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LuAnn Adams, Box Elder County Recorder
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Rec'd For: PHILLIPS HANBEN LAND TITLE CO

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Elizabeth M. Haslam
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main Street
P.O. Box 45444
Salt Lake City, Utah 84145

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS

between

WELLS FARGO BANK, NATIONAL ASSOCIATION

and

SMITH'S FOOD & DRUG CENTERS, INC.

DATE: Nov 30, 1998

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Exhibits:

Exhibit A - Site Plan of the Project

Exhibit B - Legal Description of the Wells Parcel

Exhibit C - Legal Description of the Smith's Parcel

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS (this "Agreement") is made as of the 30th day of November, 1998, by and between WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("Wells"), and SMITH'S FOOD & DRUG CENTERS, INC., a Delaware corporation ("Smith's"), collectively referred to as the "Parties" and individually, a "Party.

R E C I T A L S

WHEREAS, this Agreement concerns that certain real property constituting a project located in Brigham City, Utah, which project is bounded by Main Street, 100 South Street, 100 West Street, and 200 South Street, which real property is hereinafter referred to as the "Project"; and

WHEREAS, Wells is, or will be at the time of the recordation of this Agreement, the Owner of that portion of the Project designated as "Wells Parcel" on the Site Plan attached hereto and incorporated herein by reference as Exhibit "A" and legally described on Exhibit "B"; and

WHEREAS, Smith's is, or will be at the time of the recordation of this Agreement, the Owner of that portion of the Project designated as "Smith's Parcel" on the Site Plan and legally described on Exhibit "C"; and

WHEREAS, the Parties desire to grant each other certain reciprocal easements over and across each of their Parcels for certain purposes as more particularly provided herein and for the mutual benefit of the Parties and of each and all of the Parcels, and accordingly do hereby establish easements, covenants, restrictions, liens and charges, (collectively the "Restrictions")

as are hereinafter set forth, subject to which all of the Project shall be improved, held, exchanged, leased, sold and/or conveyed; and

WHEREAS, each of the Restrictions (i) is imposed upon each Parcel in the Project as a mutual equitable servitude in favor of the other Parcels, (ii) shall create reciprocal rights and obligations between and among each of the Owners; and (iii) shall create a privity of contract and estate between and among the Owners and their heirs, successors and assigns; and

WHEREAS, each of the Restrictions are intended to and shall run with the land, and each Parcel is affected and burdened by the covenants of its Owner for the benefit of the other Parcels in the Project; and

WHEREAS, the Owners intend that the successive owners of all or any portion of any Parcel are bound hereby for the benefit of the other Parcels in the Project and any portion thereof and the Owners thereof;

NOW, THEREFORE, in consideration of the foregoing, and the covenants and agreements set forth herein, the Parties agree as follows:

I. PRELIMINARY.

A. Incorporation. The above Recitals are incorporated herein and made a part hereof.

B. Definitions.

1. Approving Parties. "Approving Party" shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this Agreement. There shall be one Approving Party representing the Wells Parcel and one Approving Party representing the

Smith's Parcel. Each Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the real estate represented by such position regardless of whether the Approving Party then owns all or less than all of the Wells Parcel or the Smith's Parcel, as the case may be. The holder of the Approving Party position shall have the right to assign such position to any other Party owning a Parcel within the Wells Parcel or the Smith's Parcel, as the case may be, but if an assignment is not made, then such Approving Party position shall automatically be deemed assigned to the Party acquiring the last Parcel owned by the transferring Approving Party. Wells shall be the initial Approving Party for the Wells Parcel; Smith's shall be the initial Approving Party for the Smith's Parcel.

2. Building Area. That area shown as "Building Area" or "Building Envelope" on the Site Plan.

3. No Build Area. All real property within the Project which is not depicted on the Site Plan as Building Area or Building Envelope. Vehicular access drives, pedestrian walkways and parking stalls within the Project shall be located in the areas depicted on the Site Plan. No Owner may change the location of the vehicular access drives, pedestrian walkways or parking stalls from that shown on the Site Plan if such change reduces the number of parking spaces or materially alters the parking configuration or vehicular and pedestrian circulation, and/or access from that shown on the Site Plan without the written approval of the Approving Parties.

4. Owner. Wells, Smith's and any other person or entity having fee record title to any Parcel in the Project and their respective assigns, grantees, and successors in interest.

5. Permittees. The occupants of the Parcels and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of such occupants.

II. EASEMENTS; INGRESS, EGRESS AND PARKING.

A. Ingress and Egress. Each Owner, with respect to its Parcel, hereby grants to each other Owner as grantee, for the benefit of each other Owner, and for the use of the Owners and their respective Permittees, and for the benefit of the Parcels owned by such grantee and as a burden on the grantor's Parcel, a non-exclusive easement appurtenant to each grantee's Parcel for the purpose of ingress and egress by vehicular and pedestrian traffic upon, over, across and through the vehicular access drives and pedestrian walkways located in the No Build Area within each grantor's Parcel. The foregoing shall not create any rights in any parties other than the Owners.

B. Parking. Each of the Owners grants to each other Owner, as grantee, for the benefit of the other Owner, and for the use of the Owners of parking stalls contained in the Project, and their respective Permittees, and for the benefit of each Parcels owned by such grantee and as a burden on the grantor's Parcel, a non-exclusive easement appurtenant to each grantee's Parcel for the purpose of vehicular parking upon, over, across and through the parking stalls located in the No Build Area within the Parcels. The foregoing shall not create any rights in any parties other than the Owners of the Parcels.

III. NO BUILD AREA.

A. No Build Area Use; Parcels. The No Build Area within the Parcels may be used for parking by the Owners of the Parcels and their Permittees. There shall be no charge or other validation for parking in the No Build Area of the Parcels. No persons other than the Owners and Permittees of the Parcels shall be permitted to park in the No Build Area of the Parcels, unless the Approving Parties give prior written approval thereto.

B. No Build Area Use Generally. The No Build Area within the Project shall be used for vehicular access, circulation and pedestrian traffic of all the Owners and their Permittees and for the servicing and supplying of businesses operating within each Parcel. Each Owner of a Parcel shall have the right, at its cost and expense and for the benefit of its Parcel, to install, maintain, repair and replace water, sewer, electricity, gas and other utility lines, pipes and equipment, beneath such Parcel. No barricade or structure may be placed, erected or constructed within the No Build Area on any Parcel except loading and delivery docks and covered areas attached to such docks, trash enclosures, pylon and other free-standing signs and directional signs, bumper guards or curbs, paving, landscaping and landscape planters, lighting standards, driveways, sidewalks, walkways, parking stalls, columns or pillars supporting roof overhangs, and any other improvements as may be required under applicable laws, rules, ordinances and regulations of any governmental body having jurisdiction over the Project. Nothing in this Agreement shall preclude the installation and operation of drive-through lanes on the Wells Parcel within the area depicted on the Site Plan.

C. Maintenance and Repair. Each Owner shall, at its own expense, cause the No Build Area located on its Parcel to be maintained at all times in good and clean condition and repair, which shall include, but not be limited to the following:

1. Maintaining the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;
2. Removing all papers, debris, filth and refuse, ice and snow, and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
3. Placing, keeping in repair, and replacing appropriate directional signs, markers and lines, where necessary;
4. Maintaining free and unobstructed access to and from its Parcel and the adjoining portions of the Project and to and from its Parcel and the streets adjacent thereto; and
5. Maintaining all landscaped areas in and around the No Build Area and repairing sprinkler systems or water lines and replacing shrubs and other landscaping as necessary.

Notwithstanding the foregoing, the Owner of the Smith's Parcel shall cause the portion of No Build Area in the Project designated on the Site Plan as "Common Access Driveways," to be maintained in good and clean condition and repair and otherwise in the manner provided in paragraphs 1 through 5 above. The Owner of the Smith's Parcel shall expend only the

monies reasonably necessary for such maintenance in order to keep the Common Access Driveways in good repair and clean condition on a nonprofit basis to the end that the expense in connection therewith shall be kept to a minimum. The Owner of the Smith's Parcel shall not make or authorize any single expenditure regarding the Common Access Driveways or the operation thereof exceeding One Thousand Dollars (\$1,000.00), as such amount may be adjusted each five years of the term of this Agreement by the percentage increase in the Consumer Price Index for such period, without first obtaining the written consent of the Owner of the Wells Parcel. "Consumer Price Index" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Wage Earners and Clerical Workers: U.S. City Average, "All Items" (1982-84=100), as amended, or any successor to such index. In the event such index, or successor to such index, is discontinued, the Approving Parties shall select the replacement index published by a governmental agency which is closest to the Consumer Price Index. The Owner of the Smith's Parcel shall, from time to time within sixty (60) days after the end of the billing period, but not more often than quarterly, nor less frequently than annually, send to the Owner of the Smith's Parcel, a written statement of the total cost and expenses of maintenance of the Common Access Driveways for the period of the preceding quarterly or longer period. All such written billing statements shall be accompanied by bills or receipts for all charges. The Owner of the Smith's Parcel may charge a management fee of five percent (5%) of such costs and expenses (excluding real administrative and overhead expenses of the Owner of the Smith's Parcel, and any third party management fees). Within thirty (30) days after receipt of such statement, the Owner of the Wells Parcel shall pay to the Owner of the Smith's Parcel fourteen percent (14%) of the total amount of such costs and expenses hereinafter

described. The failure of the Owner of the Smith's Parcel to include any expenditure in a statement to the Owner of the Wells Parcel within twelve (12) months after the date of such expenditure shall be deemed a waiver by the Owner of the Smith's Parcel of its right to demand payment by the Owner of the Wells Parcel of its proportionate share thereof. The Owner of the Wells Parcel, or its authorized representative, shall have the right to examine the records of expenses in connection therewith at reasonable business hours and without unreasonable frequency.

If the Owner of the Smith's Parcel shall fail to so maintain the Common Access Driveways after thirty (30) days written notice specifying such failure, then the Owner of the Wells Parcel may do so, and the Owner of the Wells Parcel may then bill the Owner of the Smith's Parcel for the expense incurred except no such notice shall be required in the event of an emergency caused by Owner of the Smith's Parcel's failure to properly maintain the Common Access Driveways.

