

8449348  
12/06/2002 03:51 PM 22.00  
Book - 8698 Pg - 4977-4983  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
UTAH POWER & LIGHT  
1407 W NORTH TEMPLE  
SLC UT 84140  
BY: RDJ, DEPUTY - WI 7 P.

7  
WHEN RECORDED, RETURN TO:  
PACIFICORP *W.A. Lander*  
Attn: Property Management  
1407 West North Temple  
Salt Lake City, UT 84140 *116*

### EASEMENT AGREEMENT

8449348  
THIS EASEMENT AGREEMENT ("Agreement") is made and entered into this 25th day of November, 2002, by and between 92 WEST CORP., a Utah Corporation ("Owner"), with an address of 3815 South West Temple, Salt Lake City, Utah 84165, Attention: General Counsel; and PacifiCorp, an Oregon corporation ("PacifiCorp"), with an address of 1407 West North Temple, Salt Lake City, Utah 84140 (Owner and PacifiCorp are referred to herein sometimes collectively as the "Parties" and individually as a ("Party")), with reference to the following:

A. Owner owns that certain real property located at approximately 3815 South West Temple, Salt Lake City, Salt Lake County, Utah ("Property").

B. PacifiCorp desires to obtain from Owner, and Owner is willing to grant to PacifiCorp, an easement across the portion of the Property described on Exhibit A ("Easement Parcel") in accordance with the terms of this Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, PacifiCorp and Owner agree as follows:

1. Grant of Easement. Subject to the provisions of this Agreement, Owner grants and conveys to PacifiCorp a non-exclusive overhang easement ("Easement") on and over the surface of the Easement Parcel not to exceed fifteen (15) feet in width for the construction, reconstruction, operation, maintenance, repair, replacement, and removal of electric power lines, transmission, distribution lines and communication lines and necessary accessories and appurtenances thereto (collectively, "Improvements"); but not including supporting towers, poles, or props. Notwithstanding the foregoing, PacifiCorp shall not remove or disturb any existing building or structures located in the Easement Parcel without Owner's prior consent. Except for the Easement Parcel, PacifiCorp shall have no right to enter upon any portion of the Property or any adjacent property of Owner without obtaining the prior consent of Owner which consent shall not be unreasonably withheld, delayed, or conditioned. PacifiCorp shall access the Easement Parcel from public streets.

2. Surface Use. At no time shall Owner place, use or permit any equipment, trees or other vegetation, or material of any kind that exceeds twelve (12) feet in height, light any fires, place or store any flammable materials (other than trees and shrubs), on or within the Easement Parcel. Subject to the foregoing limitations, Owner shall have the right to construct, repair, replace, use, and maintain improvements and perform work on the surface of the Easement Parcel including, but not limited to, landscaping, trees, shrubs, leveling, grading, paving, curb and gutter and related improvements to existing building and structures; provided, however, that

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such use of the Easement Parcel by Owner shall comply with the National Electric Safety Code standards. PacifiCorp shall, at PacifiCorp's sole cost and expense, promptly replace and repair and return to their prior condition the surface of the Easement Parcel and any improvements disturbed during the course of the use, repair, maintenance, replacement, or construction of the Improvements or in the exercise of any of PacifiCorp' rights hereunder.

3. Construction of Improvements.

(a) Except in an emergency, PacifiCorp shall provide to Owner written notice at least 10 days prior to commencement of construction of the Improvements, or conducting any major repair or maintenance work on the Improvements or in the Easement. PacifiCorp shall be responsible for the payment of any and all costs and fees associated with, or relating to, the construction, use, repair, replacement and maintenance of the Improvements including, but not limited to, the cost of materials and labor, bonding fees, financing fees and insurance premiums.

(b) Subject to the provisions of this Easement, PacifiCorp shall cause the construction of the Improvements and the use, maintenance, repair, replacement and operation of the Easement and the Improvements to be conducted in a manner so as not to interfere with the access, utility service, use, occupancy, development, operation and enjoyment of the Property or the conduct of Owner's business. PacifiCorp shall be liable to Owner for any and all losses or damages incurred by Owner caused in whole or in part by or in any way arising out of PacifiCorp's or PacifiCorp's agents, contractors and employees unreasonable interference with or interruption of Owner's business.

