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12/23/2009 11:48:00 AM \$41.00
Book - 9791 Pg - 1322-1334
Gary W. Ott
Recorder, Salt Lake County, UT
METRO NATIONAL TITLE
BY: eCASH, DEPUTY - EF 13 P.

RECORDING REQUESTED BY:

Chicago Title Company

AFTER RECORDED RETURN TO:

Tammy A. Zokan, Esq.
WinCo Foods, LLC
P.O. Box 5756
Boise, ID 83705

14-23-477-001
Thru - 007

West Valley, Utah

(Space above this line for Recorder's use only)

FIRST AMENDMENT TO DECLARATION OF EASEMENTS AND COVENANTS

This First Amendment to Declaration of Easements and Covenants ("Amendment") dated for reference purposes as of December 23, 2009, is entered by and between WINCO FOODS, LLC ("WinCo"), and WEST VALLEY PAVILION, LLC ("Kornwasser").

RECITALS

A. WinCo and Kornwasser entered into that certain Declaration of Easements and Covenants dated August 7, 2008 and recorded in the Official Records of Salt Lake County, Utah on August 7, 2008 as Instrument No. 10494814 (the "DEC") with respect to the real property described on Schedule 1 attached to this Amendment..

B. The parties desire to enter into this Amendment to modify the DEC as set forth herein.

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

1. Capitalized Terms. Except as otherwise defined in this Amendment, all capitalized terms used in this Amendment shall have the meanings given such terms in the DEC.

2. Definition of Site Plan. The definition of "Site Plan" in Section 1.37 of the DEC is hereby amended to mean, and the reference to "Site Plan" in Recital B of the DEC is hereby modified to refer to, the Site Plan attached to this Amendment as Exhibit B. Exhibit B attached to this Amendment replaces and supersedes Exhibit B attached to the DEC.

3. Change to Boundaries of Lots 5, 6 and 7. It is the intent of the parties to modify by lot line adjustment the boundaries of Lot 5 (referenced in the DEC as the Shops B Tract), Lot 6 (referenced in the DEC as the Pad D Tract) and Lot 7 (referenced in the DEC as the Pad A Tract) of the West Valley plat referenced on Exhibit A-2 attached to the DEC for the purpose of conforming the boundaries of such Tracts to the new boundaries of such Tracts shown on the Site Plan attached as Exhibit B to this Amendment. Such lot line adjustments have been approved by the City of West Valley. Effective on and after the date of this Amendment, the

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Shops B Tract, Pad D Tract and the Pad A Tract shall mean and refer to each of those particular Tracts as shown on Exhibit B attached to this Amendment.

4. Maximum Allowable Floor Area of Building on Pad A Tract. Section 3.3(e) of the DEC is hereby amended to provide that the maximum allowable Floor Area of the building on the Pad A Tract shall not exceed 4,800 square feet. For purposes of clarification, any fueling pavilion improvements shall not be considered as Floor Area for purposes of the foregoing restriction.

5. Permitted Use of the Pad A Tract. Notwithstanding any contrary provision of Section 5.1 of the DEC, the parties to the DEC agree that the Pad A Tract may be used for the construction and operation of a combination vehicle fueling station and convenience store business, provided that all other retail grocery store operations as defined in Section 5.1(d) of the DEC, which shall include small-format grocery stores including, for illustrative purposes only, Tesco's Fresh & Easy Neighborhood Market and Wal-Mart's Marketside stores, shall be prohibited on the Pad A Tract in accordance with Section 5.1(d) of the DEC. Any fueling station use on Pad A Tract shall remain subject to the use restrictions set forth in Section 5.1(b) of the DEC, including without limitation, the prohibition in Section 5.1(b)(viii) against any body shop or vehicle maintenance or repair use. Any fuel dispensing pavilion and associated pumps and related facilities shall not be considered to violate the terms and provisions of Section 5.1(e) of the DEC, provided that, except for the dispensing of fuel, no other merchandise, equipment or services are displayed, offered for sale or lease, or stored, from or within such area.

6. Freestanding Sign on the Pad A Tract. Subject to receipt of all applicable governmental permits and approvals, the Occupant of the Pad A Tract shall be permitted to install a freestanding sign on the Pad A Tract in the "Monument Sign" location on the Pad A Tract generally depicted on the new Site Plan attached to this Amendment as Exhibit B (the "Pad A Tract Monument Sign"); provided, however, that no governmental approval of the Pad A Tract Monument Sign shall limit or restrict the other signage permitted to be installed on the WinCo Tract or the other portions of the Kornwasser Tract under Section 5.3 of the DEC. The Pad A Tract Monument Sign shall be in accordance with the specifications attached to this Amendment as Exhibit A.

The Pad A Tract Monument sign is in addition to, and shall not replace any of the Center Signs and Kornwasser Tract Monument Signs referenced in Section 5.3 of the DEC. The locations of the Center Signs and Kornwasser Tract Monument Signs are set forth on the new Site Plan attached to this Amendment as Exhibit B. Notwithstanding any contrary provision of the DEC, the Owner of the Pad A Tract shall have no rights with respect to the Center Signs or the Kornwasser Tract Monument Signs.

