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RASHELLE HOBBS
Recorder, Salt Lake County, UT
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BY: eCASH, DEPUTY - EF 67 P.

After Recording Return To:

Chad W. Lamer
WinCo Foods, LLC
P.O. Box 5756
Boise, ID 83705

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MTC # 265341

SALT LAKE COUNTY, UTAH

Abbreviated Legal Description:

Lots 301, 302, 303, 304, 305, 306,
307, 308, 309, 310 and Parcel A,
Anthem Commercial 3rd Amended Subdivision

Tax Parcel Number(s): 26-25-202-002, 26-25-128-004,
26-25-128-003, 26-25-128-002, 26-25-178-004,
26-25-178-005, 26-25-178-006, 26-25-252-001,
26-25-252-002, 26-25-252-003, 26-25-202-001

DECLARATION OF EASEMENTS AND CONDITIONS

BETWEEN

WINCO FOODS, LLC
a Delaware limited liability company,

AND

ANTHEM CENTER, LLC
a Utah limited liability company

DECLARATION OF EASEMENTS AND CONDITIONS

THIS DECLARATION OF EASEMENTS AND CONDITIONS (“DEC”) is made as of the 23 day of April, 2019, by and between WINCO FOODS, LLC, a Delaware limited liability company (“WinCo”) and ANTHEM CENTER, LLC, a Utah limited liability company (“Anthem”).

RECITALS

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

A. WinCo is or will be the owner of a certain parcels of land in the City of Herriman, County of Salt Lake, State of Utah more particularly described on **Exhibit A**, attached hereto (the “WinCo Parcel”).

B. Anthem is the owner of certain parcels of land in the City of Herriman, County of Salt Lake, State of Utah, more particularly described on **Exhibit A-1**, attached hereto (collectively, the “Anthem Parcel” and together with the WinCo Parcel, the “Shopping Center”).

C. The Shopping Center will consist of contiguous Parcels (as defined in Section 1.36 below) identified on the site plan attached hereto as **Exhibit X** (the “Site Plan”). The WinCo Parcel will consist of the parcel identified on the Site Plan as “Lot 301” and the Anthem Parcel will consist of the parcels identified on the Site Plan as “Lots 302-309”, and the land identified on the Site Plan as “Lot 310” (the “Future Development Parcel”).

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

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 Anthem hereby make this DEC:

1. DEFINITIONS.

1.1. “Adjacent Party” shall mean the Party (as defined in Section 1.36 below) owning a Parcel (as defined in Section 1.35 below) adjacent to another Party.

1.2. “Administration Fee” shall mean the fee that may be charged by the Operator (as defined in Section 1.33 below) in lieu of the Operator’s administrative and overhead costs in accordance with Section 4.3(e).

1.3. “Approving Parties” shall mean each of WinCo, or its successor-in-interest, and Anthem for so long as Anthem or any entity that is controlled by, under common control with or controls Anthem owns any Anthem 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. In the event Anthem is no longer an Approving Party, the Approving Party for the Anthem Parcel will either be (a) appointed by Anthem in a document of record and recorded against the Shopping Center as a supplement to this DEC, or (b) if Anthem has failed to appoint another Approving Party, the owner of the largest Anthem Parcel. 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 (as defined in Section 1.7 below) on a Parcel.

1.5. “Architectural Guidelines” shall mean the guidelines for the Shopping Center as required by the Master Development Agreement for Anthem Commercial Project, dated September 28, 2016, and recorded as document number 12453407 in the office of the Salt Lake County Recorder’s Office, with all Buildings remaining subject to the obligations under Section 3.3(b). Any changes, amendments or modifications to the guidelines set forth in the Master Development Agreement in effect as of the date hereof will not change the guidelines required hereunder unless the Approving Parties have consented to such changes.

1.6. “Budget” shall mean the written document setting forth the estimated cost of maintaining the Common Area (as defined in Section 1.13 below) of the Shopping Center, including the Center Signs (as defined in Section 1.12 below), and estimated Administration Fee prepared by the Operator and approved by the Approving Parties.

1.7. “Building” shall mean any building structure, including drive-through facilities and trash enclosures, and any associated appurtenant canopies, supports, loading docks, truck ramps, and other outward extensions, including sidewalks immediately adjacent to any such building structure and areas between such sidewalks and buildings, exclusive of Center Signs.

1.8. “Building Area” shall mean the areas of the Shopping Center within which Buildings may be constructed, placed, or located from time to time. Building Areas are, subject to the provisions of Section 3.3(a) below, 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. Notwithstanding anything to the contrary in this DEC, the owner of the WinCo Parcel shall not be required to submit or obtain Approving Party or other Party’s approval for any relocation or reconfiguration of the Building Area on the WinCo Parcel, nor the expansion of the Building Area on WinCo Parcel, provided that, all such changes comply with the provisions of this DEC. 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 (as defined in Section 1.25 below) for such Building to be made in accordance with this section, and such determination shall be sent to the Approving Party(ies) and to any Party requesting the same.

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

1.10. “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 in Section 1.24 below).

1.11. “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.

1.12. “Center Signs” shall mean the signs used to identify Occupants (as defined in Section 1.32 below) of the Shopping Center which are for the use of more than one Occupant of the Shopping Center, as further defined in Section 3.2(e), and located at the approximate locations shown on **Exhibit X**.

1.13. “Common Area” shall mean all areas within the boundaries of the Shopping Center, exclusive of Buildings.

1.14. “Common Maintenance Area 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. “Common Maintenance Areas” shall mean (a) the Main Access Driveways (as defined in Section 1.29 below) and (b) Center Signs.

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

1.17. “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 (6th) 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.

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

1.19. “Defaulting Party” shall mean the Party failing to perform under the DEC beyond all applicable notice and cure periods.

1.20. “Detention Ponds” means the detention ponds (if any) labeled on the Site Plan as “Detention Ponds” and serving the Shopping Center, but excluding the WinCo Detention Pond (as defined in Section 1.46).

1.21. “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.

1.22. “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.

1.23. “Fast Food Restaurant” shall mean any quick serve/fast casual restaurant that prepares and dispenses food orders in a limited period of time. Fast Food Restaurants do not include any Restaurant (as defined in Section 1.41 below) 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.

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

1.25. “Floor Area” shall mean the actual number of square feet of space contained on each floor within a Building, excluding 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.

1.26. "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.

1.27. "Initial Work" shall mean site improvement work to be performed pursuant to the Site Development Agreement.

1.28. "Invoice" shall mean the monthly billing statement issued by Operator for the Common Maintenance Area Costs in accordance with Section 4.3(f).

1.29. "Main Access Driveways" means the roads serving the Shopping Center and designated on the Site Plan as "Main Access Driveway."

1.30. "Maintenance Standard" shall have the meaning set forth in Section 4.2(a).

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

1.32. "Occupant" or "Occupants" shall mean any Person or Persons (as defined in Section 1.37 below) 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.

1.33. "Operator" shall mean the Person designated by the Approving Parties from time to time to maintain and operate the Common 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 Areas within the Shopping Center in accordance with Section 4.3(j). The initial Operator shall be Anthem Center, LLC.

1.34. "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.

1.35. "Parcel" or "Parcels" shall mean one or more legally subdivided portions of the Shopping Center owned by a Party and designated as a "Lot" on **Exhibit X**.

1.36. "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. 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, no Party will be required to provide such notice of transfer in the event that it transfers its interest in a Parcel to a parent, subsidiary, or affiliate of such Party. 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.

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

1.38. "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 other than signs expressly permitted herein;
- (b) Distributing any circular, handbill, placard, or booklet;
- (c) Soliciting memberships, contributions, or signatures;
- (d) Parading, picketing, or demonstrating (except to the extent any restrictions on the same is in violation of applicable law); or
- (e) Failing to follow regulations relating to the use of the Shopping Center.

1.39. "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 or any Common Area.

1.40. "Remaining Work" shall mean all site improvement work for or on the balance of the Shopping Center Property not included in the Initial Work.

1.41. "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.

1.42. "Site Development Agreement" shall mean that certain Site Development Agreement dated on or around the date hereof, between Anthem and WinCo relating to the Initial Work, as amended, restated, supplemented or otherwise modified from time to time.

1.43. "Site Plan" shall mean the site plan for the Shopping Center attached hereto as **Exhibit X**, which may be reasonably modified by amendment to this DEC duly executed and recorded in accordance with Section 8.4(e) below.

1.44. "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 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.

1.45. "Utility Corridors" shall mean the area under the Main Access Driveways.

1.46. "WinCo Detention Pond" means the detention ponds shown on the Site Plan labeled "WinCo Detention Pond A" and "WinCo Detention Pond B."

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 each Parcel, over and across 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. Said access, parking, drive aisle and driveway easement areas and the Main Access Driveways shall be located as shown on the Site Plan (but subject to modification as permitted herein). 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 a minimum of ten (10) days prior 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 the Utility Corridors (exclusive of any portion located within a Building 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.

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 Main Access Driveways 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 (other than those being installed pursuant to the Site Development Agreement), 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 in the Utility Corridors. The grantor shall have the right at any time to relocate a Utility Line within the Utility Corridors upon thirty (30) days prior written notice, provided that such relocation:

(i) shall be within the Utility Corridor, unless, with respect to a Separate Utility Line, each owner of a Parcel on which such Separate Utility Line may be located gives its written consent to the location of such Separate Utility Line in an area outside of the Utility Corridor, which consent may be granted or withheld in such owner's sole discretion;

(ii) shall not interfere with or diminish the utility service to the grantee during the grantee's business hours, and shall not unreasonably restrict vehicular and pedestrian access along the Main Access Driveways;

(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;

(vi) shall provide reasonable alternative access along the Main Access Driveways; and

(vii) 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 surface water drainage/retention system for the Shopping Center shall be initially constructed in accordance with the Site Development Agreement; and

(ii) No Party shall alter or permit to be altered the surface of the Common Area after the initial construction 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.

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 resides hereby grants to (a) the owner of a WinCo Parcel with respect to the portions of the Center Signs shown on **Exhibit X**, and (b) the owner of Anthem Parcel with respect to the portions of the Center Signs shown on **Exhibit X**, an easement in, to, over, under, and across that portion of such Party's Parcel as is reasonably necessary to install and maintain a sign panel on such Center Sign, including all necessary utilities and related improvements in areas approved by the Party whose Parcel a Center Sign is located, 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, or breach of this DEC by, 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 purpose 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) Directly 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;

(iv) Cause any Building located on another Parcel which has been constructed in accordance with the requirements of this DEC 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; provided, however, that the foregoing shall not be applicable to events or circumstances caused by the negligence or willful act or omission of, or breach of this DEC by, such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them unless covered by the release set forth in Section 5.4(d) below.

(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 the Main Access Driveways, or, when completed, will not unreasonably restrict the use of the Common Areas on its Parcel. No other Party's staging area shall, without the prior written consent of the owner of a Parcel, which may be granted or withheld in such owner's sole, absolute and unreviewable discretion, be located on another owner's Parcel or, without the consent of the Approving Parties, within the Main Access Driveways. 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, so long as the owner of the WinCo Parcel has provided at least thirty (30) days prior written notice of the date of the grand opening of its business (which shall be limited to one day) on the WinCo Parcel to each Party, 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, commence any staging or construction activities on or with respect to Lots 302, 303, 306, 307, 308, and 309 during the period commencing five (5) days prior to the grand opening (as specified in such notice) of the business on the WinCo Parcel and ending thirty (30) days following the date of such grand opening (as specified in such notice), and such areas shall be maintained in a clean and slightly condition at all times during such grand opening period. The foregoing will not in any way prevent or limit construction that was commenced before such five (5) day 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, access points, and the Main Access Driveways. Upon completion of such work, the Constructing Party shall restore the affected Common Area and access points to the Property 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 interfere with access over and across the access points, common drive aisles or Main Access Driveways located on another Party's Parcel or generally any Main Access Driveways within or to the Shopping Center without the prior written consent of the owner of such 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). 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 Property 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.

3.2. Common Area. The Parties have agreed that the Main Access Driveways, the Detention Ponds (if any), the WinCo Detention Pond, and Center Signs of the Shopping Center shall be initially constructed as shown on the Site Plan, as finally approved by the City of Herriman. No fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel within the Common Area shall be erected or permitted within or across the Common Area, exclusive of the limited curbing and other forms of traffic control depicted on the Site Plan, or permitted staging and/or storage areas or as required herein. 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 Area light standards shall be subject to the Architectural Guideline. Each owner shall meter and maintain the Common Area lighting on its Parcel in accordance with the standards set forth in Sections 4.2 and 5.2 below. The Common Area lights located on the Main Access Driveways ("Main Access Driveway Lighting") shall be separately metered when installed so that the Operator controls the Main Access Driveway Lighting within the area depicted on the Lighting Control Plan attached hereto as **Exhibit X-1** ("Lighting Control Plan"). The all costs associated with the maintenance, repair, replacement, and electricity in the operation of the Main Access Driveway Lighting shall be included in the Common Maintenance Area Costs.

(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) Common Utility Lines that are placed underground shall be at depths designated by consultants approved by the Approving Parties. If surface water retention and/or detention areas are located outside of the general parking lots, if required by governmental authorities, then all such areas shall be fenced or otherwise secured, to impede public access thereto.

