

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

CHARLOTTE WIGHTMAN, ESQ.
SMITH'S FOOD & DRUG CENTERS, INC.
1550 SOUTH REDWOOD ROAD
SALT LAKE CITY, UTAH 84104

ENT 757445 Bk 996 Pg 875
DATE 27-MAR-2001 4:35PM FEE 44.00
MICHAEL L GLEED, RECORDER - FILED BY T.J.
CACHE COUNTY, UTAH
FOR CACHE TITLE COMPANY

OTC # 274616

SPACE ABOVE FOR RECORDERS USE

RECIPROCAL EASEMENT, DEVELOPMENT AND MAINTENANCE AGREEMENT WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

THIS RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT
WITH COVENANTS AND RESTRICTITONS AFFECTING LAND ("Easement
Agreement") dated February 26, 2001, is made by and between SMITH'S
FOOD & DRUG CENTERS, INC., ("Smith's"), FIFTY THREE INVESTMENT
COMPANY, a limited Partnership ("King's"), INKLEY'S PORTRAITS PLUS
("Inkley's"), and the CITY OF LOGAN ("City").

RECITALS

A. Smith's owns or will acquire fee title to certain real property located in Cache County, State of Utah which is identified as Smith's on the site plan attached hereto as Exhibit "A" and more particularly described in Exhibit "B" attached hereto and made a part hereof (hereinafter "Smith's Parcel").

B. City owns or will acquire fee title to certain real property located in Cache County, State of Utah which is identified as City's on Exhibit "A" and more particularly described in Exhibit "C" attached hereto and made a part hereof (hereinafter "City's Parcel").

C. King's owns certain real property located in Cache County, State of Utah which is identified as King's on Exhibit "A" and more particularly described in Exhibit "D" attached hereto and made a part hereof (hereinafter "King's Parcel").

D. Inkley's owns certain real property located in Cache County, State of Utah which is identified as Inkley's on Exhibit "A" and more particularly described in Exhibit "E" attached hereto and made a part hereof (hereinafter "Inkley's Parcel").

E. As used herein, the term "Owner" shall mean the record owner of the fee title to any Parcel(s) or any portion thereof, their respective heirs, successors and assigns.

F. The parties to this Easement Agreement desire to create and grant certain easements for the benefit of each parcel, to provide for the improvement and maintenance of these easements, and to provide for the orderly development of the City's Parcel.

NOW, THEREFORE, in consideration of the covenants contained in this Easement Agreement and other good and valuable consideration, receipt of which is acknowledged, the following grants, agreements and covenants are made:

1. **Grant of Easements.**

a. City hereby grants to each other party hereto for the use and benefit of all parties hereto, their lessees, employees, and business invitees, and guests, a perpetual, non-exclusive easement for vehicular and pedestrian ingress and egress over and across the Joint Easement Area, as shown on Exhibit "A".

b. City hereby grants to King's a perpetual, non-exclusive easement over and across the King's Easement Area, as shown on Exhibit "A" for truck ingress and egress to the loading area on the east side of the building on the King's Parcel.

2. **Development of City's Parcel.**

a. Each party hereby approves the configuration and location of buildings, landscaping, drive isles and trash receptacle placement on City's Parcel, as shown on Exhibit "A".

b. Each party hereby approves the configuration and location of the temporary construction staging area as shown on Exhibit "A".

c. Each party hereby approves the temporary relocation of the transit center to the area east of the building on Smith's Parcel as shown on Exhibit "A".

d. City shall be responsible for the development and construction of all the improvements, including access drives, to be located on the City's Parcel, the Joint Easement Area, and the King's Easement Area, including loading dock.

e. City shall be responsible for the temporary relocation of the transit center. Upon completion of the new transit center City shall be responsible for returning the temporary transit center and the staging area back to the state they were in prior to being used as a temporary transit center and staging area.

3. **Maintenance.** The parties hereto shall maintain their respective portions of the Joint Easement Area and King's Easement Area on their respective Parcels as follows: (i) repairing any damage to paving or curbing; (ii) maintaining the asphalt surface in a smooth and even-covered condition free of cracks and holes, (iii) maintaining the striping; (iv) timely removing all snow, ice, refuse, debris and filth, (v) maintaining all landscaping and trash enclosures in a clean condition. Notwithstanding

the foregoing, in the event there is a conflict between the terms of this Easement Agreement and the terms of either the Easement Agreement recorded February 14, 1989 as Entry No. 520221, in Book 445 at Page 43 in the Records of Cache County, Utah, or the Easement Agreement recorded June 27, 1989 as Entry No. 524035, in Book 452 at Page 468 in the Official Records of Cache County, Utah, the previously recorded Easements shall control.

