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66-527-0005, 66-527-0006

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

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Jeffery Smith  
Utah County Recorder  
2016 Jun 30 11:25 AM FEE 49.00 BY VM  
RECORDED FOR First American - Salt Lake Es  
ELECTRONICALLY RECORDED

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

023-5773907

## 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 29 day of June, 2016 by **SMITH'S FOOD AND DRUG CENTERS, INC.**, an Ohio 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(l), which Subject Land is located in Utah County, State of Utah, and more particularly described in Exhibit "A" attached hereto.

B. Improvement of Subject Land. Smith's proposes to improve the Subject Land 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 Store or Smith's Marketplace located on the Building Area designated as "**Smith's**" (hereinafter, "**Smith's Parcel**") on the site plan ("**Site Plan**") attached hereto as Exhibit "B", and other similar structures upon certain portions of the Subject Land, and Smith's has set aside for additional construction of structures or buildings on the Subject Land certain portions of the Subject Land, as more particularly defined as "**Building Areas**" in Section 1(b).

D. Common Areas. There shall be certain roadways, sidewalks, driveways, parking areas, Building Areas, mall, 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(c) as the Common Areas.

E. Easement and Maintenance Obligations. Smith's desires to establish and create for the benefit of each Building Area 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.

F. 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 for the benefit of the Owners of all interests in the Subject Land.

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

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

b. "Building Areas" shall mean those areas within each separate Parcel on the Site Plan as outlined and identified on Exhibit "B", upon which buildings may be constructed. Any Owner shall have the right at any time subsequent to the execution of this Declaration to expand the Floor Area of its building on its Parcel(s) within the limits of the Building Area shown by the dotted black line on Exhibit "B" hereto, provided that such expansion does not reduce the number of available parking spaces on its Parcel below the greater of (i) five (5) spaces per thousand (1,000) square feet of Building Area for a retail use or ten (10) spaces per thousand (1,000) square feet of Building Area for any casual dining restaurant (such as, e.g., Panda Express, Zupas, Café Rio or Costa Vida) or full-service sit-down restaurant use, seven (7) spaces per thousand (1,000) square feet of floor area for any fast-food restaurant, or (ii) that required by applicable governmental authorities on its Parcel, without taking into account the parking which may exist on the other Parcels.. Notwithstanding the foregoing, the Building located on Pad E may be rotated 90 degrees so that such building is parallel to the adjacent roadway.

c. "Common Areas" shall mean all real property within the Shopping Center except the Building Areas; provided those portions of the Building Areas upon which an Owner is not obligated to construct (or does not construct) buildings pursuant to this Declaration shall be deemed to be Common Area until such time as construction of buildings thereon commences. 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. Those portions of the Building Areas on each Parcel which are not from time to time used, or cannot under the terms of this Declaration be used, for Buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided in this Declaration. An area converted to Common Area may be, as set forth below, converted back to

Building Area, if at the time of conversion back to Building Area, it meets the requirements of this Declaration.

d. "Developer Parcel(s)" shall mean all Parcels in the Shopping Center other than the Smith's Parcel, and includes Lot 2, Lot 3, Lot 4 and Lot 5 as detailed in Exhibit A, which lots each include one or more pads, as shown on the Site Plan.

e. "Floor Area" shall be defined as the square foot floor area within exterior walls of any building or structure, excluding any equipment, storage, office, restroom, lounge or other raised mezzanine; 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 Building Area may project from any building or structure 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.

f. "Owner" shall mean the Owner of the fee title to a Parcel.

g. "Parcel" shall mean each separate parcel of land, sometimes referred to herein and in Exhibit A as a Lot, contained in the Shopping Center held by any record Owner.

h. "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 consists of the development of the Smith's Parcel. The subsequent development phases, if they occur, shall consist of the development of the remaining Building Areas.

