

**SETTLEMENT AGREEMENT**

This Agreement bearing the date August 12, 2005 is by and between FRANKLIN M. BOYDEN ("Boyden"), on the one hand, and LEON S. SIMISTER and LOUISE N. SIMISTER ("Simisters"), on the other hand.

WITNESSETH:

WHEREAS, Boyden is the owner and holder of the legal, equitable and record title to that certain parcel of real property ("Boyden Property") located in Summit County, State of Utah that is more particularly identified and described in Exhibit A attached hereto and by this reference made a part hereof; subject, however to the right of way and easement ("Simister Right of Way") that is more particularly identified and described in Exhibit A attached hereto, and whose location is more particularly shown outlined in yellow on Exhibit B attached hereto and by this reference made a part hereof; and

WHEREAS, Simisters are the owners and holders of the legal, equitable and record title to that certain parcel of real property ("Simister Property") located in Summit County, State of Utah that is more particularly identified and described in Exhibit C attached hereto and by this reference made a part hereof, together with the Simister Right Of Way; and

WHEREAS, certain claims, issues and defenses ("Claims and Defenses") have been raised and asserted by and between the parties hereto which Claims and Defenses are the subject of Civil Action 04050050 ("Civil 04050050") filed in the District Court of Summit County, State of Utah; and

WHEREAS, the parties hereto desire and have agreed to fully and finally compromise, settle and resolve all of said Claims and Defenses upon and subject to the terms and conditions hereinafter set forth.

NOW THEREFORE, for such purposes, between the parties hereto it is mutually agreed as follows:

1. The parties acknowledge and agree as follows:

a. Simisters hereby acknowledge and agree that Boyden is the owner and holder of the legal, equitable and record title to the Boyden Property free and clear of any and all right, title claim and interest of Simisters therein and thereto, with the exception of Simisters' right, title, claim and interest in and to the Simister Right Of Way as hereinafter described and shown on Exhibit B attached hereto and incorporated herein by this reference. Simisters hereby waive and disclaim any and all rights and interests of every kind in and to the Boyden Property except for the portion thereof covered by the Simister Right Of Way or New Simister Right Of Way.

b. Boyden hereby acknowledges and agrees that Simisters are the owners and holders of the legal, equitable and record title to the Simister Property free and clear of any and all right, title, claim and interest of Boyden therein and thereto.

c. Boyden hereby further acknowledges and agrees that Simisters are the owners and holders of the legal, equitable and record title to the Simister Right Of Way over and across the Boyden Property.

In the event of any default on the part of any of the parties hereto, the party at fault agrees to reimburse any party not at fault for any costs and legal fees incurred by such party in enforcing such party's rights hereunder.

2. Simisters have agreed to allow Boyden to relocate the Simister Right Of Way as shown on Exhibit B-1 attached hereto and incorporated herein by this reference (hereinafter referred to as the "New Simister Right Of Way" when discussing location and the "Simister Right Of Way" when discussing the "Burden"). Boyden will as soon as is reasonably possible and at his sole expense cause (a) the entire surface of the New Simister Right Of Way to be black topped with asphalt and (b) cause the telephone pole that is presently located on the New Simister Right Of Way to be removed or relocated to another location off the New Simister Right Of Way. The Simister Right Of Way will be used by Simisters, their successors and assigns, solely for the following historical, authorized and permitted purposes and uses (collectively "Burden" or Permitted Uses"), which Burden and Permitted uses shall not hereafter change or be increased unless and until otherwise agreed to in writing signed by all parties having and interest therein and thereto.

a. A passageway for persons, animals and vehicles and every method of transportation to access the rear of Simister Property to and from Center Street;

b. Making deliveries to and from the Simister Property;

c. Loading and unloading equipment, materials and supplies to and from the Simister Property;

d. Until such time as improvements are constructed upon the Simister Property, the owners thereof and/or their permittees shall have the right to cross over the Simister Right Of Way with vehicles and/or trailers for the sole purpose of parking the same on the Simister Property; and

3. The parties hereto hereby agree that the Simister Right Of Way may not be used for the following purposes or uses (collectively "Prohibited Uses");

a. For the parking or storage of vehicles, transportation devices of any kind or trailers;

b. For driving vehicles, transportation devices of any kind or trailers through the Simister Right Of Way and the Simister Property from Center Street to Main Street or from Main Street to Center Street.

c. A public easement or right of way.

