

RETURN TO:

Rainbo  
8156 South Highland Drive  
Sandy, Utah 84093

5487130  
27 APRIL 93 04:37 PM  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
LANDMARK TITLE  
REC BY: REBECCA GRAY , DEPUTY

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AMENDMENT OF DEVELOPMENT AGREEMENT

THIS AMENDMENT, made this 12<sup>th</sup> day of August, 1992, by and between BOYER 7800 ASSOCIATES, a Utah Limited Partnership, hereinafter referred to as "Boyer", SMITH'S FOOD & DRUG CENTERS, INC., a Delaware corporation, hereinafter referred to as "Smith's", and AMOCO OIL COMPANY, a Maryland corporation, hereinafter referred to as "Amoco",

WITNESSETH, That

WHEREAS, Boyer and Smith entered in a Development Agreement dated January 31, 1985, a Memorandum of which was recorded February 2, 1985, in Book 5687, Page 676, Records of Salt Lake County, Utah, covering the following tracts or parcels of land:

- A. The "Smith's Parcel" as more fully described in Exhibit "A-1" annexed hereto and made a part hereof;
- B. The "Boyer Parcel" as more fully described Exhibit "A-2" annexed hereto and made a part hereof; and
- C. "Pad B" as more fully described in Exhibit "A-3" annexed hereto and made a part hereof.

AND WHEREAS, Boyer has conveyed to Amoco a tract or parcel of land which includes Pad B and a portion of the Boyer Parcel and/or the Smith's Parcel, as more particularly described in Exhibit "B-1" annexed hereto and made a part hereof, and hereinafter referred to as the "Amoco Parcel";

AND WHEREAS, it is the desire of Boyer, Smith's and Amoco to amend and modify the Development Agreement in certain respects as it applies to the Amoco Parcel;

NOW, THEREFORE, in consideration of the premises, the covenants and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Boyer, Smith's and Amoco agree that, notwithstanding any provisions to the contrary set forth therein, the Development Agreement shall be and is hereby amended and modified as follows:

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1. Section 8 of the Development Agreement is hereby amended to permit the Amoco Parcel to be used for a convenience store and retail gasoline facility. Boyer and Smith's hereby expressly consent and agree to use of the Amoco Parcel for the operation of convenience food and gasoline businesses.

2. Boyer and Smith's each expressly acknowledge that Amoco intends to build and operate a convenience store and retail gasoline facility on the Amoco Parcel in accordance with the plans and specifications set forth in Exhibit "C-1" annexed hereto and made a part hereof. Pursuant to the provisions of Sections 3, 4 and 9 of the Development Agreement, Boyer and Smith's each further agree to and expressly approve (i) the specifications of the buildings and improvements to be erected on the Amoco Parcel, and (ii) the design, style, placement and construction of the building and improvements on the Amoco Parcel, as depicted on Exhibit "C-1" and (iii) all connections to the existing underground utility lines necessary for the construction and operation of the approved building and improvements; it being understood that Amoco will install separate utility meters so that the utilities actually utilized by Amoco on the Amoco Parcel are separately measured and billed to Amoco. Pursuant to Section 9 of the Development Agreement, Boyer and Smith's, on behalf of the Architectural Committee, hereby approved the building and improvements to be constructed on the Amoco Parcel as depicted on Exhibit "C-1".

3. Sections 4 and 9 of the Development Agreement shall no longer apply to the Amoco Parcel following completion of construction of the buildings and improvements thereon pursuant to Exhibit "C-1"; provided, however, that except as set forth herein, no new buildings or improvements for a use other than a retail gasoline facility and convenience store shall be constructed on the Amoco Parcel which (i) exceeds 20 feet in height, (ii) exceeds 2,750 square feet in size, or (iii) does not substantially match the color, materials and architectural style of the Shopping Center without the prior approval of the Architectural Committee; and provided further that the Amoco Parcel shall not be used as or for a grocery store, drug store or for the sale of fresh meats or produce, prescription pharmaceuticals, on-premises film development, liquor for off-premises consumption (excluding beer), for a health spa or gym, bowling alley, skating rink, theater, pool hall or billiard room, game parlor, massage parlor, bar, tavern, night club, dance hall, Chinese restaurant with food for off-premises consumption, for the outdoor storage of tires, or for the sale, display, renting or leasing of motor vehicles or trailers without the prior approval of Smith's and Boyer; provided, however, that in the event the photo lab and/or the Chinese restaurant/deli currently operating on the Smith's Parcel are closed for a continuous period of one year or longer, the restriction limiting use of the Amoco Parcel for on-premises film development and/or for

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a Chinese restaurant with food for off-premises consumption shall thereafter terminate and be of no further force or effect.

