



ENT 36869:2012 PG 1 of 21  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2012 May 03 1:44 pm FEE 51.00 BY ED  
RECORDED FOR NATIONAL TITLE AGENCY

When Recorded Mail To:

Tight Loop, LLC  
12498 Timberline Drive  
Highland, UT 84003

NTA #5435078

Tax Parcel No. 66-170-0024

**DECLARATION OF EASEMENTS COVENANTS, AND RESTRICTIONS**

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

**THIS DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS** ("Declaration") is made this 11th day of April, 2012, by STATIONS WEST-SARATOGA, LLC, an Ohio limited liability company.

**RECITALS:**

A. Stations West Saratoga, LLC and its assigns ("Declarant") is the owner of that certain tract or parcel of land located in Utah County, Utah, which is more particularly described in **Exhibit A** attached hereto and by this reference expressly incorporated herein and made a part hereof (said tract of land, together with all buildings and other improvements now or hereafter developed thereon, and all easements, rights, and options appurtenant thereto, being hereinafter referred to as the "Shopping Center").

B. Declarant is also the owner of that certain tract or parcel of land lying adjacent and contiguous to the Shopping Center, which is more particularly described in **Exhibit B** attached hereto and by this reference expressly incorporated herein and made a part hereof (said tract of land, together with all buildings and other improvements now or hereafter developed thereon, and all easements and rights appurtenant thereto, being hereinafter referred to as the "Outparcel") (the Shopping Center and the Outparcel are sometimes individually referred to below as a "Parcel" and collectively as the "Parcels").

C. Declarant intends to convey the Outparcel to one or more third parties; provided that Declarant shall have no obligation to so convey the Outparcel to third parties.

D. Declarant, in view of the fact that the Shopping Center and the Outparcel may be separately owned, desires to establish certain covenants, easements, rights, options, and restrictions to facilitate the separate and mutually beneficial development and operation of the Shopping Center and the Outparcel.

**NOW, THEREFORE**, for and in consideration of the premises hereof, and other good and valuable consideration, Declarant hereby covenants and declares, for itself and its successors, assigns, and successors-in-title to the Shopping Center and the Outparcel, as follows:

1. The Shopping Center shall be and is hereby declared to be subject to the easements more particularly set forth in this Declaration for the benefit of the Outparcel. The Outparcel shall be and is hereby declared to be subject to the easements and restrictions more particularly set forth in this Declaration for the benefit of the Shopping Center. The Outparcel shall be and is hereby declared to be subject to the restrictive covenants more particularly set

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forth in this Declaration. The Shopping Center and the Outparcel shall each hereafter be held, transferred, sold, conveyed, used, rented, enjoyed, occupied, mortgaged, or otherwise encumbered or disposed of subject to the covenants, easements, options, rights, and restrictions set forth in this Declaration.

2. For purposes of this Declaration, the term "Shopping Center Owner" shall mean the then-current fee owner of the Shopping Center or any portion remaining thereof (as limited below), and shall not mean any person or entity having an interest in the Shopping Center or any portion thereof solely by virtue of either (i) a contract or as security for an obligation; (ii) a lease; or (iii) a mortgage, deed of trust, sale-leaseback, or other interest created for the purpose of securing an indebtedness. Upon further sale or creation of additional out-parcels, such owners shall have rights and privileges as specifically granted to them as separate outparcel owners and shall not be deemed to be included in the definition of "Shopping Center Owner". For purposes of this Declaration, the term "Outparcel Owner" shall mean the then-current fee owner of the Outparcel or any portion thereof, and shall not mean any person or entity having an interest in the Outparcel or any portion thereof solely by virtue of either (i) a contract or as security for an obligation; (ii) a lease; or (iii) a mortgage, deed of trust, sale-leaseback, or other interest created for the purpose of securing an indebtedness. The Shopping Center Owner, Declarant, and Outparcel Owner may be referred to herein individually as a "Party" or together as the "Parties".

