

Alamo Title Co. GF #4000412103493 NW

**DECLARATION OF
EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS**

This **Declaration of Easements, Covenants, Conditions and Restrictions** (this “**Declaration**”) is made and entered into effective as of the 21st day of September, 2021 (the “**Effective Date**”), by **ABISO DOMINION CREEK, LP**, a Texas limited partnership (“**Declarant**”).

ARTICLE 1

Recitals

1.1 **Property; TXDOT Property.** Declarant owns those certain parcels of real property containing approximately 5.511 acres of land (the “**Property**”) situated in the City of San Antonio, Bexar County, Texas, as described on **Exhibit A** attached hereto and incorporated herein. As of the Effective Date, Declarant has leased that certain approximately 3.26 acres tract real property (the “**TXDOT Property**”) described in that certain Standard Lease Agreement, Lease No. L15-015-443 dated June 6, 2017 by and between Declarant, as lessee, and the Texas Department of Transportation, as lessor (the “**TXDOT Lease**”), as same is more particularly depicted on the Site Plan (defined below). The Property and the TXDOT Property are hereinafter collectively referred to as the “**Development**”.

1.2 **Easements and Restrictions.** Declarant desires to subject the Property and the TXDOT Property during the term of the TXDOT Lease to certain easements, covenants, conditions and restrictive covenants, subject to which the Property and each Parcel (defined below), as applicable, shall be owned, held, improved, used and conveyed during the term of this Declaration.

NOW, THEREFORE, in consideration of the premises, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration in hand paid, and in consideration of the terms and conditions herein made, the receipt and sufficiency of which are hereby acknowledged and confessed, the undersigned Declarant hereby declares that the following terms and requirements shall be applicable to the Property:

ARTICLE 2

Definitions

2.1 **Assessing Party.** The party responsible for assessing each Owner and/or Occupant of a Parcel its prorata share of the costs for the maintenance, repair and/or replacement of the Development Infrastructure. Initially the Declarant shall be the Assessing Party, and thereafter the Owner of the Retail Parcel shall be the Assessing Party upon the expiration of the Declarant Control Period.

2.2 **City.** The City of San Antonio, Texas.

2.3 **Declarant Control Period.** The time period during which Declarant owns any Parcel within the Property.

2.4 **Development Infrastructure.** Collectively, the Stormwater Improvements and the TXDOT Property Improvements (both terms as hereinafter defined) constituting a part of the Development as of the Effective Date.

2.5 **Future Development Parcel.** That certain approximately 1.774 acre tract of land of the Property as identified on the Site Plan and legally described on **Exhibit A-1** attached hereto and incorporated herein.

2.6 **Occupant.** Any Person, from time to time, entitled to the use and occupancy of any portion of the Property under any lease, sublease, license, concession or other similar agreement.

2.7 **Owner.** The owner of any Parcel, including, but not limited to, Declarant during the Declarant Control Period.

2.8 **Parcel.** Each of the Future Development Parcel, the Retail Parcel and the Roadhouse Parcel. The Future Development Parcel, the Retail Parcel and the Roadhouse Parcel are sometimes hereinafter collectively referred to as the "**Parcels**". The Parcels collectively form the Property.

2.9 **Permittee.** All Owners, Occupants and the partners, members, managers, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees and licensees of Owners and Occupants.

2.10 **Person.** Individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

2.11 **Retail Parcel.** That certain approximately 2.321 acre tract out of the Property as depicted on the Site Plan and legally described on **Exhibit A-2** attached hereto and incorporated herein.

2.12 **Roadhouse.** Roadhouse Enterprises, Inc., a Texas corporation or any of its subsidiaries, parent entity, affiliate or succeeding entity by merger.

2.13 **Roadhouse Lease.** Ground Lease Agreement dated January 14, 2021 by and between Declarant, as landlord, and Roadhouse, as tenant, relating to the ground leasing of approximately 1.862 acres and identified as the "**Roadhouse Parcel**" on the Site Plan and legally described on **Exhibit A-3** attached hereto and incorporated herein.

2.14 **Site Plan.** That certain initial site plan of the Development attached hereto as **Exhibit B** and made a part hereof.

2.15 **Stormwater Improvements.** Stormwater detention facilities (including any stormwater quality structures and first flush systems) constructed by Declarant on the Property as of the Effective Date in the areas outlined on **Exhibit C** attached hereto and made a part hereof.

2.16 **TXDOT Property Improvements.** Those certain parking, landscaping and other improvements constructed upon the TXDOT Property by Declarant as of the Effective Date and as depicted on the Site Plan.

ARTICLE 3 **Easements**

3.1 **Access and Parking Easements.** Subject to the terms, provisions and conditions of this Declaration, Declarant hereby confirms and establishes, for the benefit of the Owners of the Property and their Permittees a perpetual, non-exclusive easement for ingress and egress and parking by vehicular and pedestrian traffic, upon, over and across any driveways and parking areas (the "**Shared Driveway(s) and Parking Area(s)**") situated on the Property from time to time (the "**Access and Parking Easements**"). The Access and Parking Easements are being established for the purposes of providing each Owner and their respective Permittees with (i) common access to and from an Owner's Parcel and the public roadways located adjacent to the Development and (ii) cross parking between the Parcels. Notwithstanding anything

