

Customer no. 3909

Property no. 3957

NW14-13-37-1W Farmington Area Pressurized Irrigation District
IRRIGATION WATER APPLICATION AGREEMENT

AGREEMENT made in duplicate this 8 day of December, 1999, between:

Smith Food King Properties
By BURKE & NICKEL

and

FARMINGTON AREA PRESSURIZED
IRRIGATION DISTRICT
50 North 100 East
Farmington, Utah 84025
P. O. Box 268
Farmington, Utah 84025
(the "District")

RETURNED

3336 E 32nd St Suite 217 FEB - 7 2000
("User" Mailing Address)
TULSA OKLAHOMA 74135

WITNESSETH:

WHEREAS, the District is organized as a special improvement district and has developed a water distribution system to supply irrigation water to land located within the District boundaries; and User owns property within the boundary lines of the District and desires to make application for water to irrigate User's land;

NOW, THEREFORE, the parties agree as follows:

1. User hereby applies to the District for a connection to the District's distribution system (Service connection category type: Residential; Agricultural; or X Special need) and a full water right to irrigate the 5.92 ^(Combined Acreage) acres of land owned or under contract to purchase by User situated in Davis County, State of Utah, at the address commonly known as (property address) 1316 No. Hwy 89 Farmington Ut 84025 and more particularly described as follows (the "Property"):

Tax Serial Number: 08:051:0069 & 08:051:0074
Subdivision:
Lot Number:
Legal Description: SEE ATTACHED

E 1573889 B 2612 P 1042
SHERYL L. WHITE, DAVIS CNTY RECORDER
2000 FEB 7 8:31 AM FEE .00 DEP MT
REC'D FOR FARMINGTON AREA PRESSURIZED IR

2. For each distribution delivery point located on or adjacent to the Property, User shall pay an initial application agreement fee of \$300.00, plus the cost of installation, for a total of \$ paid.
3. The parties covenant and agree to all of the General Provisions set forth on page 2 of this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement the day and year first above written.

USER: SMITH'S FOOD & DRUG CENTERS, INC.

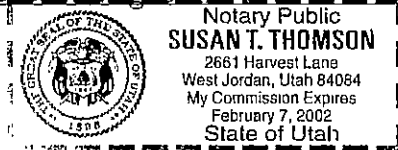
DISTRICT: FARMINGTON AREA
PRESSURIZED IRRIGATION DISTRICT

X Charlotte K. Wightman
Director of Property Management

By: Judy C Rigby
Title: Office Manager

STATE OF UTAH }
COUNTY OF DAVIS } ss.

The foregoing instrument was acknowledged before me this 8th day of December, 1999
by Charlotte K. Wightman, the above-named User.



Susan T. Thomson
Notary Public

GENERAL PROVISIONS

A. In addition to the initial service fee, User shall pay to the District an annual water fee (in advance of the irrigation season each year) within thirty (30) days after billing. The annual fee is based upon the amount of the acreage of the Property. User agrees to pay for the right to use such water whether or not User actually takes or uses it.

B. If the amount of Property set forth above is reduced by sale or other conveyance, the amount of the annual fee for the water shall be proportionally reduced upon application by User to the District. However, any property divided off from the Property shall not be entitled to use the water of the District until the new owner has applied, and paid to the District required service fees, for the use of the water.

C. User shall not permit anyone to connect to any water line which serves the Property or is located thereon.

D. User covenants and agrees to abide by all of the District rules, regulations, and policies now presently in force or hereafter adopted by the District.

E. Any and all delinquent sums owed hereunder by User shall bear interest at the rate of 18% per annum until paid in full. Any and all sums owed hereunder (including interest) shall constitute a lien against the Property.

F. This Agreement and the covenants of User herein shall run with the Property and shall be binding upon the representatives, successors and assigns of User and cannot be transferred or assigned to any other parcel of land located within the District boundaries.

G. If User fails to pay sums owed hereunder within thirty (30) days after due date, or in any other way breaches this Agreement, then in addition to the District's other rights and remedies available at law or in equity, the District shall have all of the following rights and remedies, which shall be cumulative:

- (1) The District may terminate water service to the Property;
- (2) The District may foreclose its lien against the Property, as a mortgage; and
- (3) The District may bring suit to recover the delinquent sums owed or to recover damages or seek such other remedies as are appropriate.

