

hereby acknowledges that the easement hereby granted extends to and includes vibration(s), noise(s), dust, particulate(s) and other materials or odor(s) which may descend upon, go across and be in the air above the Grantor's Property and which result from vehicles, including trucks, travelling to and from the Sloan Property.

TO HAVE AND TO HOLD all and singular the full enjoyment of said Easement before mentioned and described on the Grantor's Property unto Grantees, their successors and assigns, forever.

2. Covenant Not to Sue. Except as provided in Section 3 hereinafter, Grantor shall neither institute nor maintain any action at law or in equity, either for damages or injunctive relief, under any theory of recovery, including, but not limited to, negligence, nuisance, trespass or conversion, against the Grantees, their successors and assigns, for any damage or injury sustained prior or subsequent hereto, and caused, occasioned, resulting from or in any way related to any use of the Sloan Property or from the operation of a rock quarry, rock crushing plant, asphalt plant and related activities on the Sloan Property.

3. Conditions for Suit.

3.1 It is the true meaning and intent of the parties that notwithstanding the foregoing provisions of Sections 1 and 2, the Grantor shall have the right to institute and maintain a cause of action arising out of the Grantees' operation of the rock quarry, rock crushing plant, asphalt plant and related activities only if the Grantees have failed to comply with such federal, state and local laws,

0 4 5 9

4328-172