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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
8/30/2016 9:54:00 AM
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**CROSS-ACCESS EASEMENT, TEMPORARY CONSTRUCTION EASEMENT
AND RESTRICTION AGREEMENT**

THIS CROSS-ACCESS EASEMENT, TEMPORARY CONSTRUCTION EASEMENT AND RESTRICTION AGREEMENT ("Agreement") is made effective as of the 30 day of AUGUST, 2016 (the "Effective Date"), by and among FORT LANE VILLAGE, L.C., a Utah limited liability company ("Fort Lane"), WELLS FARGO BANK, N.A., successor by merger to FIRST SECURITY BANK OF UTAH, N.A. ("Wells Fargo") and WINCO FOODS, LLC, a Delaware limited liability company ("WinCo"). Fort Lane, Wells Fargo and WinCo may be collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS

A. WinCo is, or will be as of the date of the recording of the Fort Lane Village Amended subdivision plat, the owner of certain parcels of land in the City of Layton, County of Davis, State of Utah, more particularly described on Exhibit A hereto (the "WinCo Parcel").

B. Wells Fargo is, or will be as of the date of the recording of the Fort Lane Village Amended subdivision plat, the owner of a certain parcel of land in the City of Layton, County of Davis, State of Utah, more particularly described on Exhibit B hereto (the "Wells Fargo Parcel").

C. Fort Lane is, or will be as of the date of the recording of the Fort Lane Village Amended subdivision plat, the owner of certain parcels of land in the City of Layton, County of Davis, State of Utah, more particularly described on Exhibit C hereto (collectively, the "Fort Lane Parcel").

D. The WinCo Parcel, the Wells Fargo Parcel and the Fort Lane Parcel may be collectively referred to herein as the "Parcels", and individually as a "Parcel."

E. The Parties are willing to grant such easements and restrictions, as set forth below, subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and for the covenants set forth herein, the Parties hereby agree as follows:

1. **SITE PLAN APPROVAL.** The Parties hereby acknowledge and approve the site plan (the "Site Plan") set forth on **Exhibit D** hereto. No material amendment or revision may be made to the Site Plan without the express written consent of the Parties.

2. **CROSS-ACCESS EASEMENT.** The Parties hereby grant and convey to one another, for their joint and non-exclusive use and for the use of each Party's respective officers, directors, employees, contractors, customers, vendors, suppliers, visitors, invitees, tenants, occupants, licensees, subtenants, and concessionaires (collectively, "Permittees"), a perpetual, non-exclusive easement for the passage of vehicles and pedestrians over, across and between the Parcels over those portions of their respective Parcel which comprise, or will comprise, the extension of Wasatch Drive through the Parcels, which areas are labeled the "Common Access Area", as depicted on the Site Plan (the foregoing, collectively, the "Cross-Access Easement"). No portion of the Common Access Area may be used for any purpose other than for roadway, curb, gutter, sidewalks and related improvements comprising the extension of Wasatch Drive. The Cross-Access Easement granted herein shall permit the initial construction by WinCo of any and all improvements required or approved by the City of Layton within the Common Access Area, and WinCo may, within its reasonable discretion, take such actions as are necessary to protect the public from potentially hazardous conditions during such period of initial construction. Upon the completion of the initial construction of the Common Access Area, the Cross-Access Easement may be used by the Parties and the respective Permittees to access the Parcels and all permitted uses operating therein. Without limiting the foregoing, however, the Parties reserve the right to temporarily erect or place barriers on their respective Parcel in areas that are being constructed and/or repaired in order to ensure either safety of persons or protection of property.

3. **MAINTENANCE OF COMMON ACCESS AREA.** The Operator (as defined in and pursuant to that certain Amended & Restated Declaration of Easements and Conditions dated _____, 2015, by and between WinCo and Fort Lane (as used herein, the "Declaration") shall maintain or cause to be maintained, the Common Access Area improvements in good condition and repair including, without limitation, routine Maintenance (defined below) thereof, sweeping, patching, paving, repainting, restriping and resurfacing, and snow removal therefrom. Operator may, but shall not be required to, enter into one or more third-party contracts for the provision of all or any portion of its maintenance obligations as described herein. "Maintenance" shall include, without limitation:

a. Maintenance, repair and replacement of the surface and subsurface of the Common Access Area, as necessary, to maintain the Common Access Area in a level, smooth, and evenly covered condition with the types of materials and at the same grade and elevation as initially constructed;

b. Removal from the Common Access Area of paper, rubbish, debris, ice, snow, and other hazards to Parties and Permittees using the Common Access Area, and washing or sweeping paved areas as required; and

c. Such painting and repainting of traffic lines (if any) to maintain the Common Access Area in good condition and provide for safe traffic flow between the Parcels.

d. In lieu of Operator's administrative, management, and overhead costs, Operator shall be permitted to charge an administrative fee, which shall be computed by multiplying the Common Costs (defined below), but excluding the cost of Operator's insurance, any utilities, and any capital improvements, by ten (10) percent ("Administration Fee"). The Administration Fee shall be included in the Common Costs.

