

When recorded, return to:

Smith's Food & Drug Centers, Inc.  
c/o The Kroger Co.  
1014 Vine Street  
Cincinnati, Ohio 45202  
Attn: Law Department (Smith's 271)

Parcel Nos.: 66-527-0001 (Lot 1)  
66-527-0002 (Lot 2)  
66-527-0004 (Lot 4)  
66-527-0005 (Lot 5)  
66:624:0008 (Lot 8)  
66:624:0010 (Lot 7)  
66:834:0009 (Lot 9)  
66:834:0010 (Lot 10)

**SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS (this "Amendment") is made as of this 21 day of June, 2022 (the "Effective Date"), by SMITH'S FOOD & DRUG CENTERS, INC., an Ohio corporation ("Smith's"), and TERRA SPRINGS, LLC, a Utah limited liability company ("Terra Springs").

WHEREAS, Smith's executed that certain Declaration of Covenants, Conditions and Restrictions and Grant of Easements on June 29, 2016, and recorded the same on June 30, 2016 with Utah County Recorder, State of Utah as Entry No. 59811:2016 and that certain First Amendment to Declaration of Covenants, Conditions and Restrictions and Grant of Easements on July 15, 2021, and recorded the same on July 21, 2021 with Utah county Recorded, State of Utah as Entry No. 128273:2021 (collectively, the "Declaration"), which Declaration pertains to the development and operations of the Shopping Center; and

WHEREAS, Smith's is the owner of the Lot 1 of the Shopping Center as such is more particularly described on the attached Exhibit "A", which exhibit contains the legal descriptions of all the property subject to this Amendment; and

WHEREAS, Terra Springs is the Owner of Lot 2, Lot 4, Lot 5, Lot 8, and Lot 9 of the Developer Parcels as such are more particularly described on the attached Exhibit "A" ("Terra Springs Parcels"); and

WHEREAS, the Declarant and Terra Springs desire to amend the Declaration to address the anticipated development of a portion of Lot 5 (as described on the attached Exhibit "B" and shall hereinafter be referred to as "McDonald's Parcel") which will be leased to McDonald's USA, LLC ("McDonald's"), among other things, all as more particularly provided herein.

NOW THEREFORE, for Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Capitalized Terms. All capitalized terms used herein but not herein defined shall have the meanings ascribed to such terms in the Declaration.

2. Necessary Parties. In accordance with the provisions of Section 8.b of the Declaration, captioned Modification, Cancellation and Delegation of Authority, Smith's and Terra Springs, as Owner of more than 50% of the Developer Parcels, are the only necessary parties needed to execute this Amendment.

3. Section 1c of the Declaration, captioned Common Area, is hereby amended to include the following at the end of the section: Notwithstanding anything contained herein, the drive-thru areas and trash corrals, if any, located on McDonald's Parcel and on the Terra Springs Parcels shall not be deemed Common Area.

4. Section 2h of the Declaration, captioned Alterations to Shopping Center, is hereby amended to include the following at the end of the section: Smith's shall have 45 days to review and approve any request and must provide any comments to the party submitting the request within 45 days of receipt. If Smith's does not provide any comments as provided herein then Smith's shall be deemed to have approved the changes as presented. Terra Springs agrees that any written request for approval to Smith's shall include language that clearly and conspicuously states Smith's has 45 days to review such request and if Smith's does not provide any comments within that 45 day timeframe, the request is deemed approved.

5. Except as specifically amended herein, the Declaration remains in full force and effect as originally set forth.

6. This Amendment may be executed in any number of counterparts, and also by electronic means, such as DocuSign, Coupa, or delivery via .pdf, and when such signatures are cross-delivered and counterparts assembled, each fully executed counterpart shall constitute an original of this Amendment, however, the parties acknowledge that an original wet-inked signature must be delivered to a title company of Smith's choosing for recording.

[Signatures on following page]





**Exhibit A**

**Legal description of Subject Land/Shopping Center**

Smith's Marketplace:

All of Lot 1, Springville Marketplace, a Commercial Subdivision as recorded in the Utah County Recorder's Office.

Pad G:

All of Lot 2, Springville Marketplace, a Commercial Subdivision as recorded in the Utah County Recorder's Office.

Pads C & D:

All of Lot 4, Springville Marketplace, a Commercial Subdivision as recorded in the Utah County Recorder's Office.

Pads E & F

All of Lot 5, Springville Marketplace, a Commercial Subdivision as recorded in the Utah County Recorder's Office.

All of Lot 7, Springville Marketplace Plat B as recorded in the Utah County Recorder's Office.

All of Lot 8, Springville Marketplace Plat B as recorded in the Utah County Recorder's Office.

All of Lot 9, Springville Marketplace Plat C, as recorded in the Utah County Recorder's Office.

All of Lot 10, Springville Marketplace Plat C as recorded in the Utah County Recorder's Office.

**Exhibit B****Portion of Lot 5 – McDonald's Parcel**

A portion of LOT 5, SPRINGVILLE MARKETPLACE, A COMMERCIAL SUBDIVISION, according to the official plat thereof on file and of record in the office of the Utah County Recorder, recorded May 26, 2016 as Entry No. 47132:2016, located in the SW 1/4 of Section 32, Township 7 South, Range 3 East, Salt Lake Base & Meridian, Springville City, Utah County, Utah, more particularly described as follows: BEGINNING at a point located on the southerly line of said LOT 5, SPRINGVILLE MARKETPLACE, A COMMERCIAL SUBDIVISION, said point also located along the Section line 2165.99 feet North  $88^{\circ}34'56''$  East and 364.97 feet North  $01^{\circ}25'04''$  West from the Northeast Corner of Section 6, Township 8 South, Range 3 East, Salt Lake Base & Meridian (Basis of bearing being South  $89^{\circ}11'49''$  West 2655.76 feet from the Northeast Corner to the North Quarter corner of said Section 6), and running thence along said Lot 5 North  $68^{\circ}16'42''$  West 88.12 feet; thence North  $00^{\circ}01'29''$  West 56.73 feet; thence South  $89^{\circ}58'31''$  West 20.00 feet; thence North  $00^{\circ}01'29''$  West 193.44 feet to the southerly Right of Way line of 400 South Street; thence along said Right of Way line South  $87^{\circ}49'34''$  East 193.18 feet to a point on a 15.00 foot radius non-tangent curve to the right; thence southeasterly 23.09 along the arc of said curve through a central angle of  $88^{\circ}12'50''$  (chord bears South  $43^{\circ}44'27''$  East 20.88 feet) to the westerly Right of Way line of 950 West Street; thence along said westerly Right of Way line South  $00^{\circ}24'40''$  West 260.38 feet to the Southeast corner of said LOT 5; thence along the southerly line of said LOT 5 North  $89^{\circ}59'43''$  West 103.63 feet to the POINT OF BEGINNING.