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P.O. Box 5756  
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DAVIS COUNTY, UTAH

**AMENDED AND RESTATED  
DECLARATION OF EASEMENTS AND CONDITIONS**

**BETWEEN**

**WINCO FOODS, LLC**  
a Delaware limited liability company,

**AND**

**FORT LANE VILLAGE, LC**  
a Utah limited liability company

**AMENDED AND RESTATED**

**DECLARATION OF EASEMENTS AND CONDITIONS**

THIS AMENDED AND RESTATED DECLARATION OF EASEMENTS AND CONDITIONS (“DEC”) is made as of the 30 day of AUGUST, 2016, by and between WINCO FOODS, LLC, a Delaware limited liability company (“WinCo”) and FORT LANE VILLAGE, LC, a Utah limited liability company (“Fort Lane”).

**RECITALS**

This DEC is made with reference to the following facts and objectives:

A. WinCo is, or will be as of the date of the recording of the Fort Lane Village Amended subdivision plat, the owner of certain parcels of land in the City of Layton, County of Davis, State of Utah more particularly described on **Exhibit A**, attached hereto (collectively, the “WinCo Parcel”).

B. Fort Lane is, or will be as of the date of the recording of the Fort Lane Village Amended subdivision plat, the owner of certain parcels of land in the City of Layton, County of Davis, State of Utah, more particularly described on **Exhibit A-1**, attached hereto (collectively, the “Fort Lane Parcel”), and together with the WinCo Parcel, the “Shopping Center”).

C. The Shopping Center will consist of eight (8) contiguous Parcels identified on the site plan attached hereto as **Exhibit X** (the “Site Plan”). The WinCo Parcel will consist of the parcels identified on the Site Plan as “Parcel 1” and “Parcel 9”; the Fort Lane Parcel will consist of the parcels identified on the Site Plan as “Parcel 2”, “Parcel 4”, “Parcel 5”, “Parcel 6”, “Parcel 8” and “Tract A”.

D. Fort Lane is party to that certain Cross Access Easement Agreement recorded as Instrument No. 2511470 in the Official Records of Davis County, Utah on February 12, 2010 (the “Terraventure Access Easement”), pursuant to which Terraventure Development LTD. (“Terraventure”) granted Fort Lane certain non-exclusive access over and across the Terraventure property, and Fort Lane granted Terraventure certain non-exclusive access over and across the Fort Lane property; and Fort Lane and Terraventure are party to that certain Storm Drain and Sanitary Sewer Easement Agreement recorded as Instrument No. 2511471 in the Official Records of Davis County, Utah on February 12, 2010 (the “Terraventure Storm Drain and Sewer Easement”), pursuant to which Terraventure granted Fort Lane certain non-exclusive access under, over and across the Terraventure property for the construction, installation, location, operation, maintenance and repair of sewer facilities, and Fort Lane granted Terraventure certain non-exclusive access over and across the Fort Lane property for the construction, installation, location, operation, maintenance and repair of storm drain facilities. The Terraventure Access Easement and the Terraventure Storm Drain and Sewer Easement bind and benefit the Shopping Center.

E. WinCo and Fort Lane intend for the Shopping Center to be developed as an integrated retail shopping complex, and not as a planned development. In order to effectuate the common use and operation of certain portions of the Shopping Center, WinCo and Fort Lane

hereby grant certain reciprocal easements into, over, and across certain portions of the Shopping Center and impose certain conditions and restrictions thereon.

F. *This DEC amends, restates, supersedes and replaces in its entirety that certain Declaration of Easements and Conditions between WinCo Foods, LLC and Fort Lane Village, LC dated as of July 9, 2010 and recorded in Book 5063 Page 621 as Instrument No. 2539087 in the Official Records of Davis County, Utah on July 9, 2010. From and after the date of this DEC, the original Declaration of Easements and Conditions shall be deemed to be canceled and of no further force or effect.*

#### DECLARATION

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated into this DEC, the premises and the easements, conditions, and restrictions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WinCo and Fort Lane hereby make this DEC:

#### 1. DEFINITIONS.

1.1. "Adjacent Party" shall mean the Party owning a parcel adjacent to another Party.

1.2. "Administration Fee" shall mean the fee that may be charged by the Operator in lieu of the Operator's administrative and overhead costs in accordance with Section 4.3(e) below.

1.3. "Approving Parties" shall mean each of WinCo, or its successor-in-interest, and Fort Lane for so long as Fort Lane owns more than twenty-five percent (25%) of the Fort Lane Parcel (each an "Approving Party" and collectively, the "Approving Parties"), which Parties shall be designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this DEC. The Approving Parties shall each, unless otherwise provided herein, have sole, absolute and unreviewable discretion to make the decisions and/or give the approvals expressly designated in this DEC to be made and/or given by the Approving Parties.

1.4. "Architectural Feature" shall mean any gable, tower, pilaster or other design element appurtenant to any Building on a Parcel.

1.5. "Budget" shall mean the written document setting forth the estimated cost of maintaining the Common Maintenance Area of the Shopping Center, including the Center Signs, and estimated Administration Fee prepared by the Operator and approved by the Approving Parties.

1.6. "Building Area" shall mean the limited areas of the Shopping Center within which Buildings may be constructed, placed, or located. Building Areas are designated on the Site Plan by the building limit lines shown thereon. Any and all Buildings on a Parcel must be constructed within the designated Building Area for such Parcel. During any period of rebuilding, repairing, replacement, or reconstruction of a Building, the Building Area of that

Building shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement, or reconstruction, the Party upon whose Parcel such Building is located shall cause a new determination of Floor Area for such Building to be made in accordance with this Section, and such determination shall be sent to the Approving Parties and to any Party requesting the same.

1.7. “Building Code” shall mean all applicable federal, state, and local building codes.

1.8. “Buildings or Building” shall mean all building structures and any appurtenant canopies, supports, loading docks, truck ramps, and other outward extensions, exclusive of sidewalks and Center Signs.

1.9. “Business Office” shall mean any business office, including but not limited to a medical or dental office, but shall exclude Financial Retail Office as defined below.

1.10. “Cart Containment System” shall mean electronic systems or devices installed for the purpose of creating an invisible barrier preventing the removal of shopping carts beyond a perimeter-boundary signal, and shall include but not be limited to, underground cabling, painted lines, striping or other pavement markings identifying containment area boundaries, and freestanding signs used to alert customers that a Cart Containment System is in use.

1.11. “Center Signs” shall mean the signs used to identify Occupants of the Shopping Center, as further defined in Section 3.2(e) below, and located at the approximate locations shown on the Site Plan.

1.12. “Common Area” shall mean all areas within the boundaries of the Shopping Center, exclusive of Buildings, drive-thru service lanes, outdoor dining and patio areas, and other similar areas and/or improvements which are intended for the exclusive benefit of any Occupant.

1.13. “Common Maintenance Areas” shall mean the Center Signs, Common Utility Lines (as defined in Section 1.42 below), the common drive aisles, Tract A surface water facilities, any storm water retention area and common landscaping (including irrigation), in the approximate areas shown on the Site Plan.

1.14. “Common Maintenance Areas Costs” shall mean all sums expended in connection with the general maintenance and repair of the Common Maintenance Areas and the replacement of any improvements in the Common Maintenance Areas, in accordance with Section 4.3 below.

1.15. “Communications Equipment” shall mean such things as satellite and microwave dishes, antennas, and laser head, together with associated equipment and cable.

1.16. “Constant Dollars” shall mean the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth (6<sup>th</sup>) calendar year following the date of this DEC, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The

“Base Index Number” shall be the level of the Index for the month during which the DEC is dated. The “Current Index Number” shall be the level of the Index for the month of October of the year preceding the adjustment year. The “Index” shall be the Consumer Price Index, All Urban Consumers, for the West Region, published by the United States Department of Commerce (base year 1982 84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.17. “Constructing Party” shall mean a Party constructing, reconstructing, altering, repairing or maintaining improvements.

1.18. “Defaulting Party” shall mean the Party failing to perform under the DEC.

1.19. “Emergency Situation” shall mean a situation which threatens access to a Parcel or threatens an immediate substantial loss or damage to property and/or any personal injury or death to Persons.

1.20. “Environmental Laws” means all present and future federal, state or local statute, ordinance, regulation, rule, guideline, decision, or order governing the generation, storage, release, discharge, transportation, removal, remediation, reduction, or disposal of hazardous or toxic materials such as, without limitation, the Resource Conservation and Recovery Act (RCRA, 42 U.S.C. § 6901, et seq.), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, 42 U.S.C. § 9601, et seq.) as amended, the Toxic Substance Control Act (TSCA, 15 U.S.C. § 2601, et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRTKA, 42 U.S.C. § 11001, et seq.), the Clean Water Act (33 U.S.C. § 1251, et seq.), the Clean Air Act (42 U.S.C. § 7401, et seq.), the Pollution Prevention Act of 1990 (42 U.S.C. § 13101, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), or any similar laws of the city, county, and/or state in which the Shopping Center is located regulating environmental pollutants or underground storage tanks, and any and all amendments, supplements, modifications, and replacements thereof.

1.21. “Fast Food Restaurant” shall mean any quick serve Restaurant that prepares and dispenses food orders in a limited period of time. Fast Food Restaurants do not include any Restaurant or food service establishment which offers as the primary method of service for orders to be taken and served by a waitperson at the customer’s table, or whose primary method of service is for customers to serve themselves at a buffet line. Without limiting the foregoing and for illustrative purposes only, Fast Food Restaurants include the following: Burger King, Wendy’s, Carl’s Jr., Taco Bell, Taco Time, Hardy’s, McDonald’s, Jack-in-the-Box, Arby’s, Subway, and Blimpie.

1.22. “Financial Retail Office” shall mean any office which provides financial services directly to consumers such as banks, credit unions, and stock brokerages.

1.23. "Floor Area" shall mean the actual number of square feet of space contained on each floor within a Building, including any mezzanine or basement space, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following areas shall not be included in such calculations: space attributable to any multi-deck, platform, or structural levels used for the storage of merchandise which is located vertically above ground floor; truck ramps, loading and delivery areas (unless covered by a roof, in which case it shall be included in the calculation of Floor Area), and trash-compactor facilities located outside the Building, though attached to it. Within thirty (30) days of a request, a Party shall certify to the requesting Party the amount of Floor Area applicable to each Building on its Parcel. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party shall furnish a copy of the survey to the other Parties for informational purposes only. During any period of rebuilding, repairing, replacement, or reconstruction of a Building, the Floor Area of that Building shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement, or reconstruction, the Party upon whose Parcel such Building is located, shall cause a new determination of Floor Area for such Building to be made in the manner described above, and such determination shall be sent to any Party requesting the same.

1.24. "Grant of Exclusivity" shall mean the right to exclusively operate a type of business within the Shopping Center in accordance with Section 5.1(i) below.

1.25. "Hazardous Materials" means wastes, substances, mixtures, pollutants, contaminants, or other materials which are defined or classified by any Environmental Law as hazardous, toxic, or radioactive, including, whether or not so defined, petroleum and natural gas products, polychlorinated biphenyls, radioactive materials, urea formaldehyde foam insulation, and asbestos-containing materials.

1.26. "Initial Work" shall mean site improvement work to be performed on all or a portion of the WinCo Parcel and the Common Maintenance Area of the Shopping Center.

1.27. "Invoice" shall mean the quarterly billing statement issued by Operator, or Fort Lane pursuant to Section 2.2(d)(ii) below, for actual Common Maintenance Areas costs or Tract A Surface Water Facilities costs, as applicable, which shall include Operator's, or Fort Lane's certified statement and supporting documentation in accordance with Section 4.3(f) below.

1.28. "Maintenance Standard" shall have the meaning set forth in Section 4.2 below.

1.29. "No-Build Easement" shall have the meaning set forth in Section 3.5 below.

1.30. "Non-Defaulting Party" shall mean the Party who has not failed to perform under the DEC.

1.31. "Occupant" shall mean any Person from time to time entitled to the use and occupancy of any portion of a Building in the Shopping Center under an ownership right or any lease, sublease, license, concession, or other similar agreement.

1.32. "Operator" shall mean the Person designated by the Approving Parties from time to time to maintain and operate the Common Maintenance Areas within the Shopping Center in accordance with the Maintenance Standard. The Person designated as Operator shall serve in that capacity until it resigns or is removed for failure to maintain and operate the Common Maintenance Areas within the Shopping Center in accordance with Section 4.3(j) below. Upon WinCo's opening of its business on Parcel 1, WinCo shall become the initial Operator for the Shopping Center.

1.33. "Outdoor Sales Area" shall mean the limited areas of the Shopping Center within which goods may be sold outside a Building as set forth in Section 5.1(e) below.

1.34. "Parcel" shall mean a legally subdivided portion of the Shopping Center owned by a Party.

1.35. "Party" shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors and assigns who become owners of any portion of the Shopping Center. "Parties" shall mean, collectively, each Party. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Shopping Center owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party's liability for unaccrued obligations shall terminate. A Party transferring all or any portion of its interest in the Shopping Center shall give notice to the Approving Parties and, if one is appointed, the Operator, of such transfer and shall include the name and address of the new Party and a copy of the legal description of the portion of the Shopping Center transferred. Notwithstanding the foregoing, (i) WinCo shall not be required to provide such notice of transfer in the event that it transfers its interest in the WinCo Parcel to a parent, subsidiary or affiliate of WinCo, and (ii) Fort Lane shall not be required to provide such notice of transfer in the event that it transfers its interest in all or any portion of the Fort Lane Parcel to a parent, subsidiary or affiliate of Fort Lane.

If a Parcel is owned by more than one Person, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Parcel shall designate one (1) of their number to represent all owners of the Parcel and such designated Person shall be deemed the Party for such Parcel. Until the notice of transfer is given, the transferring Party shall be (for the purpose of this DEC only) the transferee's agent. Nothing contained herein to the contrary shall affect the existence, priority, validity, or enforceability of any lien permitted hereunder which is placed upon the transferred portion of the Shopping Center prior to receipt of the notice.

