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**DECLARATION OF EASEMENTS AND CONDITIONS**

THIS DECLARATION OF EASEMENTS AND CONDITIONS ("DEC") is made as of the 5th day of December, 2008, by WINCO FOODS, LLC, a Delaware limited liability company ("WinCo") and HOMESTEAD PAVILION, LLC, a Delaware limited liability company ("Kornwasser").

**RECITALS**

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

A. WinCo is the owner of the WinCo Tract, which is more particularly described on Exhibit A-1, which is attached hereto, and Kornwasser is the owner of the Kornwasser Tract, which is more particularly described on Exhibit A-2, which is attached hereto (collectively, the "Shopping Center"). The Shopping Center is located partially in Roy City, Weber County, Utah, and partially in Clinton City, Davis County, Utah,

B. The Shopping Center will consist of seven (7) contiguous Tracts and is identified on the Site Plan attached hereto as Exhibit B (the "Site Plan").

C. WinCo and Kornwasser intend for the Shopping Center to be developed as an integrated retail shopping complex, and not as a planned development. In order to effectuate the common use and operation of certain portions of the Shopping Center, WinCo and Kornwasser hereby grant certain reciprocal easements into, over, and across certain portions of the Shopping Center, and impose certain conditions and restrictions thereon.

NOW, THEREFORE, in consideration of the premises and the easements, conditions, and restrictions hereinafter set forth, WinCo and Kornwasser hereby make this DEC.

1. **DEFINITIONS.**

1.1. **Adjacent Party.** "Adjacent Party" shall have the meaning set forth in Section 2.3(b).

1.2. **Administration Fee.** "Administration Fee" shall have the meaning set forth in Section 4.2(b).

1.3. **Approving Party.** "Approving Party" shall mean each Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this DEC. There shall be one Approving Party for the WinCo Tract and one Approving Party for the Kornwasser Tract. The Approving Party for the WinCo Tract shall be the owner of the WinCo Tract. The Approving Party with respect to the Kornwasser Tract shall initially be Kornwasser. Kornwasser shall continue to be the Approving Party with respect to the Kornwasser Tract until neither Kornwasser nor any entity under common control with Kornwasser (a "Kornwasser Affiliate") continues to own any portion of the 6152985.1

Kornwasser Tract. At such time as neither Kornwasser nor any Kornwasser Affiliate owns any portion of the Kornwasser Tract: (i) all of Kornwasser's rights as an Approving Party shall terminate, (ii) all references in this DEC to the "Approving Party for the Kornwasser Tract" shall no longer be applicable, (iii) WinCo shall thereafter be the sole Approving Party for the entire Shopping Center under this DEC, and (iv) all references to "Approving Parties" shall be deemed to refer to WinCo as the sole Approving Party for the Shopping Center. Each Approving Party shall, unless otherwise provided herein, have 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 Party.

- 1.4. Budget. "Budget" shall have the meaning set forth in Section 4.2(c).
- 1.5. Building Area. "Building Area" shall mean the limited areas of the Shopping Center within which buildings (which for the purpose of this DEC shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions thereto) may be constructed, placed, or located. Building Areas are designated on the Site Plan by the building limit lines shown thereon.
- 1.6. Business Office. "Business Office" shall have the meaning set forth in Section 5.1(c)(i).
- 1.7. Center Signs. "Center Signs" shall have the meaning set forth in Section 5.3(a)(i).
- 1.8. Common Area. "Common Area" shall mean all areas within the exterior boundaries of the Shopping Center, exclusive of buildings. For purposes of this Agreement, a grantor's Common Area shall mean the Common Area located on the portion of the Shopping Center owned by such grantor.
- 1.9. Common Utility Lines. "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to the Tracts and which are not Separate Utility Lines.
- 1.10. Communications Equipment. "Communications Equipment" shall have the meaning set forth in Section 3.3(e).
- 1.11. Constant Dollars. "Constant Dollars" means the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth (6th) 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 September of the year preceding the adjustment year. The "Index" shall be the Consumer Price Index, All Urban Consumers (CPI-U), all items index, for the West Region (base year 1982-1984=100), published by the United States Department of Labor, Bureau of Labor Statistics. 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.
- 1.12. Constructing Party. "Constructing Party" shall have the meaning set forth in Section 2.3(b).
- 1.13. DEC. "DEC" shall have the meaning set forth in the introductory paragraph above.
- 1.14. Deficiencies. "Deficiencies" shall have the meaning set forth in Section 4.2(k).
- 1.15. Environmental Laws. "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, by way of example and not 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 State of Utah (or the city or county in which the Shopping Center is located) regulating environmental pollutants or underground storage tanks, and any and all amendments, supplements, modifications, and replacements thereof.

1.16. Fast Food Restaurant. "Fast Food Restaurant" shall have the meaning set forth in Section 5.1(c)(ii).

1.17. Financial Retail Office. "Financial Retail Office" shall have the meaning set forth in Section 5.1.

1.18. Floor Area. "Floor 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: office space within retail establishments used by the Occupant for administrative purposes of that location and which is not open or accessible to the general public; 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, 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 Tract. 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 Tract 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.

1.19. Hazardous Materials. "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.

1.20. Initial Work. "Initial Work" shall have the meaning set forth in Section 3.4(a).

1.21. Kornwasser. "Kornwasser" means Homestead Pavilion, LLC.

1.22. Kornwasser Tract. "Kornwasser Tract" means collectively the portion of the Property consisting of the six (6) Tracts identified as Pad A, Pad B, Pad D, Shops C, Shops D and Major A & B on the Site Plan, as more particularly described on Exhibit A-2. For purposes of clarification, Major A & B is one Tract.

1.23. Kornwasser Tract Monument Signs. "Kornwasser Tract Monument Signs" shall have the meaning set forth in Section 5.3(a)(iii).

1.24. Occupant. "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.

1.25. Operator. "Operator" means the Person designated from time to time by the Approving Party for the WinCo Tract to maintain and operate the Operator Maintenance Area. The Person designated as Operator shall serve in such capacity until it resigns, is removed by the Approving Party for the WinCo Tract at its election. The initial Operator shall be the owner of the WinCo Tract.

1.26. Operator Maintenance Area. The common driveways and drive aisles in the Shopping Center which are identified as "Common Drive Aisles" on the Site Plan, the Center Signs and the Common Utility Lines.

1.27. Operator Maintenance Area Costs. "Operator Maintenance Area Costs" shall have the meaning set forth in Section 4.2(b).

1.28. Party. "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 all other Parties of such transfer and shall include therein at least the following information:

- (a) the name and address of the new Party; and
- (b) a copy of the legal description of the portion of the Shopping Center transferred.

If a Tract is owned by more than one Person, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Tract shall designate one (1) of their number to represent all owners of the Tract and such designated Person shall be deemed the Party for such Tract. 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.

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

1.30. Permittee. "Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors, 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 one or more of 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; or
- (e) Failing to follow regulations relating to the use of the Shopping Center.

1.31. Plans. "Plans" shall have the meaning set forth in Section 3.3(b).

1.32. Remaining Work. "Remaining Work" shall have the meaning set forth in Section 3.4(a).

1.33. Restaurant. "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.

1.34. Separate Utility Lines. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service solely to a single Tract. 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.

1.35. Shopping Center. "Shopping Center" shall have the meaning set forth in Recital A above.

1.36. Signage Plan. "Signage Plan" shall have the meaning set forth in Section 5.3.

1.37. Site Plan. "Site Plan" shall have the meaning set forth in Recital A above.

1.38. Subsurface Construction Elements. "Subsurface Construction Elements" shall have the meaning set forth in Section 2.3(b).

1.39. Tract. "Tract" shall mean each separate legal parcel of the Shopping Center in existence from time to time. As of the date of this DEC, each of Anchor A, Pad A, Pad B, Pad D, Shops C, Shops D and Major A & B, as set forth on the Site Plan, is a separate Tract.

1.40. Utility Lines. "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water.

1.41. WinCo. "WinCo" means WinCo Foods, LLC.

1.42. WinCo Tract. "WinCo Tract" means the Tract identified as Anchor A on the Site Plan and more particularly described on Exhibit A-1.

## 2. EASEMENTS.

### 2.1. Ingress, Egress and Parking.

During 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 passage and parking of vehicles over and across the parking and driveway areas on that portion of the Common Area on the grantor's Tract, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways, and sidewalk areas on that portion of the Common Area on the grantor's Tract, as the same may from time to time be constructed and maintained for such use. Such easement rights shall

be subject to the following reservation, as well as other provisions contained in this DEC: 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 Tract. In addition to the foregoing, the Parties each hereby grant and convey to the other Parties (and their successors and assigns) for their use and for the use of their Permittees, in common with others entitled to use the same, a non-exclusive, perpetual access easement over and across the portions of the Shopping Center depicted with hatch marks on the Site Plan.

## 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 Tract necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Tract, 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; and
- (vi) parking lot or driveway gutters used for surface water drainage.

Prior to exercising the right granted herein, 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 Tract. If the Approving Parties elect to install Common Utility Lines, all repair, maintenance, replacement, and other work thereon shall, if not performed by the utility company or the Operator, be performed by the owner of the Tract upon which the Common Utility Lines are located and paid for as provided in Section 4.2.

(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. Prior to installing such Utility Line, the installing Party shall notify the Approving Party for the portion of the Property on which the Tract that will contain such Utility Line is located, of the location of such Utility Line, and, upon request following the installation, shall provide such Approving Party with a copy of an as-built survey showing the location of such Utility Line. The easement area 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, except that (A) Utility Lines located on and serving only the Kornwasser Tract, and that do not affect Common Drive Aisles providing access to the WinCo Tract, shall not require the approval of the Approving Party of the WinCo Tract, and (B) Utility Lines located on and serving only the WinCo Tract, and that do not affect Common Drive Aisles providing access to the Kornwasser Tract, shall not require the approval of the Approving Party of the Kornwasser Tract;

(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 (if grantee is open for business twenty-four (24) hours, then relocation shall be coordinated between the Parties in a reasonable manner);

(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 Tract the perpetual right and easement to discharge surface storm drainage and/or runoff from the grantee's Tract over, upon, and across the Common Area of the grantor's Tract, 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 plans approved under the Site Development Agreement between WinCo and Kornwasser dated concurrently herewith (the "SDA") and such other details as are approved by the Approving Party for the WinCo Tract (provided that any revisions or additional details approved solely by the Approving Party for the WinCo Tract shall not materially affect any portion of the Kornwasser Tract without the approval of the owner of such portion of the Kornwasser Tract); 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 Tract if such alteration would materially increase the flow of surface water onto another Tract 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 another Tract without the written consent of the owner of the applicable Tract, which consent shall not be unreasonably withheld or delayed.

The surface water collection, retention and distribution facilities shall be deemed a Common Utility Line except to the extent that such facilities are located solely on, and solely serve, the Kornwasser Tract, and do not affect surface water flow to or from the WinCo Tract.

