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Gary W. Ott
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**MASTER DEVELOPMENT AGREEMENT
FOR
ANTHEM COMMERCIAL PROJECT**

September 28, 2016

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WHEN RECORDED, RETURN TO:

Anthem Center, LLC
126 West Sege Lily Drive, Suite 275
Sandy, Utah 84070

**MASTER DEVELOPMENT AGREEMENT
FOR
ANTHEM COMMERCIAL PROJECT**

THIS MASTER DEVELOPMENT AGREEMENT is made and entered effective as of the 28th day of September, 2016, by and among the Herriman City, a political subdivision of the State of Utah (the "City"), Anthem Commercial, LLC, a Utah limited liability company (the "Owner") and Anthem Center, LLC, a Utah limited liability company (the "Master Developer").

RECITALS

- A. The capitalized terms used in these Recitals are defined in Section 1.2, below.
- B. Owner and Master Developer own, or will own, the Property.
- C. The City has or will zone the Property as C-2.
- D. Owner, Master Developer and the City desire that the Property be developed in a unified and consistent fashion pursuant to the Design Guidelines, the Site Plan and this MDA.
- E. Development of the Project as a commercial center pursuant to this MDA is acknowledged by the parties to be consistent with LUDMA and the Zoning Ordinance and to operate to the benefit of the City, Owner, Master Developer, and the general public.
- F. The City Council has reviewed this MDA and determined that it is consistent with the Act, the Zoning Ordinance and the Zoning of the Property.
- G. The parties acknowledge that development of the Property pursuant to this MDA will

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result in significant planning and economic benefits to the City and its residents by, among other things requiring orderly development of the Property and increasing property tax, sales tax and other revenues to the City based on improvements to be constructed on the Property.

H. Development of the Property pursuant to this MDA will also result in significant benefits to Owner and Master Developer by providing assurances to Owner and Master Developer that it will have the ability to develop the Property in accordance with this MDA.

I. Owner, Master Developer and the City have cooperated in the preparation of this MDA.

J. The parties desire to enter into this MDA to specify the rights and responsibilities of Owner and the Master Developer to develop the Property as parts of the Project as expressed in this MDA and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this MDA.

K. The parties understand and intend that this MDA is a “development agreement” within the meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-102 (2016).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City Owner and Master Developer hereby agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1. **Incorporation.** The foregoing Recitals and Exhibits “A” – “E” are hereby incorporated into this MDA.

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1.2. **Definitions.** As used in this MDA, the words and phrases specified below shall have the following meanings:

1.2.1. **Administrator** means the person designated by the City as the Administrator of this MDA.

1.2.2. **Amended Zoning Ordinance** means an amendment to the Zoning Ordinance proposed by the City amending Chapter 23 of Title 10 of the City's Vested Laws with respect to signs.

1.2.3. **Applicant** means a person or entity submitting a Development Application.

1.2.4. **Buildout** means the completion of all of the development on the entire Project in accordance with this MDA.

1.2.5. **City** means Herriman City, a political subdivision of the State of Utah.

1.2.6. **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage for reviewing certain aspects of the development of the Project.

1.2.7. **City's Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City which may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and which may or may not be applicable to the Development Application depending upon the provisions of this MDA.

1.2.8. **City's Vested Laws** means the ordinances, policies, standards and procedures of the City in effect as of the date of this MDA, a digital copy of which is attached as Exhibit "C".

1.2.9. **Council** means the elected City Council of the City.

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1.2.10. **Default** means a material breach of this MDA as specified herein.

1.2.11. **Denied** means a formal denial issued by the final decision-making body of the City for a particular type of Development Application but does not include review comments or “redlines” by City staff.

1.2.12. **Design Guidelines** means the guidelines for the Project which are attached as Exhibit “B”.

1.2.13. **Development** means the development of a Parcel or a portion thereof pursuant to an approved Development Application.

1.2.14. **Development Application** means an application to the City for development of a portion of the Project including a Subdivision or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.15. **LUDMA** means the Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, *et seq.* (2016).

1.2.16. **Master Developer** means Anthem Center, LLC, a Utah limited liability company, and its assignees or transferees as permitted by this MDA.

1.2.17. **MDA** means this Master Development Agreement including all of its Exhibits.

1.2.18. **Notice** means any notice to or from any party to this MDA that is either required or permitted to be given to another party.

1.2.19. **Outsourc[e][ing]** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application as is more fully set out in this MDA.

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1.2.20. **Owner** means Anthem Commercial, LLC, a Utah limited liability company

1.2.21. **Parcel** means a parcel of the Project that is created by the Master Developer to be sold to a Subdeveloper as a Subdivision.

1.2.22. **Phase** means the development of a portion of the Project at a point in a logical sequence as determined by Master Developer.

1.2.23. **Planning Commission** means the City's Planning Commission.

1.2.24. **Project** means the total development to be constructed on the Property pursuant to this MDA with the associated public and private facilities, Phases and all of the other aspects approved as part of this MDA.

1.2.25. **Public Infrastructure** means those elements of infrastructure that are planned to be dedicated to the City as a condition of the approval of a Development Application.

1.2.26. **Site Plan** means the site plan for development of the Project which is attached as Exhibit "D."

1.2.27. **Subdeveloper** means a person or an entity not "related" (as defined by section 165 of the Internal Revenue Code) to Owner or Master Developer which purchases, ground leases or leases all or a portion of a Parcel for development.

1.2.28. **Subdivision** means the division of any portion of the Project into developable lots pursuant to State Law and/or the Zoning Ordinance.

1.2.29. **Subdivision Application** means the application to create a Subdivision.

1.2.30. **Zoning** means the zoning for the Project

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1.2.31. **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that was in effect as of the date of this MDA as a part of the City's Vested Laws.

2. **Effect of MDA.** This MDA shall be the sole agreement between the parties related to the development of the Project (excluding any separate agreements relating to development incentives).

3. **Development of the Project.** Development of the Project shall be in accordance with the City's Vested Laws, the City's Future Laws (to the extent that these are applicable as otherwise specified in this MDA), the Zoning, the Design Guidelines, the Site Plan, and this MDA.

4. **Zoning and Vested Rights.**

4.1. **Design Guidelines and Site Plan.** The City has approved the Zoning, the Site Plan, and the Design Guidelines for the Project as a whole.

4.2. **Vested Rights Granted by Approval of this MDA.** To the maximum extent permissible under the laws of Utah and the United States and at equity, the City, Owner and Master Developer intend that this MDA grants Owner and Master Developer all rights to develop the Project in fulfillment of this MDA, the City's Vested Laws and the Design Guidelines except as specifically provided herein. The Parties intend that the rights granted to Master Developer under this MDA are contractual and also those rights that exist under statute, common law and at equity. The parties specifically intend that this MDA, the Site Plan, and the Design Guidelines grant to Master Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann.

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§ 10-9a-509 (2016). To the extent that any such conditions subsequent are not performed then vested rights shall be deemed to have lapsed.

4.3. **Exceptions.** The restrictions on the applicability of the City's Future Laws to the Project as specified in Section 4.2 are subject to only the following exceptions:

4.3.1. Owner and Master Developer Agreement. City's Future Laws that Owner and Master Developer agrees in writing to the application thereof to the Project;

4.3.2. State and Federal Compliance. City's Future Laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;

4.3.3. Codes. City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

4.3.4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated; or,

4.3.5. Fees. Changes to the amounts of fees (but not changes to the times provided in the City's Vested Laws for the imposition or collection of such fees) for the processing of Development Applications that are generally applicable to all

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development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.

4.3.6. Planning and Zoning Modification. Changes by the City to its planning principles and design standards such as architectural or design requirements, setbacks or similar items so long as such changes are generally applicable across the entire City to the respective Zones within the Project and do not materially and unreasonably increase the costs of any Development.

4.3.7. Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(i) (2016).

5. **Term of Agreement.** The term of this MDA shall be until December 31, 2025. This MDA shall also terminate automatically at Buildout.

6. **Processing of Development Applications.**

6.1. **Outsourcing of Processing of Development Applications.** Within fifteen (15) business days after receipt of a Development Application and upon the request of Master Developer the City and Master Developer will confer to determine whether the City desires to Outsource the review of any aspect of the Development Application to insure that it is processed on a timely basis. If the City determines that Outsourcing is appropriate then the City shall promptly estimate the reasonably anticipated differential cost of Outsourcing in the manner selected by the Master Developer or Subdeveloper in good faith consultation with the Master Developer or Subdeveloper (either overtime to City employees or the hiring of a City Consultant). If the Master Developer or a

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Subdeveloper notifies the City that it desires to proceed with the Outsourcing based on the City's estimate of costs then the Master Developer or Subdeveloper shall deposit in advance with the City the estimated differential cost and the City shall then promptly proceed with having the work Outsourced. Upon completion of the Outsourcing services and the provision by the City of an invoice (with such reasonable supporting documentation as may be requested by Master Developer or Subdeveloper) for the actual differential cost (whether by way of paying a City Consultant or paying overtime to City employees) of Outsourcing, Master Developer or the Subdeveloper shall, within ten (10) business days pay or receive credit (as the case may be) for any difference between the estimated differential cost deposited for the Outsourcing and the actual cost differential.

6.2. Acceptance of Certifications Required for Development Applications. Any Development Application requiring the signature, endorsement, or certification and/or stamping by a person holding a license or professional certification required by the State of Utah in a particular discipline shall be so signed, endorsed, certified or stamped signifying that the contents of the Development Application comply with the applicable regulatory standards of the City. The City should endeavor to make all of its redlines, comments or suggestions at the time of the first review of the Development Application unless and changes to the Development Application raise new issues that need to be addressed.

6.3. Independent Technical Analyses for Development Applications. If the City needs technical expertise beyond the City's internal resources to determine impacts of a Development Application such as for structures, bridges, water tanks, and other similar matters which are not required by the City's Vested Laws to be certified by such experts

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as part of a Development Application, the City may engage such experts as City Consultants under the processes specified in Section 6.1 with the actual and reasonable costs being the responsibility of Applicant. If the City needs any other technical expertise other than as specified above, under extraordinary circumstances specified in writing by the City, the City may engage such experts as City Consultants under the processes in Section 6.1 with the actual and reasonable costs being the responsibility of Applicant.