3. The following non-exclusive rights and easements shall exist and are hereby established for the benefit of, and as an appurtenance to the ownership of, the Outparcel, with respect to, and as a burden upon, the Shopping Center: (i) a non-exclusive right and easement for pedestrian and vehicular ingress and egress in, to, upon, and across the Shopping Center for the purpose of driving, walking, or going (but not parking) upon or across any driveway, access road, walkway, or sidewalk, now existing or hereafter constructed on the Shopping Center, and being utilized by Declarant or its successors-in-title, or by or for the benefit of tenants or occupants of the Shopping Center, as a driveway, access road, walkway, or sidewalk, as the case may be (collectively, the "Shopping Center Driveways"), but only for so long as such portion of the Shopping Center is so utilized; (ii) and (ii) a non-exclusive, perpetual right and easement across, through, and under the Shopping Center to tie into, connect with, and use, to such extent as is commercially reasonable and necessary, any utility facilities (including, without limitation, water, electric, gas, and telephone distribution lines, and sanitary and storm sewer pipelines), now or hereafter installed on the Shopping Center and intended to jointly serve the Shopping Center and the Outparcel; and (iv) a non-exclusive, perpetual right and easement to drain storm water runoff from the Outparcel, both on the surface and through any now-existing or hereafter constructed underground storm drainage systems located on the Shopping Center and intended to jointly serve the Shopping Center and the Outparcel, including the right to use any storm water retention facilities located on the Shopping Center and intended to jointly serve the Shopping Center and the Outparcel, so long as such drainage from the Outparcel shall not cause any material damage to the Shopping Center or any improvements located thereon. The rights and easements hereby established in this Section are solely for the benefit of, and shall be appurtenant to, the Outparcel, as provided above, and shall in no way limit or restrict the right and privilege of Declarant, or Shopping Center Owner with respect to the Shopping Center, at any time and from time to time, to relocate, repair, replace, alter, eliminate, or build upon any

driveway, access road, sidewalk, walkway, parking space, or utility facility, now or hereafter existing upon the Shopping Center, or in any way obligate or require Shopping Center Owner as to the Shopping Center to construct thereon any driveway, access road, sidewalk, walkway, parking spaces, or utility facility; provided that the rights and easements hereby established for the Outparcel to tie into, connect with, and use utility facilities, or to drain surface water in, to, upon, under, and across the Shopping Center shall be undisturbed ( subject to being repaired, replaced or relocated with facilities substantially equal to those existing prior to such , and provided further that Shopping Center Owner shall not eliminate or restrict the easements providing ingress and egress to and from the Outparcel and any public roadways or streets and/or the Shopping Center in any manner that would affect the business conducted on the Outparcel without replacing such ingress and egress with alternative access providing substantially equal movement of pedestrian and vehicular traffic. In the event that the Outparcel connects with any such utility facilities on the Shopping Center, then (i) such connection of such utility facilities shall be subject to the approval of the Declarant , which approval shall not be unreasonably withheld, and shall be performed in a good and workmanlike manner and comply in all respects with all applicable governmental regulations and requirements; (ii) such connection with such utility facilities shall not unreasonably interfere with the conduct or operation of any business in the Shopping Center or reduce the capacity of any such utility facilities to the material detriment of the Shopping Center; and (iii) after each exercise of any such connection with such utility facilities, the Outparcel Owner shall, at its sole cost and expense, restore those portions of the Shopping Center affected by such connection to no less than the condition and appearance prior to such connection.

4. The following non-exclusive rights and easements shall exist and are hereby established for the benefit of, and as an appurtenance to the ownership of, the Shopping Center, with respect to, and as a burden upon, the Outparcel: (i) a non-exclusive right and easement for pedestrian and vehicular ingress and egress in, to, upon, and across the Outparcel for the purpose of driving, walking, or going (but not parking) upon or across any driveway, access road, sidewalk, or walkway, now existing or hereafter constructed on the Outparcel, and being utilized by the owner or lessee of the Outparcel or its successors-in-title, or by or for the benefit of tenants or occupants of the Outparcel, as a driveway, access road, sidewalk, or walkway, as the case may be, but only for so long as such portion of the Outparcel is so utilized; and (ii) a right and easement to maintain the existing Shopping Center pylon sign and any replacements thereof on the Outparcel, and a right and easement for the installation, operation, maintenance, repair, and replacement thereof, and in connection therewith, the Declarant and its employees, agents, and contractors shall have a right and license to enter upon the Outparcel for the purposes of any such easement rights so granted, provided, however, the grantees thereof shall, subsequent to any entry upon the Outparcel for the purposes of exercising any such easement rights so granted, restore, to the condition existing immediately prior to any such entry, such portion of the surface of the Outparcel damaged on account of any such entry; and (iv) a non-exclusive, perpetual right and easement across, through, and under the Outparcel to tie into, connect with, use, maintain, repair, and replace, all only to the extent reasonably necessary, any utility facilities (including, without limitation, water, electric, gas, and telephone distribution lines, and sanitary and storm sewer pipelines), now or hereafter installed on the Outparcel and intended to jointly serve the Outparcel and the Shopping Center, provided that the sanitary sewer lateral as depicted in Exhibit E attached hereto and incorporated herein by this specific reference shall be for the sole

