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By

RICHARD N TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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SIGN EASEMENT AGREEMENT
(South Project Center Sign)

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16th THIS SIGN EASEMENT AGREEMENT ("Easement") is made and entered into this day of June, 2000, by and between ALBERTSON'S, INC., a Delaware corporation ("Albertson's"), HOME DEPOT U.S.A., INC., a Delaware corporation ("HD"), and BENSON PARK PLAZA, L.L.C., a Delaware limited liability company ("Benson").

RECITALS:

This Easement is made in contemplation of the following facts and understandings of the parties:

A) Albertson's is owner of that certain real property referred to as **Lot 4 of the plat of Benson Park Plaza, City of Omaha, Douglas County, State of Nebraska** (the "Plat"). Lot 4 of the Plat (the "Albertson's Property") is shown as Lot 4 south of Ames Avenue on the site plan attached hereto as **Exhibit "A"** and incorporated herein.

B) HD is owner of that certain real property referred to as **Lot 1 of Benson Park Plaza Replat 1, a replatting of Lots 7 through 14 of the Plat (the "Replat"), City of Omaha, Douglas County, State of Nebraska**. Lot 1 of the Replat (the "HD Property") is shown as Lot 1 north of Ames Avenue on **Exhibit "A"**.

C) Benson is owner of Lots 1, 3, 5 and 6 of the Plat, as shown on **Exhibit "A"**.

D) For convenience of reference, the following definitions shall apply:

(i) The entirety of the property comprising the Plat (including the Replat), as shown on Exhibit "A," is referred to herein as the "**Project**";

(ii) That portion of the Project consisting of Lots 1, 2, 3, 4, 5, and 6 and Outlot 1 of the Plat is referred to herein as the "**South Project**"; and

(iii) that portion of the Project consisting of Lots 1, 2, 3, 4, 5, 6, 7, and 8 of the Replat is referred to herein as the "**North Project**".

*Return
Box 16*

E) As part of the site improvements to be constructed in connection with the development of the South Project, a freestanding sign will be constructed and installed on the Albertson's Property at the approximate location shown on the Site Plan (herein the "**Center Sign**").

NOW, THEREFORE, in exchange for good and valuable consideration, including each party's proceeding to closing on its purchase of the Albertson's Property (as to Albertson's), the HD Property (as to HD), and the Benson Property (as to Benson), the receipt and sufficiency of such consideration being hereby acknowledged; and on the basis of the foregoing facts and understandings of the parties, the parties do hereby agree as follows:

AGREEMENTS:

1. **Grant of Easement by Albertson's.** Albertson's hereby grants to HD the right and easement (the "**Easement**") to install, maintain, repair and replace a sign panel on the Center Sign, and any replacement thereof, which Easement shall include rights of access to the Center Sign over and across the Common Areas of the Albertson's Property (as such Common Areas may be defined in the Declaration referred to below, as amended from time to time). The rights and obligations of this Easement shall also extend to any successor of HD that occupies at least 75% of the floor area of a building of at least 100,000 square feet of floor area (the "**HD Building**") to be constructed by HD on the HD Property (such successor occupying the requisite square footage being referred to herein as the "**HD Successor**"). Notwithstanding anything herein to the contrary, this Easement shall not be given, and no rights hereunder are conferred, on HD or any HD Successor to place a designation on the Center Sign for any operation or use which includes within its business on the HD Property, either (a) a supermarket ("**supermarket**" being defined herein 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), or (b) a business selling ethical pharmaceutical products, or commonly viewed as a pharmacy, or requiring the services of a registered or licensed pharmacist.

2. **Term of Easement.** The term of this Easement shall continue for so long as HD or any HD Successor shall occupy 75% or more of the floor area of the HD Building, or until expiration or other termination of the Declaration, whichever is earlier; provided, however, that temporary cessations of such occupancy of the HD Building for a period of not more than 24 consecutive months, or temporary cessations resulting from repair due to casualty or remodeling work expeditiously pursued, shall not result in the cessation of this Easement.

