

WHEN RECORDED, RETURN ORIGINAL TO:

RETURN TO: FIRST AMERICAN TITLE
USA ORTEGA GF: 1824163

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

SPACE ABOVE FOR RECORDER'S USE

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Easement Agreement") is made and entered into this 27 day of November, 2013, by and between WESTFALL LEGACY, LLC, a New Mexico limited liability company ("Westfall Legacy"), and SMITH'S FOOD & DRUG CENTERS, INC., an Ohio corporation ("Smith's").

RECITALS:

A. Smith's is the owner of certain real property situated in the City of Albuquerque, County of Bernalillo, State of New Mexico, more particularly described on Exhibit "A-1" attached hereto and depicted on Exhibit "B" attached hereto ("Smith's Parcel").

B. Westfall Legacy is the owner of certain real property adjacent to the Smith's Parcel, more particularly described on Exhibit "A-2" attached hereto and as depicted on Exhibit "B" attached hereto ("Westfall Legacy Parcel").

C. Smith's intends to develop the Smith's Parcel as a fuel center. With respect to that development, Smith's wants to widen the access point between the two parcels as depicted on Exhibit "B", and in consideration of such modification of the access point, Smith's is willing to grant access and parking easements to allow Westfall Legacy and its tenants, and their respective employees and invitees, to utilize certain parking spaces in the area designated as "Westfall Legacy Parking Spaces" on the attached Exhibit "B" and to provide access across the Smith's Parcel to and from such parking spaces and to and from the rear of the building located on the Westfall Legacy Parcel, on the terms and conditions set forth in this Easement Agreement.

D. Westfall Legacy is willing to modify the access point on the Westfall Legacy Parcel as depicted on Exhibit "B" on the terms and conditions set forth in this Easement Agreement.

Doc #2013128001 eRecorded
11/27/2013 11:48:00 AM Page 1 of 10
EASE Rec Fee: \$25.00 M. Toulouse Oliver, Bernalillo County

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Consent to Modification of Access Point; Grant of Access Easement to Smith's. Westfall Legacy hereby consents to the widening of the access point between the Smith's Parcel and the Westfall Legacy Parcel, so that it is no more than forty (40) feet along Louisiana Boulevard, as depicted on Exhibit "B" (the "Access Point"). Westfall Legacy grants a non-exclusive easement to Smith's, its employees and invitees, from the Access Point, as so modified, on, over and across the parking lot on the Westfall Legacy Parcel to provide ingress to and egress from the Smith's Parcel to and from Louisiana Boulevard N.E.

2. Responsibility for Construction and Repair Activities. Smith's will pay all costs when due, and will be responsible for all construction activities required, with respect to the modification and repair of the curb cut and driveway at the Access Point, and such activities will be scheduled and performed in a manner that complies with all applicable laws and codes and that does not unreasonably interfere with the access to and parking on the Westfall Parcel by the owners and tenants, and the employees and invitees of the owners and tenants, of the Westfall Parcel during the normal business hours of the owners and tenants. Smith's also will be responsible for any future repair or maintenance of the curb cut and driveway at the Access Point and will pay, when due, all costs with respect to any such repair or maintenance.

3. Grant of Parking Easement and Access Easement to Westfall Legacy. Smith's grants to Westfall Legacy and its tenants located on the Westfall Legacy Parcel, and their respective employees and invitees, the following easements:

3.1. Parking Easement. A non-exclusive easement on, over and across the Smith's Parcel for the purpose of parking motor vehicles in three (3) non-handicapped, parking spaces, which spaces will be adequate for standard size automobiles and located in the area designated as the "Westfall Legacy Parking Spaces" on the attached Exhibit B; and

3.2. Access Easement. A non-exclusive access easement on, over and across the parking lot on the Smith's Parcel for the purpose of ingress to and egress from the rear of the building located on the Westfall Legacy Parcel across the boundary between the Smith's Parcel and the Westfall Legacy Parcel in the area shown and designated on the attached Exhibit "B", which access will be adequate for both delivery and trash collection vehicles, and the parties bound by this Easement Agreement will maintain a level grade at the boundary line between the Smith's Parcel and Westfall Legacy Parcel to permit such access.

