

STATE OF NEBRASKA )  
COUNTY OF HALL ) SS

2013 DEC 26 PM 3 16

*Mitchell Clark*  
HALL CO. REGISTER OF DEEDS

CASH 89.00  
CHECK \_\_\_\_\_  
REFUNDS:  
CASH \_\_\_\_\_  
CHECK \_\_\_\_\_

**DEVELOPMENT AGREEMENT**

This Development Agreement ("Agreement") dated December 18, 2013, is between ALLEN 281 LLC, a Nebraska limited liability company ("Developer"), and AMES DEVELOPMENT, LLC, a Nebraska limited liability company ("Owner").

*1/8200*

**PRELIMINARY STATEMENT**

Contemporaneously with the execution of this Agreement, Owner acquired from Developer ownership of Lot 14, Meadowlark West Third Subdivision, Hall County, Nebraska (the "Property"). As a condition precedent to such acquisition, Owner and Developer agreed to execute and exchange this Agreement to evidence their agreement and understanding with respect to the development and use of the Property.

**TERMS AND CONDITIONS**

In consideration of the foregoing Preliminary Statement, which is repeated in its entirety in this portion of this Agreement, and other valuable consideration, the receipt of which is acknowledged, Developer and Owner agree as follows:

1. **Declaration of Restrictions and Grant of Easements.** The Property and any development and use of the Property are subject to the terms and provisions of a certain Declaration of Restrictions and Grant of Easements dated March 11, 1999 (the "1999 Declaration"). The 1999 Declaration was recorded on June 24, 1999 as Instrument No. 99-106376 in the Official Records of Hall County, Nebraska. The 1999 Declaration was amended by a certain First Amendment to Declaration of Restrictions and Grant of Easements dated August 21, 2000 (the "First Amendment"). The First Amendment was recorded on September 25, 2000 as Instrument No. 200007944. The 1999 Declaration was further amended by a certain Second Amendment to Declaration of Restrictions and Grant of Easements dated July 24, 2002 (the "Second Amendment"). The Second Amendment was recorded July 25, 2002 as Instrument No. 200207725. The 1999 Declaration, First Amendment and Second Amendment were further amended by a Third Amendment to Declaration of Restrictions and Grant of

After recording, return to:  
John Q. Bachman  
PANSING HOGAN ERNST & BACHMAN LLP  
10250 Regency Circle, Suite 300  
Omaha, NE 68114



ABSTRACT

Easements dated August 15, 2008 (the "Third Amendment"). The Third Amendment was recorded August 18, 2008 as Instrument No. 200807155. The 1999 Declaration, the First Amendment, the Second Amendment and Third Amendment were further amended by a Fourth Amendment to Declaration of Restrictions and Grant of Easements dated August 29, 2011 (the "Fourth Amendment"). The Fourth Amendment was recorded August 30, 2011 as Instrument No. 201106471. The 1999 Declaration, the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment are hereinafter collectively referred to as the "Declaration". From and after the date of Owner's acquisition of the Property, Owner and its successors and assigns agree to assume and perform all of the obligations under the Declaration, if any, imposed on the owner of the Property or which are applicable to the Property during the period of Owner's ownership of the Property. Developer shall be responsible to perform all of the obligations under the Declaration arising or accruing prior to the acquisition of the Property by the Owner, if any, imposed on the owner of the Property or which are applicable to the Property.

2. **Plans.** Prior to or concurrent with the Closing under the Purchase Agreement, Owner and Developer shall have reasonably agreed upon (a) a Site Plan and grading plan of the Property depicting (i) any building and all other improvements to be constructed on the Property, and (ii) the grading activities to be conducted on the Property (such grading plan, building and other improvements are referred to collectively as the "Project"); and (b) architecturally certified Plans and Specifications of the Project, including elevations of the building, landscaping plans, and exterior signage drawings.

