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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
08/06/2014 10:51 AM  
FEE \$91.00 Pgs: 41  
DEPT REC'D FOR FOUNDERS TITLE CO  
- LAYTON

This instrument was prepared by  
and after recording return to:

Brett D. Smith  
Assistant Counsel  
The Inland Real Estate Group, Inc.  
2901 Butterfield Road  
Oak Brook, Illinois 60523

**RETURNED**  
**AUG 06 2014**

09-371-0001, 0003  
09-036-0061, 0062

D51094

09-036-0064

(Space Above For Recorder's Use)

**RECIPROCAL EASEMENTS AGREEMENT, MAINTENANCE AGREEMENT,  
DECLARATION OF RESTRICTIVE COVENANTS AND RIGHT OF FIRST  
OFFER**

THIS RECIPROCAL EASEMENTS AGREEMENT, MAINTENANCE AGREEMENT, DECLARATION OF RESTRICTIVE COVENANTS AND RIGHT OF FIRST OFFER (this "Declaration") is made effective as of the 4<sup>th</sup> day of August, 2014 by and between IREIT LAYTON POINTE, L.L.C., a Delaware limited liability company, its successors and assigns ("IREIT") and LAYTON POINTE, L.C., a Utah limited liability company, its successors and assigns ("LP").

**WITNESSETH:**

WHEREAS, IREIT is the owner of certain real property containing 12.68 acres of real property in the City of Layton, State of Utah identified as the IREIT Parcel ("IREIT Parcel") on the site plan attached hereto as Exhibit A (the "Site Plan") and legally described on Exhibit B attached hereto, which property has been developed as a portion of the retail shopping center commonly known as the Harris Pointe Shopping Center (the "Center");

WHEREAS, LP is the owner of certain real property containing 8.19 acres of real property in the City of Layton, State of Utah identified as the LP Parcel ("LP Parcel") on the Site Plan and legally described on Exhibit C attached hereto, which property has been developed as the other portion of the Center;

WHEREAS, IREIT and LP desire to enter into this Declaration for the purpose of (i) identifying the rights, obligations and restrictions regarding the maintenance of the common areas of the Center, and (ii) granting to each other certain reciprocal easements.

WHEREAS, certain tenant leases in effect as of the date of this Declaration on the IREIT Parcel (collectively, the "IREIT Tenant Leases") restrict the use of the LP Parcel and, as a condition to IREIT's purchase of the IREIT Parcel, LP has agreed to enter into this Declaration to restrict the LP Parcel as required by such IREIT Tenant Leases as more particularly set forth below;

WHEREAS, certain tenant leases in effect as of the date of this Declaration on the LP Parcel (collectively, the "LP Tenant Leases") restrict the use of the IREIT Parcel and IREIT has agreed to enter into this Declaration to restrict the IREIT Parcel as required by such LP Tenant Leases as more particularly set forth below; and

WHEREAS, LP desires to grant IREIT a right of first refusal to purchase the LP Parcel in accordance with the terms and provisions set forth herein.

NOW, THEREFORE, in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LP hereby agrees and declares as follows:

1. Maintenance of the Center. Commencing as of the date of this Declaration, IREIT shall be responsible to maintain the common areas of the Center, including, but not limited to, the portions of the common area located on the LP Parcel (collectively, the "Common Areas"), in good repair and condition consistent with similar shopping centers in the Ogden, Utah metropolitan area; provided, however, IREIT shall not be responsible (i) to maintain the exterior walls, roofs, structures and foundations located on the LP Parcel, (ii) to repaint any buildings located on the LP Parcel, (iii) to maintain any sanitary and water lines located on the LP Parcel that are for the dedicated use of any of the tenants on the LP Parcel, and (iv) to make any capital repairs or capital improvements on the LP Parcel (collectively, the "LP CAM Obligations"). LP shall be solely responsible to perform the LP CAM Obligations at LP's sole cost and expense. Additionally, IREIT and LP both hereby agree that the Center is subdivided with respect to real estate taxes and that each party hereto shall be responsible for the real estate taxes assessed against their portion of the Center.

The costs incurred by IREIT to maintain the Common Areas shall be defined as "Operating Expenses" and shall include all expenditures incurred by or on behalf of IREIT in operating, maintaining, repairing or replacing the Common Areas other than the LP CAM Obligations, including, without limitation, the cost incurred by IREIT for all gardening and landscaping, assessments, repairs, preventive maintenance, any association fees, repainting including restriping or repaving of parking lot and access ways, repairing or replacing any streets, curbs or parking lots, updating and maintenance and replacement of directory signs, rental of signs and equipment, lighting, sanitary control, cleaning, sweeping, removal of ice, snow, trash, rubbish, garbage and other refuse, repair or replacement of awnings, repair or replacement of on-site water lines, sanitary sewer lines, storm water lines, gas lines and electrical lines, all costs, charges and expenses incurred by IREIT in connection with utility services including without limitation repair, installation and service costs associated therewith, the cost of police, fire protection,

security and traffic control services, all IREIT's insurance relating to the common facilities of the Center as a whole or the operations thereon including, but not limited to, casualty insurance, flood insurance, rent loss insurance, fire insurance and extended coverage as well as general liability insurance, umbrella liability insurance, bodily injury, public liability, property damage liability, , sign insurance, and any other insurance carried by IREIT in limits selected by IREIT, reasonable reserves for anticipated expenditures, costs incurred by IREIT under any operating and easement agreements or other similar agreement of record and the reasonable cost of all personnel required to supervise, implement and accomplish all of the foregoing. Notwithstanding the foregoing, the following shall not constitute Operating Expenses: (a) real estate taxes; (b) interest, points and fees on debt or amortization on or for any mortgage or similar security instrument (a "Security Instrument") encumbering all or any portion of the Center, and all principal, escrow deposits and other sums paid on or in respect to any indebtedness (whether or not secured by a Security Instrument), and all costs incurred in connection with any financing, refinancing or syndication of all or any portion of the Center; (c) costs of improvements to, or alterations of, space leased to or available for lease to any tenant; (d) costs and expenses incurred in connection with leasing space in or procuring tenants for the Center, including, without limitation, leasing commissions and advertising expenses, and legal and other professional fees; (e) court costs and legal fees incurred to enforce the obligations of tenants with respect to the IREIT Tenant Leases, or resulting from the violation by IREIT of the terms and conditions of any lease; (f) wages, salaries, compensation and benefits of any employees above the level of property manager; and (g) fines, interest, charges, penalties, damages and other costs incurred by IREIT by reason of any default (or claim of default) or late payment by it under any IREIT Tenant Lease or other contract or instrument (regardless of whether or not the payment itself is allowed to be included in Operating Expenses), including, without limitation, any legal and other professional fees paid or incurred in connection therewith; (h) maintenance of the exterior walls, roof and roof structures maintenance repairs and replacements and maintenance and repairs of foundations located on the IREIT Parcel; (i) repainting any building located on the IREIT Parcel; (j) maintenance of any sanitary and water lines located on the IREIT Parcel that are dedicated to the use of the tenants of the IREIT Parcel; and (k) capital repairs or capital improvements on the IREIT Parcel.

LP shall be responsible to reimburse IREIT for LP's share of the Operating Expenses ("LP's Share"). IREIT shall be responsible to collect from the tenants on IREIT's parcel the amount of Operating Expenses that the applicable IREIT Tenant Leases allow to be billed to such tenants (collectively, "IREIT Tenants' Share"). LP's Share shall be calculated by subtracting the IREIT Tenants' Share for such calendar year from the total amount of Operating Expenses for such calendar year. For any partial calendar year, such amounts shall be equitably prorated.

For the initial partial calendar year commencing as of the date of this Declaration and expiring on December 31, 2014 ("Initial Calendar Year"), IREIT shall reasonably estimate LP's Share and LP shall make monthly payments on the first (1<sup>st</sup>) day of each calendar month during the Initial Calendar Year ("LP Monthly Operating Expense Payments"). Within one hundred fifty (150) days after expiration of the Initial Calendar

Year and following receipt of billings for the Operating Expenses, IREIT shall supply LP with a summary of all costs and expenditures as enumerated above and a determination of LP's Share thereof. In the event the amount billed to LP shall be less than LP's Share, the same shall be paid within ten (10) days after notice of such determination. In the event the amount billed to LP exceeds LP's Share, then such excess shall be applied to the next LP Monthly Operating Expense Payments coming due, until fully exhausted. Said summary shall also contain a determination by IREIT of the LP Monthly Operating Expense Payments to be paid by LP during the succeeding months of the applicable calendar year, if an adjustment is required, which determination shall be based in part on the Operating Expenses for the preceding year modified by any known increases in the cost of said services. The LP Monthly Operating Expense Payments shall be continued to be made by LP on the first (1<sup>st</sup>) day of each calendar month. Failure of IREIT to provide notice of under or overpayment shall not constitute or a default by IREIT under this Declaration and will not waive any of IREIT's rights to collect such payments or LP's obligations hereunder including, but not limited to, LP's obligations to pay LP's Share of the Operating Expenses, but will extend each party's rights until the date notice is given. LP shall indemnify IREIT for any costs and expenses IREIT may incur arising from or relating to any failure of LP to make timely payment of the LP Monthly Operating Expense Payments. Such costs and fees shall include court costs, reasonable attorney's fees, interest at the rate of twelve percent (12%) per annum and such other costs incurred by IREIT by reason of any late payment or default in payment by LP.

Notwithstanding anything to the contrary contained herein, for each calendar year after the Initial Calendar Year, LP's Share of the Operating Expenses for such calendar year shall not exceed 105% of LP's Share of the Operating Expenses for the preceding calendar year, to be calculated on a non-cumulative basis. LP's Share of the Operating Expenses for any partial calendar year shall be equitably prorated.

2. Restrictions on the LP Parcel. The LP Parcel shall be subject to the applicable restrictions and prohibited uses set forth in the IREIT Tenant Leases, which restrictions and prohibited uses are set forth on Exhibit D attached hereto and made a part hereof (collectively the "IREIT Restrictions"). Such IREIT Restrictions for each respective IREIT Tenant Lease shall remain effective for the term of such IREIT Tenant Lease (including extension and renewal terms contemplated in the IREIT Tenant Lease), or the earlier termination thereof. Notwithstanding the foregoing, the LP Parcel shall not be subject to (a) any new or additional exclusive uses placed on the IREIT Parcel by IREIT from and after the date hereof, or (b) the extension of any existing IREIT Restrictions beyond the term of the applicable IREIT Tenant Lease and any extension rights contained in the applicable IREIT Tenant Lease, as such IREIT Tenant Lease exists on the date hereof. LP and its respective heirs, successors, grantees and assigns, and all future owners of the LP Parcel and their respective heirs, successors, grantees and assigns shall, at their own respective cost and expense, cause the LP Parcel to comply with, and not otherwise violate or breach, the IREIT Restrictions in accordance with the terms of this Declaration. To the extent IREIT or any owner of the IREIT Parcel or any portion thereof becomes aware of a breach or violation (or any potential breach or violation), IREIT or such owner, as applicable, shall immediately notify LP of the same.

Upon receipt of such notice, LP shall take commercially reasonable efforts to cure a breach or violation of the IREIT Restrictions.

