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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
10/19/2005 02:44 PM
FEE \$33.00 Pgs: 11
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Charles L. Maak
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, Utah 84111

NYZ L - BOUNTIFUL NMC

Tax Serial Nos.: 03-036-0115 ✓
03-036-0116 ✓
03-036-0117 ✓
03-036-0118 ✓

SECOND AMENDMENT

to:

- (1) **DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS; and**
- (2) **COMMON AREA MAINTENANCE AGREEMENT**

THIS SECOND AMENDMENT (the "Second Amendment"), dated the 12th day of October, 2005, is entered into by ALBERTSON'S, INC., a Delaware corporation ("Albertson's"), whose address is 250 ParkCenter Boulevard, P.O. Box 20, Boise, Idaho 83726, and 2DF, a Utah General Partnership ("2DF"), whose address is c/o Fred W. Fairclough, Jr., 111 East Broadway, Suite 1250, Salt Lake City, Utah 84111. This Second Amendment may be CONSENTED TO by ZIONS FIRST NATIONAL BANK, N.A. (whose address is Attn: Real Estate Construction, One South Main Street, Suite 470, Salt Lake City, Utah 84111), as the "Lienholder" regarding "Parcel 3" and "Parcel 4," as hereinafter described. However, if such Lienholder does not consent to this Second Amendment, this Second Amendment shall nevertheless be fully effective and enforceable as between and as regards Albertson's, 2DF, and their respective tenants, permittees, successors, and assigns. For the purposes and under the circumstances referred to below, Albertson's and 2DF agree as follows, and Zions First National Bank, N.A. (if it is a signatory to this Second Amendment) consents to this Second Amendment.

1. **Property Affected, and Interests of Albertson's and 2DF.** Albertson's is the current owner of fee title to the following-described real estate ("Parcel 2") located in Davis County, Utah:

Parcel 2:

BEGINNING at a point North 89°44'04" East 166.96 feet and South 0°15'56" East 11.00 feet from the Northwest corner of Block "L," North Mill Creek Plat, Bountiful Townsite Survey, in the City of Bountiful, and running thence North 89°44'04" East 231.75 feet; thence South 0°15'56"

10-10-05

East 67.25 feet; thence North 89°44'04" East 9.01 feet; thence South 0°15'56" East 80.55 feet; thence North 89°44'04" East 141.01 feet; thence North 0°15'56" West 5.00 feet; thence North 89°44'04" East 110.13 feet; thence South 0°09'34" West 267.98 feet; thence South 69°34'33" West 88.28 feet; thence North 80°58'26" West 162.70 feet; thence North 67°12'26" West 88.10 feet; thence South 59°37'34" West 87.00 feet; thence South 86°28'33" West 86.97 feet; thence North 0°09'34" East 161.09 feet; thence South 89°44'01" West 173.54 feet; thence North 0°09'34" East 93.43 feet; thence North 89°44'04" East 168.33 feet; thence North 0°15'56" West 174.50 feet to the point of BEGINNING. 03-036-0115

ALSO: BEGINNING at a point North 89°44'04" East 398.71 feet and South 0°15'56" East 11.00 feet from the Northwest Corner of Block "L," North Mill Creek Plat, Bountiful Townsite Survey, in the City of Bountiful, and running thence North 89°44'04" East 261.21 feet; thence South 0°09'34" West 142.80 feet; thence South 89°44'04" West 110.13 feet; thence South 0°15'56" East 5.0 feet; thence South 89°44'04" West 141.01 feet; thence North 0°15'56" West 80.55 feet; thence South 89°44'04" West 9.01 feet; thence North 0°15'56" West 67.25 feet to the point of BEGINNING. 03-036-0116

2DF is the current owner of fee title to the following-described real estate ("Parcel 3" and "Parcel 4," respectively) located in Davis County, Utah:

Parcel 3:

BEGINNING at a point South 0°09'34" West 11.00 feet from the Northwest corner of Block "L", North Mill Creek Plat, Bountiful Townsite Survey, in the City of Bountiful, and running thence North 89°44'04" East 167.04 feet; thence South 0°15'56" East 174.50 feet; thence South 89°44'04" West 168.33 feet; thence North 0°09'34" East 174.50 feet to the point of BEGINNING. 03-036-0117

Parcel 4:

