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 4/3/2008 12:34:00 PM \$33.00
 Book - 9590 Pg - 3149-3158
 Gary W. Ott
 Recorder, Salt Lake County, UT
 BACKMAN TITLE SERVICES
 BY: eCASH, DEPUTY - EF 10 P.

When Recorded Return to:

A & Z Produce
 c/o David L. Barclay
 Richards, Brandt, Miller & Nelson
 50 South Main 7th Floor
 Post Office Box 2465
 Salt Lake City, Utah 84110-2465

LIMITED COMMERCIAL EASEMENT IN GROSS

Effective as of the 17th day of April, 2006, and in compliance with the requirements of, and in consideration for, the promises, covenants, and warranties set forth in the Settlement Agreement of even effective date herewith executed in conjunction with this Limited Commercial Easement in Gross by the below-described Grantors and those Grantees identified in subparagraphs 1.a. through 1.c. below regarding the properties described herein ("**Settlement Agreement**") **TONY VINA** and **SHERRY VINA**, as the **TRUSTEES OF THE VINA FAMILY TRUST** dated August 17, 1993, whose address is 351 West 400 South, Salt Lake City, Utah 84101, (it is understood that the middle initial of Sherry Vina is "B."), collectively as "**Grantors**", hereby acknowledge the existence of, and re-confirm by conveying to, the "**Grantees**" identified in paragraph 1 below a **LIMITED COMMERCIAL EASEMENT IN GROSS** ("**Limited Commercial Easement**") in that parcel of real property located in Salt Lake County, State of Utah, more particularly described as follows, which parcel shall sometimes hereinafter be referred to as "**Parcel 9**" in reference to the last digit of its Salt Lake County tax parcel number:

Beginning at a point 32.5 feet North of the Southwest corner of Lot 3, Block 43, Plat A, Salt Lake City Survey and running thence East 47.07 feet to a point in the center line of a spur track; thence South 63°23'30" East 18.3 feet to a point in the center line of spur track; thence South 68°47'30" East 18.78 feet to a point in the center line of spur track; thence South 73°20'30" East 18.84 feet, more or less, to a point in the center line of spur track; thence South 12.13 feet, more or less, to South boundary line of Lot 3; thence East 231 feet to Southeast corner of said Lot 3; thence North 82.5 feet; thence West 330 feet; thence South 50 feet to the place of beginning.

Tax I.D. and Sidwell No.: 15-01-330-009

1. **Identification of Grantees:** The Grantees of the Limited Commercial Easement are identified as follows and shall also sometimes be referred to below collectively as the "**A & Z Easement Owners**":

- a. **A AND Z PRODUCE CO.**, a Utah Corporation also known as "**A and Z Produce Company, a Utah Corporation,**" and "**A & Z Produce, a Utah Corporation**" (hereinafter sometimes referred to as "**A and Z Produce Co.**");
- b. **A&Z PRODUCE II, L.C.**, a Utah Limited Liability Company also known as "**A & Z Produce II, L.C.,**" (hereinafter sometimes referred to as "**A & Z Produce II**");
- c. **JAY DEE CLARK, STEVEN D. CLARK, SCOTT D. CLARK,** and **CLIFTON C. CLARK,** who shall sometimes be referred to collectively below as the "**Clarks**";
- d. The additional persons and entities, including the spouses of the Clarks and the successors and assigns of A & Z Produce Co., A & Z Produce II, and the Clarks, who fall within any of the following categories:

(1) "**A & Z Family Members**" consisting of: (i) the respective present and future blood and adopted descendants of the Clarks (ii) the present and future spouses of the Clarks, and (iii) any present or future trust, the primary or secondary beneficiary of which is any of the Clarks. For purposes of this Settlement Agreement, the term "**A & Z Family Member**" shall mean and refer to one of the A & Z Family Members.

(2) Any present or future corporation, partnership, limited liability company, or other business entity the majority interest of which is now or hereafter owned by one or more of the Clarks, by one or more of the A & Z Family Members, and/or by one or more present or future trusts, the primary or secondary beneficiary of which trust is any of the Clarks or any of the A & Z Family Members.

(3) Any present or future corporation, partnership, limited liability company, or other business entity the majority interest of which is now or hereafter owned by any corporation, partnership, limited liability company, or other business entity the majority interest of which is now or hereafter owned by one or more of the Clarks, by one or more of the A & Z Family Members, and/or by one or more present or future trusts, the primary or secondary beneficiary of which trust is any of the Clarks or any of the A & Z Family Members.

