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NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: RDJ, DEPUTY - WI 20 P.

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

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

SPACE ABOVE FOR RECORDER'S USE

Tax Serial No.: 21-05-351-020
21-05-351-023

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS

This Declaration of Covenants, Conditions and Restrictions and Grant of Easements (hereinafter referred to as the "**Declaration**"), is made and executed as of the 1st day of December, 2000, by **SMITH'S FOOD & DRUG CENTERS, INC.**, a Delaware corporation (hereinafter referred to as "**Smith's**").

RECITALS

A. Description of Subject Land. Smith's is the Owner of the "**Subject Land**" as hereinafter defined in Section 1(b), which Subject Land is located in Salt Lake County, State of Utah, and more particularly described in Exhibit "A" attached hereto.

B. Improvement of Subject Land. Smith's has heretofore improved the Subject Land, and hereafter intends to cause the Subject Land to be further improved, all as a "**Shopping Center**" in one or more phases under a general plan or scheme of development, and for that purpose Smith's intends to hereby create and establish certain easements, restrictions, and obligations with respect to the Subject Land.

C. Buildings on Subject Land. Smith's and/or third parties have erected or intend to erect various buildings including, but not limited to, a Smith's Food & Drug Center located on the Building Area designated on the site plan ("**Site Plan**") attached hereto as Exhibit "B", and other structures or buildings upon certain portions of the Subject Land, and Smith's reserves the right to designate and develop additional parcels, structures or buildings on the Subject Land.

D. Immediately following the recordation of this Declaration in Salt Lake County, Utah, Smith's will deed to WCFB, L.C., a Utah limited liability company (hereinafter

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referred to as the "**Shops Parcel Owner**"), the portion of the Subject Land that is described on Exhibit "C" attached hereto (hereinafter referred to as the "**Shops Parcel**"). The Shops Parcel will constitute a "**Parcel**" as defined in Section 1(i) of this Declaration. The approximate location of the "**Building Area**" associated with the Shops Parcel is shown as "**Proposed Shops**" on the Site Plan attached as Exhibit "B", with the actual "**Building Area**" on the Shops Parcel being the area upon which a building is actually constructed in accordance with this Declaration. The Subject Land less the Shops Parcel also will constitute a "**Parcel**" as defined in Section 1(i), and is hereafter referred to as the "**Smith's Parcel**." The Smith's Parcel may be further divided into additional parcels at Smith's discretion.

E. **Common Areas.** There are currently or will be certain roadways, sidewalks, driveways, parking areas, Building Areas, and utility improvements and facilities, including grading, surfacing, lighting, striping, planting, installation of sewer, water, electrical, and gas lines, in, under, over, and upon the Subject Land and Smith's intends for such purposes to set aside certain portions of the Subject Land referred to and defined hereinafter in Section 1(g) as the Common Areas.

F. **Easement and Maintenance Obligations.** Smith's desires to establish and create for the benefit of each Parcel certain easements and rights-of-way for access over and upon the Common Areas, as well as obligations of maintenance, repair, and replacement of common facilities as the same are or will be included within the Common Areas.

G. **Intent and Purpose.** Smith's intends by recording this Declaration, together with the exhibits attached hereto, to subject the Subject Land and all improvements situated or to be situated thereon to the provisions of this Declaration and to impose upon the Subject Land mutually beneficial restrictions for a general plan of improvements and operation for the benefit of the respective Owners of the Parcels.

NOW, THEREFORE, Smith's, as the Owner of the Subject Land, for itself and its legal representatives, successors, and assigns hereby declares as follows:

1. **Definitions.**

a. **Defined Terms.** Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Section.

b. "Subject Land" shall mean the land consisting of approximately 8 acres as shown on the Site Plan. The Subject Land is located in the County of Salt Lake, State of Utah, and is legally described in Exhibit "A" which is attached hereto and by this reference incorporated herein.

c. "Shopping Center" shall mean all Parcels of land contained in the Subject Land and contains all Building Areas and Common Areas, collectively. The Shopping Center shall consist of one or more phases. The first development phase has partially occurred, and consists of the construction of a supermarket on the Smith's Parcel ("**Smith's Building**"). The Smith's Building is shown on the Site Plan. The subsequent development phases, if they occur,

shall consist of the development of the Shops Parcel, future improvement construction at Smith's discretion and the creation of additional Parcels and associated improvements.

d. "Building Areas" shall mean those areas upon which buildings are actually constructed.

e. "Site Plan" shall mean the Site Plan attached hereto as Exhibit "B" and by this reference incorporated herein, as it may be amended from time to time by the parties as set forth in this Declaration.

f. "Building" shall mean the structure or structures to be constructed within a Building Area.

g. "Common Areas" shall mean all real property within the Shopping Center except the Building Areas. Canopies which are attached to Buildings but which extend over Common Area shall be deemed to be part of the Building to which attached and not part of the Common Area.

