

Recording Requested by
and When Recorded Return to:

Marron Reid & Sheehy, LLP
100 B Street, Suite 400
Santa Rosa, CA 95401-6376
Attn: Rebecca A. Wetterlin, Esq.

✓ E 104612 B 0483 P 0643
DATE 19-DEC-1997 12:46PM
FEE: 49.00 CHECK
DONNA S. MCKENDRICK, RECORDER
FILED BY MRT
✓ FOR BRIGHTON TITLE
✓ A TOOELE COUNTY CORPORATION

AGREEMENT FOR SEWER LINE EASEMENT

THIS AGREEMENT FOR SEWER LINE EASEMENT ("**Agreement**") is made this 16th day of December, 1997, by and between **PRICE TOOELE COMPANY, LLC**, a Utah limited liability company ("**Grantor**") and the **LINCOLN LAKEVIEW LIMITED PARTNERSHIP**, a Utah limited partnership (the "**Grantee**").

RECITALS:

A. Concurrent with the execution of this Easement Agreement, Grantee is purchasing from Grantor certain real property (the "**Grantee Property**") located north of the intersection of 700 North and 100 East, Tooele, Utah, which Grantee Property is more thoroughly described in Exhibit A attached hereto.

B. Grantor owns certain real property (the "**Grantor Property**") adjacent to the Grantee Property, which Grantor Property is more thoroughly described in Exhibit B attached hereto.

C. Grantee desires to construct and maintain a sanitary sewer line and related appurtenances and connections, from the Grantee Property across the Grantor Property, to connect to the existing sewer lines located in Tenth North Street (collectively the "**Sewer Line**"), which Sewer Line is to be located on the portion of the Grantor Property described in Exhibit C attached hereto (the "**Easement Parcel**").

D. Grantor and Grantee desire to set forth certain obligations of Grantee regarding the Sewer Line easement granted hereunder.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Grant of Easement.** Grantor hereby grants to Grantee and Grantee hereby accepts the following easement, appurtenant to and for the benefit of the Grantee Property, and Grantee and its successors, assignees, mortgagees, lessees, sublessees, employees, suppliers, contractors, vendors, agents, customers, visitors, licensees and invitees ("**Permitted Users**"): a perpetual, non-exclusive easement over the Easement Parcel for the sole purpose of constructing and maintaining the Sewer Line, subject to the terms and conditions of this Agreement.

2. **Grant of License for Construction Activity and for Maintenance.** Grantor grants to Grantee, and the Permitted Users, an irrevocable license over that portion of the Grantor

Property fifteen feet (15') either side of the centerline referenced in Exhibit C (the "License Area") for performance of work of construction, maintenance, repair and replacement in conjunction with the construction and maintenance of the Sewer Line. Such license includes use of the License Area (i) for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with the construction and maintenance of the Sewer Line and (ii) temporary storage of materials and vehicles being utilized in connection with construction of the Sewer Line. The license granted herein shall terminate upon completion of construction of the Sewer Line.

3. Obligations of Grantee.

3.1. Maintenance. Grantee shall be solely responsible for the maintenance and repair of the Sewer Line. If damage or destruction to the Sewer Line, or a defect in the Sewer Line, adversely affects the Grantor Property in any way, then Grantee, at its sole cost and expense, shall promptly make any necessary repairs to, or replacements of, the Sewer Line to remedy such condition. If Grantee fails to maintain or repair the Sewer Line as required pursuant to the terms of this Agreement, then Grantor may, but shall not be obligated to, upon fifteen (15) days prior written notice to Grantee, take such action as Grantor deems necessary, to repair or maintain the Sewer Line, and Grantee shall reimburse Grantor on demand for all costs incurred by Grantor in connection therewith, plus interest at an interest rate equal to the lower of ten percent (10%) per annum or the highest rate allowable under law, from the date of written notice to Grantee of such expenditure.

3.2. Construction. Grantee shall construct the Sewer Line, which shall be at least sixteen inches (16") in diameter. Grantee shall use its best efforts to construct and maintain the Sewer Line in a manner which minimizes the adverse effects on, or interference with, Grantor's use, enjoyment or operation of the Grantor Property. All construction, repair, replacement and maintenance work on the Sewer Line shall be performed expeditiously and in a good and workmanlike manner. Grantee and Grantor shall share equally the cost of constructing the Sewer Line. Grantee shall use its best efforts to complete construction of the Sewer Line on or before August 1, 1998.

