

DOUGLAS COUNTY, NV

2018-919817

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09/19/2018 12:51 PM

TICOR TITLE - RENO (TITLE ONLY)

KAREN ELLISON, RECORDER

RECORDING REQUESTED BY
FIDELITY NATIONAL TITLE

AND WHEN RECORDED MAIL TO:

FIDELITY NATIONAL TITLE
ATTN: MICHELLE BURTON
1 E. WASHINGTON ST., SUITE 450
PHOENIX, AZ 85004

APN: 1220-04-50114
1220-04-501021

Escrow No.: Z1723350

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CROSS EASEMENT AGREEMENT

COPY

Recording Requested by: :
SMITH'S FOOD & DRUG CENTERS, INC. :
:
:
When Recorded Mail To: :
SMITH'S FOOD & DRUG CENTERS, INC. :
Attention: Property Management :
1550 South Redwood Road :
Salt Lake City, UT 84104 :

Space Above for Recorder's Use

CROSS-EASEMENT AGREEMENT

THIS CROSS-EASEMENT AGREEMENT (this "Agreement") is made this 8th day of June, 2018, by and between SMITH'S FOOD & DRUG CENTERS, INC., an Ohio corporation ("Smith's"), and JPMORGAN CHASE BANK, National Association ("Chase").

RECITALS

A. Smith's is the fee owner of that certain property located in the Town of Garnerville, Douglas County, State of Nevada, which is more fully described in Exhibit "A", attached hereto ("Smith's Parcel").

B. Chase is the fee owner of that certain property located in the Town of Gardnerville, Douglas County, State of Nevada, which is more fully described in Exhibit "B", attached hereto ("Chase Parcel"). The Smith's Parcel and the Chase Parcel may be collectively be referred to as the "Parcels" or each, individually as a "Parcel."

NOW, THEREFORE, in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Grant of Easement.** There is hereby granted, declared and reserved for the mutual and reciprocal benefit of the Chase Parcel and the Smith's Parcel, and for the mutual and reciprocal benefit of the present and future owners and tenants of such parcels, their respective successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees, and invitees, a permanent, mutual, reciprocal, non-exclusive easement and right to use the driveways, accessways, and thoroughfares for pedestrians and vehicular traffic within the boundaries of each parcel as they may exist from time to time (the "Easements"). The use and enjoyment of the Easements shall not include the right to park vehicles upon or otherwise unreasonably interfere with the use and enjoyment of the respective businesses by the owners, tenants, or businesses which operate thereon except for mutual invitees frequenting both Parcels. All uses allowed and existing within each Parcel must

include, within the parcel upon which such use is located, parking equal to that required by applicable governmental authorities on its Parcel, without taking into account the parking which may exist on other owner's Parcel or Parcels. Any damage (other than by ordinary wear and tear) which results from any use thereof by a party hereto, or anyone claiming use rights under a party hereto, shall be repaired by said party. The rights encompassed within this grant shall include the right to use and enjoy, subject to the limitations herein, all entrances, exits, driveways, walks (other than walkways adjoining a building), located on the respective Parcels as may now or hereafter be established and constructed upon any portion of a Parcel for the purposes for which they are provided and intended.

2. **No Barriers.** No walls, fences, or barriers of any kind shall be constructed or maintained on the Easements, or any portion thereof, by any party which shall prevent or impair the use or exercise of any rights granted herein, or the free access and movement, including without limitation, of pedestrians and vehicular traffic between the Parcels; provided, however, reasonable traffic controls 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 are not closed or blocked. The only exceptions to this provision shall be for (1) incidental encroachments upon the Easements which may occur as a result of the use of the ladders, scaffolding, storefront barricades and similar facilities resulting in temporary obstructions, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction work being expeditiously pursued, (2) temporary encroachments which may be reasonably necessary for Chase to construct its planned improvements on the Chase Parcel, and those on the Smith's Parcel consistent with Section 6 below, and (3) for temporary blockage of certain areas deemed necessary by the parties to prevent a public dedication of an easement or access right.

