

This Instrument Prepared by, and  
Upon Recordation, Return to:

Strong & Hanni  
Attn: H. Burt Ringwood  
3 Triad Center, Suite 500  
Salt Lake City, Utah 84180

11135201  
2/16/2011 10:36:00 AM \$30.00  
Book - 9905 Pg - 7633-7642  
Gary W. Ott  
Recorder, Salt Lake County, UT  
AFFILIATED FIRST TITLE  
BY: eCASH, DEPUTY - EF 10 P.

*For Recorder's Use Only*

**ACCESS EASEMENT AGREEMENT**

THIS ACCESS EASEMENT AGREEMENT (this "**Agreement**") is made and entered into this 24<sup>th</sup> day of November, 2009, by and between Castlewood Development, Inc, a Utah corporation (the "**Parcel A Owner**"), and Walter F. Mileski and Eva M. Mileski, individuals (the "**Parcel B Owner**").

**RECITALS**

- A. The Parcel A Owner is the owner of that certain real property situated in Cottonwood Heights City, Salt Lake County, State of Utah, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("**Parcel A**").
- B. The Parcel B Owner is the owner of that certain real property situated in Cottonwood Heights City, Salt Lake County, State of Utah, more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference ("**Parcel B**").
- C. The Parcel A Owner intends to develop Parcel A into residential lots and to construct homes on the residential lots (the "**Project**").
- D. The Parcel B Owner, or its predecessor, granted an easement over a portion of Parcel B to the Parcel A Owner, or its predecessor, for vehicular and pedestrian ingress and egress from the adjacent public street pursuant to Parcel A (the "**Easement Agreement**") dated \_\_\_\_\_ and recorded in Salt Lake County on \_\_\_\_\_ as Entry No. 9811110, Book 9335 at Page 5518.

*[Handwritten signatures]*

- E. The parties hereto desire to create new access and rights of way easements for the benefit and complement of Parcel A and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth, including the termination of the Easement Agreement upon completion of construction as provided herein.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Parcel A Owner and the Parcel B Owner hereby covenant and agree that Parcels A and B and all present and future owners and occupants of Parcels A and B shall be and hereby are subject to the easements, covenants, and restrictions hereinafter set forth in this Agreement, so that said parcels shall be maintained, kept, sold and used in full compliance with and subject to this Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

### AGREEMENTS

1. Definitions. For purposes hereof:

The term "Access Opening" shall have the same meaning set forth in Section 2.4 below.

The term "City" shall mean Cottonwood Heights City.

The term "Driveway" shall mean that twenty six foot (26') wide driveway over the Parcel B Easement Property as depicted on the Site Plan, together with the Driveway Improvements.

The term "Driveway Improvements" shall mean the improvements to be constructed on the Driveway, including paving, curbing, entrances and exits, as more particularly described in Section 2 below.

The term "Owner" or "Owners" shall mean the Parcel A Owner (as to Parcel A) and the Parcel B Owner (as to Parcel B), and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise.

The term "Parcels" shall mean Parcel A and Parcel B, and "Parcel" shall mean either Parcel A or Parcel B, as the case may be.

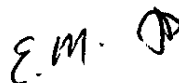
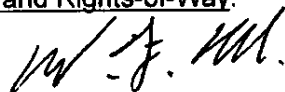
The term "Parcel B Easement Property" shall mean the twenty-six foot (26') wide portion of Parcel B over which the Driveway will run, which portion is more particularly described and depicted on the Site Plan.

The term "Permittees" shall mean the tenant(s) or occupant(s) of Parcel A and the respective employees, agents, contractors, customers, permittees, invitees and licensees of (i) the Owners of such parcels, and/or (ii) such tenant(s) or occupant(s).

The term "Recorder" shall mean the Salt Lake County Recorder, Salt Lake County, Utah.

The term "Site Plan" shall mean that site plan of the Parcels attached hereto as Exhibit "C" and by reference made a part hereof.

2. Easements and Rights-of-Way.



2.1 Grant of Easement for Driveway.

(a) The Owner of Parcel B hereby grants to the Owner of Parcel A, an exclusive, perpetual easement and right-of-way for access, ingress and egress over the Parcel B Easement Property comprising the Driveway for the passage of motor vehicles and pedestrians to and from Parcel A and the Access Opening and all abutting streets or rights of way furnishing access to Parcel A, for so long as Parcel A is used solely for residential or office purposes.

