

When Recorded Return To:
Hawley Troxell Ennis & Hawley
Ruth E. Trinkaus
First Interstate Center
877 Main Street, Suite 1000
Boise, Idaho 83701-1617

E-404078BR

6313870 32.00
03/27/96 11:48 AM
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
REC BY: B GRAY DEPUTY - WI

#0339 NWC 70th South & Redwood
West Jordan, UT

6313870

SUPERMARKET AND PHARMACY RESTRICTION

THIS SUPERMARKET AND PHARMACY RESTRICTION ("Restriction") is made as of the 29th day of February, 1996 by and between HWB Enterprises, LTD., and James H. Pingree, Trustee of The Janice B. Pingree Family Trust, as to Parcel 1-A and Parcel 1-B, and H & L Investments, a Utah limited partnership, Deseret Trust Company, a Utah corporation, and James H. Pingree, Trustee of The Janice B. Pingree Family Trust, as to Parcel 11 (collectively, "First Party"), CPI West Jordan, LLC, an Idaho limited liability company ("CPI"), and Albertson's, Inc., a Delaware corporation ("Albertson's").

RECITALS:

WHEREAS, CPI has an option to purchase from First Party that certain property described as Parcel 1-A on Schedule I ("Parcel 1-A") attached hereto and incorporated herein by reference and CPI has options to purchase from First Party adjacent parcels of land described as Parcel 1-B on Schedule I ("Parcel 1-B") and Parcel 11 on Schedule I ("Parcel 11").

WHEREAS, CPI and Albertson's intend to develop Parcel 1-A, Parcel 1-B, Parcel 11 and other property as a Shopping Center.

WHEREAS, Albertson's and CPI have entered into a Shopping Center Lease affecting a portion of Parcel 1-A, subject to: (i) CPI's purchase of and obtaining title to Parcel 1-A; and (ii) First Party's execution of this Restriction, and the recording of this Restriction.

BK7360PG2590

WHEREAS, the parties desire to restrict Parcel 1-B and Parcel 11 from use as a supermarket and pharmacy (defined below) for the mutual benefit of their respective properties.

NOW, THEREFORE, for valuable consideration, including the exercise of the option for Parcel 1-A and the payment of the purchase price for Parcel 1-A by CPI to First Party, the parties hereby agree as follows:

1. **Supermarket and Pharmacy Restriction:** No part of the Parcel 1-B or Parcel 11 shall be used as a supermarket (which shall be defined as any store or department containing at least 5,000 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption); as a bakery or delicatessen; for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; for the sale of alcoholic beverages for off-premises consumption; or for the sale or offer for sale of any ethical pharmaceutical products requiring the services of a registered pharmacist (collectively, the "Restrictions").
2. **Restrictions Runs With the Land:** The Restrictions shall be a burden on the Parcel 1-B and Parcel 11 and shall be appurtenant to and for the benefit of Parcel 1-A and each part thereof and shall run with the land, and shall be for the benefit of CPI and Albertson's.
3. **Successors and Assigns:** The Restrictions created hereby shall inure to the benefit of Parcel 1-A and the owners and tenants thereof, and be binding upon the owner, its heirs, personal representatives, successors and assigns, and upon any person acquiring Parcel 1-B, Parcel 11, or any portion thereof, or any interest therein, whether by operation of law or otherwise. Any subsequent owner of Parcel 1-B, Parcel 11 or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be subject

to this Restriction and liable for all obligations arising under this Restriction with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

4. **Duration:** The term of this Restriction shall be for seventy-five (75) years from the date hereof.

5. **Injunctive Relief:** In the event of any violation or threatened violation by any person of this Restriction, any or all of the owners or tenants of any part of Parcel 1-A shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies provided by law.

6. **Attorney Fees:** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Restriction, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

7. **Termination:** This Restriction may be terminated only by a written instrument executed and acknowledged by CPI and Albertson's.

8. **Counterparts:** This Restriction may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument, and shall be effective upon execution of one or more such counterparts by each of the parties hereto.

