

When recorded, return to:
Smith Knowles, P.C.
2225 Washington Boulevard, Suite 200
Ogden, Utah 84401
Attention: J. Scott Buehler, Esq.

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12/20/2018 3:50:00 PM \$27.00
Book - 10740 Pg - 3394-3401
ADAM GARDINER
Recorder, Salt Lake County, UT
MERIDIAN TITLE
BY: eCASH, DEPUTY - EF 8 P.

RESTRICTIVE USE AGREEMENT

THIS RESTRICTIVE USE AGREEMENT (this “**Agreement**”) is made and entered into as of this 19th day of December, 2018, by and between ANTHEM CENTER, LLC, a Utah limited liability company (hereinafter “**Anthem**”) and AMERICA FIRST FEDERAL CREDIT UNION, a federally chartered credit union (hereinafter “**Credit Union**”) (each a “**Party**”, and collectively, the “**Parties**”).

RECITALS

A. Anthem is the owner of those certain parcels of real property located in Herriman City, Salt Lake County, Utah, more particularly described in **Exhibit “A”** and as depicted in **Exhibits “B-1” and “B-2”**, all of which are attached hereto and incorporated herein by reference (the “**Anthem Property**”).

B. Anthem intends to sell a portion of the Anthem Property constituting Lots 5 and 6 of the Anthem Commercial Lot 1 Amended Subdivision to the Credit Union (“**Lots 5 and 6**”) with all appurtenant rights, benefits, easements, rights of way and other appurtenances thereto for commercial development.

C. As the owner of the Anthem Property, Anthem will continue to have an interest in the orderly development and use of Lots 5 and 6 and would not agree to sell Lots 5 and 6 without the imposition of the covenants, conditions and restrictions set forth in this Agreement.

D. As the prospective purchaser of Lots 5 and 6, the Credit Union will continue to have an interest in the orderly development and use of the Anthem Property exclusive of Lots 5 and 6, and would not agree to purchase Lots 5 and 6 without the imposition of the covenants, conditions and restrictions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, it is mutually agreed as follows:

1. **Restriction on Development.**

In consideration for Anthem’s agreement to sell Lots 5 and 6 to the Credit Union, the development and use of Lots 5 and 6 shall be restricted for the benefit of the Anthem Property as follows:

- a. Lots 5 and 6 Uses. No portion of Lots 5 and 6 shall be used for a carwash.

b. Anthem Property Uses. No portion of Lots 201 and 204 of the Anthem Property shall be used for a financial institution including a bank, credit union, savings and loan, insurance or brokerage (the “**Exclusive Use Restriction**”) provided the Exclusive Use Restriction shall not apply to services provided by tenants or other users of such Lots which are incidental to a retail business (other than as a bank or credit union) such as additional cash back to a customer following a retail transaction or check cashing. In the event that Lots 5 and 6 shall not be used for a financial institution including a bank, credit union, savings and loan, insurance or brokerage for a period of twelve (12) consecutive months or more, such Exclusive Use Restriction will automatically terminate and have no further force or effect.

2. Enforcement.

Either Party hereto shall have the right to enforce by proceedings at law or in equity, all of the terms, provisions, covenants, conditions and restrictions of this Agreement, including the right to prevent the violation of any of the same and the right to recover damages or other amounts for such violation. Failure of either Party to enforce any term, provision, covenant, condition or restriction of this Agreement in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any future breach of the same or of any other term, provision, covenant, condition or restriction herein contained.

3. Miscellaneous.

a. Termination and Modification. This Agreement may be terminated or modified only by an instrument signed by the Parties, their respective successors or assigns, and recorded in the Records of the Salt Lake County Recorder.

b. Severability. If any term, provision, covenant, condition or restriction of this Agreement, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void, or unenforceable, all terms, provisions, covenants, conditions and restrictions of this Agreement and all applications thereof not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

c. Captions and Headings. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, provisions, covenants, conditions or restrictions contained herein.

d. Interpretation. Whenever the context requires in construing the provisions of this Agreement, the use of a gender shall include both genders, use of the singular shall include the plural, and use of the plural shall include the singular. The word “including” shall be construed inclusively, and not in limitation, whether or not the words “without limitation” or “but not limited to” (or words of similar import) are used with respect thereto. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

e. Governing Law. The laws of the State of Utah shall govern the validity, construction, performance and effect of this Agreement.

f. Attorneys' Fees and Costs. In the event any action or proceeding shall be instituted in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' fees and costs incurred in bringing or defending such action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment.

g. Rights of Successors and Assigns. The covenants, conditions, restrictions, benefits and obligations hereunder shall be perpetual and shall create mutual benefits and servitudes upon the Anthem Property and Lots 5 and 6 that run with the land. This Agreement shall bind and inure to the benefit of the Parties hereto and all parties having any right, title or interest in the Anthem Property or Lots 5 and 6 and their respective successors and assigns.