4. Covenants Running with the Land. The rights and obligations contained in this Easement Agreement shall run with the land, benefiting and burdening the Parcels, and shall inure to and be for the benefit of, and shall be binding upon the parties hereto, and the tenants, sub-tenants, licensees, concessionaires, mortgagees in possession, customers and business invitees of each Owner.

5. Termination of Liability. Whenever a transfer of Ownership of any Parcel takes place, the transferor will not be liable for a breach of this Easement Agreement occurring after such transfer.

6. Not a Partnership. The Owners do not by this Easement Agreement, in any way or for any purpose, become partners or joint venturers of the other party in the conduct of their respective businesses or uses or otherwise.

7. Amendment. This Easement Agreement shall not be amended, modified or terminated without the prior written consent of each Owner.

8. Successors and Assigns. This Easement Agreement shall be binding upon and inure to the benefit of the successors, heirs, assigns and personal representatives of all parties hereto (including successors by voluntary or involuntary event or operation of law).

9. Costs of Default. In the event of default by any party hereto, the defaulting party shall pay all costs and expenses of each other party, including a reasonable attorney's fee, which may be incurred by such other party in enforcing its rights and remedies resulting from such default, whether or not suit is commenced or an appeal is taken, or in enforcing any judgment, and whether or not related to proceedings in bankruptcy or seeking relief from any automatic stay in bankruptcy.

10. Not a Public Dedication. Nothing contained in this Easement Agreement shall be deemed to be a gift or dedication of any portion of the parcels to the general public or for the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this Easement Agreement shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the parcels herein affected, or any portion thereof is by permission, and subject to the control of the Owners. Notwithstanding any other provisions herein to the contrary, the Owners of the parcels affected hereby may periodically restrict ingress and egress over and across the parcels in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such time as to have a minimum effect on the parties occupying the parcels.

IN WITNESS WHEREOF, the Owners have executed this Easement Agreement as of the day and year first above written.

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

By: 
Its: S. Vice President

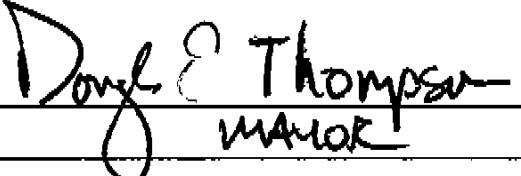
KING'S OF LOGAN

By: _____
Its: _____

INKLEY'S PORTRAITS PLUS

By: _____
Its: _____

CITY OF LOGAN

By: 
Its: MAJOR

IN WITNESS WHEREOF, the Owners have executed this Easement Agreement as of the day and year first above written.

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

By: _____
Its: _____

KING'S OF LOGAN

By: _____
Its: _____

INKLEY'S PORTRAITS PLUS

By: Doe Clark
Its: Manager

CITY OF LOGAN

By: _____
Its: _____

Signature Page
to
Reciprocal Easement Development and Maintenance Agreement

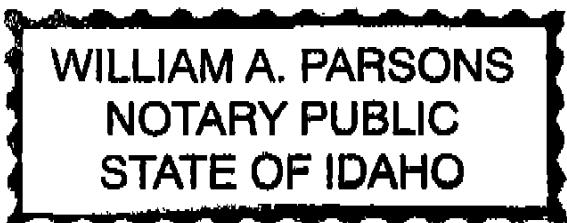
FIFTY THREE INVESTMENT COMPANY,
a limited partnership

By: Tom E. King
Its: General Partner

STATE OF IDAHO)
)
COUNTY OF CASSIA)
)

Before me, the undersigned authority, on this day personally appeared Thomas E. King, General Partner of FIFTY THREE INVESTMENT COMPANY, Limited Partnership known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said partnership.

Given under my hand and seal of office on this 28 day of January, 2001.



Notary Public:

William Parsons

Notary's name printed:

William A. Parsons

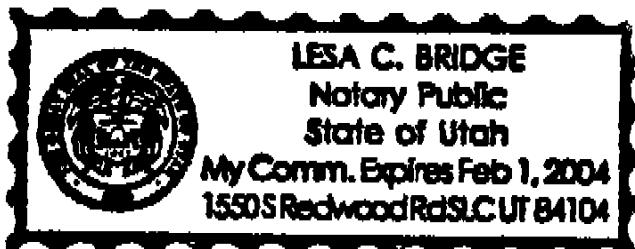
My commission expires:

7/20/2004

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

Before me, the undersigned authority, on this day personally appeared Wade S. Williams, Sr. Vice President of SMITH'S FOOD & DRUG CENTERS, INC., a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this 26th day of February, 2001.



