

179938-KAP

WHEN RECORDED RETURN TO:

Layton Antelope, LLC  
748 W. Heritage Park Blvd.  
Suite 203  
Layton, UT 84041

Tax Parcel No. 09-487-0202, 0203, 0204, & 0205

[Space Above for Recorder's Use]

## DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS

This Declaration of Easements, Covenants, and Restrictions ("Declaration," as the same may be supplemented or amended as provided herein) is dated November 19, 2024 ("Effective Date"), by LAYTON ANTELOPE, LLC, a Utah limited liability company and LAYTON ANTELOPE RETAIL, LLC, a Utah limited liability company (the "Declarants").

### RECITALS

A. Declarant is the owner of the Real Property (defined below). The Real Property is within Declarant's commercial retail Project (defined below) known as "**Harris Pointe Subdivision**," located in the City of Layton, Davis County, Utah.

B. To protect the value and desirability of the Project and to provide for the maintenance, repair and operation of the Project, Declarant desires to subject the Project to the covenants, conditions, assessments, restrictions, easements, charges and liens hereinafter set forth (sometimes collectively referred to herein as "**Easements, Covenants, and Restrictions**").

C. Unless otherwise expressly provided, capitalized terms appearing herein have the meanings given to them in **Article I** hereof.

### DECLARATIONS

NOW, THEREFORE, Declarant hereby declares that the Project is and will be owned, held, leased, transferred, sold, conveyed, mortgaged, developed, used and occupied subject to the Easements, Covenants, and Restrictions hereinafter set forth, all of which run with the land and will be binding on the Project and all persons having or acquiring any right, title or interest in or to the Project, or any part thereof, and will inure to the benefit of Declarant and each Owner and other person having any interest in the Project or any part thereof.

### ARTICLE I PURPOSE AND DEFINITIONS

1.1 Purposes of Declaration. The purposes of this Declaration include promotion of the proper use and operation of the Project in a manner that is consistent with the quality and integrity of the development of the Project as a whole; maintenance and support of a quality-designed community; restriction of certain uses of the Project; encouragement of the construction of attractive improvements at appropriate locations; provisions for the administration and enforcement of this Declaration; and general preservation of the aesthetic

appearance of the Project and improvements constructed thereon. The Recitals are hereby incorporated into this Declaration.

1.2 **Definitions.** The following words, when used in this Declaration, will have the following meanings unless the context prohibits:

1.2.1 **“Access Drives”** means the areas labeled as such on the Site Plan that are intended to provide vehicular and pedestrian access to and from the Project and public roads, or vehicular circulation between different portions of the Project. Each area includes all surface driving areas, access points to public roads, Landscaping within the drive (if any), site lighting within or alongside the drive, and curbing up to and including the back of the concrete curb or similar drive boundary. The Access Drives may be modified by Declarant in its sole discretion, provided such modification does not materially impair access to a Parcel without such Parcel Owner’s written consent, and provided written consent has been obtained from the Parcel Owner over whose Parcel the Access Drive is being modified.

1.2.2 **“Building” or “Buildings”** means the building or buildings on each Parcel.

1.2.3 **“Building Area”** means the area approved by the City and approved by Declarant within which a Building or Buildings are permitted be constructed on each Parcel. The Building Area definition shall also include a height restriction of (i) twenty-six feet (exclusive of parapets and all rooftop equipment and architectural enhancements) for all Buildings that are 5,000 square feet or less (measured to the exterior portion of the exterior walls) located on any Parcel, and (ii) thirty-five feet (exclusive of parapets and all rooftop equipment and architectural enhancements) for all Buildings that are more than 5,000 square feet (measured to the exterior portion of the exterior walls) located on any Parcel. The Declarant may, from time-to-time, approve any construction not in compliance with this Section. Additionally, Declarant may, from time-to-time, record a supplement to this Declaration that appends an updated Site Plan showing the then-current approved Building Areas for each Parcel.

1.2.4 **“City”** means the City of Layton, Utah.

1.2.5 **“Common Area”** (singular or plural) means the Access Drives, Parking Areas, the Signage Easement Area(s) (if any), and any Landscaping located within the Access Drives or Signage Easement Area, together with the easements or other rights appurtenant thereto. The Common Area shall also include any area of landscaping or public amenity or improvement whose upkeep, operation and/or maintenance is the obligation of the Project pursuant to the requirements of any Governing Authority.

1.2.6 **“Common Facilities”** means all utility lines or piping (including, but not limited to, natural gas, electric, telecommunications of all types, domestic water, fire water, storm water, sanitary sewer, and any other similar utility), and other Improvements within the exterior boundaries of the Project that provide service to more than one Parcel, including, but not limited to those utility lines shown on any of the Site Plan drawing(s) (each, a **“Common Utility Line”**), street lights along the Access Drives to the extent Declarant elects to install the same during such time that less than all of the Parcels have a Building, or otherwise to the extent that Declarant determines that such street lights are reasonably necessary for the benefit of the

Project (as opposed to the individual Parcel); and any other amenities (if any) installed by Declarant for non-exclusive use of the Owners, Occupants, and/or Permittees of the Project.

1.2.7 **“Common Improvements”** means, collectively, the Common Area and the Common Facilities.

1.2.8 **“Declarant”** means the original Declarant named herein, and any successor Declarant appointed pursuant to the terms of **Section 5.8** hereof. Notwithstanding the foregoing, no collateral assignment of any rights or privileges of Declarant as security will require an assumption of any responsibilities or obligations by the secured party until and unless the secured party executes on its collateral.

1.2.9 **“Governing Authority”** means any City, County, State, or Federal government department, agency, or entity, or other governmental or quasi-governmental agency with jurisdiction over the Project.

1.2.10 **“Improvements”** means any and all physical changes to any Parcel or to its appearance, from initial construction through later construction, reconstruction, modification or maintenance, which are intended to be temporary or permanent in nature (other than changes made during a period of construction that will be removed when the construction period is complete), but does not include improvements or changes to the interior of Buildings.

1.2.11 **“Landscaping”** means all plant material (including grass, plantings, vines, ground cover, trees, flowers, mulch, bulbs, hedges and shrubs), rock, landscape edging, hardscape, water features, berms, irrigation systems and related improvements and related materials.

1.2.12 **“Occupant”** means any person or entity from time to time entitled to the use and occupancy of any portion of a Parcel and/or Building in the Project under an ownership right or under any lease, sublease, license, concession or other similar valid agreement.

1.2.13 **“Owner”** means the owner of fee title to any Parcel and will include Declarant, unless otherwise expressly provided or required by context. If this Declaration imposes obligations or liabilities on the “Owner” or any portion of the Project and more than a single person holds an ownership interest in fee title to the portion of the Project, the obligations and liabilities will be joint and several for all such persons.

1.2.14 **“Parcel”** means a subdivided lot within the Project owned by a particular Owner. No Parcel within the Project may be subdivided, re-platted, or reconfigured, including by creation of a condominium, without the prior written approval of Declarant. Notwithstanding the foregoing, Declarant acknowledges that, as of the date of this Declaration, the Real Property has been or will be platted as Lots 202, 203, 204 and 205 in that certain Harris Pointe Subdivision – Second Amendment, Davis County, Utah; however, anticipated to be subdivided in the configurations shown on the Site Plan.

1.2.15 **“Parking Areas”** means those paved portions of the Project outside the Access Drives which are intended for vehicular access and vehicular parking uses as currently developed and as may be developed in the future.

1.2.16 **“Permittee”** means all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the development, use and occupancy of a Parcel. Persons engaged in civic, public, charitable or political activities within a Parcel, including the following activities, will not be considered Permittees: (i) exhibiting any placard, sign or notice; (ii) distributing any circular, handbill, placard or booklet; (iii) soliciting memberships, signatures or contributions for private, civic, public, charitable or political purposes; (iv) parading, picketing or demonstrating; and (v) failing to follow Rules or other regulations established by the parties relating to the use and operation of the Project. The term “Permittee” includes the City in the performance of its municipal functions for public safety emergencies, including utility emergencies.

1.2.17 **“Project”** means the Real Property, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.2.18 **“Pro Rata Share”**, as to each Parcel, means the percentage shares as determined by application of a fraction, the numerator of which is the land area of a Parcel, and the denominator of which is the land area of the Real Property. The Pro Rata Share of any Parcel that is hereafter subdivided into one or more Parcels of record (for purposes hereof, the original Parcel being so subdivided shall be referred to herein as the **“Original Parcel”**, and each new Parcel resulting from such subdivision shall be referred to herein as a **“Resulting Parcel”**) will be allocated among the Resulting Parcels based on the gross land area of each Resulting Parcel compared to the overall gross land area of the Original Parcel, and such that the combined sum of the allocated Pro Rata Share of the Resulting Parcels equals the Pro Rata Share of the Original Parcel immediately prior to such subdivision. The Owner of the Original Parcel shall prepare an amendment to this Declaration memorializing such allocation, and the Declarant shall promptly execute such amendment and deliver the same to the Owner of the Original Parcel. The Owner of the Original Parcel being subdivided shall be responsible for recording a copy of the amendment and delivering a recorded copy to Declarant. Thereafter each of the Resulting Parcels will be responsible only for its separate Pro Rata Share.

1.2.19 **“Shared Expenses”** means the sum of all reasonable out-of-pocket costs, expenses and assessments of any kind or nature paid or incurred by Declarant for maintaining, operating, repairing, replacing and insuring the Common Improvements, and for altering, improving or otherwise changing the Common Improvements to conform with requirements of law or insurance underwriters, or to reduce the costs of operating or maintaining the Common Improvements. In addition, Shared Expenses may include an Administrative Fee as set forth in **Section 5.4.1**.

1.2.20 **“Site Plan”** means, collectively, the drawing(s) and depiction(s) attached hereto as **Exhibit “B.”**

Other terms used in this Declaration are defined in various provisions contained herein.

## ARTICLE II

### GENERAL OPERATIONS

2.1 **General Covenants.** Any Owner and Occupant shall conduct its business in all respects in a high grade and reputable manner consistent with the quality of operation of the Project. No Owner or Occupant of any Parcel shall use or permit its Parcel or any part thereof to be used in a disorderly, unlawful or unreasonably disruptive manner, or in any other manner that unreasonably interferes with the use and enjoyment by other Occupants of the Project. No Owner or Occupant of any Parcel shall unreasonably suffer, allow or permit any vibration, noise, odor or flashing or bright light to emanate from the Premises or from any machine or other installation located therein in more than a de minimis manner, or otherwise suffer, allow or permit the same to constitute a nuisance to or interfere with the safety, comfort or convenience of any Owner or Occupant within the Project.

2.2 **Dining Areas.** No Owner or Occupant of any Parcel shall operate, or permit the operation of, any outdoor dining areas, food and beverage sales areas, kiosks and/or carts outside of the Building Area on its Parcel, unless a larger or alternative area has been approved in writing by Declarant, and no sounds generated from within such outdoor areas can be heard from any other Parcel. The Owner or Occupant of any Parcel operating an outdoor dining area within its Parcel shall be solely responsible for maintaining such outdoor dining area daily in a good condition of maintenance and repair, including, without limitation, collecting all refuse, cleaning any spills and steam cleaning as necessary to keep such areas free of stains, odors and food residue.

## ARTICLE III

### EASEMENTS

3.1 **Access and Parking Easement over Access Drives and Parking Areas.** Declarant hereby grants, conveys and reserves to Declarant and the other Owners for the use of Declarant, such Owners, Occupants, and their Permittees for the benefit of their respective Parcels and for the use of Declarant, such Owners, Occupants, and their Permittees a perpetual, non-exclusive easement for vehicular and pedestrian access, ingress, egress and passage upon, over and across the portion of the Access Drive(s) located within the Project and cross-parking rights over and across any paved portions developed as Parking Area(s) within the Project.

3.2 **Signage.** Declarant hereby grants, conveys and reserves to Declarant an easement for the construction and maintenance of the signs and sign structures in those areas identified on the Site Plan as "Signage Easement Areas," together with easements for reasonable access and utilities for the operation, repair and replacement of such signs (including all utility lines and facilities appurtenant thereto). Declarant may designate additional Signage Easement Areas or relocate any of the initial Signage Easement Areas, so long as (i) the same is done in accordance with signage that conforms to all applicable Governmental Requirements, (ii) the Owner of any Parcel on which the additional or relocated Signage Easement Area is to be located, has consented to the addition or relocation, and (iii) Declarant memorializes such action by recording a supplement to this Declaration identifying such additional or relocated Signage Easement Areas.

3.3 **Easement for Utility Lines.** Declarant hereby grants, conveys and reserves to Declarant and the other Owners for the use of Declarant, such Owners and their Permittees for

the benefit of their respective Parcels and for the use of Declarant, such Owners and their Permittees, a perpetual, non-exclusive easement upon, over, under and across the Common Areas, any platted utility easement areas, and in such areas where Common Utility Lines or Common Facilities are shown on the Site Plan, for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation and removal of utility lines serving the grantee's Parcel, including sanitary sewers, storm drains and storm water drainage water (fire and domestic), gas, electrical, telephone and communication lines. All utility lines will be underground except (i) ground mounted electrical transformers; (ii) as may be necessary during periods of construction, reconstruction, repair, or temporary service; (iii) as may be required by Governing Authorities having jurisdiction; (iv) fire hydrants; and (v) natural gas risers, manifolds, vents, switch gears, meters and similar equipment and appurtenances if fully screened and located as unobtrusively as possible. Except as otherwise agreed by the grantor and the grantee, any Owner installing utility lines pursuant to the provisions of this subparagraph separate from the Common Utility Lines must obtain Declarant prior approval, not to be unreasonably withheld, conditioned or delayed, of all plans therefor and will pay all costs and expenses with respect to the initial construction and any subsequent maintenance or repair thereof and will cause all work in connection therewith (including proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner that minimizes interference with the use of the Common Area. Upon completion, the grantee will provide to the grantor a copy of an as-built survey showing the location of the utility line.

3.4 Easements for Use of Common Improvements. Subject to the provisions hereof, every Owner and their Permittees will have a right and non-exclusive easement of enjoyment in and to the Common Improvements, which shall include the Access Drives and the paved Parking Areas. The rights and easements of enjoyment created hereby are subject to (i) the right of the Declarant to prescribe reasonable rules and regulations for the use, enjoyment, and maintenance of the Common Improvements; (ii) the right of the Declarant to take such steps as are reasonably necessary to protect the Common Improvements, or any part thereof; and (iii) the right of the Declarant to suspend the easements of enjoyment of any Owner during the time an Owner is in default beyond cure, provided that no Owner will be deprived of access to its Parcel.

3.5 Drainage/Water Flow. Declarant hereby grants, conveys and reserves to Declarant and other Owners, and each Owner hereby also grants, conveys, a perpetual, non-exclusive easement upon, over, under and across the grantor's Parcel to establish and maintain drainage patterns and facilities for the benefit of the Project as a whole and for each portion of the Project pursuant to the current grading and drainage plans in place for the Project and any future grading and drainage plans approved by Declarant and any applicable Governing Authority. No Owner shall commence any grading activities within its Parcel which will materially and adversely alter the natural water drainage flow thereon without the prior written approval by Declarant of a detailed grading plan for same.

