



\*W2656421\*

Recorded at the Request of:  
Roy Water Conservancy District  
5440 South Freeway Park Drive  
Riverdale, Utah 84405

EH 2656421 PG 1 OF 7  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
19-SEP-13 401 PM FEE \$1.00 DEP SGC  
REC FOR: ROY WTR CONSV DIST

Land Parcel (Tax) Id. No(s): 095820001

8.83 ACRES

**PETITION FOR THE ALLOTMENT OF WATER,  
ORDER AND WATER CONTRACT**

**PETITION**

**PETITIONER**, pursuant to and in conformance with the provisions of Section 1007 of the Utah Water Conservancy Act, Title 17B, Chapter 2a, Part 10, Utah Code Ann., 2007, as amended (the "Act"), hereby petitions **ROY WATER CONSERVANCY DISTRICT** (the "District"), a water conservancy district organized and existing under the Act, to enter into a Water Contract for an annual allotment of untreated irrigation water (the "Petition").

**1. PETITIONER [Please Print].**

Petitioner's Name: WINCO FOODS LLC, #16  
Petitioner's Address: 6060 S. 3500 W., ROY, UT 84067

**2. QUANTITY OF WATER REQUESTED FOR ALLOTMENT.** The quantity of irrigation water requested by Petitioner for allotment hereunder is 27.00 acre-feet annually.

**3. ASSESSED LAND.** The land owned by Petitioner which is to receive the beneficial use of the water allotted pursuant to this Petition (the "Assessed Land"), is situated within the boundaries of the District in Weber County, State of Utah, and more particularly described as follows:

Number of Square Feet: 384635  
Parcel Address: 6060 S. 3500 W. ROY, UT 84067  
Legal Description: ALL OF LOT 1, HOMESTEAD ROY PAVILION, ROY CITY, WEBER COUNTY, UTAH.

**4. PAYMENT OF CONTRACT ASSESSMENTS; FEES AND CHARGES.** Any water allotment granted pursuant to this Petition shall be subject to the timely payment of all annual contract assessments duly levied by the District, which contract assessment shall become a perpetuallien upon the Assessed Land as provided in the Act. Petitioner shall also be subject to the timely payment of all impact fees, connection fees and other fees and charges lawfully levied and imposed by the District.

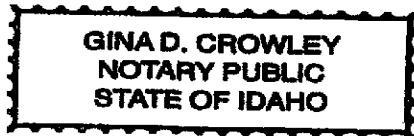
**5. LAWS, RULES AND REGULATIONS.** Petitioner is bound by the provisions of Part 10 of the Act and all District rules and regulations promulgated by the Board of Trustees (the "Board"), of the District.

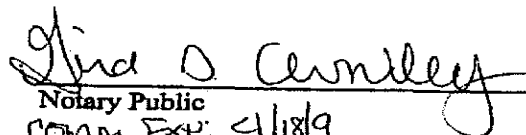
DATED this 30th day of May, 2013.

  
[SIGNATURE OF PETITIONER]

Ada Idaho  
STATE OF UTAH )  
Ada : ss.  
County of Weber )

The foregoing instrument was duly acknowledged before me this 30th day of May, 2013.



  
Notary Public  
Comm Exp: 4/18/19  
Residing: Nampa, ID

**ORDER GRANTING PETITION**

WHEREAS due notice having been given and published, and a public hearing convened, in conformance with the requirements of Section 1007(4) of the Act, and the Board, having found and determined that the granting of the foregoing Petition is in the best interests of the District;

NOW, THEREFORE, pursuant to authority granted to the Board under Section 1007(5) of the Act;

IT IS HEREBY ORDERED that the foregoing Petition to Enter into a Water Contract for the Allotment of Water be and is hereby granted, and that an allotment of irrigation water in the amount set forth in the Petition is hereby made for beneficial use on the Assessed Land as more particularly described in the Petition, subject to and in conformance with the terms, provisions, covenants and conditions set forth in the Water Contract below.

DATED this 11th day of September, 2013.

