

**AMENDED & RESTATED
DECLARATION OF
EASEMENTS, COVENANTS &
RESTRICTIONS**

Document Number

Document Name

PRIOR DECLARATION SUPERSEDED & REPLACED. Declarant previously executed a Declaration of Easements, Covenants and Restrictions, which was recorded with the Waukesha Register of Deeds on July 6, 2012, as Document No. 3931254. This Amended & Restated Declaration of Easements, Covenants & Restrictions replaces and supersedes, in its entirety, the previous declaration. Declarant hereby releases the previous declaration of record.

DECLARATION. Effective as of July 6, 2012 Woodman's Food Market, Inc., a Wisconsin corporation, hereby subjects the following described real estate to this Declaration:

SEE ATTACHED EXHIBIT A

Recording Area

Name and Return Address

Woodman's Food Market, Inc.
Attn: Bret A. Backus
2631 Liberty Lane
Janesville, WI 53545

SEE ATTACHED EXHIBIT A

Parcel Identification Number (PIN):

This is not homestead property.

ALL PROSPECTIVE PURCHASERS, PLEASE TAKE NOTICE:

Woodman's Food Market, Inc. is the beneficiary of TIF financing through the City of Waukesha, under a Development Agreement dated March 16, 2011. If any third party purchaser is exempt from the payment of property taxes, and purchases a Lot, then the Association will be entitled to levy a special assessment equal to the amount that such Lot would have owed in property taxes, and be entitled to remit that amount to the City of Waukesha to use in payment of the TIF. Once the TIF has been fully and finally paid, this restriction will become null and void, and of no further force or effect.

STATEMENT OF INTENT. This Declaration is made upon all of the terms and conditions that follow. This Declaration is intended to:

- Assure proper use and appropriate development and improvement of the Lots
- Protect Owners and Tenants against such improper use and development of Lots as might diminish the value and use of other Lots
- Prevent the erection of buildings constructed of improper or unsuitable materials or with improper quality
- Assure adequate and reasonably consistent development of the Lots
- Encourage and assure the construction of attractively designed buildings and landscaping appropriately located within the Lots
- Generally preserve the attractive design and quality and atmosphere of the Lots
- Provide adequate off-street parking and loading facilities
- Generally to promote the welfare and safety of the Owners and Tenants and their customers and invitees

1. DEFINITIONS. The following terms have the meanings ascribed to them below.

- 1.01** *"ACC"* means the Architectural Control Committee established by SECTION 6 below.
- 1.02** *"Association"* means WRC Waukesha LLC, the Wisconsin limited liability company that will repair and maintain the Common Elements and perform the duties described in this Declaration.
- 1.03** *"Association Dues"* means an amount equal to \$1,250.00 per acre of each Lot per year, increased by 10% every 5 years. For example, a 2 acre Lot would have annual Association Dues of \$2,500.00.
- 1.04** *"Center"* means the real estate described on EXHIBIT A, and graphically depicted on EXHIBIT B.
- 1.05** *"City"* means the City of Waukesha, Wisconsin, a Wisconsin municipal corporation.
- 1.06** *"Common Elements"* means the Stormwater System and the Developer Improvements.
 - (a) *"Stormwater System"* means the stormwater drainage system consisting of any detention pond on Outlot 3 of CSM 10946, any detention pond on Outlot 4 of CSM 10945, and the liners, pipes, and other drainage facilities that direct stormwater into and out of those ponds (some of which may be located on or across one or more Lots), which improvements were constructed by Developer to manage, retain, and dispose of stormwater for all of the Lots (but excluding any catch basins or stormwater drainage facilities located on an individual Lot, which are the responsibility of the Owner).

(b) ***"Developer Improvements"*** means Outlot 1 of CSM 10944 (the private street owned by Developer), and any street lights now or hereafter situated within the Center (except street lights owned or maintained by the City).

1.07 ***"Common Expenses"*** mean all reasonable, actual, and direct expenses of owning, operating and maintaining the Common Elements and of operating the Association, including, without limitation:

- (a) utility services;
- (b) public liability insurance (and such other insurance as the Association deems necessary or desirable, such as insurance against loss or damage by fire and other hazards, or fidelity insurance);
- (c) engineered soil replacement (if any), landscaping, grass cutting, gardening, snow removal, painting, cleaning, maintenance, repair, replacement, and similar expenses;
- (d) the acquisition of tools, equipment and supplies for the repair, maintenance and replacement of the Common Elements;
- (e) salaries and wages of employees of the Association, if any;
- (f) any other materials, supplies, labor, personnel services, maintenance, repairs and structural alterations that the Association deems necessary or desirable for the maintenance and operation of the Common Elements in a first class manner or for enforcement of this Declaration;
- (g) any amount necessary to discharge any construction lien or other encumbrance levied against the Common Elements that, in the opinion of the Association, constitutes a lien against that property (and if the lien or encumbrance is the responsibility of one or more Owners, the Association will specially assess any costs incurred by the Association by reason of the lien or encumbrance against that Owner or Owners by the procedure provided elsewhere in this Declaration);
- (h) such amounts as the Association may deem proper for working capital, for a general operating reserve, for a reserve fund for replacements, or to make up any deficit in the payment of any of these for any prior year; and
- (i) fees for legal, accounting, and other professional services.

