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WHEN RECORDED, MAIL TO:
ZIONS FIRST NATIONAL BANK
2185 South 3270 West
West Valley City, Utah 84119

096843 Bk 0644 Pg 1191
LuAnn Adams, Box Elder County Recorder
03/28/1997 11:36am FEE: 24.00 Depo
Rec'd For: ASSOCIATED TITLE CO

71418 ✓
03-101-0052-0075 ✓
0077, 0053, 0079 ✓

Title Company ASSOCIATED TITLE CO
Commitment # 71418

THIS SPACE IS FOR RECORDER'S USE ONLY

**ZIONS FIRST NATIONAL BANK
DEED OF TRUST WITH ASSIGNMENT OF RENTS
TO SECURE A HOME EQUITY CREDIT LINE AND DISCLOSURE AGREEMENT**

PRINCIPAL	LOAN DATE	ACCOUNT NUMBER	APPLICATION ID
\$ 35000.00	03/27/97	001700730000045932	212355

THIS DEED OF TRUST is made this 27th day of March 1997 among BRENT W HENINGER
AND JOANN B HENINGER, HIS WIFE, AS JOINT TENANTS WITH FULL RIGHTS
OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON

(hereinafter referred to as "Trustor"), ZIONS FIRST NATIONAL BANK, a national banking association (hereinafter referred to as "Trustee"), and ZIONS FIRST NATIONAL BANK, a national banking association (hereinafter referred to as "Beneficiary").

WITNESSETH:

TRUSTOR, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property (the "Property") located in the County of BOX ELDER, State of Utah,

SEE ATTACHED EXHIBIT A



ASSOCIATED TITLE COMPANY
68 South Main Brigham City, Utah 84302
(801) 788-0400 FAX (801) 788-8488

which has the address of 267 N 400 E, BRIGHAM CITY
UTAH 84302,

(hereinafter referred to as the "Property Address") (Trustor's address, if different from the Property Address, is

TOGETHER with all improvements now or hereafter erected on the Property, and all easements, rights, appurtenances, fixtures and rents (subject however to the rights and authority herein given to Beneficiary to collect and apply such rents), all of which shall be deemed to be and remain a part of the Property covered by this Deed of Trust; and all of the foregoing, together with said Property (or the leasehold estate if this Deed of Trust is on a leasehold), are hereinafter referred to collectively as the "Property";

TO SECURE to Beneficiary all of the following described items (the "Indebtedness"):

1. The repayment of all indebtedness owed to Beneficiary under an open-end line of credit evidenced by and described in that certain **AGREEMENT** between Beneficiary and BRENT W HENINGER AND JOANN B HENINGER (the "Borrower") dated March 27, 1997 together with all modifications, amendments, extensions and renewals thereof (hereinafter referred to as the "Agreement"). Beneficiary shall make advances to Borrower pursuant to the terms and conditions of the Agreement, which advances shall be repaid in whole or in part from time to time by Borrower. The maximum amount outstanding on the line of credit shall not exceed the aggregate principal balance of Thirty Five Thousand and 00/100 Dollars (\$ 35000.00). The Indebtedness secured by this Deed of Trust, together with interest and other charges assessed on the unpaid balance thereof computed in accordance with the terms of the Agreement, shall be payable to Beneficiary in the manner and subject to the conditions set forth in the Agreement.
2. The payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust.
3. The performance of the covenants and agreements of Trustor contained in this Deed of Trust.

Trustor covenants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered, except for any exceptions to title listed in any title insurance policy or report issued in favor of Beneficiary in connection with this Deed of Trust acceptable to Beneficiary. Trustor covenants that Trustor warrants and will defend the lien created by this Deed of Trust and the title to the Property against all claims and demands subject to encumbrances of record.

