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11/13/2015 1:22:00 PM \$46.00  
Book - 10379 Pg - 1454-1466  
Gary W. Ott  
Recorder, Salt Lake County, UT  
LANDMARK TITLE  
BY: eCASH, DEPUTY - EF 13 P.

When recorded, return to:

David F. Klomp  
Associated Food Stores, Inc.  
1850 West 2100 South  
Salt Lake City, Utah 84119

Tax Parcel Numbers: 14-26-476-033; 14-26-476-031; 14-26-476-023; 14-26-476-015;  
14-26-476-022; 14-26-476-035; 14-26-476-034; 14-26-476-024; and 14-26-476-011

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**SECOND AMENDMENT TO  
FIFTH AMENDMENT TO AND TOTAL RESTATEMENT  
OF DECLARATION OF RESTRICTIONS AND  
GRANT OF EASEMENTS**

This Second Amendment to Fifth Amendment to and Total Restatement of Declaration of Restrictions and Grant of Easements (this "Second Amendment") is made as of ~~October~~ <sup>NOVEMBER</sup> 3, 2015, by and among ASSOCIATED FRESH MARKETS, INC., a Utah corporation ("AFM"), TROY COOLIDGE NO. 53, LLC, a Michigan limited liability company ("Troy Coolidge"), WEC 97K-39 INVESTMENT GROUP, INC., a Delaware corporation ("WEC"), and THRIFTY PAYLESS, INC., a California corporation ("Thrifty"). AFM, Troy Coolidge, WEC and Thrifty are sometimes referred to herein as a "Party" and, collectively, as the "Parties."

R E C I T A L S

A. AFM, Troy Coolidge and WEC are owners of one or more parcels of land in a commercial shopping center located at the northwest corner of the intersection of 5600 West Street and 3500 South Street in West Valley City, Salt Lake County, Utah (the "Shopping Center"). Thrifty is the "Prime Lessee" of one of the parcels in the Shopping Center. The parcels of land comprising the Shopping Center are more fully described in Exhibit A attached hereto and incorporated herein by this reference.

B. The Shopping Center is subject to that certain "Fifth Amendment to and Total Restatement of Declaration of Restrictions and Grant of Easements" dated October 27, 1992, and recorded in the official records of the Salt Lake County Recorder, State of Utah, on December 16, 1992, in Book 6574, at Page 75 *et seq.*, as Entry Number 5396348, as amended by that certain "First Amendment to Fifth Amendment to and Total Restatement of Declaration of Restrictions and Grant of Easements" dated June 19, 1997, and recorded in the official records of the Salt Lake County Recorder, State of Utah, on October 28, 1997, in Book 7791, at Page 2229 *et seq.*, as Entry Number 6774493 (as amended, the "Restated Declaration"). Capitalized terms used in this Second Amendment that are not defined herein shall have the meanings given to them in the Restated Declaration.

C. AFM is the owner of Parcel 7 (as well as having an undivided 33.49% interest in Parcel 12) of the Shopping Center. Troy Coolidge is the owner of Parcels 13A and 13B (as well

as Parcels 8, 9 and 11A and an undivided 66.51% interest in Parcel 12) of the Shopping Center. WEC is the owner of Parcel 2 of the Shopping Center.

D. Paragraph 7.5 of the Restated Declaration states that it may not be modified in any respect or rescinded except with the consent of the Prime Lessees and/or the owners of Parcels 2, 7, 13A and 13B. Paragraph 7.5 of the Restated Declaration further states that the consent of the owners of Parcels 4 and 10 is required if any modification or rescission affects access between such Parcels and the remainder of the Shopping Center or imposes any restrictions on those Parcels. The modifications to the Restated Declaration made in this Second Amendment do not affect access to or impose restrictions on Parcels 4 or 10.

E. "Prime Lessee" is defined in the Restated Declaration to mean "[a]n owner ("Seller") of a Parcel who sells the Parcel to a third party ("Buyer") and thereafter enters into a lease for the Parcel with the Buyer or the lessee or sublessee of the Buyer. Prime Lessee includes the successors and assigns of Seller but does not include the sublessees, licensees or concessionaires of Seller." Thrifty is the Prime Lessee of Parcel 2. There are no other Prime Lessees with respect to Parcels 7, 13A or 13B.

F. As the owners and/or Prime Lessee of Parcels 2, 7, 13A and 13B, the Parties have the authority to amend or modify the Restated Declaration in the manner set forth in this Second Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The Parties acknowledge the truth and accuracy of the statements set forth in the above Recitals and incorporate the same herein by this reference.