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

j. "Smith's Building" shall mean the building constructed on the Smith's Parcel.

k. "Smith's Parcel" shall mean that area designated as "Smith's" (consisting of Lot 1 and Lot 6) on the Site Plan, and more particularly described in Exhibit "A" attached hereto.

l. "Subject Land" shall mean the land consisting of approximately 24.721 acres as shown on the Site Plan specifically identified and designated as: Smith's Parcel and Developer Parcels. The Subject Land is located in the City of Springville, Utah County State of Utah, and is legally described in Exhibit "A" which is attached hereto and by this reference incorporated herein.

## 2. Buildings.

a. Retail Limitation. The buildings shall be commercial buildings of the type usually found in first-class retail shopping centers in the greater metropolitan area in which the Shopping Center is located. The tenants occupying the buildings shall be primarily retail sales and retail service tenants of the type normally associated with first-class retail shopping centers in such metropolitan area. "Retail services" means restaurants, financial institutions, real estate and stock brokerage offices, travel or insurance agencies,, and similar uses providing services directly to the public, but "retail services" specifically excludes nonprofit organization offices, medical and dental offices, government offices, office uses that do not involve direct service to consumers, office uses in excess of 3,000 square feet of floor area, and other uses not customarily associated with or contained in first-class retail developments. Without limiting the generality of the foregoing, without Smith's consent (which consent may be withheld in Smith's sole discretion), no portion of the Shopping Center other than the Smith's Parcel shall be used for (i) flea markets, fire, bankruptcy or liquidation sales, or sales of "second-hand" or "surplus" merchandise; (ii) training or educational facilities (other than on-site employee training by an occupant incidental to the conduct of its business); or (iii) automotive or other vehicle service or tire or battery sales or service facilities (except that a "Pep Boys" or "Auto Zone" or other auto parts store shall be permissible); (iv) the renting, leasing, sale or display of any motor vehicle, truck, trailer, recreational vehicle or boats; (v) movie theater; (vi) children's playland (except as part of a fast-food restaurant), (vii) night club or dance hall, (viii) bowling alley, (ix) skating or roller rink; (x) pool or billiard hall; (xi) health spa or fitness gym or workout facility; (xii) and game room or video arcades (more than six [6] electronic games) or other entertainment facilities.

b. Restrictions on Types of Use. To safeguard Smith's interest in having a clean, quiet and proper environment and in having adequate parking for its customers, excepting any restaurant located on Lot 2, no restaurant (fast-food or sit-down) shall be allowed within three hundred feet (300') of any exterior building wall of Smith's Building. Excepting any building used for general or business offices located on Lot 2, no building used for general or business offices shall be allowed within two hundred fifty feet (250') of the exterior building wall of the Smith's Building. All uses allowed and existing within the Developer Parcels must include, within the Parcel upon which such use is located, parking equal to the greater of (i) that required by applicable laws and ordinances or (ii) five (5) spaces per thousand (1,000) square feet of floor area for any non-restaurant use, (iii) seven (7) spaces per thousand (1,000) square feet of floor area for any fast-food restaurant; and (iv) ten (10) spaces per thousand (1,000) square feet of floor area for any casual dining restaurant (such as, e.g., Panda Express, Zupas, Café Rio or Costa Vida) or any full-service sit-down restaurant use.

c. Restrictions on Certain Parcels. During the term of this REA, no portion of the Developer Parcels shall be used for (i) any supermarket or grocery store or drug store (which for purposes of this Declaration means any store, department or area within a store, containing 500 square feet or more of sales floor area, including aisle space and storage, primarily devoted to the retail sale of food or alcoholic beverages for off-premises consumption), or for the sale of fresh or frozen meat, fish, poultry, produce or bakery products for off-premises

consumption; (ii) any delicatessen (but not restricting a sandwich shop such as Subway or Togo's), convenience store or fuel center; (iii) the operation of a cigarette or smoke shop or any other shop or store the primary business of which is to sell tobacco products; or (iv) the sale of health and nutrition aids; or (v) the sale of pharmaceutical drugs.

