

Record and return to:
Albertson's Companies
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
Attn: Real Estate Law (ABS #416, Bellingham, WA)

Whatcom County, WA
Total:\$82.00 Pgs=9
D/RC
Request of: CHICAGO TITLE INSURANCE

2018-0202258

02/23/2018 02:45 PM



Document Title or Titles: USE RESTRICTION

Reference Nos. of Documents Assigned or Released: None.

Name of Grantor:

ABS WA-O LLC, a Delaware limited liability company
GGD OAKDALE, LLC, a California limited liability company

Name of Grantee:

ABS WA-O LLC, a Delaware limited liability company
GGD OAKDALE, LLC, a California limited liability company

Abbreviated Legal Description: Lot 2, Amended Albertson Area Short Plat and Lot 2, Sprouse Lot Line Adjustment

Additional Legal Description Found On: *PAGE 9*

Assessor's Property Tax Parcel Numbers or Account Number: 380213-328008-0000,
380213-345008-0000

Grantors:	ABS WA-O LLC, a Delaware limited liability company GGD OAKDALE, LLC, a California limited liability company
Grantees:	ABS WA-O LLC, a Delaware limited liability company GGD OAKDALE, LLC, a California limited liability company
Legal Description (abbreviated):	Lot 2, Amended Albertson Area Short Plat and Lot 2, Sprouse Lot Line Adjustment
Additional on:	<i>PAGE 9</i>
Assessor's Tax Parcel ID #:	380213-328008-0000, 380213-345008-0000
Reference No. of Document Modified:	N/A

USE RESTRICTION

THIS USE RESTRICTION ("Agreement") is dated as of February 23rd, 2018, and is made and entered into by and **ABS WA-O LLC**, a Delaware limited liability company ("ABS"), and **GGD OAKDALE, LLC**, a California limited liability company ("Buyer").

RECITALS

A. Buyer and Seller are parties to that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated November 20, 2017, as it may have been amended and modified (collectively, the "Purchase Agreement").

B. Pursuant to the terms of the Purchase Agreement, Seller has agreed to sell and Buyer has agreed to purchase certain property commonly known as 1650 Birchwood Avenue, Bellingham, WA and further described in the Purchase Agreement ("Burdened Property"). The legal description of the Burdened Property is attached hereto as Exhibit A and made a part hereof.

C. On the date hereof, ABS or companies affiliated with ABS (collectively, "Seller" operate certain grocery supermarkets within a radius of five (5) miles of the Burdened Property. The properties on which such stores are operated, and any other properties that Seller may operate within such 5-mile radius, are together called the "Benefitted Properties."

D. Buyer acknowledges that (i) Seller has made a considerable investment in the Benefitted Properties, (ii) Seller has invested its business reputation in the Benefitted Properties, which reputation will be adversely affected if the sales volume of Seller is significantly less than the level planned by Seller, (iii) the addition of other businesses to the Burdened Property that may violate the Restrictions will result in a reduction of Seller's sales volume and thus impair the benefit of the bargain for which ABS negotiated in entering into the Purchase Agreement, and (iv) Seller's agreement to sell the Burdened Property is predicated upon Buyer's acknowledgement of all of the foregoing, and Buyer's agreement to the terms of this Agreement.

E. Buyer and Seller agree that the use of the Burdened Property will be restricted as provided in this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **USE RESTRICTION.** Buyer agrees, on behalf of itself and its successors and assigns, that for the "Restriction Period" (defined later), the Burdened Property will not be used in violation of the "Restrictions" (defined later). The "Restrictions" are the "Food Restriction" (defined later), the "Prescription Pharmacy Restriction" (defined later), and the "Fuel Restriction" (defined later).

1.1 Food Restriction. No portion of the Burdened Property shall be used or occupied for a general food market, supermarket, grocery store, meat market, fish market, fruit store, vegetable store, convenience store, or any combination of the foregoing ("Food Restriction").

1.2 Prescription Pharmacy Restriction. No portion of the Burdened Property shall be used or occupied for the sale of merchandise which, under the laws of the State where the Burdened Property is located, is required to be dispensed by or under the supervision of a registered or licensed pharmacist ("Prescription Pharmacy Restriction").

1.3 **Fuel Restriction.** No portion of the Burdened Property shall be used or occupied for the sale of fuel products for use in vehicles ("Fuel Restriction").

