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11-794-0005

Prepared by and When Recorded Return To:

Paul Bachman, JD
Smith Knowles
225 Washington Blvd., Ste. 200
Ogden, Utah 84401

ACCESS EASEMENT, TEMPORARY CONSTRUCTION EASEMENT AND MAINTENANCE AGREEMENT

This Access Easement, Temporary Construction Easement and Maintenance Agreement (this "Agreement") is made as of this 17th day of February, 2021, by and between Burger LADS Layton LLC, a Utah limited liability company ("Burger LADS"), and Fort Lane Village Land, LLC, a Utah limited liability company ("Fort Lane") (Burger LADS and Fort Lane are sometimes hereinafter referred to singularly as a "Party" and collectively as the "Parties").

Whereas, Fort Lane is the owner of the land more particularly described on Exhibit A attached hereto and shown on Exhibit C (the "Fort Lane Property"); and

Whereas, Burger LADS is the owner of the land more particularly described on Exhibit B attached hereto and shown on Exhibit C (the "Burger LADS Property") (The Fort Lane Property and Burger LADS property are sometimes hereinafter referred to collectively as "Properties"); and

Whereas, the Properties are subject to that certain Amended and Restated Declaration of Easements and Conditions recorded August 30, 2016 as Entry No. 2962369 in Book 6590 at Page 166, as amended by that certain First Amendment to Amended and Restated Declaration of Easements and Conditions recorded July 12, 2017 as Entry No. 3032092 in Book 6805, Page 384, Official Records of Davis County, Utah (collectively, the "Declaration"), and are part of the Shopping Center as defined therein; and

Whereas, Fort Lane desires to grant certain easements for access on the Fort Lane Property for the benefit of the owner of the Burger LADS Property in the area shown on Exhibit C (the "Easement Area"), as hereinafter set forth; and

Whereas, the Parties desire to set forth construction provisions regarding the driveway within the Easement Area; and

Whereas, the Parties desire to set forth maintenance provisions regarding the driveway within the Easement Area.

Now, therefore, for and in consideration of the mutual rights and obligations set forth herein, the parties hereby covenant and agree as follows:

1. Grant of Easement: Term.

- (a) Fort Lane grants and conveys for the benefit of the Burger LADS Property (including its tenants, employees, vendors, customers and other invitees), a non-exclusive, irrevocable and perpetual easement ("Easement"), appurtenant to the Burger LADS Property, for pedestrian and vehicular ingress and egress, but not for parking, between the Burger LADS Property and an access drive that connects with the adjoining street over and across driveways, roadways, walkways, sidewalks and all similar facilities located within the



Easement Area. No gate, barrier or other obstruction shall be erected or permitted to remain over any portion of the Easement Area. Fort Lane shall have the right to use the Easement Area for any and all purposes whatsoever, provided that no such use shall be made of the Easement which is inconsistent with or detrimental to the use of the Easement for the benefit of the Burger LADS Property as described herein. Any changes to the layout of the Easement Area shall require the written consent of the owner and any lessee of the Burger LADS property,

(b) The Easement shall be effective as of the date hereof and shall be perpetual (the "Term").

2. Grant of Temporary Construction Easement: Construction of Driveway within the Easement Area; Term.

(a) Fort Lane hereby grants to Burger LADS a temporary construction easement (the "Temporary Construction Easement") over the Fort Lane Property in the Easement Area in order to permit Burger LADS to enter upon the Fort Lane Property and, at Burger LADS sole cost, construct any and all improvements (the "Driveway") required by the City of Layton to provide a means of ingress and egress into and onto the Burger LADS Property. Prior to construction of the Driveway, Burger LADS shall obtain Fort Lane's prior written consent to all material plans and specifications for the Driveway, which consent shall not be unreasonably withheld.

(b) The term of the Temporary Construction Easement shall automatically terminate and expire on the earlier of (i) the completion of the Driveway, or (ii) twelve (12) months from the Effective Date of this Agreement.

(c) Any and all such work conducted by Burger LADS under this Agreement shall be completed in a good and workmanlike manner in accordance with all applicable laws, rules, regulations and local ordinances, and, except as permitted herein, shall not unreasonably disrupt or otherwise interfere with Fort Lane's use of the Fort Lane Property. Following any exercise by Burger LADS of the Temporary Construction Easement rights set forth herein, Burger LADS, at its sole cost, shall promptly restore the portions of the Fort Lane Property surrounding the Easement Area to substantially the same condition as existed prior to such exercise.

3. Maintenance of Driveway within the Easement Area. The owner of the Burger LADS Property, at its sole cost, shall perform all tasks that, in its reasonable judgment, are necessary or beneficial to maintain and repair the Driveway within the Easement Area. In the event that the Driveway within the Easement Area is not adequately maintained and repaired, the owner of the Fort Lane Property shall have the right, but not the obligation, to maintain and repair such areas. Burger LADS shall reimburse Fort Lane for all such costs reasonably incurred by Fort Lane within thirty (30) days after receipt of written notice thereof (which notice shall include documentation evidencing such costs).

