



El Dorado, County Recorder  
William Schultz Co Recorder Office  
**DOC- 2014-0015591-00**

Acct 6-PLACER TITLE CO  
Friday, APR 25, 2014 11:25:12  
Ttl Pd \$84.00 Rcpt # 0001598519  
KMV/C1/2-19

**Recording Requested by:**

Timothy A. Lundell, Esq.

**When Recorded Mail To:**

PUBA Properties Partnership  
c/o Timothy A. Lundell, Esq.  
1065 Asbury Street  
San Jose, CA 95126  
*201-44464-UB*

**OPERATION AND EASEMENT AGREEMENT**

This Operation and Easement Agreement (this "Agreement") is made as of the 24 day of April, 2014, by and between PUBA PROPERTIES, a California general partnership ("PUBA"), and RICHARD AHART and TRUDI AHART, Co-Trustees of the Ahart Family 1995 Revocable Trust ("AHART"), with respect to the following facts:

**RECITALS**

A. PUBA is the fee simple owner of commercial real property located in the City of Placerville, County of El Dorado, State of California, commonly known as Assessor's Parcel Numbers 004-261-003-100, 004-261-12-100, 004-261-016-100, and 004-261-023-100 (collectively, for ease of reference, the "PUBA Parcel"), and 004-261-022-100 (the "AHART Parcel") all as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference, which real property has been, and is, operated as a commercial retail center commonly known as "Hangtown Village Square."

B. AHART is, concurrently with this Agreement, acquiring ownership of the AHART Parcel.

C. The parties desire to continue to operate the PUBA Parcel and the AHART Parcel in conjunction with each other as integral parts of a commercial retail center, but not a planned development, and in order to effectuate the common use and operation thereof, the parties desire to enter into certain covenants and agreements, and to grant each other certain reciprocal easements in, to, over and across their respective Parcels, so as to provide for, among other things, access, utilities, signage, repair and maintenance, trash storage, and use restriction covenants for the mutual benefit and protection of PUBA, AHART, their respective Parcels and their respective successors and assigns.

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Grant of Easements for AHART Ingress, Egress and Parking.**

PUBA hereby grants and conveys to AHART for its use and for the use of (by way of example only and without limitation) its trustees, managers, employees, agents, representatives, consultants, contractors, vendors, suppliers, customers, guests, invitees, visitors, licensees, tenants, subtenants and concessionaires (collectively with AHART, the "AHART Permittees"), in common with others entitled to use the same, a non-exclusive easement appurtenant to the AHART Parcel for the passage and parking of vehicles over and across the parking and driveway areas of the PUBA Parcel (including, but not limited to, that portion of the PUBA Parcel depicted as "Driveway Easement 5" and "Parking Easement 4" in ~~Exhibit "B"~~ attached hereto and made a part hereof by reference), as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the PUBA Parcel, as the same may from time to time be constructed and maintained for such use. With respect to that portion of the PUBA Parcel described as "Parking License 8" in ~~Exhibit "B"~~, the owner of the PUBA Parcel may, after first providing the owner of the AHART Parcel not less than ninety (90) days' written notice, determine, in the exercise of its commercially reasonable discretion, to utilize such area for a different purpose; provided, however, that the owner of the PUBA Parcel shall nevertheless provide space for parking on the PUBA Parcel sufficient at all times to accommodate adequate parking for the AHART Permittees. No change shall be made in the access points between the PUBA Parcel and the public streets without the prior written approval of the owner of the AHART Parcel, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that additional access points may be created.

**2. Grant of Easements for PUBA Ingress, Egress and Parking.**

AHART hereby grants and conveys to PUBA for its use and for the use of (by way of example only and without limitation) its partners, managers, employees, agents, representatives, consultants, contractors, vendors, suppliers, customers, guests, invitees, visitors, licensees, tenants, subtenants and concessionaires (collectively with PUBA, the "PUBA Permittees"), in common with others entitled to use the same, a non-exclusive easement appurtenant to the PUBA Parcel for the passage and parking of vehicles over and across the parking and driveway areas of the AHART Parcel (including, but not limited to, that portion of the AHART Parcel depicted as "Driveway Easement 1," "Driveway Easement 3" and "Parking Easement 2" in ~~Exhibit "B"~~), as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the AHART Parcel, as the same may from time to time be constructed and maintained for such use. No change shall be made in the access points between the AHART Parcel and the public streets without the prior written approval of the owner of the PUBA Parcel, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that additional access points may be created.