2. **Use Restrictions.** The Parties agree that Article V of the Restated Declaration is amended in the following particulars:

(a) **Food and Drug Restrictions.** Paragraph 5.1 of the Restated Declaration is hereby deleted in its entirety.

(b) **Shopping Center Restrictions.** Paragraph 5.2(a) of the Restated Declaration is hereby amended and restated in its entirety to read as follows:

"(a) No part of the Shopping Center shall be used (i) as a bar, tavern or business selling alcoholic beverages (except where the sale of alcoholic beverages is incidental to the business of a restaurant or family-oriented game center); (ii) as an adult book store (meaning a store specializing in the sale of photographs, reading materials, film and/or electronic media formats primarily appealing to prurient interests); (iii) as a dance hall; (iv) as a billiard or pool hall (except where such activities are incidental to a restaurant or family-oriented game center); (v) as a massage

parlor; (vi) as a warehouse; (vii) as a car wash (except as provided in Paragraph 5.2(b) below); (viii) for industrial purposes; (ix) for the display, sale or distribution of any pornographic books, magazines, literature or other printed matter or any drug or sexual paraphernalia (except those commonly sold in a drug store or a supermarket); (x) for the showing, displaying, viewing, renting or selling of movie films or videos tapes or video discs which are classified or rated as "X" under present standards or rating criteria of the Motion Picture Association of America; or (xi) or for any other act or condition which shall be lewd, obscene or licentious."

(c) Paragraph 5.2(c) of the Restated Declaration is hereby deleted in its entirety.

(d) Location Restrictions. Paragraph 5.3 of the Restated Declaration is hereby deleted in its entirety and replaced with the following new Paragraph 5.3:

5.3 Gym Exclusivity: No part of the Shopping Center other than Parcel 7 shall be used for the operation of a gym, exercise or workout facility or health spa.

Except as expressly amended or modified by this Section 2, the remaining terms, conditions and restrictions set forth in Article V of the Restated Declaration shall remain unchanged and in full force and effect.

3. Parcel 12 Real Estate Taxes. Article VII of the Restated Declaration is hereby amended by adding the following new Section 7.12:

7.12 Parcel 12 Real Estate Taxes: Parcel 12 is identified on the site plan as a "Retention Pond." The owner of Parcel 7 has an undivided 33.49% interest in Parcel 12, and the owner of Parcel 13B has an undivided 66.51% interest in Parcel 12. The owners of Parcels 7 and 13B shall not sell, transfer or convey their respective Parcels without also including in such sale, transfer or conveyance such owner's respective undivided interest in Parcel 12. The owners of Parcel 7 and Parcel 13B shall be obligated for the payment of all real estate taxes and assessments made on or with respect to Parcel 12 pro rata based on their respective undivided interests in Parcel 12. Notices of all real estate taxes and assessments made on or with respect to Parcel 12 shall be sent by the appropriate governmental authority or agency to the owner of Parcel 7. The owner of Parcel 7 shall pay all real estate taxes and assessments for Parcel 12 to the appropriate governmental authority or agency prior to the date the same become due and payable. The owner of Parcel 7 shall then remit to the owner of Parcel 13B, at the address provided by the owner of Parcel 13B to the owner of Parcel 7 for such purpose, a copy of the receipted tax bill, the owner of Parcel 13B's pro rata share of such tax bill ("Parcel 13B's Share") and the calculations by which such amount was determined (the "Tax Notice"). The owner of Parcel 13B shall reimburse the owner of Parcel 7 in the amount of Parcel 13B's Share within thirty (30) days after receipt of the Tax Notice. The owners of Parcels 7 and 13B each agrees to indemnify and hold harmless the other party for any

claim, cost or expense made against or incurred by the other party with respect to the indemnifying owner's pro rata share of real property taxes and assessments made with respect to Parcel 12.

4. **Representations and Warranties.** Each of the Parties represents and warrants to each of the other Parties as follows:

(a) there are no Prime Lessees with respect to its Parcel whose consent is required to this Second Amendment;

(b) it has obtained all necessary consents, approvals and authorizations from its governing body to enter into this Second Amendment and no other or additional consents, approvals or authorizations are needed from any other governing body, any governmental entity, any mortgagee, beneficiary, trustee or holder of any lien or encumbrance, or any other person; and

(c) the person signing this Second Amendment on its behalf is duly authorized, and has all requisite authority, to execute and deliver this Second Amendment.