2. **RESTRICTION PERIOD.** The Restriction Period shall begin on the date hereof and end on the date on which is the earlier of (i) Seller and/or its successors and assigns has not operated at least one grocery supermarket and/or prescription pharmacy and/or fuel center within a radius of five (5) miles of the Burdened Property (measured as the crow flies from any point on the perimeter of the Burdened Property) for a continuous period of at least one (1) year for any reason other than (a) a strike, lockout or other labor difficulty, fire or other casualty, condemnation, war, riot, insurrection, act of God, the requirements of any local, state or federal law, rule or regulation, or any other reason (other than financial) beyond the reasonable control of Seller (or its affiliate or successor, as applicable) or (b) temporary closure due to the restoration, reconstruction, expansion, alteration or remodeling of such store, such temporary closure in no event to exceed three hundred sixty-five (365) days and (ii) the twentieth (20th) anniversary of the recordation of this Use Restriction.

3. **EXCEPTIONS TO FOOD RESTRICTION.** Notwithstanding the Food Restriction, (i) businesses operating on the Burdened Property may devote up to, but not more than, the lesser of (a) one thousand five hundred (1,500) square feet of sales area (including aisle space adjacent thereto), or (b) sales area (including aisle space adjacent thereto) of up to ten percent (10%) of the total square footage of such business's premises, to the sale of food for off-premises consumption, and (ii) the Use Restriction shall not be deemed to prohibit a restaurant (fast food or sit-down) from selling food prepared on premises for off-premises consumption.

4. **COVENANT RUNNING WITH THE LAND.** The Restrictions shall be deemed to be a restriction and covenant burdening the Burdened Property for the benefit of the Benefitted Property. The Restrictions are a servitude upon the entire Burdened Property, shall run with the land and shall be binding upon any person acquiring any interest in any part of the Burdened Property.

5. **ENFORCEMENT.** The parties agree that the economic loss to Seller or its successors and assigns resulting from a violation of the Restrictions is not readily measurable, or subject to precise calculation. Each of the parties hereto agree that, in any lawsuit by Seller or its successors or assigns seeking specific performance of the terms of this Agreement by injunctive relief, the harm suffered by Seller or its successors or assigns by reason of a breach of this Agreement shall be deemed to be irreparable for which the party so harmed does not have an adequate remedy at law. Seller and its successors or assigns also shall have the right to enforce the Restrictions directly against any one or more of Buyer, and the owner, tenant, or occupant of any business on the Burdened Property in violation of the Use Restriction. In no event shall Seller or its successors or assigns be required to post a bond or other security in any action seeking to enforce the provisions of this Agreement by injunctive relief or other remedy.

6. **BINDING EFFECT.** Each and all of the covenants, terms, agreements, rights and obligations contained in this Agreement shall extend to and bind and inure to the benefit of the heirs, personal representatives, successors and assigns of Seller and Buyer.

7. **SEVERABILITY.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws and court decisions. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of such

provision to other persons or circumstances or other instruments referred to in this Agreement shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law.

8. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the successors and assigns of Buyer for the duration of the Restriction Period. Seller's rights and benefits under this Agreement shall automatically pass to the any successor of Seller by merger, consolidation or reorganization, and to any purchaser of all or substantially all of the assets of Seller, without the necessity of entering into or recording any additional instrument or document.

9. **MODIFICATION.** Neither this Agreement nor any provision of this Agreement may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by all parties to this Agreement and then only to the extent set forth in such instrument,

10. **NOTICES.** Any notice provided for herein shall be given by registered or certified United States mail, postage prepaid, or expedited delivery service (i.e., Federal Express), addressed if to:

If to Seller:

ABS WA-O LLC
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
Attn.: Real Estate Law, ABS #416
(Bellingham, WA)

With a copy to:

Albertsons-Seattle Real Estate
1510 140th Ave. NE, Ste.200
Bellevue WA 98005
Attn.: Senior REM (ABS #416;
Bellingham, WA)

If to Buyer:

GGD Oakdale, LLC
101 E. Vineyard Ave. #201
Livermore, CA. 94550
Attention: Sanjiv Chopra or Sandie Martin

With a copy to:

Gordon Fine, ESQ.
101 E. Vineyard Ave. #201
Livermore, CA. 94550
Attention: Counsel

11. **WAIVER OF JURY TRIAL.** Each party hereto desires and intends that any disputes arising between them with respect to or in connection with this Agreement be subject to expeditious resolution in a court trial without a jury. Therefore each of Buyer and Seller hereby waive the right to a trial by jury of any cause of action, claim, counter claim or cross complaint in any action, proceeding or other hearing brought by any one or more of the parties hereto against any one or more of the other parties hereto on any matter whatsoever arising out of or in any way connected with, this Agreement, the relationship of Buyer and Seller concerning the subject matter of this Agreement or the documents related thereto or any claim of injury or damage, or the enforcement of any remedy under any statute, law, ordinance, rule or regulation now or hereafter in effect concerning such agreements.

