

BOOK 1077

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DAVIS COUNTY RECORDER

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### DEVELOPMENT AGREEMENT

AGREEMENT made this 19th day of FEBRUARY, 1986, by and between FOXGLOVE ASSOCIATES, a Utah partnership, hereinafter referred to as "Foxglove," and SMITH'S FOOD KING PROPERTIES, INC., a Utah corporation, hereinafter referred to as "Smith's."

In consideration of the mutual covenants and promises to be kept and performed as described herein, the parties agree as follows:

1. FACTS AND OBJECTIVES

This Agreement for Development, containing restrictive covenants, is made with reference to the following facts and objectives:

A. Smith's is the owner of that certain tract of land designated as Smith's Parcel, and Foxglove is the owner of that certain tract of land designated as Foxglove's Parcel, as more fully described in Exhibit "A" attached hereto and incorporated herein by this reference. Also attached hereto as Exhibit "B" is a site plan of the Shopping Center, which shall, for purposes of this Agreement, be by this reference incorporated herein and considered a part hereof.

B. Smith's Parcel and Foxglove's Parcel together shall be hereafter known as the "Entire Premises."

08-051-0070  
08-051-0069  
08-043-0076

C. The parties acknowledge they may each lease and/or sell all or portions of their respective parcels to other tenants and/or owners.

D. The parties desire to establish, as hereinafter provided, nonexclusive easements for the use of those portions of the Entire Premises, which are not from time to time improved with buildings or other structures, and which are intended for use as driveways, pedestrian ways, sidewalks, parking areas, parking spaces, and for ingress and egress to and from public roadways and utility line purposes (the foregoing portions of the Entire Premises hereinafter collectively referred to as "Common Areas") and are generally designated on the Exhibit "B" site plan attached hereto, and further desire to set out the terms, conditions and restrictive covenants controlling development of the Entire Premises.

E. The parties agree to cooperate in designing and developing a successful, first-class shopping center on the Entire Premises and further agree that in the design, development and use thereof, they will be bound by the terms of this Development Agreement. Smith's agrees to construct and open a store of approximately 62,000 square feet on or before December, 1987. Foxglove agrees to proceed diligently to complete a minimum of 14,000 square feet of shop space to open simultaneously with Smith's opening for business. In any case, Foxglove shall complete construction of the parking, Common Area improvements and roads as set forth in Paragraph 5 of this Agreement. Any building areas on the Entire Premises which are not fully

developed by the date Smith's opens for business shall be maintained by the owner thereof, reasonably clear of weeds or debris. Any undeveloped pad, not covered by asphalt or concrete, shall be oiled by the owner of such portion to keep weeds down and to prevent dust and dirt from being blown onto other parts of the Entire Premises. Future construction upon such building areas, if any, shall be managed so as not to unreasonably interfere with the common parking areas and roads.

F. All areas not designated as locations or pads for buildings shall be defined as "Common Areas."

2. TERM

The term of this Agreement shall commence on the date of execution hereof, and shall continue in perpetuity.

3. EASEMENT

The parties hereby grant to each and every person, partnership, corporation or other entity now or hereinafter owning or having an interest in all or any portion of Smith's Parcel, and Foxglove's Parcel, a mutual reciprocal and non-exclusive easement, license, right and privilege, for the installation, maintenance and connection to all underground utilities including all utility lines, wires, pipes, conduits, sewers and drainage lines, and the rights and privileges of passage and use both pedestrian and vehicular, including but not limited to, the parking of vehicles and for ingress and egress to and from the roadways adjoining the Entire Premises, in, to, upon, through and over the Common Areas from time to time located on the Entire Premises. Such rights of parking referred to in this Paragraph 3

are limited to the extent that each party shall be responsible to provide parking and see that its principals, employees and the principals and employees of any tenants park on the respective owner's property in an area designated for employee parking, it being understood and agreed that the most convenient parking facilities be maintained for use of customers and other business invitees only. The parties agree that any future connections to the existing "underground utility lines," as used herein to include, by way of reference but not limitation, all wires, pipes, conduits, sewer drainage lines, etc., located on the respective Parcels shall be, following the date that the shopping center is constructed, subject to advance written approval of the owner of the respective parcels where such future connections are to occur.

