

When Recorded Return To:  
Wendy's International  
4288 West Dublin Granville Road  
Dublin, Ohio 43017  
E-107457AW

8505586  
01/24/2003 04:34 PM 94.00  
Book - 8726 Pg - 1937-1951  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
BY: RDJ, DEPUTY - WI 15 p.

MEMORANDUM OF LEASE,  
RIGHT OF FIRST REFUSAL  
AND  
OPTION TO PURCHASE

THIS MEMORANDUM OF LEASE, RIGHT OF FIRST REFUSAL AND OPTION TO PURCHASE (the "**Memorandum**") is a memorandum of an unrecorded Ground Lease (the "**Lease**") dated the 18th day of March, 2002, by and between **KNUDSON INVESTMENTS, LLC** a Utah limited liability company, hereinafter called "**Lessor**", whose mailing address is 1409 East 2100 South, Salt Lake City, Utah 84105 and **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**, an Ohio corporation, hereinafter referred to as "**Lessee**", whose mailing address is P. O. Box 256, 4288 West Dublin-Granville Road, Dublin, Ohio 43017, concerning that certain real property situated in the City of Salt Lake City, County of Salt Lake and State of Utah containing approximately 36,250 square feet of land, together with all rights, easements and appurtenances thereunto belonging or appertaining (collectively referred to herein as the "**Leased Premises**"), said Real Property being those more fully described in **Exhibit A** attached hereto and made a part hereof by this reference.

For good and valuable consideration, Lessor hereby leases to Wendy's and Wendy's hereby leases from Lessor the above-described premises for the term and under the conditions in the Lease, said Lease being incorporated herein by this reference.

In particular, the Lease contains the following provisions:

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15/58

1. TERM.

A. Original Term

The "**Original Term**" of the Lease shall be defined as the period commencing on the Commencement Date as defined in Section 2 below and ending on December 31 of the tenth (10<sup>th</sup>) full Lease Year (as hereinafter defined) following such Commencement Date. "**Lease Year**" shall be defined as each successive period of twelve (12) consecutive calendar months commencing on the first day of January of each year during the term hereof and ending on December 31 of each year of the term hereof. If the Commencement Date is other than January 1 of any calendar year, the period between the Commencement Date and December 31 of that year shall be the "**First Partial Lease Year**". Lessee's obligation to pay rent shall commence on the Commencement Date.

B. Renewal Terms

Upon the expiration of the Original Term of the Lease, the Lease shall automatically renew for six (6) additional periods of five (5) years each (the "**Renewal Terms**"), except in the event Lessee gives Lessor a cancellation notice as hereinafter provided. In the event Lessee elects to cancel the renewal term of the Lease, such cancellation notice may be given by Lessee at any time but in any event must be given at least ninety (90) days prior to the expiration of the then ending term. In the event Lessee exercises its option to cancel the renewal term of the Lease, the Lease shall terminate upon the expiration of the then ending term.

Except in the event that Lessee cancels the renewal term of the Lease, the Lease shall be renewed at the rental set forth in Section 4 of the Lease, and upon the same other terms and conditions as are applicable to the Original Term, except that such subsequent renewal terms shall begin on the date of expiration of the previous term and shall continue for a period of five (5) years thereafter. The Original Term and any and all Renewal Terms which are not canceled are hereinafter collectively referred to as the "**Term**" of the Lease.

2. EFFECTIVE DATE AND COMMENCEMENT DATE.

The "**Effective Date**" of the Lease is March 18, 2002. The "**Commencement Date**" of the Lease shall be the earlier of the following: (a) Lessee's completion of the improvements to be constructed by Lessee and the opening to the public of Lessee's business on the Real Property, or (b) one hundred thirty (130) days after the date the conditions precedent under Section 8 of the Lease have been satisfied or waived in writing by Lessee and Lessor has delivered exclusive possession of the Real Property to Lessee; provided, however, that said one hundred thirty (130) day period shall be extended by the amount of time attributable to any delays due to causes beyond Lessee's control, including but not limited to acts of God, strikes, lockouts or unavailability of materials.