h. "Owner" shall mean the record owner (in the office of the Salt Lake County Recorder) of the fee title to a Parcel. In the event there is more than one Owner of a Parcel, the liability of each such Owner for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee under a mortgage or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

i. "Parcel" shall mean the Smith's Parcel, and any further divisions thereof, or the Shops Parcel, as the context may require.

j. "Floor Area" shall be defined as the square foot floor area within exterior walls of any Building, excluding any mezzanine space and any equipment, storage, office, restroom, lounge or other such space; exterior trash enclosures; enclosed or 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 up to a distance of twenty-five (25) feet over or outside of the Building 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.

k. "Smith's," in the event the original Smith's Parcel is further divided, shall mean the Owner of the Parcel on which the Smith's Building is located.

l. "Smith's Parcel," in the event the original Smith's Parcel is further divided, shall mean the Parcel on which the Smith's Building is located.

2. **Buildings.**

a. **General Use.** The Buildings shall be commercial buildings of the type usually found in attractive and well-kept retail shopping centers in the greater metropolitan area in which the Shopping Center is located. The Owners or tenants occupying the Buildings shall be primarily retail and service businesses of the type normally associated with retail shopping centers in such metropolitan area.

b. **Restrictions on Types of Uses.** As used in the following provisions, each of the following terms shall have the indicated meaning:

- (i) "Table Service Restaurant" shall mean a sit-down restaurant that provides both tables and table service for its customers or where customers order from a menu located at the tables. Examples of a Table Service Restaurant are Chili's, Red Lobster, Applebees, Training Table, and Marie Callender's.
- (ii) "Fast Food Restaurant" shall mean a restaurant that provides counter-order service for its customers, that offers either just a take-out option or both a take-out and an in-restaurant eating option, and that does not provide table service for its customers (whether or not tables are provided). Examples of a Fast Food Restaurant are Subway, Hogi Yogi, TCBY Yogurt, McDonald's, Baskin-Robbins and Panda Express.
- (iii) "Permissible Fast Food Restaurant" shall mean a Fast Food Restaurant that occupies no more than 2,750 square feet of Floor Area.

To safeguard Smith's interest in having a clean, quiet and proper environment and in having adequate parking for its customers, no Owner shall permit the use or operation of any portion of any Parcel within four hundred feet (400') of any exterior building wall of Smith's Building for a restaurant (whether a Table Service Restaurant or a Fast Food Restaurant) without Smith's prior written consent, which may be withheld in Smith's sole and absolute discretion (except that no such consent shall be required for up to two Permissible Fast Food Restaurants on the Shops Parcel). No portion of any Parcel within two hundred fifty feet (250') of the exterior wall of the Smith's Building shall be used for general or business offices. No portion of the Shopping Center shall be used for a bar or lounge, an automobile repair shop, a massage parlor, a book store specializing in so-called "adult" or pornographic materials, the renting, leasing, sale or display of motor vehicles or trailers. No portion of the Shops Parcel, or additional Parcels created by Smith's shall be used for a movie theater, night club, dance hall, bowling alley, roller rink, veterinary clinic, pool hall, health spa, or game room (with more than four (4) electronic games). In addition, during the term of this Declaration, no portion of any Parcel except the Smith's Parcel shall be used or permitted to be used for a supermarket or grocery store, or for the sale for off-premises consumption of groceries, meats, produce, alcoholic beverages, bakery products, prescription pharmaceuticals, or quick film development, or any of them (other than incidental sales

for off-premises consumption made by a business primarily engaged in sales for on-premises consumption).

Unless otherwise approved in writing by Smith's, all uses allowed and existing within the Shopping Center must include, within the Parcel upon which such use is located, parking equal to the greater of (i) that required by applicable governmental authorities, or (ii) five (5) spaces per thousand (1,000) square feet of Floor Area for a non-restaurant use or ten (10) spaces per thousand (1,000) square feet of Floor Area for a restaurant use, (except that only five (5) spaces per 1,000 square feet of Floor Area shall be required as regards each Permissible Fast Food Restaurant on the Shops Parcel). Notwithstanding the foregoing, in the event Smith's creates additional Parcels, the parking requirements as stated in this Section 2.b. must be satisfied without taking into consideration the parking contained within the Shops Parcel.

c. **Building Restriction Area.** No Building shall be constructed or located anywhere within the "Building Restriction Area" shown and identified on the Site Plan, and no part of that Building Restriction Area may be or become Building Area.

