

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
Bryan B. Todd, Esq.
358 So. Rio Grande, Suite 200
Salt Lake City, Utah 84101
(801) 741-4540

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Book - 10195 Pg - 5148-5153
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 6 P.

**SUPPLEMENTAL DECLARATION
(HIGHBURY LOT 5b)**

NCS - 636501
14-25-101-002

THIS SUPPLEMENTAL DECLARATION (this “**Supplemental Declaration**”) is made by and between **AMSOURCE HIGHBURY, LLC**, a Utah limited liability company (“**Declarant**”) and **JONES WVC PROPERTY, LLC**, a Utah limited liability company (“**Buyer**”).

WHEREAS, Declarant is the Declarant under that certain Grant of Easements and Declaration of Covenants, Conditions & Restrictions dated “October __, 2006” and recorded in the Salt Lake County, Utah Official Records as Entry No. 9876676 in Book 9365 beginning at Page 6981, as the same may have been previously amended (the “**Declaration**”), regarding the real property legally described as follows (the “**Property**”):

Lots 5a, 5b, 5c, 5d, 5e and 5f, Highbury Shoppes Subdivision amending Lot 5 of Highbury Commons at Lake Park to create Lots 5a, 5b, 5c, 5d, 5e and 5f, according to the Official Plat thereof recorded October 16, 2006 as Entry No. 9876677 in Book 9365 of Plats at Page 7006 in the Office of the Salt Lake County Recorder;

WHEREAS, Declarant is the owner of the above-referenced Lot 5a (“**Declarant’s Lot**”); Cyprus Federal Credit Union is the owner of the above-referenced Lot 5c (“**CFCU’s Lot**”); and Buyer has recently acquired, or is in the process of acquiring, the above-referenced Lot 5b (“**Buyer’s Lot**”); and

WHEREAS, Declarant and Buyer (collectively, the “**Parties**”) desire to supplement the Declaration and modify its application to Buyer’s Lot as set forth below;

NOW, THEREFORE, the Parties agree as follows:

1. Capitalized terms used but not defined herein shall be defined as set forth in the Declaration.
2. The Supplemental Site Plan attached hereto as **Exhibit A** (the “**Supplemental Site Plan**”), as it applies to Buyer’s Lot, is hereby approved by Declarant; and Declarant hereby consents to the development of Buyer’s Lot as shown thereon, subject to all applicable governmental approvals and requirements.
3. Despite any parking/cross-parking easements created by the Declaration: (a) the owners of Declarant’s Lot and CFCU’s Lot shall not rely on, count or use any of the parking spaces on Buyer’s Lot in determining available parking for the development of Declarant’s Lot or CFCU’s Lot or for satisfying the parking requirements for Declarant’s Lot or CFCU’s Lot; and (b) the owner of Buyer’s Lot shall rely on, count and use *only* the parking spaces actually located on Buyer’s Lot from time to time in determining available parking for the development of Buyer’s Lot and for satisfying the parking requirements for the same.

4. Buyer shall operate, maintain and repair Buyer's Lot, including all buildings and other improvements thereon, at all times in compliance with all applicable governmental laws, rules, regulations, orders and ordinances and as required under, and to the standard set forth in, the Declaration, and in a safe, sound condition, clean and free of rubbish, debris, and other hazards to persons using the same, and shall repair and replace the same, so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. Such operation, maintenance and repair shall be performed and carried out promptly and in a first class and workmanlike manner, quality and condition comparable to that of the remainder of the Shopping Center and of first class shopping centers of comparable size and nature to that of the Shopping Center, located in the same geographic area as the Shopping Center. As long as Buyer does so, Buyer shall not be obligated to contribute to the cost of maintaining the Shopping Center, except that Buyer shall contribute:

(a) its pro-rata share of assessments charged under the Master Declaration of Easements Covenants and Restrictions for Highbury Commons at Lake Park within ten (10) days after receipt of request or demand for the same; and

(b) the sum of One hundred Fifty Dollars (\$150.00) per month (increased by 3% of the amount thereof then in effect on each annual anniversary of the date hereof) towards the costs of maintaining the access ways of the Shopping Center and other Common Facilities which benefit Buyer's Lot, which shall be paid on the first day of each month in advance without notice, demand, deduction or off-set.