2. **Real Property Benefiting from Limited Commercial Easement:** The Limited Commercial Easement shall inure to the benefit of the Grantees in connection with their use of the parcels of real property located in Salt Lake County, State of Utah, which are described in subparagraphs 2.a. through and including 2.d. below, as the boundaries thereof are established pursuant to the doctrine of *boundary by acquiescence*

as described in paragraph 6 below, and which properties are owned by the persons and entities described in those subparagraphs.

a. **Parcel 10.** The property located in Salt Lake County, State of Utah, more particularly described in **Exhibit A** attached hereto and incorporated herein by reference, which property shall sometimes be referred to as "**Parcel 10**" in reference to the last two digits of its Salt Lake County tax parcel number. The loading dock located on Parcel 10 shall sometimes be referred to below as the "**Parcel 10 Loading Dock**". A and Z Produce Co. currently owns of record a one-third undivided fee simple interest in Parcel 10, and the **Rescue Mission of Salt Lake**, a Utah non-profit corporation, currently owns of record the other two-thirds undivided fee simple interest of Parcel 10.

b. **Parcel 12.** The property located in Salt Lake County, State of Utah, more particularly described in **Exhibit B** attached hereto and incorporated herein by reference, which property shall sometimes be referred to as "**Parcel 12**" in reference to the last two digits of its Salt Lake County tax parcel number. A and Z Produce Co. is currently the fee simple owner of record of Parcel 12.

c. **Parcel 13.** The property located in Salt Lake County, State of Utah, more particularly described in **Exhibit C** attached hereto and incorporated herein by reference, which property shall sometimes be referred to as "**Parcel 13**" in reference to the last two digits of its Salt Lake County tax parcel number, including the additional ten and one-half feet determined by extending the northern boundary of Parcel 13 ten and one-half feet to the north. A and Z Produce Co. is also currently the fee simple owner of record of Parcel 13 (exclusive of said additional ten and one-half feet).

d. **Parcel 14.** The property located in Salt Lake County, State of Utah, more particularly described in **Exhibit D** attached hereto and incorporated herein by reference, which property shall sometimes be referred to as "**Parcel 14**" in reference to the last two digits of its Salt Lake County tax parcel number. **JAY DEE CLARK, STEVEN D. CLARK, and SCOTT D. CLARK** are currently the equal co-fee simple owners or record, as tenants-in-common (with no rights of survivorship), of Parcel 14.

All of the parcels of property described above in this paragraph 2, as the boundaries thereof are established as described in paragraph 6 below, shall sometimes be referred to in this Limited Commercial Easement as the "**West A & Z Parcels**". Other than Parcel 10, all of the West A & Z Parcels are commercial properties improved with a commercial warehouse or other type of commercial building, and the Parcel 10 Loading Dock serves for the loading and unloading of goods to Parcel 12, Parcel 13, and Parcel 14 along the northern side of the buildings located on those parcels. Parcel 14 also has a loading dock along approximately the west 60 feet of its northern side currently containing two (2) entry doors ("**Parcel 14 Loading Dock**").

3. **Purpose and Scope of Limited Commercial Easement.** The Limited Commercial Easement grants the A & Z Easement Owners the right to make deliveries ("A & Z Deliveries") to and from the West A & Z Parcels along the Parcel 10 Loading Dock and along the west sixty (60) feet of the Parcel 14 Loading Dock ("Docks"), as such Docks are currently configured or as they may be hereafter physically modified (so long as any physical modification of the Docks does not encroach upon Parcel 9 as the boundaries of Parcel 9 are established as described in paragraph 6 below) starting at the hour of 3:00 a.m. and continuing forward to 2:00 p.m., daily. However, during any period of time a private club or other business operating from Parcel 9 ceases operating (including closing operations) earlier than 3:00 a.m., A & Z Deliveries may be made during such period of time from and including the later of the hour such business operations cease, or 11:30 p.m., and continuing forward (i) until 2:00 p.m. of the immediately following day, if the A & Z Deliveries cannot commence as early as 11:30 p.m., or (ii) 8:00 a.m. of the following day, if A & Z Deliveries can commence as early as 11:30 p.m. By way of example, if private club operations operating from Parcel 9 (including closing operations) were to cease as of 1:00 a.m., then A & Z Deliveries could be made between the hours of 1:00 a.m. of that day and continuing forward until 2:00 p.m. of that day during the period of time such club operations cease at 1:00 p.m. By way of further example, if private club operations operating from Parcel 9 were to cease as of 11:30 p.m. of one day, then A & Z Deliveries could be made between the hours of 11:30 p.m. of that day and continuing forward only until 8:00 a.m. of the immediately following day. A & Z Deliveries to the West A & Z Parcels via the Docks across Parcel 9 at times other than described above will be strictly based upon permission of the fee simple owner or owners of Parcel 9 at the time of such A & Z Deliveries, which permission shall not be unreasonably withheld. It is understood that withholding such permission for the purpose of avoiding a conflict between A & Z Deliveries and the contemporaneous use of Parcel 9 by the then fee simple owners of Parcel 9 would not be deemed unreasonably withholding such permission. This Limited Commercial Easement shall be an easement upon, and shall run with, the land of Parcel 9 until terminated by operation of a "Triggering Event" as described in paragraph 5 below, and no fence or other improvement may be erected, constructed, or placed upon Parcel 9 by any current or future owner of Parcel 9 or other person or entity that would restrict, impede, or otherwise materially interfere with the use of the Limited Commercial Easement by the A & Z Easement Owners in the manner and for the purposes described in this paragraph.

