

After Recording Return To:

Kendra Smith
WinCo Foods LLC
P.O. Box 5756
Boise, ID 83705

13382473
9/2/2020 12:05:00 PM \$40.00
Book - 11011 Pg - 8805-8817
RASHELLE HOBBS
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 13 P.

This Space Reserved for Recording Purposes
Salt Lake County, Utah

THIRD AMENDMENT TO DECLARATION OF EASEMENTS AND CONDITIONS

This Third Amendment to Declaration of Easements and Conditions ("Amendment") dated for reference purposes as of this 2nd day of September, 2020, 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 Conditions dated August 7, 2008 and recorded in the Official Records of Salt Lake County, Utah on August 7, 2008 as Instrument No. 10494814, as amended by that certain First Amendment to Declaration of Easements and Conditions dated December 23, 2009 and recorded in the Official Records of Salt Lake County, Utah on December 23, 2009 as Instrument No. 10865205, and as further amended by that certain Second Amendment to Declaration of Easements and Conditions dated June 1, 2010 and recorded in the Official Records of Salt Lake County, Utah on June 2, 2010 as Instrument No. 10964013 (collectively, the "DEC") with respect to the real property described in **Schedule 1** attached to this Amendment.

B. Section 7.8(e) of the DEC provides that the DEC may be amended by a written agreement signed by WinCo, as the Approving Party, and Kornwasser, so long as Kornwasser remains the owner of any Tract. Kornwasser has sold portions of the Kornwasser Tract but has retained portions of the Kornwasser Tract that constitute a Tract under the DEC.

C. WinCo and Kornwasser desire to enter into this Amendment to modify the DEC as set forth herein.

AGREEMENT

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. Amendment of Recital B. Recital B of the DEC is hereby amended by deleting the phrase “seven (7)” and inserting “nine (9)”.

3. Change to Boundaries of Major A. It is the intent of the parties to modify, by lot line adjustment, the boundaries of Major A to create Pad E as shown on the Site Plan

4. Replacement of Site Plan. The Site Plan attached to the DEC is hereby deleted in its entirety and replaced with the Site Plan attached to this Amendment as **Exhibit B**. All references in the DEC to the “Site Plan” shall mean and refer to the Site Plan attached hereto as **Exhibit B**. Approving Party hereby consents to the development of Pad F in accordance with the Site Plan attached to this Amendment as **Exhibit B**.

5. Replacement of the Signage Plan. The Signage Plan attached to the DEC is hereby deleted in its entirety and replaced with the Signage Plan attached to this Amendment as **Exhibit C**. All references in the DEC to the “Signage Plan” shall mean and refer to the Signage Plan as amended by **Exhibit C**.

6. Amendment of Section 1.3. The second sentence of Section 1.3 of the DEC is hereby deleted and replaced with the following:

“There shall be one Approving Party, which shall be the owner of Major A of the WinCo Tract.”

7. Amendment to Section 1.22. Section 1.22 of the DEC is hereby deleted in its entirety and replaced with the following:

“1.22 Kornwasser Tract. “Kornwasser Tract” means the Tracts identified as Pad A, Pad B, Pad C, Pad D, Pad F, Shops A and Shops C on the Site Plan.”

8. Amendment of Section 1.25. The last sentence of Section 1.25 of the DEC is hereby deleted and replaced with the following:

“The initial Operator shall be WinCo.”

9. Amendment of Section 1.39. The second sentence of Section 1.39 of the DEC is hereby amended by inserting “Pad B” after the phrase “Pad A”, by inserting “Pad E, Pad F,” after the phrase “Pad D,” and by deleting the reference to “Shops B”.

10. Amendment of Section 1.42. 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 Tracts identified as Major A and Pad E on the Site Plan and more particularly described on **Schedule 1**.”

