

~~Indianapolis, IN 46206-0368~~

Washington State Recorder's Cover Sheet (RCW 65.04) Please print legibly or type information.

Document Title(s) Subordination, Non-Disturbance and Attornment Agreement
Grantor(s) Cross Court Plaza - BWC LLC, Cross Court Plaza - CPL LLC & Cross Court Plaza EC LLC
____ Additional Names on Page ____ of Document
Grantee(s) American United Life Insurance Company
____ Additional Names on Page ____ of Document
Legal Description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section) PTN NE, 06-34-04
Complete Legal Description on Page <u>12-14</u> of Document
Auditor's Reference Number(s) 202304240041 and 202304240042
Assessor's Property Tax Parcel/Account Number(s) P23694 & P23720

This Document Was Prepared By
And Upon Recording Return To:

Dennis R. Tyler, Attorney at Law
American United Life Insurance Company
One American Square
Post Office Box 368
Indianapolis, Indiana 46206-0368
(317) 285-1877

Assessor's Parcel No(s): 340406-0-072-0102/P102562 & 340406-0-072-011/P23694

Abbreviated Legal Description: Parcel A of Survey AF#9107100065

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN THE LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is dated as of the 24th day of April, 2023, among (i) AMERICAN UNITED LIFE INSURANCE COMPANY, an Indiana corporation with a principal address of One American Square, P.O. Box 368, Indianapolis, Indiana 46206-0368 ("Lender"), (ii) CROSS COURT PLAZA – CPL LLC, a Texas limited liability company, CROSS COURT PLAZA – EC LLC, a Texas limited liability company, and CROSS COURT PLAZA – BWC LLC, a Texas limited liability company, as tenants in common and all with an address at 1717 Woodstead Court, Suite 298, The Woodlands, Texas 77380, Attn: Benjamin J. Cheng (collectively, "Landlord") and (iii) RED ROBIN INTERNATIONAL, INC., a Nevada corporation with an address at 10000 E. Geddes Ave., Suite 500, Englewood, Colorado 80112, Attn: Real Estate ("Tenant").

WITNESSETH:

WHEREAS, MGP XI US PROPERTIES, LLC, successor in interest to Winmar Cascade, Inc. ("Current Landlord"), as landlord, and Tenant, as tenant, entered into that certain Ground Lease dated as of February 11, 1991, as amended by that certain First Amendment to Lease dated May 6, 1991, as supplemented by that certain Landlord's Lien Waiver dated October 3, 1991, as modified by that certain Assignment of Ground Lease dated July 7, 2006, as supplemented by that

certain Memorandum of Lease dated July 7, 2006, as supplemented by that certain Rent and Term Commencement Agreement dated July 10, 2009, as modified by that certain Exercise of Renewal Option Notice dated May 20, 2011, as modified by that certain Exercise of Renewal Option Notice dated September 2, 2015, as modified by that certain Exercise of Renewal Option Notice dated June 30, 2021, and as supplemented by that certain Option Renewal Acknowledgement Letter dated July 6, 2021 (collectively, "Lease") for certain premises located at 1075 Burlington Blvd., Burlington, WA (Unit #733-Q01) within Cross Court Plaza, such space is more particularly described in the Lease as the Leased Premised. Such Leased Premises is a portion of the shopping center as follows, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND
INCORPORATED HEREIN BY REFERENCE

together with all improvements of any type now or hereafter located thereon (hereinafter collectively called the "Premises"); and

WHEREAS, Landlord intends to acquire the Premises (including the Leased Premises) from Current Landlord, and as part of such acquisition, Current Landlord's interest in the Lease will be assigned to Landlord (the "Closing"); and

WHEREAS, pursuant to Lender's certain mortgage loan application/commitment numbered 2326701, Lender has agreed to make a loan to Landlord in the original principal amount of EIGHT MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars (\$8,400,000.00) which will be secured by, among other things, a Deed of Trust on the Premises from Landlord to Lender (the "Deed of Trust") and an Assignment of Rents and Leases (the "Assignment") from Landlord to Lender, provided that Tenant shall subordinate Tenant's interest in the Lease and in the Premises as hereinafter provided.