3. **Maintenance.** Each party shall be responsible for maintaining their Parcels, to the extent necessary, to keep the areas subject to the Easements in a first class condition without cost or expense to the other party, including but not limited to cleaning and sweeping the parking lot area, removal of snow and ice, providing and maintaining adequate lighting, maintaining all landscaped areas, and resurfacing walks, drives and parking areas as needed. Chase shall pay Smith's One Thousand and 00/100 Dollars (\$1,000.00) ("**Chase's Maintenance Contribution**") per year in order to cover a fraction of the maintenance costs for the Smith's Parcel. Chase's Maintenance Contribution shall be paid upon execution of this Agreement and on the anniversary date every year thereafter. The Maintenance Contribution shall be increased annually by an amount equal to two percent (2%) of the then current amount.

4. **Alteration of Parcels.** Smith's, for itself and its successors and assigns, reserves the right to modify, alter, change, and improve any parking areas, driveways, accessways and thoroughfares for pedestrian and vehicular traffic located on the Smith's Parcel, including without limitation, the right to increase or decrease the same so long as the Easements are maintained. Chase, for itself and its successors and assigns, reserves the right to modify, alter, change, and improve any parking areas, driveways, accessways and thoroughfares for pedestrian and vehicular traffic located on the Chase Parcel, including without limitation, the right to increase or decrease the same so long

as the Easements are maintained. Notwithstanding the foregoing, Chase shall not modify, alter, change or improve either the cross access driveway between the Parcels located on the south boundary of the Chase Parcel (the "**Cross Access Driveway**") or Chase's drive through lane, each as shown on Exhibit "C" attached hereto, in a manner that would materially and regularly block access through the Cross Access Driveway or cause traffic to materially and regularly back-up into the Smith's Parcel.

5. **Indemnification/Insurance.**

A. **Indemnification.** Each party hereby indemnifies and holds 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 their respective parcels, except if caused by the act or omission of the party seeking indemnification.

B. **Insurance.** Each party shall each provide and maintain commercial general liability insurance affording protection to itself and the other party on its own Parcel, 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 \$3,000,000 per occurrence, \$5,000,000 aggregate. Such insurance may be a part of blanket liability coverage carried by the party so long as such blanket policy does not reduce the limits or diminish the coverage required herein. Either party hereunder 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 such party or its parent providing self-insurance has a net worth of at least Fifty Million Dollars (\$50,000,000), or if such self-insurance plan is furnished through a related entity thereof, the entity furnishing such self-insurance shall have a net worth of at least Fifty Million Dollars (\$50,000,000).

6. **Temporary Construction Easement.** Subject to the terms and conditions hereinafter set forth, Smith's hereby grants and conveys to Chase, for the use and benefit of Chase and its agents, invitees, permittees, contractors, and representatives (collectively, "**Permitees**"), an easement over and across that certain real property on the Smith's Parcel which is depicted as "**TCE Area**" on Exhibit "C" attached hereto for the construction of certain proposed improvements on both the Chase Parcel and the Smith's Parcel relating to the Cross Access Driveway (the "**Temporary Construction Easement**"). During the period of the use of the TCE Area by the Permitees, Chase may maintain a barrier around the TCE Area on the lines shown in red on Exhibit "C," and shall maintain the areas immediately adjacent thereto in reasonably clean condition. Within 15 days after the expiration of the Temporary Construction Easement, Chase shall remove all construction materials, equipment and debris from the TCE Area and repair any damage to the Smith's Parcel caused by the use of the Smith's Parcel by the Permitees. Chase shall indemnify and hold Smith's harmless from and against all losses, claims, costs, damages and liabilities arising out of or in connection with the use of the Smith's Parcel by the Permitees for the purposes of this Section 6. The Temporary Construction Easement shall become effective on the date of execution of this Agreement and, solely with respect to the Temporary Construction Easement, shall automatically expire and terminate on the earlier of

(a) the date on which Chase substantially completes construction of the Cross Access Driveway and related improvements and permits vehicle traffic through same, or (b) 18 months from the date first written above.

