

WHEN RECORDED, MAIL TO:
CROOK & TAYLOR LAW PLLC
2150 South 1300 East, Suite 500
Salt Lake City, Utah 84106

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DECLAR- DECLARATION
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: RAY QUINNEY & NEBEKER, P.C.
36 S STATE STREETSALT LAKE CITY, UT 84111

Tax Assessor Numbers: 28-16-101-027 and 28-16-101-030

**SECOND AMENDMENT TO AGREEMENT REGARDING
COVENANTS, CONDITIONS AND RESTRICTIONS**

This Second Amendment to Agreement Regarding Covenants, Conditions and Restrictions (this "Second Amendment") is dated and effective as of January 28, 2022, among ALTA VIEW SHOPPING CENTER, LLC, a Delaware limited liability company ("AVSC"), WHITE INVESTMENT, INC., a Utah corporation ("White"), and MAGNA INVESTMENT & DEVELOPMENT LTD., a Utah partnership ("Magna") (collectively hereafter the "Parties").

RECITALS

A. The Parties entered into that certain Agreement Regarding Covenants, Conditions and Restrictions dated May 25, 2017, which was recorded on May 25, 2017, as Entry No. 12542908 in the official records of Salt Lake County, Utah with respect to that certain real property described therein.

B. The Parties entered into that certain First Amendment to Agreement Regarding Covenants, Conditions and Restrictions on February 26, 2019, which was recorded on March 29, 2019, as Entry No. 12958338 (the Agreement Regarding Covenants, Conditions and Restrictions and the First Amendment to Agreement Regarding Covenants, Conditions and Restrictions referenced above are collectively referred to herein as the "CC&Rs").

C. AVSC owns fee title to the real property described in Exhibit A attached hereto and made a part hereof by this reference, including the building and all improvements located thereon (the "AVSC Property").

D. Smith's Food & Drug Centers, Inc., an Ohio corporation (with its successors and assigns, "Smith's") has been subleasing one of the buildings on the AVSC Property since approximately January 31, 1990.

E. Smith's grocery supermarket is located at approximately 10305 South 1300 East, Sandy, Utah 84094.

F. White, as to undivided one-half interest, and Magna, as to an undivided one-half interest, own fee title to the real property described in Exhibit B attached hereto and made a part hereof by this reference, including the building and all improvements located thereon (the "White/Magna Property").

G. The AVSC Property and the White/Magna Property are collectively referred to in this Second Amendment as the "Shopping Center".

H. The White/Magna Property is located to the South of the AVSC Property at approximately 10365 South 1300 East, Sandy Utah 84094.

I. Starting in approximately 1999, White and Magna leased their property to 24-Hour Fitness for the operation of a gym and health club.

J. Intentionally omitted.

K. 24-Hour Fitness closed its doors at the White/Magna Property in approximately March 2020 and decided to permanently discontinue operating out of the White/Magna Property in approximately June 2020.

L. White and Magna now desire to sell the White/Magna Property.

M. One or more third-party buyers desire to purchase the White/Magna Property and lease it for the operation of a gym, fitness center, health spa, and/or health club.

N. The CC&Rs prohibit any part of the Shopping Center from being used as a gym or health spa.

O. The Parties desire to amend the CC&Rs to allow the White/Magna Property to be used for the operation of a gym, fitness center, health spa, and/or health club.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The White/Magna Property and the building and improvements thereon may be leased and used for the purpose of operating a gym, fitness center, health spa, and/or health club.

2. The Parties agree that the current building, improvements, and other current aspects of the White/Magna Property, including but not limited to elevations, overhangs, canopies, awnings, coverings, parking areas, and parking spaces (collectively, the "Current Design"), are in compliance with the CC&Rs, or that the CC&Rs are hereby amended to allow the Current Design.

