

8296657
12-2

When Recorded, return to:
Curtis R. Ward, Esq.
265 E. 100 S., No. 250
SLC, UT 84111

8296657
07/18/2002 12:56 PM 40.00
Book - 8621 Pg - 466A-4675
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
CURTIS R WARD
265 E 100 S #250
SLC UT 84111
BY: ZJM, DEPUTY - WI 12 P.

**NON-EXCLUSIVE
EASEMENT AGREEMENT**

STATE OF UTAH §
COUNTY OF SALT LAKE §

KNOW ALL MEN BY THESE PRESENTS:

THAT, **EAGLE/WHTV, LTD.**, a Texas partnership (herein called "Grantor"), for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, BARGAIN, SELL, WARRANT, and CONVEY unto **EDWARD WEST ROSENBERGER**, an individual (herein called "Grantee"), a non-exclusive, driveway and access easement (the "Easement") over, upon, and across that certain tract or parcel of land being described by metes and bounds on **Exhibit "A"** attached hereto and made a part hereof for all purposes (the "Easement Tract"), and as generally depicted on the attached **Exhibit "B"**. The easement rights in and to the Easement Tract herein granted, bargained, sold, warranted, and conveyed by Grantor to Grantee shall be deemed an appurtenance to and a benefit to that certain tract or parcel of land more particularly described on **Exhibit "C"** (the "Property") attached hereto and incorporated herein for all purposes. The Easement as herein created is a non-exclusive easement solely for pedestrian and vehicular ingress and egress over, upon, and across the Easement Tract to provide ingress and egress from and to the Property from Richards Street for Grantee, its successors, assigns, employees, agents, contractors, invitees, lessees, occupants, sublessees, and customers, and is an appurtenance to and a burden upon that certain tract or parcel of land more particularly described on **Exhibit "D"** attached hereto and incorporated herein for all purposes ("Grantor's Property"). Neither Grantor, nor Grantee nor any of their respective successors, assigns, employees, agents, contractors, designees, invitees, lessees, occupants, sublessees, or customers, nor others designated by either of such parties shall have the right to park vehicles on the Easement Tract, nor shall any of such parties have the right to erect any temporary or permanent buildings, kiosks, or other structures or improvements of any kind or character on the Easement Tract.

TO HAVE AND TO HOLD said Easement together with, all and singular, all rights, privileges, and hereditaments thereto in anywise belonging unto Grantee, its successors and assigns forever, subject to: (i) the matters herein stated; and (ii) any and all matters of record in the office of the County Recorder of Salt Lake County, Utah as of the date of the Prior Easement (hereinafter defined), to the extent such matters of record are validly existing and affect the Easement Tract (items (i) and (ii) being collectively hereinafter referred to as the "Permitted Exceptions"); provided, further, that the exceptions to title herein stated shall be subject to, and limited by, the representations and warranties of Grantor contained below in this instrument.

The Easement is granted, bargained, sold, warranted and conveyed by Grantor and accepted by Grantee subject to the following:

- Grantor's Representations and Warranties.** Grantor represents and warrants to Grantee that Grantor has all necessary capacity and authority to execute and deliver this Easement, and to enter into and perform its obligations hereunder, and both the execution and delivery of this Easement, and the terms and provisions contained herein, have been authorized by all necessary corporate or partnership action on the part of Grantor and its partners. Further, Grantor represents and warrants to Grantee that no consent is required to be obtained from any party claiming any part of or any interest in the Easement Tract by,

BK8621PG4664

through, or under Grantor (e.g., a tenant of Grantor or Grantor's mortgagee) in order for Grantor to grant the rights, privileges, and appurtenances contained in this Easement or to enter into this Easement with Grantee. Additionally, Grantor represents and warrants to Grantee that there are no other agreements, restrictions, or rights of way on the part of any person or entity claiming any part of or interest in the Easement Tract by, through, or under Grantor the terms of which would materially and unreasonably diminish or limit Grantee's rights in and to the Easement Tract for the purposes provided in this Easement.