No party shall have the right to withhold any written approval required by this Paragraph 3 when reasonable arrangements are made to perform any work required in a manner and at times calculated to cause minimal disruption with the business of the tenants upon the parcel where the work is to be accomplished.

The easements, rights and privileges granted hereby shall be for the benefit of and be restrictive solely to the owners from time to time of all or any portion of Parcels, but such owner or owners may grant the benefit of such easement, right and privileges to its tenants now or hereafter occupying a building or portions thereof on the Entire Premises for a period of such tenancy, and to the customers, employees and business invitees of said tenants, but the same is not intended, and shall not be

construed as creating any rights in and for the benefit of the general public.

Notwithstanding anything contained in this Paragraph 3 to the contrary, the easements, rights and privileges hereinabove granted shall not extend to or exist over portions of the Entire Premises hereinafter improved with buildings or other structures as shown on the site plan attached hereto as Exhibit "B."

The easements, rights and privileges hereinabove granted shall be used and enjoyed in such a manner as to cause the least possible interference with the conduct and operations of the businesses at any time existing on the Entire Premises. The construction of buildings upon the Entire Premises shall be within the perimeter of those areas designated as building areas on the site plan attached as Exhibit "B." All other areas shall be maintained as Common Areas with no less parking on any parcel than is currently shown on attached Exhibit "B." As buildings are developed within designated perimeters, any areas within each building pad not utilized for building purposes shall be considered as Common Area and maintained as such until and unless converted to building. In no case will buildings or other structures be constructed outside the designated building perimeters outlined on Exhibit "B" without the prior written approval of both parties. The parties further agree in general to manage their respective properties in such manner as to encourage customer convenience and retail sales.

There shall be a minimum of one (1) vehicular driveway entrance for the parking area of said Shopping Center on U.S.

Highway 89, one (1) vehicular driveway entrance on Shepard Lane, and at least two (2) vehicular driveway entrances on Foxglove Road, to be located as designated on the Exhibit "B" site plan. Foxglove agrees that it will obtain all permits and licenses and do whatever is necessary in order to receive appropriate governmental authorization for the driveway entrances described in the preceding sentence.

Each party shall have the right to permit employee parking on their respective parcel except that such employee parking may be limited from time to time to specific areas mutually designated by Foxglove and Smith's, or their successors.

The easements herein granted include an allowance for excess storm water, not handled by the storm drain system, to flow over the parking lot areas from one parcel to the other.

4. SPECIFICATIONS OF BUILDINGS TO BE ERECTED ON PARCELS

The parties hereto agree that as a material part of this Development Agreement, the specifications as to size, shape and location of the building to be erected on the respective parcels at any time shall be governed by the site plan attached hereto as Exhibit "B," and other specifications not covered by Exhibit "B," including but not limited to, type and location of signs, building materials and design and color of buildings, to be determined by an identity and architectural control document. Such document shall be developed during the pre-construction and design development stages of the project. The parties specifically agree that the exterior of all buildings to be constructed on the Entire Premises shall be of a "block" material, and in no

case shall "metal skins" be used anywhere on the exterior of any building. Unless otherwise agreed to in writing by each party to this Development Agreement, all buildings constructed on the Entire Premises shall be protected by and have installed thereon a fire sprinkling system, to be in conformity with local fire and building code requirements. Foxglove guarantees that the water pressure of the water lines coming into the Entire Premises is adequate for a fire sprinkler system to service all of the buildings to be built on both Smith's and Foxglove's Parcels.

5. COMPLETION OF COMMON AREAS

The parties agree to share the construction expense of the onsite common area improvements outlined below, such expense to be borne by each party on a pro rata basis determined by total acreage of each party's parcel compared to the Entire Premises. Onsite common area improvements shall include the cost for water lines, sewer lines, storm drains, subsurface drainage, lighting, grading, asphalt, and other surface improvements that will service both parcels. It is understood that the parties agree to share the costs incurred from the date of execution of this Agreement forward. Any costs previously incurred by Foxglove for improvements to any portion of the Entire Premises shall be fully borne by Foxglove, and Smith's shall have no duty to reimburse Foxglove for any portion thereof. The common area improvements, including lighting and paving of parking, as designated on Exhibit "B," shall be completed at least three (3) months prior to Smith's target date for commencement of business. Work on the

common area improvements shall start no later than when Smith's begins construction on its parcel.