BEGINNING at a point South 0°09'34" West 278.93 feet from the Northwest corner of Block "L", North Mill Creek Plat, Bountiful Townsite Survey, in the City of Bountiful, and running thence North 89°44'01" East 173.54 feet; thence South 0°09'34" West 161.09 feet; thence South 86°28'33" West 43.63 feet; thence North 72°14'26" West 42.40 feet; thence North 88°41'25" West 89.60 feet; thence North 0°09'34" East 147.99 feet to the point of BEGINNING. 03-036-0118

2. "Existing Declaration" and "Existing CAM Agreement". Parcels 2, 3, and 4 are affected by the following documents, which were entered into between the respective parties that then held fee title to Parcels 2, 3, and 4:

(a) A document entitled "Declaration of Restrictions and Grant of Easements," recorded in Davis County, Utah on October 4, 1989, as Entry No. 871276 in Book 1316 at Page 618, which said document was modified by a document entitled "First Amendment to Declaration of Restrictions and Grant of Easements," recorded in Davis County, Utah, on April 28, 2004, as Entry No. 1982318 in Book 3528 at Page 1082. (Such Declaration, as amended by such First Amendment, is hereinafter referred to as the "Existing Declaration.")

(b) A document entitled "Common Area Maintenance Agreement," recorded in Davis County, Utah on October 4, 1989, as Entry No. 871277 in Book 1316 at Page 644, which said document was amended by a document entitled "First Amendment to Common Area Maintenance Agreement," recorded in Davis County, Utah on April 28, 2004, as Entry No. 1982319 in Book 3528 at Page 1090. (Such Agreement, as amended by such First Amendment, is hereinafter referred to as the "Existing CAM Agreement.")

The Existing Declaration and the Existing CAM Agreement are hereinafter sometimes collectively referred to as the "Existing CC&Rs."

3. **"Shopping Center," and Right to Amend Existing CC&Rs** The Existing CC&Rs provide that Parcels 2, 3, and 4, taken together, comprise the "Shopping Center." The Existing CC&Rs also provide that they may be modified with the consent of the Owners and Prime Lessees of Parcels containing at least 85% of the total Building Area in the Shopping Center at the time of the modification. There currently is no Prime Lessee of any of the Parcels, and Albertson's and 2DF, taken together, are the Owners of Parcels containing 100% of the total Building Area in the Shopping Center. Accordingly, under the provisions of the Existing CC&Rs, Albertson's and 2DF have the right and ability to modify the Existing CC&Rs. Albertson's and 2DF wish to amend the Existing CC&Rs in the respects provided for in this Second Amendment.

4. **Relationship of Second Amendment to Existing CC&Rs** Those provisions of this Second Amendment that indicate they amend specified provisions of the Existing CC&Rs shall amend the specified Existing CC&Rs provisions in the indicated respects. Those provisions of this Second Amendment that do not so indicate shall be added to, supplement, and become a part of the Existing CC&Rs and shall supercede and control over any conflicting or inconsistent provisions contained in the Existing CC&Rs.

5. **Definitions.** Any capitalized term used in this Second Amendment which is defined in the Existing CC&Rs shall have the same meaning herein, unless otherwise stated. Other capitalized terms used in this Second Amendment, including those defined below and those defined elsewhere in this Second Amendment, shall have the meanings given to them in this Second Amendment.

(a) "Carl Karcher Lease" shall mean the Commercial Center Land and Building Lease, dated September 25, 1997, and amended by an Amendment dated June 15, 1999, covering the building on Parcel 3, and naming Carl Karcher Enterprises, Inc , a California corporation, as Tenant, as such Lease may have heretofore been or may hereafter be amended, modified, renewed, or extended, together with any new or replacement

lease that may be entered into with such Tenant (or any successor to or assignee of such Tenant) and that covers building space located within Parcel 3.

(b) "Pizza Hut Lease" shall mean the In-Line Delco Lease, dated March 19, 2004, covering part of the building on Parcel 4, and naming Pizza Hut, Inc., a California corporation, as Tenant, as such Lease may have heretofore been or may hereafter be amended, modified, renewed, or extended, together with any new or replacement lease that may be entered into with such Tenant (or any successor to or assignee of such Tenant) and that covers building space located within Parcel 4.

(c) "Blockbuster Lease" shall mean the Shopping Center Lease, dated April 23, 1990, and amended by a First Amendment dated June 28, 1995, and by a Second Amendment dated August 5, 1998, covering part of the building on Parcel 4, and naming Blockbuster Videos, Inc., a Texas corporation, as Tenant, as such Lease may have heretofore been or may hereafter be amended, modified, renewed, or extended, together with any new or replacement lease that may be entered into with such Tenant (or any successor to or assignee of such Tenant) and that covers building space located within Parcel 4.