NOW, THEREFORE, in consideration of the premises and of the sum of One and 00/100 Dollar (\$1.00) by each party in hand paid to the other, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Subject to the terms of this Agreement and conditioned upon the Closing, the Lease, and all rights, options, liens or charges created thereby, is hereby made and shall be subject and subordinate to the lien of the Deed of Trust and the security interest created thereby insofar as it affects the Premises. Notwithstanding the foregoing, Tenant agrees that Lender may at any time, at its election, execute and record in the Auditor's Office of Skagit County, Washington a notice of subordination reciting that the Lease shall be superior to the Deed of Trust. From and after the recordation of such notice of subordination, the Deed of Trust shall be subordinate to the Lease and the Lease shall not be extinguished by any foreclosure of the Deed of Trust or sale thereunder.

2. Upon Tenant's receipt of written notice pertaining to Lender's (or any successor owner's) acquisition of Landlord's interest in the Premises, Tenant agrees that it will attorn to and recognize Lender or any such owner as its landlord for the unexpired balance (and extensions, if

exercised by Tenant) of the term of the Lease, upon the same terms and conditions set forth in the Lease, and Lender hereby agrees that it will accept such attornment.

3. So long as Tenant is not in default beyond notice and any cure period provided for in the Lease, in the payment of rent or in the performance of any of the terms, conditions, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any renewals, modifications or extensions thereof which may be effected in accordance with any option granted in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender during the term of the Lease or any such renewals, modifications, or extensions thereof.

4. If it should become necessary to exercise remedies under the Deed of Trust, or if Lender shall otherwise take control of the Premises or succeed to the interest of Landlord under the Lease, Lender shall not terminate the Lease nor join Tenant in summary proceedings so long as Tenant is not then currently in default under any of the terms, covenants or conditions of the Lease beyond notice and any applicable cure period.

5. Tenant shall have no right to appear in any foreclosure proceedings brought under the Deed of Trust.

6. Tenant agrees that it shall notify Lender in writing of the occurrence of any default by Landlord under the Lease before exercising a right to terminate the Lease. Tenant further agrees that Tenant shall permit Lender the length of any applicable cure period as specified in the Lease for Landlord to cure such default, prior to Tenant exercising any of its rights or remedies for such default.

7. If Lender shall become owner of the Premises by reason of foreclosure or otherwise, or Lender succeeds to the interests of Landlord under the Lease, then, during the period of Lender's ownership of such interest, but not thereafter, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and during the period of Lender's ownership of Landlord's interests in the Lease, Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant would have had against Landlord if Lender had not become such owner or had not succeeded to Landlord's interest therein;

PROVIDED, HOWEVER, Lender shall not be:

- (a) liable for any act or omission of any prior landlord (including Landlord) which accrued prior to the date of acquisition of Landlord's interest except for (i) ongoing defaults under the Lease or (ii) acts or omissions of which Lender had written notice of prior to Lender's acquisition of Landlord's interest under the Lease;
- (b) liable for the return of any security deposits (except such as have been delivered to Lender);

- (c) subject to any offsets or defenses that Tenant might have against any prior landlord (including Landlord), unless the basis of such offset or defense remains uncured or except as set forth in the Lease;
- (d) bound by any rent or additional rent that Tenant pays more than one month in advance to any prior landlord (including Landlord);
- (e) bound by any amendment of the Lease that terminates the Lease early, materially reduces rent, shortens the Lease Term, or materially reduces Tenant's obligations under the Lease, or materially increases Landlord's obligations under the Lease and is made after the date of this Agreement and without Lender's consent, but only if such consent is required pursuant to the Deed of Trust (which consent Lender shall not unreasonably withhold, delay, or condition); and
- (f) personally liable for any default under the Lease or any covenant on its part to be performed thereunder as landlord, it being acknowledged that Tenant's sole remedy in the event of such default shall be to proceed against Lender's interest in the Premises (including all proceeds, rents and profits applicable to the Premises, insurance and condemnation proceeds, security deposits, and escrows).

Landlord shall obtain any required consent from Lender. Tenant may rely on any representation from Landlord that Landlord has received such consent from Lender. Notwithstanding the foregoing or anything to the contrary contained herein, Lender's consent is not required for (and any successor owner shall be bound by) any modification of the Lease that is provided for under the Lease or that confirms the exercise by Tenant of any of its rights under the Lease.

8. Tenant hereby acknowledges that the entire interest of Landlord in and to the Lease, and all sums due thereunder, is being assigned to Lender pursuant to the terms of the Assignment. Tenant further acknowledges and agrees:

(a) omitted.

(b) whether or not Lender shall have taken possession of the Premises, upon notice from Lender to Tenant, Tenant shall pay all rent and other sums due under the Lease (including, without limitation, termination fees) to Lender at its address hereinafter set forth or to such other address as Lender shall specify. Landlord hereby authorizes Tenant to make such payments to Lender or as Lender shall otherwise direct, and Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's compliance with Lender's demands; Landlord and Lender hereby agree that any payment to Lender by Tenant shall satisfy such payment obligation under the Lease.

