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 GARY W. OTT  
 RECORDER, SALT LAKE COUNTY, UTAH  
 LANDMARK TITLE  
 BY: SAM, DEPUTY - WI 19 P.

RECORDING REQUESTED BY  
 AND WHEN RECORDED RETURN TO:

Julia M. Baigent  
 Attorney at Law  
 60 Buck Court  
 Woodside, CA 94062  
 LTC 44205

SALT LAKE COUNTY, UTAH

### SIGNAGE EASEMENT AGREEMENT

This SIGNAGE EASEMENT AGREEMENT ("**Agreement**") is made as of this 25<sup>th</sup> day of June, 2008 (the "**Effective Date**") by and between **RIVERWALK INVESTMENT HOLDINGS, LLC**, a Utah limited liability company ("**Riverwalk Parcel Owner**"), and **JORDAN RIVER BOULEVARD PARTNERS, LLC**, a Delaware limited liability company ("**Jordan River Parcel Owner**").

### RECITALS

A. Riverwalk Parcel Owner is the owner of those certain parcels of land in the City of Midvale (the "**City**"), County of Salt Lake (the "**County**"), State of Utah described on **Exhibit A** attached hereto and incorporated herein (collectively, the "**Riverwalk Parcels**", and each individually, a "**Riverwalk Parcel**").

B. Riverwalk Parcel Owner is also the owner of those certain parcels of land in the City and County which are adjacent to the Riverwalk Parcel described on **Exhibit B** attached hereto and incorporated herein (collectively, the "**West Parcels**", and each individually, a "**West Parcel**").

C. Jordan River Parcel Owner is the owner of that certain parcel of land in the City and County described on **Exhibit C** attached hereto and incorporated herein (the "**Jordan River Parcel**"). The West Parcels, Riverwalk Parcels and Jordan River Parcel are depicted on the Site Plan attached hereto as **Exhibit D** and incorporated herein by reference (the "**Site Plan**"). Jordan River Parcel Owner and Riverwalk Parcel Owner, or their respective successors and assigns to a Riverwalk Parcel or the Jordan River Parcel, are referred to individually herein as a "**Party**" and collectively as the "**Parties**." Also, the owner of a West Parcel that is also a Signage Parcel shall be a "**Party**" and one of the "**Parties**."

D. It is the desire and intention of the Parties to provide for the grant of certain signage rights and related easements, subject to the restrictions and obligations set forth below, with respect to a pylon sign (the "**Pylon Sign**") constructed or to be constructed on one (1) of the Riverwalk Parcels and a monument sign to be constructed at the corner of the public rights-of-way known as 700 West and 7200 South (the "**Monument Sign**" and together with the Pylon Sign, the "**Center Signs**"), which signs are located in the approximate locations depicted on the Site Plan attached hereto as **Exhibit D**.

## AGREEMENT

### ARTICLE 1. SIGN EASEMENT

1.1 **Grant of Sign Easement.** As of the Effective Date, subject to the terms and conditions of this Agreement, Riverwalk Parcel Owner, as owner of the Riverwalk Parcels, hereby grants to Jordan River Parcel Owner and to the owners of the West Parcels and Riverwalk Parcels that are Signage Parcels (as defined in this Section 1.4.2, below), a non-exclusive easement (the "**Sign Easement**") for the use and maintenance of the Center Signs as provided herein and over and across the areas immediately surrounding the Pylon Sign and the Monument Sign, as the same are depicted on the Site Plan attached hereto as **Exhibit D** (together, the "**Sign Sites**"), and over all roadways and drive aisles, as the same exist from time to time on Riverwalk Parcels, as reasonably necessary to access the Center Signs ("**Sign Access Areas**") for the purposes set forth in this Agreement. The Sign Easement is for the benefit of Jordan River Parcel, and the West Parcels and Riverwalk Parcels that are occupied by a Sign User ("**Signage Parcels**"). Riverwalk Parcel Owner may reconfigure the Sign Access Areas on the Riverwalk Parcels from time to time in accordance with applicable laws, codes and regulations, provided that at all times direct access to the Center Signs for Jordan River Parcel Owner and the Sign Users, as reasonably required for the purposes herein, is provided and maintained.