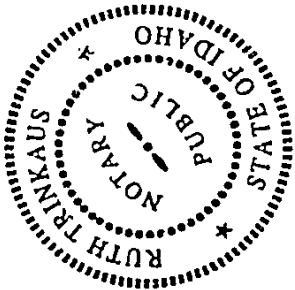
CPI/West Jordan, LLC,
an Idaho limited liability company

BY: [Signature]
Roger D. Cantlon, Member

STATE OF IDAHO)
) ss.
County of Ada)

On this 27th day of Feb., 1996, before me, RUTH
TRINKAUS the undersigned, a Notary Public in and for said State,
personally appeared Roger D. Cantlon, known or identified to me to be a member of CPI/West
Jordan, LLC, who subscribed said company's name to the foregoing instrument, and
acknowledged to me that he executed the same as an authorized member of and in said
company's name.

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



Ruth Trinkaus
Notary Public for Idaho
Residing at Bowl 10
My commission expires 12-10-97

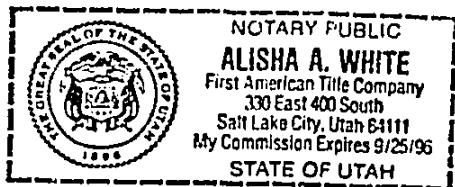
HWB ENTERPRISES, LTD.,
a limited partnership

BY: Howard W. Barben
Howard W. Barben,
Its General Partner

STATE OF UTAH)
County of Salt Lake) ss.

On this 28th day of February, 1996, before me, Alisha
A. White the undersigned, a Notary Public in and for said State,
personally appeared Howard W. Barben, known or identified to me to be the general partner of
HWB Enterprises, LTD, who subscribed said partnership name to the foregoing instrument, and
acknowledged to me that Howard W. Barben, executed the same as the general partner of and
in said partnership name.

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



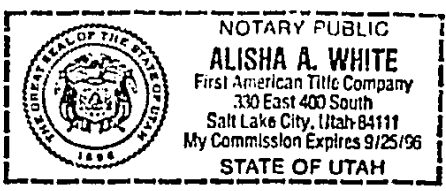
Alisha White
Notary Public for Utah
Residing at Salt Lake City
My commission expires 9/25/96

James H. Pingree Trustee
James H. Pingree, Trustee of
The Janice B. Pingree Family Trust

STATE OF UTAH)
County of Salt Lake) ss.

On this 28th day of February, 1996, before me, Alisha A. White,
a Notary Public in and for the State of ~~Utah~~ Utah, personally appeared James H. Pingree, known or
identified to me to be the person whose name is subscribed to the within instrument as trustee
of The Janice B. Pingree Family Trust, and acknowledged to me that he executed the same as
such trustee of The Janice B. Pingree Family Trust.

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



Alisha White
Notary Public for Utah,
Residing at Salt Lake City
My commission expires on 9/25/96

BK7360162596

H & L Investments, a
Utah limited partnership

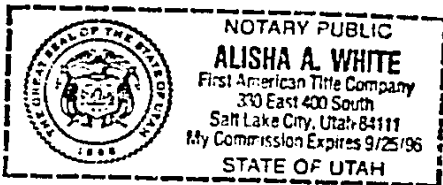
By: Howard W. Barber
General Partner

STATE OF UTAH)

County of Salt Lake SS.

On this 28th day of February, 1996, before me, Alisha A. White, a Notary Public in and for said State, personally appeared Howard W. Barber known or identified to me to be the General Partner of H & L Investments, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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



Alisha White
Notary Public for Utah
Residing at Salt Lake City
My commission expires 9/25/96

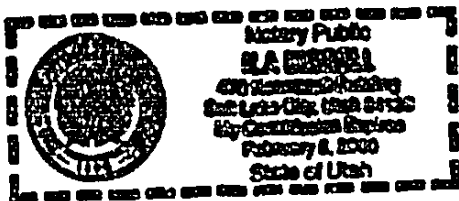
DESERET TRUST COMPANY, a
Utah corporation

By: Harvey S. Glade
Its President

STATE OF UTAH)
) ss.
County of Salt Lake)