1.08 ***"Common Taxes"*** means real estate taxes and special assessments levied against the Common Elements, and any other taxes to which the Association is subject.

1.09 ***"CSMs"*** means Certified Survey Map No. 10943, recorded with the Waukesha County Register of Deeds, Volume 106, Pages 283 to 291, Document No. 3891684 (***"CSM 10943"***); Certified Survey Map No. 10944, recorded with the Waukesha County Register of Deeds, Volume 106, Pages 292 to 302, Document No. 3891685

("CSM 10944"); Certified Survey Map No. 10945, recorded with the Waukesha County Register of Deeds, Volume 106, Pages 303 to 308, Document No. 3891686 ("CSM 10945"); and Certified Survey Map No. 10946, recorded with the Waukesha County Register of Deeds, Volume 106, Pages 309 to 312, Document No. 3891687 ("CSM 10946").

- 1.10 **"Declaration"** means this Declaration of Easements, Covenants & Restrictions, as amended from time to time.
 - 1.11 **"Default Interest Rate"** means 18% per year (or the maximum rate allowed by applicable law, whichever is less).
 - 1.12 **"Developer"** means Woodman's Food Market, Inc.
 - 1.13 **"Lot"** means a legally subdivided, buildable parcel of real property, and includes, as the context reasonably requires, Lots 1 and 2 on CSM 10943, Lots 3 and 7 on CSM 10944, Lots 5 and 6 on CSM 10945, and Lot 4 on CSM 10946 (but not Outlot 1 on CSM 10944, Outlot 4 on CSM 10945, or Outlot 3 on CSM 10946). In the future, if any part of the Center is validly subdivided or combined (in compliance with this Declaration and applicable law) to create a legal, buildable parcel of real estate, then **"Lot"** also means any parcel resulting from that subdivision or combination.
 - 1.14 **"Manager"** means the manager of the Association from time to time, and will initially be Woodman's Food Market, Inc.
 - 1.15 **"Owner"** means the owner of the fee title to any Lot, except that if a Lot is being sold on land contract, then the purchaser under the land contract will be the Owner.
 - 1.16 **"Tenant"** means any person from time to time occupying all or part of a Lot or its improvements by a lease, sublease, license, or other instrument of occupancy.
 - 1.17 **"Woodman's Lot"** means Lot 3 of CSM 10944 and Lot 5 of CSM 10945, as well as any other Lot owned by Developer from time to time.
 - 1.18 **"Woodman's Lot Exclusive Uses"** mean the operation of a convenience store, gasoline station, oil or lubrication station or operation, self-service car wash, supermarket, grocery store, butcher shop, delicatessen, liquor store, or any combination of one or more of those uses.
2. **EASEMENTS.** The Center will hereafter be benefited and burdened by the following easements.
- 2.01 **Developer Improvements.** Developer hereby grants to each Owner (and to such other parties as Developer may subsequently designate), and Developer reserves to itself, a non-exclusive, perpetual easement for the installation, operation, maintenance, repair, and replacement of streets—for access, ingress and egress, by pedestrian, truck, and vehicular travel—on, over and across the Outlot 1 of CSM

10944. In addition, Developer declares an easement of 5 feet on either side of Outlot 1 of CSM 10944 for the placement of street lights.

