

FIRST ADDENDUM TO DEVELOPMENT AGREEMENT

- PARTIES:**
1. City of Meridian
 2. WinCo Foods, LLC, Owner/Developer

THIS FIRST ADDENDUM TO DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this _____ day of _____, 2021, by and between **City of Meridian**, a municipal corporation of the State of Idaho, hereafter called CITY whose address is 33 E. Broadway Avenue, Meridian, Idaho and **WinCo Foods, LLC**, whose address is 650 N. Armstrong Place, Boise, ID 83704, hereinafter called OWNER/DEVELOPER.

1. RECITALS:

- 1.1 **WHEREAS**, Owner/Developer is the sole owner, in law and/or equity, of that certain tract of land located at 2600 E. Overland Road, Meridian, in the County of Ada, State of Idaho, described in Exhibit "A", which is attached hereto and by this reference incorporated herein as if set forth in full, herein after referred to as the Property; and
- 1.2 **WHEREAS**, the Property is subject to that certain Development Agreement between the City of Meridian and Volante Investments, LLLP, dated July 5, 2016 (Instrument #2016-060157) ("2016 Development Agreement"), which generally describes how the Property will be developed and what improvements will be made; and
- 1.3 **WHEREAS**, on the 18th day of May, 2021, the Meridian City Council approved a modification of development agreement (H-2020-0118) and subdivision (H-2021-0007) to remove certain property located at 2700 E. Overland Road from the 2016 Development Agreement.
- 1.4 **WHEREAS**, Owner/Developer deems it to be in its best interest to be able to enter into this Agreement and acknowledges that this Agreement was entered into voluntarily and at its urging and request; and

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the parties agree as follows:

2. **INCORPORATION OF RECITALS:** That the above recitals are contractual and binding and are incorporated herein as if set forth in full.

3. **DEFINITIONS:** For all purposes of this Agreement the following words, terms, and phrases herein contained in this section shall be defined and interpreted as herein provided for, unless the clear context of the presentation of the same requires otherwise:

3.1 **CITY:** means and refers to the City of Meridian, a party to this Agreement, which is a municipal Corporation and government subdivision of the state of Idaho, organized and existing by virtue of law of the State of Idaho, whose address is 33 East Broadway Avenue, Meridian, Idaho 83642.

3.2 **OWNER/DEVELOPER:** means and refers to WinCo Foods, LLC, whose address is 650 N. Armstrong Place, Boise, ID 83704, the party that is developing said Property and shall include any subsequent owner/developer(s) of the Property.

3.3 **PROPERTY:** means and refers to that certain parcel(s) of Property located at 2600 E. Overland Road, Meridian, in the County of Ada, City of Meridian as described in Exhibit "A" and attached hereto and by this reference incorporated herein as if set forth at length.

4. **USES PERMITTED BY THIS AGREEMENT:** This Agreement shall vest the right to develop the Property in accordance with the terms and conditions of this Agreement.

4.1 The uses allowed pursuant to this Agreement are only those uses allowed under the UDC.

4.2 No change in the uses specified in this Agreement shall be allowed without modification of this Agreement.

5. **CONDITIONS GOVERNING DEVELOPMENT OF SUBJECT PROPERTY:**

5.1. Owner/Developer shall develop the Property in accordance with the terms and conditions in the 2016 Development Agreement, except that Condition 5.1.3, which related to the removed property at 2700 E. Overland Road, is hereby deleted.

6. **REQUIREMENT FOR RECORDATION:** City shall record this Agreement, including all of the Exhibits, and submit proof of such recording to Owner/Developer.

7. **NOTICES:** Any notice desired by the parties and/or required by this Agreement shall be deemed delivered if and when personally delivered or three (3) days after deposit in the United States Mail, registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

CITY:

with copy to:

City Clerk
City of Meridian
33 E. Broadway Ave.
Meridian, Idaho 83642

City Attorney
City of Meridian
33 E. Broadway Avenue
Meridian, Idaho 83642

OWNER/DEVELOPER:

with copy to:

WinCo Foods, LLC
Attn: Greg Goins, Vice President of Real Estate
650 N. Armstrong Place
Boise, Idaho 83704

WinCo Foods, LLC
Attn: Chad W. Lamer Real Estate Attorney
650 N. Armstrong Place
Boise, Idaho 83704

7.1 A party shall have the right to change its address by delivering to the other party a written notification thereof in accordance with the requirements of this section.

8. **ATTORNEY FEES:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

9. **TIME IS OF THE ESSENCE:** The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the other party so failing to perform.

