

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

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04/05/2022 02:10 PM By: asteffensen Fees: \$40.00
AMEND- AMENDMENT
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: STEWART TITLE OF UTAH
6955 S UNION PARK CTR STE 100MIDVALE, UT 840476516

WHEN RECORDED, MAIL TO:
SMITH'S FOOD & DRUG CENTERS, INC.
c/o The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202
Attn: Jennifer K Gothard, Senior Attorney (Smith's 276)

1416831

Tax Parcel No. 26-24-300-022-0000

**SECOND AMENDMENT TO RESTRICTIONS AND
EASEMENTS AGREEMENT**

THIS SECOND AMENDMENT TO RESTRICTIONS AND EASEMENTS AGREEMENT (the "Amendment") is made to be effective as of the 4 day of April, 2022, between SMITH'S FOOD & DRUG CENTERS, INC., an Ohio corporation, herein called "Smith's", and WDG TRAIL CROSSING, LLC, a Utah limited liability company, herein called "Developer".

RECITALS

WHEREAS, Smith's and DB Trail Crossing, LLC, a Delaware limited liability company ("Original Developer") entered into that certain Restrictions and Easements Agreement dated November 25, 2015, and recorded the same day as Entry 12178028, in Book 10382, Pages 6541-6562, in the office of the Salt Lake County Recorder, as amended by that certain First Amendment to Restrictions and Easements Agreement dated April 18, 2018 and recorded May 3, 2018 as Entry 12765714, in Book 10671, Pages 1698-1703, in the office of the Salt Lake County Recorder (collectively, the "REA");

WHEREAS, Developer succeeded to the interest of Original Developer in, to, and under the REA;

WHEREAS, pursuant to Section 8(a) of the REA, the parties desire to amend the REA to reflect the creation of a new Developer Lot within the Shopping Center (the "New Developer Lot"), said New Developer Lot being carved out of the Smith's Lot, and to reflect the sale of that newly created New Developer Lot from Smith's to Developer; and

WHEREAS, the parties also desire to replace the Site Plan attached to the REA as Exhibit A with an updated Site Plan.

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

AGREEMENT

1. New Developer Lot. Developer, or its designee, shall be permitted to subdivide the Smith's Lot so as to create a New Developer Lot to be utilized for commercial purposes, which New Developer Lot is depicted in general terms on the Site Plan (defined herein). The parties agree that the New Developer Lot shall have a maximum building area of 20,000 square feet, shall be required to meet all governmental parking ratios using only the available parking located on the New Developer Lot (but shall be allowed cross parking with any other land in the Shopping Center, including without limitation, the remainder of

the Smith's Lot in the shaded locations shown on the Site Plan at Exhibit A-1), all building improvements on the New Developer Lot shall not exceed one story in height above grade, and no architectural features (parapets, cupolas, and the like) shall exceed a maximum of 30' in height above grade and such architectural features shall not be wider than 50% of the building elevations of the building that faces Trail Crossing Drive, and finally, the New Developer Lot shall be permitted one free-standing sign if approved by appropriate governmental authorities in addition to building signage. At such time as construction is commenced on the New Developer Lot, the building improvements constructed on the New Developer Lot shall no longer be considered to be Common Area under the REA. Notwithstanding anything contained in this Amendment or the REA to the contrary, if Smith's no longer has a legal or equitable interest in the New Developer Lot, then as of the date that legal or equitable interest ceases, (i) all use and development restrictions applicable to the Developer Lots in the REA and this Amendment, and (ii) all rights and obligations of the Developer Lots in the REA and this Amendment, shall automatically be applicable to the New Developer Lot without further action by any party to this Amendment.

2. Site Plan. The Site Plan attached to the REA as Exhibit A, is hereby deleted in its entirety and replaced with Exhibit A attached hereto and made a part hereof by this reference. The Site Plan at Exhibit A-1, attached hereto, showing the Developer's allowed cross-parking on the Smith's Lot, is hereby incorporated as part of the REA.

3. Retail Limitation. Section 2.a. of the REA, captioned, Retail Limitation, shall be amended to delete the fifth sentence of said Section and hereby replace it with the following:

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 or the New Developer Lot shall be used or (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 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; (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 in excess of 15,000 square feet (a health spa or fitness gym use is limited to the New Developer Lot); or (xii) game room or video arcades (more than 4 electronic games) or entertainment facilities in Jr. Anchor Pads or Retail J.

4. Use Restrictions. The following use restrictions of the REA are applicable to the New Developer Lot: Section 2(d) and 2(e), and 2(f).

5. Common Areas Use. Section 3 of the REA is hereby amended to include the following as a new Subsection f:

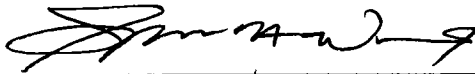
f. Additional Uses by Smith's. Smith's shall have the right on the Common Areas of the Smith's Lot to add commercial uses other than permanent buildings so long as such uses do not block or unreasonably hinder access to the Developer Lots, or reduce the number of parking spaces in the Shopping Center such as would create an unreasonable burden on such other parcels. Such uses include, by way of illustration and not limitation, electric vehicle charges and infrastructure, seasonal tents (selling, for example, fireworks, plants, and Christmas trees), food trucks, cell towers, and shaved ice kiosks. Kiosks, tents, utility cabinets, and other such facilities are not considered "permanent buildings" for purposes of the foregoing sentence.

