

**RAILROAD SPUR EASEMENT AGREEMENT**

THIS DOCUMENT WAS )  
PREPARED BY AND )  
AFTER RECORDING )  
RETURN TO: )

Hangley Aronchick Segal )  
Pudlin & Schiller )  
One Logan Square, 27th Floor )  
Philadelphia, Pennsylvania 19103 )  
Attn: Adena Herskovitz, Esquire )

NCS-703735 )  
12-833-0001 12-761-0005 )  
12-833-0003 12-785-0001 )

[This space reserved for recording data.]

**THIS RAILROAD SPUR EASEMENT AGREEMENT** (this "Agreement") is made this 11<sup>th</sup> day of September, 2015, by and between UNITED STATES COLD STORAGE, INC., a New Jersey corporation, its successors and assigns ("USCS"), and NINIGRET CONSTRUCTION NORTH, L.C., a Utah limited liability company, its successors and assigns ("Ninigret").

**WITNESSETH:**

**WHEREAS**, Ninigret is the owner of certain property located in the City of Syracuse, Davis County, Utah, as more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Ninigret Parcel"); and

**WHEREAS**, USCS has purchased from or through Ninigret and is the owner of certain property immediately adjacent to the Ninigret Parcel, as more particularly described on Exhibit "B" attached hereto and made a part hereof (the "U.S. Cold Storage Parcel"); and

**WHEREAS**, in connection with USCS's development of the U.S. Cold Storage Parcel and in order to provide railroad service to the U.S. Cold Storage Parcel, USCS has constructed a rail spur and related facilities (the "USCS Rail Spur") that connects into a railroad line owned and serviced by the Union Pacific Railroad ("U.P. Railroad"), as shown on Exhibit "B-1" attached hereto and made a part hereof; and

**WHEREAS**, Ninigret desires to construct railroad tracks and related facilities and improvements, together with any and all structures and appurtenances necessary to deliver railroad service to the Ninigret Parcel as set forth herein (the "Ninigret Rail Spur") that will connect into the USCS Rail Spur, all as more fully depicted on the plan attached hereto as Exhibit "D" and made a part hereof (such plan, as it may be required to be modified by the U.P.

Railroad, the “Engineering Plan”) in the area depicted and described on Exhibit “C” attached hereto and made a part hereof (the “Rail Easement Area”); and

**WHEREAS**, Ninigret has agreed to reimburse USCS for a portion of the cost of the construction of the USCS Rail Spur, in the amount of \$125,000.00, and has agreed to construct the Ninigret Rail Spur at its sole cost and expense as set forth herein (the “Rail Payment”); and

**WHEREAS**, in order to permit the construction, maintenance, repair, replacement and use of the Ninigret Rail Spur, USCS desires to grant certain perpetual easement rights over, across, under and upon the Rail Easement Area for the benefit of the Ninigret Parcel.

**NOW, THEREFORE**, the parties hereto, intending to be legally bound hereby, and for the Rail Payment paid by Ninigret to USCS, the mutual promises, covenants and conditions contained herein and other good and valuable consideration, do hereby agree and covenant as follows:

1. Grant of Rail Spur Easements.

(a) USCS hereby grants, sells and conveys to Ninigret and its successors and assigns, for the use, benefit and quiet enjoyment of all present and future owners of the Ninigret Parcel and their tenants, licensees, agents, invitees, vendors, suppliers, employees, representatives, and contractors an exclusive, irrevocable and perpetual easement and right-of-way, subject to the conditions in Section 3, over and across the portion of the Rail Easement Area consisting of the Ninigret Rail Spur, together with the right to enter upon and use such Rail Easement Area for the construction, installation, operation, maintenance, repair and replacement of the Ninigret Rail Spur. If the U.P. Railroad shall insist on modifications to the Engineering Plan, Ninigret shall have the right to relocate the Rail Easement Area and to modify the Engineering Plan to conform to the changes required by the U.P. Railroad.

(b) USCS hereby grants, sells and conveys to Ninigret and its successors and assigns, for the use, benefit and quiet enjoyment of all present and future owners of the Ninigret Parcel and their tenants, licensees, agents, invitees, vendors, suppliers, employees, representatives, and contractors in common with all present and future owners of the U.S. Cold Storage Parcel and their tenants, licensees, agents, invitees, vendors, suppliers, employees and representatives, a non-exclusive, irrevocable and perpetual easement and right-of-way, subject to the conditions in Section 3, over and across the portion of the Rail Easement Area consisting of the USCS Rail Spur for the purposes of construction, installation, operation, maintenance, repair and replacement of the Ninigret Rail Spur and transporting rail cars and other rolling stock across the USCS Rail Spur.

