

Entry No. 169215
Indexed ✓
Abstracted ✓
Reg. Fee 23.50

EASEMENT AND RIGHT-OF-WAY AGREEMENT

STATE OF UTAH
COUNTY OF CARBON
FILED
Clyde, Pratt, Gibbs & Co.
JUL 12 10 18 AM '83
BOOK 229 of Records
PAGE 632-644
RECORDED
COUNTY RECORDER

THIS EASEMENT AND RIGHT-OF-WAY AGREEMENT is made and entered into this 6th day of July, 1983, in Salt Lake City, State of Utah, by and between KAISER STEEL CORPORATION, a Nevada Corporation, DON R. WILCOX, JEANETTE WILCOX, WALDO WILCOX, AND JULIA WILCOX, of Carbon County, State of Utah, hereinafter collectively referred to as "Grantors" and DONALD I. DENNIS of Bullard, Texas, and AMERICAN PLASTI-PLATE CORPORATION, a Texas corporation whose principal place of business is in Bullard, Texas, hereinafter referred to as "Grantees."

W I T N E S S E T H:

WHEREAS, the parties were engaged in litigation in the Federal District Court of the State of Utah, Civil No. C-77-0412, in which Grantees sought to establish an easement for access to lands owned by Grantees across and over lands owned by Grantors, which case was appealed to the United States Court of Appeals for the Tenth Circuit, dismissed and directed back to the Federal District Court, and have engaged in litigation in the Seventh Judicial District Court for Carbon County, State of Utah, Civil No. 13103, in an action for condemnation, which action is presently stayed pursuant to a Memorandum Decision dated March 3, 1982; and

WHEREAS, the Federal District Court entered its judgment in the above referenced case and held that Grantees had no private or public right to travel over Grantors' land in order to gain access to Grantees' land; and

WHEREAS, Grantees now desire to purchase an easement from Grantors and Grantors are willing to sell and grant to Grantees the desired easement subject to the following terms and conditions:

1. Easement.

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantors hereby grant to Grantees,

their successors, administrators and assigns, a right-of-way and perpetual easement twenty (20) feet in width, lying ten (10) feet on each side of the center line which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, which land is located in Carbon County, State of Utah.

It is the intent of the parties hereto that the easement follow the course of the existing road in Range Creek Canyon from its intersection with the Little Horse Canyon Road east and up to Grantees' property. To the extent, if any, that the survey description (Exhibit "A" hereto) deviates from the existing roadway, it is the intent of the parties that such description be modified by this grant and agreement to conform to the location and configuration of the existing road.

2. Purpose of Grant.

The easement described in Exhibit "A" hereto, is granted for the sole and exclusive purpose of providing Grantees with the right of ingress and egress for a total of two residential dwellings including those dwellings now existing or to be constructed as replacements thereto on Grantees' property located in Carbon County, State of Utah. This property is more particularly described as follows:

Township 15 South, Range 14 East:

- Section 1: South Half of Northwest Quarter; North Half of Southwest Quarter; West Half of Southeast Quarter
- Section 11: West Half of Southwest Quarter; Southeast Quarter, East Half of Southwest Quarter; South Half of Northwest Quarter
- Section 12: South Half of Southeast Quarter; North Half of Southeast Quarter; North Half of Southwest Quarter, South Half of Northwest Quarter, and Lot 4; South Half of Southwest Quarter; South Half of Northwest Quarter
- Section 13: North Half of Northeast Quarter, North Half of Northwest Quarter, South Half
- Section 14: Northeast Quarter; East Half of Southeast Quarter; East Half of Northwest Quarter
- Section 23: Northeast Quarter of Northeast Quarter

Section 24: Northwest Quarter of Northwest Quarter,
Northeast Quarter of Northeast Quarter

Township 15 South, Range 15 East SLB&M

Section 18: Northwest Quarter of Northwest Quarter;
Northwest Quarter of Southeast Quarter; North
Half of Southwest Quarter; Southwest Quarter of
Southwest Quarter.

It is mutually agreed and acknowledged that the above described easement and right-of-way granted herein is not an easement in gross, but is limited as an appurtenance to the two existing residences, or two residences to be built on the above described property as replacements of the two existing homes, and shall benefit no other lands or residences now owned or later acquired or constructed by Grantees or by Grantees' successors-in-interest. Grantors' land shall be burdened only to the extent required to provide reasonable vehicular access to the two residences and such use shall be limited to that normally and reasonably associated with the use of two residences. By virtue of the execution of this agreement, Grantees acknowledge that they have no ownership interest in the Grantors' property with the exception of the interest expressly granted herein.

