

When Recorded, Return To:

KeyBank National Association  
c/o Wells Fargo Bank Northwest, National Association  
299 South Main Street  
Salt Lake City, Utah 84111

E 2180655 B 4066 P 1573-1582  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
6/29/2006 3:59:00 PM  
FEE \$28.00 Pgs: 10  
DEP eCASH REC'D FOR FOUNDERS TITLE CO - SLC

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

(Store No. 17) (001.005.0917)

THIS AGREEMENT is made this 5<sup>th</sup> day of June, 2006, by and among **KEYBANK NATIONAL ASSOCIATION**, its successors and assigns (hereinafter referred to as "Mortgagee"), **JL HOLDINGS III, LLC**, a Delaware limited liability company (hereinafter referred to as "Landlord"), and **BRINKER RESTAURANT CORPORATION**, a Delaware corporation (hereinafter referred to as "Tenant").

**Recitals**

A. Tenant is the holder of a leasehold estate pursuant to a lease with Landlord dated December 23, 1998, as amended (hereinafter called the "Lease"), wherein Tenant has leased from Landlord certain real property located in Davis County, State of Utah, as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, and certain improvements located thereon; (hereinafter referred to as the "Demised Premises");

B. Mortgagee is now, or will be, the owner and holder of a Trust Indenture, Leasehold Mortgage, Security Agreement and Fixture Filing dated June 29, 2006, (hereinafter referred to as "Mortgage") from Landlord encumbering Landlord's interest in the Demised Premises (hereinafter collectively referred to as the "Mortgaged Property"), which Mortgage is recorded in the public records of Davis County, State of Utah and secures the payment of a promissory note payable to the order of Mortgagee.

C. Tenant, Landlord, and Mortgagee desire to confirm their understanding with respect to the Lease and the Mortgage.

TaxID No. 10-200-0005

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Mortgagee and Tenant hereby agree and covenant as follows:

1. The Lease now is, and shall at all times continue to be, subject and subordinate in each and every respect, to the Mortgage and to any and all liens, interests and rights created thereby and to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage, provided that any and all such increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations shall nevertheless be subject to the terms of this Agreement.

2. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any term, covenant or condition of the Lease on Tenant's part to be performed, (a) Tenant's possession of the Demised Premises shall not be disbursed or interfered with by Mortgagee and Tenant's rights and privileges under the Lease shall be recognized by Mortgagee; (b) Tenant possession of the Demised Premises and Tenant's right and privileges under the Lease shall not be disturbed or interfered with by Mortgagee in the exercise of its rights under the Mortgage to foreclose said Mortgage and/or to have the Mortgaged Property sold at trustee's sale; and (c) Mortgagee will not join Tenant as a party defendant in any action or proceeding for the purposes of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage, however Mortgagee may join Tenant as a party defendant in any action or proceeding to enforce the Mortgage or any other instrument given as security for the loan to Landlord, if such is done only for purposes of procedure and required completeness and not for the purposes of canceling the Lease or Tenant's rights under such Lease. The term "Mortgagee" shall include all persons deriving title to the Mortgaged Property by, through or under Mortgagee.

3. In the event any proceedings are brought for the foreclosure of the Mortgage, or if the Mortgaged Property be sold pursuant to a trustee's sale under the Mortgage or if the Mortgagee becomes owner of the Mortgaged Property by acceptance of a deed or assignment in lieu of foreclosure or otherwise, Tenant shall attorn to the purchaser or Mortgagee, as the case may be, upon any such foreclosure sale or trustee's sale or acceptance by Mortgagee of a deed or assignment in lieu of foreclosure and Tenant shall recognize such purchaser or Mortgagee, as the case may be, as the Landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Landlord or of any holder(s) of any of the indebtedness or other obligations secured by the Mortgage or any such purchaser, any instrument or certificate which, in the reasonable judgment of Landlord or of such holder(s) or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment. If and to the extent that Landlord rejects the Lease in any federal or state proceeding, Tenant will, at Mortgagee's

request, immediately enter into a new lease directly with Mortgagee, as Landlord, on the same terms as the Lease, provided execution of such new lease does not violate any bankruptcy law or related court order.

