

WHEN RECORDED MAIL TO:

R.N. SPRATLING JR.

P.O. BOX 17403

S.L.C. UT. 84117

9000 South/1300 West
West Jordan, Utah

05/26/99 4:35 PM 7366120 38-01

DECLARATION OF EASEMENT

NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
MERIDIAN TITLE
REC BY: R JORDAN DEPUTY - WI

7366120

THIS DECLARATION OF EASEMENT (this "Declaration") made as of the 10th day of NOV., 1998, by SPRATLING INVESTMENT CORP. and RONALD N. SPRATLING, JR., AS TRUSTEE OF THE RONALD N. SPRATLING, JR. TRUST DATED JULY 6, 1990 (collectively "Declarant Owner"), and THRIFTY PAYLESS, INC. ("Rite Aid").

INTRODUCTORY STATEMENT

A. By a Ground Lease dated the same day as this Declaration (the "Rite Aid Lease"), Declarant Owner has leased to Thrifty PayLess, Inc., a subsidiary of Rite Aid Corporation, ("Rite Aid") property consisting of approximately 2.01 acres described on Exhibit A (the "Rite Aid Parcel").

B. To induce Rite Aid to enter into the Rite Aid Lease, Declarant Owner is providing an easement for two-way access road (the "Access Road") between the K-Mart Driveway (defined below) at the northwest corner of the Rite Aid Parcel to 1300 West over that property described on Exhibit B (the property on which the Access Road and any related improvements is to be constructed is referred to as the "Access Road Parcel").

C. The Rite Aid Parcel and the Access Road Parcel are depicted on the plan attached as Exhibit C hereto.

NOW, THEREFORE, for and in consideration of the Introductory Statement, which is a material and substantive part of this Declaration, and Ten Dollars (\$10.00) and other good and valuable consideration, Declarant hereby declares that the Access Road Parcel is subject to the following:

1. **Definitions.** For purposes of this Declaration, the terms defined in the Introductory Statement shall have the meanings set forth in such Statement and the terms below shall have the following meanings:

(a) "K-Mart Access Rights Agreement" means the Easement Agreement and Consent and Confirmation of Approval of Access Rights dated effective NOV. 10, 1998 executed by GFI-West Jordan Investments Limited Partnership, Spratling Investment Corporation, Ronald N. Spratling, Jr. as Trustee of the Ronald N.

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Spratling, Jr. Trust dated July 6, 1990 and Thrifty Payless, Inc. and intended to be recorded in the Official Records.

(b) "K-Mart Driveway" means the access road along the western boundary of the Rite Aid Parcel which extends from 9000 South northward to the K-Mart store located to the northwest of the Rite Aid Parcel. The K-Mart Driveway is more particularly described in the Easement Agreement dated July 31, 1992 executed by GFI-West Jordan Investments Limited Partnership and recorded in the Official Records as Number 5304459, (the "K-Mart Driveway Agreement").

(c) "Owner" means Declarant Owner and/or the fee simple owner(s) of all or any part of the Property; but Owner does not mean any person or entity holding such interest merely as security for the repayment of a debt.

(d) "Permittee" means the tenants, employees, agents, contractors, customers, invitees and licensees of an Owner of the Property or any portion thereof.

(e) "Property" means the Rite Aid Parcel, the Access Road Parcel, and all other properties which Declarant Owner (with Rite Aid's reasonable consent, which consent shall not be unreasonably delayed or withheld) grants the right to use the Access Road as provided herein.

(f) "Temporary Easement Area" means that property within ten feet of the northern boundary of the Access Road Parcel.

2. Grant of Easements

(a) Each Owner and its Permittees are granted the right, in common with all other Owners and their Permittees, to use the Access Road for purposes of vehicular and pedestrian ingress and egress but not parking between 1300 West and their respective Parcel and, as to the Rite Aid Parcel, between the K-Mart Driveway and 1300 West.

(b) Rite Aid and its Permittees are granted a temporary easement for original construction purposes only over the Temporary Easement Area and the Access Road Parcel, for the purposes of installing the Access Road.

(c) Notwithstanding the foregoing, any use of the Access Road Parcel, when combined with and added to the normal use thereof by each other Owner and its Permittees, shall not exceed the reasonable capacity of the Access Road. No utility lines shall be installed in, and no easements for utility lines or similar uses shall be granted in the Access Road Parcel without the prior written consent of Rite Aid (during the term of the Rite Aid Lease only), the Owner of the Rite Aid Parcel, and the Owner of the Access Road Parcel.