3. **Restrictions.** The Property shall be subject to the following restrictions which may be deleted or modified only with the prior consent of Developer which may be withheld in its sole discretion:

A. **Use of Property.** The building constructed within the Property shall be used and operated initially as a PepperJax Grill restaurant not to exceed a gross floor area of six thousand (6,000) square feet of gross building floor area, and thereafter as a single tenant or occupant building. The Property in no event shall be occupied by more than one (1) business. The Property shall not be subsequently occupied or used for any purpose or use which violates the provisions of the Declaration referred to in Section 1 of this Agreement, or for any of the following uses or purposes: (i) as a discount department store or other discount store; or (ii) as a supermarket or grocery store; or (iii) as a drug store; or (iv) as a pharmacy or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind; or (v) as a facility dispensing gasoline or petroleum products or as a convenience food mart, or combination of both; or (vi) as an establishment dispensing prescription drugs; or (vii) as a department store; or (viii) for the retail sale of pets (including but not limited to fish, birds, reptiles, dogs, cats and other small mammals), pet grooming, veterinary and other pet services, pet food, pet accessories and other pet products; or (ix) as an automobile or truck repair

facility; or (x) as a thrift store or liquidation outlet; or (xi) as a coin operated laundry; or (xii) for the sale of electronic equipment and components; or (xiii) for the retail sale of health foods, vitamins or mineral supplements; or (xiv) for the sale, rental and/or distribution of video games and/or any substitutes for or items which are a technological evolution of video games; or (xv) for the operation of an open-stock branded footwear store such as Shoe Carnival or Famous Footwear; an open-stock branded footwear store shall mean a store of which twenty percent (20%) of its sales area is devoted to the display and sale of open-stock branded footwear; or (xvi) for the operation of those casual dining restaurants with alcoholic beverage service now known as Ruby Tuesday's, Applebee's, TGI Friday's, Chili's, Houlihan's, Houston's, McGregor's, O'Charley's, Grady's or Spats; or (xvii) for the operation of a submarine sandwich store or shop of which more than twenty-five percent (25%) of the gross sales from the store are represented by the sale of submarine sandwiches; or (xviii) as a home improvement center, such as Home Depot, Lowe's or Menard's, a hardware store such as Ace Hardware, or other retail store whose principal business is the sale of lumber, hardware items, plumbing supplies, electrical supplies, paint, wallpaper, carpeting, floor coverings, cabinets, siding, ceiling fans, gardening supplies, nursery products, major appliances, pool supplies, or Christmas trees, or for any outdoor garden center or greenhouse selling live plants, trees, shrubbery or other vegetation; or (xix) for the operation of a restaurant of which more than twenty percent (20%) of the gross sales from the restaurant are represented by the sale of hamburgers or frozen desserts or treats, including, but not limited to, Burger King, McDonald's, Culvers, Wendy's, Dairy Queen, Hardee's, Arby's and Carl Juniors; or (xx) for the operation of a restaurant or bar with a sports theme or concept as a "Sports Bar"; a Sports Bar shall mean a restaurant and/or bar which has five (5) or more televisions, or any projection programming or broadcasting, or any screens that exceed 37" diagonal, and markets itself to the public for viewing of sporting events; or (xxi) for the operation of a restaurant or bar which serves bone-in or boneless chicken wings as a menu item with two (2) or more types of sauces.

As an inducement to and in consideration for Developer's sale of the Property to Owner, Owner agrees that it will construct initially a PepperJax Grill restaurant on the Property in compliance with this Agreement.

B. Buildings and Site Improvements. The Property shall be developed under the following standards:

- (1) The design and construction of any building or any remodeling, reconstruction or permitted expansion thereof shall be of high quality, consistent with the approved plans and specifications. Any building constructed within the Property shall have a decorative concrete block, stone, brick or EIFS exterior or other similar material reasonably acceptable to Developer, as approved prior to the Closing.

(2) No more than one (1) building shall be constructed on the Property. Such building shall not exceed twenty-two feet (22') in height as measured from ground floor elevation; any architectural element may extend above the general roofline by up to five feet (5') with a total aggregate width of such element along any single roofline of no more than twenty percent (20%) of the length of the roofline on any front, side or back elevation. No detached facilities, buildings or structures of any kind shall be constructed on the Property, except (i) approved signage, (ii) an approved dumpster enclosure, and (iii) outside cooler servicing the PepperJax Grill restaurant (which cooler area shall be shielded from view as generally depicted on Schedule A hereto).

(3) Any building constructed on the Property shall not exceed six thousand (6,000) square feet in gross building area including any drive-thru areas or canopies.

(4) Any rooftop equipment or building components shall be screened from public view from all directions.

(5) No rooftop sign shall be erected on any building constructed within the Property.

(6) Subject to governmental approval and municipal regulations, only one freestanding monument identification sign may be erected on the Property in a design and location approved by Developer not to be unreasonably withheld and may advertise only the name and logo of the business conducted thereon; such identification sign shall not exceed twenty-two feet (22') in height and ten feet (10') in width. Notwithstanding the foregoing, there may be erected by Owner entrance-exit and directional signs to facilitate the free flow of traffic, which signage shall be of a monument type, not to exceed three feet three inches (3'3") in height.