2. Access Right. The easement set forth in Section 1(a) above includes, without limitation, a right of access over those portions of the USCS Parcel over which Ninigret may reasonably need access from time to time to exercise the rights set forth herein. Ninigret shall have the right to legally subdivide the Ninigret Parcel as Ninigret deems necessary and the owner(s) of the Ninigret Parcel, as successors-in-interest to Ninigret, shall have the right to use the Rail Easement Area; subject to the terms and conditions of this Agreement; provided that the

number of rail cars per year allowed to use the Rail Easement Area pursuant to Section 3(b) below will not be increased by reason of such subdivision.

3. Restrictions on Easement Use. Ninigret's use of the easement rights granted under Section 1 above is subject to the following restrictions:

(a) No Hazardous Materials shall be transported over the Rail Easement Area or the USCS Rail Spur. Hazardous Materials shall include any substance that the transportation of which is or becomes regulated under any and all existing or future federal, state and local statutes, ordinances, regulations, rules, standards and requirements, including the requirements imposed by common law, concerning or relating to industrial hygiene or the protection of health or the environment, as the same may be amended from time to time ("Environmental Laws"), including, without limitation, any substance which is (1) gasoline, petroleum products, explosives, radioactive materials, including byproduct, source and/or special nuclear material and solid wastes, polychlorinated biphenyls or related or similar materials, asbestos or material containing asbestos; (2) defined, designated or listed as a "Hazardous Substance," Hazardous Material," "Hazardous Waste" or "Industrial Waste" under any of Environmental Laws, including, without limitation, (A) Sections 307 and 311 of the Clean Water Act, 33 U.S.C. Sections 1317 and 1321; (B) Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601(14); and (C) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sections 1801-1812; or (3) defined as "hazardous", "toxic", or otherwise regulated, under Environmental Laws adopted by the State of Utah, or its agencies or political subdivisions.

(b) Ninigret may not use the Ninigret Rail Spur or the USCS Rail Spur for the transit of more than 1,040 rail cars per year.

(c) Ninigret may not use the Ninigret Rail Spur or the USCS Rail Spur for more than 5 days per week. The use limitations of this Section 3(c) shall not apply to uses associated with any construction, installation, maintenance, repair, or replacement of the Ninigret Rail Spur or the USCS Rail Spur.

(d) Rail cars may not block the fire access road, as identified on the Engineering Plan (the "Fire Access Road").

4. Construction of Ninigret Rail Spur. Ninigret shall have the right to construct the Ninigret Rail Spur within the Rail Easement Area, subject to the terms and condition of this Agreement and in accordance with the Engineering Plan, as approved by the U.P. Railroad, the City of Syracuse and USCS. Upon the commencement of construction, Ninigret shall complete such construction in a diligent manner, in accordance with good construction practices, and in a lien-free manner. Ninigret shall bear the entire cost of constructing the Ninigret Rail Spur. Prior to the commencement of any construction, Ninigret shall secure all necessary permits and approvals from all applicable government agencies and authorities. Ninigret acknowledges that the Ninigret Rail Spur will cross the Fire Access Road, and agrees to construct and install all appropriate crossing facilities and signage, as required by USCS, the U.P. Railroad and the City of Syracuse, and to construct the Ninigret Rail Spur at the appropriate elevations to accommodate safe emergency vehicle crossings.

5. Maintenance.

(a) Ninigret shall be responsible, at Ninigret's sole cost and expense, for the regular inspection, repair and maintenance of the Ninigret Rail Spur and that portion of the USCS Rail Spur used jointly by Ninigret and USCS, which area is labeled "Ninigret Track Maintenance Responsibility (BLUE)" and is depicted on Exhibit E, attached hereto and incorporated herein by this reference. All work hereunder by Ninigret shall be done in a lien free manner and in accordance with good construction practices.

(b) USCS shall be responsible for the regular inspection, repair and maintenance of that portion of the USCS Rail Spur used solely by USCS, which area is labeled "USCS Track Maintenance Responsibility (RED)" and is depicted on Exhibit E. All work hereunder by USCS shall be done in a lien free manner and in accordance with good construction practices.