Trustor covenants and agrees as follows:

1. **TAXES.** Trustor shall pay when due all taxes, special taxes, assessments, charges (including water and sewer) fines and impositions levied against or on account of the Property. Trustor shall keep the Property free and clear of all liens which have a priority over the interest of Beneficiary under this Deed of Trust except for the lien of any taxes and assessments not yet due and payable and other liens acceptable to Beneficiary. Upon demand, Trustor shall furnish to Beneficiary such evidence as Beneficiary may reasonably require, that Trustor has paid all taxes and assessments applicable to the Property. Trustor may withhold payment of any tax or assessment in connection with a good faith dispute over Trustor's obligation to pay such tax or assessment provided any such dispute is prosecuted with due diligence and Beneficiary's lien position is not jeopardized. Beneficiary retains the right to require Trustor to provide adequate assurances to Beneficiary that any dispute will not result in an impairment of Beneficiary's lien position granted by this Deed of Trust.
2. **PRIOR MORTGAGES AND DEEDS OF TRUST.** Trustor shall promptly perform all of Trustor's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over the lien of this Deed of Trust, including delivering to Beneficiary evidence of Trustor's prompt performance.
3. **HAZARD INSURANCE.** Trustor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and such other hazards as Beneficiary may require, and in such amounts and for such periods as Beneficiary may require. Beneficiary shall be named as Loss Payee or Additional Insured, whichever may be appropriate, in all such insurance policies. The insurance carrier providing the insurance shall be chosen by Trustor subject to approval by Beneficiary, provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Beneficiary and shall include a standard mortgagee clause in favor of and in a form acceptable to Beneficiary. Beneficiary shall have the right to hold the policies and any renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over the lien of this Deed of Trust. At Beneficiary's request, Trustor will deliver certificates of insurance in form satisfactory to Beneficiary including endorsements that any coverage will not be cancelled or diminished without at least ten (10) days prior written notice to Beneficiary. Should the Property at any time become located in an area designated as a special flood hazard area, Trustor agrees to obtain and maintain Federal Flood Insurance to the extent such insurance is required and or becomes available for the term of the Indebtedness secured by this Deed of Trust and for the maximum balance available or the maximum limit of coverage that is available, whichever is less. In the event of loss, Trustor shall give prompt notice to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly by Trustor.

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- 4. PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Trustor shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Trustor shall perform all of Trustor's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.
- 5. PROTECTION OF BENEFICIARY'S SECURITY.** If Trustor fails to perform any covenants or agreements contained in this Deed of Trust, or if any action or proceeding is commenced which affects Beneficiary's interest in the Property, then Beneficiary, at Beneficiary's option, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Beneficiary's interest. Any amounts disbursed by Beneficiary pursuant hereto, with interest thereon, at the rate specified in the Agreement, shall become additional Indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof. Nothing contained in this Deed of Trust shall require Beneficiary to incur any expense or take any action hereunder. Any action taken by Beneficiary shall not be construed as curing any default by Trustor.
- 6. INSPECTION.** Beneficiary may make or cause to be made reasonable entries upon and inspections of the Property, provided that Beneficiary shall give Trustor notice prior to any such inspection specifying reasonable cause therefor related to Beneficiary's interest in the Property.
- 7. APPRAISAL.** Beneficiary may obtain appraisals of the Property and Trustor shall cooperate with Beneficiary and grant access to the Property for the purposes of completing any such appraisals. In the event that Beneficiary is required to obtain appraisals in order to comply with any law or regulation imposed by any government entity which has jurisdiction over Beneficiary, Trustor shall bear the cost of any such appraisal and Beneficiary is hereby authorized to add such cost to the Indebtedness secured hereby.
- 8. HAZARDOUS MATERIALS.** Trustor hereby represents and warrants that no hazardous materials are or will be located on the Property and to the best of Trustor's knowledge no hazardous materials have been located on or disposed on or under the Property. Hazardous materials shall be defined as any items or substances identified as hazardous in any federal, state or local laws or regulations. Trustor shall give notice to Beneficiary immediately upon Trustor's obtaining knowledge that any hazardous material is located upon the Property and shall immediately remove such hazardous material in compliance with all laws relating to any such removal. Trustor hereby indemnifies and holds harmless Trustee and Beneficiary from any and all claims, expenses, liabilities and costs which may occur from the presence of hazardous materials being located on the Property.
- 9. USE OF PROPERTY.** Beneficiary shall not use the Property for any illegal purpose.
- 10. CONDEMNATION.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or any part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary to the extent of any Indebtedness which may be due and owing under the Agreement or pursuant to this Deed of Trust, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.
- 11. TRUSTOR NOT RELEASED; FORBEARANCE BY BENEFICIARY NOT A WAIVER.** Extension of time for payment or modification of the sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of the original Trustor or Trustor's successor in interest. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify the Indebtedness secured by this Deed of Trust by reason of any demand made by Trustor or Trustor's successor in interest. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of nor shall preclude the exercise of any such right or remedy in the future.
- 12. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CO-SIGNERS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary and Trustor. All covenants and agreements of Trustor shall be joint and several. Any Trustor who signs this Deed of Trust, but does not execute the Agreement, (a) acknowledges having read and understood the Agreement, the obligations of which are secured by this Deed of Trust, (b) is not personally liable under the Agreement, and (c) agrees that Beneficiary and any other Trustor hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or the Agreement, without that Trustor's consent and without releasing that Trustor or modifying this Deed of Trust as to that Trustor's interest in the Property.