11. Amendment of Section 3.2(e)(iv). Section 3.2(e)(iv) of the DEC is hereby amended by substituting “Pad B and Pad F” for “Shops B”, and by adding the following at the end of the paragraph:

“Additionally, (i) WinCo may also combine the aggregate parking spaces for Major A and Pad E for the purposes of determining the aggregate parking ratio for such Tracts. (ii) Pad B, Pad C and Pad F may use up to 36 parking spaces on the Major A Tract for determining compliance with parking requirements pursuant to this DEC and applicable law.”

12. Amendment of Section 3.3(e). Section 3.3(e) is amended by replacing the reference to “Shops B” with “Pad B and Pad F” and adding the following to the table:

“Pad E 25 feet 30 feet --- 8,000 square feet”

13. Amendments to Section 5.1

13.1 Section 5.1(b)(iii) of the DEC is hereby deleted in its entirety and replaced with the following:

(iii) any “second hand” store or “surplus store” except those such as Ross Dress For Less, T.J. Maxx, Uptown Cheapskate, Kid 2 Kid, Play it Again Sports, Goodwill or Savers.”

13.2 Section 5.1(b)(ix) is amended by adding the following language following the last words in such section:

“provided, however, notwithstanding the foregoing, the following uses shall be permitted: entertainment and recreation operations, catering to children or adults.”

13.3 Section 5.1(b)(xi) is hereby amended by deleting the restriction on veterinary hospitals.

13.4 Section 5.1(b)(xiv) is hereby amended by deleting the restrictions against liquor stores.

13.5 Section 5.1(b)(xv) is hereby deleted in its entirety.

13.6 Section 5.1(b)(xvi) is hereby deleted in its entirety and replaced with the following:

“any flea markets;”

13.7 Section 5.1(b)(xx) of the DEC is hereby deleted in its entirety and replaced with the following:

“(xx) any car washing establishment, except that a car washing establishment shall be permitted on Pad F as specifically designed and shown on Exhibit B.”

13.8 Section 5.1(b)(xxiv) and (xxv) are hereby deleted in their entirety.

14. Amendment of Section 5.1(c)(i). Section 5.1(c)(i) is hereby deleted in its entirety.

15. Amendment of Section 5.3(a)(i). Section 5.3(a)(i) is hereby deleted in its entirety and replaced with the following:

“(i) The Occupant of Major A of the WinCo Tract shall be entitled to the top designation and the 35.71% of the two (2) pylon signs in the locations shown on the Signage Plan (the “Center Signs”), subject to the approval of the applicable governmental authority. The Occupant of the WinCo Tract Pad E may erect a monument sign at the location as shown on the Signage Plan, subject to the approval of the applicable governing authority. Such monument sign shall be no more than ten (10) feet in height above the ground level and shall have a total sign panel of no more than eighty (80) square feet. In the event that any Party desires to relocate any such monument sign or add an additional monument sign, such Party must obtain the approval of the Approving Party, such approval to be in the Approving Party’s sole, absolute and unreviewable discretion.”

16. Amendment of Section 7.4. 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 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, only if additionally sent by one of the methods mentioned above. 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 e-mail (so long as the sender sends such 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:

TO WINCO: WinCo Foods, LLC
Attn: Greg Goins, Vice President of Real Estate
650 N. Armstrong Place
Boise, Idaho 83704
Fax: (208) 377-0474
E-mail: greg.goins@wincofoods.com

WITH A COPY (AT THE SAME ADDRESS) TO:
Chad Lamer, Real Estate Attorney
E-mail: chad.lamer@wincofoods.com

AND: Lori Gilbertson, Property Supervisor
E-mail: PropertyMgmt@wincofoods.com

TO KORNWASSER: West Valley Pavilion, LLC
c/o CCA Acquisition Company
Attn: Steven Usdan
5670 Wilshire Blvd., Suite 1250
Los Angeles, CA 90036
E-mail: StevenU@kornwasser.net"

17. 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.

18. 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.

