

MNT 0705 2733

When recorded, please return to:

Givens Pursley LLP
Attention: Jeremy G. Ladle
601 West Bannock Street
Boise, Idaho 83702

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0085

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
5/28/2008 3:41:00 PM
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DRAINAGE EASEMENT AGREEMENT

This Drainage Easement Agreement ("Agreement") is made this ^{28th} day of May, 2008, between Kaysville I, LLC, a Utah limited liability company ("Kaysville I"), and Boondocks Properties, LLC, a Utah limited liability company ("Boondocks"). Kaysville I and Boondocks may be referred to hereinafter individually as a "Party," or collectively as the "Parties," as applicable.

RECITALS

A. Kaysville I previously owned a thirty-five (35) acre parcel of real property located at 600 S. Deseret Dr., Kaysville, Utah 84037, Tax ID # 08-001-0025 (the "Kaysville I Property"). Kaysville I recently conveyed a portion of the Kaysville I Property, which portion is legally described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property"), to Kaysville Development, LLC, a Utah limited liability company ("Kaysville Development"), an affiliate of Kaysville I. Contemporaneously with the execution of this Agreement, Boondocks shall have acquired the Property from Kaysville Development, pursuant to that certain Real Estate Purchase and Sale Agreement, dated January 23, 2008, as amended by that certain First Amendment of Real Estate Purchase and Sale Agreement, dated March 11, 2008, and that certain Second Amendment to Real Estate Purchase and Sale Agreement, dated April 15, 2008 (together, the "Purchase Agreement").

B. Prior to purchasing the Property from Kaysville Development, and while Buyer was conducting its due diligence review of the Property, Buyer became aware that certain historical drainage flow ("Historical Drainage") travels under the freeway and Union Pacific Railroad to the east of the Property, enters the Property, then travels south across a portion of the Property in an open drainage ditch (the "Drain") that continues on to other real property owned by Kaysville I to the south of the Property (hereafter, the "Southern Property").

C. Boondocks plans on developing the Property and desires to cover and tile the Drain as it traverses the Property to provide for additional developable area and to eliminate the open drainage system. Boondocks also desires to confirm and obtain an easement for the Historical Drainage to continue to flow from the Property on to and across the Southern Property. Kaysville I, as owner of the Southern Property, has agreed to continue to accept the Historical Drainage on the Southern Property and to confirm and grant Boondocks an easement in accordance with the provisions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals which the Parties acknowledge are true and correct and are incorporated below, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **TILING OF DRAIN.** Boondocks shall have the right, but not the obligation, to cover and tile the portion of the Drain located on the Property, at its sole cost and expense. Such construction shall be in accordance with applicable laws and regulations and after obtaining any necessary permits. Boondocks shall also have the right to realign the Drain on the Property, as desired, so long as the realigned drain delivers the Historical Drainage to the same location on the Southern Property or to another location acceptable to Kaysville I.

2. **ACCEPTANCE OF HISTORICAL DRAINAGE AND EASEMENT.** Kaysville I agrees to accept the Historical Drainage from the Property and confirms and grants unto Boondocks a perpetual, non-exclusive drainage easement for the continual flow of the Historical Drainage from the Property on to, over, across and through the Southern Property.

3. **NO INTERFERENCE.** Kaysville I shall not place, install or construct any improvements, barriers, structures or other obstructions on the Southern Property that will impede, interfere, or otherwise hinder the flow of the Historical Drainage from the Drain and on to and over the Southern Property. This Agreement shall not, however, preclude Kaysville I from relocating any drain on the Southern Property to another more convenient location on the Southern Property, so long as such relocation does not impede the Historical Drainage from the Property or otherwise cause any damage to Boondocks.

4. **STORMWATER FACILITIES.** As a part of the development of the Property, Boondocks Properties shall construct the stormwater drainage facilities required by applicable laws and regulations to address the Property's on-site drainage.

5. **BINDING EFFECT.** The terms and provisions contained herein shall be a burden on the Southern Property, shall be appurtenant to and for the benefit of the Property and shall run with the land, and shall inure to the benefit of and bind the Parties hereto and their respective heirs, representatives, successors and assigns.

6. **REMEDIES.** In the event of a breach hereunder by any Party, the non-breaching Party shall have all remedies available at law or in equity, including injunctive or other equitable relief. In any suit, action or appeal therefrom to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees and disbursements, and also including reasonable attorneys' fees and costs associated with any appeal of a judgment. The "prevailing party" will be that Party which was awarded judgment as a result of trial or arbitration, or which receives a payment of money from the other party in settlement of claims asserted by that Party.

7. **ENTIRE AGREEMENT.** This Agreement embodies the entire agreement between the Parties hereto and there are no oral agreements existing between the Parties relative to the subject matter hereof. This Agreement may only be amended by written document executed by the Parties.

[End of Text]

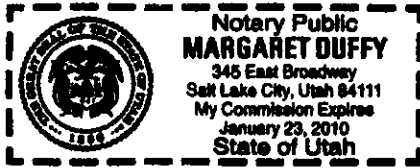
IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed the day and year first above written.

KAYSVILLE I: Kaysville I, LLC, a Utah limited liability company

By: [Signature]
Terry C. Diehl, Manager

State of Utah)
County of SALT LAKE S.S.

On this 28th day of May, in the year of 2008, before me MARGARET DUFFY, a notary public, personally appeared Terry C. Diehl, known or identified to me to be the Manager of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.