The costs of repairing or maintaining "underground utility lines," as specified in Paragraph 3, located on one owner's parcel but servicing solely another owner's parcel shall be paid by the owner of the parcel receiving such service. The costs of repairing or maintaining "underground utility lines" located on one owner's parcel but servicing more than one parcel shall be paid for by the party causing the damage to such utility lines.

Foxglove agrees, at its sole cost and expense, and two (2) months prior to Smith's target date for commencement of business, to complete all off-site improvements required by the various municipal and other governmental agencies, and as mutually agreed upon by Smith's.

6. MAINTENANCE AND TAXES

From and after the date of completion of the parking and Common Area improvements outlined in Paragraph 5 above, the owner of the respective parcels of property comprising the Entire Premises shall be responsible at their own expense for all costs and expenses of the maintenance of the Common Areas located on their respective parcels which shall include, but not be limited to, sewer line maintenance, landscaping maintenance, electricity, cleaning, snow removal, repairs and replacements, including resurfacing and restriping of parking, maintenance of lights and light standards including illumination during the hours the businesses of the shopping center are open, and a reasonable period prior and subsequent thereto, landscaping and



operation of such Common Areas. The owners shall cause the Common Area parking to be thoroughly cleaned not less than once weekly, and more often if necessary, and snow to be properly removed on every occasion where it impedes the use of said facilities. In the event any or all of the Owners and/or Tenants elect to maintain the Common Areas located on their respective parcels in conjunction with each other, then in such event, all such costs and expenses shall be prorated among such Owners and/or Tenants by comparing the total acreage of each parcel-owned to the total acreage of the Entire Premises. Should any party sell all or part of its premises, this covenant and the proration agreement shall run with the land and be binding upon successors and assigns of the parties hereto.

The Owners and/or Tenants, (if obligated to do so pursuant to any lease) of the respective parcels of property comprising the Entire Premises shall timely pay all real estate taxes and assessments, water rents and charges levied on their respective parcels.

7. COVENANT OF CONSTRUCTION

In the event that Foxglove does not complete development of the Common Areas as described pursuant to Paragraph 5 of this Agreement, Smith's shall have the right to cause such work to be performed and to bill Foxglove for such work and to be paid or reimbursed not later than thirty (30) days after the billing thereof, offset only by the amount Smith's is obligated to contribute to the construction of the Common Area improvements as specified in Paragraph 5 hereof.

8. INDEMNIFICATION/INSURANCE

A. Indemnification: Each party hereby indemnifies and saves the other parties harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from injury to person or property occurring on any portion of the Shopping Center owned by it, except if caused by the act or neglect of another party hereto or the agents, assigns, lessees, or successors in interest of another party hereto.

B. Liability Insurance: Each party shall provide comprehensive general liability insurance affording protection to itself and the other parties, naming the other parties as "additional insureds" under the policy or policies, for a combined bodily injury and property damage limit of liability of not less than \$1,000,000 for each individual, \$2,000,000 for each accident, and \$250,000 for property damage for any portion of the Shopping Center owned by it not otherwise included within the insurance coverage provided upon the Common Areas. The parties hereto may agree to increase or decrease the minimum insurance coverage as may be reasonable.

9. TYPES OF BUSINESS

The parties covenant mutually, commencing on the date of this Agreement and continuing into perpetuity, that so long as Smith's Parcel is being operated as a supermarket food and drug store, Foxglove's Parcel of land as described in Exhibit "A" shall not be leased, rented, used or occupied as any type of supermarket, grocery store, pharmacy, convenience store (7-11

type) or video rental shop, without first obtaining the approval of Smith's or Smith's successor in interest.