3. **Indemnity.** HD shall indemnify, defend and hold harmless Albertson's (and Albertson's successors, assigns, heirs, and representatives) from and against any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action of any kind whatsoever (collectively and separately, "**Claim[s]**") relating to or arising from HD's use and exercise of this Easement, except to the extent such Claims arise from

the negligence or willful misconduct of Albertson's, its employees, agents, or contractors.

4. **Sign Design.** The plans and specifications for the Center Sign shall be subject to the mutual approval of Albertson's and HD, which approval shall not be unreasonably withheld, conditioned or delayed. Each of Albertson's and HD shall have the right to install their respective standard logo sign panels on the Center Sign. The logos on the Center Sign for each of Albertson's and HD shall be of equal size unless Albertson's and HD shall otherwise agree, with the Albertson's sign panel in the top position on each face of the Center Sign and HD's sign panel in the second down position on each face of the Center Sign. It is acknowledged and understood that other parties have rights regarding the Center Sign as provided in that certain Declaration of Restrictions and Grant of Easements now encumbering the South Project, recorded concurrently herewith (the "**Declaration**"). Albertson's makes no representations or warranties regarding those rights, which are a matter of public record.

5. **Installation of Center Sign.** It is anticipated that the Center Sign will be installed as part of the Site Work, pursuant to the terms of that certain Development Agreement encumbering the South Project and recorded concurrently herewith (the "**Development Agreement**"). Albertson's makes no representations, warranties, or guarantees regarding the schedule for construction, or the design, of the Center Sign.

6. **Costs.** HD shall pay its share of (i) the cost of initial construction and installation of the Center Sign, and (ii) the cost of electrical power serving the Center Sign, and (iii) the ongoing costs of insurance, taxes, maintenance, repairs and replacement of the Center Sign structure. Each party shall be solely responsible for payment of the cost of its sign panel and the installation thereof and for the cost of the ongoing maintenance and repairs of such sign panel. Each party's share of the foregoing costs shall be a fraction of such costs, the numerator of which is the area of the sign panel or panels which such party is entitled to install on the Center Sign, and the denominator of which is the total area of all sign panels which parties are entitled to installed on the Center Sign. Upon completion of the initial construction and installation of the Center Sign structure, HD shall pay its share of the costs thereof directly to the party who paid for such work. HD shall pay its share of the ongoing costs of electrical power, insurance, maintenance, repairs and replacement of the Center Sign structure to the Maintenance Director or other party performing such work as provided in the "CAMA" referred to below.

7. **Maintenance and Repairs.**

(a) It is anticipated that the ongoing maintenance of the Center Sign structure will be performed by the Maintenance Director or other responsible party as specified in that certain Common Area Maintenance Agreement encumbering the South Project, recorded concurrently herewith ("**CAMA**"). Albertson's is not acting as Maintenance Director and is otherwise not responsible under the CAMA for maintaining the Center Sign.

(b) Albertson's agrees that it will exercise commercially reasonable, economically feasible efforts to enforce the terms of the CAMA as against the party then responsible for such maintenance, but shall have no liability to HD for such other party's failures

to perform its obligations under the CAMA relating to maintenance of the Center Sign.

(c) Albertson's and HD shall each at its sole cost maintain its individual sign panel(s) in good condition and repair. HD agrees that the Maintenance Director or other party responsible under the CAMA for maintenance of the Center Sign shall have direct rights to enforce HD's payment obligations under this Easement, and shall be deemed a third party beneficiary of HD's obligations (but not its rights) hereunder.

