

After Recording Return To:

Andrea Deguzman
WinCo Foods, LLC
PO Box 5756
Boise, ID 83705

NCS - 804994
13-286-0004

Space Above This Line For Recording Purposes

SECOND AMENDMENT TO DECLARATION OF EASEMENTS AND CONDITIONS

THIS SECOND AMENDMENT TO DECLARATION OF EASEMENTS AND CONDITIONS (“Second Amendment”) is made as of ~~March~~^{June} 7th, 2017 by WINCO FOODS, LLC, a Delaware limited liability company (“WinCo”), and HOMESTEAD PAVILION, LLC, a Delaware limited liability company (“Kornwasser”).

RECITALS

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

A. WinCo and Kornwasser entered into that certain Declaration of Easements and Conditions dated December 5, 2008 and recorded on December 5, 2008 by the Davis County, Utah Recorder as Entry No. 2408700 and by the Weber County, Utah Recorder as Entry No. 2378745, with respect to certain real property located in Davis County and Weber County described on Exhibits A-1 and A-2 attached to the DEC, as amended by that certain First Amendment to Declaration of Easements and Conditions dated June 1, 2010 and recorded on June 2, 2010 by the Davis County, Utah Recorder as Entry No. 2531809 (collectively, the “DEC”).

B. WinCo and Kornwasser desire to enter into this Second Amendment to modify the DEC in certain respects set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WinCo and Kornwasser agree as follows:

1. Capitalized Terms. All initial capitalized terms used in this Second Amendment and not otherwise defined herein have the meanings given to such terms in the DEC.

2. Subdivision of Shopping Center. Subsequent to the recordation of the DEC the Shopping Center was subdivided pursuant to the plats referenced on Exhibits A-1 and A-2 attached to this Second Amendment and incorporated herein by this reference. Exhibits A-1 and A-2 attached to this Second Amendment hereby replace Exhibits A-1 and A-2, respectively, attached to the DEC. All references in the DEC to Exhibits A-1 and A-2 shall mean and refer to Exhibits A-1 and A-2 attached hereto.

3. Modifications to Certain Definitions and References.

3.1 Kornwasser Tract. The definition of Kornwasser Tract in Section 1.22 of the DEC is hereby deleted in its entirety and replaced with the following:

“1.22 Kornwasser Tract. ‘Kornwasser Tract’ means collectively the portion of the Property consisting of the Tracts identified as Parcel 2 (Major A), Parcel 3 (Pad A), Parcel 4 (Pad C), Parcel 5 (Pad D) and Parcel 6 (Shops A) on the Site Plan. The legal description of the Kornwasser Tract is set forth on Exhibit A-2.”

3.2 Shopping Center. The reference to “seven (7) contiguous Tracts” in Recital B to the DEC is changed to “six (6) contiguous Tracts”.

3.3 Site Plan. The Site Plan attached to this Second Amendment as Exhibit B shall replace the Site Plan attached as “Exhibit B” to the DEC. All references to the “Site Plan” in the DEC shall mean and refer to the Site Plan attached hereto as Exhibit B. Notwithstanding the foregoing, Kornwasser shall have the right to develop Parcel 4 and Parcel 5 as one Tract referenced as Parcel 4&5 (Pad C) as shown on the alternative site plans attached to this Amendment as Exhibit B-1 and Exhibit B-2 (the “Alternative Site Plans”). In the event Kornwasser’s elects to develop Parcel 4 and Parcel 5 as one Tract, upon the commencement of construction of Parcel 4 and Parcel 5 as one Tract the Approving Parties shall execute and record an amendment to the DEC memorializing the final Site Plan for the Shopping Center.

3.4 Tract. The definition of Tract in Section 1.39 of the DEC is hereby deleted in its entirety and replaced with the following:

“1.39 Tract. ‘Tract’ means each separate legal parcel of the Shopping Center in existence from time to time. As of the date of this Second Amendment, each of Parcel 1 (Anchor A), Parcel 2 (Major A), Parcel 3 (Pad A), Parcel 4 (Pad C), Parcel 5 (Pad D) and Parcel 6 (Shops A), as set forth on the Site Plan is a separate Tract. Notwithstanding the foregoing, Kornwasser shall have the right to develop Parcel 4 and Parcel 5 as one Tract provided that such development complies with the Building Area, maximum allowable Floor Area, parking and other requirements set forth in this DEC. During any period during which Parcel 4 and Parcel 5 are developed in accordance with Exhibit B-2 or Exhibit B-3, Parcel 4 and Parcel 5 shall be considered to be one Tract.”

3.5 WinCo Tract. The definition of WinCo Tract in Section 1.42 of the DEC is hereby deleted in its entirety and replaced with the following:

“1.42 WinCo Tract. ‘WinCo Tract’ means the Tract identified as Parcel 1 (Anchor A) on the Site Plan and more particularly described on Exhibit A-1.”

3.6 Certain Tract References.

(a) All references in the DEC to “Major A & B Tract” or “Major A & B” are hereby changed to “Parcel 2 (Major A)”.

(b) All references in the DEC to “Shops C Tract” or “Shops C” are hereby changed to “Parcel 6 (Shops A)”.

