

# Santaquin City Resolution 03-04-2014

## A Resolution Approving an Agreement for the Exchange of Right of Way Along Orchard Lane and 500 East

**WHEREAS**, Santaquin City (City) owns certain real property within its municipal boundaries referred to as "Orchard Lane"; and

**WHEREAS**, CJM Limited Liability Partnership (CJM) is in the business of constructing and operating supermarkets, and has purchased certain real property within the municipal boundaries of the City located around Orchard Lane, for the purpose of constructing and operating a supermarket in Santaquin; and

**WHEREAS**, the City and CJM desire to enter into an Agreement to provide for the exchange of property as illustrated in the Agreement attached hereto for the construction of 500 East Street; and to provide for improvements on 500 East Street, from Main Street to 100 North; and

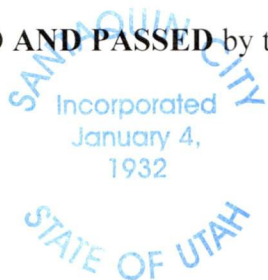
**WHEREAS**, the City and CJM agree that the construction and operation of a supermarket in Santaquin will benefit CJM and the residents of the City and the surrounding area; and that the success of the project will be enhanced by: a) exchanging their interests in certain of the above described properties to facilitate the construction of a portion of 500 East between Main Street and 100 North; and b) cooperating in the construction of certain right-of-way improvements.; and

**WHEREAS**, The property improvements anticipated are intended to benefit both Parties and the residents of the City and the surrounding area; and

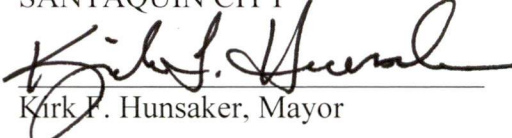
**WHEREAS**, The Parties deem that the two parcels to be exchanged are of equivalent value now and at all times material herein.

**NOW THEREFORE**, be it resolved by the City Council of Santaquin City to authorize the Mayor of Santaquin to execute all documents necessary to execute the acceptance of the proposed boundary line adjustment and dedication of land adjacent to Orchard Cove Park.


**ADOPTED AND PASSED** by the City Council of Santaquin City, Utah, this 18<sup>th</sup> day of March, 2014.



SANTAQUIN CITY

  
Kirk F. Hunsaker, Mayor

Attest

  
Susan B. Darnsworth, City Recorder

## EXCHANGE AGREEMENT

This Exchange Agreement ("Agreement") is made and entered into this 9 day of April, 2015 by and between CJM Limited Liability Limited Partnership, an Idaho limited partnership (hereinafter "CJM") and the City of Santaquin, a municipality and political subdivision of the State of Utah (hereinafter "the City"). CJM and the City may further be referred to herein as a "Party" or as "the Parties."

### RECITALS

- A. The City owns certain real property within its municipal boundaries referred to as "Orchard Lane."
- B. CJM is in the business of constructing and operating supermarkets, and has purchased certain real property within the municipal boundaries of the City located adjacent to Orchard Lane, for the purpose of constructing and operating a supermarket in Santaquin.
- C. Parties desire to enter into this Agreement to provide for the exchange of property as illustrated in the attached Exhibit "A" for the construction of 500 East Street; and to provide for improvements on 500 East Street, from Main Street to 100 North.
- D. The Parties agree that the construction and operation of a supermarket in Santaquin will benefit CJM and the residents of the City and the surrounding area; and that the success of the project will be enhanced by: a) the Parties exchanging their interests in certain of the above described properties to facilitate the construction of a portion of 500 East between Main Street and 100 North; and b) cooperating in the construction of certain right-of-way improvements within said portion of 500 East.
- E. The property improvements described above are intended to benefit both Parties and the residents of the City and the surrounding area.
- F. A true and accurate legal description of the property to be conveyed by CJM to the City through this exchange is attached hereto as Exhibit "B" (the "CJM Property") and a true and accurate legal description of the property to be conveyed by the City to CJM through this exchange is attached hereto as Exhibit "C" (the "City Property" and, together with the CJM Property, the "Property"). Both exhibits are incorporated herein by this reference.
- G. The Parties agree and acknowledge that the two parcels to be exchanged are of reasonably equivalent value now and at all times material herein.

**NOW, THEREFORE**, in consideration of the covenants, conditions and promises contained herein, and other consideration, which the parties deem valuable, the Parties hereto agree as follows:

1. **Form of Transaction.** Upon satisfaction of all conditions precedent contained in this Agreement, the exchange and conveyance to the City of the CJM Property and to CJM of the City Property shall be completed simultaneously by quit claim deed.

