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3/28/2005 4:39:00 PM \$54.00  
Book - 9110 Pg - 7206-7219  
Gary W. Ott  
Recorder, Salt Lake County, UT  
FIRST AMERICAN TITLE  
BY: eCASH, DEPUTY - EF 14 P.

**RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:**

Paul M. Harman  
Jones, Waldo, Holbrook & McDonough, P.C.  
170 South Main Street, Suite 1500  
Salt Lake City, Utah 84101

**Space Above For Recorder's Use Only**

**PARKING AND ACCESS EASEMENT AGREEMENT**

This PARKING AND ACCESS EASEMENT AGREEMENT ("Easement Agreement") is entered into this 28<sup>th</sup> day of MARCH, 2005 ("Effective Date"), by and between, LOWE'S HIW, INC., a Washington corporation ("Lowe's"), and SAMUEL F. GRANATO, as Trustee of the SAMUEL FRANK GRANATO FAMILY TRUST, dated June 24, 1997, ("Granato") (sometimes collectively, the "Parties" and individually, a "Party").

**WITNESSETH:**

TA/ku 73805T-4

A. WHEREAS, Lowe's is the "Owner" of the "Lowe's Property" as "Lowe's Parcel" on the site plans attached hereto as Exhibit A-1 and Exhibit A-2 (collectively the "Site Plan"); and

B. WHEREAS, Granato is the "Owner" of the "Granato Property" as "Granato Parcel" on the Site Plan; and

C. WHEREAS, the Parties desire to grant for their mutual benefit, a reciprocal easement for parking in accordance with the terms and conditions set forth herein; and

D. WHEREAS, the Parties desire to grant for their mutual benefit, a reciprocal easement for ingress and egress. Granato has agreed to grant Lowe's access over Granato's Property and Lowe's has agreed to grant Granato access over the Lowe's Property in accordance with and pursuant to the terms of this Easement Agreement; and

E. WHEREAS, Lowe's shall grant for the benefit of Granato, an easement for the ingress and egress of Granato delivery trucks in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## A G R E E M E N T

**1. Definition.**

a. **"Owner"**: The record owner of fee simple title to the Lowe's Property and the Granato Property on the Effective date of this Easement Agreement.

**2. Reciprocal Parking Easement.**

a. Lowe's, as Owner of the Lowe's Property, as grantor, hereby grants to Granato, as Owner of the Granato Property, its contractors, employees, agents, licensees and invitees, for the benefit of the Granato Property, as grantee, a nonexclusive easement for parking by non-delivery vehicles upon that portion of the Lowe's Parcel on parking areas located on Lowe's Parcel as the same may be changed from time to time, in Lowe's sole and absolute discretion.

b. Granato, as Owner of Granato's Property, as grantor, hereby grants to Lowe's, as Owner of the Lowe's Property, its contractors, employees, agents, licensees and invitees, for the benefit of the Lowe's Property, as grantee, a nonexclusive easement for parking by vehicles upon that portion of the Granato Parcel on parking areas located on Granato's Parcel depicted on the Site Plan as the "Granato Parking Area" and more particularly described on Exhibit D attached hereto and incorporated herein by reference. Granato shall maintain a minimum of twelve parking stalls as depicted on the Site Plan.

**3. Reciprocal Ingress and Egress Easement.**

a. Lowe's, as Owner of the Lowe's Property, as grantor, hereby grants to Granato, as Owner of the Granato Property, its contractors, employees, agents, licensees and invitees, for the benefit of the Granato Property, as grantee, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic (with the exception of delivery trucks, which access is limited to the Delivery Area) upon, over and across the Lowe's Parcel, provided, however, that in no event shall Granato obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the Lowe's Property.

b. Granato, as Owner of the Granato Property, as grantor, hereby grants to Lowe's, as Owner of the Lowe's Property, its contractors, employees, agents, licensees and invitees, for the benefit of the Lowe's Property, as grantee, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across the Granato Property, provided, however, that in no event shall Lowe's obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the Granato Property.

**4. Delivery Easement.** Lowe's, as Owner of the Lowe's Property, as grantor, hereby grants to Granato, as Owner of the Granato Property, its contractors, employees, agents, licensees and invitees, for the benefit of the Granato Property, as grantee, a nonexclusive "Delivery Easement" for ingress and egress by delivery trucks upon, over and across that portion of the Lowe's Parcel shown as "Delivery Area" on the Site Plan and more particularly described on Exhibit E attached hereto and incorporated herein by reference, provided, however, that in no event shall Granato obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the Delivery Area or Lowe's Property.

