

RECORDING REQUESTED BY:  
SMITH'S FOOD & DRUG CENTERS, INC.

WHEN RECORDED, MAIL TO:  
SMITH'S FOOD & DRUG CENTERS, INC.  
ATTN: KYLE McKAY, ESQ.  
1550 SOUTH REDWOOD ROAD  
SALT LAKE CITY, UTAH 84104

6610999  
04/03/97 4:22 PM 56.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
SURETY TITLE  
REC BY: B ROME DEPUTY - WI

SPACE ABOVE FOR RECORDER'S USE

## RESTRICTIONS AND EASEMENTS AGREEMENT

THIS RESTRICTIONS AND EASEMENTS AGREEMENT ("REA") is made to be effective as of the 6<sup>th</sup> day of March, 1997 ("Effective Date"), between SMITH'S FOOD & DRUG CENTERS, INC., a Delaware corporation, herein called "Smith's," and WEST BENCH PLAZA, L.C., a Utah limited liability company, and BOYER-3300 SOUTH SHOPPING CENTER ASSOCIATES, LTD., herein collectively called "Developer."

### RECITALS

1. **Subject Land.** Developer is or will be the Owner of the real property ("Shopping Center") depicted on the Site Plan attached hereto as Exhibit "A" ("Site Plan"), and more particularly described as Exhibit "B". On the Effective Date, Smith's is the tenant of the Parcel identified as "Major Retail" on the Site Plan.

2. **Purpose.** Smith's and Developer desire that the Shopping Center be developed and operated in an orderly fashion as set forth herein and further desire that the Shopping Center be benefited by and subject to certain easements, covenants, conditions and restrictions all as hereinafter set forth.

### AGREEMENT

In consideration that the following encumbrances shall be binding upon the parties hereto and shall attach to and run with the Shopping Center, and shall be for the benefit of and shall be limitations upon all future owners of the Parcels within the Shopping Center ("Shopping Center Parcels") and any tenants operating thereon, and that all easements, restrictions and other covenants herein set forth shall be appurtenant to the dominant estates and obligations on the servient estates, and in consideration of the promises, covenants, conditions, restrictions, easements and encumbrances contained herein, Smith's and Developer do hereby agree as follows:

1. **Definitions.**

a. **"Shopping Center."** The "Shopping Center" shall consist of the real property depicted on Exhibit "A" and described on Exhibit "B". Upon the Shopping Center, will be constructed retail space shown on the Site Plan as Retail A, B, C, D, E & F, Major Retail ("Smith's Parcel"), Pad A, Pad B, Pad C and Bank Pad A. It is understood that, although the Shopping Center will be developed into several different

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retail pads and phases, the Shopping Center is currently not subdivided. Developer may, from time to time, subdivide the Shopping Center, so long as such subdivision does not alter in any way the Site Plan or violate the terms of this Agreement. If a proposed subdivision is contrary to the terms of this Agreement or would effect a change in the Site Plan, then such subdivision shall be subject to Smith's prior written approval, which may be withheld at Smith's sole discretion.

b. "Building Area; Floor Area." The **"Building Area"** in the Shopping Center is the portion thereof upon which buildings may be constructed, as outlined and identified on the Site Plan. Initially approximately sixty thousand (60,000) square feet of Floor Area of buildings, as defined below, are planned to be constructed within the Building Area on the Smith's Parcel as shown on the Site Plan as the **"Smith's Building."** Additional buildings shall be constructed on the Building Areas shown on the Site Plan. For purposes hereof, **"Floor Area"** shall be defined as the square foot floor area within exterior walls of any building or structure, excluding any equipment, mezzanines, or other raised mezzanine, exterior trash area; open loading docks which are not fully enclosed and part of the building; canopies and roof overhangs. Such exclusions from Floor Area may project from any building or structure up to a distance of twenty-five feet (25') over or outside of the Floor Area on any Parcel; provided, any such projection or extension complies with all applicable laws, rules, ordinances and regulations of every governmental body having jurisdiction over the Shopping Center; and provided further, no such extension or projection shall be allowed if it materially alters the parking configuration or vehicular or pedestrian circulation, and/or access in and through the entire Shopping Center as shown on the Site Plan.

c. "Common Areas." The Common Area is all real property within the Shopping Center except the Building Areas, dock areas or service areas serving individual tenants and **"Smith's Exclusive Use Area"** as defined herein and as shown on the Site Plan; provided, those portions of the Building Areas upon which the Parties are not obligated to construct (or do not construct) buildings pursuant to this REA shall be deemed to be Common Area until such time as construction of buildings thereon commences. Canopies which are attached to buildings but which extend over Common Area shall be deemed to be part of the building to which attached and not part of the Common Area. Those portions of the Building Areas on each Parcel which are not from time to time used or cannot under the terms of this REA be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided in this REA. An area converted to Common Area may be, as set forth below, converted back to Building Area, if at the time of conversion back to Building Area, it meets the requirements of this REA.

d. "Owner." An **"Owner"** shall be the fee Owner of any of the Shopping Center Parcels.

e. "Parcel" The term **"Parcel"** shall mean any one of the following shown on the Site Plan: Retail A, B, C, D, E, F, Major Retail, Pad A, Pad B, Pad C and Bank Pad A. Although the Shopping Center is not currently subdivided to create these Parcels as separate

legal parcels, Developer shall have the right to subdivide the Shopping Center pursuant to subparagraph (a) above.

