

When Recorded Return To:

Kantor Taylor Nelson Evatt & Decina PC
901 Fifth Avenue – Suite 4000
Seattle, Washington 98164
Attn: Glenn J. Amster



201405200047

Skagit County Auditor

\$156.00

5/20/2014 Page

1 of

13

1:37PM

**SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX**

POOR ORIGINAL

MAY 20 2014

Amount Paid \$
Skagit Co. Treasurer

By TTB

Deputy

SUPPLEMENTAL EASEMENT AND COVENANT AGREEMENT

GUARDIAN NORTHWEST TITLE CO.

GRANTORS:

BURGER MAKERS, LLC

107126

GRANTEES:

BFO FACTORY SHOPPES, LLC

RELATED

200205030134

DOCUMENTS:

ABBR.

LEGAL

DESCRIPTION:

Burlington Short Plat No. 1-92, recorded July 27, 1992 in Volume 10 of short plats, page 105, under Auditor's File No. 9207270058, records of Skagit County, Washington.

(complete legal descriptions on Exhibits "A" and "C")

TAX PARCEL NO:

340407-1-002-0500 (P24042)

THIS SUPPLEMENTAL EASEMENT AND COVENANT AGREEMENT ("Supplemental ECA") is made as of this 20th day of may, 2014 by and between BFO FACTORY SHOPPES, LLC, a Delaware limited liability company ("BFO"), and BURGER MAKERS LLC, a California limited liability company ("Burger Makers") (BFO and Burger Makers are referred to herein collectively as the "Parties").

WITNESSETH

A. BFO is the owner of property in Burlington, Washington, which is more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference ("BFO Property"). BFO owns and operates a shopping center on the BFO Property.

B. Burger Makers intends to acquire a parcel in the shopping center, which is depicted as "Lot 1", on Exhibit "B" and more particularly described in Exhibit "C", both of which are attached hereto and incorporated herein by this reference ("Lot 1").

No Monetary Consideration

C. Lot 1 is subject to that certain Reciprocal Easement and Covenant Agreement dated and recorded as of May 3, 2002, under Auditor's File No. 200205030134, records of Skagit County, Washington ("ECA").

D. The Parties desire to supplement the ECA to (i) limit the extent of development that may occur on Lot 1; (ii) to provide BFO with the right to approve any proposed development on Lot 1, whether by Burger Makers or any subsequent owner; and (iii) allow BFO to maintain a shopping center sign on a portion of Lot 1, on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BFO and Burger Makers hereby agree as follows:

1. Building Limitations. Burger Makers covenants and agrees that (a) no more than one (1) business shall be permitted to operate on Lot 1 at any time; and (b) no more than one (1) building or other structure (excluding a dumpster enclosure, if necessary) shall be located on Lot 1 at any time.

2. Plan Approval. Prior to the commencement of any construction on Lot 1, Burger Makers covenants and agrees that it shall deliver to BFO plans and specifications for any proposed improvements, including, without limitation, civil drawings (including ingress and egress plans, parking configuration, landscaping, lighting, utilities and signage plans) and architectural plans and specifications, together with the proposed exterior elevations indicating colors and materials of the structure Burger Makers intends to construct on Lot 1 (collectively, the "Plans"). If any work is to be performed on BFO's adjacent property or elsewhere within the Shopping Center of which Lot 1 is a part, BFO may elect to have the Plans peer reviewed at Burger Makers' sole cost and expense by a civil engineer and architect designated by BFO. The Plans, and any subsequent revisions thereto (the parties acknowledge that the Plans may be subject to revision in connection with Burger Makers' efforts to obtain any required development permits), shall be subject to BFO's approval in BFO's sole and absolute discretion.

3. Sign Easement. Burger Makers hereby grants and conveys to BFO a nonexclusive easement under, through and across Lot 1, to the extent necessary and for the purpose of construction, operation, use, maintenance and repair (including any utilities incidental thereto) of a shopping center sign in the location depicted on Exhibit "D" attached hereto (the "Easement").

4. Enforcement Costs. BFO and Burger Makers agree that in the event it becomes necessary for either party to defend or institute any legal proceedings as a result of the failure of the other party to comply with the terms, covenants, agreements and/or conditions of this Supplemental ECA, the substantially prevailing party in such proceedings shall be entitled to be reimbursed for all costs incurred or expended in connection therewith, including, but not limited to, reasonable attorneys' fees.

5. Waiver. No waiver of any of the provisions of this Supplemental ECA shall be effective unless it is in writing, signed by the party against whom it is asserted and any such



written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

6. Binding Effect. This Supplemental ECA shall run with the land and be binding on the parties hereto, their successors and assigns to the BFO Property and Lot 1, respectively.

