

WHEN RECORDED, RETURN TO:

SMITH'S FOOD & DRUG CENTERS, INC.
1550 SOUTH REDWOOD ROAD
SALT LAKE CITY, UTAH 84104

6610460
04/03/97 12:27 PM 33.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
REC BY: Z JOHANSON DEPUTY - WI

CROSS EASEMENT AGREEMENT WITH RESTRICTIVE COVENANTS

THIS CROSS EASEMENT AGREEMENT WITH RESTRICTIVE COVENANTS (the "Agreement") is made this 19th day of March, 1997, by and between SMITH'S FOOD & DRUG CENTERS, INC., a Delaware corporation, ("Smith's"), and HOME DEPOT U.S.A., INC., a Delaware corporation ("Home Depot").

RECITALS:

A. Smith's owns in fee simple certain property located in West Valley City, Utah, more fully described on Exhibit "A-1" and shown on the site plan attached hereto as Exhibit "B" (the "Smith's Parcel").

B. Home Depot owns in fee simple certain property contiguous to the Smith's property as described on Exhibit "A-2" and also shown on Exhibit "B" (the "Home Depot Parcel"). The Smith's Parcel and the Home Depot Parcel shall collectively be referred to herein as the "Shopping Center").

C. Home Depot plans to develop the Home Depot Parcel. The parties desire cross-access between the Home Depot Parcel and the Smith's Parcel to facilitate a harmonious Shopping Center on the terms and conditions hereof.

D. Smith's and Home Depot desire to terminate the Cross Easement Agreement with Restrictive Covenants recorded June 29, 1991, as Entry No. 5085141 in Book 6328, at Page 1286 ("1991 Cross-Easement Agreement") which affects the Shopping Center.

NOW, THEREFORE, in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, it is agreed as follows:

1. Cross-Access.

(a) Smith's, for itself, its heirs, successors and assigns, grants and conveys to Home Depot, its heirs, successors and assigns, an easement running with the land for vehicular and pedestrian ingress and egress, but not parking, across and over the drive aisles and curb cuts located from time to time on the Smith's Parcel.

(b) Home Depot, for itself, its heirs, successors and assigns, grants and conveys to Smith's, its heirs, successors and assigns, an easement running with the land for vehicular and pedestrian ingress and egress, but not parking, across and over the drive aisles and curb cuts located from time to time on the Home Depot Parcel.

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Exhibit #429299 Gd
429044 Gd

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(c) Each of Smith's and Home Depot, for itself, its heirs, successors and assigns, grants and conveys to the other party, an easement running with the land for vehicular and pedestrian access, ingress and egress through and over the joint access drives depicted in two (2) places on Exhibit "B" attached hereto. After the construction of the joint access drives, as provided for in Section 5, and as shown on Exhibit "B," no walls, fences, or barriers of any kind shall be constructed or maintained in the joint access drives, or any portion thereof, by any party which shall prevent or impair the use or exercise of the easements granted herein, or the free access and movement, including without limitation, of pedestrians and vehicular traffic between the Smith's Parcel and the Home Depot Parcel. The only exceptions to this provision shall be: (1) for maintenance of the joint access drives as required by this Agreement resulting in temporary obstruction of the joint access drives, which is permitted hereunder so long as it is kept within reasonable requirements of construction work being expeditiously pursued, and (2) for temporary blockage of certain areas deemed necessary by the parties to prevent a public dedication of an easement or access right.

2. Maintenance. Smith's and Home Depot each agree to maintain the drive aisles and curb cuts on their respective Parcels in good condition and repair with asphalt or concrete surfaces at least to the standards of a first-class retail shopping center found in the Salt Lake City area. Each party shall be responsible for the cost of its own work hereunder.

3. Insurance. Each of the parties shall maintain, with respect to its own Parcel, commercial general liability insurance in the amount of at least \$1,000,000 per occurrence, \$2,000,000 aggregate, covering injury or death to persons or damage to property which occurs on such party's Parcel. Each policy shall name the other party as an additional insured. In the event a party has a minimum net worth of at least \$200,000,000, such party may provide the insurance required herein through a program of self-insurance.

4. Indemnification. Each party (the "indemnifying party") agrees to indemnify, defend and hold harmless the other party from and against any claims, causes of action or liabilities arising out of injury to persons or damage to property occurring on the Parcel of the indemnifying party, unless such is caused by the negligence or willful conduct of the indemnified party. For purposes of this Section 4, the Home Depot Parcel shall include the graded access ramps located at the two points shown on Exhibit "B", provided the proximate cause is attributable to the ramp's gradient.