3.6 Maintenance. Declarant hereby reserves unto itself, and its agents, an easement over the Common Improvements located upon each Owner's Parcel, for the purpose of performing the Declarant's obligations pursuant to this Declaration.

3.7 Temporary Construction Authorizations. In the event of construction or reconstruction of Improvements upon a Parcel, Declarant shall have the sole authority and discretion to approve encroachments into or partial closure of or temporary modification to the Access Drives located on such Parcel during the period of construction or reconstruction, and the Parcel Owner may only make or allow such encroachments, closures or modifications upon the written approval of Declarant. Such encroachments, closures or modification that are approved hereunder shall be permitted only so long as their existence is kept within reasonable

requirements of construction work expeditiously pursued. Subject to the terms of this Declaration, the Access Drives within a Parcel may be utilized, for a commercially reasonable period of time based on the work involved for the ingress and egress of vehicles transporting construction materials, equipment and persons employed in connection with any work provided for herein. Any damage caused to a Parcel or the Common Improvements shall be promptly repaired at the sole cost and expense of the Owner performing such construction work.

3.8 Easement for Encroachments. In the event any Building wall footings encroach into any area outside of a party's permissible Building Area, despite efforts to avoid that occurrence, and such encroachment is not in excess of twelve (12) inches outside of the encroaching party's permissible Building Area, a valid easement for such encroachment shall exist as long as such encroachment shall exist. The grantee(s) for said easements shall be responsible for any repairs required to such footings. Nothing contained in this subsection shall create easements for intentional encroachments (i) onto another Parcel without the written consent of the Owner whose Parcel has been encroached upon, which may be granted or withheld in such Owner's sole and absolute discretion, or (ii) onto the Common Area without the written consent of Declarant, which may be granted or withheld in Declarant's sole and absolute discretion.

3.9 Unobstructed Access. The Owners covenant that at all times free access between each Parcel and the remainder of the Property will not be impeded and will be maintained. Except as specifically depicted on the Site Plan, or as may be approved in writing by Declarant, no fence, division, partition, rail, or obstruction of any type or kind shall ever be placed, kept, permitted, or maintained between the Parcels or between any subsequent division thereof or upon or along any of the common property lines of any portion thereof, except within the confines of a permissible Building Area, and except as may be required at any time and from time to time in connection with the maintenance, repair and replacement of Common Improvements by the Declarant.

3.10 Further Easements. Declarant reserves the right to grant further easements over, under, upon or across the Common Areas that Declarant determines necessary or advisable for the benefit of the Project or to comply with requirements of law or Declarant's insurance underwriters or for the safe and efficient operation of any portion of the Project, provided, such easement grants shall require the written approval of the Owner of the Parcel that will be burdened by the proposed easement. Except as herein expressly provided or with the approval of Declarant, no Owner may grant any easement to any Person or for any purpose, but the foregoing does not prohibit the granting or dedicating of easements by an Owner on its Parcel to Governing Authorities or to public utilities if required by law, if necessary for the development of the Parcel, or in lieu of a taking.

## ARTICLE IV CONSTRUCTION

### 4.1 General Requirements.

4.1.1 Compliance with Law and Declaration. All construction activities within the Project must be performed in compliance with this Declaration and all applicable federal, state, county or municipal laws, rules, regulations, orders and ordinances and directions of any Governing Authority having due authority. Without limiting the foregoing, each Owner will be solely responsible to obtain all necessary permits and approvals before commencing any construction. Approval of or failure to object to any matter by Declarant

will not relieve any Owner from the obligation to comply with the foregoing requirements, which will remain the sole responsibility of the Owner undertaking any construction activity.

4.1.2 Approval by Declarant. Any construction or reconstruction of a Building within the Project shall be done so as to construct the Building using reasonably similar materials and architectural expression as the other Buildings then situated within the Project, or to comply with design and architectural standards consistent with other first class retail properties in the Twin Cities Metropolitan area, all as reasonably determined by the Declarant. Prior to commencing construction or reconstruction of a Building on a Parcel, the Owner of such Parcel shall cause for design plans to be submitted for Declarant's approval, which approval shall not be unreasonably withheld, conditioned, or delayed. If Declarant has not, within thirty (30) days after receipt of a complete set of design plans, delivered written notice to the applicable owner either granting or denying approval of the plans, Declarant's approval shall be deemed to have been given. Declarant's only right with respect to the approval or denial of construction plans shall be to determine that the plans reflect a Building that is to be constructed using reasonably similar color schemes, materials, and architectural expression as the other Buildings then situated within the Project. Upon approval, or deemed approval, of the Building plans, construction or reconstruction of the applicable Building shall commence substantially in accordance with such plans, unless otherwise approved by Declarant in writing.

4.1.3 Construction Standards. Each Owner is responsible for, and will cause all contractors employed by the Owner to be held responsible for, the costs of cleaning up any debris or waste improperly disposed of anywhere in the Project. Each Owner and its contractors must maintain a reasonably attractive, clean, safe, and nuisance-free environment on the Owner's Parcel during the period of construction. No construction may commence until all approvals have been received from Governing Authorities, and Owner has installed or caused its contractors to install all customary safety barriers, notices, fencing, signs and barricades approved by Declarant to protect against injury to person or property. Once commenced, all construction will be continued with due diligence, all commercially reasonable expediency, and good faith until completion. Each Owner expressly covenants to undertake reasonable precautions to protect areas outside the Owner's Parcel from adverse impacts of development on the Owner's Parcel resulting from construction, alteration, maintenance, repair, replacement or removal of improvements on the Owner's Parcel and to indemnify and hold harmless Declarant and other Owners and Occupants of other Parcels from any and all damages resulting therefrom. Without limiting the foregoing, each Owner shall locate all utility lines (including grease traps), in such locations so that the installation, maintenance, repair and replacement of the same will not have any adverse impact on Common Utility Lines, any portion of a Building or Building Area, or any adjacent Parcel.

4.1.4 Indemnification. Each Owner agrees to defend, indemnify and hold harmless Declarant and all other Owners for, from and against all claims, losses, liabilities, actions, proceedings, costs (including fines or penalties, reasonable attorneys' fees and costs of suit), liens, injuries or damages whatsoever occurring to any Person or to the property of any Person arising out of or resulting from any construction activities performed or authorized by the Indemnitor but (i) the foregoing will not be applicable to claims covered by the release set forth in **Section 9.2.2** and (ii) if a court of law determines that such claim or demand was the result of negligence or the willful act or omission of the Indemnitee, then such indemnification shall be limited based on comparative fault and such Indemnitee must reimburse the Indemnitor for all reasonable expenses and/or costs incurred by Indemnitor defending against such claim or demand to the extent of such fault.

**4.1.5 Staging Areas.** In connection with any construction, reconstruction, repair or maintenance on its Parcel, an Owner may create a temporary staging and/or storage area (“**Staging Area**”) within its Parcel, provided that such Staging Area will not unreasonably interfere with access between its Parcel and the other areas of the Project and shall be limited in scope only to such area reasonably necessary for its purpose, all of which shall be subject to the approval of Declarant, not to be unreasonably withheld, conditioned or delayed. Staging Areas will be fenced and kept at all times in a safe and sightly condition. All storage of materials and the parking of construction vehicles, including vehicles of workers, will occur only on the constructing Owner's Parcel. Upon completion, the constructing Owner will restore the affected Common Area to a condition equal to or better than existed before commencement of the work.

**4.2 Common Areas.** Together with the construction or reconstruction of a Building upon its Parcel, the constructing Owner will cause all paving, striping, utilities, lighting, sidewalks, landscaping and other Improvements contemplated by the Site Plan or otherwise required in connection with any design approvals, to be substantially completed; provided, for any landscaping or final lift of paving that cannot reasonably be completed by such time as a result of seasonal weather conditions, the time for completion of such work may be delayed until such earliest practicable time in the spring that the work may be completed. All work will be done in a good and workmanlike manner in accordance with all applicable legal requirements and good engineering standards, all other requirements of this Declaration. Except as otherwise approved by Declarant in writing, the location, dimensions, design, specifications and other characteristics of the Common Improvements will not be changed following the Effective Date. Declarant's approval of or signing onto of any applications to governmental authorities shall be deemed its written approval of the same, and in the event of any inconsistency between the Site Plan and any later approved site plan approved by the Declarant and by any governing authorities, such later approved site plan shall be controlling.

**4.2.1 Parking.** Upon construction or reconstruction of Improvements upon a Parcel, such Parcel will contain sufficient parking spaces to comply with Governing Authorities, and to comply with the site plan approved by Declarant. All parking and drive areas will be constructed and maintained in accordance with the requirements of applicable Governing Authorities. Upon a taking of part of a Parcel or sale or transfer in lieu thereof that reduces the number of parking spaces below that required herein, the Owner of the affected Parcel will use commercially reasonable efforts (including applying proceeds from the condemnation award or settlement) to restore and/or substitute parking spaces in order to comply with the parking requirements set forth in this Declaration.

**4.2.2 Alteration of Common Improvements.** No Owner may make changes to the Common Improvements within its Parcel without the approval of Declarant.

**4.3 Building Improvements.**

**4.3.1 Size and Location.** Without the prior written approval of Declarant no Owner may construct or reconstruct any building outside of the Building Area on its Parcel. Unless otherwise approved by Declarant, all exterior shipping/receiving dock areas, truck docks and ramps and any recycling center or similarly designated area for the collection of items intended for recycling; any refuse, compactor or dumpster area will be subject to the reasonable approval of Declarant.

**4.3.2 Sharing of As-Built Plans.** Within ninety (90) days after completion of any Improvements, the Owner of the Parcel where the Improvements are located will provide to Declarant as-built site, utility and landscape plans and such other as-built information may reasonably be requested by Declarant.

#### 4.4 Liens.

4.4.1 Indemnity; Right to Contest. If any mechanic's lien is recorded against the Parcel of one Owner as a result of services performed or materials furnished for the use of another Owner, then notwithstanding the indemnity set forth in **Section 5.4.1** below, the Owner permitting or causing such lien will defend, protect, indemnify and hold harmless each other Owner and its Parcel from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien. The Owner permitting or causing such lien to be recorded may contest the validity thereof in any manner such Owner chooses so long as such contest is pursued with reasonable diligence. If such contest is determined adversely (allowing for appeal to the highest appellate court), such Owner will promptly, but within fifteen (15) days after the entry of a final judgment, pay in full the required amount, together with any interest, penalty, cost, or other charge necessary to release such lien of record.

4.4.2 Release. Upon the request of the Owner whose Parcel is subject to such lien, the Owner permitting or causing such lien to be recorded will promptly cause such lien to be released and discharged of record with respect to such Parcel by posting a bond or other security as will be required by law to obtain such release and discharge. If Utah laws do not provide for a method to release real estate from a lien claim, then the Owner permitting or causing such lien must deposit with the Owner whose Parcel is subject to such lien security (cash or other reasonably acceptable substitution) equal to 150% of the amount of the lien. The security will be held until the contest provisions set forth in **Section 4.4.1** are completed and the lien released but if either the lien is not contested and then released pursuant to **Section 4.4.1** above, or the Owner permitting or causing such lien elects to satisfy the claim, then the security will be used to pay the lien claim and obtain the release of record.

### ARTICLE V OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT; SHARED EXPENSES

#### 5.1 Maintenance Obligations.

5.1.1 Parcels. Subject to provisions relating to maintenance, repair and replacement of Common Improvements within the Project, and as further set forth in **Section 5.1.3** below, each Owner will operate, maintain, and to the extent necessary due to ordinary wear and tear, repair and replace the Buildings (including building components such as roof, gutters, walls, windows, doors, signs, utilities, and similar), utilities, Landscaping, site-specific signs and all other Improvements of any kind or nature on its Parcel in a sightly, safe condition and good state of repair at such Owner's sole cost and expense in a manner comparable to the standards of other high quality commercial developments, and in compliance with all applicable Governmental Requirements and the provisions of this Declaration.

5.1.2 Common Improvements and Declarant's Standard of Maintenance. The Declarant will operate, maintain and repair and replace the Common Improvements (except as otherwise provided in this Declaration) in a sightly, safe and good condition as required hereunder, subject to reimbursement as a Shared Expense. Such operation, maintenance and repair of the Common Improvements shall include, but not be limited to, the following:

- (i) Maintaining, repairing and replacing as necessary all sidewalks, driveways, other paved surfaces and curbs within the Common

Areas in a smooth and evenly covered condition (including, without limitation, replacement of base, fill, surface, sealing and striping) and removing ice, and removing snow when there is an accumulation of one (1) inch or more.

- (ii) Periodically removing all trash, rubbish, garbage and other refuse.
- (iii) Maintaining, repairing and replacing lighting facilities alongside the Access Drives and within Common Areas, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers.
- (iv) Maintaining, pruning and replacing all Landscaping within the Common Areas in an attractive and thriving condition, trimmed and weed free; maintaining and replacing landscape planters; and maintaining and replacing irrigation systems.
- (v) Maintaining, repairing and replacing common utility lines and facilities.
- (vi) Keeping the Common Improvements free from obstructions, except any obstruction that is permitted under the provisions of this Declaration.
- (vii) Maintaining insurance coverage against such risks (including commercial general liability insurance, all-risk or special form casualty insurance or equivalent coverages) and in such amounts as required by this Declaration.
- (viii) Repairing and restoring any portion of the Access Drives that may be excavated or otherwise damaged by any Governing Authority or any utility provider in connection with work on utility lines.

5.1.3 Owners' Standard of Maintenance. Each Owner will operate, maintain and repair and replace its Parcel in a sightly, safe and good condition as required hereunder, at its sole cost and expense. Such operation, maintenance and repair shall include, but not be limited to, the following:

- (i) Maintaining, repairing and replacing as necessary all sidewalks, and removing ice, and removing snow when there is an accumulation of one (1) inch or more.
- (ii) Periodically removing all papers, debris, refuse, dust and other substances, including broom sweeping, to keep its Parcel in a clean and orderly condition.
- (iii) Operating, maintaining, repairing and replacing all site-specific signage on its Parcel. Signage lighting must be repaired or replaced within seven (7) calendar days of failure.
- (iv) Maintaining, repairing and replacing lighting facilities exclusively serving its Parcel (except for that alongside the Access Drives), including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers.

- (v) Maintaining, pruning and replacing all Landscaping on its Parcel (except for that alongside the Access Drives or within Common Areas) in an attractive and thriving condition, trimmed and weed free; maintaining and replacing landscape planters; and maintaining and replacing irrigation systems.
- (vi) Maintaining, repairing and replacing utility lines and facilities exclusively serving its Parcel.
- (vii) Keeping ingress and egress to and from the Parcel free from obstructions, except any obstruction that is expressly permitted under the provisions of this Declaration.
- (viii) Maintaining insurance coverage against such risks (including commercial general liability insurance, all-risk or special form casualty insurance or equivalent coverages) and in such amounts as required by this Declaration, or such additional coverage as Declarant may reasonably determine.
- (ix) Repairing and restoring any portion of the drive lanes and Parking Areas within its Parcel that may be excavated or otherwise damaged by any Governing Authority or any utility provider in connection with work on utility lines.
- (x) Each Owner is responsible for security on its Parcel and complying with all applicable Governmental Requirements.

