

**WHEN RECORDED, RETURN TO:**

**Dillon Companies, LLC  
1014 Vine Street  
Cincinnati, Ohio 45202-1100**

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**FOR**

**FALCON MARKETPLACE**

**BY AND BETWEEN**

**LG HI FALCON, LLC,  
a Texas limited liability company**

**and**

**DILLON COMPANIES, LLC,  
a Kansas limited liability company**

Dated as of: January 30, 2020

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FALCON MARKETPLACE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (“Agreement”) made this 30th day of January, 2020, by, between and among LG HI FALCON, LLC, a Texas limited liability company, whose address is c/o Leon Capital Group, 3500 Maple Avenue, Suite 1600, Dallas Texas 75219 (“Developing Party”), and DILLON COMPANIES, LLC, a Kansas limited liability company, whose address is 65 Tejon Street, Denver, Colorado 80223 (“Dillon”), collectively referred to herein as the “Parties” or individually, as a “Party”.

**RECITALS**

A. The Parties desire to establish a general plan for the development, maintenance, and improvement of certain real property in the County of El Paso, State of Colorado, located at the northwest corner of Woodmen Road and Meridian Road, as an integrated, retail shopping center designed for the mutual benefit of the Parties, which real property is more particularly described on Exhibit A, attached hereto and incorporated herein by reference (“Shopping Center”).

B. The Parties desire to provide protective covenants and restrictions relating to the Shopping Center.

C. All such restrictions shall be imposed on each portion of the Shopping Center as a mutual, equitable servitude in favor of all other portions of the Shopping Center.

D. Dillon is the Owner of Lot 2 and Lot 3, (collectively, the “Dillon Parcels”), as shown on the Site Plan attached hereto as Exhibit B and incorporated herein by reference.

E. Developing Party is the Owner of Lots 1, 4, 5, 6, 7, 8, 9, 10, and 11 (collectively, the “Developer Parcels”) and Tracts A, B, and C (collectively, the “Non-Developable Parcels”), as shown on the Site Plan attached hereto as Exhibit B and incorporated herein by reference.

NOW, THEREFORE, in order to establish such general plan, the Parties agree as follows:

**ARTICLE I  
DEFINITIONS**

Section 1.1 “Agreement”: this Declaration of Covenants, Conditions and Restrictions.

Section 1.2 “Allowable Gross Square Feet”: the maximum number of square feet of permitted Commercial Area allowed by law of each of the Owners on its Parcel, whether the entire amount is initially used, or whether part is initially used, and the balance is held for expansion. The Allowable Gross Square Feet of Commercial Area shall be the maximum allowed by applicable law.

Section 1.3 “Building Area” or “Buildable Area”: the area allowed pursuant to governmental zoning and setbacks for Commercial Area on each Parcel.

Section 1.4 “CAMA”: that certain Agreement for Operation and Maintenance for Common Areas for Falcon Marketplace executed by the Parties hereto which encumbers the Shopping Center and is recorded concurrently with this Agreement.

Section 1.5 “Circulation Drives” means those driveway corridors intended for vehicular and pedestrian access, ingress and egress designated as Circulation Drives on the Site Plan including, without limitation, any appurtenant sidewalks, walkways, curbs, gutters and similar Improvements.

Section 1.6 “Commercial Area”: all areas used or constructed for use for commercial purposes within a Building Area or enclosure, whether or not actually occupied, including, but not limited to, basement areas, subterranean areas, balcony areas, sales and service areas, warehousing and storage areas, clerical or office areas and employee facilities, and enclosed loading and delivery areas. Commercial Area shall be measured from the exterior line of the exterior walls and from the center line of any Party or common interior walls, without deduction for columns, walls or other structural or non-structural components.

Section 1.7 “Common Areas”: All areas within the Shopping Center, which are not Commercial Areas, Drive-Through Areas or Service Facilities and are not exclusively appropriated for the use of any single Occupant or limited number of Occupants by the terms of this Agreement. Such Common Areas include parking areas (including employee parking areas), Circulation Drives, walkways, landscaped areas (excluding back of curb landscaping), public restrooms which are both directly accessible from pedestrian passageways and not within Commercial Areas, perimeter (not adjacent to a building) sidewalks, including associated lighting, landscaping and trash facilities and all other similar facilities provided for the common convenience of the Owners, Occupants and Permittees. Common Areas also do not include the areas located beneath a gas canopy, secured exterior areas of a public storage facility or fenced exterior play yards of an educational or child care facility.

Section 1.8 “Consenting Owners”: the Owners of the Dillon Parcels and the Developing Party (so long as the Developing Party remains an Owner of a Parcel).

Section 1.9 “Contracting Party”: is defined in Section 2.8(a).

Section 1.10 “Development Agreement”: that certain Development Agreement for Shopping Center between the Parties hereto, which encumbers the Shopping Center, a memorandum of which is recorded concurrently with this Agreement.

Section 1.11 “Developing Party”: LG HI Falcon, LLC, whose current address is c/o Leon Capital Group, 3500 Maple Avenue, Suite 1600, Dallas, Texas 75219.

Section 1.12 “Dillon”: Dillon Companies, LLC, a Kansas limited liability company, its parent company, subsidiaries and affiliates together with any entity succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entity, whose current address is 1014 Vine Street, Cincinnati, Ohio 45202-1100.

Section 1.13 “Dillon Parcels”: Defined in Recital D above.

Section 1.14 “Drive-Through Area”: all areas within the Shopping Center designed or used to provide services or merchandise for delivery to consumers or users in vehicles including stacking areas, order areas, pick-up areas and curb cuts or driveways used only for such uses. This would include Fuel Center pump areas.

Section 1.15 Intentionally Omitted.

Section 1.16 “Fuel Center”: Lot 3 as depicted on Exhibit B and part of the Dillon Parcels.

Section 1.17 “Lienholder”: any mortgagee under a mortgage or beneficiary under a deed of trust constituting a lien on any Parcel.

Section 1.18 “Maintenance Director”: that person responsible for the oversight of maintenance of the Common Areas as more particularly set forth in the CAMA.

Section 1.19 “National or Regional Chain”: a business organization (i) operating at least twenty-five (25) retail stores throughout the United States or at least eight (8) retail stores within a single state of the United States, (ii) utilizing prototypical signage and exterior elevations on all or substantially all of its stores, and (iii) having a national or regional identity with the public at large.

Section 1.20 “Occupant”: each of the Owners and any Person from time to time entitled to the use and occupancy of any portion of Commercial Area in the Shopping Center under any lease, sublease, license, or concession agreement, or other instrument or arrangement. “Occupant” can be used in the singular or plural, as the context requires.

Section 1.21 “Owner”: the record holder of fee title to all or any portion of the Parcels comprising the Shopping Center, their respective heirs, personal representatives, assigns and successors in interest. The term “Owner” shall not, however, include a Lienholder until such Lienholder acquires fee simple title to a Parcel.

Section 1.22 “Parcel”: Any of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, as designated on Exhibit A; two (2) or more of which may be referred to as “Parcels.” “Parcel” or “Parcels” do not include the Non-Developable Parcels unless specifically so stated.

Section 1.23 “Permittees”: all Occupants and all customers, employees, agents, contractors, vendors, suppliers, visitors, and other business invitees of Owners and Occupants insofar as their activities relate to the intended use or construction of the Shopping Center.

Section 1.24 “Person”: individuals, general or limited partnerships, firms, associations, corporations, trusts, limited liability companies, government agencies, administrative tribunals, or any other form of business or legal entity.

Section 1.25 “Same geographic area in which the Shopping Center is located” or “in the same geographic area of the Shopping Center” means the greater Colorado Springs, Colorado metropolitan area.

Section 1.26 “Service Facilities”: sidewalks adjacent to a building, raised loading docks,

delivery and pick-up truck ramps, trash enclosures, exterior coolers, bottle storage areas and other similar service facilities.

Section 1.27 “Shopping Center”: that property described on Exhibit A attached hereto and incorporated hereby by reference, also known as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, and Tracts A, B, and C.

Section 1.28 “Site Plan”: the Site Plan is the plan for development on the Shopping Center which has been approved by the County of El Paso, a copy of which is attached as Exhibit B, and incorporated herein by reference. Notations on the Site Plan are for information only and are not considered to be incorporated into this document by reference unless this Agreement so specifies.

