

WHEN RECORDED MAIL TO:

J. Donald Stevenson, Jr., Esq.
7-Eleven, Inc.
Attn: Legal Department (Loc. 36464)
One Arts Plaza
1722 Routh St., Suite 1000
Dallas, Texas 75201-2506

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "Covenant") is made and entered into as of September 30, 2013, by DIATC, LLC, a Colorado limited liability company ("Declarant"), and 7-ELEVEN, INC., a Texas corporation ("7-Eleven"), and its successors and assigns.

Recitals

A. Declarant is the owner of certain real property situated in the City of Commerce City, County of Adams, State of Colorado, legally described on Exhibit A attached hereto (the "Declarant Property").

B. Prior to the date hereof, Declarant, as seller, and 7-Eleven, as buyer, entered into that certain Purchase Contract dated as of August 2, 2012 (as amended, the "Purchase Contract"), pursuant to which 7-Eleven agreed to purchase certain property located adjacent to the Declarant Property and legally described on Exhibit B attached hereto (the "Convenience Store Property", and together with the Declarant Property, the "Property").

C. 7-Eleven has closed on its purchase of the Convenience Store Property pursuant to the Purchase Contract and intends to use the Convenience Store Property for the operation of a convenience store whose primary business is the sale, rental or provision of merchandise and services customarily sold, rented or provided from time to time, at stores operated or franchised by 7-Eleven, and/or at similar-type convenience stores such as Loaf-N-Jug, Jenny's Market and Circle K (a "Convenience Store").

D. As a condition to the closing, Declarant agreed to record certain restrictions against the Declarant Property on the terms and conditions set forth herein.

NOW, THEREFORE, Declarant and 7-Eleven covenant and agree as follows:

1. Recitals. The foregoing Recitals are incorporated herein by this reference.
2. Defined Terms. The terms listed below shall have the meanings as set forth in this Section 2:
 - (a) "Bank" means a bank, credit union or other financial services company.
 - (b) "Hotel" means any hotel, motel or similar hospitality establishment that provides, incidental to its business, a "sundries" type shop for the convenience of its guests.
 - (c) "Liquor Store" means any store where the primary business operations are the retail sale of beer, wine and alcohol for off-premises consumption.

(d) **"Permitted Restaurant"** means a full-table service restaurant, a fast casual restaurant with limited or no table service which offers hot or cold beverages or food for both on and off-premises consumption, or a fast food restaurant, so long as any such restaurant is not a "donut shop" (e.g.: Dunkin Donuts, Winchell's, Krispy Kreme or similar-type shop).

(e) **"Permitted Store"** means any retail store with more than 30,000 square feet of floor area under one roof.

3. **Restrictions on Use.** For so long as 7-Eleven, its successors and assigns, and/or any subtenant thereof (a **"Store Operator"**), opens and operates the Convenience Store Property for a Convenience Store, no portion of the Declarant Property other than the Convenience Store Property shall be used or operated for the following, subject to the terms and conditions set forth herein (collectively, the **"Exclusives"**):

(a) a business which provides or offers banking or other financial services (including automatic teller machines), unless offered by a Bank or a Permitted Store; and/or

(b) a business selling one or more of the following items:

- (i) packaged fluid milk in one quart or larger containers, unless sold by a Permitted Store;
- (ii) fresh or commercially packaged bakery or bread products, unless sold by a Permitted Restaurant or a Permitted Store;
- (iii) delicatessen and delicatessen-type items, including, but not limited to, packaged lunch meats, pre-prepared sandwiches and foods, chicken wings and chicken fingers, grill items (such as hot dogs), burritos, taquitos, pre-made salads and fruit cups or fruit salad for consumption on or off-premises, except that made-to-order items may be sold by a Permitted Restaurant or a Permitted Store;
- (iv) pizza by the slice, unless sold by a Permitted Restaurant;
- (v) grocery items commonly sold from a Convenience Store, unless sold by a Permitted Store, except that a Liquor Store may have incidental sales of grocery items directly related to the Liquor Store operations (e.g. drink mixes and limes);
- (vi) cigarettes and tobacco products, unless vended by machine or sold by a Permitted Store;
- (vii) health and beauty care products, other than incidental sales of such items related to the primary business operations of a medical practice (e.g. a dentist or family care physician), a beauty salon, a barber shop or a Permitted Store;
- (viii) chilled, single serve beverages, including frozen or semi-frozen carbonated beverages, unless sold by a Permitted Restaurant or a Permitted Store;
- (ix) energy drinks by the case, bottle or can, except that a Permitted Restaurant or a Permitted Store may sell energy drinks by the bottle or can;
- (x) beverages by the cup or can, unless sold by a Permitted Restaurant, a Permitted Store or a Liquor Store;
- (xi) beverages in six pack, eight pack, twelve pack, case lots, half, one or two liter bottles, unless sold by a Permitted Store or a Liquor Store;
- (xii) candy, unless gift boxed or sold in bulk, or unless sold from a candy store, a Permitted Restaurant or a Permitted Store;

