

E 3551339 B 8380 P 583-594
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
11/15/2023 3:17 PM
FEE 40.00 Pgs: 12
DEP CTA REC'D FOR TFC
CLINTON RETAIL LLC

Office of the Davis County Recorder



Davis
COUNTY

CLINTON RETAIL LLC

Recorder
Richard T. Maughan
Chief Deputy
Lalle H. Lomax

THE UNDERLYING DOCUMENT ATTACHED HERETO IS AN ORIGINAL DOCUMENT SUBMITTED FOR RECORDING IN THE OFFICE OF THE COUNTY RECORDER OF DAVIS COUNTY, UTAH. THE DOCUMENT HAS INSUFFICIENT MARGIN SPACE FOR THE REQUIRED RECORDING ENDORSEMENT STAMP. THIS PAGE BECOMES THE FRONT PAGE OF THE DOCUMENT FOR RECORDING PURPOSES.

THE DOCUMENT HEREIN RECORDED IS A Declaration
(Document Type)

13-286-0001 - 13-286-0004
Tax Serial Number(s)

WHEN RECORDED RETURN TO:

TFC Clinton Retail, LLC
6770 South 900 East, Suite 300
Salt Lake City, Utah 84047



W3305360

E# 3305360 PG 1 OF 11

LEANN H KILTS, WEBER CTY. RECORDER
15-NOV-23 220 PM FEE \$40.00 SED
REC FOR: TFC CLINTON RETAIL

Davis: Parcel Nos 132860001, 132860002, 132860003, 132860004,
Weber: Parcel Nos 095820001, 095820003, 095820004, 096590001, 096590002, 096590003, 096590004

FOURTH AMENDMENT TO DECLARATION OF EASEMENTS AND CONDITIONS

THIS FOURTH AMENDMENT TO DECLARATION OF EASEMENTS AND CONDITIONS ("Fourth Amendment") is made and dated as of the date of recordation hereof by WINCO FOODS, LLC, a Delaware limited liability company ("WinCo"), HOMESTEAD PAVILION, LLC, a Delaware limited liability company ("Kornwasser"), and TFC CLINTON RETAIL, LLC, a Utah limited liability company ("TFC") (collectively, the "Parties").

RECITALS

This Fourth 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 (the "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 thereto and in turn hereto (as to said property, the "Property"), 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 Recorder as Entry No. 2531809, that certain Second Amendment to Declaration of Easements and Conditions dated June 7, 2017 and recorded on June 7, 2017 by the Recorder as Entry No. 3024849, and that certain Third Amendment to Declaration of Easements and Conditions recorded on May 9, 2018 by the Recorder as Entry No. 3092227 (collectively, the "DEC").

B. WinCo and Kornwasser desire to enter into this Fourth Amendment to modify the DEC in certain respects set forth herein, and to agree with TFC, as the owner of that certain property (the "TFC Tracts") more particularly described on Exhibit A-3 attached hereto and incorporated herein, as 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, the Parties hereby amend the DEC, and hereby agree, as follows:

1. **Capitalized Terms.** All initial capitalized terms used in this Amendment and not otherwise defined herein have the meanings given to such terms in the DEC.
2. **Site Plan Approval.** Pursuant to Section 5.1(c) of the DEC and subject to the approval of the applicable government authority, this section constitutes approval by the Approving Parties of the design and construction of two (2) buildings to be located on the TFC Tracts for Fast Food Restaurant purposes within the Shopping Center, including the drive through facilities anticipated to be constructed in connection with such buildings, as further depicted on the site plan attached as Exhibit B.

3. **Signage.** Pursuant to Section 5.3(a) of the DEC and subject to the approval of the applicable government authority, this section constitutes approval by the Approving Parties of the design and construction of the following freestanding monument signs to be erected within the Shopping Center, as further described on and depicted in **Exhibit C** attached hereto and incorporated herein:

- a. Two (2) monument signs located along the western boundary of the Shopping Center adjacent to 3500 West, for use in connection with the businesses operating upon the TFC Tracts, identified as "TFC Sign 1" and "TFC Sign 2" in Exhibit C.
- b. An additional monument sign located along the northern boundary of the Shopping Center adjacent to 6000 South, and west of the existing Center Sign, for use by the Occupant(s) of Parcel 6 (Shops A), identified as "Kornwasser Sign 1" in Exhibit C.