4. Simisters hereby agree that they will not increase the historical Burden or the Permitted Uses on the Boyden Property, or make a Prohibited Use of the Simister Right Of Way.

5. The parties hereby agree that they will not block, obstruct, impair or otherwise interfere with the other parties' Permitted Use of the Simister Right Of Way.

6. The terms and provisions hereof shall be construed as covenants running with the Boyden Property.

7. The parties shall do each and every thing required of them hereunder in good faith.

8. Concurrently with the execution hereof the parties shall instruct and cause their respective counsel to take appropriate steps to have Civil No. 04050050, including the Complaint and Counterclaim filed therein, dismissed with prejudice and upon the merits with each party to bear and pay such party's own costs and attorney's fees.

EXECUTED as of the day and year first above written.

BOYDEN:

Franklin M. Boyden  
Franklin M. Boyden

SIMISTERS

Leon S. Simister  
Leon S. Simister

Louise N. Simister  
Louise N. Simister

STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF SACRAMENTO )

On the 12<sup>th</sup> day of August 2005, personally appeared before me, Franklin M. Boyden who being duly sworn, did say that he executed the above and foregoing instrument.



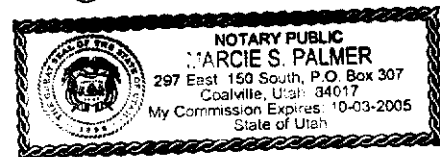
Notary Public

STATE OF UTAH )  
 )ss.  
COUNTY OF )

On the 17<sup>th</sup> day of August 2005, personally appeared before me, Leon S. Simister who being duly sworn, did say that he executed the above and foregoing instrument.

Marcie Palmer  
Notary Public

STATE OF UTAH )  
 )ss.  
COUNTY OF )



On the 17th day of August 2005, personally appeared before me, Louise N. Simister who being duly sworn, did say that she executed the above and foregoing instrument.

Notary Public

in settlement agreement2 byden

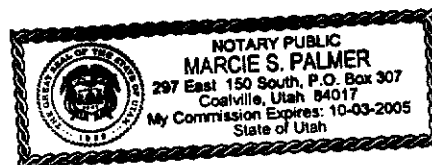


EXHIBIT A

COMMENCING at a point that is 31 feet 11 1/2 inches South 23°30' East of the Northeast corner of Lot 4, Block 79, Plat "B", Coalville City, Summit County, Utah; and running thence South 66°30' West 107 feet; thence South 23°30' East 21 feet 8 inches; thence North 66°30' East 107 feet; thence North 23°30' West 21 feet 8 inches to the point of BEGINNING, situated in the Southeast quarter of Section 8, Township 2 North Range 5 East, Salt Lake Base and Meridian.

TOGETHER WITH A RIGHT OF WAY for persons, animals and vehicles and every method of transportation over the following described premises: COMMENCING at the Northeast corner of Lot 4, Block 79, Plat "B", Coalville City, Summit County, Utah; and running thence South 66°30' West 139.5 feet; thence South 23°30' East 53.625 feet; thence North 66°30' East 7 feet; thence North 23°30' West 21 feet 8 inches; thence North 66°30' East 132.5 feet; thence North 23°30' West 31 feet 11 1/2 inches to the point of BEGINNING, situated in the Southeast quarter of Section 8, Township 2 North Range 5 East, Salt Lake Base and Meridian. Said right of way being a passageway now in use at the rear of the building situated on said premises last hereinabove described; running South 23°30' East from Center Street in Coalville, Utah, to the rear of the building upon the premises herein conveyed. Limited to surface rights only.