3. **Construction of the Access Road.**

(a) In connection with the development of the Rite Aid store pursuant to the site plan approved by the City of West Jordan in 1998, Rite Aid shall construct the Access Road on the Access Road Parcel, at its sole cost and expense, in accordance with all applicable requirements of the City of West Jordan related to such Rite Aid development. Any additional requirements with respect to the Access Road Parcel hereafter imposed by governmental authority shall be installed and paid for by the Owner(s) of the Parcel on account of which such requirements are imposed.

(b) Declarant Owner represents that it has obtained, at Declarant Owner's sole cost and expense, the approval of the Owner of the K-Mart Driveway and others, if any, required for location of the intersection of the Access Road with the K-Mart Driveway and for the construction and use of the Access Road as required under the K-Mart Driveway Agreement. Such approval is set forth in the K-Mart Access Rights Agreement.

4. **General Standards.**

All improvements in the Access Road Parcel shall be designed, constructed, installed, repaired and maintained in a good and workmanlike manner. Upon completing construction of the Access Road Rite Aid shall restore the Temporary Easement Area (and any other adjoining real property of Declarant Owner damaged during the construction) to the same condition as before the construction of the Access Road. No buildings or other above-ground construction (other than utility poles) shall be erected in, on or over the Access Road Parcel, nor shall the existing grade of the Access Road Parcel be materially changed except as set forth in the Rite Aid Approval Requirements, without the prior written consent of the following "Approving Parties":

- (i) Declarant Owner, and
- (ii) either Rite Aid or, after the Rite Aid Lease terminates, the Owner of the Rite Aid Parcel.

After the initial construction of the Access Road, work on the Access Road Parcel (i) will be performed expeditiously so as to not interfere with or hinder the use and enjoyment of the same; and (ii) will not materially alter the size or configuration of the improvements within the Access Road without the prior written approval of the Approving Parties, which approval shall not be unreasonably withheld or delayed.

5. **Designation of Additional Users.** Declarant Owner has granted additional properties the right to use the Access Road, pursuant to (i) to the K-Mart Access Rights Agreement, and (ii) a Cross-Easement Agreement between Declarant Owner and Bosco

Liu and Karl Tak-Yee Lew dated as of the same day as this Declaration, and intended to be recorded in the Official Records.

6. **Access Road Parcel Maintenance and Taxes.**

- (a) The "Maintaining Party" means
- (i) the tenant under the Rite Aid Lease, or
 - (ii) after the Rite Aid Lease terminates, the Owner of the Rite Aid Parcel.

The Maintaining Party, at its cost and expense, shall maintain the Access Road Parcel and the improvements thereto installed by Rite Aid in good order and repair (except as otherwise expressly provided for above), and reasonably free of snow and ice, and shall have an easement over the Access Road Parcel for the purpose of performing maintenance in accordance with this Declaration. Maintenance includes, by way of example and not limitation, asphalt maintenance, surfacing, patching, coating, striping, lighting (if any), signage and landscaping. If the Maintaining Party fails to perform its obligations hereunder after notice of default (except as the same may be excused by force majeure reasonably determined), any non-defaulting Owner may perform such maintenance and the Maintaining Party shall reimburse such non-defaulting Owner for the actual cost of its maintenance plus twenty percent (20%).

(b) The Maintaining Party shall pay the taxes and assessments on the Access Road Parcel promptly before penalties or interest for late payment shall accrue. The Owner of the Access Road Parcel will provide copies of the bills at least thirty (30) days prior to the deadline for paying at the discount rate. If the Access Road Parcel is not a separate tax parcel, the share paid by the Maintaining Party shall be a portion of the total tax (as to land only and not buildings) on the entire tax parcel, equal to the same proportion as the acreage in the Access Road Parcel bears to the acreage in the entire tax parcel.

7. Intentionally omitted.

8. **Enforcement.** This Declaration may be enforced by Declarant Owner and/or Rite Aid (during the term of the Rite Aid Lease only), and/or any subsequent Owner of the Rite Aid Parcel, or their respective successors and assigns against any person or entity having obligations hereunder. Any such amounts due and not paid hereunder shall be and become a lien on the property of the defaulting Owner. The non-defaulting Owner(s) of a Parcel or Rite Aid or their respective successors and assigns shall be entitled forthwith to full and adequate relief by injunction and all such other legal and equitable remedies for the consequences of such breach. If any party, or person benefitted hereby, institutes any litigation to enforce any of the terms, covenants, conditions, easements and restrictions set

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out in the Declaration, the prevailing party in such litigation shall be entitled to collect court costs and reasonable attorneys' fees from the non-prevailing party. Any monetary judgment, which shall include attorney's fees, shall constitute a lien against the Parcel of the defaulting Owner.

