

7961503

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

HUPRICH & KRASNOVE, LLP  
Torrance Executive Plaza West  
3838 Carson Street, Suite 210  
Torrance, California 90503  
Attention: Edward Krasnove, Esq.

7961503  
07/31/2001 12:51 PM 44.00  
Book - 8484 Pg - 3596-3612  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
METRO NATIONAL TITLE  
BY: R.O.J. DEPUTY - WI 17 P.

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

ACCESS AND UTILITY EASEMENT AGREEMENT

RECITALS

WHEREAS, LOWE'S HIW, INC., a Washington corporation ("Grantor") is the fee owner of certain real property located in the City of West Jordan, Utah and described in Exhibit "A" attached hereto and made a part hereof and shown on the Site Plan attached hereto as Exhibit "B" and made a part hereof ("Grantor's Property").

WHEREAS, JORDAN LANDING, LLC, a Delaware limited liability company ("Grantee") is the fee owner of certain property located in West Jordan, Utah and described in Exhibit "C" attached hereto and made a part hereof and shown on the Site Plan attached hereto as Exhibit "B" and made a part hereof ("Grantee's Property").

WHEREAS, Grantor has developed or will develop the Grantor's Property as a retail home improvement center and Grantee has developed or will develop the Grantee's Property as a retail shopping center known as "Jordan Landing Plaza".

WHEREAS, Grantee desires to obtain an easement over a portion of Grantor's Property for access and utility purposes and Grantor has agreed to grant and convey to Grantee a non-exclusive easement for access and utility purposes over a portion of Grantor's Property.

NOW, THEREFORE, Grantor, for and in consideration of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, shall grant and convey to Grantee and to all future owners of Grantee's Property, or any portion thereof, a non-exclusive easement for access to and from the Grantee's Property, in common with all others entitled to use the same, on, over and across that portion of the Grantor's Property described on Exhibit "A-1" attached hereto and made a part hereof and shown on the Easement Area Site Plan attached hereto as Exhibit "A-2" and made a part hereof (the "Easement Area"). Grantor further grants and conveys to Grantee and to all future owners of Grantee's Property, or any portion thereof, a non-exclusive easement across, in, over and under the Easement Area for utility purposes as more particularly set forth herein.

BOOK 8484 PAGE 3596

AGREEMENT

1. Access Easement. There shall be created for the benefit of Grantee and all future owners of Grantee's Property, or any portion thereof, a non-exclusive easement, on, over, through and across the Easement Area for the purpose of vehicular and pedestrian ingress and egress from one Property to the other Property and to adjoining streets and driveways.

2. Utility Easement. There shall be created for the benefit of Grantee and all future owners of Grantee's Property, or any portion thereof, a non-exclusive easement upon, across, in, over and under the Easement Area for ingress to, egress from, and the construction, installation, operation, maintenance, repair, removal, and replacement of Utility Facilities. As used in this Easement Agreement, the term "Utility Facilities" means all utility and service lines and systems serving the Grantee's Property or portions thereof, including sewers, ejector pumps, water pipes and systems, intake and exhaust vents, gas pipes and systems, sprinkler pipes and systems, drainage lines and systems, electrical power conduits, lines and wires, cable television lines, microwave communication systems, telephone conduits, lines and wires, security lines and systems, and other service or utility lines. Grantor further grants and conveys to Grantee and all future owners of Grantee's Property, or any portion thereof, the right of assignment, in whole or in part, to any third party utility providers, without limitation, and the right to apportion or divide in whatever manner Grantee deems desirable, the easement for Utility Facilities, including but not limited to all right of access and ingress and egress granted to Grantee in connection with such grant of easement.

3. No Build Area. Grantor agrees that no walls, fences, improvements, obstructions or barriers of any kind (whether temporary or permanent) shall be constructed, erected or permitted within the Easement Area; provided, however, that Grantor may install hardscape and landscaping within the Easement Area. Grantor further agrees that Grantor will take no action which could limit, interfere with or impede the use or exercise of any of Grantee's rights hereunder, including without limitation, the granting of any right whatsoever to park motor vehicles in the Easement Area.

