

When Recorded, Return to:  
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60 E. South Temple, #2000  
Salt Lake City, UT 84111

26-36-351-003

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08/21/2003 12:40 PM 16.00  
Book - 8867 Pg - 1679-1682  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
HOLLAND & HART  
DAVID K BROADBENT  
60 E SOUTH TEMPLE #2000  
SLC UT 84111  
BY: SBM, DEPUTY - WI 4 P.

**ADDENDUM No. 2  
TO  
RESTRICTIONS AND EASEMENTS AGREEMENT**

This ADDENDUM No. 2 to that certain Restrictions and Easements Agreement identified in Recital A is dated this 20<sup>th</sup> day of August, 2003, and is entered into by and between Smith's Food & Drug Centers, Inc., a Delaware corporation ("Smith's") and H.V. Commercial, L.L.C., a Utah limited liability company ("Developer") and is made in connection with the following facts:

A. Smith's and Developer entered into that certain Restrictions and Easements Agreement, dated February 13, 2003, and recorded in the office of the Salt Lake County Recorder on February 26, 2003, as Entry No. 8544976 in Book 8745 at Page 1714 (the "REA Agreement");

B. The following real property ("Lot 1") was unintentionally omitted from the legal description on Exhibit C of the REA Agreement:

Lot 1, HERRIMAN TOWN CENTER, A COMMERCIAL SUBDIVISION, according to the official plat thereof, as recorded in the office of the Salt Lake County Recorder.

C. Lot 1 is the subject of that certain Ground Lease dated the 14th day of July, 2003, entered into by Herriman V, L.C., subsequently amended to H.V. Commercial, L.L.C., and Wendy's Old Fashioned Hamburgers of New York, Inc., an Ohio corporation ("Wendy's");

D. The parties hereto desire to add Lot 1 to the property covered by the REA Agreement, and amend the REA Agreement as follows:

1. Added Parcel. Lot 1 is hereby added to and incorporated into the REA as if originally included in Exhibit C thereto and shall constitute for all purposes one of the "Developer Parcels" under the REA Agreement, being subject to and benefiting from all of the covenants, conditions, restrictions, easements, and encumbrances appertaining to Developer Parcels as set forth in the REA Agreement.

2. Amendment to Section 8a of REA Agreement. The following is added to the end of Section 8a of the REA Agreement:

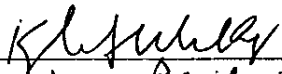
Anything to the contrary herein notwithstanding, no such modification or cancellation of this REA may reduce the easement granted for ingress and egress over the Common Area that is cross-hatched and designated as "protected access" on Exhibit A attached hereto without the prior written consent of Wendy's or its successors and assigns, if any, under the Ground Lease, which consent shall be in the sole discretion of Wendy's or its successors and assigns, if any, under the Ground Lease.

3. Modification. To the extent that the terms of this Addendum modify or conflict with any provisions of the REA Agreement, then these terms control. All other terms of the REA Agreement not modified by this Addendum shall remain unchanged in full force and effect.

4. Wendy's Consent to Amend. This Addendum cannot be amended without the prior written consent of Wendy's or its successors and assigns, if any, under the Ground Lease.

**IN WITNESS WHEREOF**, the parties hereto have executed this Addendum No. 2 to the Restrictions and Easements Agreement the day and year first written above.

**Smith's Food & Drug Centers, Inc., a  
Delaware corporation**

By:   
Its: Vice President

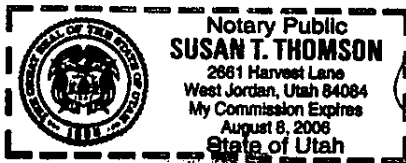
**H.V. Commercial, L.L.C., a Utah limited  
liability company**

By:   
Its: Manager

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

Before me, the undersigned authority, on this day personally appeared Kyle S. McKay, VICE PRESIDENT of Smith's Food & Drug Centers, Inc., a Delaware 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 20<sup>th</sup> day of AUGUST, 2003.



Susan T. Thomson  
Notary Public  
Resident of the State of Utah

My Commission Expires:  
8-8-06

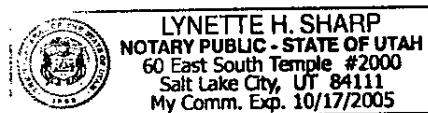
STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

Before me, the undersigned authority, on this day personally appeared Milton P. Shipp, manager of H.V. Commercial, L.L.C., a Utah limited liability company, 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 20<sup>th</sup> day of August, 2003.