(c) If either party shall fail to perform any inspection, repair, maintenance or replacement required under this Agreement, the other party may, at its option, after no less than thirty (30) days' prior written notice (except in case of emergency), enter upon the other party's property to perform such repair, maintenance or replacement, in which event the non-performing party shall promptly reimburse the other party for the amount of any costs and expenses incurred by such other party as a result of performing such maintenance, repairs or replacements, except to the extent any such costs are the performing party's responsibility under this Section 5.

(d) In the event that the Ninigret Rail Spur has been constructed and subsequently is not used for a continuous period of more than eighteen (18) months (excluding all nonusage associated with any maintenance, repair, or replacement of some or all of the Ninigret Rail Spur and all nonusage associated with a force majeure event outside the control of Ninigret), USCS shall have the right to remove the Ninigret Rail Spur from the U.S. Cold Storage Parcel upon ninety (90) days written notice to Ninigret. Following such removal, this Agreement shall terminate and be void and of no further force and effect, and USCS shall have the right to place notice in the Davis County, Utah land records of such termination.

(e) If Ninigret fails to pay any amounts due to USCS under this Agreement, the easement rights granted hereunder shall be suspended until all payments are made in full, including interest as set forth in the following sentence; provided, however, that Ninigret may in good faith dispute such amounts claimed owing by USCS, and in such case, Ninigret shall pay all undisputed amounts due to USCS in the manner provided herein and the easement rights granted hereunder shall not be suspended. The parties shall cooperate in good faith and in a timely manner to attempt to resolve any disputed payment amounts. If Ninigret fails to pay any sum due under this Agreement, then such sum shall bear interest thereon at the annual rate of ten percent (10%). Any unpaid amounts under this Agreement, together with interest thereon as provided above, shall be an obligation which runs with, and shall be a continuing charge and lien upon, the Ninigret Parcel. Any lien created pursuant to this Agreement shall be subordinate to the lien of any first mortgage on the Ninigret Parcel.

6. U.P. Agreements. The easement rights granted under this Agreement and Ninigret's use of Rail Easement Area are contingent on Ninigret entering into an agreement for

rail service with the U.P. Railroad (or its successor in interest) and such agreement continuing in full force and effect. Notwithstanding anything set forth herein to the contrary, in the event of a conflict between this Agreement and any agreements between the U.P. Railroad and USCS or between the U.P. Railroad and Ninigret (collectively, the "U.P. Agreements,") the U.P. Agreements shall govern and control. The parties acknowledge that Ninigret has already contributed \$50,000 to USCS for the construction of the USCS Rail Spur located on the USCS Parcel, which \$50,000 is applicable to the Rail Payment. Ninigret will pay to USCS the remainder of the Rail Payment (\$75,000) within three (3) business days of receiving the U.P. Agreements fully executed by the U.P. Railroad.

7. Non-Interference. Whenever Ninigret enters upon the U.S. Cold Storage Parcel pursuant to the rights granted herein, Ninigret shall use all reasonable efforts to interfere as little as possible with the use, occupation and enjoyment of such parcel and shall repair in a timely manner and at Ninigret's cost all damage to U.S. Cold Storage Parcel and any improvements on such parcel caused by such entry to substantially the same condition of such parcel or improvements immediately before the damage.

8. Indemnification. Ninigret does hereby agree to indemnify and hold USCS harmless from any and all costs, expenses, liability and damage claim suits, including, without limitation, attorneys' fees and court costs, suffered or incurred by USCS, its affiliates or principals, officers, agents and employees arising from Ninigret's exercise of its rights under this Agreement.

9. Insurance. Ninigret shall carry and maintain comprehensive public liability insurance covering injuries (including death) to persons and property on, in and about the Rail Easement Area for not less than One Million Dollars (\$1,000,000.00) for death or personal injury and One Million Dollars (\$1,000,000.00) for property damage. Ninigret shall name USCS as an additional insured under such insurance policies. The aforesaid minimum levels of required insurance coverage shall be increased periodically as reasonably necessary to insure associated risks at a level commensurate with insurance maintained by other similar commercial properties in the geographic vicinity. Ninigret shall provide evidence of the insurance coverage required under this Section to USCS upon request.

