POURTH AMENDMENT TO DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

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KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
ALLEN HARDY & RASHUSEKN
215 S STATE SUITE 90D SLC, 8411
REC BY: REBECCA GRAY , DEPUTY

THIS FOURTH AMENDMENT TO DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS, ("Fourth Amendment") is made as of the 10th day of August, 1992, between G.F.I. LTD. II - W.V.C. INVESTMENTS, LTD., a Utah limited partnership ("First Party"), ALBERTSON'S, INC., a Delaware corporation ("Albertson's"), ALBERTSON'S REALTY, INC., an Idaho corporation ("Albertson's Realty"), KHART CORPORATION, a Michigan corporation ("Emart"), and WALTER GASSER, TRUSTEE, FOR WALT GASSER & ASSOCIATES, INC. EMP'OYEES PROFIT SHARING PLAN ("Profit Sharing Plan") and CANNON SUPER WASH, INC., a Utah corporation ("Super Wash").

RECITALS:

A. First Party and Albertson's entered into a Declaration of Restrictions and Grant of Easements and Common Area Maintenance Agreement, dated July 28, 1983, recorded in the records of Salt Lake County July 29, 1983, covering real property located in the northwest corner of the intersection of 5600 West and 3500 South in West Valley City, County of Salt Lake, State of Utah, consisting of Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 13 (now known as 13A and 13B), as described on Schedule I attached hereto and incorporated herein by this reference. The Declaration of Restrictions and Grant of Easements as the same has been amended on October 13, 1983, on March 22, 1985, and on February 26, 1986, shall be referred to herein as the "Declaration" and the Common Area Maintenance Agreement as the same has been amended on October 13,

1983, on March 22, 1985, and on March 14, 1986, shall be referred to herein as the "CAMA".

- B. Albertson's and/or Albertson's Realty is the current owner of Parcels 6 and 7, Kmart is the current lessee of Parcels 13B and 11, which Parcel 11 is also described in Schedule I, First Party is the current owner of Parcels 2, 8, 9, 13A and 13B, Profit Sharing Plan is the current owner of Parcel 11, and Super Wash is the current owner of Parcel 5.
- c. Kmart, which leases Parcels 11 and 13B, desires to expand its building and improvements on Parcels 11 and 13B ("Kmart Building") for purposes of adding the Kmart addition and garden shop identified on the Site Plan attached hereto as Exhibit "A" (collectively "Kmart Addition"). To accommodate Kmart's proposed expansion, Profit Sharing Plan has leased Parcel 11 to Kmart as shown on the attached Site Plan.
- D. The parties hereto desire to make certain changes to the Declaration as hereinafter set forth.

AGREEMENTS:

1. The Exhibit "A" site Plan attached to the Declara(on is hereby deleted from the Declaration and replaced by the Exhibit "A" attached hereto and incorporated herein by this reference. From and after the effective date of this Fourth Amendment, any reference in this Fourth Amendment or in the Declaration to the "Site Plan" or to Exhibit "A" shall mean and refer to the Site Plan which is attached hereto as Exhibit "A". The "Building Area" and "Common Area" as provided in Paragraph 1.1 of the Declaration and the parking space size, configuration and traffic flows found on

the Site Plan shall mean, include and refer to the Building Area, Common Area and the parking space size, configuration and traffic flow patterns designated on the Site Plan attached hereto as Exhibit "A".

- 2. First Party, Profit Sharing Plan, Albertson's and Albertson's Realty hereby expressly consent to the building of the Kmart Addition identified on the Exhibit "A" Site Plan attached hereto, and to those changes associated therewith occurring to the Kmart Building which are shown on the Site Plan and to any change to the Common Area due to the Kmart Addition which are shown on the Site Plan, including changes to the sizes and arrangements of the Common Area improvements and including the traffic circulation and flow patterns, ingress, egress and parking configurations as shown on the Site Plan attached hereto.
- 3. The parties agree that Parcel 11 shall be included within the "Shopping Center" for purposes of the Declaration. Notwithstanding the foregoing, or anything else to the contrary in the Declaration, CAMA or this Fourth Amendment, First Party, Profit Sharing Plan and Kmart shall develop, maintain, repair and insure Parcel 11 separately from the remainder of the Shopping Center at their sole cost and expense (it being understood that none of the other parties to the CAMA or the Declaration shall be liable for any costs relating to the same) in a manner and at a level of quality at least equal to that required for the remainder of the Shopping Center under the CAMA. Albertson's and Albertson's Realty shall not be responsible for any costs in any way relating to the Kmart Addition or Parcel 11, or any other additional property or Common Area improvements necessitated by or due to the Kmart

