



W2825710

RECORDING REQUESTED BY: :
SMITH'S FOOD & DRUG CENTERS, INC. :

E# 2825710 PG 1 OF 19
Leann H. Kilts, WEBER COUNTY RECORDER
09-Nov-16 0205 PM FEE \$49.00 DEP DA
REC FOR: FOUNDERS TITLE COMPANY - LAYTON
ELECTRONICALLY RECORDED

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

18-149-0001,0002,0003 >0004
16-020800

RESTRICTIONS AND EASEMENTS AGREEMENT

THIS RESTRICTIONS AND EASEMENTS AGREEMENT ("REA") is made to be effective as of the 9th day of November, 2016, between SMITH'S FOOD & DRUG CENTERS, INC., an Ohio corporation, herein called "Smith's," and CROSSROADS NOGDEN BP, LLC, a Utah limited liability company, herein called "Developer."

RECITALS

A. **Smith's Parcel.** Smith's is the owner of the "Smith's Parcel" as shown on the "Site Plan" attached hereto as Exhibit "A" and which is more particularly described on Exhibit "B" hereto.

B. **Developer Parcel.** Developer is the owner of the "Developer Parcel" as shown on the Site Plan, which is more particularly described on Exhibit "C" hereto.

C. **Purpose.** Smith's and Developer desire that the Smith's Parcel and the Developer Parcel 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 Parcel and the Developer Parcel be subject to certain easements, covenants, conditions and restrictions all as hereinafter set forth.

AGREEMENT

In consideration that the following encumbrances shall be binding upon the parties hereto and shall attach to and run with the Smith's Parcel and the Developer Parcel, and shall be for the benefit of and shall be limitations upon all future owners of the Smith's Parcel and the Developer Parcel 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 Developer do hereby agree as follows:

1. **Definitions.**

a. "Shopping Center." The "**Shopping Center**" shall consist of the Developer Parcel and the Smith's Parcel.

b. "Building Areas; Floor Area." The "**Developer's Shops Area**" and the "**Developer's Pad Area**" (collectively, the "**Building Areas**"), are those portions of the Shopping Center as shown on Exhibit "D" hereto. 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 Parcel; 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 Areas**" are all real property within the Shopping Center except those portions occupied by a building or other structure and the Building Areas; provided, those portions of the Building Areas upon which the Parties are not obligated to construct buildings pursuant to this REA shall be deemed to be Common Areas 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 Areas shall be deemed to be part of the building which they serve or to which they are attached and not part of the Common Areas.

d. "Conversion to Common Areas." Those portions of the Building Areas on each parcel 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 Areas for the uses permitted hereunder and shall be improved, kept and maintained as provided in this REA. An area converted to Common Areas 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.

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 retail stores, salons, 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 3,000 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 Developer Parcel 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 in excess of 2,500 square feet (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 or a "Jiffy Lube" or other lube center shall be permissible); (iv) the renting, leasing, sale or display of any motor vehicle, truck, trailer, recreational vehicle or boats; (v) movie theater; (vi) children's playland, (vii) night club or dance hall, (viii) bowling alley, (ix) skating or roller rink; (x) pool or billiard hall; (xi) health spa or fitness gym (except one specialty gym such as Curves or a Pilates studio shall be permissible if it is less than 5,000 square feet and either located on the Developer's Shops Area and oriented to the west or located on the Developer's Pad Area); (xii) and game room or video arcades (more than four [4] electronic games) or other entertainment facilities.

b. Restrictions on Types of Use. Developer recognizes the needs of Smith's customers to have adequate parking facilities in close proximity to the building upon the Smith's Parcel, 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. Developer further recognizes Smith's interest in not having tenants occupying space in close proximity to the Smith's building 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, Developer covenants and agrees that it shall not permit the use or operation of any portion of the Developer Parcel within three hundred feet (300') of any exterior building wall of Smith's building as is presently constructed for a restaurant (fast-food or sit-down). No portion of the Developer Parcel within two hundred fifty feet (250') of the exterior building wall of the Smith's building shall be used for general or business offices. Without Smith's consent (which consent may

be withheld in Smith's sole discretion), all uses allowed and existing within the Developer Parcel must include within the Developer Parcel upon which such use is located parking to the greater of (i) that required by applicable laws and ordinances or (ii) four and one-half (4½) 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 Developer's neighboring property or the Smith's Parcel).

