

When Recorded Return To:  
Bob O'Brien  
Utah Department of Environmental Quality  
Division of Environmental Response & Remediation  
P.O. Box 144480  
SLC UT 84144-4840

Exhibit 4

6891209  
03/13/98 12:26 PM 35.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
REC BY: N ZELAYA DEPUTY - WE

## LAND USE EASEMENT SOILS RESTRICTIONS

Charles H. Horman, Trustee of the **Horman Family Trust**, GRANTOR, for the covenants and other valuable consideration described in the Settlement Agreement, EPA Docket # CERCLA-VII-97-02, does hereby grant and convey to the **UNITED STATES** and the **STATE OF UTAH**, GRANTEES, a perpetual, non-exclusive restrictive easement for the purpose of protecting the public health and safety of the citizens of Utah. This easement regulates the use of the land hereinafter described on Exhibit "A" attached hereto (the "Property") and makes it subject to the following conditions:

### Definitions

1.1 "Approved Top Soil" shall mean soil that has been tested for, and does not exceed 500 parts per million lead, 70 parts per million arsenic, or pH of 12, unless specifically approved in writing by the executive director of the Utah Department of Environmental Quality (the "UDEQ") or the director of the United States Environmental Protection Agency (the "EPA") Region VIII's Office of Ecosystem Protection and Remediation.

1.2 "Grantor" shall mean the Horman Family Trust, Redwood Development, LLC., or any Successor in Interest or Successor in Title as defined in the Settlement Agreement (the "Agreement") between the United States, the State of Utah and Redwood Development, LLC., EPA Docket # CERCLA-VII-97-03.

1.3 "Undercap Material" shall mean any soil or other material below the eighteen (18) inch cap placed on the property pursuant to the a Record of Decision for the Portland Cement Superfund Site, dated September 29, 1995. Undercap Material is presumed to exceed 500 parts per million lead, 70 parts per million arsenic and pH of 12, unless a state certified laboratory tests the Undercap Material and determines otherwise.

### Grantor Duties

2.1 The Grantor shall not adversely impact any ongoing or completed response actions at the property. The Grantor may perform approved development activities in accordance with Sections 2.5 through 2.12 below, but shall remain responsible for correcting any adverse impact to ongoing or completed response actions at the property and for maintaining the integrity of the eighteen (18) inch cap (or other EPA chosen remedy) at the property from any degradation or destruction resulting from the Grantor's use or development of the property.

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2.2 The Grantor shall have Undercap Material tested by a state certified laboratory before disposal off of the property. The Grantor shall dispose of tested Undercap Material in a manner consistent with state and federal law. Within a reasonable time, exposed Undercap Material remaining on the property shall be covered with eighteen (18) inches of Approved Top Soil or with asphalt, a permanent structure, or paving materials that function as a cap. Exposed Undercap Material remaining on the property need not be covered if a state certified laboratory determines that it does not exceed 500 parts per million lead, 70 parts per million arsenic, or a pH of 12.

2.3 The Grantor is responsible for the actions of his lessees and sublessees and shall not allow any use of the property which may impair the integrity of the cap. The Grantor shall provide a copy of this Land Use Easement, and all other land use easements established pursuant to the Settlement Agreement between the United States, the State of Utah and the Horman Family Trust, Docket # CERCLA-VII-97-02 to his lessees and sublessees.

2.4 The Grantor shall notify UDEQ of the occurrence of any unplanned activities or events (e.g., storms, erosion, vandalism) that have compromised the integrity of the cap within 14 days of becoming aware of such occurrences. However, nothing herein shall be construed in any manner to impose an affirmative obligation on the Grantor to monitor the property for damage or destruction arising from storms, erosion, vandalism, etc.... beyond the duty to act as a reasonable Grantor.

