

FAIRFIELD, DIXON  
RECORDER  
SALT LAKE COUNTY,  
UTAH

185 So. State # 450  
St. C. Utah  
84111

MAY 11 3 15 PM '84

Allen, Nelson, Hawks & Evans  
REC'D OF DEED

Donald Thurst  
Lowell Hulse

13.50

DECLARATION OF PROTECTIVE COVENANTS FOR  
WEST POINT SHOPPING CENTER

3940232

THIS DECLARATION is made this 2nd day of May, 1984, by W.P.S. COMPANY, a Utah General Partnership ("Declarant").

I. PURPOSE OF COVENANTS. It is the intention of Declarant, expressed by its execution of this instrument, that the property known as the West Point Shopping Center, which property is more fully described on Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as "West Point Shopping Center"), be developed and maintained as a highly desirable commercial area. It is the purpose of these covenants that the business-like surrounding of West Point Shopping Center shall be always protected insofar as it is possible in connection with the uses and structures permitted by this instrument. Declarant hereby declares that a certain parcel of property which is a part of the West Point Shopping Center, which property is more fully described on Exhibit "B" attached hereto and incorporated herein by this reference (hereinafter referred to as "Pad A") is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied, improved, and otherwise affected in any manner subject to the provisions of this Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plan and scheme of ownership referred to herein, and are further declared to be for the benefit of the West Point Shopping Center and every part thereof and for the benefit of each owner thereof. Declarant hereby declares that the burden described in the provisions of this Declaration shall attach only to Pad A and shall be deemed to run with the land as covenants running with the land or as equitable servitudes as the case may be, and shall constitute burdens to the owners, lessees, renters, occupants, or other parties claiming an interest in Pad A, their successors and assigns, and to all parties hereafter claiming any interest in the West Point Shopping

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Center. Further, Declarant declares that the benefit described in the provisions of this Declaration shall enure to the benefit of the West Point Shopping Center, and all provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits to all owners, lessees, renters, occupants, or other parties claiming an interest in the West Point Shopping Center, their successors and assigns, and to all parties hereafter any interest in the West Point Shopping Center.

## II. DEFINITIONS.

2.1 Declarant. "Declarant" means W.P.S. Company, a Utah General Partnership, together with its successors and assigns.

2.2 Building. "Building" means any building, structure, or other improvement constructed on Pad A.

## III. RESTRICTIONS ON PAD A.

3.1 Type of Building. No Building, other than a "Dairy Queen" restaurant or other restaurant of similar character and quality shall be constructed on Pad A.

3.2 Building Size. No Building constructed on Pad A shall exceed an aggregate total of 3,000 square feet, and no such Building shall exceed a height greater than 18 feet, measured from natural or unmodified grade at the Building site to the highest point of the roof.

3.3 Building Appearance. No change, modification, additional construction, or remodeling, including the change of paint or panel color, to any exterior surface, shall be performed on any Building located on Pad A.

3.4 Parking Configuration. No change, modification, or other alteration shall be made to the parking configuration on Pad A.

3.5 Egress and Ingress. No change, modification, or other alteration shall be made to the ingress or egress to Pad A.

3.6 Restriction on Business Activity. Commercial business activity conducted on Pad A shall not consist of the manufacture, sale, or distribution of bakery goods, including, but not

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limited to, the manufacture, sale, or distribution of breads, cakes, and pasteries.

3.7 Common Area Fees. The owners, lessees, renters, occupants, or other parties claiming an interest in Pad A shall pay a three percent (3%) share annually to the Declarant or its successors and assigns, of the expense of maintaining and repairing the parking and common areas of the West Point Shopping Center outlined on Exhibit "C", attached hereto and incorporated herein.

IV. WAIVER OF RESTRICTIONS. No restriction, covenant, or other provision of the Declaration may be waived without the prior written and recorded approval by Declarant, its successors, or assigns.

V. ENFORCEMENT.

5.1 Enforcement and Remedies. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or any supplemental or amended Declaration shall be enforceable by Declarant or by any owner of the West Point Shopping Center by proceeding for a prohibitive or mandatory injunction. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recovery its costs and expenses in connection therewith, including reasonable attorney's fees.