(7) No building or other improvements shall be constructed, erected, expanded or altered within the Property until the plans for same (including grading plan, site layout, utility and sewer plans, elevations, exterior building materials, colors, landscaping, signage and parking layout) have been approved in writing by Developer. Notwithstanding the provisions of Section 2 and this Section 3.B.(7), Owner shall have the right to make such alterations, additions or improvements to the interior of the building without the written approval by Developer.

(8) Landscaping shall not materially obstruct (either through original planting or through untrimmed growth) the view of any building constructed in Meadowlark West Third Subdivision or Meadowlark West Ninth Subdivision, Hall County, Nebraska, and any further replattings or administrative subdivisions of such Third Subdivision or Ninth Subdivision.

(9) Until such time as the Property is developed and improved by its Owner, such Owner shall keep the same planted with grass, mowed and in a clean and sightly condition.

In the event the Property abuts a public street, the portion of such right-of-way which adjoins the Property and which has not been improved by the appropriate governmental body as a street or highway shall be seeded, fertilized and mowed by such abutting Property Owner and maintained in the same condition as the grass areas within the Property.

(10) Unless required otherwise by the Declaration or appropriate City of Grand Island codes, the Owner of the Property shall continuously provide and maintain a minimum parking ratio equal to five (5) spaces per one thousand (1,000) square feet of gross floor area devoted to retail uses and ten (10) spaces per one thousand (1,000) square feet of gross floor area devoted for restaurant uses.

(11) No outdoor satellite shall be installed on the roof of any building or within or on any portion of the Property without the prior approval of Developer which will not be unreasonably withheld provided the size and design are acceptable and the view of which is substantially obstructed from public view.

(12) Any area within the Property which houses refuse dumpsters or garbage containers shall be completely surrounded on three (3) sides with a wall the exterior of which shall be of the same materials as the building constructed on the Property; the entrance to such area shall be gated with wrought iron.

(13) No fences or barricades of any kind shall be constructed on the Property, except as required by applicable City Ordinances and/or Building Code in which event any such fence or barricade shall be constructed of materials approved by Developer which approval will not be unreasonably withheld or delayed.

(14) The Property may not be subdivided, in any manner, into smaller lots without the prior written consent of Developer, which may be withheld in its sole discretion.

(15) All utilities and sewers serving and located within the Property shall be installed underground.

(16) The roof of any building constructed within the Property shall not be metal, unless such roofing materials are screened from view or approved by Developer.

4. **Indemnity and Insurance.** Owner, its successors and assigns shall indemnify, defend and save Developer and its agents, employees, members, directors and officers harmless from all loss, damages, liability, costs or expenses, including, but not limited to, reasonable attorney's fees and all other sums incurred by or threatened against Developer, its agents, employees, members, directors and officers because of any claim or assertion of liability arising or alleged to have arisen out of any act or omission of Owner, its agents, employees and contractors, for any work to be performed by or at the direction of the Owner pursuant to this Agreement. Developer, its successors and assigns shall indemnify, defend and save Owner and its agents, employees, members, directors and officers harmless from all loss, damages, liability, costs or expenses, including, but not limited to, reasonable attorney's fees and all other sums incurred by or threatened against Owner, its agents, employees, members, directors and officers because of any claim or assertion of liability arising or alleged to have arisen out of any act or omission of Developer, its agents, employees and contractors, for any work to be performed by or at the direction of the Developer pursuant to this Agreement or in relation to the Property.

5. **Release of Owner.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, UPON THE SALE OR TRANSFER OF THE PROPERTY BY THE THEN CURRENT OWNER (THE "SELLING OWNER"), SUCH SELLING OWNER SHALL BE RELEASED FROM AND HAVE NO FURTHER OBLIGATIONS OR LIABILITIES HEREUNDER, INCLUDING WITHOUT LIMITATION FOR ANY INDEMNIFICATION OBLIGATIONS, OTHER THAN FOR CLAIMS ARISING DURING SUCH SELLING OWNER'S PERIOD OF OWNERSHIP OF THE PROPERTY.