[SIGNATURES ON FOLLOWING PAGE]

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

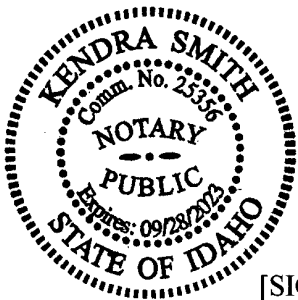
WINCO FOODS, LLC

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

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

On this 1st day of September, 2020, 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 she executed the same in the name and on behalf of said 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.

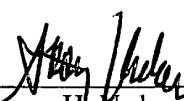


Kendra Smith
Notary Public
Residing at Boise, ID
My Commission expires 09/28/2023

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

WEST VALLEY PAVILION, LLC

By: West Valley Pavilion Managing Member,
LLC, its managing member

By: 
Steven H. Usdan, 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 _____)

On this ___ day of _____, 2020, before me, _____, a Notary Public, personally appeared _____, 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.

Signature: _____

**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 AUGUST 28, 2020 before me, K. RACHEL HOLLINGSWORTH, NOTARY PUBLIC,
Date Here Insert Name and Title of the Officer

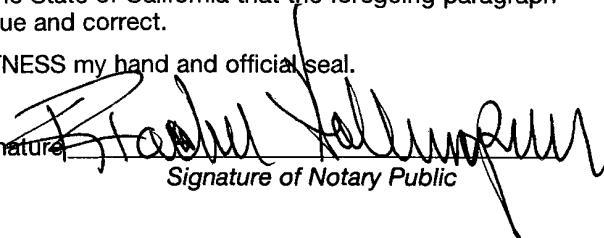
personally appeared STEVEN H USDAN aka STEVEN USDAN
Name of Signer

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



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: _____

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.

Assessor Parcel Nos.:




14-23-477-001-0000
14-23-477-002-0000
14-23-477-004-0000
14-23-477-009-0000
14-23-477-010-0000
14-23-477-011-0000
14-23-477-012-0000