13. **NOTICE.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Trustor at the Property Address or at such other address as Trustor may designate by notice to Beneficiary as provided herein, and (b) any notice to Beneficiary shall be given by certified mail to Beneficiary's address shown at the top of the first page hereof or to such other address as Beneficiary may designate by notice to Trustor as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor or Beneficiary when given in the manner designated herein.

14. **GOVERNING LAW; SEVERABILITY.** The state and local laws applicable to this Deed of Trust shall be the laws of the State of Utah. In the event that any provision or clause of this Deed of Trust or the Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

15. **EVENTS OF DEFAULT.** Each of the following shall constitute an Event of Default under this Deed of Trust (an "Event of Default"):

- (a) Borrower fails to make any payment when due under the Agreement.
- (b) Borrower or Trustor commits fraud or makes a material misrepresentation at any time in connection with the Agreement including but not limited to having provided false or misleading statements relating to Trustor's or Borrower's income, assets, liabilities or other aspects of Trustor's or Borrower's financial condition.
- (c) Trustor does not comply with the terms, conditions or obligations contained in this Trust Deed.
- (d) Trustor's action or inaction adversely affects the Property or Beneficiary's rights in the Property. This can include, but not be limited to, failure to maintain required insurance, waste or destructive use of the Property, failure to pay taxes, death of all persons liable on the Agreement, transfer of title or sale of the Property, creation of a lien on the Property without Beneficiary's permission, foreclosure by the holder of any other lien or use of the Property for prohibited purposes.
- (e) An event of default occurs under the Agreement.

16. **REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Trustee or Beneficiary, at its option may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

- (a) **Foreclosure.** With respect to all or part of the Property, the Trustee shall have the right to foreclose in accordance with and to the full extent provided by applicable law.
- (b) **Collect Rents.** Beneficiary shall have the right, without notice to Trustor, to take possession of and manage the Property and collect any rents, including amounts past due and unpaid and apply the net proceeds to the Indebtedness. Beneficiary may require any tenant or other user of the Property to make payments directly to Beneficiary. If any such amounts are collected by Beneficiary, Trustor hereby irrevocably designates Beneficiary as Trustor's attorney-in-fact to endorse instruments received in payment thereof in the name of Trustor and to negotiate the same and collect the proceeds.
- (c) **Receiver.** Beneficiary shall have the right to have a receiver appointed to take possession of all or part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect any rents from the Property and apply the proceeds, over and above the cost of the receiver against the Indebtedness.
- (d) **Other Remedies.** Trustee or Beneficiary shall have any other right or remedy provided in this Deed of Trust, the Agreement or by law.
- (e) **Trustee.** Trustee shall have all of the rights and duties of Beneficiary as described in this Deed of Trust.

17. **WAIVER.** A waiver by any party of a breach of a provision of this Deed of Trust shall not constitute a waiver of such party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Beneficiary to pursue any remedy provided in this Deed of Trust, the Agreement or provided by law shall not exclude the exercise of any other remedy provided herein or pursuant to law or equity.

