

Upon Recording Return To:

Brad H. Bearnson
OLSON & HOGGAN, P.C.
56 West Center
P.O. Box 525
Logan, Utah 84323-0525

ENT 574812 Bk 558 Pg 229
DATE 13-APR-1993 3:57PM FEE 17.00
MICHAEL L GLEED, RECORDER - FILED BY DB
CACHE COUNTY, UTAH
FOR OLSON & HOGGAN

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 24th day of ~~January~~^{March}, 1993 by and between ANN INVESTMENT ("ANN"), a Utah General Partnership, and K.S.G. PROPERTIES, INC. ("K.S.G."), a Utah corporation.

RECITALS

A. ANN is the owner of fee simple title in certain real property and improvements located in Cache County, Utah, more particularly described as follows:

Beginning at a point 20 feet West of the Northeast corner of Lot 6, Block 33, Plat "A" Logan City Survey, running thence West 54.25 feet, more or less, to the West line of the East half of the said Lot 6; thence South 9 rods, more or less to the South line of the North half of said Lot 6; thence East 54.25 feet more or less to a point 20 feet West of the East line of said Lot 6; thence North 9 rods more or less to the place of beginning, and being further described as situated in Section 34, Township 12 North, Range 1 East of the Salt Lake Base and Meridian. Tax No. 06-044-0027.

Beginning 10 rods East of the Northwest corner of Lot 4, Block 33, Plat "A" Logan City Survey, and running thence South 4 rods; thence East 132 feet; thence North 22 rods; thence West 20 feet; thence South 9 rods; thence West 38.20 feet; thence South 55.6 feet; thence West 75 feet; thence South 82.90 feet; thence West 4 feet; thence South 10 feet to beginning. Together with a right-of-way and being situate in the Northwest Quarter of Section 34, Township 12 North, Range 1 East, Salt Lake Base and Meridian. Tax No. 06-044-0015.

(Hereinafter referred to as the "ANN Parcel".)

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B. K.S.G. is the owner of fee simple title in certain real property located in Cache County, Utah, more particularly described as follows:

Beginning 104.5 feet East of the Northwest corner of Lot 5, Block 33, Plat "A", Logan City Survey, and running thence East along the South line of 400 North Street 123.5 feet (118.25 feet by record) to the West line of the East half of said Lot 6 and an existing survey marker; thence South $0^{\circ}01'13''$ West along said West line 149.58 feet (South 148.50 feet by record) to the South line of the North half of said Lot 6; thence East along said South line 16.05 feet (22.00 feet by record); thence South 54.15 feet (55.5 feet by record); thence West 74.88 feet (76 feet by record) to a fence line; thence North $0^{\circ}07'33''$ West (North by record) along said fence line 18.00 feet to a fence corner; thence South $89^{\circ}44'24''$ West along a fence line 58.72 feet (West 58 feet by record) to a fence corner; thence North 44.00 feet; thence West 10.00 feet; thence North 82.00 feet; thence East 4.50 feet; thence North 60.00 feet to said South line of Street and the point of beginning.

Tax No. 06-044-0026.

(Hereinafter referred to as the "K.S.G. Parcel".)

C. The K.S.G. Parcel is adjacent to and contiguous with the ANN Parcel; the two (2) parcels sharing a common boundary along the west boundary line and part of the south boundary line of the ANN Parcel.

D. ANN, its partners, employees, tenants and patrons claim to have for a period of approximately twenty-seven (27) years used a driveway located on the east portion of the K.S.G. parcel for ingress and egress to the ANN property to and from 400 North Street, Logan, Utah, and extending along the entire west boundary of the ANN Parcel approximately fifteen feet (15') in width; by reason of such use ANN claims a prescriptive easement for ingress and egress over the K.S.G. Parcel, to the full extent of said driveway.

E. K.S.G. has undertaken efforts to develop the K.S.G. Parcel and to construct improvements thereon which would interfere with the prescriptive easement claimed by ANN.

F. To declare and clarify the prescriptive easement claimed by ANN over the K.S.G. Parcel, ANN initiated legal action against K.S.G. in the District Court of the First Judicial District in and for the County of Cache, State of Utah, Civil No. 92-117PR, seeking injunctive relief thereunder against K.S.G. from interfering with

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the prescriptive easement claimed by ANN and declaring in ANN the prescriptive easement claimed by ANN.