## **ARTICLE II REGULATION OF IMPROVEMENTS**

Section 2.1 Building Location. No building, structure, or improvement of any kind, other than Common Area improvements, will be constructed or installed, except in those areas specifically designated as Building Area. The Owners have the right to place footings (to a maximum of 3 feet), signs, canopies, roof overhangs, cornices, columns, foundation walls and walls (to a maximum of 6 inches) and other building features attached to a commercial building which encroach or project over the Common Areas. The Building Areas are designated areas where buildings or structures may be located, but the entire amount of Building Area does not necessarily have to be used initially for buildings. The total square footage of utilized Building Area on any Parcel shall not exceed the maximum square footage of Building Area for each Parcel. All buildings and structures shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. All portions of a Building Area which are not used for buildings initially shall be developed and maintained as a Common Area. All Parcels on which buildings are not under construction as of the date any Owner first opens its doors for business on a Parcel, shall be covered by decomposed granite, a one-inch (1”) asphalt or other acceptable dust cap and kept weed free and clean at the respective Owner's sole expense until such time as a building or buildings are constructed thereon.

Section 2.2 Common Area. The Common Area is hereby reserved for the sole and exclusive use of the Owners, Occupants and their Permittees. The Common Area may be used for vehicular driving and parking areas, pedestrian traffic, directional signs, sidewalks, walkways, perimeter walls, retaining walls, fences, parking lot lighting, utilities, landscaping and for the other uses specified in this Agreement. Subject to the terms of Section 2.6 below, no buildings or structures shall be placed or constructed in the Common Area except pylon and directional signs, paving, bumper guards or curbs, landscape planters, public restrooms, lighting fixtures, perimeter walls and fences, utility pads, sidewalks, retaining walls and to the extent that they do not impede access to the rear or sides of buildings, trash enclosures (with all trash being hidden from view from the parking areas). The Common Area shall be constructed in accordance with the Site Plan and shall be kept and maintained as provided for in the CAMA. In this regard, at such time as an Owner constructs a building, structure or other vertical improvement upon its Parcel, such owner shall install such Common Area landscaping and irrigation as may be required by the Development Agreement and/or governmental authorities having jurisdiction and such Common Area irrigation

(as well as irrigation serving right of way landscaping adjacent to such Owner's Parcel) shall be tied to such Owner's water meter for such Owner's Parcel. In addition, the Owner of Lot 1 shall perform and be responsible for the same services set forth in the preceding sentence (regarding landscaping and irrigation) on Tract C. The sizes and arrangements of the Common Area improvements (excluding Common Areas located within a Building Area) including, without limitation, Circulation Drives, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, perimeter walls and fences, retaining walls and landscaped areas together with necessary planting may not be materially changed without the written approval of the Consenting Owners. No Circulation Drive or parking area on any Parcel shall be altered without the consent of the Owner of that Parcel.

Section 2.3 Shop Signs. Except as provided for in this Section 2.3 or in Section 2.4, no exterior sign, symbol, advertisement, or billboard will be erected, maintained, displayed, or permitted on or about any portion of the Shopping Center except one (or more, if approved by the County of El Paso) sign for each retail Occupant in the Parcels known as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, as approved by the County of El Paso, provided the signs (i) are attached to the building occupied, (ii) identify only the name, business, or symbol of such retail Occupant, (iii) are architecturally and aesthetically compatible and harmonious with and generally consistent with the general exterior architectural treatment of the buildings in the Shopping Center, (iv) are of a type, size, and design commonly found in first class shopping centers in the same geographical area as the Shopping Center, and (v) comply with any sign criteria and design guidelines now or hereafter approved and implemented by the Consenting Owners and the sign ordinances of the controlling legal entity where the Shopping Center is located. Dillon (or other Occupant of the Dillon Parcel) may erect and maintain exterior signs attached to its buildings to the extent such signs are: (i) permitted by and in compliance with applicable governmental regulations, (ii) architecturally and aesthetically compatible and harmonious with and generally consistent with the general exterior architectural treatment of the buildings in the Shopping Center, and (iii) in compliance with any sign criteria and design guidelines now or hereafter approved and implemented by the Consenting Owners. No exterior building or free-standing sign shall utilize flashing or audible elements. The provisions of this Section 2.3 shall not, however, prohibit professionally prepared coming soon, grand opening and/or now open signage, customary property management and for lease and/or for sale signage, contractor signage, signage identifying a Lienholder, handicap parking signage, traffic and directional signage, time restricted parking signage and such other signage as may be required by governmental authorities having jurisdiction.

Section 2.4 Shopping Center Signs. Subject to governmental approval, the Developing Party shall construct two (2) multi-panel Shopping Center monument sign structures (collectively, the "Shopping Center Monument Signs"), in the areas shown on the Site Plan. One Shopping Center Monument Sign along East Woodmen Road and one Shopping Center Monument Sign on the corners of East Woodmen Road and Meridian Road as designated on the Site Plan as a "Shared" Shopping Center Monument Sign (collectively, the "Shared Monument Signs"). The other Shopping Center Monument Signs are for the sole use by Developing Party, at its sole cost and expense. The sign panel sizes and locations for the Shared Monument Signs are as shown on Exhibit C. The construction costs of the two (2) Shared Monument Signs shall be shared as follows: thirty-one percent (31%) to Dillon and sixty-nine percent (69%) to Developing Party. Each displaying Party shall supply and maintain its own sign fascia and can. The design of the Shopping Center Monument Signs shall be subject to the approval of Developing Party and Dillon

pursuant to the terms of the Development Agreement, as shall be the design, size and location of the sign fascia used; provided, however, that any National or Regional Chain which operates in the Shopping Center may use such standard fascia as it from time to time uses generally in carrying on its business.

The Owner of the Fuel Center and the Owners or Occupants of the Parcels known as Lot 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 may on their pads erect free-standing signs (a “Pad Monument Sign”) on their respective Parcels. No Pad Monument Sign shall exceed the lesser of (i) the greatest height allowed by law or (ii) more than seven feet (7') in height (exclusive of architectural embellishments and eleven feet (11') in height inclusive of architectural embellishments) above the elevation of the finish grade at its installed location and each Pad Monument Sign shall be erected in the locations as shown on the Site Plan.

Section 2.5 Barriers. No hedge, fence, wall (other than retaining walls), or other like barrier or barricade may be constructed on the line separating one Parcel from another Parcel, other than improvements expressly permitted herein (which expressly includes barriers, barricades, improvements or other structures identified in the plans and specifications for the initial construction of the Common Areas in accordance with the provisions of the Development Agreement), or upon the Common Areas, or any portion thereof which shall prevent, impede or impair the use or exercise of any of the easements herein granted, or free access and movement upon the Common Areas. Each Owner shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Agreement to use the Common Area from using the Common Area for ingress, egress and parking.

Section 2.6 Allowable Gross Building Area. No building or other improvement will at any time be constructed or maintained on, under, or above the surface of any Parcels of the Shopping Center which exceeds the Allowable Gross Square Feet for such Parcel or Parcels. Notwithstanding the foregoing, an Owner may expand its existing Commercial Area and/or Allowable Gross Square Feet for such Parcel or Parcels so long as: (1) such Owner obtains the prior written consent of the Consenting Owners, such consent not to be unreasonably withheld; (2) such Owner obtains the prior written consent of the applicable governmental authorities; (3) such Owner, at its sole expense, timely and diligently, and in compliance with all governmental regulations and building codes, makes any and all modifications and adjustments to the Common Areas, including the Circulation Drives, Drive-Through Areas, Service Facilities, drainage areas, parking areas and access drives and driveways as may be necessary or required by (a) governmental regulations, (b) governmental authorities, including the County, or (c) the Consenting Owners or the Owners of the Parcels directly impacted by such modifications and adjustments (collectively, the “Adjustments”); and (4) such Owner exercises all commercially reasonable efforts to minimize the impact on the Owners, users, occupants, tenants and guests of the impacted Parcels when completing the Adjustments. It will not be unreasonable for one or more of the Consenting Owners to withhold its/their consent to an expansion in which, among other factors that may be examined by the Consenting Owners, any one or more of the following applies: (A) the Consenting Owner(s) determine in its/their commercially reasonable opinion that the Adjustments will unreasonably interfere with, burden, or adversely impact the business operations of any occupant or tenant of the Shopping Center; (B) the proposed Adjustments and/or expansion will not be consistent with the quality and character of the improvements located elsewhere in the Shopping Center; (C) the Consenting Owner(s) determine in its/their

commercially reasonable opinion that the proposed expansion and Adjustments would (i) adversely affect or otherwise cause an undue burden on the Circulation Drives, Service Facilities, drainage areas, parking areas and access drives and driveways for the Shopping Center, (ii) require any addition to (including improvements thereon) or modification of any building or improvements on the Parcel of another Owner, or all or any portion of the Shopping Center, in order to comply with building code or other governmental requirements, (iii) not be in compliance with any governmental rule, requirement, regulation or code, or (iv) involve any increased risk of the use, release or mishandling of any hazardous substances; (D) the proposed expansion and Adjustments would cause an Owner to be in violation of any existing lease or other agreement in the Shopping Center, or any applicable law; or (E) the Owner requesting the expansion is in default of this Agreement at the time of the request for consent to the expansion from the Consenting Owners.