3.1 As reimbursement for its share of the total costs of maintaining the Common Access Area as set forth above (the "Common Costs"), Wells Fargo shall pay to the Operator ten percent (10%) of such Common Costs within twenty (20) days of receiving a written billing from the Operator, which billings shall be issued on a quarterly basis. WinCo and Fort Lane shall be responsible for payment of the remaining ninety percent (90%) of such Common Costs pursuant to the terms of the Declaration.

3.2 In the event that Wells Fargo utilizes any storm water inlets, pipe, drains, and/or other facilities and improvements located on the Fort Lane Parcel and/or WinCo Parcel, including but not limited to the Tract A Surface Water Facilities (as defined in the Declaration), for the collection, conveyance and/or storage of storm water from the Wells Fargo Parcel, Wells Fargo shall reimburse the Operator for its share of the costs of maintaining, repairing and replacing such storm water facilities in accordance with the terms set forth in Section 3.1 above, and such costs shall be included as billed as Common Costs.

4. TEMPORARY CONSTRUCTION EASEMENT.

a. Wells Fargo hereby grants to WinCo (and to Fort Lane, if Fort Lane is the party constructing any such improvements) a temporary construction easement (the "Temporary Construction Easement") over the Wells Fargo Parcel in order to permit WinCo to enter upon the Wells Fargo Parcel and construct any and all improvements (the "Wasatch Improvements") required by the City of Layton as a condition of the extension of Wasatch Drive (for example, any curbing, gutters, sidewalk, landscaping or paving), a private drive. The Temporary Construction Easement is depicted on Exhibit D attached hereto.

b. The term of the Temporary Construction Easement shall automatically terminate and expire upon the earlier of (i) the completion of the Wasatch Improvements, or (ii) twenty-four (24) months from the Effective Date of this Agreement.

c. Any and all such work conducted by WinCo under this Agreement shall be completed in a good and workmanlike manner in accordance with all applicable laws, rules, regulations, and local ordinances, and, except as permitted herein, shall not unreasonably disrupt or otherwise interfere with Wells Fargo's use of the Wells Fargo Parcel.

d. WinCo shall indemnify, defend and hold Wells Fargo and its members, parents, subsidiaries, and each of their respective agents, employees, representatives, successors and assigns, harmless from and against any and all claims, losses, liabilities, damages, actions, proceedings, or judgments of whatever kind or nature, liens, penalties, fines, and any and all costs and expenses (including, without limitation, reasonable attorneys' and experts' fees and costs of suit) arising from or related to WinCo's or its Permittees' use of or operations in the

Temporary Construction Easement area; provided, however, that the foregoing indemnification shall not apply to any such claims based on the willful or negligent acts or omissions of Wells Fargo or its Permittees.

5. **RESTRICTIONS.** The Parties agree that the following uses shall not be permitted on the Parcels:

- a. 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;
- b. Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
- c. 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);
- d. Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors or other future technology no more intrusive than garbage compactors);
- e. 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;
- f. Any manufactured home, automobile, truck, trailer, boat or recreational vehicles sales, leasing, display, body shop operation;
- g. Any cemetery, mortuaries, funeral homes or similar service establishments;
- h. Any adult book or adult video stores or establishments selling or exhibiting pornographic materials, marijuana (whether medical or otherwise) and/or drug-related paraphernalia, or any other use of a sexually-oriented or "adult" nature;
- i. Any public or private nuisance;

j. Any fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks.

6. **DEFAULT.**

a. **Events of Default.** The failure of a Party to observe or perform any of the covenants, conditions or obligations of this Agreement within thirty (30) days after the issuance of a written notice by another Party that it has failed to perform under this Agreement specifying the nature of the default claimed, shall constitute a material default and breach of this Agreement.

b. **Equitable Relief.** The 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 Agreement, 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 Agreement, 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 Agreement 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.

c. **Waiver of Default.** No waiver by any Party of any default under this Agreement 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 Agreement 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 Agreement.

d. **Agreement Continues Notwithstanding Default.** It is expressly agreed that no breach of or event of default under this Agreement shall: (i) entitle any Party to cancel, rescind, or otherwise terminate this Agreement; 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 a Parcel. This limitation shall not affect in any manner any other rights or remedies that a Party may have hereunder by reason of any such breach or default.

