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**Abbreviated Legal Description:**

**Tax Parcel Number(s):**

11-061-0205 (formerly 11-061-0151),  
11-061-0079, 11-061-0080, 11-061-0082,  
11-061-0083, 0196, 0198, 0206, 0136, 0030 thru 0034, 0150, 0199

**DECLARATION OF EASEMENTS AND CONDITIONS**

**BETWEEN**

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

**AND**

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

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**DECLARATION OF EASEMENTS AND CONDITIONS**

THIS DECLARATION OF EASEMENTS AND CONDITIONS ("DEC") is made as of the 9th day of July, 2010, by and between WinCo Foods, LLC, a Delaware limited liability company ("WinCo") and Fort Lane Village, LC, a Utah limited liability company ("Fort Lane").

**RECITALS**

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

A. WinCo is or will be the owner of a certain parcel of land in the City of Layton, County of Davis, State of Utah more particularly described on **Exhibit A**, attached hereto.

B. Fort Lane is the owner of certain parcels and tract of land in the City of Layton, County of Davis, State of Utah, more particularly described on **Exhibit A-1**, attached hereto.

C. The Shopping Center will consist of seven (7) contiguous Parcels and one (1) Tract identified on the site plan attached hereto as **Exhibit B** (the "Site Plan"). WinCo owns or will own the parcels identified on the Site Plan as "Parcel 1" (the "WinCo Parcel") and Fort Lane owns the parcels identified on the Site Plan as "Parcel 2", "Parcel 3", "Parcel 4", "Parcel 5", "Parcel 6", and "Parcel 7" and the tract identified on the Site Plan as "Tract A" (collectively, the "Fort Lane Parcel"). The Fort Lane Parcel together with the WinCo Parcel, shall collectively be referred to as the "Shopping Center".

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

E. WinCo and Fort Lane intend for the Shopping Center to be developed as an integrated retail shopping complex, to be developed as a planned development. In order to effectuate the common use and operation of certain portions of the Shopping Center, WinCo and Fort Lane hereby grant certain reciprocal easements into, over, and across certain portions of the Shopping Center and impose certain conditions and restrictions thereon.

**DECLARATION**

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

**I. DEFINITIONS.**

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

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

1.3. "Approving Parties" shall mean WinCo and Fort Lane (each an "Approving Party"), or their respective successors, 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. Notwithstanding the foregoing, Fort Lane shall only be an Approving Party for the period of time Fort Lane owns a minimum of fifty percent (50%) of the Fort Lane 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 Features" shall mean any gable, tower, pilaster or other design element appurtenant to any building on a Parcel.

1.5. "Budget" shall mean the estimated cost of maintaining the Common Maintenance Areas of the Shopping Center and estimated Administration Fee.

1.6. "Building Area" shall mean the limited areas of the Shopping Center within which Buildings may be constructed, placed, or located. Building Areas are designated on the Site Plan by the building limit lines shown thereon. Any and all Buildings on a Parcel must be constructed within the designated Building Area for such Parcel. During any period of rebuilding, repairing, replacement, or reconstruction of a Building, the Building Area of that Building shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement, or reconstruction, the Party upon whose Parcel such Building is located shall cause a new determination of building Area for such Building to be made in accordance with this Section, and such determination shall be sent to the Approving Parties and to any Party requesting the same.

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

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

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

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

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

1.12. "Common Area" shall mean all areas within the boundaries of the Shopping Center, exclusive of Buildings.

1.13. "Common Maintenance Areas" shall mean the Center Signs and the Common Utility Lines, and the common drive aisles and common landscaping in the approximate locations shown on the Site Plan.

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.

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

1.16. "Constant Dollars" shall mean the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth calendar year following the date of this DEC, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the month during which the DEC is dated. The "Current Index Number" shall be the level of the Index for the month of October of the year preceding the adjustment year. The "Index" shall be the Consumer Price Index, All Urban Consumers, for the West Region, published by the United States Department of Commerce (base year 1982 84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.17. "Constructing Party" shall mean a Party constructing Building improvements.

1.18. "DEC" shall have the meaning set forth in the introductory paragraph above.

1.19. "Defaulting Party" shall mean the Party failing to perform under the DEC.

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

1.21. "Fast Food Restaurant" shall mean any quick serve Restaurant whose marketing strategy is based on preparing and dispensing food orders in a limited period of time. Fast Food Restaurants do not include any Restaurant or food service establishment which offers as the primary method of service for orders to be taken and served by a waitperson at the customer's table or to vehicles, or whose primary method of service is for customers to serve themselves at a buffet line.

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

1.23. "Eloot Area" shall mean the actual number of square feet of space contained on each floor within a Building, including any mezzanine or basement space, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; *provided, however,* that the following areas shall not be included in such calculations: space attributable to any multi-deck, platform, or structural levels used for the storage of merchandise which is located vertically.

above ground floor; truck ramps, loading and delivery areas (unless covered by a roof, in which case it shall be included in the calculation of Floor Area), and trash-compactor facilities located outside the Building, though attached to it. Within thirty (30) days of a request, a Party shall certify to the requesting Party the amount of Floor Area applicable to each Building on its Parcel. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party shall furnish a copy of the survey to the other Parties for informational purposes only. During any period of rebuilding, repairing, replacement, or reconstruction of a Building, the Floor Area of that Building shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement, or reconstruction, the Party upon whose Parcel such Building is located, shall cause a new determination of Floor Area for such Building to be made in the manner described above, and such determination shall be sent to any Party requesting the same.

1.24. "Fort Lane" shall have the meaning set forth in the introductory paragraph above.

1.25. "Fort Lane Parcel" shall have the meaning set forth in Recital C above.

1.26. "Grant of Exclusivity" shall mean the right to exclusively operate a type of retail business in accordance with Section 5.1(i).

1.27. "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

1.28. "Initial Work" shall mean site improvement work to be performed on all or a portion of the WinCo Parcel.

1.29. "Invoice" shall mean the quarterly billing statement issued by Operator for actual Common Area Maintenance costs, which shall include Operator's certified statement and supporting documentation in accordance with Section 4.3(d).

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

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

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

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

1.34. "Operator" shall mean the Person designated from time to time to maintain and operate the Common Maintenance Areas within the Shopping Center in accordance with the Maintenance Standard. The Person designated as Operator shall serve in that capacity until it resigns or is removed for failure to maintain and operate the Common Maintenance Areas within the Shopping Center in accordance with Section 4.3(h). The initial Operator shall be the owner of the Fort Lane Parcel. Once the owner of the WinCo Parcel commences construction on the WinCo Parcel, the owner of the WinCo Parcel shall the right, upon written notice to the other Parties, to assume the obligations of Operator under this DEC.

1.35. "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.

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

1.37. "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, WinCo shall not be required to provide such notice of transfer in the event that it transfers its interest in the WinCo Parcel to a parent, subsidiary, or affiliate of WinCo.

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 (for the purpose of this DEC only) be 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.

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

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

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

1.40. "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.

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

1.42. "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.



1.43. "Shopping Center" shall have the meaning set forth in Recital B above.

1.44. "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 3.4(e), below.

1.45. "Subsurface Construction Elements" shall mean piers, footings and/or foundations.

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

1.47. "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; provided, however, Tract A Surface Water Facilities shall not be 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.

1.48. "WinCo" shall have the meaning set forth in the introductory paragraph, above.

1.49. "WinCo Parcel" shall have the meaning set forth in Recital C.

## 2. EASEMENTS.

2.1 Ingress, Egress and Parking. In accordance with the term of this DEC, 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 easement for the ingress, egress and parking of vehicles over and across the parking, drive aisle and driveway areas of the Common Area on the grantor's Parcel. The same may from time to time be constructed, altered, maintained for such use, and for the ingress, and accommodation of pedestrians over and across the parking, drive aisle, driveway, 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. Each Party shall have the right to each Party entitled to the same in accordance with Section 3.2(e) below for its use, and shall have the right to the location, construction, operation and maintenance of Center Signs including access, lighting and utilities servicing said signs. Said parking, drive aisle and driveway easements shall be located as shown on the Site Plan. Easements for Center Signs, access, ingress, egress and parking of vehicles of pedestrians over and across all driveways, drive aisles and roadways depicted on the Site Plan shall continue in effect for perpetuity. 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 a reasonable period of time as may be legally necessary in the opinion of such Party to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of its Parcel, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing with each other Party so that no unreasonable interference with the passage of pedestrians or vehicles shall occur.

