

ENTRY NO. 00280517

01/14/2016 01:25:55 PM B: 0568 P: 1755

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CRAIG J. SPERRY JUAB COUNTY RECORDER

FEE \$ 42.00 BY ENSIGN DEVELOPMENT



When recorded, return to:

W. Michael Black

Mitchell Barlow & Mansfield, P.C.

Nine Exchange Place, Suite 600

Salt Lake City, Utah 84111

Parcel Number: XA3A-0500-1

XA3A-0500-1A

AMENDMENT TO EASEMENT AGREEMENT

THIS AMENDMENT TO EASEMENT AGREEMENT (this "Amendment") is made and entered into this 13 day of January, 2016 by and between PATRICK PAINTER AS TRUSTEE OF THE J.L. AND Z.D.W. PAINTER IRREVOCABLE TRUST DATED JANUARY 1, 1986 ("Painter") and ENSIGN DEVELOPMENT GROUP, LLC, a Utah limited liability company ("Ensign") (collectively referred to hereafter as "Parties").

RECITALS:

WHEREAS, Painter and Ensign entered into that certain Easement Agreement dated March 16, 2015 and recorded with the Juab County Recorder as Entry No. 00278160, Book 0564 Page 0763, on March 17, 2015 (the "Agreement", and all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement) relating to the real property described on Exhibit 1, Exhibit 2 and Exhibit 3 attached hereto.

WHEREAS, the Parties desire to amend the Agreement in accordance with the terms and conditions hereof.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals; Affect.** The Recitals set forth above are incorporated herein by this reference. Except as modified hereby, the Agreement shall survive this Amendment without modification. This Amendment may be executed in counterparts, each of which shall constitute an original for all purposes and all of which, taken together, shall constitute one and the same instrument.
2. **Painter Remainder Parcel.** In addition to the Painter Parcel, Painter owns the real property located directly east of the Painter Parcel and the ShopKo Parcel, which property is described on Exhibit 3, attached hereto. Accordingly, the following language is added to the Recitals of the Agreement as the fourth "whereas" in the Recitals:

"WHEREAS, Painter also owns certain real property immediately to the east of the Painter Parcel and the Shopko Parcel (the "Painter Remainder Parcel") as described in Exhibit 7 attached hereto that is burdened by a portion of the Access Easement as described herein; and"

Further, the legal description of the Painter Remainder Parcel as shown on Exhibit 3 to this Amendment is hereby added to the Agreement as Exhibit 7.

3. **Access Easement.** Section 2 of the Agreement is hereby deleted in its entirety and replaced with the following:

"2. **Grant of Access Easement.** Painter hereby grants to Ensign and its successors and assigns, employees, vendors, guests, invitees, and customers a perpetual nonexclusive access easement for ingress and egress as described in **Exhibit 1** (the "**Access Easement**"). The Access Easement is labeled as EXHIBIT 1 on the Site Plan attached hereto as Exhibit 6 (the "**Site Plan**"). The Access Easement burdens both the Painter Parcel and the Painter Remainder Parcel."

4. **Maintenance and Repair.** Section 8 of the Agreement is hereby deleted in its entirety and replaced with the following:

"8. **Maintenance and Repair; Sharing of Costs.** The obligation to improve, repair and/or maintain the property burdened by the Cross Access Easement, the Ingress/Egress Easement, and the Access Easement shall be borne by Ensign and its successors and assigns. Following the sale of the Painter Parcel to a third party (meaning a party other than the beneficiaries (the "**Beneficiaries**") of the J.L. and Z.D.W. Painter Irrevocable Trust dated January 1, 1986, the spouses of the Beneficiaries, or the descendants of the Beneficiaries), the owner of each of the Painter Parcel and the Shopko Parcel shall share equally the cost of maintaining and repairing the Cross Access Easement, the Ingress/Egress Easement, and the Access Easement. The obligation to repair and/or maintain the property burdened by the Reciprocal Easements, excepting the property burdened by the Cross Access Easement, the Ingress/Egress Easement, and the Access Easement, shall be borne by the owner of the real property burdened by the Reciprocal Easements.

Further, the owner of the Shopko Parcel shall allow and support the modification of the curbs on or bordering the Cross Access Easement, the Ingress/Egress Easement, and the Access Easement ("**Curbs**") so as to allow vehicular traffic to travel freely over the Cross Access Easement to the Painter Parcel. Such modification may include changing all or a portion of the Curbs to the type sometimes referred to as "rollover" or "mountable" curbs or cutting all or a portion of the Curbs and installing ramps, or other such modification as may be deemed necessary by Painter or its successors or assigns to allow free vehicular access across and through the Cross Access Easement to the Painter Parcel. The owner of the Shopko Parcel shall take such reasonable actions to support the modification of the Curbs as may be requested by the owner of the Painter Parcel, including expressing support for such modifications to Nephi City."

[remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

DATED this 13 day of January, 2016.

