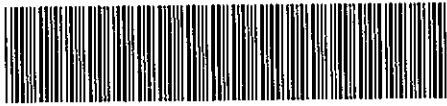




1342 485 MISC



08474 00 485-491

Nebr Doc  
Stamp Tax

Date

\$

By

RICHARD N. TAKECH  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

00 JUN 26 AM 11:28

RECEIVED

Aun: Legal Dept (SLB - #ZZCY)  
250 Parkcenter Boulevard  
Boise, ID 83706

*Alice* 2900 43-03445

**SIGN EASEMENT AGREEMENT**  
(North Project Center Sign)

FEE 2900 FB 43-03445  
SKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP MB  
8 DEL \_\_\_\_\_ SCAN BW FV \_\_\_\_\_

THIS SIGN EASEMENT AGREEMENT ("Agreement") is made and entered into this 16<sup>th</sup> 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:**

This Agreement 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 2 of the Plat of Benson Park Plaza, City of Omaha, Douglas County, State of Nebraska.** Lot 2 is part of the "South Project" and is shown as such on the site plan attached hereto as **EXHIBIT "A"** and incorporated herein (the "**Site Plan**").

B) Benson is the owner of that certain real property referred to as **Lots 2 through 8, inclusive, of Benson Park Plaza Replat 1.** The Benson Property is part of the "North Project" shown as such on the Site Plan.

C) For convenience of reference, the following definitions shall apply: (i) the entirety of the property known as Benson Park Plaza, as shown on the Site Plan, both north and south of Ames Avenue, is referred to herein as the "**Project**"; (ii) that portion of the Project lying south of Ames Avenue, consisting of Lots 1, 2, 3, 4, 5, 6 and Outlot 1, is referred to herein as the "**South Project**"; (iii) that portion of the Project lying north of Ames Avenue, consisting of Lots 1, 2, 3, 4, 5, 6, 7 and 8, is referred to herein as the "**North Project**"; (iv) Lot 2 of the South Project owned by Albertson's is referred to herein as the "**Albertson's Property**"; and (v) Lots 2 through 8 of the North Project owned by Benson are referred to herein collectively the "**Benson Property**."

D) As part of the site improvements to be constructed in connection with the development of the North Project, Benson will construct a freestanding sign on Lot 2 of the Benson Property at the approximate location shown on the Site Plan (herein the "**Center Sign**").

*Return  
Box 16  
Spence*

E) Albertson's desires to install and maintain a sign panel on the Center Sign on which will be designated the name of the principal occupant of the building to be constructed on the Albertson's Property. Benson is willing to allow Albertson's to install and maintain such sign panel, subject to the terms and conditions herein stated.

NOW, THEREFORE, in exchange for good and valuable consideration, including Albertson's proceeding to close on the purchase of the Albertson's Property, and other good and valuable consideration, the receipt and sufficiency of which are 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 Benson.** Benson hereby grants to Albertson's, and to any successor that occupies 75% or more of the floor area of the 60,000 +/- square foot building to be constructed by Albertson's on the Albertson's Property (any such successor being referred to herein as a "**Albertson's Successor**") and such building as the "**Albertson's Building**"), the right and easement to install, maintain, repair and replace a sign panel on the Center Sign, and any replacement thereof, with rights of access thereto over and across the Common Areas of the Benson Property. The term of the easement and other signage rights herein granted shall continue for so long as Albertson's or any Albertson's Successor shall occupy 75% or more of the floor area of the Albertson's Building; provided, however, that temporary cessations of such occupancy of the Albertson's 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 such easement and related rights. Albertson's shall indemnify, defend and hold harmless Benson (and Benson'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 Albertson's use and exercise of the easement rights granted herein, except to the extent such Claims arise from the negligence or willful misconduct of Benson, or Benson's employees, agents, or contractors.

2. **Sign Design.** The plans and specifications for the Center Sign shall be subject to the mutual approval of Albertson's and Benson, which approval shall not be unreasonably withheld, conditioned or delayed. Albertson's, the occupant of Lot 1 of the North Project (initially "**Home Depot**") and other major occupants of the Project designated by Benson 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 Home Depot and Albertson's shall be of equal size unless Benson, Home Depot and Albertson's shall otherwise agree, with the Home Depot sign panel in the top position on each face of the Center Sign and Albertson's sign panel in the second down position on each face of the Center Sign. The logo sign panels of other major occupants of the Project

designated by Benson shall be below and of size not exceeding the size of the Home Depot and Albertson's sign panels.

