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Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 15 P.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

SJ Marketplace, LLC
5670 Wilshire Boulevard, Suite 1250
Los Angeles, California 90036
Attn.: Steven Usdan

NCS - 679708

27-20-302-007

27-20-302-005

AGREEMENT CONTAINING COVENANTS

THIS AGREEMENT CONTAINING COVENANTS ("Agreement") is dated as of November 12th, 2014 ("Effective Date") by and between SJ MARKETPLACE, LLC, a Delaware limited liability company (with its successors and assigns, "Seller"), and 12TH & WASHINGTON NEC, LLC, a Utah limited liability company (with its successors and assigns, "Buyer").

RECITALS

A. Seller and Buyer's affiliate, CDG Holdings, LLC, entered into that certain Purchase and Sale Agreement dated as of July 9, 2014 (as amended, the "Purchase Agreement"), pursuant to which Seller is conveying to Buyer certain real property described on Exhibit A attached hereto ("Buyer's Property").

B. Buyer's Property is part of a retail center that is encumbered by that certain Declaration of Easements, Covenants, Conditions and Restrictions recorded in the Official Records of Salt Lake County, Utah on February 21, 2014 as Entry No. 11807867 in Book 10212 at Page 7709, as amended by First Amendment to Declaration of Easements, Covenants, Conditions and Restrictions recorded in the Official Records of Salt Lake County, Utah on July 31, 2014 as Entry No. 11889627 in Book 10249 at Page 4295 (collectively, the "Declaration"). Buyer is purchasing Buyer's Property subject to the Declaration. The real property encumbered by the Declaration is referred to herein as the "Shopping Center Property." All initial capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings given such terms in the Declaration.

C. Upon Seller's conveyance of Buyer's Property to Buyer, Seller retains ownership of those portions of the Shopping Center Property described on Exhibit B attached hereto ("Seller's Retained Property").

D. Seller and Buyer desire to enter into this Agreement for the purpose of the confirmation of certain matters pertaining to the ownership, improvement and operation of Buyer's Property and Seller's Retained Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Development of Buyer's Property. Except as provided in this paragraph, Buyer's Property shall be developed in accordance with the site plan attached to this Agreement as Exhibit C (the "Site Plan"), and there shall be no improvements or alterations to Buyer's Property that are in conflict with the Site Plan, as such Site Plan may be modified in accordance with the remaining provisions of this Section 1. Buyer shall have the right to make modifications to the Site Plan, provided that (a) there shall be only one Building constructed on Buyer's Property and the Building shall be located within the "Building Envelope" depicted on the attached Site Plan; (b) the Building shall be one-story and not exceed 3,900 square feet of building area; (c) as required by Section 3.2 of the Declaration, the Building and other improvements constructed on Buyer's Property shall be architecturally compatible with the other Buildings on the Shopping Center Property; provided, however, that any Building and other improvements constructed in accordance with the Wendy's national standard store construction in effect at the time of such construction shall be deemed to satisfy the foregoing architectural compatibility requirement; (d) Buyer's Property shall contain not less than sixty-seven (67) parking spaces, inclusive of handicapped parking spaces; provided, however that Declarant shall not unreasonably withhold its approval to a reduction in the number of parking spaces on Buyer's Property to not less than sixty-five (65) parking spaces if such reduction is required to address City requirements with respect to the site plan for Buyer's Property; provided, further, that Declarant shall have the right to withhold its consent to a reduction in the number of parking spaces on Buyer's Property to less than sixty-five (65) parking spaces in Declarant's sole and absolute discretion; (e) no changes shall be made to the "Buyer Protected Drive Aisles" marked on the Site Plan without the consent of the Declarant under the Declaration; (f) there shall be no improvements constructed outside of the Building envelope shown on the Site Plan that materially interfere with the visibility from Bangerter Highway of the northernmost building to be constructed on the West Commercial Property (as defined in the Declaration) (it being understood that typical parking lot islands, parking lot lighting, landscaping and directional and drive-through signage shall not violate this provision); and (g) Buyer shall comply with the Declaration. Declarant agrees that in addition to the restrictions set forth in Section 3.3 of the Declaration with respect to the "Protected Drive Aisles" (as defined in the Declaration), there shall be no changes to the Buyer Protected Drive Aisles marked on the Site Plan under this Agreement that would materially interfere with the traffic flow over such Buyer Protected Drive Aisles.

