

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 9th day of March, 1999, by and between **SMITH'S FOOD & DRUG CENTERS, INC.**, a Delaware corporation (the "Developer"), and **PROVO CITY CORPORATION**, a municipal corporation of the State of Utah (the "City").

### RECITALS:

A. Developer is or will be the owner of certain property located generally at the NEC of Center and Geneva in Provo, Utah (the "Property"), which is more fully described on Exhibit "A" attached hereto as a part hereof. As part of the acquisition and development of the Property, Developer desires to have the Property placed in the SC2 (Community Shopping Center) zone (the "SC2 Zone") as provided in Title 14 of the Provo City Code, as amended (the "Rezoning Request").

B. Developer has indicated a desire and intent to develop on the Property a high quality, commercial project which meets the development standards of the SC2 Zone (the "Project").

C. To assist the City in its review of the Rezoning Request and to assure development of the Project in accordance with Developer's representations to City, Developer desires to enter into this Agreement which sets forth the process and standards whereby Developer may develop the Project.

D. Acting pursuant to its authority under Utah Code Annotated, §10-9-101, et seq., and after all required public notice and hearings, City, in the exercise of its legislative discretion, (i) has elected to process the proposed Project in a manner resulting in the negotiation, consideration, and approval of this Development Agreement and (ii) has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of City.

E. On August 26, 1997, City adopted a General Plan, pursuant to Utah Code Annotated, §10-9-301, et seq. A portion of the General Plan establishes development policies for the Property which provide that the Property should be developed for shopping center uses.

F. On July 8, 1998, after a duly noticed public hearing, the Provo City Planning Commission recommended approval of Developer's application to rezone the Property, subject to certain findings and conditions as set forth in Exhibit "B", attached hereto and incorporated herein, and forwarded such application to the Municipal Council for its consideration.

G. On July 8, 1998, after a duly noticed public hearing, the Provo City Planning Commission granted preliminary project plan approval, subject to certain findings and conditions as set forth in Exhibit "C", attached hereto and incorporated herein.

H. On October 6, 1998, and February 16, 1999, the Municipal Council held a duly noticed public hearing to consider Developer's application to rezone the subject property and duly considered (i) comments from the public, neighborhood representatives, the Developer, and city officials and (ii) recommendation of the General Plan regarding the Property.

I. On October 6, 1998, and February 16, 1999, the Municipal Council reviewed a preliminary project plan for the Property, attached hereto as Exhibit "D", and found that such plan meets the policy and intent of the General Plan as it pertains to the Property.

J. To allow development of the Property for the benefit of Developer and to ensure City that the development of the Property will conform to applicable policies set forth in the General Plan, applicable City codes, and Developer's representations, Developer and City are each willing to abide by the terms and conditions set forth herein.

K. Acting pursuant to its legislative authority under Utah Code Annotated, §10-9-102 and 10-9-401, et seq., and after (i) all required public notice and hearings and (ii) execution of this Agreement by Developer, the Municipal Council of City, in exercising its legislative discretion, has determined that entering into this Agreement furthers the purposes of the (i) Utah Municipal Land Development and Management Act, (ii) City's General Plan, and (iii) Chapter 14 of the Provo City Code (collectively, the "Public Purposes"). As a result of such determination, the City has elected to process the rezoning request and the subsequent development authorized thereunder in accordance with the provisions of this Agreement and has concluded that the terms and conditions set forth in this Agreement accomplish the Public Purposes referenced above and promote the health, safety, prosperity, security and general welfare of the inhabitants and taxpayers of the City.

## A G R E E M E N T

NOW, THEREFORE, in consideration of the premises recited above and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer hereby agree as follows:

1. Development. In the event City approves Developer's Rezoning Request, development of the Property shall be subject to the terms and conditions of this Agreement. In the event City does not approve Developer's Rezoning Request, this Agreement shall be null and void.

2. Permitted Uses. Subject to City's approval of the Rezoning Request, land uses on the Property shall be as allowed by the SC2 Zone as set forth in Title 14 of the Provo City Code as constituted on the effective date of this Agreement, except to the extent that this Agreement is more restrictive.

3. Applicable Code Provisions. All provisions of the Provo City Code as constituted on the effective date of this Agreement shall be applicable to the Project proposed on the Property except as expressly modified by this Agreement. The parties acknowledge that in order to proceed with the proposed development of the Property as reflected on Exhibit "D", Developer shall comply with the requirements of this Agreement, Titles 14 and 15 of the Provo City Code, and other requirements applicable to development in Provo City. In particular, and not by way of limitation, Developer shall conform to the requirements of Chapter 14.19 of the Provo City Code and the project plan and design review approval process therein.

4. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police powers of City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of City to enact such legislation under its policy power, such legislation shall not modify Developer's rights as set forth herein unless facts and circumstances are present which meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah 1988) or successor case law. Any such proposed change affecting Developer's rights shall be of general application to all development activity in City; and, unless City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project.

5. Project Plan Approval. In the event City approves the Rezoning Request, Developer shall cause project plans and specifications (including site and building design plans) (the "Project Plans") to be prepared for the Project. In particular, such Project Plans shall conform to the requirements enumerated on Exhibit "E" attached hereto.

6. Standard for Approval. City, on recommendation of its Design Review Committee, shall approve the Project Plans if such Project Plans meet the standards and requirements enumerated in this Agreement, particularly Paragraphs 3 and 5 hereof.

7. Commencement of Site Preparation. Developer shall not commence site preparation without first obtaining a demolition permit and Developer shall not start construction of any Project improvement on the Property until such time as the Project Plans have been approved by City in accordance with the terms and conditions of this Agreement.

8. Project Phasing and Timing. Upon approval of the Project Plans, Developer may proceed by constructing the entire Project at one time or in phases.

