

When recorded return to:
Smith's Food & Drug Centers, Inc.
Attn: Real Estate Legal Services
1550 South Redwood Road
Salt Lake City, Utah 84104

5700

5564383
28 JULY 93 04:17 PM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
FOUNDERS TITLE
REC BY: SHARON WEST , DEPUTY

5564383

**EASEMENTS WITH
COVENANTS, CONDITIONS AND RESTRICTIONS AFFECTING LAND**

THIS AGREEMENT is made to be effective as of the 26th day of July, 1993 between SMITH'S FOOD & DRUG CENTERS, INC., a Delaware corporation, herein called "Smith's," and FIRST CITY INVESTORS, INC., a Utah Corporation, herein called "Developer."

R E C I T A L S

A. Smith's Parcel. Smith's is the owner of the Smith's Parcel as shown on the plan attached hereto as Exhibit "A" and which is more particularly described in "B" hereto.

B. Developer Parcels. Developer is the owner of the Developer Parcel(s) as shown on the plan attached hereto as Exhibit "A" and which are more particularly described in Exhibit "C" hereto.

C. Purpose. Smith's and Developer desire that the Smith's Parcel and the Developer Parcels be developed and operated in conjunction with each other in an orderly fashion so as to create a commercial shopping center as set forth herein and further desire that the Smith's Parcel and the Developer Parcels be subject to certain easements, covenants, conditions and restrictions all as hereinafter set forth.

A G R E E M E N T

In consideration that the following encumbrances shall be binding upon the parties hereto and shall attach to and run with the Smith's Parcel and the Developer Parcels, and shall be for the benefit of and shall be limitations upon all future owners of the Smith's Parcel and the Developer Parcels 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 Developer Parcels and the Smith's Parcel as from time to time expanded pursuant to Paragraph 1(e) below.

F-1970D

BR 6718PG0343

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 attached as Exhibit "A" and as may be modified by Exhibits "D" or "E", which are attached hereto. Initially approximately 72,209 square feet of floor area of buildings have been constructed in the Building Area on the Smith's Parcel. At the discretion of Developer, the Developer Parcel may be developed in conformity with either of two alternative site plans, which are shown on Exhibits "D" and "E." Depending on whether the Developer Parcel is developed in conformity with Exhibit "D" or Exhibit "E", approximately 12,600 square feet of floor area, of buildings, are planned to be constructed within the Building Area on the Developer Parcel. In the event Developer desires to develop the Developer Parcels in a manner not depicted on either Exhibits "D" or "E," Developer shall obtain the prior approval of Smith's, which approval shall not be unreasonably withheld, and this Agreement shall be amended accordingly. 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, storage, office, restroom, lounge or other raised mezzanine; exterior, trash enclosures; enclosed or open loading docks which are not heated or air conditioned; canopies and roof overhangs; and vestibules for ingress and egress. Such exclusions from Building Area may project from any building or structure up to a distance of twenty-five (25) feet over or outside of the Building 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 Area; provided, those portions of the Building Area upon which the Parties are not obligated to construct (or do not construct) buildings pursuant to this Agreement 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.

d. Conversion to Common Areas. Those portions of the Building Areas on each parcel which are not from time to time used or cannot under the terms of this Agreement 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 Agreement. 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 Agreement.

e. Expansion of Building Area. Any expansion or modification of the Building Areas or Floor Areas, as allowed herein, shall not reduce the number of available parking spaces below the greater of five spaces per thousand square feet of Building Area or that required by applicable governmental authorities on its Parcel (without taking into account the parking which may exist on the other party's Parcel or Parcels). Another party may, in the event it expands its Building Area, acquire additional parking rights adjacent to the Shopping Center and incorporate such parking rights into the Common Area to satisfy the parking requirements hereof.

