



W2944258

E# 2944258 PG 1 OF 9
Leann H. Kilts, WEBER COUNTY RECORDER
28-Sep-18 0934 AM FEE \$27.00 DEP JC
REC FOR: FIRST AMERICAN TITLE-NCS-SLC1
ELECTRONICALLY RECORDED

AFTER RECORDING RETURN TO:

Wadsworth Development Group
Attn: R. Roman Groesbeck
166 East 14000 South, Suite 210
Draper, UT 84020

Parcel Nos. 07-777-0008; 07-777-0009

(space above for Recorder's use)

**AMENDED AND RESTATED CROSS-ACCESS AND TEMPORARY CONSTRUCTION
EASEMENT AGREEMENT**

THIS AMENDED AND RESTATED CROSS-ACCESS AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this "Agreement") is made as of the 26th day of SEPTEMBER, 2018 (the "Effective Date"), by WADSWORTH UINTAH BK, LLC, a Utah limited liability company ("BK") and WADSWORTH UINTAH SBUX, LLC, a Utah limited liability company ("SBUX"). BK and SBUX may be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS:

A. BK is the owner of a parcel of land in Uintah, Weber County, Utah, being legally described on Exhibit A attached hereto and incorporated herein by reference (the "BK Parcel").

B. SBUX is the owner of a parcel of land located adjacent and to the south of the BK Parcel, being legally described on Exhibit B attached hereto and incorporated herein by reference (the "SBUX Parcel"); the BK Parcel and the SBUX Parcel may be referred to herein individually as a "Parcel" and collectively as the "Parcels").

C. The Parties entered into that certain Cross-Access and Temporary Construction Easement Agreement, dated September 5, 2018, encumbering the Parcels and recorded on September 7, 2018 in the Office of the Weber County Recorder as Entry No. 2940527 (the "Original Easement").

D. The Parties now desire to amend, restate and replace the Original Easement in its entirety upon the terms, covenants and conditions contained in this Agreement in order to create for the benefit of the Parcels certain vehicular and pedestrian cross-access rights, over, upon and across the "Access Drive" (depicted on Exhibit C attached hereto), and to establish certain maintenance obligations associated with the Access Drive, all as more particularly set forth herein.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants and agreements herein contained, the Parties hereby amend, restate and replace the Original Easement in its entirety and agree as follows:

1. **Grant of Easement.** Subject to the terms and conditions set forth herein, BK and SBUX hereby grant and convey to each other, and their successors and assigns, a private, perpetual, non-

exclusive reciprocal easement (the “**Easement**”) over that portion of the Access Drive located on each Party’s Parcel, including any sidewalk located in the Access Drive, to permit unobstructed pedestrian and vehicular ingress, egress and access over, across and upon the same for the benefit of the Parcels, the owners thereof and their respective agents, contractors, employees, tenants, licensees and invitees.

The Original Easement shall be terminated and of no further force or effect as of the Effective Date.

2. **Maintenance of Easement.** Unless the Parties agree to the contrary, each Party, including its successors and assigns, shall be responsible, at its sole cost and expense, for the repair and upkeep of its Parcel, including that portion of the Access Drive located on its Parcel, which repair and upkeep shall be performed in a workmanlike, diligent and efficient manner and shall include maintenance of paved surfaces in a level and smooth condition, free of potholes, with the type of material as originally used or a substitute equal in quality; plowing of snow and ice from paved surfaces and sidewalks; and restriping as required to keep the same clearly visible. All such maintenance, repair and replacement shall be accomplished in a first-class, lien-free manner in accordance with standards pursuant to similarly situated property of similar size maintained in Weber County, Utah, and consistent with any covenants, conditions and restrictions applicable to the Parcels. If either Party damages the Access Drive, that Party agrees to promptly repair the Access Drive at its expense to the condition existing immediately prior to the damage. In the event the Parties agree that one Party, specifically, will be responsible for the routine maintenance, upkeep and repair of the Access Drive, the Parties (or their successors and/or assigns) will share the costs for such maintenance, upkeep and repair on a 80/20 basis—80% of the costs attributable to the BK Parcel, 20% of the costs attributable to the SBUX Parcel.