Notary Public:

A handwritten signature of "LESA C. BRIDGE" in cursive script.

Notary's name printed:

LESA C. BRIDGE

My commission expires: 2/01/2004

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

Before me, the undersigned authority, on this day personally appeared _____, _____ of KING'S OF LOGAN, a _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this _____ day of _____, 2001.

Notary Public:

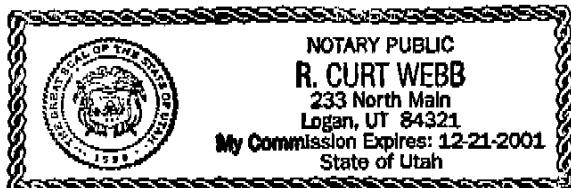
Notary's name printed:

My commission expires: _____

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

Before me, the undersigned authority, on this day personally appeared Dave Oblock, manager of INKLEY'S PORTRIATS PLUS, a _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this 14 day of Feb, 2001.



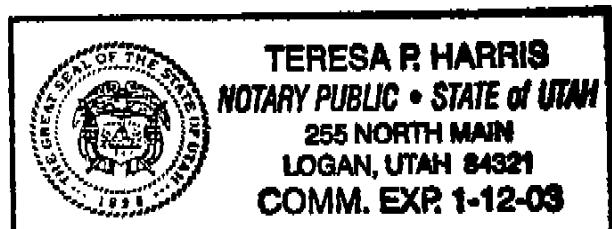
Notary Public:

Notary's name printed:

My commission expires:

Before me, the undersigned authority, on this day personally appeared Douglas E. Thompson, mayor of CITY OF LOGAN, a municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this 28 day of Feb., 2001.



Notary Public:

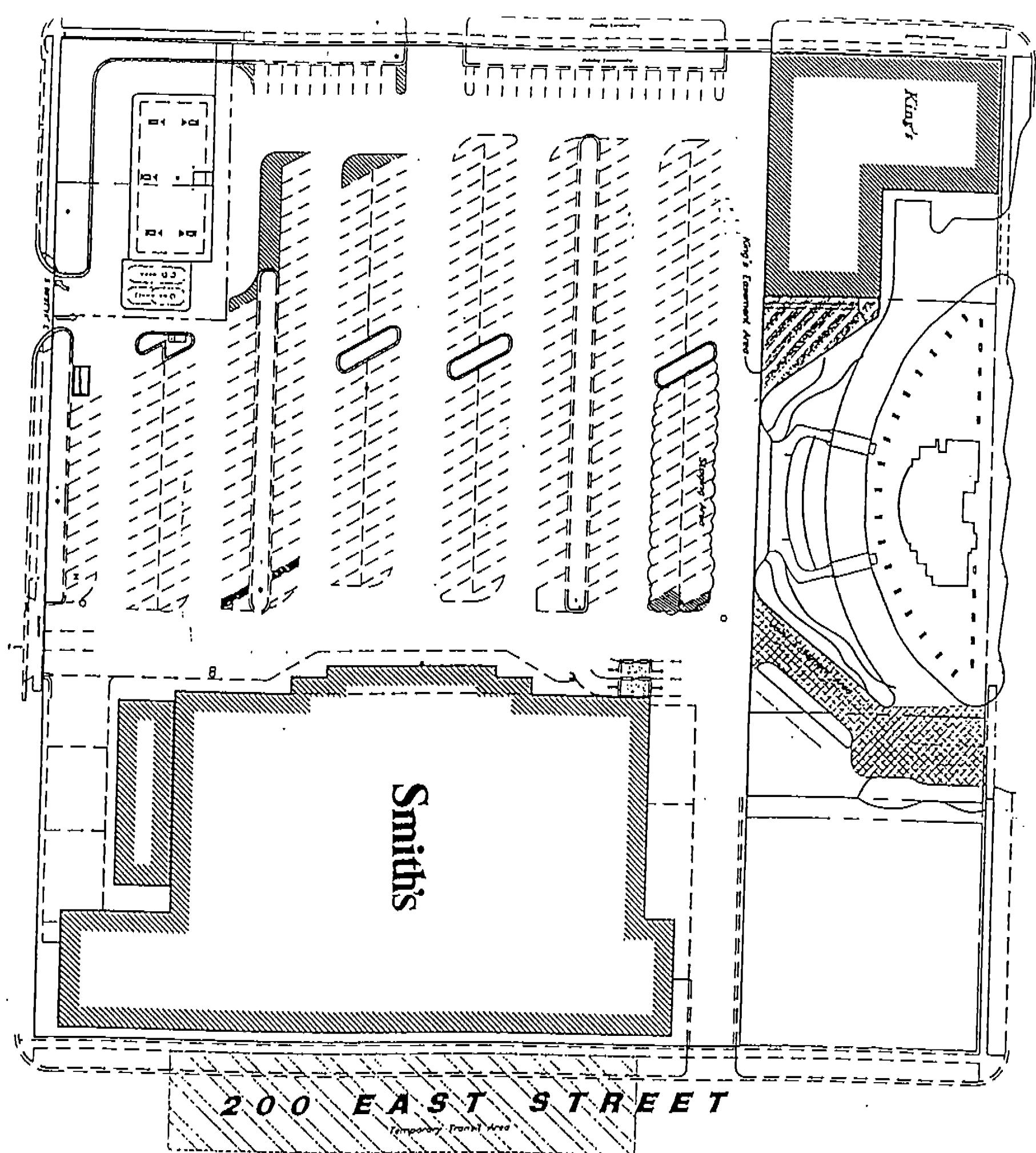
Teresa P. Harris

Notary's name printed:

Teresa F. Harris

Exhibit “A”

Site Plan



Legend

- Joint Easement Area
- King's Easement Area
- Staging Area
- Temporary Transit Area

ENT 757445 BK 996 PG 00 4



Smith's
Food & Drug Store
#87
Lopen, Inc.

Cross Access
Smith's Food and Drug Stores
1330 Main Street
Lopen, Inc.



GREAT BASIN ENGINEERING - SOUTH
CONTRACTORS SPECIALISTS IN LAND SURVEYS
1970 1971 1972 1973 1974 1975 1976 1977
1978 1979 1980 1981 1982 1983 1984 1985



U.S. AIR
C-

Exhibit "B"

Smith's Parcel

Beginning at the Southwest Corner of Lot 2, Block 48, Plat "A" LOGAN CITY SURVEY, and running thence East 4 rods 11.5 feet; thence North 5 rods 6.5 feet; thence West 4 rods 11.5 feet to Street line; thence South 5 rods 6.5 feet to the place of beginning.

ALSO, an undivided one-third interest in and to the following described tract, to-wit: Commencing at a point 6 rods North of the Southwest Corner of Lot 2, Block 48, Plat "A" LOGAN CITY SURVEY, and running thence East 5 rods 5 feet; thence South 6 rods; thence West 10 feet; thence North 5 rods 6.5 feet; thence West 4 rods 11.5 feet to the street line; thence North 10 feet to the place of beginning, to be used as a right-of-way. (06-041-0003)

Beginning at the Southeast Corner of Lot 1, Block 48, Plat "A", LOGAN CITY SURVEY and running thence West (North $88^{\circ}27'16''$ West) 506.50 feet (513.98 feet) along the South Line of said Block 48 to a point 87.5 feet East of the Southwest Corner of Lot 2 of said Block 48; thence North (North $1^{\circ}48'14''$ East) 99.0 feet; thence West (North $88^{\circ}27'16''$ West) 87.5 feet to the West Line of said Block 48; thence North (North $1^{\circ}48'14''$ East) 350.40 feet along said West Line to a point 0.5 feet South of the Northwest Corner of Lot 4 of said Block; thence East (South $88^{\circ}15'57''$ East) 150.29 feet parallel to the North Line of said Lot 4; thence South $87^{\circ}48'51''$ East 249.96 feet to a point 2.47 feet South of the North Line of Lot 7 of said Block; thence South $88^{\circ}15'57''$ East 200.12 feet parallel to the North Line of said Block 48 to the East Line of said Block 48; thence South (South $1^{\circ}39'39''$ West) 445.45 feet along the East Line of said Block 48 to the Point of Beginning. (Note: Bearings and Dimensions in parenthesis represent actual measurements.)

LESS AND EXCEPTING therefrom that portion conveyed to Joseph D. Anderson and Edesa Z. Anderson in that certain Warranty Deed recorded June 27, 1989, as Entry No. 524031 in Book 452 at Page 451 described as follows:

Beginning at a point which is North $1^{\circ}39'39''$ East 82.67 feet along the East Line of Block 48, Plat "A", LOGAN CITY SURVEY, and North $88^{\circ}20'21''$ West 91.33 feet from the Southeast Corner of Lot 1 of said Block 48; running thence South $1^{\circ}39'39''$ West 40.00 feet; thence North $88^{\circ}20'21''$ West 129.60 feet; thence North $1^{\circ}39'39''$ East 40.00 feet; thence South $88^{\circ}20'21''$ East 129.60 feet to the Point of Beginning.