(a) The road described in Exhibit "A" hereto shall afford access to Grantees' property to Grantees' guests and invitees in small groups that can reasonably be accommodated by two dwelling units, but the road and right of access shall not be used to bring in large groups of people for overnight encampment, in-house trailers, tents, campers, motorhomes, recreational vehicles, or other similar temporary shelters upon Grantees' property.

(b) The road shall not be used to support or provide access to Grantees' lands described above for any commercial venture or enterprise upon Grantees' property.

(c) This road shall not afford access for any oil and gas or other mineral exploration or development upon Grantees' property and no mineral lessee of Grantees or Grantees' predecessors-in-interest shall have a right by virtue of this

grant and easement to utilize this easement for mineral exploration, development or extraction and transportation purposes without the express written consent of Grantors, which consent shall not be unreasonably withheld.

(d) Grantees shall accept the road as is and shall assert no claims for damages against Grantors for any vehicle or property damage which may be sustained by Grantees as a result of Grantees' use of this road. Grantees shall indemnify and save Grantors harmless from any and all claims, liens, losses and liabilities for bodily injury, property damage or vehicle damage sustained by Grantees' guests and invitees as a result of their use of this road in accordance with this agreement. Grantors shall have no obligation to improve the road beyond its present and existing state of improvement, but Grantors shall maintain the road at its present state of improvement at the joint expense of the parties as herein provided.

(e) The parties agree that the duration of this agreement is conditioned upon Grantees' continuing need for the easement and right-of-way. At such time as Grantees obtain or secure alternative access to the property described in the agreement or, in the alternative, elect to abandon the easement and right-of-way, Grantees shall tender written termination to this effect to the Grantors. This termination shall become final upon the delivery of a quitclaim deed by Grantees, conveying Grantees full interest in the easement and right-of-way, together with full payment for all maintenance expenses (described in Section 3 of this agreement) accrued up until the date of the tender of written termination. Upon satisfaction of the above conditions, all Grantees' interest in the easement and right-of-way, as well as their obligations for maintenance will be extinguished and, from that day forward, Grantees must solely utilize their alternative access to their property.

3. Rights and Duties of the Parties.

(a) Wilcoxes shall perform all required maintenance work on the portion of the road described above beginning at the

gate near Little Horse Canyon and on up to Gooseberry Canyon at the joint expense of Wilcoxes and Grantees. Wilcoxes shall pay 80% and Grantees shall pay 20% of the maintenance costs and Grantees, upon request, shall receive an accounting indicating how this money has been expended. Wilcoxes are under no obligation to maintain the road beyond Gooseberry Canyon and Grantees shall have the sole responsibility to maintain their road section from that point up to and upon Grantees' property at Grantees' sole expense. If improvements to the section of the road from Little Horse Canyon up to Gooseberry Canyon are contemplated beyond those necessitated by normal maintenance, Wilcoxes shall provide Grantees with reasonable notice of these contemplated improvements prior to their implementation. Additionally, Wilcoxes shall have the right to review and approve Grantees' plans with regard to the improvement and maintenance of the section of road from Gooseberry Canyon up to the boundary of Grantees' property, which approval shall be withheld only if it appears reasonably likely that implementation of Grantees' plans for improvement or maintenance will detrimentally impact Wilcoxes property.

(b) Wilcoxes shall be entitled to retain the locked gate at the junction of Little Horse Canyon with Range Creek Canyon and shall maintain the same with the right to change locks on the gate at any time, and shall have the exclusive right, except as may be provided for herein, to control the distribution of keys to the lock on the gate. Grantees shall be given a key for their use, and may give a key to the locked gate at the junction of Little Horse Canyon and Range Creek Canyon to their guests and invitees, but Grantees shall at all times retain control over the use and distribution to the public at large, or to individuals or entities beyond this immediate control.

(c) Grantees shall have the right to have tradesmen or materialmen take material and equipment to Grantees' property over this easement as may be reasonably required by Grantees. In the event Grantees provide keys to the locked gate or gates to tradesmen or materialmen, Grantees shall ensure that the keys will

not be further distributed by them, and Grantees shall retrieve the keys upon the cessation of their work on Grantees' property.

(d) Grantees shall police the activities of Grantees' guests and invitees on their property and shall not allow their guests and invitees to litter Grantors' property, nor to hunt, fish, hike, ride horses, motorbikes, snowmobiles or other motorized vehicles, or otherwise trespass or commit waste upon Grantors' premises. Grantees and Grantees' guests and invitees shall stay upon the road described above and shall not travel upon any other lands or roads owned by Grantors.