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

(i) Three (3) Pylon Signs and six (6) blade signs (to be used by a single entity) which shall be located at the approximate locations shown on **Exhibit "X"** (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 all Pylon Signs, the full use of one (1) blade sign located adjacent to the Mountain View Corridor as depicted on **Exhibit X**. Anthem shall have the right to use the remaining areas on the Pylon Signs and the remaining five (5) blade signs and may separately designate the parties and/or Anthem Parcels entitled to use the remaining area on the Center Signs pursuant to a sign agreement which may be recorded as a supplement to this DEC against the Parcels subject to the Center Signs. Notwithstanding the foregoing, only one entity or occupant of the Shopping Center will be allowed to use a single blade sign at any given moment.

(ii) The initial design and construction of the Center Signs shall be set forth in the Site Development Agreement. 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) Subject to the prior written approval of governmental authorities, the owners of the other Parcels may erect monument signs on their Parcels. In no event shall any such monument signs be included in the definition of the "Center Signs" set forth in Sections 1.12 and 3.2(e) above. The design and construction of, and the inserts on, each such monument sign, shall comply with the Architectural Guidelines and each monument sign shall be no more than ten feet (10') in height above ground level, and shall have a total sign panel of no more than seventy-five (75) square feet. Each monument sign will be maintained by the owner of the Parcel on which such monument sign is located at such owner's sole cost and expense.

(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 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; provided, the entire costs for the electronic or digital display on the Center Signs shall be paid for by the owner of the WinCo Parcel and such sign shall be separately metered and paid for directory by the owner of the WinCo Parcel.

(f) The parking area on each separate Parcel (excluding the Future Development Parcel, which shall only be required to contain the number of spaces required by applicable law) shall contain sufficient ground level parking spaces in order to comply with the following minimum requirements:

(i) The minimum number of parking spaces on a Parcel shall be as follows:

- (1) Grocery store uses shall have a parking ratio of 4:1;
- (2) General retail uses shall have a parking ratio of 4:1;
- (3) Office uses which contain 5,000 square feet of Floor Area or less shall have a parking ratio of 5:1, and office uses which contain more than 5,000 square feet of Floor Area shall have a parking ratio of 7:1;
- (4) Fast Food Restaurant uses shall have a parking ratio of 7:1; and
- (5) Restaurant uses shall have a parking ratio of 10:1;

(ii) All governmental rules, regulations, and/or ordinances relating to parking requirements, as if such Parcel were a separate legal parcel with self-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) Each Party may upon thirty (30) 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 materially 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) Except as otherwise expressly permitted herein, no Party shall make changes to the Main Access Driveways and Center Signs on its Parcel without the approval of the Approving Parties. Each owner of a Parcel will have the right to change the Common Areas on its Parcel from time to time provided that:

(i) Vehicular and pedestrian access along the Main Access Driveways shall not be unreasonably restricted or hindered unless reasonable alternative access is provided and is approved by the Approving Parties;

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

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

(iv) 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;

(v) No change shall be made in the access points along the Main Access Driveways; provided, however, that additional access points may be created with the approval of the Approving Parties, which approval shall not be unreasonably withheld, conditioned, or delayed; and

(vi) At least thirty (30) days prior to making any such change, modification, or alteration, the Party desiring to do such work shall deliver to each other affected Party copies of the Plans therefor, and provided further that, except for the Initial Work construction of the Common Area and for repair of any Utility Lines, no such work shall occur with respect to the Main Access Driveways between October 1st and the following January 31st; and

(vii) 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.

The provisions of this Section 3.2(g) do not apply to any changes, modifications, or alterations of Common Area located within Building Areas which result from or arise out of the construction, expansion, or maintenance of Buildings.

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. The Building Area for each Building shall not exceed the number of square feet designated in Section 3.3(d) for that Parcel. Notwithstanding the foregoing, the Parties agree that Building Area limit lines for Lot 307 shall be established by an amendment to this DEC prior to the initial construction of any Building on Lot 307 and that WinCo's approval of such DEC amendment shall be contingent upon Lot 307 self-parking in accordance with parking ratio requirements of this DEC, conformance with the square footage restrictions for each authorized use under this DEC. WinCo's approval of such DEC amendment shall not be unreasonably

withheld, conditioned, or delayed. Other than the initial construction of the Building on the WinCo Parcel, there shall be no Building construction work performed on Lots 302, 308, or 309 between October 1st and the following January 31st; provided, however, Building construction work may be performed on Lots 302, 308, or 309 between October 1st and the following January 31st (the "Blackout Period") so long as the Party performing such work submits a copy of a plan (the "Staging Plan") to the Approving Parties which shows during the Blackout Period (i) the areas where construction parking for such Parcel will be located (which may not be on the WinCo Parcel), (ii) where a track out pad and wash out pad will be located (which may not be on the WinCo Parcel), (iii) the location of construction fencing on such Parcel, which fencing shall have a 6' visual barrier and will be located around on construction activities on such Parcel, and (iv) confirms that the Main Access Driveways will be swept and kept free of mud and construction debris as a result of the construction activities of such submitting Party. The Staging Plan will be subject to the approval of the Approving Parties. Once approved, the submitting Party will comply with the Staging Plan during the Blackout Period and Anthem shall monitor and enforce such compliance. If the submitting Party fails to comply with the Staging Plan, either Approving Party may deliver written notice to the submitting Party of such failure and if the submitting Party fails to remediate any non-compliance, or thereafter fails to comply, with the Staging Plan, the submitting Party will be required to pay, as liquidated damages, \$200.00 per day for each day of violation of the Staging Plan, which amounts will be paid to the owner of the WinCo Parcel. The Parties agree that it is difficult to approximate the amount of damages WinCo will suffer as a result of failure to comply with the terms of this Section 3.3(a) and that \$200.00 per day is a fair estimate of such damages and that such amount is not a penalty for failure to comply with the terms of this Section 3.3(a).

(b) The exterior of all Buildings to be constructed or placed within the Shopping Center shall be architecturally and aesthetically compatible and in conformance with the Architectural Guidelines (e.g. architecturally and aesthetically compatible with the Architectural Guidelines for the Shopping Center). In order to ensure the exterior architectural and aesthetic compatibility of the Buildings within the Shopping Center, each Party shall submit to the Approving Parties a site plan and elevations for each Building (the "Submission Plans"), and any additions, remodeling, reconstruction, or other alteration thereto which changes the exterior thereof at least thirty (30) days prior to the submission of such plans to the City; provided, however that this requirement shall not apply to the owner of the WinCo Parcel. Anthem has approved WinCo's elevations attached to this DEC as **Exhibit C**. If an Approving Party determines that a Party's Submission Plans fail to comply with the Architectural Guidelines or the Submission Plans are architecturally or aesthetically incompatible with the Architectural Guidelines for the Shopping Center, then such Approving Party shall have thirty (30) days after receiving the Submission Plans to deliver written notice objecting to such Submission Plans. Such written notice shall include a reasonably detailed description of how the Submission Plans violate the Architectural Guidelines or how the Plans are architecturally or aesthetically incompatible with the Architectural Guidelines for the Shopping Center, and what changes, if made, would conform to the Architectural Guidelines or make the Building architecturally or aesthetically compatible with the Architectural Guidelines for the Shopping Center. If a Party receives an objection from an Approving Party, such Party shall not be permitted to construct a Building in accordance with the Submission Plans, but may revise and resubmit such Submission Plans as provided herein or may elect to take any other legal action (including seeking a declaratory judgement that such plans to comply with the Architectural Guidelines and are architecturally or aesthetically compatible with the Architectural Guidelines for the Shopping Center).

(c) 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. All Buildings shall be located at least twenty-five feet (25') away from the Main Access Driveway as shown on **Exhibit X**.

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(d) No Building or other structure (exclusive of any light poles, free standing signs referred to in Section 3.2 or 5.3, or flag poles) in the Shopping Center (excluding the Future Development Parcel) shall exceed the following heights without prior written approval of the Approving Parties:

PARCEL	BUILDING HEIGHT	HEIGHT OF ARCHITECTURAL FEATURES	ALLOWABLE FLOOR AREA
WinCo Parcel (Lot 301)	40'	48'	87,000 s.f.
Anthem Parcel (Lots 302, 303, 304, 305, 306, and 308)	25'	28'	Lots 302-308 shall be the S.F. Max. as stated on the Site Plan
Anthem Parcel Lot 307	25'	28'	* See Section 3.3(a) for reasonableness standard
Anthem and WinCo Parcel	N/A	WinCo Detention Pond	None

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 height and allowable Floor Area of Buildings in the Future Development Parcel (Lot 310) will be unrestricted. In the event two Parcels are combined, the allowable Floor Area as provided above for the combined parcel will be equal to the sum of the allowable Floor Area for the Parcels that were combined.

(e) 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(d) above, provided that such Communications Equipment shall be screened so that it is not visible to customers.

(f) 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(d) above.

3.4. Phased Development.

(a) WinCo and Anthem anticipate that certain Initial Work will be performed on certain portions of the Shopping Center as specified in the Site Development Agreement. 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 no other owner of a Parcel, other than the Parcel for which such Remaining Work is being done, 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 accordance with the requirements thereof.

3.5. Fire Protection. All improvements within the Shopping Center shall be constructed in compliance with the Building Code.

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 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 1.34 above or 4.3(b) below, the Operator shall maintain the Center Signs as part of the Common 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 Permittees; (ii) after completion of construction 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 D**, attached hereto; (y) meet or exceed the standard of maintenance followed in other first class retail developments of comparable size in the Salt Lake County, 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, or breach of this DEC by, 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 screened, 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, immediately remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall either: (i) 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 (ii) erect other Building improvements in such location, such construction to be performed in accordance with all provisions of this DEC; or (iii) 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 Area Maintenance.

(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 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) Notwithstanding the provisions of Section 4.3(a) to the contrary, in the event an Operator for the Shopping Center is designated in accordance with Section 1.33 above, or Section 4.3(j) below, the Operator 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 Area Costs"), including sums expended for the following: the cost of public liability, property damage, and other insurance that meets the requirements set forth in Section 5.4, below; maintaining, cleaning, repairing and/or replacing sidewalks along the Main Access Driveways; line painting, paving, maintaining, repairing, and/or replacing the drive aisles and driveways in the Main Access Driveways; snow and ice removal from the Main Access Driveways; maintaining, repairing, and/or replacing Detention Ponds (if any) as labeled on the Site Plan; maintaining, replacing, and/or repairing all Center Signs; sanitary control and removal of trash, rubbish, garbage, and other refuse from the Main Access Driveways; all items of repair, maintenance, and/or replacement of any improvements within the Common Maintenance Areas 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 Areas; 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 Area 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 or expenses for Common Areas other than the Common Maintenance Areas;
- (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 blade sign, or the initial design and installation, or re-design, replacement, and installation, of a Party's individual sign panel insert on the Pylon Sign or on a blade sign (which will be paid by the Party(ies) entitled to use such sign);
- (viii) Any costs for the installation, operation and maintenance of any electronic or digital message display on Center Signs (including utilities required to power such electronic or digital messages), which shall be paid solely by the Party installing and operating such sign.
- (ix) Real property taxes and assessments on the Common Area;
- (x) Any general corporate overhead and general administrative expenses;
- (xi) Any administration or management fees 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;
- (xiv) Any costs, fees, expenses, and or adjustments to any of the Common Maintenance Area Costs submitted more than two (2) years after the date incurred by the Operator; or
- (xv) Any costs for the maintenance or replacement of the WinCo Detention Pond (which will be maintained and replaced by the owner of the WinCo Parcel at its sole cost and expense).

(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 its maintenance or operation of the Common Area, 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 obligations of Operator in excess of Ten Thousand and No/100 Dollars (\$10,000.00) in Constant Dollars and not set forth in the Budget 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 D**. 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 most 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 Area Costs for the balance of the current year or the upcoming year, as applicable. The Budget shall be subject to the approval of the Approving Parties, such approval not to be unreasonably withheld, conditioned or delayed, and shall separately identify cost estimates for at least the categories of expenses specified in Section 4.3(f) below. In the event the Approving Parties have failed to consent to a Budget by the beginning of a calendar year, the Budget shall automatically be increased by five percent (5%) over the prior years' Budget until the then current year's Budget has been approved by the Approving Parties. The Operator shall use commercially reasonable efforts to maintain the Common Maintenance Areas 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 Area Costs by ten (10%) percent, but excluding the cost of Operator's insurance any utilities for purposes of calculating such fee, provided, with respect to any capital improvements such fee shall be limited to two percent (2%) of the amounts of the capital improvements performed by the Operator (collectively, "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 maintenance 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 Shopping Center shall not be included in the Common Maintenance Area 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 Areas 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 Area Maintenance Cost. The Operator shall maintain all records related to Common Maintenance Area Costs, Budgets, Administration Fees, Invoices, and supporting documentation evidencing the Common Maintenance Area Costs for at least three (3) 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 Area Costs and the Administration Fee on a monthly basis as follows: (i) all Common Areas Maintenance Costs other than the Center Signs and the portion of the Main Access Roadway shown on the Site Plan as Denali Park Drive will be split between the WinCo Parcel and the Anthem Parcel (but excluding the Future Development Parcel) pro rata based on the square footage contained in each such Parcel, (ii) all Common Areas Maintenance Costs for the Pylon Signs will be split between owners entitled to use such Pylon Signs based on the square footage of the sign panel such Owner is entitled to use, (iii) all Common Areas Maintenance Costs for the Center Signs constituting the blade signs will be paid by the owner entitled to use such blade signs, and (iv) all Common Areas Maintenance Costs for the portion of the Main Access Roadway shown on the Site Plan as Denali Park Drive will be split equally between the Future Development Parcel on one hand, and the WinCo Parcel and the Anthem Parcel (but excluding the Future Development Parcel) on the other hand (and amounts allocated to the WinCo Parcel and the Anthem Parcel shall be allocated to such Parcels as provided in clause (i) above). Each Party will pay to the Operator, on or before the first day of each month, one-twelfth (1/12th) of the Common Maintenance Area Costs as shown in the Budget and for which such Party is responsible. The Operator will confirm each monthly payment in an annual invoice delivered to the Parties (each an "Invoice"). 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. Each Party shall pay interest on any such amortized amount at the rate of U.S. Bank National Association's prime rate of interest (or if it no longer exists a comparable regional national bank located 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 Area Cost for purposes of the calculation of the Administration Fee.