Lynette H. Sharp  
Notary Public  
Resident of the State of Utah

My Commission Expires:  
10-17-2005



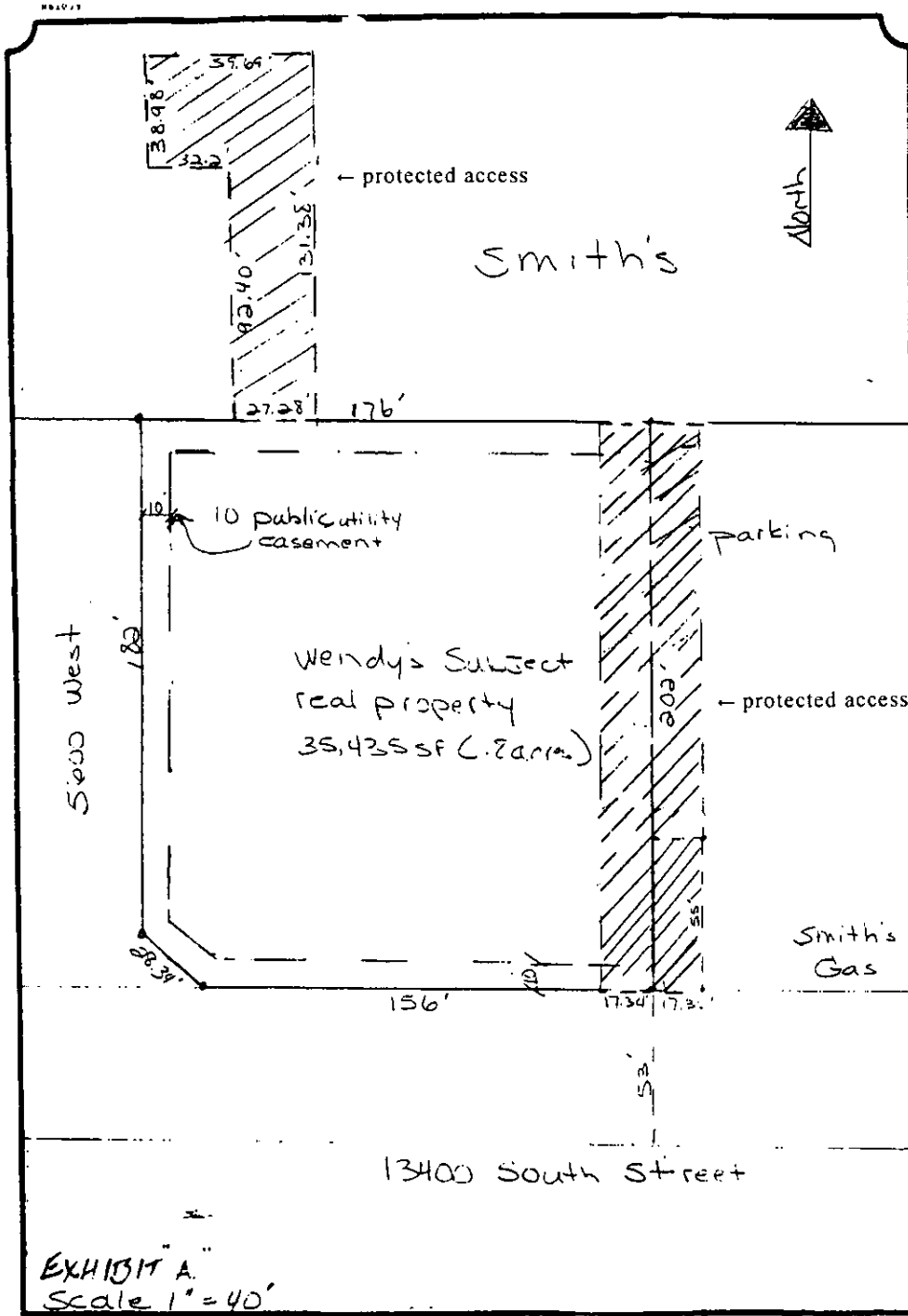


EXHIBIT "A"