(e) The gate at the junction of Little Horse Canyon with Range Creek Canyon shall remain closed and locked at all times and Grantees shall ensure that Grantees' guests and invitees shall close any other gates along the above-described easement to avoid the mixing of herds of cattle and the disruption of Grantors' livestock operation.

(f) It is mutually acknowledged that Grantees may wish to lease a portion of the property described above to various livestockmen as summer grazing land. Grantors agree to give their permission to these lessees, upon request and upon year by year basis, which request for permission shall be withheld or revoked only for good cause. The lessee (licensee) shall be entitled to use the road to trail livestock to and from Grantees' land and to occasionally inspect their livestock, provided that these lessees shall be required to coordinate their activities with Grantors and required to enter into written license agreements with Grantors, which shall give the terms and conditions of the lessees access and right of travel over Grantor's road.

4. Effect on Current Litigation Between the Parties.
Grantees shall formally withdraw and dismiss with prejudice any case currently pending in the Federal District Court of the State of Utah against the parties to this agreement that arose from the dispute adjudicated in Civil No. C-77-0412. Additionally, Grantees shall formally withdraw and dismiss with prejudice Civil No. 13103, which action for condemnation is currently stayed in

the Seventh Judicial District Court for Carbon County, State of Utah.

5. Lessee's Right of Enforcement. The parties mutually acknowledge that the Wilcoxes are leasing certain lands owned by Kaiser Steel Corporation in Range Creek Canyon. As the Lessee, Wilcoxes have the possessory interest in the property and the right to enforce the terms and conditions of this agreement against Grantees and Grantees' successors and assigns in connection with Grantees' use of this easement over Kaiser's property. This right of enforcement shall exist throughout the term of the Wilcoxes' lease with Kaiser Steel Corporation and any extensions thereof.

6. Default. Any material default by Grantees in the performance of any covenant or condition contained herein which is not cured within 60 days of the receipt of written notice of the default of Grantees, shall constitute a major default under this agreement. Grantors shall thereafter be entitled to pursue any remedy available to Grantor at law or in equity to enforce the terms and conditions hereof. Grantors' failure to assert any breach or the waiver of any breach or default by Grantees shall not preclude Grantors from asserting a subsequent breach of this agreement, and efforts to enforce the same.

7. Notice. All required notices shall be given to the parties hereto in writing and shall be mailed, postage prepaid, to the parties at the following addresses which may be changed from time to time:

GRANTEES:

Donald I. Dennis
P.O. Box 97
Bullard, Texas 75757

American Plasti-Plate Corporation
Route #4, Box 175B
Highway 69, South
Tyler, Texas 75701

GRANTORS:

Ray Wilcox & Sons
c/o Don Wilcox
P.O. Box 139
Green River, Utah 84525

Kaiser Steel Corporation
c/o George M. Perry
Vice President and General Counsel
Kaiser Steel Corporation
9400 Cherry Avenue
Fontana, California 92335

Steven E. Clyde, Esquire
CLYDE, PRATT, GIBBS & CAHOON
200 American Savings Plaza
77 West 200 South
Salt Lake City, Utah 84101

8. Costs and Attorney's Fees. In the event either party defaults in the performance of the covenants and conditions contained herein, the defaulting party hereby agrees to pay all costs including a reasonable attorney's fee, incurred by the party enforcing the terms and provisions of this agreement, whether enforcement is through litigation or otherwise.


9. Binding Effect. This right-of-way and easement agreement shall be recorded with the County Recorder of Carbon County and upon recordation shall become a covenant running with the land, and shall bind the parties hereto, their heirs, successors, administrators and assigns.

10. Choice of Law. The parties mutually agree that the laws of the State of Utah shall govern and control all questions of construction, interpretation and enforcement of this agreement.

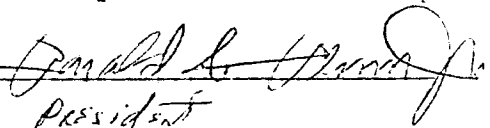
11. Integration. The foregoing constitutes the full and complete agreement by and between the parties and shall supersede all prior oral or written discussions or representations by and between the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands
the day and year set forth above.