c. Restrictions on Certain Parcels. During the term of this REA, without Smith's consent (which consent may be withheld in Smith's sole discretion), no portion of the Developer Parcel shall 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 500 square feet of sales Floor Area, including aisle space, primarily devoted to the retail sale of food or alcohol for off-premises consumption) or the retail sale of pharmaceutical drugs; or a retail store primarily devoted to the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption (which for purposes of this REA does not include take-and-bakes, edible food arrangement stores, and other similar uses); (ii) any delicatessen, convenience store or fuel center (which for purposes of this REA does not include a propane refilling center); (iii) any on-premises film development; (iv) the sale of any pharmaceuticals requiring the services of a registered pharmacist; or (v) the operation of a cigarette or smoke shop or any other shop or store the primary business of which is to sell tobacco products.

d. General Restrictions on Use. Neither the Developer Parcel nor the Smith's Parcel nor any portion thereof 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 veterinary clinic, a second hand or pawn shop type of business, or any use in violation of applicable zoning and other governmental laws and regulations; provided, however, that nothing herein shall be deemed, construed or interpreted as restricting or prohibiting gaming operations from being conducted on Developer Parcel or Smith's Parcel, so long as such gaming operation is secondary to the parcel's main use. In addition, and not in limitation of the foregoing, neither the Developer Parcel nor the Smith's Parcel, nor any portion thereof, 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 and groomers), 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. Liquor Sales. Except as otherwise specifically approved in writing by Smith's (which Smith's may withhold in its sole discretion), in no event shall any portion of the Developer Parcel be used for any bar, tavern or other business operation involved in the sale of alcoholic beverages for on-site or off-site consumption; provided, however, that liquor sales for on-premises consumption shall be permitted in conjunction with a restaurant or other eating or food service establishment, in which case, the bar area of the restaurant shall not exceed twenty-five percent (25%) of the restaurant's total Floor Area.

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 the building on the Smith's Parcel, all buildings shall be one story and shall not exceed twenty-four feet (24') in height (with the exception of architectural elements, raised mezzanines for equipment, storage, offices (to which the public is not invited), restrooms or lounges). Developer 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. Alterations to Shopping Center. Developer may maintain, construct, demolish and reconstruct, or remodel buildings and other structures in accordance with the terms of this REA and within the Building Areas as shown on Exhibit "D."

It is acknowledged by the Parties that there is an existing building on the Developer Parcel, which extends onto the Smith's Parcel and that Developer is obligated to remodel or demolish and reconstruct the existing building and develop and improve that portion that is on the Smith's Parcel (the "Developed Parking Lot") as a fully-improved parking lot, free and clear of the existing building. At Developer's sole cost, and subject to Smith's approval of plans and specifications, which shall be pre-approved in writing and in conformance with Smith's standard specifications, Developer shall complete such development within one (1) year following the date of this REA, subject to government approvals, acts of God, or other reasonable delays. Upon execution of this REA, Developer shall provide Smith's with a surety bond, letter of credit, or other form of assurance reasonably acceptable to Smith's guaranteeing performance and completion of the remodel,

construction and improvement obligations that will occur on the Developed Parking Lot within the time period specified herein.

At any time, Developer shall have the right to construct buildings and other structures on the Developer's Pad Area in accordance with the terms of this REA and subject to Smith's standard specifications.