2.5 The Grantor shall obtain UDEQ's approval prior to commencing work or other activities which may disturb the integrity of the cap. Such approval shall be obtained by filing a work plan or a general plan and obtaining written approval from UDEQ. UDEQ approval will not be necessary for actions that will disturb less than one cubic yard of the cap or the Undercap Material, however the Grantor must treat exposed Undercap Material in accordance with Paragraph 2.2 above. Submittal of a general plan or work plan for UDEQ review will require payment of a review charge by the Grantor in accordance with Paragraphs 2.6 and 2.7 below. A general plan may address landscaping, maintenance and other routine activities. Activities that are not routine must be addressed in a work plan. The required contents of work plans are set forth in Paragraph 2.7 below. The contents of general plans shall not exceed the work plan requirements. The UDEQ shall approve any general plan that reasonably addresses protection of the cap and of the Undercap Material. The UDEQ shall approve any work plan that reasonably addresses the requirements of Section 2.7 below.

2.6 The UDEQ shall charge the Grantor the hourly rate for review set forth in the fee schedule in effect upon filing, which the UDEQ shall make available upon request. The UDEQ shall, prior to commencing the review, give the Grantor notice of the anticipated maximum cost of review beyond which the UDEQ may not charge the Grantor. The UDEQ may charge a deposit not to exceed \$1,000 prior to beginning the review which

shall be credited toward the review cost. The UDEQ shall return the unused fees to the Grantor. Before issuing an approval, the UDEQ may require full payment for the review. The fees received by the UDEQ shall be placed in a Portland Superfund Site Operation and Maintenance Restricted Account for the review of Grantor Work Plans and General Plans.

2.7 The Work Plan must demonstrate that the Grantor will comply with Paragraphs 2.1 and 2.2 in developing the Property. The Work Plan must address the following:

- 2.7.1 The location and nature of the proposed activity or development.
- 2.7.2 The duration of excavation activities.
- 2.7.3 The dimensions of all surface areas to be disturbed.
- 2.7.4 The depth of any proposed excavation.
- 2.7.5 The approach to identification and segregation of clean fill and uncontaminated soil from the Undercap Material during the period of activity or development.
- 2.7.6 The volume of soil or other materials to be backfilled on the Property.
- 2.7.7 The volume of the Undercap Material proposed to be disposed of off of the Property.
- 2.7.8 The plans for compliance with disposal requirements under state and federal law.
- 2.7.9 Seed mix and revegetation plans.
- 2.7.10 Plans for fugitive dust control during excavation activities.
- 2.7.11 A submittal schedule for a final report, including as-built drawings, describing post-remedial work conducted under the Work Plan.

2.8 For informational purposes, the Grantor shall also file with UDEQ a health and safety plan that it prepares and implements in accordance with the Occupational Health and Safety Administration ("OSHA") regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. § 1910. The Grantor shall file the health and safety plan with the Work Plan. The Work Plan shall not be considered complete until the health and safety plan is filed.

2.9 The Grantor shall give written notice to UDEQ that a building permit application has been filed with local authorities to conduct work on the property within five days after the application is filed. The notice shall state the date the building permit application was filed and shall provide other information sufficient for the UDEQ to specifically reference the application in communications with the local authorities responsible for issuing the building permit.

2.10 The UDEQ shall issue a written approval or objection to the Work Plan within 90 days after the Grantor submits a Work Plan to UDEQ. If the UDEQ objects to the Work Plan, the UDEQ shall provide the reasons therefor. The Grantor may revise and resubmit the Work Plan which shall be subject to review and approval in the manner described above including, but not limited to, the fee requirements of Section 2.6. The Grantor may seek judicial review of the UDEQ's objection to a Work Plan, but shall contest UDEQ's objection to a Work Plan administratively prior to seeking a judicial remedy. Review shall be limited to UDEQ's objection to an individual Work Plan and shall not encompass any challenge to the underlying institutional controls, site remedy or the validity of any easements related thereto.

2.11 The UDEQ does not waive any of its statutory authority, including its order or cost recovery authority, by approving the Work Plan. UDEQ's approval does not release the Grantor from responsibility for correcting any adverse impact its actions may have on the cap or on any ongoing or completed response actions at the Site.

2.12 The Grantor shall file with the UDEQ as built drawings describing the work that was conducted under the Work Plan within 30 days of completing or stopping work.