(g) Notwithstanding anything to the contrary herein, the Operator shall have the right to make emergency repairs to the Common 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 one hundred twenty (120) days after each calendar year, the Operator will furnish each owner with a written reconciliation statement with supporting invoice documentation (the "Reconciliation Statement") comparing the actual Common Maintenance Area Costs payable by such owner during the previous calendar year against the amounts actually paid by such owner. If the annual reconciliation statement of costs indicates that Common Maintenance Area Costs paid by an owner for any year exceeded the Common Maintenance Area Costs owing by such owner, the Operator, at its election, shall within thirty (30) days of deliver of such Reconciliation Statement, either (a) pay the amount of such excess to such owner, or (b) apply such excess against the next installment of Common Maintenance Area Costs payable by such owner. If the Reconciliation Statement indicates the Common Maintenance Area Costs pay by an owner for any year are less than the Common Maintenance Area Costs owing by such owner for such calendar year, such owner will pay to the Operator any such deficiency within thirty (30) days of such owner's receipt of such reconciliation statement. Within one hundred twenty (120) days after receipt of a Reconciliation Statement, each Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common Maintenance Areas for the period covered by such Reconciliation Statement. 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. Such audit shall be conducted with all due diligence and shall not unreasonably interfere with the Operator's operations. In the event that such audit shall disclose any error in the determination of the Common Maintenance Area 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 five percent (5%) of the amount calculated by Operator as its share for the year, in which event Operator shall pay the Party's out-of-pocket costs of such audit, excluding transportation, lodging and related costs.

(i) In the event the Operator fails to maintain the Common Maintenance Areas 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 in the same proportion required pursuant to Section 4.3(f) 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.

(j) In the event the Operator desires to resign as Operator, such Operator shall deliver written notice thereof to the Approving Parties at least thirty (30) days prior to the date of the proposed resignation; provided, however, if requested by the Approving Parties, the Operator will extend its resignation for up to an additional sixty (60) days. 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 Approving Parties acting jointly shall be responsible for the obligations of the 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 (excluding the Future Development Parcel) shall be used or occupied for any purposes other than retail sales (including a gas station and associated convenience store and an oil changing business (provided such oil changing business must be included as part of a national brand that includes more than fifty (50) stores), Business Offices, Financial Retail Offices, Restaurants, and Fast Food Restaurants.

(b) No use shall be permitted in the Shopping Center (excluding the Future Development Parcel) 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 in the Shopping Center, including the Future Development Parcel unless specifically excepted herein:

(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 (a) the Occupant of the WinCo Parcel conducting its supermarket operations, 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, or (b) the Occupant of a Parcel in conducting a business consisting of a Restaurant or Fast Food Restaurant which are typical of such facilities so long as such Occupant shall take measures normally taken by first-class restaurant 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 located near the rear of any Building);

(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, T.J. Maxx or similar store; provided, this prohibition will not apply to the Future Development Parcel;

(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; provided, this prohibition will not apply to the Future Development Parcel;

(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; provided, further, the prohibition on movie theaters and bowling lanes will not apply to the Future Development Parcel;

(xi) Any residences, living quarters, sleeping apartments, lodging rooms, or any hotel, motel, or other lodging facility; provided, the prohibition on hotels, motels and other commercial lodging rooms or facilities will not apply to the Future Development Parcel;

(xii) Any veterinary hospitals or animal raising facilities (except that this prohibition shall not prohibit pet shops or services incidental to pet shops); provided, this prohibition will apply to animal raising facilities but not veterinary hospitals on the Future Development Parcel;

(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, or any other use of a sexually-oriented or "adult" nature; provided, this prohibition will not apply to a hotel built on the Future Development Parcel;

(xv) Any stores selling cigarettes, cigars, tobacco and/or tobacco related products, vapor cigarettes and/or related products, marijuana (whether medical or otherwise) and/or drug-related paraphernalia; provided that this prohibition shall not be applicable to a retail grocery store operating on the WinCo Parcel;

(xvi) 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 forty-five percent (45%) of the gross revenues for such business; (2) a retail grocery store operating on the WinCo Parcel; or (3) a pub (such as 'Bout time, Squatters, Wasatch Brewery, Hoppers or other similar establishment); provided, this prohibition will not apply to the Future Development Parcel;

(xvii) Any health spas, massage parlors, fitness centers, gyms, or workout facilities, or any day spas or similar facilities; provided, however, that (1) a fitness center, gym or workout facility that does not exceed five thousand (5,000) square feet of Floor Area shall be permitted; (2) a day spa facility that does not exceed more than five thousand (5,000) square feet of Floor Area shall be permitted; and (3) this prohibition will not apply to the Future Development Parcel;

(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; (3) a diet center or training facility that does not exceed three thousand (3,000) square feet of Floor Area; or (4) the Future Development Parcel;

(xix) Any flea markets;

- (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, but excepting: (1) the seasonal sale of fireworks; (2) uses where hazardous substances are stored or used in nominal legal amounts in conjunction with an otherwise permitted use; (3) products in sealed containers and sold in the ordinary course of any otherwise permitted use; or (4) products typical for a gas station or oil changing business;
 - (xxii) Any automobile body and fender repair work; and
 - (xxiii) Any church, synagogue, mosque or other place of worship.
- (c) The following additional use and occupancy restrictions shall apply (except with respect to the Future Development Parcel):

(i) Business Offices and Financial Retail Offices shall be permitted in the Shopping Center; provided, however, the aggregate square footage of all Floor Area dedicated to use as Business Offices and Financial Retail Offices within the Shopping Center (other than the Future Development Parcel) shall not exceed twenty thousand (20,000) 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 under seven thousand (7,000) square feet of Floor Area shall be permitted in the Shopping Center. 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 or any Fast Food Restaurant. 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.

(iii) Fast Food Restaurants of not more than five thousand five hundred (5,500) square feet of Floor Area shall be permitted in the Shopping Center (subject to the restrictions provided in Section 5.1(d) below). Without limiting the foregoing and for illustrative purposes only, Fast Food Restaurants include the following:

- | | |
|--------------|-----------------|
| Burger King | Hardy's |
| Wendy's | McDonald's |
| Carl's Jr | Jack In The Box |
| Taco Bell | Arby's |
| Taco Time | Subway |
| Blimpie | Café Rio |
| Zupas | Jimmy Johns |
| Panera Bread | Einstein Bros |
| Starbucks | |

(d) No portion of the Shopping Center (including the Future Development Parcel) other than the WinCo Parcel shall be used as a retail grocery store operation (which is hereby defined to mean any store [including e-commerce retailers that may include, without limitation, storefront drop-off/pick-up facilities], bakery, delicatessen, or sushi operation, 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, Grocery Outlet, 99 Cents Stores, Aldi, Lidl, and Wal-Mart's Neighborhood Market or Express stores. Notwithstanding the foregoing, any Party or Occupant of any Parcel may (a) 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), or (b) operate a convenience store that is associated with a gas station located on such Parcel. 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 Salt Lake County, Utah. In addition, in the event a retail grocery store operation is not operated on the WinCo Parcel for a period in excess of three (3) consecutive years, the foregoing provisions of this subsection (d) shall be null and void.

(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, food trucks, temporary trailers (other than construction 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; (iv) automated teller machines; or (v) newspaper distribution stands and similar public service items, except that no promotional activities will be allowed in the Common Area without the prior written approval of the Parties, which may be withheld in their sole and absolute discretion. Notwithstanding the foregoing, the Occupant of a Parcel 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 the Building located on a Parcel, 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 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 of the Parcel; 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) An Occupant of a Parcel shall be allowed to conduct promotional activities related to a grand opening of a business within a Building (not to exceed thirty (30) days).

(g) 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 not be deemed by the Approving Parties an imposition required by law.

(h) 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.

(i) 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.

(j) Any Party may grant of exclusivity for a specific use on its Parcel which will not limit any other Parcel unless agreed to in writing by the owner of such Parcel.

5.2. Lighting. Each Party hereby covenants and agrees, following the construction of a Building on such Parcel, 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 requires that the lights located along the Main Access Driveways remain illuminated before and/or after the period required herein as outlined in Section 3.2(a) above.

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 for thirty (30) days; provided, however, no Occupant, other than the owner of a Parcel, shall be entitled to place such signs on a Parcel at any time.
- (b) Unless approved by the Approving Parties, and excluding the Occupants of the WinCo Parcel and Future Development 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, signs providing for reserved parking for Occupants of a Parcel not to exceed more than five (5) signs per Parcel, and the temporary display of leasing information and the temporary erection of one (1) sign identifying each general contractor working 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 ancillary use to a grocery store that competes with a business operating a grocery store located on the WinCo Parcel, even if it's not a grocery store operations (by way of example, a fueling station may not partner with a retail grocery store which displays advertising related to such retail grocery store).

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 at least a minimum of 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 (which limits may be met through an umbrella policy of insurance). Each Party shall name the Approving Parties as "additional insureds" with appropriate endorsements 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 Salt Lake County, Utah metropolitan 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 named an "additional insured", and such policy will be endorsed to cause such insurance to be primary to any insurance carried by such owner, 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 Sections 5.4(a), 5.4(b) or 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.

(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 if 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 \$150,000,000 in Constant Dollars or more of tangible 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 in Constant Dollars 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 and endorsements 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 Section 4.3, 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 (which will be included as a Common Area Maintenance Cost).

(h) Each Party shall provide to such party named as an "additional insured" on such Party's insurance policy as set forth herein a copy of such policy, endorsement, policy binder, or other such document as may be reasonably requested.

(i) 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 or breach of this DEC by 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, 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 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), other than an Occupant operating a gas station, 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 upon such Party obtaining notice of the same with respect to its Parcel: (a) any written notice of violation 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 written 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, including the operating of a gas station and related convenience store, 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, gasoline, 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, including the operating of a gas station and related convenience store, 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 a demand for written notice thereof; 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; provided, if the default is a non-monetary default and it is of such a nature that it cannot be cured within thirty (30) days, such thirty (30) day period will be extended for such additional time as is necessary to cure such default so long as the Defaulting Party has commenced the cure of such default within such thirty (30) day period and is diligently prosecuting the same to completion.

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 any obligation which constitutes an imminent threat of injury to person or property 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. 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 Salt Lake 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. Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations or entities who constitute a Party hereto, including, but not limited to, officers, directors, employees or agents of a Party hereto with respect to any of the terms, covenants, conditions, and provisions of this DEC. 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.

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 executed by the Party or Parties (if applicable) 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, if a response is not given within the required time period, a written notice for second request will be delivered to the approving Party. If the Party fails to respond to such request within fifteen (15) days of the delivery of the second request, the request shall be deemed approved.

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.

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 so long as such award doesn't reduced the award payable to the owner of the Parcel. 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, a written notice for second request will be delivered to the approving Party. If the Party fails to respond to such request within fifteen (15) days of the delivery of the second request, the request shall be deemed approved.

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 Area 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 U.S. Bank National Association or its successor (or if it no longer exists a comparable regional national bank located 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, provided the sender sends a copy of such email or facsimile via overnight courier service the next business day with next day business service. 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 (3rd) business day after mailing, if mailed using certified mail; or (iv) on the date sent when delivered by facsimile or e-mail (provided the sender sends a copy of such email or facsimile via overnight courier service the next business day with next day business service). 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
E-mail: greg.goins@wincofoods.com

With a copy at the same address to:
Lori Gilbertson, Property Supervisor
E-mail: PropertyMgmt@wincofoods.com

With a copy at the same address to:
(which shall not constitute notice)
Chad Lamer, Real Estate Attorney
E-mail: chad.lamer@wincofoods.com

IF TO ANTHEM:

Anthem Center, LLC
Attention: Cory Gust
126 West Sege Lily Drive
Sandy, Utah 84070
Telephone: (801) 561-8594
Fax: (801) 561-8647
E-mail: cory@arborutah.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, 2094; 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.]

IN WITNESS WHEREOF, WinCo and Anthem have caused this DEC to be executed effective as of the day and year first above written.

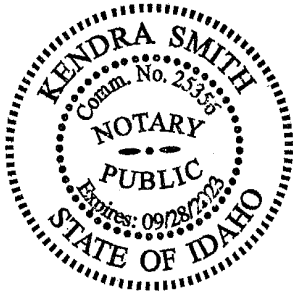
WINCO FOODS, LLC,
a Delaware limited liability company

By: David M. Butler
David M. Butler CFO

STATE OF IDAHO)
)ss.
County of Ada)

On this 7th day of March, 20 19, before me, a Notary Public, personally appeared David M. Butler known or proved to me to be the CFO of WINCO FOODS, LLC, a Delaware 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.




