



"W2201924"

WHEN RECORDED PLEASE RETURN TO:  
SB56, LLC  
c/o S-PM, Inc.  
Attn: Mike Stangi  
90 East 7200 South, Suite 200  
Midvale, UT 84047

ES 2201924 PG 1 OF 14  
DOUG CROFTS, WEBER COUNTY RECORDER  
18-AUG-06 3:40 PM FEE \$37.00 DEP SGC  
REC FOR: PROFESSIONAL BROKERS

### DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

This Declaration of Easements, Covenants and Restrictions (this "Declaration") dated as of the 9 day of August, 2006 is made by SB56, LLC, a Utah limited liability company ("SB56").

WHEREAS, SB56 is the owner of two certain parcels of real estate located in Weber County, State of Utah as more fully described on Exhibit "A" ("Parcel 1") and Exhibit "B" ("Parcel 2") (collectively Parcel 1 and Parcel 2 are referred to herein as the "Property"); and

WHEREAS, SB56 desires to provide reciprocal easements for utilities, pedestrian and vehicular ingress, egress, parking, passage and traffic and for payment of common utilities and other obligations set forth herein as well as the imposition of certain use restrictions on the Property;

NOW THEREFORE, the above recitals are incorporated herein, and in consideration of the reciprocal benefits to be derived from the easements, restrictions, covenants, and requirements set forth below, SB56 hereby establishes the following terms and provisions applicable to Parcel 1 and Parcel 2:

1. General Grant of Easement. SB56 hereby establishes that Parcel 1 and Parcel 2 shall have appurtenant thereto and shall be benefited and burdened by a non-exclusive easement for utilities, and ingress and egress by vehicular and pedestrian traffic over and across such portions of

each of the respective parcels where improvements are located on such portions at the time concerned which are intended and designated for use as parking areas for automobiles, driveways and sidewalks as the same may be composed of from time to time (the "Common Areas").

2. Mutual Benefits and Burdens. The mutual benefits and burdens herein include:

a. Pedestrian easement. A non-exclusive easement for the purpose of pedestrian traffic between each parcel and the public streets and ways now and hereafter adjacent to or located on any portion of either parcel, the parking areas now and hereinafter located on either parcel, over, across, and upon the Common Areas; limited, however, to those portions of each parcel which are improved from time to time for pedestrian sidewalks, parking lots and driveways and made available by the owner of such parcel for general use, as such portions may be reduced, increased or relocated from time to time by each such owner.

b. Vehicle Easement. A non-exclusive easement for the purpose of vehicular traffic over, upon, across and between each parcel and public streets and ways now and hereafter adjacent to or located upon any portion of either parcel; limited, however, to those portions of each parcel which are improved from time to time for vehicular access as such portions may be relocated from time to time by the owner of each parcel, the vehicular easements herein described shall include a non-exclusive right of the parking of vehicles upon either parcel in such areas as the owner of such parcel may designate, provided, however, the owner of each respective parcel shall retain the right to designate up to one hundred percent (100%) of any such parking stalls for the exclusive use of the owner or its designees. If Parcel 1 and Parcel 2 are owned by separate persons or entities, then such parking designation shall be effective upon notice to the other owner in any manner reasonably calculated to convey the intent to designate such parking areas as exclusive. No such designation of

exclusive parking areas shall in any way impair the non-exclusive easements for vehicular traffic over and across each parcel as provided herein.