2.3. Construction, Maintenance, and Reconstruction.

(a) In order to accommodate any building improvements which may *inadvertently* be constructed beyond a Tract's boundary line, each Party grants to each Party owning an adjacent Tract an easement in, to, over, under, and across that portion of the grantor's Tract adjacent to such common boundary line for the maintenance and replacement of such building improvements to a maximum lateral distance of six inches (6").

(b) In the event a constructing Party (the "Constructing Party") determines that it is necessary to place underground piers, footings and/or foundations ("Subsurface Construction Elements") across the boundary line of its Tract, the Constructing Party shall advise the Party owning the adjacent Tract (the "Adjacent Party") of its construction requirement and shall provide plans and specifications relating thereto, including proposed construction techniques for the Subsurface Construction Elements. The Adjacent Party hereby grants and conveys to the Constructing Party for the benefit of its Tract an easement, not to exceed a maximum lateral distance of five feet (5'), in, to, under, and across that portion of the Adjacent Party's Tract not theretofore occupied by any then existing structure, for the installation, maintenance, and replacement of such Subsurface Construction Elements. Provided, however, that the Constructing Party shall have no right to use such easement if the Adjacent Party is able to provide the Constructing Party a reasonable alternative construction method for the placement of the Subsurface Construction Elements entirely on the Constructing Party's Tract. The Adjacent Party reserves the right to require the Constructing Party to modify the design specifications for the Subsurface Construction Elements in order to permit the Adjacent Party the opportunity to utilize the same in connection with the construction of its building improvements to the end that each Party shall be able to place its building immediately adjacent to the common boundary line. If a common Subsurface Construction Element is used by the Parties, each shall assume and pay its reasonable share of the cost and expense of the design and construction thereof. In the event any building utilizing a common Subsurface Construction Element is destroyed and not replaced or is removed, the common Subsurface Construction Element shall remain in place for the benefit of the other building utilizing the same.

(c) The foregoing easement grants shall not diminish or waive any right of a Party to recover damages resulting from the Constructing Party's failure to construct its building within its Tract in the case of (a) above, or within the easement area limits in the case of (b) above. Nothing herein shall be deemed to create or establish a "common" or "party" wall to be shared by buildings constructed along the common boundary line between Tracts. The easements in each instance shall:

(i) continue in effect for the term of this DEC and thereafter for so long as the building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such building if the same shall be destroyed, damaged, or demolished); and

(ii) include the reasonable right of access necessary to exercise and enjoy such grant upon terms and with the limitations described in Section 3.1(e) below.

2.4. Restriction. No Party shall grant any easement or license for the purpose set forth in this Article 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. Further, any such easement or license granted by the Approving Party for the WinCo Tract shall not result in the reduction of parking spaces on or otherwise burden the parking on any portion of the Kornwasser Tract; and any such easement or license granted by the Approving Party for the Kornwasser Tract shall not result in the reduction of parking spaces on or otherwise burden the parking on any portion of the WinCo Tract. Provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Tract 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.

(b) 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 Tract;

(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 Tract 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.

(c) 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).

(d) In connection with any construction, reconstruction, repair, or maintenance on its Tract, each Party reserves the right to create a temporary staging and/or storage area in the Common Area on its Tract or in the Building Area on its Tract at a location which will not unreasonably interfere with access between such Tract and the other areas of the Shopping Center and which in no event shall be located in any common driveway or drive aisle in the Shopping Center. Prior to the commencement of any work which requires the establishment of a staging and/or storage area on its Tract a Party (other than the owner of the WinCo Tract) shall give at least thirty (30) days' prior notice to the Approving Parties, for their confirmation that the proposed location satisfies the requirements of this Section 3.1(d). Provided, however, that if a business is operating on the WinCo Tract then no other Party's staging area shall be located within three hundred (300) feet of the front door of the building on the WinCo Tract, unless located within a Building Area. 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 an Approving Party, fence off the staging and storage area. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Party's Tract, and all laborers, suppliers, contractors, and others connected with such construction activities shall use only the access points located upon the Constructing Party's Tract if such access exists. Upon completion of such work, the constructing Party shall restore the affected Common Area to a condition equal to or better than that existing prior to commencement of such work. In addition to the foregoing, no staging or construction activities shall be permitted on Major A & B or Shops C during the period commencing five (5) days prior to the grand opening of the retail store on the WinCo Tract and ending thirty (30) days following the date of the grand opening (the "WinCo Grand Opening Period"). The Owner(s) of Major A & B, Pad A, Pad B, Pad D, Shops C and Shops D shall ensure that each of Major A & B, Pad A, Pad B, Pad D, Shops C and Shops D is maintained in an orderly, slightly condition at all times during the WinCo Grand Opening

Period, and, shall, at WinCo's request, fence off any staging or storage area located on Major A & B, Pad A, Pad B, Pad D, Shops C and Shops D during the WinCo Grand Opening Period.

(e) 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 Tract as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Tract; 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. Prior to exercising the rights granted herein (except for routine maintenance), 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 contractor performing services in connection with the construction of improvements to that Party's Tract shall only be required to provide One Million Dollars (\$1,000,000) 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 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 Tract.

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 or as finally approved by Roy City (and, if applicable, Clinton City); 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. The following minimum general design standards shall be complied with throughout the term of this DEC:

(a) The lighting system shall be designed to produce a minimum maintained lighting intensity measured at grade at all points in the Common Area of 2.0 foot candle. Provided, however, that the extreme edge of the parking or drive areas may have not less than a minimum maintained lighting intensity measured at grade of 2.0 foot candle, and provided further that 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. Each of the following portions of the Property shall be separately metered: (i) the WinCo Tract (excluding lighting located in the Common Drive Aisles), (ii) the Kornwasser Tract (excluding lighting located in the Common Drive Aisles), and (iii) the Common Drive Aisles. The separate meters for the WinCo Tract and the Kornwasser Tract shall be paid directly by the Owner of each such portions of the Property (with the costs payable by the Owner of the Kornwasser Tract in turn allocated among the Owners of the individual Tracts on the Kornwasser Tract on a pro rata land square footage basis). The costs for the lighting in the Common Drive Aisles shall be shared pro rata among the various Tracts (based on the land square footage of the applicable Tract). The type and design of the Common Area light standards shall be approved by the Approving Parties. The foregoing light standards are subject to compliance with applicable municipal requirements.

(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 which shall require

the installation of a suitable base and the surfacing with an asphaltic concrete or concrete wearing material.

(d) Utility Lines that are placed underground shall be at standard commercial 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) The parking area on the WinCo Tract and on each separate Tract shall contain sufficient ground level parking spaces in order to comply with the following minimum requirements:

(i) The number of parking spaces and the configuration of the parking spaces for each Tract shall be as shown on the Site Plan, unless modified with respect to the WinCo Tract by the Approving Party for the WinCo Tract in its sole, absolute, and unreviewable discretion, provided that (1) no modification of the parking spaces on the WinCo Tract shall result in less than four (4) parking spaces per 1,000 square feet on the WinCo Tract, and (2) no unilateral modification by WinCo of the parking spaces on the WinCo Tract shall violate any other term or provision of this DEC without the consent of the Approving Party for the Kornwasser Tract; provided, however, that the Approving Party for the Kornwasser Tract may eliminate stalls on the Kornwasser Tract so long as a minimum ratio of four (4) parking spaces per 1,000 square feet is maintained on the Kornwasser Tract as a whole and the size of the nine (9) foot stalls on the Major A & B and Shops C Tracts are not reduced; and provided, further, that a Party may add, delete or otherwise reconfigure parking spaces within the Building Area on its Tract as long as (i) the minimum parking ratio and, in the case of the Major A & B and Shops C Tracts, the minimum ratio of the nine (9) foot stalls, as provided above, is maintained, and (ii) no other provision of this DEC is violated without the written consent of the Approving Parties.

If a business 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.

(ii) In the event of a condemnation of part of a Tract or sale or transfer in lieu thereof that reduces the number of usable parking spaces below that which is required herein, the Party whose Tract is so affected shall use its best efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute ground level parking spaces 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 Tract unless (i) such Party is authorized to do so by the Approving Party in its reasonable discretion, and (ii) such Tract continues to comply with the parking requirements of this Section 3.2(e) and Roy City (and, if applicable, Clinton City). If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Tract may not subsequently be increased unless the parking requirement is satisfied or unless (i) such Party is authorized to do so by the Approving Party in its reasonable discretion, and (ii) such Tract continues to comply with the parking requirements of this Section 3.2(e) and Roy City (and, if applicable, Clinton City).

(iii) Notwithstanding the foregoing, the Approving Party for the Kornwasser Tract may, at its election, treat Pad A and Pad D as one Tract, and/or treat Shops D and Pad B as one Tract, for the purposes of satisfying the parking ratio and other parking requirements under this DEC for such Tracts; provided, however, that a minimum ratio of four (4) parking spaces per 1,000 square feet is maintained on the Kornwasser Tract as a whole and the size of the nine (9) foot stalls is not reduced on the Major A & B and Shops C Tracts.

(f) No Party shall make changes to the Common Area on its Tract without the approval of the Approving Parties, except that the approval of the Approving Party for the WinCo Tract shall not be

required with respect to any change, modification, or alteration of the Common Area on the Kornwasser Tract, and the approval of the Approving Party for the Kornwasser Tract shall not be required with respect to any change, modification, or alteration of the Common Area on the WinCo Tract, provided that in each case under this Section 3.2(f):

(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, the parking requirements of this DEC continue to be satisfied and there is no change to the Common Drive Aisles hatched 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(e), as well as all governmental rules, regulations, and/or ordinances relating to parking requirements;

(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, such approval not to be unreasonably withheld; and

(v) at least thirty (30) days prior to making any such change, modification, or alteration, the Party desiring to do such work shall deliver to the Approving Parties copies of the plans therefor, and provided further that, except for the initial construction of the Common Area, such work shall not occur between October 1<sup>st</sup> and the following January 31<sup>st</sup>.

Notwithstanding the foregoing, the approval of the Approving Party for the WinCo Tract shall not be required with respect to any changes, modifications, or alterations of Common Area located within Building Areas on the Kornwasser Tract 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 Common Drive Aisles 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 Tract, the Parties hereby agree once construction has been commenced, such building shall be completed in a timely fashion. Each building on a Tract shall be located only within the Building Area designated on the Site Plan for such Tract. The maximum building square footage 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 ("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. 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. In no event shall the Approving Parties require any other Party to utilize design standards superior to those utilized by the Approving Parties in the construction of buildings on their Tracts. 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 any contrary provision of this Section 3.3(b), as long as WinCo complies with the requirements of the first sentence of this Section 3.3(b), WinCo shall not be required to obtain the approval of the Approving Party for the Kornwasser Tract under this Section 3.3(b) with respect to the construction matters described in this Section 3.3(b).

(c) Buildings may be placed along the common boundary line between the WinCo Tract and the Shops C Tract as depicted on the Site Plan and along the common boundary line between the WinCo Tract and the Major A & B Tract. No other building may be placed along the common boundary lines between the WinCo Tract and the Kornwasser Tract except upon the consent of the owner of the WinCo Tract in its sole, absolute, and unreviewable discretion, and the owners of such Tracts agree to support any request by the other for a side-yard or setback variance if the same is required in order to accommodate such construction.