10. **BINDING UPON SUCCESSORS:** This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives, including City's corporate authorities and their successors in office. This Agreement shall be binding on the Owner/Developer, each subsequent owner and any other person acquiring an interest in the Property. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed. City agrees, upon written request of Owner/Developer, to execute appropriate and recordable evidence of termination of this Agreement if City, in its sole and reasonable discretion, had determined that Owner/Developer has fully performed its obligations under this Agreement.

11. **INVALID PROVISION:** If any provision of this Agreement is held not valid by a court of competent jurisdiction, such provision shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any of the other provisions contained herein.

12. **DUTY TO ACT REASONABLY:** Unless otherwise expressly provided, each party shall act reasonably in giving any consent, approval, or taking any other action under this Agreement.

13. **COOPERATION OF THE PARTIES:** In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision in this Agreement, the parties agree to cooperate in defending such action or proceeding.

14. **FINAL AGREEMENT:** This Agreement, along with the 2016 Development Agreement, sets forth all promises, inducements, agreements, condition and understandings between Owner/Developer and City relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between Owner/Developer and City, other than as are stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assigns, and pursuant, with respect to City, to a duly adopted ordinance or resolution of City.

14.1 No condition governing the uses and/or conditions governing the subject Property herein provided for can be modified or amended without the approval of the City Council after the City has conducted public hearing(s) in accordance with the notice provisions provided for a zoning designation and/or amendment in force at the time of the proposed amendment.

15. **EFFECTIVE DATE OF AGREEMENT:** This Agreement shall be effective on the date the Meridian City Council shall authorize execution by the Mayor and City Clerk.

[end of text; signatures, acknowledgements, and Exhibit A]

ACKNOWLEDGMENTS

IN WITNESS WHEREOF, the parties have herein executed this agreement and made it effective as hereinabove provided.

OWNER/DEVELOPER:

WinCo Foods, LLC

By: David M Butler
Name: David M Butler
Its: CFO

CITY OF MERIDIAN

By: _____
Mayor Robert E. Simison

ATTEST:

Chris Johnson, City Clerk

STATE OF IDAHO)
: ss:
County of Ada,)

On this 13th day of July, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared David M. Butler, known or identified to me to be the CFO of **WinCo Foods, LLC**, and acknowledged to me that he/she executed the same 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.

(SEAL)



Kendra Smith
Notary Public for Idaho
Residing at: Boise, ID
My Commission Expires: 09/28/2023

STATE OF IDAHO)
: ss
County of Ada)

On this _____ day of _____, 2021, before me, a Notary Public, personally appeared **Robert E. Simison** and **Chris Johnson**, know or identified to me to be the Mayor and Clerk, respectively, of the City of Meridian, who executed the instrument or the person that executed the instrument of behalf of said City, and acknowledged to me that such City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

Notary Public for Idaho
Residing at: _____
Commission expires: _____

EXHIBIT A

**2600 Overland Road
Property Description**

PARCEL I

A parcel of land located in the SW 1/4 of the SE 1/4 Section 17, Township 3 North, Range 1 East, Boise Meridian, Meridian, Ada County, Idaho, being more particularly described as follows:

Commencing at the S1/4 corner of said Section 17 from which the SE corner of said Section 17 bears North 89°46'00" East, 2656.88 feet;

thence North 00°24'05" East, 45.00 feet to the SE corner of Destination Place Subdivision filed in Book 93 of Plats at Pages 11190 through 11192, records of Ada County, Idaho, said point being the **REAL POINT OF BEGINNING**;

thence along the East boundary line of said Destination Place Subdivision North 00°24'05" East, 1,181.25 feet to a point on the southerly right-of-way line of Interstate 84;

thence along said southerly right-of-way line the following 3 courses and distances:

thence North 81°35'27" East, 158.13 feet;

thence South 86°18'23" East, 471.33 feet;

thence 63.33 feet along the arc of a non-tangent curve to the right, said curve having a radius of 1,809.86 feet, a central angle of 02°00'17" and a long chord of 63.32 feet which bears South 85°10'34" East;

thence leaving said southerly right-of-way line South 00°24'05" West, 1134.59 feet to a point on the North right-of-way line of E. Overland Road;

thence along said North right-of-way line the following 4 courses and distances:

thence South 89°59'52" West, 71.96 feet;

thence South 00°24'05" West, 11.58 feet;

thence South 45°33'34" West, 28.68 feet;

thence South 89°46'00" West, 597.70 feet to the **REAL POINT OF BEGINNING**. Containing 18.74 acres, more or less.

