

# 104169-UC

WHEN RECORDED, MAIL TO:  
WARDLEY, MCLACHLAN, L.L.C.  
5296 Commerce Drive  
Salt Lake City, Utah 84107  
etc 12165

ENT 24071:2003 PG 1 of 4  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2003 Jun 23 2:09 pm FEE 16.00 BY SFS  
RECORDED FOR CENTURY TITLE

## AGREEMENT TO RESTRICT APPLICATION OF DECLARATION AND LEASE

This Agreement is made this 17<sup>th</sup> day of June, 2003, by Wardley, McLachlan, L.L.C., a Utah limited liability company ("Wardley") and Smith's Food and Drug Centers, Inc., a Delaware corporation ("Smith's").

### RECITALS

A. Wardley is the owner of approximately 35 acres in Utah County, known as and identified in the records of Utah County, Utah as Saratoga Crossroads ("Saratoga Crossroads"). A legal description of Saratoga Crossroads is attached hereto as Exhibit A.

B. On October 9, Wardley and Smith's entered into that certain Shopping Center Ground Lease (the "Smith's Lease") with respect to a portion of Saratoga Crossroads. A Memorandum of Lease with respect to the Smith's Lease was recorded as Entry No. 126380:2002 in the records of Utah County, Utah on October 24, 2002.

C. On October 24, 2002 Wardley caused to be recorded as Entry No. 126379:2002 in the records of Utah County, Utah, a Declaration of Covenants, Conditions and Restrictions and Grant of Easements (the "Declaration") covering all of Saratoga Crossroads.

D. On May 7, 2003 Wardley caused to be recorded in the records of Utah County, Utah, a plat of Saratoga Crossroads, dividing it into six (6) lots, a copy of which plat is attached hereto as Exhibit B (the "Plat").

E. Wardley and Smith's now desire to modify the application of the Declaration and Smith's Lease.

### AGREEMENT

THEREFORE, Wardley and Smith's hereby agree as follows:

For ten dollars (\$10.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Wardley and Smith's hereby agree as follows:

1. All terms of the Declaration shall continue to be applicable to and restrict Lot 1 and Lot 2 of Saratoga Crossroads, as shown on the Plat.

2. The use restrictions set forth in Sections 2(b)(i) and 2(b)(ii) of the Declaration shall continue to be applicable as set forth in the Declaration.

3. A height restriction of twenty-four (24) feet, plus four (4) feet for architectural elements, features and towers shall be applicable to Lot 6 of Saratoga Crossroads, as shown on the Plat.

4. With the development of Lot 3 of Saratoga Crossroads, the owner of Lot 3 shall install a physical barrier (such as a fence or landscaping) that would separate the existing Smith's shopping center parking from the improvements on Lot 3 and which would prevent direct vehicular access from Lot 3 to the existing Smith's shopping center parking.

5. Except as set forth herein, the provisions of the Declaration shall not apply to Lot 3, Lot 4, Lot 5 and Lot 6 of Saratoga Crossroads.

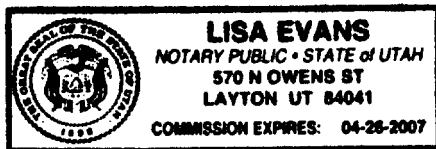
6. The provisions of the Smith's Lease are hereby amended where inconsistent with this Agreement.

WARDLEY, Mc LACHLAN, L.L.C., a Utah limited liability company

By: [Signature]  
Its Manager

Sworn to before me on this 17<sup>th</sup> day of June, 2003

[Signature]  
Notary Public

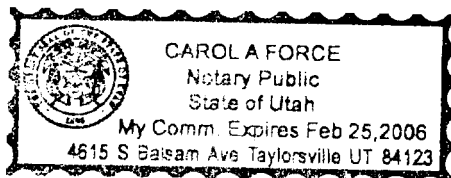


SMITH'S FOOD & DRUG CENTERS, INC. a Delaware corporation

By: [Signature]  
Its Vice President

Sworn to before me on this 17<sup>th</sup> day of June, 2003

[Signature]  
Notary Public



**EXHIBIT A****PROPERTY DESCRIPTION**

Commencing at a point which is South 1434.50 feet and East 44.82 feet from the North 1/4 corner of Section 14, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89°26'17" East along the extended line of a fence and along said fence line 1284.87 feet to another fence line; thence South 00°26'07" West along said fence line 1205.22 feet to another fence line; thence South 89°52'45" West along said fence line 1283.68 feet to another fence line; thence North 00°22'37" East along said fence line and its line extended 1220.52 feet to the Point of Beginning.

EXHIBIT B

PLAT

Scale: 1" = 100'