(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 Tract, 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 Tract, 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 5.3 or flag poles) shall exceed the following size and height restrictions:

<u>TRACT</u>	<u>BUILDING HEIGHT</u>	<u>HEIGHT OF FEATURES</u>	<u>ALLOWABLE FLOOR AREA</u>
WinCo Tract	38 feet	48 feet	98,000 square feet
Major A & B	32 feet	36 feet	45,000 square feet
Pad D	25 feet	30 feet	4,500 square feet
Shops C	30 feet	32 feet	20,000 square feet
Pad A	25 feet	30 feet	5,000 square feet
Shops D & Pad B (combined)	25 feet	30 feet	16,000 square feet (combined)

The height of any building 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. Any change to the maximum height of each building on a Tract (as set forth above) shall be subject to the prior written approval of the Approving Party. Any Party shall have the right to install, maintain, repair, replace, and remove Communications Equipment on the top of the building on its Tract so long as it does not extend above the height limits established above. Provided, however, such Communication Equipment and any other rooftop

equipment shall be screened from view as required by applicable governmental authority and code. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas, and laser heads, together with associated equipment and cable, and technological evolutions of the foregoing.

(f) No building or other structure on any Tract shall exceed one (1) story unless approved by the Approving Party.

#### 3.4. Phased Development.

(a) It is anticipated that certain site improvement work (the "Initial Work") will be performed on all or certain portions of the Shopping Center. All site improvement work for or on the balance of the Shopping Center not included in the Initial Work (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 Tract shall be completed prior to the earlier of: (i) initial occupancy of any building on such Tract 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 Tract 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 Tract shall not have any responsibility therefor. Notwithstanding the foregoing, the Parties acknowledge that Major A & B may be constructed in more than one phase, and in such case the provisions of this Section 3.4 shall be applied to the Major A & B Tract on a phase by phase basis.

(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 Tract shall either be hard-surfaced or left in a natural, but attractive, condition, until building improvements are constructed thereon. The owner of such Tract 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. No-Build Area. The Parties acknowledge that Roy City and Clinton City (the "Cities") require the establishment of no-build areas in compliance with their respective building codes (as modified by any variance or waiver received from the Cities, the "Building Code"). To the extent required by the Building Code, the Parties agree that a sixty foot (60') no-build area adjacent to the adjoining buildings to be constructed on Shops C, Major A & B and Anchor A shall be preserved, as generally depicted on the Site Plan (the "No-Build Area"), that no buildings or other structures shall be constructed within the No-Build Area, and that such area shall be maintained pursuant to the Building Code; *provided, however*, that this Section shall not prevent construction, use, and maintenance within the No-Build Area of any driveways, sidewalks, curbs and gutters, parking, landscaping, and similar uses which do not constitute buildings or structures in violation of the No-Build Area requirements of the Building Code. This provision shall not be amended, revoked, or altered without the written consent of the Cities, acknowledged and recorded with the County Recorders of Weber County and Davis County.

#### 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 which are located on another Party's Tract 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 Tract 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 Area pursuant to Section 4.2 below.

4.2. Common Area Maintenance.

(a) Certain Maintenance Responsibilities. Each owner of a Tract shall at all times during the term of this DEC, at its sole cost and expense, maintain and repair the building and such portion of the Common Area (exclusive of the Operator Maintenance Area) located on such owner's Tract and keep the same in good condition and repair, clean and free of litter and other hazards to Permittees. Any unimproved areas of a Tract shall be mowed and kept dust and litter-free. Further, each owner shall keep the area immediately in front of its storefront clean and free of debris and other litter. The minimum standard of maintenance for the improved area of a Tract shall be comparable to the standard of maintenance followed in other first class retail developments of comparable size in the city in which the Shopping Center is located, and in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and the provisions of this DEC. All repairs or replacements of the buildings on each Tract shall be completed in such a manner so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. During any such time as there is no Operator designated by the Approving Party of the WinCo Tract, each Party agrees to defend, indemnify and hold harmless each other Party (each, an "Indemnatee") 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 the maintenance, use or operation of the Common Areas located on its Tract, except for claims caused by the negligence or willful act or omission of such Indemnatee.

(b) Maintenance of Operator Maintenance Area. The Operator shall perform or cause to be performed all tasks that in Operator's reasonable judgment are necessary or beneficial to operate, maintain, and repair and keep in good condition and repair the Operator Maintenance Area within the entire Shopping Center. Occupants of the Shopping Center will be required to share the costs and expenses of the maintenance of such Operator Maintenance Area in accordance with this DEC. The shared costs of the operation and maintenance of the Operator Maintenance Area shall include, but shall not be limited to, all sums expended in connection within the general maintenance and repair of the Operator Maintenance Area and the replacement of any improvements in the Operator Maintenance Area, including without limitation sums expended for (collectively, "Operator Maintenance Area Costs"): the maintenance, repair and/or replacement, gardening and landscaping of the Operator Maintenance Area; the cost of public liability, business interruption, property damage and other insurance (provided that in the event the owner of the applicable Tract on which the Operator Maintenance Area is located carries such insurance and provides written proof of such insurance in such amounts reasonably acceptable to the Operator, such owner shall not be obligated to pay any additional costs related to insurance obtained by the Operator with respect to such portion of the Operator Maintenance Area); maintaining, cleaning, and replacing all sidewalks; line painting, paving, re-surfacing, and resealing and snow and ice removal in the Operator Maintenance Area; maintaining and repairing, and/or replacing all Common Utility Lines; maintaining, replacing, and/or repairing all lighting, electricity; sewer and water allocable to the Operator Maintenance Area; storm drains and/or surface water retention facilities located in the Operator Maintenance Area; sign maintenance, replacement and repair of the Center Signs (except that the Operator shall charge the users of the signs

in proportion to the relative sizes of their respective sign panels); sanitary control; removal of trash, rubbish, garbage, and other refuse from the Operator Maintenance Area; with respect to all equipment and machinery used to maintain and operate the Operator Maintenance Area, the cost thereof, if owned, or any rental paid therefore, if leased (provided that in the event that any equipment or machinery is purchased, the occupants shall not be obligated to pay any amounts in excess of the costs that would have been allocated amongst the occupants if the equipment or machinery had been leased); all items of repair, maintenance, alteration, improvement or reconstruction 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 Operator Maintenance Area; and other expenses necessary or beneficial, in the Operator's reasonable judgment, for the maintenance and operation of the Operator Maintenance Area, and/or the replacement of any improvements within the Operator Maintenance Area. Notwithstanding the foregoing, the enumeration of specific tasks herein shall not be construed to obligate Operator to perform such specific tasks.

Within thirty (30) days following the commencement of Operator's maintenance and operation of the Shopping Center, Operator shall provide the Approving Parties with an estimated budget for the balance of the current calendar year containing the information required by Section (c) below. Each Party agrees to pay its share thereof in accordance with Section (d) below. The Operator shall have the right with regard to any and all management and maintenance obligations of Operator under this DEC to contract with a Person (including entities affiliated with WinCo) for the performance and accomplishment of such of the obligations as the Operator shall deem proper. Each Party hereby grants to Operator, its agents and employees a license to enter upon its Tract to discharge the duties to operate, maintain, and repair the Operator Maintenance Area. For the purpose of this DEC, Operator Maintenance Area Costs shall not include:

- (i) any late charges or fees;
- (ii) any charge for lighting electricity to a Party that separately pays the electrical costs for lighting the Common Area on its Tract;
- (iii) any costs to clean up or repair the Common Area resulting from promotional activities or from construction, maintenance or replacement of buildings;
- (iv) real property taxes and assessments;
- (v) Operator's general corporate overhead and general administrative expenses; and
- (vi) Operator's profit, administrative and overhead costs (including but not limited to: office space, equipment and utilities; legal, accounting or administrative services; Operator's personnel who are not permanently located at the Shopping Center);
- (vii) entertainment, transportation, meals, and lodging of anyone; and
- (viii) depreciation.

In lieu of Operator's profit, administrative and overhead costs, Operator shall be permitted to charge an amount ("Administration Fee") computed by multiplying the Operator Maintenance Area Costs (exclusive of insurance premiums, fees paid to third Persons who perform all or a portion of the Operator Maintenance Area operation and management on Operator's behalf, and utility charges) by ten percent (10%). To the extent the Operator directly or indirectly contracts with a commercial property management company to administer or oversee any portion of the maintenance of the Operator Maintenance Area, Operator shall not receive an Administration Fee on the portion so contracted. If any



of Operator's personnel at the Shopping Center perform services, functions, or tasks in addition to the Operator's duties with respect to the Operator Maintenance Area, then the cost of such personnel shall be equitably allocated according to time spent performing such duties.

(c) Upon written request from an Approving Party, Operator shall, at least sixty (60) days prior to the beginning of each calendar year, prepare and submit to the Approving Parties an estimated budget ("Budget") for the Operator Maintenance Area Costs and the Administration Fee for operating and maintaining the Operator Maintenance Area of the Shopping Center for the ensuing calendar year. In the event that a Budget is prepared, the Approving Parties shall distribute the Budget to the owners of all of the Tracts. The Budget shall be in a form reasonably acceptable to the Approving Parties, and shall identify separate cost estimates for at least the categories specified under Section 4.2(b), plus:

- (i) landscaping and irrigation;
- (ii) storm drains and/or surface water retention facilities;
- (iii) parking area maintenance;
- (iv) Operator Maintenance Area sweeping and lighting;
- (v) rental or purchase of equipment and supplies;
- (vi) amortization or trade-in allowance applicable to items purchased for Operator Maintenance Area purposes; and
- (vii) Administration Fee.

If an item of maintenance or replacement is to be accomplished in phases over a period of calendar years, such as resurfacing of the drive and/or parking areas, then the Budget shall separately identify the cost attributable to such year (including the area of the Operator Maintenance Area affected), and shall note the anticipated cost and timing (indicating the area of the Operator Maintenance Area affected) of such phased work during succeeding calendar years. The cost of approved "phased" work shall be paid by the Parties. In the event the Budget is approved as provided above, the Approving Party shall provide a copy of the Budget to the other Parties upon request. Operator shall use its best efforts to operate and maintain the Operator Maintenance Area in accordance with the Budget. Notwithstanding the foregoing, Operator shall have the right to make emergency repairs to the Operator Maintenance Area to prevent injury or damage to person or property, it being understood that Operator shall nevertheless advise each Party of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the emergency action exceeds Ten Thousand Dollars (\$10,000) in Constant Dollars, then Operator may submit a supplemental billing to each Party, together with evidence supporting such payment, and each Party shall pay its share thereof within thirty (30) days.

(d) Operator Maintenance Area Costs and the Administration Fee shall, except as otherwise provided herein, be allocated in the proportion that, respectively, the land area of each Tract bears to the total land area of all Tracts then comprising the Shopping Center. Further, as provided in Section 4.2(f) below, certain costs shall be payable by the owners of the Tracts.