3. REAL PROPERTY AS PART OF A LARGER TRACT OF LAND.

A. General Covenants

The Real Property is part of a larger tract of land depicted on Exhibit B and more fully described on Exhibit B-1 both attached hereto and made a part hereof (hereinafter "**Lessor's Larger Tract**"). In the event any portion of Lessor's Larger Tract which is adjacent to the Real Property is developed for retail use in the future, Lessor covenants and agrees that (i) no fences or other obstructions prohibiting access to and from the Real Property and the developed portion of Lessor's Larger Tract shall be constructed during the Term; (ii) there will be sufficient parking spaces on the developed portion of Lessor's Larger Tract (if and when developed) including the Real Property to meet the requirements of any laws, ordinances and regulations; (iii) Lessee, its employees, customers and invitees shall have the non-exclusive rights of ingress and egress in, on and over the driveways and parking areas to be later constructed on developed portion of Lessor's Larger Tract to and from all streets, alleys and across ways adjacent to the developed portion of Lessor's Larger Tract if and when constructed; and (iv) no buildings, signs, or other improvements shall be constructed upon the developed portion of Lessor's Larger Tract which will materially reduce the visibility of Lessee's signs or of the Real Property from any access streets. Lessor hereby grants and conveys to Lessee, its employees, customers and invitees a non-exclusive right and easement for access, ingress/egress and parking purposes over the common driveway and parking areas that may exist from time to time within the developed portion of Lessor's Larger Tract. Lessor agrees to keep the Lessor's Larger Tract (excepting the Real Property and the Access Easement) in good maintenance and repair and in a safe, clean and sanitary condition. The cost of maintaining and repairing the Lessor's Larger Tract (excepting the Real Property and the Access Easement) and keeping it in a safe, clean and sanitary condition shall be borne solely by Lessor. All repairs, alterations and maintenance of the Lessor's Larger Tract (excepting the Real Property and the Access Easement) shall be solely the cost of Lessor and Lessee shall not be liable for any portion of the cost of repairs, alterations and maintenance of the Lessor's Larger Tract (excepting the Real Property and the Access Easement) without Lessee's prior written consent. Lessee shall keep the Real Property in good maintenance and repair and in a safe, clean and sanitary condition at Lessee's sole cost and expense. Lessee shall also, on a weekly basis, remove all refuse generated by Wendy's from the "**Restricted Parcel**," as depicted on Exhibit B-2, for so long as the Restricted Parcel is undeveloped.

B. Access Easement

Lessor hereby grants and conveys to Lessee, for the use and benefit of Lessee, its successors, assigns, licensees, employees, suppliers, customers and invitees, a non-exclusive easement appurtenant to the Real Property for the Term and any period of holding over for the purpose of vehicular and pedestrian ingress, egress and access to and from the Real Property, over, upon, across and through that portion of the Lessor's Larger Tract which runs approximately 250 feet parallel to the western boundary of the Real

Property providing access to and from North Temple Street and which is more fully described on the attached Exhibit C.

Lessee shall construct and maintain a chain link fence adjacent to the southern boundary of the Real Property and the western boundary of the Access Easement or at such other location as the parties agree to in writing. Lessor grants Lessee an easement on such portions of the Lessor's Larger Tract as is reasonably necessary for the construction and maintenance of such fence. Lessor, at Lessor's expense, shall repair any damage to the fence by Lessor. Lessee shall be obligated to adequately maintain the Access Easement in a level, evenly paved condition and relatively free and clear of snow, ice and debris. This easement shall also include the right to enter upon such other portions of the Lessor's Larger Tract as may be reasonably necessary for the purpose of maintaining the Access Easement.