6.4. Planning Commission Review. The Planning Commission shall review and consider any Development Application that the City's Planning Staff determines is required to be so reviewed based on any other requirements of the City's Vested Laws. If the Planning Commission determines that the Development Application should be approved then the City shall approve it. If the Planning Commission does not approve the Development Application the City Council shall approve it if the Development Application is consistent with this MDA and the Design Guidelines.

6.5. City Denial of a Development Application. If the City denies a Development Application the City shall provide a written determination advising the Applicant of the reasons for denial including specifying the reasons the City believes that the Development Application is not consistent with this MDA, the Site Plan, the Design Guidelines and/or the City's Vested Laws (or, if applicable, the City's Future Laws).

6.6. Meet and Confer regarding Development Application Denials. The City and Applicant shall meet within fifteen (15) business days of any Denial to resolve the issues specified in the Denial of a Development Application.

6.7. City Denials of Development Applications Based on Denials from Non-City

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Agencies. If the City's denial of a Development Application is based on the denial of the Development Application by a Non-City Agency, Master Developer shall appeal any such denial through the appropriate procedures for such a decision and not through the processes specified below.

6.8. Mediation of Development Application Denials.

6.8.1. Issues Subject to Mediation. Issues resulting from the City's Denial of a Development Application that are not subject to arbitration provided in Section 6.9 shall be mediated.

6.8.2. Mediation Process. If the City and Applicant are unable to resolve a disagreement subject to mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute. If the parties are unable to agree on a single acceptable mediator they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator. Applicant shall pay the fees of the chosen mediator. The chosen mediator shall within fifteen (15) business days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties. If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the parties.

6.9. Arbitration of Development Application Objections.

6.9.1. Issues Subject to Arbitration. Issues regarding the City's Denial of a Development Application that are subject to resolution by scientific or technical

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experts such as traffic impacts, water quality impacts, pollution impacts, etc. are subject to arbitration.

6.9.2. Mediation Required Before Arbitration. Prior to any arbitration the parties shall first attempt mediation as specified in Section 6.8.

6.9.3. Arbitration Process. If the City and Applicant are unable to resolve an issue through mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable expert in the professional discipline(s) of the issue in question. If the parties are unable to agree on a single acceptable arbitrator they shall each, within ten (10) business days, appoint their own individual appropriate expert. These two experts shall, between them, choose the single arbitrator. Applicant shall pay the fees of the chosen arbitrator. The chosen arbitrator shall within fifteen (15) business days, review the positions of the parties regarding the arbitration issue and render a decision. The arbitrator shall ask the prevailing party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, and consideration of such objections, the arbitrator's decision shall be final and binding upon both parties. If the arbitrator determines as a part of the decision that the City's or Applicant's position was not only incorrect but was also maintained unreasonably and not in good faith then the arbitrator may order the City or Applicant to pay the arbitrator's fees.

7. Application Under City's Future Laws. Without waiving any rights granted by this MDA, Owner and Master Developer may at any time, choose to submit a Development Application for some or all of the Project under the City's Future Laws in effect at the time of the Development Application so long as Owner and Master Developer and any Subdivider is not

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in current breach of this MDA. Any Development Application filed for consideration under the City's Future Laws shall be governed by all portions of the City's Future Laws related to the Development Application. The election by Owner and Master Developer at any time to submit a Development Application under the City's Future Laws shall not be construed to prevent Owner and Master Developer from relying for other Development Applications on the City's Vested Laws.

8. **Tax Benefits.** The City acknowledges that Owner or Master Developer may seek and qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring portions of the Property to the City or to a charitable organization for open space. Owner or Master Developer shall have the sole responsibility to claim and qualify for any tax benefits sought by Owner or Master Developer by reason of the foregoing. The City shall reasonably cooperate with Owner or Master Developer to the maximum extent allowable under law to allow Owner or Master Developer to take advantage of any such tax benefits.

9. **Construction of Anthem Main Street.** As part of the consideration for this MDA, the City to the extent funds have been budgeted by the Council for construction of Main Street the City will construct the in the areas shown on Exhibit "E" at its sole cost and expense, the following roads: (a) with respect to the area designated as segment 1 on Exhibit "E", a four lane road, and (b) with respect to the areas designated as segment 2 on Exhibit "E", a two lane road. The segment 2 road shall be completed by the City and open to the public for use on or before October 15, 2017.

10. **Upsizing/Reimbursements to Master Developer.**

10.1. **"Upsizing".** The City shall not require Owner or Master Developer to "upsized" any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than

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required to service the Project) unless financial arrangements reasonably acceptable to Owner and Master Developer are made to compensate Owner and/or Master Developer for the incremental or additive costs of such upsizing. For example, if an upsize to a water pipe size increases costs by 10% but adds 50% more capacity, the City shall only be responsible to compensate Owner and Master Developer for the 10% cost increase. Acceptable financial arrangements for upsizing of improvements include reimbursement agreements, payback agreements, pioneering agreements, and impact fee credits and reimbursements.

11. **Condition Subsequent.** The right to put signage on the Property as provided in this Design Criteria shall not become vested until City approval of Amended Zoning Ordinance. If the City does not approve of the Amended Zoning Ordinance, the Owner and Master Developer may only place signage on the Property in accordance with the existing zoning ordinance.

12. **Default.**

12.1. **Notice.** If Owner, Master Developer or a Subdeveloper or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the party believing that a Default has occurred shall provide Notice to the other party. If the City believes that the Default has been committed by a Subdeveloper then the City shall also provide a courtesy copy of the Notice to Owner and Master Developer.

12.2. **Contents of the Notice of Default.** The Notice of Default shall:

12.2.1. **Specific Claim.** Specify the claimed event of Default;

12.2.2. **Applicable Provisions.** Identify with particularity the provisions of any applicable law, rule, regulation or provision of this MDA that is claimed to be in Default;

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12.2.3. Materiality. Identify why the Default is claimed to be material; and

12.2.4. Optional Cure. If the City chooses, in its discretion, it may propose a method and time for curing the Default which shall be of no less than thirty (30) days duration.

12.3. **Meet and Confer, Mediation, Arbitration**. Upon the issuance of a Notice of Default the parties shall engage in the “Meet and Confer” and “Mediation” processes specified in Sections 6.6 and 6.8. If the claimed Default is subject to Arbitration as provided in Section 6.9 then the parties shall follow such processes.

12.4. **Remedies**. If the parties are not able to resolve the Default by “Meet and Confer” or by Mediation, and if the Default is not subject to Arbitration then the parties may have the following remedies, except as specifically limited in 13.9:

12.4.1. Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

12.4.2. Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

12.4.3. Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by Owner or Master Developer, or in the case of a default by a Subdeveloper, development of those Parcels owned by the Subdeveloper until the Default has been cured.

12.5. **Public Meeting**. Before any remedy in Section 12.4 may be imposed by the City the party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default.

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12.6. **Emergency Defaults.** Anything in this MDA notwithstanding, if the City Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of Section 12.4 without the requirements of Sections 12.5. The City shall give Notice to Owner and Master Developer and/or any applicable Subdeveloper of any public meeting at which an emergency default is to be considered and the Developer and/or any applicable Subdeveloper shall be allowed to address the City Council at that meeting regarding the claimed emergency Default

12.7. **Extended Cure Period.** If any Default cannot be reasonably cured within thirty (30) days then such cure period shall be extended so long as the defaulting party is pursuing a cure with reasonable diligence.

12.8. **Default of Assignee.** A default of any obligations assumed by an assignee shall not be deemed a default of Owner or Master Developer.

12.9. **Limitation on Recovery for Default – No Damages.** No party shall be entitled to any claim for any monetary damages as a result of any breach of this MDA and each Party waives any claims thereto. The sole remedy available to Owner, Master Developer or any Subdeveloper shall be that of specific performance.

13. **Notices.** All notices required or permitted under this MDA shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Master Developer:

Anthem Center, LLC

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Attn: Cory Gust
126 West Sego Lily Drive, Suite 275
Sandy, Utah 84070

To Owner:

Anthem Commercial, LLC
Attn: Ryan Button
6150 South Redwood Road, Suite 150
Taylorsville, UT 84123

To the City:

Herriman City
Attn: City Manager
13011 South Pioneer Street
Herriman, Utah 84096

Herriman City
Attn: City Attorney
13011 South Pioneer Street
Herriman, Utah 84096

13.1. **Effectiveness of Notice.** Except as otherwise provided in this MDA, each Notice shall be effective and shall be deemed delivered on the earlier of:

13.1.1. Hand Delivery. Its actual receipt, if delivered personally, by courier service, or by facsimile provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending party has confirmation of transmission receipt of the Notice). If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

13.1.2. Electronic Delivery. Its actual receipt if delivered electronically by email provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending party has an electronic receipt of the delivery of the Notice. If the copy is not sent on the same

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day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

13.1.3. Mailing. On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any party may change its address for Notice under this MDA by giving written Notice to the other party in accordance with the provisions of this Section.

14. Estoppel Certificate. Upon twenty (20) days prior written request by Owner or Master Developer or a Subdeveloper, the City will execute an estoppel certificate to any third party certifying that Owner, Master Developer or a Subdeveloper, as the case may be, at that time is not in default of the terms of this MDA.

15. Headings. The captions used in this MDA are for convenience only and are not intended to be substantive provisions or evidences of intent.

16. No Third Party Rights/No Joint Venture. This MDA does not create a joint venture relationship, partnership or agency relationship between the City, Owner or Master Developer. Further, the parties do not intend this MDA to create any third-party beneficiary rights. The parties acknowledge that this MDA refers to a private development and that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements at which time all rights and responsibilities—except for warranty bond requirements under City's Vested Laws and as allowed by state law—for the dedicated public improvement shall be the City's.