(e) Operator agrees to defend, indemnify and hold each Party paying it the amounts due hereunder harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities in connection therewith, including reasonable attorney's fees and court costs, arising out of the maintenance and operation by Operator of the Operator Maintenance Area, and in the event that the Tract of any such Party shall become subject to any such lien, Operator shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave

rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

(f) Except as provided for above with respect to the Operator Maintenance Area, each owner of a Tract shall, at its sole cost and expense, maintain, repair, and/or replace the Common Area on its Tract in accordance with the requirements of Section 4.2(a) above unless such task is delegated in writing to the Operator. It is recognized and acknowledged that the maintenance items related to the Operator Maintenance Area benefit all Tracts and cannot be practically segregated from or allocated to some Tracts and not others. Each owner of a Tract shall, in addition to maintaining, repairing, and/or replacing the Common Area on its Tract, pay the Operator, or if there is not an Operator, the Party which has or will be paying for same, its prorata share (based upon land area) of the Operator Maintenance Area Costs. Notwithstanding the foregoing, in the event that the Operator determines that any extraordinary, one-time expenditure in excess of \$20,000 is required with respect to any construction, installation, repair and/or maintenance on or to the Operator Maintenance Area, the Operator shall obtain the consent of the owners of the remaining Tracts, such consent not to be unreasonably withheld, conditioned or delayed, before completing such work.

(g) Each Party shall pay to the Operator quarterly payments, in arrears, in the amount of its share of the actual Operator Maintenance Area Costs and the Administrative Fee based upon the amount set forth in the billing notice provided by the Operator. Within ninety (90) days after the end of each calendar year, Operator shall provide each Party with a statement certified by an authorized Person, together with supporting invoices and other materials setting forth the actual Operator Maintenance Area Costs paid by it for the operation and maintenance of such Common Area, the Administration Fee, and such Party's share of the aggregate thereof. If the amount paid by a Party for such calendar year shall have exceeded its share, Operator shall refund the excess to such Party at the time such certified statement is delivered, or if the amount paid by a Party for such calendar year shall be less than its share, such Party shall pay the balance of its share to Operator within thirty (30) days after receipt of such certified statement.

(h) Within one hundred twenty (120) days after receipt of any such certified statement, each Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Operator Maintenance Area for the calendar year covered by such certified statement; the 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 Operator Maintenance Area Costs, the Administration Fee or in the allocation thereof to a Tract, an appropriate adjustment shall be made forthwith. The cost of any audit shall be assumed by the auditing Party unless such Party shall be entitled to a refund in excess of five percent (5%) of the amount calculated by Operator as its share for the calendar year, in which case Operator shall pay the Party's out-of-pocket costs of such audit.

(i) 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 Operator Maintenance Area, except for claims caused by the negligence or willful act or omission of a Party.

(j) Each owner of a Tract agrees to defend, indemnify, and hold harmless each other Party ("Indemnitee") 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 the maintenance, use or operation of the Common Area located on its Tract, except for claims caused by the negligence or willful act or omission of such Indemnitees.

(k) In the event a Party fails to maintain its Tract in accordance with the requirements of Section 4.2(a) (such Party being hereinafter referred to as the "Defaulting Party"), any other Party (the "Non-Defaulting" Party) and/or the Operator may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred

to as the "Deficiencies") in the Defaulting Party's performance of its obligations under Section 4.2(a) Except for an Emergency Situation, the Defaulting Party shall have ten (10) days after receipt of such notice in which to correct the Deficiencies or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said ten-day period, and thereafter to proceed diligently to complete the correction of the Deficiencies. An "Emergency Situation" is a situation which threatens access to a Tract or threatens an immediate substantial loss or damage to property or any personal injury or death to Persons. In the event a Defaulting Party shall fail or refuse to timely correct or to begin to correct the Deficiencies and proceed to diligently complete the same, as the case may be, the Non-Defaulting Party and/or the Operator may, in its option, correct the Deficiencies and take over the portion of the maintenance on the Defaulting Party's Tract which relates to the Deficiencies. In the event the Non-Defaulting Party and/or the Operator shall exercise its option, the Defaulting Party shall, within ten (10) days from receipt from the Operator, of an itemized invoice for the costs incurred by the Non-Defaulting Party and/or the Operator in correcting the Deficiencies and/or maintaining the Common Area on the Defaulting Party's Tract, pay such costs to the Non-Defaulting Party and/or the Operator, plus an administrative fee in the amount of ten percent (10%) of the costs. If the invoice is not paid within said ten-day (10) period, interest on the amount due under the invoice from the date of the invoice shall be paid by the Defaulting Party at U.S. Bank National Association's prime rate of interest (or if it no longer exists a comparable regional national bank located in Utah), plus two percent (2%) per annum until paid.

The Defaulting Party may reassume its maintenance obligations under Section 4.2(a) upon: (i) paying any and all amounts, including interest and administrative fees, then due the Non-Defaulting Party and/or the Operator; and (ii) providing the Non-Defaulting Party and/or the Operator and the Approving Party with reasonable assurance that it will maintain the Tract in accordance with the requirements of Section 4.2(a).

In the event that Operator fails to maintain the Operator Maintenance Area in accordance with the requirements of Section 4.2(b), any Party may send written notice of such failure to the Operator. Such notice shall contain an itemized statement of the Deficiencies in the Operator's performance of its obligations under Section 4.2(b) Except for an Emergency Situation, the Operator shall have thirty (30) days after receipt of such notice in which to correct the Deficiencies or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said ten-day period, and thereafter to proceed diligently to complete the correction of the Deficiencies. In the event the Operator shall fail or refuse to timely correct or to begin to correct the Deficiencies and proceed to diligently complete the same, as the case may be, the Party may, at its option, correct the Deficiencies. In the event such Party shall exercise its option, the Operator shall, within ten (10) days from receipt from the Party of an itemized invoice for the costs incurred by the Party in correcting the Deficiencies, pay such costs to the Party, plus an administrative fee in the amount of ten percent (10%) of the costs. If the invoice is not paid within said ten-day (10) period, interest on the amount due under the invoice from the date of the invoice shall be paid by the Defaulting Party at U.S. Bank National Association's prime rate of interest (or if it no longer exists a comparable regional national bank located in Utah), plus two percent (2%) per annum until paid. Notwithstanding the foregoing, the Operator shall retain the rights and obligations to maintain the Operator Maintenance Area as set forth in Section 4.2(b), but shall be responsible for paying any and all amounts, including interest and administrative fees, then due such Party.

(l) In the event any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this DEC, other than damage caused by ordinary use or wear and tear, the Party upon whose Tract such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence; provided that no Party shall be required to expend more than its deductible in excess of insurance proceeds which may be available (or which would have been available except for a Party's failure to obtain insurance coverage as required herein or for elections relating to deductibles or self-insurance for which the Party shall be responsible to contribute) for such repair or restoration. Notwithstanding the limitation set forth in the preceding sentence, the Approving Party may require another Party or the Operator to do such restoration work if the requiring Party has agreed in writing to pay the costs in excess of such sum. Except to the extent

limited by Section 5.4 hereof, in the event such damage or destruction of Common Area is caused in whole or in part by another Party or third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution or damages.

(m) Notwithstanding anything to the contrary in this DEC, within the area marked "WinCo Zone of Control" on the Site Plan, no Party shall, without the owner of the WinCo Tract's prior written consent, which may be granted or withheld in such owner's sole, absolute, and unreviewable discretion: (i) alter the location, height, or size of any building (provided that such consent shall not be required if the building meets the size and height requirements set forth in Section 3.3(e) and is located within the Building Area for such building as depicted on the Site Plan); (ii) alter the location, height, or size of any other improvement not otherwise addressed in this subsection (m); (iii) alter the location or size of any access way into or out of the Shopping Center; (iv) change the number, location, or layout of any parking spaces located outside of a Building Area; or (v) construct any additional structure, improvement, or building on the Common Area (except as set forth in (i) above).

#### 4.3. Building Improvements.

(a) After completion of construction, each Party covenants and agrees to maintain and keep the exterior portion of the building improvements, if any, located on its Tract in first-class condition and state of repair in a manner consistent with other first-class retail developments of comparable size in the city in which the Shopping Center is located, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover, and in compliance with the provisions of this DEC. Each Party further agrees to store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage, except that, in the event the Operator designates a common trash container area with respect to the Major A & B and/or the Shops C Tract(s), then each party assigned to the applicable trash container area shall be responsible for its pro rata share of the costs of maintaining such area and the disposal of the trash deposited therein.

(b) In the event any of the building improvements are damaged by fire or other casualty (whether insured or not), the Party upon whose Tract such building 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: (i) repair or restore the building improvements so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this DEC; or (ii) erect other building improvements in such location, such construction to be performed in accordance with all provisions of this DEC; or (iii) 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 in which event the area shall be Common Area until a replacement building is erected. 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. Such Party shall give notice to each other Party within ninety (90) days from the date of such casualty of which alternative it elects.

### 5. OPERATION OF THE SHOPPING CENTER

#### 5.1. Uses.

(a) Subject to the limitations set forth in Section 5.1, no part of the Shopping Center shall be used or occupied for purposes other than retail sales, Financial Retail Offices, Fast Food Restaurants, other restaurants, or chiropractic, dentist or other medical offices typically found in retail shopping centers in the area where the Shopping Center is located. The term "Financial Retail Office" shall mean an office which provides financial services directly to consumers such as banks, credit unions, title

companies, real estate brokers, tax preparation firms, escrow companies, insurance and stock brokerages.

(b) No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class retail shopping center or which otherwise causes the Shopping Center or any Tract to be in violation of the parking ratio requirements of Roy City (and, if applicable, Clinton City). 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 (1) the Occupant of the WinCo Tract from conducting its supermarket operations thereon, including a bakery, in the ordinary course of its business, provided that the Occupant of the WinCo Tract shall take measures normally taken by first-class supermarket operations and shopping centers to limit the emission of odors; or (2) the Occupant of any other Tract from conducting permitted Restaurant operations thereon in the ordinary course of its business, provided that the Occupants of such Tracts shall take measures normally taken by first-class Restaurant 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, mining operation or any industrial purposes;

(iii) any "second hand" store or "surplus" store except those such as Ross Dress For Less, Big Lots or T.J. Maxx;

(iv) any 99 Cent Store or "dollar-type" store; provided however, this prohibition shall not be applicable to Dollar Store, Dollar Tree, Family Dollar, Dollar General or comparable stores occupying less than twelve thousand (12,000) square feet of Floor Area that do not engage in retail grocery store operations except as incidental to the Occupant's primary business purpose. For the purpose of this Section (iv), retail grocery store operation shall be "incidental" if it occupies less than ten percent (10%) of the Occupant's Floor Area; provided, further, that, notwithstanding anything in this DEC to the contrary, a "99 Cents Only" store shall not be permitted on any portion of the Kornwasser Tract;

(v) 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);

(vi) 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);

(vii) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(viii) any central laundry, dry cleaning plant, or laundromat; provided, however, 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 are located; (2) the operation of on-site laundry facilities within a store which services only the internal needs of that store and do not provide laundry services to the general public; (3) a wet dry cleaning business or a dry cleaning business for drop off and pick up without a plant on a Tract; or (4) a