and exclusive benefit and service to the Shopping Center; and (v) a non-exclusive, perpetual right and easement to drain storm water runoff from the Shopping Center onto and across the Outparcel, both on the surface and through any now-existing or hereafter constructed underground storm drainage systems located on the Outparcel and intended to jointly serve the Outparcel and the Shopping Center, including the right to use any storm water retention facilities located on the Outparcel and intended to jointly serve the Outparcel and the Shopping Center, so long as such drainage shall not cause any material damage to the Outparcel. The rights and easements hereby established in this Section are solely for the benefit of, and shall be appurtenant to, the Shopping Center (unless otherwise limited herein), and shall in no way limit or restrict the right and privilege of the owner or lessee of the Outparcel, or any successor-in-title thereof, at any time and from time to time, to relocate, repair, replace, alter, eliminate, or build upon any driveway, access road, sidewalk, walkway, parking space, or utility facility, now or hereafter existing upon the Outparcel, or in any way obligate or require the owner or lessee of the Outparcel or any successor-in-title thereof to construct thereon any driveway, access road, sidewalk, walkway, parking spaces, or utility facility; provided that the rights and easements hereby established for the Shopping Center to tie into, install, repair, replace, maintain, and use utility facilities or to drain surface water in, to, upon, under, and across the Outparcel shall be undisturbed (subject to being repaired, replaced, or relocated). In the event that the Shopping Center Owner desires to connect with, install, maintain, repair, or replace any utility facilities located on or running under or through the Outparcel, then: (i) in the event such connection, installation, maintenance or repair takes place after a building is constructed on the Outparcel, the Shopping Center Owner may not block or restrict access to and from the Outparcel and any public streets or roadways in a manner which creates a materially adverse impact on the business operations on the Outparcel; (ii) such connection, installation, maintenance, repair, or replacement of such utility facilities shall be performed in a good and workmanlike manner and comply in all respects with all applicable governmental regulations and requirements; (iii) such connection with or installation, maintenance, repair, or replacement of such utility facilities shall not unreasonably interfere with the conduct or operation of any business on the Outparcel or reduce the capacity of any such utility facilities to the material detriment of the Outparcel; and (iv) after each exercise of any such connection with or installation, maintenance, repair, or replacement of such utility facilities, the responsible Shopping Center Owner shall, at its sole cost and expense, restore those portions of the Outparcel affected by such connection, installation, maintenance, repair, or replacement to no less than the condition and appearance prior to such connection, installation, maintenance, repair, or replacement.

5. Subject to the prior written approval of the Outparcel Owner, which approval shall not be unreasonably withheld, conditioned, or delayed, the Shopping Center Owner and such other parties to whom such rights shall be granted shall have the right and license to enter upon the Outparcel for the installation, operation, maintenance, repair, and replacement of underground utilities lines and facilities as shall be required for the benefit of the Shopping Center, provided, however, that: (i) in the event such connection, installation, maintenance or repair takes place after a building is constructed on the Outparcel, the Shopping Center Owner may not block or restrict access to and from the Outparcel and any public streets or roadways in a manner which creates a materially adverse impact on business operations on the Outparcel or the business conducted on the Outparcel and the grantees thereof shall, subsequent to any entry upon the Outparcel for the purposes of accessing such areas, restore, to the condition existing

immediately prior to any such entry, such portion of the surface of the Outparcel damaged on account of any such entry.

6. Any construction or reconstruction of any buildings, structures, or improvements on the Outparcel shall be subject to the prior written consent of Declarant, which consent shall not be unreasonably withheld; provided that Declarant shall have the right, in its sole and absolute discretion, to withhold its consent to any construction or reconstruction that would violate any restrictions in effect as of the date of this Declaration with respect to the Outparcel or to the Shopping Center in regards to the operation of the Outparcel. Before any construction or reconstruction begins on the Outparcel, Outparcel Owner shall submit to Declarant, for prior approval, all plans for the construction of all improvements to be located upon the Outparcel, including, but not limited to, all buildings, signs, parking areas, roadways, and driveways to be constructed on the Outparcel. Such plans shall include, but shall not be limited to, signage plans, including building signage, a full grading plan, full front elevations, footprints of the building, and full utility and landscaping plans. All of such plans shall be subject to the prior written consent of Declarant, which consent shall not be unreasonably withheld; provided that Declarant shall have the right, in its sole and absolute discretion, to withhold its consent to any construction or reconstruction that would violate any restrictions in effect as of the date of this Declaration with respect to the Outparcel or to the Shopping Center in regards to the operation of the Outparcel. Outparcel Owner's plans, approved as provided herein, shall be referred to hereinafter as the "Approved Plans." Following approval of the Approved Plans, Outparcel Owner shall not make any alterations, additions, or modifications to the Outparcel and the improvements located thereon except as is provided in the Approved Plans or unless otherwise consented to by Declarant in writing. No more than one (1) building shall be permitted on the Outparcel at any time. Any building or improvement that may be constructed on the Outparcel shall not exceed: (i) one (1) story in height, and (ii) the maximum height allowed by law, measured from ground level to the top of all rooftops, parapets, signs, and other extensions.