17. Assignability. The rights and responsibilities of Owner and Master Developer under this MDA may be assigned in whole or in part by Owner or Master Developer with the consent of the

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City as provided herein.

17.1. **Sale of Parcel.** Owner or Master Developer's selling or conveying Parcels to builders, users, or Subdevelopers, shall not be deemed to be an "assignment" subject to the above-referenced approval by the City unless specifically designated as such an assignment by the Owner or Master Developer.

17.2. **Related Entity.** Owner or Master Developer's transfer of all or any part of the Property to any entity related to Owner or Master Developer, Owner or Master Developer's entry into a joint venture for the development of the Project or Owner or Master Developer's pledging of part or all of the Project as security for financing shall also not be deemed to be an "assignment" subject to the above-referenced approval by the City unless specifically designated as such an assignment by the Master Developer.

Owner and Master Developer shall give the City Notice of any event specified in this sub-section within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

17.3. **Notice.** Owner and Master Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

17.4. **Time for Objection.** Unless the City objects in writing within twenty (20) business days of notice, the City shall be deemed to have approved of and consented to the assignment.

17.5. **Partial Assignment.** If any proposed assignment is for less than all of Owner's or

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Master Developer's rights and responsibilities then the assignee shall be responsible for the performance of each of the obligations contained in this MDA to which the assignee succeeds. Upon any such approved partial assignment, Owner and Master Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.

17.6. **Denial.** The City may only withhold its consent if the City is not reasonably satisfied of the assignee's financial ability to perform the obligations of Owner or Master Developer proposed to be assigned or there is an existing breach of a development obligation owed to the City by the assignee or related entity that has not either been cured or in the process of being cured in a manner acceptable to the City. Any refusal of the City to accept an assignment shall be subject to the "Meet and Confer" and "Mediation" processes specified in Sections 6.5 and 6.7. If the refusal is subject to Arbitration as provided in Section 6.8 then the parties shall follow such processes.

17.7. **Assignees Bound by MDA.** Any assignee shall consent in writing to be bound by the assigned terms and conditions of this MDA as a condition precedent to the effectiveness of the assignment.

18. **Binding Effect.** If Owner or Master Developer sells or conveys Parcels of lands to Subdevelopers or related parties, the lands so sold and conveyed shall bear the same rights, privileges, and configurations as applicable to such Parcel and be subject to the same limitations and rights of the City when owned by Owner or Master Developer and as set forth in this MDA without any required approval, review, or consent by the City except as otherwise provided herein.

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19. **No Waiver.** Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

20. **Severability.** If any provision of this MDA is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this MDA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this MDA shall remain in full force and affect.

21. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this MDA which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

22. **Time is of the Essence.** Time is of the essence to this MDA and every right or responsibility shall be performed within the times specified.

23. **Appointment of Representatives.** To further the commitment of the parties to cooperate in the implementation of this MDA, the City, Owner and Master Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Master Developer. The initial representative for the City shall be the City Manager and the initial representative for Owner shall be Ryan Button and Master Developer shall be John Gust. The parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance

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of the parties to this MDA and the development of the Project.

24. **Mutual Drafting**. Each party has participated in negotiating and drafting this MDA and therefore no provision of this MDA shall be construed for or against either party based on which party drafted any particular portion of this MDA.

25. **Applicable Law**. This MDA is entered into in Salt Lake County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

26. **Venue**. Any action to enforce this MDA shall be brought only in the Third District Court for the State of Utah, Salt Lake County.

27. **Entire Agreement**. This MDA, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

28. **Recordation and Running with the Land**. This MDA shall be recorded in the chain of title for the Project. This MDA shall be deemed to run with the land. The data disk of the City's Vested Laws, Exhibit "C", shall not be recorded in the chain of title. A secure copy of Exhibit "C" shall be filed with the City Recorder and each party shall also have an identical copy.

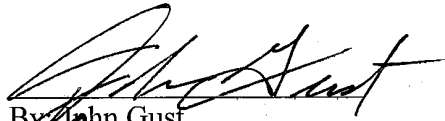
29. **Authority**. The parties to this MDA each warrant that they have all of the necessary authority to execute this MDA. Specifically, on behalf of the City, the signature of the City Manager of the City is affixed to this MDA lawfully binding the City pursuant to Ordinance No. 2016-32 adopted by the City on September 28, 2016.

EXECUTION VERSION

IN WITNESS WHEREOF, the parties hereto have executed this MDA by and through their respective, duly authorized representatives as of the day and year first herein above written.

MASTER DEVELOPER
Anthem Center, LLC,
by its managers

Arbor Commercial Real Estate L.L.C.



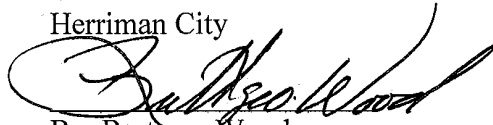
By: John Gust
Its: Manager

Anthem Commercial, LLC,



By: J. Ryan Button
Its: Manager

CITY
Herriman City



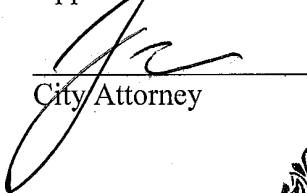
By: Bret Geo Wood
Its: City Manager

OWNER
Anthem Commercial, LLC



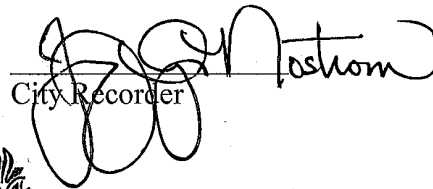
By: J. Ryan Button
Its: Manager

Approved as to form and legality:



City Attorney

Attest:



City Recorder



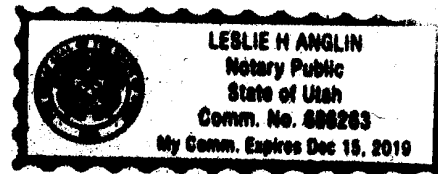
EXECUTION VERSION
CITY ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF UTAH)

On the 12 day of January, 2017, personally appeared before me Brett geo Wood who being by me duly sworn, did say that he is the City Manager of Herriman City, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said City Manager acknowledged to me that the City executed the same.


NOTARY PUBLIC

My Commission Expires: December 15, 2019
Residing at: 13011 S Pioneer St



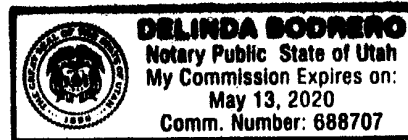
MASTER DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF UTAH)

On the 12 day of January, 2017, personally appeared before me John Gust, who being by me duly sworn, did say that he is a manager of Arbor Commercial Real Estate L.L.C., a Manager of Anthem Center, LLC, a Utah limited liability company and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.


NOTARY PUBLIC

My Commission Expires: May 13, 2020
Residing at: 13011 S. Pioneer St.



EXECUTION VERSION
OWNER ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

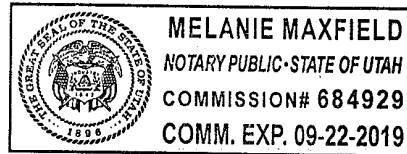
On the 17 day of January, 2017, personally appeared before me J. Ryan Button, who being by me duly sworn, did say that he is the Manager of Anthem Commercial, LLC, a Utah limited liability company and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company in its own capacity and as a manager of Anthem Center, LLC, a Utah limited liability company.

M Maxfield

NOTARY PUBLIC

My Commission Expires: 9/22/19

Residing at: Riverton



EXECUTION VERSION

TABLE OF EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B":	Design Guidelines
Exhibit "C":	City's Vested Laws
Exhibit "D":	Site Plan
Exhibit "E":	Roadway

EXECUTION VERSION

Exhibit "A"

Legal Description of Property

Lots 1, 2, 4 and 5, Anthem Commercial Subdivision, according to the official plat thereof as recorded in the Salt Lake County Recorder's Office.