Notwithstanding the foregoing, at no time shall the Owner of the Wells Parcel be required to pay in excess of \$5,000.00 annually to the Owner of the Smith's Parcel, as such amount may be adjusted each five years of the term of this Agreement by the percentage increase in the Consumer Price Index for such period, without the prior written consent of the Owner of the Wells Parcel, which consent shall not be unreasonably withheld.

IV. BUILDING AREA ON PARCELS. Except as otherwise permitted by this Agreement, no building or other structure shall be constructed or reconstructed upon any Parcel other than within the Building Area on each Parcel. Notwithstanding the foregoing, canopies and roof overhangs (including supporting columns or pillars and drive-through canopy areas), normal

foundations, trash enclosures, and loading and delivery docks, covered areas attached to such docks, required emergency exits (including stairs, landings, footings and foundations associated therewith), and doors for ingress and egress may project from any building or structure up to a distance of twenty-five (25) feet over or outside of the Building Area on any Parcel; provided, any such projection or extension must comply with all applicable laws, rules, ordinances and regulations of every governmental body having jurisdiction over the Parcels; and provided further, no such extension or projection shall be allowed if it (i) reduces the number of parking spaces or materially alters the parking configuration or vehicular and pedestrian circulation, and/or access in and through the entire Project shown on the Site Plan, or (ii) interferes with or prevents the location, placement or construction of a building or structure in the Building Area on any other Parcel.

V. INSURANCE.

A. Liability Insurance Coverage and Limits. Each Owner agrees to maintain, and/or cause to be maintained, at no cost to the other Owners, liability insurance insuring its interests against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Project and the ways immediately adjoining the Project, with a "Combined Single Limit" (covering personal injury liability, bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000.00) for total claims for any one occurrence. The insurance limits in this Section shall be subject to increase from time to time by such amounts as the Owners may reasonably agree in writing is necessary or desirable, as may be evidenced by the practice of similarly situated properties.

B. Waiver of Certain Rights. With respect to any loss or damage that may occur to the Project (or any improvements thereon) or the respective property of the Owners therein, arising from any peril customarily insured under a fire and extended coverage insurance policy, regardless of the cause or origin, excluding willful acts but including negligence of the Owners, their agents, servants or employees, the Owner suffering such loss hereby releases the other Owners from all claims with respect to such loss, but only to the extent of insurance proceeds actually received by the Owner suffering such loss; and the Owners each agree that their respective insurance companies shall have no right of subrogation against the other Owners on account of any such loss, and each Owner shall procure from its respective insurers under all policies of fire and extended coverage insurance a waiver of all rights of subrogation against the other Owners which the insurers might otherwise have under such policies.

C. Policy Requirements. Insurance coverage required by this Agreement may contain the following elements, so long as the required coverage is not diminished, the required limits are not reduced, and the elements thereof are otherwise commercially reasonable: an Owner's insurance program may include blanket, layered, umbrella, conventional and/or manuscript forms of policies, as well as retention levels and loss reserves which are charged against earnings or otherwise funded, and commercially reasonable deductibles.

Upon request, each Owner shall cause certificates of insurance reasonably evidencing compliance with the requirements of this Article to be delivered to the other Owner. The insurance policies and certificates required by this Article shall require the insurance company to furnish all Owners thirty (30) days' prior written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage.

D. Self-Insurance. All insurance required by this Article may be provided under a plan of self-insurance, provided that any Party so self-insuring notifies the other Party of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party has at least Fifty Million Dollars (\$50,000,000) in net current assets.

VI. DAMAGE OR DESTRUCTION.

In the event the No Build Area on the Parcels or any (or any portion of such No Build Area) shall be damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of such No Build Area so damaged or destroyed, shall proceed with due diligence to restore such areas to a condition to permit vehicular parking on the Parcels (in the manner required by this Agreement) and free and safe vehicular and pedestrian access and circulation in the Project and to and from all streets adjacent thereto.

VII. EMINENT DOMAIN.

A. Owner's Right to Award. Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting any other Owner's Parcel or giving the public or any government any rights in the Parcels. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the No Build Area, the award attributable to the land and improvements of such portion of the No Build Area shall be payable only to the Owner in fee thereof and no claim thereon shall be made by the Owners of any other portion of the No Build Area.

B. Collateral Claims. All other Owners or persons having an interest in the No Build Area so condemned may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken.

C. Tenant's Claim. Nothing in this Section shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and Owner for all or a portion of any such award or payment.

D. Restoration of No Build Area. The Owner of the fee of each portion of the No Build Area on the Parcels so condemned, shall promptly repair and restore the remaining portion of the area so owned as near as practicable to the condition of the No Build Area, immediately prior to such condemnation or transfer to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Party.

VIII. USE RESTRICTIONS. The following uses shall not be permitted in the Project without the prior written approval of the Approving Parties:

- a. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- b. Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);

- c. Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the area where the Project is located;
- d. Any establishment selling or exhibiting pornographic materials or drug-related paraphernalia;
- e. Any health spa, fitness center or workout facility; or
- f. As to the Wells Parcel only, any sit-down restaurant or drug store.

IX. DEFAULT.

A. Right to Cure. Should any Owner fail to timely perform any of its obligations hereunder and thereafter fail to perform such obligation within thirty (30) days after its receipt of any other Owner's written demand therefor, the Owner giving such notice shall, in addition to any other remedy provided at law or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of the defaulting Owner and the defaulting Owner shall reimburse the curing Owner for the cost of performing such obligation within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting Owner does not reimburse the curing Owner within such ten (10) days, the curing Owner shall have (i) the right to exercise any and all rights which such curing Owner might have at law to collect the same, and (ii) a lien on the Parcel(s) owned by the defaulting Owner to the extent of the amount paid by the curing Owner but not reimbursed by the defaulting Owner, which amount shall bear interest at a rate equal to the then published Discount Rate of the Federal Reserve Bank of San Francisco, California plus four percent (4%) per annum, or the highest legal rate of interest,

whichever is less, (the "Effective Rate") from the date of billing until paid. Such lien may be filed for record by the curing Owner as a claim against the defaulting Owner, in the form required by law, in the office wherein mortgages are recorded, which lien shall contain at least the following information:

1. The name of the lien claimant;
2. The name of the defaulting Owner;
3. A description of the work performed on behalf of such Owner and a statement itemizing the cost thereof; and
4. A description of the property being liened.

The lien so claimed shall attach from the date of recordation in the amount claimed by the Owner curing the default and it may be enforced and foreclosed in any manner allowed by law, including, but not limited to, suits to foreclose a mechanic's lien, trust deed or mortgage under applicable law. Such lien, when so recorded against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which may be or is acquired or attached to such real property after the time of recording the claim of lien, but shall be subordinate to (a) each mortgage or deed of trust affecting the defaulting Owner's Parcel at the time such lien is recorded, (b) this Agreement, (c) each (recorded or unrecorded) utility easement, right-of-way or similar interest affecting the defaulting Owner's Parcel at the time such lien is recorded, (d) the interest of the tenant or lessee under each lease, rental agreement or similar instrument (whether recorded or unrecorded) affecting the defaulting Owner's Parcel at the time such lien is recorded, and (e) the lien for general taxes and other governmental assessments.

B. Injunctive Relief. In the event of any violation or threatened violation of any provision of this Agreement, any Owner shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation.

C. Breach Shall Not Permit Termination. No breach of this Agreement shall terminate this Agreement or entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement.

D. No Limitation of Remedies. The various rights and remedies herein contained and reserved to the Owners, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein.

E. Mortgagee Protection.

1. Definitions. As used in this paragraph, each of the following terms shall have the indicated meaning:

- a. "Mortgage" means a mortgage or a deed of trust recorded in the official records of the Box Elder County Recorder.
- b. "Mortgagee" means the mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the official records of the Box Elder County Recorder.

c. "Qualified Mortgagee" means a Mortgagee of which each Owner has been given written notice, including such Mortgagee's name and address.

2. Obligations of Mortgagee. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Parcels shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Agreement (other than those provisions, if any, concerning a consent to be given by a Mortgagee, if a Mortgagee's failure to give such consent is wrongful).

3. Notices; Right to Cure. Any Owner, on delivering to the other Owner any notice, demand or other communication pursuant to the provisions of this Agreement, shall at the same time deliver by certified mail, return receipt requested, copies of such notice to each Qualified Mortgagee at the latest address provided to such Owner by such Qualified Mortgagee. Although otherwise effective with respect to the Owner receiving such notice, no notice delivered to any Owner shall affect any rights or remedies of any Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to the defaulting Owner plus, in the case of monetary defaults, an additional fifteen (15) days and, in the case of non-monetary defaults, an

additional thirty (30) days; provided, however, that if a non-monetary default reasonably requires more than thirty (30) days to cure, each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

4. Performance. Each Qualified Mortgagee shall have the right to act for and in the place of the Owner of the Parcel covered by its Mortgage, to the extent permitted by the applicable Mortgage or otherwise agreed to by such Owner in writing. Any Owner shall accept performance by or on behalf of any Qualified Mortgagee as if the same had been performed by the other Owner. Such acceptance shall not create any additional rights as against such Owner in such Qualified Mortgagee, nor shall such Qualified Mortgagee be subrogated to any interest or right of such Owner. Each Qualified Mortgagee shall have the right, to the extent the Owner of the Parcel covered by the Mortgage concerned agrees in writing, to appear in a legal action or proceeding on behalf of such Owner in connection with the Parcel.

5. Recognition. On request, any Owner agrees to execute, acknowledge and deliver to any Qualified Mortgagee an instrument prepared by the Qualified Mortgagee concerned, acknowledging that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of this paragraph E.

