

When Recorded Mail : Raddon/Bell
12222 South 10000 East, St#3
Draper, Utah 84020
Attn; Greg Bell

7

SUPPLEMENTAL DECLARATION OF COVENANTS, EASEMENTS, AND RESTRICTIONS

[Between Smith's, Zions Bank and Raddon/Bell Properties]

THIS SUPPLEMENTAL DECLARATION OF COVENANTS, EASEMENTS, AND RESTRICTIONS ("**Declaration**") is made by SMITH'S FOOD & DRUG CENTERS, INC., a Delaware corporation ("**Smith's**"), ZIONS FIRST NATIONAL BANK ("**Zions**"), RADDON/BELL PROPERTIES, LC, a Utah limited liability company ("**Raddon/Bell**").

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RECITALS:

A. Smith's was the owner of certain real property located in Salt Lake County, State of Utah, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. Smith's rendered various small parcels of said property subject to the First Amended and Expanded Plat of Town Commons Subdivision (the "**Plat**"). Subsequently, the parties hereto have entered into various conveyances concerning the subdivision created by the Plat (the "**Subdivision**"), the result of which is that: (1) Zions owns Lot 7, Smith's owns Lot 8, and Raddon/Bell owns Lots 1, 6 and 9 of the Subdivision.

B. The Lots in the Subdivision affected by this Declaration collectively constitute all of the land in the Subdivision on the west side of Beckstead Lane, being Lots 1, 6, 7, 8 and 9 and are collectively referred to herein as the "**Town Commons Property**". This Declaration has no effect on Lots 2, 3, 4 and 5 of the Subdivision. (Legal description of Town Commons Property on Exhibit "A-1" attached hereto)

C. The property described on Exhibit "A" less and excepting the property which is now part of the Subdivision is owned by Smith's and is herein referred to as the "**Smith's Shopping Center**").

D. The Subdivision is governed by a declaration of easements, covenants and restrictions providing for a general plan for the development, improvement, and maintenance of the Subdivision. Likewise, the Smith's Shopping Center is subject to a similar but separate agreement providing for a general plan for the development, improvement, and maintenance of the Smith's Shopping Center.

E. In view of the fact that Beckstead Lane provides public street access to the Subdivision, the parties have constructed and wish to provide for the perpetual existence of two driveways (the "**Driveways**") between Beckstead Lane and the Smith's Shopping Center as depicted on Exhibit "B" hereto, the north driveway (the "**North Driveway**") being located on Lots 1 and 8, and the south driveway being located on Lots 6, 7 and 9 (the "**South Driveway**"). The purposes of the Driveways are to provide pedestrian and vehicular access between Beckstead Lane and the Smith's Shopping Center and *vice versa*, between Beckstead Lane and Lots 1, 6, 7,

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8 and 9 and *vice versa*, and between the Smith's Shopping Center and Lots 1, 6, 7, 8 and 9 and *vice versa*.

F. In general the party which owns the ground on which one of the Driveways is located shall be responsible to pay for the maintenance of the Driveway and other improvements thereon.

Now, therefore, in order to establish a plan for the development, improvement, and maintenance of the Property, the Parties hereby publish and declare as follows:

ARTICLE I
Definitions

1. "Occupant" refers to the Parties and to any other person from time to time entitled to use and occupy any of the Parcels under any lease, license, concession agreement, or any other instrument or arrangement.
2. "Owner" or "Owners" refers to all owners of the Lots.
3. "Parcel" or "Parcels" refers to the Smith's Shopping Center or any or all, as applicable, of Lots 1, 6, 7, 8 and 9 of the Subdivision.
4. "Party" or "Parties" refers to the Smith's, Raddon/Bell or Zions, as applicable, and their successors and assigns.
5. "Permittee" or "Permittees" refers to all Occupants and their customers, employees, agents, contractors, invitees and licenses.
6. "Person" means and includes individuals, joint ventures, partnerships, limited liability companies, firms, associations, corporations, and any other form of business entity.
7. "Property" means and includes the Smith's Shopping Center and Lots 1, 6, 7, 8 and 9 of the Subdivision.

ARTICLE II
Other Agreements

The Town Commons Property is subject to that certain Declaration of Easements, Covenants and Restrictions dated as of November 12, 2001 and recorded prior to the recordation of this Declaration (the "**Town Commons CCR's**"). Recorded Dec. 18, 2001, as Entry No. 8094885.