18. **ATTORNEY'S FEES AND EXPENSES.** In the event Beneficiary institutes any suit or action to enforce any of the terms of this Deed of Trust, Beneficiary shall be entitled to recover its reasonable attorneys' fees. Whether or not any court action is involved all reasonable expenses incurred by Beneficiary or the Trustee, which in Beneficiary's or Trustee's opinion are necessary at any time for the protection of its interest or the enforcement of its rights, shall become a part of the Indebtedness secured hereby, shall be payable on demand and shall bear interest at the rate provided in the Agreement. Expenses include, but are not limited to, reasonable attorneys' fees, whether or not there is a lawsuit (including efforts to modify or vacate any automatic stay or injunction, title reports, surveyor's reports, appraisal fees, title insurance, court costs and other amounts as provided by law).

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19. **ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; BENEFICIARY IN POSSESSION.** As additional security hereunder, Trustor assigns to Beneficiary the rents generated by the Property, provided that Trustor shall, prior to an Event of Default hereunder or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

20. ARBITRATION DISCLOSURES:

1. AS USED IN THIS ARBITRATION SECTION, THE TERM "PARTIES" MEANS THE LENDER, ANY OTHER SIGNERS HERETO AND PERMITTED SUCCESSORS AND ASSIGNS.
 2. ARBITRATION IS USUALLY FINAL AND BINDING ON THE PARTIES AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT.
 3. THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT, INCLUDING THEIR RIGHT TO A JURY TRIAL.
 4. PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED AND DIFFERENT FROM COURT PROCEEDINGS.
 5. ARBITRATORS' AWARDS ARE NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY ARBITRATORS IS STRICTLY LIMITED.
 6. A PANEL OF ARBITRATORS MIGHT INCLUDE AN ARBITRATOR WHO IS OR WAS AFFILIATED WITH THE BANKING INDUSTRY.
 7. IF YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT YOUR ATTORNEY OR THE AMERICAN ARBITRATION ASSOCIATION.
- ARBITRATION PROVISIONS:**

- (a) Any controversy or claim between or among the parties, including but not limited to those arising out of or relating to this agreement or any agreements or instruments relating hereto or delivered in connection herewith, and including but not limited to a claim based on or arising from an alleged tort, shall at the request of any party be determined by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceedings shall be conducted in Salt Lake City, Utah. The arbitrator(s) shall have the qualifications set forth in subparagraph (c) hereto. All statutes of limitations which would otherwise be applicable in a judicial action brought by a party shall apply to any arbitration or reference proceedings hereunder.
- (b) In any judicial action or proceeding arising out of or relating to this Agreement or any agreements or instruments relating hereto or delivered in connection herewith, including but not limited to a claim based on or arising from an alleged tort, if the controversy or claim is not submitted to arbitration as provided and limited in subparagraph (a) hereto, all decisions of fact and law shall be determined by a reference in accordance with Rule 53 of the Federal Rules of Civil Procedure or Rule 53 of the Utah Rules of Civil Procedure or other comparable, applicable reference procedure. The parties shall designate to the court the referee(s) selected under the auspices of the American Arbitration Association in the same manner as arbitrators are selected in Association-sponsored arbitration proceedings. The referee(s) shall have the qualifications set forth in subparagraph (c) hereto.
- (c) The arbitrator(s) or referee(s) shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association. A single arbitrator or referee shall be knowledgeable in the subject matter of the dispute. Where three arbitrators or referees conduct an arbitration or reference proceeding, the claim shall be decided by a majority vote of the three arbitrators or referees, at least one of whom must be knowledgeable in the subject matter of the dispute and at least one of whom must be a practicing attorney. The arbitrator(s) or referee(s) shall award recovery of all costs and fees (including reasonable attorneys' fees, administrative fees, arbitrators' fees, and court costs). The arbitrator(s) or referee(s) also may grant provisional or ancillary remedies such as, for example, injunctive relief, attachment, or the appointment of a receiver, either during the pendency of the arbitration or reference proceeding or as part of the arbitration or reference award.
- (d) Judgment upon an arbitration or reference award may be entered in any court having jurisdiction, subject to the following limitation: the arbitration or reference award is binding upon the parties only if the amount does not exceed Four Million Dollars (\$4,000,000.00); if the award exceeds that limit, either party may commence legal action for a court trial de novo. Such legal action must be filed within thirty (30) days following the date of the arbitration or reference award; if such legal action is not filed within that time period, the amount of the arbitration or reference award shall be binding. The computation of the total amount of an arbitration or reference award shall include amounts awarded for arbitration fees, attorneys' fees, interest, and all other related costs.