- (xiii) newspapers, magazines and paperback books, unless sold from a bookstore, Permitted Restaurant or a Permitted Store;
- (xiv) lottery tickets, unless sold from a Permitted Store;
- (xv) money orders, unless sold from a Bank or a Permitted Store;
- (xvi) money orders, unless sold from a phone specialty store or a Permitted Store;
- (xvii) gift cards, unless such gift card is for the particular business occupying such space, or unless sold by a Permitted Store; and
- (xviii) motor fuels or petroleum products (the "Gas Exclusive").

4. Hotel Exclusion. Notwithstanding anything to the contrary contained herein, all Exclusives, other than the Gas Exclusive, shall not apply to any Hotel.

5. Termination. This Covenant shall automatically terminate upon the earliest to occur of the following: (i) one (1) year after Seller's Development Work (as defined in the Purchase Contract) has been completed, if the Convenience Store Property has not, prior to such date, been open to the public for a Convenience Store, or (ii) once the Convenience Store is open to the public, one (1) year following the date Store Operator fails to be open for business and operate a Convenience Store on the Convenience Store Property, provided that such time period shall automatically be extended as reasonably required if Store Operator is diligently and in good faith completing restoration of the Convenience Store Property following a casualty, condemnation or remodeling. Upon expiration or termination of the Covenant pursuant to any of the conditions above, 7-Eleven (or its successors or assigns), at its expense, shall execute such documentation provided by Declarant as reasonably required, in recordable form, to clear title of the recorded Covenant. This obligation may be enforced by specific performance.

6. Enforcement. If any of the above covenants are found by a court of competent jurisdiction to be unreasonable or unenforceable, then such covenants shall be limited only to the extent that such court determines is reasonable and enforceable. Declarant hereby grants Store Operator the right to institute an action, including an action for damages or injunctive relief, against any owner, tenant or other occupant of the Declarant Property operating in violation of the Exclusives reserved for Store Operator.

7. Representations. Declarant represents and warrants to 7-Eleven the following as of the date of this Covenant: (i) Declarant is the fee owner of the Declarant Property; (ii) Declarant has all requisite power and authority to execute and deliver this Covenant, and the execution, delivery and performance of this Covenant has been duly authorized by all necessary action on the part of such party, and (iii) the execution and delivery of this Covenant and compliance with the terms hereof will not conflict with, or with or without notice or the passage of time or both, result in a breach of, any contractual or other restrictions or limitations on Declarant.

8. Covenants Running with the Land. The rights and restrictions herein shall be binding upon and shall inure to the benefit of any owner(s) of the Properties or any portion thereof and their successors and assigns, including all tenants and other occupants of the Property. This Covenant shall burden the Declarant Property and each portion thereof, shall be appurtenant to and for the benefit of the Convenience Store Property, and shall run with the land.

9. Notices. Any notice hereunder shall be in writing and shall be deemed to have been properly given when sent by overnight courier such as Federal Express, or United States Certified Mail, Return Receipt Requested, postage fully prepaid, to the addresses which follow, as the same may be changed by notice sent in accordance with this Section 9:

Declarant: DIATC, LLC
5753 Shasta Circle
Littleton, CO 80123
Attention: Christopher H. Thompson

with a copy to: BROWNSTEIN HYATT FARBER SCHRECK, LLP
410 17th Street, 22nd floor
Denver, Colorado 80202-4437
Attention: Gregory A. Vallin

7-Eleven: 7-ELEVEN, INC.
P.O. Box 711
Dallas, Texas 75221-0711
Attention: Corporate Real Estate

with a copy to: 7-ELEVEN, INC.
1722 Routh Street, Suite 1000
Dallas, Texas 75201-2506
Attention: Property Specialist

10. Joinder of Lender. Declarant represents and warrants to 7-Eleven that the parties executing each Joinder of Lender attached hereto are the only record holders of mortgage liens on the Declarant Property prior in interest to this Covenant.