1.36. "Person" shall mean any individual, partnership, firm, association, corporation, trust, or any other form of business or governmental entity.

1.37. "Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors (subject to Section 3.1(d) below), customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the development, use, and occupancy of the Shopping Center. Among others, Persons engaging in the following activities on the Common Area will not be considered to be Permittees:

- (a) Exhibiting any placard, sign, or notice;
- (b) Distributing any circular, handbill, placard, or booklet;
- (c) Soliciting memberships or contributions;
- (d) Parading, picketing, or demonstrating; or
- (e) Failing to follow regulations relating to the use of the Shopping Center.

1.38. "Plans" shall mean detailed plans specifying planned construction of each Building and any additions, remodeling, reconstruction, or other alteration which changes the exterior of any Building on Parcel 2.

1.39. "Remaining Work" shall mean all site improvement work (specifically excluding Buildings) for or on the balance of the Shopping Center not included in the Initial Work.

1.40. "Restaurant" shall mean any operation or business which requires a governmental permit, license, and/or authorization to prepare and/or serve food for either on-site or off-site consumption, and which offers as the primary method of service for orders to be taken and serviced by a waitperson at the customer's table and/or for customers to service themselves at a buffet line. As used herein, the term "Restaurant" shall not include a Fast Food Restaurant.

1.41. "Tract A Surface Water Facilities" shall mean any surface water collection facilities actually constructed on Tract A and utilized by the Shopping Center for the drainage and storage of surface water.

1.42. "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water. "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to the Parcels and which are not Separate Utility Lines. Any surface water collection, retention, and distribution facilities within the Shopping Center (including the Tract A Surface Water Facilities) shall be deemed a Common Utility Line. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service solely to a single Parcel. For the purpose of this DEC, the portion of a Utility Line extending between a Common Utility Line and a Building shall be considered a Separate Utility Line.

## 2. EASEMENTS.

2.1. Ingress, Egress and Parking. Each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive, perpetual easement for access and the ingress, egress and parking of vehicles, including without limitation, ingress and egress for delivery trucks servicing the store on the WinCo Parcel, over and across the common drive aisles and the parking, drive aisle and driveway areas of the Common Area on the grantor's Parcel, as the same may from time to time be constructed and maintained for such use, and for the ingress, egress and accommodation of pedestrians over and across the parking, drive aisle, driveways, and sidewalk areas of the



Common Area on the Grantor's Parcel, as the same may from time to time be constructed and maintained for such use. The easement areas for the common drive aisles shall be located as shown on the Site Plan. The drive aisles shown on the Site Plan within Parcels 4 and 5 (connecting between Gentile Street and the extension of Wasatch Drive) are preliminary and subject to change as determined by the owner(s) of such Parcels, subject to the following: the locations of the northern (at Gentile Street) and southern (at Wasatch Drive) termini of such drive aisles shall, prior to initial construction, be approved by the Approving Parties. Such easement rights shall be subject to the following reservations, as well as other provisions contained in this DEC:

(a) Each Party reserves the right to close off any portion of its Parcel for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of its Parcel, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing with each other Party so that no unreasonable interference with the passage of pedestrians or vehicles shall occur;

(b) Each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using the Common Area on its Parcel; and

(c) Each Party reserves the right to temporarily erect or place barriers in and around areas on its Parcel which are being constructed and/or repaired in order to ensure either safety of Persons or protection of property.

(d) Each Party reserves the right, at its sole cost and expense to install, operate and maintain a Cart Containment System on its Parcel for the purpose of preventing the removal of shopping carts from its Parcel; provided that each Party who elects to install, operate, maintain, alter, remove or replace a Cart Containment System on its Parcel, shall defend, indemnify and hold harmless the other Parties from all loss, cost, liability, expense and damages resulting (or claimed to have resulted) from or in connection with the Cart Containment System.

## 2.2. Utilities.

(a) Each Party hereby grants and conveys to each other Party non-exclusive, perpetual easements in, to, over, under, along, and across those portions of the Common Area located on the grantor's Parcel necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Parcel, including but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone, and communication lines. All Utility Lines shall 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 governmental agencies having jurisdiction;
- (iv) as may be required by the provider of such service;

- (v) fire hydrants;
- (vi) surface water collection; and
- (vii) traffic signal controllers.

After the construction of the Initial Work, and improvements on the WinCo Parcel, if a Party desires to construct new utility lines for which an additional easement is required, then the grantee shall first provide the grantor with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.4(b) hereof. Except as otherwise agreed to by the grantor and the grantee, any Party installing Separate Utility Lines pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith (including general clean up and proper surface and/or subsurface restoration) to be completed as quickly as possible, in a manner so as to minimize interference with the use of the Common Area and in a manner so as to not unreasonably interfere with the use, occupancy, or enjoyment of the grantor's Parcel. If the Approving Parties elect to install Common Utility Lines, all repair, maintenance, replacement, and other work thereon shall be performed by the utility company or the Operator, if an Operator is designated, and paid for as provided in Section 4.3 below.

(b) The initial location of any Utility Line shall be subject to the prior written approval of the Party whose Common Area is to be burdened thereby, such approval not to be unreasonably withheld or delayed, and the approval of the Approving Parties. The easement area for such Utility Line shall be the greater of the width reasonably necessary to satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to a Party. Upon request, the grantee shall provide to the grantor a copy of an as-built survey showing the location of such Utility Line. The grantor shall have the right at any time to relocate a Utility Line upon thirty (30) days prior written notice, provided that such relocation:

- (i) shall have been approved by the Approving Parties;
- (ii) shall not interfere with or diminish the utility service to the grantee during the grantee's business hours, and shall not unreasonably restrict any vehicular movement;
- (iii) shall not reduce or impair the usefulness or function of such Utility Line;
- (iv) shall be performed without cost or expense to grantee;
- (v) shall be completed using materials and design standards which equal or exceed those originally used; and
- (vi) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereover.

Documentation of the relocated easement area, including the furnishing to the grantee of an "as-built" survey, shall be provided at the grantor's expense and shall be accomplished as soon as possible.

(c) Each Party hereby grants and conveys to each Party owning an adjacent Parcel the perpetual right and easement to discharge surface storm drainage and/or runoff from the grantee's Parcel over, upon, and across the Common Area of the grantor's Parcel, upon the following terms and conditions:

(i) The Common Area grades and the surface water drainage/retention system for the Shopping Center shall be initially constructed in strict conformance with the detailed plans approved by the Approving Parties; and

(ii) No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Parcel if such alteration would materially increase the flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area, or materially decreasing the purity or quality of surface water flowing onto an adjacent Parcel, without the written consent of the owner of the applicable Parcel, which consent shall not be unreasonably withheld or delayed.

(d) Fort Lane hereby grants and conveys to each Party the perpetual right and easement to discharge surface water from grantee's Parcel into Tract A and the Tract A Surface Water Facilities upon the following terms and conditions:

(i) WinCo shall construct the Tract A Surface Water Facilities and the Operator shall maintain Tract A and the Tract A Surface Water Facilities in strict conformance with all federal, state and local laws, rules and regulations;

(ii) Upon the completion of the construction of the Tract A Surface Water Facilities, each Party shall pay to Operator the actual costs of operating and maintaining the Tract A Surface Water Facilities as part of its Common Maintenance Areas Costs in accordance with Section 4.3 below.

2.3. Accommodation of Encroachments. In order to accommodate any Building improvements which may inadvertently be constructed beyond a Parcel's boundary line, each Party grants to each other Party an easement in, to, over, and across that portion of the grantor's Parcel adjacent to such common boundary line for the maintenance and replacement of such Building improvements to a maximum lateral distance of six inches (6"); provided, however that the foregoing easement shall not diminish or waive any right of a Party to recover damages resulting from the Constructing Party's failure to construct its Building within its Parcel. This easement shall continue in effect for the term of this DEC and thereafter for so long as the Building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such Building if the same shall be destroyed, damaged, or demolished), and shall include the reasonable right of access necessary to exercise and enjoy such grant upon terms and with the limitations described in Section 3.1(d) below.

2.4. Access to Center Signs. The Party upon whose Parcel a Center Sign is located hereby grants to each Party that shall be responsible for the construction and maintenance of such Center Sign, and to each Party that has the right to use a sign panel or sign panels on the Center Sign, an easement in, to, over, under, and across that portion of such Party's Parcel as is reasonably necessary to construct, install and maintain such Center Sign, including all necessary utilities and related improvements, and obtain access to the Center Sign and exercise such Party's or Parties' rights with respect to its sign panel(s) on the Center Sign as set forth in this DEC, provided that, at the time of exercising its rights under this Section 2.4, such Party's policies of insurance required under Section 5.4 below shall be in full force and effect. The Party exercising its rights hereunder shall defend, protect, indemnify, and hold harmless the Party upon whose Parcel a Center Sign is located 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 property or any improvements on the Parcel on which a Center Signs is located, arising out of a Party's exercise of its rights hereunder or entry on to such Parcel, or that of its agents, servants, contractors, employees, or representatives, except to the extent such claim is caused by the negligence or willful act or omission of such indemnified Party, or its licensees, agents, servants, contractors, employees, or representatives.

2.5. Easements Perpetual. Except as expressly set forth herein, all of the easements set forth in this Section 2 shall be perpetual and non-exclusive in nature, and shall continue in full force and effect unless and until: (a) the Parties hereto (or their respective successors-in-interest) agree in writing to terminate such easement(s), or (b) such easements are terminated by operation of law.

2.6. Restriction. No Party other than the Approving Parties shall grant any easement or license for the purposes set forth in this Section 2 for the benefit of any property not within the Shopping Center or for the benefit of any Person in connection with any activity not related to the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Parcel to governmental or quasi-governmental authorities or to public utilities.

### 3. CONSTRUCTION.

#### 3.1. General Requirements.

(a) Each Party agrees that all construction activities performed by it within the Shopping Center shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof. Each Party further agrees that its construction activities shall not:

(i) Cause any unreasonable increase in the cost of constructing improvements upon another Party's Parcel;

(ii) Unreasonably interfere with construction work being performed on any other part of the Shopping Center;

(iii) Unreasonably interfere with the use, occupancy, or enjoyment of any part of the remainder of the Shopping Center by any other Party or its Permittees; or

(iv) Cause any Building located on another Parcel to be in violation of any law, rule, regulation, order, or ordinance authorized by any city, county, state, federal government, or any department or agency thereof.

(b) Each Party agrees to defend, indemnify, and hold harmless each other Party from all claims, losses, liabilities, actions, proceedings, and costs (including reasonable attorneys' fees and costs of suit), including liens, and any accident, injury, loss, or damage 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 such indemnifying Party, unless covered by the release set forth in Section 5.4(d) below; provided, however, that the foregoing indemnity obligations shall not be applicable to events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them.

(c) In connection with any construction, reconstruction, alteration, repair, or maintenance on its Parcel, each Party reserves the right to create a temporary staging and/or storage area in the Common Area on its Parcel or in the Building Area on its Parcel at a location which will not unreasonably interfere with access between such Parcel and the other areas of the Shopping Center. Prior to the commencement of any work which requires the establishment of a staging and/or storage area on Parcel 2, the Constructing Party shall give at least thirty (30) days prior notice to the Approving Parties, for their approval, of the proposed location. No other Party's staging area shall, without the prior written consent of the owner of the WinCo Parcel, which may be granted or withheld in its sole, absolute and unreviewable discretion, be located: (i) on the WinCo Parcel, (ii) within sixty feet (60') of any Building located on the WinCo Parcel, (iii) within any common drive aisles within the Shopping Center or the access points to the Shopping Center; or (iv) in the area adjacent to or behind the area shown as Parcel 2, as depicted on the Site Plan. If the Approving Parties do not approve the proposed location of the staging and/or storage area, the Constructing Party shall modify the proposed location to satisfy the reasonable requirements of the Approving Parties. If substantial work is to be performed, the Constructing Party shall, at the request of the Approving Parties, fence off the staging and storage area. Notwithstanding anything to the contrary in this Section, no Party shall, without the prior written consent of the owner of the WinCo Parcel, which may be granted or withheld in its sole, absolute and unreviewable discretion, conduct any staging or construction activities on or with respect to Parcel 2 during the period commencing five (5) days prior to the grand opening of the business on the WinCo Parcel and ending thirty (30) days following the date of such grand opening, and such areas shall be maintained in a clean and sightly condition at all times during such grand opening period. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the Constructing Party's Parcel outside of any common drive aisles or access points. Upon completion of such work, the Constructing Party shall restore the affected Common Area and access points to the Shopping Center to a condition equal to or better than that existing prior to commencement of such work.

(d) Each Party hereby grants and conveys to each Constructing Party and to its respective contractors, materialmen, and laborers a temporary license for access and passage

over and across the Common Area of the grantor's Parcel as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Parcel; provided, however, that (i) such license shall be in effect only during periods when actual construction and/or maintenance is being performed; and (ii) provided further that the use of such license shall not unreasonably interfere with the use, operation, and enjoyment of the Common Area by others. No Party shall unreasonably interfere with access over and across the access points and common drive aisles located on or connecting the WinCo Parcel to Gentile Street, Fort Lane or any other access point to the Shopping Center without the prior written consent of the owner of the WinCo Parcel, which may be granted or withheld in its sole, absolute and unreviewable discretion. Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.4(b) below. Any Party availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area, and restore and/or repair the affected portion of the Common Area and access points to the Shopping Center to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractor, laborers, suppliers, and/or others connected with construction activities, each Party shall have the right to prohibit the contractor, laborers, suppliers, and/or others working for another Party from using the Common Area on its Parcel.

