

RETURN TO:
WALT BRADSHAW & ASSOCIATES
220 SOUTH 200 EAST
S.L.C. UTAH 84111

#3-P SWC 5400 S. & W. Valley Hwy.
Kearns, UT
9/8/81

MEMORANDUM OF SHOPPING CENTER LEASE

3613837

THIS MEMORANDUM OF SHOPPING CENTER LEASE is entered into as of the 16th day of September, 1981, between WPS Company, a Utah limited partnership (Landlord), and Albertson's, Inc., a Delaware corporation, (Tenant).

1. **Premises:** Landlord and Tenant have heretofore entered into a Lease dated as of August 21, 1981, (hereinafter called Lease), whereby Landlord has leased and Tenant has hired, and Landlord does hereby lease and Tenant does hereby hire, those certain premises located in the County of Salt Lake, State of Utah, described in the Lease and more particularly described in Schedule I hereto and shown on Exhibit "A" hereto ("Leased Premises"), which premises are a part of the Shopping Center sometimes known as the West Point Square Shopping Center described in said Lease and more particularly described in Schedule II attached hereto.

UT-79206

2. **Term:** The term of the Lease is for a period of twenty-five (25) years commencing on the Lease Commencement Date as defined in the Lease and terminating on the last day of the calendar month during which the twenty-fifth (25th) anniversary of the Lease Commencement Date occurs.

3. **Options for Renewal:** Tenant, at Tenant's option, in accordance with the terms of the Lease, may extend the term of the Lease for six (6) separate and additional periods of five (5) years each on the same terms and conditions, except length of term, as the Lease.

4. **Common Area:** The Lease provides that:

4.1 All those portions of the Shopping Center upon which buildings cannot be built, as hereinafter provided, shall be Common Areas for the sole and exclusive joint use of all tenants in the Shopping Center, their customers, invitees and employees. Landlord hereby grants to Tenant, for use by Tenant, Tenant's customers, invitees and employees the right of such use of all the Common Areas and any enlargement thereof. In addition, Tenant shall have exclusive use of those portions of the Common Area to the rear or side of

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Tenant's Building devoted to Service Facilities, but Tenant shall not thereby impede the movement of motor vehicles past the rear or side of Tenant's Building. Portions of the Common Area to the rear or side of other buildings in the Shopping Center may be devoted to Service Facilities provided that the movement of motor vehicles past the rear or sides of such buildings are not thereby impeded. Any Service Facilities on or next to Buildings Areas A, B, and C shall be attractively screened from view.

4.2 During construction of every portion of the Shopping Center, and during the entire term of the Lease, the sizes and arrangements of buildings and on-site improvements, including, without limitation, service drives, parking areas, striping, traffic directional arrows and signs, concrete curbing or bumpers, parking lot lighting, perimeter walls or fences, and irrigated landscaped areas and landscaping will not be changed from the sizes and arrangements shown on Exhibit "A".

4.3 Areas designated "Building Areas" on Exhibit "A" represent the only areas on which buildings may be located; however, no building shall be constructed, even in the Building Area, which would reduce the developed Common Area to an area containing less than three (3) square feet for each square foot of ground floor area in buildings located in the Shopping Center or other display or sales areas (other than sidewalks) nor which would reduce the number of customer parking spaces in the Shopping Center to below one (1) customer parking space for each two hundred twenty (220) square feet of ground floor area of all buildings. All areas shown as "Building Area" upon which buildings cannot be constructed because of the foregoing requirements or because of governmental regulations or requirements, shall become and be developed as improved Common Areas.

4.4 There shall be no doubledeck parking in the Shopping Center. No portion of the Common Areas, except sidewalks, shall be used for the sale or display of merchandise. No building shall consist of more than one story plus mezzanine. No free-standing building in the Shopping Center shall exceed eighteen (18) feet in height. No mezzanine shall be used as a sales or display area.

4.5 Landlord agrees that, if the Shopping Center is expanded by ownership, control of Landlord, or agreement with a third party, all of the provisions of the Lease, including but not limited to the provisions in Article 14 (Shopping Center Use Restrictions), with respect to the Shopping Center and the Leased Premises shall apply to the expanded area, the Common Area to Building Area ratio in the expanded area of the Shopping Center will not be less than three (3) square feet for each square foot of ground floor area in buildings and there will be in the Shopping Center as expanded at least one (1) customer parking space for each two hundred twenty (220) square feet of ground floor area of all buildings. At Tenant's request, Landlord will enter into an amendment of the Lease and of the Memorandum of Lease to substitute a Schedule I and Exhibit "A" which describe and show the Shopping Center as expanded.