2. Use of Buyer's Property. Buyer's Property and the improvements constructed thereon may be used for any lawful purpose, including, without limitation, a Wendy's restaurant, that complies with the terms and provisions of the Declaration. Seller, as Declarant under the Declaration, agrees that so long as the Building on Buyer's Property is open and operating as an establishment that "conducts business involving the sale of hamburgers" (as such term is defined in Paragraph 7 of Exhibit E of the Declaration) and continuing during any closure of the Building on Buyer's Property for a closure period that does not exceed twenty-four (24) consecutive months, the Building

located on Buyer's Property shall be the one establishment in the Shopping Center referenced in Paragraph 7 of Exhibit E of the Declaration that is permitted to "conduct business involving the sale of hamburgers" (as such term is defined in Paragraph 7 of Exhibit E of the Declaration) (the "Buyer's Exclusive"). If the Building on Buyer's Property is closed for business for a period of twenty-four (24) months or longer, then Buyer's Property shall no longer have the benefit of Buyer's Exclusive and neither Buyer, Tenant (as defined below) nor any future owner or other tenant of Buyer's Property shall have the right to restrict any other portion of the Shopping Center for the conduct of business involving the sale of hamburgers; provided, however, Declarant hereby agrees that notwithstanding any termination of Buyer's Exclusive due to a closure referenced above, Buyer's Property may always be used to conduct a business involving the sale of hamburgers and Declarant shall either (a) restrict use of the remaining portions of the Shopping Center such that use of Buyer's Property to conduct a business involving the sale of hamburgers does not violate the Declaration, or (b) cause the restriction in Paragraph 7 of Exhibit E of the Declaration referenced above to be modified or waived such that the use of Buyer's Property to conduct a business involving the sale of hamburgers does not violate the Declaration.

3. Construction and Operation of Building. The Owner of Buyer's Property shall construct the restaurant Building on Buyer's Property and cause such restaurant to be opened for business within twenty-four (24) months after the date of the completion by Seller of the Grading and Utility Work (as such term is defined in the Purchase Agreement) on Buyer's Property. If the restaurant Building on Buyer's Property is not completed and opened for business within thirty (30) months after the date of the completion by Seller of the Grading and Utility Work on Buyer's Property, or if the restaurant Building on Buyer's Property is thereafter closed for business to the public for a period longer than twelve (12) consecutive months (excluding any reasonable period required to restore casualty damage, and excluding any temporary closure for not longer than one hundred eighty (180) days for renovation or remodeling), then the Declarant under the Declaration shall have the right to re-purchase Buyer's Property (and all improvements located thereon) at a purchase price equal to the greater of (a) the Purchase Price for Buyer's Property under the Purchase Agreement plus the unamortized improvement costs incurred by Buyer or Tenant (as defined below) for the construction of the improvements on Buyer's Property, which costs shall be amortized on a straight-line basis over the useful life of such improvements; or (b) the Fair Market Value (as defined below) of Buyer's Property and the improvements located thereon, as determined in accordance with the appraisal procedure set forth below.

The Fair Market Value of Buyer's Property and the improvements located thereon shall be determined as of the date Declarant exercises the option to purchase described above. Within twenty (20) business days following Buyer's receipt of Declarant's notice that Declarant is exercising the option to re-purchase (the "Selection Period"), Buyer and Declarant shall select an appraiser who is a Utah member of the American Institute of Real Estate Appraisers and knowledgeable concerning the values of properties similar to and located in the same county as the Buyer's Property (the "Original Appraiser"). The Original Appraiser shall make an appraisal of the Fair Market Value of Buyer's Property,