**5. Changes to the Easement Area.** Lowe's shall have the right to close off any portion of the Lowe's Property for such reasonable period or periods of time as it determines, in its reasonable business judgment, to be necessary, provided, however, prior to closing off any portion of the Lowe's Property, Lowe's shall: (i) give written notice to Granato of its intention to do so, and (ii) coordinate such closing with Granato so that no unreasonable interference with the operation of the Granato Property shall occur.

**6. Termination of Granato Parking Easement.** In the event that the Granato Property is no longer used by Granato or its successors or assigns for its use as a bakery, delicatessen, specialty food market, and associated warehouse as it is used on the Effective Date, then Lowe's may, in its sole and absolute discretion, terminate the parking easement, delivery easement and the ingress and egress easement on the Lowe's property and block access from the Lowe's Property to the Granato Property.

**7. Maintenance.** Each Party shall maintain any easement area located on its property in good clean condition and repair, including, without limitation, (i) maintaining, repairing and resurfacing all paved surfaces and restriping, when necessary; (ii) removing all snow; (iii) maintaining directional signage, and (iv) operating, maintaining, repairing and replacing the artificial lighting facilities (if any).

**8. Indemnification, Insurance.**

**a. Indemnification.** The Grantee of any easement provided in this Easement Agreement ("Indemnitor") shall indemnify, defend and hold harmless the Grantor of any Easement, as well as Grantor's agents, contractors and employees ("Indemnitee") from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings, and causes of action of any kind whatsoever for injury to or death of any person or damage to any property, unless caused by the willful or negligent act or omission of the Indemnitee, arising from Claims (i) occurring on the Indemnitor Property, (ii) arising from the use of the Indemnitee's Property and/or the easement area by the Indemnitor or any of its tenants, licensees, invitees, customers, agents or employees, and (iii) any negligence or willful misconduct or omission of Indemnitor or any of its tenants, licensees, invitees, customers, agents or employees.

**b. Insurance.** The Owner of each parcel shall provide and maintain commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) covering its obligations under this Section 5 and insuring it against claims for personal injury, bodily injury or death, and property damage or destruction. Such insurance shall be written with an insurer licensed to do business in the state in which the Parcels are located and shall name the other Owner as additional insured. The limits of liability of all such insurance shall be not less than Two Million Dollars (\$2,000,000.00) for personal injury or bodily injury or death of any one person, Two Million Dollars (\$2,000,000.00) for personal injury or bodily injury or death of more than one person in one occurrence and Five Hundred Thousand Dollars (\$500,000.00) with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or

death and property damage and destruction) with a limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence. Each Owner shall furnish the other Owner with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be canceled, materially changed or non-renewed without the giving of thirty (30) days prior written notice to the holders of such insurance and the holders of such certificates. The insurance required under this Section 5 may be provided under a blanket policy provided such policy otherwise complies with the requirements of this Section 5. So long as an Owner has a net worth, determined in accordance with generally accepted accounting principles, in excess of One Hundred Million Dollars (\$100,000,000.00), all or part of such insurance may be provided under a program of self-insurance.

9. **Successors and Assigns.** This Easement Agreement shall inure to the benefit of and be binding upon the Owners and their successors or assigns of each parcel.

10. **Modification and Termination.** Except as provided in Section 2 above, this Easement Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of both Owners, and then only by written instrument duly executed and acknowledged by the Owners and recorded in the office of the Salt Lake County recorder.

11. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Parcels or the Easement Area to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parties that this Easement Agreement shall be strictly limited to and for the purposes herein expressed.

12. **Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Easement Agreement shall entitle either Owner to terminate this Easement Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Easement Agreement. Any breach of this Easement Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value.

13. **Default.** A person shall be deemed to be in default of this Easement Agreement only upon the expiration of thirty (30) days from receipt of written notice from the other Owner specifying the particulars in which such person has failed to perform the obligations of this Easement Agreement unless such person, prior to the expiration of said thirty (30) days has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure cannot be rectified within said thirty (30) day period and such person is using good faith and commercially reasonable efforts to rectify the particulars specified in the notice of default.

