

754896

Drafted by and when recorded return to:
Stations West – Saratoga, LLC
c/o Phillips Edison & Company, Ltd.
Attn: Richard Tranter, Esq.
11501 Northlake Drive
Cincinnati, Ohio 45249

ENT 39149:2016 PG 1 of 22
Jeffery Smith
Utah County Recorder
2016 May 04 12:09 PM FEE 60.00 BY VM
RECORDED FOR First American Title Insurance
ELECTRONICALLY RECORDED

Parcel 66:268:0004
66:387:0004
66:387:0008

DECLARATION

THIS DECLARATION (“*Declaration*”) is made effective as of February 24, 2016 (“*Effective Date*”) by STATIONS WEST – SARATOGA LLC, a Delaware limited liability company, successor to STATIONS WEST – SARATOGA, LLC, an Ohio limited liability company (“*Declarant*”), whose address is 11501 Northlake Drive, Cincinnati, Ohio 45249.

RECITALS:

A. Declarant is the Owner of the real property in Saratoga Springs, Utah described in Exhibit A attached hereto and depicted on Exhibit A-1 attached hereto and incorporated herein by reference (the “*Shopping Center*”).

B. Declarant is the Owner of the real property in Saratoga Springs, Utah described in Exhibit B attached hereto and depicted on Exhibit B-1 attached hereto and incorporated herein by reference (the “*Outlot*”).

C. The Shopping Center and Outlot are currently subject to that certain Declaration of Easements, Covenants, Conditions and Restrictions and Common Area Maintenance Agreement dated October 4, 2006, and recorded as Entry # 132916:2006 of the Official Records of Utah County, Utah (the “*Master Declaration*”).

D. Declarant contemplates the sale of the Outlot.

E. Declarant desires to establish certain use, maintenance and building restrictions with respect to the Shopping Center and the Outlot, and to provide for the sharing of certain costs in connection therewith, in contemplation of the sale and development of the Outlot.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the parties agree as follows:

FIRST AMERICAN TITLE
754896

1. DEFINITIONS.

For purposes hereof:

(i) The term “*Common Area*” shall mean the Driveways, Parking Areas, landscaped areas and facilities and systems for drainage and storage of storm water located from time to time on a Parcel.

(ii) The term “*Driveways*” shall mean the driveways and roadways and related improvements, entrances and exits to and from the public roadways adjoining the same, sidewalks, walkways, and curbing and paving with respect thereto located from time to time on the Parcels.

(iii) The terms “*Improvement*” or “*Improvements*” means: (a) any building, sign, wall sign, Parking Area, dumpster enclosure, loading area, exterior color, exterior lighting, fence, advertising device, wall, drainage facility, water retention or detention facility, sewage system, Utility Lines (as hereinafter defined), all utilities, road, pond or lake, landscaping, irrigation, and/or other structure that is constructed, installed, erected, placed or made within the Shopping Center or Outlot which is visible from the exterior of any building; (b) any construction, demolition, excavation and/or grading, within or upon any Parcel; (c) any subdividing (or re-subdividing) and/or platting (or re-platting) of, or combination of, a Parcel or Parcels; and (d) any addition or modification to any of the foregoing.

(iv) The term “*Owner*” or “*Owners*” shall mean the owner or owners, from time to time, of fee simple title to all or any portion of the real property benefited or burdened hereby, whether such owner took title by sale, assignment, inheritance, operation of law, trustee’s sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property. As of the Effective Date, Declarant is the Shopping Center Owner and also the Outlot Owner.

(v) The term “*Parcel*” or “*Parcels*” shall mean either or both of the Shopping Center, or the Outlot, as the case may be, and any future subdivisions and/or resubdivisions thereof.

(vi) The term “*Parking Areas*” shall mean the areas located on the Parcels designated for the parking of the motor vehicles of the business visitors to the Parcels from time to time.

(vii) The term “*Permittee*” or “*Permittees*” shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (a) the Owner of such Parcel, and/or (b) such tenant(s) or occupant(s).

Wheresoever this Declaration refers to the obligations, rights or duties of a Parcel, it shall be deemed to refer to the obligations, rights and duties of the respective Owners thereof.

2. EASEMENTS.

2.1 Grant of Easements. The Outlot and the Shopping Center and the Owners and Permittees thereof from time to time shall have the benefit of, and be burdened by, the easements and other terms and conditions set forth in the Master Declaration. Furthermore, subject to any express conditions, limitations or reservations elsewhere contained herein:

2.1.1 Declarant hereby grants and conveys, for the benefit of the Outlot and the Owners and Permittees of the Outlot, a nonexclusive, perpetual and reciprocal easement for reasonable access, ingress and egress over the Driveways located upon the Shopping Center so as to provide for the

passage of motor vehicles and pedestrians between the Outlot and the public rights of way adjacent to the Shopping Center.