5.2 Protection of Encumbrances. No violation or breach of any provision, restriction, covenant, or condition contained in this Declaration or any supplemental or amended Declaration and no action to enforce the same shall defeat or render invalid the lien of any mortgage or deed of trust taken in good faith and for value and perfected by recording prior to the time of recording of an instrument giving notice of such violation or breach, or the title or interest of the holder thereof, or the title acquired by any purchaser upon foreclosure of any such mortgage or deed of trust. Any such purchaser shall, however, take subject to this Declaration and any supplemental or amended declaration, except that only non-continuing violations or breaches which occurred prior to such foreclosure shall not be deemed breaches

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or violations hereof with respect to such purchaser, his heirs, personal representatives, successors, and assigns.

## VI. GENERAL PROVISIONS.

6.1 Duration of Declaration. Any provision, covenant, condition, or restriction contained in this Declaration or any supplemental or amended Declaration which is subject to the common law rule, sometimes referred to as the Rule Against Perpetuities, shall continue and remain in force and effect for the period of 50 years or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions, covenants, conditions, and restrictions contained in this declaration or in any supplemental or amended declaration shall continue and remain in force and effect until January 1, 2034, A.D., provided, however, that unless at least one year prior to said time of expiration, there is recorded an instrument directing the termination of this Declaration, executed by the Declarant, its successors, or assigns, said other provisions, covenants, conditions, and restrictions shall continue automatically for an additional ten years, and thereafter for successive periods of ten years unless, at least one year prior to the expiration of any such extended period of duration, this Declaration is terminated by recorded instrument directing termination signed by the Declarant, its successors, or assigns.

6.2 Amendment or Revocation. At any time while any provisions, covenant, condition, or restriction contained in this Declaration or any supplemental or amended Declaration is in force and effect, it may be amended or repealed by the recording of a written instrument specifying the amendment or the repeal, executed by the Declarant, its successors, or assigns. No such amendment or repeal shall be effective with respect to the holder or successor or assign of the holder of a mortgage or deed of trust recorded prior to the recording of the instrument specifying the amendment or repeal unless such holder executes the said instrument.

6.3 Severability. Invalidity or unenforceability of any provision of this Declaration or any supplemental or amended Declaration in whole or in part shall not affect the validity or enforceability of any

other provisions or valid and enforceable part of a provision of this declaration.

6.4 Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision, restriction, covenant, or condition contained in this declaration.

6.5 Waiver. Except as provided in Article IV, failure to enforce any provision, restriction, covenant, or condition in this declaration or in any supplemental or amended declaration shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provision, restriction, covenant, or condition.

IN WITNESS WHEREOF, W.P.S. Company has executed this declaration the day and year first above written.

W.P.S. COMPANY, a Utah General  
Partnership

By: C.D.I., LTD., General Partner

  
G. Walter Casser

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STATE OF UTAH            )  
                                  :    ss.  
COUNTY OF SALT LAKE )

On the 2<sup>nd</sup> day of May, 1984, personally appeared before me G. Walter Gasser, General Partner of C.D.I., LTD., who, being by me duly sworn, did say that C.D.I., Ltd., is the General Partner of W.P.S. COMPANY, a Utah General Partnership, and that the within and foregoing Declaration of Protective Covenants for West Point Shopping Center was signed by him in behalf of said General Partnership.

Charles S. Allan  
NOTARY PUBLIC

My Commission Expires:

8-5-85

Residing at SLC, UT.



C3-015

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EXHIBIT "A"

BEGINNING at a point on the South right-of-way line of 5400 South Street, North 89°56'30" East, 823.9 feet, and South 0°03'30" East 53.0 feet from the Northwest Corner of Section 17, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°56'30" East, 572.40 feet 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 South 13°24'08" East along said East line, 196.92 feet; thence South 17°01'08" East 886.50 feet along said line; thence North 89°54'30" West, 876.41 feet; thence North 0°03'30" West, 531.25 feet; thence South 89°56'30" West, 133.90 feet; thence North 0°03'30" West, 276.00 feet; thence North 89°56'30" East, 133.90 feet; thence North 0°03'30" West, 230.00 feet to BEGINNING.

EXHIBIT "E"

Legal Description  
Pad "A"  
WEST POINT SHOPPING CENTER

Beginning at a point on the South R/W line of 5400 South Street, Kearns, Utah, said point being N 89°56'30" E, 863.90 ft. and S 0°03'30" E, 53.00 ft. from the NW Cor of Sec 17, T2S, R1W, SLB&M, and running thence N 89°56'30" E, 160.37 ft. along said South R/W line to a point on a 40.00 ft. radius curve to the right, (radius point bears S 40°15'24" W) thence southeasterly along the arc of said curve, 48.09 ft; thence S 19°08'16" W, 102.02 ft; thence S 89°56'30" W, 138.72 ft; thence N 0°03'30" W, 140.00 ft. to the point of beginning.

