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12/15/2000 02:36 PM 24.00  
Book - 8408 Pg - 4705-4711  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
BY: KCC, DEPUTY - WI 7 P.

7781497

**DECLARATION OF RESTRICTIONS, EASEMENTS AND COVENANTS**

This Declaration of Restrictions, Easements and Covenants (hereinafter the "Declaration") is made and entered into this 4<sup>th</sup> day of Oct, 2000, by and between FLYING J INC., a Utah corporation (hereinafter referred to as "Grantor"), whose mailing address is 50 West 990 South, Brigham City, Utah 84302, and WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC., an Ohio corporation (hereinafter referred to as "Grantee"), whose mailing address is 4288 West Dublin-Granville Road, P. O. Box 256, Dublin, Ohio 43017.

WITNESSETH:

WHEREAS, Grantor is the owner of that certain real property located in the State of Utah, City of Draper, as more particularly described in **Exhibit A** which is attached hereto and made a part hereof and is comprised of two parcels hereinafter referred to as Grantor's North Parcel and Grantor's South Parcel as depicted on **Exhibit A-1** (Grantor's North Parcel and Grantor's South Parcel may be collectively referred to as "Grantor's Parcel"); and

WHEREAS, Grantee is the owner of that certain real property located in the State of Utah, City of Draper, as more particularly described in **Exhibit B** which is attached hereto and made a part hereof (which real property is hereinafter referred to as "Grantee's Parcel"); and

WHEREAS, Grantor and Grantee desire to establish certain restrictions, easements and covenants in connection with the use of their respective parcels.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor, Grantor and Grantee agree as follows:

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1. Use Restriction. Grantor hereby covenants and agrees that Grantor's South Parcel (also known as the "Flying J Parcel") shall not be used for a restaurant use, the primary business of which is the sale of hamburgers. For the purpose of this restriction, a restaurant has the aforesaid products as its primary business if fifteen percent (15%) or more of its gross sales, exclusive of taxes, beverage and dairy product sales, consists of sales of hamburgers. This restriction shall burden and run with Grantor's South Parcel for a period of twelve (12) years from the date of recording of this Declaration, and shall benefit Grantee's Parcel, and the owners, successors and assigns thereof.

2. Grantee's Access Easement. Grantor hereby grants, conveys and delivers to Grantee, for the use and benefit of Grantee, its successors, assigns, licensees, suppliers, customers and employees, a non-exclusive, perpetual easement, appurtenant to Grantee's Parcel, for the purpose of driveway, vehicular and pedestrian ingress, egress and access over the common drives and walkways as they may exist from time to time, within Grantor's South Parcel whereon Grantor operates a Flying J, depicted on Exhibit A-1 as the "Flying J Parcel," attached hereto and made a part hereof. Grantor and Grantee agree that points of access along the common property lines between Grantee's Parcel and Grantor's Parcel will be established as agreed upon by the parties to allow sufficient flow of traffic through Grantor's Parcel and Grantee's Parcel. No buildings, fences, curbs or other obstructions prohibiting access between Grantee's Parcel and Grantor's Parcel shall be constructed without the express written consent of Grantor and Grantee. In the event Grantor believes the easement granted in the paragraph may cause interruption of its business, Grantor shall notify Grantee in writing of its concerns, such concerns shall be resolved by the management representatives of Grantor and Grantee as expeditiously as possible and with the express approval of the City of Draper and in accordance with all City Ordinances.

3. Grantor's Access Easement. Grantee hereby grants, conveys and delivers to Grantor, for the use and benefit of Grantor, its successors, assigns, licensees, suppliers, customers and employees, a non-exclusive, perpetual easement, appurtenant to Grantee's Parcel, for the purpose of driveway, vehicular and pedestrian ingress/egress and access over the common drives, walkways as they may exist from time to time within Grantee's Parcel. Grantor and Grantee agree that points of access along the common property lines between Grantee's Parcel and Grantor's Parcel will be established as agreed upon by the parties to allow sufficient flow of traffic through Grantor's Parcel and Grantee's Parcel. No buildings, fences, curbs or other obstructions prohibiting access between Grantee's Parcel and Grantor's Parcel shall be constructed without the express written consent of Grantor and Grantee.