2. Buildings.

a. General Use. The buildings shall be commercial buildings of the type usually found in attractive and well-kept retail shopping centers in the greater metropolitan area in which the Shopping Center is located. The tenants occupying the buildings shall be primarily retail and service tenants of the type normally associated with retail shopping centers in such metropolitan area.

b. Restrictions on Types of Uses. Developer recognizes the needs of Smith's customers to have adequate parking facilities in close proximity to the building upon the Smith's Parcel, 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 further recognizes Smith's interest in not having 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 Store. To safeguard Smith's interest in having a clean, quiet and proper environment and in having adequate parking for its customers, Developer covenants and agrees that in the event the Developer Parcels are developed in conformity with Exhibit "D," restaurant use shall be limited to 5,700 square feet of floor area, or; in the event the Developer Parcels are developed in conformity with Exhibit "E" restaurant use shall be limited to 2520 square feet of floor area, (a Pizza Hut Delivery unit which does not exceed 1260 square feet of floor area shall not be considered a restaurant use and shall be permitted). General business space within the Developer Parcel shall not total more than 2520 square feet. A travel agency shall not be considered general business and shall be allowed if its building area is 1260 square feet of floor area or less, and an emergency medical facility shall also be allowed if no more than four sections (1240 square feet per section) or no more

than 5,040 square feet, and shall be located in the north half of the building. Notwithstanding the above the total of all restaurant and general business use shall not exceed 6,300 square feet of floor area. ~~No portion of the Developer's Parcels within two hundred fifty feet (250') of the exterior building wall of the Smith's building shall be used for general or business offices.~~ ^{AW} No portion of the Smith's Parcel or the Developer Parcels shall be used for a movie theater, night club, dance hall, bowling alley, roller rink, bar or lounge, veterinary clinic, automobile repair shop, pool hall, health spa, massage parlor, adult book store, game room (more than four (4) electronic games), the renting, leasing, or sale or the display of motor vehicles or trailers, or other similar purpose which is not compatible with first-class retail shopping centers in the relevant metropolitan area. In addition, during the term of this Agreement, Developer shall not use or permit the use of any portion of the Developer Parcels for a supermarket or grocery store, or for the sale for off-premises consumption of groceries, meats, produce, liquor, bakery products (except that a sandwich shop such as Blimpie's or Subway shall be allowed and not considered as an off premise seller of the above items), prescription pharmaceuticals, video rentals or quick film development, or any of them, but provided that this restriction shall not prohibit a donut shop which does not carry any bakery products other than donuts (examples of donut shops that will be allowed are Winchell's, Banberry Cross, or similar operations), nor prohibit the sale of manufactured cookies, candy or confections commonly sold in variety stores or department stores. All uses allowed and existing within the Shopping Center must include, within the Parcel upon which such use is located, parking equal to the greater of five spaces per thousand square feet of building area, or that required by applicable governmental authorities on its Parcel (without taking into account the parking which may exist on other party's parcel or parcels).

c. Location. No building shall be constructed on the Smith's Parcel or the Developer Parcels, except within the Building Areas shown on Exhibit "A."

d. Design and Construction. The buildings shall be designed so that the exterior elevation of each will be architecturally and aesthetically compatible. The design and construction shall be in conformity with sound architectural and engineering standards and the construction shall be first quality. All buildings shall be one story and shall not exceed thirty-five feet (35') in height (but may include raised mezzanines for equipment, storage, offices (to which the public is not invited), restrooms or lounges). Developer acknowledges that Smith's is a national grocery and drug supermarket retailer and that the architectural theme of its store is related to operational strategies which change from time to time. Although Smith's has no reason to believe that

the architectural theme and signage, once adopted, will be subject to change, Smith's reserves the right upon instruction from its Real Estate Committee (evidenced by a certificate therefrom given to Developer) to make such changes as are instructed to the signage and exterior design, materials, color, elevations and/or other elements of the architectural theme as it pertains to the Smith's Building.

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 has been constructed to meet a Type II (Uniform Commercial Building Code) non-rated building and has been 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. Developer covenants to provide no-build easements or yard agreements as may be required by the appropriate governmental agencies necessary for Lessor to comply with its obligation as set forth herein.

3. Common Areas Use.

a. Grant of Easements. Each party, as grantor, hereby grants to the other party for the benefit of said other party, its customers, invitees and employees, a nonexclusive easement for pedestrian and vehicular access, ingress and egress, the parking of motor vehicles in designated areas and use of facilities installed for the comfort and convenience of customers, invitees and employees on the Common Areas of the grantor's parcel.