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

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

(d) Each Party reserves the right to install a Cart Containment System on its Parcel for the purpose of preventing the removal of shopping carts from its Parcel.

2.2. Utilities.

(a) Each Party hereby grants and conveys to each other Party non-exclusive, perpetual easements in, to, over, under, along, and across those portions of the Common Area (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.

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

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

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

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

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

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

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

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

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

(ii) Each Party shall pay to Fort Lane its share of the actual costs of operating and maintaining the Tract A Surface Water Facilities, including current real property taxes assessed on Tract A (collectively, "Tract A Surface Water Facilities Costs"), on a quarterly basis. The Tract A Surface Water Facilities Costs shall be allocated among the Parties in the proportion that, respectively, the total land area of each Parcel bears to the total land area of the Shopping Center. Fort Lane shall, on a quarterly basis, prepare and submit to each Party an Invoice for such Party's share of the actual Tract A Surface Water Facilities Costs for the previous quarter. Each Party shall pay the amount due under the Invoice on or before thirty (30) days from delivery of the Invoice to each Party in the manner in which Notices are to be provided under Section 8.11. below. If any Party fails to timely pay an

Invoice, the amount set forth in such Invoice shall accrue interest in accordance with Section 8.8 below.

2.3. ~~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) Cause any unreasonable increase in the cost of constructing improvements upon another Party's Parcel;

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

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

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

(b) Each Party agrees to defend, indemnify, and hold harmless each other Party from all claims, losses, liabilities, actions, proceedings, and costs (including reasonable attorneys' fees and costs of suit), including liens, and any accident, injury, loss, or damage whatsoever occurring to any Person or to the property of any Person arising out of or resulting from any construction activities performed or authorized by such indemnifying Party; provided, however, that the foregoing shall not be applicable to events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them 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 access between such Parcel and the other areas of the Shopping Center. Prior to the commencement of any work which requires the establishment of a staging and/or storage area on its Parcel, a Party shall give at least thirty (30) days prior notice to the Approving Parties, for their approval, of the proposed location. No other Party's staging area shall, without the prior written consent of the owner of the WinCo Parcel, which may be granted or withheld in its sole, absolute and unreviewable discretion, be located: (i) on the WinCo Parcel, (ii) within one hundred feet (100') of any Building location on the WinCo Parcel, (iii) within any common drive aisles within the Shopping Center or the access points to the Shopping Center, or (iv) in the area adjacent to or behind the area shown as "Major B" on Parcel 2 as depicted on the Site Plan. If the Approving Parties do not approve the proposed location of the staging and/or storage area, the Party shall modify the proposed location to satisfy the reasonable requirements of the Approving Parties. If substantial work is to be performed,

the constructing Party shall, at the request of the Approving Parties, fence off the staging and storage area. Notwithstanding anything to the contrary in this Section, no Party shall, without the prior written consent of the owner of the WinCo Parcel, which may be granted or withheld in its sole, absolute and unreviewable discretion, conduct any staging or construction activities on or with respect to Parcel 2 or Parcel 3, as depicted on the Site Plan, during the period commencing five (5) days prior to the grand opening of the business on the WinCo Parcel and ending thirty (30) days following the date of such grand opening, and such areas shall be maintained in a clean and sightly condition at all times during such grand opening period. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Party's Parcel outside of any common drive aisles or access points. Upon completion of such work, the constructing Party shall restore the affected Common Area and access points to the 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 other 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 such license shall be in effect only during periods when actual construction and/or maintenance is being performed and 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 and common drive aisles located on or connecting the WinCo Parcel to Gentile Street, Fort Lane or any other access point to the Shopping Center without the prior written consent of WinCo, 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); provided, however, that any Party's contractor performing services in connection with the construction of improvements to that Party's Parcel shall only be required to provide Three Million and No/100 Dollars (\$3,000,000) of commercial general liability insurance. 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 Common Area of the Shopping Center shall be initially constructed as shown on the Site Plan, as finally approved by the City of Layton; provided, however, that 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. Notwithstanding anything to the contrary in this Section 3.2, no Party shall be prohibited from installing a Car 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 and 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; 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 prior written approval of the Approving Parties. In the event an Operator is designated in accordance with Section 4.2, the Operator shall meter and

maintain the Common Area lighting in accordance with the standards set forth in Sections 4.3 and 5.2 below, and shall invoice the Parties for their pro-rata share of such lighting expenses as part of the Common Maintenance Area Costs; *provided, however*, that the owner of the WinCo Parcel may, in its sole and absolute discretion, elect to separately meter and maintain the lighting on the WinCo Parcel. Notwithstanding anything to the contrary in this Section 3.2(a), the owner of the WinCo Parcel shall, at its sole cost and expense, separately meter, control, operate and maintain the Common Area lights and entryway lights as may be located on other Parcels within the area depicted on the Site Plan.

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

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

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

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

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

(ii) The design and construction of, and the panel inserts on, the Center Signs shall be subject to the prior written approval of the Approving Parties, which approval shall not be unreasonably withheld, conditioned, or delayed.

(iii) Subject to the prior written approval of the Approving Parties, the owners of the other Parcels may erect monument signs on their Parcels at the locations shown on the Site Plan. No other signs shall be erected without the prior written approval of the Approving Parties in their absolute and unreviewable discretion. In no event shall any monument signs be included in the definition of the "Center Signs" set forth in Section 3.2(e)(i) above. The design and construction of, and the inserts on, each such monument sign, shall be subject to the prior approval of the Approving Parties 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. The monument signs shall only be used to identify Occupants of the Shopping Center.

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

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

(i) The number of parking spaces and configuration of the parking spaces for each Parcel shall be as shown on the Site Plan, unless modified in writing by the Approving Parties, each in its sole and absolute discretion;

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

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

(iv) No structured (above or below ground) parking shall be constructed without the prior written approval of the owner of the WinCo Parcel which may be granted or withheld in its sole, absolute and unreviewable discretion.

In the event of a condemnation of part of a Parcel or sale or transfer in lieu thereof that 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) 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 such compliance 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, in their absolute and unreviewable discretion. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Parcel may not subsequently be increased unless the parking requirement is satisfied or unless otherwise authorized to do so by the Approving Parties, in their absolute and unreviewable discretion.

(g) No Party shall make changes to the Common Area on its Parcel without the approval of the Approving Parties, except that each Party hereby reserves the right, from time to time without obtaining the consent or approval of any other Party, to make at its own expense any insignificant change, modification, or alteration in its portion of the Common Area, including the installation of convenience facilities such as mailboxes, public telephones and benches, provided that:

(i) The accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered, and all parking stalls and rows and vehicular traffic lanes shall remain generally as shown on the Site Plan;

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

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

(iv) No change shall be made in the access points between the Common Area and the public streets; 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

(v) At least sixty (60) days prior to making any such change, modification, or alteration, the Party desiring to do such work shall deliver to each other Party copies of the Plans therefor, and provided further that, except for the initial construction of the Common

Area, no such work shall occur on Parcel A between October 1st and the following January 31st.

(vi) 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.

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. Notwithstanding anything contained herein to the contrary, any change to the access points or the driveways from that which is shown on the Site Plan must be approved by each of the Parties.

### 3.3 Building Improvements.

(a) While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any Building on its Parcel, the Parties hereby agree once construction has been commenced, such Building shall be completed in a timely fashion. Each Building on a Parcel shall be located only within the Building Area designated on the Site Plan for such Parcel. The Building Area for each Building shall not exceed the number of square feet designated in Section 3.3(e) for that Building.

