

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

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11/25/2015 1:05:00 PM \$60.00  
Book - 10382 Pg - 6541-6562  
Gary W. Ott  
Recorder, Salt Lake County, UT  
FIRST AMERICAN TITLE  
BY: eCASH, DEPUTY - EF 22 P.

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

SPACE ABOVE FOR RECORDER'S USE

TaxID# 26-24-300-022-0000

## RESTRICTIONS AND EASEMENTS AGREEMENT

THIS RESTRICTIONS AND EASEMENTS AGREEMENT ("REA") is made to be effective as of the 25 day of November, 2015, between **SMITH'S FOOD & DRUG CENTERS, INC.**, an Ohio corporation, herein called "**Smith's**," and **DB TRAIL CROSSING, LLC**, a Delaware limited liability company, herein called "**Developer**."

### RECITALS

A. **Smith's Lot.** Smith's is the owner of the Smith's Lot as shown on the "Site Plan" attached hereto as Exhibit "A" and which is more particularly described on Exhibit "B" hereto (the "**Smith's Lot**").

B. **Developer Lots.** Developer is the owner of the Developer Lots as shown on the Site Plan, which are more particularly described on Exhibit "C" hereto (the "**Developer Lots**", together with the Smith's Lot the, "**Property**").

C. **Purpose.** Smith's and Developer desire that the Smith's Lot and the Developer Lots be developed in conjunction with each other in an orderly fashion so as to create a harmonious and efficient commercial shopping center as set forth herein and further desire that the Shopping Center (as defined below) be subject to certain easements, covenants, conditions and restrictions all as hereinafter set forth.

### AGREEMENT

In consideration that the following encumbrances shall be binding upon the parties hereto and shall attach to and run with the Smith's Lot and the Developer Lots, and shall be for the benefit of and shall be limitations upon all future owners of the Smith's Lot and the Developer Lots and that all easements, restrictions and other covenants herein set forth shall be appurtenant to the dominant estates and obligations on the servient estates, and in consideration

of the promises, covenants, conditions, restrictions, easements and encumbrances contained herein, Smith's and Developer do hereby agree as follows:

1. **Definitions.**

a. **"Building Area; Floor Area."** The "**Building Area**" shall mean that portion of the Property upon which buildings may be constructed, as outlined and identified on the Site Plan attached hereto as Exhibit A. Initially, approximately One Hundred Fourteen Thousand Eight Hundred Four (114,804) square feet of Floor Area of buildings, as defined below, are planned to be constructed within the Building Area on the Smith's Lot; approximately Eighty Three (83,000) square feet of Floor Area are planned to be constructed within the Building Areas on Developer Lots. In no event shall any of Developer's Lots be developed into a use with Floor Area greater than the amount of Floor Area designated for each Lot as set forth on the Site Plan. For purposes hereof, "**Floor Area**" shall be defined as the square foot floor area within exterior walls of any building or structure, excluding any equipment, restroom, or other raised mezzanine, exterior trash enclosures; open loading docks which are not heated or air conditioned; canopies and roof overhangs; and vestibules for ingress and egress. Such exclusions from Floor Area may project from any building or structure up to a distance of twenty-five feet (25') over or outside of the Floor Area on any Lot; 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.

b. **"Common Areas."** The "**Common Area**" shall mean all public and common facilities erected on the Property exclusive of the Building Areas including but not limited to, all entrances, exits, driveways, parking areas, walks, service drives, utilities, storm water drainage and retention or detention pond facilities, shopping center identification and directional signs and lighting facilities, exclusive of any improvements constructed on any Building Areas. Docks, loading areas, service areas and canopies which are attached to buildings but which extend over Common Area shall be deemed to be part of the building which they serve or to which they are attached and not part of the Common Area. Those portions of the Building Areas on each lot which are not from time to time used or cannot under the terms of this REA 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 REA. 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 REA.

c. "Shopping Center." The "**Shopping Center**" shall mean the Property, the Building Area, and the Common Areas together with the improvements constructed thereon.