1.2 **Purposes.** Subject to the terms and conditions of this Agreement, the Sign Easement is granted for the following purposes:

1.2.1 use, operation, construction, replacement, maintenance and repair of the Center Signs and the sign Panels thereon as permitted by this Agreement;

1.2.2 access by pedestrians, automobiles, trucks, construction equipment and other appropriate equipment to and from the Center Signs and Sign Sites over and across the Sign Access Areas to access the Sign Sites for the purposes permitted herein;

1.2.3 the installation, replacement, maintenance, repair and operation of a utility line or lines (the "**Utility Lines**") within, under and across the Sign Access Areas and Sign Sites as reasonably required for the illumination and/or operation of the Center Signs; and

1.2.4 the use of the Sign Sites and Sign Access Areas, for purposes of construction, installation, maintenance, repair and replacement of the Center Signs and sign Panels thereon, and the Utility Lines, as provided in this Agreement.

All such rights set forth above shall be undertaken in such a manner so as to minimize any interference with the conduct or operation of any business being conducted or construction being performed on the Riverwalk Parcels. Jordan River Parcel Owner and/or the Signage Parcel owners and their Sign Users shall promptly repair any damage caused to the Sign Sites and Sign Access Areas, or any other part of the Riverwalk Parcels or the improvements thereon, resulting from the exercise by such Party or Sign User of any rights set forth in this Agreement, at such Party's and Sign User's sole cost and expense.

1.3 **Interference with Access.** The Parties shall not take any action which would interfere with any Party's or Sign User's ability to exercise its easement rights for access to the Center Signs as provided in this Agreement. Notwithstanding the foregoing, the Sign Parcel Owner (as defined in Section 2.3, below) may close off the Sign Site on its parcel and the

owners of the Riverwalk Parcels may close off the Sign Access Areas on their respective parcels for such reasonable period or periods of time as may be required to discharge such Parties' maintenance and repair obligations set forth in this Agreement and as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Sign Sites or Sign Access Areas as herein provided, such Party shall give prior written notice to each Party and any Sign User of its intention to do so, and shall reasonably coordinate such closing with the Parties' and Sign Users' needs to access the Sign Sites.

1.4 **Sign Panels.** As used in this Agreement, "**Panel**" refers to the area of the Pylon Sign or Monument Sign designated for individual sign panels which are available for installation of signage.

1.4.1 **Exclusive Rights to Panels.** Jordan River Parcel Owner and its successors and assigns shall have the exclusive right to use and occupy the uppermost Panel position on both sides of the Center Signs (the "**Jordan River Parcel Panels**"). Jordan River Parcel Owner may lease, license or delegate its rights to use and occupy the Panel position allocated to it only to a Sign User who occupies the Jordan River Parcel. Riverwalk Parcel Owner and its respective successors and assigns shall have the exclusive right to the use and occupancy of the all Panel positions other than the uppermost Panel position on both sides of the Center Signs (the "**Riverwalk Parcel Panels**"). Riverwalk Parcel Owner shall not lease, license or delegate its rights to use and occupy the Panel positions allocated to it to any person or entity who is not an occupant of a Riverwalk Parcel or West Parcel. At such time as either Party no longer owns an interest in the Jordan River Parcel or any of the Riverwalk Parcels or West Parcels, as applicable, or at such time as a Sign User is no longer an owner or occupant of either the Jordan River Parcel, a West Parcel or a Riverwalk Parcel, such Party or Sign User shall cease to have any right to use or occupy any Panel on the Center Signs.

1.4.2 **Sign Users.** The "**Sign Users**" (each, individually, a "**Sign User**") shall be the occupant of the Jordan River Parcel as designated in writing from time to time to the Parties by Jordan River Parcel Owner for use of a Jordan River Parcel Panel, and such occupants of the West Parcels and/or Riverwalk Parcels as are designated from time to time in writing as provided in this Section by Riverwalk Parcel Owner for use of a Riverwalk Parcel Panel. In order to designate an occupant of a Riverwalk Parcel or a West Parcel as a Sign User, Riverwalk Parcel Owner shall deliver to the Parties and record in the official records of the County a "Notice of Designation of Sign User" which shall reference this Agreement, the date of recordation of this Agreement and the recording document number of this Agreement, and shall set forth the name and address for notices of the Sign User, the parcel owned or occupied by such Sign User, and if the Sign User occupies a West Parcel, that such Sign User agrees that it and the West Parcel occupied by it are subject to and bound by this Agreement.