G. ANN and K.S.G., having now reached agreement as to the settlement of the issues subject of the legal action initiated by ANN, wish to compromise and settle all issues and causes of action between them as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ANN and K.S.G. hereby agree as follows:

ARTICLE I.

GRANT OF EASEMENT TO ANN

1.01. Grant of Easement. K.S.G. grants to ANN, its successors and assigns, a non-exclusive, perpetual easement and privilege of right-of-way of ingress and egress, not less than twenty feet (20') wide and thirty-five feet (35') in depth (North to South), over the K.S.G. Parcel, to and from 400 North Street, Logan, Utah, in favor of the ANN Parcel. The easement hereby granted is for vehicular, bicycle and pedestrian traffic and for the installation and maintenance of all utilities and other service lines of every type and nature. The dimensions and location of the easement are more particularly set forth on Exhibit "A" hereto which is incorporated herein by reference.

1.02. Installation of Improvements/Maintenance. K.S.G. shall provide and install, at its sole expense, all improvements relative to the easement granted in this Article I, including, at a minimum, asphalt surfacing and cement curbing and the replacement of all sidewalks and other improvements damaged by K.S.G., its agents, contractors, or employees. Upon completed installation of all improvements pertaining to the easement granted under this Article I, all costs and expenses relating to the maintenance, repair and replacements of the improvements (not directly caused by K.S.G., its agents, successors, assigns, tenants, guests or employees) shall be borne by ANN, its successors and assigns.

1.03. Benefit and Binding Effect. The easement, covenants and restrictions contained in this Article I shall run with and bind both the K.S.G. Parcel and the ANN Parcel and be binding upon ANN, K.S.G., their respective successors in interest and all parties having or acquiring any right, title or interest in or to any part of the K.S.G. Parcel or the ANN Parcel or in any property having ownership interest in or right of use of the easement specified in Section 1.01. Any conveyance of easement rights shall

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also carry all the duties and obligations specified in this Article I. Each party hereto shall be personally obligated and liable for performing its responsibilities and duties hereunder. Conveyance of title to either the K.S.G. Parcel or the ANN Parcel shall not affect either parties' rights or obligations hereunder.

ARTICLE II.

GRANT OF EASEMENT TO K.S.G.

2.01. Grant of Easement. ANN grants to K.S.G., its successors and assigns, a non-exclusive easement and privilege of right-of-way of ingress and egress (not to exceed twenty feet (20') in width) over the ANN Parcel to a maximum depth of two hundred thirty-four (234') for vehicular traffic to and from 400 North Street, Logan, Utah, in favor of the K.S.G. Parcel. The easement granted under this Section 2.01 is for the limited purpose of allowing the agents and employees of K.S.G. (and its tenants of the K.S.G. Parcel) access to approximately eight (8) vehicular parking stalls situated on the southern extreme of the K.S.G. Parcel and depicted on Exhibit "A" hereto as parking stalls Nos. 33-40 and a dumpster. The centerline of the easement otherwise granted under this Section 2.01 is intended to be consistent with existing patterns of traffic subject to relocation from time to time by the owners of the ANN Parcel to allow the owners of the ANN Parcel to further develop and improve the ANN Parcel. The easement granted under this Section 2.01 is (i) limited to use by K.S.G., its agents, employees and customers, K.S.G.'s tenants and other agents, employees and customers of such tenants and (ii) shall be immediately terminated upon K.S.G.'s (or its successors') acquisition of any property located adjacent to the K.S.G. parcel which would otherwise allow access to eight (8) parking stalls and dumpster serviced by the easement provided in this Section 2.01.

2.02. Maintenance/Improvements. All costs and expenses relating to the maintenance, repair and replacements of the improvements along the easement hereby granted under this Article II shall be borne by ANN and its successors and assigns, except to the extent such repairs, maintenance or replacement is caused by the negligent acts or omissions of K.S.G., its successors or assigns in interest, agents or employees.

2.03. Benefit and Binding Effect. The easement, covenants and restrictions contained in this Article II shall run with and bind both the K.S.G. Parcel and the ANN Parcel and be binding upon ANN, K.S.G., their respective successors in interest and all parties having or acquiring any right, title or interest in or to any part of the K.S.G. Parcel or the ANN Parcel or in any property having ownership interest in or right of use of the easement specified in Section 2.01. Any conveyance of easement rights shall also carry all the duties and obligations specified in this Article

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II. Each party hereto shall be personally obligated and liable for performing its responsibilities and duties hereunder. Conveyance of title to either the K.S.G. Parcel or the ANN Parcel shall not affect either parties' rights or obligations hereunder.