7. **MISCELLANEOUS.**

a. **Binding Effect.** The terms of this Agreement 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. No amendment hereto shall be effective unless such amendment has been executed and notarized by the Parties or their respective successors and further provided that any such amendment is recorded in the Official Records of the Recorder's Office of Davis County, Utah.

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

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

d. Notices. Whenever a Party is required or permitted under this Agreement to provide the other Party with any notice, submittal, request, demand, consent, or approval ("Notice"), such Notice will be given in writing and will be delivered to the other Party at the address or facsimile number set forth below: (i) personally; (ii) by a reputable overnight courier service; (iii) by certified mail, postage prepaid, return receipt requested; or (iv) by e-mail or facsimile transmission. A Party may change its address for Notice by written notice to the other Party delivered in the manner set forth above. Notice will be deemed to have been duly given: (A) on the date personally delivered; (B) one (1) business day after delivery to an overnight courier service with next-day service requested; (C) on the third (3rd) business day after mailing, if mailed using certified mail; or (D) on the date sent when delivered by facsimile or e-mail (so long as the sender sends such facsimile or email on a business day and receives electronic confirmation of receipt and a copy of the Notice is sent by one of the other means permitted hereunder on or before the next business day). The initial addresses for Notice are as follows:

IF TO WINCO:

WinCo Foods, LLC
Attn: Greg Goins, Vice President-Real Estate
650 N. Armstrong Place
Boise, ID 83704
Telephone: (208) 377-0110
Fax: (208) 672-2146
E-mail: greg.goins@wincofoods.com

With a copy at the same address to:
Lori Gilbertson, Property Supervisor
E-mail: lori.gilbertson@wincofoods.com

With a copy at the same address to:
(which shall not constitute notice)
Andrea Deguzman, Real Estate Paralegal
E-mail: andrea.deguzman@wincofoods.com

IF TO FORT LANE:

Fort Lane Village, L.C.
Attn: Kevin Garn
748 W. Heritage Park Blvd., Ste. 203
Layton, UT 84041
Telephone: (801) 784-5146
Fax: () -
E-mail: kevin_garn@yahoo.com

With a copy to:

The Thackeray Garn Company, LLC
Attn: Dean Smith, Attorney
1165 E. Wilmington Ave., Ste. 275
Salt Lake City, UT 84106
Telephone: (801) 487-6670
Fax: (801) 487-6671
E-mail: deans@jtcompany.com

IF TO WELLS FARGO:

WELLS FARGO BANK, N.A.
Attn: Ronald K. Mack
MAC C7201-042
560 South Broadway, Suite 400
Littleton, CO 80121
Telephone: (303) 658-5207
Fax: (303) 658-5224
E-mail: Ronald.K.Mack@wellsfargo.com

With a copy to:

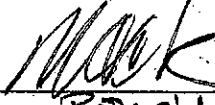
Wells Fargo Corporate Properties Group
Attn: Lease/Property Administration
MAC D1116-L10
1525 West W.T. Harris Blvd.
Charlotte, NC 28262

e. Time. Time is of the essence with respect to each and every term, condition, obligation and provision contained in this Agreement.

f. 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.

[Signatures on following pages.]


**WELLS FARGO BANK, N.A., successor by
merger to First Security Bank of Utah, N.A.**

By: 
Name: Ronald K Mack
Title: Vice President

STATE OF COLORADO)
)ss.
County of Arapahoe)

On this 11 day of June, 2015, before me, a Notary Public, personally appeared Ronald K. Mack, known or proved to me to be the Vice President of Wells Fargo Bank, N.A., successor by merger to First Security Bank of Utah, N.A., the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same on behalf of said national banking association.

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


Notary Public
Residing at Colorado
Comm. Expires Nov. 21, 2017

[Signatures continue on following page.]

KANDICE BACA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094010634
MY COMMISSION EXPIRES NOVEMBER 21, 2017

EXHIBIT A

LEGAL DESCRIPTION OF WINCO PARCEL

LOT 1 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE
PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY
RECORDER;

and:

LOT 9 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE
PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY
RECORDER.

EXHIBIT B

LEGAL DESCRIPTION OF WELLS FARGO PARCEL

PARCEL 7 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER.

