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**COVENANT REGARDING CERTAIN USES**

This COVENANT REGARDING CERTAIN USES ("Covenant") is made as of the 14 day of June, 2000, by and between **Benson Park Plaza, L.L.C.**, a Nebraska limited liability company ("**Benson**"), and **Albertson's, Inc.**, a Delaware corporation ("**Albertson's**").

**RECITALS:**

**A. Ownership.** Benson owns that certain real property described on **Schedule I** (the "**Benson Property**"); and Albertson's owns that certain real property described on **Schedule II** (the "**Albertson's Property**"). Each of said Properties is contained within that certain **plat of Benson Park Plaza, City of Omaha, County of Douglas, State of Nebraska** (the "**Plat**"). The Benson Property has been replatted in Benson Park Plaza Replat 1, City of Omaha, Douglas County, Nebraska (the "**Replat**").

**B. Properties Defined.** The Benson Property and the Albertson's Property are sometimes referred to herein separately as a "**Property**" or together as "**Properties**."

**C. Imposition of Covenant.** The parties wish to impose this Covenant on the Benson Property, as a covenant that runs with the land for the benefit of the Albertson's Property, and of the owner or occupant of the Albertson's Property, for the term hereof.

**WHEREFORE**, in exchange for the covenants and agreements set forth herein, Albertson's closing on its purchase of the Albertson's Property, and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby expressly acknowledged by both parties, the parties agree as set forth below.

**AGREEMENTS:**

**1. Supermarket Restriction.** Except as set forth in Paragraph 4 hereof, no part of the Benson Property shall be used as a supermarket, which shall be defined as any store or department containing more than 3,000 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption; for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; for the sale of alcoholic beverages for off-premises consumption; or as a convenience store ("**Convenience Store**") in the nature of a Circle K, 7-Eleven, AM-PM Minimart, or the like.

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2. **Fuel Restriction.** Except as set forth in Paragraph 4 hereof, no part of the Benson Property shall be used for a gas station or fuel service station ("**Fuel Center**"), or for the sale of gasoline, motor fuel, and/or other non-packaged petroleum products. As used herein, "Petroleum" shall mean gasoline, motor fuel, and/or other non-packaged petroleum products.

3. **Industrial Restriction.** No part of the Benson Property shall be used for industrial purposes.

4. **Exceptions to Restrictions.** Notwithstanding the language of Paragraphs 1 and 2 above, the following uses shall be allowed on the specific Property which is expressly designated in this Paragraph 4:

(a) One (1) Convenience Store (with or without Fuel Center) shall be allowed on Lot 6 of the Replat; and

(b) The following use shall be expressly permitted on only Lot 7 of the Replat, as an exception to the above restriction against a supermarket on the Benson Property, if such use is operating within a discount department store occupying at least 95,000 square feet of ground floor area, which discount department store is in the nature of a Kmart, ShopKo, Target, Wal-Mart, or the like ("**Qualified Department Store**"), all subject, however, to the following terms and conditions:

(i) A Qualified Department Store may utilize the lesser of fifteen percent (15%) or fifteen thousand (15,000) square feet (including aisle space and storage) of its building for the storage, sale or display of groceries, frozen meat, frozen seafood, frozen poultry, and/or dairy and bakery products for off-premises consumption; provided that (A) such use shall not include the sale of fresh produce, fresh poultry, fresh fish, or fresh meat, (B) such use shall not include an on-site bakery, (C) all bakery items sold in such Qualified Department Store shall be prepackaged and baked off-premises, and (D) such use shall be strictly incidental to the operation of the Qualified Department Store; and

(ii) A Qualified Department Store on Lot 7 of the Replat may engage in the operation of a delicatessen, sandwich counter, cafeteria or similar facility which sells food for on-premises or off-premises consumption, provided that the same is done strictly as an incidental part of the operation of a Qualified Department Store, and further provided that

any area(s) utilized for any such sandwich counter, cafeteria or delicatessen shall not exceed, in the aggregate, five thousand (5,000) square feet of floor area of the building on said Replat Lot 7.

**5. Effect of Sale by Owner.** If a party hereto sells all or any portion of its interest in its building or Property, such party shall thereupon be released and discharged from any and all obligations in connection with the Property sold by it arising under this Covenant after the sale and conveyance of title but shall remain liable for all obligations arising under this Covenant prior to the sale and conveyance of title. The new owner of such Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Covenant with respect to such Property or portion thereof after the date of sale and conveyance of title.

**6. Default.** If any owner of property within the Benson Property fails to perform any provision of this Covenant, which failure continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default, and the owner of the Albertson's Property may thereafter institute legal action against the defaulting owner for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law. No remedy herein conferred upon, or reserved to, any person shall exclude any other remedy herein or by law provided, but each shall be cumulative.

**7. Enforcement.** If the owner or occupant of the Albertson's Property initiates or defends any legal action or proceeding to enforce or interpret this Covenant, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal) as determined by the court in the same or a separate proceeding. The failure of a person to insist upon strict performance of any of the terms, covenants, or conditions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, or conditions contained herein by the same or any other person.

