## ARTICLE 7. USE; CONDUCT OF BUSINESS

7.1 Use.

(a) Tenant's Use.

(i) The Demised Premises shall be used only for the purpose of the operation of a grocery store, food market, and/or supermarket under the trade name Whole Foods Market or any other trade name used by Whole Foods Market, Inc. or by entities owned or controlled by Whole Foods Market, Inc. as provided for herein (the "**Permitted Use**"). The Permitted Use may include, without limitation, (A) primarily the sale of products, foods, merchandise, services and items generally sold in supermarkets, grocery stores or food markets including, without limitation, produce, meat, poultry, seafood, dairy, cereals, grains, fruits and vegetables, frozen foods, grocery products, household items, bulk foods, gourmet foods, bakery goods, prepared foods, alcoholic beverages (including wine, beer and package (i.e., "hard") liquor products and including for on and off premises consumption), vitamins, body care products, cosmetics, health care items, beauty aids, plants, flowers, books, magazines, bed sheets, towels and other household linens clothing, medicinal herbs, naturopathic and homeopathic remedies, nutritional supplements, smoothies and/or fresh fruit drinks, electronics, memberships, subscriptions, warranties, and any other non-discount, wholesale or bulk goods product, food, merchandise, services, or item sold in other supermarkets, grocery stores or food markets operated by Whole Foods Market, Inc. or by entities owned or controlled by Whole Foods Market, Inc., (B) the operation of an in-store bakery, brew pub, bar, microbrewery, café, and/or a delicatessen style or sit down style restaurant including the cooking required therefor, coffee bar and/or juice bar, including non-alcoholic and alcoholic beverages for on-premises consumption; provided, however that in no event shall the seating area for consumption of food and beverages at the Demised Premises exceed twenty percent (20%) of the Rentable Area of the Demised Premises, (C) storage of Tenant's and or Tenant Affiliate's products, foods, merchandise, and other items (provided that the storing products of Tenant's Affiliates shall not occupy more than 5% of the Demised Premises), (D) installing lockers for customer pick up and drop off of items purchased through Tenant and/or a Tenant Affiliate including, without limitation, items purchased online, which area may include lockers and/or may be staffed by personnel of Tenant or a Tenant Affiliate; provided however, that in no event shall the area reserved for locker use exceed 5,000 square feet of Rentable Area, and (E) providing and/or offering services ancillary or complementary to the foregoing operation of a full service grocery store including, without limitation, a branch bank, cooking demonstrations and cooking classes, coffee roasting, massages, pedicures and other spa type services, delivery (including, without limitation, Prime Now ordering and delivery), customer pick up, and other ancillary or complementary services to the operation of a full service grocery store and the sale of any other products, foods, merchandise, and items and/or the provision of any other services or the conduct of any other activity that Tenant may from time to time deem to be desirable and consistent with the operation of a full service grocery store, including those that may arise from future innovations to or changes in Tenant's business as a full service grocery store operation.

(ii) Tenant may have such number of seats for Tenant's customers in any brew pub, bar, microbrewery, café, delicatessen style or sit down style restaurant, coffee bar and/or juice bar located in the Demised Premises as Tenant deems necessary or desirable and, if required by applicable Law with respect to alcohol sales or any in store brew pub or bar within

the interior of the Demised Premises, Tenant may have a separate entrance to and/or demising walls for a brew pub or bar as may be required by connection with such use, so long as such use does not exceed 10,000 square feet of Rentable Area.

(iii) Tenant also shall have the right at any time and from time to time to use any mezzanine area constructed within the Demised Premises for Retail Purposes (as that term is defined in Section 5.3 above) provided Tenant will be responsible for all structural upgrades necessary for such uses and purposes.

(iv) Tenant (and any successors, assigns or subtenants of Tenant) shall be subject only to those exclusives of existing tenants in the Development and Project that are set forth in Exhibit Q attached hereto and made a part hereof (the "**Existing Exclusives**"). Except for the Existing Exclusives, Landlord shall not be permitted to grant any tenant in the Development any exclusive use protection that is binding on Tenant provided Tenant is operating in accordance with Section 7(a)(i), and except for the Existing Exclusives, neither Tenant nor any successors, assigns or subtenants of Tenant shall be bound by any exclusives of other tenants including, without limitation, future exclusives granted to other tenants in the Development.