2. **Grading Matters.** Grantor agrees, at its sole cost and expense, to construct a new concrete pad to replace the former concrete pad located behind the building situated on the Property. Grantor further agrees, at its sole cost and expense, to grade the portion of the driveway on the Easement Tract that is immediately adjacent to the newly constructed concrete pad located behind the building situated on the Property so that such portion of the driveway is level with such pad.

3. **Dumpster Area.** In addition to Grantee's rights of ingress and egress as previously granted above in this Easement, Grantee shall have the right and shall be entitled to maintain, at its sole cost and expense, a dumpster on that portion of the Easement Tract designated as the "Dumpster Area" on the attached **Exhibit "B."** Such dumpster shall be for Grantee's exclusive use, and Grantee shall arrange for regular trash pick up from such dumpster also at its sole cost and expense. Such dumpster and the immediately surrounding area shall be maintained by Grantee in good condition and repair, clean and free of rubbish and other hazards at all times. Any other dumpster located in the Dumpster Area shall be for the exclusive use of Grantor, its tenants, and other occupants of Grantor's Property, and Grantor shall (or shall cause its tenants to) arrange for regular trash pick up from such other dumpster(s) at its sole cost and expense. Such other dumpster(s) and the immediately surrounding area shall be maintained by Grantor in good condition and repair, clean and free of rubbish and other hazards at all times.

4. **Parking.** Grantee shall be permitted to park no more than two (2) automobiles on a non-exclusive basis on the parking areas located on Grantor's Property, as shown on the attached **Exhibit "B."** Grantee shall abide by any and all parking regulations and rules established from time to time by Grantor or by Grantor's parking operator. Grantor shall have the right to reasonably designate and relocate, from time to time, the specific locations within the parking areas located on Grantor's Property where Grantee may park its vehicles. Further, it is understood and acknowledged by Grantee that there are other parties with concurrent (or superior) rights to park vehicles in the parking areas situated on Grantor's Property (e.g., tenants of Grantor). As such, such parking spaces available to Grantee from time to time shall be strictly on a "first-come-first-served" basis, meaning that if, for example, there are no spaces available on the designated portion of Grantor's Property at a given time, then Grantee may not park its vehicles on Grantor's Property until such time as one or more spaces become available, and Grantor shall not be in breach of any of its obligations hereunder as a result of such lack of availability (provided that those others then parking on Grantor's Property are authorized to do so).

5. **Easement Appurtenant.** The Easement shall be appurtenant to and run with the Property and Grantor's Property and shall . Grantor hereby binds itself, its successors and assigns to warrant and forever defend the Easement unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the Permitted Exceptions.

6. **Private Use.** Nothing contained in this Easement shall ever be deemed to create a gift or dedication of all or any portion of the Easement Tract or the benefits of the Easement to the general public or for any public use or public purpose whatsoever. It is the intention of Grantor and Grantee that this

Easement shall be solely for the benefit of the Property, and for Grantee and its successors and assigns as the fee owners of the Property. Nothing contained herein, express or implied, shall confer upon any person or entity other than Grantee and its successors and assigns as the fee owners of the Property (and any others expressly named herein and their respective successors and assigns) any rights or remedies under or by reason of this Easement.

7. **Maintenance.** Other than with respect to Grantee's obligations with respect to its dumpster located in the Dumpster Area, the Easement Tract shall be maintained by Grantor in good condition and repair, clean and free of rubbish and other hazards. Such maintenance shall include regular and timely removal of all litter, garbage, trash, and waste, and the repair of the driveway located on the Easement Tract. Additionally, all ad valorem taxes and assessments (and all other governmental charges and levies) applicable to the Easement Tract shall be borne and paid for by Grantor, at its sole cost and expense, and Grantor shall pay all of the same prior to delinquency.

