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10/03/97 1:12 PM 22.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
BOYER COMPANY  
127 S 5TH E  
SLC, UT 84111  
REC BY:R JORDAN ,DEPUTY - WI

PREPARED BY AND WHEN  
RECORDED RETURN TO:

Victor A. Taylor, Esq.  
Kimball, Parr, Waddoups, Brown & Gee  
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P.O. Box 11019  
Salt Lake City, Utah 84147-0019  
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AGREEMENT

[Boyer-3300 South Shopping Center Associates, Ltd./Alan Summerhays and  
Kristine Summerhays]

THIS AGREEMENT (this "Agreement") is entered into as of the 10<sup>th</sup> day of  
September, 1997, between BOYER-3300 SOUTH SHOPPING CENTER ASSOCIATES, LTD., a  
Utah limited partnership ("Boyer"), whose address is 127 South 500 East, Suite 100, Salt Lake City,  
Utah 84102, and ALAN SUMMERHAYS and KRISTINE SUMMERHAYS, husband and wife  
(collectively, "Summerhays"), whose address is 136 East 12300 South, Draper, Utah 84020.

FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration,  
the receipt and sufficiency of which are acknowledged, Boyer and Summerhays agree as follows:

1. Definitions. As used in this Agreement, each of the following terms shall have the  
indicated meaning:

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

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

1.2. "No Build Area" means that portion of the Summerhays Parcel crosshatched  
on the site plan attached as Exhibit A, incorporated by this reference.

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1.3. "Summerhays Parcel" means the real property located in Salt Lake County, Utah, described as follows:

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

2. Purpose. Summerhays is the owner of the Guadalahonky's Parcel and the Summerhays Parcel. Boyer and Summerhays desire to (a) prohibit construction of any building within the No Build Area, (b) require an opening for pedestrian access across the eastern boundary line of the Guadalahonky's Parcel, and (c) make certain agreements regarding certain construction adjacent to the eastern boundary line of the Guadalahonky's Parcel.

3. Building Prohibition. No building shall be constructed at any time within the No Build Area.

4. Access. Boyer shall provide an opening for pedestrian access in any landscaping or wall constructed East of, and adjacent to, the eastern boundary line of the Guadalahonky's Parcel. Such access shall be used only by persons going to or coming from the office located on the second floor of the restaurant located on the Guadalahonky's Parcel.

5. Certain Construction. Boyer shall not oppose the construction by Summerhays of a building for storage on the Guadalahonky's Parcel, located adjacent to the eastern boundary line of the Guadalahonky's Parcel.

6. Nature of Agreement. Each provision contained in this Agreement shall be perpetual and shall constitute a covenant running with the land.

7. Attorneys' Fees. If any person brings suit to enforce or interpret this Agreement or for damages on account of the breach of any provision of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled.

8. General Provisions. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This Agreement shall inure to the benefit of, and be binding on, Boyer and Summerhays and their respective heirs, personal representatives, successors and assigns. Whenever possible, each provision

of this Agreement shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Agreement shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

BOYER AND SUMMERHAYS have executed this Agreement on the respective dates set forth below, to be effective as of the date first set forth above.

BOYER:

BOYER-3300 SOUTH SHOPPING CENTER  
ASSOCIATES, LTD.,  
by its general partner:

THE BOYER COMPANY, L.C.,  
a Utah limited liability company

By *Ken Gardner*

Its MANAGER

Date 9-11-97

SUMMERHAYS:

*Alan Summerhays*

ALAN SUMMERHAYS

Date 9-10-97

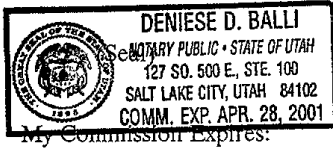
*Kristine Summerhays*

KRISTINE SUMMERHAYS

Date 9-10-97

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

The foregoing instrument was acknowledged before me this 11 day of September 1997, by Kern C. Gaudner, the Manager of The Boyer Company, L.C., the general partner of Boyer-3300 South Shopping Center Associates, Ltd.



Deniese D. Balli  
Notary Public

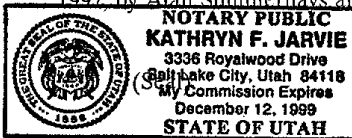
Residing at:

4-28-01

Salt Lake County

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

The foregoing instrument was acknowledged before me this 10 day of Sept 1997, by Alan Summerhays and Kristine Summerhays.



