13797778 10/13/2021 2:30:00 PM \$40.00 Book - 11253 Pg - 4510-4532 RASHELLE HOBBS Recorder, Salt Lake County, UT COTTONWOOD TITLE BY: eCASH, DEPUTY - EF 23 P.

After Recording, Return to:

The Kroger Co. 1014 Vine Street Cincinnati, OH 45202

Space above for Recorder's use

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

Dated June 10, 2021

ENTERED INTO BETWEEN:

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

AND

JON BURDETT AND TERESA E. NELSON, AS CO-TRUSTEES OF THE CAROLYN NELSON HARDY TRUST DATED MARCH 18, 1996

ACCOMMODATION RECORDING ONLY.
COTTONWOOD TITLE INSURANCE AGENCY,
INC. MAKES NO REPRESENTATION AS TO
CONDITION OF TITLE, NOR DOES IT ASSUME
ANY RESPONSIBILITY FOR VALIDITY,
SUFFICIENCY OR EFFECTS OF DOCUMENT.

Tax Parcel Numbers: 22-05-302-027, 22-05-177-016, 22-05-302-019, 22-05-302-020, 22-05-177-015 (for reference purposes only)

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

RECITALS:

WHEREAS, Smith's and Nelson's predecessors-in-interest entered into that certain Development Agreement dated April 27, 1987, which was placed of record with the Recorder of Salt Lake County, Utah on September 15, 1989 at Document No. 4823289 in Book 6159, Page 808, and then re-recorded on October 12, 1989 as Document No. 4834465 in Book 6167, Page 443, which was then amended by that certain Amendment to Development Agreement dated September 25, 1990 and recorded on September 26, 1990 as Document No. 4970480 in Book 6255, page 2292, and amended by that certain Amendment to Development Agreement dated October 16, 1990 and recorded on October 17, 1990 in Book 6261, Page 339 (collectively, the "Agreement");

WHEREAS, Smith's is the owner of the parcel more particularly described in Exhibit A attached hereto and made a part hereof by this reference (the "Smith's Parcel").

WHEREAS, Nelson is the owner of the parcels of land which are adjacent to the Smith's Parcel, and more particularly described in Exhibit B attached hereto and made a part hereof by this reference (the "Nelson Parcels").

WHEREAS, the Smith's Parcel and the Nelson Parcels are collectively referred to as the "Entire Premises";

WHEREAS, Smith's intends to subdivide the Smith's Parcel into 2 separate parcels and sell one of the parcels created in the subdivision (hereinafter defined as "Outparcel"), which Outparcel is more particularly described in Exhibit C-2 attached hereto and made a part hereof by this reference; and

WHEREAS, the Parties desire to amend certain terms of the Agreement as set forth in this Amendment.

AGREEMENTS:

NOW, THEREFORE, in consideration ten and 00/100 Dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the

Recording Requested By: NCO30257
FNTG-NCS Colorado

Recording Requested By:

Parties agree as follows:

- 1. <u>Capitalized Terms</u>. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.
- 2. Smith's Parcel Subdivision. Either Smith's or the contract owner of the Outparcel may subdivide the Smith's Parcel as shown on Exhibit C-1 attached hereto a made a part hereof by this reference ("Plot Plan") to create the Outparcel, and develop the Outparcel generally as shown on the Plot Plan. Nelson, as owner of the Nelson Parcels, hereby approves the Plot Plan, the subdivision necessary to create the Outparcel, and the design, style, placement and construction of the buildings and improvements and parking areas for the Outparcel generally as shown in Exhibit C-3 attached hereto and made a part hereof by this reference ("Plans"). Nelson acknowledges and agrees that, to Nelson's knowledge, no other approvals from Nelson, as owner of the Nelson Parcels, shall be necessary or required in order for either Smith's or the contract owner of the Outparcel to subdivide the Smith's Parcel as shown on Exhibit C-1 to this Amendment or proceed with the Plans as shown on Exhibit C-3 to this Amendment.
- 3. EV Charging and Other Uses. Smith's may convert parking spaces on the retained portion of the Smith's Parcel as such parking may exist from time to time to accommodate electric vehicle chargers, or other uses including but not limited to temporary fireworks stands or shaved ice kiosks, in such locations and numbers as determined by Smith's in its sole but reasonable judgment provided such uses do not impede access to the Nelson Parcels.
- 4. <u>Maintenance and Taxes</u>. Smith's shall continue to be responsible for seventy-six percent (76%) of costs and expenses as set forth in Section 6 of the Agreement. Nevertheless, nothing shall prevent Smith's from seeking reimbursement and/or contribution from the purchaser of the Outparcel for a portion of those costs and expenses.
- 5. <u>Necessary and Proper Parties</u>. Nelson represents and warrants to Smith's that the signatories below are all of the necessary and proper parties to sign on behalf of the Nelson Parcels.
- 6. <u>Recitals</u>. The Parties agree that the Recitals set forth above are true and correct and are incorporated herein by this reference.
- 7. <u>Counterparts</u>. This Amendment may be executed in any number of counterparts, each of which counterparts when so executed will be deemed to be an original and all of which counterparts taken together will constitute one and the same agreement. Facsimile or electronic transmission of any signed document shall be the same as delivery of the original.
- 8. Full Force and Effect; Control; Run with the Land. All other terms and conditions of the Agreement, not specifically amended hereby, remain in full force and effect. In the event of a conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall control. The promises, covenants, and agreements

herein shall inure to the Parties, their respective successor and assigns and shall run with the land.

IN WITNESS WHEREOF, the Parties execute this Third Amendment to Development Agreement as of the Effective Date.

SMITH'S:

Smith's Food & Drug Centers, Inc.,

an Ohio corporation A

Name:_

Title: Vice Rusident



NELSON:

Carolyn Nelson Hardy Trust dated March 18, 1996

Title: Co-Trustee

Name: Teresa E. Nelson

Title: Co-Trustee

STATE OF OHIO

) SS:

COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 10th day of June, 2021, by Lick J. Landrum, the Vice President of Smith's Food & Drug Centers, Inc., an Ohio corporation, on behalf of the corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

DE Note OF OTHER DES

DEBORAH MOORE Notary Public, State of Ohio My Commission Expires April 24, 2024

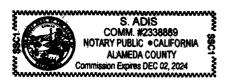
Notary Public

STATE OF Califon (5)

COUNTY OF Alam of

The foregoing instrument was acknowledged before me this 19 day of Tuke 2021, by Jon Burdett, Co-Trustee of the Carolyn Nelson Hardy Trust dated March 18, 1996, on behalf of the Trust.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.



Notary Public

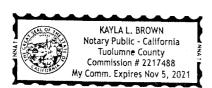
STATE OF

) SS:

COUNTY OF

The foregoing instrument was acknowledged before me this 2021, by Teresa E. Nelson, Co-Trustee of the Carolyn Nelson Hardy Trust dated March 18, 1996, on behalf of the Trust.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.



Notary Public

This Instrument Prepared By:

Jennifer K. Gothard

Senior Attorney

Smith's Food & Drug Centers, Inc.

c/o The Kroger Co.

1014 Vine Street

Cincinnati, Ohio 45202-1100

Page 5 of 10

EXHIBIT A

Legal Description of Smith's Parcel



GREAT BASIN ENGINEERING, INC.