9. **Term.** Unless otherwise canceled or terminated, this Declaration and all the easements, covenants, restrictions, rights, benefits, obligations and liabilities created under this Declaration shall be for an initial term of twenty-one (21) years (or such longer time as the term of the Rite Aid Lease (as the same may be extended or renewed) shall end. This Declaration shall not be deemed to be perpetual but shall automatically continue in full force and effect after the initial term for additional consecutive terms of one (1) year each until terminated or released by the recordation among the Official Records of Salt Lake County of a written instrument executed by the Owner of the Access Road Parcel and the Owner of the Rite Aid Parcel. Until such termination, cancellation or release, all such easements, covenants, restrictions, rights, benefits, obligations and liabilities created in this Declaration shall be easements and shall be deemed covenants and easements running with and binding upon the land. As used in this Declaration, the "term" of the Rite Aid Lease shall mean the initial term as it may be extended or renewed.

10. **Dedication.** If the City of West Jordan agrees to accept dedication of the Access Road as a public street to be maintained by the City of West Jordan, then upon written request from Rite Aid or its successor as tenant of the Rite Aid Property, or the Owner of the Rite Aid Property, the Owner of the Access Road Parcel will either convey the Access Road Parcel to the City of West Jordan for reasonable compensation, or will assume full responsibility for maintaining the Access Road in accordance with the standards herein at no cost or expense to the fee Owner or tenant of the Rite Aid Parcel.

11. **Miscellaneous.** This Declaration may be modified only by written consent of the Owner of the Access Road Parcel, Rite Aid and its successors and assigns under the Rite Aid Lease, and the Owner of the Rite Aid Parcel, which consent shall not be unreasonably withheld or delayed. Headings are for convenience of reference only and shall not affect meanings or interpretations of the contents of this Declaration. This Declaration shall be binding upon and inure to the benefit of Declarant Owner and Rite Aid, their respective personal or legal representatives, successors and assigns. This Declaration shall be governed by the laws of the State of Utah. Nothing in this Agreement is intended to deny Declarant Owner the absolute right to use or allocate the Access Road property or the Temporary Easement Area as part of Declarant Owner's ownership for purposes of calculating zoning or building requirements.

12. **Severability.** If any term or provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to person or circumstances, other than those as to which it would become invalid or unenforceable, shall

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not be affected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

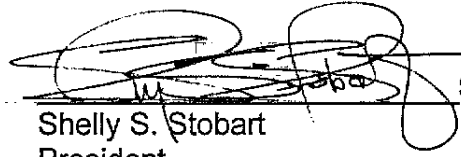
13. **Mortgages.** Any mortgages or deeds of trust encumbering a Parcel shall be subordinate to the terms of this Declaration and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to this Declaration. Declarant Owner represents and warrants to Rite Aid that there are no mortgages, deeds of trust or ground leases encumbering any of the Property.

14. **Waiver.** No delay or omission of any Owner in the exercise of any right occurring upon any default of any other Owner shall impair such right or be construed to be a waiver thereof, unless expressly waived in writing by such Owner. A waiver by any Owner of a breach of, or a default in, any of the terms and conditions of this Declaration by any other Owner shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provisions of this Declaration. Exercise by an Owner, or the beginning of the exercise by an Owner, of any one or more of the rights or remedies provided for in this Declaration, now or hereafter existing at law or in equity, shall not be considered as an election of remedies so as to preclude the simultaneous or subsequent exercise by such Owner of any other right or for such breach.

IN WITNESS WHEREOF, the undersigned have executed this Agreement for the purposes herein contained, as of the date first set forth above.

SPRATLING INVESTMENT CORP.

By: _____


Shelly S. Stobart
President

SEAL)

[SIGNATURES CONTINUED ON NEXT PAGE]

RONALD N. SPRATLING, JR., TRUSTEE OF
THE RONALD N. SPRATLING, JR. TRUST
DATED JULY 6, 1990

_____ Ronald N. Spratling, Jr. (SEAL)

THRIFTY PAYLESS, INC.

By: Roma S. Young (SEAL)
Roma S. Young
Authorized Representative

Initials: RSY
BSY

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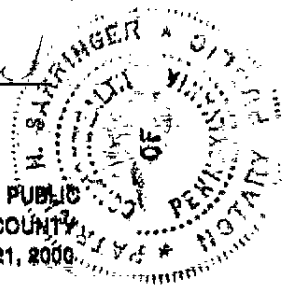
COMMONWEALTH OF PENNSYLVANIA

COUNTY OF BUCKS

On the 25th day of November A.D. 1998, before me, the undersigned officer, personally appeared **Roma S. Young**, who acknowledged herself to be the Authorized Representative of **THRIFTY PAYLESS, INC.**, a corporation, and that she, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by herself as Authorized Representative.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal.

