

When recorded return to:
Gateway Art City Commercial LC
2457 No. 1200 E.
Provo, UT 84604

**EASEMENTS WITH COVENANTS AND
RESTRICTIONS AFFECTING LAND ("ECR")**

THIS DECLARATION AND AGREEMENT is made as of the 11th day of June, 2001, by GATEWAY-ART CITY COMMERCIAL, L.C., a Utah limited liability company, of 2457 North 1200 East, Provo, Utah 84604 ("Developer").

WITNESSETH:

WHEREAS, Developer is the owner of or has previously sold Lots 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of Plat B of the Springville Commercial Development, (the "Developer Tract"), which is shown on the plat attached hereto as Exhibit A-1 hereof, and;

WHEREAS, Wendy's Old Fashioned Hamburgers of New York, Inc. ("WENDY'S") is intending to buy Lot 8, Plat B of the Springville Plaza Commercial Development (the "WENDY'S Lot") as shown on the plat attached hereto as Exhibit A-1 hereof, and;

WHEREAS, the Developer Tract and the WENDY'S Lot consist of 12 lots which may be sold or leased to purchasers and users; and;

WHEREAS, WENDY'S and Developer desire that the WENDY'S Lot and the Developer Tract be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial Shopping Center (sometimes hereinafter referred to as the "Shopping Center");

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, WENDY'S and Developer and their heirs, successors and assigns do hereby agree and enter into this ECR Agreement:

1. Building/Common Areas.

a. "Building Areas" as used herein shall mean that portion of the WENDY'S Lot and those portions of the Developer Tract shown on Exhibit A-1 as "Building Area" (and "Future

TW 20101191

JMK

Building Area" and Future Expansion Area"). Canopies may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

b. "Common Areas" shall be all of the WENDY'S Lot and the Developer Tract except the Building Areas.

c. Conversion to Common Areas: Those portions of the Building Areas on each tract which are not from time to time used or cannot, under the terms of this Agreement, be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein; provided, however, in no event shall the drive thru on the WENDY'S Lot be so converted to Common Areas.

2. Use. Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center and according to the zoning of the Shopping Center, including, without limitation, financial institutions, service shops, offices, restaurants, fast food services, retail stores and other Springville City permitted uses, except that no adult oriented theatres, adult oriented bookstores, exotic or sexually oriented businesses shall occupy space within the Shopping Center. No stand alone billiard parlor, night club or other place of adult oriented recreation or amusement, or any business which derives in excess of 30% of its gross revenue from the sale of alcoholic beverages for onsite consumption shall occupy space within the Shopping Center. Developer and WENDY'S recognize that said businesses may inconvenience Developer's and WENDY'S's customers and adversely affect Developer's and WENDY'S's businesses. Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by either WENDY'S or Developer on the WENDY'S Lot or the Developer Tract. Developer and WENDY'S recognize and agree that Developer and WENDY'S may, at Developer's and WENDY'S's sole discretion and at any time during the term of this Agreement, cease the operation of its business on the Developer Tract and the WENDY'S Lot and Developer and WENDY'S hereby waive any legal action for damages or for equitable relief which might be available to Developer or WENDY'S because of such cessation of business activity by Developer or WENDY'S.

3. Competing Business. Developer covenants that for twenty years (20) years from the closing of the purchase of the WENDY'S Lot, and so long as WENDY'S, or any affiliate of WENDY'S or Wendy's International, Inc., or any franchisee or affiliate of Wendy's International, Inc., is the user of the WENDY'S Lot, either as owner or lessee, no space in or portion of the Developer Tract shall be leased or occupied by or conveyed to any other party or user whose primary business consists of a quick service (fast food) restaurant with a drive thru, for the sale of hamburgers and chicken sandwiches. For the purpose of this restriction, a quick service restaurant has the aforesaid products as its primary business if fifteen percent (15%) or more of its gross sales exclusive of taxes, beverages and dairy product sales, consists of sales of hamburgers, chicken sandwiches, or any combination thereof. This restriction shall burden and run with the Developer Tract so long as WENDY'S opens for business within one year of closing of the purchase of the

WENDY'S Lot and after initially opening for business is continuously operating and does not stop operations for more than twelve (12) consecutive months. In the event WENDY'S shall violate either of the foregoing conditions this exclusive right and restriction on the Developer Tract is no longer valid.