4. Easements Run with the Land. The easements granted and all covenants set forth in this Easement Agreement will run with the title to the real estate described on the attached Exhibit "A-1" and Exhibit "A-2".

5. Reaffirmation of Existing Access Easement. Each party, on behalf of itself, its successors and assigns, hereby reaffirms an access easement between the Westfall Legacy Parcel and the Smith's Parcel at the access point as set forth in any document filed of record in the real property records of Bernalillo County, New Mexico prior to the date of this Easement Agreement, which access easement will be modified pursuant to the terms of this Easement Agreement.

6. Reciprocal Indemnification. Each party, on behalf of itself, its successors and assigns, hereby agrees to indemnify the other party, on demand, from and against any and all claims, actions, causes of action, damages, injuries to personal property, demands, judgments, expenses, including reasonable attorney fees caused by the indemnifying party, its agents, representatives or employees.

7. Termination of Liability on Transfer or Conveyance. Any transfer or conveyance of either party's title to or interest in the real property described on the attached Exhibit "A-1" or Exhibit "A-2" to another person or entity will result in the automatic termination of the transferor's liability for any breach of any covenant under this Easement Agreement which occurs at any time after the instrument of transfer or conveyance is filed for record in the real property records of the County Clerk of Bernalillo County, New Mexico.

8. Notices. All notices, requests, demands, waivers and other communications given by any party or successor in interest of any party to this Easement Agreement with respect to this Easement Agreement will be in writing and, unless otherwise specifically provided in this Agreement, will be deemed to have been given on the date delivered in person or three days after being deposited with the United States Postal Service, by certified or registered mail, postage prepaid, and addressed to the then current owner of record of the real estate described on the attached Exhibit "A-1" or the real estate describe on the attached Exhibit "A-2" as shown in the real property records of the County Clerk of Bernalillo County, New Mexico.

9. Disputes and Reimbursement of Expenses. If any party now or hereafter bound by or subject to this Easement Agreement files an action against any other party bound by or subject to this Agreement (i) to enforce any of the provisions of this Easement Agreement, (ii) to protest any other party's interest under this Easement Agreement, or (iii) to recover damages for any breach of this Easement Agreement, and a final order or judgment is ultimately entered in the action (the finality of which is not legally contested), then the party that does not prevail in the action will reimburse the prevailing party for all expenses and costs, including, without limitation, all discovery and court costs and the reasonable, actual attorney fees, incurred by the prevailing party with respect to the action, unless the parties otherwise agree, in writing. To the fullest extent allowed by law, the parties hereby waive their right to a jury trial for disputes arising under this Agreement.

10. Jurisdiction. Each of the parties to this Easement Agreement irrevocably submits in any suit, action or proceeding arising out of or relating to this Easement Agreement to the jurisdiction of Second Judicial District Court of Bernalillo County, New Mexico, and waives any

and all objections to the jurisdiction of such court that the party may have under the laws of either the state of New Mexico or the United States of America.

11. Severability. If any provision of this Easement Agreement is determined by a court or arbitrator, with competent jurisdiction, to be invalid, unenforceable or otherwise ineffective, then that provision will be severed from the remainder of this Easement Agreement, and the remaining provisions of this Easement Agreement will remain in effect and enforceable. Any party bound by this Easement Agreement may request, in any proceeding in which any provision is determined to be invalid, that the court or arbitrator reform the invalid provision or provisions in such a manner as to cause the invalid provision or provisions to be valid and enforceable while at the same time accomplishing as nearly as possible the original intent of the parties in including such provision in the Easement Agreement.

