

14223868 B: 11482 P: 2388 Total Pages: 6
04/03/2024 10:23 AM By: EMEHANOVIC Fees \$42.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To SMITH'S FOOD & DRUG CENTERS, INC
1014 VINE STREET CINCINNATI, OH 45202

RECORDING REQUESTED BY:
Smith's Food & Drug Centers, Inc.



WHEN RECORDED, RETURN 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)

APN(s): 26-24-353-013, 26-24-353-001, 26-24-353-009, 26-24-353-008, 26-24-353-007, 26-24-353-011, 26-24-353-010, 26-24-353-005, 26-24-353-004, 26-24-353-003, 26-24-353-014

THIRD AMENDMENT TO RESTRICTIONS AND EASEMENTS AGREEMENT

THIS THIRD AMENDMENT TO RESTRICTIONS AND EASEMENTS AGREEMENT (this "Third Amendment") is made this 1st day of April, 2024 (the "Third Amendment Effective Date"), by and between SMITH'S FOOD & DRUG CENTERS, INC., an Ohio corporation ("Smith's"), and WDG TRAIL CROSSING, LLC, a Utah limited liability company, successor in interest to DB Trail Crossing, LLC ("Developer").

RECITALS

A. Smith's and DB Trail Crossing, LLC, a Delaware limited liability company entered into that certain Restrictions and Easements Agreement dated November 25, 2015, and recorded November 25, 2015, as Entry No. 12178028, Book 10382, Page 6541, 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 No. 12765714, Book 10671, Page 1698, in the office of the Salt Lake County Recorder, and Second Amendment to Restrictions and Easements Agreement, dated April 4, 2022, and recorded April 5, 2022, as Entry No. 13926860, Book 11325, Page 5324, in the office of the Salt Lake County Recorder (collectively, the "REA").

B. Pursuant to Section 8.a. of the REA, the parties hereto desire to amend the REA to clarify certain items between the Smith's Lot and Developer Lots.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and conditions contained herein, and for Ten and 00/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. 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**”).

2. Property Owners. The following is added as a new Section 1.d. of the REA:

“Property Owners.” The “**Property Owners**” shall mean the fee simple owner of all or any portion of the Smith’s Lot or the Developer Lots, and their respective successors and assigns.

3. Retail Parking. Section 2.c. of the REA is hereby amended by adding the following paragraph at the end of Section 2.c.:

“Notwithstanding the foregoing, (a) the development of Lot C-106 on the Site Plan (“**Lot C-106**”) shall not be subject to the parking requirements, provided at least seventy-eight (78) parking spaces are provided on Lot C-106, (b) the development of Lot C-103 on the Site Plan (“**Lot C-103**”) shall not be subject to the parking requirements, provided at least thirty-four (34) parking spaces are provided on Lot C-103, and (c) the development of Lot C-104 on the Site Plan (“**Lot C-104**”) shall not be subject to the parking requirements, provided at least thirty-nine (39) parking spaces are provided on Lot C-104. In addition, in determining the parking requirements on Lot C-109, forty-five (45) parking spaces have been allocated from Lot C-109 on the Site Plan (“**Lot C-109**”) to Lot C-106, seventeen (17) parking spaces have been allocated from Lot C-109 to Lot C-103, and nine (9) parking spaces have been allocated from Lot C-109 to Lot C-104 and, as a result, seventy-one (71) parking spaces of the total parking spaces provided on Lot C-109 shall be excluded in making the determination as to whether Lot C-109 satisfies the parking requirements under this REA.”

4. Signs. The fourth sentence of Section 5 of the REA is hereby deleted in its entirety and restated as follows:

“Each 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, the designation of the Smith’s Fuel Center (as long as such Smith’s Fuel Center is open and operating within the Shopping Center), and the designation of the trade name of up to eleven (11) additional tenants of the Developer Lots located within the Shopping Center from time to time, with such additional tenants being determined pursuant to separate agreement between Developer and one or more other Property Owners of the Developer Lots.”

5. Modification, Cancellation and Delegation of Authority. The first sentence of Section 8.a. of the REA is hereby deleted in its entirety and restated as follows:

“This REA (including Exhibit A) may be modified or canceled only by written consent of all Property Owners of the Smith’s Lot, and all Property Owners of the Developer Lots, which consents shall not be unreasonably withheld, conditioned, or delayed.”

6. Force Majeure. Section 16 of the REA is hereby amended so that the references therein to Smith's, Developer, or a Party, shall be revised, in each instance, to each such Property Owner.

7. Development Agreement. All requirements or references in the REA relating to the entering into of a development agreement are hereby deleted and of no further force or effect; provided, however, the Site Development Planning Agreement dated November 23, 2015, as may be amended from time to time (the "**Development Agreement**"), shall remain in full force and effect.

8. General Provisions.

8.1 Recitals Incorporated. The Recitals set forth above are an integral part of the agreement and understanding of Smith's and Developer and are incorporated herein by this reference.