X. NOTICES.

Any notice or demand given or served by one Owner to another shall not be deemed to have been duly given or served unless in writing and personally delivered or forwarded by postage prepaid certified or registered mail, return receipt requested, or by another commercially recognized means of delivery, addressed as follows:

TO SMITH'S: Smith's Food & Drug Centers, Inc.
1550 South Redwood Road
Salt Lake City, Utah 84104

WITH A COPY TO: Stephen K. Christensen
Nelson, Rasmussen & Christensen
215 South State Street, Suite # 900
Salt Lake City, Utah 84111

TO WELLS: Wells Fargo Bank
Corporate Properties Group
333 So. Grand Avenue, Suite 700
Los Angeles, California 90071
Attn: Manager

WITH A COPY TO: Wells Fargo Bank
Corporate Properties Group
100 W. Washington, Ste. 1430
Phoenix, AZ 85003
Attn: Leo J. Bauman

Notices and demands shall be deemed effective upon receipt. The person and place to which notices are to be given may be changed by the Owners by written notice to the other Owners.

XI. ATTORNEYS' FEES.

In the event legal proceedings are brought or commenced to enforce any of the terms of this Agreement against any Owner or other person with an interest in the Project, the successful party in such action shall be entitled to receive and shall receive from the defaulting Owner, a reasonable sum as attorneys' fees and costs, to be fixed by the court in the same action.

XII. DURATION.

This Agreement shall remain in full force and effect in perpetuity.

XIII. MODIFICATION.

All negotiations and oral agreements acceptable to the Owners of the Wells Parcel and the Smith's Parcel have been incorporated herein. Except as otherwise provided herein, this Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a writing executed by the Approving Parties and duly recorded.

XIV. CONSTRUCTION.

During any construction on the Smith's Parcel (including initial construction), the Owner of the Smith's Parcel shall conduct its construction so as not to unreasonably interfere with the conduct of business on the Wells Parcel. Without limiting the generality of the foregoing, the Owner of the Smith's Parcel shall conduct its construction in a manner that ensures that access to the ATM's located on the Wells Parcel is available 24 hours a day. During any construction on the Wells Parcel (including initial construction), the Owner of the Wells Parcel shall conduct its construction so as not to unreasonably interfere with the conduct of business on the Smith's Parcel. During the initial construction of new buildings and site improvement work in the Project, employee vehicles and construction vehicles shall not be parked, and construction materials shall not be stored, anywhere within the Project or on the parts of streets adjacent to the Project. Notwithstanding the foregoing sentence, Wells may temporarily store construction materials, equipment and vehicles in the area on the Wells Parcel depicted on the Site Plan as "Construction Staging Area", and Smith's may temporarily store construction materials,

equipment and vehicles in the area on the Smith's Parcel depicted on the Site Plan as "Construction Staging Area".

XV. RIGHT OF FIRST NEGOTIATION. Smith's, with respect to the Wells Parcel, and Wells, with respect to the Smith's Parcel, shall each have a right of first negotiation ("Right of Negotiation") for the purchase of the applicable Parcel for a period of ten (10) years from the date of this Agreement (hereafter referred to as the "Term") under the following terms and conditions:

1. If during the Term either Party desires to transfer or sell its Parcel, separately and not together with the sale of other property, or if a Party receives an unsolicited offer (an "Unsolicited Offer") to purchase its Parcel separately and not together with the sale of other property, which offer such Party is willing to accept (hereafter referred to as "Offeror"), then the Offeror shall provide the other Party ("Offeree") with written notice thereof ("Offeror's Notice"), which as to an Unsolicited Offer shall include all material terms and conditions of such Unsolicited Offer.
2. If the Offeree desires to purchase the Wells Parcel or Smith's Parcel, as the case may be ("Offered Parcel"), the Offeree shall, within fifteen (15) days following receipt of the Offeror's Notice, provide the Offeror with written notice ("Offeree's Notice") offering to purchase the Offered Parcel, and setting forth all material terms and conditions upon which the Offeree is willing to purchase the Offered Parcel. If the Offeree fails to deliver such Offeree's Notice within such fifteen (15) day period, the Offeror may proceed to sell the

Offered Parcel to any third party upon such terms and conditions as the Offeror desires in its sole and absolute discretion.

3. If the Offeree delivers the Offeree's Notice within such fifteen (15) day period, then within fifteen (15) days thereafter, the Offeror shall deliver written notice to Offeree ("Response Notice") either (i) agreeing to sell the Offered Parcel on the terms and conditions set forth in the Offeree's Notice, (ii) making a counter-offer to Offeree setting forth all material terms and conditions upon which the Offeror would be willing to sell the Offered Parcel to Offeree, or (iii) rejecting Offeree's offer to purchase. In the event Offeror fails to deliver such Response Notice within such fifteen (15) day period, Offeror shall be deemed to have elected to reject Offeree's offer pursuant to clause (ii) above.

4. In the event Offeror delivers Offeror's Response Notice containing a counter-offer to Offeree, then within fifteen (15) days thereafter, Offeree shall deliver written notice to Offeror ("Offeree's Response Notice") either (i) agreeing to purchase the Offered Parcel from Offeror on the terms and conditions set forth in Offeror's Response Notice, or (ii) rejecting Offeror's counteroffer to sell. In the event Offeree fails to deliver such Offeree's Response Notice within such fifteen (15) day period, Offeree shall be deemed to have elected to reject Offeror's offer pursuant to clause (ii) above.

5. In the event either (i) Offeror agrees in Offeror's Response Notice to accept Offeree's offer to purchase the Offered Parcel or (ii) Offeree agrees in Offeree's Response Notice to accept Offeror's offer to sell the Offered Parcel, in

accordance with the foregoing, the Parties shall proceed to negotiate in good faith an agreement memorializing the terms of such purchase and sale as so offered and accepted.

6. In the event Offeror elects or is deemed to have elected to reject Offeree's offer to purchase pursuant to this Article, or in the event Offeree elects or is deemed to have elected to reject Offeror's offer to sell pursuant to this Article, Offeror may proceed to sell the Offered Parcel to any third party upon such terms and conditions as Offeror desires in its sole and absolute discretion.

7. The Right of Negotiation shall be personal to Smith's and Wells, as the case may be, and may not be assigned by either Party except to an affiliate of such Party (an affiliate is defined to include an entity which is wholly owned or ultimately owned by the parent corporation of such Party). The Right of Negotiation shall not be a covenant running with the land. In the event Offeror elects or is deemed to have elected to reject Offeree's offer to purchase pursuant to this Article, or in the event Offeree elects or is deemed to have elected to reject Offeror's offer to sell pursuant to this Article, or in the event Offeree elects or is deemed to have elected to reject Offeror's offer to sell pursuant to this Article, the Offeree shall promptly, upon Offeror's request, execute and deliver to Offeror and its designee a written release of its Right of Negotiation as it pertains to the applicable transaction. The Right of Negotiation shall not be triggered by a transfer of a Parcel to an affiliate of either Party

XVI. GENERAL PROVISIONS.

A. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for any public purposes whatsoever, it being the intention of the Owners that this Agreement shall be strictly limited to and for the purposes herein expressed.

B. Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

C. Pronouns. When required by context, the singular shall include the plural, and the neuter gender shall include a person, corporation, firm, association, or other business arrangement.

D. Captions. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

E. Not a Partnership. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted to create, a joint venture, a partnership, or any other similar relationship between the Owners.

F. Governing Law. This Agreement shall be construed and enforced in accordance with, and governed by, the law of the State of Utah.

G. No Presumption. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any Owner.

H. Inurement. This Agreement and the easements, covenants, benefits and obligations created hereby shall inure to the benefit and be binding upon each Owner and its successors and assigns; provided, if any Owner conveys all of its interest in any Parcel owned by it, such Owner shall thereupon be released and discharged from any and all further obligations under this Agreement as fee owner of the property conveyed by it if the buyer assumes in writing all of such obligations; and provided further, no such sale shall release such Owner from any liabilities, actual or contingent, existing as of the time of such conveyance.

I. Estoppel Certificate. Each Owner agrees that upon request by any other Owner, it will issue to a prospective lender of such other Owner or to a prospective purchaser of such other Owner's interest, an estoppel certificate stating:

1. whether the Owner to whom the request has been directed knows of any default by the requesting Owner under this Agreement, and if there are known defaults, specifying the nature thereof;

2. whether this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and

3. that to the Owner's knowledge this Agreement as of that date is in full force and effect.

Such statement shall act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the

claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Owner furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Owner to disclose correct and/or relevant information.

J. Authority. Each of the individuals who have executed this Agreement represents and warrants that he or she is duly authorized to execute this Agreement on behalf of Smith's and Wells, as the case may be; that all corporate, partnership, trust or other action necessary for such Party to execute and perform the terms of this Agreement have been duly taken by such Party; and that no other signature and/or authorization is necessary for such Party to enter into and perform the terms of this Agreement.

K. Exhibits. Exhibits A, B, and C, attached hereto are incorporated herein by this reference.

L. Counterparts. This Agreement may be signed in any number of counterparts, each of which for all purposes shall be deemed an original.

IN WITNESS WHEREOF, this Agreement is entered into as of the day and year first written above.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, a national banking association

By *Jeff Baum*
Its *Vice President*

By *[Signature]*
Its *[Signature]*

"Wells"

SMITH'S FOOD & DRUG CENTERS, INC.,
a Delaware corporation

By *Robert B. Dimon*
Its *VICE PRESIDENT*

By _____
Its _____

"Developer"

STATE OF Arizona)

: ss.

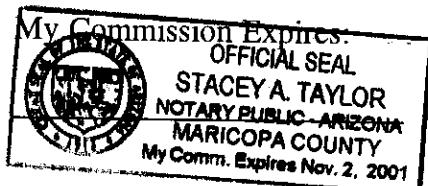
COUNTY OF Maricopa)

On the 3rd day of November, 1998, personally appeared before me Lee
J. Bryan and Mark H. Bryan, who being by me duly sworn did say that s/he is
 the Vice President and Senior Vice President, respectively, of
 WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, and
 that the within and foregoing instrument as officer of WELLS FARGO BANK, NATIONAL
 ASSOCIATION was signed on behalf of said corporation.



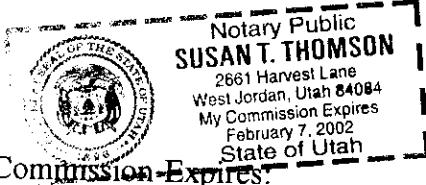
NOTARY PUBLIC

Residing at: _____



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

On the 20th day of NOVEMBER, 1998, personally appeared before me ROBERT B. DIMOND, who being by me duly sworn did say that s/he is the VICE PRESIDENT, of SMITH'S FOOD AND DRUG CENTERS, INC., a Delaware corporation, and that the within and foregoing instrument as officer of SMITH'S FOOD AND DRUG CENTERS, INC., was signed on behalf of said corporation.