8. **Amendment.** The provisions of this Easement may be modified, rescinded, or amended in whole or in part only with the consent of all of the owners of the Property and all owners of Grantor's Property and of each mortgagee or beneficiary under any first mortgage or first deed of trust covering all or any part of the Property or Grantor's Property, by an amendment, in writing, executed and acknowledged by all of said owners (and such first mortgagees or first beneficiaries), duly recorded in the Office of the County Recorder of Salt Lake County, Utah. Otherwise, this Easement may not be modified, rescinded or amended, in whole or in part.

9. **Indemnification; Insurance.**

(a) GRANTOR AND GRANTEE EACH HEREBY INDEMNIFIES, HOLDS HARMLESS AND AGREES TO DEFEND THE OTHER FROM AND AGAINST ALL CLAIMS, DAMAGES, AND EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND REASONABLE INVESTIGATIVE AND DISCOVERY COSTS), LIABILITIES AND JUDGMENTS ON ACCOUNT OF INJURY TO PERSONS, LOSS OF LIFE, OR DAMAGE TO PROPERTY OCCURRING ON THE EASEMENT TRACT OR ON THE WAYS IMMEDIATELY ADJOINING THE EASEMENT TRACT, CAUSED BY THE WILLFUL ACTS OR ACTIVE OR PASSIVE NEGLIGENCE OF THE INDEMNIFYING PARTY, OR SUCH PARTY'S TENANTS, OR ITS OR THEIR RESPECTIVE AGENTS, SERVANTS OR EMPLOYEES; PROVIDED, THAT THE INDEMNIFYING PARTY DOES NOT INDEMNIFY, HOLD HARMLESS OR AGREE TO DEFEND THE OTHER PARTY AGAINST ANY INJURY, LOSS OF LIFE, OR DAMAGES TO THE EXTENT CAUSED BY THE ACTIVE OR PASSIVE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OTHER PARTY, ITS TENANTS, OR ITS OR THEIR AGENTS, SERVANTS OR EMPLOYEES.

(b) Grantor and Grantee each agrees to maintain, or to cause to be maintained, at its sole cost and expense, liability insurance insuring its interests against claims for bodily injury, death and property damage, occurring on, in or about the Easement Tract and the ways immediately adjoining the Easement Tract, with a "Combined Single Limit" (covering bodily injury liability and property damage liability of not less than One Million Dollar (\$1,000,000.00) for total claims for any one (1) occurrence. All policies of insurance required hereunder shall insure the performance of Grantor or Grantee, as the case may be, of the indemnity agreements contained herein, and shall contain a provision that the insurance company will give the other party thirty (30) days prior written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage. Upon request, each party

shall deliver to the requesting party a certificate of insurance, reasonably satisfactory in form and substance, evidencing all insurance required to be maintained hereunder.

10. **Miscellaneous.**

(a) This Easement may be executed in any number of counterparts, each of which shall be an original, and all of such counterparts together shall be deemed to constitute an original agreement.

(b) The servitudes, easements, rights, rights-of-way, privileges, agreements, covenants, and restrictions and other terms hereof shall be binding on the respective successors and assigns of Grantor and Grantee and all other persons or entities having or hereafter acquiring any right, title or interest in the Property or the Easement Tract.

(c) Any notice, request, demand, or other communication to be given to either party hereunder shall be in writing and shall be deemed to be delivered (i) when received, if hand delivered, or when sent via a recognized overnight delivery service, or (ii) if sent by mail, three (3) days following deposit of same in a U.S. postal service receptacle, postage prepaid, as registered or certified mail, return receipt requested, to the addresses set out hereinbelow or such other addresses as may be designated from time to time by the parties hereto or their successors and assigns.

(d) In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any part of the Easement Tract (or conveyance in lieu thereof), Grantee shall have the right to seek a separate claim or award from the condemning authority for the value of the easement estate conveyed hereby.

(e) In the event either Grantor or Grantee brings legal proceedings permitted hereunder against the other in order to enforce any provision of this instrument, the party in whose favor final judgment is entered by a court of competent jurisdiction shall be entitled to recover expenses and costs incurred by the prevailing party in connection with such legal proceedings (including, without limitation, reasonable attorneys' fees).