(e) The owner of the Fort Lane Parcel shall provide or cause to be provided to the owner of the WinCo Parcel site plans and building elevations, with respect to any proposed building construction or expansion, or alterations to the existing site plan, or sign elevations, with respect to new sign(s) to be constructed, a minimum of sixty (60) days prior to the construction of any building(s) or sign(s) within the Fort Lane Parcel. The foregoing requirement is solely for informational purposes, and the requirements set forth in this subsection shall not be deemed to grant the owner of the WinCo Parcel any approval rights with respect to same.

3.2. Common Area. The Parties have agreed that the Common Maintenance Area of the Shopping Center shall be initially constructed as shown on the Site Plan, as finally approved by the City of Layton. No fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel between Parcels shall be erected or permitted within or across the Common Area, exclusive of permitted staging and/or storage areas and the Tract A Surface Water Facilities. Notwithstanding anything to the contrary in this Section 3.2, no Party shall be prohibited from installing a Cart Containment System on its Parcel. The following minimum general design standards shall be complied with throughout the term of this DEC:

(a) Unless otherwise approved by the Approving Parties, the lighting system shall be designed to produce a minimum maintained lighting intensity measured at grade at all points in the Common Area of at least 2.0 foot candles, the drive areas immediately in front of the entrance to any Building shall have not less than a minimum maintained lighting intensity measured at grade of 4.0 foot candles and a security lighting system designed to produce a minimum maintained lighting intensity of at least 2.0 foot candles or equivalent (based on

lighting system used); provided, however, that if the applicable public agency does not allow the lighting intensity set forth herein, then compliance with the applicable public agency's maximum lighting intensity allowance shall satisfy the obligation under this Section 3.2(a). The type and design of the Common Maintenance Area light standards shall be subject to the prior written approval of the Approving Parties. The owner of the WinCo Parcel shall have the right, at its sole cost and expense, to separately meter, control, operate and maintain the entryway and common drive aisle lights as may be located on other Parcels within the area depicted on the Lighting Control Plan attached hereto as **Exhibit X-1** ("Lighting Control Plan").

(b) The slope in the parking area shall not exceed a maximum of three percent (3%) nor be less than a minimum of one percent (1%), unless otherwise approved by the Approving Parties.

(c) All sidewalks and pedestrian aisles shall be concrete or other approved materials. The automobile parking areas, drives, and access roads shall be designed in conformity with the recommendations of a registered soils engineer and shall require the installation of a suitable base and shall be surfaced with an asphaltic concrete or concrete wearing material.

(d) Utility Lines that are placed underground shall be at depths designated by qualified consultants. If surface water retention and/or detention areas are located outside of the general parking lots, such areas shall be fenced or otherwise secured to impede public access thereto, except as otherwise agreed upon by the Approving Parties.

(e) Unless otherwise approved by the Approving Parties, the freestanding signs at the Shopping Center shall be utilized as follows:

(i) The one (1) freeway pylon sign and two (2) pylon signs shall be located at the approximate locations shown on the Site Plan (collectively, the "Center Signs"). The Center Signs may only be used to identify the Occupants of the Shopping Center, provided that the owner of the WinCo Parcel shall be entitled to the top one-half (1/2) of signage area on Center Signs, and no more than four (4) Occupants of the Fort Lane Parcel, as determined by Fort Lane in its sole discretion, shall be entitled to use the bottom one-half (1/2) of the signage area on the Center Signs.

(ii) The design and construction of the Center Signs (excluding the individual panel inserts) shall be subject to the prior written approval of the Approving Parties, which approval shall not be unreasonably withheld, conditioned, or delayed. Each of the individual sign panels on such Center Sign shall be maintained by the individual sign users as set forth in Section 4.2(a) below and subject to the requirements of Section 2.4 above.

(iii) The owners of the other Parcels may erect monument signs on their Parcels at locations determined in their sole discretion, and with design and construction which is architecturally and aesthetically compatible with the Center Signs. In no event shall any such monument signs be included in the definition of the "Center Signs" set forth in Section 3.2(e)(i) above. Each such monument sign (i) shall be no

more than ten feet (10') in height above ground level, (ii) may not materially block or impede visibility to the Center Signs, and (iii) shall have a total sign panel area of no more than seventy-five (75) square feet.

(iv) The Center Signs shall be fully illuminated from dusk until dawn, seven (7) days a week.

(v) The owner of the WinCo Parcel shall have the right, at its sole cost and expense, to install, meter and maintain an electronic or digital message display on the signage area allocated to it on the Center Signs and on any monument signs located on the WinCo Parcel.

(f) The parking area on each separate Parcel shall contain sufficient ground level parking spaces in order to comply with the following minimum requirements:

(i) The number of parking spaces for each Parcel shall conform to the following parking ratios:

(1) General retail uses: 4:1,000 s.f. of Floor Area

(2) Restaurant/Fast Food Restaurant uses: 8:1,000 s.f. of Floor Area

(3) Office uses: 4:1,000 s.f. of Floor Area

(ii) All governmental rules, regulations, and/or ordinances relating to parking requirements;

(iii) If an Occupant's use contains a drive-up unit (such as remote banking teller or food ordering/dispensing facility), then, there shall also be created space for stacking not less than five (5) automobiles for each drive-up unit;

(iv) In the event of a condemnation of part of a Parcel or sale or transfer in lieu thereof or in the event of a casualty, which condemnation or casualty reduces the number of usable parking spaces below that which is required herein, the Party whose Parcel is so affected shall use commercially reasonable efforts (including using proceeds from the condemnation award or settlement or insurance) to restore and/or substitute ground level parking spaces within the Common Area on its Parcel in order to comply with the parking requirements set forth in this DEC. If, upon completion of restoration and/or substitution compliance with this Section 3.2(f)(iv) is not possible, such Party shall not be deemed in default hereunder, but such Party shall not be permitted to expand the amount of Floor Area located upon its Parcel unless authorized to do so by the Approving Parties; and

(v) After the initial construction of improvements on a Parcel, each Party may upon twenty (20) days prior written notice to the Approving Parties and any Adjacent Party temporarily reduce the amount of parking available on its Parcel in order to construct, repair, or reconstruct any improvements on its Parcel, so long as such reduction does not interfere with the use of any other Parcel, such Party diligently



proceeds with completion of such work and the Party's Parcel complies with the parking requirements hereunder upon the completion of such construction, repair, or restoration.

(g) Each Party shall have the right to make changes to the Common Area on its Parcel without the approval of the Approving Parties (excluding Parcel 2, for which changes to the Common Area shall require the approval of the Approving Parties), provided that:

(i) The accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered;

(ii) There shall be maintained at all times within such Common Area, a sufficient number of vehicular parking spaces to meet the parking requirements set forth in Section 3.2(f) above;

(iii) No governmental rule, ordinance, or regulation shall be violated as a result of such action, and such action shall not result in any other Party being in violation of any governmental rule, ordinance, or regulation;

(iv) No change shall be made in the Common Maintenance Areas or to the layout or site design of Parcel 2 without the approval of the Approving Parties, which approval shall not be unreasonably withheld, conditioned, or delayed; and

(v) Upon completion of such work, the Constructing Party shall restore the affected Common Area to the Shopping Center to a condition equal to or better than that existing prior to the construction of such work.

### 3.3. Building Improvements.

(a) While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any Building on its Parcel, the Parties hereby agree once construction has been commenced, such Building shall be completed in a timely fashion. Each Building on a Parcel shall be located only within the Building Area designated on the Site Plan for such Parcel.

(b) The exterior of all Buildings, elevations (including colors) and signage to be constructed or placed within the Shopping Center shall be architecturally and aesthetically compatible. In order to ensure the exterior architectural and aesthetic compatibility of the Buildings within Parcel 2, the owner of Parcel 2 shall submit to the Approving Parties detailed Plans covering the initial construction of each Building on Parcel 2 and any additions, remodeling, reconstruction, or other alteration thereto, together with a color board of proposed materials, which changes the exterior thereof for approval at least sixty (60) days prior to the commencement of any such work. Notwithstanding anything to the contrary in this Section 3.3(b), the owner of Parcel 1 shall not be required to submit or obtain the Approving Parties' approval of any Plans for any additions, remodeling, reconstruction, or other exterior alteration of the Building on Parcel 1, so long as such addition, remodeling, reconstruction or other alteration complies with the other provisions of this DEC.

(c) Buildings may be placed along the common boundary lines between the WinCo Parcel and the other Parcels provided the Buildings to be constructed (1) are architecturally and aesthetically compatible with the Building or Buildings on the WinCo Parcel; (2) do not adversely affect the fire rating of the Building or Buildings on the WinCo Parcel; (3) do not encroach (including any footings) on the WinCo Parcel; and (4) otherwise comply with the requirements of this DEC, including, but not limited to, those requirements set forth in this Section 3.3 and Section 3.5 below.

(d) The second Party to construct a Building along a common boundary line shall do so in a manner that does not result in damage to the improvements in place on the adjoining Parcel, and further shall undertake and assume at its sole cost the obligation of completing and maintaining the nominal attachment (flashing and seal) of its Building to that of the existing Building on the other Parcel, it being the intent of the Parties to establish and maintain the appearance of one continuous building complex. In performing such attachment, the wall of one Building shall not receive support from nor apply pressure to the wall of the other Building.

(e) No Building or other structure (exclusive of any light poles, free standing signs referred to in Sections 3.2 above or 5.3 below or flag poles) shall exceed the following allowable height restrictions without prior written approval of the Approving Parties:

<b>PARCEL</b>	<b>BUILDING HEIGHT</b>	<b>HEIGHT OF ARCHITECTURAL FEATURES</b>
Parcel 1	40'	48'
Parcel 2	32'	45'
Parcel 4	28'	30'
Parcel 5	27'	30'
Parcel 6	40'	44'
Parcel 8	27'	30'
Parcel 9	27'	30'

The height of any Building or Architectural Feature shall be measured perpendicular from the finished floor elevation to the top of the roof structure (including any screening, parapet, penthouse, mechanical equipment, or similar appurtenance located on the roof of such Building) or Architectural Feature, as applicable. The Buildings located on the Parcels as set forth in the foregoing table shall mean and refer to the respective Buildings as they are identified on the Site Plan.

(f) Any Party shall have the right to install, maintain, repair, replace, and remove Communications Equipment on the top of the Building on its Parcel so long as it does not extend above the height limits established in Section 3.3(e) above, provided that such Communications Equipment shall be screened so that it is not visible to customers.

(g) No Building or other structure on any Parcel shall exceed one (1) story unless approved by the Approving Parties. An internal mezzanine level shall be permitted,

provided that the Building or structure including the mezzanine does not exceed the height restrictions set forth in Section 3.3(e) above.

3.4. Phased Development.

(a) WinCo and Fort Lane anticipate that certain Initial Work will be performed by WinCo on all of the WinCo Parcel and on certain portions of the Common Maintenance Area of the Shopping Center. The Remaining Work shall be performed in accordance with and subject to the terms and conditions applicable thereto set forth elsewhere in this DEC and in accordance with this Section 3.4. All of the Remaining Work applicable to any Parcel shall be completed prior to the earlier of: (i) initial occupancy of any Building on such Parcel in question; or (ii) issuance of any certificate of occupancy for any such Building. Nothing in this DEC shall obligate any Party to commence any Remaining Work, but once commenced, all of the Remaining Work for the Parcel in question shall be prosecuted continuously and with all due diligence to completion. The Remaining Work shall be performed (if at all) under separate contract(s) and shall be independent of the Initial Work, and the owner of the WinCo Parcel shall not have any responsibility therefor.

(b) On or before substantial completion of the Initial Work and except for areas on which any Party is then prosecuting any Remaining Work, any undeveloped Parcel shall either be hard surfaced or left in a natural, but attractive, condition until Building improvements are constructed thereon. The owner of such Parcel shall take such steps on an on-going basis as are reasonably necessary to prevent erosion or blowing dust. In addition, the Party engaging in any Remaining Work shall leave the Initial Work, including all drive lanes and access points, open and accessible, and shall perform such construction in such manner as will not adversely affect the balance of the Shopping Center, or the businesses from time to time being conducted thereon, in any material way.

3.5. Fire Protection. All improvements within the Shopping Center shall be constructed in compliance with the Building Code. Additionally, (a) all improvements within sixty feet (60') of the Building on the WinCo Parcel shall be sprinklered for fire protection and; (b) there shall be sixty feet (60') of open space as depicted on the Site Plan on which no Buildings may be constructed around the Building on the WinCo Parcel and all Buildings which are adjacent to, abut or are in-line with the Building on the WinCo Parcel (the "No-Build Easement"). If required by governmental or quasi-governmental agency having jurisdiction, the Parties shall execute and record a separate No-Build Easement document in the official records of Davis County, Utah. Notwithstanding anything to the contrary in this Section 3.5, nothing shall prevent construction, use and maintenance within the No-Build Easement of any driveways, sidewalks, curbs and gutters, parking, landscaping, and similar uses which do not constitute buildings or structures as contemplated by the Building Code. Notwithstanding anything to the contrary in this DEC, no Party shall seek a building permit for a Building within sixty feet (60') of the Building on the WinCo Parcel without the prior written consent of the owner of the WinCo Parcel, which may granted or denied in its sole, absolute and unreviewable discretion.

4. MAINTENANCE AND REPAIR.

4.1. Utility Lines and Center Signs.

(a) Each Party shall maintain and repair, or cause to be maintained and repaired, in a good state of repair and safe condition, all Separate Utility Lines utilized by it regardless of where located within the Shopping Center. All Separate Utility Lines must be underground. Any maintenance and repair of utilities not dedicated to a public utility company which are located on another Party's Parcel shall be performed: (i) after two (2) weeks prior notice to the grantor (except in an emergency the work may be initiated with reasonable notice); (ii) after normal business hours whenever possible; and (iii) in such a manner as to cause as little disturbance in the use of the grantor's Parcel as is practicable under the circumstances. Any Party performing or causing to be performed maintenance or repair work agrees: (1) to promptly pay all costs and expenses associated therewith; (2) to diligently complete such work as quickly as possible; and (3) to promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement of such work.