5. **Severability.** If any term or provision of this Second Amendment is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Second Amendment or invalidate or render unenforceable such term or provision in any other jurisdiction; provided, however, that the remaining terms and conditions are sufficient to carry into effect the original intentions and purposes of the Parties in entering into this Second Amendment.

6. **Remaining Terms Unchanged.** Except as expressly amended and modified by this Second Amendment, all of the remaining terms and conditions set forth in the Restated Declaration shall remain unchanged and in full force and effect.

7. **Entire Agreement.** This Second Amendment constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations and understandings with respect thereto. The terms of this Second Amendment may not be contradicted by evidence of any alleged oral agreement or understanding to the contrary. No course of dealings between the Parties, no usage of trade, and no parole or extrinsic evidence of any nature shall be used or be relevant to supplement, explain or modify any term or provision of this Second Amendment. This Second Amendment shall be binding on, and shall inure to the benefit of, the Parties and their respective successors and assigns and all persons claiming by, through or under them.

8. **Amendment and Waivers.** No amendment or waiver of any provision of this Second Amendment will be valid and binding unless it is in writing and signed by all of the Parties hereto, or in the case of a waiver, is signed by the Party against which the waiver is to be effective. No waiver by any Party hereto shall operate or be construed as a waiver in respect of

any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver.

9. **No Third-party Beneficiaries.** The Parties hereby agree that their respective representations, warranties and covenants as set forth herein are solely for the benefit of the other Parties hereto and this Second Amendment is not intended to, and does not, confer upon any person other than the Parties hereto any rights or remedies hereunder, including without limitation the right to rely upon the representations and commitments set forth herein.

10. **No Presumption Against Drafting Party.** Each Party acknowledges that it was represented by legal counsel in the drafting of this Second Amendment. The Parties agree that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Second Amendment and hereby waive the application of any such rule of construction.

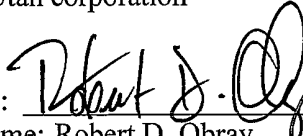
11. **Counterparts.** This Second Amendment may be executed in counterparts, each of which shall be deemed an original instrument and all of which shall constitute a single agreement. The execution of a counterpart by a Party shall be sufficient to bind such Party, provided all of the other Parties have executed one or more counterpart. Any Party may remove the signature page from any counterpart and attach the same to any other counterpart for the purpose of creating a single document bearing the signatures of all Parties.

*[Remainder of page left blank.  
Counterpart signature pages follow.]*

[COUNTERPART SIGNATURE PAGE TO SECOND AMENDMENT TO FIFTH AMENDMENT  
TO AND TOTAL RESTATEMENT OF DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS]


Executed as of the date and year first written above.

ASSOCIATED FRESH MARKETS, INC.,  
a Utah corporation

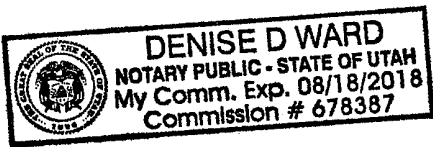
By:   
Name: Robert D. Obray  
Title: Its Vice President

STATE OF UTAH                    )  
  : ss  
County of Salt Lake            )

On 30 Oct, 2015, before me the undersigned notary public, personally appeared Robert D. Obray, the Vice President of Associated Fresh Markets, Inc., a Utah corporation, who duly acknowledged to and before me that he signed the foregoing instrument for and on behalf of said corporation having all requisite authority to so act.

  
Notary Public  
Residing at: W Jordan

[seal]









[COUNTERPART SIGNATURE PAGE TO SECOND AMENDMENT TO FIFTH AMENDMENT  
TO AND TOTAL RESTATEMENT OF DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS]

Executed as of the date and year first written above.

THRIFTY PAYLESS, INC.,  
a California corporation

By: *Lisa M. Winnick*  
Name: Lisa M. Winnick  
Title: Authorized Representative

STATE OF Pennsylvania  
County of Cumberland : ss

On October 26, 2015, before me the undersigned notary public, personally appeared Lisa M. Winnick, the Authorized Representative of Thrifty Payless, Inc., a California corporation, who duly acknowledged to and before me that he signed the foregoing instrument for and on behalf of said corporation having all requisite authority to so act.