4. Surface Water Drainage. Grantor hereby grants and conveys to Grantee, its successors and assigns, a non-exclusive, perpetual easement for the purpose of surface water drainage and all storm water runoff from Grantee's Parcel and the improvements which may, from time to time, be constructed thereon, over, upon, across and through that portion of Grantor's Parcel.

TO HAVE AND TO HOLD the easements and rights unto Grantee, its successors and assigns forever. Grantor, for Grantor and Grantor's heirs, successors and assigns, hereby warrants and covenants with Grantee, its successors and assigns, that Grantor is the true and lawful owner in fee simple of Grantor's Parcel and has the right and full power to grant and convey the easement and rights herein granted, and that Grantor will warrant and defend the easement and rights herein granted against all claims of all persons whomsoever.

The above-described easements, restrictions and covenants shall be for the use and benefit of Grantee's Parcel and the owners from time to time of all or any part thereof. All provisions of this Declaration, including the covenants, benefits and burdens, shall run with the land and be binding upon and inure to the heirs, executors, administrators, personal and/or legal representatives, successors, assigns and tenants of Grantee and Grantor. The rule of strict construction shall not apply to this grant. This grant shall be given a reasonable construction so that the intention of the parties to confer a commercially usable right of enjoyment on Grantee is carried out.

IN WITNESS WHEREOF, this Declaration is executed as of the day and year first above written.

Witnesses:

*S. Barrick*  
 Print Name: S. BARRICK  
*Jana Schurig*  
 Print Name: Jana Schurig

SELLER:  
 FLYING J INC.

By: *[Signature]*

BUYER:  
 WENDY'S OLD FASHIONED  
 HAMBURGERS OF NEW YORK, INC.

By: *[Signature]*  
 RAYMOND W. BAKER  
 Vice President

Title: \_\_\_\_\_

By: *[Signature]*

RONALD E. WALLACE  
 Vice President

Title: \_\_\_\_\_

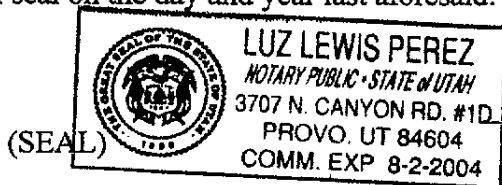
Law Dept. *[Signature]*

*Maryanne E. Stephens*  
 Print Name: MARYANNE E. STEPHENS  
*Erica E. Armentrout*  
 Print Name: ERICA E. ARMENTROUT  
*Maryanne E. Stephens*  
 Print Name: MARYANNE E. STEPHENS  
*Erica E. Armentrout*  
 Print Name: ERICA E. ARMENTROUT

STATE OF Utah  
COUNTY OF Utah, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 4 day of Oct, 2000, before me personally appeared Ron Parker, the Vice President of FLYING J INC., a Utah corporation, who was known to me as the person and officer described in and who executed the foregoing instrument on behalf of said corporation, and who acknowledged that he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.



[Signature]  
Notary Public

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 29<sup>th</sup> day of August, 2000, before me personally appeared RAYMOND W. BAKER Vice President and RONALD E. WALLACE Vice President, the

and \_\_\_\_\_ respectively, of WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC., an Ohio corporation, who are known to me as the persons and officers described in and who executed the foregoing instrument on behalf of said corporation, and who acknowledge that they held the positions or titles set forth in the instrument and certificate, that they signed the instrument on behalf of the corporation by proper authority, and that the instrument was the act of the corporation for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.