10. ARCHITECTURAL CONTROL

The design, style, placement and construction of the building and improvements on the respective Parcels are subject to review and approval by an Architectural Committee consisting of a representative of Smith's and Foxglove. During the term of this Agreement, all such buildings and improvements shall and must be approved in writing by the Architectural Committee prior to the start of the construction thereof. No approval shall be unreasonably withheld by any member of the Architectural Committee.

11. CONDEMNATION

In the event of condemnation by eminent domain by any duly constituted authority for a public or quasi-public use of all or any part of the Entire Premises, that portion of the award attributable to the value of any land within the Common Areas so taken shall be payable only to the owner in fee, as the case may be with respect to the portion condemned, and no claim thereon shall be made by other owner of any other portion of the Entire Premises, provided, however, all other owners of the Entire Premises may file collateral claims with the condemning authority, over and above the value of the land within the Common Areas so taken, to the extent of any damage suffered to their respective improvements resulting from the severance of the appurtenant Common Area or utility easements and facilities so taken, provided, however, that the Owner in fee of the portion of

the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area so owned by such Owner as near as practicable to the condition of the same immediately prior to such condemnation and without contribution from any other owners of the Entire Premises except to the extent that the proceeds of such award are insufficient to pay the costs of such restoration and repair, or if the Owner is not obligated to restore and/or repair pursuant to a lease affecting the area so condemned.

No party shall have any right to any award made by the condemning authority for the value of any rights or other benefits relating to other parcels, whichever is taken by the condemnation.

12. OBSTRUCTIONS

No fences, barriers or other obstructions, except as are shown on Exhibit "B" shall be erected or maintained between Smith's Parcel and Foxglove's Parcel except to facilitate smooth and safe traffic flow between the parcels. Notwithstanding the foregoing, nothing herein shall be construed to prohibit, from time to time, not more frequently than four (4) times in any calendar year nor for more than thirty (30) days in duration, the use of a portion of the Common Area by the respective owner thereof, or its assigns, for a temporary sale or promotion, so long as such use does not unreasonably interfere with the traffic flow or unreasonably obstruct the rights granted under this Agreement to the other parties hereto.

13. CONTROL OF ACCESS

The parties, for themselves and the then Owners of all or any part of the easement areas granted in Paragraph 3 above, do, however, reserve the right to close temporarily all or any portion of the said easement areas to such extent, in the opinion of the parties or the then Owners of all or any part of the easement areas, as may be legally necessary and sufficient to prevent a dedication thereof or an accrual of any rights in any person other than as aforesaid or in the public generally therein. Any such temporary closing shall, however, be further subject to the reasonable consent of all owners of the Entire Premises.

14. COVENANTS RUN WITH LAND

The easements hereby granted, the restrictions hereby imposed and the agreements and covenants herein contained shall be easements, restrictions and covenants running with the land, and shall inure to the benefit of, and be binding upon, the parties and all future owners of all or any portion of the Entire Premises, and their respective heirs, successors and assigns, and all persons claiming under them from the date hereof into perpetuity, unless terminated either as set forth herein, or by unanimous vote of all the owners of the Entire Premises.

15. REMEDIES

In the event of a breach, or attempt or threatened breach, by any owner hereafter of any portion of said Entire Premises, in any of the terms, covenants and conditions hereof, including but not limited to payment of taxes and assessments,

anyone or all other owners of the Entire Premises shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach including payment of any amounts due, and any deed, lease, assignment, conveyance or contract made in violation of this Agreement shall be void and may be set aside upon petition of one or more of the owners of the Entire Premises. All costs and expenses incurred by any owner in making any payments in any such suit or proceedings shall be assessed against the defaulting owner in favor of any prevailing owner and shall constitute a lien against the real estate or the interest therein for which such payment was made or against the real estate or the interest therein wrongfully deeded, leased, assigned, conveyed or contracted for until paid, effective upon recording notice thereof in the Office of the Recorder in and for the county where the Entire Premises is located, but any such lien shall be subordinated to any First Mortgage covering any portion of the Entire Premises and any Purchaser at any foreclosure sale (as well as any grant of deed in lieu of foreclosure) under any such First Mortgage shall take title free from any such existing lien, but otherwise be subject to the provisions hereof. The remedies of any one or all such owners of the property and shopping center specified herein shall be cumulative as to each and as to all other permitted at law or in equity.