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, 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 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 Agreement, (2) for incidental encroachments upon the Common Areas which may occur as a result from 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. Notwithstanding anything herein to the contrary, Smith's may elect to operate a Recycle Center on a portion of the parking area of the Smith's Property, at a location reasonably determined by Smith's, but not within 100 feet of Developer Parcels. This Recycle Center will not be affixed to the parking lot, will be fully moveable, and will consist of a trailer and approximately four (4) containers into which recyclable materials may be deposited. Smith's agrees that the Recycle Center will be located within the parking stall areas and will not otherwise obstruct the access and parking easements as granted herein. The Recycle Center is thus deemed by the parties to be consistent with the rights and easements described herein.

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 Smith's Parcel or the Developer Parcels 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." The parties hereto may from time to time mutually designate and approve "employee parking areas"; however, if they do not, each party may designate "employee parking areas" on its own Parcel.

(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 agreement 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 the site plan attached hereto as Exhibit "A" and all at the expense of the owner of said Parcel.

(2) By Smith's. If Smith's constructs improvements on the Smith's Parcel prior to the development of the Developer Parcels, Smith's may grade, pave and otherwise improve and use any portion of the Common Areas of the Developer Parcels in accordance with Exhibit "A."

b. Maintenance.

(1) Standards. Following completion of the improvement of the Common Areas, the parties hereto 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 all perimeter walls in good condition and state of repair; and

(f) Maintaining all landscaped areas in a thriving and trimmed condition and making such replacements of shrubs and other landscaping as is necessary.

(2) Expenses. The respective owners shall timely pay the maintenance expense of their respective Parcels. Until such time as Developer commences construction on its parcel, Developer shall allow Smith's patrons and employees to park on Developer's Parcel, and until Developer commences construction on its parcel, Smith's shall maintain and keep clean the Developer's parcel at Smith's own cost and expense.

(3) By agent. Subject to the revocable mutual agreement of the parties hereto, either of the parties or a third party may be appointed as agent to 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 all parties 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 of the parties hereto agrees to 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. Signs.

Except for directional signs for guidance upon the Common Areas, no pylon or pole signs shall be located on the Common Areas on the Smith's Parcel or the Developer Parcels except in accordance with the terms and conditions of this Agreement. Smith's shall have the right at its sole option, but not the obligation, at any time to construct two pylon signs bearing Smith's own designation, located on the Common Area as shown in Exhibit A. Smith's shall bear all maintenance and utility costs associated with the pylon signs. In the event that Developer, its successors and assigns, or any other "major tenant" (e.g., a tenant occupying a single space of at least 20,000 square feet) desires to construct a pylon sign at any location at the Shopping Center, the location, size and design of such pylon sign shall be subject to Smith's prior written approval, which approval shall not be unreasonably withheld. Smith's shall have the right of top designation on each pylon sign and Smith's shall pay its pro rata share of the cost of construction, as specified in this Section. In the event that rules, regulations or codes of any governmental authority having jurisdiction do not permit two pylon signs to be

constructed on the Property, and a variance cannot be obtained, then Smith's, Developer, and any other affected "major tenant" shall jointly design and construct one mutually acceptable pylon sign, and apart from each party bearing the cost of such party's own designation on such sign, all costs of design, construction, maintenance, utilities and replacement of such common pylon sign shall be shared in accordance with the ratio that the surface area of the fascia of such party's designation bears to the total surface area of the fascia on the common pylon sign. The common pylon sign shall bear only the Developer's designation of the Shopping Center name, the designation of the trade name of the operator of the Smith's Building, and the designation of the trade name of the "major tenant(s)."

The Developer, Developer's tenants, or pad owners may construct free standing signage located on their respective parcels, subject to the prior written approval of Smith's, which shall not be unreasonably withheld. The determination of reasonable shall be based upon the location of the sign, the type of sign, and the proposed sign's square footage and height. In addition, building signage shall be allowed so long as it is in accordance with standard advertising for other well run retail centers, is done in a first class workmanlike manner, and is acceptable to governmental authorities.