2.1.2 Declarant hereby grants and conveys, for the benefit of the Outlot and the Owners and Permittees of the Outlot, a nonexclusive, perpetual easement in, to, over, under, along and across those portions of the Shopping Center (exclusive of any portion located within any building) necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, replacement, relocation, and removal of facilities and systems for the transmission of utility services serving the Outlot, including without limitation, the right to connect into any retention and detention ponds (collectively, the "*Utility Lines*" and individually, a "*Utility Line*"). Notwithstanding the foregoing, prior to utilizing said easements in any manner which results in a modification of the existing Utility Lines, Outlot Owner shall obtain the prior written consent thereto of Shopping Center Owner, not to be unreasonably withheld or delayed. In connection with any request for consent, Outlot Owner shall provide Shopping Center Owner with a written statement describing the need for such use, the proposed location of the Utility Line, the nature of the service to be provided and the anticipated commencement and completion dates for the work related to the request. Outlot Owner shall within 30 days after completion of any work whereby Outlot Owner has tapped into or relocated any Utility Line on or about the Shopping Center, provide Shopping Center Owner with a copy of an as-built survey showing the location of any installed Utility Line. Any and all work to be undertaken by Outlot Owner in connection with Utility Lines shall be done in a good, workmanlike and lien free manner. All damage to any asphalt surfaces or landscaping located upon the Shopping Center in connection with any such work shall be promptly restored by Outlot Owner. Shopping Center Owner shall have sole discretion in scheduling any of such work which shall occur on the Shopping Center. Outlot Owner shall, notwithstanding anything herein contained or in the Master Declaration to the contrary, indemnify, defend and hold harmless Shopping Center Owner and also (if it is not then the Shopping Center Owner) Declarant with respect to all claims, liabilities and expenses (including reasonable attorney's fees) arising from or related to any construction liens filed against the Shopping Center on account of any such work, accidents, injuries, loss or damage to any person of property located on the Shopping Center on account of such work.

2.1.3 Outlot Owner hereby grants and conveys, for the benefit of the Shopping Center and all Owners and Permittees of the Shopping Center, a nonexclusive, perpetual easement in, to, over, under, along and across those portions of the Outlot (exclusive of any portion located within any building) necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, replacement, relocation, and removal of facilities and systems for the transmission of utility services serving the Shopping Center, including without limitation, the right to connect into any retention and detention ponds. Any and all work to be undertaken by Shopping Center Owner in connection with this section shall be done in a good, workmanlike and lien free manner. All damage to any asphalt surfaces or landscaping located upon the Outlot in connection with any such work shall be promptly restored by the Owner performing such work.

2.1.4 Outlot Owner hereby grants and conveys, for the benefit of the Shopping Center, and all Owners and Permittees of the Shopping Center, a nonexclusive, perpetual and reciprocal easement for reasonable access, ingress and egress over the Driveways located upon the Outlot so as to provide for the passage of motor vehicles and pedestrians between the Shopping Center and the public rights of way adjacent to the Outlot.

2.2 Indemnification. Outlot Owner shall indemnify and hold harmless Shopping Center Owner and also (if it is not then the Shopping Center Owner) Declarant from and against any and all claims, liabilities and expenses (including, reasonable attorneys' fees) arising from or relating to accidents, injuries, loss, or damage of or to any person or property located on the Outlot.

2.3 Access Openings. The opening and access points between the Parcels for use as Driveways (the "*Access Openings*") shall in no event be blocked, closed, altered, changed or removed by Outlot Owner and shall at all times remain in place, except as otherwise approved in writing by Shopping Center Owner. There shall be maintained between the Access Openings a smooth and level grade transition to allow the use of the Driveways for pedestrian and vehicular ingress and egress.

3. MAINTENANCE.

3.1 General. Outlot Owner shall maintain the Outlot in a clean and neat condition and shall take such measures as are reasonably necessary to control grass, weeds, blowing dust, dirt, litter or debris.

3.2 Outlot Common Area Maintenance. Notwithstanding anything in the Master Declaration to the contrary, Outlot Owner shall operate and maintain, or cause to be operated and maintained, at its expense, the Common Area on its Outlot in good order, condition and repair ("*Outlot Maintenance*"). Outlot Maintenance shall include, without limitation, maintaining and repairing the surface of the Outlot Driveways and parking areas, removing all papers, debris and other refuse from and periodically sweeping all Outlot Driveways and Parking Areas (including snow and ice removal) to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining appropriate lighting fixtures for the Outlot Driveways and parking areas, installing and maintaining directional signs, lines and striping on the Outlot as needed, maintaining underground irrigation (if any) and landscaping on the Outlot in clean and fresh condition, maintaining signage on the Outlot in good condition and repair, and performing any and all such other duties as are necessary to maintain the Common Area on the Outlot in a clean, safe and orderly condition.

