

No. 27071
 RECORDED AT THE REQUEST OF
TOOELE TITLE COMPANY
 DATE SEP 27 1965 *11:30 A.M.*
 BOOK 140 OF Rec. 131 FEE 2.25
John H. Johnson
 Nevada County Recorder

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 Declaration of Encumbrances
 (Lease Situation)

DECLARATION OF ENCUMBRANCES
 (Lease Situation)

THIS AGREEMENT, Made and entered into this 27 day of September, 19 65, by and between ALBERTSON'S, INC., a Nevada corporation, (hereinafter designated and referred to as "Albertson's"), and RONALD I. CHRISTENSEN and GARY GRIFFITH, (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 as Tenant did enter on the 10th day of August, 19 65, into a Lease and Lease Agreement with Third Cheltenham Properties, Inc. as Landlord, recorded in Nevada County Deed 9, 1965, Book 140, Page 270, 271 on the demised premises being certain 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 a point North 89°33' West 167.46 feet from the Southeast corner of Lot 1, Block 11, Plat "A", Tooele City Survey, Tooele City, and running thence South 89°33' East 47.46 feet; thence North 0°56'50" East 100.00 feet; thence South 89°33' East 120.00 feet; thence North 0°56'50" East 187.10 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 131.46 feet; thence South 89°03'10" East 127.00 feet along a party wall; thence South 48°10' East 52.24 feet; thence South 0°56'50" West 120.00 feet to the Point of Beginning.

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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 a point North 89°33' West 167.46 feet from the Southeast corner of Lot 1, Block 11, Plat "A", Tooele City Survey, Tooele City, and running thence North 89°33' West 46.50 feet; thence North 0°56'50" East 97.02 feet; thence North 89°33' West 120.0 feet; thence North 0°56'50" East 58.62 feet; thence South 89°03'10" East 127.00 feet along a party wall; thence South 48°10' East 52.24 feet; thence South 0°56'50" West 120.00 feet to the point of beginning.

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NOW, THEREFORE, In consideration of Ten and no/100ths Dollars (\$10.00) paid by Second Party to Albertson's and of the promises, covenants and agreements contained herein, it is promised, covenanted and agreed as follows:

LAND USE

1. No portion or part of Parcel II shall now or in the future be used for any of the purposes 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 Parcel II may be used for the sale of gum, candy, and similar items, and for the sale of food for on the premises consumption~~. 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, it is agreed that the owner of Parcel I, its successors and assigns, and their respective Tenants, may without notice obtain immediate injunctive relief; and, in addition, may pursue any or all damages or 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 1st 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 Two Hundred Fifteen (215) feet of Main Street ~~(Avenue), xxx within~~ Street (Avenue), xxx all as approximately shown on Exhibit "A".

PARKING AREA

5. Any vehicular driving, parking and pedestrian traffic areas (including malls and sidewalks), as shown by crosshatching 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 1.5 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. Albertson's shall, during the term of its lease, and as extended or renewed, and Second Party shall,

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at their own respective cost and expense, keep, repair and maintain on their respective Parcels I and II the said respective vehicular driving, parking and pedestrian areas (including malls and sidewalks), in good order, condition and repair, and in a clean and sightly condition. Second Party 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.

ERECT AND
BOUNDARY
CESS

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 required for location of any buildings as shown on Exhibit "A".

MUTUAL
INGRESS
AND
EGRESS

7. It is agreed by the parties hereto, their successors and assigns, that during the term of Albertson's lease, as extended or renewed, Albertson's and Second Party shall have the right of mutual ingress and egress by vehicular or pedestrian traffic over and across the common, adjoining boundary lines of Parcel I and Parcel II, except where any building is or may be located, and neither Albertson's nor Second Party shall erect any structure, barricade or fences which prevent or hinder such ingress and egress.

VALIDITY

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.

ENFORCE-
MENT

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, or its tenant, 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, or its tenant, may seek any available remedy or damages, or both, at law or equity. The failure of the owner of Parcel I, or its tenant, to insist in any one or more instances 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.

ENFORCE-
MENT

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

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EXCEPTIONS

11.

RECORD
TITLE

12. This Declaration of Encumbrances is subject to any and all easements, restrictions, reservations, encumbrances and defects of record or title.

MORTGAGES

13. If Parcel II is in any manner subject to, encumbered by or affected by any mortgages or deeds of trust, or both, Second Party, prior to executing this instrument, agrees it shall deliver to Albertson's an Agreement by the mortgagee, mortgagees, trustee, trustees, beneficiary, beneficiaries and other persons in form satisfactory to Albertson's that subordinates any such mortgages or deeds of trust to all of the terms of this instrument.