6. Indemnification/Insurance.

a. Indemnification. Each party hereby agrees to indemnify, defend and save the other party 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 other party hereto.

b. Insurance. Each party shall provide commercial general liability insurance affording protection to itself and the other party on its own parcel(s), naming the other party as an "additional insured" under the policy or policies, for a combined bodily injury and property damage limit of liability of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate. 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, but only so long as the party so self-insuring shall have a net worth of at least Fifty Million Dollars (\$50,000,000), or if such self-insurance plan is furnished through a related entity of the party, the entity

furnishing such self-insurance shall have a net worth of at least Fifty Million Dollars (\$50,000,000). Any party providing self-insurance shall, upon request, provide the other party with a description of such self-insurance program, financial statements evidencing the required net worth, and evidence of any partial insurance coverage which may be supplementing any plan of partial self-insurance. Any deductible under any policy of insurance in excess of Five Thousand Dollars (\$5,000) shall be deemed self-insurance.

d. Other Insurance Matters. All policies of insurance required by this Agreement shall insure the performance of the party insured thereunder of the indemnity agreement contained in this paragraph 6, shall name the other party an additional insured 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 party shall deliver to each other party a certificate or statement from the party's insurance company that such insurance insures the performance by the party insured of the indemnity agreement specified in this Paragraph 6 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.

7. Eminent Domain.

a. Owner's Right to Award. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's parcel or give the public or any government any rights in the Smith's Parcel or the Developer Parcels. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on the Smith's Parcel or the Developer Parcel, 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 Paragraph 7 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.

8. Agreement.

a. Modification, Cancellation and Delegation of Authority. This Agreement (including Exhibit "A") may be modified or cancelled only by written consent of all record owners of the Smith's Parcel and all record owners of the Developer Parcels, which consents shall not be unreasonably withheld. It is agreed that as long as either Smith's or the Developer is the initial user and/or operator of one or both the Parcels, whether as owner or lessee, that the authority for modifying this Agreement shall rest with them alone as to the Parcel(s) they own, use or operate. Any purchaser, lender, mortgagee, lessee, assignee, grantee, sublessee or other party having any interest in any portions of the Smith's Parcel and/or the Developer Parcels shall be deemed to have appointed Smith's and/or Developer, as the case may be, as their attorneys-in-fact for their respective Parcels for the purpose of negotiating and entering into any modifications of this Agreement, except for extending the duration hereof. Cancellation of this Agreement shall not be considered a modification.

b. Breach. In the event of breach or threatened breach of this Agreement, only all record owners of the Smith's Parcel as a group, or all the record owners of the Developer Parcels as a group, or Smith's so long as it has an interest as owner or tenant in the Smith's Parcel, or Developer so long as it has an interest in any part of the Developer Parcels, 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 Parcel shall, during the term of this Agreement, 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

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 Paragraph 3a and except that the utility easements granted pursuant to Paragraph 3e, if any, shall continue in full force and effect until terminated in writing by the parties entitled to modify this Agreement in accordance with the provisions of 8a hereof.

9. **Rights and Obligations of Lenders.**

Subject to the provisions of 8c above, the charges and burdens of this Agreement 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 Smith's Parcel or the Developer 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 Agreement 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 Smith's Parcel and the Developer Parcels by virtue of this Agreement, as noted in 8c hereof.

10. **Release from Liability.**

Any person acquiring fee or leasehold title to the Smith's Parcel or the Developer Parcels or any portion thereon shall be bound by this Agreement only as to the Parcels or portion of the Parcels acquired by such person. Such person shall be bound by this Agreement 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 paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits and servitudes which run with the land as described in Paragraph 11 next below.

11. **Rights of Successors.**

The easements, covenants, conditions, restrictions, benefits, and obligations hereunder shall create mutual benefits and servitudes upon the Smith's Parcel and the Developer Parcels and shall run with the land. This Agreement 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.

12. 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.

13. 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 Agreement 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 a time as to have a minimum effect on the parties in occupancy within the Shopping Center.

14. Document Execution and Change.

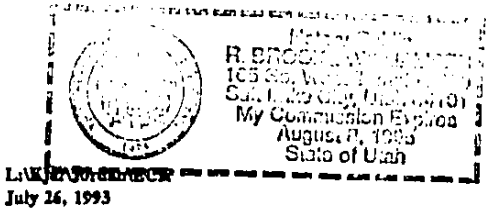
It is understood and agreed that until this document is fully executed and delivered by both Developer and Smith's there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be based. It is further agreed that once this document 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.