Tax ID Nos. 26-25-126-003
26-25-201-001
26-25-176-017
26-25-400-063

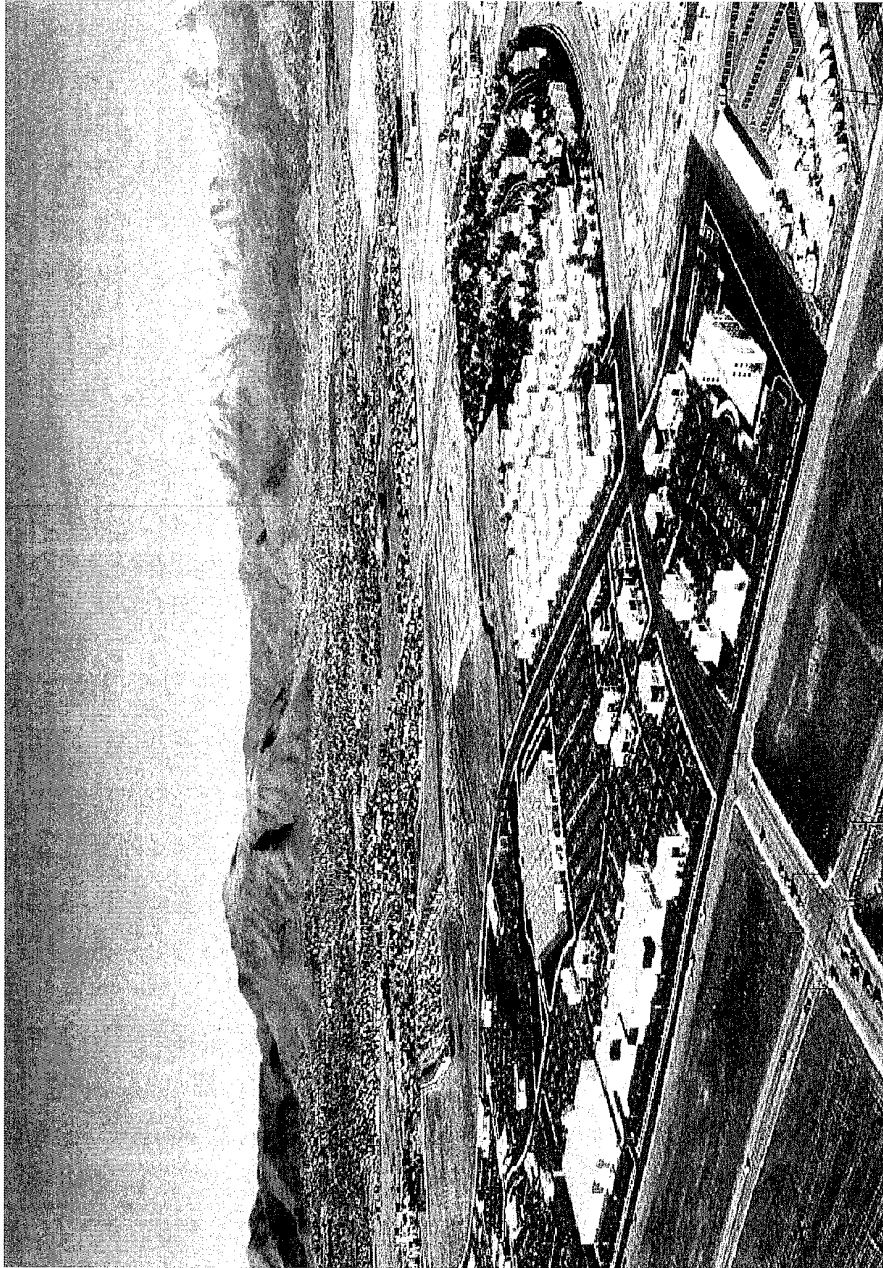
EXECUTION VERSION

Exhibit "B"

Design Guidelines

(see attached)

Anthem Center
Development Plan
Herriman, Utah



Index

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

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Anthem Center Development Plan

52 Exchange Place, Suite 200, Salt Lake City, UT 84111 • 801.487.8411 • 801.487.8412 • www.babcockdesign.com

29 August, 2016



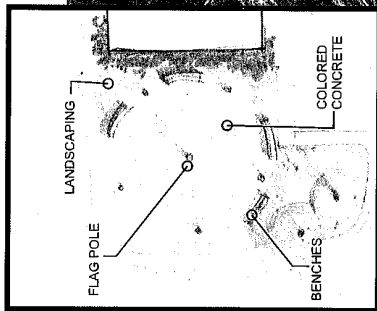
Anthem Development Plan 1

Aerial View

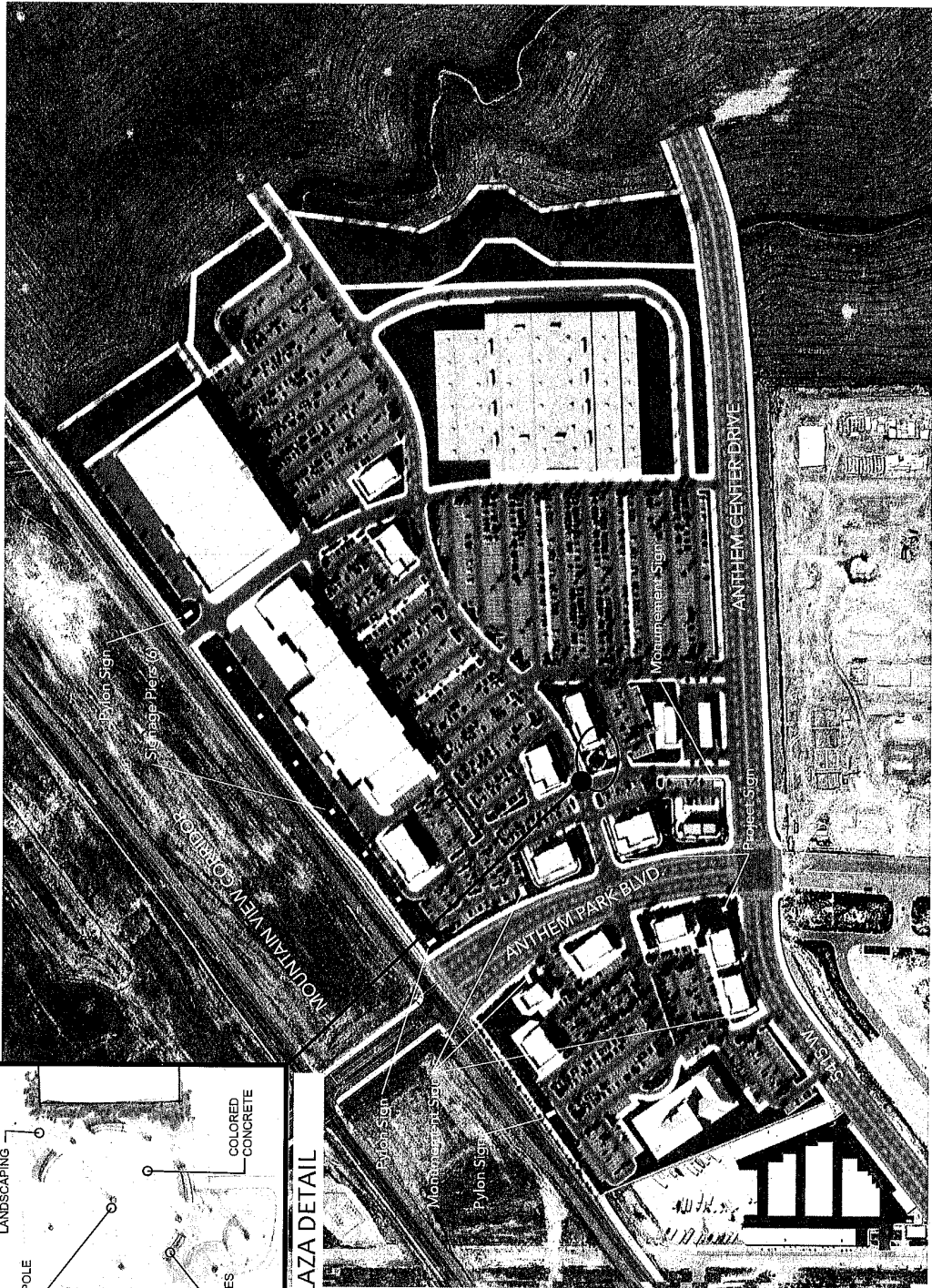
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32 Exchange Place • 11th Floor • New York, NY 10013 • 212.317.4200 • 800.368.3352 • www.babcockdesign.com