## **ARTICLE 2.**

### **COSTS, EXPENSES AND REQUIREMENTS**

2.1 **Separate Costs.** All costs allocated to separate Parties or Sign Users pursuant to Article 2 shall be paid by such Party or Sign User, provided that each Sign User shall be jointly and severally liable with the Party having exclusive occupancy rights to its Panel, for all costs, liabilities and obligations allocated to that Party as to such Panel occupied and used by such Sign User under the provisions of this Article 2. All costs of fabricating, installing, maintaining, repairing, replacing and removing an individual Panel shall be borne solely by the Party and/or Sign User entitled to the use and occupancy of that Panel, in accordance with Section 2.2, below. Costs of installing a new meter for any Panel shall be paid by the Party

desiring to install the same. All real property taxes and assessments allocable to the Sign Sites or imposed upon the Pylon Sign structure, the Monument Sign structure, or any related improvements thereto (collectively, the “**Sign Improvements**”), shall be paid by the respective Sign Parcel Owner directly to the taxing authorities, provided that the Parties and/or Sign Users shall share such taxes and assessments pro-rata in the same percentages provided for sharing maintenance costs in Section 2.3, below. If taxes are separately assessed for the Sign Access Areas or the Sign Easement, the Signage Parcel Owners shall pay such taxes directly to the taxing authorities, provided that the Parties and/or Sign Users shall share such taxes and assessments pro-rata in the same percentages provided for sharing maintenance costs in Section 2.3, below. Otherwise, the owners of the Riverwalk Parcels that are subject to Sign Access Areas or the Sign Easement shall pay any all taxes assessed to such Riverwalk Parcels without allocation to the Sign Access Areas or Sign Easement directly to the taxing authorities, and the Parties and/or Sign Users shall not be required to share in such taxes and assessments.

## **2.2 Panel Construction.**

2.2.1 **Panel Permits and Governmental Requirements.** All permits for an individual Panel sign that are required by the City or County shall be obtained by the Party or Sign User having rights to use such Panel prior to installation of the Panel sign at such Party’s or Sign User’s sole cost and expense, provided that Riverwalk Parcel Owner shall obtain any permits or other governmental approvals required for the construction and maintenance of the Sign Improvements. Each Party or Sign User shall be responsible for fulfillment of all governmental requirements and specifications for its Panel sign, including those of the City, County and the Uniform Electric Code, applicable thereto (including its illumination).

2.2.2 **Liability for Sign Panel Construction.** Each Party and its Sign User shall be fully responsible for the operations, acts and omissions of its sign contractor and such sign contractor’s subcontractors with respect to its Panel, and shall defend, indemnify and hold harmless each other Party and Sign User, the Jordan River Parcel, and the Riverwalk Parcels, and occupants of the parcels, from all damages, liabilities, claims, expenses and causes of action arising out of any operations, acts or omissions by that Party or Sign User, or their sign contractor or subcontractors.

2.2.3 **Mechanics’ Liens.** Each Party shall have the obligation to defend, indemnify and hold each other Party harmless from and against any mechanics’, materialmen’s and/or laborer’s liens, and all costs, expenses and liabilities arising out of such Party’s performance of its obligations under this Agreement, including reasonable attorneys’ fees and court costs. In the event that the Sign Easement, Sign Sites, Sign Access Areas, Center Signs, any West Parcel or Riverwalk Parcel, or the Jordan River Parcel shall become subject to any such lien, the responsible Party shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting and maintaining such bond or other security as shall be required by law to obtain such release and discharge. In the event that the responsible Party does not discharge such lien within thirty (30) days from written request therefor by the Party whose parcel is subject to such lien, the noticing Party shall have the right, but not the obligation, to bond for or otherwise obtain a release of such lien and the Party responsible for such lien shall, upon demand from the other Party, reimburse the noticing Party for the amount of the lien and any and all expenses (including attorneys’ fees) incurred in connection with the release of the lien.

2.3 **Maintenance of Sign Access Areas and Pylon Sign.** Each owner of a Riverwalk Parcel that has a Sign Access Area located on its parcel shall maintain and repair the surface of the Sign Access Areas on its parcel in a good, operational and clean condition at

its sole cost and expense. The owner or owners of the parcels upon which the Pylon Sign and Monument Sign are located (each a "Sign Parcel Owner") shall maintain and repair the Sign Improvements located on such Sign Parcel Owner's parcel in a good, operational and clean condition, subject to reimbursement as provided below. All maintenance, insurance, repair, replacement and operation regarding each Center Sign (including the Utility Lines, but excluding the Parties' and/or Sign User's responsibilities regarding their respective individual Panels and the Sign Access Areas as set forth in this Article 2), shall be controlled, supervised, directed and/or performed by the respective Sign Parcel Owner. The Sign Parcel Owner, its employees, contractors and vendors, are expressly permitted to enter upon its respective Sign Sites and the Sign Access Areas for such Sign Site to discharge its duties hereunder.