EXHIBIT B

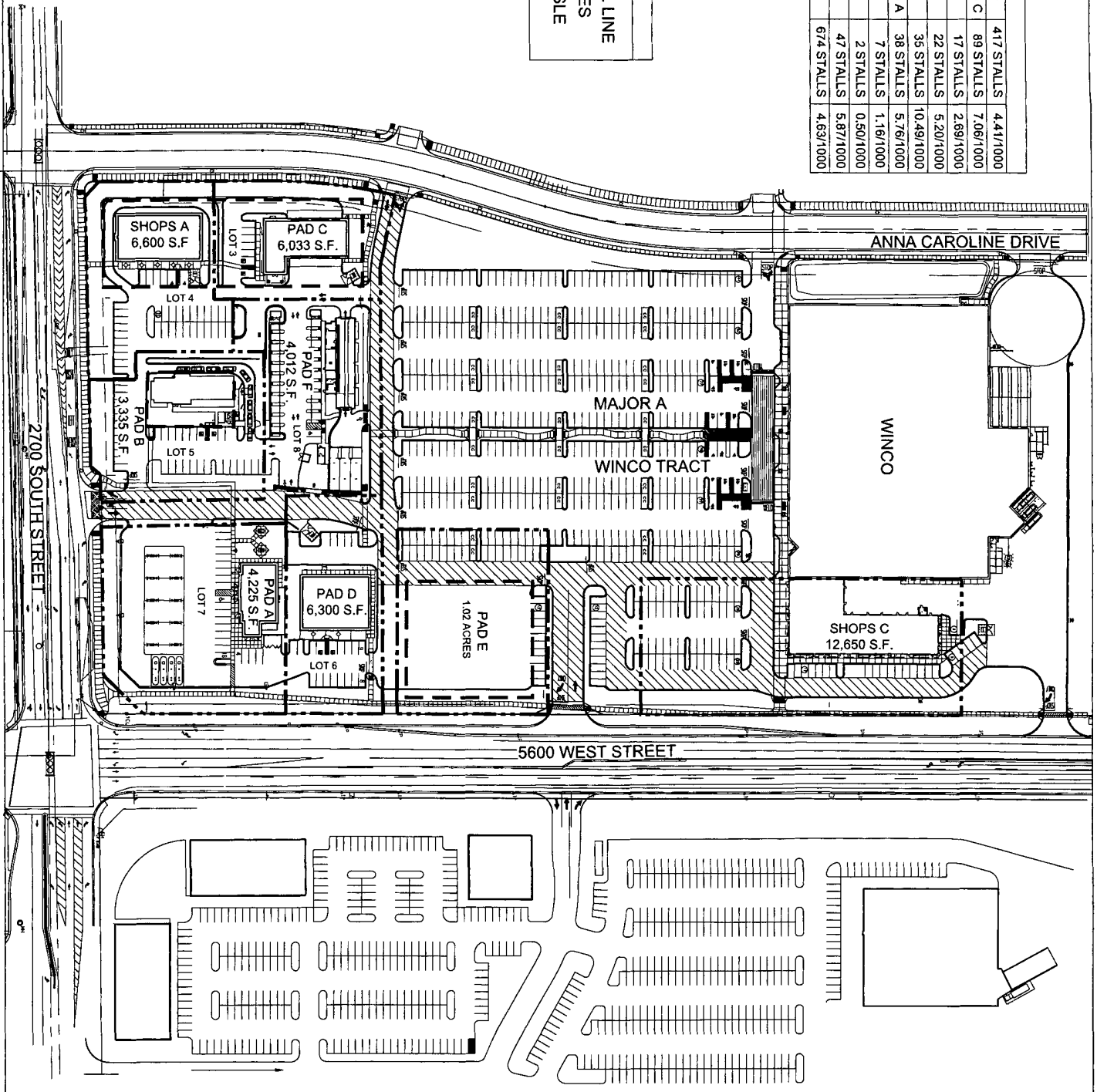
Site Plan

(See Attached)

SITE DATA				
9.50 ACRES	94,531 S.F.	WINCO	417 STALLS	4,411/1000
1.61 ACRES	12,650 S.F.	SHOPS C	89 STALLS	7,067/1000
0.78 ACRES	6,300 S.F.	PAD D	17 STALLS	2,691/1000
1.24 ACRES	4,225 S.F.	PAD A	22 STALLS	5,201/1000
0.89 ACRES	3,335 S.F.	PAD B	36 STALLS	10,491/1000
0.87 ACRES	6,600 S.F.	SHOPS A	38 STALLS	5,767/1000
0.72 ACRES	6,033 S.F.	PAD C	7 STALLS	1,161/1000
1.07 ACRES	4,012 S.F.	PAD F	2 STALLS	0,501/1000
1.02 ACRES	8,000 S.F.	PAD E	47 STALLS	5,871/1000
TOTALS	17.71 ACRES		674 STALLS	4,631/1000

LEGEND	
	PROPERTY/PARCEL LINE
	BUILDING LIMIT LINES
	COMMON DRIVE AISLE

SITE PLAN
SCALE: 1" = 40'-0"



DATE
8/20/20

WINCO FOODS STORE
5600 WEST STREET &
PARKWAY BLVD
WEST VALLEY CITY, UT

**WinCo
FOODS**

EXHIBIT
DEC

EXHIBIT
B

EXHIBIT C

Signage Plan

(See Attached)