My Commission Expires:

2-7-2002

Susan T. Thomson
 NOTARY PUBLIC
 Residing at: SALT LAKE COUNTY, UT

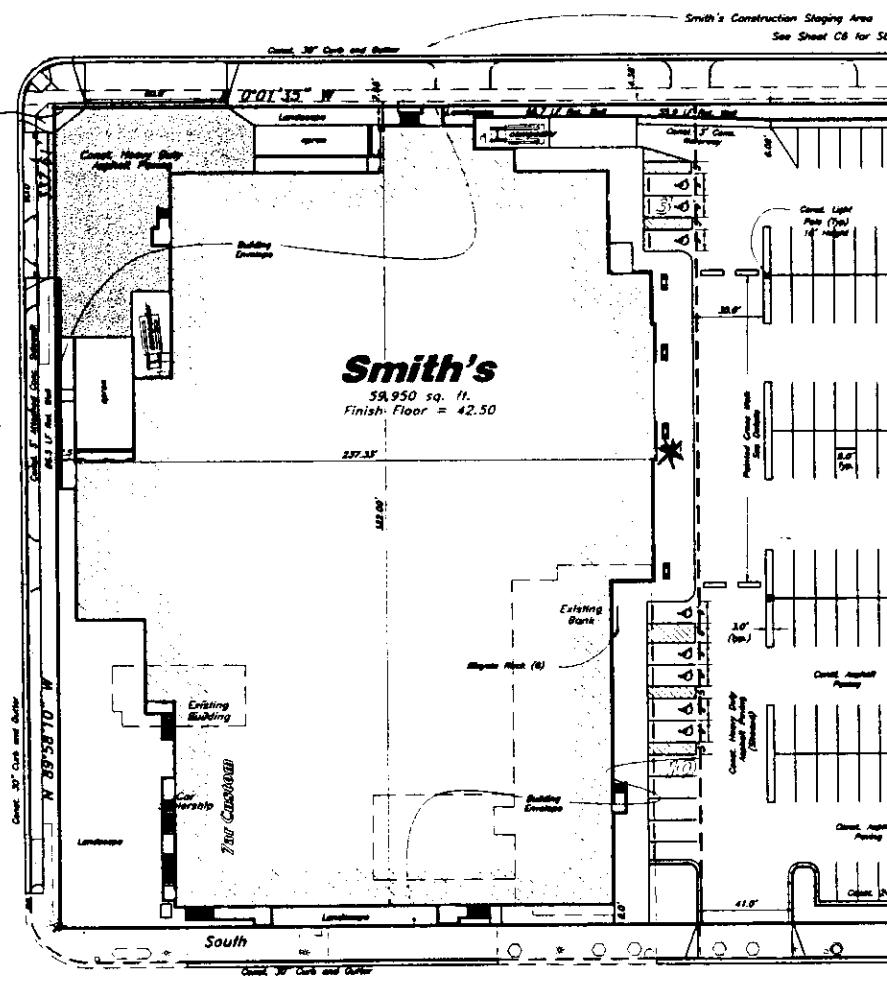
120208 Bk 0698 Pg 0407

A

100

Wes

200 South Street



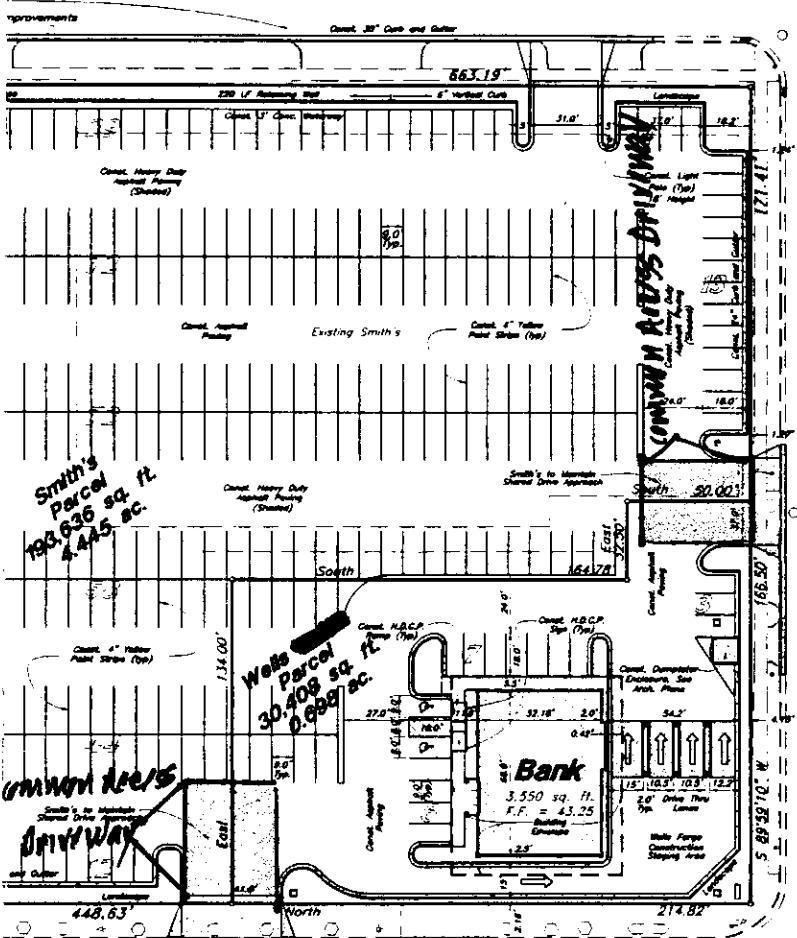
Main

* Wells ATM Located ~~at~~ Smith's EN outside

General Site Notes:

1. Stalls designated as handicap will require a painted handicap symbol, sign, and wheel stop. (See Details)
2. Fire lane markings and signs to be installed as directed by the Fire Marshal.
3. Apple markings, directional arrows and stop bars will be painted at each driveway as shown on the plans.
4. See Horizontal Control plan for coordinates, radii and detailed dimensions of site improvements.
5. Building sidewalks, ramps, and bollards are building contractor responsible items. See architectural plans.
6. All dimensions are to back of curb unless otherwise noted.

Street



100 — *South* — *State*

Site Area

Gross Site Area : 5.143 acres

Building Area

Smith's	64,574	s.f.
Bank	3,550	s.f.
Total	68,124	s.f.

Parking Provided

Smith's	310 stalls
Bank	22 stalls
Total	332 stalls

tree *t*

γ (EAST side of main entry)

EXHIBIT A
TO
DECLARATION

Smith's # 78
Brigham City, Utah

SENIOR ENGINEER'S GUIDE TO CONTRACTORS

Contractor agrees that he shall assume sole and complete responsibility for job site
s during the course of construction of this project, including safety of all
and property; that this requirement shall apply continuously and not be limited to
working hours; and that the contractor shall defend, indemnify, and hold the owner
engineer harmless from any and all liability, real or alleged, in connection with
performance of work on this project, excepting for liability arising from the sole
action of the owner or the engineer.

Site Plan		Smiths Food and Drug Centers, Inc.		
		1550 South Redwood Road Salt Lake City, Utah 84104 Telephone (801) 974-1400		
GREAT BASIN ENGINEERING - SOUTH  2010 North Redwood Road, P.O. Box 18747 Salt Lake City, Utah 84148 <small>Call 800-321-0000 800-321-0001 800-321-0002</small>		SCALE : 1" = 30'	DATE : 11 Sep, 1998	DRAWING NO. : C1
		PLATE : 6b	RESPONSIBILITY :	
		SMC78EX3		

120208 8k 0698 Pg 0410

GREAT BASIN ENGINEERING - SOUTH

2010 North Redwood Road • P.O. Box 16747 • Salt Lake City, Utah 84116
 (801) 521-8529 • (801) 394-7288 • Fax (801) 521-9551

CONSULTING ENGINEERS
AND LAND SURVEYORS



**Smith's #178
Brigham City**

**August 10, 1998
Revised August 26, 1998**

Bank Parcel

A part of Block 5, Plat "A" Brigham City Survey, in Brigham City, Box Elder County, Utah:

Beginning at the Northeast corner of Block 5, Plat "A" said Brigham City Survey and running thence South 214.82 feet along the East Line of said Block 5; thence West 134.00 feet; thence North 164.78 feet; thence West 32.50 feet; thence North 50.00 feet to the North Line of said Block 5; thence North $89^{\circ}59'10''$ East 166.50 feet along said Block Line to the point of beginning.

Contains 30,408 square feet
or 0.698 acre

120208 0698 P 0412

C

GREAT BASIN ENGINEERING - SOUTH

2010 North Redwood Road • P.O. Box 16747 • Salt Lake City, Utah 84116
(801) 521-8529 • (801) 394-7288 • Fax (801) 521-9551

120208 Blk 0698 Pg 0413



CONSULTING ENGINEERS
AND LAND SURVEYORS

Smith's #178
Brigham City

August 10, 1998
Revised August 26, 1998

Smith's Parcel

A part of Block 5, Plat "A" Brigham City Survey, in Brigham City, Box Elder County, Utah:

Beginning at the Southeast Corner of Block 5, Plat "A" in said Brigham City Survey and running thence North 89°58'10" West 337.61 feet along the South Line of said Block 5 to the Southwest corner thereof; thence North 0°01'35" West 663.19 feet along the West Line of said Block 5 to the Northwest corner thereof; thence North 89°59'10" East 171.41 feet along the North Line of said Block 5 to a point 166.50 feet South 89°59'10" West from the Northeast corner of said Block 5; thence South 50.00 feet; thence East 32.50 feet; thence South 164.78 feet; thence East 134.00 feet; to a point on the East Line of said Block 5 being 214.82 feet South from the Northeast corner of said Block 5; thence South 448.63 feet along said East Line of Block to the point of beginning

Contains 193,636 square feet
or 4.445 acres

o:common\data\work\legals\178.doc

EXHIBIT C
TO
DECLARATION

PH 8632
PH 8633

03-125-0137
0161
0165
0167

120208 bk 0698 Pg 0376
LuAnn Adams, Box Elder County Recorder
12/01/1998 3:20pm FEE: 84.00 Dep:NM
Rec'd For: PHILLIPS HANBEN LAND TITLE CO

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Elizabeth M. Haslam
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main Street
P.O. Box 45444
Salt Lake City, Utah 84145

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS

between

WELLS FARGO BANK, NATIONAL ASSOCIATION

and

SMITH'S FOOD & DRUG CENTERS, INC.

