

WHEN RECORDED, RETURN TO:

The Pointe, LLC
Attn: Justin J. Atwater
1178 Legacy Crossing Blvd., Suite 100
Centerville, Utah 84014

Space above for County Recorder's Use

Tax Parcel No. 12-033-0058 & 12-033-0054

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT ("**Agreement**"), dated July 31, 2015 ("**Effective Date**"), is between The Pointe, LLC, a Utah limited liability company ("**Grantor**"), and Smith's Food & Drug Centers, Inc., an Ohio corporation ("**Grantee**"), with reference to the following:

A. Grantor is the owner of certain real property located in West Point City, Davis County, State of Utah, more particularly described on **Exhibit A** attached hereto and made a part hereof ("**Grantor Property**"), and Grantee is the owner of certain real property located adjacent to the Grantor Property, more particularly described on **Exhibit B** attached hereto and made a part hereof ("**Grantee Property**").

B. Grantor desires to grant to Grantee, and Grantee desires to accept from Grantor, an easement on, over, across, and through the Grantor Property upon the terms and conditions set forth in this Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, Grantor and Grantee hereby agree as follows:

1. Grant of Easement. Subject to the terms and conditions of this Agreement, Grantor grants and conveys to Grantee a non-exclusive easement and right-of-way for the limited purposes of ingress and egress by vehicular and pedestrian traffic upon, over, and across the Grantor Property.

2. Grantee's Use of Grantor Property. Grantee and the Benefited Parties (as defined below) shall have the right and easement, in common with others, to utilize the Grantor Property for pedestrian and vehicular access, including, but not limited to, automobile, truck, and other street-legal wheeled conveyances, and to maintain, improve, replace, and repair the Grantor Property and any sidewalks and other related surface improvements constructed within the Grantor Property, including, but not limited to, signs, markers, monuments, landscaping, retaining walls and other improvements necessary for the easement ("**Access Easement Improvements**"). To the extent any portion of the Grantor Property is improved with sidewalks or other similar improvements, including certain of the Access Easement Improvements, evidencing that a portion of the Grantor Property is to be utilized by pedestrians and not by automobiles, trucks, and other street-legal wheeled conveyances, such portion of the Grantor Property shall not be utilized by automobiles, trucks, and other street-legal wheeled conveyances.

3. Transfer of Grantor Property for Public Use. Grantor reserves the right to make any use of the Grantor Property and to grant others the right to use the Grantor Property including

without limitation the dedication, or transfer of the Grantor Property for the public use (the occurrence of which will automatically terminate this Agreement and the rights granted to Grantee hereunder). Within 15 days of Grantor's written request, and provided the Grantor Property has been transferred and/or dedicated for public use, Grantee will execute a notice of termination of this Agreement, in a form reasonably requested by Grantor.

4. Easement Appurtenant to the Grantee Property; Benefited Parties. The Easement shall be appurtenant to and run with the land and constitute a portion of the Grantee Property. The Easement shall be restricted to the use and benefit of the following parties ("**Benefited Parties**"): (a) Grantee and its respective successors and assigns; and (b) all employees, contractors, and agents of Grantee.

5. Grantor's Reservation of Rights. Subject to the terms, conditions, and provisions of this Agreement, Grantor (and, to the extent Grantor has granted easement rights in the Grantor Property to a third Party ("**Easement Holder**"), reserves unto itself and its tenants, successors, assigns, employees, contractors, and agents, forever, the right to: (i) cross over, on, across, under, and through the Grantor Property and the Access Easement Improvements; (ii) make any improvements, adjustments, revisions, repairs, maintenance, replacements, relocations, and to perform any and all other actions necessary or desirable with respect to the Grantor Property and the Access Easement Improvements, as Grantor and Easement Holder may see fit, in its sole and absolute discretion; and (iii) grant any other easements over, on, across, under, through, and in connection with the Grantor Property, so long as such uses, improvements, and additional easements do not materially and adversely impair or diminish Grantee's or the Benefited Parties' use of the Grantor Property and the Access Easement Improvements for the purposes granted in this Agreement.

