

SE 35 5N-2W

E 1636253 B 2741 P 567
SHERYL L. WHITE, DAVIS CNTY RECORDER
2001 JAN 29 2:57 PM FEE 27.00 DEP JB
REC'D FOR FOUNDERS TITLE COMPANY

14-071-0077
- 0078

PARKING EASEMENT AGREEMENT

This Parking Easement Agreement is made between **DEARELD D. RICH**, 1823 North 200 West, Sunset, Utah 84015 (Rich) and **WING WEST DEVELOPMENT, L.L.C.**, whose address is in care of Stephen D. Westfall, 1329 Albion Avenue, Burley, Idaho 83318 (Wing West).

RECITALS

Wing West is purchasing the real property described on Exhibit A attached hereto from Rich (Winger's property). Located on the real property is a Winger's Restaurant.

Immediately adjacent and north of the Winger's property is real property owned by Rich described on Exhibit B attached hereto (Rich property). In order to comply with the off street parking requirements of the City of Clearfield, it is necessary that the Winger's property use the Rich property and the Rich property use the Winger's property for parking.

In consideration of Wing West purchasing the Winger's property, and in consideration of Rich selling the Winger's property to Wing West, the parties are willing to grant to one another parking easements on the Winger's property and the Rich property. The parties desire to set forth the terms of their agreement in writing.

Based upon the foregoing, the parties agree:

1. PARKING EASEMENT: Wing West and all tenants and licensees of the Winger's property or any part thereof and their business invitees, licensees, and employees shall have the right to use, free of charge, the Rich property as a parking area (which expression as

1
2
3 used herein includes entrances, exits, driveways, and walks), in
4 common with Rich and all tenants and licensees of the Rich property
5 or any part thereof and their business invitees, licensees, and
6 employees.

7 Rich and all tenants and licensees of the Rich property or any
8 part thereof and their business invitees, licensees, and employees
9 shall have the right to use, free of charge, the Winger's property as
10 a parking area (which expression as used herein includes entrances,
11 exits, driveways, and walks), in common with Wing West and all
12 tenants and licensees of the Winger's property or any part thereof
13 and their business invitees, licensees, and employees.

14 2. REQUIREMENTS OF CLEARFIELD CITY: The parties agree that the
15 Winger's property and the Rich property shall be used to comply with
16 the planning and zoning requirements of Clearfield City as the
17 requirements pertain to off street parking required for the Winger's
18 property and Rich property. The parties agree to maintain parking on
19 the Winger's property and Rich property so that the total of the
20 parking available on the Winger's property and the Rich property,
21 when used together, shall not be less than the sum of the various
22 uses of the Winger's property and Rich property computed separately.

23 3. RIGHT OF WAY: Wing West and all tenants, customers,
24 invitees, and licensees of the Winger's property or any part thereof
25 shall have a right of way at all times, in common with Rich and all
26 tenants and licensees of the Rich property or any part thereof, for
27 motor vehicles and pedestrians, over and across the Rich property as
28 is reasonably necessary for ingress to and egress from the Winger's

1
2
3 property.

4 Rich and all tenants, customers, invitees, and licensees of the
5 Rich property or any part thereof shall have a right of way at all
6 times, in common with Wing West and all tenants and licensees of the
7 Winger's property or any part thereof, for motor vehicles and
8 pedestrians, over and across the Winger's property as is reasonably
9 necessary for ingress to and egress from the Rich property.

10 4. MAINTENANCE AND INSURANCE: Until Rich constructs a building
11 on the Rich property, Wing West shall pay all costs of maintenance of
12 the parking areas and rights of way located on the Winger's property.
13 Until Rich constructs a building on the Rich property, the owner of
14 the Winger's property and the owner of the Rich property shall each
15 pay one-half (1/2) of all costs to maintain and keep in good repair
16 the parking areas and rights of way located on the Rich property and
17 shall keep such areas and rights of way striped and free and clear of
18 snow, ice, rubbish, and obstructions of every nature, and shall
19 provide adequate drainage and lighting thereon.

20 Once a building is constructed on the Rich property, the owner
21 of the Winger's property shall pay all costs of maintenance and
22 repair of the parking areas and rights of way located on the Winger's
23 property and the owner of the Rich property shall pay all costs of
24 maintenance and repair of the parking areas and rights of way located
25 on the Rich property. The owner of each parcel of property shall
26 then keep such areas and rights of way striped and free and clear of
27 snow, ice, rubbish, and obstructions of every nature, and shall
28 provide adequate drainage and lighting thereon.

1
2
3 Neither party shall change the striping of the parking spaces
4 and the driveways on either property without the other party's
5 written consent.

6 Until Rich constructs a building on the Rich property, Wing West
7 shall maintain, at all times, insurance against claims for personal
8 injury or property damage in an amount not less than One Million
9 Dollars (\$1,000,000.00) with respect to any single personal injury,
10 One Million Dollars (\$1,000,000.00) with respect all personal
11 injuries suffered in an accident, and One Hundred Thousand Dollars
12 (\$100,000.00) with respect to property damage. Rich shall be named
13 on the policy as an additional named insured. The policy shall
14 provide that the insurance carrier shall give written notice of
15 cancellation to Rich at least ten (10) days prior to the effective
16 date of cancellation. Wing West shall provide Rich a certificate of
17 insurance, evidencing the existence of a valid policy of insurance
18 conforming to this paragraph, upon the request of Rich.

19 Once Rich constructs a building on the Rich property, each party
20 shall maintain insurance as stated above, naming the other party as
21 an additional named insured and providing that the insurance policy
22 shall not be cancelled without written notice to both parties at
23 least ten (10) days prior to the effective date of cancellation. A
24 certificate of insurance shall be provided to the party requesting
25 the certificate.