14. **Notices.**

a. **Delivery.** All notices given pursuant to this Easement Agreement shall be in writing and shall be given by telefacsimile, personal service, by United States mail or by

United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate Party at the address or telefacsimile number set forth below:

Lowe's:       Lowe's HIW, Inc.  
                  Box 1111  
                  (Highway 268 East, North Wilkesboro, North Carolina 28659)  
                  North Wilkesboro, North Carolina 28656-0001  
                  Attention: Property Management Dept. (REO)

Copy to:       Lowe's HIW, Inc.  
                  Box 1111  
                  (Highway 268 East, North Wilkesboro, North Carolina 28659)  
                  North Wilkesboro, North Carolina 28656-0001  
                  Attention: Legal Department (REO)

Granato:       Samuel Granato  
                  Frank Granato Importing Company  
                  2620 Gaylar Circle  
                  Salt Lake City, Utah 84109

The person and address to which notices are to be given may be changed at any time by any Party upon written notice to the other Party. All notices given pursuant to this Easement Agreement shall be deemed given upon receipt.

b. **Receipt.** For the purpose of this Easement Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of: (A) the date of the attempted delivery or refusal to accept delivery; (B) the date of the postmark on the return receipt; or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending Party or in the case of a telefacsimile, the date and time of receipt as shown on the confirmation of the telefacsimile transmission.

15. **Attorney's Fees.** In the event either Party initiates or defends any legal action or proceeding in any way connected with this Easement Agreement, the prevailing Party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing Party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

16. **Severability.** If any term or provision of this Easement Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Easement Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Easement Agreement shall be valid and shall be enforced to the extent permitted by law.

17. **Not a Partnership.** The provisions of this Easement Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties.

18. **No Third Party Beneficiary Rights.** This Easement Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a Party hereto.

19. **Captions and Headings.** The captions and headings in this Easement Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

20. **Entire Agreement.** This Easement Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Easement Agreement shall be construed as a whole and not strictly for or against either Party.

21. **Construction.** In construing the provisions of this Easement Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

22. **Joint and Several Obligations.** In the event either Party hereto is composed of more than one (1) person, the obligations of said Party shall be joint and several.

23. **Recordation.** This Easement Agreement shall be recorded in the office of the Salt Lake County recorder.

24. **Governing Law.** This Easement Agreement shall be governed by and constructed and enforced in accordance with the internal laws of the State of Utah.

25. **Counterparts.** This Easement Agreement may be executed in counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

26. **Exhibits and Schedules.** All Exhibits and are considered an integral part of this Easement Agreement and are hereby incorporated herein and this Easement Agreement shall not be considered executed and/or complete until and unless they shall be attached hereto.

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**27. Legal Representation.** This Easement Agreement is the result of negotiations by and between the Parties hereto and said Parties covenant that both have obtained legal representation in the preparation of this Easement Agreement. Therefore, this Easement Agreement should not be construed against either Party as draftsman.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

LOWE'S HIW, INC.,  
a Washington corporation

By: David E Shelton  
Name: **David E. Shelton**  
Title: **Senior Vice President**

KAB-

RH  
DM  
SH

SAMUEL F. GRANATO, as Trustee of the  
SAMUELFRANK GRANATO FAMILY TRUST,  
dated June 24, 1997.

By: Samuel F. Granato, Trustee  
Name: Samuel F. Granato  
Title: Trustee

STATE OF NORTH CAROLINA )

) ss.

COUNTY OF WILKESBORO )

On this 16<sup>th</sup> day of March, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared David E. Shelton, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the Sr. Vice President of Lowe's HIW, INC., a Washington corporation, and that he/she executed such instrument on behalf of said corporation by authority of its board of directors, and said person acknowledged to me that he/she executed such instrument as the act and deed of said corporation.

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

Notary Public: Sheila H. Mastin  
Printed Name: Sheila H. Mastin  
My Commission Expires: 10-6-08



OFFICIAL SEAL  
North Carolina - Wilkes County  
**SHEILA H. MASTIN**  
Notary Public  
My Commission Expires 10-6-08



STATE OF UTAH )

) ss.

COUNTY OF SALT LAKE)

On this 23 day of February, 2005, before me, a Notary Public in and for said State, personally appeared Samuel F. Granato, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the Trustee of the Samuel Frank Granato Family Trust, dated June 24, 1997, and that he/she executed such instrument on behalf of said corporation by authority of its board of directors, and said person acknowledged to me that he/she executed such instrument as the act and deed of said corporation.