LEGEND

- CENTER SIGN
- KORNWASSER TRACT MONUMENT SIGN
- ▲ PAD E MONUMENT SIGN

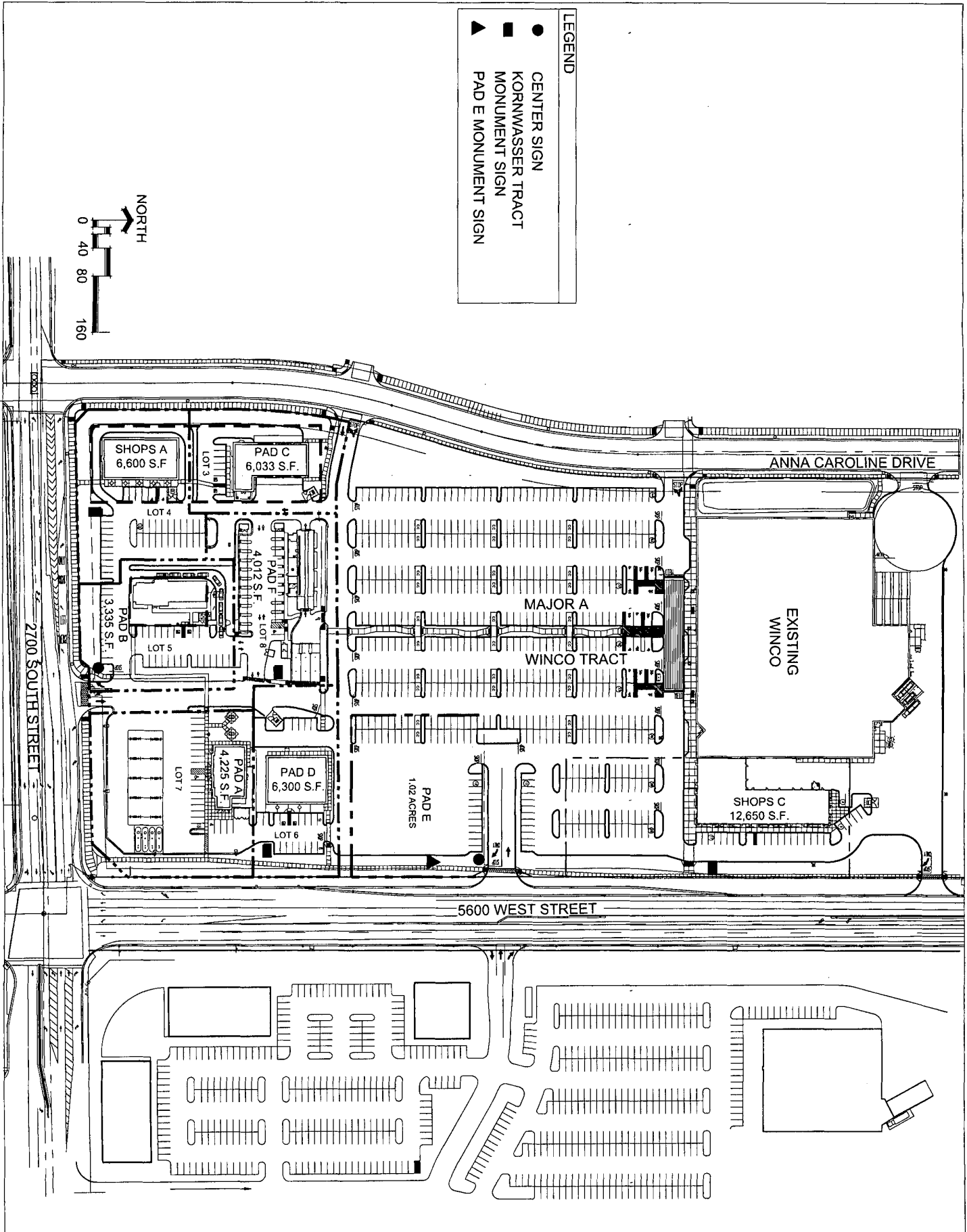
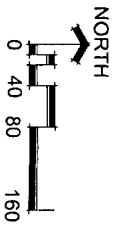


EXHIBIT
C

DEC
EXHIBIT

**WinCo
FOODS**

WINCO FOODS STORE
5600 WEST STREET &
PARKWAY BLVD
WEST VALLEY CITY, UT

DATE
8/20/20