c. Utility Easements. A non-exclusive easement for the installation, use, connection to, operation, maintenance, repair, replacement and removal of: water lines and systems; telephone lines and systems; gas lines and systems; sanitary sewer lines and systems; electrical lines and systems; storm sewers and drainage lines and systems; and other utility lines or systems now or hereafter developed to serve either of the parcels; provided, however, that all pipes, lines, wires, conduits, drains, sewers, systems and related equipment (collectively, "Utility Facilities") will be installed underground to the extent practicable or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use of the parcel or improvements on which such Utility Facilities are located. Items such as manhole covers, hydrants, standpipes, meters, control valves, transformers and other similar items customarily required to be located above ground, will not be required to be installed underground. The location of any new, additional or relocated (other than those presently existing) Utility Facilities shall be subject to the reasonable approval of the owner of the burdened parcel (if Parcel 1 and Parcel 2 are owned by two separate owners at the time), which approval shall not be unreasonably delayed, conditioned or denied. The owner of any burdened site affected by any such utility easement will have the right, at any time, to relocate any Utility Facilities then located on the burdened site on the conditions that: (i) such right of relocation will be exercisable only after thirty (30) days prior written notice of the intention to relocate has been given to all owners (if applicable) using the Utility Facilities to be relocated; (ii) such relocation will not unreasonably interrupt any utility service to the improvements then located on the benefited site; (iii) such relocation will not reduce or unreasonably impair the

usefulness or the function of the Utility Facilities to be relocated; and (iv) all costs of such relocation will be borne by the owner relocating the Utility Facilities.

d. No Barriers. Except to the extent approved in writing by the other owner (if applicable), no owner shall permit or suffer to be constructed or placed upon any portion of the Common Areas, any fence, wall, barricade, or other obstruction, whether temporary or permanent in nature, which materially limits or impairs vehicular or pedestrian traffic over any portion of the Common Areas or shall otherwise obstruct or interfere with the free flow of such traffic upon the Common Areas (it being agreed that drive-through facilities and outdoor patios and/or seating areas used by an owner or its tenants or occupants of a parcel shall not be limited hereby), except as may be reasonably necessary or appropriate during periods that construction activities are ongoing or to the extent that it may be necessary to do so temporarily to prevent a public dedication of, or the accrual of any rights in the public in either parcel or to the extent objectively necessary to prevent eminent damage to the Common Areas. Any obstruction or interference permitted under this paragraph shall be done in a manner reasonably calculated to minimize its impact upon the businesses located on the parcels.

3. Restrictions of Use and Development. No owner of Parcel 1 or Parcel 2 shall construct any building or other structure of whatsoever nature or allow any use of the respective parcel which construction or use would entail or be the subject of any law, ordinance, or regulation, wherein the parking requirements under such law ordinance or regulation with respect to such parcel upon which such use or construction would be in excess of the areas actually dedicated to parking on such parcel. It is the intent of this provision that except as parking may be available on an owner's parcel, the easements and other rights herein conveyed shall not be considered as parking available

for any development or use of the owner's parcel for purposes of compliance with parking laws, regulations, or ordinances and that each parcel must be used and developed with adequate parking facilities associated with each individual parcel.

No owner shall use or allow any other person or entity (except Starbucks Corporation and its successors, assigns, and subtenants pursuant to its lease which affects Parcel 1) to use any portion of the Property for the sale of (a) freshly ground and whole coffee beans, (b) espresso, espresso-based drinks, and coffee-based drinks, (c) tea or tea-based drinks, (d) gourmet brand-identified brewed coffee, except that other tenants may sell brewed coffee that is not gourmet nor brand-identified, or (e) blended beverages, including without limitation, those containing any of the following: ice, coffee, espresso, tea, and/or cream. Notwithstanding the foregoing, full service, sit-down restaurants serving a complete dinner menu may sell brewed coffee or hot espresso drinks for on-premises consumption only. In addition, the blended beverages exclusive described in subsection (c) hereof does not restrict blended beverages from containing juice and/or fruit.

