

EASEMENTS, COVENANTS, AND  
RESTRICTIONS COVERING REAL ESTATE AGREEMENT (ECR)

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This Agreement made and entered into this 7 day of January, 2002, by and between DUCKWALL-ALCO STORES, INC., a Kansas corporation, 401 Cottage, Abilene, Kansas 67410, hereinafter referred to as "Alco", and CLARK'S BLANDING, LLC, a Colorado Limited Liability Company, 351 South Side Drive, Basalt, Colorado 81621, hereinafter referred to as "Clarks".

WHEREAS, Alco is the owner of Parcel 1 as described in Exhibit A attached hereto and depicted on Exhibit C attached hereto, and

WHEREAS, Clarks is the owner of Parcel 2 as described in Exhibit B attached hereto and depicted on Exhibit C attached hereto, and

WHEREAS, the parties hereto desire that Parcel 1 and Parcel 2 be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial shopping center (sometimes hereinafter referred to as the "shopping center"), and further desire that said Parcels be subject to the easements, covenants, and restrictions, as hereinafter set forth, and

WHEREAS, the parties hereto desire that the shopping center be developed for the benefit of the parties hereto and their successors and assigns and for the benefit of the future owner or owners of the property in the shopping center, and their respective successors and assigns and the easements, covenants, and restrictions contained herein shall be covenants running with the land and shall inure to the benefit of the owners of the property.

NOW THEREFORE, in consideration of the foregoing and the covenants, easements, restrictions and agreements contained herein, the sufficiency of which is hereby acknowledged, the parties do mutually agree as follows:

1. Easements. Each party, as Grantor, hereby grants to the other party as Grantee, and to the customers, invitees, tenants, licensees, a non-exclusive easement for roadways, walkways, ingress and egress by vehicular and pedestrian traffic and vehicular parking over the portion of the Shopping Center (the "Common Areas") not improved by temporary or permanent buildings.

Consent of Jendal/Burey  
065604 802-615  
2-15-02

js

E 065603 B 802 P 0604  
Date 15-FEB-2002 11:38am 614  
Fee: 32.00 Check  
LOUISE C JONES, Recorder  
Filed By IH  
For SOUTH EASTERN UTAH TITLE CO  
SAN JUAN COUNTY CORPORATION

South Eastern Utah  
Title Company  
Order No. 34339-SJ

2. Use of Common Areas. (a) Each party shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on Parcel 1 and Parcel 2.

(b) The owners of Parcel 1 and Parcel 2 shall not construct nor permit the construction of any fences, barriers or obstructions that would impede or deter the free flow of traffic throughout the shopping center. Notwithstanding respectively, the parties agree that the owners of Parcels 1 and 2 may each at their sole discretion and at their sole cost and expense construct a structure on each of Parcels 1 and 2 for the purpose of storing and merchandising various lawn and garden products, provided, however, that the aforementioned area shall at all times be situated on Parcels 1 and 2 and shall not exceed 3,000 square feet. Nothing contained herein shall prohibit either party from expanding or enlarging its existing buildings upon the areas designated for expansion as depicted on Exhibit C.

(c) There shall be no charge or validation for parking in the Common Area without the consent of all owners of the shopping center.

(d) The owner(s) of Parcel 1 and Parcel 2 shall provide parking for their employees on their respective tracts.

3. Use. The buildings in the shopping center shall be used for commercial purposes of the type normally found in a retail shopping center, including without limitation financial institutions, service shops, offices, grocery stores, and retail stores. No cafeteria, restaurant, theatre, bowling alley, billiard or pool parlor, night club, arcade, or other place of recreation or amusement or any business serving alcoholic beverage shall be permitted to occupy space within the shopping center without the express written approval and waiver of this provision by the owners of Parcel 1 and Parcel 2. A restaurant will be a permitted use in the event that it has its own dedicated parking, separated from any common areas.

4. Restrictions. (a) The parties agree that no portion of any building on Parcel 2 may be leased, occupied or operated by any party for use as a discount store, variety store, or department store as long as Alco is operating a similar type business on Parcel 1.