3. The Parties agree to and approve of the layout, design, architecture, entrance locations, signage, colors, landscaping, and aesthetics shown in the architectural drawing and images attached as Exhibit C attached hereto and made a part hereof by this reference (collectively, the "Proposed Design"). The Parties agree that the Proposed Design is in compliance with the CC&Rs, or that the CC&Rs are hereby amended to allow the Proposed Design.

4. The Parties acknowledge that one or more third-party buyers are relying on this Second Amendment with regard to any decision to purchase the White/Magna Property, or enter into any agreement concerning the White/Magna Property, including but not limited to any purchase agreement or lease agreement.

5. This Second Amendment shall run with the Shopping Center, and shall be binding upon and shall benefit each owner and their respective heirs, successors and assigns.

6. The recitals are part of the agreement among the Parties set forth in this Second Amendment.

7. To the extent the terms of this Second Amendment modify or conflict with any provisions of the CC&Rs, these terms shall control. All other terms of the CC&Rs not modified by this Second Amendment shall remain the same.

[Signatures follow below]

IN WITNESS WHEREOF, the Parties execute this Second Amendment to Agreement Regarding Covenants, Conditions and Restrictions as of the date first written above.

ALTA VIEW SHOPPING CENTER, LLC, a Delaware limited liability company

By: 2106 Utah Managing Member Portfolio, LLC, a Delaware limited liability company, its manager

By: 2016 Utah Portfolio, LLC, a Delaware limited liability company, its sole and managing member

By: CCA Acquisition Company, LLC, a California limited liability company, its managing member

Sign: Steven Usdan

Name: Steven Usdan
Managing Member

Title: _____

CERTIFICATE OF ACKNOWLEDGMENT

State of _____
County of _____

_____ (signor) personally appeared before me on _____ (date), executed this document, proved with satisfactory evidence to be the person whose name is subscribed to this document, and acknowledged that he/she has the authority to bind the person or entity on behalf of whom he/she executed this document.

WITNESS my hand and official seal.

**SEE ATTACHED
CA CERTIFICATE**

Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

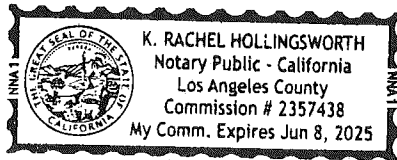
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of LOS ANGELES)

On DECEMBER 29, 2021 before me, K. RACHEL HOLLINGSWORTH, NOTARY PUBLIC,
Date Here Insert Name and Title of the Officer

personally appeared STEVEN USDAN
Name of Signer

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

WHITE INVESTMENT, INC., a Utah corporation

Sign: Brandon Halliday

Name: Brandon Halliday

Title: Secretary

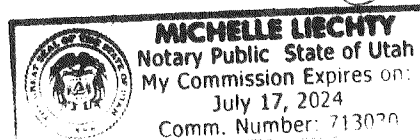
CERTIFICATE OF ACKNOWLEDGMENT

State of Utah
County of Salt Lake

Brandon Halliday (signor) personally appeared before me on December 21, 2021 (date), executed this document, proved with satisfactory evidence to be the person whose name is subscribed to this document, and acknowledged that he/she has the authority to bind the person or entity on behalf of whom he/she executed this document.

WITNESS my hand and official seal.

Michelle Liechty
Notary Public



MAGNA INVESTMENT & DEVELOPMENT, LTD., a Utah partnership

By: Allied Services, Inc., general partner

Sign: Michael J. Papanikolas

Name: MICHAEL J. PAPANIKOLAS

Title: Executive Vice President

CERTIFICATE OF ACKNOWLEDGMENT

State of ARIZONA
County of PIMA

MICHAEL J. PAPANIKOLAS (signor) personally appeared before me on DECEMBER 2, 2021 (date), executed this document, proved with satisfactory evidence to be the person whose name is subscribed to this document, and acknowledged that he/she has the authority to bind the person or entity on behalf of whom he/she executed this document.

WITNESS my hand and official seal.