4. Maintenance. Each owner of the parcels (or the owner, so long as Parcel 1 and Parcel 2 are owned by the same person or entity) shall maintain in a first class condition the Common Areas from time to time located upon its parcel. Such maintenance shall include, but shall not be limited to: (a) reasonable maintenance, repair and replacement of the surface and subsurface of the walkways, parking lot and driveways situated on the Common Areas to maintain the same level, smooth and evenly covered with the types of materials originally constructed thereon or such substitutes as will in all respects be equal to such materials in quality, appearance and durability; (b) reasonable maintenance and care of all grass, shrubs and landscaping ("Landscaped Areas"), including, but not limited to, the fertilizing, watering, mowing and trimming thereof and

maintaining, repairing and replacing automatic sprinkler systems and waterlines as may be necessary, as the same may be located on such owner's parcel; (c) removal from the Common Areas of papers, debris, ice, snow, refuse and other hazards to persons using all said areas and thoroughly sweeping and cleaning such areas as may reasonably be required to maintain the same in neat and orderly condition; (d) maintenance of such appropriate parking area entrance, exits and directional signs, markers, and lights as may be reasonably required from time to time; and (e) such painting and repainting as may be required to maintain the parking area and the equipment installed thereon in a reasonably high quality condition.

5. Failure to Properly Maintain and Observe Other Obligations. In the event that any owner shall fail to observe the obligations imposed hereunder, or fails to properly maintain that portion of the Common Area or Landscaped Areas, as required herein, which is from time to time located on its parcel, the other owner (if applicable) may send written notice of such failure. Such notice shall contain an itemized statement of the specific deficiencies in performance of Common Area maintenance or other obligations hereunder. The owner receiving such notice shall then have thirty (30) days after receipt in which to correct the deficiencies, or in which to commence to correct the deficiencies if said deficiencies cannot be corrected with a thirty (30) day period and thereafter to proceed diligently to complete the correction of the deficiencies. In the event the owner receiving notice shall fail or refuse to timely correct or begin to correct and diligently complete the deficiencies, the other owner may, at its option, correct the deficiencies. In that event, the owner who has failed to perform its maintenance obligations hereunder shall promptly upon receipt of an itemized invoice for the costs incurred in correcting the deficiencies, pay such costs to the other owner.

6. Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenant to the affected portions of the entire parcel and none of easements and rights may be transferred, assigned, or encumbered, except as an appurtenance to such parcel. For the purposes of such easements and rights, the entire parcel which is benefited by such easements shall constitute the dominant estate and the particular areas of the entire parcel which are burdened by such easements and rights shall constitute the servient estate.

7. Nature and Effect of Easements. Each and all of the easements, restrictions and covenants, and provisions contained in this Declaration: (a) are made for the direct, mutual, and reciprocal benefit of the respective parcels; (b) create mutual equitable servitudes upon each parcel in favor of the other; (c) constitute covenants running with the land; (d) shall bind every person or entity that may have, or acquire any fee, leasehold or other interest in any portion of either parcel at any time or from time to time to the extent that such interest is affected or bound by the easement, covenant, restriction or provision or to the extent that such easement, covenant, restriction, or provision is to be performed by such person.

8. Taxes. The owner of each parcel shall pay or cause to be paid all real estate taxes and special assessments which are levied against that portion of the Common Area on its parcel prior to delinquency of such taxes or special assessments.

9. Common Utility Facilities/Payment. The owner (and any subsequent owner of Parcel 1 and/or Parcel 2) hereto recognizes that certain Utility Facilities may service both parcels that are the subject hereof, that if such Utility Facilities are not separately metered or otherwise monitored for use and consumption with respect to either parcel ("Common Utility Facilities"). The owner of Parcel 1 shall maintain accounts with providers of Common Utility Facilities for the benefit of both

parcels, and shall pay all charges properly assessed respecting such Common Utility Facilities. The owner of Parcel 1 shall from time to time provide a statement of charges made by providers of Common Utility Facilities to the owner of Parcel 2 (if a separate owner) who shall, within thirty (30) days after receipt of such notice, pay and remit to the owner of Parcel 1 one-half (1/2) of all such charges. Any owner of Parcel 1 and/or Parcel 2 recognizes and agrees that the allocation of Common Utility Facility expenses is not based on actual usage or actual square footage of the land or improvements constructed upon either parcel, but is a fair and reasonable estimate and compromise between the owners respecting a proper allocation of the charges for such Common Utility Facility.