6. Ratification. Except as modified by or where inconsistent with this Amendment, the REA is hereby ratified and confirmed. Where inconsistent, the terms of this Amendment shall supersede and take precedence over the REA. Capitalized terms used herein, but not otherwise defined, shall have the meanings attributed to such terms in the REA. The REA, as amended hereby, shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

7. Counterparts; Electronic Signature. This Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument. Electronic transmission in portable document format of any signed original document or retransmission of any signed electronic transmission in portable document format will be deemed to have the same legal effect as delivery of an original.

[Signature page follows]

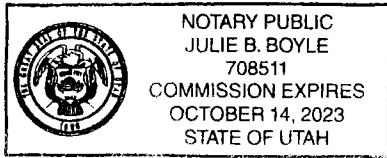
WDG TRAIL CROSSING, LLC,
a Utah limited liability company

By: 
Its: MANAGER

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

Before me, the undersigned authority, on this 28 day of March, 2022, personally appeared Spencer H. Wright, Manager of WDG Trail Crossing, LLC, a Utah limited liability company, known to me to be the person whose name is subscribed 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 company.

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



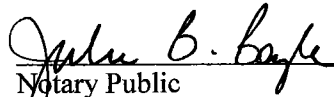

Notary Public

EXHIBIT A
Site Plan

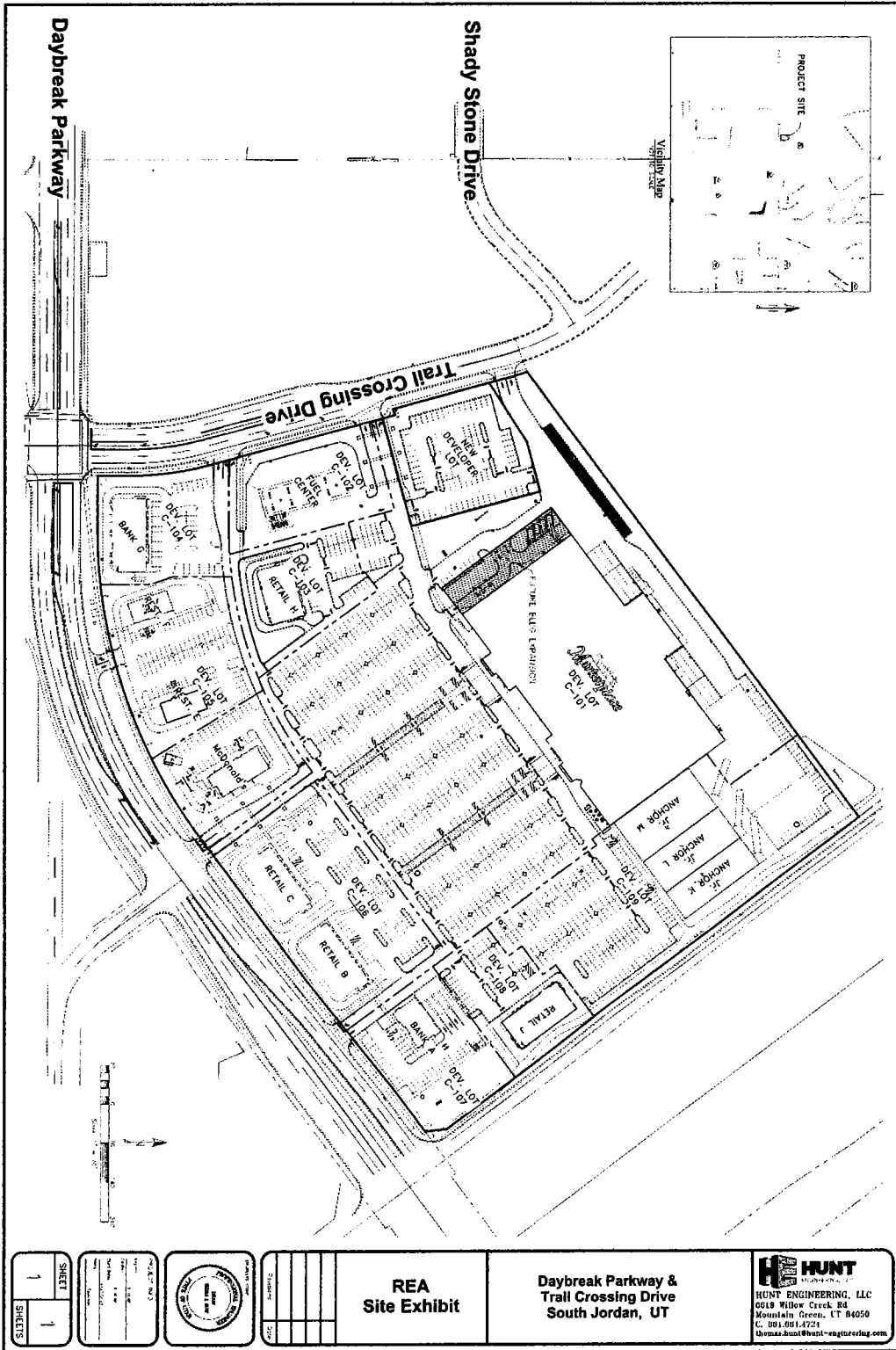


EXHIBIT A-1

Site Plan – Cross Parking

