



W2122254

E# 2122254 PG 1 OF 15
DOUG CROFTS, WEBER COUNTY RECORDER
12-AUG-05 4:14 PM FEE \$38.00 DEP CC
REC FOR: BONNEVILLE TITLE COMPANY - SAL
ELECTRONICALLY RECORDED

Tax ID Number for Affected Parcel: 150980002 *ce*

Address for Tax Statement: 2755 Pennsylvania Avenue (1100 West), Ogden, UT 84401

THIS INSTRUMENT PREPARED BY AND SHOULD BE RETURNED TO: The Scoular Company, c/o Jann M. Eichlersmith, 250 Marquette Avenue, Suite 1050, Minneapolis, MN 55401 (612) 335-8700

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made on the 1st day of April, 2005 by and among Farmers Grain Cooperative of Idaho, Inc., an Idaho corporation ("FGC"), The Scoular Company, a Nebraska corporation ("Scoular"), Midland Partners, LLC, a Utah limited liability company ("Midland") and Stock Building Supply West, Inc., a Utah corporation ("Stock").

RECITALS *15-098-0013, 0003, 0002*

A. FGC is the owner of a parcel of real estate located in the City of Ogden, County of Weber, State of Utah (the "FGC Real Property"), including but not limited to a portion of the parcel more particularly described as follows: a strip of real estate of varying widths running along the following described centerline: beginning at a point 1789.56 feet South 0°22'18" West along the Section line from the Northeast corner of the Northeast Quarter of Section 36, Township 6 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey; running thence North 89°34'07" West 370.00 feet (the "Centerline"); beginning at the intersection of the Centerline and Pennsylvania Avenue (1100 West), the first 100.00 feet of such strip being 100.0 feet wide (50.0 feet either side of the Centerline); thence gradually narrowing over the next 100.00 feet to be 60.0 feet wide (30.0 feet either side of the Centerline); and continuing over the final 170.00 feet at a width of 60.0 feet (30.0 feet either side of the Centerline) (the "Easement Parcel").

B. Scoular has an option to purchase the FGC Real Property, including but not limited to the Easement Parcel.

C. Midland is the owner and Stock is the lessee of a parcel of real estate located in the City of Ogden, County of Weber, State of Utah (the "Midland/Stock Real Property") that is contiguous to the southern boundary of the FGC Real Property, including but not limited to approximately sixty feet of the southwestern end of the Easement Parcel.

D. Midland and Stock desire an easement to create a vehicular ingress and egress easement over the Easement Parcel to provide access to the Midland/Stock Real Property via Pennsylvania Avenue (1100 West).

E. FGC is willing to grant Midland and Stock such an easement on the terms and conditions contained in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual promises contained herein, the parties agree as follows:

1. GRANT OF EASEMENT.

- a) **Grant.** FGC hereby grants, bargains, sells and conveys unto Midland and Stock a non-exclusive right-of-way easement to (i) access, locate, construct, maintain, use and repair the Roadway (defined in Subsection 2(a)) over and across the Easement Parcel; provided that such Roadway be used by Midland and Stock solely for the purposes of vehicular ingress and egress to and from the Midland/Stock Real Property via Pennsylvania Avenue (1100 West) in support of Stock's wood truss manufacturing and lumber products reloading operations; and (ii) access, locate, construct, maintain, use and repair the Water Line (defined in Subsection 3(a)) (collectively, the "Easement").
- b) **Covenant Running with the Land.** The Easement herein granted will constitute a covenant running with the FGC Real Property, and the same will be binding upon FGC and inure to the benefit of Midland and Stock and their respective successors and assigns.
- c) **No Transfer of Title.** The rights granted to Midland and Stock hereunder do not convey nor will they be deemed to convey to Midland or Stock any fee interest in or to any real property or mineral rights associated with the Easement Parcel.