4. If Mortgagee shall succeed to the interest of Landlord under the Lease in any manner, or if any purchaser acquires the Demised Premises upon any foreclosure of the Mortgage or any trustee's sale under the Mortgage, Mortgagee or such purchaser, as the case may be, shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants and conditions of the Lease on Tenant's part to be performed that Landlord had or would have had if Mortgagee or such purchaser had not succeeded to the interest of Landlord. From and after any such attornment, Mortgagee or such purchaser shall be bound to Tenant under all the terms, covenants, and conditions of the Lease, and Tenant shall, from and after the succession to the interest of Landlord under the Lease by Mortgagee or such purchaser, have the same remedies against Mortgagee or such purchaser for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Mortgagee or such purchaser had not succeeded to the interest of Landlord; provided, however, the Mortgagee or such purchaser shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord);  
or

(b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except for those arising from payments of rent, taxes, insurance premiums or common area maintenance charges previously paid by Tenant to Landlord pursuant to the Lease; or

(c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or

(d) bound by any amendment or modification of the Lease made without Mortgagee's consent, provided, however, that Landlord and Tenant, may, without Lender's consent, make non-material amendments to the Lease, but in no event shall such amendments decrease the size or configuration of the Demised Premises, term of the Lease, amount or frequency of rental payments or any other financial obligations of either party thereunder; or

(e) liable for any security deposit, rental deposit or similar deposit given by Tenant to a prior landlord (including Landlord) unless such deposit was actually paid over to Mortgagee or such purchaser by the prior landlord; or

(f) liable for any moving, relocation or refurbishment allowance or any construction of or payment of allowance for tenant improvements to the Demised Premises or the Mortgaged Property or any part thereof for the benefit of Tenant; or

5. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Landlord under the Lease in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed.

6. This Agreement may not be amended or modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, and any purchaser or purchasers at foreclosure of the Mortgaged Property, and their respective heirs, personal representatives, successors and assigns.

7. Tenant represents that it has no right or option of any nature to purchase the Mortgaged Property or any portion of the Mortgaged Property or any interest in the Borrower. To the extent Tenant has or acquires any such right or option, these rights or options are acknowledged to be subject and subordinate to the Mortgage and are waived and released as to Mortgagee and any purchaser of the Mortgaged Property under a trustee's sale.

8. To the extent that the Lease shall entitle the Tenant to notice of any mortgage, and/or the address of the Mortgagee, this Agreement shall constitute such notice to the Tenant with respect to the Mortgage and to the address of the Mortgagee. So long as the Mortgage on the Demised Premises remains outstanding, Tenant will deliver to Mortgagee a copy of all notices permitted or required to be given to Landlord by Tenant pursuant to which Tenant proposes to abate or reduce the rental payable under the Lease or to terminate or cancel the Lease, and that no such notices to Landlord shall be effective, unless a copy of such notice is also delivered to Mortgagee. At any time before the rights of Landlord shall have been forfeited or adversely affected because of any default or failure of performance under the Lease as therein provided, Mortgagee shall have the right (but not the obligation) to cure such default or failure of performance the time prescribed in the Lease so long as Tenant has provided notice to Mortgagee stating the nature of such default or failure of performance, provided that if such default cannot reasonably be cured within the prescribed time, then Mortgagee shall have an additional reasonable period of time within which to cure such default and so long as Mortgagee diligently pursues such cure to completion.

9. Tenant shall pay and Landlord, pursuant to Section 4(b) of the Lease, directs Tenant to pay all Priority and Non-Priority Rent to Mortgagee at the address set forth below c/o Wells Fargo Bank Northwest, N.A., trustee, until such time as all of Landlord's monetary obligations to Mortgagee with respect to the Loan have been fully paid or Mortgagee, its

successor or assigns, provides written notice to Tenant that payments should no longer be made directly to Mortgagee. Tenant shall be entitled to full credit under the Lease for any rents paid to Mortgagee, its successors or assigns, in accordance with the provisions hereof to the same extent as if such rents were paid directly to Landlord.