Section 2.7 Type and Design of Building.

(a) In order to produce an architecturally compatible unified shopping center, each building in the Shopping Center, now or in the future, shall be of first quality construction and architecturally designed so that its exterior elevation (including signs) and color will be architecturally, and aesthetically compatible and harmonious with all other buildings in the Shopping Center. In this regard, Developing Party and Dillon have agreed to the sign plan and building design concepts for the Shopping Center. No building may be constructed, nor the exterior of any existing building changed (including, without limitation, signs and color) so that its exterior elevation (including signs) and color will not be architecturally, and aesthetically compatible and harmonious with all other buildings in the Shopping Center without the prior written approval of the Consenting Owners. Notwithstanding the provisions of the immediately preceding sentence, the following shall not require approval: (i) the standard signs and logos of any National or Regional Chain as they may exist from time to time; (ii) the opening, closing or relocation of any door in a facility of any National or Regional Chain located on any Parcel; (iii) signs that are architecturally and aesthetically compatible and harmonious with all other signs in the Shopping Center or otherwise conform to any sign plan and building design concepts now or hereafter approved and implemented by the Consenting Owners; and (iv) building plans where the exterior design, color and elevations (whether to be constructed or modified) are architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center or otherwise conform to any design concepts now or hereafter approved and implemented by the Consenting Owners.

(b) Every building shall be either equipped with automatic sprinkler systems or shall be constructed in such a manner as not to adversely affect the fire rating of any building built upon any other Parcel. The purpose of this subparagraph (b) is to allow buildings built on each Parcel to be fire rated as separate and distinct units without deficiency charge.

(c) No building shall be built in such a manner as to adversely affect the structural integrity of any other building in the Shopping Center.

(d) All buildings except the buildings on the Dillon Parcel shall be single story with mezzanine permitted and shall not exceed twenty-nine feet (29') in height (excluding architectural treatments, tower features, mechanical fixtures and equipment and screening for same

up to thirty-five feet (35') total) from its finished floor elevation. The buildings on the Dillon Parcel shall not exceed fifty feet (50') in height (including mechanical fixtures and equipment and screening for same).

(e) Each Owner shall maintain or cause to be maintained all Drive-Through Areas, Service Facilities and the exterior of any building located on such Owner's Parcel(s) in a quality and condition comparable to that of first-class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center. All Service Facilities shall be attractively screened from view from the parking areas.

#### Section 2.8 Construction Requirements.

(a) All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Shopping Center shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center, or any part thereof, to or from any public right-of-way; (ii) customer vehicular parking in that portion of the improved Common Area located in front of any building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to Service Facilities. Staging for the construction, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Shopping Center including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Shopping Center approved in writing by the Consenting Owners and to those portions of the Common Area identified on the Site Plan as "Staging Areas". Unless otherwise specifically stated herein, in the Development Agreement or in the CAMA, the person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and Common Area improvements damaged or destroyed in the performance of such work.

(b) The Contracting Party shall not permit any liens to stand against any Parcel for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner of any Parcel encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law. If the Contracting Party fails to timely release the lien, the Owner of said Parcel shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners and Occupants of the Shopping Center from any and all liability, claims, damages, expenses (including reasonable attorneys' fees and costs and reasonable attorneys' fees and costs on any appeal), liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, except to the extent caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

Section 2.9 Encroachments. The Owners acknowledge and agree that incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, signs and Common Area improvements located in the Shopping Center, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in the Shopping Center.

### **ARTICLE III OPERATIONS AND USE**

Section 3.1 Permitted Uses. Neither the Shopping Center nor any part of it will be used and no building or other improvement will be constructed, maintained, or used for any purpose other than retail, office, food service, professional and service establishments. Except as otherwise prohibited by this Agreement, any part of the Shopping Center may be used for any commercial or business operation, use or purpose, which is expressly authorized herein, or which is common to first class shopping centers in the same geographic area in which the Shopping Center is located and which is not prohibited by this Agreement or by law.

Section 3.2 Mall Restrictions. No retail or business establishment will be located within any enclosed mall without the prior written consent of the Consenting Owners. This should not be construed to restrict passages between businesses that are not Common Area.

Section 3.3 Food and Drug Restrictions. No Parcel other than the Dillon Parcel may, without the prior written consent of the Owner and Occupant of the Dillon Parcel, which may be withheld in its sole and subjective opinion, be used (i) as a food store or supermarket (which collectively shall be defined as any store containing at least two thousand (2,000) square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption); (ii) as a bakery or delicatessen, but this shall not be deemed to prohibit (a) a donut shop such as Krispy Kreme, Lamars, Winchell's, Dunkin Donuts or a similar operation consisting of two thousand five hundred (2,500) square feet or less and customer counter carry out displays (as distinguished from back of counter rack storage) for packaged products do not exceed twenty (20) linear feet in width, or (b) an Einstein's Bagels, Moc's Bagels, Brueger's Bagel Bakery or similar operation consisting of two thousand five hundred (2,500) square feet or less and customer counter carry out displays (as distinguished from back of counter rack storage) for packaged products do not exceed twenty (20) linear feet in width; (iii) as a business for the sale of fresh meat, fish, poultry or produce for off-premises consumption; (iv) for the sale or offer for sale of any ethical pharmaceutical products requiring the services of a registered pharmacist, but this restriction shall neither prohibit the dispensing of medicinal drugs in connection with an operation of a veterinary practice nor shall it apply to medical, dental, physician, surgical, chiropractic or other licensed health care provider offices dispensing sample (not more than a twenty-four (24) hours by recommended use) doses of medicinal drugs to their patients during office visits without a fee or remuneration of any kind; or (v) for the sale of packaged alcoholic beverages, including beer, wine, and liquor for off-premises consumption; provided, however, the maximum square footage permitted pursuant to the carve outs described in clause (ii) of this Section 3.3 shall not exceed nine thousand (9,000) square feet. Notwithstanding the foregoing, (i) full service, fast food

or quick service restaurants selling prepared foods for on premises or off premises consumption as its primary menu items and (ii) Panera Bread or restaurants of a similar type to Panera Bread with a maximum size of four thousand (4,000) square feet may operate on the Parcels provided the restaurant is not a Boston Market, Eatzie's, Tasteez, Gourmet To Go or similar restaurant type primarily selling home meal replacement items. If Dillon shall discontinue any one or more of the uses described in this Section 3.3 for a period of twelve (12) continuous months or more (so long as such discontinuance is not due to remodeling, fire, casualty, repair, strike, temporary loss of licenses or causes beyond Dillon's control), then the restriction in favor of the discontinued use shall be waived and terminated as of such date. In addition, in the event Developing Party acquires the Fuel Center from Dillon, Developing Party may operate a convenience store and Fuel Center of the nature typically operated in gasoline service stations.

Section 3.4 Fuel Center. No portion of the Shopping Center other than Fuel Center may be used for the purpose of (i) conducting or carrying on the business of selling or dealing in gasoline, kerosene, benzol, propane, naphtha, greases, lubricating oils, any fuel to be used for internal combustion engines or any power source for vehicles as they may evolve technologically, or lubricants in any other form, or (ii) for the purpose of conducting or carrying on the business of operating a convenience store. The foregoing restriction are not intended to prohibit (a) general retailers, specifically including grocers like Dillon Companies, LLC, d/b/a King Soopers, from selling auto parts, including motor oil and lubricants, as part of their general merchandise; (b) an auto parts specialty store; (c) one (1) full service car wash on either of the Parcels known as Lots 1, 4, 5, 6, 7, 8, 9, 10, and 11 or a car wash incidental to the operation of another primary use such as a Jiffy Lube or Grease Monkey; (d) a business selling new or reconditioned auto parts or performing vehicle service and light auto repair services (it being understood that heavy automotive repair such as transmission replacements, grinding, boring or machining of engine blocks, transmissions or engine components, engine overhauls, transmission overhauls, body/fender repairs and vehicle painting are expressly prohibited); or (e) or selling and repairing tires.

Section 3.5 Dollar-Type Stores. Notwithstanding any of the foregoing restrictions, Dollar-type stores in the Shopping Center, if any, are restricted as follows: (a) no sale of fresh meat, fish, poultry or produce, fresh dairy (with the exception of ice cream products in unit sizes not larger than one quart) and bakery items not delivered prepackaged is allowed, (b) sale of health and beauty aids and body related products shall not exceed five hundred (500) square feet of retail floor area, including one-half of the aisle space adjacent to the display area, (c) sale of food, candy, snacks and beverages shall not exceed five hundred (500) square feet of retail floor area, including one-half of the aisle space adjacent to the display area. A Dollar-type store for the purposes of this section is a general merchandise store selling products for generally a dollar, ninety-nine cents, or a similar low-cost fixed sum. Dollar Tree, Dollar General, Family Dollar and It's a Deal are Dollar-type stores that would be subject to the restrictions stated in this section, but the foregoing is not an exhaustive list.