(c) All references in the DEC to “Shops D Tract” or “Shops D” are eliminated.

(d) All references in the DEC to “Pad B Tract” or “Pad B” are hereby changed to “Parcel 3 (Pad A)”.

3.7 Parking Area References. Section 3.2(e)(iii) of the DEC is hereby deleted in its entirety and replaced with the following replaced with the following:

“(iii) Notwithstanding the foregoing, even if Parcel 4 (Pad C) and Parcel 5 (Pad D) are developed with separate buildings, the Approving Party for the Kornwasser Tract may, at its election, treat Parcel 4 (Pad C) and Parcel 5 (Pad D) as one Tract for purposes of satisfying the parking ratio and other parking requirements under the DEC for such Tracts; provided, however, that a minimum ratio of four (4) parking spaces for general retail uses, or ten (10) parking spaces for any Restaurant uses, per one thousand (1,000) square feet of Floor Area is maintained on the Kornwasser Tract, and that Parcel 4 (Pad C) and Parcel 5 (Pad D) individually and collectively maintain a minimum ratio of not less than four (4) parking spaces for general retail uses, or ten (10) parking spaces for any Restaurant uses, per one thousand (1,000) square feet of Floor Area, and the size of the nine (9) foot stalls is not reduced on Parcel 2 (Major A) and Parcel 6 (Shops A).”

4. Building Restrictions. The first paragraph of Section 3.3(e) of the DEC (inclusive of the chart) is hereby deleted in its entirety and replaced with the following:

“(e) No building or other structure (exclusive of any light poles, free standing signs referred to in Section 5.3 or flag poles) shall exceed the following size and height restrictions:

<u>TRACT</u>	<u>BUILDING HEIGHT</u>	<u>HEIGHT OF FEATURES</u>	<u>ALLOWABLE FLOOR AREA</u>
WinCo Tract	38 feet	48 feet	98,000 square feet
Parcel 2 (Major A)	32 feet	36 feet	50,937 square feet
Parcel 3 (Pad A)	25 feet	30 feet	7,000 square feet
Parcel 4 (Pad C) and Parcel 5 (Pad D) combined	25 feet	30 feet	15,105 square feet
Parcel 6 (Shops A)	30 feet	32 feet	16,100 square feet”

5. Fitness Center Use. Section 5.1(b)(xvi) of the DEC is hereby deleted in its entirety and replaced with the following:

“(xvi) any health spas, fitness centers, gyms or workout facilities, except as permitted in either (*but not both*) of the following clauses (A) or (B), and further provided that associated new parking is constructed south of the Building located on Parcel 2 (Major A) along the southerly wall and along the southerly property line as shown on the Site Plan: (A) facilities shall be permitted on the Kornwasser Tract that do not exceed an aggregate of six thousand five hundred (6,500) square feet and in the case of Parcel 6 (Shops A) the facility must face North and in the case of Parcel 2 (Major A) no public entrance to the facility shall be closer than one hundred sixty two feet (162’) from the boundary of Parcel 1 (Anchor A) as depicted on the Site Plan; or (B) a facility shall be permitted on Parcel 2 (Major A) up to the maximum allowable Floor Area permitted on such Tract in accordance with Section 3.3(e) of the DEC provided that no public entrance to such facility is closer than one hundred sixty two feet (162’) feet from the boundary of Parcel 1 (Anchor A) as depicted on the Site Plan;”

6. Drive Through Facilities. The reference in the fifth line of Section 5.1(c)(ii) of the DEC to “Pad A, Pad B, Pad D or Shops D” is hereby changed to “Parcel 3 (Pad A), Parcel 4 (Pad C) or Parcel 5 (Pad D)”.

7. Employee Parking. Section 5.1(g) of the DEC is hereby amended to add the following sentence at the end of the paragraph:

“The Occupant of Parcel 2 (“Major A”) shall require its employees to park south of the Building located on such Parcel.”

8. Notices. Section 7.4 of the DEC is hereby deleted in its entirety and replaced with the following:

“7.4 Notices. Whenever a Party is required or permitted under this DEC 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: (a) personally; (b) by a reputable overnight courier service, delivery fee prepaid; (c) by certified mail, postage prepaid; or (d) 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: (i) on the date personally delivered; (ii) one (1) business day after delivery to an overnight courier service with next-day service requested; (iii) on the third (3rd) business day after mailing, if mailed using certified mail; or (iv) 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 addresses for Notice are as follows:

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

WITH COPIES AT THE
SAME ADDRESS TO: Andrea Deguzman, Real Estate Paralegal
E-mail: andrea.deguzman@wincofoods.com

Lori Gilbertson, Property Supervisor
E-mail: lori.gilbertson@wincofoods.com

IF TO KORNWASSER: Homestead Pavilion, LLC
ATTN: Steven Usdan
5670 Wilshire Boulevard, Suite 1250
Los Angeles, CA 90036
Telephone: (323) 965-1510
Fax: (323) 965-1520

WITH A COPY TO: Munger, Tolles & Olson LLP
ATTN: Jeffrey A. Heintz, Esq.
355 South Grand Avenue, Suite 3500
Los Angeles, CA 90071
Telephone: (213) 683-9185
Fax: (213) 683-5185”

9. Notice of Transfer. Kornwasser hereby notifies WinCo that concurrent with the recordation of this Second Amendment Kornwasser is transferring ownership of Parcel 2 (Major A) to HD Clinton, LLC, a Utah limited liability com with an address of 7108 South Alton Way, Suite F-2 Centennial, CO. WinCo hereby acknowledges that this paragraph satisfies the requirements for notice of transfer set forth in Section 1.28 of the DEC.