d. General Restrictions on Use. Neither the Developer Parcels nor the Smith's Parcel nor any portion thereof shall in any event be leased, subleased, operated or otherwise used for (i) the display, distribution or sale of any "adult" books, "adult" films, "adult" periodicals or "adult" entertainment; (ii) the establishment or maintenance of a massage parlor "adult" theater, "adult" bookstore, "sex" shop, "peep show" or bawdy house or brothel; (iii) the operation, establishment or maintenance of a veterinary clinic, or any use in violation of applicable zoning and other governmental laws and regulations. In addition, and not in limitation of the foregoing, no part of the Shopping Center shall be used or permitted to be used for (i) any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building in the Shopping Center; or (ii) any use which is a public or private nuisance, or which is likely to generate public protests or controversy interfering with the operation of the Shopping Center as a retail center; nor shall there be thereon any (iii) distilling, refining, smelting, agricultural, animal raising or boarding (other than consumer pet shops), or mining operation; (iv) any short or long-term residential use; (v) any primary use as a warehousing, assembling, manufacturing, waste processing or other industrial operation; (vi) any place for public assembly (such as a church mortuary or meeting hall). Notwithstanding the above, the normal operation of a Smith's Food & Drug Store or Smith's Marketplace or Smith's fuel center shall not be deemed a violation of this Section 2.d.

e. Liquor Sales. Except as otherwise specifically approved in writing by Smith's (which Smith's may withhold in its sole discretion), in no event shall any portion of the Developer Parcels be used for any bar, tavern or other business operation involved in the sale of alcoholic beverages for on-site or off-site consumption; provided, however, that liquor sales for on-premises consumption shall be permitted in conjunction with a restaurant or other eating or food service establishment, in which case, the bar area of the restaurant shall not exceed twenty-five percent (25%) of the restaurant's total sales floor area.

f. Location. No building shall be constructed on the Smith's Parcel or the Developer Parcels, except within the Building Areas shown on Exhibit "B".

g. 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. Except for the building on the Smith's Parcel, all buildings shall be one story and shall not exceed twenty-four feet (24') in height (but may include an architectural element, raised mezzanines for equipment, storage, offices (to which the public is not invited), restrooms or lounges). Smith's, subject to first obtaining approval of all applicable governmental authorities, may make such changes as are instructed 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.

h. Alterations to Shopping Center. Following completion of construction of any portion of the Shopping Center, the sizes and arrangements of said buildings and common areas related thereto (including parking areas and traffic circulation and flow patterns) will not be changed without Smith's written consent, which written consent shall not be unreasonably withheld, conditioned or delayed

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

j. Fire Protection. Smith's plans on constructing its building as a Type V-B, non-rated (as defined in the International Building Code) building ("Construction Type"). Except for buildings abutting the Smith's Building, no building in the Shopping Center shall be constructed within sixty (60) feet of the Smith's Building. Buildings abutting Smith's Building or within sixty (60) feet of any building abutting Smith's Building must be of the same Construction Type as the Smith's Building in order to preserve Smith's Building rating and shall be continuously maintained so as to preserve Smith's Construction Type. Any Owner of a Developer Parcel shall provide sixty (60) feet no-build easements or yard agreements as may be required by the appropriate governmental agencies to preserve Smith's construction classification.

k. No Covenant to Construct or Operate. Notwithstanding anything contained anywhere in this Declaration to the contrary, nothing herein shall be deemed to create an obligation on Smith's to commence or complete construction of any building on the Smith's Parcel, or to operate any business for any period of time on the Smith's Parcel. The construction of a building or operation of a business on the Smith's Parcel shall, at all times, be in the sole and absolute discretion of Smith's.

