

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Jones Waldo Holbrook & McDonough P.C.  
Attn: Marianne G. Sorensen, Esq.  
301 North 200 East, Suite 3A  
St. George, UT 84770

Space above this line for recorder's use only

**MEMORANDUM OF GROUND LEASE**

THIS MEMORANDUM OF GROUND LEASE (this "Memorandum") is made and entered into as of the date of the last execution, which date is the 29 day of September, 2011, by and between Thanksgiving Point Institute, Inc., a Utah non-profit corporation ("Landlord"); MiMi Unlimited LLC, a Utah limited liability company ("Tenant");

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Ground Lease dated as of the 24th day of August, 2011 (the "Lease");

WHEREAS, the Lease pertained to certain premises located in Utah County, Utah, said premises being more specifically described on Exhibit A attached hereto (the "Demised Premises");

WHEREAS, as provided in the Lease, the Demised Premises are part of a larger development known as Thanksgiving Point (the "Project"), which is legally described on Exhibit B attached hereto; and

WHEREAS, the Lease contains rights, easements, and covenants affecting the Project that run with the land; and

WHEREAS, Landlord and Tenant desire to evidence the Lease in the Official Records of Utah County by the recitations contained in this Memorandum.

NOW, THEREFORE, in consideration of the foregoing and TEN DOLLARS (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord does hereby demise, lease and let unto Tenant the Demised Premises, as follows:

1. The Term of the Lease shall be for a fifteen (15) year period, subject to three (3) Renewal Terms of ten (10) years each. The Original Term will commence upon the Rent Commencement Date and will expire on 11:59 p.m. (local time) of the day prior to the fifteenth (15th) anniversary of the Rent Commencement Date (a memorandum of which will be recorded at a later date confirming the actual Rent Commencement Date).

FATIC 488564

2. This Memorandum is subject to all conditions, terms and provisions of the Lease, which is hereby adopted by reference to the same in the same manner as if all the provisions thereof were copied herein in full.

3. In the event of a conflict between the terms of the Lease and this Memorandum, the Lease shall prevail. Reference should be made to the Lease for a more detailed description of all matters contained in this Memorandum.

4. The Lease contains certain covenants and restrictions which have been imposed on the Project for the benefit of the Demised Premises, which shall be deemed restrictive covenants running with the land and shall be binding upon each of the Parcels within the Project and any person who may from time to time own, lease or otherwise have any interest in any of the Parcels. A copy of such covenants, conditions restrictions is attached here to as Attachment 1.

4. Capitalized terms not defined herein shall have the meaning as set forth in the Lease.

EXECUTED effective as of the date first written above.

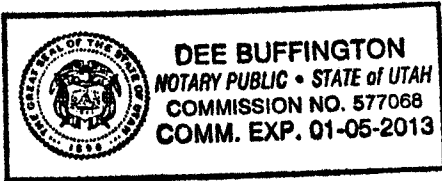
**"LANDLORD"**

THANKSGIVING POINT INSTITUTE, INC.  
a Utah non-profit corporation

By: [Signature]  
Mike Washburn, President

STATE OF UTAH )  
                          :  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 19 day of September, 2011, by Mike Washburn, President of Thanksgiving Point Institute, Inc.



[Signature]  
NOTARY PUBLIC

**"TENANT"**

MiMi Unlimited LLC,  
a Utah limited liability company

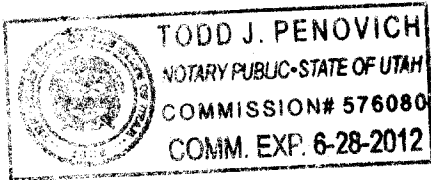
By: [Signature]  
Name: SHELL GARDNER  
Title: Manager

STATE OF UTAH )  
                          :  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 30 day of September, 2011, by Stelli Gardner, Manager of MiMi Unlimited LLC.



NOTARY PUBLIC

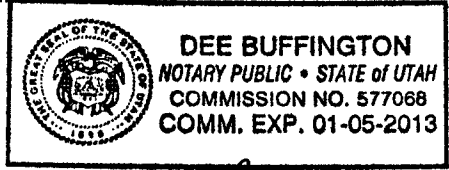




**Whistle Stop Development Corporation**  
a Utah corporation

*Ralph W. Rasmussen, Jr.*  
Ralph W. Rasmussen, Jr., Secretary/Treasurer

STATE OF UTAH )  
  :  
COUNTY OF UTAH )



The foregoing instrument was acknowledged before me this 29 day of September, 2011, by Ralph W. Rasmussen, Jr., Secretary/Treasurer of Whistle Stop Development Corporation.

