

4340583

WHEN RECORDED, RETURN TO:

Thomas M. Lloyd
Suite 500
6925 Union Park Center
Midvale, UT 84047

Patricia R. Brown
PATRICIA R. BROWN

19.00
WESTERN STATES
RECORDER
SALT LAKE COUNTY,
UTAH
OCT 30 11 59 AM '86

KATIE L. DIXON
RECORDER
SALT LAKE COUNTY,
UTAH

AMENDED AND RESTATED
EASEMENT AGREEMENT

BY THIS EASEMENT AGREEMENT ("Agreement"), dated as of the 30th day of October, 1986, UNION PARK ASSOCIATES, a Utah limited partnership ("Union") and THOMAS M. LLOYD, an individual ("Lloyd"), and J. ROBERT BONNEMORT ("Bonnemort") who joins in this Agreement solely to terminate an existing easement in which he has a beneficial interest, recite, agree and state as follows:

RECITALS

A. Union is the owner of that real property located in Salt Lake County, Utah, and described on Exhibits "A" and "C" attached hereto (the "Servient Tenement"). Lloyd is the owner of that real property described on Exhibit "B" attached hereto (the "Dominant Tenement"). All properties are located in Salt Lake County, Utah.

B. Union has previously granted an easement to Lloyd and Bonnemort by document entitled Easement, dated April 19, 1982, recorded April 19, 1982, Entry No. 3667237, Book 5363, Page 571 of the records of the Salt Lake County Recorder and has granted an easement to Lloyd by a document entitled Agreement for an Ingress, Egress and Construction Easement to, from and over a Bridge dated April 29, 1986 (unrecorded) and an Easement Deed dated October 10, 1986 and recorded October 10, 1986, Entry No. 4330686, Book 5827, Page 305 of the records of the Salt Lake County Recorder; said easements are collectively referred to herein as the "Preliminary Easements".

C. Union, Lloyd and Bonnemort desire to amend, restate and relocate the Preliminary Easements as provided for herein to provide to Lloyd, his successors and assigns, ingress and egress from a freeway access road to and over bridges to be constructed over Little Cottonwood Creek to the Dominant Tenement, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as hereinafter provided.

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AGREEMENT

I. INGRESS AND EGRESS EASEMENT

1.1 EASEMENT. Union hereby quit claims to Lloyd, his successors and assigns, the following perpetual easements (the "Easements"):

A NON-EXCLUSIVE EASEMENT over, along, upon and across:

That property situated in the County of Salt Lake, State of Utah, more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof, which is from time to time improved for pedestrian and vehicular ingress and egress only from the roadway presently known as the Freeway Access Road (which abuts the property described in Exhibit A on its south boundary) to the property described in Exhibit C, subject to reduction in size as herein provided (herein called "Servient Tenement 1");

for the benefit of and appurtenant to and for pedestrian and vehicular ingress to and egress from the Dominant Tenement as it is described in Exhibit B attached hereto and by this reference made a part hereof and each and every part thereof, including, without limitation, any and all lots, parcels, condominiums and/or portions thereof which now exist or may be developed within said Dominant Tenement at any time in the future;

AN EXCLUSIVE EASEMENT in, under, over, along, upon, through and across:

That certain real property situated in the County of Salt Lake, State of Utah, more particularly described on Exhibit "C" attached hereto and by this reference made a part hereof subject to reduction in size as herein provided (herein called the "Servient Tenement 2");

for the benefit of and appurtenant to the Dominant Tenement and for the installation, construction, maintenance, repair and replacement, at Grantee's sole cost and expense, of not more than two pedestrian and vehicular bridges and all appurtenances thereto on and from the Dominant Tenement over Little Cottonwood Creek to Servient Tenement 2, which bridges shall be of such design and at such location within Servient Tenement 2 as Grantee in its sole and absolute discretion shall determine, and for the perpetual use of said bridges and appurtenances for pedestrian and vehicular ingress to and egress from the Dominant Tenement by Grantee, its successors and assigns in interest in the Dominant Tenement and each and every part thereof, including, without limitation, the owners of any and all lots, parcels, condominiums and/or portions thereof which now exist or

which may exist within the Dominant Tenement at any time in the future and by the respective lessees, tenants, patrons, agents, employees, invitees and guests of the same;