contained herein to the contrary, in no event shall any Owner of the Property or its Permittees permit its employees to park on any Parcel other than upon such Owner's or Permittee's respective Parcel. Furthermore, Declarant hereby establishes that the Owners of the Property and their Permittees shall have the right of ingress and egress and parking by vehicular and pedestrian traffic upon, over and across the TXDOT Property Improvements located upon the TXDOT Property; provided, however, such rights shall at all times be subordinate to the terms, provisions and conditions contained in the TXDOT Lease. If the TXDOT Lease is terminated or otherwise no longer in force and effect, then the Owners of the Property and their Permittees shall have no further access and parking rights with respect to the TXDOT Property. Other than directional signage, curbing, striping and other related improvements to the Shared Driveway(s) and Parking Area(s) or the TXDOT Property Improvements, no barrier, fence, curb, wall, ditch, barricade or other structure or obstacle may be placed upon an Owner's Parcel or the TXDOT Property which would unreasonably interfere with, impede, slow or in any way prevent vehicular traffic from passing along and across the Shared Driveway(s) and Parking Area(s) or the TXDOT Property Improvements. Subject to Section 3.5 below, following the completion of construction of the TXDOT Property Improvements, the TXDOT Property Improvements shall be maintained by Declarant until the expiration of the Declarant Control Period, whereupon the TXDOT Property Improvements shall be maintained by the Owner of the Retail Parcel. The costs incurred by Declarant (from the Effective Date to the expiration of the Declarant Control Period) or the Owner of the Retail Parcel (as applicable after the Declarant Control Period) for the maintenance, repair and/or replacement of the TXDOT Property Improvements shall be subject to the reimbursement by the Owners of the Parcels as more particularly set forth under Section 5.1 below.

3.2 **Stormwater Improvements Easement.** Subject to the terms, provisions and conditions of this Declaration, Declarant has constructed to completion on the Property the Stormwater Improvements. The Stormwater Improvements shall be maintained by Declarant until the expiration of the Declarant Control Period, whereupon the Stormwater Improvements shall be maintained by the Owner of the Retail Parcel. The costs incurred by Declarant (from the Effective Date to the expiration of the Declarant Control Period) or the Owner of the Retail Parcel (as applicable after the Declarant Control Period) for the maintenance, repair and/or replacement of the Stormwater Improvements shall be subject to reimbursement from the Owners of the Property, in accordance with Section 5.1 below. Declarant hereby creates a blanket non-exclusive drainage easement over, under, across and upon each portion of the Property for surface and sub-surface water flow and drainage to the Stormwater Improvements. Additionally, Declarant hereby establishes a non-exclusive access easement for the benefit of party maintaining the Stormwater Improvements to enter upon any portion of the Property that is reasonably required to perform such maintenance obligations. The party maintaining the Stormwater Improvements shall use good faith and commercially reasonable efforts to minimize any interruption to an Owner's use of its Parcel arising out of such maintaining party's performance of the maintenance obligations for the Stormwater Improvements as provided hereunder.

3.3 **Reservation of Rights.** Each Owner shall enjoy fee ownership, and the surface and subsurface, of its respective Parcel for any and all purposes which comply with the terms of this Declaration and which do not unreasonably interfere with and prevent the use of the easements granted herein. In addition, each Owner will have for themselves, and for the benefit of their respective successors and assigns, the right to use the surface and subsurface of its respective Parcel, as may be necessary for the installation, operation, maintenance, repair, replacement, removal and relocation of underground storm sewer lines, underground sanitary sewer pipes, underground water and gas mains, underground electric power lines, underground telephone and cable T.V. lines, and other like uses which do not unreasonably interfere with and prevent the use of the easements described herein, or any other easement subsequently established by the Declarant prior to the development of any Parcel. Overhead electric lines may be permitted, but only if approved as to type and location at the sole discretion of the Declarant.

3.4 **Permitted Exceptions.** The easements described herein are conveyed and reserved subject to any and all other recorded restrictions, easements, utility lines, or other matters or easements validly affecting the Property.

3.5 **Rights of Roadhouse.** Notwithstanding anything to the contrary contained in this Declaration, so long as the Roadhouse Lease is in effect and except to the extent required by applicable law, in no event shall Declarant and/or any applicable Owner (i) alter or change the access points (including the location of curb cuts) identified on the Site Plan as “**Roadhouse’s Protected Access**” in a material and adverse manner without providing a suitable alternative, (ii) alter or change the Roadhouse Parcel in any way, (iii) adversely affect visibility to the Roadhouse Parcel from IH-10 West, and/or (iv) substantially reduce, alter or reconfigure the parking spaces available to Roadhouse, or its customers or invitees, within “**Roadhouse’s Protected Area**” identified on the Site Plan. Notwithstanding the foregoing, in the event that during the Term of the Roadhouse Lease, Declarant or any successor of Declarant, loses control of such portions of Roadhouse’s Protected Access and Roadhouse’s Protected Area located within the TXDOT Property to TXDOT and TXDOT subsequently modifies and/or changes such portions of Roadhouse’s Protected Access and/or Roadhouse’s Protected Area (as and if applicable), then the same shall not be deemed a violation of the terms and conditions of this Declaration.

3.6 **Maintenance of Shared Driveways and Parking Areas.** Each Owner of a Parcel of the Property shall be responsible at its sole cost and expense to maintain in good condition and repair at all times the Shared Driveways and Parking Areas and any other common area improvements located upon its Parcel. During the Term of the Roadhouse Lease, Roadhouse shall self-maintain, at its sole cost and expense, the Shared Driveways and Parking Areas and common area improvements located on the Roadhouse Parcel in good condition and repair at all times.

ARTICLE 4
Intentionally Omitted

ARTICLE 5
Assessments for Development Infrastructure Maintenance Costs

5.1 **Covenant for Assessments.** Each Owner of a Parcel shall be deemed to covenant to pay to the Assessing Party assessments (“**Assessments**”) for the costs associated with the maintenance, repair and replacement of the Development Infrastructure, as well as for any and all costs (including without limitation the payment of rent) due under the TXDOT Lease, accruing after the Effective Date. The Assessing Party shall allocate among the Owners of the Property the Assessments for the Development Infrastructure as set forth in Article 6 below. As of the Effective Date, Declarant is the lessee under the TXDOT Lease and shall remain the lessee thereunder until the expiration of the Declarant Control Period. Upon the expiration of the Declarant Control Period, Declarant shall assign all of its right, title and interest, as lessee, in and to the TXDOT Lease to the Owner of the Retail Parcel, which TXDOT Lease shall run with the ownership of the Retail Parcel and be binding upon the Owner of the Retail Parcel and its successors and assigns. Declarant or the Owner of the Retail Parcel (as applicable) shall at all times comply with the terms, provisions and conditions of the TXDOT Lease so as not to cause any default by the lessee thereunder. The Owner of the Retail Parcel shall execute any such documentation reasonably required in connection with the assignment of the TXDOT Lease by the Declarant upon the expiration of the Declarant Control Period.