4. Buildings and Site Plan.

a. Design and Construction. The Buildings shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one tract onto another tract. The design and construction shall be of high quality, and the Site Plan shall be conducive to the Shopping Centers well being, and shall be subject to review, acceptance and approval by Developer and if required by either Springville City's Design Review Committee, Planning Commission or other municipal board or body. Acceptance and approval by Developer shall not be unreasonably withheld. No building shall have a metal exterior, except as used as accents, and provided that Developer has approved, in writing, such accents prior to construction. Metal roofs may be allowed if approved, in writing, by Developer and City prior to construction.

b. Location. No building shall be constructed on the WENDY'S Lot and the Developer Tract (as either immediate development or future expansion) except within the Building Areas.

c. Lots 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 (the "Out Parcels"). The Out Parcels shall be developed only under the following guidelines:

(1) The buildings constructed on the Out Parcel(s) shall not exceed thirty (30) feet in height, as measured from the mean finished elevation of the parking area of the Shopping Center;

(2) Any buildings to be constructed on the Out Parcels shall not exceed 10,000 square feet in size.

(3) Any rooftop equipment shall be screened in a manner satisfactory to and as approved by the Developer;

(4) In developing and using the Out Parcel(s), the owner of the Out Parcel(s) shall continuously provide and maintain a parking ratio on each such Out Parcel equal to one of the following: (i) ten (10) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use in excess of five thousand (5,000) square feet; or (ii) eight (8) spaces for every one thousand (1,000) square feet of building space for any restaurant or entertainment use less than five thousand (5,000) square feet (subject to the exception above); or (iii) six (6.0) spaces per one thousand (1,000) square feet of building space for any other use; or (iv) as

approved in writing by the Developer at Developer's sole discretion, which approval shall not violate Springville City parking requirements and ordinances.

(5) The Out Parcels and Lot 19 shall be kept neat, clean and devoid of weeds and wild grasses and at the request of Developer be covered with well-trimmed vegetation to prevent dust circulation until improved and constructed. The owner of each specific Lot of the Out Parcels and of Lot 19 shall cause landscaping areas to be added and maintained in conjunction with any building or other improvement constructed on same.

5. Common Areas.

a. Grant of Easements. Each party, as grantor, hereby grants to the other party, as grantee, and to the agents, customers, suppliers, invitees, licensees, tenants, employees, successors and assigns of grantee, nonexclusive easements for incidental light pollution, vehicular and pedestrian access, ingress, and egress over and across the Common Areas of their respective tracts, including the Access Easements as more particularly described in section 5. a. (1) below and as shown on Plat B, Springville Plaza Commercial Development which plat was recorded in Utah County, ^{Map No. 9033, Entry No. 38786, 2001} Book Page ; provided, however, in no event shall the owner, occupant, tenant, lessee, licensee or invitee of any lot of the Developer Tract or of the WENDY'S Lot be permitted to use any other lot of the Developer Tract or the WENDY'S Lot (except for use of its own lot) for vehicular parking or for any other purpose other than as described above. Nothing contained in this Agreement shall in any way be construed as a dedication of any portion of the Shopping Center to the public or to any governmental entity nor to merge the interests of the parties hereof.