(b) The parties agree that no portion of any building on Parcel 1 may be leased, occupied, or operated by any party for use as a general food market or grocery store, as long as Clarks is operating a similar type business on Parcel 2.

5. Signs. The owner of Parcel 1 and Parcel 2 may, at its sole cost and expense, erect a pylon sign on their respective properties. All signs shall be in compliance with all rules, regulations, laws and statutes and no sign shall obstruct the ingress or egress to the shopping center.

6. Utilities. Each owner of property in the shopping center grants to the other party(ies) a non-exclusive easement for the installation, maintenance and repair of all public and private utilities, provided that the rights granted pursuant to this easement shall at all times be exercised in such a manner as to cause the least interference with the operation of the shopping center; and provided further, except in an emergency, the right of any party to enter upon the property of another for the exercise of any right pursuant to said easements shall be conditioned upon the obtaining the prior written consent of such party, which consent shall not be unreasonably withheld.

7. Maintenance - Taxes - Insurance.

(a) Maintenance. The owners of Parcel 1 and Parcel 2 shall pay the maintenance expense of their respective Parcels. The maintenance is to include without limitation the following:

1. Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
2. Removing all snow and ice, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
3. Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
4. Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

5. Maintaining all perimeter walls in a good condition and state of repair; and

6. Maintaining all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

(b) Taxes. The owners of Parcel 1 and Parcel 2 agree to pay or cause to be paid, prior to delinquency all property taxes which are levied against their respective properties.

(c) Insurance. The owners of Parcel 1 and Parcel 2 hereby indemnifies and hold the other party harmless from any and all liability, damage, expense, suits, claims or judgements arising from personal injury, death or property damage and occurring on or from its own Parcel except if caused by the act or neglect of the other party. Each owner shall procure and maintain general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$1,000,000.00 for injury or death of a single person, and to the limit of not less than \$3,000,000.00 for any one occurrence, and to the limit of not less than \$300,000.00 for property damage. Each party shall be named as an additional insured under the other party's insurance policy. Each party shall provide the other party with certificates of such insurance from time to time to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be cancelled without ten (10) days prior written notice to the other party.

8. Eminent Domain.

(a) Owner's Right to Award. Nothing herein shall be construed to give any owner any interest in any award or payment made to any other owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting any other owner's property or giving the public or any government any rights in the property. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located within the shopping center, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof and no claim thereon shall be made by the owners of any other portion of the Common Areas.

(b) Collateral Claims. All other owners or persons having an interest in the Common Areas so condemned may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken.

(c) Tenant's Claim. Nothing in this Paragraph shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

(d) Restoration of Common Areas. The owner of each portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas so owned as near as practicable to the condition of the Common Areas immediately prior to such condemnation or transfer without contribution from any other party hereto.

(e) Restoration of Building Areas. In the event any building located in the shopping center is condemned and the owner chooses not to restore such a building, then the owner of such building shall remove the building, seal and dust proof the building area, and restore the Common Area surrounding the building.

9. General Provisions.

(a) Covenants Run With the Land. Each easement, restriction and covenant over property in the shopping center shall be appurtenant to and for the benefit of all other property in the shopping center. Each covenant, restriction and undertaking as to property in the shopping center shall be a burden thereon for the benefit of all other property, and shall run with the land. For the purposes of said easements and rights, the property in the shopping center which is benefited shall constitute the dominant estate, and the property in the shopping center which respectively is burdened by such easements and rights shall constitute the servient estate.

(b) Inurement. This instrument and the easements, covenants, restrictions, benefits and obligations created hereby shall inure to the benefit of and be binding upon each owner of property in the shopping center and its successors and assigns; provided, however, that if any owner sells any portion or all of its interest in any property owned by such owner, such owner shall thereupon be released and discharged from any and all future accruing obligations under this Agreement in connection with the property sold by it. Such owner's grantee shall be deemed to have assumed and

therefore be bound by all of the obligations hereunder from and after the date of the grantee's acquisition of its interest.

(c) Duration. Unless otherwise provided herein, this Agreement shall remain in full force and effect for a term of ninety-nine (99) years from the date hereof.

