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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
3/11/2022 4:17:00 PM  
FEE \$46.00 Pgs: 12  
DEP eCASH REC'D FOR NATIONAL TITLE AGEN

When recorded, return to:

Steven C. Miner  
Associated Food Stores, Inc.  
1850 West 2100 South  
Salt Lake City, Utah 84119

Tax Parcel ID Nos.: 14266001, 14266002, 14266003, 14266003, 14266004, 14266005,  
14266006, 14266007, 14266008, 14266009, 142660014, 142660011, 142660015

**SECOND AMENDMENT TO COMMON AREA MAINTENANCE AGREEMENT**

This Second Amendment to Common Area Maintenance Agreement (this "Second Amendment") is made as of **February 15, 2022**, by and among ASSOCIATED FRESH MARKETS, INC., a Utah corporation ("AFM"), HYIF CLINTON TOWN CENTER, LLC, a Colorado limited liability company ("HYIF Clinton"), [WELLS FARGO BANK, N.A., a national banking association ("Wells Fargo"), WENDY'S PROPERTIES, LLC, a [ ] limited liability company ("Wendy's"), SEJ ASSET MANAGEMENT & INVESTMENT COMPANY, a Delaware corporation ("SEJ"), SB CLINTON L.C., a Utah limited liability company ("SB Clinton"), Alvie Carter-Trustee, and EMIC PROPERITES LP, a California limited partnership ("EMIC Properties"), CLINTON CITY SODA LLC, a Utah limited liability company. The foregoing entities are sometimes individually referred to herein as a "Party" and, collectively, as the "Parties."

**R E C I T A L S**

A. The Parties are owners of parcels in a commercial shopping center located at the northwest corner of the intersection of 2000 West and 1800 North in Clinton, Davis County, Utah, sometimes known or referred to as "Clinton Towne Center Shopping Center" (the "Shopping Center"), as more fully described in Exhibit A attached hereto.

B. The Shopping Center, and each of the parcels therein, is subject to the terms and conditions of that certain "Common Area Maintenance Agreement" dated October 22, 1998, and recorded in the official records of the Davis County Recorder, State of Utah (the "Official Records") on October 23, 1998, in Book 2379, beginning at page 430, as Entry Number 1451283, as amended by that certain "First Amendment to Common Area Maintenance Agreement" dated May 12, 2004, and recorded in the Official Records on June 2, 2004, in Book 3552, beginning at Page 326, as Entry Number 1991288 (as amended, the "CAMA"). Capitalized terms used in this Second Amendment that are not defined herein have the meanings given to them in the CAMA.

C. Ownership of the lots or parcels in the Shopping Center is currently as follows:

Lot or Parcel No.	Tax Parcel ID No.	Owner
1	14266001	HYIF Clinton Towne Center, LLC

2	14266002	Associated Fresh Markets, Inc.
3	14266003	HYIF Clinton Towne Center, LLC
4	14266004	Wells Fargo Bank, NA, as successor-in-interest to First Security Bank, NA
5	14266005	Wendy's Properties, LLC
6	14266006	HYIF Clinton Towne Center, LLC
7	14266007	SEJ Asset Management & Investment Company
8	14266008	SB Clinton L.C.
9	14266009	SB Clinton L.C.
10	142660014	Clinton City Soda LLC
11	142660011	Alive Carter, Trustee
12	142660015	EMIC Properties, LP

D. Simultaneous with the execution of this Second Amendment, the Parties entered into that certain Second Amendment to the "Declaration of Restrictions and Easements" dated as of October 22, 1998, and recorded in the Official Records, in Book 2379, beginning at Page 380, as Entry Number 1451282, as amended by that certain "First Amendment to Declaration of Restrictions and Easements" dated May 12, 2004, and recorded in the Official Records on June 2, 2004, in Book 3552, beginning at Page 315, as Entry Number 1991287 (the "Second Amendment to Declaration"). The Second Amendment to Declaration, among other things, provides for a plat amendment to combine Parcels 8 and 9 into a single parcel (Parcel 14) and establishes drive aisles and other Common Area elements.

E. The Parties who are signatories to this Second Amendment are Owners or Prime Lessees of Parcels containing ninety percent (90%) or more of the total square footage of Building Area in the Shopping Center. Pursuant to Section 13.5 of the CAMA, the Parties who are signatories to this Second Amendment may amend or modify the CAMA by written agreement recorded in the Official Records.

F. In conjunction with the Second Amendment to the Declaration, the Parties desire to amend or modify the CAMA in the manner set forth below.