(1) Access Easements. Developer and WENDY'S hereby grant to each other and to each owner, occupant, tenant, lessee, licensee, agent, customer, supplier or invitee thereof, a non-exclusive, perpetual easement for the purpose of vehicular and pedestrian ingress, egress and access to and from the lots in the Developer Tract and the WENDY'S Lot to the various streets as identified on the attached Exhibit B including 1750 West Street, 400 South Street and 500 South Street, over, upon, across and through the areas depicted as the "Access Easement" areas on the attached Exhibit B or which are recorded on Plat B, Springville Plaza Commercial Development ~~and~~ as recorded in Utah County, Book Page (hereafter collectively called the "Access Easements").
^{Map No. 9033, Entry No. 38786; 2001}

a. WENDY'S shall be responsible for construction of driveways within the Access Easement Areas on the WENDY'S Lot and any adjoining lots thereto in a level, evenly paved condition, at a grade level and compatible to the WENDY'S Lot and as approved by Springville City as depicted on Exhibit B attached hereto (hereafter collectively called the "Driveways"). Developer, its successors and assigns, covenants and agrees to reimburse WENDY'S, or its successor or assigns, for the cost of construction of such Driveways that lay within Lots 9, 10, and 11 of the Developer Tract as depicted on Exhibit B, no later than: (i) the date upon which a certificate of occupancy is issued for Lot 9 with respect to its share of such costs, the date upon which a certificate of occupancy is issued for Lot 10 with respect to its share of such costs and the

date upon which a certificate of occupancy is issued with respect to Lot 11 with respect to its share of such costs; or (ii) twelve (12) months after the Closing Date, whichever occurs first. Upon request from Developer, WENDY'S shall provide to Developer copies of lien waivers and releases from all persons or entities involved in construction of said Driveways. The grant of the Access Easements includes the right of WENDY'S and/or the Developer to enter upon such other portions of the Developer Tract and the WENDY'S Lot as are necessary for the purpose of constructing or maintaining the Access Easements and the Driveways so long as any damaged areas are restored to their original state or better.

b. Developer and WENDY'S, each covenant and agree to adequately maintain that portion of the Access Easement(s) area and Driveways which are located on the lot(s) owned by each such party. In the event either party fails or refuses to adequately maintain any such easement area or Driveways after receiving reasonable notice from the other party, the party providing notice shall have the option, but not the obligation, of performing the necessary maintenance. The party upon whose lot(s) such easement area and Driveways are located shall be responsible to pay the reasonable cost thereof to the party who performed such maintenance.

b. Limitation on Use.

(1) General. Any activity within the Common Areas other than its primary purpose of the Common Areas, which is to provide for ingress, egress and parking for the customers, invitees and employees of those businesses conducted within the Building Areas, and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use. The Common areas on the WENDY'S Lot may be used by WENDY'S for construction staging purposes in connection with the construction of improvements in and on the Building Areas on the WENDY'S Lot. The common Areas on the Developer Tract may be used by the Developer for construction staging purposes in connection with the construction of improvements in and on the Building Areas on the Developer Tract.

c. Utility and Service Easements. The parties shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center. Both parties shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. After the paving of the Common Areas, the party installing such utility and service lines shall immediately repair any damage to pavement caused by such installation. No such lines, sewers, utilities or services of one party shall be installed within the Building Areas on the other party's parcel.

d. Water Flow. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements

including without limitation building and building expansion, curbs, drives and paving shall be permitted.

6. Development, Maintenance, and Taxes.

a. Arrangement. Developer shall have the right to consolidate or redesign lots owned by Developer, including the creation of new lots that will be legal under the then existing Springville City Zoning ordinance and to alter or modify the common areas on the lots owned by Developer, and with the consent of the respective owner thereof, the lot of such owner. Such consolidation, redesign or creation of new lots shall be supported by WENDY'S provided the Access Easements as set forth on Plat B, Springville Plaza Commercial Development and as recorded in Utah County, ~~Book~~ ~~Page~~ are not changed.

Map No. 9033, Entry No. 38786; 2001

b. Development. Except as otherwise provided herein, each owner of a Lot in the Developer Tract or the WENDY'S Lot shall make improvements on or to the Access Easements located on such owner's lot at such owner's expenses. Such improvements shall be made prior to the opening for business of the business on such lots. Owners of lots that have Access Easements within their lots and the owners of lots adjacent to such lots may determine by separate agreement the obligation for improvements to the Access Easements, the allocation of the cost of such improvements, and the timing for the construction of such improvements, provided that such agreement shall be first approved in writing by Developer.

c. Maintenance.