2.13 The Grantor shall give the UDEQ written notice of its conveyance of any interest in the Property described herein. No conveyance of title, easement, lease or other interest in the Property shall be consummated by the Grantor without providing copies of this Land Use Easement to the Grantor's assignee(s) or successors-in-title or without provision for compliance with this Land Use Easement. If the conveying Grantor provides proof that the assignee or successor-in-title had actual notice of this Land Use Easement and agreed in writing to comply with this Land Use Easement prior to the transfer, the conveying Grantor shall not be responsible for the assignee's or successor-in-title's actions at the Property.

2.14 The Grantor shall have a duty to exercise the due care a reasonable and informed Grantor would exercise in caring for and managing its property.

#### **Remedies**

3.1 If the Grantor fails to comply with this Land Use Easement and such failure results in a direct and immediate threat to the public health or the environment, the

UDEQ may order the Grantor to take action or may take action itself to abate such direct and immediate threat to the public health and the environment. The UDEQ may recover its costs from the Grantor to the extent the Grantor's failure to comply resulted in the abatement action. The costs shall include those costs incurred by UDEQ's contractors, subcontractors and attorneys in the Attorney General's Office.

3.2 UDEQ may pursue penalties or other remedies available to it under state or federal law consistent with this Land Use Easement or any settlement agreements with the Grantor, including any Consent Decree, any Administrative Order on Consent, or any Prospective Purchaser Agreement. The Grantor understands and agrees that noncompliance with this Land Use Easement is a violation of the terms of an agreement made under the authority of the Utah Hazardous Substances Mitigation Act and under CERCLA.

3.3 EPA may enforce the terms of this Land Use Easement if the Grantor fails to comply with any provision thereof. Any other local, state or federal government agency, or Grantor affected by any violations of this Land Use Easement, may enforce it by legal action.

3.4 The terms of this Land Use Easement may be specifically enforced.

3.5 The Grantor shall not at any time institute legal proceedings, by way of quiet title or otherwise, to remove or amend this Land Use Easement unless UDEQ and EPA have given the Grantor advance written approval for such.

3.6 This Land Use Easement is intended to run with the land and shall be binding upon each Grantor for so long as the Grantor owns an interest in the Property. This Land Use Easement is also intended to make the Grantor remain liable for breaches of the terms of the Land Use Easement committed during the period the Grantor owned an interest in the Property, regardless of whether the Grantor subsequently gives up its interest in the Property. Otherwise, the obligation of a Grantor under this Land Use Easement ends upon sale or transfer of the Grantor's respective interest in the Property in accordance with paragraph 2.13.

3.7 This Land Use Easement does not prohibit development and the Grantor agrees that governmental actions that are consistent with this Land Use Easement do not constitute a taking.

#### **General Conditions**

4.1 If any terms or provisions of this Land Use Easement shall be adjudged invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of the Land Use Easement, and each term and provision

of this Land Use Easement, other than those which are held invalid or unenforceable, shall be valid and enforceable to the fullest extent permitted by law.

4.2 The validity, interpretation and performance of this Land Use Easement, and any dispute arising under the Land Use Easement, shall be construed, enforced and governed in accordance with the laws of the State of Utah.

4.3 This Land Use Easement shall be binding upon and shall inure for the benefit of the Grantor, the UDEQ, the EPA and their respective heirs, executors, administrators, successors, legal representatives and assignees.

4.4 Notice shall be considered given on the third day after it is sent, not counting state or federal holidays or weekends.

4.5 Notices and service of process shall be mailed or faxed to the Grantor and his assignees as successors as follows unless the Grantor or his assignees and successors provide the UDEQ written notice of a different designee or address for notice and service of process purposes:

Charles H. Horman, Trustee  
5320 South 900 East  
Suite 250  
Salt Lake City, UT 84117

with a copy to:

Kevin R. Murray  
LeBoeuf, Lamb, Greene & MacRae  
136 S. Main St.  
Salt Lake City, UT 84101

4.6 Notices shall be sent to UDEQ as follows or as directed by UDEQ in writing:

Bob O'Brien  
Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
P.O. Box 144480  
Salt Lake City, UT 84114-4840