Wells Fargo Bank Northwest, National Association  
 299 South Main Street  
 Salt Lake City, Utah 84111  
 ABA: 121-000-248  
 Account: 051-0922115

Notwithstanding anything in this paragraph to the contrary, if annual rent includes rent due by Landlord under an underlying ground lease to ground lessor, Tenant shall continue to pay such rent and other payments required by the underlying ground lease directly to or on account for the underlying ground lessor.

10. If Landlord leases the Demised Premises from a ground lessor, then, if the underlying ground lease from the ground lessor to Landlord is terminated by ground lessor (or anyone claiming through ground lessor) prior to expiration of the term of the ground lease and such termination was caused by the actions of anyone other than Tenant, and if Mortgagee enters into a new lease (the "New Lease") for the Demised Premises with ground lessor, then, provided no event of material default (to be determined in Mortgagee's reasonable discretion) has occurred under the Lease by Tenant (subject to any notice and opportunity to cure provisions in the Lease), Mortgagee shall recognize the Lease, and Mortgagee shall be bound to the Tenant, its successors and assigns, and the Tenant shall be bound to Mortgagee, its successors and assigns, pursuant to all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease then remaining and any extensions or renewals thereof, and the Lease shall not be terminated, nor shall Tenant's use, possession or enjoyment of the Demised Premises be interfered with, nor shall the leasehold estate granted by the Lease be affected in any manner so long as Tenant performs all of its obligations and complies with the terms and conditions of the Lease. The terms and conditions of this paragraph shall be binding upon and inure to the benefit of Mortgagee and Tenant, and their respective successors and assigns.

11. All notices to be sent hereunder shall be sent by certified mail, return receipt requested, by a nationally recognized overnight courier, or shall be personally delivered to the respective parties at the following addresses:

If to Mortgagee: KeyBank National Association  
 c/o Wells Fargo Bank Northwest, National Association  
 299 South Main Street  
 Salt Lake City, Utah 84111  
 Attn: \_\_\_\_\_

If to Tenant:           Brinker Restaurant Corporation  
                              c/o Brinker International  
                              6820 LBJ Freeway  
                              Dallas, Texas 75240  
                              Attn: General Counsel (CH0917)