10. No Other Changes. The Parties confirm that the DEC is in full force and effect, as amended by this Second Amendment. To the extent that any of the terms or provisions of this Second Amendment conflict with any of the terms or provisions of the DEC, the terms and provisions of this Second Amendment shall control.

11. Counterparts. This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have entered into this Second Amendment as of the date first set forth above.

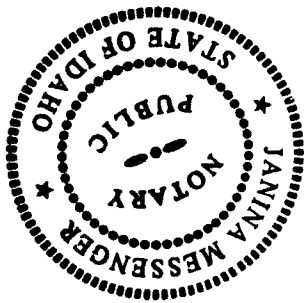
WINCO FOODS, LLC,
a Delaware limited liability company

By: *David M Butler*
Name: David M Butler
Title: CFO

STATE OF IDAHO)
) ss.
County of Ada)

On this 6th day of June, 2017, before me, a Notary Public, personally appeared David M. Butler, known or proved to me to be the CFO 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 limited liability 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.



Janina Messenger
Notary Public
Residing at Meridian, ID
Comm. Expires 3/12/18

HOMESTEAD PAVILION, LLC, a Delaware limited liability company

By: Homestead Pavilion Managing Member, LLC, a Delaware limited liability company

By: 
Name: Steven Usdan
Title: Managing Member of CCA Acquisition Company, LLC,

a California limited liability company
the Managing Member

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

On this 16th day of May, 2017, before me, a Notary Public, personally appeared Steven Usdan, known or proved to me to be the _____ of Homestead Pavilion Managing Member, 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Notary Public
Residing at _____
Comm. Expires _____

*See attached
CA certificate*

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

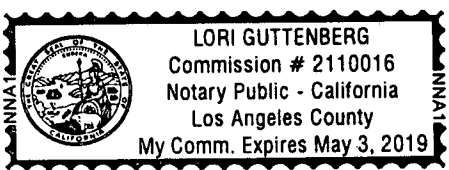
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)
On May 16, 2017 before me, Lori Guttenberg, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Steven Usdan
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Lori Guttenberg
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

CONSENT AND SUBORDINATION

The undersigned, Bank of Utah ("Lender"), being the beneficiary under that certain Deed of Trust recorded in the Official Records of the Davis County Recorder as Entry No. 2669356, and recorded in the Official Records of the Weber County Recorder as Entry No. 2581068 (collectively, the "Existing Lien"), hereby unconditionally subordinates the Existing Lien to the effects of the foregoing Second Amendment to Declaration of Easements and Conditions (the "Second Amendment"), and agrees that the Second Amendment shall be and remain at all times a lien or charge prior and superior to the Existing Lien and any subsequent amendments to same.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Subordination instrument to be executed as of the 7th day of June, 2017.

Bank of Utah,
a Utah corporation

By: 

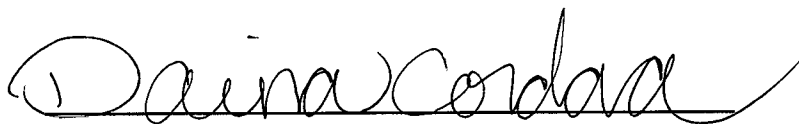
Name: David Snow

Its: Sr. Vice President

[ATTACH NOTARY BLOCK]

STATE of Utah
COUNTY of Salt Lake

On June 2, 2017, personally appeared before me David K. Snow,
who, being by me duly sworn, did say that he/she is Sr. Vice President
of BANK OF UTAH, that the above and foregoing instrument was signed
in behalf of said Corporation by authority of a resolution of its
Board of Directors, and said, David K. Snow,
acknowledged to me that said corporation executed the same.



Notary Public
Residing at

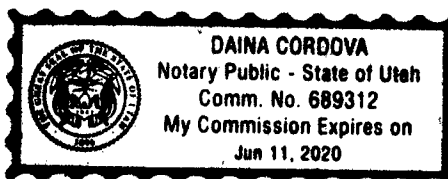


EXHIBIT A-1

LEGAL DESCRIPTION OF WINCO TRACT

LOT 1 OF THAT CERTAIN PLAT ENTITLED "HOMESTEAD ROY PAVILION" FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF WEBER, STATE OF UTAH ON OCTOBER 15, 2009 AS ENTRY NO. 2439608 IN BOOK 70 OF OFFICIAL RECORDS PAGE 59.

LOTS 2 AND 3 OF THAT CERTAIN PLAT ENTITLED "HOMESTEAD CLINTON PAVILION" FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF DAVIS, STATE OF UTAH ON DECEMBER 1, 2009 AS ENTRY NO. 2496717 IN BOOK 4911 OF PLATS AT PAGE 188.