2. **Buildings.**

a. General Use. The buildings shall be commercial buildings of the type usually found in first-class retail shopping centers in the greater metropolitan area in which the Shopping Center is located. The uses made of the buildings shall be primarily retail and service uses of the type normally associated with first-class retail shopping centers in such metropolitan area.

b. Restrictions on Types of Uses. Developer and Smith's recognize the need to have adequate parking facilities in close proximity to the buildings within the Shopping Center, and the importance of protecting against unreasonable or extensive use of parking spaces which is likely to result from parking by patrons or employees of certain types of business establishments. Developer and Smith's desire to prohibit tenants occupying space in close proximity to the Smith's Building who create or cause excessive noise, litter or odor or which are duplicative of the uses found in Smith's Building. To accomplish the foregoing objectives, Developer hereby declares as restrictions against the Shopping Center, the following:

1. Smith's Exclusive. For so long as Smith's or its successor or assigns holds a leasehold interest in the Smith's Building, neither Developer nor any Owner will lease, rent, occupy or permit to be occupied or used within any part of the Shopping Center (excluding the Smith's Building), for a convenience store, or any use which provides for the storage, display, or sale of edible or non-edible groceries, meats, produce, frozen foods, dairy products, prescription pharmaceuticals, on-premises film development, liquor for on-premises consumption or the operation of a restaurant (excluding the operation of a restaurant on Retail D shops and Pad C as shown on the Site Plan; provided, however, that this restriction shall not prohibit (i) the sale of candies or confections commonly sold in variety stores, (ii) a fast-food restaurant which offers the sale of prepared foods which is not within two hundred feet (200') of any exterior wall of the Smith's Building (iii) a restaurant on Pad A which does not have in excess of two thousand seven hundred (2,700) square feet of Floor Area for seating area and kitchen plus an additional one thousand square feet (1,000) of floor area for a children's playland area, as shown on the Site Plan, (iv) retail business deriving the majority of its sales from the sale of bagels in shop space or on a pad which is not within one hundred twenty feet (120') of any exterior wall of the Smith's Building, (v) a video sales and rental business in any shop space which is not within one hundred twenty feet (120') of any exterior wall of the Smith's Building, (vi) sandwich shop which does not exceed two thousand four hundred (2,400) square feet of Floor Area, which derives the majority of its sales from the sale of sandwiches and other prepared foods for immediate consumption, and which does not offer for sale individual sliced meat and cheese for off-premises consumption and is not within one hundred twenty

feet (120') of the Smith's Building, or (vii) a business which offers for sale for on and off-premises consumption yogurt and ice cream.

2. Shopping Center Prohibited Uses. Developer or any tenant within the Shopping Center, including Smith's, shall not operate or lease (or permit to be operated or leased) any building or tenant space in the Shopping Center for use as:

- (1) a bar, pub, nightclub, music hall or disco in which less than fifty percent (50%) of its space or revenue is devoted to and derived from food service;
- (2) a bowling alley;
- (3) a billiard or bingo parlor;
- (4) a flea market;
- (5) a massage parlor;
- (6) a funeral home;
- (7) a facility for the sale of paraphernalia for use with illicit drugs;
- (8) a facility for the sale or display of pornographic material (as determined by community standards for the area in which the Shopping Center is located);
- (9) an off-track betting parlor;
- (10) a carnival, amusement park or circus;
- (11) a gas station, car wash or auto repair or body shop other than on the area defined as Pad "C" described on the Site Plan;
- (12) a facility for the sale of new or used motor vehicles, trailers or mobile homes;
- (13) a facility for any use which is illegal;
- (14) a skating rink;
- (15) an arcade, pinball or computer gameroom (provided that retail facilities in the Shopping Center may operate not more than four (4) such electronic games incidental to their primary operations) and a children's activity center;
- (16) service oriented office (such as, by way of example, medical or employment offices, travel agencies, real estate agencies or dry cleaning establishments, except that a dry cleaner will be permitted in Retail F) or other nonretail uses except for offices and storage facilities incidental to a primary retail operation in Smith's Building; provided, however that such restriction shall not prohibit an office in Retail "A", "B" and "F" as shown on the Site Plan, so long as each office does not individually exceed five thousand (5,000) square feet of Floor Area;
- (17) a banquet hall, auditorium or other place of public assembly;
- (18) a training or educational facility (including, without limitation, a beauty school, barber college, reading room, school or other facility catering primarily to students or trainees rather than customers) other than a facility not to exceed five thousand five hundred (5,500) square feet of Floor Area, provided only such

- conforming use shall not be located within two hundred feet (200') of any exterior wall of the Smith's Building;
- (19) a theater; this restriction shall not be deemed to limit ticket sales by Smith's in the Smith's Building, such sales being specifically allowed by Developer;
  - (20) a gymnasium, sport or health club or spa; this restriction shall not prevent a tenant such as Discovery Zone, Jungle Jim's or other similar tenant (as they operate in a majority of their locations upon the date of this REA) from occupying space in the Shopping Center, provided such use is not located within two hundred feet (200') of any exterior wall of Smith's Building.

All uses allowed and existing within the Shopping Center must include, within the Parcel upon which such use is located, parking equal to five spaces per thousand square feet of Building Area, (without taking into account the parking which may exist on the other party's Parcel or Parcels).

c. Location. No building shall be constructed in the Shopping Center, except within the Building Areas shown on Exhibit "A".

d. Design and Construction. Except for the building on the Smith's Parcel and other in-line buildings, all buildings on the Shopping Center shall be one story and shall not exceed twenty four feet (24') in height (but may include raised mezzanines for equipment, storage, offices to which the public is not invited), restrooms or lounges, unless approved by Smith's in writing, such approval not to be unreasonably withheld in accordance with the terms of its lease. In-line buildings may be the height approved by the City of Draper.

e. Footing Easements. In the event it is appropriate or practical to have building wall footings encroach from one Parcel onto the other Parcel, the party onto whose Parcel the footings encroach shall cooperate in granting an encroachment permit or easement to the party who desires to have its building wall footings so encroach.

f. Fire Protection. Smith's Building will be constructed to meet a Type II (Uniform Commercial Building Code) non-rated building and will be sprinklered. Developer will provide that any building(s) constructed immediately adjacent or within a close proximity to Smith's Building will be constructed and situated with necessary setbacks in a manner which will preserve Smith's Building rating and shall be maintained in a manner to preserve the type and sprinklered insurance rate obtained on Smith's Building.