*Dee Buffington*  
NOTARY PUBLIC

**Thanksgiving Point-US-D, LLC**  
a Utah limited liability company  
By Thanksgiving Point Institute, Inc., its Manager

*Mike Washburn*  
Mike Washburn, President

STATE OF UTAH )  
  :  
COUNTY OF UTAH )

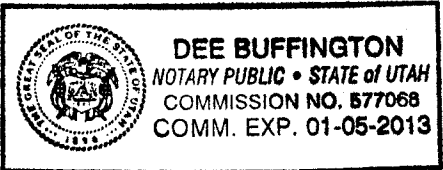
The foregoing instrument was acknowledged before me this 29 day of September, 2011, by Mike Washburn, President of Thanksgiving Point Institute, Inc.

*Dee Buffington*  
NOTARY PUBLIC

**NAMAL Holding Company, LLC**  
a Utah limited liability company

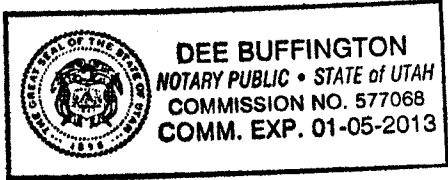
*Ralph W. Rasmussen, Jr.*  
Ralph W. Rasmussen, Jr., Manager

STATE OF UTAH )  
  :  
COUNTY OF UTAH )



The foregoing instrument was acknowledged before me this 29 day of September, 2011, by Ralph W. Rasmussen, Jr., Manager of NAMAL Holding Company, LLC.

*Dee Buffington*  
NOTARY PUBLIC



**Attachment 1 to Memorandum of Ground Lease  
Covenants, Conditions, & Restrictions from Lease**

The following clauses from the Lease are binding on the Parcels within the Village:

**6. COMMON AREAS; COMMON AREA MAINTENANCE; CAM FEES**

**6.1 Definitions.**

6.1.1 **"Common Areas"** means all real property in the Village for the common use, convenience and benefit of Landlord, Tenant, their respective permittees and all other owners and occupants, whether or not currently identified, including, without limitation, the New Parking Lot, other parking areas, access and egress drives, service drives, landscaped areas and exterior planted areas, sidewalks and non-dedicated streets. Common Areas do not include drive up or drive through areas and facilities, loading docks, or permanent outdoor sales areas.

6.1.2 **"Common Area Improvements"** shall mean all improvements constructed from time to time within the Common Area and intended for common use which may include, without limitation, parking areas, access and egress drives, service drives, non dedicated streets, lighting standards, sidewalks, landscaping, fixtures, and signage. The initial Common Area Improvements are shown on the Site Plan.

6.1.3 **"Parcel"** shall mean and refer to any parcel of land shown on the Site Plan.

6.2 **Right to Use.** Landlord and the Affiliated Owners grant to Tenant, its agents, employees, customers, invitees, licensees and concessionaires, the non-exclusive right during the term of this Lease to use the Common Areas for their intended purposes. Tenant's use of the Common Areas shall be in common with others entitled to the use thereof and subject to the provisions of this Lease. Tenant and all persons having business with Tenant shall have the right to use, in common with all other occupants of the Project and all persons having business with such other occupants, and Landlord, all Common Areas of the Project, for their intended purposes. Use shall be restricted only as follows:

6.2.1 **Easements.** Certain easements are granted in this Lease and the use of the Common Area is subject to those easement grants.

6.2.2 **Fire Protection.** All improvements within the Project shall be constructed in compliance with all applicable federal, state and local building codes. Any new construction within sixty (60) feet of Tenant's Facility shall be sprinkled for fire protection or a fire wall built such that Tenants' Facility will maintain an unlimited area classification for fire protection purposes.