2. **Building.**

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 neighborhood first-class retail shopping centers in such metropolitan area. "Retail services" include restaurants, financial institutions, real estate and stock brokerage offices, travel or insurance agencies, medical and dental offices, and similar uses providing services directly to the public, but "retail services" specifically excludes nonprofit organization offices, university or government offices in excess of 3,000 square feet, office uses that do not involve direct service to consumers, office uses in excess of 3,000 square feet of Floor Area (except where offices are used in connection with (i) financial institutions not to exceed 7,500 square feet or (ii) medical and dental offices not to exceed 7,500). Notwithstanding anything herein to the contrary, neither financial institutions or medical or dental offices shall be located in Jr. Anchor M, Jr. Anchor L and Jr. Anchor K (collectively, "Jr. Anchors Pads"). 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 Developer Lots shall be used for (i) flea markets, fire, bankruptcy or liquidation sales; (ii) sales of "second hand" or "surplus" merchandise in excess of 5,000 square feet (Tuesday Morning, Play-it-Again Sports are permitted); (iii) training or educational facilities in the areas identified on the site plan as Jr. Anchor Pads and Retail J; (iv) the renting, leasing, sale or display of any motor vehicle, truck, trailer, recreational vehicle or boats; (v) movie theater; (vi) children's playland in Jr. Anchor Pads and Retail J (v) night club or dance hall, (vi) bowling alley, (vii) skating or roller rink; (viii) pool or billiard hall; (ix) health spa or fitness gym or (x) and game room or video arcades (more than four (4) electronic games) or entertainment facilities in Jr. Anchor Pads or Retail J. Notwithstanding the restrictions contained in (ix) above, one specialty health spa or fitness gym of not more than 7,500 square feet may be operated in the Shopping Center, but not on Jr. Anchor Pad M or L; and one climbing gym of not more than 25,000 square feet may be operated in the Shopping Center, in the Jr. Anchor pads, so long as the entrance to said climbing gym is no closer than one hundred thirty-five feet (135') from the Smith's building, but in no event shall the Jr. Anchor pads be operated as both a climbing gym and a specialty health spa/fitness gym. If Developer elects not to construct or operate a climbing gym or a state liquor store in the Shopping Center, then it may construct and operate a second specialty health spa or fitness gym of not more than 7,500 square feet, but not on the Jr. Anchor Pad M or L.

b. Restrictions on Types of Use. Developer recognizes the needs of Smith's customers to have adequate parking facilities in close proximity to the building upon the Smith's Lot, and the importance of protecting against unreasonable or extensive use of parking spaces which is likely to result from parking by patrons or employees of certain types of business establishments. Developer further recognizes Smith's interest in not having tenants occupying space in close proximity to the Smith's building who create or cause excessive noise, litter or odor or which are duplicative of the uses found in Smith's Store.

c. Retail Parking. The Property Owners shall establish and maintain the parking spaces on the Common Areas giving due regard to the need for an orderly and efficient traffic flow on the Common Areas, employee parking and loading and unloading of merchandise. In no event shall there be less than: (i) five (5) parking spaces for each 1,000 square feet of non-restaurant Floor Area; and (ii) ten (10) spaces for each 1,000 square feet of restaurant Floor Area within the Shopping Center to be measured on a building, by building basis. The employees of the businesses operated on the Property shall park only in the areas designated on Exhibit A hereto, if any, or such other areas as the Property Owners may collectively designate. Each Property Owner shall take such reasonable action as may be necessary and appropriate to enforce this parking restriction.

d. Restrictions on Certain Lots. During the term of this REA no portion of the Developer Lots shall be used for (i) any supermarket or grocery store or drug store (which for purposes of this REA means any retail store, department or area within a retail store, containing at least 1,000 square feet of sales Floor Area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption), or for the sale of fresh or frozen meat, fish, poultry or produce or alcohol, liquor or alcoholic beverages for off-premises consumption (provided that this provision (i) shall not apply to carry-out or delivery restaurants); (ii) any delicatessen (but this shall not exclude a sandwich shop, including by way of example, Subway, Jimmy Johns or Firehouse Subs); (iii) fuel center; (iv) the sale of any pharmaceuticals requiring the services of a registered pharmacist; or (v) the operation of a cigarette or smoke shop or any other shop or store the primary business of which is to sell tobacco products. The foregoing restrictions set forth in this Section 2(d) shall not apply if, at the time such use is commenced, the Smith's Lot is not and has not been actively used as a supermarket or grocery store for a period of One Hundred Eighty (180) consecutive days, excluding periods of construction, reconstruction, repair, remodel, temporary taking or closures due to force majeure events. Notwithstanding the above, one State Liquor Store may be constructed and operated in the Shopping Center, so long as its entrance is at least one hundred feet (100') from Smith's building. If state liquor laws are ever changed to allow the private sales of liquor, then Smith's shall have the exclusive right to sell alcoholic beverages for off-premises consumption in the Shopping Center, but such exclusive shall not prohibit the State Liquor Store (if any) located in the Shopping Center as of the date of the change of said laws.