29 August, 2016



PLAZA DETAIL



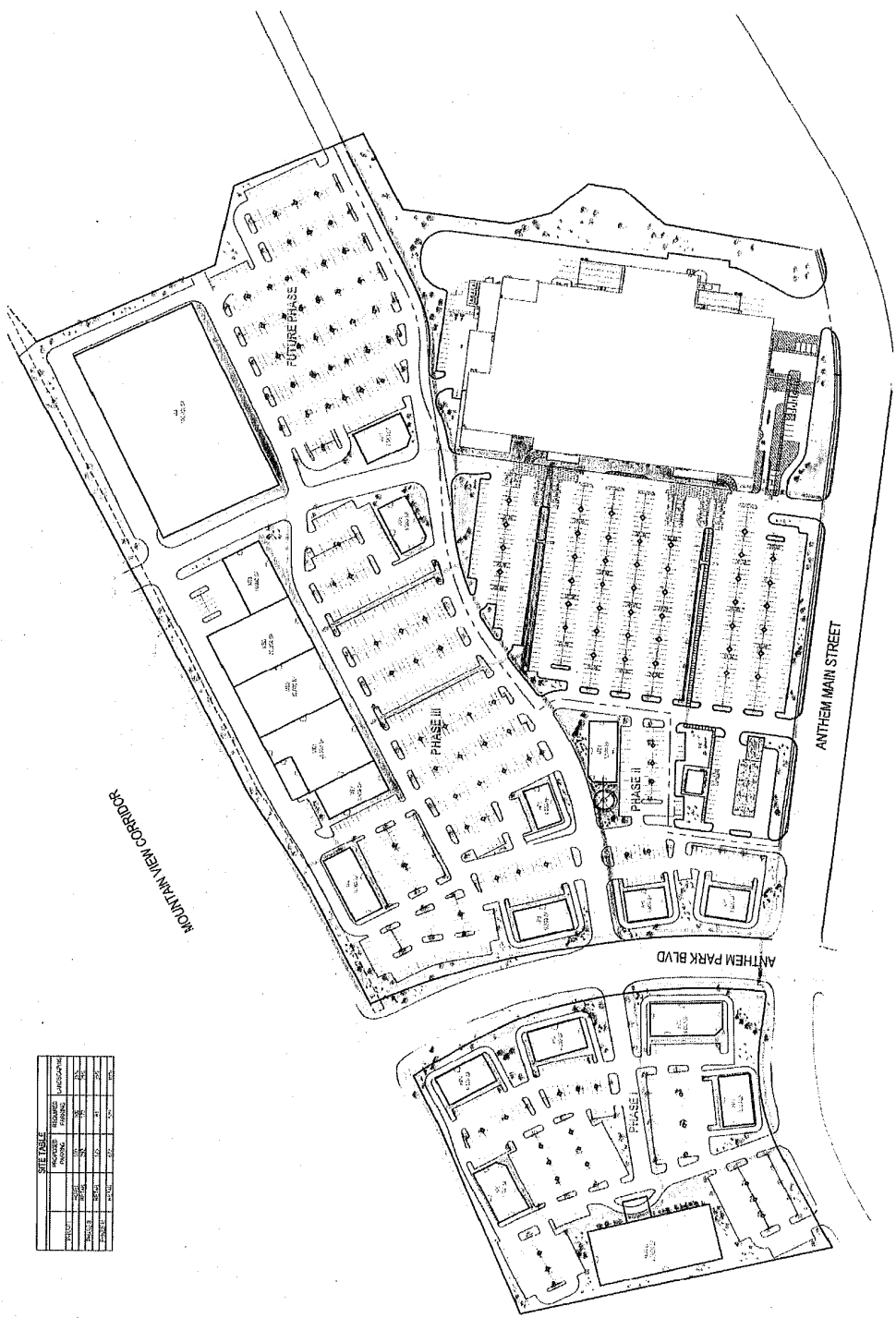
Anthem Development Plan 2

Site Plan

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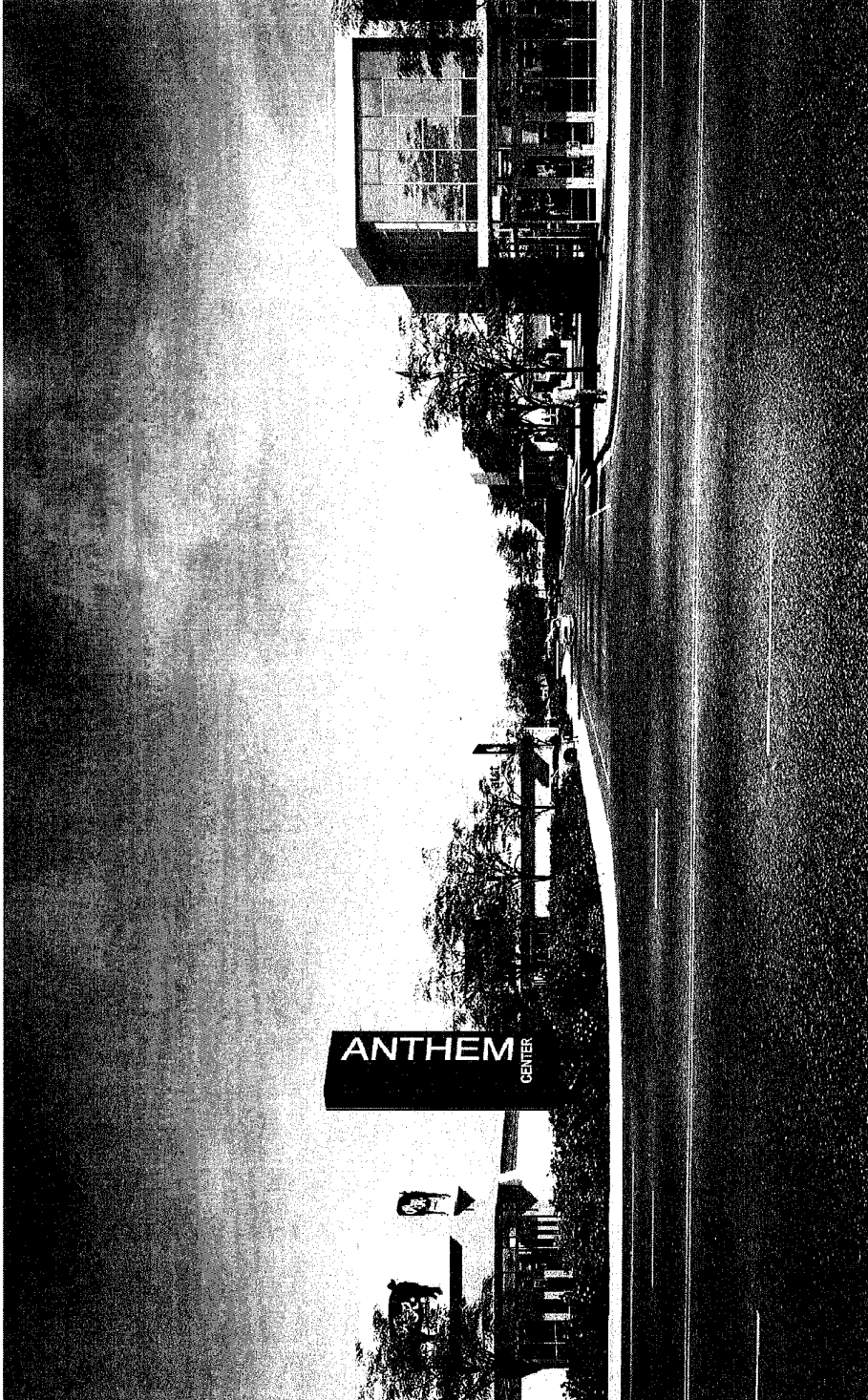
28 August, 2016

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SITE USE		PHASE I	PHASE II	PHASE III	FUTURE PHASE
RESIDENTIAL	OFFICE	100	100	100	100
RETAIL	RESTAURANT	100	100	100	100
COMMERCIAL	INDUSTRIAL	100	100	100	100
RECREATION	TRAVEL	100	100	100	100
UTILITY	OTHER	100	100	100	100



