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WHEN RECORDED, MAIL TO:
Heartland West Valley Commercial Limited Partners
c/o Barlow Nielsen Associates, Inc.
358 South Rio Grande St, Suite 250
Salt Lake City, Utah 84101

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09/19/2001 02:45 PM 41.00
Book - 8501 Pg - 7391-7404
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
BY: ZJM, DEPUTY - WI 14 P.

RECIPROCAL GRANT OF EASEMENTS FOR ACCESS AND PARKING

This Reciprocal Grant of Easements For Access and Parking is made and entered into this 18th of September, 2001, by and between WEST VALLEY CITY, a Utah municipal corporation ("City") and HEARTLAND WEST VALLEY COMMERCIAL LIMITED PARTNERS I and II, Minnesota limited partnerships ("Heartland").

Recitals

A. City is the owner of certain real property situated in West Valley City, Salt Lake County, Utah, and more particularly described in Exhibit "A" which is attached hereto and incorporated herein by this reference (the "City Property").

B. Heartland is the owner of certain real property and improvements situated in West Valley City, Salt Lake County, Utah, and more particularly described in Exhibit "B" which is attached hereto and incorporated herein by this reference (the "Heartland Property").

C. To insure that the Owners, Occupants and Permittees (as defined below) of the City Property and the Heartland property will have and continue to have adequate access to, egress from and parking related to their respective Properties, City and Heartland now desire to establish and grant reciprocal easements as described in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, promises and obligations hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. In addition to the definitions set forth above, as used herein the terms set forth below shall have the following meanings:
 - 1.1 Easements. The term "Easements" shall mean the City Easement and the Heartland Easement, as defined in Article 2, below.
 - 1.2 Occupant. The term "Occupant" as to each Property shall mean the Owner and any person from time to time entitled to the use and occupancy of any part of such Property under any lease, license or

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concession agreement, or other instrument or arrangement with the Owner.

- 1.3 Owner. The term "Owner" means and refers to City, with respect to the City Property, and Heartland, with respect to the Heartland Property, and the respective assigns, transferees, successors in interest, and others claiming by, through or, under such present Owner.
- 1.4 Permittee. The term "Permittee" shall mean and refer to all Occupants and all customers, employees and other business invitees of Occupants.
- 1.5 Properties. The term "Properties" shall mean and refer to the Heartland Property and the City Property. The term "Property" may refer to either one of the Properties, as the context may suggest.

2. Grant of Easements.

2.1 Grant of Easements by Heartland. Heartland hereby grants to City its successors and assigns, the following easements:

- (a) Pedestrian Access. A non-exclusive easement, appurtenant to the City Property, over that portion of the Heartland Property which is more particularly described in Exhibit "B", which is attached hereto and incorporated herein by this reference (the "City Easement"), for the purpose of pedestrian traffic of the Owners, Occupants and the Permittees of the City Property; limited, however, to uses or purposes connected with or incidental to the use of the City Property. The easement hereby established is an easement over all sidewalks and those portions of the City Easement which are available for general use, or which are designated from time to time by Heartland as appropriate areas for pedestrian traffic.
- (b) Vehicular Access. A non-exclusive easement, appurtenant to the City Property, over the City Easement for the purpose of automobile, light truck and other non-commercial vehicular traffic of the Owners, Occupants and Permittees of the City Property; limited, however, to uses or purposes connected with or incidental to the use of the City Property. The easement hereby established is an easement over those portions of the City Easement which are designated from time to time by Heartland as roadways or drives for vehicular use. The purpose of this easement is

to provide an easement for non-commercial vehicular travel between the City Property and adjacent public streets, as well as between the City Property and the Heartland Property.

- (c) Parking. A non-exclusive easement, appurtenant to the City Property, for parking of automobiles, motorcycles, light trucks and other non-commercial vehicles, for the non-exclusive use of the Owners, Occupants and Permittees of the City Property; limited however, to uses or purposes connected with or incidental to the use of the City Property. The easement hereby established is an easement over those portions of the City Easement which are designated from time to time by Heartland as parking spaces.

