

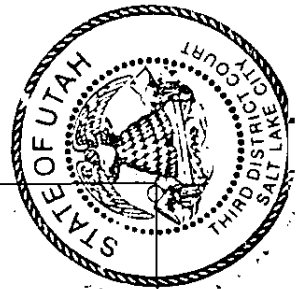
9755944
06/16/2006 04:18 PM \$54.00
Book - 9309 Pg - 4909-4928
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
BACKMAN TITLE SERVICES
BY: ZJM, DEPUTY - WI 20 P.

David L. Barclay (A0200)
RICHARDS, BRANDT, MILLER & NELSON
Attorneys for A and Z Produce Co., a Utah corporation;
A&Z Produce II, L.C., a Utah limited liability
company; Jay Dee Clark; Steven D. Clark;
Scott D. Clark; and A and Z Produce Company
Key Bank Tower, Seventh Floor
50 South Main Street
P.O. Box 2465
Salt Lake City, Utah 84110-2465
Telephone: (801) 531-2000

FILED DISTRICT COURT
Third Judicial District

APR 17 2006

Emily Thompson
SALT LAKE COUNTY
Deputy Clerk



IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

TONY VINA and SHERRY VINA, as
Trustees of the Vina Family Trust,

Plaintiffs,

vs.

A AND Z PRODUCE CO., a Utah
corporation, A&Z PRODUCE II, L.C., a Utah
limited liability company, JAY DEE CLARK,
an individual, STEVEN D. CLARK, an
individual, SCOTT D. CLARK, an individual,
RESCUE MISSION OF SALT LAKE, a Utah
non-profit corporation, and A AND Z
PRODUCE COMPANY, a Utah Partnership,

Defendants.

ORDER, JUDGMENT, AND DECREE

Civil No. 990906672

Judge: Timothy R. Hanson

A AND Z PRODUCE CO., a Utah
corporation, A&Z PRODUCE II, L.C., a Utah

limited liability company; JAY DEE CLARK;
STEVEN D. CLARK; SCOTT D. CLARK;
and A AND Z PRODUCE COMPANY,

Counterclaimants,

vs.

TONY VINA and SHERRY VINA, as
Trustees of The Vina Family Trust,

Counter-Defendants.

A AND Z PRODUCE CO., a Utah
corporation, A&Z Produce II, L.C., a Utah
limited liability company; JAY DEE CLARK;
STEVEN D. CLARK; and SCOTT D.
CLARK,

Third-Party Plaintiffs,

vs.

ALAN MOSS and JANE and JOHN DOES 1-
20,

Third-Party Defendants.

Pursuant to a *Settlement Stipulation* ("**Stipulation**") submitted (i) by the above-captioned Plaintiffs, **TONY VINA and SHERRY VINA, as Trustees of The Vina Family Trust**, by and through their counsel of record, Hirschi Christensen, PLLC, (ii) by **A AND Z PRODUCE CO.**, a Utah corporation, **A&Z PRODUCE II, L.C.**, a Utah limited liability company, **JAY DEE CLARK**, an individual, **STEVEN D. CLARK**, an individual, and **SCOTT D. CLARK**, an

individual, by and through their counsel of record, Richards, Brandt, Miller & Nelson, and (iii) by **ALAN MOSS**, pro se, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. As used in this Order, Judgment, and Decree, the following terms shall have the following meanings:

a. **“A and Z” Produce Co.** shall mean and refer to **A AND Z PRODUCE CO.**, a Utah Corporation also known as *A and Z Produce Company, a Utah Corporation*, and *A & Z Produce, a Utah corporation*.

b. **“A & Z Produce II”** shall mean and refer to **A&Z PRODUCE II, L.C.**, a Utah limited liability company also known as *A & Z Produce II, L.C.*

c. **“A & Z Defendants”** shall mean and refer collectively to **JAY DEE CLARK, STEVEN D. CLARK, SCOTT D. CLARK**, A and Z Produce Co., and A & Z Produce II.

d. **“A & Z Parties”** shall mean and refer to the A & Z Defendants as well as **CLIFTON C. CLARK**.

e. **“A & Z Parcels”** shall mean and refer to Parcel 10, Parcel 12, Parcel 13, Parcel 14, Parcel 16, and Parcel 18, as those parcels of real property are more particularly described in paragraphs 4 through and including 9 below and as the boundaries thereof may be established pursuant to the operation of the doctrine of *boundary by acquiescence* as described in paragraph 13 below.

f. **“Clarks”** shall mean and refer to **JAY DEE CLARK, STEVEN D. CLARK, SCOTT D. CLARK,** and their father, **CLIFTON C. CLARK.**

g. **“Litigation Parcels”** shall mean and refer to Parcel 9, Parcel 10, Parcel 11, Parcel 12, Parcel 13, Parcel 14, Parcel 16, and Parcel 18, as those parcels are more particularly described in paragraphs 3 through and including 10 below and as the boundaries thereof may be established pursuant to the operation of the doctrine of *boundary by acquiescence* as described in paragraph 13 below.

h. **“Mr. Moss”** shall mean and refer to **ALAN MOSS,** an individual.

i. **“Order”** shall mean and refer to this Order, Judgment, and Decree.

j. **“Rescue Mission”** shall mean and refer to **THE RESCUE MISSION OF SALT LAKE.**

k. **“Second Litigation”** shall mean and refer to those proceedings described in paragraph 12 below pending before this Third Judicial District Court bearing Civil No. 030914971, the Honorable Deno Himonas currently presiding.

l. **“Settlement Agreement”** shall mean and refer to the Settlement Agreement heretofore executed and entered into by and between the *Vina Parties*, the *A & Z Parties*, and Mr. Moss settling and resolving, *inter alia*, their disputes in this Litigation and in the Second Litigation regarding the *A & Z Parcels* and the *Vina Parcels*.

m. **“this Litigation”** shall mean and refer to the proceedings in the above-captioned case, Civil No. 990906672, pursuant to which this Order is entered.