3.3 Use of Sewer Line by Grantor. After construction of the Sewer Line, Grantor shall have the right to tap into the Sewer Line and use it for the benefit of the Grantor Property.

4. Reservation of Rights. Grantor reserves to itself, its successors and assigns, and the occupants, tenants and invitees of the Grantor Property (i) all development rights and credits, air rights, water, water rights, minerals, oil, gas and other hydrocarbon substances and all subsurface rights with respect to the Easement Parcel, and (ii) the right to use and enjoy the Easement Parcel for ingress and egress to the Grantor Property, the parking of automobiles, trucks and other vehicles, the construction, maintenance and operation of a parking lot, the construction, maintenance and operation of related improvements and landscaping and all other purposes which shall not unreasonably interfere with the rights herein granted to Grantee.

5. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Grantor Property to the general public or for the general public, it being the intention and understanding of the parties hereto that the easement and rights granted hereby shall be limited to and for the purposes herein specified.

6. Indemnity. Grantee shall indemnify, defend, protect and hold harmless Grantor, and its partners, directors, offices, shareholders, representatives, contractors, agents and

employees, from and against any and all loss, cost, liability, damage and expense, including without limitation, reasonable attorney's fees, arising out of or in any way connected with any actual or claimed injury to or death of any person, or any damage to or loss of Grantor Property incurred by any person or entity, occurring on or about the Grantor Property, and related to the easement or license granted herein, except for any such losses, costs, liabilities, damages or expenses arising by reason of the negligence or willful misconduct of Grantor or its contractors, agents, or employees.

7. **Successors and Assigns.** This Agreement is and shall be binding upon and shall inure to the benefit of each of the parties hereto and their respective successors, assigns, heirs, administrators, executors and legal representatives. The covenants set forth hereunder constitute covenants running with the land.

8. **Entire Agreement.** This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. This Agreement may be modified only by an instrument in writing executed by the parties hereto.

9. **Attorney's Fees.** In the event of any controversy, claim or dispute relating to this Agreement or the breach hereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

10. **Notices.** All notices and other communications hereunder shall be in writing and shall be personally delivered or sent by first-class United States mail, certified, postage prepaid, addressed as follows:

If to Grantor:

Price Tooele Company, LLC
35 Century Park Way
Salt Lake City, Utah 84115
Attention: Mr. Steve Price
Telephone No.: (801) 486-3911
Telecopy No.: (801) 486-7653

with a copy to:

David K. Broadbent, Esq.
Prince, Yeates & Geldzahler
175 East 400 South #900
Salt Lake City Utah 84111
Telephone No.: (801) 524-1000
Telecopy No.: (801) 524-1099

if to Grantee:

Lincoln Property Company N.C., Inc.
650 South Cherry Street, Suite 825
Denver, Colorado 80222
Attn: Michael A. Zoellner or Chris Gillies
Telephone No.: (303) 320-3500
Telecopy No.: (303) 320-3532

with a copy to:

Lincoln Property Company N.C., Inc.
101 Lincoln Center Drive, 56h Floor
Foster City, California 94404
Attn: W. Dean Henry
Telephone No.: (415) 571-2250
Telecopy No.: (415) 571-2253

and with a copy to:

Marron Reid & Sheehy, LLP
100 B Street, Suite 400
Santa Rosa, CA 95401-6376
Attn: Richard W. Power, Esq.

or such other address as either party may from time to time specify in writing to the other. Also, such notices and other communications if sent by mail shall be deemed to have been given upon the earlier of actual receipt, or two (2) business days after the date of such mailing.

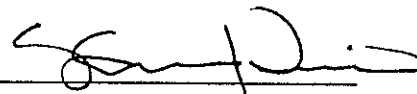
11. **Counterparts.** This Easement Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by telecopy or facsimile transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

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

GRANTOR:

PRICE TOOELE COMPANY, LLC,
a Utah limited liability company

By: 

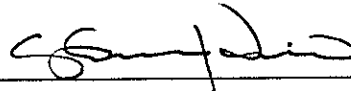
Its: Member

[SIGNATURES CONTINUED ON NEXT PAGE]

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

GRANTOR:

PRICE TOOELE COMPANY, LLC,
a Utah limited liability company

By: 

Its: Member

GRANTEE:

**LINCOLN LAKEVIEW LIMITED
PARTNERSHIP,** a Utah limited partnership

By: Lincoln Property Company No. 2311 Limited
Partnership, a Utah limited partnership, its
general partner