3.3 Shopping Center Maintenance.

3.3.1 Shopping Center Owner shall operate and maintain, or cause to be operated and maintained, at its expense, subject to reimbursement as provided herein, the Driveways located on the Shopping Center in the areas immediately adjacent to the Outlot in good order, condition and repair ("*Shopping Center Driveway Maintenance*"). Shopping Center Driveway Maintenance shall include, without limitation, maintaining and repairing the surface of such Driveways, removing all papers, debris and other refuse from and periodically sweeping such Driveways to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining appropriate lighting fixtures with respect thereto, installing and maintaining directional signs, lines and striping thereon as needed, maintaining signage thereon in good condition and repair, and performing any and all such other duties as are necessary to maintain such Driveways in a clean, safe and orderly condition.

3.3.2 Notwithstanding anything in the Master Declaration to the contrary, Outlot Owner shall not have any liability for, and Declarant (in its capacity as Developer under the Master Declaration) hereby waives the right to collect Outlot Owner's pro rata share of Common Area Expenses (as defined in the Master Declaration) and the Service Charge (as defined in the Master Declaration) as set forth in Section 5.9 of the Master Declaration.

3.3.3 Notwithstanding the foregoing, Outlot Owner shall pay an annual maintenance fee to Shopping Center Owner toward the cost of the Shopping Center Driveway Maintenance and other costs incurred by Shopping Center Owner in connection with the Common Areas located on the Shopping Center, as follows (the "*Maintenance Fee*"): Initially, the Maintenance Fee shall be \$2,549.75 per year (calculated at \$0.062 times the actual square footage of the Outlot, which is deemed to 41,125 square feet). The first yearly installment of the Maintenance Fee shall be paid by the grantee upon Declarant's conveyance of the Outlot to a third party Outlot Owner, and shall be prorated based on the number of

days then-remaining in the calendar year in which the conveyance occurs. Thereafter, the Maintenance Fee shall be due and payable by Outlot Owner in advance on or before January 1st of each calendar year following the date hereof. The Maintenance Fee shall increase by ten percent (10%) every five (5) years after January 1st of the calendar year in which the Effective Date falls (such that the first such increase shall be effective on January 1, 2021). If the Outlot Owner fails to pay the Maintenance Fee as and when required hereunder, then in addition to any other rights and remedies provided to Shopping Center Owner hereunder or under the law, the Outlot shall be subject to an Assessment Lien as described in Section 9.2.1.

3.4 Building Appurtenances. Outlot Owner covenants to keep and maintain, at its sole cost and expense and in good order, condition and repair, the Improvements located from time to time on the Outlot (collectively the “*Outlot Improvements*”). In the event of any damage to or destruction of any Outlot Improvements, Outlot Owner shall, at its sole cost and expense, and with due diligence, repair, restore and rebuild such Outlot Improvements to substantially the condition existing prior to such damage or destruction (or with such changes as shall not conflict with this Declaration), or (ii) demolish and remove all portions of such damaged or destroyed Outlot Improvements then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level, graded condition and seeded or sodded. Nothing contained in this Section shall be deemed to allow Outlot Owner to avoid a more stringent obligation for repair, restoration and rebuilding contained in the Master Declaration or in a lease or other written agreement between Outlot Owner and its Permittee, if any.

4. CONSTRUCTION OF IMPROVEMENTS.

4.1 Governmental Regulations. All Outlot Improvements, now or in the future constructed on the Outlot shall be constructed, operated and maintained so that the same is in compliance with all applicable governmental requirements, including sign ordinances.

4.2 Parking. The Outlot shall comply with applicable governmental parking ratio requirements without variance and without taking into account the parking on the Shopping Center, such that the Outlot (independent of the Shopping Center) shall be self-sufficient for vehicular parking. Neither Parcel shall have the right to utilize any parking located on the other Parcel.

4.3 Modification of Shopping Center. Shopping Center Owner reserves the right to alter, modify, reconfigure, relocate and/or remove any Improvement or Common Area located from time to time on the Shopping Center, provided however that the Access Openings between the Parcels shall not be permanently closed or materially impaired without Outlot Owners’ prior written approval, same not to be unreasonably withheld or delayed (provided that, no such approval shall be required for a temporary closure of any of the same in connection with repaving and/or repair of any of the same, so long as reasonable alternate access is provided).

4.4 Staging. Outlot Owner and its contractors, agents, or licensees, shall not be permitted to use any portion of the Shopping Center, or other property owned, controlled, or leased by Declarant, for any construction staging.