5.2 **Fixing and Payment of Assessments.** The Assessments shall be fixed annually by the Assessing Party in its reasonable discretion, not later than December 1 of the calendar year preceding the year for which an assessment is imposed and based upon a good faith estimate of the Assessing Party’s projected costs for such year. The estimated amount of Assessments will be communicated by the Assessing

Party to each Owner of a Parcel in writing and shall become due and payable on January 2nd of each calendar year and shall be delinquent if not paid within fifteen (15) days thereafter. By April 1st of each year or as soon as practical thereafter, the Assessing Party shall deliver to each Owner annual statements comparing the estimated payments made by such Owner during the previous calendar year with the Assessing Party's actual maintenance costs during such period. If the portion of an Owner's share of the actual maintenance costs exceeds an Owner's estimated payments, such Owner shall pay the excess amount due to the Assessing Party within thirty (30) days after receipt of such statement. If excess payments are made by a Owner that exceed such Owners' share of the actual maintenance costs, the Assessing Party shall, at the Assessing Party's option, either refund any such overpayment to such Owner or credit any such overpayment to such Owner's account. If applicable, the initial Assessment(s) shall be prorated for the period from the Effective Date to the end of the then current calendar year.

5.3 **Personal Obligation for Payment of Assessment.** The Assessments provided for herein shall be the personal and individual debt of each Owner. No Owner shall be exempt from liability for Assessments. In the event the Owner of a Parcel is a subassociation created pursuant to a condominium regime, the subassociation shall be obligated to pay such Assessments; provided however that such obligation of the subassociation shall not release any individual owner of any condominium or other interest in such Parcel from liability for such assessments. Upon a default in the payment of any Assessment beyond any applicable notice and cure period, the defaulting Owner shall be obligated to pay interest on the amount of the Assessment from the due date thereof until paid at the corporate loan prime rate, published in the Wall Street Journal on the date such sum is payable, plus ten percent (10%), but in no event higher than the highest rate allowed by applicable usury laws then in effect, together with all costs and expenses of collection, including reasonable attorneys' fees. The Assessing Party shall have the right to charge a late fee for failure by any Owner to pay assessments within five (5) days after receipt by the such Owner of written notice by the Assessing Party that such Assessments are overdue, which such late fee shall be in an amount equal to six percent (6%) of the delinquent Assessment, except that no late charge shall be due for the first such late payment in any twelve (12) month period during the term of this Declaration. No Owner may waive or otherwise avoid liability for an Assessment as provided for herein by non-use of a Development Infrastructure or abandonment of its portion of the Property.

5.4 **Assessment Lien and Foreclosure.** All Assessments provided for in this section which are not paid when due, together with interest and late charges as provided above and collection costs and expenses as herein provided, shall be secured by a continuing lien and charge in favor of the Assessing Party on each Parcel and any improvements thereon subject to such Assessment or interests therein, which shall bind such Parcel and improvements thereon or interests therein and the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors and assigns. The obligation to pay Assessments hereunder is part of the purchase price of each Parcel when sold to the Owner thereof, and an express vendor's lien is hereby retained to secure the payment thereof. Additionally, a lien is hereby granted and conveyed to the Assessing Party to secure the payment of the Assessments. Such liens shall be superior to all other liens and charges against such Parcel, except only for tax liens, the lien of a first mortgage (as refinanced from time to time) which is of record before a notice of Assessment lien (described below) has been recorded against the Parcel, and which secures sums borrowed for the acquisition or improvement of the particular Parcel or the refinancing thereof. The Assessing Party, at its sole option, shall have the power to subordinate the Assessment liens to any other lien. To evidence any lien for Assessments, the Assessing Party may prepare a written notice of Assessment lien which sets forth the amount of the unpaid Assessment(s), the name of the Owner and a description of such Owner's Parcel. Such notice shall be signed by the Assessing Party and shall be recorded in the office of the County Clerk of Bexar County, Texas. Any Assessment lien shall attach with the priority above set forth from the date that such payment becomes due. Upon the written request of the any Owner of, or mortgagee holding a prior lien on any part of the Property, the Assessing Party shall report to said Owner or mortgagee any Assessments then unpaid. Each Owner, by acceptance of a deed to its Parcel, hereby expressly recognizes the existence of the Assessment liens as

being prior to its ownership of such Parcel and hereby vests in the Assessing Party the right and power to bring all actions against such Owner personally for the collection of any unpaid Assessments and other sums due hereunder as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens including, without limitation, foreclosure of the Parcel for which Assessments are unpaid. At any foreclosure, the Assessing Party shall be entitled to bid up to the amount of the sum secured by the Assessment lien, together with costs and reasonable attorneys' fees, and to apply as a cash credit against its bid all sums due to the Assessing Party covered by the lien foreclosed.

5.5 **Audit Rights.** Each Owner may, at its sole cost and expense, audit the Assessing Party's books and records relating to the computation of the charges included in Assessments levied pursuant to this Declaration. In the event the Owner is a sub-association created pursuant to a condominium regime, the sub-association, and not the individual owners, shall have the sole right to audit the Assessing Party's books and records as set forth herein. Any Owner may conduct an audit no more than once each calendar year as to charges incurred by the Assessing Party not more than thirty-six (36) months prior to the date of the last annual statement provided by the Assessing Party, and not more than once within thirty-six (36) months after the later to occur of the expiration or earlier termination of the term of this Declaration or the date a Owner receives a final invoice with respect to all sums claimed to be due and owing by such Owner under this Declaration. The Assessing Party agrees that it will make available to an Owner and its designated auditors, at the Assessing Party's office during business hours, all appropriate books and records, or copies thereof, required for the performance of the audit. A Owner's access to these books and records may be restricted to periods of time during which the Assessing Party does not reasonably require access to them in connection with the operation or management of the Development Infrastructure. If any audit reveals discrepancies or incorrect computations, and if the Assessing Party reasonably agrees with such audit, the Assessing Party and such auditing Owner shall make appropriate reconciliation payments, in cash, between themselves based on the correct amount for such period. Any dispute may be submitted by the applicable Owner to mediation and the decision of the mediator shall be final and binding on both parties. Notwithstanding anything to the contrary contained in this Declaration, so long as Roadhouse is occupying the Roadhouse Parcel pursuant to the Roadhouse Lease, Roadhouse shall have the right as an Owner under this Section 5.5 to audit the Assessments.