(v) Tenant shall be responsible for (1) obtaining any required licenses (including, but not limited to, a liquor license) and permits issuable by applicable governmental authorities for Tenant's operations in the Demised Premises, and (2) complying with all Laws concerning the cleanliness, safety and operation of the Demised Premises and liquor sales, if any.

(vi) Notwithstanding any provision of this Lease to the contrary, Tenant shall not use, or allow the use of, the Demised Premises for, and Landlord shall not use, or allow the use of, the Development for, any of the Prohibited Uses (herein so called) set forth on Exhibit L attached.

(b) Restrictive Covenant – Phase I. Except as (x) prohibited by Law and (y) as permitted by Sections 7.1(e) and 7.1(f) below, Landlord shall not lease space in any other portion of Phase I for:

(i) Any salad bar, delicatessen (which is defined as a retail store that sells sliced to order meat and/or cheese by weight or bulk), or any other business that sells any prepared foods (including, without limitation, pizza, salad, sandwiches or soups, except that national and regional sandwich and pizza chains similar to Jason's Deli, Panera Bread, Jimmy John's or Mod Pizza that do not sell meat and cheese by the pound are permitted) for on- or off-premises consumption.

(ii) LYFE Kitchen, Veggie Grill, The Plant, Tender Greens, SweetGreen, Native Foods, b.good, CHOPT, CORE, Urban Plates, or any similar business.

(iii) No more than one coffee store and/or coffee bar.

(iv) Any juice and/or smoothie bar; provided, however one Jamba Juice style smoothie shop shall be permitted.

(v) No more than one cookie or cupcake shop such as Crumbl Cookies, Insomnia Cookie or Sprinkle.

(c) Restrictive Covenant – Development. Except as (x) prohibited by Law and (y) as permitted by Sections 7.1(e) and 7.1(f) below, Landlord shall not lease space in any other portion of the Development for:

(i) Eatzi's or any similar business that combines a specialty food market and self-service European style eatery.

(ii) The sale of produce, meat, poultry, seafood, dairy, cheese, cereals, grains, fruits and vegetables, frozen foods, grocery products, bulk foods, gourmet foods, bakery goods, alcoholic beverages (including beer and wine), body care products, cosmetics, health care items, beauty aids, plants, flowers, vitamins, medicinal herbs, naturopathic or homeopathic remedies, nutritional supplements, coffee beans (except within the coffee bar described above), smoothies and/or fresh fruit drinks, ice cream, frozen yogurt and/or gelato.

(iii) Any use that would legally impair Tenant's ability to obtain and/or maintain a license to sell alcoholic beverages (including wine and beer) for on- or off-premises consumption from the Demised Premises.

(d) Restrictive Covenant – Project. Except as prohibited by applicable Laws, Landlord may not lease any space in the Project, now or hereafter owned by Landlord or its affiliates under common control (i.e., over 50%), for any supermarket or grocery store (for purposes hereof, the term "**supermarket or grocery store**" means a store of a scale and scope of a stand-alone supermarket such as Safeway, Trader Joe's, Whole Foods Market, Natural Grocers by Vitamin Cottage, Kroger, Von's, Ralphs, Sprouts, Trader Joe's, HEB, Central Market, or Kroger) whose merchandise includes all or some of the following items: perishable items, such as fresh and frozen meat, poultry, and seafood, dairy products and/or fresh fruit and produce, and a variety of other consumer-oriented items, such as cheese, cereals, grains, fruits and vegetables, frozen foods, bulk foods, gourmet foods, bakery goods, and/or vitamins. Further, Landlord shall exercise its rights under the REA to prohibit any "supermarket or grocery store" (as defined above) to the maximum extent permitted under the REA.

(e) Exceptions to Prohibited Uses, Prohibited Parking Intensive Uses and Restrictive Covenant - General. Notwithstanding the foregoing Section 7.1(b) and Exhibit L, but subject to the provisions of Section 7.1(e)(vi) below that constrain or prohibit the sale of the items described in Section 7.1(b) above, Landlord may lease premises in Development to the following uses:

(i) Any full service, sit down, fast casual or counter service restaurant in Phase I; provided, however, full service, sit down restaurants in Phase I shall be permitted only in the Adjacent Parking Area Outlot and the area marked as the "**Phase I Permitted Restaurant Area**" on Exhibit A and shall not exceed 14,000 square feet of Rentable Area in the aggregate. In no event shall restaurant uses in Phase I exceed 28,000 square feet of Rentable Area in the aggregate. For the avoidance of doubt, the square footage devoted to any full service, sit down restaurant shall count against the aggregate cap for restaurants.