Patricia L. Sauer

Notary Public

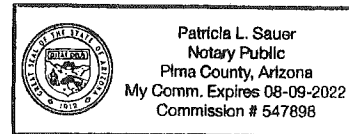


EXHIBIT A

AVSC Property

Exhibit ^A~~B~~
Legal Description

5 Mar, 2021

All of Lot 3 of the Alta View Commercial Subdivision.

EXHIBIT B

White/Magna Property

8
Exhibit A
Legal Description

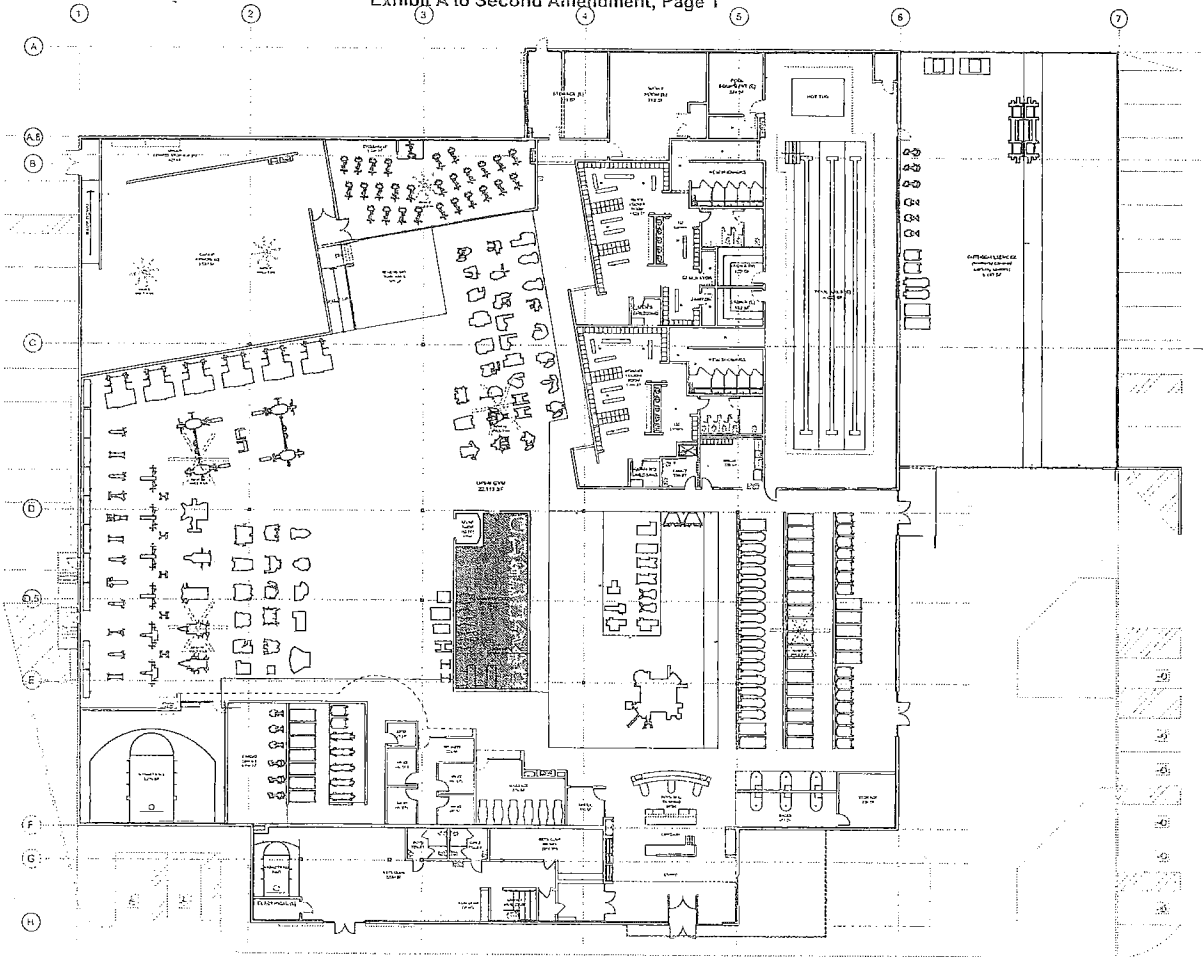
5 Mar, 2021

All of Lots 4 and 5 of the Alta View Commercial Subdivision.