(b) The exterior of all Buildings to be constructed or placed within the Shopping Center shall be architecturally and aesthetically compatible. In order to ensure the exterior architectural and aesthetic compatibility of the Buildings within the Shopping Center, each Party shall submit to the Approving Parties detailed Plans covering the initial construction of each Building and any additions, remodeling, reconstruction, or other alteration thereto which changes the exterior thereof for approval at least thirty (30) days prior to the commencement of any such work; provided that this requirement shall not apply to the owner of the WinCo Parcel. If the Approving Parties should reject the Plans for not complying with the architectural theme, the submitting Party and the Approving Parties shall mutually consult to establish approved Plans for the proposed work. The Approving Parties shall not arbitrarily or unreasonably withhold approval of the Plans, nor shall they withhold approval of exterior remodeling or exterior reconstruction which does not substantially change an existing structure. Approval of Plans by the Approving Parties shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with applicable laws. No material deviation shall be made from the approved Plans. Notwithstanding anything to the contrary in this Section 3.3(b), WinCo and its parents, subsidiaries, and affiliates shall not be required to submit or obtain the Approving Parties' approval of any Plans for any additions, remodeling, reconstruction, or other exterior alteration of the Building on the WinCo Parcel, so long as such addition, remodeling, reconstruction or other alteration complies with the other provisions of this DEC.

(c) Buildings may be placed along the common boundary lines between the WinCo Parcel and the other Parcels only upon the consent of the owner of the WinCo Parcel in its sole, absolute, and unreviewable discretion, and in accordance with fire protection standards set forth in Section 3.5.

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



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

PARCEL	PAD	BUILDING HEIGHT	HEIGHT OF ARCHITECTURAL FEATURES	ALLOWABLE FLOOR AREA	PARCEL SIZE
Parcel 1	Major A	40'	48'	95,000 s.f.	8.74 acres
Parcel 2	Major B	32'	45'	23,405 s.f.	2.19 acres
Parcel 3	Bank	27'	30'	3,790 s.f.	0.93 acres
Parcel 4	Retail A	27'	30'	9,600 s.f.	4.02 ac
	Retail B	27'	30'	7,800 s.f.	
	Retail C	27'	30'	8,960 s.f.	
	Office/ Retail	27'	30'	18,100 s.f.	
Parcel 5	Retail D	27'	30'	5,600 s.f.	2.30 acres
	Retail E	27'	30'	5,600 s.f.	
	Retail F	27'	30'	7,200 s.f.	
Parcel 6	Restaurant	27'	30'	5,400 s.f.	1.43 acres
Parcel 7	Fast Food	27'	30'	3,200 s.f.	1.03 acres

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 designated Buildings set forth in the foregoing table shall mean and refer to the respective Buildings as they are identified on the Site Plan.

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

(g) No Building or other structure on any Parcel shall exceed one (1) story unless approved by the Approving Parties. An internal mezzanine level shall be permitted, provided that the Building or structure including the mezzanine does not exceed the height restrictions set forth in Section 3.3(e).

**3.4. Phased Development.**

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

(b) On or before substantial completion of the Initial Work and except for areas on which any Party is then prosecuting any Remaining Work, any undeveloped Parcel shall either be hard surfaced or left in a natural, but attractive, condition, until Building improvements are constructed thereon. The owner of such Parcel shall take such steps on a on-going basis as are reasonably necessary to prevent erosion or blowing dust. In addition, the Party engaging in any Remaining Work shall leave the Initial Work, including all drive lanes and access points, open and accessible, and shall

perform such construction in such manner as will not adversely affect the balance of the Shopping Center, or the businesses from time to time being conducted thereon, in any material way.

3.5. Fire Protection. All improvements within the Shopping Center shall be constructed in compliance with Building Code and particularly all improvements within sixty (60) feet of the Building on the WinCo Parcel shall be sprinklered for fire protection such that the sprinklered rating for such Buildings will be preserved. There shall be sixty (60) feet of open space around the Building on the WinCo Parcel and any Building that is adjacent to, abuts, or is in line with the Building on the WinCo Parcel, as depicted on the Site Plan, on which no Buildings may be constructed around the Building on the WinCo Parcel and any Building which is adjacent to, abuts or is in-line with the Building on the WinCo Parcel (the "No-Build Easement") such that the Building on the WinCo Parcel and any such adjacent, abutting or in-line Buildings maintain an unlimited area classification for fire protection purposes, which No-Build Easement shall be recorded in the official records of Davis County, Utah. Notwithstanding anything to the contrary in this Section 3.5, nothing shall prevent construction, use and maintenance within the No-Build Easement of any driveways, sidewalks, curbs and gutters, parking, landscaping, and similar uses which do not constitute buildings or structures as contemplated by the Building Code. Notwithstanding anything to the contrary in this DEC, no Party shall seek a building permit for a Building within sixty (60) feet of the permissible Building Area on the WinCo Parcel without the prior written consent of the owner of the WinCo Parcel, which may be granted or denied in its sole and absolute discretion.

#### 4. MAINTENANCE AND REPAIR.

##### 4.1. Utility Lines.

(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 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 as part of the Common Maintenance Areas pursuant to Section 4.3 below. The cost of maintaining, cleaning, replacing and repairing Common Utility Lines, if not performed by the utility company, shall be shared by the owners of the Shopping Center in the ratio that the number of square feet in each Parcel bears to the number of square feet in the Shopping Center.

4.2. Building Maintenance. 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 Building Area and Common Area located on such Party's Parcel and keep the Building Area and Common Area in good condition and repair, clean and free of litter and other hazards to Permittees. Further, 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: (i) meet or exceed the minimum standards set forth in Exhibit C, attached hereto; (ii) meet or exceed the standard of maintenance followed in other first class retail developments of comparable size in the Layton, Utah area; and (iii) be in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and the provisions of this DEC (collectively the "Maintenance Standard"). Each Party agrees to defend, indemnify, and hold each other Party harmless from and against all claims, costs, losses, expenses and

liability (including costs and reasonable attorneys' fees) arising from or directly or indirectly relating to the maintenance of its Parcel as set forth herein, except for claims caused by the negligence or willful acts of the indemnified Party.

4.3. **Common Maintenance Areas.** 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.

(a) 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: gardening and landscaping; 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 all sidewalks; line painting, paving, maintaining, repairing, and/or replacing the drive aisles and driveways; snow and ice removal for the drive aisles, driveways, and sidewalks; maintaining, repairing, and/or replacing all Common Utility Lines; maintaining, repairing, and/or replacing all lighting, electricity, sewer and water allocable to the Common Maintenance Areas, including any utility lines servicing the Center Signs; maintaining, replacing, and/or repairing all Center Signs, including individual panels thereon (except as set forth in subsection (vii) below); sanitary control and removal of trash, rubbish, garbage, and other refuse from the Common Maintenance Areas; with respect to all equipment and machinery used to maintain and operate the Common Maintenance Areas, the cost thereof if owned, or any rental paid therefor if leased; all items of repair, maintenance, and/or replacement of any improvements as may be required at any time or from time to time by a governmental agency having jurisdiction thereof; any public utility or governmental charges, surcharges, any other costs levied, assessed or imposed pursuant to laws, statutes, regulations, codes and ordinances promulgated by any governmental or quasi governmental authority in connection with the use of the Common Maintenance Areas; and other expenses necessary or beneficial, in the Operator's reasonable judgment, for the maintenance and operation of the Common Maintenance Areas, and/or the repair or replacement of any improvements within the Common Maintenance Areas. 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 Exhibit C, 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 to clean up or repair the Common Maintenance Areas resulting from promotional or holiday activities;
- (iv) Any costs for seasonal or promotional sales in a Party's Outdoor Sales Area, which shall be paid by the Party holding such sale;
- (v) Any costs resulting from or arising out of the repair or replacement of any items or improvements to the extent covered by warranties or guaranties;

(vi) Any costs for the construction, maintenance, or replacement of any Buildings or any Common Area not within the Common Maintenance Areas within the Shopping Center;

(vii) Any costs of any individual sign panel, or the initial design and installation, or re-design, replacement, and installation, of a Party's individual sign panel insert on Center Signs;

(viii) Real property taxes and assessments on the Common Maintenance Areas;

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

(x) Any administration or management fees or any third-party property management fees;

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

(xii) Entertainment, transportation, meals, and lodging of anyone;

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

(xiv) Any costs for such Common Maintenance Areas and entryway lights metered, controlled, operated and maintained by the owner of the WinCo Parcel pursuant to Section 3.2(a), above.