3. Restrictions on the IREIT Parcel. The IREIT Parcel shall be subject to the applicable restrictions and prohibited uses set forth in the LP Tenant Leases, which restrictions and prohibited uses are set forth on Exhibit E attached hereto and made a part hereof (collectively the "LP Restrictions"). Such LP Restrictions for each respective LP Tenant Lease shall remain effective for the term of such LP Tenant Lease (including extension and renewal terms contemplated in the LP Tenant Lease), or the earlier termination thereof. Notwithstanding the foregoing, the IREIT Parcel shall not be subject to (a) any new or additional exclusive uses placed on the LP Parcel by LP from and after the date hereof, or (b) the extension of any existing LP Restrictions beyond the term of the applicable LP Tenant Lease and any extension rights contained in the applicable LP Tenant Lease, as such LP Tenant Lease exists on the date hereof. IREIT and its respective heirs, successors, grantees and assigns, and all future owners of the IREIT Parcel and their respective heirs, successors, grantees and assigns shall, at their own respective cost and expense, cause the IREIT Parcel to comply with, and not otherwise violate or breach, the LP Restrictions in accordance with the terms of this Declaration. To the extent LP or any owner of the LP Parcel or any portion thereof becomes aware of a breach or violation (or any potential breach or violation), LP or such owner, as applicable, shall immediately notify IREIT of the same. Upon receipt of such notice, IREIT shall take commercially reasonable efforts to cure a breach or violation of the LP Restrictions.

4. Right of First Offer to Purchase the LP Parcel. If LP intends to offer all or any portion of the 8.19 acre portion of the LP Parcel shown on Exhibit F attached hereto and made a part hereof (the "ROFO Property"), for sale to a third party unrelated to LP, LP shall first offer to sell the ROFO Property to IREIT (the "Purchase Offer") for the price and upon such other material terms and conditions as LP intends to offer the ROFO Property for sale (the "Purchase Offering Terms"). The Purchase Offering Terms shall, at a minimum, include (i) the purchase price, (ii) the amount of the required earnest money deposit and (iii) the time and location for the closing. The Purchase Offer shall be provided to IREIT in writing and contain the Purchase Offering Terms, whereupon IREIT shall have a period of thirty (30) days from the date of its receipt of the Purchase Offer in which to accept or reject the Purchase Offer. If IREIT shall fail to respond to the Purchase Offer within such 30-day period, IREIT shall be deemed to have refused the Purchase Offer. If IREIT shall refuse or be deemed to have refused such Purchase Offer, LP shall be entitled to sell the ROFO Property at any price not less than ninety-seven percent (97%) of the proposed sales price set forth in the Purchase Offer and such other Purchaser Offering Terms shall remain the same in all material respects. For the avoidance of doubt, the parties agree that for purposes of determining the proposed sales price, the proposed sales price shall include any monetary consideration (for example, purchase price or credit at closing), or terms that are capable of being expressed as monetary consideration (for example, assumption of an existing mortgage). If LP receives either (a) an unsolicited offer from an unrelated third party for the ROFO Property that is acceptable to LP or (b) an offer for the ROFO Property from an unrelated third party for a price less than ninety-seven percent (97%) of

the proposed sales price set forth in the Purchase Offer which LP wishes to accept (each a "Third Party Offer"), LP shall provide written notice of the Third Party Offer (along with the Purchase Offering Terms) to IREIT, whereupon IREIT shall have a period of thirty (30) days of its receipt of such notice in which to determine whether to purchase the ROFO Property for the purchase price and other Purchase Offering Terms set forth in the Third Party Offer. If IREIT shall fail to respond to LP's written notice of the Third Party Offer within such 30-day period, IREIT shall be deemed to have refused to purchase the ROFO Property in accordance with the Third Party Offer. If IREIT shall refuse or be deemed to have refused to purchase the ROFO Property in accordance with the Third Party Offer, LP shall be entitled to sell the ROFO Property in accordance with the Purchase Offering Terms set forth in such Third Party Offer. If IREIT shall timely elect to purchase the ROFO Property in accordance with the Purchase Offer (or Third Party Offer, if applicable), then LP shall deliver a purchase and sale agreement to IREIT and LP and IREIT shall use good faith efforts to enter into a mutually agreeable purchase and sale agreement on terms consistent with the terms of the Purchase Offer (or Third Party Offer, if applicable). In the event LP and IREIT fail to agree on the terms of the purchase and sale agreement or do not otherwise enter into a mutually agreeable purchase and sale agreement within thirty (30) days after LP delivers the initial draft of such purchase and sale agreement to IREIT despite the good faith efforts of both parties, then IREIT shall be deemed to have waived its right to purchase the ROFO Property pursuant to the terms of the Purchase Offer (or Third Party Offer, if applicable), and LP shall thereafter have the right to sell the ROFO Property in accordance with the terms of this Section 4.

Notwithstanding anything to the contrary contained in this Section 4, if LP intends to sell all or any portion of the ROFO Property to a prospective tenant of the Center that both LP and IREIT reasonably determine that such prospective tenant would be beneficial to the Center ("Beneficial Tenant"), LP shall have the right to sell the applicable portion of the ROFO Property ("Beneficial Tenant Property") without triggering IREIT's right of first offer for the Beneficial Tenant Property, provided that the terms of the sale of the Beneficial Tenant Property to the Beneficial Tenant is commercially reasonable in IREIT's reasonable discretion. The parties hereby agree that IREIT's reasonable determination with respect to the Beneficial Tenant and the terms of the sale of the Beneficial Tenant Property shall be in the form of a written approval signed by IREIT. If IREIT does not respond within five (5) business days after receipt of all applicable information reasonably requested by IREIT to make the applicable determination, such reasonable determination shall be deemed granted. Upon the sale of the Beneficial Tenant Property to the Beneficial Tenant, LP shall pay to IREIT an amount equal to \$100,000.00 multiplied by a fraction with the numerator being the acreage of the Beneficial Tenant Property and the denominator being the acreage of the ROFO Property (e.g., if the Beneficial Tenant Property is 2.0 acres, LP shall pay IREIT \$24,420 [\$100,000.00 x 2.0/8.19]). Upon completion of the sale of the Beneficial Tenant Property to the Beneficial Tenant, IREIT shall continue to retain a right of first offer for the remaining portion of the ROFO Property in accordance with the first paragraph of this Section 3.

5. Restriction Against Relocation of LP Tenants. Without IREIT's prior written consent, which consent may be withheld by IREIT in its sole and absolute

discretion, LP shall not cause or permit (where LP's approval or consent is required) any portion of the LP Parcel to be used, leased, occupied or licensed by any of the tenants currently located at the IREIT Parcel (such tenants listed on Exhibit G attached hereto and made a part hereof) (collectively, the "Current IREIT Tenants") during the term of the applicable Current IREIT Tenant's lease (including any extension or renewal terms provided for in such lease) (the "LP Relocation Restrictions"). Upon the final expiration of any such Current IREIT Tenant lease or other occupancy agreement, the foregoing restriction shall no longer apply to the applicable Current IREIT Tenant. Within fifteen (15) days of receipt of written request from LP, IREIT agrees to provide LP with a list of any Current IREIT Tenants whose leases have expired or terminated.

6. Restriction Against Relocation of IREIT Tenants. Without LP's prior written consent, which consent may be withheld by LP in its sole and absolute discretion, IREIT shall not cause or permit (where IREIT's approval or consent is required) any portion of the IREIT Parcel to be used, leased, occupied or licensed by any of the tenants currently located at the LP Parcel (such tenants listed on Exhibit H attached hereto and made a part hereof) (collectively, the "Current LP Tenants") during the term of the applicable Current LP Tenant's lease (including any extension or renewal terms provided for in such lease) (the "IREIT Relocation Restrictions"). Upon the final expiration of any such Current LP Tenant lease or other occupancy agreement, the foregoing restriction shall no longer apply to the applicable Current LP Tenant. Within fifteen (15) days of receipt of written request from IREIT, LP agrees to provide IREIT with a list of any Current LP Tenants whose leases have expired or terminated.

7. LP Indemnity. LP and its successors, grantees and assigns, and all future owners of the LP Parcel and their respective heirs, successors, grantees and assigns (collectively, the "LP Owner") covenant and agree, at their sole cost and expense, to indemnify and hold harmless IREIT, its members, officers, directors, shareholders, employees, mortgagees, affiliates and agents, and their respective officers, directors, shareholders, agents and employees (each an "Indemnatee") from and against any and all claims, suits, actions, proceedings, losses, liabilities, damages, judgments, costs and expenses (including, without limitation, court costs and reasonable attorneys' fees) suffered or incurred by such Indemnatee and arising out of or in connection with any breach or violation, or alleged breach or violation by LP Owner of any of the LP Relocation Restrictions.

8. IREIT Indemnity. IREIT and its successors, grantees and assigns, and all future owners of the IREIT Parcel and their respective heirs, successors, grantees and assigns (collectively, the "IREIT Owner") covenant and agree, at their sole cost and expense, to indemnify and hold harmless LP and its Indemnitees from and against any and all claims, suits, actions, proceedings, losses, liabilities, damages, judgments, costs and expenses (including, without limitation, court costs and reasonable attorneys' fees) suffered or incurred by such Indemnatee and arising out of or in connection with any breach or violation, or alleged breach or violation by IREIT Owner of any of the IREIT Relocation Restrictions

9. Reciprocal Easements and Drainage Easement

a. Access to Common Areas. Each Owner hereby grants and conveys to the other Owner, for the benefit of the other Owner, its tenants, licensees, invitees, employees, customers, and guests (collectively "Occupants"), a perpetual non-exclusive, irrevocable and reciprocal easement over, and right to the use of the Common Areas of the granting Owner's Parcel for purposes of ingress and egress during the term of this Agreement and for such other purposes as shall be consistent with the purposes of the Common Areas.

b. Ingress, Egress, and Parking Easements. Each Owner hereby grants and conveys to the other Owner for the benefit of the other Owner and its occupants and all future owners and future occupants perpetual, non-exclusive, irrevocable, reciprocal easements over and right to the use of the parking lots, roads, drives, driveways, and sidewalks now or hereafter located on the granting Owner's Parcel for purposes of vehicular and pedestrian ingress and egress to and from the granting Owner's Parcel and to and from all abutting streets or rights-of-way furnishing access to the parcels, and for parking; provided, however, such grants and conveyances shall be subject to the terms and provisions of the IREIT Tenant Leases and LP Tenant Leases in effect as of the date of this Declaration.

c. Utility Easements. Each Owner hereby grants and conveys to the other Owner for the benefit of the other Owner and the other Owner's Parcel, an easement permitting the installation, maintenance, repair, replacement, removal of underground storm sewer lines, sanitary sewer pipes, water and gas mains, electric power lines, telephone lines, and other underground utility lines for the purpose of providing service to the other Owner's Parcel. Each Owner may relocate a utility line which services only that Owner's Parcel and which crosses the other Owner's Parcel, but only upon the written approval of the other Owner as to the exact location of the easement. Such approval shall not be unreasonably withheld, conditioned, or delayed, subject to the provision that such relocation shall not unreasonably interfere with the use of an Owner's Parcel.

d. Drainage Easement. LP hereby grants, gives and conveys to IREIT, its successors and assigns a perpetual, non-exclusive easement for transportation of surface and subsurface storm water runoff on, across and under property owned by LP and legally described on Exhibit I attached hereto and made a part hereof (the "Easement Parcels") for the benefit of the IREIT Parcel and for the detention of such water on the Easement Parcels. LP shall be responsible for all maintenance, repairs and improvements to the Easement Parcels to enable the surface and subsurface storm water runoff from the IREIT Parcel to be funneled through to the Easement Parcels and for detention thereon.

10. IREIT Remedies. In the event of a violation of any of the covenants set forth herein by LP, IREIT shall notify LP in writing and LP shall have ten (10) days to cure such violation (or, if such violation cannot reasonably be cured within such 10-day period, then such longer period of time as may reasonably be required, not to exceed 30 additional days). If LP shall fail to timely cure such violation, IREIT shall have the right to seek all remedies available at law or in equity, including without limitation, specific performance and injunctive relief to enjoin or prevent any person or entity that has violated or is attempting or threatening to violate any of the IREIT Relocation



Restrictions from doing so. No remedy provided in this Declaration shall be exclusive but each shall be cumulative with all other remedies provided in this Declaration, and all remedies at law or in equity shall be available.