8.2 Ratification and Confirmation. Smith's and Developer each hereby confirm and ratify, except as modified by this Third Amendment, all of the terms, conditions and covenants of the REA.

8.3 Counterparts. This Third Amendment may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document.

8.4 Party References. All provisions in the REA to a "party" or the "parties" shall include each Property Owner. Without limiting the foregoing, the easements granted in Section 3 of the REA shall also be for the benefit of each Property Owner, its customers, invitees and employees, and the maintenance obligations in Section 4 of the REA shall apply to each Property Owner with respect to each such Property Owner's Lot.

8.5 Capitalized Terms. Capitalized terms not otherwise defined in this Third Amendment shall have the meanings ascribed to them in the REA.

[Signature and Acknowledgment Pages Follow]

DEVELOPER:

WDG TRAIL CROSSING, LLC,
a Utah limited liability company

By: Millcreek Partners, LLC,
a Utah limited liability company, Manager

By: CW The Manager, LLC,
a Utah limited liability company, Manager

By: CW Development Group, LLC,
a Utah limited liability company, Manager

By: [Signature]
Name: Colin Wright
Its Manager

STATE OF UTAH)
 : ss.
COUNTY OF Davis)

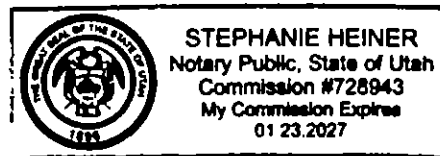
On the 3rd day of April, 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared Colin Wright, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he/she/they executed the same.

[Signature]
NOTARY PUBLIC

Residing at Layton, UT

My Commission Expires:

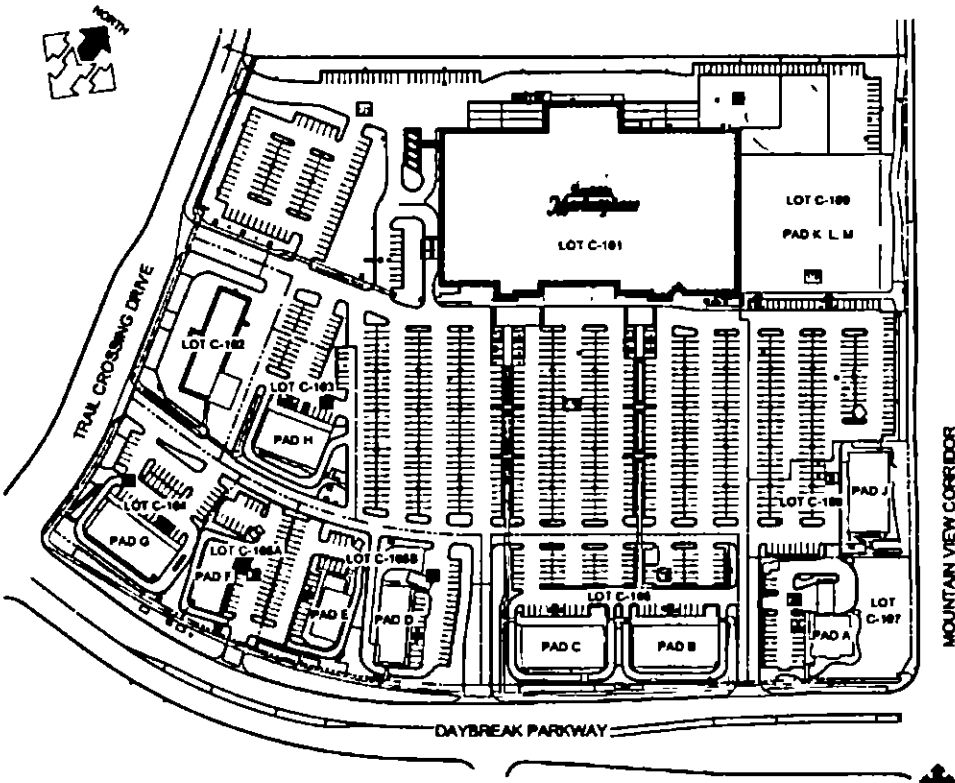
01.23.2027



[Signature Page to Third Amendment to Restrictions and Easements Agreement]

EXHIBIT A

Site Plan



PROJECT SUMMARY

LOT NO	PAD ID	BLDG. AREA (SQ FT)	STALLS
C-101	PAD TVS	110,000	600
C-102	PAD TVS	6,500	0
C-103	PAD H	6,601	20
C-104	PAD G	7,875	20
C-105A	PAD F	4,700	20
C-105B	PAD B	5,270	0
	PAD E	3,200	0
C-105C	PAD S	8,341	70
	PAD C	7,800	20
C-107	PAD A	3,700	20
C-108	PAD J	7,200	20
C-109	PAD K,L,M	0	170
TOTAL		181,410	1,141

EXHIBIT A