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 Areas, except for claims caused by the negligence or willful act or omission of a Party.

(b) Notwithstanding anything to the contrary in this Section 4.3, any capital improvements or expenditures for any repair or maintenance obligations of Operator in excess of Five Thousand and No/100 Dollars (\$5,000.00) in Constant Dollars shall require the prior written consent of the Approving Parties. For purposes of this Section 4.3, "capital improvements" shall include the replacement of any existing improvements. The Operator shall complete any and all capital improvements in accordance with the standards set forth in Exhibit C. Further, the Operator shall submit all capital improvements in excess of such amount for bid to no less than two (2) general contractors acceptable to the Approving Parties, or one (1) general contractor for each Approving Party if there are more than two (2) Approving Parties. The Approving Parties shall review the bids and consult with one another to select the lowest qualified and responsible bidder.

(c) 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 and shall separately

identify cost estimates for at least the categories of expenses specified in Section 4.3(d) below. The Operator shall use its best 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, but excluding the cost of Operator's insurance, any utilities, and any capital improvements, by a percentage determined by the Operator ("Administration Fee"); provided, however, that the Administration Fee shall be computed by multiplying the Common Maintenance Area Costs by an amount not to exceed ten percent (10%). 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 Area affected, and shall note the anticipated cost and timing of such phased work during succeeding quarters and calendar years. The cost of any such phased work approved in the Budget shall be paid by the Parties as a Common Maintenance Area Cost. The Operator shall maintain all records related to Common Maintenance Area Costs, Budgets, Administration Fees, Invoices (defined in Section 4.3(d) below) and supporting documentation evidencing the Common Maintenance Area Costs for at least seven (7) years from the date of the Invoice to which such records are related.

(d) Each Party shall pay to the Operator its share of the actual Common Maintenance Area Costs and the Administration Fee on a quarterly basis. The Common Maintenance Area Costs and the Administration Fee shall, except as otherwise provided herein, be allocated among the Parties in the proportion that, respectively, the total land area of each Parcel bears to the total land area of the Shopping Center. The Operator shall, on a quarterly basis, prepare and submit to each Party an Invoice for such Party's share of the actual Common Maintenance Area Costs for the previous quarter and the Administration Fee applicable thereto. Each Party shall pay the amount due under the Invoice on or before thirty (30) days from delivery of the Invoice to each Party in the manner in which Notices are to be provided under Section 8.11, below. If any Party fails to timely pay an Invoice, the amount set forth in such Invoice shall accrue interest in accordance with Section 8.8 below. Notwithstanding the foregoing, in the event a Party's share of the cost of any single item of maintenance, repair, and replacement, including any emergency repairs conducted pursuant to Section 4.3(e) below, exceeds Ten Thousand and No/100 Dollars (\$10,000.00) in Constant Dollars, the Operator shall amortize the cost of any such item of maintenance, repair, and replacement over a term not less than the life of said maintenance, repair, and/or replacement item. Each Party shall pay interest on any such amortized amount at the rate of 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.

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

- (i) Landscaping and Irrigation;
- (ii) Common Utility Lines;
- (iii) [intentionally omitted];

- (iv) Common Maintenance Areas cleaning, sweeping, and lighting;
- (v) Use of a "day porter" or similar service;
- (vi) Rental or purchase of equipment and supplies;
- (vii) Depreciation or trade-in allowance applicable to items purchased for Common Maintenance Areas purposes;
- (viii) The cost of any phased work approved in the Budget attributable to such year, including the portion of the Common Maintenance Areas affected in such year;
- (ix) The Administration Fee.

(e) Notwithstanding anything to the contrary herein, the Operator shall have the right to make emergency repairs to the Common Maintenance Area to resolve any situation which threatens access to a Parcel or threatens an immediate substantial loss or damage to property or any personal injury or death to Persons (an "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.

(f) Within ninety (90) days after receipt of any Invoice and supporting documentation, but not more than once per calendar year, each Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common Maintenance Area for the quarter covered by such Invoice. Said audit shall be conducted at the office of the Operator and the auditing Party shall notify Operator of its intent to audit at least fifteen (15) days prior to the designated audit date. In the event that such audit shall disclose any error in the determination of the Common Maintenance 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 three percent (3%) of the amount calculated by Operator as its share for the quarter, in which event Operator shall pay the Party's out-of-pocket costs of such audit, excluding transportation, lodging and related costs.

(g) [Intentionally omitted.]

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

(i) In the event the Operator desires to resign as Operator, such Operator shall deliver written notice thereof to the Approving Parties at least ninety (90) days prior to the date of the proposed resignation; *provided however*, in no event shall the Operator's proposed resignation or any removal of the Operator by the Approving Parties be effective until such time as a successor Operator has been appointed by the Approving Parties. At such time as the Operator gives notice of resignation, or is removed, the owner of the WinCo Parcel shall have the right, upon written notice to the other Parties, to assume the obligations of Operator under this DEC. In the event that the owner of the WinCo Parcel does not elect to assume the obligations of Operator as set forth above, the Approving Parties shall act in good faith to select a new Operator. In such event, the Approving Parties shall immediately solicit bids from not less than four (4) property managers, two (2) of which shall be designated by each Approving Party; provided that all four (4) property managers shall be approved by the owner of the WinCo Parcel, which approval shall not be unreasonably withheld, conditioned, or delayed. The Approving Parties shall, acting in good faith and mutual cooperation, review the bids upon receipt and consult with each other to select, agree upon and appoint the lowest qualified and responsible bidder. 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.

4.4. Building Improvements. 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: (a) repair or restore the Building improvements so damaged to a complete unit, which repair or restoration shall maintain the architectural and aesthetic harmony of the Shopping Center as a whole and shall comply the provisions of this DEC; or (b) erect other Building improvements in such location, such construction to be performed in accordance with all provisions of this DEC; or (c) demolish the damaged portion and/or the balance of such Building improvements and restore the cleared area to either a hard surface condition or a landscaped condition. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one of such alternatives, and such Party shall give notice of which alternative it elects to the Approving Parties and, if one is appointed, the Operator, within ninety (90) days from the date of such casualty.

## 5. OPERATION OF THE SHOPPING CENTER

### 5.1. Uses.

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

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

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

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

(iii) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

(iv) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors or other future technology no more intrusive than garbage compactors 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, or T.J. Maxx; provided that this prohibition shall not be applicable to a nationally or regionally recognized store selling consigned or secondhand goods such as Plato's Closet and Play it Again Sports, that does not exceed the allowable Floor Area set forth in Section 3.3(c) above so long as no donation or drop-off trailer or other used goods delivery receptacle shall be permitted in the Shopping Center at any time.