## 5.2 Buildings and Building Areas.

5.2.1 Standard of Maintenance. Each Owner covenants and agrees to maintain and keep the exterior portion of any Building and Building Area located on its Parcel and any separate utility lines appurtenant thereto in first-class condition and state of repair, in compliance with all Governmental Requirements and in compliance with the standards of maintenance required by this Declaration, including **Section 5.1** hereof. Each Owner will store all trash and garbage in adequate, clean, and in good working condition containers, arrange for regular removal of trash and garbage, keep all areas used for the storage and collection of trash and garbage fenced and fully screened from view of the Common Area, unless otherwise approved by Declarant, and clean, free of debris, and in good working condition.

5.2.2 Damage or Destruction. If any Improvements (other than Common Improvements) are damaged by fire or other casualty (whether or not insured), the Owner upon whose Parcel such Improvements are located will, subject to Governmental Requirements, conditions in loan documents, and/or insurance adjustment delays, promptly remove the debris resulting from such event and restore the area to a sightly condition and within a reasonable time thereafter will, in accordance with all applicable provisions of this Declaration, either (i) repair or restore the Improvements so damaged to their condition before such event or better, (ii) erect other Improvements or (iii) demolish the damaged portion and/or the balance of the Improvements and restore the affected area to either a parking area or landscaped open space. If any Common Improvement is damaged by fire or other casualty (whether or not insured), Declarant shall restore such Common Improvement so damaged to its condition before such event or better.

5.3 Maintenance by Declarant. Declarant hereby grants, conveys and reserves to itself, its agents, contractors and employees, a license to enter upon the Project to discharge

Declarant's duties to operate and maintain the Common Improvements. At least thirty (30) days before any major work to the Common Improvements, Declarant will advise the affected Owner of the scope thereof, and the proposed commencement and completion dates.

Declarant will use its diligent, good faith efforts to operate and maintain the Common Improvements in accordance with the annual budget determined from time to time as provided in **Section 5.4.2**. Notwithstanding the foregoing, Declarant may make emergency repairs to the Common Improvements to prevent injury or damage to Persons or property, it being understood that Declarant will nevertheless advise the Owners of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the emergency action exceeds \$10,000.00, then Declarant may submit a supplemental billing to each Owner, together with evidence supporting such cost, and each party will pay its share thereof within thirty (30) days after receipt of such billing.

**5.4 Shared Expenses; Assessments**. Each Owner will be responsible for payment of its Pro Rata Share of Shared Expenses (such payment obligations are sometimes referred to herein as "**Assessments**" [singular or plural]), which Assessments are the personal and individual debt of the Owner of the property covered by the Assessments at the time the Assessments are imposed as well as a charge against the land. Where there are multiple Owners of a Parcel, their personal liability shall be joint and several. No Owner may exempt itself or its property from liability for any such Assessment nor will any offset or diminution of any such Assessment be allowed for any reason including a claim that (i) Declarant is not properly exercising its duties or powers as provided in the Declaration; or (ii) an Owner has made or elects to make no use of Common Improvements. If an existing Parcel is divided, the party causing such division will, at its expense, cause the Assessments and the Administration Fee attributable to the Original Parcel to the Resulting Parcels to be allocated in the manner provided in **Section 1.2.20** hereof and shall otherwise comply with the requirements of said **Section 1.2.20**. Each Parcel shall be considered as Common Area until such time as the Parcel is developed.

**5.4.1 Exclusions**. Notwithstanding anything contained in this Declaration to the contrary, Shared Expenses will not include:

- (i) Any late charges or fees; any cost, fee, fine, penalty or similar charge arising out of or resulting from any violation by Declarant or anyone else, of any agreement to which it is party, or any law, ordinance, permit or approval to which it or the Parcel it owns is subject to, including, without limitation, claims under the Americans with Disabilities Act, as amended from time-to-time.
- (ii) Any costs for electricity for building accent lighting or architectural features, or any building security lighting, or for electricity to illuminate the Common Area if an Owner separately pays the costs of power to illuminate the Common Area on its Parcel.
- (iii) Any costs to clean up or repair the Common Improvements resulting from construction, maintenance or replacement of a Building, such costs being the responsibility of the party owning the Building.

- (iv) Any costs associated with trash and/or garbage exclusive to one Owner or Occupant to the extent the same is paid solely by such benefitting party.
- (v) Any costs resulting from or arising out of the repair or replacement of items covered by warranties or guaranties including Improvements, signs, trees, plants or other landscaping.
- (vi) Real property taxes and assessments on the Common Area, which taxes shall be the responsibility of the party owning the Parcel.
- (vii) Insurance costs and/or premiums other than premiums for the insurance Declarant is required to carry hereunder.

Declarant may additionally charge an administrative fee not to exceed an amount equal to ten percent (10%) of Shared Expenses (the "**Administration Fee**").

**5.4.2 Annual Budgets for Shared Expenses.** Not less than thirty (30) days before the beginning of each calendar year, Declarant will prepare a reasonably detailed, estimated budget for the Shared Expenses for the ensuing year and will provide a copy of such estimate to each Owner (each, a "**Shared Expenses Budget**"), together with a bill indicating the monthly payment due from each Owner for its share of the Assessments, as set forth below in this **Section 5.4.2**. Each Owner will pay to Declarant without demand on or before the first day of each month, an amount equal to one-twelfth of its annual Assessments. On or before April 1<sup>st</sup> of each calendar year, Declarant will prepare and provide to each Owner a reconciliation of budgeted versus actual Assessments incurred for the prior year, together with copies of Declarant's general ledger for such Shared Expenses, and other backup documentation as may reasonably requested by the Owner to evidence the Shared Expenses (collectively, the "**Annual Reconciliation**"). If any Owner has overpaid, Declarant will remit the amount of such overpayment to such Owner along with the Annual Reconciliation. If the estimated Assessments to an Owner were less than the actual amounts thereof, each Owner will pay to Declarant such deficiency within thirty (30) days after receiving the Annual Reconciliation.

Each Owner shall have the right to audit the amounts shown on the Annual Reconciliation by notifying Declarant that it wishes to commence such audit within one (1) year after such Owner's receipt of the Annual Reconciliation. If an Owner so notifies Declarant of its intent to audit the Annual Reconciliation, then such Owner or its authorized agent shall have the right, at its own cost and expense, to inspect and audit the Annual Reconciliation. If an audit of an Annual Reconciliation shows that the Declarant has overcharged the Owner for any Shared Expenses, Declarant shall reimburse the Owner within thirty (30) days.

Alternatively, at the sole election of Declarant, Declarant may bill each Owner (or its respective tenants or agents, as it may direct) on a calendar year basis for such Owner's annual share of Assessments actually incurred by Declarant during the immediately prior year, and in such event, Owner (or its respective tenants or agents, as it may direct) shall pay Declarant's statement thereof (which statement shall show the total Shared Expenses actually incurred by Declarant for such calendar year) within thirty (30) days of Owner's receipt of the same (such election is hereafter referred to as the "**Annual Payment Election**"). At any time after making the Annual Payment Election, Declarant may elect to return to the estimated payment method for payment of Assessments, as set forth above in this **Section 5.4.2**.

**5.4.3 Creation of Lien and Obligation.** Declarant hereby covenants and agrees, and each future Owner of any portion of the Project, by acceptance of a deed or other instrument of conveyance, whether or not it is expressed in the deed or other conveyance, will be deemed

to covenant and agree (and the covenant will be deemed to constitute a portion of the consideration for acquisition of the portion of the Project), to pay its Assessments. Assessments, together with such interest and late charges thereon and costs of collection, will be a charge on the land, a continuing lien upon the portion(s) of the Project against which such Assessment is made, and the continuing personal obligation of the individual or entity who was the Owner at the time the Assessment was imposed.

5.5 Enforcement. The liability for Assessments is absolute and unconditional. No Owner is exempt from liability for payments of its share of Assessments by right of set-off, waiver of use or enjoyment of any part of the Project, by waiver of any other rights, or by reason of any claim against Declarant. If any Owner or Occupant has failed to satisfy its duties or responsibilities under this Article V, the Declarant may give the Owner written notice of the alleged failure, describing in reasonable detail the nature of the alleged failure. Any person receiving such a notice will have thirty (30) calendar days after receipt of the notice in which to cure the alleged failure with diligence to completion. If the condition is not cured within such period, the Declarant (either directly or through agents authorized by it) may, in addition to any other remedies provided elsewhere in this Declaration or by law, for the purpose of enforcing its rights enter the Parcel (or the portion of it on which the failure exists or to which the failure applies) and perform required care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to the Owner or Occupant. The Owner will be liable to the Declarant for the cost of any such work by Declarant, together with a management fee equal to 15% of the cost of the work performed by Declarant, and will promptly pay Declarant in full. If any such obligation to the Declarant is not repaid in full within thirty (30) days after receipt of a statement for the work performed, the indebtedness will be the obligation of all such persons jointly and severally and will constitute a lien against the Parcel owned by the Owner, which may be enforced in the manner of a mortgage against real property including foreclosure, in accordance with Utah law, and all such unpaid obligations (including the 10% management fee), shall accrue interest at a rate of twelve percent (12%) per annum beginning on the date of invoice, which interest shall be added to the obligations due from such Owner to the Declarant.

5.6 Declarant's Insurance and Indemnity. Declarant will maintain such insurance coverages as is required by **Article IX** hereof, the premiums for which will be included in Shared Expenses. Declarant will defend, indemnify and hold each Owner harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities in connection therewith, including reasonable attorney's fees and court costs, arising out of the maintenance and operation by Declarant of the Common Improvements and the performance of other functions expressly required of Declarant hereunder, and if any Parcel will become subject to any such lien, Declarant will promptly cause such lien to be released and discharged of record, either by paying the indebtedness that gave rise to such lien or by posting such bond or other security as will be required by law to obtain such release and discharge.

5.7 Appointment of Declarant. The Declarant first named in this Agreement shall be the Declarant for so long as it may choose, provided it is at all such times the Owner of at least one Parcel within the Project. Declarant shall have the right to transfer the rights and obligations of Declarant to any other party then an Owner (or to become an Owner in connection with conveyance of the fee title to a Parcel from Declarant to such Owner), so long as such Owner expressly assumes the obligations of Declarant hereunder, and the parties put a document of record memorializing the assignment of the Declarant's rights and obligations. Such assignee shall similarly have the right to thereafter transfer its rights and obligations of Declarant to any other party then an Owner (or to become an Owner in connection with

conveyance of the fee title to a Parcel from Declarant to such Owner), so long as such Owner expressly assumes the obligations of Declarant hereunder, and the parties put a document of record memorializing the assignment of the Declarant's rights and obligations. In no event shall a party that is not an Owner be the Declarant hereunder. If a conveyance is made of the fee title to the last Parcel owned by Declarant and there is no express assignment and assumption of the Declarant's rights and obligations in connection therewith, the Owners shall appoint a successor Declarant by the affirmative vote of the Parcel Owners constituting a majority of the Pro Rata Share within the Project.

## ARTICLE VI

### USE AND OPERATION OF PARCELS

6.1 **Permissible Use.** Subject to the terms and conditions of this Declaration, the Project may be used for any lawful purpose. No Owner will use or permit any portion of its Parcel to be used for uses not allowed under applicable public codes and ordinances either already adopted or as may be adopted from time to time hereafter by the City or other controlling public authority. Each Owner will comply at all times in every respect with this Declaration, and any and all applicable laws, ordinances, policies, rules, regulations and orders of all Governing Authorities having jurisdictional control over the Project ("**Governmental Requirements**"). In the event a conflict exists between any such public requirement and any requirement of this Declaration, the more restrictive requirement will prevail. Where a Governmental Requirement does not clearly conflict with the provisions of this Declaration, but permits action that is different from that required by this Declaration, the provisions of this Declaration will prevail. Upon the prior written approval of Declarant and any Parcel Owner whose Parcel is burdened, a specified portion of the Project (as designated in the approval) may also be used for public amenities. To the extent permitted by law, no Owner other than Declarant will apply for, or concur in any application for, or directly or indirectly aid or support any zoning change, or any amendment to any applicable zoning classification, that would affect in any way the zoning or applicability of the zoning ordinances of the City to the Project or any other portion thereof without the express prior written approval of Declarant.

6.2 **Prohibited and Exclusive Uses.** The uses set forth on **Exhibit "C-1"** attached hereto are not permitted within the Project and no Owner will use or permit any portion of its Parcel to be used for such purposes. Declarant shall have the right to reasonably update the Prohibited Uses set forth on **Exhibit "C-1"** from time-to-time, and shall record a supplement to this Declaration memorializing any such updates. The uses set forth on **Exhibit "C-2"** attached hereto are exclusive to a single Occupant, or are restricted pursuant to the terms of a lease with a particular Occupant, and shall be restricted or prohibited within the Project as further described on **Exhibit "C-2"** hereof. Declarant shall have the right to record additional prohibited and exclusive uses, provided no Parcel may be hereafter encumbered by an exclusion or restriction unless the Owner of such Parcel has expressly consented to such exclusion or restriction in an instrument duly executed by such Owner and recorded in the county land records. No such consent shall be required where the terms of **Exhibit "C-2"** hereof expressly allow Declarant to record a supplement to this Declaration updating said **Exhibit "C-2"** hereof.

6.3 **Hazardous Materials.** No Owner or Occupant will store, discharge or dispose of, and no Owner or Occupant will permit the storage, discharge or disposal of, any hazardous, toxic or regulated materials or substances on a Parcel in violation of applicable Governmental Requirements. No Owner will keep, stock, use or permit the use or sale of Hazardous Materials in, on or from its Parcel, except (i) inventory held for sale to the public by a retail business that

is packaged and labeled in conformity with all Environmental Laws and constitutes an incidental part of such retail business and (ii) substances customarily and incidentally used, in compliance with applicable Environmental Laws in the normal course of maintenance operations. Each Owner will indemnify, protect, defend and hold harmless the other Owners for, from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including costs of investigation, litigation and remedial response, arising out of any Hazardous Material located, used or discharged on or from its Parcel in violation of this Section. Notwithstanding anything to the contrary in this Section, in the event Declarant approves the use of any Parcel for a fuel service station (which fuel may include, but need not be limited to, diesel fuel), such Use will in no-wise be a violation of any terms, conditions, and/or provisions of this Section.

6.4 Parking. Each Owner will use reasonable efforts to cause the employees of the Occupants of its Parcel to park their vehicles within employee parking areas on such Owner's Parcel, or in such other areas as may otherwise be designated by Declarant from time to time, and consented to by the Parcel Owner on which such employee parking is being designated.