"green earth" type retail dry cleaning operator using DF-2000 or any similar hydrocarbon solvent used as an alternative to perchloroethylene, provided that such facilities are constructed and operated in compliance with all local, state and federal laws, codes, ordinances, requirements and regulations;

(ix) any manufactured home, automobile, truck, trailer, boat or recreational vehicles sales, leasing, renting, display, body shop, maintenance or repair operation; provided, however, that one national or regional automotive tire operation such as a Discount Tire, Goodyear, Les Schwab, Fletcher's Tire or Firestone may be located on Shops D and/or Pad B, provided that (1) all servicing of vehicles must be performed inside the facility; (2) any outdoor storage of inventory and all refuse containers must be screened from public view in a reasonable manner; and (3) no portion of the WinCo Tract or the designated parking areas on the Kornwasser Tract located directly adjacent to 3500 West Street shall be utilized for parking of customer or employee vehicles related to the operation of such facility;

(x) 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, billiard or pool halls, massage parlors or similar facilities (specifically excluding chiropractor offices which employ massage therapists, or a massage spa type use such as "Massage Envy"), teenage discotheque, discotheque, off-track betting facilities, casino, card club, bingo parlor, rides, video games (except up to five (5) electronic games per tenant space shall be allowed if incidental to any permitted use), play for fun casino games;

(xi) any living quarters, sleeping apartments, or lodging rooms;

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

(xiii) any cemetery, mortuaries, funeral homes or similar service establishments;

(xiv) any adult book or adult video stores or establishments selling or exhibiting or delivering pornographic or obscene materials or drug-related paraphernalia or any other use of a sexually-oriented or so-called "adult" nature;

(xv) any liquor stores, bars, taverns, cocktail lounges or other establishments whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds thirty per cent (30%) of the gross revenues of such business;

(xvi) any health spas, fitness centers, gyms, or workout facilities, other than facilities located on Major B, Pad A, Pad B, Pad D, Shops D or the facilities facing north on the Shops C Tract, not to exceed an aggregate of six thousand five hundred (6,500) square feet;

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

(xviii) any school, training, or educational or day care facilities, including but not limited to: beauty schools, barber colleges, nursery schools, diet centers (excluding tenants of less than 2,500 square feet such as Weight Watchers or substantially similar operations), reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business in the Shopping Center;

- (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;
- (xxi) any car washing establishment;
- (xxii) any automobile body and fender repair work;
- (xxiii) any church, synagogue, mosque or other place of worship;
- (xxiv) any hotel, motel, or other lodging facility;
- (xxv) with respect to the Major A & B and Shops C Tracts (except for any offices the entrance to which faces North), no chiropractic, dentist or other medical offices shall be permitted, and, further, no more than a total of four (4) chiropractic, dentist or other medical offices shall be permitted on the remainder of the Kornwasser Tract, not to exceed an aggregate of eight thousand (8,000) square feet for the entire Kornwasser Tract; or
- (xxvi) except as otherwise provided for Section 5.1(c)(ii), any drive through facilities or Fast Food Restaurants.

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

(i) No part of the Shopping Center shall be used or occupied as a Business Office. PROVIDED, HOWEVER, this prohibition shall not be applicable to Business Offices located within a building which only services the internal needs of that store and does not provide business office services to the general public. The term "Business Office" shall mean an office other than a Financial Retail Office and other than a chiropractic, dentist or other medical office typically found in retail shopping centers in the area where the Shopping Center is located.

(ii) No Fast Food Restaurant shall be located on any Tract in the Kornwasser Tract until and unless the Approving Parties approve in writing the design and location of the drive through facilities of any such Fast Food Restaurant, and the location of its building footprint; provided, however, the approval of the Approving Party for the WinCo Tract of a Fast Food Restaurant and/or drive through facility located in the Building Area on Pad A, Pad B, Pad D or Shops D shall not be required as long as the design of any drive through facility meets the parking requirements set forth in this DEC and the vehicular stacking requirements of Roy City (and, if applicable, Clinton City). Any owner that desires to construct and/or operate a Fast Food Restaurant or drive through facility on its Tract shall submit its proposed design and location to the Approving Parties; provided that the Approving Parties' approval shall not be required except as otherwise set forth in this DEC. Further, any Fast Food Restaurant or drive through facility shall be constructed entirely with the Building Area for its respective Tract. For purposes of this DEC, the term "Fast Food Restaurant(s)" shall mean a restaurant whose marketing strategy is based on preparing and dispensing food orders in a limited period of time and shall include restaurants with drive through facilities. "Fast Food Restaurant" does not include (i) any restaurant or food service which offers as the primary method of service for orders to be taken and served by a waitperson at the customer's table, or whose primary method of service is for customers to serve themselves at a buffet line, and (ii) any restaurant or food service of less than 2,850 square feet. For purposes of this Section 5.1(c)(ii), the consent of the Approving Parties shall be deemed given if the requesting owner does not receive a written objection to the proposed Fast Food Restaurant or drive through facility within ten (10) days of the date on which the requesting owner mails a copy of the proposed design and location referenced above to the Approving Parties via certified mail.

(d) Until such time as WinCo constructs and operates a supermarket on the WinCo Tract, and thereafter, for so long as the WinCo Tract is being used or has during any portion of the immediately preceding twelve (12) months been so used as a retail grocery operation, no portion of the Shopping Center, other than the WinCo Tract, 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, including without limitation, a convenience store such as a Trader Joe's, Walmart, Safeway, Tesco or a substantially similar convenience or grocery store). This restriction shall not be deemed to prohibit incidental grocery sales in a CVS, Walgreen's or substantially similar pharmacy. This restriction may be waived or modified solely by the owner of the WinCo Tract in writing by an instrument recorded in the real property records of the county in which the Shopping Center is located. The twelve (12) month period referred to in this section 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 Tract so long as the owner or Occupant of the WinCo Tract diligently proceeds with such repair and restoration of such building reasonably calculated to permit resumption for such use.

(e) No merchandise, equipment or services, including but not limited to vending machines, 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 Tract; (iii) temporary Shopping Center promotions, except that no promotional activities will be allowed in the Common Area on the Kornwasser Tract without the prior written approval of the Approving Parties which may be withheld in their sole, absolute, and unreviewable discretion; or (iv) newspaper distribution stands, ATM machines, payphones, water dispensing machines, internet kiosks, up to two (2) vending machines per building, and similar public service items. In addition, if a recycling center or equipment is required by law to be located in the Shopping Center, the location thereof shall be subject to the approval of the Approving Parties. Notwithstanding the foregoing, the Occupant of the WinCo Tract and national retailers that are Occupants of greater than 5,000 square feet of Floor Area on the Kornwasser Tract 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 occupied by such Occupant, 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 subject to the following restrictions:

- (1) sales shall be limited to not more than ninety (90) days per calendar year;
- (2) the sales area shall be limited to sidewalks immediately adjacent to buildings, and shall in no event take place in any parking area, driveway or drive aisle;
- (3) all booths, stands, displays and other structures erected in connection therewith shall be promptly removed by said Occupant upon termination of said activities;
- (4) the Occupant 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. 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; and

- (5) such 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, the employees of the Occupants of a Tract shall park their vehicles only on such Tract and only in the parking spaces on such Tract.

(h) 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 Tract.

#### 5.2. Lighting.

(a) After completion of the Common Area lighting system on its Tract, each Party hereby covenants and agrees to keep any exterior building security lights on from dusk until dawn. 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 Tract to incidentally shine on the adjoining Tract.

(b) It is recognized that the Occupant of the WinCo Tract may be open for business at different hours than the Occupants of the other Tracts, and that the Occupant of the WinCo Tract may wish to have the Common Area lights located on all or a portion of the other Tracts and the WinCo Tract illuminated before and/or after the period required in Section (a) above. Notwithstanding anything to the contrary in this DEC, the owner of the WinCo Tract may require that the Common Area lights located on the WinCo Tract and the other Tracts, as well as all entryway lights, be installed or modified so that the owner of the WinCo Tract controls the Common Area lights located on said Tracts and all entryways and may cause these Common Area lights to be operated before and/or after the period required in Section (a) above. The owner of the WinCo Tract shall be initially responsible for the payment of utility and maintenance charges incurred for the operation of the Common Area lighting on said Tracts. The owners of the other Tracts shall, however, reimburse the owner of the WinCo Tract for that portion of utility and maintenance charges attributable to operating and maintaining the Common Area lights located on the other Tracts during the period required in Section (a) above (or during any period a business on said Tracts is open for business beyond the period required in Section (a) above) and shall promptly pay the same upon receipt of an invoice from the owner of the WinCo Tract for the same.

#### 5.3. Occupant Signs.

(a) No freestanding sign shall be permitted within the Shopping Center unless constructed in areas designated on and in accordance with the provisions of the Signage Plan attached hereto as Exhibit C (the "Signage Plan"), and only one such sign may be located in each designated area. The Signage Plan provides for the freestanding signs at the Shopping Center to be utilized as follows:

(i) The Occupant of the WinCo Tract shall be entitled to the top designation and the use of 44.58% of the two (2) pylon signs in the locations shown on the Signage Plan (the "Center Signs"), subject to the approval of the applicable government authority.

(ii) The design and construction of, and the panel inserts on, the Center Signs shall be subject to the design and construction guidelines for the Center Signs depicted on the Signage Plan. In the event that any Party desires to relocate any Center Sign or add an additional Center Sign, such Party must obtain the approval of the Approving Parties, such approval to be in the Approving Parties' sole, absolute and unreviewable discretion.

(iii) Subject to the approval of the applicable governmental authority, the owners of the other Tracts may erect monument signs on their Tracts at the three (3) locations as shown on the Signage Plan and subject to the guidelines set forth on the Signage Plan (the "Kornwasser Tract Monument Signs"). The design and construction of, and the pylon inserts on, each Kornwasser Tract Monument Sign, shall conform to the provisions set forth in the Signage Plan, and each monument sign shall be no more than eight (8) feet in height above the ground level, and shall have a total sign panel of no more than forty (40) square feet. In the event that any Party desires to relocate any such monument sign or add an additional monument sign, such Party must obtain the approval of the Approving Parties, such approval to be in the Approving Parties' sole, absolute and unreviewable discretion.

This section shall not be interpreted to restrict the Occupant of the WinCo Tract from erecting a flag pole(s) at a location reasonably determined by such Occupant and displaying thereon only the United States flag or the State of Utah flag, provided that the same is permitted by local ordinances and regulations, and provided further that the said Occupant exercises proper care in the maintenance and display of said flag(s) and flag pole.

(b) 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 (8) feet 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 or cardboard 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 or professional promotional materials of national retail tenants.

Notwithstanding the above, the Occupant of the WinCo Tract, during such time as it is operating a supermarket thereon, may also display professionally prepared temporary signs and banners for in-store promotions.

Unless approved by the Approving Parties, and further subject to any necessary governmental approvals, no Occupant of less than ten thousand (10,000) square feet of Floor Area on the Kornwasser Tract 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 Tract directional signs or informational signs such as "Handicapped Parking", the temporary display of leasing information and the temporary erection of one sign identifying each contractor working on a construction job.