(vii) Any central laundry, dry cleaning plant, or Laundromat; provided 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;

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

(ix) 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, teenage discotheque, discotheque, off-track betting facilities, casino, card club, bingo parlor, rides, play for fun casino games, and carnival activities; provided that this prohibition shall not be applicable to DVD rental vending machines such as "Red Box" or other nationally recognized DVD rental vending machine;

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

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

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

(xiii) Any adult book or adult video stores or establishments selling or exhibiting pornographic materials or drug-related paraphernalia, or any other use of a sexually-oriented or "adult" nature

(xiv) Any liquor store, bars, taverns, or other similar establishments selling alcoholic beverages for on-premises or off-premises consumption; provided that this prohibition shall not be applicable to (1) a permitted Restaurant whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption is less



than thirty six percent (36%) of the gross revenues for such business; (2) a Utah State liquor store located on "Retail B" on Parcel 4 or "Retail F" on Parcel 5; or (3) a retail grocery store operating on the WinCo Parcel;

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

(xvi) Any diet center, health spas, fitness centers, gyms, or workout facilities, or any day spas or similar facilities; provided that a diet center, health spa, fitness center, gym, workout facility or day spa facility shall be permitted in the Shopping Center on Parcel 4 and Parcel 5, so long as the aggregate square footage of all Floor Area dedicated to use as a diet center, health spa, fitness center, gym, or workout facility, or any day spa or similar facilities shall not exceed eight thousand (8,000) square feet;

(xvii) Any school, training, or educational or day care facilities, including, but not limited to, beauty schools, barber colleges, nursery schools, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided 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; or, (2) Tutor Time, Kinder Care or similar recognized child day care facilities;

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

(xix) Any public or private nuisance;

(xx) Any fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks; provide that this prohibition shall not be applicable to the seasonal sale of legal fireworks so long as such use: (1) complies with all federal, state and local laws and regulations; (2) is located within a Building; and (3) is incidental to an otherwise permitted use in accordance with this DEC.

(xxi) Any gas station, lube shop, tire and/or muffler shop, or car washing establishment; provided that a gas station, lube shop, tire and/or muffler shop, or car washing establishment that does not exceed five thousand (5,000) square feet of Floor Area shall be permitted in the Shopping Center on Parcel 4 and Parcel 5.

(xxii) Any automobile body and fender repair work; provided that an automobile body and fender repair work establishment that does not exceed five thousand (5,000) square feet of Floor Area shall be permitted in the Shopping Center on Parcel 4 and Parcel 5;

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

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

(i) A Business Office or Financial Retail Office that does not exceed six thousand (6,000) square feet of Floor Area shall be permitted in the Shopping Center on Parcel 4, and Parcel 5; provided that the aggregate square footage of all Floor Area dedicated to use as Business Office use and Financial Retail Office use shall not exceed twelve thousand (12,000) square feet. 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 shall be permitted in the Shopping Center as follows: (a) a Restaurant may be located on "Retail B" on Parcel 4, "Retail F" on Parcel 5 and on Parcel 6 so long as such Restaurant does not exceed the allowable Floor Area set forth in Section 3.3(e); (b) only one (1) permitted Restaurant may be located on any Parcel at any time; and (c) no Restaurant shall be permitted on Parcel 2, Parcel 3, or Parcel 7. 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(c)(ii), 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 shall be permitted in the Shopping Center; *provided, however*, that the design and location of the drive through facilities of any such Fast Food Restaurant and the location of its Building footprint shall be subject to the prior written approval of the owner of the WinCo Parcel, which approval may not be unreasonably withheld. Without limiting the foregoing and for illustrative purposes only, Fast Food Restaurants include the following:

Burger King  
Wendy's  
Carl's Jr  
Taco Bell  
Taco Time  
Blimpie

Hardy's  
McDonald's  
Jack In The Box  
Arby's  
Subway

For purposes of this DEC, the following eating establishments operating under the following trade names and within such franchise's current quick service format shall be considered Fast Food Restaurants:

Café Rio  
Five Guys  
Panda Express

(d) Until such time as the owner of the WinCo Parcel opens a retail grocery operation on the WinCo Parcel and for so long as any portion of the WinCo Parcel is being used as a retail grocery operation or has during any portion of the immediately preceding twenty-four (24) months been used as a retail grocery operation, no portion of the Shopping Center other than the WinCo Parcel shall be used as a retail grocery store operation (which is hereby defined to mean any store, bakery, or delicatessen, engaged in the sale of food products for off-premises preparation and consumption). Without limiting the foregoing, for purposes of this Section 5.1(d), the term "retail grocery store operation" shall include any small-format grocery stores including, for illustrative purposes only, Tesco's Fresh & Easy Neighborhood Markets and Wal-Mart's Marketside stores. Notwithstanding the foregoing, any Party or Occupant of any Parcel may operate a store or business that sells food for off-premises preparation and consumption provided that the area within such store or business dedicated to the sale of food for off premises preparation and consumption shall not exceed the lesser of ten percent (10%) of said store or business' Floor Area, or two thousand five hundred (2,500) square feet of Floor Area. The twenty-four (24) month period referred to in this Section 5.1(d) shall not include any period during which the particular use lapses due to force majeure conditions or damage, destruction, condemnation, or remodeling of the Building on the WinCo Parcel so long as the owner of the WinCo Parcel diligently proceeds with such repair and restoration of such Building reasonably calculated to permit resumption of such use. The restriction contained in this Section 5.1(d)

may be waived or modified solely by the owner of the WinCo Parcel in writing, in its sole, absolute and unreviewable discretion by an instrument recorded in the official records of Davis County, Utah.

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

(i) To have vending carts and the display and sale of merchandise and ready to eat products on sidewalks directly in front of the Building located on the WinCo 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 from the WinCo Parcel subject to the following restrictions:

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

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

(3) the Occupant of the WinCo Parcel 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 of the WinCo Parcel. 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 WinCo 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) Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area. For the purpose of this provision, a tax assessment or other form of charge applicable to parking spaces or parking lots may be deemed by the Approving Parties an imposition required by law.

(g) In order to minimize interference with normal customer parking within the Shopping Center, each Party shall cause the employees of the Occupants of its Parcel to park their vehicles only on such Parcel and only in the parking spaces on such Parcel designated by the Approving Parties in their absolute, and unreviewable discretion.

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

(i) Any Party may request a Grant of Exclusivity for a specific use on its Parcel by providing a written memorandum specifying the type of business for which the Grant of Exclusivity is

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

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

5.3. Occupant Signs.

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

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

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

(iii) Painted on the surface of any Building;

(iv) Flashing or audible signs;

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

(vi) Paper, cardboard or fabric signs, temporary signs (exclusive of contractor signs), stickers or decals; *provided*, however, the foregoing shall not prohibit the placement at the entrance of each Occupant's space a small sticker or decal, indicating hours of business, emergency telephone numbers, acceptance of credit cards, and other similar bits of information. This prohibition shall not prohibit a business from using temporary signs to advertise the business' grand opening for a limited period of time; *provided* that such signs shall only be allowed one (1) month prior to the date the business is first opening for business and one (1) month after said opening date; *provided however*, no such signs shall be placed on the WinCo Parcel at any time.

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

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

**5.4. Insurance.**

(a) Each Party (as to its Parcel only) shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance with a combined single limit of liability of not less than Five Million and No/100 Dollars (\$5,000,000.00) for bodily injury or death, and for property damage, arising out of any one occurrence. Each Party shall name the Approving Parties as "additional insureds" under such policy. The limits of such insurance may be increased from time to time consistent with the practices in similarly situated properties in the Layton 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 - \$2,000,000 per occurrence;
  - (2) Independent Contractors Liability; same coverage as set forth in (1) above;
  - (3) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work;
  - (4) "XCU" Hazard Endorsement, if applicable;
  - (5) "Broad Form" Property Damage Endorsement;
  - (6) "Personal Injury" Endorsements; and
  - (7) "Blanket Contractual Liability" Endorsement.

If the construction activity involves the use of another Party's Parcel, then the owner of such Parcel shall be an additional insured and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this DEC, without at least thirty (30) days prior written notice to the named insureds and each additional insured. If such insurance is

canceled or expires then the constructing Party shall immediately stop all work on or use of the other Party's Parcel until either the required insurance is reinstated or replacement insurance obtained.

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

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

(e) All insurance required by 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 \$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 \$80,000,000 in Constant Dollars or more of net worth, determined in accordance with generally accepted accounting principles; and

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

To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party in compliance with 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 \$50,000.00 unless such Party complies with the requirements regarding self-insurance pursuant to (iii) above. Each Party agrees to furnish to any Party requesting the same, or the Operator at its request, certificates of insurance evidencing that the insurance required to be carried by such Person is in full force and effect.

(f) The insurance required pursuant to Sections 5.4(a) and 5.4(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 by the insurer 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 (c) of this Section limit the indemnity obligations of any Party hereunder.