2.3.1 The Sign Users shall share the costs incurred by a Sign Parcel Owner in discharging its duties pursuant to this Section 2.3 pro-rata based upon the square footage of the Panel area occupied by such Sign User on the Pylon Sign or Monument Sign, as applicable, over the entire square footage of all Panel areas on such sign. A Sign Parcel Owner shall be obligated to expend only such funds as are reasonably necessary to discharge its duties hereunder.

2.3.2 Each Sign Parcel Owner shall provide the Sign Users with a written estimate of the total costs for the maintenance of its respective Center Sign pursuant to this Section 2.3 and for insurance to be maintained as provided in Section 2.5 for the upcoming twelve (12)-month period, amortized on a monthly basis. The Sign Users shall pay such monthly estimate on the first (1<sup>st</sup>) day of each month of said period. Within three (3) months after the end of such period, each Sign Parcel Owner shall deliver to the Sign Users a final reconciliation of the actual costs spent pursuant to this Section during the applicable prior twelve (12)-month period. Charges owing by a Sign User shall be prorated if the Sign User was not a Sign User for the entire such twelve (12)-month period. Each Sign User shall pay any shortfall to the Sign Parcel Owner within thirty (30) days from such Sign User's receipt of the reconciliation and any excess payment by a Sign User shall be applied to the next payment(s) due from such Sign User or, if none, within five (5) days from such Sign User's written request therefor.

2.3.3 Notwithstanding anything in this Section 2.3 to the contrary, any repair or replacements to the Center Signs necessitated by or from the negligence or willful misconduct of any Party, or such Party's agents, contractors, employees, customers or vendors, shall be paid for exclusively by the Party whose negligence or willful misconduct (or that of its agents, contractors, employees, customers or vendors) gave rise to such repairs or replacements.

#### 2.4 Use of Panels.

2.4.1 Use Restrictions. No Panel sign shall emit any sound which is audible to any occupants of any Riverwalk Parcel or Jordan River Parcel. No Panel sign shall exhibit, post or display anything of an obscene, indecent, immoral or unlawful nature.

2.4.2 Hours of Illumination. The Panels shall be illuminated from dusk to dawn, or during such other legally permissible times mutually agreed upon by the Parties from time to time.

2.4.3 Maintenance. Each Panel sign shall be maintained and repaired in good attractive condition by the Party owning the rights to such Panel and/or its Sign User for such Panel at such Party or Sign User's sole cost and expense.

2.4.4 **Panel Insurance.** Each Party and Sign User shall require that its sign contractor carry workman's compensation and commercial general liability insurance against all damage suffered or done to any and all Persons and/or property while the contractor is engaged in the construction, installation, repair, replacement or maintenance of any Panel signs, or the Center Signs. Such insurance shall provide for a limit of no less than \$2,000,000 combined single limit. Commercial general liability insurance shall be maintained by each Sign User and the Party owning rights to such Sign User's Panel, written on an "occurrence" policy form, covering bodily injury, property damage, personal injury, and advertising injury arising out of or relating (directly or indirectly) to the business operations, conduct, assumed liabilities, or use or occupancy of the Panel and all signage thereon. Such insurance shall be primary to the insuring Parties, and shall name the Parties and the Sign Users, and their designated lenders, as additional insureds.

2.5 **Insurance.** The Sign Parcel Owner shall insure the Pylon Sign or Monument Sign (but not the individual Panels thereon) and Sign Site on its parcel and performance of its duties with the following limits and other insurance requirements (which may be provided by blanket insurance policies):

2.5.1 **Liability Insurance.** Commercial general liability insurance written on an "occurrence" policy form, covering bodily injury, property damage, personal injury, and advertising injury arising out of or relating (directly or indirectly) to the business operations, conduct, assumed liabilities, or use or occupancy of the Pylon Sign or Monument Sign (as applicable), the Sign Site, and any Sign Access Areas on its parcel. The liability insurance shall be broad form general liability coverage, premises-operations coverage, products completed operations coverage, owners and contractors protective coverage (during any work done on or about the Sign Site on its parcel), and the broadest available form of contractual liability coverage. Such insurance shall be in an amount not less than \$1,000,000 per occurrence, shall be primary to the Parties, and shall name the Sign Users and Parties, and their designated lenders, as additional insureds.