9. Changes to Project. No material modifications to the Project Plans shall be made after approval by City without City's written approval of such modification. Developer may request approval of material modifications to the Project Plans from time to time as Developer may determine necessary or appropriate. For purposes of this Agreement, a material modification shall mean any modification which (i) increases the total perimeter size (footprint) of building area to be constructed on the Property by more than ten percent, (ii) substantially changes the exterior appearance of the Project, (iii) substantially changes the functional design of the Project regarding

traffic, drainage, or other design characteristics, or (iv) is not permitted by applicable law or ordinance. Modifications to the Project Plans which do not constitute a material modification may be made without the consent of City. Modifications shall be approved by City if such proposed modifications are consistent with City's then applicable rules and regulations for projects in the SC2 Zone, and are otherwise consistent with the standard for approval set forth in Paragraph 6 hereof.

10. Time of Approval. Any approval required by this Agreement shall not be unreasonably withheld or delayed and shall be made in accordance with procedures applicable to the SC2 Zone.

11. Term. The term of this Agreement shall commence on, and the effective date of this Agreement shall be, the effective date of the ordinance approving the Rezoning Request. In the event a building permit has not been issued within 24 months after approval of the Project Plans, this Agreement shall expire and shall have no further force or effect and City may initiate a rezoning action. This Agreement shall automatically terminate upon satisfaction and/or completion by Developer of all conditions and requirements set forth in Exhibit "C" and Exhibit "E" and issuance of a permanent certificate of occupancy by the City to Developer.

12. Successors and Assigns. This Agreement shall be binding on the successors and assigns of Developer. A purchaser of the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to any portion of the Project so transferred. In the event of a sale or transfer of the Project, or any portion thereof, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by City. Alternatively, prior to such sale or transfer, Developer shall obtain from the buyer or transferee a letter (i) acknowledging the existence of this Agreement and (ii) agreeing to be bound thereby. Said letter shall be signed by the buyer or transferee, notarized, and delivered to City prior to the transfer or sale. In such event, the buyer or transferee of the parcel so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the parcel so transferred.

13. Default.

A. Events of Default. Upon the happening of one or more of the following events or conditions, Developer or City, as applicable, shall be in default ("Default") under this Agreement:

(1) A warranty, representation or statement made by Developer in the Provo Municipal Council meetings of October 6, 1998, and February 16, 1999, or set forth in this Agreement is intentionally false or misleading in any material respect when it was made.

(2) Developer has not complied in good faith with one or more of the material terms or conditions of this Agreement.

(3) Any other event, condition, act or omission, either by City or Developer, that (i) violates the terms of, or (ii) materially interferes with the intent and objectives of this Agreement.

(4) An express repudiation or renunciation of this Agreement, if the same is in writing and signed by the repudiating party.

**B. Procedure Upon Default.**

(1) Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said Default must be cured. In the event that the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such default so long as the defaulting party takes action to begin curing such default with such thirty (30) day period and thereafter proceeds diligently to cure the default. After proper notice and expiration of said thirty (30) day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in Paragraph C herein. Failure or delay in giving notice of default shall not constitute a waiver of any default.

(2) Any Default or inability to cure a Default caused by strikes, lockouts, labor dispute, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.

**C. Breach of Agreement.** Upon Default by Developer as set forth in Paragraphs A and B above, City may declare Developer to be in breach of this Agreement and City (i) may withhold approval of any or all building permits or certificates of occupancy applied for in the Project, but not yet issued; and (ii) shall be under no obligation to approve or to issue any additional building permits or certificates of occupancy for any building within the Project until the breach has been corrected by Developer. In addition to such remedies, either City or Developer (in the case of a default by the City) may pursue whatever additional remedies it may have at law or in equity, including injunctive and other equitable relief.

14. General Terms and Conditions.

A. Recording of Agreement. In the event City approves the Rezoning Request, the ordinance rezoning the Property shall be recorded immediately as a covenant running with the Property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

B. Severability. Each and every provision of this Agreement shall be separate, several and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provision shall not affect the enforceability of any other provision hereof.

C. Time of Performance. Time shall be of the essence with respect to the duties imposed on the parties under this Agreement. Unless a time limit is specified for the performance of such duties, each party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.

D. Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect the health, safety, and welfare of the citizens of City.

E. State and Federal Law. The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.

F. Enforcement.

(1) The parties to this Agreement recognize that notwithstanding this Agreement, City has the right to enforce applicable laws, rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days' written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer. City shall be free from any liability arising out of the exercise of its rights under this paragraph.

(2) In the event City violates the terms of this Agreement, Developer shall have the right to enforce this Agreement by seeking an injunction to compel compliance.

G. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the Municipal Council taken with the same formality as the vote approving this Agreement, no officer, official or agent of City has the power to amend, modify or alter this Agreement or waiver any of its conditions as to bind City by making any promise or representation not contained herein.

H. Entire Agreement. This Agreement shall supersede all prior agreements with respect to the subject matter hereof, not incorporated herein, and all prior agreements and understandings are merged herein. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties.

I. Attorneys' Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.

J. Notices. Any notices required or permitted to be given pursuant to this Agreement shall be deemed to have been sufficiently given or served for all purposes when presented personally, or four (4) days after being sent by registered or certified mail, properly addressed to the parties as follows (or to such other address as the receiving party shall have notified the sending party in accordance with the provisions hereof):

To the Developer:	Smith's Food & Drug Centers, Inc. 1550 South Redwood Road Salt Lake City, Utah 84104 Attention: Director of Real Estate Legal Services
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To the City:	Gary Gregerson, Esq. City Attorney P. O. Box 1849 Provo, Utah 84603
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With copy to: Neil Lindberg, Esq.  
Municipal Council Attorney  
P. O. Box 1849  
Provo, Utah 84603

With copy to: Richard Secrist  
Community Development Director  
P. O. Box 1849  
Provo, Utah 84603

K. Applicable Law. This Agreement and the construction thereof, and the rights, remedies, duties, and obligations of the parties which arise hereunder are to be construed and enforced in accordance with the laws of the State of Utah.

L. Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

M. Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees, consultants, special counsel, and representatives harmless, to the extent of Developer's negligence or wrongdoing, from liability for damages, just compensation restitution, judicial or equitable relief resulting from claims for personal injury, including health, and claims for property damage which result from the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees which relate to the Project.

(1) The agreements of Developer in Paragraph M shall not be applicable to (i) any claim resulting from the negligence or intentionally wrongful actions of City, its officers, agents, employees, consultants, special counsel, and representatives, or (ii) attorneys' fees under Paragraph I herein.

(2) City shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Developer shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

N. Relationship of Parties. The contractual relationship between City and Developer arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third party beneficiary rights. It is specifically understood by the parties that (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Developer, (ii) the Project is a



private development, (iii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property, and (iv) Developer shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.

O. Annual Review. City shall review progress pursuant to this Agreement at least once every twelve (12) months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in Paragraph 13 herein and give notice and an opportunity to cure such Default as provided in Paragraph 13. City's failure to review at least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any party as a Default under this Agreement by Developer or City.

P. Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in this Agreement or to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fourth District Court, State of Utah, or in the Federal District Court for the District of Utah.

Q. Title and Authority. Developer expressly warrants and represents to City that it is a corporation in good standing and that such entity owns all right, title and interest in and to the Property and that no portion of the Property, or any right, title or interest therein has been sold, assigned or otherwise transferred to any other entity or individual. Developer further warrants and represents that no portion of the Property is subject to any lawsuit or pending legal claim of any kind. Developer warrants that the undersigned individual has full power and authority to enter into this Agreement on behalf of Developer. Developer understands that City is relying on such representations and warranties in executing this Agreement.

R. Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.



STATE OF UTAH )  
 : ss. )  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, by Lewis K. Billings, Mayor of Provo, Utah.

\_\_\_\_\_

My Term Expires:

\_\_\_\_\_

**LIST OF EXHIBITS**

Provo City/Smith's Food & Drug Centers, Inc. Development Agreement

Exhibit A - Legal Description of Property

Exhibit B - Planning Commission Report of Action -- Rezoning

Exhibit C - Planning Commission Report of Action -- Preliminary Project Plan

Exhibit D - Preliminary Project Plan, dated March 9, 1999

Exhibit E - Project Plans, Specifications and Special Requirements

Exhibit A

**GREAT BASIN ENGINEERING - South**

2010 North Redwood Road • P.O. Box 16747 • Salt Lake City, Utah 84116  
 (801) 521-8529 • (801) 394-7288 • Fax (801) 521-9551 • E-mail gbes@xmission.com



CONSULTING ENGINEERS  
AND LAND SURVEYORS

Smith's #143  
 Provo  
 Rezone Description

ENT 51726 BK 5072 PG 801  
 March 9, 1999

All of Lots 1, 2, and 3, Cox's Corner, a Commercial Planned Unit Development in Provo City, Utah County, Utah, along with a portion of 100 North Street as shown on the official plat of said development and a part of the Southwest quarter of Section 2 and the southeast quarter of Section 3, Township 7 South, Range 2 East, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the South Line of the Provo City Park Deed being 1336.75 feet South 0°30'29" East along the Section Line from the West quarter corner of said Section 2; and running thence along Provo City Park Deed lines the following three courses: South 89°30'29" East 230.06 feet; North 0°40'29" West 212.79 feet; and South 89°00'00" East 654.88 feet along said Deed line and said Line extended to a point on the West Line of West Park Subdivision, a subdivision in Provo City, Utah County, Utah as it exists on the ground; thence South 0°20'29" East 600.26 feet along said Subdivision as it exists on the ground to the North Line of Center Street as it exists on the ground; thence South 89°53'30" West 841.07 feet along said North Line of Center Street as it exists on the ground; thence North 0°06'39" West 85.53 feet; thence North 89°48'44" East 88.34 feet; thence North 0°04'15" West 83.71 feet; thence South 89°48'44" West 88.57 feet; thence North 0°29'31" East 30.43 feet to a point on the South line of Lot 4 of said Cox's Corner Planned Unit Development; thence along the boundaries of said Lot 4 the following three courses: North 89°48'44" East 28.02 feet to the Southeast corner thereof; North 99.84 feet to the Northeast corner thereof; and North 89°33'20" West 128.66 feet to the Northwest corner thereof and being a point on the East Line of Geneva Road; thence North 0°07'10" West 102.32 feet along the East Line of said Geneva Road to the Southwest corner of the Provo City Park Deed; thence South 89°30'29" East 56.25 feet along said Provo City Park Deed Line to the point of beginning.

Contains 471,470 square feet  
 Or 10.823 acres

# Report of Action

of the  
Provo City Planning Commission  
July 8, 1998

ENT 51726 BK 5072 PG 802

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- ITEM 4\* Continuation of public hearing on the request by Great Basin Engineering, agents for Smiths Food and Drug to rezone approximately 11.32 acres located generally at the northeast corner of West Center Street and Geneva Road from SC1 (Neighborhood Shopping Center) zone and RA (Residential Agricultural) zone to SC2 (Community Shopping Center) zone. *Fort Utah Neighborhood* 98-009(R)
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The following action was taken by the Planning Commission on the above described item at their regular meeting of July 8, 1998

## RECOMMEND APPROVAL SUBJECT TO MEETING CONDITIONS OF APPROVAL FOR PROJECT PLAN

Motion By: Scott Ward

Second By: Roy Peterman

Votes in Favor of Motion: McKinnon, Stohlton, Ward, Peterman

Votes Opposed to Motion: Kelson

*The following is a brief summary of the decision including conditions of approval and/or comments by the Commission:*

The Planning Commission adopted the following findings and conclusions and recommends approval of the request as set forth below.