(g) If an Operator is designated in accordance with Section 4.2, the Operator shall maintain or cause to be maintained for the Common Area, insurance as required by and in accordance with this Section 5.4.

(h) Each Party covenants and agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on the Parcel owned by each indemnifying Party, except for claims caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof.

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

5.6. Mechanics' and Materialmen's Liens. In the event any mechanic's or materialman's lien is filed against the Parcel of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so filed agrees to cause such lien to be discharged within one hundred twenty (120) 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) shall install, operate, or maintain any above, below, or at grade tank, sump, pit, pond, lagoon, or other storage or treatment vessel or device on or about the Shopping Center unless Plans

therefor have been submitted to and approved by the Approving Parties pursuant to Section 6.2 hereof. Each Party with respect to its Parcel shall immediately notify the other Parties in writing of the following with respect to such Party's Parcel: (a) any notice of violation or potential or alleged violation of any laws, ordinances, or regulations which the Party shall have received from any governmental agency concerning the use, storage, release, and/or disposal of Hazardous Materials; (b) any and all inquiry, investigation, enforcement, cleanup, removal, or other governmental or regulatory actions instituted or threatened relating to such Parcel(s); (c) all claims made or threatened by any third party relating to any Hazardous Materials; and (d) any release of Hazardous Materials in a reportable quantity on or about the Shopping Center which such Party knows of or reasonably believes may have occurred. Such notice shall be accompanied by copies of any notices, inquiries, or other documentation issued to the notifying Party in connection with such matters.

**6.2. Permitted Use, Storage, Handling and Disposal of Hazardous Materials.**

Notwithstanding anything contained in Section 6.1 to the contrary, any Party, or any Occupant or Permittee may sell, store, and use products containing Hazardous Materials in, on, or about the Parcel occupied by such Party, Occupant or Permittee or the Common Areas to the extent such products and/or equipment are incidental to normal shopping center operations, and are sold, stored, or used in compliance with all applicable Environmental Laws. By way of example, and not limitation, such permitted materials may include paints, oils, solvents, sealers, adhesives, finishes, fertilizers, medicines, insecticides and rodent poisons, and the like, which may be or contain Hazardous Materials, so long as such products are produced, packaged, and purchased for retail sale and generally merchandised or sold in retail outlets or are normally used in maintaining or repairing shopping center improvements. A Party or an Occupant may also use other Hazardous Materials in connection with its use of its Parcel if such Party or Occupant has received the Approving Parties' prior consent to the same. The Approving Parties shall not unreasonably withhold its consent provided that: (i) the Party demonstrates to the Approving Parties' reasonable satisfaction that such Hazardous Materials (1) are necessary or useful to the Party's or its Occupant's business, (2) will be monitored, used, stored, handled, and disposed of in compliance with all Environmental Laws, (3) will not endanger any persons or property, and (4) will not invalidate or limit the coverage or increase the premiums of any insurance policy affecting or covering any portion of the Shopping Center; (ii) 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; and (iii) such Party or Occupant satisfies any other requirements any other Party may reasonably impose with respect to the Party's or Occupant's use of the subject Hazardous Materials.

**6.3. Cleanup of Hazardous Materials.**

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

**7. DEFAULT.**

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

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

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



7.2. Cure by Operator or Non-Defaulting Party. With respect to any default under Section 7.1 above, the Operator or any Non-Defaulting Party which is an Approving Party shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an Emergency Condition, 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. An "Emergency Condition" is a condition which threatens a Parcel or threatens an immediate substantial loss or damage to property or any personal injury or death to Persons. 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 Davis County, Utah, by the Party making the claim. The claim of lien shall include the following:

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

7.4. Waiver of Default. No waiver by any Party of any default under this DEC shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers or any default under any provision of this DEC shall not be deemed to be a waiver of any subsequent default in the performance of 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: (i) entitle any Party to cancel, rescind, or otherwise terminate this DEC; or (ii) 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 acknowledged (where appropriate) by the Party or Parties whose approval is required. Unless provision is made for a specific time period, each response to a request for an approval or consent shall be given by the Party to whom directed within thirty (30) days of receipt. 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, the requested Party shall be deemed to have given its approval; provided however, in no event shall the owner of the WinCo Parcel be deemed to have given its approval unless in writing and acknowledged by said owner.

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. 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 arms 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 Agreement 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 Agreement.

(e) This DEC may be amended by, and only by, a written agreement signed by the then current Approving Party or 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 Occupant or Person other than the Parties. To the extent a Party's consent to an amendment of this DEC is required, such Party: (i) may consider, approve, or disapprove any such proposed amendment to this DEC in its reasonable discretion, and (ii) must approve or disapprove of any such proposed

amendment within fifteen (15) days from delivery of such proposal in accordance with Section 8.11, below. If a Party does not respond within the required time period, that Party shall be deemed to have given its approval; provided however, in no event shall the owner of the WinCo Parcel be deemed to have given its approval unless in writing and acknowledged by said owner.

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 Area Maintenance 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.** All notices under this DEC shall be in writing and delivered either: (a) in person; (b) by reputable over-night delivery service, so long as delivery is made by obtaining a signed receipt; (c) by certified mail; or (d) by facsimile or e-mail transmission, so long as the original notice is also forwarded by the method described in (a), (b), or (c) of this Section 8.11. Any notice given pursuant to this DEC shall be deemed effective the day it is personally delivered or transmitted by facsimile, the day after it is delivered to the overnight delivery service, or three (3) business days after the date it is deposited in the United States mail system. Upon at least ten (10) days prior written notice, each Party shall have the right to change its address to any other address within the United States of America. The initial addresses for notices are as follows:

IF TO WINCO FOODS, LLC:

WinCo Foods, LLC  
Attn: Morgan Randis, V.P Retail Development  
650 N. Armstrong Place  
Boise, ID 83704  
Telephone: (208) 377-0110  
Fax: (208) 672-2146  
E-mail: [morgan.randis@wincofoods.com](mailto:morgan.randis@wincofoods.com)

With a copy at the same address to:

Lori Gilbertson, Property Manager  
E-mail: [lori.gilbertson@wincofoods.com](mailto:lori.gilbertson@wincofoods.com)

With a copy at the same address to:  
(which shall not constitute notice)

Tammy Zokan  
E-mail: [tammy.zokan@wincofoods.com](mailto:tammy.zokan@wincofoods.com)

IF TO FORT LANE VILLAGE, LLC:

Fort Lane Village, LC  
Attn: Kevin S. Garn  
748 W. Heritage Park Blvd., Suite 203  
Layton, UT 84042  
Telephone: (801) 776-0232  
Fax: (801) 776-0214  
E-mail: [ksgproperties@yahoo.com](mailto:ksgproperties@yahoo.com)

With a copy at the same address to:  
(which shall not constitute notice)

Douglas M. Durbano  
Attorney at Law  
Durbano Law Firm  
476 W. Heritage Park Blvd., Suite 200  
Layton, UT 84041  
Telephone: (801) 776-4111  
Fax: (801) 776-1121  
E-mail: [doug@durbanolaw.com](mailto:doug@durbanolaw.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, 2085; provided, however, that the easements referred to in Section 2 which are specified 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 the easements set forth in Section 2, shall terminate and have no further force or effect; provided, however, that the termination of this DEC shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this DEC prior to the date of such termination.

[Signatures on following pages.]



Fort Lane Village, LC  
a Utah limited liability company

By: [Signature]

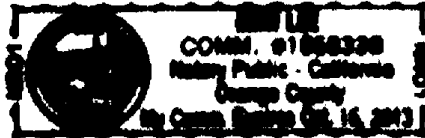
Its: Margery [Signature]

STATE OF California  
County of Orange

On this 7<sup>th</sup> day of July, 2010, before me, a Notary Public, personally appeared Kevin S. Garn, knows or proved to me to be the margery of Fort Lane Village, LC, a Utah limited liability company, the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same on behalf of said company.