2.2 Grant of Easements by City. City hereby grants to Heartland, its successors and assigns, the following easements:

- (a) Pedestrian Access. A non-exclusive easement appurtenant to the Heartland Property, over that portion of the City Property which is more particularly described in Exhibit "A", which is attached hereto and incorporated herein by this reference (the "Heartland Easement"), for the purpose of pedestrian traffic of the Owners, Occupants and Permittees of the Heartland Property; limited, however, to uses or purposes connected with or incidental to the use of the Heartland Property. The easement hereby established is an easement over all sidewalks and those portions of the Heartland Easement as are provided or available for general or pedestrian use.
- (b) Vehicular Access. A non-exclusive easement, appurtenant to the Heartland property, over the Heartland Easement for the purpose of automobile, light truck and other vehicular traffic of the Owners, Occupants and Permittees of the Heartland Property; limited, however, to uses or purposes connected with or incidental to the use of the Heartland Property. The easement hereby established is an easement over those portions of the Heartland Easement which are designated as roadways or drives for vehicular use. The purpose of this easement is to provide an easement for vehicular travel between the Heartland Property and adjacent public streets, as well as between various portions of the Heartland Property.
- (c) Parking. A non-exclusive easement, appurtenant to the Heartland Property, for parking of automobiles, motorcycles, light trucks and other non-commercial vehicles, for the non-exclusive use of the Owners,

Occupants and Permittees of the Heartland Property; limited, however, to uses or purposes connected with or incidental to the use of the Heartland Property. The easement hereby established is an easement over those portions of the Heartland Easement which are designated as parking spaces.

3. Mutual Covenants.

- 3.1 Covenant of Access. There shall at all times be free access between the City Property and the Heartland Property and such access between the Properties will not be prohibited or substantially impaired, except in the case of emergency repairs or any other temporary event. In furtherance of the foregoing provisions, and not by way of limitation, no hedge, fence, walls, retaining wall or other barrier will be constructed which would separate the Properties and prevent access from one Property to another.
- 3.2 Easements Non-exclusive. Subject to the rules and regulations adopted for the use of such areas as provided in this Agreement the use of all easements provided for in this Agreement will, in each instance, be non-exclusive, and for the use and benefit of the Owners, and to the extent the Owners may see fit to permit the same, for the use and benefit of Occupants or Permittees. The parties acknowledge that title to the easements granted herein is subject to and encumbered by other non-exclusive easements in favor of other Occupants, adjoining landowners and utility companies. Each party may grant additional easements over the Properties in the future, without the consent of the other party to the Agreement, so long as such easements do not materially impair or restrict any of the rights or interests granted herein.
- 3.3 Other Restrictions on Use of Easements. The parties acknowledge that the easements granted herein are part of the "Common Areas" of the Market Street Center, as described in the two leases between Heartland and Toys "R" Us, Inc. dated May 17, 1990 (the "Ground Leases"). The Ground Leases also include certain restrictions on the use of such common areas which shall be binding upon both Heartland and City. The parties acknowledge and agree to be bound by the restrictions and limitations of the Ground Leases, so long as the Ground Leases remain in effect and to the extent that they affect the easements granted herein, including, without limitation, the following:
- (a) The parties shall not alter the location of any curb cuts, roadways, access aisles or sidewalks, nor alter the quality,

quantity, availability or location of any parking areas included within the Easements.

- (b) Neither party shall construct any barrier, building or other structure (including temporary structures) on any portion of the Easements nor change the points of ingress or egress to or from the Market Street Center from the public roads nor obstruct the visibility of the buildings constructed by Toys “R” Us, Inc.
- (c) Neither party shall reduce the number of parking spaces existing on the Easements.

4. Maintenance of Easement Areas.

4.1 Care and Maintenance. Heartland shall be responsible for maintaining the Easements in good condition and repair. Heartland shall clean and sweep the Easements, arrange for snow removal, keep the surfacing of the parking areas in good repair, and maintain the lighting for the parking areas. Heartland shall keep the parking areas lighted during normal retail shopping hours all days of the week, except on such days as the Market Street Center may be closed to the public.

4.2 Payment of Common Expenses. City shall pay to Heartland its Proportionate Share (as defined below) of all sums expended by Heartland to operate, maintain and repair the Easements. Such costs and expenses (“Common Expenses”) shall include, without limitation, the following: cleaning and sweeping of the parking areas, snow removal, landscaping maintenance, repairing, repaving and restriping the parking areas, replanting and replacing landscaping, water, electricity and other utility charges, capital improvements and replacements, premiums for insurance covering the Easements, real estate taxes on the Easements, other taxes that may be imposed on the Easements, wages, salaries and reasonable employee benefits of staff exclusively performing services in connection with the easements, personal property, sales and/or use taxes on materials, equipment, supplies and services and other direct costs properly chargeable to the operation and maintenance of the easements, together with an administrative charge equal to fifteen percent (15%) of the foregoing items. City’s Proportionate Share of the Common Expenses shall be 31.07% which is calculated by dividing the total square footage of the buildings on the City Property by the total square footage of all buildings on the City Property and the Heartland Property. City’s Proportionate Share of the Common Expenses shall be billed monthly, and shall be due and payable on or before the first day of each month, in advance. Such billing shall be based upon the one-twelfth (1/12) of the estimated Common Expenses for the year in question. At