7. Notices. Section 7.4 of the DEC is hereby amended to delete the WinCo contact persons and addresses for Notices and replace the same with the following persons and address:

IF TO WINCO:	WinCo Foods, LLC
	Attn: Morgan Randis
	650 N. Armstrong Place
	Boise, Idaho 83704

Fax: (208) 377-0474

WITH A COPY TO: Tammy A. Zokan at the same address

8. Party. Upon the recordation of this Amendment, this Amendment shall satisfy the notice requirements set forth in Section 1.28 of the DEC with respect to the transfer by Kornwasser to Maverik, Inc. of the Pad A Tract. On and after the conveyance to Maverik, Inc. of the Pad A Tract, Maverik, Inc. shall constitute a "Party" under the DEC as successor owner of the Pad A Tract. For purposes of Section 1.28 of the DEC, the address of Maverik, Inc. is 880 West Center Street, North Salt Lake, Utah 84054, Attn.: Dan L. Murray.

9. No Other Modifications. The parties acknowledge that the DEC remains in full force and effect and has not been amended or modified, except as set forth herein.

10. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one fully-executed document.

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

WINCO FOODS, LLC

By: Steven L. Guddard
Name: Steven L. Guddard
Title: CEO / President

WEST VALLEY PAVILION, LLC

By: _____
Name: _____
Title: _____

Fax: (208) 377-0474

WITH A COPY TO: Tammy A. Zokan at the same address

8. Party. Upon the recordation of this Amendment, this Amendment shall satisfy the notice requirements set forth in Section 1.28 of the DEC with respect to the transfer by Kornwasser to Maverik, Inc. of the Pad A Tract. On and after the conveyance to Maverik, Inc. of the Pad A Tract, Maverik, Inc. shall constitute a "Party" under the DEC as successor owner of the Pad A Tract. For purposes of Section 1.28 of the DEC, the address of Maverik, Inc. is 880 West Center Street, North Salt Lake, Utah 84054, Attn.: Dan L. Murray.

9. No Other Modifications. The parties acknowledge that the DEC remains in full force and effect and has not been amended or modified, except as set forth herein.

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

WINCO FOODS, LLC

By: _____
Name: _____
Title: _____

WEST VALLEY PAVILION, LLC

By: _____
Name: JOSEPH KORNWASSER
Title: MANAGING MEMBER

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

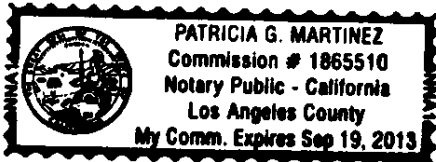
State of California

County of Los Angeles }

On 12/20/09 before me, Patricia G. Martinez, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Joseph Kornwagner
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: Patricia G. Martinez
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another 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: _____ Signer's Name: _____

- | | | | |
|---|---|---|---|
| <input type="checkbox"/> Corporate Officer — Title(s): _____
<input type="checkbox"/> Individual
<input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General
<input type="checkbox"/> Attorney in Fact
<input type="checkbox"/> Trustee
<input type="checkbox"/> Guardian or Conservator
<input type="checkbox"/> Other: _____ | <div style="border: 1px solid black; padding: 2px; text-align: center;"> TOP OF THUMB HERE
 STATE </div> <p>Top of thumb here</p> | <input type="checkbox"/> Corporate Officer — Title(s): _____
<input type="checkbox"/> Individual
<input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General
<input type="checkbox"/> Attorney in Fact
<input type="checkbox"/> Trustee
<input type="checkbox"/> Guardian or Conservator
<input type="checkbox"/> Other: _____ | <div style="border: 1px solid black; padding: 2px; text-align: center;"> TOP OF THUMB HERE
 STATE </div> <p>Top of thumb here</p> |
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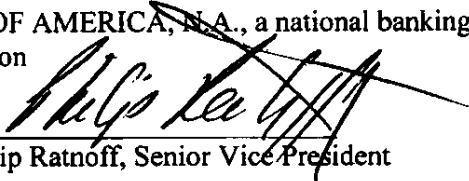
Signer Is Representing: _____ Signer Is Representing: _____

LENDER CONSENT

The undersigned, as the current "Beneficiary" under that certain Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing dated July 31, 2008 executed by West Valley Pavilion, LLC and recorded in the Official Records of Salt Lake County, Utah on August 7, 2008 as Instrument No. 10494861 (the "Deed of Trust"), hereby consents to the foregoing First Amendment to Declaration of Easements and Conditions and agrees that the above-referenced Deed of Trust is subject and subordinate to such First Amendment to Declaration of Easements and Conditions.

BANK OF AMERICA, N.A., a national banking association

By:


Philip Ratnoff, Senior Vice President

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Los Angeles

On 12/21/09 before me, Judith Zamora, Notary Public,
(Here insert name and title of the officer)

personally appeared Philip Ratnoff

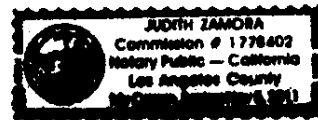
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument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

Judith Zamora
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer

(Title)

- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

SCHEDULE 1

LEGAL DESCRIPTION

WINCO TRACT

That certain real property situated in the City of West Valley, County of Salt Lake, State of Utah, and more particularly described as follows:

Lot 1, West Valley Pavilion, according to the official plat thereof, recorded in the office of the Salt Lake County Recorder.