(b) As a result of the Easement granted by this Section 2.1, the Owner of Parcel A and their Permittees shall have the right to use the entire Driveway for the purposes described.

2.2 Temporary Easement for Construction of the Driveway Improvements. The Parcel B Owner hereby grants the Parcel A Owner a temporary easement over the Parcel B Easement Property and such portions of Parcel B as are immediately adjoining the Parcel B Easement Property as are reasonably and temporarily necessary in order to permit the Parcel A Owner to construct the Driveway Improvements on the following terms and conditions.

(a) The Parcel A Owner shall be responsible to obtain and pay for all governmental approvals necessary for the construction of the Driveway Improvements.

(b) During the construction of the Driveway Improvements, the Parcel B Owner may inspect the same from time to time.

(c) The Parcel A Owner shall pay for the initial construction of the Driveway Improvements and shall repair and restore the portions of Parcel B that it disturbed, if any, in connection with the construction activities.

(d) The temporary easements granted in this Section 2.2 shall terminate automatically without any further action of either party when the Driveway Improvements have been completed.

(e) Any consent or approval of an Owner that is required hereunder shall not be unreasonably withheld, delayed or conditioned by such Owner.

2.3 Indemnification.

(a) Each Owner (in this subsection, the "Indemnifying Party") shall indemnify the other Owner (in this subsection, the "Indemnified Parties"), and each of their shareholders, members, officers, directors, agents, and employees against, and hold the Indemnified Parties, and each of their shareholders, members, officers, directors, agents, and employees harmless from, any and all demands, claims, causes of action, fines, penalties, damages (excluding consequential and punitive damages), losses, liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees and court costs) incurred directly in connection with or arising out of, related to or caused by the Indemnifying Party's acts or omissions to act, use of, or occupancy of the other Owner's Parcel, including without limitation with respect to mechanics' liens and damage to any utilities within the Driveway, including without limitation any damage to the building on Parcel B..

(b) If any action or proceeding is brought against the Indemnified Parties, or either of their members, officers, directors, agents or employees by reason of any such claim,

*W. J. M. E. M. JP*

the Indemnifying Party, upon notice from the Indemnified Parties, shall defend the claim at the expense of the Indemnifying Party with counsel reasonably satisfactory to the Indemnified Parties, as the case may be.

(c) The Indemnified Parties shall give to the Indemnifying Party prompt and timely notice of any claim or suit instituted coming to its knowledge which in any way, directly or indirectly, contingently or otherwise, affects or might affect the Indemnifying Party. Each Owner shall have the right to participate in the defense of the same to the extent of its own interest.

2.4 Access Opening. The opening and access point for use of the Driveway is within the public right-of-way of Fort Union Blvd and is shown on the Site Plan, and such opening and access point for use of the Driveway is hereinafter called the "Access Opening." The Access Opening shall in no event be blocked, closed, altered, changed or removed by either Owner and shall at all times remain in place as shown on the Site Plan.

3. Maintenance of Access Opening and Driveway.

3.1 Each of the Owners covenant and agree that the Driveway and the Access Opening shall at all times be properly surfaced with asphalt, concrete or other similar material and be adequately maintained. To this end, the Owners jointly shall appoint and direct an independent contractor to maintain the Driveway and the Access Opening in reasonably good, clean and safe condition and repair, reasonably free from debris, rubbish, snow, ice and other materials. If the Owners cannot agree as to any question on the proper maintenance of the Driveway and the Access Opening, including without limitation the identity of the independent contractor to be appointed pursuant to the prior sentence, then each Owner shall appoint a property manager (which may be such party's then existing property manager) who shall use their best business and professional judgment to resolve the dispute. If the two property managers cannot agree, then together the two property managers shall appoint a third independent property manager. The Owners shall be bound by any majority decision of the three property managers. Nothing contained herein shall prevent the Owners from entering into any other agreement with each other for the maintenance and repair of the Driveway and the Access Opening. The Parcel A Owner shall be responsible for all costs of maintaining the Driveway.

3.2 Notwithstanding the provisions of Subsection 3.1 above, if an Owner (the "Responsible Owner") or one of the Responsible Owner's Permittees damages the Driveway Improvements on the Parcel of the other Owner, such damage shall be promptly repaired by the Responsible Owner at the Responsible Owner's sole expense.