2. ROADWAY.

- a) **Construction.** The parties acknowledge that Midland will construct a roadway over and across the Easement Parcel. In constructing the roadway, Midland will (i) use appropriate fill, road base and asphalt; (ii) ensure that the roadway is a minimum of 60 feet wide at the point it intersects with Pennsylvania Avenue (1100 West) and after the first 100 feet gradually narrows to a width of 45 feet; and (iii) ensure that both the drainage constructed in conjunction with the roadway and the access provided by the roadway to the FGC Real Property are acceptable to FGC and Scoular, each in its sole, but reasonable discretion. Midland will submit preliminary drawings of its proposed roadway to FGC and Scoular, and FGC and Scoular will provide Midland with joint written notice of its consent or any objections to the proposed roadway within fifteen (15) days of their receipt of the drawings. Thereafter, Midland will promptly undertake diligent efforts to cure FGC's and Scoular's objections, if any. Upon receiving written consent or curing FGC's and Scoular's objections with respect to the preliminary drawings of the proposed roadway, if any, the Easement will commence ("Easement Commencement Date"). For purposes of this Agreement, the Roadway will mean the roadway to be constructed as depicted in the preliminary drawings agreed upon by Midland, FGC and Scoular. Midland

covenants that it will construct the Roadway in accordance with the preliminary drawings and all applicable laws, rules and regulations.

- b) **Use.** Midland and Stock acknowledge that both FGC and Scoular conduct operations on, at or about the FGC Real Property and accordingly, FGC and Scoular will also be using the Roadway in support of their respective operations, and may grant others the right to use the Roadway as well. Midland, Stock, FGC and Scoular will use reasonable efforts to coordinate their use of the Roadway and ensure that their respective use of the Roadway will not unreasonably interfere with the others' use of the same.
- c) **Maintenance.** Midland and Stock will be responsible for maintaining the Roadway, at their sole expense. In the event Midland or Stock fails to so maintain the Roadway, FGC or Scoular may do so, at Midland's and Stock's expense.
- d) **Fences; Sign.**
 - i) Midland will, at its sole expense, install a security fence along the boundary of the southwest corner of the Easement Parcel where the Easement Parcel abuts the Midland/Stock Real Property for approximately sixty feet, and will, at its sole expense install a gate in such fence where it crosses over the Roadway. FGC or Scoular may, at their sole expense, install a security fence and gate along the boundary of the northwest corner of the Easement Parcel.
 - ii) Stock will, at its sole expense, install signs on the Easement Parcel at the entry to the Roadway from Pennsylvania Avenue (1100 West), which such signs will state "Private Roadway – No Through Traffic".

3. WATER LINE.

- a) **Construction.** The parties acknowledge that Midland will construct a water pipeline at a depth of at least two feet below the surface of the Easement Parcel (or such further depth as may be required by applicable state, county or city law, rule or regulation), which such water pipeline will support a looped water supply between Pennsylvania Avenue (1100 West) and Midland Drive (the "Water Line"). Midland covenants that it will construct the Water Line in accordance with all applicable state, county and city laws, rules and regulations and with the approval of the Public Works Department or other applicable department or agency of the City of Ogden, Utah.
- b) **Use.** Midland and Stock acknowledge that both FGC and Scoular conduct operations on, at or about the FGC Real Property and accordingly, FGC and Scoular may also use the Water Line in support of their respective operations. FGC and Scoular acknowledge that the Water Line is being constructed to provide water and fire protection service to the Midland/Stock Real Property, and such Water Line will not automatically be connected so as to provide water or fire protection service to the FGC Real Property. FGC or Scoular may, at their sole

expense, connect the Water Line so as to provide water and fire protection service to the FGC Real Property, provided such connection is constructed in accordance with all applicable state, county and city laws, rules and regulations and with the approval of the Public Works Department or other applicable department or agency of the City of Ogden, Utah. Midland, Stock, FGC and Scoular will use reasonable efforts to coordinate their use of the Water Line and ensure that their respective use of the Water Line will not unreasonably interfere with the others' use of the same.