**ROY WATER CONSERVANCY DISTRICT**

  
Chair, Board of Trustees

## **WATER CONTRACT**

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the Petitioner and the District hereby agree as follows:

**1. ALLOTMENT OF DISTRICT IRRIGATION WATER.** Pursuant to the foregoing Petition and Order Granting Petition, and in conformance with the provisions of Section 1007 of the Act, the District hereby agrees to enter into this Water Contract providing for an allotment of District irrigation water to the Petitioner, and the Petitioner hereby agrees to receive an allotment of irrigation water for beneficial use on the Assessed Land situated within the District as described in the Petition, all subject to the terms, provisions, covenants and conditions set forth in this Water Contract.

### **2. PAYMENT OF CONTRACT ASSESSMENTS, TAXES, FEES AND CHARGES.**

(a) **Contract Assessments.** For the allotment of irrigation water granted to Petitioner hereunder, the Petitioner shall annually pay to the District a sum per acre-foot, including an debt service component and an operation and maintenance component (collectively, the "Contract Assessment"), to be fixed annually by the Board and paid by the Petitioner in conformance with the following:

(1) **Payment.** The Contract Assessment shall be paid by the Petitioner, annually, in a lumpsum or in installments as determined by the Board.

(2) **Payment Due Regardless of Use.** The full Contract Assessment shall be paid by the petitioner to the District whether or not the total quantity of water allotted hereunder is fully utilized by the Petitioner or is otherwise available from the District as set forth in Section 5 herein.

(3) **Tax Lien.** Upon recordation of a certified copy of the resolution of the Board levying the Contract Assessment and certification of the same to the Weber County Auditor, the Contract Assessment shall become a perpetual lien on the Assessed Land.

(4) **Collection of the Contract Assessment.** The Contract Assessment shall be collected by Weber County in the same manner as taxes levied by Weber County.

(b) **Real Property Taxes and Other Taxes and Assessments.** Payment by the Petitioner of the Contract Assessment shall be in addition to, and Petitioner shall not be construed to be exempt from paying, any and all real property and other taxes and assessments duly levied by the District pursuant to the authority of the Act.

(c) **Other Fees and Charges.** Petitioner shall also be obligated to pay to the District any connection fees, impact fees and other fees and charges, if any, which may be lawfully imposed from time-to-time by the Board in connection with the use of the District's irrigation water supply. (d) **Division of the District into Units.** The Petitioner acknowledges that the Board may divide the District into units and within each respective unit fix a different rate per acre-foot or other unit of measurement of water for Contract Assessments and other fees and charges; provided that such rates, fees and charges shall be equitable, although not necessarily equal or

uniform for like classes of service throughout the District.

### **3. USE OF WATER LIMITED TO THE ASSESSED LAND; REALLOCATION.**

(a) All rights and interests accruing hereunder shall attach perpetually to the Assessed Land, and the water allotted hereunder shall only be used on the Assessed Land and shall not be reallocated to or used on any other land.

(b) The District shall have the right to reallocate the water allotted hereunder to sub-parcels of the Assessed Land as the same may hereafter be subdivided, transferred and held in ownership separate from that of the Petitioner in accordance with the rules and regulations of the District.

### **4. DELIVERY, DIVERSION AND USE OF WATER.**

(a) Point(s) of Delivery. The water allotted to Petitioner hereunder shall only be delivered to the Assessed Land at such point or points as shall be prescribed by the District.

(b) Petitioner's Equipment and Facilities; Indemnification.

(1) Petitioner's Water System. The Petitioner shall own and have the sole and separate responsibility, at Petitioner's sole cost and expense, to acquire, construct and install all equipment and facilities, including, without limitation, diversion works, turnouts, valves, meters, pumps, pipelines and laterals, as shall be necessary for the ownership, control, transportation and use of the allotted water, commencing at the Petitioner's side of the District delivery structure(s) located at the prescribed point(s) of delivery and extending from thence to the Assessed Land (the "Petitioner's Water System"). Petitioner's Water System shall be owned, controlled, operated, maintained, repaired and replaced by the Petitioner at Petitioner's sole cost and expense.

(2) Indemnification. The Petitioner shall indemnify and hold the District, and its trustees, officers, employees, agents and consultants, harmless from and against any all actions, claims, demands, damages, obligations, losses, expenses, liabilities, controversies, payments and executions, of any kind or nature, whether direct or indirect, resulting from or arising out of Petitioner's ownership, control, transportation and use of the allotted water within Petitioner's Water System and on the Assessed Land.

