

PREPARED BY AND WHEN
RECORDED RETURN TO:

Victor A. Taylor, Esq.
Parr, Waddoups, *et al.*
185 South State Street, Suite 1300
Salt Lake City, Utah 84111-1537
telephone: (801) 257-7945
fax: (801) 532-7750

NCS 353869

SPECIAL WARRANTY DEED,
WITH USE RESTRICTION AND CONTINUING RIGHT TO PURCHASE

THIS INSTRUMENT is entered into as of the 19th day of June, 2008, between SOLANA BEACH HOLDINGS, L.C., a Utah limited liability company (the "Manager"), HIGH NOON, L.C., a Utah limited liability company, and HIGHLAND MARKETPLACE, L.C., a Utah limited liability company (collectively, "Grantor"), whose address is 515 West Pickett Circle, Suite 400, Salt Lake City, Utah 84115, and LBF-95, L.C., a Utah limited liability company ("Grantee"), whose address is 196 Holly Drive, Alpine, Utah 84004. (Grantor and Grantee are referred to in this instrument collectively as the "Parties" and individually as a "Party.")

FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor and Grantee agree as follows:

1. Conveyance; Merger.

1.1. Conveyance. Grantor hereby conveys and warrants to Grantee against all persons claiming by, through or under Grantor, but not otherwise, certain real property (the "Property") located in Utah County, Utah, described as follows:

[Tax Parcel No. 41-690-0004]

Lot 4, HIGHLAND MARKETPLACE SUBDIVISION, according to the official plat thereof as recorded in the office of the Utah County Recorder.

TOGETHER WITH all rights-of-way and easements appurtenant to the Property set forth in the Declaration of Easements, Covenants and Restrictions for Highland Marketplace (the "Declaration"), dated May 22, 2007 and recorded June 4, 2007 as Entry No. 82152:2007 of the official records (the "Official Records") of the Utah County Recorder, as amended on or after the date of this instrument.

SUBJECT TO (i) current taxes and assessments, (ii) rights-of-way, easements, covenants, restrictions, reservations and other matters of record or enforceable at law or in equity, including, without limitation, the Declaration, other

than any mortgage, judgment or mechanic's lien created by, through or under Grantor (and Grantee assumes all obligations of the "Owner" with respect to the Property under the Declaration, including, without limitation, those obligations regarding "Manager" approvals set forth in Paragraph 2.1 of the Declaration), (iii) facts, rights, interests or claims that could be ascertained by an inspection of the Property, and (iv) discrepancies, conflicts in boundary lines, shortages in area, encroachments or other facts that a correct survey would disclose.

1.2. Merger. The terms of the purchase agreement pursuant to which this instrument is delivered are merged into this instrument pursuant to applicable law. See, e.g., Mason v. Loveless, 24 P.3d. 997 (Ut. App. 2001).

2. Use Restriction. In addition to the restrictions set forth in Paragraph 2.2 of the Declaration, and the uses prohibited by Paragraph 9 of the Declaration (and any other relevant provision of the Declaration), in no event may the Property be used for any of the following uses:

- (a) a fast/casual or full service Mexican food restaurant;
- (b) the retail sale of pizza if the sale of such item generates ten percent (10%) or more of the gross revenue from the premises concerned;
- (c) shipping and packaging supplies and services, including overnight delivery services; copying and printing services; mailbox rentals, postal and metered mail services; fax for profit; computer time rentals; internet services; passport photos; film processing services; stationery and office supplies; key duplicating; or Western Union services;
- (d) (i) the operation of a drug store or a so-called prescription pharmacy or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind; (ii) the operation of a medical diagnostic lab and/or the provision of treatment (other than as part of a medical, dental, physician, surgical or chiropractic office, which office shall not be restricted by this subsection); (iii) the operation of a business in which photofinishing services (including, without limitation, digital photographic processing or printing, or the sale of any other imaging services, processes or goods) and/or photographic film are offered for sale; or (iv) the operation of a business in which prepackaged food items for off-premises consumption are offered for sale (except that this clause (iv) shall not be applicable to (A) any sales of such items for which no more than fifteen percent (15%) of a tenant's or occupant's floor or display area is so devoted, or (B) the sale of such items in connection with a restaurant or delicatessen; provided, however, that the operation of a convenience store, including a convenience store located within, or associated with, a gas station shall not be permitted);