and shall furnish a copy of such appraisal to Buyer and Declarant within thirty (30) days after being selected. If Buyer and Declarant cannot agree on an appraiser to serve as the Original Appraiser on or before the expiration of the Selection Period, then Buyer and Declarant, within ten (10) business days following the expiration of the Selection Period, shall each select and notify the other party hereto of the name and address of an appraiser who is a Utah member of the American Institute of Real Estate Appraisers and each of whom must be knowledgeable concerning the values of properties similar to and located in the same county as Buyer's Property (each a "Selected Appraiser", or collectively the "Selected Appraisers"). The Selected Appraisers shall, within five (5) business days following their selection, jointly select a third appraiser (the "Jointly Selected Appraiser") who meets the qualifications of this section. The Selected Appraisers and the Jointly Selected Appraiser shall each make an independent and separate appraisal of the Fair Market Value of Buyer's Property, and shall furnish copies of each such appraisals to Buyer and Declarant within thirty (30) days after the aforesaid 5-business day period, and the Fair Market Value for the purpose of determining the sales price pursuant to this Section 3 shall be the average of the two closest appraisals. The term "Fair Market Value" means the highest price on a cash basis that a willing and able purchaser would pay for Buyer's Property if Buyer's Property were exposed for sale in the open market allowing a reasonable time to find a purchaser who buys Buyer's Property with knowledge of all the uses for which Buyer's Property is capable of being used and subject to all current taxes and assessments, reservations in patents, all easements, rights-of-way, covenants, conditions and restrictions as may appear of record. If the Wendy's Lease is in effect as of the date of Declarant's acquisition of Buyer's Property and Declarant does not have the right to terminate the Wendy's Lease as provided in the next paragraph, then the Fair Market Value of Buyer's Property shall take into consideration the existence of the Wendy's Lease. If either Buyer or Declarant fails to appoint its Selected Appraiser and send notice thereof to the other party as required herein, the one Selected Appraiser promptly shall appoint a second appraiser who meets the requirements of this section and whose fees and expenses shall be paid by the party who failed to make such appointment. The fees and expenses of the Jointly Appointed Appraiser shall be shared equally by the parties. The determination of the Fair Market Value in accordance with the foregoing procedures shall be final and binding upon Buyer and Declarant and enforceable by any court of competent jurisdiction. All appraisal fees and expenses of the Selected Appraiser of Buyer shall be paid by Buyer, and of the Selected Appraiser of Declarant shall be paid by Declarant.

On or about the date hereof, Buyer is entering into a Lease Agreement (the "Wendy's Lease") with NPC Quality Burgers, Inc. ("Tenant"). If the Declarant exercises its right to purchase Buyer's Property pursuant to this Section 3 and as of the date of the closing of such acquisition the Wendy's Lease remains in effect and the Tenant is not in default of the Wendy's Lease after notice and the expiration of any applicable cure period under the Wendy's Lease, then Declarant agrees to take title to Buyer's Property subject to the Wendy's Lease, which shall be assigned to Declarant at the closing of Declarant's acquisition of the Property. Notwithstanding the foregoing, (a) if as of the date of Declarant's acquisition of Buyer's Property pursuant to this Section 3 the Tenant is in default of the Wendy's Lease after notice and the expiration of any applicable cure

period, then Declarant shall have the right to terminate the Wendy's Lease at any time prior to the cure by the Tenant of such default; or (b) if on, or at any time after, the date of Declarant's acquisition of Buyer's Property the Building on Buyer's Property has been closed for business for a period of twenty-four (24) months or longer, then Declarant shall have the right to terminate the Wendy's Lease at any time prior to the re-opening of the Building on Buyer's Property for business. Subject to Declarant's right to terminate the Wendy's Lease as provided above, Declarant agrees to assume all of the obligations of the landlord under the Wendy's Lease arising from and after the date of such acquisition, except that Declarant shall not be: (i) liable for any act or omission that arises prior to the date of Declarant's acquisition of Buyer's Property; (ii) subject to any offsets or defenses that Tenant might have against any prior landlord (including Buyer); or (iii) bound by any rent or additional rent which Tenant might have paid in advance to any prior landlord (including Buyer) for a period in excess of one month or by any security deposit that Tenant may have paid in advance to any prior landlord (including Buyer). Notwithstanding any contrary term of provision of the Wendy's Lease, Declarant shall not be bound by any exclusive use right or use restriction that runs in favor of the Tenant under the Wendy's Lease that is broader than the Buyer's Exclusive set forth in Section 2 of this Agreement or that continues to be effective under the Wendy's Lease beyond any expiration of Buyer's Exclusive set forth in Section 2 of this Agreement.

