

RECORDED AT THE REQUEST OF: :  
SMITH'S FOOD & DRUG CENTERS, INC. :

WHEN RECORDED, MAIL TO: :  
SMITH'S FOOD & DRUG CENTERS, INC. :  
Attention: Director of Real Estate Legal Services :  
1550 South Redwood Road :  
Salt Lake City, UT 84104 :

SPACE ABOVE FOR RECORDER'S USE

**RESTRICTIONS AND EASEMENTS AGREEMENT**

**THIS RESTRICTIONS AND EASEMENTS AGREEMENT ("REA")** is made to be effective as of the 24<sup>th</sup> day of MAY, 1999, between **SMITH'S FOOD & DRUG CENTERS, INC.**, a Delaware corporation, herein called "**Smith's**," and **DELL COX FAMILY PARTNERSHIP**, a Utah partnership, herein called "**Cox**."

**RECITALS:**

A. **Smith's Property.** Smith's is the owner of the Smith's Property as shown on the "Site Plan" attached hereto as Exhibit "A" and more particularly described on Exhibit "B" hereto. The Smith's Property is sometimes hereinafter referred to individually as Lots 2, 3, 4, 5, 6, 7 and 11.

B. **Cox Property.** Cox is the owner of the Cox Property as shown on the Site Plan and more particularly described on Exhibit "C" hereto. The Cox Property is sometimes hereinafter referred to individually as Lots 1, 8, 9 and 10. Pursuant to that certain Ground Lease ("Lease") of even date herewith between Cox and Smith's, Smith's is the Lessee of Lot 1, upon which Smith's intends to construct and operate a supermarket/grocery store ("Smith's Building" or "Smith's Store").

C. **Purpose.** Smith's and Cox desire that the Smith's Property and the Cox Property be developed and operated in conjunction with each other in an orderly fashion so as to create a commercial shopping center as set forth herein and further desire that the Smith's Property and the Cox Property be subject to certain easements, covenants, conditions and restrictions all as hereinafter set forth.

## A G R E E M E N T

In consideration that the following encumbrances shall be binding upon the parties hereto and shall attach to and run with the Smith's Property and the Cox Property, and shall be for the benefit of and shall be limitations upon all future owners of the Smith's Property and the Cox Property and that all easements, restrictions and other covenants herein set forth shall be appurtenant to the dominant estates and obligations on the servient estates, and in consideration of the promises, covenants, conditions, restrictions, easements and encumbrances contained herein, Smith's and Cox do hereby agree as follows:

1. **Definitions.**

a. **"Shopping Center."** The **"Shopping Center"** shall consist of the Cox Property and the Smith's Property as from time to time expanded pursuant to Section 1(e) below.

b. **"Building Area; Floor Area."** The **"Building Area"** in the Shopping Center is the portion thereof upon which buildings may be constructed, as outlined and identified on the Site Plan. Approximately sixty-six thousand six hundred (66,600) square feet of Floor Area of buildings, as defined below, are planned to be constructed by Smith's within the Building Area on Lot 1; approximately twenty-one thousand eight hundred (21,800) square feet of Floor Area are planned to be constructed within the Building Area on Lot 2; and approximately three thousand (3,000) square feet of Floor Area are planned to be constructed within the Building Area on Lot 3. Approximately three thousand five hundred (3,500) square feet of Floor Area are planned to be constructed within the Building Area on Lot 4; approximately three thousand five hundred (3,500) square feet of Floor Area are planned to be constructed within the Building Area on Lot 5; approximately five thousand (5,000) square feet of Floor Area are planned to be constructed within the Building Area on Lot 6. Currently, there exists on Lot 7 a building totaling approximately two thousand (2,000) square feet. In the future, if said building is razed, it is intended that Lot 7 be developed into a building of no more than two thousand (2,000) square feet of Floor Area. Currently, there exists on Lot 8 a building totaling approximately one thousand three hundred fifty (1,350) square feet. In the future, if said building is razed, it is intended that Lot 8 be developed into a building a no more than one thousand three hundred fifty (1,350) square feet of Floor Area. Approximately two thousand five hundred (2,500) square feet of Floor Area are planned to be constructed within the Building Area on Lot 9. Currently, there exists on Lot 10 a building of approximately two thousand (2,000) square feet as depicted on the Site Plan. In the future, if the building on Lot 10 is razed, it is intended that Lot 10 be developed into a building of not more than two thousand (2,000) square feet of Floor Area. Approximately twelve thousand two hundred fifty (12,250) square feet of Floor Area are planned to be constructed on Lot 11. In no event shall Lots 2, 3, 4, 5, 6, 7, 8, 9, 10 or 11 be developed into a use with Floor Area greater than

the amount of Floor Area designated for each Parcel as set forth on the Site Plan. For purposes hereof, "**Floor Area**" shall be defined as the square foot floor area within exterior walls of any building or structure, excluding any equipment, restroom, or other raised mezzanine, exterior trash enclosures; open loading docks which are not heated or air conditioned; canopies and roof overhangs; and vestibules for ingress and egress. Such exclusions from Floor Area may project from any building or structure up to a distance of twenty-five feet (25') over or outside of the Floor Area on any Lot; provided, any such projection or extension complies with all applicable laws, rules, ordinances and regulations of every governmental body having jurisdiction over the Shopping Center; and provided further, no such extension or projection shall be allowed if it materially alters the parking configuration or vehicular or pedestrian circulation, and/or access in and through the entire Shopping Center as shown on the Site Plan.

c. "Common Areas." The Common Area is all real property within the Shopping Center except the Building Area; provided, those portions of the Building Area upon which the Parties are not obligated to construct buildings pursuant to this REA shall be deemed to be Common Area until such time as construction of buildings thereon commences. Docks, loading areas, service areas and canopies which are attached to buildings but which extend over Common Area shall be deemed to be part of the building which they serve or to which they are attached and not part of the Common Area.

d. Conversion to Common Areas. Those portions of the Building Areas on each Lot which are not from time to time used or cannot under the terms of this REA be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided in this REA. An area converted to Common Area may be, as set forth below, converted back to Building Area, if at the time of conversion back to Building Area, it meets the requirements of this REA.

e. Expansion of Smith's Floor Area. Smith's shall have the right at any time subsequent to the execution of this REA by written notice to Cox to expand the Floor Area on Lot 1 to the limits of the Expansion Area shown by the dotted line on Exhibit "A" hereto, provided that such expansion does not reduce the number of available parking spaces below that required by applicable governmental authorities on Lot 1 (without taking into account the parking which may exist on the other party's Lot or Lots).