5. Scope. Each Parcel shall always contain sufficient parking for the uses which are conducted thereon and neither party shall rely on any parking which is constructed on the other party's Parcel in obtaining building permits or in seeking variances from the amount of parking spaces otherwise required by governmental entities. It is specifically understood and agreed that the cross access portion of this Agreement is for purposes of ingress and egress only and is not for cross parking. Home Depot shall be responsible for the retaining wall on the common boundary between the Smith's Parcel and the Home Depot Parcel, and shall be responsible for construction of the joint access drives between the Parcels in the locations shown on Exhibit "B". The grading plan for the joint access drives shall be pre-approved in writing by Smith's, and the slope of the access drives shall not exceed six percent (6%) in any given location. Once the Home Depot Parcel is developed to facilitate the functioning of the cross-access herein described, the parties shall only modify or alter the traffic patterns on their respective Parcels as long as the two (2) joint access points are preserved as shown on Exhibit "B". In the initial construction on the Home Depot Parcel, Home Depot shall install fencing or other barricades so as to protect against vehicles or pedestrians falling down the grade break

currently existing along the common boundary between the Smith's Parcel and the Home Depot Parcel.

6. Exclusive Use Provisions: Use Restrictions. Each party recognizes the other party's need for adequate parking facilities for its customers and protecting such parking facilities against unreasonable or undue encroachment which is likely to result from long-term parking by patrons or employees at certain types of business establishments. To safeguard each party's interest in having a clean, safe, quiet and odor free environment as well as having adequate parking for its customers, each party covenants and agrees to strictly comply with the following restrictive use provisions:

(a) Home Depot covenants and agrees that from the date of execution of this Cross-Easement Agreement and continuing for as long as this Agreement is in effect, and as long as Smith's uses the Smith's Parcel as a supermarket/drugstore, no occupant on the Home Depot Parcel shall store, display or sell groceries, meats, produce, frozen foods, dairy products, bakery products (but such shall not preclude a donut shop), or prescription pharmaceuticals, but provided that this restriction shall not prohibit the sale of candies, confections or other foods commonly sold in variety stores or the sale of prepared foods by a fast food restaurant.

(b) Home Depot agrees that no portion of the Home Depot Parcel within one hundred (100') feet of the Home Depot southerly property line shall be used for a bank, on-site film development, or for a store primarily engaged in video rentals.

(c) No sit-down restaurant on the Home Depot Parcel shall be located closer than one hundred (100') feet to the Home Depot southerly property line. No space utilized for business offices shall be located closer than one hundred (100') feet to the Home Depot southerly property line without the prior written consent of Smith's. For purposes of this Agreement, a sit-down restaurant shall not be deemed to include typical fast-food establishments such as a Wendy's, McDonald's or Burger King.

(d) Prohibited Uses. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Shopping Center, which use or operation is obnoxious to, or out of harmony with, the development or operation of retail or wholesale facilities, including but not limited to, the following:

- i) any public or private nuisance;
- ii) any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- iii) any obnoxious odor;
- iv) any excessive quantity of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement, supermarket, or general merchandise store;

- v) any distillation, refining, smelting, agriculture (other than a retail or wholesale garden center or supermarket) or mining operations;
- vi) any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising;
- vii) any drilling for and/or removal of subsurface substances;
- viii) any dumping of garbage or refuse, other than in enclosed receptacles intended for such purpose;
- ix) any cemetery, mortuary or similar service establishment;
- x) any automobile body and fender repair work;
- xi) any skating rink, bowling alley, night club, teenage discotheque, discotheque, dance hall, game room (more than four (4) electronic games), pool room, massage parlor, off-track betting facility, casino, card club or bingo parlor;
- xii) any theater, playhouse, cinema, movie theater, or other entertainment viewing, listening or recording facility (whether live, film, audio/visual or video);
- xiii) any establishment engaged in the business of selling exhibiting or delivering pornographic or obscene materials;
- xiv) any so-called "head shop;"
- xv) any automobile, truck, trailer, or recreational vehicle or boat sales, leasing, storage, repair or display which is not entirely conducted inside of a building;
- xvi) any bar, tavern, comedy club, night club, restaurant or other establishment which sells intoxicating beverages for consumption on the premises other than as incidental to food consumption;
- xvii) any school, training, education or day care facility (other than a pre-school daycare), including but not limited to: beauty schools, barber colleges, diet centers, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided however, this prohibition shall not be applicable to on-site training of employees working at the Shopping Center by an occupant incidental to the conduct of its business at the Shopping Center;
- xviii) any church, synagogue, mosque or other place of worship;
- xix) any hotel, motel or other lodging facility;
- xx) any industrial or manufacturing use (other than such manufacturing use as is conducted in conjunction with Home Depot's home center business);

xxi) any apartment, home or other residential use;