e. General Restrictions on Use. Neither the Developer Lots nor the Smith's Lot 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 (provided that this provision shall not exclude a day spa or massage retailer, including for example Massage Envy, so long as such business is not located on Jr. Anchor Pads), "adult" theater, "adult" bookstore, "sex" shop, "peep show" or bawdy house or brothel; (iii) the operation, establishment or maintenance of a veterinary clinic, a pawn shop business, or any use in violation of applicable zoning and other governmental laws and regulations; provided, however, that nothing herein shall be deemed, construed or interpreted as restricting or prohibiting gaming operations from being conducted on Smith's Lot, so long as such gaming operation is secondary to its main use. In addition, and not in limitation of the foregoing, neither the Developer's Lot nor the Smith's Lot, nor any portion thereof, 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 (provided that the smell of food outside of a restaurant shall not violate this provision); 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).

f. 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 Lots be used for any bar, tavern or other business operation involved in the sale of alcoholic beverages for on-premises 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.

g. Location. No building shall be constructed on the Smith's Lot or the Developer Lots, except within the Building Areas shown on Exhibit "A". Notwithstanding the foregoing, Smith's shall have the right at any time subsequent to the execution of this REA by written notice to the Developer to expand the Floor Area on the Smith's Lot to the limits of the Expansion Area shown by the dotted line on Exhibit "A" hereto, provided that such expansion does not reduce the number of available parking spaces below that required by applicable governmental authorities on the Smith's Lot (without taking into account the parking which may exist on the other party's Lot or Lots).

h. 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. All buildings shall be one story and shall not exceed twenty-five feet (25') in height (and may also include an architectural element, raised mezzanines for equipment, storage, offices (to which the public is not invited), restrooms or lounges, provided that such height restriction shall not apply to (i) the building on the Smith's Lot, (ii) any building on any Developer Lot on which a credit union and/or bank is constructed, which may not exceed twenty-seven feet (27') in height, and (iii) any building constructed on Lot C-109, which buildings shall not exceed the height of the building on Smith's Lot, provided, however, that in the event that a climbing gym is located in the Jr. Anchor Pads, the height of the climbing gym shall be permitted to be equal to average building height of its other stores in the Utah market. Developer acknowledges that Smith's is a national grocery and drug supermarket retailer and that the architectural theme of its store is related to operational strategies which change from time to time. Although Smith's has no reason to believe that the architectural theme and signage, once adopted, will be subject to change, Smith's, 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.

i. Alterations to Shopping Center. Following completion of construction of any portion of the No Change Areas depicted on Exhibit B, such No Change Areas will not be changed without Smith's written consent, which written consent shall not be unreasonably withheld, conditioned or delayed.

i. Footing Easements. In order to accommodate any footings, foundations, columns or walls which are or may be constructed or reconstructed near or immediately adjacent to a common boundary line, Developer and Smith's each grants to the other a non-exclusive easement in, to, over, under, and across that portion of its Lot adjacent to such common boundary line in space not occupied by any then existing structure for the construction, maintenance and replacement of such footings, foundations, columns, or walls. This grant of easement shall include the reasonable right of access necessary to exercise and enjoy such grant. Prior to utilizing the easement right set forth above, the grantee shall notify the grantor of its intention to use the same.

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. Developer covenants to 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 REA 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 Lot, or to operate any business for any period of time on the Smith's Lot. The construction of a building or operation of a business on the Smith's Lot shall, at all times, be in the sole and absolute discretion of Smith's. In the event no building is open to the public or no vertical construction has commenced on the Smith's Lot within Two (2) years of this Agreement, or the building constructed on the Smith's Lot ceases to operate as a fully-functioning supermarket for one hundred eighty (180) consecutive days at any time thereafter (excluding periods of repair, remodel, reconstruction or closures do to force majeure events), all use restrictions of the Developer Lots set forth in Section 2(d) above shall cease.