ARTICLE III.

RESTRICTIONS, COVENANTS AND OBLIGATIONS OF ANN

3.01. Removal and Replacement of Sign. As a further inducement to K.S.G. to enter into this Agreement, ANN agrees to remove the existing sign and related fixtures located near the northwest corner of the ANN Parcel. ANN may replace the sign and install a new signage fixture in regard thereto along the northern boundary of the ANN Parcel, within five feet (5') west of the west line of the east driveway to 400 North Street, as now located upon the ANN Parcel. Removal of the signage shall be completed within ninety (90) days of the date hereof.

3.02. Restriction on Transient and Temporary Retail Sales. ANN also agrees not to permit any person or entity to conduct retail sales from temporary or transient facilities along the northern thirty-five feet (35') of the ANN Parcel; this restriction is limited to temporary retail sales facilities such as "Snow Shack", fireworks stands or other similar enterprises conducting retail sales from nonpermanent facilities. Nothing herein shall restrict ANN, its successor or assigns, from further developing, improving or modifying the improvements upon the ANN Parcel in whatever manner ANN, its successors or assigns, deems appropriate or conducting retail sales or other business upon any portion of the ANN Parcel, except as otherwise provided in Section 3.04.

3.03. Dismissal of Legal Proceedings. Within ten (10) days of the execution and delivery of this Agreement by K.S.G., ANN shall cause the dismissal, with prejudice, of the legal proceedings now pending in the First Judicial District Court in and for Cache County, Utah, and styled as Ann Investment Partnership v. K.S.G. Properties, Inc., Civil No. 92-117PR.

3.04. Restrictive Setback for Building. As a material inducement to K.S.G. to enter into this Agreement, ANN shall provide, in perpetuity, for not less than a thirty-five foot (35') setback from the northern boundary of the ANN Parcel for the construction of its proposed building and all related improvements (other than reasonable signage). Within the thirty-five foot (35') setback provided in this Section 3.04, ANN, its successors and assigns, shall at no time construct any building or other improvement therein without the express written consent of the owners of the K.S.G. Parcel. The restrictions contained in this Section 3.04 shall run with and bind the ANN Parcel and be binding upon ANN, its successors and assigns and all parties having or

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acquiring any right, title or interest in or to any part of the ANN Parcel and shall run with, in favor of and be appurtenant to the K.S.G. Parcel. Any conveyance of rights in or to the ANN Parcel or K.S.G. Parcel shall also carry with it the burdens and benefits of this Section 3.04.

ARTICLE IV.

RESTRICTIONS, COVENANTS AND OBLIGATIONS OF K.S.G.

4.01. Restrictive Setback for Building. As a material inducement to ANN to enter into this Agreement, K.S.G. shall provide, in perpetuity, for not less than a thirty-five foot (35') setback from the northern boundary of the K.S.G. Parcel for the construction of its proposed building and all related improvements (other than reasonable signage). Within the thirty-five foot (35') setback provided in this Section 4.01, K.S.G., its successors and assigns, shall at no time construct any building or other improvement therein without the express written consent of the owners of the ANN Parcel. The restrictions contained in this Section 4.01 shall run with and bind the K.S.G. Parcel and be binding upon K.S.G., its successors and assigns and all parties having or acquiring any right, title or interest in or to any part of the K.S.G. Parcel and shall run with, in favor of and be appurtenant to the ANN Parcel. Any conveyance of rights in or to the K.S.G. Parcel or ANN Parcel shall also carry with it the burdens and benefits of this Section 4.01.

ARTICLE V.

MISCELLANEOUS

5.01. Mutual Release. K.S.G. and ANN each, for themselves, their successors and assigns, do hereby release and forever discharge the other (and all agents and employees of the other) of and from all existing or possible actions, causes of action, claims, demands, damages, costs and expenses of any kind, on account of, or in any way arising from or relating to all known or unknown injuries or damages resulting or that may result from (i) the prior acts or omissions of the other, their agents or employees, or (ii) the rights, claims or interests at any time asserted by any one of the parties hereto in the property or properties of the other. It is further understood by each of the parties that this Agreement constitutes a full and final settlement of disputed claims between the parties and that each of the parties deny liability to the other.