The Smith's Shopping Center is subject to Easements with Covenants, Conditions and Restrictions Affecting Land recorded July 28, 1993 as Entry No. 5564383, in Book 6718, at Page 343 of the Official Records of Salt Lake County, State of Utah as amended by that certain First

Amendment to Easements with Covenants, Conditions and Restrictions Affecting Land recorded August 22, 1996 as Entry no. 6436077, in Book 7471, at Page 1146 of the Official Records of Salt Lake County, Utah (the "Smith's Shopping Center CCR's").

ARTICLE III
Restrictions

3.1 The Property shall be used only in accordance with all applicable governmental ordinances and regulations. No portion of Lots 1, 7 or 9 shall be used to operate a restaurant 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).

3.2 Each Owner shall maintain insurance which includes a provision adequate in substance and amount to provide for removal of all damaged Improvements and clearing and restoring of the Property after a casualty.

ARTICLE IV
Grant of Easements

4.1 Each of the Owners on which any portion of a Driveway is located hereby grants to the other Owners and their respective Permittees, and successors and assigns a non-exclusive easement over, upon and across the Driveways for vehicular and pedestrian traffic, but not for parking.

4.2 Smith's grants to the Owner of Lot 7 an easement to locate overhanging eaves from a building onto not more than three (3) feet beyond the westerly property line of Lot 7 and to locate footings for a building in the same described area, provided, such footings are not more than one (1) foot beyond said property line. The Owner of Lot 7 agrees to indemnify and hold Smith's, its successors and assigns harmless from and against all loss, cost, suit, or demand in connection with or arising out of the easement granted in this Section 4.2, including reasonable attorneys' fees and court costs.

4.3 Each of the Owner's grants to the other Owner's and their respective Permittees, and successors and assigns a non-exclusive easement for the location of underground utilities as now exist in the Town Commons Property and in the Smith's Shopping Center.

4.4 The parties agree that subject to obtaining all requisite governmental approvals, Smith's may construct a pylon sign at the location identified on Lot 7 on the Plat.

ARTICLE V
Maintenance

5.1 Each Owner shall maintain that part of the Driveways which are located on such Owner's Parcel at Owner's sole cost and expense, including replacing asphalt, all as more particularly set forth in the Town Commons CCR's. The Owners may agree to a joint maintenance arrangement, the cost of which would be shared by the respective Owners.

5.2 Each of the Owners shall provide its own insurance as the primary insurance coverage for any liability arising in connection with the use and existence of the Driveways.

ARTICLE VI
Duration, Modification and Amendment

6.1 This Declaration may be mended with the written approval of the Owners and any holder of a ground lease on a parcel. Raddon/Bell may make such amendment acting alone without approval of any of the other Parties if the amendment is necessary to comply with governmental requirements or to correct clerical errors. The approval of any Party required by this Section shall not be unreasonably withheld.

6.2 Unless sooner terminated pursuant to Section 5.2, this Declaration shall terminate and expire fifty (50) years from the date hereof, unless extended with the written approval of all Parties; provided that the Cross-Access Easements shall not terminate and shall continue in full force and effect unless modified or terminated upon the prior written approval of all Parties. However, notwithstanding the foregoing provision, the exclusive right restriction provided in Section 3.1 shall terminate and be of no further force and effect on the earlier of: (a) the discontinuance of the sale of restricted items on Lot 6 for ninety (90) days; or (b) the date of conveyance or leasing of Lot 6 for a business other than for the restricted items.

6.3 No termination, extension, or amendment will be effective until a written instrument setting forth the terms of the termination, extension, or amendment has been executed and acknowledged by the required Parties and recorded in the Office of the Clerk and Recorder of Salt Lake County, Utah.

ARTICLE VII
Mutuality and Enforcement

7.1 The covenants and restrictions granted or created by this Declaration are appurtenant to the applicable Lots which they benefit or burden. These covenants and restrictions shall run with the land, shall be binding upon and inure to the benefit of the Parties and their successors and assigns. For purposes of this Declaration, the Lot burdened by a covenant or restriction shall be the servient estate and every Lot which is benefitted by the

covenant or restriction shall be the dominant estate. These covenants and restrictions shall create mutual benefits and servitudes upon each Lot.