- 2.02 Stormwater System.** By quit claim deed dated contemporaneously with this Declaration, Developer conveys Outlot 4 of CSM 10945 and Outlot 3 of CSM 10946 to the Association, which will own and operate Outlots 3 and 4, and the Stormwater System. Developer and the Association hereby grant to each Owner (and to such other parties as Developer or the Association may subsequently designate), and Developer and the Association reserve to themselves, a non-exclusive, perpetual easement for the use of the Stormwater System, including, as applicable to a particular Lot, the right to discharge stormwater into the detention ponds located on Outlots 3 and 4.
- 2.03 Right to Modify.** Developer reserves the right to modify, adjust, amend and relocate the Developer Improvements, and the Association reserves those rights over the Stormwater System. But no such action may materially and adversely affect beneficial enjoyment of the easements or Lots by the Owners.
- 2.04 Power to Dedicate.** The Association anticipates that it will retain private ownership of the Stormwater System for the foreseeable future. However, the Association is empowered to dedicate all or part of the Stormwater System to the City on such terms as the City and the Association may agree.
- 2.05 Right to Extend Benefit.** Developer and the Association each reserve the right to extend the benefit and right to use any of the easements described in this SECTION 2 to parties other than those specifically identified in this SECTION 2, including persons who may own real estate that is not part of the Center, and whether or not that real estate is contiguous to the Center. Developer and the Association may not, however, grant any such extension if the extension would unreasonably overload a particular easement beyond its intended capacity or materially and adversely affect the use and enjoyment of a Lot by its Owner.
- 2.06 Right to Grant Further Easements.** Developer reserves the right to subsequently grant additional or further easements for the installation, operation, maintenance, repair, replacement and relocation of underground utilities within the outer 10 foot perimeter of each Lot, except that no such easement may be granted in any portion of such perimeter where improvements are constructed or planned to be constructed. This reservation will survive the conveyance of any Lot by Developer. Developer may accomplish any such reservation by recording a separate instrument granting such an easement at a specified location within the permitted perimeter. Developer may also waive this right as to any Lot by written instrument.

- 3. OWNERSHIP & MAINTENANCE.** The Owner of the Woodman's Lot, from time to time, will own fee title to the Developer Improvements, but will have the right to convey them to Association in the future without the consent or approval of any other Lot Owner. The

Association will own the Stormwater System, and will operate, maintain, repair, and replace all of the Common Elements, as more fully described in SECTION 4 below.

4. THE ASSOCIATION. Developer has formed and organized the Association for the purposes set forth below, and for those purposes that may be necessary or desirable in the future.

4.01 Membership. Each Owner of a Lot is a member of the Association, and acquires its interest in the Association, by operation of law, when it acquires its Lot. Membership by each Owner is mandatory. Each member will have the rights and duties described in this Declaration and in the Association's articles, operating agreement, and bylaws (as these instruments may be amended from time to time).

- (a) The Association has 2 classes of membership, Class A and Class B. The Owners of all of the Lots other than the Woodman's Lot are Class A members. The Owner of the Woodman's Lot is the sole Class B member.
- (b) Initially, the Class B member is the sole voting member of Association. The voting rights of the members are more fully stated in the Association's operating agreement.

4.02 Management. The affairs of the Association will be managed by the Manager in accordance with the Association's operating agreement.

4.03 Delegation of Duties. Developer hereby delegates to the Association the duty to own, operate, repair, replace, and maintain the Stormwater System, and to operate, repair, replace, and maintain the Developer Improvements. Developer assigns to the Association all contractors' and vendors' warranties received by Developer in connection with the construction of the Common Elements. The Association's acceptance of the deed from Developer conveying the Stormwater System to the Association constitutes the Association's acceptance of this delegation. The Association assumes and agrees to pay and perform all of the duties so delegated, and will defend, indemnify, and hold Developer harmless from any liability for the performance of those duties. This indemnity includes any reasonable attorneys' fees incurred by Developer in defending itself against such liability, but only if Developer gives the Association timely notice of any claimed liability and tenders the defense of any such claims to the Association.

4.04 Powers & Duties of Association. The powers and duties of the Association include, without limitation:

- (a) the power and duty to pay the Common Expenses;
- (b) the exclusive right to contract for all goods and services necessary or desirable for the payment and performance of the Common Expenses;

- (c) the power and duty to designate banking institutions as depository for Association's funds, and to designate officers authorized to make withdrawals from such accounts and to execute contracts on behalf of the Association;
- (d) the power and duty to levy and collect Assessments as provided in SECTION 5;
- (e) the power to make additional improvements to the Common Elements;
- (f) the power to acquire, hold, encumber, mortgage, lease, and convey the Stormwater System, and any right, title or interest in and to personal property and other real property reasonably needed to benefit the Association's ownership and operation of the Common Elements;
- (g) the power to grant easements through or over the Stormwater System;
- (h) the power to establish reasonable rules and regulations of uniform application for the effective implementation and administration of the Association's powers and duties;
- (i) all other powers and duties reasonably necessary for the administration of its affairs, and for the protection of rights and enforcement of duties conferred by this Declaration.

5. ASSESSMENTS. Developer (on behalf of each Lot it owns), and the Owner of each Lot (by acceptance of a deed or other conveyance for the Lot, whether or not expressly stated in a deed or other conveyance), each hereby covenants to pay to the Association the Assessments described below. "Assessments" means any amount payable for Association Dues, Common Taxes, special assessments, and any other fines, fees, or other amounts payable by any Owner now or in the future under this Declaration or the Association's Operating Agreement.