d. **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. Smith's is a national grocery and drug supermarket retailer and therefore the architectural theme of its store is related to operational and marketing 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 reserves the sole right to make changes 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. All construction, alteration, and repair work relative to the Shopping Center shall be accomplished in an expeditious manner, in compliance with all laws, rules, regulations, orders, permits, approvals, and licenses of governmental authorities having jurisdiction and shall be subject to Smith's prior approval. Notwithstanding the foregoing, however, Smith's approval shall not be required for work on the interior of a Building, for routine maintenance or repair, or for work that does not materially affect the layout or usability of the Common Area or the exterior appearance of the Building located on the Shops Parcel. In any case where the approval of Smith's is required, it shall not be unreasonably withheld, conditioned, or delayed. The Owner undertaking such work shall take all necessary measures to reasonably minimize any disruption or inconvenience caused by such work. Such work shall be accomplished in such a manner as to reasonably minimize any damage or adverse effect which might be caused by such work to any other party or to any other Parcel in the Shopping Center. The Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work and shall restore the Common Areas located on the affected portion of the Parcel upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, the Owner undertaking such work shall timely pay all costs and expenses associated therewith and shall indemnify and hold all other Owners harmless from all damages, losses, claims, or expenses, including reasonable attorneys' fees, attributable to the performance of such work. Except in cases of emergency, all such work (except work which under the foregoing provisions need not be approved by Smith's) shall be undertaken only after giving Smith's thirty (30) days' prior written

notice of the work to be undertaken, the scope and nature of the work, the expected duration of the work, and the area in which the work is to be performed.

Except for the Smith's Building, in no event shall any Building in the Shopping Center be of a height in excess of eighteen feet (18') unless approved by Smith's in writing, which approval shall not be unreasonably withheld, conditioned or delayed. For the purposes of this subparagraph (d), height shall be measured from finished grade of floor to the highest point of the Building. Except for the Smith's Building, no Building located in the Shopping Center shall exceed a height of one (1) story, plus mezzanine.

The Building Area on the Shops Parcel may be developed into not more than one (1) Building, which shall not exceed Eleven Thousand Four Hundred (11,400) square feet in Floor Area. Notwithstanding any other provision of this Declaration, the exact location of the Building located on the Shops Parcel shall be subject to the approval of Smith's (which said approval shall not be unreasonably withheld, conditioned or delayed). Smith's agrees that: (i) it has approved the elevations and height of the Building to be constructed on the Shops Parcel; and (ii) the Building located on the Shops Parcel may be located anywhere within the area shown as "Proposed Shops" on the Site Plan.

e. Footing Easements. In the event it is appropriate or practical to have building wall footings encroach from one Parcel onto the other Parcel, the Owner onto whose Parcel the footings encroach shall cooperate in granting an encroachment permit or easement to the Owner who desires to have its Building wall footings so encroach.

f. Fire Protection. Smith's Building has been constructed to meet a Type II (Uniform Commercial Building Code) non-rated building and is sprinklered. Any Building(s) constructed in the Shopping Center shall be constructed and situated with necessary setbacks in a manner which will preserve Smith's Building rating and shall be maintained in a manner to preserve the type and sprinklered insurance rate obtained on Smith's Building. The Owners of other Parcels in the Shopping Center shall provide no-build easements or yard agreements as may be required by the appropriate governmental agencies necessary for Smith's to comply with its obligation as set forth herein. None of the provisions of this Section 2(f) shall apply to the Shops Parcel, so long as the Building constructed on the Shops Parcel is at least sixty (60) feet away from the Smith's Building.

3. Common Areas Use.

a. Grant of Easements. Smith's hereby declares for the benefit of each of the respective Parcels within the Shopping Center and Smith's hereby grants to each and every Owner, for the benefit of such Owner and its successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees, and invitees permanent, mutual, reciprocal, and non-exclusive easements and rights to use the Common Areas for the purposes for which they are provided and intended, including, but not limited to, ingress, egress, access, and parking for vehicular or pedestrian traffic, upon or across the parking areas, entrances, exits, driveways, walks, or service drives located within the Common Areas, and also including the use of any storm

drainage and retention facilities, landscaping, public facilities, directional signs and other areas intended for common use.

b. Use. Subject to easements currently 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 in and occupants of the Buildings constructed on the Building Areas defined above. Seasonal sales and promotions conducted within the Common Areas shall be permissible provided they are confined to the Parcel owned by the Owner or occupied by the lessee conducting the sale or promotion.

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 Parcels; provided, however, reasonable traffic controls approved in advance by Smith's 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 the foregoing provisions shall be: (1) for changes to the Building Areas and Common Areas permitted by this Declaration, (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, and (3) for temporary blockage of certain areas deemed necessary by the Owners 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 that is at least 250 feet away from the Shops Parcel. This Recycle Center will not be affixed to the parking lot, will be fully moveable, and will consist of a trailer and approximately four (4) 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, and that the Recycle Center and the area surrounding it will be kept reasonably attractive and reasonably refuse- and odor free. The Recycle Center shall be deemed to be consistent with the rights and easements described herein.

d. Limitations on Use.