11. LP Remedies. In the event of a violation of any of the covenants set forth herein by IREIT, LP shall notify IREIT in writing and IREIT shall have ten (10) days to cure such violation (or, if such violation cannot reasonably be cured within such 10-day period, then such longer period of time as may reasonably be required, not to exceed 30 additional days). If IREIT shall fail to timely cure such violation, LP shall have the right to seek all remedies available at law or in equity, including without limitation, specific performance and injunctive relief to enjoin or prevent any person or entity that has violated or is attempting or threatening to violate any of the LP Relocation Restrictions from doing so. No remedy provided in this Declaration shall be exclusive but each shall be cumulative with all other remedies provided in this Declaration, and all remedies at law or in equity shall be available.

12. Miscellaneous.

(a) Binding Effect. All of the terms, provisions, rights, covenants, easements, declarations, reservations, restrictions and conditions contained in this Declaration shall run with the land affected by them and shall be binding upon and inure to the benefit of each of the parties hereto and to the successors and assigns of the parties hereto and all future owners and their respective successors, grantees and assigns of any portion of the IREIT Parcel or LP Parcel. Every person and entity that now or hereafter acquires any right, title, estate, or interest in or to the IREIT Parcel or LP Parcel (or any portion thereof) is and shall conclusively be deemed to have consented and agreed to every covenant, term, provision, agreement and condition contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquires its interest in the IREIT Parcel or LP Parcel (or any portion thereof); and the transferring person or entity shall be released from all liability and obligations hereunder arising from and after the date of such transfer.

(b) Governing Law. This Declaration shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Utah.

(c) Headings. The use of headings, captions and numbers in this Declaration is solely for the convenience of identifying and indexing the various provisions in this Declaration and shall in no event be considered otherwise in construing or interpreting any provision in this Declaration.

(d) Exhibits. Each and every exhibit attached to this Declaration is made a part of this Declaration.

(e) Defined Terms. Capitalized terms used in this Declaration shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

(f) Pronouns. Wherever appropriate in this Declaration, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

(g) Severability. If any term, covenant, condition or provision of this Declaration, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Declaration or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(h) Modification. This Declaration shall not be modified or amended except by an instrument in writing executed by or on behalf of all of the owners of the IREIT Parcel and the LP Parcel.

(i) Applicability. Nothing contained in this Declaration shall or shall be deemed to grant, create or confer upon any tenants or occupants of the IREIT Parcel, including without limit Current Tenants or any tenants under the Tenant Leases, any rights or claims against IREIT, LP or their respective successors, grantees and assigns, or any future owners of the LP Parcel and their respective heirs, successors, grantees and assigns it being the intention of IREIT and LP that this Declaration shall be strictly limited to and for the purposes set forth in this Declaration.

(j) No Waiver. No failure, delay or omission of either party hereunder, its successors-in-title and/or assigns in the exercise of any right accruing upon any default of such other party, its successors, grantees or assigns, or any future owners of the applicable parcel or their respective heirs, successors, grantees and assigns shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by a party hereto, its successors-in-title and/or assigns of a breach or default of any of the terms and conditions of this Declaration by such other party, its successors, grantees and assigns, or any future owners of the applicable parcel or their respective heirs, successors, grantees and assigns shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Declaration.

(k) This Declaration contains the entire agreement of the parties hereto, and is binding upon and burdening the LP Parcel and the IREIT Parcel, as applicable, with respect to the subject matter hereof. Any prior correspondence, memoranda or declarations concerning the subject matter hereof are superseded in total by and integrated into this Declaration.

*(Signatures Commence On The Following Page)*

[Signature page for LP]

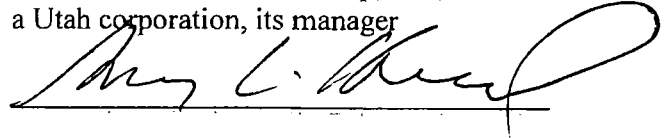
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by parties duly authorized thereunto as of the day and year first above written.

LP:

LAYTON POINTE, L.C., a Utah limited liability company

By: Eagle Pointe Financial Group, Inc.,  
a Utah corporation, its manager

By:  
Name:  
Its:

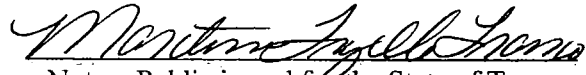


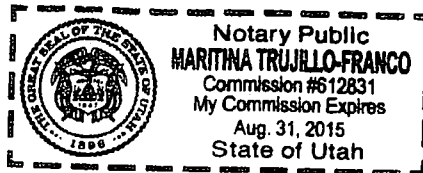
THE STATE OF Utah

§  
§  
§

COUNTY OF Salt Lake

This instrument was acknowledged before me on August 4, 2014, by Carol Anderson, CEO of Eagle Pointe Financial Group, Inc., a Utah corporation and manager of Layton Pointe, L.C., a Utah limited liability company, on behalf of said corporation.

  
Notary Public in and for the State of Texas

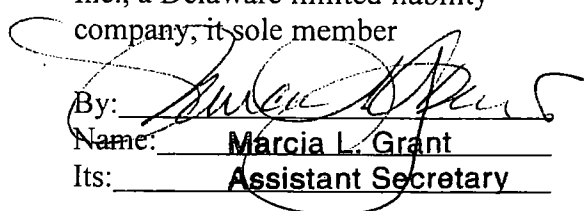


[Signature page for IREIT]

IREIT:

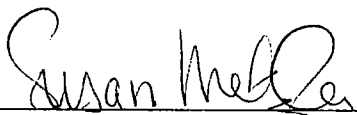
**IREIT LAYTON POINTE, L.L.C.**, a  
Delaware limited liability company

By: Inland Real Estate Income Trust,  
Inc., a Delaware limited liability  
company, its sole member

By:   
Name: Marcia L. Grant  
Its: Assistant Secretary

STATE OF Illinois §  
§  
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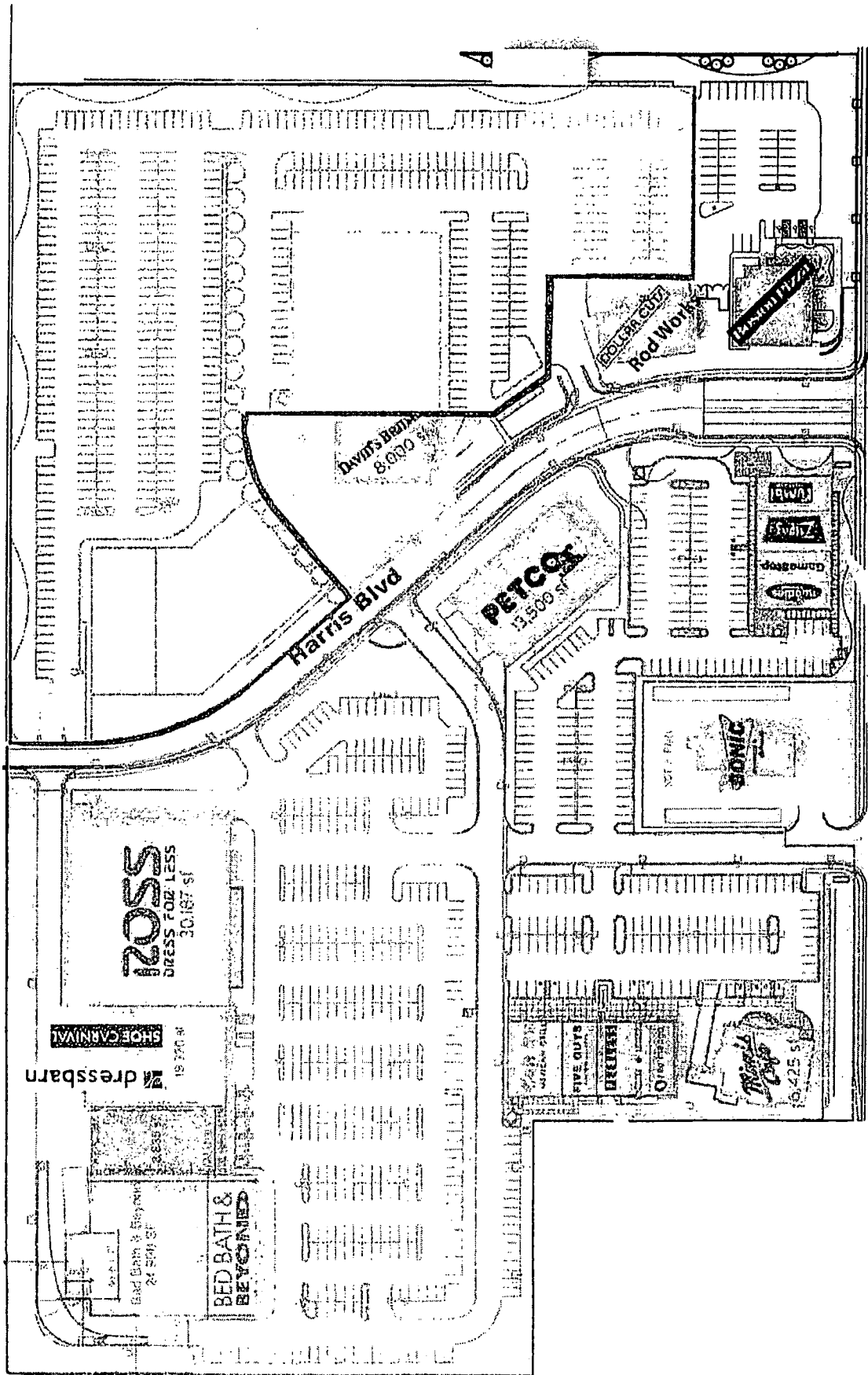
This instrument was acknowledged before me on this the 31<sup>st</sup> day of July, 2014, by Marcia L. Grant, Asst. Secretary of Inland Real Estate Income Trust, Inc., a Maryland corporation and sole member of IREIT Layton Pointe, L.L.C., a Delaware limited liability company, on behalf of said corporation.

  
Notary Public in and for the State of Illinois  
OFFICIAL SEAL  
SUSAN METZLER  
Notary Public - State of Illinois  
My Commission Expires May 05, 2015

**EXHIBIT A**

**SITE PLAN**

(see attached)



**EXHIBIT B**

**LEGAL DESCRIPTION OF IREIT PARCEL**

PARCEL 1

All of Lot 1, HARRIS POINTE SUBDIVISION, LAYTON CITY, according to the Official Plat thereof, recorded in the Office of the County Recorder of DAVIS County, State of Utah.

Tax Parcel No. 09-371-0001

PARCEL 5

BEGINNING ON THE NORTH LINE OF ANTELOPE DRIVE AT A POINT THAT IS NORTH 89°55'10" EAST 1851.10 FEET AND NORTH 00°10'30" EAST 46.67 FEET FROM THE SOUTHWEST CORNER OF SECTION 8, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 00°10'30" EAST 211.92 FEET; THENCE NORTH 89°55'10" EAST 148.06 FEET; THENCE SOUTH 00°10'30" WEST 211.92 FEET TO SAID NORTH LINE OF ANTELOPE DRIVE; THENCE SOUTH 89°55'10" WEST 148.06 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

Tax Parcel No. 09-036-0061

PARCEL 6

BEGINNING ON THE NORTH LINE OF ANTELOPE DRIVE AT A POINT THAT IS NORTH 89°55'10" EAST 1832.60 FEET AND NORTH 00°10'30" EAST 46.67 FEET FROM THE SOUTHWEST CORNER OF SECTION 8, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°10'30" EAST 70.00 FEET; THENCE SOUTH 89°49'30" EAST 18.50 FEET; THENCE SOUTH 00°10'30" WEST 69.92 FEET TO THE NORTH LINE OF SAID ANTELOPE DRIVE; THENCE SOUTH 89°55'10" WEST 18.50 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

Tax Parcel No. 09-036-0062

**EXHIBIT C**

**LEGAL DESCRIPTION OF LP PARCEL**

PARCEL 2

All of Lot 2, HARRIS POINTE SUBDIVISION, LAYTON CITY, according to the Official Plat thereof, recorded in the Office of the County Recorder of DAVIS County, State of Utah.