ERICA ELAINE ARMENTROUT  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES OCT. 30, 2002

[Signature]  
Notary Public

This instrument prepared by:  
Mark A. Reynolds, Attorney at Law  
Wendy's International, Inc.  
4288 West Dublin-Granville Road  
P. O. Box 256  
Dublin, Ohio 43017

**Exhibit "A"**  
**DESCRIPTION**

That portion of Lot 3, Section 30, Township 3 South, range 1 East, Salt Lake Base and Meridian described as follows:

BEGINNING at a point on the North line of 12300 South Street, said point being South 1047.794 feet and South 89°40'10" East 527.756 feet from the West quarter corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian, said point also being North 89°40'10" West along the monument line (basis of bearing) 2115.097 feet and North 0°19'50" East, 33.000 feet from a monument in the intersection of 12300 South Street and 300 East Street, said point being the Southeast corner of a state highway right-of-way, and running thence South 89°40'10" East, 363.124 feet along said North line; thence North, 1053.517 feet to the quarter section line; thence South 89°57'45" West, 674.470 feet along said quarter section line to the East line of a Frontage Road; thence South 11°31'19" East, 1034.217 feet along said East line to the North line of said 12300 South Street; thence South 89°40'10" East, 104.989 feet along said North line; thence South 0°19'50" West 37.000 feet to the point of beginning.

LESS AND EXCEPTING that portion of property described in Street Dedication of a Portion of 12150 South plat, recorded May 8, 1997, as Entry No. 6639960 in Book 97-5P at page 144 of Official Records.

AND LESS AND EXCEPTING that portion of property described in East Frontage Road Relocation plat recorded October 28, 1997, as Entry No. 6773810 in Book 97-10P at page 327 of Official Records.

LESS AND EXCEPT:

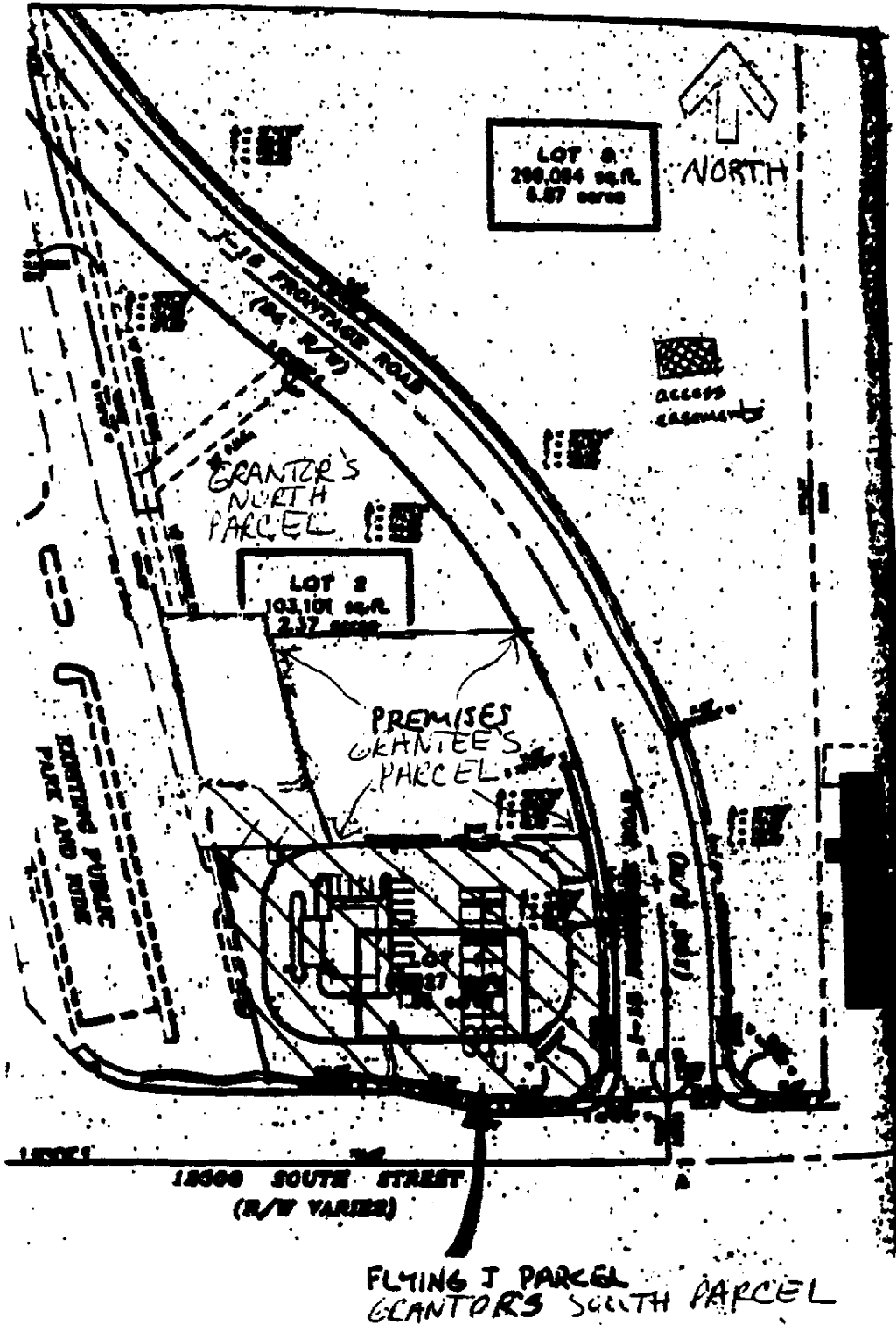
**BEGINNING AT A POINT SOUTH 1047.794 FEET AND SOUTH 89°40'10" EAST 527.756 FEET AND NORTH 0°19'50" EAST 37.00 FEET AND NORTH 89°40'10" WEST 104.989 AND NORTH 11°31'19" WEST 214.88 FEET AND SOUTH 89°40'10" EAST 94.21 FEET FROM THE WEST QUARTER CORNER OF SECTION 30, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 11°31'19" WEST 183.92 FEET; THENCE SOUTH 89°40'10" EAST 179.65 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF FACTORY DRIVE, SAID POINT ALSO BEING ON A 679.785 FOOT RADIUS CURVE TO THE RIGHT, THE RADIUS POINT OF WHICH BEARS SOUTH 57°48'44" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE 183.88 FEET THROUGH A CENTRAL ANGLE OF 15°29'55"; THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE SOUTH 73°18'39" WEST 11.00 FEET TO A POINT ON A 668.785 FOOT RADIUS CURVE TO THE RIGHT, THE RADIUS POINT OF WHICH BEARS SOUTH 73°18'39" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID RIGHT OF WAY LINE 10.77 FEET THROUGH A CENTRAL ANGLE OF 00°55'22"; THENCE NORTH 89°40'10" WEST 211.23 FEET TO THE POINT OF BEGINNING.**