7.2 In the event of any violation or threatened violation of any of a covenant or restriction, any Party may enforce the covenant or restriction. In the enforcement of a covenant or restriction, such Party will have, in addition to the right to recover damages and reasonable attorney's fees, the additional right to bring an action in a court of competent jurisdiction to enjoin the violation or threatened violation.

ARTICLE VIII Miscellaneous

8.1 If any clause, provision, or portion of this Declaration is or becomes illegal, unenforceable, or void for any reason, or is declared by a court of competent jurisdiction to be so, the remaining provisions of this Declaration shall continue in full force and effect.

8.2 Nothing contained in this Declaration shall be deemed to be a gift or dedication of any Lot or portion of the Property to the public, or for any public purpose.

8.3 Nothing contained in this Declaration shall be deemed to create a partnership or joint venture between the Parties or any of them or between any Owner or Permittee of any portion of the Property.

8.4 Each Party agrees that upon written request of another Party, it will issue to a prospective mortgagee of or prospective successor to such other Party, an estoppel certificate stating:

(a) Whether the Party to whom the request has been directed knows of any default by the requesting Party under the Declaration, and if there are known defaults, specifying the nature of the default;

(b) Whether to its knowledge this Declaration has been modified or amended in any way (and if it has, then stating the nature thereof); and

(c) That to the Party's knowledge this Declaration is in full force and effect as of that date.

8.5 This Declaration shall be governed by, and shall be interpreted in accordance with the laws of the State of Utah.

8.6 Any notice or demand required or permitted under this Declaration shall be in writing and be personally delivered, sent by facsimile or other wire transmission (with assurance of receipt in a manner typical for communication of that type), sent by express delivery with all applicable shipping charges prepaid, or mailed, certified or registered with all postage prepaid, to

the Person to whom the notice is directed. In the case of mailing, notice shall be effective three (3) days after deposit in the U.S. Mail Except as provided below, notice shall be served at the address of any portion of the Property owned or occupied by the Person to whom the notice is directed, or, if no such address is available, then at the last known address of the Person being served. However, any Owner may change its address for notice hereunder by recording such address against the records of its Parcel:

Smith's Food & Drug Centers, Inc.
1550 So. Redwood Road
Salt Lake City, UT 84104
Attn: Wade S. Williams
Senior Vice President

Raddon/Bell Properties, LC
1111 E. Draper Parkway, Suite 101
Draper, UT 84020
Attn: Ron Raddon
With copy to:
Greg Bell, at the same address

Zions First National Bank
One South Main Street
Salt Lake City, UT 84111
Attn: George B. Hofmann, III
Executive Vice President

In witness whereof, the Parties have executed this Declaration on the date specified below.

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

RADDON/BELL PROPERTIES, LC, a
Utah limited liability company

By *Wade S. Williams*
Its: *Sr. Vice President*
Date: *12/14/01*

By *Gregory J. Bell*
Its: *Managing Member*
Date: *12/13/01*

ZIONS FIRST NATIONAL BANK

By *George B. Hofmann III*
Its: *Independent Prop. Mgt*
Date: *12/13/01*

STATE OF UTAH)
 : SS.
COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me on the 13th day of December, 2001, by Deborah Alto, Vice President of Zions First National Bank.

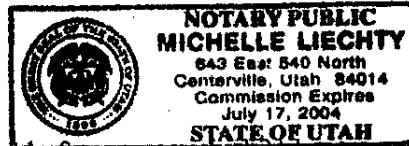
(Seal)

My commission expires:

07-17-2004


Notary Public
Residing at: Centerville, Utah

STATE OF UTAH)
 : SS.
COUNTY OF Salt Lake




The foregoing instrument was acknowledged before me on the 13th day of December, 2001, by Gregory S. Bell, Managing Member of Raddon/Bell Properties, LC, a Utah Limited Liability Company.

(Seal)

My commission expires:

07-17-2004


Notary Public
Residing at: Centerville, Utah



STATE OF UTAH)

: ss.


COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me on the 14th day of December, 2001, by Wade S. Williams, Sr. Vice President of Smith's Food & Drug Centers, Inc., a Delaware Corporation.

