

E 3092227 B 7011 P 193-202
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
5/9/2018 10:40:00 AM
FEE \$33.00 Pgs: 10
DEP eCASH REC'D FOR FIRST AMERICAN TITLE-NCS

After Recording Return To:
Andrea Deguzman
WinCo Foods, LLC
PO Box 5756
Boise, ID 83705

FATCO NCS - A12018
DAVIS APN: 13-286-0001, 13-286-0002, 13-286-0003 and 13-286-0004
Space Above This Line For Recording Purposes

THIRD AMENDMENT TO DECLARATION OF EASEMENTS AND CONDITIONS

THIS THIRD AMENDMENT TO DECLARATION OF EASEMENTS AND CONDITIONS (this "**Third 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 **HD CLINTON, LLC**, a Utah limited liability company ("**HDC**") (collectively, the "**Parties**").

RECITALS

This Third 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 and 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 (the "**Second Amendment**") (collectively, the "**DEC**").

B. WinCo and Kornwasser desire to enter into this Third Amendment to modify the DEC in certain respects set forth herein, and to agree with HDC as set forth herein.

AGREEMENT

NOW, THEREFORE, inconsideration 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. **Option Agreement; Drive Aisle Connection.** Kornwasser entered into an Option Agreement with H&B Development of Utah, LLC (“**Optionee**”) dated December 5, 2008, as evidenced by that certain Memorandum of Option dated December 5, 2008 and recorded on December 5, 2008 by the Recorder as Entry No. 2408659 (collectively, the “**Option.**”) The Optionee’s rights under the Option were assigned to Property Reserve, Inc. (“**PRI**”) pursuant to the certain Assignment and Consent to Assignment of Option Agreement dated December 4, 2008 and recorded on December 5, 2008 by the Recorder as Entry No. 2408665. Under the Option, Optionee, its successors and assigns, have the right, upon developing the property to the south of the Property (“**Optionee’s Property**”), to connect drive aisles on Optionee’s Property to drive isles located on the Property, including the drive aisle shown by cross-hatching on **Exhibit B** to this Amendment as the “**Connection Area**” (the “**Connection Area**”), and to remove the parking stalls located in the Connection Area as part thereof.
3. **Non-Violation.** It is hereby agreed, and the Declaration is hereby amended to provide, that in the event PRI or any other successor-in-interest to Optionee exercises its right under the Option to connect a drive aisle on Optionee’s Property to the drive aisle located on the Property in the Connection Area as described in Section 2 above, and in so doing eliminates the parking stalls located in the Connection Area without replacing them, the same shall not result in any violation or breach of, or default under, the Declaration, nor shall it be required that such parking stalls be replaced.
4. **Notice of Transfer.** HDC hereby gives notice that concurrently with the recordation of this Third Amendment, HDC is transferring ownership of Parcel 2 (Major A) to FC HOMES, LLC, a Delaware limited liability company, whose address is 9537 South 700 East Sandy, Utah 84070. The Parties hereby acknowledge that this paragraph satisfies the requirements for notice of transfer set forth in Section 1.28 of the DEC.
5. **Correction of Second Amendment.** In the Second Amendment, it was stated that Section 5.1(b)(xix) of the Declaration was deleted in its entirety and replaced with the following:

(xix) Any fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks; *provided, however,* that this prohibition shall not be applicable to the seasonal sale of legal fireworks on the WinCo Tract so long as such use: (1) complies with all federal, state and local laws and regulations; (2) is located within a building; and (3) is incidental to an otherwise permitted use in accordance with this Dec.

The references quoted above to subsection (xix) were intended to be references to subsection (xx), and are accordingly replaced by references to subsection (xx).

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

7. **Counterparts.** This Third 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]

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)

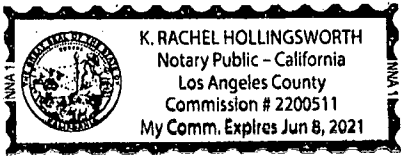
On APRIL 26, 2018 before me, K. RACHEL HOLLINGSWORTH, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

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 [Handwritten 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: _____

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

