

Recorded at request of SECURITY TITLE COMPANY Order No 73480 Fee Paid 14.00
 Date APR 16 1981 at 9:30 A M CAROL DEAN PAGE Recorder Davis County
 By [Signature] Deputy Book 864 Page 94

WHEN RECORDED, MAIL TO:
 Denis R. Morrill, Esq.
 Prince, Yeates & Geldzahler
 Third Floor MONY Plaza
 424 East Fifth South
 Salt Lake City, Utah 84111

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SECOND AMENDMENT TO
 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
LAYTON HILLS MALL, DAVIS COUNTY, UTAH

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS to that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, LAYTON HILLS MALL, DAVIS COUNTY, UTAH, dated January 12, 1979, and recorded January 17, 1979, as Entry No. 520506, in Book 749, at Page 347 of the Official Records of Davis County, Utah, as previously amended by that certain FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS dated November 8, 1979, and recorded December 20, 1979, as Entry No. 553586 in Book 806, at Page 481 of said Official Records (herein collectively called the "Declaration"), is made this 25th day of FEBRUARY, 1981, by HOMCO INVESTMENT COMPANY, a Utah general partnership, the Declarant under the Declaration and the Owner of each of the parcels covered by the Declaration, and by each of the parties which paragraphs 13 and 23 of the Declaration require to execute and acknowledge this Second Amendment. The real property which is the subject of the Declaration and this Second Amendment is more particularly described on Exhibit 1 attached hereto and hereby made a part hereof.

- Abstracted
- Indexed
- Entered
- Platted
- Co Margin
- Compared

WITNESSETH:

The Declaration is hereby amended as follows:

1. Paragraph 1.B. of the Declaration is hereby deleted and the following is substituted in its stead:

"B. Subparcel shall have the meaning which is provided for in this subparagraph B. Subparcel shall refer to each or any of Parcels B, C, D, E, or F, as shown pictorially on Exhibit "A" and as described by metes and bounds on Exhibit "B", which

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said Parcels B, C, D, E, and F are shown with a single crosshatch on Exhibit "A"; provided, however, that in the event and so long as (but only so long as) either of the following comes to be and continues to be the case:

(i) Record fee title to any portion (described by metes and bounds, as distinguished from by undivided interests) of any of said Parcels B, C, D, E, or F is vested differently than is record fee title to the entirety of the remainder of the realty included within whichever of said Parcels B, C, D, E, or F contains such portion; and/or

(ii) Any portion (described by metes and bounds, as distinguished from by undivided interests) of any of said Parcels B, C, D, E, or F is covered by any recorded first-position Mortgage which does not also cover the entirety of the remainder of the realty included within whichever of said Parcels B, C, D, E, or F contains such portion;

then so long as (but only so long as) such state of affairs continues to be the case with respect to any such portion, the portion concerned and the remainder of the realty included within whichever of said Parcels B, C, D, E, or F contains such portion (or, in the event and so long as the state of affairs contemplated by the preceding items (i) and (ii) is the case with respect to such remainder itself when such remainder is considered alone, the separate portions which collectively comprise such remainder) shall each be considered to be a Subparcel for all purposes under this Declaration. Notwithstanding any of the foregoing provisions of this subparagraph B, however, the term Subparcel (as well as the term parcel, to the extent that the term parcel includes the term Subparcel) shall refer to each or any of said Parcels B, C, D, E, or F (as distinguished from portions thereof) for purposes of each of the following provisions contained in this Declaration:

(a) Paragraph B of the "Recitals" portion of this Declaration.

(b) The first sentence of Paragraph 2.C. of this Declaration.

(c) The second-to-last sentence of Paragraph 2.C. of this Declaration.

(d) The first sentence of Paragraph 5.C. of this Declaration.

(e) Item (b) of Paragraph 21 of this Declaration.

(f) The final clause (which final clause begins with the words "except that Common Access Roadways") of the first sentence of Paragraph 22 of this Declaration.

All Subparcels shall be referred to collectively as the 'Subparcels'."

2. Paragraph 1.H. of the Declaration is hereby deleted and the following is substituted in its stead:

"H. Purchaser shall mean the Owner of any of the Subparcels."

3. The following paragraph is hereby added to the Declaration:

"24. So long as (but only so long as) that certain Lease and Agreement between Declarant, as lessor, and Sizzling Platter, Inc., a Utah corporation, as lessee, dated October 31, 1979, as amended by that certain First Amendment to Lease and Agreement dated December 14, 1979, by that certain Second Amendment to Lease and Agreement dated December 30, 1980, and by that certain Third Amendment to Lease and Agreement dated March 9, 1981, is in effect, which Lease and Agreement, as amended, covers land within Parcel C, no space within the Entire Parcel (except the land covered by said Lease and Agreement, as amended), shall be leased to or used by any specialty menu steak house (other than the then-lessee under said Lease and Agreement, as amended) similar in menu and pricing to the then-lessee under said Lease and Agreement, as amended; provided, however, that the foregoing provisions of this paragraph 24 shall not: (i) prohibit a portion or portions of the Entire Parcel from being leased to or used by other general menu restaurants or a steak house with substantially higher prices than those then being charged by the then-lessee under said Lease and Agreement, as amended; or (ii) restrict the uses to which other tenants of Declarant or of Declarant's successors or assigns may put their respective premises pursuant to leases entered into between Declarant, as landlord or lessor, and said respective tenants prior to the date of said original Lease and Agreement between Declarant and said Sizzling Platter, Inc., where the prescribed use of said other tenants' respective premises is for general retail purposes. So long as (but only so long as) said Lease and Agreement, as now or hereafter amended, is in effect, nothing in this Paragraph 24 shall be amended or modified without the express written consent of the then-lessee under said Lease and Agreement, as now or hereafter amended."

