

P Book 84 Pg 547

This instrument prepared by/  
After recording return to:  
Piper Allan Severns, Esquire  
Bogin, Munns & Munns  
P.O. Box 2807  
Orlando, FL 32802

STATE MS.-DE SOTO CO.  
FILED

MAR 9 3 41 PM '00

BK 84 PG 547  
W. J. ...

Albertson's Store # 4737 (47CL)  
NEC Goodman Road and Horn Lake Road  
Horn Lake, MS

### MEMORANDUM AGREEMENT

This MEMORANDUM AGREEMENT (hereinafter "Agreement") is made and entered into by and between Albertson's, Inc., a Delaware corporation (hereinafter "Albertson's") having an address of 250 Parkcenter Boulevard, Boise, ID 83726 and Maurie C. Thomas, Trustee for The Hugh Dancy Irrevocable Trust (hereinafter "Dancy") having an address of 6000 Poplar Avenue Suite 250 Memphis, TN 38119 in order to set forth their understanding and agreement regarding their adjoining real property more particularly described below, all as set forth herein.

#### WITNESSETH:

WHEREAS, Albertson's is the record owner of Lot 2, Property Commerce Subdivision in Section 28, Township 1 South, Range 8 West, DeSoto County, Mississippi, according to the plat thereof, recorded in Plat Book 67 at Page 14 in the office of the Chancery Clerk of DeSoto County, Mississippi, and as shown as Parcel 2 on Exhibit "A" attached hereto and made a part hereof (the "Albertson's Property"); and

WHEREAS, Dancy is the record owner of unplatted real property located, at least partially, within the southwest quarter of Section 28, Township 1 South, Range 8 West, DeSoto County, Mississippi. Said Dancy property is immediately north of and has a common boundary with the northernmost boundary of the Albertson's Property, and is more particularly described in Exhibit "B" attached hereto and made a part hereof (the "Dancy Property"); and

WHEREAS, Dancy acknowledges and agrees that Albertson's has begun the process of constructing a building on the Albertson's Property that will benefit the Dancy Property, but further acknowledges that Albertson's is not obligated to Dancy to construct same; and

WHEREAS, Albertson's and Dancy acknowledge that applicable building codes require that building improvements on the Albertson's Property and the Dancy Property be separated by a permanent open space of not less than sixty (60) feet.

NOW THEREFORE, in consideration of the foregoing and the rights and benefits granted herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Albertson's and Dancy hereby stipulate and agree as follows, to-wit:

1. The recitals set forth above are true and correct and are incorporated herein as fully as if set forth below.
2. Albertson's hereby agrees and acknowledges that it shall not construct any buildings on the Albertson's Property that are located, in whole or in part, north of the Building Limit Line as shown on Exhibit "A" attached hereto (the "Building

Limit Line"), nor will it modify or expand any such building in such a manner that any portion of it will be located north of the Building Limit Line.

3. Dancy hereby agrees and acknowledges that it shall not construct any buildings on the Dancy Property within sixty (60) feet of the Building Limit Line, nor will it modify or expand any such building in such a manner that any portion of it will be located within sixty (60) feet of the Building Limit Line.
4. This Agreement shall run with the land, and shall bind and inure to the benefit of the parties hereto, their successors, assigns, tenants and subtenants, and their successors' and assigns' tenants and subtenants.
5. In the event of a default by a party hereunder, the other party shall have all rights and remedies available to it at law and in equity, including, without limitation, the right to seek injunctive relief.
6. The failure of a party to insist upon strict performance of any of the provisions contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the provisions contained herein.
7. In the event either party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.
8. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.
9. This Agreement may only be amended, terminated or modified upon the recordation of a written instrument executed on behalf of the parties hereto, or their successors or assigns.
10. By its execution hereof, Dancy hereby represents and warrants to Albertson's that (a) the person signing this Agreement on behalf of Dancy is properly authorized, empowered and directed to execute this Agreement on behalf of Dancy and to legally bind Dancy thereby, and (b) the Dancy Property is not encumbered by a mortgage or other security instrument, and no party other than Dancy has any rights of ownership or possession of the Dancy Property.
11. This Agreement shall be recorded in the County in which the Albertson's Property and the Dancy Property is located, and the original recorded instrument shall be returned to Albertson's.

12. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgment pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this document.

WITNESS THE SIGNATURES of the parties hereto on the dates as indicated below. This Agreement shall be effective and in full force from and after the later date of execution by the respective parties.

WITNESSES:

M Louise Simpson

Printed Name: M. Louise Simpson

Helene Myers

Printed Name: HELENE J. MYERS

ALBERTSON'S:  
Albertson's, Inc.,  
a Delaware corporation

BMM (PA)

By: \_\_\_\_\_

Printed Name: LINCOLN V. SHARP, JR.

Title: Vice President, Real Estate Law

Date: March 3, 2000

WITNESSES:

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

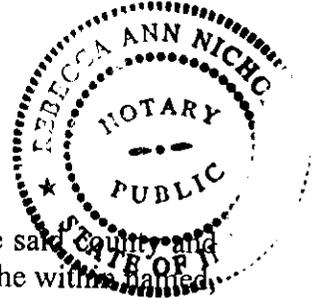
DANCY:

\_\_\_\_\_  
Maurie C. Thomas,  
Trustee for The Hugh Dancy Irrevocable Trust

Date: \_\_\_\_\_

STATE OF Idaho  
COUNTY OF Ada

Personally appeared before me, the undersigned authority in and for the said county and state, on this the 3rd day of March, 2000, within my jurisdiction, the within named, LINCOLN V. SHARP, JR., who acknowledged that he/she is the V.P., Real Estate Law of Albertson's, Inc., a Delaware corporation, and that for and on behalf of the said corporation, and as its act and deed he/she executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.



Rebecca Ann Nichols  
My Commission Expires: 09/24/00

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for the said county and state, on this the \_\_\_\_ day of \_\_\_\_\_, 2000, within my jurisdiction, the within named, Maurie C. Thomas, who acknowledged that he is Trustee for The Hugh Dancy Irrevocable Trust, and that in said representative capacity he executed the above foregoing instrument, after first having been duly authorized so to do.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
\_\_\_\_\_

12. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgment pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this document.

WITNESS THE SIGNATURES of the parties hereto on the dates as indicated below. This Agreement shall be effective and in full force from and after the later date of execution by the respective parties.

WITNESSES:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
\_\_\_\_\_  
Printed Name: \_\_\_\_\_

ALBERTSON'S:  
Albertson's, Inc.,  
a Delaware corporation

**BWM/PAS**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

WITNESSES:

Thurman D. Mooneyham  
Printed Name: Thurman D. Mooneyham  
Jennifer Cochran  
Printed Name: Jennifer Cochran

DANCY:

Maurie C. Thomas  
Maurie C. Thomas,  
Trustee for The Hugh Dancy Irrevocable Trust  
Date: 3-2-2000

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for the said county and state, on this the \_\_\_\_ day of \_\_\_\_\_, 2000, within my jurisdiction, the within named, \_\_\_\_\_, who acknowledged that he/she is the \_\_\_\_\_ of Albertson's, Inc., a Delaware corporation, and that for and on behalf of the said corporation, and as its act and deed he/she executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

STATE OF MISSISSIPPI  
COUNTY OF DESOTO

Personally appeared before me, the undersigned authority in and for the said county and state, on this the 2nd day of March, 2000, within my jurisdiction, the within named, **Maurie C. Thomas**, who acknowledged that he is **Trustee for The Hugh Dancy Irrevocable Trust**, and that in said representative capacity he executed the above foregoing instrument, after first having been duly authorized so to do.