Section 3.6 Drive Up and Drive Through Facilities. No restaurant, bank or other facility featuring a Drive Through Area shall be located in the Shopping Center unless (i) depicted on the Site Plan, or (ii) Dillon has first given their written consent to the location, parking and drive lanes of such facility. Consent may not be unreasonably withheld.

Section 3.7 Marijuana. No marijuana dispensary is allowed in the Shopping Center, except on the Dillon Parcels.

Section 3.8 Other Restrictions. No part of the Shopping Center, except Lot 2, shall be used as a non-retail business which requires extensive parking such that, at any time, the availability of convenient parking for the customers of any other business operated in the Shopping Center is reduced or eliminated, including without limitation a disco, nightclub, health spa, theater, bowling alley, bingo parlor or recreational center. No part of the Shopping Center, including Lot 2, shall be used as a business which principally features sexually explicit products, drug paraphernalia, any so-called "head shop", massage parlor or book store or establishment primarily engaged in selling, leasing or exhibiting pornographic, obscene, or indecent materials, exhibiting pornographic or indecent performances. Businesses with a regional platform having at least 5 locations in the State of Colorado or having a national platform, such as "Massage Envy" shall not be considered a "massage parlor" as stated immediately above. Additionally, the foregoing restriction on a non-retail business which requires extensive parking and health spas shall not prohibit a fitness center of less than fifteen thousand (15,000) square feet, provided that the front door of such fitness center is more than two hundred linear feet (200') from the nearest point of the building occupied by King Soopers as a supermarket.

#### **ARTICLE IV EASEMENTS**

Section 4.1 Grant. Dillon and Developing Party each grant to the other and accept the following easements:

(a) Ingress, Egress and Parking. Nonexclusive easements appurtenant to each Parcel over the Common Areas of all other Parcels for the purpose of ingress and egress by vehicular and pedestrian traffic of Owners, Occupants, Permittees, and their customers, licensees and invitees; and parking of vehicles of the Owner, Occupants, or Permittees and their customers, licensees, and invitees; limited however, for purposes connected with or incidental to any permitted use being made of any portion of the Owner's Parcel. Notwithstanding anything contained in this Agreement to the contrary, each Parcel must meet applicable governmental parking requirements using only parking available within its own Parcel. Parking spaces from other Parcels cannot be used to satisfy a Parcel's requirements. Each Parcel must be self-parked.

(b) Access. Nonexclusive easements appurtenant to each Parcel over the Common Areas of all other Parcels for the purpose of furnishing access and the right of access between the public streets and any parking areas situated on the Shopping Center property and between the public streets and parking areas and the Owner's Parcel.

(c) Signs. An easement under, through and across the Common Area of the Parcels for the installation, operation, maintenance, repair and replacement of Shopping Center Monument Signs referred to in Section 2.4 of this Agreement and all utility lines and facilities appurtenant thereto.

(d) Drainage. An easement appurtenant to each Parcel under, through and across the Common Area of all other Parcels for surface and subsurface drainage of storm water

consistent with the drainage plan for the Shopping Center developed by the Parties pursuant to the Development Agreement.

(e) Utilities. An easement under, through and across the Common Area of the Parcels (including a reasonable right of access to any panels or meters on an Owner’s Parcel for Common Area utilities) for the installation, maintenance and operation of utility lines and related facilities and services for Common Area or Building Area together with and including, without limitation, vaults, manholes, meters, transformers, pipelines, valves, hydrants, sprinkler controls, conduits, sewage facilities and all related facilities, all of which shall, whenever and wherever reasonably practicable, be located below the surface of the Common Area or the surface of any other above ground improvements located thereon.

(f) Comfort and Convenience. An easement under, through and across the Common Area of the Parcels for minor comfort and convenience facilities for Permittees, such as mailboxes, public telephones and benches as each Owner may from time to time deem appropriate to construct or permit to be constructed on its Parcel.

(g) Temporary Construction Activity. An easement under, through and across the Common Area of the Parcels for the construction, maintenance, repair, replacement, rearrangement and remodeling permitted under this Agreement of buildings and improvements within Building Areas and Common Areas. Good faith efforts shall be made to ensure that all such work shall be conducted in an expeditious manner to minimize interference with use of the Common Areas and businesses being conducted in the Shopping Center, shall be diligently prosecuted to completion and shall be performed in accordance of the provisions of Section 2.8.

Section 4.2 Free Access. The Owners covenant that at all times free access between the Parcels owned by each Owner and the remainder of the Shopping Center will not be impeded and will be maintained.

**ARTICLE V  
COMMON AREAS**

Section 5.1 Location. All areas not used as Commercial Areas, Drive-Through Areas or Service Facilities, but used for other purposes permitted by this Article will be improved, used, and maintained as Common Areas.

Section 5.2 Possession. The Owners, or their respective successors or assigns to all or any part of their Parcels, will jointly have the general possession of all Common Areas of the Shopping Center, and such Parties jointly or individually may, at any time and from time to time, remove, exclude and restrain any Person from the use or occupancy of such, excepting bona fide Permittees who make use of such areas in accordance with the rules and regulations established from time to time for such use unanimously by the Consenting Owners. If unauthorized use is being made of any of such Common Areas, any of the Owners may restrain or terminate such unauthorized use by appropriate proceedings after the expiration of twenty-four (24) hours after written notice to the Owner of such Parcel and such Owner's failure to abate such use.

Section 5.3 No Commercial Use. None of the Common Areas shall be used for commercial purposes by any Owner, Occupant, Permittee or Person, except in accordance with

the provisions of this Agreement and the rules and regulations adopted for such use unanimously by the Consenting Owners. All of the uses permitted within the Common Areas shall be used within reason and judgment so as not to interfere with the primary purpose of the Common Areas which is to provide for access and parking for the customers, invitees and employees of those businesses conducted within the Shopping Center and for the servicing and supplying of such businesses. Dillon (or other Occupant of the Dillon Parcel) may store shopping carts in cart corrals in the parking area and may also install a cart control system along the perimeter of the Dillon Parcel. Plants, firewood, Christmas trees, outdoor décor, outdoor dining, vending machines, and other items customarily displayed and sold in other King Soopers locations may be displayed, stored, and sold on the sidewalk adjacent to its Building Area. The seasonal or occasional sale of merchandise by Dillon (or other Occupant of the Dillon Parcel) shall be permitted in the Common Area on the Dillon Parcel except in those portions of the Common Area identified on the Site Plan as “No Seasonal Sales Areas” so long as the Common Area is promptly restored upon completion of such sales to its condition prior to said sale at the sole cost of the Occupant of the Dillon Parcel. Dillon (or other Occupant of the Dillon Parcel) shall be permitted to have vending machines and propane exchange facilities on the sidewalk adjacent to its Building Area. The Occupants operating a Fuel Center shall be permitted to have outdoor displays on sidewalks adjacent to any building and in gasoline pump islands. The Occupants of the Parcels known as Lot 2 and Lots 3, 4, 5, 6, 7, 8, 9, 10, and 11 may have outside dining areas on the sidewalks or patios adjacent to the buildings developed on such Parcels so long as the same are operated in accordance with the codes and ordinances of governmental authorities having jurisdiction. In addition, the provisions of this Section 5.3 shall not prohibit temporary promotions within the Common Areas of the Shopping Center, so long as the prior approval of the Consenting Owners is obtained. Notwithstanding anything contained herein to the contrary, Dillon shall be able to offer its grocery pick-up service in the Common Area located on the Dillon Parcels in such areas as it deems necessary or desirable from time to time, including without limitation, dedicated parking spaces, signage, crossing areas, and directional signage.

Section 5.4 Maintenance of Common Areas. At such time any Occupant of the Shopping Center commences doing business, the maintenance of the Common Areas shall be subject to the provisions and restrictions as contained in the CAMA.

Section 5.5 Parking. There shall be no charge for parking in the Common Area without the prior written unanimous consent of the Consenting Owners or unless otherwise required by law. Each Parcel shall comply with the parking requirements of applicable governmental authorities without relying on spaces from other lots to meet these requirements.

Section 5.6 Employee Parking. Anything in this Agreement to the contrary notwithstanding, areas to be used for motor vehicle parking by employees of Occupants of the Shopping Center may be designated within the Shopping Center from time to time with the prior written consent of the Consenting Owners, but in all events, employees of any Owner (or an Occupant of any Owner’s Parcel) shall not be permitted to park on the Parcel(s) of any other Owner without the prior written consent of such Owner. In the event employee parking areas are designated as provided herein, then employees of any Owner or Occupant of any part of the Shopping Center shall use only those portions of the Common Area designated for such motor vehicle parking purposes. In no event shall employees park within one hundred fifty feet (150') of the front of any building located on the Dillon Parcel. The authority herein granted shall be

exercised in such manner as not to discriminate against any Owner or Occupant of the Shopping Center.