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Addition (all of the foregoing sometimes collectively referred to herein as the "Additional Property") including, without limitation any costs relating to the purchase, development, insurance, ownership, improvement or maintenance of the Additional Property, it being agreed that First Party, Profit Sharing Plan and Kmart shall be responsible for all of the foregoing costs and each shall fully indemnify, defend, and hold Albertson's and Albertson's Realty harmless for any costs and expenses arising therefrom.

4. In order to allow all the improvements found on Parcel 13 to separately compute parking and Common Area ratics, and to allow all of the improvements on Parcel 13 to include the Common Area of Parcel 11 in their computations, Article 2.3 of the Declaration is amended by inserting the following after the conclusion of the current paragraph's last sentence:

As to Parcel 13, the parking ratio and Common Area ratio required by this paragraph shall be computed separately for Parcel 13 which shall include in such computation the Common Area of Parcel 11.

Non-building Easements.

A new paragraph 2.5 is hereby added to the Declaration to provide as follows:

2.5. So long as required by local or national fire codes, a public way or yard 60 feet in width shall at all times be maintained on the west, north and east of the building currently designated on Exhibit "A" hereto as the Kmart building, and on the west, south and east sides of the building currently designated on Exhibit "A" hereto as the Albertson's building ("Albertson's Building"). The parties agree that with respect to the public way or yard on the west side of Albertson's Building, such public way or yard shall commence at the westerly most point of the Albertson's Building, as indicated on Exhibit A attached hereto. In addition, with respect to the public way or yard on the east side of the Albertson's Building, such public way or yard

shall commence from the point of the expansion limit line as indicated on Exhibit "A". First Party represents and warrants that with respect to any portion of such public way or yards outside the boundaries of the Shopping Center, First Party has acquired such public ways or yards required as of the date hereof at its sole cost and expense.

So long as required by local or national fire codes, no addition or modification to either the Kmart or Albertson's buildings may be made unless the public way or yard is maintained as described above.

- 6. To allow the establishment of a car wash on Parcel 5, Paragraph 6.2 and other applicable provisions of the Declaration are hereby amended to permit the construction and operation of a car wash with vehicular drive through on Parcel 5 as shown on the Site Plan provided that:
- (a) The car wash is at all times operated in compliance with all applicable laws;
- (b) The owner of Parcel 5 agrees to indemnify, defend and hold harmless Albertson's and Albertson's Realty from and against any claims, costs, liabilities, damages, expenses and losses in any way relating to any hazardous or dangerous conditions arising in the Shopping Center as a result of any waste water that may have originated from the operations conducted on Parcel 5 or relating to any hazardous or toxic substance or material used in connection with the operations conducted on Parcel 5;
- (c) The owner of Parcel 5 shall, in addition to all of its other obligations and costs under the CAMA, as amended, and any other agreement between the parties, be responsible for all of the following at its sole cost and expense:

- (1) maintaining and repairing the asphalt surface area on Parcel 5 consistent with the maintanance standards applicable to the rest of the Shopping Center, and
- (2) repairing any damage to any asphalt surface in the Shopping Center which is within the area of forty (40) feet from the boundary line of Parcel 5 or within the two adjacent drive approaches to the Shopping Center, to the extent such damage is caused, outside of the ordinary wear and tear, by the waste water from Parcel 5,
- (d) Without limiting the foregoing, in no event shall Albertson's or Albertson's Realty be charged with or liable for any Common Area (or other) expenses uniquely relating to Parcel 5 being used as a car wash.
- 7. The parties hereto agree as soon as reasonably possible to amend the CAMA to provide that Parcel 11 shall be included within the Shopping Center and to incorporate all of the provisions of Paragraph 3 above and subparagraphs (c) and (d) of Paragraph 6 above.
- 8. Albertson's Realty, Inc. hereby ratifies and affirms ull of the amendments to the Declaration and CAMA as set forth in Recital A above.
- 9. This Fourth Amendment to Declaration shall be recorded in the records of Salt Lake County, Utah, at First Party's expense.
- 10. This Fourth Amendment may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute but one and the

same instrument, and shall become effective only upon execution of one or more of such counterparts by each of the parties hereto.