Consulting Engineers en, Land Surveyers

P.O. Box 9307 Ogden, Uieh Zip Code 84409 3303 Grent Avenus Ogden (80.) 374-4515 Salt Lake (801) 521-8529

August 6, 1986

SMITH'S MANAGEMENT STORE #133 4500 SOUTH AND 900 EAST SMITH'S PARCEL 1 DESCRIPTION

A part of Block 5, 10-Acre Plat "A", Big Field Survey, in Section 5, Township 2 South, Range I East, Sait Lake Base and Meridian, U.S. Survey:

Beginning at a point 227 30 feet South 89°53' West along the South line of said Block 5, and 20.00 feet North 0°05'44" East from the Southeast corner of Lot 1 of said Block 5, said point of beginning being 53.00 feet perpendicularly distant Northerly from the Centerline of 4500 South Street: and running thence South 89°53' West 414.70 feet along a line parallel to and being 53.00 feet perpendicularly distant Northerly from the Centerline of said 4500 South Street; thence North 0°09'59" East 562,40 feet along an existing boundary line fence; thence North 89°54'14" East 441.00 feet; thence South 0°05'44" West 57.18 feet; thouce North 89°54'14" East 193.00 feet to a point being 40.00 feet perpendicularly distant Westerly from the Centerline of 900 East Street; thence South 0°05'44" West 25.00 feet along a line parallel to end being 40.00 feet distant Westerly from the Cencerline of said 900 East Street; thence South 89°54'14" West 275.00 feet to the East line of Smith's Building; thance South 0°05'46" East 221.49 fest along said East building line; thence North 89°54'14" East 117.60 feet: thence North 44°59'59" East 37.19 feet; thence North 89°54'14" East 130.42 feet to a point being 40.00 feet perpendicularly distant Westerly from the Centerline of 900 East Street; thence South 0°05'44" West 15.00 feet along a line parallel to and being 40.00 perpendicularly distant Westerly from the Centerline of 900 East Street; thence South 89"54'14" West

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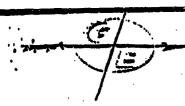
SMITH'S MANAGELENT STORE NO. 133

-2-

110.00 feet; thence South 44°59'59" West 28.33 feet; thence South 0°05'44" West 104.80 feet; thence South 89°53' West 90.00 feet; thence South 0°05'44" West 145.00 feet to the point of beginning.

Contains 5.525 Acres

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A TIBIHAS

- GREAT BASIN ENGINEERING, INC.

P.O. Bex 9207 Ogden, Uteh Zie Code 84409

3305 Grant Avenue Ogden (801) 394-4515 Solt Lake (801) 521-8229

August 6, 1986

SMITH'S MANAGEMENT STORE #133 4500 SOUTH AND 900 EAST SMITH'S PARCEL 2 DESCRIPTION

A part of Block 5, 10-Acre Plat "A", Big Field Survey in Section 5, Township 2 South, Range 1 East, Selt Lake Base and Meridian, U.S. Survey:

Beginning at a point 319.75 feet North 0°05'44" East along the East
line of said Block 5, and 7.00 feet South 89°54'14" West from the Southeast
corner of said Lot 1; said point of beginning being 40.00 feet perpendicularly
distant Westerly from the Centerline of 900 East Street; and running thence
South 89°54'14" West 72:10 feet; thence North 0°05'44" East 165.24 feet; thence
North 89°54'14" East 72:10 fact to a point being 40.00 feet perpendicularly
distant Westerly from the Centerline of 900 East Street; thence South 0°05'44" West
165.24 feet along a line parallel to and being 40.00 feet perpendicularly
distant Westerly from said Centerline of 900 East Street to the point of
beginning.

EXHIBIT B

<u>Legal Description of Nelson Parcels</u>



GREAT BASIN ENGINEERING, INC.

Consulting Engineers and Lane Surveyors
P.O. Bex 9307
Ogden, Utah
Ogden (801) 294-4815
Zip Code 84409
Sait take (801) 321-8329

August 6, 1986

SMITH'S MANAGEMENT STORE #133 4500 SOUTH AND 900 EAST PAD 'A' DESCRIPTION

A part of Block 5, 10-Acre Plat "A", Big Field Survey in Section 5, Township 2 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point 189.75 feet North 0°05'44" East along the East line of said Block 5, and 7.00 feet South 89°54'14" Mest from the Southeast corner of Lot 1 of said Block 5; said point of beginning being 40.00 feet perpendicularly distant Mesterly from the Centerline of 900 East Street; and running thence South 89°54'14" West 100.00 feet; thence South 0°05'44" West 24.79 feet; thence South 89°53' West: 30.00 feet; thence North 0°05'44" East 104.80 reet; thence North 44°59'59" East 28.33 feet; thence North 89°54'14" East 110.00 feet to a point being 40.00 feet perpendicularly distant Westerly from the Centerline of 900 East Street; thence South 0°05'44" West 100.00 feet along a line parallel to and being 40.00 feet perpendicularly distant Westerly from said Centerline of 900 East Street to the point of beginning.

