

Recorded at request of *Smith's Management* Fee Paid \$24.00
Date **MAR 1 1983** at *3:08* P.M. CAROL DEAN PAGE Recorder Devis County
By *Grace Van Sweden* Deputy Book *932* Page **1061**

SW 22 > 4N-1W
NW 27

634085 RESTRICTIVE COVENANTS

AGREEMENT made this 13th day of December, 1982, by and between JOHANSEN-THACKERAY COMPANY, INC., a Utah corporation ("J-T" herein), and SMITH'S FOOD KING PROPERTIES, INC., a Utah corporation ("Smith's" herein).

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

1. FACTS AND OBJECTIVES

This Agreement for Restrictive Covenants is made with reference to the following facts and objectives:

A. Smith's is the owner of that certain tract of land more fully described as "Smith's Parcel" in Exhibit "A" attached hereto and J-T is the owner of that certain tract of land more fully described as "J-T's Parcel" in Exhibit "A" attached hereto, such property sometimes collectively referred to as "Entire Premises". The parties have also initialed on this date, a site plan of the Shopping Center, which shall for purposes of this Agreement be considered as part hereof and shall be hereafter attached and referred to as Exhibit "B".

B. The parties may lease and/or sell their respective parcels to other tenants and/or owners.

Platted Abstracted
On Margin Indexed
Compared Entered

P.O. Box 30550 JZC 84130
1544 S. K. ... 84114

C. The parties desire to establish, as hereinafter provided, non-exclusive 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 incorporated herein, and further desire to set out the terms, conditions and restrictive covenants controlling development of the Entire Premises.

D. The parties also wish to cooperate in designing and developing a successful shopping center on the Entire Premises and agree that in the design and development, the use thereof, they will be bound by the terms hereof.

2. TERM

The term of this Agreement shall commence on the date of execution hereof, and shall continue for a term of sixty-five (65) years from the commencement date.

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 J-I'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 that the easement for vehicle parking is for business invitees only. The parties agree that any future connections to the existing "underground utility lines" as used herein shall 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.

Parties hereby agree that any costs, or expenses incurred in repairing or maintaining the "underground utility lines" located on and servicing its Parcel. The costs of repairing or maintaining "underground utility lines" 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 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 such 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 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", It

is further understood and agreed that no building will be erected or placed in the Common Area and that buildings shall only be erected in the building area as shown on 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 business at any time existing on the Entire Premises. The construction of buildings upon the Entire Premises shall be limited to such an extent that there shall always be three (3) square feet of vehicle parking and common area for each one (1) square foot of gross building area to be constructed.

There shall be a minimum of three (3) vehicular driveway entrances for the parking area of said Shopping Center on Fairfield Road and two (2) vehicular driveway entrances on Gentile Street to be located as designated on the Exhibit "B" site plan, as said streets are now designated; except that if fewer such entrances are authorized and permitted by lawful public authority, then the maximum permitted by said authority shall at all times be maintained. In the event that fewer are permitted, the parties agree to join together in seeking appropriate governmental authorizations for additional access up to the minimum referred to above in this paragraph.

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 J-T's and Smith's or their successors.

4. COMPLETION OF COMMON AREAS

The parties hereto agree that at the time they develop their respective parcels that all sidewalks shall be of concrete construction, and all service drives, parking aisles, driveways, curbs and parking areas shall be graded, leveled and paved with concrete or asphalt, and market for the orderly distribution of automobiles.

5. MAINTENANCE AND TAXES

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 in their respective parcels which shall include, but not be limited to, electricity, cleaning, snow removal, repairs and replacements, including resurfacing and restriping, 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, to a minimum of one and one-half foot candles measured at ground level of Common Areas, landscaping and all other functions necessary for the

property maintenance, upkeep and operation of such Common Areas. The owners shall cause the common areas 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 in the same proportion as the floor area of all improvements owned and/or leased by such participating Owners and/or Tenants.

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.