4.5 Commencement of Construction. Outlot Owner shall not commence construction on its Parcel until Outlot Owner has received all requisite governmental permits and approvals and Shopping Center Owner’s prior written consent. Any modifications to the approved plans for any Improvements to be constructed on the Outlot shall, in each instance, require Shopping Center Owner’s prior written approval. Once Outlot Owner commences any construction activity on its Parcel, including but not

limited to installation of footers or grading, Outlot Owner shall work in good faith and with diligence to complete the construction contemplated herein.

4.6 Access Roads. Outlot Owner shall never modify any access road or other drive lane serving the Shopping Center, without the prior written approval of the Shopping Center Owner.

5. RESTRICTIONS.

5.1 General. Subject to the provisions of Sections 5.2, 5.3, 5.4 and 5.5 below, the Outlot shall be used, if at all, only for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of the Outlot which is illegal.

5.2 Permitted Use. The Outlot and Improvements constructed thereon shall be used solely for operation of a single story Denny's restaurant not to exceed 6,000 square feet in size (the "**Permitted Use**"). Any proposed change in the use of the Outlot from the Permitted Use shall first be approved by the Shopping Center Owner and also by the Declarant (so long as Declarant, its successor or any of their respective affiliates is an Owner or tenant of, or holds any mortgage on, any other property in or about Saratoga Springs Towne Centre), which approval shall not be unreasonably withheld. Notwithstanding the foregoing, it shall not be deemed unreasonable for such parties to withhold approval of a change in use if, *inter alia*, such proposed use would violate any restrictive covenants then in effect with respect to the Outlot or Shopping Center, or which would duplicate any use or type of business that is then operating within the Shopping Center.

5.3 Restrictions.

5.3.1 It is expressly agreed that no use of the Outlot shall be permitted if such use would violate any exclusive use rights or restrictions set forth on Exhibit C attached hereto. Further, it is expressly agreed that no more than two (2) tenants shall occupy the Outlot Improvements at any one time.

5.3.2 It is expressly agreed that so long as the Outlot is used for the Permitted Use, no portion of the Shopping Center shall be used or operated as a full service family style restaurant that serves breakfast food after 11:00 a.m. local time, specifically including but not limited to, IHOP, Mimi's Café, Village Inn, Good Egg, and Black Bear Diner; provided that the foregoing restriction shall not apply to an Owner or Permittee that operates a single business greater than 20,000 square feet in building size, or less than 2,000 square feet in building size.

5.4 Building Restrictions. All Improvements on the Outlot shall comply with the restrictions of record (including but not limited to the Master Declaration). All exterior appearances and architectural features, signage, utility plans, landscaping plans and elevations of all buildings and other Improvements located upon the Outlot and the site plan of the same must be approved in advance, in writing, by Shopping Center Owner and also by the Declarant (so long as Declarant, its successor or any of their respective affiliates is an Owner or tenant of, or holds any mortgage on, any other property in or about Saratoga Springs Towne Centre), provided that such approval shall not be unreasonably withheld. Notwithstanding the foregoing, it shall not be deemed unreasonable for such parties to withhold approval of proposed Improvements or modification thereto if, *inter alia*, such proposed use would violate any restrictive covenants then in effect with respect to the Outlot or Shopping Center.

5.5 Drive-Throughs. Any facility on the Outlot for vehicular drive-up or drive-through in which the stopping or standing of motor vehicles in line at a location for drop-off and/or pickup is

intended (as, for example, at a restaurant, car wash or bank), and any gasoline/auto diesel vehicle fueling facility on an Outlot, shall be designed, constructed, used and operated in a manner such that motor vehicles in line at such facility shall not stop or stand, or otherwise interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across, the Shopping Center and/or the Driveways located thereon.

6. INSURANCE.

Outlot Owner shall procure and at all times maintain commercial general liability and property damage insurance against claims for personal injury (including contractual liability arising under the indemnity contained in Section 2.2 above), death, or property damage occurring upon the Outlot, with coverage of not less than an aggregate of \$2,000,000.00 per occurrence, including umbrella coverage, if any, and naming the Shopping Center Owner and (if not then the Shopping Center Owner) also Declarant as additional insureds. All such insurance policies shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-/VII, which are authorized to do business in the State of Utah. If any lease of all or a portion of the Outlot permits the tenant thereunder to self-insure, then such insurance shall satisfy the provisions of this Section.

7. TAXES AND ASSESSMENTS.

Each Owner shall pay all taxes, assessments or charges of any type levied or made by any governmental body or agency with respect to its Parcel before the same commence to accrue interest or penalties.

8. NO RIGHTS IN PUBLIC; NO IMPLIED EASEMENTS.

Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Parcels. No easements, except as expressly set forth in Section 2 above, shall be implied by this Declaration. In that regard, and without limiting the foregoing, no easements for parking are granted or implied by virtue of this Declaration, but nothing herein shall impair the operative effect of easements heretofore recorded and of record with respect to a Parcel. Upon written request of either party, both parties will cooperate in any action necessary under governing law to ensure that no public thoroughfare is created.