4. Termination of Easement Agreement and Conveyance of Parcel B Easement Property. Promptly upon the completion of the Driveway Improvements the Parcel B Owner agrees to execute a release of the Easement Agreement and cause such release to be recorded with the Recorder. Pursuant to that Certain Easement and Purchase Agreement dated the same date as this Agreement, Parcel B Owner has agreed to deed the Parcel B Easement Property to Parcel A Owner upon the earlier of the following events: (i) the pay-off by Parcel B Owner of the SBA loan currently existing on Parcel B ; or (ii) the transfer, sell or conveyance of the Parcel B to a person or entity not controlled by the Parcel B Owner.

5. Taxes and Assessments. The Parcel A Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to the Driveway.

*M. J. M. E. M. JD*

6. Remedies and Enforcement.

6.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by either Owner of any of the terms, covenants, restrictions or conditions hereof, the other Owner shall have, in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The remedies of an Owner hereunder shall be specifically enforceable by the aggrieved Owner without the necessity of demonstrating an adequate remedy at law exists, and interference with the use of the Parcel B Easement Property shall be presumed to be irreparable harm. In connection with any such action, an Owner shall not be required to post a surety bond.

6.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of either Owner to cure a breach of this Agreement within thirty (30) days following written notice thereof by the other Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the breaching Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), the other Owner shall have the right to perform such obligation contained in this Agreement on behalf of the breaching Owner and be reimbursed by the breaching Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Bank One (its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency and/or (ii) blockage or material impairment of the easement rights, either Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described. Any amount owing by an Owner (the "Defaulting Owner") not paid within 30 days of notice of the other Owner shall constitute a lien on the Defaulting Owner's Parcel and the other Owner may foreclose such lien in accordance with the provision of Utah law regarding the enforcement of a deed of trust.

6.3 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement.

7. Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement with the Recorder, and shall remain in full force and effect thereafter in perpetuity unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of Parcel A and Parcel B Easement Property in accordance with Section 10.3 hereof.

8. Miscellaneous.

8.1 Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

8.2 Amendment. The parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of Parcel A and Parcel B Easement Property, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded with the Recorder.

Handwritten signatures of two parties, one appearing to be 'M. J. M.' and the other 'E. M. J.' with a stylized initial.

8.3 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

8.4 No Agency. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

8.5 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

8.6 Not a Public Declaration. This Agreement shall not be deemed to be a gift or dedication of all or any portion of the Parcel B Easement Property for the general public or for any public purposes whatsoever, it being the intention of each Owner that this Agreement be strictly limited to the purposes expressed in this Agreement.

8.7 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for him and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

8.8 Separability. Each provision of this Agreement and the application thereof to Parcel A and Parcel B are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of both Parcels by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

8.9 Time of Essence. Time is of the essence of this Agreement.

8.10 Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby. The Recitals and the Exhibits are integral parts of this Agreement and are hereby incorporated by reference into this Agreement.

8.11 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of the Parcel A Owner, the Parcel B Owner, are as follows:

*W. J. M. E. M. [Signature]*

Parcel A Owner: Castlewood Development, Inc  
Attn: Jeff Duke  
6740 South 1300 East, Suite 200  
Salt Lake City, Utah 84121

Parcel B Owner: Walter F. Mileski and Eva M. Mileski  
2122 East Fort Union Blvd  
Cottonwood Heights City, Utah

8.12 Governing Law. The laws of the State of Utah shall govern the interpretation, validity, performance, and enforcement of this Agreement.

8.13 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of either Parcel A or Parcel B, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

*[Signature pages to follow]*

*W F Mileski      E M. Mileski      JD*

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

PARCEL A OWNER:

CASTLEWOOD DEVELOPMENT, INC

By: [Signature]  
Jeff Duke, its President

PARCEL B OWNER:

Walter F. and Eva M. Mileski

By: [Signature]  
Walter F. Mileski  
By: [Signature]  
Eva M. Mileski

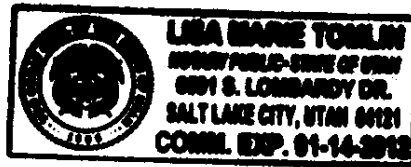
STATE OF UTAH )  
COUNTY OF Saltlake ) :ss.

