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WASATCH COUNTY RECORDER-JOE DEAN HUBER
1994 SEP 14 11:48 AM FEE \$1.00 BY PA
REQUEST: WASATCH COUNTY SHERIFF

IN THE FOURTH JUDICIAL DISTRICT COURT OF WASATCH COUNTY
STATE OF UTAH

HEBER CITY and WASATCH COUNTY,)	<i>Amended</i>
)	
Plaintiffs,)	
)	
vs.)	Civil No. 6414
)	
CLYE L. ROWLEY,)	
DOROTHY L. BAIRD,)	
Trustee of the Dorothy L. Baird)	
Family Trust, et al.,)	
)	
Defendants.)	

Based upon the stipulations of the parties and the Settlement Agreement filed herein by the parties, with respect to plaintiffs and defendant Dorothy L. Baird, as Trustee of the Dorothy L. Baird Family Living Trust, and the Court being fully apprised in this matter, now enters its Order and Judgment as follows:

JUDGMENT is hereby awarded to the parties as follows:

1. Plaintiffs shall be awarded jointly a non-exclusive right-of-way and easement over that property described in Exhibit "A", by reference made a part hereof (the "East Parcel"), for use

as a roadway and access to, and for the repair and maintenance of, the drainage channel lying adjacent thereto immediately to the south of the East Parcel, together with the right to place gates along said right-of-way at either end thereof, subject to the conditions and covenants set forth herein.

2. Plaintiffs shall be and hereby are awarded jointly all right, title and interest, without warranty, in and to that property described at Exhibit "B", by reference made a part hereof (the "West Parcel").

3. Plaintiffs shall be required to do the following:

a. Plaintiffs shall, on or before June 1, 1988, at their sole expense, relocate the culinary waterline hydrant now existing on the north side of the West Parcel and place it to the south side thereof on defendant's property, using the same hydrant as now exists or replace such hydrant with another of similar or better grade or quality.

b. Plaintiff Heber City shall and hereby does agree to provide culinary water service to the West Parcel through the waterline now existing and described at paragraph "a" above. Such water service shall be continuous and uninterrupted and shall be provided at the same rates and charges as provided to all other non-resident customers; provided that defendant agrees to pay for such service in the normal course, and be governed by the same regulations as other non-residents, and that

to the extent limited by ordinance or constitution, defendant's water supply shall be limited to "surplus" water. Defendants shall have the right to enlarge the use of such water from the prior stock watering privilege to a quantity equivalent to a one-family residence. Plaintiff shall not be responsible for maintenance of any water line beyond existing city water meters.

c. If and when flood irrigation is restored to defendant's land, plaintiffs shall restore and replace a diversion box with headgates which did lie immediately north of the inverse siphon at the southeast corner of the parcel of property described at Exhibit "C", and shall restore any ditches to the diversion box. Plaintiffs shall restore and replace said diversion box with headgates and ditches to a condition at least equal to that existing prior to the beginning of plaintiffs' construction of the drainage channel. Plaintiffs may satisfy the requirement for restoration of the diversion box by installation of a wood diversion box with headgates.

4. Defendant is hereby awarded the sum of \$10,307.00 as full payment for the land taken hereunder and for all other damages incurred by defendant and at issue herein. Defendant has already been paid said sum and no additional compensation shall be paid to defendant.

5. Plaintiffs shall be bound by the following covenants that shall run with the land of defendant and for so

long as plaintiffs and plaintiffs' successors or assigns shall own any interest in the East Parcel or shall continue to hold or use the drainage channel:

a. Plaintiffs shall maintain the inverse siphon culvert which is located at or near the south and east corner of that property described at Exhibit "C", by reference made a part hereof, perpetually and in perpetuity and for so long as plaintiffs or their successors shall maintain the drainage channel running along the southernmost boundary of the property described in Exhibit "C". The term "maintain" as used herein shall include, but shall not be limited to, cleaning of said culvert, maintaining said culvert in a good and operable condition so as to allow the free flow and passage of irrigation waters in adequate quantities based on historic use (any use prior to the date hereof), repair and replacement of said culvert as may be reasonably necessary and emergency cleaning, maintenance or repair as may be necessary in the event of clogging or blockage during periods in which defendants or defendants' successors or assigns are using said siphon in irrigating the land described in Exhibit "C". It is expressly understood that the purpose of the siphon is to continue the flow and use of irrigation waters to defendants' lands.

