

**FIRST AMENDMENT TO
DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS**

This First Amendment to Declaration of Easements, Covenants, Conditions and Restrictions (this "First Amendment") is made effective the 7th day of October, 2011 by **HEB GROCERY COMPANY, LP**, a Texas limited partnership ("HEB"), **COLLEGE STATION MARKETPLACE, LP**, a Texas limited partnership ("CSMarketPlace"), and **CSMP PHASE 3/LOT 28, LLC**, a Texas limited liability company ("Lot 28 Owner").

RECITALS:

WHEREAS, CSMarketPlace and HEB entered into that Declaration of Easements, Covenants, Conditions and Restrictions dated February 10, 2010, and which was recorded as Document 01054761 in Volume 9530 Pages 98 through 144 in the Official Records of Brazos County, Texas (the "REA");

WHEREAS, CSMarketPlace, Lot 28 Owner and Santa Paula Townhouses, LLC ("Lot 14 Owner") currently own all of that certain real property defined collectively in the REA as the "CSMP Parcel";

WHEREAS, HEB currently owns all of the certain real property defined in the REA as the HEB Parcel;

WHEREAS, CSMarketPlace and Lot 28 Owner together own at least seventy-five percent (75%) of the land area of the CSMarketPlace Parcel;

WHEREAS, CSMarketPlace desires to modify certain restrictions relating to the location and development of the CSMP Pylon Sign and the configuration and development of Lots B1, B2, B3, B4, D2, D3 and D4 on the CSMarketPlace Parcel; and

WHEREAS, under Section 10.6 of the REA, the REA may be amended by the written and recorded agreement of the Owners of seventy-five percent (75%) of the land area of the HEB Parcel and seventy-five percent (75%) of the land area of the CS MarketPlace Parcel.

NOW, THEREFORE, CSMarketPlace, HEB, and Lot 28 Owner hereby declare, adopt, grant, and establish the following modifications to the REA as more fully set forth in this First Amendment.

1. The foregoing recitals are incorporated into this First Amendment as if fully set forth herein. All terms used in this First Amendment not otherwise defined herein shall have the same definition and meaning as set forth in the REA.

2. Pages 2 and 3 of the Site Plan set forth in Exhibit C of the REA are deleted and replaced with the attached Exhibit C, Site Plan, pages 2 and 3.
3. Exhibit E, Building Restriction Plan set forth in the REA is deleted and replaced with the attached Exhibit E, Building Restriction Plan.
4. All references in the REA and its Exhibits to Lot D2 are hereby deleted.
5. The reference to Lot D4 in the second sentence of Section 3.1 of the REA is hereby deleted.
6. The following provisions are added to Section 3.1 of the REA:

Further, notwithstanding anything to the contrary in this Agreement, Lot B1 may be divided into two lots, provided: (a) the combined Floor Area of all buildings constructed thereon shall not exceed 11,400 square feet in the aggregate; (b) the Permissible Building Area of such Lots shall extend from the center of such Lot to a line lying thirty (30) feet from the boundary lines of such Lot, except for the boundary line adjacent to Highway 6, in which case the Permissible Building Area shall end at the applicable Building Setback Line as set forth on Exhibit E and except for the common boundary line between Lot B1 and Lot B2, in which case the Permissible Building Area shall end at a line lying fifteen (15) feet from the common boundary line between Lot B1 and Lot B2; and (c) in no event shall there be less than thirty (30) feet between the buildings situated on Lot B1.

Further, notwithstanding anything to the contrary in this Agreement, the boundary line between Lots B1 and B2 may be relocated by CSMarketPlace, provided the square footage of Lot B2 does not change by more than five percent (5%).

Further, notwithstanding anything to the contrary in this Agreement, Lot B4 may be divided into two lots, provided: (a) the combined Floor Area of all buildings constructed on such Lots shall not exceed 18,000 square feet in the aggregate; and (b) the Permissible Building Area of such Lots shall extend from the center of each Lot to a line lying 30 feet from the boundary lines of such Lot, except as otherwise shown on page 2 of Exhibit C attached hereto.