3. **Temporary Construction Easement.** SBUX hereby grants to BK, without warranty, a temporary, non-exclusive easement (the “**Temporary Construction Easement**”) over, upon and across the Access Drive for the purpose of constructing the same pursuant to the plans and specifications approved by the Parties. BK shall construct the Access Drive at its sole cost and expense. The Temporary Construction Easement shall automatically terminate upon completion of the Access Drive.

4. **Insurance.** Each Party shall maintain comprehensive general liability insurance, including contractual liability coverage, naming the other Party as an additional insured and providing coverage with a combined bodily injury, death and property damage limit of Two Million and 00/100 Dollars (\$2,000,000.00) or more per occurrence. Each Party shall provide the other with a certificate of insurance, which certificate shall provide that the coverage referred to therein shall not be modified or cancelled without at least thirty (30) days written notice to each named insured thereunder.

5. **Damage or Condemnation.**

5.1. **Damage.** In the event that any portion of the Access Drive is destroyed or damaged by fire, casualty or force majeure, the Party’s Parcel upon which the Access Drive is so damaged shall, at its sole cost and expense, forthwith repair and restore such area to the condition that existed immediately prior to such damage.

5.2. **Condemnation.** In the event that any part of a Parcel is condemned, the owner of the affected Parcel, at its sole cost and expense, shall restore such area as much as practicable to provide the same approximate configuration, size and location of the drives, driveways and sidewalks, together with existing curb cuts to adjacent roadways existing prior to the condemnation. Unless the owner of the affected Parcel has otherwise provided for the cost of restoration, any award on account of a

condemnation on the affected Parcel first shall be used in the restoration of the same, and any claim to the award made by a Parcel owner, or its tenants or licensees hereunder shall be expressly subject and subordinate to its use in such restoration. The term "condemnation" as used herein shall include all conveyances made in anticipation or lieu of an actual taking. Nothing in this Section shall be construed to give any Party an interest in any award or payment made to the other Party in connection with any exercise of the power of eminent domain or any transfer in lieu thereof affecting said Party's Parcel or giving the public or any government any rights in said Parcel except as may be provided by applicable law.

6. **Remedies and Enforcement.** In the event of a default or threatened default by any Party hereunder, and/or any such Party's respective successors and/or assigns, of any of the terms, easements, covenants, conditions or restrictions hereof, the non-defaulting Party shall be entitled to pursue all available legal and equitable remedies from the consequences of such breach, including but not limited to specific performance. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity. Notwithstanding the foregoing, no default hereunder shall entitle either Party to cancel, rescind, or otherwise terminate this Agreement. If this Agreement or any provision hereof shall be enforced by an attorney retained by a Party, whether by suit or otherwise, the reasonable fees and costs of the attorney for the prevailing Party shall be paid by the losing Party, including fees and costs incurred upon appeal or in bankruptcy court.

7. **Indemnification.** Each Party (the "**Indemnifying Party**") agrees to indemnify, release and defend, with counsel of the other Party's choice, and hold the other Party and its employees, officers, divisions, subsidiaries, partners, members and affiliated companies and entities and its and their employees, officers, shareholders, members, directors, agents, representatives, and professional consultants and its and their respective successors and assigns (collectively, the "**Indemnitees**") harmless from and against any loss, damage, injury, accident, fire, or other casualty, liability, claim, cost, or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property, including the property of the Indemnitees (collectively the "**Claims**", or a "**Claim**") from or by any unaffiliated third party or the Indemnifying Party, arising from or relating to (i) any use of the Access Drive, the other Party's Parcel, and/or adjacent areas by the Indemnifying Party, (ii) any act or omission of Indemnifying Party, (iii) any bodily injury, property damage, accident, fire or other casualty to or involving Indemnifying Party and its property on the Access Drive and/or adjacent areas, and (iv) any enforcement by the other Party of any provision of this Agreement and any cost of removing the Indemnifying Party's employees or its property or equipment from the Access Drive or restoring the same as provided herein; provided, however, that the foregoing indemnity shall not apply to the extent any such Claim is ultimately established by a court of competent jurisdiction to have been caused solely by gross negligence or willful misconduct of the Indemnitees. The terms and conditions of this indemnification provision shall remain effective, notwithstanding the expiration or termination of this Agreement.