4. Pylon Signage. Buyer's Property is subject to the easement and other rights reserved to Declarant under Section 7.8.2 with respect to the Pylon Sign located on Buyer's Property. Pursuant to Section 7.8.2 of the Declaration, Seller, as Declarant under the Declaration, reserves all rights to use the Pylon Signs in the Shopping Center, including the Pylon Sign located on Buyer's Property, subject to the right of Declarant to grant to an Owner of a particular Parcel the right to display the trade name of the Occupant of such Owner's Parcel on a designated Pylon Sign. In accordance with Section 7.8.2 of the Declaration, Seller, as Declarant under the Declaration, hereby grants to the Owner of Buyer's Property the right to display the trade name of the Occupant of Buyer's Property on a one-half/double-sided sign panel on the Pylon Sign to be located on Buyer's Property in the location of such Pylon Sign shown on Exhibit C attached to this Agreement. The position of the sign panel granted to the Owner of Buyer's Property on such Pylon Sign is marked as "Wendy's" on Exhibit D attached to this Agreement. The Owner of Buyer's Property shall have all obligations and responsibilities set forth in Section 7.8.4 of the Declaration with respect to the sign panel rights on the Pylon Sign located on Buyer's Property granted to the Owner of Buyer's Property pursuant to this Section 4. Seller, as Declarant under the Declaration, agrees that so long as Buyer's Exclusive remains in effect, Declarant shall not designate any other sign panels on the Pylon Sign located on Buyer's Property to identify an Owner or Occupant of any portion of Seller's Retained Property that "conducts business involving the sale of hamburgers" (as such term is defined in Paragraph 7 of Exhibit E of the Declaration) on Seller's Retained Property.

5. Modifications to Declaration. Seller shall have the right as Owner of Seller's Retained Property, without the consent, approval or joinder of or by Buyer, to amend or waive provisions of the Declaration that pertain to Seller's Retained Property

and/or other portions of the Shopping Center Property outside of Buyer's Property, provided that such amendments or waivers do not modify the rights or obligations of the Owner of Buyer's Property under the Declaration or this Agreement.

6. Notices. All notices required or permitted to be given under this Agreement must be in writing and shall be deemed to have been given as of the date such notice is (a) delivered to the party intended, (b) delivered to the then designated address of the party intended, (c) rejected at the then designated address of the party intended, provided such notice was sent prepaid, or (d) the date of receipt (as confirmed by the carrier's records) at the then designated address of the party intended if sent by nationally recognized overnight courier with delivery instructions for "next business day" service, or by United States certified mail, return receipt requested, postage prepaid and addressed to the then designated address of the party intended. The initial addresses of the parties shall be:

If to Seller:

SJ Marketplace, LLC
5670 Wilshire Boulevard, Suite 1250
Los Angeles, California 90036
Attn.: Steven Usdan

If to Buyer:

12TH & WASHINGTON NEC, LLC
6340 South 3000 East Street, Suite 500
Salt Lake City, Utah 84121
Attn.: Chad Christiansen

Each party shall have the right to change its address for notices to any other address within the United States of America upon written notice to the other party in accordance with this Section 6.

7. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement.

