

WHEN RECORDED, RETURN TO:  
MR. M. PAUL MERTLICH  
8105 Willow Stream Drive  
Sandy, Utah 84070

Recorded JUN 11 1973 at 9:25 A m.

Request of \_\_\_\_\_

Fee Paid JERACEAN MARTIN

Recorder, Salt Lake County, Utah

\$ 9.00 By [Signature] Deputy

2545965

**AGREEMENT**

THIS AGREEMENT made and entered into this 31st day of May, 1973, by and between NICKLE IRRIGATION COMPANY, a corporation hereinafter called "Irrigation Company," and LOREN C. ZITTING and SYLVIA ZITTING, his wife, and MARVIN C. ZITTING and RHEA S. ZITTING, his wife, by JOSEPH C. ZITTING, their attorney in fact, hereinafter referred to as "Builder";

**WITNESSETH:**

WHEREAS, the Irrigation Company present has an easement of prescriptive rights over and across that certain piece of property which has been or will be designated by Salt Lake County as the Creek Road Terrace, Plat C, and Lots 228, 229 and 230 Plat B, and fee title to said property is in the Builder; and,

WHEREAS, in the interest of developing said lands for subdivision purposes, it is advisable and necessary that the easement owned and held by Irrigation Company be terminated and removed to another location, which plan the parties are mutually in accord and agreement with;

NOW, THEREFORE, in consideration of the premises and other good and valuable considerations in hand paid to each party by the other, the receipt and sufficiency of which is hereby acknowledged, Irrigation Company does by these presents release, quit-claim and convey unto Builder all of its right, title, interest and estate which now exists or has heretofore existed in favor of Irrigation Company by virtue of the old existing easement over and across the premises first hereinabove described by prescriptive use and right, which easement is more particularly described as follows:

LAW OFFICES OF  
MOFFAT, WELLING, PAULSEN & BURNINGHAM  
A PROFESSIONAL CORPORATION  
9TH FLOOR TRIBUNE BUILDING  
143 SOUTH MAIN STREET  
SALT LAKE CITY, UTAH 84111

200-3396 REC. 325

Fifteen feet on either side of the following described center line:

Beginning at a point which is South 0° 11' 25" West 90.00 feet from the Northwest corner of Lot 228, Creek Road Terrace Plat B, which point is South 0° 11' 25" West 736.079 feet from the center of Section 33, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 79° 52' 10" East 77.59 feet; thence South 61° 05' East 784.56 feet; thence South 25° 27' 35" East 150.91 feet; thence South 89° 57' 02" East 93.07 feet; to a point North 29° 30' East 65.00 feet from the Southwest corner of Lot 18, Creek Road Terrace Plat A.

Builder does, in consideration of the premises, give and grant unto the Irrigation Company a perpetual easement and right of way fifteen feet on both sides of the center line of said ditch, which is described as follows:

Beginning at a point South 0° 11' 25" West 736.08 feet along the quarter section line from the Northwest corner of the Southeast quarter of Section 33, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 79° 52' 10" East 77.59 feet; thence South 61° 05' East 765.48 feet; thence South 50° 55' 10" East 226.75 feet; to a point North 29° 30' East 68.00 feet from the Southwest corner of Lot 18, Creek Road Terrace Plat B located in said Section 33.

Said perpetual easement and right of way to be used by Irrigation Company for conducting over and across the same the flow of water of the Nickle Irrigation Company with the right to enter upon said easement and right of way for all purposes incidental to the construction, maintenance and repair of same as may be deemed necessary and expedient by Irrigation Company.

It is explicitly agreed between the parties hereto that the conditions of the grant of this easement as hereinafter set forth shall become a covenant running with the land, and shall be binding upon any and all persons who acquire any interest in

and to the property upon which said easement is impressed or any of the following lots in Creek Road Terrace Plat C:

All of Lots 228, 229, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 323, 324, 325, 326, 327, 328, 329, and 330, or any lots substituted for the above mentioned lots in the event of the filing of an amended plat for said Creek Road Terrace Plat C, all as recorded in the office of the County Recorder of Salt Lake County, State of Utah, and generally to all lots in said subdivision.

Said Covenants and conditions are as follows:

1. In changing the location of the ditch, the water shall enter the land of Builder at the same point and at the same grade after the change in the course of the ditch as before such change, and shall leave the property at the same point and at the same grade after the change in the course of the ditch as before such change.
2. The new ditch shall impose upon Irrigation Company no additional burdens in repairs and maintenance over those burdens and expenses on the old ditch, and Builder, their successors, heirs, assigns and subsequent owners of the properties subject to this easement agree to save and hold Irrigation Company harmless from any additional expenses or burdens in repairs to or maintenance due to the relocating of the ditch, for a period of four years from the date hereof.
3. The new location of the ditch shall not impose any greater hazards or risks upon Irrigation Company than the hazards and risks imposed upon Irrigation Company as the ditch now exists and the Builders, their heirs, successors and subsequent

owners of the lots in Creek Road Terrace Plat C above listed as bordering on the ditch and agree to same and hold Irrigation Company harmless from any new or greater hazards or risks imposed by relocating the ditch.

4. The Builder agrees to reimburse Irrigation Company for its out-of-pocket expenses incurred in effecting the operation and execution of this Agreement, and in effecting the relocation of the ditch, including costs of inspection of the new location of the ditch by employees of Irrigation Company, and any expenses incident to calling a special meeting of the Board of Directors for approval of such change, if such a special meeting is called.

5. Parties of the Builder, their heirs, successors and assigns, and as a covenant running with the land which shall be binding upon any subsequent persons acquiring any interest in and to all of Lots 228, 229, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 323, 324, 325, 326, 327, 328, 329, and 330, Creek Road Terrace Plat C, according to the official plat thereof, agree to indemnify, save, and hold harmless Irrigation Company for a period of four years from date hereof, from all claims of any nature whatsoever arising out of or connected with the relocation of the ditch, the maintenance thereof, seepage therefrom or personal injury caused or occasioned by reason of the existence, and

IT IS further agreed that the building restrictions and covenants recorded against the Lots in Creek Road Terrace Plat C shall contain a provision that the new owners of Lots in said subdivision shall not do anything to alter, change or destroy any



banks of the irrigation ditch without the express consent of said Irrigation Company and shall not do anything which will impede or change the flow of the water in said irrigation ditch.

6. Builder agrees that all deeds, or conveyances of any interest in and to any of the specific lots listed above shall contain as a covenant running with the land a reference to this agreement, including the recording data thereon and shall specifically state that the conveyance is subject to the provision of this agreement, which constitutes a covenant running with the land.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and have caused these presents to be executed, the day and year first above written.

NICKLE IRRIGATION COMPANY

By Lyle J. Smart  
Lyle J. Smart, President

ATTEST:

Irvin H. Smart  
Secretary

LOREN C. ZITTING and SYLVIA ZITTING,  
his wife; MARVIN C. ZITTING and  
RHEA S. ZITTING, his wife

By Joseph C. Zitting  
Joseph C. Zitting,  
Their attorney in fact

STATE OF UTAH )  
                  ) ss  
COUNTY OF SALT LAKE )

On the 31<sup>st</sup> day of May, 1973, personally appeared before me, Lyle J. Smart, who being by me first duly sworn, did acknowledge to me that he is the President of NICKLE IRRIGATION COMPANY, and that the foregoing instrument was executed on behalf of said corporation by him pursuant to authority vested

BUM 336 P. 330