7. Governing Law. This Supplemental ECA shall be governed by and construed in accordance with the laws of the State of Washington.

8. Counterparts. This Supplemental ECA may be executed in counterparts, and each counterpart hereof shall be deemed to be an original instrument, but such counterparts together shall constitute but one agreement.

Dated as of the date first written above.

BFO:

BFO FACTORY SHOPPES, LLC
a Delaware limited liability company

By: Horizon Group Properties, L.P.,
a Delaware limited partnership]
Its: Member

By: Horizon Group Properties, Inc.,
a Maryland corporation
Its: General Partner

By: 
Name: Gary Skoien
Title: CEO

BURGER MAKERS:

BURGER MAKERS, LLC,
a California limited liability company

By: _____
Name: Michael Seter
Its: Member

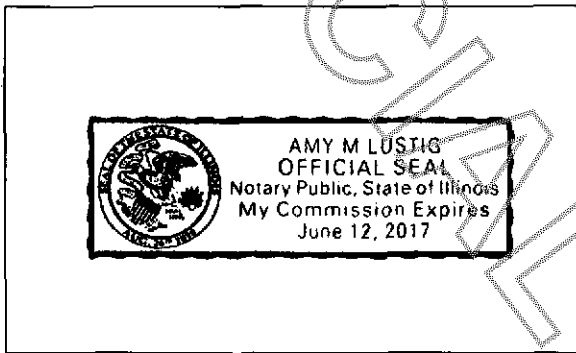
[notary blocks on following page]



STATE OF Illinois)
)ss.
COUNTY OF Cook)

I certify that I know or have satisfactory evidence that Gary Skoien is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the CEO of Horizon Group Properties, Inc., a Maryland corporation, the general partner of Horizon Group Properties, L.P., a Delaware limited partnership, the member of of BFO Factory Shoppes, LLC, a Delaware limited liability company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 5/15/2014.



Amy M. Lustig

Print Name: Amy M. Lustig

Residing at: 9210 S. 83rd Ct.

Hickory Hills, IL
My appointment expires: 6/12/2014

STATE OF _____)
)ss.
COUNTY OF _____)

On _____, 2012, before me, _____, personally appeared _____, 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 he/she executed the same in his/her authorized capacity, and that by his/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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(SEAL)



201405200047

Skagit County Auditor

\$158.00

5/20/2014 Page

4 of 13 1:37PM

UNRECORDED
written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

6. Binding Effect. This Supplemental ECA shall run with the land and be binding on the parties hereto, their successors and assigns to the BFO Property and Lot 1, respectively.

7. Governing Law. This Supplemental ECA shall be governed by and construed in accordance with the laws of the State of Washington.

8. Counterparts. This Supplemental ECA may be executed in counterparts, and each counterpart hereof shall be deemed to be an original instrument, but such counterparts together shall constitute but one agreement.

Dated as of the date first written above.

BFO:

BFO FACTORY SHOPPES, LLC
a Delaware limited liability company

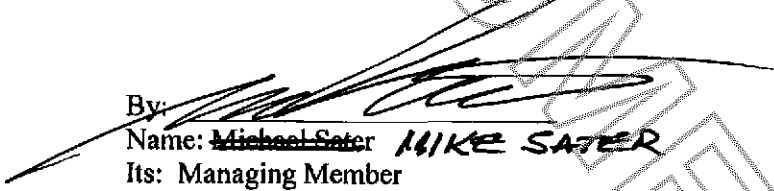
By: Horizon Group Properties, L.P.,
a Delaware limited partnership]
Its: Member

By: Horizon Group Properties, Inc.,
a Maryland corporation
Its: General Partner

By: 
Name: Gary Skolen
Title: CEO

BURGER MAKERS:

BURGER MAKERS, LLC,
a California limited liability company

By: 
Name: ~~Michael Sater~~ MIKE SATER
Its: Managing Member

[notary blocks on following page]



201405200047

Skagit County Auditor

\$156.00

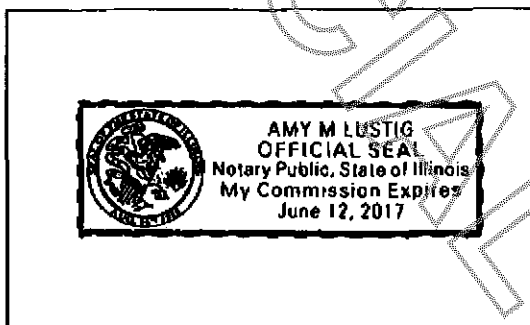
5/20/2014 Page

5 of 13 1:37PM

STATE OF Illinois)
)ss.
COUNTY OF Cook)