In the further event of any failure by a party to perform, fulfill or observe any covenant or agreement herein to be performed, fulfilled or observed by it, continuing for thirty (30)

days after receipt of written notice, creating or causing a situation involving potential danger to the health or safety of persons, in, on or about Smith's Parcel and/or Foxglove's Parcel or causing substantial deterioration or damage to either parcel, or any portion or part thereof, in each case after written notice specifying such, any other party may, at its election, cure such failure or breach for and on behalf of the defaulting party, and any amount which the party so electing shall expend for such purpose, or which shall otherwise be due by any party to any of the other parties hereunder, shall be paid to the party to whom due on demand, without contest, upon delivery of its invoice, together with interest thereon at the lower of (i) the rate of fifteen percent (15%) per annum, or (ii) the maximum permissible from time to time under applicable law, from the date of the expenditure or the date when the same shall have become due to the date of payment thereof in full. The provisions of this paragraph shall in all respects be subject and subordinate to the lien of any mortgages or any deeds of trust at any time or from time to time on the land of the defaulting party and the rights of the holder or holders thereof.

16. SUCCESSORS BOUND

The rights herein granted or reserved and the restrictions herein set forth shall run with the land and the agreements herein contained shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

17. FORCE MAJEURE

If the parties hereto are prevented from timely performance of any requirement hereunder by strikes, lockouts, natural disasters, delays in obtaining materials, acts of God or any similar event, the time for performance shall be extended by the period of any such delay.

18. GOVERNING LAW

This Agreement shall be construed in accordance with the laws where the real property which is the subject matter of this Agreement is located.

19. MEMORANDUM

The parties agree to sign and have recorded a Memorandum of this Development Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed the day and year first above written.

"FOXGLOVE"

FOXGLOVE ASSOCIATES

By Michael B. [Signature]  
Its Partner

By [Signature] Agent Groupist Co.  
Its Partner

"SMITH'S"

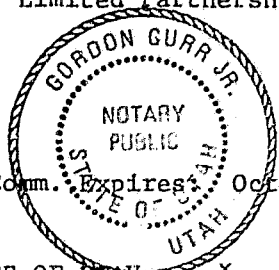
SMITH'S FOOD KING PROPERTIES, INC.

By [Signature]  
Peter H. Barth, Corporate Counsel



STATE OF UTAH           X  
                                  XSS.  
COUNTY OF DAVIS       X

On the 19th day of February, A.D. 1986, personally appeared before me Michael O. Bischoff, as Partner of LANDPAK CO., a Partnership, and Steven E. Lindquist, as Partner of LINDQUIST CO., a Partnership, the signers of the within instrument, who duly acknowledged to me that they signed the within instrument as such Partners, and that the said Partnerships are the General Partners of FOXGLOVE ASSOCIATES, a Utah Limited Partnership, and that such Partnerships executed the within instrument for and on behalf of said Limited Partnership as the General Partners thereof.

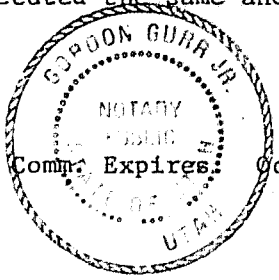


*[Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC

My Comm. Expires: October 31, 1988      Residing in: Clearfield, Utah

STATE OF UTAH           X  
                                  XSS.  
COUNTY OF DAVIS       X

On the 19th day of February, A.D. 1986, personally appeared before me Peter H. Barth, who being by me duly sworn did say that he, the said Peter H. Barth, is the Corporate Counsel for SMITH'S FOOD KING PROPERTIES, INC., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors and said Peter H. Barth duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.