(i) Customers. Customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on a Parcel with the occupants thereof.

(ii) Employees. Employees shall not be permitted to park on the Common Areas, except in areas designated as "employee parking areas." The Owners may from time to time mutually designate and approve "employee parking areas"; however, if the Owners do not, each Owner may designate an "employee parking area" on its own Parcel.

(iii) 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 access and 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 Declaration shall not be charged any fee for such use.

e. Utility and Service Easements. The Owners shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, water lines, other utility lines, and other proper services necessary for the orderly development or operation of the Common Areas and/or the Buildings to be erected upon any Building Area.

f. Signage. Subject to its obtaining Smith's and any required governmental approvals, the Owner of the Shops Parcel shall have the right to place and maintain within the Common Areas on the Shops Parcel, at a location near 40th West Street, a monument sign advertising one or more of the businesses conducted in the Building on the Shops Parcel. Monument signage which conforms with the requirements shown in Exhibit "D" is hereby approved by Smith's.

It is recognized that there are currently two (2) pylon signs in the Shopping Center, both of which are within the Common Areas on the Smith's Parcel. One of those pylon signs is adjacent to 47th South Street and the other is adjacent to 40th West Street. At Smith's sole discretion and subject to obtaining any required governmental approvals, the Owner of the Shops Parcel shall have the right to one designation below the Smith's signage on the 47th South Street pylon sign (or on any modification or replacement of such pylon sign) for the placement of signage advertising one of the businesses conducted in the Building on the Shops Parcel. Prior to the placement of any such signage, the Owner of the Shops Parcel shall obtain Smith's written approval of the appearance of the signage. The Owner of the Shops Parcel shall pay all of the costs associated with the signage placed by it. In addition, prior to the placement of its signage on the pylon sign, the Owner of the Shops Parcel shall pay to Smith's a pro-rata share of the original cost of construction of such pylon sign, based upon the ratio between the surface area of the fascia to be used on such pylon by the Shops Parcel Owner and the total surface area of all fascia on such pylon.

The Owner of the Shops Parcel shall be responsible for all costs of maintaining its designation together with a pro-rata share (based upon the above-stated ratio) of all utilities and maintenance costs not specifically related to Smith's designation.

4. Common Areas: Development, Maintenance and Taxes.

a. Development Timing. When any Building is constructed on a Parcel, the Common Areas on that Parcel shall be developed in accordance with the Site Plan attached hereto as Exhibit "B" subject to modifications as contemplated and provided for in Section 2(d) herein, all at the expense of the Owner of said Parcel.

b. Maintenance.

(i) Standards. Following completion of the improvement of the Common Areas located on a Parcel, the Owner of the Parcel shall maintain the Common Areas on it 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) At reasonable intervals, 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 reasonably 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 any 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.

(ii) Expenses. The respective Owners shall timely pay the maintenance expense of their respective Parcels.

(iii) By Designee. Subject to the revocable mutual agreement of the Owners, any Owner or a third party may be selected to maintain the Common Areas in the Shopping Center in the manner as above outlined. Said party may receive for such services a fee that is mutually acceptable to all Owners to cover supervision, management, accounting and similar costs. The share of such fee to be paid by each Owner shall be pro-rata based upon a Floor Area to Floor Area ratio.

(iv) Taxes. Each Owner shall 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 Parcel owned by it.

5. Indemnification/Insurance.

a. Indemnification. Each Owner shall indemnify, defend and save the other Owner harmless from any and all liability, damage, causes of action, suits, claims, judgments, or expenses, including attorney's fees, arising from injury to person or property that occurs on the Parcel owned by the indemnifying Owner, except if caused by the act or neglect of the Owner seeking indemnification or of that Owner's lessees, licensees, employees, agents, representatives or contractors.

b. Insurance. Each Owner shall provide commercial general liability insurance covering its own Parcel and affording protection to itself and the other Owner and naming the other Owner as an "additional insured" under the policy or policies, for a combined bodily injury and property damage limit of liability of not less than \$2,000,000 per occurrence, \$3,000,000 aggregate. In addition, the policy shall name Home Depot U.S.A., Inc. as an additional insured, pursuant to the "Easement" referred to in Section 17. Such insurance may be a part of blanket liability coverage carried by an Owner so long as such blanket policy does not reduce the limits or diminish the coverage required herein as regards the Parcel owned by such Owner.

c. Self Insurance. Each Owner 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, but only so long as the Owner so self-insuring shall have a net worth of at least Two Hundred Million Dollars (\$200,000,000), or if such self-insurance plan is furnished through a related entity of the Owner, the entity furnishing such self-insurance shall have a net worth of at least Two Hundred Million Dollars (\$200,000,000). Any Owner providing self-insurance shall, upon request, provide the other Owner with a description of such self-insurance program, financial statements evidencing the required net worth, and evidence of any partial insurance coverage which may be supplementing any plan of partial self-insurance. Any deductible under any policy of insurance in excess of Twenty-Five Thousand Dollars (\$25,000) shall be deemed self-insurance.