## 2. **Buildings.**

a. Retail Limitation. The buildings shall be commercial buildings of the type usually found in first-class retail shopping centers in the greater metropolitan area in which the Shopping Center is located. The tenants occupying the buildings shall be primarily retail sales and retail service tenants of

the type normally associated with first-class retail shopping centers in such metropolitan area. "Retail services" means restaurants, financial institutions, real estate and stock brokerage offices, travel or insurance agencies, medical and dental offices, and similar uses providing services directly to the public, but "retail services" specifically excludes nonprofit organization offices, government offices, office uses that do not involve direct service to consumers, office uses in excess of 5,000 square feet of floor area, and other uses not customarily associated with or contained in first-class retail developments. Without limiting the generality of the foregoing, without Smith's consent (which consent may be withheld in Smith's sole discretion), no portion of the Shopping Center shall be used for (i) flea markets, fire, bankruptcy or liquidation sales, or sales of "second-hand" or "surplus" merchandise; (ii) training or educational facilities (other than on-site employee training by an occupant incidental to the conduct of its business); or (iii) automotive or other vehicle service or tire or battery sales or service facilities (except that a "Pep Boys" or "Auto Zone" or other auto parts store shall be permissible); and (iv) the renting, leasing, sale or display of any motor vehicle, truck, trailer, recreational vehicle or boats.

b. Restrictions on Types of Use. The parties recognize the needs of Smith's customers to have adequate parking facilities in close proximity to the building upon Lot 1, and the importance of protecting against unreasonable or extensive use of parking spaces which is likely to result from parking by patrons or employees of certain types of business establishments. The parties further recognize Smith's interest in not having tenants occupying space in close proximity to the Smith's Building on Lot 1 who create or cause excessive noise, litter or odor or which are duplicative of the uses found in Smith's Store. To safeguard Smith's interest in having a clean, quiet and proper environment and in having adequate parking for its customers, the parties agree that, without Smith's consent (which may be withheld in Smith's sole discretion), no portion of any Lot within three hundred feet (300') of any exterior building wall of Smith's Building shall be used for a restaurant (fast-food or sit-down). No portion of any Lot within two hundred fifty feet (250') of the exterior building wall of the Smith's Building shall be used for general or business offices. All uses allowed and existing within the Shopping Center must include, within the Lot upon which such use is located, parking equal to the greater of (i) that required by applicable laws and ordinances or (ii) five (5) spaces per thousand (1,000) square feet of Floor Area for any non-restaurant use and ten (10) spaces per thousand (1,000) square feet of Floor Area for any restaurant use (without taking into account the parking which may exist on the other party's Lot or Lots).

c. Restrictions on Certain Lots. During the term of this REA, no portion of any Lot other than Lot 1 shall be used or permitted to be used for (i) any supermarket or grocery store or drug store (which for purposes of this REA means any store, department or area within a store, containing at least 1,000 square feet of sales floor area, including aisle space and storage, primarily devoted

to the retail sale of food or liquor for off-premises consumption) or the retail sale of pharmaceutical or non-pharmaceutical drugs; or for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; (ii) any delicatessen, convenience store (except that a convenience store being operated in conjunction with a gasoline product service station and which contains not more than 1,000 square feet of sales floor area for product display, or such greater area as Smith's may approve from time to time, will not be a prohibited use); (iii) any quick film development; or (iv) the sale of any prescription pharmaceuticals requiring the services of a registered pharmacist. Additionally, during the term of this REA, Cox shall not use or permit the use of any portion of any other property owned by Cox or its successor within a two-mile radius of the Shopping Center for any supermarket or grocery store (which, for purposes of this REA, means any store, department or area within a store, containing at least 1,000 square feet of sales floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption), nor shall any portion of any other property owned by Cox or its successor within a two-mile radius of the Shopping Center be used for the sale of pharmaceutical or non-pharmaceutical drugs.

d. General Restrictions on Use. No portion of the Shopping Center shall in any event be leased, subleased, operated or otherwise used for (i) the display, distribution or sale of any "adult" books, "adult" films, "adult" periodicals or "adult" entertainment; (ii) the establishment or maintenance of a massage parlor, "adult" theater, "adult" bookstore, "sex" shop, "peep show" or bawdy house or brothel, (iii) the operation, establishment or maintenance of a movie theater, children's playland, night club, dance hall, bowling alley, skating or roller rink, veterinary clinic, pool or billiard hall, health spa, a second hand or pawn shop type of business, game room or video arcades (more than four (4) electronic games) or other entertainment facilities, or any use in violation of applicable zoning and other governmental laws and regulations. No portion of the Shopping Center shall be used or permitted to be used for (i) any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building in the Shopping Center; or (ii) any use which is a public or private nuisance, or which is likely to generate public protests or controversy interfering with the operation of the Shopping Center as a retail center; nor shall there be thereon any (iii) distilling, refining, smelting, agricultural, animal raising or boarding (other than consumer pet shops), or mining operation; (iv) any short or long-term residential use, (v) any primary use as a warehousing, assembling, manufacturing, waste processing or other industrial operation; (vi) any place for public assembly (such as a church mortuary or meeting hall).

e. Location. No building shall be constructed in the Shopping Center, except within the Building Areas shown on Exhibit "A".

f. Design and Construction. The buildings shall be designed so that the exterior elevation of each will be architecturally and aesthetically compatible.

