



ENT 21625:2009 PG 1 of 2
 RANDALL A. COVINGTON
 UTAH COUNTY RECORDER
 2009 Aug 20 2:34 pm FEE 0.00 BY CS
 RECORDED FOR UDOT-R/W INSTRUMENTS SECTION

Utah Department of Transportation Right of Entry and Occupancy Agreement

Project No: F-0092(12)1
 Parcel No.(s): 27:A, 27:E, 27:2E
 Job/Proj / Auth No: 52647 Pin No: 6690
 Project Location: SR-92, LEHI TO HIGHLAND
 County of Property: UTAH Tax ID / Sidwell No: 11-029-0035
 Property Address: 1550 E. 3400 North LEHI UT, 84043
 Owner / Grantor (s): IM Flash Technologies, LLC, a Delaware limited liability company
 Owner's Address: 1550 East 3400 North, Lehi, UT 84043
 Owner's Phone: 801-767-4000

Acquiring Entity: Utah Department of Transportation (UDOT)

For the subject property described in the attached Exhibit A.

This Right of Entry and Occupancy Agreement ("Agreement") is made pursuant to Utah Code Annotated Section 59-2-1337.

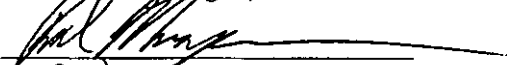
IM Flash Technologies, LLC (as Property Owner), hereby grants to the State of Utah, Department of Transportation ("UDOT") and its contractors permission to enter upon, take possession of, and commence construction of its public works facility on the property described in attached Exhibit A, subject to the terms and conditions contained herein. This Agreement is made in connection with a pending condemnation action by UDOT and is intended to provide for the entry and occupancy of the property pending further negotiations or the pursuit of condemnation proceedings and possible alternative informal proceedings. Property Owner understands that, by executing this Agreement, Property Owner has waived and abandoned all defenses to the acquisition of the property.

It is understood and agreed that the sum of \$ 2,995,000.00 will be paid to the Property Owner as consideration for entering into this Agreement. This amount paid to the Property Owner shall be deducted from a final settlement, award of arbitration, or other determination of just compensation in an eminent domain action to acquire the property. The amount paid will be for the purposes of this Agreement only, and will not be admissible as evidence in any subsequent process used to establish the value of the property or the amount of compensation that may be due to the Property Owner. This Agreement is an 'entry agreement' made pursuant to Utah Code Annotated Section 59-2-1337.

It is understood and agreed that this Agreement is granted without prejudice to the rights of the Property Owner, pending any settlement, to contest the amount of compensation to be paid the Property Owner for the property described in Exhibit A.

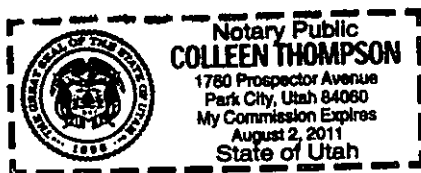
Dated this 11th day of August, 2009

IM Flash Technologies, LLC

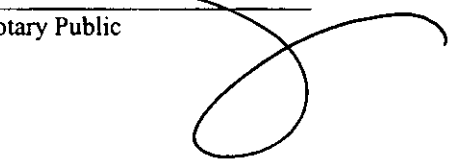

 By Rod Morgan
 Its Co Executive Officer

STATE OF UTAH
 County of Utah

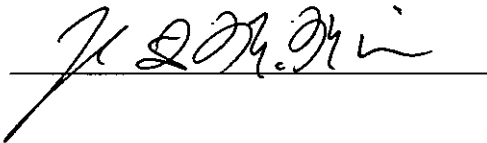
On the 11 day of August, 2009 personally appeared before me Rod Morgan the signer(s) of this Agreement for IMFT who duly acknowledged to me that they executed the same.



Notary Public



Lyle McMillan, UDOT Director of Right of Way



STATE OF UTAH
County of Utah

On the 11 day of August, 2009 personally appeared before me Lyle McMillan the signer(s) of this Agreement for UDOT who duly acknowledged to me that they executed the same



Notary Public

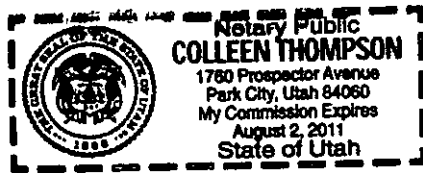


EXHIBIT A

Parcel No. 0092:27:A

A parcel of land in fee, for the widening of highway State Route 92 known as Project F-0092, being part of an entire tract of property, situate in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 34, Township 4 South, Range 1 East, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows:

