

*JLB*

DECLARATION OF ENCUMBRANCES

THIS AGREEMENT, Made and entered into this 16th day of July, 1965, by and between ALBERTSON'S, INC., a Nevada corporation, (hereinafter designated and referred to as "Albertson's"), and THE BEEHIVE STATE BANK, a Utah Corporation, (hereinafter collectively designated and referred to as "Second Party");

WHEREAS, It is the mutual desire of the parties hereto that there be a declaration of encumbrances as hereinafter stated;

AND, WHEREAS, Albertson's is the owner of the real property, (hereinafter designated and referred to as "Parcel I"), and Parcel I is shown on Exhibit "A" attached hereto and said Exhibit "A" being a part hereof is incorporated into this Declaration of Encumbrances by reference thereto, and said Parcel I is more particularly described as follows, to-wit:

PARCEL I

Beginning at the Southeast corner of Lot 1, Block 11, Plat "A", Tooele City Survey, Tooele, Utah, and running thence North 0° 56' 50" East 287.10 feet to the Northeast corner of Lot 3, of said Block 11; thence North 89° 33' West 333.96 feet to the Northwest corner of said Lot 3; thence South 0° 56' 50" West 190.08 feet to the Northwest corner of said Lot 1; thence South 89° 33' East 120.00 feet; thence South 0° 56' 50" West 97.02 feet to the South line of said Lot 1; thence South 89° 33' East 213.96 feet to the point of beginning.

EXCEPTING THEREFROM that parcel of property which is described as follows:

Beginning at the Southeast corner of Lot 1, Block 11, Plat "A", Tooele City Survey, Tooele City, running thence North 89° 33' West 120 feet; thence North 0° 56' 50" East, 100 feet; thence South 89° 33' East, 120 feet; thence South 0° 56' 50" West, 100 feet to the Point of Beginning

*T-7689*

*1965*

*[Handwritten mark]*

No. 275813  
RECORDED AT THE REQUEST OF  
BY TITLE COMPANY  
DATE SEP. 3 1965 TIME 11:49 AM  
BOOK 61 OF PAGES PAGE 520 FEE 3.00  
*[Signature]*  
County Recorder

AND, WHEREAS, Second Party is the owner of the real property (hereinafter designated and referred to as "Parcel II"), and said Parcel II is as shown on said Exhibit "A", and said Parcel II is more particularly described as follows, to-wit:

PARCEL II

Beginning at the Southeast corner of Lot 1, Block II, Plat "A", Tooele City Survey, Tooele City, running thence North  $89^{\circ} 33'$  West 120 feet; thence North  $0^{\circ} 56' 50''$  East, 100 feet; thence South  $89^{\circ} 33'$  East, 120 feet; thence South  $0^{\circ} 56' 50''$  West, 100 feet to the Point of Beginning.

NOW, THEREFORE, in consideration of Ten and no/100 Dollars (\$10.00) paid by Second Party to Albertson's, and that the following encumbrances shall be binding upon the parties hereto, and shall attach to and run with their respective parcels, and shall be for the benefit of and limitations upon all future owners of the above-described parcels, and that all easements are appurtenant to the dominant estates, and of the promises, covenants, conditions, restrictions, easements and encumbrances contained herein, it is promised, covenanted and agreed as follows:

So long as Parcel I is used for the purpose of operating a food supermarket,

LAND USE

1. no portion or part of Parcel II shall now or in the future be used for the purpose of operating a food supermarket nor for the selling of retail foods or bakery products, nor for the retail sale of beer, wine or liquor, except restriction shall not apply to food items sold in dispensing machines which are located in Second Party's employee lunchroom.

Since Parcel II is so encumbered, if any part, portion or all of Parcel II is ever so used for any or all of the foregoing purposes, then and in such event, Albertson's, its successors and assigns may without notice obtain immediate injunctive relief; and, in addition, may pursue any or all remedies available at law or equity, or otherwise.

BUILDING TYPE AND APPROVAL

2. No buildings shall be erected, altered, placed or permitted to remain on Parcel II that are not of the same type and quality of design, materials and workmanship as is consistent with other modern shopping centers now and in the future existing in the area of the City of Tooele County of Tooele, State of Utah. All buildings constructed thereon shall be used for retail sales purposes and attendant uses. Albertson's is to have the right of final approval, which shall not be withheld unreasonably, of the plans and specifications, size and location of any buildings, structures, improvements and signs on Parcel II, which shall only be constructed and erected thereon in accordance with such approval.

SIGNS AND BILLBOARDS

3. No signs shall be placed on Parcel II ~~except those as shown thereon on Exhibit "A"~~ without the written consent of Albertson's, which consent shall not be unreasonably withheld. It is expressly understood and agreed that no billboards or other signs of a similar nature shall be placed on Parcel II.