10. No Existing Mortgages; Lender Protections. Each party represents and warrants to the other that no mortgage, lien, deed of trust, ground lease or other superior interest has arisen with respect to its property from the date of its acquisition its property that remains in effect. No breach of the terms, conditions and covenants of this Agreement or any other enforcement thereof shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value. None of the terms or provisions of this Agreement shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust and nothing in this Agreement shall be deemed to make the holder or beneficiary of any mortgage or deed of trust (collectively, a "Beneficiary") liable for the performance of any term, covenant or condition under this Agreement to be performed by such party except if and when such Beneficiary or any other person or entity acquires the title to the applicable parcel as a result of a judicial or non-judicial foreclosure, a deed in lieu of foreclosure or any other exercise or remedy.

11. Notice. All notices required or permitted to be given hereunder shall be in writing and delivered postage prepaid by registered or certified mail, return receipt requested or by a nationally recognized overnight courier who provides written proof of delivery such as Federal Express, U.S. Express Mail or Airborne Express to the address set forth in the most recent deed for the property or to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered when deposited in the U.S. Postal Service or a nationally recognized overnight courier as provided above.

12. Easement Runs With The Land. The easements contained herein shall run with and be appurtenant to the Ninigret Parcel and the U.S. Cold Storage Parcel and shall run with title to and burden the Ninigret Parcel and the U.S. Cold Storage Parcel. The easements and covenants set forth herein shall be binding upon the parties and their respective successors and assigns; and shall inure to the benefit of the parties hereto and their respective successors, assigns, tenants, licensees and agents. Any conveyance of all or any portion of the Ninigret Parcel or the portion of the U.S. Cold Storage Parcel that is subject to the easements set forth herein shall also convey the rights, privileges, duties and obligations contained in this Agreement, regardless of whether specific mention is made of this Agreement and regardless of whether or not a specific conveyance is made of, or subject to, the rights, privileges, duties and obligations herein.

13. Governing Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of Utah.

14. No Principal/Agent Relationship Created. Neither anything contained herein nor any acts of the parties performed pursuant hereto shall be deemed or construed to create the relationship of principal and agent, or a partnership, or of joint venture or of any association among the parties hereto.

15. No Dedication to Public. Nothing contained herein shall be deemed to be a gift or dedication of all or any portion of the U.S. Cold Storage Parcel or the Ninigret Parcel to the general public, for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the parties hereto that the agreements herein be strictly limited to and for the purposes expressed herein and solely for the benefit of the parties hereto.

16. Entire Agreement. This Agreement constitutes the entire agreement between Ninigret and USCS with respect to the matters set forth herein and may not be modified or altered in any respect except by a writing executed and delivered by all parties hereto. Invalidation of any of the provisions contained herein, or of the application thereof to any person or entity, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or entity or circumstance and the remainder of the provisions hereof shall remain in effect.

17. Captions. Titles or captions of sections or subsections contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend and/or describe the scope of this Agreement or the intent of any provision.

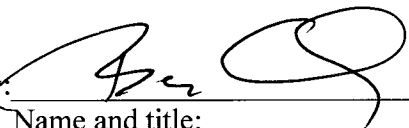
18. Counterparts. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original, and such counterparts together shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, and intending to be legally bound, the parties hereto have caused these presents to be duly executed as of the day and year aforesaid.

**NINIGRET CONSTRUCTION NORTH, L.C.**, a  
Utah limited liability company

By: \_\_\_\_\_  
Name and title:

**UNITED STATES COLD STORAGE, INC.**, a  
New Jersey corporation

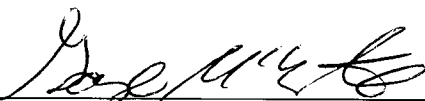
By:  \_\_\_\_\_  
Name and title:

Barry Ominsky  
VP - Controller & Treasurer



**IN WITNESS WHEREOF**, and intending to be legally bound, the parties hereto have caused these presents to be duly executed as of the day and year aforesaid.