Section 5.7 Common Area Indemnity. Each Owner shall indemnify, defend and hold the other Owners harmless for, from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, arising from that Owner's, or the agents, servants or employees of such Owner, negligent acts that result in the death of any person, bodily injury, loss or damage, however caused, to any person or damage to tangible property as shall occur in or about the Common Area located on such indemnifying Owner's Parcel, except claims resulting from the negligence or willful act or omission of the indemnified Owner or any Occupant or Permittee of any such indemnified Owner's Parcel, or the agents, servants or employees of such indemnified Owner or Occupant, wherever the same may occur.

Section 5.8 Building Area Indemnity. Each Owner shall indemnify, defend and hold the other Owners harmless for, from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, incurred in connection with, arising from, that Owner's, or the agents, servants, or employees of such Owner, negligent acts that result in the death of any person, bodily injury, loss or damage, however caused, to any person or damage to tangible property as shall occur in or about the Building Areas located on that Owner's Parcel, caused by the negligent acts or omissions of such Owner or any Occupant of any such Owner's Parcel, or the agents, servants or employees of such Owner or Occupant, wherever the same may occur, except (i) claims released under Section 6.9, but only to the extent of such release, (ii) claims resulting from the negligence or willful act or omission of the indemnified Owner or any Occupant or Permittee of any such Owners Parcel, or the agents, servants or employees of such indemnified Owner, Occupant or Permittee, wherever the same may occur, and (iii) mechanic's liens which arise from work performed for the benefit of one Owner on another Owner's Parcel (i.e. utility systems, access routes). Where the Owner of a Parcel agrees to allow a utility or other easement to be constructed on its Parcel for the benefit of another Owner, the Owner who benefits from such an easement agrees to indemnify and hold harmless the Owner of the burdened Parcel from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorney's fees, and any actions, or proceedings in connection therewith, arising from, due to or as a result of the death of any person, bodily injury, loss or damage, however caused, to any person or damage to tangible property as shall occur in connection with the construction, use and maintenance of such easement.

## **ARTICLE VI INSURANCE--DAMAGE AND DESTRUCTION**

Section 6.1 Common Area - Insurance. Pursuant to the CAMA, the Maintenance Director, as a cost of Common Area maintenance, shall purchase and maintain, at a pro rata cost to the Owners, commercial general liability insurance covering the Common Area in the amounts and standards as set, forth therein, which policies shall name the Owners and any Occupant of any entire Parcel as additional insureds. This insurance is intended to provide primary coverage for occurrences within the Common Areas.

Section 6.2 Public Liability Insurance. Each Owner shall at all times during the term hereof maintain or cause to be maintained commercial general liability insurance covering the Building Areas and Common Area located on such Owner's Parcel, insuring against the risks of bodily injury, property damage and personal injury liability with respect to such Building Areas and Common Area located on such Parcel, and providing contractual liability coverage for the indemnity obligations contained in Sections 5.7 and 5.8, with a limit not less than Three Million and 00/100 Dollars (\$3,000,000.00) per occurrence, coverage to be in a commercial general liability form with at least the following coverage's: (i) deleting any employee exclusion on personal injury coverage, (ii) including employees as additional insureds, (iii) providing for blanket contractual coverage, broad form property damage coverage, products completed operations, independent contractors protective and personal injury's coverage, and (iv) providing for coverage of employers vehicular non-ownership liability. Any Owner other than Dillon may provide for a "deductible" of up to Ten Thousand and 00/100 Dollars (\$10,000.00) as to any portion of the coverage. Each policy of liability insurance maintained by an Owner hereunder shall name the other Owners as additional insureds. All such insurance shall be primary and noncontributory; shall provide for severability of interests; shall provide that an act or omission of one of the insureds or additional named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the insured or other additional named insureds, as the case may be; and shall afford coverage for all claims based on negligent acts or omissions, resulting in bodily injury and/or damage to tangible property which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. The limits of insurance specified herein may be reviewed by Dillon and Developing Party not more often than at five (5) year increments and Dillon may thereupon require higher limits as is standard in the industry.

Section 6.3 Fire Insurance and Rebuilding. Each Owner shall carry fire insurance, with "special perils" coverage for normal insurable risks including but not limited to, vandalism and malicious mischief endorsements, upon all Buildings, improvements and contents on its Parcel, with coverage in an amount of not less than ninety percent (90%) of the full replacement cost of the real and personal property (excluding foundations or excavations). The loss, if any, covered by such insurance shall be paid to the insured Owner, unless payment of all or a portion of said insurance is required to be paid to a mortgagee, deed of trust beneficiary or leaseback lessor, as its interest may appear. Each Owner shall have the right and power to adjust and settle any loss with its insurer. In the event of any damage to or destruction of any Building from any cause for which insurance is required to be maintained under this Section 6.3, the affected Owner, if it intends to repair or reconstruct such Building, shall repair and reconstruct the Building in accordance with (i) the concept of an integrated Shopping Center, and (ii) the provisions of this Agreement. If electing to repair or reconstruct the Building, the affected Owner shall commence restoration and reconstruction as herein provided as soon as possible after receipt of the proceeds of insurance therefor and shall use all due diligence to repair or reconstruct within a reasonable period of time thereafter. If the affected Owner elects not to repair or reconstruct its Building, it shall comply with Section 6.5 below.

Section 6.4 Obligations on Rebuilding. Whenever an Owner elects under this Article VI to rebuild, replace or repair any Building or other improvement damaged or destroyed from any insured cause whatsoever, the work of such rebuilding, replacement or repair shall be completed with all due diligence and as soon as reasonably possible after the event of damage or destruction occurs. The work of rebuilding, replacement or repair shall be undertaken by the Owner in

accordance with all the terms of this Agreement, including the provisions of Sections 2.7 and 2.8 with respect to the approval of plans. Such Owner shall prosecute completion of the improvements as expeditiously as possible so that the same may be open for business and operating as part of the Shopping Center with as little delay and disruption as circumstances will permit.

Section 6.5 Obligations When Owner Elects Not to Rebuild. In the event of any damage or destruction to any Building or improvement located on the Building Area of any Owner's Parcel, which damage or destruction the Owner of the Parcel elects not to repair under this Agreement, such Owner shall, at its sole cost and expense, within ninety (90) days after the date of the damage or destruction, commence to raze and demolish such Building or improvement (or such part thereof that has been damaged or destroyed), clear the affected area of all debris, and thereafter comply with the applicable requirements of Section 2.1 with respect to clear areas.

Section 6.6 Self-Insurance. Any insurance required to be maintained under this Article VI by Dillon may be maintained either under a plan of self-insurance or from a carrier which specializes in providing coverage to or for its affiliates or firms in the same or related businesses; provided, however, that Dillon shall be entitled to utilize self-insurance or special coverage only for such periods as the tangible net worth of Dillon (or its parent company) exceeds One Hundred Million and 00/100 Dollars (\$100,000,000.00) as established by generally accepted accounting principles, consistently applied. If Dillon elects to self-insure in accordance with the provisions of this Section 6.6, Dillon shall provide to Developing Party at the request of Developing Party a certificate or memorandum of self-insurance describing the extent of self-insurance by Dillon pursuant to the provisions of this Section 6.6.

Section 6.7 Blanket Coverage. Any policy required to be maintained by an Owner under this Article VI may be maintained under a so-called "blanket policy" insuring other persons and other locations.

Section 6.8 Other Insurance Requirements. Any policy of insurance required to be carried by an Owner under this Article VI (other than an Owner who is self-insuring in accordance with the provisions of Section 6.6) shall provide that such policy may not be canceled or modified without at least thirty (30) days prior written notice to the other Owners, except for nonpayment of premium which shall require ten (10) days prior written notice. Each Owner (other than an Owner who is self-insuring in accordance with the provisions of Section 6.6) shall furnish to the other Owners on or before the effective date of any policy of insurance required to be carried under this Agreement, a certificate thereof stating that such insurance is in full force and effect, and otherwise complying with the requirements contained herein.