d. Other Insurance Matters. All policies of insurance required by this Declaration shall insure the performance of the Owner insured thereunder of the indemnity requirements contained in this Section shall name the other Owner as 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 of the effective date of any material reduction in the amounts or scope of coverage. Each Owner shall deliver to the other Owner a certificate or statement from the Owner's insurance company or insurance agent evidencing the existence of the insurance coverage to the limits herein required. Each Owner shall promptly notify the other Owner of any asserted claim with respect to which the notifying Owner is or may be indemnified against hereunder and shall deliver to the other Owner copies of process and pleadings.

6. Eminent Domain.

a. Owner's Right to Award. Nothing herein shall be construed to give any Owner an interest in any award or payment made to another Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting the other Owner's Parcel or give the

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public or any government any rights in the Smith's Parcel or any other Parcels. In the event of any exercise of eminent domain or transfer in lieu thereof affecting any part of the Common Areas located on any Parcel, 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 Owner 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. An Owner shall have the right to seek and obtain from the condemning authority compensation for severance damages in an appropriate case (as, for example, where the Owner's access to its own Parcel is eliminated or materially impaired as a result of the condemnation of Common Areas located beyond the Parcel owned by such Owner).

c. Tenant's Claim. Nothing in this Section 6 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 condemnation 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 owned by such Owner as nearly as practicable to the condition of same immediately prior to such condemnation or transfer, but shall be required to do so only to the extent such repair or restoration can be accomplished with the proceeds of the condemnation award paid to such Owner

e. Casualty. In the event of destruction or damage from fire or any other casualty to any Buildings or improvements erected on the Subject Land, the Owner having its Building or improvements destroyed or damaged, at its sole cost and expense, shall at its option within six (6) months of the date of such fire or casualty either: (i) commence its efforts to rebuild or repair its Building or other improvements; or (ii) raze the damaged Building or improvements and pave the former locations thereof. If any Owner elects to rebuild or repair, the Buildings or improvements shall be at least substantially the same size and in as good a condition as they were in immediately preceding such fire or casualty and shall be completed within one (1) year of the date of such fire or casualty. If the Owner elects to raze the Building or improvements destroyed or damaged, the site thereof shall be leveled and paved so that the affected area conforms substantially to the Common Areas surrounding it. Anything in this subparagraph notwithstanding, if such event shall destroy five percent (5%) or less of the ground floor area of such Building or structure, then the Owner of such Building or structure shall have no option to raze the Building or improvement and shall rebuild or repair the same in accordance with this subparagraph.

7. Enforcement and Duration.

a. Right to Enforce. The right to enforce the terms, covenants, and easements contained herein shall belong only to the Owners and the occupant of the Smith's Parcel.

b. Modification and Cancellation. This Declaration (including Exhibit "B") may be modified or cancelled only by a document recorded in Salt Lake County, Utah that includes the written consent of: (i) the Owner of each Parcel; and (ii) each beneficiary or mortgagee under each recorded deed of trust or mortgage affecting each of the Parcels. A modification or cancellation consented to by all of the foregoing parties shall be effective and enforceable against each purchaser, lender, mortgagee, lessee, assignee, grantee, sublessee or other party having any interest in any of the Parcels.

c. Breach. In the event of litigation because of the violation or threatened violation of this Declaration or to enforce or interpret this Declaration, the unsuccessful party in the 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.

d. Remedies for Default; Waiver. If the Owner of any Parcel shall, during the term of this Declaration, 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 the Owner of another Parcel or from the party to whom such other Parcel Owner's authority has been delegated, stating with particularity the nature and extent of such default, the defaulting Owner has neither cured nor has begun and is then diligently pursuing efforts to cure such default, then any other Owner 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 Declaration on behalf of such defaulting Owner and be reimbursed by such defaulting Owner for the cost thereof with interest at the rate of ten percent (10%). Any such claim for reimbursement, together with interest as aforesaid, shall be a secured claim and a lien against the Parcel owned by the defaulting Owner shall attach and take effect upon recordation of a property claim of lien by the claimant in the office of the county recorder of Salt Lake County. 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 name of the Owner of the Parcel against which the lien is claimed; (4) a description of the Parcel against which the lien is claimed; (5) a description of the expenditure(s) 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 Declaration, 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 provided to the Owner against whom the lien is claimed, either by personal delivery or by mailing (first class, certified, with return receipt requested) to the defaulting Owner, at the address for mailing of tax statements with respect to the Parcel 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. Such lien shall be subordinate to any recorded mortgage or deed of trust affecting the Parcel concerned at the time of recordation of the claim of lien, and shall also be subordinate to the rights of each tenant or lessee under each bona fide lease (whether or not recorded) which at the time of recordation of the claim of lien may affect the Parcel involved. The failure of the Owner of any of the Parcels subject to this Declaration 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 violation of the same or other provisions hereof.