4. Maintenance of Easement Area. Grantor shall maintain or cause to be maintained the Easement Area in a clean, sightly, good state of repair and safe condition, comparable to the standard of maintenance followed in other first class developments of comparable size in Salt Lake County, Utah. Notwithstanding the foregoing, the Easement Area shall be maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and the provisions of this Amendment. In the event Grantor fails to maintain the Easement Area in the aforesaid condition, Grantee shall have the right, after thirty (30) days prior written notice to Grantor, to so maintain it, and Grantor shall reimburse Grantee for all of its reasonable cost of doing so.

5. Run with the Land. The easements granted herein shall run with the Grantor's Property and be appurtenant to and be for the benefit of the Grantee, its successors and assigns, and for the benefit of the Grantee's Property. The terms of this Easement Agreement, including the respective obligations of each of the parties herein, shall apply to and be binding upon the parties hereto and their respective administrators, successors and assigns.

6. Limitation on Use. The exercise of the easements granted by this Easement Agreement shall be limited solely to the Easement Area and solely for the purposes set forth above. Grantee shall not exercise the easements granted by this Easement Agreement in any manner except for the purpose set forth herein and shall not unduly interfere with, or materially restrict or impede the use or operation of the Grantor's Property. All Utility Facilities installed by Grantee shall be located underground except for manholes, handholes and markers, and shall be designed to bear anticipated traffic loads. In the event Grantee is required to repair, replace or relocate any Utility Facilities, Grantee shall restore the Easement Area to its original condition.

Grantee and all future owners of the Grantee Property, at Grantee's cost, shall be responsible for the installation, maintenance, repair and removal of all Utility Facilities installed by Grantee or a future owner of the Grantee Property pursuant to the exercise of the easements granted herein. Any such installation, maintenance, repair, replacement or removal of Utility Facilities shall be performed by Grantee or any future owner of the Grantee Property only after first giving to Grantor thirty (30) days advance notice of Grantee's intention to do such work. However, in the case of an emergency, any such work may be immediately performed after giving such advance notice to Grantor as is practicable under the circumstances. In addition, all such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to Grantor as may be commercially practicable under the circumstances and any and all portions of the surface area of Grantor's Property which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Grantee, to essentially the same condition as the same were in prior to the commencement of any such work. No such work or restoration, except emergency repair work, shall be carried on during the period from October 14 through the next succeeding January 4.

Grantor may relocate Utility Facilities within the Easement Area provided that such relocation:

(a) is performed only after Grantor has given Grantee thirty (30) days' written notice of its intention to relocate such facilities;

(b) does not interfere with or in any way diminish utility services to Grantee's Property (however, temporary interferences and diminutions in utility services shall be permitted if they occur during the non-business hours of tenants of Grantee's Property, and Grantee has been so notified as provided above. Grantor shall promptly reimburse Grantee for all costs, expenses and losses incurred by Grantee or tenants of Grantee's Property as a result of such interferences or diminutions, or both;

(c) does not reduce or unreasonably impair the usefulness or function of the facilities in question;

(d) is located underground, if reasonably possible; and

(e) is performed without cost or expense to Grantee.

7. Indemnification. Grantee, including its successors and assigns, shall indemnify and defend Grantor, its officers, directors, employees, contractors, agents, successors, assigns and agents and their respective successors and assigns, ("Grantor Parties") from any loss or claims for property damage, death or bodily injury which may occur, on or about the Easement Area due to an act or omission of Grantee, its successors and assigns. Grantee, including its successors and assigns shall further indemnify, defend and hold harmless Grantor Parties in connection with any mechanics or materials liens placed on the Easement Area due to materials supplied or work performed by or at the request of Grantee, its successors or assigns, or any of them.

8. Term. Unless otherwise canceled or terminated, the easements granted in this Easement Agreement shall continue in perpetuity or such shorter term if mandated by Utah law. Upon the expiration or earlier termination of this Easement Agreement, Grantee will promptly prepare and record, at their sole cost and expense, a deed quitclaiming any interest in the Easement Area.