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

[Signature]  
Notary Public  
Residing at Lovine, CA  
Comm. Expires Oct. 16, 2013





**EXHIBIT A**

**LEGAL DESCRIPTION OF WINCO PARCEL**

A PARCEL OF LAND LOCATED IN THE NORTH HALF OR SECTION 28, TOWNSHIP 4 NORTH RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, LAYTON CITY, DAVIS COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 177.35 FEET SOUTH 89°27'20" EAST AND 392.34 FEET SOUTH 00°47'13" WEST FROM THE DAVIS COUNTY SURVEY MONUMENT FOUND MARKING THE NORTH QUARTER CORNER OF SAID SECTION 28 (THE BASIS OF BEARINGS IS SOUTH 89°27'20" EAST 2637.52 FEET MEASURED BETWEEN THE DAVIS COUNTY SURVEY MONUMENTS FOUND MARKING THE NORTHWEST CORNER AND NORTH QUARTER CORNER OF SAID SECTION 28), AND RUNNING THENCE SOUTH 00°47'13" WEST 326.04 FEET; THENCE NORTH 89°11'07" WEST 79.88 FEET; THENCE SOUTH 00°47'13" WEST 252.16 FEET; THENCE SOUTH 89°20'20" EAST 84.77 FEET; THENCE SOUTH 20°58'32" WEST 165.27 FEET; THENCE NORTH 89°12'47" WEST 378.03 FEET TO THE EASTERLY BOUNDARY OF INTERSTATE 15, PROJ. NO. S-15-8(211)332 (PARCEL NO. 15-8:68:A, WARRANTY DEED, ENTRY NO. 2497004); THENCE NORTH 16°36'49" WEST 296.99 FEET ALONG SAID LINE TO A POINT OF CURVATURE WITH A 1160.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY 367.73 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19°09'14" (CHORD BEARS NORTH 26°11'26" WEST 366.02 FEET); THENCE NORTH 46°52'45" EAST 200.83 TO A POINT ON A 165.00 FOOT RADIUS CURVE TO THE LEFT; THENCE EASTERLY 72.75 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25°15'42" (CHORD BEARS SOUTH 76°34'56" EAST 72.16 FEET); THENCE SOUTH 89°12'47" EAST 469.93 FEET TO THE POINT OF BEGINNING.

11-061-0083, 0080, 0194, 0198  
\*0205, \*0079, 0082

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF FORT LANE PARCEL**

A parcel of land located in the North half of Section 28, Township 4 North, Range 1 West, Salt Lake Base and Meridian, Layton City, Davis County, Utah, more particularly described as follows:

**BEGINNING** at a point on the South boundary line of Gentile Street (SR-109), which is 33.00 feet South 00°32'40" West from the Davis County Survey monument found marking the North Quarter corner of said Section 28 (the Basis of Bearings is South 89°27'20" East 2637.52 feet measured between the Davis County Survey monuments found marking the Northwest corner and North Quarter corner of said Section 28), and running thence South 89°27'20" East 401.21 feet along said street to the West boundary line of Fort Lane; thence South 00°47'13" West 887.78 feet along said street to the northerly boundary line of Elm Street; thence North 89°20'20" West 303.88 feet along said street; thence North 00°47'13" East 202.16 feet; thence South 89°11'07" East 79.88 feet; thence North 00°47'13" East 326.04 feet; thence North 89°12'47" West 469.93 feet to a point of curvature with a 165.00 foot radius curve to the right; thence westerly 72.75 feet along the arc of said curve through a central angle of 25°15'42" (chord bears North 76°34'56" West 72.61 feet); thence South 46°52'45" West 200.82 feet to the easterly boundary of Interstate 15, Proj. No. S-15-8(211)332 and a point on a 1100.00 foot radius curve to the left; thence Northwesterly 77.82 feet along said line and the arc of said curve through a central angle of 04°03'12" (chord bears North 37°47'39" West 77.80 feet); thence North 39°49'16" West 6.25 feet along said line to the original I-15 right-of-way (Project No. 115-7(18)326 and a point on a 2066.15 foot radius curve to the left; thence Northwesterly 144.85 feet along said line and the arc of said curve through a central angle of 4°01'01" (chord bears North 33°26'48" West 144.82 feet); thence North 43°07'15" West 383.01 feet along said line to the Westerly boundary line of said Gentile Street; thence North 85°44'07" East 202.78 feet along said street; thence South 89°27'20" East 12.29 feet; thence South 75°16'51" East 57.17 feet; thence South 89°27'20" East 145.01 feet; thence South 00°47'13" West 177.51 feet to a point of curvature with a 200.00 foot radius curve to the left; thence southerly 30.11 feet along said curve through a central angle of 08°37'37" (chord bears South 03°31'35" East 30.09 feet); thence South 89°12'47" East 219.67 feet; thence North 00°47'13" East 155.00 feet; thence North 37°39'25" East 25.00 feet; thence North 00°47'13" East 33.51 feet; thence South 89°27'20" East 255.02 feet; thence North 00°32'40" East 14.00 feet to said Gentile Street; thence South 89°27'20" East 0.83 feet to the POINT OF BEGINNING.

**TOGETHER WITH**

A parcel of land located in the North half of Section 28, Township 4 North, Range 1 West, Salt Lake Base and Meridian, Layton City, Davis County, Utah, more particularly described as follows:

**BEGINNING** at a point 120.44 feet South 89°27'20" East and 1125.20 feet South 00°32'40" West from the Davis County Survey monument found marking the North Quarter corner of said Section 28 (the Basis of Bearings is South 89°27'20" East 2637.52 feet measured between the Davis County Survey monuments found marking the Northwest corner and North Quarter corner of said Section 28), and running thence South 20°58'32" West 54.38 feet; thence South

11-061-0205, 0206, 0136, 0205, 0079, 0080  
0031, 0030, 0032, 0033, 0150  
0034

11-061-0999

00°47'13" West 100.01 feet, more or less, to the Northerly boundary line of that certain Utah Department of Transportation property as described in Book 4692 at page 188; thence along said line the following three courses. North 87°17'15" West 78.49 feet; thence North 86°57'22" West 156.49 feet; thence North 86°02'18" West 4.59 feet to the Questar Gas Company Parcel No. 15-8:6f recorded as Entry No. 2497004; thence following said parcel the following two courses. North 16°36'49" West 55.03 feet; thence South 73°23'11" West 71.92 feet to the easterly boundary of Interstate 15, Proj. No. S-15-8(211)332; thence North 16°36'49" West 116.32 feet along said line; thence South 89°12'47" East 378.03 feet to the POINT OF BEGINNING.