### 3. Common Areas Use.

#### a. Access Right-of-Way and Easements.

1. Easements With Adjoining Properties. The Shopping Center, Guadalhonky's (as hereinafter defined) and Parcel 2 (as hereinafter defined) shall

have appurtenant thereto and shall be benefited by a perpetual, non-exclusive right-of-way and easement for pedestrian and vehicular ingress and egress and temporary vehicular parking (without charge) on, over and across such portion of the Shopping Center, Guadalahonky's and Parcel 2 that are designated now or in the future as Common Areas. This right-of-way and easement shall be for the benefit of (A) the Owners of Parcels in the Shopping Center, Guadalahonky's and Parcel 2, (B) the tenants of such Owners, and (C) the customers, invitees and employees of such owners and tenants. This easement shall be a benefit and burden running with the Shopping Center, Guadalahonky's and Parcel 2. As used in this Section 3(a)(1), each of the following terms shall have the indicated meaning:

"**Guadalahonky's**" means the real property located in Salt Lake County, Utah, described as follows:

Beginning at a point South 89°48'40" East which is the base of bearing, along the Section line 1130.25 feet (total quarter section line distance 2642.34 feet) and North 1533.76 feet to the South line of 12300 South Street from the Southwest corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence South ~~230.00 feet; thence North~~ 89°40'10" East along the South side of said street 128.72 feet; thence South 230.00 feet; thence North 89°40'10" West 128.72 feet; thence North 230.00 feet to the point of beginning.

"**Parcel 2**" means the real property located in Salt Lake County, Utah, described as follows:

BEGINNING at a point which is South 89°48'40" East along the section line 1130.25 feet and North 879.59 feet from the Southwest corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence South 89°57'00" West 229.08 feet to a point of curvature; thence Northwesterly along the arc of a 300.00 foot radius curve to the right, through a central angle of 37°21'32", a distance of 195.611 feet; thence North 52°41'28" West 61.05 feet to a point on the arc of a 400 foot radius curve to the left; thence Northeasterly along said curve (center bears North 52°41'28" West), through a central angle of 37°22'04", a distance of 260.877 feet to a point of tangency; thence North 00°03'52" West 105.63 feet; thence South 89°40'10" East 54.00 feet; thence South 20.06 feet; thence South 89°40'10" East 350.084 feet; thence South 430.13 feet; thence South 89°57'00" West 26.08 feet; thence North 6.00 feet to the point of BEGINNING.

Notwithstanding the mention of Guadalahonky's and Parcel 2 in this REA, in no event and under no circumstances shall Guadalahonky's or Parcel 2 be deemed to be a part of the Shopping Center unless specifically so defined in an amendment to this REA pursuant to Section 4(a)(2) herein. Furthermore, Guadalahonky's and Parcel 2 (and the Owners of and tenants thereon) shall have no rights under this REA except the right-of-way and easement rights contained

in this Section 3(a)(1). The Owners of Guadalhonky's and Parcel 2\*are signatories to this REA only to establish the rights and obligations pursuant to Section 3(a)(1).

\*(Alan Summerhays and Kristine Summerhays)

2. Utilities Right-of-Way and Easement.

(A) Grant of Right-of-Way and Easement. Each of the Shopping Center Parcels shall have appurtenant thereto and shall be benefited by, and the Common Area shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities (including, without limitation, pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, sewage, storm drainage and all types of water) under, through and across the Common Area.

(B) Exercise of Right-of-Way and Easement. Any Owner of any of the Shopping Center Parcels may (a) enter on any portion of the Common Area as may be necessary or appropriate in order to accomplish the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of the utilities and facilities referred to in Section 3(a)(2)(A), and (B) in connection with such utilities and facilities, excavate or conduct construction activities on the Common Area, so long as such excavation or construction activities are performed in a good and workmanlike manner and are prosecuted diligently to completion. On completion of such excavation or construction activities, the Owner conducting such activities shall immediately restore any portion of the Common Area affected to the same condition as existed prior to the commencement of such excavation or construction activities, using the same type and quality of materials previously used.

As used in this Paragraph (2), the term "Common Area" shall have the same meaning as set forth in Section 1(c).

Notwithstanding the foregoing, Smith's is hereby granted as its exclusive use area, the land described as "Smith's Exclusive Use Area" on the Site Plan for the sale and display of its merchandise and for the placement of baskets, and for the display of seasonal supplies such as peat moss, fertilizer, plants, garden tools, seasonal merchandise, etc., provided that such uses do not unreasonably interfere with pedestrian and vehicular traffic and are maintained in a neat and orderly condition such areas are approved by Draper City. Smith's is further granted the right, for a total of up to sixty (60) days three (3) times per year to use portions of the Common Areas as marked as "Smith's Outside Sales Area" on the Site Plan for the sale and display of its merchandise, provided that such uses do not unreasonably interfere with pedestrian and vehicular traffic and are maintained in a neat and orderly condition and such areas are approved by Draper City.