2.5.2 **Property Insurance.** "All Risk" property insurance coverage. The property insurance policy shall insure the Sign Improvements and Utility Lines against loss or damage by fire with customary extended coverage in a face amount not less than the full replacement value of such improvements as adjusted annually for increases in replacement cost. Such insurance shall be primary to the Parties, and shall name the Sign Users and the Parties, and their designated lenders, as additional insureds.

### **ARTICLE 3.**

#### **TERM OF AGREEMENT; BINDING ON SUCCESSORS.**

3.1 **Term.** This Agreement shall be effective as of the Effective Date and shall continue in full force and effect in perpetuity.

3.2 **Covenants Running With Land.** The covenants, conditions, restrictions, easements, obligations and limitations set forth herein will be binding on all parties having or acquiring any right, title or interest in Riverwalk Parcel or Jordan River Parcel, and, their heirs, successors and assigns, and will inure to the benefit of the Parties and their heirs, successors and assigns. The covenants, conditions, restrictions, easements, obligations and limitations herein shall be deemed to be, and shall be construed as, covenants running with all the land constituting each Riverwalk Parcel and the Jordan River Parcel, and each West Parcel that is a Signage Parcel, as equitable servitudes.

**ARTICLE 4.**  
**DEFAULT AND REMEDIES**

4.1 **Joint and Several Liability Respecting Signage Obligation.** Each Party and its designated Sign User shall be jointly and severally liable for all liabilities and obligations imposed on either of them or their Panel pursuant to this Agreement.

4.2 **Default Defined.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by the non-performing party (collectively, the "**Defaulting Party**"): (i) the failure to make any payment required to be made hereunder within thirty (30) days after notice of nonpayment is given by a non-defaulting Party to a Defaulting Party; or (ii) the failure to observe or perform any of the covenants, conditions or obligations of this Agreement, other than as described in (i) above, within thirty (30) days after written notice is given to the Defaulting Party by a non-defaulting Party specifying the nature of the default claimed, or such longer time period as shall be reasonably necessary to effect such cure if the nature of such condition is curable and will take longer than thirty (30) days to complete, provided that the party receiving such notice commences such cure within such thirty (30) day period and diligently pursues the same thereafter to completion, but in any event completes such cure in not more than ninety (90) days after receipt of the written notice of default.

4.3 **Remedies.** With respect to any default described above which is not timely cured, any non-defaulting Party shall have the right, but not the obligation, after expiration of the applicable cure period without cure, to cure such default by the payment of money, or the performance of the obligation for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an emergency condition, any other non-defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter.

4.3.1 **Priority of Curing Parties.** If more than one Party desires to cure, unless the Parties otherwise agree in writing, a Party's right to cure shall be given in the following order or priority: (i) first, a Party who is not in default under this Agreement and who owns the right to exclusive use of the greatest square footage of Panel space pursuant to this Agreement shall have the right to cure, and if such Party does not elect to cure, then the right to cure may be exercised by the Party having the right to use the next greatest square footage of Panel space, and so on, until each Party has had the opportunity to cure, (ii) next, Riverwalk Parcel Owner shall have the right to cure.

4.3.2 **Request for Cure.** After lapse of a Defaulting Party's cure rights without cure, any non-defaulting Party may deliver to each other Party a written request for cure ("**Request for Cure**"), which shall specify the nature of the default, including the amount due or obligation requiring performance to cure, the identification of the Party in default, identification of the Panel to which such default applies, the priorities of cure rights as provided herein, and the date upon which a Party must elect to cure, which shall not be sooner than thirty (30) days from the Request for Cure or later than sixty (60) days from such Request for Cure. If a Party elects to cure (subject to the priorities of cure rights in Section 4.3.1, above) a Party's election to cure shall be in writing to all other Parties within fifteen (15) days from receipt of the Request for Cure and state the date(s) upon which such cure shall be made.

4.3.3 **Payment by Defaulting Party.** In the event a Party timely elects to cure and does so cure a default in accordance with its notice (the "**Curing Party**"), the Defaulting

Party shall reimburse the Curing Party for all costs and expenses incurred in connection with such curative action, including reasonable attorneys' fees, plus interest as provided in Section 5.1 of this Agreement, within thirty (30) days from receipt of written demand from the Curing Party, together with reasonable documentation supporting the expenditures made.