4. **EV Stations.** WinCo shall have the right to construct and install electric vehicle charging stations (the "EV Stations") within the parking area on the WinCo Tract. The EV Stations shall not limit the minimum required parking spaces as set forth in Section 3.2(e) of the DEC, and shall be subject to all governmental rules, regulations, and/or ordinances relating to parking requirements. Notwithstanding any contrary provision of the DEC, the owner of the WinCo Tract shall be responsible for all costs associated with the EV Stations, including without limitation, the installation, operation, maintenance, repair or replacement thereof, and no owner or Occupant of the Kornwasser Tract shall be responsible for any such costs.

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

6. **Counterparts.** This Fourth 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 Fourth Amendment as of the date first set forth above.

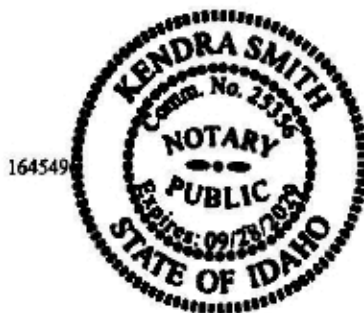
WINCO:

WINCO FOODS, LLC,
a Delaware limited liability company

By: [Signature]
Name: ISAAC KIMBALL
Title: SVP + CFO

STATE OF Idaho)
COUNTY OF Ada) : ss.

On the 7th day of November, 2023, personally appeared before me Isaac Kimball, who being by me duly sworn did say that [he/she] is a SVP + CFO of WinCo Foods, LLC, a Delaware limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company.



[Signature]
Notary Public
Residing at: Boise ID

KORNWASSER:

HOMESTEAD PAVILLION, LLC,
a Delaware limited liability company

By:

Name:

Title:

JOSEPH KORNWASSER
MANAGING MEMBER

STATE OF

)

: ss.

COUNTY OF

)

On the ____ day of _____, 2023, personally appeared before me _____, who being by me duly sworn did say that [he/she] is a _____ of Homestead Pavillion, LLC, a Delaware limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company.

Notary Public

**SEE ATTACHED
CA CERTIFICATE**

CALIFORNIA 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 November 2, 2023 before me, Lori Guttenberg, Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared Joseph Komwasser

Name of Signer

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Place Notary Seal and/or Stamp Above

Signature

Lori Guttenberg

Signature of Notary Public

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: _____

ACKNOWLEDGED AND CONSENTED TO BY:

TFC:

TFC CLINTON RETAIL, LLC,
a Delaware limited liability company

By: [Signature]
Name: JASON E. SMITH
Title: MANAGER

STATE OF Utah)
COUNTY OF Salt Lake) : ss.

On the 6 day of November, 2023, personally appeared before me Jason E. Smith, who being by me duly sworn did say that [he/she] is a Manager of TFC Clinton Retail, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company.

[Signature]
Notary Public

1645496

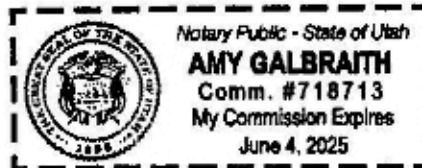


EXHIBIT A-1

LEGAL DESCRIPTION OF WINCO TRACT

ALL THAT LAND LOCATED IN WEBER COUNTY AND DAVIS COUNTY, UTAH, BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF 3500 WEST (ROY CITY), STREET, SAID POINT BEING S89°43'33"E ALONG THE QUARTER SECTION LINE 33.00 FEET AND S00°20'59"W 390.47 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE S89°39'01"E 218.48 FEET; THENCE N00°16'27"E 175.55 FEET; THENCE S89°39'01"E 47.38 FEET; THENCE N00°16'27"E 122.80 FEET; THENCE S89°39'01"E 139.52 FEET; THENCE S00°16'27"W 32.13 FEET; THENCE S89°39'01"E 138.86 FEET; THENCE S00°16'27"W 142.75 FEET; THENCE S89°35'08"E 206.17 FEET; THENCE N00°24'59"E 235.23 FEET, TO THE SOUTH LINE OF 6000 SOUTH STREET; THENCE S89°43'33"E ALONG SAID SOUTH LINE 190.37 FEET, TO THE WEST LINE OF THE ROY 10TH & 30TH WARD SUBDIVISION RECORDED MARCH 1, 2000 AS ENTRY NO. 1692487, IN BOOK 51, AT PAGE 63, WEBER COUNTY RECORDER OFFICIAL RECORDS; THENCE ALONG SAID LINE AND THE EXTENSION THEREOF S00°16'27"W 581.03 FEET TO THE SOUTH LINE OF WEBER COUNTY AS ESTABLISHED IN THE DECLARATION OF COUNTY LINE COMMON TO WEBER COUNTY AND DAVIS COUNTY, UTAH, AND SHOWN ON RECORD OF SURVEY NO. 2993, RECORDED AS ENTRY NO. 1885948, BOOK 56, PAGES 88-92, WEBER COUNTY RECORDER OFFICIAL RECORDS; THENCE ALONG SAID LINE N89°35'08"W 941.67 FEET TO THE EAST LINE OF 3500 WEST STREET; THENCE ALONG SAID EAST LINE N00°20'59"E 221.25 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