By: LPDC N.C. No. 2300, Inc., a California
Corporation, its general partner

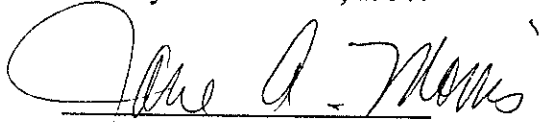
By: 

Its: Senior Vice President

[ATTACH NOTARIES]

STATE OF COLORADO)
)
COUNTY OF ARAPAHOE)

Michael A. Zoellner, as authorized representative for Lincoln Lakeview Limited Partnership, signed the above document before me, Jane A. Morris, Notary Public, this 11th day of December, 1997.



Jane A. Morris
Notary Public

My Commission Expires April 11, 2001.

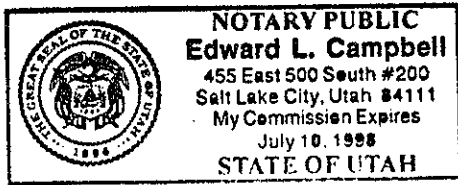
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STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 16th day of December, 1997, by Steven Prive, as member of Price Tooele Company, LLC., a Utah limited liability company.


Notary Public

My Commission Expires: 7-10-98 Residing at: Salt Lake City, Utah



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EXHIBIT "A"
PROPERTY DESCRIPTION

That certain parcel of real property situated in Tooele County, State of Utah and more particularly described as follows:

PARCEL 1:

LOTS 31, 32, 33, 34, 35, 37, 39, 40, 41, 42, 43, 45, 47, JOHNSON SUBDIVISION a subdivision of Tooele City according to the plat thereof recorded in the office of the Tooele County Recorder, being more particularly described as follows:

BEGINNING at a point which lies on the Northeast corner of Lot 39, Johnson Subdivision, said point also lies North 00°15'56" West, along the section line, (basis of bearings) 866.00 feet from the East Quarter Corner of Section 21, said point also lies South 00°15'56" East, along the section line, 1777.42 feet, from the Northeast Corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence South 00°15'56" East, along the section line, 298.05 feet; thence North 89°12'56" West, along the Northerly line of Lots 29 and 30 of said subdivision, 277.17 feet; thence South 00°47'04" West, along the Easterly line of Lot 33 of said subdivision, 40.00 feet; thence North 89°12'56" West, along the Northerly line of Lots 23, 24, and 27, of said subdivision, 275.20 feet to a point on the Easterly right of way line of First East Street; thence North 00°47'04" East, along said Easterly line, 338.00 feet; thence South 89°12'56" East, along the Northerly line of said Johnson Subdivision, 546.91 feet to the point of BEGINNING.

09-011-0 lots 31, 32, 33, 34, 35, 37, 39, 40, 41, 42, 43, 45, 47

PARCEL 2:

BEGINNING at a point which lies on the Northeast corner of Lot 39, Johnson Subdivision, said point also lies North 00°15'56" West, along the section line, (basis of bearings) 866.00 feet from the East Quarter Corner of Section 21, said point also lies South 00°15'56" East, along the section line, 1777.42 feet, from the Northeast Corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence North 89°12'56" West, along the Northerly line of said Johnson Subdivision, 546.91 feet; thence North 00°47'04" East, 78.73 feet; thence South 89°12'56" East, 545.47 feet to a point on the Easterly Line of said Section 21; thence South 00°15'56" East, along the section line, 78.74 feet to the point of BEGINNING.

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EXHIBIT "B"
PROPERTY DESCRIPTION