(d) If, during the term of this Agreement, the Center Sign is not being properly repaired or maintained in accordance with the standards of quality shopping centers in Douglas County, Nebraska, HD shall be entitled to provide thirty (30) days notice to the owner of the Albertson's Property and the owner of Lot 1 of the Plat, to the effect that HD intends to perform reasonably needed maintenance and/or repair (but not replacement) of the Center Sign. If, upon expiration of such 30-day notice period, neither Albertson's nor the owner of Lot 1 of the Plat has commenced repair of the Center Sign (or committed in writing to do so), then HD shall have the right to repair the Center Sign, and each party entitled to display a designation on the Center Sign shall reimburse HD its share of the reasonable cost of such repair. Such amount shall be paid within thirty (30) days following receipt by such owner of a detailed billing, along with backup documentation of the work performed and the amount paid therefor.

(e) If any party to this Easement shall assume the obligation to maintain and repair the Center Sign, pursuant to the terms of this Agreement, the CAMA, or by side agreement among the parties having rights to the Center Sign, the party assuming such obligation shall bill the parties responsible for the reasonable cost of such maintenance and repairs on a monthly basis, or at such other interval as may be reasonably agreed upon by such responsible parties, and each responsible party shall pay its prorata share of such reasonable costs within thirty (30) days of receipt of such billing. Further, if any amount owing hereunder is not paid when due and remains unpaid at the end of 10 days following written notice of delinquency, such amount shall bear interest from the original due date until paid, at a rate equal to the lesser of (i) two percentage points above prime rate (defined below), or (ii) the maximum lawful rate. As used herein, the term "prime rate" shall mean the prime rate as published from time to time by *The Wall Street Journal*.

8. Notices.

(a) Generally. All notices given pursuant to this Easement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, addressed to the appropriate party at the address set forth below:

Albertson's:	Albertson's, Inc. 250 Parkcenter Blvd. P.O. Box 20 Boise, Idaho 83726 <u>Attn:</u> Property Management
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HD: Home Depot U.S.A., Inc.
 1400 Dundee Road
 Arlington Heights, Illinois 60004
Attn: Mr. James T. McPhail

Concurrent copy to: Altman, Kritzer & Levick, Ltd.
 1101 Perimeter Drive, Suite 700
 Schaumburg, Illinois 60173
Attn: Thomas B. Cahill, Esq.

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

provided, however, that (a) any notice of default shall be sent return receipt requested, and (b) in order to be effective, a copy of any notice of default sent to Albertson's must also be sent concurrently to Albertson's Legal Department at the above address or any alternative address specified pursuant to this Paragraph 8. 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 party. All notices given pursuant to this Easement shall be deemed given upon receipt.

(b) Receipt. For the purpose of this Easement, the term "**receipt**" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

9. Application to Successors. For the term hereof the easements and other rights herein granted shall be deemed covenants running with the land, shall burden the Albertson's Property for the benefit of the HD Property, and of HD and an HD Successor that satisfies the above requirements, and shall be binding upon any successor owner of the Albertson's Property. The obligations of HD hereunder shall be deemed covenants running with the land, shall burden the HD Property for the benefit of Albertson's and the Albertson's Property, and any successor owner or occupant of the Albertson's Property, and shall be binding upon any successor owner of the HD Property.

10. Discontinuation of Sign Designation Rights. If at any time during the term of this Agreement, HD (or an HD Successor) determines that it no longer desires to display a

designation on the Center Sign, HD (or the HD Successor) may so notify Albertson's and the owner of Lot 1 of the Plat. The parties shall negotiate in good faith for an arrangement under which HD's right to be on the Center Sign would be terminated (including termination of this Agreement and of the signage provisions allowing the owner of Lot 1 of the Plat to install HD's sign designation on the Center Sign, within the Declaration). In such event, HD (or the HD Successor) shall pay the reasonable cost of renovating or reconfiguring the Center Sign to remove the HD designation and leave the Center Sign in an aesthetically pleasing and architecturally sound condition.