9. Attorneys Fees. If any legal action or proceeding arising out of relating to this Easement Agreement is brought by any party to this Easement Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses that may be incurred in any action or proceeding by the prevailing party.

10. Counterparts. This Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one and the same instrument.

[signatures commence on following page]

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed as of July 31<sup>st</sup>, 2001.

GRANTOR:

LOWE'S HIW, INC.,  
a Washington corporation

By: Michael Skiles  
Michael Skiles,  
Vice President

By: Thomas E. Maddox  
Thomas E. Maddox,  
Assistant Secretary

GRANTEE:

JORDAN LANDING, L.L.C.,  
a Delaware limited liability company

By: JL Project, LLC  
a Utah limited liability company  
Manager of Jordan Landing, L.L.C.

By: Russell W. Grosse Development Co., Inc.,  
a California corporation  
Manager of JL Project, LLC

By: \_\_\_\_\_  
Russell W. Grosse, CEO

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed  
as of July 31<sup>st</sup>, 2001.

GRANTOR:

LOWE'S HIW, INC.,  
a Washington corporation

By: \_\_\_\_\_  
Michael Skiles,  
Vice President

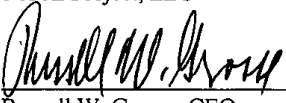
By: \_\_\_\_\_  
Thomas E. Maddox,  
Assistant Secretary

GRANTEE:

JORDAN LANDING, L.L.C.,  
a Delaware limited liability company

By: JL Project, LLC  
a Utah limited liability company  
Manager of Jordan Landing, L.L.C.

By: Russell W. Grosse Development Co., Inc.,  
a California corporation  
Manager of JL Project, LLC

By:   
\_\_\_\_\_  
Russell W. Grosse, CEO

ACKNOWLEDGMENT

STATE OF California )  
 ) SS  
COUNTY OF San Diego )

On July 27<sup>th</sup>, 2001 before me, a notary public in and for said state, personally appeared, Russell W. Grosse personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in the capacity(ies) indicated at the signature point.

WITNESS my hand and official seal.

Signature: Joan E. Hendrick  
Notary Public



My Commission Expires: March 8, 2002 (Seal)

STATE OF )  
 ) SS  
COUNTY OF )

On \_\_\_\_\_, 2001 before me, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in the capacity(ies) indicated at the signature point.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On July 27, 2001 before me, Linda Perry, Notary Public, personally appeared Michael L. Skiles and Thomas E. Maddox, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the person(s), or the entity upon behalf of which the persons acted, executed the instrument.



WITNESS my hand and official seal.

*Linda Perry*  
\_\_\_\_\_  
SIGNATURE OF NOTARY

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EXHIBIT "A"

LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

Lot 4 of the Amendment to Jordan Landing II Final Plat filed in the Official Records of the Salt Lake County Recorder's Office on June 29, 2001, at Book 2001P, Page 192, as Entry No. 7936063.

*21.29.2001.002*

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EXHIBIT "A-1"

LEGAL DESCRIPTION OF EASEMENT AREA

[attached]

BOOK 8484 PAGE 3605

**EXHIBIT "A-1"**

**LEGAL DESCRIPTION OF EASEMENT AREA**

The northerly 30' of Lot 4 of the Amendment to Jordan Landing II Final Plat filed in the Official Records of the South Lake County Recorder's Office on June 29, 2001, at Book 2001P, Page 192, as Entry No. 7936063, and as more particularly described in the following descriptions.

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**CROSS ACCESS EASEMENT LEGAL DESCRIPTION**