**3. Scope of Ingress, Egress and Parking Easements.** The easements granted pursuant to Sections 1 and 2 above shall be subject to the following:

a) No fence or other structure shall be erected on, in or around any of the parking, driveway or sidewalk areas described in Sections 1 or 2 above (collectively, the "Easement Areas"), except as may be agreed upon in writing by the owners of the PUBA Parcel and the AHART Parcel, nor shall the Easement Areas be improved or maintained in such a way as to obstruct access to the Easement Areas by the AHART Permittees or the PUBA Permittees;

b) Each party reserves the right to close off the Easement Areas on its Parcel for such reasonable period of time as may be legally necessary, in the opinion of such party's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Easement Areas, as herein provided, such party shall give written notice to each other party of its intention to do so, and shall attempt to coordinate such closing with each other party so that no unreasonable interference in the passage of pedestrians or vehicles shall occur.

c) Each party reserves the right at any time and from time to time to exclude and restrain any person who is not a Permittee of either of the parties from using the portion of the Easement Areas on its Parcel.

4. **Maintenance of Ingress, Egress and Parking Easement Areas.** The owner of the PUBA Parcel shall at all times maintain all Easement Areas in an attractive, safe condition and in good state of repair (including, but not limited to, by maintaining paved surfaces in a smooth and evenly-covered condition and by replacement of base, skin patch, resealing and resurfacing, if necessary). All paved surfaces shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced. The cost of maintaining the Easement Areas shall be shared between the parties in the manner specified in Section 14 (a) below.

5. **Easements for Utilities.** Each party hereby grants and conveys to the other party non-exclusive easements appurtenant to the Parcel of each grantee in, to, over, under, along and across those portions of the grantor's Parcel (exclusive of any portion located beneath any building) necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, replacement, relocation, and removal of utility lines serving the grantee's Parcel (including, but not limited to, sanitary sewers, storm drains, water, gas, electrical, telephone and communication lines). All utility lines shall be underground except:

- a) ground-mounted electrical transformers;
- b) as may be necessary during periods of construction, reconstruction, repair, or temporary service;
- c) as may be required by governmental agencies having jurisdiction;
- d) as may be required by the provider of such service;

- e) fire hydrants; and
- f) as currently exist.

Prior to exercising the right granted herein, the grantee party shall first provide the grantor with a written statement describing the need for such easement and identifying the proposed location of the utility line. The initial location of any utility line shall be subject to the prior written approval of the party whose Parcel is to be burdened thereby, which approval shall not be unreasonably withheld, conditioned or delayed. The easement shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to a party. Upon request, the grantee party shall provide to the grantor a copy of an as-built survey showing the location of such utility line. The grantor shall have the right at any time to relocate a utility line upon thirty (30) days' prior written notice to the grantee party, provided that such relocation shall not (i) interfere with or diminish the utility service to the grantee party or the grantee party's Parcel during business hours; (ii) shall not reduce or unreasonably impair the usefulness or function of such utility line; (iii) shall be performed without cost or expense to the grantee party; (iv) shall be completed using materials and design standards which equal or exceed those originally used; and (v) shall have been approved by the provider of such service and the appropriate governmental agencies having jurisdiction thereover. Documentation of the relocated easement area, including the furnishing of an "as-built" survey by the grantor to the grantee party, shall be the grantor's expense and shall be accomplished as soon as possible. Except as otherwise agreed to by the grantor and the grantee party, any party installing utility lines pursuant to the provisions of this Section 5 shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the grantor's Parcel.

