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After Recording Return To:

WinCo Foods, LLC  
Attn: Tammy Zokan  
650 N. Armstrong Place  
Boise, ID 83704

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WEBER COUNTY, UT

**DECLARATION OF EASEMENTS AND CONDITIONS**

**BETWEEN**

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

**AND**

**WRIGHT DEVELOPMENT GROUP, INC.**  
a Utah corporation.

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**DECLARATION OF EASEMENTS AND CONDITIONS**

THIS DECLARATION OF EASEMENTS AND CONDITIONS ("DEC") is made as of the \_\_\_\_ day of September, 2009, by and between WINCO FOODS, LLC, a Delaware limited liability company ("WinCo") and WRIGHT DEVELOPMENT GROUP, INC., a Utah corporation ("Wright Development").

**RECITALS**

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

A. WinCo is or will be the owner of a certain parcel of land in Ogden, Utah more particularly described on Exhibit A, attached hereto (the "WinCo Parcel").

B. Wright Development is or will be the owner of certain parcels of land in Ogden, Utah, more particularly described on Exhibit A-1, attached hereto (collectively, the "Wright Development Parcel") and together with the WinCo Parcel, the "Shopping Center").

C. The Shopping Center will consist of six (6) contiguous Parcels identified on the site plan attached hereto as Exhibit B (the "Site Plan"). WinCo owns or will own the parcel identified on the Site Plan as Parcel 1 and Wright Development owns or will own the parcels identified on the Site Plan as Parcel 2 and Parcel 3.

D. WinCo and Wright Development 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 Wright Development hereby grant certain reciprocal easements into, over, and across certain portions of the Shopping Center and impose certain conditions and restrictions thereon.

**DECLARATION**

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

**1. DEFINITIONS.**

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

1.2. "Administration Fee" shall have the meaning set forth in Section 4.3(c).

1.3. "Approving Parties" shall mean and refer to the owner of the WinCo Parcel and the owner of greater than fifty percent (50%) of the gross square footage of the Wright Development Parcel. The Parties intend that there shall be only two (2) Approving Parties for the purposes of this DEC, consisting of only one Approving Party representing the WinCo Parcel and only one Approving Party representing the Wright Development Parcel. In the event no single Party owns greater than fifty (50%) of the gross square footage of the Wright Development Parcel, the owner of the WinCo Parcel shall be the sole Approving Party. The Approving Parties, or their successors or assigns, designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this DEC, shall, unless otherwise provided herein, have the sole, absolute, and unreviewable discretion to make the decisions and/or give the approvals expressly designated in this DEC to be made and/or given by the Approving Parties.

1.4. "Architectural Features" shall mean any gable, tower, pilaster, or other design element appurtenant to any Building on a Parcel.

1.5. "Budget" shall have the meaning set forth in Section 4.3(c).

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

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

1.8. "Business Office" shall mean any office other than a Financial Retail Office (as defined in Section 1.20 below) or a Health Service Office (as defined in Section 1.24 below).

1.9. "Center Signs" shall mean the two (2) pylon signs located at the northwest entrance to the Shopping Center from the public right-of-way known as 12th Street and at the southeast entrance to the Shopping Center from the public right-of-way known as Wall Avenue (the "Pylon Signs") and the two (2) center identification monument signs located at the entrances to the Shopping Center from 12th Street and Wall Avenue, as more particularly depicted on the Site Plan attached hereto.

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

1.11. "Common Area Maintenance Costs" shall have the meaning set forth in Section 4.3(a).

1.12. "Communications Equipment" shall mean satellite and microwave dishes, antennas, and laser heads, together with associated equipment and cable.

1.13. "Constant Dollars" means the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth (6<sup>th</sup>) 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, for the West Region, published by the United States Department of Commerce (base year 1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Party 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.

1.14. "Constructing Party" shall have the meaning set forth in Section 2.3(b).

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

1.16. "Defaulting Party" shall have the meaning set forth in Section 7.1.

1.17. "Emergency Situation" shall mean a situation which threatens access to a Parcel or threatens an immediate substantial loss or damage to property or any personal injury or death to Persons.

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

1.19. "Fast Food Restaurant" shall mean "quick serve" restaurants whose marketing strategy is based on preparing and dispensing food orders in a limited period of time. Without limiting the foregoing and for illustrative purposes only, Fast Food Restaurants include the following: Burger King, Wendy's, Carl's Jr., Taco Bell, Taco Time, Blimpie, Hardy's, McDonalds, Jack in the Box, Arby's, Subway, Baskin Robbins, Quizno's, Café Rio, Rumbi Grill and TCBY. Also, without limiting the foregoing, Fast Food Restaurant(s) do not include Restaurants (as defined in Section 1.40 below) or food service establishments which offer, 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.

1.20. "Financial Retail Office" shall mean an office which provides financial services directly to consumers such as banks, credit unions, tax preparation services, check cashing services, consumer lending services, insurance businesses and stock brokerages.

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

1.22. "Grant of Exclusivity" shall mean and refer to the exclusive operation of a type of retail business within the Shopping Center (by way of example only, a hair salon, a video rental store, a Mexican-style restaurant, or a Chinese restaurant).

1.23. "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.

1.24. "Health Service Office" shall mean an office which provides health and wellness services directly to consumers such as dental offices, chiropractors and doctors offices, *provided, however,* that the following specialized practices shall not be permitted within the Shopping Center: family planning clinic, blood donation center, cosmetic surgery, immunology, gynecology/obstetrics, or indigent services clinic.

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

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

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

1.28. "Non-Defaulting Party" shall have the meaning set forth in Section 7.1.

1.29. "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.

1.30. "Operator" means the Person designated from time to time by the Approving Parties to maintain and operate the Common Areas within the Shopping Center in accordance with the standards set forth in Section 4.3. The Person designated as Operator shall serve in that capacity until it resigns, is removed by the Approving Parties, or is removed for failure to maintain and operate the Common Areas within the Shopping Center in accordance with Section 4.3(h). The initial Operator shall be Wright Development.

1.31. "Outdoor Sales Area" shall mean the limited areas of the Shopping Center within which goods may be sold outside a Building as set forth in Section 5.1(e) below.

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

1.33. "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 the name and address of the new Party and a copy of the legal description of the portion of the Shopping Center transferred.

If a Parcel is owned by more than one Person, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Parcel shall designate one (1) of their number to represent all owners of the Parcel and such designated Person shall be deemed the Party for such Parcel. Until the notice of transfer is given, the transferring Party shall (for the purpose of this DEC only) be the transferee's agent. Nothing contained herein to the contrary shall affect the existence, priority, validity,

or enforceability of any lien permitted hereunder which is placed upon the transferred portion of the Shopping Center prior to receipt of the notice.

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

1.35. "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 the following activities on the Common Area will not be considered to be Permittees:

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

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

1.37. "Releasing Party" shall have the meaning set forth in Section 5.4(d).

1.38. "Released Party" shall have the meaning set forth in Section 5.4(d).

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

1.40. "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.

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

1.42. "Site Plan" shall have the meaning set forth in Recital C above.

1.43. "Subsurface Construction Elements" shall mean underground piers, footings and/or foundations for any Buildings or improvements constructed on a Parcel.

1.44. "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water. "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to the Parcels and which are not Separate Utility Lines. Any surface water collection, retention, and distribution facilities within the Shopping Center shall be deemed a Common Utility Line. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service solely to a single Parcel. For the purpose of this DEC, the portion of a Utility Line extending between a Common Utility Line and a Building shall be considered a Separate Utility Line.

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



1.46. "WinCo Parcel" shall have the meaning set forth in Recital A, which Parcel is identified on the Site Plan as "Parcel 1" or "Major A" and is more particularly described in **Exhibit A** attached hereto.

1.47. "Wright Development" shall have the meaning set forth in the introductory paragraph above.

1.48. "Wright Development Parcel" shall have the meaning set forth in Recital B above, which is identified on the Site Plan as Parcel 2 and Parcel 3 and is more particularly described in **Exhibit A-1** attached hereto. As set forth on the Site Plan, Parcel 2 includes "Future Shops A" and "Future Shops B", and "Future Pad A", "Future Pad B", "Future Pad C", "Future Pad D" and "Future Pad E", and Parcel 3 consists of "Future Pad F."

## 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 of the Common Area on the grantor's Parcel, 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 of the Common Area on the grantor's Parcel, as the same may from time to time be constructed and maintained for such use. Such easement rights shall be subject to the following reservations, as well as other provisions contained in this DEC:

(a) Each Party reserves the right to close off any portion of its Parcel for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone; *provided, however*, that prior to closing off any portion of its Parcel, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing with each other Party so that no unreasonable interference with the passage of pedestrians or vehicles shall occur;

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

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

### 2.2. Utilities.

(a) Each Party hereby grants and conveys to each other Party non-exclusive, perpetual easements in, to, over, under, along, and across those portions of the Common Area (exclusive of any portion located within a Building Area) located on the grantor's Parcel necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Parcel, including but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone, and communication lines. All Utility Lines shall be underground except:

- (i) ground mounted electrical transformers;
- (ii) as may be necessary during periods of construction, reconstruction, repair, or temporary service;
- (iii) as may be required by governmental agencies having jurisdiction;

- (iv) as may be required by the provider of such service;
- (v) fire hydrants;
- (vi) surface water collection; and
- (vii) existing telephone and electric lines that are located off site of the Shopping Center.