11. Except as amended herein, the Declaration as amended is affirmed and shall remain in full force and effect.

EXECUTED to be effective as of the date first above written.

G.F.I. LTD. II - W.V.C. INVESTMENTS, LTD., a Utah limited partnership

STATE OF 1/42 COUNTY OF Davis

On the 4th day of August , 1992, personally appeared before me Gulla Grant , who, being by me duly sworn, did say that he is a General Partner of G.F.I. LTD. II - W.V.C. INVESTMENTS, LTD., a limited partnership, and that he was authorized to, and did, execute the foregoing Amendment as a General Partner in said partnership.

JANET N ROWLES Natary Public STATE OF UTAH My Commission Explase October 31, 1993 Entt. UT 84010

NOTARY PUBLIC Residing at:

ATTEST:

ALBERTSON'S, INC., a Delaware Corporation

By: See Frospert, Bool By to Low

COUNTY OF Ada ;

on the 21st day of 1004, 1992, personally appeared before me 10000mm H. Ornott and Youk 1. O'COVALL, who being by se only sworn, did say that they are the 11.00 years of REMEMBER'S, THO., & Delaware corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Bylanes or a resolution of its Board of Directors, and said V.P. (a) 1904 (40) and 10000 for the said corporation executed the same.

ACATA COMMISSION OF THE POST O

Jammy R Chustice

ROTARY PUBLIC BOWN, Idaho

My commusion expires: 1/24/95

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ACTEST:

ALEXETSON'S, EMALTY, INC., an Idaho corporation

By: Gang. Michael

STATE OF Idaho ; se.

on the Ald day of May 1992, personally appeared before me CALLE MICHAEL and KARLE WOODAN, who, being by me duly sworm, did say that they are the Mordal who, being by me duly sworm, did say that they are the Corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Beard of Directors, and said William and acknowledged to me that said corporation experience the same.

CANAL COMMISSION OF THE PROPERTY OF THE PROPER

hommy R. Quetro:
NOTARY PHILIC BOUSE, Id
My commission expires: 1/24/95

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KMART CORPORATION, a Michigan corporation

ATTEST:

Bull Secretary

By: M.(. A. Its: Senior Vice President

STATE OF MICHIGAN ; ss

On the 24th day of July , 1992, personally appeared before me M. L. Skiles and D. H. Burdick II , who, being by me duly sworn, did say that they are the <u>Senior Vice President</u> and Assistant Secretary of RMART CORPORATION, a Michigan corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said M. L. Skiles and D. H. Burdick II acknowledged to me that said corporation executed the same

[SEAL]

NOTARY PUBLIC Residing at:

> Nota , Public, Macomb County, Michigan Acting in Caxtand County, Michigan Lly Commission Expires July 10, 1865

PROPIT SHARING PLAN:

G. Walter Gasser, Trustee, for Walt Gasser & Associates, Inc. Employees Profit Sharing Plan

Trustee

STATE OF UTAH

ss.

COUNTY OF DAVIS

On the 4th day of August, 1992, personally appeared before me G. WALTER GASSER, who, being by me duly sworn, did say that he is the Trustee for Walt Gasser & Associates, Inc. Employees Profit Sharing Plan and that he was authorized to, and did, execute the foregoing Amendment as Trustee of said Profit Sharing Plan.

JANET IN BOWLES
Notary Public
STATE OF UTAH
My Commission Expires
October 31, 1993
Briffs, ut 84010

Residing at: Bountiful Web

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CANHOM SUPER WASH, INC. a Utah corporation

Its:

STATE OF UTAH COUNTY OF SALT LAKE

On the day of and before me duly sworn, did say that they are the litt beginst and of CANNON SUPER WASH, INC., a Utah corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said lex b. Change and acknowledged to me that said corporation

[SEAL]



NOTARY PUBLIC

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SCHEDULE I

Parcel 1: (Pad 1)

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 acre.