Margaret Duffy
Notary Public for Utah
Residing at _____
My Commission Expires _____

BOONDOCKS:

Boondocks Properties, LLC, a Utah limited liability company

By: Select Investment and Management Co., a Utah corporation, its Manager

By: [Signature]
Randy L. Fullmer, its President

State of ~~Idaho~~ Colorado
County of Adams S.S.

On this 27th day of May, in the year of 2008, before me Carlos Gonzales, a notary public, personally appeared Randy L. Fullmer, known or identified to me to be the President of Select Investment and Management Co, a Utah corporation, known or identified to be the Manager of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such executed the same in said limited liability company name.

[Signature]
Notary Public for ~~Utah~~ Colorado
Residing at Westminster, CO 80234
My Commission Expires 8/31/2011



My Comm. Exp. 8-31-2011

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[to be attached]

Order Number: 07052733F

Commencing at a point which is South $0^{\circ}39'51''$ East a distance of 645.22 feet along the Section line from the Northwest corner of Section 3, Township 3 North, Range 1 West, Salt Lake Base and Meridian; thence North $89^{\circ}20'09''$ East a distance of 512.85 feet, to the Westerly Right of Way of the Union Pacific Railroad and the point of beginning, said point also being the Southeast corner of the Legacy Office Complex property described in the Deed recorded in Book 4281 at Page 528, Davis County Records; thence along said Right of Way, South $19^{\circ}35'10''$ East 584.08 feet; thence South $65^{\circ}53'22''$ West 766.74 feet; to the East Right of Way line of Deseret Drive; thence along said East Right of Way, North $15^{\circ}37'20''$ West 591.92 feet to the Southwest Corner of said Legacy Office Complex property; thence along the Southerly line of said property, North $66^{\circ}08'27''$ East 725.44 feet to the point of beginning

EXHIBIT B

LEGAL DESCRIPTION OF THE SOUTHERN PROPERTY

[to be attached]

Order Number:

PARCEL 1:

Beginning 367.70 feet South and South 66 deg. 31'10" West 367.61 feet and South 15 deg. 37'20" East 1012.66 feet from the Northeast corner of Section 4, Township 3 North, Range 1 West, Salt Lake Base and Meridian; and running thence South 15 deg. 37'20" East 345.62 feet; thence South 22 deg. 18'40" East 907.33 feet; thence South 88 deg. 06'40" East 222.96 feet; thence North 21 deg. 27'40" West 1209.28 feet along an existing fence; thence North 63 deg. 31'05" East 654.31 feet along said fence to the Westerly line of the railroad right of way; thence North 19 deg. 36'30" West 102.50 feet along said right of way; thence South 66 deg. 31'10" West 838.62 feet to the point of beginning.

Less and excepting that portion lying within Deseret Drive Roadway as shown by Dedication Plat Recorded January 08, 2007, as Entry No. 2234041, In Book 4194, at Page 514 of the Official Records.

Less and excepting any portion lying within the following:

Commencing at a point which is South 0°39'51" East a distance of 645.22 feet along the Section line from the Northwest corner of Section 3, Township 3 North, Range 1 West, Salt Lake Base and Meridian; thence North 89°20'09" East a distance of 512.85 feet, to the Westerly Right of Way of the Union Pacific Railroad and the point of beginning, said point also being the Southeast corner of the Legacy Office Complex property described in the Deed recorded in Book 4281 at Page 528, Davis County Records; thence along said Right of Way, South 19°35'10" East 584.08 feet; thence South 65°53'22" West 766.74 feet; to the East Right of Way line of Deseret Drive; thence along said East Right of Way, North 15°37'20" West 591.92 feet to the Southwest Corner of said Legacy Office Complex property; thence along the Southerly line of said property, North 66°08'27" East 725.44 feet to the point of beginning

PARCEL 2:

Beginning South 367.7 feet along the section line and North 66 deg. 31'10" East 400.67 feet to the Westerly line of a Railroad right of way and South 19 deg. 36'30" East 1107.93 feet along said right of way from the Northwest corner of Section 3, Township 3 North, Range 1 West, Salt Lake Meridian; and running thence South 63 deg. 31'05" West 654.31 feet along an existing fence line; thence South 21 deg. 27'40" East 1209.28 feet, along a fence line to the South line of the Northwest quarter of said Section 3; thence South 88 deg. 13' East 639.9 feet,

Continued on next page

Continuation of Exhibit "B"
Order Number:

more or less, along the South line of said Northwest quarter to the West line of said Railroad right of way; thence North 19 deg. 44' West 1520 feet, more or less, along said Railroad right of way to the point of beginning.

The following being further described by survey as follows:

Part of the West half of Section 3, Township 3 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, described as follows:

Beginning at a point on a fence, said point being South 88 deg. 10'19" East 564.66 feet from the West quarter corner of said Section 3 (basis of bearings being North 00 deg. 39'49" East along the line between the West quarter corner and the Northwest corner of said Section 3; thence along said fence the following five (5) courses; (1) North 18 deg. 56'43" West 128.76 feet, (2) North 21 deg. 51'18" West 523.03 feet, (3) North 21 deg. 22'54" West 243.62 feet, (4) North 18 deg. 55'10" West 266.27 feet, and (5) North 23 deg. 03'55" West 50.72 feet; thence North 63 deg. 21'25" East 642.81 feet to the West right of way line of the Union Pacific Railroad; thence South 19 deg. 35'57" East along said West line 1530.51 feet; thence North 88 deg. 10'19" West 656.75 feet to the point of beginning.