4. Maintenance of Easement Parcel. PacifiCorp shall keep and maintain the Improvements and the Easement Parcel free of hazards and in good condition and repair. PacifiCorp shall pay any and all costs and fees associated with or relating to the maintenance, repair, replacement and use of the Easement Parcel. PacifiCorp shall keep the Easement Parcel free and clear of all liens, claims, and charges whatsoever, arising in connection with the use, repair, replacement or maintenance of the Improvements or the Easement.

5. Relocation. Owner shall have the right, at Owner's cost and expense, to relocate, or cause or be relocated, the Easement and the Improvements to another portion of the Property; provided that such location is reasonably acceptable to PacifiCorp. "Owner's cost and expense" as used in this paragraph 5 shall include all permitting costs, design and engineering costs, outage costs, right-of-way costs and any and all other costs incurred by PacifiCorp arising from the relocation of the Improvements. Any relocated easement hereunder shall be on the same terms and conditions as set forth in this Agreement.

6. Indemnity. PacifiCorp shall indemnify Owner against and hold Owner and Owner's employees, agents, contractors, representatives, or invitees and the Property harmless from any and all losses, costs, claims, damages, expenses (including, without limitation, attorneys' fees and costs), or liability arising from or in any way related to: (a) PacifiCorp's use of the Improvements and the Easement; (b) the construction, design, engineering, maintenance, repair and replacement of the Improvements, including but not limited to consequential damages and lost profits; (c) the conduct of PacifiCorp or anything else done or permitted by PacifiCorp

to be done in or about the Easement Parcel, including any contamination of the Property or any other property resulting from the presence or use of hazardous material caused or permitted by PacifiCorp; (d) any breach or default in the performance of PacifiCorp's obligations hereunder; (e) injuries to or the death of any person or persons, including the employees of each party hereto, or arising out of, or in any way pertaining to, loss of or damage to the property of any person or persons, including the property of Owner, caused by or resulting from the acts or omissions of PacifiCorp or any one performing on their behalf (including without limitation, for all sums which Owner may pay or be compelled to pay in settlement of any claim on account thereof) unless such injury, loss, or damage is caused or proximately caused by the negligence of Owner's or its employees, agents, or assigns; or (f) other acts or omissions of PacifiCorp. PacifiCorp assumes all risk of damage to property or injury to persons in or about the Easement Parcel arising from any cause, and PacifiCorp hereby waives all claims in respect thereof against Owner, unless such damage is caused by Owner's negligence.

7. Compliance With Law. PacifiCorp shall give all necessary notices and shall comply and ensure that all its subcontractors and suppliers comply with all applicable laws, codes, ordinances, permits, governmental rules and regulations relative to the Improvements and the Easement, including without limiting the foregoing, those relating to the preservation of the public health and safety, and where not in conflict with applicable law, nationally recognized codes and standards.

8. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the parties at the addresses listed below, or at such other address as the parties may designate by written notice in the above manner.

To Owner:

92 West Corp.  
3815 South West Temple  
Salt Lake City, Utah 84165  
Attention: General Counsel  
Fax No.: (801) 293-2555

To PacifiCorp:

PacifiCorp  
Attn: Property Management  
1407 West North Temple  
Salt Lake City, UT 84140  
Fax No.: (801) 220-4373

Communications may also be given by fax, provided the communication is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery.

9. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of Easement Parcel to or for the general public or for any public purposes whatsoever, it being the intention of the Parties that this Agreement be strictly limited to and for the purposes expressed herein.

10. Attorneys' Fees. In the event it becomes necessary for any party hereto to employ an attorney in order for such parties to enforce its rights hereunder, either with or without

litigation, the defaulting party of such controversy shall pay to the successful party reasonable attorneys' fees and, in addition, such costs and expenses as are incurred by the non defaulting party in enforcing their rights hereunder.

11. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, but this instrument shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.


12. Binding Effect. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the Parties.

13. Miscellaneous. PacifiCorp may not assign, convey or sell the Easement or any of its rights under this instrument to any other party. Time is of the essence with respect to the performance by the parties of their obligations hereunder. No change in, addition to, or waiver of any of the provisions of this instrument shall be binding upon Owner unless in writing signed by an authorized representative of Owner. The headings to the Sections hereof have been inserted for convenience of reference only and shall in no way modify or restrict any provisions hereof or be used to construe any such provisions. No waiver by Owner of any breach by PacifiCorp of any of the provisions of this instrument shall be construed as a waiver of any subsequent breach, whether of the same or of a different provision in this instrument. The parties do not by this instrument, in any way or for any purpose, become partners or joint venturers of each other in the conduct of their respective businesses or otherwise. Nothing in this instrument is intended to create an enforceable right, claim, or cause of action upon any third party who is not a party hereto. This Agreement shall be construed in accordance with and governed by the laws in the State of Utah. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the undersigned, having the requisite power and authority and being duly authorized, have executed this instrument to be effective as of the date first above written.

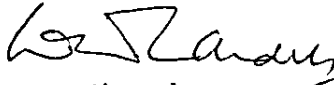
**OWNER:**

92 West Corp., a Utah corporation

By:   
Print Name: Kim A. STEVENSON  
Title: VICE PRESIDENT

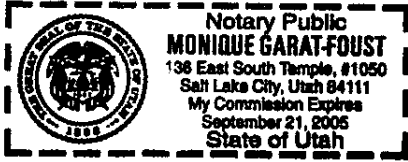
**PACIFICORP:**

PacifiCorp, an Oregon corporation

By:   
Print Name: William D. Landels  
Title: Executive VP

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

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of November, 2002, by Kim Stevenson, as Vice President of 92 West Corp., a Utah corporation.



My Commission Expires:  
\_\_\_\_\_

Monique Garat-Foust  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of December, 2002, by William D. Landels, as Executive VP of PacifiCorp, an Oregon corporation.