LESS AND EXCEPTING THE FOLLOWING:

BEGINNING AT A POINT ON THE NORTH LINE OF S.R. 108 (ANTELOPE DRIVE), SAID POINT BEING 46.67 FEET NORTH 0°08'00" EAST FROM THE SOUTH QUARTER CORNER OF SECTION 8, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, THE SOUTH QUARTER CORNER BEING LOCATED 173.95 FEET SOUTH 59°53'31" WEST FROM A WITNESS CORNER, THE BASIS OF BEARING BEING BETWEEN SAID WITNESS CORNER OF THE WITNESS CORNER FOR THE SOUTHWEST CORNER, SAID BASIS OF BEARING BEING SOUTH 88°14'33" EAST, AND RUNNING THENCE SOUTH 89°55'10" WEST A DISTANCE OF 315.81 FEET ALONG SAID NORTH LINE OF S.R. 108; THENCE ALONG THE EAST LINE OF 700 WEST STREET THE FOLLOWING TWO CALLS (1) NORTH, A DISTANCE OF 130.62 FEET TO A POINT ON A 400.00 FOOT RADIUS CURVE TO THE LEFT AND A CENTRAL ANGLE OF 03°58'57" (2) NORTHERLY ALONG SAID CURVE A DISTANCE OF 27.80 FEET; THENCE EAST A DISTANCE OF 417.14 FEET; THENCE SOUTH 00°08'00" WEST A DISTANCE OF 157.96 FEET TO THE POINT OF BEGINNING.

Tax Parcel No. 09-371-0003



**EXHIBIT D**

**LIST OF IREIT RESTRICTIONS**

(see attached)

**ROSS DRESS FOR LESS**

3.2. Nature of the Shopping Center.

3.2.1. Retail Use.

(a) General. Tenant has entered into this Lease in reliance upon representations by Landlord that the Shopping Center is and shall remain retail in character, and, further, no part of the Shopping Center shall be used for office or residential purposes or as a theater, auditorium, meeting hall, school, church or other place of public assembly, "flea market," gymnasium, veterinary services, overnight stay pet facilities, health club, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, car wash, facility for the sale, display, leasing or repair of motor vehicles, night club, adult products, adult books or adult audio/video products (which are defined as stores in which at least ten percent (10%) of the inventory is not available for sale or rental to children under the age of majority in the state in which the Store is located because such inventory explicitly deals with or depicts human sexuality). No ATM or similar machine shall be permitted in the Shopping Center within one hundred (100) feet of the front and side perimeter walls of the Store. Further, no restaurant or other "High Intensity Parking User" (as hereinafter defined) shall be permitted in the Shopping Center within five hundred (500) feet of the front and side perimeter walls of the Store. A "High Intensity Parking User" is a tenant or occupant whose use requires more than five (5) parking spaces per one thousand (1,000) square feet of Leasable Floor Area in accordance with either customary shopping center practices or governmental regulations, whichever has a higher parking requirement. The foregoing use restrictions are referred to herein as the Ross Prohibited Uses.

(b) Exceptions.

(i) Notwithstanding the prohibition on offices set forth in Section 3.2.1 (a) above, (A) retail service offices such as full service banks, insurance offices and travel agencies, shall be permitted provided that (1) retail service offices in the aggregate do not exceed fifteen percent (15%) of the Leasable Floor Area of the Shopping Center, and (2) no retail service offices may be located within one hundred fifty (150) feet of the Store, and (B) for purposes of Section 3.2.2 below, with respect to the area shown as the "Permitted Office Area" on the Site Plan, no restrictions on offices set forth in this Lease shall apply.

(ii) Notwithstanding the prohibition on veterinary services and overnight stay pet facilities set forth in Section 3.2.1 (a) above, a national Anchor Tenant pet store or pet supply store ("Anchor Pet Store") with incidental veterinary services, pet vaccination clinic and overnight stay pet facilities, such as a PetsMart or Petco shall be permitted in the Shopping Center, provided that the front doors of such Anchor Pet Store shall not be any closer than one hundred fifty (150) feet from the exterior storefront of the Store, and provided further that all of the following conditions are complied with throughout the Term of this Lease: (A) the Anchor Pet Store shall not exceed twenty thousand (20,000) square feet of Leasable Floor Area; (B) the veterinary services, pet vaccination clinic and overnight stay pet facilities are only incidental to the operation of the Anchor Pet Store, and such combined services and facilities in the aggregate shall not occupy more than fifteen percent (15%) of the Leasable Floor Area of the Anchor Pet Store; (C) there shall be no boarding of

pets as a separate customer service; (D) all kennels, runs and pens shall be totally located inside the Anchor Pet Store; and (E) the Anchor Pet Store shall be completely contained within a fully enclosed building structure.

(iii) Notwithstanding the prohibition on restaurants set forth in Section 3.2.1(a), the following restaurants shall be permitted: (A) the Mimi's Cafe as shown on the Site Plan, (B) restaurants located in Building 4, as shown on the Site Plan, and (C) only with respect to Building 13, as shown on the Site Plan, either one (1) "quick serve" restaurant shall be permitted, provided such restaurant does not exceed four thousand (4,000) square feet of Leasable Floor Area, or a total of two (2) shops, which may consist of any combination of deli/sandwich, coffee or ice cream shops, provided each such shop does not exceed one thousand eight hundred (1,800) square feet of Leasable Floor Area.

(iv) Notwithstanding the prohibition on fitness and health facilities set forth in Section 3.2.1(a) above, for purposes of Section 3.2.2 below, with respect to the area shown as the "Permitted Office Area" on the Site Plan, no restrictions on fitness and health facilities shall apply.

**3.2.2. Further Prohibited Uses.** Landlord agrees that the Ross Prohibited Uses set forth in Section 3.2.1 and the "Landlord's Prohibited Uses" which are listed in Exhibit D (collectively, the "Prohibited Uses") shall not be permitted in the Shopping Center. If Landlord sells any portion of the Shopping Center, Landlord shall attach and incorporate into every deed or other instruments of conveyance the Prohibited Uses. Any property contiguous to any portion of the Shopping Center which may be purchased, leased or otherwise controlled by Landlord, or any affiliate of Landlord, after the Effective Date shall be subject to all of the restrictions of the Prohibited Uses and, with respect to the area shown as the "Permitted Office Area" on the Site Plan, (a) Landlord shall use reasonable efforts to prevent such tenants, and their employees, contractors and invitees from parking in the Common Areas of the Shopping Center, and (b) Landlord covenants that ingress to and egress from the Permitted Office Area to the public roads surrounding such area shall only be permitted from the east side of the parcel of which the Permitted Office Area is a part; provided, however, this restriction shall not preclude emergency egress from the Permitted Office Area from other portions of such parcel to the extent required by governmental authorities. Tenant agrees that it will not violate the Prohibited Uses.

**NOTE: There are no Prohibited Uses listed on Exhibit D**

#### 15.4. Exclusive Uses.

Tenant shall not use the Store for any use which is listed on Exhibit H (the "Exclusive Use"), so long as the Exclusive Use is in existence in the Shopping Center. Failure of any Exclusive Use to be operated for a period of ninety (90) consecutive days during the Term shall cause such Exclusive Use to be deleted from Exhibit H. Any exclusive granted by Landlord which is not listed on Exhibit H (the "Unauthorized Exclusive") shall be null and void as against Tenant and any assignee or sublessee of Tenant. Landlord shall indemnify, defend and hold harmless Tenant and any assignee or sublessee against any and all claims by any other occupant of the Shopping Center that Tenant and/or an assignee or sublessee has violated an Unauthorized Exclusive.

15.5. Other Exclusives Not Binding on Tenant.

Except for those Exclusive Uses specifically set forth in Exhibit H, neither Tenant nor any of its subtenants or assignees or the use of the Store shall be subject to any exclusives or restrictions granted to or for the benefit of any other tenants or occupants in the Shopping Center or on any Outparcel or adjacent parcel owned by Landlord. Except for those Exclusive Uses specifically set forth in Exhibit H, Landlord agrees that it has not entered into a lease or other occupancy agreement with nor shall it lease to or permit occupancy in the Shopping Center by any tenant, subtenant, assignee or other occupant, which has imposed or proposes to impose a restriction on Tenant or Tenant's business. Landlord shall hold Tenant harmless from any claims or damages suffered or claimed to be suffered by Tenant as a result of any breach or alleged breach of Landlord's representation and warranty set forth in this Section 15.5.

**BED BATH & BEYOND**

13.1.2 Prohibited Uses. Landlord shall construct, lease, operate, maintain and manage the Shopping Center as a first-class shopping center comparable to other first-class shopping centers in the state in which the Shopping Center is located. Landlord shall not lease, rent or occupy or permit to be occupied any portion of the Shopping Center or any "Related Land" (hereinafter defined) for any of the "Prohibited Uses" that pertain to the Shopping Center or the Related Land, as the case may be (as set forth in Exhibit M hereto annexed), provided, however, that as to any future Related Land, the foregoing restriction shall not apply to the extent that any Prohibited Uses are otherwise permitted under leases entered into prior to the date on which such land becomes Related Land. As used in this Lease, the term "**Related Land**" shall mean any land contiguous or adjacent to the Shopping Center (including, without limitation, any land that would be contiguous or adjacent to the Shopping Center but for any intervening road, street, alley or highway) owned or controlled by Landlord or its Affiliate(s).

Section 13.2 Tenant's Exclusive in Center. To induce Tenant to execute this Lease, and subject to all of the terms and provisions of this Section 13.2, Landlord covenants and agrees as follows.

13.2.1 Subject to the Existing Leases (as defined in Section 12.3(j)), Landlord shall not lease, rent or occupy or permit any other premises in the Shopping Center or on any Related Land to be occupied, whether by a tenant, sublessee, assignee, licensee or other occupant or itself, for the sale, rental or distribution, at retail or at wholesale, either singly or in any combination, of items contained in any of the following respective categories of merchandise: (a) linens and domestics; (b) bathroom items (including, without limitation, health and beauty care items, but excluding plumbing hardware); (c) housewares (excluding furniture, and major appliances or "white goods"); (d) frames and wall art (provided that a fine art gallery shall not be precluded); (e) window treatments; and/or (f) closet, shelving and storage items (which items, either singly or in any combination, are hereinafter referred to as the "**Exclusive Items**"). Notwithstanding the foregoing, any tenant or subtenant in the Shopping Center or the Related Land shall have the right to utilize its respective premises for the sale, rental and/or distribution of Exclusive Items within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed the lesser of (x) five percent (5%) of the Floor Area of such tenant's

or subtenant's premises, or (y) two thousand (2,000) square feet of Floor Area within such tenant's or subtenant's premises. [For example only, a tenant occupying premises containing a total of five thousand (5,000) square feet of Floor Area could sell Exclusive Items (either singly or in any combination) so long as the aggregate area within its entire demised premises in which any and all Exclusive Items are sold shall not exceed two hundred fifty (250) square feet.] As to any future Related Land, the foregoing restrictions shall not apply to the extent that any Exclusive Items are otherwise permitted under leases entered into prior to the date on which such land became Related Land. The tenants under the Existing Leases (and current or future assignees or sub lessees of such tenants) shall nevertheless be subject to the restrictions contained in this Section 13.2 in the event that: (i) the lease between Landlord (or Landlord's Affiliate) and any such tenant requires the consent of Landlord (or its Affiliate) to any assignment or subletting or to a change in the use of the applicable premises to permit the sale, rental or distribution of the Exclusive Items; or (ii) Landlord or its Affiliate permits or agrees to an expansion of the applicable premises for the sale, rental, or distribution of the Exclusive Items.