**PATRICK PAINTER AS TRUSTEE OF THE
J.L. AND Z.D.W. PAINTER IRREVOCABLE
TRUST DATED JANUARY 1, 1986**

Patrick R. Painter, Trustee

STATE OF UTAH)
 :SS.
COUNTY OF Juab)

On this 14 day of January, 2016, Patrick Painter personally appeared before me, and being duly sworn, acknowledged that he is the trustee of the J.L. and Z.D.W. Painter Irrevocable Trust dated January 1, 1986, and has been duly authorized to and did in fact execute the foregoing instrument for the purposes stated therein.

Gail Bateman
NOTARY PUBLIC

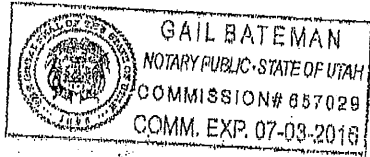


EXHIBIT 1
to Amendment

Shopko Parcel Legal Description

Beginning at a point on the quarter section line which is S89°51'32"W 1689.06 feet and South 220.12 feet from the Northeast Corner of the Southwest Quarter of Section 33, Township 12 South, Range 1 East, Salt Lake Base and Meridian, as re-established and marked by a Juab County Survey of 1946; thence South a distance of 230.70 feet to a fenceline projection, which is also the North fenceline of Painter Motor company; thence N 87°51'28" W a distance of 205.99 feet along said fenceline; thence N 87°49'17" W a distance of 238.20 feet along said fenceline to the East right of way of Highway 28; thence N 00°14'36" E a distance of 213.94 feet along said highway; thence East a distance of 442.97 feet to the point of beginning, having an area of 2.26 acres.

EXHIBIT 2

to Amendment

Painter Parcel Legal Description

Beginning at a point which is S89°51'32"W, 1689.08 feet along the Mid-section line from the Northeast Corner of the Southwest Quarter of Section 33, Township 12 South, Range 1 East, Salt Lake Base and Meridian as re-established and marked by a Juab County Survey of 1946; Thence S 89°51'32" W a distance of 317.12 feet; thence S 00°22'22" E a distance of 175.00 feet; thence S 89°51'32" W a distance of 126.80 feet; thence S 00°14'36" W a distance of 44.03 feet; thence East a distance of 442.97 feet; thence North a distance of 220.12 feet to the point of beginning, having an area of 75138.25 square feet, 1.725 acres.

EXHIBIT 3**to Amendment***Painter Remainder Parcel Legal Description*Parcel No. XA3A-0500- 1;

Beginning at a point on the quarter section line which is South 89°43' West 99 feet from the Northeast corner of the Southwest quarter of Section 33, Township 12 South, Range 1 East, Salt Lake Meridian, as re-established and marked by a Juab County Survey of 1946; thence South 89°43' West 1907.2 feet along the quarter section line, thence South 175 feet, thence South 89°43' West 123 feet, thence South 752.22 feet, thence South 89°52' East 429 feet, thence South 356.58 feet, thence South 89°52' East 81.89 feet to the Southwest corner of State Road Commission property as described in Book 231, Page 466, of the records of the Juab County Recorder's office, thence North 0°19' West 430 feet, thence South 89°52' East 452.02 feet, thence South 1°33' West 430 feet, thence South 89°52' East 273.96 feet to the Southwest corner of the Steele property as described in Book 247, Page 463, of the records of the Juab County Recorder's office, thence North 432 feet, thence South 89°52' East 377.5 feet to the Southwest corner of the L.D.S. Church property as described in Book 374, Page 508, of the records of the Juab County Recorder's office, thence North 0°11'51" West 429 feet, thence South 89°52' East 429 feet, thence North 0°11'51" East 436.99 feet to the point of beginning.

Less and Except (the Painter Parcel):

Beginning at a point which is S89°51'32"W, 1689.08 feet along the Mid-section line from the Northeast Corner of the Southwest Quarter of Section 33, Township 12 South, Range 1 East, Salt Lake Base and Meridian as re-established and marked by a Juab County Survey of 1946; Thence S 89°51'32" W a distance of 317.12 feet; thence S 00°22'22" E a distance of 175.00 feet; thence S 89°51'32" W a distance of 126.80 feet; thence S 00°14'36" W a distance of 44.03 feet; thence East a distance of 442.97 feet; thence North a distance of 220.12 feet to the point of beginning, having an area of 75138.25 square feet, 1.725 acres.

And Less and Except (the ShopKo Parcel):

Beginning at a point on the quarter section line which is S89°51'32"W 1689.06 feet and South 220.12 feet from the Northeast Corner of the Southwest Quarter of Section 33, Township 12 South, Range 1 East, Salt Lake Base and Meridian, as re-established and marked by a Juab County Survey of 1946; thence South a distance of 230.70 feet to a fenceline projection, which is also the North fenceline of Painter Motor company; thence N 87°51'28" W a distance of 205.99 feet along said fenceline; thence N 87°49'17" W a distance of 238.20 feet along said fenceline to the East right of way of Highway 28; thence N 00°14'36" E a distance of 213.94 feet along said highway; thence East a distance of 442.97 feet to the point of beginning, having an area of 2.26 acres.