The design and construction shall be in conformity with sound architectural and engineering standards and the construction shall be first quality. Except for Smith's Building on Lot 1, all buildings shall be one story and shall not exceed twenty-four feet (24') in height (but may include an architectural element, raised mezzanines for equipment, storage, offices to which the public is not invited, restrooms or lounges). Lot 2 may be developed into shop space or shop space with a retail box user, but in any event, Lot 2 may be developed into no more than twenty-one thousand eight hundred (21,800) square feet of Floor Area in the aggregate. Lot 3 may be developed into no more than one (1) building not to exceed three thousand (3,000) square feet of Floor Area. Lot 4 may be developed into no more than one (1) building not to exceed three thousand five hundred (3,500) square feet of Floor Area. Lot 5 may be developed into no more than one (1) building not to exceed three thousand five hundred (3,500) square feet in Floor Area. Lot 6 may be developed into no more than one (1) building not to exceed five thousand (5,000) square feet of Floor Area. In no event shall the existing building on Lot 7 be expanded or modified without the prior written approval of Smith's, which approval may be withheld in Smith's sole discretion. Any future development on Lot 7 shall consist of no more than one (1) building not to exceed two thousand (2,000) square feet of Floor Area. The building currently situated on Lot 8 shall not be expanded or modified without the prior written consent of Smith's, which consent may be withheld in Smith's sole discretion. Any future development on Lot 8 shall consist of no more than one (1) building not to exceed one thousand three hundred fifty (1,350) square feet of Floor Area. Lot 9 may be developed into no more than one (1) building not to exceed two thousand five hundred (2,500) square feet of Floor Area. The building currently situated on Lot 10 may not be expanded or modified without the prior written consent of Smith's, which consent may be withheld in Smith's sole discretion. Any future development of Lot 10 shall consist of no more than one (1) building not to exceed two thousand (2,000) square feet of Floor Area. Lot 11 may be developed into no more than one (1) building or shop space as shown on the Site Plan, not to exceed twelve thousand two hundred fifty (12,250) square feet of Floor Area. Notwithstanding anything contained herein, the exact size and location of the buildings on any of the Lots shall be determined and approved by Smith's and the Owner of the Lot(s). Cox acknowledges that Smith's is a national grocery and drug supermarket retailer and that the architectural theme of its store is related to operational strategies which change from time to time. Although Smith's has no reason to believe that the architectural theme and signage, once adopted, will be subject to change, Smith's, subject to first obtaining approval of all applicable governmental authorities, may make such changes as are instructed to the signage and exterior design, materials, color, elevations and/or other elements of the architectural theme as it pertains to the Smith's Building.

g. Footing Easements. In the event it is appropriate or practical to have building wall footings encroach from one parcel onto the other parcel, the party onto whose parcel the footings encroach shall cooperate in granting an

encroachment permit or easement to the party who desires to have its building wall footings so encroach.

3. **Common Areas Use.**

a. Grant of Easements. Each party, as grantor, hereby grants to the other party for the benefit of said other party, its customers, invitees and employees, a nonexclusive easement for pedestrian and vehicular access, ingress and egress, the parking of motor vehicles in designated areas and use of facilities installed for the comfort and convenience of customers, invitees and employees on the Common Areas of the grantor's Property.

b. Use. Subject to existing easements of record, the Common Areas shall be used for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, for driveway purposes, and for the comfort and convenience of customers, invitees and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above.

c. No Barriers. No walls, fences, or barriers of any kind shall be constructed or maintained on the Common Areas, or any portion thereof, by any party which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitation, of pedestrians and vehicular traffic between the various parcels; provided, however, reasonable traffic controls approved in advance by Smith's (which approval shall not be unreasonably withheld or delayed) as may be necessary to guide and control the orderly flow of traffic may be installed so long as access driveways to the parking areas in the Common Areas are not closed or blocked. The only exceptions to this provision shall be (1) for changes to the Building Areas and Common Areas permitted by this REA, (2) for incidental encroachments upon the Common Areas which may occur as a result of the use of the ladders, scaffolding, storefront barricades and similar facilities resulting in temporary obstruction of the Common Areas, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction work being expeditiously pursued, (3) for incidental, immaterial and temporary encroachments upon the Common Areas which may occur in conjunction with the construction, maintenance or repair of buildings and improvements on the Smith's Property or the Cox Property, so long as such construction, maintenance or repair is being diligently pursued, and (4) for temporary blockage of certain areas deemed necessary by the parties to prevent a public dedication of an easement or access right. Notwithstanding anything herein to the contrary, Smith's may elect to operate a Recycle Center on a portion of the Common Area on Lot 1, at a location reasonably determined by Smith's. This Recycle Center will not be affixed to the parking lot, will be fully moveable, and may consist of a trailer and additional containers into which recyclable materials may be deposited. Smith's agrees that

the Recycle Center will be located within the parking stall areas and will not otherwise obstruct the access and parking easements as granted herein. The Recycle Center is thus deemed by the parties to be consistent with the rights and easements described herein.

d. Limitations on Use.

(1) Customers. Customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business in the Shopping Center with the occupants thereof.

(2) Employees. Employees shall not be permitted to park on the Common Areas, except in areas designated as "employee parking areas." The parties hereto may from time to time mutually designate and approve "employee parking areas"; however, if they do not, each party may designate "employee parking areas" on its own Lot.

(3) General. All of the uses permitted within the Common Areas shall be used with reason and judgment so as not to interfere with the primary purpose of the Common Areas which is to provide for parking for the customers, invitees and employees of those businesses conducted within the Building Areas and for the servicing and supplying of such businesses. Persons using the Common Areas in accordance with this REA shall not be charged any fee for such use.

e. Utility and Service Easements. The parties shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Common Areas and buildings to be erected upon the Building Areas. The parties will use their best reasonable efforts to cause the installation of such utility and service lines prior to paving of the Common Areas.

4. **Common Areas: Development, Maintenance and Taxes.**

a. Development Timing. When any building is constructed within the Building Areas on a Lot, the Common Areas on that Lot associated with such building shall be developed in accordance with Exhibit "A", all at the expense of the owner of said Lot.

b. Maintenance.