On this 11th day of MARCH, 1996, before me, Ila Birrell, a Notary Public in and for said State, personally appeared Harvey S. Glade, known or identified to me to be the President of Deseret Trust Company, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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



Ila Birrell
Notary Public for Utah
Residing at SALT LAKE CITY UT
My commission expires 2-6-2000

Schedule I - Legal description, Parcel 1-A, 1-B, 11

SCHEDULE 1

PARCEL 1A:

Beginning on the old North line of 7000 South Street at a point that is $N89^{\circ}54'29''W$ along the section line 264.00 feet and $N0^{\circ}01'25''W$ 33.00 feet from the County monument at the South Quarter corner of Section 22, Township 2 South, Range 1 West, Salt Lake Base and Meridian, from which monument the County monument at the Center of said Section 22 bears $N0^{\circ}01'25''W$ (basis of bearing); thence along said old North line of 7000 South Street $N89^{\circ}54'29''W$ 467.18 feet to a point on the extension of the East line of Heatherwood Subdivision Phase 2, according to the official plat thereof; thence along said extension and said East line of subdivision $N0^{\circ}01'13''W$ 493.50 feet (plat = North) to a point of curve; thence Northeasterly 215.52 feet along said subdivision line and the arc of a 2915.00 foot radius curve to the right through a central angle of $4^{\circ}14'10''$ (chord bears $N2^{\circ}05'52''E$ 215.47 feet); thence $N89^{\circ}56'35''E$ 459.18 feet; thence $S0^{\circ}01'25''E$ 709.76 feet to the point of beginning. Contains 7.5937

PARCEL 1B:

Beginning on the old West line of Redwood Road at a point that is $N0^{\circ}01'25''W$ along the quarter-section line (basis of bearing) 990.00 feet and $N89^{\circ}54'29''W$ 33.00 feet from the County monument at the South Quarter corner of Section 22, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence $N89^{\circ}54'29''W$ 231.00 feet, parallel with the South line of said Section 22; thence $S0^{\circ}01'25''E$ 247.24 feet; thence $S89^{\circ}58'35''W$ 459.18 feet to a point on the East line of Heatherwood Subdivision Phase 2, according to the official plat thereof; thence Northeasterly 535.76 feet along said subdivision line and the arc of a 2915.00 foot radius curve to the right through a central angle of $10^{\circ}31'50''$ (chord bears $N9^{\circ}28'52''E$ 535.00 feet); thence along said subdivision line $N14^{\circ}44'47''E$ 52.70 feet; thence $S89^{\circ}54'29''E$ 588.40 feet to a point on said old West line of Redwood Road; thence along said street line $S0^{\circ}01'25''E$ 330.66 feet to the point of beginning. Contains 7.3043 acres.

Parcel 11

BEGINNING at a point North $0^{\circ}02'25''$ West 1320.0 feet and South $89^{\circ}57'35''$ West 33 feet from the South quarter corner of Section 22, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence North $89^{\circ}57'$ West 590.56 feet; thence South $89^{\circ}54'$ West 92.26 feet along the North boundary of Heatherwood No. 2 Subdivision; thence North $0^{\circ}02'56''$ West 110.0 feet; thence South $89^{\circ}54'$ West 165.0 feet, more or less, to the East line of property described in Warranty Deed Recorded September 19, 1977 as Entry No. 2998823 in Book 4551 at page 306 of Official Records; thence North $0^{\circ}02'56''$ West 446.59 feet; thence South $89^{\circ}58'46''$ East 616.89 feet, more or less, to the West line of property described in Quit Claim Deed recorded March 23, 1982 as Entry No. 3659475 in Book 5384 at page 342 of Official Records; thence South $0^{\circ}02'25''$ East 47.1 feet, more or less, to the Southwest corner of said Quit Claim Deed recorded as Entry No. 3659475; thence North $89^{\circ}57'35''$ East 231.0 feet; thence South $0^{\circ}02'25''$ East 508.50 feet to the point of BEGINNING.

LESS that portion found within the bounds of Redwood Road.

-FOR COPY-
CO. RECORDS

BK 7360 PG 2600