ARTICLE 6

Allocation of Assessments for Development Infrastructure

6.1 **Assessment Allocation.** The costs associated with the maintenance, repair and/or replacement of the Development Infrastructure, as well as the costs due under the TXDOT Lease shall be allocated among the Owners of the Property calculated based upon the ratio that the land area of each Owner's Parcel bears to the total land area of all Owners' Parcels. If any portion of the Property is subdivided in the future, the Assessing Party shall have the right to re-calculate the allocation of Assessments to ensure that each Owner of the Property is properly being assessed its equitable share of the costs associated with the maintenance and repair of the Development Infrastructure and the payment of costs due under the TXDOT Lease in accordance with the terms of this Declaration.

6.2 **Additional Development Infrastructure Assessments Post Final Site Plan.** Notwithstanding anything set forth in this Declaration to the contrary, after the initial completion of the Development Infrastructure required by Declarant in accordance with the Site Plan, in no event shall any additional Development Infrastructure be added within the Property that results in additional Assessments to an Owner without such Owner's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed, and so long as Roadhouse is occupying the Roadhouse Parcel pursuant to the Roadhouse Lease, Roadhouse's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

ARTICLE 7
Insurance and Indemnity

7.1 **Insurance.** Each Owner shall maintain, or cause to be maintained, commercial general liability insurance insuring against claims on account of lost life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the such Owner's Parcel and the Development Infrastructure, or caused by such Owner, or caused by those persons for whose acts and omissions such Owner is legally liable. Each respective Owner shall obtain an insurance policy, according to the provisions hereof, covering its Parcel and its use of the Development Infrastructure from a reputable insurance company or companies qualified to do business in the State of Texas and that is rated by Best's Insurance Reports not less than "A- / VIII"; and each such policy of insurance shall have limits for loss of life or bodily injury in amounts of not less than \$2,000,000.00 for each occurrence. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of the respective party, and may be maintained by way of self-insurance, provided that such Owner maintains a tangible net worth in excess of \$100,000,000.00. Each Owner shall, upon written request from a party or the Assessing Party, furnish to the Assessing Party (for confirmation to the requesting party if applicable) one or more certificates of insurance evidencing the existence of the insurance required above. All such insurance shall include provisions denying to the insurer subrogation rights against the other parties to the extent such rights have been waived by the insured prior to the occurrence of damage or loss. Each Owner hereby waives any rights of recovery against any other Owner, its Occupants and Permittees for any damage or consequential loss covered by said policies, against which the non-waiving Owner is protected by insurance, to the extent of the proceeds payable under such policies, whether or not such damage or loss shall have been caused by any acts or omissions of the non-waiving Owner or its Occupants or Permittees, **INCLUDING MATTERS ARISING FROM THE NEGLIGENCE OF SUCH NON-WAIVING PARTY.** The Declarant (prior to the expiration of the Declarant Control Period) and thereafter the Owner of the Retail Parcel shall maintain casualty insurance with respect to the Development Infrastructure in the amount of the full replacement value thereof and from a reputable insurance carrier licensed to do business in the State of Texas with an A.M. Best's Rating of not less than A-/VIII. The costs of such casualty insurance incurred by Declarant or the Owner of the Retail Parcel, as applicable, shall be reimbursed through Assessments provided to all Owners pursuant to this Declaration.

7.2 **Indemnity.** Each Owner (the "**Indemnifying Owner**") shall indemnify and hold the other Owner and the Assessing Party harmless from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person or property and occurring on the Indemnifying Owner's own Parcel as resulting from the Indemnifying Owner's, or its Occupants' or Permittees' use of the Development Infrastructure, except to the extent such occurrence is caused by the negligence or willful act or omission in whole or in part by the Assessing Party or another Owner or its Permittees.

ARTICLE 8
Damage or Destruction

8.1 **Damage to Building Improvements.** If any part of the building improvements on a Parcel is damaged by fire or other casualty, the Owner thereof shall not be obligated to restore the same. If such Owner does not elect to restore any damaged building improvements, then such Owner, at its sole expense, shall raze the damaged structures, remove all debris, fill any excavation and perform any other work deemed necessary by the Association to put such Parcel in a clean, slightly and safe condition.

8.2 **Eminent Domain.** In the event the whole or any part of any Parcel is taken by right of eminent domain or any similar authority of law, or conveyed in anticipation or in lieu thereof (a "**Taking**"), the allocable portions of the award for the value of the land and improvements so taken shall belong to the Owner of the property taken (or to such Owner's mortgagees or Occupants, as their interests may appear).

No other Owner shall have a right to claim any portion of such award by virtue of any interest created by this Declaration. In the event of a partial Taking, the Owner of the portion of the Parcel so taken shall promptly elect to either (i) restore the improvements located on the Owner's Parcel as nearly as possible to the condition existing prior to the Taking without contribution from any other Owner and any portion of any condemnation award, or (ii) raze the improvements and put the Parcel in a clean, sightly and safe condition. Notwithstanding the foregoing, so long as Roadhouse is occupying the Roadhouse Parcel pursuant to the Roadhouse Lease, any condemnation proceeds with respect to the Roadhouse Parcel shall be distributed in the manner described in the Roadhouse Lease.