13.2.2 The restrictions set forth in Subsection 13.2.1 above shall not apply to a full-line national or regional: (i) department store [for example, Wal-Mart, Macy's, or Target], (ii) discount club [for example, Costco, BJ's Wholesale Club, or Sam's Club], or (iii) home improvement center [for example, Home Depot or Lowe's], commonly located in first-class shopping centers in the state in which the Shopping Center is located, each occupying at least 80,000 square feet of Floor Area within the Shopping Center, as such stores are currently operated (as of the Effective Date).

13.2.3 The exclusive rights granted to Tenant in this Section 13.2 shall inure to the benefit of any assignee of Tenant's interest in this Lease and to any sublessee of at least fifty percent (50%) of the Floor Area of the Premises.

13.2.4 (a) Upon breach of the aforesaid covenant and agreement by Landlord (which breach shall not include a situation in which the lease between Landlord and any tenant in the Shopping Center or in the Related Land prohibits the tenant therein from violating the exclusive rights granted to Tenant in this Section 13.2 and despite such prohibition, such tenant violates such exclusive rights, unless Landlord fails to comply with any of the provisions of subparagraph (b) below), the Rent payable hereunder shall be reduced by fifty percent (50%) for so long as such violation shall continue, and Tenant shall have all remedies given to it at law and in equity, including, without limitation, the right to obtain injunctive relief, and/or to terminate this Lease, and/or to commence and prosecute an action against Landlord or any other violator for damages. (b) If any person or entity other than Landlord shall violate any of the exclusive provisions herein set forth, or shall indicate in writing to Landlord that it intends to violate any of said provisions, Landlord shall promptly commence appropriate legal proceedings, and diligently prosecute the same, to enjoin and prohibit any such violation. If Landlord fails to promptly commence such proceedings, or shall fail thereafter to diligently prosecute the same, then Tenant shall have the right (a) to conduct and prosecute such legal proceedings (including, without limitation, an action for injunctive relief) in its own name, at Landlord's expense, or (b) in the event the right set forth in (a) above is not permitted to be exercised under applicable Legal Requirements, to conduct and prosecute such legal proceedings in the name of Landlord, at Landlord's expense, and Landlord shall cooperate with Tenant with respect to such prosecution (including, without limitation, by executing

any documentation or authorization reasonably required by Tenant in connection with such prosecution and by appearing at any hearing or trial with respect to such prosecution).

13.2.5 Simultaneously with the execution and delivery of this Lease, Landlord shall execute and record, or cause to be executed and recorded, Declaration of Restrictions substantially the form attached hereto as Exhibit O, against the No Build Area, Phase II and any other Related Land existing as of the Effective Date. Notwithstanding the foregoing or anything in Exhibit O to the contrary, (i) the Declaration of Restrictions recorded against the No Build Area shall also include the restrictions set forth Section 5.2.2 above, and (ii) the Declaration of Restrictions recorded against Phase II shall be modified by (y) adding as Exhibit D to such Declaration of Restrictions the site plan annexed at Exhibit B hereto and (z) deleting the text of Prohibited Use 28 on Exhibit C to such Declaration of Restrictions and replacing it with the following text:

"(28) Any office use, other than: (x) office space used in connection with and ancillary to a permitted retail use hereunder; (y) retail offices providing services commonly found in similar first-class shopping centers in the Salt Lake City metropolitan area (for example, financial services, real estate brokerage, insurance agency, banking, travel agency), provided that (i) the Floor Area of such retail offices in the Related Land (exclusive of the Floor Area of the building identified on Exhibit D to this Declaration of Restriction as "Future Building A"), when aggregated with the Floor Area of such retail offices in the areas of the Shopping Center located to the East of Harris Boulevard, shall not exceed five thousand (5,000) square feet in the aggregate; and (z) up to, but not more than, half of the Floor Area in the building identified on Exhibit D hereto as "Future Building A" may be used for such retail offices and/or for general office uses."

## **PETCO**

### **10. (a) NON-COMPETITION**

Landlord covenants and agrees that during the term of this Lease, but subject to the rights of tenants under leases existing as of the date hereof, Tenant shall have the exclusive right to sell pet food, pet supplies, live animals, pet grooming, pet training, and veterinary services in the Shopping Center or any property within one (1) mile of the Shopping Center owned, managed and/or controlled by Landlord or any affiliate of Landlord, other than for incidental sales. Incidental sales shall mean the sale or display for sale of such items or services not as the primary use of the competing tenant and taking up no more than five hundred (500) square feet of floor area. This covenant shall run with the land on which the Shopping Center is located so long as the Premises are used as a pet food and supply store. Landlord agrees not to sell to, lease to, nor approve any sublease or assignment of lease, or change in use, unless prevented by the terms of any lease then currently in force and effect, for any competing tenant, sub-tenant, assignee or user. Landlord agrees at its sole cost and expense to promptly and continuously enforce this non-competition covenant using all reasonable legal means, subject to Tenant's obligation to reasonably cooperate with Landlord in this enforcement effort, at no material cost or expense to Tenant. Should Landlord violate the provisions of this covenant, in addition to any other remedies available at law or in equity, Tenant shall have the right upon twenty (20) days prior written notice to Landlord to either:

(i) reduce the Base Rent to 3% of Gross Sales for the entire period of the violation; or (ii) terminate this Lease upon thirty (30) days advance Notice and receive from the Landlord any unamortized costs of Tenant's improvements to the Premises as well as any reasonable relocation costs or expenses incurred by Tenant to relocate within a ten (10)-mile radius of the Premises. As used in this Lease, the term "Gross Sales" means all sales, both cash and charge, of merchandise and services made in, upon or from the Premises,

#### 11. CHARACTER OF SHOPPING CENTER

Tenant has entered into this Lease in reliance upon representations by Landlord that, excluding any part of the Shopping Center on the east side of Harris Boulevard, the Shopping Center is and will remain substantially retail in character and, further, no part of same shall be used as an auditorium, meeting hall, school or other place of public assembly, telemarketing or call center, gymnasium or dance hall; for Bingo or similar games of chance, or as a massage parlor, video game arcade, bowling alley, skating rink, car wash, car repair or car rental agency, night club or adult book or adult video store or for a restaurant within one hundred (100) feet of the Premises' front door, except with Tenant's permission, which Tenant may choose to give or deny in its sole and absolute discretion.

#### SHOE CARNIVAL

##### 5.01. Competition.

A) During the entire term of this Lease, and as a material inducement to Tenant to enter into this Lease, Tenant shall have the exclusive right to sell footwear in the Shopping Center as currently configured on the date of this Lease (herein, the "Exclusive Use"). In the event Tenant shall cease operations at the Premises for reasons other than Permitted Closures (as defined in Section 5.03) for a period in excess of one hundred eighty (180) days, the Exclusive Use shall be deemed cancelled and of no further force or effect.

B) The Exclusive Use shall not apply to (i) existing tenants of the Shopping Center with leases dated prior to June 3, 2011, to the extent such tenants are either expressly permitted to sell footwear pursuant to the terms of their existing leases or have the right to change use or operate for any lawful use without the consent of Landlord (all of which, and the relevant use provisions, are identified in Exhibit F attached to this Lease); (ii) incidental sales of footwear by tenants occupying at least 25,000 square feet; (iii) incidental sales of footwear by tenants whose primary business is the retail sale of fashion and apparel merchandise; and (iv) stand-alone out parcel tenants, provided such tenants do not operate primarily for the sale of footwear. The phrase "incidental sales" shall mean the lesser of ten (10%) percent of such tenant's sales floor area or 3,000 square feet is used for the sale/display of footwear.

C) In the event the Exclusive Use is violated, Rent and all other charges under the Lease shall abate entirely until such violation is cured; provided, however, in addition to the foregoing, Tenant may terminate this Lease at any time during the continuance of such violation by delivering written notice to Landlord at least thirty (30) days prior to the effective date of termination;

provided, however, if such violation shall continue for twenty-four (24) months and Tenant has not terminated the Lease, Tenant shall thereby be deemed to have waived the right to terminate the Lease on the basis of such then-existing violation. If Tenant does not elect to terminate the Lease or has waived the right to terminate, the Lease shall remain in full force and effect. However, Tenant shall continue to receive Rent abatement until such violation is cured.

**15.10. Prohibited Uses.** The Shopping Center shall be maintained, operated and managed as a first-class retail project in compliance with all laws, regulations and orders and shall be used and occupied only for normal retail uses customarily conducted in first-class shopping centers; and in no event shall the Shopping Center or any portion thereof be used for any use prohibited under the CC&Rs.

### **DRESS BARN**

2.4 Prohibited Uses. Tenant acknowledges that other tenants of the Shopping Center have been granted exclusive rights for their respective uses of their premises in the Shopping Center and Tenant covenants that it shall be bound by each of such exclusive uses until the earlier to occur of (1) the date on which the lease containing the exclusive use expires, (2) the tenant having the exclusive use waives the exclusive use, in writing, or (3) the tenant having the exclusive use ceases to use its premises for such exclusive use. The exclusive uses are generally described as follows and are more particularly set forth in the tenant's lease to which the exclusive use has been granted by Landlord: the retail sale and/or rental of bridal wear, men's formal and women's formal attire and clothing; prom and special occasion attire; accessories relating to all the foregoing; and any other goods or services relating to weddings, special events and parties; the sale of pet food, pet supplies, live animals, pet grooming, pet training, veterinary services, and related goods and services; mobile radio and cellular phones, pagers, personal communicators, cellular and wireless voice, data, and internet services, and related software and accessories; the sale of noodles and pasta, and noodle and pasta dishes for on or off premises consumption; the sale of a primary cuisine competitive with the Mexican and Tex-Mex cuisine of Cafe Rio; the sale of pizza as the primary business; and a retail footwear store. Landlord warrants and represents that (i) Tenant's sale of shoes in less than ten percent (10%) of the sales area of the Demised Premises shall not violate any exclusive use provision, and (ii) Tenant's sale of women's formal attire and clothing and prom and special occasion attire in less than ten percent (10%) of the sales area of the Demised Premises shall not violate any exclusive use provision. Landlord agrees not to use, lease, sell or otherwise permit any space in the Shopping Center to be used, in whole or in part, for any office or non-retail use (except for office and storage and stocking use ancillary to a primary retail use), including, without limitation, any medical center or medical facility of any kind (in-care or ambulatory care) and any professional center or professional offices; day care center; manufacturing operation; as a factory; for any outdoor selling of merchandise; for any industrial usage; as a warehouse or distribution center, processing or rendering plant; any retail warehouse, outlet, distribution operation or similar type operation; any establishment selling or renting cars, trailers, mobile homes, boats or any other vehicle or vessel; automotive repair or service operation or gas station; a coin operated laundry or a "Laundromat"; any operation of a billiard parlor, amusement park or carnival, flea market or the like, massage parlor or any similar type operation; for a so-called "off-track betting" operation; on or off-premises consumption of alcohol; night club, discotheque or other like entertainment