BEGINNING at a point 33 feet South of the Northeast corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian, to a point on the Southerly line of a County Road; thence West 679 feet, more or less, along the South line of said County Road to the Northeast corner of that property conveyed to Albert R. Arellano by that certain Real Estate Contract recorded April 15, 1987 as Entry No. 008249 in Book 254 at page 36 to 40 of Official Records; thence South 218 feet, more or less, along the East line of said Arellano property to its Southeast corner; thence West 200 feet, more or less, along the South line of said Arellano property to its Southwest corner; thence North 218 feet, more or less, along the West line of said Arellano property to its Northwest corner, said point also being on the South line of said County Road; thence West 161.5 feet, more or less, along the South line of said County Road to the Northeast corner of the property conveyed to H.E.B. auto Supply Inc. by Deed recorded July 13, 1992 as Entry No. 018738 in Book 334 at page 417 of Official Records; thence South 330 feet, more or less, along the East line of said H.E.B. property and the East line of the property conveyed to Mantes Realty Co. by deed recorded March 23, 1971 as Entry No. 293080 in Book 101 at page 440 of Official Records, to the Southeast corner of said Mantes Realty property; thence West 229 feet, more or less to the Southwest corner of said Mantes Realty property, said point also being on the East line of State Highway; thence South 505.99 feet, more or less, along the East line of said State Highway to the Northwest corner of that property conveyed to Velma Faye J. Connell by deed recorded December 7, 1990 as Entry No. 038324 in Book 311 at page 392 of Official Records; thence East 445.71 feet, more or less along the North line of said Connell property to its Northeast corner; thence South 179.97 feet, more or less, along the East line of said Connell property to its Southeast corner; thence West 125.38 feet, more or less, along the South line of said Connell property to the Northeast corner of that property conveyed to Triple "M" Food & Fuel, Inc. by deed recorded April 17, 1991 as Entry No. 040274 in Book 315 at page 301 of Official Records; thence South 281 feet, more or less, along the East line of said Triple "M" property and that property conveyed to Glenn G. Oscarson, etux by deed recorded December 6, 1989 as Entry No. 030879 in Book 296 at page 767 of Official Records, to the Southeast corner of said Oscarson property; thence West 20 feet more or less, along the South line of said Oscarson property to the Northeast corner of that property conveyed to Bruce T. Steadman, etal by deed recorded December 6, 1989 as Entry No. 030882 in Book 296 at page 774 of Official Records; thence South 200 feet, more or less, along the East line of said Steadman property to its Southeast corner, said point also being on the North line of that property conveyed to Sandra K. Aquirre by deed recorded May 14, 1990 as Entry No. 034153 in Book 303 at page 61 of Official Records; thence East 427.74 feet, more or less, along the North line of said Aquirre property and the North line of that property conveyed to Jerome H. Pearlman and Faith Pearlman, Trustees of the Jerome H. Pearlman and Faith Pearlman Trust No. II recorded September 13, 1991 as Entry No. 043221 in Book 321 at page 569 to 570 of Official Records, to the Northeast corner of said Pearlman property; thence South 325.60 feet, more or less, along the East line of said Pearlman property, to the Northwest corner of the Johnson Subdivision recorded September 8, 1951 as Entry No. 230182 of Official Records; thence East 613.03 feet, more or less, along the North line of said Johnson Subdivision to the Northeast corner of said Johnson Subdivision, said point being on the East line of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian; thence North 1741 feet, more or less, along said East line of said Section 21, to the point of BEGINNING.

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LESS AND EXCEPTING the following described property:

BEGINNING at a point which lies on the Northeast corner of Lot 39, Johnson Subdivision, said point also lies North $00^{\circ}15'56''$ West, along the section line, (basis of bearings) 866.00 feet from the East Quarter Corner of Section 21, said point also lies South $00^{\circ}15'56''$ East, along the section line, 1777.42 feet, from the Northeast Corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence North $89^{\circ}12'56''$ West, along the Northerly line of said Johnson Subdivision, 546.91 feet; thence North $00^{\circ}47'04''$ East, 78.73 feet; thence South $89^{\circ}12'56''$ East, 545.47 feet to a point on the Easterly Line of said Section 21; thence South $00^{\circ}15'56''$ East, along the section line, 78.74 feet to the point of BEGINNING.

02-004-0-0015

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EXHIBIT "C"
PROPERTY DESCRIPTION

A non-exclusive easement for the sole purpose of construction and maintaining a sewer line and related appurtenances and connections, appurtenant to Parcels 1 and 2, over the following described area:

A 10.00 foot wide sewerline easement, 5.00 feet on each side of the following described centerline:

BEGINNING at a point which lies on the Northerly line of Johnson Subdivision, said point also lies North $00^{\circ}15'56''$ West, along the section line, (Basis of Bearings) 866.00 feet, and North $89^{\circ}12'56''$ West, along the Northerly line of said Johnson Subdivision, 589.91 feet from the East Quarter Corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence North $00^{\circ}47'04''$ East, 1380.32 feet; thence North $00^{\circ}24'02''$ West, 351.28 feet to the Northerly line of grantors land.

pt 2-4-15
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lot 39, 41, 40, 43, 42, 47

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