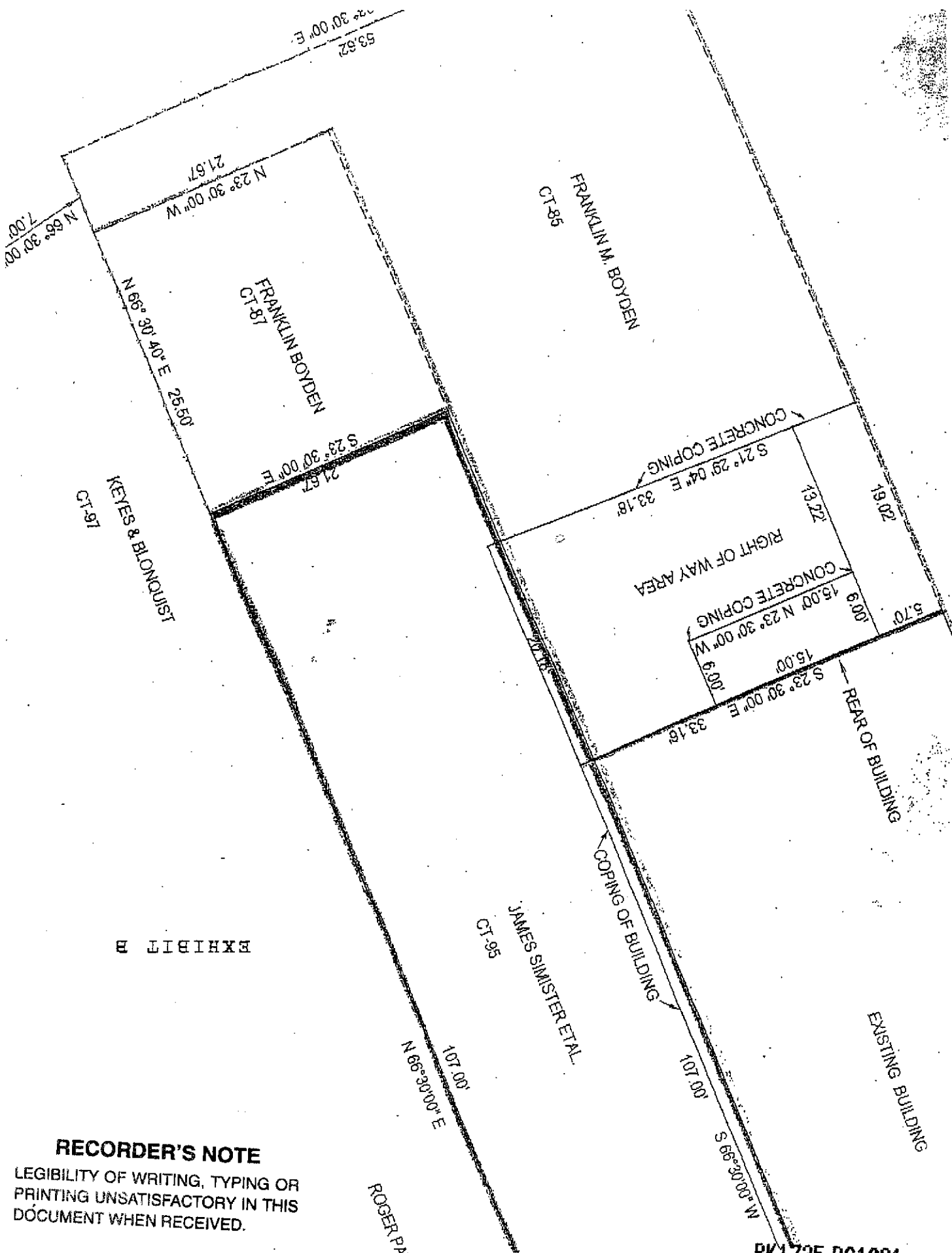


EXHIBIT B

# RECORDER'S NOTE

LEGIBILITY OF WRITING, TYPING OR  
PRINTING UNSATISFACTORY IN THIS  
DOCUMENT WHEN RECEIVED.

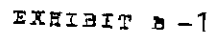
BK1725 PG1081

P. 02

P: 3/3

FAA NO. 801 486 0585

4. 1115



Right Of Way Area

BK1725 PG1082

# EXHIBIT C

COMMENCING at the Northeast corner of Lot 4, Block 79, Plat B, Coalville City Survey; and running thence South 66°30' West 139.5 feet; thence South 23°30' East 53.625 feet; thence North 66°30' East 7 feet; thence North 23°30' West 21 feet 8 inches; thence North 66°30' East 132.5 feet; thence North 23°30' West 31 feet 11-1/2 inches to the point of BEGINNING, being situated in the Southeast quarter of Section 8, Township 2 North Range 5 East, Salt Lake Base and Meridian.

RESERVING, however, a right of way at the rear of the building situated on said premises for persons, animals and vehicles and every method of transportation over that part of the above land as set forth in that certain deed of date August 15, 1939 recorded in Book "G" Page 184, Quit-claim Deed recorded in the office of the County Recorder of Summit County, Utah, described as follows:

A passageway now in use running South 23°30' East from Center Street in Coalville City, Utah to the rear of the building adjoining the above described premises on the Southerly side.

BK1725 PG1083