

ENT 20298:2009 PG 1 of 7
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2009 Feb 26 2:01 pm FEE 0.00 BY SS
RECORDED FOR UDOT



Utah Department of Transportation Right of Entry and Occupancy Agreement

Project No: F-0068(45)33	Parcel No.(s): 36B, 36BE	Job/Proj / Auth No: 52701	Pin No: 5748
Project Location: SR-68; Bangerter Highway through Saratoga Springs			
County of Property:	Tax ID / Sidwell No:		
Property Address: 1410 North Redwood Road, Saratoga Springs, UT			
Owner / Grantor (s): S3 Properties L.P., a Nevada limited partnership as to undivided 74 1/2 % interest; and Wesmar Land Co., an Oregon Corporation as to an undivided 25 1/5 % interest			
Owner's Address: : 42874 Old Wingville Rd., Baker, OR 97814-8253			
Owner's Home Phone:	Owner's Work Phone:	Greg Byron 208-344-8600	

Acquiring Entity: Utah Department of Transportation (UDOT)

**For the subject property described in the attached deed (Exhibit A), commonly referred to as:
1410 North Redwood Road, SARATOGA SPRINGS, UT 84045**

This Right of Entry and Occupancy Agreement ("Agreement") is made pursuant to Utah Code Annotated Section 59-2-1337.

We, the undersigned (as Property Owners), hereby grant to the State of Utah, Department of Transportation ("UDOT") and its contractors permission to enter upon, take possession of, and commence construction of its public works facility, a portion of which is to be located on the property described in attached Exhibit A, subject to the terms and conditions contained herein. This Agreement is made in anticipation of a possible condemnation action by UDOT and is intended to provide for the entry and occupancy of the property pending further negotiations or the filing and pursuit of condemnation proceedings and possible alternative informal proceedings as provided for in this Agreement. Property Owners understand that, by executing this Agreement, Property Owners have waived and abandoned all defenses to the acquisition of the property.

It is understood and agreed that the sum of \$193,500.00 will be paid to the Property Owners as consideration for entering into this Agreement. This amount paid to the Property Owners shall be deducted from a final settlement, award of arbitration, or other determination of just compensation in an eminent domain action should one be pursued to acquire the property that is determined to be necessary for the project. The amount paid will be for the purposes of this Agreement only, and will not be admissible as evidence in any subsequent process used to establish the value of the property or the amount of compensation that may be due to the Property Owners. This Agreement is an 'entry agreement' made pursuant to Utah Code Annotated Section 59-2-1337. In the event property taxes are validly assessed after the date of this Agreement, said property taxes will be the responsibility of the Property Owners.

The parties to this Agreement understand that a title report may indicate that other third parties may have a claim to part of the proceeds being paid by UDOT to the Property Owners under this Agreement. It is understood that Property Owners are obligated to provide good and marketable title to the property when conveyance of any fee interest is made to UDOT. It is not the intent of the Agreement to properly assess potential third-party claims. In the event it is later determined that part of the compensation paid to the Property Owners herein should properly be paid to other third parties, then it shall be the sole obligation of the Property Owners to satisfy such claims and deliver good and marketable title to UDOT. It shall also be the sole obligation of the Property Owners to hold UDOT harmless as to such encumbrances by third parties.

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It is understood and agreed that this Agreement is granted without prejudice to the rights of the Property Owners, pending any settlement, to contest the amount of compensation to be paid the Property Owners for the property described in Exhibit A. If a satisfactory settlement cannot be agreed upon, UDOT will, upon notice from the Property Owners that the amount of compensation offered and/or other proposed settlement terms are not acceptable, or at its own election, proceed at once to commence and diligently prosecute a condemnation proceeding in the appropriate court for a judicial determination of such compensation. If requested to do so by the Property Owners, UDOT will, prior to commencing a condemnation proceeding, enter into a mediation or arbitration procedure provided for in Utah Code Annotated Section 78-34-21 through the Office of the Property Rights Ombudsman.

If the Property Owner uses the property for a residence, business, or farming operation and is required to move as a result of UDOT's acquisition of the property, the Property Owners may be entitled to relocation assistance and/or payments as a displaced person. The relocation assistance and payment are available as a matter of right and subject to federal and state law if the Property Owners are displaced by the acquisition of this property and are not conditional upon the Property Owners signing this Right of Entry and Occupancy Agreement.