IN WITNESS WHEREOF, this Second Amendment to Declaration of Covenants, Conditions and Restrictions, Layton Hills Mall, Davis County, Utah, has been executed the day and year first above written.

HOMCO INVESTMENT COMPANY, a Utah general partnership, Owner of all the described parcels covered by the Declaration:

By 
DAVID M. HORNE, Partner

By Layton P Ott
LAYTON P. OTT, Partner

By Paul W Mendenhall
PAUL W. MENDENHALL, Partner

By Robert L Mendenhall
ROBERT L. MENDENHALL, Partner

ACKNOWLEDGMENT

STATE OF UTAH)
) :ss.
COUNTY OF SALT LAKE)

On the 25th day of February, 1981, personally appeared before me DAVID M. HORNE, LAYTON P. OTT, PAUL W. MENDENHALL and ROBERT L. MENDENHALL, all of the partners of HOMCO INVESTMENT COMPANY, the signers of the foregoing instrument, who each duly acknowledged to me that they executed the same for and on behalf of Homco Investment Company, a Utah general partnership.

Christine R Eckhardt
NOTARY PUBLIC
Residing at: Salt Lake City

My Commission Expires:
7-02-84

Second Amendment to Declaration of Covenants, Conditions and Restrictions, Layton Hills Mall, Davis County, Utah

APPROVED AND ACCEPTED BY:

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation, as Mortgage Lender

By Ernest O. Robert Its Ernest O. Robert Assistant Vice President

ACKNOWLEDGMENT

STATE OF NEW YORK) : ss. COUNTY OF NEW YORK)

On the 16th day of MARCH, 1981, personally appeared before me Ernest O. Robert who by me duly sworn did say that he is the Assistant Vice President of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its By-laws or by a resolution of its Board of Directors, and said OFFICER acknowledged to me that said corporation executed the same.

My Commission Expires:

Walter F. Allen NOTARY PUBLIC Residing at: WALTER F. ALLEN Notary Public, State of New York Qualified in Kings Co. No. 245033000 Certified in New York County Commission Expires March 30, 1982

Second Amendment to Declaration of Covenants, Conditions and Restrictions, Layton Hills Mall, Davis County, Utah

APPROVED AND ACCEPTED BY:

THE RICHER DEPARTMENT STORE COMPANY, dba AUERBACH'S, a corporation, as Tenant under a certain lease:

By Layton P. Ott
Its President

ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 18th day of March, 1981, personally appeared before me Layton P. Ott, who by me duly sworn did say that he is the President of THE RICHER DEPARTMENT STORE COMPANY, dba AUERBACH'S, a corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its By-laws or by a resolution of its Board of Directors, and said Layton P. Ott acknowledged to me that said corporation executed the same.

Christine R. Eckhardt
NOTARY PUBLIC
Residing at:

My Commission Expires:
7-84

Second Amendment to Declaration of Covenants, Conditions and Restrictions, Layton Hills Mall, Davis County, Utah

APPROVED AND ACCEPTED BY:

SAFEWAY STORES INCORPORATED, a Maryland corporation, as a necessary party to any amendment to said Declaration, pursuant to a Supplement to Declaration heretofore recorded:

By Gary D. Scott
Its Assistant Vice President

By James B. Bolen, Jr.
Its Assistant Secretary

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
 : ss.
COUNTY OF ALAMEDA)

On the 13th day of March, 1981, personally appeared before me GARY D. SCOTT and JAMES B. BOLEN, JR., who, being by me duly sworn, did say that they are, respectively, the Assistant Vice President and the Assistant Secretary of SAFEWAY STORES, INCORPORATED, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said GARY D. SCOTT and JAMES B. BOLEN, JR., acknowledged to me that said corporation executed the same.

WITNESS my hand and official seal.