10. Mutual Indemnification. Each owner, with respect to its parcel shall comply with all applicable laws, rules, regulations and requirements of all public authorities and shall indemnify and hold the other owner (if applicable) harmless from and against any and all claims, demands, losses, damages, liabilities and expenses and all suits, actions and judgments (including but not limited to costs and reasonable attorney's fees) arising out of or in any way related to the failure of such owner to maintain the Common Areas or Landscaped Areas situated on its parcel in a safe and proper condition. Each owner shall give notice to the other (if applicable) in a prompt and timely manner of any claim made or suit or action commenced which in any way could result in indemnification hereunder.

11. Insurance. In furtherance of the indemnification agreements provided herein, and in addition thereto, each owner shall obtain and maintain comprehensive public liability insurance, naming the other owner (if applicable) as an additional insured, covering injuries to persons and properties with a single limit of not less than Two Million Dollars (\$2,000,000.00). All such policies of insurance shall be issued by responsible insurance companies authorized to do business in the



state of Utah and all such policies shall contain a waiver of the right of subrogation. Each owner (if applicable) shall furnish the other owner upon request, a copy of such certificates of insurance evidencing the coverages required herein.

12. Remedies. In the event of any violation by any owner hereto or by any designee, permittee or occupant of any part of either parcel of any of terms, restrictions, covenants and conditions provided herein, any of the owners hereto or their respective successors or assigns as the case may be, shall have in addition to the right to pursue a suit for damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, thirty (30) days written notice of the claimed violation must be given to all of the owners and to persons or persons claimed to be in violation of this Declaration, and such owner or other designee, permittee, or occupant responsible for compliance with the particular provision of this Declaration shall have thirty (30) days to cure such violation (except when the nature of the obligation is such that more than thirty (30) days are required for its performance, in which case the owner, designee, permittee, or occupant (as applicable) shall not be deemed in default if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion).

13. No Third Party Enforcement. It is the intent of this Declaration that only the owners of the parcels described herein or their successors or assigns in title shall be entitled to enforce or bring an action to enforce the terms hereof and no tenant, occupant or third party is an intended beneficiary hereof and any benefits flowing to such persons are merely incidental and it is the intent of the owner that no such third person shall have an independent right of action hereunder, except with respect to the exclusive use restriction described in Section 3 above.

14. Breach Does Not Affect Agreement. It is expressly agreed that no breach of this Declaration shall entitle any owner to cancel, rescind, or otherwise terminate this Declaration, but this limitation shall not affect any other right to remedies which any owner may have by reason of any breach of the terms hereof.

15. Duration. The easements, covenants, restrictions and other provisions of this Declaration shall become effective upon the filing of the same with the Office of the Weber County Recorder and shall terminate fifty (50) years after the filing of this Declaration with the Office of the Weber County Recorder unless extended by mutual agreement of the then-current owners of the parcels or their successors in interest.

16. Discharge of Rights and Duties Upon Transfer. In the event of assignment, transfer or conveyance of the whole of the interest of any owner in and to any parcel, without retaining any beneficial interest other than under the terms of a deed of trust, mortgage or similar instrument, the powers, rights and obligations created hereunder will be deemed assigned, transferred and conveyed to such transferee, and such powers, rights and obligations will be deemed assumed by such transferee, effective as of the date of transfer. The obligations and rights of the transferor shall immediately thereafter be deemed discharged as to any such rights and obligations arising after transfer of the interest.

17. Amendment. This Declaration or any easement, covenant, restriction, or undertaking contained herein, may be terminated, extended or amended by recording of an appropriate document in the Office of the Weber County Recorder, State of Utah, which document must be executed by the then-current owner or owners of Parcel 1 and Parcel 2 or their successors or assigns in title.