(Seal)

My commission expires:

07-17-2004



Notary Public
Residing at: Centerville, Utah



SIGNATURE OF RADDON/BELL PROPERTIES, LC'S LENDER

The undersigned hereby subordinate to this Declaration the lien of their Deed of Trust, Assignment of Rents and Lease, Security Agreement and Fixture Filing dated April 11, 2001 in the maximum principal amount of \$2,000,000 made by Raddon/Bell Properties, L.C., a Utah limited liability company as Trustor, in favor of W. Jeffery Fillmore as Trustee and in favor of the undersigned collectively as Beneficiary and recorded April 13, 2001 as Entry No. 7869524 in Book 8445 at Page 4189 of the Official Records of Salt Lake County, Utah.

McGILLIS INVESTMENTS,
a Utah general partnership

By *Roger S. McGillis*
Roger S. McGillis

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

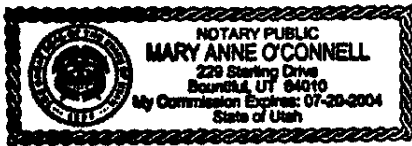
On the 17th day of December, 2001, personally appeared before me ROGER S. MCGILLIS partner of McGillis Investments, a Utah general partnership, who duly acknowledged to me that he executed the same for and on behalf of said partnership.

(Seal)

My commission expires:

7-20-2004

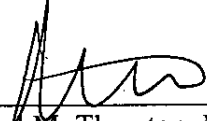
Mary Anne O'Connell
Notary Public
Residing at: *Bountiful, Utah*



BK 854 3 PG 0687

[Handwritten signature]

FIRST INTERSTATE FINANCIAL, L.L.C.
a Utah limited liability company

By 
Paul M. Thurston, Manager

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

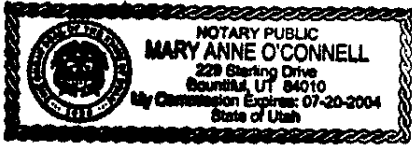
On the 17th day of December, 2001, personally appeared before me PAUL THURSTON
Manager of First Interstate Financial, L.L.C., a Utah limited liability company, who duly acknowledged
to me that he executed the same for and on behalf of said limited liability company.

(Seal)

My commission expires:

7-20-2004

Mary Anne O'Connell
Notary Public
Residing at: Beautiful, Utah



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HTD

EXHIBIT "A"
[Supplemental Declaration Of Covenants, Easements And Restrictions]

PARCEL 1:

BEGINNING at a point on the Easterly right-of-way line of Redwood Road (as widened to 53.00 feet half width) being South 0°06'05" West, along the center line of Redwood Road, 460.24 feet and South 89°47'25" East 53.00 feet from the North Quarter Corner of Section 15, Township 3 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, and running thence South 0°06'05" West, along a line parallel to and being 53.00 feet perpendicularly distant Easterly from the center line of Redwood Road, 25.00 feet; thence South 89°47'25" East 140.06 feet; thence South 0°06'05" West 289.15 feet; thence North 89°53'55" West 140.06 feet to the Easterly line of said Redwood Road, said line being 53.00 feet from centerline of Redwood Road; thence South 0°06'05" West 355.42 feet along said Easterly line of Redwood Road; thence South 89°47'25" East 351.11 feet; thence North 22°52'35" East 65.82 feet to point of curvature; thence Northeasterly along the arc of a 688.76 foot radius curve to the right a distance of 99.82 feet (the chord of which bears North 27°01'43" East 99.74 feet) to a point of tangency; thence North 31°10'50" East 297.52 feet to the point of curvature of a 205.26 foot radius curve to the left; thence along said curve 103.09 feet (the chord of which bears North 16°47'32" East 102.01 feet); thence North 2°24'13" East 167.50 feet; thence North 89°47'25" West 611.37 feet to the point of BEGINNING.

(Continued)

EXHIBIT "A" CONTINUED

PARCEL 2:

BEGINNING at a point 363 feet East from the Southwest Corner of the Northwest Quarter of the Northeast Quarter of Section 15, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence East 78 feet; thence North 188.57 feet; thence West 78 feet; thence South 188.57 feet to the point of BEGINNING.