8. **Miscellaneous.** This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties hereto. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions hereof. The Recitals set forth above are incorporated into this Agreement

by reference. If any provision of this Agreement or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect. Each Party hereby waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose attorney) prepared the Agreement or any earlier draft of the same. This Agreement may be signed in multiple counterparts, all of which taken together shall constitute one and the same agreement. After execution and delivery of this Agreement, a copy of the signed Agreement shall be considered for all purposes as an original of the Agreement to the maximum extent permitted by law, and no Party to this Agreement shall have any obligation to retain a version of the Agreement that contains original signatures in order to enforce the Agreement, or for any other purpose, except as otherwise required by law.

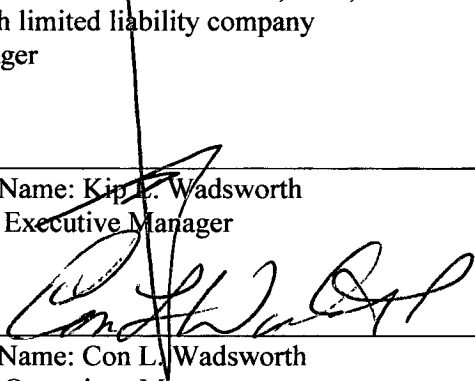
[Signatures and Acknowledgments Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

BK: WADSWORTH UINTAH BK, LLC,
a Utah limited liability company

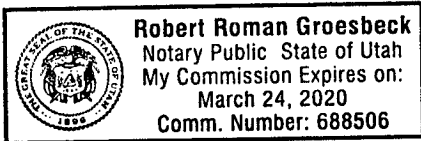
By: WADSWORTH & SONS IV, LLC,
a Utah limited liability company
Its: Manager

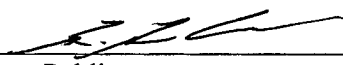
By: _____
Print Name: Kip L. Wadsworth
Title: Executive Manager

By: 
Print Name: Con L. Wadsworth
Title: Operations Manager

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

The above and foregoing instrument was acknowledged before me this 26th day of September, 2018, by Kip L. Wadsworth, Executive Manager of Wadsworth & Sons IV, LLC, a Utah limited liability company, Manager of Wadsworth Uintah BK, LLC, a Utah limited liability company.

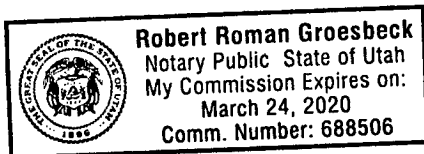





Notary Public

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

The above and foregoing instrument was acknowledged before me this 26th day of September, 2018, by Con L. Wadsworth, Operations Manager of Wadsworth & Sons IV, LLC, a Utah limited liability company, Manager of Wadsworth Uintah BK, LLC, a Utah limited liability company.





Notary Public

SBUX: WADSWORTH UINTAH SBUX, LLC,
a Utah limited liability company

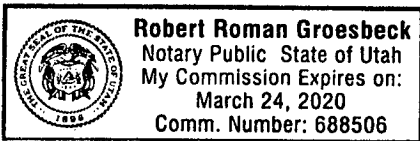
By: WADSWORTH & SONS III, LLC,
a Utah limited liability company
Its: Manager

By: _____
Print Name: Kip L. Wadsworth
Title: Executive Manager

By: _____
Print Name: Con L. Wadsworth
Title: Operations Manager

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

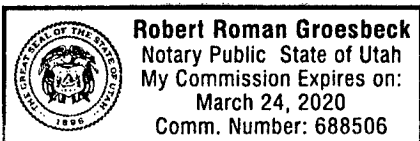
The above and foregoing instrument was acknowledged before me this 26th day of September, 2018, by Kip L. Wadsworth, Executive Manager of Wadsworth & Sons III, LLC, a Utah limited liability company, Manager of Wadsworth Uintah SBUX, LLC, a Utah limited liability company.