Kendra Smith
Notary Public
Residing at Boise ID
Comm. Expires 09/28/2023

[Signatures continued on following page.]

**ANTHEM CENTER, LLC,
a Utah limited liability company,
by its Managers**

Arbor Commercial Real Estate L.L.C., a Utah limited liability
company

By: 

Its: Member / Manager

Anthem Commercial, LLC, a Utah limited liability company

By: 

Its: MANAGER

STATE OF Ut)
County of Salt Lake)^{ss.}

On this 6 day of March, 2019 before me, a Notary Public, personally appeared Cory Gust, known or proved to me to be the member/manager of Arbor Commercial Real Estate LLC, a Utah limited liability company, a manager of Anthem Center, LLC, 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.

Melanie Maxfield
Notary Public

Residing at _____



STATE OF UT)
County of Salt Lake)^{ss.}

On this 7 day of March, 2019 before me, a Notary Public, personally appeared J. Ryan Burton, known or proved to me to be the manager of Anthem Commercial, LLC, a Utah limited liability company, a manager of Anthem Center, LLC, 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.

Melanie Maxfield
Notary Public
Residing at _____

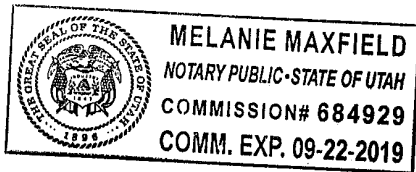


EXHIBIT A

LEGAL DESCRIPTION OF WINCO PARCEL

[Lot 301]

{See attached}

MTC File No. 265341

Exhibit "A"

Lot 301, Anthem Commercial 3rd Amended Subdivision, amending Lots 2 thru 5 of Anthem Commercial Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

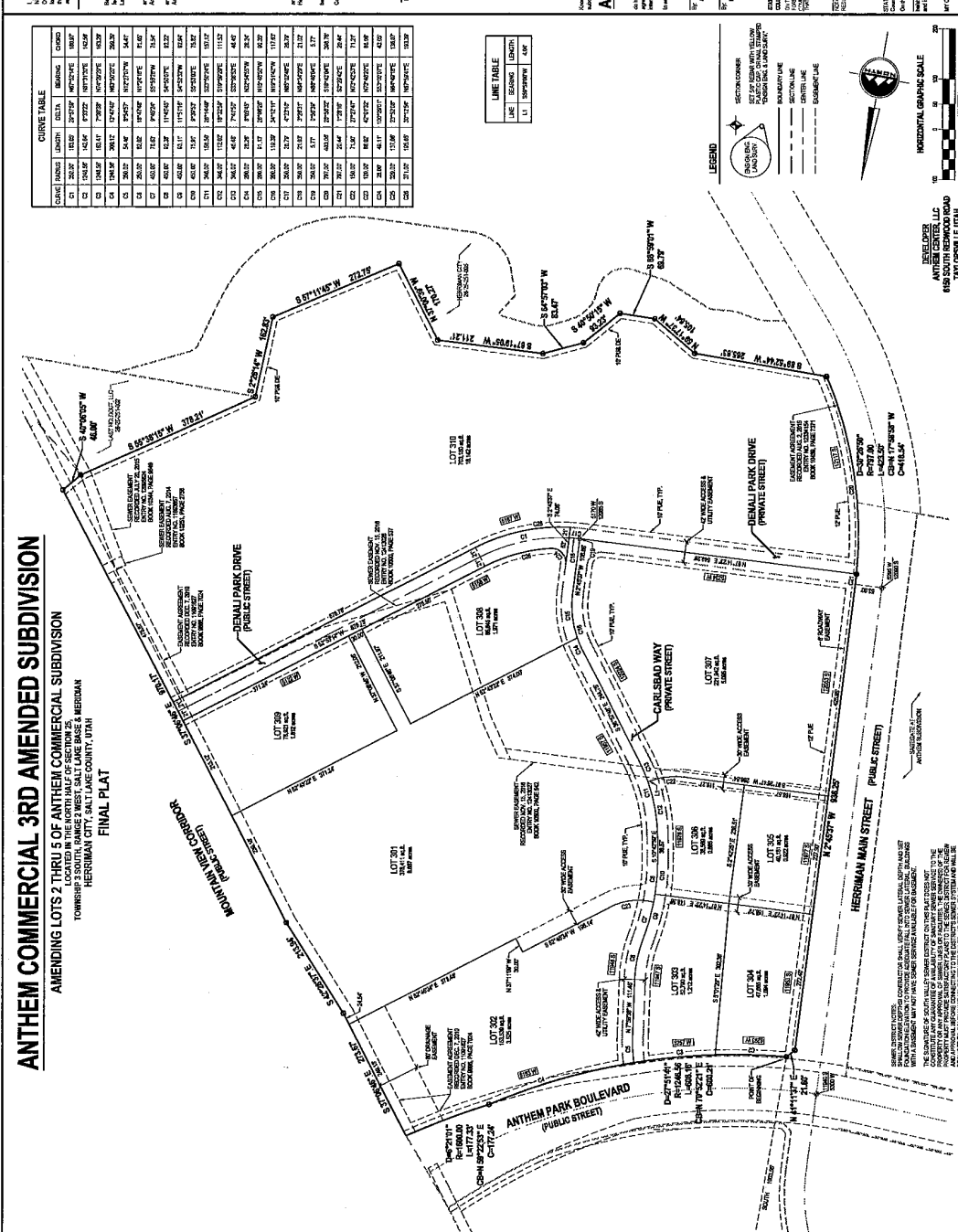
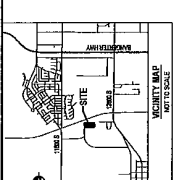
Tax ID: 26-25-202-002

ANTHEM COMMERCIAL 3RD AMENDED SUBDIVISION

AMENDING LOTS 2 THRU 5 OF ANTHEM COMMERCIAL SUBDIVISION

LOCATED IN THE NORTH HALF OF SECTION 26, TOWNSHIP 3 SOUTH, RANGE 2 WEST, SALT LAKE BASIN & HERDMAN HERDMAN CITY, SALT LAKE COUNTY, UTAH

FINAL PLAT



SURVEYOR'S CERTIFICATE

I, the undersigned, being duly qualified and sworn, do hereby certify that the foregoing is a true and correct copy of the original plat as recorded in the office of the County Clerk of Salt Lake County, Utah, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Salt Lake County, Utah, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Salt Lake County, Utah.

BOUNDARY DESCRIPTION

Reference is made to the plat of the Anthem Commercial Subdivision, recorded in the office of the County Clerk of Salt Lake County, Utah, on the 15th day of June, 2010, and to the plat of the Anthem Commercial 3rd Amended Subdivision, recorded in the office of the County Clerk of Salt Lake County, Utah, on the 15th day of June, 2010.

OWNERS DEDICATION

The undersigned, being duly qualified and sworn, do hereby certify that the following is a true and correct copy of the original plat as recorded in the office of the County Clerk of Salt Lake County, Utah, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Salt Lake County, Utah.

ANTHEM COMMERCIAL 3RD AMENDED SUBDIVISION

AMENDING LOTS 2 THRU 5 OF ANTHEM COMMERCIAL SUBDIVISION

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

I, the undersigned, being duly qualified and sworn, do hereby certify that the following is a true and correct copy of the original plat as recorded in the office of the County Clerk of Salt Lake County, Utah, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Salt Lake County, Utah.

MUNICIPAL ACKNOWLEDGMENT

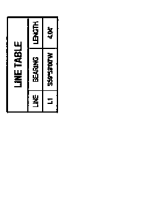
I, the undersigned, being duly qualified and sworn, do hereby certify that the following is a true and correct copy of the original plat as recorded in the office of the County Clerk of Salt Lake County, Utah, and that the same is a true and correct copy of the original plat as recorded in the office of the County Clerk of Salt Lake County, Utah.

CURVE TABLE

CHORD BEARS	LENGTH	CHORD BEARS	LENGTH	CHORD BEARS	LENGTH
C1	300.00	C11	300.00	C21	300.00
C2	300.00	C12	300.00	C22	300.00
C3	300.00	C13	300.00	C23	300.00
C4	300.00	C14	300.00	C24	300.00
C5	300.00	C15	300.00	C25	300.00
C6	300.00	C16	300.00	C26	300.00
C7	300.00	C17	300.00	C27	300.00
C8	300.00	C18	300.00	C28	300.00
C9	300.00	C19	300.00	C29	300.00
C10	300.00	C20	300.00	C30	300.00

LINE TABLE

LINE	BEARING	LENGTH	BEARING	LENGTH
L1	S 89° 57' 00" W	100.00	S 89° 57' 00" W	100.00
L2	S 89° 57' 00" W	100.00	S 89° 57' 00" W	100.00
L3	S 89° 57' 00" W	100.00	S 89° 57' 00" W	100.00
L4	S 89° 57' 00" W	100.00	S 89° 57' 00" W	100.00
L5	S 89° 57' 00" W	100.00	S 89° 57' 00" W	100.00



DEVELOPER
ANTHEM CENTER, LLC
100 SOUTH HERDMAN ROAD
HERDMAN CITY, UTAH

APPROVED BY:

APPROVED THIS _____ DAY OF _____, 2010, BY THE BOARD OF COMMISSIONERS.

APPROVED THIS _____ DAY OF _____, 2010, BY THE BOARD OF COMMISSIONERS.

APPROVED BY:

APPROVED THIS _____ DAY OF _____, 2010, BY THE BOARD OF COMMISSIONERS.

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APPROVED BY:

APPROVED THIS _____ DAY OF _____, 2010, BY THE BOARD OF COMMISSIONERS.

APPROVED THIS _____ DAY OF _____, 2010, BY THE BOARD OF COMMISSIONERS.

EXHIBIT A-1

LEGAL DESCRIPTION OF ANTHEM PARCELS

[Lots 302-310]

{See attached}

Exhibit "A-1"

Lots 302, 303, 304, 305, 306, 307, 308, 309, 310 and Parcel A, Anthem Commercial 3rd Amended Subdivision, Amending Lots 2 thru 5 of Anthem Commercial Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

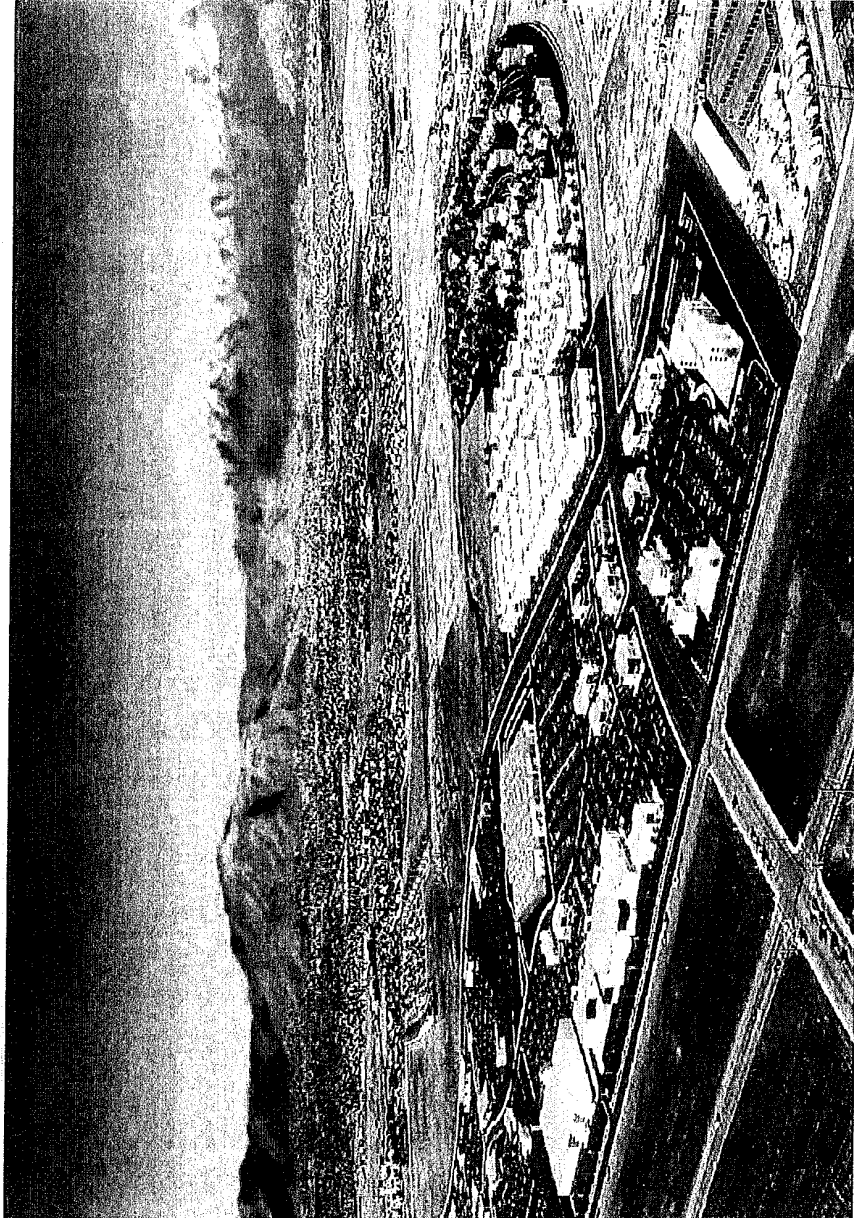
Tax ID No.: 26-25-128-004, 26-25-128-003, 26-25-128-002, 26-25-178-004, 26-25-178-005, 26-25-178-006, 26-25-252-001, 26-25-252-002, 26-25-252-003, 26-25-202-001.