(1) Standards. Following completion of the improvement of the Common Areas, the parties hereto shall maintain their respective portions of the Common Areas on their respective Lots in good condition and repair. The



maintenance is to include, without limiting the generality of the foregoing, the following:

A. Maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability.

B. Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition, and free of snow, ice, dirt, and debris.

C. Placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines.

D. Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required for adequate lighting.

E. Maintaining all perimeter walls in good condition and state of repair; and

F. Maintaining all landscaped areas in a thriving and trimmed condition and making such replacements of shrubs and other landscaping as is necessary.

(2) Expenses. The respective owners shall timely pay the maintenance expense of their respective Lots.

(3) By Agent. Subject to the revocable mutual agreement of the parties hereto, either of the parties or a third party may be appointed as agent to maintain the Common Areas in the Shopping Center in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar costs, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

c. Taxes. Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and assessments which are levied against the respective portion of the Common Areas owned by it.

5.

**Signs.**

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Except for directional signs for guidance upon the Common Areas, no pylon or pole signs shall be located on the Common Areas in the Shopping Center, except in accordance with the terms and conditions of this REA and all applicable governmental requirements. Smith's may design and construct a pylon sign in the place designated on the Site Plan. The cost of the pylon sign shall be borne solely by Smith's and any other user approved by Smith's whose sign or logo appears on the pylon sign. Each party's share of costs shall be in accordance with the ratio that the surface area of the facia of each party's designation bears to the total surface area of the facia of the common sign. The pylon sign shall bear only the designation of the trade name of the operator of the Smith's Building, and the designation of the trade name of the other tenants approved by Smith's. Smith's or its successor shall have the first priority position on any common pylon sign(s) in the Shopping Center.

6.

**Indemnification/Insurance.**

a. Indemnification. Each party hereby agrees to indemnify, defend and save the other party harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from injury to person or property and occurring on its own Lot, except if caused by the act or neglect of the other party hereto.

b. Insurance. Each party shall provide commercial general liability insurance affording protection to itself and the other party on its own parcel(s), naming the other party as an "additional insured" under the policy or policies, for a combined bodily injury and property damage limit of liability of not less than Two Million Dollars (\$2,000,000) per occurrence, Three Million Dollars (\$3,000,000) aggregate. Such insurance may be a part of blanket liability coverage carried by a party so long as such blanket policy does not reduce the limits or diminish the coverage required herein.

c. Self Insurance. Each party shall have the right to satisfy its insurance obligations hereunder by means of self-insurance to the extent of all or part of the insurance required hereunder, in accordance with each party's established corporate policy. Any party providing self-insurance shall, upon request, provide the other party with a description of such self-insurance program, financial statements, and evidence of any partial insurance coverage which may be supplementing any plan of partial self-insurance.

d. Other Insurance Matters. All policies of insurance required by this REA shall insure the performance of the party insured thereunder of the indemnity agreement contained in this Section 6, shall name the other party an additional insured and shall contain a provision that the insurance company will provide all

parties with twenty (20) days advance written notice of any cancellation or lapse, or the effective date of any material reduction in the amounts or scope of coverage. Each party shall deliver to each other party a certificate or statement from the party's insurance company that such insurance insures the performance by the party insured of the indemnity agreement specified in this Section 6 and the existence of the insurance coverage to the limits herein required. Each party shall promptly notify each other party of any asserted claim with respect to which such party is or may be indemnified against hereunder and shall deliver to such party copies of process and pleadings.

7. **Eminent Domain.**

a. Owner's Right to Award. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's parcel or give the public or any government any rights in the Smith's Property or the Cox Property. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on the Smith's Property or the Cox Property, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner in fee thereof and no claim thereon shall be made by the owners of any other portion of the Common Areas.

b. Collateral Claims. All other Owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.

c. Tenant's Claim. Nothing in this Section 7 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between such tenant and owner for all or a portion of any such award or payment.

d. Restoration of Common Areas. The owner of the fee of each portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas so owned as near as practicable to the condition of same immediately prior to such condemnation or transfer to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

8. **Agreement.**

a. Modification, Cancellation and Delegation of Authority. This REA (including Exhibit "A") may be modified or cancelled only by written consent of the Owner and Tenant of Lot 1, and the owners of at least five (5) Lots other than Lot 1, which consents shall not be unreasonably withheld. Any

purchaser, lender, mortgagee, lessee, assignee, grantee, sublessee or other party having any interest in any portions of the Smith's Property and/or the Cox Property shall be deemed to have appointed Smith's and/or Cox, as the case may be, as their attorneys-in-fact for their respective Lots for the purpose of negotiating and entering into any modifications of this REA, except for extending the duration hereof. Cancellation of this REA shall not be considered a modification.

b. Breach. In the event of breach or threatened breach of this REA, only the record owners of any of the Lots, or Smith's so long as it has an interest as owner or tenant in Lot 1, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

c. Remedies for Default; Waiver. If the owner of any Lot shall, during the term of this REA, default in the full, faithful and punctual performance of any obligation required hereunder and if at the end of thirty (30) days after written notice from any owner of a Lot or the party to whom its authority has been delegated, stating with particularity the nature and extent of such default, the defaulting owner has failed to cure such default, and if a diligent effort is not then being made to cure such default, then any other owner of a Lot of land subject to this REA or the party to whom its authority has been delegated shall, in addition to all other remedies it may have at law or in equity, have the right to perform such obligation of this REA on behalf of such defaulting owner and be reimbursed by such defaulting owner for the cost thereof with interest thereon at the rate of ten percent (10%) per annum. Any such claim for reimbursement, together with interest as aforesaid, shall be a secured claim and a lien shall attach and take effect upon recordation of a property claim of lien by the claimant in the office of the county recorder of the county in which the land is located. The claim of lien shall include the following: (1) the name of the claimant; (2) a statement concerning the basis of the claim of lien, (3) the last known name and address of the owner or reputed owner of the Lot against which the lien is claimed; (4) a description of the property against which the lien is claimed; (5) a description of the "work performed or payment made" which has given rise to the claim of lien hereunder and a statement itemizing the amount thereof; and (6) a statement that the lien is claimed pursuant to the provision of this REA reciting the date, book and page of the recordation hereof. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the party against whom the lien is claimed, either by personal service or by mailing (first class, certified, or return receipt requested) to the defaulting owner, at the address for mailing of tax statements with respect to the property against which the lien is claimed. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and it may be enforced in any manner allowed by law