Further, notwithstanding anything to the contrary in this Agreement, Lot D3 may be divided into two lots, provided that: (a) the combined Floor Area of all buildings constructed on such Lots shall not exceed 7,500 square feet in the aggregate; and (b) the Permissible Building Area of such Lots shall extend from the center of each Lot to a line lying thirty (30) feet from the boundary lines of such Lot, except for the boundary line adjacent to Highway 40, in which case the Permissible Building Area shall end at the applicable Building Setback Line as set forth on Exhibit E.

7. The provisions of Section 7.1(c)(ii) of the REA are hereby amended and restated as follows:

“(ii) with respect to Area C (comprised of Lots C1, C2, C3, C4 and C5) depicted on the Site Plan, no individual restaurant may exceed 4,000 square feet of Floor Area except for (A) one (1) casual, family style sit-down restaurant (such as that currently operated by “Chili’s”) on Lot C1 which shall not exceed 7,000 square feet of Floor Area (except that in lieu of such casual, family style sit-down restaurant, the operation of one (1) Logan’s Roadhouse on Lot C1 shall be permitted, provided such restaurant shall not exceed 7,500 square feet of Floor Area) (and, if such casual, family style sit-down restaurant or Logan’s Roadhouse exceeding 4,000 square feet of Floor Area is operated on Lot C1, then no restaurant may be located on Lot C2), or (B) one (1) McDonald’s restaurant (whose use is consistent with the operations of other McDonald’s fast-food, hamburger restaurants in the market area) on Lot C1 which shall not exceed 5,000 square feet of Floor Area (inclusive of the Floor Area devoted to any children’s play area), and the aggregate Floor Area of all restaurants situated on Area C shall not exceed 15,000 square feet.”


8. Except as otherwise specifically set forth in this First Amendment, the REA shall remain in full force and effect. If there shall be any inconsistency between the REA and the First Amendment, the terms of this First Amendment shall control. Upon execution and recordation of this First Amendment the REA and First Amendment shall thereafter be referred to collectively as the REA.

9. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument and shall be binding upon, and shall inure to the benefit of, each of the undersigned individually as fully and completely as if all had signed one instrument.

[Remainder of this page left intentionally blank; signatures follow on next page.]

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and year first above written.

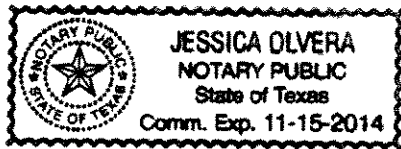
HEB GROCERY COMPANY, LP,
a Texas limited partnership

By: *Todd A. Piland* 
Name: Todd A. Piland
Title: Executive Vice President of Real Estate

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Before me on this day personally appeared Todd A. Piland, 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 Executive Vice President of Real Estate of HEB GROCERY COMPANY, LP, a Texas limited partnership, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 21st day of September, 2011.

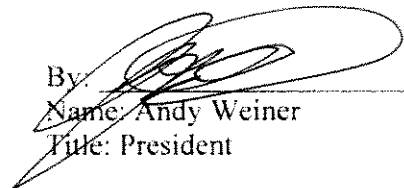


Jessica Olvera
Notary Public in and for the State of Texas
Jessica Olvera
Printed Name of Notary
My Commission Expires: 11-15-2014

[signatures continue on following page]

COLLEGE STATION MARKETPLACE, LP,
A Texas limited partnership

By: College Station Marketplace GP, LLC,
a Texas limited liability company, as General Partner

By: 
Name: Andy Weiner
Title: President

STATE OF TEXAS §
 §
COUNTY OF Harris §

Before me on this day personally appeared Andy Weiner, 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 President of College Station Marketplace GP, LLC, a Texas limited liability company, the general partner of COLLEGE STATION MARKETPLACE, LP for the purposes and consideration therein expressed, and in the capacity therein stated.