6. **Easement for Trash Disposal Facilities.** There currently exists on the PUBA Parcel an enclosure for the location of trash disposal facilities (identified as "Trash Enclosure 6" on ~~Exhibit "B"~~ and referred to herein as the "Trash Enclosure"). PUBA hereby grants to AHART a non-exclusive easement appurtenant to the AHART Parcel for access to and use of the Trash Enclosure for the disposal of trash, paper products, food waste and other such material customarily generated as trash in the operation of a fast food restaurant facility. PUBA reserves the right, in the exercise of its commercially reasonable discretion, to relocate the Trash Enclosure to another location on the PUBA Parcel, provided that such alternate location is no further from the building structure located on the AHART Parcel than is practical and permitted by local authorities, and provided that the facilities at such alternate location shall be equal to or greater than the disposal capacity of the current Trash Enclosure.

7. **Easement for Directory Sign.** There currently exists a directory sign (identified as "Directory Sign Easement 7" in ~~Exhibit "B"~~ and referred to herein as the "Directory Sign") that is located partially on the PUBA Parcel and partially on the AHART Parcel. AHART hereby grants to PUBA an easement appurtenant to the PUBA Parcel for

the continued access to, placement, use, repair and maintenance of the Directory Sign and related foundation (including any modification or replacement thereof), underground electrical utility connection, and existing appurtenant structures. The owner of the PUBA Parcel shall maintain the Directory Sign in first class condition and repair at such owner's sole cost and expense. Payment of all charges for any utilities serving the Directory Sign shall be the sole responsibility of the owner of the PUBA Parcel. The owner of the AHART Parcel acknowledges its separate identifying sign located on the AHART Parcel, on which AHART, at its expense, shall be entitled to post, maintain and replace as necessary, panels or signs identifying the occupant of the AHART Parcel that are no smaller or less prominent than that or those which presently exist.

8. **Liens.** In the event any mechanic's lien is filed against the Parcel of any party as a result of services performed or materials furnished for the use of the other party, the party permitting or causing such lien to be so filed agrees to cause such lien to be discharged within fifteen (15) days after the entry of a final judgment (after all appeals) for the foreclosure of such lien and further agrees to protect, indemnify, defend, and hold harmless the other party and its Parcel against liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. Upon request of the party whose Parcel is subject to such lien, the party permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent a party permitting or causing such lien from contesting the validity thereof in any manner such party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien.

9. **Term of Easement.** All easements granted hereby shall be perpetual unless terminated by written agreement of the parties, or upon the determination by a court of competent jurisdiction that the easement has been abandoned.

10. **Indemnification.** Each party ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless the other party ("Indemnitee") from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees and cost of suit) arising from or as a result of the injury to or death of any person, or damage to the property of any person located on the Parcel owned by such Indemnitor or caused by the negligence or willful misconduct of such Indemnitor or any Permittee of such Indemnitor, wherever the same may occur, except for claims caused by the negligence or willful act or omission of such Indemnitee or any Permittee of such Indemnitee.

11. **Insurance.** Each party shall acquire and maintain comprehensive general liability insurance covering the use, repair, or maintenance of the portion of the Easement Areas within its Parcel providing combined single limit liability coverage of at least

\$2,000,000, or such other limit as may be established from time to time by agreement of the parties, and naming the other party and any persons reasonably designated by the other party as additional insureds. Each policy of insurance required hereunder shall provide (i) that the policy may not be canceled or reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days' prior written notice by the insurer to each insured and to each additional insured; (ii) shall provide for severability of interests; (iii) shall provide that an act or omission of one or the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other named insureds; (iv) shall provide for contractual liability coverage with respect to the indemnity obligation set forth herein; and (v) shall be written on an occurrence basis. On or before the date this Agreement is recorded, the parties shall deliver to each other certificates of insurance evidencing such insurance coverages.

12. **Grant of Right of First Offer.** Before AHART offers the AHART Parcel for sale to any third party or on the open market, AHART shall first offer the AHART Parcel for sale to PUBA in writing upon all terms and conditions which AHART is willing to offer to any third party or on the open market ("Notice"). PUBA shall notify AHART of its acceptance of the offer to purchase set forth in the Notice within thirty (30) calendar days after delivery of the Notice ("Deadline Date"). If PUBA fails to so notify AHART of its acceptance by the Deadline Date, PUBA's right of first offer shall be deemed to have automatically and without further notice expired and AHART shall thereafter have the right to offer the Property to any third person or on the open market on terms and conditions stated in the Notice (or on terms which are better, but not worse, for AHART). If AHART does not consummate a sale of the Property on the terms and conditions set forth in the Notice (or on terms which are better, but not worse, for AHART) within one (1) year after the Deadline Date, this right of first offer shall revive. If, however, AHART consummates the sale of the Property to a third party within said one (1) year after the Deadline Date, this right of first refusal shall thereupon automatically terminate without further notice.

