

WHEN RECORDED MAIL TO:

David E. Gee, Esq.
ROOKER, LARSEN, KIMBALL & PARR
185 South State Street, Suite 1300
Salt Lake City, Utah 84111

4048237

DEVELOPMENT AGREEMENT

Devin Koroligos
Penni Koroligos

REC'D OF REC

Boyer Comp

FEB 7 4 00 PM '85

MAIL L. DIXON
RECORDER
SALT LAKE COUNTY,
UTAH

2600

AGREEMENT made this 3 day of January, 1985, by and between BOYER 7800 SOUTH ASSOCIATES, a Utah Limited Partnership, hereinafter referred to as "Boyer," 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 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 Boyer is the owner of that certain tract of land designated as Boyer's Parcel, as more fully described in Exhibit "A" attached hereto. 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 referred to as Exhibit "B".

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

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

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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. Both 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, and use thereof, they will be bound by the terms hereof. Smith's agrees to construct and open a grocery and drug store of ~~45,822~~^{47,025} square feet on or before December 31, 1985. Boyer agrees to construct ~~26,873~~^{26,873} square feet of additional retail stores to be available to open simultaneously with Smith's and to otherwise proceed diligently to complete its portion of the commercial shopping center consistent with demands of tenants. Any building areas on the Entire Premises which are not fully developed by the date Smith's or Boyer's tenants first open for business shall be maintained by the owners reasonably clear of weeds or debris and future construction upon such parcels, if any, shall be managed so as not to unreasonably interfere with the common parking areas and roads.

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

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2. TERMS

The terms of this Agreement shall commence on the date of execution hereof, and shall continue in perpetuity 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 Boyer'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,

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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 only its Parcel shall be paid by the owner of the 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 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, or in the event no party has caused the damages, by the owners in the ratio that the parties bear original construction costs pursuant to Paragraph 5.

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

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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."

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 in all material respects within the perimeter of those areas designated as building areas on the attached site plan attached as Exhibit "B." All other areas shall be maintained as Common Areas with substantially the same configuration and with no less parking on any parcel than is currently shown on attached Exhibit "B," or as may be required by applicable ordinances, whichever is greater. 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. Except to the extent of encroachments or overhangs not exceeding four (4) feet in each instance, buildings or other structures will not be

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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 three ~~(3)~~⁽²⁾ vehicular driveway entrances for the parking area of said Shopping Center on 3500 East and two ~~(2)~~⁽³⁾ vehicular driveway entrances on 7800 South, to be located as designated on the Exhibit "B" site plan; 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. HRB

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 Boyer and Smith's, or their successors.

4. SPECIFICATIONS OF BUILDINGS TO BE ERECTED ON PARCELS

The parties hereto agree that as a material part of this Development Agreement that 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 specifications to be agreed to between the parties.

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5. COMPLETION OF COMMON AREAS

On or before September 1, 1985, the parties shall complete on their respective property the service drives, parking aisles, and parking areas as designated on Exhibit "B." 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 marked for the orderly distribution of automobiles.

Smith's and Boyer will assume the obligation for ^{60.75%}~~59.6%~~ and ^{39.25%}~~40.4%~~, respectively, of all costs associated with completing all on-site and off-site utilities, installing sidewalks, curbs and gutters, parking areas, parking lot lighting and striping, as well as any costs incurred or associated with the improvements of common areas; provided all expenditures shall be subject to prior written approval of both parties. Additionally, the parties shall assume the obligation on the above basis for any costs incurred in securing any necessary municipal approvals to proceed or carry on the project, as well as all engineering and architectural fees relating to the above items.

All items of work required by Smith's or Boyer which shall take place within the areas outlined in blue on the attached site plan shall be the sole responsibility of the respective party.

6. MAINTENANCE AND TAXES

From and after the date of this Agreement, 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

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their respective parcels which shall include, but not be limited to, landscaping maintenance, 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 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 gross buildable floor area of that improvement owned and/or leased by such participating Owners and/or Tenants. 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 either party does not complete said paving and striping and development of the Common Areas as required pursuant to Paragraph 5 of this Agreement, either party shall have the right to cause such work to be performed and to bill the party responsible for such work and to be paid or reimbursed not later than thirty (30) days after the billing thereof, without offset.

8. TYPES OF BUSINESS

The parties covenant mutually, commencing on the date of this Agreement and continuing for the life of this Agreement, that Boyer's Parcel of land as described in Exhibit "A" shall not be leased, rented, used or occupied as or for a grocery store, drug store or convenience food and/or gas business without first obtaining the approval of Smith's or Smith's successor in interest, which shall not be unreasonably withheld.

9. 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 two (2) persons, a representative of Smith's and a representative of Boyer. The Architectural Committee shall act only upon the unanimous vote of both representatives. 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

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Committee, and if approval is withheld, the withholding party shall specify in detail the items which, if altered, would cause its approval to be granted.

10. 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.

11. OBSTRUCTIONS

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

12. 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,

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however, be further subject to the reasonable consent of all owners of the Entire Premises.

13. 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 in perpetuity from the effective date hereof, unless terminated either as set forth herein, or by unanimous cause of all the owners of the Entire Premises.

