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ABS 1347

21-34-201-007
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MEMORANDUM OF LEASE TERMINATION AND USE RESTRICTION AGREEMENT

THIS MEMORANDUM OF LEASE TERMINATION AND USE RESTRICTION AGREEMENT ("**Agreement**") is made as of the 21st day of January, 2009, by and between Q-6 Associates, a Utah limited liability company, Kimwell Corporation, a Utah corporation, Solgarden, LLC, a Utah limited liability company and Sundborn, LLC, a Utah limited liability company (collectively "**Landlord**"), and New Albertson's, Inc., an Ohio corporation ("**Tenant**"), individually referred to herein as a "**Party**" or collectively as the "**Parties**."

1. Landlord, as successor in interest to Briarwood Associates, and Tenant, previously a Delaware corporation and as successor in interest to Albertson's, Inc., are parties to that certain Shopping Center Lease dated March 12, 1976, a memorandum of which was recorded in the records of Salt Lake County, Utah, in Book 4178, Page 295, as amended by that certain First Amendment to Shopping Center Lease dated April 2, 1976, that certain Second Amendment to Shopping Center Lease dated May 25, 1976, that certain Third Amendment to Shopping Center Lease dated February 2, 1977, recorded in Book 4453, Page 473 on February 24, 1977, that certain Fourth Amendment to Shopping Center Lease dated June 24, 1977, recorded in Book 4546, Page 1264 on September 12, 1977, and that certain Fifth Amendment to Shopping Center Lease dated September 22, 1987 ("**Lease**"). The current term of the Lease will expire on March 31, 2010.

2. Pursuant to the Lease, Landlord leases to Tenant that certain real property located at 7839 South 1700 West in the City of West Jordan, County of Salt Lake, State of Utah, more particular described in Schedule I attached hereto and depicted on Exhibit A, attached hereto (the "**Premises**"). The Premises are a part of that certain real property more particularly depicted on Exhibit A ("**Shopping Center**").

3. Pursuant to the Lease Termination Agreement dated January 21, 2009 ("**Termination Agreement**"), Landlord and Tenant have agreed to terminate the Lease as of January 31, 2009 ("**Termination Date**"). On and after the Termination Date (i) all of

Tenant's rights to possession of the Premises shall cease, and (ii) neither Party shall have any further obligations under the Lease.

4. Other provisions regarding the termination of the Lease shall be as provided in the Termination Agreement. In the event of a conflict between the terms hereof and the terms of the Termination Agreement, the Termination Agreement shall control.

5. Use Restriction:

(a) In consideration for the termination of the Lease, the Landlord agrees that it shall not use, let or sublet or permit to the use, letting or subletting of any store on Premises or the Shopping Center (a) as a supermarket (which shall be defined as any store or department containing at least 3,500 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption); (b) for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; or (d) for the parking of motor vehicles in connection with the sale or storage of food for off premises consumption (the "**Restriction**"). Notwithstanding the preceding the Restriction would not apply to (i) the operation of an ethnic type grocery store, (ii) a convenience store not to exceed 3,500 square feet, or (iii) a dollar store, defined as any store primarily devoted to the deep-discount retail sale of general merchandise and/or food for off-premises consumption including, without limitation, single price point retailers such as All-a-Dollar, 99 Cents Only, Family Dollar, Dollar Tree, Dollar General and Big Lots, provided that in no event shall any such dollar store use more than ~~2,000~~ ^{3,500} square feet of combined floor area for the sale of food.

(b) The Restriction created hereby shall inure to the benefit of all property owned or leased by Tenant or Tenant's affiliates or their successors or assigns and located within a five (5) mile radius of the Premises and shall inure to the benefit Tenant, Tenant's affiliates and their successors or assigns and may only be waived in a writing signed by Tenant or Tenant's Affiliates or their successors or assigns without the joinder of any other person. The Restriction shall be binding on Landlord, and on any person acquiring the Premises or the Shopping Center, or any portion thereof, or any interest therein, whether by operation of law or otherwise. "**Affiliates**" shall mean a branch, division, parent or subsidiary of a Party, its successors or assigns, or any company in which a Party, its successors or assigns own (directly or indirectly) five percent (5%) or more of the voting stock or interest or which is a company that owns (directly or indirectly) five percent (5%) or more of the voting stock or interest of a Party, its successors or assigns.