6. Relocation. Grantor, for itself and Easement Holder, reserves the right to relocate the Easement and the Access Easement Improvements, at Grantor's or Easement Holder's cost and expense; provided, however, that such relocation shall not materially and adversely impair or diminish Grantee's or the Benefited Parties' ability to continue to access and use the Grantor Property Access Easement Improvements for the purposes granted in this Agreement. Prior to any relocation of the Easement or any portions of the Access Easement Improvements, Grantor or Easement Holder will provide a reasonably detailed depiction of the proposed relocation of the Easement and the impacted portion or portions of the Grantor Property and the Access Easement Improvements for Grantee's review and input. Afterward, Grantor, Easement Holder, and Grantee shall exercise good faith efforts to meet and foster a cooperative and reasonable environment during the review and input process in order to determine the most suitable area on the Grantor Property to relocate the Easement and any applicable portions of the Grantor Property, and the Access Easement Improvements that may be affected, however, the ultimate and final decision regarding any relocation of the Easement and any portion of the Grantor Property, and the Access Easement Improvements shall be unilaterally made by Grantor or Easement Holder, in its sole and absolute discretion.

7. Grantor's Protection of Grantor Property. Notwithstanding anything in this Agreement to the contrary, Grantor and Easement Holder shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Agreement to use the Grantor Property, the Access Easement Improvements, and all other portions of the Grantor Property from using the Grantor Property, the Access Easement Improvements, and the Grantor Property for

ingress, egress, parking, or any other unauthorized purpose. Subject to any limitations or requirements of any applicable governmental authorities and governmental regulations, such steps may include, without limitation, the construction of fences, walls, or barricades along or within any portion of the Grantor Property; provided, however, that any steps taken by Grantor or Easement Holder that shall cause a material and adverse impairment of the Easement and rights granted in favor of Grantee and the Benefited Parties under this Agreement shall require Grantor or Easement Holder to provide a reasonable alternative to Grantee and the Benefited Parties within the Grantee Property, in order to provide Grantee access to and from the Grantee Property.

8. Construction and Maintenance. The Grantor Property and the Access Easement Improvements shall be constructed and completed at Grantor's or its designee's sole cost and expense and in accordance with Grantor's overall development plans for the Grantor Property. Following completion, Grantor shall maintain the Grantor Property and the Access Easement Improvements in good condition and repair and in a condition consistent with and similar to other comparable areas within Canyons resort. Any maintenance work undertaken by Grantor on the Grantor Property and the Access Easement Improvements shall be performed diligently and shall not unreasonably interfere with Grantor's use of the Grantor Property. Any work necessary to construct and maintain the Grantor Property and the Access Easement Improvements shall be performed by Grantee or caused to be performed by Grantor in a good and workmanlike manner free of liens and defects, by qualified contractors, and with all necessary licenses, permits, and governmental and quasi-governmental authorizations having been obtained in advance. Grantor shall give Grantee at least 20 days advance written notice of Grantor's intention to maintain, alter, repair, or relocate the Grantor Property and the Access Easement Improvements.

9. Taxes. Grantor and Grantee shall timely pay all property taxes and assessments of their respective properties, including their own respective easements. Notwithstanding the foregoing, neither Grantor nor Grantee shall have an obligation to pay property taxes during any formal appeal or protest, so long as such party pays, at its sole cost and expense, all penalties and interest assessed thereon and pays such taxes in full prior to the date of any tax sale.

10. Default by Grantee. In the event of a default by Grantee of any of the easements, restrictions, rights, burdens, obligations, and interests granted or otherwise set forth in this Agreement, Grantor shall, following written notice of such default and a failure to cure the default on or before fifteen days following delivery of such notice to Grantee, be entitled to institute proceedings (at law or in equity) for full and adequate relief, and/or compensation from the consequences of such default, which remedies shall include, but not be limited to, the right to specific performance and injunctive relief and shall be in addition to and not in lieu of any rights or remedies to which Grantor may be entitled.