5.01 Association Dues. On January 1 of each calendar year, each Owner will pay, and the Association will collect, its Association Dues. If the Association fails to act to compel payment from any delinquent Owner, then the Owner or Tenant of the Woodman's Lot may do so in its stead. The Association is responsible for the payment of all Common Expenses, to the extent of Association Dues collected. If the Association Dues are not adequate to pay for all of the Common Expenses, then the Owner of the Woodman's Lot will contribute the shortfall to the Association. To the extent that Association Dues exceed Common Expenses, the Association may hold those funds in a reserve account, or pay them to the Owner of the Woodman's Lot as a reduction of its capital account.

5.02 Common Taxes. On January 1, 2014, and on January 1 of each calendar year after that, the Association will assess and collect the Common Taxes against the Owners of the Lots, and collect from each its percentage share, equal to the total square footage of that Owner's Lot or Lots divided by the total square footage of the Center. If any Lot is subject to Section 5.03, then the Lot Owner will not be charged

for real estate taxes under this section, and that Lot will be disregarded for purposes of calculating percentage shares. The Association will promptly pay Common Taxes on or before the due date. If the Association fails to do so for any reason, then the Owner of the Woodman's Lot may do so in its stead, and any amount will be treated as a capital contribution to the Association.

5.03 Special Assessments In Lieu of Real Estate Taxes. The Association may levy in any calendar year (or partial calendar year) a special assessment against each Owner of a Lot that is not otherwise obligated to pay real estate taxes to the applicable governmental authorities that assess and impose taxes on real property. But the Association's right to make this particular levy will only exist for so long as that certain Development Agreement between the City and the Declarant dated March 16, 2012, is in effect. The amount of the levy will be equal to the amount of real estate taxes that would otherwise be imposed upon a non-tax exempt Owner of the Lot. This SECTION 5.03 does not apply to the Woodman's Lot.

5.04 Accounting. The Association will keep full and correct books of accounts of its collection of Association Dues. The books will be open for inspection and copying by any Owner of a Lot or by the representative of any such Owner authorized in writing during usual business hours upon reasonable notice.

5.05 Collection & Lien Rights. The Association will collect and enforce the collection of Assessments. The Owner of each Lot is personally liable for the payment of any Assessments assessed or accrued during the period of such Owner's ownership of its Lot.

- (a) Until paid, all Assessments payable by an Owner (together with interest and actual costs of collection, including reasonable attorneys' fees and disbursements) constitute a lien against such Owner's Lot. The Association may file a statement of lien with the Clerk of Court for Waukesha County, Wisconsin, or with such other governmental agency as is allowed by applicable law. The Association may follow any procedures provided by the Wisconsin Statutes for the enforcement of liens, any of which statutory provisions are hereby incorporated by reference and contractually made part of this Declaration.
- (b) The Association may foreclose a lien in the manner provided in those statutory sections incorporated above or in the same manner as an action to foreclose a real estate mortgage, whichever the Association may choose.
- (c) In any collection action, the Association is entitled to recover reasonable attorneys' fees, court costs, and disbursements.

5.06 Liability Upon Conveyance. Upon the sale, exchange or other conveyance of any Lot, the grantor will not have any liability for the payment of Assessments that accrue after the date of the recording of the conveyance. But the grantor remains

liable for Assessments that accrued during its period of ownership, up to the date of such recording. Upon the voluntary conveyance of a Lot, the grantee is jointly and severally liable with the grantor for all Assessments under this SECTION 5 that are unpaid as of the date of conveyance. The grantee may recover the amount of such unpaid Assessments from the grantor, subject to any contrary agreement between grantor and grantee allocating responsibility for the Assessments.

5.07 Statements. The Owner of any Lot and any prospective grantee of the Owner may request a written statement from the Association, setting forth the amount of any unpaid Assessments. A grantee is not liable for (nor is the Lot or portion acquired by the grantee, subject to a lien for) any unpaid Assessment against the grantor that is in excess of the amount stated in the Association's statement. If the Association does not provide a requested statement within 30 days after receipt of a written request, then the Association is barred from claiming any lien, notice of which was not filed with the Clerk of Court for Waukesha County or other governmental agency in Waukesha County prior to the Association's receipt of the written request. Even if the Association loses the right to collect unpaid Assessments from a grantee or loses the right to claim a lien, the Association retains its right to collect the unpaid Association Dues or special Assessment from the grantor and any other person personally liable for payment.