(1) Maintenance Obligation. Following completion of the improvements on the Common Areas by the owners of their own individual lots, the parties hereto shall maintain the Common Areas on their own lots in good condition and repair. Following completion of the improvements to the Access easements (including the Driveways) the parties hereto shall maintain the Access easements on their own lots in good condition and repair. Owners of lots that have Access Easements within their lots and the owners of lots adjacent to such lots may determine by separate agreement which lot owners have the obligation to maintain the Access Easements and the allocation of the costs of such maintenance, provided that such agreement shall first be approved in writing by Developer.

(2) Maintenance Standards. The maintenance is to include, without limitation, the following:

(a) Maintaining the 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 in quality, use, and durability;

(b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls and fences in a good condition and state of repair;

(f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and

(g) Placing, keeping in repair, and screening all garbage dumpsters with fencing and screening satisfactory to Developer, and placing, keeping in repair, and screening with screening or fencing satisfactory to Developer, of all items, retail and wholesale wares, and vehicles parked for repairs that are not inside the respective buildings.

(2) Expenses. The respective owners shall pay the maintenance expense of their respective tracts.

(3) By Agent. Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties to maintain the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

(4) Taxes. Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the Common Areas owned by it.

7. Signs. No sign shall be located on the Common Areas on the WENDY'S Lot and the Developer Tract except signs advertising business conducted on the respective lots thereof of which there shall be not more than one (1) sign on the Common Areas of the WENDY'S Lot and one (1) sign on the Common Areas of each of the Out Parcels. Notwithstanding the foregoing, the signage and the location thereof for Lot 19 shall be determined by the Developer, in Developer's sole discretion, and may be placed on the Common Area of any lot except the WENDY'S Lot. No sign shall obstruct the ingress and egress shown on Exhibit A-1, and no sign on the Out Parcels shall exceed 65 feet in height nor block the visibility of Lot 19. All signs shall be approved by Developer, which approval shall not be unreasonably withheld. Directional signs, entrance and exit signs and

menu boards mounted within the Common Areas on the WENDY'S Lot or any lot within the Developer Tract shall not be deemed to be a sign for the purposes of this Section 7. Developer has reserved a sign easement on the Northwest corner of Lot 8 as shown on Plat B of Springville Plaza Commercial Development (hereafter the "Sign Easement"). Developer retains the right, at Developer's expense, to erect a monument or sign of a type selected by Developer on the Sign Easement for the Shopping Center; provided, however, that such monument or sign may not exceed six (6) feet in height. In the event Developer erects a monument or sign in the Sign Easement, Developer, by separate agreement and at Developer's sole discretion, may allow the owners or users of the Developer Tract and the WENDY'S Lot the right to place signage thereon, at such costs and rents as are negotiated between Developer and such respective Owners or users of such lots of the Developer Tract and the WENDY'S Lot. WENDY'S shall be responsible for landscaping and maintaining the Sign Easement area. Developer shall be responsible for maintaining the monument or sign erected by it in the Sign Easement. Developer and WENDY'S consent, subject to the consent and approval of all applicable governmental authorities, to erection by WENDY'S, at WENDY'S expense, on the WENDY'S Lot or on the Sign Easement, the exact location to be agreed upon between Developer and WENDY'S, of a high-rise sign not to exceed 65 feet in height (the "WENDY'S Sign"). Subject to the consent of all applicable governmental authorities, WENDY'S shall permit Developer and other Owners or users of other lots within the Developer Tract to use the WENDY'S Sign for additional signage (the "Developer's Signage") under the following terms and conditions:

- (a) Use of the Developer's Signage on the WENDY'S Sign shall be limited to the Developer, and as designated by Developer or his appointed representative, Owners or users of other lots within the Developer Tract.
- (b) WENDY'S signage shall be mounted on the top or prominent position on the WENDY'S Sign. Furthermore WENDY'S signage shall comprise at a minimum 33% of the aggregate square footage of all signage mounted on the WENDY'S Sign. Developer's Signage as determined by Developer shall comprise at a minimum 50% of the aggregate square footage of all signage mounted on the WENDY'S Sign. WENDY'S may but shall not be required to modify the size, shape or configuration of its signage in order to accommodate the signage of any third party; notwithstanding any provision to the contrary, WENDY'S must have at least 150 square feet of signage.
- (c) No portion of any signage mounted on the WENDY'S Sign shall be constructed so as to block the site line of the strip signage on the exterior top areas of WENDY'S building, by potential customers of WENDY'S as they travel in automobiles along 400 South and 1750 West. It is anticipated that signage on the WENDY'S Sign shall be no lower than approximately 20 to 25 feet from the ground. The minimum height shall be determined by design and approved by WENDY'S, which approval and consent shall not be unreasonably withheld.

- (d) WENDY'S shall not incur any additional cost or expense of any kind or nature for allowing any third party to use the WENDY'S Sign; WENDY'S shall not be responsible for obtaining any consents, permits or licenses from any governmental authorities in connection with the use of the WENDY'S Sign by any third parties; WENDY'S shall not be responsible for the installation, maintenance, repair or upkeep of any third party's signage mounted on the WENDY'S Sign and every third party using WENDY'S Sign shall indemnify and hold WENDY'S harmless from and against any loss or liability WENDY'S may incur arising directly or indirectly from such third party's use of the WENDY'S Sign.
- (e) In Developer's discretion, the use of the Developer's Signage on the WENDY'S Sign shall be subject to the terms of a separate agreement to be executed by Owners or users of lots within the Developer Tract who wish to use the WENDY'S Sign. The terms of such separate agreement shall in no way conflict with the terms of this Section 7.
- (f) Developer's Signage and WENDY'S Signage including configuration, size, shape and content may from time to time, upon approval of applicable governmental authorities if required, and at the discretion of the Developer or WENDY'S for their particular signage be changed. Any changes after the initial agreed upon signage design that include a change in size or shape or that may effect the structural integrity of the WENDY'S sign shall be approved by both Developer and WENDY'S. Such approval shall not be unreasonably withheld by WENDY'S or Developer and WENDY'S and Developer hereby agree that they will within 30 days of written request for approval of such changes in writing either approve or disapprove. In the event written approval or disapproval is not received within 30 days of the written request then the request shall be deemed to be approved.
- (g) Neither the WENDY'S Signage or the Developer's Signage shall be used for promotion or advertisement purposes that would be in conflict with Section 2 of these ECRs.

Notwithstanding the above, the Developer may place additional signage on the Developer Tract subject to the following limitations: (i) the additional signage may be used solely for the purpose of advertising the sale or lease of residential lots and commercial lots owned by the Developer or it's affiliates, (ii) the additional signage if for residential lots must be fully removed on or before that date which is ten (10) years from the date hereof, (iii) the additional signage, unless it is a temporary banner, may not exceed 260 square feet in size in the aggregate, and (iv) the additional signage may not exceed twelve (12) feet in height or substantially block the visibility of the WENDY'S store. Temporary banners specific to the business (s) on a particular lot and attached to the buildings or canopies on that lot will be allowed, however the owners of the lots in the Developer's Tract and WENDY'S agree that upon Developer's request they will promptly remove such banner, if in the Developer's sole discretion, the banners adversely effect the Developer's Tract

and/or the WENDY'S Lot. Developer reserves the right to remove such banners if the owners or lessees of the Developer Tract or the WENDY'S Lot do not promptly comply with Developer's request.

8. Indemnification/Insurance.

a. Indemnification. Each party hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, cause of action, suits, claims, or judgements arising from personal injury, death, or property damage and occurring on or from its own tract, except if caused by the act or negligence of the other party hereto.

b. Insurance.