C. Use Restriction

As a material inducement for Lessee to enter into the Lease, Lessor warrants, covenants and agrees that Lessor will not sell, lease or develop, nor permit the sale, lease or development of the part of Lessor's Larger Tract depicted as the "**Restricted Parcel**" on Exhibit B-2 for a restaurant use the primary business of which is the advertising, preparation and/or sale of hamburgers, hamburger products, hot dogs, roast beef or chicken sandwiches (or any combination thereof). For purposes of this restriction a restaurant has as its primary business the advertising, preparation and/or sale of hamburgers, hamburger products, hot dogs, roast beef or chicken sandwiches (or any combination thereof) if fifteen percent (15%) or more of its gross sales exclusive of tax, beverage and dairy product sales, consist of sales of hamburgers, hamburger products, hot dogs, roast beef or chicken sandwiches (or any combination thereof). For purposes of this Section, Lessor shall include, but shall not be limited to, any other person, corporation, partnership, or legal entity in which Lessor has, or subsequently acquires, an interest. Lessor covenants and agrees that all deeds, leases or other legal documents which shall be given or made by Lessor for the Restricted Parcel shall contain appropriate restrictions prohibiting the use of said lands or buildings located thereon for the purposes set forth above. This restriction shall attach to and run with the Restricted Parcel for a period commensurate with the Term of the Lease and shall be binding upon Lessor's heirs, personal representatives, tenants, successors and assigns.

4. RIGHT OF FIRST REFUSAL.

From and after the Effective Date and during the Original Term of the Lease, Lessee shall have the first right of purchase and Lessor shall not sell, transfer or otherwise dispose of all or part of Lessor's interest in the Real Property until and unless Lessor shall have given written notice to Lessee of Lessor's desire to sell the Real Property and received written notice of Lessee's election to not exercise this first right of purchase. In the event Lessee elects to exercise its first right of purchase hereunder, the purchase price shall be determined as set forth in the Lease.

5. OPTION TO PURCHASE.

In consideration of and as a material inducement to Lessee to enter into the Lease, Lessor grants to Lessee the option to purchase the Leased Premises on and subject to the terms and conditions contained within the Lease.

6. SERVICE OF NOTICE.

Notices hereunder shall be in writing signed by the party serving the same and shall be sent to the following addresses:

A. If intended for Lessor:

Knudson Investments, LLC  
1409 East 2100 South  
Salt Lake City, Utah 84105  
Facsimile number: (801) 467-6368

with a copy addressed to:

Martha Knudson  
Richards, Brandt, Miller & Nelson  
Key Bank Tower, Suite 700  
50 South Main Street  
P.O. Box 2465  
Salt Lake City, Utah 84110-2465

B. If intended for Lessee:

Wendy's Old Fashioned Hamburgers of New York, Inc.  
ATTENTION: Real Estate Department  
4288 West Dublin-Granville Road  
P. O. Box 256  
Dublin, Ohio 43017  
Facsimile number: (614) 764-6737

with a copy addressed and sent to:

Wendy's Old Fashioned Hamburgers of New York, Inc.  
ATTENTION: Legal Department  
4288 West Dublin-Granville Road  
P. O. Box 256  
Dublin, Ohio 43017  
Facsimile number: (614) 764-3243.

All notices, demands and requests by either party to the other shall be deemed effective upon the earlier of (A) personal delivery, or (B) three (3) days after deposit in United States registered or certified mail, postage prepaid, return receipt requested, or (C) one (1) day after deposit with an overnight courier service for next day delivery, with postage prepaid, or (D) actual delivery if transmitted by facsimile during normal business hours (8:00 a.m.-5:00 p.m.) for the recipient, provided, however, that the same notice is also deposited on the same day with an overnight courier service in compliance with (C) above, all addressed to the other party at its address set forth above, or at such other place as it may from time to time designate in a written notice to the other party.

7. ESTATE IN LAND.

It is the intention of Lessor to create, in favor of Lessee, a leasehold estate in land, which estate shall be vested in Lessee from the date of execution hereof and shall continue for the full original term and all renewal terms of the Lease. Said estate in land shall be subject to divestment only by reason of Lessee's election not to exercise its right of renewal or by reason of the earlier termination of the Lease by one of the parties hereto in accordance with the provisions of the Lease.