**3. Installation of Center Sign.** The Center Sign will be installed by Benson as part of the Site Work for the North Project.

**4. Repair and Costs.**

(a) Albertson's shall pay its share of the cost of initial design, construction and installation of the Center Sign, (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. Home Depot (under separate agreement with Benson), Albertson's, and Benson shall be solely responsible for payment of the cost of their respective sign panels and the installation thereof and for the cost of the ongoing maintenance and repairs of such sign panels. 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 install on the Center Sign. Upon completion of the initial construction and installation of the Center Sign structure, Albertson's shall pay its share of the reasonable costs thereof directly to Benson, which amount shall be due and payable within thirty (30) days following Albertson's receipt of Benson's invoice accompanied by proof of payment of the amounts for which reimbursement is requested.

(b) Albertson's shall pay its share of the reasonable ongoing costs referred to in Paragraph 4(a), to Benson or other party performing the maintenance of the Center Sign, which amounts shall be paid quarterly in arrears, within thirty (30) days following Albertson's receipt of Benson's or such other party's invoice accompanied by proof of payment of the amounts for which reimbursement is requested.

(c) 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, Albertson's shall be entitled to provide thirty (30) days notice to the owner of the Benson Property, to the effect that Albertson's 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, the owner of the Benson Property has not commenced repair of the Center Sign (or committed in writing to do so), then Albertson's shall have the right to repair the Center Sign, and Benson (or its successors who are entitled to display designations on the Center Sign) shall reimburse Albertson's their 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.

**5. Default.** If either party to this Agreement shall fail to perform its obligations hereunder, and if such failure remains uncured at the end of thirty (30) days following the defaulting party's receipt of a written notice thereof, such party shall be deemed in default

hereunder, and in such circumstance the non-defaulting party shall have such remedies at law or in equity as may be available for such default. Further, any amount not paid when due, which remains unpaid at the end of ten (10) days following written notice of delinquency, shall bear interest from the original due date until paid at a rate equal to the lesser of (i) two (2) percentage points above the Prime Rate, 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*.

## 6. Notices.

(a) Generally. All notices given pursuant to this Agreement 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
--------------	--

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

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 6. 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 Agreement shall be deemed given upon receipt.

(b) Receipt. For the purpose of this Agreement, 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.

7. **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 Benson Property for the benefit of Albertson's and any Albertson's Successor that satisfies the above requirements, and for the benefit of the Albertson's Property, and shall be binding upon any successor owner of the Benson Property.

8. **Attorney's Fees.** If a party initiates or defends any legal action or proceeding in any way connected with this Agreement, 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.

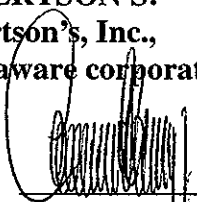
9. **Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of Nebraska.

10. **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.

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

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

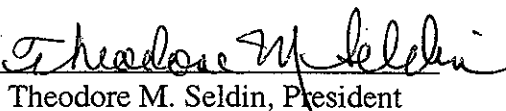
BY:

  
\_\_\_\_\_  
Lincoln V. Sharp, Jr.  
Vice President, Real Estate Law

slB

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

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

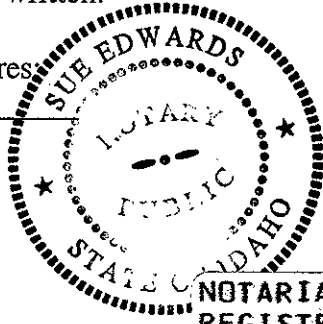
By:   
Theodore M. Seldin, President

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



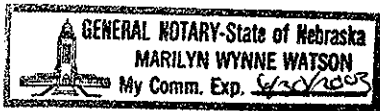
Sue Edwards  
Notary Public in and for the  
State of Idaho  
Residing at Boise, Idaho