7. **Duration.** The easements and covenants described herein (except as provided in Section 6 above with respect to the Temporary Construction Easement) shall continue for a period of seventy (75) years commencing on the date of execution of this Agreement and continuing thereafter until terminated by a recorded document, executed, acknowledged and filed for record by the record title owners of all Parcels.

8. **Covenant Running with the Land.** The parties intend that the Easements described herein constitute a covenant running with and against the land described herein, and except to the extent otherwise specifically provided herein shall be a benefit thereto and a burden thereon. It is understood that any one or more of the Parcels may hereafter be subdivided into one or more separate parcels. In such event, and except as otherwise herein expressly provided, the terms of this REA shall be deemed to continue to apply to and benefit and burden subparcels of the parcels, or any one or more of them, and to create the same rights, easements and obligations as between and among such subparcels as are herein created.

IN WITNESS WHEREOF, the parties hereto have entered into this Cross-Easement Agreement this 3th day of June, 2018.

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

By: 
Its: Steven M. Sorenson, Vice President



JPMORGAN CHASE BANK, National
Association

SIGNED IN COUNTERPART

By: _____
Its: _____

[This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same document and agreement.]

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

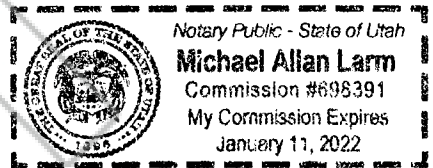
Before me, the undersigned authority, on this day personally appeared STEVE SORESENEN, VICE PRESIDENT of SMITH'S FOOD & DRUG CENTERS, INC., an Ohio corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the 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 08 day of JUNE, 2018

[Handwritten Signature]

Notary Public
Resident of the State of Utah

My commission expires:



STATE OF _____)
 : ss.
COUNTY OF _____)

Before me, the undersigned authority, on this day personally appeared _____, _____ of JPMORGAN CHASE BANK, National Association 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 limited liability company.

Given under my hand and seal of office on this _____ day of _____, 20__.

Notary Public
Residing at:

My Commission Expires:

(a) the date on which Chase substantially completes construction of the Cross Access Driveway and related improvements and permits vehicle traffic through same, or (b) 18 months from the date first written above.

7. **Duration.** The easements and covenants described herein (except as provided in Section 6 above with respect to the Temporary Construction Easement) shall continue for a period of seventy (75) years commencing on the date of execution of this Agreement and continuing thereafter until terminated by a recorded document, executed, acknowledged and filed for record by the record title owners of all Parcels.

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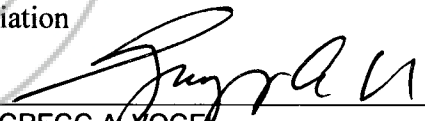
IN WITNESS WHEREOF, the parties hereto have entered into this Cross-Easement Agreement this ____ day of _____, 2018.

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

SIGNED IN COUNTERPART

By: _____
Its: _____

JPMORGAN CHASE BANK, National
Association


By: GREGG A. VOGEL
Its: Executive Director

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 ORANGE)

On June 08, 2018 before me, CARMEN MARGINEANU, NOTARY PUBLIC

Date

Here Insert Name and Title of the Officer

personally appeared _____

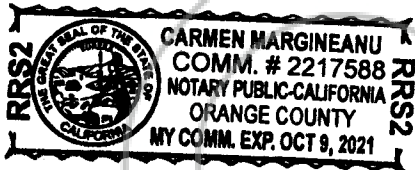
GREGG A. VOGEL

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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 _____

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: _____

Exhibit "A"
[Legal Description of Smith's Parcel]

APN No. 25-431-13
Adjusted Parcel 2

A parcel of land located within a portion of the northwest one-quarter of the northwest one-quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$), Township 12 North, Range 20 East, Mount Diablo Meridian, Douglas County, Nevada, described as follows:

Commencing at centerline Station "A" 370+44.51 of U.S. Highway 395 per found Nevada Department of Transportation Highway right-of-way Brass Cap Monuments;

thence along said centerline South 51°04'00" East, per Document No. 28058, 1403.69 feet;

thence North 38°56'00" East, a right angle to the preceding course a distance of 40.00 feet to a point on the Northeasterly right-of-way line of U.S. 395, said point further described as the Southwesterly most corner of the property conveyed to Wayne C. Matley et. ux recorded May 19, 1971, in Book 87 of official records at page 109, in Douglas County, Nevada.