(b) Common Utility Lines shall be maintained and replaced by the owner of the Parcel on which such Common Utility Line is located; provided, however, that in the event an Operator is appointed as set forth in Sections 1.33 above or 4.3(b) below, the Operator shall maintain the Common Utility Lines as part of the Common Maintenance Area pursuant to Section 4.3 below.

(c) Center Signs shall be maintained and replaced by the owner of the Parcel on which such Center Sign is located; provided however, that in the event an Operator is appointed as set forth in Sections 1.33 above or 4.3(b) below, the Operator shall maintain the Center Signs as part of the Common Maintenance Area pursuant to Section 4.3 below.

4.2. Building Maintenance.

(a) Each Party shall at all times during the term of this DEC, at such Party's sole cost and expense, (i) maintain, repair and replace the Building Area located on such Party's Parcel and keep the Building Area in good condition and repair, clean and free of litter and other hazards to the Premises; (ii) after completion of construction of any Building on such Party's Parcel, maintain, repair, and replace the exterior portion of such Building; and (iii) if such Party is entitled to use sign space on the Center Sign, maintain, repair, and replace such Party's individual sign panel thereon. Prior to construction of a Building on a Party's Parcel, such Party shall, at its sole cost and expense, keep the unimproved area of its Parcel mowed and clean and free from all debris, litter, and other hazards to Permittees. Each Party's maintenance of its Parcel as set forth herein shall: (x) meet or exceed the minimum standards set forth in **Exhibit B**, attached hereto; (y) meet or exceed the standard of maintenance followed in other first class retail developments of comparable size in the Layton, Utah area; and (z) be in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and the provisions of this DEC (collectively the "Maintenance Standard"). Each Party agrees to defend, indemnify, and hold each other Party harmless from and against all claims, costs, losses, expenses and liability (including costs and reasonable attorneys' fees) arising from or directly or indirectly

relating to the maintenance of its Parcel as set forth herein, except for claims caused by the negligence or willful acts of the indemnified Party.

(b) Each Party further agrees to store all trash and garbage in adequate containers, to locate such containers so that they are within enclosures or are otherwise not readily visible from the parking area, and to arrange for regular removal of such trash or garbage, except that in the event the Operator designates a common trash container area, then each Party assigned to the applicable trash container area shall be responsible for its pro-rata share of the costs of maintaining such area and the disposal of the trash deposited therein.

(c) In the event any of the Building improvements are damaged by fire or other casualty (whether insured or not), the Party upon whose Parcel such improvements are located shall, subject to governmental regulations and/or insurance adjustment delays, promptly remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall either: (a) repair or restore the Building improvements so damaged to a complete unit, which repair or restoration shall maintain the architectural and aesthetic harmony of the Shopping Center as a whole and shall comply the provisions of this DEC; or (b) erect other Building improvements in such location, such construction to be performed in accordance with all provisions of this DEC; or (c) demolish the damaged portion and/or the balance of such Building improvements and restore the cleared area to either a hard surface condition or a landscaped condition. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one of such alternatives, and such Party shall give notice of which alternative it elects to the Approving Parties and, if one is appointed, the Operator, within ninety (90) days from the date of such casualty.

#### 4.3. Common Maintenance Areas.

(a) Each Party shall at all times during the term of this DEC, at such Party's sole cost and expense maintain, repair and replace the Common Area located on such Party's Parcel, other than those Common Maintenance Areas as set forth in Section 1.13 above and Section 4.3(b) below, and keep the Common Area in good condition and repair, clean and free of litter and other hazards to Permittees. Each Party shall perform all tasks that are necessary or beneficial to operate and maintain the Common Area of such Party's Parcel in accordance with the Maintenance Standard.

(b) The Operator for the Shopping Center as is designated in accordance with Section 1.32 above, or Section 4.3(k) below, shall perform all tasks that, in the Operator's reasonable judgment, are necessary or beneficial to operate and maintain the Common Maintenance Areas in accordance with the Maintenance Standard and each Party shall share the costs and expenses of the Operator's operation and maintenance of such Common Maintenance Areas in the manner set forth in this Section 4.3. The shared costs of the operation and maintenance of the Common Maintenance Areas shall include all sums expended in connection within the general operation and maintenance of the Common Maintenance Areas and the repair or replacement of any improvements in the Common Maintenance Areas (the "Common Maintenance Areas Costs"), including sums expended for the following: gardening and landscaping; maintaining, cleaning, repairing and/or replacing all Common Maintenance Areas;

maintaining, cleaning, and repairing the Tract A Surface Water Facilities, maintaining, repairing, and/or replacing all Common Utility Lines, including any utility lines servicing the Center Signs; maintaining, replacing, and/or repairing all Center Signs; with respect to all equipment and machinery used to maintain and operate the Common Maintenance Area, the cost thereof if owned, or any rental paid therefor if leased; all items of repair, maintenance, and/or replacement of any improvements as may be required at any time or from time to time by a governmental agency having jurisdiction thereof; any public utility or governmental charges, surcharges, any other costs levied, assessed or imposed pursuant to laws, statutes, regulations, codes and ordinances promulgated by any governmental or quasi-governmental authority in connection with the use of the Common Maintenance Area; and other expenses necessary or beneficial, in the Operator's reasonable judgment, for the maintenance and operation of the Common Maintenance Areas in accordance with the Maintenance Standard, and/or the repair or replacement of any improvements within the Common Maintenance Areas in accordance with the Maintenance Standard. Notwithstanding the foregoing, unless otherwise approved in writing by the Approving Parties, in no event shall the cost of providing security for any portion or all of the Shopping Center be included in the Common Maintenance Area Costs, provided that the foregoing limitation shall not prohibit any Party or Occupant from obtaining security services for such Party's or Occupant's Parcel at such Party's sole cost and expense. With the exception of the minimum standards and requirements set forth in the Maintenance Standard, the enumeration of specific tasks herein shall not be construed to obligate the Operator to perform any such specific tasks. For purposes of this DEC, in no event shall the Common Maintenance Areas Costs include any of the following:

- (i) Any late charges or fees, or any cost, fee, fine, penalty or similar charge;
- (ii) Any costs or expenses for utilities separately paid by any Party;
- (iii) Any costs to clean up or repair the Common Maintenance Areas resulting from promotional or holiday activities, which shall be paid by the Party holding such activities;
- (iv) Any costs for seasonal or promotional sales in a Party's Outdoor Sales Area, which shall be paid by the Party holding such sale;
- (v) Any costs resulting from or arising out of the repair or replacement of any items or improvements to the extent covered by warranties or guaranties;
- (vi) Any costs for the construction, maintenance, or replacement of any Buildings within the Shopping Center;
- (vii) Any costs of any individual sign panel, or the initial design and installation, or re-design, replacement, and installation, of a Party's individual sign panel insert on Center Signs;
- (viii) Any costs for the installation, operation and maintenance of any electronic or digital message display on Center Signs.

(ix) Real property taxes and assessments on any Parcel; provided, however, that Fort Lane shall be entitled to invoice each Party for such Party's share of the actual Tract A real property taxes for the current year as allocated among the Parties in the proportion that, respectively, the total land area of each Parcel bears to the total land area of the Shopping Center; and further provided that to the extent Fort Lane receives credit from the assessor or any environmental agency, Fort Lane shall pass any such credit through to the Parties as part of the following year's Invoice for such real property taxes. Each Party shall pay the amount due on or before thirty (30) days after receipt of such Invoice, provided that such Invoice was issued to each Party in accordance with Section 8.11 below. If any Party fails to timely pay an Invoice, the amount set forth in such Invoice shall accrue interest in accordance with Section 8.8 below;

(x) Any general corporate overhead and general administrative expenses;

(xi) Any administration or management fees (other than the Administration Fee, defined below) or any third-party property management fees;

(xii) Any amounts included in or designated as "reserves" for any of Operator's Common Maintenance Areas maintenance obligations;

(xiii) Entertainment, transportation, meals, and lodging of anyone; or

(xiv) Any costs, fees, expenses, and or adjustments to any of the Common Maintenance Areas Costs submitted more than two (2) years after the date incurred by the Operator.

(c) The Operator shall have the right with regard to any and all maintenance obligations of Operator under this DEC to contract with a Person reasonably acceptable to the Approving Parties for the performance and accomplishment of such obligations as the Operator shall deem proper. Each Party hereby grants to the Operator and its agents and employees a license to enter upon its Parcel to discharge the duties to operate and maintain the Common Maintenance Areas in accordance with the Maintenance Standard. The Operator agrees to defend, indemnify, and hold harmless each Party from and against all claims, costs, losses, expenses, and liability (including reasonable attorney fees and costs of suit) arising from or directly or indirectly relating to Operator's obligations to maintain and operate the Common Maintenance Areas, except for claims caused by the negligence or willful act or omission of a Party.

(d) Notwithstanding anything to the contrary in this Section 4.3, any capital improvements or expenditures for any repair or maintenance obligations of Operator in excess of Five Thousand and No/100 Dollars (\$5,000.00) in Constant Dollars shall require the prior written consent of the Approving Parties. For purposes of this Section 4.3, "capital improvements" shall include the replacement of any existing improvements. The Operator shall complete any and all capital improvements in accordance with the standards set forth in **Exhibit B**. Further, the Operator shall submit all capital improvements in excess of such amount for bid

to no less than two (2) general contractors acceptable to the Approving Parties, or one (1) general contractor for each Approving Party if there are more than two (2) Approving Parties. The Approving Parties shall review the bids and consult with one another to select the lowest qualified and responsible bidder.

(e) The Operator shall, within thirty (30) days following the commencement of its operation and maintenance obligations hereunder and at least sixty (60) days prior to the beginning of each calendar year thereafter, provide the Approving Parties with a written Budget for the anticipated Common Maintenance Areas Costs for the balance of the current year or the upcoming year, as applicable. In the event that any third party is obligated to pay any Common Maintenance Area Costs, pursuant to any separate agreement or otherwise, the amount of such obligation(s) shall reduce the Common Maintenance Area Costs otherwise payable by the Parties hereunder. The Budget shall be subject to the approval of the Approving Parties and shall separately identify cost estimates for at least the categories of expenses specified in Section 4.3(f) below. The Operator shall use its best efforts to maintain the Common Maintenance Area in accordance with the Budget. In lieu of Operator's administrative, management, and overhead costs, Operator shall be permitted to charge an administrative fee, which shall be computed by multiplying the Common Maintenance Areas Costs, but excluding the cost of Operator's insurance, any utilities, and any capital improvements, by ten (10) percent ("Administration Fee"). If any of Operator's personnel at the Shopping Center perform services, functions, or tasks in addition to Operator's Common Maintenance Areas obligations pursuant to this DEC, then the cost of such personnel shall be equitably allocated according to time spent performing such duties, and that portion not allocated to the same shall not be included in the Common Maintenance Areas Costs. If an item of maintenance, repair, replacement is to be accomplished in phases over a period of calendar years (such as, without limitation and by way of example only, resurfacing of the drive and/or parking areas) the Operator shall separately identify the cost attributable to such work attributable to such calendar year, the portion of the Common Maintenance Area affected, and shall note the anticipated cost and timing of such phased work during succeeding quarters and calendar years. The cost of any such phased work approved in the Budget shall be paid by the Parties as a Common Maintenance Areas Cost. The Operator shall maintain all records related to Common Maintenance Areas Costs, Budgets, Administration Fees, Invoices, and supporting documentation evidencing the Common Maintenance Areas Costs for at least seven (7) years from the date of the Invoice to which such records are related.

(f) Each Party shall pay to the Operator its share of the actual Common Maintenance Areas Costs and the Administration Fee on a quarterly basis. The Common Maintenance Areas Costs and the Administration Fee shall, except as otherwise provided herein, be allocated among the Parties in the proportion that, respectively, the total land area of each Parcel bears to the total land area of the Shopping Center. The Operator shall, on a quarterly basis, prepare and submit to each Party an Invoice for such Party's share of the actual Common Maintenance Areas Costs for the previous quarter and the Administration Fee applicable thereto. Each Party shall pay the amount due under the Invoice on or before thirty (30) days from delivery of the Invoice to each Party in the manner in which Notice are to be provided under Section 8.11 below. If any Party fails to timely pay an Invoice, the amount set forth in such Invoice shall accrue interest in accordance with Section 8.8 below. Notwithstanding the foregoing, in the event a Party's share of the cost of any single item of maintenance, repair, and replacement, including any emergency repair conducted pursuant to Section 4.3(g) below,



exceeds Ten Thousand and No/100 Dollars (\$10,000.00) in Constant Dollars, the Operator shall, unless otherwise agreed by the Approving Parties, amortize the cost of any such item of maintenance, repair, and replacement over a term not less than the life of said maintenance, repair, and/or replacement item. Each Party shall pay interest on any such amortized amount at the rate of Wells Fargo Bank, N.A.'s prime rate of interest (or if it no longer exists a comparable national bank doing business in the State of Utah), plus two percent (2%) per annum, provided that in no event shall the interest accrued on any amounts amortized pursuant to this Section be included as a Common Maintenance Areas Cost for purposes of the calculation of the Administration Fee.

The Invoice shall include a statement of each Party's share of the actual Common Maintenance Areas Costs for the previous quarter and the Administration Fee applicable thereto certified by the Operator and supporting invoices and other materials evidencing the actual Common Maintenance Areas Costs paid by it for the operation and maintenance of the Common Maintenance Area. The Invoice shall be in a form reasonably acceptable to the Approving Parties and shall separately identify the Administration Fee and at least the following categories of Common Maintenance Areas Costs:

- (i) Landscaping and irrigation;
- (ii) Common Utility Lines;
- (iii) Center Signs;
- (iv) Tract A Surface Water Facilities;
- (v) Common drive aisles;
- (vi) Rental or purchase of equipment and supplies;
- (vii) Depreciation or trade-in allowance applicable to items purchased for Common Maintenance Area purposes;
- (viii) The cost of any phased work approved in the Budget attributable to such year, including the portion of the Common Maintenance Area affected in such year;

(g) Notwithstanding anything to the contrary herein, the Operator shall have the right to make emergency repairs to the Common Maintenance Area to resolve any Emergency Situation, it being understood that Operator shall nevertheless advise each Party of such Emergency Situation as soon as reasonably possible, including the corrective measures taken and the cost thereof. Operator shall submit a supplemental billing for the costs of such emergency repairs to each Party, together with evidence supporting such payment, and each Party shall pay its share thereof within thirty (30) days of receipt of the supplemental billing and supporting documentation.