LESS AND EXCEPTING THEREFROM any portion within the bounds of the following described parcel of land, conveyed to the UTAH DEPARTMENT OF TRANSPORTATION in that certain Special Warranty Deed recorded November 9, 2000 as Entry No. 7757664, in Book 8400 at Page 3979, of the Official Records of the Salt Lake County Recorder, to-wit:

A parcel of land in fee for the widening of 10400 South Street known as Project No. 0151, being part of an entire tract of property, situate in the Northwest 1/4 of the Northeast 1/4 of Section 15, Township 3 South, Range 1 West, S.L.B.&M. The boundaries of said parcel of land are described as follows: Beginning at the Southwest Corner of said entire tract at a point which is 110.642 meters (363.00 feet) east (highway bearing South 89°31'55" East) along the Redwood Road monument line from the county monument in the intersection of 10400 South Street and Redwood Road, used as the Southwest Corner of the Northwest 1/4 of the Northeast 1/4 of said Section 15; and running thence North (highway bearing North 00°16'16" East) 16.233 meters (53.26 feet) along the west boundary line of said entire tract to a point which is 16.154 meters (53.00 feet) perpendicularly distant northerly from the centerline of said project at Engineer Station 35+221.026; thence North 89°57'34" East (highway bearing South 89°34'21" East) 47.549 meters (156.00 feet) parallel to the centerline of said project to the east boundary line of said entire tract; thence South (highway bearing South 00°16'16" West) 16.266 meters (53.37 feet) along said east boundary line to the southeast corner of said entire tract; thence West (highway bearing North 89°31'55" West) 47.549 meters (156.00 feet) to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation.

(Continued)

EXHIBIT "A" CONTINUED

PARCEL 3:

BEGINNING at a point 441 feet East from the Southwest Corner of the Northwest Quarter of the Northeast Quarter of Section 15, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence East 78 feet; thence North 188.57 feet; thence West 78 feet; thence South 188.57 feet to the point of BEGINNING.

LESS AND EXCEPTING THEREFROM any portion within the bounds of the following described parcel of land, conveyed to the UTAH DEPARTMENT OF TRANSPORTATION in that certain Special Warranty Deed recorded November 9, 2000 as Entry No. 7757664, in Book 8400 at Page 3979, of the Official Records of the Salt Lake County Recorder, to-wit:

A parcel of land in fee for the widening of 10400 South Street known as Project No. 0151, being part of an entire tract of property, situate in the Northwest 1/4 of the Northeast 1/4 of Section 15, Township 3 South, Range 1 West, S.L.B.&M. The boundaries of said parcel of land are described as follows: Beginning at the Southwest Corner of said entire tract at a point which is 110.642 meters (363.00 feet) east (highway bearing South 89°31'55" East) along the Redwood Road monument line from the county monument in the intersection of 10400 South Street and Redwood Road, used as the Southwest Corner of the Northwest 1/4 of the Northeast 1/4 of said Section 15; and running thence North (highway bearing North 00°16'16" East) 16.233 meters (53.26 feet) along the west boundary line of said entire tract to a point which is 16.154 meters (53.00 feet) perpendicularly distant northerly from the centerline of said project at Engineer Station 35+221.026; thence North 89°57'34" East (highway bearing South 89°34'21" East) 47.549 meters (156.00 feet) parallel to the centerline of said project to the east boundary line of said entire tract; thence South (highway bearing South 00°16'16" West) 16.266 meters (53.37 feet) along said east boundary line to the southeast corner of said entire tract; thence West (highway bearing North 89°31'55" West) 47.549 meters (156.00 feet) to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation.

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FOR REFERENCE PURPOSES ONLY:

TAX PARCEL / SIDWELL NUMBERS

27-15-202-039, 27-15-202-040
and 27-15-202-004

[EXHIBIT "A" - PAGE 3 OF 3 PAGES]

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EXHIBIT 'A-1'

Lots 1,6,7,8 and 9, FIRST AMENDED AND EXPANDED PLAT OF TOWN COMMONS, a Commercial Subdivision, according to the official plat thereof, filed in Book "2001P" of Plats at Page 313 of the Official Records of the Salt Lake County Recorder.