6.5 Extended Lighting. If and to the extent reasonably necessary for the use of its Parcel, any Owner will have the right to require portions of the Common Area to be lighted beyond the minimum hours of operation established by Declarant. Unless metered directly to an Owner, all increased costs of electricity and maintenance of the lighting system, as estimated by Declarant in its reasonable discretion, will be allocated to and paid monthly by such Owner, or in proportion to their Pro Rata Shares by all Owners requesting the extension at the same time as and in addition to their respective payment of the Shared Expenses.

6.6 Occupant Signs.

6.6.1 Freestanding Signs; Allocation of Sign Panels. No freestanding sign will be permitted within the Project except as shown on the Site Plan within the Signage Easement Area, as may be adjusted in accordance with the terms of this Declaration, or as otherwise approved by Declarant in its reasonable discretion, provided, this provision shall not apply to any Billboard presently located within the Project or hereafter located within the Project, if approved by Declarant in accordance with Article VIII. The designation of freestanding sign locations on the Site Plan will not obligate Declarant to construct any freestanding signs. The Declarant shall have the right to determine which Owners shall have the right to install panels on any common sign within the Signage Easement Area, provided, the provisions of this sentence shall be subject to any separate signage maintenance agreement or similar agreement that may be entered into by some or all of the Owners and recorded in the appropriate land records office (a "**Separate Signage Agreement**").

6.6.2 Building Signage. No Owner or Occupant will place any temporary signage or banners of any kind on a Parcel, except grand opening signs or banners permitted by Declarant for a period of no longer than thirty (30) days. All building signage will conform to Governmental Requirements and will be subject to the prior written approval of Declarant, not to be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, no exterior Occupant sign will (i) be placed on canopy roofs extending above the building roof or placed so as to project above the parapet, canopy or top of the wall upon which it is mounted; (ii) be painted on the surface of any Building; (iii) contain flashing, moving or audible parts; (iv) employ neon tubes, exposed ballast boxes or transformers; or (v) be constructed of paper,

cardboard, flags or banners of any kind, or consist of stickers or decals. Any changes to building signage shall be subject to the prior written approval of Declarant, not to be unreasonably withheld, conditioned or delayed, as well as all Governmental Requirements.

## ARTICLE VII

### TAXES

As used in this Declaration, “**taxes**” means any tax, charge or imposition levied, assessed or imposed by any Governing Authority upon any portion of any Parcel or the Common Area, or the maintenance, operation, repair, replacement or use of the Common Improvements or upon the Shared Expenses, including without limitation any real or personal property tax, possessory interest tax, transaction privilege tax, school taxes, betterment assessments or other governmental taxes, charges or impositions of any kind, whether or not similar to the foregoing. Each Owner will pay all taxes and assessments with respect to its Parcel and the Buildings and other Improvements located thereon and any personal property that it owns or leases. If any taxes or assessments or any part thereof may be paid in installments, the Person responsible therefor may elect to and in such event will pay each installment as and when it becomes due and payable. Nothing contained in this subsection will prevent any Owner from contesting at its cost and expense any taxes and assessments for which it is responsible in any appropriate manner so long as the contest is maintained with reasonable diligence and in good faith. At the time any contest is concluded (allowing for appeal to the highest appellate court), the contesting party will promptly pay all taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

## ARTICLE VIII

### RULES AND REGULATIONS

Declarant will have the right from time to time to promulgate, amend and rescind reasonable rules and regulations (“**Rules**”) consistent with this Declaration (including consistency with the general nature of the Rules first set forth below) governing the development, use and operation of the Project and the conduct of all persons thereat. Such Rules may, but need not, be recorded by Declarant from time to time, will be effective when notice thereof has been given to all the Owners and will have the same force and effect as if set forth in this Declaration. In addition, and not by way of limitation, each Owner shall adhere to and cause Occupants on its Parcel to abide by the following rules and regulations:

1. Owners and Occupants shall comply with all applicable laws, rules, regulations, codes and ordinances applicable to such Owner’s and/or Occupant’s Parcel.
2. Subject to **Exhibit “C-1”**, attached hereto, Owners and Occupants may sell merchandise of any type on the Parcels in areas outside of a Building, provided the same is in accordance with all Governmental Requirements and is maintained in a first-class manner.
3. Owners and Occupants shall deposit trash and rubbish only within receptacles located within Buildings or within trash enclosures, except as may be approved by Declarant. Owners and Occupants shall not display or sell merchandise or allow carts, signs or any other object to be stored or to remain outside the Buildings on any Parcel.

4. Owners and Occupants shall cause any aerial or antenna on the roof or any other portion of the Buildings to be screened from view. Unless otherwise approved by Declarant, screening for rooftop equipment shall not exceed 8 feet in height and no equipment shall extend beyond such screening. No cellular towers, billboards or similar structures shall be permitted on any Parcel, except as may be approved by Declarant in writing. The foregoing restriction is not intended to prohibit standard satellite dish used in commercial operations, if properly screened.

5. Owners and Occupants shall not solicit or distribute materials in the Common Area. Owners and Occupants shall not display, paint or place any handbill, bumper sticker or other advertising device on any vehicle within the Project. Owners and Occupants shall not distribute any handbills or other advertising matter in the Project.

6. Owners and Occupants shall neither conduct on the Parcels, nor advertise with respect to the Parcels, any liquidation, "going out of business", distress, "lost our lease" or similar sale.

## ARTICLE IX INSURANCE

9.1 Right of Declarant to Purchase Insurance. Declarant will purchase, carry and maintain in force insurance covering (i) Declarant's activities hereunder, (ii) the Common Facilities, and (iii) the Common Areas, for the interest of all Owners, in such amounts and with such endorsements and coverages as will be considered good, sound insurance coverage for properties similar in construction, location, and use to the Project. Insurance may include, but not be limited to, commercial general liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of Declarant with respect to its activities hereunder and the Common Areas. The cost of said insurance may be included in Shared Expenses.

9.2 Owner's Responsibility to Insure. It will be each Owner's responsibility (subject to the provisions of **Section 11.5** hereof) to provide insurance on its own Parcel consistent with the requirements contained herein, including any Common Areas on its Parcel and Common Facilities (to the extent of the Owner's insurable interest) within its Parcel, and the Owner's interest in any additions and improvements thereto, furnishings and personal property therein, its personal property located elsewhere within the Project, its personal liability to the extent not covered by liability insurance obtained by Declarant, and such other insurance as the Owner desires.

9.2.1 Liability Insurance. Each Owner, at a minimum, will maintain or cause to be maintained in full force and effect at all times at its own cost and expense commercial general liability insurance with limits of liability of not less than one million dollars per occurrence, two million dollars (\$2,000,000.00) annual aggregate, for bodily or personal injury or death, and for property damage, arising out of any occurrence on such Owner's Parcel or arising out of the use, occupancy or operation thereof.

9.2.2 Release. Effective upon the commencement of construction of any Improvement on any currently un-improved Parcel, or in the case of Parcels with Improvements as of the Effective Date, then effective as of the Effective Date, and so long as any Improvement exists on a Parcel, the Parcel Owner will carry, or cause to be carried, special form property insurance in the amount of the full replacement cost thereof (excluding footings, foundations or excavations). Each Owner (the "**Releasing Owner**") hereby releases

each other Owner and its Occupants (the “**Released Party**”) from any liability for any loss or damage to all property of such Releasing Owner located upon the Releasing Owner’s Parcel that is of the type covered by the insurance required to be maintained under this Section, irrespective either of any negligence or other fault on the part of the Released Party that may have contributed to or caused the loss or of the amount of the insurance required or actually carried including any deductible or self-insurance reserve. Each Owner agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release but failure to obtain such endorsements will not affect the release hereinabove given. Each Owner also covenants and agrees to indemnify, defend and hold harmless each Released Party for, from and against all claims asserted by or through any Permittees of such Owner’s Parcel for any loss or damage to the property of any Permittee located upon a Released Party’s Parcel, which loss or damage is of the type generally covered by the insurance required to be maintained under this Section, irrespective of any negligence or other fault on the part of the Indemnitee that may have contributed to or caused such loss.

**9.2.3 Indemnity.** Each Owner (an “**Indemnitor**”) hereby covenants and agrees to defend, protect, indemnify and hold harmless Declarant and each other Owner (each an “**Indemnitee**”) for, from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney’s fees and cost of suit) arising from or as a result of the injury to or death of any Person or damage to the property of any Person occurring on the Parcel owned by such Indemnitor or arising out of the use, occupancy or operation thereof. An Indemnitor will have full control over the defense of any indemnified claims, and the Indemnitee will not be entitled to be indemnified for the fees, charges or expenses of any separate counsel the Indemnitor chooses to engage in connection with any claim, unless the Indemnitor fails to timely and properly undertake the competent defense of the claim or retains counsel to which the Indemnitee makes reasonable and timely objection. The foregoing will not prohibit any Indemnitee from participating in, but not controlling, any defense for which it is being indemnified at the sole cost and expense of the Indemnitee. The Indemnitor will have the right to settle, compromise or arbitrate any claim for which it is obligated to provide indemnification with the prior written approval of the Indemnitee, which will not be unreasonably withheld. No approval will be required by the Indemnitee for any settlement within the claim limits of the Indemnitee’s insurance.

**9.2.4 General Insurance Requirements.** All insurance required by this Declaration will be procured from companies that are licensed in the State of Utah. All insurance may be provided under (i) an individual policy covering this location (in at least the amounts required hereunder), (ii) a blanket policy or policies that includes other liabilities, properties and locations of the insuring party (provided that under any such blanket commercial general liability insurance policy the insuring party will cause its insurer to specifically allocate coverage in at least the minimum insurance amounts required hereunder), (iii) umbrella or excess policies, or (iv) a combination of any of the foregoing insurance programs. During any period of construction, all insurance policies will include course of construction coverages or endorsements.

All insurance required pursuant to this **Section 9.2** will provide (i) that the policy may not be canceled or terminated without at least thirty days prior written notice by the insurer (ten days in the case of cancellation for non-payment of premium) to each insured and to each additional insured; (ii) for severability of interests; and (iii) for contractual liability coverage with respect to all Indemnities in this Declaration. With respect to the insurance required

pursuant to **Sections 9.2.1 or 9.2.2**, each Owner will also use best efforts to obtain its insurer's agreement that an act or omission of one of the named insureds or additional insureds will not reduce or void the coverage as to the other named insureds or additional insureds.

Notwithstanding the foregoing, so long as any Owner shall maintain a net worth of not less than One Hundred Million Dollars (\$100,000,000.00), insurance required to be maintained pursuant to this section may be self-insured by any such Owner. At all times Owner shall include Declarant as an additional insured with respect to its commercial general liability insurance described herein, unless such Owner elects to self-insure. Notwithstanding the foregoing, if any Owner shall have elected to self-insure, such Owner shall provide Declarant a letter identifying such Owner's election to self-insure for the coverages otherwise required herein and certify that the minimum net worth requirement has been satisfied.

## ARTICLE X MORTGAGEES

**10.1 Consent by Mortgagees.** Any mortgagees or beneficiaries under a deed of trust encumbering the Project as of the date of this Declaration or thereafter until this Declaration is recorded in Davis County, Utah shall and do hereby consent to the terms and conditions of this Declaration. Any mortgages or deeds of trust entered into after the date of this Declaration shall be subordinate to this Declaration.

## ARTICLE XI MISCELLANEOUS PROVISIONS

### 11.1 Default.

**11.1.1 Events of Default.** Subject to **Section 11.1.2** below, the occurrence of any one or more of the following events will constitute a material default and breach of this Declaration by the non-performing Owner (the "**Defaulting Owner**"):

- (A) The failure to make any payment required to be made hereunder within ten (10) business days after notice by Declarant, or any Owner to whom such payment is owed; or
- (B) The failure to observe or perform any of the covenants, conditions or obligations of this Declaration, other than as described in (i) above, within thirty (30) days after the issuance of a notice by Declarant, or an Owner, specifying the nature of the default claimed; provided, however, if the nature of the default is such that it cannot be remedied within thirty days, such Defaulting Owner will not be deemed to be in default provided it commences curative measures within thirty days of the notice from Declarant, or an Owner, and diligently prosecutes the cure to completion.

**11.1.2 Right to Cure.** Declarant will have the right, but not the obligation, upon not less than ten (10) business days' notice to cure any default by the payment of money or the performance of any other action at the expense of the Defaulting Owner but, in the event the default constitutes an emergency condition, the Declarant, acting in good faith, will have the right to cure the default upon as much 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. Declarant will have the right to enter upon the Parcel of the Defaulting Owner (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default. Each Owner will be responsible for any defaults of its Occupants. If Declarant will cure a default, the Defaulting Owner will reimburse Declarant for all costs and expenses incurred in connection therewith, plus interest as provided herein, within thirty (30) days after receipt of demand (which will include with reasonable supporting documentation). Such amounts owing to Declarant will be a charge on the Parcel(s) of the Defaulting Owner, a continuing lien upon those portion(s) of the Project, and the continuing personal obligation of the Defaulting Owner as of the time such obligation arose. Declarant shall have the right to enforce a lien for such unpaid amounts in the same manner as foreclosure of Assessment liens pursuant to **Section 5.6**, above. No remedy conferred upon the Declarant by this Declaration is intended to be exclusive of any other remedy, and no such remedies are intended to preclude any Owner from seeking enforcement of any alleged breach of this Declaration by any Owner in a court of law.

11.1.3 Estoppel. The Declarant, upon written request by an Owner, agrees to provide an estoppel certificate stating whether the requesting Owner is in compliance with this Declaration, and if not, the nature and extent of the default. Declarant will provide such certificate within ten (10) business days following a written request.

11.2 Duration. The terms, provisions, easements, liens and charges contained in this Declaration shall be perpetual.

#### 11.3 Amendment

11.3.1 Generally. This Declaration may be amended or modified at any time by written action of the Parcel Owners holding a majority of the Pro Rata Share, provided, however, in no event will any provision hereof be amended without the express written consent of (i) Declarant, and/or (ii) any party whose rights or obligations are materially and adversely affected by the proposed amendment; and (iii) the City of Layton to the extent provided under **Section 3.12**. Any amendment or termination will become effective when an instrument is recorded in the office of the County Recorder of Davis County, Utah, with the signatures of the requisite number of Owners together with the signature of Declarant (if applicable), or at such later date as the instrument may specify. No agreement to any amendment of this Declaration will ever be required of any Occupant or Person other than the Declarant and the Owner(s).

#### 11.4 Enforcement

11.4.1 Each Owner will have the right (but not the duty) to enforce any of the Easements, Covenants, and Restrictions set forth herein. Enforcement of the Easements, Covenants, and Restrictions will be by any proceeding at law or in equity against any person violating or attempting to violate any of the Easements, Covenants, and Restrictions, either to restrain violation or to recover damages, and against the land, to enforce any lien created by this Declaration. Failure to enforce any Easements, Covenants, and Restrictions will in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any such litigation will be entitled to recover reasonable attorneys' fees and court costs from the losing party.