4. With respect to the Amoco Parcel, Boyer and Smith's expressly agree that, in addition to the building areas, the "Common Areas" shall not include any areas under canopies or within 15 feet of any pump island or motor fuel dispensing equipment, including underground tanks and lines.

5. Boyer and Smith's each hereby expressly agree that there shall be no common parking rights on the Amoco Parcel, and each hereby further waives any and all parking rights, ~~restrictions, requirements and/or obligations~~ <sup>\* easements</sup> set forth in the Development Agreement with respect to the Amoco Parcel, and Amoco hereby expressly waives any and all parking rights <sup>\*</sup> on the Boyer Parcel and the Smith's parcel. The owner of the Amoco Parcel shall provide parking for its employees, tenants, customers and business invitees on the Amoco Parcel and shall have no parking rights <sup>\*</sup> on the Boyer Parcel or the Smith's Parcel.

6. Section 16 of the Development Agreement is hereby amended by adding the following sentence to the end thereof: Any party having a minimum net worth of One Hundred Million Dollars (\$100,000,000.00), as evidenced by audited financial statements, may elect to self-insure the obligations herein described. Any party so self-insuring agrees to provide the owners of the other parcels with the same protection as would be provided had commercial general liability insurance been procured.

7. Boyer and Smith's each expressly acknowledge and agree that neither Amoco nor any subsequent owner of the Amoco Parcel shall be obligated to reimburse Smith's, Boyer or any other party for a proportionate share of the cost of the original common area improvements, land purchase or development costs, and each further waives any provisions in the Development Agreement to contrary, including but not limited to Sections 5 and 17 thereof, with respect to the Amoco Parcel. Notwithstanding the foregoing, Boyer agrees to reimburse Smith's the sum of \$ 8,573, reflecting an adjustment to the initial costs of constructing the common area improvements because of the development of the Amoco Parcel.

8. The Development Agreement remains in full force and effect and remains unaltered except to the specific extent amended herein.

\* , parking easements and parking requirements

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IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment of Development Agreement the day and year first above written.

"BOYER"

WITNESS:

Beverly J. Kluyper

BOYER 7800 SOUTH ASSOCIATES, a Utah Limited Partnership, by its General Partner, Boyer-Gardner Properties Partnership No. 2, a Utah General Partnership

By Roger Boyer  
Roger Boyer, General Partner

"SMITH'S"

ATTEST:

Peter H. Barth  
Peter H. Barth  
Assistant Secretary

SMITH'S FOOD & DRUG CENTERS, INC.

By Michael C. Frei  
Michael C. Frei  
Senior Vice President

"AMOCO"

WITNESS:

Frank R. Silva

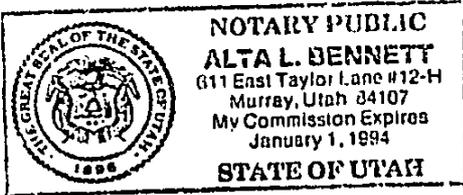
AMOCO OIL COMPANY

By R. J. Couch

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UTAH  
STATE OF ~~XXXXXXXX~~ )  
                  SALT LAKE ) SS  
COUNTY OF ~~XXXX~~ )

On the 21st day of July, 1992, personally appeared before me, a notary public, R. L. Couch, who being first duly sworn, acknowledged to me that he is Manager, SLC Business Unit of AMOCO OIL COMPANY, a Maryland corporation, and that he executed the foregoing instrument on behalf of said corporation and that such corporation thereby executed the same.

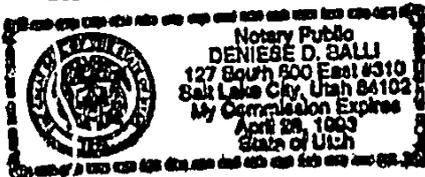


Alta L. Bennett  
Notary Public                   Alta L. Bennett  
Residing at:                   Salt Lake County

My commission expires:  
1/1/94

STATE OF UTAH )  
 ) SS  
COUNTY OF SALT LAKE )

On the 27 day of August, 1992, personally appeared before me, a notary public, N. Roger Boyer, who being first duly sworn, acknowledged to me that he is the General Partner of BOYER 7800 SOUTH ASSOCIATES, a Utah limited partnership, and that he executed the foregoing instrument on behalf of said partnership and that such partnership thereby executed the same.