(ii) One (1) conventional pharmacy such as CVS or Walgreen's as such are commonly operated provided that such conventional pharmacy is located outside of Phase I;

(iii) One (1) cosmetic store, such as Ulta and Sephora provided that such cosmetic store is located outside of Phase I; Modified language on page 5

(iv) Traditional ice cream or frozen yogurt stores such as Baskin Robbins or Dairy Queen provided that such store is located outside of Phase I;

(v) intentionally deleted; and

(vi) "Incidental sales" of any of the prohibited items described in Section 7.1(c)(ii) above by any tenant or occupant in the Development. For purposes of the foregoing, a tenant or occupant shall be deemed to be conducting "incidental sales" of such prohibited items only if the aggregate floor area in such tenant's or occupant's premises devoted to the display of such items does not exceed the lesser of (1) ten percent (10%) of the Rentable Area of such tenant's or occupant's premises, or (2) two hundred and fifty (250) square feet. Notwithstanding the foregoing, however, the sale of the following (even if such sales be considered only "incidental sales") by any tenant or occupant in the Development is expressly prohibited: (1) wine and/or beer for off premises consumption, (2) except as part of a restaurant, meat, poultry and/or seafood for off premises consumption, (3) except as part of a restaurant, cheese for off premises consumption, (4) vitamins, (5) naturopathic and/or homeopathic remedies, and (6) nutritional supplements. Modified language on page 5-6

(f) Exceptions to Prohibited Uses, and Restrictive Covenants - Existing Tenants. Further, the provisions of Sections 7.1(b), 7.1(c), 7.1(d) and Exhibit L shall not apply to the existing tenants or occupants in the Project as described on Exhibit P attached hereto ("**Existing Tenants**") or any successor, assignee or sublessee of such Existing Tenant for so long as any such Existing Tenant's lease or occupancy agreement or any renewal or extension thereof, is in effect; provided, however, if a change of use or an expansion of the premises under any such existing lease requires Landlord's consent, Landlord shall not consent to any change of use or to any expansion of the area of such premises for a use that would violate the restrictions on use set forth in Sections 7.1(b), 7.1(c), 7.1(d) and Exhibit L unless (x) such change in use is for a purpose presently permitted by such lease or occupancy agreement which does not require the consent of Landlord thereunder, (y) Landlord is not permitted pursuant to the terms of such lease or occupancy agreement to enforce Tenant's rights hereunder in connection with such change in use, or (z) Landlord's failure to approve or consent to a change in use would be unreasonable under the terms of any such lease or occupancy agreement for which Landlord's consent is required to be reasonable.

(g) Remedies for Breach of Restrictive Covenant. The restrictions set forth in Sections 7.1(b), 7.1(c) and 7.1(d) above and Exhibit L were a material inducement to Tenant to enter into this Lease, and any breach of such restrictions will cause Tenant irreparable harm.

(i) Unilateral Action of Another Tenant. If (A) a violation of the restrictions set forth in Sections 7.1(b), 7.1(c) and/or 7.1(d) above and/or Exhibit L occurs (a "**Violation**"), (B) Tenant provides written notice of such Violation to Landlord (a "**Violation Notice**"), (C) the Violation is the result of the unilateral action of another tenant or occupant of the Development (i.e., Landlord did not expressly consent to or take any affirmation action to allow the Violation) other than an Existing Tenant (i.e., Landlord did not expressly consent to the Violation), and no voluntary resolution is reached within three (3) months after Tenant gives Landlord the Violation Notice, then Landlord agrees to commence an action (or arbitration, if required by such lease) against such other tenant or occupant, and thereafter and use commercially reasonable, good faith efforts to enforce its rights under such lease and to obtain

accrue) until (i) the Building has been completed, (ii) all structural and exterior work on all other buildings at Phase I has been completed; provided, however, (x) the Adjacent Parking Area Outlot may remain incomplete, and (y) Phase I(B) may remain incomplete, (iii) Landlord's Common Area improvements in the Development are substantially completed and are available for use by Tenant and Tenant's Invitees, and (iv) the date on which the building shell of the Residential Component shall have been substantially completed."