Contains 13,544 Square Feet or

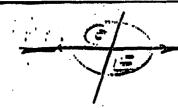
0.311 Acre

100 (187 mg day

AEMOER OF IMPIGAN CONTY OF TIVIL PHONEERS

MEMBER OF 17 IN COUNTY IF LAND 1971 STORES

-CHIPT A



GREAT BASIN ENGINEERING, INC.

Cansulting Engineers and Jane Jameyora P.O. Box 9307 Ogden, Utah Zip Codo 84409

3305 Grant Avenue Ogden (801) 394-4515 Sulf Lake (801) 521-8529

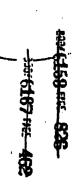
August 6, 1976

SMITH MANAGEMENT STORE #133 4500 SOUTH AND 900 EAST PAD 'B' DESCRIPTION

A part of Block 5, 10-Acre Plat "A", Big Field Survey, in Section 5, Township 2 South, Range I East, Sait Lake Base and Meridian, U.S. Survey:

Beginning at a point 107.00 feet South 89°53' West along the South line of said Block 5, and 20.00 feet North 0°05'44" East from the Southeast corner of Lot 1 of said Block 5, said point of beginning being 53.00 feet perpendicularly distant Northerly from the Centerline of 4500 South Street; and running thance South 89°53' West 120.00 feet along a line being parallel to and 53.00 feet distant Northerly from the Centerline of 4500 South Street; thence North 0°05'44" East 145.00 feet; thence North 89°53' East 120.00 feet; thence South 0°05'44" West 145:00 feet to the point of beginning.

> Contains 17,400 Square Feet or 0.399 Acre



ARMARE TELEVISION IN THE POST. ******

GREAT BASIN ENGINEERING, INC.

Constituting Engineers and Lund Eurrewars
P.O. Sex 9307
Ogden, Ulah
Cip Code 84409
Sett take (801) 321-8229

Revised Date August 6, 1986 August 8, 1986

SMITH'S MANAGEMENT STORE #133 4500 SOUTH AND 900 EAST SHOPS PARCEL DESCRIPTION

A part of Block 5, 10-Acre Plat "A", Big Field Survey in Section 5, Township 2 South, Range 1 East, Salt Lake Base and Heridian, U.S. Survey:

Beginning at a point 304.75 feet North 0°05'44" East along the East line of said Block 5, and 7.00 feet South 89°54'14" West from the Southeast corner of Lot I of said Block 5, said point of beginning being 40.00 feet perpendicularly distant Westerly from the Centerline of 900 East Street; and running thence South 89°54'14" West 130.42 feet; thence South 44°59'59" West 37.19 feet; thence South 89°54'14" West 117.60 feet; thence North 0°05'46" West 221.49 feet along the East line of the Smith's Building; thence North 89°54'14" East 275.00 feet to a point bein 40.00 feet perpendicularly distant Westerly from the Centerline of 900 čast Street; thence South 0°05'44" West 15.00 feet along a line parallel to and being 40.00 feet perpendicularly distant Westerly from the Centerline of 900 East Street; thence South 89°54'14" West 35.19 feet; thence South 0°05'44" West 165.24 feet; thence North 89°54'14" East 35.19 feet to a point being 40.00 feet perpendicularly distant Wasterly from the Centerline of 900 East Street; thence South 0°05'44" West 15.00 feet along a line parallel to and being 40.00 feet perpendicularly distant Westerly from the Centerline of said 900 East Street to the point of beginning.