11.4.2 Whenever this Declaration provides for enforcement or the imposition of penalties (including a loss of voting rights) because of a breach or default hereunder, the Owner or other person alleged to be in default will be entitled to notice and an opportunity to cure before any enforcement action is taken against it as provided in **Section 11.1**. Notwithstanding the foregoing, any Owner will be entitled to take action to cure conditions representing an unreasonable risk of injury to persons or property without waiting for expiration of any cure period provided under this Declaration.

11.5 Obligations Generally. In the event that a Parcel is occupied by only one Occupant and such Occupant is not the Owner of the subject Parcel, the obligations with respect to such Parcel under this Declaration may be performed by the Occupant, provided, this authorization shall in no event release Owner or the Parcel from liability in the event of any loss, cost, liability, or failure to perform with respect to such Parcel or its Owner.

11.6 Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration is or becomes illegal, null or void for any reason or is held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of the instrument will continue in full force and effect and will not be affected thereby. It is hereby declared that the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases might become or be illegal, null or void.

11.7 Notice. Whenever notice to any Owner (including Declarant) is required or provided for hereunder, it must be in writing and will be deemed to have been given as of the date such notice is (i) delivered to the party intended, (ii) delivered to then-designated address of the party intended, (iii) rejected at then-designated address of the party intended, provided such notice was sent prepaid, or (iv) sent by nationally recognized overnight courier with delivery instructions for "next business day" service, or (v) by United States certified mail, return receipt requested, postage prepaid and addressed to then-designated address of the party intended, or (vi) sent by email transmission to a party, provided a return email from such party's same email address is sent on the same day, confirming receipt. Whenever notice to any Owner (including Declarant) or Declarant is required or provided for hereunder, it will be sent to the address of the Owner appearing on the records of Declarant (and as furnished to Declarant by the Owner) and to the address for Declarant that it may specify by notice to Owners from time to time. If notice is given in such a manner, it will be conclusively deemed to have been received, whether received by the addressee or not.

The address of the Declarant is: 748 W Heritage Park Blvd  
Suite 203  
Layton, UT 84041

11.8 Interpretation. In all cases, the provisions set forth or provided for in this Declaration will be construed together, and given that interpretation or construction that will best effect the general plan of development as reflected herein. The provisions will be liberally interpreted and, if necessary, they will be so extended or enlarged by implication as to make them fully effective. This Declaration will be construed under and in accordance with the laws of the State of Utah. The exhibits attached hereto are made a part hereof by reference. The recitals are also made a part hereof by reference.

### 11.9 Approvals.

11.9.1 Approvals Only in Writing. Except as otherwise set forth herein, no approval by Declarant or any Owner pursuant to the provisions of this Declaration will be effective unless in writing. In any circumstance in which an approval, consent or decision by Declarant is provided for herein, the approval, consent or decision will not be unreasonably delayed, withheld, conditioned or denied unless a different standard is expressly set forth for the particular matter herein.

11.9.2 Deemed Approval. 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 Declaration will be given within thirty (30) days after receipt thereof. Each disapproval will be in writing and the reasons therefor will be clearly stated. Other than requests to the Declarant, if a response is not given within the required time period, the party whose approval is required will be deemed to have given its approval if the original notice stated in capitalized letters that failure to respond within the applicable time period will be deemed an approval. Notwithstanding anything contained herein to the contrary, the provisions of this **Section 11.9.2** do not apply in any manner or fashion to any request that requires an amendment to this Declaration, such requests being governed solely by the provisions of **Section 11.3**.

11.10 Captions. The titles, headings and captions used throughout this Declaration are for convenience of reference only and are not to be used in construing this Declaration or any part thereof. Captions will be disregarded in the construction and interpretation of this Declaration. 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 Declaration.

11.11 Binding Effect. This Declaration sets forth the entire understanding with respect to the terms, covenants, conditions and standards pursuant to which obligations are to be judged and performance measured. The terms of this Declaration and all easements granted hereunder constitute covenants running with the land, bind the Parcel(s) described herein and inure to the benefit of and bind each party.

11.12 Terminology. Whenever required by the context of this Declaration, (i) the singular includes the plural, and vice versa, and the masculine includes 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 will 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 will be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter. Whenever this Declaration imposes an obligation upon a party to perform an action (e.g. obtain a policy of insurance) such obligation will be deemed satisfied if such party has caused such obligation to be performed regardless of whether such party has itself performed such action; provided however, that nothing will relieve such party from responsibility for complying or causing compliance with the terms and provisions of this Declaration. The titles, headings and captions used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

11.13 Excusable Delays. Whenever performance is required of any party hereunder, such party will use all due diligence to perform and take all necessary measures in good faith to perform, but if completion of performance will be delayed at any time by reason of acts of God, war, terrorism, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other

casualty, or any cause beyond the reasonable control of such party, then the time for performance as herein specified will be appropriately extended by the amount of the delay actually so caused. The provisions of this Section will not operate to excuse any party from the prompt payment of any monies required by this Declaration.

11.14 Mitigation of Damages. In all situations arising out of this Declaration, each of Declarant, Owner, and Occupant will attempt to avoid and mitigate the damages resulting from the conduct of any other party. Each party will take all reasonable measures to effectuate the provisions of this Declaration.

11.15 Declaration Will Continue Notwithstanding Breach. No breach of this Declaration will (i) entitle any party to cancel, rescind, or otherwise terminate this Declaration, or (ii) defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to any part of the Project.

11.16 Time. Time is of the essence of this Declaration.

11.17 No Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof will not be deemed a waiver of any rights or remedies which that party may have hereunder, at law or in equity, and will 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 Declaration will be effective or binding on such party unless made in writing by such party and no such waiver will be implied from any omission by a party to take action in respect to such default. One (1) or more written waivers of any default under any provision of this Declaration will not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Declaration.

11.18 Attorney's Fees. If Declarant or one or more Owners brings an action of law or in equity to interpret or enforce this Declaration, the prevailing party as determined by the Court in such action will be entitled to recover reasonable attorney's fees and court costs for all stages of litigation, including appellate proceedings, in addition to any other remedy granted. In the case of Owners bringing an action, the obligation of such Owners as provided in this Section will be joint and several.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has caused this Declaration to be executed on the day and year first written herein.

LAYTON ANTELOPE, LLC,  
a Utah limited liability company

By: Michael R. Christensen  
Name: Michael Christensen  
Its: Manager

STATE OF UTAH )  
 ) ss  
COUNTY OF DAVIS )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of November, 2024, by Michael R Christensen, the Manager of Layton Antelope, LLC a Utah limited liability company, on behalf of said limited liability company.

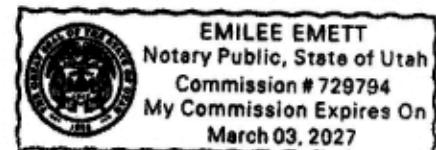
[SEAL]

Emilee Emett

Notary Public

My Commission Expires:

3/3/2027



LAYTON ANTELOPE RETAIL, LLC,  
a Utah limited liability company

By: Michael R. Christensen  
Name: Michael Christensen  
Its: Manager

STATE OF UTAH )  
 ) ss  
COUNTY OF DAVIS )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of November, 2024, by Michael R Christensen, the Manager of Layton Antelope Retail, LLC a Utah limited liability company, on behalf of said limited liability company.

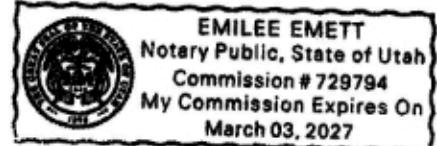
[SEAL]

Emilee Emett

Notary Public

My Commission Expires:

3/3/2027



**EXHIBIT A****LEGAL DESCRIPTION OF PROJECT**

A parcel of land situate in the Southwest Quarter of Section 8, 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 westerly line of Falcon Wood Subdivision and the North-South Quarter Section Line, said point being North 0°08'00" East 204.63 feet along said Quarter Section Line (NAD83 Bearing being North 00°29'15" East between the South Quarter Corner and the Center Quarter Corner of said Section 8, per the Davis County Township Reference Plat) from the South Quarter Corner of said Section 8 and running thence:

West 317.20 feet to the easterly right-of-way line of 700 West Street;

thence along said right-of-way line the following four (4) courses and distance:

1. Northwesterly 100.00 feet along the arc of a 340.00-foot radius curve to the left, (center bears South 89°27'32" West and long chord bears North 8°58'02" West 99.65 feet, with a central angle of 16°51'07");
2. South 72°36'25" West 10.00 feet;
3. Northwesterly 136.43 feet along the arc of a 330.00-foot radius curve to the left, (center bears South 72°36'25" West and long chord bears North 29°14'13" West 135.46 feet, with a central angle of 23°41'15");
4. North 41°04'52" West 176.51 feet to the Southwest Corner of Midtown Courts Townhomes Subdivision;

thence along the southerly line of the Midtown Courts Townhomes Subdivision the following three (3) courses and distances:

1. North 48°55'08" East 115.39 feet;
2. Northerly 96.50 feet along the arc of a 135.00-foot radius curve to the right, (center bears South 41°04'53" East and long chord bears North 69°23'49" East 94.46 feet, with a central angle of 40°57'22");
3. North 89°52'30" East 350.10 feet to a point on the westerly line of Falcon Wood Subdivision, also being on the North-South Quarter Section Line;

thence South 0°08'00" West 456.53 feet along the West line of Falcon Wood Subdivision and the Quarter Section line to the Point of Beginning.

Contains 186,980 square feet, 4.292 acres, 4 lots.

\*\*Now known as Lot 202, 203, 204, and 205, of the Harris Pointe Subdivision - Second Amendment\*\*

**2816835**

**3595993**

**BK 8631 PG 1078**

**EXHIBIT B**

**SITE PLAN**

**(See attached on the following \_\_\_\_ pages)**

**EXHIBIT C-1****SHOPPING CENTER PROHIBITED USES**

1. Any use which emits an obnoxious odor, noise, light, or sound which can be heard or smelled outside of any building in the Project, including any advertising medium that might constitute a public or private nuisance such as flashing lights, rotating devices, loud-speakers or sound amplifiers, provided that odors, noises or sounds typical of uses customarily included within a retail Project (e.g. normal restaurant odors or patio sound) shall not be prohibited;
2. Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling (other than as a commercial or retail operation offering "on-sale" consumption to the general public), refining, smelting, drilling, agricultural or mining operation;
3. Any second hand store, surplus store, or thrift shop or other business principally engaged in the sale of used merchandise; provided that the foregoing shall not prohibit a high-end antique store or a national or regional second-hand store operating at least ten stores;
4. Any mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);
5. Any dumping, incineration, or reduction of garbage, except the disposal of garbage incidental to retail uses, in locations identified on the Site Plan, or as otherwise approved in writing by Declarant;
6. Any fire sale, going out of business sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
7. Any central laundry, central dry cleaning plant or laundromat (except that this provision shall not prohibit nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in similar Projects);
8. Any bowling alley or skating rink, unless the same is located within the Additional Land;
9. Any night club or live performance theater unless ancillary to a premises whose bona fide primary use is a restaurant;

10. Any animal raising facility;
11. Any mortuary, funeral home or crematory;
12. Any adult book store, adult video store, adult movie theater or other establishment selling, renting or exhibiting pornographic materials or drug-related paraphernalia (except that this provision shall not prohibit the operation of a bookstore or video store which carries a broad inventory of books or videos and other materials directed towards the interest of the general public [as opposed to the specific adult entertainment segment thereof]);
13. Any bar or tavern, or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds fifty percent of the gross revenues of such business;
14. Any flea market, amusement or video arcade, tattoo parlor, pool or billiard hall, or dance hall, except that this provision shall not prohibit a restaurant from including video games as an incidental use to its operations, or a video arcade in conjunction with a regional or national food service establishment;
15. Any massage parlor (except that this provision shall not prohibit massages in connection with a beauty salon, health club or athletic facility and shall not exclude a Massage Envy or other national operator);
16. Any casino or other gambling facility or operation, including but not limited to off-track or sports betting parlors, table games such as black-jack or poker, slot machines, video gambling machines and similar devices, and bingo halls (except that this provision shall not prohibit tribal or government sponsored gambling or lottery activities or charitable gambling activities if such activities are incidental to the business operation being conducted by an operator of the Project);
17. Any use that violates any federal, state or local law; a public or private nuisance.
18. Any traveling carnivals, shows, fairs, amusement park, festival, car show, circus, auctions, booths for the sale of fireworks, sales by transient merchants using vehicles or booths and other outdoor promotions of any nature;
19. Any oil development operations, oil refining, quarrying or mining operations of any kind, nor any oil wells, tanks, tunnels, mineral excavation or shafts, derricks or other structure designed for use in boring for water, oil, natural gas or other minerals;
20. No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or

lease, or stored within the Common Area.

21. Any so-called "head shop" (sale of drug paraphernalia), or any marijuana growing operation, including any establishment that stocks, displays, sells, rents, or offers for sale or rent any merchandise or material commonly used or intended for the use with or in consumption of any narcotic, dangerous drug, or other controlled substance (provided that the foregoing is not intended and shall not be construed to prohibit a drug store or any store or operation involving the sale of cannabis (including marijuana) or cannabis derivatives and related products).

**EXHIBIT C-2****EXISTING EXCLUSIVE OR PROHIBITED USES SPECIFIC TO AN OCCUPANT/PARCEL**

All owners, occupants, and tenants within the Project shall be subject to the following exclusive or prohibited uses benefitting the following occupants/parcels:

Parcel: Lot 203

For so long as a business selling sewing machines and fabric opens for business to the public on or before December 31, 2026 within Lot 203 of the Project, and continuing until a sewing machine and fabric store ceases to operate on such Lot for a period of twenty-four (24) consecutive months, no other Owner shall allow any person to operate a business within the Project that (i) sells or services sewing machines, (ii) sells fabric and related sewing materials, or (iii) offers sewing classes. All Owners, including the Owner of Lot 203, shall have the right to enforce this provision by proceedings at law or in equity, including the right to prevent the violation of this provision and the right to recover damages for any such violation. The failure of any Owner to enforce this provision in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any future breach of this provision.

Crispy Cones:

**Exclusive Use:**

Provided that: (i) Tenant is not in default of this Lease; (ii) Tenant is in leasehold possession of the Premises; and (iii) Tenant is open for normal operation at the Premises, Landlord will not sell or permit any party, other than Tenant, to operate in any part of the Shopping Center (which is owned or controlled by Landlord), whose primary use is the sale of ice cream during the Term of this Lease, as such term may be extended. For purposes of this paragraph, "primary use" is defined as a business in which more than twenty percent (20%) of gross revenues are derived from the sale of ice cream.

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hich more than twenty percent (20%) of gross revenues are derived from the sale of ice cream.

