

When recorded, return to:
Anthem Center, LLC
126 Segoe Lily Drive, Suite 275
Sandy, Utah 84070
Attn: Cory Gust

13314861
6/30/2020 3:21:00 PM \$40.00
Book - 10971 Pg - 2529-2536
RASHELLE HOBBS
Recorder, Salt Lake County, UT
MERIDIAN TITLE
BY: eCASH, DEPUTY - EF 8 P.

RESTRICTIVE / EXCLUSIVE USE AGREEMENT

THIS RESTRICTIVE /EXCLUSIVE USE AGREEMENT (this “**Agreement**”) is made and entered into as of this 30 day of June, 2020, by and between ANTHEM CENTER, LLC, a Utah limited liability company (hereinafter “**Anthem**”), PLAZA STREET FUND 87, LLC, a Kansas limited liability company (hereinafter “**Plaza**”), and MILE HIGH CHICKEN, LLC, a Colorado limited liability company (hereinafter “**Mile High**”) (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 on **Exhibit “A”** attached hereto and incorporated herein by reference (the “**Anthem Property**”).

B. Anthem intends to sell to Plaza a portion of the Anthem Property which is more particularly described on **Exhibit “B”** attached hereto (the “**Plaza Parcel**”) with all appurtenant rights, benefits, easements, rights of way and other appurtenances thereto for commercial development.

C. Anthem has a continuing interest in restricting the use of the Plaza Parcel, and would not agree to sell the Plaza Parcel without the imposition of the covenants, conditions and restrictions set forth in this Agreement.

D. As the prospective purchaser of the Plaza Parcel, Plaza has a continued interest in its exclusive use for the Anthem Property, and would not agree to purchase the Plaza Parcel without the imposition of the covenants, conditions and restrictions set forth in this Agreement.

E. Mile High will be the operator and lessee of the building and Plaza Parcel and therefore would not agree to lease the Plaza Parcel 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 and Use of the Plaza Parcel.**

The development and use of the Plaza Parcel shall be restricted for the benefit of the Anthem Property so that no portion of the Plaza Parcel shall be used for a carwash.

2. **Restriction on Development and Use of Anthem Property.**

The development and use of the Anthem Property shall be restricted for the benefit of the Plaza Parcel, as follows:

So long as Plaza or Mile High has (a) commenced the operation of a quick-serve, drive thru restaurant that sells chicken as its primary menu item (the "**Plaza's Primary Use**") within two (2) years of the date of this Agreement, and (b) Plaza or Mile High has not ceased operating the Plaza's Primary Use on the Plaza Parcel for a period in excess of twenty (24) months, then no other restaurant on the Anthem Property will be permitted to sell chicken if the revenues from the sale of such chicken exceed more than ten percent (10%) of such restaurant's gross annual revenue.

Without limiting the generality of the foregoing, the following restaurants will be a violation of Plaza's Primary Use: Chick-fil-A, Raising Canes, Churches Chicken, Zaxby's, Popeye's Chicken and Kentucky Fried Chicken, provided, however, Taco Bell shall not be considered a violation of Plaza's Primary Use. Plaza's Primary Use shall not prevent operation of a restaurant that sells chicken as its primary menu item so long as said restaurant (i) is less than 2,000 square feet in size; (ii) is located in a multi-tenant building which is owned by Anthem; and (iii) does not contain a drive thru.

3. Enforcement.

Any 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 any 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.

4. 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 the Plaza Parcel 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 the Plaza Parcel 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 the Plaza Parcel 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 Parties.

[signature page follows]

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


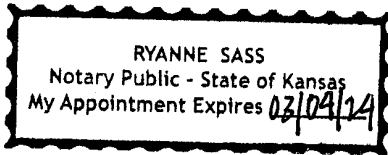
PLAZA STREET FUND 87, LLC,
a Kansas limited liability company



By: Bret Elliott
Its: President

STATE OF KANSAS)
COUNTY OF JOHNSON) : ss.

On this 11 day of JUNE, 2020, personally appeared before me the undersigned, a Notary Public in and for the State of KANSAS, Bret Elliott, the President of PLAZA STREET FUND 87, LLC, a Kansas limited liability company, signed the foregoing instrument, and acknowledged he executed the same on behalf of said company. Witness my hand and official seal.



NOTARY PUBLIC

MILE HIGH CHICKEN, LLC, a Colorado limited liability company

By: Rick Stuey
Its: manager

STATE OF CO)
COUNTY OF Douglas) : ss.

On this 25 day of June, 2020, personally appeared before me the undersigned, a Notary Public in and for the State of Colorado Rick Stuey, the manager, of, signer of MILE HIGH CHICKEN, LLC, a Colorado limited liability company the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.