12. Governing Law; Binding Effect. This Easement Agreement is governed by, and will be construed according to, the laws of the state of New Mexico and is binding on and will benefit the parties to this Easement Agreement and their respective successors and assignees.

13. Modification or Termination. This Easement Agreement may be modified or terminated only by a written instrument signed by the parties or their respective successors, assignees or legal representatives.

14. Headings. The subject headings of the sections of this Easement Agreement are included for the purpose of convenience only and will not affect the construction or interpretation of any of the terms of this Easement Agreement.

15. Entire Agreement. This Easement Agreement constitutes the entire agreement of the parties, and supersedes all previous agreements, whether written or oral, between or among the parties, with respect to the subject matter of this Easement Agreement, except as otherwise expressly set forth or reaffirmed in this Easement Agreement.

IN WITNESS WHEREOF, the parties have caused this Easement Agreement to be executed as of the date first set forth above.

WESTFALL LEGACY, LLC

By: _____

Christine J. Redd, Its Managing Member

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

By: _____

Its: _____

and all objections to the jurisdiction of such court that the party may have under the laws of either the state of New Mexico or the United States of America.

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WESTFALL LEGACY, LLC

By: _____
Christine J. Redd, Its Managing Member

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

By:  _____
Its: VP

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

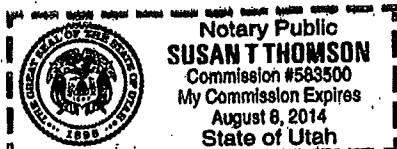
This instrument was acknowledged before me on _____, 2013 by Christine J. Redd, as Managing Member of Westfall Legacy, LLC, a New Mexico limited liability company, on behalf of the company.

Notary Public

My commission expires:
(Seal or Stamp)

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

On this 25th day of NOVEMBER, 2013, personally appeared before me STEVEN M. SORESEN, who duly acknowledged to me that he executed the foregoing Easement Agreement as VICE PRESIDENT of SMITH'S FOOD & DRUG CENTERS, INC., an Ohio corporation, Grantee.



My Commission Expires:

8-8-14

A handwritten signature in cursive script, appearing to read "Susan L. Thomson".

Notary Public

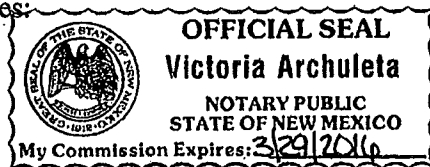
Residing at: SALT LAKE COUNTY, UTAH

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on November 25, 2013 by Christine J. Redd, as Managing Member of Westfall Legacy, LLC, a New Mexico limited liability company, on behalf of the company.

Victoria Archuleta
Notary Public

My commission expires:
(Seal or Stamp)



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

On this _____ day of _____, 2013, personally appeared before me _____, who duly acknowledged to me that he executed the foregoing Easement Agreement as _____ of SMITH'S FOOD & DRUG CENTERS, INC., an Ohio corporation, Grantee.

Notary Public
Residing at:

My Commission Expires:

**Exhibit A-1
Smith's Parcel**

August 12, 2013

**Smith's #485
Louisiana and Montgomery
Fuel Center Property
Tract 2-D and a Portion of Tract 2**

All of Tract Two-D (2-D) as shown on plat entitled "PLAT OF TRACTS 2-D AND 2-E MUNICIPAL ADDITION No. 1 WITHIN SECTION 36, TOWNSHIP 11 NORTH, RANGE 3 EAST, N.M.P.M. CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, JULY 2007", filed in the office of the County Clerk, Bernalillo County, New Mexico on July 27, 2007, in Plat book 2007C, Page 202, as Document No. 2007108802 along with a Portion of Tract 2 of the replat of a portion of Tract "G" of the replat of municipal addition No. 1, a subdivision, Albuquerque, New Mexico, as the same is shown and designated on said replat filed in the office of the County Clerk of Bernalillo County, New Mexico, January 28, 1964;