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 hereby acknowledge the accuracy of the statements set forth in the above Recitals and incorporate the same herein by this reference and further agree as follows:

1. **Billing for Expenses.** As set forth in Section 7.1 of the CAMA, the Owners of Parcels 8 and 9 are currently responsible for their pro rata share (18.25% total – 11.22% for Parcel 8 and 7.03% for Parcel 9) of all expenses. The foregoing notwithstanding, for expenses related solely to the maintenance, repair and replacement of parking areas and drive aisles (including, without limitation, asphalt repair, stripping, sealing, and mill and overlay work) (collectively, "Asphalt Repairs and Maintenance"), beginning on the Storage Facility Opening Date (as defined below), if same occurs, the pro rata share for Parcels 8 and 9 will be 8.54% total (5.25% for Parcel 8 and 3.29% for Parcel 9), and accordingly the proportionate shares of the Asphalt Repairs and Maintenance to be borne by each Owner will be as set forth on **Exhibit B** hereto. For the avoidance

of doubt, all other expenses (other than Asphalt Repairs and Maintenance) will be shared in the proportions set forth in Section 7.1 of the CAMA, as amended by the First Amendment to the CAMA.

2. **Recalculation Date.** The Parties acknowledge the Recalculation Date, as defined in Section 7.2 of the CAMA, has occurred as buildings and other improvements have been constructed on Parcels 11 and 12. Accordingly, the proportionate shares of the Common Area expenses to be borne by each Owner are currently, and will continue to be, as set forth in Section 7.1 of the CAMA, as amended by the First Amendment to the CAMA, until such time as the Owner(s) of Parcels 8 and 9 open a Storage Facility (as defined in the Second Amendment to Declaration) (the "Storage Facility Opening Date"). On the Storage Facility Opening Date, if same occurs, the proportionate shares of the Asphalt Repairs and Maintenance to be borne by each Owner will be adjusted pro-rata as set forth in Section 1 of this Second Amendment.

3. **Notices.** Pursuant to Section 13.7 of the CAMA, the parties agree and give notice that the current addresses of the parties for giving notices is as follows:

SB Clinton L.C.  
C/O Eldon Haacke  
6770 South 900 East  
Suite 302  
Salt Lake City, UT 84047

HYIF Clinton Towne Center, LLC  
Attention: Jeanette Brown  
1391 Speer Blvd., Suite 800  
Denver, CO 82024

Associated Fresh Markets, Inc.  
Attention: President Steven Miner  
1850 West 2100 South  
Salt Lake City, UT 84119

Wells Fargo, N.A.  
c/o Wells Fargo/Wahovia Bank  
PO Box 2609  
Carlsbad, CA 92018

Wendy's Properties, LLC  
One Dave Thomas Blvd  
Dublin, Ohio 43017  
C&C Properties, LLC

SEJ Asset Management & Investment Co.  
PO Box 711  
Dallas, TX 75221-0711

Alive Carter-Trustee  
1445 Lombardy Dr.  
Salt Lake City, UT 84121

EMIC Properties, LP  
c/o Nancy Conger  
PO Box 1326  
Sausalito, CA 94966

Clinton City Soda LLC  
C/O Jordan Olsen  
857 South 1425 West  
Clearfield, UT 84015

4. **Remaining Terms Unchanged.** Except as amended or modified by this Second Amendment, all of the remaining terms and conditions set forth in the CAMA remain unchanged and are in full force and effect.

5. **Counterparts.** This Second Amendment may be executed in counterparts, each of which is deemed an original instrument and all of which constitute and comprise a single agreement. Any Party may remove the signature pages from any counterpart and attach the same to any other counterpart for the purpose of creating a single instrument containing the signatures and notarizations for all Parties.

*[Remainder of page left blank. Signature pages follow.]*

**This document is being recorded solely as a courtesy and an accommodation to the parties named herein. National Title Agency of Utah, Inc. hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.**

*[Counterpart signature page to Second Amendment  
to Common Area Maintenance Agreement]*

Executed as of the day and year first written above.

ASSOCIATED FRESH MARKETS, INC.

By: Robert D. O'Bray  
Name: Robert D. O'Bray  
Title: Vice President

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

On March 9, 2022, before me the undersigned notary public, personally appeared Robert D. O'Bray, the Vice President of Associated Fresh Markets, Inc., who duly acknowledged to and before me that he signed the foregoing instrument for and on behalf of said entity, having all requisite authority to so act.

Denise D Ward  
Notary Public

[seal]



*[Counterpart signature page to Second Amendment  
to Common Area Maintenance Agreement]*

SB CLINTON L.C.

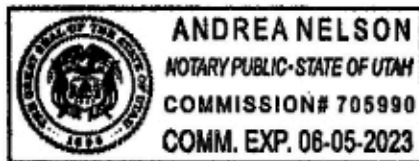
By: *Eldon V. Haacke*  
Name: Eldon V. Haacke  
Title: Managing Member

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

On February 14<sup>th</sup>, 2022, before me the undersigned notary public, personally appeared Eldon V. Haacke, the Managing Member of SB Clinton L.C., who duly acknowledged to and before me that he signed the foregoing instrument for and on behalf of said entity, having all requisite authority to so act.