(1) WENDY'S and the Developer (for the Developer Tract until such time as the Out Parcels(s) are sold or leased to other parties who shall thereby assume this obligation) shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$1,000,000.00 for injury or death of a single person, and to the limit of not less than \$1,000,000.00 for any one occurrence, and to the limit of not less than \$1,000,000.00 for property damage. Each party shall provide the other party with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this agreement. Such insurance shall provide that the same may not be canceled without ten (10) days prior written notice to the other party.

(2) At all times during the term of this Agreement, each party shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the state in which the parties' respective properties are located, with such insurance to be for the full replacement value of the insured improvements.

(3) Policies of insurance provided for in this Paragraph 8 shall name WENDY'S and Developer as insurer as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.

(4) WENDY'S for itself and its property insurer hereby releases Developer, and Developer for itself and its property insurer hereby releases WENDY'S from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of either WENDY'S or Developer resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent,

associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

(5) Notwithstanding anything to the contrary contained in this Paragraph 8, so long as the net worth of WENDY'S or Wendy's International, Inc. (or their consolidated group) shall exceed One Hundred Million Dollars (100,000,000.00), and so long as WENDY'S or an affiliate of WENDY'S or a franchisee of Wendy's International, Inc. for whom WENDY'S or Wendy's International, Inc. is providing such insurance, is the owner or lessee of the WENDY'S Lot, WENDY'S and/or Wendy's International, Inc., shall have the right to retain (in whole or in part) the financial risk for any claim.

9. Eminent Domain.

a. Owner's Right To Award. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's tract or giving the public or any government any rights in said tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on the WENDY'S Lot and the Developer Tract, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

b. Collateral Claims. All other owners of the Common Areas 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 from another owner.

c. Tenant's Claim. Nothing in this Paragraph 9 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 Common Areas. The owner of any portion of the Common areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective tract as nearly as practicable to the condition of the same 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 owner.

10. Rights and Obligations Of Lenders. If by virtue of any right or obligation set forth herein a lien for payment of costs or expenses shall be placed upon the tract of either party hereto, such lien shall expressly be subordinate and inferior to the lien of any first lien holder now or hereafter placed on such tract. Except as set forth in the preceding sentence, however, any holder of a first lien on the WENDY'S Lot, the Developer tract or the Out Parcels, and any assignee or

successor in interest of such first lien holder, shall be subject to the terms and conditions of this Agreement.

11. Release from Liability. Any person acquiring fee or leasehold title to the WENDY'S Lot, the Developer Tract or the Out Parcels, shall be bound by this Agreement only as to the tract or portion of the tract acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such-tract, portion of the tract, or lot, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said tracts running with the land.

12. Breach. In the event of breach or threatened breach of this Agreement, each record owner of a lot in the Developer Tract or of the WENDY'S Lot shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.

13. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

14. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by both Developer and WENDY'S there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified, amended, or canceled upon the written agreement of the owners of two-thirds (2/3rds) of the total square footage included in the WENDY'S Lot and the Developer Tract; provided, however, that; (a) no modification of, amendment to, or cancellation of paragraph 3 or that portion of paragraph 7 which relates to the WENDY'S Sign shall be made without the written consent or approval of WENDY'S, (b) no modification of, amendment to, or cancellation of the Common Area Easements, including the Sign Easement, or of the Building Areas shall be made without the written consent or approval of the lot owner of the lot upon which such Common Area Easement or Building Area is located; (c) no modification of, amendment to, or cancellation of an Access Easement on a lot or providing access to a lot or other provision materially and substantially affecting the access to a lot shall be made without the written consent or approval of the lot owner on which such Access Easement is located and of the lot owner whose lot is provided access by such Access Easement or the access to whose lot would be materially and substantially affected, and (d) no modification of, amendment to, or cancellation of the provisions of paragraph 5(c) or with respect to the Sign Easement shall be made without the written consent or approval of the owner of Lot 19.