(c) that any notices to be sent by Tenant to Lender shall be delivered in hand by recognized national overnight express courier service, or by registered or certified U.S. mail, postage prepaid, addressed to Lender at One American Square, P.O. Box 368, Indianapolis, Indiana 46206-0368, Attn: Legal Dept., Loan #2326701 (overnight address: OneAmerica Financial Partners, Inc., Attn: Legal Department, #1704, Indianapolis, Indiana 46202-3107). Any notices to be sent by Lender to Tenant shall be delivered in hand by recognized national overnight express courier service, or by registered or certified mail at the following address:

Red Robin International, Inc.
10000 E. Geddes Ave., Suite 500
Englewood, Colorado 80112
Attn: Real Estate

With a copy to:

Red Robin International, Inc.
10000 E. Geddes Ave., Suite 500
Englewood, Colorado 80112
Attn: Legal Department

9. On and after the Closing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything herein to the contrary, this Agreement shall have no force or effect unless and until the Closing occurs within 90 days after the date of Tenant's execution of this Agreement and Tenant receives notice of such Closing within that time period.

10. By execution hereof, Landlord consents to the execution hereby by Tenant and agrees that such execution is not and shall not be or cause a default under the Lease.

[Remainder of page intentionally left blank; signature page(s) to follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as a sealed instrument as of the date and year first above written.

"Tenant"

RED ROBIN INTERNATIONAL, INC.,
a Nevada corporation

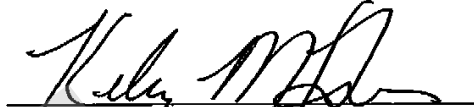


By: Mark Dubberly, Authorized Signatory
Its: Director of Real Estate and Lease Management

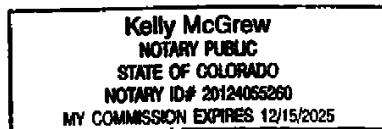
STATE OF COLORADO)
) SS:
COUNTY OF ARAPAHOE)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this 14th day of April, 2023, personally appeared Mark Dubberly, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, acknowledged that he/she/they is/are the Director of Real Estate and Lease Management of Red Robin International, Inc., a Nevada corporation, and executed said instrument by authority duly given and as the act of said corporation.

My Commission Expires: 12/15/2025


NOTARY PUBLIC

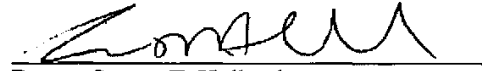
[Notary Seal]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as a sealed instrument as of the date and year first above written.

"Lender"

AMERICAN UNITED LIFE INSURANCE
COMPANY, an Indiana corporation



By: Steven T. Holland
Its: Vice President

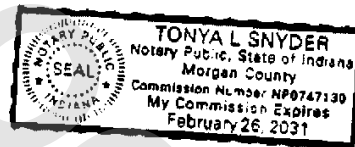
STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared STEVEN T. HOLLAND, known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged that he is the Vice President of AMERICAN UNITED LIFE INSURANCE COMPANY, an Indiana corporation, and executed said instrument by authority duly given and as the act of said corporation.

Given under my hand and seal this 12th day of April, 2023


Notary Public Signature

(Notary Public Seal)



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as a sealed instrument as of the date and year first above written.

"Landlord"

CROSS COURT PLAZA - CPL LLC, a Texas limited liability company

By: 

Benjamin J. Cheng, its Manager

CROSS

CROSS COURT PLAZA - EC LLC, a Texas limited liability company

By: 

Benjamin J. Cheng, its Manager

CROSS

CROSS COURT PLAZA - BWC LLC, a Texas limited liability company

By: 

Benjamin J. Cheng, its Manager

STATE OF TEXAS)

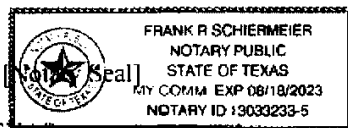
) SS:

COUNTY OF Montgomery

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this 21 day of April, 2023, personally appeared Benjamin J. Cheng, known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged that he is the Manager of CROSS COURT PLAZA - CPL LLC, a Texas limited liability company, and executed said instrument by authority duly given and as the act of said company.