200482

05/30/2001

30' WIDE EASEMENT ADJACENT TO THE NORTH BOUNDARY OF LOWE'S PARCEL

BEGINNING AT A POINT NORTH 17°30'39" EAST 1.49 FEET FROM THE NORTHWEST CORNER OF LOT 4, JORDAN LANDING II FINAL PLAT SUBDIVISION, SAID POINT BEING NORTH 89°57'29" WEST 1389.75 FEET AND NORTH 2641.68 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 17°30'39" EAST 31.85 FEET; THENCE NORTH 87°54'34" EAST 56.05 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 78.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 38°29'29" A DISTANCE OF 52.40 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 100.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 20°12'17" A DISTANCE OF 35.26 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 496.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 27°47'39" A DISTANCE OF 240.61 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 660.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 24°40'13" A DISTANCE OF 142.09 FEET TO A POINT OF TANGENCY; THENCE SOUTH 76°56'40" EAST 26.01 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 600.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 12°43'49" A DISTANCE OF 66.66 FEET TO A POINT OF TANGENCY; THENCE SOUTH 89°40'29" EAST 117.54 FEET TO A POINT OF NON-TANGENCY ON A CURVE; THENCE ALONG THE ARC OF A 500.00 FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS NORTH 87°44'28" WEST) THROUGH A CENTRAL ANGLE OF 03°26'43" A DISTANCE OF 30.07 FEET; THENCE NORTH 89°40'29" WEST 115.62 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 330.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 12°43'49" A DISTANCE OF 73.32 FEET TO A POINT OF TANGENCY; THENCE NORTH 76°56'40" WEST 26.01 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 300.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24°40'13" A DISTANCE OF 129.17 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF A 526.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 27°47'39" A DISTANCE OF 255.16 FEET TO A POINT OF COMPOUND CURVATURE; THENCE ALONG THE ARC OF A 130.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 20°12'17" A DISTANCE OF 45.84 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF A 48.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 38°29'29" A DISTANCE OF 32.25 FEET; THENCE SOUTH 87°53'34" WEST 66.74 FEET TO THE POINT OF BEGINNING.

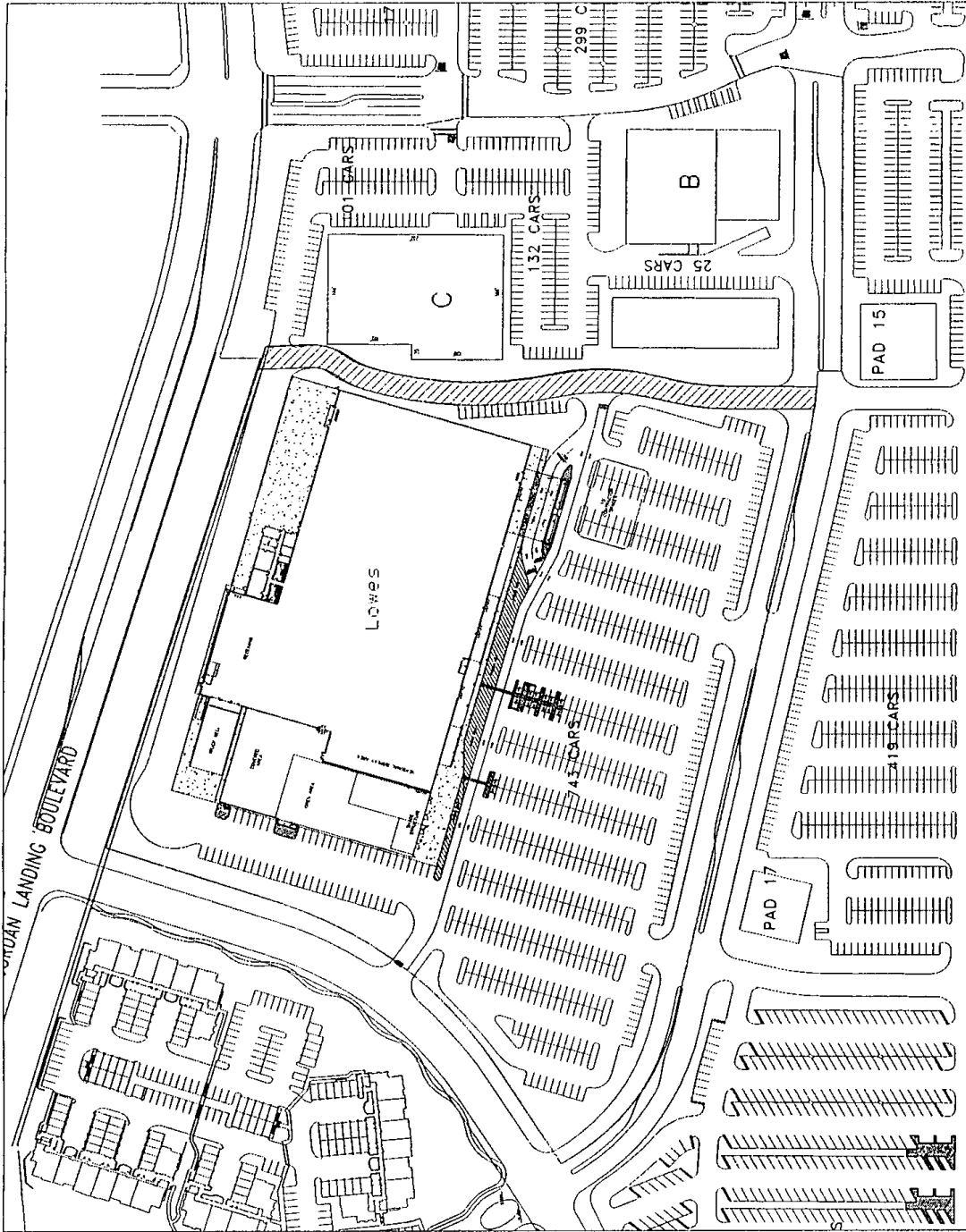
CONTAINS 0.510 ACRES OR 22,216 SQ. FT.