Such Easements shall only benefit the Dominant Tenement and shall not serve any other property. Said Easements are granted solely for the purpose of allowing pedestrian and vehicular traffic across the Easements, and shall not limit the right of Union, its successors and assigns in interest in Servient Tenement 1 and Servient Tenement 2, and the Permittees thereof, to use said Servient Tenements for any purpose not inconsistent with Lloyd's rights hereunder. Union shall have the right from time to time to temporarily close portions of the Easements to perform maintenance, repair, restoration, excavation and other work in connection with the operation of its adjoining property, provided that reasonable access across such other property of Union shall be afforded to the Dominant Tenement at all times. The parties acknowledge and agree that the intent of this Article is to provide Lloyd with reasonable access across the Easements and that, so long as such access is enjoyed by Lloyd, encroachments of curbs, landscaping, parking spaces and other matters onto the Easements (presently existing or that may exist in the future) shall be permitted and shall not be deemed to be contrary to the easement rights granted herein. As used herein, "Permittees" shall mean and include the guests, agents, tenants, customers, employees, invitees and licensees of the parties.

1.2 MAINTENANCE - SERVIENT TENEMENT 1. Union shall maintain driveways over Servient Tenement 1 in good condition and repair. The cost of maintaining, repairing and restoring such driveways and the areas immediately adjacent to such driveways that affect the structural integrity of such driveways (the "Driveway Costs") shall be shared equally by Union and Lloyd commencing at the time Lloyd begins construction of a bridge. The Driveway Costs shall include without limitation sums expended for resurfacing, sweeping, and third-party construction management fees. As soon as reasonably practical after the expiration of each calendar year, but in no event later than March 1st of each year, Union shall deliver to Lloyd a statement setting forth in reasonable detail Lloyd's share of the Driveway Costs for such past calendar year. Lloyd's one-half share of such costs shall be payable within fifteen (15) days after delivery of such statement. In no event shall Lloyd's share of the Driveway Costs be less than \$100.00 in any calendar year once construction of the bridge has commenced.

1.3 MAINTENANCE - SERVIENT TENEMENT 2. Lloyd shall maintain at his sole expense all driveways, bridges, pedestrian walkways, over and through Servient Tenement 2 and areas immediately adjacent thereto, in good condition and repair.

1.4 FAILURE TO MAINTAIN. In the event Union fails to maintain the driveways in Servient Tenement 1 as provided above and such failure continues for a period of at least thirty (30) days after delivery of written notice of such failure by Lloyd to Union, Lloyd, as his sole and exclusive remedy, shall have the right to enter onto the Easements and perform such maintenance and repair and Union shall reimburse Lloyd for one-half of all costs incurred by Lloyd within ten (10) days after delivery of written demand therefor to Union.

1.5 RELOCATION OF THE EASEMENT PROPERTY. Union shall have at all times the right to temporarily or permanently relocate the Servient Tenement 1, provided that, despite such relocation, Lloyd, his successors and assigns and Permittees thereof, shall at all times enjoy reasonable access between the Dominant Tenement and the dedicated right-of-way presently known as the Freeway Access Road located on the south boundary of Servient Tenement 1. Union shall notify Lloyd of its intent to relocate the Servient Tenement 1 at least thirty (30) days prior to such relocation. Such relocation shall be performed at Union's sole expense. Except for temporary relocations as contemplated by Union, upon Union's relocation of the Servient Tenement 1, Union and Lloyd shall execute an amendment to this Agreement which shall identify the new location of Servient Tenement 1.

1.6 REDUCTION IN EASEMENT AREA. At such time as Lloyd completes the construction of the bridge(s), the area of both Servient Tenement 1 and Servient Tenement 2 shall be reduced to eliminate area unneeded, if any, for ingress and egress from the Freeway Access Road over the bridge(s) to the Dominant Tenement, allowing reasonable area for slope, bridge approaches and foundations and as may be required by governmental authorities. Lloyd shall pay all costs for surveying the final reduced area of the Easements and fees and costs relating to preparation of and recording of documents to amend this Easement Agreement to accomplish such reduction, if any, in the area of the Easements.