13. **Restriction on Use of Parcels.**

a) The parties agree and covenant that, other than its current use as a Mexican-themed fast food restaurant, at no time shall the AHART Parcel be utilized as a restaurant for other cuisines without first obtaining the written consent of the owner of the PUBA Parcel, which consent will be withheld only if the proposed other cuisines compete or conflict with an existing restaurant facility on the PUBA Parcel. Further, the AHART Parcel shall be subject to those restrictions on use imposed by virtue of leases between PUBA and existing tenants of the Hangtown Village Square, which are set forth in Exhibit "C" attached hereto and made a part hereof by this reference.

b) The parties agree and covenant that at no time shall any portion of the PUBA Parcel be utilized as a Mexican-themed fast food restaurant or as a restaurant for other cuisines offered by the occupant of the AHART Parcel with the consent of the owner of the PUBA Parcel as provided in subsection (a) above without first obtaining the written consent of the owner of the AHART Parcel, which consent may be withheld if, in the sound business judgment of the owner of the AHART Parcel, the proposed cuisines to be offered

compete or conflict with cuisines offered or intended to be offered in the future by the occupant of the AHART Parcel.

c) For so long as the PUBA Parcel is operated as a first-class commercial retail center, no material exterior improvements, modifications, additions, or alterations to the exterior of the structure and improvements on the AHART Parcel, save and except for maintenance and repair of existing improvements, shall be effected on the AHART Parcel without the written consent and approval of PUBA, or its successors or assigns, which consent and approval shall not be unreasonably withheld, conditioned or delayed.

14. **Hangtown Village Square Rules; Maintenance Assessments.** The current rules for Hangtown Village Square promulgated by PUBA are set forth in Exhibit "D" attached hereto and made a part hereof by reference (the "Rules"). Those portions of the current Rules that are not shown in strike-through font on Exhibit "D" shall, to the extent applicable to the AHART Parcel, be applicable to the AHART Parcel wherever "Tenant" appears in the Rules, and shall constitute covenants running with the land as to the AHART Parcel. Any modification, alteration, amendment or augmentation of the Rules shall not be binding with respect to the AHART Parcel without the prior written consent of the owner of the AHART Parcel, which consent may be withheld in the owner of the AHART Parcel's sole discretion. In addition to the foregoing, PUBA shall have the right to establish reasonable pro-rata contributions from the AHART Parcel by way of assessment for the maintenance, management and repair/replacement of the Easement Areas and other expenses related to the common areas of the Hangtown Village Square which accrue to the benefit of the AHART Parcel, as follows:

a) Pro-rata, based on the size of the AHART Parcel relative to the combined AHART Parcel and PUBA Parcel: parking lot sweeping, maintenance and repair of paved areas, trash storage and removal, regular pest control service, security patrol, landscape maintenance, and common area electrical (lighting);

b) Pro-rata, based on the size of the structures on the AHART Parcel relative to the combined size of all structures on the AHART Parcel and the PUBA Parcel: any utilities provided to the AHART Parcel which are not separately metered.

15. **Attorney's Fees.** In the event of any controversy, claim or dispute relating to this instrument or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees, and costs. The parties agree to mediate any dispute between them arising out of this Agreement before any court action. A party who refuses to mediate in good faith or resists mediation shall not be entitled to recover prevailing party attorney's fees. Each Party shall bear its own attorney's fees and costs incurred in the negotiation and implementation of this Agreement.