DATE: Nov 30, 1998

250499.5

09/11/98
5:49pm

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Exhibits:

Exhibit A - Site Plan of the Project

Exhibit B - Legal Description of the Wells Parcel

Exhibit C - Legal Description of the Smith's Parcel

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS (this "Agreement") is made as of the 30th day of November, 1998, by and between WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("Wells"), and SMITH'S FOOD & DRUG CENTERS, INC., a Delaware corporation ("Smith's"), collectively referred to as the "Parties" and individually, a "Party.

R E C I T A L S

WHEREAS, this Agreement concerns that certain real property constituting a project located in Brigham City, Utah, which project is bounded by Main Street, 100 South Street, 100 West Street, and 200 South Street, which real property is hereinafter referred to as the "Project"; and

WHEREAS, Wells is, or will be at the time of the recordation of this Agreement, the Owner of that portion of the Project designated as "Wells Parcel" on the Site Plan attached hereto and incorporated herein by reference as Exhibit "A" and legally described on Exhibit "B"; and

WHEREAS, Smith's is, or will be at the time of the recordation of this Agreement, the Owner of that portion of the Project designated as "Smith's Parcel" on the Site Plan and legally described on Exhibit "C"; and

WHEREAS, the Parties desire to grant each other certain reciprocal easements over and across each of their Parcels for certain purposes as more particularly provided herein and for the mutual benefit of the Parties and of each and all of the Parcels, and accordingly do hereby establish easements, covenants, restrictions, liens and charges, (collectively the "Restrictions")

as are hereinafter set forth, subject to which all of the Project shall be improved, held, exchanged, leased, sold and/or conveyed; and

WHEREAS, each of the Restrictions (i) is imposed upon each Parcel in the Project as a mutual equitable servitude in favor of the other Parcels, (ii) shall create reciprocal rights and obligations between and among each of the Owners; and (iii) shall create a privity of contract and estate between and among the Owners and their heirs, successors and assigns; and

WHEREAS, each of the Restrictions are intended to and shall run with the land, and each Parcel is affected and burdened by the covenants of its Owner for the benefit of the other Parcels in the Project; and

WHEREAS, the Owners intend that the successive owners of all or any portion of any Parcel are bound hereby for the benefit of the other Parcels in the Project and any portion thereof and the Owners thereof;

NOW, THEREFORE, in consideration of the foregoing, and the covenants and agreements set forth herein, the Parties agree as follows:

I. PRELIMINARY.

A. Incorporation. The above Recitals are incorporated herein and made a part hereof.

B. Definitions.

1. Approving Parties. "Approving Party" shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this Agreement. There shall be one Approving Party representing the Wells Parcel and one Approving Party representing the

Smith's Parcel. Each Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the real estate represented by such position regardless of whether the Approving Party then owns all or less than all of the Wells Parcel or the Smith's Parcel, as the case may be. The holder of the Approving Party position shall have the right to assign such position to any other Party owning a Parcel within the Wells Parcel or the Smith's Parcel, as the case may be, but if an assignment is not made, then such Approving Party position shall automatically be deemed assigned to the Party acquiring the last Parcel owned by the transferring Approving Party. Wells shall be the initial Approving Party for the Wells Parcel; Smith's shall be the initial Approving Party for the Smith's Parcel.

2. Building Area. That area shown as "Building Area" or "Building Envelope" on the Site Plan.

3. No Build Area. All real property within the Project which is not depicted on the Site Plan as Building Area or Building Envelope. Vehicular access drives, pedestrian walkways and parking stalls within the Project shall be located in the areas depicted on the Site Plan. No Owner may change the location of the vehicular access drives, pedestrian walkways or parking stalls from that shown on the Site Plan if such change reduces the number of parking spaces or materially alters the parking configuration or vehicular and pedestrian circulation, and/or access from that shown on the Site Plan without the written approval of the Approving Parties.

4. Owner. Wells, Smith's and any other person or entity having fee record title to any Parcel in the Project and their respective assigns, grantees, and successors in interest.

5. Permittees. The occupants of the Parcels and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of such occupants.

II. EASEMENTS; INGRESS, EGRESS AND PARKING.

A. Ingress and Egress. Each Owner, with respect to its Parcel, hereby grants to each other Owner as grantee, for the benefit of each other Owner, and for the use of the Owners and their respective Permittees, and for the benefit of the Parcels owned by such grantee and as a burden on the grantor's Parcel, a non-exclusive easement appurtenant to each grantee's Parcel for the purpose of ingress and egress by vehicular and pedestrian traffic upon, over, across and through the vehicular access drives and pedestrian walkways located in the No Build Area within each grantor's Parcel. The foregoing shall not create any rights in any parties other than the Owners.

B. Parking. Each of the Owners grants to each other Owner, as grantee, for the benefit of the other Owner, and for the use of the Owners of parking stalls contained in the Project, and their respective Permittees, and for the benefit of each Parcels owned by such grantee and as a burden on the grantor's Parcel, a non-exclusive easement appurtenant to each grantee's Parcel for the purpose of vehicular parking upon, over, across and through the parking stalls located in the No Build Area within the Parcels. The foregoing shall not create any rights in any parties other than the Owners of the Parcels.

III. NO BUILD AREA.

A. No Build Area Use; Parcels. The No Build Area within the Parcels may be used for parking by the Owners of the Parcels and their Permittees. There shall be no charge or other validation for parking in the No Build Area of the Parcels. No persons other than the Owners and Permittees of the Parcels shall be permitted to park in the No Build Area of the Parcels, unless the Approving Parties give prior written approval thereto.

B. No Build Area Use Generally. The No Build Area within the Project shall be used for vehicular access, circulation and pedestrian traffic of all the Owners and their Permittees and for the servicing and supplying of businesses operating within each Parcel. Each Owner of a Parcel shall have the right, at its cost and expense and for the benefit of its Parcel, to install, maintain, repair and replace water, sewer, electricity, gas and other utility lines, pipes and equipment, beneath such Parcel. No barricade or structure may be placed, erected or constructed within the No Build Area on any Parcel except loading and delivery docks and covered areas attached to such docks, trash enclosures, pylon and other free-standing signs and directional signs, bumper guards or curbs, paving, landscaping and landscape planters, lighting standards, driveways, sidewalks, walkways, parking stalls, columns or pillars supporting roof overhangs, and any other improvements as may be required under applicable laws, rules, ordinances and regulations of any governmental body having jurisdiction over the Project. Nothing in this Agreement shall preclude the installation and operation of drive-through lanes on the Wells Parcel within the area depicted on the Site Plan.

C. Maintenance and Repair. Each Owner shall, at its own expense, cause the No Build Area located on its Parcel to be maintained at all times in good and clean condition and repair, which shall include, but not be limited to the following:

1. Maintaining the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;
2. Removing all papers, debris, filth and refuse, ice and snow, and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
3. Placing, keeping in repair, and replacing appropriate directional signs, markers and lines, where necessary;
4. Maintaining free and unobstructed access to and from its Parcel and the adjoining portions of the Project and to and from its Parcel and the streets adjacent thereto; and
5. Maintaining all landscaped areas in and around the No Build Area and repairing sprinkler systems or water lines and replacing shrubs and other landscaping as necessary.

Notwithstanding the foregoing, the Owner of the Smith's Parcel shall cause the portion of No Build Area in the Project designated on the Site Plan as "Common Access Driveways," to be maintained in good and clean condition and repair and otherwise in the manner provided in paragraphs 1 through 5 above. The Owner of the Smith's Parcel shall expend only the

monies reasonably necessary for such maintenance in order to keep the Common Access Driveways in good repair and clean condition on a nonprofit basis to the end that the expense in connection therewith shall be kept to a minimum. The Owner of the Smith's Parcel shall not make or authorize any single expenditure regarding the Common Access Driveways or the operation thereof exceeding One Thousand Dollars (\$1,000.00), as such amount may be adjusted each five years of the term of this Agreement by the percentage increase in the Consumer Price Index for such period, without first obtaining the written consent of the Owner of the Wells Parcel. "Consumer Price Index" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Wage Earners and Clerical Workers: U.S. City Average, "All Items" (1982-84=100), as amended, or any successor to such index. In the event such index, or successor to such index, is discontinued, the Approving Parties shall select the replacement index published by a governmental agency which is closest to the Consumer Price Index. The Owner of the Smith's Parcel shall, from time to time within sixty (60) days after the end of the billing period, but not more often than quarterly, nor less frequently than annually, send to the Owner of the Smith's Parcel, a written statement of the total cost and expenses of maintenance of the Common Access Driveways for the period of the preceding quarterly or longer period. All such written billing statements shall be accompanied by bills or receipts for all charges. The Owner of the Smith's Parcel may charge a management fee of five percent (5%) of such costs and expenses (excluding real administrative and overhead expenses of the Owner of the Smith's Parcel, and any third party management fees). Within thirty (30) days after receipt of such statement, the Owner of the Wells Parcel shall pay to the Owner of the Smith's Parcel fourteen percent (14%) of the total amount of such costs and expenses hereinafter

described. The failure of the Owner of the Smith's Parcel to include any expenditure in a statement to the Owner of the Wells Parcel within twelve (12) months after the date of such expenditure shall be deemed a waiver by the Owner of the Smith's Parcel of its right to demand payment by the Owner of the Wells Parcel of its proportionate share thereof. The Owner of the Wells Parcel, or its authorized representative, shall have the right to examine the records of expenses in connection therewith at reasonable business hours and without unreasonable frequency.