- c) **Maintenance.** Midland and Stock will be responsible for maintaining the Water Line, at their sole expense except to the extent it is being adequately and properly maintained by the Public Works Department or other department or agency of the City of Ogden, Utah. In the event Midland, Stock or the City of Ogden, Utah fails to so maintain the Water Line, FGC or Scoular may do so, at Midland's and Stock's expense.
4. **OPERATIONS ON FGC REAL PROPERTY.** Midland and Stock acknowledge that FGC's and Scoular's operations on, at or about the FGC Real Property involve the operation of a fan or other equipment that will from time to time blow dust on to the Midland/Stock Real Property. Midland and Stock further acknowledge that such dust may occasionally be of sufficient quantity to result in dust settling on buildings, vehicles and other items located on or at the Midland/Stock Real Property, and neither Midland nor Stock will object to or otherwise complain to FGC, Scoular or any third party about the operation of such equipment or the dust blowing on to the Midland/Stock Real Property. Further, each of Midland and Stock hereby waives any and all claims and causes of action resulting or arising from or in connection with FGC's or Scoular's operations on, at or about the FGC Real Property, including but not limited to the dust.
5. **OPERATIONS ON MIDLAND/STOCK REAL PROPERTY.** FGC and Scoular acknowledge that Stock will operate a wood-truss manufacturing facility and lumber re-load facility on, at or about the Midland/Stock Real Property and such operations may be continuous and around-the-clock during high demand season. Neither FGC nor Scoular will object to such continuous or around-the-clock operations during high demand season.
6. **CONSIDERATION TO BE PAID FOR EASEMENT.**
- a) **One Time Payment.** Upon execution of this Agreement by all parties, Midland will pay Fifteen Thousand and no/100 Dollars as follows: (a) Five Thousand and no/100 Dollars to FGC; (b) Five Thousand and no/100 Dollars to Scoular; and (c) Five Thousand and no/100 Dollars to FGC's accountant, Gordon James, to be held in escrow by him (the "Escrowed Sum"). Gordon James or FGC will pay the Escrowed Sum to Scoular upon the closing of its acquisition or long term lease of the FGC Real Property or if Scoular does not so acquire or lease the FGC Real Property, Gordon James will pay the Escrowed Sum to FGC upon termination of that certain Short Term Operating Agreement, as amended, by and between FGC and Scoular.

b) On-Going Payments.

- i) Midland will reimburse FGC or Scoular, as applicable, the Easement Parcel's pro rata portion of all property taxes assessed against the FGC Real Property. FGC or Scoular, as applicable, will provide Midland with the applicable property tax statement supporting the real property taxes to be paid.
- ii) Midland will reimburse FGC or Scoular, as applicable, any expenses they incur in accordance with Subsection 2(c) or 3(c).

c) **Failure to Make Payments.** In the event Midland fails to make any payment required by Subsection 6(a) or (b), Stock will make such payment.

7. **TERM.** The Easement will commence on the Easement Commencement Date and continue until such time as FGC or Scoular elects to terminate the Easement in accordance with this Section. If Midland or Stock breaches any portion of Sections 2 through 4 or 6, either FGC or Scoular may give Midland and Stock written notice of such breach and Midland and Stock will have thirty days from receipt of the notice to cure the breach cited in the notice. If Midland or Stock fails to timely cure such breach, the party giving the notice may immediately terminate this Easement by giving prior, written notice of termination to all other parties to this Agreement. Notwithstanding the termination of the Easement, FGC's and Scoular's rights under Subsection 3(b) and Midland's and Stock's obligations under Section 4 will remain in full force and effect.
8. **REPRESENTATION AND WARRANTY.** FGC hereby represents and warrants to Midland and Stock that FGC is the owner of the Easement Parcel; its title thereto is free and clear of liens and encumbrances that presently impair or may impair Midland's or Stock's use of the Easement; and the execution and performance of the Easement will not conflict with or constitute a default under the terms of any other agreement or commitment by which FGC is bound.
9. **INDEMNIFICATION.** Midland and Stock will indemnify, defend and hold FGC and Scoular harmless from and against any and all claims, causes of action, costs, expenses, damages, fines and liabilities (including but not limited to reasonable attorneys' fees and expenses) incurred by or charged against FGC or Scoular and resulting or arising out of or in any way connected with (i) Midland's or Stock's operations, including but not limited to operations on, at or about the Easement Parcel; (ii) the activities conducted by Midland or Stock and its respective employees, agents, independent contractors and other personnel pursuant to this Agreement; or (iii) Midland's or Stock's breach of this Agreement.
10. **WAIVER.** No delay or failure by either party hereto to exercise any right or remedy will constitute a waiver thereof, and no single or partial exercise by either party hereto of any right or remedy will preclude other or further exercises thereof or the exercise of any other right or remedy by such party.


the terms of any other agreement or commitment by which FGC is bound.