b. Use. Subject to existing easements of record, the Common Areas shall be used for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, for driveway purposes, landscaping,

storm drainage and directional signage, and for the comfort and convenience of customers, invitees and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above.

c. No Barriers. No walls, fences, or barriers of any kind shall be constructed or maintained on the Common Areas, or any portion thereof, by any party which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitation, of pedestrians and vehicular traffic between the various Parcels; provided, however, reasonable traffic controls approved in advance by Smith's and Developer as may be necessary to guide and control the orderly flow of traffic may be installed so long as access driveways to the parking areas in the Common Areas are not closed or blocked. The only exceptions to this provision shall be (1) for changes to the Building Areas and Common Areas permitted by this REA, (2) for incidental encroachments upon the Common Areas which may occur as a result of the use of the ladders, scaffolding, storefront barricades and similar facilities resulting in temporary obstruction of the Common Areas, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction work being expeditiously pursued, and (3) for temporary blockage of certain areas deemed necessary by the parties to prevent a public dedication of an easement or access right.

d. Limitations on Use.

(1) Customers. Customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on the Shopping Center with the occupants thereof.

(2) Employees. Employees shall not be permitted to park on the Common Areas, except in areas designated as "employee parking areas" on the Site Plan. Developer and Smith's may from time to time mutually designate and approve additional "employee parking areas".

(3) General. All of the uses permitted within the Common Areas shall be used with reason and judgment so as not to interfere with the primary purpose of the Common Areas which is to provide for parking for the customers, invitees and employees of those businesses conducted within the Building Areas and for the servicing and supplying of such businesses. Persons using the Common Areas in accordance with this REA shall not be charged any fee for such use.

e. Utility and Service Easements. The parties shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Common Areas and buildings to be erected upon the Building Areas. The parties will use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas.



4. **Common Areas: Development, Maintenance and Taxes.**

a. Development Timing.

(1) By Owner of Parcel. When any building is constructed within the Building Areas on a Parcel, the Common Areas on that Parcel associated with such building shall be developed in accordance with Exhibit "A" and the Lease Agreement between the Developer and Smith's of even date herewith, all at the expense of the Owner of said Parcel.

(2) Shopping Center Configuration. All Building Areas as shown on the Site Plan and the Common Areas (including parking areas, entranceways, driveways, traffic circulation and flow patterns) will not be materially changed without Developer's and Smith's written consent, which consent may be withheld in Developer's and Smith's respective sole discretion. The Shopping Center will not be expanded by Developer's or its successors' or assigns' obtaining ownership or control of land adjacent to the Shopping Center, without Smith's prior written consent, which consent may be withheld in Smith's sole discretion. If consent is provided by Smith's to any of the foregoing changes, all the provisions of the REA with respect to the Shopping Center shall apply to the expanded area, and the parking-to-building ratio in the expanded area of the Shopping Center will not be less than five (5) per one thousand feet (1,000') of floor space for each individual parcel of property.

b. Maintenance.

(1) Standards. Following completion of the improvement of the Common Areas, each Owner of the Shopping Center Parcels shall maintain their respective portions of the Common Areas on their respective Parcels in good condition and repair. The maintenance is to include, without limiting the generality of the foregoing, the following:

A. Maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability;

B. Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition, and free of snow, ice, dirt, and debris;

C. Placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines;

D. Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required for adequate lighting;

E. Maintaining and painting all perimeter walls in good condition and state of repair;

F. Maintaining all automatic sprinkler systems, water lines, and landscaped areas in a thriving and trimmed condition and making such replacements of shrubs and other landscaping as is necessary; and

G. Maintaining site storm drainage, and all sidewalks situated on the perimeter or outside the boundaries of the Shopping Center.

(2) Expenses. The respective Owners shall timely pay the maintenance expense of their respective Parcels.

(3) By agent. Subject to the revocable mutual agreement of the parties hereto, either Developer or a third party shall maintain the Common Areas in the Shopping Center in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to Developer, Smith's and other Owners to cover supervision, management, accounting and similar costs, which sums are to be included in the general maintenance expense paid by the respective Owners of the Common Areas.

c. Taxes. Each Owner of property in fee simple, shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and assessments which are levied against the respective portion of the Common Areas owned by it.

5. **Indemnification/Insurance.**

a. Indemnification. Each Owner of the Shopping Center Parcels hereby agrees to indemnify, defend and save each other Owner harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from injury to person or property and occurring on its own Parcel, except if caused by the act or neglect of the indemnified Owner.

b. Insurance. Each Owner of the Shopping Center Parcels shall provide commercial general liability insurance affording protection to itself and each other Owner on its own Parcel(s), naming the other Owner as an "additional insured" under the policy or policies, for a combined bodily injury and property damage limit of liability of not less than Two Million Dollars (\$2,000,000) per occurrence, Three Million Dollars (\$3,000,000) aggregate, or in other greater amounts mutually approved by Developer and Smith's. Such insurance may be a part of blanket liability coverage carried by a party so long as such blanket policy does not reduce the limits or diminish the coverage required herein.

c. Self Insurance. Each party shall have the right to satisfy its insurance obligations hereunder by means of self-insurance to the extent of all or part of the insurance required hereunder, in accordance with each party's established corporate policy. Any party providing self-insurance shall, upon request, provide the other party

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with a description of such self-insurance program, financial statements, and evidence of any partial insurance coverage which may be supplementing any plan of partial self-insurance.

d. Other Insurance Matters. All policies of insurance required by this REA shall insure the performance of the Owner insured thereunder of the indemnity agreement contained in Section 5(a), shall name each other Owner as additional insureds and shall contain a provision that the insurance company will provide all parties with twenty (20) days advance written notice of any cancellation or lapse, or the effective date of any material reduction in the amounts or scope of coverage. Each Owner of the Shopping Center Parcels shall deliver to all other Owners a certificate or statement from the Owner's insurance company evidencing that such insurance insures the performance by the party insured of the indemnity agreement specified in this Section 5 and the existence of the insurance coverage to the limits herein required. Each party shall promptly notify each other party of any asserted claim with respect to which such party is or may be indemnified against hereunder and shall deliver to such party copies of process and pleadings.