6. **Miscellaneous.**

A. All notices, requests, demands or other communications ("Notices") hereunder shall be in writing and given by certified mail, return receipt requested or by national overnight courier (e.g., Federal Express or UPS) and, in the case of courier service, shall be effective as of the date of delivery to the intended recipient as shown on the courier's records, and in the case of mail, shall be effective three (3) days (excluding weekends and holidays) after mailing, delivery shall be deemed to have been made if the postal service or courier was not able to deliver due to change of address for which no Notice was given. Notices shall be addressed as shown below or to such other address as may be specified from time to time in writing by either party:

To Developer: Allen 281 LLC  
1115 West 2<sup>nd</sup> Street  
P.O. Box 987  
Hastings, Nebraska 68902  
Attention: Kristin M. Allen, Manager

With copy to: John Q. Bachman, Esq.  
Pansing Hogan Ernst & Bachman LLP  
10250 Regency Circle, Suite 300  
Omaha, Nebraska 68114

To Owner: Ames Development, LLC  
13207 F Street  
Omaha, Nebraska 68137  
Attention: Gary Rohwer, President

With copy to: MCGILL, GOTSDINER, WORKMAN & LEPP, P.C., L.L.O.  
11404 West Dodge Road, # 500  
Omaha, NE 68154-2584  
Attention: Keith A. Green

B. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, a partnership, or any other similar relationship between the parties.

C. The captions heading the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective paragraphs.

D. This Agreement, and all of its exhibits and incorporated documents, constitutes the entire integrated agreement between Owner and Developer relating to the items described herein, and supersedes all prior negotiations, representations, understandings and agreements, either written or oral.

E. This Agreement shall be interpreted according to Nebraska law. The invalidity of any provision of this Agreement shall not affect the remaining provisions. One or more waivers of a default shall not be deemed a waiver of a later default.

F. In the event Developer does not respond to Owner's written requests for approvals or consents of Developer as required by this Agreement, within thirty (30) days of the effective date of delivery to Developer of such Owner's written request, such request shall be deemed approved.

G. This Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns. The obligations of Owner under this Agreement shall be deemed covenants running with the land and shall bind the Property, and every owner acquiring an interest in the Property, in perpetuity. The Owner acknowledges that the execution and delivery of this Agreement was a material inducement to and consideration for Developer's conveyance of the Property to Owner.

H. Developer shall have the right to delegate or assign any approval or consent rights under this Agreement upon written notice to Owner.

I. This Agreement may be amended only by written agreement of the Parties and their respective successors and assigns which amendment shall be deemed effective upon recordation with the Register of Deeds of Hall County, Nebraska.

J. If there is any conflict between this Agreement and the Declaration, the terms of this Agreement shall control.

K. This Agreement may be executed in two (2) counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same agreement.

***[SIGNATURE PAGE TO FOLLOW]***



IN WITNESS WHEREOF, Owner and Developer have caused this Development Agreement to be executed effective as of the day and year above referenced.

**DEVELOPER:**

ALLEN 281 LLC, a Nebraska limited liability company

By: *Kristin M. Allen*  
Kristin M. Allen, Manager

**OWNER:**

AMES DEVELOPMENT, LLC, a Nebraska limited liability company

By: \_\_\_\_\_  
Gary Rohwer, President

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Adams )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of December, 2013, by KRISTIN M. ALLEN, Manager of ALLEN 281 LLC, a Nebraska limited liability company, on behalf of the limited liability company.

*Christine M. Guest*  
Notary Public



IN WITNESS WHEREOF, Owner and Developer have caused this Development Agreement to be executed effective as of the day and year above referenced.


**DEVELOPER:**

ALLEN 281 LLC, a Nebraska limited liability company

By: \_\_\_\_\_  
Kristin M. Allen, Manager

**OWNER:**

AMES DEVELOPMENT, LLC, a Nebraska limited liability company

By:  \_\_\_\_\_  
Gary Rohwer, President

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of December, 2013, by KRISTIN M. ALLEN, Manager of ALLEN 281 LLC, a Nebraska limited liability company, on behalf of the limited liability company.

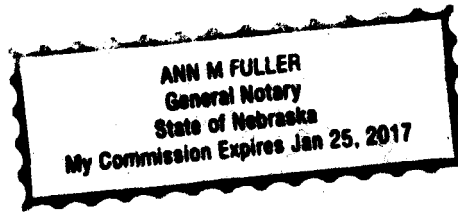
\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA        )  
                                  ) ss.  
COUNTY OF DOUGLAS     )

The foregoing instrument was acknowledged before me this 18 day of December, 2013, by GARY ROHWER, President of AMES DEVELOPMENT, LLC, a Nebraska limited liability company, on behalf of the limited liability company.



\_\_\_\_\_  
Notary Public



201309980

**Schedule A**

**COOLER AREA**

*See attached picture.*

201809980