11. Attorney's Fees. If a party initiates or defends any legal action or proceeding in any way connected with this Easement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

12. Applicable Law. This Easement shall be construed in accordance with the laws of the State of Nebraska.

13. No Implied Grant of Third Party Beneficiary Rights. Except as expressly set forth in Paragraph 5 hereof, nothing in this Easement is intended, or shall be construed, as a grant of any third party beneficiary right under the Declaration, CAMA, or Development Agreement, to any person or party. This Easement shall not be deemed to grant HD a right of enforcement of any provision of the Declaration, CAMA, or Development Agreement.

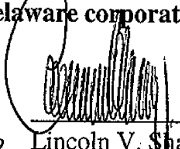
14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to constitute one and the same agreement.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Easement as of the day and year first above written.

ALBERTSON'S:
Albertson's, Inc.,
a Delaware corporation

HD:
Home Depot U.S.A., Inc.,
a Delaware corporation

BY:  _____
slb Lincoln V. Sharp, Jr.
Vice President, Real Estate Law

BY: _____
Printed name: _____
Title: _____

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

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

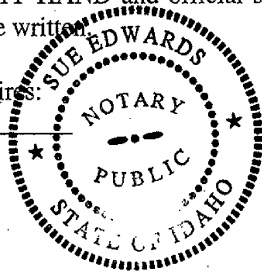
By: _____
Theodore M. Seldin, President

STATE OF IDAHO)
) ss.
County of Ada)

On this 20th day of June, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared **Lincoln V. Sharp, Jr.**, 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



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

STATE OF GEORGIA)
) ss.
County of _____)

On this _____ day of June, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ to me known to be the _____ of **Home Depot U.S.A., 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 limited liability company, 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:

Notary Public in and for the State of Georgia
Residing at _____

Jun-13-00 03:11pm From-ALTMAN KRITZER & LEVICK

847-240-0344

T-722 P.11/13 F-164

IN WITNESS WHEREOF, the parties have executed this Easement as of the day and year first above written.

ALBERTSON'S:
Albertson's, Inc.,
a Delaware corporation

HD:
Home Depot U.S.A., INC.,
a Delaware corporation

BY: _____
Lincoln V. Sharp, Jr.
Vice President, Real Estate Law

BY: 
Printed name: **KATHRYN E. LEE** TBC
Title: **V.P. REAL ESTATE LAW GROU**

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

JUN 13 2008

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

By: _____
Theodore M. Seldin, President

SIGN EASEMENT AGREEMENT, page 7

Jun-13-00 03:11pm From-ALTMAN KRITZER & LEVICK

847-240-0344

T-722 P.12/33 F-164

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of June, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared **Lincoln V. Sharp, Jr.**, 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:

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

STATE OF GEORGIA)
) ss.
County of Cobb)

On this 13 day of June, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Kathryn E. Lee to me known to be the VP Real Estate Law Group of **Home Depot U.S.A., 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 limited liability company, 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:

Notary Public, Fulton County, Georgia
My Commission Expires July 11, 2000

Barbara Lawrence
Notary Public in and for the State of Georgia
Residing at Atlanta, Georgia

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

IN WITNESS WHEREOF, the parties have executed this Easement as of the day and year first above written.

ALBERTSON'S:
Albertson's, Inc.,
a Delaware corporation

HD:
Home Depot U.S.A., INC.,
a Delaware corporation

BY: _____
Lincoln V. Sharp, Jr.
Vice President, Real Estate Law

BY: _____
Printed name: _____
Title: _____

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

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

By: Theodore M. Seldin
Theodore M. Seldin, President

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.