This Memorandum is not a complete summary of the Lease. In the event of conflict of interpretation between this Memorandum and the Lease, the Lease would prevail. Originally executed counterparts of the Lease are in the possession of the Lessor and Lessee at the addresses set forth above.

Signed by Lessor this 21<sup>st</sup> day  
of JUNE, 2002.

WITNESSES {AS TO BOTH}:

LESSOR:

Wayne Bennett  
Wayne Bennett  
(Printed Name)

KNUDSON INVESTMENTS, LLC

By: [Signature]  
Title: MANAGER

[Signature]  
Gerald Knudson  
(Printed Name)

{Signatures continued on next page}

Signed by Lessee this 18<sup>th</sup> day  
of June, 2002.

WITNESSES {AS TO BOTH}:

LESSEE:

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

Narcy B. Mihal

**DARCY B. MIHAL**

E. Armentrout  
(Printed Name)

**ERICA E. ARMENTROUT**

(Printed Name)

By: George Condos

Title: **GEORGE CONDOS**  
Executive Vice President

By: Raymond W. Baker

Title: **RAYMOND W. BAKER**  
Vice President

Legal Dept. MM

ACKNOWLEDGMENTS

STATE OF Utah  
COUNTY OF Salt Lake, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the 21<sup>st</sup> day of June, 2002, before me personally appeared Olen B. Knudson as a Member of **Knudson Investments, LLC**, a Utah limited liability company, who was known to me as the person and member described in and who executed the foregoing instrument on behalf of said company, 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 company by proper authority, and the instrument was the act of the company 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.

Francine M. Caserta  
Notary Public



acknowledgments continued on next page}

BK8726PG1943

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 18<sup>th</sup> day of June, 2002, before me personally appeared **RAYMOND W. BAKER** Vice President and **GEORGE CONDOS** Executive 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.