the end of each year Heartland shall determine the actual amount of the Common Expenses incurred during such year, and City's Proportionate of such expenses. In the event that City's monthly payments of the Common Expenses throughout the year exceed its Proportionate Share of the actual Common Expenses for the year, such excess shall be applied as a credit to the billing(s) for Common Expenses next coming due. If City's monthly payments of estimated Common Expenses are less than its Proportionate Share of the actual Common Expenses for the year, such shortage shall be paid by City to Heartland immediately upon receipt of billing statement for the same. Heartland shall maintain accurate books and records for all Common Expenses, and City shall have the right to inspect such books and records during reasonable office hours upon not less than fifteen (15) days prior written notice to Heartland.

5. Duration, Extinguishment, Continuation and Modification.

5.1 Duration. This Agreement and each easement, covenant, restriction and undertaking of this Agreement shall be perpetual in duration, unless earlier modified or terminated by the mutual agreement of all Owners of the Properties.

5.2 Modification. This Agreement and any provision, covenant, condition or restriction contained herein may be terminated, extended, modified or amended by unanimous consent of the Owners of the Properties. No termination, extension, modification or amendment of this Agreement will be effective until a written instrument setting forth its terms has been executed, acknowledged and recorded in the Office of the Recorder of Salt Lake County, State of Utah. No such amendment, modification, extension or termination of this Agreement will affect the rights of any mortgagee under a mortgage or the beneficiary under any deed of trust constituting a lien on any portion of the Properties, unless the mortgagee or beneficiary consents to such, nor will any amendment, modification, extension or termination be effective against such mortgagee or beneficiary subsequent to its securing title to its encumbered property by foreclosure, trustee's deed, or deed in lieu of foreclosure, unless the mortgagee or beneficiary has consented in writing.

5.3 Approval of Parties in Possession. No lessee, licensee or other person having a possessory interest, other than those referred to in Section 5.2, will be required to join in the execution of or consent to any act of the parties in interest taken subject to this Article 5.

6. Not a Public Dedication. Nothing contained in this Agreement will be deemed to be a gift or dedication of any portion of the Properties to the general public, for the use by or benefit of the general public or any public

purpose whatsoever; it being the intention of the Owners that his Agreement will be strictly limited to and for the purpose expressed herein.

7. Miscellaneous.

- 7.1 Appurtenances. Each and all of the easements, restrictions and rights granted or created herein are appurtenances to the applicable Properties, and none of the easements, restrictions and rights created herein may be transferred, assigned or encumbered except as an appurtenance to such Properties. For the purposes of the easements, restrictions and rights set forth herein, the Property benefitted will constitute the dominant estate, and the particular area in the Properties which respectively are burdened by such easements, restrictions and rights will constitute the servient estate.
- 7.2 Subject to Existing Encumbrances. The easements, rights and interests granted or created herein are subject to all covenants, conditions, restrictions easements, leases, encumbrances and other matters of record with respect to the Properties as of the date this instruments is filed for record in the Office of the Salt Lake County Recorder, except as such encumbrances may be subordinated to this instrument by a recorded instrument giving notice of such subordination.
- 7.3 Interest of Parties. Each and all of the covenants, restrictions, conditions and provisions contained in this Agreement (whether affirmative or negative in nature) are made for the direct, mutual and reciprocal benefit of each Property, and (i) will create mutual equitable servitudes upon each Property in favor of the other Property; (ii) will constitute covenants running with the land; (iii) will bind every person having any fee, leasehold or other interest in any portion of such Property at any time, or from time to time, to the extent that such property is affected or bound by the covenants, restrictions, conditions or provisions in questions; and (iv) will inure to the benefit of the Owners and their respective successors and assigns as to each Property.
- 7.4 Partial Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 7.5 Attorney's Fees. In the event of a breach or other dispute between the parties in the performance or interpretation of this Agreement, or otherwise arising out of or relating to this Agreement, the prevailing parting in such dispute, whether pursued through litigation or otherwise, shall be entitled to recover from the other

party all of its costs and expenses incurred in connection with such dispute, including reasonable attorneys' fees actually incurred.