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

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

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

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

(c) Each Party hereby grants and conveys to each Party owning an adjacent Parcel the perpetual right and easement to discharge surface storm drainage and/or runoff from the grantee's

Parcel over, upon, and across the Common Area of the grantor's Parcel, upon the following conditions and terms:

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

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

2.3. Construction, Maintenance, and Reconstruction.

(a) In order to accommodate any Building improvements which may inadvertently be constructed beyond a Parcel's boundary line, each Party grants to each Party owning an adjacent Parcel an easement in, to, over, under, and across that portion of the grantor's Parcel 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 any Subsurface Construction Elements across the boundary line of its Parcel, the Constructing Party shall advise the Party owning the adjacent Parcel (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 Parcel 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 Parcel not theretofore occupied by any then existing structure, necessary for the installation, maintenance, and replacement of such Subsurface Construction Elements; *provided, however*, that the location of such easement shall be subject to the prior written approval of the Adjacent Party, which shall not be unreasonably withheld, conditioned, or delayed. 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 so that each Party is able to place its Building immediately adjacent to the common boundary line. If a common Subsurface Construction Element is used by the Parties, each Party 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 in this Section 2.3 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 Parcel in the case of 2.3 (a) above, or within the easement area limits in the case of 2.3 (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 the Parcels or the right for a Building on a Parcel to receive support from or apply pressure to the adjacent Building. 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(d) below.

2.4. Restriction. No Party shall grant any easement or license for the purpose set forth in this Section 2 for the benefit of any property not within the Shopping Center or for the benefit of any Person in connection with any activity not related to the Shopping Center without the other Parties' consent; *provided, however*, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Parcel to governmental or quasi-governmental authorities or for public utilities.

### 3. CONSTRUCTION.

#### 3.1. General Requirements.

(a) Each Party agrees that all construction activities performed by it within the Shopping Center shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof. Each Party further agrees that its construction activities shall not:

(i) cause any unreasonable increase in the cost of constructing improvements upon another Party's Parcel;

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

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

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

(b) Each Party agrees to defend, indemnify, and hold harmless each other Party from all claims, losses, liabilities, actions, proceedings, and costs (including reasonable attorneys' fees and costs of suit), including liens, and any accident, injury, loss, or damage whatsoever occurring to any Person or to the property of any Person arising out of or resulting from any construction activities performed or authorized by such indemnifying Party; *provided, however*, that the foregoing shall not be applicable to events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them unless covered by the release set forth in Section 5.4(d) below.

(c) In connection with any construction, reconstruction, repair, or maintenance on its Parcel, each Party reserves the right to create a temporary staging and/or storage area in the Common Area on its Parcel or in the Building Area on its Parcel at a location which will not unreasonably interfere with access between such Parcel and the other areas of the Shopping Center. Prior to the commencement of any work which requires the establishment of a staging and/or storage area on its Parcel, a Party shall give at least thirty (30) days' prior notice to the owner of the WinCo Parcel for its approval of the proposed location. If the owner of the WinCo Parcel does 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 owner of the WinCo Parcel. If substantial work is to be performed, the constructing Party shall, at the request of the owner of the WinCo Parcel, 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 Parcel. Upon completion of such work, the constructing Party shall restore the affected Common Area and access points to the Property to a condition equal to or better than that existing prior to commencement of such work. In the event that a business is operating on the WinCo Parcel, no other Party's staging area shall, without the prior written consent of the owner of the WinCo Parcel, which may be granted or withheld in its sole, absolute and unreviewable discretion, be located: (i) on the WinCo Parcel, (ii) within five hundred feet (500') of the

front door of the Building on the WinCo Parcel, or (iii) on or within any of the common drive aisles or access points to the Shopping Center. Further, no Party shall conduct any staging or construction activities on or with respect to Future Shops B, Future Pad E, or Future Pad F during the period commencing five (5) days prior to the grand opening of the business on the WinCo Parcel and ending thirty (30) days following the date of such grand opening, and such areas shall be maintained in a clean and sightly condition at all times during such grand opening period. Further, staging and construction activities shall only be permitted on Future Shops A and Future Pad D during such grand opening period so long as such staging and construction activities are fully screened from view.

(d) Each Party hereby grants and conveys to each other Party and to its respective contractors, materialmen, and laborers a temporary license for access and passage over and across the Common Area of the grantor's Parcel as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Parcel; *provided, however*, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed and provided further that the use of such license shall not unreasonably interfere with the use, operation, and enjoyment of the Common Area by others. No Party shall interfere with access over and across the access points and common drive aisles located on or connecting the WinCo Parcel to Wall Avenue or 12th Street or any other access point to the Shopping Center without the prior written consent of the owner of the WinCo Parcel, which may be granted or withheld in its sole, absolute, and unreviewable discretion. Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.4(b); *provided, however*, that any Party contractor performing services in connection with the construction of improvements to that Party's Parcel shall only be required to provide Two Million and No/100 Dollars (\$2,000,000) of commercial general liability insurance. Any Party availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area, and restore and/or repair the affected portion of the Common Area and access points to the Property to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractor, laborers, suppliers, and/or others connected with construction activities, each Party shall have the right to prohibit the contractor, laborers, suppliers, and/or others working for another Party from using the Common Area on its Parcel.

3.2. Common Area. The Parties have agreed that the Common Area of the Shopping Center shall be initially constructed as shown on the Site Plan, as finally approved by the City of Ogden; *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) Unless otherwise approved by the owner of the WinCo Parcel, the lighting system shall be designed to produce a minimum maintained lighting intensity measured at grade at all points in the Common Area of at least 2.0 foot candles and the drive areas immediately in front of the entrance to any Building shall have not less than a minimum maintained lighting intensity measured at grade of 4.0 foot candles; *provided, however*, that if the applicable public agency does not allow the lighting intensity set forth herein, then compliance with the applicable public agency's maximum lighting intensity allowance shall satisfy the obligation under this Section 3.2(a). The type and design of the Common Area light standards shall be subject to the prior written approval of the Approving Parties. The Operator shall meter and maintain the Common Area lighting in accordance with the standards set forth in Sections 4.3 and 5.2 below, and shall invoice the Parties for their pro-rata share of such lighting expenses as part of the Common Area Maintenance Costs in accordance with Section 4.3 below; *provided, however*, that the owner of the WinCo Parcel may require that the Common Area lights located on the Common Areas within the Shopping Center to be installed or modified such that the owner of the WinCo Parcel has the ability to control such lights.

(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 owner of the WinCo Parcel.

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

(i) the number of parking spaces and the configuration of the parking spaces for each Parcel shall be as shown on the Site Plan, unless modified by the Approving Parties; and

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

In the event of a condemnation of part of a Parcel or sale or transfer in lieu thereof that reduces the number of usable parking spaces below that which is required herein, the Party whose Parcel is so affected shall use commercially reasonable efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute ground level parking spaces within the Common Area on its Parcel in order to comply with the parking requirements set forth in this DEC. If such compliance is not possible, such Party shall not be deemed in default hereunder, but such Party shall not be permitted to expand the amount of Floor Area located upon its Parcel unless authorized to do so by the Approving Parties. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Parcel may not subsequently be increased unless the parking requirement is satisfied or unless otherwise authorized to do so by the Approving Parties.

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

(i) The Center Signs may only be used to identify the Occupants of the Shopping Center. The design and construction of, and the panel inserts on, the Center Signs shall be substantially similar to the signs depicted on **Exhibit C**, attached hereto, provided that the owner or Occupant of the WinCo Parcel shall be entitled to the top sign position on each side of the pylon signs as depicted on **Exhibit C**. The Center Signs shall be fully illuminated twenty-four (24) hours a day, seven (7) days a week.

(ii) Subject to the prior written approval of the Approving Parties, the Parties may erect monument signs in addition to the Center Signs on their respective Parcels at locations approved in writing by the Approving Parties in their sole, absolute, and unreviewable discretion, provided that in no event shall any such monument signs be included in the definition of the "Center Signs." The design and construction of, and the inserts on, each monument sign, shall also be subject to the prior approval of the Approving Party and each monument sign shall be no more than ten feet (10') in height above ground level, and shall have a total sign panel area of no more than seventy-five (75) square feet.

(iii) No other freestanding signs, other than entrance, exit, and menu signs; the existing billboard signs located within the Shopping Center; and the Center Signs shall be permitted within the Shopping Center unless approved in writing by the Approving Parties in their sole, absolute, and unreviewable discretion, and constructed in areas designated in the Site Plan.

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

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

(ii) there shall be maintained at all times within such Common Area, a sufficient number of vehicular parking spaces to meet the parking requirements set forth in this Section (c) and (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, which approval shall not be unreasonably withheld, conditioned, or delayed; and

(v) at least sixty (60) days prior to making any such change, modification, or alteration, the Party desiring to do such work shall deliver to each other Party copies of the plans therefor, and provided further that, except for the initial construction of the Common Area, such work shall not occur between October 1<sup>st</sup> and the following January 31<sup>st</sup>.

The provisions of this Section 3.2(g) do not apply to any changes, modifications, or alterations of Common Area located within Building Areas which result from or arise out of the construction, expansion, or maintenance of Buildings. Notwithstanding anything contained herein to the contrary, any change to the access points or the driveways from that which is shown on the Site Plan must be approved by each of the Parties.

### 3.3. Building Improvements.

(a) While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any Building on its Parcel, the Parties hereby agree once construction has been commenced, such Building shall be completed in a timely fashion. Each Building on a Parcel shall be located only within the Building Area designated on the Site Plan for such Parcel. The Floor Area for each Building shall not exceed the number of square feet designated in Section 3.3(e) below 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 design drawings, elevations, and plans and specifications (“Plans”) covering the initial construction of each Building and any additions, remodeling, reconstruction, or other alteration thereto which changes the exterior or exterior appearance 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 for exterior remodeling, reconstruction, or alterations which do not substantially change an existing structure or the appearance thereof. Approval of Plans by the Approving Parties shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with applicable laws. No material deviation shall be made from the approved Plans. Notwithstanding anything to the contrary in this Section 3.3(b), the owner of the WinCo Parcel shall not be required to submit or obtain the Approving Party’s approval of any Plans or for any additions, remodeling, reconstruction, or other exterior alteration of the Building on the WinCo Parcel.