Given under my hand this 7th day of October, 2011.


Notary Public in and for the State of Texas

Emily Craft
Printed Name of Notary
My Commission Expires:

[signatures continue on following page]

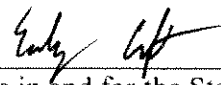
CSMP PHASE 3/LOT 28, LLC
a Texas limited liability company

By: 
Name: Andy Weiner
Title: President

STATE OF TEXAS §
 §
COUNTY OF Harris §

Before me on this day personally appeared Andy Weiner, 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 President of CSMP PHASE 3/LOT 28, LLC for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 7th day of October, 2011.



Notary Public in and for the State of Texas

Emily Craft

Printed Name of Notary
My Commission Expires:

[signatures continue on following page]

CONSENT AND SUBORDINATION OF LIENHOLDER

Lienholder, as the holder of the lien on a portion of the CS MarketPlace Parcel, consents to the foregoing First Amendment to Declaration of Easements, Covenants, Conditions and Restrictions, and the covenants, conditions, restrictions and easements contained therein, and Lienholder hereby subordinates its lien to the rights and interests of the Declaration of Easements, Covenants, Conditions and Restrictions as amended by such First Amendment, such that a foreclosure of the lien shall not extinguish the covenants, conditions, restrictions and easements contained in the Declaration of Easements, Covenants, Conditions and Restrictions as amended by such First Amendment.

FIRST VICTORIA NATIONAL BANK

By: [Signature]
Name: Timothy C. Jones
Title: EXECUTIVE VICE PRESIDENT

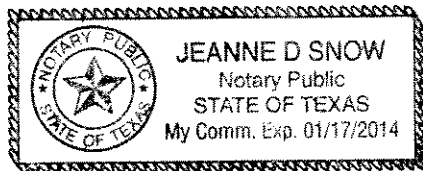
STATE OF TEXAS §
 §
COUNTY OF Brazos §

Before me on this day personally appeared Timothy C. Jones 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 Timothy C. Jones - Executive of FIRST VICTORIA NATIONAL BANK for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 19th day of October, 2011.

[Signature]
Notary Public in and for the State of Texas

Jeanne D. Snow
Printed Name of Notary
My Commission Expires:



CONSENT AND SUBORDINATION OF LIENHOLDER

Lienholder, as the holder of the lien on a portion of the CS MarketPlace Parcel, consents to the foregoing First Amendment to Declaration of Easements, Covenants, Conditions and Restrictions, and the covenants, conditions, restrictions and easements contained therein. and Lienholder hereby subordinates its lien to the rights and interests of the Declaration of Easements, Covenants, Conditions and Restrictions as amended by such First Amendment, such that a foreclosure of the lien shall not extinguish the covenants, conditions, restrictions and easements contained in the Declaration of Easements, Covenants, Conditions and Restrictions as amended by such First Amendment.

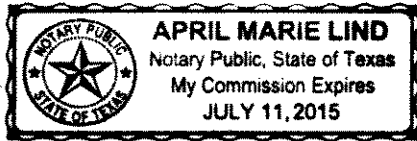
THE BANK & TRUST OF BRYAN/COLLEGE STATION

By: Nora Thompson
Name: NORA Thompson
Title: Sr. Vice President

STATE OF TEXAS §
COUNTY OF Brazos §

Before me on this day personally appeared Nora Thompson, 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 SVP of THE BANK & TRUST OF BRYAN/COLLEGE STATION for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand this 12 day of Oct., 2011.