BEGINNING AT A POINT ON THE NORTH LINE OF DAVIS COUNTY AS ESTABLISHED IN THE DECLARATION OF COUNTY LINE COMMON TO WEBER COUNTY AND DAVIS COUNTY, UTAH, AND SHOWN ON RECORD OF SURVEY NO. 2993, RECORDED AS ENTRY NO. 1885948, BOOK 56, PAGES 88-92, WEBER COUNTY RECORDER OFFICIAL RECORDS, SAID POINT BEING S89°43'33"E ALONG THE QUARTER SECTION LINE 33.00 FEET AND S00°20'59"W 611.72 FEET, TO SAID COUNTY LINE, AND S89°35'08"E ALONG SAID LINE 266.95 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE CONTINUING ALONG SAID COUNTY LINE S89°35'08"E 266.12 FEET; THENCE S00°20'59"W 102.94 FEET; THENCE N89°39'01"W 60.62 FEET; THENCE N00°20'59"E 43.92 FEET; THENCE N89°39'01"W 205.50 FEET; THENCE N00°20'59"E 59.32 FEET, TO THE POINT OF BEGINNING

TOGETHER WITH:

BEGINNING AT A POINT ON THE NORTH LINE OF DAVIS COUNTY AS ESTABLISHED IN THE DECLARATION OF COUNTY LINE COMMON TO WEBER COUNTY AND DAVIS COUNTY, UTAH, AND SHOWN ON RECORD OF SURVEY NO. 2993, RECORDED AS ENTRY NO. 1885948, BOOK 56, PAGES 88-92, WEBER COUNTY RECORDER OFFICIAL RECORDS, SAID POINT BEING S89°43'33"E ALONG THE QUARTER SECTION LINE 33.00 FEET AND S00°20'59"W 611.72 FEET, TO SAID COUNTY LINE, AND S89°35'08"E ALONG SAID LINE 794.57 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE CONTINUING ALONG SAID COUNTY LINE S89°35'08"E 147.10 FEET, TO A POINT AT THE EXTENSION OF THE WEST LINE OF THE ROY 10TH & 30TH WARD SUBDIVISION RECORDED MARCH 1, 2000 AS ENTRY NO. 1692487, IN BOOK 51, AT PAGE 63, WEBER COUNTY RECORDER OFFICIAL RECORDS; THENCE ALONG SAID EXTENSION LINE S00°16'27"W 333.93 FEET; THENCE N89°39'01"W 147.54 FEET; THENCE N00°20'59"E 334.10 FEET, TO THE POINT OF BEGINNING.

CONTAINS 10.49 ACRES MORE OR LESS.

EXHIBIT A-2

LEGAL DESCRIPTION OF KORNWASSER TRACT

ALL THAT LAND LOCATED IN WEBER COUNTY AND DAVIS COUNTY, UTAH, BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF 6000 SOUTH STREET AND THE EAST LINE OF 3500 WEST (ROY CITY), STREET, SAID POINT BEING S89°43'33"E ALONG THE QUARTER SECTION LINE 33.00 FEET AND S00°20'59"W 33.00 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE ALONG SAID SOUTH LINE S89°43'33"E 19.82 FEET; THENCE S00°20'58"W 15.02 FEET; THENCE N59°17'18"E 29.18 FEET, TO THE SOUTH LINE OF 6000 SOUTH STREET; THENCE S89°43'33"E ALONG SAID SOUTH LINE 705.71 FEET; THENCE S00°24'59"W 235.23 FEET; THENCE N89°35'08"W 206.17 FEET; THENCE N00°16'27"E 142.75 FEET; THENCE N89°39'01"W 138.86 FEET; THENCE N00°16'27"E 32.13 FEET; THENCE N89°39'01"W 139.52 FEET; THENCE S00°16'27"W 122.80 FEET; THENCE N89°39'01"W 47.38 FEET; THENCE S00°16'27"W 175.55 FEET; THENCE N89°39'01"W 218.48 FEET, TO THE EAST LINE OF 3500 WEST STREET; THENCE ALONG SAID EAST LINE N00°20'59"E 357.47 FEET, TO THE POINT OF BEGINNING.