My Commission Expires:  
12/5/02



Melanie R. Allen  
NOTARY PUBLIC  
Residing at: Salt Lake City Utah

**EXHIBIT A  
TO  
EASEMENT AGREEMENT**

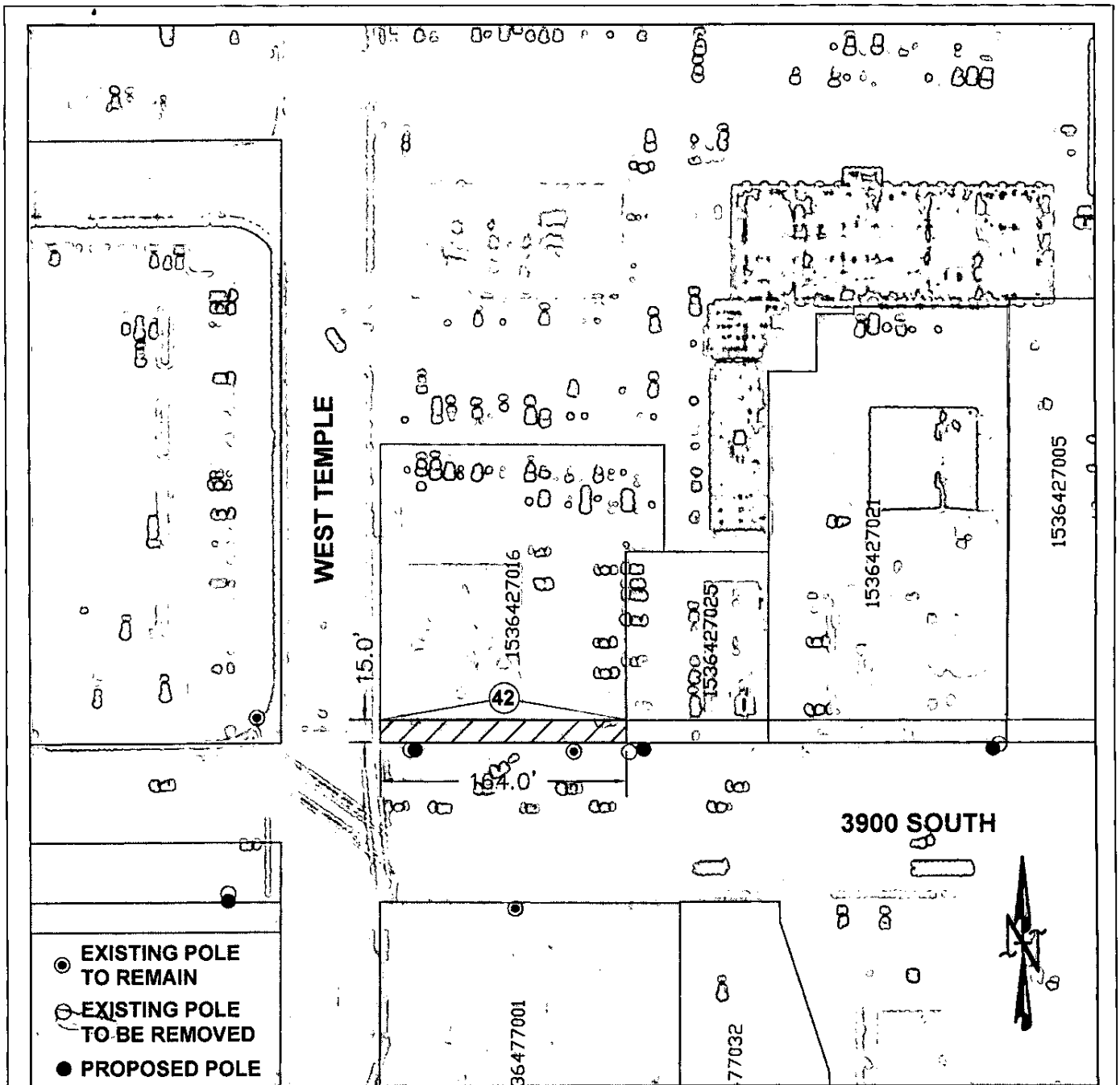
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EASEMENT PARCEL

The Easement Parcel is located in Salt Lake County, Utah and is more particularly described as follows:

An overhang easement over the south 15 feet of that certain property conveyed by Warranty Deed and recorded as Entry No. 7630425 in Book 8359 at Page(s) 2387 and 2388 of the Official Records of the Salt Lake County Recorder. The south line of said overhang easement being coincident with the north line of 3900 South Street. The above said overhang easement contains 0.056 acre.

Affecting Tax Serial No. 15-36-427-016



**EASEMENT DESCRIPTION:**

An easement over property owned by **92 WEST CORP.**, ("Grantor"), situated in Section 36, Township 1 South, Range 1 West, Salt Lake Base & Meridian, Salt Lake County, Utah, and being more particularly described as follows:

The South fifteen (15) feet of "Grantor's" land, parallel with and adjacent to the Northerly right of way line of 3900 South.

Contains: 0.056 acres, more or less, (as described)

THIS DRAWING SHOULD BE USED ONLY AS A REPRESENTATION OF THE LOCATION OF THE EASEMENT BEING CONVEYED. THE EXACT LOCATION OF ALL STRUCTURES, LINES AND APPURTENANCES IS SUBJECT TO CHANGE WITHIN THE BOUNDARIES OF THE RIGHT OF WAY HEREIN GRANTED

REV 0    DATE: 10/9/02    DESC. MIDVALLEY-COTTONWOOD PROJECT    BY SAM    CHK SB    APP TW



1410 South 600 West Woods Cross, UT 84087 (801) 292-9954

EXHIBIT "A"  
EASEMENT THROUGH  
92 WEST CORP. PROPERTY  
SECTION 36, T.1S, R.1.W.  
SALT LAKE BASE & MERIDIAN



SCALE 1:100

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