EXHIBIT A-2

LEGAL DESCRIPTION OF KORNWASSER TRACT

LOTS 2, 3 AND 4 OF THAT CERTAIN PLAT ENTITLED "HOMESTEAD ROY PAVILION" FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF WEBER, STATE OF UTAH ON OCTOBER 15, 2009 AS ENTRY NO. 2439608 IN BOOK 70 OF OFFICIAL RECORDS PAGE 59.

LOTS 1 AND 4 OF THAT CERTAIN PLAT ENTITLED "HOMESTEAD CLINTON PAVILION" FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF DAVIS, STATE OF UTAH ON DECEMBER 1, 2009 AS ENTRY NO. 2496717 IN BOOK 4911 OF PLATS AT PAGE 188.

EXHIBIT B

SITE PLAN

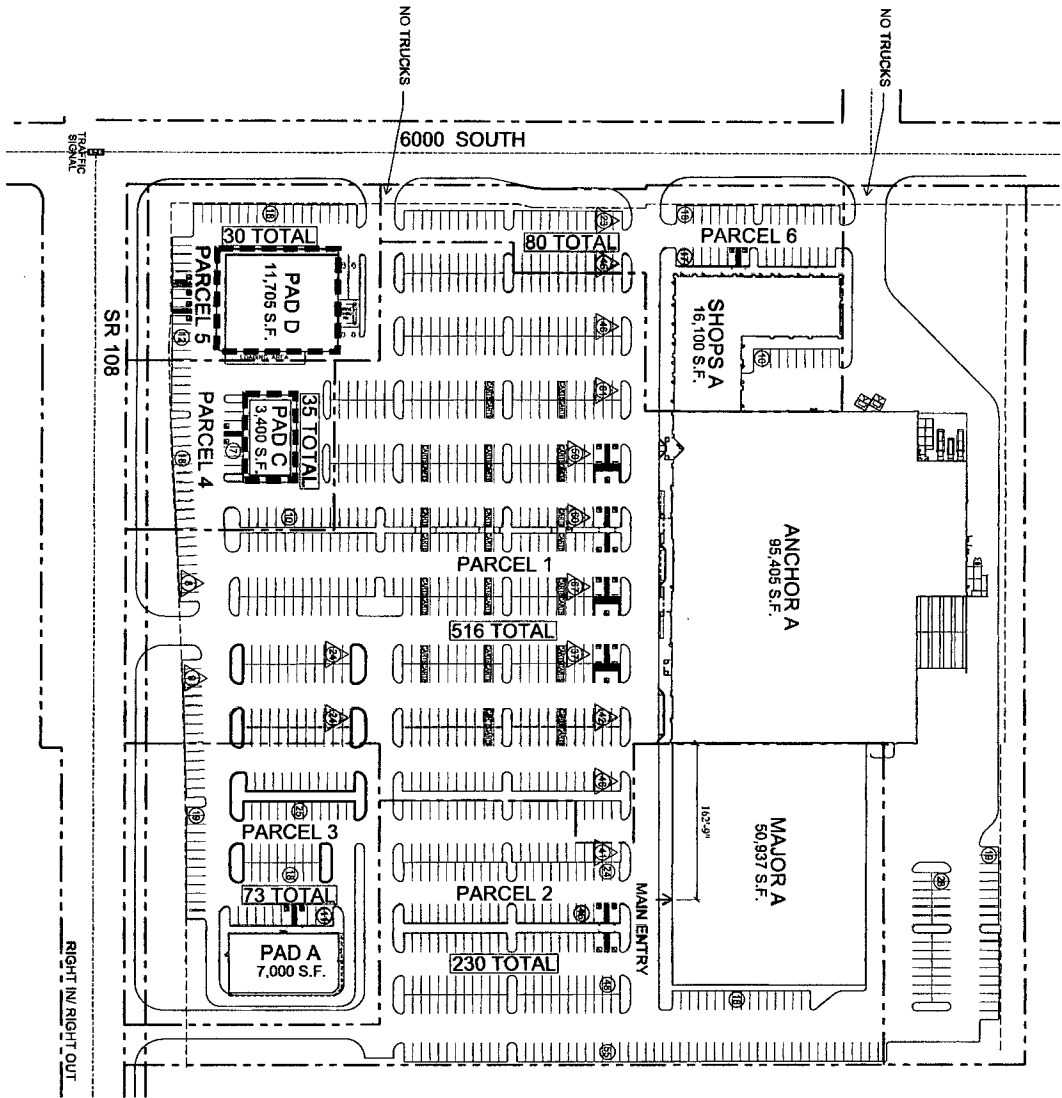
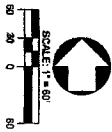


EXHIBIT B

SITE DATA				
PARCEL 1	10.38 ACRES	95,405 S.F.	ANCHOR A	516 STALLS
PARCEL 2	3.86 ACRES	50,937 S.F.	MAJOR A	230 STALLS
PARCEL 3	1.56 ACRES	7,000 S.F.	PAD A	73 STALLS
PARCEL 4	0.79 ACRES	3,400 S.F.	PAD C	35 STALLS
PARCEL 5	1.22 ACRES	11,705 S.F.	PAD D	30 STALLS
PARCEL 6	1.59 ACRES	16,100 S.F.	SHOPS A	80 STALLS
TOTALS	19.29 ACRES	184,547 S.F.		964 STALLS