Following completion of construction of any portion of the Shopping Center, the sizes and arrangements of said buildings and common areas related thereto (including parking areas and traffic circulation and flow patterns) will not be changed without Smith's written consent, which may be withheld in Smith's sole discretion. Notwithstanding anything contained anywhere in this REA to the contrary, nothing herein shall be deemed to create an obligation on Developer to commence or complete construction of any building on the Developer's Pad Area or to operate any business for any period of time on the Developer Parcel. The remodel of the existing building, grading and resurfacing of the parking areas on the Developer Parcel, but not the operation of a business on the Development Parcel shall, at all times, be in the sole and absolute discretion of Developer.

h. No Covenant to Construct or Operate. Notwithstanding anything contained anywhere in this REA to the contrary, nothing herein shall be deemed to create an obligation on Smith's to commence or complete construction of any building on the Smith's Parcel, or to operate any business for any period of time on the Smith's Parcel. The construction of a building or operation of a business on the Smith's Parcel shall, at all times, be in the sole and absolute discretion of Smith's.

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 parcel.

b. 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 Parcel or Developer Parcel, 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 parking area of the Smith's Parcel, at a location reasonably determined by Smith's, but not within three hundred (300) feet of the Developer Parcel. 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.

c. Limitations on Use.

(1) Customers. Customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on the Smith's Parcel or the Developer Parcel 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 Parcel.

d. 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 Maintenance.**

a. Maintenance.

Following completion of the improvement of the Common Areas, the parties hereto shall maintain their respective portions of the Common Areas on their respective Parcels in good condition and repair. The maintenance is to include, without limiting the generality of the foregoing, the following:

i. 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.

ii. 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.

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

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

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

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

b. Expenses. The respective owners shall timely pay the maintenance expense of their respective Parcels.

5. **Signs.**

The old existing pylon sign located as shown on the Site Plan shall be owned, managed, reconfigured and maintained by Developer at Developer's discretion, subject to governmental regulations. The new existing pylon sign located as shown on the Site Plan shall be owned, managed, reconfigured and maintained by Smith's at Smith's discretion, subject to governmental regulations. Additional signage on Developer Parcel, other than signage on any building in compliance with all local laws and ordinances, shall require Smith's prior written approval.

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 Parcel, 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 One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate. The insurance company providing such insurance shall be rated at least A-VII, A.M. Best's rating. 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; provided, however, that the party electing to self-insure (or its parent corporation) must have a net worth of at least One Hundred Million Dollars (\$100,000,000). 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. Developer shall deliver to Smith's 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. **Agreement.**

a. Breach. In the event of breach or threatened breach of this REA, only all record owners of the Smith's Parcel as a group, or all the record owners of the Developer Parcel as a group, or Smith's so long as it has an interest as owner or tenant in the Smith's Parcel, or Developer so long as it has an interest in any part of the Developer Parcel, 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.

b. Remedies for Default; Waiver. If the owner of any Parcel 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 Parcel 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 Parcel 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 Parcel 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 Parcels 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.

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

d. 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(d), if any, shall continue in full force and effect until terminated in writing by all fee owners of the Smith's Parcel and the Developer Parcel.

8. **Rights and Obligations of Lenders.**

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 Parcel or the Developer Parcel 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 Parcel and the Developer Parcel by virtue of this REA.

9. **Release from Liability.**

Any person acquiring fee or leasehold title to the Smith's Parcel or the Developer Parcel or any portion thereon shall be bound by this REA only as to the Parcels or portion of the Parcels 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 Parcel(s) or portion of the Parcel(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 10 next below.

10. **Rights of Successors.**

The easements, covenants, conditions, restrictions, benefits, and obligations hereunder shall create mutual benefits and servitudes upon the Smith's Parcel and the Developer Parcel 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.

11. **Waiver of Jury Trial; Governing Law.**

All disputes or claims arising under this Agreement shall be mediated by a mediator to be agreed upon by the parties. If after good faith efforts by the parties mediation is unsuccessful in resolving the dispute(s), then any remaining controversy or claim arising out of or relating to this Agreement or the breach thereof shall be resolved by bench trial in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover all costs, including reasonable attorneys' fees, incurred in enforcing the terms of this Agreement. The parties hereby waive their right to a jury trial of any disputes or claims arising under this Agreement.

The Parties expressly agree that this Assignment is governed by, and shall be interpreted under, and constructed and enforced in accordance with the laws of the State of Utah, that the courts of the State of Utah have exclusive jurisdiction of any claim or cause of action, and that venue for any cause of action hereunder is proper in Weber County, Utah.