(d) Injunctive Relief. In the event of any violation or threatened violation by any owner, lessee, or occupant of any portion of the shopping center for any of the terms, covenants and conditions herein contained, in addition to the other remedies herein provided, any or all of the owners of the property included with the shopping center and parties so long as they have any interest in the shopping center, shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

10. Modification. Except as may be provided herein, this Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except with the written consent of the owners of Parcel 1 and Parcel 2.

11. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the shopping center to the general public or for any public purposes whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

12. Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Agreement shall entitle the parties or the parties successors to cancel, rescind or otherwise to terminate this Agreement, but such limitations shall not affect in any manner, any other rights or remedies which such party may have hereunder by reason of any breach of this Agreement. Any breach of any of such covenants or restrictions, however, shall not defeat, or render invalid the lien of any mortgage or deed of trust made in good faith for value, but such covenants or restrictions shall be binding upon and effective against any person who acquires any interest in the property subject to this Agreement through foreclosure, trustees' sale, deed in lieu of foreclosure, or otherwise.

13. Damage or Destruction. In the event any building in the shopping center is damaged or destroyed by casualty, the owner of such building shall, in its discretion and within a reasonable period of time, either tear down or rebuild the damaged building. However, if such owner determines to tear down a damaged building, such owner shall

either promptly commence to rebuild the building on the same location and thereafter diligently prosecute such rebuilding to completion, or leave and maintain the property on which the building was located in a smooth, level condition, free and clear of all refuse.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

DUCKWALL-ALCO STORES, INC.

by: John E. Heden

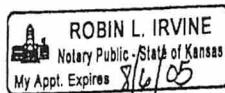
CLARK'S BLANDING, LLC

by: [Signature]

STATE OF KANSAS )  
 ) SS:  
COUNTY OF DICKINSON)

On this 4<sup>th</sup> day of JANUARY, 2002, before me, a Notary Public, duly commissioned, qualified and acting within and for the said County and State, appeared in person the within named John E. Hedeen, to me personally well known, who stated that he is Vice-President, R.E. of Duckwall-Alco Stores, Inc., a corporation organized and doing business under the laws of the State of Kansas, and is duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said corporation; and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 4<sup>th</sup> day of JANUARY, 2002.



Robin L. Irvine  
Notary Public

My commission expires: 8/6/05

STATE OF COLORADO )  
 ) SS:  
COUNTY OF Garfield)

On this 7<sup>th</sup> day of January, 2002, before me, a Notary Public, duly commissioned, qualified and acting within and for the said County and State, appeared in person the within named J. Thomas Clark to me personally well known, who stated that he is Manager, of CLARK'S BLANDING, LLC, a Colorado Limited Liability Company, organized and doing business under the laws of the State of Colorado, and is duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said company; and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 7<sup>th</sup> day of January, 2002.

Richard Teague  
Notary Public

A circular notary seal stamp for Richard Teague, Notary Public - State of Colorado. The seal features a central emblem with a scale of justice and the text "NOTARY PUBLIC STATE OF COLORADO".

My commission expires: 11/17/02



EXHIBIT A

LEGAL DESCRIPTION:

From a point of beginning at a point located north 2383.0 feet and east 1699.0 feet from the south 1/4 corner of section 34, T36S, R22E, SLB&M. Said point beginning south 17 feet of the southeast corner of the Clark's Market parcel. Running thence west 400.0 feet; thence south 268.0 feet; thence east 400.0 feet; thence north 268.0 feet to the point of beginning. Said parcel containing 10700 square feet or 2.461 acres, more or less.

E 065603 B 802 P 0612

EXHIBIT B

T36S, R22E, SLB&M:

Section 34: Beginning at a point located North 2565 feet and East 1699 feet from the S1/4 corner of this section 34, and running thence West 490 feet; South 165 feet; East 490 feet; North 165 feet to point of beginning.

Parcel #B36220347208

Beginning at a point located north 2400 feet and east 1699 feet from the south 1/4 corner of section 34, T36S, R22E, SLB&M. Running thence west 490 feet; thence south 17 feet; thence east 490 feet; thence north 17 feet to the point of beginning. Containing 0.19 acres, more or less.