LEGEND	
	NUMBER OF STANDARD PARKING SPACES
	NUMBER OF NON-STANDARD PARKING SPACES
	CART CORRAL
	NUMBER OF PARKING SPACES PER PARCEL
	60' NO BUILD EASEMENT
	BUILDING SETBACK/EASEMENT LINE
	BUILDING LINE
	COMMON AREA & ENTRY-WAY
	LIGHT CONTROLLED PANEL
	WINDOW
	BUILDING LIMIT LINE



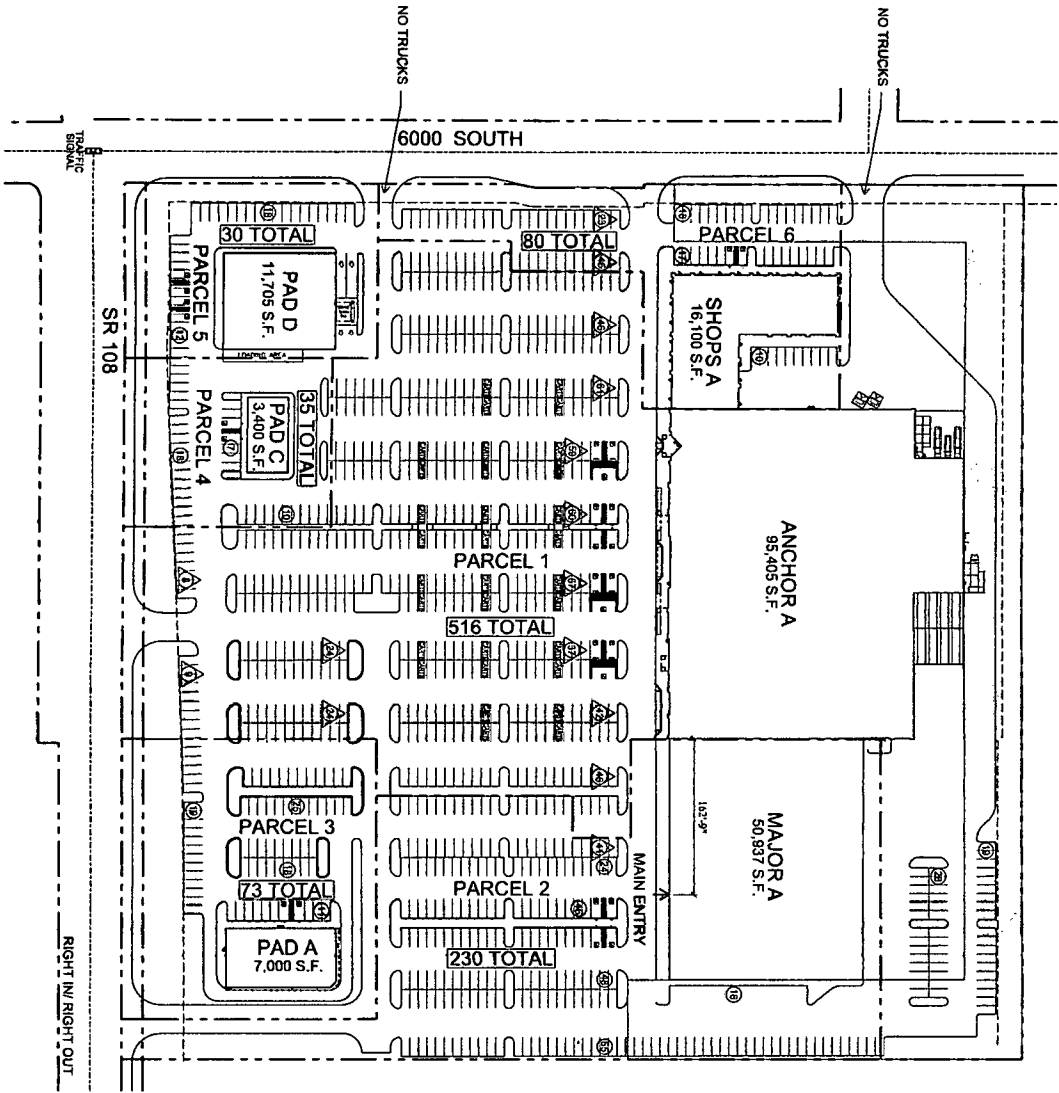


EXHIBIT B

SITE DATA			
PARCEL 1	10.38 ACRES	95,405 S.F.	ANCHOR A
PARCEL 2	3.86 ACRES	50,937 S.F.	MAJOR A
PARCEL 3	1.66 ACRES	7,000 S.F.	PAD A
PARCEL 4	0.79 ACRES	3,400 S.F.	PAD C
PARCEL 5	1.02 ACRES	11,705 S.F.	PAD D
PARCEL 6	1.59 ACRES	16,100 S.F.	SHOPS A
TOTALS	19.29 ACRES	164,547 S.F.	864 STALLS