4.6 At Tenant's request, Landlord shall keep all unauthorized persons from using the Common Areas and, if required by Tenant, construct a fence along one or more of the boundaries of the Shopping Center, the cost of which shall be a Common Area maintenance expense.

4.7 All Building Areas on which buildings are not under construction or completed on the Lease Commencement Date shall be oiled and kept weed free and clean at Landlord's sole expense until such time as buildings are constructed thereon.

4.8 Upon thirty (30) days written notice from Tenant, Landlord shall furnish Tenant an accurate and up-to-date as-built plot plan of the Shopping Center certified to be accurate by Landlord.

4.9 At Landlord's expense, all Common Areas, except Tenant's Service Facilities, shall be maintained in good repair, kept clean, and kept clear of snow and ice and adequately lighted when the Leased Premises or other stores are open for business in accordance with Tenant's standards.

4.10 At least thirty (30) days prior to the initial commencement of the cleaning and sweeping of the Common Area required to be maintained by Landlord hereunder and any other Common Area maintenance work done on a regular basis for which Tenant is obligated to

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reimburse Landlord, Landlord shall submit said Common Area maintenance work for bid to at least four bidders approved in writing by Tenant, which approval shall not be unreasonably withheld. The names of the bidding contractors or companies and the amount of their respective bids shall be furnished to Tenant by Landlord within ten (10) days after receipt thereof. Landlord shall award the contract to the low bidder unless Tenant's prior written consent to award the contract to a higher bidder is obtained by Landlord.

4.11 Tenant agrees to reimburse Landlord for Tenant's share of the actual costs incurred by Landlord in maintaining the Common Areas (except any Service Facilities and the Common Area of any open or enclosed mall) which shall include keeping the Common Areas clean, clear of snow and ice, adequately and clearly striped, adequately lighted, and in good repair, including the proper maintenance of landscaped areas (excluding, however, for the first ten Fiscal Years, the costs of capitalizable improvements or additions to the Common Areas, including, but not limited to, asphalt resurfacing and curbs, light standard and landscape replacement), and insuring said Common Areas, except Service Facilities, with respect to injury to person and loss of life and damage to property in an amount not less than that set forth in Section 15.3; provided, however, Tenant shall not be obligated to reimburse Landlord for any item, Tenant's share of which exceeds \$2,000.00, unless Tenant has given Tenant's prior written approval to the incurrence of the cost thereof, which approval shall not be unreasonably withheld. In addition, Tenant shall pay a management fee of ten percent (10%) of Tenant's share to cover administrative expenses. The management fee shall not exceed \$350.00 for any individual item of service performed without the prior written approval of Tenant. In the event a portion of the Common Area lighting is metered through Tenant's separate meter, Tenant shall be responsible for the electricity, light bulbs and ballasts used by said portion of the Common Area, and Tenant's share of the Common Area costs shall not include the costs of electricity, light bulbs and ballasts in the remainder of the Shopping Center.

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4.12 Said costs shall be reasonable, and Landlord shall use its best efforts to keep said costs as low as reasonably possible. Upon thirty (30) days written notice from Tenant, Landlord shall have said maintenance work bid as set forth in Section 8.2, and Tenant's share shall be based on said costs not to exceed the amount of the lowest bid.

4.13 Tenant's share of Common Area lighting, maintenance and insurance costs shall be twenty-five and ninety-eight hundredths percent (~~25.98%~~) of said costs. This percentage is based on the area of Tenant's Building being ^{41,896}~~41,876~~ square feet and the area of all buildings in the Shopping Center being ^{165,103}~~161,273~~ square feet. If the latter figure is increased, the percentage will be decreased accordingly.

4.14 Landlord shall submit written statements of Landlord's reimbursable costs at least annually. Upon request of Tenant, Landlord shall send Tenant invoices and other evidence substantiating the statements. Provided the statement is reasonable and in accordance with the provisions of the Lease, Tenant shall pay the statement within thirty (30) days of the receipt of the statement and any evidence requested by Tenant. Landlord hereby waives any and all right to collect any such costs for which a statement is not submitted on or before the first day of July of the year following the calendar year during which the costs were incurred.