B 36220347213

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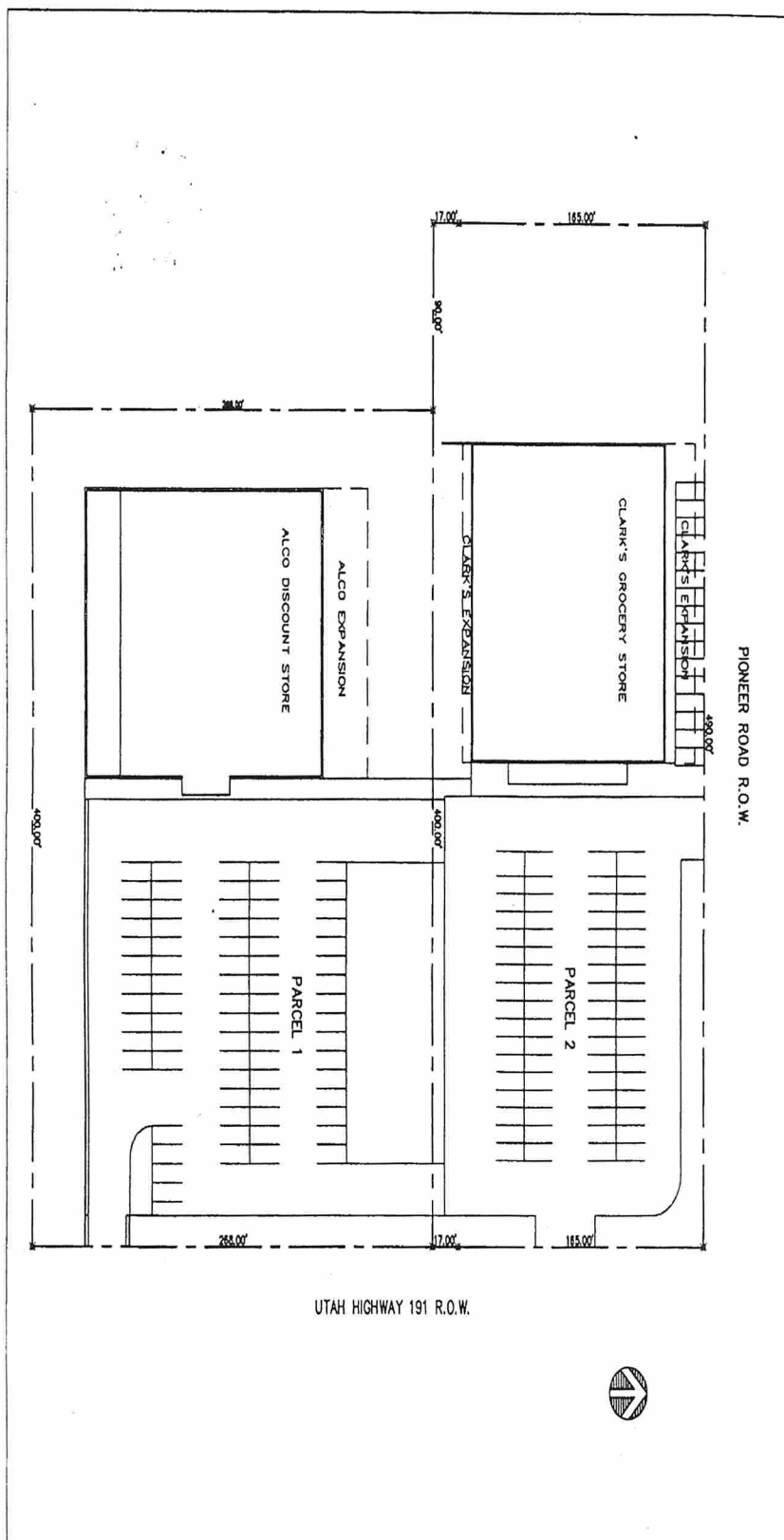



EXHIBIT  
C

DEVELOPMENT PLAN  
BLANDING, UTAH


**DUCKWALL ALCO STORES, INC.**  
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 SINCE 1901

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