

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO

MATTHEW M. HICKS, ESQ.
HOLLAND & HART LLP
P.O. BOX 2527
BOISE, ID 83701-2527
LTC 44265

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06/25/2008 04:30 PM #27-000
Book - 9621 Pg - 1531-1539
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: SAM, DEPUTY - 01 9 P.

SALT LAKE COUNTY, UTAH

**DECLARATION OF USE
RESTRICTION**

THIS DECLARATION OF USE RESTRICTION ("Declaration") is executed as of this 25th day of June, 2008 (the "Effective Date") by RIVERWALK INVESTMENT HOLDINGS, LLC, a Utah limited liability company ("Riverwalk") and JORDAN RIVER BOULEVARD PARTNERS, LLC, a Delaware limited liability company ("Jordan River") (Riverwalk and Jordan River are collectively referred to herein as the "Original Owners").

WHEREAS, Riverwalk is the Owner of those certain parcels of real property described in Exhibit A attached hereto, located in the City of Midvale, State of Utah (the "Riverwalk Parcels").

WHEREAS, Jordan River has acquired that certain real property adjacent to the Riverwalk Parcels and more particularly described in Exhibit B, attached hereto (the "Grocery Store Parcel") from Riverwalk, upon which Jordan River intends to construct and operate a grocery store. The Riverwalk Parcels and Grocery Store Parcel are collectively referred to herein as the "Parcels" and individually as a "Parcel." The Parcels are more particularly depicted on the site plan attached hereto as Exhibit C.

WHEREAS, Original Owners desire to provide for a use restriction affecting the Parcels, as hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Original Owners do hereby establish and declare as follows:

1. **Grocery Store Use Restriction.**

(a) Riverwalk, on behalf of itself and its tenants, subtenants, successors and assigns of the Riverwalk Parcels, for the benefit of Jordan River, and its tenants, subtenants, successors and assigns of the Grocery Store Parcel, agrees that as of the Effective Date, except as expressly permitted in this Agreement, no portion of the Riverwalk Parcels shall be used as a retail grocery store operation, which is hereby defined to mean any store engaged in the sale of food products for off-premises preparation and consumption (the "Grocery Exclusive Use"). Notwithstanding the foregoing, the occupant of any Riverwalk Parcel may use and operate on its Riverwalk Parcel stores or businesses that sell food for off-premises preparation and consumption provided that not more than twenty-five hundred (2,500) square feet of area within each such store is dedicated to display for sale of food for off-premises preparation and consumption, including without limitation, a delicatessen, pizza shop or bakery. Further, a convenience store or quick stop mart that is located on a Riverwalk Parcel and operated in conjunction with any retail gas station or fuel center may devote up to, but not more than,

thirty-six hundred (3,600) square feet of space to the sale of food for off-premises preparation and consumption, provided that such convenience store or quick stop mart is not owned or operated by Safeway, Tesco, Wal-Mart, or Kroger, or an affiliate of any of the foregoing.

(b) Notwithstanding the provisions of Section 1(a) above, the Owner of the Grocery Store Parcel shall have the right, but not the obligation, from time to time and at any time, following written request therefor from any Owner of the Riverwalk Parcels, to waive and relinquish the Grocery Exclusive Use restriction provided in this Declaration as to the requesting party's Parcel. Such waiver shall be evidenced by a "Notice of Waiver of Use Restriction" executed, acknowledged, and recorded by the Owner of the Grocery Store Parcel in the Salt Lake County records, which declares that this Declaration shall not affect or apply to said Parcel, and which describes the Parcel against which such rights are relinquished. After the recordation of such Notice of Waiver of Use Restriction, this Declaration shall not apply to or affect such released Parcel except as may be set forth in such Notice of Waiver of Use Restriction.

(c) For purposes of this Declaration, "Owner" shall mean: (i) each person or entity which holds fee title to any portion of the Riverwalk Parcels or the Grocery Store Parcel; (ii) any successor of such person or entity acquiring said fee title from such person or entity; and (iii) any other person or entity who leases all or a portion of either the Riverwalk Parcels or the Grocery Store Parcel and is designated in writing by the fee Owner thereof to perform the duties and responsibilities and exercise the benefits of the Owner of such Parcel as set forth herein.

2. **Termination of Exclusive Use Rights.** In the event that the Grocery Store Parcel is not open to the public and being used as, and has not, during any portion of the immediately preceding thirty-six (36) months, been open to the public and used as, a retail grocery store operation, the Grocery Exclusive Use shall terminate and be of no further force or effect. The thirty-six (36) month period referred to in this section shall not include any period during which the particular use lapses due to force majeure conditions or damage, destruction, condemnation, or remodeling of the building on the Grocery Store Parcel so long as the owner of the Grocery Store Parcel promptly commences and diligently proceeds with repair and restoration of such building in a manner reasonably calculated to permit resumption of such use. Further, at such time as all of the usable retail portion of the building on the Grocery Store Parcel is opened for business as a use other than a retail grocery store operation, the Grocery Store Exclusive granted herein shall automatically terminate and be of no further force or effect.

3. **Attorneys' Fees.** Should any litigation, action or proceeding be commenced concerning this Declaration or any matter herein, including any Notice of Waiver of Use Restriction, the party who prevails in such litigation, action or proceeding shall be entitled, in addition to such other relief as may be granted, to court costs and reasonable attorneys' fees as determined by the court (including any costs and attorneys' fees incurred on appeal).