4.7 The UDEQ and the EPA reserve the right to bring action against the Grantor to enforce this Land Use Easement. Nothing contained herein shall be deemed to constitute a waiver by the UDEQ or the EPA of their right to initiate enforcement action, including civil penalties against the Grantor in the event of future noncompliance with

this Land Use Easement or with the Utah Hazardous Substances Mitigation Act or any other law, nor shall UDEQ or EPA be precluded in any way from taking appropriate action to abate an endangerment to public health or the environment at any Grantor facility. This reservation is not intended to make the Grantor remain liable for the present contamination on the Property for which the Grantor was released under the Agreement or any Successor Addendum thereto. UDEQ and EPA acknowledge that nothing herein limits the scope of any covenant not to sue contained in the Agreement or any successor addendum thereto.

4.8 This Land use Easement is not intended to encumber, create an estate of any type whatsoever, affect title, or in any other manner attach to or encroach upon any adjacent or contiguous property owned by the Horman Family Trust on the date of recordation of this easement.

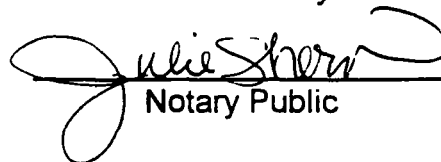


Grantor  
Charles H. Horman Trustee, Horman Family Trust

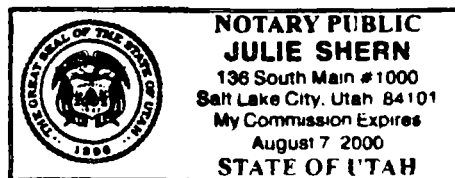
State of Utah            )  
                                  )s.s.  
County of Salt Lake)

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of March, 1998, by Charles H. Horman, Trustee of the Horman Family Trust

Witness my hand and official seal

  
Notary Public

My commission expires \_\_\_\_\_



## **EXHIBIT A**

### **LEGAL DESCRIPTIONS**

#### **For Horman Family Trust Properties Situating Within Portland Cement Sites OU-1, OU-2 and OU-3**

##### **Parcel 15-10-177-001<sup>1</sup>**

A parcel of land situated in Section 10, Township 1 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah and being more particularly described as follows:

Beginning at a point in the center of the County Road, which point is 3,226.94 feet North of the South Quarter corner of Section 10, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence West 1,320 feet to the center line of the Northwest quarter of said Section 10, thence North along said line 581.7 feet to the South boundary of the Right of Way on the S.P., L.A., and S.L. Railroads; thence along said South line of said Right of Way South 74° 10' East 549 feet; thence South 57.5 feet; thence East 232.1 feet; thence South 74° 10' East 180.1 feet; thence leaving said right of way South 307.2 feet; thence East 378 feet to center line of Redwood Road; thence along said center line South 14.96 feet to the place of beginning.

##### **Parcel 15-10-177-002**

A parcel of land situated in Section 10, Township 1 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah and being more particularly described as follows:

Commencing 3,026.94 feet North from the south 1/4 Corner of Section 10, Township 1 South, Range 1 West, Salt Lake Base and Meridian; thence West 560 feet; thence South 200 feet; thence West 165 feet, more or less to the North Line of the Canal; thence Westerly along said Canal 596.3 feet, more or less, to the centerline of the Northwest one-quarter of said Section 10; thence North 340.3 feet; thence East 760 feet; thence South 100 feet; thence East 560 feet; thence south 75 feet to the point of beginning, less the State Road, consisting of 7.45 acres.

##### **Parcel 15-10-177-006**

A parcel of land situated in Section 10, Township 1 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah and being more particularly described as follows:

Beginning 3,101.94 feet North from the South quarter corner of Section 10, Township 1 South, Range 1 West, Salt Lake Meridian; thence West 560 feet; thence North 100 feet; thence West 760

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<sup>1</sup>Parcel numbers are Salt Lake County Permanent Parcel Number System identifiers (a.k.a. Sidwell Numbers)



Feet; more or less, to the centerline of the Northwest quarter of said Section 10; thence North 25 feet; thence East 1,320 feet; thence South 125 feet to the place of beginning.