16. **Agreement Supersedes All Other Rights and Claims.** The parties hereto acknowledge that this Agreement is intended to, and shall, represent the sole and exclusive expression of the respective rights and obligations of the parties with respect to the subject matter hereof. Each party (on behalf of itself and its predecessors in interest)

relinquishes any and all claims regarding prescriptive or adverse rights which that party may have against the other party. This Agreement supersedes and replaces any and all prior or contemporaneous agreements, discussions, representations, or understandings between the parties relating to the subject matter of this Agreement, whether oral or written.

17. **Binding Effect.** This Agreement, and the easement rights granted hereunder, shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, successors and assigns. A party shall only be personally bound by this Agreement for any obligation that arose during the time the party had an ownership interest in that party's Parcel.

18. **Interpretation.** It is understood and agreed by the parties that this Agreement has been arrived at through negotiation and deliberation by the parties, with each party having had the opportunity to review and revise this Agreement and to discuss the terms and effect of this Agreement with counsel of its choice. Accordingly, in the event of any dispute regarding its interpretation, this Agreement shall not be construed against any party as the drafter, and the parties expressly waive any right to assert such a rule of interpretation.

19. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. Any provision of this Agreement held to be void or unenforceable under applicable law shall be deemed stricken and all remaining provisions of this Agreement shall continue to be valid and binding upon the Parties.

20. **Amendment or Modification.** It is the intention of the parties that, as soon as practicable after the execution hereof, the location and dimensions of the areas identified in ~~Exhibit "B"~~ shall be determined by a licensed surveyor, who shall create a legal description for each of the areas so depicted, and the parties shall cooperate in good faith to amend this Agreement to supplement the graphic depiction of such areas in ~~Exhibit "B"~~ with a legal description of such areas as created by survey. This Agreement shall otherwise not be amended or modified except by written agreement of the parties hereto or their respective successors or assigns.

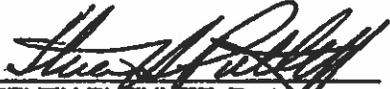
21. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The signature page of each counterpart may be detached from such counterpart and attached to a single document which shall for all purposes be treated as an original.

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IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above at El Dorado County, California.

PUBA PROPERTIES, a California  
general partnership

By:   
STEVEN PUTHUFF, Partner

  
RICHARD AHART, Co-Trustee of the  
Ahart Family 1995 Revocable Trust

By:   
JUDITH PUTHUFF, Partner

  
TRUDI AHART, Co-Trustee of the Ahart  
Family 1995 Revocable Trust

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above at El Dorado County, California.

PUBA PROPERTIES, a California  
general partnership

By: \_\_\_\_\_  
STEVEN PUTHUFF, Partner

  
RICHARD AHART, Co-Trustee of the  
Ahart Family 1995 Revocable Trust

By: \_\_\_\_\_  
JUDITH PUTHUFF, Partner

  
TRUDI AHART, Co-Trustee of the Ahart  
Family 1995 Revocable Trust

State of CA

County of Santa Clara

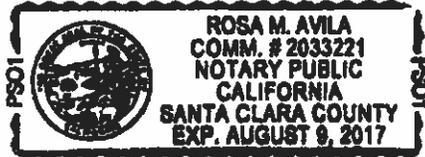
On 22nd day of April, 2014 before me, Rosa M. Avila a Notary Public, personally appeared Steven Puthuff and Judith Puthuff, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature:  \_\_\_\_\_

Name: Rosa M. Avila  
(typed or printed)



(Seal)

State of California }  
County of Nevada } ss.

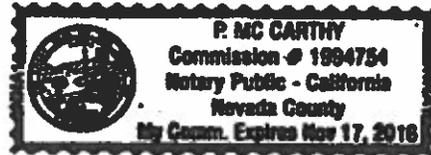
On April 24, 2014, before me, P. McCarthy, Notary Public,  
personally appeared RICHARD AHART and TRUDI AHART

[Handwritten Signature]

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)



----- OPTIONAL -----

**Description of Attached Document**

Title or Type of Document: Operation & Carement Agreement

Document Date: 4-24-2014 Number of Pages: 17 + NOTARY

Signers(s) Other Than Named Above: PUBA PROPERTIES, OR PARTNER  
SHP.