LEGEND	
	NUMBER OF STANDARD PARKING SPACES
	NUMBER OF NON-STANDARD PARKING SPACES
	CART CORRAL
	# TOTAL NUMBER OF PARKING SPACES PER PARCEL
	PROPERTY/PARCEL LINE
	NO BUILD AREA

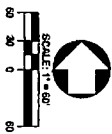
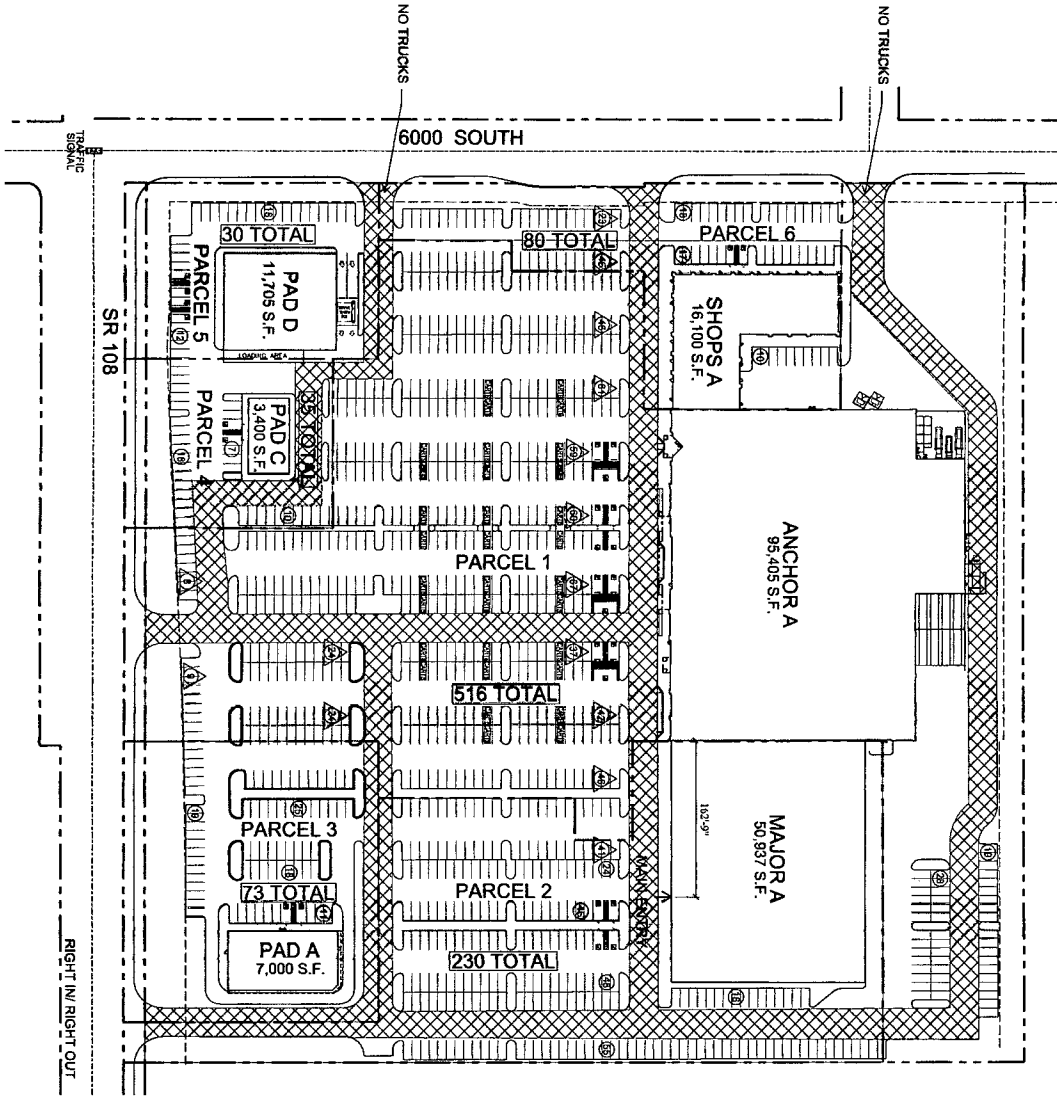


EXHIBIT B



SITE DATA

PARCEL	ACRES	S.F.	ANCHOR A	MAJOR A	STALLS	S.F./1000
PARCEL 1	10.38	95,405	ANCHOR A	516	5,417	1000
PARCEL 2	3.86	50,937	MAJOR A	229	4,521	1000
PARCEL 3	1.65	7,000	PAD A	73	10,437	1000
PARCEL 4	0.79	3,400	PAD C	36	10,297	1000
PARCEL 5	1.02	11,705	PAD D	30	2,567	1000
PARCEL 6	1.59	16,100	SHOPS A	80	4,971	1000
TOTALS	19.29	184,547		964	5,221	1000

LEGEND

- NUMBER OF STANDARD PARKING SPACES
- NUMBER OF NON-STANDARD PARKING SPACES
- CART CORRAL
- # TOTAL NUMBER OF PARKING SPACES PER PARCEL
- PROPERTY/PARCEL LINE
- COMMON DRIVE AISLES