### FINDINGS OF FACT:

1. The subject property is currently zoned SC1 (Neighborhood Shopping Center) and RA (Residential Agriculture). The applicant requests a rezoning to the SC2 zone (Community Shopping Center).
2. The requested SC2 (Community Shopping Center) zone provides for supermarkets to meet the needs of a community or a group of neighborhoods. This proposal complies with the intent and purpose of the SC2 zone, in that the proposed store would meet the needs of the Lakeview North, Lakeview South, Fort Utah, Provo Bay, Sunset and Lakewood neighborhoods. Currently, in order to shop at a major shopping center residents must travel to Orem via Geneva Road, or take 820 North, Center Street, 600 South or 920 South in order to access major shopping centers in Orem or Provo. The proposed shopping center will allow residents the ability to shop on the west side, reducing traffic and congestion, not only on the west side, but those neighborhoods we are currently impacting uptown.
3. Currently, on the west side of Provo (west of I-15) there are 3,087 dwelling units. The proposed shopping center will provide expanded shopping opportunities for west side residences and at the same time provide transportation efficient land use. How many shopping trips does an average family make during a week? One? Two? Three? Each shopping visit equals two trips. So there are between 6,174 and 18,522 weekly trips using four westside accesses 820 North, Center Street, 600 South or 920 South.
4. Section 14.02.020 (1), Provo City Code, sets forth the following procedure for zoning map amendments:

ENT 51726 BK 5072 PG 803

(1) This Planning and Zoning Title, including the Map, may be amended by the Provo Municipal Council after said amendments shall have first been submitted for recommendation to the Planning Commission. For the purpose of establishing and maintaining sound, stable, and desirable development within the City, it is declared to be the public policy that amendments shall not be made to the Planning and Zoning Title and Map except to promote more fully the objectives and purposes of this Title or to correct manifest errors. Any person seeking an amendment to the Planning and Zoning Title or Map shall submit to the Planning Commission a written petition containing the following information:

(a) Designation of the specific zone change or Title amendment desired.

(b) The reason and justification for such zone change or Title amendment, and a statement setting forth the manner in which a proposed amendment or zone would further promote the objectives and purposes of this Title.

(c) A complete and accurate legal description of the area proposed to be rezoned, or a draft of the proposed Title amendment.

(d) An accurate plan, drawn to scale, showing all areas to be included within the proposed rezoning, designating the present zoning of the property subject of the petition, and properties immediately adjacent thereto.

(e) The filing fee as established by Chapter 14.43.

(f) If a map amendment is proposed, the signature of the property owner or authorized agent or, in the case of a multiple property rezoning request, the signature of a majority of the persons who own property within the area proposed for the zoning map amendment.

5. In this case, the applicant has submitted the information and plans required by Chapter 14.02. The applicant has an agreement with each owner to act as agent to proceed with the request for rezoning. There are 14 total parcels within this proposal. Of these, all the property owners except one have signed a petition supporting the rezoning request, thus meeting the majority requirement of Chapter 14.02.020 (1). The one property owner's property who's signature we do not have is currently zoned SCI.

Since the June 10, 1998 public hearing, Robert M. Rupper, the owner of the property located at the southwest side of the Smith's site, has expressed a willingness to have his property added to the rezoning request. However, Smith's has not paid the fee to have the rezoning re-advertised to include the Rupper property. In order to add the Rupper property to this rezoning, the hearing would need to be recessed until at least August 13, 1998 to allow for sufficient notices to be prepared and mailed.

6. Chapter 2 of the general plan and Chapter 14.02.020(2) of the Zoning Ordinance set forth criteria for the Planning Commission to consider as it recommends zoning map amendments to the Municipal Council. These considerations are as follows:

1. Public purpose for the change in question
2. Confirmation that the public purpose is best served by the change in question
3. Compatibility of the proposed change with general plan policies, goals, and objectives
4. Consistency of proposed change with the general plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.
5. Potential for hindrance or obstruction of attainment of the plan's articulated policies by the proposed change
6. Adverse impacts on adjacent land owners
7. Verification of correctness in the original zoning or general plan for the area in question.
8. In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

7. This request has been reviewed for compliance with the provisions of Chapter 14.02.020, with the following findings as a result:
1. In its policy making role for the city, the Municipal Council has declared that a portion of the subject property, at this time, is best used for a Shopping Center development. However, the Planning Commission and Municipal Council will need to decide if the entire proposed property is best used for a shopping center development, based on general plan policies.
  2. If the rezoning request is approved, the resultant land use will fall within the shopping center land use called for by the general plan which states that commercial land uses are proposed on all four corners of the intersection of Geneva Road and Center Street.
  3. The proposed change is in compliance with the goals and policies of the general plan. The proposal promotes "transportation efficient land use." Residents of the west side will need to make fewer trips over the West Center Street viaduct to purchase food and other items. This means a reduction in total vehicle miles traveled, which has positive implications for air quality and traffic congestion. The City has made progress in implementing the General Plan including a Fire Station, controlled intersections at 1600 West and at Geneva Road, and now the potential to provide additional commercial services not currently available on the west side of Provo. Approval of this project will help speed up some of the transportation improvements proposed in the West Side Traffic Study (see attached) such as: restriping Center Street and Geneva Road for additional lanes, and widening Geneva Road between Center Street and 820 North.  
  
Commercial at 2000 North Geneva Road was not anticipated to be grocery shopping. Grocery shopping needs to be at a central location in the neighborhood. Center Street and Geneva Road is the most central location. The 2000 North property is only proposed for commercial if a new freeway interchange is built. That is not a given and probably would not happen for 20-30 years. The type of development would be big box retail similar to University Parkway in Orem.
  4. There are no timing or sequencing provisions in the general plan that would suggest development of this property at some later point in time.
  5. The general plan contains policies for each neighborhood. The 1997 Provo City General Plan calls for commercial uses to meet west side neighborhood shopping needs at the intersection of Geneva Road and West Center Street, which is centrally located in relationship to the growing residential areas west of I-15.
  6. Through the neighborhood meeting process several concerns were outlined. Some concerns include: deterioration of homes to the east of this project, the increase of traffic, loitering, and increase in the already existing commercial zone. Section 14.19.140, Provo City Code, requires submittal of a preliminary project plan at the time of an SC2 zoning request. The project plan and conditions attached to an approval of such plan help the Planning Commission and Municipal Council determine if mitigation of any potential impacts on adjacent land owners is addressed adequately and if the rezoning should be granted.
  7. The zoning and general plan designation for the property is verified as correct and is well documented in the 1997 general plan deliberations. Although the new general plan land use map does not show this commercial center extending as far east as this proposal indicates, the general plan is not intended to be a rigid document. The Municipal Council adopted the general plan and its land use map as an advisory document or a "guideline" for community development.