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

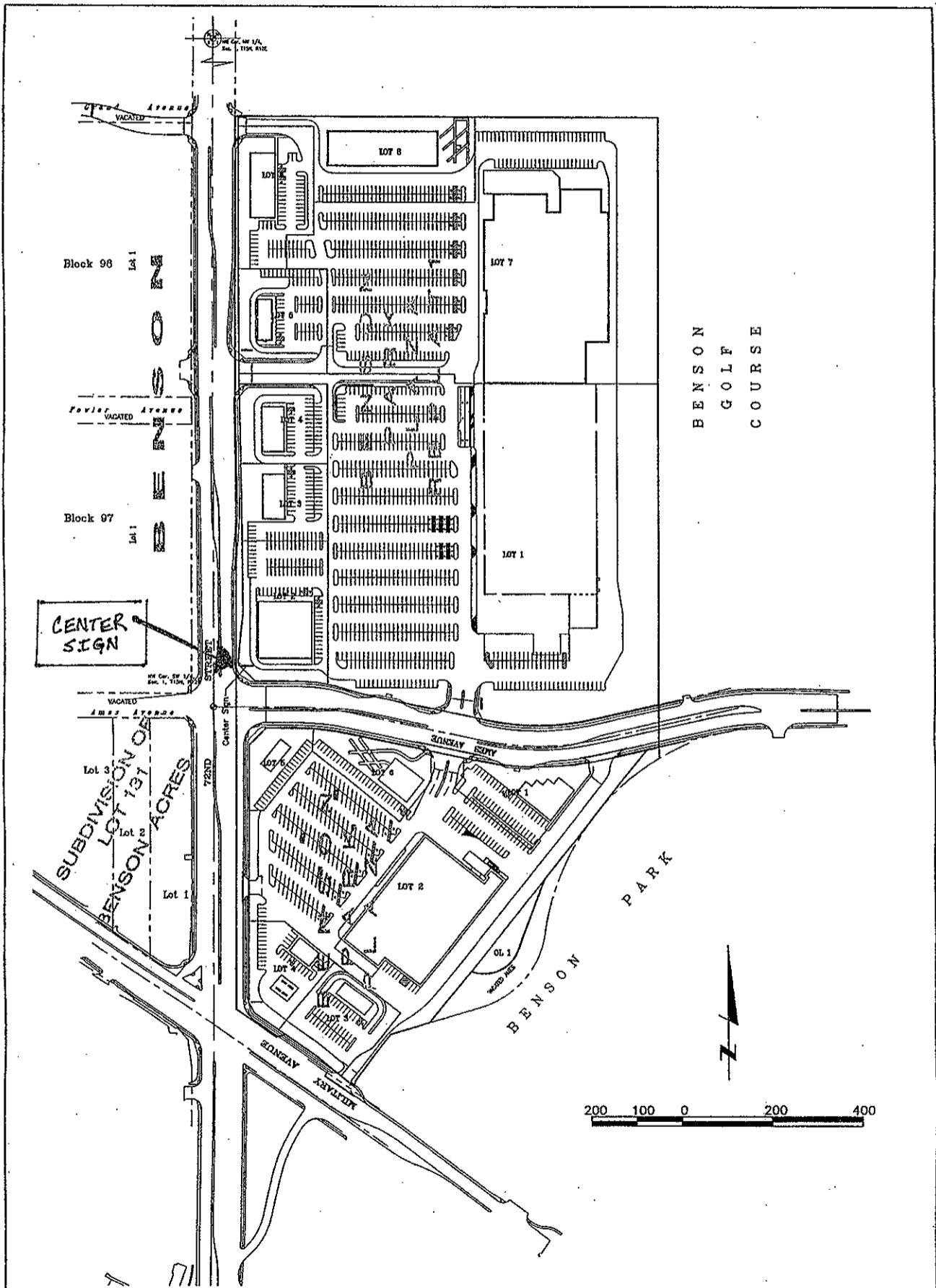
STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On this 22 day of June, 2000, before me, the undersigned, a Notary Public, duly commissioned and qualified for said County, personally came Theodore M. Seldin, President of Northwood Properties, Inc., who is the Manager of Benson Park Plaza, L.L.C., to me known to be the identical person whose name is subscribed to the foregoing Agreement and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said limited liability company.

WITNESS MY HAND and Notarial Seal on the day and year last above written.



Marilyn Wynne Watson  
Notary Public



**EXHIBIT A SIGN EASEMENT AGREEMENT  
"BENSON PARK PLAZA L.L.C. TO ALBERTSON'S"**

EXHIBITS-2



**lamp, rynearson & associates, inc.**  
engineers      surveyors      planners

14710 west dodge road, suite 100  
Omaha, nebraska 68154-2022

ph 402-400-2400  
fax 402-406-2730

job number-taska  
98013.00-010  
date 06/13/2000  
drawn by PWB  
d-jlms  
NLP