I certify that I know or have satisfactory evidence that Gary Skoien is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the CEO of Horizon Group Properties, Inc., a Maryland corporation, the general partner of Horizon Group Properties, L.P., a Delaware limited partnership, the member of of BFO Factory Shoppes, LLC, a Delaware limited liability company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 5-16-2014



Amy M. Lustig
Print Name: Amy M. Lustig
9210 E. 83rd St.
Residing at: Hickory Hills, IL
My appointment expires: 6/12/2017

STATE OF CALIFORNIA)
)ss.
COUNTY OF Los Angeles)

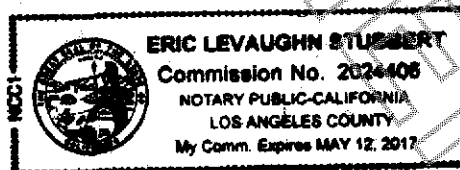
I certify that I know or have satisfactory evidence that Mike Sater is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Managing Member of Burger Makers, LLC, a California limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in 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]
SIGNATURE OF NOTARY PUBLIC

(SEAL)



201405200047

Skagit County Auditor

\$156.00

5/20/2014 Page

6 of 13 1:37PM

Exhibit "A"

BFO Property

PARCEL "A":

Lots 1 and 3, City of Burlington Short Plat No. 1-92 as approved July 18, 1989, and recorded July 27, 1992, in Volume 10 of Short Plats, page 105, under Auditor's File No. 9207270058, records of Skagit County, Washington; being a portion of the Northeast of the Northeast 1/4 of Section 7, Township 34 North, Range 4 East, W.M.

EXCEPT the South 13 feet of Lot 1 thereof.

Situate in the City of Burlington, County of Skagit State of Washington.

PARCEL "B":

Parcel B, City of Burlington Short Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington; being a portion of the Northeast 1/4 of the Northeast 1/4 of Section 7, Township 34 North, Range 4 East, W.M.

Situate in the City of Burlington, County of Skagit, State of Washington.

PARCEL "C":

Parcel A, City of Burlington Short Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington; being a portion of the Northeast 1/4 of the Northeast 1/4 of Section 7, Township 34 North, Range 4 East, W.M.

Situate in the City of Burlington, County of Skagit, State of Washington.

PARCEL "D":

An easement for drainage, as acquired by document recorded under Auditor's File No. 8811230046, records of Skagit County, Washington, over and across the following described property:

The West 20 feet of Lot 3, City of Burlington Short Plat No. 37-76 as approved August 2, 1976, and recorded August 5, 1976, in Volume 1 of Short Plats page 156 under Auditors File No. 840316, records of Skagit County, Washington; being a portion of the Southeast 1/4 of the Southeast 1/4 of Section 6, Township 34 North, Range 4 East, W.M.

Situate in the City of Burlington, County of Skagit, State of Washington.



201405200047

Skagit County Auditor

\$156.00

5/20/2014 Page

7 of 13 1:37PM

PARCEL "E":

An easement acquired by instruments recorded November 23, 1988, under Auditor's File No. 8811230048, records of Skagit County, Washington for ingress, egress, and utilities, over, under, and across a 36.00 foot strip of land lying 18.00 feet each side of the following described centerline:

Beginning at the Northeast corner of Section 7, Township 34 North, Range 4 East W.M.; thence South 01°34'38" East, along the East line of said Section 7 a distance of 13.73 feet; thence South 86°59'04" West, 40.01 feet to the true point of beginning; thence continuing South 86°59'04" West, 56.99 feet to the beginning of a curve to the left having a radius of 170.00 feet; thence Southwesterly along said curve through a central angle of 66°32'00", an arc distance of 197.41 feet; thence South 20°27'04" West, 124.00 feet to the beginning of a curve to the right, having a radius of 273.00 feet; thence Southwesterly along said curve through a central angle of 71°07'06", an arc distance of 338.86 feet; thence North 88°25'50" West, 150.00 feet to the terminus point of said centerline. (Said easement being appurtenant to Parcels "B" and "C")

Situate in the City of Burlington, County of Skagit, State of Washington.

PARCEL "F":

An easement for ingress, egress, and utilities over, under, and across that area delineated as "Access and Utility Easement" on the Easterly portion of Parcel "B" of City of Burlington Short Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington. (Said easement is appurtenant to Parcel "C".)

Situate in the City of Burlington, County of Skagit, State of Washington.