(e) Uses Exclusive to Home Depot. No portion of the Smith's Parcel shall be used by a operator whose principal business includes the sale of any of the following items; paint, wallpaper, carpeting, floor coverings, cabinets, lighting fixtures or plumbing fixtures; provided that the incidental sale of any of the foregoing by a grocery store or supermarket shall not be deemed a violation of this section.

7. Special Rule Concerning Pad 1. Home Depot and Smith's further agree that the building in the area of Building Pad 1 shown on Exhibit "B" shall be constructed so as to allow a straight cross access at the westerly access cross-easement point between the Smith's Parcel and the Home Depot Parcel in the general fashion as depicted on Exhibit "B". Such requirement is designed to facilitate efficient ingress, egress and cross-access at such point and to preserve the visibility of the most northerly curb cut on the Smith's Parcel (which shall benefit both Parcels). Notwithstanding Paragraph 6(c) above, a fast-food type restaurant may occupy such Pad 1 provided no customer door is located on the south side thereof and any drive-through window is designed to avoid vehicular stacking in the cross-drive. Provided the preceding requirements of this Section 7 are met, this prohibition is not intended to preclude a drive-up service window located on the south side of the building located on Building Pad 1.

8. 1991 Cross-Easement Agreement. The 1991 Cross-Easement Agreement is cancelled and terminated in its entirety and shall be null and void and of no further force nor effect whatsoever.

9. Miscellaneous.

(a) Governing Law. This Cross-Easement Agreement is governed in accordance with the laws of the State of Utah.

(b) Entire Agreement. This Cross-Easement Agreement sets forth the entire understanding of the parties with regard to the subject matter hereof and any amendment to this Cross-Easement Agreement must be in writing and signed by all of the owners of the Parcels.

(c) Power to Execute. Each person executing this Cross-Easement Agreement on behalf of each party represents that it is duly empowered so to do and that this Cross-Easement Agreement is binding upon its respective party.

(d) Attorneys' Fees. If a party to this Cross-Easement Agreement files a suit against the other which is in any way connected with this Cross-Easement Agreement, the unsuccessful party 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.

(e) Notices. Any notice or demand provided for herein shall be given in writing by registered or certified United States mail, postage prepaid, and addressed as follows:

SMITH'S: SMITH'S FOOD & DRUG CENTERS, INC.
1550 South Redwood Road
Salt Lake City, Utah 84104
Attention: General Counsel

With copy to: SMITH'S FOOD & DRUG CENTERS, INC.
1550 South Redwood Road
Salt Lake City, Utah 84104
Attention: Director of Real Estate

HOME DEPOT: HOME DEPOT U.S.A., INC.
601 South Placentia
Fullerton, CA 92631
Attn: Real Estate and Legal Dept.

With a copy to: HOME DEPOT U.S.A., INC.
2455 Paces Ferry Road, N.W.
Atlanta, Georgia 30339-4024
Attn: Vice-President Legal

The person and the place to which notices are to be mailed may be changed by either party by notice to the other party. Notices shall be deemed given upon receipt, either by hand delivery or through the mails or through an air courier service.

(f) Paragraph Headings. The paragraph headings of this Cross-Easement Agreement are inserted only for reference and in no way define, limit, or describe the scope or intent of this Cross Easement Agreement nor affect its terms and provisions.

(g) Rights of Successors. All of the rights and obligations of the parties under this Cross-Easement Agreement shall bind and inure to the benefit of their respective heirs, personal representatives, successors and assigns.

(h) Waiver of Breach. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Cross-Easement Agreement shall be deemed to have been waived by either party unless such waiver be in writing by such party.

(i) Partial Invalidity. If any term, covenant or condition of this Cross-Easement Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Cross-Easement Agreement, or the application of such terms, covenant or condition to persons or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Cross-Easement Agreement shall be valid and be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have entered into this Cross-Easement Agreement this 19 of March, 1997.