Beginning at the intersection of the northerly right of way line of existing State Route 92 (Alpine Highway) and the westerly boundary line of said entire tract, which point is 403.26 feet S.89°58'38"E. along the north line of said Section 33 and 1,303.43 feet S.04°02'40"E. from the North Quarter corner of said Section 33; and running thence N.04°02'40"W. 262.42 feet along said westerly boundary line to a point 138.09 feet radially distant northerly from the centerline of said project, opposite approximate Engineers Station 154+36.29; thence N.89°42'00"E. 2,089.63 feet to a point 139.00 feet perpendicularly distant northerly from said centerline, opposite approximate Engineers Station 175+45.00; thence N.00°18'00"W. 50.00 feet; thence N.89°42'00"E. 180.00 feet; thence S.00°18'00"E. 50.00 feet; thence N.89°42'00"E. 1,304.73 feet, more or less, to the easterly boundary line of said entire tract, at a point 298.27 feet perpendicularly distant northerly from said centerline, opposite approximate Engineers Station 199+85.30; thence S.01°24'45"W. 264.51 feet along said easterly boundary line to said existing northerly right of way line; thence along said existing northerly right of way line the following six (6) courses and distances; (1) thence S.89°41'35"W. 366.16 feet; (2) thence S.89°43'46"W. 790.00 feet; (3) thence S.89°40'02"W. 1,110.00 feet; (4) thence S.89°44'09"W. 670.00 feet; (5) thence S.89°41'35"W. 200.09 feet; (6) thence N.89°58'01"W. 413.08 feet to the point of beginning. The above described parcel of land contains 949,987 square feet in area or 21.809 acres.

Parcel No. 0092:27:E

Two perpetual easements, upon part of an entire tract of property, situate in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 34, Township 4 South, Range 1 East, Salt Lake Base and Meridian. for the purpose of constructing and maintaining thereon public utilities and appurtenant parts thereof including, but not limited to ATMS Fiber Optic conduit, phone/communication lines, electrical service lines, gas lines, and cut and/or fill slopes to facilitate for the widening of State Route 92, known as project F-0092. The easement specifically including the right to maintain and continue the existence of said cut and/or fill slopes in the same grade and slope ratio as constructed by UDOT. The easement includes and conveys all rights of the servient estate owner to change the vertical distance or grade of said cut and/or fill slopes. The boundaries of said part of an entire tract are described as follows:

Beginning at the intersection of the northerly right of way and limited-access line of said project and the westerly boundary line of said entire tract at a point 138.09 feet radially distant northerly from the centerline of said project, opposite approximate Engineers Station 154+36.29,

which point is 403.26 feet S.89°58'38"E. along the north line of said Section 33 and 1040.99 feet S.04°02'40"E. from the North Quarter corner of said Section 33; and running thence N.04°02'40"W. 50.11 feet along said westerly boundary line; thence N.89°42'00"E. 2092.90 feet to said right of way and limited access line; thence S.00°18'00"E. 50.00 feet; thence S.89°42'00"W. 2,089.63 feet to the point of beginning. The above described part of an entire tract contains 104,566 square feet in area or 2.401 acres.

Also:

Beginning at a point in the northerly right of way and limited-access line of said project at a point 139.00 feet perpendicularly distant northerly from the centerline of said project, opposite approximate Engineers Station 177+25.00, which point is 403.26 feet S.89°58'38"E. along the north line of said Section 33 and 1040.99 feet S.04°02'40"E. and 2269.63 feet N.89°42'00"E along said northerly right of way and limited-access line from the North Quarter corner of said Section 33; and running thence N.00°18'00"W. 50.00 feet along said right of way and limited access line; thence N.89°42'00"E. 1,306.23 feet to the easterly boundary line of said entire tract; thence S.01°24'45"W. 50.02 feet along said easterly boundary line to said northerly right of way and limited-access line, at a point 258.31 feet perpendicularly distant northerly from the centerline of said project, opposite approximate Engineers Station 190+26.84; thence S.89°42'00"W. 1,304.73 feet along said right of way and limited access line to the point of beginning. The above described part of an entire tract contains 65,272 square feet in area or 1.498 acres. The combined area of the above described parts of an entire tract contains 169,838 square feet in area or 3.899 acres.

Parcel No. 0092:2E 27:2E *PM*

A temporary construction easement, upon part of an entire tract of property, situate in the NE¼NE¼ of Section 33 and NW¼NW¼ of Section 34, Township 4 South, Range 1 East, Salt Lake Base and Meridian, The purpose of the easement is to allow UDOT and its contractors to enter the property and to use it for a work area to facilitate the construction of State Route improvements known as Project F 0092(12)1 and further described as follows:

Non-exclusive use. The easement acquired herein does not convey any right except as stated herein, nor does it prevent Defendant(s) from the use of the real property within the easement so long as such use does not interfere with the purposes for which the easement is being acquired. This easement does not convey the right to use the easement in a manner that would deny any right the Defendant may possess of reasonable access to property outside of the easement.

Duration of easement. The easement shall begin at the time actual construction of said project is commenced at the location of the easement, and shall continue for a period of the three years or until the earlier completion of the project. The easement shall run with the real property and shall be binding on Defendant(s), their successors, heirs and assigns.

Restoration of property. UDOT will restore the real property as nearly as reasonably possible to its condition prior to any material disturbance from construction activities, consistent with project improvements.