*Linda L. Brown*  
Notary Public  
Residing at: \_\_\_\_\_

[seal]

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
LINDA L BROWN, NOTARY PUBLIC  
CAMP HILL, CUMBERLAND CO  
COMMISSION EXPIRES JUNE 18, 2016

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
LINDA L BROWN, NOTARY PUBLIC  
CAMP HILL, CUMBERLAND CO.  
MY COMMISSION EXPIRES JUNE 18, 2016

EXHIBIT A  
TO SECOND AMENDMENT TO FIFTH AMENDMENT TO AND TOTAL  
RESTATEMENT OF DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

Parcel 1:

MB

Beginning at a point which is South 89°59'10" West along the section line 362.50 feet and North 0°09'50" West 40.00 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian, and running thence South 89°59'10" West 137.50 feet; thence North 0°08'47" West 120.30 feet; thence North 89°50'10" East 137.46 feet; thence South 0°09'50" East 120.66 feet to the point of beginning. Contains 16,563.4 square feet or 0.380 acres.

Parcel 2:

Beginning at a point on the West line of 5600 West Street which point is North 0°09'50" West along the section line 354.24 feet and South 89°50'10" West 53.00 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian; thence South 89°50'10" West 170.00 feet; thence North 0°09'50" West 2.50 feet; thence South 89°50'10" West 139.50 feet; thence North 0°09'50" West 4.88 feet; thence South 89°50'10" West 197.40 feet; thence North 0°08'47" West 2.85 feet; thence South 89°58'47" West 131.15 feet; thence South 0°00'50" East 169.50 feet; thence North 89°59'10" East 94.83 feet; thence South 44°56'01" East 52.12 feet; thence South 0°08'47" East 116.60 to the north line of 3500 South Street; thence North 89°59'10" East along said North line 60.00 feet; thence North 0°08'47" West 120.30 feet; thence North 89°50'10" East 137.46 feet; thence South 0°09'50" East 120.66 feet to the North line of 3500 South Street; thence North 89°59'10" East along said North line 139.50 feet; thence North 0°09'50" West 183.00 feet; thence North 89°59'10" East 170.00 feet to the West line of 5600 West Street; thence North 0°09'50" West along said West line 131.10 feet to the point of beginning. Contains 3.12 acres, 135,980 square feet

Parcel 4:

Beginning at a point which is North 0°09'50" West along the section line 647.24 feet and South 89°50'10" West 53.00 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence South 89°50'10" West 110.50 feet; thence North 0°09'50" West 139.00 feet; thence North 89°50'10" East 110.50 feet; thence South 0°09'50" East 139.00 feet to the point of beginning. Contains 15,359.5 square feet or 0.353 acres.

Parcel 5:

Beginning at a point which is North 0°09'50" West along the section line 1157.53 feet and South 89°50'10" West 53.00 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence South 89°50'10" West 110.50 feet; thence North 0°09'50" West 129.50 feet; thence North 89°59'10" East 110.50 feet; thence South 0°09'50" East 129.21 feet to the point of beginning. Contains 14,293.7 square feet or 0.328 acres.

Parcel 6:

Beginning at a point on a fence line and on the North line of 3500 South Street which point is South 89°59'10" West along the section line 692.00 feet and North 0°00'50" West 40.00 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian; thence North 0°00'50" West along said fence 153.50 feet; thence North 89°59'10" East 94.83 feet; thence South 44°56'01" East 52.12 feet to a fence line; thence South 0°08'47" East along said fence 116.60 feet to the North line of 3500 South Street; thence South 89°59'10" West along said North line 131.90 feet to the point of beginning. Contains 19,543 square feet or 0.45 acres.

Parcel 7: (Albertson's Site)

Beginning at a point which is North 0°09'50" West along the section line 354.24 feet and South 89°50'10" West 53.00 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence South 89°50'10" West 170.00 feet; thence North 0°09'50" West 2.50 feet; thence South 89°50'10" West 59.50 feet; thence North 0°09'50" West 72.88 feet; thence South 89°50'10" West 217.38 feet; thence South 0°08'47" East 5.00 feet; thence South 89°50'10" West 113.12 feet; thence North 0°09'50" West 5.00 feet; thence South 89°50'10" West 40.00 feet; thence North 0°09'50" West 200.00 feet; thence North 89°50'10" East 321.00 feet; thence North 0°09'50" West 7.12 feet; thence North 89°50'10" East 49.50 feet; thence North 0°09'50" West 60.00 feet; thence North 89°50'10" East 119.00 feet; thence South 0°09'50" East 49.50 feet; thence North 89°50'10" East 110.50 feet; thence South 0°09'50" East 293.00 feet to the point of beginning. Contains 148,003.2 square feet or 3.39 acres.