Zao Modern Asian Cafe:

10.2 **Exclusive Use.** Provided Tenant is open, operating, and not in material default under any of the terms and conditions of this Lease beyond any applicable notice and cure period, and provided there has been no change in the Permitted Use, Landlord hereby agrees that it shall not lease, sell or otherwise convey to, or otherwise permit the operation of, any other tenant or occupant at the Shopping Center for use as a restaurant for which more than twenty-five percent (25%) of menu items are Asian cuisine. Landlord further acknowledges that the exclusivity granted herein is not contradictory with any existing tenant's use clause or exclusivity. The exclusive use granted herein shall not apply to any tenants in the Shopping Center with whom Landlord has an executed lease agreement as of the date of full execution of this Lease, and any successors or assigns of such tenants.

The parties acknowledge and agree that this Declaration and Project is subject to all terms and provisions pursuant to that certain Reciprocal Easements Agreement, Maintenance Agreement, Declaration of Restrictive Covenants and Right of First Offer, by and between IREIT Layton Pointe, L.L.C and Layton Pointe, L.C., recorded 8/6/2014. Which shall include certain existing tenant exclusives uses to be prohibited within the Project as follows:

**ROSS DRESS FOR LESS**

**3.2. Nature of the Shopping Center.**

**3.2.1. Retail Use.**

(a) General. Tenant has entered into this Lease in reliance upon representations by Landlord that the Shopping Center is and shall remain retail in character, and, further, no part of the Shopping Center shall be used for office or residential purposes or as a theater, auditorium, meeting hall, school, church or other place of public assembly, "flea market," gymnasium, veterinary services, overnight stay pet facilities, health club, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, car wash, facility for the sale, display, leasing or repair of motor vehicles, night club, adult products, adult books or adult audio/video products (which are defined as stores in which at least ten percent (10%) of the inventory is not available for sale or rental to children under the age of majority in the state in which the Store is located because such inventory explicitly deals with or depicts human sexuality). No ATM or similar machine shall be permitted in the Shopping Center within one hundred (100) feet of the front and side perimeter walls of the Store. Further, no restaurant or other "High Intensity Parking User" (as hereinafter defined) shall be permitted in the Shopping Center within five hundred (500) feet of the front and side perimeter walls of the Store. A "High Intensity Parking User" is a tenant or occupant whose use requires more than five (5) parking spaces per one thousand (1,000) square feet of Leasable Floor Area in accordance with either customary shopping center practices or governmental regulations, whichever has a higher parking requirement. The foregoing use restrictions are referred to herein as the Ross Prohibited Uses.

(b) Exceptions.

(i) Notwithstanding the prohibition on offices set forth in Section 3.2.1 (a) above, (A) retail service offices such as full service banks, insurance offices and travel agencies, shall be permitted provided that (1) retail service offices in the aggregate do not exceed fifteen percent (15%) of the Leasable Floor Area of the Shopping Center, and (2) no retail service offices may be located within one hundred fifty hundred (150) feet of the Store, and (B) for purposes of Section 3.2.2 below, with respect to the area shown as the "Permitted Office Area" on the Site Plan, no restrictions on offices set forth in this Lease shall apply.

(ii) Notwithstanding the prohibition on veterinary services and overnight stay pet facilities set forth in Section 3.2.1 (a) above, a national Anchor Tenant pet store or pet supply store ("Anchor Pet Store") with incidental veterinary services, pet vaccination clinic and overnight stay pet facilities,

such as a PetsMart or Petco shall be permitted in the Shopping Center, provided that the front doors of such Anchor Pet Store shall not be any closer than one hundred fifty (150) feet from the exterior storefront of the Store, and provided further that all of the following conditions are complied with throughout the Term of this Lease: (A) the Anchor Pet Store shall not exceed twenty thousand (20,000) square feet of Leasable Floor Area; (B) the veterinary services, pet vaccination clinic and overnight stay pet facilities are only incidental to the operation of the Anchor Pet Store, and such combined services and facilities in the aggregate shall not occupy more than fifteen percent (15%) of the Leasable Floor Area of the Anchor Pet Store; (C) there shall be no boarding of pets as a separate customer service; (D) all kennels, runs and pens shall be totally located inside the Anchor Pet Store; and (E) the Anchor Pet Store shall be completely contained within a fully enclosed building structure.

(iii) Notwithstanding the prohibition on restaurants set forth in Section 3.2.l(a), the following restaurants shall be permitted: (A) the Mimi's Cafe as shown on the Site Plan, (B) restaurants located in Building 4, as shown on the Site Plan, and (C) only with respect to Building 13, as shown on the Site Plan, either one (1) "quick serve" restaurant shall be permitted, provided such restaurant does not exceed four thousand (4,000) square feet of Leasable Floor Area, or a total of two (2) shops, which may consist of any combination of deli/sandwich, coffee or ice cream shops, provided each such shop does not exceed one thousand eight hundred (1,800) square feet of Leasable Floor Area.

(iv) Notwithstanding the prohibition on fitness and health facilities set forth in Section 3.2.l(a) above, for purposes of Section 3.2.2 below, with respect to the area shown as the "Permitted Office Area" on the Site Plan, no restrictions on fitness and health facilities shall apply.

**3.2.2. Further Prohibited Uses.** Landlord agrees that the Ross Prohibited Uses set forth in Section 3.2.1 and the "Landlord's Prohibited Uses" which are listed in Exhibit D (collectively, the "Prohibited Uses") shall not be permitted in the Shopping Center. If Landlord sells any portion of the Shopping Center, Landlord shall attach and incorporate into every deed or other instruments of conveyance the Prohibited Uses. Any property contiguous to any portion of the Shopping Center which may be purchased, leased or otherwise controlled by Landlord, or any affiliate of Landlord, after the Effective Date shall be subject to all of the restrictions of the Prohibited Uses and, with respect to the area shown as the "Permitted Office Area" on the Site Plan, (a) Landlord shall use reasonable efforts to prevent such tenants, and their employees, contractors and invitees from parking in the Common Areas of the Shopping Center, and (b) Landlord covenants that ingress to and egress from the Permitted Office Area to the public roads surrounding such area shall only be permitted from the east side of the parcel of which the Permitted Office Area is a part; provided, however, this restriction shall not preclude emergency egress from the Permitted Office Area from other portions of such parcel to the extent required by governmental authorities. Tenant agrees that it will not violate the Prohibited Uses.

#### 15.4. Exclusive Uses.

Tenant shall not use the Store for any use which is listed on Exhibit H (the "Exclusive Use"), so long as the Exclusive Use is in existence in the Shopping Center. Failure of any Exclusive Use to be operated for a period of ninety (90) consecutive days during the Term shall cause such Exclusive Use to be deleted from Exhibit H. Any exclusive granted by Landlord which is not listed on Exhibit H (the "Unauthorized Exclusive") shall be null and void as against Tenant and any assignee or sublessee of

Tenant. Landlord shall indemnify, defend and hold harmless Tenant and any assignee or sublessee against any and all claims by any other occupant of the Shopping Center that Tenant and/or an assignee or sublessee has violated an Unauthorized Exclusive.

15.5. Other Exclusives Not Binding on Tenant.

Except for those Exclusive Uses specifically set forth in Exhibit H, neither Tenant nor any of its subtenants or assignees or the use of the Store shall be subject to any exclusives or restrictions granted to or for the benefit of any other tenants or occupants in the Shopping Center or on any Outparcel or adjacent parcel owned by Landlord. Except for those Exclusive Uses specifically set forth in Exhibit H, Landlord agrees that it has not entered into a lease or other occupancy agreement with nor shall it lease to or permit occupancy in the Shopping Center by any tenant, subtenant, assignee or other occupant, which has imposed or proposes to impose a restriction on Tenant or Tenant's business. Landlord shall hold Tenant harmless from any claims or damages suffered or claimed to be suffered by Tenant as a result of any breach or alleged breach of Landlord's representation and warranty set forth in this Section 15.5.

**BED BATH & BEYOND**

13.1.2 **Prohibited Uses.** Landlord shall construct, lease, operate, maintain and manage the Shopping Center as a first-class shopping center comparable to other first-class shopping centers in the state in which the Shopping Center is located. Landlord shall not lease, rent or occupy or permit to be occupied any portion of the Shopping Center or any "Related Land" (hereinafter defined) for any of the "Prohibited Uses" that pertain to the Shopping Center or the Related Land, as the case may be (as set forth in Exhibit M hereto annexed), provided, however, that as to any future Related Land, the foregoing restriction shall not apply to the extent that any Prohibited Uses are otherwise permitted under leases entered into prior to the date on which such land becomes Related Land. As used in this Lease, the term "**Related Land**" shall mean any land contiguous or adjacent to the Shopping Center (including, without limitation, any land that would be contiguous or adjacent to the Shopping Center but for any intervening road, street, alley or highway) owned or controlled by Landlord or its Affiliate(s).

Section 13.2 **Tenant's Exclusive in Center.** To induce Tenant to execute this Lease, and subject to all of the terms and provisions of this Section 13.2, Landlord covenants and agrees as follows.

13.2.1 Subject to the Existing Leases (as defined in Section 12.3U)), Landlord shall not lease, rent or occupy or permit any other premises in the Shopping Center or on any Related Land to be occupied, whether by a tenant, sublessee, assignee, licensee or other occupant or itself, for the sale, rental or distribution, at retail or at wholesale, either singly or in any combination, of items contained in any of the following respective categories of merchandise: (a) linens and domestics; (b) bathroom

items (including, without limitation, health and beauty care items, but excluding plumbing hardware); (c) housewares (excluding furniture, and major appliances or "white goods"); (d) frames and wall art (provided that a fine art gallery shall not be precluded); (e) window treatments; and/or (f) closet, shelving and storage items (which items, either singly or in any combination, are hereinafter referred to as the "*Exclusive Items*"). Notwithstanding the foregoing, any tenant or subtenant in the Shopping Center or the Related Land shall have the right to utilize its respective premises for the sale, rental and/or distribution of Exclusive Items within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed the lesser of (x) five percent (5%) of the Floor Area of such tenant's or subtenant's premises, or (y) two thousand (2,000) square feet of Floor Area within such tenant's or subtenant's premises. [For example only, a tenant occupying premises containing a total of five thousand (5,000) square feet of Floor Area could sell Exclusive Items (either singly or in any combination) so long as the aggregate area within its entire demised premises in which any and all Exclusive Items are sold shall not exceed two hundred fifty (250) square feet.] As to any future Related Land, the foregoing restrictions shall not apply to the extent that any Exclusive Items are otherwise permitted under leases entered into prior to the date on which such land became Related Land. The tenants under the Existing Leases (and current or future assignees or sub lessees of such tenants) shall nevertheless be subject to the restrictions contained in this Section 13.2 in the event that: (i) the lease between Landlord (or Landlord's Affiliate) and any such tenant requires the consent of Landlord (or its Affiliate) to any assignment or subletting or to a change in the use of the applicable premises to permit the sale, rental or distribution of the Exclusive Items; or (ii) Landlord or its Affiliate permits or agrees to an expansion of the applicable premises for the sale, rental, or distribution of the Exclusive Items.

13.2.2 The restrictions set forth in Subsection 13.2.1 above shall not apply to a full-line national or regional: (i) department store [for example, Wal-Mart, Macy's, or Target], (ii) discount club [for example, Costco, BJ's Wholesale Club, or Sam's Club], or (iii) home improvement center [for example, Home Depot or Lowe's], commonly located in first-class shopping centers in the state in which the Shopping Center is located, each occupying at least 80,000 square feet of Floor Area within the Shopping Center, as such stores are currently operated (as of the Effective Date).

13.2.3 The exclusive rights granted to Tenant in this Section 13.2 shall inure to the benefit of any assignee of Tenant's interest in this Lease and to any sublessee of at least fifty percent (50%) of the Floor Area of the Premises.

13.2.4 (a) Upon breach of the aforesaid covenant and agreement by Landlord (which breach shall not include a situation in which the lease between Landlord and any tenant in the Shopping Center or in the Related Land prohibits the tenant therein from violating the exclusive rights granted to Tenant in this Section 13.2 and despite such prohibition, such tenant violates such exclusive rights, unless Landlord fails to comply with any of the provisions of subparagraph (b) below), the Rent payable hereunder shall be reduced by fifty percent (50%) for so long as such violation shall continue, and Tenant shall have all remedies given to it at law and in equity, including, without limitation, the right to obtain injunctive relief, and/or to terminate this Lease, and/or to commence and prosecute an action against Landlord or any other violator for damages. (b) If any person or entity other than Landlord shall violate any of the exclusive provisions herein set forth, or shall

indicate in writing to Landlord that it intends to violate any of said provisions, Landlord shall promptly commence appropriate legal proceedings, and diligently prosecute the same, to enjoin and prohibit any such violation. If Landlord fails to promptly commence such proceedings, or shall fail thereafter to diligently prosecute the same, then Tenant shall have the right (a) to conduct and prosecute such legal proceedings (including, without limitation, an action for injunctive relief) in its own name, at Landlord's expense, or (b) in the event the right set forth in (a) above is not permitted to be exercised under applicable Legal Requirements, to conduct and prosecute such legal proceedings in the name of Landlord, at Landlord's expense, and Landlord shall cooperate with Tenant with respect to such prosecution (including, without limitation, by executing any documentation or authorization reasonably required by Tenant in connection with such prosecution and by appearing at any hearing or trial with respect to such prosecution).

13.2.5 Simultaneously with the execution and delivery of this Lease, Landlord shall execute and record, or cause to be executed and recorded, Declaration of Restrictions substantially the form attached hereto as Exhibit O, against the No Build Area, Phase II and any other Related Land existing as of the Effective Date. Notwithstanding the foregoing or anything in Exhibit O to the contrary, (i) the Declaration of Restrictions recorded against the No Build Area shall also include the restrictions set forth Section 5.2.2 above, and (ii) the Declaration of Restrictions recorded against Phase II shall be modified by (y) adding as Exhibit D to such Declaration of Restrictions the site plan annexed at Exhibit B hereto and (z) deleting the text of Prohibited Use 28 on Exhibit C to such Declaration of Restrictions and replacing it with the following text:

"(28) Any office use, other than: (x) office space used in connection with and ancillary to a permitted retail use hereunder; (y) retail offices providing services commonly found in similar first-class shopping centers in the Salt Lake City metropolitan area (for example, financial services, real estate brokerage, insurance agency, banking, travel agency), provided that (i) the Floor Area of such retail offices in the Related Land (exclusive of the Floor Area of the building identified on Exhibit D to this Declaration of Restriction as "Future Building A"), when aggregated with the Floor Area of such retail offices in the areas of the Shopping Center located to the East of Harris Boulevard, shall not exceed five thousand (5,000) square feet in the aggregate; and (z) up to, but not more than, half of the Floor Area in the building identified on Exhibit D hereto as "Future Building A" may be used for such retail offices and/or for general office uses."