If the Owner of the Smith's Parcel shall fail to so maintain the Common Access Driveways after thirty (30) days written notice specifying such failure, then the Owner of the Wells Parcel may do so, and the Owner of the Wells Parcel may then bill the Owner of the Smith's Parcel for the expense incurred except no such notice shall be required in the event of an emergency caused by Owner of the Smith's Parcel's failure to properly maintain the Common Access Driveways.

Notwithstanding the foregoing, at no time shall the Owner of the Wells Parcel be required to pay in excess of \$5,000.00 annually to the Owner of the Smith's Parcel, as such amount may be adjusted each five years of the term of this Agreement by the percentage increase in the Consumer Price Index for such period, without the prior written consent of the Owner of the Wells Parcel, which consent shall not be unreasonably withheld.

IV. BUILDING AREA ON PARCELS. Except as otherwise permitted by this Agreement, no building or other structure shall be constructed or reconstructed upon any Parcel other than within the Building Area on each Parcel. Notwithstanding the foregoing, canopies and roof overhangs (including supporting columns or pillars and drive-through canopy areas), normal

foundations, trash enclosures, and loading and delivery docks, covered areas attached to such docks, required emergency exits (including stairs, landings, footings and foundations associated therewith), and doors for ingress and egress may project from any building or structure up to a distance of twenty-five (25) feet over or outside of the Building Area on any Parcel; provided, any such projection or extension must comply with all applicable laws, rules, ordinances and regulations of every governmental body having jurisdiction over the Parcels; and provided further, no such extension or projection shall be allowed if it (i) reduces the number of parking spaces or materially alters the parking configuration or vehicular and pedestrian circulation, and/or access in and through the entire Project shown on the Site Plan, or (ii) interferes with or prevents the location, placement or construction of a building or structure in the Building Area on any other Parcel.

V. INSURANCE.

A. Liability Insurance Coverage and Limits. Each Owner agrees to maintain, and/or cause to be maintained, at no cost to the other Owners, liability insurance insuring its interests against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Project and the ways immediately adjoining the Project, with a "Combined Single Limit" (covering personal injury liability, bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000.00) for total claims for any one occurrence. The insurance limits in this Section shall be subject to increase from time to time by such amounts as the Owners may reasonably agree in writing is necessary or desirable, as may be evidenced by the practice of similarly situated properties.

B. Waiver of Certain Rights. With respect to any loss or damage that may occur to the Project (or any improvements thereon) or the respective property of the Owners therein, arising from any peril customarily insured under a fire and extended coverage insurance policy, regardless of the cause or origin, excluding willful acts but including negligence of the Owners, their agents, servants or employees, the Owner suffering such loss hereby releases the other Owners from all claims with respect to such loss, but only to the extent of insurance proceeds actually received by the Owner suffering such loss; and the Owners each agree that their respective insurance companies shall have no right of subrogation against the other Owners on account of any such loss, and each Owner shall procure from its respective insurers under all policies of fire and extended coverage insurance a waiver of all rights of subrogation against the other Owners which the insurers might otherwise have under such policies.

C. Policy Requirements. Insurance coverage required by this Agreement may contain the following elements, so long as the required coverage is not diminished, the required limits are not reduced, and the elements thereof are otherwise commercially reasonable: an Owner's insurance program may include blanket, layered, umbrella, conventional and/or manuscript forms of policies, as well as retention levels and loss reserves which are charged against earnings or otherwise funded, and commercially reasonable deductibles.

Upon request, each Owner shall cause certificates of insurance reasonably evidencing compliance with the requirements of this Article to be delivered to the other Owner. The insurance policies and certificates required by this Article shall require the insurance company to furnish all Owners thirty (30) days' prior written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage.

D. Self-Insurance. All insurance required by this Article may be provided under a plan of self-insurance, provided that any Party so self-insuring notifies the other Party of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party has at least Fifty Million Dollars (\$50,000,000) in net current assets.

VI. DAMAGE OR DESTRUCTION.

In the event the No Build Area on the Parcels or any (or any portion of such No Build Area) shall be damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of such No Build Area so damaged or destroyed, shall proceed with due diligence to restore such areas to a condition to permit vehicular parking on the Parcels (in the manner required by this Agreement) and free and safe vehicular and pedestrian access and circulation in the Project and to and from all streets adjacent thereto.

VII. EMINENT DOMAIN.

A. Owner's Right to Award. Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting any other Owner's Parcel or giving the public or any government any rights in the Parcels. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the No Build Area, the award attributable to the land and improvements of such portion of the No Build Area shall be payable only to the Owner in fee thereof and no claim thereon shall be made by the Owners of any other portion of the No Build Area.

B. Collateral Claims. All other Owners or persons having an interest in the No Build Area so condemned may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken.

C. Tenant's Claim. Nothing in this Section shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and Owner for all or a portion of any such award or payment.

D. Restoration of No Build Area. The Owner of the fee of each portion of the No Build Area on the Parcels so condemned, shall promptly repair and restore the remaining portion of the area so owned as near as practicable to the condition of the No Build Area, immediately prior to such condemnation or transfer to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Party.

VIII. USE RESTRICTIONS. The following uses shall not be permitted in the Project without the prior written approval of the Approving Parties:

- a. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- b. Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);

- c. Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the area where the Project is located;
- d. Any establishment selling or exhibiting pornographic materials or drug-related paraphernalia;
- e. Any health spa, fitness center or workout facility; or
- f. As to the Wells Parcel only, any sit-down restaurant or drug store.

IX. DEFAULT.

A. Right to Cure. Should any Owner fail to timely perform any of its obligations hereunder and thereafter fail to perform such obligation within thirty (30) days after its receipt of any other Owner's written demand therefor, the Owner giving such notice shall, in addition to any other remedy provided at law or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of the defaulting Owner and the defaulting Owner shall reimburse the curing Owner for the cost of performing such obligation within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting Owner does not reimburse the curing Owner within such ten (10) days, the curing Owner shall have (i) the right to exercise any and all rights which such curing Owner might have at law to collect the same, and (ii) a lien on the Parcel(s) owned by the defaulting Owner to the extent of the amount paid by the curing Owner but not reimbursed by the defaulting Owner, which amount shall bear interest at a rate equal to the then published Discount Rate of the Federal Reserve Bank of San Francisco, California plus four percent (4%) per annum, or the highest legal rate of interest,

whichever is less, (the "Effective Rate") from the date of billing until paid. Such lien may be filed for record by the curing Owner as a claim against the defaulting Owner, in the form required by law, in the office wherein mortgages are recorded, which lien shall contain at least the following information:

1. The name of the lien claimant;
2. The name of the defaulting Owner;
3. A description of the work performed on behalf of such Owner and a statement itemizing the cost thereof; and
4. A description of the property being liened.

The lien so claimed shall attach from the date of recordation in the amount claimed by the Owner curing the default and it may be enforced and foreclosed in any manner allowed by law, including, but not limited to, suits to foreclose a mechanic's lien, trust deed or mortgage under applicable law. Such lien, when so recorded against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which may be or is acquired or attached to such real property after the time of recording the claim of lien, but shall be subordinate to (a) each mortgage or deed of trust affecting the defaulting Owner's Parcel at the time such lien is recorded, (b) this Agreement, (c) each (recorded or unrecorded) utility easement, right-of-way or similar interest affecting the defaulting Owner's Parcel at the time such lien is recorded, (d) the interest of the tenant or lessee under each lease, rental agreement or similar instrument (whether recorded or unrecorded) affecting the defaulting Owner's Parcel at the time such lien is recorded, and (e) the lien for general taxes and other governmental assessments.

B. Injunctive Relief. In the event of any violation or threatened violation of any provision of this Agreement, any Owner shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation.

C. Breach Shall Not Permit Termination. No breach of this Agreement shall terminate this Agreement or entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement.

D. No Limitation of Remedies. The various rights and remedies herein contained and reserved to the Owners, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein.

E. Mortgagee Protection.

1. Definitions. As used in this paragraph, each of the following terms shall have the indicated meaning:

- a. "Mortgage" means a mortgage or a deed of trust recorded in the official records of the Box Elder County Recorder.
- b. "Mortgagee" means the mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the official records of the Box Elder County Recorder.

c. "Qualified Mortgagee" means a Mortgagee of which each Owner has been given written notice, including such Mortgagee's name and address.

2. Obligations of Mortgagee. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Parcels shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Agreement (other than those provisions, if any, concerning a consent to be given by a Mortgagee, if a Mortgagee's failure to give such consent is wrongful).

3. Notices; Right to Cure. Any Owner, on delivering to the other Owner any notice, demand or other communication pursuant to the provisions of this Agreement, shall at the same time deliver by certified mail, return receipt requested, copies of such notice to each Qualified Mortgagee at the latest address provided to such Owner by such Qualified Mortgagee. Although otherwise effective with respect to the Owner receiving such notice, no notice delivered to any Owner shall affect any rights or remedies of any Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to the defaulting Owner plus, in the case of monetary defaults, an additional fifteen (15) days and, in the case of non-monetary defaults, an

additional thirty (30) days; provided, however, that if a non-monetary default reasonably requires more than thirty (30) days to cure, each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

4. Performance. Each Qualified Mortgagee shall have the right to act for and in the place of the Owner of the Parcel covered by its Mortgage, to the extent permitted by the applicable Mortgage or otherwise agreed to by such Owner in writing. Any Owner shall accept performance by or on behalf of any Qualified Mortgagee as if the same had been performed by the other Owner. Such acceptance shall not create any additional rights as against such Owner in such Qualified Mortgagee, nor shall such Qualified Mortgagee be subrogated to any interest or right of such Owner. Each Qualified Mortgagee shall have the right, to the extent the Owner of the Parcel covered by the Mortgage concerned agrees in writing, to appear in a legal action or proceeding on behalf of such Owner in connection with the Parcel.

5. Recognition. On request, any Owner agrees to execute, acknowledge and deliver to any Qualified Mortgagee an instrument prepared by the Qualified Mortgagee concerned, acknowledging that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of this paragraph E.

