

2

When Recorded, Return to:
PacifiCorp
Attn: Dennis Harper
1407 West North Temple
Salt Lake City, UT 84140

E 1815668 B 3191 P 498
SHERYL L. WHITE, DAVIS CNTY RECORDER
2002 DEC 20 11:23 AM FEE 23.00 DEP JKM
REC'D FOR FIRST AMERICAN TITLE CO OF UTA

NW 14, 4020
12-079-0028, 0015

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Easement") is entered into as of December 19, 2002, by and between PacifiCorp, an Oregon corporation, dba Utah Power & Light Company ("Grantor") and Benchmark Holding Co., L.C., a Utah ~~corporation~~ ("Grantee").
limited liability company

RECITALS

A. Grantor owns that certain parcel of real property located in Davis County, state of Utah, and more particularly described in Exhibit A, attached hereto and by this reference made a part hereof (the "Easement Property"), which Easement Property is currently owned by Grantor in connection with the operation and maintenance of high voltage transmission lines.

6810 NW

B. Grantee owns that certain parcel of real property located in Davis County, state of Utah, and more particularly described in Exhibit B, (the "Benefited Property") which Benefited Property is situated immediately adjacent to the Easement Property and developed and used as a commercial development.

C. Grantee desires to obtain an easement over and across the Easement Property for access, parking, landscaping, lighting, drainage, and other uses commonly associated with commercial development.

D. Grantor desires to convey and easement to Grantee for the purposes expressed above, provided that such uses and changes to the Easement Property are made in a manner that will not adversely affect Grantor's ability to effectively and efficiently operate and maintain its power lines.

NOW, THEREFORE, in consideration of the mutual benefits and covenant herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor hereby conveys to Grantee, over and across the Easement Property, a perpetual, non exclusive easement of the scope and nature herein described.

2. Purpose. The purpose of the easement hereby granted is allow Grantee to use the Easement Property for vehicle parking, lighting, landscaping, drainage, access, and other uses commonly associated with commercial development.

3. Improvements.

(a) Grantee may not make any improvements or changes to the Easement Property, including changing existing ground elevation, excavating, constructing any structure or lighting structure, or landscaping to the Easement Property without Grantor's prior written consent. If Grantee desires to make any changes or improvements to the Easement Property, Grantee shall provide Grantor with detailed plans and specifications for the proposed change or improvement at least thirty (30) days in advance. Grantor shall have the right to approve, modify, or deny the requested change or improvement if Grantor determines that it is likely to unreasonably interfere with or impair, or has the potential to interfere with or impair, Grantor's current or future use of the Easement Property for the placement and operation of overhead transmission and distribution lines.

(b) In the event curb and gutter is constructed on the Easement Property, any curb and gutter will be high-back type and will contain at least a 16-foot curb cut on both sides of any roadway located at places designated by the Grantor, which curb cuts will permit passage of Grantor's heavy equipment used for the repair, maintenance, and construction of Grantor's improvements and facilities.

(c) All improvements shall be made in a good and workmanlike manner. Any improvement that violates building codes or the laws or ordinances of any governing jurisdiction, or that harm the Property in any manner, shall be timely cured by Grantee at its sole expense and in a manner satisfactory to Grantor.

4. Restrictions.

(a) Grantee will not use or permit to be used within the Easement Property any construction cranes or other equipment having a boom or similar attachment which may come in contact with Grantor's overhead electric lines.

(b) Grantee shall not: (i) place or store any flammable material, including but not limited to chemical solvents, fuels (except fuels and motor vehicle oils properly contained in vehicles maintained in an operating condition), rubbish piles, haystacks, or lumber products on the Property; (ii) construct or place any building structure or other improvement on the Property or plant any trees that are within fifteen (15) feet of the power lines located on the power poles or that interferes with Grantor's access to its existing structures and facilities; or (iii) install any underground utilities or other facilities within twenty five (25) feet of any pole or other power line structure. Grantee shall remove or trim at its sole cost and expense any trees or other vegetation that grows within Grantor's line clearance specifications.

5. Reserved Uses by Grantor. Grantor reserves the right to access the Easement Property at any time for the purpose of maintaining or repairing its existing power lines and associated equipment and facilities and to place additional lines and equipment upon the Easement Property. Grantor reserves the right to add to, change, or enlarge its power lines and associated facilities and structures on the Easement Property, including such equipment and facilities of others, including fiber optic and cable lines.

6. Access. Grantor shall have free and unrestricted access within the Easement for Grantor's personnel, agents, contractors, vehicles, equipment and activities necessary for Grantor's said operations and uses. In the event curb and gutter is allowed to be constructed on the Easement Property, all costs shall be the responsibility of Grantee and shall be high-back type and will contain a 16-foot curb cut on both sides of the easement located at places designated by the Grantor, which curb cuts will permit passage of Grantor's equipment used for repair and maintenance of Grantor's transmission lines or structures. Roadway construction will be sufficient to support Grantor's equipment.

7. Indemnification. Grantee agrees to defend, indemnify, and hold harmless Grantor from and against any and all liability, damage, loss, cost, and expense, including attorneys' fees arising from Grantee's use or occupation of the Easement Property or on account of injury or damage to persons or property occurring on or occasioned by and facilities or improvements owned or controlled by Grantee, whether by its agents, employees, or assigns, unless such injury or damage resulted from the sole negligence or willful misconduct of Grantor.