6. Change in "Consenting Owners" Section 1.1(e) of the Existing Declaration is amended in its entirety to read as follows:

"(e) 'Consenting Owners': The respective Owners of Parcels 2 and 4; provided, however, that in the event any such Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof so long as it is the Prime Lessee of such Parcel."

All references in the Existing Declaration and in the Existing CAM Agreement to the "Consenting Owner" are hereby changed to the "Consenting Owners."

7. Appointment of "Maintenance Director". Section 5.1 of the Existing CAM Agreement is amended in its entirety to read as follows:

"The Owners hereby appoint the Owner of Parcel 4 as Maintenance Director of the Shopping Center Common Area."

Pursuant to Article 11 (entitled "Right to Maintain Parcel Separately") of the Existing CAM Agreement, Albertson's hereby elects to assume the obligations of the Maintenance Director to maintain, repair, replace, and insure the Common Areas located within Parcel 2 (subject, however, to the exceptions and exclusions provided for in said Article 11). Albertson's assumption of such obligations shall apply immediately, notwithstanding the requirement of said Article 11 that an Owner's election to assume such obligations be made by at least 60 days prior written notice to the Maintenance Director and the other Owners.

8. **Inspection of Maintenance, Etc. Records** The first sentence of Section 7.2 of the Existing CAM Agreement is amended to read as follows:

"The Owner of any Parcel may, upon not less than ten (10) days prior written notice to the Maintenance Director [or to any other Owner that during the period in question had (pursuant to Article 11 of the Existing CAM Agreement) assumed the obligation to accomplish as regards its own Parcel any of the matters otherwise required to be accomplished by the Maintenance Director], inspect, during reasonable business hours at the General Offices of the person whose records are to be inspected or at such other location as may be reasonably designated by such person, the Maintenance Director's records (or the records of any such other Owner) for all Common Area maintenance and insurance expenses incurred at any time during the then-current calendar year or at any time during the four (4) immediately preceding calendar years."

The last sentence of Section 7.2 of the Existing CAM Agreement is amended to read as follows:

"The Maintenance Director's expenses for any calendar year shall be deemed correct if no Parcel Owner gives the Maintenance Director written notice of any such overpayment or underpayment within four (4) years after the end of the calendar year during which the expenses in question were incurred."

9. **Casualty Insurance on Common Area Improvements** The Owner of each Parcel shall at all times maintain or cause to be maintained in force, without any expense to any other Owner, casualty insurance covering the Common Area improvements located on such Owner's Parcel, for the replacement cost of such improvements. The coverage of such insurance shall be at least as favorable as the coverage typically obtained by prudent owners of similar properties in the metropolitan Salt Lake City area. All insurance which an Owner is required to maintain hereunder may be provided under a blanket policy of insurance so long as such policy otherwise complies with the requirements of the Existing CC&Rs, as amended by this Second Amendment. So long as an Owner or its Prime Lessee has a net worth, determined in accordance with generally accepted accounting principles, in excess of \$100,000,000.00, all or any part of such insurance maintained by or on behalf of such Owner may be provided under a program of self-insurance established by such Owner or its Prime Lessee.

10. **Cost of Insurance**. Each Parcel Owner shall have the right, upon ten (10) days prior written notice to any other Parcel Owner, to obtain from such other Owner the following information: (a) A description of each casualty and liability insurance policy such other Owner then has, or at any time during the three preceding calendar years has had, in force as regards the Common Area on its Parcel; (b) The term or policy period as regards each such insurance policy; and (c) The premium or other cost of each such insurance policy.

11. **Limits of Liability Insurance Covering Common Area** Section 2.2 of the Existing CAM Agreement is amended by changing the amount \$2,000,000 each time it appears therein to \$5,000,000.

12. Replacement of Damaged or Destroyed Common Area Improvements

Section 2.1 of the Existing CAM Agreement is amended by adding thereto the following subparagraph (l):

"(l) Repairing, replacing, or restoring any damaged or destroyed improvements to the Common Area, to a condition at least as good as such improvements were in prior to the damage or destruction. Any insurance proceeds collected from casualty insurance policy(s) maintained by the Owner(s) of the Parcel(s) on which the damaged or destroyed Common Area improvements are located shall be made available by such Owner(s) to the Maintenance Director, for use in accomplishing the required repair, replacement, or restoration."