1.7 DAMAGE TO SERVIENT TENEMENT 1. If the roadways in the Easement Servient Tenement 1 are damaged or the cost of cleaning them is increased beyond normal costs for cleaning such areas as a result of construction of the bridge(s) or other construction on the Dominant Tenement, Lloyd shall reimburse Union within five (5) days after delivery of written demand for all costs incurred in repairing such damage or cleaning. If the roadways within the Easements are damaged by Union or its Permittees, Union shall promptly repair such damage at its sole expense. Lloyd shall indemnify and hold Union harmless from and against any and all claims, costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceeding brought thereon, arising from or as a result of the death of, or any

accident loss, injury or damage whatsoever to, any person, or to the property of any person, occurring on or about the Servient Tenements and caused by Lloyd or his Permittees, provided such indemnification obligation shall not apply to loss, injury or damage to the extent such loss, injury or damage is caused as a result of Union's failure to perform its maintenance duties as set forth in this Agreement.

1.8 CONSTRUCTION OF BRIDGES AND PARKING AREA. Lloyd agrees that upon commencement of construction of a bridge within Servient Tenement 2 such work shall proceed diligently to completion. Upon completion of such construction, the Servient Tenement property shall be relandscaped and restored to its prior configuration or such other configuration as is reasonably satisfactory to Union and its lender(s). Lloyd and Union also agree to construct up to 23 additional parking spaces in Servient Tenement 2 for the benefit of the six story building owned by Union on property of which the Servient Tenements are a part if such spaces should at the time be required by governmental authorities having jurisdiction over such property.

1.9 INSURANCE. Lloyd, at his sole expense, shall upon commencement of construction of a bridge, procure and maintain a comprehensive general liability insurance policy against claims for bodily injury, death or property damage, occurring as a result of the exercise of the easement rights granted herein which policy shall name Union as an additional insured. Such insurance shall be in the amount of at least \$2,000,000.00 combined single limit with provision for annual cost of living increases. Such policy shall be endorsed to indicate that it will cover the indemnification obligations contained in Section 1.7 to the coverage limit of such policy. Such insurance shall be effected under a valid and enforceable policy issued by an insurance company authorized to do business in Utah and which shall maintain at all times an A. M. Best rating of at least A Class XII. Any "umbrella" type of insurance coverage carried by Lloyd on this and other properties satisfying the requirements of this paragraph shall be acceptable. Lloyd shall deliver to Union within thirty (30) days after commencement of construction and within 30-days after each anniversary thereof, certified copies of the insurance policies required herein and evidence that the premium therefore has been paid in full. Such policy shall contain a covenant obligating the insurer to notify Union in writing of any cancellation, alteration or non-renewal of said policy at least sixty (60) days prior thereto. The insurance policy shall provide "occurrence" coverage, rather than "claims-made" coverage.

1.10 RESTRICTION OF VEHICLES ON NORTH BRIDGE. Notwithstanding anything contained herein to the contrary, in no event shall Lloyd or his Permittees be entitled to use or permit the use of any vehicles or equipment other than passenger vehicles,

including pickup trucks, vans and similar light weight vehicles on the more northerly of the two bridges if two bridges are or shall be constructed.

II. REMEDIES

2.1 CUMULATIVE REMEDIES. The remedies permitted or available pursuant to the provisions of this Agreement, at law or in equity, shall be cumulative.

2.2 ATTORNEYS' FEES AND COSTS. In the event suit is brought for the enforcement of, or the declaration of rights pursuant to, this Agreement or as the result of any alleged breach of any restriction or other provision of this Agreement, the prevailing party or parties in such suit shall be entitled to recover their costs and expenses, including reasonable attorneys' fees, from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof.

2.3 INJUNCTIVE RELIEF AND DAMAGES. In the event of any breach or threatened breach of any restriction or other provision of this Agreement, any party may prosecute any proceedings at law or in equity to enjoin such breach or threatened breach and to recover damages for any such breach.