8. Forbearance. Any forbearance by Grantor to exercise its rights under this Easement in the event of any breach of any term of this Easement shall not be deemed or construed to be a waiver by Grantor of such term or of any subsequent breach of this Easement. No delay or omission by Grantee in the exercise of any right to remedy upon any breach shall impair such right or be construed as a waiver.

9. Recordation. Grantee shall record this Easement in a timely fashion in the records of Davis County. Grantee shall deliver to Grantor a copy of this Easement certified by the Office of the Davis County Recorder.

10. Litigation Expense. If suit or action is instituted in connection with any controversy arising hereunder, the prevailing party shall be entitled to recover in addition to costs such sum as the court or courts may adjudge reasonable as attorney fees, at or in preparation for trial, appeal and on review or other proceeding, including without limitation, any arbitration or other proceeding.

11. Taxes. Any increase in general ad valorem taxes assessed to the Easement Property over the taxes payable for 2002 without reduction for any exemption or reduction (such as through the Farmland Assessment Act) due to Grantee's use or occupation of the Easement Property shall be borne by Grantee and paid to Grantor within thirty (30) days receipt of the tax notice. Grantee shall pay all taxes and assessments levied against its improvements located on the Easement Property.

12. Binding Effect on Successors. This Easement shall be binding upon and inure to the benefit of the immediate parties and their respective heirs, executors, administrators, successors, and assigns and shall run with the land benefited and burdened hereby.

13. Authority. Each individual executing this Easement does thereby represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she signs.

14. Subject to Existing Rights. This Easement is subject to all existing rights or way and encumbrances of record or in equity or at law.

IN WITNESS WHEREOF, Grantor and Grantee hereby execute this Easement.

GRANTOR:

PACIFICORP, an Oregon corporation,
Dba, Utah Power & Light Company


By: 

Its: Executive Vice President

GRANTEE:

BENCHMARK HOLDING Co., L.C., a
Utah ~~Corporation~~ limited liability company

By: 

Its: 

ACKNOWLEDGMENTS

STATE OF UTAH)
)
) : ss.
County of Salt Lake)

On this 18th day of December, 2002, personally appeared before me William D. Landels, who being by me duly sworn, did say that he/she is the signer of the within instrument on behalf of PacifiCorp, an Oregon corporation, d.b.a. Utah Power & Light Company, and that the within and foregoing document was signed on behalf of PacifiCorp by actual authority.



Melanie R. Allen
NOTARY PUBLIC, residing in
Salt Lake County, Utah

STATE OF UTAH)
)
) : ss.
County of Salt Lake)

On this 9 day of December, 2002, personally appeared before me Neil Walker, who being by me duly sworn, did say that he/she is the signer of the within instrument on behalf of Benchmark Holding Co., L.C., a Utah Limited liability co. corporation, and that the within and foregoing document was signed on behalf of Benchmark Holding Co., L.C., by actual authority.

Victoria J. Walker
NOTARY PUBLIC, residing in
Salt Lake County, Utah

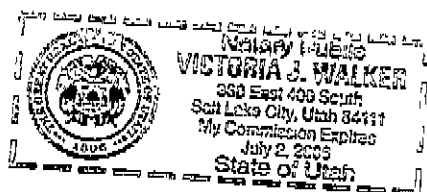


EXHIBIT A
(Legal Description of the Easement Property)

A parcel of land situate in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 14, T. 4 N., R. 2 W., S.L.M., more particularly described as follows:

Beginning at a point N.89°59'49"W. 1116.73 feet along the section line and 0.73 feet north, more or less, from the north one quarter corner of Section 14, T. 4 N., R. 2 W., S.L.M., and running thence S.36°26'34"E. 1845.93 feet, more or less, thence East 14.85 feet, more or less, thence North 267.8 feet, more or less, thence N.36°41'W. 491.0 feet, more or less, thence N.0°10'42"E. 468.77 feet, more or less, thence S.89°53'53"W. 401.01 feet, more or less, thence North 355.28 feet, more or less, thence S.89°55'47"W. 420.96 feet, more or less, to the point of beginning; containing 396,205.0 sq. ft. or 9.10 acres, more or less.

EXHIBIT B
(Legal Description of the Benefited Property)

Parcel 1:

A parcel of land situate in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 14, T. 4 N., R. 2 W., S.L.M., more particularly described as follows:

Beginning at a point N.89°59'49"W. 1116.73 feet along the section line and 0.73 feet north, more or less, from the north one quarter corner of Section 14, T. 4 N., R. 2 W., S.L.M., and running thence S.89°55'47"W. 60.05 feet, more or less, thence S.0°11'39"W. 536.41 feet, more or less, thence S.89°52'35"W. 292.74 feet, more or less, thence S.0°12'10"W. 947.43 feet, more or less, thence S.89°59'01"E. 1175.30 feet, more or less, thence N.0°08'45"E. 376.70 feet, more or less, thence N.36°26'34"W. 1377.56 feet, more or less, to the point of beginning; containing 1,131,785.85 sq. ft. or 25.98 acres, more or less.

Parcel 2:

A parcel of land situate in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 14, T. 4 N., R. 2 W., S.L.M., more particularly described as follows:

Beginning at a point South 1107.39 feet and West 298.42 feet, more or less, from the north one quarter corner of Section 14, T. 4 N., R. 2 W., S.L.M., and running thence S.36°26'34"E. 468.37 feet, more or less, thence N.89°59'01"W. 279.18 feet, more or less, thence N.0°08'45"E. 376.70 feet, more or less, to the point of beginning; containing 52,583.29 sq. ft. or 1.21 of an acre, more or less.