#### 5.4. Insurance.

(a) Each Party (as to its Tract 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 Dollars (\$5,000,000.00) in Constant Dollars for bodily or personal injury or death, and for property damage, arising out of any one occurrence; the other Parties shall be "additional insureds" under such policy.

Each Party ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Party ("Indemnitee") 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 Tract owned by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitees, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof.

(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 in Constant Dollars set forth below:

- (i) Workers' Compensation - statutory limits
- (ii) Employers' Liability - \$500,000
- (iii) Comprehensive General/Commercial General Liability and Business Auto Liability as follows:
  - (1) Bodily Injury - \$1,000,000 per occurrence
  - (2) Property Damage - \$1,000,000 per occurrence
  - (3) Independent Contractors Liability; same coverage as set forth in (1) and (2) above;
  - (4) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work;
  - (5) "XCU" Hazard Endorsement, if applicable;
  - (6) "Broad Form" Property Damage Endorsement;
  - (7) "Personal Injury" Endorsements; and

**(8) "Blanket Contractual Liability" Endorsement.**

If the construction activity involves the use of another Party's Tract, then the owner of such Tract 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 Tract until either the required insurance is reinstated or replacement insurance obtained.

(c) Effective upon the commencement of construction of any building on its Tract and so long as such building exists, a Party shall carry, or cause to be carried, casualty insurance with "extended" or "all-risk" coverage, in the amount of one hundred percent (100%) of full replacement cost thereof (excluding footings, foundations or excavations).

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 Tract, 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 foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. Each Party ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless each other Party ("Indemnitee") from and against all claims asserted by or through any Permittees of the Indemnitor's Tract for any loss or damage to the property of such Permittee located upon the Indemnitor's Tract, 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 Indemnitee which may have contributed to or caused such loss.

(d) 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 this location; (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 general policy aggregate of less than \$20,000,000 in Constant Dollars, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$20,000,000 in Constant Dollars; (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 foregoing 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 in Constant Dollars 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, a certificate(s) of insurance evidencing that the insurance required to be carried by such Person is in full force and effect.

The insurance required pursuant to Sections 5.4(a) and (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, provided, however, the coverage limits of such insurance shall in no event limit the indemnity obligations of any Party hereunder.

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 Tract, 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 Tract 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 owing, together with all interest, penalties and costs thereon.

5.6. Liens. In the event any mechanic's lien is filed against the Tract 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 fifteen (15) days after the entry of a final judgment (after all appeals) for the foreclosure of such lien and further agrees to indemnify, defend, and hold harmless the other Party and its Tract against liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. Upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent a 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. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien.

## 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 in violation of applicable laws. 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 jurisdiction thereof. 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 Tract shall immediately notify the other Parties in writing of the following with respect to such Party's Tract: (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 Tract(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 Tract 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 and 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 Tract if such Party or Occupant has received the Approving Parties' prior consent to the same. The Approving Parties shall not unreasonably withhold their consent provided: (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. MISCELLANEOUS.

### 7.1. Default.

(a) The occurrence of any one or more of the following events shall constitute a material default and breach of this DEC by the non-performing Party (the "Defaulting Party"):

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

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

(b) With respect to any default under Section (a) above, 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, 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 that threatens a Tract or threatens an immediate substantial loss or damage to property or any personal injury or death to Persons. To effectuate any such cure, any such Non-Defaulting Party shall have the right to enter upon the Tract 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 any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the 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.

(c) Costs and expenses accruing and/or assessed pursuant to Section 7.1(b) above, including attorney's fees reasonably related to enforcing this DEC or reasonably related to Non-Defaulting Party's cure of another Party's default, shall constitute a lien against the Defaulting Party's Tract. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of the county of the state in which the Shopping Center is located, by the Party making the claim. The claim of lien shall include the following:

- (i) The name of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a curing Party;
- (iii) An identification of the owner or reputed owner of the Tract or interest therein or portion thereof against which the lien is claimed;
- (iv) A description of the Tract (or portion thereof) against which the lien is claimed;
- (v) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and
- (vi) 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 7.4 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 the state in which the Shopping Center is located.

(d) 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 of any default under any provision of this DEC shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this DEC.

(e) 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.

7.2. 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 or national bank located in Utah).

7.3. Estoppel Certificate.

Each Party 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 Operator Maintenance Area Costs for any year it is entitled to do so, or challenge acts committed by other Parties for which approval by an Approving Party was required but not sought or obtained.

7.4. 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 transmission, so long as the original notice is also forwarded by the method described in (a), (b), or (c). the initial address for notices are as follows:

TO WINCO: WinCo Foods, LLC  
ATTN: Morgan Randis  
650 N. Armstrong Place  
Boise, ID 83704  
Telephone: (208) 377-0110  
Fax: (208) 672-2146

With a copy at the same address to: Tammy Zokan  
E-mail: tammy.zokan@wincofoods.com

WITH A COPY TO: Kelly T. Barbour  
Holland & Hart LLP  
P.O. Box 2527  
Boise, ID 83701-2527  
Telephone: (208) 342-5000  
Fax: (208) 343-8869

IF TO KORNWASSER: Homestead Pavilion, LLC  
ATTN: Steven Usdan  
145 South Fairfax Avenue, Suite 401  
Los Angeles, CA 90036  
Telephone: (323) 965-1510  
Fax: (323) 965-1520

WITH A COPY TO: Kornwasser Shopping Center Properties, LLC  
ATTN: Gordon Keig  
2720 E. Camelback, Suite 275  
Phoenix, AZ 85016  
Telephone: (602) 889-2070  
Fax: (602) 889-2071

In addition, upon any Party's written request, duplicate notices shall be sent to the Occupant(s) of the Tract(s).

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 Person shall have the right to change its address to any other address within the United States of America.

7.5. Approval Rights.

(a) Except as expressly set forth otherwise in this DEC, 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; and 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) Unless provision is made for a specific time period, each response to a request for an approval or consent shall be given by the Person 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. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval.

7.6. 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.

7.7. 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.

7.8. Construction and Interpretation.

(a) This DEC, together with the Recitals and the Exhibits hereto, which are incorporated herein by this reference, 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 are superseded in total by this DEC and Exhibits hereto. 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) Invalidation of any of the provisions contained in this DEC, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

(e) This DEC may be amended by, and only by, a written agreement signed by the then-current Approving 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 Tract without the consent of such party. The waiver of a use restriction by an Approving Party shall not require the consent of any other Owner and shall not be deemed an impairment. No consent to the amendment of this DEC shall ever be required of any Occupant or Person other than the Parties. To the extent the Parties' consent to an amendment of this DEC is required, each Party may, in a timely fashion, consider, approve or disapprove any such proposed amendment to this DEC in its sole, absolute, and unreviewable discretion without regard to reasonableness.

(f) 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.

7.9. Negation of Partnership. 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.

7.10. 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 Tract 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.

7.11. Excusable Delays. Whenever performance is required of any Person 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.

7.12. Mitigation of Damages. In all situations arising out of this DEC, all Parties shall attempt 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.

7.13. DEC Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this DEC shall: (a) entitle any Party to cancel, rescind, or otherwise terminate this DEC; or (b) 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. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

7.14. Time. Time is of the essence of this DEC.

7.15. No 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.

7.16. Limitation of Liability.

(a) 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 (as defined in Section 7.1) any Non-Defaulting Party (as defined in Section 7.1) 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 Non-Defaulting Party; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Party:

(i) 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

(ii) 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. TERM

8.1. 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 January 31, 2075; provided, however, that the easements referred to in Article 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 mentioned above, 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.



**KORNWASSER:**

**HOMESTEAD PAVILION, LLC,  
a Delaware limited liability company**

**By: Homestead Pavilion Managing  
Member, LLC, a Delaware limited  
liability company**

By: *[Signature]*  
Name: \_\_\_\_\_  
Title: Vice President

STATE OF California )  
County of Los Angeles ) ss.

On this 7 day of November, 2008, before me, a Notary Public, personally appeared \_\_\_\_\_, known or proved to me to be the \_\_\_\_\_ of HOMESTEAD PAVILION, LLC, a Delaware limited liability company, the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said corporation.

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

\_\_\_\_\_  
Notary Public  
Residing at \_\_\_\_\_  
Comm. Expires \_\_\_\_\_

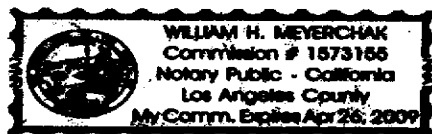
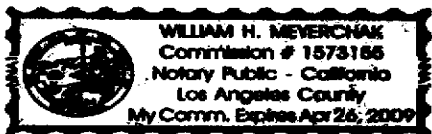
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Los Angeles

On Nov. 7, 2008 before me, William H. Meyerchak, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Steven Usdan  
Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) 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(s) on the instrument the person(s), or the entity 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]  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Declaration of Easements and Conditions

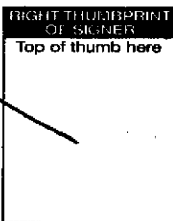
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

**EXHIBITS**

<b>EXHIBIT A-1</b>	<b>Legal Description of WinCo Tract</b>
<b>EXHIBIT A-2</b>	<b>Legal Description of Kornwasser Tract</b>
<b>EXHIBIT B</b>	<b>Site Plan</b>
<b>EXHIBIT C</b>	<b>Signage Plan</b>



**EXHIBIT A-1****LEGAL DESCRIPTION OF WINCO TRACT**

ALL THAT LAND LOCATED IN WEBER COUNTY AND DAVIS COUNTY, UTAH, BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF 3500 WEST (ROY CITY), STREET, SAID POINT BEING S89°43'33"E ALONG THE QUARTER SECTION LINE 33.00 FEET AND S00°20'59"W 390.47 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE S89°39'01"E 218.48 FEET; THENCE N00°16'27"E 175.55 FEET; THENCE S89°39'01"E 47.38 FEET; THENCE N00°16'27"E 122.80 FEET; THENCE S89°39'01"E 139.52 FEET; THENCE S00°16'27"W 32.13 FEET; THENCE S89°39'01"E 138.86 FEET; THENCE S00°16'27"W 142.75 FEET; THENCE S89°35'08"E 206.17 FEET; THENCE N00°24'59"E 235.23 FEET, TO THE SOUTH LINE OF 6000 SOUTH STREET; THENCE S89°43'33"E ALONG SAID SOUTH LINE 190.37 FEET, TO THE WEST LINE OF THE ROY 10TH & 30TH WARD SUBDIVISION RECORDED MARCH 1, 2000 AS ENTRY NO. 1692487, IN BOOK 51, AT PAGE 63, WEBER COUNTY RECORDER OFFICIAL RECORDS; THENCE ALONG SAID LINE AND THE EXTENSION THEREOF S00°16'27"W 581.03 FEET TO THE SOUTH LINE OF WEBER COUNTY AS ESTABLISHED IN THE DECLARATION OF COUNTY LINE COMMON TO WEBER COUNTY AND DAVIS COUNTY, UTAH, AND SHOWN ON RECORD OF SURVEY NO. 2993, RECORDED AS ENTRY NO. 1885948, BOOK 56, PAGES 88-92, WEBER COUNTY RECORDER OFFICIAL RECORDS; THENCE ALONG SAID LINE N89°35'08"W 941.67 FEET TO THE EAST LINE OF 3500 WEST STREET; THENCE ALONG SAID EAST LINE N00°20'59"E 221.25 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