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 Parcels 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 Parcels 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 Developer 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.

[Signatures on the following page]

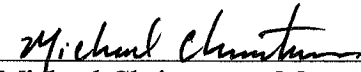
IN WITNESS WHEREOF, the parties hereto have executed this REA the day and year first above written.

SMITH'S FOOD & DRUG CENTERS, INC.,
an Ohio corporation


By: 
Its: VICE PRESIDENT

CROSSROADS NOGDEN BP, LLC
a Utah limited liability company

By: TGC Crossroads Nogden BP, LLC,
a Utah limited liability company
Its: Manager

By: 
Michael Christensen, Manager

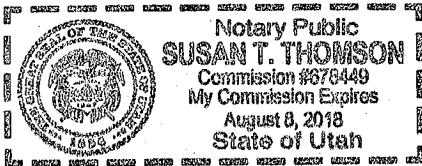
By: Nogden Partners, LLC,
a Utah limited liability company
Its: Manager

By: 
Christopher W. Hatch, Manager

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

Before me, the undersigned authority, on this day personally appeared STEVEN M. SOREENSEN, VICE PRESIDENT of SMITH'S FOOD & DRUG CENTERS, INC., an Ohio 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 7th day of NOVEMBER, 2016



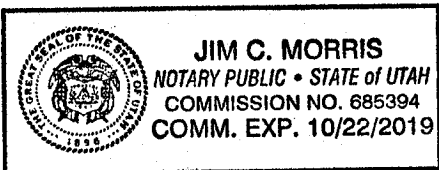
Susan T. Thomson
Notary Public
Notary's name printed:
SUSAN T. THOMSON

My Commission Expires:
8-8-18

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

Before me, the undersigned authority, on this day personally appeared Michael Christensen, as Manager of TGC Crossroads Nogden BP, LLC, and Christopher W. Hatch, as Manager of Nogden Partners, LLC, each the Manager of CROSSROADS NOGDEN BP, LLC, a Utah limited liability company, 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 9 day of NOVEMBER, 2016.