(c) Buildings may be placed along the common boundary lines between the WinCo Parcel and the other Parcels only upon the consent of the owner of the WinCo Parcel in its sole, absolute, and unreviewable discretion, and the owners of such Parcels 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, provided, however, that the owner of the WinCo Parcel hereby consents and agrees to the placement of the building identified on the Site Plan as “Future Shops A and B”.

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

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

PARCEL	BUILDING	BUILDING HEIGHT	HEIGHT OF ARCHITECTURAL FEATURES	PARCEL AREA	ALLOWABLE FLOOR AREA
Parcel 1	Major A	40'	48'	9.84 acres	95,000 sq. ft.
Parcel 2				9.58 acres	
	Future Shops A	35'	40'		23,000 sq. ft.
	Future Shops B	35'	40'		23,900 sq. ft.
	Future Pad A	25'	30'		7,700 sq. ft.
	Future Pad B	25'	30'		6,000 sq. ft.
	Future Pad C	25'	30'		4,200 sq. ft.
	Future Pad D	25'	30'		3,500 sq. ft.
	Future Pad E	25'	30'		7,700 sq. ft.
Parcel 3	Future Pad F	25'	30'	0.55 acres	6,000 sq. ft.

Notwithstanding the foregoing, in the event that Pad C and Pad D, as designated on the Site Plan, are modified to be one Building that contains a drugstore, the maximum allowable floor area for such Building shall be fourteen thousand (14,000) square feet. The height of any Building or Architectural Feature shall be measured perpendicular from the finished floor elevation to the top of the roof structure (including any screening, parapet, penthouse, mechanical equipment, or similar



appurtenance located on the roof of such Building) or Architectural Feature, as applicable. The designated Buildings set forth in the foregoing table shall mean and refer to the respective Buildings as they are identified on the Site Plan attached hereto.

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

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

#### 3.4. Phased Development.

(a) WinCo and Wright Development anticipate that certain site improvement work, including construction of a Building, will be performed on all or certain portions of the WinCo Parcel (the "Initial Work"). 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 in this DEC. All of the Remaining Work applicable to any Parcel shall be completed prior to the earlier of: (i) initial occupancy of any Building on such Parcel in question; or (ii) issuance of any certificate of occupancy for any such Building. Nothing in this DEC shall obligate any party to commence any Remaining Work, but once commenced on a Parcel, all of the Remaining Work for such Parcel shall be prosecuted continuously and with all due diligence to completion. The Remaining Work shall be performed (if at all) under separate contracts and shall be independent of the Initial Work, and the owner of the WinCo Parcel shall not have any responsibility therefor.

(b) On or before substantial completion of the Initial Work, and except for areas on which any party is then prosecuting any Remaining Work, any undeveloped Parcel shall either be hard-surfaced or left in a natural, but attractive, condition, until Building improvements are constructed thereon. The owner of such Parcel shall take such steps on a on-going basis as are reasonably necessary to prevent erosion or blowing dust. In addition, the Party engaging in any Remaining Work shall leave the Initial Work, including all drive lanes and access points, open and accessible, and shall perform such construction in such manner as will not adversely affect the balance of the Shopping Center, or the businesses from time to time being conducted thereon, in any material way.

#### 4. MAINTENANCE AND REPAIR.

##### 4.1. Utility Lines.

(a) Each Party shall maintain and repair, or cause to be maintained and repaired, in a good state of repair and safe condition, all Separate Utility Lines utilized by it regardless of where located within the Shopping Center. All Separate Utility Lines must be underground. Any maintenance and repair of utilities not dedicated to a public utility company which are located on another Party's Parcel shall be performed: (i) after ten (10) business days' notice to the grantor (except in an Emergency Situation the work may be initiated with reasonable notice); (ii) after normal business hours whenever possible; and (iii) in such a manner as to cause as little disturbance in the use of the grantor's Parcel as is practicable under the circumstances. Any Party performing or causing to be performed maintenance or repair work agrees: (1) to promptly pay all costs and expenses associated therewith; (2) to diligently complete such work as quickly as possible; and (3) to promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement of such work.

(b) Common Utility Lines shall be maintained and replaced as part of the Common Area pursuant to Section 4.2 below.

4.2. Parcel Maintenance. Each Party shall at all times during the term of this DEC, at such Party's sole cost and expense, maintain and repair the Building located on such Party's Parcel and keep the Building and the sidewalk immediately in front of its storefront in good condition and repair, clean and free of litter and other hazards to Permittees. Further, prior to construction of a Building on a Party's Parcel, such Party shall, at its sole cost and expense, keep the unimproved area of its Parcel mowed and clean and free from all debris, litter, and other hazards to Permittees. Each Party's maintenance of its Parcel as set forth herein shall: (i) meet or exceed the minimum standards set forth in Exhibit D; (ii) meet or exceed the standard of maintenance followed in other first class retail developments of comparable size in the Ogden, Utah area; and (iii) be in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and the provisions of this DEC (collectively the "Maintenance Standard"). Each Party agrees to defend, indemnify, and hold each other Party harmless from and against all claims, costs, losses, expenses, and liability (including costs and reasonable attorneys' fees) arising from or directly or indirectly relating to the maintenance of its Parcel as set forth herein, except for claims caused by the negligence or willful acts of the indemnified Party.

4.3. Common Area Maintenance. The Operator shall perform all tasks that, in the Operator's reasonable judgment, are necessary or beneficial to operate and maintain the Common Area in accordance with the Maintenance Standard. Each Party shall share the costs and expenses of the Operator's operation and maintenance of such Common Area in the manner set forth in this Section 4.3.

(a) The shared costs of the operation and maintenance of the Common Area shall include all sums expended in connection within the general operation and maintenance of the Common Area and the repair or replacement of any improvements in the Common Area (the "Common Area Maintenance Costs"), including sums expended for the following: gardening and landscaping; the cost of public liability, property damage, and other insurance that meets the requirements set forth in Section 5.4 below; maintaining, cleaning, repairing and/or replacing all sidewalks; line painting, paving, maintaining, repairing, and/or replacing the parking areas and drive aisles; snow and ice removal for the parking areas drive aisles and sidewalks; maintaining, repairing, and/or replacing all Common Utility Lines; maintaining, repairing, and/or replacing all lighting, electricity, sewer and water allocable to the Common Area, including and any utility lines servicing the Center Signs; maintaining, replacing, and/or repairing all Center Signs, including individual panels thereon (except as set forth in subsection (vii) below); sanitary control and removal of trash, rubbish, garbage, and other refuse from the Common Area; with respect to all equipment and machinery used to maintain and operate the Common Area, the cost thereof if owned, or any rental paid therefor if leased; all items of repair, maintenance, and/or replacement of any improvements as may be required at any time or from time to time by a governmental agency having jurisdiction thereof; any public utility or governmental charges, surcharges, any other costs levied, assessed or imposed pursuant to laws, statutes, regulations, codes and ordinances promulgated by any governmental or quasi-governmental authority in connection with the use of the Common Area; and other expenses necessary or beneficial, in the Operator's reasonable judgment, for the maintenance and operation of the Common Area, and/or the repair or replacement of any improvements within the Common Area. Notwithstanding the foregoing, unless otherwise approved in writing by the owner of the WinCo Parcel, in no event shall the cost of providing security for any portion or all of the Shopping Center be included in the Common Area of Maintenance Costs, provided that the foregoing limitation shall not prohibit any Party or Occupant from obtaining security services for such Party's or Occupant's Parcel at such Party's sole cost and expense. With the exception of the minimum standards and requirements set forth in Exhibit D, the enumeration of specific tasks herein shall not be construed to obligate the Operator to perform any such specific tasks. For purposes of this DEC, in no event shall the Common Area Maintenance Costs include any of the following:

- (i) any late charges or fees, or any cost, fee, fine, penalty or similar charge;

- (ii) any costs or expenses for utilities separately paid by any Party;
- (iii) any costs to clean up or repair the Common Area resulting from promotional or holiday activities;
- (iv) any costs for seasonal or promotional sales in a Party's Outdoor Sales Area, which shall be paid by the Party holding such sale;
- (v) any costs resulting from or arising out of the repair or replacement of any items or improvements covered by warranties or guaranties;
- (vi) any costs for the construction, maintenance, or replacement of any Buildings within the Shopping Center;
- (vii) any costs of any individual sign panel, or the initial design and installation, or re-design, replacement, and installation, of a Party's individual sign panel insert on Center Signs;
- (viii) real property taxes and assessments on the Common Area;
- (ix) any general corporate overhead and general administrative expenses;
- (x) any third-party property management or other management fees;
- (xi) any amounts included in or designated as "reserves" for any of Operator's Common Area maintenance obligations;
- (xii) entertainment, transportation, meals, and lodging of anyone; or
- (xiii) any costs, fees, expenses, and/or adjustments to any of the Common Area Maintenance Costs submitted more than two (2) years after the date incurred by the Operator.

The Operator shall have the right with regard to any and all maintenance obligations of Operator under this DEC to contract with a Person reasonably acceptable to the owner of the WinCo Parcel for the performance and accomplishment of such of the obligations as the Operator shall deem proper. Each Party hereby grants to the Operator and its agents and employees a license to enter upon its Parcel to discharge the duties to operate and maintain the Common Area in accordance with the Maintenance Standard. The Operator agrees to defend, indemnify, and hold harmless each Party from and against all claims, costs, losses, expenses, and liability (including reasonable attorney fees and costs of suit) arising from or directly or indirectly relating to its maintenance or operation of the Common Area, except for claims caused by the negligence or willful act or omission of a Party or Occupant.