establishment (including, without limitation, any adult entertainment establishment) for the sale, leasing or display of pornographic or other sexually explicit or oriented materials; a store specializing in the sale of drug paraphernalia; the operation of a business that unreasonably or unlawfully substantially interferes with the enjoyment or use of the Shopping Center as a first-class community oriented retail Shopping Center. In addition, Landlord shall not use, lease, sell or otherwise permit any space in the Shopping Center to be used in whole or in part by any veterinary facility or other similar type establishment other than a national Anchor Tenant pet store or pet supply store ("Anchor Pet Store") with incidental veterinary services, pet vaccinations clinic or overnight-stay pet facilities, such as a PetsMart or Petco, shall be permitted in the Shopping Center; provided that the front doors of such Anchor Pet Store shall not be any closer than one hundred fifty (150) feet from the exterior store front of the Demised Premises and provided further that all the following conditions are complied with throughout the term of this Lease: (a) the Anchor Pet Store shall not exceed twenty thousand (20,000) square feet of leasable floor area; (b) the veterinary services, vaccination clinic, and overnight-stay pet facilities are only incidental to the operation of the Anchor Pet Store and such combined services and facilities in the aggregate shall not occupy more than fifteen percent (15%) of the leasable floor area of the Anchor Pet Store; (c) there shall be no boarding of pets as a separate customer service; (d) all kennels, runs, and pens shall be totally located inside the Anchor Pet Store; and (e) the Anchor Pet Store shall be completed contained in a fully enclosed building structure. Landlord understands and agrees that to permit any of the uses described in this Section within the Shopping Center would materially and adversely affect Tenant's business. If Landlord knowingly, uses or permits any such use, then in addition to all other legal and equitable remedies Tenant may have, Landlord, as liquidated damages and not as a penalty, shall waive the payment of Base Annual Rent (but not Additional Rent or Percentage Rent) that exceed a monthly amount equal to three percent (3%) of Tenant's Gross Sales (such amount not to exceed Annual Minimum Rent) so long as such use continues. Landlord and Tenant agree that Tenant's actual damages under the foregoing circumstances would be extremely difficult or impracticable to determine, and acknowledge that the liquidated damages have been agreed upon, after negotiation, as the parties' best and reasonable estimate of Tenant's damages. In the event such use continues for six (6) months after Tenant gives written notice of such violation to Landlord, Tenant or Landlord may terminate this Lease upon thirty (30) days' written notice to the other of such election.

#### ARTICLE 57, EXCLUSIVITY

During the primary and any renewal term of the Lease, Landlord shall not lease any other space in the Shopping Center that comprises less than fifteen thousand (15,000) GLA to a tenant whose primary business is the sale of "plus size" women's apparel, or to a tenant who sells "plus sizes" in more than one thousand (1,000) square feet of the selling area of a tenant's demised premises. Further, Landlord shall not lease space in the Shopping Center comprised of seven thousand (7,000) to fifteen thousand (15,000) GLA which is used primarily for the sale of women's apparel. If the Landlord violates the foregoing covenant, Tenant shall have the right to terminate the Lease or pay in-lieu rent equal to five percent (5%) of its gross sales until such violation is cured. In the event Tenant elects to terminate this Lease pursuant to this Article 57, the effective date of termination shall be sixty (60) days after the date of Tenant's notice, or at Tenant's option (to be exercised in Tenant's notice) the next June 30th or December 31<sup>st</sup> (whichever first occurs) next following the

sixtieth (60th) day after the date of Tenant's notice. During the notice period Tenant shall have the right to continue to pay in lieu rent.

### MIMI'S CAFE

#### 9.3 EXCLUSIVE.

Landlord agrees, during the Term of this Lease and any extensions thereof, not to lease or sell any portion of the Shopping Center (other than this Lease of the Premises to Tenant) for use as a restaurant with more than three thousand five hundred (3,500) square feet of floor area that serves breakfast, nor for any full-service, sit-down restaurant serving American-style food. The foregoing restrictions shall not apply to IHOP, Johnny Carino's, nor to any restaurant whose primary menu items are ethnic foods (i.e., Mexican, Italian, or Chinese cuisine), nor to any restaurant which derives a majority of its sales from a specialty food item (i.e., steaks, bagels, or wraps). In addition, Landlord agrees during the Term of this Lease and any extensions thereof, that portion of the Shopping Center identified on the Site Plan as building "13" shall not be used for the sale of food. The covenant of exclusivity shall be contained in the Memorandum of Lease to be recorded by Tenant.

#### 21. RECIPROCAL EASEMENT AGREEMENT

Subject to Tenant's review and approval thereof, Landlord shall cause the Shopping Center to be subject to reciprocal easements for ingress and egress to and from the public ways and the Shopping Center, for passage and parking of vehicles within the parking lots of the Shopping Center, and for pedestrian access through, over, across, in, to and from, and within the Common Areas of the Shopping Center, all throughout the duration of the Term and all Option Periods exercised by Tenant (hereinafter "REA"). Such REA also shall provide notice of the terms of the restrictive covenant protecting Tenant's exclusive within the Shopping Center. Such REA shall encumber all of the real property depicted on the Site Plan. Such REA shall permit only lawful retail uses within the Shopping Center and shall prohibit the following activities and/or uses: any mortuary, funeral parlor, casket store or similar operation, any massage parlor, any establishment featuring nude or semi nude entertainment, adult book store, adult video store, any display of nudity or pornography visible from the Common Areas, a so-called "head" shop, off-track betting, gambling, or other gaming establishment, any so-called "payday loans" or similar check cashing facility (other than a first class bank, savings and loan, credit union or similar financial services institution), any school, library, reading room, or any other educational facility offering primarily instruction rather than sales of products or services, any house of worship, meeting hall, auditorium, banquet facility, any warehouse and/or self-storage facility, any gym, health club, pool, racquet sports facility, bowling alley, skating rink or any other sports or recreational facility (unless incidental to a full-line sports equipment retail store), movie theater, arcade, pool hall, paintball, laser tag, carnival, amusement park, circus and any show staged within the Common Areas, any bar, tavern or night club, dance hall, disco, liquor store, Laundromat, any automotive repair and/or service facility, any automobile, boat, trailer or truck leasing, sales and/or storage facility, car wash, animal raising or boarding (except incidental to a full-line pet supply store), pawn shop, flea market, swap meet, junk yard, manufacturing, offices, drilling for and/or removal of subsurface substances, dumping, disposal,

incineration or reduction of garbage or refuse, or any use which constitutes a public or private nuisance or produces objectionable noise, smell, vibration or blight. Landlord agrees to enforce the REA, and if Landlord fails to do so within thirty (30) days of written notice from Tenant, Tenant may do so in either the name of Landlord, Tenant or both. Landlord agrees that no modifications shall be made to the REA which materially impact Tenant's rights under this Lease and/or the operation of the Premises without Tenant's approval, which approval may be withheld in Tenant's sole and absolute discretion.

#### CAFÉ RIO

2.4 Landlord Covenant of Non Competitive Use. Landlord covenants to Tenant that so long as Tenant is not in default under the terms of the Lease, Landlord will not lease to or allow the use of any premises in the Shopping Center for a restaurant which provides a primary cuisine competitive with the Mexican and Tex-Mex cuisine of Tenant served by Tenant as of the Rent Commencement Date. For purposes of the Lease "primary cuisine" means more than twenty percent (20%) of the gross revenue of another restaurant or eating establishment attributed to the sale of Mexican and/or Tex-Mex cuisine.

#### SONIC

None.

#### CAFÉ ZUPAS

#### SECTION 6.02 OPERATION OF BUSINESS AND PROHIBITED USES.

Tenant agrees to be open for business and to operate one hundred percent (100%) of the Leased Premises during the entire Rental Term of this Lease unless prevented from doing so because of fire, accident, or acts of God, remodeling, renovations, or casualty, and to conduct its business at all times in a first class and reputable manner. Tenant shall promptly comply with all laws and ordinances and lawful orders and regulations affecting the Leased Premises and the cleanliness, safety, occupancy and use of same. Tenant acknowledges that other tenants of the Shopping Center have been granted exclusive rights for their respective uses of their premises in the Shopping Center and Tenant covenants that it shall be bound by each of such exclusive uses until the earlier to occur of: (1) the date on which the lease containing the exclusive use expires, or (2) the tenant having the exclusive use agrees to waive the exclusive use, in writing. The existing exclusive uses are generally described as follows and are more particularly set forth in the tenant's lease to whom the exclusive use has been granted by Landlord: the retail sale and/or rental of bridal wear, men's and women's formal attire and clothing, prom and special occasion attire, accessories relating to all of the foregoing, and any other goods or services relating to weddings, special events, and parties; the sale of pet food, pet supplies, live animals, pet grooming, pet training, veterinary services, and related goods and services; mobile radio and cellular phones, pagers, personal communicators, cellular and wireless voice, data and internet services; and related

software and accessories; the sale of noodles and pasta, and noodle and pasta dishes for on or off premises consumption if such sale is incidental to another primary business of a tenant and such sale does not exceed ten percent (10%) of tenant's gross annual revenue from its business operations at the Shopping Center; the sale in a restaurant, the primary cuisine of which is competitive with the Mexican and Tex-Mex cuisine of Cafe Rio; the sale of pizza in a restaurant as its primary business; the retail sale of footwear; and the providing of haircuts or the sale of hair cut products; the sale, rental or distribution, at retail or at wholesale, either singly or in any combination of items contained in any of the following respective categories of merchandise: (a) womens and domestics; (b) bathroom items (including, without limitation, health and beauty care items, but excluding plumbing hardware); (c) housewares (excluding furniture and major appliances or "white goods"); (d) frames and wall art (providing that a fine art gallery shall not be precluded); (e) window treatments; and/or (f) closet, shelving and storage items; provided, however, that any tenant or subtenant in the Shopping Center shall have the right to utilize its respective premises. Tenant shall not use, permit or suffer the use of the Leased Premises for the sale, rental, or display of pornography, pornographic books and materials, nudity, or any sexually explicit merchandise that is directed to or restricted to adult customers, due to sexually explicit subject matter, graphic violence, or drug paraphernalia. No second-hand store, auction, liquidation, going out of business, fire or bankruptcy sales may be conducted in the Leased Premises without the prior written consent of Landlord. Tenant covenants to remain open and fully operate at least six days per week and normal restaurant hours.

SECTION 26.23 EXCLUSIVE. Provided that (a) the Lease is in full force and effect, (b) Tenant is not in default under the Lease, (c) no circumstance or event exists which, with the passage of time or the giving of notice or both, would constitute such a default, and (d) Tenant has not assigned the Lease or subleased all or any portion of the Leased Premises under any then-existing sublease, so long as (but only for so long as) the Leased Premises are actually occupied and operated by the original Tenant for the sales of the following gourmet items only, and no other purpose: soups, salads, sandwiches and desserts, Landlord shall not enter into a lease with any of the following (only): Panera Bakery, Paradise Bakery, Corner Bakery, Atlanta Bread Company, Apple Spice Junction, Jason's Deli, Kneaders Bakery, or Sweet Tomatoes. Tenant agrees that the provisions of this Paragraph shall be of no force and effect if, at any time, in Landlord's reasonable judgment, the right granted to Tenant in this Paragraph would violate any statute, decision, order, ruling or decree of any court or any governmental, legislative, administrative, regulatory, adjudicatory or arbitrational body or agency having jurisdiction over Landlord, Tenant or the Premises.

(i) Furthermore, Landlord represents that Landlord shall be responsible for resolving any conflicting exclusivity provisions of tenants' leases with other tenants of the Shopping Center or obtaining any required approvals prior to execution of this Lease. Tenant shall be responsible to resolve conflicts, if any, arising from Tenant's compliance with the exclusivity provisions. of the leases of other tenants.