Parcel 2: (Pad 2)

Beginning at a point which is South 89°59'10" West along the section line 362.50 feet and North 0°09'50" West 160.66 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Mcridian, and running thence South 89°50'10" West 137.46 feet; thence North 0°08'47" West 200.00 feet; thence North 89°50'10" East 137.40 feet; thence South 0°09'50" East 200.00 feet to the point of beginning. Contains 27,486.1 square feet or 0.631 acre.

Parcel 3: (Pad 3)

Beginning at a point which is North 0°09'50" West along the section line 223.00 feet and South 89°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°59'10" West 170.00 feet; thence North 0°09'50" West 130.65 feet; thence North 89°50'10" East 170.00 feet; thence South 0°09'50" East 131.10 feet to the point of beginning. Contain: 22,249.2 square feet or 0.511 acre.

Parcel 4: (Pad 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 Maridian 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 acre.

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 83°59'10" East 110.50 feet; thence South 0°09'50" East 129.21 feat to the point of beginning. Contains 14,293.7 square feet or 0.328 acre.

Parcel 6: (South Property, Parcels)

Beginning at a point which is South 89°59'10" West along the section line 223.00 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 139.50 feet; thence North 0°09'50" Wast 315.78 feet; thence North 89°50'10" East 139.50 feet; thence South 0°09'50" East 316.15 feet to the point of beginning. Contains 44,077.5 square feet or 1.612 acres.

ALSO: Beginning at a point which is South 89°59'10" West along the section line 500.01 feet and North 0°08'47" 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 60.00 feet; thence North 0°08'47" West 323.01 feet; thence South 89°58'47" West 93.10 feet; thence North 0°09'50" West 64.90 feet; thence North 89°50'10" East 40.00 feet; thence South 0°09'50" East 5.00 feet; thence North 89°50'10" East 113.12 feet; thence South 0°08'47" East 383.30 feet to the point of beginning. Contains 28,782.1 square feet or 0.661 acre.

Parcel 7: (Albertson's Site)

Beginning at a point which is North 0°09'50" West along the section line 354.24 feat 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 feat; 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 40.00 feet; thence North 0°09'50" West 40.00 feet; thence North 89°50'10" East 321.00 feet; thence North 0°09'50" West 60.00 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 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°59'10" West along the section line 362.50 feet and North 0°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°50'10" West 137.40 feet; thence North 0°08'47" West 68.00 feet; thence North 89°50'10" East 217.38 feet; thence South 0°09'50" East 72.88 feet; thence South 89°50'10" West 80.00 feet; thence North 0°09'50" West 4.88 feet to the point of beginning. Contains 15172.9 square feet or 0.348 acre.

Parcel 9: (Retail Shops No. 2)

Beginning at a point which is South 89°59'10" West along the section line 362.50 feet and North 0°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°50'10" West 135.50 feet, thence North 0°09'50" West 60.00 feet; thence North 89°50'10" East 135.50 feet; thence North 0°09'50" West 7.12 feet; thence North 89°50'10" East 80.00 feet; thence South 0°09'50" East 60.00 feet; thence South 89°50'10" West 49.50 feet; thence South 0°09'50" East 7.12 feet; thence South 89°50'10" West 30.50 feet to the point of beginning.

Parcel 10:

Beginning at a point which is South 89°59'10" West along the section line 653.00 feet and North 0°09'50" West 363.00 feet from the Southeast corner of Section 26, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence South 89°58'47" West 237.00 feet; thence North 0°09'50" West 983.63 feet; thence North 89°59'10" East 237.00 feet; thence South 0°09'50" East 983.60 feet to the point of beginning. Contains 233,116.4 square feet or 5.352 acres.

Parcel 11:

Beginning on the West line of 5600 West Street at a point which is North 0°09'50" West along the section line 1346.60 feet and South 89°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°59'10" West 600.00 feet; thence North 0°09'50" West 185.30 feet; thence North 89°59'10" East 600.00 feet; to the West line of said 5600 West Street; thence South 0°09'50" East along said West line 185.30 feet to the point of beginning. Contains approximately 2.637 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 feot; 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.

Area = 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 785.24 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 635.30 feet; thence North 89°59'10" East 489.50 feet; thence South 0°09'50" East 185.30 feet; thence North 89°59'10" East 110.50 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 129.50 feet; thence South 0°09'50" East 320.79 feet to the point of beginning.

Area = 360,179.47 sq. feet or 8.269 acres.