11. Indemnity. Grantee shall indemnify, defend, and hold harmless Grantor of, from and against all claims for mechanics' liens, personal injury, or property damage resulting from Grantee's use of the Easement, the Access Easement Improvements, the Grantor Property, and the underlying applicable portions of the Grantor Property, as permitted by and provided for in this Agreement, to the fullest extent that any such claims arise from or occur by, through, or under Grantee. In addition, Grantee shall indemnify Grantor from and against any and all liabilities, damages, penalties, and judgments arising from injury to person or property sustained by anyone in and about the Easement, the Access Easement Improvements, the Grantor Property, and the underlying applicable portions of the Grantor Property resulting from any act or omission or

omissions of Grantee, the Benefited Parties, or Grantee's officers, agents, servants, employees or contractors.

12. Insurance. Grantee shall provide, at its sole cost and expense, and keep in full force during the existence of this Agreement general liability insurance.

13. Covenants to Run With the Land. The easements, restrictions, rights, burdens, obligations, and interests granted or otherwise set forth in this Agreement shall run with, benefit, and burden the Grantor Property and the Grantee Property, and shall inure to the benefit of and be binding upon Grantor, Grantee, and their respective successors and assigns, and any other person acquiring, leasing, or otherwise owning any interest in the Grantor Property or Grantee Property, and shall inure to the benefit of the Benefited Parties and the grantees of the Easement under this Agreement, as applicable, and each of their authorized tenants, licensees, guests, and invitees. The Easement shall burden the Grantor Property, as the servient estate, and benefit the Grantee Property, as the dominant estate.

14. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or a dedication of any portion of the Grantor Property or the Grantee Property to or for the general public or for any public purpose whatsoever, it being the intent of Grantor and Grantee that this Agreement be strictly limited to and for the purposes expressed in this Agreement.

15. Notices. All notices, requests, demands, or other communications under this Agreement shall be in writing and shall be delivered by personal delivery, overnight mail, or delivery service, electronic transmission (provided that a copy thereof shall be sent concurrently to the intended recipient by one of the other methods provided herein), or United States registered or certified mail, return receipt requested, postage prepaid, addressed to the appropriate address on the county ownership records or to such other addresses as Grantor or Grantee may from time-to-time designate by notice in writing to the other parties. Any such notice, request, demand, or communication shall be deemed to have been given on the date of mailing. The refusal to accept delivery by any party to this Agreement or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 15 shall constitute delivery.

16. No Relationship. Grantor and Grantee do not, by this Agreement nor by any of their acts, become principal and agent, limited or general partners, joint ventures, or of any other similar relationship of each other in the conduct of their respective businesses, or otherwise.

17. Force Majeure. Grantor and Grantee shall be excused from performing any of their respective obligations or undertakings set forth in this Agreement, except any obligations to pay any sums of money under this Agreement, so long as the performance of any such obligation or undertaking is prevented or delayed by an act of God, weather, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, or order of government or civil defense authorities. If either Grantor or Grantee claim a force majeure delay under this Agreement, then they shall give written notice of such delay to the other party promptly after the occurrence of such force majeure event, which notice shall set forth the anticipated length of such delay which has been caused by such force majeure event.

18. Enforcement. Grantor and Grantee shall each have the full power and authority to enforce compliance with this Agreement in any manner provided for in law or in equity, including, without limitation, the right to bring an action for damages, to enjoin any violation, or specifically enforce the provisions of this Agreement.

19. No Waiver. The failure of Grantor or Grantee to insist upon strict performance of any of the terms, covenants, conditions, or provisions contained in this Agreement shall not be deemed a waiver of any rights or remedies that said party or person may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions, or provisions contained in this Agreement by the same or any other party or person.

20. Limitation of Liability. Neither the employees or agents of Grantor or Grantee, or the members, managers, employees, or agents of any of the parties to this Agreement, shall be liable under this Agreement and Grantor and Grantee shall look solely to the assets of the parties to this Agreement, as the case may be, for the payment of any claim or the performance of any obligation under this Agreement.

21. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Grantor and Grantee and their respective heirs, executors, administrators, successors, legal representatives, and assigns. At such time as Grantee no longer owns the Grantee Property, or in the event of Grantee's transfer of title or interest to any specific portions thereof to a third-party purchaser, all of the owners of the Grantee Property and any owners' associations that may be created to manage the Grantee Property shall assume automatically the benefits of and be responsible for all of Grantee's rights, covenants, benefits, responsibilities, and duties in connection with this Agreement. The liabilities and obligations contained in this Agreement, if any, to be performed by Grantee, shall, subject as aforesaid, be binding upon Grantee's successors and assigns, only during their respective periods of ownership. At such time as Grantor no longer owns the Grantor Property, or in the event of Grantor's transfer of title or interest to any specific portions thereof to a third-party purchaser, all of the owners of Grantor Property and any owners' associations that may be created to manage the Grantor Property shall assume automatically the benefits of and be responsible for all of Grantor's rights, covenants, benefits, responsibilities, and duties in connection with this Agreement, and Grantor shall be released and relieved from and after the date of such transfer of all liability and obligations, if any, thereafter to be performed. The obligations contained in this Agreement, if any, to be performed by Grantor, shall, subject as aforesaid, be binding upon Grantor's successors and assigns, only during their respective periods of ownership.

22. Interpretation. The section and paragraph headings in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation and construction. The use of the singular in this Agreement shall include the plural, where the context is otherwise appropriate.

23. Duration and Amendment. This Agreement shall be recorded in the official records of the Davis County, Utah Recorder ("**Official Records**"). Notwithstanding anything within this Agreement to the contrary, except as provided in Section 3 above, Grantor and Grantee may terminate this Agreement only by a written notice of termination executed by the parties, and recorded in the Official Records. Grantor and Grantee may amend this Agreement only by a written instrument executed by the parties, and recorded in the Official Records.

24. Partial Invalidity. If any provision of this Agreement or the application thereof to Grantor, Grantee, or any person or circumstance shall to any extent be held invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

25. Counterparts. This Agreement may be executed in one or more counterparts, which together shall constitute the Agreement.

26. Applicable Law. This Agreement shall be governed by and construed in accordance with and interpreted under the laws of the State of Utah.

27. Recitals and Exhibits Incorporated. Grantor and Grantee acknowledge and agree that the Recitals set forth in this Agreement are true, accurate, and correct and that the Recitals and the Exhibits attached to this Agreement are incorporated herein by this reference and are hereby made a part of this Agreement.

GRANTOR AND GRANTEE have executed this Agreement as of the Effective Date.

(Intentionally Blank – Signature Pages and Acknowledgments to Follow)

SIGNATURE PAGE FOR SMITHS FOOD & DRUG CENTERS, INC.

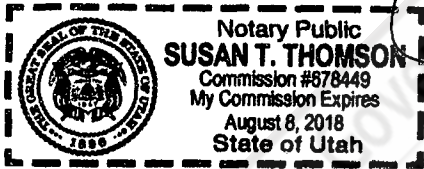
GRANTOR:

SMITHS FOOD & DRUG CENTERS, INC.,
an Ohio corporation

By: [Signature]
Print Name: STEVEN M. SORENSEN
Title: VICE PRESIDENT

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

The foregoing instrument was acknowledged before me this 3rd day of AUGUST, 2015, by STEVEN M. SORENSEN, the VICE PRESIDENT of Smiths Food & Drug Centers, Inc., an Ohio corporation.



[Signature]
NOTARY PUBLIC
Residing at: SALT LAKE COUNTY, UTAH

My Commission Expires:
8-8-18

EXHIBIT "A"
TO
ACCESS EASEMENT AGREEMENT

LEGAL DESCRIPTION OF GRANTOR PROPERTY

The real property referenced in the foregoing Access and Parking Easement Agreement as the "Grantor Property" is located in Davis County, Utah and is more particularly described as follows:

Parcel A

All of Parcel A of The Point, a subdivision in West Point, Davis County, Utah.

Contains 55,370 sq. ft.

Parcel B

All of Parcel B of The Point, a subdivision in West Point, Davis County, Utah.

Contains 40,656 sq. ft.

EXHIBIT "B"
TO
ACCESS EASEMENT AGREEMENT

LEGAL DESCRIPTION OF GRANTEE PROPERTY

The real property referenced in the foregoing Access Easement Agreement as the "Grantee Property" is located in Davis County, Utah and is more particularly described as follows:

Lot 1

All of Lot 1 of The Point, a subdivision in West Point, Davis County, Utah.

**Contains 532,221 sq. ft.
or 12.218 acres**