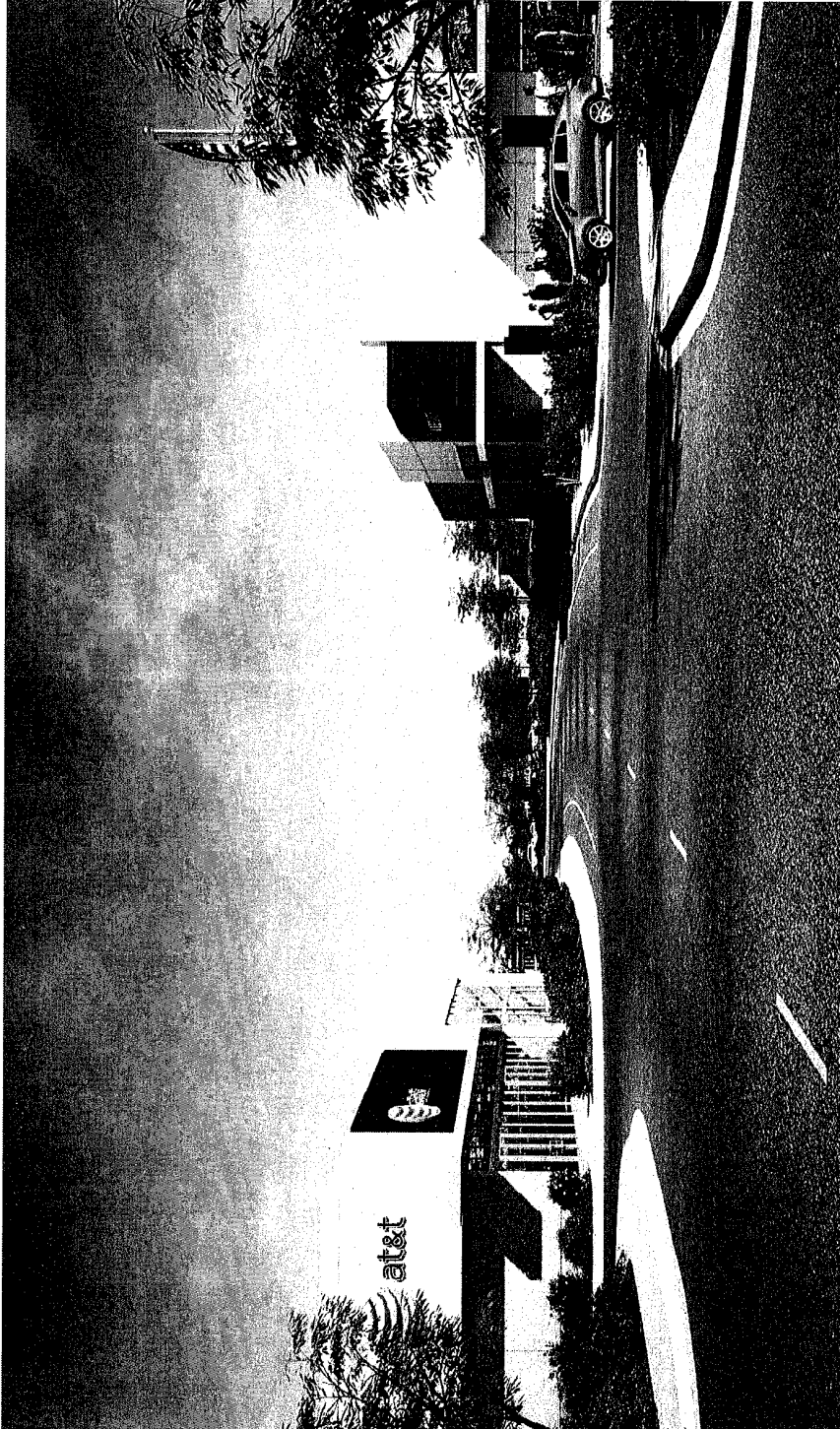


Conceptual View

Street View
29 August, 2016

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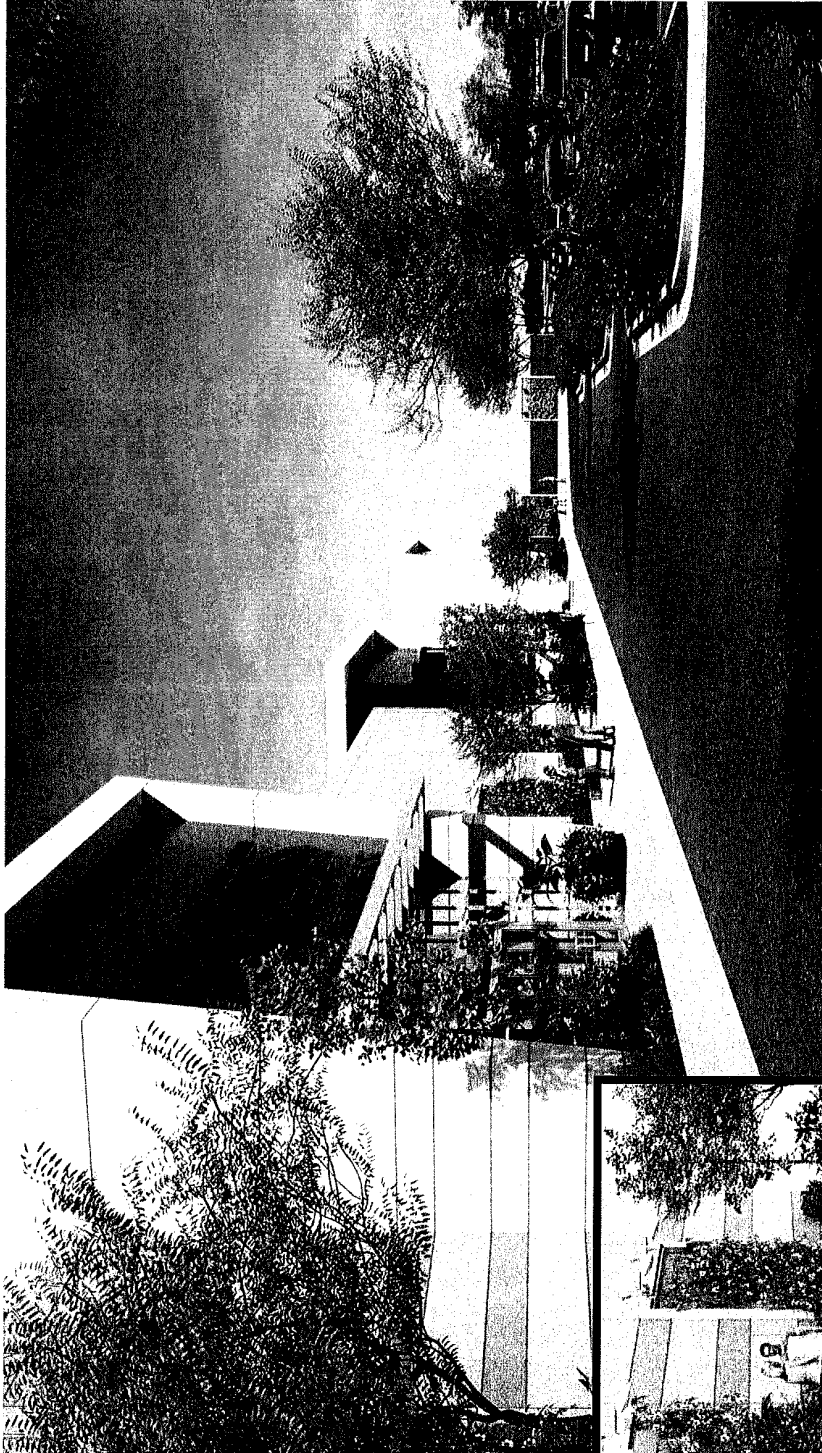


Conceptual View

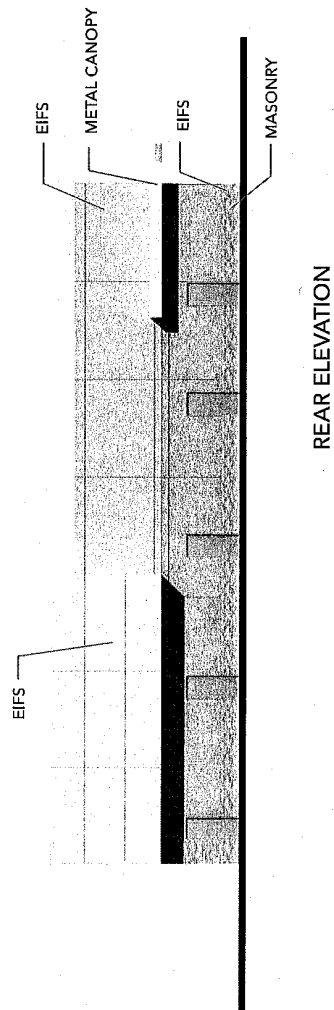
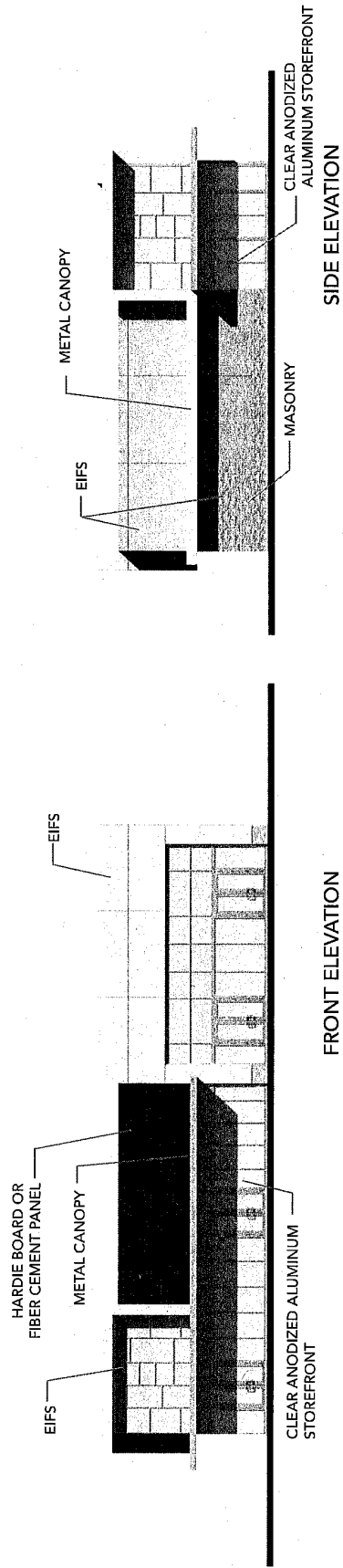
Street View
29 August, 2016

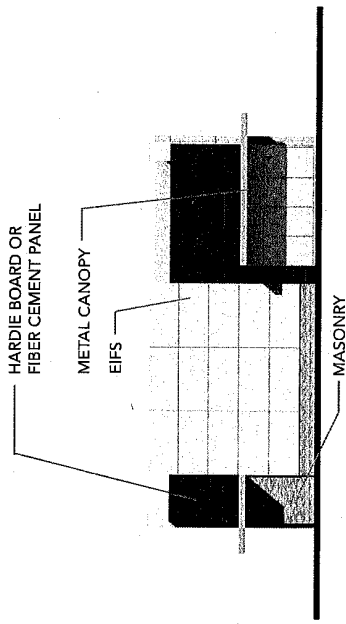
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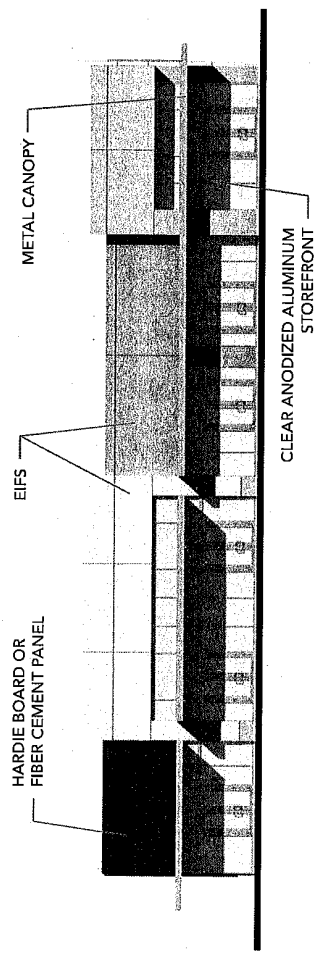


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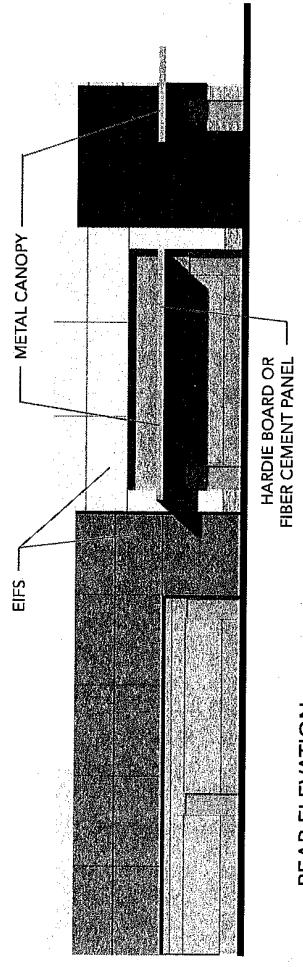