9. REMEDIES AND ENFORCEMENT.

9.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

9.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by the non-defaulting Owner to the defaulting Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, then, for such period of time as shall be reasonable under the circumstances), the non-defaulting Owner shall have the right, but not the obligation, to perform such obligation contained in this Declaration on behalf of the defaulting Owner and be reimbursed by the defaulting Owner upon demand for the reasonable costs thereof together with interest at a per annum rate ("**Default Interest**") equal to the prime rate set forth from time to time in the

Money Rates Section of the Wall Street Journal (provided that, in the event the Wall Street Journal no longer publishes such rates or in the event that the Wall Street Journal is no longer published, the prime rate published by a successor national business daily publication reasonably selected by Declarant), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law) from the date of expenditure until paid. Notwithstanding the foregoing, in the event of (i) an emergency, (ii) blockage or material impairment of the easement rights, and/or (iii) the unauthorized parking of vehicles on the Shopping Center or the Outlot, the non-defaulting Owner may immediately cure the same and be reimbursed by the defaulting Owner upon demand for the reasonable cost thereof together with Default Interest thereon from the date of expenditure until paid.

9.2.1 Lien Rights. Any claim for reimbursement, including Default Interest, and all costs and expenses, including reasonable attorneys' fees awarded to Shopping Center Owner in enforcing any payment in any suit or proceeding under this Declaration, shall be assessed against the Outlot Owner in favor of the Shopping Center Owner and shall constitute a lien (the "**Assessment Lien**") against the Outlot Parcel until paid, effective upon the recording of a notice of lien in the land title records for Utah County, Utah; provided, however, that any such Assessment Lien shall be subject and subordinate to (a) any first mortgage granted on such Parcel to a bona fide non-affiliated third party lender, (b) liens for taxes and other public charges which by applicable law are expressly made superior, (c) all liens recorded in the land title records of Utah County, Utah prior to the date of recordation of said notice of lien, and (d) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All other liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by Outlot Owner of any default for which a notice of lien was recorded, the Shopping Center Owner shall record an appropriate release of such notice of lien and Assessment Lien.

9.3 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

9.4 No Termination For Breach. No breach hereunder shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

9.5 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of Sections 2 and/or 5 of this Declaration, each Owner agrees that such violation or threat thereof shall cause the non-defaulting Owner and/or its Permittees to suffer irreparable harm and such non-defaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of Sections 2 and/or 5 of this Declaration, the non-defaulting Owner, in addition to all remedies available at law or otherwise under this Declaration, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of Sections 2 and/or 5 of this Declaration.

9.6 Release upon Notice of Transfer. Each Owner shall be liable for the performance of all covenants, obligations and undertakings applicable to the Parcel or portion thereof owned by it that accrue during the period of such ownership, and such liability shall continue with respect to any portion of a Parcel transferred by such Owner until the date of such transfer. Upon the date of any such transfer, the transferring Owner shall be released from all obligations pertaining to the portion of the Parcel transferred arising subsequent to such transfer.

10. TERM.

The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the land title records for Utah County, Utah and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners of the Outlot and the Shopping Center in accordance with Section 13.2 below, subject further however to Declarant's rights set forth in Section 13.3 below.

11. NOTICES.

Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by nationally recognized overnight courier service, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notices hereunder by like notice to the other party. The current notice addresses are as follows:

If to Declarant: Stations West – Saratoga, LLC
c/o Phillips Edison & Company
11501 Northlake Drive
Cincinnati, Ohio 45249
Attn: Legal Department

If to Outlot Owner: TFC Saratoga DN1 LLC
6770 S. 900 E., Suite 102
Salt Lake City, Utah 84047
Attn: Elliot B. Smith

With a copy to: Ray Quinney & Nebeker P.C.
36 South State Street, Suite 1400
Salt Lake City, Utah 84111
Attn: Blake Bauman

12. ESTOPPEL

Any Owner shall, within fourteen (14) days after receipt of written request (which shall not be more frequent than two (2) times during any calendar year) from any other Owner, issue to such other Owner or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date:

12.1 Whether it knows of any default under this Declaration by the requesting party, and if there are known defaults, specifying the nature thereof in reasonable detail;

12.2 Whether this Declaration has been assigned, modified or amended in any way by it and if so, stating the nature thereof in reasonable detail; and

12.3 Whether this Declaration is in full force and effect.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a the requesting Owner or its prospective bona fide encumbrancer or purchaser for value to the extent that

such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such requesting Owner or bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information.

13. MISCELLANEOUS.

13.1 Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party (i.e., the one, if any, which achieves substantially the remedy requested in its initial complaint or counterclaim) after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

13.2 Amendment. The provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all of the affected record Owners of the Parcels, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the land title records of Utah County, Utah.