Kathryn F. Jarvie  
Notary Public

My Commission Expires:

Residing at:

12/12/99

Salt Lake City

EXHIBIT A

to

AGREEMENT

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NO BUILD AREA

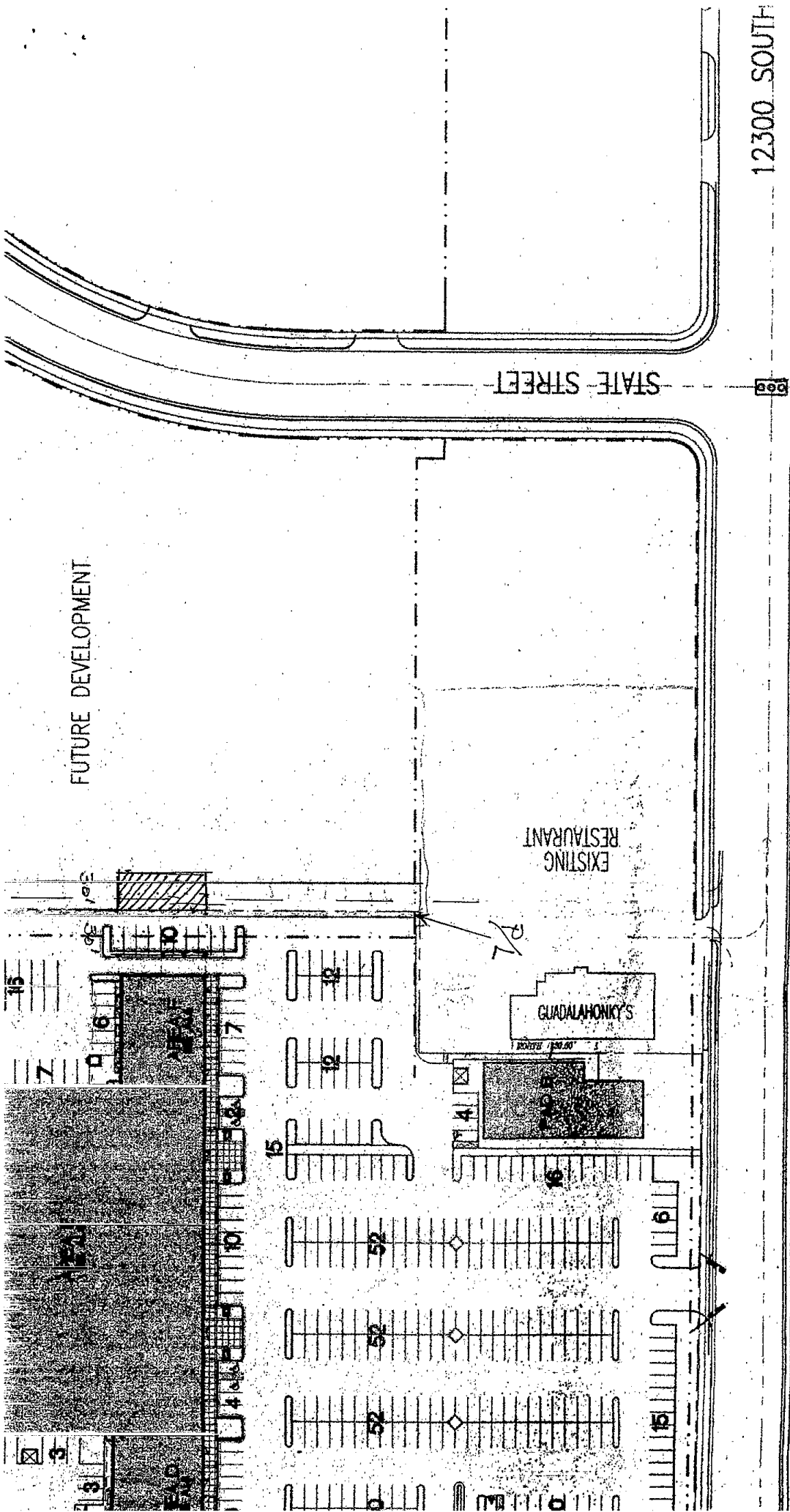
The No Build Area referred to in the foregoing instrument is located in Salt Lake County, Utah on the Summerhays Parcel, and is crosshatched on the attached site plan.

**SUMMERHAYS NO-BUILD DESCRIPTION**

BEGINNING ON THE EASTERLY LOT LINE OF LOT 2, DRAPER CROSSING SUBDIVISION, AS RECORDED WITH THE SALT LAKE COUNTY RECORDERS OFFICE, SAID POINT BEING SOUTH 89°48'40" EAST ALONG THE SECTION LINE 1156.33 FEET AND NORTH 1088.73 FEET FROM THE SOUTHWEST CORNER OF SECTION 30, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE WEST 30.00 FEET; THENCE NORTH 61.33 FEET; THENCE EAST 30.00 FEET TO SAID LOT LINE; THENCE ALONG SAID LOT LINE SOUTH 61.33 FEET TO THE POINT OF BEGINNING

CONTAINS: 0.042 ACRES

POOR COPY  
CO. RECORDER



12300 SOUTH  
 ARE

BK 7774 PG 1552

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