THE POINT OF BEGINNING;

thence North 38°54'53" East, 562.65 feet;

thence North 51°04'00" West, 160.00 feet to the Southeasterly right-of-way line of Lampe Drive;

thence along said right-of-way line North 38°54'53" East, 152.82 feet;

thence leaving said right-of-way line South 49°48'37" East, 619.38 feet to the Northwesterly right-of-way line of Waterloo Lane;

thence along said right-of-way line South 44°54'36" West, 514.68 feet;

thence leaving said right-of-way line North 51°04'00" West, 355.47 feet;

thence South 38°54'53" West, 190.00 feet to the Northeasterly right-of-way line of U.S. Highway 395;

thence along said right-of-way line North 51°04'00" West, 50.00 feet to

THE POINT OF BEGINNING, containing 5.907 acres more or less.

The Basis of Bearing of this description is the centerline of U.S. Highway 395 per the Record of Survey of the Lampe Ranch recorded May 7, 1965 as Document No. 28058.

APN: 1220-04-501-014

Document No. 345327 is provided pursuant to the requirements of Section 6. NRS 111.312.

Exhibit "B"
[Legal Description of Chase Parcel]

All that certain real property situate in the County of Douglas, State of Nevada, described as follows:

All that portion of the Northwest 1/4 of the Northeast 1/4 of Section 4, Township 12 North, Range 20 East, M.D.B. & M., in the Town of Gardnerville, Douglas County, Nevada, more particularly described as follows:

Commencing at the Southeast corner of Lot 39 of Carson Valley Estates, Unit No. 1, as filed on the 19th day of July, 1965;

Proceed N. 89°46'07" E. 30.00 feet;

Thence S. 38°54'53" W. 716.12 feet, along the Southeasterly boundary of the Centennial Parcel, to its intersection with the Northerly right-of-way line of U. S. Highway 395;

Proceed S. 51°04' E. along the Northerly right-of-way line a distance of 30 feet to the POINT OF BEGINNING;

Thence S. 51°04' E. 150.00 feet along said Northerly right-of-way line to a point;

Thence N. 38°54'53" E. a distance of 290.4 feet;