13. Signage Rights on Center Pylon Signs Section 4.3(a) of the Existing

Declaration is amended in its entirety to read as follows:

"(a) Subject to governmental approval, a free-standing sign shall be erected and maintained at each of the two locations designated "Center Pylon Sign" on Exhibit "A." Such signs may, at the option of the Owner of Parcel 2, display the designation of the Owner or occupant of Parcel 2 and/or the designation of any (one) other tenant, subtenant, licensee, or concessionaire located and operating on Parcel 2 (a "Parcel 2 Tenant"). The designation for a Parcel 2 Tenant may, at the option of the Owner of Parcel 2, be included on a separate sign can or be included as part of the designation on the sign can otherwise permitted to the Owner or occupant of Parcel 2. Provided that the amount of signage otherwise permitted by governmental authority to the Owner or occupant of Parcel 2 is not adversely affected, the respective Owners of Parcels 3 and 4 shall each have the right to display on each Center Pylon Sign a designation for one (1) business then being conducted on the Parcel owned by such Owner. The cost of constructing, installing, maintaining, repairing, and replacing the Center Pylon Sign structures (excluding electrical hookup to the Common Area meter) shall be paid by the Owners of all Parcels entitled to display designations thereon, in the proportion that the total square footage of each such Owner's designation or designations bears to the total square footage of all designations entitled to be displayed thereon. Each Owner that displays, for itself or for a business conducted on such Owner's Parcel, a designation on a Center Pylon Sign shall supply and maintain its own sign fascia and can. The design of the Center Pylon Sign structures shall be subject to the approval of the Consenting Owners, as shall be the size, design, and location of the sign fascia used (which said approvals shall not be unreasonably withheld); provided, however, that Albertson's and any other person occupying not less than 6,500 square feet of ground floor area in the Shopping Center may use such standard fascia as each from time to time uses generally in carrying on its business. The Owner or occupant of Parcel 2 shall have the top designation on each of the Center Pylon Signs."

Unless the Owners otherwise agree in writing: (i) In the case of a business conducted on Parcel 4, the sign space used shall be of the same size and in the same location on each Center Pylon

Sign as applies regarding the "Blockbuster" sign(s) displayed on the Center Pylon Signs as of the date of this Second Amendment; and (ii) In the case of a business conducted on Parcel 3, the sign space used shall be of the same size and immediately below the location of the "Blockbuster" sign(s) displayed on the Center Pylon Signs as of the date of this Second Amendment.

14. **No Reserved or Exclusive-Use Parking.** None of the parking spaces within the Common Area shall be reserved for the exclusive use of any Owner, occupant, tenant, or other person.

15. **Additional Use Restrictions.** The following new Sections 5.6 through 5.8 are hereby added to the Existing Declaration:

"5.6 **Exclusive for Carl Karcher Enterprises.** As long as the Carl Karcher Lease is in effect, neither Parcel 4 nor the part of Parcel 2 that originally comprised "Parcel 1" shall be used for a purpose which competes with the business operated on Parcel 3 under the Carl Karcher Lease; provided, however, that no business shall be operated on Parcel 3 in violation of any provision (e.g., Section 5.1) of the Existing Declaration. Such prohibited uses of Parcel 4 and of such part of Parcel 2 shall include, but not be limited to, quick-service restaurants such as Burger King, In-N-Out Burger, Jack-in-the-Box, McDonald's, Taco Bell, Del Taco, and any other type of quick-service restaurant in which sales of hamburgers accounts for more than 20% of such restaurant's gross sales.

5.7 **Exclusive for Pizza Hut.** As long as the Pizza Hut Lease is in effect, no part of the Shopping Center (except the part of Parcel 4 affected by the Pizza Hut Lease) shall be used for a retail food operation whose primary business is the sale of prepared pizza or pasta; provided, however, that the restriction provided for in this Section 5.7 shall not prohibit or restrict in any way the sale of any products or services sold or offered for sale from time to time: (i) in a supermarket operation on Parcel 2; or (ii) by any person or entity now or hereafter occupying premises within the Shopping Center under any lease that was already in effect as of April 21, 2004 (the Effective Date of the Pizza Hut Lease).