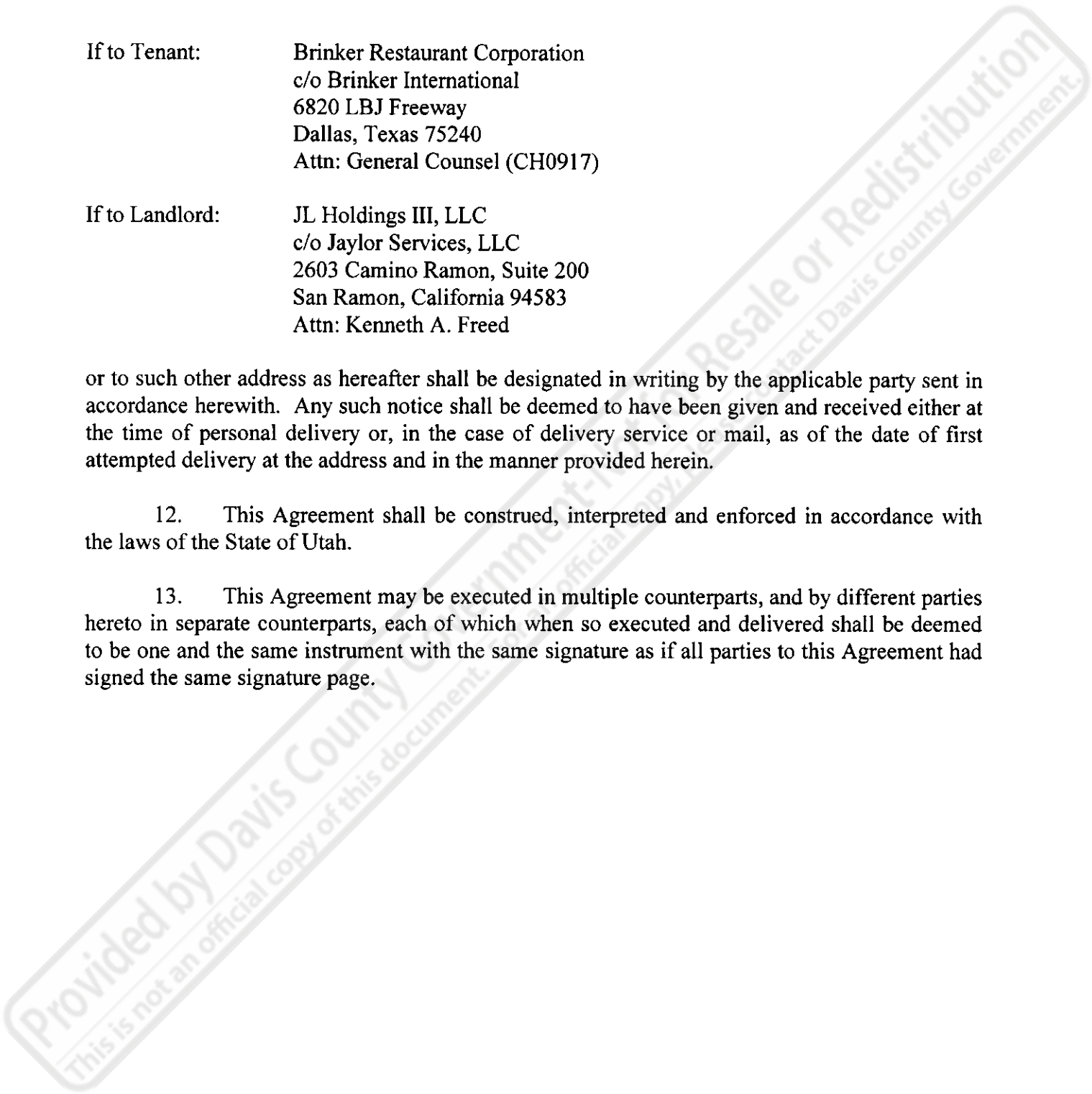
If to Landlord:         JL Holdings III, LLC  
                              c/o Jaylor Services, LLC  
                              2603 Camino Ramon, Suite 200  
                              San Ramon, California 94583  
                              Attn: Kenneth A. Freed

or to such other address as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

12. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Utah.

13. This Agreement may be executed in multiple counterparts, and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be one and the same instrument with the same signature as if all parties to this Agreement had signed the same signature page.

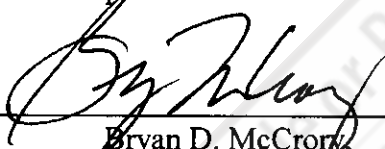
SEE NEXT PAGE FOR SIGNATURES



IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

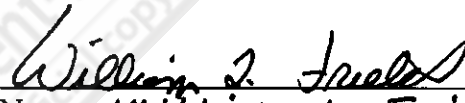
**TENANT:**

BRINKER RESTAURANT CORPORATION,  
a Delaware corporation

By:   
Bryan D. McCrone  
Vice President


**MORTGAGEE:**

KEYBANK NATIONAL ASSOCIATION

TO:   
Name: WILLIAM L. FIELDS  
Title: VICE PRESIDENT

**LANDLORD:**

JL HOLDINGS III, LLC,  
a Delaware limited liability company

By:   
Name: Kenneth Freed  
Title: President

SEE NEXT PAGE FOR ACKNOWLEDGEMENTS



STATE OF TEXAS )  
 ) ss.  
COUNTY OF DALLAS )