- 7.6 Governing Law. The provisions of this Agreement shall be governed by the laws of the State of Utah.
- 7.7 Titles and Captions. All section or paragraph titles or captions of this Agreement are for convenience only, shall not be deemed part of this Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part or parts of this Agreement.
- 7.8 Further Action. The parties shall execute and deliver all documents, provide all information, and take or forbear from taking all such action as may be necessary or appropriate to achieve the purposes of this Agreement.
- 7.9 Exhibits. All exhibits annexed to this agreement and the documents to be delivered hereunder are expressly made a part of this agreement as fully as though completely set forth herein. All references to this Agreement, either in the Agreement itself or in any of such writings, shall deem to refer to and include this Agreement and all such exhibits and writings. Any breach of, or default under, any provisions of any of such writings shall, for all purposes, constitute a breach or default under this Agreement and all other such writings.
- 7.10 Notices. All notices, requests, demands, and other communications hereunder shall be in writing, shall be effective upon receipt or three (3) days after mailing (whichever is sooner), and shall be sent by registered or certified mail to the following addresses:

If to Heartland: Heartland West Valley Commercial Limited
Partners I and II
358 South Rio Grande Street, Suite 250
Salt Lake City, Utah 84101
Attn: Michael L. Nielsen

If to City: West Valley City
3600 South Constitution Boulevard
West Valley City, Utah 84119
Attn: Richard Catten

The foregoing addresses may be changed by notices given in the manner set forth in this section.

- 7.11 Integration: No Waiver. This Agreement contains the entire agreement of the parties hereto with respect to its subject matter and may not be changed, modified or amended unless in writing and signed by the parties hereto. Any waiver or breach of any term or condition of this Agreement shall not be deemed to constitute a

waiver of any other term or condition or subsequent breach of the same condition.

7.12 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.



Attest: *Sherryl McKendrick*
City Recorder

WEST VALLEY CITY,
a Utah municipal corporation

By: *Gerald F. Wright*
Its: *Mayor*

HEARTLAND WEST VALLEY COMMERCIAL
LIMITED PARTNERS I, a Minnesota limited
partnership

By its general partner: WEST VALLEY
MANAGEMENT CORPORATION, a Utah
corporation

Michael L. Nielsen
Michael L. Nielsen, President

HEARTLAND WEST VALLEY COMMERCIAL
LIMITED PARTNERS II, a Minnesota limited
partnership

By its general partner: WEST VALLEY
MANAGEMENT CORPORATION, a Utah
corporation

Michael L. Nielsen
Michael L. Nielsen, President

EXHIBIT "A"

LEGAL DESCRIPTION

The Property referred to in the foregoing Grant of Easement is located in Salt Lake County, Utah and is more particularly described as follows:

PARCEL NO. 1:

A part of the Northwest Quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

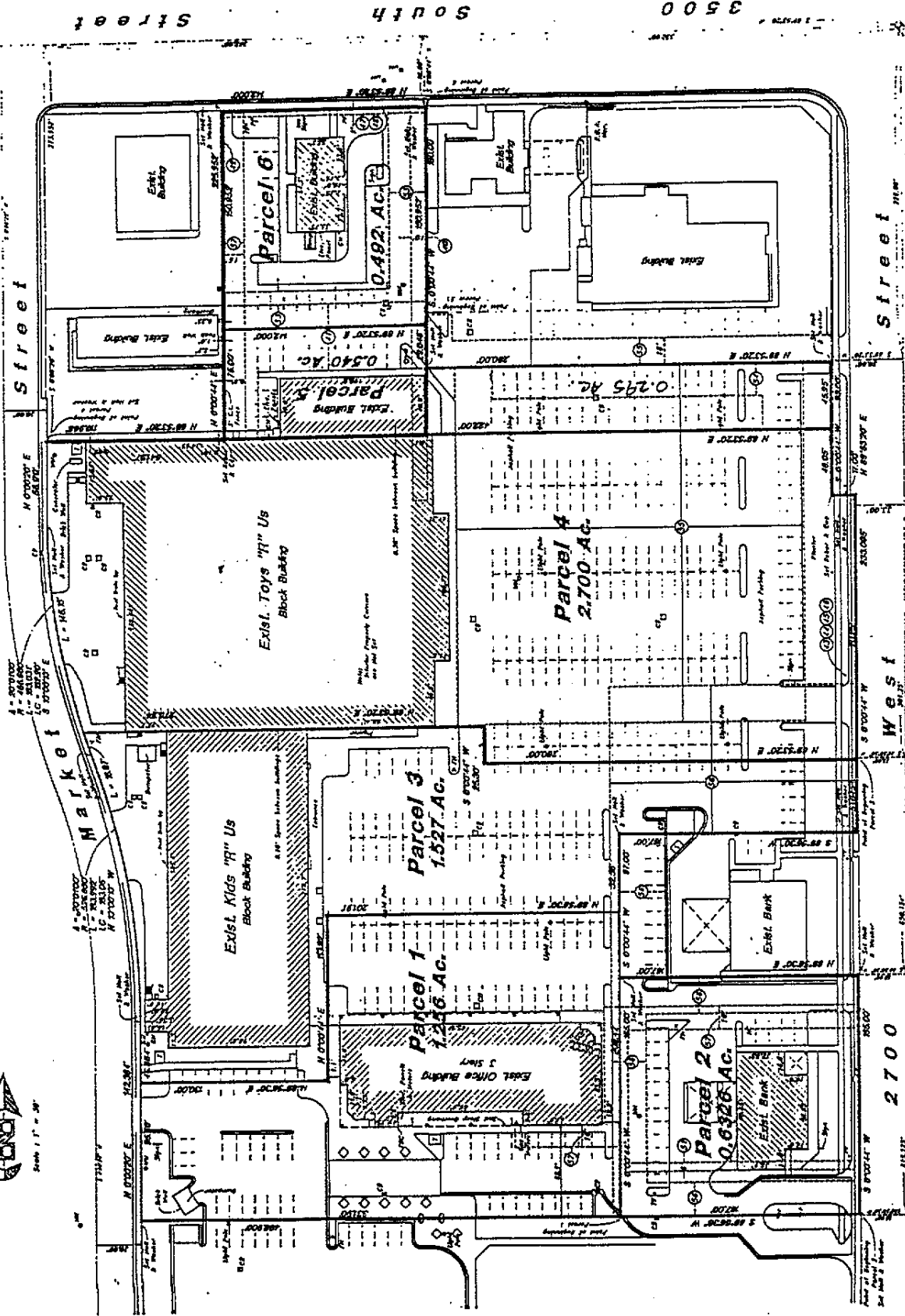
BEGINNING at a point which is 815.125 feet South 0°00'44" West along the East line of said Northwest Quarter and 200.00 feet South 89°56'30" West from the Northeast Corner of said Northwest Quarter of Section 33; running thence South 89°56'30" West 331.90 feet to the East line of Market Street; thence North 0°00'20" East 95.50 feet along said Easterly line of Market Street; thence leaving said Easterly line North 89°56'30" East 130.00 feet; thence North 0°00'44" East 113.92 feet; thence North 89°56'30" East 201.91 feet; thence South 0°00'44" West 209.42 feet to the point of BEGINNING.

Tax ID 15-33-129-039

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Scale 1" = 50'



- Exst. Building
- Proposed Building
- Proposed Parking
- Proposed Driveway
- Proposed Sidewalk
- Proposed Walkway
- Proposed Utility
- Proposed Fencing
- Proposed Retaining Wall
- Proposed Storm Drain
- Proposed Sewer Line
- Proposed Water Line
- Proposed Gas Line
- Proposed Electric Line
- Proposed Telephone Line
- Proposed Cable Line
- Proposed Fire Hydrant
- Proposed Fire Alarm
- Proposed Fire Sprinkler
- Proposed Fire Extinguisher
- Proposed Fire Alarm Control Panel
- Proposed Fire Alarm Sounder
- Proposed Fire Alarm Bell
- Proposed Fire Alarm Horn
- Proposed Fire Alarm Siren
- Proposed Fire Alarm Strobe Light
- Proposed Fire Alarm Flashing Light
- Proposed Fire Alarm Buzzer
- Proposed Fire Alarm Chime
- Proposed Fire Alarm Gong

ALTA/ACSM Land Title Survey
 Heartland West Valley Commercial Ltd Partnership
 1.1% of the North Quarter of Section 11
 Township 21 S., Range 102 W., Lake of the Woods
 Mankato Street Center

GREAT BASIN ENGINEERING, INC.
 217 W. 1st St., Ste. 200
 Mankato, MN 56001
 507-435-1111
 507-435-1112

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EXHIBIT "B"

LEGAL DESCRIPTION

The Property referred to in the foregoing Grant of Easement is located in Salt Lake County, Utah and is more particularly described as follows:

PARCEL NO. 2:

A part of the Northwest Quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

BEGINNING at a point which is 815.125 feet South 0°00'44" West along the East line of said Northwest Quarter and 33.00 feet South 89°56'30" West from the Northeast Corner of said Northwest Quarter of Section 33; running thence South 89°56'30" West 167.00 feet; thence North 0°00'44" East 165.00 feet; thence North 89°56'30" East 167.00 feet; thence South 0°00'44" West 165.00 feet to the point of BEGINNING.