**DARCY B. MIHAL**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES AUGUST 23, 2005

*Darcy B. Mihal*  
Notary Public

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



**EXHIBIT A**

**LEGAL DESCRIPTION**

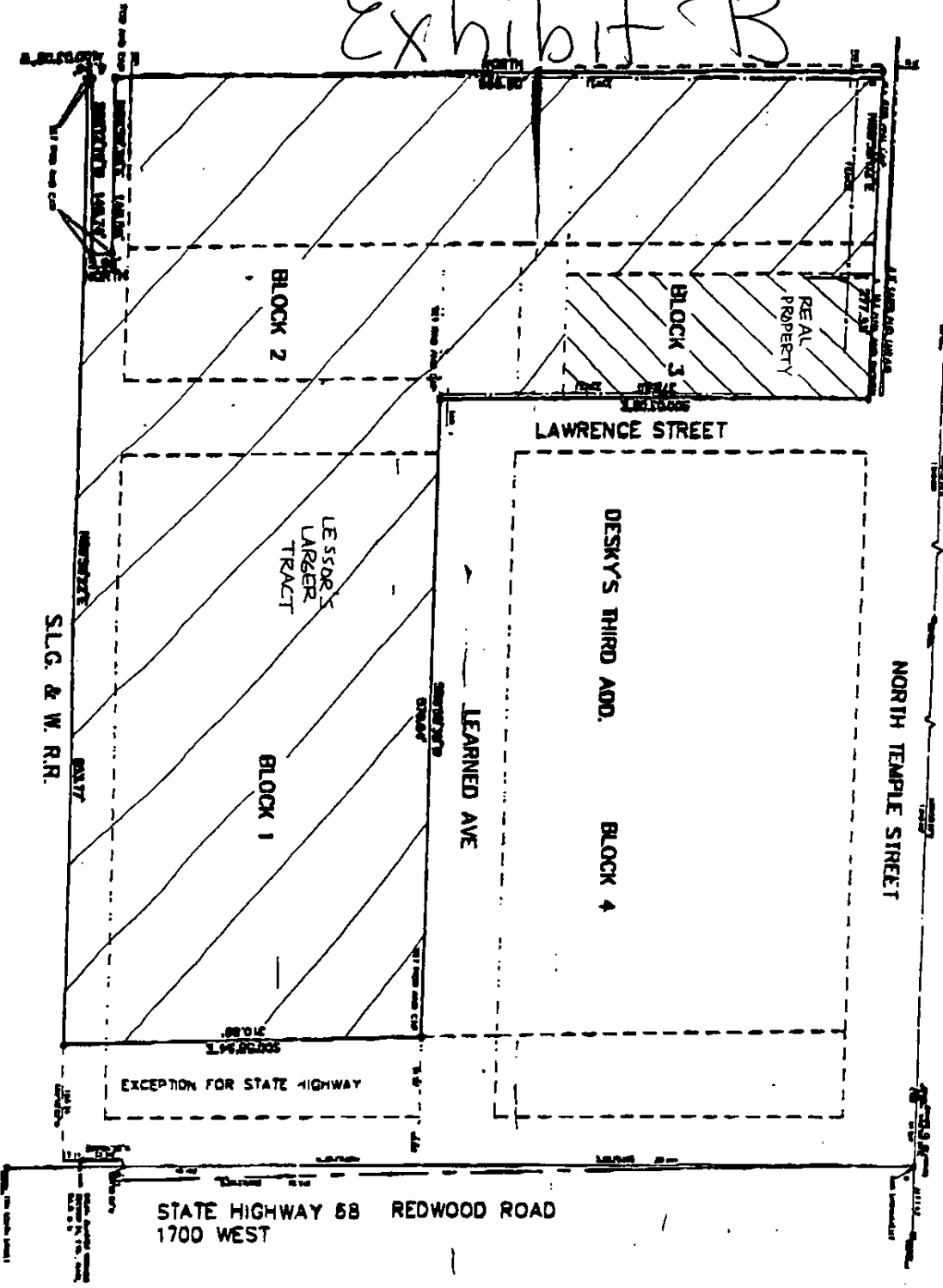
Situated in the County of Salt Lake, State of Utah, and described as follows:

Beginning at a point on the South Line of North Temple Street said point being North 89°58'38" East 18.0 feet from the Northeast Corner of Lot 8, Block 3, CHARLES S. DESKY'S THIRD ADDITION as located in the Southwest Quarter of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, and running thence South 0°03'08" West 250.00 feet; thence South 89°58'38" West 145.00 feet; thence North 0°03'08" West 250 feet to the South line of the North Temple Street; thence North 89°58'38" East along said South line 145.00 feet to the point of beginning.

Together with a portion of the vacated street abutting on the East and also the vacated alley along the South line of Lots 5, 6, 7 and 8 and the North line of Lots 1, 2, 3 and 4 of said subdivision.

BK8726PG1945

# Exhibit B



SLG. & W. R.R.

STATE HIGHWAY 58 REDWOOD ROAD  
1700 WEST

P. 03

BK 8726 PG 1946

**EXHIBIT B-1**  
**LEGAL DESCRIPTION**  
**LESSOR'S LARGER TRACT**

BK8726PG1947

JUN-21-02 FRI 10:57  
MAY-3-02 FRI 10:48

KNUDSON INVESTMENTS, LLC  
KNUDSON INVESTMENTS, LLC

FAX NO. 8014676368  
FAX NO. 8014676368

P. 03

Parcel # 08-34-378-002

Beginning at the North... st corner of Lot 5, Block 3, CHARLES S. DESKY'S THIRD ADDITION, according to the official plat thereof, running thence South along the East line of Lots 4 and 5 of said subdivision 272.2 feet; thence South 89°58'38" West 173.5 feet, more or less, to the East line of the Anaconda Company property, thence North along the East line of said Anaconda property 272.2 feet, more or less, to the South line of North Temple; thence East along the South line of North Temple Street 173.5 feet, more or less to the point of beginning.