STATE OF Utah)
COUNTY OF Salt Lake ; ss.

Before me, the undersigned authority, on this day personally appeared Thomas S. Williamsen, president of FIRST CITY INVESTORS, INC, a Utah Corp, 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.

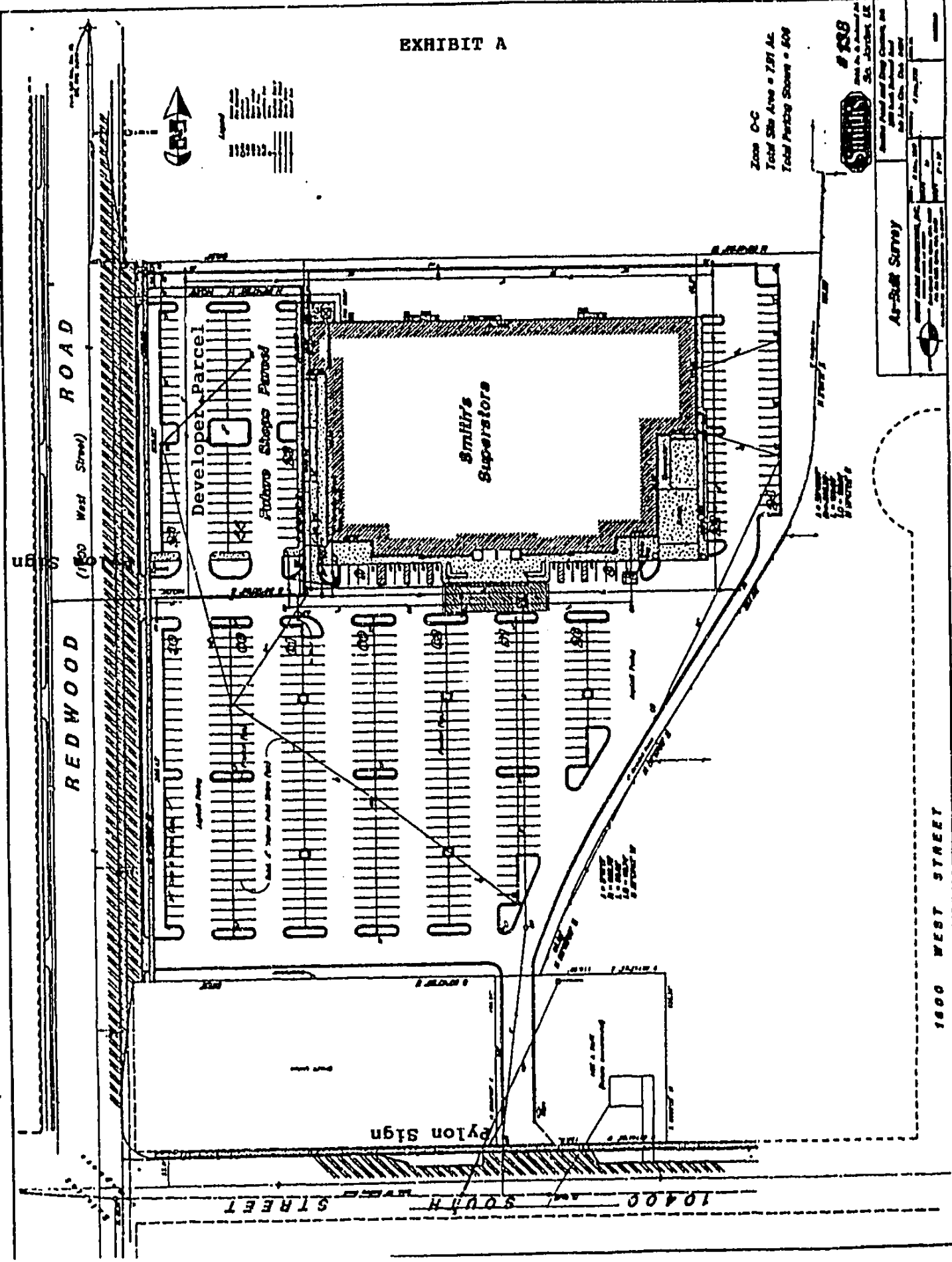
Given under my hand and seal of office on this 27th day of July, 1993