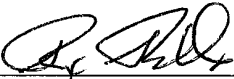
h. Mortgagee Protection Provision. The breach of any of the foregoing covenants, conditions and restrictions shall not defeat or render invalid the lien of any mortgage or deed of trust lien on the Anthem Property or Lots 5 and 6 that is made in good faith and for value; provided, however, that all of the covenants, conditions and restrictions contained herein shall be binding upon and effective against the party whose title thereto is acquired by foreclosure, trustee's sale or other foreclosure proceeding from and after the date of such foreclosure, trustee's sale or other foreclosure proceeding.

i. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which together shall be deemed to constitute one and the same instrument and shall be effective upon execution of any one (1) or more of such counterparts by each of the Parties hereto and delivery of one (1) or more of such counterparts to the other Party.

[signature page follows]

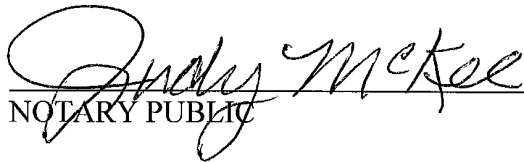
IN WITNESS WHEREOF, the parties have executed this Declaration as of the day and year first above written.

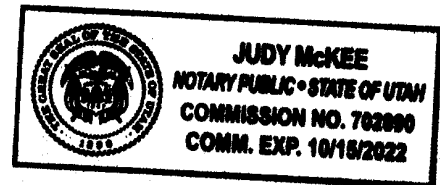
AMERICA FIRST FEDERAL CREDIT UNION, a
federally chartered credit union

By: 
Name: Rex Rollo (printed)
Title: EVP/CEO
Date: 12/19/18

STATE OF UTAH)
: ss.
COUNTY OF Weber)

On this 19th day of December, 2018, personally appeared before me the undersigned, a Notary Public in and for the State of Utah, Rex Rollo, EVP/CEO (title) of AMERICA FIRST FEDERAL CREDIT UNION, a federally chartered credit union, signer of the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.


NOTARY PUBLIC



ANTHEM CENTER, LLC, a Utah limited liability company, by its managers

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

By: [Signature]
Name: Cory Gust (printed)
Title: Member/Manager
Date: 12/18/18

Anthem Commercial, LLC, a Utah limited liability company

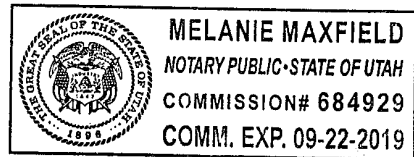
By: [Signature]
Name: Ryan Button (printed)
Title: MANAGER
Date: 12/18/18

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 18 day of December, 2018, personally appeared before me the undersigned, a Notary Public in and for the State of Utah, Cory Gust, Manager (title) of ARBOR COMMERCIAL REAL ESTATE L.L.C., a Utah limited liability company, signer of the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.

[Signature]
NOTARY PUBLIC

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)



On this 18 day of December, 2018, personally appeared before me the undersigned, a Notary Public in and for the State of Utah, J. Ryan Button, Manager (title) of ANTHEM COMMERCIAL ~~REAL ESTATE~~ L.L.C., a Utah limited liability company, signer of the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.

[Signature]
NOTARY PUBLIC

Restrictive Use Agreement

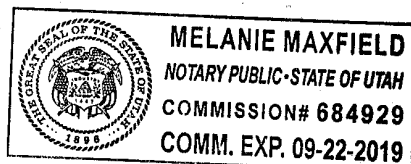


EXHIBIT "A"

Description of the Anthem Property

Lots 5 & 6, Anthem Commercial Lot 1 Amended Subdivision, amending Lot 1 of Anthem Commercial Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder

Lot 201 and 204, Anthem Commercial Lot 1, 2nd Amended Subdivision, amending Lots 2, 3 and 4 of the Anthem Commercial Lot 1 Amended Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder

Tax Parcel Id Nos: 26-25-126-008; 26-25-126-007; 26-25-126-011 and 26-25-126-013

EXHIBIT "B-2"

Depiction of the Anthem Property