EXHIBIT B

ARCHITECTURAL GUIDELINES

{See attached}

Anthem Center
Development Plan
Herriman, Utah



Index

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- 2 Site Plan
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- 4 Conceptual View
- 5 Conceptual View
- 6 Conceptual Elevations
- 7 Conceptual Elevations
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- 9 Conceptual Elevations
- 10 Color Board
- 11 Site Plan Signage
- 12 Street Furnishings



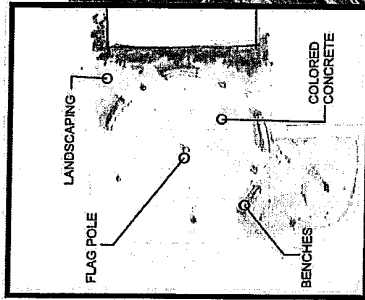
Anthem Development Plan 1

Aerial View

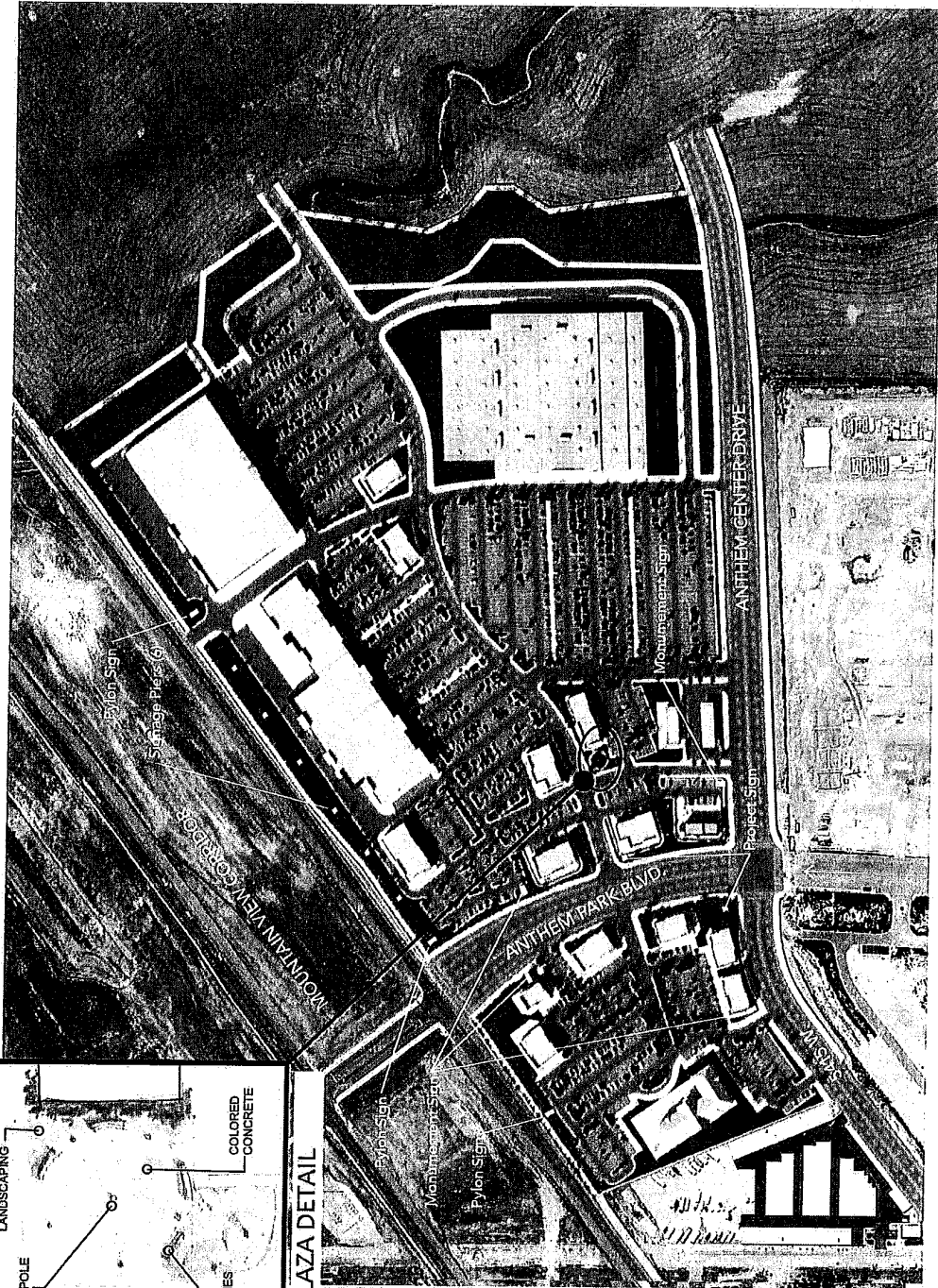
babcock design group

52 exchange place suite 200, city of phoenix, az 85016-1144 | phone: 602.998.8332 | www.babcockdesign.com

29 August, 2016



PLAZA DETAIL



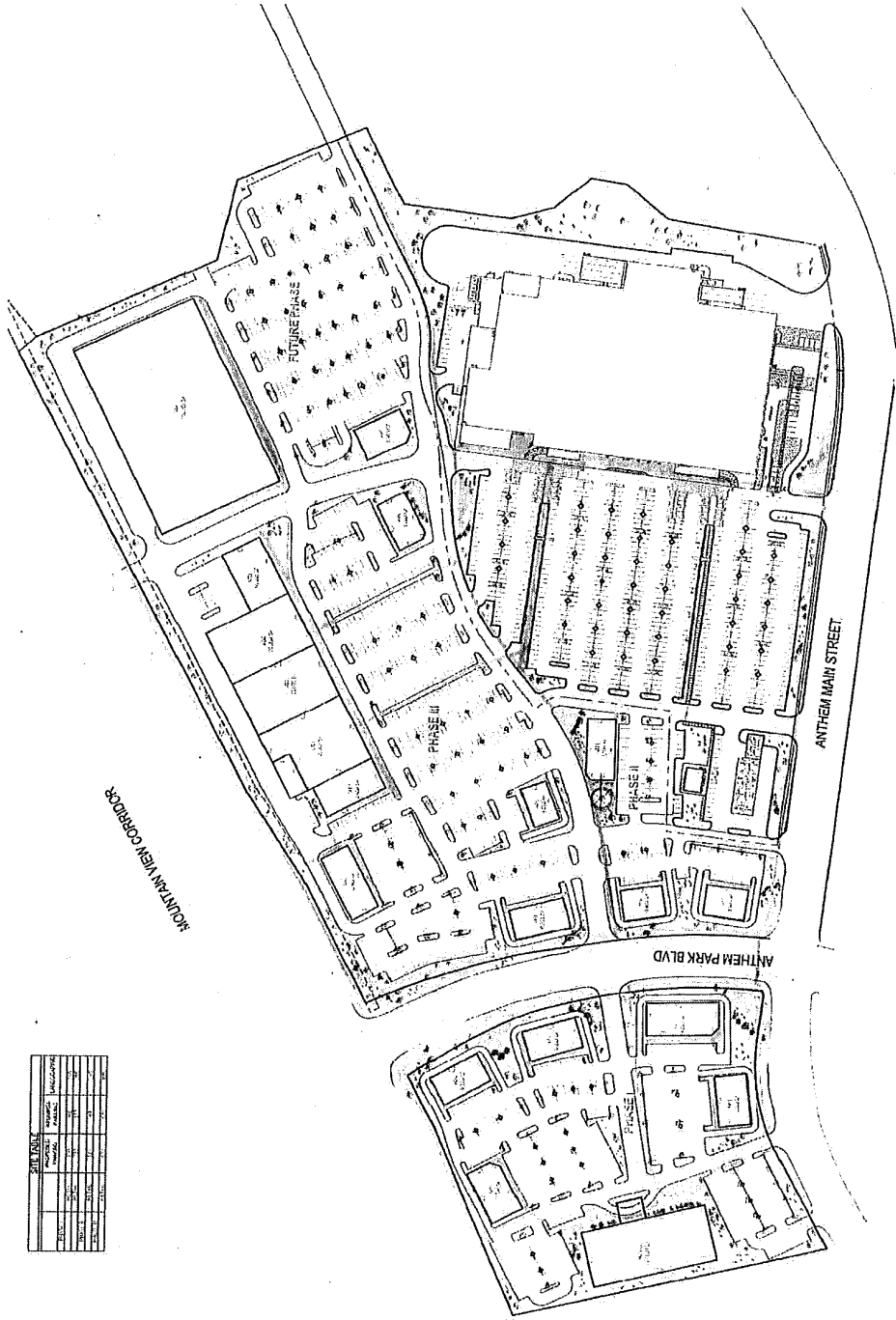
Anthem Development Plan 2

Site Plan

babcock design group

52 westlake plaza, suite 100, irving, tx 75039 | t: 817.434.1144 | f: 817.434.1144 | www.babcockdesign.com

29 August, 2016



SITE DATA	
PROPERTY	DESCRIPTION
1.00	1.00
2.00	2.00
3.00	3.00
4.00	4.00
5.00	5.00
6.00	6.00
7.00	7.00
8.00	8.00
9.00	9.00
10.00	10.00
11.00	11.00
12.00	12.00
13.00	13.00
14.00	14.00
15.00	15.00
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50.00	50.00

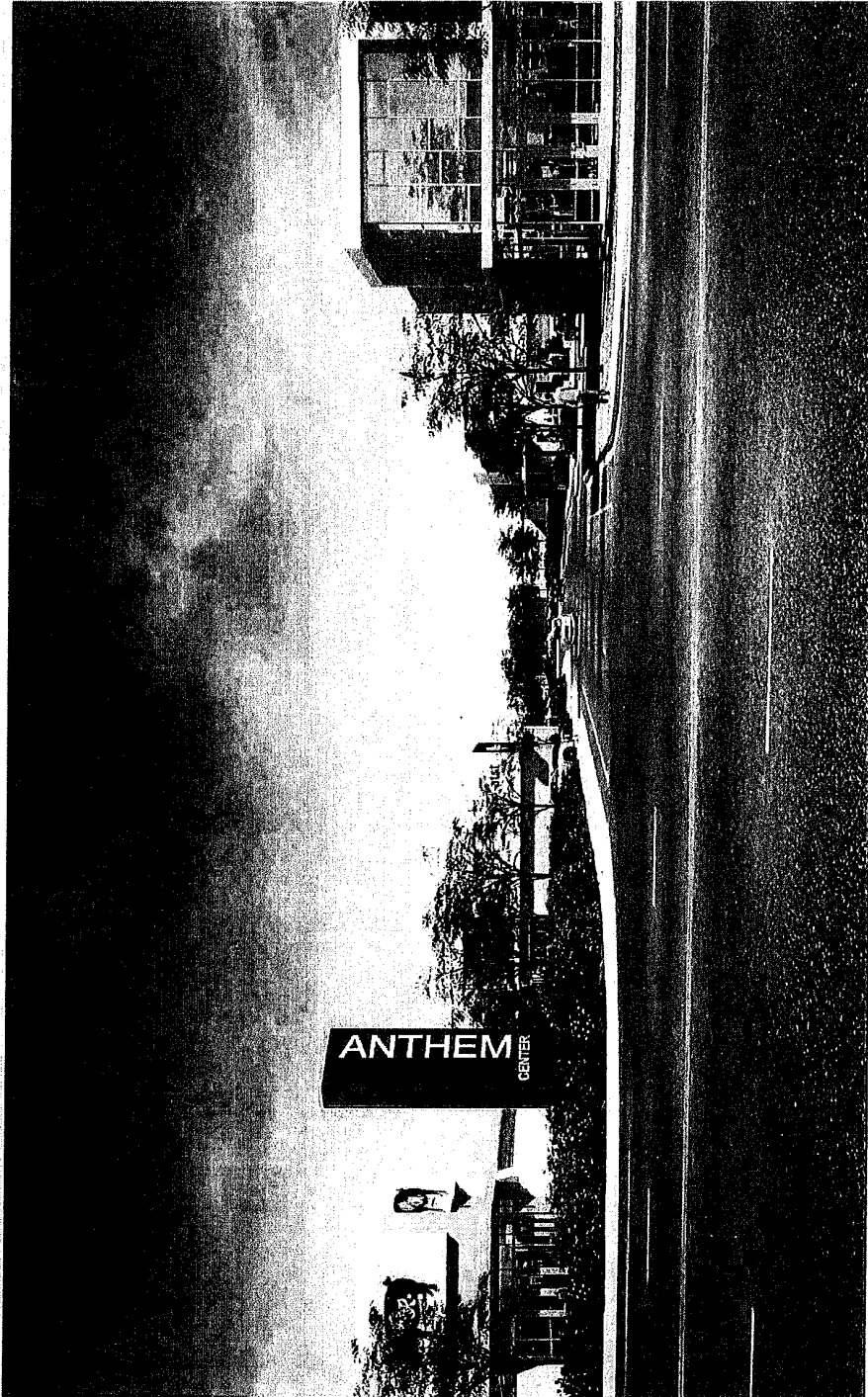


Site Plan

babcock design group

29 August, 2016

32 Babcock Design Group, LLC, 4111 Parkview Dr, Suite 100, Phoenix, AZ 85018, (602) 951-1144, (602) 951-3132, www.babcockdesign.com