6. **Eminent Domain.**

a. Owner's Right to Award. Nothing herein shall be construed to give an Owner of a Shopping Center Parcel any interest in any award or payment made to another Owner of a Parcel in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owner's Parcel or give the public or any government any rights in the Shopping Center. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on the Shopping Center Parcels, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Owner in fee thereof and no claim thereon shall be made by the Owners of any other portion of the Common Areas.

b. Collateral Claims. All other Owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another Owner.

c. Tenant's Claim. Nothing in this Section 6 shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between such tenant and Owner for all or a portion of any such award or payment.

d. Restoration of Common Areas. The Owner of the fee of each portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas so owned as near as practicable to the condition of same immediately prior to such condemnation or transfer to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owner.

7. **Agreement.**

a. Modification, Cancellation and Delegation of Authority. This REA (including Exhibit "A") may be modified or cancelled only by written consent of Smith's, and all record Owners of the Shopping Center Parcels, which consents shall not be unreasonably withheld.

b. Breach. In the event of breach or threatened breach of this REA, only Owners of Parcels in fee simple, or owners of leasehold interests within the Shopping Center (having leased Floor Area in excess of fifteen thousand (15,000) square feet) shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

c. Remedies for Default; Waiver. If the Owner of any fee or leasehold interest in any Parcel shall, during the term of this REA, default in the full, faithful and punctual performance of any obligation required hereunder and if at the end of thirty (30) days after written notice from any Owner of a Parcel or the party to whom its authority has been delegated, stating with particularity the nature and extent of such default, the defaulting Owner has failed to cure such default, and if a diligent effort is not then being made to cure such default, then any other Owner of a Parcel of land in fee simple, or the Owner of a leasehold interest within the Shopping Center (having leased Floor Area in excess of fifteen thousand (15,000) square feet) or the party to whom its authority has been delegated shall have all rights and remedies it may have at law or in equity. The failure of Smith's, or the fee simple or leasehold Owner or Owners of any of the Parcels subject to this REA to insist in any one or more cases upon the strict performance of any of the promises, covenants, conditions, restrictions or agreements herein, shall not be construed as a waiver or relinquishment of any future breach of the same or other provisions hereof.

d. Non-Merger. So long as a party is a tenant of a Parcel, this REA shall not be subject to the doctrine of merger, even though the underlying fee ownership to the Parcels described herein is vested in such party.

e. Duration. Unless otherwise cancelled and terminated, this REA and all the easements, rights and obligations hereof shall automatically terminate and be of no further force or effect after fifty-five (55) years from the date hereof, except that the access easements (but not the parking easements) described in Section 3(a) and except that the utility easements granted pursuant to Section 3(e), if any, shall continue in full force and effect until terminated in writing by the parties entitled to modify this REA in accordance with the provisions of Section 8(a) hereof.

8. **Rights and Obligations of Lenders.**

The charges and burdens of this REA are, and shall at all times be, prior and therefore superior to the lien or charge of any mortgage or deed of trust made in good faith and for value affecting the Shopping Center Parcels or any part thereof, or any improvements now or hereafter placed thereon. However, a breach of any of the

easements, covenants, or restrictions hereof shall not defeat or render invalid the lien or charge of any mortgage or deed of trust. The superiority of this REA shall be limited to the extent that title to any property acquired through sale under foreclosure of any mortgage or deed of trust effected by powers of sale, judicial proceedings, or otherwise, shall be subject to all the charges and burdens affecting the Shopping Center Parcels by virtue of this REA.

9. **Release from Liability.**

Any person acquiring fee or leasehold title to any Shopping Center Parcel or any portion thereon shall be bound by this REA only as to the Parcels or portion of the Parcels acquired by such person. Such person shall be bound by this REA only during the period such person is the fee or leasehold Owner of such Parcel(s) or portion of the Parcel(s), except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this Section, the easements, covenants and restrictions in this REA shall continue to be benefits and servitudes which run with the land as described in Section 11 next below.

10. **Rights of Successors.**

The easements, covenants, conditions, restrictions, benefits, and obligations hereunder shall create mutual benefits and servitudes upon the Shopping Center Parcels and shall run with the land. This REA shall bind and inure to the benefit of the parties hereto, their respective heirs, personal representatives, tenants, successors, and/or assigns. The singular number includes the plural and any gender includes all other genders. The interests in and rights concerning any portion of the Shopping Center held by or vested in Smith's or Developer or any other person, whether held or vested on or after the date of this REA, shall be subject and subordinate to the arrangement provided for in this REA, and the arrangement provided for in this REA shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this REA. Developer is the buyer (and, therefore, the holder of equitable title), but not yet the Owner, of certain real property to be included in the Shopping Center. Once Developer becomes the Owner of such real property, it shall not be necessary to execute or record any amendment to this REA or to execute or record any other instrument in order to make this REA fully effective as to such real property, with the same force and effect as if Developer was the Owner of such real property on the date on which this REA was executed and recorded.