13.3 Assignment. Notwithstanding anything herein to the contrary, Declarant in its sole discretion while it is the Owner of any portion of the Shopping Center shall have the right hereafter to assign some or all of the rights and obligations of Shopping Center Owner hereunder to one or more particular lots within the Shopping Center and to release from such rights and obligations other lots within the Shopping Center, by written instrument(s) recorded in the land title records of Utah County, Utah.

13.4 Consents. Wherever in this Declaration the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing.

13.5 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

13.6 No Agency. Nothing in this Declaration shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

13.7 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs and personal representatives.

13.8 Grantee's Acceptance. The rights, restrictions, agreements, representations, warranties, and easements set forth in this Declaration are intended to be and shall be construed as covenants running with the land, and shall be binding upon and inure to the benefit of any part and all of such land, and all

present and future parties having any right, title or interest in all or part of said land, and their respective successors and assigns. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party hereto or from a subsequent Owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee automatically for itself and its successors, assigns, heirs, and personal representatives, covenants, consents, and agrees to and with the other party, to keep, observe, comply with and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee. Upon such conveyance (i) the grantor shall be relieved of all obligations and duties arising, pursuant to this Declaration, from and after the date of such conveyance, and (ii) the grantee shall be obligated to perform all obligations and duties arising pursuant to this Declaration from and after the Effective Date of this Declaration (and not prior thereto).

13.9 Severability. Each provision of this Declaration and the application thereof to the Parcels are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of both Parcels by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

13.10 Time of Essence. Time is of the essence of this Declaration.

13.11 No Merger. Declarant acknowledges that the Shopping Center and Outlot are currently both owned by Declarant. Notwithstanding such common ownership, it is Declarant's intent that this Declaration not be subject to the doctrine of merger due to the Shopping Center and Outlot being owned by the same person, now or in the future, and that upon the conveyance by Declarant of all or any portion of the Shopping Center or Outlot, all such property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and easements contained in this Declaration.

13.12 Governing Law. The procedural and substantive laws of the State of Utah shall govern the interpretation, validity, performance and enforcement of this Declaration.

13.13 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

13.14 Section Headings. The section headings hereof are generally descriptive only, and do not define or limit the operative effect of any such section.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Declarant has executed this Declaration.

STATIONS WEST – SARATOGA LLC
a Delaware limited liability company

By: Phillips Edison Limited Partnership
its managing member

By: Phillips Edison & Company, Inc.
its general partner

By: *Robert F. Myers*
Name: Robert F. Myers
Title: Vice President

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

BE IT REMEMBERED THAT ON THIS 2nd day of May, 2016, before me, a Notary Public in and for the said county and state, personally appeared Robert F. Myers, the Vice President of Phillips Edison & Company, Inc., who acknowledged that he did sign the foregoing instrument and that the same is his free and voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the date and year above-mentioned.

Emily Kujawa
NOTARY PUBLIC



EMILY KUJAWA
Notary Public, State of Ohio
My Commission Expires 03-06-2021

EXHIBIT A

LEGAL DESCRIPTION OF THE SHOPPING CENTER

LOT 8A, SARATOGA TOWN CENTER LOT 8 MINOR SUBDIVISION, A PART OF LOT 8, SARATOGA TOWN CENTER, A SUBDIVISION WITHIN THE SOUTH HALF OF SECTION 11, AND THE NORTH HALF OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, SARATOGA SPRINGS CITY, UTAH COUNTY, UTAH, AS FOUND IN A PLAT RECORDED AS ENTRY NUMBER 2008-129328, BOOK 66, PAGE 268, MAP No. 12920, OFFICIAL RECORDS.

SERIAL No: 66:268:0004

AND

ALL OF LOT 1B STATIONS WEST MINOR SUBDIVISION, AS FOUND IN A PLAT RECORDED AS ENTRY NO. 36842:2012, MAP NO. 13654, OFFICIAL RECORDS; TOGETHER WITH ALL OF LOTS 9 AND 10 OF SARATOGA TOWN CENTER, AS FOUND IN A PLAT RECORDED AS ENTRY NO. 131021:2006, MAP NO. 11899, OFFICIAL RECORDS; SAID LAND BEING PART OF THE NORTH HALF OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, IN THE STATE OF UTAH, COUNTY OF UTAH, CITY OF SARATOGA SPRINGS.