e. Non-Merger. This Declaration shall not be subject to the doctrine of merger, and shall be and continue to be effective in accordance with its terms, even though all of the Parcels for some period may be or may come to be owned by the same Owner.

f. Duration. Unless otherwise cancelled and terminated, this Declaration and all the easements, rights and obligations provided for herein shall automatically terminate and be of no further force or effect fifty-five (55) years after the recordation of this Declaration in Salt Lake County, Utah, 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 Declaration in accordance with the provisions of Section 7(b) hereof.

8. Rights and Obligations of Lenders.

The provisions of Declaration are, and shall at all times be, prior and therefore superior to the lien or charge of any mortgage or deed of trust affecting any Parcel. However, a breach of any of the easements, covenants, or restrictions hereof shall not defeat or render invalid the lien or charge of any mortgage or deed of trust.

9. Persons Bound; Release from Liability.

Any person acquiring any interest in any Parcel shall be bound by this Declaration. From and after the time an Owner conveys by a properly recorded Deed legal title to the Parcel owned by it or is otherwise divested of legal title to the Parcel owned by it, such Owner shall be relieved of all liabilities and obligations which under this Declaration are imposed upon the Owner of the Parcel concerned (except such liabilities or obligations as may have already accrued but not previously been discharged). Although former Owners may be released under this Section, the easements, covenants and restrictions in this Declaration shall continue to be benefits and servitudes which run with the land as described in Section 10 next below.

10. Rights of Successors; Number and Gender.

All of the easements, covenants, conditions, restrictions, benefits, and obligations hereunder are intended to be mutual benefits and servitudes upon the Parcels in the Shopping Center and shall run with the land. This Declaration shall bind and inure to the benefit of the Owners, and (except as otherwise provided herein), their respective heirs, personal representatives, tenants, successors, and/or assigns. The singular number includes the plural, the plural includes the singular and any gender includes all other genders.

11. Section Headings.

The Section 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.

12. **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 Smith's that this Declaration 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, 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 on whose Parcel the Common Area is located. Notwithstanding any other provisions herein to the contrary, the Owners of the Parcels affected hereby may periodically restrict ingress and egress to and from the Common Areas in order to prevent a prescriptive easement or a public dedication from arising by reason of continued public use. Any such restriction on ingress and egress shall be limited to the period necessary to prevent the creation of a prescriptive easement or a public dedication and shall occur at such a time as to have a minimum effect on the parties in occupancy within the Shopping Center.

13. **Severability.**

If any clause, sentence, or other portion of the terms, covenants, or restrictions of this Declaration becomes illegal, null, or void for any reason, or is held by any Court of competent jurisdiction to be so, the remaining portions shall remain in full force and effect.

14. **Modifications.**

This document once executed and recorded, shall not be modified, changed or altered in any respect except in accordance with Section 7(b).

15. **Compliance with Laws.**

Each Owner shall timely comply with all federal, state, and municipal statutes and ordinances, and with all valid regulations, orders, and directives of appropriate governmental agencies, pertaining to the use or occupancy of the Parcel owned by such Owner, as such statutes, ordinances, regulations, orders, and directives now exist or may hereafter be amended or promulgated.

16. **Effective Date.**

This Declaration shall take effect immediately upon recording in the office of the Salt Lake County Recorder.

17. **Cross Easement Agreement With Restrictive Covenants.**

This Declaration is subject and subordinate to a Cross Easement Agreement With Restrictive Covenants dated March 19, 1997, and recorded April 3, 1997, in Book 7635 at Page 0829 Entry No. 6610460, in the Official Records of Salt Lake County, State of Utah ("Easement").

In the event of a conflict between the terms of the Easement and this Declaration, the Easement shall control.

IN WITNESS WHEREOF, Smith's has executed this Declaration the day and year first above written.

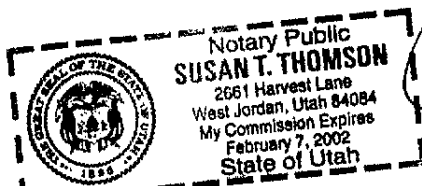
SMITH'S FOOD & DRUG CENTERS, INC.,
a Delaware corporation

By: *Deborah Williams*
Its: *2nd Vice President*

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 1st day of December, 2000.