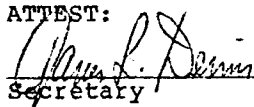
GRANTEES:

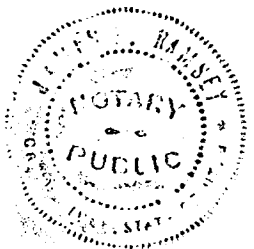

Donald I. Dennis

AMERICAN PLASTI-PLATE CORPORATION,
a Texas corporation

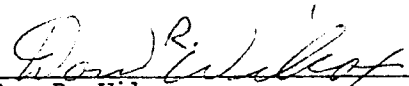
By 
Its President

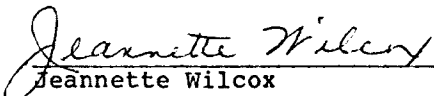
ATTEST:

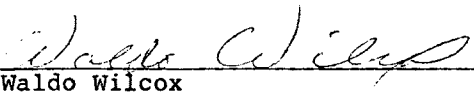

Secretary




GRANTORS:

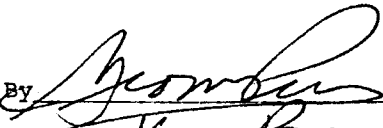

Don R. Wilcox


Jeannette Wilcox


Waldo Wilcox


Julia Wilcox

KAISER STEEL CORPORATION,

By 
Its Vice Presidents

ATTEST:


Secretary



STATE OF TEXAS)
)
) :ss.
COUNTY OF Smith)

On this 17 day of May, 1983, personally appeared before me DONALD I. DENNIS, the signer of the within instrument, who duly acknowledged to me that he executed the same.

Biller Sadler
NOTARY PUBLIC
Residing at: Smith Co.

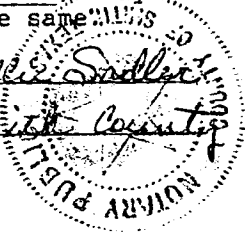


My Commission Expires:
3-18-85

STATE OF TEXAS)
)
) :ss.
COUNTY OF _____)

On this 17 day of May, 1983, personally appeared before me and, who being by me duly sworn did say that the President and Secretary of AMERICAN PLASTI-PLATE CORPORATION, and that the within and foregoing instrument was signed in behalf of said corporation, and the said Ben Bick, duly acknowledged to me that said corporation executed the same.

Biller Sadler
NOTARY PUBLIC
Residing at: Smith County

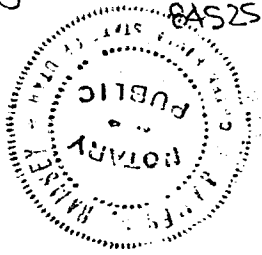


My Commission Expires:
3-18-85

STATE OF UTAH)
)
) :ss.
COUNTY OF Emery)

On this 23rd day of June, 1983, personally appeared before me DON R. WILCOX and JEANETTE WILCOX, the signers of the within instrument, who duly acknowledge to me that they executed the same.

James Ramsay
NOTARY PUBLIC
Residing at: Green River, Utah

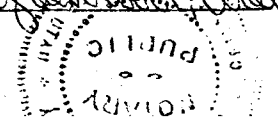


My Commission Expires:
October 1983

STATE OF UTAH)
)
) :ss.
COUNTY OF Emery)

On the 23rd day of June, 1983, personally appeared before me WALDO WILCOX AND JULIA WILCOX, the signers of the within instrument, who duly acknowledged to me that they executed the same.

James Ramsay
NOTARY PUBLIC
Residing At: Green River, Utah



My Commission Expires:
October 1983

STATE OF California
COUNTY OF San Bernardino :ss.

On this 21st day of April, 1983, personally appeared before me and, who being by me duly sworn did say that the Vice President of KAISER STEEL CORPORATION, and that the within and foregoing instrument was signed in behalf of said corporation, and the said Vice President, duly acknowledged to me that said Corporation executed the same.

Judith S. Gilbert
NOTARY PUBLIC
Residing at: San Bernardino

My Commission Expires:
November 22, 1985

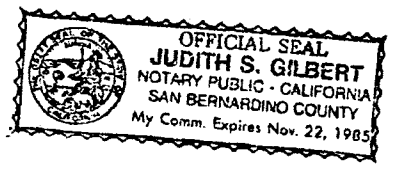


EXHIBIT "A"

Exhibit A



ENGINEERING CONSULTING ENGINEERS & SURVEYORS

777 SOUTH STATE, OREM, UTAH 84057

TELEPHONE (801) 225-7474

September 28, 1978

Donald Dennis
330 S. 300 E.
Salt Lake City, Utah 84111

Dear Sir:

The following is the description of our road traverse:

DESCRIPTION:

Commencing at a point in Gate located 2670.42 feet South and 1505.83 feet East of the Northwest Corner of Section 33, Township 15 South, Range 15 East, Salt Lake Base and Meridian; thence along the Center Line of a mountain road as follows: North 13°00'00" West 716.05 feet; North 18°34'24" East 247.60 feet; North 16°12'48" West 898.50 feet; North 12°33'24" West 896.70 feet to a point located 977.80 feet East of the said Northwest Corner of Section 33; North 40°59'12" West 694.49 feet; North 06°57'12" West 314.50 feet; North 39°29'00" West 204.40 feet; North 44°46'00" West 447.75 feet; North 21°25'36" West 189.50 feet; North 01°38'30" East 327.25 feet; North 21°33'48" West 461.20 feet; North 43°46'30" West 488.85 feet; North 75°47'12" West 369.40 feet; North 44°35'30" West 240.30 feet; North 09°48'48" East 430.30 feet; North 17°31'56" West 736.90 feet; North 40°22'54" West 480.07 feet; North 21°52'42" West 230.80 feet; North 54°53'36" West 268.70 feet; North 53°36'26" West 323.66 feet; North 36°26'36" West 887.30 feet; North 01°41'24" West 262.18 feet; North 19°33'24" West 467.40 feet; North 29°11'18" West 26.15 feet; North 13°56'42" West 193.60 feet; North 38°23'00" West 179.70 feet; North 04°56'06" West 204.00 feet; North 24°43'06" West 389.30 feet; North 07°31'57" West 954.29 feet; North 00°35'15" East 155.43 feet; North 16°47'51" West 817.29 feet; North 31°48'21" West 91.80 feet; North 11°03'45" West 697.43 feet; North 11°47'33" East 499.87 feet; North 27°16'27" West 602.31 feet to a point located East 1618.56 feet and 301.83 feet North 27°16'27" West of the Southwest Corner of Section 17; North 47°47'33" West 420.90 feet; North 37°06'33" West 261.35 feet; North 79°42'03" West 266.15 feet; North 48°16'03" West 352.25 feet; South 56°50'15" West 528.42 feet; North 72°47'03" West 70.65 feet to a point located North 76.02 feet and North 72°47'03" West 24.89 feet from the said Southwest Corner of Section 17; North 56°43'45" West 502.82 feet; North 33°49'15" West 358.90 feet; North 38°18'39" West 432.75 feet; North 19°36'51" West 188.30 feet; North 47°25'21" West 297.20 feet; North 39°44'27" West 281.30 feet; North 43°28'24" West 612.60 feet; North 70°31'24" West 328.45 feet; North 24°58'30" West 200.40 feet; North 01°21'42" West 821.75 feet; North 15°36'36" East 194.85 feet; North 01°06'20" West 200.75 feet; North 26°26'24" West 482.50 feet; North 42°19'24" West 252.93 feet; North 53°23'12" West 203.70 feet; North 41°56'30" West 443.15 feet; North 50°50'42" West 467.50 feet; North 35°55'00" West 398.75 feet; North 19°57'54" West 211.10 feet; North 69°37'54" West 189.50 feet; North

PLAINTIFF'S EXHIBIT P-6

MEMBER OF AMERICAN



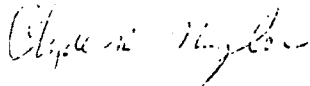
CONSULTING ENGINEERS COUNCIL

OREM ZENITH 980

Ltr, Donald Den. , 9-28-78, 2/2

49°59'06" West 481.10 feet; North 57°00'24" West 252.45 feet; South 86°36'36"
West 164.40 feet; North 58°53'59" West 570.20 feet; South 80°48'01" West 339.90
feet; North 70°03'47" West 157.50 feet; South 62°28'55" West 339.60 feet; North
82°37'29" West 131.60 feet; South 71°51'25" West 360.75 feet; South 65°48'25"
West 133.20 feet; North 77°31'23" West 159.70 feet; North 84°32'29" West 711.40
feet; South 86°34'31" West 184.75 feet; North 67°06'17" West 295.70 feet; North
87°52'47" West 383.40 feet; North 55°33'05" West 334.20 feet to a point located
North 1701.84 feet and West 3129.05 feet from the Southeast Corner of Section 12,
Township 15 South, Range 14 East, Salt Lake Base and Meridian.

Sincerely,



CLYDE R. NAYLOR
Professional Engineer

k