(f) Grantee and Grantor hereby agree that this Easement supersedes and replaces that certain right-of-way and access easement conveyed by that certain Warranty Deed, recorded May 22, 1985, as Entry No. 4089487 in Book 5656, Page 2140 of the Official Records of Salt Lake County, Utah (the "Prior Easement"). Grantee hereby further releases and relinquishes any and all rights in and to Grantor's Property pursuant to such Prior Easement, and agrees that the Prior Easement is hereby terminated and is of no further force or legal effect.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates set forth in the acknowledgments, below, to be effective as of the 11 day of ~~February~~^{July}, 2002.

GRANTOR:

EAGLE/WHTV, LTD., a Texas limited partnership

By: DMEJ No. 2, L.L.C., a Texas limited liability company, sole general partner

By: [Signature]
Dan M. Moody, III, Manager

GRANTEE:

[Signature]

EDWARD WEST ROSENBERGER

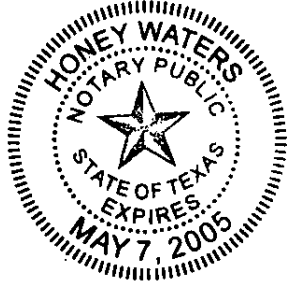
Notice Address:
3003 W. Alabama
Houston, Texas 77098
Attn: Mr. Dan M. Moody, III

Notice Address:
850 South Richards Street
Salt Lake City, Utah 84101
Attn: Mr. Ed Rosenberger

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Dan Moody, III., the Manager for DMEJ No. 2, L.L.C., , a Texas limited liability company, as sole general partner of EAGLE/WHTV, LTD., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said limited liability company, as general partner of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 11 day of ~~February~~^{July}, 2002.



[Signature]
Notary Public in and for the State of Texas

STATE OF UTAH §
 §
COUNTY OF SALT LAKE §

BEFORE ME, the undersigned authority, on this day personally appeared EDWARD WEST ROSENBERGER, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 14th day of July, 2002.

Cindi R Crossland
Notary Public in and for the State of Utah



SUBORDINATION BY LENDER

The undersigned is the lienholder under that certain Combined Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing Statement, dated December 20, 2000 (the "Deed of Trust"), executed by EAGLE/WHTV, LTD., and recorded under File No. 7786332 in the Official Records of the County Recorder of Salt Lake County, Utah. The undersigned does hereby subordinate its liens encumbering Grantor's Property (whether under the Deed of Trust or otherwise) to the easements created in that certain Non-Exclusive Easement Agreement (the "Easement Agreement"), to which this Subordination is attached.

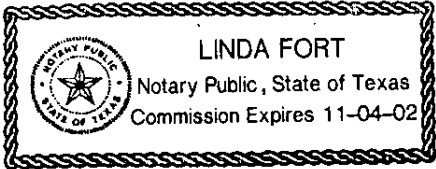
DATED: June 19, 2002.

THE FROST NATIONAL BANK, a national banking association

By: [Signature]
Name: Nancy Clarkson
Title: Senior Vice President

THE STATE OF TEXAS §
 §
COUNTY OF Harris §

This instrument was acknowledged before me on 19 day of June, 2002, by Nancy Clarkson, Sr VP of THE FROST NATIONAL BANK, a national banking association, on behalf of said national banking association.



Linda Fort
Notary Public, State of Texas

BK8621PG4670

EXHIBIT "A"