2.4 ENFORCEMENT BY LIEN. In the event either party fails to pay any amounts payable hereunder within thirty (30) days after the date such payment is due, such amounts shall constitute a lien until paid, effective upon recordation of a verified notice of lien in the Official Records of Salt Lake County, Utah. Such costs and expense shall constitute a lien against, and such notice of lien shall describe, only the portion of Servient Tenements or Dominant Tenement owned by the defaulting party. Any such lien shall be subject and subordinate to any bona fide first mortgage or deed of trust encumbering any portion of such tenements at the time such notice of lien is recorded, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free and clear of any such lien, but otherwise subject to all of the restrictions and other provisions of this Agreement. Except as provided above, any such lien shall be prior and superior to any lien recorded subsequent to the recordation of such notice of lien. Any such lien may be enforced by suit or action in any court of competent jurisdiction or by sale under power of sale, judicial foreclosure or in any other manner allowed by law.

2.5 INTEREST ON PAST-DUE OBLIGATIONS. Any amount due to either party hereunder which is not paid when due shall bear

interest from the date due until paid at a rate equal to eighteen percent (18%) per annum.

2.6 MORTGAGEE PROTECTION. Breach of any restriction or other provision of this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of the restrictions and other provisions of this Agreement shall be binding and effective against any owner whose title is acquired by foreclosure, trustee's sale or otherwise.

2.7 NO CANCELLATION. No breach of any restriction or other provision of this agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement, but this limitation shall not affect in any manner any other rights or remedies which a party may have by reason of any such breach.

III. GENERAL

3.1 NOTICES. All notices, demands, requests, consents and approvals which may, or are required to, be given by any party to any other party hereunder shall be given, made, delivered or served in writing and delivered personally or sent by registered or certified mail, postpaid to:

Union: Thomas M. Lloyd
Suite 500, 6925 Union Park Center
Midvale, UT 84047

With a copy to Metropolitan Life Insurance Company
Union's mortgagee One Madison Avenue
who presently is: New York, New York 10010
Attn: Senior Vice President
Real Estate Investments

Lloyd: Thomas M. Lloyd
Suite 500, 6925 Union Park Center
Midvale, UT 84047

or to such other addresses as either party may from time to time designate in writing and deliver in accordance herewith to the other party. Notices and communications shall be deemed delivered and received upon receipt, if delivered in person, or seventy-two (72) hours after deposit in the mail as herein provided, if delivered by mail.

3.2 CONDEMNATION. In the event the Easements or any portion thereof are taken under power of eminent domain or conveyed by Union under the threat thereof, Union shall be entitled to the entire award for such taking, including without limitation any award for the value of the easement rights created herein, and Lloyd

hereby waives any claim thereto. Notwithstanding the foregoing, Lloyd shall have the right to claim and recover from the condemning authority, but not from Union, such compensation as may be separately awarded to Lloyd in Lloyd's own right solely due to Lloyd's loss of access from the Dominant Tenement to the roadway presently known as Freeway Access Road.

3.3 MODIFICATION AND AMENDMENT. This Agreement may be amended, modified or terminated, in whole or in part, only by the agreement of the then owner(s) of the Servient Tenements and of the then owner(s) of the Dominant Tenement. No such amendment, modification or termination shall be effective until a written instrument setting forth its terms has been executed, acknowledged and recorded by such owners in the Official Records of Salt Lake County, Utah. No such amendment, modification or termination shall affect the rights of any mortgagee under a mortgage or any trustee or beneficiary under a deed of trust constituting a lien on either Servient Tenement or the Dominant Tenement, or any portion thereof, and recorded in the Official Records of Salt Lake County, Utah, at the time of such amendment, modification or termination unless such mortgagee, trustee or beneficiary consents thereto, which consent shall not be unreasonably withheld. No person other than an owner and any such mortgagee, trustee or beneficiary shall be required to join in the execution of or consent to any such amendment, modification or termination.

3.4 NOT A PUBLIC DEDICATION. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Servient Tenements to the general public or for the general public or for any public purpose whatsoever, and this Agreement shall be strictly limited to and for the purposes expressed herein. Notwithstanding the foregoing, Lloyd may dedicate the most southerly of the two bridges and driveways directly accessing to the Freeway Access Road if such dedication is required by governmental authorities.

3.5 TERMINATION OF PRIOR EASEMENTS. Lloyd, Union and Bonnemort, for valuable consideration, receipt of which is hereby acknowledged, hereby agree that the Preliminary Easements are hereby terminated and replaced by the Easements created herein.