4. **Remedies Cumulative.** In the event of a breach or attempted or threatened breach of any part of this Declaration by any Owner, any other Owner shall be entitled forthwith to full and adequate relief by injunction and all other available legal and equitable remedies. The remedies permitted at law or in equity of any one or all such Owners specified herein shall be cumulative as to each and as to all. Notwithstanding any other provision of this Declaration, the parties each hereby acknowledge and agree that no tenant, occupant, or any other person or entity except an Owner shall have the right to enforce any rights or interests created under this Declaration, as a third party beneficiary or otherwise.

5. **Covenants Running with the Land.** This Declaration shall be enforceable as equitable servitudes and covenants running with the land, and shall be binding upon and inure to the benefit of the Original Owners, and each successor-in-interest of any such Original Owner.

6. **Relief from Obligations.** In the event that any Owner shall convey its fee interest as to all or a portion of any Riverwalk Parcel or the Grocery Store Parcel, upon such conveyance said Owner shall be automatically freed and relieved of all liability under this Declaration with respect to any obligation thereafter to be performed with respect to the Parcels conveyed. It is intended that the Declaration and the obligations contained in this instrument on the part of each Owner shall be personally binding on such Owner only with respect to obligations that are to be performed during its ownership; therefore, the conveying Owner shall remain liable for any obligations incurred under this Declaration prior to the date on which its ownership interest is terminated as to the property conveyed.

7. **Miscellaneous.**

(a) This Agreement shall be construed in accordance with the laws of the State of Utah, without regard to the choice-of-laws or conflict-of-laws provisions of such state.

(b) Nothing contained herein shall be deemed a gift or dedication of any portion of any Parcel described herein to the general public or for any public purpose whatsoever.

(c) This Declaration contains the entire agreement between the Original Owners relating to the rights herein granted and the obligations hereunder assumed. Any oral representations or modifications concerning this Declaration shall be of no force or effect. Except as otherwise specifically provided herein, the terms and conditions of this Declaration may only be amended, modified, waived, or released by a written agreement signed by the parties hereto and shall be effective only when recorded in the records of Salt Lake County.

(d) The failure of a party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

(e) The invalidity of any one of the covenants, conditions, restrictions or other provisions herein contained shall in no way affect any of the other covenants, conditions, restrictions or provisions hereof, and the same shall remain in full force and effect.

(f) The consent (or waiver thereof) of a party given in any instance under the terms of this Declaration shall not relieve the other party of any obligation to secure any consent in any other or future instance under the terms of this Declaration.

(g) Each of the individuals who have executed this Declaration represents and warrants that he or she is duly authorized to execute this Declaration on behalf of Riverwalk or Jordan River, as the case may be; that all corporate, partnership, or other action necessary for such party to execute and perform the terms of this Declaration have been duly taken by such party; and that no other signature and/or authorization is necessary for such party to enter into and perform the terms of this Declaration.

(h) This Declaration may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one (1) and the same instrument.

[Remainder of page intentionally left blank. Signature pages follow immediately.]

IN WITNESS WHEREOF, the parties hereto have executed this Declaration as of the Effective Date.

RIVERWALK:

RIVERWALK INVESTMENT HOLDINGS, LLC
By: Tate Diversified Development, Inc., a California Corporation, Managing Member

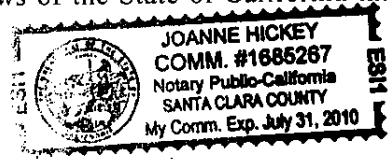
By: [Signature]
Ronald M. Tate, President

STATE OF CALIFORNIA)
 :SS
County of Santa Clara)

On 6-2-08 before me, JoAnne Hickey, Notary (here insert name and title of the officer), personally appeared Ronald M. Tate who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature JoAnne Hickey (Seal)



[Signatures continue on following page.]

JORDAN RIVER:

JORDAN RIVER BOULEVARD PARTNERS, LLC

By: Kathy Cannon
Kathy Cannon, Manager

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 3 day of June, 2008 before me, the undersigned, a Notary Public in and for said County and State, personally appeared KATHY CANNON, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that she is the Manager of JORDAN RIVER BOULEVARD PARTNERS, LLC and said person acknowledged to me that she executed such instrument on behalf of and as the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public: Chris Pfeifer
Printed Name: Chris Pfeifer
My Commission Expires: 8-4-12

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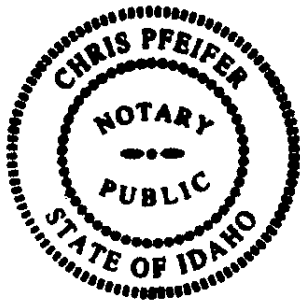


EXHIBIT A

All of Lot 4A, RIVER WALK AT BINGHAM JUNCTION LOT 4 AMENDED, according to the official plat thereof, filed in Book "2008P" of Plats, at Page 146 of the Official Records of the Salt Lake County Recorder.

For reference purposes only:
Tax Parcel No. 21-26-226-003

EXHIBIT B

All of Lot 4B, RIVER WALK AT BINGHAM JUNCTION LOT 4 AMENDED, according to the official plat thereof, filed in Book "2008P" of Plats, at Page 146 of the Official Records of the Salt Lake County Recorder.

For reference purposes only:
Tax Parcel No. 21-26-226-004

EXHIBIT C DEPICTION OF PARCELS