### 3. **Common Areas Use.**

a. Grant of Easements. Smith's hereby grants to each and every Owner and their respective successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees, and invitees, and declares for the benefit of each of the respective Parcels within the Shopping Center 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 the use of storm drainage and retention facilities, landscaping, public rest rooms, if any, and other public facilities, directional signs and other areas intended for common use. Notwithstanding the foregoing, any Owner shall have the right to revise the configuration of such designated areas and facilities on its Parcel(s), in its discretion, subject to receiving the prior written consent of Smith's.

b. Use. Subject to existing easements 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 and occupants of the buildings constructed on the Building Areas defined above.

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 various 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 this provision 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, (3) for incidental, immaterial and temporary encroachments in conjunction with construction, maintenance or repair of buildings and improvements on the Parcels, so long as such construction, maintenance or repair is being diligently pursued, and (4) for temporary blockage of certain areas deemed necessary by the parties to prevent a public dedication of an easement or access right. Temporary storage pods located behind the Smith's Building shall not be deemed a violation of this subsection or this Declaration. 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. 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 easements as granted herein. Additionally, Smith's may conduct seasonal sales on a portion of the parking area on the Smith's Parcel.

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 the Smith's Parcel or the other Parcels 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." Owners may from time to time mutually designate and approve "employee parking areas"; however, if they do not, each party may designate "employee parking areas" 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 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, utilities and other proper services necessary for the orderly development and operation of the Common Areas and buildings to be erected upon the Building Areas. The Owners will use their reasonable efforts to cause the installation of such utility and service lines prior to paving of the Common Areas.

#### 4. **Common Areas: Development, Maintenance and Taxes.**

##### a. Development Timing.

(i) By Owner of Parcel. When any Building is constructed within the Building Areas on a Parcel, the Common Areas on that Parcel associated with such Building 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.

(ii) By Smith's. Smith's, at its sole cost and expense, shall grade, pave, landscape and otherwise improve and use any portion of the Common Areas of the other Parcels in accordance with Exhibit "B" but for landscaping and sidewalks adjacent to buildings to be constructed, which improvements shall be made by the Owner of such Parcel. Any changes from Exhibit "B" shall be approved in advance by the Owner(s) of the other Parcels in writing, provided that such approval shall not be unreasonably withheld or delayed.

##### b. Maintenance.

(i) Standards. Following completion of the improvement of the Common Areas, the Owners of the Parcels shall maintain their respective portions of the Common Areas on their respective Parcels 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) 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 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 all 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 agent. Subject to the revocable mutual agreement of the Owners, any Owner or a third party may be appointed as agent to maintain the Common Areas in the Shopping Center in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar costs, which sums are to be included in the general maintenance expense paid by the respective Owners of the Common Areas.

(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 respective portion of the Common Areas owned by it.

## 5. **Signs.**

Except for directional signs for guidance upon the Common Areas, no pylon or pole signs shall be located on the Common Areas on the Smith's Parcel or any other Parcel except in accordance with the terms and conditions of this Declaration. Smith's shall have the right at its sole option, but not the obligation, at any time to construct its own pylon sign bearing its own designation, located any place on the Common Area that does not unreasonably interfere with ingress and egress to the Shopping Center. Smith's shall bear all maintenance and utility costs associated with the pylon sign. In the event any other "major tenant" (e.g., a tenant occupying a single Building of at least 5,000 square feet) desires to construct a pylon sign at any location at the Shopping Center, the right to place a sign along with the location, size and design of such pylon sign shall be subject to Smith's prior written approval. In the event that rules, regulations or codes of any governmental authority having jurisdiction do not permit a pylon sign in addition to the pylon sign to be constructed by Smith's, and a variance cannot be obtained allowing an additional pylon sign, then Smith's and any other affected "major tenant" shall jointly design and construct a

mutually acceptable pylon sign, and apart from each party bearing the cost of such party's own designation on such sign, all costs of design, construction, maintenance, utilities and replacement of such common pylon sign shall be shared in accordance with the ratio that the surface area of the facia of such party's designation bears to the total surface area of the facia on the common pylon sign. The common pylon sign shall bear only the designation of the Shopping Center name, the designation of the trade name of the operator of the Smith's Building in the top priority position, and the designation of the trade name of the "major tenant(s)." Smith's shall have the first priority position on any common pylon sign(s) in the Shopping Center. Notwithstanding the foregoing, each pad on each of the Developer Parcels shall have the right to have their own exclusive monuments signs.