(h) Within ninety (90) days after receipt of any Invoice and supporting documentation, but not more than once per calendar year, each Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common

Maintenance Area for the quarter covered by such Invoice. Said audit shall be conducted at the office of the Operator and the auditing Party shall notify Operator of its intent to audit at least fifteen (15) days prior to the designated audit date. In the event that such audit shall disclose any error in the determination of the Common Maintenance Areas Costs, the Administration Fee or in the allocation thereof to a Parcel, an appropriate adjustment shall be made, and the Person owing any sums after such adjustment shall pay such amount to the other Person within ten (10) days following the determination of the adjustment. The cost of any audit shall be assumed by the auditing Party unless the audit determines that such Party is entitled to a refund in excess of three percent (3%) of the amount calculated by Operator as its share for the quarter, in which event Operator shall pay the Party's out-of-pocket costs of such audit, excluding transportation, lodging and related costs.

(i) At any time during which the owner of the WinCo Parcel is not the Operator, the owner of the WinCo Parcel shall have the option, to be exercised in its sole, absolute and unreviewable discretion, to maintain the Common Maintenance Areas located on its Parcel, and the Center Signs, in the manner set forth in this Section 4.3, in which event the Operator shall not maintain the same. The Operator shall continue to maintain all other Common Maintenance Areas, and each Party shall pay its pro rata share of such maintenance costs as set forth in Section 4.3(f) above. In the event that the owner of the WinCo Parcel elects to maintain the Common Maintenance Areas located on its Parcel, and the Center Signs, according to this Section, the owner of the WinCo Parcel shall maintain the Center Signs and bill each Party for its proportionate share of its use or its Occupants' use of such Center Signs.

(j) In the event the Operator fails to maintain the Common Maintenance Area in accordance with this Section 4.3, any Approving Party may send written notice of such failure to the Operator, which shall contain an itemized statement of the specific deficiencies in the Operator's performance of its obligations under this Section 4.3. The Operator shall have fifteen (15) business days after receipt of such notice in which to cure the deficiencies set forth in such notice; provided, however, that in the event of an Emergency Situation, an Approving Party may immediately commence correction of such situation without providing notice of any default to the Operator. If the Operator fails or refuses to timely correct the deficiencies contained in the notice, then (i) any Approving Party may, at its option, correct the stated deficiencies; and (ii) any Approving Party may, at its option remove the defaulting Operator. In the event that an Approving Party elects to correct the deficiencies, the Approving Party shall provide each Party an itemized invoice for such Party's share of the costs incurred in correcting the Operator's default, and each Party shall pay such costs to the Approving Party plus an administration fee in the amount of ten percent (10%) of such costs. If the invoice for such costs is not paid within ten (10) business days, interest on the amount due under the invoice from the date of the invoice shall accrue until paid in accordance with Section 8.8 below.

(k) In the event the Operator desires to resign as Operator, such Operator shall deliver written notice thereof to the Approving Parties at least ninety (90) days prior to the date of the proposed resignation; provided, however, in no event shall the Operator's proposed resignation or any removal of the Operator by the Approving Parties be effective until such time as a successor Operator has been appointed by the Approving Parties. At such time as the Operator gives notice of resignation or is removed, the owner of the WinCo Parcel shall have the right, upon written notice to the other Parties, to assume the obligations of Operator under this

DEC. In the event that the owner of the WinCo Parcel does not elect to assume the obligations of Operator as set forth above, the Approving Parties shall act in good faith to select a new Operator. In such event, the Approving Parties shall immediately solicit bids from not less than four (4) property managers, two (2) of which shall be designated by each Approving Party. The Approving Parties shall review the bids upon receipt and consult with each other to select the lowest qualified and responsible bidder. The Approving Parties shall each deliver their response to the bids to each other within seven (7) business days after receipt thereof. If the Approving Parties cannot agree on an Operator within fifteen (15) business days after the receipt of the bids, the owner of the WinCo Parcel shall have the right, in its sole, absolute and unreviewable discretion, to select an Operator. Any such successor Operator appointed in accordance with this Section shall be designated in writing signed and acknowledged by the Approving Parties; and, shall have all rights and obligations of the Operator hereunder.

## **5. OPERATION OF THE SHOPPING CENTER**

### 5.1. Uses.

(a) Subject to the limitations set forth in this Section 5.1, no part of the Shopping Center shall be used or occupied for any purposes other than retail sales, Business Offices, Financial Retail Offices, Restaurants and Fast Food Restaurants.

(b) No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class retail shopping center. Without limiting the generality of the foregoing, the following uses shall not be permitted:

(i) Any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any Building in the Shopping Center, or any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness; however, this provision shall not be interpreted to restrict the Occupant of the WinCo Parcel from conducting its supermarket operations thereon, including a bakery, in the ordinary course of its business, provided that the Occupant of the WinCo Parcel shall take measures normally taken by first-class supermarket operations and shopping centers to limit the emission of odors;

(ii) Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;

(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 or other future technology no more intrusive than garbage compactors);

(v) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(vi) Any "second hand" store, "thrift store" or "surplus" store except those such as Ross Dress for Less, Nordstrom Rack, or T.J. Maxx; provided that this prohibition shall not be applicable to a nationally or regionally recognized store selling consigned or secondhand goods such as Plato's Closet and Play It Again Sports, that does not exceed the allowable Floor Area set forth in Section 3.3(e) above so long as no donation or drop-off trailer or other used goods delivery receptacle shall be permitted in the Shopping Center at any time;

(vii) Any "dollar type store" use, which includes, for illustrative purposes only, 99 Cent Store, Dollar Store, Dollar Tree, Family Dollar and Dollar General;

(viii) Any central laundry, dry cleaning plant, or laundromat; provided, however, that this prohibition shall not be applicable to: (1) nominal supportive facilities for on-site service oriented 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; (2) the operation of on-site laundry facilities within a store which services only the internal needs of that store and does not provide laundry services to the general public; and (3) a "green earth" type retail dry cleaning operator using DF-2000 or any similar hydrocarbon solvent used as an alternative to perchloroethylene;

(ix) Any manufactured home, automobile, truck, trailer, boat or recreational vehicles sales, leasing, display, body shop operation;

(x) Any entertainment, recreation, or amusement use or facility, whether directed to children or adults which includes, without limitation, flea markets, movie theaters, live performance theaters, bowling lanes, skating rinks, dance halls, discotheque, off-track betting facilities, casino, card club, bingo parlor, rides, play for fun casino games, and carnival activities; provided, however, that this prohibition shall not be applicable to DVD/movie/game rental vending machines such as "Red Box" or other such nationally recognized DVD rental vending machine;

(xi) Any residences, living quarters, sleeping apartments, lodging rooms, or any hotel, motel, or other lodging facility;

(xii) Any veterinary hospitals or animal raising facilities (except that this prohibition shall not prohibit pet shops);

(xiii) Any cemetery, mortuaries, funeral homes or similar service establishments;

(xiv) Any adult book or adult video stores or establishments selling or exhibiting pornographic materials, marijuana (whether medical or otherwise) and/or drug-related paraphernalia, or any other use of a sexually-oriented or "adult" nature;

(xv) Any liquor stores, bars, taverns, or other similar establishments selling alcoholic beverages for on-premises or off-premises consumption; provided that this prohibition shall not be applicable to (1) a permitted Restaurant whose reasonably

projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption is less than thirty six percent (36%) of the gross revenues for such business; (2) a Utah State liquor store located on Parcels 2, 4, 5, 6 or 8; (3) a retail grocery store operating on the WinCo Parcel; or (4) a CVS, Walgreens, or other similar drug store;

(xvi) Any stores selling cigarettes, cigars, tobacco and/or tobacco related products, and vapor cigarettes and/or related products; provided that this prohibition shall not be applicable to (1) a retail convenience store so long as no retail convenience store shall exceed five thousand (5,000) square feet of Floor Area, (2) a retail grocery store operating on the WinCo Parcel, or (3) a CVS, Walgreens, or other similar drug store;

(xvii) Any health spas, fitness centers, gyms, or workout facilities, or any day spas or similar facilities; provided, however, that a diet center, health spa, fitness center, gym, workout facility or day spa facility shall be permitted on any Parcel provided that the maximum aggregate square footage of all Floor Area within the Shopping Center dedicated to such use(s) shall not exceed eleven thousand (11,000) square feet of Floor Area, and further provided that no more than three thousand (3,000) square feet of Floor Area dedicated to such use(s) may be located on Parcel 2;

(xviii) Any school, training, or educational or day care facilities, including, but not limited to, beauty schools, barber colleges, nursery schools, diet centers, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, that this prohibition shall not be applicable to (1) on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center; (2) Tutor Time, Kinder Care or similar nationally recognized child day care facilities, or Kumon or other similar nationally recognized tutoring business (provided, however, that no such use may be located on Parcel 2);

(xix) Any flea markets, amusement or video arcades (except up to five (5) electronic games shall be allowed if incidental to any permitted use);

(xx) Any public or private nuisance;

(xxi) Any fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks; provided, however, that this prohibition shall not be applicable to the seasonal sale of legal fireworks so long as such use: (1) complies with all federal, state and local laws and regulations; (2) is located on an undeveloped Parcel for a period of not more than four consecutive weeks, or within a Building; (3) if located within a Building, is incidental to an otherwise permitted use in accordance with this DEC; and (4) is not located on Parcel 2.

(xxii) Any gas station, lube shop, tire and/or muffler shop, or car washing establishment; provided that a gas station, lube shop, tire and/or muffler shop, or car washing establishment that does not exceed ten thousand (10,000) square feet of Floor Area shall be permitted on Parcels 4, 5, 6 and/or 8;

(xxiii) Any church, synagogue, mosque or other place of worship; or

(xxiv) Any automobile body or fender repair work.

(c) The following additional use and occupancy restrictions shall apply:

(i) A Business Office or Financial Retail Office shall be permitted on any Parcel, provided, however, that any Business Office or Financial Retail Office on Parcel 2 shall not exceed two thousand five hundred (2,500) square feet of Floor Area, and the aggregate square footage of all Floor Area dedicated for such use(s) on Parcels 2 and 4 shall not exceed five thousand (5,000) square feet of Floor Area. Notwithstanding the foregoing, this restriction shall not be applicable to or include a Business Office or a Financial Retail Office located within a Building which only services the internal needs of that store and does not provide business office services or financial services to the general public.

(ii) Restaurants and Fast Food Restaurants shall be permitted in the Shopping Center as follows: any Restaurant and/or Fast Food Restaurant may be located (1) on Parcel 2, but only if such use is a single restaurant use and provided that the front door of such use and the parking field for such use faces S. Fort Lane, or, in the alternative, a single restaurant use shall be permitted on Parcel 2 if such use is limited to two thousand five hundred (2,500) square feet of Floor Area and the front door and parking field for such use faces E. Gentile Street), and (2) on each of Parcels 4, 5, 6, 8 and 9 provided such Restaurant and/or Fast Food Restaurant complies with the parking requirements set forth in 3.2 (f) above. Notwithstanding the foregoing, this prohibition shall not be applicable to the operation of a Restaurant which is incidental to the Occupant's primary business purpose. For the purpose of this Section 5.1, a Restaurant shall be an "incidental operation" if it occupies less than ten percent (10%) of the Occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building.

(d) Until such time as the owner of the WinCo Parcel opens a retail grocery operation on the WinCo Parcel and thereafter for so long as any portion of the WinCo Parcel is being used, or has during any portion of the immediately preceding twenty-four (24) months been so used, as a retail grocery store operation, no portion of the Shopping Center other than the WinCo Parcel shall be used as a retail grocery store operation (which is hereby defined to mean any store, bakery, or delicatessen, engaged in the sale of food products for off-premises preparation and consumption). Without limiting the foregoing, for purposes of this Section 5.1(d), the term "retail grocery store operation" shall include any small-format grocery stores including, for illustrative purposes only, Sprouts, Aldi's, Grocery Outlet, and Wal-Mart's Neighborhood Market or Express stores. Notwithstanding the foregoing, any Party or Occupant of any Parcel may operate a store or business that sells food for off-premises preparation and consumption provided that the area within such store or business dedicated to the sale of food for off premises preparation and consumption shall not exceed the lesser of ten percent (10%) of said store or business' Floor Area, or two thousand five hundred (2,500) square feet of Floor Area (which shall include an allocable portion of the aisle space adjacent to the Floor Area of such use), except with respect to CVS, Walgreens or another similar national drug store, in which case such area shall be permitted up to a maximum of three thousand (3,000) square feet of Floor Area. The twenty-four (24) month period referred to in this Section shall not include any

period during which the particular use lapses due to force majeure conditions or damage, destruction, condemnation, or remodeling of the Building on the WinCo Parcel so long as the owner of the WinCo Parcel diligently proceeds with such repair and restoration of such Building reasonably calculated to permit resumption for such use. The restriction contained in this Section 5.1(d) may be waived or modified solely by the owner of the WinCo Parcel in writing, in its sole, absolute and unreviewable discretion by an instrument recorded in the official records of Davis County, Utah.