(b) Notwithstanding anything to the contrary in this Section 4.3, any capital improvements or expenditures for any repair or maintenance obligations of Operator in excess of Five Thousand and No/100 Dollars (\$5,000.00) in Constant Dollars shall require the prior written consent of the owner of the WinCo Parcel. The Operator shall submit all capital improvements in excess of such amount for bid to no less than two (2) general contractors acceptable to the owner of the WinCo Parcel, and the owner of the WinCo Parcel shall review the bids and select the lowest qualified and responsible bidder. For purposes of this Section 4.3, "capital improvements" shall include the replacement of any existing improvements. The Operator shall complete any and all capital improvements in accordance with the standards set forth in Exhibit D attached hereto.

(c) The Operator shall, within thirty (30) days following the commencement of its operation and maintenance obligations hereunder and at least sixty (60) days prior to the beginning of each calendar year thereafter, provide the Approving Parties with a written budget for the anticipated Common Area Maintenance Costs for the balance of the current year or the upcoming year, as applicable (the "Budget"). The Budget shall be subject to the approval of the Approving Parties and shall separately identify cost estimates for at least the categories of expenses specified in Section 4.2 (d) below. The Operator shall use its best efforts to maintain the Common Area in accordance with the Budget. Notwithstanding anything herein to the contrary, in lieu of Operator's administrative and overhead costs, Operator shall be permitted to charge an administrative fee, which shall be computed by multiplying the Common Area Maintenance Costs by a percentage determined by the Operator ("Administration Fee"); *provided, however*, that the Administration Fee for the WinCo Parcel shall be computed by multiplying the Common Area Maintenance Costs, but excluding the costs of Operator's insurance, any utility costs, and any capital improvements, by five percent (5%). If any of Operator's personnel at the Shopping Center perform services, functions, or tasks in addition to Operator's Common Area maintenance obligations pursuant to this DEC, then the cost of such personnel shall be equitably allocated according to time spent performing such duties and that portion not allocated to the Shopping Center shall not be included in the Common Area Maintenance Costs. If an item of maintenance, repair, or replacement is to be accomplished in phases over a period of calendar years (such as, without limitation and by way of example only, resurfacing of the drive aisles and/or parking areas) the Operator shall separately identify the cost attributable to such work and attributable to such calendar year, the portion of the Common Area affected, and shall note the anticipated cost and timing of such phased work during succeeding quarters and calendar years. The cost of any such phased work approved in the Budget shall be paid by the Parties as a Common Area Maintenance Cost. The Operator shall maintain all records related to Common Area Maintenance Costs, Budgets, Administration Fees, Invoices (defined in Section 4.2(d) below), and supporting documentation evidencing the Common Area Maintenance Costs for at least seven (7) years from the date of the Invoice to which such records are related.

(d) Each Party shall pay to the Operator its share of the actual Common Area Maintenance Costs and the Administration Fee on a quarterly basis. The Common Area Maintenance Costs and the Administration Fee shall, except as otherwise provided herein, be allocated among the Parties in the proportion that, respectively, the total land area of each Parcel bears to the total land area then comprising the Shopping Center. The Operator shall, on a quarterly basis, prepare and submit to each Party an invoice (the "Invoice") for such Party's share of the actual Common Area Maintenance Costs for the previous quarter and the Administration Fee applicable thereto. Each Party shall pay the amount due under the Invoice within thirty (30) days from delivery of the Invoice in accordance with Section 8.11, below. Notwithstanding the foregoing, with regard to the WinCo Parcel, the Operator shall amortize the cost of any item of maintenance, repair, and replacement, including any emergency repairs conducted pursuant to Section 4.2(e) below, that exceeds Ten Thousand and No/100 Dollars (\$10,000.00) in Constant Dollars over a term not less than the life of said maintenance, repair, and/or replacement item. The Invoice shall include a statement of each Party's share of the actual Common Area Maintenance Costs for the previous quarter and the Administration Fee applicable thereto certified by the Operator and supporting invoices and other materials evidencing the actual Common Area Maintenance Costs paid by it for the operation and maintenance of the Common Area. The Invoice shall be in a form reasonably acceptable to the Approving Party and shall separately identify at least the following categories of Common Area Maintenance Costs:

- (i) landscaping and irrigation;
- (ii) storm drains and/or surface water retention facilities;
- (iii) parking area maintenance;
- (iv) parking and Common Area cleaning, sweeping, and lighting;

- (v) use of a "day porter" or similar service;
- (vi) rental or purchase of equipment and supplies;
- (vii) depreciation or trade-in allowance applicable to items purchased for Common Area purposes;
- (viii) the cost of any phased work approved in the Budget attributable to such year, including the portion of the Common Area affected in such year;
- (ix) the Administration Fee.

(e) Notwithstanding anything to the contrary herein, the Operator shall have the right to make emergency repairs to the Common Area to resolve any situation which threatens access to a Parcel or threatens an immediate substantial loss or damage to property or any personal injury or death to Persons (an "Emergency Situation"), it being understood that the Operator shall nevertheless advise each Party of such Emergency Situation as soon as reasonably possible, including the corrective measures taken and the cost thereof. Operator shall submit a supplemental billing for the costs of such emergency repairs to each Party, together with evidence supporting such payment, and each Party shall pay its share thereof within thirty (30) days of receipt of the supplemental billing and supporting documentation.

(f) Within ninety (90) days after receipt of any Invoice and supporting documentation, but not more than twice per calendar year, each Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common Area for the quarter covered by such Invoice. Unless otherwise agreed by the Operator and the auditing Party, said audit shall be conducted at the office of the Operator and the auditing Party shall notify Operator of its intent to audit at least fifteen (15) days prior to the designated audit date. In the event that such audit shall disclose any error in the determination of the Common Area Maintenance Costs or in the Administration Fee or the allocation thereof to a Parcel, an appropriate adjustment shall be made, and the Person owing any sums after such adjustment shall pay such amount to the other Person within ten (10) days following the determination of the adjustment. The cost of any audit shall be assumed by the auditing Party unless the audit determines that such Party is entitled to a refund in excess of three percent (3%) of the amount calculated by the Operator as its share for the quarter, in which event the Operator shall pay the Party's out-of-pocket costs of such audit, excluding transportation, lodging, and related costs.

(g) The owner of the WinCo Parcel shall have the option, to be exercised in its sole and absolute discretion, to continue to maintain its Parcel in accordance with the Maintenance Standard, in which event the Operator shall not maintain the Common Areas on the WinCo Parcel and the owner of the WinCo Parcel shall not be responsible for any Common Area Maintenance Costs; *provided, however*, that the Operator shall continue to maintain the common drive aisles within the Shopping Center and the owner of the WinCo Parcel shall pay its pro-rata share of such maintenance as set forth in Section 4.2(d) above. In the event that the owner of the WinCo Parcel elects to maintain its Parcel pursuant to this Section, the Common Area Maintenance Costs shall be allocated among the other Parties in the proportion that, respectively, the total land area of each other Parcel bears to the total land of then comprising the Shopping Center, excluding the total land area of the WinCo Parcel.

(h) In the event the Operator fails to maintain the Common Area in accordance with this Section 4.3, an Approving Party may send written notice of such failure to the Operator, which shall contain an itemized statement of the specific deficiencies in the Operator's performance of its obligations under this Section 4.3; *provided, however*, that in the event of an Emergency Situation, an Approving Party may immediately commence correction of such situation without providing notice of any default to the Operator. The Operator shall have fifteen (15) business days after receipt of such

notice to cure any stated deficiencies. If the Operator fails or refuses to timely correct the deficiencies contained in the notice, then: (i) the Approving Party may, at its option, correct the stated deficiencies; and (ii) such Approving Party may, at its option, remove the defaulting Operator. In the event that a Party elects to correct the deficiencies, such Approving Party shall provide each Party an itemized invoice for such Party's share of the costs incurred in correcting the Operator's default, and each Party shall pay such costs to the Approving Party that has submitted the invoice, plus an administration fee in the amount of ten percent (10%) of such costs. If the invoice for such costs is not paid within ten (10) days, interest on the amount due under the invoice from the date of the invoice shall accrue as set forth in Section 8.8 below.

(i) In the event that the Operator desires to resign as Operator, such Operator shall deliver written notice thereof to the Approving Parties at least ninety (90) days prior to the date of the proposed resignation; *provided however*, in no event shall the Operator's proposed resignation or any removal of the Operator by the Approving Parties be effective until such time as a successor Operator has been appointed by the Approving Parties. At such time as the Operator gives notice of resignation or is removed, the owner of the WinCo Parcel shall have the right, upon written notice to the other Parties, to assume the obligations of Operator under this DEC. In the event that the owner of the WinCo Parcel does not elect to assume the obligations of Operator as set forth above, the Approving Parties shall act in good faith to select a new Operator. Any such successor Operator appointed in accordance with this Section shall be designated in writing signed and acknowledged by the Approving Parties, and shall have all rights and obligations of the Operator hereunder.

4.4. **Building Improvements.** In the event any of the Building improvements are damaged by fire or other casualty (whether insured or not), the Party upon whose Parcel such 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. 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 this Section 5.1, no part of the Shopping Center shall be used or occupied for any purposes other than retail sales, Financial Retail Offices, Health Service Offices, and Restaurants, including Fast Food Restaurants.