BUILDING LOCATION

4. Any and all buildings, structures, paving, parking, driveways, curbs, malls, sidewalks, areas and any improvements of whatsoever nature on Parcel II shall be located, erected and placed thereon by Second Party, all as approximately shown on said Exhibit "A", and such shall be fully and finally completed and open for business no later than the 31st day of May, 1966\*. All of the foregoing must comply with applicable laws, rules, ordinances and regulations. Further, no buildings, structures or improvements shall be built, constructed, reconstructed, located or relocated on Parcel II within any area lying within eight ( 8 ) feet of Main Street (Avenue), nor within eight ( 8 ) feet of First North Street (Avenue);

PARKING AREA

all as approximately shown on Exhibit "A". Anything to the contrary notwithstanding Second Party agrees, at its cost and expense, to raze and remove the church building on Parcel II, and level and fill all of Parcel II, to rough grade, on or before September 15, 1965. 5. Any vehicular driving, parking and pedestrian traffic areas (including malls and sidewalks), as shown by cross hatching on and designated as "common areas" on Exhibit "A", utilized in connection with any buildings that are located on Parcel II shall at no time be less than three times the retail sales areas of any and all buildings on Parcel II. Any and all areas of Parcel II used for vehicular parking and pedestrian traffic shall be well-lighted, paved and surfaced by Second Party with good and sufficient black topping so that the same may be used and utilized now and in the future by American-type automobiles. Each Albertson's and Second parties shall, at their own respective cost and expense, keep, repair and maintain on their

\* Provided, however, that if the Federal Deposit Insurance Corporation will not permit such construction, the date of completion may be extended until May 31, 1967; thereafter Albertson's may, at its own Option on or before August 31, 1967, purchase Parcel II from Second Party for the same purchase price consideration as paid to Albertson's by Second Party.

respective Parcels I and II their said respective vehicular driving, parking and pedestrian areas (including malls and sidewalks), designated as "common areas" on Exhibit "A", in good order, condition and repair, and in a clean and sightly condition. ~~Second Parties shall place directional signs and markings and paint any traffic lot striping as Albertson's may from time to time require on Parcel II and also do so in accordance with any laws, rules, ordinances and regulations.~~

STREET AND  
BOUNDARY  
ACCESS

INGRESS  
AND  
EGRESS

SEVERA-  
BILITY

ENFORCE-  
MENT

COURT  
COSTS

CAPTIONS

TERM

6. Second Party shall not now nor in the future erect any buildings, structures or barricades along any street boundary nor along any portion of the common boundary lines of the respective properties, Parcel I and Parcel II, which adjoin each other, except for the areas needed for location of any buildings as specifically shown on Exhibit "A". Second Party may install a curb beginning at the northeasterly corner of Parcel II and running westerly along the northerly boundary (of Parcel II) for a distance of 80', all as shown on Exhibit "A".

7. Albertson's reserves for the benefit of itself, its successors and assigns, and for the benefit of Parcel I, the right in common with the Second Party of mutual non-exclusive ingress and egress by vehicular or pedestrian traffic and vehicular parking over and across any common, adjoining boundary lines between Parcel I and Parcel II, except for the areas for the location of buildings, all as shown on Exhibit "A", and neither the Owners of Parcel I nor the Owners of Parcel II shall now or in the future erect any barricades or structures which prevent or hinder such ingress, egress and parking, except Second Party may install a curb as provided in paragraph six (6) of this Agreement.

8. Should any part, term or provision of this Declaration of Encumbrances be finally adjudicated by a Court of competent jurisdiction to be invalid, the validity of the remaining portions or provisions shall not be affected thereby.

9. If the Owners of Parcel II, their successors or assigns, at any time violate any of the herein mentioned terms, covenants, conditions, restrictions and encumbrances, then and in such event, in addition to any other remedy available, or in addition to any remedy elsewhere stated herein, the then Owner of Parcel I may cure the same at the cost and expense of the then Owner of Parcel II and further, and not in limitation hereof, the owner of Parcel I may seek any available remedy or damages, or both, at law or equity. The failure of Owners of Parcel I to insist in any one or more cases upon the strict performance of any of the promises, covenants, conditions, restrictions or agreements of this Declaration of Encumbrances shall not be construed as a waiver or relinquishment for the future breach of such provisions.

10. Should suit or legal action be instituted to enforce any of the foregoing terms, covenants and conditions, restrictions and encumbrances, then the losing party, in addition to any Judgment, Order or Decree, agrees to pay the prevailing party its reasonable attorney fees and court costs as may be awarded by a court adjudging or decreeing such suit or action.

11. The captions in the margin of this agreement are not part of and in no manner define, limit, amplify, change or alter any term, covenant or condition hereof.

12. This Agreement is and shall be binding upon and shall enure to the benefit of each of the parties hereto and their respective successors, assigns, heirs, administrators, executors and legal representatives.

Any individual or individuals signing this instrument, other than those persons indicated below as signing on behalf of a corporation, are each, along with their respective successors and assigns, severally and jointly responsible and liable for performance of or breach of the terms, covenants and conditions hereof.