**6. Indemnification/Insurance.**

a. Indemnification. Each Owner shall agree to indemnify, defend and save the other Owners harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from injury to person or property and occurring on its own Parcel, except if caused by the act or neglect of the Owner seeking indemnification.

b. Insurance. Each Owner shall provide commercial general liability insurance affording protection to itself and the other Owners on its own Parcel(s), naming the other Owner as an "additional insureds" 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. The insurance company providing such insurance shall be rated at least A- VII, A.M. Best's rating. 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.

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, or its parent company, shall have a net worth of at least One Hundred Million Dollars (\$100,000,000). 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 Ten Thousand Dollars (\$10,000) 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 Paragraph 6, shall name the other Owners as additional insureds 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 the effective date of any material reduction in the amounts or scope of coverage. Each Owner shall deliver to the other Owners a certificate or statement from the Owner's insurance company that such insurance insures the performance by the Owner insured of the indemnity requirements specified in this Paragraph 6 and the existence of the insurance coverage to the limits herein required. Each Owner shall promptly notify the other

Owners of any asserted claim with respect to which such Owner is or may be indemnified against hereunder and shall deliver to such Owner copies of process and pleadings.

## 7. 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 other Owners in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owners' Parcel or give the 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 of 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 Owners 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.

c. Tenant's Claim. Nothing in this Paragraph 7 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 such 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 so owned as near as practicable to the condition of same immediately prior to such condemnation or transfer to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other 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 Buildings 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 improvements; (ii) level and pave the same. 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 level and pave the Buildings or improvements destroyed or damaged, the same 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 level or pave the Building or improvement and shall rebuild or repair the same in accordance with this subparagraph.

## 8. Enforcement.

a. Right to Enforce. The right to enforce the terms, covenants, and easements contained herein shall belong only to the Owners, lessees of the Owners, if any, and to mortgagees under mortgages covering any of the Subject Land and beneficiaries and trustees under deeds of trust covering any of the Subject Land of the Owners, provided that the lease or memorandum of lease in favor of such lessee, mortgage in favor of such mortgagee, or deed of trust in favor of such beneficiary and trustee is recorded in the office of the Recorder of Utah County, State of Utah.

b. Modification, Cancellation and Delegation of Authority. This Declaration (including Exhibit "B") may be modified or cancelled only by written consent of the Owner of the Smith's Parcel, its successors and assigns and at least fifty percent (50%) of the owners of the Developer Parcels; provided, however that any modification that materially affects the access points or parking of any Parcel shall require the consent of the Owner of that Parcel in addition to the other required consent described above. Any purchaser, lender, mortgagee, lessee, assignee, grantee, sublessee or other party having any interest in any portions of the Smith's Parcel shall be deemed to have appointed Smith's as their attorney-in-fact for the Smith's Parcel for the purpose of negotiating and entering into any modifications of this Declaration.

c. Breach. In the event of violation or threatened violation of this Declaration, only all record Owners as a group, or Smith's, so long as it has an interest as Owner or tenant in the Smith's Parcel, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach. The unsuccessful party in any 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 any Owner of a Parcel or the party to whom its authority has been delegated, stating with particularity the nature and extent of such default, the defaulting Owner has failed to cure such default, and if a diligent effort is not then being made to cure such default, then any other Owners 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 shall attach and take effect upon recordation of a property claim of lien by the claimant in the office of the county recorder of Utah 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 last known name and address of the Owner or reputed Owner of the Parcel against which the lien is claimed; (4) a description of the property against which the lien is claimed; (5) a description of the "work performed or payment made" 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 served upon the party against whom the lien is claimed, either by personal service or by mailing (first class,