*[Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC

My Comm. Expires: October 31, 1988      Residing in: Clearfield, Utah

## Foxglove South Commercial Parcel

Foxglove

February 25, 1986

Beginning at a point on the northerly line of Shepard Lane, said point also being S89°45'50"W 1100.60 feet along the section line and South 350.81 feet from the South quarter corner of Section 12, T.3N, R.1W, S.L.B.&M. and running thence:

N 89° 58'10" W	158.77 feet	along the northerly line of Shepard Lane; thence
N 87° 29'51" W	347.74 feet	along said northerly line to the easterly line of highway 89; thence
N 21° 26'40" W	214.73 feet	along said easterly line to the southerly line of the Smith's Food King properties parcel; thence
N 69° 00'00" E	471.94 feet	along the boundary line of said Smith's parcel for the following two courses: thence
S 21° 00'00" E	222.30 feet;	to the westerly line of Foxglove Road; thence
N 69° 00'00" E	60.00 feet	along said west line along a 330.96 foot radius curve to the right (long chord bears S06°29'13"E 75.11 feet); thence
Southeasterly	109.93 feet	along said west line to the point of beginning.
S 00° 01'50" W	123.60 feet	

Contains 3.5553 acres

Subject to restrictions, easements, rights-of-way of record and use, title insurance exception reasons and actual survey.

EXHIBIT A

Foxglove North Commercial Parcel

Foxglove

February 25, 1986

Beginning at a point on the easterly line of Highway 89, said point also being S89°45'50"W 1804.12 feet along the section line and North 169.72 feet from the South quarter corner of Section 12, T.3N, R.1W, S.D.B.&M. and running thence:

N 21° 26'40" W	343.33 feet	along said east line to the southerly line of the Beers parcel; thence
N 89° 54'32" E	541.70 feet	along said southerly line to the northerly line of the Smith's Food King properties parcel; thence
S 69° 00'00" W	120.37 feet	along said Smith's boundary for the following four courses:
S 21° 00'00" E	70.00 feet;	thence
S 69° 00'00" W	15.00 feet;	thence
S 21° 00'00" E	80.00 feet;	thence
S 69° 00'00" W	368.00 feet	to the point of beginning.

08-043-7076  
p 08-043-3073

Contains 2.4129 acres

Subject to restrictions, easements, rights-of-way of use and record, title insurance exception reasons and actual survey.