Jim C. Morris
Notary Public
Notary's name printed:
JIM C. MORRIS

My Commission Expires:
10-22-19

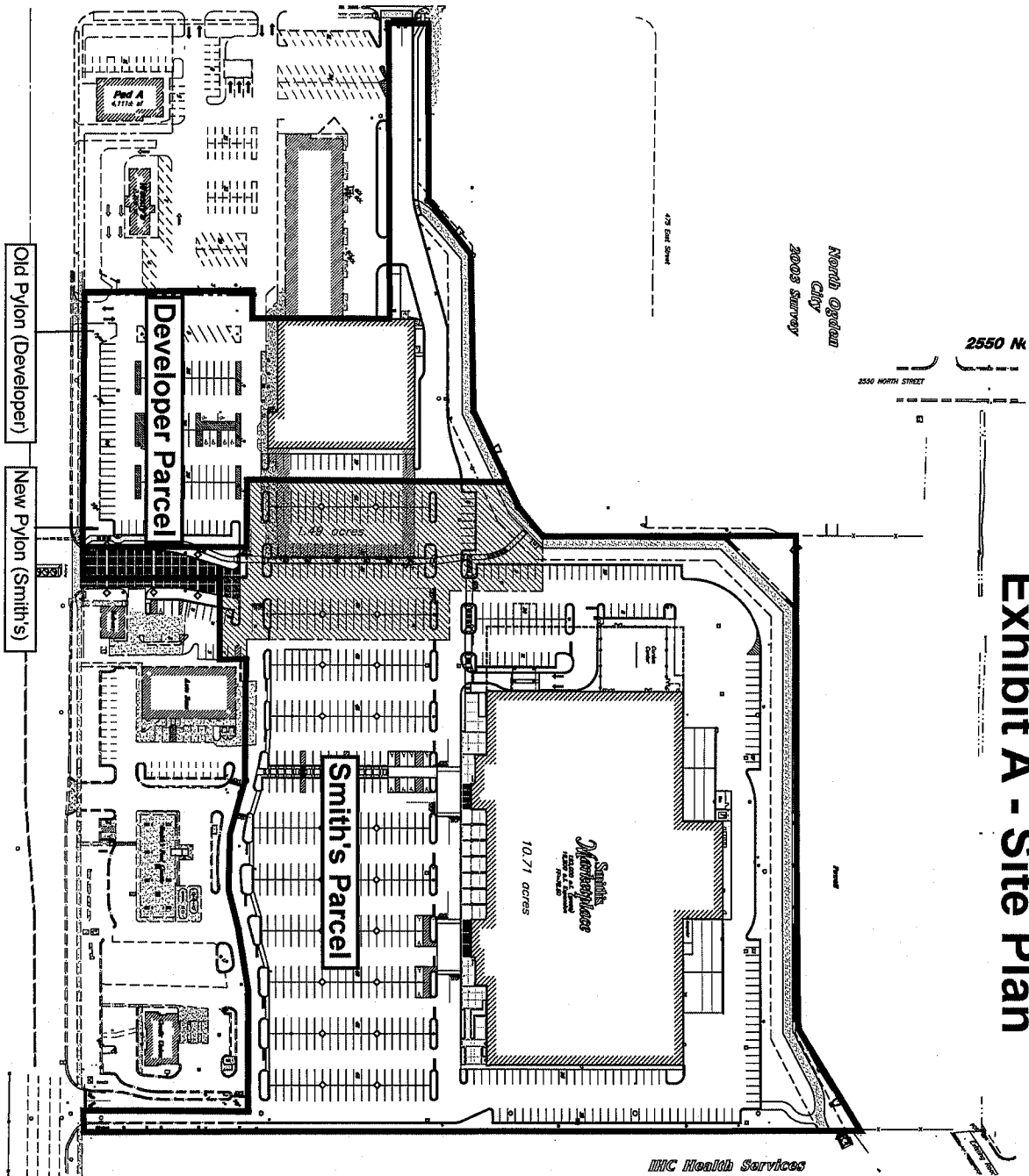
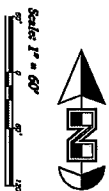


Exhibit A - Site Plan



Smith's
FOOD & DRINK STORES
#279
North Ogden, Utah

| | | | | | | | |
|--|--|--------------------------|----------------------|------------------------------------|-------------------|-----------------------------|-----------------------|
| Overall Site Plan Smith's Marketplace #279 2434 North Washington Blvd North Ogden, Utah | ANDERSON WAHLEN & ASSOCIATES Great Basin Engineering South 2010 North Redwood Road, Salt Lake City, Utah 84119 801.531.6222 - j@andersonwahlen.com | SHEET NO. C1.0 | DATE 18 Feb, 2015 | DRAWN BY Smith's Retail and Dev | CHECKED BY JWA | PROJECT NO. 2825710 - 15 | REV. DATE DESCRIPTION |
| | | | | | | | |

EXHIBIT "B"

SMITH'S PARCEL DESCRIPTION

Lot 4a, North Pointe Center Subdivision, Fourth Amendment, recorded as Entry No.: 2825342, in Book 80, at Page 013 of the Official Records on file with the Weber County Recorder

Contains: 541,862 Square Feet, or 12.439 Acres

Parcel Nos. 18-149-0001, 18-149-0002, 18-149-0003

EXHIBIT "C"