5. Shopping Center Use Restrictions: The Lease provides that:

5.1 No part of the Shopping Center other than the Leased Premises 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), a bakery, a delicatessen, nor for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption.

5.2 No part of the Shopping Center shall be used as a bar, tavern, adult book store, gym, automotive repair facility (except that K-Mart may operate such a facility), dance hall, billiard or pool hall, game parlor (except a game parlor may be located in Building

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Area 1), massage parlor, theater, bowling alley, skating rink, warehouse, or car wash or for the renting, leasing or sale of or displaying for the purpose of renting, leasing or sale of any motor vehicle or trailer, or for industrial purposes.

5.3 No part of the Shopping Center within one hundred (100) feet of the Leased Premises shall be used as a restaurant; medical, dental, professional or business offices; health spa or studio; training or educational facility; or entertainment facility. Only a maximum of 3,020 square feet of that part of the Shopping Center between one hundred (100) feet and two hundred twenty (220) feet of the Leased Premises may be used as a restaurant; medical, dental, professional or business offices; health spa or studio; training or educational facility; except that Pad No. 1 may be used as a restaurant.

5.4 No restaurant, bank, or other facility featuring vehicular driveup or drive through customer service shall be located on Pad No. 1 unless Tenant has first given Tenant's written consent, which shall not be unreasonably withheld, to the location, parking and drive lanes of such facility. Tenant hereby approves such facilities to the extent shown on Exhibit "A".

5.5 There shall be no open or enclosed malls in the Shopping Center unless Tenant has first given Tenant's written consent, which shall not be unreasonably withheld, to the location of the entrance to such mall.

5.6 If any term or provision of this Article or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Article or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Article shall be valid and shall be enforced to the extent permitted by law.

6. **Signs:** The Lease provides that:

6.1 Landlord shall, at Landlord's expense, furnish, install and maintain a sound and substantial, well designed sign pylon approved by Tenant on the Shopping Center in the area designated "Shopping Center Sign" on Exhibit "A". Tenant shall have a permanent

designation on the Shopping Center sign in a location, style and size approved by Tenant. Tenant shall pay for one-half ($\frac{1}{2}$) of the cost of constructing the sign pylon, for one-half ($\frac{1}{2}$) of the cost of bringing electric lines to the sign pylon and for a prorata share of the electricity used by the signs on the sign pylon in the ratio that the size of Tenant's sign bears to the total size of all signs on the sign pylon. Provided that the amount of signage permitted by governmental entities to Tenant is not adversely affected thereby, a designation of the Shopping Center and of other tenants in the Shopping Center who occupy at least 17,000 square feet of ground floor area shall be permitted on the sign pylon subject to the prior written approval of Tenant, which approval shall not be unreasonably withheld, of the location, size and style of said designations.

6.2 Tenant may at its own expense erect, maintain and illuminate a sign on the parking lot of the Shopping Center in the area designated "Albertson's Sign" on Exhibit "A", subject to the approval of K-Mart.

6.3 No free-standing sign shall be placed on the Shopping Center except as shown on Exhibit "A". Those signs shown on Building Areas 1, 2, and 3 shall not adversely affect the visibility of the signs referred to in Section 9.1 and 9.2.

7. **Covenant to Operate:** Albertson's is not obligated to operate a supermarket or any other business during the term of the Lease.

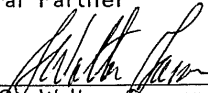
8. **Covenant to Open:**

8.1 Tenant agrees to open the Leased Premises for business as soon as is reasonably practical after the Lease Commencement Date. Tenant shall be deemed to have complied with the requirements of this Article by opening the Leased Premises for business, and nothing contained herein shall be construed to require Tenant to operate the Leased Premises for any length of time or at all after the Leased Premises are once opened for business.

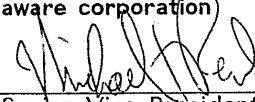
9. **Lease Incorporated:** All the terms, conditions and covenants of the Lease, which may be inspected at the offices of Landlord at Peterson Gasser & Associates, Inc., 220 South 200 East, Suite 150, Salt Lake City, Utah 84111, or the offices of the Tenant at P.O. Box 20, Boise, Idaho 83726, are incorporated herein by this reference.