certified, or return receipt requested) to the defaulting Owner, at the address for mailing of tax statements with respect to the property 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. Notwithstanding the foregoing, such lien shall be subordinate to any first mortgage or deed of trust given in good faith and for value now or hereafter encumbering the property subjected to the lien, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any first mortgage or deed of trust shall take free and clear from any such then existing lien, but otherwise subject to the provisions of this Declaration. The failure of the Owner or Owners 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. So long as an Owner is a tenant of a Parcel, this Declaration shall not be subject to the doctrine of merger, even though the underlying fee Ownership to the Parcels described herein is vested in such party.

f. Duration. All of the provisions hereof shall run with the land in perpetuity and shall be binding on all Owners, their respective successors and assigns; provided, however, if any of the provisions of this Declaration shall be unlawful, void or voidable for violation of the Rule Against Perpetuities, then such provisions shall continue only until twenty one (21) years after the death of the survivor of the now-living descendants of her Majesty, Queen Elizabeth II, the Queen of England. Notwithstanding any such termination, the access easements (but not the parking easements) described in Paragraph 3(a) and the utility easements granted pursuant to Paragraph 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 8(b) hereof.

## 9. **Rights and Obligations of Lenders.**

Subject to the provisions of 7(c) above, the charges and burdens of this Declaration are, and shall at all times be, prior and therefore superior to the lien or charge of any mortgage or deed of trust made in good faith and for value affecting any Parcel, or any improvements now or hereafter placed thereon. 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. The superiority of this Declaration shall be limited to the extent that title to any property acquired through sale under foreclosure of any mortgage or deed of trust effected by powers of sale, judicial proceedings, or otherwise, shall be subject to all the charges and burdens affecting the Parcels by virtue of this Declaration, as noted in 8(c) hereof.

## 10. **Release from Liability.**

Any person acquiring fee or leasehold title to any Parcel or any portion thereof shall be bound by this Declaration only as to the Parcels or portion of the Parcels acquired by such person. Such person shall be bound by this Declaration only during the period such person is the fee or leasehold Owner of such Parcel(s) or portion of the Parcel(s), except as to obligations,

liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Declaration shall continue to be benefits and servitudes which run with the land as described in Paragraph 11 next below.

**11. Rights of Successors.**

The easements, covenants, conditions, restrictions, benefits, and obligations hereunder shall create 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, their respective heirs, personal representatives, tenants, successors, and/or assigns. The singular number includes the plural and any gender includes all other genders.

**12. Paragraph Headings.**

The paragraph 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.

**13. 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 of the Parcels herein affected, 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 thereof. Notwithstanding any other provisions herein to the contrary, the Owners of the Parcels affected hereby may periodically restrict ingress and egress from the Common Areas in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such a time as to have a minimum effect on the parties in occupancy within the Shopping Center.

**14. 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.

**15. Modifications.**

This document once executed and delivered, shall not be modified, changed or altered in any respect except by writing executed and delivered in the same manner as required for this document.

**16. Compliance with Laws.**

All Owners shall comply promptly with all federal, state, and municipal statues and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies pertaining to the use of occupancy of the Subject Land, as such statues, ordinances, regulations, orders, and directives now exist or may hereafter provide.

17. **Waiver of Jury Trial.**

All disputes or claims arising under this Declaration shall be mediated by a mediator to be agreed upon by the parties. If after good faith efforts by the parties mediation is unsuccessful, then any remaining controversy or claim arising out of or relating to this Declaration or the breach thereof shall be resolved by bench trial in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover all costs, including reasonable attorneys' fees, incurred in enforcing the terms of this Declaration. The parties hereby waive their right to a jury trial of any disputes or claims arising under this Declaration.