5.08 Subordination. Neither breach of this Declaration, nor the enforcement of any lien provided by this Declaration, affects, impairs, defeats, or renders invalid the lien of any first mortgage made in good faith and for value encumbering any Lot. If the holder of a first mortgage on a Lot forecloses the mortgage, or accepts a deed in lieu of foreclosure, then the lien of any Assessment by the Association is automatically extinguished, without the need to name the Association as defendant in the foreclosure and without the need to take any other action. The purchaser at the foreclosure sale, the grantee named in the deed in lieu of foreclosure, and their respective heirs, representatives, successors and assigns, are not liable for any Assessments accruing prior to the acquisition of title by such purchaser or grantee. The lien of a first purchase money mortgage is superior to all unpaid Assessments accruing prior to the perfection of the mortgage lien.

- (a) Any foreclosure of an Assessment by the Association, or acceptance of a deed in lieu of such foreclosure, remains subject to any existing first mortgage on the Lot involved, and the lien of the mortgage is not affected by the foreclosure or deed.
- (b) The priority of the lien of any mortgage other than a first mortgage relative to any lien filed by Association under this Declaration will be determined by applicable law.

6. ARCHITECTURAL CONTROL COMMITTEE. Developer hereby establishes the ACC. The vote of a majority of its members constitutes the action of the ACC.

6.01 Committee Membership. The Owner of the Woodman's Lot will always be a member of the ACC, and the Owner of the Woodman's Lot may elect to include up to up to two other Owners. The Owner of the Woodman's Lot may remove and replace the other two members of the ACC at any time, with or without cause. Any member of the ACC may resign at any time.

6.02 ACC Approval Required. Without the express written approval of the ACC, no person may construct a building, sign, or other improvement on any Lot, or materially alter the exterior of any previously approved building, sign or other improvement on any Lot. The process to obtain the express written approval of the ACC is as follows, and will be strictly enforced. Each person must submit:

- (a) an application fee (which is initially \$500, but the ACC will have the right to adjust that fee from time to time);
- (b) two full size (scale not less than one inch equals 50 feet) and two reduced size (11 inches by 17 inches) copies of the following plans for the proposed development, containing all of the following detail:
 - (i) a statement describing the general contractor of the proposed development or alteration;
 - (ii) a statement confirming the anticipated commencement and completion dates;
 - (iii) a statement of the person's intended uses and the hours of operation for those uses;
 - (iv) a site plan, including the number and location of all proposed parking spaces, and a statement that the number of parking spaces shown is sufficient for the person's intended uses;
 - (v) a landscape plan;
 - (vi) a building elevation plan;
 - (vii) a site lighting plan;
 - (viii) a signage plan; and
 - (ix) an architectural rendering, including exterior materials and colors.

(c) Until further notice, submissions to the ACC will be sent to: Woodman's Food Market, Inc., Attn: Bret Backus, 2631 Liberty Lane, Janesville, WI 53545.

6.03 Approval & Deemed Approval. The ACC must approve, conditionally approve, or deny each completed submission within fifteen (15) business days after its receipt by

the ACC. The fifteen (15) business days do not commence until the ACC has received all of the materials described in **SECTION 6.02**. The ACC may not unreasonably delay action. Any decision of the ACC must be in writing. If the ACC does not so act in writing within that fifteen (15) business days, then the submission will be deemed approved.

- 6.04 Rejection.** The ACC may reject any submission that, in the opinion of the ACC, is not in keeping with the development of the Lots as a high quality, regional retail center, or that is contrary to the purposes of this Declaration, or that is not compatible with the architectural design and quality of buildings planned for or already constructed within the Lots. If the ACC rejects a submission, then it must specify in writing the reasons for the rejection and the manner in which the applicant may overcome the rejection.
- 6.05 Decision Final.** The decision made by the ACC in good faith on any particular submission is final, but an applicant may then submit a revised submission that attempts to overcome the objections made by the ACC. Persons are therefore advised to get ACC approval before finalizing the purchase of any Lot.
- 6.06 Revisions Required by City.** After the approval or deemed approval of the ACC, the Owner or Tenant may submit the plans to the City for any approvals required from the City. The Owner or Tenant may make reasonable and limited revisions to the plans and renderings approved by the ACC to comply with requirements of the City. But if the Owner or Tenant voluntarily decides to materially revise the plans or renderings approved by the ACC, then it must re-submit the revised plans and renderings to the ACC for re-approval in accordance with this **SECTION 6** (and pay another application fee).
- 6.07 Release of Liability.** Neither Developer (or its officers, directors, members, shareholders, or agents) nor the ACC (or its members) are or will be liable, in damages or otherwise, to anyone submitting plans for approval to the ACC or to any Owner or Tenant by reason of the ACC's approval or disapproval or failure to approve or to disapprove any submitted plans. Every person submitting plans to the ACC for approval agrees, by submission of the plans, and every Owner or Tenant agrees, by acquiring title to or a leasehold interest in a Lot, that the person or Owner or Tenant will not bring any action or suit against Developer (or its officers, directors, members, shareholders or agents) or the ACC (or its members) to recover damages or any other relief.
- 6.08 Assumed Risk.** No construction may commence on any building site until the ACC and the City have granted all required approvals. Any such construction is at the risk of the Owner or Tenant performing the construction and does not avoid the need for approvals from the ACC and the City. Approval by the ACC does not constitute permission to begin construction of any building or structure prior to the issuance of required permits from the City.