6. TYPES OF BUSINESS

The parties covenant mutually, commencing on the date of this Agreement and continuing for the life of this Agreement, that J-T's Parcel of land as described in Exhibit "A" shall be leased, rented, used or occupied for only the following types of business without first obtaining the approval of Smith's or Smith's successor in interest which shall not be unreasonably withheld:

Art Shops

Men's Furnishings

Bakeries	Men's Hats
Banks	Men's Shoes
Barber Shops	Milliners
Beauty Shops	Office Buildings
Books & Stationery	Office Supply Stores
Candy	Optical Store
Department Stores	Pianos & Musical Instruments
Dry Cleaning & Laundry	Record Shops
Florists	Restaurant
Furniture	Savings and Loan
Furs	Service Stations
Gift Shops	Shoe Repair
Hobby Shops	Women's Dress Shops
Hoisiery & Knit Goods	Women's Shoes
Jewelry	Women's Furnishings
Leather Goods	Specialty Foods,
Liquor Stores	such as,
Men's Clothing	Donut, Ice Cream,
	Sandwich and Candy shops

7. 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 one representative appointed by Smith's and one representative appointed by J-T's. 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.

In the event that any party hereto shall sell or convey the interest they hold in their respective parcels, the right thereafter to appoint a member of the Architectural Committee shall be transferred with the fee title of the real property.

8. CONDEMNATION

In the event of condemnation 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.

9. OBSTRUCTIONS

No fences, barriers or other obstructions, except as are shown on Exhibit "B" shall be erected or maintained between Smith's Parcel and J-I'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.

10. CONTROL OF ACCESS

Parties for themselves and the then Owners of all or any part of the easement areas 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

11. 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, Declarants 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 for a term of sixty-five (65) years from the effective date hereof, unless terminated either as set forth herein, or by unanimous cause of all the owners of the Entire Premises.

12. EQUITABLE REMEDIES

In the event of a breach, or attempt or threatened breach, by any owner hereafter or any portion of said Entire Premises, in any of the terms, covenants and conditions hereof including 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 Building Areas 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 agreement herein to be performed, fulfilled or observed by it, continuing for thirty (30) days after receipt of written notice, wherein situations involving potential danger to the health or safety of persons, in, on or about of substantial deterioration of Smith's Parcel and/or

J-I's Parcel or any portion or part hereof, in each case after written notice specifying such, any other party may, at its election, cure such failure or breach for an 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 twelve (12) percent 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 he 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 of holders thereof.

13. 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.

14. 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

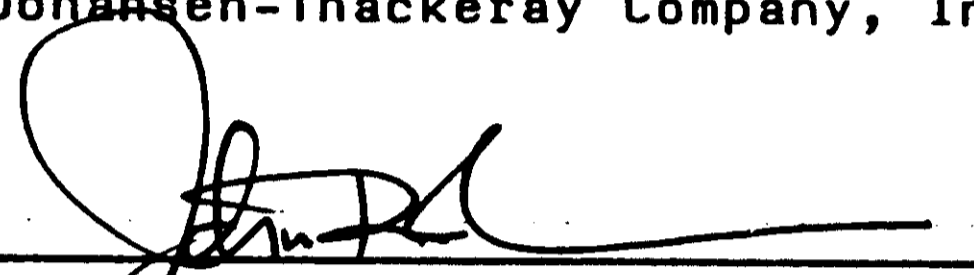
similar event, the time for performance shall be extended by the period of any such delay.

17. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of Utah.

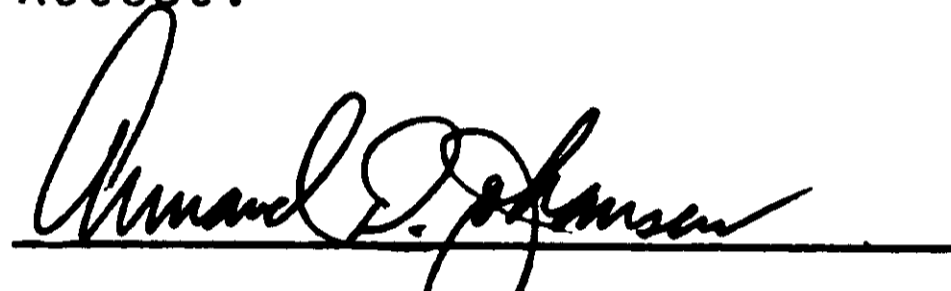
"J-T"

Johansen-Thackeray Company, Inc.



President

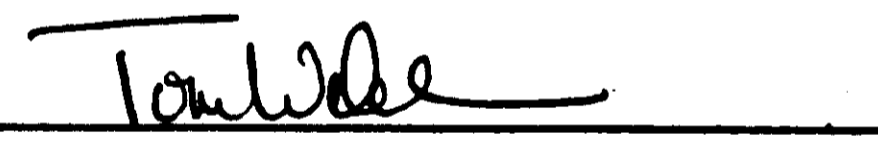
Attest:



Secretary

"SMITH'S"

SMITH'S FOOD KING PROPERTIES, INC.