11. Amendment. No amendment to this Covenant shall be effective without the written consent of 7-Eleven, which consent shall not be unreasonably withheld, conditioned or delayed.

12. Headings. Headings in this Covenant are for convenience only and shall not be used to interpret or construe its provisions.

13. Governing Law. This Covenant shall be construed in accordance with and governed by the laws of the State of Colorado. The invalidity or unenforceability of any provision of this Covenant shall not affect or impair any other provision.

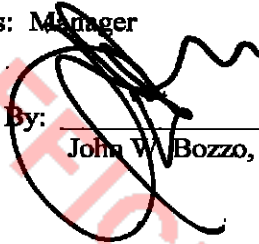
[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

JOINDER OF LENDER

By its execution hereunder, DIATC LENDER, LLC, an Arizona limited liability company, as the record holder of a mortgage lien on the Declarant Property prior in interest to this Covenant, evidenced by that certain Deed of Trust, Assignment of Rents, Security Agreement, Financing Statement and Fixture Filing, recorded in the real estate records in the office of the Clerk and Recorder of Adams County, Colorado on February 29, 2012 at Reception No. 2012000015303, as the same has been amended, consents to this Covenant and agrees to subordinate its mortgage lien on the Declarant Property to the agreements, covenants, conditions and restrictions set forth in the Covenant, and agrees that if the undersigned (or its successors or assigns) forecloses on all or any portion of the Declarant Property or takes a deed in lieu thereof, or otherwise acquires all or any portion of the Declarant Property, the undersigned (and its successors and assigns) will take ownership subject to the terms of this Covenant.

DIATC LENDER, LLC,
an Arizona limited liability company

By: RW Partners, LLC,
an Arizona limited liability company
Its: Manager

By: 
John W. Bozzo, Managing Partner

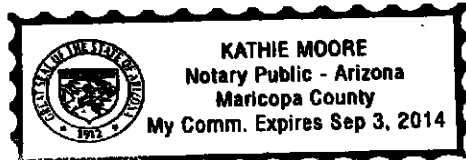
STATE OF ARIZONA }
COUNTY OF Maricopa } ss

The foregoing instrument was acknowledged before me this 24 day of September, 2013, by John W. Bozzo, as Managing Partner of RW Partners, LLC, an Arizona limited liability company, Manager of DIATC LENDER, LLC, an Arizona limited liability company.


Kathie Moore
Notary Public

My Commission Expires: 9-3-14

[SEAL]



JOINDER OF LENDER

By its execution hereunder, COWLEY MANAGEMENT, LLC, an Arizona limited liability company, as agent for the record holders of a mortgage lien on the Declarant Property prior in interest to this Covenant, evidenced by that certain Deed of Trust, Assignment of Rents, Security Agreement, Financing Statement and Fixture Filing recorded in Adams County, Colorado on February 29, 2012 at Reception No. 2012000015299, as the same has been amended, consents to this Covenant and agrees to subordinate its mortgage lien on the Declarant Property to the agreements, covenants, conditions and restrictions set forth in the Covenant, and agrees that if the undersigned (or its successors or assigns) forecloses on all or any portion of the Declarant Property or takes a deed in lieu thereof, or otherwise acquires all or any portion of the Declarant Property, the undersigned (and its successors and assigns) will take ownership subject to the terms of this Covenant.

COWLEY MANAGEMENT, LLC,
an Arizona limited liability company

By: 
Michael T. Cowley, Manager

STATE OF ARIZONA

COUNTY OF Maricopa

}
} ss
}

The foregoing instrument was acknowledged before me this 18th day of September, 2013, by Michael T. Cowley, as Manager of COWLEY MANAGEMENT, LLC, an Arizona limited liability company.