for the foreclosure of liens. Notwithstanding the foregoing, such lien shall be subordinate to any mortgage or deed of trust given in good faith and for value now or hereafter encumbering the property subjected to the lien, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any mortgage or deed of trust shall take free and clear from any such then existing lien, but otherwise subject to the provisions of this REA. The failure of the owner or owners of any of the Lots subject to this REA to insist in any one or more cases upon the strict performance of any of the promises, covenants, conditions, restrictions or agreements herein, shall not be construed as a waiver or relinquishment of any future breach of the same or other provisions hereof.

d. Non-Merger. So long as a party is a tenant of a Lot, this REA shall not be subject to the doctrine of merger, even though the underlying fee ownership to the Lots described herein is vested in such party.

e. Duration. Unless otherwise cancelled and terminated, this REA and all the easements, rights and obligations hereof shall automatically terminate and be of no further force or effect after fifty-five (55) years from the date hereof, except that the access easements (but not the parking easements) described in Section 3(a) and except that the utility easements granted pursuant to Section 3(e), if any, shall continue in full force and effect until terminated in writing by the parties entitled to modify this REA in accordance with the provisions of Section 8(a) hereof.

f. Lease Governs. As between Smith's and Cox, in the event of any conflict between the terms of this REA and the terms of the Lease, the terms of the Lease shall govern.

## 9. **Rights and Obligations of Lenders.**

Subject to, and except as provided under, the provisions of Section 8(c) above, the restrictions and burdens of this REA are, and shall at all times be, prior and therefore superior to the lien or encumbrance of any mortgage or deed of trust made in good faith and for value affecting the Smith's Property or the Cox Property or any part thereof, or any improvements now or hereafter placed thereon. However, a breach of any of the easements, covenants, or restrictions hereof shall not defeat or render invalid the lien or encumbrance of any mortgage or deed of trust. The superiority of this REA shall be limited to the extent that title to any property acquired through sale under foreclosure of any mortgage or deed of trust effected by powers of sale, judicial proceedings, or otherwise, shall be subject to all the restrictions and burdens affecting the Smith's Property and the Cox Property by virtue of this REA, as noted in Section 8(c) hereof.

10. **Release from Liability.**

Any person acquiring fee or leasehold title to any of the Lots shall be bound by this REA only as to the Lots acquired by such person. Such person shall be bound by this REA only during the period such person is the fee or leasehold owner of such Lot(s), except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this Section, the easements, covenants and restrictions in this REA shall continue to be benefits and servitudes which run with the land as described in Section 11 next below.

11. **Rights of Successors.**

The easements, covenants, conditions, restrictions, benefits, and obligations hereunder shall create mutual benefits and servitudes upon the Smith's Property and the Cox Property and shall run with the land. This REA shall bind and inure to the benefit of the parties hereto, their respective heirs, personal representatives, tenants, successors, and/or assigns. The singular number includes the plural and any gender includes all other genders.

12. **Paragraph Headings.**

The paragraph headings herein contained are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

13. **Not a Public Dedication.**

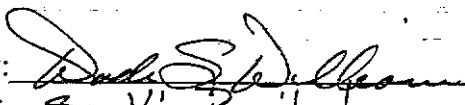
Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Common Areas to the general public or for the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this REA shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Common Areas of the Lots herein affected, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of the owner. Notwithstanding any other provisions herein to the contrary, the owners of the Lots affected hereby may periodically restrict ingress and egress from the Common Areas in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such at time as to have a minimum effect on the parties in occupancy within the Shopping Center.

14. **Document Execution and Change.**

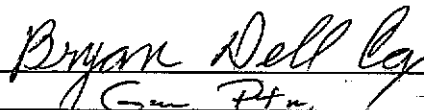
It is understood and agreed that until this REA is fully executed and delivered by both Cox and Smith's there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be based. It is further agreed that once this document is fully executed and delivered that it contains the entire agreement between the parties hereto and that, in executing it, the parties do not rely upon any statement, promise or representation not herein expressed, and this document, once executed and delivered, shall not be modified, changed or altered in any respect except by writing executed and delivered in the same manner as required for this document.

**IN WITNESS WHEREOF**, the parties hereto have executed this REA the day and year first above written.

**SMITH'S FOOD & DRUG CENTERS, INC.,**  
a Delaware corporation

By:   
Its: Gen. Vice President

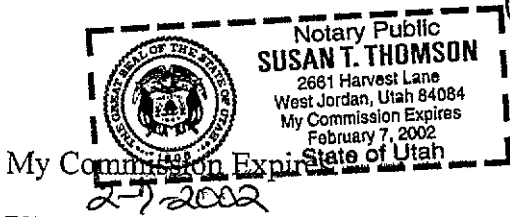
**DELL COX FAMILY PARTNERSHIP,**  
a Utah partnership

By:   
Its: Gen. Ptn.

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

Before me, the undersigned authority, on this day personally appeared WADE S. WILLIAMS, SR. VICE PRESIDENT of SMITH'S FOOD & DRUG CENTERS, INC., a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this 24<sup>th</sup> day of May, 1999.



Susan T. Thomson  
Notary Public  
Notary's name printed:  
SUSAN T. THOMSON

STATE OF UTAH )  
 : SS.  
COUNTY OF UTAH )

Before me, the undersigned authority, on this day personally appeared Bryan Dell Cox, General Partner of DELL COX FAMILY PARTNERSHIP, a Utah partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this 24<sup>th</sup> day of May, 1999.