5.8 **Exclusive and Other Restriction for Blockbuster Videos.** As long as the Blockbuster Lease is in effect, the following shall apply: (a) No sit-down, full-service restaurant shall be located in the Shopping Center (except on Parcel 2) within 250 feet of the premises covered by the Blockbuster Lease; and (b) Except for Parcel 2 and except for premises occupied by any tenant in the Shopping Center that as of April 23, 1990 was selling or renting "Blockbuster's Exclusive Items" (as hereinafter defined) and had the right to do so under the terms of its lease, no part of the Shopping Center (except the part of Parcel 4 affected by the Blockbuster Lease) shall be used for the sale, rental, and/or distribution of the following (collectively, the "Blockbuster Exclusive Items"): prerecorded video cassettes, video tapes, video discs, laser discs, video games (includ-

ing, without limitation, CD-I), DVD, divx, or other video software (including CD-ROM) and/or any substitutes for, or items which are a technological evolution of, the foregoing items."

16. **Dumpster Rights of Pizza Hut Tenant** The tenant under the Pizza Hut Lease shall have the non-exclusive right to use the trash collection "dumpster" bin located Easterly of Parcel 4, within the Common Area of Parcel 2.


17. **Counterparts**. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document, with the same effect as if all parties had signed the same signature page. Any signature page of this Second Amendment may be detached from any counterpart of this Second Amendment and reattached to any other counterpart hereof.

18. **Continuation of Existing CC&Rs as Modified**. The Existing CC&Rs are intended to be and are supplemented and modified by the provisions of this Second Amendment, and hereafter the Existing CC&Rs and this Second Amendment shall be considered and construed together. All of the terms, provisions, conditions, and covenants of the Existing CC&Rs, as modified and supplemented by this Second Amendment, shall be and remain in full force and effect.

[Signature Lines and Acknowledgments Appear on Following Pages]

EXECUTED on this 18th day of October, 2005, by ALBERTSON'S, INC., a Delaware corporation ("Albertson's").

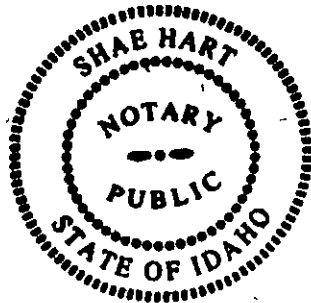
"Albertson's": ALBERTSON'S, INC., a Delaware corporation

By 
William H. Arnold, Group Vice President,
MM/KLH Real Estate Law

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 18th day of October, 2005, before me, the undersigned, a Notary Public in and for said state, personally appeared WILLIAM H. ARNOLD, known or identified to me to be the Group Vice President, Real Estate Law of, and the person who executed the foregoing instrument on behalf of, ALBERTSON'S, INC., the corporation that executed the instrument, and acknowledged to me that such corporation 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.



Shaee Hart
NOTARY PUBLIC for Idaho
Residing at: Boise Idaho
My Commission Expires: August 17, 2011

EXECUTED on this 11th day of October, 2005, by 2DF, a Utah General Partnership ("2DF").

"2DF": 2DF, a Utah General Partnership

By [Signature]
Robert J.L. Moore, Partner

By [Signature]
Herman L. Franks, Jr., Partner

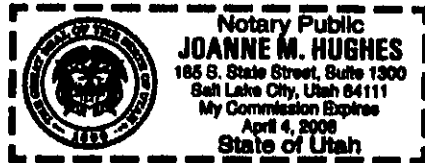
STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing Second Amendment was acknowledged before me this 11th day of October, 2005, by Robert J.L. Moore and Herman L. Franks, Jr., as Partners in, and on behalf of, 2DF, a Utah General Partnership.

My Commission Expires:

4/4/08

Joanne M. Hughes
Notary Public
Residing at: Davis County, Utah



THE UNDERSIGNED, ZIONS FIRST NATIONAL BANK, N.A., is the Beneficiary under a Deed of Trust affecting "Parcel 3" and "Parcel 4" described in the within and foregoing Second Amendment. The undersigned consents to and joins in such Second Amendment and agrees that all of its right, title, estate, and interest in Parcels 3 and 4 and the Shopping Center shall be subject and subordinate to the "Existing CC&Rs," as amended and affected by such Second Amendment.

EXECUTED on this _____ day of _____, 2005, by ZIONS FIRST NATIONAL BANK, N.A.

ZIONS FIRST NATIONAL BANK, N.A.

By _____
Name: _____
Title: _____

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

The foregoing Second Amendment was acknowledged before me this _____ day of _____, 2005, by _____, as the _____ of, and on behalf of, ZIONS FIRST NATIONAL BANK, N.A.

My Commission Expires:

Notary Public
Residing at: _____

**-RECORDER'S MEMO-
LEGIBILITY OF TYPING OR PRINTING
UNSATISFACTORY IN THE DOCUMENT
WHEN RECEIVED**