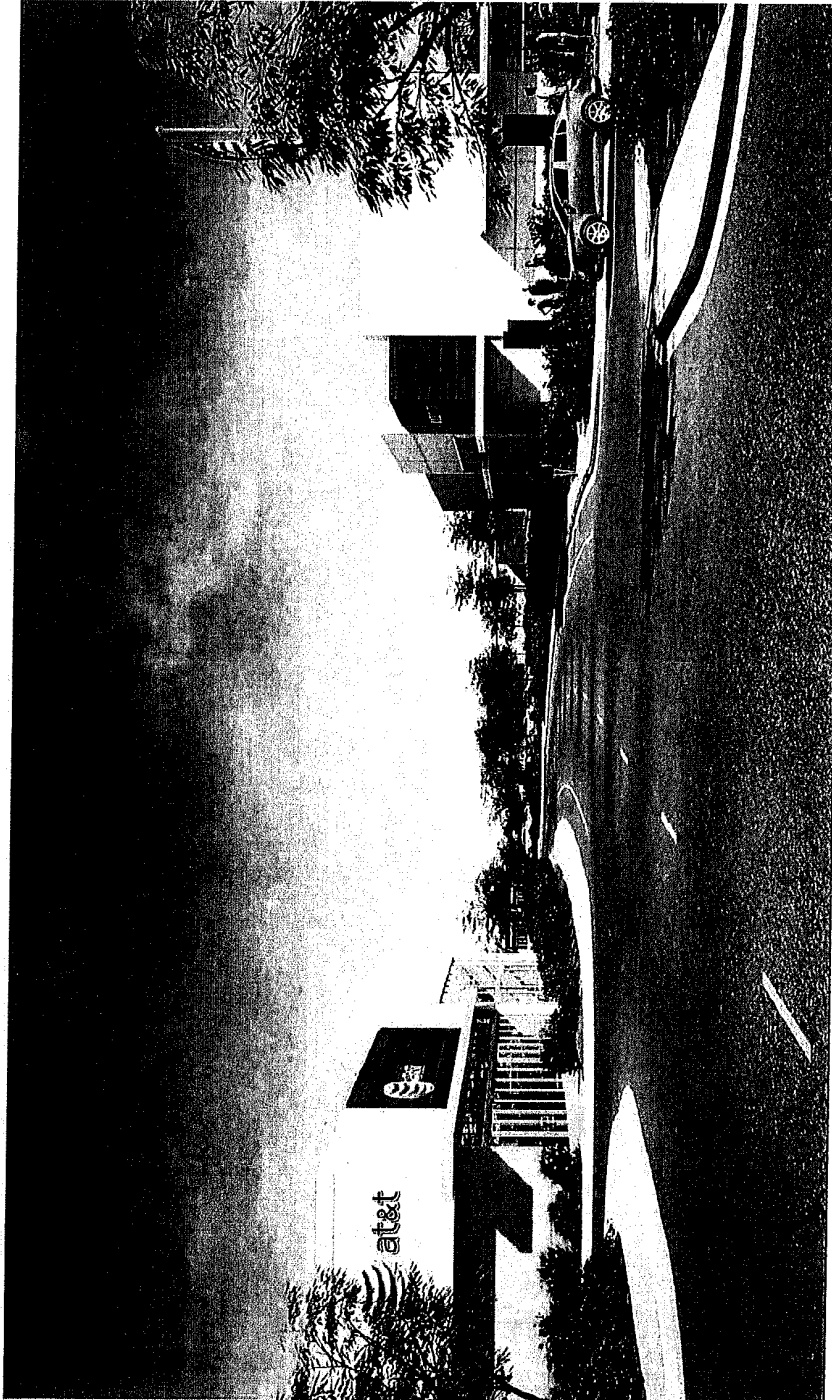
Conceptual View

Street View

29 August, 2016

babcock design group

52 exchange place, suite 100, city, nj 07014 | 801.343.3132 | 801.343.3132 | www.babcockdesign.com



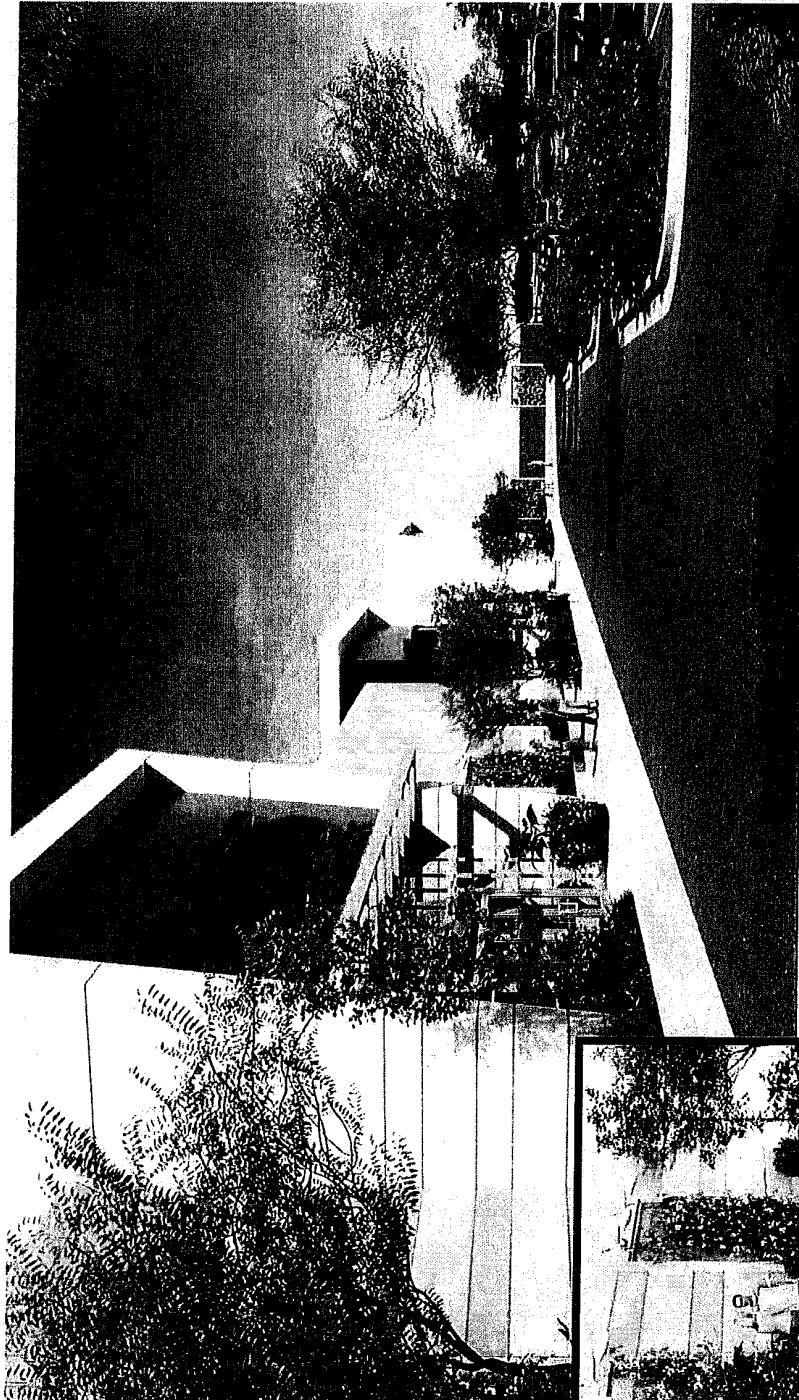
BK 10772 PG 8711

Conceptual View

babcock design group

Street View
29 August, 2016

32 Exchange Place, Suite 201, Jersey City, NJ 07310 | Tel: 201.333.1144 | Fax: 201.333.1152 | www.babcockdesign.com



TRELLIS DETAIL

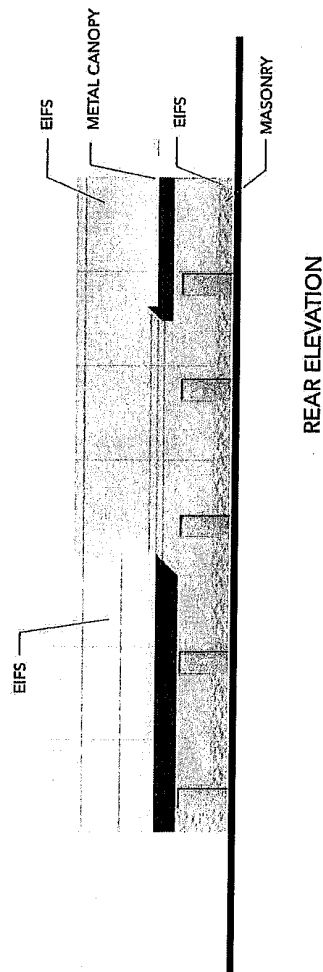
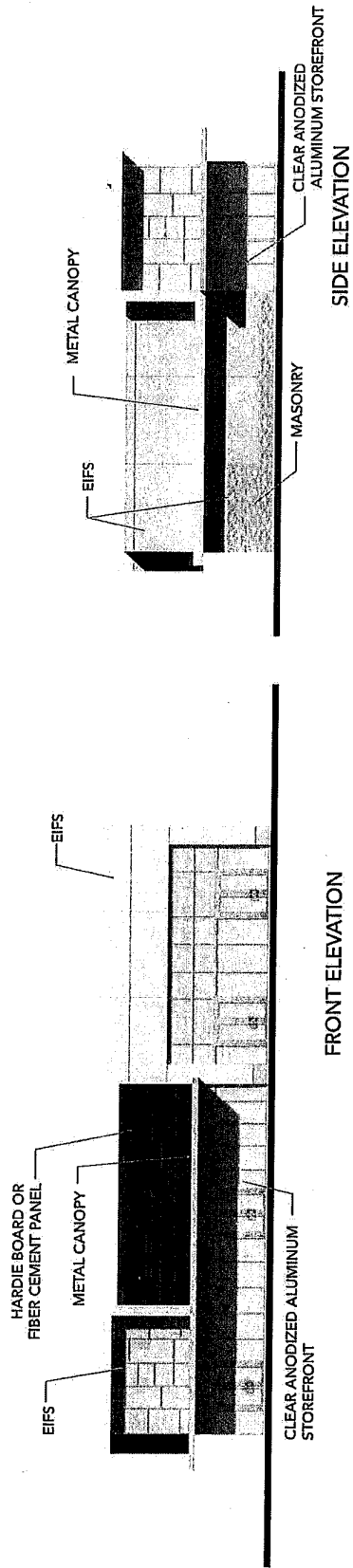
Conceptual View