12. **LEGAL FEES.** In the event any party hereto brings or commences legal proceedings to enforce any of the terms of this Agreement, the successful party in such action shall then be entitled to receive and shall receive from the other party, in every such action commenced, a reasonable sum as attorney's fees, court costs, investigation expenses, discovery costs and costs of appeal incurred by it in the litigation.

13. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

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

ABS WA-O LLC,
a Delaware limited liability company

By: Marilyn K. Beardsley
Name: Marilyn K. Beardsley
Title: Authorized Signatory

Form approved: OKA

GGD OAKDALE, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

11. **WAIVER OF JURY TRIAL.** Each party hereto desires and intends that any disputes arising between them with respect to or in connection with this Agreement be subject to expeditious resolution in a court trial without a jury. Therefore each of Buyer and Seller hereby waive the right to a trial by jury of any cause of action, claim, counter claim or cross complaint in any action, proceeding or other hearing brought by any one or more of the parties hereto against any one or more of the other parties hereto on any matter whatsoever arising out of: or in any way connected with, this Agreement, the relationship of Buyer and Seller concerning the subject matter of this Agreement or the documents related thereto or any claim of injury or damage, or the enforcement of any remedy under any statute, law, ordinance, rule or regulation now or hereafter in effect concerning such agreements.

12. **LEGAL FEES.** In the event any party hereto brings or commences legal proceedings to enforce any of the terms of this Agreement, the successful party in such action shall then be entitled to receive and shall receive from the other party, in every such action commenced, a reasonable sum as attorney's fees, court costs, investigation expenses, discovery costs and costs of appeal incurred by it in the litigation.

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

ABS WA-O LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Form approved: _____

GGD OAKDALE, LLC,
a California limited liability company

By:  _____
Name: SANTOS CHAPIN
Title: Manager

ACKNOWLEDGMENT

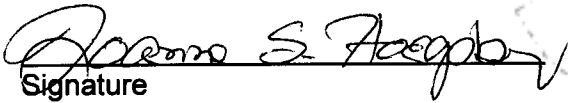
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

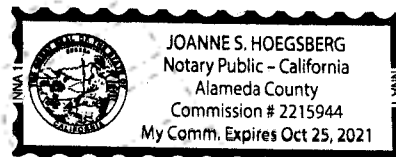
On February 21, 2018, before me, Joanne S. Hoegsberg, Notary Public, personally appeared Marilyn K. Beardsley who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature

(Seal)




A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) §
County of ALAMEDA)

On FEBRUARY 20TH 2018, before me, DENISE DRAPER a
Notary Public, personally appeared SANJIV CHOPRA who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA
that the foregoing paragraph is true and correct

WITNESS my hand and official seal.


Signature of Notary
(Affix seal here)

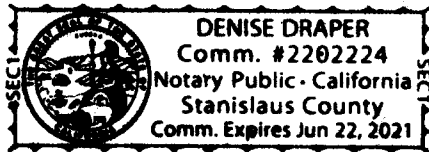


Exhibit A
Legal Description of Burdened Property

PARCEL A:

Lot 2, Amended Albertson Area Short Plat, according to the plat thereof, recorded in Volume 7 of Short Plats, Page 78, under Auditor's File No. 1421528, records of Whatcom County, Washington.

PARCEL B:

Lot 2, Sprouse Lot Line Adjustment, according to the plat thereof, recorded in Volume 14 of Short Plats, Page 61, under Auditor's File No. 1559948, records of Whatcom County, Washington.

PARCEL C:

A non-exclusive easement as set forth in that certain Declaration of Restrictions and Grant of Easements recorded July 2, 1982, under Auditor's File No. 1422250, Whatcom County, Washington, as amended by Amendment to Declaration of Restrictions and Grant of Easements recorded September 27, 1983, under Auditor's File No. 1460075, and Second Amendment to Declaration of Restrictions and Grant of Easements recorded December 31, 1986, under Auditor's File No. 1560472, for the purpose of ingress, egress, parking and utilities over and across the common area as defined in said Declaration and Amendments thereto.

Situate in Whatcom County, Washington.