EXHIBIT C

LEGAL DESCRIPTION OF FORT LANE PARCEL

PARCEL 2 OF THE FORT LANE VILLAGE SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED DECEMBER 11, 2007, AS ENTRY NO. 2631115, IN BOOK 5412 AT PAGE 1117, IN THE RECORDS OF THE DAVIS COUNTY RECORDER;

and,

PARCEL 4 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER;

and,

PARCEL 5 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER;

and,

PARCEL 8 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER;

and,

PARCEL 6 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER;

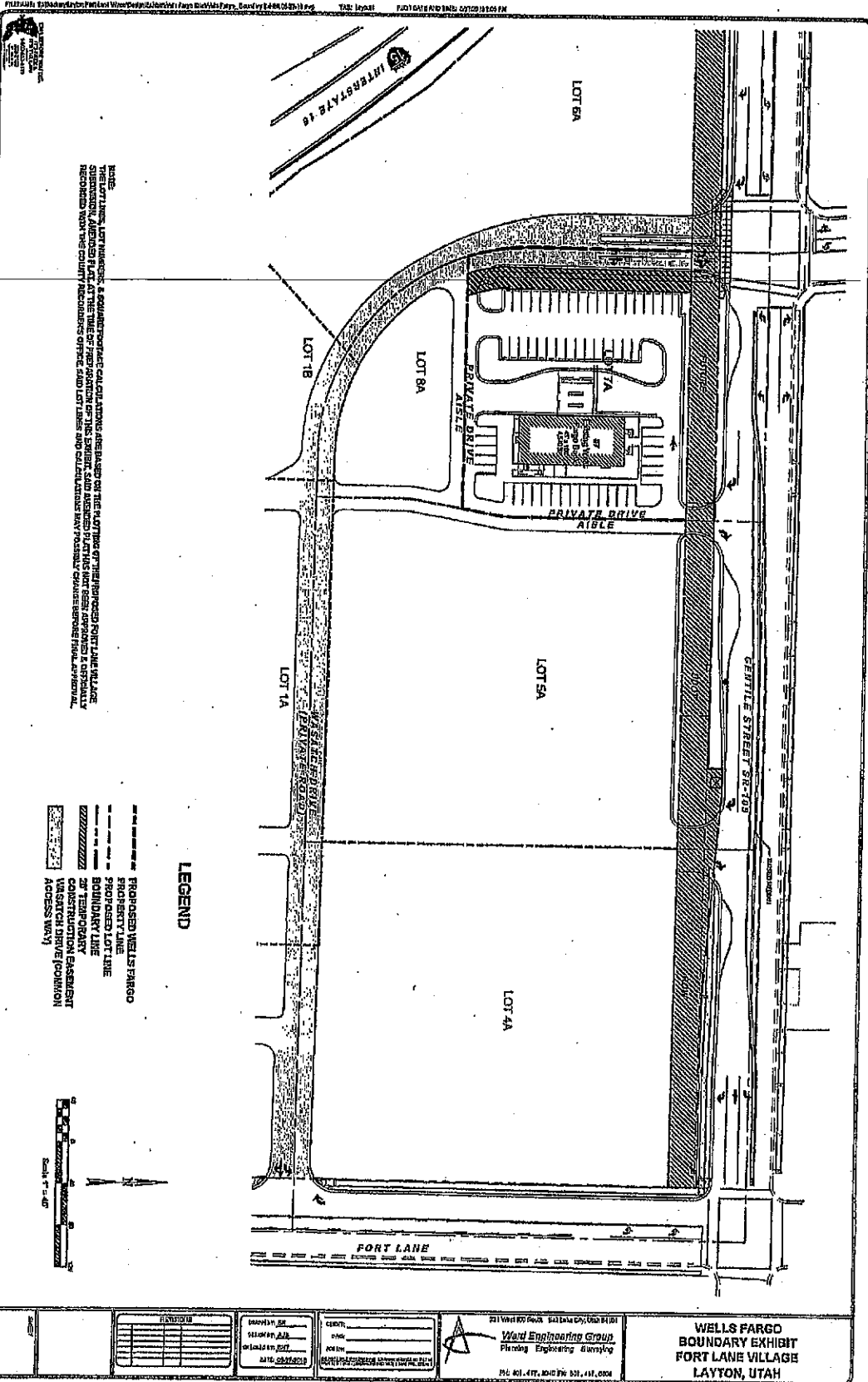
and,

TRACT A OF THE FORT LANE VILLAGE SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED DECEMBER 11, 2007, AS ENTRY NO. 2631115, IN BOOK 5412 AT PAGE 1117, IN THE RECORDS OF THE DAVIS COUNTY RECORDER;

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EXHIBIT D

SITE PLAN
[See attached.]



DATE	10/10/2018
BY	WEG
CHECKED	WEG
DATE	10/10/2018

PROJECT NO.	2018-001
DATE	10/10/2018
DATE	10/10/2018

CITY	LAYTON, UT
STATE	UTAH
DATE	10/10/2018

Ward Engineering Group
 Planning Engineering Surveying
 215 W. 400 N. SUITE 200
 LAYTON, UT 84040
 TEL: 801.477.8000 FAX: 801.477.8000

**WELLS FARGO
 BOUNDARY EXHIBIT
 FORT LANE VILLAGE
 LAYTON, UTAH**