ALEXANDRA SABADOS
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 20154014749
MY COMMISSION EXPIRES APR 13, 2023

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: Manager/Member
Date: 4/3/20

Anthem Commercial, LLC, a Utah limited liability company

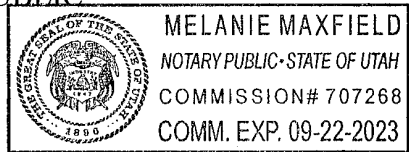
By: [Signature]
Name: Ryan Button (printed)
Title: MANAGER
Date: 6/23/20

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

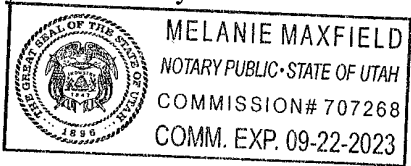
On this 24 day of June, 2020, personally appeared before me the undersigned, a Notary Public in and for the State of Utah, Cory Gust, (title) of ARBOR COMMERCIAL REAL ESTATE L.L.C., a Utah limited liability company, a manager of Anthem Center, LLC, a Utah limited liability company, signer of the foregoing 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 24 day of June, 2020, personally appeared before me the undersigned, a Notary Public in and for the State of Utah, _____, (title) of ANTHEM COMMERCIAL REAL ESTATE L.L.C., a Utah limited liability company, a manager of Anthem Center, LLC, 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.



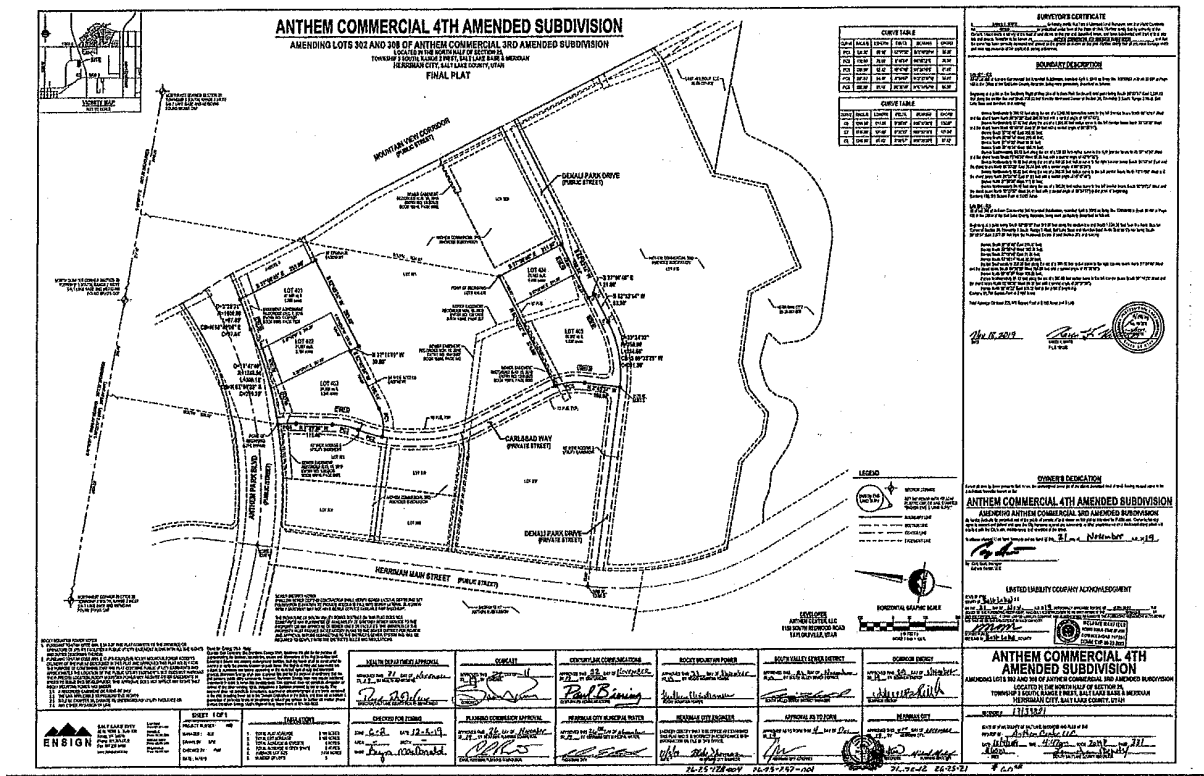
[Signature]
NOTARY PUBLIC

EXHIBIT "A"

Description of the Anthem Property

Lots 303, 304, 305, 306, 307, 309, 310, Anthem Commercial 3rd Amended Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder's Office.

Lots 401, 402, 404, 405 and Parcel A Anthem Commercial 4th Amended Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder's Office.



Tax ID NOS. 26-25-128-002 THROUGH -006
 26-25-252-002 THROUGH -005

Exhibit "B"

Description of Plaza Parcel

Parcel 1:

Lot 403, Anthem Commercial 4th Amended Subdivision, Amending Lots 302 and 308 of Anthem Commercial 3rd Amended Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

Parcel 2:

A non-exclusive, perpetual easement for access and the ingress, egress and parking as disclosed in that Declaration of Easements and Conditions recorded April 23, 2019 as Entry No. 12973216 in Book 10772 at Page 8661 of Official Records and First Amendment to Declaration of Easements and Conditions recorded August 13, 2019 as Entry No. 13051013 in Book 10815 at Page 8588 of Official Records.

Tax ID: 26-25-128-005