PARCEL 2: 08-34-383-001

Also, all of Lots 1 to 47, inclusive, Block 1, CHARLES S. DESKY'S 3rd Addition, according to the plat thereof, recorded in the office of the County Recorder of Salt Lake County. Also, all of Lots 1 to 8, inclusive, Block 2, CHARLES S. DESKY'S 3rd Addition, according to the plat thereof, recorded in the Office of the County Recorder of Salt Lake County.

EXCEPTING THEREFROM that portion thereof contained within the right of way of a state highway on the East.

TOGETHER with vacated streets and alleys abutting above described lots.

SUBJECT TO easement for public utilities over the South 5 feet, East 5 feet and the North 5 feet of said property, as disclosed by an inspection of said premises.

PARCEL 3: 08-34-378-003

Also, beginning at a point North 89°58'38" East 18.00 feet from the Southeast corner of Lot 1, Block 3, of CHARLES S. DESKY'S THIRD ADDITION as the same is located according to information on file in the Salt Lake City Engineer's Office, and running thence South 89°58'38" West 133.50 feet to the West line of said addition; thence South 0°03'08" East along said West line 341.20 feet to a point North 0°03'08" West 18.56 feet and South 89°58'38" West 812.41 feet from the South Quarter Corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian; thence South 89°58'38" West 144.59 feet to a point South 89°12'10" West along the Section line, 957.00 feet and North 30.83 feet from said South quarter corner of Section 34; thence North 381.20 feet; thence North 89°58'38" East 277.74 feet; thence South 0°03'08" East 40 feet to the point of beginning.

Subject to an easement for utility installation and maintenance reserved over the East 18 feet abutting Lot 1.

PARCEL 4: 08-34-378-003

Beginning at a point North 89°58'38" East 18.0 feet from the Northeast corner of Lot 8, Block 3 of Charles S. Desky's Third Addition as located in the Southwest 1/4 of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°58'38" West 108.5 feet; thence South 0°03'08" East 272.2 feet; thence North 89°58'38" East 108.5 feet; thence North 0°09'08" West 272.2 feet to the point of beginning.

Subject to all existing rights of way and easements of any and every description now located in, on, under or over the confines of that part of said property described as vacated alley (and vacated street); and also subject to the right of entry thereon for the purpose of inspecting, maintaining, repairing, replacing, removing, altering, or re-routing said utilities and all of them.

BK 8726 PG 1948

CO. RECORDER

BOOK 8726 PAGE 1948

JUN-21-02 FRI 10:58  
MAY- 3-02 FRI 10:47

KNUDSON INVESTMENTS, LLC  
KNUDSON INVESTMENTS, LLC

FAX NO. 8014676368  
FAX NO. 8014676368

P. 04

08-34-378-005

he  
ms  
38

Certain property located in the rear of 1737 West North Temple, Salt Lake City, Utah, more particularly described as follows:

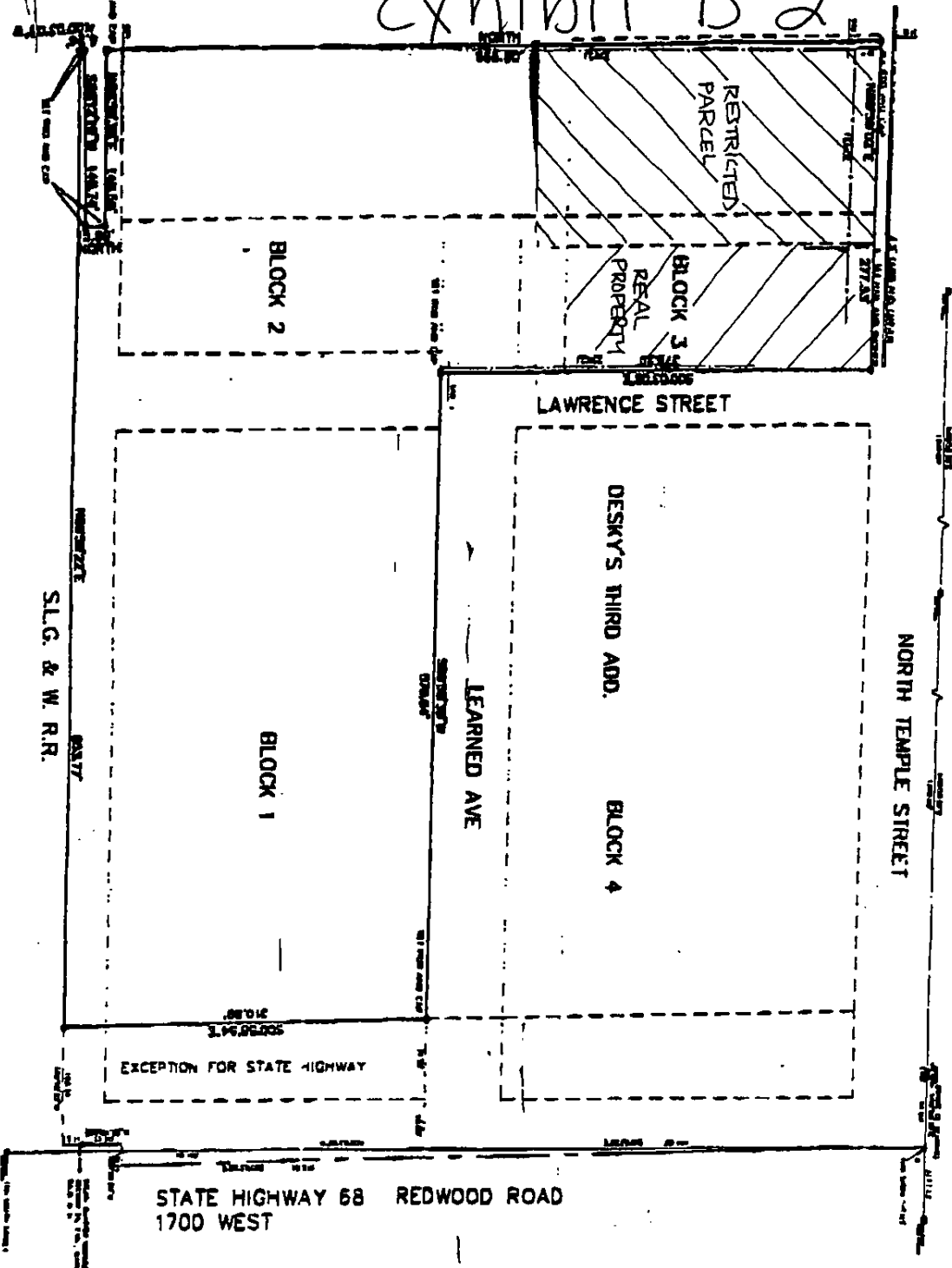
Beginning South 89°12'10" West 858.5 feet from the South  $\frac{1}{4}$  Corner of Section 34, Township 1 North, Range 1 West, Salt Lake Meridian; thence South 89°12'10" West 98.5 feet; thence North 18 feet more or less; thence North 89°58'38" East 98.5 feet; thence South 18 feet more or less to beginning 0.04 acres.

POOR COPY  
CO. RECORDER

BK 8726 PG 1949

0084 5982 PLAC 181

# Exhibit B-2



BK 8726 PG 1950

**EXHIBIT C**

**ACCESS EASEMENT LEGAL DESCRIPTION**

Situated in the County of Salt Lake, State of Utah, and described as follows:

Beginning at a point South 89°58'38" West 11.50 feet from the Northwest Corner of Lot 5, Block 3, CHARLES S. DESKY'S THIRD ADDITION as located in the Southwest Quarter of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian and running thence South 0°03'08" East 250.00 feet to a point of terminus.

BK 8726PG 1951