3. **Common Areas Use.**

a. Grant of Easements. Each party, as grantor, hereby grants to the other party for the benefit of said other party, its customers, invitees and employees, a permanent nonexclusive easement to use the Common Areas for the purposes for which they are provided, including, but not limited to, pedestrian and vehicular access, ingress and egress, the parking of motor vehicles in designated areas, utilities, storm water drainage, retention and detention and use of facilities installed for the comfort and convenience of customers, invitees and employees on the Common Areas of the grantor's lot; provided, however, the use of the Common Areas for ingress, egress, access and parking shall not cause the obstruction nor the impediment of vehicular or pedestrian traffic, upon or across the parking areas, entrances, exits, driveways, walks or service drives located within the Common Areas.

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, utilities, storm water drainage, retention and detention 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 lots; provided, however, reasonable traffic controls approved in advance by Smith's (which approval shall not be unreasonably withheld or delayed) 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 REA, (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 upon the Common Areas which may occur in conjunction with the construction, maintenance or repair of buildings and improvements on the Smith's Lot or Developer's Lots, so long as such construction, maintenance or repair is being diligently pursued, (4) for temporary blockage of certain areas deemed necessary by the parties to prevent a public dedication of an easement or access right, and (5) for parking lot paving, landscaping and lighting facilities, such directional traffic signs as are required to facilitate the orderly and free flow of pedestrian and vehicular traffic, and pylon sign in the location indicated on the Site Plan. 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 Lot, at a location reasonably determined by Smith's. This Recycle Center will not be affixed to the parking lot, will be fully moveable, and may consist of a trailer and additional containers into which recyclable materials may be deposited. Smith's agrees that the Recycle Center will be located within the parking stall areas and will not otherwise obstruct the access and parking easements as granted herein. The Recycle Center is thus deemed by the parties to be consistent with the rights and easements described herein.

d. Limitations on Use.

(1) Customers. Customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on the Smith's Lot or the Developer Lots with the occupants thereof.

(2) Employees. Employees shall not be permitted to park on the Common Areas, except in areas designated as "employee parking areas." The parties hereto 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 Lot.

(3) 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 REA shall not be charged any fee for such use.

e. Utility and Service Easements. There is hereby granted in favor of all Property Owners, their respective successors, assigns, mortgagees, lessees, sub-lessees, employees, agents, customers, licensees and invitees, a perpetual non-exclusive easement and right to use the Common Areas for storm drains, sewers, utilities and proper services for the orderly development and operation of the Common Areas which shall to the extent possible be located underground; provided, however, such shall not be located in any of the Building Areas, nor shall any utility lines be constructed in any manner as to impede or restrict vehicular or pedestrian traffic upon and across the parking areas, entrances, exits, driveways, walks or other drives located within the Common Areas. No utility lines shall be installed without the prior approval of the owners of the property affected thereby, which approval shall not be unreasonably withheld or delayed, and the party installing the line shall complete installation as soon as possible following the commencement of installation and restore any property affected thereby to as good (or better) condition as existed prior to installation. Any installation shall be performed in a manner so as not to unreasonably interfere with the operation of the Shopping Center. The parties will use their best 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.

(1) By Owner of Lot. When any building is constructed within the Building Areas on a Lot, the Common Areas on that Lot associated with such building shall be developed in accordance with Exhibit "A" and the Development Agreement to be negotiated in good faith and executed by the parties, all at the expense of the owner of said Lot.

(2) On- and Off-Site Improvements. Developer and/or Smith's shall construct and install all on- and off-site improvements as generally shown on the Site Plan and in accordance with that certain Development Agreement to be negotiated and executed by the parties. All on- and off-site improvements shall be constructed in accordance with plans and specifications approved by Smith's and Developer, and shall be completed in a lien-free condition. The non-constructing party shall reimburse the constructing party a fraction of the costs for said improvements as set forth in the Development Agreement.

(3) By Smith's. If Smith's constructs improvements on the Smith's Lot prior to the development of the Developer Lots, Smith's may grade, pave and otherwise improve and use any portion of the Common Areas of the

Developer Lots in accordance with Exhibit "A". Smith's shall cause all of said common area improvement work to be separately bid on a competitive basis, and the costs and proposed work shall be subject to Developer's prior written approval, such approval to be not unreasonably withheld or delayed. Developer agrees to reimburse Smith's for the costs of the common area improvement work done on the Developer Lot(s) by Smith's in accordance with a Site Development Construction Agreement executed by the parties on or about the date of this Agreement.

b. Maintenance.