Cindy Lund  
Notary Public  
Notary's name printed:  
Cindy Lund

My Commission Expires:  
5/18/2001

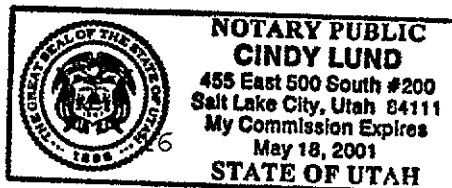




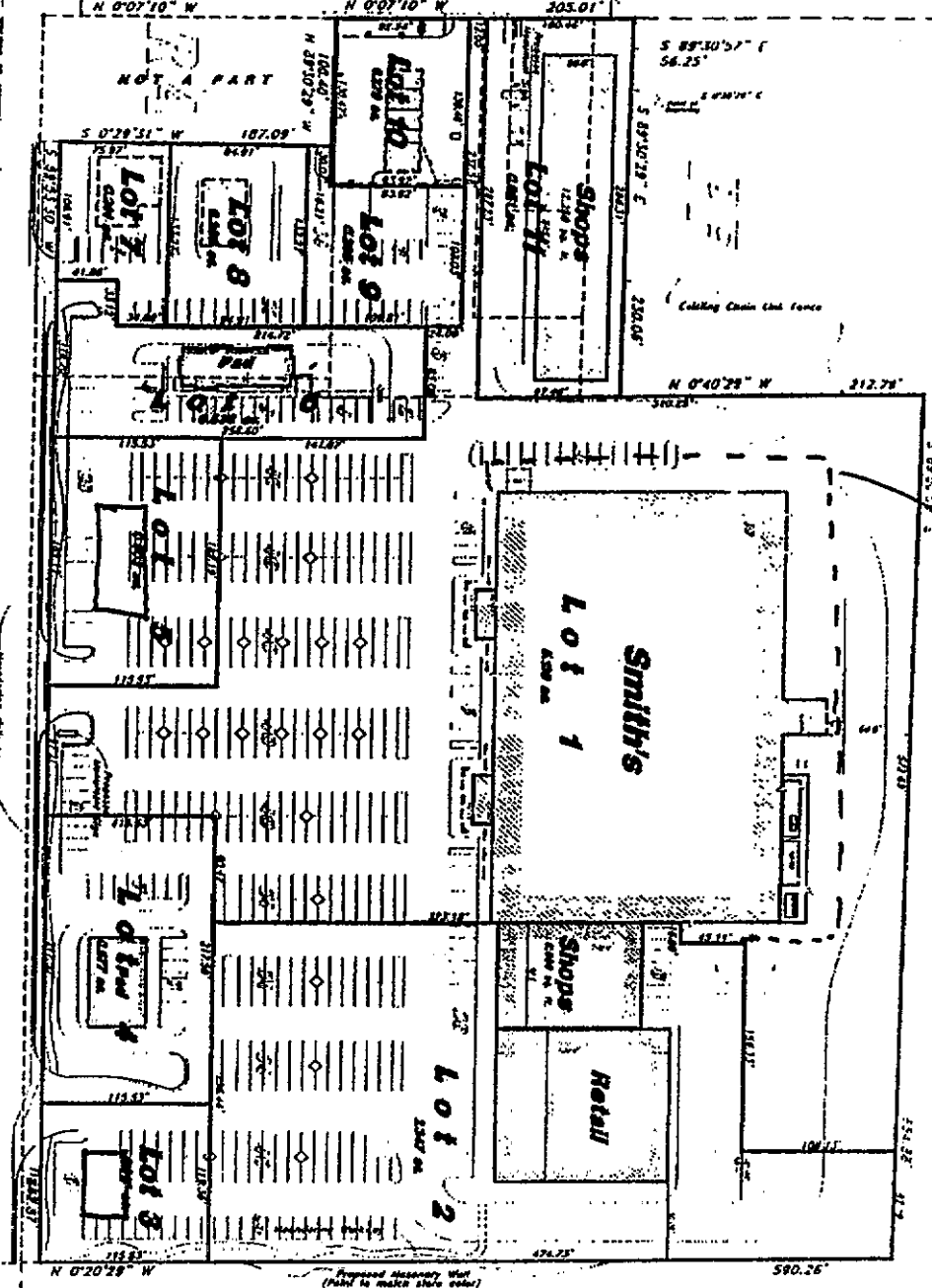
EXHIBIT "A"

ENT 66184 BK 5111 PG 793

State Hwy 114  
**Geneva Road**

Center Street

--- Smith's Expansion Area



Site Area : 1132 acres  
 535 Parking Stalls req'd  
 508 Parking Stalls shown  
 Current SC2 Zone

Preliminary Subdivision Plat

Fort Utah Center  
 Provo, Utah



Center Street and Geneva Road

Surveyed From and Containing the

Original Plat

Recorded in

Book

Page

of

Plat

Number

of

Plats

in

Book

Page

of

Plats

A

# GREAT BASIN ENGINEERING - South

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(801) 521-8529 • (801) 394-7288 • Fax (801) 521-9551 • E-mail gbes@xmission.com



CONSULTING ENGINEERS  
AND LAND SURVEYORS

ENT 66184 BK 5111 PG 794

## EXHIBIT B

Smith's #143, Provo  
Preliminary Lot 2

May 11, 1999

All of Future Lot 2 of a forthcoming commercial subdivision to be known as Fort Utah Center being more particularly described as follows:

A part of the Southwest Quarter of Section 2, Township 7 South, Range 2 East, Salt Lake Base and Meridian, U.S. Survey in Provo City, Utah County, Utah:

Beginning at a point on the West Boundary of West Park Subdivision as it exists on the ground being 1121.93 feet South 0°30'29" East along the Section Line and 885.61 feet South 89°00'00" East along the South Boundary of a Provo City park from the West Quarter Corner of said Section 2; and running thence South 0°16'32" East 474.70 feet along said West Boundary of West Park Subdivision as it exists on the ground; thence South 89°53'30" West 257.14 feet; thence North 0°06'30" West 323.18 feet; thence North 89°53'30" East 16.00 feet; thence North 0°06'30" West 45.00 feet; thence North 89°53'30" East 156.33 feet; thence North 0°06'30" West 108.13 feet to a point on the South Boundary of a Provo City Park; thence South 89°00'00" East 83.44 feet along said South Boundary of a Provo City Park to the point of beginning.