- (e) a grocery store;
- (f) the sale of delicatessen and submarine-type sandwiches if the sale of such items, collectively, generates fifty percent (50%) or more of the gross revenue from the premises concerned;
- (g) (i) a single price point variety retail store (defined as a store that offers all of its merchandise for sale at a single price point), (ii) a close-out store, or (iii) a retail store whose principal business is (A) selling variety retail merchandise at a single price point, (B) selling artificial flowers or picture frames, or (C) variety retail operations with the word "Dollar" in its trade name;
- (h) the sale of hamburgers, shakes or ice cream if the sale of such items, collectively, generates fifty percent (50%) or more of the gross revenue from the premises concerned;
- (i) the sale of fresh fruit drinks or smoothies if the sale of such items, collectively, generates fifty percent (50%) or more of the gross revenue from the premises concerned;
- (j) the sale of (i) retail baby and children's: clothing; décor; accessories; furnishings; specialty toys; and gifts; and (ii) retail maternity wear;
- (k) a health or fitness club;
- (l) a bank or credit union; or
- (m) the sale of women's sportswear and tennis shoes if the sale of such items, collectively, generates fifty percent (50%) or more of the gross revenue from the premises concerned.

3. Continuing Right to Purchase.

3.1. Definitions. As used in this Paragraph 3 or elsewhere in this instrument, each of the following terms shall have the meaning indicated:

3.1.1. "Mortgage" means a mortgage or a deed of trust recorded in the Official Records.

3.1.2. "Mortgagee" means the mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the Official Records.

3.1.3. "Owner" means the person that at the time concerned is the legal owner of record (in the Official Records) of a whole or undivided fee interest in the Property

(which term would include Grantee during the time that Grantee is the legal owner of record). If there is more than one Owner of the Property at the time concerned, the obligations and liabilities of each such Owner for performance under, and compliance with, the applicable provisions of this instrument shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the Property pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

3.1.4. "Permitted Title Exceptions" means no lien, encumbrance, right-of-way, easement, defect, restriction or claim, right, estate (including a leasehold estate or other possessory right), interest or concession in favor of any third party, other than the following only: (a) the lien of then-current general taxes and special assessments; and (b) those rights-of-way, easements and other matters of record that exist prior to the recordation of this instrument.

3.2. Grant. If at any time Owner desires to sell or transfer (which shall include, without limitation, (i) the contribution by Owner of all or any portion of the Property or any right, title or interest of Owner in the Property to a partnership, corporation, limited liability company, trust or other entity in exchange for an interest in such entity, (ii) the transfer of any interest in Owner from its owner(s) to another person that is not, prior to such transfer, already the owner of an interest in Owner, or (iii) any other conveyance, assignment or transfer intended to avoid the provisions of this Paragraph 3.2) all or any portion of the Property (the "Affected Sale Property"), Owner, as seller, must first either (a) execute and deliver to Grantor, as buyer, a written purchase and sale agreement, clearly and accurately setting forth all of the basic terms and conditions on which Owner would be willing to sell the Property, including, without limitation, the amount, type and terms for payment of the consideration involved, a legal description of the Affected Sale Property, the intended closing date and any other material terms or conditions, which delivery shall constitute an irrevocable offer by Owner to sell the Property to Grantor on such terms and conditions, subject to the other provisions of this instrument, or (b) enter into a written purchase and sale agreement with the proposed purchaser, clearly and accurately setting forth all of the basic terms and conditions of such sale, including, without limitation, the identities of the persons involved, the amount, type and terms for payment of the consideration involved, a legal description of the Affected Sale Property, the intended closing date and any other material terms or conditions. (Either instrument described in the immediately foregoing sentence is referred to in this instrument as the "Written Agreement.") The Written Agreement shall be expressly subject to this instrument and the rights of Grantor under this instrument. Within seven (7) calendar days after the execution of the Written Agreement, Owner shall deliver to Grantor a legible photocopy of the Written Agreement, with written notice (the "Transfer Notice") of Owner's intention to sell the Affected Sale Property in accordance with the Written Agreement unless Grantor exercises Grantor's rights under this Paragraph 3. Subject to the provisions of Paragraph 3.3, Grantor shall have an irrevocable option for a period of ten (10) business days after the receipt of the Written Agreement and the Transfer Notice to elect to purchase the Affected Sale Property on the same terms and conditions as are set forth in the Written Agreement; provided, however, that notwithstanding the terms and conditions of the Written Agreement, if Grantor elects to purchase the Affected Sale Property:

3.2.1. the closing (the "Closing") of the purchase and sale of the Affected Sale Property shall occur in Salt Lake City at a time and place mutually acceptable to the Parties;

3.2.2. Grantor shall have the longer of (a) an additional ninety (90) calendar days after the expiration of such ten (10) day period, or (b) the period set forth in the Written Agreement, to consummate the Closing;

3.2.3. at the Closing, Owner shall deliver to Grantor possession of the Affected Sale Property, and convey and warrant to Grantor the Affected Sale Property pursuant to a special warranty deed (unless the Written Agreement provides for a general warranty deed, in which case the Affected Sale Property shall be conveyed to Grantor pursuant to a general warranty deed), subject only to the Permitted Title Exceptions;

3.2.4. at the Closing, Owner shall, at Owner's cost, provide to Grantor an ALTA owner's standard coverage policy of title insurance (unless the Written Agreement provides for additional title insurance, such as extended coverage, in which case such additional title insurance shall be provided by Owner) in the amount of the purchase price of the Affected Sale Property; and

3.2.5. Grantor may elect to pay the purchase price for the Affected Sale Property in cash at the Closing, with Owner paying any applicable prepayment penalty.

If within such ten (10) business day period, Grantor delivers to Owner written notice that Grantor elects to purchase the Affected Sale Property on the terms and conditions set forth in the Written Agreement, the Parties shall enter into a purchase and sale agreement, and proceed to consummate such purchase transaction, in accordance with such terms and conditions. The failure of Grantor so to elect to purchase the Affected Sale Property by giving such notice to Owner shall be deemed to be an election not to purchase the Affected Sale Property.

3.3. Failure to Exercise. If Grantor elects or is deemed to have elected not to exercise the right set forth in Paragraph 3.2, Owner may sell the Affected Sale Property (but only the Affected Sale Property) to the proposed purchaser, but only substantially in accordance with all of the terms and conditions, and for the consideration, set forth in the Written Agreement. Whether or not such sale to the proposed purchaser is consummated, the right set forth in Paragraph 3.2 shall continue to apply to any and all subsequent transfers of the Property. If such sale involves less than all of the Property, the right set forth in Paragraph 3.2 shall also continue to apply fully to the Affected Property and to the remainder of the Property not previously sold, and Owner shall comply with the terms, conditions and procedures set forth in this Paragraph 3 with respect to any subsequent proposed sale. If Grantor elects or is deemed to have elected not to exercise the right set forth in Paragraph 3.2, and:

3.3.1. after such actual or deemed election, Owner and any other purchaser modify by more than two percent (2%) the purchase price, the amount of down payment or any interest being charged on the purchase price, or otherwise materially alter the terms or conditions of the Written Agreement; or

3.3.2. a sale of the Affected Property is not consummated within one hundred twenty (120) calendar days after the receipt by Grantor of the Transfer Notice,

then the right set forth in Paragraph 3.2 shall again apply to the Affected Sale Property, and Owner shall comply with the procedure, and Grantor shall have the rights, set forth in Paragraph 3.2.

3.4. Exchange. If the Written Agreement sets forth consideration (the "Exchange Consideration") other than the payment of money currently or on a deferred basis, for purposes of the right set forth in Paragraph 3.2, the Exchange Consideration shall be deemed to be a cash purchase price equal to the fair market value of the Exchange Consideration. Such fair market value shall be determined by mutual agreement between the Parties or, absent such mutual agreement within thirty (30) calendar days after Grantor receives the Transfer Notice, in accordance with the provisions set forth in the remaining portion of this Paragraph 3.4. If the Parties fail to agree on the fair market value of the Exchange Consideration within such thirty (30) day period, then the Parties shall each engage the services of an independent appraiser and each appraiser shall, within forty-five (45) calendar days after the expiration of such thirty (30) day period, submit to the Parties its estimate of the then-current fair market value of the Exchange Consideration. If the higher of the market values submitted by the two appraisers is within five percent (5%) of the lower of the market values so submitted, the average of the two shall be the binding fair market value. If the higher of the market values submitted by the two appraisers is more than five percent (5%) greater than the lower of the market values so submitted, then the two appraisers shall mutually select an independent third appraiser. The third appraiser shall select one of the two market values submitted by the two appraisers as the most accurate, and the market value so selected shall be the binding fair market value. Each Party shall pay for the appraiser it hired, and the Parties shall equally share the cost of the third appraiser, if used. Each appraiser shall be an independent, certified MAI appraiser with at least twenty (20) years' experience in appraising commercial real estate in Utah County, and be a member of the American Institute of Real Estate Appraisers. Grantor shall have an irrevocable option for a period of fifteen (15) calendar days after the Parties mutually agree on the fair market value of the Exchange Consideration or, absent such agreement, fifteen (15) calendar days after receipt of written notice of the fair market value determined by the foregoing appraisal process, to elect to purchase the Affected Sale Property on the same terms and conditions as are set forth in the Written Agreement, subject to the proviso set forth in Paragraph 3.2, substituting cash for the fair market value of the Exchange Consideration.