EXHIBIT  
(Page 1 of 3)

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EXHIBIT "A-2"  
SITE PLAN OF EASEMENT AREA

[attached]



Easement Area

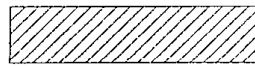


EXHIBIT "B"

SITE PLAN

[attached]

# JORDAN LANDING PLAZA



5-24-01  
SCALE: 1" = 100'

JORDAN LANDING LLC PARCEL

LOWE'S PARCEL

The Park at  
Jordan Landing  
389 apartments

Public Park

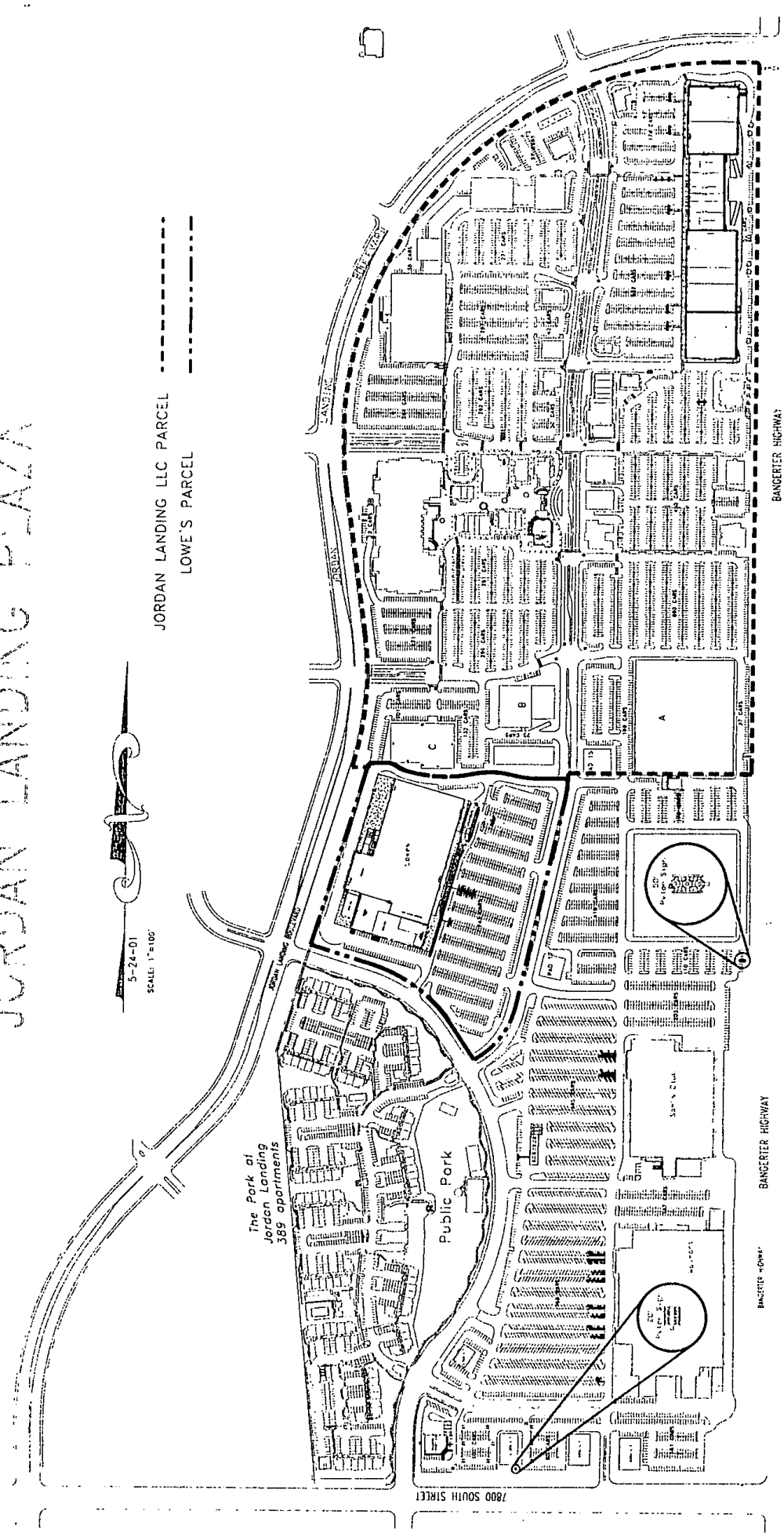




EXHIBIT "C"

LEGAL DESCRIPTION OF GRANTEE'S PROPERTY

BEGINNING AT THE CENTER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 07°46'27" WEST ALONG THE QUARTER SECTION LINE 16.50 FEET; THENCE NORTH 82°25'51" WEST 670.38 FEET; THENCE SOUTH 07°46'06" WEST 3.99 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 500.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 01°55'16" A DISTANCE OF 16.76 FEET; THENCE NORTH 82°13'59" WEST 117.54 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 300.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 12°43'49" A DISTANCE OF 66.66 FEET TO A POINT OF TANGENCY; THENCE NORTH 69°30'10" WEST 26.01 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 330.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24°40'13" A DISTANCE OF 142.09 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF A 496.