(1) Standards. Following completion of the improvement of the Common Areas, the parties hereto shall maintain their respective portions of the Common Areas on their respective Lots 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.

(2) Expenses. The respective owners shall timely pay the maintenance expense of their respective Lots.

(3) By Agent. Subject to the revocable mutual agreement of the parties hereto, either of the parties 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.

c. Taxes. Each of the parties hereto agrees to 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. If any such owner shall fail to so pay such taxes and assessments, any other property owner, or the tenant of the property owner, may pay the taxes and assessments and the paying property owner or tenant may then bill the defaulting property owner for the expense incurred, and the defaulting property owner shall pay said bill within fifteen (15) days of receipt thereof. Notwithstanding the foregoing, a property owner shall not be required to pay, discharge or remove any tax or assessment on its property so long as it shall contest at its own expense the existence, amount or validity thereof by appropriate proceedings which shall prevent the collection of or other realization upon the tax or assessment so contested, and the sale, forfeiture or loss of the property subject to the tax or assessment to satisfy the same.

5. **Signs.**

Except for directional signs for guidance upon the Common Areas and monument signs located on Developer Parcels, no pylon or pole signs shall be located on the Common Areas on the Smith's Lot or the Developer Lots except in accordance with the terms and conditions of this REA and all applicable governmental requirements. Smith's and Developer will jointly design and construct a mutually acceptable common pylon sign with marquee in the place designated on the Site Plan. The cost of the common pylon sign shall be shared in accordance with the ratio that the surface area of the facia of each party's designation bears to the total surface area of the facia of the common 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, and the designation of the trade name of up to seven (7) additional tenants located within the Shopping Center from time to time. Smith's or its successor shall have the first priority position on any common pylon sign(s) in the Shopping Center.

6. **Indemnification/Insurance.**

a. Indemnification. Each party, on behalf of themselves and their respective lessee's, hereby agrees to indemnify, defend and save the other party 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 Lot, except if caused by the act or neglect of the other party hereto.

b. Insurance. Each party shall provide commercial general liability insurance affording protection to itself and the other party on its own lot(s), naming the other party as an "additional insured" under the policy or policies, for a combined bodily injury and property damage limit of liability of not less than Two Million Dollars (\$2,000,000) per occurrence, Three Million Dollars (\$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 a party so long as such blanket policy does not reduce the limits or diminish the coverage required herein.

c. Self Insurance. Each party 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, in accordance with each party's established corporate policy; provided, however, that the party electing to self-insure (or its parent company) must have a net worth of at least Fifty Million Dollars (\$50,000,000). Any party providing self-insurance shall, upon request, provide the other party with a description of such self-insurance program, financial statements, and evidence of any partial insurance coverage which may be supplementing any plan of partial self-insurance.

d. Other Insurance Matters. All policies of insurance required by this REA shall insure the performance of the party insured thereunder of the indemnity agreement contained in this Section 6, shall name the other party an additional insured and shall contain a provision that the insurance company will provide all parties with twenty (20) days advance written notice of any cancellation or lapse, or the effective date of any material reduction in the amounts or scope of coverage. Promptly upon written request therefor, each party shall deliver to the requesting party a certificate or statement of insurance from the party's insurance company providing proof of existence of the insurance coverage to the limits herein required. Each party shall promptly notify each other party of any asserted claim with respect to which such party is or may be indemnified against hereunder and shall deliver to such party copies of process and pleadings.

7. **Eminent Domain.**

a. Owner's Right to Award. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's lot or give the public or any government any rights in the Smith's Lot or the Developer Lots. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on the Property, 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 Section 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. If more than twenty percent (20%) of the parking spaces on the Property are condemned or taken by any right of eminent domain, or the points of ingress and egress to the public roadways as depicted on Exhibit A hereto shall be materially impaired by public or quasi-public authority so as to affect the reasonable use and operation thereof, then the Property Owner of a Lot affected thereby shall have the right to withdraw from the obligations set forth in Paragraphs 7(b), (c) and (d) hereof upon serving written notice to the other property owners, as of the date of taking such property by the condemning authorities. If any condemnation results in taking of less than twenty percent (20%) of the parking spaces on the Property or if such condemnation does not affect the reasonable use and operation of the buildings affected thereby, then all provisions of the Declaration shall continue in full force and effect, except that the proceeds of any award received by any Property Owner shall be applied toward the immediate (i) repair and reconstruction of any building or other improvement affected thereby and (ii) repair and reconstruction of the parking area so as to maximize the number of parking spaces. Any condemnation award shall belong solely to the property owner whose property is affected by such condemnation.

