

MADE L. DIXON
REGISTERED
SALT LAKE COUNTY,
UTAH

FEB 7 4 00 PM '85

Boyer Corp
David E. Gee
Parr

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

4048238

DECLARATION OF EASEMENTS

THIS DECLARATION (the "Declaration") is made and entered into this 1st day of February, 1985, by and between BOYER 7800 SOUTH ASSOCIATES, a Utah limited partnership ("Boyer") and SMITH'S FOOD KING PROPERTIES, a Utah corporation ("Smith's").

RECITALS:

A. Boyer owns a tract of real property located in Salt Lake County, State of Utah, the legal description of which is set forth on Exhibit "A," attached hereto and incorporated herein by this reference. Said tract is referred to herein as the "Office Parcel."

B. Smith's and Boyer own the tracts of real property located in Salt Lake County, State of Utah, the legal description of which is set forth on Exhibit "B," attached hereto and incorporated herein by this reference. Said tract is referred to herein as the "Shopping Center Parcel."

C. The parties desire to create certain cross easements and rights between the Office Parcel and the Shopping Center Parcel.

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NOW THEREFORE, for ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. As used in this Declaration:

(a) "Party" means each person executing this instrument and its heirs, assigns and successors in interest with respect to the Parcel or portion of a Parcel owned by it, as the same may be shown by records of Salt Lake County, State of Utah, as of the date of the exercise of powers granted hereunder or the performance of or failure of performance by such Parties of the obligations created by this Declaration. Without limiting the generality of the foregoing, the term Party refers to the persons who fit the following classifications:

(i) The person or persons holding fee title to all or any portion of the Office Parcel or the Shopping Center Parcel.

(ii) The lessee or lessees under a ground lease of all or a portion of any Parcel for a fixed minimum term of thirty (30) years, or longer, in which event the fee owner of the real property covered by such lease will not be deemed to be a Party as to such Parcel or portion of a Parcel, as

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the case may be, for the purposes of this Agreement during the duration of such ground lease.

(b) "Parties" means all of the persons who are a Party, taken in the aggregate.

(c) "Parcel" means the Office Parcel or the Shopping Center Parcel where no distinction between the two is required by the context in which the terms is used.

(d) "Parcels" means the Office Parcel and the Shopping Center Parcel.

2. Grant of Easement. The Parties grant each to the other the following reciprocal easements:

(a) Non-exclusive easements appurtenant to each Party's Parcel for the purpose of pedestrian traffic of the Benefitted Parties (as defined below).

(b) Non-exclusive easements appurtenant to each Party's Parcel for the purpose of furnishing access and the right of access for the vehicles of the Benefitted Parties between the public streets and any and all parking areas situated on a Party's Parcel; provided that the foregoing right of access shall be limited to use for such purposes and to such extent as may be customary to use of the Parcels for commercial purposes (including reasonable and customary deliveries). Either Party and its successors and assigns are permitted to

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alter, relocate or change the configuration of access roads, lanes and similar routes on its Parcel.

(c) Non-exclusive easements appurtenant to each Party's Parcel for the purpose of constructing utility lines to service the buildings and improvements located on each Parcel. Without the limiting the generality of the foregoing, such utility lines shall include water, sewer, gas, electricity, telephone, cable TV and similar utility lines and systems. The use of this easement and the rights granted herein shall not unreasonably interfere with the use of each of the Parcels by the Party owning the same.

The easements granted above shall benefit each of the Parties and their respective tenants and concessionaires, and the customers, invitees, guests and invitees of the Parties and their respective tenants and concessionaires (all of the foregoing constituting the "Benefitted Parties").

3. Duration. This Declaration and each easement, covenant, restriction, and undertaking of this Declaration shall be perpetual.

4. Modification. This Declaration and any easement, covenant, restriction or undertaking contained herein may be terminated, extended, modified, or amended as to the whole of the Parcels or any portion of them, with the unanimous consent of the Parties.

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5. Not A Public Dedication. Nothing contained in this Declaration will be deemed to be a gift or dedication of any portion of either Parcel to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parties that this Declaration will be strictly limited to and for the purpose expressed here.