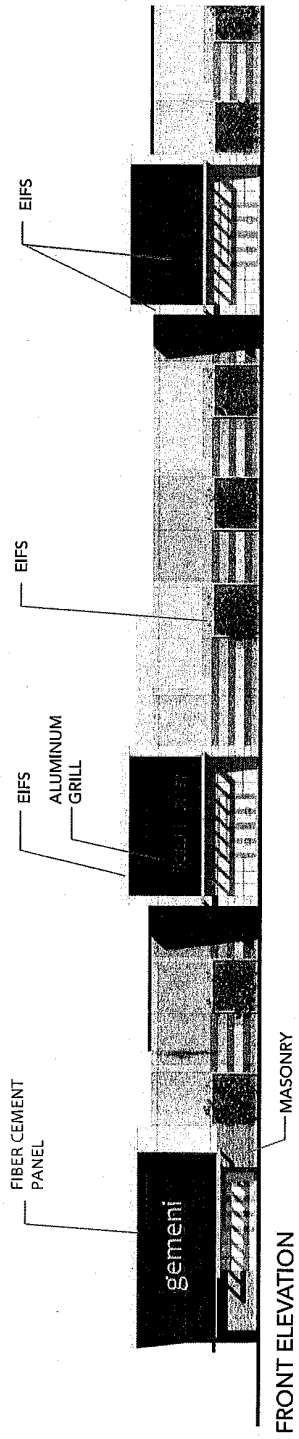
SIDE ELEVATION



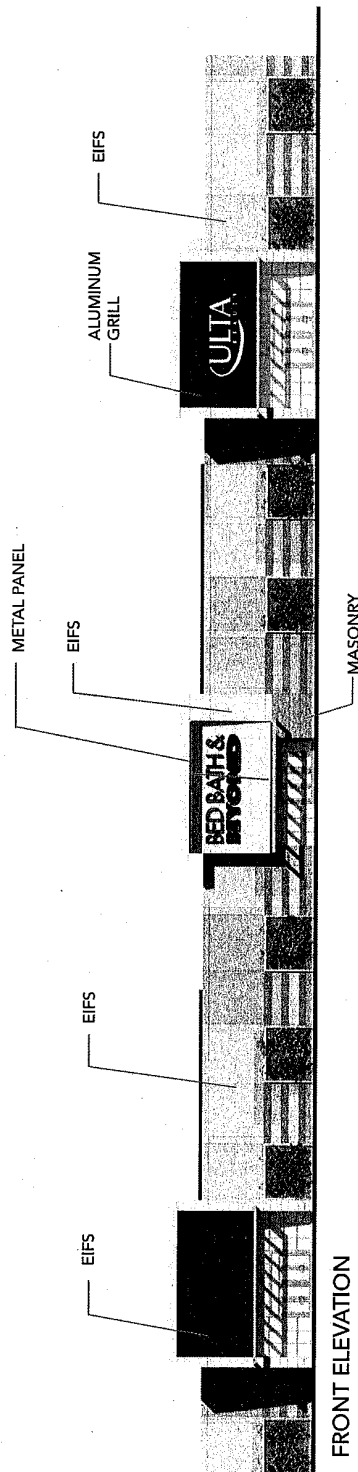
FRONT ELEVATION



REAR ELEVATION



FRONT ELEVATION



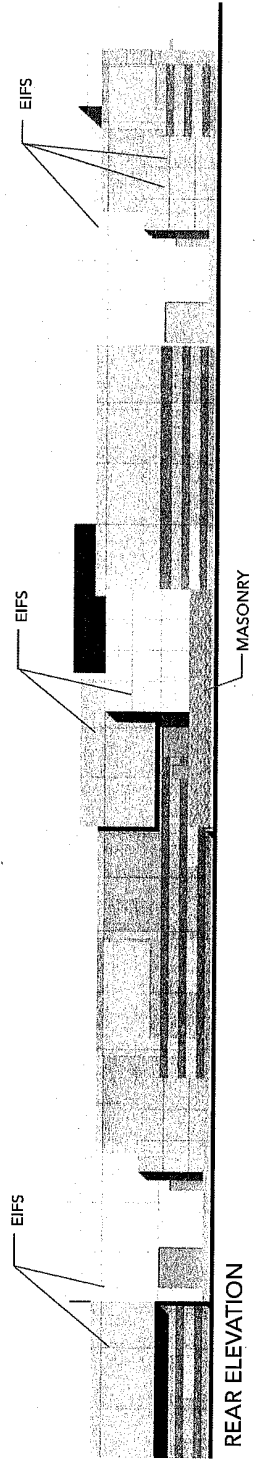
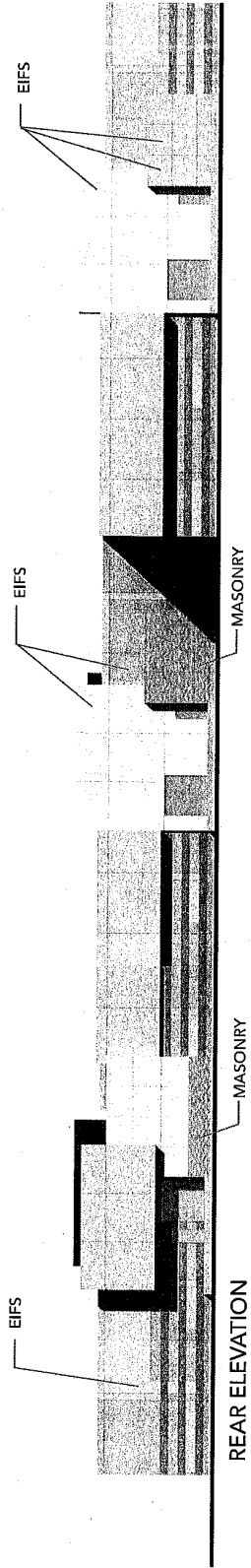
FRONT ELEVATION

Big Box Conceptual Elevations

Conceptual Elevation
29 August, 2016

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ANTHEM CENTER
EXTERIOR FINISHES
BABCOCK DESIGN GROUP 1-27-2016



METAL LAP FLASHING
M-1 BERRIDGE "SIERRA TAN"

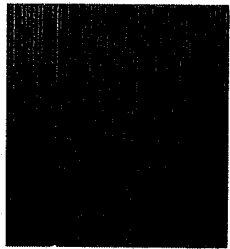
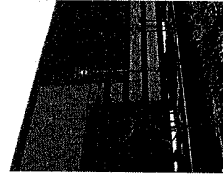
PAINTED METAL/PAINTED HARDIE PANEL
P-1 SHERWIN WILLIAMS #7718 "OAK CREEK"
P-2 SHERWIN WILLIAMS #6095 "TOASTY"
P-3 SHERWIN WILLIAMS #6054 "CANYON CLAY"
P-4 SHERWIN WILLIAMS #6202 "CAST IRON"

FIBER CEMENT PANEL
NICHIAH - VINTAGE WOOD "CEDAR"

EIFS
E-1 DRWIT #112 "SANDALWOOD BEIGE"
E-2 DRWIT #117 "COLONIAL TAN"
E-3 SYNERGY 3096 "LIONS MANE"
E-4 DRWIT (TO MATCH SW #6095) "TOASTY"
E-5 SYNERGY 3070 "BRUNET"
E-6 KWAL-HOWELLS #715D "MOOSE POINT"
E-7 DRWIT (TO MATCH SYNERGY#3070) "BUGAR"
E-8 DRWIT (TO MATCH ICI#304) "BRYCE LODGE"

STOREFRONT - METAL CANOPIES
S-1 US ALUMINUM CLEAR ANODIZED FINISH

STONE
ST-1 PANELIZED LEDGE STONE



P-1



P-2



P-3

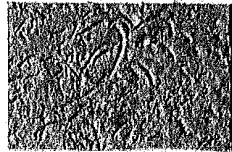
P-4



E-1



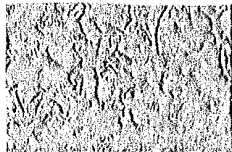
E-2



E-3



E-4



E-5



M-1



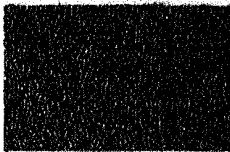
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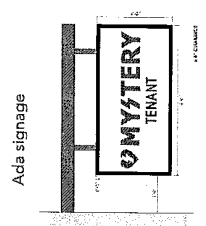
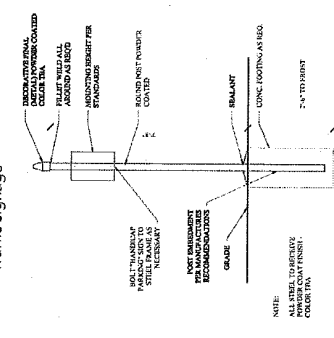
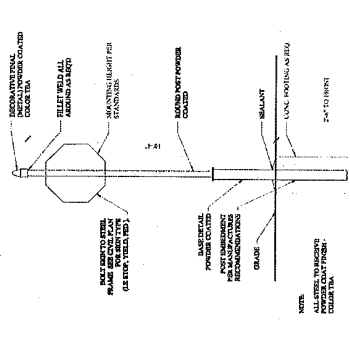
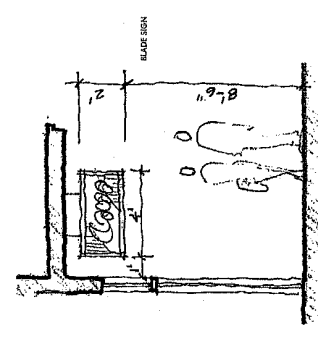
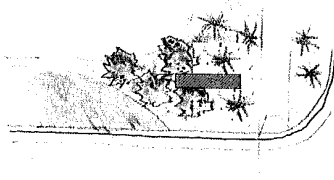
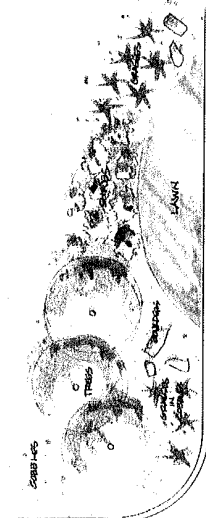
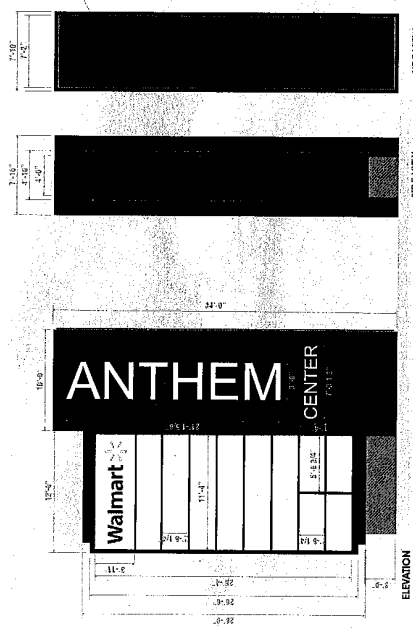
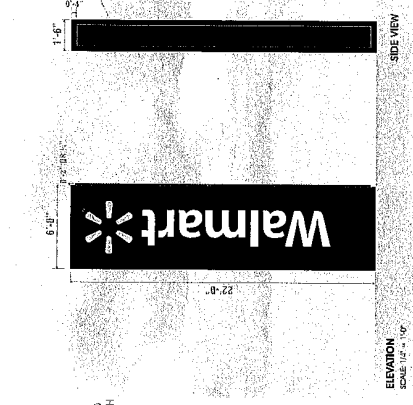
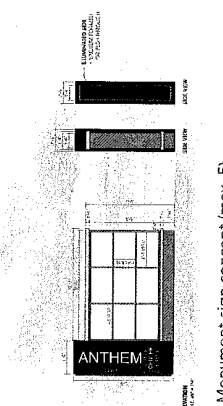
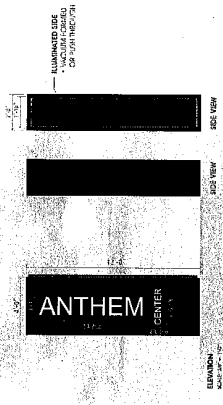
S-2