ARTICLE 9
Use Restrictions

9.1 **Prohibited Uses.** The following operations and uses shall not be permitted on the Property subject to this Declaration:

- 9.1.1 Junkyards;
- 9.1.2 Drilling for and removing oil, gas or other hydrocarbon substances (subject to any outstanding mineral interests not owned by an Owner);
- 9.1.3 Refining of petroleum or of its products;
- 9.1.4 Commercial petroleum storage yards;
- 9.1.5 Distillation of bones;
- 9.1.6 Dumping, disposal, incineration, or reduction of garbage, sewage offal, dead animals, or other refuse;
- 9.1.7 Fat rendering;
- 9.1.8 Stockyard or slaughter of animals;
- 9.1.9 Smelting of iron, tin, zinc, lead, or any other ore or ores;
- 9.1.10 Jail or honor farms;
- 9.1.11 Labor or migrant worker camps;
- 9.1.12 Electroplating;
- 9.1.13 Central mixing plant for asphalt or concrete;
- 9.1.14 Tire recapping;
- 9.1.15 Mining;
- 9.1.16 Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness, or loudness;

9.1.17 Any obnoxious odor (as determined by a court of competent jurisdiction, provided that odors associated with normal retail and restaurant operations shall not be prohibited hereby);

9.1.18 Any dust, dirt, or fly ash in excessive quantities;

9.1.19 Any unusual fire, explosive, or other damaging and dangerous hazard, including the storage, display or sale of explosives or fireworks (not including retail sales of firearms or ammunition);

9.1.20 Any warehouse (not including storage which is incidental to a permitted use or a self-storage business), assembly, manufacture, smelting, or mining operations;

9.1.21 Any "second hand" store, Army, Navy, or government "surplus" or "unclaimed" merchandise store, pawn shop or flea market;

9.1.22 Any mobile home or trailer court, labor camp, junk yard, stock yard, or animal raising;

9.1.23 Any fire or bankruptcy sale or auction house operation;

9.1.24 Any skating rink, carnival, amusement park, circus or other amusement center;

9.1.25 Any mortuary, funeral home, crematorium or cemetery;

9.1.26 Any adult bookstore or other facility specializing in the sale or exhibiting of pornographic material;

9.1.27 Any trailer or truck rental;

9.1.28 Any automobile, truck, trailer, heavy equipment, mobile home, boat or recreational vehicle sales, leasing or display, including body repair facilities;

9.1.29 Intentionally omitted;

9.1.30 Any massage parlor, modeling studio or establishment where women or men are engaged in other salacious activities, provided that the foregoing shall not be deemed to prohibit a first-class massage therapy operation such as Massage Heights and Massage Envy;

9.1.31 Any public or private nuisance (as determined by a court of competent jurisdiction);

9.1.32 Any use restricted by the applicable zoning ordinance affecting such Parcel; or

9.1.33 Any casino or off track betting facility (but excluding sales of Texas State Lottery tickets, video gaming and sports betting parlors).

9.2 **Nuisance.** Nothing shall be done on any portion of the Property that constitutes a nuisance pursuant to applicable Laws.

9.3 **Run with the Land.** These covenants shall run with the land hereby restricted throughout the Term (as defined below) and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

9.4 **Roadhouse Exclusive Use.** So long as (A) Roadhouse is not in default under the terms of the Roadhouse Lease beyond any applicable notice and cure period, (B) Roadhouse is open and operating in and from the Roadhouse Parcel as a typical Texas Roadhouse full service sit-down restaurant featuring steaks, ribs and related menu items (except for a Permitted Closure [as hereinafter defined]), and (C) the Roadhouse Lease is still in effect, no portion of the Property, other than the Roadhouse Parcel, shall be leased, sold, occupied, used or operated by any party as (i) a Cheddar's Scratch Kitchen or (ii) a full-service sit-down restaurant featuring steaks or ribs as its primary menu items, including, by way of example and not limitation, Outback, Longhorn Steakhouse, Lonestar Steakhouse, Logan's Roadhouse, Ryan's, Western Sizzlin, Texas Steakhouse, Colton's, Saltgrass, and/or Golden Corral, or for the advertisement of any such restaurant (the "**Roadhouse Exclusive Use**"). Notwithstanding the foregoing, the Roadhouse Exclusive Use set forth in this Section 9.4 shall not apply to the current tenants or occupants of the Property and their successors, subtenants and assigns (collectively, the "**Existing Tenants**") existing as of the Effective Date to the extent their leases allow such exclusive use (provided, however, that to the extent Declarant has the right to withhold consent to a change in use by any Existing Tenant to a use that would violate the Roadhouse Exclusive Use, Declarant will withhold such consent). For purposes of this Declaration, the term "**Permitted Closure**" shall mean a temporary closure due to (A) force majeure and/or other casualty or condemnation event, (B) necessary and diligently-pursued repairs to the Roadhouse Parcel, (C) federal government holidays (as applicable), and (D) diligently-pursued renovations and/or alterations to the Roadhouse Parcel performed by or on behalf of Roadhouse.

9.5 **Roadhouse Building Restriction.** As of the date of this Declaration, Declarant has constructed a building on the parcel located adjacent to the Roadhouse Parcel and as more particularly shown on the Site Plan (the "**Adjacent Building**") and such development of the Adjacent Building shall be subject to certain restrictions contained in this Section 9.5 so long as Roadhouse is occupying the Roadhouse Parcel pursuant to the Roadhouse Lease. In furtherance of the foregoing, so long as (i) Roadhouse is not in default under the terms of the Roadhouse Lease beyond any applicable notice and cure period, (ii) Roadhouse is open and operating in and from the Roadhouse Parcel as a typical Texas Roadhouse full service sit-down restaurant featuring steaks, ribs and related menu items (except for a Permitted Closure), and (iii) the Roadhouse Lease is still in effect, that certain portion of the Adjacent Building identified as the "Southern Endcap" on the Site Plan shall not be leased, sold, occupied, used or operated by any party as a Heavy Parking User (as hereinafter defined) (the "**Building Restriction**"). For the purposes of this Declaration, the term "**Heavy Parking User**" shall mean (A) any full-service sit-down restaurant in excess of four thousand (4,000) square feet; and/or (B) a gym or other fitness facility or fitness club.

