

**When recorded, return to:**

Anthem Center, LLC  
10610 South Jordan Gateway, Suite 110,  
South Jordan, Utah 84095  
Attn: Cory Gust

MTC # 300925

13809551  
10/27/2021 2:06:00 PM \$44.00  
Book - 11260 Pg - 2923-2933  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
MERIDIAN TITLE  
BY: eCASH, DEPUTY - EF 11 P.

**RESTRICTIVE/EXCLUSIVE USE AGREEMENT**

THIS RESTRICTIVE/EXCLUSIVE USE AGREEMENT (this "**Agreement**") is made and entered into as of this 25 day of October, 2021, by and between ANTHEM CENTER, LLC, a Utah limited liability company (hereinafter "**Anthem Center**"), ANTHEM RETAIL 1, LLC, a Utah limited liability company (hereinafter "**Anthem Retail**"; and together with Anthem Center, individually and collectively, as the context may require, "**Anthem**") and BAAESH, LLC., a Utah limited liability company (hereinafter "**Baaesh**") (each a "**Party**", and collectively, the "**Parties**").

**RECITALS**

A. Anthem Center is the owner of those certain parcels of real property located in Herriman City, Salt Lake County, Utah, more particularly described on **Exhibit "A-1"** attached hereto and incorporated herein by reference (the "**Anthem Center Property**").

B. Anthem Retail is the owner of those certain parcels of real property located in Herriman City, Salt Lake County, Utah, more particularly described on **Exhibit "A-2"** attached hereto and incorporated herein by reference (the "**Anthem Retail Property**"; and together with the Anthem Center Property, individually and collectively, as the context may require, the "**Anthem Property**").

C. Anthem Center intends to sell to Baaesh a portion of the Anthem Property which is more particularly described on **Exhibit "B"** attached hereto and incorporated herein by reference (the "**Baaesh Parcel**").

D. In connection with such sale, Anthem and Baaesh have agreed to enter into this Agreement restricting certain uses on the Anthem Property and the Baaesh Parcel.

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

**1. Restriction on Use.**

(a) So long as Baaesh has commenced the operation of a dental office (the "**Exclusive Use**") within two (2) years of the date hereof, and so long as Baaesh has not ceased operating the Exclusive Use on the Baaesh Parcel for a period in excess of six (6) months, no other commercial user on the Anthem Property will be permitted to operate a business on the Anthem Property for the Exclusive Use; provided, the foregoing will not (i) prevent the sale or use of dental hygiene products (but will prevent another user from providing dental hygiene services), or (ii) restrict the

use of the tenant commonly known as Organically White, or its successor in interest, from the sale of teeth whitening products and ancillary services associated therewith.

(b) So long as Baesh has commenced the operation of a dental office, which includes the practice of dentistry and any ancillary services, including without limitation providing dental hygiene and teeth whitening services and products (the "Exclusive Use") within two (2) years of the date hereof, and so long as Baesh has not ceased operating the Exclusive Use on the Baesh Parcel for a period in excess of six (6) months, no other tenant, party or user on the Anthem Property will be permitted to operate a business or otherwise conduct activities on the Anthem Property for the Exclusive Use; provided, the foregoing will not (i) prevent the sale of dental hygiene products (but does prevent the provision of dental hygiene services), or (ii) restrict the tenant commonly known as Organically White, or its successor in interest, from providing teeth whitening services and teeth whitening products (but no teeth cleaning other than brushing of the teeth prior to the application of a teeth whitening product) under a lease on the Anthem Retail Property.

## **2. Enforcement.**

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

## **3. Miscellaneous.**

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

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

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

d. Interpretation. Whenever the context requires in construing the provisions of this Agreement, the use of a gender shall include both genders, use of the singular shall include the plural, and use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited

inclusively, and not in limitation, whether or not the words “without limitation” or “but not limited to” (or words of similar import) are used with respect thereto. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

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

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

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

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

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

[signature page follows]

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

BAAESH, LLC.,  
a Utah limited liability company

By: Brian Borg  
Name: Brian Borg  
Title: Member

STATE OF UT  
: ss.  
COUNTY OF Salt Lake


On this 25 day of Oct, 2021, personally appeared before me the undersigned, a Notary Public in and for the State of UT, Brian Borg, the Member, of BAAESH, LLC., a Utah limited liability company, signer of the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.