On this 21 day of November 2009, personally appeared before me Walter F & Eva Mileski, who is the ~~Manager of Lotus Equities Property Co., LLC~~, and who duly acknowledged to me that he executed this instrument on behalf of such entity in such capacity.

\*owners

[Signature]  
NOTARY PUBLIC

STATE OF UTAH )  
COUNTY OF \_\_\_\_\_ ) :ss.



On this \_\_\_ day of \_\_\_\_\_ 2009, personally appeared before me Chris Corroon, who is the Manager of Red Gate Properties, L.L.C., and who duly acknowledged to me that he executed this instrument on behalf of such entity in such capacity.

\_\_\_\_\_  
NOTARY PUBLIC



EXISTING 16.50 FOOT RIGHT OF WAY

COMMENCING 71 RODS EAST OF THE NORTHWEST CORNER OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE MERIDIAN, RUNNING THENCE ONE ROD, SOUTH 80 RODS, THENCE EAST ONE ROD, THENCE NORTH 80 RODS TO THE PLACE OF BEGINNING.

PROPOSED 9.00 FOOT ADDITION TO RIGHT OF WAY

BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF FORT UNION BOULEVARD, SAID POINT BEING ON THE WESTERLY RIGHT OF WAY LINE OF AN EXISTING 16.50 FOOT RIGHT OF WAY, SAID POINT ALSO BEING SOUTH 89°56'23" EAST ALONG THE SECTION LINE 1155.00 FEET AND SOUTH 40.00 FEET FROM THE NORTHWEST CORNER OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE SOUTH 153.62 FEET TO THE NORTH LINE OF CADEN'ED S COVE P.U.D, AS RECORDED WITH THE OFFICE OF THE SALT LAKE COUNTY RECORDER; THENCE NORTH 89°56'23" WEST ALONG SAID NORTH LINE 9.00 FEET; THENCE NORTH 153.62 FEET TO SAID SOUTH RIGHT OF WAY LINE; THENCE SOUTH 89°56'23" EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE 9.00 FEET TO THE POINT OF BEGINNING

PROPOSED TOTAL COMBINED RIGHT OF WAY

BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF FORT UNION BOULEVARD, SAID POINT BEING SOUTH 89°56'23" EAST ALONG THE SECTION LINE 1171.50 FEET AND SOUTH 40.00 FEET FROM THE NORTHWEST CORNER OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE SOUTH 153.62 FEET TO THE NORTH LINE OF CADEN'S COVE P.U.D, AS RECORDED WITH THE OFFICE OF THE SALT LAKE COUNTY RECORDER; THENCE NORTH 89°56'23" WEST ALONG SAID NORTH LINE 25.50 FEET; THENCE NORTH 153.62 FEET TO SAID SOUTH RIGHT OF WAY LINE; THENCE SOUTH 89°56'23" EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE 25.50 FEET TO THE POINT OF BEGINNING