Contains 1.176 Acres

1259 min 827

ARRESTS IT MESSICIAL COCITY OF TIME INGINESS. " ARMARS OF IT IN COUNCIL OF LAND CAPACITY

EXHIBIT C-1

Plot Plan

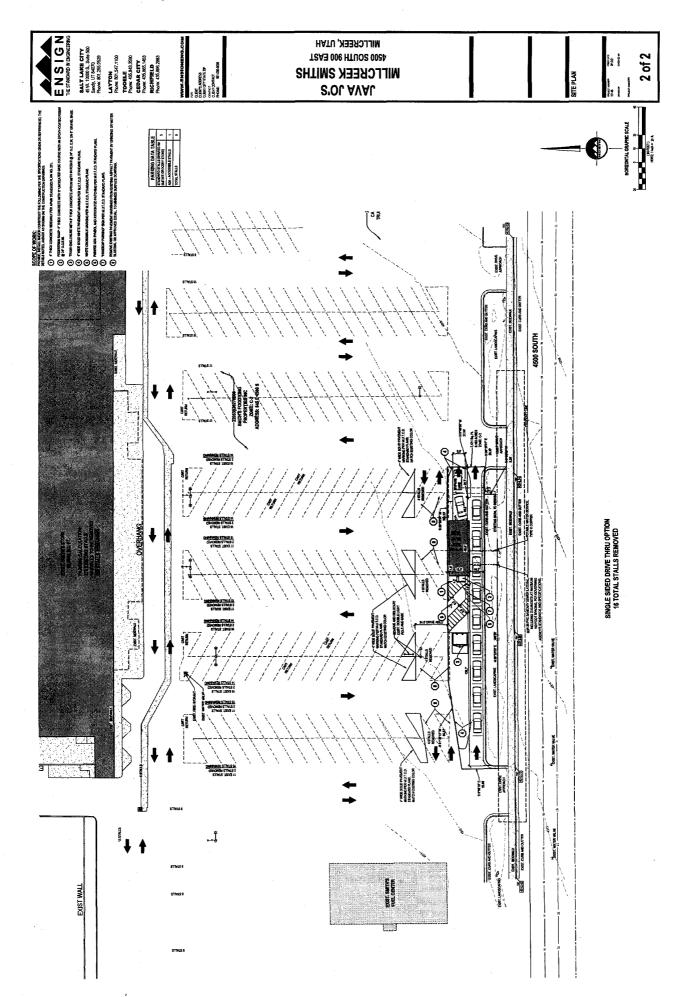


EXHIBIT C-2

Legal Description of Outparcel

JAVA JOE'S PROPOSED BOUNDARY DESCRIPTION

A part of Block 5, Ten Acre Plat "A", Big Field Survey in Section 5, Township 2 South, Range 1 East, Salt Lake Base and Meridian:

Beginning South 89°53′00″ West 405.20 feet along the South line of Lot 1 and perpendicularly North 00°07′00″ West 20.00 feet from the Southeast Corner Lot 1, Block 5, Ten Acre Plat "A", Big Field Survey and running

thence South 89°53'00" West 199.56 feet;

thence North 00°07'00" West 29.24 feet;

thence North 81°36'13" East 65.02 feet;

thence North 89°50'51" East 155.53 feet;

thence South 00°09'59" East 27.04 feet;