**FIVE GUYS**

ARTICLE 47, EXCLUSIVITY

Landlord shall not lease space in the area of the Shopping Center shown on the site plan (Exhibit B) for the duration of this lease. In addition Landlord shall not lease or in any development within one mile of the Shopping Center for a period of two (2) years, including the Sonic Pad as defined herein, if purchased, to another tenant whose primary use is the sale of hamburgers or which markets itself as a hamburger restaurant.

**RUMBI'S ISLAND GRILL**

ARTICLE 47, EXCLUSIVITY

Landlord shall give Tenant an exclusive right within the Shopping Center for the preparation and sale of island cuisine including Caribbean and Pacific Rim foods.

**NOODLES & COMPANY**

5.4 Exclusivity. Landlord agrees that, during the Term and any extensions, Tenant shall have the exclusive right to sell noodles and pasta and noodle and pasta-related dishes, for on or off premises consumption at the Shopping Center; provided, however, other tenants in the Shopping Center shall have the right to sell noodles and pasta dishes if (i) the sale of noodle and pasta dishes by such tenant is incidental to another primary business of such tenant and (ii) such tenant's sale of noodle and pasta dishes from the Shopping Center does not exceed ten percent (10%) of such tenant's annual gross revenues derived from its business operations at the Shopping Center (the "Exclusive"). This Exclusive shall not apply to: (a) any sit-down full service restaurant that exceeds 5,000 square feet, or (b) Cafe Rio and Rumbi Island Grill. Landlord will refrain from leasing any space in the Shopping Center to any future tenant in violation of the Exclusive. Leases in the Shopping Center dated later in time to the date this lease is fully executed shall require those tenants to honor this Exclusive. If any lease in the Project dated later in time than this Lease does not require the tenant to honor Tenant's Exclusive, then Landlord shall be in default of this Lease. If, at any time during the Term of this Lease, Landlord leases space in the Shopping Center to a third party in violation of the Exclusive, Tenant shall have the right, in its sole discretion, to exercise any one or more of the following described remedies: (i) pay Landlord, in lieu of Rent payable by Tenant to Landlord hereunder, fifty percent (50%) of the Rent that would otherwise be due until such material breach is cured; (ii) terminate this Lease upon giving Landlord thirty (30) days prior written notice; or (iii) obtain injunctive relief. If other tenants in the Shopping Center violate this Exclusive, then Landlord shall upon Tenant's written request make demand on them to cease such violation. If the violating party fails to observe Tenant's Exclusive right within forty-five (45) days after notice from Landlord, Landlord shall assign Tenant its enforcement rights against such tenants and Tenant shall have the right to seek an injunction or other remedy at law or in equity for such violation ("Tenant's Action") or to terminate the Lease. The remedies contained herein shall be in addition to all other rights and remedies provided by law or in equity or elsewhere herein, and shall be cumulative rather than exclusive. If Tenant elects to terminate this Lease, all rights and obligations of Landlord

and Tenant hereunder shall terminate as of such time, except for those obligations which survive the termination of this Lease or have accrued up to the termination date. Notwithstanding anything herein to the contrary and except as specifically provided in this Section 5.3, Tenant and Landlord shall continue to perform any and all of their respective obligations under the Lease during the period of time the Exclusive of Tenant is being violated.

**PEERLESS BEAUTY SUPPLY**

Landlord agrees that, during the Term and any extensions, Tenant shall have the exclusive right to sell beauty and barber supplies within the Shopping Center.

**SWEET TOOTH FAIRY**

None.

**GAMESTOP**

1.01 (U). EXCLUSIVE: Provided Tenant is not in default of any material term of this Lease beyond applicable notice and grace periods and provided further that Tenant is using the Leased Premises for its Permitted Use (as defined in Section 1.01 V), Landlord represents and warrants that it shall not enter into an agreement (excluding tenants currently existing) with any other occupant (equal to and under 3,000 square feet) in the Shopping Center whereby such occupant shall be permitted to sell entertainment software, video software or video games.

If Landlord violates the foregoing exclusive, Tenant shall have the right to reduce Minimum Rent by 25% as of the effective date of said violation until such violation has been corrected.

If Tenant shall be entitled to reduce Minimum Rent as set forth above, for a period of six (6) months or more, then Tenant shall have the right to terminate this Lease.

**EXHIBIT E**  
**LIST OF LP RESTRICTIONS**

(see attached)

**DAVID'S BRIDAL**

2.5 Use of Premises:

(a) The Premises shall be used (i) for the purpose of conducting therein the business of the retail sale and/or rental of bridal wear, women's and men's formal attire, clothing, prom and special occasion attire, and accessories related to all of the foregoing, and/or any other goods and services related to weddings, special events and parties, or (ii) subject to existing exclusive uses granted for tenants of the Center, for any other lawful purpose which Landlord may, from time to time, permit.

(b) During the Lease Term, Tenant shall have the exclusive right to sell and/or rent women's bridal wear and/or men's formal wear (collectively the "Exclusive Use") in the Center, including any additions or expansions thereto, owned, or controlled, by Landlord, or a related entity of Landlord (or in which Landlord, or a related entity of Landlord, has a twenty-five percent (25%), or greater, equity interest). Landlord and Tenant mutually acknowledge and agree that the exclusive right granted to Tenant was a material inducement to Tenant to enter into this Lease, and that absent such inducement, Tenant would not have agreed to certain of the terms of this Lease. Landlord covenants to enforce Tenant's exclusive rights as set forth herein. Therefore, neither Landlord, nor any related entity of Landlord, will use, lease (or permit the use, leasing or subleasing), or sell any space in or portion of the Shopping Center or any property contiguous to the Shopping Center owned or controlled now or at anytime hereafter by Landlord or any related entity of Landlord for the Exclusive Use identified herein. Should Tenant's exclusive right be violated by Landlord, in addition to its remedies available at law or in equity, Tenant shall have the option to: (i) terminate this Lease one (1) year after the violation of its exclusive right with thirty (30) days prior written notice, or (ii) reduce its payment of Monthly Minimum Rent, effective upon the date the exclusive right was first violated, to twenty-five percent (25%) of the then applicable amount referenced herein until such time said violation is cured; provided, however, that if Landlord has not permitted, suffered or acquiesced in the violation of Tenant's exclusive right, and has promptly commenced (including legal proceedings, if necessary) and diligently pursued the cure of such violation (including, but not limited to the termination of the lease of any such violating tenant or occupant), then Tenant shall not be permitted to reduce its payment of Monthly Minimum Rent.

See letter dated April 10, 2012 (Attached hereto) for further clarification of Exclusive Use.

2.6 Prohibited Uses:

Landlord as to the Shopping Center and Tenant as to the Premises, shall not permit the following uses: (i) any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation; (ii) any "second hand" store or "surplus" store; (iii) any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance); (iv) any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building); (v) any fire sale, bankruptcy sale, "going" out-of-business sale (unless pursuant to a court order), or auction house operation; (vi) any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located; (vii) any automobile, truck, boat,



trailer or recreational vehicle sales, leasing, display or body and mechanical repair operation, or dispensing of petroleum products; (viii) bowling alley; (ix) skating rink; (x) any movie theater, cinema or live performance theater; (xi) any residential use, including but not limited to, single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms; (xii) any veterinary hospital or animal raising or boarding facilities (except that this shall not prohibit pet shops); (xiii) any mortuary, funeral home or funeral parlor; (xiv) any establishment selling or exhibiting pornographic materials or drug-related paraphernalia, except that this shall not prohibit (a) videotape sale and rental stores which sell or rent primarily non-"X-rated" videotapes (that is, "G" to "R"-rated videotapes) but which also rent or sell "X-rated or non-rated videotapes" for off-premises viewing only, provided such X-rated or similar videotapes, and the place and procedure for selection thereof, precludes viewing or selection by minors and with no promotional, advertising or other depiction or description in respect to any "X-rated" or nonrated or similarly videotape displayed or utilized within or outside the store; or (b) book stores and other stores such as drug stores which sell primarily general audience books and other reading, listening, and/or other materials which are not perceived to be, or hold themselves out as "adult book" stores, but which incidentally sell books, magazines and other periodicals, records, CD's and tapes which may contain pornographic materials so long as such sale is not from any special segregated section in the store; (xv) flea market; (xvi) automobile or truck washing facility; (xvii) night club, disco or other dance hall; (xviii) amusement, game rooms, video arcades or similar establishments, including without limitation the use of pinball machines, electronic games and similar apparatus, except as an ancillary use; (xix) pool or billiard hall; (xx) any gambling facility or operation, including but not limited to, off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/blackjack/keno machines or similar devices; bingo hall or card parlor (notwithstanding the foregoing, the prohibition shall not apply to governmental sponsored gambling activities or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant); (xxi) amusement park, carnival or festival; (xxii) auditorium, meeting hall, or banquet facility; (xxiii) private or commercial massage parlor; (xxiv) adult entertainment center or social club; (xxv) church; and /or (xxvi) shooting gallery.

#### **ROD WORKS**

2.4 Prohibited Uses. Tenant acknowledges that other tenants of the Shopping Center have been granted exclusive rights for their respective use of their premises in the Shopping Center and Tenant covenants that it shall be bound by each of such exclusive uses until the earlier to occur of (1) date on which the lease containing the exclusive use expires, or (2) the tenant having the exclusive use agrees to waive the exclusive use. The existing exclusive uses are generally described as follows and are more particularly set forth in the tenants' leases to whom the exclusive use has been granted by Landlord: the retail sale and/or rental of bridal wear, men's and women's formal attire and clothing; prom and special occasion attire; accessories relating to all of the foregoing; and any other goods or services relating to weddings, special events, and parties; the sale of pet food, pet supplies, live animals, pet grooming, pet training, veterinary services, and related goods and services; mobile radio and cellular phones, pagers, personal communicators, cellular and wireless voice, data and internet services; and related software and accessories; the sale of noodles and pasta, and noodle

and pasta dishes for on or off premises consumption; a restaurant which provides a primary cuisine competitive with the Mexican and Tex-Mex cuisine of Cafe Rio; a pizza restaurant as the primary business; and a retail footwear store.

#### DOLLAR CUTS

2.4 Prohibited Uses. Tenant acknowledges that other tenants of the Shopping Center have been granted exclusive rights for their respective use of their premises in the Shopping Center and Tenant covenants that it shall be bound by each of such exclusive uses until the earlier to occur of (1) the date on which the lease containing the exclusive use expires, or (2) the tenant having the exclusive use agrees to waive the exclusive use. The existing exclusive uses are generally described as follows and are more particularly set forth in the tenants' leases to whom the exclusive use has been granted by Landlord: the retail sale and/or rental of bridal wear, men's and women's formal attire and clothing; prom and special occasion attire; accessories relating to all of the foregoing; and any other goods or services relating to weddings, special events, and parties; the sale of pet food, pet supplies, live animals, pet grooming, pet training, veterinary services, and related goods and services; mobile radio and cellular phones, pagers, personal communicators, cellular and wireless voice, data and internet services; and related software and accessories; the sale of noodles and pasta, and noodle and pasta dishes for on or off premises consumption; a restaurant which provides a primary cuisine competitive with the Mexican and Tex-Mex cuisine of Cafe Rio; a pizza restaurant as the primary business; and a retail footwear store.

Also, Landlord shall not during the Primary or Renewal Term of this Lease, lease space in the building of which the Premises are part of another tenant who's primary business is providing haircuts or selling hair care products.

In addition, Landlord shall not lease or permit the use of any part of the Shopping Center as an adult video store, adult book store, and or adult entertainment, of any type (defined for purposes of this Lease as offering video materials, books or other sexually explicit merchandise or services for sale or rent, which are directed to or restricted to adult customers, due to sexually explicit subject matter) or for any other reason making it inappropriate for general use.