(e) Any Party's Outdoor Sales Area shall be located only on such Party's Parcel. Further, no merchandise, equipment or services, including but not limited to vending machines, coffee kiosks, temporary trailers, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area; provided, however, that the foregoing prohibition shall not be applicable to: (i) the storage of shopping carts; (ii) the seasonal display and sale of bedding plants on the sidewalk in front of any Building; (iii) temporary Shopping Center promotions, except that no promotional activities will be allowed in the Common Area without the prior written approval of the Approving Parties which may be withheld in their sole, absolute and unreviewable discretion; or (iv) newspaper distribution stands and similar public service items. Notwithstanding the foregoing, Occupants shall be permitted:

(i) To have vending carts, including DVD/movie/game rental vending machines, and the display and sale of merchandise and ready to eat products on sidewalks directly in front of any Building, provided that said Occupant maintains said sidewalks at its sole cost in a neat and clean manner; and

(ii) To conduct seasonal or promotional sales of merchandise subject to the following restrictions:

(1) sales shall be limited to not more than ninety (90) days per calendar year;

(2) all booths, stands, displays and other structures erected in connection therewith shall be promptly removed by said Occupant upon termination of said activities;

(3) the Occupant shall be responsible for cleaning the Common Area where the sale is held during the sale and for restoring its condition to that existing immediately prior to said sale at the sole cost and expense of the Occupant. In the event said Occupant does not clean or repair such area promptly, the Operator (or if there is not an Operator, then any other Party) may do so and charge the cost thereof to said Occupant; and

(4) the parking lot sales shall not interfere with the free movement of vehicular traffic within the Shopping Center or with access to or from the Shopping Center.

(f) Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area. For the purpose of this provision, a tax assessment or other form

of charge applicable to parking spaces or parking lots may be deemed by the Approving Parties an imposition required by law.

(g) In order to minimize interference with normal customer parking within the Shopping Center, each Party shall cause the employees of the Occupants of its Parcel to park their vehicles only on such Parcel.

(h) Notwithstanding anything to the contrary contained herein, this DEC is not intended to, and does not, create or impose any obligation on a Party to operate, continuously operate, or cause to be operated a business or any particular business at the Shopping Center or on any Parcel.

(i) Any Party may request a Grant of Exclusivity for a specific use on its Parcel by providing a written memorandum specifying the type of business for which the Grant of Exclusivity is requested to the other Parties and the Approving Parties. Such Grant of Exclusivity shall be subject to approval by the Approving Parties and shall be made at their discretion, but shall be conditioned upon the consent of the other Parties, which Parties shall be obligated to grant the requested consent unless any Party is then contractually obligated to lease to a tenant engaged in substantially the same type of business as that for which the Grant of Exclusivity is proposed. The Grant of Exclusivity shall only be effective to prohibit other Occupants within the Shopping Center from engaging in substantially the same business which is protected by the Grant of Exclusivity for so long as the Occupant to whom the Grant of Exclusivity is made continues to conduct regular business operations as the business protected by the Grant of Exclusivity during the Shopping Center's normal days and hours of operation. Notwithstanding anything to the contrary contained herein, no such Grant of Exclusivity shall bind, burden, or otherwise encumber the WinCo Parcel without the owner of the WinCo Parcel's prior written consent, which may be granted or withheld in its sole, absolute and unreviewable discretion. On or about the date any Occupant granted exclusivity pursuant to this Section first opens and engages in the business operations protected by the Grant of Exclusivity, the Approving Parties will cause an amendment to this DEC to be recorded in accordance with Section 8.4(e) below.

5.2. Lighting. Each Party hereby covenants and agrees to keep its Parcel fully illuminated each day from dusk to at least 10:00 p.m. and maintain minimum security lighting thereafter until dawn. During the term of this DEC, each Party grants an irrevocable license to each other Party for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcel. It is recognized that the Occupant of the WinCo Parcel may be open for business at different hours than the Occupants of the other Parcels, and that the Occupant of the WinCo Parcel may require that the Common Area lights located on all or a portion of the WinCo Parcel and entryway lighting depicted on the Lighting Control Plan shall remain illuminated before and/or after the period required herein.

5.3. Occupant Signs.

(a) No Occupant identification sign attached to the exterior of a Building shall be:



(i) Placed on canopy roofs extending above the Building roof, placed on penthouse walls, or placed so as to project above the parapet, canopy, or top of the wall upon which it is mounted;

(ii) Placed at any angle to the Building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight feet (8') above the sidewalk;

(iii) Painted on the surface of any Building

(iv) Flashing or audible signs;

(v) Signs employing exposed raceways (unless the raceway is the same color as the Building), exposed ballast boxes, or exposed transformers; or

(vi) Paper, cardboard or fabric signs, temporary signs (exclusive of contractor signs), stickers or decals; provided, however, the foregoing shall not prohibit the placement at the entrance of each Occupant's space a small sticker or decal, indicating hours of business, emergency telephone numbers, acceptance of credit cards, and other similar bits of information. This prohibition shall not prohibit a business from using temporary signs to advertise the business' grand opening for a limited period of time; provided that such signs shall only be allowed one (1) week prior to the date the business is first opening for business and three (3) weeks after said opening date; provided, however, no Occupant, other than the owner of the WinCo Parcel, shall be entitled to place such signs on the WinCo Parcel at any time. Notwithstanding anything in this Section to the contrary, WinCo shall be entitled to utilize temporary signage on its Parcel and at the primary access points to the Shopping Center for a period of one (1) week prior to, and two (2) weeks following, the date on which it first opens for business to the public on its Parcel.

(b) Unless approved by the Approving Parties, and excluding the Occupants of the WinCo Parcel, and further subject to any necessary governmental approvals, no Occupant of less than fifty thousand (50,000) square feet of Floor Area shall have an exterior sign which identifies leased departments, and/or concessionaires operating under the Occupant's business or trade name, nor shall such sign identify specific brands or products for sale or services offered within a business establishment, unless such identification is used as part of the Occupant's trade name.

(c) Notwithstanding anything in this Section 5.3 to the contrary, each Party shall be permitted to place within the Common Area located on its Parcel directional signs or informational signs such as "Handicapped Parking", signs alerting customers that a Cart Containment System is in use, signs providing 24-hour emergency contact information for sprinkler/irrigation systems, and the temporary display of leasing information and the temporary erection of one (1) sign identifying each general contractor and/or lender on a construction job.

(d) Without limiting any other provision of this DEC, no portion of any Parcel may be used to display any temporary or permanent signs, banners, digital displays, advertisements or other marketing materials to advertise or promote a retail grocery store

operation or related use that competes with the business located on the WinCo Parcel, even if such competing use is not located in the Shopping Center.

5.4. Insurance.

(a) Each Party (as to its Parcel only) shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance with a combined single limit of liability of not less than Five Million and No/100 Dollars (\$5,000,000.00) for bodily injury or death, and for property damage, arising out of any one occurrence. Each Party shall name the Approving Parties as "additional insureds" under such policy. The limits of such insurance may be increased from time to time consistent with the practices in similarly situated properties in the Layton area as determined by the Approving Parties.

(b) Prior to commencing any construction activities within the Shopping Center, each Party shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

- (i) Workers' Compensation statutory limits;
- (ii) Employers' Liability \$1,000,000; and
- (iii) Commercial General Liability and Business Auto Liability as follows:
  - (1) Bodily Injury and Property Damage combined single limit – \$3,000,000 per occurrence;
  - (2) Independent Contractors Liability included;
  - (3) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work;
  - (4) "XCU" Hazard Endorsement included;
  - (5) "Broad Form" included;
  - (6) "Personal Injury" included; and
  - (7) "Blanket Contractual Liability" included.

If the construction activity involves the use of another Party's Parcel, then the owner of such Parcel shall be an additional insured and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this DEC, without at least thirty (30) days prior written notice to the named insureds and each additional insured. If such insurance is canceled or expires then the Constructing Party shall immediately stop all work on or use of the other Party's Parcel until either the required insurance is reinstated or replacement insurance obtained.

(c) Effective upon the commencement of construction of any Building on its Parcel and so long as such Building exists, a Party shall carry, or cause to be carried, commercial property insurance (cause of loss – special form) in the amount of one hundred percent (100%) of full replacement cost of said buildings and contents thereof (excluding footings, foundations or excavations).

(d) Each Party (the “Releasing Party”) hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party (the “Released Party”) from any liability for any loss or damage to all property of such Releasing Party located upon the Releasing Party’s Parcel, which loss or damage is of the type covered by the insurance required to be maintained under Section 5.4(c) above, irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self-insurance reserve. Each Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the forgoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. Each Party covenants and agrees to indemnify, defend and hold harmless each other Party from and against all claims asserted by or through any Permittees of the indemnifying Party’s Parcel for any loss or damage to the property of such Permittee located upon the indemnifying Party’s Parcel, which loss or damage is covered by the insurance required to be maintained under Section 5.4(c) above, irrespective of any negligence on the part of the indemnified Party which may have contributed to or caused such loss.

(e) All insurance required by this Section 5.4 shall be procured from companies licensed in the state where the Shopping Center is located and shall be rated by Best’s Insurance Reports not less than A/VII. All insurance may be provided under:

(i) an individual policy covering the Party’s Parcel(s) within the Shopping Center;

(ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; provided, however, that such blanket commercial general liability insurance policy or policies contain a per location aggregate of not less than \$5,000,000;

(iii) a plan of self-insurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party has not less than \$80,000,000 in Constant Dollars or more of net worth, determined in accordance with generally accepted accounting principles; and

(iv) a combination of any of the forgoing insurance programs.

To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party in compliance with this Section 5.4, such Party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event

shall any deductible exceed \$250,000 unless such Party complies with the requirements regarding self-insurance pursuant to (iii) above. Each Party agrees to furnish to any Party requesting the same, or the Operator at its request, certificates of insurance evidencing that the insurance required to be carried by such Person is in full force and effect.

(f) The insurance required pursuant to Sections 5.4(a) and (b), above, shall include the following provisions: (i) shall provide that the policy may not be canceled or reduced in amount or coverage below the requirements of this DEC, without at least thirty (30) days prior written notice to each insured and to each additional insured; (ii) shall provide for severability of interests; (iii) shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other named insureds; and (iv) shall provide for contractual liability coverage with respect to the indemnity obligation set forth herein. In no event shall the coverage limits of the insurance coverage required by subsection (iv) of this Section limit the indemnity obligations of any Party hereunder.

(g) If an Operator is designated in accordance with Sections 1.32 or 4.3 above, the Operator shall maintain or cause to be maintained for the Common Maintenance Area, insurance as required by and in accordance with this Section 5.4.

(h) Each Party covenants and agrees to defend, protect, indemnify and hold harmless each other Party 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 located on the Parcel owned by each indemnifying Party, except for claims caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof.

5.5. Taxes and Assessments. Each Party shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Parcel, the Buildings, and improvements located thereon and any personal property owned or leased by such Party in the Shopping Center, provided that if the taxes or assessments or any part thereof may be paid in installments, the Party may pay each such installment as and when the same becomes due and payable. Nothing contained in this subsection shall prevent any Party from contesting at its cost and expense any such taxes and assessments with respect to its Parcel in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the contesting Party shall promptly pay all such taxes and assessments determined to be owed, together with all interest, penalties and costs thereon.

5.6. Mechanics' and Materialmen's Liens. In the event any mechanic's or materialman's lien is filed against the Parcel of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so filed agrees to cause such lien to be discharged within thirty (30) days after the filing of the lien, either by paying the indebtedness which gave rise to such lien or by posting any bond or other security as shall be required by law to obtain such release and discharge. In the event that such

Party does not obtain a release of the lien, the Party whose Parcel is subject to such lien may bond for or otherwise obtain a release of the lien and collect all expenses incurred in connection therewith from the other Party. The Party permitting or causing a mechanic's or materialman's lien to be so filed agrees to indemnify, defend, and hold harmless the other Party and its Parcel against liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. Nothing herein shall prevent the Party permitting or causing such lien from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence.

## **6. ENVIRONMENTAL MATTERS.**

6.1. Duties of Users. Except as provided in Section 6.2 below, neither the Parties nor any Occupant(s) shall release, generate, use, store, dump, transport, handle, or dispose of any Hazardous Material within the Shopping Center or otherwise permit the presence of any Hazardous Material on, under, or about the Shopping Center or transport any Hazardous Material to or from the Shopping Center. Any such use, handling or storage permitted under Section 6.2 below shall be in accordance with all Environmental Laws and all other applicable laws, ordinances, rules, and regulations now or hereafter promulgated by any governmental authority having appropriate jurisdiction. Neither the Parties nor any Occupant(s) shall install, operate, or maintain any above, below, or at grade tank, sump, pit, pond, lagoon, or other storage or treatment vessel or device on or about the Shopping Center unless Plans therefor have been submitted to and approved by the Approving Parties pursuant to Section 6.2 hereof. Each Party with respect to its Parcel shall immediately notify the other Parties in writing of the following with respect to such Party's Parcel: (a) any notice of violation or potential or alleged violation of any laws, ordinances, or regulations which the Party shall have received from any governmental agency concerning the use, storage, release, and/or disposal of Hazardous Materials; (b) any and all inquiry, investigation, enforcement, cleanup, removal, or other governmental or regulatory actions instituted or threatened relating to such Parcel(s); (c) all claims made or threatened by any third party relating to any Hazardous Materials; and (d) any release of Hazardous Materials in a reportable quantity on or about the Shopping Center which such Party knows of or reasonably believes may have occurred. Such notice shall be accompanied by copies of any notices, inquiries, or other documentation issued to the notifying Party in connection with such matters.