#28-30-302-001

NOT LEGIBLE FOR MICROFILM  
CO. RECORDER

BK 8408 PG 4709

EXHIBIT A-1



# EXHIBIT B

## PROPOSED PROPERTY

BEGINNING AT A POINT SOUTH 1047.794 FEET AND SOUTH 89°40'10" EAST 527.756 FEET AND NORTH 0°19'50" EAST 37.00 FEET AND NORTH 89°40'10" WEST 104.989 AND NORTH 11°31'19" WEST 214.88 FEET AND SOUTH 89°40'10" EAST 94.21 FEET FROM THE WEST QUARTER CORNER OF SECTION 30, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 11°31'19" WEST 183.92 FEET; THENCE SOUTH 89°40'10" EAST 179.65 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF FACTORY DRIVE, SAID POINT ALSO BEING ON A 679.785 FOOT RADIUS CURVE TO THE RIGHT, THE RADIUS POINT OF WHICH BEARS SOUTH 57°48'44" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE 183.88 FEET THROUGH A CENTRAL ANGLE OF 15°29'55"; THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE SOUTH 73°18'39" WEST 11.00 FEET TO A POINT ON A 668.785 FOOT RADIUS CURVE TO THE RIGHT, THE RADIUS POINT OF WHICH BEARS SOUTH 73°18'39" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID RIGHT OF WAY LINE 10.77 FEET THROUGH A CENTRAL ANGLE OF 00°55'22"; THENCE NORTH 89°40'10" WEST 211.23 FEET TO THE POINT OF BEGINNING.

Contains 0.850 acres.

NOT LEGIBLE FOR MICROFILM  
CO. RECORDER

BK 8408 PG 4711