Notary Public

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

The above and foregoing instrument was acknowledged before me this 26th day of September, 2018, by Con L. Wadsworth, Operations Manager of Wadsworth & Sons III, LLC, a Utah limited liability company, Manager of Wadsworth Uintah SBUX, LLC, a Utah limited liability company.



Notary Public

EXHIBIT A

(Legal Description of the BK Parcel)

PART OF THE NORTHEAST AND SOUTHEAST QUARTERS OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF 2500 EAST STREET, SAID POINT BEING NORTH 00°02'25" EAST 165.07 FEET AND SOUTH 89°57'35" EAST 846.46 FEET FROM THE CENTER OF SAID SECTION 26; THENCE ALONG A NON-TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 15.00 FEET, AN ARC LENGTH OF 23.56 FEET, A DELTA ANGLE OF 89°59'57", A CHORD BEARING OF NORTH 60°00'00" EAST, A RADIAL BEARING OF SOUTH 74°59'58" EAST, AND A CHORD LENGTH OF 21.21 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF 6600 SOUTH STREET; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING TWO (2) COURSES: (1) SOUTH 75°00'00" EAST 153.73 FEET; AND (2) ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 243.00 FEET, AN ARC LENGTH OF 131.66 FEET, A DELTA ANGLE OF 31°02'36", A CHORD BEARING OF NORTH 89°28'42" EAST, AND A CHORD LENGTH OF 130.06 FEET TO THE WESTERLY RIGHT OF WAY OF HIGHWAY 89; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE ALONG A REVERSE CURVE TURNING TO THE RIGHT WITH A RADIUS OF 428.18 FEET, AN ARC LENGTH OF 226.00 FEET, A DELTA ANGLE OF 30°14'31", A CHORD BEARING OF SOUTH 02°56'03" WEST, A RADIAL BEARING OF SOUTH 77°48'48" WEST, AND A CHORD LENGTH OF 223.39 FEET; THENCE NORTH 75°00'00" WEST 340.74 FEET TO THE EASTERLY RIGHT OF WAY LINE OF 2500 EAST STREET; THENCE NORTH 15°00'02" EAST ALONG SAID EASTERLY RIGHT OF WAY LINE, 168.65 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

(Legal Description of the SBUX Parcel)

PART OF THE NORTHEAST AND SOUTHEAST QUARTERS OF SECTION 26, TOWNSHIP 5 NORTH RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF 2500 EAST STREET, SAID POINT BEING NORTH 00°02'25" EAST 165.07 FEET AND SOUTH 89°57'35" EAST 846.46 FEET AND SOUTH 15°00'02" WEST 168.65 FEET FROM THE CENTER OF SAID SECTION 26; THENCE SOUTH 75°00'00" EAST 340.74 FEET TO THE WESTERLY RIGHT OF WAY LINE OF HIGHWAY 89; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING TWO (2) COURSES: (1) ALONG A NON-TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 427.69 FEET, AN ARC LENGTH OF 73.42 FEET, A DELTA ANGLE OF 09°50'08", A CHORD BEARING SOUTH 22°57'35" WEST, A RADIAL BEARING OF NORTH 71°57'29" WEST, AND A CHORD LENGTH OF 73.33 FEET; AND (2) SOUTH 27°52'27" WEST 51.16 FEET TO THE NORTHEAST CORNER OF LOT 6, UINTAH SPRINGS BUSINESS PARK PHASE 2 (COMMERCIAL); THENCE NORTH 75°00'00" WEST ALONG THE NORTHERLY LINE OF SAID LOT 6, 319.19 FEET TO THE NORTHWEST CORNER OF SAID LOT 6 AND ALSO THE EASTERLY RIGHT OF WAY LINE OF 2500 EAST STREET; THENCE NORTH 15°00'02" EAST ALONG SAID EASTERLY RIGHT OF WAY LINE, 122.49 FEET TO THE POINT OF BEGINNING.

ACCOMMODATION RECORDING ONLY
FIRST AMERICAN TITLE MAKES NO
REPRESENTATION AS TO CONDITION
OF TITLE, NOR DOES IT ASSUME ANY
RESPONSIBILITY FOR VALIDITY,
SUFFICIENCY OR AFFECT OF DOCUMENT

EXHIBIT C

(Depiction of the Access Drive)