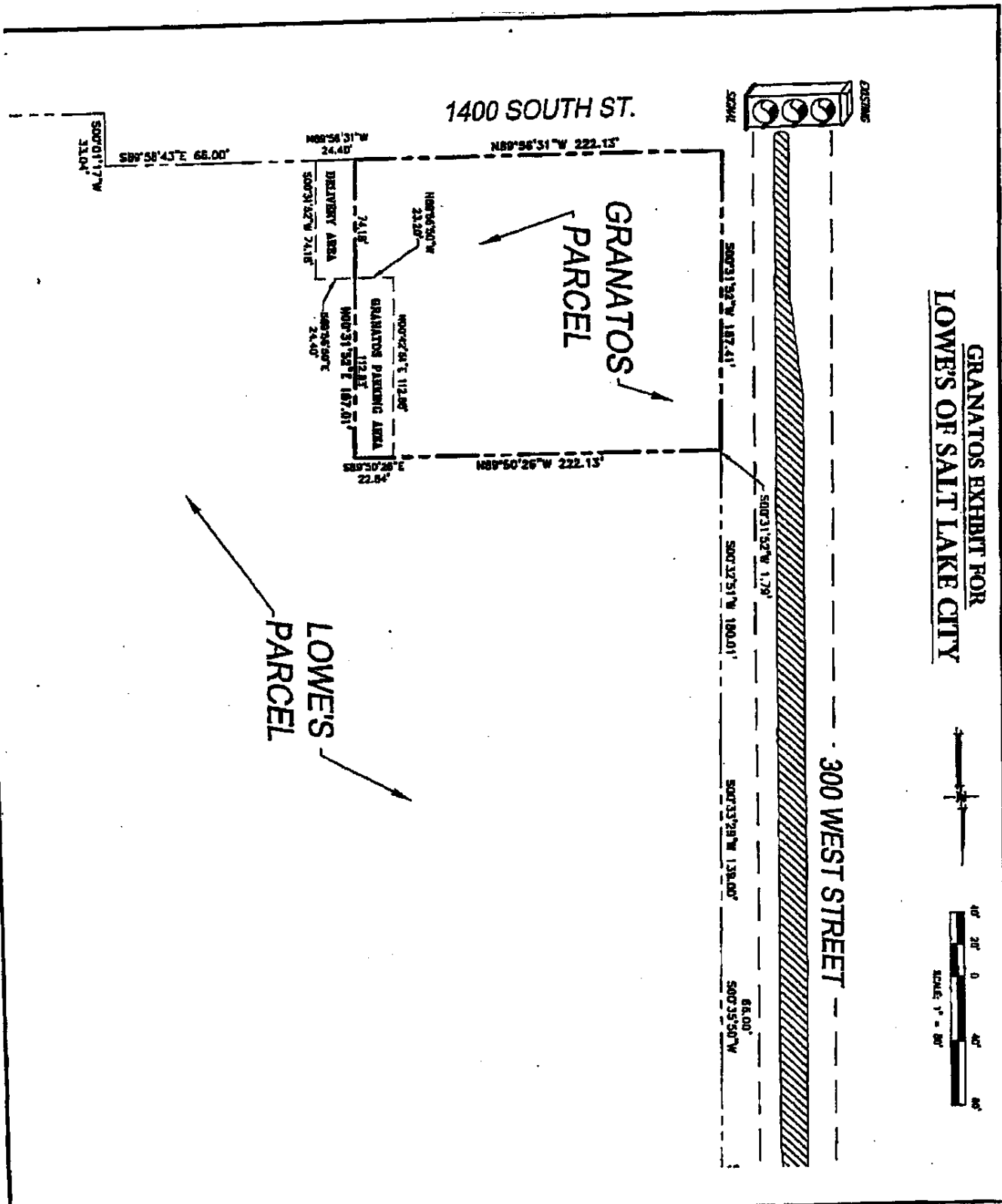
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Notary Public: Kelly Meier  
Printed Name: KELLY MEIER