6.2.3 **Insurance.** [See Section 17 on Insurance]

## 6.2.4 Parking.

- (a) Landlord and the Affiliated Owners covenant that all parking areas in the Project are or will be, prior to the Term Commencement Date, subject to cross parking agreements and these agreements cover not only the Project but the Village.
- (b) Tenant is obligated by this Lease to build approximately seventy-two (72) parking spaces. Provisions relating to this obligation will be more fully set forth in the Site Development Agreement, along with details concerning additional parking spaces Landlord may construct. The location of such additional parking spaces is outlined on the Site Plan and labeled "New Parking." Such improvements constructed by Tenant on the New Parking Lot shall become the property of Whistle Stop and shall be included in the Common Areas and maintained by Landlord as part of the Common Area expenses.
- (c) "**Minimum Parking Requirements**" shall mean with respect to any Parcel or the Village as a whole, as the case may be, 4.5 parking stalls per 1,000 square feet for all buildings (other than restaurants) and one (1) parking stall per 300 square feet for restaurants. With Lehi City's approval this requirement may be reduced by up to 25% because of reciprocal cross parking agreements with other areas of the Village. Notwithstanding the foregoing, however, Landlord and the Affiliated Owners covenant that the Project is now and at all times during the Term of this Lease will continue to be in compliance with the foregoing Minimum Parking Requirements, including as such may be adjusted with Lehi City's approval.
- (d) In the event a portion of the parking areas located within the Project is taken by condemnation, and as a result of such condemnation, the Minimum Parking Requirements for the Village are not met, the Parties agree that in addition to any and all remedies available under this Lease or at law or in equity, Tenant shall have the right to terminate this Lease during the ninety (90) day period following the date of such taking by delivering notice of termination to Landlord during said ninety (90) day period, which termination right is a bargained for and agreed to remedy for such taking. Provided, however, within this ninety (90) day period, Landlord shall have the right to propose substitute parking within the Village sufficient to bring the number of parking spaces into compliance with the Minimum Parking Requirements, and sixty (60) days thereafter, to complete the construction of such substitute parking. The sixty (60) day cure period may be lengthened by mutual agreement of the Parties because of weather-related construction issues. If the Parties cannot mutually agree to an extension, the matter shall be resolved by arbitration. In the event Landlord fully performs within the applicable time frames, Tenant's notice of termination shall be null and void, and

Landlord shall be entitled to use any condemnation proceeds for its construction of substitute parking.

6.3 Management of Common Areas.

6.3.1 Landlord by itself or through its agents shall operate, manage, equip, light, insure, repair, clean, replace and maintain the Common Areas in a good and serviceable condition for their intended purposes which will include (1) keeping the Common Areas for parking suitably paved and marked for parking and traffic flow; (2) keeping all sidewalks in the Common Areas in good condition and repair; (3) keeping the landscaped areas of the Common Areas in a neat and good condition; and (4) keeping all Common Areas and Common Area Improvements in good working order and condition, free of refuse and obstruction and properly drained and cleared of snow.

6.3.2 Landlord may, at any time, temporarily close all or any part of the Common Areas to make repairs or changes, to prevent the acquisition of public rights in the Common Areas and to perform such other acts in or to the Common Areas to improve the benefit thereof to Tenant and other occupants of the Project as Landlord, in its reasonable discretion, shall deem appropriate. Landlord shall use reasonable efforts to arrange any temporary closing of the Common Areas at such times and in such manner as to minimize interference with or disruption of the conduct of Tenant's business in the Demised Premises.

6.4 CAM Fees. Landlord and Tenant have jointly agreed upon the Common Area Maintenance Charges ("**CAM Fee**") to be paid by Tenant to Landlord. The original annual CAM Fee is \$55,000.00 which is to be paid in equal monthly installments of \$4,583.33, in advance on the first day of each and every calendar month without demand therefor and without any setoff or deduction except as expressly provided in this Lease. The CAM Fee shall be adjusted annually beginning on the first anniversary of the Rent Commencement Date. The adjustment shall be made based on the change in the CPI for the twelve month period ending 60 days prior to the annual anniversary date of the Rent Commencement Date. That change multiplier shall be applied to the then existing CAM Fee and the CAM Fee shall be adjusted up or down based on that calculation. In no event shall the CAM Fee be less than the original amount.