8. Run With the Land. The terms, provisions, agreements, covenants, conditions and restrictions set forth in this Agreement shall be equitable servitudes, and shall run in favor and be enforceable for the benefit of, and shall be binding upon and enforceable against, each party's property and each of their respective successors and assigns as Owner of such property. The liability of each party under this Agreement shall be limited to its period of ownership of the legal parcel of property that is the subject of such liability, provided that no sale or transfer shall relieve a party of liability for any act, omission or breach arising or occurring during such period of ownership. The parties acknowledge and agree that during the period that the Wendy's Lease remains in effect (a) the Tenant is an intended third-party beneficiary to this Agreement; (b) this

Agreement shall run in favor and be enforceable for the benefit of, and be binding upon and enforceable against, the Tenant; and (c) this Agreement may not be modified or terminated without the prior written consent of the Tenant.

9. Miscellaneous. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah, and venue and jurisdiction for any legal action regarding this Agreement shall lie in Salt Lake County, Utah. This Agreement may not be amended or modified except in writing executed by the party against whom such amendment or modification is being charged. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements between the parties with respect thereto, whether oral or written, including without limitation, the Purchase Agreement. No delay or omission in exercising any right or in enforcing any provision of this Agreement shall constitute a waiver of such right or provision. In the event of a dispute or litigation between the parties with respect to the interpretation or enforcement of this Agreement, the prevailing party in such dispute shall be entitled to reimbursement from the non-prevailing party of its reasonable out-of-pocket attorneys' fees and costs incurred in connection with such dispute or litigation, including costs and expenses incurred in connection with the enforcement, perfection or collection of any judgment. If any provision of this Agreement is invalid or unenforceable under applicable law, such provision shall be ineffective only to the extent of such invalidity or unenforceability, without invalidating the remaining portions of such provision or the remaining provisions of this Agreement.

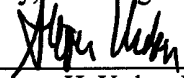
[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

SELLER:

SJ MARKETPLACE, LLC,
a Delaware limited liability company


By: CCA Acquisition Company, LLC,
a California limited liability
company, its manager

By: 
Steven H. Usdan, Manager

BUYER:

12TH & WASHINGTON NEC, LLC, a
Utah limited liability company

By: Cottonwood Capital Development,
LLC, its sole Member

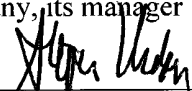
By: 
Gregg Christiansen, Manager

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

SELLER:

SJ MARKETPLACE, LLC,
a Delaware limited liability company

By: CCA Acquisition Company, LLC,
a California limited liability
company, its manager

By: 
Steven H. Usdan, Manager

BUYER:

12TH & WASHINGTON NEC, LLC, a
Utah limited liability company

By: Cottonwood Capital Development,
LLC, its sole Member

By: _____
Gregg Christiansen, Manager

STATE OF California)
)
COUNTY OF Los Angeles)

On November 7, 2014, before me, Jocelyn Maynes, Notary Public, personally appeared Steven H. Udvar who proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____



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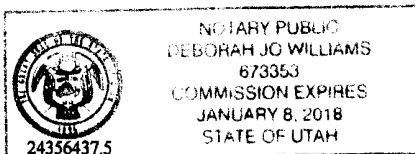
STATE OF Utah)
)
COUNTY OF Salt Lake)

On Nov. 10, 2014, before me, Deborah Jo Williams, Notary Public, personally appeared Gregory Christensen who proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ ^{Utah} that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____



(This area for official notarial seal)

STATE OF California)
)
COUNTY OF Los Angeles)

On November 7, 2014, before me, Jocelyn Maynes, Notary Public, personally appeared Steven H. Uddan who proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature [Handwritten Signature]



(This area for official notarial seal)

STATE OF _____)
)
COUNTY OF _____)

On _____, 20____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____

(This area for official notarial seal)

EXHIBIT A

LEGAL DESCRIPTION OF BUYER'S PROPERTY

LOTS 9 AND 15 OF THAT CERTAIN PLAT ENTITLED "OQUIRRH MOUNTAIN MARKETPLACE", WHICH PLAT WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SALT LAKE, STATE OF UTAH ON MARCH 6, 2014 AS ENTRY NO. 11814050 IN BOOK 2014P OF PLATS AT PAGE 49.