TOGETHER WITH:

BEGINNING AT A POINT ON THE NORTH LINE OF DAVIS COUNTY AS ESTABLISHED IN THE DECLARATION OF COUNTY LINE COMMON TO WEBER COUNTY AND DAVIS COUNTY, UTAH, AND SHOWN ON RECORD OF SURVEY NO. 2993, RECORDED AS ENTRY NO. 1885948, BOOK 56, PAGES 88-92, WEBER COUNTY RECORDER OFFICIAL RECORDS, AND THE EAST LINE OF SR-108 (2000 WEST STREET), SAID POINT BEING S89°43'33"E ALONG THE QUARTER SECTION LINE 33.00 FEET AND S00°20'59"W 611.72 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE ALONG SAID COUNTY LINE S89°35'08"E 266.95 FEET; THENCE S00°20'59"W 59.32 FEET; THENCE S89°39'01"E 205.50 FEET; THENCE S00°20'59"W 43.92 FEET; THENCE S89°39'01"E 60.62 FEET; THENCE N00°20'59"E 102.94 FEET, TO SAID COUNTY LINE; THENCE ALONG SAID LINE S89°35'08"E 261.50 FEET; THENCE S00°20'59"W 334.10 FEET; THENCE N89°39'01"W 794.57 FEET, TO THE EAST LINE OF SR-108 (2000 WEST STREET); THENCE ALONG SAID EAST LINE N00°20'59"E 334.99 FEET TO THE POINT OF BEGINNING

CONTAINS 9.26 ACRES MORE OR LESS.

EXHIBIT A-3

LEGAL DESCRIPTION OF TFC TRACTS

(ALL OF LOT 1, HOMESTEAD CLINTON PAVILION SUBDIVISION) AS RECORDED IN THE OFFICE THE DAVIS COUNTY RECORDER AS MAP NUMBER 4977, SAID LOT 1 BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1, AND RUNNING THENCE ALONG THE PERIMETER OF SAID LOT 1 THE FOLLOWING FOUR COURSES:
1) NORTH 89°39'01" WEST 244.95 FEET, 2) NORTH 0°20'59" EAST 292.75 FEET, 3) SOUTH 89°35'08" EAST 244.95 FEET, 4) SOUTH 0°20'59" EAST 292.47 FEET TO THE POINT OF BEGINNING.

CONTAINS 1.65 ACRES OR 71,673 SQ. FT.

All of Lots 1-4, Homestead Clinton Pavilion.