Contains 102,727 square feet  
Or 2.358

SMC143C5.doc

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Smith's #143, Provo  
 Preliminary Lot 3

May 11, 1999

**EXHIBIT B**

ENT 66184 BK 5111 PG 795

All of Future Lot 3 of a forthcoming commercial subdivision to be known as Fort Utah Center being more particularly described as follows:

A part of the Southwest quarter of Section 2, Township 7 South, Range 2 East, Salt Lake Base and Meridian, U.S. Survey in Provo City, Utah County, Utah:

Beginning at a point on the North line of Center Street as widened to 43.00 foot halfwidth being 1729.31 feet South 0°30'29" East along the Section Line to said North line of street and 762.54 feet North 89°53'30" East along said North line of street as widened from the West Quarter Corner of said Section 2; and running thence North 0°06'30" West 115.53 feet; thence North 89°53'30" East 120.06 feet to the West Line of West Park Subdivision as it exists on the ground; thence South 0°16'32" East 115.53 feet along said West Line of West Park Subdivision as it exists on the ground to the North Line of Center Street as widened to 43.00 feet halfwidth; thence South 89°53'30" West 120.40 feet along said North Line of Center Street to the point of beginning.

Contains 13,890 square feet  
 Or 0.319 acre

SMC143C6.doc

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CONSULTING ENGINEERS  
AND LAND SURVEYORS

Smith's #143, Provo  
Preliminary Lot 4

## EXHIBIT B

May 11, 1999

ENT 66184 BK 5111 PG 796

All of Future Lot 4 of a forthcoming commercial subdivision to be known as Fort Utah Center being more particularly described as follows:

A part of the Southwest quarter of Section 2, Township 7 South, Range 2 East, Salt Lake Base and Meridian, U.S. Survey in Provo City, Utah County, Utah:

Beginning at a point on the North line of Center Street as widened to 43.00 foot halfwidth being 1729.31 feet South 0°30'29" East along the Section Line to said North line of street and 762.54 feet North 89°53'30" East along said North line of street as widened from the West Quarter Corner of said Section 2; and running thence South 89°53'30" West 217.50 feet along said North line of street as widened; thence North 0°06'30" West 115.53 feet; thence North 89°53'30" East 217.50 feet; thence South 0°06'30" East 115.53 feet to the North Line of Center Street and the point of beginning.

Contains 25,128 square feet  
Or 0.577 acre

SMC143C27.doc

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AND LAND SURVEYORS

## EXHIBIT B

Smith's #143, Provo  
Preliminary Lot 5

May 11, 1999

ENT 66184 BK 5111. PG 797

All of Future Lot 5 of a forthcoming commercial subdivision to be known as Fort Utah Center being more particularly described as follows:

A part of the Southwest quarter of Section 2, Township 7 South, Range 2 East, Salt Lake Base and Meridian, U.S. Survey in Provo City, Utah County, Utah:

Beginning at a point on the North line of Center Street as widened to 43.00 foot halfwidth being 1729.31 feet South 0°30'29" East along the Section Line to said North line of street and 258.64 feet North 89°53'30" East along said North line of street as widened from the West Quarter Corner of said Section 2; and running thence North 0°06'30" West 115.53 feet; thence North 89°53'30" East 189.19 feet; thence South 0°06'30" East 115.53 feet to the North line of Center Street as widened to 43.00 feet halfwidth; thence South 89°53'30" West 189.19 feet along said North Line of Center Street as widened to the point of beginning.

Contains 21,858 square feet  
Or 0.502 acre

SMC143C2.doc

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CONSULTING ENGINEERS  
AND LAND SURVEYORS

Smith's #143, Provo  
Preliminary Lot 6

## EXHIBIT B

May 11, 1999

ENT 66184 BK 5111 PG 798

All of Future Lot 6 of a forthcoming commercial subdivision to be known as Fort Utah Center being more particularly described as follows:

A part of the Southwest quarter of Section 2, Township 7 South, Range 2 East, Salt Lake Base and Meridian, U.S. Survey in Provo City, Utah County, Utah:

Beginning at a point on the North line of Center Street as widened to 43.00 foot halfwidth being 1729.31 feet South 0°30'29" East along the Section Line to said North line of street and 140.44 feet North 89°53'30" East along said North line of street as widened from the West Quarter Corner of said Section 2; and running thence North 0°06'30" West 41.88 feet; thence North 89°53'30" East 33.12 feet; thence North 0°06'30" West 214.72 feet; thence North 89°53'30" East 85.08 feet; thence South 0°06'30" East 256.60 feet to the North Line of said Center Street as widened; thence South 89°53'30" West 118.20 feet along said North Line to the point of beginning.

Contains 23,219 square feet  
Or 0.533 acre

SMC143C3.doc

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CONSULTING ENGINEERS  
AND LAND SURVEYORS

**EXHIBIT B**

Smith's #143, Provo  
Preliminary Lot 7

May 11, 1999

ENT 66184 BK 5111 PG 799

All of Future Lot 7 of a forthcoming commercial subdivision to be known as Fort Utah Center being more particularly described as follows:

A part of the Southwest quarter of Section 2, Township 7 South, Range 2 East, Salt Lake Base and Meridian, U.S. Survey in Provo City, Utah County, Utah:

Beginning at a point on the North line of Center Street as widened to 43.00 foot halfwidth and the East Line of the existing Rupper Investment Property being 1729.31 feet South 0°30'29" East along the Section Line to said North line of street and 39.49 feet North 89°53'30" East along said North line of street as widened from the West Quarter Corner of said Section 2; and running thence North 0°29'31 East 75.97 feet along said East Line of the Rupper Investment Property; thence North 89°53'30" East 133.27 feet; thence South 0°06'30" East 34.09 feet; thence South 89°53'30" West 33.12 feet; thence South 0°06'30" East 41.88 feet to the North Line of Center Street as widened to 43.00 feet halfwidth; thence South 89°53'30" West 100.95 feet along said North Line of Street to the point of beginning.