7. Outparcel Owner shall keep, or cause to be kept, the Outparcel and all buildings and improvements located on the Outparcel in a neat and orderly condition, clean and free from accumulated ice, snow, and trash, and otherwise in a first class condition. Furthermore the Outparcel Owner shall keep clean and adequately lighted any parking areas, walks, and drives located on the Outparcel. The Outparcel Owner shall promptly comply with all laws, ordinances, and governmental regulations concerning the cleanliness, safety, occupancy, and use of the Outparcel. All receptacles for the storage of garbage on the Outparcel shall be screened from public view by means of a brick barrier or other suitable screening apparatus approved by Declarant. All landscaping located on the Outparcel must be irrigated by an underground irrigation system and kept in a clean, fresh, and neatly trimmed condition. It is the intention of the parties hereto that all buildings, improvements, signs, and landscaping on the Outparcel be constructed, installed, erected, operated, and maintained so that the Shopping Center and the Outparcel shall be aesthetically harmonious and shall be operated as an integrated retail development. To that end, and without limiting any of the obligations set forth elsewhere in this Declaration, Outparcel Owner shall (i) maintain the Outparcel and all buildings and other improvements thereon to the same standard as Shopping Center Owner maintains the Shopping Center and the buildings and improvements thereon; (ii) utilize the same contractors as are utilized by Declarant for the maintenance, trimming, and replacement of all lawns, trees, shrubs,

hedges, grass, and other landscaping located thereon, and for the cleaning and sweeping of, and removal of snow and ice from, all parking areas, roads, drives, sidewalks, walkways, curbs, and gutters located thereon; and (iii) maintain an outdoor lighting theme that is harmonious with the outdoor lighting theme of the Shopping Center, and cause the outdoor areas on the Outparcel to be lighted during the same hours as the outdoor areas on the Shopping Center are lighted. In the event any building, structure or other improvement located upon the Outparcel shall be damaged or destroyed by any casualty, Outparcel Owner shall, within sixty (60) days thereafter, commence to repair or reconstruct such building, structure, or other improvement to the condition existing immediately prior to such casualty, or commence to raze the remainder of such building, structure, or other improvement and complete the removal of the debris therefrom within one hundred eighty (180) days after such casualty and shall thereafter keep the Outparcel neat, orderly, planted in grass, and trimmed until subsequently improved and constructed upon. In the event that Outparcel Owner does not maintain the Outparcel in accordance with the terms set forth in this Section, Declarant shall give Outparcel Owner written notice of such failure. In the event that Outparcel Owner does not cure such failure within five (5) days after its receipt of such notice (or such lesser period of time as may be specified in such notice, if, in Declarant reasonable discretion, an emergency situation exists), Declarant shall have the right to enter upon the Outparcel and to maintain such buildings, improvements, parking, drive areas, and landscaping, in accordance with the foregoing. Outparcel Owner shall, immediately upon demand, reimburse Declarant for any and all costs incurred in connection therewith, which amount shall bear annual interest until paid at the lesser of ("Default Rate"): (i) the highest rate allowed by law; or, (ii) 18%, from and after the date when same is due.

8. On or before January 31, 2012, and on or before January 31 of each calendar year thereafter, Outparcel Owner shall pay Declarant the sum of \$0.059 per square foot of the land comprising the Outparcel per year ("Outparcel Owner's Contribution") as Outparcel Owner's contribution toward the costs and expenses incurred by Shopping Center Owner in connection with the maintenance, repair, replacement, policing, inspection, guarding, and protection of all roads, driveways, curbing, walkways, and sidewalks located on the Shopping Center, including, without limitation, the Shopping Center Driveways. Outparcel Owner's Contribution shall be adjusted on the five-year anniversary of the date of this Declaration, and thereafter at five (5) year intervals on each five-year anniversary of the date of this Declaration (each such increase to take effect starting with the next required payment of Outparcel Owner's Contribution), to an amount which shall be determined by multiplying \$0.059 by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the month that this Declaration is dated; the "Current Index Number" shall be the level of the Index for the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the parties hereto shall substitute for the Index comparable statistics as computed by an agency of the United States government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index. In the event that Outparcel Owner fails to pay Outparcel Owner's Contribution within ten (10) days after the same shall be due, thereafter, until paid, the delinquent amount shall bear interest at the Default Rate.