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 27°47'39" A DISTANCE OF 240.61 FEET TO A POINT OF COMPOUND CURVATURE; THENCE ALONG THE ARC OF A 100.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 20°12'17" A DISTANCE OF 35.26 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF A 78.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 38°29'29" A DISTANCE OF 52.40 FEET TO A POINT OF TANGENCY; THENCE NORTH 84°39'56" WEST 56.24 FEET; THENCE SOUTH 24°57'09" WEST 16.04 FEET TO THE QUARTER SECTION LINE OF SECTION 29; THENCE NORTH 82°25'51" WEST 59.74 FEET TO THE EASTERLY BOUNDARY LINE OF JORDAN LANDING BOULEVARD; THENCE ALONG SAID EASTERN BOUNDARY LINE THE FOLLOWING (6) SIX COURSES: NORTH 24°56'01" EAST 13.22 FEET TO A POINT OF CURVATURE FOR A 1103.000 FOOT RADIUS CURVE, THEN ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24°58'42" A DISTANCE OF 480.86 FEET TO A POINT OF TANGENCY, THENCE NORTH 00°02'41" WEST 538.910 FEET TO A POINT OF CURVATURE ON A 1377.000 FOOT RADIUS CURVE, THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 97°42'50" A DISTANCE OF 2348.38 FEET TO A POINT OF TANGENCY, THEN SOUTH 82°19'51" EAST 124.580 FEET; THENCE SOUTH 47°30'59" EAST 5.23 FEET; THENCE SOUTH 07°46'07" WEST 2578.36 FEET TO THE POINT OF BEGINNING.