**8. General Provisions.** This Covenant shall be binding upon the owners of fee title to, and upon all occupants of, the Benson Property, and any portion of any such Property, their heirs, personal representatives, successors and assigns, and upon any person acquiring ownership or possession of a part of the Benson Property, or any interest therein, whether by operation of law or otherwise. Each term, covenant, condition and agreement contained herein respecting the

Benson Property shall be a burden on that Property; shall be appurtenant to and for the benefit of the Albertson's Property and each part thereof; shall run with the land for the term hereof; and may be waived in writing only by the owner of the Albertson's Property (and not by an occupant who is not the fee owner), in such owner's sole and absolute discretion. Benson acknowledges that this Covenant is a material consideration and motivation to Albertson's in Albertson's decision to go forward in purchasing the Albertson's Property.

**9. Term.** The term of this Covenant shall be the term of that certain Declaration of Restrictions and Grant of Easements ("**Declaration**") between the parties, dated and recorded concurrently herewith, encumbering Lots 1 through 6 and Outlot 1 of the Plat. This Covenant shall be extended automatically upon, and for the same amount of time as, any extension of the term of the Declaration.

**10. Mortgages.** No breach of this Covenant shall defeat or render invalid the lien of any mortgage or deed of trust (separately, "**Mortgage**") made in good faith for value, but this Covenant shall be binding upon and effective against any owner of Property (or part of any Property) whose title is acquired by foreclosure, trustee's sale or otherwise.

**11. Modification.** This Covenant may not be modified in any respect whatsoever, except with the consent of the owners of the Properties, and then only by written instrument duly executed and acknowledged by all of the required owners, duly recorded in the office of the recorder of Douglas County, Nebraska. No modification or early termination of this Covenant shall affect the rights of any holder of a Mortgage as to whom the owners of the Properties have been given written notice (including name and address), unless the Mortgage holder consents in writing to the modification or early termination.

**12. Notices.** All notices given pursuant to this Covenant shall be in writing and shall be given by personal delivery, United States mail, or United States express mail or other established express delivery service (such as DHL, Airborne, or Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of Douglas County, Nebraska. All notices to Benson or Albertson's shall be sent to the person and address set forth below:

Albertson's:       Albertson's, Inc.  
                           250 Parkcenter Boulevard  
                           P.O. Box 20  
                           Boise, ID 83726  
                           Attention: Legal Department

Benson: Benson Park Plaza, L.L.C.  
 c/o Seldin Company  
 Montclair Professional Center  
 13057 West Center Road  
 Omaha, NE 68144-3790  
 Attention: Randy Lenhoff

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Covenant shall be deemed given upon receipt.

For the purpose of this Covenant, the term “**receipt**” shall mean the earlier of any of the following: (a) the date of delivery of the notice or other document to the address specified pursuant to this section as shown on the return receipt, (b) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this section, or (c) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (i) the date of the attempted delivery or refusal to accept delivery, (ii) the date of the postmark on the return receipt, or (iii) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

**13. Severability.** If any term or provision of this Covenant or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Covenant or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Covenant shall be valid and shall be enforced to the extent permitted by law.

**14. Not a Partnership; No Third-Party Beneficiary Rights.** The provisions of this Covenant are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties. Nothing in this Covenant shall be construed to create a right or claim in any third party who is not a party hereto.

**15. Captions and Headings.** The captions and headings in this Covenant are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, Covenants, conditions or agreements contained herein.

**16. Entire Agreement.** This Covenant contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Covenant shall be construed as a whole and not strictly for or against any party, regardless of which party drafted it.

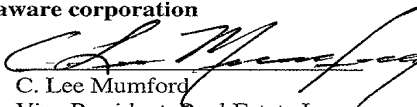
17. **Joint and Several Obligations.** If any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

18. **Recordation.** This Covenant shall be recorded in the office of the recorder of Douglas County, Nebraska.

EXECUTED as of the day and year first above written.

**ALBERTSON'S:**

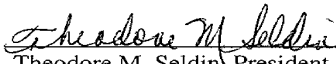
**Albertson's, Inc.**  
a Delaware corporation

BY:   
C. Lee Mumford  
Vice President, Real Estate Law

**SELLER:**

**Benson Park Plaza, L.L.C.,**  
a Nebraska limited liability company

BY: Northwood Properties, Inc., a  
Nebraska corporation, Manager

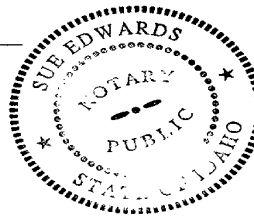
By:   
Theodore M. Seldin, President

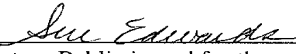
STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 15th day of June, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared **C. Lee Mumford**, to me known to be the Vice President, Real Estate Law, of **Albertson's, Inc.**, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:  
10/15/05



  
Notary Public in and for the  
State of Idaho  
Residing at Boise, Idaho

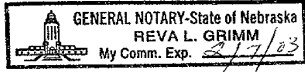
NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

STATE OF NEBRASKA )  
 ) ss.  
County of Douglas )

On this 14th day of JUNE, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared **Theodore M. Seldin**, to me known to be the President of **Northwood Properties, Inc.**, such corporation being the Manager of **Benson Park Plaza, L.L.C.**, the limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of said limited liability company.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:  
February 7, 2003



Reva L. Grimm  
Notary Public in and for the  
State of Nebraska  
Residing at Omaha, Nebraska

**Schedule I  
Legal Description of the Benson Property**

**Lots 2, 3, 4, 5, 6, 7, and 8, Benson Park Plaza, Replat 1,  
City of Omaha, Douglas County, Nebraska**

**Schedule II  
Legal Description of Albertson's Property**

**Lots 2 and 4, Benson Park Plaza, City of Omaha,  
Douglas County, Nebraska.**