4. **Relation Back of Limited Commercial Easement.** With respect to use of the West 99 feet of Parcel 9 and along the railroad spur located on Parcel 9, the Limited Commercial Easement relates back in time to the *Order Amending Findings of Fact, Conclusions of Law and Decree* ("1941 Amended Decree") issued by the Court on or about June 24, 1941 ("Date of 1941 Amended Decree") due to the operation of the 1941 Amended Decree, which 1941 Amended Decree was recorded in the official records of Salt Lake County, State of Utah on August 29, 1941 as Entry No. 912523 in Book 284 at Page 55. Due to the historical use by the predecessors in interest of the A & Z Owners of Parcel 9 in connection with the West A & Z Parcels, the Limited Commercial Easement relates back in time to June 25, 1961 (20 years following the Date of the 1941 Amended Decree) with respect to the use of the remainder of Parcel 9. The

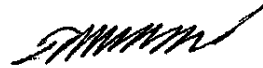
fact that the Limited Commercial Easement relates back in time as set forth in the immediately two preceding sentences shall not be construed (i) to extend the duration of the Limited Commercial Easement beyond the duration thereof described in paragraph 5 below (ii) to create in favor of the Grantees easement or other rights in Parcel 9 greater than the limited commercial easement in gross described in this instrument and in the Settlement Agreement, or (iii) to limit the efficacy of any order entered by the Third Judicial District Court in and for Salt Lake County, State of Utah, or of any quitclaim deed executed by any of the Grantees in connection with the Settlement Agreement for the purpose of extinguishing easement and other rights of the Grantees in and to Parcel 9 other than the Limited Commercial Easement being reserved unto Grantees.

5. **Duration of Limited Commercial Easement.** At such time as (a) none of the A & Z Easement Owners are using any of the warehouses on the West A & Z Parcels for warehouse activities, (b) none of the West A & Z Parcels are owned by any of the A & Z Easement Owners or (c) December 31, 2030, whichever first occurs, ("**Triggering Event**"), the Limited Commercial Easement shall terminate. Further, The Limited Commercial Easement shall continue in favor of A and Z Produce Co. only so long as the majority ownership thereof is owned by one or more of the Clarks or by one or more of the A & Z Family Members. Similarly, the Limited Commercial Easement shall continue in favor of A & Z Produce II only so long as the majority ownership thereof is owned by the one or more of the Clarks or by one or more of the A & Z Family Members.

6. **Boundary by Acquiescence.** It is acknowledged that, pursuant to other documents executed by Grantors with the current owners of the West A & Z Parcels, if any building or attached dock of a building located in whole or in part upon Parcel 9 currently encroaches upon any portion of the West A & Z Parcels, as such parcels are described of record, then the outer wall of such encroaching building and/or dock, by operation of the doctrine of *boundary by acquiescence*, shall constitute the boundary at the place of encroachment between Parcel 9 and the West A & Z Parcel or Parcels so encroached upon. In addition, if any building or attached dock of a building located in whole or part upon any of the West A & Z Parcels currently encroaches upon any portion of Parcel 9, as that parcel is described of record, then the outer wall of such encroaching building and/or dock, by operation of the doctrine of *boundary by acquiescence*, shall constitute the boundary at the place of encroachment between the West A & Z Parcel or Parcels upon which such building and/or dock is located and Parcel 9 so encroached upon. All references to Parcel 9 and the West A & Z Parcels in this Limited Commercial Easement shall mean and refer to those parcels as the boundaries thereof are established as described in this paragraph.