## **EXHIBIT "A"**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF EL DORADO, CITY OF PLACERVILLE, AND IS DESCRIBED AS FOLLOWS:

### **THE "PUBA PARCEL"**

#### **A.P.N. 004-261-03-100**

PARCEL 2, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED, "A PORTION OF BLOCK 6, CITY OF PLACERVILLE AND PORTIONS OF SECTIONS 8, 9 AND 17, T.10 N., R11 E., M.D.M.", FILED FEBRUARY 4, 1975 IN THE OFFICE OF THE COUNTY RECORDER OF EL DORADO COUNTY IN BOOK 7 OF PARCEL MAPS, AT PAGE 33.

#### **A.P.N. 004-261-12-100**

PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED MARCH 3, 1978, IN THE OFFICE OF THE COUNTY RECORDER OF EL DORADO COUNTY IN BOOK 19 OF MAPS, PAGE 32.

#### **A.P.N. 004-261-18-100**

PARCEL A, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "BEING PARCEL 2 AS SHOWN ON THE PARCEL MAP RECORDED IN BOOK 23 OF PARCEL MAPS, AT PAGE 71", FILED DECEMBER 4, 1979, IN THE OFFICE OF THE COUNTY RECORDER OF EL DORADO COUNTY IN BOOK 25 OF PARCEL MAPS, AT PAGE 120.

#### **A.P.N. 004-261-23-100**

PARCEL 1 AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "BEING PARCEL B AS SHOWN ON PARCEL MAP RECORDED IN BOOK 25 OF PARCEL MAPS, AT PAGE 120, ALSO BEING A PORTION OF BLOCK 6, CITY OF PLACERVILLE, LYING IN SECTION 8, T10N., R11E, M.D.M.", FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF EL DORADO COUNTY ON MAY 2, 1980, IN BOOK 26 OF PARCEL MAPS, AT PAGE 119.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF WHICH LIES WITHIN THE EXTERIOR BOUNDARIES OF THAT CERTAIN PARCEL SHOWN ON PARCEL MAP FILED JANUARY 11, 1984, IN BOOK 32 OF PARCEL MAPS, PAGE 83.

### **THE "AHART PARCEL"**

#### **A.P.N. 004-261-22-100**

THAT PORTION OF LOT 5, BLOCK 6, OF SAID CITY OF PLACERVILLE, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED JANUARY 11, 1983 IN THE OFFICE OF THE COUNTY RECORDER OF EL DORADO COUNTY IN BOOK 32 OF PARCEL MAPS, AT PAGE 83.

EXCEPTING THEREFROM THE FOLLOWING:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL, THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTH LINE OF SAID PARCEL, NORTH 88° 03' 23" EAST 100.0 FEET TO THE NORTHEAST CORNER THEREOF, THENCE SOUTH 13° 19' 30" EAST 6.65 FEET, THENCE SOUTH 83° 41' 54" WEST 99.61 FEET, THENCE NORTH 12° 15' 44" WEST 10.74 FEET TO THE POINT OF BEGINNING.

## **EXHIBIT "C"**

### **RESTRICTIONS ON USE**

The AHART Parcel shall not be used for any of the following purposes or businesses:

1. The sale of (a) coffee beans (ground or whole), (b) espresso-or espresso based drinks or coffee based drinks, or (c) gourmet, brand-identified brewed coffee; provided, however, that (i) the sale of brewed coffee or coffee based drinks as an incidental part of the operation of a Mexican-themed fast food restaurant (or a restaurant serving other cuisines for which consent of the owner of the PUBA Parcel has been obtained) shall not be prohibited and (ii) to the extent that any franchisor of the restaurant operated on the AHART Parcel requires brand identification of brewed coffee or coffee based drinks, such brand identification shall not be prohibited.
2. The sale of (a) health and/or beauty aids, (b) vitamins or dietary supplements, (c) prescription drugs; or (d) one hour photo processing.
3. The sale of pizza.
4. A full service retail banking facility or mortgage lending establishment.
5. Sale of water (other than the dispensing, sale or service of water as part of the operation of a restaurant) and/or water treatment equipment.
6. Travel Agency.
7. Massage, facials, waxing or esthetics.
8. Sale of packaged liquor, wine or beer.
9. Sale or dispensing of medical marijuana or products containing medical marijuana.
10. The sale of fast food hamburgers.