Beginning 403.26 feet S.89°58'38"E. along the Section line and 990.88 feet S.04°02'40"E. and 2,059.71 feet N.89°42'00"E. from the North Quarter corner of said Section 33, at a point 133.57 feet radially distant westerly from the centerline of said 1200 East Street, opposite approximate Engineers Station 9+47.77; and running thence N.89°42'00"E. 265.73 feet to a point 127.60 feet radially distant easterly from said centerline, opposite approximate Engineers Station 8+97.57; thence northwesterly 841.83 feet along the arc of a 800.00-foot radius non-concentric curve to the left (chord bears N.40°12'34"W. 803.53 feet) to a point 115.79 feet radially distant northerly from said centerline, opposite approximate Engineers Station 16+10.72; thence S.19°38'41"W. 260.00 feet to a point 144.20 feet radially distant southerly from said centerline, opposite approximate Engineers Station 16+08.53; thence southeasterly 523.12 feet along the arc of a 540.00-foot radius non-concentric curve to the right (chord bears S.42°36'10"E. 502.90 feet) to the point of beginning. The above described part of an entire tract contains 177,464 square feet in area or 4.074 acres.

COOPERATION AGREEMENT

THIS AGREEMENT is made and entered into this 11th day of August, 2009, by and between the **UTAH DEPARTMENT OF TRANSPORTATION ("UDOT")** and **IM FLASH TECHNOLOGIES, LLC.**, a Delaware Corporation ("**IMFT**") (IMFT and UDOT are referred collectively as the "**Parties**").

RECITALS

1. UDOT is engaged in a project to improve State Road 92 ("**SR-92**") (the "**Project**").
2. IMFT owns and operates a computer chip manufacturing facility located on approximately 304 acres of property on the north side of SR-92 at approximately 1500 East State Road 92 in Lehi, Utah (the "**Property**").
3. Given the design build nature of the Project, the Parties agree that it is desirable to cooperate during the construction of the Project.
4. Based on the mutual promises contained herein, the Parties agree as follows:

AGREEMENT

1. **COOPERATION.** The Parties agree to cooperate with each other with the intent to facilitate the Project and to avoid and mitigate any damage to the Property or IMFT's operations.
2. **COMMUNICATION PROCESS.** UDOT will hold a weekly project status meeting for IMFT to discuss the following:
 - a. Current design-build plans;
 - b. Project schedule; and
 - c. Management of traffic plans;
3. **BUSINESS CONTINUITY.**
 - a. Utilities (See § 3(b))
 - i. UDOT will invite IMFT to discussions or meetings pertaining to utilities that may affect IMFT;
 - ii. UDOT will invite IMFT to any utility "cut over" planning meetings that may affect IMFT;
 - iii. UDOT will give IMFT at least 1 business day advance notification of scheduled utility "cut over" actions that may affect IMFT;
 - iv. IMFT may have an observer on the job site for all utility "cut over" activities that may affect IMFT.
 - b. To the extent reasonably possible, with the respect to the relocation of the following utilities, UDOT will meet or will cooperate with IMFT to require third-party contractors to meet the following service standards:
 - i. Fiber Optics (Qwest and ELI)

- No simultaneous "cut-over" of the Qwest and ELI fiber optic cables will occur.
 - Connectivity interruption of either fiber optic cable will not exceed 30 minutes.
- ii. Natural Gas
 - No interruption in natural gas connectivity will occur.
 - iii. Industrial/Sanitary Sewer
 - No interruption will occur. No reduction of flow will exceed 4 hours.
 - iv. Process and Potable Water
 - No interruption in water connectivity will exceed 1 day.
 - v. Storm Water Drainage
 - No interruption will occur that causes IMFT to be out of compliance with its regulatory permits or requirements.
- c. Roadway Access to Property during construction
- i. UDOT will maintain two paved roads with continuous access in and out of the Property;
 - ii. UDOT will maintain continuous positive traffic control (manual or automated) for traffic in and out of the main entrance of the Property;
 - iii. UDOT will use its best efforts to give IMFT 14-day advance notification of changes in traffic flow in and out of the Property. In the event UDOT is unable to give such notification, it will notify IMFT of changes as soon as reasonably practicable.
 - iv. UDOT does not anticipate closure of SR-92. In the event SR-92 is closed in excess of 4 hours, UDOT and IMFT will work together to facilitate any needed alternative hazardous chemical delivery routes to the Property.

4. NOTIFICATION. The Parties will each designate a liaison representative to coordinate with each other. The initial liaison representative for each Party will be the following:

- a. UDOT: Jim Golden, UDOT Project Lead, 3098 Executive Parkway, Suite 125, Lehi, Utah 84043, Telephone Number (801) 360-0052.
- b. IMFT: Clint Utter, 1550 East 3400 North, Lehi, Utah 84043, Telephone Number (801) 767-3392.

5. **NON-WAIVER.** Neither UDOT nor IMFT waive any rights under the law, including the Governmental Immunity Act.

UDOT:

IM Flash Technologies, LLC



Title: Director, Right of Way

Title: Co-Executive Officer

Date: 8-11-09

Date: 8-11-09