**NINIGRET CONSTRUCTION NORTH, L.C.**, a  
Utah limited liability company

By:   
Name and title:

**UNITED STATES COLD STORAGE, INC.**, a  
New Jersey corporation

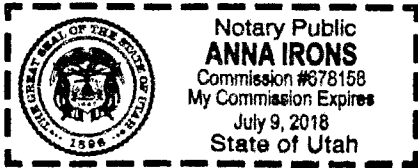
By: \_\_\_\_\_  
Name and title:

STATE OF Utah :  
 :  
 : SS  
COUNTY OF Salt Lake :

On the 16<sup>th</sup> day of September, 2015, before me, a notary public in and for the State and County aforesaid, the undersigned officer, personally appeared Gary Pzentel, who acknowledged himself to be the Manager of Ninigret Construction North, L.C., a Utah limited liability company, and that he as such Capacity executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Anna Deer  
Notary Public



My Commission Expires 7-9-2018

STATE OF NEW JERSEY :  
 :  
 : SS  
COUNTY OF Burlington :

On the 2<sup>nd</sup> day of September, 2015, before me, a notary public in and for the State and County aforesaid, the undersigned officer, personally appeared Barry Orinsky, who acknowledged himself to be VP-CORPORATE TREASURER of United States Cold Storage, Inc., a New Jersey Corporation, and that he as such \_\_\_\_\_ executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Lindsay Kelly Preston  
Notary Public

My Commission Expires:  
**Lindsay Kelly Preston**

**Notary Public Of New Jersey**  
My Commission Expires January 13, 2019  
ID # 2381490

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE NINIGRET PARCEL**

That certain real property located in Davis County, Utah, specifically described as follows:

LOTS 1A AND 3A, NINIGRET NORTH 1 AMENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED AUGUST 18, 2015 IN BOOK 6332 AT PAGE 1361 OF OFFICIAL RECORDS.

12-833-0001

12-833-0003

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF THE U.S. COLD STORAGE PARCEL**

That certain real property located in Davis County, Utah, specifically described as follows:

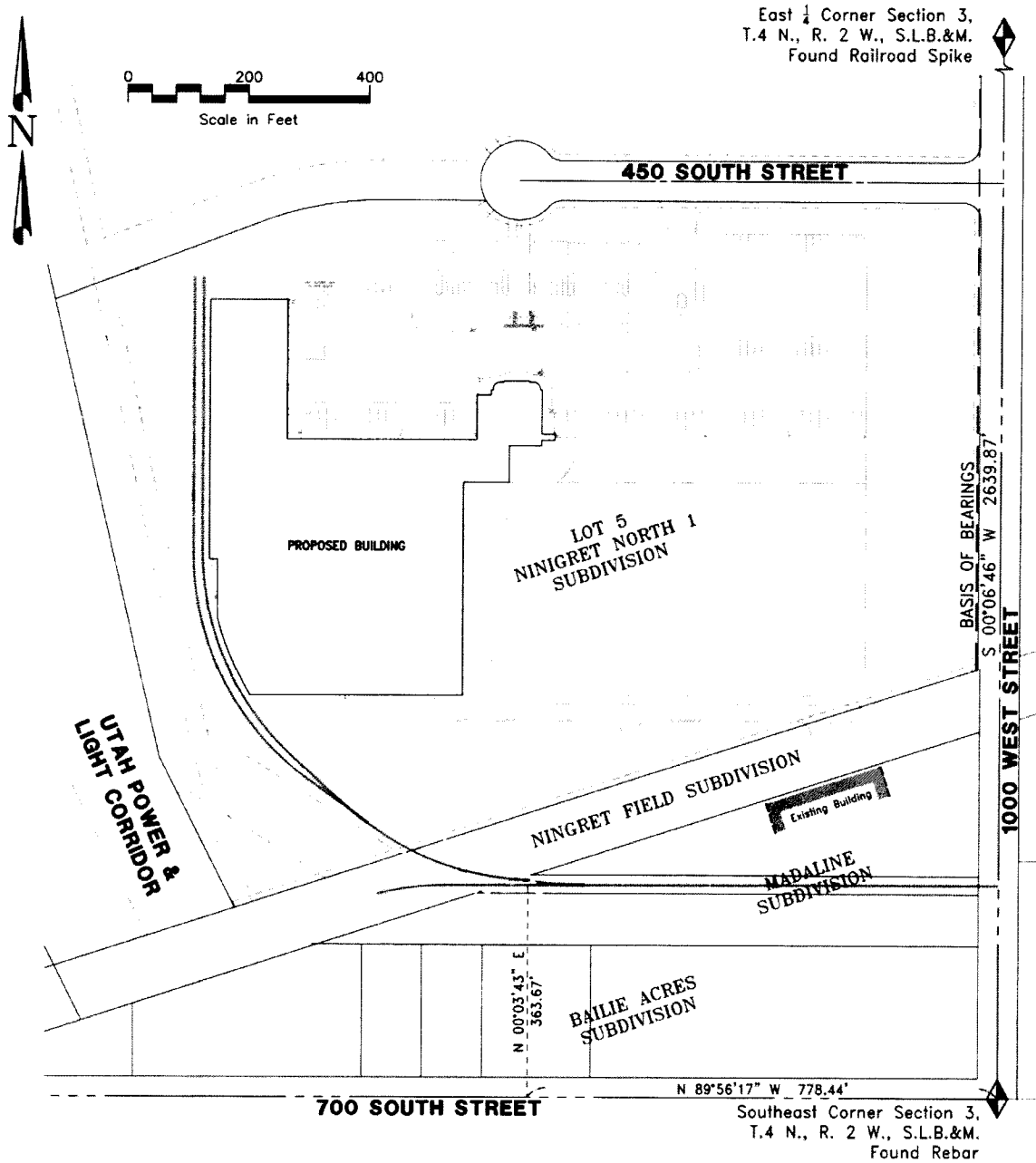
LOT 5, NINIGRET NORTH I SUBDIVISION, SYRACUSE CITY, UTAH ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED AUGUST 27, 2012 AS ENTRY NO. 2682688 IN BOOK 5593 AT PAGE 1027 OF OFFICIAL RECORDS, DAVIS COUNTY RECORDER, AND LOT 1A, NINIGRET FIELD AMENDED LOT 1 SUBDIVISION, CLEARFIELD CITY, UTAH ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED AUGUST 1, 2013 AS ENTRY NO. 2757789 IN BOOK 5822 AT PAGE 699 OF OFFICIAL RECORDS, DAVIS COUNTY RECORDER.