6.2. Permitted Use, Storage, Handling and Disposal of Hazardous Materials. Notwithstanding anything contained in Section 6.1 above to the contrary, any Party, or any Occupant or Permittee may sell, store, and use products containing Hazardous Materials in, on, or about the Parcel occupied by such Party, Occupant or Permittee or the Common Areas to the extent such products and/or equipment are incidental to normal shopping center operations, and are sold, stored, or used in compliance with all applicable Environmental Laws. By way of example, and not limitation, such permitted materials may include paints, oils, solvents, sealers, adhesives, finishes, fertilizers, medicines, insecticides and rodent poisons, and the like, which may be or contain Hazardous Materials, so long as such products are produced, packaged, and purchased for retail sale and generally merchandised or sold in retail outlets or are normally used in maintaining or repairing shopping center improvements. A Party or an Occupant may also use other Hazardous Materials in connection with its use of its Parcel if such Party or Occupant has received the Approving Parties' prior consent to the same. The Approving Parties shall not

unreasonably withhold its consent provided that: (a) the Party demonstrates to the Approving Parties' reasonable satisfaction that such Hazardous Materials (i) are necessary or useful to the Party's or its Occupant's business, (ii) will be monitored, used, stored, handled, and disposed of in compliance with all Environmental Laws, (iii) will not endanger any persons or property, and (iv) will not invalidate or limit the coverage or increase the premiums of any insurance policy affecting or covering any portion of the Shopping Center; (b) the Party or Occupant provides the Approving Parties with such security as may be reasonably required by the Approving Parties to help secure such Party's or Occupant's performance of its obligations under Section 6.3 below; and (c) such Party or Occupant satisfies any other requirements any other Party may reasonably impose with respect to the Party's or Occupant's use of the subject Hazardous Materials.

6.3. Cleanup of Hazardous Materials. In the event Hazardous Materials are released within the Shopping Center in violation of any Environmental Laws and such release occurred as a direct or indirect result of a Party's or its Occupant's or Permittee's use, handling, storage, or transportation of such Hazardous Material, as between the Parties, such Party or Occupant engaged in such activity shall be solely responsible and shall be liable for the prompt cleanup and remediation of any resulting contamination and all claims, costs, expenses (including reasonable attorney and consultant fees), and damages, including consequential damages, suffered by the other Party, Occupants and Permittees.

## 7. DEFAULT.

7.1. Events of Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this DEC by the Defaulting Party:

(a) The failure to make any payment required to be made hereunder within ten (10) days of the due date; or

(b) The failure to observe or perform any of the covenants, conditions or obligations of this DEC, other than as described in Section 7.1(a) above, within thirty (30) days after the issuance of a written notice by the Non-Defaulting Party specifying the nature of the default claimed.

7.2. Cure by Operator or Non-Defaulting Party. With respect to any default under Section 7.1 above, the Operator or any Non-Defaulting Party which is an Approving Party shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an Emergency Situation, the Operator or any such Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Operator or such Non-Defaulting Party shall have the right to enter upon the Parcel of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event the Operator or any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Operator or such Non-Defaulting Party for all costs and expenses incurred in connection with such curative

action, plus interest as provided herein, within ten (10) days of receipt of demand, together with reasonable documentation supporting the expenditures made.

7.3. Right to Lien. In the event of a default, payments, costs and expenses accruing and/or assessed pursuant to Sections 7.1 and 7.2 above shall constitute a lien against the Defaulting Party's Parcel. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of Davis County, Utah, by the Party making the claim. The claim of lien shall include the following:

- (a) The name of the lien claimant;
- (b) A statement concerning the basis for the claim of lien and identifying the lien claimant as a curing Party;
- (c) An identification of the owner or reputed owner of the Parcel or interest therein against which the lien is claimed;
- (d) A description of the Parcel against which the lien is claimed;
- (e) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and
- (f) A statement that the lien is claimed pursuant to the provisions of this DEC, reciting the date, book and page of recordation hereof. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, by personal service or by mailing pursuant to Section 8.11 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of Utah.

7.4. Waiver of Default. No waiver by any Party of any default under this DEC shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers or any default under any provision of this DEC shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this DEC

7.5. Equitable Relief. The Operator and each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this DEC, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this DEC, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the

payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this DEC or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

7.6. DEC Continues Notwithstanding Default. It is expressly agreed that no breach of or event of default under this DEC shall: (a) entitle any Party to cancel, rescind, or otherwise terminate this DEC; or (b) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Shopping Center. This limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach or default.

7.7. Limitation of Liability. In the event of default by a Defaulting Party hereunder, the Operator or any Non-Defaulting Party who seeks recovery from a Defaulting Party hereto shall look solely to the interest of such Defaulting Party, its successors and assigns, in the Shopping Center for the satisfaction of each and every remedy of the Operator or Non-Defaulting Party; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Party:

(a) to pursue equitable relief in connection with any term, covenants or condition of this DEC, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance; and

(b) to recover from another Party (or its guarantor) all losses suffered, liabilities incurred or costs imposed arising out of or in connection with, or on account of, such Party (or its guarantor) not funding its self-insurance obligations which were assumed pursuant to Section 5.4 above.

## 8. MISCELLANEOUS.

### 8.1. Approval Rights.

(a) Nothing contained in this DEC shall limit the right of a Party to exercise its business judgment, or act, in a subjective manner, with respect to any matter as to which it has specifically been granted such right, or the right to act, in its sole discretion or sole judgment, whether "objectively" reasonable under the circumstances, and any such exercise shall not be deemed inconsistent with any covenant of good faith and fair dealing otherwise implied by law to be part of this DEC. The Parties intend by this DEC to set forth their entire understanding with respect to the terms, covenants, conditions, and standards pursuant to which their obligations are to be judged and their performance measured.

(b) To the extent approval or consent is required under this DEC, said approval or consent shall not be valid unless the same is in writing and acknowledged (where appropriate) by the Party or Parties whose approval is required. Unless provision is made for a specific time period, each response to a request for an approval or consent shall be given by the Party to whom directed within thirty (30) days of receipt of such request. Each disapproval shall be in writing and, subject to (a) above, the reasons shall be clearly stated. Except for any written



request tendered pursuant to Section 8.6 above, if a response is not given within the required time period, the requested Party shall be deemed to have given its approval.

8.2. Binding Effect. The terms of this DEC and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Parties hereunder. This DEC is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby, except as otherwise provided in Recital G above.

8.3. Condemnation. In the event any portion of the Shopping Center shall be condemned, the award shall be paid to the Party owning the land or the improvement taken, except that: (a) if the taking includes improvements belonging to more than one Party, such as Utility Lines or signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition; and (b) if the taking includes easement rights which are intended to extend beyond the term of this DEC, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this DEC which does not reduce or diminish the amount paid to the Party owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof.

8.4. Construction and Interpretation.

(a) This DEC and the Exhibits hereto, which are incorporated into this DEC by reference thereto, contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements regarding the subject matter of this DEC are superseded in total by this DEC. This DEC has been fully negotiated at "arm's length" between the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto. No such signatory shall be deemed the scrivener of this DEC; and, based on the foregoing, the provisions of this DEC, and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

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

(c) The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this DEC. 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 DEC.

(d) Any provision of this DEC which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this DEC.

(e) This DEC may be amended by, and only by, a written agreement signed by the then current Approving Party or Approving Parties and shall be effective only when recorded in the county and state where the Shopping Center is located; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of a Party or its Parcel without the consent of such Party. No consent to the amendment of this DEC shall ever be required of any Person other than the Parties. To the extent a Party's consent to an amendment of this DEC is required, such Party: (i) may consider, approve, or disapprove any such proposed amendment to this DEC in its reasonable discretion, and (ii) must approve or disapprove of any such proposed amendment within fifteen (15) days from delivery of such proposal in accordance with Section 8.11 below. If a Party does not respond within the required time period, that Party shall be deemed to have given its approval.

8.5. Counterparts. This DEC may be executed in several counterparts, each of which shall be deemed an original. The signatures to this DEC may be executed and notarized on separate pages, and when attached to this DEC shall constitute one complete document.

8.6. Estoppel Certificate. Each Party, Occupant, and the Operator agrees that upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party, it will issue to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

- (a) whether it knows of any default under this DEC by the requesting Person, and if there are known defaults, specifying the nature thereof;
- (b) whether this DEC has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and
- (c) whether this DEC is in full force and effect.

Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such Person to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to either request an audit of the Common Maintenance Areas Costs for any year it is entitled to do so, or challenge acts committed by other Parties for which approval by the Approving Parties was required but not sought or obtained.

8.7. Excusable Delays. Whenever performance is required of any Party, Occupant, or the Operator hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, 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 Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse any Person from the prompt payment of any monies required by this DEC or the performance of any indemnity obligations hereunder.

8.8. Interest. Except as otherwise provided herein, any time a Party shall not pay any sum payable hereunder to another within ten (10) days of the due date, such delinquent Party shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the lesser of:

(a) the highest rate permitted by law to be paid on such type of obligation by the Person obligated to make such payment or the Person to whom such payment is due, whichever is less; or

(b) two percent (2%) per annum in excess of the prime rate from time to time publicly announced by Wells Fargo Bank, N.A. or its successor (or if it no longer exists a comparable national bank doing business in the State of Utah.

8.9. Mitigation of Damages. In all situations arising out of this DEC, all Parties shall use commercially reasonable efforts to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party hereto shall take all reasonable measures to effectuate the provisions of this DEC.

8.10. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

8.11. Notices. Whenever a Party is required or permitted under this DEC to provide the other Party with any notice, submittal, request, demand, consent, or approval ("Notice"), such Notice will be given in writing and will be delivered to the other Party at the address or facsimile number set forth below: (a) personally; (b) by a reputable overnight courier service, delivery fee prepaid; (c) by certified mail, postage prepaid; or (d) by e-mail or facsimile transmission. A Party may change its address for Notice by written notice to the other Party delivered in the manner set forth above. Notice will be deemed to have been duly given: (i) on the date personally delivered; (ii) one (1) business day after delivery to an overnight courier service with next-day service requested; (iii) on the third (3<sup>rd</sup>) business day after mailing, if mailed using certified mail; or (iv) on the date sent when delivered by facsimile or e-mail (so long as the sender sends such facsimile or email on a business day and receives electronic

confirmation of receipt and a copy of the Notice is sent by one of the other means permitted hereunder on or before the next business day). The initial addresses for Notice are as follows:

IF TO WINCO:

WinCo Foods, LLC  
Attn: Greg Goins, Vice President of Real Estate  
650 N. Armstrong Place  
Boise, ID 83704  
Telephone: (208) 377-0110  
Fax: (208) 672-2146  
E-mail: [greg.goins@wincofoods.com](mailto:greg.goins@wincofoods.com)

With a copy at the same address to:  
Lori Gilbertson, Property Supervisor  
Fax: (208) 672-2334  
E-mail: [lori.gilbertson@wincofoods.com](mailto:lori.gilbertson@wincofoods.com)

With a copy at the same address to:  
Andrea Deguzman, Real Estate Paralegal  
E-mail: [andrea.deguzman@wincofoods.com](mailto:andrea.deguzman@wincofoods.com)

IF TO FORT LANE:

Fort Lane Village, LC  
Attn: Kevin Garn  
748 W. Heritage Park Blvd., Ste. 203  
Layton, UT 84041  
Telephone: (801) 784-5146  
E-mail: [kevin\\_garn@yahoo.com](mailto:kevin_garn@yahoo.com)

With a copy to:  
The Thackeray Garn Company, LLC  
Attn: Dean Smith, Attorney  
1165 E. Wilmington Ave., Ste. 275  
Salt Lake City, UT 84106  
Telephone: (801) 487-6670  
Fax: (801) 487-6671  
E-mail: [deans@jtcompany.com](mailto:deans@jtcompany.com)

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

8.13. Time. Time is of the essence with respect to each and every term, condition, obligation and provision contained in this DEC.

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

9. **TERM**

9.1. Term of this DEC. This DEC shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on December 31, 2090; provided, however, that the easements referred to as being perpetual or as continuing beyond the term of this DEC shall continue in force and effect as provided therein. Upon termination of this DEC, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this DEC, except as relates to those perpetual easements as set forth herein, shall terminate and have no further force or effect; provided, however, that the termination of this DEC shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this DEC prior to the date of such termination.

**[Signatures on following pages.]**



FORT LANE VILLAGE, LC,  
a Utah limited liability company

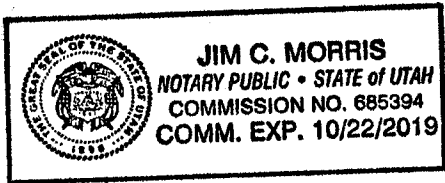
By: [Signature]  
Its: Manager

STATE OF UTAH )  
County of DAVIS )ss. )

On this 24 day of May, 2016, before me, a Notary Public, personally appeared KEVIN S. GARN, known or proved to me to be the MANAGER of FORT LANE VILLAGE, LC, a Utah limited liability company, the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same on behalf of said company.

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

[Signature]  
Notary Public  
Residing at DAVIS COUNTY  
Comm. Expires 10-22-19



**EXHIBIT A**

LEGAL DESCRIPTION OF WINCO PARCEL

Parcel 1:

PARCEL 1 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER.

Parcel 9:

PARCEL 9 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER.



**EXHIBIT A-1**

LEGAL DESCRIPTION OF FORT LANE PARCEL

Parcel 2:

PARCEL 2 OF THE FORT LANE VILLAGE SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED DECEMBER 11, 2007, AS ENTRY NO. 2631115, IN BOOK 5412 AT PAGE 1117, IN THE RECORDS OF THE DAVIS COUNTY RECORDER.

Parcel 4:

PARCEL 4 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER.

Parcel 5:

PARCEL 5 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER.

Parcel 6:

PARCEL 6 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER.

Parcel 8:

PARCEL 8 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER.

Tract A:

TRACT A OF THE FORT LANE VILLAGE SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED DECEMBER 11, 2007, AS ENTRY NO. 2631115, IN BOOK 5412 AT PAGE 1117, IN THE RECORDS OF THE DAVIS COUNTY RECORDER.