Shel A. Clark  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
5-5-2003

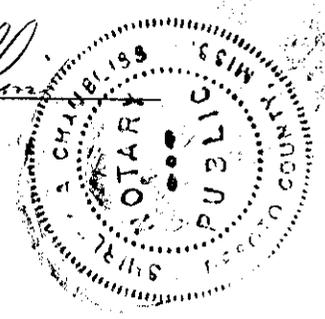
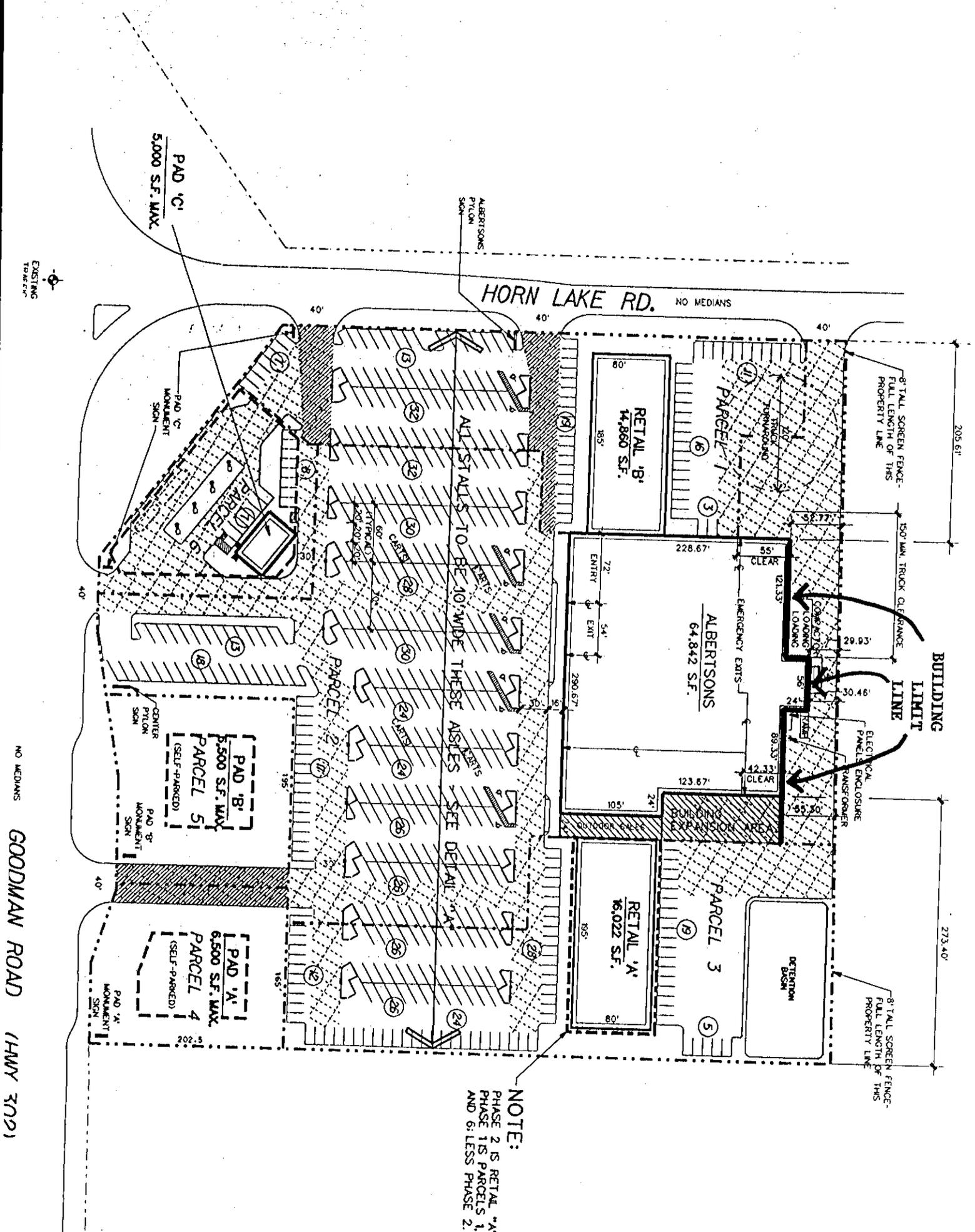


EXHIBIT "A" TO MEMORANDUM AGREEMENT



NOTE:  
 PHASE 2 IS RETAIL "A" ONLY.  
 PHASE 1 IS PARCELS 1, 2, 3, 4, 5,  
 AND 6; LESS PHASE 2.