**Parcel 15-10-326-018**

A parcel of land situated in the West ½ of Section 10, Township 1 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, and being more particularly described as follows:

Beginning a point on the Westerly Right of Way Line on Redwood Road, opposite centerline Station 86+78.9, as said Right of Way is defined on Sheet 6, DA-W1-2(1), Federal Aid Project 229 dated 1942, and on file with the Utah Department of Transportation, said point also being Corner No. (The Southeast Corner) of that certain warranty deed dated 8/11/1988, and recorded in Book 6055, Page 674, and said point being situated as follows;

The South 1/4 Corner of Section 10 (Salt Lake County Surveyor Monument) bears South 01° 09' 05" East, 1,844.45 feet distant.

The Southwest Corner of Section 10 (Salt Lake County Surveyor Monument) bears South 54° 19' 26" West, 3196.30 feet distant.

thence S 0° 01' 24" E along said Westerly Right of Way line, 124.32 feet to a point on the North Line of that certain Warranty Deed date 9/21/1932, and recorded in Book 104, Page 539, said point also being on the South Line of that certain Warranty Deed dated 8/25/1933, and recorded in Book 119, Page 230;

thence leaving said Right of Way line and Running S 89° 40' 11" W along the line between said Warranty Deeds, 390.20 feet to Corner No. 3 (the Northwest Corner) of the Deed dated 9/21/1932, said point also being Corner No. 1 (the Northeast Corner) of that certain Quit Claim Deed dated 8/10/1942, and recorded in Book 319, 362;

thence 89° 40' 11" W, along the North line of said Quit Claim Deed, and the South Line of the Deed dated 8/25/1933, 2.00 feet to Corner No. 2 (the Northwest Corner) of said Quit Claim Deed, said pint also being Corner No. 1 (the Northeast Corner) of that certain Warranty Deed dated 5/19/1941, and recorded in Book 272, Page 466;

thence S 89° 40' 11" W, along the North line of said Warranty Deed (272/466), 86.04 feet to Corner No. 4 (the Southwest Corner) of that certain Warranty Deed dated 8/25/1933  
aforementioned;

thence N 0° 01' 23" W, along the West line of said Warranty Deed date 8/25/1933, 124.32 feet\* to a point on the South Line of that certain Warranty Deed hereinbefore referred to and dated 8/11/1988 and recorded in Book 6055, Page 674, at which point Corner No. 4 (the Northwest Corner) thereof bears S 89° 40' 11" W, 2.00 feet distant;

thence N 89° 40' 11" E along the South line of the Warranty Deed dated 8/11/1988, 478.24 feet to the point of intersection of said South Line, with the Westerly Right of Way line of Redwood Road, said point being the Point of Beginning of the parcel herein described, and the point of termination of the description; consisting of 1.36 acres more or less.

**BASIS OF BEARING**

All bearings referred to in the hereinbefore described parcel of land are based on the "Original"

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Bearing of the San Pedro, Los Angeles & Salt Lake Railroad, as said direction is evidenced by the existing tracks of said Railroad. To place the bearings shown hereon into the requisite "THETA ANGLE ZONE" as proposed by the Salt Lake City Surveyors Office, rotate all bearings hereon 0d 03m 18s counterclockwise, to obtain "Record" (Geographic) Bearing as per Theta Zone 8. For a more detailed explanation of the Basis of Bearing, see "Boundary Survey of the Portland Cement Superfund Site:, Sheet 1 of 2, recorded in the County Recorders Office.

### **DIMENSIONAL CONSTANTS**

Certain record distances referred to hereon (identified by a trailing \* after the distance) were modified from the Historical "Salt Lake City Survey Foot", as evidenced by the extant monuments in Liberty Park (see Ordinance of May 13, 1892 and Revised Ordinance 1903), to conform with the "Standard U.S. Survey Foot as currently defined (see Act of July 28, 1886).

#### **Portion of Parcel 15-10-326-016**

#### **Situated Within OU-1, OU-2 and OU-3**

A parcel of land situated in the West 1/2 of Section 10, Township 1 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, and being more particularly described as follows:

Beginning at the Southwest-Center 1/16 Corner of said Section 10, at which point the following Salt Lake County Surveyors Office Monuments are situated;

South 1/4 of said Section 10 bears South 44°58'18" East 1,860 .45 feet.