April Marie Lind
Notary Public in and for the State of Texas
April Marie Lind
Printed Name of Notary
My Commission Expires:

[signatures continue on following page]

CONSENT AND SUBORDINATION OF LIENHOLDER

Lienholder, as the holder of the lien on a portion of the CS MarketPlace Parcel, consents to the foregoing First Amendment to Declaration of Easements, Covenants, Conditions and Restrictions, and the covenants, conditions, restrictions and easements contained therein, and Lienholder hereby subordinates its lien to the rights and interests of the Declaration of Easements, Covenants, Conditions and Restrictions as amended by such First Amendment, such that a foreclosure of the lien shall not extinguish the covenants, conditions, restrictions and easements contained in the Declaration of Easements, Covenants, Conditions and Restrictions as amended by such First Amendment.

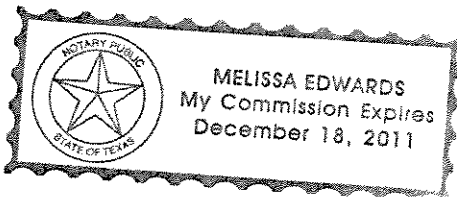
AMERICAN MOMENTUM BANK

By: Bill Van Emmerik
Name: Bill Van Emmerik
Title: VP

STATE OF TEXAS §
 §
COUNTY OF Brazos §

Before me on this day personally appeared Bill Van Emmerik 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 VP of AMERICAN MOMENTUM BANK for the purposes and consideration therein expressed, and in the capacity therein stated.

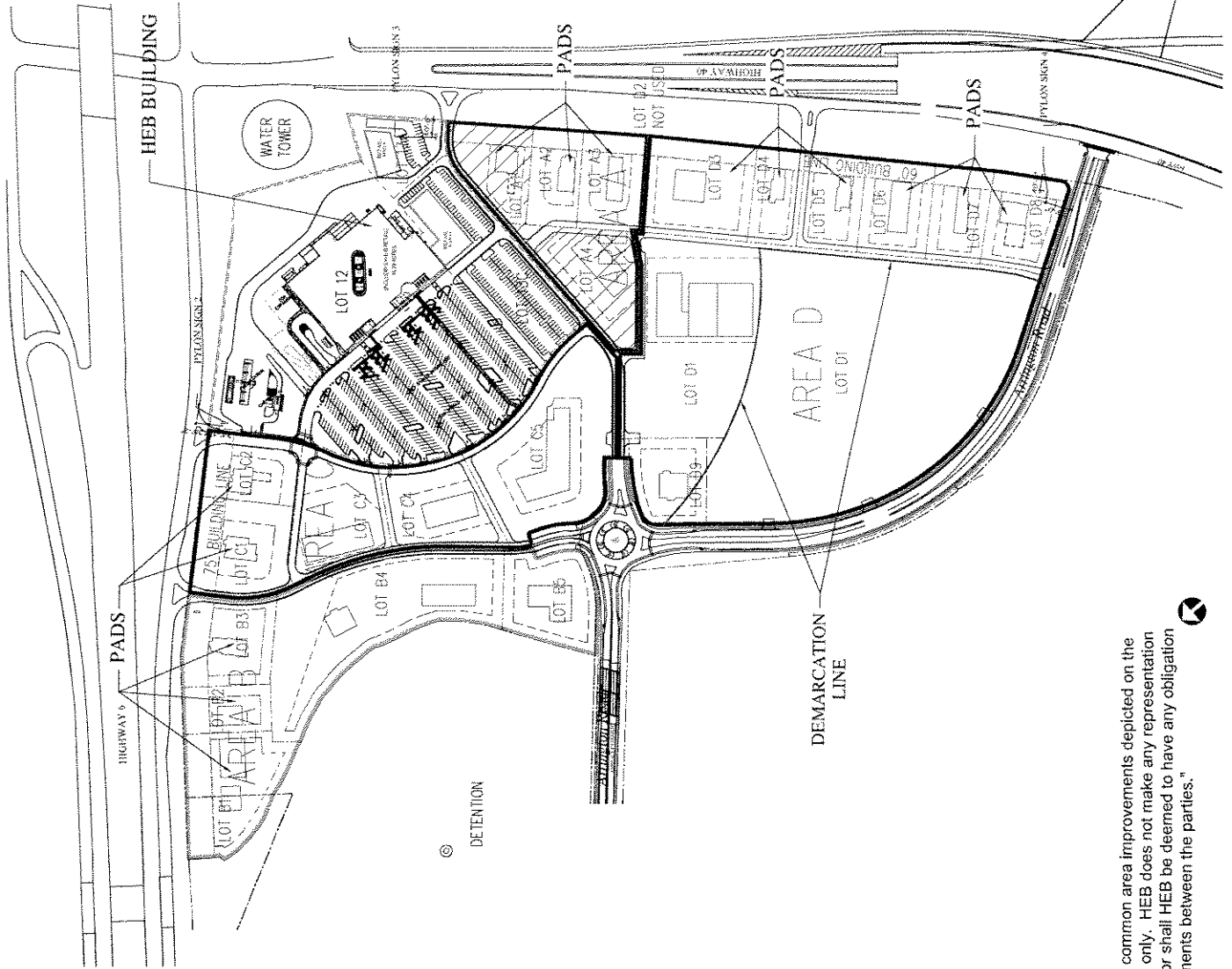
Given under my hand this 12th day of October, 2011.