And being more particularly described metes and bounds by survey as follows:

BEGINNING at the Northeast Corner of said Tract 2-D marked by a 5/8 inch rebar in place, at a point on the Easterly Line of said Tract 2 which is the Westerly Line of a public street known as Louisiana Boulevard NE;

Running from said beginning point South 0°08'59" West 124.55 feet along said Westerly Line of Louisiana Boulevard;

THENCE Southwesterly along the arc of a 25.00 foot radius curve to the right a distance of 39.71 feet (Center bears North 89°51'01" West, Central Angle equals 91°00'43" and Long Chord bears South 45°39'21" West 35.67 feet) to the Northerly Line of Montgomery Boulevard marked by a 5/8 inch rebar in place;

THENCE North 88°50'18" West, 88.10 feet along said Northerly Line to the Southwest Corner marked by a 5/8 inch rebar in place;

THENCE North 0°19'28" West 53.30 feet to a 5/8 inch rebar in place;

THENCE North 89°40'32" West 36.01 feet to a 5/8 inch rebar in place;

THENCE North 0°08'59" East 97.64 feet along the West Line of said Tract 2-D to the Northwest Corner marked by a 5/8 inch rebar in place;

THENCE, North 0°05'13" East 100.23 feet to the Northwest Corner marked by a 5/8 inch rebar in place;

THENCE, South 88°50'18" East 149.99 feet to the Northeast Corner on the Westerly Line of Louisiana Boulevard marked by a 5/8 inch rebar in place;

THENCE South 0°04'33" East, along said Boulevard Line, 100.23 feet to the point of BEGINNING.

Contains 35,476 sq. ft. or 0.814 acre

Exhibit A-2
Westfall Legacy Parcel
(4111 Louisiana Blvd. NE, Albuquerque, NM 87109)

Smith's #485
Louisiana and Montgomery
Property North of Fuel Center
Portion of Tract 2

August 12, 2013

Comprising a Portion of Tract 2 of the replat of a Portion of Tract "G" o the replat of Municipal Addition No. 1, a Subdivision, Albuquerque, New Mexico, as the same is shown and designated on the plat of said subdivision filed in the office of the County Clerk of Bernalillo County, New Mexico, January 28, 1964;

And more particularly described by survey of Elder Company in December 1970, as follows:

Beginning at the Southeast corner, marked by a 3/4 inch iron pipe stake in place, a point on the Easterly line of said Tract 2 which is the Westerly line of a public street known as Louisiana Boulevard NE, whence the Southeast corner of said Tract "G" bears S. 0° 02' 25" E., along said boulevard line, 250.00 feet distant; Running from said beginning point N. 88° 59' 40" W. 150.00 feet to the Southwest corner;

Thence N. 0° 02' 25" W., 50.05 feet to the Northwest corner marked by a 1/2 reinforcing rod stake set firmly in the ground;

Thence S. 88° 59' 40" E.,, 150.00 feet to the Northeast corner marked by a 3.4 inch iron pipe set in place of a 1/2 inch iron pipe stake found in place, but disturbed;

Thence, S. 0°02' 25" E., along said Boulevard 50.05 feet to the point of Beginning.