(c) In the event of any violation or threatened violation by any person of the Restriction, each Party shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies as provided by law. If in any judicial proceeding a court shall hold that the duration and/or scope of the Restriction are unreasonable under circumstances then existing, the Parties, and their respective successors, assigns and affiliates, agree that

the maximum allowable duration and/or scope reasonable under the circumstances shall be substituted for the duration and/or scope stated in this Restriction.

(d) The failure of Tenant or Tenant successors or assigns to insist upon strict performance of the Restriction shall not be deemed a waiver of any rights or remedies that Tenant, its successors or assigns, may have and shall not be deemed a waiver of any subsequent breach.

(e) Landlord represents and warrants that it owns the Leased Premises in fee simple and has full right and authority to restrict the Leased Premises and that no third parties (including, without limitation, any lender or mortgagee) have or will have any right to prevent, approve or control in any manner the terms of this restriction.

6. This Memorandum of Lease Termination and Use Restriction Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument. All the terms, conditions and covenants of the Termination Agreement, which may be inspected at the offices of the Tenant at 250 Parkcenter Blvd., P.O. Box 20, Boise, Idaho 83726, are incorporated herein by this reference.

[Signatures on next page.]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Lease
Termination and Use Restriction Agreement, as of the date first above written.

LANDLORD:

Q-6 Associates, LLC
a Utah limited liability company

By: _____
Name: _____
Title: _____

Kimwell Corporation
a Utah corporation

By: _____
Name: _____
Title: _____

Solgarden, LLC
a Utah limited liability company



By: _____
Name: _____
Title: _____

Sundborn, LLC
a Utah limited liability company

By: _____
Name: _____
Title: _____

TENANT:

New Albertson's, Inc.
an Ohio corporation

By: 
Name: John P. Brescione
Title: VICE PRESIDENT 

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Lease Termination and Use Restriction Agreement, as of the date first above written.

LANDLORD:

Q-6 Associates, LLC
a Utah limited liability company

By: [Signature]
Name: Q-6 Associates, LLC
Title: Manager

Kimwell Corporation
a Utah corporation

By: [Signature]
Name: Kimwell Corporation
Title: President

Solgarden, LLC
a Utah limited liability company

By: [Signature]
Name: James G. Seaberg
Title: Manager

Sundborn, LLC
a Utah limited liability company

By: [Signature]
Name: James G. Seaberg
Title: Manager

TENANT:

New Albertson's, Inc.
an Ohio corporation

By: _____
Name: _____
Title: _____

STATE OF MN)
County of HENNEPIN) ss.

On this 26th day of January, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared John P. Breedlove, to me known to be the Vice President of New Albertson's, Inc., an Ohio corporation, 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:




Linda L. Kolman
Notary Public in and for the
State of Minnesota
Residing at Prior Lake, Scott County

STATE OF Utah)
) ss.
County of Salt Lake)

On this 19 day of February, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Victor Kimball, to me known to be the Manager, of - Kimwell Corporation, an Utah limited liability company, the company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said 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:
1-30-2012