Melissa Edwards
Notary Public in and for the State of Texas
Printed Name of Notary
My Commission Expires: 12-18-11

First Amendment Exhibit "C"
Pages 2 and 3

See attached.



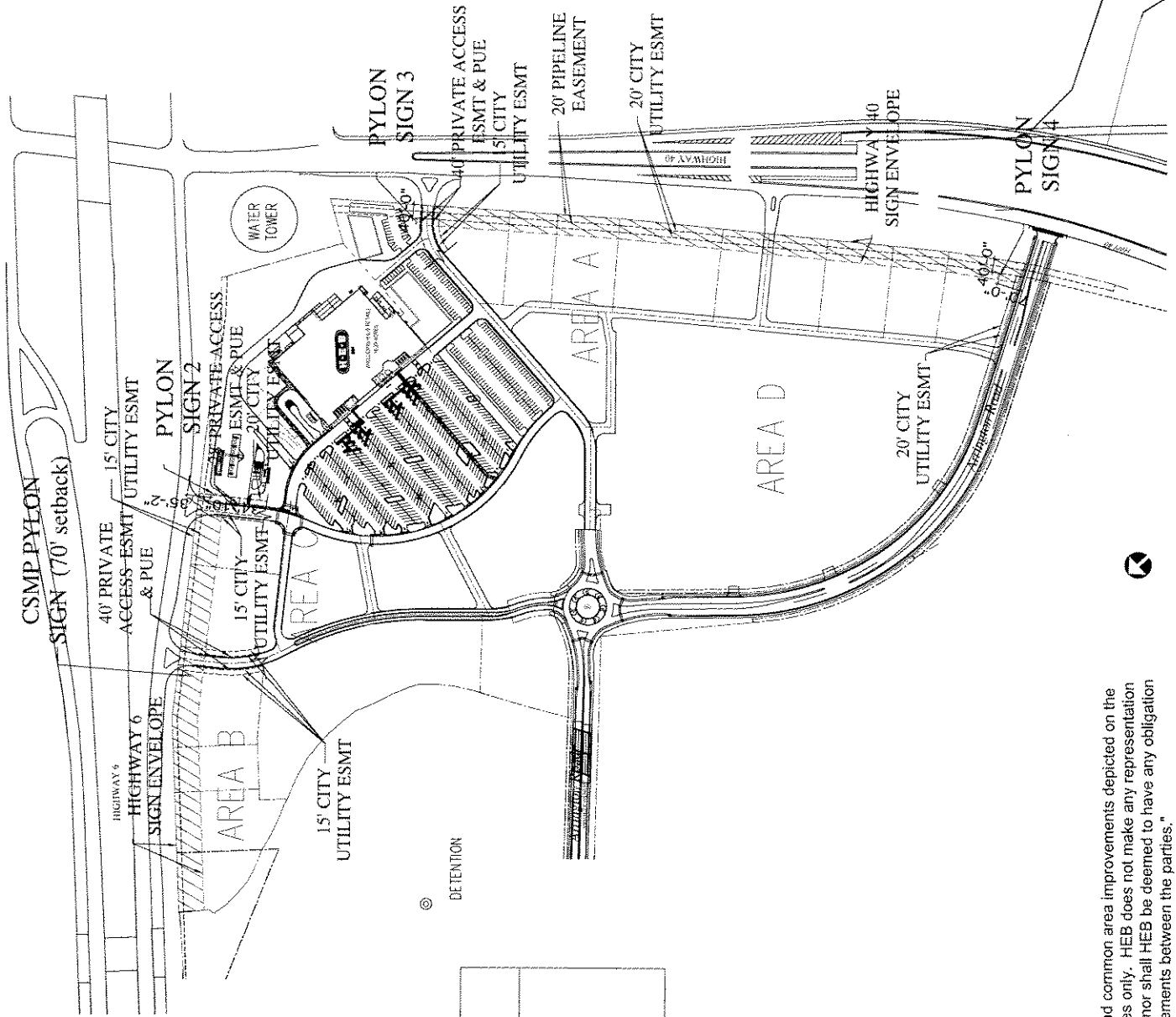
LEGEND:

<p>AREA "A" CONSISTS OF: LOTS A1,A2,A3,A4</p>	<p>AREA "A" NO RESTAURANT AREAS PERMISSIBLE BUILDING AREA BUILDING LINE</p>
<p>AREA "B" CONSISTS OF: LOTS B1,B2,B3,B4,B5</p>	
<p>AREA "C" CONSISTS OF: LOTS C1, C2, C3, C4, C5</p>	
<p>AREA "D" CONSISTS OF: LOTS D1,D2,D3,D4,D5,D6,D7,D8,D9</p>	

**EXHIBIT C
SITE PLAN (Page 2 of 3)**

**TOWER POINT S.C.
STATE HWY 6 AT HWY 40
COLLEGE STATION, TEXAS**

"Note: The locations, sizes and configurations of the buildings and common area improvements depicted on the HEB Parcel as shown on the Site Plan are for illustrative purposes only. HEB does not make any representation regarding the construction, existence or availability of the same, nor shall HEB be deemed to have any obligation to construct same, except as otherwise provided by written agreements between the parties."



LEGEND:	
	SIGN ENVELOPE

**EXHIBIT C
SITE PLAN (Page 3 of 3)
TOWER POINT S.C.
STATE HWY 6 AT HWY 40
COLLEGE STATION, TEXAS**

"Note: The locations, sizes and configurations of the buildings and common area improvements depicted on the HEB Parcel as shown on the Site Plan are for illustrative purposes only. HEB does not make any representation regarding the construction, existence or availability of the same, nor shall HEB be deemed to have any obligation to construct same, except as otherwise provided by written agreements between the parties."

First Amendment Exhibit "E"

See attached.