12-761-0005

12-785-0001

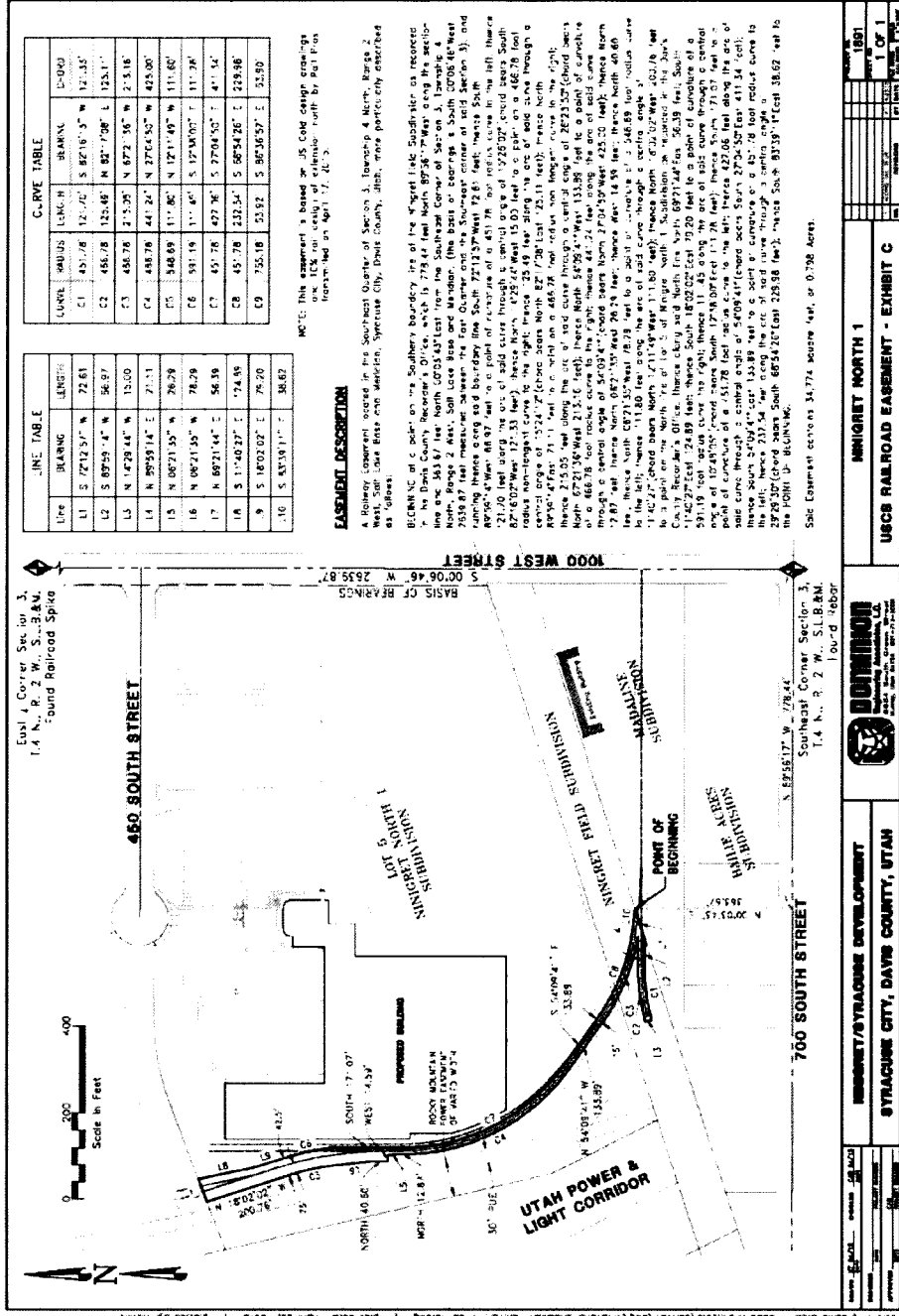
**EXHIBIT "B-1"**

**DEPICTION OF THE USCS RAIL SPUR**



**EXHIBIT "C"**

**SITE PLAN**



**EXHIBIT "C" CONTINUED**

**LEGAL DESCRIPTION OF THE EASEMENT AREA SHOWN IN THE SITE PLAN**

That certain real property located in Davis