6.09 Variances. The ACC may, in its sole discretion, grant one or more variances to any of the provisions on this Declaration which the ACC deems compatible with the purposes of the Declaration.

7. USE. Developer seeks to achieve a reasonable mix of businesses in the Center, and to attract such business as will make the Center a high-quality, family-oriented shopping center, which may include other compatible uses. To attain this goal, the Lots are hereby restricted by the following use provisions.

7.01 Restrictions. Each Lot will be used only for such use or uses as meet the following requirements:

- (a) do not violate any of the exclusive uses described in this SECTION 7; and
- (b) comply with any restrictive covenant imposed by this Declaration; and
- (c) comply with City zoning ordinances, or as a special use approved as such by the City under the procedures for special uses in the City's general zoning ordinance (and if the use is a special use which requires the approval of the City, then the special use must also be approved by the ACC).

7.02 Woodman's Lot Exclusive Uses. For the benefit of the Woodman's Lot, none of the Lots other than the Woodman's Lot may be used for the Woodman's Lot Exclusive Uses, each of which is granted exclusively to the Owner or Tenant of the Woodman's Lot from time to time.

7.03 Right to Amend. Developer reserves and will have the right to unilaterally amend this Declaration to grant exclusive uses to the Lots, but no such exclusive uses so granted will be binding upon any Lot then owned or under contract by an Owner other than Developer without the prior written consent of that Owner. Any such amendment will state which Lots are subject to an exclusive use granted under this SECTION 7.

7.04 No Duty to Enforce. Neither Developer nor the Association will have any obligation to enforce the exclusive uses granted to any Lot. The Owner or Tenant of a Lot having the benefit of an exclusive use will have the sole responsibility of enforcing its right of exclusive use at its sole expense.

7.05 Injunctive Relief. Any Owner or Tenant having the benefit of a right of exclusive use will suffer irreparable harm if that right is violated. Damages will not be an adequate remedy. Such an Owner or Tenant will have the right to injunctive relief to enforce its right of exclusive use. In addition, the Owner or Tenant will have the right to damages and such other relief as is available under applicable law. In case of litigation relating to an exclusive use, the party who substantially prevails in the litigation as determined by the court will have the right to collect the party's reasonable attorneys' fees and disbursements from the other party.

7.06 Further Covenants & Restrictions on the Lots. The provisions of this SECTION 7.06 apply to all Lots other than the Woodman's Lot.

- (a) All improvements, constructed, erected, placed or maintained on a Lot will at all times comply with all applicable laws, ordinances, codes and regulations, including without limitation building codes and zoning ordinances. Nothing in this Declaration will in any way be deemed or construed to amend, alter, vary or diminish any requirements imposed by law. To the extent of any difference between the standards and requirements imposed by this Declaration and those imposed by law, the stricter of the two will prevail and govern.
- (b) Each Owner of a Lot will provide parking spaces within the Lot adequate for all off-street parking required by applicable law, unless approved by the City and the ACC.
- (c) Except for temporary storage during construction, no materials, supplies, equipment, finished or semi-finished products or articles of any nature will be stored or permitted to remain on a Lot except within the building constructed on the Lot. As another exception, the Owner of a Lot will have the right to display merchandise sold by the Owner, but only as and to the extent allowed by applicable law and expressly allowed by written approval of the ACC.
- (d) Roof objects and equipment such as fans, vents, cooling towers and antennas will all be either enclosed or reasonably screened from public view.
- (e) All utility connections will be made underground from the nearest available source. Transformers, meters and other utility appliances and apparatus will be located within buildings or underground or will be reasonably screened from public view.
- (f) No fence will be constructed or maintained on a Lot without the prior written approval of the ACC.
- (g) Loading docks and service areas will be located at the rear of building (or such other area designated by the ACC to minimize the visibility of these areas from adjoining streets) and, if required by the ACC, will be reasonably screened from view by adjacent and neighboring properties.
- (h) There will be no storage of trash and waste outside of buildings except in dumpsters reasonably screened from public view.
- (i) No Owner of a Lot will excavate the Lot except in conjunction with the construction of a properly-approved building. Once such Owner commences construction, the Owner will diligently pursue the construction to its completion and will not leave the Owner's property in a partly-finished condition any longer than reasonably necessary. To the extent that the prior written approval of the ACC is required for any construction, the construction will all conform to the plans approved by the ACC.