15. Non-Merger. So long as WENDY'S, its affiliate, or Wendy's International, Inc. or an affiliate or franchisee thereof, is owner or lessee of the WENDY'S Lot, or Developer or its affiliate is owner or lessee of the Developer Tract or any part thereof, this Agreement shall not be subject to the doctrine of merger.

16. Duration. Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

17. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

18. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

19. Assignment of Developer's Rights. Developer may assign its rights hereunder without the consent of any other party hereto. In the event Developer ceases to be an owner of any lot in the Developer Tract without assigning its right hereunder, then the owner of Lot 19 shall be deemed for purposes of this ECR as the Developer.

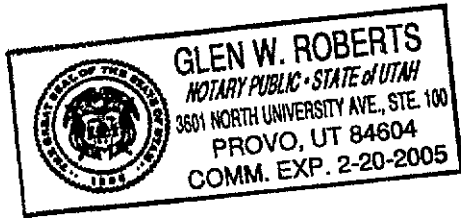
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

GATEWAY-ART CITY COMMERCIAL,
L.C. a Utah limited liability company,
"Developer"

By J. Wayne Ross
Its Manager

State of Utah)
 :SS
County of Utah)

The foregoing instrument was acknowledged before me this 20 day of June, 2001, by L. Wayne Ross, the Manager of Gateway-Art City Commercial, L.C., a Utah limited liability company, who executed the same on behalf of the company.



Glen W. Roberts
Notary Public
Residing at Provo Ut.

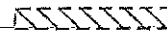
EXHIBIT A-1

(Site plan showing WENDY'S Lot, Developer Tract including Out Parcels)

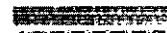
EXHIBIT A-1

LEGEND

PUBLIC UTILITY EASEMENT
5' WIDE ALONG SIDE & REAR
LOT LINES, 10' WIDE ALONG
ALL ROAD R.O.W. TYPICAL



ACCESS EASEMENT



BUILDABLE AREA



NO THROUGH TRAFFIC
ALLOWED IN THIS AREA

400 SOUTH STREET

PLAT "B"
SPRINGVILLE PLAZA

COMMERCIAL DEVELOPMENT

P.U.E. & SIGN EASEMENT

12.00'

12.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

16.00'

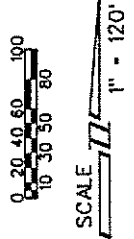
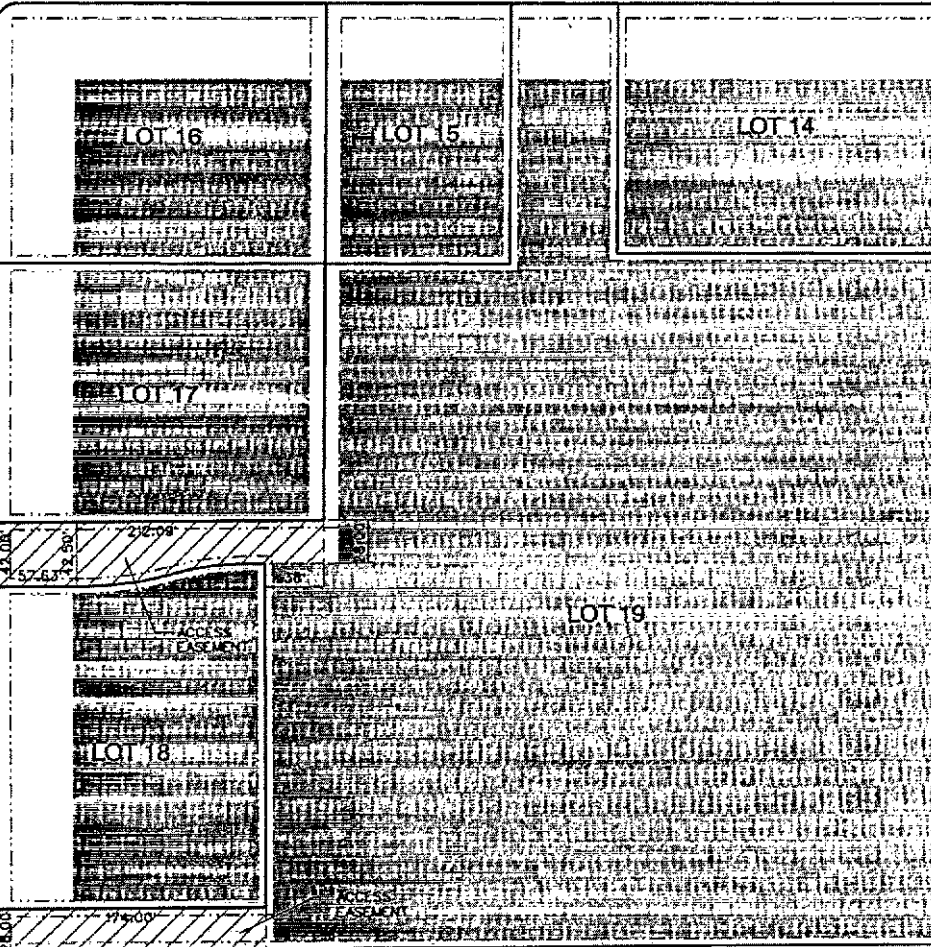
16.00'