IN WITNESS WHEREOF, the undersigned have affixed their respective signatures hereto the dates indicated below.

THE VINA FAMILY TRUST, by
its sole Trustees




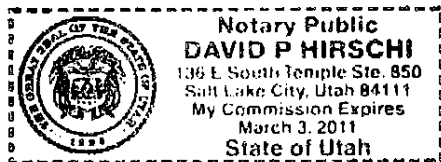
Tony Vina, Trustee of The Vina
Family Trust, under Agreement
dated August 17, 1993



Sherry Vina, Trustee of The Vina
Family Trust dated August 17, 1993

State of Utah)
) ss:
County of Salt Lake)

The foregoing instrument was acknowledged before me this 11th day of January, 2008 by Tony Vina and Sherry Vina, in their capacities as the sole Trustees of The Vina Family Trust dated August 17, 1993.


Notary Public

Who resides at:

Centerville, Utah

My Commission Expires:

March 3, 2011

Limited Commercial Easement - DLB - clean - 3-20-06
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EXHIBIT A

(Parcel 10)

Beginning at the Southwest corner of Lot 3, Block 43, Plat A, Salt Lake City Survey, thence North 32.5 feet, thence East 47.07 feet to a point in the center line of a spur track; thence South 63°23'30" East 18.3 feet to a point in the center line of spur track, thence South 68°47'30" East 18.78 feet to a point in the center line of spur track, thence South 73°20'30" East 18.84 feet more or less to a point in the center line of spur track, thence South 12.13 feet, thence West 99.0 feet to point of beginning.

Tax I.D. or Sidwell No.: 15-01-330-010

EXHIBIT B

(Parcel 12)

Beginning at the Southwest corner of Lot 2, Block 43, Plat A, Salt Lake City Survey, running thence East 58- $\frac{1}{4}$ feet; thence North 99- $\frac{1}{2}$ feet; thence West 58- $\frac{1}{4}$ feet; thence South 99- $\frac{1}{2}$ feet to the place of beginning.

Together with a perpetual right-of-way for ingress, egress and regress for all purposes over the following strip of ground, to-wit: commencing 99 feet East of the Northwest corner of said Lot 2, running thence South 76 feet; thence West 40- $\frac{3}{4}$ feet; thence North 10- $\frac{1}{2}$ feet; thence East 30- $\frac{3}{4}$ feet; thence North 65- $\frac{1}{2}$ feet; thence East 10 feet, to the place of beginning, to be kept open for loading and unloading goods, merchandise and other commodities from the platform along the South line of Lot 3, Block 43, Plat A, Salt Lake City Survey, together with the right of maintaining a cover or roof over said platform at the north end of said right-of-way.

Tax I.D. or Sidwell No.: 15-01-330-012

EXHIBIT C

(Parcel 13)

Commencing 58- $\frac{1}{4}$ feet East from the Southwest corner of Lot 2, Block 43, Plat A, Salt Lake City Survey, and running thence East 40- $\frac{3}{4}$ feet; thence North 89 feet; thence West 40- $\frac{3}{4}$ feet; thence South 89 feet to beginning.

Together with a perpetual right-of-way for ingress, egress and regress for all purposes over the following strip of ground, to-wit: commencing 99 feet East of the Northwest corner of said Lot 2, running thence South 76 feet; thence West 40- $\frac{3}{4}$ feet; thence North 10- $\frac{1}{2}$ feet; thence East 30- $\frac{3}{4}$ feet; thence North 65- $\frac{1}{2}$ feet; thence East 10 feet, to the place of beginning, to be kept open for loading and unloading goods, merchandise and other commodities from the platform along the South line of Lot 3, Block 43, Plat A, Salt Lake City Survey, together with the right of maintaining a cover or roof over said platform at the north end of said right-of-way.

Tax I.D. or Sidwell No.: 15-01-330-013

EXHIBIT D

(Parcel 14)

Commencing 83.5 feet West from the Southeast corner of Lot 2, Block 43, Plat "A", Salt Lake City Survey, and running thence West 147.50 feet; thence North 10 rods; thence East 147.50 feet; thence South 10 rods to the point of beginning.

Tax I.D. and Sidwell No.: 15-01-330-014