NO MEDIANS  
 GOODMAN ROAD (HWY 302)

## EXHIBIT "B" TO MEMORANDUM AGREEMENT

Begin at the accepted southwest corner of Section 28, Township 1 South, Range 8 West, Horn Lake, Mississippi, said point being on the centerline of Goodman Road and the centerline of Horn Lake Road; thence along centerline of Goodman Road North 89 degrees 55 minutes 25 seconds East 284.00 feet to a point on the centerline of Goodman Road; thence North 00 degrees 04 minutes 35 seconds East 55 feet to the true point of beginning for the herein described Tract; thence North 52 degrees 53 minutes 07 seconds West 305.98 feet to a point on the East right-of-way of Horn Lake Road having a 40 foot right-of-way; thence along said right-of-way North 00 degrees 01 minutes 02 seconds West 1038.73 feet to a point on the centerline of a Texas Gas Easement; thence North 59 degrees 46 minutes 12 seconds East 1374.93 feet to a point; thence North 60 degrees 58 minutes 21 seconds East 606.29 feet to a point on the West line of Kingston Estates Subdivision; thence along said West line South 00 degrees 36 minutes 09 seconds West 2177.98 feet to a point on the North right-of-way of Goodman Road; thence along said right-of-way the following distances; thence North 89 degrees 55 minutes 25 seconds West 80.92 feet to a point; thence South 63 degrees 21 minutes 31 seconds West 55.90 feet to a point; thence South 85 degrees 38 minutes 04 seconds West 200.56 feet to a point; thence South 89 degrees 55 minutes 25 seconds West 150.00 feet to a point; thence North 78 degrees 45 minutes 59 seconds West 50.99 feet to a point; thence North 89 degrees 55 minutes 25 seconds West 500.00 feet to a point; thence North 71 degrees 38 minutes 29 seconds West 79.06 feet to a point; thence South 89 degrees 55 minutes 25 seconds West 125.00 feet to a point; thence South 80 degrees 29 minutes 41 seconds West 152.07 feet to a point; thence South 89 degrees 55 minutes 25 seconds West, 70.00 feet to the true point of beginning containing 66.60 acres of land, more or less.

**INDEXING INSTRUCTIONS: THE QUARTER/QUARTER SECTION IS NOT ASCERTAINABLE, THEREFORE PLEASE INDEX TRACT V AS N/E, N/W, S/E, S/W OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 8 WEST, DESOTO COUNTY, MISSISSIPPI.**

**LESS AND EXCEPT: Lots 1, 2, 3, 4, 5, & 6, Property Commerce Subdivision, in Section 28, Township 1 South, Range 8 West, DeSoto County, Mississippi as per plat thereof recorded in Plat Book 67, Page 14, in the Office of the Chancery Clerk of DeSoto County, Mississippi.**

PREPARER'S STATEMENT AND INDEXING INSTRUCTION

TYPE OF INSTRUMENT:

Memorandum Agreement

PREPARER'S NAME AND ADDRESS (AFTER RECORDING, PLEASE RETURN TO):

Piper Allan Severns, Esquire  
Bogin, Munns & Munns  
P.O. Box 2807  
Orlando, FL 32802

407-425-1814

INDEXING INSTRUCTIONS:

Please index as a part of Property Commerce Subdivision recorded  
in Plat Book 67 at Page 14

and

in the Southwest Quarter of Section 28,  
Township 1 South, Range 8 West, DeSoto County, Mississippi.

TENDERED FOR RECORDING BY:

Billy C. Campbell, Jr.  
Holcomb Dunbar, P.A.  
Post Office Box 190  
Southaven, MS 38671

601-349-0664