6.5 Other than Tenant's CAM Fee, as set forth herein, Tenant shall have no obligation to reimburse or pay any amounts to Landlord or the Affiliated Owners for any costs or expenses relating to, or incurred for, the operation, management, equipping, lighting, insuring, repairing, cleaning, maintenance or replacement of the Common Areas.

**7. PROJECT EASEMENTS**

7.1 Definitions and General Conditions. For the purposes of this Section 7, the following shall apply:

7.1.1 *Definitions.* In addition to the other defined terms in this Lease, the following definitions shall apply:



- (a) A party granting an easement is called the "**Grantor**", it being intended that the grant shall thereby bind and include not only such party but also its successors and assigns.
- (b) A party to whom the easement is granted is called the "Grantee", it being intended that the grant shall benefit and include not only such party but also its successors, assigns, and Permittees.
- (c) "Utility Facilities" means utility systems and utility facilities serving the Project, including but not limited to the following; storm drainage, detention, retention and disposal facilities and sanitary sewer systems, manholes, underground domestic and fire protection water systems, underground natural gas systems, underground electric power cables and systems, underground telephone and television cables and systems. "Common Utility Facilities" means any Utility Facilities used by more than one tenant or owner in the Project. All Common Utility Facilities lying within any Common Area shall for all purposes be deemed to be included within the definition of Common Area Improvements. "**Separate Utility Facilities**" means any Utility Facilities serving only one tenant or owner, and not for service of the Common Area.

#### 7.1.2 *General Conditions.*

- (a) All easements granted herein are non-exclusive and are irrevocable and co-terminous with the Term of this Lease.
- (b) All easements herein shall be easements appurtenant and not easements in gross.
- (c) In the event Landlord or an Affiliated Owner transfers or conveys a portion of the Village, those easements granted under this Section which benefit, bind, and burden the remainder of the Village not transferred or conveyed shall benefit, bind, and burden the portion of the Village so transferred or conveyed, and those easements granted under this Section which benefit, bind, and burden the portion so transferred or conveyed shall benefit, bind, and burden the remainder of the Village.
- (d) All easements granted hereunder shall exist by virtue of this Lease, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release with respect to all or any part of the Village, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the reasonable request of Grantee, Grantor will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement.

7.2 Easements for Use of Common Areas.

7.2.1 *Grant of Easement.* Grantor hereby grants to Grantee easements in the Common Areas for:

- (a) ingress to and egress from the Demised Premises;
- (b) the passage of vehicles;
- (c) the passage and accommodation of pedestrians; and
- (d) the doing of such other things as are authorized or required to be done on the Common Areas under this Lease;

Provided, however, that such easements are limited to such portions of the Common Areas of the Grantor's property as are now or hereafter from time to time set aside or intended to be set aside, maintained and authorized for such use under this Lease.

7.2.2 *Design of the Common Areas.*

- (a) **No Change Area.** There is an area in the Project that is currently established as a small garden like area. Seventy-five percent (75%) of this area shall be designated as a "No Change Area" as is shown on Exhibit C.
- (b) **Changes after Initial Development.** No party may make any change to the Common Area and Common Area Improvements within the area marked "No Change Area" on the Site Plan without the prior written consent of the Grantee, which consent Grantee may not unreasonably withhold. Tenant may make changes to the Common Areas and the Common Area Improvements on the Demised Premises and not included in the No Change Area, as Tenant determines in its sole discretion. Tenant's consent, which may not be unreasonably withheld, shall be required for any change or addition in the Project that adversely impacts: (i) access to the Demised Premises or the Project (including changes and additions to entrances or exits that adversely affect access to the Demised Premises or the Project) or (ii) vehicular traffic flow to the Project (including changes or additions to curb cuts or the orientation of parking spaces or drive aisles that adversely affect traffic flow to or within the Project).
- (c) Additionally, the Parties acknowledge that during the winter, there are a number of deer that try to inhabit the No Change Area and Landlord is forced to fence the area to preserve the plants. Such fencing will be done only when necessary and in a way that Tenant's customers shall still have access to the Facility.