## "Smith's Parcel"

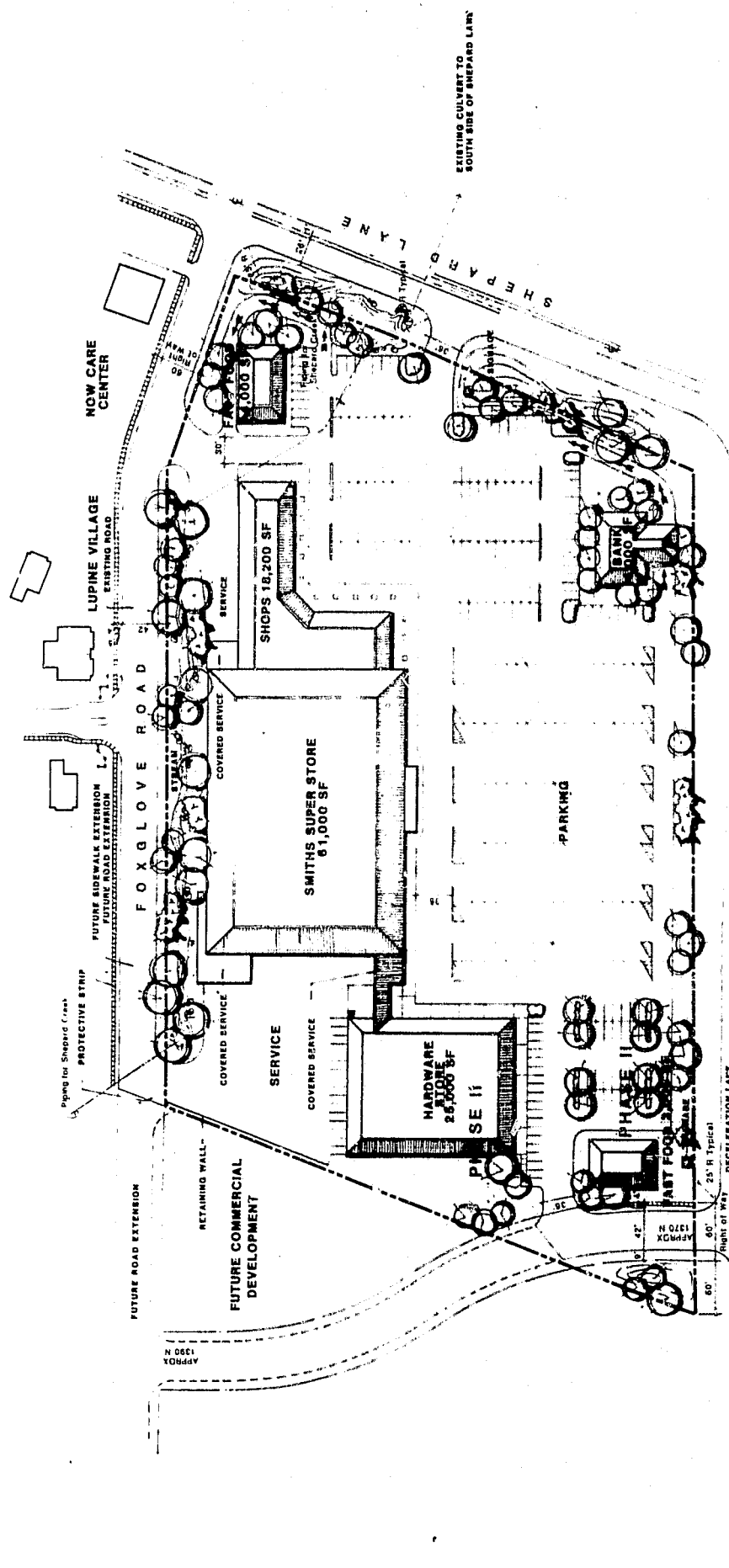
The land referred to as Smith's parcel, situated in the

County of DAVIS State of Utah, and is described as follows:

Beginning on the Westerly line of Foxglove Road at a point South 89°45'50" West 1164.04 feet along the Section line from the South Quarter corner of Section 12, Township 3 North, Range 1 West, Salt Lake Meridian, in the City of Farmington, and running thence South 21° East 115.86 feet along the Westerly line of said road; thence Southeasterly 46.21 feet along the arc of a 330.96 foot radius curve to the right along said road (Chord bears South 17° East 46.17 feet); thence South 69° West 60 feet; thence North 21° West 222.30 feet; thence South 69° West 471.94 feet, more or less, to the Northeasterly line of State Highway 89; thence North 21°26'40" West 325.0 feet along said Highway line; thence North 69° East 368.0 feet; thence North 21° West 80.0 feet; thence North 69° East 15.0 feet; thence North 21° West 70.0 feet; thence North 69° East 120.37 feet to a fence line and a point South 89°54'32" West from the intersection of two fence lines 484.0 feet North and 811.34 feet West of a brass cap marking the South Quarter corner of said Section 12; thence North 89°54'32" East 36.73 feet along said fence line; thence South 21° East 522.26 feet along the Westerly line of a proposed road and the Westerly line of said Foxglove Road to the point of beginning.

78-051-0069

EXHIBIT A



U . S . H I G H W A Y 8 9

TOTAL ACRES	11.1 ACRES
SMITHS SUPER STORE	61,000 SF
SHOPS	43,200 SF
PADS	11,000 SF
PARKING	467 SPACES
PARKING RATIO	1 CAR/247 SF
OPEN SPACE	1.75 ACRES

North  
Scale: 1" = 50'  
MASTER PLAN

38

ARCHITECTS  
LANDSCAPE ARCHITECTS  
PLANNERS



A/E Intra  
Group, Inc.  
24 SOUTH 800 EAST  
SALT LAKE CITY, UTAH 84119  
(801) 325-0031

# Foxglove Commercial Center

Farmington, Utah

Developed by: Foxglove Associates 524 South 600 East Salt Lake City, Utah 84102 Phone: (801) 364-1881

## Exhibit B