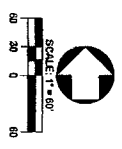


EXHIBIT B-1

ALTERNATIVE SITE PLAN 1

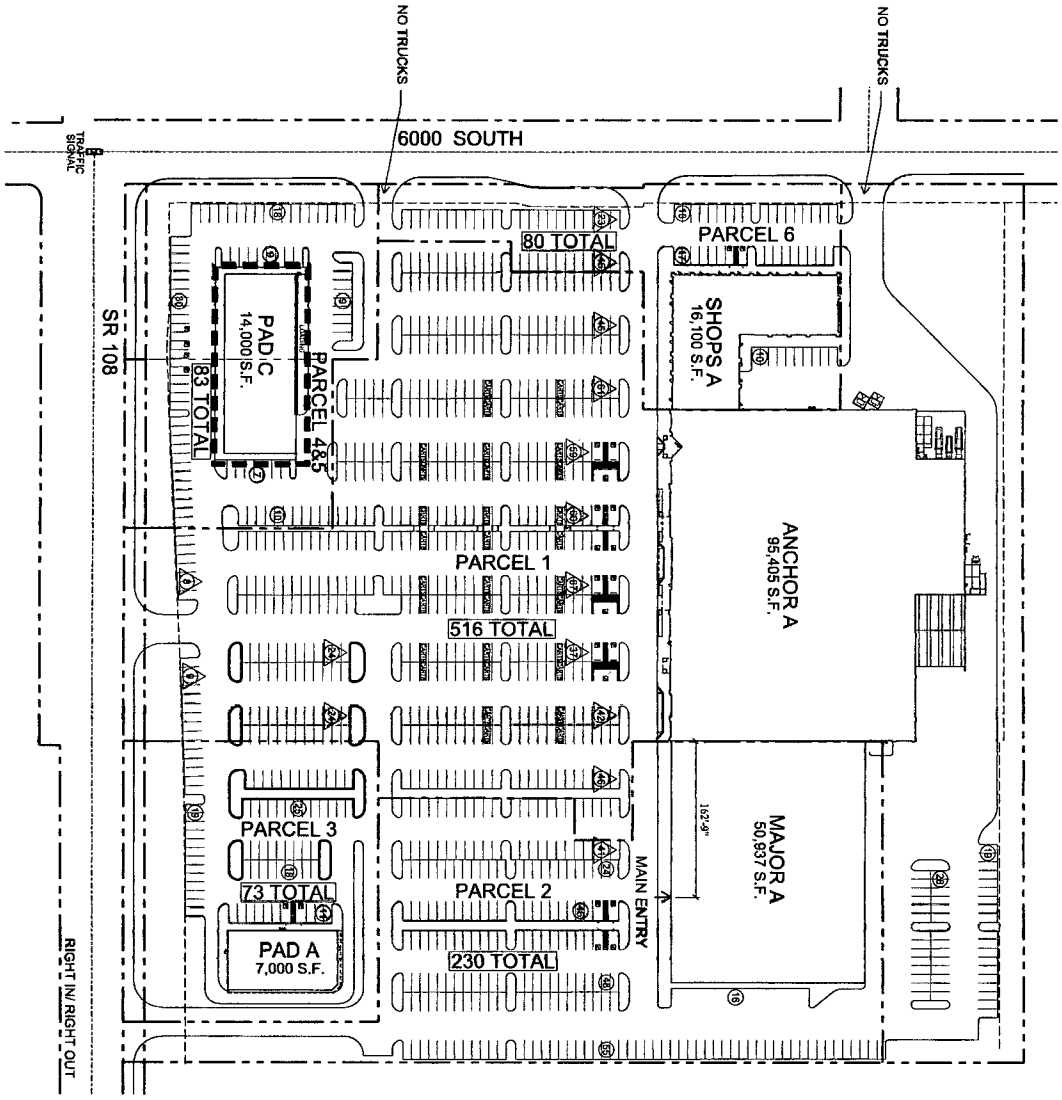
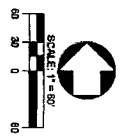


EXHIBIT B1

SITE DATA			
PARCEL 1	10.38 ACRES	95,405 S.F.	ANCHOR A
PARCEL 2	3.86 ACRES	50,937 S.F.	MAJOR A
PARCEL 3	1.65 ACRES	7,000 S.F.	PAD A
PARCEL 4	1.81 ACRES	14,000 S.F.	PAD C
PARCEL 5	1.59 ACRES	16,100 S.F.	SHOPS A
PARCEL 6	1.59 ACRES	16,100 S.F.	SHOPS A
TOTALS	19.29 ACRES	183,442 S.F.	