6. Mutuality; Reciprocity Runs With Land.

(a) Each and all of the easements, restrictions, covenants and rights granted or created herein are appurtenances to the Parcels and none of the easements, restrictions, covenants and rights may be transferred, assigned, or encumbered except as an appurtenance to such Parcels. For the purposes of the easements, restrictions and rights, the Parcel benefitted will constitute the dominant estate, and the Parcel burdened by such easements, restrictions, and rights will constitute the servient estate.

(b) Each and all of the covenants, restrictions, conditions, and provisions contained in this Declaration (whether affirmative or negative in nature) are made for the direct, mutual and reciprocal benefit of each Parcel; will create mutual equitable servitudes upon each Parcel in favor of each other Parcel; will constitute covenants running with the land; will bind every person having any fee, leasehold, or other

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interest in any portion of the Parcel at any time or from time to time to the extent that such portion is affected or bound by the covenant, restriction, condition, or provision in question, or that the covenant, restriction, condition or provision is to be performed on such portion; and will inure to the benefit of the Parties and their respective successors and assigns as to their respective Parcels.

7. Miscellaneous Provisions.

(a) The Parties do not by this Declaration, in any way or for any purpose, become partners or joint venturers of each other in the conduct of their respective businesses or otherwise.

(b) Each Party shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond such Party's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or services or acts of God.

(c) Failure of a Party to insist upon the strict performance of any provision or to exercise any option hereunder shall not be construed as a waiver for the future of any such provision or option. No provision of this Declaration shall be deemed to have been waived

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unless such waiver be in writing signed by each other Party.

(d) If any provision of this Declaration or the application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Declaration shall be valid and enforced to the fullest extent permitted by law.

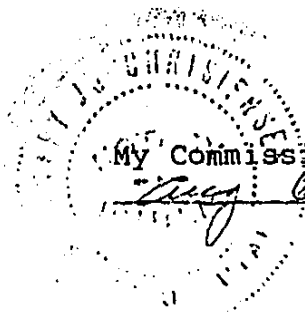
(e) Except as otherwise provided, all provisions herein shall be binding upon and shall inure to the benefit of the Parties, their legal representatives, heirs, successors and assigns.

(f) Each person executing this Declaration individually and personally represents and warrants that he is duly authorized to execute and deliver the same on behalf of the entity for which he is signing (whether it be a corporation, general or limited partnership or otherwise), and that this Declaration is binding upon said entity in accordance with its terms.

(g) This Declaration shall be construed in accordance with the laws of the State of Utah.

STATE OF UTAH)
): SS.
COUNTY OF SALT LAKE)

On this 4th day of February, 1985, personally appeared before me TOM WELCH, who being by me duly sworn did say, that he is the VICE PRESIDENT of SMITH'S FOOD KING PROPERTIES, a Utah corporation, and that the within and foregoing instrument was signed in behalf of said corporation by authority of its bylaws (or of a resolution of its board of directors as the case may be) and said TOM WELCH duly acknowledged to me that said corporation executed the same.



Mary Jo Christensen
NOTARY PUBLIC
Residing at: Salt Lake City, Utah

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EXHIBIT "A"

OFFICE PARCEL

Beginning at a point on the West line of 3500 East Street and the Northeasterly boundary of Southampton No. 2, a subdivision in the Northeast Quarter of Section 35, Township 2 South, Range 1 East, Salt Lake Base and Meridian, said point being South 00°08'25" West along the Section line 1119.99 feet and North 38°52'44" West along said Northeasterly boundary 46.06 feet from the Northeast corner of said Section 35; and running thence North 38°52'44" West along said Northeasterly boundary 594.37 feet; thence North 89°56'20" East 374.20 feet to the West line of 3500 East Street; thence South 00°08'25" West along said West line 463.10 feet to the point of beginning. Contains 1.989 Acres.

EXHIBIT "B"

SHOPPING CENTER PARCEL

TRACT 1 (OWNED BY SMITH'S):

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.

TRACT 2 (OWNED BY BOYER):

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 "B" CONTINUED

TRACT 3 (OWNED BY BOYER):

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.

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