If Buyer fails to maintain Buyer's Lot as provided herein at any time, Declarant shall provide written notice of such failure to Buyer and Buyer shall have thirty (30) days from the date of such notice to cure such failure, provided however, if the failure is of a nature that requires more than thirty (30) days to cure, Buyer shall commence to cure such failure within thirty (30) days of the date of Declarant's notice and thereafter diligently pursue the same to completion. In the event Buyer does not cure any failure to maintain in accordance with the preceding sentence, Declarant may, at its option, declare this Section 4 void, in which case all provisions of the Declaration regarding Common Facilities and the maintenance of the Shopping Center (including, without limitation, Buyer's Lot) shall be immediately and automatically reinstated with full application thereof to Buyer's Lot, including the payment of all charges and assessments (including, without limitation, Operating Costs) as otherwise provided in the Declaration. In the event Buyer fails to pay any amount due hereunder when due, time being of the essence, Buyer shall pay interest thereon from the due date of each past due amount to the date of payment thereof, both before and after judgment, at a rate equal to the greater of fifteen percent (15%) per annum or six percent (6%) over the nationally prevailing "prime rate" or equivalent in effect from time to time (provided, however, that in any case the maximum amount or rate of interest to be charged shall not exceed the maximum non-usurious rate in accordance with applicable law), in addition to which Buyer shall promptly pay a late fee equal to five percent (5%) of such past due amount to compensate Declarant for extra administrative, collection, processing, accounting and other costs incurred through Buyer's non-payment. In the event Declarant declares this Section 4 void as provided above, Buyer shall nevertheless continue to be liable for all amounts owed for the time up through the date Declarant does so (including all late fees and interest charges). Notwithstanding the foregoing, in the event any failure by Buyer to maintain Buyer's Lot creates an emergency situation, Declarant shall have the right to cure the same without advance notice (but shall provide notice thereof within a reasonable time thereafter), and Buyer shall reimburse Declarant for its reasonable costs of remedying such emergency situation in the same manner and subject to the same provisions as apply under the Declaration to Common Facilities Charges; but Declarant shall not have the right in connection therewith to declare this Section 4 void without giving Buyer notice and opportunity to cure as provided above.

5. In no event shall any occupant of Buyer's Lot engage in any of the uses/operations described on **Exhibit B** attached hereto, and Buyer shall take all action necessary to assure that all occupants of Buyer's Lot comply at all times with the provisions of this Section 5.

6. Without otherwise modifying Section 2 of the Declaration, the provisions of which shall otherwise remain fully applicable to Building location, design, plan approval, parking requirements and in all other respects, it is agreed that the Building to be constructed on Buyer's Lot shall have at least seventy feet (70') of frontage (i.e., a wall at least seventy feet [70'] long), or such lesser amount as required by governmental requirements, along 5600 West Street, and the Building Area shown on the Site Plan and Supplemental Site Plan will be modified as necessary to allow the same; provided, however, that any change in the final Building Area for Buyer's Lot shall in all respects be subject to the written approval of Declarant, in its reasonable discretion. It is further agreed that, subject to the agreement of Declarant and Buyer on a specific location and configuration for the containment area for the same and the screening thereof, which shall be adequate in all respects to fully screen the same from all other parts of the Shopping Center as well as adjacent streets, Buyer shall be permitted to maintain a trash dumpster on Buyer's Lot.

7. The provisions hereof shall be supplementary to, and except as specifically set forth herein shall not modify, the Declaration, and shall run with and bind and benefit the Property and Buyer's Lot, and shall bind and benefit Declarant and Buyer, and their respective successors in interest. Buyer hereby confirms that Buyer's Lot is and shall remain subject to all provisions of the Declaration, as specifically amended hereby. In the event Buyer has signed this Supplemental Declaration prior to Buyer's acquisition of Buyer's Lot, this Supplemental Declaration shall nevertheless be fully effective as if it had been signed by Buyer after its acquisition thereof. All references herein to Buyer and Declarant shall include their respective successors-in-interest as the owner of Buyer's Lot (as to Buyer) and the Declarant under the Declaration (as to Declarant).

WITNESS OUR SIGNATURES effective as of the last date of notarization appearing below:

AMSOURCE Highbury, LLC,
a Utah limited liability company, by
its Manager, Amsource Development
Inc., a Utah corporation

By: David R. Gaskill
David R. Gaskill, its President

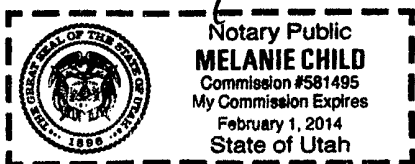
JONES WVC PROPERTY, LLC, a Utah limited
liability company

By: Tod Jones
Tod Jones, its Manager

STATE OF UTAH;
COUNTY OF SALT LAKE:

The foregoing instrument was acknowledged before me this 26 day of November, 2013, by David R. Gaskill, in the capacity indicated.

Notary Public: Melanie Child



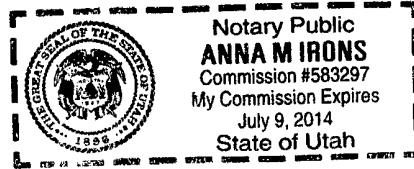
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Handwritten initials and signatures: "dj", "TJ", and a stylized signature.