## EXHIBIT "D"

### HANGTOWN VILLAGE SQUARE RULES APPLICABLE TO AHART PARCEL

The following Center Rules are additional provisions of the foregoing Lease to which they are attached. The capitalized terms used herein have the same meanings as these terms are given in the Lease.

1. **Walkways.** The sidewalks, roadways, and other public portions in the Shopping Center shall be used by the Tenant for the purpose solely of ingress and egress to and from the Premises of the Tenant. Tenant, its employees and agents, shall not offer any merchandise for sale in the entrances or corridors, nor in any way obstruct the sidewalks, halls, stairways or elevators, and shall use the same only as a means of ingress and egress for the Premises.
2. **Condition of Premises.** The Tenant shall keep the exterior and interior portion the Premises, to include all windows, doors, and all other glass, plate fixtures, and trim in a clean condition. The Tenant shall keep the display windows in the Premises in a neat and professional arrangement. ~~No improvements, additions, or materials of any kind are permitted to be placed on the outside of any of the Premises by Tenant.~~
3. **Storage of Refuse.** All waste paper, garbage and refuse shall be kept in the type of container specified by Landlord, and shall be placed outside of the Premises in designated trash containers prepared for collection in the manner and at the times and places specified by Landlord. Landlord may implement a recycling program and in such case, Tenant shall deposit refuse in accordance with any requirements of such recycling program. ~~If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at Tenant's cost.~~
4. **Antennas or Aerials.** No antenna or aerial shall be erected on the roof or exterior walls of the Premises, or within the Shopping Center, without in each instance, the written consent of the Landlord, which may be withheld in Landlord's sole discretion. Any antenna or aerial so installed without such written consent shall be subject to removal or reimbursement without notice at any time.
5. **Conduct.** Tenant shall, at all times, conduct its business in an orderly manner in the best interests of the Shopping Center. No loudspeakers, televisions, phonographs, radios, or other devices shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of the Landlord, which may be withheld in Landlord's sole discretion.

6. Outside Areas. The outside areas immediately adjoining the Premises shall be kept clean and free from dirt and rubbish by Tenant ~~to the satisfaction of the Landlord~~ and Tenant shall not place or permit any obstruction or materials in such areas, including, without limitation, inventory, equipment or signage of any type or kind. No exterior storage shall be allowed without permission in writing from Landlord.

7. ~~Parking. Tenant and Tenant's employees shall park only in those portions of the parking area designated for that purpose by Landlord. Tenant and its employees and representatives shall not park directly in front of any of the leasable areas in the Shopping Center, including their own Premises. Landlord has the right to make changes in the parking procedures and guidelines from time to time, to benefit the Shopping Center, in Landlord's sole opinion.~~

8. ~~Plumbing. The plumbing facilities shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be solely borne by Tenant, who shall, or whose employees, agents or invitees shall have caused it.~~

9. ~~Pest Exterminators. Tenant shall use, at Tenant's cost, such pest extermination contractor as Landlord may direct and at such intervals as Landlord may require.~~

10. Flammable Materials. The Tenant shall not keep or permit to be kept on the Premises any flammable or combustible fluid, chemical, or explosive material of any kind. Tenant shall not burn any trash or garbage of any kind in or about the Premises, or the Shopping Center.

11. Auctions. Tenant shall not hold any auction, fire, or bankruptcy sale in the Premises; provided, however, that this provisions shall not restrict the absolute freedom (as between Landlord and Tenant) of Tenant to determine its own selling prices, nor shall it preclude periodic, seasonal, promotional or clearance sales held in the ordinary course of business.