9. In the event that Declarant has expended funds on behalf of Outparcel Owner for any reason as is provided herein, and Outparcel Owner has not paid the amount owing within thirty (30) days after an invoice is received by Outparcel Owner setting forth the amount then due, and/or in the event Outparcel Owner shall fail to pay any amount owed to Declarant pursuant to Section 8 above, Declarant shall have the right to place a lien on the Outparcel to secure payment of such amount, all interest accruing thereon, and any costs and expenses incurred by Declarant (including attorneys' fees) in attempting to collect such amount, which lien shall be deemed perfected upon the expenditure of any such funds by Declarant. Such lien may be foreclosed by Declarant in the manner provided for foreclosure of trust deeds or mortgages under Utah law. The rights granted under this Section shall not be the exclusive remedy of Declarant, but shall be in addition to all rights and remedies at law and in equity. Any lien created by and resulting from this Section shall be subordinate and inferior to the lien of any institutional first mortgage which may exist from time to time upon the Outparcel.

10. The Outparcel shall be used initially for the operation of a Kneader's Bakery & Café. Any change in the use of the Outparcel shall be subject to the prior written consent of Shopping Center Owner, which consent shall not be unreasonably withheld; provided that Shopping Center Owner shall have the right, in its sole and absolute discretion, to withhold its consent to any change in use that would violate any restrictions or exclusive use rights now in effect with respect to the Shopping Center, or that would duplicate any type of business that is operating on the Shopping Center as of the date of this Declaration. The Outparcel shall never be used for any of the purposes set forth on Exhibit C attached hereto and incorporated herein by reference. In addition to the use restrictions and exclusive uses to which the Outparcel Owner is expressly prohibited from conducting said uses in Exhibit C, Outparcel Owner further acknowledges that the Outparcel shall not be used for restaurant or food services purposes for a period of fifteen (15) years from the date hereof. The term "restaurant or food services" as used in this clause shall apply to any type of food service establishment which serves any amount of the following products: hamburgers or any other type of beef products served in sandwich form; or ground meat or meat substitute, or a combination of ground meat and meat substitute, or any other type of meat products, any of which are served in sandwich form. Also provided that any food service establishment which offers as the primary method of service for all meal times, food and drink orders taken by and served by a waiter or waitress at the customer's table, is excluded from the term "restaurant or food service purposes." In addition, and not by way of example, the following restaurants operating under the listed trade names, or operating under any successor trade names are prohibited to operate on the Outparcel: Burger Chef, Burger king, Carl's Jr., Artic Circle, Crown Burger, Hardee's, In and Out Burgers, Jack-in-the-Box, Olympic Burgers, Checkers, Rally's, Wendy's, White Castle, Dee's, Backyard Burgers. The above notwithstanding, Outparcel Owner may operate a Kneader's Bakery & Café on the Outparcel provided the menu items served are limited to those shown on the menu attached hereto and incorporated herein by this reference in Exhibit D (the "Menu") including any Menu item changes which involve differing configurations of the same ingredients or which are consistent with the Menu, provided that no such Menu changes may include any fried foods, grilled meats and/or any other common fast food items or any of the proscribed items listed in any documents recorded of record except as permitted by this Paragraph..



10(a). Shopping Center Owner agrees that the Shopping Center shall not sell, lease, or otherwise allow to operate on the Shopping Center other bakery users including but not limited to Corner Bakery, Paradise Bakery, Zupas and Panera Bread. This exclusive shall not apply to coffee, or donut shops (including, but not limited to Dunkin Donuts, Tim Horton's, and Krispy Kreme), restaurants having a breakfast or brunch menu, including, but not limited to, International House of Pancakes ("IHOP"), Village Inn, or Jim's Family Restaurant, or any operations already being conducted at the Shopping Center as of the date of this Declaration and which are otherwise permitted to conduct the uses provided in this Paragraph.

11. Outparcel Owner shall promptly, before any penalties or interest accrues thereon, pay all taxes and assessments which become a lien upon the Outparcel and are due and payable. Outparcel Owner shall also carry full replacement cost insurance with respect to the improvements to be located upon the Outparcel. Outparcel Owner shall also carry commercial general liability insurance with a combined single limit of two Million Dollars (\$2,000,000.00) for bodily injury, personal injury and property damage, arising out of any one occurrence. The limits for Outparcel Owner's commercial general liability insurance shall be increased on the five-year anniversary of the date of this Declaration, and thereafter at five (5) year intervals on each five-year anniversary of the date of this Declaration, to an amount which shall be determined by multiplying two Million Dollars (\$2,000,000.00) by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. Upon request by Shopping Center Owner, Outparcel Owner shall furnish to Shopping Center Owner a certificate of insurance evidencing that the insurance required to be carried by Outparcel Owner is in full force and effect.