Notary Public

My Commission Expires:

[SEAL]

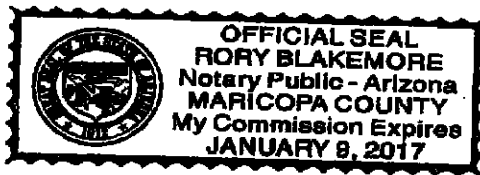


EXHIBIT A
to
RESTRICTIVE COVENANT AGREEMENT

Legal Description of Declarant Property

Lot 2, DIA Tech Center Filing No. 1, County of Adams, State of Colorado ,

Together with a parcel of land located in Section 28, Township 2 South, Range 66 West of the 6th
Principal Meridian, City of Commerce City, County of Adams, State of Colorado, described as follows:

[See attached.]

UNOFFICIAL COPY

LEGAL DESCRIPTION

A PARCEL OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 86 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN THE CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, FROM WHENCE THE EAST QUARTER CORNER OF SAID SECTION 28 BEARS NORTH 00°28'09" WEST, A DISTANCE OF 2667.07 FEET, WITH ALL BEARINGS HEREON BEING REFERENCED TO THIS LINE;

THENCE ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, NORTH 00°28'09" WEST, A DISTANCE OF 1372.80 FEET;

THENCE DEPARTING SAID EAST LINE, SOUTH 89°31'51" WEST, A DISTANCE OF 75.00 FEET TO THE NORTHEASTERLY MOST CORNER OF TRACT B, DIA TECH CENTER FILING NO. 1 AS RECORDED UNDER RECEPTION NO. 2013000045523 IN THE RECORDS OF THE ADAMS COUNTY CLERK AND RECORDER'S OFFICE, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 24.50 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 29°47'47" WEST, AND THE **POINT OF BEGINNING**;

THENCE ALONG THE NORTHERLY BOUNDARY OF SAID TRACT B THE FOLLOWING SIX (6) COURSES:

1. WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°19'38", AN ARC LENGTH OF 12.54 FEET;
2. TANGENT TO SAID CURVE, SOUTH 89°31'51" WEST, A DISTANCE OF 147.96 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 484.50 FEET;
3. WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°38'11", AN ARC LENGTH OF 115.31 FEET;
4. TANGENT TO SAID CURVE, NORTH 76°49'58" WEST, A DISTANCE OF 13.22 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 14.50 FEET;
5. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°15'27", AN ARC LENGTH OF 22.34 FEET;
6. NON-TANGENT TO SAID CURVE, NORTH 78°34'32" WEST, A DISTANCE OF 13.50 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 300.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 78°33'26" WEST;

THENCE DEPARTING SAID NORTHERLY BOUNDARY, NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°32'38", AN ARC LENGTH OF 44.74 FEET;

THENCE NON-TANGENT TO SAID CURVE, SOUTH 66°03'08" WEST, A DISTANCE OF 43.21 FEET;

THENCE NORTH 23°56'52" WEST, A DISTANCE OF 43.63 FEET;

THENCE NORTH 22°26'25" WEST, A DISTANCE OF 43.78 FEET;

THENCE NORTH 24°09'04" WEST, A DISTANCE OF 174.25 FEET;

THENCE NORTH 76°14'46" WEST, A DISTANCE OF 212.25 FEET;

THENCE NORTH 85°52'05" WEST, A DISTANCE OF 196.89 FEET;

THENCE NORTH 06°58'58" WEST, A DISTANCE OF 79.79 FEET;

THENCE NORTH 26°06'05" EAST, A DISTANCE OF 88.19 FEET;

THENCE NORTH 15°50'49" WEST, A DISTANCE OF 124.32 FEET;

THENCE NORTH 20°33'40" EAST, A DISTANCE OF 27.62 FEET;

THENCE SOUTH 85°18'55" EAST, A DISTANCE OF 98.94 FEET;

THENCE NORTH 50°23'48" EAST, A DISTANCE OF 60.85 FEET;

THENCE NORTH 21°05'29" EAST, A DISTANCE OF 215.98 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF TRACT D OF SAID DIA TECH CENTER FILING NO. 1;

THENCE ALONG SAID SOUTHERLY BOUNDARY THE FOLLOWING SIXTEEN (16) COURSES:

1. SOUTH 53°35'09" EAST, A DISTANCE OF 42.23 FEET;
2. NORTH 82°49'01" EAST, A DISTANCE OF 91.66 FEET;
3. SOUTH 77°48'48" EAST, A DISTANCE OF 75.89 FEET;
4. SOUTH 27°58'40" EAST, A DISTANCE OF 41.97 FEET;
5. SOUTH 17°09'35" WEST, A DISTANCE OF 122.61 FEET;
6. SOUTH 37°34'29" EAST, A DISTANCE OF 11.95 FEET;
7. NORTH 76°19'09" EAST, A DISTANCE OF 59.11 FEET;
8. SOUTH 42°23'20" EAST, A DISTANCE OF 175.19 FEET;
9. SOUTH 00°00'00" EAST, A DISTANCE OF 65.81 FEET;
10. SOUTH 46°37'34" EAST, A DISTANCE OF 28.43 FEET;
11. SOUTH 88°51'20" EAST, A DISTANCE OF 94.45 FEET;
12. NORTH 15°35'16" EAST, A DISTANCE OF 66.86 FEET;
13. NORTH 45°01'01" EAST, A DISTANCE OF 77.48 FEET;
14. SOUTH 11°00'52" EAST, A DISTANCE OF 23.91 FEET;
15. SOUTH 35°07'58" EAST, A DISTANCE OF 42.26 FEET;
16. NORTH 57°25'54" EAST, A DISTANCE OF 45.54 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF TOWER ROAD AS SHOWN ON THE PLAT OF SAID DIA TECH CENTER FILING NO. 1;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY, SOUTH 00°28'09" EAST, A DISTANCE OF 587.51 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 9.884 ACRES, (430,556 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.

DEREK S. BROWN, PLS
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
8000 S. LINCOLN ST., SUITE 201, LITTLETON, CO 80122
303-303-713-1898

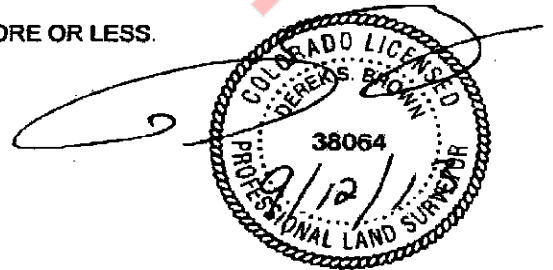
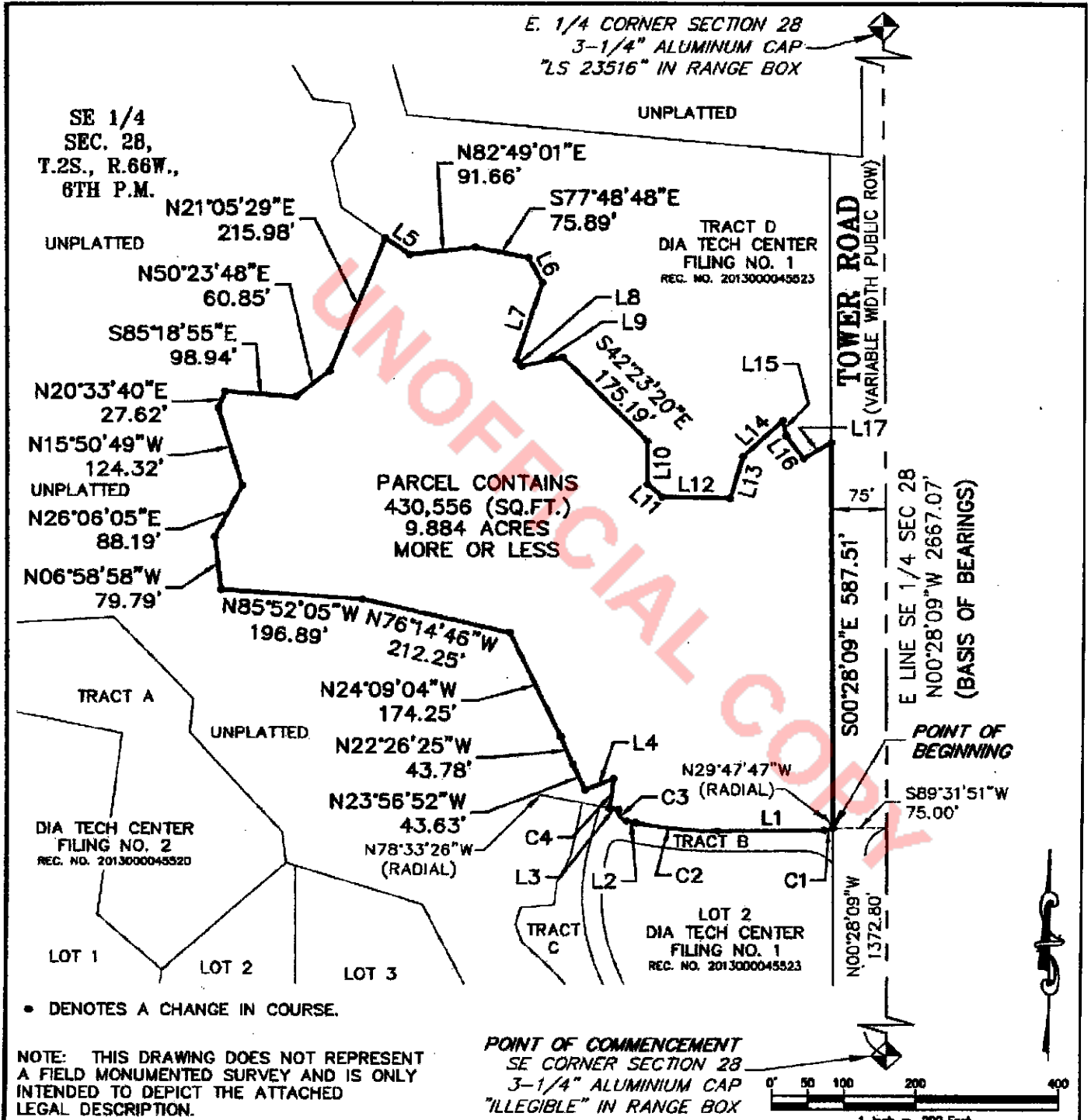