3.6 SEVERABILITY. Invalidation of any of the restrictions or other provisions of this Agreement shall in no way affect any of the other restrictions or provisions of this Agreement.

3.7 HEADINGS. The captions and headings of the various Articles and Sections of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective Articles or Sections.

3.8 EFFECTIVE DATE. This Agreement shall take effect only upon its recordation in the Official Records of Salt Lake County, Utah.

3.9 TERM. Except as otherwise expressly provided herein, the easements granted hereby shall be perpetual.

3.10 UTAH LAW. This Agreement shall be governed by the laws of Utah.

3.11 COVENANTS TO RUN WITH LAND. Notwithstanding the use of the terms "Union" and "Lloyd" herein, all provisions of this Agreement shall run with the land and shall be binding upon and inure to the benefit of the heirs, assigns, successors and personal representatives of Union and Lloyd.

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

UNION:

UNION PARK ASSOCIATES, a Utah
limited partnership

By Thomas M. Lloyd
Thomas M. Lloyd
General Partner

By J. Robert Bonnemort
J. Robert Bonnemort
General Partner

LLOYD:

Thomas M. Lloyd
THOMAS M. LLOYD

BONNEMORT:

J. Robert Bonnemort
J. ROBERT BONNEMORT

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 30th day of October, 1986, personally appeared before me Thomas M. Lloyd, who being by me duly sworn, did say that he is a general partner of Union Park Associates, a Utah limited partnership, and that the foregoing instrument was signed on behalf of the partnership, and said Thomas M. Lloyd acknowledged to me that the Partnership executed the same.

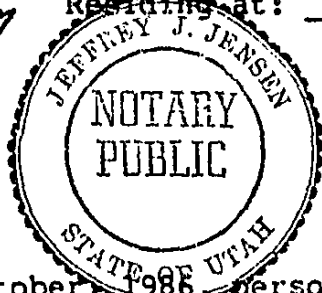
Jeffrey J. Jensen

NOTARY PUBLIC
Residing at:

SLC UTAH

My Commission Expires: 9.9.87

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)



On the 30th day of October, 1986, personally appeared before me J. Robert Bonnemort, who being by me duly sworn, did say that he is a general partner of Union Park Associates, a Utah limited partnership, and that the foregoing instrument was signed on behalf of the partnership, and said J. Robert Bonnemort acknowledged to me that the Partnership executed the same.

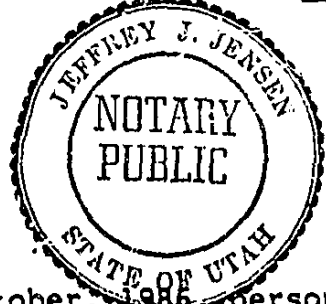
Jeffrey J. Jensen

NOTARY PUBLIC
Residing at:

SLC UTAH

My Commission Expires: 9.9.87

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)



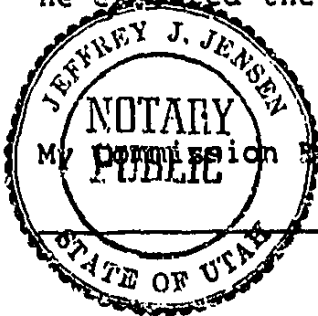
On the 30th day of October, 1986, personally appeared before me Thomas M. Lloyd, who being first duly sworn did say that he executed the foregoing instrument.

Jeffrey J. Jensen

NOTARY PUBLIC
Residing at:

SLC UTAH

My Commission Expires: 9.9.87

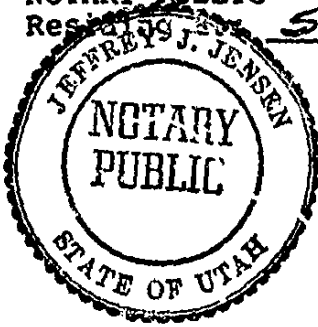


STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 20th day of October, 1986, personally appeared before me J. Robert Bonnemort, who being first duly sworn did say that he executed the foregoing instrument.