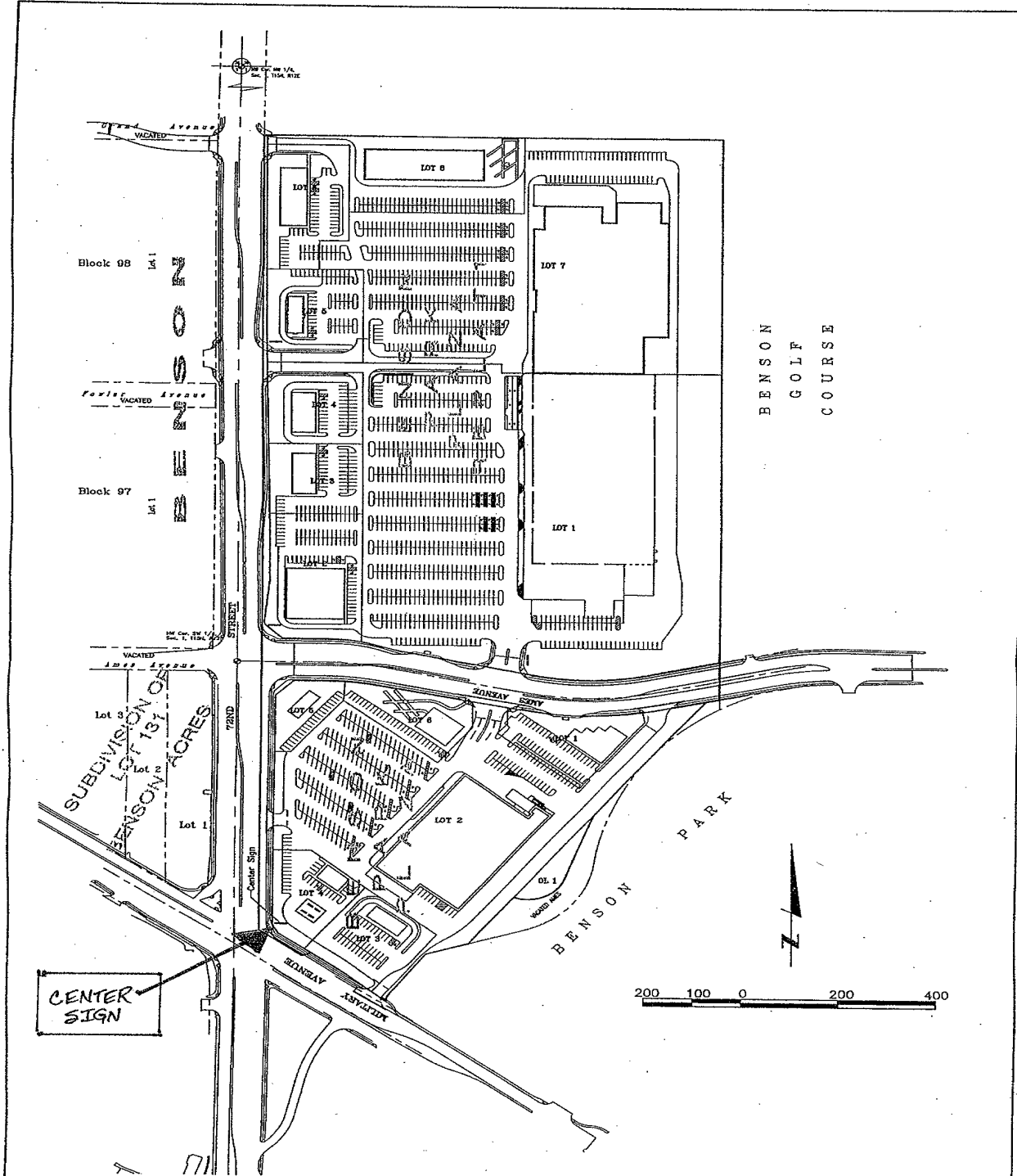
WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:
February 7, 2003



Notary Public in and for the
State of Nebraska
Residing at Omaha, Nebraska





**EXHIBIT A SIGN EASEMENT AGREEMENT
"ALBERTSON'S TO HOME DEPOT"**

EXHIBITS-1

	<p>lamp, rynearson & associates, inc. engineers surveyors planners</p>	<p>job number-teeke 98013.00-010 date 05/13/2000 drawn by PWB designer NLP</p>
<p>14710 west dodge road, suite 100 omaha, nebraska 68164-2029</p>	<p>ph 402-498-2498 fax 402-498-2730</p>	