BEGINNING AT A POINT ON THE NORTH LINE OF DAVIS COUNTY AS ESTABLISHED IN THE DECLARATION OF COUNTY LINE COMMON TO WEBER COUNTY AND DAVIS COUNTY, UTAH, AND SHOWN ON RECORD OF SURVEY NO. 2993, RECORDED AS ENTRY NO. 1885948, BOOK 56, PAGES 88-92, WEBER COUNTY RECORDER OFFICIAL RECORDS, SAID POINT BEING S89°43'33"E ALONG THE QUARTER SECTION LINE 33.00 FEET AND S00°20'59"W 611.72 FEET, TO SAID COUNTY LINE, AND S89°35'08"E ALONG SAID LINE 266.95 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE CONTINUING ALONG SAID COUNTY LINE S89°35'08"E 266.12 FEET; THENCE S00°20'59"W 102.94 FEET; THENCE N89°39'01"W 60.62 FEET; THENCE N00°20'59"E 43.92 FEET; THENCE N89°39'01"W 205.50 FEET; THENCE N00°20'59"E 59.32 FEET, TO THE POINT OF BEGINNING

TOGETHER WITH:

BEGINNING AT A POINT ON THE NORTH LINE OF DAVIS COUNTY AS ESTABLISHED IN THE DECLARATION OF COUNTY LINE COMMON TO WEBER COUNTY AND DAVIS COUNTY, UTAH, AND SHOWN ON RECORD OF SURVEY NO. 2993, RECORDED AS ENTRY NO. 1885948, BOOK 56, PAGES 88-92, WEBER COUNTY RECORDER OFFICIAL RECORDS, SAID POINT BEING S89°43'33"E ALONG THE QUARTER SECTION LINE 33.00 FEET AND S00°20'59"W 611.72 FEET, TO SAID COUNTY LINE, AND S89°35'08"E ALONG SAID LINE 794.57 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE CONTINUING ALONG SAID COUNTY LINE S89°35'08"E 147.10 FEET, TO A POINT AT THE EXTENSION OF THE WEST LINE OF THE ROY 10TH & 30TH WARD SUBDIVISION RECORDED MARCH 1, 2000 AS ENTRY NO. 1692487, IN BOOK 51, AT PAGE 63, WEBER COUNTY RECORDER OFFICIAL RECORDS; THENCE ALONG SAID EXTENSION LINE S00°16'27"W 333.93 FEET; THENCE N89°39'01"W 147.54 FEET; THENCE N00°20'59"E 334.10 FEET, TO THE POINT OF BEGINNING.

CONTAINS 10.49 ACRES MORE OR LESS.

EXHIBIT A - 2KORNWASSER TRACT

ALL THAT LAND LOCATED IN WEBER COUNTY AND DAVIS COUNTY, UTAH, BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF 6000 SOUTH STREET AND THE EAST LINE OF 3500 WEST (ROY CITY), STREET, SAID POINT BEING S89°43'33"E ALONG THE QUARTER SECTION LINE 33.00 FEET AND S00°20'59"W 33.00 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE ALONG SAID SOUTH LINE S89°43'33"E 19.82 FEET; THENCE S00°20'58"W 15.02 FEET; THENCE N59°17'18"E 29.18 FEET, TO THE SOUTH LINE OF 6000 SOUTH STREET; THENCE S89°43'33"E ALONG SAID SOUTH LINE 705.71 FEET; THENCE S00°24'59"W 235.23 FEET; THENCE N89°35'08"W 206.17 FEET; THENCE N00°16'27"E 142.75 FEET; THENCE N89°39'01"W 138.86 FEET; THENCE N00°16'27"E 32.13 FEET; THENCE N89°39'01"W 139.52 FEET; THENCE S00°16'27"W 122.80 FEET; THENCE N89°39'01"W 47.38 FEET; THENCE S00°16'27"W 175.55 FEET; THENCE N89°39'01"W 218.48 FEET, TO THE EAST LINE OF 3500 WEST STREET; THENCE ALONG SAID EAST LINE N00°20'59"E 357.47 FEET, TO THE POINT OF BEGINNING.

TOGETHER WITH:

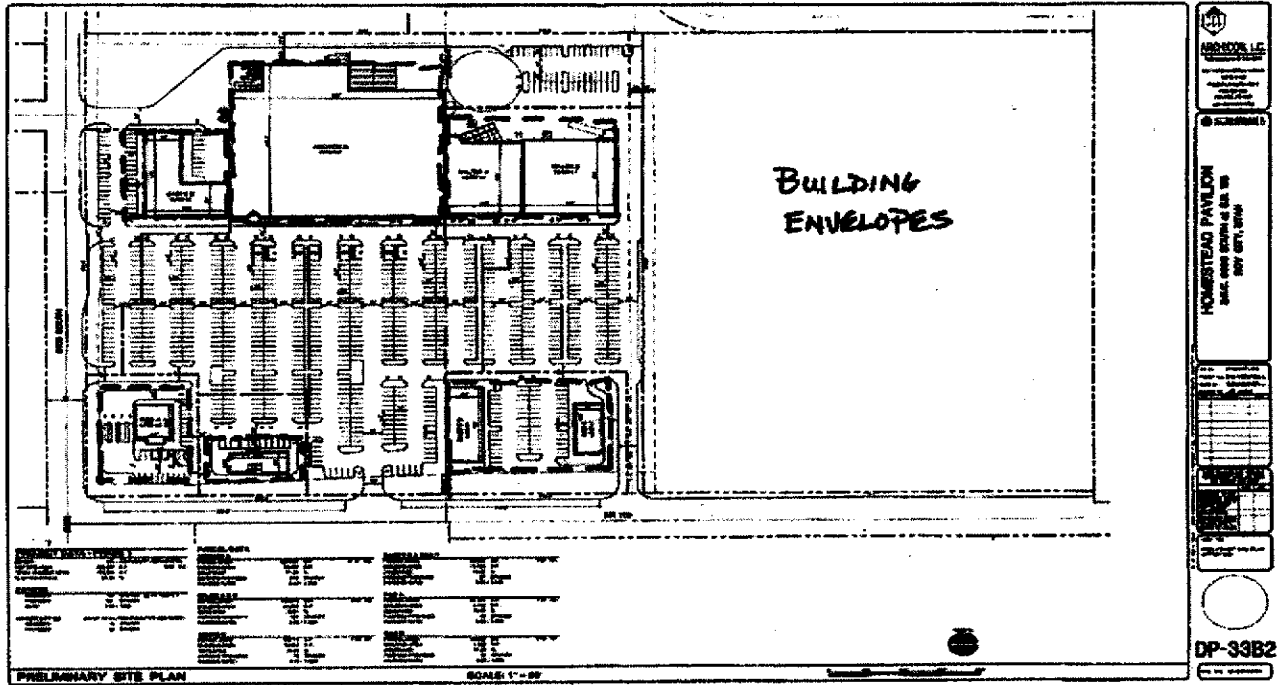
BEGINNING AT A POINT ON THE NORTH LINE OF DAVIS COUNTY AS ESTABLISHED IN THE DECLARATION OF COUNTY LINE COMMON TO WEBER COUNTY AND DAVIS COUNTY, UTAH, AND SHOWN ON RECORD OF SURVEY NO. 2993, RECORDED AS ENTRY NO. 1885948, BOOK 56, PAGES 88-92, WEBER COUNTY RECORDER OFFICIAL RECORDS, AND THE EAST LINE OF SR-108 (2000 WEST STREET), SAID POINT BEING S89°43'33"E ALONG THE QUARTER SECTION LINE 33.00 FEET AND S00°20'59"W 611.72 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE ALONG SAID COUNTY LINE S89°35'08"E 266.95 FEET; THENCE S00°20'59"W 59.32 FEET; THENCE S89°39'01"E 205.50 FEET; THENCE S00°20'59"W 43.92 FEET; THENCE S89°39'01"E 60.62 FEET; THENCE N00°20'59"E 102.94 FEET, TO SAID COUNTY LINE; THENCE ALONG SAID LINE S89°35'08"E 261.50 FEET; THENCE S00°20'59"W 334.10 FEET; THENCE N89°39'01"W 794.57 FEET, TO THE EAST LINE OF SR-108 (2000 WEST STREET); THENCE ALONG SAID EAST LINE N00°20'59"E 334.99 FEET TO THE POINT OF BEGINNING

CONTAINS 9.26 ACRES MORE OR LESS.