18. **Force Majeure.**


Smith's shall be excused from performing any obligation or undertaking provided in this Declaration, in the event, but only so long as, the performance of any such obligation or undertaking is prevented or delayed, retarded, or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies, failure of transportation, strikes, lockouts, action of labor unions, laws hereafter enacted, orders of governmental or civil or military or naval authorities, government action or inaction where action is required, court orders or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of either party (other than lack of or inability to procure monies to fulfill its commitments and obligations under this Lease).

19. **Effective Date.**

This Declaration shall take effect immediately upon recording.

**IN WITNESS WHEREOF**, the parties hereto have executed this Declaration the day and year first above written.

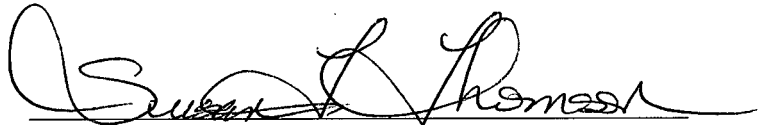
**SMITH'S FOOD & DRUG CENTERS, INC.,**  
an Ohio corporation

By:   
Its: VICE PRESIDENT

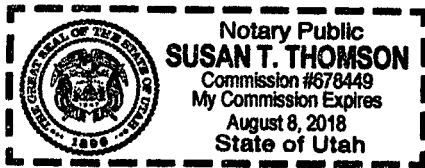
STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

Before me, the undersigned authority, on this day personally appeared STEVEN M. BERENSEN, Vice President of SMITH'S FOOD & DRUG CENTERS, INC., an Ohio 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 29<sup>th</sup> day of JUNE, 2016.

  
Notary Public  
Residing at: SALT LAKE COUNTY, UT

My Commission Expires:  
8-8-18





**EXHIBIT "A"**

[Declaration of Covenants, Conditions and Restrictions and Grant of Easements]

Smith's #271 – Smith's Marketplace -- Lot 1

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

Contains 559,694 sq. ft.  
or 12.849 acres

Smith's #271 – Pad G -- Lot 2

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

Contains 37,026 sq. ft.  
or 0.850 acre

Smith's #271 – Pads A & B -- Lot 3

All of Lot 3, Springville Marketplace, a Commercial Subdivision as recorded in the Utah County Recorder's Office.