Patricia A. Sarringer
My Commission Expires:

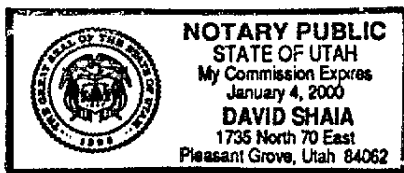


STATE OF UTAH
COUNTY OF SL.

NOTARIAL SEAL
PATRICIA H. SARRINGER, NOTARY PUBLIC
LOWER SOUTHAMPTON, BUCKS COUNTY, PA
MY COMMISSION EXPIRES JULY 21, 2000

On the 9th day of NOV. A.D. 1998, before me, the undersigned officer, personally appeared **Shelly S. Stobart**, who acknowledged herself to be the President of **SPRATLING INVESTMENT CORPORATION**, a Utah corporation, and that she, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by herself as President.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal.



David Shaia
My Commission Expires:

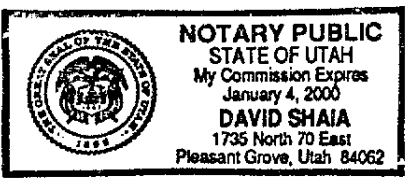
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STATE OF UTAH

CITY OF S.L.C.

On the 9th day of NOV A.D. 1998, before me, the undersigned officer, personally appeared **Ronald N. Spratling, Jr.**, who acknowledged himself to be a Trustee of the **Ronald N. Spratling, Jr. Trust dated July 6, 1990**, and that he as such Trustee, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Trust by himself as Trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal.



David Shaia
My Commission Expires:

Initials: RSY
RSY

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LIST OF EXHIBITS

- EXHIBIT A Description of the Rite Aid Parcel
- EXHIBIT B Description of the Access Road Parcel
- EXHIBIT C Plan

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Initials:

MSJ
RSY

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EXHIBIT A

LEGAL DESCRIPTION OF LEASED PARCEL

MTC File No. 57854a-AB
LEGAL DESCRIPTION

Parcel 1:

Beginning at a point 318.00 feet South 89 degrees 53'45" West and 73.00 feet North 00 degrees 02'16" West from the East 1/4 corner of Section 3, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 89 degrees 53'45" West 336.27 feet; thence North 00 degrees 02'16" West 260.00 feet; thence North 89 degrees 53'45" East 336.27 feet; thence South 00 degrees 02'16" East 260.00 feet to the point of beginning.

Parcel 1A:

Together with a permanent non-exclusive easement for ingress, egress and access over and across the following described property:

Beginning at a point on the North line of 9000 South Street which point is North 89 degrees 50'20" West along the quarter section line 684.27 feet and North 0 degrees 13'39" East 73.00 feet from the East 1/4 corner of Section 3, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence North 0 degrees 13'39" East 330.00 feet; thence South 89 degrees 50'20" East 30 feet; thence South 0 degrees 13'39" West 330.00 feet; thence North 89 degrees 50'20" West 30.00 feet to the point of beginning.

As created by that certain Easement Agreement recorded August 3, 1992 as Entry No. 5304459 of Official Records.

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Exhibit B to Declaration of Easement

NORTH ACCESS ROAD RIGHT OF WAY DESCRIPTION

4 Nov. 1998

Beginning at a point on the West right of way line of 1300 ^{West} East Street 333.00 feet North $0^{\circ}02'16''$ West and 40.00 feet South $89^{\circ}53'45''$ West from the East 1/4 Corner of Section 3, Township 3 South, Range 1 West, Salt Lake Base and Meridian and running thence South $89^{\circ}53'45''$ West 614.27 feet; thence North $00^{\circ}02'16''$ West 70.00; thence North $89^{\circ}53'45''$ East 12.00 feet; thence South $00^{\circ}02'16''$ East 14.06 feet to a point of tangency with the arc of an 8.00-foot radius curve to the left; thence Southeasterly 10.53 feet along the arc of said curve (Note: Chord for said curve bears South $37^{\circ}43'50''$ East for a distance of 9.78 feet.); thence South $75^{\circ}25'23''$ East 57.72 feet; thence North $89^{\circ}53'45''$ East 252.02 feet; thence South $87^{\circ}04'47''$ East 60.08 feet; thence North $89^{\circ}53'45''$ East 228.42 feet to said right of way line; thence South $00^{\circ}02'16''$ East 30.50 feet along said right of way line to the point of beginning.
Contains 24,739 Sq. Ft., or 0.568 Acre.