X. NOTICES.

Any notice or demand given or served by one Owner to another shall not be deemed to have been duly given or served unless in writing and personally delivered or forwarded by postage prepaid certified or registered mail, return receipt requested, or by another commercially recognized means of delivery, addressed as follows:

TO SMITH'S: Smith's Food & Drug Centers, Inc.
1550 South Redwood Road
Salt Lake City, Utah 84104

WITH A COPY TO: Stephen K. Christensen
Nelson, Rasmussen & Christensen
215 South State Street, Suite # 900
Salt Lake City, Utah 84111

TO WELLS: Wells Fargo Bank
Corporate Properties Group
333 So. Grand Avenue, Suite 700
Los Angeles, California 90071
Attn: Manager

WITH A COPY TO: Wells Fargo Bank
Corporate Properties Group
100 W. Washington, Ste. 1430
Phoenix, AZ 85003
Attn: Leo J. Bauman

Notices and demands shall be deemed effective upon receipt. The person and place to which notices are to be given may be changed by the Owners by written notice to the other Owners.

XI. ATTORNEYS' FEES.

In the event legal proceedings are brought or commenced to enforce any of the terms of this Agreement against any Owner or other person with an interest in the Project, the successful party in such action shall be entitled to receive and shall receive from the defaulting Owner, a reasonable sum as attorneys' fees and costs, to be fixed by the court in the same action.

XII. DURATION.

This Agreement shall remain in full force and effect in perpetuity.

XIII. MODIFICATION.

All negotiations and oral agreements acceptable to the Owners of the Wells Parcel and the Smith's Parcel have been incorporated herein. Except as otherwise provided herein, this Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a writing executed by the Approving Parties and duly recorded.

XIV. CONSTRUCTION.

During any construction on the Smith's Parcel (including initial construction), the Owner of the Smith's Parcel shall conduct its construction so as not to unreasonably interfere with the conduct of business on the Wells Parcel. Without limiting the generality of the foregoing, the Owner of the Smith's Parcel shall conduct its construction in a manner that ensures that access to the ATM's located on the Wells Parcel is available 24 hours a day. During any construction on the Wells Parcel (including initial construction), the Owner of the Wells Parcel shall conduct its construction so as not to unreasonably interfere with the conduct of business on the Smith's Parcel. During the initial construction of new buildings and site improvement work in the Project, employee vehicles and construction vehicles shall not be parked, and construction materials shall not be stored, anywhere within the Project or on the parts of streets adjacent to the Project. Notwithstanding the foregoing sentence, Wells may temporarily store construction materials, equipment and vehicles in the area on the Wells Parcel depicted on the Site Plan as "Construction Staging Area", and Smith's may temporarily store construction materials,

equipment and vehicles in the area on the Smith's Parcel depicted on the Site Plan as "Construction Staging Area".

XV. RIGHT OF FIRST NEGOTIATION. Smith's, with respect to the Wells Parcel, and Wells, with respect to the Smith's Parcel, shall each have a right of first negotiation ("Right of Negotiation") for the purchase of the applicable Parcel for a period of ten (10) years from the date of this Agreement (hereafter referred to as the "Term") under the following terms and conditions:

1. If during the Term either Party desires to transfer or sell its Parcel, separately and not together with the sale of other property, or if a Party receives an unsolicited offer (an "Unsolicited Offer") to purchase its Parcel separately and not together with the sale of other property, which offer such Party is willing to accept (hereafter referred to as "Offeror"), then the Offeror shall provide the other Party ("Offeree") with written notice thereof ("Offeror's Notice"), which as to an Unsolicited Offer shall include all material terms and conditions of such Unsolicited Offer.
2. If the Offeree desires to purchase the Wells Parcel or Smith's Parcel, as the case may be ("Offered Parcel"), the Offeree shall, within fifteen (15) days following receipt of the Offeror's Notice, provide the Offeror with written notice ("Offeree's Notice") offering to purchase the Offered Parcel, and setting forth all material terms and conditions upon which the Offeree is willing to purchase the Offered Parcel. If the Offeree fails to deliver such Offeree's Notice within such fifteen (15) day period, the Offeror may proceed to sell the

Offered Parcel to any third party upon such terms and conditions as the Offeror desires in its sole and absolute discretion.

3. If the Offeree delivers the Offeree's Notice within such fifteen (15) day period, then within fifteen (15) days thereafter, the Offeror shall deliver written notice to Offeree ("Response Notice") either (i) agreeing to sell the Offered Parcel on the terms and conditions set forth in the Offeree's Notice, (ii) making a counter-offer to Offeree setting forth all material terms and conditions upon which the Offeror would be willing to sell the Offered Parcel to Offeree, or (iii) rejecting Offeree's offer to purchase. In the event Offeror fails to deliver such Response Notice within such fifteen (15) day period, Offeror shall be deemed to have elected to reject Offeree's offer pursuant to clause (ii) above.

4. In the event Offeror delivers Offeror's Response Notice containing a counter-offer to Offeree, then within fifteen (15) days thereafter, Offeree shall deliver written notice to Offeror ("Offeree's Response Notice") either (i) agreeing to purchase the Offered Parcel from Offeror on the terms and conditions set forth in Offeror's Response Notice, or (ii) rejecting Offeror's counteroffer to sell. In the event Offeree fails to deliver such Offeree's Response Notice within such fifteen (15) day period, Offeree shall be deemed to have elected to reject Offeror's offer pursuant to clause (ii) above.

5. In the event either (i) Offeror agrees in Offeror's Response Notice to accept Offeree's offer to purchase the Offered Parcel or (ii) Offeree agrees in Offeree's Response Notice to accept Offeror's offer to sell the Offered Parcel, in

accordance with the foregoing, the Parties shall proceed to negotiate in good faith an agreement memorializing the terms of such purchase and sale as so offered and accepted.

6. In the event Offeror elects or is deemed to have elected to reject Offeree's offer to purchase pursuant to this Article, or in the event Offeree elects or is deemed to have elected to reject Offeror's offer to sell pursuant to this Article, Offeror may proceed to sell the Offered Parcel to any third party upon such terms and conditions as Offeror desires in its sole and absolute discretion.

7. The Right of Negotiation shall be personal to Smith's and Wells, as the case may be, and may not be assigned by either Party except to an affiliate of such Party (an affiliate is defined to include an entity which is wholly owned or ultimately owned by the parent corporation of such Party). The Right of Negotiation shall not be a covenant running with the land. In the event Offeror elects or is deemed to have elected to reject Offeree's offer to purchase pursuant to this Article, or in the event Offeree elects or is deemed to have elected to reject Offeror's offer to sell pursuant to this Article, or in the event Offeree elects or is deemed to have elected to reject Offeror's offer to sell pursuant to this Article, the Offeree shall promptly, upon Offeror's request, execute and deliver to Offeror and its designee a written release of its Right of Negotiation as it pertains to the applicable transaction. The Right of Negotiation shall not be triggered by a transfer of a Parcel to an affiliate of either Party

XVI. GENERAL PROVISIONS.

A. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for any public purposes whatsoever, it being the intention of the Owners that this Agreement shall be strictly limited to and for the purposes herein expressed.

B. Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

C. Pronouns. When required by context, the singular shall include the plural, and the neuter gender shall include a person, corporation, firm, association, or other business arrangement.

D. Captions. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

E. Not a Partnership. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted to create, a joint venture, a partnership, or any other similar relationship between the Owners.

F. Governing Law. This Agreement shall be construed and enforced in accordance with, and governed by, the law of the State of Utah.

G. No Presumption. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any Owner.

H. Inurement. This Agreement and the easements, covenants, benefits and obligations created hereby shall inure to the benefit and be binding upon each Owner and its successors and assigns; provided, if any Owner conveys all of its interest in any Parcel owned by it, such Owner shall thereupon be released and discharged from any and all further obligations under this Agreement as fee owner of the property conveyed by it if the buyer assumes in writing all of such obligations; and provided further, no such sale shall release such Owner from any liabilities, actual or contingent, existing as of the time of such conveyance.

I. Estoppel Certificate. Each Owner agrees that upon request by any other Owner, it will issue to a prospective lender of such other Owner or to a prospective purchaser of such other Owner's interest, an estoppel certificate stating:

1. whether the Owner to whom the request has been directed knows of any default by the requesting Owner under this Agreement, and if there are known defaults, specifying the nature thereof;

2. whether this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and

3. that to the Owner's knowledge this Agreement as of that date is in full force and effect.

Such statement shall act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the

claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Owner furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Owner to disclose correct and/or relevant information.

J. Authority. Each of the individuals who have executed this Agreement represents and warrants that he or she is duly authorized to execute this Agreement on behalf of Smith's and Wells, as the case may be; that all corporate, partnership, trust or other action necessary for such Party to execute and perform the terms of this Agreement have been duly taken by such Party; and that no other signature and/or authorization is necessary for such Party to enter into and perform the terms of this Agreement.

K. Exhibits. Exhibits A, B, and C, attached hereto are incorporated herein by this reference.

L. Counterparts. This Agreement may be signed in any number of counterparts, each of which for all purposes shall be deemed an original.

IN WITNESS WHEREOF, this Agreement is entered into as of the day and year first written above.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, a national banking association

By *Jeff Baum*
Its *Vice President*

By *[Signature]*
Its *[Signature]*

"Wells"

SMITH'S FOOD & DRUG CENTERS, INC.,
a Delaware corporation

By *Robert B. Dimon*
Its *VICE PRESIDENT*

By _____
Its _____

"Developer"

STATE OF Arizona)

: ss.

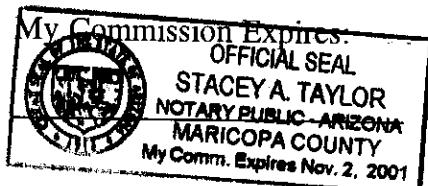
COUNTY OF Maricopa)

On the 3rd day of November, 1998, personally appeared before me Lee
J. Bryan and Mark H. Bryan, who being by me duly sworn did say that s/he is
 the Vice President and Senior Vice President, respectively, of
 WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, and
 that the within and foregoing instrument as officer of WELLS FARGO BANK, NATIONAL
 ASSOCIATION was signed on behalf of said corporation.