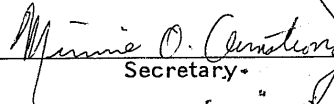
LANDLORD:
WPS COMPANY,
a Utah limited partnership

BY: CDI Ltd.,
a Utah limited partnership
General Partner

BY: 
G. Walter Gasser,
General Partner

TENANT:
ALBERTSON'S, INC.
a Delaware corporation

BY: 
Senior Vice President

BY: 
Secretary



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STATE OF IDAHO)
) ss.
County of Ada)

On this 16th day of September, 1981, before me, the undersigned Notary Public in and for said State, personally appeared Michael F. Reuling and Minnie O. Armstrong, known to me to be the Senior Vice President and 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.

Claudia A. Medina
Notary Public for Idaho
Residing at Boise, Idaho

My Commission expires:

10-30-84


STATE OF UTAH)
) ss.
County of SALT LAKE)

On this 10th day of SEPTEMBER, 1981, before me, the undersigned Notary Public in and for said State, personally appeared EMIL WALTER GASSER, known to me to be the General Partner of the partnership that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said partnership for the uses and purposes therein.

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

Red E. Stephenson
Notary Public for UTAH
Residing at SALT LAKE CITY

My Commission expires:

July 14, 1982

1700

Opfer

SEARCHED
SERIALIZED
INDEXED
FILED

OCT 14 11 22 AM '81

KATE LARSON
RECORDER
SALT LAKE COUNTY
UTAH

SCHEDULE II

Beginning at a point on the South right of way line of 5400 South Street, N 89°56'30" E, 823.9' and S 0°03'30" E. 53.00' from the Northwest Corner of Section 17, T2S, R1W, SLB&M.

and running thence N 89°56'30" E, 572.40' along said south right of way line to the east line of a permanent easement of the Jordan Aqueduct recorded in book 3235 page 127 and referred to as Parcel No. JA-204(F); thence S 13°24'08" E along said east line, 196.92'; thence S 17°01'08" E, 886.50' along said line; thence N 89°54'30" W, 876.41'; thence N 0°03'30" W, 531.25'; thence S 89°56'30" W, 133.90'; thence N 0°03'30" W, 276.00'; thence N 89°56'30" E, 133.90'; thence N 0°03'30" W, 230.00' to beginning. Containing 17.9861 acres.