Section 6.9 Mutual Release. Each Owner for itself, and any person claiming under such Owner, by way of subrogation or otherwise, and, to the extent it is legally possible for it to do so and without affecting the coverage provided by insurance required to be maintained by any Owner hereunder, on behalf of its insurer, hereby releases and waives any right to recover against the other Owners for, from and against any liability for loss or damage to property or injury to person, including deductibles caused by an insured peril; provided, however, that this release and waiver shall be effective in the event and to the extent of actual recovery or payment under applicable insurance policies, and provided, further, that this waiver shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the insurance policies carried

by the Owners contain a clause or endorsement to the effect that such release shall not adversely affect or impair said policies or prejudice the release thereunder by the releasing Party. The liability covered herein shall include, without limitation: (i) damages for injury to or death of persons, (ii) any loss or damage to property, including, without limitation, the property of any Owner, Occupant or Permittee, located upon or in the Shopping Center, (iii) any loss or damage to Buildings or other improvements or the contents thereof, (iv) any other direct or indirect loss or damage caused by fire or other risks, which loss or damage is covered by the insurance required to be carried hereunder by such Owner or is otherwise insured, or (v) claims arising by reason of any of the foregoing. Each Owner (other than an Owner who is self-insuring in accordance with the provisions of Section 6.6) shall, to the extent such insurance endorsement is available, obtain or cause to be obtained, for the benefit of the other Owners, a waiver of any such right of subrogation which the insurer of such Owner may acquire against the other Owners by virtue of the payment of any such loss covered by such insurance.

## ARTICLE VII CONSENTING OWNERS' APPROVAL

Section 7.1 Whenever any provision of this Agreement requires the consent or approval of the Consenting Owners, then before the work or matter which requires consent or approval is commenced, sufficient information shall be sent to the Consenting Owners to make a reasonable determination of whether or not it should be approved (the "Initial Proposal"). The Consenting Owners must approve or disapprove the proposal within twenty (20) calendar days after receipt of the proposal. If any Consenting Owner disapproves the proposal ("Disapproving Owner"), it shall provide a written explanation in reasonable detail of its reasons for disapproval. If the Disapproving Owner fails to respond, or if it disapproves, it fails to provide such explanation within the twenty (20) calendar day period, such Disapproving Owner shall be deemed to have approved same provided that, when the approval was sought, the one seeking the approval (the "Proposing Owner") stated in writing to the Consenting Owners that if a disapproval with explanation was not made within the twenty (20) calendar day period, approval would then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal addressing the objections to the Initial Proposal may be submitted by the Proposing Owner (the "Alternate Proposal"), which Alternate Proposal shall be handled in the same manner as the Initial Proposal. Any Alternate Proposal shall require approval from both Consenting Owners.

As there are only two (2) Consenting Owners, the following provisions shall apply:

- (i) If the proposal pertains to a consent or an approval required for a modification or change in accordance with Section 3.3, Section 3.4 and Section 5.3 of this Agreement and the Consenting Owners cannot agree after submission of an Alternate Proposal then the requested modification or change shall not be permitted.
- (ii) If the proposal pertains to a consent or approval required in accordance with any sections of this Agreement or the CAMA, not listed in (i) above and the Consenting Owners cannot reach agreement after an Alternate Proposal has been submitted then the

dispute shall be resolved by mandatory binding arbitration in accordance with the Rules of the American Arbitration Association (“AAA”) and each of the following:

- (A) The arbitration shall be conducted pursuant to all expedited procedures of the AAA.
- (B) The Parties shall select a single arbitrator by- their joint agreement or according to the procedures of the AAA if the Parties fail to agree. The arbitrator shall be a licensed Colorado lawyer with at least fifteen (15) years’ experience in the metropolitan Colorado Springs, Colorado area in representing developers of first-class shopping centers of comparable size and nature as the Shopping Center.
- (C) The arbitrator shall determine only which, if any, proposal is most consistent with the development of first-class shopping centers of comparable size and nature as the Shopping Center.
- (D) The Consenting Owners shall be bound by the decision of the Arbitrator and the Arbitration is in lieu of and instead of any rights to judicial proceedings and determination that the Parties may otherwise have.
- (E) (e) The prevailing Party in the arbitration proceedings shall receive from the non-prevailing Party all reasonable expenses of such proceeding, including reasonable attorneys’ fees, expert witness fees, and all costs of the arbitration.

## **ARTICLE VIII MISCELLANEOUS**

Section 8.1 Notices. All notices, statements, demands, approvals, or other communications to be given under or pursuant to this Agreement will be in writing, addressed to the Owners at their respective addresses as provided below, and will be delivered in person, or by certified or registered mail, postage prepaid, return receipt requested or by overnight delivery, telegraph, facsimile or cable, charges prepaid and receipt at the recipient's office verified. The notice will be deemed to have been given upon receipt.

The addresses of the Owners to which such notices are to be sent will be those designated by written notice to the other Owners or the addresses shown on the then current real property tax rolls if none other has been designated, and until further notice are as follows:

DEVELOPING PARTY: LG HI Falcon, LLC  
c/o Leon Capital Group  
Attention: Will Tolliver  
3500 Maple Avenue, Suite 1600  
Dallas, Texas 75219

With a copy to: Hummel Investments, LLC  
Attention: Ben Hummel  
8117 Preston Rd, Suite 120  
Dallas, Texas 75225

DILLON: Dillon Companies, LLC  
Attention: Director of Real Estate (KS-147)  
1014 Vine Street  
Cincinnati, Ohio 45202-1100  
FAX: (513) 762-4839

With a copy to: The Kroger Co.  
Attention: Law Department (KS-147)  
1014 Vine Street  
Cincinnati, Ohio 45202-1100

The persons and addresses may be changed at any time by written notice to the other Owners.

Section 8.2 Sale and Sale-Leaseback Purchaser. Notwithstanding anything to the contrary contained in this Agreement, it is expressly agreed that in the event an Owner sells its Parcel to an unaffiliated third Party and thereafter enters into a lease for such Parcel with such third Party or its lessee or sublessee (hereinafter referred to collectively as the “Prime Lessor”), so long as said selling Owner or an affiliate is in possession of the property as a prime lessee, the Parties hereto shall look solely to said prime lessee (and said prime lessee shall be liable therefor) for the exercise of rights under this Agreement or the performance of any obligations either the prime lessee or the Prime Lessor shall have under this Agreement and so long as said selling Owner or an affiliate is in possession of the property as a prime lessee, the Prime Lessor shall be relieved of any personal obligation for the performance of or liability for the obligations set forth herein relating to the prime lessee with the exception of violation of the restrictions on Use provided for in the Agreement. Unless the Prime Lessor and Prime Lessee agree otherwise and such agreement is communicated to the other Owners by written notice the Prime Lessee shall operate as the “Consenting Owner” if it occupies the Dillon Parcel.

Section 8.3 Estoppel Certificate. Any Owner may, at any time and from time to time, in connection with the sale or transfer of the Owner’s Parcel, or in connection with the financing or refinancing of the Owner’s Parcel by mortgage, deed of trust or sale leaseback made in good faith and for value, deliver written notice to the other Owners requesting such Owners to certify in writing that to the knowledge of the certifying Owner, the requesting Owner is not in default in the performance of its obligations under this Agreement, or, if in default, to describe therein the

nature and amount of any and all defaults. Each Owner receiving such request shall, without charge, execute and return such certificate within thirty (30) days following the receipt thereof. Failure by an Owner to execute and return such certificate within the specified period shall be deemed an admission on such Owner's part that the Owner requesting the certificate is current and not in default in the performance of such Owner's obligations under this Agreement. The Owners acknowledge that such certificate (or failure to execute and return such certificate in a timely manner) may be relied upon by transferees, mortgagees, deed of trust beneficiaries and leaseback lessors.

Section 8.4 Sale by Owner. Upon the assignment, conveyance, sale or other transfer by any Owner of its entire right, title and interest in its Parcel, that Owner shall be released from the obligations of this Agreement as the Owner of such Parcel arising subsequent to the effective date of such sale or transfer (other than those obligations arising from any default by such Owner in the performance of any provision of this Agreement prior to such sale or transfer, including payment of any amounts which may then be due and owing under this Agreement), provided that such Owner shall have given notice to the Owner of the Dillon Parcel and the Owner of the Parcel known as Lot 2 of such transfer promptly following the filing for record of the instrument effecting the transfer.

Section 8.5 Assumption Statement. Concurrently with the transfer of all right, title and interest in any Parcel by any Owner, the transferee shall execute and deliver to the other Owners a written statement in which: (i) The name and address of the transferee shall be disclosed, and (ii) the transferee shall acknowledge its obligation to be bound by this Agreement and perform all obligations hereunder in accordance with the provisions of this Agreement. Failure to deliver any such written statement shall not affect the running of any covenants, herein with the land as provided by Section 8.8, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

Section 8.6 No Termination. The breach of this Agreement shall not entitle any Owner or Person to cancel, rescind or otherwise terminate this Agreement, or any conditions, covenants, easements or restrictions hereunder.