20. **Initial Co-Tenancy Satisfaction Date.** Section 5.2(a) of the Original Lease is deleted in its entirety and the following is substituted therefor:

(a) Initial Co-Tenancy Satisfaction Date. As used in this Lease, the term "**Initial Co-Tenancy Satisfaction Date**" means the date on which each of the following conditions has been met:

(i) Eighty percent (80%) of the total rentable retail area of the Development (excluding the Demised Premises) with all base building construction work (roof, foundations, structural elements, etc.) completed or under construction, although not all storefronts or interior improvements need to be complete; and

(ii) Landlord certifies to Tenant in writing (as part of the Landlord Work Completion Certification attached hereto as Exhibit I) that Landlord has entered into signed leases with third party, Retail Tenants for at least sixty percent (60%) of the total Rentable Area to be constructed in the Development (excluding the Demised Premises), which leases obligate such tenants to open within nine (9) months from the date of Landlord's certification.

Landlord and Tenant acknowledge that "retail area" shall not include the Residential Component.

21. **Landlord's Work Completion Date.** Section 5.2 of the Original Lease is hereby further amended in part as follows:

A. Section 5.2(b)(iv) is hereby amended in part so that the phrase "ninety (90) days" is deleted in its entirety and the phrase "one hundred fifty (150) days is substituted therefor."

22. **Pylon/Monument Signage**. Anything in the Lease to the contrary notwithstanding, including, but not limited to, Section 6.7 of the Original Lease, Tenant shall only be entitled to panels on those signs shown on Schedule 1 attached hereto and made a part hereof. If at any time during the Term Landlord constructs any other free-standing pylon signs, Tenant shall not be entitled to any panels thereon. Landlord shall also install way finding signage providing directions in the Development.

23. **Exceptions to Prohibited Uses.** Anything in Article 7 to the contrary notwithstanding, Landlord and Tenant agree as follows:

A. Section 7.1(e)(iii) is hereby amended as follows: One (1) cosmetic store, such as Ulta or Sephora, anywhere in the Development, including Phase I.

B. Section 7.1(e)(vi) is hereby deleted in its entirety and the following is substituted therefor:

(vi) "Incidental sales" of any of the prohibited items described in Section 7.1(c)(ii) above by any tenant or occupant in the Development. For purposes of the foregoing, a tenant or occupant shall be deemed to be conducting "incidental sales" of such prohibited items only if the aggregate

floor area in such tenant's or occupant's premises devoted to the display of such items does not exceed the lesser of (1) ten percent (10%) of the Rentable Area of such tenant's or occupant's premises, or (2) two hundred and fifty (250) square feet. Notwithstanding the foregoing, however, the sale of the following (even if such sales be considered only "incidental sales") by any tenant or occupant in the Development is expressly prohibited: (1) except as part of a restaurant, wine and/or beer for off premises consumption, (2) except as part of a restaurant, meat, poultry and/or seafood for off premises consumption, (3) except as part of a restaurant, cheese for off premises consumption, (4) vitamins, (5) naturopathic and/or homeopathic remedies, and (6) nutritional supplements.

C. Landlord and Tenant acknowledge and agree that the Development shall include a park area as shown on Exhibit A ("**Park Area**"). Tenant agrees that the restrictions in Article 7 shall not prohibit Landlord from allowing (i) up to twenty-five thousand (25,000) square feet of restaurants to be located in the Park Area and such restaurants and other tenants or occupants of the Development may be permitted to have a valet area provided that such valet area shall be outside of Phase 1; and (ii) two (2) brewery tap rooms primarily selling their own brand of beer located in the Park Area.

24. **Service Area.** Section 7.2(d) of the Original Lease is hereby amended in part so that the term "**Trash Area**" is deleted in its entirety and the term "**Tenant's Service Areas**" is substituted therefor.

25. **Tenant's Conditions.** The conditions set forth in Section 16.1 of the Original Lease are amended follows:

(a) Tenant acknowledges that Landlord has obtained control of that portion of the Development under lease by Sears. Therefore, Tenant acknowledges that the condition set forth in Section 16.1(a) of the Original Lease has been satisfied and Tenant shall no longer have the right to terminate the Lease for a failure of this condition.