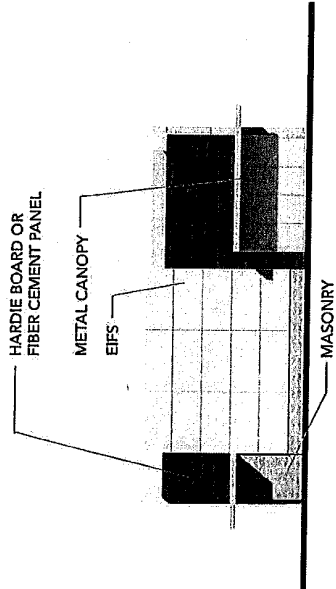
babcock design group

Street View

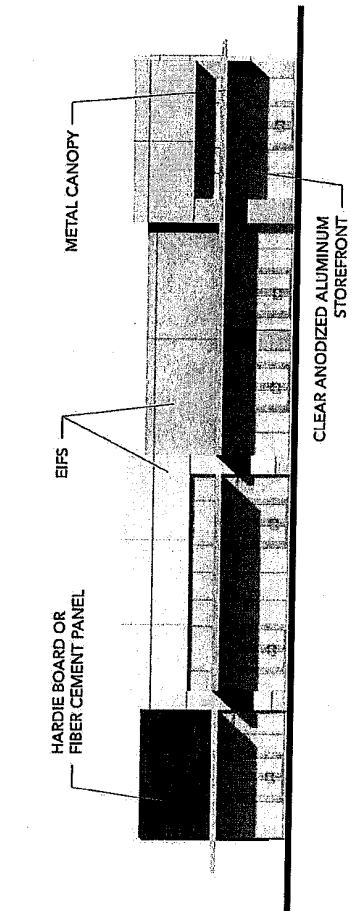
29 August, 2016

32 Exchange Place, Suite 200, New York, NY 10013, USA | T: 800.533.1144 | F: 800.333.3332 | www.babcockdesign.com

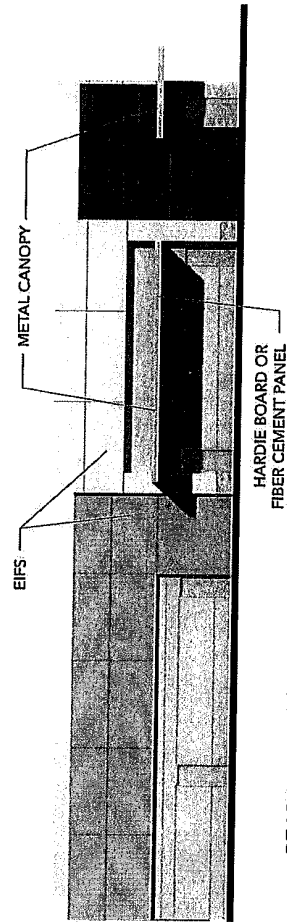




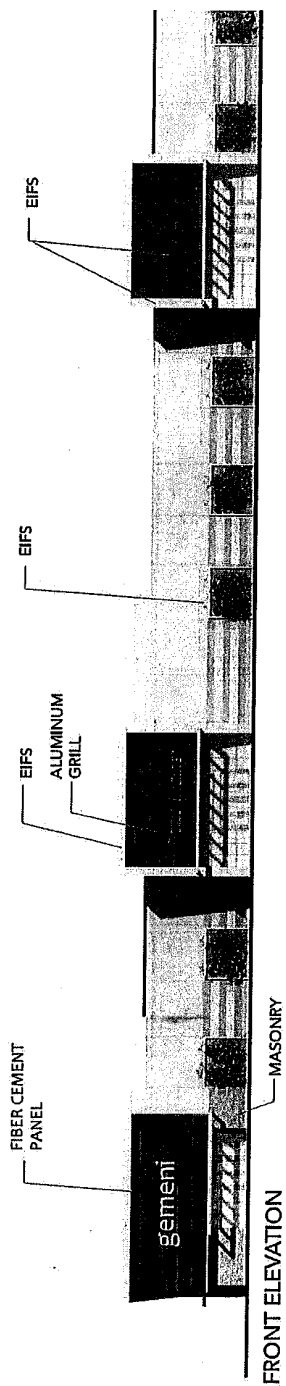
SIDE ELEVATION



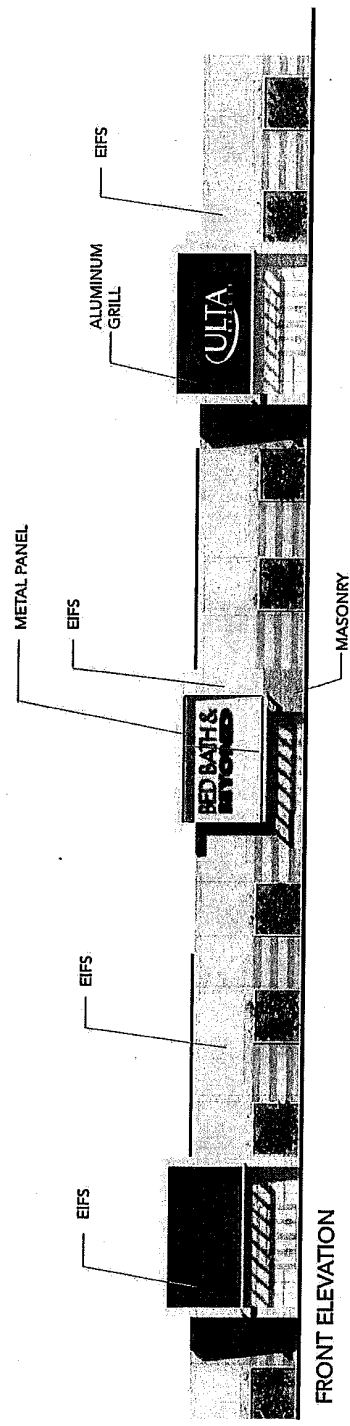
FRONT ELEVATION



REAR ELEVATION



FRONT ELEVATION



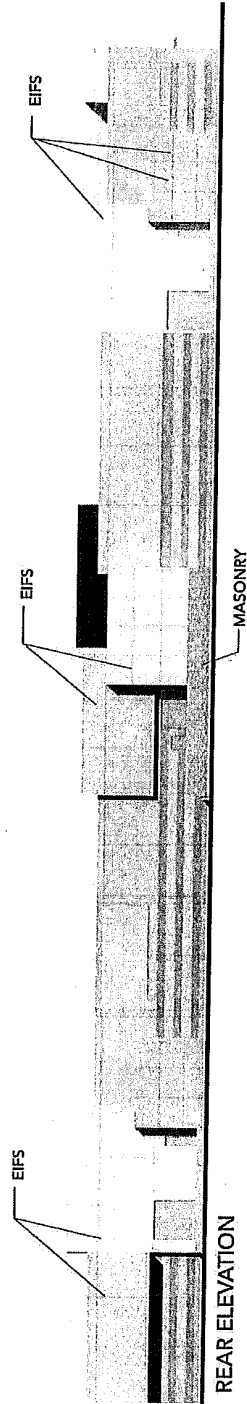
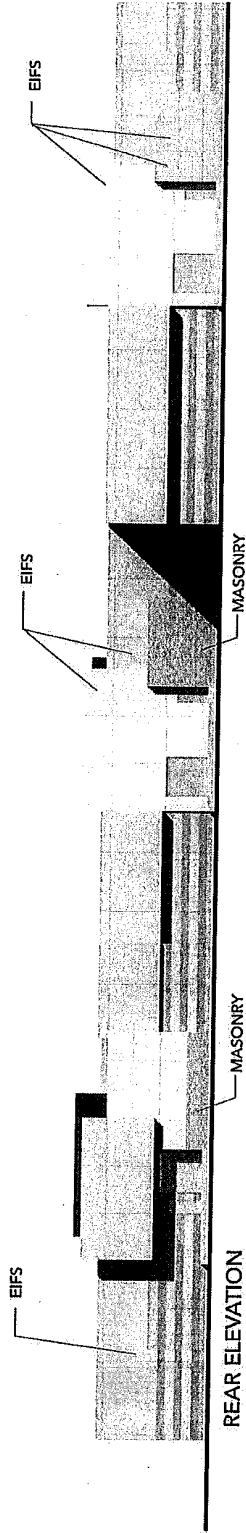
FRONT ELEVATION

babcock design group

Big Box Conceptual Elevations

Conceptual Elevation
29 August, 2016

82 Washington Blvd. Suite 600, Jersey City, NJ 07310 | Tel: (201) 223-3122 | www.babcockdesign.com



babcock design group

Big Box Conceptual Elevations

Conceptual Elevation
28 August, 2016

32 exchange place, 3rd floor, nyc, ny 10011 | t: 907.321.1144 | f: 907.321.3122 | www.babcockdesign.com

ANTHEM CENTER
EXTERIOR FINISHES
BABCOCK DESIGN GROUP 4-27-2016



METAL CAP FLASHING
M-1 BERTRIDGE "SIERRA TAN"

PAINTED METAL / PAINTED HARDIE PANEL
P-1 SHERWIN WILLIAMS #7728
P-2 SHERWIN WILLIAMS #8595
P-3 SHERWIN WILLIAMS #8592
P-4 SHERWIN WILLIAMS #8202

FIBER CEMENT PANELS
NICHHAH - VINTAGE WOOD: "CEDAR"

E.E.E.S.
E-1 DRYVIT #112
E-2 DRYVIT #117
E-3 SYNERGY 3088
E-4 DRYVIT (TO MATCH SW #6595)
E-5 KVALI POLYESTER
E-6 DRYVIT (TO MATCH SYNERGY#8577)
E-7 DRYVIT (TO MATCH IG #8204)
E-8

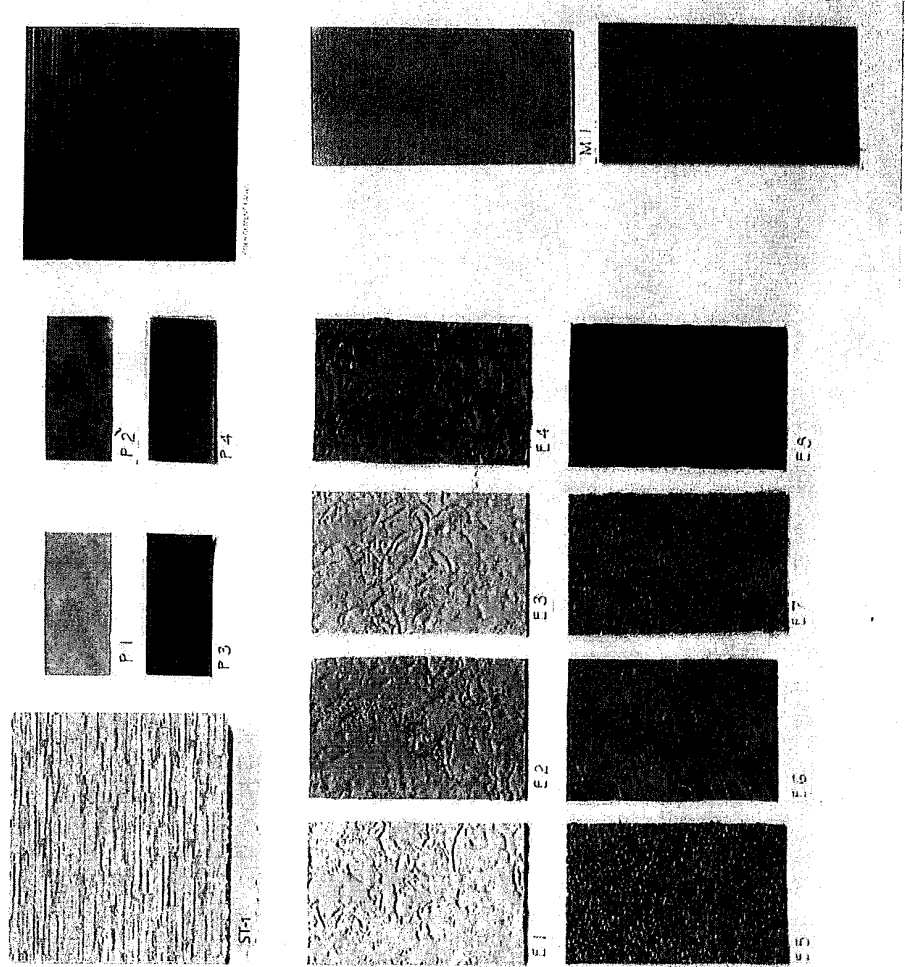
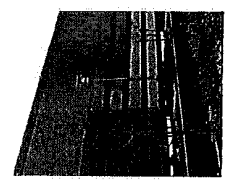
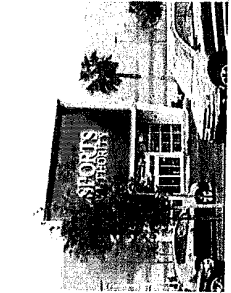
STORE FRONT - METAL CANOPIES
S-1 US ALUMINUM CLEAR ANODIZED FINISH

STONE
ST-1 PANELIZED LEDGE STONE

"OAK CREEK"
"DUSTY"
"CANTON CLAY"
"CAST IRON"

SANDBLAST FINISH
SANDBLAST FINISH
SANDPEBBLE FINISH
SANDPEBBLE FINISH
SANDPEBBLE FINISH
SANDPEBBLE FINISH

"SANDALWOOD BEIGE"
"COLONIAL TAN"
"LIONS MANE"
"BROWN"
"MOOSE POINT"
"RICE LODGE"

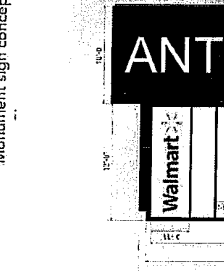
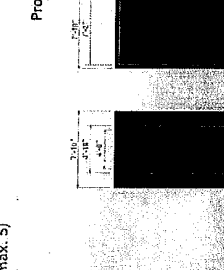
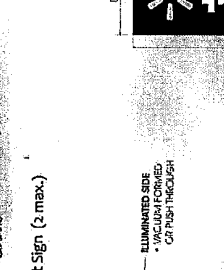
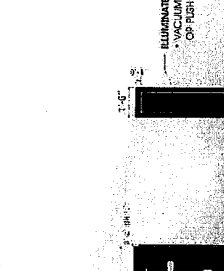
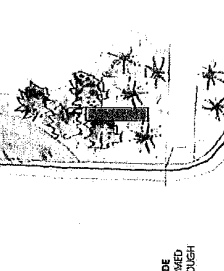
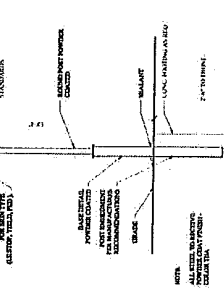
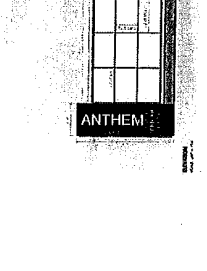
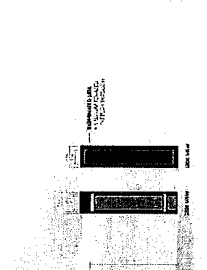
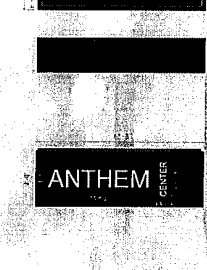
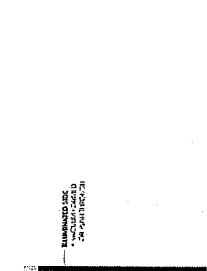
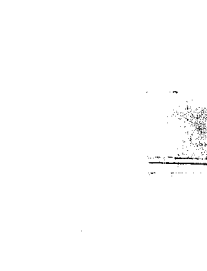
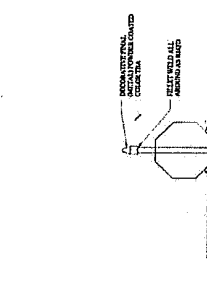