Section 8.7 Mortgagee Protection. This Agreement, and the rights, privileges, covenants, agreements and easements hereunder with respect to each Owner and Parcel, shall be superior and senior to any lien placed upon any Parcel, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but all of the covenants and restrictions, easements and conditions and other provisions, terms and conditions contained in this Agreement shall be binding upon and effective against any Person (including any mortgagee or beneficiary under a deed of trust) who acquires title to any Parcel or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. In addition, breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid any lease executed by a Party in good faith and for value as to all or any portion of a Parcel and any Person acquiring a Parcel as a result of a foreclosure of any lien granted pursuant to this Declaration shall acquire title to such Parcel subject to such lease.

Section 8.8 Covenants Run With the Land. All of the provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the Owners, their respective successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, Occupants and all other Persons acquiring any Parcel, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. Further, all of the rights, benefits and powers contained in this Agreement granted in favor of Dillon as a result of its ownership of the Dillon Parcel (whether or not the same includes the Fuel Center) including the right to be a Consenting Owner, shall automatically transfer to the successors (by merger, consolidation or otherwise) and assigns of such party upon the sale or transfer of the Dillon Parcel (whether or not the same includes the Fuel Center) or merger or consolidation, as applicable. All of the rights, benefits and powers contained in this Agreement granted in favor of Developing Party as a result of its ownership of the Developer Parcels shall automatically transfer to the successors (by merger, consolidation or otherwise) and assigns of such party upon the sale or transfer of a Developer Parcel or merger or consolidation, as applicable; provided, however, Developing Party's right to be a Consenting Owner shall not transfer to any successors and assigns until such time as (i) all Developer Parcels have been sold or transferred from LG HI FALCON, LLC or (ii) LG HI FALCON, LLC designates a successor Developing Party in a written assignment executed by both LG HI FALCON, LLC and the designated successor Developing Party and recording said assignment in the public records of El Paso County, CO. All of the provisions of this Agreement shall constitute equitable servitudes and be covenants running with the land pursuant to applicable law. It is expressly acknowledged that each covenant to do or refrain from doing some act on each Parcel (i) is for the benefit of each other Parcel and is a burden upon each other Parcel, (ii) runs with each Parcel, and (iii) shall benefit or be binding upon each successive owner during its ownership of each Parcel, or any portion thereof, and each Person having any interest therein derived in any manner through any Owner of any Parcel, or any portion thereof. Each covenant may be enforced as part of the uniform general plan for the Shopping Center.

Section 8.9 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties or any Owners, Permittees or Occupants in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise. This Agreement is not intended nor shall it be construed to create any third-party beneficiary rights in any person who is not a Party, an Owner or Occupant, unless expressly otherwise provided.

Section 8.10 Termination and Amendment. This Agreement may not be terminated except by a recorded document executed by all Owners.

Section 8.11 Not A Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center, or of any Parcel, or portion thereof, to the general public, for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of a private shopping center on private property solely for the benefit of the Owners. Pursuant to the provision of this Section 8.11, and notwithstanding any other provision to the contrary herein contained, any Owner shall have the right to prevent or prohibit the use of its Parcel, or any portion thereof, including Common Area and Buildings and improvements located thereon, by any Person,

including Permittees, for any purpose that may impair such operation of an integrated first-class shopping center. Notwithstanding the provisions of this Section 8.11 to the contrary, Developing Party may, at any time, with the prior written approval of the Consenting Owners (except in the event of limited circumstances for Tracts A and B as set forth below), convey the Non-Developable Parcels to (a) the County of El Paso or another governmental authority having jurisdiction, (b) a home owners' association for one (1) or more residential developments adjacent to the Shopping Center; (c) Dillon, or (d) another Person (including the successors or assigns of the Owner of the Parcel known as Lot 2), so long as in each case, the conveyance requires that the Non-Developable Parcels continue to serve the Shopping Center for retention/detention and any other purpose required by the County of El Paso and/or other governmental authorities having jurisdiction. Notwithstanding the foregoing, the Developing Party may convey Tracts A and/or B to the County of El Paso or another governmental authority having jurisdiction without the consent of the Consenting Owners. Upon conveyance of Tracts A and/or B to the County of El Paso, Tracts A and/or B, as applicable, shall automatically be released from this Agreement without the need for any further action or recorded instrument; provided, however, that the Consenting Parties will promptly provide a recordable release to the County of El Paso upon its request. In addition, Developing Party may, in its sole discretion, convey the Non-Developable Parcels by special warranty deed, subject to all matters of record, to all Owners of Parcels in the Shopping Center as tenants in common, each as to an undivided interest, in the same proportion that the land area of each Owner's Parcel bears to the total land area of all Parcels in the Shopping Center. By acceptance of title to a Parcel subject to this Agreement, each Owner agrees to accept such conveyance from Developing Party of an undivided interest in the Non-Developable Parcels. No conveyance by Developing Party of the Non-Developable Parcels pursuant to the provisions of this Section 8.11 shall diminish the obligations of the Owners with respect to the Non-Developable Parcels under the CAMA, except to the extent such conveyance expressly so provides.

Section 8.12 Captions. The captions preceding the text of each Article, Section and subsection and the Table of Contents hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

Section 8.13 Litigation Expenses.

(a) Payment to Prevailing Party. If any Owner shall bring an action or proceeding (including, without limitation, any cross-complaint, counterclaim or third party claim) against any other Owner by reason of the breach or alleged violation of any covenant, term or obligation hereof, or for the enforcement of any provision hereof, or to interpret or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this Section 8.13 shall include, without limitation, an Owner who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

(b) Attorneys' Fees in Third Party Litigation. If any Owner is required to initiate or defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim or third party claim) because of any other Owner's breach of or failure to enforce this Agreement, or otherwise arising out of this Agreement, then the Owner so

initiating or defending shall be entitled to reimbursement of its reasonable attorneys' fees from such other Owner.

(c) Scope of Fees. Attorneys' fees under this Section 8.13 shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

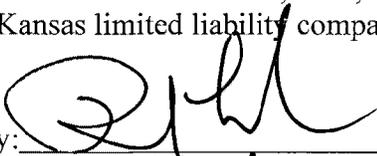
Section 8.14 Time. Time is of the essence of this Agreement and each and every provision hereof.

Section 8.15 THE OWNERS AND THEIR TENANTS AND OCCUPANTS WAIVE JURY TRIAL FOR ALL MATTERS ARISING OUT OF OR IN CONNECTION WITH THIS DECLARATION.

[Signatures appear on next pages]

IN WITNESS WHEREOF the Parties have executed this Declaration of Covenants, Conditions and Restrictions for Falcon Marketplace on the date first above written.

DILLON COMPANIES, LLC,  
a Kansas limited liability company

By:   
Its: **Rick J. Landrum**  
**Vice President**



State of Ohio

County of Hamilton

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 2020  
by Rick J. Landrum, Vice President of Dillon Companies, LLC, a  
Kansas limited liability company, on behalf of the limited liability company.

  
Notary Public

My commission expires: 11/30/2020



**Renee A. R. Cipriani**  
Notary Public, State of Ohio  
My Commission Expires 11-30-2020

LG HI FALCON, LLC,  
a Texas limited liability company

By: LG HI Master, LLC,  
a Texas limited liability company  
Its: Manager

By: LG Capital, LLC,  
a Texas limited liability company  
Its: Manager

By: *[Signature]*  
Name: Joshua Canafax  
Its: Authorized Signatory

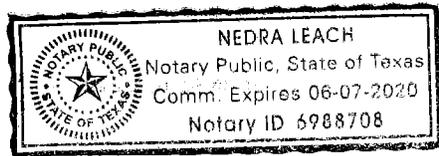
STATE OF Texas )  
COUNTY OF Dallas ) ss.

On January 29, 2020 before me, Nedra Leach,  
a Notary Public in and for said state, personally appeared Joshua Canafax,  
the authorized signatory of LG Capital, LLC, a Texas limited liability company and manager  
of LG HI Master, LLC, a Texas limited liability company and manager of LG HI Falcon, LLC, a  
Texas limited liability company and Seller hereunder, personally known to me (or proved to me  
on the basis of satisfactory evidence) to be the person whose name is subscribed to the within  
instrument and acknowledged to me that he/she executed the same in his/her authorized capacity,  
and that by his/her signature on the instrument, the entity upon behalf of which the person acted,  
executed the instrument.

WITNESS my hand and official seal.