LESS AND EXCEPTING THE LAND CONVEYED TO THE UTAH DEPARTMENT OF TRANSPORTATION PURSUANT TO THE WARRANTY DEED RECORDED AS ENTRY NO. 62974:2010 ON JULY 29, 2012, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF COMMERCE DRIVE AS SHOWN ON THE PLAT OF SAID SARATOGA TOWN CENTER SUBDIVISION FILE NUMBER 11899, ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER, UTAH; WHICH IS 84.00 FT. PERPENDICULARLY DISTANT EASTERLY FROM THE CENTERLINE OF SAID PROJECT NO. 0066, OPPOSITE ENGINEER STATION 617+64.86, WHICH POINT IS 6.01 FT S89°38'52"W ALONG THE NORTH LINE OF SAID NW1/4 AND 271.17 FT. S00°21'08"E FROM THE NORTH QUARTER CORNER OF SAID SECTION 14; AND RUNNING THENCE S13°44'55"E 6.37 FT.; THENCE S37°56'00"W 29.69 FT. TO A POINT 61.73 FT. PERPENDICULARLY DISTANT EASTERLY FROM THE CENTERLINE OF SAID PROJECT NO. 0068, OPPOSITE ENGINEER STATION 617+39.59 WHICH IS A POINT ON A 4,459.29 FT. RADIUS CURVE TO THE RIGHT (NOTE: RADIUS BEARS S77°50'13"W) THENCE SOUTHERLY ALONG SAID CURVE 241.36 FT.; THENCE S04°07'27"E 27.01 FT. TO A POINT ON A 4,314.00 FT. RADIUS CURVE TO THE RIGHT (NOTE: RADIUS BEARS S82°18'25"W); THENCE SOUTHERLY ALONG SAID CURVE 509.32 FT. TO THE SOUTH LINE OF LOT 1, OS SAID SARATOGA TOWN CENTER SUBDIVISION WHICH IS 64.00 FT. PERPENDICULARLY DISTANT EASTERLY FROM THE CENTERLINE OF SAID PROJECT NO. 0068, OPPOSITE ENGINEER STATION 609+73.51; THENCE N89°27'44"W ALONG SAID SOUTH LINE 13.15 FT. TO THE SOUTHWEST CORNER OF SAID LOT 1, SARATOGA TOWN CENTER SUBDIVISION WHICH IS A POINT ON A 5,789.88 FT. RADIUS CURVE TO THE LEFT (NOTE: RADIUS BEARS S88°03'54"W); THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 1 AND SAID CURVE 798.62 FT. TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE N74°38'31"E 28.08 FT. TO THE POINT OF BEGINNING.

ALSO:

BEGINNING AT A POINT ON THE EAST LINE OF LOT 2, AS SHOWN ON THE PLAT OF SAID SARATOGA TOWN CENTER SUBDIVISION FILE NUMBER 11899 ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER, UTAH; WHICH IS 396.68 FT. PERPENDICULARLY DISTANT EASTERLY FROM THE CENTERLINE OF SAID PROJECT NO. 0068, OPPOSITE ENGINEER STATION 607+33.63 WHICH POINT IS 392.28 FT. N89°51'45"E ALONG THE NORTH LINE OF SAID NE1/4 AND 1,317.92 FT. S00°08'15"E FROM THE NORTH QUARTER CORNER OF SAID SECTION 14; AND RUNNING THENCE S85°39'30"E 24.46 FT. TO A POINT 421.08 FT. PERPENDICULARLY DISTANT EASTERLY FROM THE CENTERLINE OF SAID PROJECT NO. 0068, OPPOSITE STATION 607+31.99; THENCE N89°27'46"W 24.40 FT.; THENCE N00°32'16"E 1.62 FT. TO THE POINT OF BEGINNING.

ALSO:

A PART OF LOT 3, SARATOGA TOWN CENTER NO. 2 SUBDIVISION LOCATED IN THE NORTH HALF OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 1 WEST, OF THE SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 3 SAID POINT BEING LOCATED SOUTH 73°15'07" WEST 237.99 FEET AND SOUTH 54°31'43" WEST 129.50 FEET FROM THE CENTERLINE PT MONUMENT IN COMMERCE DRIVE; RUNNING THENCE THE FOLLOWING TWO (2) COURSES ALONG THE BOUNDARY OF SAID LOT 3: (1) SOUTH 15°15'24" EAST 107.89 FEET; (2) SOUTH 08°38'55" EAST 102.84 FEET; THENCE SOUTH 81°21'05" WEST 174.24 FEET TO THE WEST BOUNDARY LINE OF SAID LOT 3; THENCE ALONG THE BOUNDARY OF SAID LOT 3 THE FOLLOWING FOUR (4) COURSES: (1) ALONG THE ARC OF A 4459.29 FOOT RADIUS CURVE TO THE LEFT 166.08 FEET, CHORD BEARS NORTH 11°05'42" WEST 166.07 FEET; (2) NORTH 37°56'00" EAST 29.69 FEET; (3) NORTH 13°44'55" WEST 6.37 FEET; (4) NORTH 74°39'51" EAST 148.93 FEET TO THE POINT OF BEGINNING. CONTAINING 34,740 SQ.FT.