ARTICLE 10

Remedies

10.1 **Self Help and Other Remedies.** If an Owner defaults in the performance of its obligations hereunder and the default is not cured within ten (10) days following delivery of written notice to such Owner, then the Assessing Party shall (i) perform such obligation on behalf of the defaulting Owner, in which event the defaulting Owner shall reimburse the Assessing Party for all amounts expended by the Assessing Party on behalf of the defaulting Owner, together with interest thereon at the lesser of fourteen percent (14%) per annum ("**Default Rate**"), or the maximum amount permitted by law from the date the amounts are expended until the date repaid; and/or (ii) exercise any other rights or remedies available to the Assessing Party either at law or in equity. If the Assessing Party fails to exercise the foregoing remedies against a defaulting Owner, then any other Owner that is not a defaulting Owner and Roadhouse (so long as Roadhouse is the occupant of the Roadhouse Parcel) shall have the right to enforce such rights and remedies on behalf of the Assessing Party against the defaulting Owner.

10.2 **Injunctive Relief.** In the event of a default or breach by an Owner of any obligation of such Owner under this Declaration, any non-defaulting Owner or the Assessing Party shall be entitled to

injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree specifically enforcing the performance of the obligations created hereunder. The undersigned hereby acknowledge and stipulate the inadequacy of legal remedies and irreparable harm which would be caused by the breach of this Declaration, and the non-defaulting Owner shall be entitled to relief by any and all other available legal and equitable remedies from the consequences of such breach. Any costs and expenses of any such proceeding, including reasonable attorney's fees, shall be paid by the defaulting Owner.

10.3 **Non-Waiver.** No delay or omission of the Assessing Party or any non-defaulting Owner in the exercise of any rights created hereunder shall impair such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of an event of default hereunder. A waiver by the Assessing Party or any non-defaulting Owner hereto of a breach of, or default in, any of the terms and conditions of this Declaration by the Assessing Party or any non-defaulting Owner shall not be construed to be a waiver of any subsequent breach thereof or of any other provision of this Declaration. Except as otherwise specifically provided in this Declaration, no remedy provided in this Declaration shall be exclusive but shall be cumulative with all other remedies provided for in this Declaration, and all other remedies at law or in equity which are available to the parties hereto.

10.4 **Roadhouse Default Rights.** Notwithstanding anything to the contrary contained in this Declaration, so long as the Roadhouse Lease is in effect, Roadhouse shall have the right to enforce the terms and conditions of this Declaration as applicable and on behalf of the Owner of the Roadhouse Parcel. This enforcement right shall include, without limitation, the right to exercise self-help rights arising from a default under this Declaration beyond any applicable notice and cure period.

ARTICLE 11
Notices

All notices, demands, statements, and requests (collectively the "Notice") required or permitted to be given under this Declaration must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the Owner to whom the notice is addressed or if such Owner is not available the date such notice is left at the address of the Owner to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, certified mail, return receipt requested, (iii) on the date the notice is delivered by a courier service (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Owner to whom it is directed, provided it is sent prepaid, return receipt requested, and (iv) on the date the notice is received if sent by facsimile or electronic delivery. The address of Declarant is set forth below:

Abiso Dominion Creek, LP
120 Austin Highway, Suite 105
San Antonio, Texas 78209
Attn: Blake Honigblum

ARTICLE 12
General Provisions

12.1 **Binding Effect.** The provisions of this Declaration shall be binding upon and inure to the benefit of the Owners of the Property and their respective Permittees, as well as the successors and assigns of such Persons. The easements and restrictive covenants shall be appurtenant to and for the benefit of the Owners of the Property and their respective successors and assigns and shall run with the land for the periods set forth herein. This Declaration shall be construed in accordance with the laws of the State of Texas and all obligations hereunder are performable in Bexar County, Texas.

12.2 **Partial Invalidity.** If any term, covenant or condition of this Declaration or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term, covenant or condition to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Declaration shall be valid and shall be enforced to the extent permitted by law.

12.3 **Captions.** The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

12.4 **Gender.** In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

12.5 **Relationship of the Parties.** Nothing contained herein shall be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

12.6 **Amendment.** During the Declarant Control Period, this Declaration may be modified or amended by a written instrument executed by Declarant, and filed of record in the Real Property Records of Bexar County, Texas without the joinder of any other Owner, Occupant, Permittee, or any other party, including the right to amend the Declaration to update the Site Plan and the legal description of the Property upon the re-subdivision of same; provided that any such amendment shall not, without the consent of the Owner of any affected Parcel (which consent shall not be unreasonably withheld, conditioned or delayed), (i) materially and adversely affect the access or drainage rights granted to any Owner hereunder, (ii) impose additional use or development restrictions on any Parcel, (iii) otherwise materially increase the monetary obligations or costs of any occupant hereunder, or (iv) materially impair any Owner's rights to enforce the terms of this Declaration. Following the expiration of the Declarant Control Period, this Declaration may be canceled, changed, modified or amended, in whole or in part, only by the written and recorded agreement of the Owners of seventy-five percent (75%) of the land area of the Property. Except as expressly provided in this section, in no event shall any amendment of this Declaration ever require the consent or joinder of any one or more of the agents, patrons, customers, employees, tenants, licensees or invitees of the Property.

12.7 **No Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Declaration shall be strictly limited to and for the purposes herein expressed. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not specifically benefited by the terms and provisions hereof. Nothing contained in this Declaration shall prohibit an Owner from dedicating all or any part of its Parcel to an appropriate governmental entity, the effect of which would create a public street on the easement area so dedicated, with maintenance and repair responsibilities transferring to the applicable governmental entity; provided, however, that any such dedication shall not be permitted if the effect of a dedication would be to materially alter, modify or restrict the intended access easements contemplated under this Declaration.