Marlene R. Collins
NOTARY PUBLIC
Residing at: Fremont, California

My Commission Expires:
March 18, 1983



Second Amendment to Declaration of Covenants, Conditions and Restrictions, Layton Hills Mall, Davis County, Utah

APPROVED AND ACCEPTED BY:

PAY N' SAVE CORPORATION, a Washington corporation, ERNST HOME CENTER DIVISION, as a necessary party to any amendment to said Declaration, pursuant to a Supplement to Declaration heretofore recorded

By [Signature]
Its PRESIDENT

Attest [Signature]
Its SECRETARY

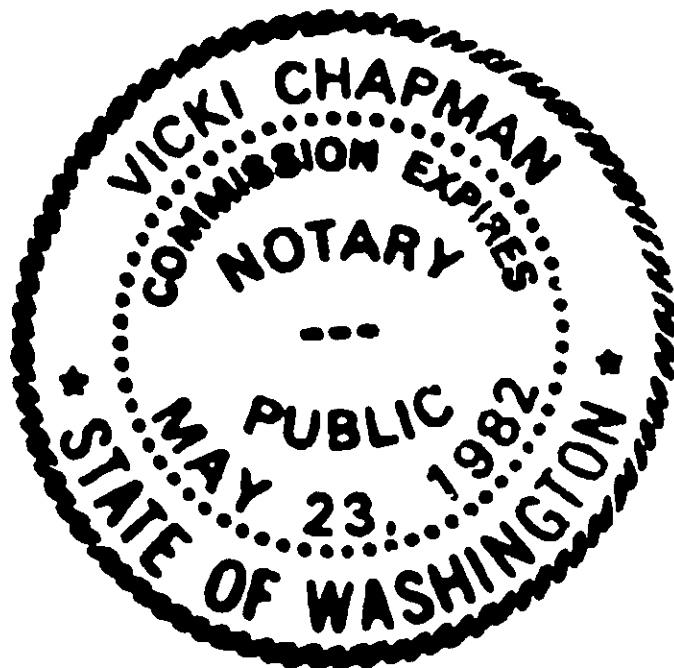
ACKNOWLEDGMENT

STATE OF WASHINGTON)
: ss.
COUNTY OF KING)

On the 26th day of March, 1981, personally appeared before me M. Lamont Bean and Raymond C. Swanson, who by me duly sworn did say that ~~he is~~ ^{they are} the President and Secretary, respectively of PAY N' SAVE CORPORATION, a Washington corporation, ERNST HOME CENTER DIVISION, and that the foregoing instrument was signed on behalf of said corporation by authority of its By-laws or by a resolution of its Board of Directors, and said M. Lamont Bean and Raymond C. Swanson acknowledged to me that said corporation executed the same.

[Signature]
NOTARY PUBLIC
Residing at: Seattle

My Commission Expires:
May 23, 1982



Second Amendment to Declaration of Covenants, Conditions and Restrictions, Layton Hills Mall, Davis County, Utah

APPROVED AND ACCEPTED BY:

MERVYN'S, a California corporation, as a necessary party to any amendment to said Declaration, pursuant to a Supplement to Declaration heretofore recorded

By J. F. Kilmartin
Its Chairman

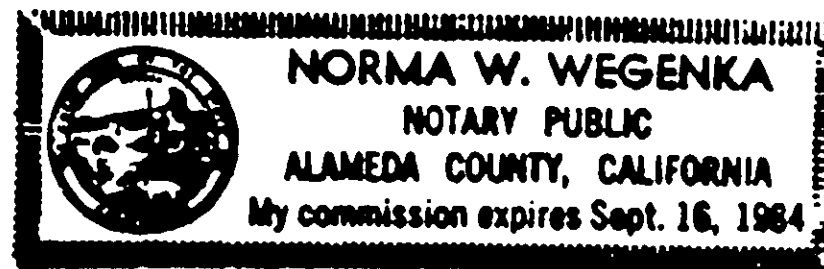
ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) : ss.
COUNTY OF ALAMEDA)

On the 10th day of April, 1981, personally appeared before me J. F. Kilmartin, who by me duly sworn did say that he is the Chairman of MERVYN'S, a California corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its By-laws and by a resolution of its Board of Directors, and said J. F. Kilmartin acknowledged to me that said corporation executed the same.

Norma W. Wegenka
NOTARY PUBLIC
Residing at:

My Commission Expires:



Legal Description of Entire Parcel

Beginning at a point that is South 89° 54' 50" West 1371.679 feet and North 0° 08' 08" East 501.129 feet from the Southeast Corner of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian; said point being on the West right-of-way line of the Hillfield Road (400 West); thence North 0° 08' 08" East 1647.867 feet along said West right-of-way line; thence South 89° 54' 50" West 2394.474 feet to the Interstate 15 right-of-way fence; thence South 34° 57' 09" East 1195.886 feet; thence South 38° 47' 31" East 552.882 feet to a point of a 1085.92 foot radius curve to the left (bearing to center of curve bears North 53° 24' 29" East); thence Southeasterly along the arc of said curve 264.387 feet; thence South 50° 17' 28" East 600.130 feet; thence South 34° 49' 00" East 201.836 feet; thence North 56° 17' 59" East 470.449 feet to a Department of Transportation right-of-way marker which represents a point of a 420.00 foot radius curve to the left (bearing to center of curve bears North 33° 42' 01" West); thence Northeasterly 252.481 feet along the arc of said curve; thence North 88° 43' 02" East 36.619 feet to a point of a 453.901 foot radius curve to the left (bearing to the center of curve bears North 69° 57' 36" West); thence Northeasterly 54.532 feet along the arc of said curve to the point of beginning.