**STATE OF UTAH;
COUNTY OF SALT LAKE:**

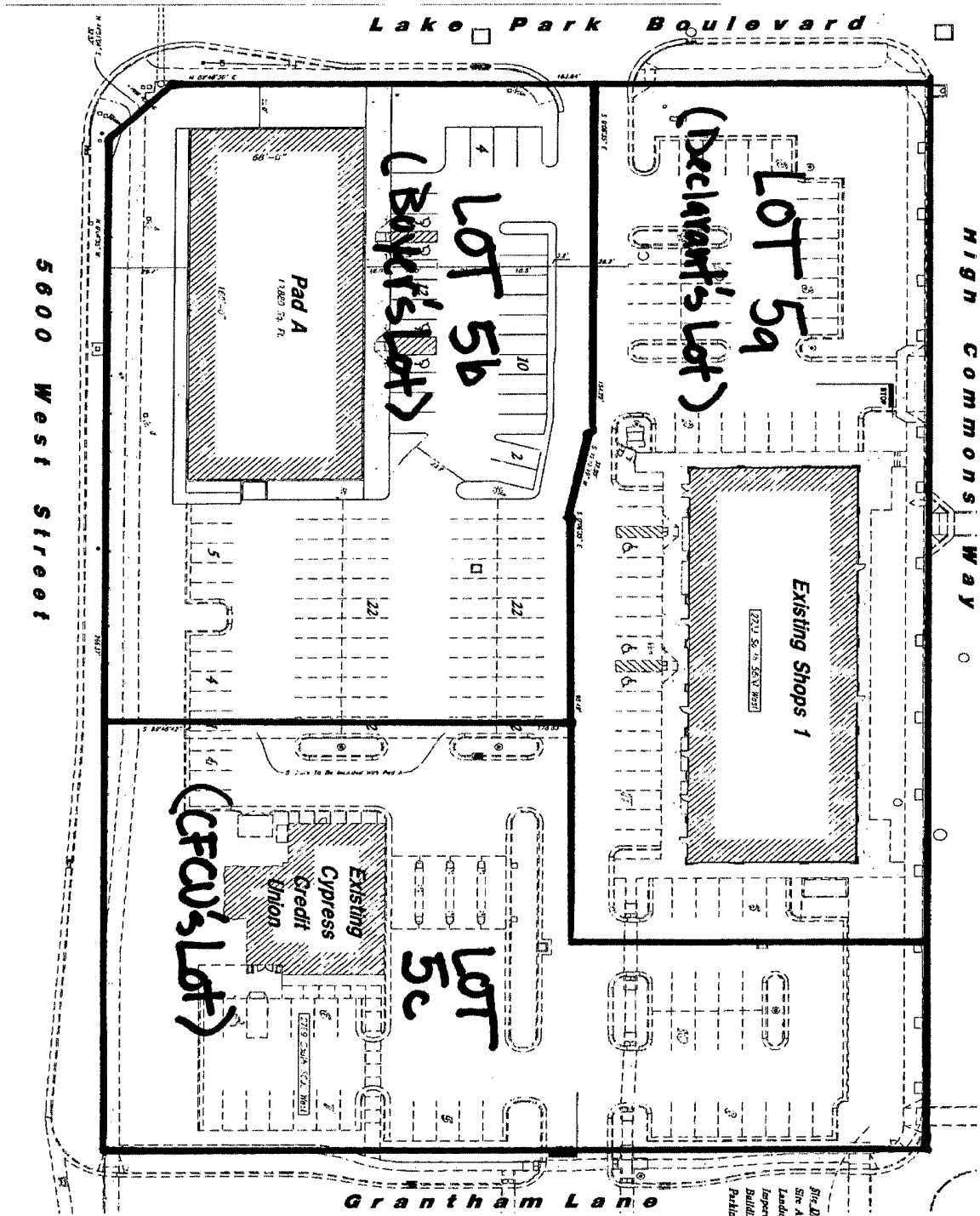
The foregoing instrument was acknowledged before me this 26th day of November, 2013, by Tod Jones, in the capacity indicated.

Notary Public: Anna Irons



[Handwritten initials and signatures]

EXHIBIT A
SUPPLEMENTAL SITE PLAN



[Handwritten signatures and initials]

**EXHIBIT B
EXCLUSIVE USES**

1. The operation of an Asian, Chinese, or Japanese buffet style restaurant.
2. Martial arts instruction.
3. A full service beauty salon, including hair, skin care, and nail services.

og *TJ* *[Signature]*