2. **Physical Condition to be "As Is".** Subject to the terms and conditions contained in this Agreement, each Party agrees to take the respective parcel received by the Party "as is" regarding its physical condition without reliance upon any opinion or statement of the other Party. Neither of the Parties makes any covenant or warranty regarding the condition of the soil or subsoil or any other condition of the land. Moreover, neither of the Parties makes any covenant or warranty regarding the zoning of the respective parcels or as to the status of any governmental restrictions.

3. **Preservation of Value.** Because the exchange will not be completed until a later date, each Party shall maintain and preserve the Property in good repair and condition. Neither Party shall commit, permit or suffer any demolition or waste of the Property or any use or occupancy that constitutes a public or private nuisance. Neither Party shall permit or suffer to be done any act whereby the value of any part of the Property may be decreased.

4. **Title.** Each Party shall promptly discharge any mechanics', laborers', materialmen's or similar lien, charge, attachment, or lis pendens filed or recorded which relates to the respective Property.

5. **Easements.** The City has previously granted easements in favor of a high-pressure gas line, local gas line and a power line running through the City Property. The City also installed sewer, culinary, and pressurized irrigation lines ("Infrastructure") in the City Property. Any and all easements and Infrastructure currently located within the City Property shall be "permitted encumbrances" and CJM shall take title to the City Property subject to such permitted encumbrances. In addition, the City will retain in its deed to CJM an easement covering the City Property for the City's Infrastructure and for vehicular and pedestrian access to real property being retained by the City and to the CJM Property that is being acquired by the City pursuant to this exchange. The City shall continue to be responsible for maintaining, repairing and operating the roadway known as "Orchard Lane" and the Infrastructure within the City Property to provide vehicular and pedestrian access until such roadway is vacated and CJM shall have no obligation or liability for providing such maintenance or repairs. The City hereby agrees to indemnify and hold CJM harmless for all claims, damages or liability whatsoever resulting from or arising out of the maintenance, repair or use of the Improvements or the roadway within the City Property until such time as the roadway is vacated and no longer used as a public right of way. The City's obligation to maintain and repair the roadway and the Improvements and to indemnify CJM as provided in this paragraph 5 shall survive the closing of

the conveyances contemplated in this Agreement. The deed of reservation shall be in such form and shall contain such terms, consistent with the intent of this Agreement, as may reasonably be required by the City and CJM.

6. **Taxes.** Real property belonging to the City is tax exempt. CJM shall pay the entire tax assessment accrued as of the date of closing and all prior years on the CJM Property and shall be responsible for rollback taxes, if any, on the City Property. Otherwise, the Parties shall each pay any general and special assessments and any other charges of every description that may be levied on or assessed on the land they now own up to and including the time of closing and after closing shall pay their respective taxes on the land received through the exchange.

7. **Due Diligence and Contingencies.**

- a. The Parties hereby agree and acknowledge that they have conducted whatever due diligence and investigations of the Property they deem necessary to perform their respective obligations hereunder and to close the exchange of property contemplated herein. The closing of such exchange and delivery of the deeds conveying the Property shall not be contingent upon either Party conducting further due diligence or investigations.
- b. The CJM Property is part of a larger parcel, most of which is being retained by CJM, and the City Property is part of a larger parcel, most of which is being retained by the City. The closing of this exchange is conditioned upon the satisfaction of any requirement to legally subdivide either the CJM Property or the City Property, or both, from the larger parcel of which each is a part. Should there be a requirement to legally subdivide either property from a larger parcel of which it may be a part, CJM shall be responsible for the cost of the same, including but not limited to any required survey and platting work, to the satisfaction of the city or county having jurisdiction with respect to the same and the closing date provided in paragraph 8 shall be extended until such time as the Property is legally subdivided if such subdivision is required by law. The City agrees to sign such documents and otherwise cooperate in the subdivision process as reasonably requested by CJM, provided that the City shall incur no cost, risk or liability as a consequence thereof. If CJM has not satisfied any applicable subdivision requirements, or the equivalent, within 90 days after the effective date of this Agreement, the

City may, without liability, terminate this Agreement by so notifying CJM in writing.

8. **Closing.** The closing shall occur within five (5) business days after the later to occur of: (i) the execution of this Agreement by the Parties; or (ii) the satisfaction of the condition provided in Section 7.b. The closing will be held at the office of a local title company mutually acceptable to the Parties or at such other location as the Parties may mutually agree. No cash will be exchanged at closing, and neither party is depositing earnest money. Should the Parties desire title insurance on the Property at closing, each Party shall be responsible for payment of the premium and other costs associated with the issuance of the title insurance policy obtained by them, respectively. Since this is a property exchange with no cash consideration changing hands, and the Parties having not established a value for the property being exchanged, for purposes of title insurance, the Parties agree that a value of \$158,000 will be assumed for each of the City Property and the CJM Property. Any other closing costs shall be the responsibility of CJM.