18. No Public Dedication. Nothing contained in this Declaration shall, constitute a gift or dedication of any portion of any parcel to the general public or for any public purpose whatsoever.

19. Waiver. No waiver of any breach of any of the terms hereof shall be construed as or constitute a waiver of any other breach or acquiescence in or consent to any further or succeeding breach of the same or other covenant or term of this Declaration.

20. Severability. If any term or provision hereof shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Declaration shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by the law.

21. Notice. All notices under this Declaration shall be effective on the date of receipt or refusal by the addressee if mailed certified mail, return receipt requested, or sent via reliable overnight courier such as Federal Express, to the owner at the following address:

SB56, LLC  
c/o S-PM, Inc.  
90 East 7200 South, Suite 200  
Midvale, Utah 84047  
Attn: Property Manager

IN WITNESS WHEREOF, the owner of Parcels 1 and 2 has executed this Declaration the day and year first above written.

SB56, LLC,  
a Utah limited liability company

By  
Its

  
\_\_\_\_\_  
Manager

STATE OF Utah )  
                                  ) ss:  
County of Salt Lake)

On the 9<sup>th</sup> day of August, 2006, personally appeared before me Mike Stangl, who being by me duly sworn did say that he is the MANAGER of SB56, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said limited liability company and said limited liability company duly acknowledged to me that said limited liability company executed the same.



Michael J Coon  
Notary Public

**Exhibit "A"**

Parcel 1 Description

That certain tract of land situated in the County of Weber, State of Utah and more particularly described as follows:

South Parcel/ Parcel #1/ Tax Parcel No.: 07-004-0038 ✓

Beginning at the intersection of the north line of Combe Road and the quarter section line, said point being North  $0^{\circ}35'07''$  East 93.00 feet along the quarter section line from the South Quarter Corner of Section 15, Township 5 North, Range 1 West, Salt Lake Base and Meridian, and running;

Thence North  $0^{\circ}35'07''$  East 190.90 feet along the quarter section line;

Thence North  $89^{\circ}24'53''$  West 156.60 feet to the east line of Harrison Boulevard;

Thence southeasterly 102.01 feet along the arc of a 3899.80 foot radius curve to the right, (center bears South  $70^{\circ}47'12''$  West and long chord bears South  $18^{\circ}27'50''$  East 102.01 feet, with a central angle of  $1^{\circ}29'56''$ ) along the east line of Harrison Boulevard;

Thence southeasterly 91.29 feet along the arc of a 110.00 foot radius curve to the left, (center bears North  $72^{\circ}17'08''$  East and long chord bears South  $41^{\circ}29'22''$  East 88.69 feet, with a central angle of  $47^{\circ}33'01''$ ) along the east line of Harrison Boulevard to the north line of Combe Road;

Thence South  $65^{\circ}15'53''$  East 70.00 feet along the north line of Combe Road to the point of beginning.

Contains 21,106 square feet, 0.485 acres.

**Exhibit "B"**

Parcel 2 Description

That certain tract of land situated in the County of Weber, State of Utah and more particularly described as follows:

North Parcel/ Parcel #2/ Tax Parcel No.: 07-004-0059 ✓

Beginning at a point on the quarter section line, said point being North 0°35'07" East 283.90 feet along the quarter section line from the South Quarter Corner of Section 15, Township 5 North, Range 1 West, Salt Lake Base and Meridian, and running;

Thence North 89°24'53" West 156.60 feet to the east line of Harrison Boulevard;

Thence northwesterly 105.96 feet along the arc of a 3899.80 foot radius curve to the left, (center bears South 70°47'12" West and long chord bears North 19°59'30" West 105.96 feet, with a central angle of 1°33'24") along the east line of Harrison Boulevard;

Thence North 86°39'37" East 194.30 feet to the quarter section line;

Thence South 0°35'07" West 112.50 feet along the quarter section line to the point of beginning.

Contains 18,645 square feet, 0.428 acres.