b. Plaintiffs acknowledge that prior to the construction of their drainage channel, the East Parcel provided

to defendants access to their property described in Exhibit "C" which was generally flat, level and usable for the full 16.5-foot width thereof. Plaintiffs use will increase the burdens on the East Parcel. Plaintiffs shall maintain the East Parcel in a generally level, passable condition and shall maintain said East Parcel at a width of at least 16.5 feet of usable surface. To the extent that plaintiffs' drainage channel shall cause weakness to the edges of the East Parcel or shall cause the loss of area to the East Parcel, plaintiffs shall shore-up, strengthen and stabilize the walls of the drainage channel in order to fulfill this covenant for maintenance. To the extent plaintiffs place gates at either end of the East Parcel, plaintiffs shall provide for and insure that the openings thereof or access through such gates shall be at least 16.5 feet in width. To the extent that the gate at the east end of the East Parcel does not provide a 16.5 foot opening, defendant's right to enlarge the opening shall not become operative or vest until defendant can establish a real need.

c. Plaintiffs shall not object to the placement or extension by defendant or defendant's successors or assigns of utilities and services to the defendant's remaining property which services or utilities may run underneath culverts or the drainage channel constructed by plaintiffs. Plaintiffs are not hereby waiving any rights or responsibilities to control or

object to the zoning or re-zoning of defendant's lands, but are hereby waiving any rights to object to extension of utilities and services as provided herein; provided that such placement or extension of utilities and services is properly engineered and constructed, all in accordance with applicable zoning, building and health laws, ordinances and regulations.

d. Plaintiffs will not object to the placement of a vehicle or pedestrian bridge across the drainage channel by defendant or defendant's successors or assigns; provided that such bridge, if constructed, complies with all applicable building and construction standards and does not provide an obstruction to the flow of waters in said drainage channel. The maximum flow of waters for which defendant or its successors must design such a bridge shall be 225 cubic feet per second.

e. Plaintiffs agree not to classify defendant's remaining land as being in a flood zone or flood plain by virtue of the proximity of said land to the drainage channel constructed by plaintiffs.

DATED:

January 19, 1989

BY THE COURT:

Ronald K. Taylor
DISTRICT JUDGE

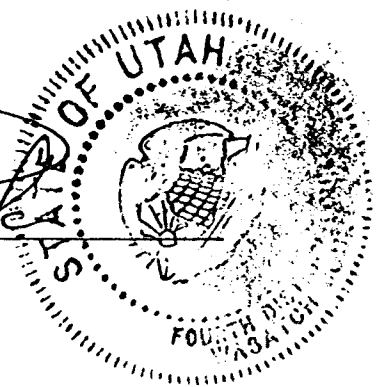


EXHIBIT "A"

EAST PARCEL

Real property located in Wasatch County, Utah, and described as follows:

Beginning at a point having a State Plane coordinates of X = 2,024,747.09 and Y = 786,163.55 (Utah Central Zone), and said point of beginning also being described as being situated 407.69 feet South and 753.63 feet East of the brass capped Northwest corner of Section 8, Township 4 South, Range 5 East, Salt Lake Base & Meridian; thence North 89°43'52" East 768.27 feet; thence continuing North 89°43'52" East 31.67 feet; thence South 34.52 feet; thence South 89°57'26" West 30.00 feet; thence North 2°47' West 17.8 feet; thence South 89°43'52" West 755.72 feet, more or less, to the northeasterly right-of-way line of US Highway 40; thence along said right-of-way line North 38°52'30" West 21.28 feet to the Point of Beginning. Area: 0.291 acres, more or less. Basis of Bearing: Utah State Plane Coordinate System, Central Zone.

TOGETHER with the right to fence the northerly side thereof until such time as the owner or its successors should elect to widen said road.

EXHIBIT "B"

WEST PARCEL

Real property located in Wasatch County, Utah, and described as follows:

Beginning at a fence corner in the east right-of-way fence line of a county road; said point of beginning having State Plane coordinates of X = 2,024,014.62 and Y = 786,078.71 (Utah Central Zone), and said point of beginning also being described as being situated South 492.56 feet and East 20.94 feet from the brass capped Northwest corner of Section 8, Township 4 South, Range 5 East, Salt Lake Base & Meridian; thence North 89°55'00" East 635.36 feet along the grantor's north boundary fence line to the southwesterly right-of-way line of US Highway 40; thence South 38°07'30" East 38.42 feet along said right-of-way line to a boundary fence line; thence South 82°17'54" West 35.80 feet along said boundary fence line to a fence corner; thence South 89°55'00" West 580.32 feet; thence South 59°55'00" West 50.07 feet to the east right-of-way fence line of the above-mentioned county road; thence North 0°02'42" East 60.04 feet along said fence line to the point of beginning. Area: 0.532 acres, more or less. Basis of Bearing: Utah State Plane Coordinate System, Central Zone.

EXHIBIT "C"

Parcel of real property located in Wasatch County, Utah, and described as follows:

Beginning at a point which is 1896 feet East of the Northwest corner of Section 8 in Township 4 South of Range 5 East of the Salt Lake Base and Meridian; and running thence East 744.0 feet; thence South 27.0 rods; thence West 68.0 rods; thence North approximately 2.00 rods; thence Northeasterly to the place of beginning. Area 10.00 acres, more or less.