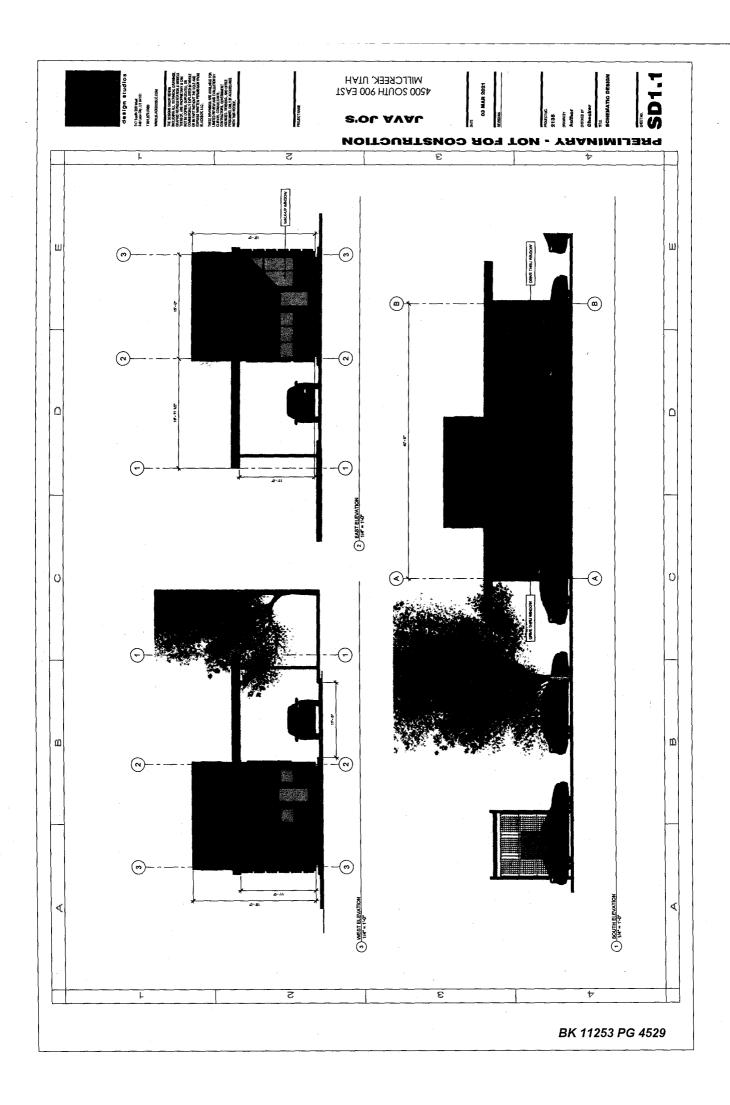
thence South 89°50'01" West 20.35 feet;

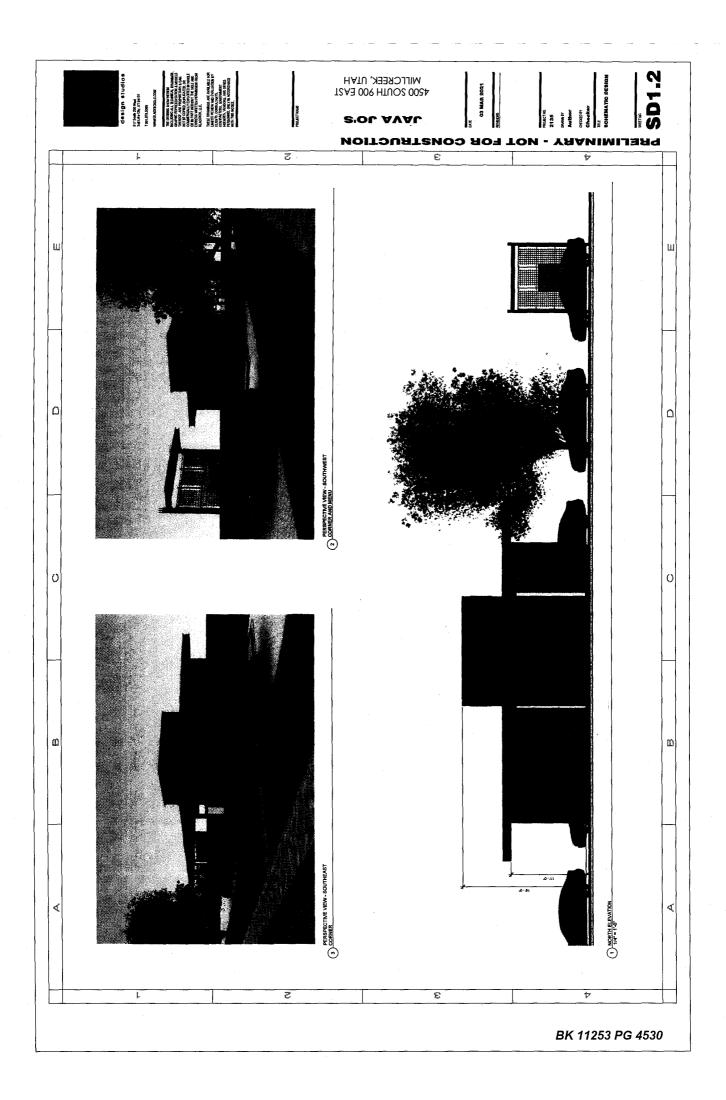
thence South 00°09'22" East 11.65 feet to the South line of said Lot 1 and the Point of Beginning.