*Nedra Leach*  
Notary Public in and for said State

My Commission Expires:  
6/7/2020

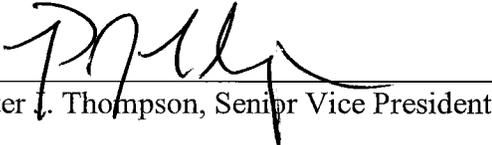


CONSENT OF MORTGAGEE

The undersigned, Simmons Bank, an Arkansas state bank, as the successor-in-interest by merger to Bank SNB, an Oklahoma banking corporation, is the holder of a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Deed of Trust") executed by LG HI FALCON, LLC, a Texas limited liability company ("Borrower") for the benefit of Bank SNB, which is recorded at Instrument No. D216085939 ("Recorder's Office"), The undersigned hereby consents to the execution by the Borrower of the foregoing Declaration of Covenants, Conditions and Restrictions for Falcon Marketplace dated January 30, 2020 and filed or to be filed for record in the Recorder's Office (the "Declaration") and, subject to the following sentence, hereby subordinates the lien of such Deed of Trust to the Declaration. Notwithstanding the foregoing, however, the undersigned specifically does **not** subordinate the lien of the Deed of Trust to any liens created or granted by such Declaration. The undersigned is relying on the provisions of Section 8.7 of the Declaration in executing this Consent of Mortgagee.

Dated: January 30, 2020

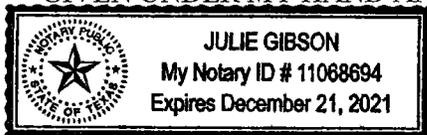
**SIMMONS BANK,**  
an Arkansas state bank,  
as successor-in-interest by merger to  
Bank SNB, an Oklahoma banking corporation

By:   
Peter J. Thompson, Senior Vice President

STATE OF TEXAS                   §  
  §  
COUNTY OF TEXAS               §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Peter J. Thompson, as Senior Vice President of SIMMONS BANK, an Arkansas state bank, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as a duly authorized officer of such state banking corporation, and as the act and deed of such state banking corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 30<sup>th</sup> day of January, 2020.



  
Notary Public, State of Texas  
My Commission Expires 12/21/2021  
Julie Gibson  
(Typed/Printed Name of Notary)

EXHIBIT A  
Legal Description of Shopping Center

Dillon Parcels:

Lot 2, Falcon Marketplace

LOT 2 OF FALCON MARKETPLACE SUBDIVISION, LOCATED IN EL PASO COUNTY, COLORADO; AS SHOWN ON THE PLAT THEROF RECORDED UNDER RECEPTION NO. 219714441 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO

Lot 3, Falcon Marketplace

LOT 3 OF FALCON MARKETPLACE SUBDIVISION, LOCATED IN EL PASO COUNTY, COLORADO; AS SHOWN ON THE PLAT THEROF RECORDED UNDER RECEPTION NO. 219714441 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO

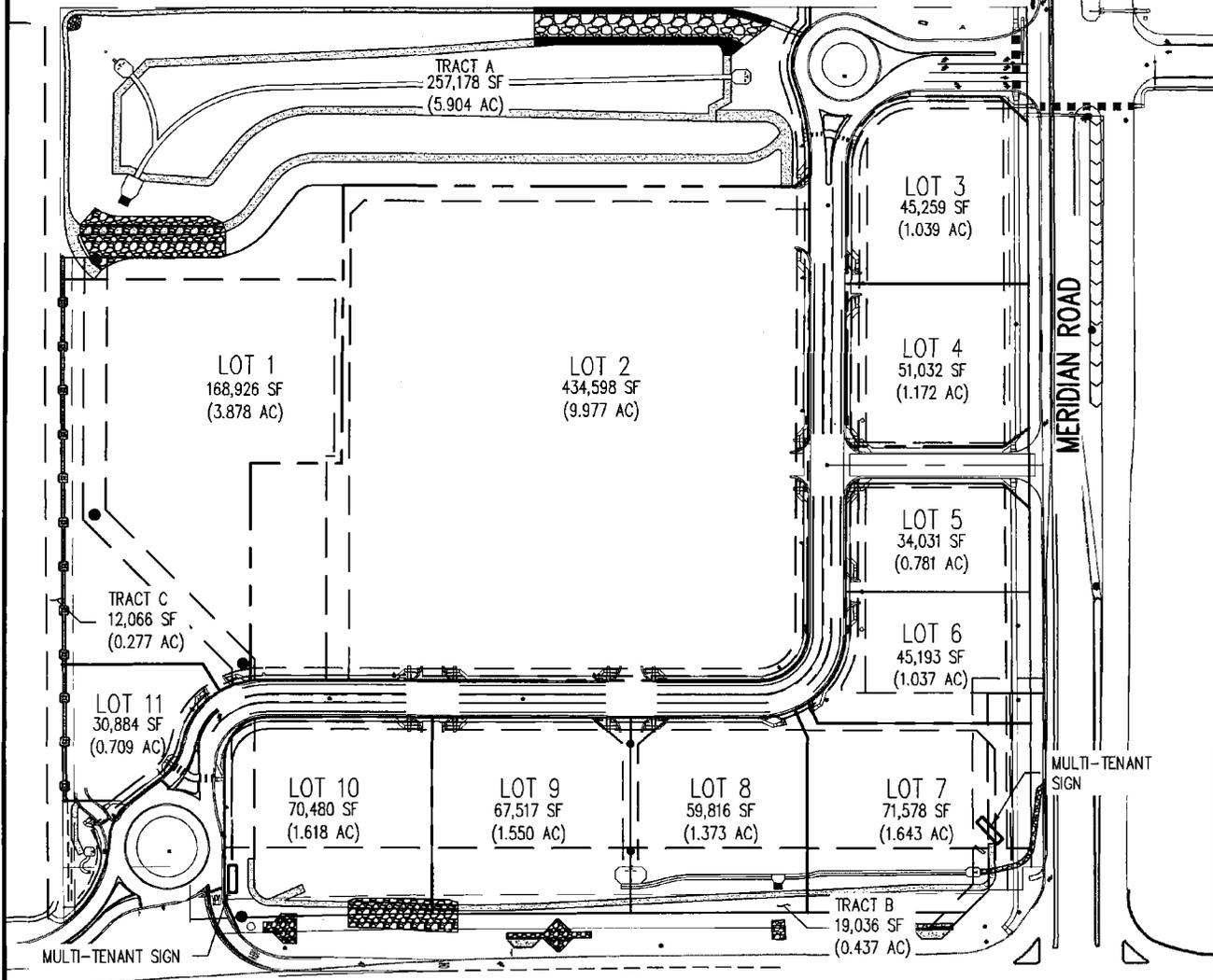
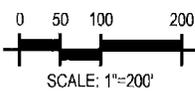
Developing Party Parcels:

Lots 1, 4, 5, 6, 7, 8, 9, 10, and 11 of Falcon Marketplace Subdivision, Located in El Paso County Colorado; as shown on the plat thereof recorded under Reception No. 219714441 of the records of the County of El Paso, State of Colorado.

Non-Developable Parcels:

Tracts A, B, and C of Falcon Marketplace Subdivision, Located in El Paso County Colorado; as shown on the plat thereof recorded under Reception No. 219714441 of the records of the County of El Paso, State of Colorado.

EXHIBIT B  
Site Plan of Shopping Center



MERIDIAN ROAD

E. WOODMEN ROAD

MULTI-TENANT SIGN

MULTI-TENANT SIGN

TRACT A  
257,178 SF  
(5.904 AC)

TRACT B  
19,036 SF  
(0.437 AC)

TRACT C  
12,066 SF  
(0.277 AC)

LOT 1  
168,926 SF  
(3.878 AC)

LOT 2  
434,598 SF  
(9.977 AC)

LOT 3  
45,259 SF  
(1.039 AC)

LOT 4  
51,032 SF  
(1.172 AC)

LOT 5  
34,031 SF  
(0.781 AC)

LOT 6  
45,193 SF  
(1.037 AC)

LOT 11  
30,884 SF  
(0.709 AC)

LOT 10  
70,480 SF  
(1.618 AC)

LOT 9  
67,517 SF  
(1.550 AC)

LOT 8  
59,816 SF  
(1.373 AC)

LOT 7  
71,578 SF  
(1.643 AC)

EXHIBIT C  
Shopping Center Monument Signage





Design: 09999704r6

Sheet 2 of 2

Client: FALCON MARKETPLACE

Address: 1160 EAST WOODMAN RD  
FALCON, COLORADO

Account Rep: WEF/IM

Designer: SD

Date: 7/16/1

Approval / Issue:

Client:

Sales:

Estimating:

Site:

Electrifying:

Landscape:

Revision / Date:

1-18-2015/02: New Sign "A" & add "A" only

03-20-2015/12: New Sign "B"

03-20-2015/12: New Sign "C"

04-10/17: Update "A" sign to new sign "A"

04-10/17: Update "B" sign to new sign "B"

05-18-2015/19: New Sign "A" & add "A" only

05-18-2015/19: Change base & reduce letters sign "A"



chandler.com

12345 Main Street  
Denver, CO 80202

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Fax: 303.555.5678

www.chandler.com

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Final Electrical Customer

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