Jeffrey J. Jensen
NOTARY PUBLIC
Res. 522 4th

My Commission Expires: 9-9-87



1035j:GDM

Legal Description of Servient Tenament 1

Beginning at a point on the Northeasterly line of Parcel No. 126 U:A of Utah Highway Project No. 1-415-9(4) 297 according to the official documentation thereof on file in the offices of the Utah Department of Transportation; said point of beginning being due South 219.77 feet, due West 1442.90 feet and North $53^{\circ}04'43''$ West 33.0 feet from the Northeast corner of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence North $53^{\circ}04'43''$ West along said Northeasterly line 37.0 feet; thence North $0^{\circ}49'17''$ East 308.00 feet; thence East approximately 30 feet to a point on a line which projects North $0^{\circ}49'17''$ East from the point of beginning; thence South $0^{\circ}49'17''$ West approximately 330 feet to the point of beginning.

EXHIBIT "A"

1040j:GDM

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Legal Description of Dominant Tenement

Beginning at a point on the Westline of 1300 East street, said point being North 521.80 feet and West 550.77 feet from the Southeast corner of Section 20, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence South 11° 35' West along said West line 443.65 feet; thence North 79° 08' West 183.87 feet; thence South 7° 06' West 140.65 feet; thence South 88° 30' East 45.55 feet; thence South 87° 08' 30" East 122.26 feet to the West line of 1300 East Street; thence South 15° 12' West along said West line 239.08 feet to a point of a 749.95 foot radius curve to the left; thence Southerly along the arc of said curve and West line 185.54 feet; thence South 89° 19' West 120.95 feet; thence South 17.16 feet; thence South 88° 19' West 219.92 feet to the Northeasterly line of Parcel No. 126 U:A of Utah Highway Project No. 1-415-9 (4) 297, according to the Official Documentation thereof on file in the office of the Utah Department of Transportation; thence North 53° 04' 43" West along said Northeasterly line 297.47 feet to a point on the West bank of Little Cottonwood Creek; thence along said West bank for fifteen courses as follows: North 16° 33' West 25.65 feet; North 33° 32' West 40.00 feet, North 26° 59' West 39.00 feet, North 34° 55' West 47.70 feet; North 22° 22' West 35.80 feet; North 5° 38' West 19.20 feet; North 18° 36' West 29.20 feet; North 4° 49" West 26.30 feet; North 22° 38' East 18.90 feet; thence North 12° 50' East 33.60 feet; North 5° 10' East 37.30 feet; North 21° 54' East 38.70 feet; North 27° 12' East 22.80 feet; North 30° 11' East 52.70 feet; North 29° 30' East 41.60 feet; thence North 88° 45' West 3.20 feet; thence North 31° 20' East 53.42 feet; thence East 40.657 feet; thence North 10° 00' East 164.36 feet; thence North 20° 00' West 140.00 feet; thence North 20° 00' East 18.60 feet; thence South 89° 55' East 589.76 feet; thence North 9° 19' East 13.50 feet; thence South 80° 41' East 154.96 feet to the point of beginning. Contains 14.667 acres.

Subject to the right-of-way for Little Cottonwood Creek as the same exists on the ground.

EXHIBIT "B"

B09 5833 P15 2711

Legal Description of Servient Tenement 2

Beginning at a point on the Northeasterly line of Parcel No. 126 U:A of Utah Highway Project No. 1-415-9 (4) 297 according to the official documentation thereof on file in the office of the Utah Department of Transportation said point of beginning being due South 219.77 feet and due West 1442.90 feet from the Northeast corner of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence North 53° 04' 43" West along said Northeasterly line 33.00 feet; thence North 0° 49' 17" East 334.73 feet; thence South 39° 33' 35" East 67.30 feet to a point on the West bank of Little Cottonwood Creek; thence along said West bank for ten courses as follows; South 27° 12' West 7.50 feet; South 21° 54' West 38.70 feet, South 5° 10' West 37.30 feet, South 12° 50' West 33.60 feet, South 22° 38' West 18.90 feet, South 4° 49' East 26.30 feet, South 18° 36' East 29.20 feet, South 5° 38' East 19.20 feet, South 22° 22' East 35.80 feet, South 34° 55' East 47.70 feet; thence South 55° 16' West 48.26 feet to the point of beginning.

EXHIBIT "C"

B004 5833 PAGE 2712