8. **Agreement.**

a. Modification, Cancellation and Delegation of Authority. This REA (including Exhibit "A") may be modified or cancelled only by written consent of all record owners of the Smith's Lot and at least fifty percent (50%) of all record owners of the Developer Lots, which consents shall not be unreasonably withheld. It is agreed that as long as either Smith's or the Developer is the initial user and/or operator of one or both the Lots, whether as owner or lessee, that the authority for modifying this REA shall rest with them alone as to the Lot(s) they own, use or operate. Any purchaser, lender, mortgagee, lessee, assignee, grantee, sublessee or other party having any interest in any portions of the Smith's Lot and/or the Developer Lots shall be deemed to have appointed

Smith's and/or Developer, as the case may be, as their attorneys-in-fact for their respective Lots for the purpose of negotiating and entering into any modifications of this REA, except for extending the duration hereof. Cancellation of this REA shall not be considered a modification.

b. Breach. In the event of breach or threatened breach of this REA, only all record owners of the Smith's Lot as a group, or all the record owners of the Developer Lots as a group, or Smith's so long as it has an interest as owner or tenant in the Smith's Lot, or Developer so long as it has an interest in any part of the Developer Lots, 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.

c. Remedies for Default; Waiver. If the owner of any Lot shall, during the term of this REA, 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 Lot 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 owner of a Lot of land subject to this REA 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 REA on behalf of such defaulting owner and be reimbursed by such defaulting owner for the cost thereof with interest thereon at the rate of ten percent (10%) per annum. 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 the county in which the land is located. 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 Lot 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 REA 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 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 mortgage or deed of trust shall take free and clear from any such then existing lien, but otherwise subject to the provisions of this REA. The failure of the owner or owners of any of the Lots subject to this REA 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 breach of the same or other provisions hereof. If a failure by any property owner to perform any of its obligations under this Agreement causes an emergency or if performance of such obligation is necessary to prevent or relieve an emergency, then the notice required to be given hereunder need only be such reasonable notice, if any, as is warranted by the nature of the specific condition involved. If appropriate action is not timely taken by the non-performing party, any other property owner shall be entitled to immediately perform such obligations.

d. Non-Merger. So long as a party is a tenant of a Lot, this REA shall not be subject to the doctrine of merger, even though the underlying fee ownership to the Lots described herein is vested in such party. The ownership of the entire Shopping Center at any time by the same party shall not effect the termination of this REA.

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

Subject to, and except as provided under the provisions of Section 8(c) above, the restrictions and burdens of this REA are, and shall at all times be, prior and therefore superior to the lien or encumbrance of any mortgage or deed of trust made in good faith and for value affecting the Smith's Lot or the Developer Lots or any part thereof, 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 encumbrance of any mortgage or deed of trust. The superiority of this REA 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 restrictions and burdens affecting the Smith's Lot and the Developer Lots by virtue of this REA, as noted in Section 8(c) hereof.

10. **Release from Liability.**

Any person acquiring fee or leasehold title to the Smith's Lot or the Developer Lots or any portion thereon shall be bound by this REA only as to the Lots or portion of the Lots acquired by such person. Such person shall be bound by this REA only during the period such person is the fee or leasehold owner of such Lot(s) or portion of the Lot(s), except as to obligations, liabilities or

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

11. **Rights of Successors.**

The easements, covenants, conditions, restrictions, benefits, and obligations hereunder are appurtenant to and for the benefit of all portions of the Shopping Center and shall create mutual benefits and servitudes upon Property and shall run with the land. This REA shall bind and inure to the benefit of the parties hereto, their respective heirs, personal representatives, tenants, successors, and/or assigns. The singular number includes the plural and any gender includes all other genders.

12. **Waiver of Jury Trial.**

All disputes or claims arising under this Agreement shall be mediated by a mediator to be agreed upon by the parties. If after good faith efforts by the parties mediation is unsuccessful in resolving the dispute(s), then any remaining controversy or claim arising out of or relating to this Agreement 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 Agreement. The parties hereby waive their right to a jury trial of any disputes or claims arising under this Agreement.