12.8 **Attorneys' Fees.** In the event any legal action or proceeding for the enforcement of any right or obligations herein contained is commenced, the prevailing party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

12.9 **Term.** This Declaration and the easements, rights, obligations and liabilities created hereby shall encumber the Property for a period of fifty (50) years, or such lesser period if and to the extent a lesser

period is required by applicable law, and thereafter the terms hereof shall be renewed automatically for successive ten (10) year periods unless all Owners and any parties owning at that time any security interest in any of the Parcels execute and record in the Real Estate Records of Bexar County, Texas a statement terminating such restrictive covenants within sixty (60) days of the expiration of such statutory period or any ten (10) year renewal thereof.

12.10 **Consent and Approvals.** Whenever any proposed action by any Owner(s) of a Parcel requires the consent or approval of the Owner(s) pursuant to this Declaration, then the Owner requesting such consent or approval shall submit to the Owner(s) a written notice delivered in accordance with Article 10 above describing the action for which such Owner seeks consent or approval, together with full, complete, and legible copies of all such documents or instruments reasonably necessary for the Owner(s) to review in connection with such request. Unless otherwise expressly provided in this Declaration, whenever a consent or approval is required, such consent or approval shall not be unreasonably withheld, hindered, conditioned, or delayed. Each Owner shall bear its own costs and expense (including attorneys' fees) in connection with any requests for approval or consent. If and to the extent any other provision of this Declaration provides for a different method, standard, or time frames with respect to obtaining the consent of an Owner, such other provision shall control, it being the intent of the Owners that this provision govern all situations for which no express procedure has otherwise been provided.

12.11 **Estoppel Certificate.** At any time, and from time to time (but not more often than once every calendar quarter), within twenty-one (21) calendar days after notice or request by an Owner or the Association, the other Owner(s) or the Assessing Party, at no cost to the requesting Owner and, if applicable, such requesting Owner's lender and/or a prospective lender with respect to the requesting Owner's Parcel, shall execute and deliver to such requesting Owner a statement certifying: (a) that this Declaration is unmodified and is in full force and effect (or if there have been modifications, certifying that this Declaration is in full force and effect as modified in the manner specified in such statement); and (b) that there exists no default under this Declaration except as otherwise specified in such statement.

12.12 **Subordination.** The liens of any mortgage loans or deeds of trust now or hereafter obtained by an Owner secured in whole or in part by any part of a Parcel shall be subordinate to this Declaration, and the Owner whose Parcel is burdened by such liens shall cause the liens to be so subordinated promptly upon the execution of this Declaration.

[SIGNATURE PAGE FOLLOWS]

EXECUTED effective the date first written above.

DECLARANT:

ABISO DOMINION CREEK, LP,

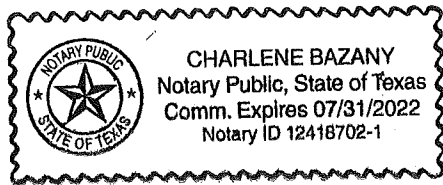
a Texas limited partnership

By: ABISO DEVELOPMENT, LLC,
a Texas limited liability company
its General Partner

By: *[Signature]*
Blake Honigblum, Manager

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this 22 day of September, 2021, by Blake Honigblum, the Manager of Abiso Development, LLC, a Texas limited liability company, the General Partner of Abiso Dominion Creek, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership.



Charlene Bazany
Notary Public in and for the State of Texas

**Consent and Subordination of Lender
To
Declaration of Easements, Covenants, Conditions and Restrictions**

Jefferson Bank ("Lender"), owner and holder of certain liens for the benefit of Lender, executed by Abiso Dominion Creek, LP, a Texas limited partnership, recorded in the Real Property Records of Bexar County, Texas (collectively, the "Security Instruments") (i) hereby consents to the foregoing Declaration of Easements, Covenants, Conditions and Restrictions ("Declaration") to which this Consent and Subordination of Lender is attached and the imposition of the Declaration on the real property encumbered by the Security Instruments and (ii) confirms that from and after this date the Security Instruments and Lender's rights thereunder will be subject to the provisions of the Declaration, the foreclosure of the Security Instruments or any transfer in lieu thereof will not affect the Declaration, and the terms of the Declaration will continue to bind the Property and Lender or other party who acquires any portion of the Property by foreclosure or transfer in lieu thereof (and their successors and assigns) following such foreclosure or other transfer.

LIENHOLDER:

JEFFERSON BANK

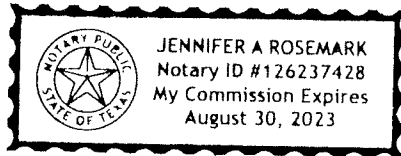
By: *Jonathan Wilt*
Name: Jonathan Wilt
Title: Vice President

THE STATE OF TEXAS

§
§
§

COUNTY OF BEXAR

This instrument was acknowledged before me this 23rd day of September, 2021, by Jonathan Wilt, Vice President, _____ of Jefferson Bank, on behalf of said entity.



Jennifer A. Rosemark
Notary Public in and for the State of Texas

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOT 3, BLOCK 110, NEW CITY BLOCK 16386, DOMINION RETAIL, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NO. 20170174559, REAL PROPERTY RECORDS, BEXAR COUNTY, TEXAS; LOT 5, BLOCK 110, NEW CITY BLOCK 16386, DOMINION RETAIL, ACCORDING TO THE PLAT THEREOF RECORDED AS PLAT VOLUME 20002 PAGE 1024, REAL PROPERTY RECORDS, BEXAR COUNTY, TEXAS; AND LOT 6, BLOCK 110, NEW CITY BLOCK 16386, DOMINION RETAIL, ACCORDING TO THE PLAT THEREOF RECORDED AS PLAT VOLUME 20002 PAGE 1024, REAL PROPERTY RECORDS, BEXAR COUNTY, TEXAS..

EXHIBIT A

EXHIBIT A-1

LEGAL DESCRIPTION OF FUTURE DEVELOPMENT PARCEL

LOT 3, BLOCK 110, NEW CITY BLOCK 16386, DOMINION RETAIL, ACCORDING TO THE PLAT THEREOF RECORDED AS PLAT VOLUME 110 PAGE 159-160, REAL PROPERTY RECORDS, BEXAR COUNTY, TEXAS.