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

By: [Signature]
Its: Senior Vice President

HOME DEPOT U.S.A., INC.,
a Delaware corporation

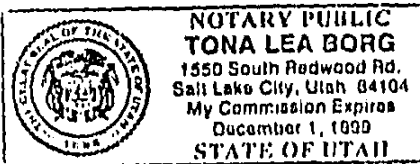
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By: [Signature]
Its: Senior Corporate Counsel

U:\WESTVAL\HOMEDEP.REA

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

Before me, the undersigned authority, on this 19th day of March, 1997, personally appeared Wade S. Williams, Senior 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.

Witness my hand and Official Seal this 19th day of March, 1997.



(Seal)

[Signature]
Signature

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STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On March 6, 1997, before me, PHYLLIS A. RUOFF, a Notary Public in and for said state, personally appeared DANIEL R. HATCH, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within document, and proved to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



SIGNATURE OF NOTARY PUBLIC

(SEAL)

SK 7635 PG 0836

EXHIBIT "A-1"

SMITH'S LOT 1:

BEGINNING at a point being 40.00 feet perpendicularly distant Easterly from the Centerline of 4000 West Street, said point being more particularly described as being located North $0^{\circ}03'40''$ East 660.00 feet and North $89^{\circ}58'12''$ East 40.00 feet from the Southwest Corner of Section 5, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence North $89^{\circ}58'12''$ East 620.00 feet; thence South $0^{\circ}03'40''$ West 607.00 feet to the North line of 4700 South Street, thence South $89^{\circ}58'12''$ West 84.76 feet along said North line; thence North $0^{\circ}03'40''$ East 210.37 feet to the Southeast Corner of the existing building; thence North $89^{\circ}56'20''$ West 133.14 feet along the South line of said building; thence South $0^{\circ}03'40''$ West 210.59 feet to the North line of 4700 South Street, thence South $89^{\circ}58'12''$ West 239.10 feet along said North line; thence North $0^{\circ}03'40''$ East 170.00 feet; thence South $89^{\circ}58'12''$ West 163.00 feet to a point being 40.00 feet perpendicularly distant Easterly from the Centerline of 4000 West Street; thence North $0^{\circ}03'40''$ East 437.00 feet to the point of beginning.

Contains 7.360 Acres

SMITH'S LOT 2:

BEGINNING at a point being 40.00 feet perpendicularly distant Easterly from the Centerline of 4000 West Street; said point being North $0^{\circ}03'40''$ East 660.00 feet and North $89^{\circ}58'12''$ East 40.00 feet from the Southwest Corner of Section 5, Township 2 South, Range 1 West, Salt Lake Base & Meridian; and running thence North $89^{\circ}58'12''$ East 435.20 feet; thence North $0^{\circ}03'40''$ East 81.00 feet; thence South $89^{\circ}58'12''$ West 435.20 feet to a point being 40.00 feet perpendicularly distant Easterly from the Centerline of 4000 West Street; thence South $0^{\circ}03'40''$ West 81.00 feet to the point of beginning.

Contains 0.809 Acre

Exhibit "A-2"

OVERALL SURVEY DESCRIPTION

BEGINNING AT A POINT ON THE EAST BOUNDARY LINE OF 4000 WEST STREET, SAID POINT BEING NORTH 00°03'40" EAST 680.00 FEET ALONG THE SECTION LINE AND NORTH 89°58'12" EAST 33.00 FEET FROM THE SOUTHWEST CORNER OF SECTION 5, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE MERIDIAN, AND RUNNING THENCE NORTH 00°03'40" EAST ALONG SAID EAST BOUNDARY LINE 685.189 FEET; THENCE NORTH 89°58'07" EAST ALONG THE SOUTH BOUNDARY LINE OF CROWN SUBDIVISION NO. 3 441.482 FEET; THENCE SOUTH 00°00'02" EAST 6.705 FEET; THENCE EAST 514.800 FEET; THENCE SOUTH 859.482 FEET; THENCE SOUTH 89°58'12" WEST 514.80 FEET; THENCE NORTH 00°03'40" EAST 81.000 FEET; THENCE SOUTH 89°58'12" WEST 435.20 FEET; THENCE SOUTH 00°03'40" WEST 31.00 FEET; THENCE SOUTH 89°58'12" WEST 7.000 FEET TO THE POINT OF BEGINNING.