Contains 549,560 square feet or 12.616 acres

**EXHIBIT B**

**SITE PLAN**

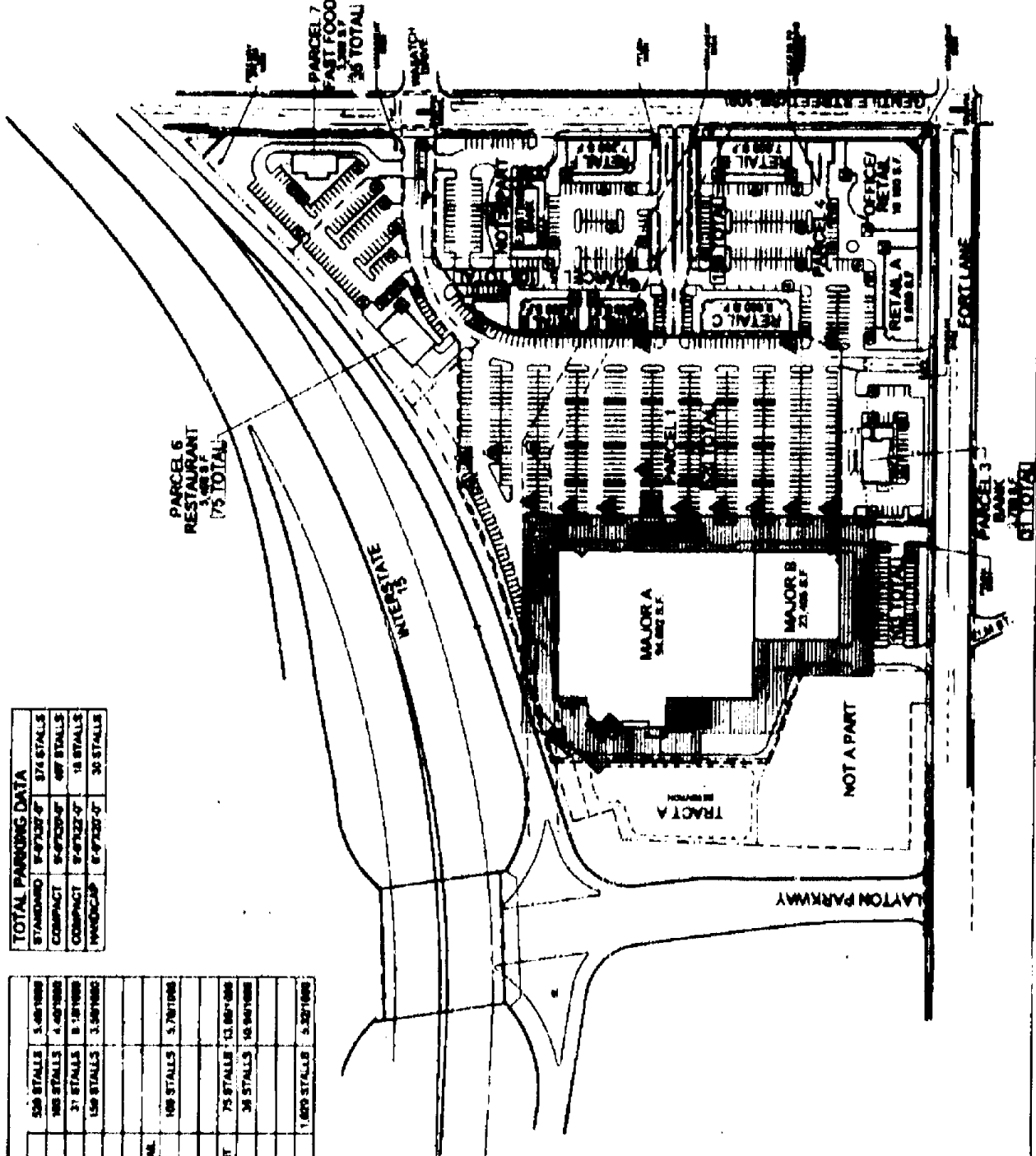
*(See attached.)*

REVISIONS  
 1. DATE: 10/15/10  
 2. DATE: 10/15/10  
 3. DATE: 10/15/10  
 4. DATE: 10/15/10

MANCO FOODS STORE  
 8 FORT LANE  
 LAYTON UTAH  
 S.W.C. E. GENTILE STREET &



DATE: 6-26-10  
 SHEET TITLE: SITE PLAN  
 SHEET: C-2



**TOTAL PARKING DATA**

STANDARD	9'-0"X20'-0"	574 STALLS
COMPACT	8'-0"X20'-0"	487 STALLS
COMPACT	9'-0"X22'-0"	18 STALLS
HANDICAP	8'-0"X20'-0"	30 STALLS

**SITE DATA**

PARCEL	ACRES	MAJOR S.F.	MAJOR A	MAJOR B	550 STALLS	5.487/1000
PARCEL 1	0.24	24,000 S.F.	MAJOR A	MAJOR B	180 STALLS	4.40/1000
PARCEL 2	2.19	21,900 S.F.	MAJOR B	BANK	37 STALLS	8.18/1000
PARCEL 3	0.83	8,300 S.F.	BANK	RETAIL A	150 STALLS	3.50/1000
PARCEL 4	4.82	48,200 S.F.	RETAIL A	RETAIL B		
PARCEL 5	7.28	72,800 S.F.	RETAIL B	OFFICE/RETAIL	180 STALLS	5.70/1000
PARCEL 6	1.83	18,300 S.F.	RESTAURANT	RETAIL F	75 STALLS	13.80/1000
PARCEL 7	1.02	10,200 S.F.	RESTAURANT	FAST FOOD	34 STALLS	10.94/1000
TRACT A	1.02	10,200 S.F.	FAST FOOD			
TRACT B	0.14	1,400 S.F.				
TRACT C	11.84	118,400 S.F.			1,870 STALLS	4.32/1000
TOTALS						



**LEGEND**

- ▲ NUMBER OF STANDARD PARKING SPACES
- NUMBER OF NON-STANDARD PARKING SPACES
- CART CORRAL
- TOTAL NUMBER OF PARKING SPACES PER PARCEL
- ▨ NO BUILD EXEMPT
- PROPERTY/PARCEL LINE
- PARKING LOT LINE
- BUILDING LINE
- COMMON AREA & ENTRY-WAY LIGHT CONTROLLED BY MANCO OR WINCO PANEL

**EXHIBIT C**

**CAPITAL IMPROVEMENT AND MAINTENANCE STANDARDS**

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

- Pot holes, sink holes, crumbling and other damage must be repaired immediately.
- Slurry/Crack Fill/Reseal must be completed a minimum of once every four (4) years.
- Striping of high traffic areas (including, but not limited to, cross walks, front hatching, stop bars, dock areas and speed bumps) must be completed no less than annually. The remainder of the parking lot must be completed no less than once every other year.
- Concrete Curbing/Sidewalks/Driveways and Stamped Areas shall be inspected no less than annually. Repairs shall be completed in a in a timely manner to resolve hazards.
- Metal Signage (including, but not limited to, handicap signs, "no parking" signs, stop signs) shall be inspected no less than quarterly. Damaged and/or weathered signs shall be replaced immediately.
- Sweeping of parking lot, driveways and drive aisles
  - Sweeping shall occur no less than seven (7) days per week (hereinafter "Daily")
  - Debris must be blown out from cart corrals and gutters using back-pack blowers (3 days/week)
  - All sidewalks and business entrance areas shall be blown-off using back-pack blowers (3 days/week)
  - Pick up and remove trash from parking lot (3 days/week)
  - Vendors/contractors shall not be allowed to dispose of or discard any refuse or debris into dumpsters located on the Property or on any area of the Property
  - Work must be conducted at night or at times that cause minimal customer interruption
- Snow/ice removal
  - Monitor weather conditions, respond and provide service immediately when a snow or ice event is predicted
  - Apply preventative applications of de-icing material starting with heavy frosts continuing throughout winter
  - Keep all sidewalks, landings, entryways, emergency exits, drive aisles and cart corral areas clear of snow and ice
  - Begin plowing parking lots no later than at one inch (1") accumulation

**Lighting and Signs**

- Parking lot lighting facilities and related equipment shall be formally inspected on no less than a quarterly basis to ensure they are in proper working order and that the parking and common areas are well lit at all times. Inoperative light bulbs and facilities shall be replaced immediately.

- Pylon/Monument Signs are to be inspected no less than quarterly to ensure proper operation and attractiveness. Damaged sign panels and/or sign structures shall be repaired in a timely manner.

#### **Landscaping**

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

#### **Pressure Washing**

- Sidewalks and landings shall be pressure washed no less than once a month
- Pressure washing shall be performed at night unless prohibited by law

#### **Day Porter Services**

- Day porter services shall be conducted no less than three (3) days a week, rain or shine.
- Day porter services shall include but not be limited to inspecting the entire Property on foot, including parking lot, sidewalks, landscape beds, ditches and swale and retention areas, and removing all trash and debris, including large items dumped on premises, including furniture, tires, etc.
- Day porters shall empty and wipe surface of all common area public trash receptacles.

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 D**

**FORM OF GRANTS OF EXCLUSIVITY**

Pursuant to Section 5.1(i) of the DEC, the Approving Parties have granted Exclusivity to the following Occupants for the following described exclusive uses:

**[None at this time.]**

**Approving Parties:**

WinCo Foods, LLC, [or its successor-in-interest]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Fort Lane Village, LC

By: \_\_\_\_\_

Its: \_\_\_\_\_