5.02. Attorney's Fees. In the event that any party hereto shall be in default or breach of this Agreement, said party shall be liable to pay all reasonable attorney's fees, court costs and other related collection costs and expenses incurred by the non-

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defaulting or non-breaching party in prosecuting its rights hereunder.

5.03. Further Instruments. The parties hereto agree that they will execute any and all other documents or legal instruments that may be necessary or required to carry out and effectuate the provisions hereof; including, but not limited to Quit Claim Deeds relinquishing any interest in the property of the other, except as expressly provided hereunder.

5.04. Waiver. A waiver by any party of any provision hereof, whether in writing or by course of conduct or otherwise, shall be valid only in the instance for which it is given, and shall not be deemed a continuing waiver of said provision, nor shall it be construed as a waiver of any other provision hereof.

5.05. Paragraph Headings. The paragraph headings of this Agreement are inserted only for convenience and in no way define, limit or describe the scope or intent of this Agreement nor affect its terms and provisions.

5.06. Governing Law. This Agreement, and all matters relating hereto, including any matter or dispute arising out of the Agreement, shall be interpreted, governed, and enforced according to the laws of the State of Utah, and the parties hereto consent to the jurisdiction of any appropriate court in the State of Utah to resolve such disputes.

5.07. Amendments. This Agreement may be amended at any time upon unanimous agreement of the parties hereto, which amendment(s) must be reduced to writing and signed by all parties in order to become effective.

5.08. Severability. In the event that any provision of this Agreement, or any operation contemplated hereunder, is found by a court of competent jurisdiction to be inconsistent with or contrary to any law, ordinance, or regulation, the latter shall be deemed to control and the Agreement shall be regarded as modified accordingly and, in any event, the remainder of this Agreement shall continue in full force and effect.

5.09. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

5.10. Separate Counterparts. This Agreement is being executed in several identical counterparts, each one of which shall be considered an original and all of which when taken together shall constitute but one instrument.

5.11. Entire Agreement. This Agreement constitutes and represents the entire agreement of the parties hereto with respect

to the subject matter hereof, and all other prior agreements, covenants, promises and conditions, verbal or written, between these parties are incorporated herein. No party hereto has relied upon any other promise, representation or warranty, other than those contained herein, in executing this Agreement.

5.12. Incorporation of Recitals and Exhibits. The above recitals and all exhibits and schedules attached hereto are incorporated herein by this reference and expressly made a part of this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement on the day and year first above written.

ANN INVESTMENT, A Utah General Partnership

By *E. J. Nixon, Jr.*
E. J. Nixon, Jr., General Partner

By *Stan Allen*
Stan Allen, General Partner

K.S.G., INC., a Utah Corporation

ATTEST

By *Deenee Webb*
President

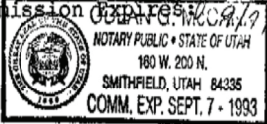
Secretary

STATE OF UTAH)
 : ss.
County of Cache)

On the 24th day of ~~January~~ ^{MARCH}, 1993, personally appeared before me E. J. NIXON, JR. and STAN ALLEN, known to me to be two of the General Partners in the partnership of ANN INVESTMENT, a Utah Partnership, and the General Partners who subscribed said partnership name to the foregoing instrument, and acknowledged to

me that they executed the same in said partnership name and that said partnership executed the same.

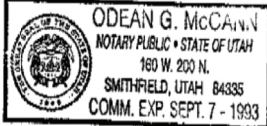
Odean G. McCann
 NOTARY PUBLIC
 Residing at: Smithfield, Utah
 Commission Expires: 9/7/93



STATE OF UTAH)
) ss.
 County of Cache)

On the 24th day of ~~January~~ ^{March}, 1993, personally appeared before me Allen G. Webb and _____, who, being by me duly sworn, did say that they are the President and Secretary respectively of K.S.G. PROPERTIES, INC., and that the said instrument was signed in behalf of said Corporation by authority of a resolution of the Board of Directors or its By-Laws, and the aforesaid officers acknowledged to me that said Corporation executed the same.

Odean G. McCann
 NOTARY PUBLIC
 Residing at: Smithfield, Utah
 Commission Expires: 9/7/93



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