8. There are no conflicts between the general plan map and the general plan policies to resolve in this case. Literal interpretation of the general plan map shows the SC (Shopping Center) designation extending to the existing SC1 zoning only. However, the general plan policies which indicate commercial uses on all four corners of Geneva Road and Center Street does not give specific boundaries. The Planning Commission and Municipal Council will need to determine if by general plan policy the SC designation can be extended further east to include all of the proposed property.

8. At the June 10, 1998 public hearing, the Planning Commission recessed consideration of the rezone request until additional information was presented regarding traffic and storm drainage.

Since that time, the applicants have completed their traffic study (see attached). The major findings of the traffic study are shown on page 28 of the report. The report concludes that: ...the main intersections operate well above acceptable operating levels of service. The accesses are projected to operate without congestion. Based on the analysis, the following recommendations should be taken once the site is developed:

1. A 14-foot center, two-way, left turn lane should be added for use by the ingress/egress vehicles on both Center Street and Geneva Road. There appears to be adequate spacing for the 3 lane facility by simply restriping the roadway. Parking on the north side of Center Street will need to be eliminated in front of the Smith's store. Coordination between the city's bike routes may limit the amount of available space and the bike route may need to be modified or the road may require widening to accommodate the bike route.
2. Right turn deceleration lanes are recommended at each access but particularly for Access B and D. (Access B is the middle of the three access points on Center Street while Access D is the access from Geneva Road).
3. Access A (eastern most access) should align with 1860 West to form a four approach intersection at 1860 West.
4. Protected left turn phasing is anticipated for the westbound approach to 1600 West (Center Street intersection). This is due to the high number of westbound left turns during the PM peak period coming from Provo and I-15 and entering the residential communities located to the south. This is anticipated as a future problem and has been identified; however, this is unrelated to the site as no traffic due to the site contributes to the westbound left [turn] direction."

Attached are minutes from an Engineering Department meeting of June 26, 1998. It appears that the submitted traffic study addresses all of the concerns expressed by the engineering department. Trip generation rates in the traffic study have been revised to reflect Wasatch Front trip generation rates.

Since the June 10 public hearing, the applicants have been working with the city's storm water service district to determine how best to provide storm water service to this site. The applicants have elected to take the option of collecting the storm water generated by the site and piping it south along Geneva Road to existing city owned and maintained facilities (a 30-inch pipe and public ditch system to Utah Lake). Scott Allen of the city storm water district has expressed satisfaction with this concept and will be reviewing detailed engineering plans for this improvement as plans progress.

9. This request has been circulated for review by the various Provo City departments. The comments and conditions are included with the Project Plan Staff Report, item 5 of this agenda.

**Project Plan Information**

10. The applicant is requesting approval for a Smith's Food and Drug Center located generally at Center Street and Geneva Road. Also proposed in the center is additional retail space and three restaurant pads. The property is requesting a rezoning to SC-2 (Community Shopping Center) zone in order to build this project.
11. The proposed Smith's will have 64,574 Square feet. The additional two retail buildings will contain a total of 25,390 square feet of retail space. The restaurant pads contain an additional 7,550 square feet.
12. Parking for Smith's and the other retail space is calculated at one (1) parking space per 200 square feet of gross floor area. The restaurants are calculated at one (1) parking space per 100 Square feet, as outlined in Provo City Code Section 14.37. Based on the proposed buildings this project will be required 450 parking spaces for the retail space, and 76 parking spaces for the proposed restaurants. The total parking spaces required 526, the site plan presented contains 552 parking spaces.
13. This project will be required to obtain Design Review Committee approval prior to obtaining a building permit for this project.
14. This project complies with the SC-2 standards set forth in Section 14.19 Provo City Code, subject to the attached conditions listed below.

**CONCLUSIONS:**

1. The request complies with the adopted Provo City General Plan land use policies.
2. The request complies with the policies and criteria within the general plan and zoning ordinance for the consideration of a zoning map amendment.
3. Issues of neighborhood compatibility can be addressed via the project plan review process.
4. The request is valid.

**RECOMMENDATION:**

The Planning Commission recommends that the Municipal Council approve the rezoning subject to the applicant meet the following conditions

**PROJECT PLAN CONDITIONS OF APPROVAL:**

1. This project will be required to obtain Design Review Committee approval prior to obtaining a building permit.
2. A subdivision plat or planned unit development will need to be submitted, approved, and recorded at the Utah County Recorders Office prior to obtaining a building permit for this project, as outlined in Provo city Code Section 14.19.025. Single ownership or control must also be maintained.