NOTARY PUBLIC

Residing at: _____



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

On the 20th day of NOVEMBER, 1998, personally appeared before me ROBERT B. DIMOND, who being by me duly sworn did say that s/he is the VICE PRESIDENT, of SMITH'S FOOD AND DRUG CENTERS, INC., a Delaware corporation, and that the within and foregoing instrument as officer of SMITH'S FOOD AND DRUG CENTERS, INC., was signed on behalf of said corporation.



My Commission Expires:

2-7-2002

Susan T. Thomson
 NOTARY PUBLIC
 Residing at: SALT LAKE COUNTY, UT

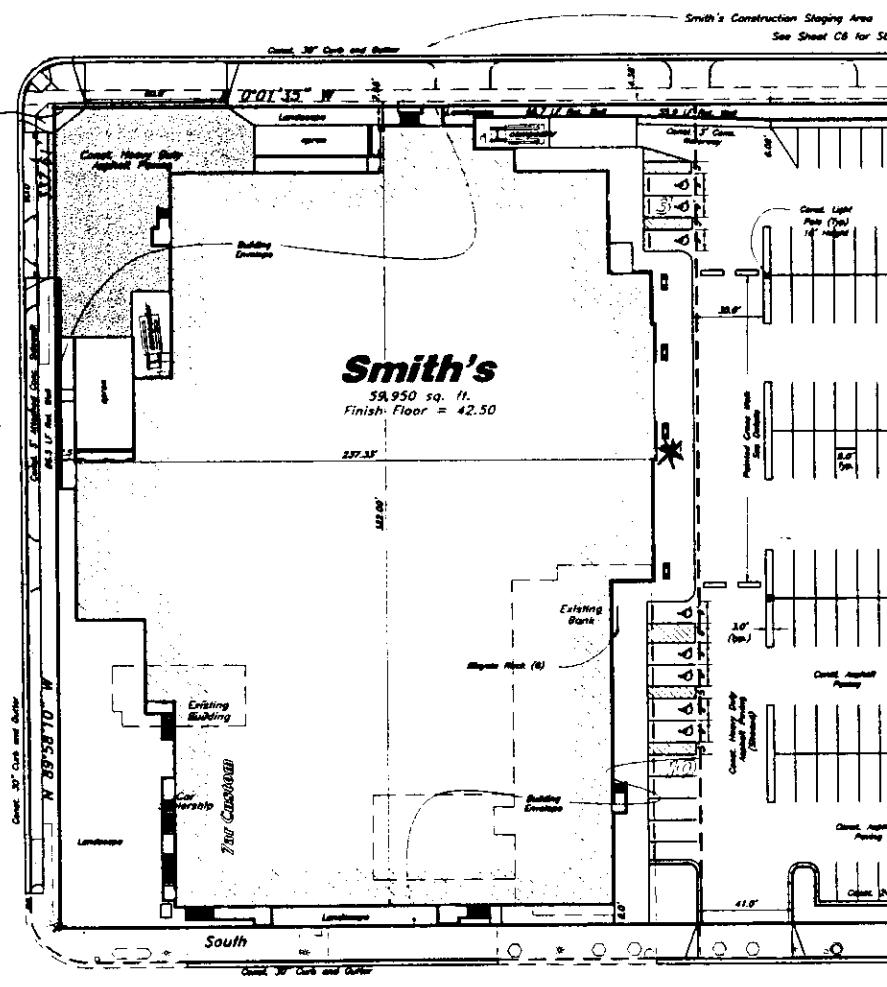
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200 South Street



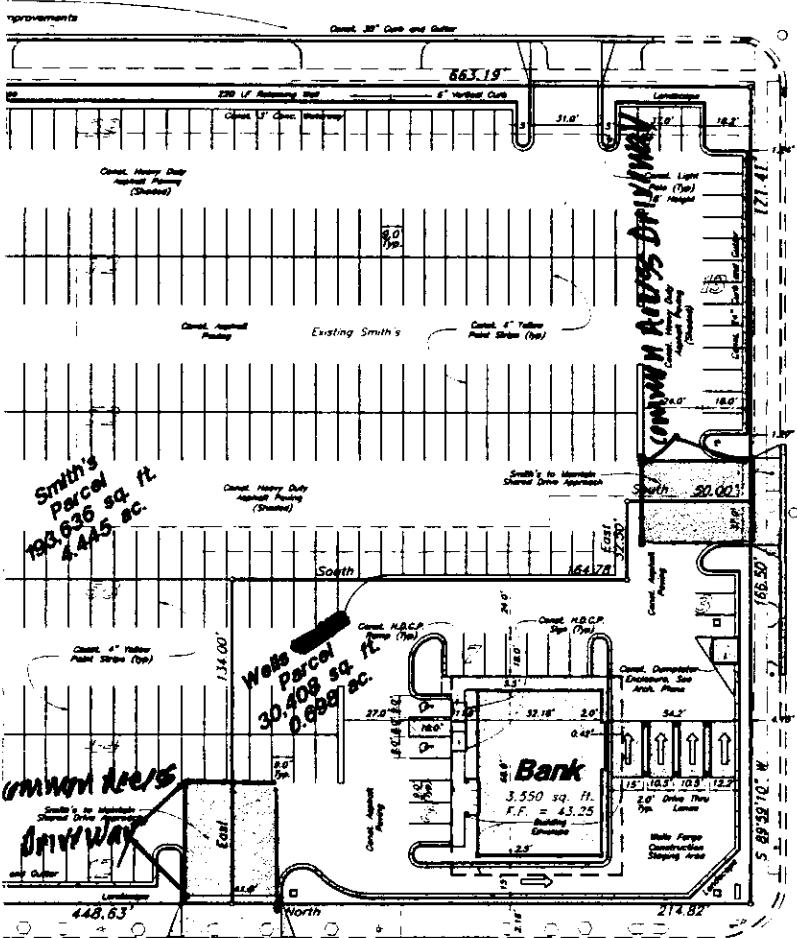
Main

* Wells ATM Located ~~at~~ Smith's EN outside

General Site Notes:

1. Stalls designated as handicap will require a painted handicap symbol, sign, and wheel stop. (See Details)
2. Fire lane markings and signs to be installed as directed by the Fire Marshal.
3. Apple markings, directional arrows and stop bars will be painted at each driveway as shown on the plans.
4. See Horizontal Control plan for coordinates, radii and detailed dimensions of site improvements.
5. Building sidewalks, ramps, and bollards are building contractor responsible items. See architectural plans.
6. All dimensions are to back of curb unless otherwise noted.

Street



Site Area

Gross Site Area : 5.143 acres

Building Area

Smith's	64,574	s.f.
Bank	3,550	s.f.
Total	68,124	s.f.

Parking Provided

Smith's	310 stores
Bank	22 stores
Total	332 stores

treeet

γ (EAST side of main entry)

EXHIBIT A
TO
DECLARATION

Smith's # 78
Brigham City, Utah

PRIVATE ENGINEER'S MESSAGE TO CONTRACTORS

Contractor agrees that he shall assume sole and complete responsibility for job site
s during the course of construction of this project, including safety of all
and property; that this requirement shall apply continuously and not be limited to
working hours; and that the contractor shall defend, indemnify, and hold the owner
engineer harmless from any and all liability, real or alleged, in connection with
performance of work on this project, excepting for liability arising from the sole
action of the owner or the engineer.

Site Plan		Smiths Food and Drug Centers, Inc.		
		1550 South Redwood Road Salt Lake City, Utah 84104 Telephone (801) 974-1400		
 GREAT BASIN ENGINEERING - SOUTH ENGINEERS ARCHITECTS - SURVEYS 3010 North Redwood Road, P.O. Box 18747 Salt Lake City, Utah 84116 <small>Call 800-328-0000, Fax 800-328-7889, File #84-021-0001</small>		SCALE : 1" = 30'	DATE : 11 Sep, 1998	DRAWING NO.:
		DRAWN : EB	REVISIONS :	
		SMC78EX3		

120208 8k 0698 Pg 0410

GREAT BASIN ENGINEERING - SOUTH

2010 North Redwood Road • P.O. Box 16747 • Salt Lake City, Utah 84116
 (801) 521-8529 • (801) 394-7288 • Fax (801) 521-9551

CONSULTING ENGINEERS
AND LAND SURVEYORS



**Smith's #178
Brigham City**

**August 10, 1998
Revised August 26, 1998**

Bank Parcel

**A part of Block 5, Plat "A" Brigham City Survey, in Brigham City, Box Elder
County, Utah:**

Beginning at the Northeast corner of Block 5, Plat "A" said Brigham City Survey and running thence South 214.82 feet along the East Line of said Block 5; thence West 134.00 feet; thence North 164.78 feet; thence West 32.50 feet; thence North 50.00 feet to the North Line of said Block 5; thence North $89^{\circ}59'10''$ East 166.50 feet along said Block Line to the point of beginning.

**Contains 30,408 square feet
or 0.698 acre**

120208 0698 P 0412

C

GREAT BASIN ENGINEERING - SOUTH

2010 North Redwood Road • P.O. Box 16747 • Salt Lake City, Utah 84116
(801) 521-8529 • (801) 394-7288 • Fax (801) 521-9551

120208 Blk 0698 Pg 0413



CONSULTING ENGINEERS
AND LAND SURVEYORS

Smith's #178
Brigham City

August 10, 1998
Revised August 26, 1998

Smith's Parcel

A part of Block 5, Plat "A" Brigham City Survey, in Brigham City, Box Elder County, Utah:

Beginning at the Southeast Corner of Block 5, Plat "A" in said Brigham City Survey and running thence North 89°58'10" West 337.61 feet along the South Line of said Block 5 to the Southwest corner thereof; thence North 0°01'35" West 663.19 feet along the West Line of said Block 5 to the Northwest corner thereof; thence North 89°59'10" East 171.41 feet along the North Line of said Block 5 to a point 166.50 feet South 89°59'10" West from the Northeast corner of said Block 5; thence South 50.00 feet; thence East 32.50 feet; thence South 164.78 feet; thence East 134.00 feet; to a point on the East Line of said Block 5 being 214.82 feet South from the Northeast corner of said Block 5; thence South 448.63 feet along said East Line of Block to the point of beginning

Contains 193,636 square feet
or 4.445 acres

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EXHIBIT C
TO
DECLARATION