- (j) Each Owner and Tenant of any Lot will, at the person's expense, keep the Lot, including all its improvements, in a well maintained, safe, clean and attractive condition at all times. Such maintenance will include but not be limited to:
 - (i) Promptly removing of all litter, trash, refuse and wastes.
 - (ii) Keeping all landscaping maintained and attractive.
 - (iii) Keeping exterior lighting and mechanical facilities in working order.
 - (iv) Keeping parking areas, driveways, and roads in good repair.
 - (v) Complying with all governmental statutes, ordinances, regulations and health, fire and police requirements.
 - (vi) Striping of parking areas and repainting of improvements.
 - (vii) Repairing exterior damage to improvements.
 - (viii) Maintaining of utility lines.
- (k) As an example of compliance with law, each Owner and Tenant will comply with all applicable environmental laws. No such person will use a Lot for the generation, transportation, storage, treatment or disposal of any hazardous substance, except that the person may store small amounts of hazardous substances used in the operation and maintenance of the person's property, if that storage complies with all applicable environmental regulations; and except the person may sell hazardous substances like gasoline or fuel oil, if they are sold and stored in compliance with all applicable environmental regulations. No asbestos, polychlorinated biphenyl compounds or any other hazardous substances will be used in the construction of improvements on a Lot.
- (l) No trailer, temporary building or temporary structure of any kind will be permitted on a Lot except temporary buildings, trailers or structures used during construction of a permanent building. Such temporary buildings, trailers or structures will be removed as promptly as practicable after completion of construction, and in any event not later than 30 days after the issuance of a certificate of occupancy for the permanent improvement by the City.
- (m) If any building located within a Lot is damaged or destroyed by fire or other casualty, the Owner of the building will as promptly as possible, but in no event later than nine months after the date of the damage or destruction, either commence and diligently pursue to completion the restoration of the building to the condition existing prior to the damage or destruction; or raze and remove the building, and landscape the land in a visually appealing manner; or construct a new building in compliance with this Declaration.

8. COVENANTS RUN WITH THE LAND. This Declaration runs with the land, and binds and inures to the benefit of the Owners of each of the Lots, and their respective successors and

assigns. The Owner of any Lot will have the power to enforce this Declaration, and will have the right to obtain all remedies allowed by applicable law, including without limitation injunction and money damages.

- 8.01 Nuisance.** Any violation of this Declaration will constitute a nuisance. Any remedy allowed by applicable law for abatement of a nuisance will be available in any action brought to enforce this Declaration.
- 8.02 Notice & Cure.** If any Owner or Tenant of any Lot fails to comply with its obligations under this Declaration, then the Owner of any other Lot may give the defaulting party notice of default. The defaulting party must cure the default within 30 days after the giving of the notice. If the defaulting party cannot reasonably cure the default within 30 days, then the defaulting party must promptly commence the cure and complete the cure as soon as reasonably possible. If the defaulting party does not timely cure, then the Owner, in its discretion, and in addition to any other right or remedy it may have, will also have the right, through authorized agents and contractors and after reasonable notice to the defaulting party, to enter the defaulting party's property at reasonable business times and on any business day to cure the default. The notifying Owner is then entitled to invoice the defaulting party, and the defaulting party is obligated to pay the invoice immediately.
- 8.03 Tenants Liable.** If the defaulting party is a Tenant, the Owner who leases to the Tenant and the Tenant will be jointly and severally liable for all expenses so incurred by the notifying Owner.
- 8.04 Interest.** Such expenses will bear interest at the Default Interest Rate from the date incurred by the notifying Owner to the date paid.
- 8.05 Prevailing Party.** In any legal action brought to enforce this Declaration, the prevailing party will have the right to collect its reasonable attorneys' fees and disbursements from the losing party.
- 8.06 Venue.** Any litigation that is the subject matter of this instrument will be venued in the state court in either Dane County or Waukesha County, Wisconsin, or in the federal court in Dane County, Wisconsin, and each party hereto accepts the jurisdiction of such courts.
- 8.07 No Waiver.** The failure to enforce any provision of this Declaration will in no event be deemed a waiver of the right to do so for any subsequent violation or a waiver of the right to enforce any other provision of the Declaration. The Owner of the Woodman's Lot may waive any particular violation without waiving any subsequent or prior violation.
- 8.08 Covenants.** The benefits and obligations described in this Declaration are covenants and not conditions, and constitute equitable servitudes upon the Lots. This

Declaration creates privity of contract and estate with and among all Owners and Tenants of all Lots and their respective representatives, successors and assigns.

9. DURATION & AMENDMENT. This Declaration will continue in effect until December 31, 2040, and will then automatically extend from year to year unless terminated as provided in this SECTION 9.