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

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

- (ii) any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
- (iii) any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- (iv) any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors or other future technology no more intrusive than garbage compactors located near the rear of any building);
- (v) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- (vi) any "second hand" store;
- (vii) any central laundry, dry cleaning plant, or laundromat; *provided, however, that this prohibition shall not be applicable to: (1) nominal supportive facilities for on-site service-oriented pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located; (2) the operation of on-site laundry facilities within a store which services only the internal needs of that store and does not provide laundry services to the general public, and (3) a "green earth" type retail dry cleaning operator using DF-2000 or any similar hydrocarbon solvent used as an alternative to perchloroethylene;*
- (viii) any manufactured home, automobile, truck, trailer, boat or recreational vehicles sales, leasing, display, body shop operation;
- (ix) any entertainment, recreation, or amusement use or facility, whether directed to children or adults which includes, without limitation, flea markets, movie theaters, live performance theaters, bowling lanes, skating rinks, dance halls, teenage discotheque, discotheque, off-track betting facilities, casino, card club, bingo parlor, rides, play for fun casino games, and carnival activities;
- (x) any residences, living quarters, sleeping apartments, lodging rooms, or any hotel, motel, or other lodging facility;
- (xi) any veterinary hospitals or animal raising facilities (except that this prohibition shall not prohibit pet shops);
- (xii) any cemetery, mortuaries, funeral homes or similar service establishments;
- (xiii) any adult book or adult video stores or establishments selling or exhibiting pornographic materials or drug-related paraphernalia, or any other use of a sexually-oriented or "adult" nature;
- (xiv) any bars, taverns, or other similar establishments selling alcoholic beverages whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds twenty-five percent (25%) of the gross revenues for such business; *provided, however, that no permitted bar, tavern, or similar establishment shall occupy more than two thousand (2,000) square feet of Floor Area;*

(xv) any health spas, fitness centers, gyms, or workout facilities, or any massage parlors or similar facilities except that two (2) health clubs, not to exceed nine thousand (9,000) square feet of Floor Area in the aggregate and two (2) day spas not to exceed three thousand (3,000) square feet of Floor Area in the aggregate, may be located anywhere in the Shopping Center except Future Shops B;

(xvi) any school, training, or educational or day care facilities, including, but not limited to, beauty schools, barber colleges, nursery schools, diet centers, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; *provided, however*, that this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center;

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

(xviii) any public or private nuisance;

(xix) any fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;

(xx) any car washing establishment, except in conjunction with a gas station;

(xxi) any automobile body and fender repair work;

(xxii) any church, synagogue, mosque or other place of worship; or

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

(i) Business Offices shall be permitted in the Shopping Center; *provided, however*, that no Business Office shall be located in Future Shops A or B, Future Pad E, or Future Pad F, and provided further that the aggregate square footage of all Floor Area dedicated to use as a Business Office shall not exceed six thousand (6,000) square feet. Financial Retail Offices shall be permitted in the Shopping Center; *provided, however*, that no Financial Retail Offices shall be located in Future Shops B or Future Pad F. Health Service Offices shall be permitted in the Shopping Center; *provided, however*, that no Health Service Offices shall be located in Future Shops B or on Future Pad E or Future Pad F, and provided further that the aggregate square footage of all Floor Area dedicated to use as Health Service Office within the Shopping Center shall not exceed six thousand (6,000) square feet.

(ii) Restaurants of not more than four thousand (4,000) square feet shall be permitted on the Shopping Center; *provided, however*, that a Restaurant of no more than six thousand (6,000) square feet shall be permitted on Future Pad B, and provided further that no Restaurant shall be located in Future Shops A or B or on Future Pad E or Future Pad F, and provided further that no more than three (3) Restaurants shall be permitted to operate in the Shopping Center at any given time. Notwithstanding the foregoing, this prohibition shall not be applicable to the operation of a Restaurant which is incidental to the Occupant's primary business purpose or any Fast Food Restaurant. For the purpose of this Section 5.1, a Restaurant shall be an "incidental operation" if it occupies less than ten percent (10%) of the Occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building.

(iii) Fast Food Restaurants shall be permitted in the Shopping Center, *provided, however*, that: (1) any Fast Food Restaurant located in Pad E shall not exceed four thousand (4,000) square feet, (2) no Fast Food Restaurants shall be located in Future Shops A or B or Pad F, and (3) the design and location of the drive through facilities of any such Fast Food



Restaurant and the location of its Building footprint shall be subject to the prior written approval of the owner of the WinCo Parcel, which approval may be granted or withheld in its sole, absolute, and unreviewable discretion; *provided, however*, that WinCo hereby approves the drive through facilities and Building footprint for Future Pad A and Future Pad E, as depicted on the Site Plan.

(d) For so long as the WinCo Parcel is being used or has during any portion of the immediately preceding thirty-six (36) months been so used as a retail grocery operation, no portion of the Shopping Center other than the WinCo Parcel shall be used as a retail grocery store operation (which is hereby defined to mean any store, bakery, or delicatessen engaged in the sale of food products for off-premises preparation and consumption). The restriction contained in this Section 5.1(d) may be waived or modified solely by the owner of the WinCo Parcel in writing, in its sole, absolute and unreviewable discretion by an instrument recorded in the real property records of Weber County, Utah. The thirty-six (36)-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 Parcel so long as the owner of the WinCo Parcel diligently proceeds with such repair and restoration of such Building reasonably calculated to permit resumption for such use.

(e) Any Party's Outdoor Sales Area shall be located only on such Party's Parcel in the area designated on the Site Plan. Further, 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 Parcel; (iii) temporary Shopping Center promotions, except that no promotional activities will be allowed in the Common Area without the prior written approval of the Approving Parties; or (iv) newspaper distribution stands and similar public service items. Notwithstanding the foregoing, the Occupants of the Shopping Center shall be permitted:

(i) To have vending carts and the display and sale of merchandise and ready-to-eat products on sidewalks directly in front of the Building located on the WinCo Parcel, provided that said Occupant maintains said sidewalks at its sole cost in a neat and clean manner, *provided, however*, that notwithstanding anything herein to the contrary, this provision shall apply only to the Occupant of the WinCo Parcel; 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) all booths, stands, displays and other structures erected in connection therewith shall be promptly removed upon termination of said activities;
- (3) the Occupant holding the sale 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, and in the event said Occupant does not clean or repair such area promptly, the Operator may do so and charge the cost thereof to such Occupant; and

- (4) the parking lot sales shall not interfere with the free movement of vehicular traffic within the Shopping Center or with access to or from the Shopping Center.

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

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

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

(i) A Party may provide a Grant of Exclusivity to an Occupant of its Parcel provided that notwithstanding anything to the contrary contained herein, (i) no such Grant of Exclusivity to an Occupant of the Wright Development Parcel shall bind, burden, or otherwise encumber an Occupant of the WinCo Parcel without the owner of the WinCo Parcel's prior written consent, which may be granted or withheld in its sole, absolute, and unreviewable discretion and (ii) no such Grant of Exclusivity to an Occupant of the WinCo Parcel other than WinCo shall bind, burden or otherwise encumber an Occupant of the Wright Development Parcel without the owner of the Wright Development Parcel's prior written consent, which may be granted or withheld in its sole, absolute and unreviewable discretion.

#### 5.2. Lighting.

(a) Each Party hereby covenants and agrees to keep its Parcel fully illuminated each day from dusk to at least 10:00 p.m. During the term of this DEC, each Party grants an irrevocable license to each other Party for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcel. It is recognized that the Occupant of the WinCo Parcel may be open for business at different hours than the Occupants of the other Parcels, and that the Occupant of the WinCo Parcel may require that the Common Area lights located on all or a portion of the other Parcels and the WinCo Parcel remain illuminated before and/or after the period required herein. In such event, the owner of the WinCo Parcel shall pay for any and all expenses incurred for operation of any lights within the Common Area on such other Parcels which the owner of the WinCo Parcel causes or requires to be kept illuminated before and/or after the period set forth above.

#### 5.3. Occupant Signs.

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

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

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

(iii) painted on the surface of any Building;

- (iv) flashing or audible signs;
- (v) signs employing exposed raceways (unless the raceway is the same color as the Building), exposed ballast boxes, or exposed transformers; or
- (vi) paper, cardboard, or fabric signs, temporary signs (exclusive of contractor signs), stickers or decals; *provided, however*, the foregoing shall not prohibit the placement at the entrance of each Occupant's space a small sticker or decal, indicating hours of business, emergency telephone numbers, acceptance of credit cards, and other similar bits of information.

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

(c) Notwithstanding anything in this Section 5.3 to the contrary, each Party shall be permitted to place within the Common Area located on its Parcel directional signs or informational signs such as "Handicapped Parking", the temporary display of leasing information and the temporary placement of one sign identifying each contractor working on a construction job.

#### 5.4. Insurance.

(a) Each Party, as to its Parcel only, shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance with a combined single limit of liability of not less than Five Million and No/100 Dollars (\$5,000,000.00) in Constant Dollars for bodily or personal injury or death, and for property damage, arising out of any one occurrence. Each Party shall name the Approving Parties as "additional insureds" under such policy.

(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 – \$1,000,000; and
- (iii) Comprehensive General/Commercial General Liability and Business Auto Liability as follows:
  - (1) Bodily Injury and Property Damage combined single limit – \$2,000,000 per occurrence;
  - (2) Independent Contractors Liability; same coverage as set forth in (1) above;
  - (3) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work;
  - (4) "XCU" Hazard Endorsement, if applicable;

- (5) "Broad Form" Property Damage Endorsement;
- (6) "Personal Injury" Endorsements; and
- (7) "Blanket Contractual Liability" Endorsement.

If the construction activity involves the use of another Party's Parcel, then the owner of such Parcel shall be an additional insured and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this DEC, without at least thirty (30) days prior written notice to the named insureds and each additional insured. If such insurance is canceled or expires then the constructing Party shall immediately stop all work on or use of the other Party's Parcel until either the required insurance is reinstated or replacement insurance obtained.