Contains 87,608 sq. ft.  
or 2.011 acres

Smith's #271 – Pad C & D -- Lot 4

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

Contains 91,861 sq. ft.  
or 2.109 acres

Smith's #271 – Pads E & F -- Lot 5

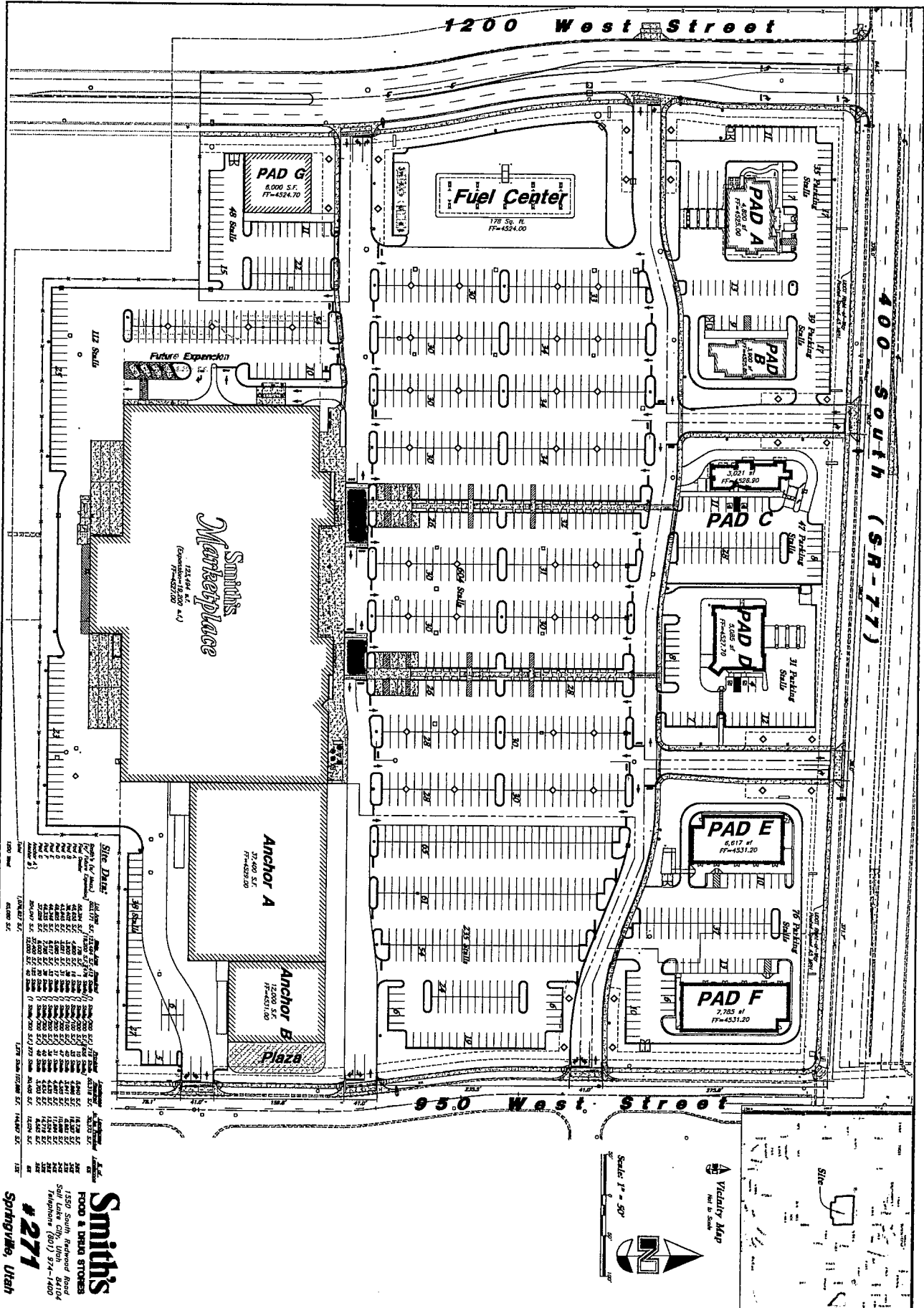
All of Lot 5, Springville Marketplace, a Commercial Subdivision as recorded in the Utah County Recorder's Office.

Contains 94,047 sq. ft.  
or 2.159 acres

Smith's #271 – Anchor A & B -- Lot 6

All of Lot 6, Springville Marketplace, a Commercial Subdivision as recorded in the Utah County Recorder's Office.

Contains 206,590 sq. ft.  
or 4.743 acres



**Site Data**

Lot No.	Area (S.F.)	FF	Notes
1	133,144	4520	A-1
2	17,400	4526.50	
3	12,000	4531.00	
4	4,800	4524.00	
5	4,800	4524.00	
6	5,821	4526.90	
7	4,800	4527.70	
8	5,611	4531.20	
9	7,725	4531.20	
10	5,000	4524.70	

**Smith's**  
**FOOD & DRUG STORES**  
 1350 South Redwood Road  
 Salt Lake City, UT 84119  
 Telephone: (801) 584-4480  
**#271**  
 Springville, Utah

**C10**

16 Nov 2015

**Overall Site Plan**  
**Smith's #271 Marketplace**  
 1117 West 400 South  
 Springville, Utah

**AWA**  
**ANDERSON WAHLEN & ASSOCIATES**  
 2010 North Redwood Road, Salt Lake City, Utah 84115  
 801 221-8322 - awah@andersonwahlen.com

Scale: 1" = 50'

Vicinity Map

REV	DATE	DESCRIPTION
1	11/24/2015	Submission 1