H. If User's line is disconnected from the District's distribution system for failure to pay fees due, or at the request of User, User agrees to pay a new service fee in the amount then being assessed by the District, before the line is reconnected.

I. In the event there is a shortage of water resulting from drought, prior or superior claims, breakage of any water line, or other causes, no liability shall accrue against the District or any of its trustees, officers, agents or employees for any damage, direct or indirect, arising therefrom and any charges due by User shall not be reduced because of any such shortage and damage. Deliveries of water allotted pursuant to this Agreement shall be reduced in the proportion that the number of acre-feet of the District's shortage bears to the total number of acre-feet subscribed for by all users of District water.

J. In the event either party is required to enforce the terms of this Agreement, the defaulting party agrees to pay all costs of enforcement, including a reasonable attorney's fee, whether or not litigation is actually commenced.

K. This Agreement shall remain in full force and effect from year to year unless either of the parties notifies the other, in writing, at least sixty (60) days prior to the end of the current calendar year.

FOOTING TO THE PUB. CONT. 0.526 ACRES
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(024)08:051:0069 SMITH'S FOOD KING PROPERTIES, 899,460 3428,570
REF. NO: 921920

TOTAL PA

% BURKE & NICKEL 3336 EAST 32ND STREET #217 TULSA OK

1316 NORTH HIGHWAY 89 FARMINGTON E 1573889 B 2612 P 1044

BEG ON THE W'LY LN OF FOXGLOVE ROAD AT A PT S 89°45'50" W 1164.04 FT ALG THE SEC LN FR THE S 1/4 COR OF SEC 12-T3N-R1W, SLM; & RUN TH S 21° E 115.86 FT ALG THE W'LY LN OF SD ROAD; TH SE'LY 46.21 FT ALG THE ARC OF A 330.96 FT RADIUS CURVE TO THE RIGHT ALG SD ROAD (CH BEARS S 17° E 46.17 FT); TH S 69° W 60 FT; TH N 21° W 222.30 FT; TH S 69° W 471.94 FT M/L TO THE NE'LY LN OF STATE HWY 89; TH N 21° W 325.0 FT ALG SD HWY LN; TH N 69° E 368.0 FT; TH N 21° W 80.0 FT; TH N 69° E 15.0 FT; TH N 21° W 70.0 FT; TH N 69° E 120.37 FT TO A FENCE LN & A PT S 89°54'32" W FR THE INTERSEC OF TWO FENCE LN 484.0 FT N & 811.34 FT W OF A BRASS CAP MARKING THE S 1/4 COR OF SD SEC 12; TH N 89°54'32" E 36.73 FT ALG SD FENCE LN; TH S 21° E 522.26 FT ALG THE W'LY LN OF A PROPOSED ROAD & THE W'LY LN OF SD FOXGLOVE ROAD TO THE PUB. CONT. 4.87 ACRES.

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(024)08:051:0074 SMITH'S FOOD KING PROPERTIES, 182,950 0
REF. NO: 921921

TOTAL PA

% BURKE & NICKEL 3336 EAST 32ND STREET #217 TULSA OK

1316 NORTH HIGHWAY 89 FARMINGTON

BEG AT A PT ON THE E'LY LN OF US HWY 89 & THE N'LY LN OF SHEPARD LANE, SD PT ALS O BEING S 340.08 FT & W 1606.77 FT FR THE S 1/4 COR OF SEC 12-T3N-R1W, SLM; (BAS IS OF BEARING BEING S 89°45'50" W BETWEEN SD S 1/4 COR & THE SW COR OF SD SEC 12) & RUN TH N 21°26'40" W 214.73 FT ALG THE E LN OF US HWY 89; TH N 69°00'00" E 181.21 FT ALG THE S LN OF SMITH'S PARCEL; TH S 21°00'00" E 292.80 FT ALG THE W LN OF THE PROPOSED BOYER PARCEL; TH N 87°29'51" W 195.78 FT ALG THE N LN OF SHEPARD LANE TO THE PUB. CONT. 1.05 ACRES. SUBJ TO R/W

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