Susan T. Thomson

Notary Public
Residing at: SALT LAKE COUNTY, UT

My Commission Expires:

2-7-2002

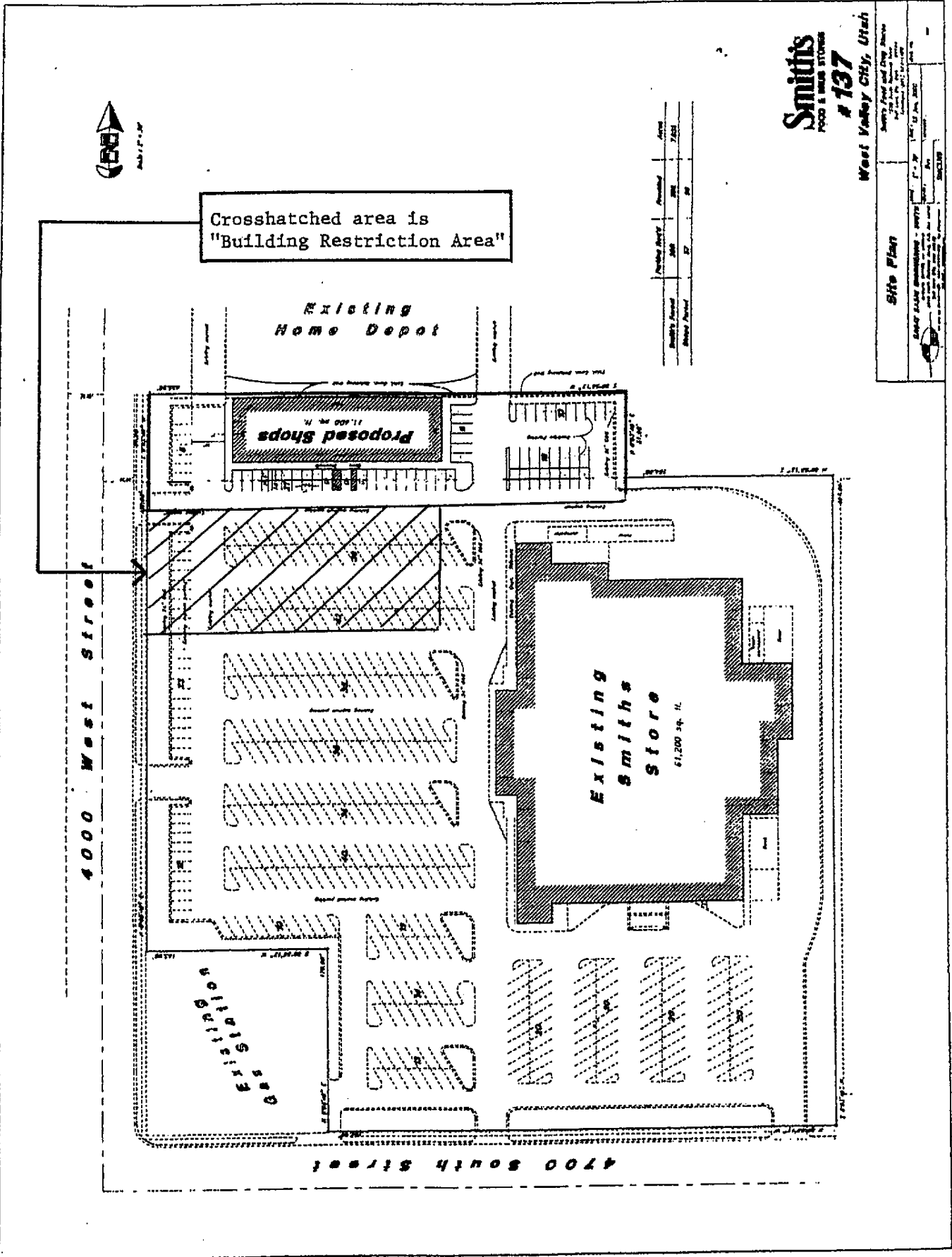
EXHIBIT A
to
Declaration of Covenants, Conditions and
Restrictions and Grant of Easements

The "Subject Land" consists of the following-described realty, located in Salt Lake County, Utah:

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°03'40" East 660.00 feet and North 89°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 0°03'40" East 81.00 feet to a point 40.00 feet perpendicularly distant Easterly from the Centerline of 4000 West Street; thence North 89°58'12" East 435.20 feet; thence South 0°03'40" West 81.00 feet; thence North 89°58'12" East 184.80 feet; thence South 0°03'40" West 607.00 feet to the North line of 4700 South Street; thence South 89°58'12" West 457.00 feet along said North line; thence North 0°03'40" East 170.00 feet; thence South 89°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°03'40" East 437.00 feet to the point of BEGINNING.

Tax Serial No: 21-05-351-020
21-05-351-023

EXHIBIT "B"



Crosshatched area is
"Building Restriction Area"

Existing
Home Depot

Proposed Shops
11,000 sq. ft.

Existing
Smith's
Store
61,200 sq. ft.