11. **Paragraph Headings.**

The paragraph headings herein contained are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

12. **Not a Public Dedication.**

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Common Areas to the general public or for the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this REA shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Common Areas of the Parcels herein affected, or any portion thereof (other than any use expressly allowed by a written or recorded

map, agreement, deed or dedication) is by permission, and subject to the control of the Owner. Notwithstanding any other provisions herein to the contrary, the Owners of the Parcels affected hereby may periodically restrict ingress and egress from the Common Areas in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such time as to have a minimum effect on the parties in occupancy within the Shopping Center.

13. **Document Execution and Change.**

It is understood and agreed that until this REA is fully executed and delivered by both Developer and Smith's there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be based. It is further agreed that once this document is fully executed and delivered that it contains the entire agreement between the parties hereto and that, in executing it, the parties do not rely upon any statement, promise or representation not herein expressed, and this document, once executed and delivered, shall not be modified, changed or altered in any respect except by writing executed and delivered in the same manner as required for this document.

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

**SMITH'S FOOD & DRUG CENTERS, INC.,**  
a Delaware corporation

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

*[Handwritten Signature]*  
SR J.P.

**WEST BENCH PLAZA, L.C.,**  
a Utah limited liability company, by its manager:  
THE BOYER COMPANY, L.C.

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

*[Handwritten Signature]*  
President or Manager

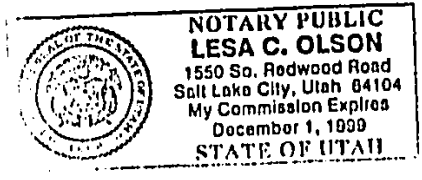
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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

On this 16<sup>th</sup> day of March, 1997, personally appeared before me Michael C. Free, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he is the Sr. Vice President of Smith's Food & Drug Centers, Inc. and that said document was signed by him in behalf of said corporation by authority of its bylaws (or of a Resolution of its Board of Directors), and said Michael C. Free acknowledged to me that said corporation executed the same.

Given under my hand and seal of office on this 16<sup>th</sup> day of March, 1997.



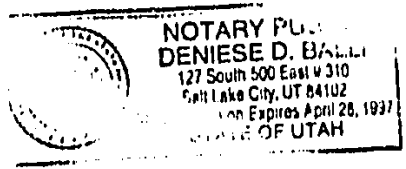
[Signature]  
Notary Public  
Notary's name printed:  
LESA C. OLSON

My commission expires: 12/1/99

STATE OF Utah )  
 : ss.  
COUNTY OF Salt Lake )

Before me, the undersigned authority, on this day personally appeared Kam C. Gaedner, President and Manager\*\* of West Beach Plaza, L.C., atllah Limited Liability Co., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation. Limited Liability Company.  
\*\*of The Boyer Company, L.C., the manager

Given under my hand and seal of office on this 14 day of March, 1997.



[Signature]  
Notary Public  
Notary's name printed:  
Deniese D. Balli

My commission expires: 4-28-97

EX 7635PG2321

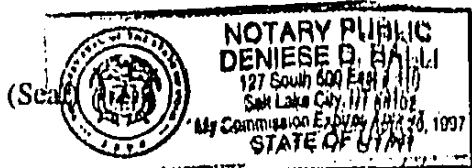
DEVELOPER:

BOYER-3300 SOUTH SHOPPING CENTER  
ASSOCIATES, LTD., by its general partner:  
THE BOYER COMPANY, L.C.

By: *[Signature]*  
Its: ~~Ken C. Gardner~~  
President and Manager

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

On March 14, 1997, before me, Deniese B. Balli, a Notary Public in and for said state, personally appeared Ken C. Gardner, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, ~~and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.~~ as the President and Manager of The Boyer Company, L.C., as the general partner of Boyer-3300 South Shopping Center Associates, L.C.  
Witness my hand and official seal.



*Deniese B. Balli*  
Signature



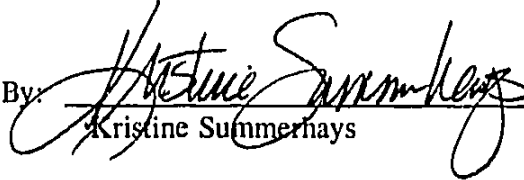
**GUADALAHONKY'S and PARCEL 2 OWNERS**

(Signatories only to establish the rights and obligations pursuant to Section 3(a)(1))

By:

  
Alan Summerhays

By:

  
Kristine Summerhays

State of Utah )  
County of Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 27th day of MARCH, 1997, by ~~Alan Summerhays~~ and Kristine Summerhays.



**LORI L. THOMAS**  
NOTARY PUBLIC - STATE of UTAH  
6975 SO. UNION PARK CNTR  
Midvale, UT 84047  
COM. EXPIRES 5-11-00

*Lori L. Thomas*  
\_\_\_\_\_  
Notary Public

My Commission Expires: 5-11-98

Residing at: Midvale, Utah

\_\_\_\_\_

\_\_\_\_\_

WEST BENCH PLAZA, L.C.

by one of its managers:

ARBOR COMMERCIAL PROPERTIES, L.C.,

a Utah limited liability company,

by its members:



John Gust

Date 3-31-97



Cory Gust

Date 3-31-97

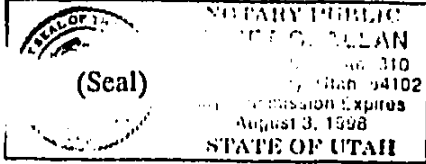


Trisha Christensen

Date 3-31-97

State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 31 day of March, 1997, by John Gust, one of the members of Arbor Commercial Properties, L.C., one of the managers of West Bench Plaza, L.C.