My Commission Expires: 6-27-05

Exhibit A-1



PROJECT NO.  
CD4043

SHEET  
1 OF 1

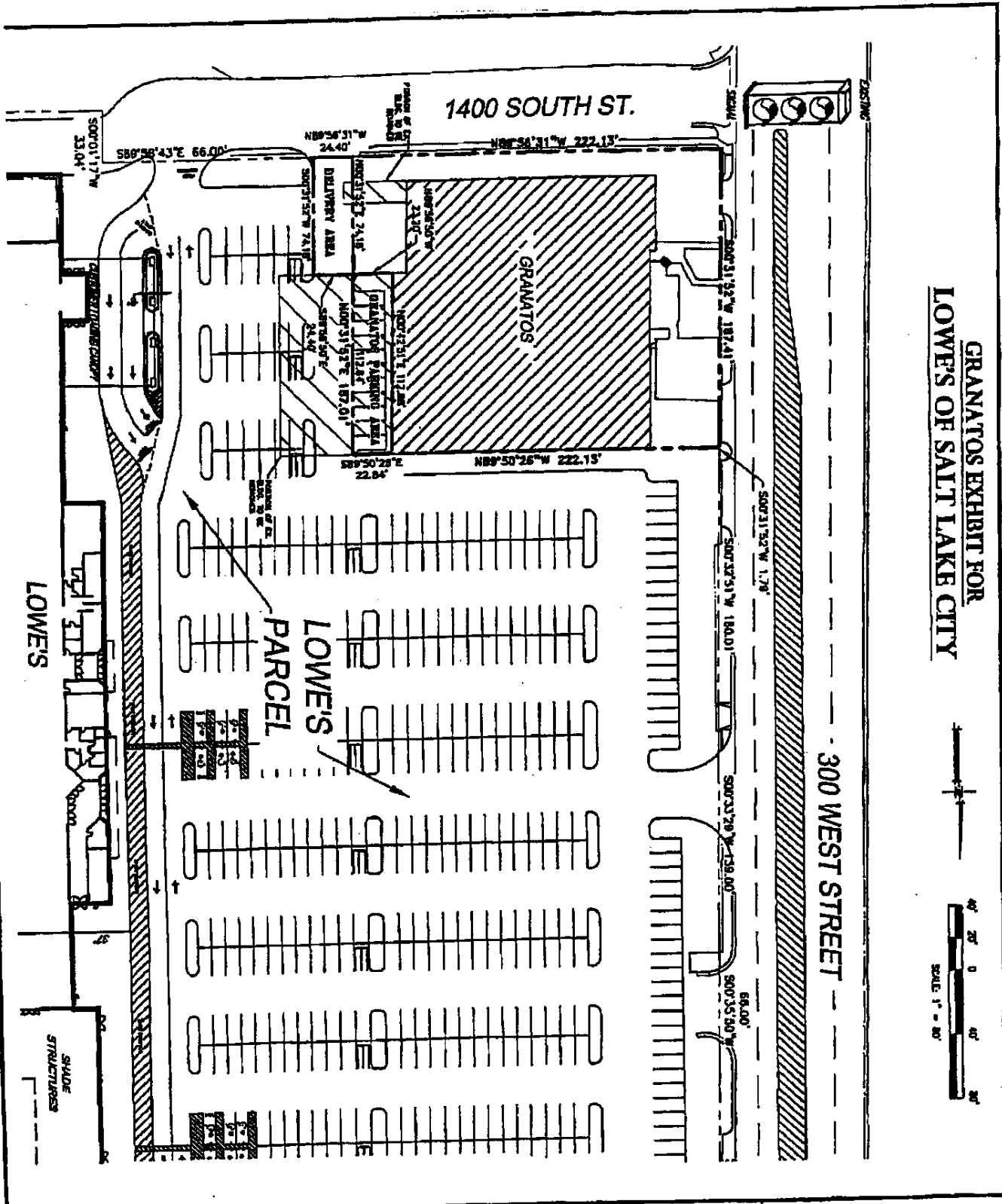
GRANATOS EXHIBIT FOR  
LOWE'S OF SALT LAKE CITY

DATE 12-21-05  
SCALE 1"=80'  
DRAWN BY JAL  
CHECKED BY JCC  
DESIGNED BY J.C. CARPENTER P.E.



CITY OF SALT LAKE CITY UTAH  
UTAH PROJECTS 2004 CD4043 GRANATOS EXHIBIT - 077103.DWG 2/23/2005 9:29:33 PM. AUTHOR: J.C. CARPENTER P.E. DRAWING: J.C. CARPENTER P.E. CHECKING: J.C. CARPENTER P.E. ALL RIGHTS RESERVED.