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

(d) Each Party (the "Releasing Party") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon the Releasing Party's Parcel, which loss or damage is of the type covered by the insurance required to be maintained under this 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 covenants and agrees to indemnify, defend and hold harmless each other Party from and against all claims asserted by or through any Permittees of the indemnifying Party's Parcel for any loss or damage to the property of such Permittee located upon the indemnifying Party's Parcel, which loss or damage is covered by the insurance required to be maintained under this Section 5.4(c), irrespective of any negligence on the part of the indemnified Party which may have contributed to or caused such loss.

(e) All insurance required by this 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 any of the following insurance programs or any combination thereof:

- (i) an individual policy covering the Party's Parcel(s) within the Shopping Center;
- (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; *provided, however*, that if such blanket commercial general liability insurance policy or policies contain a 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

To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party in compliance with this 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 subsection (iii) above. Each Party agrees to furnish to any Party requesting the same, or the Operator at its request, certificates of insurance evidencing that the insurance required to be carried by such Person is in full force and effect.

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

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

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

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

5.6. **Mechanics' and Materialmen's Liens.** In the event any mechanic's or materialman's lien is filed against the Parcel of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so filed agrees to cause such lien to be discharged within thirty (30) days after the filing of the lien, either by paying the indebtedness which gave rise to such lien or by posting any bond or other security as shall be required by law to obtain such release and discharge. In the event that such Party does not obtain a release of the lien, the Party whose Parcel is subject to such lien may bond for or otherwise obtain a release of the lien and collect all expenses incurred in connection therewith from the other Party. The Party permitting or causing a mechanic's or materialman's lien to be so filed agrees to indemnify, defend, and hold harmless the other Party and its Parcel against liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. Nothing herein shall prevent the Party

permitting or causing such lien from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence.

**6. ENVIRONMENTAL MATTERS.**

6.1. Duties of Users. Except as provided in Section 6.2, neither the Parties nor any Occupant(s) shall release, generate, use, store, dump, transport, handle, or dispose of any Hazardous Material within the Shopping Center or otherwise permit the presence of any Hazardous Material on, under, or about the Shopping Center or transport any Hazardous Material to or from the Shopping Center. Any such use, handling or storage permitted under Section 6.2 shall be in accordance with all Environmental Laws and all other applicable laws, ordinances, rules, and regulations now or hereafter promulgated by any governmental authority having appropriate jurisdiction. Neither the Parties nor any Occupant(s) shall install, operate, or maintain any above, below, or at grade tank, sump, pit, pond, lagoon, or other storage or treatment vessel or device on or about the Shopping Center unless plans therefor have been submitted to and approved by the Approving Parties pursuant to Section 6.2 hereof. Each Party with respect to its Parcel shall immediately notify the other Parties in writing of the following with respect to such Party's Parcel: (a) any notice of violation or potential or alleged violation of any laws, ordinances, or regulations which the Party shall have received from any governmental agency concerning the use, storage, release, and/or disposal of Hazardous Materials; (b) any and all inquiry, investigation, enforcement, cleanup, removal, or other governmental or regulatory actions instituted or threatened relating to such Parcel(s); (c) all claims made or threatened by any third party relating to any Hazardous Materials; and (d) any release of Hazardous Materials in a reportable quantity on or about the Shopping Center which such Party knows of or reasonably believes may have occurred. Such notice shall be accompanied by copies of any notices, inquiries, or other documentation issued to the notifying Party in connection with such matters.

6.2. Permitted Use, Storage, Handling and Disposal of Hazardous Materials. Notwithstanding anything contained in Section 6.1 to the contrary, any Party, or any Occupant or Permittee may sell, store, and use products containing Hazardous Materials in, on, or about the Parcel occupied by such Party, Occupant or Permittee or the Common Areas to the extent such products and/or equipment are incidental to normal shopping center operations, and are sold, stored, or used in compliance with all applicable Environmental Laws. By way of example, and not limitation, such permitted materials may include paints, oils, solvents, sealers, adhesives, finishes, fertilizers, medicines, insecticides and rodent poisons, and the like, which may be or contain Hazardous Materials, so long as such products are produced, packaged, and purchased for retail sale and generally merchandised or sold in retail outlets or are normally used in maintaining or repairing shopping center improvements. A Party or an Occupant may also use other Hazardous Materials in connection with its use of its Parcel if such Party or Occupant has received the Approving Parties' prior consent to the same. The Approving Parties shall not unreasonably withhold their consent provided that: (i) the Party demonstrates to the Approving Parties' reasonable satisfaction that such Hazardous Materials (1) are necessary or useful to the Party's or its Occupant's business, (2) will be monitored, used, stored, handled, and disposed of in compliance with all Environmental Laws, (3) will not endanger any persons or property, and (4) will not invalidate or limit the coverage or increase the premiums of any insurance policy affecting or covering any portion of the Shopping Center; (ii) the Party or Occupant provides the Approving Parties with such security as may be reasonably required by the Approving Parties to help secure such Party's or Occupant's performance of its obligations under Section 6.3; and (iii) such Party or Occupant satisfies any other requirements any other Party may reasonably impose with respect to the Party's or Occupant's use of the subject Hazardous Materials.

6.3. Cleanup of Hazardous Materials. In the event Hazardous Materials are released within the Shopping Center in violation of any Environmental Laws and such release occurred as a direct or indirect result of a Party's or its Occupant's or Permittee's use, handling, storage, or transportation of such Hazardous Material, as between the Parties, such Party or Occupant engaged in such activity shall be solely responsible and shall be liable for the prompt cleanup and remediation of any resulting

contamination and all claims, costs, expenses (including reasonable attorney and consultant fees), and damages, including consequential damages, suffered by the other Party, Occupants and Permittees.

7. **DEFAULT.**

7.1. **Events of Default.** A Party's failure to observe or perform (the "**Defaulting Party**") any of the covenants, conditions or obligations of this DEC within thirty (30) days after the issuance of a written notice by another Party (the "**Non-Defaulting Party**") specifying the nature of the default claimed shall constitute a material default and breach of this DEC by the Defaulting Party.

7.2. **Cure by Non-Defaulting Party.** With respect to any default under Section 7.1 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 Situation, 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. To effectuate any such cure, any such Non-Defaulting Party shall have the right to enter upon the Parcel of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event 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.

7.3. **Right to Lien.** Costs and expenses accruing and/or assessed pursuant to Section 7.2 above shall constitute a lien against the Defaulting Party's Parcel. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of 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:

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

7.4. Waiver of Default. No waiver by any Party of any default under this DEC shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers or any default under any provision of this DEC shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this DEC.

7.5. Equitable Relief. Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this DEC, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this DEC, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this DEC or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

7.6. DEC Continues Notwithstanding Default. It is expressly agreed that no breach of or event of default under this DEC shall: (i) entitle any Party to cancel, rescind, or otherwise terminate this DEC; or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Shopping Center. This limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach or default.

7.7. Limitation of Liability. Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations or entities who constitute a Party hereto, including, but not limited to, officers, directors, employees or agents of a party hereto with respect to any of the terms, covenants, conditions, and provisions of this DEC. In the event of default by a Defaulting Party hereunder, any Non-Defaulting Party who seeks recovery from a Defaulting Party hereto shall look solely to the interest of such Defaulting Party, its successors and assigns, in the Shopping Center for the satisfaction of each and every remedy of the Non-Defaulting Party; *provided, however,* the foregoing shall not in any way impair, limit or prejudice the right of any Party:

(a) to pursue equitable relief in connection with any term, covenants or condition of this DEC, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance; and

(b) to recover from another Party (or its guarantor) all losses suffered, liabilities incurred or costs imposed arising out of or in connection with, or on account of, such Party (or its guarantor) not funding its self-insurance obligations which were assumed pursuant to Section 5.4.

## 8. MISCELLANEOUS.

### 8.1. Approval Rights.

(a) Nothing contained in this DEC shall limit the right of a Party to exercise its business judgment, or act, in a subjective manner, with respect to any matter as to which it has specifically been granted such right, or the right to act, in its sole discretion or sole judgment, whether "objectively" reasonable under the circumstances, and any such exercise shall not be deemed inconsistent with any covenant of good faith and fair dealing otherwise implied by law to be part of this DEC. The Parties intend by this DEC to set forth their entire understanding with respect to the terms,



covenants, conditions, and standards pursuant to which their obligations are to be judged and their performance measured.

(b) 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. Except for any written request tendered pursuant to Section 8.6 or tendered to the owner of the WinCo Parcel, if a response is not given within the required time period, the requested Party shall be deemed to have given its approval. No approval or consent required under this DEC shall be valid unless the same is in writing and executed by the Party or Parties whose approval is required.

8.2. Binding Effect. The terms of this DEC and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Parties hereunder. This DEC is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

8.3. Condemnation. In the event any portion of the Shopping Center shall be condemned, the award shall be paid to the Party owning the land or the improvement taken, except that: (a) if the taking includes improvements belonging to more than one Party, such as Utility Lines or signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition; and (b) if the taking includes easement rights which are intended to extend beyond the term of this DEC, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this DEC which does not reduce or diminish the amount paid to the Party owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof.

8.4. Construction and Interpretation.

(a) This DEC and the Exhibits hereto, which are incorporated into this DEC by reference thereto, contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements regarding the subject matter of this DEC are superseded in total by this DEC. This DEC has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto. No such signatory shall be deemed the scrivener of this DEC; and, based on the foregoing, the provisions of this DEC, and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

(b) Whenever required by the context of this DEC: (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa; and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.

(c) The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this DEC. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this DEC.