- 9. **INDEMNIFICATION.** Midland and Stock will indemnify, defend and hold FGC and Scoular harmless from and against any and all claims, causes of action, costs, expenses, damages, fines and liabilities (including but not limited to reasonable attorneys' fees and expenses) incurred by or charged against FGC or Scoular and resulting or arising out of or in any way connected with (i) Midland's or Stock's operations, including but not limited to operations on, at or about the Easement Parcel; (ii) the activities conducted by Midland or Stock and its respective employees, agents, independent contractors and other personnel pursuant to this Agreement; or (iii) Midland's or Stock's breach of this Agreement.
- 10. **WAIVER.** No delay or failure by either party hereto to exercise any right or remedy will constitute a waiver thereof, and no single or partial exercise by either party hereto of any right or remedy will preclude other or further exercises thereof or the exercise of any other right or remedy by such party.
- 11. **ENTIRE AGREEMENT.** This Agreement, together with the documents to be delivered hereunder, set forth the entire understanding of the parties hereto relating to the subject matter hereof and supersede all prior agreements and understandings, both oral or written.
- 12. **HEADINGS.** Headings appearing in this Agreement are for convenience only and will not be deemed to explain, limit or amplify the provisions of this Agreement.
- 13. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the internal laws of the State of Utah.
- 14. **AMENDMENTS.** This Agreement will not be modified or amended other than by the written agreement of the parties hereto.
- 15. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which when so executed will constitute an original and all of which together will constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, intending to be bound hereby, as of the date first above written.

**FARMERS GRAIN COOPERATIVE
OF IDAHO, INC.**

THE SCoulAR COMPANY


By Brent Shaffer
Its President

By _____
Its _____

- 11. **ENTIRE AGREEMENT.** This Agreement, together with the documents to be delivered hereunder, set forth the entire understanding of the parties hereto relating to the subject matter hereof and supersede all prior agreements and understandings, both oral or written.
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IN WITNESS WHEREOF, the parties have executed this Agreement, intending to be bound hereby, as of the date first above written.

FARMERS GRAIN COOPERATIVE OF IDAHO, INC.

THE SCOULAR COMPANY

By _____
Its _____

By [Signature]
Its [Signature]

MIDLAND PARTNERS, LLC

STOCK BUILDING SUPPLY WEST, INC.

By _____
Its _____

By _____
Its _____

**For purposes of Section 6 only,
GORDON JAMES**

- 11. **ENTIRE AGREEMENT.** This Agreement, together with the documents to be delivered hereunder, set forth the entire understanding of the parties hereto relating to the subject matter hereof and supersede all prior agreements and understandings, both oral or written.
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IN WITNESS WHEREOF, the parties have executed this Agreement, intending to be bound hereby, as of the date first above written.

**FARMERS GRAIN COOPERATIVE
OF IDAHO, INC.**


THE SCOULAR COMPANY

By _____
Its _____

By _____
Its _____

MIDLAND PARTNERS, LLC

**STOCK BUILDING SUPPLY
WEST, INC.**


By TOM STUART
Its MANAGER

By _____
Its _____

**For purposes of Section 6 only,
GORDON JAMES**

- 11. **ENTIRE AGREEMENT.** This Agreement, together with the documents to be delivered hereunder, set forth the entire understanding of the parties hereto relating to the subject matter hereof and supersede all prior agreements and understandings, both oral or written.
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- 15. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which when so executed will constitute an original and all of which together will constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, intending to be bound hereby, as of the date first above written.

FARMERS GRAIN COOPERATIVE OF IDAHO, INC.

THE SCOULAR COMPANY

By _____
Its _____

By _____
Its _____

MIDLAND PARTNERS, LLC

STOCK BUILDING SUPPLY WEST, INC.

By _____
Its _____

By *[Signature]*
Its DAVID W. O'HALLORAN
Sr. VP. Q12

**For purposes of Section 6 only,
GORDON JAMES**

STATE OF Nebraska)
) ss
COUNTY OF Douglas)

On this 11th day of April, 2005, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally came Todd J. McQueen to me personally known to be the identified person who signed the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed in his or her identified capacity, and the voluntary act and deed of Farmers Grain Cooperative of Idaho, Inc.