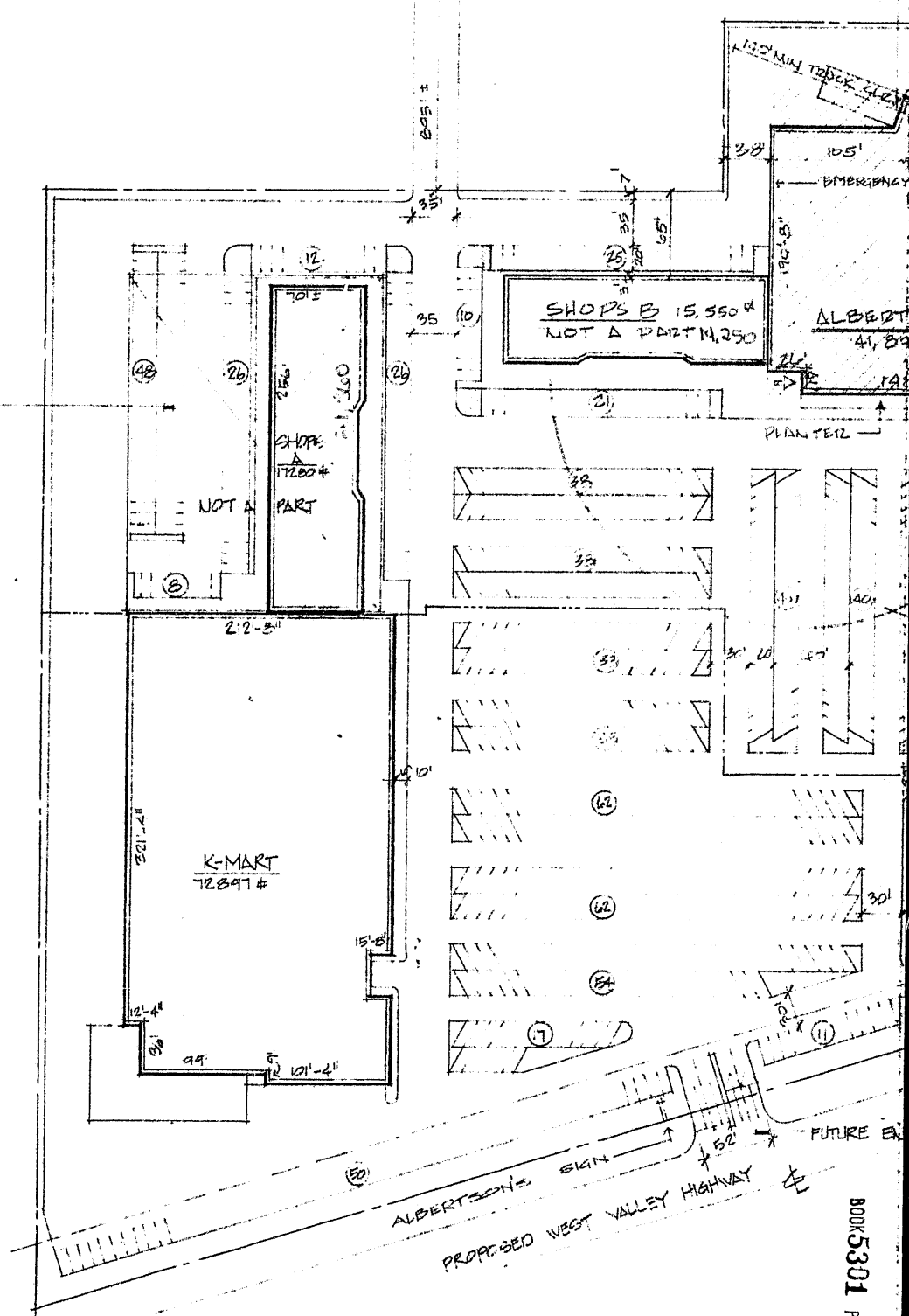
Together with the following described right of way:

Beginning at a point S 0°05'29" E, 559.00' and N 89°54'30" W, 68.89' and S 0°05'30" W, 245.32' from the Northwest corner of Section 17, T2S, R1W, SLB&M, running thence S 89°54'30" E, 488.17'; thence N 79°10'20" E, 205.30'; thence S 89°54'30" E, 203.25'; thence S 0°03'30" E, 35.00'; thence N 89°54'30" W, 200.00'; thence S 79°10'20" W, 205.30'; thence N 89°54'30" W, 491.52' to the East line of 4015 West Street; thence N 0°05'30" E 35.00 feet to the point of beginning.