9. **Default.** In case of default by either Party under this Agreement, the defaulting Party shall pay all costs incurred in enforcing this Agreement, or any right arising out of the breach thereof, whether by suit or otherwise, including reasonable attorney fees.

10. **Condemnation.** In the event of condemnation by any governmental entity prior to the closing of this transaction, the other Party shall not be entitled to share any portion of any award from the governmental entity.

11. **Water Rights.** Water rights are not included in this transfer.

12. **Property Improvements.** Both CJM and the City will benefit from the construction and maintenance of certain improvements to the CJM Property pursuant to this Agreement. The Parties therefore agree to cooperate in the construction of the improvements described below.

a. The City will clear and grub the CJM Property and will use a portion of funds obtained for the Santaquin Main Street Phase 2 project to construct a road within the width of said property from Main Street to 100 North consisting of an asphalt surface twenty-four (24) feet wide.

b. At the time CJM develops a supermarket and other related improvements on the property adjacent to the Property, CJM will construct the remainder of the 500 East road improvements described in this paragraph 12.b. Such improvements shall include an asphalt surface six (6) feet wide on each side of the twenty-four (24) foot wide surface constructed by

the City, for a total paved road width of thirty-six (36) feet. The additional six (6) foot wide sections of asphalt installed by CJM on the above-described road will be of the same materials, thickness and quality as the surface constructed by the City. CJM will also install an overlay 1.5 inches thick on the twenty-four (24) foot wide asphalt road constructed by the City. Curbing, gutter, sidewalk, planter areas and associated landscaping improvements shall also be installed by CJM in conjunction with its overall development of the adjacent property owned by CJM.

c. All of the improvements described herein shall be installed and constructed in compliance with the Santaquin City Development Standards and all other applicable rules and regulations.

13. **Waivers.** No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by either Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

14. **Entire Agreement.** This Agreement contains the entire agreement between the parties concerning the subject matter hereof. No promise, representation, warranty or covenant not included in this Agreement has been or is relied on by either Party. No subsequent amendment or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by each Party.

15. **Notices.** Any notice, demand, request, consent, approval or other communication to be given by one Party to the other shall be given by: hand delivery, confirmed overnight mail or by mailing in the United States mail, certified or registered, postage prepaid, addressed to the applicable Party at the Party's respective last known addresses.

16. **Successors and Assigns; Survival.** This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors, assigns and nominees. All covenants, representations and warranties contained herein shall survive the Closing.

17. **Governing Law.** This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with, the laws of the State of Utah applicable to agreements made and to be performed wholly within the State of Utah.

18. **Interpretation.** The term "days", as used herein, shall mean actual days occurring, including Saturdays, Sundays and holidays. The term "business days" shall mean days other than Saturdays, Sundays and holidays. If any item must be accomplished or delivered hereunder on a day that is not a business day, it shall be deemed to have been timely accomplished or delivered if accomplished or delivered on the next following business day. As

used in this Agreement, the neuter includes the masculine and feminine, and the singular includes the plural.

19. **Counterparts.** This Agreement and any originals of exhibits referred to herein may be executed in any number of duplicate originals or counterparts, each of which (when the original signatures are affixed) shall be an original, but all of which shall constitute one and the same instrument.

20. **Execution of Other Documents; Compliance with Regulations.** The Parties hereto will do all other things and will execute all documents that are necessary for the transaction contemplated hereby to close. Furthermore, except as otherwise provided herein, the Parties will comply at their own expense with all applicable laws and governmental regulations required for this transaction to close, including without limitation any required filings with governmental authorities.

21. **Right of Entry.** The Parties hereby agree that they and/or their agents, representatives, contractors and subcontractors may enter upon the respective parcels of real property in order to conduct their own inspections, appraisals, environmental and engineering studies, soil and compaction tests, surveys, mapping and other tests and studies so long as such activities do not materially damage the Property.

22. **No Joint Venture.** The Parties understand, acknowledge and agree that this Agreement shall not constitute nor be regarded as a joint venture agreement and that the Parties shall not be regarded in any manner whatsoever as partners or joint venturers in connection with the Property or the transactions contemplated hereunder.

23. **Captions.** The captions of the various paragraphs of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content, or intent of this Agreement or of any part of this Agreement.