3.5. Exception. The right set forth in this Paragraph 3 shall not be triggered by the granting of a bona fide first lien Mortgage recorded against the Property in favor of a third-party commercial lender, and, therefore, shall continue in full force and effect after the occurrence of such event.

4. General Provisions.

4.1. Real Property Covenants. The provisions of this instrument are covenants running with the land in favor of Grantor, binding on and enforceable against the Property and

Grantee, any other Owner and every person having any fee, leasehold, Mortgage lien or other interest in any portion of the Property or using or occupying the Property, and shall be enforceable by Grantor by an action for damages for the violations of such covenants, an action to compel specific enforcement of such covenants or an action to obtain an injunction to prevent the violation of such covenants. No remedy provided in this instrument shall be exclusive of any other remedy at law or in equity (whether existing on or created after the date of this instrument), and all remedies under this instrument may be exercised concurrently, independently or successively from time to time. All interests in and rights concerning any portion of the Property shall be subject and subordinate to the arrangement provided for in this instrument, and the arrangement provided for in this instrument shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this instrument. Grantor may at any time or from time to time assign part or all of its rights under this instrument to one or more other persons, and any such assignment shall be effective on the recordation in the Official Records of the instrument effecting such assignment, or a notice or memorandum of such instrument, setting forth at least the following: (a) the name and address of the assignee; (b) the right(s) being assigned; and (c) a legal description of the Property.

4.2. Attorneys' Fees. If either Party brings suit to enforce or interpret this instrument, the prevailing Party shall be entitled to recover from the other Party the prevailing Party's reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing Party is entitled. As used in the preceding sentence, "prevailing Party" shall include, without limitation, a Party who retains legal counsel or brings an action against the other Party and subsequently obtains all or part of the relief sought, whether by compromise, settlement or judgment.

4.3. Notices. Any notice or demand to be given by either Party to the other shall be given in writing by personal service, fax (provided that a hard copy of any such notice has been dispatched by one of the other means for giving notice within twenty-four (24) hours after faxing), express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, and addressed to such Party as follows:

If to Grantor:

TFP Service Company
515 West Pickett Circle, Suite 400
Salt Lake City, Utah 84115
Attention: Thomas A. Hulbert
telephone: (801) 596-7711, Ext. 25
fax: (801) 596-7161

with a required copy to:

Victor A. Taylor, Esq.
Parr, Waddoups, *et al.*
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
telephone: (801) 257-7945
fax: (801) 532-7750

If to Grantee:

LBF-95, L.C.
196 Holly Drive,
Alpine, Utah 84004
telephone: (801) 764-5900
fax: (801) 224-0376
email: lcloveland@xactware.com

with a required copy to:

Richard W. Evans, Esq.
Richard W. Evans, P.C.
136 South Main Street, Suite 318
Salt Lake City, Utah 84101
telephone: (801) 961-8800
fax: (801) 961-8801
email: evans@rwelaw.us

Either Party may change the address at which such Party desires to receive notice on written notice of such change to the other Party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the Party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

4.4. General Provisions. A modification of, or amendment to, any provision contained in this instrument shall be effective only if the modification or amendment is in writing and signed by both Parties. Any oral representation or modification concerning this instrument shall be of no force or effect. This instrument shall inure to the benefit of, and shall be binding on, the Parties and their respective successors and assigns. This instrument shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the state of Utah. This instrument may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document. Each individual executing this instrument represents and warrants that such

individual has been duly authorized to execute and deliver this instrument in the capacity and for the entity set forth where such individual signs.

THE PARTIES have executed this instrument on the respective dates set forth below, to be effective as of the date first set forth above.