3. All signage will require a separate review and building permit prior to the placement of any sign for this development.
4. The landscaping plan will need to be modified to include the end of the parking rowsto be landscaped with suitable landscape material, i.e. trees.
5. A decorative masonry wall, at least 6 feet in height, shall be erected along the east property line as outlined in Provo City Code Section 14.19.160(5)(b). In addition, a masonry wall, at least six feet in height, shall be erected along the north property line to screen the rear of the store from the park. The design and height of the wall should be reviewed and approved by the Design Review Commission.
6. That trees be planted on the park side of the masonry wall to give a visual break from the park, provided such plantings are approved by the Parks & Recreation Department.
7. This project will need to comply with the Transitional Development Standards for Non-residential Uses Bordering Residential Zones, as outlined in Provo City Code Section 14.34.300.
8. Improvements recommended by the completed traffic study will need to be installed prior to occupancy of any commercial business on the site.
9. Curb, gutter and sidewalk adjacent to this project shall be brought up to current City standards.
10. A portion of the driveway on the northeast corner of this project crosses current Provo City park property and into the shopping center. It will be necessary that this be coordinated through the Parks Department; and, inasmuch as parking is in short supply near the soccer fields in this area, a cross-easement agreement with parking and the driveway must be worked out with Smiths prior to finalization of this plan.
11. A detailed utility plan with plan and profile information will need to be submitted prior to final project approval.
12. UDOT approval of the final site plan will be required.
13. Bonding will be required. We will prepare an estimate when final plans have been submitted and approved.
14. Owner\Developer to contact Energy Department (Engineering Division, see contact name), to review project and site specific electrical service conditions\requirements.
15. Owner\Developer shall provide to Community Development Department a Letter of Agreement\Understanding for the Provision of Electric Utilities which has been signed by Provo City Energy Department, (Engineering Division).
16. Aid to Construction fees to be collected prior to any on\off site electrical distribution work by Provo City Department of Energy.

17. Provo City Energy Department will not allow any new structure to be built directly under any Provo City transmission\distribution line or within the transmission easement\right-of-way. There may be a conflict with existing overhead power lines.
18. All the technical concerns raised by the Water Resources Department will need to be resolved prior to obtaining a building permit.
19. All the technical concerns raised by the Storm Water Service District will need to be resolved prior to obtaining a building permit. This includes final review and approval of plans to pipe storm water southward along Geneva Road to a public storm sewer pipe and ditch system. Applicant shall fund all such improvements.
20. That the storm water system be designed to accommodate a 25-year storm event.
21. That off-site storm sewer pipe improvements meet the Storm Water Dept. requirements and be funded by the applicant.
22. That the applicant complete the improvements listed in the traffic study, to include the re-striping of Center Street and Geneva Road.
23. That the Storm Water Service District verify the use of the drainage ditch which this project will drain into, to determine whether or not the water is used for irrigation purposes.

The staff report is accepted for the official record.

\*Legislative items are noted with a (\*) and require legislative action by the Municipal Council and a public hearing.

Administrative decisions (items not marked with a star) of the Planning Commission may be appealed by submitting an application and a \$100 fee to the Board of Adjustment at the Community Development Department within ten (10) days of the Commission's decision.

**BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS**

# Report of Action

of the  
Provo City Planning Commission  
July 8, 1998

ENT 51726 BK 5072 PG 809

- 
- ITEM 5 Continuation of public hearing on the request by Great Basin Engineering, agents for Smiths Food and Drug for project plan approval for a shopping center located generally at the northeast corner of West Center Street and Geneva Road in the SC2 (Community Shopping Center) zone. *Fort Utah Neighborhood 98-023(PPA)*
- 

The following action was taken by the Planning Commission on the above described item at their regular meeting of July 8, 1998

## CONDITIONALLY APPROVED

Motion By: Ward

Second By: McKinnon

Votes in Favor of Motion: McKinnon, Stohlton, Ward, Peterman

Votes Opposed to Motion: Kelson

*The following is a brief summary of the decision including conditions of approval and/or comments by the Commission:*

The Planning Commission adopted the following findings and conclusions and approved the request as set forth below.

### FINDINGS OF FACT:

1. The applicant is requesting approval for a Smith's Food and Drug Center located generally at Center Street and Geneva Road. Also proposed in the center is additional retail space and three restaurant pads. The property is requesting a rezoning to SC-2 (Community Shopping Center) zone in order to build this project.
2. The proposed Smith's will have 64,574 Square feet. The additional two retail buildings will contain a total of 25,390 square feet of retail space. The restaurant pads contain an additional 7,550 square feet.
3. Parking for Smith's and the other retail space is calculated at one (1) parking space per 200 square feet of gross floor area. The restaurants are calculated at one (1) parking space per 100 Square feet, as outlined in Provo City Code Section 14.37.
4. Based on the proposed buildings this project will be required 450 parking spaces for the retail space, and 76 parking spaces for the proposed restaurants. The total parking spaces required 526, the site plan presented contains 552 parking spaces.
5. This project will be required to obtain Design Review Committee approval prior to obtaining a building permit for this project.
6. This project complies with the SC-2 standards set forth in Section 14.19 Provo City Code, subject to the attached conditions listed below.
7. Concerns regarding traffic and storm water have been addressed since the hearing was continued on June 10, 1998. See the staff report associated with the rezoning of this site for details.

ENT 51726 BK 5072 PG 810

**CONCLUSIONS:**

1. The request is in compliance with Provo City Code subject to the conditions listed below.
2. The request is valid.

**DECISION:**

The Planning Commission approved the project plan subject to the following conditions.

**PROJECT PLAN CONDITIONS OF APPROVAL:**

1. This project will be required to obtain Design Review Committee approval prior to obtaining a building permit.
2. A subdivision plat or planned unit development will need to be submitted, approved, and recorded at the Utah County Recorders Office prior to obtaining a building permit for this project, as outlined in Provo city Code Section 14.19.025. Single ownership or control must also be maintained.
3. All signage will require a separate review and building permit prior to the placement of any sign for this development.
4. The landscaping plan will need to be modified to include the end of the parking rowsto be landscaped with suitable landscape material, i.e. trees.
5. A decorative masonry wall, at least 6 feet in height, shall be erected along the east property line as outlined in Provo City Code Section 14.19.160(5)(b). In addition, a masonry wall, at least six feet in height, shall be erected along the north property line to screen the rear of the store from the park. The design and height of the wall should be reviewed and approved by the Design Review Commission.
6. That trees be planted on the park side of the masonry wall to give a visual break from the park, provided such plantings are approved by the Parks & Recreation Department.
7. This project will need to comply with the Transitional Development Standards for Non-residential Uses Bordering Residential Zones, as outlined in Provo City Code Section 14.34.300.
8. Improvements recommended by the completed traffic study will need to be installed prior to occupancy of any commercial business on the site.
9. Curb, gutter and sidewalk adjacent to this project shall be brought up to current City standards.
10. A portion of the driveway on the northeast corner of this project crosses current Provo City park property and into the shopping center. It will be necessary that this be coordinated through the Parks Department; and, inasmuch as parking is in short supply near the soccer fields in this area, a cross-easement agreement with parking and the driveway must be worked out with Smiths prior to finalization of this plan.