7.2.3 *Easements for Access Drives.* Grantor hereby grants to Grantee easements for *pedestrian* and vehicular traffic on its (Grantor's) Parcel for the purpose of providing ingress to and egress from the Grantee's Parcel and Executive Parkway and Thanksgiving Way ("**Access Drives**"),

together with the following rights and subject to the following restrictions and reservations:

- (a) The use of the Access Drive easements by any person entitled to the use thereof shall be in common with all other such persons. The Access Drive easements and the land upon which they are located shall be considered in all respects part of the Common Area, and the improvements thereon shall be considered in all respects part of the Common Area Improvements; and
- (b) Grantors of the Access Drive easements agree not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways which comprise the Access Drives, except to the extent necessary for reasonable repair and maintenance, general utility maintenance or installation, traffic regulation and control, and to prevent a dedication thereof or the accrual of any prescriptive rights to any person therein.

7.2.4 *General Provisions for Common Area Easements.* Except as agreed to by the Parties, no barriers, fences, walls, grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Project from time to time devoted to pedestrian access, vehicular roadways or parking areas, or in any manner unreasonably restrict or interfere with the use and enjoyment by any party of the rights and easements created by this Section. In addition, Grantor may temporarily close or block traffic in the Project for the time necessary to protect ownership rights and prevent creation of easements to the public and unrelated third parties; provided, however, that, prior to closing off any portion of the Common Area, Grantor shall give fifteen (15) days written notice to Grantee of its intention to do so and shall attempt to coordinate such closing with Grantee, so that no unreasonable interference in the passage of pedestrians or vehicles shall occur), and may temporarily fence off portions of the Project as reasonably required for the purpose of repair, construction and reconstruction.

### 7.3 Easements for Utility Facilities.

7.3.1 *Grant of Easement.* Grantor hereby grants to Grantee, for the Term of the Lease, a perpetual easement in the Project for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities and Separate Utility Facilities serving the Demised Premises.

#### 7.3.2 *Installation, Repair and Maintenance*

- (a) All Separate Utility Facilities installed in the Common Areas and all Common Utility Facilities shall be underground if reasonably possible.

- (b) The location of the Utility Facilities shall be subject to the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed.
- (c) Except as otherwise provided herein, the Grantee of any easement for Utility Facilities under this Section shall be responsible, as between the Grantee and the Grantor, for the installation, maintenance, repair and removal, at the Grantee's cost, of all Utility Facilities installed by the Grantee. Any such installation, maintenance, repair, replacement, relocation and removal of Utility Facilities shall be performed by the Grantee only after giving to the Grantor at least thirty (30) days advance notice to Grantor of Grantee's intention to do such work. However, in the case of an emergency (whereby either persons or property are in immediate danger of substantial damage and/or harm, any such work may be immediately performed after giving to the Grantor such advance notice as is practicable and reasonable under the circumstances. In addition, the Parties agree that all such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to the Grantor as may be practicable under the circumstances, and any and all portions of the surface area of the Grantor's property which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of the Grantee, to essentially the same condition in which they were prior to the commencement of any such work.

7.3.3 *Easements to Public Utilities.* Any grant or other conveyance of an easement to a public utility, as Grantee, by a Grantor shall, without necessity of further recital in the conveyancing instrument, be deemed to include the following conditions, covenants and restrictions to which such public utility and its successors shall be bound unless specifically stated otherwise in such instrument:

- (a) The easement is non-exclusive;
- (b) The right to use the surface areas for the purposes allowed under this Lease is reserved;
- (c) Grantee shall not, in its use or installation, interfere with other installations and easements in the area;
- (d) Grantee shall protect its Utility Facilities against uses of the surface made by Grantor and others; and
- (e) Grantee shall make adequate provisions for the safety and convenience of all persons using the area.

7.3.4 *Indemnification.* The Grantee shall defend, indemnify and hold Grantor harmless from and against any and all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees), incurred in connection with Grantee's use of the Utility Facilities easements under this Section,

except to the extent occasioned by Grantor's grossly negligent or willful wrongful act or omission to act.