R. Brooke Williamsen
Notary Public
Notary's name printed:
R. BROCKE WILLIAMSEN
My commission expires: 8/8/95



BK6718PG0357

EXHIBIT A



Zone C-C
 Total Site Area = 7.91 AC
 Total Parking Spaces = 808

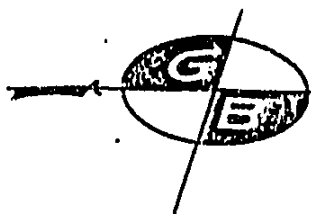
STUBBS
 # 538
 1000 West Street, Suite 100
 St. Joseph, MO
 Planning, Surveying and Engineering, Inc.
 1000 West Street, Suite 100
 St. Joseph, MO 64501

Air-Sub Survey

Project Name	
Client	
Scale	
Date	
Drawn By	
Checked By	
Approved By	

BK6718PG0358

EXHIBIT "B"

**GREAT BASIN ENGINEERING, INC.**

Consulting Engineers and Land Surveyors
 P.O. Box 9307
 Ogden, Utah 84409

Ogden (801) 394-4515
 Salt Lake (801) 521-8529
 FAX (801) 392-7544



May 4, 1993

SMITH'S #138 - SOUTH JORDAN, UTAH - LESS SHOPS PARCEL

Beginning at a point on the Easterly right-of-way line of Redwood Road (as widened to 53.00 feet half width) being South $0^{\circ}06'05''$ West, along the center line of Redwood Road, 460.24 feet and South $89^{\circ}47'25''$ East 53.00 feet from the North Quarter Corner of Section 15, Township 3 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey; and running thence South $0^{\circ}06'05''$ West, along a line parallel to and being 53.00 feet perpendicularly distant Easterly from the center line of Redwood Road, 25.00 feet; thence South $89^{\circ}47'25''$ East 140.06 feet; thence South $0^{\circ}06'05''$ West 289.315 feet; thence North $89^{\circ}53'55''$ West 140.06 feet to said line being 53.00 feet from centerline of Redwood Road; thence South $0^{\circ}06'05''$ West 355.42 feet along said line; thence South $89^{\circ}47'25''$ East 351.11 feet; thence North $22^{\circ}52'35''$ East 65.82 feet to point of curvature; thence Northeasterly along the arc of a 688.76 foot radius curve to the right a distance of 99.82 feet (the cord of which bears North $27^{\circ}01'43''$ East 99.74 feet) to a point of tangency; thence North $31^{\circ}10'50''$ East 297.52 feet to the point of curvature of a 205.26 foot radius curve to the left; thence along said curve 103.09 feet (the cord of which bears North $16^{\circ}47'32''$ East 102.01 feet); thence North $2^{\circ}24'13''$ East 167.50 feet; thence North $89^{\circ}47'25''$ West 611.37 feet to the point of beginning.

Contains 304,041 Square Feet
 Or 6.980 Acres

SMC #138

MEMBER OF AMERICAN SOCIETY OF CIVIL ENGINEERS

MEMBER OF UTAH COUNCIL OF LAND SURVEYORS

MEMBER OF AMERICAN CONSULTING ENGINEERS COUNCIL

BK6718PG0360

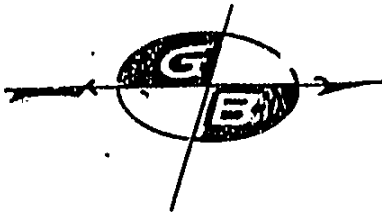


EXHIBIT "C"

GREAT BASIN ENGINEERING, INC.