24. **Partial Invalidity.** If any term of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

25. **Warranty of Authority.** The individuals signing this Agreement for the Parties each warrant, by their signature, that they have full authority to enter into this Agreement in behalf of the party for whom they sign.


26. **Time of Essence.** Time is of the essence in the performance of all covenants and conditions in this Agreement for which time is a factor.

(Signature Page to Follow)



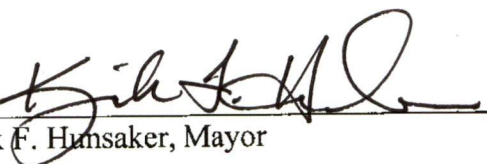
IN WITNESS WHEREOF, the Parties have signed this Agreement as of the day and year first above written.

**CJM LIMITED LIABILITY LIMITED PARTNERSHIP**


By:   
Mark Ridley, Authorized Representative



**SANTAQUIN CITY**

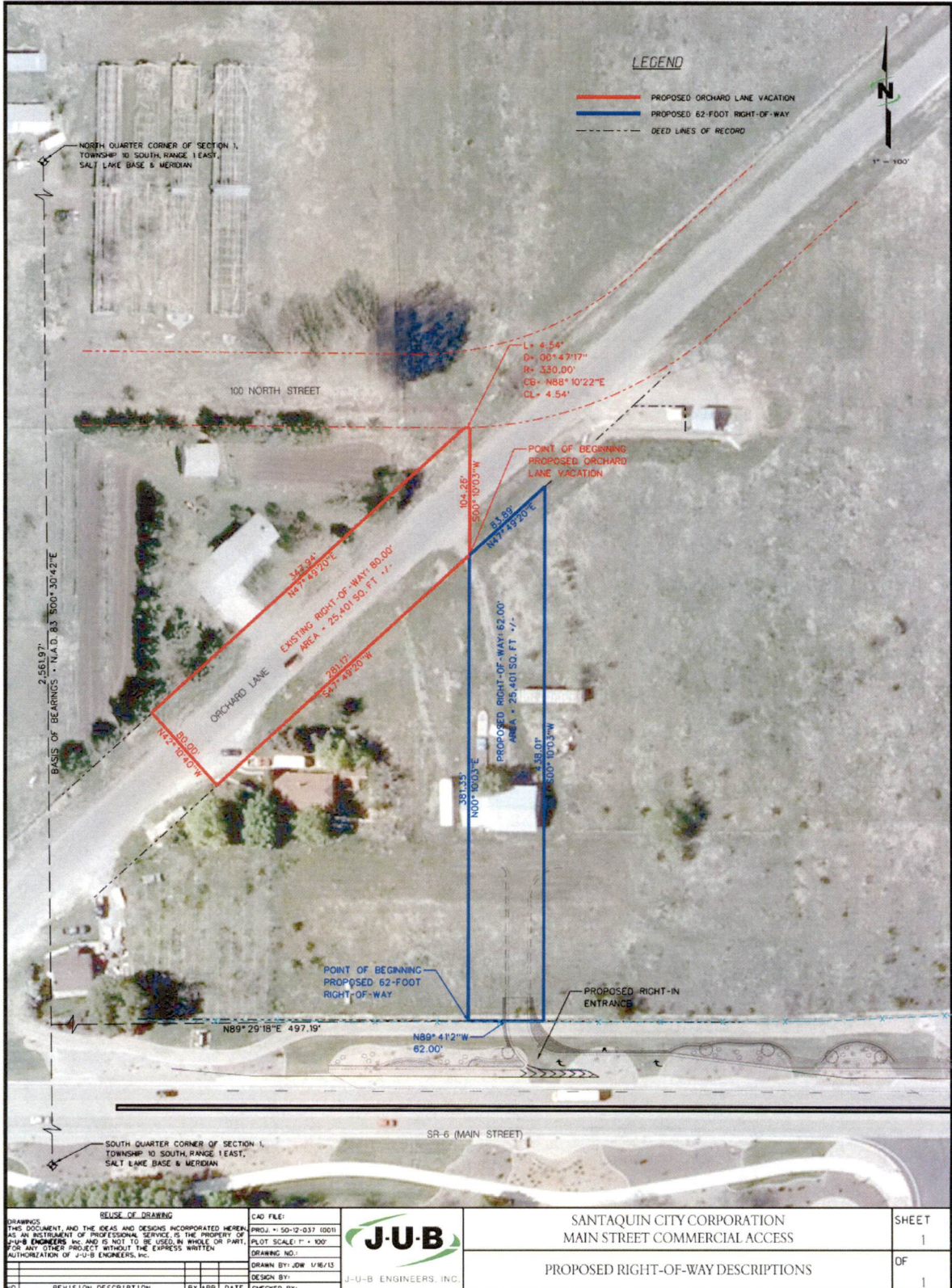
By:   
Kirk F. Hunsaker, Mayor

ATTEST:

  
Susan B. Farnsworth, City Recorder

# EXHIBIT "A"

## Diagram of Land Transfer



REUSE OF DRAWING		CAD FILE:
DRAWINGS THIS DOCUMENT AND THE DEAS AND DESIGNS INCORPORATED HEREIN AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF J-U-B ENGINEERS INC AND IS NOT TO BE USED, IN WHOLE OR PART, FOR ANY OTHER PROJECT WITHOUT THE EXPRESS WRITTEN AUTHORIZATION OF J-U-B ENGINEERS, INC.		PROJ. # 50-12-037 (001)
		PLOT SCALE: 1" = 100'
		DRAWING NO.:
		DRAWN BY: JOW 1/16/13
		DESIGN BY:
		CHECKED BY:
NO.	REVISION DESCRIPTION	BY
		DATE



SANTAQUIN CITY CORPORATION MAIN STREET COMMERCIAL ACCESS	SHEET 1
PROPOSED RIGHT-OF-WAY DESCRIPTIONS	OF 1

## EXHIBIT "B"

### CJM Property Legal Description

A parcel of land for a public road right-of-way, which parcel is situate in the SW1/4NE1/4 of Section 1, Township 10 South, Range 1 East, Salt Lake Base and Meridian, which parcel is described as follows:

Beginning at a point on the north right-of-way of State Highway 6 (Santaquin Main Street), which point is South 00°30'42" East 2,561.97 feet along the quarter section line and North 89°29'18" East 497.19 feet from the North Quarter Corner of said Section 1; thence North 00°10'03" East 381.35 feet to the south right-of-way of Orchard Lane, which right-of-way is described in that certain Quitclaim deed recorded as Entry 9262 filed on December 17, 1923 at the office of the Utah County Recorder; thence North 47°49'20" East 83.89 feet (*North 47°31' East by record*) along said right-of-way; thence South 00°10'03" West 438.01 feet to the north right-of-way of said State Highway 6, which right-of-way is described in that certain Warranty Deed recorded as Entry 14233 filed on August 12, 1964 at the office of the Utah County Recorder; thence North 89°41'02" West 62.00 feet (*WEST by record*) along said right-of-way to the point of beginning.

The above described parcel contains 25,401 square feet or 0.583 acre in area, more or less.

Basis of bearings: The line between the North Quarter Corner of Section 1, Township 10 South, Range 1 East, Salt Lake Base and Meridian (Utah County GIS Monument No. 5101) and the South Quarter Corner of said section (Utah County GIS Monument No. 5293) bears South 00°30'42" East.

## EXHIBIT "C"

### City Property Legal Description

A portion of that public road right-of-way known as Orchard Lane, which right-of-way is described in that certain Quitclaim deed recorded as Entry 9262 filed on December 17, 1923 at the office of the Utah County Recorder, which portion is situate in the SW1/4NE1/4 of Section 1, Township 10 South, Range 1 East, Salt Lake Base and Meridian, which portion is described as follows:

Beginning at a point on the easterly right-of-way of said Orchard Lane, which point is South 00°30'42" East 2,180.65 feet along the quarter section line and North 89°29'18" East 501.71 feet from the North Quarter Corner of said Section 1; thence South 47°49'20" West 281.17 feet (*South 47°31' West by record*) along said right-of-way; thence North 42°10'40" West 80.00 feet to the westerly right-of-way of said Orchard Lane; thence North 47°49'20" East 347.94 feet (*North 47°31' East by record*) along said right-of-way to a point of non-tangent curvature on the southerly right-of-way of 100 North Street; thence easterly 4.54 feet following said right-of-way along the arc of a 330.00 foot radius curve to the left, through a central angle of 00°47'17", the chord of which bears North 88°10'22" East 4.54 feet to a point of non-tangency; thence South 00°10'03" West 104.26 feet to the point of beginning.

The above described parcel contains 25,401 square feet or 0.583 acre in area, more or less.

Basis of bearings: The line between the North Quarter Corner of Section 1, Township 10 South, Range 1 East, Salt Lake Base and Meridian (Utah County GIS Monument No. 5101) and the South Quarter Corner of said section (Utah County GIS Monument No. 5293) bears South 00°30'42" East.