4. Indemnity; Insurance.



- (a) Burger LADS assumes all risks and responsibilities for accidents, injuries or deaths to persons or damage to property which may occur on the Fort Lane Property in connection with Burger LADS' exercise of its rights set forth herein, unless due to the willful or negligent acts or omissions of Fort Lane. Burger LADS shall indemnify, defend and hold Fort Lane and its members, parents, subsidiaries and each of their respective agents, employees, representatives, successors and assigns, harmless from and against any and all claims, losses liabilities damages actions proceedings or judgments of whatever kind or nature, liens, penalties, fines and any and all costs and expenses (including, without limitation, reasonable attorneys' and expert's fees and costs of suit) arising from or related to Burger LADS or its members, managers, employees, contractors, customers, vendors, suppliers, visitors, invitees, tenants, occupants, licensees, subtenants, and concessionaires (collectively, "Permittees") exercise of the rights set forth in this Agreement; provided, however, that the foregoing indemnification shall not apply to any such claims based on the willful or negligent acts or omissions of Fort Lane.
- (b) Each Party shall provide commercial general liability insurance affording protection to itself and the other Party on its own property, naming the other Party as an "additional insured" under the policy or policies, for a combined bodily injury and property damage limit of liability of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate. The insurance company providing such insurance shall be rated at least A- / VII, A.M. Best's rating. Such insurance may be a part of blanket liability coverage carried by a party so long as such blanket policy does not reduce the limits or diminish the coverage required herein.
- (c) All policies of insurance required by this Agreement shall insure the performance of the Party insured thereunder of the indemnity obligations contained in this Agreement, shall name the other Party an additional insured and shall contain a provision that the insurance company will provide all Parties with not less than twenty (20) days advance written notice of any cancellation or lapse, or of the effective date of any material reduction in the amounts or scope of coverage. Each Party shall deliver to the other a certificate or statement from the Party's insurance company that such insurance insures the performance by the Party insured of the indemnity obligations herein and the existence of the insurance coverage to the limits herein required. Each Party shall promptly notify each other Party of any asserted claim with respect to which such Party is or may be indemnified against hereunder and shall deliver to such Party copies of process and pleadings.
5. No Liens. Burger LADS shall, at its sole expense, keep the Easement Area free and clear of liens and encumbrances resulting from Burger LAD's exercise of its easement rights hereunder.
6. Consent Required to Amend and Right of Enforcement. So long as any lessee of the Burger LADS Property is owned or controlled by Burger LADS, (i) no amendment of this Agreement shall be binding upon any such lessee whose leasehold interest in the Burger LADS Property has been properly recorded in the appropriate recording office, unless such lessee shall have given its written consent thereto; and (ii) Burger LADS or its affiliates, as a beneficiary under



this Agreement, shall have the right to enforce any of the terms and conditions of this Agreement, as if Burger LADS remained the owner of the Burger LADS Property.

7. Notices. Whenever, pursuant to this Agreement, notice or demand shall or may be given to any of the Parties or their assignees by another, and whenever any of the Parties shall desire to give to the other any notice or demand with respect to this Agreement, each such notice or demand shall be in writing, and any laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served by mailing the same to the other party by certified mail, return receipt requested, or by overnight nationally-recognized courier service provided a receipt is required, at its notice address set forth below, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

Notices shall be sent:

If to Burger LADS, to:

Burger LADS Layton LLC
6261 S. 2125 E.
Ogden, UT 84403
Attn: Donald Wichern

with a copy to:

Smith Knowles
225 Washington Blvd., Ste. 200
Ogden, Utah 84401
Attn: Paul Bachman, JD, LL.M. Tax

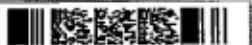
If to Fort Lane, to:

Fort Lane Village Land, LLC
748 W. Heritage Park Blvd., Ste. 203
Layton, UT 84041
Attn: Garrett Goff

with a copy to:

Dean Smith, Attorney at Law, PLLC
7730 S Union Park Ave., Ste. 130
Midvale, UT 84047

8. No Other Rights Created. No provision of this instrument shall ever constitute or be construed as a dedication of any interest herein described to the public or give any member of the public any right whatsoever.
9. Partial Invalidity. If any provision of this instrument shall, for any reason, be held violative of any applicable law and/or unenforceable, such provision shall be reformed only to the extent necessary to render such provision non-violative and/or enforceable. The invalidity of any provision herein shall not be held to invalidate any other provision herein, all of which such other provisions shall remain in full force and effect.



10. Successors and Assigns. All of the easements and other rights, covenants and conditions herein shall run with the land and shall be binding upon and inure to the benefit of the owners of the Properties and their respective successors and assigns. Upon the conveyance by the owner of any Property of its interest in its Property, such owner shall be relieved from any unaccrued liability which such owner may have hereunder.
11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.
12. Costs of Enforcement. If an action or proceeding is brought to enforce this Agreement, the prevailing party in such action or proceeding shall be entitled to collect from the losing party any and all costs and expenses, including reasonable legal fees, incurred by the prevailing party in connection therewith.