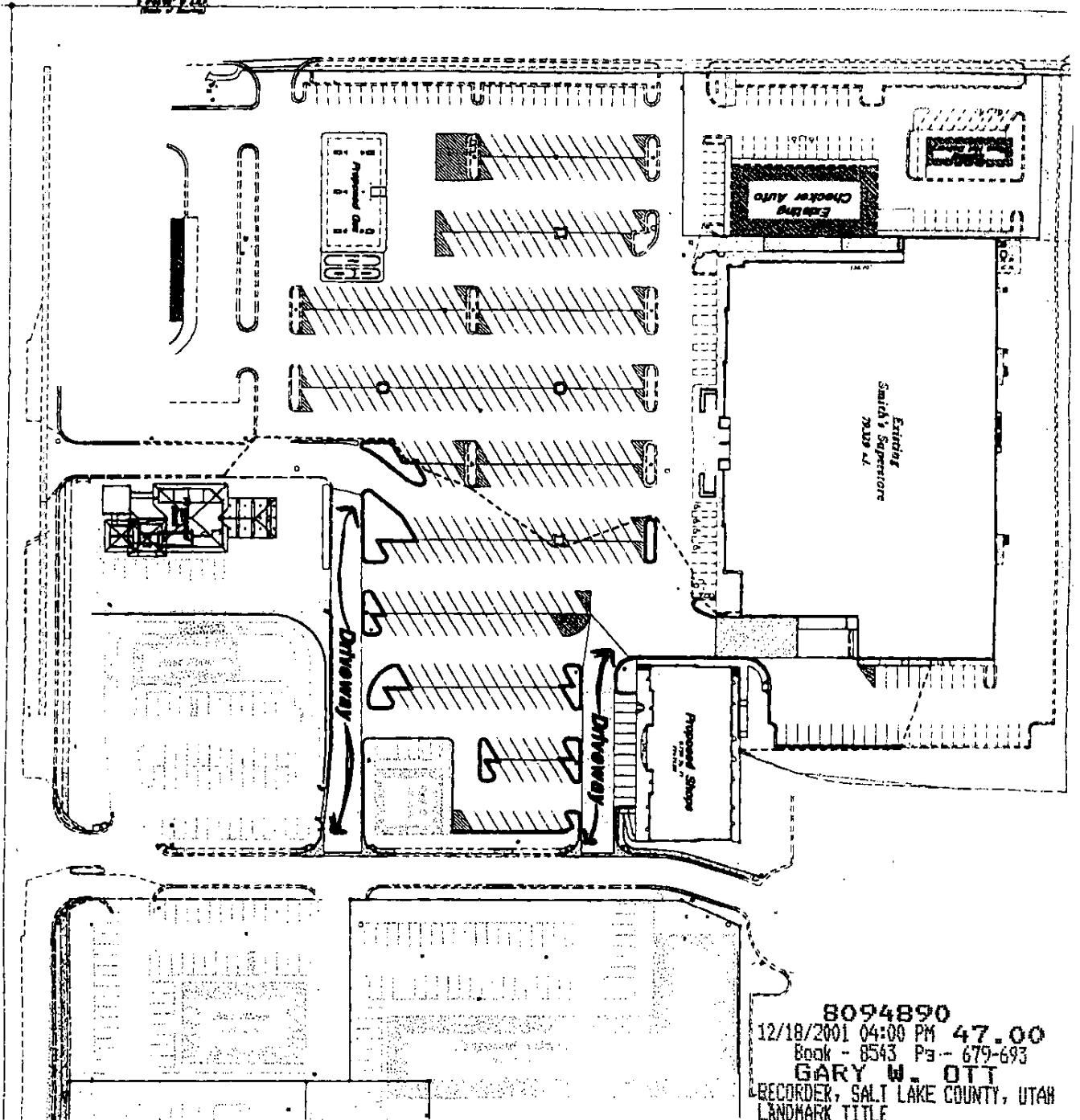
For Reference Purposes Only: Tax Parcel/Serial No.'s
27-15-202-042 , 27-15-202-046 , 27-15-202-045,
27-15-202,043 and 27-15-202-044.

BK8543PG0692

Exhibit "B"

Redwood Road

10400 South Street



8094890
12/18/2001 04:00 PM 47.00
Book - 8543 Pg - 679-693
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: RDJ, DEPUTY - WI 15 P.

BK8543PG0693