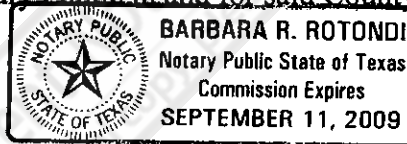
On this 5<sup>th</sup> day of June, 2006 before me, the undersigned, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared BRYAN D. McCRORY, to me personally known, who by me duly sworn, did say that he is a Vice President of BRINKER RESTAURANT CORPORATION, a Delaware corporation, and that said instrument was signed and sealed in behalf of said corporation and as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

Barbara R. Rotondi  
Notary Public in and for said County and State

My commission expires:

9-11-09



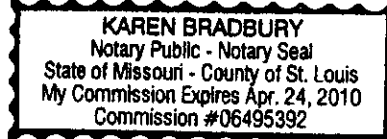
STATE OF MISSOURI )  
 ) SS  
CITY OF ST. LOUIS )

On this 14<sup>th</sup> day of June, 2006, before me, the undersigned Notary Public, personally appeared William L. FRIEDS known personally by me and known to me to be, respectively, the Vice President of KeyBank National Association, a national banking association, and, as such, authorized to act on behalf of the said national banking association and who acknowledged under oath that they he executed the within instrument in his capacity as the free act and deed of such banking association.

Karen Bradbury  
Notary Public

My Commission Expires:

\_\_\_\_\_



SEE NEXT PAGE FOR ADDITIONAL ACKNOWLEDGEMENT

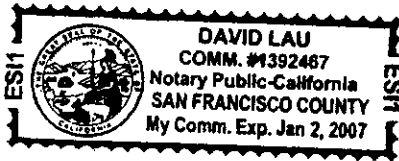


STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF CONTRA COSTA )

On June 21, 2006, before me, DAVID LAU, Notary Public for the State of California, personally appeared:

KENNETH A. FREED

personally known to me  
-OR-  
 proved to me on the basis of satisfactory evidence



to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

(Place Notary Seal Above)

WITNESS my hand and official seal.

Signature of Notary Public

Provided by Davis County Government  
This is not an official copy of this document or official seal of Davis County Government

**EXHIBIT A**

**CHILIS #17**

**LEGAL DESCRIPTION**

**ALL OF LOT 5-A, LAYTON MARKET CENTER SUBDIVISION 2ND AMENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE OF RECORD IN THE OFFICE OF THE LAYTON CITY, DAVIS COUNTY, UTAH.**

**PARCEL 1A:**

**OPERATION AND EASEMENT AGREEMENT BETWEEN DAYTON HUDSON CORPORATION, A MINNESOTA CORPORATION AND WOODBURY AMSOURCE INC., A UTAH CORPORATION RECORDED FEBRUARY 19, 1997, AS ENTRY NO. 1305041, IN BOOK 2096, AT PAGE 1354, FIRST AMENDMENT TO OPERATION AND EASEMENT AGREEMENT BETWEEN DAYTON HUDSON CORPORATION, A MINNESOTA CORPORATION AND WOODBURY AMSOURCE INC., A UTAH CORPORATION RECORDED JULY 14, 1997, AS ENTRY NO. 1334336, IN BOOK 2151, AT PAGE 721, RECORDS OF DAVIS COUNTY, UTAH, MAINTENANCE AND EASEMENT AGREEMENT DATED FEBRUARY 11, 1997 BETWEEN DAYTON HUDSON CORPORATION A MINNESOTA CORPORATION AND WOODBURY AMSOURCE INC., A UTAH CORPORATION RECORDED FEBRUARY 19, 1997 AS ENTRY NO. 1305042, IN BOOK 2096, AT PAGE 1451, SUPPLEMENTAL MAINTENANCE AND EASEMENT AGREEMENT BETWEEN DAYTON HUDSON CORPORATION, A MINNESOTA CORPORATION AND IG, L.C., A UTAH LIMITED LIABILITY COMPANY RECORDED NOVEMBER 2, 1999, AS ENTRY NO. 1556171, IN BOOK 2577, AT PAGE 1006, IN THE RECORDS OF DAVIS COUNTY, UTAH.**

Tax ID No. 10-200-0005