IN WITNESS WHEREOF, The parties hereto have hereunto set their authorized signatures the day and year first above written.

ALBERTSON'S, INC.

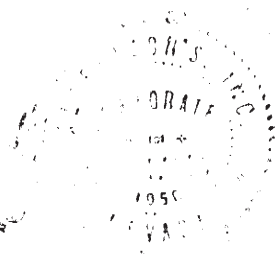
By: J. H. Berlin  
President

Attest: A. S. [Signature]  
Secretary

SECOND PARTY:

[Signature]  
Executive Vice President

Attest: [Signature]  
Secretary and Treasurer



ACKNOWLEDGMENTS

STATE OF IDAHO ) ss.  
County of Ada )

On this 27<sup>th</sup> day of August, 19 65, before me, the undersigned, a Notary Public in and for said State, personally appeared J. L. BERLIN and A. L. LYONS, to me known to be the President and the Assistant Secretary, respectively, 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 they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

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

My Commission Expires:

Nov 17 1966

Edith J. [Signature]  
Notary Public in and for the state of Idaho  
Residing at Boise, Idaho

STATE OF \_\_\_\_\_ ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known to me to be the person(s) who executed the above and foregoing instrument, and said person(s) acknowledged to me that (he)(she)(they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day, month and year in this certificate first above written.

My Commission Expires:

\_\_\_\_\_

Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_

STATE OF UTAH ) ss.  
County of SALT LAKE )

On this 16th day of July, 19 65, before me, the undersigned, a Notary Public in and for said State, personally appeared LOUIS S. LEATHAM and Katherine T. Cartwright, to me known to be the Executive V/President and the Secretary, respectively, of BEEHIVE STATE BANK, 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 they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

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

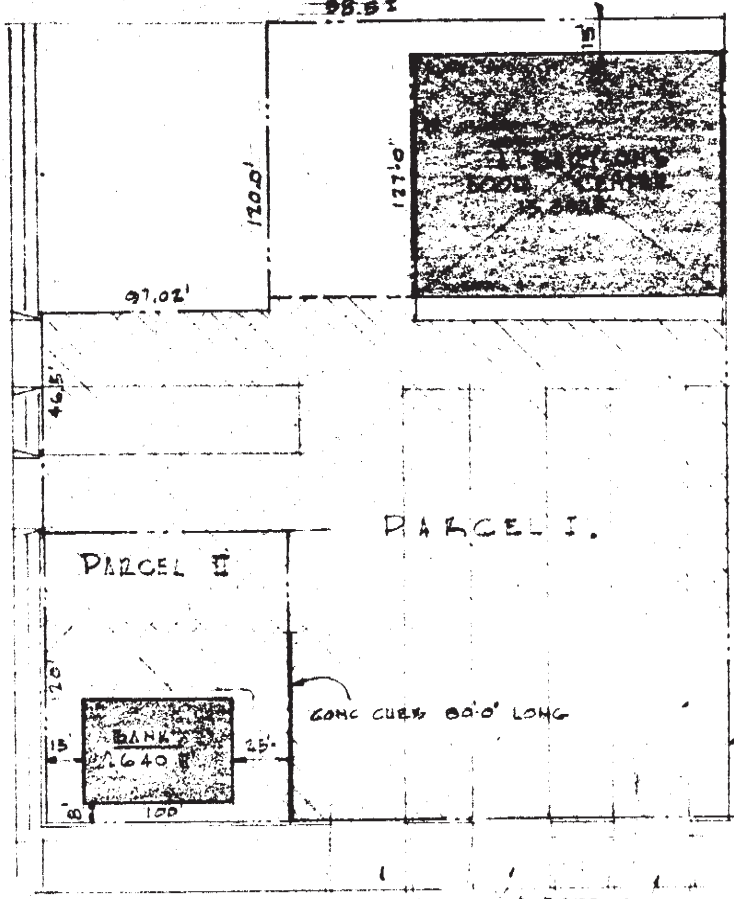
My Commission Expires: \_\_\_\_\_

[Signature]  
Notary Public in and for the State of Utah  
Residing at Salt Lake City, Utah

06-11-65

30TH WEST

FIRST NORTH SE



PARCEL I.

PARCEL II

CONC CURB 60'-0" LONG

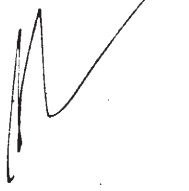
BANK  
26.40'

INGRESS & EGRESS

MAIN STREET

COMMON AREAS

BLDG AREA



# EXHIBIT "A"

TOOELE UTAH

C ED TROUT  
BOX 20

A.M.A. ARCHITECT  
BOYSE IDAHO

A handwritten signature in the bottom right corner of the drawing area.

DATE: MAY 18 1965  
SCALE: 1" = 60'-0"

REVISED: JUNE 23, 1965