mt
CCM

4015 WEST STREET

BLDG. PAD/
LEASE



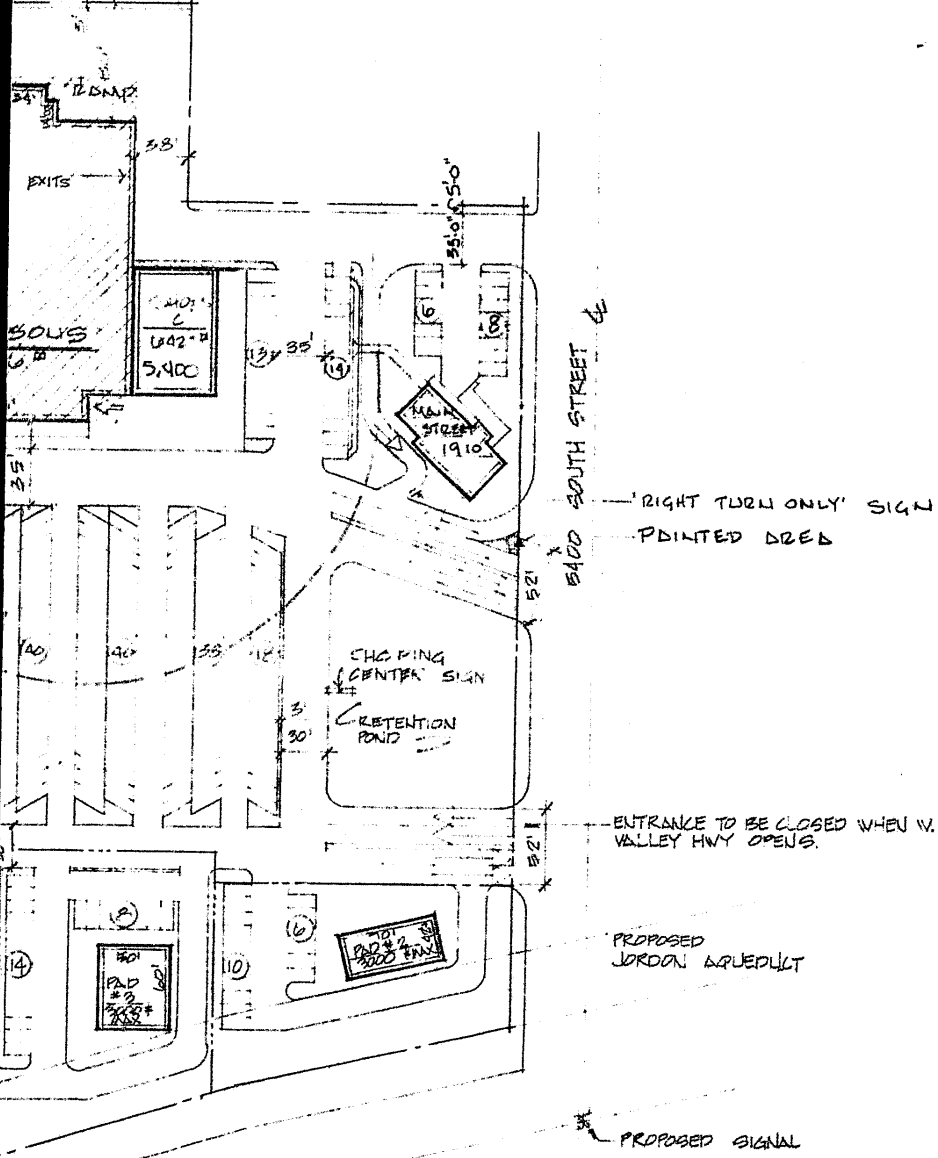
IMPORTANT - DISTANCE BETWEEN REAR CURB & REAR OF ALBERTSON'S MAY VARY BASED ON LOADING RAMP REQUIREMENTS & GRADES. CONSEQUENTLY, ALBERTSON'S BUILDING MAY MOVE FORWARD A MAXIMUM OF 10'-0". TO BE VERIFIED WITH ALBERTSON'S PROJECT ARCHITECT.

TOTAL BLDG AREA
TOTAL CARPARKS
CARPARKS W. IN 200' RADIUS

LEASED - PRD

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DOCK ANGLE 20°



REVISIONS
 REV. B - 2-28-81
 ADJUST PARKING
 INCREASE SHOP
 AREA - DRW
 281, 4-16-81
 ADD MAIN ST.
 1710, ADJUST
 PARKING, CHANGE
 SHOP FRONT,
 SINGLE LEADING
 DOCK ADD PLANNED
 S.E.H.

[Signature]

SITE PLAN



PROJECT
 S.W.C.
 5400
 SO. ST.
 &
 W. VALLEY
 HWY.

KEARN'S
 UTAH
 BOOK 5381 PAGE 1589
 STORE NO.
 3-P

SCALE: 1"=100'-0"

PRELIMINARY SITE PLAN

213 A
 819
 15B

11585

APPROVED	
MCCAIN	
BOLINDER	
MICHAEL	<i>[Signature]</i>
CARLEY	<i>[Signature]</i>
LANDON	<i>[Signature]</i>
HORNECKER	<i>[Signature]</i>

Drawn By J.C.J.
 Checked By
 Date 6-15-81
 Sheet 01
 No.

SCHEDULE I

Beginning at a point South 320.05' and East 770.33' from the Northwest Cor. Section 17, T2S, R1W, SLB&M and running thence N 89°56'30" E, 209.67'; thence S 0°03'30" E, 200.33'; thence S 89°56'30" W, 209.67'; thence N 0°03'30" W, 38.00'; thence S 89°56'30" W, 24.67'; thence N 0°03'30" W, 101.00'; thence N 89°56'30" E, 10.67'; thence N 0°03'30" W, 8.00'; thence N 89°56'30" E, 14.00'; thence N 0°03'30" W, 53.33' to the point of beginning. Containing 44,606.53 square feet or 1.0240 acres.

mgl
ccw

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