13. **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.

14. **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 the parties hereto that this REA 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 Lots 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. Notwithstanding any other provisions herein to the contrary, the owners of the Lots 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 at time as to have a minimum effect on the parties in occupancy within the Shopping Center.

15. **Document Execution and Change.**

It is understood and agreed that until this REA is fully executed and delivered by both Developer and Smith's there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be based. It is further agreed that once this document is fully executed and delivered that it contains the entire agreement between the parties hereto and that, in executing it, the parties do not rely upon any statement, promise or representation not herein expressed, and 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. **Force Majeure.**

Smith's and Developer shall each be excused from performing any obligation or undertaking provided in this REA, 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 REA).

17. **Governing Law.**

This REA shall be governed by and construed in accordance with the laws of the State of Utah.

18. **Counterpart Signatures.**

This REA may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to constitute one and the same instrument, and shall be effective upon execution of any one (1) or more of such counterparts by each of the parties hereto and delivery of one (1) or more of such counterparts (or a telecopy thereof) to the other party.

19. **Estoppel Certificate.**


Each property owner shall, from time to time, upon ten (10) days prior written request by any other property owner, cause to be executed, acknowledged and delivered a certificate stating that this REA is unmodified and in full effect (or, if there have been modifications, that this REA is in full effect as modified, and setting forth such modifications) and either stating that to the knowledge of the signer of such certificate no default exists hereunder or specifying each such default of which the signer has knowledge; provided that neither party shall be required to provide more than one certificate per annum.

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

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

By:   
Its: VICE PRESIDENT

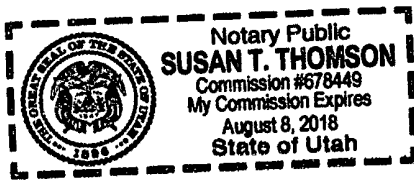
**DB TRAIL CROSSING, LLC,**  
a Delaware limited liability company

By:   
Its: MANAGER

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

Before me, the undersigned authority, on this day personally appeared STEVEN M. SORENSON, 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 20<sup>th</sup> day of NOVEMBER, 2015



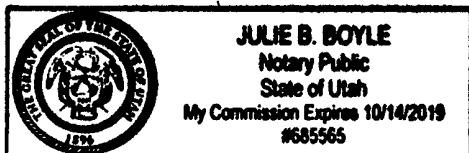
My Commission Expires:  
8-8-18

Susan T. Thomson  
Notary Public  
Notary's name printed:  
SUSAN T. THOMSON

STATE OF Utah )  
 : ss.  
COUNTY OF Davis )

Before me, the undersigned authority, on this day personally appeared Spencer H. Wright, Manager of DB TRAIL CROSSING, LLC, a Delaware limited liability company, 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.