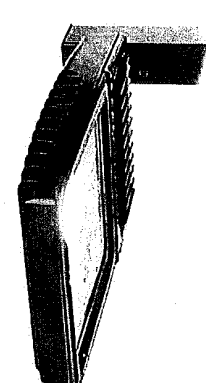
Color Board

Conceptual Elevation
29 August, 2016

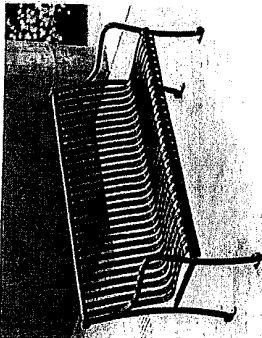
babcock design group

32 Westridge Plaza, Suite 200, Oak Ridge, TN 37831
Tel: (803) 369-3132 Fax: (803) 369-3132
www.babcockdesign.com

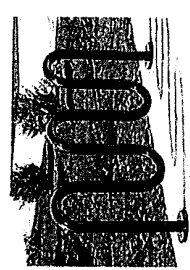




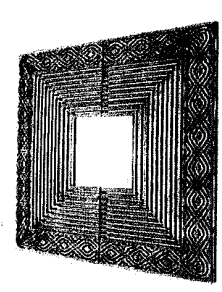
PARKING LOT LIGHT:



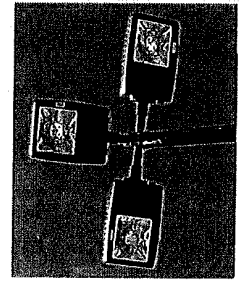
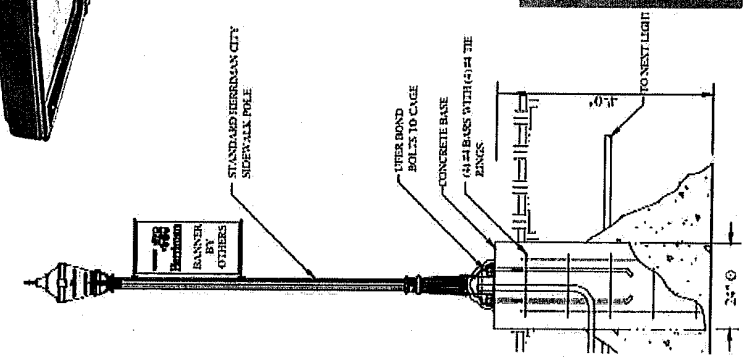
Plaza Series, Model PL-3
Fair Weather



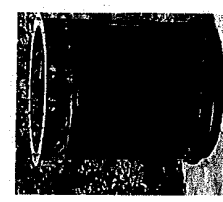
BIKE RACK:
DUMOR
MULTI-LOOP BIKE RACK 130
OR SIMILAR



TREE GRATE:
URBAN ACCESSORIES
CHINOOK 2000
OR SIMILAR



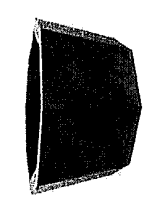
PARKING LOT LIGHT:



TRASH:
DUMOR
RECEPTACLE 102
OR SIMILAR



BOLLARD:
KIM LIGHTING:
GEN 1



PLANTER:
IAP
52-SULTAN
OR SIMILAR



SIGN LIGHTS:
BEACON:
TRAVERSE

EXHIBIT C

WINCO ELEVATIONS

{See attached}

EXHIBIT D

CAPITAL IMPROVEMENT AND MAINTENANCE STANDARDS [UNDER REVIEW]

All Common Areas shall be maintained in a clean and safe condition and substantially similar to that of other similar shopping centers in the Salt Lake County Area.

The following specific standards will apply with respect to 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; provided any replacement of trees shall be done solely by the owner of the Parcel the tree is on and shall be an obligation of the Operator
- 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

The following specific standards will apply with respect to other Common Areas:

- Pot holes, sink holes, crumbling and other damage must be repaired in a timely manner.
- Slurry/Crack Fill/Reseal in a commercially reasonable manner suitable for a class A shopping center.
- 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 on a commercially reasonable scheduled. Damaged and/or weathered signs shall be replaced in a timely manner.
- Sweeping of parking lot, driveways and drive aisles on a commercially reasonable schedule suitable for a class A shopping center:
 - Debris must be blown out from cart corrals and gutters using back-pack blowers
 - All sidewalks and business entrance areas shall be blown-off using back-pack blowers
 - Pick up and remove trash from parking lot
 - 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 – During snow/ice events accumulations of more than two inches are required to be removed promptly.

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.)

[To be updated based on changes if any to final plat]

REVISIONS
 11/29/18
 12/13/18
 12/17/18
 1/15/19

WINCO FOODS STORE
 MOUNTAIN VIEW CORRIDOR
 & ANTHEM PARK BLVD
 HERRIMAN, UTAH

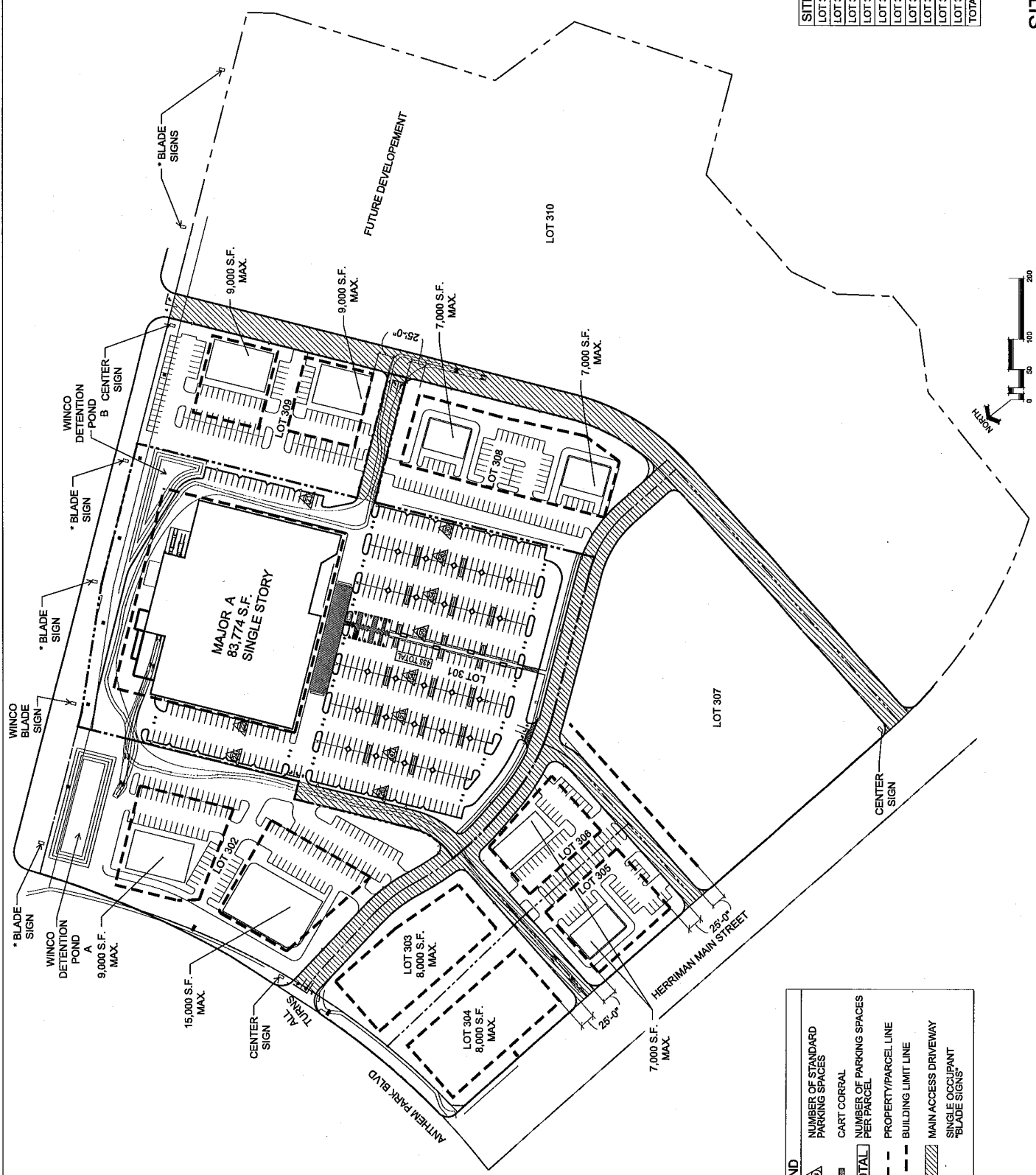


EXHIBIT TITLE
 DEC

EXHIBIT
 X

SITE DATA	
LOT 301	8.68 ACRES
LOT 302	3.52 ACRES
LOT 303	1.21 ACRES
LOT 304	1.09 ACRES
LOT 305	0.92 ACRES
LOT 306	0.86 ACRES
LOT 307	5.09 ACRES
LOT 308	1.97 ACRES
LOT 309	1.81 ACRES
LOT 310	16.97 ACRES
TOTALS	42.14 ACRES

SITE PLAN



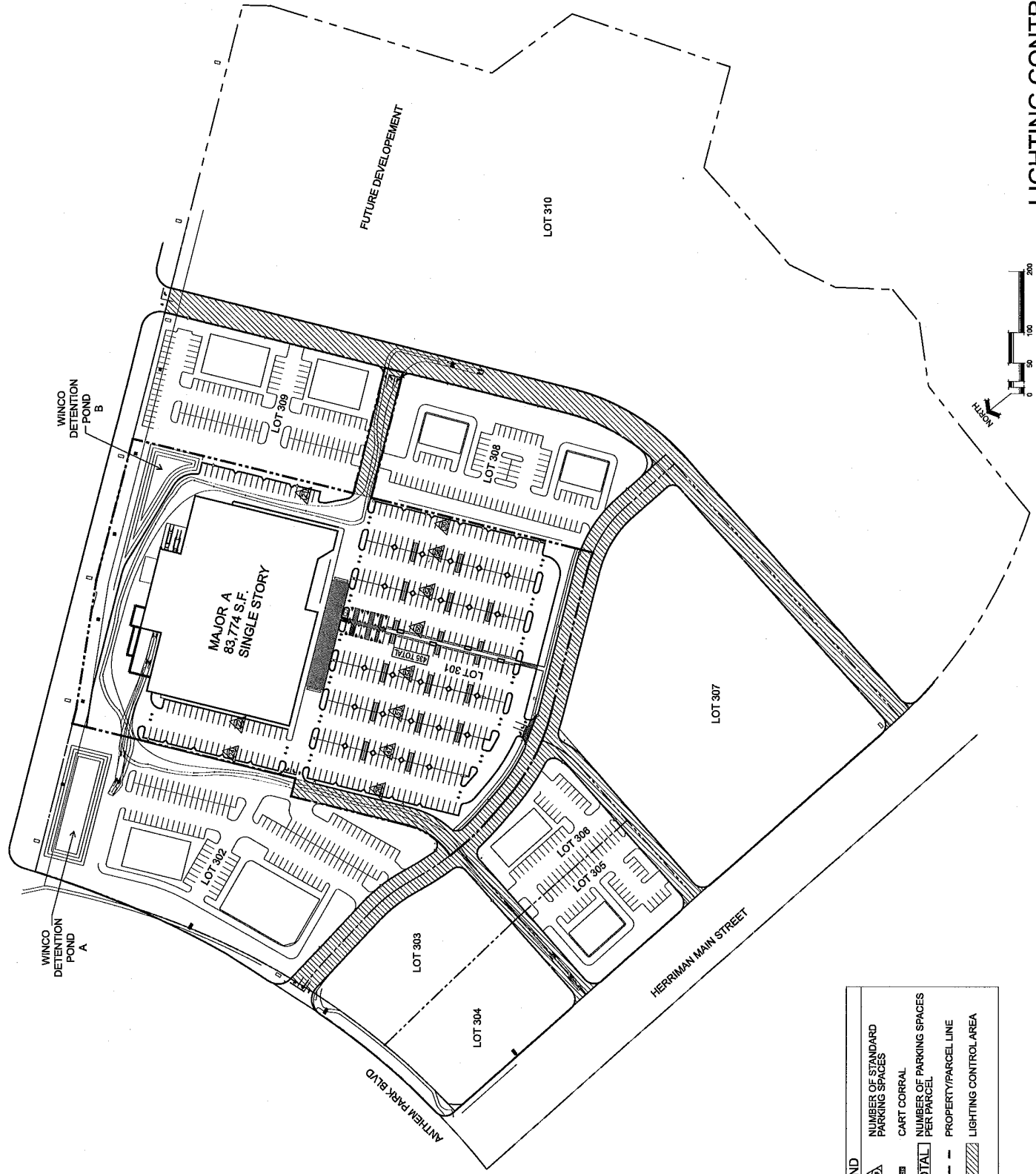
LEGEND	
	NUMBER OF STANDARD PARKING SPACES
	CART CORRAL
# TOTAL	NUMBER OF PARKING SPACES PER PARCEL
	PROPERTY/PARCEL LINE
	BUILDING LIMIT LINE
	MAIN ACCESS DRIVEWAY
	SINGLE OCCUPANT "BLADE SIGNS"

EXHIBIT X-1

LIGHTING CONTROL PLAN

{See attached}

LIGHTING CONTROL PLAN



LEGEND

	NUMBER OF STANDARD PARKING SPACES
	CART CORRAL
	# TOTAL NUMBER OF PARKING SPACES PER PARCEL
	PROPERTY/PARCEL LINE
	LIGHTING CONTROL AREA