The effective date of the Right Of Entry and Occupancy Agreement shall be the date this Agreement is executed by the Property Owners, as shown below, and that date shall be the date of value for fair market valuation purposes in the context of settlement negotiations, arbitration, or an eminent domain proceeding, should one be necessary, unless the Property Owners have been previously served with a summons in regard to this property acquisition or the parties have otherwise agreed in writing to a different date for purposes of valuation. It is understood that, according to state law, any additional compensation that is ordered to be paid to the Property Owners for the acquisition of the property will include interest at an annual rate of 8 % on any additional compensation that is determined to be payable to the Property Owners over and above that paid with this Agreement, calculated from the date of this Agreement.

DATED this 9th day of February, 2009.

Grantor

S3 Properties L.P.
By its General Partner:

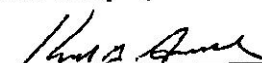
K.G. Smith L.P.,
By its General Partner:

SSI Management Corporation

By: 
Kirk G. Smith, President

Grantor

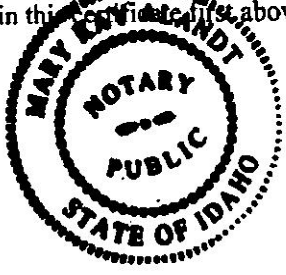
Wesmar Land Company

By: 
Kirk G. Smith, President

STATE OF IDAHO)
)
 ss.
)
COUNTY OF ADA)

On this 9th day of February, 2009, before me, the undersigned Notary Public in and for said State, personally appeared KIRK G. SMITH, known or identified to me to be the President of SSI Management Corporation, the General Partner of K.G. Smith L.P., the General Partner of S3 Properties L.P., the Grantor that executed the foregoing instrument and the person whose name is subscribed to the within instrument, and acknowledged to me that said limited partnership executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Mary Kay Alandt

NOTARY PUBLIC, State of Idaho
Residing at Boise, Idaho
Commission expires: May 1, 2012

STATE OF IDAHO)
)
 ss.
)
COUNTY OF ADA)

On this 9th day of February, 2009, before me, the undersigned Notary Public in and for said State, personally appeared KIRK G. SMITH, known or identified to me to be the President of Wesmar Land Company, the Grantor that executed the foregoing instrument and person whose name is subscribed to the within instrument, and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Mary Kay Alandt

NOTARY PUBLIC, State of Idaho
Residing at Boise, Idaho
Commission expires: May 1, 2012

DATED this 18 day of FEBRUARY, 2009

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Lyle McMillan
Lyle McMillan, UDOT Director of Right of Way

STATE OF UTAH

County of Garfield

On the 18 day of FEBRUARY, 2009, personally appeared before me

Lyle D. McMillan the signer(s) of this Agreement for UDOT
who duly acknowledged to me that they executed the same.

[Signature]
NOTARY PUBLIC

Exhibits:

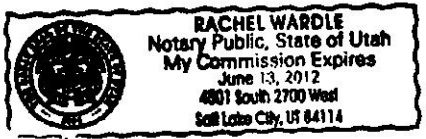


Exhibit "A"

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WHEN RECORDED, MAIL TO:
Utah Department of Transportation
Right of Way, Fourth Floor
Box 148420
Salt Lake City, Utah 84114-8420

Easement

(LIMITED LIABILITY COMPANY)

Tax ID. No. 66-170-0013

Parcel No. 0068:36B:E

Utah County

Project No. F-0068(45)33

S3 Properties L.P., a Nevada limited partnership as to an undivided 74 1/2% interest, Grantor, hereby GRANTS AND CONVEYS to the UTAH DEPARTMENT OF TRANSPORTATION, at 4501 South 2700 West, Salt Lake City, Utah 84119, Grantee, for the sum of _____ Dollars,

A temporary construction easement for the purpose of constructing thereon cut and/or fill slopes, wall construction and driveway relocation incident to a roadway widening known as Project No. 0068, being part of an entire tract of property situate in the NW1/4NE1/4 of Section 14, T. 5 S, R. 1 W, S.L.B. & M. This easement shall commence upon the beginning of actual construction on the property and shall continue only until project construction on the property is complete, or for three years, whichever first occurs. The easement shall be non-exclusive such that the Grantor may use the property at any time in a manner which does not interfere with construction activities. The said part of an entire tract is described as follows:

Beginning at a point on the North line of Lot 8, as shown on the Plat of SARATOGA TOWN CENTER SUBDIVISION, File Number 11899, on file in the office of the Utah County Recorder, Utah, which is 64.00 ft. perpendicularly distant easterly from the centerline of said project No. 0068, opposite Engineer Station 609+73.51, which is 60.99 ft.