Consulting Engineers and Land Surveyors
P.O. Box 9307
Ogden, Utah 04409

Ogden (801) 394-6315
Salt Lake (801) 521-8529
FAX (801) 392-7344



May 3, 1993

SMITH'S #138 - SOUTH JORDAN, UTAH - SHOPS PARCEL

Beginning at a point on the Easterly right-of-way line of Redwood Road (as widened to 53.00 feet half width) being South $0^{\circ}06'05''$ West, along the center line of Redwood Road, 460.24 feet and South $89^{\circ}47'25''$ East 53.00 feet and South $0^{\circ}06'05''$ West 25.00 feet from the North Quarter Corner of Section 15, Township 3 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey; and running thence South $0^{\circ}06'05''$ West, along a line parallel to and being 53.00 feet perpendicularly distant Easterly from the center line of Redwood Road, 289.58 feet; thence South $89^{\circ}53'55''$ East 140.06 feet; thence North $0^{\circ}06'05''$ East 289.315 feet along the West edge of an existing building wall and wall extended; thence North $89^{\circ}47'25''$ West 140.06 feet to the point of beginning;

Contains 40,541 Square Feet
Or 0.931 Acres

SMC#138

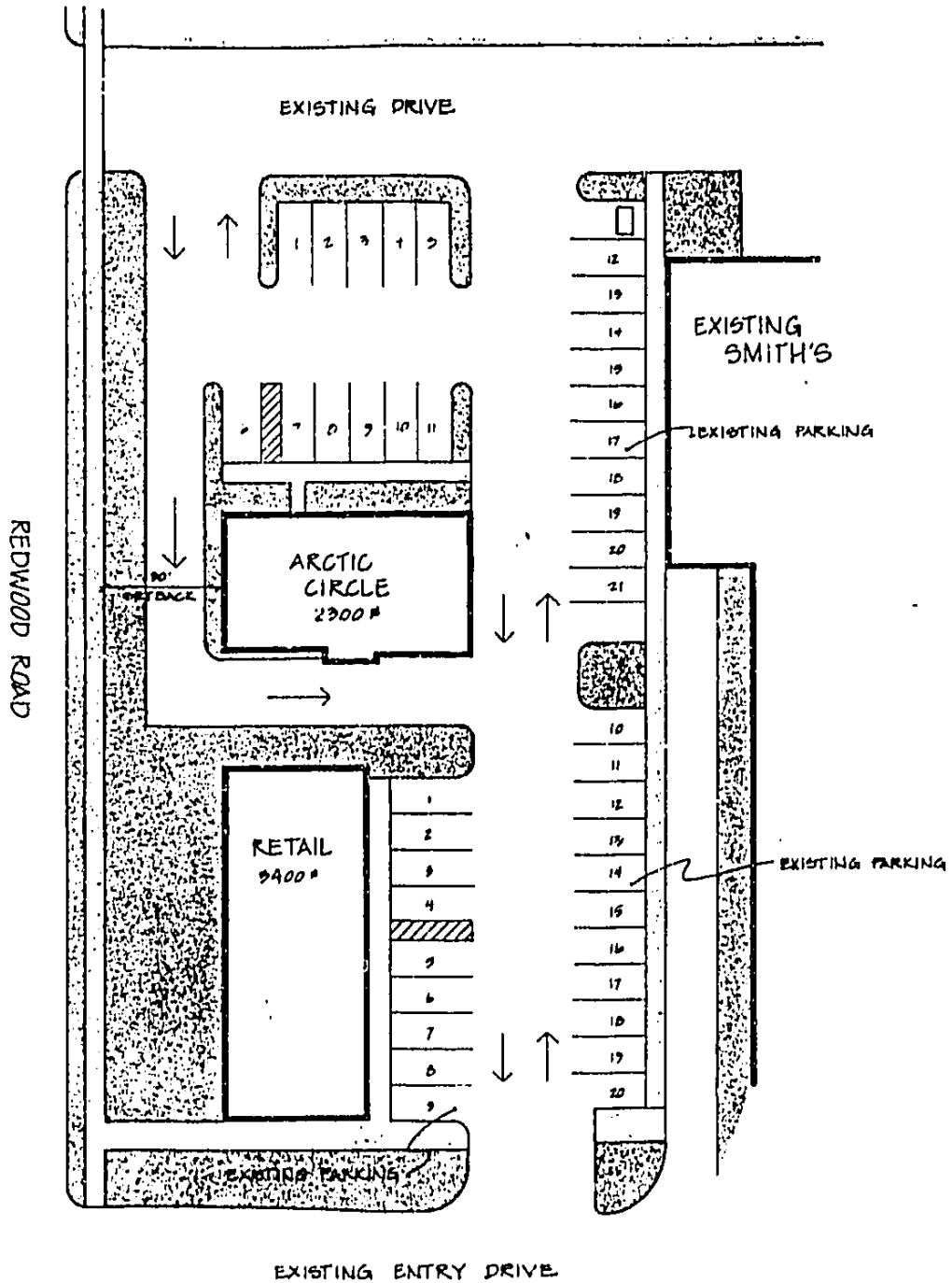
MEMBER OF AMERICAN SOCIETY OF CIVIL ENGINEERS