Vice President

Attest:

W. S. Walker
Asst. Secretary

STATE OF UTAH)
) ss.
County of Salt Lake)

I, *Audra Kephart*, a Notary Public in and for the County and State aforesaid, do hereby certify that, personally known to me to be the same person whose name is, as *John Thackeray, President* of Johansen-Thackeray Company, Inc., a Utah corporation, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, sealed with the seal of said corporation, and delivered the said instrument as the free and voluntary act of said corporation and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 22nd day of February, 1983.

Sandra Kephart
Notary Public

My commission expires:

5-22-84

(SEAL)

STATE OF UTAH)
) ss.
County of Salt Lake)

I, Sandra Kephart, a Notary Public in and for the County and State aforesaid, do hereby certify that Tom Welch, personally known to me to be the same person whose name is, as Vice President of Smith's Food King Properties, Inc., subscribed to the foregoing instrument, appeared before me this

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day in person and severally acknowledged that he, being thereunto duly authorized, signed, sealed with the seal of said corporation, and delivered the said instrument as the free and voluntary act of said corporation and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this *22nd* day of

February, 198*1*.

Dandra Kephart

Notary Public

My commission expires:

5-22-84

(SEAL)

JOHANSEN AND THACKERAY'S PARCELS

SW 22
11-003-0072

Part of the Southwest quarter of Section 22 and the Northwest quarter of Section 27, T4N, R1W, SLB&M, U.S. Survey: Beginning at a point on the South line of Gentile Street, said point of beginning being North 00° 20' 20" East 69.70 feet along the section line; North 69° 11' 45" East 790.51 feet along the center line of Gentile Street and South 21° 54' 46" East 33.01 feet from the Northwest corner of said Section 27; and running thence North 69° 11' 45" East 30.00 feet along said South line of Gentile Street; thence South 21° 54' 46" East 130.29 feet; thence North 68° 05' 14" East 164.00 feet; thence North 21° 54' 46" West 127.12 feet to said South line of Gentile Street; thence North 69° 11' 45" East 164.03 feet along said South line; to point of beginning.

Contains .48 acre

SW 22, NW 27
11-050-00144 0015

Part of the Southwest 1/4 of Section 22 and the Northwest 1/4 of Section 27, T4N, R1W, SLB&M, U.S. Survey: Beginning at a point being North 00° 20' 20" East 69.70 feet along the section line; North 69° 11' 45" East 790.51 feet along the center line of Gentile Street and South 21° 54' 46" East 435.88 feet from the Northwest corner of said Section 27; and running thence North 68° 05' 14" East 456.38 feet to the West line of Fairfield Road; thence South 22° 02' 32" East 251.39 feet along said West line of Fairfield Road; thence South 69° 00' 47" West 482.01 feet along an old existing fence to an old existing fence corner being Easterly from the East line of Colonial Park Subdivision; thence North 21° 54' 46" West 243.60 feet along said old existing fence; thence North 68° 05' 14" East 25.00 feet to the point of beginning.

Contains 2.74 acres

SMITH'S PARCEL

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Part of the Southwest quarter of Section 22 and the Northwest quarter of Section 27, T4N, R1W, SLB&M, U.S. Survey. Beginning at a point on the South line of Gentile Street, said point of beginning being North 00° 20' 20" East 69.70 feet along the section line; North 69° 11' 45" East 790.51 feet along the center line of Gentile Street and South 21° 54' 46" East 33.01 feet from the Northwest corner of said Section 27; and running thence North 69° 11' 45" East 30.00 feet along said South line of Gentile Street; thence South 21° 54' 46" East 130.29 feet; thence North 68° 05' 14" East 164.00 feet; thence North 21° 54' 46" West 127.12 feet to said South line of Gentile Street; thence North 69° 11' 45" East 264.54 feet along said South line; thence South 22° 02' 32" East 394.06 feet along said West line of Fairfield Road; thence South 68° 05' 14" West 456.38 feet; thence North 21° 54' 46" West 402.87 feet to the point of beginning.

Subd. No. 27
11-003-0074 + 0073

Contains 3.67 acres