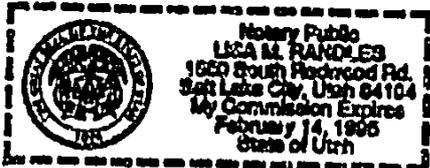
Denise D. Balli  
Notary Public  
Residing at: Salt Lake County

My commission expires:

4-28-93

STATE OF UTAH )  
 ) SS  
COUNTY OF SALT LAKE )

On the 12th day of August, 19    , personally appeared before me, a notary public, Michael C. Frei and Peter H. Barth, who being first duly sworn, acknowledged to me that they are Senior Vice President and Assistant Secretary of SMITH'S FOOD & DRUG CENTERS, INC., a Delaware corporation, and that they executed the foregoing instrument on behalf of said corporation and that such corporation thereby executed the same.



Lisa M. Randles  
Notary Public  
Residing at: Salt Lake

My commission expires:

2-14-95

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EXHIBIT "A-1"

LEGAL DESCRIPTION  
OF  
SMITH PARCEL

BEGINNING at a point on the West line of 3500 East Street, said point being South  $00^{\circ}08'25''$  West along the Section line 621.00 feet and South  $89^{\circ}56'20''$  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  $89^{\circ}56'20''$  West 362.50 feet; thence North  $00^{\circ}08'25''$  East 219.00 feet; thence South  $89^{\circ}51'35''$  East 22.50 feet; thence North  $00^{\circ}08'25''$  East 213.00 feet; thence North  $89^{\circ}51'35''$  West 195.00 feet; thence North  $00^{\circ}08'25''$  East 155.39 feet to the South line of 7800 South Street; thence North  $89^{\circ}56'20''$  East along said South line 365.00 feet to a point being South  $89^{\circ}56'20''$  West 170.00 feet from the West line of 3500 East Street; thence South  $00^{\circ}08'25''$  West 100.00 feet; thence North  $89^{\circ}56'20''$  East 170.00 feet to a point on the West line of 3500 East Street, said point being South  $00^{\circ}08'25''$  West 100.00 feet from the South Line of 7800 South Street; thence South  $00^{\circ}08'25''$  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-2"

LEGAL DESCRIPTION  
OF  
BOYER RETAIL PARCEL #1

BEGINNING at a point being South  $00^{\circ}08'25''$  West along the Section line 621.00 feet and South  $89^{\circ}56'20''$  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  $00^{\circ}08'25''$  East 219.00 feet; thence South  $89^{\circ}51'35''$  East 22.50 feet; thence North  $00^{\circ}08'25''$  East 213.00 feet; thence North  $89^{\circ}51'35''$  West 195.00 feet; thence North  $00^{\circ}08'25''$  East 155.39 feet to the South line of 7800 South Street; thence South  $89^{\circ}56'20''$  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  $38^{\circ}52'44''$  East along said Northeasterly boundary 754.67 feet; thence North  $89^{\circ}56'20''$  East 11.70 feet to the point of Beginning. Contains 2.848 Acres.

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EXHIBIT "A-3"

LEGAL DESCRIPTION  
OF  
BOYER RETAIL N.E. PARCEL #2 (PAD B)

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  $00^{\circ}08'25''$  West along the Section line 33.00 feet and South  $89^{\circ}56'20''$  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  $00^{\circ}08'25''$  West along the West line of 3500 East Street 100.00 feet; thence South  $89^{\circ}56'20''$  West 170.00 feet; thence North  $00^{\circ}08'25''$  East 100.00 feet to the South line of 7800 South Street; thence North  $89^{\circ}56'20''$  East along said South line 170.00 feet to the point of BEGINNING. Contains 0.390 Acres.

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**EXHIBIT B-2**

**Legal Description**

**of**

**Parcel to be Deeded to Amoco**

**Description**

A part of the Northeast Quarter of Section 35, Township 2 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the Southerly line of 7800 South Street as widened to 40 feet half width being 40.00 feet South 0°08'25" West along the Section line and 39.00 feet South 89°56'20" West from the Northeast Corner of said Section 35; and running thence South 44°57'38" East 14.12 feet to a point on the Westerly line of 3500 East Street; thence South 0°08'25" West 105.00 feet along said Westerly line of 3500 East Street; thence South 89°56'20" West 190.00 feet; thence North 0°08'25" East 115.00 feet to the Southerly line of 7800 South Street; thence North 89°56'20" East 180.00 feet along said Southerly line of 7800 South Street to the point of beginning, together with a non-exclusive easement for access over the area as designated in Exhibit A of the real estate contract.

Deeded Area Contains  
21,800 Square Feet or 0.500 Acre

\_\_\_\_\_  
Smiths

\_\_\_\_\_  
Boyer

x *R. W. Couch*  
\_\_\_\_\_  
Amoco

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