(d) Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

(e) This DEC may be amended by, and only by, a written agreement signed by the then-current Approving Parties and shall be effective only when recorded in the county and state where the Shopping Center is located; *provided, however*, that no such amendment shall impose any materially greater obligation on, or materially impair any right of a Party or its Parcel without the consent of such Party. No consent to the amendment of this DEC shall ever be required of any Occupant or Person other than the Parties. To the extent a Party's consent to an amendment of this DEC is required, such Party: (i) may consider, approve, or disapprove any such proposed amendment to this DEC in its reasonable discretion, and (ii) must approve or disapprove of any such proposed amendment within fifteen (15) days from delivery of such proposal, *provided however*, in no event shall the owner of the WinCo Parcel or Wright Development be deemed to have given its approval unless in writing and acknowledged by said owner.

8.5. Counterparts. This DEC may be executed in several counterparts, each of which shall be deemed an original. The signatures to this DEC may be executed and notarized on separate pages, and when attached to this DEC shall constitute one complete document.

8.6. Estoppel Certificate. Each Party, Occupant, and the Operator agrees that upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party, it will issue to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

(a) whether it knows of any default under this DEC by the requesting Person, and if there are known defaults, specifying the nature thereof;

(b) whether this DEC has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and

(c) whether this DEC is in full force and effect.

Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such Person to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to either request an audit of the Common Area Maintenance Costs for any year it is entitled to do so, or challenge acts committed by other Parties for which approval by the Approving Parties was required but not sought or obtained.

8.7. Excusable Delays. Whenever performance is required of any Party, Occupant, or the Operator hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; *provided, however*, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse any Person from the prompt payment of any monies required by this DEC or the performance of any indemnity obligations hereunder.

8.8. Interest. Except as otherwise provided herein, any time a Party shall not pay any sum payable hereunder to another within ten (10) days of the due date, such delinquent Party shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the lesser of:

(a) the highest rate permitted by law to be paid on such type of obligation by the Person obligated to make such payment or the Person to whom such payment is due, whichever is less; or

(b) two percent (2%) per annum in excess of the prime rate from time to time publicly announced by U.S. Bank National Association or its successor (or if it no longer exists a comparable regional national bank located in the state in which the Shopping Center is located).

8.9. Mitigation of Damages. In all situations arising out of this DEC, all Parties shall use commercially reasonable efforts to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party hereto shall take all reasonable measures to effectuate the provisions of this DEC.

8.10. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

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

IF TO WINCO FOODS:

WinCo Foods, LLC  
Attn: Morgan Randis  
Vice President of Development  
650 N. Armstrong Place  
Boise, ID 83704  
Telephone: (208) 377-0110  
Fax: (208) 672-2146  
E-mail: morgan.randis@wincofoods.com

With a copy at the same address to:

Tammy Zokan  
Project Attorney  
E-mail: tammy.zokan@wincofoods.com

With a copy to:

(which shall not constitute Notice)  
Matthew M. Hicks  
Holland & Hart LLP  
U.S. Bank Plaza  
101 S. Capitol Blvd., Suite 1400  
P.O. Box 2527  
Boise, ID 83701  
Telephone: (208) 342-5000  
Fax: (208) 343-8869  
E-Mail: mhicks@hollandhart.com

IF TO WRIGHT DEVELOPMENT:

Wright Development Group, Inc.  
1572 N. Woodland Park Dr., Ste 505  
Layton, Utah 84041  
Telephone: (801) 773-7339  
Fax: (801) 499-5102  
E-mail: spencer@wrightdevelopmentgroup.net

8.12. Relationship of Parties. None of the terms or provisions of this DEC shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

8.13. Time. Time is of the essence as to each and every provision of this DEC.

8.14. Waiver. The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

## 9. TERM

9.1. Term of this DEC. This DEC shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on January 31, 2075; *provided, however*, that the easements referred to in Section 2 which are specified as being perpetual or as continuing beyond the term of this DEC shall continue in force and effect as provided therein. Upon termination of this DEC, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this DEC, except as relates to the easements set forth in Section 2, shall terminate and have no further force or effect; *provided, however*, that the termination of this DEC shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this DEC prior to the date of such termination.

[Signatures on following pages.]

IN WITNESS WHEREOF, WinCo and Wright Development have caused this DEC to be executed effective as of the day and year first above written.

WINCO FOODS, LLC, a Delaware limited liability company

By: [Signature]  
Its: COO

STATE OF IDAHO )  
County of Ada )ss.  
)

On this 8<sup>th</sup> day of September, 2009, before me, a Notary Public, personally appeared Rich L. Charney, known or proved to me to be the COO of WINCO FOODS, 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 company.

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



[Signature]  
Notary Public  
Residing at Boise, Idaho  
Comm. Expires May 16, 2013

[Signatures continued on following page.]

**WRIGHT DEVELOPMENT GROUP, INC.**, a Utah corporation

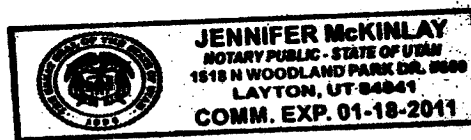
By: *[Signature]*  
Its: President

STATE OF UTAH                    )  
  ) :ss.  
COUNTY OF DAVIS            )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of September, 2009, by Gary M. Wright, the President of WRIGHT DEVELOPMENT GROUP, INC.

*Jennifer McKinlay*  
NOTARY PUBLIC  
Residing at: Layton, Utah

My Commission Expires:  
01-18-2011



**EXHIBIT A**

**LEGAL DESCRIPTION OF WINCO PARCEL**

**Lot 1 of that certain plat entitled "The Commons at Ogden", which plat was filed in the office of the recorder of the County of Weber, State of Utah on August 7, 2009 as Entry No. 2428525 in Book 70 of Plats at Page 29**

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF WRIGHT DEVELOPMENT PARCEL**

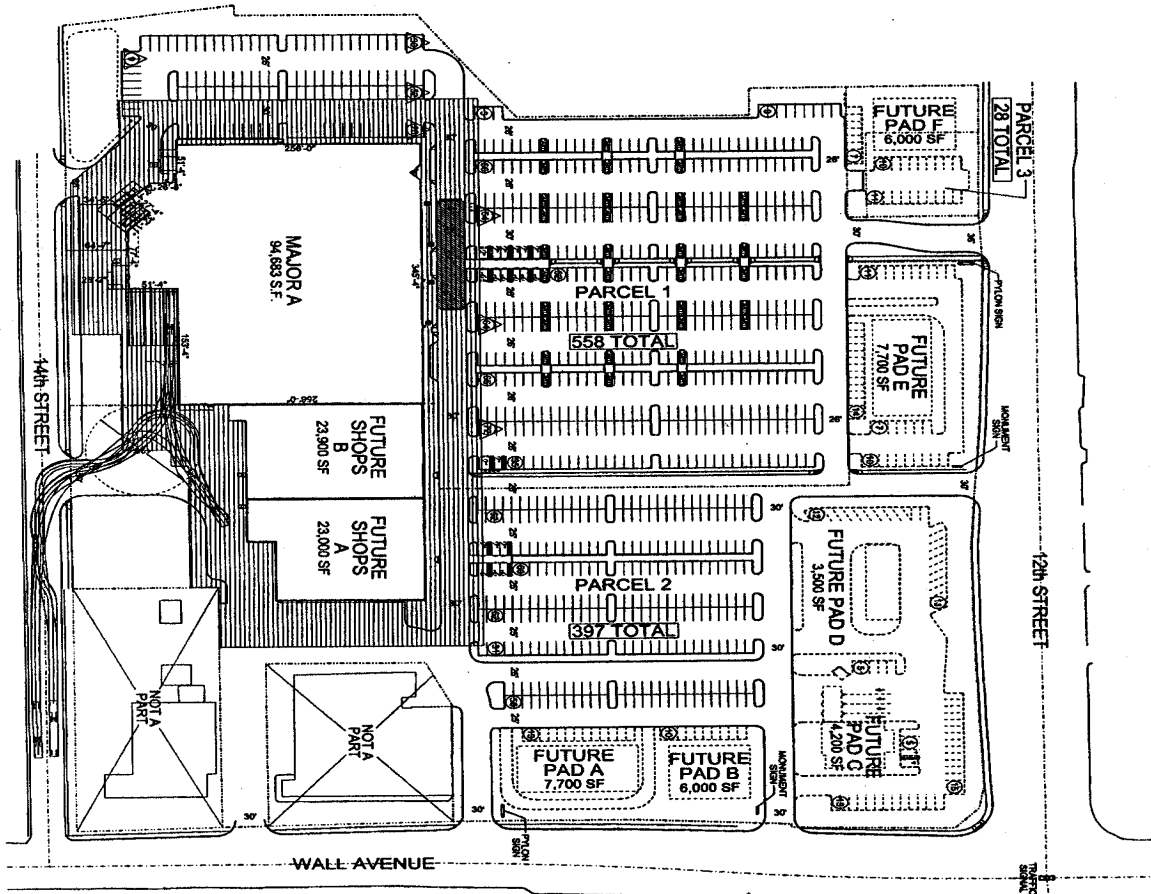
Lots 2 and 3 of that certain plat entitled "The Commons at Ogden", which plat was filed in the office of the recorder of the County of Weber, State of Utah on August 7, 2009 as Entry No. 2428525 in Book 70 of Plats at Page 29



**EXHIBIT B**

**SITE PLAN**

*(See attached.)*



**TOTAL PARKING DATA**

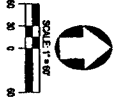
STANDARD	9'-6"X20'-0"	317 STALLS
COMPACT	9'-6"X18'-0"	224 STALLS
COMPACT	9'-0"X20'-0"	31 STALLS
COMPACT	9'-0"X18'-0"	379 STALLS
HANDICAP	11'-0"X18'-0"	3 STALLS
HANDICAP	10'-0"X20'-0"	1 STALLS
HANDICAP	8'-0"X20'-0"	1 STALLS
HANDICAP	8'-0"X18'-0"	15 STALLS