(c) Beneficial Use. The Petitioner acknowledges that beneficial use is the basis, measure and limit of a water right in the State of Utah, and that responsibility for the application of the water allotted to Petitioner hereunder to beneficial use on the Assessed Land shall rest perpetually with the Petitioner.

(d) Cross Connections Prohibited. Any cross connection of Petitioner's Water System with Roy City's municipal water system or any other culinary water system is strictly prohibited.

(e) Hold Over and Lease of Water Prohibited. The Petitioner shall have no right or authority whatsoever to hold-over or accumulate the water allotted hereunder from year-to-year, or to sell

or lease any water allotted hereunder at any time or under any circumstance.

**5. CONSERVATION MEASURES; SHORTAGE OF WATER.** The obligation of the District to provide the quantity of water allotted hereunder shall at all times be and remain subject to: (i) reductions in the available water supply resulting from the implementation of conservation measures lawfully imposed by the District, and/or any federal, state or local jurisdiction having authority to impose the same; and (ii) shortages of water supply caused by drought, hostile diversion, prior or superior claims, any order or directive of the State Engineer or other local, state or federal agency, acts of God, and any and all other such measures, conditions, events and causes not within the control of the District; and with respect to (i) and (ii) above, the Petitioner understands, acknowledges and agrees that:

(a) in the event of a water shortage resulting from any such measure, condition, event or cause, the Board shall have the right to equitably allocate and distribute the available water supply among all of the District's petitioners and customers in such manner as shall be determined by the Board to be in the best interest of the District;

(b) no liability shall accrue against the District, or any of its trustees, officers, employees, agents and consultants, for any loss, damage or claim, of whatsoever kind or nature, whether direct or indirect, resulting from or arising out of any such measure, condition, event or cause; and

(c) any Contract Assessment due and payable to the District hereunder shall not be abated or reduced, nor shall the time for payment be extended, as a result of any such measure, condition, event or cause, but payment shall at all times be due and payable and be collected in full as provided herein, except as otherwise expressly authorized by resolution of the Board.

**6. COMPLIANCE WITH THE ACT, RULES AND REGULATIONS.** The Petitioner shall be bound by and agrees to comply with all applicable provisions of the Act, as amended, and all rules and regulations of the District as may be duly promulgated and administered by the Board, and as the same may be amended, from time-to-time. The Petitioner also agrees to fully comply with all applicable federal, state and local laws, orders and regulations as promulgated and administered by appropriate authorities pertaining to the diversion, use, pollution and discharge of water.

**7. WATER QUALITY.** The Petitioner acknowledges and agrees: (i) that the water to be delivered by the District hereunder is untreated irrigation water, (ii) that the District does not at any time guarantee and shall not at any time assume any responsibility for the quality of the water sold and delivered by it to the Petitioner hereunder, and (iii) that Petitioner shall take delivery of the water on an "as is" basis, without liability of any kind whatsoever to the District.

**8. REUSE OF WATER.** The reuse of water allotted hereunder shall not be allowed without the prior, express written approval of the District. All waste, seepage or return flow water deriving

from the water delivered to the Assessed Land pursuant hereto shall belong to the District, and the Petitioner shall obtain no right or interest therein or thereto by use, appropriation, or otherwise.

**9. BINDING UPON PETITIONER'S HEIRS AND SUCCESSORS.** The terms, provisions, covenants and conditions hereof, and all rights and interests accruing to the Petitioner hereunder, shall run with the Assessed Land and be binding upon and apply to the heirs, successors-in-interest and assigns of the Petitioner so long as the Contract Assessments are timely paid in full as provided herein, and the party to be charged is otherwise in compliance with all other the terms, provisions, covenants and conditions hereof.

**IN WITNESS WHEREOF,** the Petitioner and the District have executed this Water Contract as of the day and year set forth in the Order Granting Petition.

**ROY WATER CONSERVANCY DISTRICT**

*Gay Z. Newman*  
Chair, Board of Trustees

*[Signature]*  
[SIGNATURE OF PETITIONER]

**CERTIFICATION**

I hereby certify that the above is a true and correct copy of the Petition for Allotment of Irrigation Water, Order and Water Contract made, entered and executed by the Roy Water Conservancy District as of the day and year set forth in the Order Granting Petition.

*Linda A. Loupin*  
District Clerk