9.01 Amendment by Developer. Subject to SECTION 9.05 below, as long as Developer is the owner of the Woodman's Lot, Developer will have the unilateral right to amend this Declaration. Developer will act reasonably and in good faith in making any such amendment, and will promptly give the Owners of the Lots notice of the amendment. No such Amendment may change the amount or the calculation of the amount of Association Dues.

9.02 Amendment by Majority. After Developer ceases to be the owner of the Woodman's Lot, this Declaration may be amended or terminated by the written consent of owners who own a majority of the area comprising all of the Lots.

9.03 Deprivation. No amendment, by whomever made, will deprive the Owner of any Lot of the right to occupy and use any then-existing building located on the Lot, or to use the Lot for its then existing use, without the prior written consent of the Owner.

9.04 No Merger. Neither the doctrine of merger of title nor any other doctrine will operate to terminate this Declaration, which cannot be terminated other than as provided in this SECTION 9.

9.05 Easements Not Affected. Any termination of this Declaration will not affect the easements granted in SECTION 2. Those easements will continue in effect until termination by the unanimous consent of the Owners of all Lots.

10. NOTICES. Any notice given in connection with this agreement will be in writing and may be given in any one of the following ways: by personal delivery; by delivery by an express mail service; by mailing via the first class United States mail, postage prepaid, addressed to the last known address of the recipient; or by facsimile transmission, electronic mail or other comparable means. Notice by mailing in the first class United States mail as described will be deemed given three days after mailing. All other forms of notice will be effective upon receipt at the last known address (whether physical or electronic) or facsimile number of the recipient.

SIGNATURE PAGE TO DECLARATION OF EASEMENTS, COVENANTS & RESTRICTIONS


WOODMAN'S FOOD MARKET, INC.

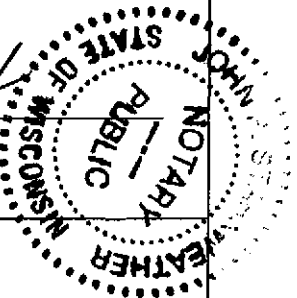
By: 

Clint Woodman, Vice President

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Clint Woodman, Vice President of Woodman's Food Market, Inc., personally appeared before me this 5th day of September 2013, and who is known by me to be the person who executed the foregoing instrument and acknowledged the same.


Name: John P. Starkweather
Notary Public, Dane County, Wisconsin
My commission expires on July 5, 2015



*Drafted by John P. Starkweather
Boardman & Clark LLP
P.O. Box 927
Madison, WI 53701-0927*

Lots 1 and 2 Certified Survey Map No. 10943 recorded on February 3, 2012 in Volume 106 at Page 283-291 as Document No. 3891684, being a division of Lot 2 of Certified Survey Map No. 5245 and lands, located in the Southeast 1/4 and the Northeast 1/4 of the Southeast 1/4 of Section 35 and the Southwest 1/4 and the Northwest 1/4 of the Southwest 1/4 of Section 36, Township 7 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin; and

Lots 3, and 7 and Outlot 1 Certified Survey Map No. 10944 recorded on February 3, 2012 in Volume 106 at Page 292-302 as Document No. 3891685, being a division of Lot 3 of Certified Survey Map No. 10943, located in the Southeast 1/4 and the Northeast 1/4 of the Southeast 1/4 of Section 35 and the Southwest 1/4 and the Northwest 1/4 of the Southwest 1/4 of Section 36, Township 7 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin; and

Lots 5 and 6 and Outlot 4 Certified Survey Map No. 10945 recorded on February 3, 2012 in Volume 106 at Page 303-308 as Document No. 3891686, being a division of Lot 4 of Certified Survey Map No. 10943, located in the Southwest 1/4 and the Northwest 1/4 of the Southwest 1/4 of Section 36, Township 7 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin; and

Lot 4 and Outlot 3 Certified Survey Map No. 10946 recorded on February 3, 2012 in Volume 106 at Page 309-312 as Document No. 3891687, being a division of Lot 4 of Certified Survey Map No. 10944, located in the Southeast 1/4 of the Southeast 1/4 of Section 35 and the Southwest 1/4 of the Southwest 1/4 of Section 36, Township 7 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin.

WAKC1007041

WAKC1007042

WAKC1007043

WAKC1007044

WAKC1007045

WAKC1007046

WAKC1007047

WAKC1007048

WAKC1007048

WAKC1007050

AMENDED & RESTATED DECLARATION OF EASEMENTS, COVENANTS & RESTRICTIONS: *Woodman's, Waukesha*
EXHIBIT B: INTENDED ONLY TO SHOW SPATIAL RELATIONSHIPS; MAY BE OTHERWISE ILLEGIBLE