PARCEL 3

A part of the Northwest Quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

BEGINNING at a point on the West line of 2700 West Street, being 501.25 feet South 0°00'44" West along the East line of said Northwest Quarter and 33.00 feet South 89°53'20" West from the Northeast Corner of said Northwest Quarter of Section 33; and running thence South 0°00'44" West 51.845 feet; thence South 89°56'30" West 167.00 feet; thence South 0°00'44" West 52.58 feet; thence South 89°56'30" West 201.91 feet; thence South 0°00'44" West 113.92 feet; thence South 89°56'30" West 130.00 feet to the East line of Market Street; thence along the Easterly line of Market Street as follows: North 0°00'20" East 46.88 feet; thence Northwesterly along the arc of a 526.66 foot radius curve to the left 183.99 feet (Long Chord bears North 10°00'10" West 183.06 feet, Central Angle equals 20°01'00") and Northwesterly along the arc of a 466.66 foot radius curve to the right 16.87 feet (Long Chord bears North 18°58'32" West 16.87 feet, Central Angle equals 2°04'16"); thence leaving said Easterly line North 89°53'20" East 276.24 feet; thence South 0°00'44" West 25.30 feet; thence North 89°53'20" East 260.00 feet to the point of BEGINNING.

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PARCEL 4

A part of the Northwest Quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

BEGINNING at a point on the East line of Market Street, being 592.00 feet South $89^{\circ}53'20''$ West along the Section line and 273.95 feet South $0^{\circ}00'20''$ West from the Northeast Corner of said Northwest Quarter of Section 33; and running thence North $89^{\circ}53'20''$ East 541.97 feet; thence South $0^{\circ}00'44''$ East 46.05 feet; thence North $89^{\circ}23'20''$ East 17.00 feet to the West line of 2700 West Street, said West line being 33.00 feet Westerly of and parallel to the East line of said Northwest Quarter of Section 33; thence South $0^{\circ}00'44''$ West 181.25 feet along said West line; thence South $89^{\circ}53'20''$ West 260.00 feet; thence North $0^{\circ}00'44''$ East 25.30 feet; thence South $89^{\circ}53'20''$ West 276.24 feet to the East line of Market Street at a point in a curve in which the radius point bears North $72^{\circ}03'36''$ East; thence along the Easterly line of Market Street as follows: Northwesterly along the arc of a 466.66 foot radius curve to the right 146.16 feet (Long Chord bears North $8^{\circ}58'02''$ West 145.57 feet, Central Angle equals $17^{\circ}56'44''$) and North $0^{\circ}00'20''$ East 58.17 feet to the point of BEGINNING.

PARCEL NO. 5:

A part of the Northwest Quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

BEGINNING at a point which is South $89^{\circ}53'20''$ West 330.00 feet along the North line of said Northwest Quarter and South $0^{\circ}00'44''$ West 198.952 feet from the Northeast corner of said Northwest Quarter of Section 33; running thence South $0^{\circ}00'44''$ West 29.048 feet; thence North $89^{\circ}53'20''$ East 280.00 feet to a point 50.00 feet perpendicularly distant West of the East line of said Northwest Quarter; thence South $0^{\circ}00'44''$ West 45.95 feet parallel to said East line; thence South $89^{\circ}53'20''$ West 422.00 feet; thence North $0^{\circ}00'44''$ East 75.00 feet; thence North $89^{\circ}53'20''$ East 142.00 feet to the point of BEGINNING.

PARCEL NO. 6:

A part of the Northwest Quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

BEGINNING at a point which is South $89^{\circ}53'20''$ West 330.00 feet along the North line of said Northwest Quarter and South $0^{\circ}00'44''$ West 48.00 feet from the Northeast corner of said Northwest Quarter of Section 33; running thence South $0^{\circ}00'44''$ West 150.952 feet; thence South $89^{\circ}53'20''$ West 142.00 feet; thence North $0^{\circ}00'44''$ East 150.952 feet; thence North $89^{\circ}53'20''$ East 142.00 feet to the point of BEGINNING.

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