**Parcel 8:** (Retail Shops No. 1)

Beginning at a point which is South  $89^{\circ}59'10''$  West along the section line 362.50 feet and North  $0^{\circ}09'50''$  West 360.66 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence South  $89^{\circ}50'10''$  West 137.40 feet; thence North  $0^{\circ}08'47''$  West 68.00 feet; thence North  $89^{\circ}50'10''$  East 217.38 feet; thence South  $0^{\circ}09'50''$  East 72.88 feet; thence South  $89^{\circ}50'10''$  West 80.00 feet; thence North  $0^{\circ}09'50''$  West 4.88 feet to the point of beginning. Contains 15172.9 square feet or 0.348 acres.

**Parcel 9:** (Retail Shops No. 2)

Beginning at a point which is South  $89^{\circ}59'10''$  West along the section line 362.50 feet and North  $0^{\circ}09'50''$  West 628.66 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence South  $89^{\circ}50'10''$  West 135.50 feet, thence North  $0^{\circ}09'50''$  West 60.00 feet; thence North  $89^{\circ}50'10''$  East 135.50 feet; thence North  $0^{\circ}09'50''$  West 7.12 feet; thence North  $89^{\circ}50'10''$  East 80.00 feet; thence South  $0^{\circ}09'50''$  East 60.00 feet; thence South  $89^{\circ}50'10''$  West 49.50 feet; thence South  $0^{\circ}09'50''$  East 7.12 feet; thence South  $89^{\circ}50'10''$  West 30.50 feet to the point of beginning.

**Parcel 11A:**

Beginning at a point which is North  $0^{\circ}09'50''$  West along the section line 1346.60 feet and South  $89^{\circ}59'10''$  West 163.50 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence South  $89^{\circ}59'10''$  West 489.50 feet; thence North  $0^{\circ}09'50''$  West 185.30 feet; thence North  $89^{\circ}59'10''$  East 489.50 feet; thence South  $0^{\circ}09'50''$  East 185.30 feet to the point of beginning. Contains approximately 2.082 acres.

**Parcel 11B:**

Beginning at a point which is North  $0^{\circ}09'50''$  West along the section line 1346.60 feet and South  $89^{\circ}59'10''$  West 53.00 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian, and running thence South  $89^{\circ}59'10''$  West 110.50 feet; thence North  $0^{\circ}09'50''$  West 185.30 feet; thence North  $89^{\circ}59'10''$  East 110.50 feet; thence South  $0^{\circ}09'50''$  East 185.30 feet to the point of beginning. Contains approximately .470 acres.

Parcel 12: (Retention Pond)

Beginning at a point which is South 89°59'10" West along the section line 653.00 feet and North 0°09'50" West 1346.60 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence South 89°59'10" West 237.00 feet; thence North 0°09'50" West 185.30 feet; thence North 89°59'10" East 237.00 feet; thence South 0°09'50" East 185.30 feet to the point of beginning. Contains 43,915.9 square feet or 1.008 acres.

Parcel 13-A

Beginning at a point which is North 0°09'50" West along the section line 786.24 feet and South 89°50'10" West 53.00 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian; thence South 89°50'10" West 110.50 feet; thence South 0°09'50" East 89.50 feet; thence South 89°50'10" West 199.00 feet; thence South 0°09'50" East 7.12 feet; thence South 89°50'10" West 135.50 feet; thence South 0°09'50" East 60.00 feet; thence South 89°50'10" West 155.00 feet; thence North 0°09'50" West 268.70 feet; thence North 89°50'10" East 370.50 feet; thence South 0°09'50" East 60.00 feet; thence North 89°59'10" East 229.50 feet; thence South 0°09'50" East 50.50 feet to the point of beginning. Contains 108,185.19 square feet or 2.484 acres.

Parcel 13-B:

Beginning at a point which is North 0°09'50" West along the section line 786.24 feet and South 89°50'10" West 53.00 feet and North 0°09'50" West 50.50 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian; thence South 89°59'10" West 229.50 feet; thence North 0°09'50" West 60.00 feet; thence South 89°59'10" West 370.50 feet; thence North 0°09'50" West 450.00 feet; thence North 89°59'10" East 600.00 feet; thence South 0°09'50" East 60.00 feet; thence South 89°59'10" West 110.50 feet; thence South 0°09'50" East 129.50 feet; thence North 89°50'10" East 110.50 feet; thence South 0°09'50" East 320.79 feet to the point of beginning. Contains approximately 6.190 acres.