#### ARTICLE 40, EXCLUSIVITY

During the Primary or any Renewal Term of this Lease, Landlord shall not lease any other space in the building of which the Premises are part to another tenant whose primary business is providing haircuts and selling hair care products.

Tenant acknowledges that Snip-Its Haircuts for Kids is currently a Tenant in the Shopping Center.

ORIGINAL

**David's Bridal, Inc.**

1001 Washington Street, Conshohocken, Pennsylvania 19428

April 10, 2012

LAYTON POINTE, L.C.  
9450 South Redwood Road  
South Jordan, Utah 84095

Re: Lease Agreement dated March 9, 2007 (the "Lease") between Layton Pointe, L.C., a Utah limited liability company (the "Landlord") and David's Bridal, Inc. (the "Tenant"), for the "Premises" located at the "Harris Point Shopping Center", Layton, Utah (the "Shopping Center")

Dear Landlord:

The purpose of this letter is to avoid any disputes concerning Tenant's exclusive use, as set forth in Section 2.5(b) of the Lease relating to the SALE OR RENTAL OF WOMEN'S BRIDAL WEAR (the "Exclusive Use"), and the proposed operation of a retail store by "Dress Barn" in the Shopping Center.

In response to a request by Landlord and related information supplied concerning a portion of the proposed "Dress Barn" lease that is to read: "that [Dress Barn's] sale of women's formal attire and clothing and prom and special occasion attire in less than ten percent (10%) of the sales area of the demised premises shall not violate any exclusive use provision" (the "non-prohibited use"), Tenant hereby agrees, subject to absolute strict compliance by all parties hereto with all of the terms and conditions set forth herein, that such non-prohibited use set forth herein, with respect only to the operation of a retail store by "Dress Barn" in the Shopping Center will not be a violation of Tenant's Exclusive Use; provided that, it is specifically acknowledged and agreed by all parties hereto that such non-prohibited use **DOES NOT PERMIT, IN ANY WAY WHATSOEVER, THE SALE OR RENTAL OF ANY WOMEN'S BRIDAL WEAR**, and Tenant's Exclusive Use shall be violated if "Dress Barn", at its retail store in the Shopping Center (i) offers for sale or rental any women's bridal gowns or wedding dresses; (ii) establishes any separate bridal department or area within the store identified by signage as such; (iii) displays bridal gowns or wedding dresses in its display windows or within the store; (iv) displays any poster or advertisement in any storefront windows or within the store referring to or containing bridal gowns or wedding dresses; or (v) refers to bridal gowns or wedding dresses in any advertising which identifies the Harris Point Shopping Center, Layton, Utah location.

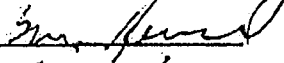
Landlord and "Dress Barn" only may rely on the provisions of this letter, which shall not apply to any other entity, person, tenant or occupant in the Shopping Center, and shall automatically expire immediately upon the expiration or termination of the "Dress Barn" tenancy in the Shopping Center. Except as specifically provided for herein, in no other way shall this letter modify any rights or obligations, including but not limited to the Exclusive Use, contained in Tenant's Lease, nor shall this letter be deemed to waive the necessity of obtaining Tenant's consent under any circumstances where Tenant's waiver or consent is otherwise required pursuant to the Lease.

Sincerely,  
DAVID'S BRIDAL, INC.

By: \_\_\_\_\_  
Name: Michael H. Mirsky  
Its: Vice President, Real Estate

The above contents of this letter acknowledged and agreed:

LAYTON POINTE, L.C. (the "Landlord")


By: 

Name: GARY HOWLAND

Its: CEO, Eagle Point, Mason Hill

The above contents of this letter acknowledged and agreed:

"Dress Barn"

By: 

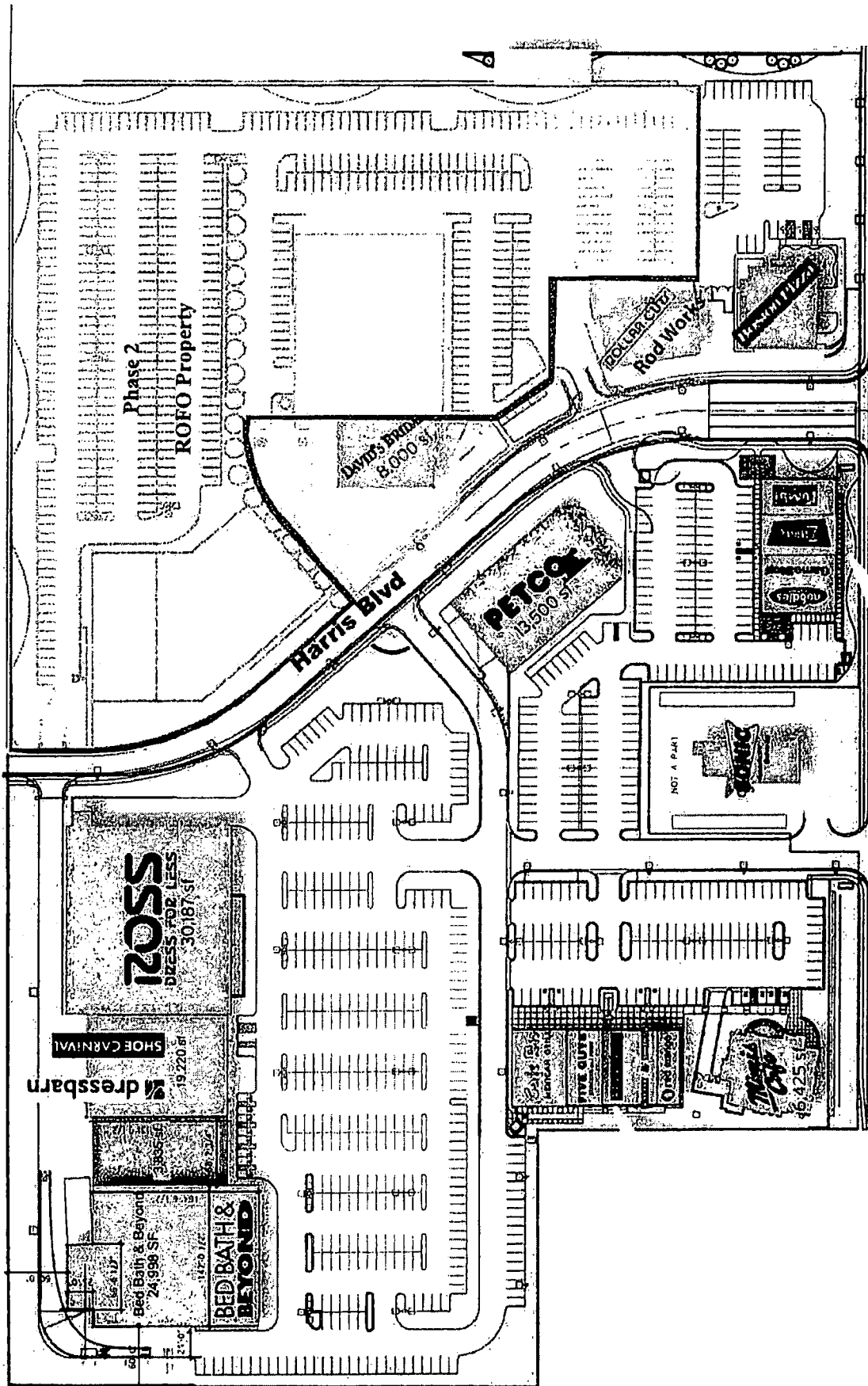
Name: ELISE JAFFE  
Sr. Vice President

Its: \_\_\_\_\_



**EXHIBIT F**  
**SITE PLAN OF ROFO PROPERTY**

(see attached)



**EXHIBIT G**

**LIST OF CURRENT IREIT TENANTS**

<u>Suite</u>	<u>Tenant</u>	<u>Sq. Ft.</u>
A	Ross	30,187
E	Bed Bath & Beyond	25,000
F	Petco	13,500
B	Shoe Carnival	12,100
C	Dress Barn	7,100
1	Mimi's Café	6,425
13e	Café Rio	4,000
D	America's Best	3,825
2	Sonic	3,500
4c	Café Zupas	3,445
13cd	Five Guys	2,645
4a	Noodles & Company	2,575
4e	Rumbi Island Grill	2,500
13b	Peerless Beauty Supply	2,096
13ab	Sweet Tooth Fairy	1,650
4b	Game Stop	1,500
13a	Vacant	1,452
13abc	Vacant	380
<b>Property Totals</b>		<b>123,880</b>

**EXHIBIT H**

**LIST OF CURRENT LP TENANTS**

<u>Suite</u>	<u>Tenant</u>	<u>Sq. Ft.</u>
G	David's Bridal	8,000
1	Rod Works	2,976
2	Dollar Cuts	1,226
<b>Property Totals</b>		<b>12,202</b>



**EXHIBIT I**

**DRAINAGE EASEMENT PARCELS**

PARCEL 3 (Easement Estate)

NORTH DETENTION BASIN DESCRIPTION:

A TRACT OF LAND BEING A PART OF THE DAVIS COUNTY SCHOOL DISTRICT PROPERTY, RECORDED AS BOOK 368 AND PAGE 466 IN THE DAVIS COUNTY RECORDER'S OFFICE, WHICH PROPERTY BEING LOCATED IN THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, LAYTON CITY, DAVIS COUNTY, STATE OF UTAH, THE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST BOUNDARY LINE OF THE SAID DAVIS COUNTY SCHOOL DISTRICT PROPERTY, WHICH POINT IS NORTH 89°55'10" EAST 1299.88 FEET ALONG THE SECTION LINE, NORTH 0°08'00" EAST 46.67 FEET, AND NORTH 0°09'40" EAST 122.78 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 8; AND RUNNING THENCE NORTH 65°34'58" WEST 43.94 FEET; THENCE NORTH 0°10'43" EAST 194.09 FEET; THENCE EAST 40.00 FEET TO THE SAID EAST LINE OF THE DAVIS COUNTY SCHOOL DISTRICT; THENCE ALONG SAID LINE SOUTH 0°09'40" WEST 212.25 FEET TO THE POINT OF BEGINNING.

Tax Parcel No. 09-036-0064

PARCEL 4 (Easement Estate)

SOUTH DETENTION BASIN DESCRIPTION:

A TRACT OF LAND BEING A PART OF THE DAVIS COUNTY SCHOOL DISTRICT PROPERTY, RECORDED AS BOOK 368 AND PAGE 466 IN THE DAVIS COUNTY RECORDER'S OFFICE, WHICH PROPERTY BEING LOCATED IN THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, LAYTON CITY, DAVIS COUNTY, STATE OF UTAH, THE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH RIGHT OF WAY LINE OF ANTELOPE DRIVE (SR-108), WHICH POINT BEING NORTH 89°55'10" EAST 1273.21 FEET ALONG THE SECTION LINE, AND NORTH 0°05'00" EAST 46.67 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 8, AND RUNNING THENCE SOUTH 89°55'10" WEST 357.99 FEET ALONG SAID RIGHT OF WAY LINE; THENCE NORTH 315.44 FEET; THENCE EAST 19.79 FEET; THENCE SOUTH 50°50'53" EAST 94.24 FEET; THENCE SOUTH 65°34'58" EAST 320.83 FEET TO THE EAST LINE OF SAID DAVIS COUNTY SCHOOL DISTRICT PROPERTY; THENCE SOUTH 0°09'40" WEST 100.89 FEET ALONG SAID LINE; THENCE SOUTH 50°39'06" WEST 34.57 FEET TO THE POINT OF BEGINNING.

Tax Parcel No. 09-036-0065