#### 7.3.5 *Grantor's Rights as to Utility Facilities*

- (a) *Use of Separate Utility Facilities. The Grantor of any easement for Separate Utility Facilities under this Section may use the utility facilities installed pursuant to such easement; provided, however, that any increase in costs incurred in order to make such utility facilities adequate to serve Grantor's additional use shall be borne by such Grantor.*
- (b) *Relocation of Utility Facilities on Grantor's Parcel. The Grantor of any easement under this Section may relocate any Separate Utility Facilities or Common Utility Facilities installed under any easement granted by it; provided, however, that such relocation:*
- (1) may be performed only after Grantor has given Grantee 30 days written notice of its intention to relocate such facilities;
  - (2) shall not interfere with or diminish the utility services to the Grantee (however, temporary interferences with and diminutions in utility services shall be permitted if they occur during the non-business hours of the Grantee, and Grantee has been so notified). Grantor shall promptly reimburse Grantee for all costs, expenses and losses incurred by Grantee as a result of such interferences or diminutions, or both;
  - (3) shall not reduce or unreasonably impair the usefulness or function of the facilities in question; and
  - (4) shall be performed without cost or expense to Grantee, and, if Common Utility Facilities or Separate Utility Facilities which provide service to the Grantee are involved, in accordance with plans approved by the Grantee.

#### 7.4 Construction Easements.

- 7.4.1 Grantor hereby grants to Grantee temporary construction related easements in the Common Area of the Project for the purpose of facilitating the construction of any Grantee improvements contemplated within this Lease.
- 7.4.2 The location and use of all temporary construction easements under this Section shall be subject to the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed. Grantee agrees to pay the Grantor any additional cost of construction, maintenance, repair and replacement of any improvement or structure constructed by Grantor which may arise on account of or due to Grantee's exercise of its temporary construction easement rights under this Section. Grantee further agrees to use due care in the exercise of the rights

granted under this Section and to first obtain the consent of Grantor as to the specific activities, methods and timing in the exercise of such rights so as to avoid cost or damage to Grantor.

7.4.3 Each party covenants and agrees that its exercise of such easements shall not result in damage or injury to the building(s) or other improvements of any other party, and shall not interfere with or interrupt the business operations conducted by any other party in the Project. In addition, Grantee, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of Grantor which have been damaged or destroyed in the exercise by Grantee of the temporary construction easements granted under this Section and shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) incurred in connection with or arising out of Grantee's exercise of said temporary construction easements, except to the extent occasioned by Grantor's grossly negligent or wrongful acts or omissions.

7.5 Cure Right Easements. Grantor hereby grants to Grantee easements and license to enter upon the Project for the purpose of exercising the cure rights provided by this Lease. Grantee shall defend, indemnify and hold the Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees and reasonable attorneys; fees on appeal) incurred in connection with or arising out of the Grantee's exercise of such easements, except to the extent occasioned by the Grantor's grossly negligent or wrongful acts or omissions.

## 10. USE OF DEMISED PREMISES

- 10.1 Permitted Uses. The Demised Premises shall initially be used for purposes of constructing and operating a yoga studio, spa, and salon ("Tenant's Exclusive Uses") as allowed by all federal, state and local land use rules, regulations, ordinances and permits. Tenant shall not use, occupy or allow the use of the Demised Premises, or any part thereof, for any extra-hazardous purpose, or any other purpose or in any manner which might violate any law, ordinance, rule, order or regulation of any governmental, political or military agency or entity.
- 10.2 Exclusivity. So long as Tenant is operating the Demised Premises for yoga, spa and salon services, Tenant shall have the exclusive right to operate such services in the Village. If Tenant chooses not to provide yoga, spa or salon services, the exclusivity regarding those terminated services in the Village will automatically be terminated.
- 10.3 Alternative Permitted Uses. In the event that Tenant's use of the Demised Premises as a spa, yoga studio or salon proves not economically feasible, in Tenant's sole discretion, Landlord and Tenant agree that Tenant may use the Demised Premises for any of the following uses: tanning salon, Pilates studio, bicycling studio, photography school and/or studio, preschool or any other use that Landlord and Tenant may hereafter agree upon, and such alternative permitted use shall become an exclusive use so long as no other occupant of the Village has established such a use in the Village prior to Tenant's need for an alternative use.