LEGEND	
	NUMBER OF STANDARD PARKING SPACES
	NUMBER OF NON-STANDARD PARKING SPACES
	CART CORRAL
	NUMBER OF PARKING SPACES PER PARCEL
	NO BUILD EASEMENT
	PROPERTY/PARCEL LINE
	BUILDING SETBACK/ EASEMENT LINE
	BUILDING LINE
	COMMON AREA & ENTRY-WAY LINE OR WINDO PANEL
	BUILDING LIMIT LINE



WinCo FOODS

SHEET TITLE
SITE PLAN
SHEET
B1

WINCO FOODS STORE NO.78
S.E.C. SR 108 & 6000 SOUTH
ROY, UTAH

REVISIONS

EXHIBIT B-2

ALTERNATIVE SITE PLAN 2

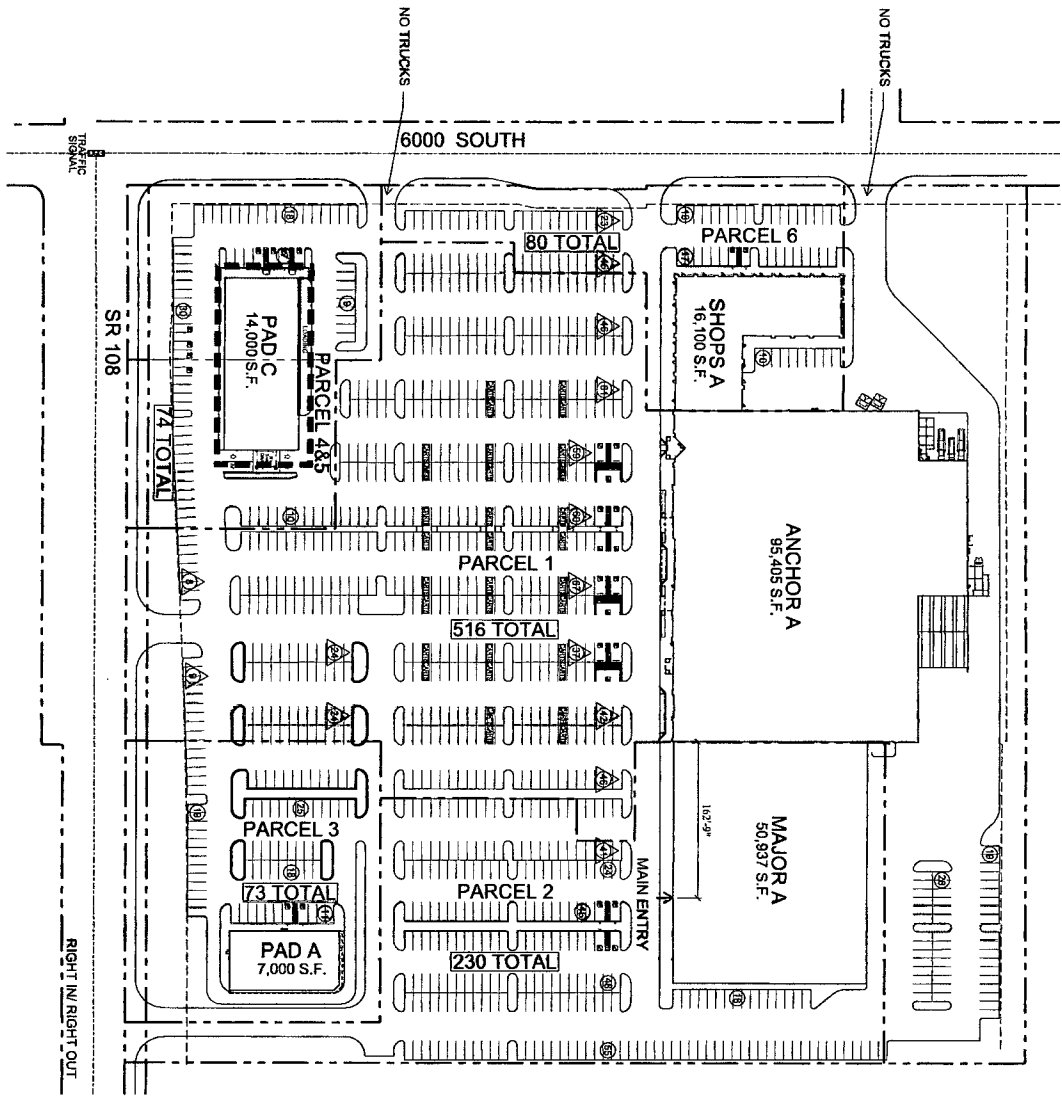


EXHIBIT B2

SITE DATA				
PARCEL 1	10.38 ACRES	95,405 S.F.	ANCHOR A	516 STALLS
PARCEL 2	3.86 ACRES	50,937 S.F.	MAJOR A	230 STALLS
PARCEL 3	1.65 ACRES	7,000 S.F.	PAD A	73 STALLS
PARCEL 4	1.81 ACRES	14,000 S.F.	PAD C	74 STALLS
PARCEL 5	1.59 ACRES	16,100 S.F.	SHOPS A	80 STALLS
TOTALS	19.29 ACRES	183,442 S.F.		973 STALLS

LEGEND	
	NUMBER OF STANDARD PARKING SPACES
	NUMBER OF NON-STANDARD PARKING SPACES
	CART CORRAL
	NUMBER OF PARKING SPACES PER PARCEL
	60' NO BUILD EASEMENT
	PROPERTY/PARCEL LINE
	BUILDING SETBACK/EASEMENT LINE
	BUILDING LINE
	COMMON AREA & ENTRY-WAY LIGHT CONTROLLED BY WINCO OR WINCO PANEL
	BUILDING LIMIT LINE