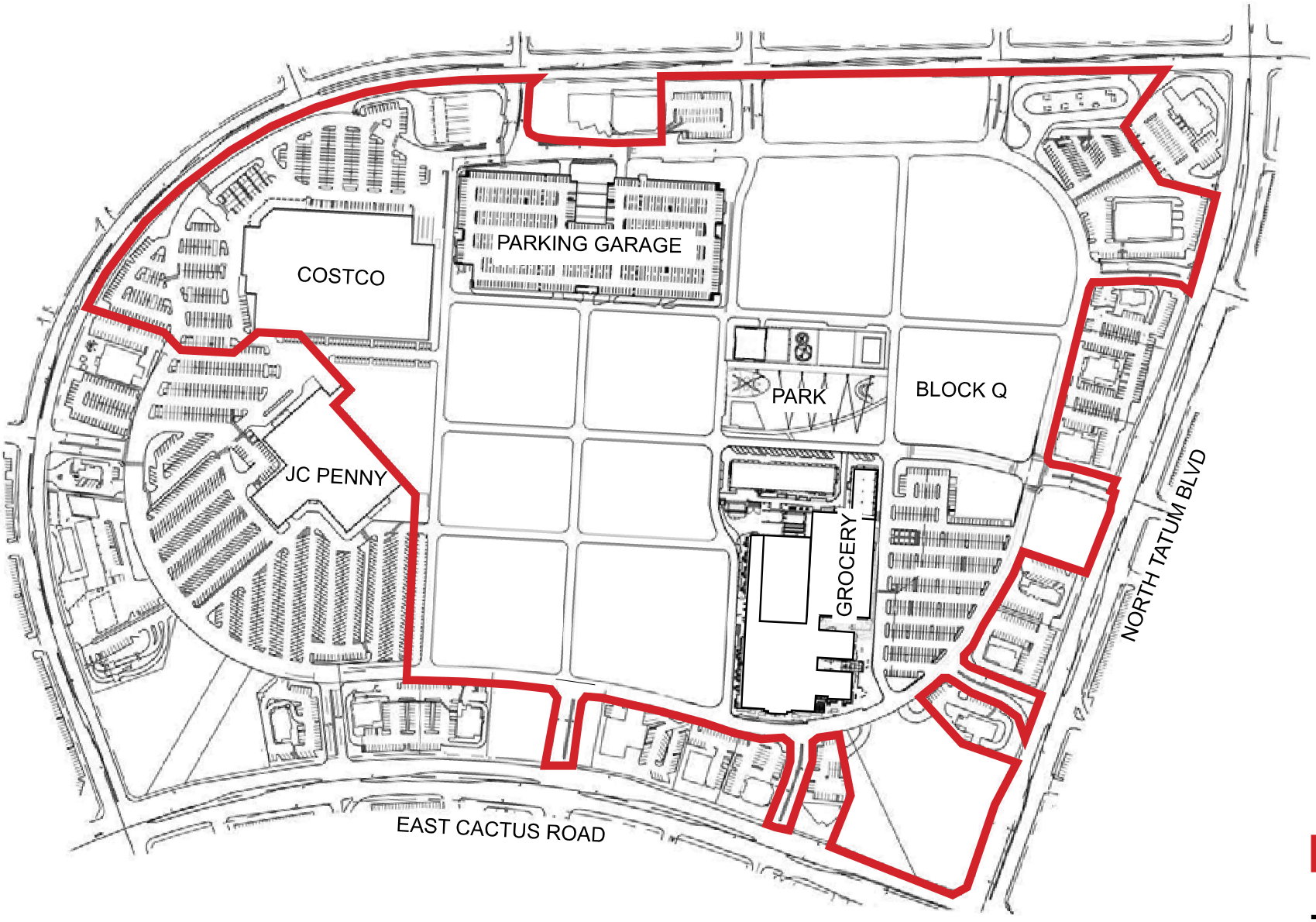
(b) The City of Phoenix has approved the Site Plan for the Development with no continuing restriction or provision included as part of such approval that in any way restricts Tenant's operations at the Demised Premises or its rights to operate under this Lease. Therefore, Tenant acknowledges that the condition set forth in Section 16.1(b) of the Original Lease has been satisfied and Tenant shall no longer have the right to terminate the Lease for a failure of this condition.