4.4 **Mortgagee Protection.** Notwithstanding the foregoing, no breach of the covenants, conditions or restrictions herein contained, shall affect, impair, defeat or render invalid the lien or charge of any mortgage or deed of trust made in good faith and for value encumbering all or any portion of a Signage Parcel, Riverwalk Parcel or the Jordan River Parcel, but all of such covenants, conditions and restrictions shall be binding upon and effective against the Signage Parcels, Riverwalk Parcels and the Jordan River Parcel, or any part thereof, whose title is derived through foreclosure or trustee's sale, deed in lieu thereof, or otherwise, with respect to all or any portion of such parcel.

4.5 **Enforcement Actions.** Each Party (or its assignee) shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, and to recover appropriate damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

## **ARTICLE 5. MISCELLANEOUS**

5.1 **Interest.** Any time any sum payable hereunder is not paid when due, such delinquent sum shall accrue interest from the due date (or other date, if any, specified in this Agreement for the commencement of interest) to and including the date paid to the Person entitled thereto, at the lesser of: (i) the highest rate permitted by law to be either paid on such type of obligation by the Person obligated to make such payment or charged by the Person to whom payment is due, whichever is less; or (ii) three percent (3%) per annum in excess of the prime rate from time to time publicly announced in the Wall Street Journal, or its successor, or if there is no successor, by a Bank having assets of not less than \$1,000,000,000 which maintains a business office or offices in Utah, as selected by the charging party.

5.2 **Estoppel Certificate.** The Parties agree that upon written request of any Party, it will issue to such Party, or its prospective mortgagee or successor, within ten (10) business days from receipt of such request, an estoppel certificate ("**Estoppel**") stating to the best of the issuer's knowledge as of such date:

5.2.1 whether it knows of any default under this Agreement by the requesting Party or any other Party, and if there are known defaults, specifying the nature thereof;

5.2.2 whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;

5.2.3 whether this Agreement is in full force and effect;



5.2.4 whether, to such Party's actual knowledge, conditions exist which, with the passage of time and/or giving of notice, or both, will become a default by the requesting Party or any other Party, and, if so, specifying any such conditions;

5.2.5 whether, to such Party's actual knowledge, all sums due by the requesting Party to any other Party pursuant to this Agreement have been paid as of the date of such request, or specifying such failure;

5.2.6 whether the requested Party has any known off-sets, claims, demands or set offs against any other Party.

Such statement shall act to prevent the Party furnishing it from making or bringing any claim against a bona fide encumbrancer or purchaser for value who does not have knowledge (actual or constructive) of facts to the contrary of those contained in the Estoppel, and who has acted in reasonable reliance upon the Estoppel, to the extent any such claim is based upon facts known to the Party furnishing the Estoppel to be contrary to those asserted in the Estoppel. The issuance of an Estoppel shall in no event subject the Party furnishing it to any liability for the negligent or inadvertent failure of such Party to make correct statements or disclose relevant information, but it shall estop such Party from making assertions contrary to those known to the Party at the time of signing the Estoppel to be contrary to the assertions set forth in the Estoppel for the period covered by the Estoppel.

5.3 **Notices.** All notices, demands and requests (collectively, "Notice") required or permitted to be given under this Agreement must be in writing and shall be effective when received or rejected if hand delivered, or when sent to the addresses set forth herein by registered or certified mail, or by nationally recognized overnight courier, or when sent via facsimile or e-mail (so long as the original Notice is also sent by one of the other methods specified above within one (1) business day thereafter), in each case to the last address of the addressee known to the sender. As of the recording of this Agreement, the Parties' addresses are:

If to Riverwalk Parcel Owner:

Riverwalk Investment Holdings, LLC  
Attn: John D. Mercer  
c/o J.D. Mercer & Company  
5976 W. Las Positas Blvd., Ste. 202  
Pleasanton, CA 94588  
Telephone: (925) 225-0222  
Fax: (925) 225-0223  
E-mail: johnjdmco@sbcglobal.net

If to Jordan River Parcel Owner:

Jordan River Boulevard Partners, LLC  
c/o Commercial Associates, LLC  
2421 W. Pratt Blvd.  
Chicago, IL 60645

With a copy to:

(which shall not constitute Notice)  
Matthew M. Hicks  
Holland & Hart LLP  
P.O. Box 2527  
Boise, ID 83701-2527  
Telephone: (208) 342-5000  
Fax: (208) 343-8869  
E-mail: mhicks@hollandhart.com

5.4 **Approval Rights.** Unless otherwise herein provided, whenever a consent or approval is required of any party by virtue of this Agreement, such approval shall not be unreasonably withheld, delayed or conditioned. Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to this Agreement shall be given by the Person to whom directed within thirty (30) days of receipt. Each disapproval shall be in writing and the reasons shall be clearly stated.