[SIGNATURE PAGES FOLLOW]



Executed as of the date set forth above.

Burger LADS Layton LLC
a Utah limited liability company

By: *Donald Wichern*
Name: Donald Wichern
Title: Member Manager

By: *Lance Parks*
Name: Lance Parks
Title: Manager

State of Utah)
County of DAVIS) ss

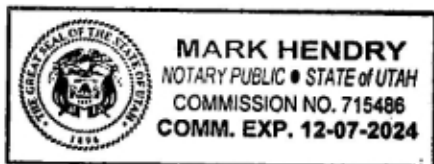
The foregoing instrument was acknowledged before me this 12 day of FEB, 2021,
by Donald Wichern as Manager of Burger LADS Layton LLC, a Utah limited liability company, on behalf
of the limited liability company.



Mark Hendry
Notary Public
My Commission Expires: 12-7-24

State of Utah)
County of DAVIS) ss

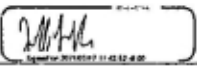
The foregoing instrument was acknowledged before me this 12 day of FEB, 2021,
by Lance Parks as Manager of Burger LADS Layton LLC, a Utah limited liability company, on behalf of
the limited liability company.



Mark Hendry
Notary Public
My Commission Expires: 12-7-24

Fort Lane Village Land, LLC
a Utah limited liability company

By: _____
Name: Kevin S. Garn
Its: Manager

By:  _____
Name: Jeffrey Yarbrough
Its: Manager

STATE OF UTAH)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of February, 2021, by Kevin S. Garn, the Manager of Fort Lane Village Land, LLC, on behalf of the company.

My Commission Expires: _____ Notary Public _____

STATE OF UTAH)
) ss.
County of SALT LAKE)

The foregoing instrument was acknowledged before me this 17th day of February, 2021, by Jeffrey Yarbrough, the Manager of Fort Lane Village Land, LLC, on behalf of the company.

My Commission Expires: 10/18/22 Notary  _____



This act was performed via remote online audio-visual communication.

12986372-C081-4E-9-5-1AG-60030370-0F1 - 162190217 02-18-21 3:00 - Remote Notary

EXHIBIT A

Fort Lane Property

A portion of Parcel 5, Fort Lane Village Amended, located in the North Half of Section 28, Township 4 North, Range 1 West, Salt Lake Base and Meridian, said parcel also located in Layton City, Davis County, Utah. Being more particularly described as follows:

Beginning at a point on the southerly right-of-way-line of Gentile Street, said point being South 00°54'20" West 73.00 feet (Basis of Bearings being South 89°51'30" West between the North Quarter Corner and the Northeast Corner of said Section 28 as noted on the Davis County NAD83 Township Reference Plat) from the North Quarter Corner of said Section 28 and running thence: South 89°05'46" East 76.46 feet to the East line of Parcel 5; thence South 00°54'20" West 337.92 feet along said East line to the South line of said Parcel 5; thence North 88°51'07" West 136.62 feet along the South line of Parcel 5; thence North 00°54'20" East 337.34 feet; thence South 89°05'46" East 60.17 feet to the Point of Beginning.



EXHIBIT B

Burger LADS Property

A PORTION OF PARCEL 5, FORT LANE VILLAGE AMENDED RECORDED JULY 29, 2016 AS ENTRY NUMBER 2955022 IN BOOK 6568 AT PAGE 338, LOCATED IN THE NORTH HALF OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, LAYTON CITY, DAVIS COUNTY, UTAH. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF GENTILE STREET, SAID POINT BEING SOUTH 00°54'20" WEST 73.00 FEET AND NORTH 89°06'13" WEST 60.17 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 28 (NAD83 BEARING BEING: NORTH 89°51'30"EAST BETWEEN THE NORTH QUARTER CORNER AND THE NORTHEAST QUARTER CORNER OF SAID SECTION 28 AS NOTED ON DAVIS COUNTY NAD 83 TOWNSHIP REFERENCE PLAT) AND RUNNING THENCE: SOUTH 00°54'20" WEST 337.34 FEET TO THE SOUTH LINE OF PARCEL 5; THENCE NORTH 88°51'07" WEST 194.37 FEET ALONG THE SOUTH LINE TO THE SOUTHWEST CORNER OF PARCEL 5; THENCE ALONG THE WEST LINE OF PARCEL 5 THE FOLLOWING THREE(3) COURSES AND DISTANCES: 1) NORTH 01°01'23" EAST 73.81 FEET; 2) NORTH 10°47'10" EAST 91.38 FEET; 3) NORTH 00°54'20" EAST 172.68 FEET TO THE SOUTHERLY RIGHT OF WAY OF GENTILE STREET; THENCE SOUTH 89°05'40" EAST 178.53 FEET ALONG SAID SOUTHERLY RIGHT OF WAY TO THE POINT OF BEGINNING.



EXHIBIT C

Site Plan of Fort Lane Property and Burger LADS Property showing Easement Area