My Commission Expires:

8/3/98

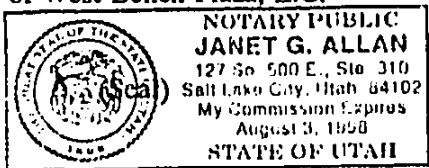
Janet G. Allan  
Notary Public

Residing at:

Salt Lake County

State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 31 day of March, 1997, by Cory Gust, one of the members of Arbor Commercial Properties, L.C., one of the managers of West Bench Plaza, L.C.



My Commission Expires:

8/3/98

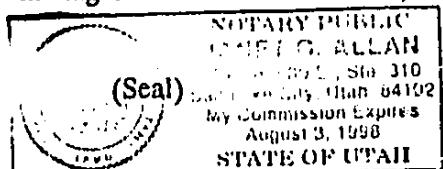
Janet G. Allan  
Notary Public

Residing at:

Salt Lake County

State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 31 day of March, 1997, by Trisha Christensen, one of the members of Arbor Commercial Properties, L.C., one of the managers of West Bench Plaza, L.C.



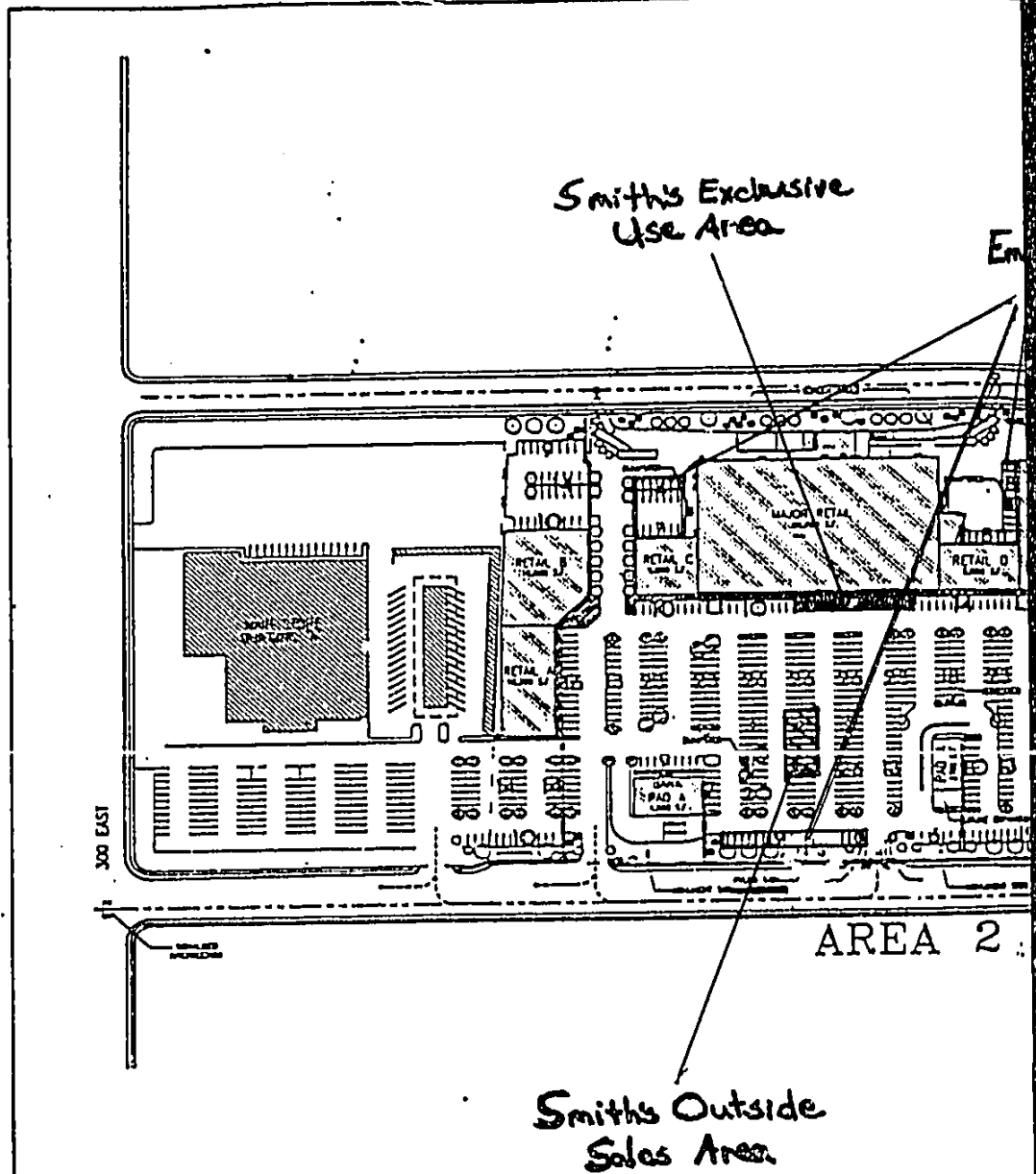
My Commission Expires:

8/3/98

Jamie G. Allan  
Notary Public

Residing at:

Salt Lake County



AREA 2 PROJECT DATA

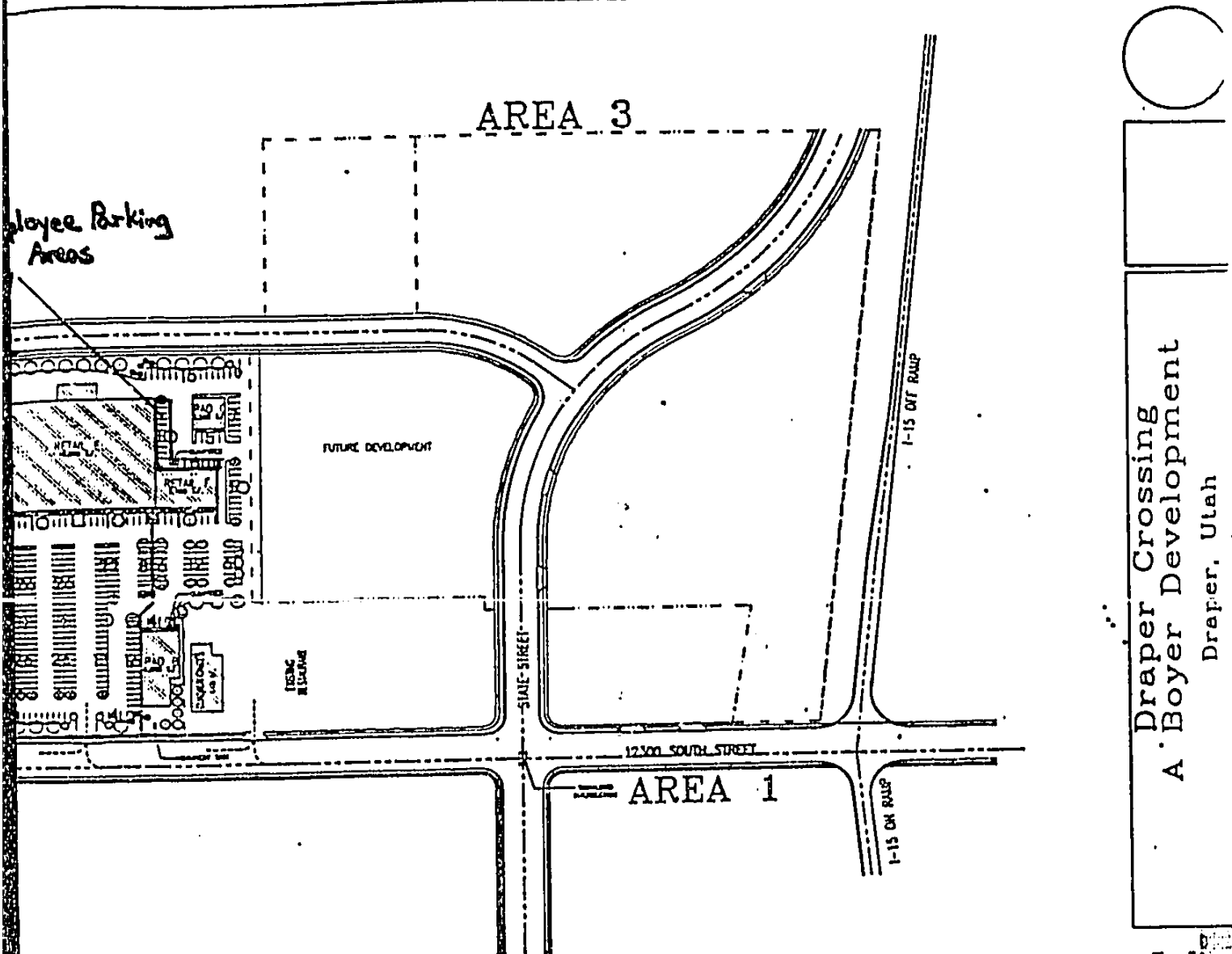
SPACE	SQ. FT.	PARKING STALLS	PARKING SPACES
MAJOR RETAIL	80,000 S.F.	300 STALLS	300 STALLS
RETAIL A	10,200 S.F.	51 STALLS	52 STALLS
RETAIL B	10,000 S.F.	50 STALLS	50 STALLS
RETAIL C	8,000 S.F.	30 STALLS	31 STALLS
RETAIL D	8,000 S.F.	30 STALLS	31 STALLS
RETAIL E	40,000 S.F.	200 STALLS	200 STALLS
RETAIL F	5,400 S.F.	27 STALLS	27 STALLS
PHO A	2,700 S.F.	13.5 STALLS	14 STALLS
PHO B	8,000 S.F.	30 STALLS	45 STALLS
PHO C	2,500 S.F.	12.5 STALLS	13 STALLS
BANK PHO A	4,000 S.F.	23 STALLS	23 STALLS
TOTAL	153,400 S.F.	787 STALLS	802 STALLS



DRAPER

hibit "A"

-POOR COPY-  
CO. RECORDER



CROSSING SITE PLAN

○

Draper Crossing  
A Boyer Development  
Draper, Utah

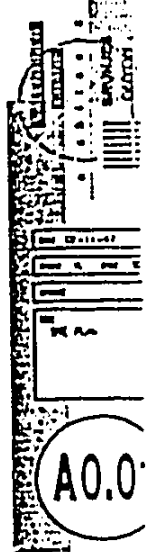


EXHIBIT B

to

RESTRICTIONS AND EASEMENTS AGREEMENT

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SHOPPING CENTER

The Shopping Center referred to in the foregoing instrument is located in Salt Lake County, Utah, and is described as follows:

BEGINNING at a point South 89°48'40" East along the section line 1130.25 feet and North 909.595 feet and North 89°57'00" East 26.08 feet from the Southwest corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 393.99 feet; thence South 89°40'10" East 102.64 feet; thence North 210.00 feet to the South line of 12300 South Street (53 foot half width); thence South 89°40'10" East along said South line 935.50 feet to a point on the West line of the Anderson Lumber Company property recorded March 2, 1993, as Entry No. 5445958, in Book 6613, at Page 2531 of official records; thence South 02°43'00" West along said West line 186.11 feet; thence South 02°29'00" West along said West line 411.61 feet to a point on the North line of 12450 South Street (not yet recorded); thence South 89°57'00" West along said North line 1011.47 feet to the point of BEGINNING.

JK/635PG2330