(e) At the Lender's option, foreclosure under a deed of trust or mortgage may be accomplished either by exercise of a power of sale under the deed of trust or by judicial foreclosure. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(f) Notwithstanding the applicability of other law to any other provision of this Agreement, the Federal Arbitration Act, 9 U.S.C. § 1 et seq., shall apply to the construction and interpretation of this arbitration paragraph.

21. **RECONVEYANCE.** Upon payment by Trustor of all sums secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all instruments evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

22. **SUBSTITUTE TRUSTEE.** Beneficiary, at Beneficiary's option, may from time to time remove Trustee and appoint a successor Trustee to any Trustee appointed hereunder. Without reconveyance of the Property, the successor Trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

23. **REQUEST FOR NOTICE.** Trustor requests that copies of the notice of default and notice of sale be sent to Trustor's address as shown above or to the last known address.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust on the day and year first above written.

TRUSTOR:

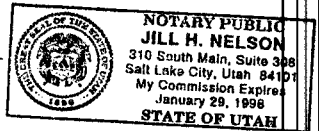
Brent W Heninger
BRENT W HENINGER

Joann B Heninger
JOANN B HENINGER

STATE OF UTAH)
COUNTY OF Box Elder)

On this 27 day of March, 19 97, personally appeared before me Brent W Heninger & Joann B Heninger, the signer(s) of the above instrument, who duly acknowledged to me that he executed the same.

Jill H Nelson
NOTARY PUBLIC



My Commission Expires Residing at:

1-29-98 Mantua

REQUEST FOR RECONVEYANCE

To Trustee:

The undersigned is the legal owner of all indebtedness secured by this Deed of Trust. Said indebtedness has been paid in full. You are hereby directed to cancel this Deed of Trust, which is delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the persons legally entitled thereto.

Date: _____, 19 _____

EXHIBIT "A"
TRUSTOR: BRENT W. HENINGER and JOANN B. HENINGER

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PARCEL 1: Beginning at a point located South 11.00 feet from the Northeast corner of Lot 3, Block 3, Plat "C", BRIGHAM CITY SURVEY, point of beginning being further described as being North 484.00 feet and East 330.00 feet from the Southwest corner of Lot 1, said Block 3, running thence South 114.00 feet; thence West 102.57 feet; thence North 71.00 feet to the center of Box Elder Creek; thence Northwesterly along the center of Box Elder Creek 69.00 feet, more or less, to the center of said Block 3; thence North 18.50 feet to a point which is 11.00 feet South of the North line of said Lot 3; thence East 166.73 feet to the point of beginning. TOGETHER WITH a 12.00 foot perpetual right of way for ingress and egress recorded in Book 321, Page 412 of the Official County Records described as follows: Beginning at a point located South 109.55 feet from the Northwest corner of said Lot 3; thence East 166.77 feet to the center of said Block 3; thence South 12.00 feet; thence West 166.77 feet; thence North 12.00 feet to the point of beginning. ALSO TOGETHER WITH a right of way and easement in Book 326, Page 168, of Official County Records described as follows: Beginning at a point located South 109.55 feet and East 166.77 feet from the Northwest corner of said Lot 3, point of beginning being on the West line of the East one half of said Lot 3; running thence South 20.51 feet; thence East 64.20 feet; thence North 12.00 feet; thence West 40.00 feet; thence North 60.00 feet; thence Northeasterly 18.00 feet to the center of Box Elder Creek; thence Northwesterly along the center of Box Elder Creek 35.00 feet, more or less, to the West line of the East one half of said Lot 3; thence South 80.03 feet to the point of beginning.

PARCEL 2: Beginning at a point located 11.00 feet South and 133.73 feet West from the Southeast corner of Lot 4, Block 3, Plat C, Brigham City Survey; thence West 33.00 feet to the center of said Block 3; thence North 6.00 feet; thence Southeasterly 33.54 feet to the point of beginning.