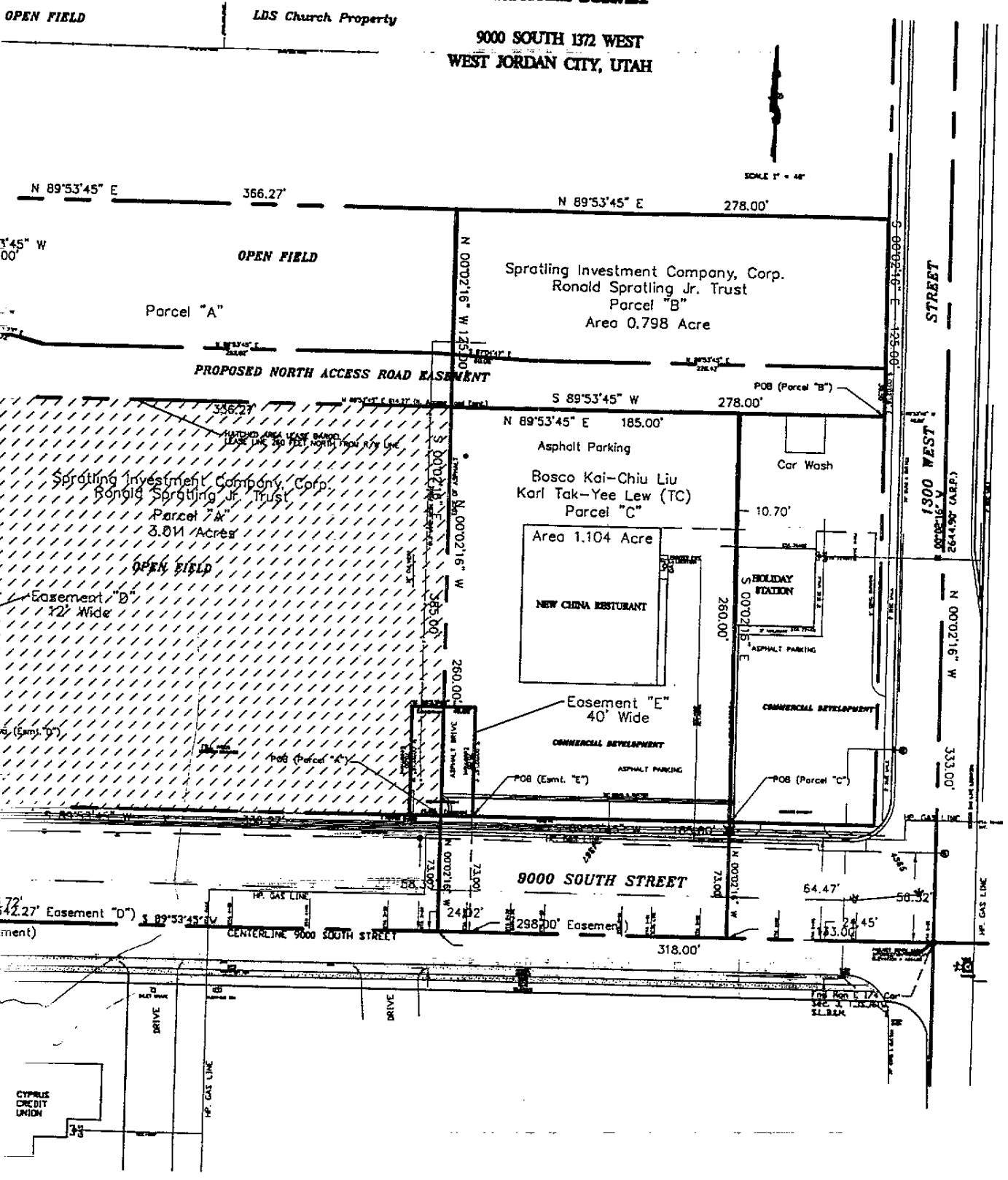
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MSA
BSY

Exhibit C

ALTA/ACSM SURVEY

9000 SOUTH 1372 WEST
WEST JORDAN CITY, UTAH



SCALE 1" = 40'

BK 8280167850

P ENGINEERING INC.
700 East, Suite 308, S.L.C. UT. 801-281-8080

(Sheet Title) **ALTA / ACSM SURVEY**
(Project Name) **9000 SOUTH 1372 WEST**
(Client Name) **JEFFREY A. BENDER ARCH.**
(Address)

Sheet Number

RBY
PROJECT BENCH MARK
INTERSECTION MONUMENT
1300 WEST & 9000 SOUTH
ELEVATION = 4364.85