EXHIBIT C

Proposed Design

Exhibit A to Second Amendment, Page 1

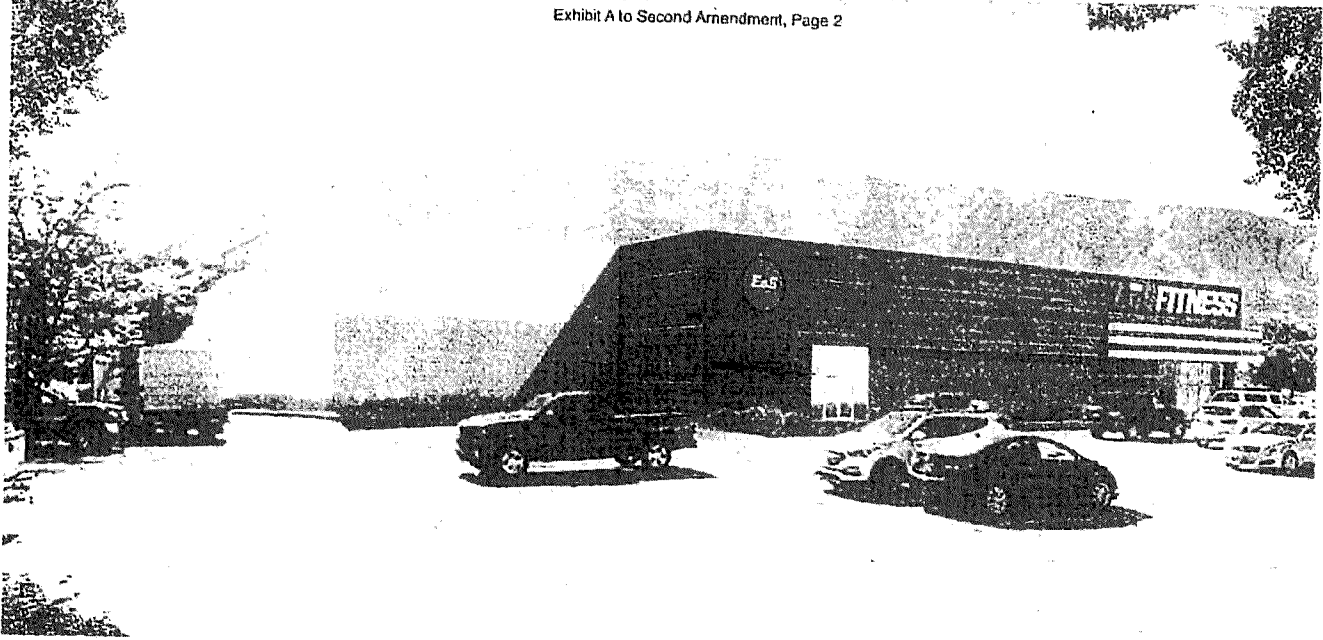


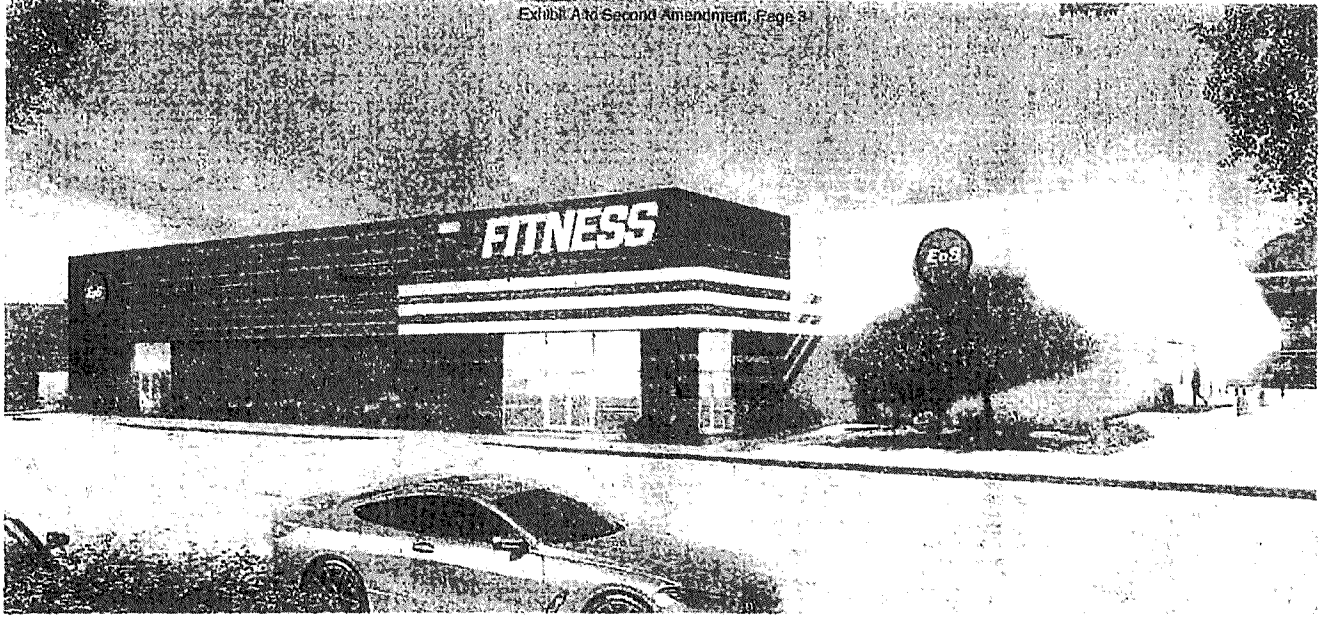
SANDY, UT 24 RENOVATION • June 28, 2021

47,046 SF



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CONSENT AND JOINDER

Smith's Food & Drug Centers, Inc., an Ohio corporation ("Tenant") is the subtenant under that certain Sublease dated January 31, 1990 by and between Alta View Shopping Center, LLC, a Delaware limited liability company, as landlord through mesne assignments, and Tenant, which was amended by that certain Amendment to Sublease dated March 18, 2017, that certain Second Amendment to Sublease dated February 5, 2019, and that certain Third Amendment to Sublease dated January 4, 2021 (collectively, the "Lease") for certain land and improvements located at 10305 South 1300 East Street, Sandy, Utah (the "Demised Premises") and more particularly described in said Lease. Said Lease grants Tenant certain rights and privileges with respect to various uses permitted in the shopping center of which the Demised Premises are a part. Tenant hereby joins in and consents to the execution and recording of the foregoing Second Amendment to Agreement Regarding Covenants, Conditions and Restrictions for the purpose of memorializing Tenant's consent to the provisions of Sections 1, 2, and 3 thereof.

Dated: December 3, 2021

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

By: *Christine S. Wheatley*
Printed Name: Christine S. Wheatley
Title: Vice President



STATE OF OHIO)

COUNTY OF HAMILTON) ss:

This instrument was acknowledged before me this 3rd day of December, 2021, by Christine S. Wheatley, the Vice President of Smith's Food & Drug Centers, Inc., an Ohio corporation, on behalf of the corporation.



Jennifer K. Gorman
Notary Public
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Date: Section 147.03 O.R.C.