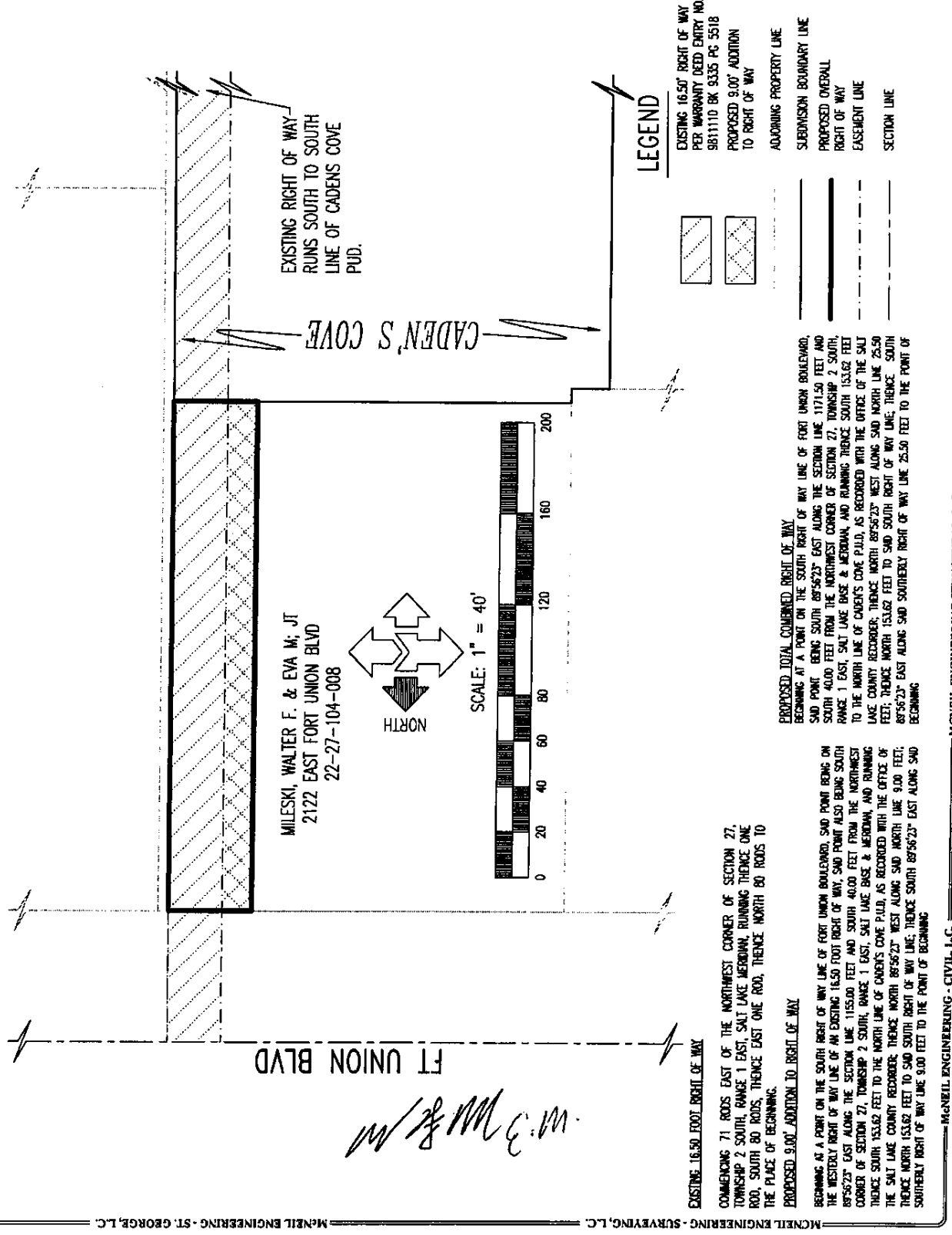
*W.A.M. E.M.*

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**CADENS COVE RIGHT OF WAY**  
 2150 E FT UNION BLVD  
 LOCATED IN THE NW 1/4 SEC 27, T2S, R1E, S1B&M

PROJECT NO: 280175
CHECKED BY: DBD
DRAWN BY: DBD
DATE: 11-20-09
1 OF 1

McNEIL ENGINEERING - SURVEYING, L.C. McNEIL ENGINEERING - CIVIL, L.C. McNEIL ENGINEERING STRUCTURAL, L.C.



**LEGEND**

- EXISTING 16.50' RIGHT OF WAY PER WARRANTY DEED ENTRY NO. 9811110 BK 9335 PG 5518
- PROPOSED 9.00' ADDITION TO RIGHT OF WAY
- ADJOINING PROPERTY LINE
- SUBSECTION BOUNDARY LINE
- PROPOSED OVERALL RIGHT OF WAY
- EASEMENT LINE
- SECTION LINE

EXISTING RIGHT OF WAY RUNS SOUTH TO SOUTH LINE OF CADENS COVE PUD.

MULESKI, WALTER F. & EVA M; JT  
 2122 EAST FORT UNION BLVD  
 22-27-104-008

SCALE: 1" = 40'

**EXISTING 16.50 FOOT RIGHT OF WAY**  
 COMMENCING 71 RODS EAST OF THE NORTHWEST CORNER OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE MERIDIAN, RUNNING THENCE ONE ROD, SOUTH 80 RODS, THENCE EAST ONE ROD, THENCE NORTH 80 RODS TO THE PLACE OF BEGINNING.

**PROPOSED 9.00' ADDITION TO RIGHT OF WAY**  
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*M. E. M.*

McNEIL ENGINEERING - SURVEYING, L.C. McNEIL ENGINEERING - CIVIL, L.C. McNEIL ENGINEERING STRUCTURAL, L.C.