Item 5 Page 3

ENT 51726 BK 5072 PG 811

11. A detailed utility plan with plan and profile information will need to be submitted prior to final project approval.
12. UDOT approval of the final site plan will be required.
13. Bonding will be required. We will prepare an estimate when final plans have been submitted and approved.
14. Owner\Developer to contact Energy Department (Engineering Division, see contact name), to review project and site specific electrical service conditions\requirements.
15. Owner\Developer shall provide to Community Development Department a Letter of Agreement\Understanding for the Provision of Electric Utilities which has been signed by Provo City Energy Department, (Engineering Division).
16. Aid to Construction fees to be collected prior to any on\off site electrical distribution work by Provo City Department of Energy.
17. Provo City Energy Department will not allow any new structure to be built directly under any Provo City transmission\distribution line or within the transmission easement\right-of-way. There may be a conflict with existing overhead power lines.
18. All the technical concerns raised by the Water Resources Department will need to be resolved prior to obtaining a building permit.
19. All the technical concerns raised by the Storm Water Service District will need to be resolved prior to obtaining a building permit. This includes final review and approval of plans to pipe storm water southward along Geneva Road to a public storm sewer pipe and ditch system. Applicant shall fund all such improvements.
20. That the storm water system be designed to accommodate a 25-year storm event.
21. That off-site storm sewer pipe improvements meet the Storm Water Dept. requirements and be funded by the applicant.
22. That the applicant complete the improvements listed in the traffic study, to include the re-striping of Center Street and Geneva Road.
23. That the Storm Water Service District verify the use of the drainage ditch which this project will drain into, to determine whether or not the water is used for irrigation purposes.

The staff report is accepted for the official record.

\*Legislative items are noted with a (\*) and require legislative action by the Municipal Council and a public hearing.

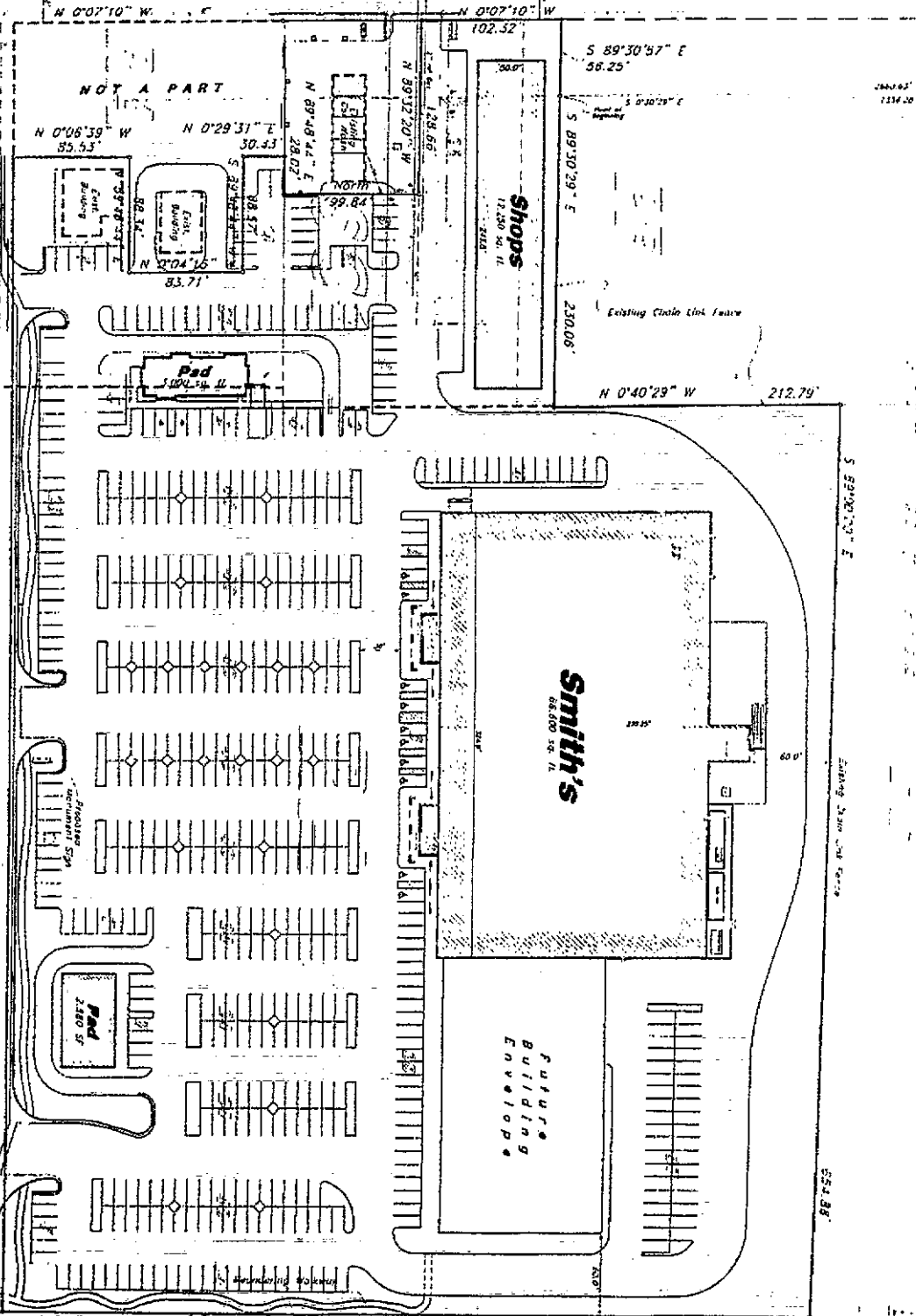
Administrative decisions (items not marked with a star) of the Planning Commission may be appealed by submitting an application and a \$100 fee to the Board of Adjustment at the Community Development Department within ten (10) days of the Commission's decision.

