

WHEN RECORDED, MAIL TO:  
Joshua L. Lee  
BENNETT TUELLER JOHNSON & DEERE  
3165 East Millrock Drive, Suite 500  
Salt Lake City, Utah 84121  
(801) 438-2000

Tax Parcel Nos. 35:064:0031  
35:064:0032


**NOTICE OF IMPLIED EASEMENT**

Notice is hereby given of a Ruling and Order Granting Partial Motion for Summary Judgment (the "**Order**"), issued on January 27, 2022 by the Fourth Judicial District Court of the State of Utah, under which Vista Heights Investments, LLC was awarded an easement by implication over a portion of the following described real property, standing on the records of Utah County, and particularly described below. A copy of the Order is appended hereto.

Parcel 1:  
LOT 31, PLAT A, BILLINGS TECHNOLOGY PARK REVISED SUB.  
Tax ID No. 35:064:0031

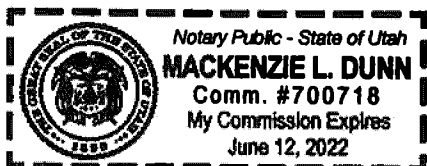
Parcel 2:  
LOT 32, PLAT A, BILLINGS TECHNOLOGY PARK REVISED SUB.  
Tax ID No. 35:064:0032

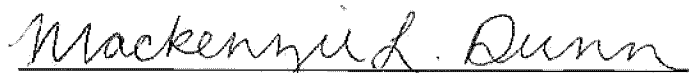
DATED this 1st day of June, 2022.

  
\_\_\_\_\_  
Joshua L. Lee  
BENNETT TUELLER JOHNSON & DEERE  
3165 East Millrock Drive, Suite 500  
Salt Lake City, Utah 84121  
Telephone: (801) 438-2000

STATE OF UTAH                    )  
                                          :SS  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 1st day of June, 2022, by Joshua L. Lee.



  
\_\_\_\_\_  
NOTARY PUBLIC

**IN THE FOURTH JUDICIAL DISTRICT COURT  
IN AND FOR UTAH COUNTY, STATE OF UTAH**

<p><b>440 NORTH SF, LLC,</b>  Plaintiff,</p> <p>vs.</p> <p><b>VISTA HEIGHTS INVESTMENTS, LLC, a Utah limited liability company; MEGADIAMOND, a Schlumberger company; NOVATEK, INC., HALL PROPERTY HOLDINGS, LLC (f/k/a NEW VISTAS PROPERTY HOLDINGS, LLC; DRH HOLDINGS, LLC, a Utah limited liability company, DAVID HALL, an individual, and JOHN DOES 1-20.</b></p> <p style="text-align: center;">Defendants.</p>	<p><b>RULING AND ORDER GRANTING PARTIAL MOTION FOR SUMMARY JUDGMENT</b></p>   <p>Case No. 210400480</p>   <p>Judge Robert A. Lund</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------

On September 27, 2021, Defendants filed their motion for partial summary judgment. Plaintiff filed its opposition to the motion on November 12, 2021. Defendants then filed a request to submit on December 16, 2021. Neither party requested oral argument. Being now fully advised in the premises, the court enters the following Ruling and Order pursuant to Rule 56 of the Utah Rules of Civil Procedure.

**UNDISPUTED FACTS**

The court finds that no genuine dispute could exist regarding the following facts, either because those facts are uncontroverted by the record evidence or because Plaintiff lacks a sufficient basis in knowledge to reasonably dispute them:

1. Parcel A is a tract of land located at 2185 Tracy Hall Parkway in Provo, Utah.
2. Parcel B is a tract of land located at 2202 S. Mountain Vista Lane in Provo, Utah.
3. Parcels A and B are adjoining pieces of property, with Parcel A on the west and Parcel B on the east.
4. Since as early as 1978, Union Pacific Railroad recorded an easement on Parcel B along the eastern boundary of Parcel A. Union Pacific laid railroad tracks across the entire easement.
5. Contemporaneous with the railroad easement, a publicly recorded irrigation easement also existed on Parcel B abutting the railroad easement.
6. David Hall, one of the Defendants herein, is an individual who historically has owned and operated multiple businesses in Utah County, several of which are also listed as defendants in this action. One of Mr. Hall's companies purchased Parcel A in 1987.
7. Mr. Hall also owned another company called Novatek, Inc. In 2011, Novatek purchased Parcel A.
8. In 2012, Novatek purchased Parcel B.
9. In 2012, Mr. Hall, through Novatek, built a facility on Parcel A used to construct synthetic and polycrystalline diamonds (referred to hereafter as the PDC business).
10. Novatek constructed a Research and Development (R & D) space located on the east side of the building. The large facility abuts the eastern boundary of Parcel A. Only a few feet exist between the building and the property line.
11. Novatek added two large overhead doors in order to access to the R & D space.
12. In the course of its business, Novatek used heavy equipment along the roadway behind the business, including semi-trucks and industrial capacity fork lifts to move multi-ton granite boulders through the overhead doors at the R & D space.

13. The roadway used to accommodate that business requirement corresponds to a strip of land on the far western boundary of parcel B, approximately 38 feet wide and 210 feet long. That narrow tract of land constitutes the subject of the instant lawsuit (hereinafter referred to as the easement) and corresponds to the approximate area of the originally recorded right of way held by Union Pacific Railroad.
14. In 2012, Novatek poured asphalt over the railroad tracks, creating a permanent road, in order to better facilitate access to the R & D space by means of the heavy equipment used during the ordinary operation of the business. Novatek used the permanent road in a continuously open, obvious, and visible manner.
15. In 2015, Novatek sold its PDC business to MegaDiamond and leased Parcel A to MegaDiamond as well.
16. In 2015, Novatek sold Parcels A and B to New Vistas Property Holdings, another of David Hall's companies.
17. MegaDiamond continued to use the property, including the easement at issue, in the same fashion as did Novatek.
18. In 2018, New Vistas sold Parcel A to Vista Heights who continues to lease Parcel A to MegaDiamond. MegaDiamond continues to use the easement in the same open, obvious, and visible fashion as it always has.
19. In 2018, New Vista conveyed Parcel B to another of Mr. Hall's holding companies, DRH Holdings.
20. In 2020, DRH sold Parcel B to the Plaintiff.

21. When Mr. Hall sold both parcels of property he intended to create an easement on Parcel B for the benefit of Parcel A, and that easement has been used as described above since at least 2012, consistent with Mr. Hall's intention.
22. Since before creation of the easement a fence separated Parcel B from the far east edge of the easement. Thereafter, large metal pipes were laid near fence line. Because of the pipes and fencing, Plaintiff did know, at the time of purchase, that it owed the strip of land associated with the now disputed easement.

### **CONCLUSIONS OF LAW**

1. Unity of title existed as to parcels A and B under the ownership of business entities owned and controlled by David Hall.
2. Unity of title severed when David Hall's companies sold Parcel A to the Vista Heights and parcel B to the Plaintiff.
3. The servitude on Parcel B for the benefit of Parcel A has been apparent, obvious, and visible since long before Plaintiff purchased Parcel B.
4. The implied easement is reasonably necessary to the enjoyment of Parcel A.
5. The easement has been in continuous use by the owners and occupants of Parcel A as needed to conduct their businesses since at least 2012.

### **RULING**

Having established by undisputed facts all of the elements of an implied easement, Defendants are entitled to summary judgment as to Plaintiff's first three causes of action: declaratory judgment, quiet title, and trespass. *Bridge Boq Nac, LLC v. Sof, CNS*, 447 P.3d 1278, 1281 (Utah App. 2019).

Defendants, therefore, are also entitled to summary judgement on their counterclaim for declaratory judgment as to the implied easement. Plaintiff's fourth cause of action for fraudulent nondisclosure remains unresolved.

It is SO ORDERED.

DATED this 27<sup>th</sup> day of January, 2022.



Stamp used at the direction  
of the judge by C Cope

---

JUDGE ROBERT A. LUND  
Fourth District Court