**EXHIBIT B**

CAPITAL IMPROVEMENT AND MAINTENANCE STANDARDS

**Parking Lot, Sidewalk, Driveway and Drive Aisle Areas**

- Pot holes, sink holes, crumbling and other damage must be repaired immediately.
- Slurry/Crack Fill/Reseal must be completed a minimum of once every four (4) years.
- Striping of high traffic areas (including, but not limited to, cross walks, front hatching, stop bars, dock areas and speed bumps) must be completed no less than annually. The remainder of the parking lot must be completed no less than once every other year.
- Concrete Curbing/Sidewalks/Driveways and Stamped Areas shall be inspected no less than annually. Repairs shall be completed in a in a timely manner to resolve hazards.
- Metal Signage (including, but not limited to, handicap signs, “no parking” signs, stop signs) shall be inspected no less than quarterly. Damaged and/or weathered signs shall be replaced immediately.
- Sweeping of parking lot, driveways and drive aisles
  - Sweeping shall occur no less than seven (7) days per week (hereinafter “Daily”)
  - Debris must be blown out from cart corrals and gutters using back-pack blowers (Daily)
  - All sidewalks and business entrance areas shall be blown-off using back-pack blowers (Daily)
  - Pick up and remove trash from parking lot (Daily)
  - Vendors/contractors shall not be allowed to dispose of or discard any refuse or debris into dumpsters located on the Shopping Center or on any area of the Shopping Center
  - Work must be conducted at night, or at times that cause minimal customer interruption, unless prohibited by law
- Snow/ice removal
  - Monitor weather conditions, respond and provide service immediately when a snow or ice event is predicted
  - Apply preventative applications of de-icing material starting with heavy frosts continuing throughout winter
  - Keep all sidewalks, landings, entryways, emergency exits, drive aisles and cart corral areas clear of snow and ice
  - Begin plowing parking lots no later than at one inch (1”) accumulation

### **Lighting and Signs**

- Parking lot lighting facilities and related equipment shall be formally inspected on no less than a quarterly basis to ensure they are in proper working order and that the parking and common areas are well lit at all times. Inoperative light bulbs and facilities shall be replaced immediately.
- Pylon/Monument Signs are to be inspected no less than quarterly to ensure proper operation and attractiveness. Damaged sign panels and/or sign structures shall be repaired in a timely manner.

### **Landscaping**

- Basic mowing, trimming and weeding shall be completed no less than on a weekly basis
- An air blower shall be used to clear all sidewalks after all mowing/trimming services
- Edging shall be completed no less than twice per season (determined by regional conditions)
- Bed maintenance, weed removal and trash/debris clean-up shall be conducted no less than on a weekly basis
- Sprinkler system maintenance shall be conducted no less than once a week (weekly sprinkler maintenance shall include but not be limited to, adjustments, inspection of sprinkler coverage as well as the identification of any necessary repairs)
- Seasonal start-up and shut-off sprinkler system service shall be conducted (seasonal sprinkler service shall include but not be limited to end of season sprinkler system "blow-out")
- Weed/pesticide treatments shall be conducted as needed to control weeds/pests and protect against weed growth and pest proliferation (determined by regional conditions)
- Tree and shrub trimming shall be conducted on an as needed basis to resolve hazards and maintain attractive appearance (determined by regional conditions)
- Monitor, re-stake and/or replace trees as needed and remove guy-wires/stakes as needed for proper tree growth and condition
- Seasonal clean-up shall be conducted at the beginning and end of growing season (seasonal clean-up shall include but not be limited to trimming, pruning, removal of leaves)
- Complete additional projects and repairs as needed (additional projects may include installation of fresh mulch, fence repair, etc.)
- All trimmings, leaves, trash, debris, etc. shall be removed from the Shopping Center and disposed of properly

### **Pressure Washing**

- Sidewalks and landings shall be pressure washed no less than every other week (weather permitting)
- Pressure washing shall be performed at night unless prohibited by law

### **Day Porter Services**




- Day porter services shall include but not be limited to inspecting the entire Shopping Center on foot, including parking lot, sidewalks, landscape beds, ditches and swale and retention areas, and removing all trash and debris, including large items dumped on premises, including furniture, tires, etc.

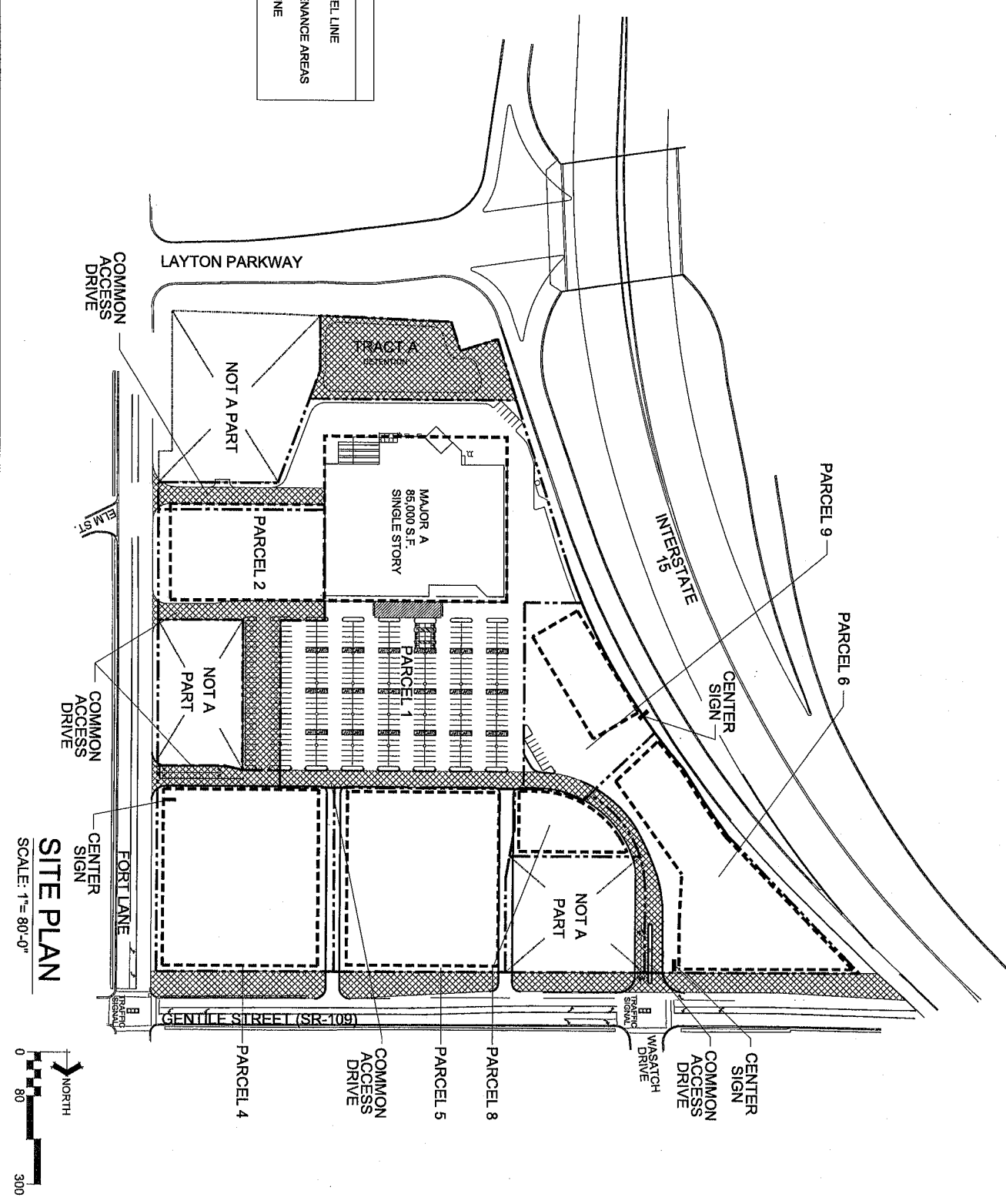
**All Contractors shall perform work in accordance with the DEC and all applicable laws and shall be responsible for obtaining permits or licenses legally required prior to performing work. All Contractors shall be responsible for conducting work in a manner to protect against injury to all persons. All Contractors are required to provide proof of liability insurance, workers compensation insurance, a current business license and complete a W-9. All Contractors shall provide an emergency phone number for contact 24 hours/7 days a week and all Contractor employees and vehicles will be clearly marked and identifiable with the business name or logo.**

**EXHIBIT X**

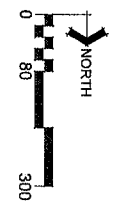
SITE PLAN

*(See attached.)*

	PROPERTY/PARCEL LINE
	COMMON MAINTENANCE AREAS
	BUILDING LIMIT LINE



**SITE PLAN**  
SCALE: 1" = 80'-0"






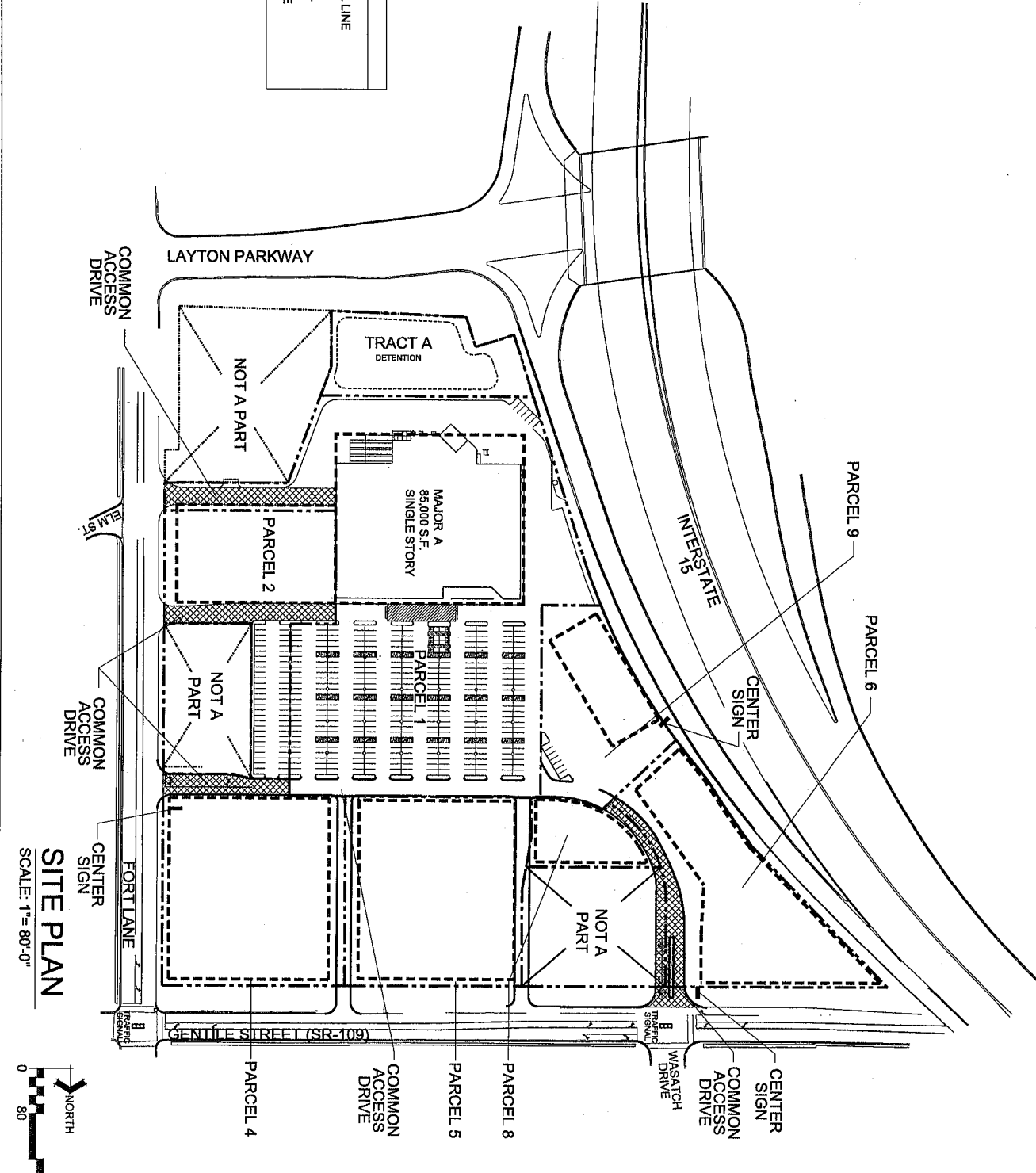
<p>REVISIONS</p> <table border="1"> <tr><td>3/03/15</td></tr> <tr><td>4/07/15</td></tr> <tr><td>4/09/15</td></tr> <tr><td>5/1/15</td></tr> <tr><td>5/18/15</td></tr> <tr><td>6/1/15</td></tr> <tr><td>6/16/15</td></tr> <tr><td>2/22/16</td></tr> </table>	3/03/15	4/07/15	4/09/15	5/1/15	5/18/15	6/1/15	6/16/15	2/22/16	<p>WINCO FOODS STORE S.W.C. E. GENTILE STREET &amp; S. FORT LANE LAYTON, UTAH</p>
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2/22/16									
<p>DATE: 4/9/15</p> <p>SHEET TITLE: PRELIMINARY SITE PLAN</p> <p>SHEET: EX-X</p>									

**EXHIBIT X-1**

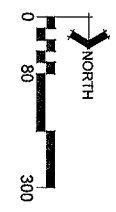
LIGHTING CONTROL PLAN

*(See attached.)*

	PROPERTY/PARCEL LINE
	LIGHTING CONTROL
	BUILDING LIMIT LINE



**SITE PLAN**  
SCALE: 1"=80'-0"



<p>REVISIONS</p> <p>6/03/15 2/22/16</p>	<p>DATE</p> <p>4/9/15</p>	<p><b>WinCo</b> <b>FOODS</b></p> <p>WINCO FOODS STORE S.W.C. E. GENTILE STREET &amp; S. FORT LANE LAYTON, UTAH</p>	<p>SHEET</p> <p>EX-X1</p>
	<p>SHEET TITLE</p> <p>PRELIMINARY SITE PLAN</p>		