

## DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (this “**Declaration**”) is dated this 17 day of July, 2018, by Anthem Center, LLC, a Utah limited liability company (“**Anthem**”) for the benefit of the owner of the SFP Property (as that term is defined below) and the JCWS Property (as that term is defined below).

### **RECITALS**

A. Anthem owns that certain real property described on Exhibit A attached hereto (the “**Property**”). The Property is a portion of a shopping center commonly known Anthem Center, located in the City of Herriman, County of Salt Lake, State of Utah.

B. In connection with the sale of certain real property to each of (i) JCWS Land & Holding, LLC (or its successor or assign) which real property is described on Exhibit B attached hereto (“**JCWS Property**”), and (ii) SFP-E, LLC, an Oregon limited liability company, which real property is described on Exhibit C attached hereto (“**SFP Property**”), Anthem desires to impose certain use restrictions on the Property in favor of the JCWS Property and the SFP Property as described in this Declaration.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged, Anthem hereby agrees as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein and made a part hereof to the same extent as if set forth herein in full.

2. Restrictive Covenants.

(a) From and after the date hereof, no owner, occupant or tenant of the Property shall use the Property, other than the JCWS Property, for a restaurant operating primarily for the sale of hamburgers. For purposes hereof, the “**primary sale**” means sales by an owner, occupant or tenant of the Property which comprise more than 25% of the total sales volume of such owner’s, occupant’s or tenant’s operations on the Property. Notwithstanding the foregoing, this Section 2(a) shall automatically terminate on the earlier to occur of the following (a) the Property is occupied and in use by an owner other than Anthem, and (b) the date that is one hundred eighty (180) days after the owner of the JCWS Property fails to use the JCWS Property for the primary sale of hamburgers, other than temporary closures due to fire, condemnation, construction and remodeling.

(b) From and after the date hereof, no owner, occupant or tenant of the Property shall use the Property, other than the SFP Property, for the sale, installation or servicing of tires, wheels, shocks, brakes, batteries or other automotive accessories, or alignment for any vehicle or trailer. Notwithstanding the foregoing, this Section 2(b) shall automatically terminate if the owner, occupant, or tenant (as applicable) of the SFP Property has ceased using the SFP Property for the sale, installation or servicing of automotive tires, wheels, shocks, brakes, batteries or other automotive accessories, or alignment for any vehicle or trailer for a period of more than twenty-four (24) consecutive months from and after the date of commencement of such use. Notwithstanding the foregoing, in the event SFP-E, LLC, an Oregon limited

liability company or its affiliate does not purchase the SFP Property, Anthem shall have the right to terminate this Section 2(b) at any time.

3. Remedies. Any breach of the terms and conditions of this Declaration shall cause irreparable harm to (a) the owner of the JCWS Property with respect the terms set forth in Section 2(a), and (b) the owner of the SFP Property with respect the terms set forth in Section 2(b) (each owner, as applicable, a “**Benefitted Party**”). As such, the applicable Benefitted Party shall have the right to enforce the terms and conditions of this Declaration and shall have the right to seek and obtain temporary and/or permanent injunctive relief against the then current owner, occupant or tenant of the portion of the Property upon which the violation has occurred or is threatened to occur. All of the remedies permitted or available to the applicable Benefitted Party shall be cumulative and not alternative to any other remedies available at law or in equity, and an 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.

4. Covenant Running With Land; Binding on Successors and Assigns. This Declaration and the restrictions contained herein shall burden the Property, be appurtenant to and benefit the SFP Property and JCWS Property, as applicable. The restrictions and provisions herein shall run with the SFP Property, the JCWS Property and the Property and shall be binding upon and inure to the benefit of the successors in title to the SFP Property, the JCWS Property and the Property.

5. Severability. If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion hereof shall remain in full force and effect and the court shall construe this Declaration as much as possible to give rise to the intent to the language hereof.

6. Attorneys’ Fees. In the event of any action at law or in equity to enforce any of the provisions and/or rights under this Declaration, the prevailing party in such action shall be awarded reasonable attorneys’ fees and court costs incurred therein.

7. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

*[remainder of page intentionally blank]*

IN WITNESS WHEREOF, Anthem has set its hand as of the date and year first set forth above.

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

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

By: [Signature]  
Name: Cory Gust  
Title: Member / Manager

Anthem Commercial, LLC, a Utah limited liability company

By: [Signature]  
Name: Ryan Button  
Title: MANAGER

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

On this 17 day of July, 2018, personally appeared before me Cory Gust, a Manager of Arbor Commercial Real Estate L.L.C., a Utah limited liability company, a manager of Anthem Center, LLC, a Utah limited liability company, who executed the foregoing instrument on behalf of said company.

[Signature]  
NOTARY PUBLIC  
Residing at:

My Commission Expires:



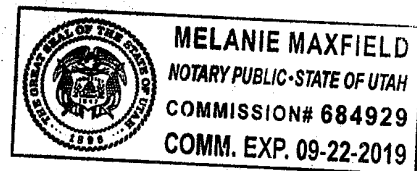
STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On this 17 day of July, 2018, personally appeared before me Ryan Bullon, a Manager of Anthem Commercial, LLC, a Utah limited liability company, a manager of Anthem Center, LLC, a Utah limited liability company, who executed the foregoing instrument on behalf of said company.



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NOTARY PUBLIC  
Residing at:

My Commission Expires:



**EXHIBIT A**  
(to Declaration of Restrictive Covenant)

**Description of the Property**

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

Property I.D. No: 26-25-126-008 and 26-25-126-007

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

Property I.D. No: 26-25-126-011 and 26-25-126-013

**EXHIBIT B**  
(to Declaration of Restrictive Covenant)

**Description of the JCWS Property**

Lot 203, Anthem Commercial Lot 1 2<sup>nd</sup> Amended Subdivision, Amending Lots 2, 3 and 4 of Anthem Commercial Lot 1 Amended Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

Property I.D. No: 26-25-126-014

**EXHIBIT C**  
(to Declaration of Restrictive Covenant)

**Description of the SFP Property**

Lot 202, Anthem Commercial Lot 1 2<sup>nd</sup> Amended Subdivision, Amending Lots 2, 3 and 4 of Anthem Commercial Lot 1 Amended Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

Property I.D. No: 26-25-126-012