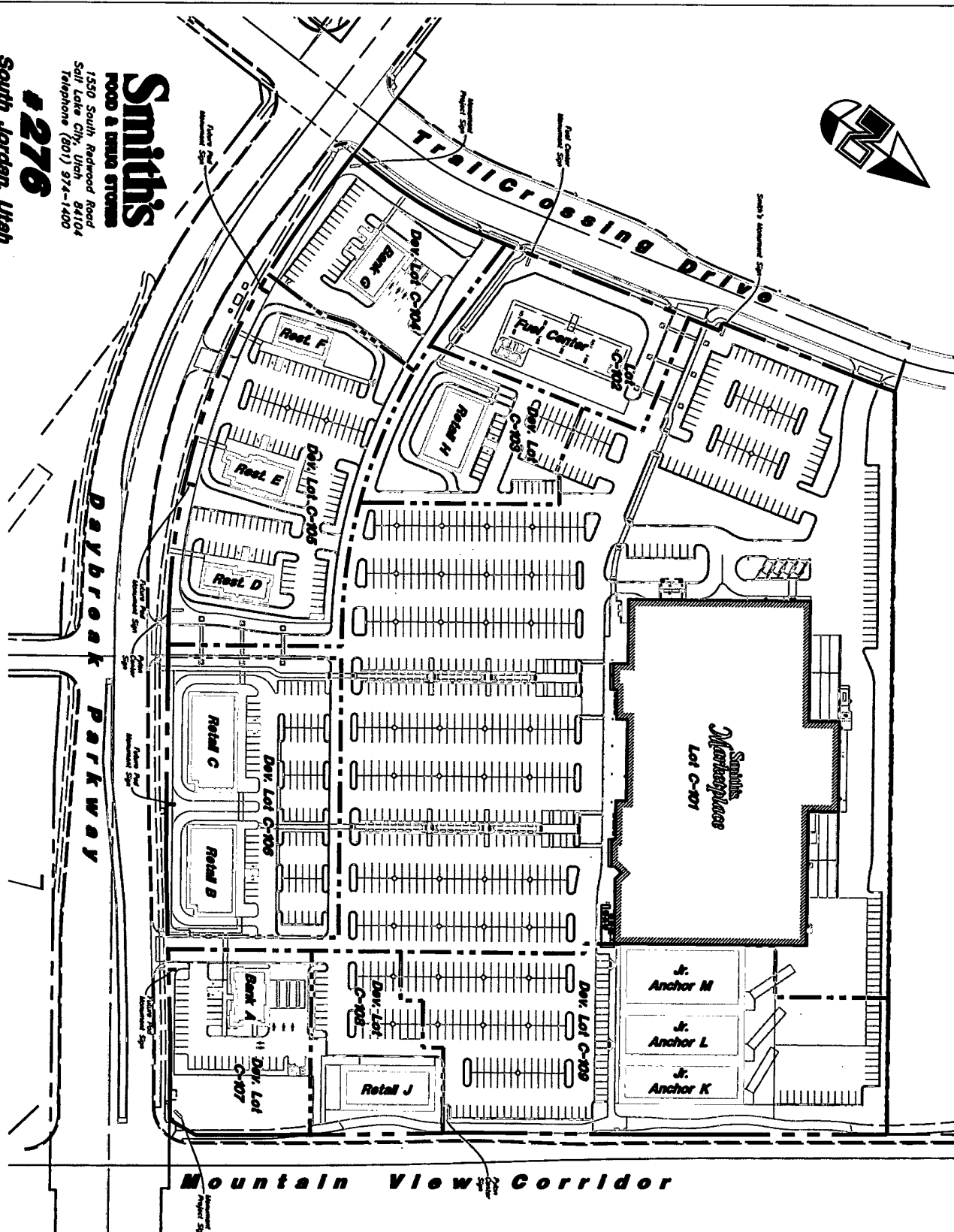
Given under my hand and seal of office on this 23 day of November, 2015.



My Commission Expires:  
10-14-19

Julie B. Boyle  
Notary Public  
Notary's name printed:  
Julie B. Boyle

**Smith's**  
**FOOD & DRUG STORES**  
 1530 South Redwood Road  
 Salt Lake City, Utah 84104  
 Telephone (801) 974-1400  
**#276**  
 South Jordan, Utah



**AWA**  
 ANDERSON WAHLEN & ASSOCIATES  
 2010 North Redwood Road, Salt Lake City, Utah 84116  
 801 521-8529 - AWAAengineering.net

**Site Plan - Exhibit A**  
**Trail Crossing**  
 Daybreak Parkway & TrailCrossing Drive  
 South Jordan, Utah

Sheet No.  
**EX**

Designed By: KR  
 Drafted By: JC  
 Client Name:  
 Smith's  
 SMC276 REA Exhibit  
**09 Nov, 2015**

**EXHIBIT "B"**

**Trail Crossing  
Smith's Lots**

**October 21, 2015**

All of Lots C-101 and C-102 of Kennecott Day Break Village 7A Plat 1 Subdivision, Amending Lots B3 and WTC2 of Amended Lots B2, B3, OS2, T4 and WTC2 Kennecott Master Subdivision #1 lying within the Southwest Quarter of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian, U.S. Survey in South Jordan City, Salt Lake County, Utah.

**Contains 572,604 sq. ft.  
or 13.145 acres**

**EXHIBIT "C"**

**Trail Crossing  
Developer Lots**

**October 21, 2015**

All of Lots C-103, C-104, C-105, C-106, C-107, C-108, and C-109 of Kennecott Day Break Village 7A Plat 1 Subdivision, Amending Lots B3 and WTC2 of Amended Lots B2, B3, OS2, T4 and WTC2 Kennecott Master Subdivision #1 lying within the Southwest Quarter of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian, U.S. Survey in South Jordan City, Salt Lake County, Utah.

**Contains 505,425 sq. ft.  
or 11.603 acres**