12. ~~Use of Space. Tenant shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Tenant intends to offer for sale at retail at, in, from or upon the Premises. This shall not preclude occasional emergency transfers of merchandise to the other stores of Tenant, if any, not located in the Shopping Center. Tenant shall use for office, clerical or other non-selling purposes only such space in the Premises as is from time to time reasonably required for Tenant's business in the Premises.~~

13. ~~No Animals. Tenant shall not bring into the Premises at the Shopping Center any~~

~~animals of any type or kind, except animals necessary to assist persons with disabilities, without Landlord's prior written consent.~~

~~14. Safes. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy property brought into the Shopping Center and also the times and manner of moving the same in and out of the Shopping Center. Safes and other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property in any case. All damage done to any part of the Shopping Center, its contents, occupants or visitors by moving or maintaining any such safe or other property shall be the sole responsibility of Tenant and any expense of said damage or injury shall be borne by Tenant.~~

15. Deliveries. Tenant shall use its best efforts to complete, or cause to be completed, all deliveries, loading, unloading and services to the Premises prior to 10:00 a.m. of each day. Tenant shall attempt to prevent any delivery trucks or other vehicles servicing the Premises from parking or standing in front of, or at the rear of, the Premises from 10:00 a.m. to 9:00 p.m. of each day. Tenant acknowledges that, because the design of the Shopping Center does not permit deliveries to the rear of the store Premises, the restrictions on delivery hours set forth in this Lease are critical to the efficient operation of the Shopping Center. Landlord reserves the right to regulate further the activities of Tenant in regard to deliveries and servicing of the Premises, and Tenant agrees to abide by such further nondiscriminatory regulations of Landlord.

16. Public Portions of Shopping Center. Landlord reserves further the right to control and operate the public portions of the Shopping Center in such manner as the Landlord deems necessary or desirable for the best interests of the Shopping Center and of the tenants, and for the protection of the buildings and other property in the Shopping Center. The Landlord, however, shall not be liable to any Tenant for any damages arising out of such control and operation.

17. Safety Procedures. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

18. Protection from Theft. Tenant shall assume any and all responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.

19. Waiver by Landlord. Landlord may waive any one or more of these rules and regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord will be construed as a waiver of such rules and regulations in favor of any other tenant or tenants nor prevent Landlord from thereafter enforcing these rules and regulations against any

or all of the tenants of the Shopping Center.

~~20. Window Coverings. No curtains, draperies, blinds, shutters, shades, screens, or other coverings, hangings, or decorations will be attached to, hung, or placed in, or used in connection with any window of the Premises without the prior written consent of Landlord.~~

~~21. Changes to Rules. Landlord reserves the right from time to time to amend or supplement the foregoing rules and regulations, and to adopt and promulgate additional rules and regulations applicable to the Premises. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to Tenant and Tenant agrees to comply with all such rules and regulations upon receipt of notice. Landlord shall not be liable in any way to Tenant for any damage or inconvenience caused by any other tenant's non-compliance with these rules and regulations.~~

22. Window Coverings. Any approved window coverings, signage, displays and/or furniture shall not obscure more than twenty percent (20%) of the gross window space of the Premises, nor shall it violate in any manner the sign ordinance for Hangtown Village Square or the City of Placerville.

23. Governing Jurisdictions. All state, local and federal ordinances shall be observed and obeyed, which shall include, but not be limited to, the sign ordinance and any modifications thereto for Hangtown Village Square and the City of Placerville.

24. Banners. Pursuant to the sign ordinance for the City of Placerville, no banners shall be allowed, except in conjunction with a grand opening or closing, provided that such sign shall not exceed thirty-two (32) square feet, or be displayed for a period in excess of thirty (30) days. Any such sign or banner shall not be placed upon any roof or extend above roof line or parapet and must be attached or affixed to a solid wall. ~~Landlord shall be entitled, without any liability to Tenant, to remove any sign or banner in violation of this Lease, including, but not limited to, any sign or banner displayed pursuant to this paragraph in excess of thirty (30) days.~~

25. Effect on Lease. ~~These rules and regulations are in addition to and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of the Lease. Any violation of these rules and regulations shall constitute a default under the Lease.~~

26. Non-Discriminatory Enforcement. Subject to the provisions of the Lease (and the provisions of other leases with respect to other tenants), Landlord shall use reasonable efforts to enforce these rules and regulations in a non-discriminatory manner, but in no event shall Landlord have any liability for any failure to do so (and Tenant's sole and exclusive remedy

**for any such failure or refusal shall be injunctive relief preventing Landlord from enforcing any of the rules and regulations against Tenant in a manner that discriminates against Tenant).**