CONTAINS 598,289 SQ. FT. OR 13.725 ACRES

EX 7635PG0838

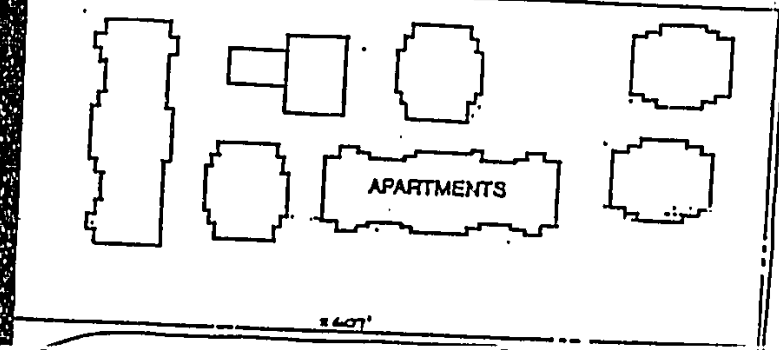
SUMMARY

HOME DEPOT PARCEL AREA	9.89 AC
RETAIL 'A' PARCEL AREA	2.08 AC
REST. PAD PARCEL AREA	1.70 AC
TOTAL PARCEL AREA	13.67 AC
HOME DEPOT:	105,700 SF
GARDEN CENTER	22,493 SF
	128,193 SF
RETAIL A:	24,000 SF
REST. PAD II:	3,035 SF
TOTAL:	155,230 SF

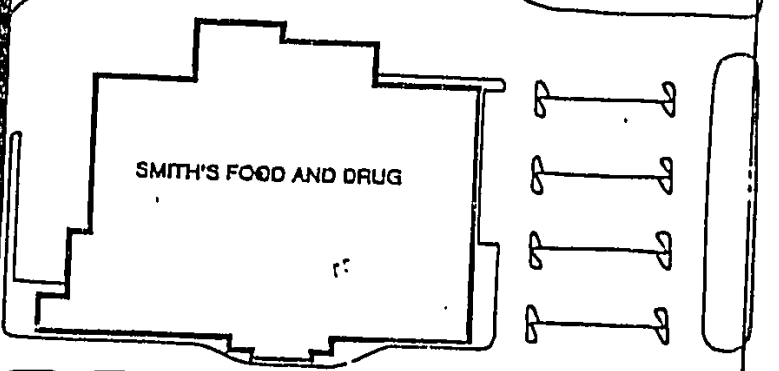
PARKING

PARKING REQUIRED BY CITY:	
HOME DEPOT @ 1/300:	427 CARS
RETAIL 'A' @ 1/250:	96 CARS
REST. PAD 'II' @ 1/100:	30 CARS
	553 CARS
PARKING PROVIDED:	661 CARS

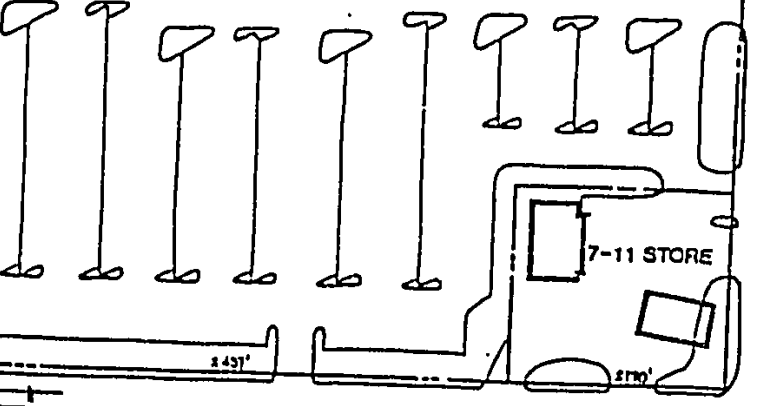
WEST VALLEY ST



2607'



SMITH'S FOOD AND DRUG



7-11 STORE

2437'

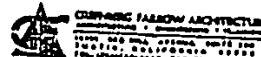
2170'



4700 S. STREET

PROPOSED STORE LOCATION FOR
THE HOME DEPOT U.S.A., INC

WEST VALLEY CITY, UTAH
4000 W. STREET & 4700 S. STREET



03/10/97

JOB NO. 95197.02

U-270

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