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

# Geneva Road

State Hwy 114

2050 West Street



## Center Street

State Hwy 114

## Smith's #143

Provo, Utah

Center Street and Geneva Road

Smith's Food and Drug Centers, Inc.

### Parcel Exhibit

Site Area: 10.82 acres

595 Parking Stalls req'd

596 Parking Stalls shown

Proposed SC2 Zone

**GREAT BASIN ENGINEERING - SOUTH**

1000 West 2000 South, Suite 100, Provo, UT 84601

Phone: (801) 733-1111

FAX: (801) 733-1112

Website: www.gbengr.com

Project: Smith's #143

Scale: 1" = 40'

Date: 9/16/10

Author: SUGRAY



The following items represent suggestions from the Mediation Committee to which Smith's Food & Drug Centers ("Developer") is willing to adhere, or which are otherwise agreed to between Provo City Corporation (the "City") and Developer in connection with the development of the Project:

1. Landscaping for the Project shall exceed Provo City standards and will be done in accordance with and as depicted on Developer's site plan, dated February 4, 1999 and submitted herewith, or as Developer and City may otherwise agree. Landscaping shall be maintained in a living and first rate condition.
2. Developer shall dedicate or deed to the applicable governmental entity real property in an amount sufficient to create a deceleration lane on Center Street as depicted on Developer's site plan dated February 4, 1999, and submitted herewith. In no event shall Developer be required to dedicate or deed more property than as shown on the attached site plan. The design and configuration of the deceleration lane shall be consistent with City design requirements.
3. Developer shall conform to the recommendations regarding fencing around the Property as contained in the Provo City Planning Commission Report dated July 8, 1998, *with the exception* that the masonry wall on the east side of the Property shall be six feet (6') tall and the fence on the north side of the Property between the park and Developer's store will remain chain link. If requested by the City, a pedestrian gate shall be installed in the fence along the north property line between Developer's Property and the adjoining park. Additionally, if the City so requests, the fence running along Developer's north property line will be green vinyl mesh.
4. Proposed signs shall meet the pending requirements of City's new sign ordinance. Monument signs at the drive entries shall meet sight distance setback requirements. Additionally, monument signs shall utilize materials similar to Developer's building.
5. Parking lot light poles shall not exceed twenty-five feet (25') in height, and shall conform to all standards currently pending as amendments proposed to Title 15 of the Provo City Code (but no less than five (5) foot candles).
6. Delivery trucks shall not schedule deliveries after 10:00 p.m. or before 7:00 a.m. The same hours shall apply to parking lot sweeping.
7. Final construction plans shall be subject to review and approval by City's Design Review Committee.
8. Storm drainage shall be handled as provided in the Planning Commission Report of Action, according to the standards of the Provo Storm Water District. Generally, this will include construction of an eighteen inch (18") (plus or minus an inch or two depending on profile

and grade) storm sewer line from Geneva Road running to the east boundary line of the Property and construction of a twenty-four inch (24") line (plus or minus and inch or two depending on profile and grade) from Center Street to 300 South, with approved inlet structures. Note: the City will construct the line from 300 South to Utah Lake. If the City's segment is completed after Developer's line, then Developer's line may temporarily drain into the irrigation ditch located along 300 South.

9. The number of trees on the Project shall equal or exceed that number shown on the site plan in Exhibit "D."
10. If any building pads remain in separate ownership, or will be sold off later, reciprocal access easements shall be recorded with the property.
11. Nothing in this Agreement shall be construed to preclude or limit compliance with all City codes, ordinances and policies, some of which may not be fully evaluated until final construction drawings (site plan, utility plan, landscaping plan, grading and drainage, and building plans) are submitted for Final Project Plan approval and building permit issuance.
12. Developer shall provide funds not to exceed Fifteen Thousand Dollars (\$15,000.00) which shall be used to construct sidewalks in the vicinity of the Amelia Earhart Elementary School.
13. Developer's building elevations shall substantially conform to the Fort Utah elevations or one of the four building designs presented to the Mediation Committee. The City's Design Review Committee shall approve one of such designs for the Project. Building elevations shall be reviewed and approved for all four sides of the building. Particular care shall be taken to provide the same quality on the rear of the building as the front inasmuch as it will be visible from adjacent park property.
14. Upon request by the property owner, Developer shall purchase one, two and one-half inch (2½") caliper, deciduous tree or one, five (5) foot tall, coniferous tree for each of the nine lots located on West Center Street directly south of the Project.
15. The following uses shall be restricted from the Property:

Personal services (wedding chapels and reception centers only)

Auction houses

Vehicle rental

Dance halls-ballrooms

Billiard and pool halls

Ice skating

Roller skating and skate boarding

Bowling alleys

16. Storm drain inlets shall include oil and grease traps as approved by the City Engineer.
17. Landscaped areas adjacent to the east and south property lines shall be bermed wherever possible as determined by the City's Design Review Committee to provide a more effective protective buffer between the Project and adjacent property.
18. A hedge shall be placed along the north property line wherever it is desirable from an aesthetic perspective and not undesirable from a public safety or private security perspective, as determined by the City's Design Review Committee.
19. Developer agrees to contribute \$15,000 for off-site sidewalk improvements (as provided in Condition No. 12 above) and \$35,000 for off-site storm drain improvements on West Center Street (as provided in Condition No. 8 above). In the event City secures additional third-party funding for all or some of such off-site improvements, Developer agrees to contribute a like amount to the City to be used for similar improvements elsewhere in the west Provo area. In no event will the amount contributed by Developer exceed the \$50,000 detailed above.