EXHIBIT A-1

EXHIBIT A-2

LEGAL DESCRIPTION OF RETAIL PARCEL

LOT 5, BLOCK 110, NEW CITY BLOCK 16386, DOMINION RETAIL, ACCORDING TO THE PLAT THEREOF RECORDED AS PLAT VOLUME 20002 PAGE 1024, REAL PROPERTY RECORDS, BEXAR COUNTY, TEXAS.

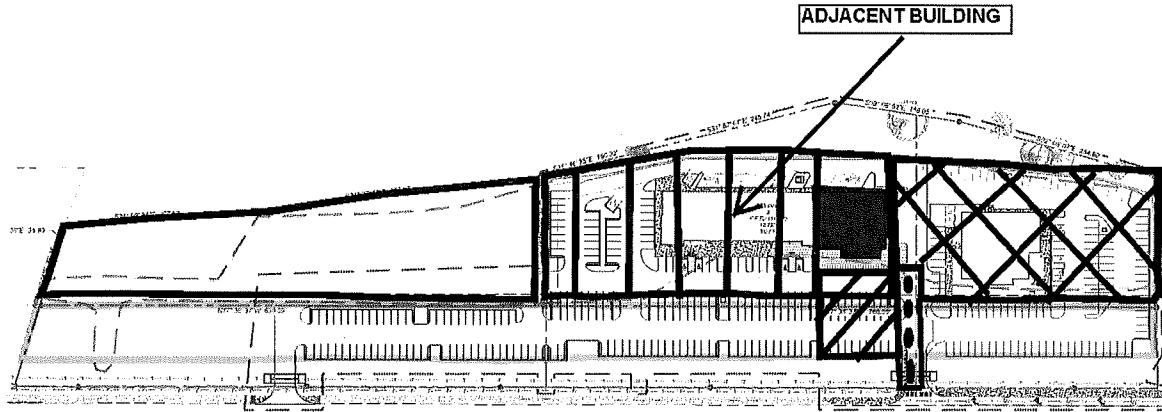
EXHIBIT A-3

LEGAL DESCRIPTION OF ROADHOUSE PARCEL

LOT 6, BLOCK 110, NEW CITY BLOCK 16386, DOMINION RETAIL, ACCORDING TO THE PLAT THEREOF RECORDED AS PLAT VOLUME 20002 PAGE 1024, REAL PROPERTY RECORDS, BEXAR COUNTY, TEXAS.

EXHIBIT A-3

EXHIBIT B
SITE PLAN










- | | |
|--|--|
|  TXDOT AREA |  ROADHOUSE'S PROTECTED ACCESS |
|  ROADHOUSE'S PROTECTED AREA |  FUTURE RETAIL PARCEL |
|  SOUTHERN ENDCAP |  RETAIL PARCEL |
|  TEXAS ROADHOUSE PARCEL | |

EXHIBIT C

STORMWATER IMPROVEMENTS

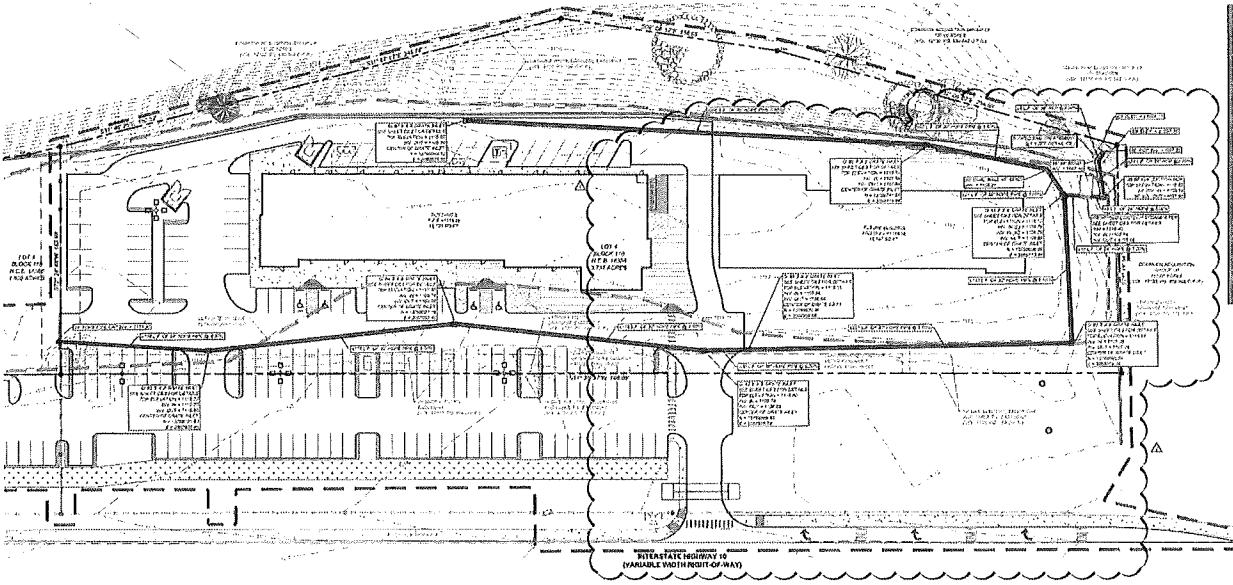


EXHIBIT C

File Information

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

Document Number: 20210272648
Recorded Date: September 29, 2021
Recorded Time: 5:05 PM
Total Pages: 22
Total Fees: \$106.00

**** THIS PAGE IS PART OF THE DOCUMENT ****

**** Do Not Remove ****

Any provision herein which restricts the sale or use of the described real property because of race is invalid and unenforceable under Federal law

STATE OF TEXAS, COUNTY OF BEXAR

I hereby Certify that this instrument was eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 9/29/2021 5:05 PM



Lucy Adame-Clark
Lucy Adame-Clark
Bexar County Clerk