My Commission Expires: 8/18/2023


NOTARY PUBLIC



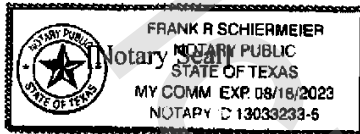
STATE OF TEXAS

COUNTY OF Montgomery SS:

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this 21 day of April, 2023, personally appeared Benjamin J. Cheng, known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged that he is the Manager of CROSS COURT PLAZA – CPL LLC, a Texas limited liability company, . and executed said instrument by authority duly given and as the act of said company.

My Commission Expires: 8/18/2023

Frank R Schiermeier
NOTARY PUBLIC



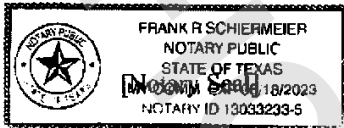
STATE OF TEXAS)

COUNTY OF Montgomery) SS:

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this 21 day of April, 2023, personally appeared Benjamin J. Cheng, known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged that he is the Manager of CROSS COURT PLAZA - EC LLC, a Texas limited liability company, and executed said instrument by authority duly given and as the act of said company.

My Commission Expires: 8/18/23

Frank R Schiermeier
NOTARY PUBLIC



STATE OF TEXAS)

COUNTY OF Montgomery) SS:

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this 21 day of April, 2023, personally appeared Benjamin J. Cheng, known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged that he is the Manager of CROSS COURT PLAZA - BWC LLC, a Texas limited liability company, and executed said instrument by authority duly given and as the act of said company.

My Commission Expires: 8/18/23

Frank R Schiermeier
NOTARY PUBLIC

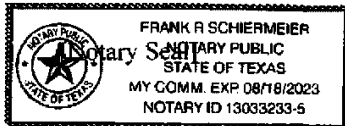


EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL A:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 34 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 6;

THENCE NORTH $00^{\circ}17'42''$ EAST ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 273.81 FEET;

THENCE NORTH $89^{\circ}42'21''$ WEST A DISTANCE OF 50.00 FEET TO THE INTERSECTION OF THE WEST LINE OF THAT CERTAIN TRACT OF LAND CONVEYED TO THE CITY OF BURLINGTON, UNDER AUDITOR'S FILE NO. 8604020016, RECORDS OF SKAGIT COUNTY, WASHINGTON (HEREAFTER KNOWN AS THE CITY TRACT) BEING BURLINGTON BOULEVARD (FORMERLY KNOWN AS GARL STREET) AND THE TRUE POINT OF BEGINNING;

THENCE CONTINUE NORTH $89^{\circ}42'21''$ WEST A DISTANCE OF 81.95 FEET;

THENCE NORTH $76^{\circ}11'58''$ WEST A DISTANCE OF 25.81 FEET;

THENCE NORTH $89^{\circ}42'21''$ WEST A DISTANCE OF 145.00 FEET;

THENCE SOUTH $00^{\circ}17'42''$ WEST A DISTANCE OF 168.00 FEET;

THENCE SOUTH $24^{\circ}05'48''$ EAST A DISTANCE OF 27.67 FEET;

THENCE SOUTH $00^{\circ}17'42''$ WEST A DISTANCE OF 25.50 FEET TO THE INTERSECTION OF THE SOUTH LINE OF TRACT 2, AS PER BOUNDARY LINE ADJUSTMENT RECORDED IN VOLUME 10 OF SURVEYS, PAGES 51 AND 52, UNDER AUDITOR'S FILE NO. 9007100003, RECORDS OF SKAGIT COUNTY, WASHINGTON;

THENCE SOUTH $88^{\circ}50'37''$ EAST, ALONG SAID SOUTH LINE A DISTANCE OF 222.53 FEET TO A POINT OF CURVATURE TO THE LEFT;

THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 29.50 FEET THROUGH A CENTRAL ANGLE OF $37^{\circ}39'38''$ AN ARC DISTANCE OF 19.39 FEET TO THE INTERSECTION OF THE WEST RIGHT-OF-WAY MARGIN OF SAID CITY TRACT;

THENCE NORTH $00^{\circ}17'42''$ EAST ALONG THE WEST LINE OF SAID CITY TRACT A DISTANCE OF 210.15 FEET TO THE TRUE POINT OF BEGINNING;

(ALSO KNOWN AS PARCEL A OF THAT SURVEY RECORDED IN VOLUME 11 OF SURVEYS, PAGES 122 AND 123, UNDER AUDITOR'S FILE NO. 9107100065, RECORDS OF SKAGIT COUNTY, WASHINGTON.)