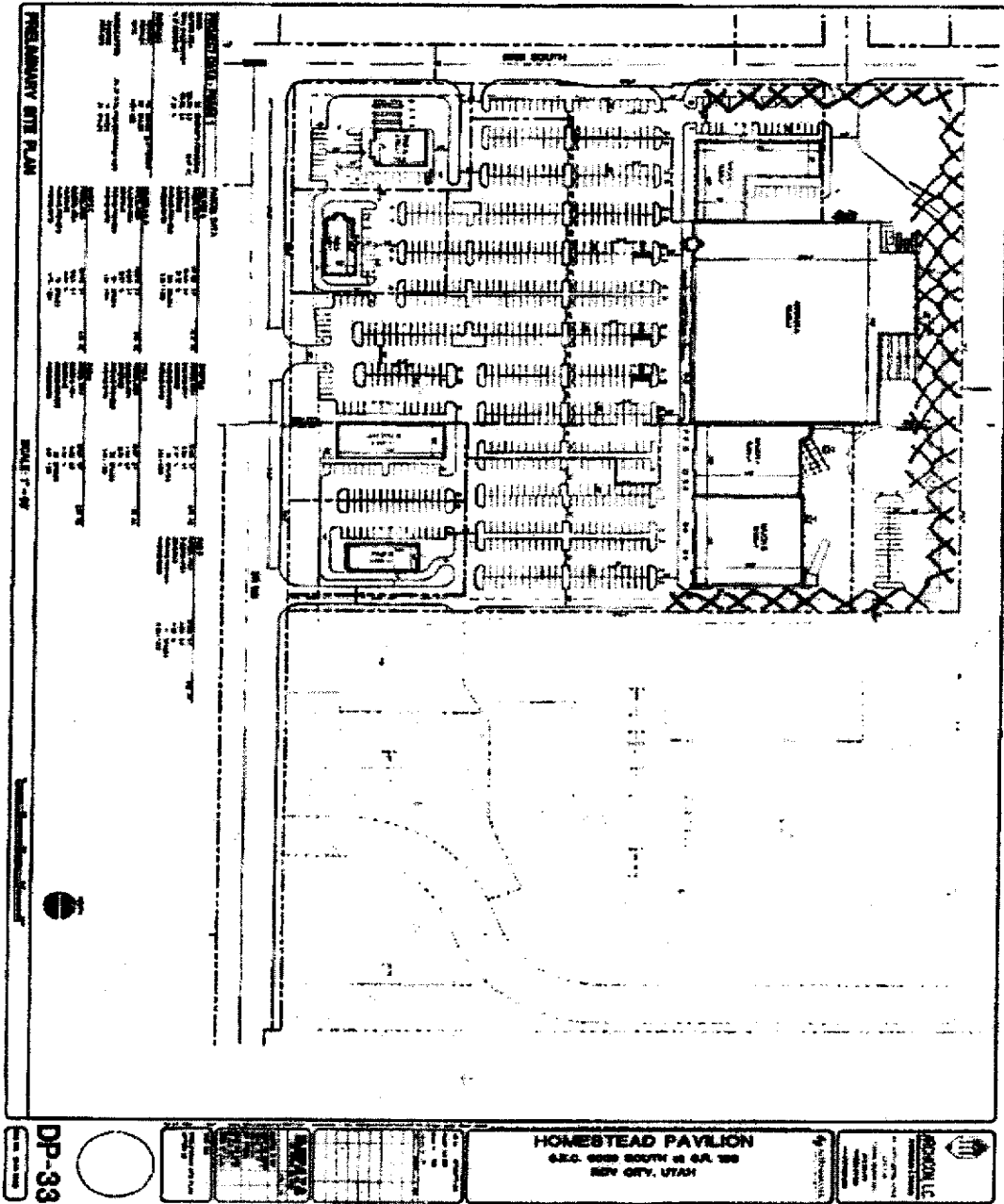
**EXHIBIT B**

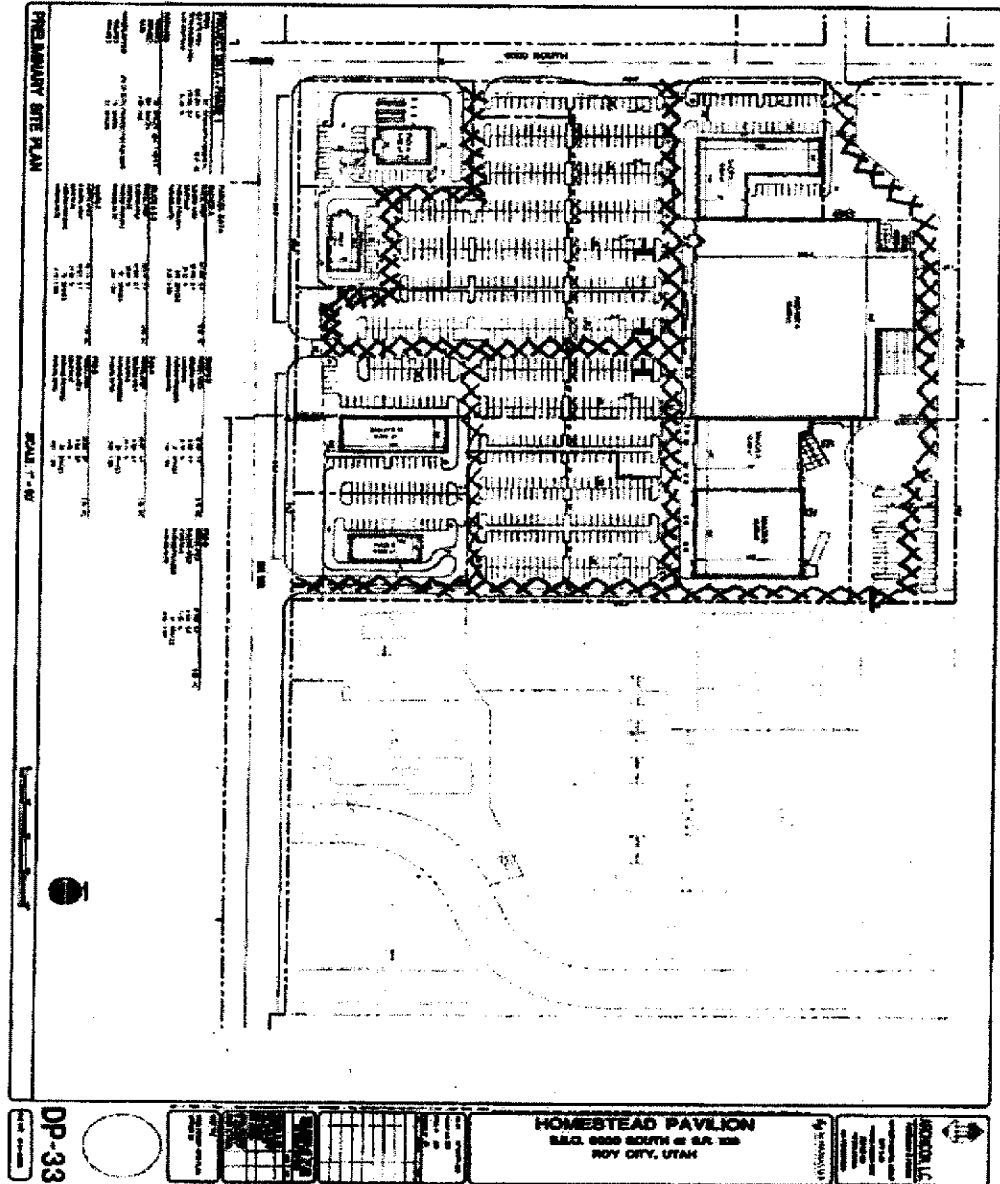
**SITE PLAN**


(see attached)









 = Common Drive Aisles

**DP-33**

**HOMESTEAD PAVILION**  
S.E.C. 0000 SOUTH of S.R. 100  
HOY CITY, UTAH

**GENERAL NOTES**

1. See General Notes on Sheet DP-32.
2. See General Notes on Sheet DP-34.
3. See General Notes on Sheet DP-35.
4. See General Notes on Sheet DP-36.
5. See General Notes on Sheet DP-37.
6. See General Notes on Sheet DP-38.
7. See General Notes on Sheet DP-39.
8. See General Notes on Sheet DP-40.
9. See General Notes on Sheet DP-41.
10. See General Notes on Sheet DP-42.
11. See General Notes on Sheet DP-43.
12. See General Notes on Sheet DP-44.
13. See General Notes on Sheet DP-45.
14. See General Notes on Sheet DP-46.
15. See General Notes on Sheet DP-47.
16. See General Notes on Sheet DP-48.
17. See General Notes on Sheet DP-49.
18. See General Notes on Sheet DP-50.

**EXHIBIT C**  
**SIGNAGE PLAN**  
**(see attached)**







**Mfg. & Install (3) 8'-0" O.A.H. Monument Displays**  
 Scale: 1/2" = 1'-0"  
 Mfg. & Install. Fabricated Monument Display. Monument to be internally illuminated w/ 6000mK Fluorescent Lamps (4) 6" Lamps on (1) 1224-24 DIMMS.  
 Total of 2.7 sqms  
 Front Panel Cabinet to have frosted face w/etch-thru Copy (incl. of 3" Post-It) Panels painted to match existing CMU



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 or share it with  
 your network

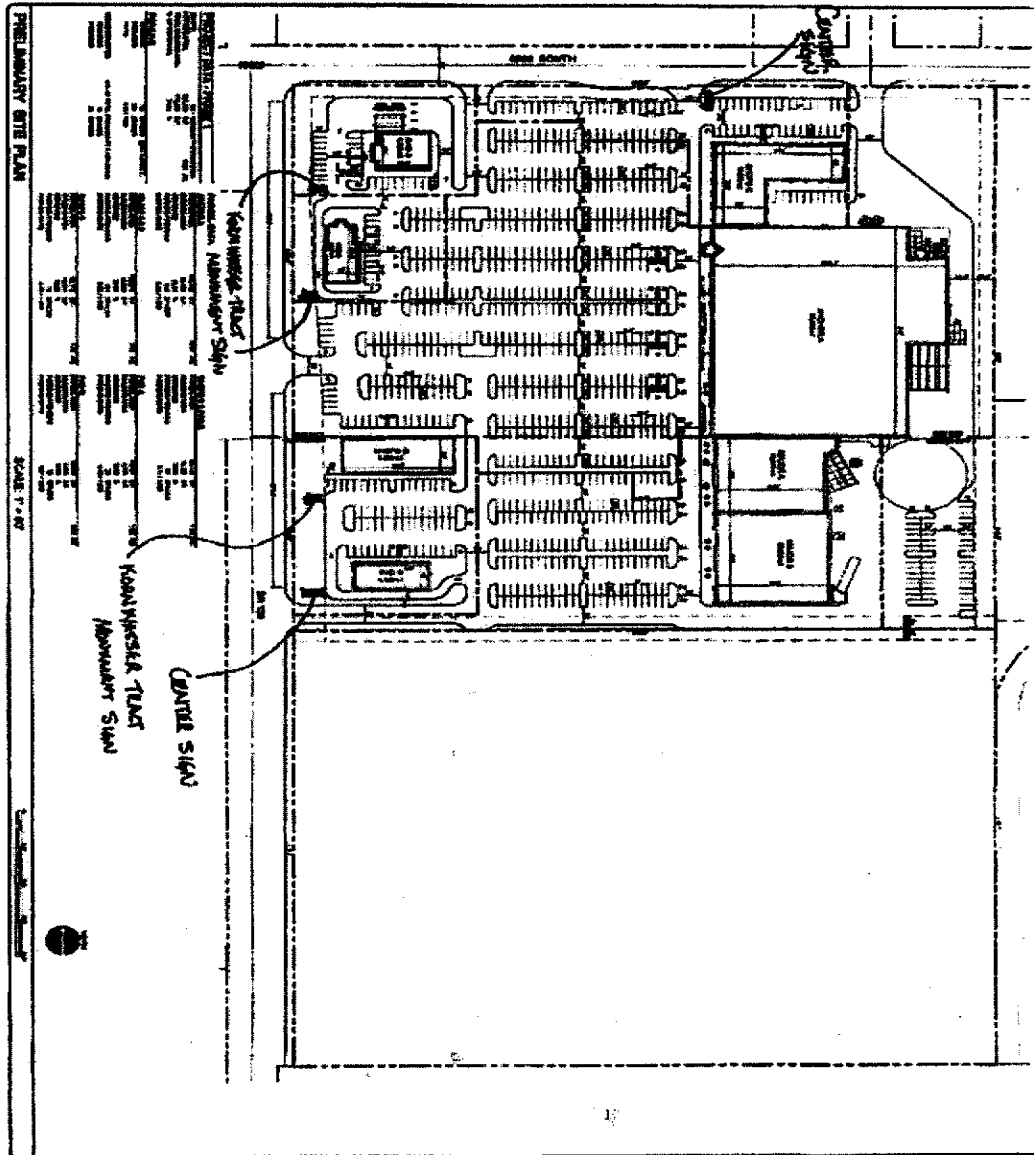
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10.24.2008  
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S.E.C.  
 6800 South  
 S.R. 198  
 Chula, UT  
 84007





**DP-3382**

**HOMESTEAD PAVILION**  
 SEC. 0800 SOUTH 44 EBL. 08  
 MOY CITY, UTAH

**ARCHITECTURAL**