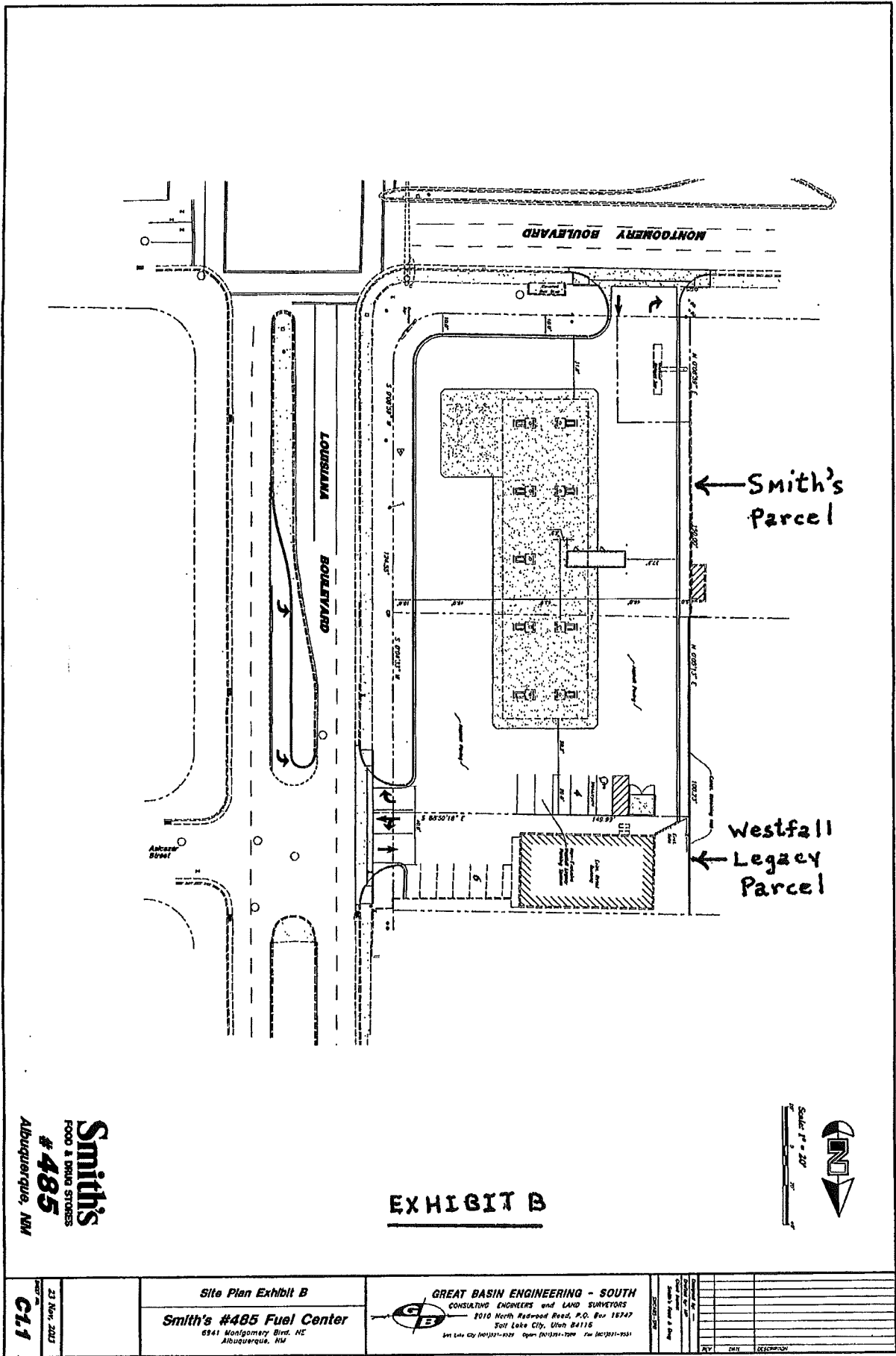


EXHIBIT B

Smith's
#485
 FOOD & DRUG STORES
 Albuquerque, NM

Site Plan Exhibit B

Smith's #485 Fuel Center
 8941 Montgomery Blvd. NE
 Albuquerque, NM

GREAT BASIN ENGINEERING - SOUTH
 CONSULTING ENGINEERS and LAND SURVEYORS
 2010 North Redwood Road, P.O. Box 18747
 Salt Lake City, Utah 84116
 801-461-1111 Fax 801-461-1112

Project No.	
Client	
Survey No.	
Survey Date	
Surveyor	
Checker	
Reviewer	
Approval	
Scale	
North Arrow	
Legend	
Notes	

23 Nov. 2013
CL1