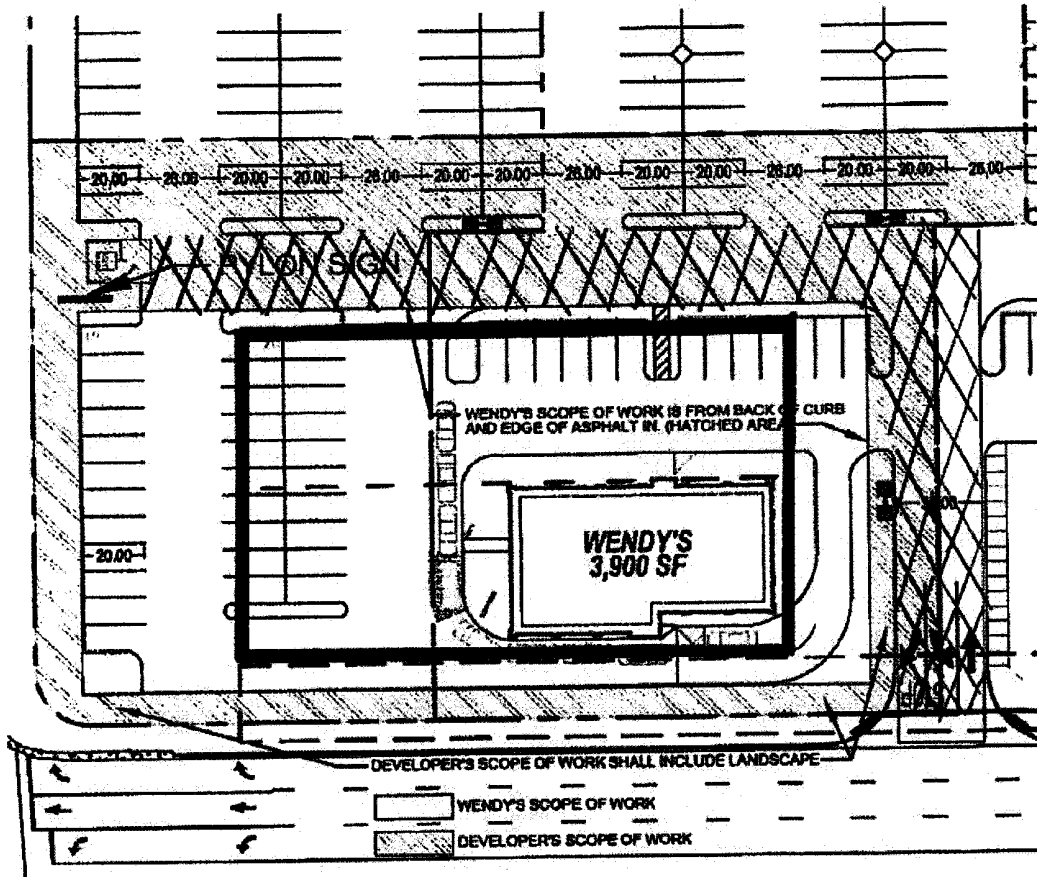
EXHIBIT B



LEGAL DESCRIPTION OF SELLER'S RETAINED PROPERTY

LOTS 3, 4, 5, 6, 7, 8, 10 AND 12 OF THAT CERTAIN PLAT ENTITLED "OQUIRRH MOUNTAIN MARKETPLACE", WHICH PLAT WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SALT LAKE, STATE OF UTAH ON MARCH 6, 2014 AS ENTRY NO. 11814050 IN BOOK 2014P OF PLATS AT PAGE 49.

EXHIBIT C

SITE PLAN FOR DEVELOPMENT OF BUYER'S PROPERTY



-  = BUYER PROTECTED DRIVE AISLES
-  = BUILDING ENVELOPE

The Building Envelope depicted above is subject to the further requirement that if the Building is oriented north/south (i.e., the longer elevations of the Building run in the north/south direction as opposed to the east/west direction), then the entire Building must be located west of the north/south dashed line that bisects the Building Envelope as shown above.

EXHIBIT D

PYLON SIGN ALLOCATION FOR BUYER'S PROPERTY