Exhibit A-2



GRANATOS EXHIBIT FOR  
LOWE'S OF SALT LAKE CITY

300 WEST STREET

PROJECT NO.  
C04043

SHEET  
1 OF 1

GRANATOS EXHIBIT FOR  
LOWE'S OF SALT LAKE CITY

DATE: 12-21-88  
SCALE: 1"=80'  
DRAWN BY: JCC  
CHECKED BY: JCC  
DESIGNED BY: J.S. CHRISTOPHER, P.E.



CITY OF SALT LAKE CITY

UTAH

THIS PLAN IS THE PROPERTY OF LANDMARK ENGINEERING & PLANNING, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF LANDMARK ENGINEERING & PLANNING, INC.

Exhibit B

Beginning at a point on the North line of 1400 South Street; said point being South 89°56'31" East 238.37 feet from the Southwest corner of Lot 23, Block 1, Temple View Addition, according to the Official Plat thereof, recorded in the Office of the County Recorder of Salt Lake County, Utah; said point also being North 0°01'05" West 32.95 feet along the Monument line of 300 West Street, and South 89°56'31" East 261.79 feet from the city monument in the intersection of 300 West Street and 1400 South Street: and running thence North 00°31'52" East 187.02 feet; thence North 89°50'26" West 222.13 feet to the East line of 300 West Street; thence North 00°31'52" East along said East line 1.79 feet; thence North 00°32'51" East along said East line 180.01 feet; thence North 00°33'29" East along said East line 139.00 feet; thence North 00°35'50" East along said East line 66.00 feet; thence North 00°37'01" East along said West line 229.25 feet; thence North 50°51'06" East 30.06 feet to the South line of 1300 South Street; thence North 89°14'17" East along said South line 138.71 feet; thence continuing North 89°14'17" East along said South line 169.50 feet; thence South 88°33'56" East along said South line 5.52 feet; thence North 89°35'58" East along said South line 100.00 feet; thence North 89°35'07" East along said South line 94.03 feet; thence South 89°56'55" East along said South line 75.07 feet; thence South 89°43'35" East along said South line 80.90 feet; thence South 00°01'28" West 253.80 feet; thence South 00°03'25" West 66.00 feet; thence South 89°56'35" East 15.05 feet; thence South 00°01'20" West 541.20 feet to the monument line of 1400 South Street; thence North 89°56'35" West along said Monument line 330.00 feet; thence North 00°01'17" East 33.04 feet to the North line of 1400 South Street; thence North 89°58'43" West 66.00 feet; thence North 89°56'31" West along said North line 91.54 feet to the point of beginning. Contains 547,490 square feet or 12.5686 acres.

TAX PARCELS 15-12-459-001, 002, 003, 004, 009  
15-12-459-005, 010, 011, 012, 013, 015  
15-12-459-007, 014  
15-12-459-008  
15-13-207-006  
15-13-207-007  
15-12-461-001, 002  
15-12-209-002

Exhibit C

Beginning at a point on the East line of 300 West Street; said point being South 89°56'31" East 16.24 feet from the Southwest corner of Lot 23, Block 1, Temple View Addition, according to the Official Plat thereof, recorded in the Office of the County Recorder of Salt Lake County, Utah; said point also being North 0°01'05" West 32.95 feet along the Monument line of 300 West Street, and South 89°56'31" East 39.66 feet from the city monument in the intersection of 300 West Street and 1400 South Street; and running thence North 00°31'52" East along said East line 187.41 feet; thence South 89°50'26" East 222.13 feet; thence South 00°31'52" West 187.02 feet to the North line of 1400 South Street; thence North 89°56'31" West along said North line 222.13 feet to the point of beginning. Contains 41,586 square feet or 0.9547 acre.

15-13-207-006.

Exhibit D

Beginning at a point on the North line of 1400 South Street; said point being South 89°56'31" East 238.37 feet from the Southwest corner of Lot 23, Block 1, Temple View Addition, according to the Official Plat thereof, recorded in the Office of the County Recorder of Salt Lake County, Utah; said point also being North 0°01'05" West 32.95 feet along the Monument line of 300 West Street, and South 89°56'31" East 261.79 feet from the city monument in the intersection of 300 West Street and 1400 South Street: and running thence North 89°56'31" West along said North line 18.00 feet; thence North 00°31'52" East 187.05 feet; thence South 89°50'26" East 18.00 feet; thence South 00°31'52" West 187.02 feet; to the point of beginning. Contains 3,367 square feet or 0.0773 acre.

15-13-207-006