201405200047

Skagit County Auditor

\$156.00

5/20/2014 Page

8 of 13 1:37PM

Exhibit "B"

Depiction of Lot 1



201405200047

Skagit County Auditor

\$156.00

5/20/2014 Page

9 of 13 1:37PM

Exhibits C

Legal Description of Lot 1

Lot 1, Burlington Short Plat No. 1-92, approved July 18, 1989, recorded July 27, 1992 in Volume 10 of short plats, Page 105, under Auditor's File No. 9207270058, records of Skagit County, Washington, except for the south 13 feet thereof.



201405200047

Skagit County Auditor

\$158.00

5/20/2014 Page

11 of

13

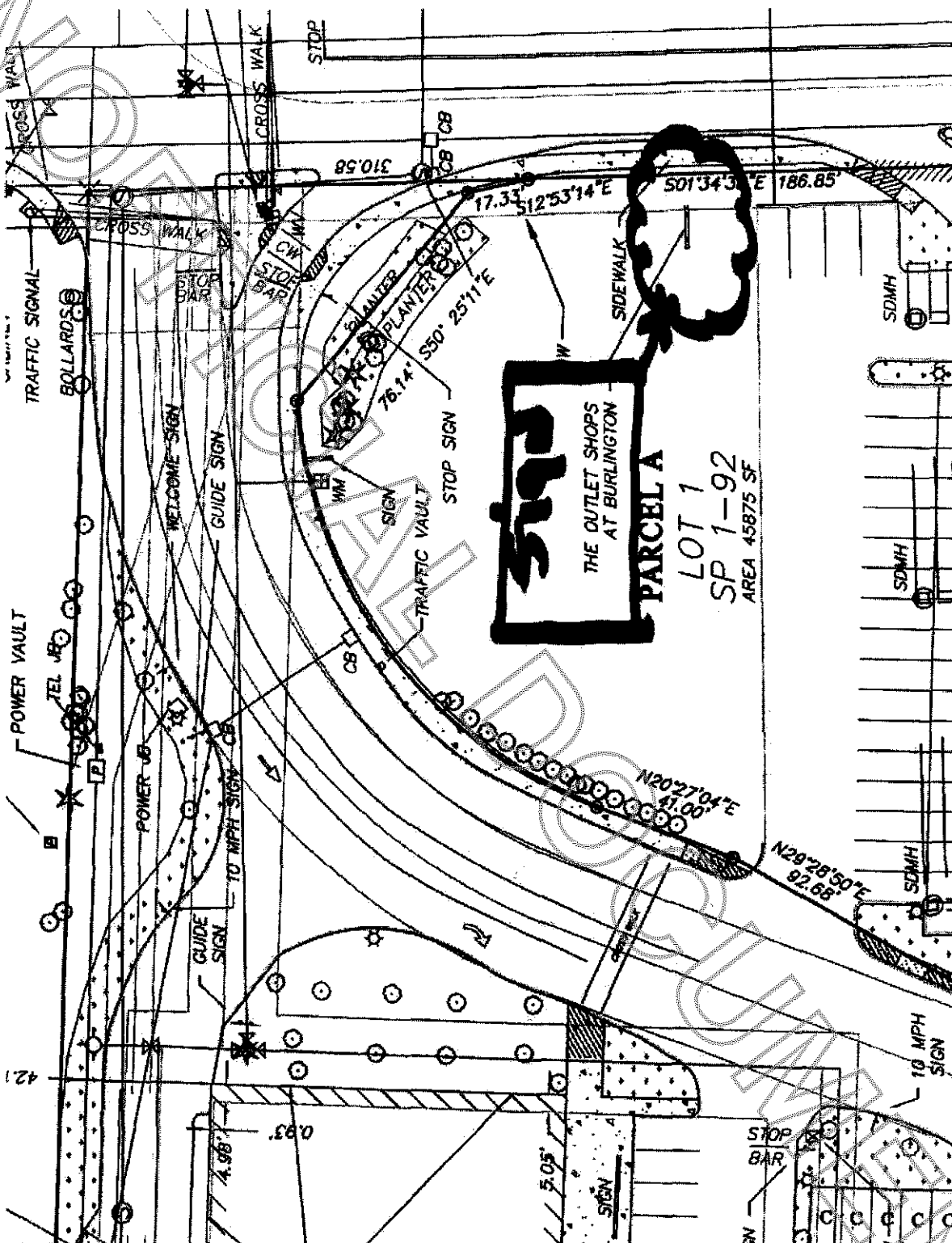
1:37PM

Exhibit "D"

Location of Sign



201405200047



**NORTHWEST
DATUM & DESIGN, Inc.**
CIVIL ENGINEERING AND SURVEYING SOLUTIONS



SHEET DESCRIPTION

Lot 1 Short P



201405200047