EXHIBIT B

SITE PLAN FOR FAST FOOD RESTAURANTS

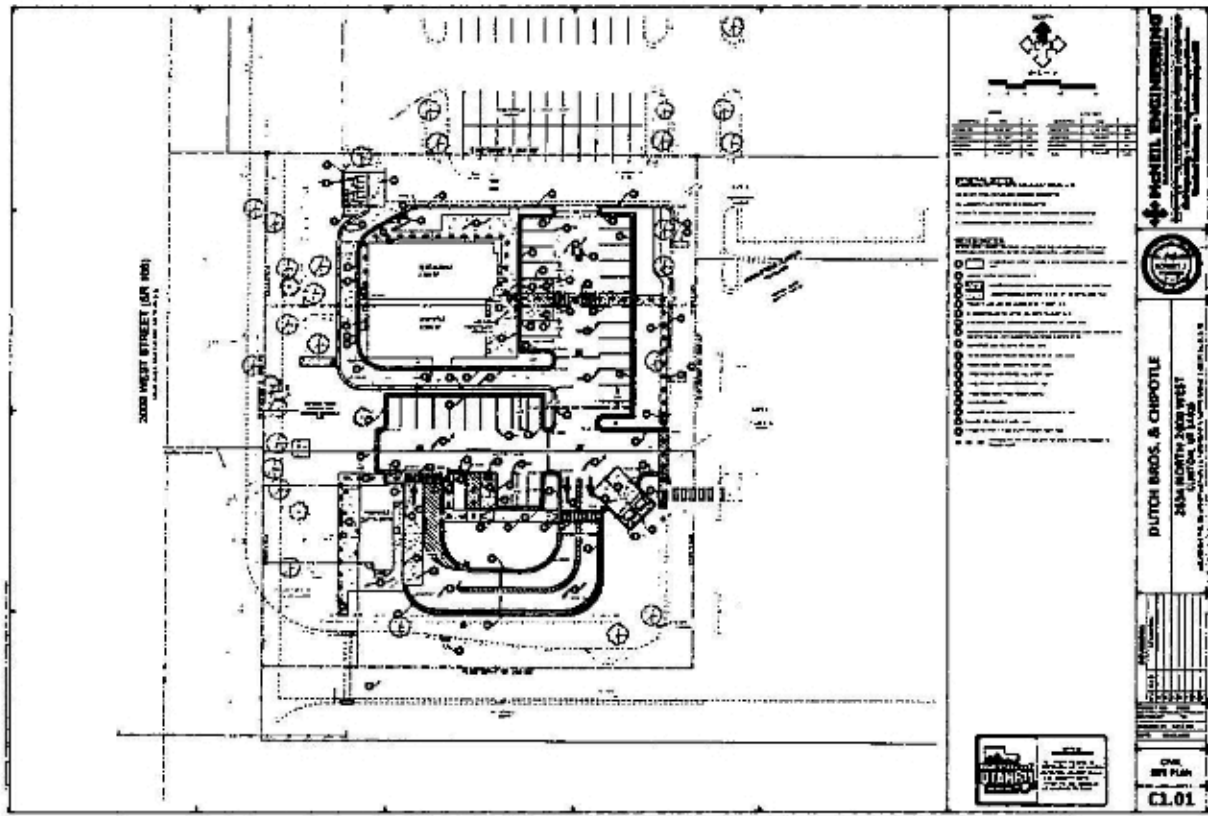
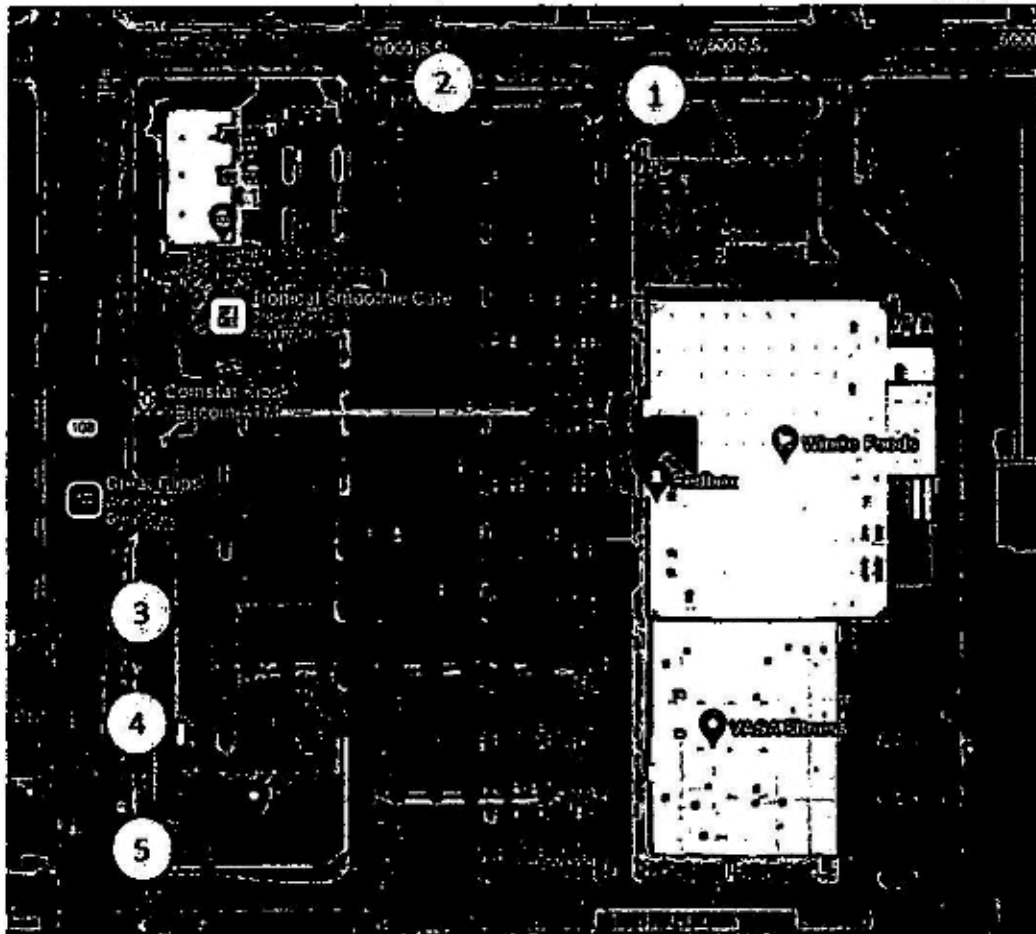


EXHIBIT C

DEPICTION OF NEW MONUMENT SIGNS



- ① Existing Center Sign
- ② Kornwasser Sign 1. To be placed in accordance with city code
- ③ TFC Sign 2. 10' setback from ROW. 115' from TFC Sign 1
- ④ TFC Sign 1. 10' setback from ROW. 135' from Existing Center Sign
- ⑤ Existing Center Sign