Witness my hand and notarial seal the day and year above written.



Kimberly J. Daniels
Notary Public

STATE OF NEBRASKA)
) ss
COUNTY OF DODGE)

On this ___ day of April, 2005, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally came _____ to me personally known to be the identified person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed in his identified capacity, and the voluntary act and deed of The Scouler Company

Witness my hand and notarial seal the day and year above written.

Notary Public

STATE OF UTAH)
) ss
COUNTY OF WEBER)

On this ___ day of April, 2005, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally came _____ to me personally known to be the identified person who signed the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed in his or her identified capacity, and the voluntary act and deed of Midland Partners, LLC.

Witness my hand and notarial seal the day and year above written.

Notary Public

STATE OF _____)
) ss
COUNTY OF _____)

On this ___ day of April, 2005, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally came _____ to me personally known to be the identified person who signed the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed in his or her identified capacity, and the voluntary act and deed of Farmers Grain Cooperative of Idaho, Inc.

Witness my hand and notarial seal the day and year above written.

Notary Public

STATE OF NEBRASKA)
) ss
COUNTY OF DODGE)

On this ___ day of April, 2005, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally came _____ to me personally known to be the identified person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed in his identified capacity, and the voluntary act and deed of The Scouler Company

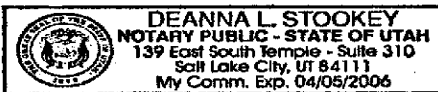
Witness my hand and notarial seal the day and year above written.

Notary Public

STATE OF UTAH)
) ss
COUNTY OF WEBER)

On this 12th day of April, 2005, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally came TAM STUART to me personally known to be the identified person who signed the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed in his or her identified capacity, and the voluntary act and deed of Midland Partners, LLC.

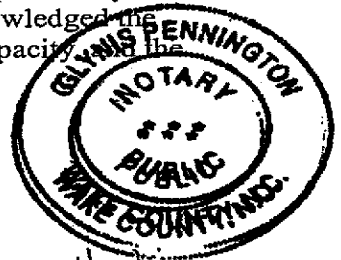
Witness my hand and notarial seal the day and year above written.



Deanna L. Stookey
Notary Public

n.e.
STATE OF UTAH)
) ss
) Wake
COUNTY OF WEBER)

On this 5th day of April, 2005, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally came David W. O'Halloran to me personally known to be the identified person who signed the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed in his or her identified capacity as the voluntary act and deed of Stock Building Supply West, Inc.



Witness my hand and notarial seal the day and year above written.

Glynnis Pennington
Notary Public my commission expires: 11/21/2007

STATE OF UTAH)
) ss
COUNTY OF WEBER)

On this ___ day of April, 2005, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally came Gordon James to me personally known to be the identified person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year above written.

Notary Public

Witness my hand and notarial seal the day and year above written.

Notary Public

STATE OF UTAH)
) ss
COUNTY OF WEBER)

On this ___ day of April, 2005, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally came _____ to me personally known to be the identified person who signed the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed in his or her identified capacity, and the voluntary act and deed of Midland Partners, LLC.

Witness my hand and notarial seal the day and year above written.

Notary Public

STATE OF UTAH)
) ss
COUNTY OF WEBER)

On this ___ day of April, 2005, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally came _____ to me personally known to be the identified person who signed the foregoing instrument, and acknowledged the execution thereof to be his or her voluntary act and deed in his or her identified capacity, and the voluntary act and deed of Stock Building Supply West, Inc.

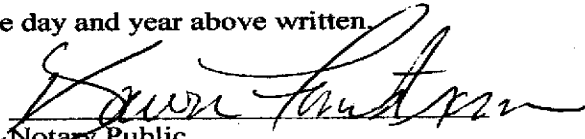
Witness my hand and notarial seal the day and year above written.

Notary Public

STATE OF ^{Idaho} UTAH)
) ss
COUNTY OF ~~WEBER~~ ^{Bannock})

On this 8 day of April, 2005, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally came Gordon James to me personally known to be the identified person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year above written.


Notary Public