ILLUSTRATION TO EXHIBIT A



PATH: V:\05813-01\DWG
 DWG NAME: LEGAL PAR 4-6.DWG
 DWG: TP CHK: DSB
 DATE: 2013-09-12
 SCALE: 1" = 200'

AZTEC
 CONSULTANTS, INC.

8000 5011TH LINCOLN ST.
 SUITE 201
 Littleton, Colorado 80122
 Phone: (303)713-1896
 Fax: (303)713-1897
 www.aztecconsultants.com

DIA TECH CENTER
 SE 1/4 SEC. 28, T2S, R66W
 COMMERCE CITY, COLORADO

ILLUSTRATION TO EXHIBIT A

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S89°31'51"W	147.96'
L2	N76°49'58"W	13.22'
L3	N78°34'32"W	13.50'
L4	S66°03'08"W	43.21'
L5	S53°35'09"E	42.23'
L6	S27°58'40"E	41.97'
L7	S17°09'35"W	122.61'
L8	S37°34'29"E	11.95'
L9	N76°19'09"E	59.11'
L10	S00°00'00"E	65.81'
L11	S46°37'34"E	28.43'
L12	S88°51'20"E	94.45'
L13	N15°35'16"E	66.86'
L14	N45°01'01"E	77.46'
L15	S11°00'52"E	23.91'
L16	S35°07'58"E	42.26'
L17	N57°25'54"E	45.54'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	29°19'38"	24.50'	12.54'
C2	13°38'11"	484.50'	115.31'
C3	88°15'27"	14.50'	22.34'
C4	8°32'38"	300.00'	44.74'

NOTE: THIS DRAWING DOES NOT REPRESENT
 A FIELD MONUMENTED SURVEY AND IS ONLY
 INTENDED TO DEPICT THE ATTACHED
 LEGAL DESCRIPTION.

PATH: Y:\83813-01\DWG\
 DWG NAME: LEGAL PAR 4-6.DWG
 DWG: TP CHK: DSB
 DATE: 2013-09-12
 SCALE: N/A



8000 SOUTH LINCOLN ST.
 SUITE 201
 LITTLETON, Colorado 80122
 Phone: (303)713-1890
 Fax: (303)713-1897
 www.aztecconsultants.com

DIA TECH CENTER
 SE 1/4 SEC. 28, T2S, R66W
 COMMERCE CITY, COLORADO

JOB NUMBER 83813-01

4 OF 4 SHEETS

EXHIBIT B
to
RESTRICTIVE COVENANT AGREEMENT
Legal Description of Convenience Store Property

Lot 1, DIA Tech Center Filing No. 1, County of Adams, State of Colorado.

UNOFFICIAL COPY