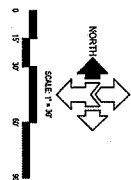
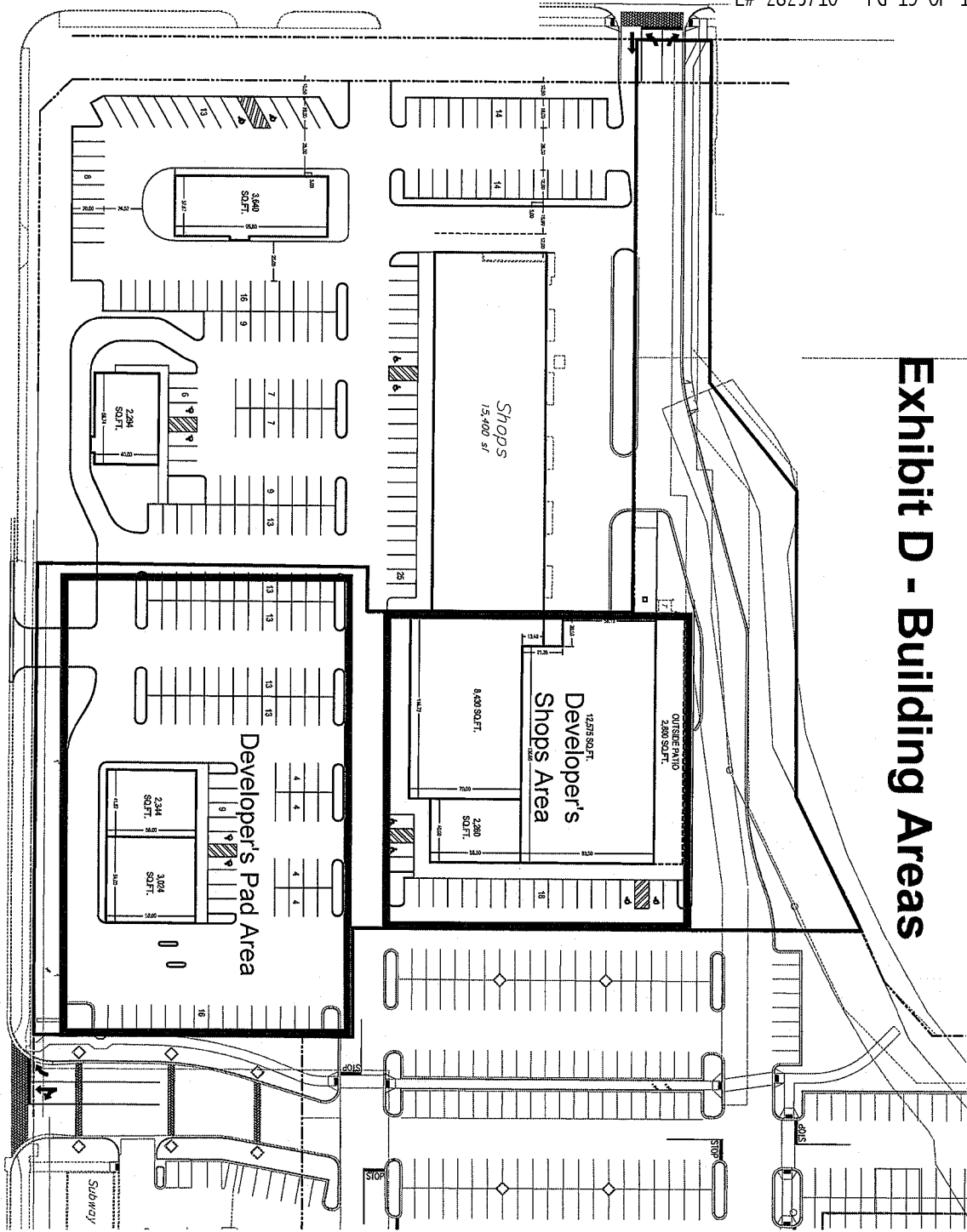
DEVELOPER PARCEL DESCRIPTION

Lot 5a, North Pointe Center Subdivision, Fourth Amendment, recorded as Entry No.: 2825342, in Book 80, at Page 013 of the Official Records on file with the Weber County Recorder

Contains: 139,127 square feet, or 3.194 acres

Parcel No. 18-149-0004

Exhibit D - Building Areas



| REVISIONS | | |
|-----------|------|-------------|
| REV | DATE | DESCRIPTION |
| | | |
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| | | |

PROJECT NO. 2825710
 DRAWN BY: JAD
 CHECKED BY: JAD
 DATE: 8/15/18

CONCEPT

**2434 NORTH WASHINGTON BLVD
 NORTH OGDEN, UTAH**

SECTION INFORMATION

McNEIL ENGINEERING™
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 Structural Engineering • Land Surveying & MDS

SK-04

SKETCH