12. Shopping Center Owner reserves the right at any time and from time to time (a) to make or permit changes or revisions in the Shopping Center, including additions to, subtractions from, rearrangements of, alterations of, modifications of, or supplements to the building areas, walkways, parking areas, driveways, curb cuts, or other areas, (b) to construct other buildings or improvements in the Shopping Center and to make alterations thereof or additions thereto and to build additional stories on any such building or buildings and to build adjoining same, and (c) to make or permit changes or revisions in the Shopping Center, including additions thereto, and to convey portions of the Shopping Center to others for the purpose of constructing thereon other buildings or improvements, including additions thereto and alterations thereof, provided that changes to driveways, curb cuts and walkways shall be restricted as provided in Paragraph 3 above.

13. Outparcel Owner shall take all reasonable steps necessary to protect the Shopping Center from damage by reason of its activities permitted hereunder upon the Shopping Center, including, but not limited to, its use of easements now existing or hereafter to be created, and in the event of any such damage to the Shopping Center, Outparcel Owner shall, at its sole cost and expense, promptly restore or cause to be restored that portion of the Shopping Center so damaged to as nearly as practicable the condition existing prior to such damage. Outparcel Owner shall indemnify Shopping Center Owner, its officers, directors, managers, members, stockholders, beneficiaries, partners, representatives, agents and employees, and save them harmless from and against any and all claims, actions, damages, liabilities, costs, and expenses, including attorney fees, in connection with all losses, including loss of life, personal injury, and/or damage to property, arising from or out of any occurrence in, upon, or at the Outparcel.

Declarant shall take all reasonable steps necessary to protect the Outparcel from damage by reason of its activities permitted hereunder upon the Outparcel, including, but not limited to, its use of easements now existing or hereafter to be created, and in the event of any such damage to the Outparcel, Declarant shall, at its sole cost and expense, promptly restore or cause to be restored that portion of the Outparcel so damaged to as nearly as practicable the condition existing prior to such damage. Declarant shall indemnify Outparcel Owner, its officers, directors, managers, members, stockholders, beneficiaries, partners, representatives, agents, and employees, and save them harmless from and against any and all claims, actions, damages, liabilities, costs, and expenses, including attorney fees, in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon, or at the portion of the Shopping Center that Declarant, except to the extent that any such claims, actions, damages, liabilities, costs, and expenses are attributable to the negligent or willful acts or omissions of Outparcel Owner, its agents, employees, or contractors.

14. Each party covenants to the other that any work to be undertaken by the one on the Parcel of the other shall be undertaken and completed in a good, workmanlike, first-class, and lien-free manner. Each party covenants to the other to cause any liens filed against the Parcel of the other on account of any such work so undertaken and/or materials supplied in connection therewith to be released and discharged of record within twenty-one (21) days after notice thereof to the party that has undertaken any such work. Each party indemnifies, agrees to defend and holds harmless the other party from and against any and all claims, actions, damages, liabilities, costs, and expenses, including attorney fees reasonably incurred, in connection with any such liens so filed against the Parcel of the other party.

15. The Declarant shall have a perpetual right of first refusal to purchase all or any portion of the Outparcel, except as to that certain contract to finance and purchase, which has been previously executed between Tight Loop, LLC and Mackey Investment Company L.P., and which provides for a purchase prior to completion of the building. If the Outparcel Owner receives a bona fide offer ("Offer") to purchase all or any portion of the Outparcel, which offer the Outparcel Owner desires to accept, the Outparcel Owner shall notify the Declarant in writing of said offer. For purposes of this Declaration, a "bona fide offer" need not be binding and may take the form of a letter of intent, letter agreement, or a similar offer which is not a real estate contract or offer. Within fifteen (15) days after the date of such notice, the Declarant shall elect, by notice to the Outparcel Owner, either: (i) to exercise its right of first refusal upon the specific terms and conditions stated in the Offer, or (ii) to decline to exercise its right of first refusal. In the event that the Declarant elects to exercise its right of first refusal, the parties shall work together, in good faith, to negotiate a purchase agreement that incorporates the terms and conditions stated in said offer. In the event that the Declarant declines to exercise its right of first refusal, the Outparcel Owner may proceed to sell the Outparcel pursuant to the terms and conditions stated in said offer; provided that: (a) in the event that there are any material change(s) in the terms and conditions stated in said Offer, the Outparcel Owner shall notify the Declarant in writing of such modifications, whereupon the Declarant shall again have the option to exercise its right of first refusal with respect to the modified terms and conditions based on the procedure described above; and (b) the right of first refusal described in this Section shall remain in full force and effect with respect to any subsequent offers to purchase all or any portion of the Outparcel. Subject to the receipt by Declarant of the notice required herein, any

failure to respond to the Outparcel Owner within the time specified on the part of the Declarant shall be unequivocally construed as an election to decline to exercise its "right of first refusal". For purposes of this Paragraph a bona fide offer shall be any offer written as a letter of intent, memorandum of understanding, letter agreement, or a uniform real estate contract.