- 10.4 Compliance with Law. Tenant, at Tenant's sole cost and expense, shall comply with all laws, ordinances, rules, orders, regulations and requirements of any legal, governmental, body or commission including those requiring capital improvements to the Demised Premises or relating to, affecting or controlling the reconstruction, replacement, changes in construction or repair, maintenance, condition, equipment, protection, occupancy or use of any Improvement or relating to or affecting the Improvements, occupancy, use or condition of, any work or operation in or on the Demised Premises or any sidewalk or street surrounding or adjoining it. If any license, permit or other governmental authorization is required for the lawful use or occupancy of the Demised Premises, the Tenant shall procure and maintain it, at Tenant's sole cost and expense, throughout the term of this Lease.
- 10.5 Waste; Nuisance. Tenant shall not commit and shall use commercially reasonable efforts to prevent other Persons from committing any waste, damage, disfigurement or injury to the Demised Premises or the Facility. Tenant shall not cause or maintain and shall use commercially reasonable efforts to prevent other Persons from causing or maintaining a nuisance on the Demised Premises or the Facility. Tenant shall specifically keep all areas surrounding the Facility in a clean and neat condition, subject to Landlord's maintenance obligations for Common Areas.

**11. VILLAGE USES**

Subject to the provisions of this Section 11, property within the Village shall only be used for those uses permitted within the Thanksgiving Point Area Plan filed with and approved by Lehi City. However, Tenant acknowledges and agrees that the activities conducted within the Village include large gatherings of people often in outdoor venues because of Thanksgiving Point Institute's mission of providing hands on educational and recreational experiences to its customers, and that such use does not necessarily fit within any classification and is allowed so long as it is consistent with Landlord's mission statement.

- 11.1 Uses Specifically Prohibited. No Parcel shall be used for any of the following uses:
  - 11.1.1 Terminals, including truck or bus terminals, and other distribution facilities.
  - 11.1.2 Food processing operations, except as incidental to permitted restaurant and cafeteria operations or candy, as it might relate to Thanksgiving Point Institute's mission, confection or bakery operations incidental and housed within the same building as a bakery or candy store.
  - 11.1.3 Sand, gravel, and other extraction mining.
  - 11.1.4 Manufacturing and assembly operations, except as otherwise provided.
  - 11.1.5 Distillation, refining, smelting, or mining operations.
  - 11.1.6 Fire sales, flea markets, pawn shops, businesses selling second hand goods, bankruptcy sales (unless pursuant to a court order) or auction operations.

- 11.1.7 Auto, truck, trailer, RV, ATV, or boat sales, leasing, storage, repair or display.
  - 11.1.8 Churches, synagogues, mosques or other places of worship
  - 11.1.9 Dry cleaning or laundry plants or facilities other than those facilities used solely for the collection of soiled clothing and other fabrics from customers and distribution of clean clothing and other fabrics to customers.
  - 11.1.10 Industrial or manufacturing uses.
  - 11.1.11 Junk or salvage yards
  - 11.1.12 Liquor stores
  - 11.1.13 Plumbing and sheet metal shops
  - 11.1.14 Auto body and fender repair, motorcycle or other vehicle repair shops.
  - 11.1.15 Night clubs, pool rooms, off-track betting facilities, casinos, card clubs, bingo parlors, or facilities containing gaming equipment.
  - 11.1.16 An adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts.
- 11.2 Generally Prohibited Uses. Notwithstanding any other provisions of this Lease, no use or activity shall be established, maintained, conducted or permitted on any portion of the Project which will cause or result in any:
- 11.2.1 Emission of smoke, fumes, odors, gases, vapors, steam, dust, sweepings, dirt, cinders, or other particles or substances into the atmosphere which are detectable outside the Parcel boundary where they are created (except to the extent that such fumes or odors are incidental to the normal operation of a restaurant, bakery, candy store, etc.) or which may be detrimental to the health, safety, welfare or comfort of any Village lessee, employee, or invitee, to the conditions of other portions of the Village, or to any vegetation within the Village.
  - 11.2.2 Discharge of fluids, gases, solid wastes or other harmful materials into any waterway, drainage canal or pipe which may adversely affect the health, safety, welfare or comfort of any of the Village's owners, lessees, employees, or invitees, or the conditions of any portion of the Village.
  - 11.2.3 Discharge of glare or heat, subsonic or ultrasonic sounds, or atomic, electromagnetic, microwave, ultra-violet, laser or other radiation which is detectable from any point exterior to the Parcel upon which the operation is being conducted.