Notary Public in and for the
State of Utah
Residing at SLC UT

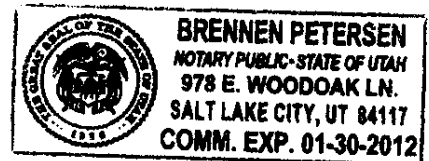
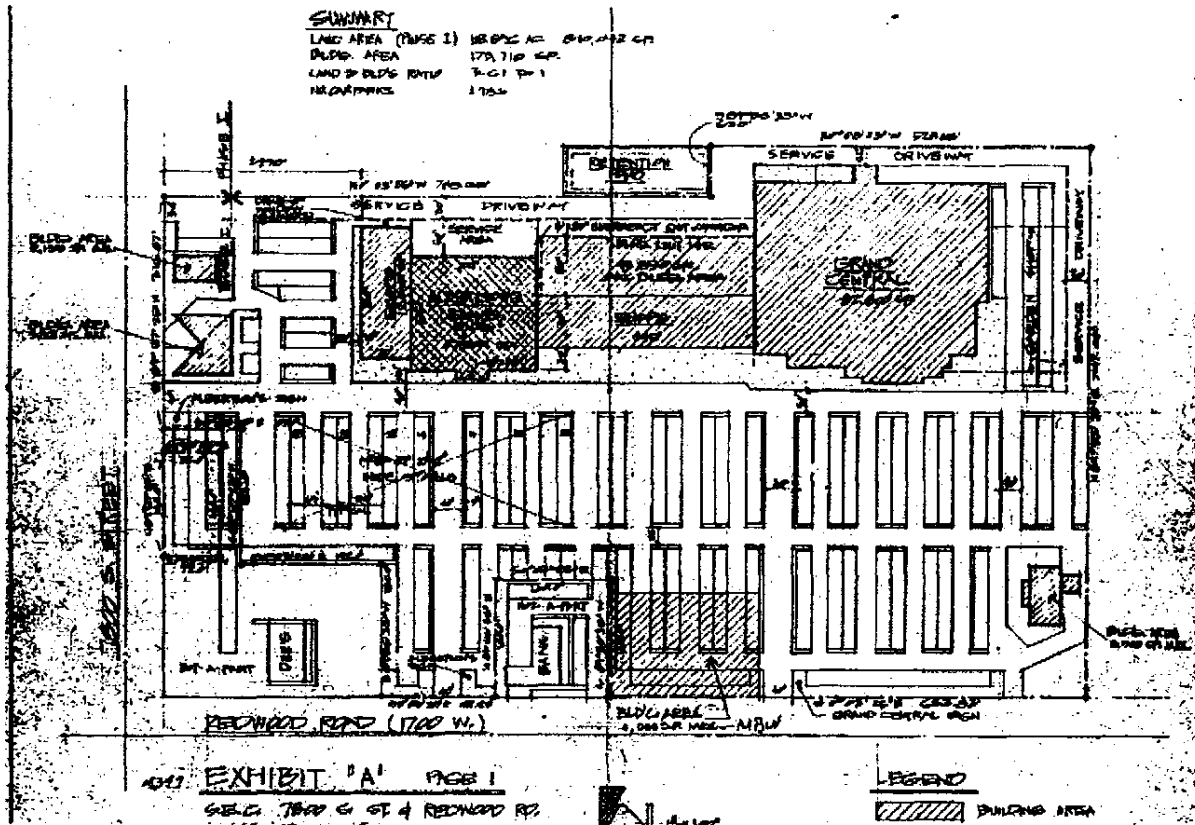


EXHIBIT A

SITE PLAN OF SHOPPING CENTER



SCHEDULE I

LEGAL DESCRIPTION OF PREMISES

That certain real property situate in the City of West Jordan, County of Salt Lake, State of Utah more particularly described as follows:

Beginning at a point on the East line of Redwood Road, said point being South 0°03'25" East 352.00 feet and North 89°56'35" East 53.00 feet from the North Quarter Corner of Section 34, Township 2 South, Range 1 West, Salt Lake Base & Meridian; and running thence along said East line South 0°03'25" East 157.25 feet; thence North 89°56'35" East 160.00 feet; thence South 0°03'25" East 160.00 feet; thence South 89°56'35" West 160.00 feet to the aforementioned East line; thence along said East line South 0°03'25" East 653.83 feet to the South line of the Northwest Quarter of the Northeast Quarter of said Section 34; thence along said South line North 89°53'37" East 747.00 feet; thence North 0°03'25" West 520.65 feet; thence South 89°56'35" West 67.00 feet; thence North 0°03'25" West 748.66 feet to the South line of 7800 South Street; thence along said South line South 89°57'25" West 316.87 feet; thence South 0°02'35" East 107.00 feet; thence South 89°57'25" West 183.10 feet; thence South 0°03'25" East 192.00 feet; thence South 89°56'35" West 180.00 feet to the point of beginning, containing 18.349 Acres.

ALSO

Beginning at a point on the South line of 7800 South Street, said point being North 89°57'25" East 246.10 feet and South 0°02'35" East 53.00 feet from the North Quarter Corner of Section 34, Township 2 South, Range 1 West, Salt Lake Base & Meridian; and running thence along said South line North 89°57'25" East 140.00 feet; thence South 0°02'35" East 77.00 feet; thence South 89°57'25" West 140.00 feet; thence North 0°02'35" West 77.00 feet to the point of beginning, containing 0.247 Acre.