PETCO

1. (a) NON-COMPETITION

Landlord covenants and agrees that during the term of this Lease, but subject to the rights of tenants under leases existing as of the date hereof, Tenant shall have the exclusive right to sell pet food, pet supplies, live animals, pet grooming, pet training, and veterinary services in the

Shopping Center or any property within one (1) mile of the Shopping Center owned, managed and/or controlled by Landlord or any affiliate of Landlord, other than for incidental sales. Incidental sales shall mean the sale or display for sale of such items or services not as the primary use of the competing tenant and taking up no more than five hundred (500) square feet of floor area. This covenant shall run with the land on which the Shopping Center is located so long as the Premises are used as a pet food and supply store. Landlord agrees not to sell to, lease to, nor approve any sublease or assignment of lease, or change in use, unless prevented by the terms of any lease then currently in force and effect, for any competing tenant, sub-tenant, assignee or user. Landlord agrees at its sole cost and expense to promptly and continuously enforce this non-competition covenant using all reasonable legal means, subject to Tenant's obligation to reasonably cooperate with Landlord in this enforcement effort, at no material cost or expense to Tenant. Should Landlord violate the provisions of this covenant, in addition to any other remedies available at law or in equity, Tenant shall have the right upon twenty (20) days prior written notice to Landlord to either: (i) reduce the Base Rent to 3% of Gross Sales for the entire period of the violation; or (ii) terminate this Lease upon thirty (30) days advance Notice and receive from the Landlord any unamortized costs of Tenant's improvements to the Premises as well as any reasonable relocation costs or expenses incurred by Tenant to relocate within a ten (10)-mile radius of the Premises. As used in this Lease, the term "Gross Sales" means all sales, both cash and charge, of merchandise and services made in, upon or from the Premises,

## 2. CHARACTER OF SHOPPING CENTER

Tenant has entered into this Lease in reliance upon representations by Landlord that, excluding any part of the Shopping Center on the east side of Harris Boulevard, the Shopping Center is and will remain substantially retail in character and, further, no part of same shall be used as an auditorium, meeting hall, school or other place of public assembly, telemarketing or call center, gymnasium or dance hall; for Bingo or similar games of chance, or as a massage parlor, video game arcade, bowling alley, skating rink, car wash, car repair or car rental agency, night club or adult book or adult video store or for a restaurant within one hundred (100) feet of the Premises' front door, except with Tenant's permission, which Tenant may choose to give or deny in its sole and absolute discretion.

### SHOE CARNIVAL

#### 5.01. Competition.

A) During the entire term of this Lease, and as a material inducement to Tenant to enter into this Lease, Tenant shall have the exclusive right to sell footwear in the Shopping Center as currently configured on the date of this Lease (herein, the "Exclusive Use"). In the event Tenant shall cease operations at the Premises for reasons other than Permitted Closures (as defined in Section 5.03) for

a period in excess of one hundred eighty (180) days, the Exclusive Use shall be deemed cancelled and of no further force or effect.

B) The Exclusive Use shall not apply to (i) existing tenants of the Shopping Center with leases dated prior to June 3, 2011, to the extent such tenants are either expressly permitted to sell footwear pursuant to the terms of their existing leases or have the right to change use or operate for any lawful use without the consent of Landlord (all of which, and the relevant use provisions, are identified in Exhibit F attached to this Lease); (ii) incidental sales of footwear by tenants occupying at least 25,000 square feet; (iii) incidental sales of footwear by tenants whose primary business is the retail sale of fashion and apparel merchandise; and (iv) stand-alone out parcel tenants, provided such tenants do not operate primarily for the sale of footwear. The phrase "incidental sales" shall mean the lesser of ten (10%) percent of such tenant's sales floor area or 3,000 square feet is used for the sale/display of footwear.

C) In the event the Exclusive Use is violated, Rent and all other charges under the Lease shall abate entirely until such violation is cured; provided, however, in addition to the foregoing, Tenant may terminate this Lease at any time during the continuance of such violation by delivering written notice to Landlord at least thirty (30) days prior to the effective date of termination; provided, however, if such violation shall continue for twenty-four (24) months and Tenant has not terminated the Lease, Tenant shall thereby be deemed to have waived the right to terminate the Lease on the basis of such then-existing violation. If Tenant does not elect to terminate the Lease or has waived the right to terminate, the Lease shall remain in full force and effect. However, Tenant shall continue to receive Rent abatement until such violation is cured.

**15.10. Prohibited Uses.** The Shopping Center shall be maintained, operated and managed as a first-class retail project in compliance with all laws, regulations and orders and shall be used and occupied only for normal retail uses customarily conducted in first-class shopping centers; and in no event shall the Shopping Center or any portion thereof be used for any use prohibited under the CC&Rs.

#### **DRESS BARN**

2.4 Prohibited Uses. Tenant acknowledges that other tenants of the Shopping Center have been granted exclusive rights for their respective uses of their premises in the Shopping Center and Tenant covenants that it shall be bound by each of such exclusive uses until the earlier to occur of (1) the date on which the lease containing the exclusive use expires, (2) the tenant having the exclusive use waives the exclusive use, in writing, or (3) the tenant having the exclusive use ceases to use its premises for such exclusive use. The exclusive uses are generally described as follows and are more particularly set forth in the tenant's lease to which the exclusive use has been granted by Landlord: the retail sale and/or rental of bridal wear, men's formal and women's formal attire and clothing; prom and special occasion attire; accessories relating to all the foregoing; and any other goods or services relating to weddings, special events and parties; the sale of pet food, pet supplies, live animals, pet grooming, pet training, veterinary services, and related goods and services; mobile

radio and cellular phones, pagers, personal communicators, cellular and wireless voice, data, and internet services, and related software and accessories; the sale of noodles and pasta, and noodle and pasta dishes for on or off premises consumption; the sale of a primary cuisine competitive with the Mexican and Tex-Mex cuisine of Cafe Rio; the sale of pizza as the primary business; and a retail footwear store. Landlord warrants and represents that (i) Tenant's sale of shoes in less than ten percent (10%) of the sales area of the Demised Premises shall not violate any exclusive use provision, and (ii) Tenant's sale of women's formal attire and clothing and prom and special occasion attire in less than ten percent (10%) of the sales area of the Demised Premises shall not violate any exclusive use provision. Landlord agrees not to use, lease, sell or otherwise permit any space in the Shopping Center to be used, in whole or in part, for any office or non-retail use (except for office and storage and stocking use ancillary to a primary retail use), including, without limitation, any medical center or medical facility of any kind (in-care or ambulatory care) and any professional center or professional offices; day care center; manufacturing operation; as a factory; for any outdoor selling of merchandise; for any industrial usage; as a warehouse or distribution center, processing or rendering plant; any retail warehouse, outlet, distribution operation or similar type operation; any establishment selling or renting cars, trailers, mobile homes, boats or any other vehicle or vessel; automotive repair or service operation or gas station; a coin operated laundry or a "Laundromat"; any operation of a billiard parlor, amusement park or carnival, flea market or the like, massage parlor or any similar type operation; for a so-called "off-track betting" operation; on or off-premises consumption of alcohol; night club, discotheque or other like entertainment establishment (including, without limitation, any adult entertainment establishment) for the sale, leasing or display of pornographic or other sexually explicit or oriented materials; a store specializing in the sale of drug paraphernalia; the operation of a business that unreasonably or unlawfully substantially interferes with the enjoyment or use of the Shopping Center as a first-class community oriented retail Shopping Center. In addition, Landlord shall not use, lease, sell or otherwise permit any space in the Shopping Center to be used in whole or in part by any veterinary facility or other similar type establishment other than a national Anchor Tenant pet store or pet supply store ("Anchor Pet Store") with incidental veterinary services, pet vaccinations clinic or overnight-stay pet facilities, such as a PetsMart or Petco, shall be permitted in the Shopping Center; provided that the front doors of such Anchor Pet Store shall not be any closer than one hundred fifty (150) feet from the exterior store front of the Demised Premises and provided further that all the following conditions are complied with throughout the term of this Lease: (a) the Anchor Pet Store shall not exceed twenty thousand (20,000) square feet of leasable floor area; (b) the veterinary services, vaccination clinic, and overnight-stay pet facilities are only incidental to the operation of the Anchor Pet Store and such combined services and facilities in the aggregate shall not occupy more than fifteen percent (15%) of the leasable floor area of the Anchor Pet Store; (c) there shall be no boarding of pets as a separate customer service; (d) all kennels, runs, and pens shall be totally located inside the Anchor Pet Store; and (e) the Anchor Pet Store shall be completely contained in a fully enclosed building structure. Landlord understands and agrees that to permit any of the uses described in this Section within the Shopping Center would materially and adversely affect Tenant's business. If Landlord knowingly, uses or permits any such use, then in addition to all other legal and equitable remedies Tenant may have, Landlord, as liquidated damages and not as a penalty, shall waive the payment of Base Annual Rent (but not Additional Rent or Percentage Rent) that exceed a monthly amount equal to three percent (3%) of Tenant's Gross Sales (such amount not to exceed Annual

Minimum Rent) so long as such use continues. Landlord and Tenant agree that Tenant's actual damages under the foregoing circumstances would be extremely difficult or impracticable to determine, and acknowledge that the liquidated damages have been agreed upon, after negotiation, as the parties' best and reasonable estimate of Tenant's damages. In the event such use continues for six (6) months after Tenant gives written notice of such violation to Landlord, Tenant or Landlord may terminate this Lease upon thirty (30) days' written notice to the other of such election.

#### ARTICLE 57, EXCLUSIVITY

During the primary and any renewal term of the Lease, Landlord shall not lease any other space in the Shopping Center that comprises less than fifteen thousand (15,000) GLA to a tenant whose primary business is the sale of "plus size" women's apparel, or to a tenant who sells "plus sizes" in more than one thousand (1,000) square feet of the selling area of a tenant's demised premises. Further, Landlord shall not lease space in the Shopping Center comprised of seven thousand (7,000) to fifteen thousand (15,000) GLA which is used primarily for the sale of women's apparel. If the Landlord violates the foregoing covenant, Tenant shall have the right to terminate the Lease or pay in-lieu rent equal to five percent (5%) of its gross sales until such violation is cured. In the event Tenant elects to terminate this Lease pursuant to this Article 57, the effective date of termination shall be sixty (60) days after the date of Tenant's notice, or at Tenant's option (to be exercised in Tenant's notice) the next June 30th or December 31<sup>st</sup> (whichever first occurs) next following the sixtieth (60th) day after the date of Tenant's notice. During the notice period Tenant shall have the right to continue to pay in lieu rent.

#### MIMI'S CAFE

##### 9.3 EXCLUSIVE.

Landlord agrees, during the Term of this Lease and any extensions thereof, not to lease or sell any portion of the Shopping Center (other than this Lease of the Premises to Tenant) for use as a restaurant with more than three thousand five hundred (3,500) square feet of floor area that serves breakfast, nor for any full-service, sit-down restaurant serving American-style food. The foregoing restrictions shall not apply to IHOP, Johnny Carina's, nor to any restaurant whose primary menu items are ethnic foods (i.e., Mexican, Italian, or Chinese cuisine), nor to any restaurant which derives a majority of its sales from a specialty food item (i.e., steaks, bagels, or wraps). In addition, Landlord agrees during the Term of this Lease and any extensions thereof, that portion of the Shopping Center identified on the Site Plan as building "13" shall not be used for the sale of food. The covenant of exclusivity shall be contained in the Memorandum of Lease to be recorded by Tenant.

## 21. RECIPROCAL EASEMENT AGREEMENT

Subject to Tenant's review and approval thereof, Landlord shall cause the Shopping Center to be subject to reciprocal easements for ingress and egress to and from the public ways and the Shopping Center, for passage and parking of vehicles within the parking lots of the Shopping Center, and for pedestrian access through, over, across, in, to and from, and within the Common Areas of the Shopping Center, all throughout the duration of the Term and all Option Periods exercised by Tenant (hereinafter "REA"). Such REA also shall provide notice of the terms of the restrictive covenant protecting Tenant's exclusive within the Shopping Center. Such REA shall encumber all of the real property depicted on the Site Plan. Such REA shall permit only lawful retail uses within the Shopping Center and shall prohibit the following activities and/or uses: any mortuary, funeral parlor, casket store or similar operation, any massage parlor, any establishment featuring nude or semi nude entertainment, adult book store, adult video store, any display of nudity or pornography visible from the Common Areas, a so-called "head" shop, off-track betting, gambling, or other gaming establishment, any so-called "payday loans" or similar check cashing facility (other than a first class bank, savings and loan, credit union or similar financial services institution), any school, library, reading room, or any other educational facility offering primarily instruction rather than sales of products or services, any house of worship, meeting hall, auditorium, banquet facility, any warehouse and/or self-storage facility, any gym, health club, pool, racquet sports facility, bowling alley, skating rink or any other sports or recreational facility (unless incidental to a full-line sports equipment retail store), movie theater, arcade, pool hall, paintball, laser tag, carnival, amusement park, circus and any show staged within the Common Areas, any bar, tavern or night club, dance hall, disco, liquor store, Laundromat, any automotive repair and/or service facility, any automobile, boat, trailer or truck leasing, sales and/or storage facility, car wash, animal raising or boarding (except incidental to a full-line pet supply store), pawn shop, flea market, swap meet, junk yard, manufacturing, offices, drilling for and/or removal of subsurface substances, dumping, disposal, incineration or reduction of garbage or refuse, or any use which constitutes a public or private nuisance or produces objectionable noise, smell, vibration or blight. Landlord agrees to enforce the REA, and if Landlord fails to do so within thirty (30) days of written notice from Tenant, Tenant may do so in either the name of Landlord, Tenant or both. Landlord agrees that no modifications shall be made to the REA which materially impact Tenant's rights under this Lease and/or the operation of the Premises without Tenant's approval, which approval may be withheld in Tenant's sole and absolute discretion.

### CAFF RIO

2.4 Landlord Covenant of Non Competitive Use. Landlord covenants to Tenant that so long as Tenant is not in default under the terms of the Lease, Landlord will not lease to or allow the use of any premises in the Shopping Center for a restaurant which provides a primary cuisine competitive with the Mexican and Tex-Mex cuisine of Tenant served by Tenant as of the Rent

Commencement Date. For purposes of the Lease "primary cuisine" means more than twenty percent (20%) of the gross revenue of another restaurant or eating establishment attributed to the sale of Mexican and/or Tex-Mex cuisine.

**SONIC**

None.