14. 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

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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 Boyer'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 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

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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 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.

15. ENCROACHMENTS. It is expressly understood and agreed that each of the parties hereto may encroach on the Common Areas contiguous to the buildings as shown on Exhibit "B" for reasonably sized sidewalks and walkways, canopies and marquees over sidewalks and walkways, and signs which may be affixed thereto, necessary fences and walls, lighting standards, planters, loading docks, and trash and service areas at the rear of any building and bumper guards, and for building footings under the parking areas, and may encroach a reasonable distance over contiguous buildings as shown on Exhibit "B" for canopies, marquees and building footings.

16. INSURANCE. Each owner of a parcel agrees to contract for adequate public liability and property damage insurance in connection with the operation of the Common Areas owned by such owner, which insurance shall name both owners as insured, and to furnish the other owner or owners with a certificate of said insurance coverage. Such insurance shall provide no less than

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One Million Dollars (\$1,000,000.00) single limit coverage. Said insurance shall so evidence that said coverage may not be materially changed or be cancelled without the insurer first giving ten (10) days' written notice to owners and shall contain a waiver of subrogation provision with respect to all other owners and all tenants claiming under them.

17. It is understood by the parties to this Agreement that the Salt Lake County Planning Commission, as of the date of this Agreement, has prohibited the construction of a free-standing retail building within that area defined as Pad "B" on Exhibit "B" attached.

Furthermore, it is understood that if construction is permitted, Boyer 7800 South Associates will be permitted to build a retail building not to exceed 3,500 square feet within that area defined as Pad "B." The owners, tenants, customers and invitees of this building, if constructed, shall enjoy all the rights and privileges outlined within this Development Agreement.

Furthermore, at such time as the referenced building is constructed, there shall be an adjustment of the percentages set forth in Section 5 to reflect the actual building square footage within the Boyer retail Parcels 1 and 2 and the Smith's parcel. The adjusted percentages shall be equal to a number, the numerator of which being the total ground floor building square footage in the Smith's or Boyer parcels, respectively, and the denominator being the total building square footage in the combined Smith's and Boyer parcels. Upon completion of such construction, the owner of Pad "B" shall be obligated to reimburse

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Smith's for a proportionate share of the cost of the original common area improvements and land purchase based upon the difference between Smith's percentage before and after construction. Following this adjustment, all prorations that are applicable under this Agreement shall be based upon these adjusted percentages.

18. 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.

19 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.

20. GOVERNING LAW

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

21. MEMORANDUM

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

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EXHIBIT "A"

LEGAL DESCRIPTION
OF
SMITH PARCEL

BEGINNING at a point on the West line of 3500 East Street, said point being South 00°08'25" West along the Section line 621.00 feet and South 89°56'20" West 29.00 feet from the Northeast corner of Section 35, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence South 89°56'20" West 362.50 feet; thence North 00°08'25" East 219.00 feet; thence South 89°51'35" East 22.50 feet; thence North 00°08'25" East 213.00 feet; thence North 89°51'35" West 195.00 feet; thence North 00°08'25" East 155.39 feet to the South line of 7800 South Street; thence North 89°56'20" East along said South line 365.00 feet to a point being South 89°56'20" West 170.00 feet from the West line of 3500 East Street; thence South 00°08'25" West 100.00 feet; thence North 89°56'20" East 170.00 feet to a point on the West line of 3500 East Street, said point being South 00°08'25" West 100.00 feet from the South Line of 7800 South Street; thence South 00°08'25" West along said West line of 3500 East Street 488.00 feet to the point of BEGINNING. Contains 5.010 Acres.

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EXHIBIT "A"

LEGAL DESCRIPTION
OF
BOYER RETAIL PARCEL #1

BEGINNING at a point being South 00°08'25" West along the Section line 621.00 feet and South 89°56'20" West 391.50 feet from the Northeast corner of Section 35, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 00°08'25" East 219.00 feet; thence South 89°51'35" East 22.50 feet; thence North 00°08'25" East 213.00 feet; thence North 89°51'35" West 195.00 feet; thence North 00°08'25" East 155.39 feet to the South line of 7800 South Street; thence South 89°56'20" West along said South line 314.33 feet to the Northeasterly boundary of Southampton No. 2, a subdivision in the Northeast Quarter of said Section 35; thence South 38°52'44" East along said Northeasterly boundary 754.67 feet; thence North 89°56'20" East 11.70 feet to the point of Beginning. Contains 2.858 Acres.

EXHIBIT "A"

LEGAL DESCRIPTION
OF
BOYER RETAIL N.E. PARCEL #2

BEGINNING at a point at the intersection of the South line of 7800 South Street and the West line of 3500 East Street, said point being South 00°08'25" West along the Section line 33.00 feet and South 89°56'20" West 29.00 feet from the Northeast corner of Section 35, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence South 00°08'25" West along the West line of 3500 East Street 100.00 feet; thence South 89°56'20" West 170.00 feet; thence North 00°08'25" East 100.00 feet to the South line of 7800 South Street; thence North 89°56'20" East along said South line 170.00 feet to the point of BEGINNING. Contains 0.390 Acres.