26 5. PROHIBITION OF IMPROVEMENTS: Rich shall not build or
27 maintain, or permit to be built or maintained, any structure on the
28 Rich property that would interfere with the easements and rights

1
2
3 granted by this Agreement. Wing West shall not build or maintain, or
4 permit to be built or maintained, any structure on the Winger's
5 property that would interfere with the easements and rights granted
6 by this Agreement.

7 Rich shall not operate or permit the operation upon the Rich
8 property of a restaurant, cafe, drive-in, or other establishment
9 selling or serving cooked or prepared food; provided, however, Rich
10 shall be allowed to operate or permit the operation upon the Rich
11 property of an establishment selling donuts, cookies, ice cream, or
12 other desserts, juices, hot drinks, or soft drinks.

13 6. **TERM:** This Agreement is perpetual unless terminated by
14 court order or by a writing signed by the record owner of the
15 Winger's property and the record owner of the Rich property and
16 recorded in Davis County, Utah.

17 7. **RUNS WITH LAND:** The rights and easements herein granted,
18 and the restrictions herein imposed, run with the land and shall
19 inure to the benefit of, and be binding upon, the parties hereto and
20 their respective heirs, successors, legal representative, and
21 assigns, including all subsequent owners of the Winger's property and
22 the Rich property.

23 8. **NOTICES:** All notices under this Agreement shall be in
24 writing and mailed certified mail, postage prepaid, return receipt
25 requested, addressed to each party at the address stated on the first
26 page of this Agreement. Should either party desire to change its
27 address for the purpose of notice, that party shall notify the other
28 party in writing and shall serve that notice by certified mail,

FLETCHER LAW OFFICE
BURLEY, IDAHO

1
2
3 return receipt requested.

4 9. NON WAIVER: No delay or failure by either party to exercise
5 any right under this Agreement, and no partial or single exercise of
6 that right, shall constitute a waiver of that or any other right,
7 unless otherwise expressly provided herein.

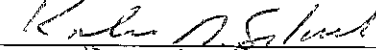
8 10. GOVERNING LAW: This Agreement shall be construed in
9 accordance with and governed by the laws of the State of Utah.

10 11. ATTORNEY FEES: Should either party breach or default in
11 any of the covenants or agreements contained herein, the defaulting
12 party shall pay all costs and expenses, including reasonable
13 attorney's fees, which may arise or accrue from enforcing this
14 Agreement or in pursuing any remedy provided by this Agreement or by
15 the statutes of the State of Utah, whether such remedy is pursued by
16 filing suit or otherwise.

17 DATED this 26th day of January, 2001.

18 
19 Deareld D. Rich

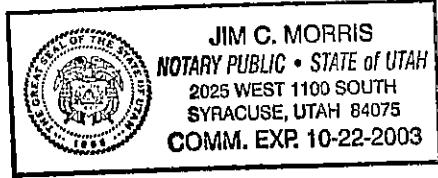
20
21 WING WEST DEVELOPMENT, L.L.C.

22 BY 
23 Title President - Manager

24
25 STATE OF UTAH)
26 County of Davis) ss

27 On this 26th day of January, in the year of 2001, before
28 me, the undersigned, a Notary Public in and for said State,
personally appeared DEARELD D. RICH, known or identified to me to be

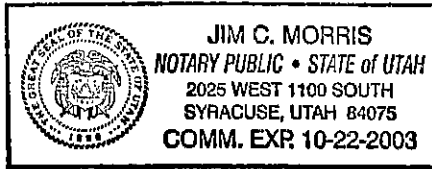
the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Jim C. Morris
Notary Public for Utah
Residing at DAVIS COUNTY
My commission expires on 10-22-03

STATE OF ~~IDAHO~~ ^{UTAH})
County of DAVIS) ss

On this 26th day of January, in the year ~~2000~~ ²⁰⁰¹, before me, the undersigned, a Notary Public in and for said State, personally appeared RICHARD D SILCOCK, known or identified to me to be the MANAGER of WING WEST DEVELOPMENT, L.L.C., the Limited Liability Company that executed the instrument or the person who executed the instrument on behalf of said Limited Liability Company, and acknowledged to me that such Limited Liability Company executed the same.



Jim C. Morris
Notary Public for ~~Idaho~~ ^{UTAH}
Residing at DAVIS COUNTY
My commission expires on 10-22-03

FLETCHER LAW OFFICE
BURLEY, IDAHO

0078

Beginning on the West line of a Highway 50.00 feet West and South 0°01'21" West 141.90 feet from the Northeast corner of the Southeast Quarter of Section 35, Township 5 North, Range 2 West, Salt Lake Meridian, and running thence South 0°01'21" West 125.40 feet; thence North 89°56'38" West 175.00 feet; thence North 0°01'21" East 31.129 feet; thence West 3.976 feet; thence North 0°01'00" East 94.275 feet; thence South 89°56'38" East 178.986 feet to the point of beginning.

Davis County, State of Utah.

EXHIBIT A

EXHIBIT "B"

0077 Beginning on the West line of a Highway 50.00 feet West and South $0^{\circ}01'21''$ West 65.699 feet from the Northeast Corner of the Southeast 1/4 Section 35, Township 5 North, Range 2 West, Salt Lake Meridian; and running thence South $0^{\circ}01'21''$ West 76.221 feet; thence North $89^{\circ}56'38''$ West 178.986 feet; thence North $0^{\circ}01'00''$ East 103.929 feet; thence South $89^{\circ}56'38''$ East 151.476 feet; thence South $44^{\circ}45'00''$ East 39.08 feet to the point of beginning.

*** I ***