5.5 **Construction and Interpretation.**

5.5.1 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Utah, without regard to the conflicts-of-laws or choice-of-laws principles of such state.

5.5.2 **Particular Words.** Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matters.

5.5.3 **Captions and Capitalized Terms.** The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

5.5.4 **Severability.** Invalidity of any of the provisions contained in this Agreement, or of the application thereof to any Person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

5.5.5 **No Effect on West Parcels That Are Not Signage Parcels.** Notwithstanding the recordation of this Agreement against all of the West Parcels, this Agreement shall not impose any obligations or liabilities or confer any rights or benefits on any West Parcel that is not and has not been designated as a Signage Parcel in the manner set forth in Section 1.4.2 of this Agreement.

5.6 **Modification.** This Agreement may not be amended except by, and then only by, a written agreement signed by all of the then-current Parties and any such amendment shall be effective only when recorded in the official records of the County.

5.7 **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parcel owners, Parties or Sign Users in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered separate, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

5.8 **Not A Public Dedication; No Third Party Beneficiaries.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of any Parcel or portion thereof, or of the Center Signs, to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein.

5.9 **Excusable Delays.** Whenever performance is required of any Person hereunder, such Person shall use reasonable due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, acts of terrorism, riots, strikes, picketing or other labor disputes, damage to work in progress by reason of fire or other casualty, inability or delays in receiving approvals or permits from the City (provided such Party has used all due diligence and good faith in seeking such approvals or permits in a timely manner), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. Lack of funds shall not be deemed to be an excusable delay. The provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this Agreement; provided, however, that a Party shall not be required to make any payment prior to the performance of the obligations to which such payment applies.

5.10 **Agreement Shall Continue.** Except as expressly stated in this Agreement, no breach of this Agreement shall result in termination of any easements or entitle any Party to cancel, rescind, or otherwise terminate this Agreement. However, such limitation shall not affect in any manner any rights or remedies which a Party may have hereunder by reason of any such breach.

5.11 **Time.** Time is of the essence of this Agreement.

5.12 **No Waiver.** The failure of any 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. No waiver by any Party of any default under this Agreement shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Agreement.

5.13 **Mortgage Subordination.** Any mortgage or deed of trust affecting any Parcel or portion thereof shall at all times be subject and subordinate to the terms of this Agreement and any Party foreclosing any such mortgage or deed of trust or acquiring title by deed in lieu

of foreclosure or trustee sale shall acquire title subject to all of the terms and provisions of this Agreement, except that any purchaser at any foreclosure or trustee sale under any such mortgage shall take title subject to only to obligations thereafter accruing under this Agreement.

5.14 **Costs and Attorney's Fees.** If any Party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the prevailing Party in such action shall be entitled to recovery of all costs and expenses of litigation, including reasonable attorney's fees, from the Party determined to be at fault or who ultimately performs the obligations for which relief was sought.

5.15 **Counterparts.** This Agreement 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. Signature pages may be detached from such counterparts and attached to a single copy of this Agreement to form one (1) document.

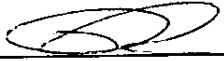
**[Signature pages follow immediately.]**

IN WITNESS OF THE FOREGOING, the Parties have executed this SIGNAGE EASEMENT AGREEMENT as of the Effective Date.