**SITE DATA**

PARCEL 1	94.683 ACRES	94,683 S.F.	MAJOR A	558 STALLS	5,889,1000
PARCEL 2	9.59 ACRES	23,000 S.F.	FUTURE SHOPS A	397 STALLS	5,227,1000
		23,900 S.F.	FUTURE SHOPS B		
		7,700 S.F.	FUTURE PAD A		
		6,000 S.F.	FUTURE PAD B		
		4,200 S.F.	FUTURE PAD C		
		3,500 S.F.	FUTURE PAD D		
		7,700 S.F.	FUTURE PAD E		
PARCEL 3	0.56 ACRES	6,000 S.F.	FUTURE PAD F	28 STALLS	4,671,000
TOTALS	109.87 ACRES	176,683 S.F.		983 STALLS	5,561,000

**LEGEND**

- NUMBER OF STANDARD PARKING SPACES
- NUMBER OF NON-STANDARD PARKING SPACES
- CART CORRAL
- # TOTAL NUMBER OF PARKING SPACES PER PARCEL
- 80' NO BUILD EASEMENT PROPERTY/PARCEL LINE
- BUILDING LINE

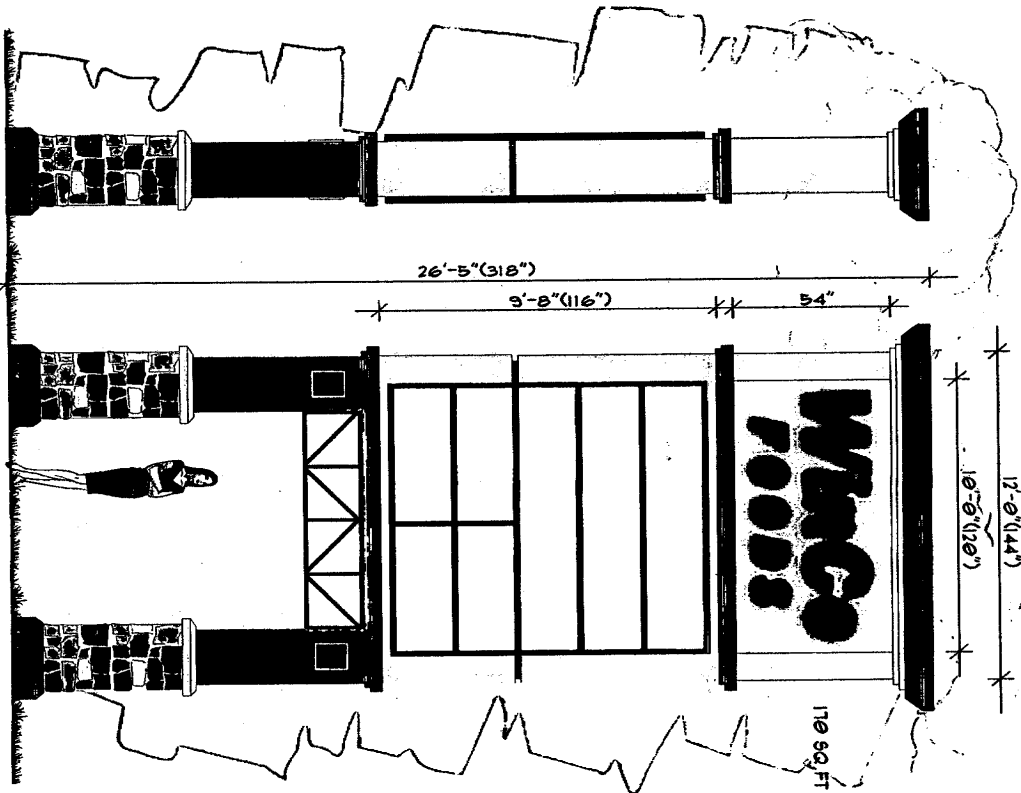


**EXHIBIT C**

**CENTER SIGNS**

*(See attached.)*

**THE COMMONS AT OGDEN**



**SCOPE OF WORK:**  
 MANUFACTURE AND INSTALL TWO (2) INTERNALLY  
 ILLUMINATED PYLON SIGNS

**CONSTRUCTION DETAILS:**  
 PRIMARY TENANT CABINET  
 STRUCTURE - PRIMED ANGLE  
 SKIN - .040 PREPAINT ALUMINUM  
 2" RETAINERS - .040 PREPAINT ALUMINUM  
 FACES - .080 PAINTED ALUMINUM

"WINCO FOODS" (P/C LETTERS)  
 5" RETURNS - .063 ALUMINUM PAINTED RED  
 1" TRIMCAP - RED  
 FACES - 3/16" (1) RED PLEX  
 ILLUMINATION - LED  
 MOUNTING - FLUSH TO SIGN FACE

SECONDARY TENANT CABINET  
 STRUCTURE - PRIMED ANGLE  
 SKIN - .040 PREPAINT ALUMINUM  
 2" RETAINERS - .040 PREPAINT ALUMINUM  
 FACES - WHITE SOLAR GRADE LEXAN  
 2" DIVIDERS - FIRST SURFACE VINYL  
 ILLUMINATION - HO T-12

POLE COVERS  
 STRUCTURE - PRIMED ANGLE  
 SKIN - 3/4" OUTDOOR GRADE PLY W/ 1/2" INSET  
 FOR ROCKWORK BY OTHERS

REVEALS - STRUCTURAL .063 PAINTED ALUMINUM  
 DECORATIVE DETAIL - PAINTED 1 1/2 SQUARE TUBE  
 ALUMINUM W/ 3/4" SQUARE LATTICE ALUMINUM INSET

**Customer Approval**

I have reviewed the provided design, I approve the following:

- ( ) Materials
- ( ) Colors
- ( ) Dimensions
- ( ) Letter/Font or Font Styles

Make the color depicted as the representation for your order unless please contact your sales representative.

Landlord Signature (if required) / Date

Primary electrical supply to sign is the customer's responsibility.

Electrical work must be done by a licensed electrical contractor or licensed electrician.

Your sign must have at least one dedicated 120V 20A circuit, approved and installed within six (6) feet of the sign and three wires: line, ground and neutral.

630 N Main Street North Salt Lake, UT 84054

**SignSource**  
 CUSTOMER ELECTRIC SIGNS

(801) 292-SIGN FAX: (801) 292-9446

**THE COMMONS AT OGDEN**

**SCOPE OF WORK:**  
 MANUFACTURE AND INSTALL TWO (2) D/F MOUNTMENT SIGNS

**COLORS:**  
 IVORY  
 DARK BRONZE  
 TAN

**CONSTRUCTION DETAILS:**

**CABINET**  
 STRUCTURE - PRIMED ANGLE  
 SKIN - .063 PAINTED ALUMINUM  
 2" RETAINERS - .040 PAINTED ALUMINUM  
 FACES - WHITE PLEX  
 GRAPHICS - 19T SURFACE VINYL  
 ILLUMINATION - T-12

**BASE**  
 STRUCTURE - PRIMED ANGLE  
 SKIN - .040 PAINTLOK AND 3/4"  
 OUTDOOR PLY W/ 1/2" INSET FOR  
 ROCKWORK BY OTHERS

**REVEALS - STRUCTURAL .063  
 PAINTED ALUMINUM**



**Customer Approval**

I have reviewed the provided design, I approve the following:

( ) Materials ( ) Colors ( ) Dimensions ( ) Letter/Font Style

Customer Signature / Date

Make the color depicted as for reference only. Final color may vary due to printing process and material used.

Landlord Signature (if required) / Date

Primary electrical supply to sign is the customer's responsibility. Electrical work must be done by a licensed electrical contractor or licensed electrician. Your sign must have at least one electrical T-12/T-8/T-5 unit, a junction box provided within six (6) feet of the sign, with three wires: Line, Ground and Neutral.

650 N Main Street, North Salt Lake, UT 84054

**SignSource**  
 CUSTOM ELECTRIC SIGNS

(801) 292-SIGN FAX: (801) 292-9446

The contents of this proposal have been created to help assist you in visualizing our proposal. Representations and ideas are property of SignSource and may not be reproduced unless you obtain written permission from SignSource.

**EXHIBIT D****MINIMUM COMMON AREA MAINTENANCE REQUIREMENTS****Parking Lot, Sidewalk, Driveway and Drive Aisle Areas**

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

**Lighting and Signs**

- Parking lot lighting facilities and related equipment shall be formally inspected on no less than a quarterly basis to ensure they are in proper working order and that the parking and common areas are well lit at all times. Inoperative light bulbs and facilities shall be replaced immediately.
- Pylon/Monument Signs are to be inspected no less than quarterly to ensure proper operation and attractiveness. Damaged sign panels and/or sign structures shall be repaired in a timely manner.

**Landscaping**

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

**Pressure Washing**

- Sidewalks and landings shall be pressure washed no less than once a week
- Pressure washing shall be performed at night

**Day Porter Services**

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

**All Contractors shall perform work in accordance with the DEC and all applicable laws and shall be responsible for obtaining permits or licenses legally required prior to performing work. All Contractors shall be responsible for conducting work in a manner to protect against injury to all persons. All Contractors are required to provide proof of liability insurance, workers compensation insurance, a current business license and complete a W-9. All Contractors shall provide an emergency phone number for contact 24 hours/7 days a week and all Contractor employees and vehicles will be clearly marked and identifiable with the business name or logo.**