ALSO:

LOT 5, SARATOGA TOWN CENTER NO. 2 AMENDING LOT 1B OF STATIONS WEST MINOR SUBDIVISION AND LOT 9 AND LOT 10 OF SARATOGA TOWN CENTER, A PART OF THE NORTH HALF OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND AN AMENDMENT TO LOT 1 OF SARATOGA TOWN CENTER SUBDIVISION SARATOGA SPRINGS, UTAH ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AT THE OFFICE OF THE RECORD, UTAH COUNTY, UTAH

ALSO:

LOT 4, SARATOGA TOWN CENTER NO. 2 SUBDIVISION, AND A PORTION OF LOT 3, SARATOGA TOWN CENTER NO. 2 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE UTAH COUNTY RECORDER AND BEING MORE PARTICULARLY

DESCRIBED BY THE FOLLOWING 'AS SURVEYED' DESCRIPTION:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 4 SARATOGA TOWN CENTER NO. 2 SAID POINT BEING LOCATED SOUTH 73°15'07" WEST 237.99 FEET AND SOUTH 03°16'22" WEST 522.63 FEET FROM A CENTERLINE PT MONUMENT IN COMMERCE DRIVE; RUNNING THENCE SOUTH 85°57'59" WEST 175.01 FEET; THENCE 126.71 FEET ALONG THE ARC OF A 4,314.00 FOOT RADIUS CURVE TO THE LEFT, (CHORD BEARS NORTH 06°48'59" WEST 126.71 FEET); THENCE NORTH 04°06'07" WEST 27.01 FEET; THENCE 75.28 FEET ALONG THE ARC OF A 4,459.29 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 09°32'55" WEST 75.28 FEET); THENCE NORTH 81°21'05" EAST 174.24 FEET; THENCE SOUTH 08°38'55" EAST 39.30 FEET; THENCE 203.70 FEET ALONG THE ARC OF A 4,314.00 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 07°17'45" EAST 203.68 FEET) TO THE POINT OF BEGINNING.

CONTAINING 41,125 SQUARE FEET.

EXHIBIT A-1

DRAWING OF THE SHOPPING CENTER

EXHIBIT B

LEGAL DESCRIPTION OF THE OUTLOT

LOT 4, SARATOGA TOWN CENTER NO. 2 SUBDIVISION, AND A PORTION OF LOT 3, SARATOGA TOWN CENTER NO. 2 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE UTAH COUNTY RECORDER AND BEING MORE PARTICULARLY

DESCRIBED BY THE FOLLOWING 'AS SURVEYED' DESCRIPTION:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 4 SARATOGA TOWN CENTER NO. 2 SAID POINT BEING LOCATED SOUTH 73°15'07" WEST 237.99 FEET AND SOUTH 03°16'22" WEST 522.63 FEET FROM A CENTERLINE PT MONUMENT IN COMMERCE DRIVE; RUNNING THENCE SOUTH 85°57'59" WEST 175.01 FEET; THENCE 126.71 FEET ALONG THE ARC OF A 4,314.00 FOOT RADIUS CURVE TO THE LEFT, (CHORD BEARS NORTH 06°48'59" WEST 126.71 FEET); THENCE NORTH 04°06'07" WEST 27.01 FEET; THENCE 75.28 FEET ALONG THE ARC OF A 4,459.29 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 09°32'55" WEST 75.28 FEET); THENCE NORTH 81°21'05" EAST 174.24 FEET; THENCE SOUTH 08°38'55" EAST 39.30 FEET; THENCE 203.70 FEET ALONG THE ARC OF A 4,314.00 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 07°17'45" EAST 203.68 FEET) TO THE POINT OF BEGINNING.

CONTAINING 41,125 SQUARE FEET.

EXHIBIT C**OUTLOT PROHIBITED USES**

The Outlot 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, except in the ordinary course of the business of a typical AutoZone operation, provided such is in compliance with all Environmental Laws.
- Restaurant or food services purposes through October 31, 2026. The term "restaurant or food services" 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., Arctic

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.

- A Mexican quick-serve or fast-casual restaurant, including but not limited to, Taco Bell, Green Burrito, Taco Maker, Rubio's, Baja Fresh, Taco Time, El Pollo Loco, Taco Del Mar, Maui Tacos, Café Rio, etc.
- No bakery users including but not limited to Corner Bakery, Paradise Bakery, Zupas and Panera Bread. This restriction 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.
- A convenience store and/or gasoline/auto diesel vehicle fueling facility retailing gas, diesel, oil, propane, biodiesel, ethanol, hydrogen or any other alternative fuel energy source.
- Pornographic bookstore, cinema, or video store.
- Massage parlor, other than a first-class medical massage location.
- 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.
- 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.
- Any use that would adversely affect any other occupant of the Saratoga Springs Towne Centre.