16. This Declaration shall be governed by, and construed in accordance with, the laws of the State of Utah.

17. All easements and rights created under this Declaration and imposed upon the Shopping Center and the Outparcel, respectively, shall perpetually run with and against the Parcels as so described in this Declaration, and said easements shall be a charge and a burden for the benefit of the owners of the Parcels and of the holder(s) of any mortgage with respect to the Parcels. This Declaration is specifically intended to run with the Parcels and to benefit and burden the Parcels as set forth herein.

18. In the event that any Party shall default in the performance of its respective obligations pursuant to this Declaration, the non-defaulting party shall retain all rights and remedies available at law and in equity, including, but not limited to, specific performance, and the right to recover damages incurred as a result of the defaulting party's breach, plus reasonable attorney fees and costs actually incurred, and any and all other damages which may result on account of the defaulting Party's breach.

19. Any enforcement proceedings may be by legal or equitable proceedings against any person or persons violating or attempting to violate any easements, declarations, restrictions, covenants, conditions, or agreements contained in this Declaration, either to restrain or enjoin such violation and/or recover damages and/or enforce specific performance of the covenants and agreements contained in this Declaration; provided, however, that no such easements or rights granted in this Declaration may be enforced by legal action or otherwise except by the then owners and/or then mortgagees of the Parcels.

20. (a) In the event of any transfer or transfers of Declarant interest in the Shopping Center, including a so-called sale-leaseback, the transferor shall be automatically relieved of any and all obligations on the part of Declarant accruing from and after the date of such transfer, and the transferee shall assume all of the obligations of the Declarant under this Declaration accruing from and after the date of such transfer. Upon the termination of any such lease in a sale-leaseback transaction prior to termination of this Declaration, the former lessee thereunder shall become and remain liable as Declarant hereunder until a further transfer.

(b) In the event of any transfer or transfers of Outparcel Owner's interest in the Outparcel, including a so-called sale-leaseback, the transferor shall be automatically relieved of any and all obligations on the part of Outparcel Owner accruing from and after the date of such transfer, provided that (a) notice of such sale, transfer, or lease shall be delivered to Declarant; and (b) the transferee shall assume all of Outparcel Owner's obligations under this Declaration accruing from and after the date of such transfer. Upon the termination of any such lease in a sale-leaseback transaction prior to termination of this Declaration, the former lessee thereunder shall become and remain liable as Outparcel Owner hereunder until a further transfer.

21. This Declaration and the easements created herein may be modified, amended, or terminated only by all of the owners and mortgagees of the Parcels, and no other person (including, without limitation, tenants, lessees, invitees, guests, or occupants of said Parcels) shall have any rights whatsoever to join in, prevent, or otherwise affect or limit any such modification, amendment, or termination.

22. In the event that any one or more of the provisions contained in this Declaration is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Declaration, and this Declaration shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

23. In the event that any party hereto institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorney fees incurred in the preparation and prosecution of such action or proceeding.

24. This Declaration and the easements, rights, and obligations contained herein shall be binding upon and inure to the benefit of any owner of the Parcels, any mortgagee of the Parcels, and their respective successors and assigns.

25. Any and all notices to Declarant or Declarant permitted or required to be given hereunder shall be in writing and shall be sent either: (i) postage prepaid by U.S. certified mail, return receipt requested; or (ii) by nationally recognized overnight delivery service which guaranties next day delivery, at the following addresses:

Stations West-Saratoga, LLC  
11501 Northlake Drive  
Cincinnati, Ohio 45249  
Attention: Legal Services

Any such notice shall be deemed given and effective three business days after depositing same in a U.S. mail receptacle, if sent by U.S. certified mail, or one business day after depositing same with a nationally recognized overnight delivery service.

26. Bank of America, N.A., a national banking association, successor by merger to LaSalle Bank National Association, as beneficiary under a Deed of Trust, Security Agreement and Fixture Filing, dated May 10, 2005, with respect to the Shopping Center and the Outparcel, hereby joins in this Declaration to evidence its consent to and approval of this Declaration and to subordinate its respective mortgage interests in the Parcels, if any, to the terms of this Declaration with all of the rights granted to it hereunder.

**[SIGNATURE PAGES TO FOLLOW]**





**Exhibits List:**

- A – Legal Description of Shopping Center
- B – Legal Description of Outparcel
- C – Prohibited Uses
- D – Menu for Kneader's Bakery & Cafe
- E – Site Plan with Utilities

EXHIBIT A

LEGAL DESCRIPTION OF SHOPPING CENTER

Lot 1B, SARATOGA TOWN CENTER SUBDIVISION, as amended by the Minor Subdivision Amending Lot 1, filed on the 3 day of ~~April~~ May, 2012 as Entry No. 36842-2012, Map Filing No. 13653, in Map Book 666, at Map Page 358, of the Official Records of the Utah County Recorder.