KORNWASSER TRACT

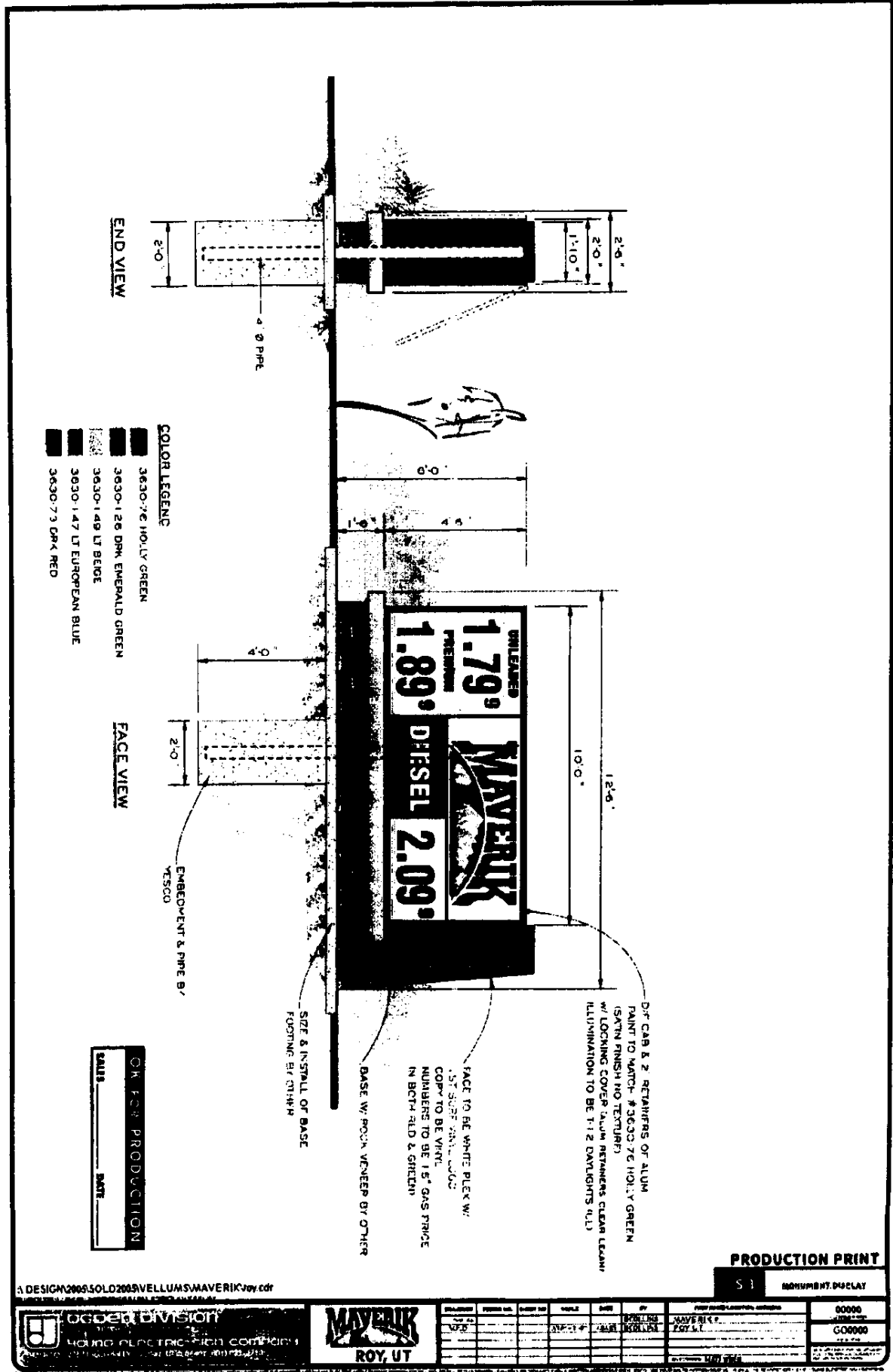
That certain real property situated in the City of West Valley, County of Salt Lake, State of Utah, and more particularly described as follows:

Lots 2, 3, 4, 5, 6 and 7, West Valley Pavilion, according to the official plat thereof, recorded in the office of the Salt Lake County Recorder.

EXHIBIT A

DEPICTION OF PAD A TRACT MONUMENT SIGN

See attached.



DESIGN 2005.SOLD 2005.VELLUM.SMAVERIK.vay.cdr

OGDEN DIVISION
 HOLDING AND FINANCIAL COMPANY



REV	DATE	BY	CHKD	APP'D	DESCRIPTION
1	05/21/05

Project Name: ...
 Client: ...
 Location: ...

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EXHIBIT B

SITE PLAN

See attached.