Contains 8,767 square feet  
Or 0.201 acre

SMC143C4.doc

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## EXHIBIT B

Smith's #143, Provo  
Preliminary Lot 11

May 11, 1999.

ENT 66184 BK 5111 PG 800

All of Future Lot 11 of a forthcoming commercial subdivision to be known as Fort Utah Center being more particularly described as follows:

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 in Provo City, Utah County, Utah:

Beginning at a point on the South Boundary of a Provo City Park 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 South 89°30'29" East 230.06 feet along said Park Boundary; thence South 0°40'29" East 97.46 feet; thence South 89°53'30" West 287.23 feet to the East Line of Geneva Road; thence North 0°07'10" West 100.46 feet along the East Line of Geneva Road to the South Boundary of said Provo City Park; thence South 89°30'29" East 56.25 feet along said South Boundary line of Park to the point of beginning.

Contains 28,377 square feet  
Or 0.651 acre

SMC143C.doc



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## **EXHIBIT "C"**

Smith's #143, Provo  
Smith's Parcel  
Preliminary Lot 1

April 1, 1999

ENT 66184 BK 5111 PG 801

All of Future Lot 1 of a forthcoming commercial subdivision to be known as Fort Utah Center being more particularly described as follows:

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 in Provo City, Utah County, Utah:

Beginning at a point on the South Boundary of a Provo City Park being 1336.75 feet South 0°30'29" East along the Section Line to said South Park boundary and 230.06 feet South 89°30'29" East along said South Boundary from the West Quarter Corner of said Section 2; and running thence along said Park Boundary the following two courses: North 0°40'29" West 212.79 feet; and South 89°00'00" East 572.69 feet; thence South 0°06'30" East 108.13 feet; thence South 89°53'30" West 156.33 feet; thence South 0°06'30" East 45.01 feet; thence South 89°53'30" West 16.00 feet to a point on the East edge of a future Smith's Building; thence South 0°06'30" East 323.18 feet along said future building and said line projection; thence South 89°53'30" West 80.42 feet; thence South 0°06'30" East 115.53 feet to a point on the North Line of Center Street as widened to 43.00 foot halfwidth; thence South 89°53'30" West 97.21 feet along said North Line of Center Street as widened; thence North 0°06'30" West 115.53 feet; thence South 89°53'30" West 189.19 feet; thence North 0°06'30" West 141.07 feet; thence South 89°53'30" West 85.08 feet; thence North 0°06'30" West 24.09 feet; thence South 89°53'30" West 232.51 feet to the East Line of Geneva Road; thence North 07'10" West 12.00 feet along said East Line of Geneva Road; thence North 89°53'30" East 287.23 feet; thence North 0°40'29" West 97.46 feet to the point of beginning.

Contains 223,863 square feet  
Or 5.139 acres

**GREAT BASIN ENGINEERING - South**

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**EXHIBIT "C"**

Smith's #143, Provo  
Preliminary Lot 8

April 1, 1999

ENT 66184 BK 5111 PG 802

All of Future Lot 8 of a forthcoming commercial subdivision to be known as Fort Utah Center being more particularly described as follows:

A part of the Southwest quarter of Section 2 Township 7 South, Range 2 East, Salt Lake Base and Meridian, U.S. Survey in Provo City, Utah County, Utah:

Beginning at a point 1,558.43 feet South 0°30'29" East along the Section Line and 42.47 feet North 89°53'30" East from the West Quarter Corner of said Section 2; and running thence North 89°53'30" East 132.27 feet; thence South 0°06'30" East 94.91 feet; thence South 89°53'30" West 133.27 feet to the East Line of the Rupper Investment Deed; thence North 0°29'31" East 94.91 feet along said East Line of the Rupper Investment Deed to the point of beginning.

Contains 12,601 square feet  
Or 0.289 acres

**GREAT BASIN ENGINEERING - South**

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**EXHIBIT "C"**

Smith's #143, Provo  
Preliminary Lot 9

April 1, 1999

ENT 66184 BK 5111 PG 803

All of future Lot 9 of a forthcoming commercial subdivision to be known Fort Utah Center being more particularly described as follows:

A part of the Southwest quarter of Section 2, Township 7 South, Range 2 East, Salt Lake Base and Meridian, U.S. Survey in Provo City, Utah County, Utah:

Beginning at a point 1448.62 feet South 0°30'29" East along the Section Line and 73.47 feet North 89°53'30" East from the West Quarter Corner of said Section 2; and running thence North 89°53'30" East 102.04 feet; thence South 0°06'30" East 109.81 feet; thence South 89°53'30" West 132.27 feet to the East Line of the Rupper Investment Deed; thence North 0°29'31" East 16.21 feet along the East Line of said Rupper Investment Deed; thence South 89°30'29" East 30.07 feet; thence North 0°06'30" West 93.92 feet to the point of beginning.

Contains 11,689 square feet  
Or 0.268 acre

**GREAT BASIN ENGINEERING - South**

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**EXHIBIT "C"**

Smith's #143, Provo  
Preliminary Lot 10

April 1, 1999

ENT 66184 BK 5111 PG 804

All of Future Lot 10 of a forthcoming commercial subdivision to be known as Fort Utah Center being more particularly described as follows:

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 in Provo City, Utah County, Utah:

Beginning at a point being 1448.62 feet South 0°30'29" East along the Section Line from the West Quarter Corner of said Section 2; and running thence North 89°53'30" East 73.47 feet; thence South 0°06'30" East 93.92 feet; thence North 89°30'29" West 130.46 feet to the East Line of Geneva Road; thence North 0°07'10" West 92.56 feet along said East Line of Geneva Road; thence North 89°53'30" East 57.00 feet to the point of beginning.

Contains 12,165 square feet  
Or 0.279 acre