Containing 0.5155 Acres.

C3-014

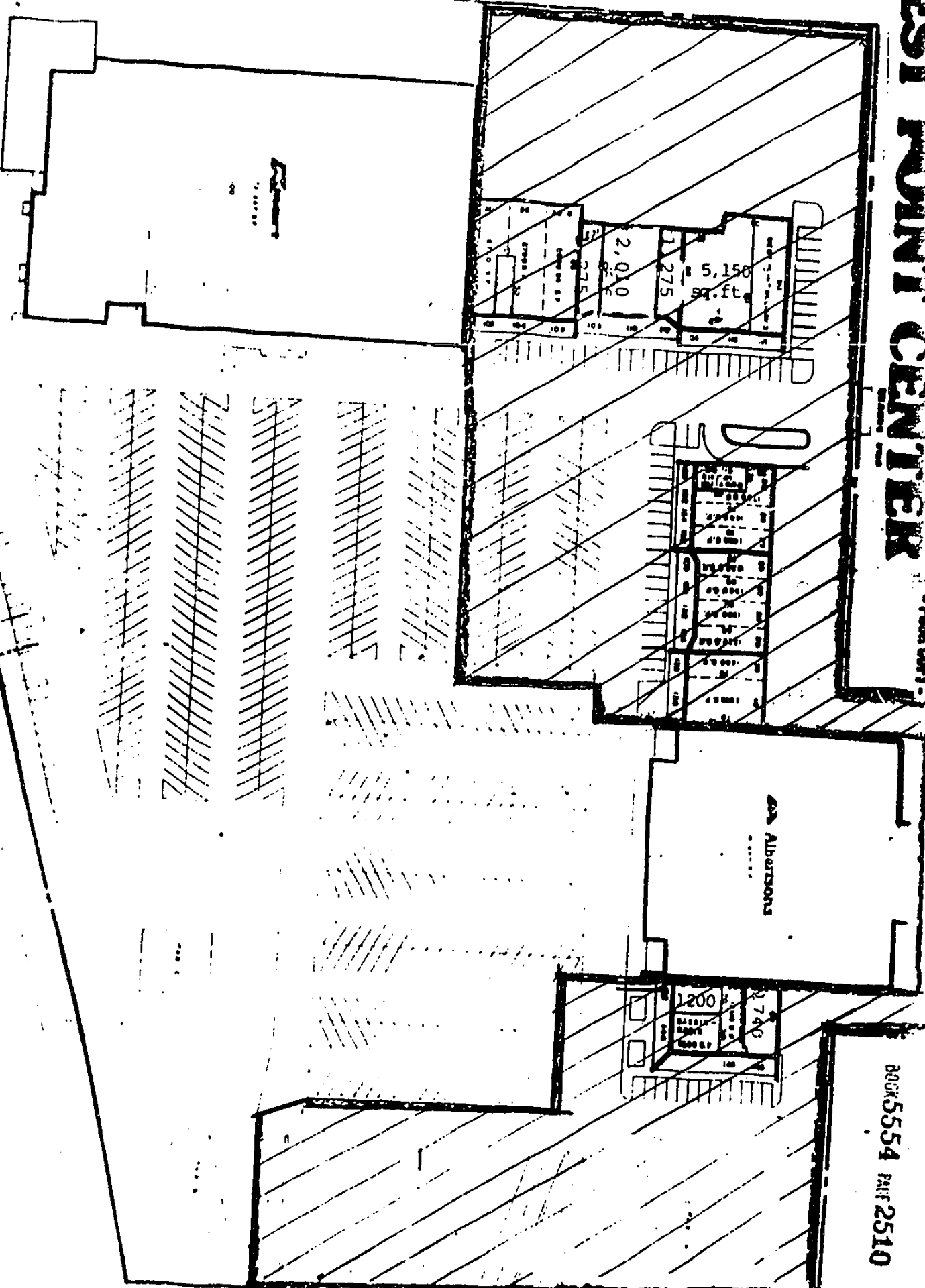
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EXHIBIT "C"

# WEST POINT CENTER

- FROM COURT -



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