**CAFEZUPAS**

**SECTION 6.02 OPERATION OF BUSINESS AND PROHIBITED USES.**

Tenant agrees to be open for business and to operate one hundred percent (100%) of the Leased Premises during the entire Rental Term of this Lease unless prevented from doing so because of fire, accident, or acts of God, remodeling, renovations, or casualty, and to conduct its business at all times in a first class and reputable manner. Tenant shall promptly comply with all laws and ordinances and lawful orders and regulations affecting the Leased Premises and the cleanliness, safety, occupancy and use of same. Tenant acknowledges that other tenants of the Shopping Center have been granted exclusive rights for their respective uses of their premises in the Shopping Center and Tenant covenants that it shall be bound by each of such exclusive uses until the earlier to occur of: (1) the date on which the lease containing the exclusive use expires, or (2) the tenant having the exclusive use agrees to waive the exclusive use, in writing. The existing exclusive uses are generally described as follows and are more particularly set forth in the tenant's lease to whom the exclusive use has been granted by Landlord: the retail sale and/or rental of bridal wear, men's and women's formal attire and clothing, prom and special occasion attire, accessories relating to all of the foregoing, and any other goods or services relating to weddings, special events, and parties; the sale of pet food, pet supplies, live animals, pet grooming, pet training, veterinary services, and related goods and services; mobile radio and cellular phones, pagers, personal communicators, cellular and wireless voice, data and internet services; and related software and accessories; the sale of noodles and pasta, and noodle and pasta dishes for on or off premises consumption if such sale is incidental to another primary business of a tenant and such sale does not exceed ten percent (10%) of tenant's gross annual revenue from its business operations at the Shopping Center; the sale in a restaurant, the primary cuisine of which is competitive with the Mexican and Tex-Mex cuisine of Cafe Rio; the sale of pizza in a restaurant as its primary business; the retail sale of footwear; and the providing of haircuts or the sale of hair cut products; the sale, rental or distribution, at retail or at wholesale, either singly or in any combination of items contained in any of the following respective categories of merchandise: (a) womens and domestics; (b) bathroom items (including, without limitation, health and beauty care items, but excluding plumbing hardware); (c) housewares (excluding

furniture and major appliances or "white goods"); (d) frames and wall art (providing that a fine art gallery shall not be precluded); (e) window treatments; and/or (f) closet, shelving and storage items; provided, however, that any tenant or subtenant in the Shopping Center shall have the right to utilize its respective premises. Tenant shall not use, permit or suffer the use of the Leased Premises for the sale, rental, or display of pornography, pornographic books and materials, nudity, or any sexually explicit merchandise that is directed to or restricted to adult customers, due to sexually explicit subject matter, graphic violence, or drug paraphernalia. No second-hand store, auction, liquidation, going out of business, fire or bankruptcy sales may be conducted in the Leased Premises without the prior written consent of Landlord. Tenant covenants to remain open and fully operate at least six days per week and normal restaurant hours.

SECTION 26.23 EXCLUSIVE. Provided that (a) the Lease is in full force and effect, (b) Tenant is not in default under the Lease, (c) no circumstance or event exists which, with the passage of time or the giving of notice or both, would constitute such a default, and (d) Tenant has not assigned the Lease or subleased all or any portion of the Leased Premises under any then-existing sublease, so long as (but only for so long as) the Leased Premises are actually occupied and operated by the original Tenant for the sales of the following gourmet items only, and no other purpose: soups, salads, sandwiches and desserts, Landlord shall not enter into a lease with any of the following (only): Panera Bakery, Paradise Bakery, Corner Bakery, Atlanta Bread Company, Apple Spice Junction, Jason's Deli, Kneaders Bakery, or Sweet Tomatoes. Tenant agrees that the provisions of this Paragraph shall be of no force and effect if, at any time, in Landlord's reasonable judgment, the right granted to Tenant in this Paragraph would violate any statute, decision, order, ruling or decree of any court or any governmental, legislative, administrative, regulatory, adjudicatory or arbitral body or agency having jurisdiction over Landlord, Tenant or the Premises.

(i) Furthermore, Landlord represents that Landlord shall be responsible for resolving any conflicting exclusivity provisions of tenants' leases with other tenants of the Shopping Center or obtaining any required approvals prior to execution of this Lease. Tenant shall be responsible to resolve conflicts, if any, arising from Tenant's compliance with the exclusivity provisions of the leases of other tenants.

**FIVE GUYS**

Landlord shall not lease space in the area of the Shopping Center shown on the site plan (Exhibit B) for the duration of this lease. In addition Landlord shall not lease or in any development within one mile of the Shopping Center for a period of two (2) years, including the Sonic Pad as defined herein, if purchased, to another tenant whose primary use is the sale of hamburgers or which markets itself as a hamburger restaurant.

**RUMBI'S ISLAND GRILL**

**ARTICLE47, EXCLUSIVITY**

Landlord shall give Tenant an exclusive right within the Shopping Center for the preparation and sale of island cuisine including Caribbean and Pacific Rim foods.

**NOODLES & COMPANY**

5.4 Exclusivity. Landlord agrees that, during the Term and any extensions, Tenant shall have the exclusive right to sell noodles and pasta and noodle and pasta-related dishes, for on or off premises consumption at the Shopping Center; provided, however, other tenants in the Shopping Center shall have the right to sell noodles and pasta dishes if (i) the sale of noodle and pasta dishes by such tenant is incidental to another primary business of such tenant and (ii) such tenant's sale of noodle and pasta dishes from the Shopping Center does not exceed ten percent (10%) of such tenant's annual gross revenues derived from its business operations at the Shopping Center (the "Exclusive"). This Exclusive shall not apply to: (a) any sit-down full service restaurant that exceeds 5,000 square feet, or (b) Cafe Rio and Rumbi Island Grill. Landlord will refrain from leasing any space in the Shopping Center to any future tenant in violation of the Exclusive. Leases in the Shopping Center dated later in time to the date this lease is fully executed shall require those tenants to honor this Exclusive. If any lease in the Project dated later in time than this Lease does not require the tenant to honor Tenant's Exclusive, then Landlord shall be in default of this Lease. If, at any time during the Term of this Lease, Landlord leases space in the Shopping Center to a third party in violation of the Exclusive, Tenant shall have the right, in its sole discretion, to exercise any one or more of the following described remedies: (i) pay Landlord, in lieu of Rent payable by Tenant to Landlord hereunder, fifty percent (50%) of the Rent that would otherwise be due until such material breach is cured; (ii) terminate this Lease upon giving Landlord thirty (30) days prior written notice; or (iii) obtain injunctive relief. If other tenants in the Shopping Center violate this Exclusive, then Landlord shall upon Tenant's written request make demand on them to cease such violation. If the violating party fails to observe Tenant's Exclusive right within forty-five (45) days after notice from Landlord, Landlord shall assign Tenant its enforcement rights against such tenants and Tenant shall have the

right to seek an injunction or other remedy at law or in equity for such violation ("Tenant's Action") or to terminate the Lease. The remedies contained herein shall be in addition to all other rights and remedies provided by law or in equity or elsewhere herein, and shall be cumulative rather than exclusive. If Tenant elects to terminate this Lease, all rights and obligations of Landlord and Tenant hereunder shall terminate as of such time, except for those obligations which survive the termination of this Lease or have accrued up to the termination date. Notwithstanding anything herein to the contrary and except as specifically provided in this Section 5.3, Tenant and Landlord shall continue to perform any and all of their respective obligations under the Lease during the period of time the Exclusive of Tenant is being violated.

**PEERLESS BEAUTY SUPPLY**

Landlord agrees that, during the Term and any extensions, Tenant shall have the exclusive right to sell beauty and barber supplies within the Shopping Center.

**SWEET TOOTH FAIRY**

None.

**GAMESTOP**

1.01 (U). EXCLUSIVE: Provided Tenant is not in default of any material term of this Lease beyond applicable notice and grace periods and provided further that Tenant is using the Leased Premises for its Permitted Use (as defined in Section 1.01 V), Landlord represents and warrants that it shall not enter into an agreement (excluding tenants currently existing) with any other occupant (equal to and under 3,000 square feet) in the Shopping Center whereby such occupant shall be permitted to sell entertainment software, video software or video games.

If Landlord violates the foregoing exclusive, Tenant shall have the right to reduce Minimum Rent by 25% as of the effective date of said violation until such violation has been corrected.

If Tenant shall be entitled to reduce Minimum Rent as set forth above, for a period of six (6) months or more, then Tenant shall have the right to terminate this Lease.

DAVID'S BRIDAL

## 2.5 Use of Premises:

(a) The Premises shall be used (i) for the purpose of conducting therein the business of the retail sale and/or rental of bridal wear, women's and men's formal attire, clothing, prom and special occasion attire, and accessories related to all of the foregoing, and/or any other goods and services related to weddings, special events and parties, or (ii) subject to existing exclusive uses granted for tenants of the Center, for any other lawful purpose which Landlord may, from time to time, permit.

(b) During the Lease Term, Tenant shall have the exclusive right to sell and/or rent women's bridal wear and/or men's formal wear (collectively the "Exclusive Use") in the Center, including any additions or expansions thereto, owned, or controlled, by Landlord, or a related entity of Landlord (or in which Landlord, or a related entity of Landlord, has a twenty-five percent (25%), or greater, equity interest). Landlord and Tenant mutually acknowledge and agree that the exclusive right granted to Tenant was a material inducement to Tenant to enter into this Lease, and that absent such inducement, Tenant would not have agreed to certain of the terms of this Lease. Landlord covenants to enforce Tenant's exclusive rights as set forth herein. Therefore, neither Landlord, nor any related entity of Landlord, will use, lease (or permit the use, leasing or subleasing), or sell any space in or portion of the Shopping Center or any property contiguous to the Shopping Center owned or controlled now or at anytime hereafter by Landlord or any related entity of Landlord for the Exclusive Use identified herein. Should Tenant's exclusive right be violated by Landlord, in addition to its remedies available at law or in equity, Tenant shall have the option to: (i) terminate this Lease one (1) year after the violation of its exclusive right with thirty (30) days prior written notice, or (ii) reduce its payment of Monthly Minimum Rent, effective upon the date the exclusive right was first violated, to twenty-five percent (25%) of the then applicable amount referenced herein until such time said violation is cured; provided, however, that if Landlord has not permitted, suffered or acquiesced in the violation of Tenant's exclusive right, and has promptly commenced (including legal proceedings, if necessary) and diligently pursued the cure of such violation (including, but not limited to the termination of the lease of any such violating tenant or occupant), then Tenant shall not be permitted to reduce its payment of Monthly Minimum Rent.

See letter dated April 10, 2012 (Attached hereto) for further clarification of Exclusive Use.

## 2.6 Prohibited Uses:

Landlord as to the Shopping Center and Tenant as to the Premises, shall not permit the following uses: (i) any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation; (ii) any "second hand" store or "surplus" store; (iii) any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance); (iv) any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building); (v) any fire sale, bankruptcy sale, "going" out-of-business sale (unless pursuant to a court order), or auction house operation; (vi) any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located; (vii) any automobile, truck, boat, trailer or recreational vehicle sales, leasing, display or body and mechanical repair

operation, or dispensing of petroleum products; (viii) bowling alley; (ix) skating rink; (x) any movie theater, cinema or live performance theater; (xi) any residential use, including but not limited to, single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms; (xii) any veterinary hospital or animal raising or boarding facilities (except that this shall not prohibit pet shops); (xiii) any mortuary, funeral home or funeral parlor; (xiv) any establishment selling or exhibiting pornographic materials or drug-related paraphernalia, except that this shall not prohibit (a) videotape sale and rental stores which sell or rent primarily non-"X-rated" videotapes (that is, "G" to "R"-rated videotapes) but which also rent or sell "X-rated or non-rated videotapes" for off-premises viewing only, provided such X-rated or similar videotapes, and the place and procedure for selection thereof, precludes viewing or selection by minors and with no promotional, advertising or other depiction or description in respect to any "X-rated" or nonrated or similarly videotape displayed or utilized within or outside the store; or (b) book stores and other stores such as drug stores which sell primarily general audience books and other reading, listening, and/or other materials which are not perceived to be, or hold themselves out as "adult book" stores, but which incidentally sell books, magazines and other periodicals, records, CD's and tapes which may contain pornographic materials so long as such sale is not from any special segregated section in the store; (xv) flea market; (xvi) automobile or truck washing facility; (xvii) night club, disco or other dance hall; (xviii) amusement, game rooms, video arcades or similar establishments, including without limitation the use of pinball machines, electronic games and similar apparatus, except as an ancillary use; (xix) pool or billiard hall; (xx) any gambling facility or operation, including but not limited to, off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/blackjack/keno machines or similar devices; bingo hall or card parlor (notwithstanding the foregoing, the prohibition shall not apply to governmental sponsored gambling activities or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant); (xxi) amusement park, carnival or festival; (xxii) auditorium, meeting hall, or banquet facility; (xxiii) private or commercial massage parlor; (xxiv) adult entertainment center or social club; (xxv) church; and /or (xxvi) shooting gallery.

#### ROD WORKS

2.4 Prohibited Uses. Tenant acknowledges that other tenants of the Shopping Center have been granted exclusive rights for their respective use of their premises in the Shopping Center and Tenant covenants that it shall be bound by each of such exclusive uses until the earlier to occur of (1) date on which the lease containing the exclusive use expires, or (2) the tenant having the exclusive use agrees to waive the exclusive use. The existing exclusive uses are generally described as follows and are more particularly set forth in the tenants' leases to whom the exclusive use has been granted by Landlord: the retail sale and/or rental of bridal wear, men's and women's formal attire and clothing; prom and special occasion attire; accessories relating to all of the foregoing; and any other goods or services relating to weddings, special events, and parties; the sale of pet food, pet supplies, live animals, pet grooming, pet training, veterinary services, and related goods and services; mobile radio and cellular phones, pagers, personal communicators, cellular and wireless voice, data and internet services; and related software and accessories; the sale of noodles and pasta, and noodle and pasta dishes for on or off premises consumption; a restaurant which provides a primary cuisine competitive with the mexican and tex-mex cuisine of Cafe Rio; a pizza restaurant as the primary business; and a retail footwear store.

**DOLLAR CUTS**

Prohibited Uses. Tenant acknowledges that other tenants of the Shopping Center have been granted exclusive rights for their respective use of their premises in the Shopping Center and Tenant covenants that it shall be bound by each of such exclusive uses until the earlier to occur of (1) the date on which the lease containing the exclusive use expires, or (2) the tenant having the exclusive use agrees to waive the exclusive use. The existing exclusive uses are generally described as follows and are more particularly set forth in the tenants' leases to whom the exclusive use has been granted by Landlord: the retail sale and/or rental of bridal wear, men's and women's formal attire and clothing; prom and special occasion attire; accessories relating to all of the foregoing; and any other goods or services relating to weddings, special events, and parties; the sale of pet food, pet supplies, live animals, pet grooming, pet training, veterinary services, and related goods and services; mobile radio and cellular phones, pagers, personal communicators, cellular and wireless voice, data and internet services; and related software and accessories; the sale of noodles and pasta, and noodle and pasta dishes for on or off premises consumption; a restaurant which provides a primary cuisine competitive with the Mexican and Tex-Mex cuisine of Cafe Rio; a pizza restaurant as the primary business; and a retail footwear store.

In addition, Landlord shall not lease or permit the use of any part of the Shopping Center as an adult video store, adult book store, and/or adult entertainment, of any type (defined for purposes of this Lease as offering video materials, books or other sexually explicit merchandise or services for sale or rent, which are directed to or restricted to adult customers, due to sexually explicit subject matter) or for any other reason making it inappropriate for general use.

**EXCLUSIVE USE.** Landlord shall not during the Primary or Renewal Term of this Lease, lease space in the building of which the Premises are part of another tenant whose primary business is providing haircuts or selling hair care products.