County, Utah, specifically described as follows:

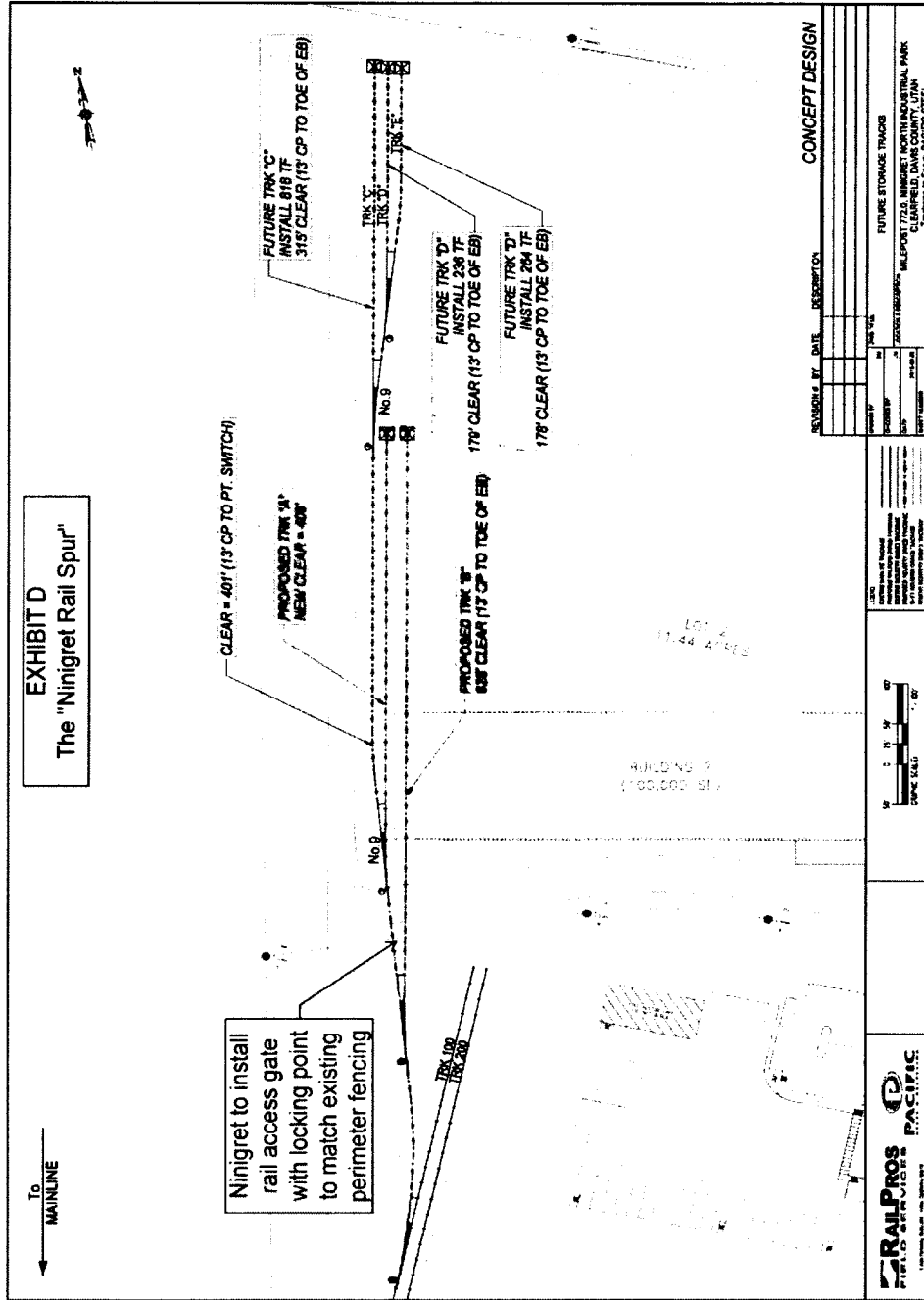
A Railway Easement located in the Southeast Quarter of Section 3, Township 4 North, Range 2 West, Salt Lake Base and Meridian, Syracuse City, Davis County, Utah, more particularly described as follows:

BEGINNING at a point on the Southerly boundary line of the Ningret Field Subdivision as recorded in the Davis County Recorder's Office, which is 778.44 feet North 89°56'17" West along the section line and 363.67 feet North 00°03'43" East from the Southeast Corner of Section 3, Township 4 North, Range 2 West, Salt Lake Base and Meridian, (the basis of bearings is South 00°06'46" West 2639.87 feet measured between the East Quarter and the Southeast corner of said Section 3), and running thence along said boundary line South 72°12'57" West 72.61 feet; thence South 89°59'14" West 66.97 feet to a point of curvature of a 451.78 foot radius curve to the left; thence 121.70 feet along the arc of said curve through a central angle of 15°26'02" (chord bears South 82°16'02" West 121.33 feet); thence North 14°29'44" West 15.00 feet to a point on a 466.78 foot radius non-tangent curve to the right; thence 125.49 feet along the arc of said curve through a central angle of 15°24'12" (chord bears North 82°17'08" East 125.11 feet); thence North 89°59'14" East 71.11 feet to a point on a 466.78 foot radius non-tangent curve to the right; thence 215.05 feet along the arc of said curve through a central angle of 26°23'50" (chord bears North 67°21'36" West 213.16 feet); thence North 54°09'41" West 133.89 feet to a point of curvature of a 466.78 foot radius curve to the right; thence 441.24 feet along the arc of said curve through a central angle of 54°09'41" (chord bears North 27°04'50" West 425.00 feet); thence North 12.87 feet; thence North 06°21'35" West 26.29 feet; thence West 14.59 feet; thence North 40.60 feet; thence North 06°21'35" West 78.29 feet to a point of curvature of a 548.69 foot radius curve to the left; thence 111.80 feet along the arc of said curve through a central angle of 11°40'27" (chord bears North 12°11'49" West 111.60 feet); thence North 18°02'02" West 200.76 feet to a point on the North line of Lot 5 of Ninigret North 1 Subdivision as recorded in the Davis County Recorder's Office; thence along said North line North 69°21'44" East 56.39 feet; South 11°40'27" East 124.89 feet; thence South 18°02'02" East 79.20 feet to a point of curvature of a 591.19 foot radius curve the right; thence 111.45 along the arc of said curve through a central angle of 10°48'05" (chord bears South 12°38'00" East 111.28 feet); thence South 171.07 feet to a point of curvature of a 451.78 foot radius curve to the left; thence 427.06 feet along the arc of said curve through a central angle of 54°09'41" (chord bears South 27°04'50" East 411.34 feet); thence South 54°09'41" East 133.89 feet to a point of curvature of a 451.78 foot radius curve to the left; thence 232.54 feet along the arc of said curve through a central angle of 29°29'30" (chord bears South 68°54'26" East 229.98 feet); thence South 83°39'11" East 38.62 feet to the POINT OF BEGINNING.

Said Easement contains 34,774 square feet, or 0.798 Acres.

EXHIBIT "D"

ENGINEERING PLANS FOR NINIGRET RAIL SPUR





**EXHIBIT "E"**

**DEPICTION OF THE MAINTENANCE OBLIGATIONS**

4816-7587-7410, v. 5