N. 89°51'45" E., along the north line of said NE1/4, and 1,072.69 ft.; S. 00°08'15" E., from the North Quarter corner of said Section 14; and running thence S. 89°27'44" E., along said north line of Lot 8, 16.88 ft. to a point on a 5,819.56 ft. radius curve to the right, (Note: radius bears S. 88°04'41" W.); thence southerly along said curve 152.82 ft.; thence S. 00°15'25" E., 32.60 ft.; thence S. 37°03'55" E., 34.83 ft.; thence S. 89°27'46" E., 91.01 ft. to the east line of said Lot 8; thence S. 00°32'16" W., along said east line, 28.38 ft. to a point 396.68 ft. perpendicularly distant easterly from the centerline of said project No. 0068, opposite Engineer Station 607+33.63; thence N. 85°39'30" W., 34.78 ft.; thence N. 89°28'25" W., 264.93 ft.; thence N. 44°28'59" W., 46.74 ft.; thence N. 00°30'28" E., 97.87 ft. to a point of tangency with a 4,314.00 ft. radius curve to the left; thence northerly 108.16 ft. along the arc of said curve to the point of beginning.

The above described parcel of land contains 12,504 square feet in area or 0.287 acres, more or less.

Exhibit "A"

WHEN RECORDED, MAIL TO:
Utah Department of Transportation
Right of Way, Fourth Floor
Box 148420
Salt Lake City, Utah 84114-8420

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Warranty Deed
(LIMITED LIABILITY COMPANY) Tax ID. No. 66-170-0013
Utah County Parcel No. 0068:36B
Project No. F-0068(45)33

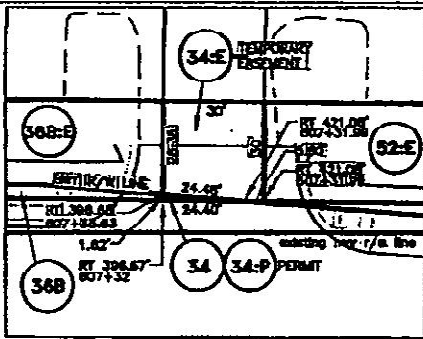
S3 Properties L.P., a Nevada limited partnership as to an undivided 74 1/2% interest, Grantor, hereby CONVEY AND WARRANT to the UTAH DEPARTMENT OF TRANSPORTATION, at 4501 South 2700 West, Salt Lake City, Utah 84119, Grantee, for the sum of _____ Dollars, and other good and valuable considerations, the following described parcel of land in Utah County, State of Utah, to-wit:

A parcel of land in fee for the purpose of constructing thereon a roadway known as Project No. 0068, being part of an entire tract of property situate in the NW1/4NE1/4 of Section 14, T. 5 S, R. 1 W, S.L.B. & M. The boundaries of said parcel of land are described as follows:

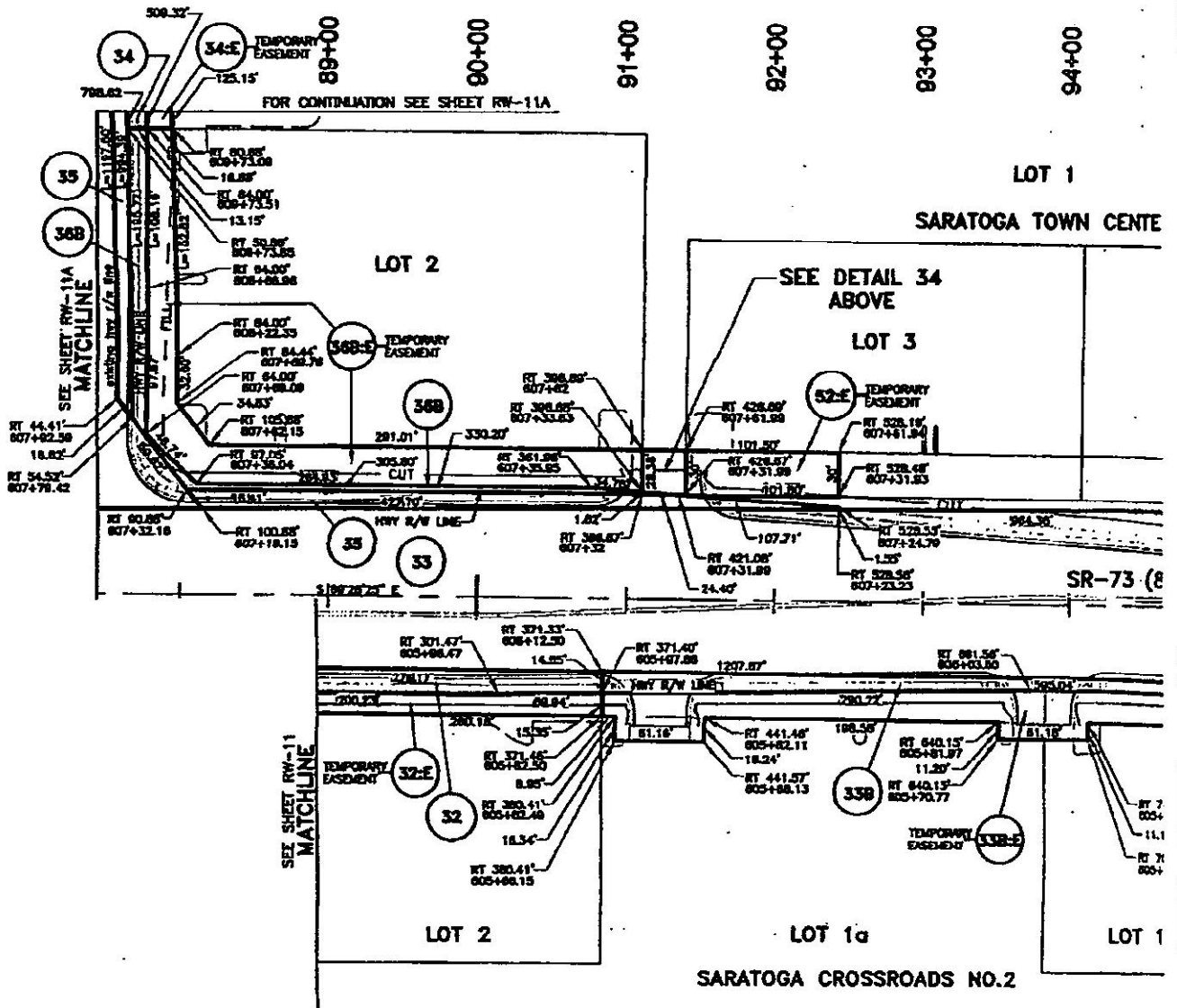
Beginning at Northwest corner of Lot 2, as per the Plat of SARATOGA TOWN CENTER SUBDIVISION, File Number 11899, on file in the office of the Utah County Recorder, Utah, which point is 47.85 ft. N. 89°51'45" E., along the north line of said NE1/4 and 1,072.54 ft., S. 00°08'15" E., from the North Quarter corner of said Section 14; and running thence S. 89°27'44" E., along the north line of said Lot 2, 13.15 ft. to a point 64.00 ft. perpendicularly distant easterly from the centerline of said project No. 0068, opposite Engineer Station 609+73.51, which is a point on a 4,314.00 ft. radius curve to the right, (Note: radius bears S. 89°04'17" W.); thence southerly along said curve 108.16 ft.; thence S. 00°30'28" W., 97.87 ft.; thence S. 44°28'59" E., 46.74 ft.; thence S. 89°28'25" E., 264.93 ft.; thence S. 85°39'30" E., 34.78 ft. to the east line of said Lot 2, which is 396.68 ft. perpendicularly distant easterly from the centerline of said project No. 0068, opposite Engineer Station 607+33.63; thence S. 00°32'16" W., along said east line, 1.62 ft.; thence N. 89°27'46" W., 305.80 ft.; thence N. 37°03'02" W., 59.62 ft. to a point on a 5,789.41 ft. radius curve to the left, (Note: radius bears N. 89°59'50" W.); thence northerly along said curve 195.77 ft. to the point of beginning.

The above described parcel of land contains 3,581 square feet in area or 0.082 acres, more or less.

Exhibit "A"



DETAIL 34
SCALE 1"=30'



SEE SHEET RW-11A MATCHLINE

PRELIMINARY
NOT FOR CONSTRUCTION