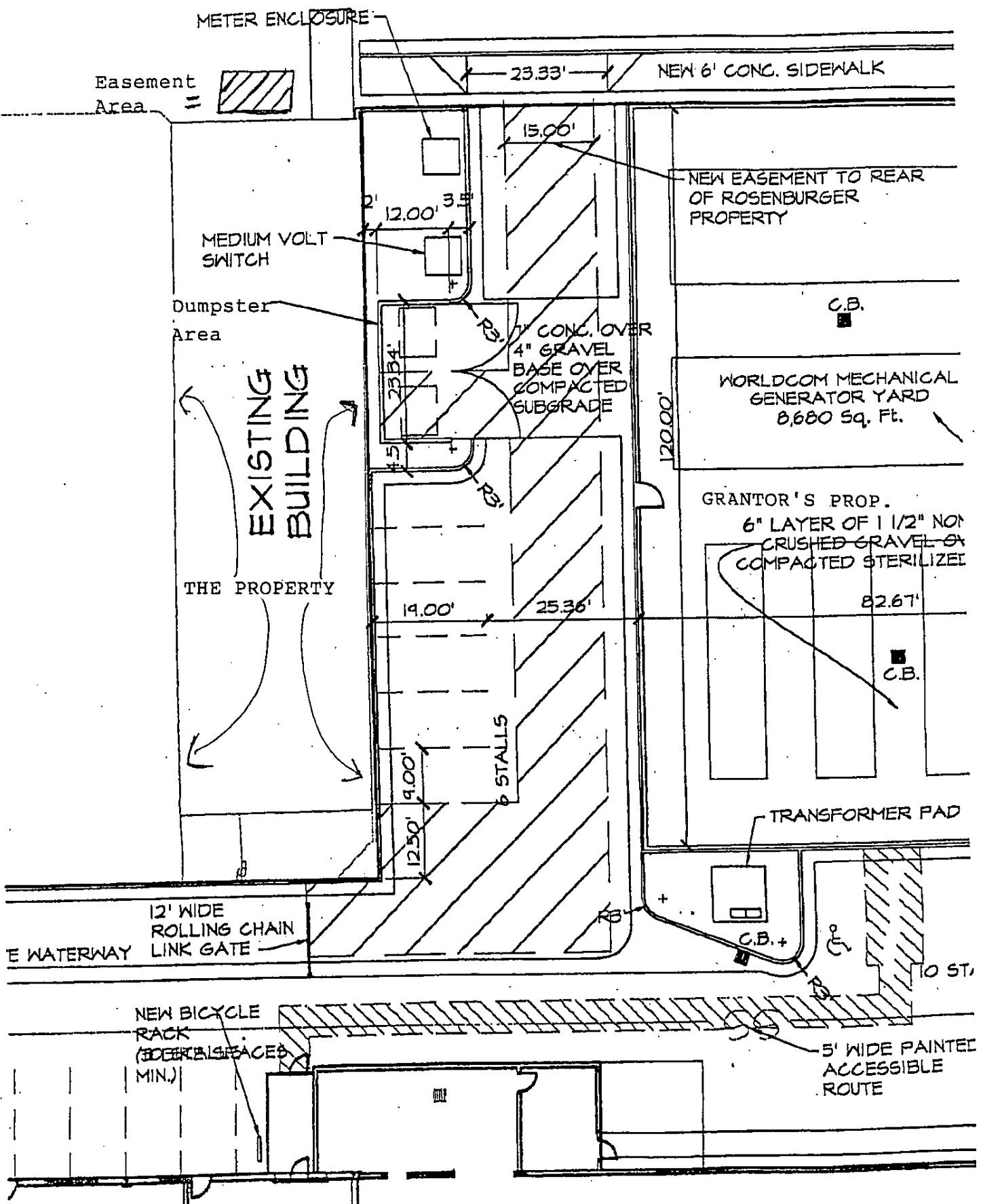
ACCESS EASEMENT TO REAR OF ROSENBERGER PARCEL

Easement for access to the rear of the Edward W. Rosenberger parcel over and across a portion of an Eagle/WHTV Ltd. parcel, said access easement being more particularly described as follows:

Beginning at a point North $89^{\circ}57'15''$ East 225.65 feet along the monument line and South 475.33 feet from an existing Salt Lake City Survey monument located at the intersection of 800 South Street and West Temple Street, said point also being South $89^{\circ}55'15''$ East 159.21 feet and South 406.00 feet from the Northwest Corner of Lot 16, Walker's Subdivision of Block 4, Plat A, Salt Lake City Survey and running;

thence South $89^{\circ}55'15''$ East 12.50 feet to a point on the property line;
thence South $0^{\circ}01'48''$ East 12.00 feet along the said property line;
thence South $89^{\circ}55'15''$ East 12.50 feet along the said property line;
thence South 23.53 feet;
thence East 59.17 feet;
thence North 21.43 feet;
thence East 11.00 feet;
thence South 21.43 feet;
thence East 42.84 feet to the West line of Richards Street;
thence South $0^{\circ}01'48''$ East 15.00 feet along said West line;
thence West 138.00 feet;
thence North $0^{\circ}01'48''$ West 50.57 feet to the point of beginning.