4000 West Street

4700 South Street



Property No.	Area	Zone
200	200	7-20
21	21	21

Smith's
FOOD & DRUG STORES
#137

West Valley City, Utah

Site Plan

SMITH'S FOOD & DRUG STORES
1100 W. 2100 S. WEST VALLEY CITY, UTAH 84119
DATE: 12/14/88
SCALE: AS SHOWN
DRAWN BY: [Signature]

BK8408PG5666

EXHIBIT "C"

Legal Description of "Shops Parcel"

Parcel 1:

The following-described part of the Southwest quarter of Section 5, Township 2 South, Range 1 West, Salt Lake Base and Meridian:

BEGINNING at a point on the East line of 4000 West Street as widened to 40.00 foot half-width being 634.00 feet North 0°03'40" East along the Section line and 40.00 feet North 89°58'12" East from the Southwest Corner of said Section 5; and running thence North 89°58'12" East 435.20 feet; thence North 0°03'40" East 107.00 feet; thence South 89°58'12" West 435.20 feet to a point on said East line of 4000 West Street as widened to 40.00 foot half-width; thence South 0°03'40" West 107.00 feet along said East line to the point of BEGINNING.

Having an effect on Tax Serial Nos:

Tax Serial Nos.: 21-05-351-020
 21-05-351-023

INTERNALLY ILLUMINATED MONUMENT DISPLAY

FABRICATE & INSTALL (1) D/F MONUMENT DISPLAY.

CABINET & POLECOVER TO BE ALUMINUM PAINTED
 STUCCO TO MATCH BUILDING.
 REVEAL TO BE PAINTED GREEN TO MATCH (230-26) VINYL
 DIVIDERS,
 INTERNALLY ILLUMINATED W/ T-12 H.O. FLOURESCENT
 LAMPS.

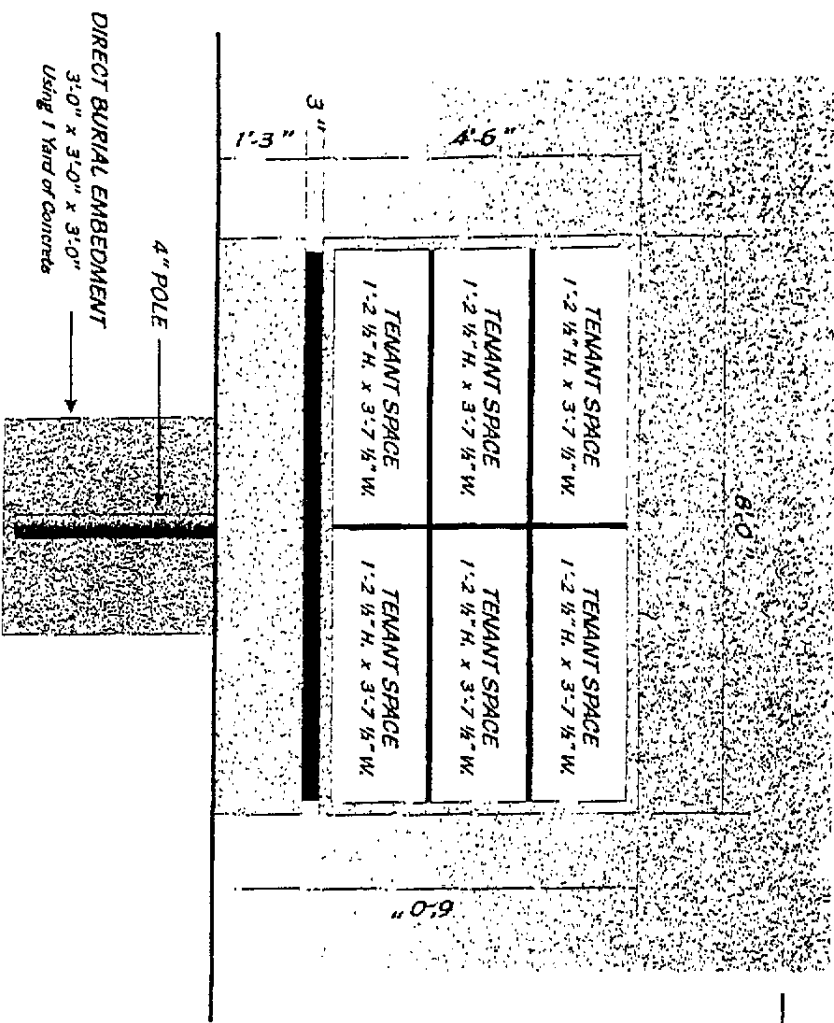


EXHIBIT "D"



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 972-5101 Colors depicted may not match actual colors on finished display.

CLIENT COLLIERS, GRG
 ADDRESS 4700 S. 4000 W.
 DATE 05/12/00 SCALE 1/2" = 1' NUMBER _____
 ARTIST RUSSELL SALES KEVAN