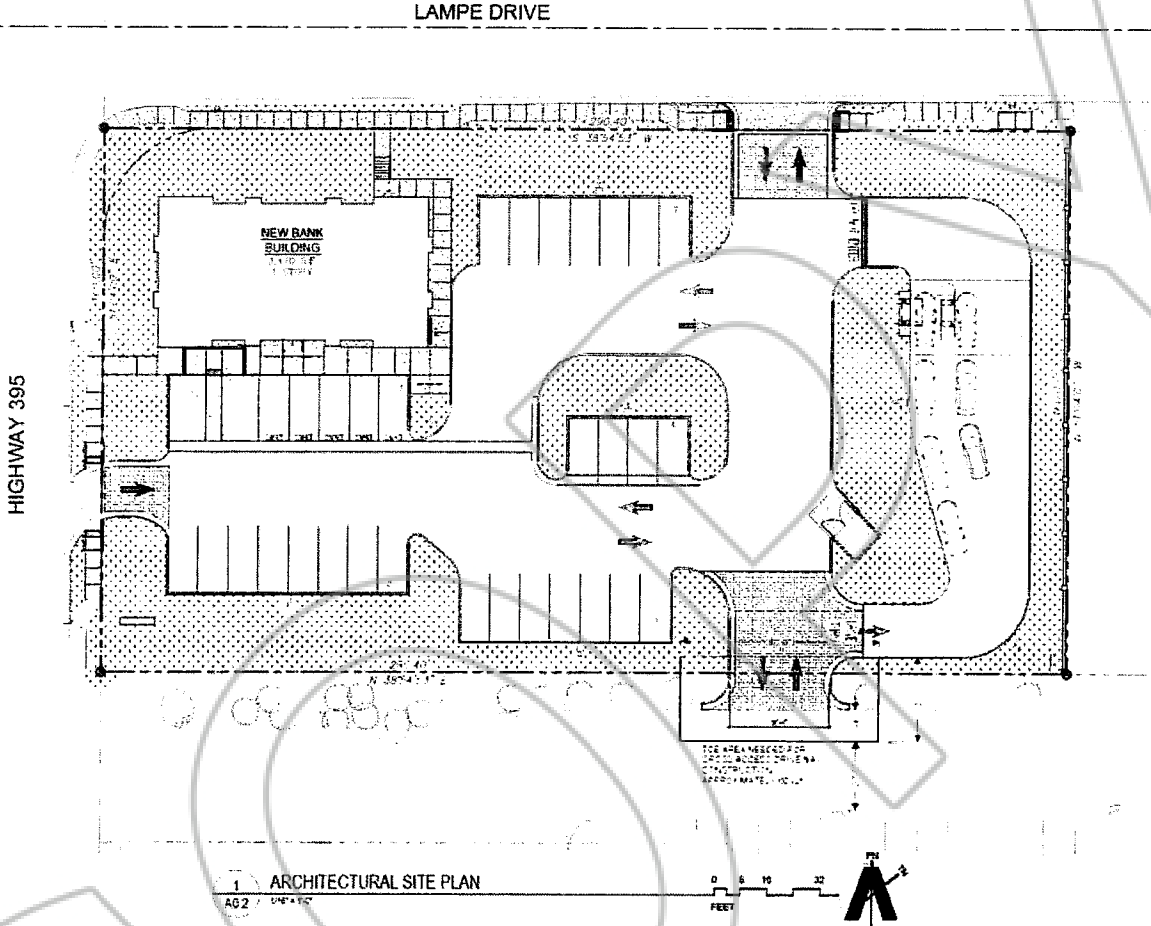
Thence N. 51°04' W. a distance of 150.0 feet;

Thence S. 38°54'53" W. a distance of 290.4 feet to the POINT OF BEGINNING.

APN: 1220-04-501-0~~X~~021

Document No. 510762 is provided pursuant to the requirements of Section 6. NRS 111.312.

Exhibit "C"
[Site Plan]





Douglas County Recorder's Office

Karen Ellison, Recorder

<http://recorder.co.douglas.nv.us>

kellison@co.douglas.nv.us

(775) 782-9027

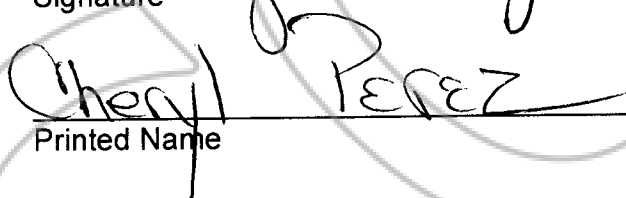
LEGIBILITY NOTICE

The Douglas County Recorder's Office has determined that the attached document may not be suitable for recording by the method used by the Recorder to preserve the Recorder's records. The customer was advised that copies reproduced from the recorded document would not be legible. However, the customer demanded that the document be recorded without delay as the parties right may be adversely affected because of a delay in recording. Therefore, pursuant to NRS 247.120 (3), the County Recorder accepted the document conditionally, based on the undersigned's representation (1) that a suitable copy will be submitted at a later date (2) it is impossible or impracticable to submit a more suitable copy.

By my signing below, I acknowledge that I have been advised that once the document has been microfilmed, it may not reproduce a legible copy.


Signature


Date


Printed Name