Exhibit "C"

City's Parcel

A part of the Northwest quarter of Section 34, Township 12 North, Range 1 East of the Salt Lake Base and Meridian, described as follows: Beginning at a point located South $88^{\circ}12'36''$ East 83.33 feet (East 82.50 feet by record) from the Northwest Corner of Block 48, Plat "A" LOGAN CITY SURVEY; and running thence South $01^{\circ}38'00''$ West 74.94 feet (South 74.25 feet by record); thence South $88^{\circ}14'04''$ East 66.69 feet (East 66 feet by record); thence North $01^{\circ}46'06''$ East 74.91 feet (North 74.25 feet by record) to the North line of said block; thence North $88^{\circ}12'36''$ West (West by record) along said North line 66.87 feet (66 feet by record) to the point of beginning. (06-041-0006)

A part of the Northwest Quarter of Section 34, Township 12 North, Range 1 East of the Salt Lake Base and Meridian, described as follows: Beginning at a point located North $88^{\circ}12'36''$ West 199.99 feet (West 198 feet by record) from the Northeast Corner of Block 48, Plat "A" LOGAN CITY SURVEY; and running thence South $01^{\circ}42'31''$ West 151.87 feet (South 148.5 feet by record); thence North $87^{\circ}48'47''$ West 249.75 feet; thence North $01^{\circ}46'06''$ East 150.13 feet (North 148.5 feet by record) to the North line of said block; thence South $88^{\circ}12'36''$ East (East by record) along said North line 249.58 feet to the point of beginning. (06-041-0002)

A part of the Northwest Quarter of Section 34, Township 12 North, Range 1 East of the Salt Lake Base and Meridian described as follows: Beginning at a point located North $88^{\circ}12'36''$ West 148.50 feet (West by record) from the Northeast Corner of Block 48, Plat "A" LOGAN CITY SURVEY; and running thence South $01^{\circ}38'27''$ West 151.82 feet (South 148.5 feet by record); thence North $88^{\circ}15'57''$ West 51.67 feet (West 49.5 feet by record); thence North $01^{\circ}42'31''$ East 151.87 feet (North 148.5 feet by record) to the North line of said block; thence South $88^{\circ}12'36''$ East (East by record) along said North line 51.49 feet (49.5 feet by record) to the point of beginning. (06-041-0012)

TOGETHER WITH a right of way consisting of an undivided $\frac{1}{4}$ interest in and to: Beginning at a point 8 rods $4 \frac{1}{2}$ feet West of the Northeast Corner of the above described land; thence West 12 feet; thence South 9 rods; thence East 12 feet; thence North 9 rods to the beginning.

Exhibit "D"

King's Parcel

Beginning at the Northwest Corner of Lot 5, Block 48, Plat "A", Logan City Survey, and running thence East (South $88^{\circ}12'10''$ East) 82.5 feet (83.33 feet); thence South (South $1^{\circ}47'03''$ West) 74.25 feet (74.94 feet); thence East (South $88^{\circ}14'04''$ East) 66.0 feet (66.69 feet); thence South (South $1^{\circ}46'06''$ West) 74.25 feet (74.90 feet) to the South line of said Lot 5; thence West (North $88^{\circ}15'57''$ West) 148.5 feet (150.09 feet) along said South line to the Southwest Corner of said Lot 5; thence North (North $1^{\circ}48'14''$ East) 148.5 feet (149.97 feet) to the point of beginning. Note: Bearings & Dimensions in Parenthesis represent actual measurements.

Contains 0.402 Acre

Also together with a right-of-way described as follows:

Beginning at a point which is East (South $88^{\circ}15'57''$ East) 148.5 feet (150.09 feet) from the Southwest corner of Lot 5, Block 48, Plat "A", Logan City Survey, and running thence North (North $1^{\circ}46'06''$ East) 74.25 feet (74.90 feet); thence East (South $88^{\circ}15'57''$ East) 20.00 feet; thence South (South $1^{\circ}46'06''$ West) 74.25 feet (74.90 feet); thence West (North $88^{\circ}15'57''$ West) 20.00 feet to the point of beginning.

Exhibit "E"

Inkley's Parcel

Beginning at a point which is North 1°39'39" East 82.67 feet along the East line of Block 48, Plat "A", Logan City Survey, and North 88°20'21" West 91.33 feet from the Southeast corner of Lot 1 of said Block 48; and running thence South 1°39'39" West 40.00 feet; thence North 88°20'21" West 129.60 feet; thence North 1°39'39" East 40.00 feet; thence South 88°20'21" East 129.60 feet to the point of beginning.

Contains 5,184 Square Feet or 0.119 Acre