SITUATED IN SKAGIT COUNTY, WASHINGTON

PARCEL B:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 34 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 6;

THENCE NORTH $00^{\circ}17'42''$ EAST ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 657.12 FEET TO A POINT THAT IS 10.00 FEET SOUTH AS MEASURED AT RIGHT ANGLES TO THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SECTION 6;

THENCE NORTH $88^{\circ}59'14''$ WEST, PARALLEL WITH SAID NORTH LINE A DISTANCE OF 69.75 FEET TO THE INTERSECTION OF THE WEST LINE OF THAT CERTAIN TRACT OF LAND CONVEYED TO THE CITY OF BURLINGTON UNDER AUDITOR'S FILE NO. 8604020016, RECORDS OF SKAGIT COUNTY, WASHINGTON (HEREAFTER KNOWN AS THE CITY TRACT) BEING BURLINGTON BOULEVARD (FORMERLY KNOWN AS GARL STREET), SAID INTERSECTION BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH $88^{\circ}59'14''$ WEST A DISTANCE OF 540.05 FEET;

THENCE SOUTH $01^{\circ}00'46''$ WEST A DISTANCE OF 29.00 FEET;

THENCE SOUTH $01^{\circ}24'07''$ EAST A DISTANCE OF 23.02 FEET;

THENCE SOUTH $01^{\circ}00'46''$ WEST A DISTANCE OF 125.00 FEET;

THENCE NORTH $88^{\circ}59'14''$ WEST A DISTANCE OF 10.83 FEET;

THENCE SOUTH $01^{\circ}00'46''$ WEST A DISTANCE OF 167.17 FEET;

THENCE SOUTH $88^{\circ}59'14''$ EAST A DISTANCE OF 6.33 FEET;

THENCE SOUTH $01^{\circ}00'46''$ WEST A DISTANCE OF 44.22 FEET;

THENCE NORTH $50^{\circ}37'51''$ EAST A DISTANCE OF 165.79 FEET;

THENCE SOUTH $00^{\circ}17'42''$ WEST A DISTANCE OF 93.34 FEET;

THENCE SOUTH $89^{\circ}42'21''$ EAST A DISTANCE OF 51.97 FEET;

THENCE SOUTH $00^{\circ}17'42''$ WEST A DISTANCE OF 225.57 FEET TO THE INTERSECTION OF THE SOUTH LINE OF TRACT 2 OF THE BOUNDARY LINE ADJUSTMENT

RECORDED IN VOLUME 10 OF SURVEYS, PAGES 51 AND 52, UNDER AUDITOR'S FILE NO. 9007100003, RECORDS OF SKAGIT COUNTY, WASHINGTON;

THENCE SOUTH 88°50'37" EAST ALONG SAID SOUTH LINE A DISTANCE OF 147.96 FEET;

THENCE NORTH 00°17'42" EAST A DISTANCE OF 25.50 FEET;

THENCE NORTH 24°05'48" WEST A DISTANCE OF 27.67 FEET;

THENCE NORTH 00°17'42" EAST A DISTANCE OF 168.00 FEET;

THENCE SOUTH 89°42'21" EAST A DISTANCE OF 145.00 FEET;

THENCE SOUTH 76°11'58" EAST A DISTANCE OF 25.81 FEET;

THENCE SOUTH 89°42'21" EAST A DISTANCE OF 81.95 FEET TO THE WESTERLY MARGIN OF SAID CITY TRACT;

THENCE NORTH 00°17'42" EAST ALONG SAID WESTERLY MARGIN A DISTANCE OF 364.19 FEET TO A POINT OF CURVATURE TO THE LEFT;

THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET THROUGH A CENTRAL ANGLE OF 89°16'56" AN ARC DISTANCE OF 31.17 FEET TO THE TRUE POINT OF BEGINNING;

(ALSO KNOWN AS PARCEL B OF THAT SURVEY RECORDED IN VOLUME 11 OF SURVEYS, PAGES 122 AND 123, UNDER AUDITOR'S FILE NO. 910710065, RECORDS OF SKAGIT COUNTY, WASHINGTON.)

PARCEL C:

AN EASEMENT FOR INGRESS, EGRESS, AND PARKING AS DESCRIBED IN THAT CERTAIN EASEMENT DATED AUGUST 1, 1991, BETWEEN DAYTON HUDSON CORPORATION AND WINMAR CASCADE, INC., RECORDED AUGUST 1, 1991, UNDER AUDITOR'S FILE NO. 9108010068, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATED IN SKAGIT COUNTY, WASHINGTON