

BOOK 1202

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PAGE 994

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RECORDED AT REQUEST OF

*Davis Co*  
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**RETURNED**  
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CASH ADVANCE  
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87-253

EASEMENT

nw 13 30-10  
sw 12 30-10

Smith's Food King Properties, Inc., a Utah corporation, and Boyer Shopping Center Associates, a Utah Limited Partnership, Grantors and property owners in Davis County, State of Utah, for ten dollars (\$10.00) and other good and valuable consideration, hereby grant to Davis County, a body politic of the State of Utah, Grantee, its successors and assigns, and Davis County hereby accepts, for itself, its successors and assigns, a perpetual easement for the purpose of conveying flood and runoff and storm waters over and across and under the following described real property (to the extent owned by that Grantor) located in Davis County, State of Utah, to wit:

nw 13  
68-051-0073

Beginning at a point of curvature on the westerly line of Foxglove Road, said point also being South 112.96 feet and West 1122.51 feet from the South quarter corner of Section 12, T. 3N., R. 1W., S.L.B. & M. (basis of bearing being S89° 45' 50" W between said South quarter corner and the Southwest corner of said Section 12) and running thence: South easterly 121.48 feet along a 330.96 foot radius curve to the right (long chord bears S10° 29' 05" E 120.80 feet); thence S00° 01' 50" W 123.60 feet to the North line of Shepard Lane; thence N89° 58' 10" W 19.00 feet along said North line; thence N01° 30' E 133.0 feet, thence N14° 51' 29" W 105.05 feet, thence N69° E 22 feet to the point of beginning.

Containing 0.1067 Acres.

Also:

5w 12  
08-051-0069

Beginning at a point on the westerly line of proposed Foxglove Road, said point also being North 436.10 feet and West 1333.27 feet from the South quarter corner of Section 12, Township 3 North, Range 1 West, Salt Lake Base and Meridian, (basis of bearing being S89° 45' 50" W between said South quarter corner and the Southwest corner of said Section 12) and running thence S21° 00' 00" E 588.13 feet along the westerly line of said proposed and existing Foxglove Road to a point of curvature thereof; thence S69° 00' 00" W 30.00 feet, thence N21° 00' 00" W 588.13 feet; thence N69° 00' 00" E 30 feet to the point of beginning.

Containing 0.4050 Acres.

In addition thereto, Grantors do hereby grant to Grantee, its successors and assigns a perpetual easement for ingress and egress over, across and under the above-described properties (to the extent owned by that Grantor) for the purpose of digging an open flood control channel, laying concrete, and installing pipe in accordance with plans initialled by the parties hereto dated October 27, 1987, and consisting of eight (8) separate sheets. Said easement may also be used by Grantee for maintaining, cleaning or replacing said improvements.

The purpose of this Easement is for Davis County, its successors and assigns, to have and to hold the same so long as the above-described rights of way are used for flood and storm water drainage purposes as set forth above. The said Grantors, their successors and assigns may fully use the said premises except for the purpose for which these easement is granted to said Grantee provided that Grantors, their successors and assigns

shall not in any way use the properties in such a manner that will interrupt the flow of water or in any material way jeopardize the integrity of the easement for flood control purposes. Said Grantors have submitted to Grantee a landscaping plan which consists of one sheet that has been approved and initialled by all parties.

Grantors shall maintain and in their sole discretion replace any such landscaping in accordance with the landscaping plan. All other maintenance of the improvements on the easement (including replacement of any landscaping in accordance with the size and kinds of trees shown in the plant schedule on the landscape plan if the landscaping is destroyed by flood waters or acts of Grantee) shall be the responsibility of Grantee, and Grantee agrees to keep the improvements on the easement at all times in good repair and well maintained for the purposes for which the easement is granted.

Grantee, its successors and assigns shall be liable for any and all damages that occur to the property of the Grantors, their successors and assigns as a result of the negligent or willful acts of Grantee, its employees, contractors or agents in the construction, operation, maintenance, cleaning, replacement and repair of the flood, runoff and storm water drainage facilities on the easement. Said Grantee, its successors and assigns also hereby agrees to indemnify, defend and hold harmless said Grantors, their successors and assigns from any claims by or damages to third parties that arise or occur as a result of

the negligence or willful acts or omissions of Grantee, its employees, contractors or agents in the construction, operation, maintenance, cleaning, replacement or repair of the flood runoff and storm water drainage facilities or easements.

It is specifically intended by the Grantors and Grantee that neither party shall have liability or responsibility directly or through indemnity for acts of God or other matters not within the control of that party.

Should either party hereto retain counsel for the purpose of enforcing or preventing the breach of any provision hereof, then, said party shall be entitled, in addition to such other relief as may be available, to be reimbursed by the other party for all costs and expenses incurred thereby, including but not limited to, reasonable attorneys' fees and costs.

WITNESS the hands of said Grantors this 28<sup>th</sup> day of October, 1987.

SMITH'S FOOD KING PROPERTIES, INC

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

BOYER SHOPPING CENTER ASSOCIATES,  
a Utah Limited Partnership

By: BOYER-GARDNER PROPERTIES  
PARTNERSHIP NO. 3, a Utah General  
Partnership

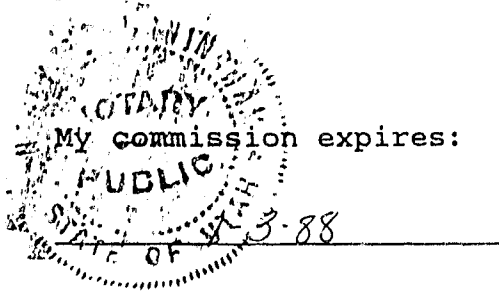
By \_\_\_\_\_

H. Roger Boyer,  
General Partner



STATE OF UTAH )  
 ) ss.  
COUNTY OF Davis )

On the 2nd day of ~~October~~ <sup>November</sup>, 1987, personally appeared before me Harold J. Sippette, known to me to be the Chairman of the Davis County Commission, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same for and on behalf of Davis County, a body politic of the State of Utah.



Nancy R. Burningham  
Notary Public

Residing at:  
Centerville, Utah

Approved as to form:

Davis County Attorney

[Signature]  
Deputy