MEMBER OF UTAH COUNCIL OF LAND SURVEYORS

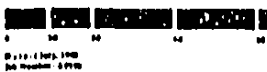
MEMBER OF AMERICAN CONSULTING ENGINEERS COUNCIL

BK6718PG0361

EXHIBIT "D"



Preliminary Plans



Scale: 1/8" = 10'
Date: 1/15/78

100 South West Temple, Suite 400, Salt Lake City, Utah 84115
Telephone: 531-2211

LANDSCAPE
ARCHITECTS
INCORPORATED

Chasebrook Company

168 So. West Temple, Suite 300, Salt Lake City, Utah

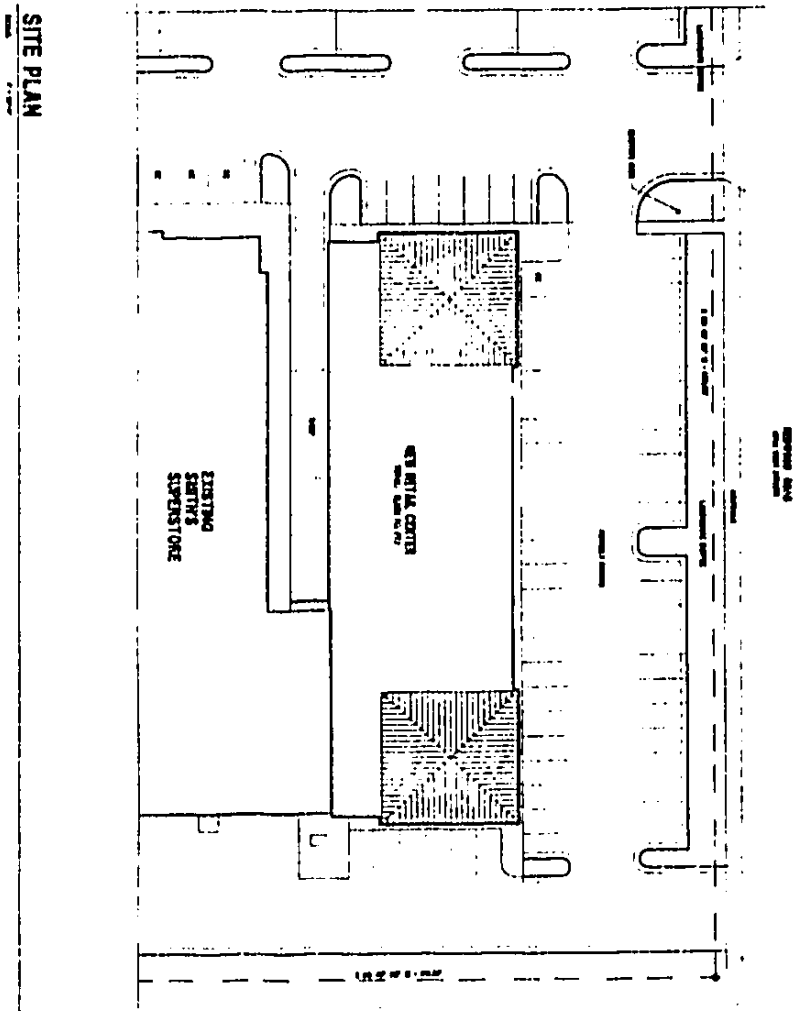
South Jordan Centre

South Jordan, Utah



BK6718FG0362

EXHIBIT "E"



"Preliminary"



SOUTH JORDAN CENTRE
 1000 South Jordan Parkway
 South Jordan, Utah

Developed by
CHASSERBROOK COMPANY

James E. Chaslerbrook Architects
 1000 South Jordan Parkway
 South Jordan, Utah

SP

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 BK 5718 PG 0363