Southwest Corner Section 10 bears South 44°37'13" West 1,877.28 feet.

Thence North 0°04'50" East, along the North-South Centerline of the southwest 1/4 of said Section 10, 1,326.20 feet to the Center-West 1/16 Corner of Said Section 10,

Thence North 0°04'50" East along the North-South Centerline of the Northwest 1/4 of Section 10, 161.12 feet to a point on the Southerly Right of Way line of the "CITY DRAIN" as said Right of Way is described and evidenced by that certain map dated August 1933, Number 8644, Account 46-M, Drawing 8, and known as the "Drainage Map of Low Lands" Salt Lake Mosquito Abatement District, said map being on file with the Salt Lake County Engineer, said point also being on the Southerly line of that certain Easement and Right of Way related to said "CITY DRAIN" dated 1/17/1934, and recorded in Book 130, Page 473.

Thence South 86°11'52" East along said Southerly Right of Way line 233.81 feet to a point on the Westerly boundary of that certain Quit Claim Deed dated 12/31/1978, and recorded in Book 4950, Page 1367,

Thence South 0°11'27" East along the West boundary of said Deed 182.05 feet to Corner No. 2 (the Southwest Corner) thereof, said point also being Corner No. 3 (the Northwest Corner) of that certain Warranty Deed dated 9/21/1979, and recorded in Book 4950, Page 1368.

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Thence South 0°01'27" East along the West line of said Warranty Deed, 343.78 feet to Corner No. 2 (the Southwest Corner) thereof.

Thence East 1080.26 feet; thence South along the center of a County road 187.32 feet; thence West 520 feet; to the West line of that certain Warranty Deed dated 11/17/1944, and recorded in book 404, Page 638; thence south 0°01'24" East along the West Line of said Warranty Deed to Corner No. 4 (the Southwest Corner) of that certain Quit Claim Deed dated 4/20/39, and recorded in Book 235, Page 281,

Thence South 0°01'24" East along the West Line of said Quit Claim Deed, 41.47\* feet to Corner No 4 (the Southwest Corner) thereof, said point also being Corner No. 3 (the Northwest Corner) of that certain Warranty Deed dated 8/11/1988, and recorded in Book 6055, Page 673,

Thence South 0°01'24" East along the West line of said Warranty Deed, 40.76 feet to Corner No. 4 (the Southwest Corner) thereof,

Thence North 89°40'11" East along the South line of said Warranty Deed, 2.00 feet to the point of intersection of said South Line, with the West Line of that certain Warranty Deed dated 8/25/1933, and recorded in book 119, Page 230,

Thence South 0°01'24" East along the West line of said Warranty Deed, 124.32 feet to Corner No. 4 (the Southwest Corner) thereof, and the North Line of that certain Warranty Deed dated 5/19/1941, and recorded in Book 272, Page 466,

Thence South 89°40'11" West, along the North line of said Warranty Deed, 134.07 feet to Corner No. 4 (the Northwest Corner) thereof,

Thence South 0°01'24" East along the West line of said Warranty Deed, 396.20\* feet to a point on the East-West Centerline of the Southwest Quarter of Section 10, said point also being Corner No. 3, (the Southwest Corner) of said Warranty Deed,

Thence South 89°40'11" West along said Centerline, 655.75 feet to the Southwest Center 1/16 Corner of said Section 10, the Point of Beginning of the Parcel herein described, and the point of termination of this description.

LESS AND EXCEPTING THEREFROM that portion lying within the property conveyed by warranty deed, to Beehive Barrel & Drum Inc., recorded August 12, 1988 as Entry No. 4662108 in Book 6055 at Page 673 of Official Records and being more particularly described as follows:

BEGINNING at a point which is North 0°03'08" West along the quarter section line 1840.26 feet from the South quarter corner of Section 10, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 0°03'08" West 82.19 feet; thence South 89° 56' 52" West 530.00 feet; thence South 0° 03' 08" East 89.12 feet; thence North 89° 56' 52" East 539.00 feet to the point of beginning.

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