Mmm  
NOTARY PUBLIC

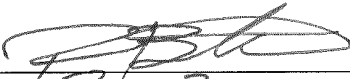


ANTHEM CENTER, LLC, a Utah limited liability company, by its managers

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

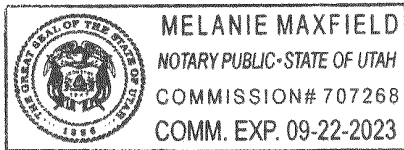
By:   
Name: CORY GUST  
Title: MANAGER

Anthem Commercial, LLC, a Utah limited liability company

By:   
Name: RYAN BUTTON  
Title: MANAGER

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

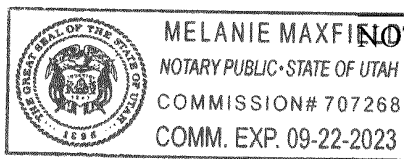
On this 25 day of October, 2021, personally appeared before me the undersigned, a Notary Public in and for the State of Utah, Cory Gust, a manager of ARBOR COMMERCIAL REAL ESTATE L.L.C., a Utah limited liability company, a manager of Anthem Center, LLC, a Utah limited liability company, signer of the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.

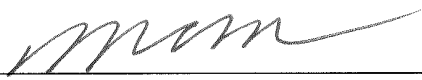


  
\_\_\_\_\_  
NOTARY PUBLIC

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

On this 25 day of October, 2021 personally appeared before me the undersigned, a Notary Public in and for the State of Utah, Ryan Sutton, Manager (title) of ANTHEM COMMERCIAL, LLC, a Utah limited liability company, a manager of Anthem Center, LLC, a Utah limited liability company, signer of the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.




  
\_\_\_\_\_  
NOTARY PUBLIC


ANTHEM RETAIL 1, LLC, a Utah limited liability company, by its manager

Anthem Center, LLC, a Utah limited liability company, by its managers

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

By:   
Name: CORY GUST  
Title: MANAGER

Anthem Commercial, LLC, a Utah limited liability company

By:   
Name: RYAN BUTTON  
Title: MANAGER

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

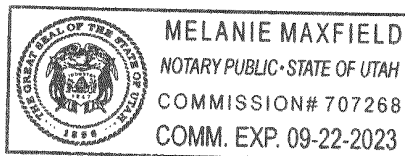
On this 25 day of October, 2021, personally appeared before me the undersigned, a Notary Public in and for the State of Utah, Cory Gust, manager (title) of ARBOR COMMERCIAL REAL ESTATE L.L.C., a Utah limited liability company, a manager of Anthem Center, LLC, a Utah limited liability company, the manager of Anthem Retail 1, LLC, a Utah limited liability company, the signer of the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.



Mmm  
NOTARY PUBLIC

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

On this 25 day of October, 2021, personally appeared before me the undersigned, a Notary Public in and for the State of Utah, Ryan Button, manager (title) of ANTHEM COMMERCIAL, LLC, a Utah limited liability company, a manager of Anthem Center, LLC, a Utah limited liability company, the manager of Anthem Retail 1, LLC, a Utah limited liability company, signer of the foregoing instrument, and acknowledged he/she executed the same on behalf of said company. Witness my hand and official seal.



Mmm  
NOTARY PUBLIC



**EXHIBIT "A-1"**

Description of the Anthem Center Property

Lots 308, 309 and 310, Anthem Commercial 3<sup>rd</sup> Amended Subdivision, Amendment Lots 2 thru 5 of Anthem Commercial Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

Lot 405, Anthem Commercial 4th Amended Subdivision, Amendment Lots 302 and 308 of Anthem Commercial Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

Lots 501, 502, 503, 504, 505 and 506, Anthem Commercial 5th Amended Subdivision, Amendment Lot 307 & 405 of Anthem Commercial Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

Tax Parcel IDs: 26-25-202-001, 26-25-178-004, 26-25-178-011, 26-25-252-004, 26-25-252-002, 26-25-252-003, 26-25-178-007, 26-25-178-008, 26-25-178-009, 26-25-178-010

**EXHIBIT "A-2"**

Description of the Anthem Retail Property

Lots 601 and 602, Anthem Commercial 6th Amended Subdivision, Amendment Lots 305 thru 306 of Anthem Commercial Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

Tax Parcel IDs: 26-25-178-013, 26-25-178-014

**EXHIBIT "B"**

Description of Baaesh Parcel

Lot 602, Anthem Commercial 6th Amended Subdivision, Amending Lots 305 and 306 of Anthem Commercial 3rd Amended Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

Tax Parcel ID: 26-25-178-014