## EXHIBIT B

Lot 1A, SARATOGA TOWN CENTER SUBDIVISION, as amended by the Minor Subdivision Amending Lot 1, filed on the 3 day of May, 2012 as Entry No. 36842-2012, Map Filing No. 13653, in Map Book 66, at Map Page 358, of the Official Records of the Utah County Recorder.

Being more particularly described as:

A PARCEL OF LAND SITUATED ON THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING N 89°51'52" E 210.09 FEET AND S 0°08'08" E 678.09 FEET FROM THE NORTH QUARTER CORNER OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, POINT ALSO BEING ON A 4314.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, WITH A RADIUS WHICH BEARS S 84°00'52" W AND RUNNING THENCE 199.09 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°38'39" TO A POINT ON A 900.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, WITH A RADIUS WHICH BEARS N 6°43'28" W; THENCE 49.53 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 3°09'12"; THENCE S 86°25'43" W 125.50 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF REDWOOD ROAD, OTHERWISE KNOWN AS STATE ROAD 68, SAID POINT ALSO BEING ON A 4314.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, WITH A RADIUS WHICH BEARS S 86°39'29" W; THENCE 199.05 FEET ALONG THE ARC OF SAID CURVE AND SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 2°38'37"; THENCE N 85°58'08" E 175.01 FEET TO THE POINT OF BEGINNING.

34,944 SQUARE FEET OR 0.802 ACRE

## EXHIBIT C

### PROHIBITED USES

The Outparcel shall never be used for any of the purposes set forth below:

- Any purpose other than for retail sales, retail services, restaurant or office uses;
- The conduct of any illegal, offensive, noisy or dangerous trade, business, activity or operation, (ii) any activity which physically or materially interferes with the business of any other owner or owner's tenants on another parcel, or (iii) any other unreasonable use not compatible with the operation of a retail, office or commercial shopping center, well maintained in accordance with the standards of the Shopping Center;
- A bar, tavern, cocktail lounge, adult book or adult video store, hotel, motel, warehouse, animal kennel, mobile home park or trailer court;
- The renting, leasing or selling of or displaying for the purpose of renting, leasing or selling any boat, motor vehicle or trailer;
- Industrial purposes;
- Any bankruptcy sales or going out of business sales;
- An open or enclosed mall;
- Handling, or storage of hazardous materials (including but not limited to, underground storage tanks, petroleum and petroleum products, asbestos, PCB's, urea-formaldehyde) and any hazardous or toxic substances, pollutants, contaminants, wastes or materials as defined under any Environmental Laws.
- The Outparcel shall at all times contain no less than four spaces per 1000 square feet of building use constructed for the Intended Use.
- Grocery store, supermarket, or meat market
- Single price point variety retail store, which is hereby defined as a store that offers all of its merchandise for sale at a single price point
- A retail store that sells variety retail merchandise at a single price point in twenty-five percent (25%) or more of the sales floor area (including one-half [1/2] of the adjacent aisle space)
- Variety retail operation with the word "Dollar" in its trade name
- Pornographic bookstore, cinema, or video store
- Massage parlor
- Modeling studio
- Tanning salon
- Any business which would tend to injure the family-oriented reputation of the Shopping Center
- Topless/bottomless nightclub or restaurant or similar venue for adult entertainment
- Auction, going out of business, fire or bankruptcy sales or similar merchandise liquidators
- Army-navy surplus store, second-hand store, or salvage or "odd-lot" store
- Roller skating rink
- Video arcade, pool or gaming hall

- Nightclub, bar or dance hall
- Flea market, swap meet or similar enterprise
- Manufacturing or processing plant
- Pawn shop
- Check cashing, cash advance, short term loan or paycheck advance service or any so called "credit service organization"
- Bowling alley
- Cinema or theater
- Sports, health or fitness club
- Gas station
- Bingo parlor
- Offtrack betting parlor
- Funeral home or mortuary
- Any use that is inconsistent with a family-oriented, first class shopping center, including, without limitation, any use of any medium that might constitute a nuisance such as loud speakers, sound amplifiers, phonographs, radios, televisions or any other sound producing device which will carry sound outside of the premises
- The sale or display of any one or any combination of more than one of the following items: ladies' ready-to-wear and wearing apparel; men's ready-to-wear and wearing apparel; children's and infants' ready-to-wear and wearing apparel; and children's furniture. The foregoing restriction shall apply to, without limitation, Goody's, Belk's, Dunlap's, J. C. Penney's, Dillard's and May Co.'s, T.J. Maxx, Stein Mart, Loehman's, Kohl's, and Burlington Coat Factory.
- Sale of cellular phones, accessories, and cellular services.

**EXHIBIT D**

**MENU FOR KNEADER'S BAKERY & CAFÉ**