EXHIBIT "B"



BK8621 PG4672

EXHIBIT "C"

"The Property"

The North Thirty Two and One-Half feet (32-1/2') of the East One Hundred Twenty Five and One-Half feet (125-1/2') of Lot 14 in Walker's Subdivision of Block 4, Plat "A," Salt Lake City Survey, according to the official plat thereof recorded in the office of the County Recorder of Salt Lake County, Utah.

EXHIBIT "D"

PARCEL NO. 1:

The West 125.5 feet of Lots 17, 18 and 19, WALKER'S SUBDIVISION, of Block 4, Plat "A", Salt Lake City Survey.

ALSO:

All of Lot 20, WALKER'S SUBDIVISION of Block 4, Plat "A", Salt Lake City Survey.

EXCEPTING:

Beginning 125.5 feet East from the Northwest corner of Lot 20; thence East 23 feet; thence South 130.0 feet; thence West 47.0 feet; thence Northeasterly along the arc of an 80 foot radius curve to the right 125.0 feet, more or less, to a point 55.0 feet South of the point of beginning; thence North 55 feet to the point of beginning.

PARCEL NO. 2:

Commencing at the Northwest corner of Lot 16, WALKER'S SUBDIVISION, of Block 4, Plat "A", Salt Lake City Survey; and running thence East along the North line of said Lot 16, a distance of 125.50 feet; thence South 115.00 feet; thence West 125.50 feet to the West line of said Block 4; thence North along said West block line 115.00 feet to the point of beginning.

PARCEL NO. 3:

Beginning at a point on the North line of Ninth South Street 101.5 feet East of the Southwest corner of Lot 20, Walker's Subdivision of Block 4, Plat "A", Salt Lake City Survey, and running thence Northeasterly along the line of a curve to the left having a radius of 125 feet a distance of 80 feet, more or less, to a point which is 125.5 feet East and 55.0 feet South of the Northwest corner of said Lot 20; thence North 585.0 feet to a point on the South line of Eighth South Street, said point being 125.5 feet East of the Northwest corner of Lot 16, said Walker's Subdivision; thence East along the South line of Eighth South Street 46.0 feet; thence South 660 feet; thence West 70.0 feet along the North line of Ninth South Street to the place of beginning, being a part of Lots 11 to 20, inclusive, of said Subdivision, together with the vacated alley-way 15 feet wide between said Lots.

Excepting herefrom, the properties conveyed to the COCA COLA BOTTLING COMPANY OF SALT LAKE by Quitclaim Deed dated May 27, 1971 and

recorded in the records of Salt Lake County, Utah, June 29, 1971, Entry NO. 2394234 in Book 2973 at pages 828 and 829; and GLADE CANDY COMPANY by GRANT, BARGAIN AND SALE DEED dated November 1, 1982 and recorded in the records of Salt Lake County, Utah, November 23, 1982, Entry No. 3732671 in Book 5421 at page 1500.

BK8621PG4674

EXHIBIT "D"

PARCEL NO. 4:

The East 125.5 feet of the South 112.5 feet of Lot 14, WALKER'S SUBDIVISION of Block 4, Plat "A", Salt Lake City Survey, according to the official plat thereof, as recorded in the office of the County Recorder of said County.

PARCEL NO. 5:

The East 125.5 feet of Lot 15, WALKER'S SUBDIVISION of Block 4, Plat "A", Salt Lake City Survey, according to the official plat thereof, as recorded in the office of the County Recorder of said County.

15-12-277