*Andrea Nelson*  
Notary Public

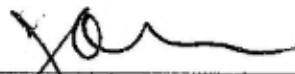
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*[Counterpart signature page to Second Amendment  
to Declaration of Restrictions and Easements]*

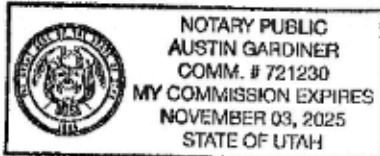
Executed as of the day and year first written above.

CLINTON CITY SODA LLC

By:   
Name: Jodan Olsen  
Title: Managing Member

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

On [March 4<sup>th</sup>], 2022, before me the undersigned notary public, personally appeared Jodan Olsen, the Managing Member of Clinton City Soda LLC, who duly acknowledged to and before me that he signed the foregoing instrument for and on behalf of said entity, having all requisite authority to so act.



[seal]

  
Notary Public

[Counterpart signature page to Second Amendment  
to Common Area Maintenance Agreement]

WENDY'S PROPERTIES LLC

DB  
BT

By: [Signature]  
Name: Kris A. Kaffenbarger  
Title: VP - Global Systems Optimization, Franchise & Portfolio Mgmt.

STATE OF Ohio )  
COUNTY OF Franklin ) : ss.

On February 25, 2022, before me the undersigned notary public, personally appeared Kris A. Kaffenbarger, the VP - Global Systems Optimization, Franchise & Portfolio Mgmt. of Wendy's Properties LLC, who duly acknowledged to and before me that he signed the foregoing instrument for and on behalf of said entity, having all requisite authority to so act.

[Signature]  
Notary Public

[seal]







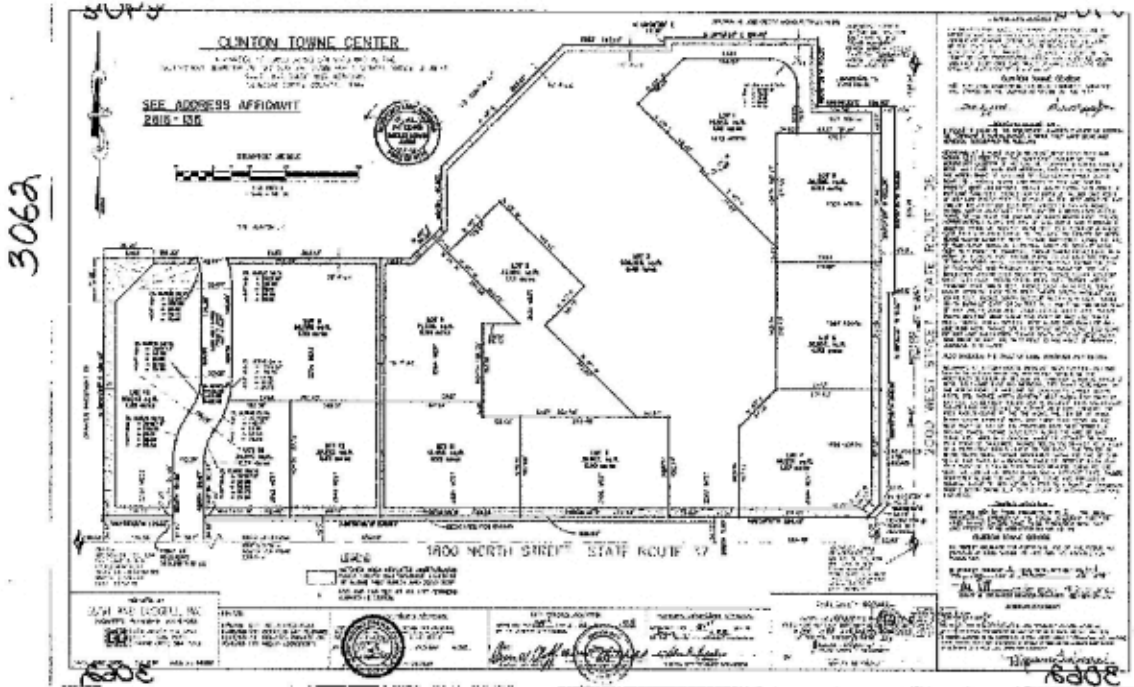


**EXHIBIT A**

(To Second Amendment to Common Area Maintenance Agreement)

The following lots or parcels are located in the Clinton Towne Shopping Center, Clinton, Utah, according to the official plat thereof on file and of record in the official records of the Davis County Recorder, State of Utah:

All of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12.



**EXHIBIT B**  
**Proportionate Share of Asphalt Repair and Maintenance**

<u>Parcel No.</u>	<u>Percent of Non-Asphalt Expenses</u>	<u>Percent of Asphalt Expenses</u>
1	8.71%	9.74%
2	38.55%	43.13%
3	10.05%	11.23%
4	2.68%	3.00%
5	4.02%	4.50%
6	4.02%	4.50%
7	2.68%	3.00%
8	11.22%	5.25%
9	7.03%	3.29%
10	3.35%	3.75%
11	3.01%	3.37%
12	4.69%	5.25%
TOTAL	100.00%	100.00%