**EXHIBIT E
BUILDING RESTRICTION PLAN**

Lot Designation†	Maximum Floor Area	Finished Floor Elevation	Maximum Building Height	With Architectural Features	Stories	Building Setback
Area A						
A1	5500	321	21	25	1 story	60 FT Bldg set back from Hwy. 40 ROW*
A2	5500	324	21	25	1 story	60 FT Bldg set back from Hwy. 40 ROW*
A3	5500	324	21	25	1 story	60 FT Bldg set back from Hwy. 40 ROW*
A4	13000	est 305	21	25	1 story	N/A
A1, A2 and A3 not to exceed 15000 in the aggregate (see Section 3.1 of Agreement)						
*If the Pylon Signs situated along Hwy. 40 (as shown on the Site Plan) are located 60' from the right-of-way instead of 40' as currently shown on the Site Plan, the Building Setback for Lots A1, A2 and A3 shall be 75' from the right-of-way instead of 60' as set forth in this Exhibit E						
Area C						
C1	5000	285	21	25	1 story	75 FT Bldg set back from Hwy. 6 ROW
C2	5000	287	21	25	1 story	75 FT Bldg set back from Hwy. 6 ROW
C3	13500	291	21	25	1 story	N/A
C4	13000	291	21	25	1 story	N/A
C5	20000	287	21	25	1 story	N/A
Area B						
B1	11400***	277	25	30	1 story	75 FT Bldg set back from Hwy. 6 ROW
B2	10000	278	25	30	1 story	75 FT Bldg set back from Hwy. 6 ROW
B3	7100	280	25	30	1 story	75 FT Bldg set back from Hwy. 6 ROW
B4	18000****	280	45	50	2 stories	N/A
B5	18000	est 280	45	50	2 stories	N/A
Area D						
D1 (within 1000')	Not to exceed 100,000 sq ft of Floor Area in aggregate.	No building can be taller than the top of the HEB Building				
D1 (outside 1000')	Not to exceed 400,000 sq ft of Floor Area in aggregate.	Height not greater than 90 feet or six (6) stories				
D2	Intentionally Omitted					
D3	7500**	323	21	25	1 story	60 FT Bldg set back from Hwy. 40 ROW
D4	5000	321	25	28	1 story	60 FT Bldg set back from Hwy. 40 ROW
D5	5000	318	25	28	1 story	60 FT Bldg set back from Hwy. 40 ROW
D6	8000	312	25	28	1 story	60 FT Bldg set back from Hwy. 40 ROW
D7	8000	305	25	28	1 story	60 FT Bldg set back from Hwy. 40 ROW
D8	10000	299	25	28	1 story	60 FT Bldg set back from Hwy. 40 ROW
D9 (if applicable)	10000	296	No building can be taller than the top of the HEB Building			

REF: HEB Building is 40' above the finished floor (312')

NOTE: In the event the actual finished floor elevation of any Parcel on the CS MarketPlace Parcel is determined to be greater than the finished floor elevation indicated for such Parcel (or Lot) on this Building Restriction Plan, the maximum Building Height applicable thereto shall be reduced by one foot (1') for each foot that the actual finished floor elevation exceeds the finished floor elevation stated hereon.

†All Lot Designations hereon refer to Lots within the CS MarketPlace Parcel as shown on the Site Plan

**If Lot D3 is divided into two lots, the Maximum Floor Area on each of the lots is 4000 square feet.

***If Lot B1 is divided into two lots, the aggregate Maximum Floor Area of all buildings on both lots will not exceed 11,400 square feet total.

****If Lot B4 is divided into two lots, the aggregate Maximum Floor Area of all buildings on both lots will not exceed 18,000 square feet total.

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BR DR 103091
7/2/00

Doc: 01103816 Bk Vol Pg
DR 10381 01

PREPARED IN THE LAW OFFICE OF:

THE ELLISON FIRM
P.O. BOX 10103
COLLEGE STATION, TX 77842-0103
Attn: AMY L. CLOUGH

RETURN TO:

THE ELLISON FIRM
P.O. BOX 10103
COLLEGE STATION, TX 77842-0103

File No. 6001.001

Filed for Record in:
BRAZOS COUNTY

On: Oct 19, 2011 at 03:12P

As a
Recording

Document Number: 01103816

Amount 72.00

Receipt Number - 423540

By:
Flo Workman

STATE OF TEXAS COUNTY OF BRAZOS
I hereby certify that this instrument was
filed on the date and time stamped hereon by me
and was duly recorded in the volume and page
of the Official Public records of:

BRAZOS COUNTY

as stamped hereon by me.

Oct 19, 2011

HONORABLE KAREN MCQUEEN, COUNTY CLERK
BRAZOS COUNTY