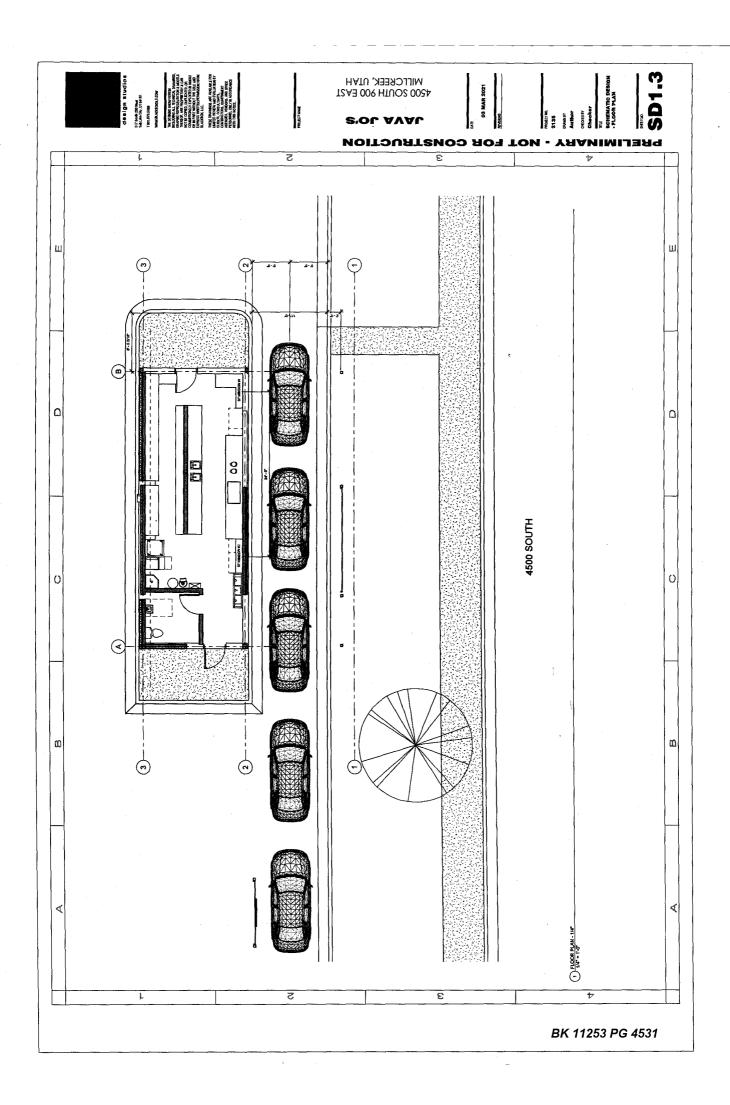
Contains 7,958 Square Feet, 0.183 Acres.

EXHIBIT C-3

<u>Plans</u>







4200 2OUTH 900 EAST 4500 3OUTH 900 EAST **2'OL AVAL** ۵ 0 0 ω Φ ⋖ BK 11253 PG 4532