(c) Landlord has provided Tenant with evidence of the existence of final, uncontested, un-appealed and non-appealable zoning, in form and substance acceptable to Tenant, permitting the construction and operation of a grocery store with no continuing restriction or provision included as part of such approval that in any way prohibits Tenant's operations at the Demised Premises or its rights to operate under this Lease other than minor restrictions consistent with other restrictions on Tenant's other locations. Therefore, Tenant acknowledges that the condition set forth in Section 16.1(c) of the Original Lease has been satisfied and Tenant shall no longer have the right to terminate the Lease for a failure of this condition.

(d) Tenant has approved Landlord's Plans (as that term is defined in Exhibit E attached hereto) and Tenant shall no longer have the right to terminate the Lease for a failure of this condition.

(e) Tenant acknowledges that Landlord has acquired the Macy's premises and therefore the Option to Require Purchase and Option to Purchase identified on Exhibit J as exception No. 38 is

**EXHIBIT A**

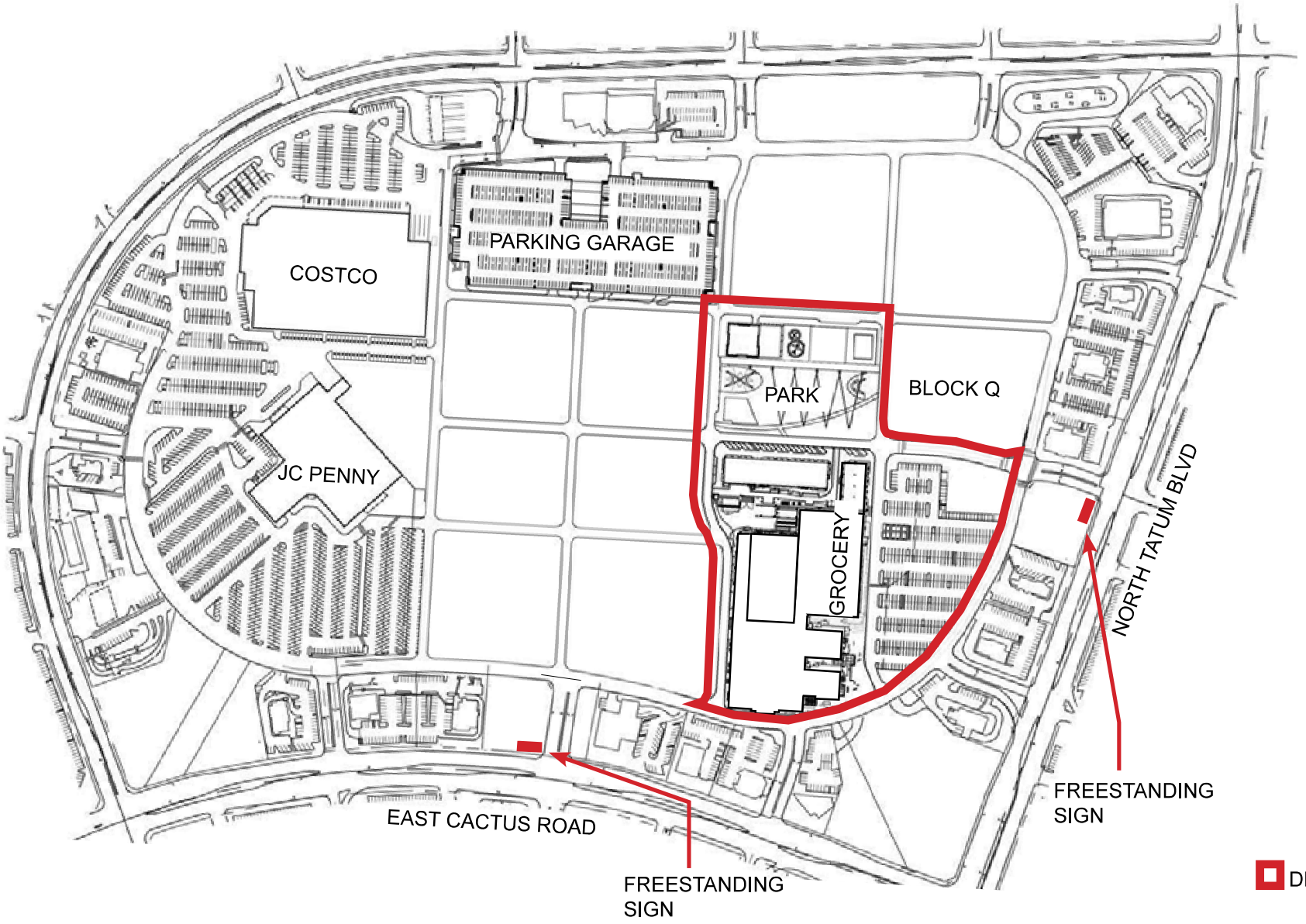



THE PROJECT

SITE PLAN

NORTH

**EXHIBIT A**

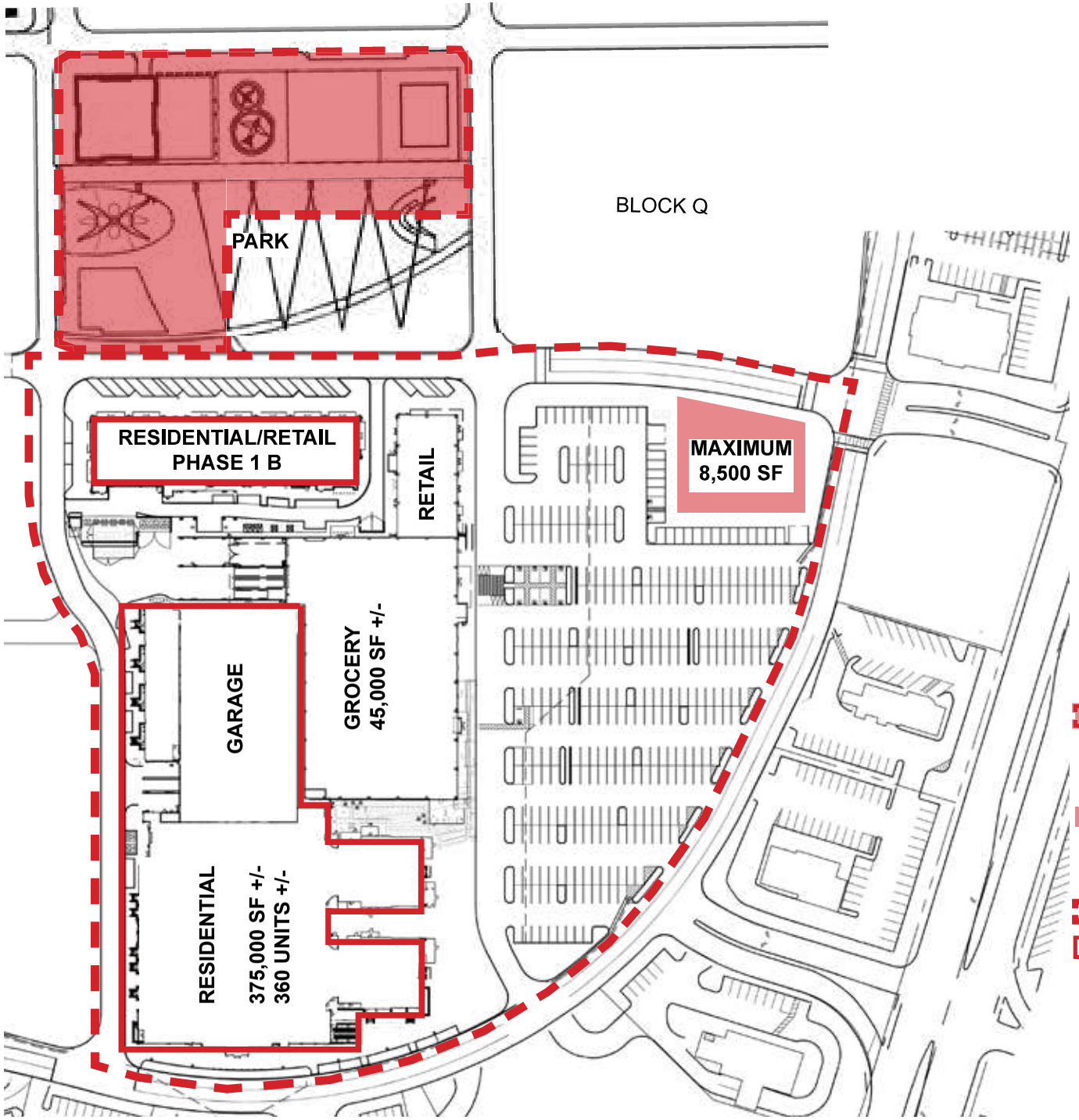



DEVELOPMENT

SITE PLAN

NORTH

**EXHIBIT A**




PARK BUILDING AREA

OUTLOT BUILDING AREA

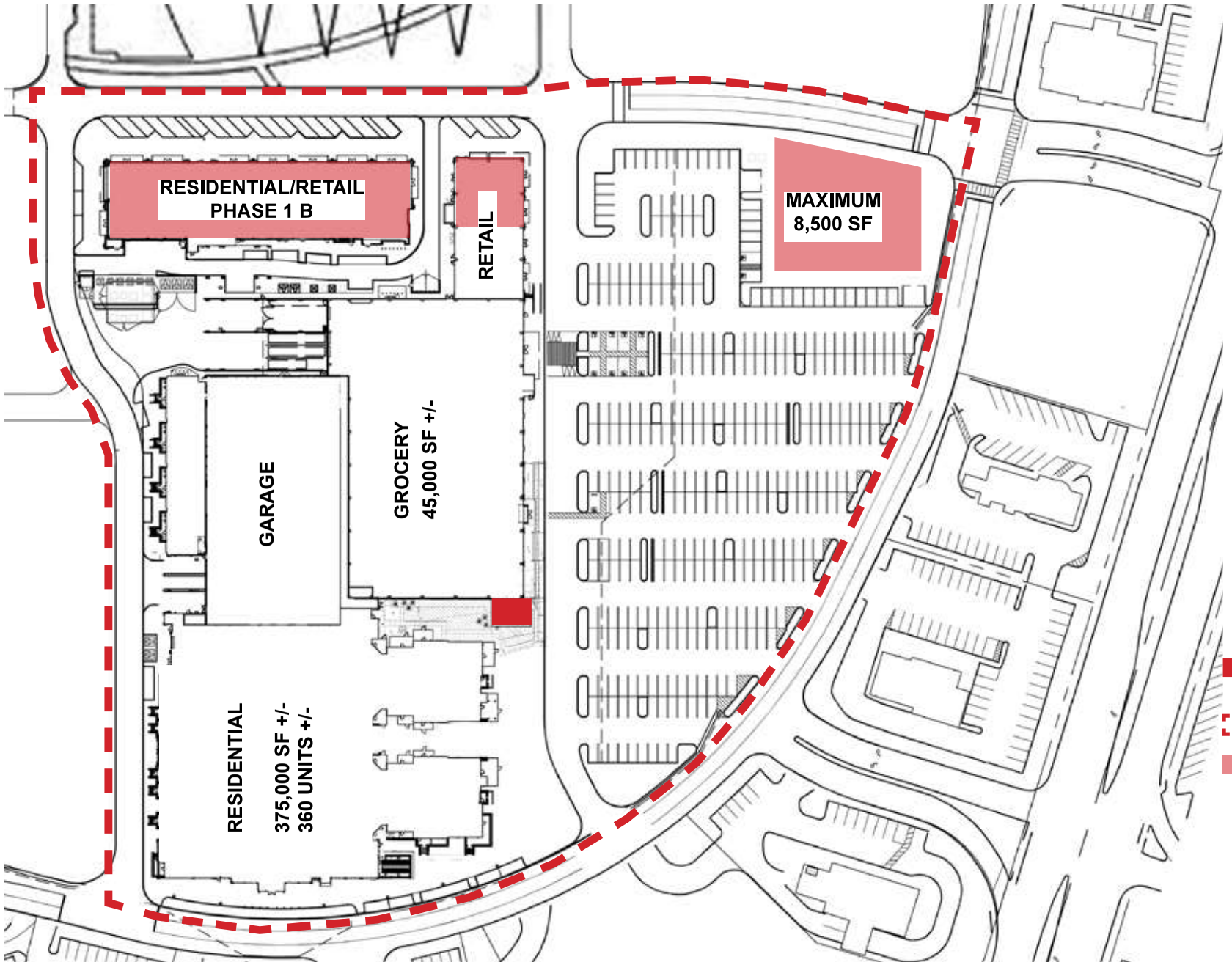
PHASE 1

RESIDENTIAL COMPONENT

SITE PLAN

NORTH

EXHIBIT A




SITE PLAN

NORTH