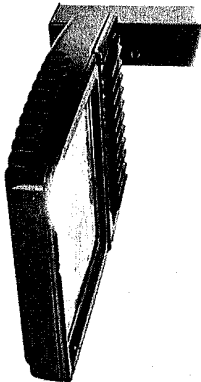


S-3

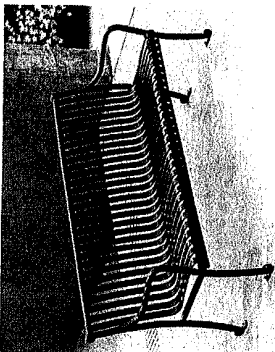


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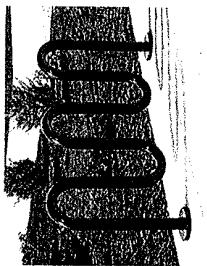




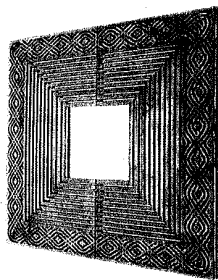
PARKING LOT LIGHT:



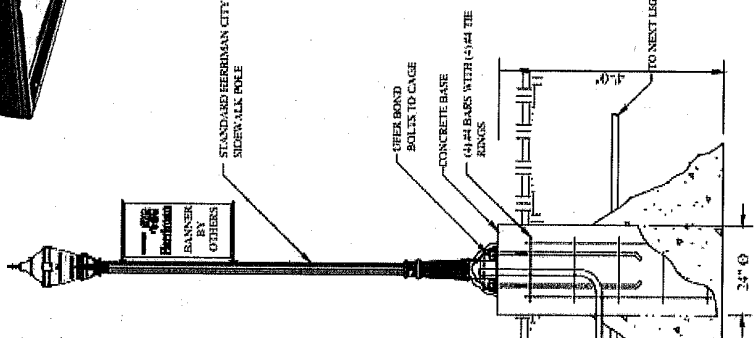
Plaza Series, Model PL-3
Fair Weather



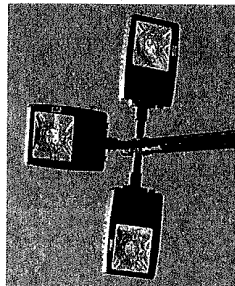
BIKE RACK:
DUMOR
MULTI-LOOP BIKE RACK 130
OR SIMILAR



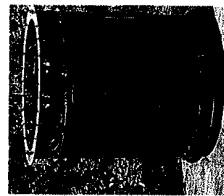
TREE GRATE:
URBAN ACCESSORIES
CHINOOK 2000
OR SIMILAR



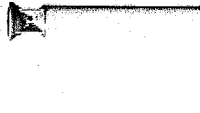
UTILITY-SIDE WALK POLE
3/8\"/>



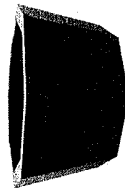
PARKING LOT LIGHT:



TRASH:
DUMOR
RECEPTACLE 102
OR SIMILAR



BOLLARD:
KIM LIGHTING:
GEM 1



PLANTER:
IAP
52 - SULTAN
OR SIMILAR



SIGN LIGHTS:
BEACON,
TRAVERSE

Street Furnishings

Conceptual Elevation
29 August, 2016

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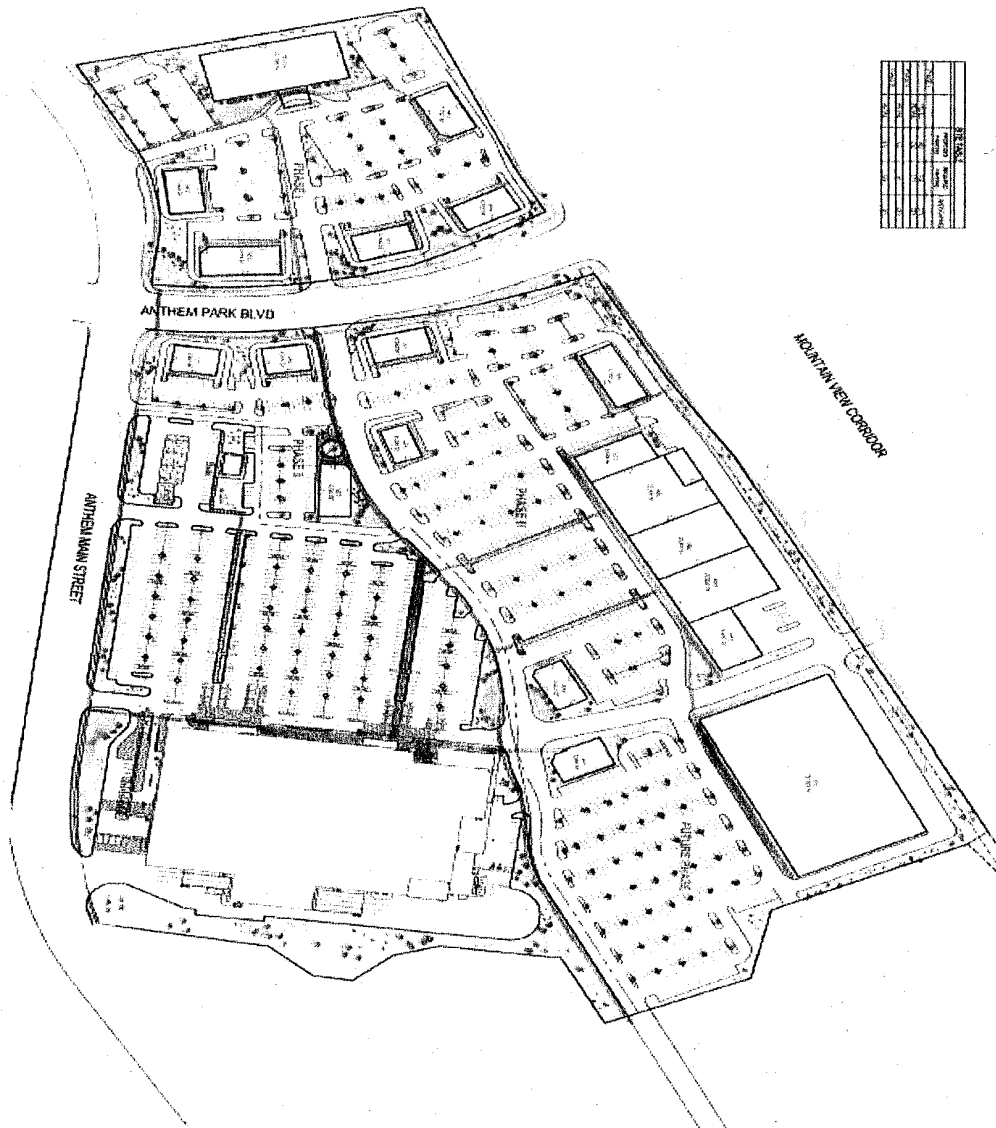
EXECUTION VERSION

Exhibit "C"

City's Vested Laws

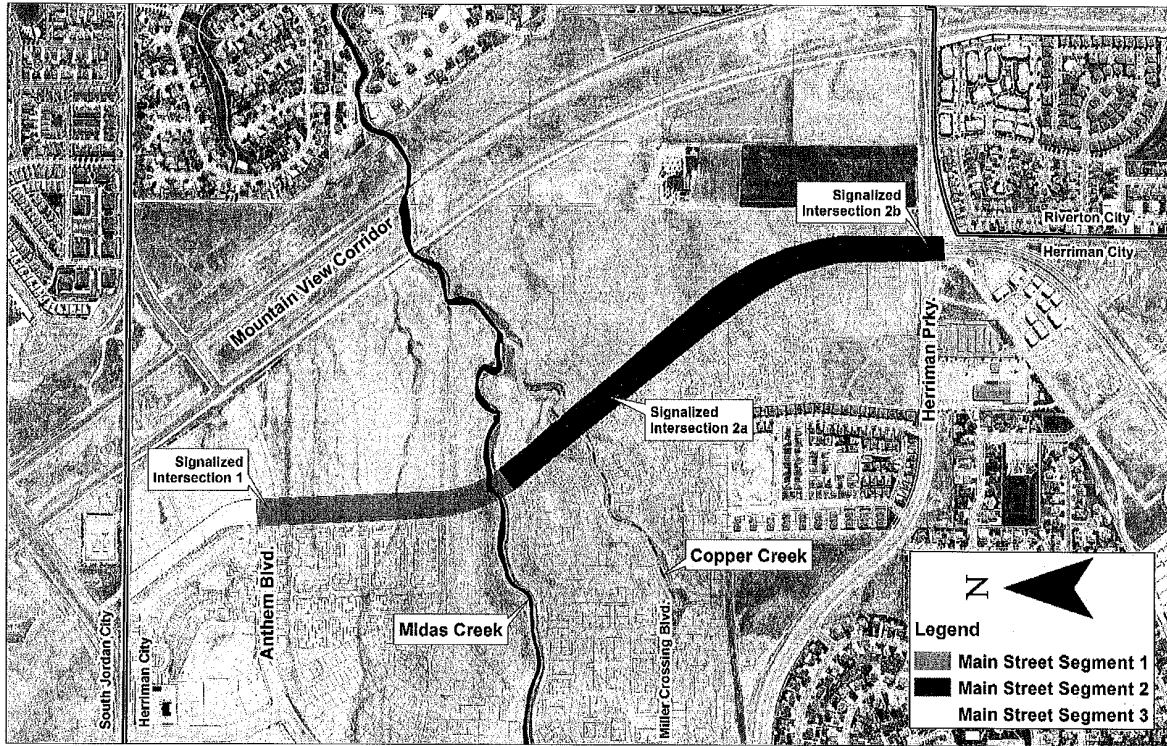
On file at City Offices

Site Plan



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Roadway



4845-5468-3448, v. 8