16.00'

16.00'

500 SOUTH STREET

1750 WEST STREET



STATEMENT OF WORK

THIS DOCUMENT AND THE IDEAS AND DESIGN INCORPORATED HEREIN ARE AN INSTRUMENT OF PROFESSIONAL SERVICE. IT IS THE PROPERTY OF JUB ENGINEERS, INC. AND IS NOT TO BE USED, IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE EXPRESS WRITTEN AUTHORIZATION OF JUB ENGINEERS, INC.

NO.	DATE	DESCRIPTION	BY	CHKD

JUB
Engineers - Surveyors - Planners

EXHIBIT A-1
SPRINGVILLE PLAZA PLAT "B"

SPRINGVILLE, UTAH

PLAT DATE:	06/20/01
CAD DWG. NUMBER:	100000
PROJECT NUMBER:	100000
GRANTY BY:	
DESIGN BY:	
CHECKED BY:	
SHEET	OF
1	2

EXHIBIT B

(Copy of site plan showing WENDY'S Lot, Developer Tract, including Outparcels with additional information not shown on the recorded plat)

EXHIBIT B

LEGEND

PUBLIC UTILITY EASEMENT
5' WIDE ALONG SIDE & REAR
LOT LINES, 10' WIDE ALONG
ALL ROAD R.O.W. TYPICAL.



400 SOUTH STREET

PLAT "B"
SPRINGVILLE PLAZA
COMMERCIAL DEVELOPMENT

P.U.E. & SIGN EASEMENT

12.00'

12.00'

16.00'

18.00'

15.50'

15.50'

50'

15.15'

51.64'

182.15'

12.00'

12.00'

24'

10.00'

20'

100'

188.87'

24'

LOT 8
WENDY'S LOT

LOT 11

LOT 12

LOT 9

LOT 10

LOT 13

500 SOUTH STREET

LOT 16

LOT 15

LOT 14

LOT 17

LOT 19

LOT 18

1750 WEST STREET



SCALE 1" = 120'

STATEMENT OF USE

THIS DOCUMENT AND THE IDEAS AND DESIGNS INCORPORATED HEREIN AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF JUB ENGINEERS, INC. AND IS NOT TO BE USED, IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE EXPRESS WRITTEN AUTHORIZATION OF JUB ENGINEERS, INC.

NO.	REVISION	DATE



EXHIBIT B
SPRINGVILLE PLAZA PLAT "B"

SPRINGVILLE, UTAH

PLOT DATE:	04/12/01
DATE DWTG.:	04/12/01
PLOT SCALE:	1/2" = 50'
DRAWN BY:	DKC
CHECKED BY:	MLU
SHEET	OF
2	2