TERM

14. Anything to the contrary notwithstanding, Albertson's, Inc., its successors and assigns, shall be bound by this agreement and liable for any and all provisions contained herein only during the term of Albertson's said lease, as extended or renewed, and if said lease is terminated at any time for any reason, then Albertson's is released and discharged from this agreement and any promises and performances. This document does not and shall not affect the title or possession of the Landlord or owner of Parcel I.

CAPTIONS

15. 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.

SUCCESSORS

16. 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, executors, executrixes, administrators, administratrixes 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, assigns, heirs, executors, executrixes, administrator, administratrixes and legal representatives, 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. Scott
Vice President

Attest: A. P. Ryan
Secretary

SECOND PARTY

[Signature]

Donald L. Christensen

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ACKNOWLEDGMENTS

STATE OF IDAHO)
County of Ada) ss.

On this 27th day of September, 1965, before me, the undersigned, a Notary Public in and for said State, personally appeared J. L. BERLIN Scott and A. L. LYONS, to me known to be the ~~-----1972-----~~ President and the ~~-----~~ 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:

7-16-69

[Signature]
Notary Public in and for the State of Idaho
Residing at Boise, Idaho

STATE OF UTAH)
County of Salt Lake) ss.

On this 27th day of September, 1965, before me, the undersigned, a Notary Public in and for said State, personally appeared RONALD I. CHRISTENSEN and GARY GRIFFITH 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:

7/8/69

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

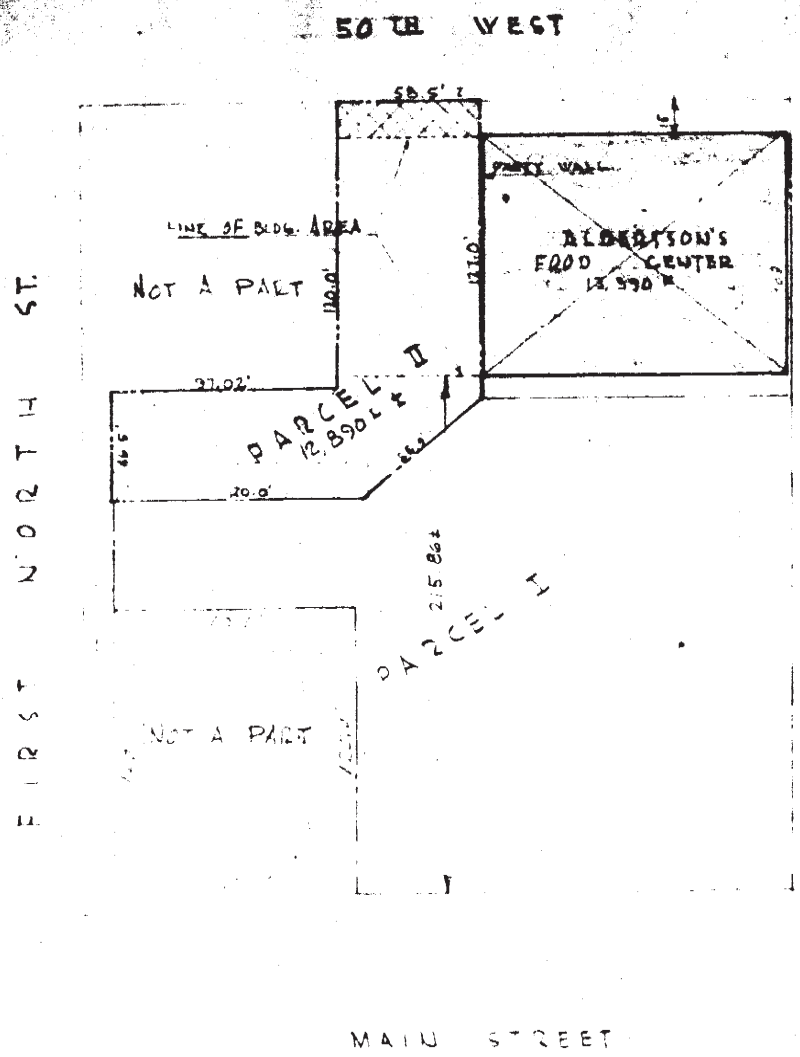
STATE OF _____)
County of _____) ss.

On this _____ day of _____, 19____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, to me known to be the _____ President and the _____ Secretary, respectively, of _____, 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:

Notary Public in and for _____
Residing at _____



1000' CONVEYANCE
 5000' AREA

~~PLOT PLAN~~ *abc*
 SCALE 1" = 50' 0"

AL

EXHIBIT "A"



LOCATED IN TODELE UTAH

C. ED TROUT A.I.A. ARCHITECT
 BOX 20 BOISE IDAHO

DATE: SEPT 27, 1965