**RIVERWALK PARCEL OWNER:**

RIVERWALK INVESTMENT HOLDINGS, LLC

By: Tate Diversified Development, Inc., a California Corporation, Managing Member

By:   
Ronald M. Tate, President

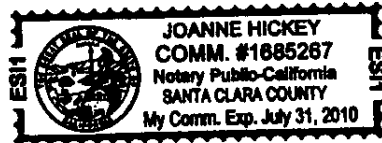
State of California  
County of Santa Clara

On June 2, 2008 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 PARCEL OWNER:**

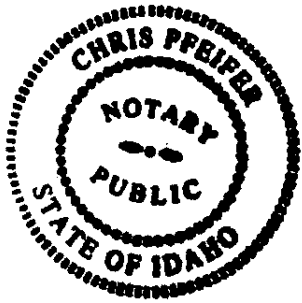
JORDAN RIVER BOULEVARD PARTNERS, LLC

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

**EXHIBIT A**

All of Lot 4C, 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. 21-26-226-005

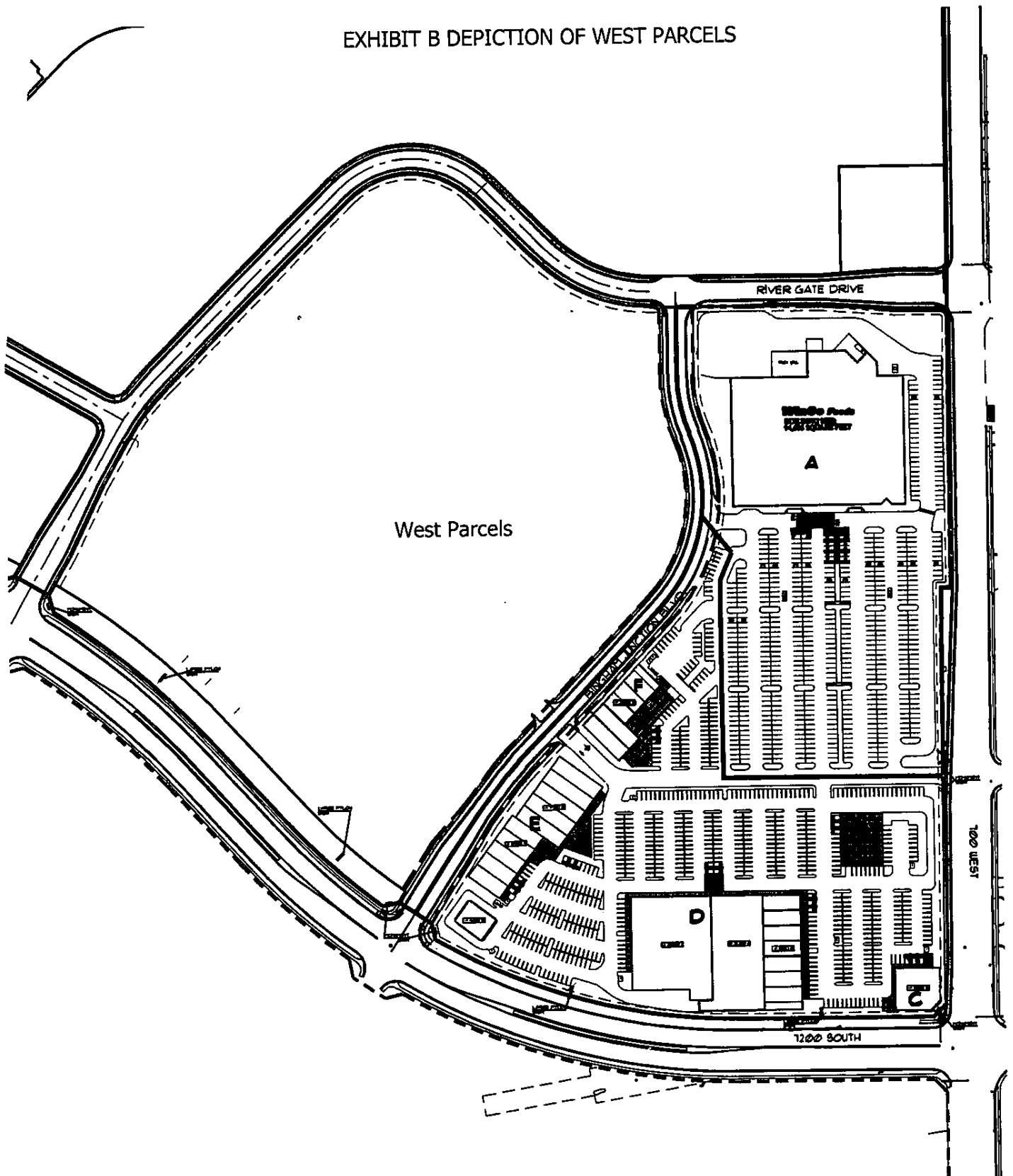
**EXHIBIT B**

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 DEPICTION OF WEST PARCELS



**EXHIBIT C**

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 D