- 11.2.4 Recurrent or continuous emission of sound or noise from any Parcel which may be heard without instruments outside the boundaries of the Parcel of origination.
  - 11.2.5 Recurrent or continuous ground vibrations perceptible without instruments any point exterior to the Parcel of origination.
  - 11.2.6 Physical hazard by reason of fire, radiation, explosion or other similar cause to either the Property or the surrounding area.
  - 11.2.7 Persistent unsightly conditions on any Parcel which is visible from any other portion of the Property.
  - 11.2.8 Excessive risk of fire or explosion that increases the casualty insurance premiums for improvements on adjacent Parcels.
  - 11.2.9 Violation of any applicable statute, ordinance, rule, regulation, permit or other validly imposed requirement of any governmental body
- 11.3 Design Guidelines. All construction within the Village shall be governed by Design Control Guidelines (the "**Design Guidelines**") which are administered by the Thanksgiving Point Village Design Control Committee ("**DCC**").
- 12.3 Landlord and Affiliated Owners Cooperation. Landlord and the Affiliated Owners agree to execute any documents necessary to facilitate governmental approvals for the Tenant Improvements and to cooperate with Tenant and all governmental authorities in the securing all approvals, permits and certificates necessary for the construction of the Tenant Improvements and Tenant's use of the Demised Premises and the New Parking Lot. In conjunction with the construction and operation of Tenant's Improvements and the improvements on the New Parking Lot, Landlord and the Affiliated Owners covenant to timely dedicate and grant all rights of way and easements on the Demised Premises, the New Parking Lot, the Project or their adjacent real properties which are reasonably necessary for Tenant's construction and use of improvements on the Demised Premises and the New Parking Lot.

**Exhibit A****Legal Description of the Demised Premises**

Commencing at a point which is South 00°01'25" East 724.71 feet along the section line and West 218.48 feet from the East Quarter Corner of Section 36, Township 4 South, Range 1 West, Salt Lake Base and Meridian; thence South 41°44'30" East 56.42 feet; thence North 48°15'30" East 0.80 feet; thence South 41°44'30" East 41.99 feet; thence South 03°15'30" West 21.41 feet; thence South 86°44'30" East 1 0.93 feet; thence South 03°15'30" West 32.96 feet; thence North 86°44'30" West 11.17 feet; thence South 03°15'30" West 11.86 feet; thence South 41°44'30" East 43.01 feet; thence South 48°15'30" West 45.67 feet; thence North 41°44'30" West 199.50 feet; thence North 48°15'30" East 32.33 feet; thence South 41°44'30" East 11.42 feet; thence North 48°15'30" East 59.53 feet to the point of beginning. Parcel contains: 0.34 acres more or less.

**Exhibit B****Legal Description of the Project**

Commencing at a point which is South 00°01'25" East 342.28 feet along the section line and East 165.01 feet from the West Quarter Corner of Section 31, Township 4 South, Range 1 East, Salt Lake Base and Meridian; thence South 41°44'00" East 251.80 feet; thence South 48°26'23" West 639.14 feet; thence North 41°42'12" West 401.21 feet; thence North 52°49'15" West 309.31 feet; thence North 08°56'22" West 30.70 feet; thence along a 15.50 foot radius curve to the left 12.17 feet (chord bears: North 31°25'58" West 11.86 feet); thence along a 530.00 foot radius curve to the left 320.86 feet (chord bears: North 67°19'38" East 315.98 feet) along the South Right-of-Way line of Executive Park Way Recorded in Subdivision Thanksgiving Point Business Park Plat "A" Amended; thence along Warranty Deed Entry No. 148471:2006 the following nine courses thence South 41°44'00" East 162.21 feet; thence North 48°16'00" East 146.47 feet; thence South 42°27'28" East 121.48 feet; thence along a non-tangent 163.00 foot radius curve to the right 26.04 feet (chord bears: North 83°38'24" East 26.01 feet); thence North 88°12'59" East 38.37 feet; thence along a 98.00 foot radius curve to the right 30.82 feet (chord bears: South 82°46'23" East 30.69 feet); thence South 73°45'46" East 38.56 feet; thence South 41°18'48" East 8.63 feet; thence North 48°47'59" East 141.83 feet to the point of beginning. Parcel contains: 7.28 acres more or less.

Exhibit C

Site Plan Showing No Change Area