- n. **“Vinas”** shall mean and refer collectively to TONY VINA and SHERRYVINA, whose address is 351 West 400 South, Salt Lake City, Utah 84121, both in their individual capacities and in their capacities as TRUSTEES OF THE VINA FAMILY TRUST dated August 17, 1993.
- o. **“Vina Parcels”** shall mean and refer to Parcel 9 and Parcel 17, as those parcels of real property are more particularly described in paragraph 3 below, and as the boundaries thereof may be established pursuant to the operation of the doctrine of *boundary by acquiescence* as described in paragraph 13 below.
- p. **“Vina Trust”** shall mean and refer to THE VINA FAMILY TRUST dated August 17, 1993, including the current and future TRUSTEES thereof.
- q. **“Vina Parties”** shall mean and refer to the Vinas and the Vina Trust.
- r. **“West A & Z Parcels”** shall mean and refer to Parcel 10, Parcel 12, Parcel 13, and Parcel 14, as those parcels of real property are more particularly described in paragraphs 4 through and including 7 below, and as the boundaries thereof may be established pursuant to the operation of the doctrine of *boundary by acquiescence* as described in paragraph 13 below.

The above-defined terms are in addition to any other terms that may be defined within the text of this Order below.

2. On or about February 27, 2004, Mr. Moss executed a *Stipulation Of Alan Moss Accepting Service Of Third-Party Complaint And Agreeing To Be Bound By Court Rulings* by which, among other things, Mr. Moss accepted service in this Litigation of a Third-Party

Complaint upon him and agreed that any determination, ruling, order, or judgment made by the Court in this Litigation affecting, determining, or otherwise adjudicating the respective rights, titles, easements, obligations, rights-of-way, liens, and/or other rights and interests of the A & Z Defendants, the Vina Trust, and the Rescue Mission in and to the Litigation Parcels are, and shall be in perpetuity, fully binding upon Mr. Moss as to whatever rights, titles, easements, rights-of-way, liens, and/or other interests he may claim in and to such Litigation Parcels.

3. The Vina Trust is currently the fee simple owner of record of the property located in Salt Lake County, State of Utah, more particularly described as follows, which property shall sometimes be referred to below as **Parcel 9** in reference to the last digit of its Salt Lake County tax parcel number:

Beginning at a point 32.5 feet North of the Southwest corner of Lot 3, Block 43, Plat A, Salt Lake City Survey and running thence East 47.07 feet to a point in the center line of a spur track; thence South 63°23'30" East 18.3 feet to a point in the center line of spur track; thence South 68°47'30" East 18.78 feet to a point in the center line of spur track; thence South 73°20'30" East 18.84 feet, more or less, to a point in the center line of spur track; thence South 12.13 feet, more or less, to South boundary line of Lot 3; thence East 231 feet to Southeast corner of said Lot 3; thence North 82.5 feet; thence West 330 feet; thence South 50 feet to the place of beginning.

Tax I.D. or Sidwell No.: 15-01-330-009

The Vina Trust is also currently the fee simple owner of record of the property located in Salt Lake County, State of Utah, more particularly described as follows, which property shall sometimes be referred to below as **Parcel 17** in reference to the last two digits of its Salt Lake County tax parcel number:

Beginning at a point 83½ feet West and 147 feet North of the Southeast corner of Lot 2, Block 43, Plat A, Salt Lake City Survey and running thence North 18 feet to the North line of Lot 2; thence East 25¾ feet; thence South 18 feet; thence West 25¾ feet to the point of beginning.

Tax I.D. or Sidwell No.: 15-01-330-017

Parcel 9 and Parcel 17 shall sometimes be referred to in this Order collectively as the “**Vina Parcels**”. In addition, the fee simple title to the Vina Parcels is hereby quieted in the Vina Trust free and clear of any liens, easements, rights-of-way, encumbrances and other interests whatsoever in favor of, and by virtue of, the A & Z Parcels and/or the A & Z Parties, with the exception of the *Limited Commercial Easement in Gross* (“**Limited Commercial Easement**”) more particularly described in paragraph 14 below.

4. A and Z Produce Co. currently owns of record a one-third undivided fee simple interest in tenancy-in-common (with no rights to survivorship) with the Rescue Mission in the property located in Salt Lake County, State of Utah, more particularly described as follows, which property shall sometimes be referred to as **Parcel 10** in reference to the last two digits of its Salt Lake County tax parcel number:

Beginning at the Southwest corner of Lot 3, Block 43, Plat A, Salt Lake City Survey, thence North 32.5 feet, thence East 47.07 feet to a point in the center line of a spur track; thence South 63°23'30" East 18.3 feet to a point in the center line of spur track, thence South 68°47'30" East 18.78 feet to a point in the center line of spur track, thence South 73°20'30" East 18.84 feet more or less to a point in the center line of spur track, thence South 12.13 feet, thence West 99.0 feet to point of beginning.

Tax I.D. or Sidwell No.: 15-01-330-010

The loading dock located on Parcel 10 shall sometimes be referred to below as the “**Parcel 10 Loading Dock**”. The Rescue Mission currently owns of record the other two-thirds tenancy-in-common undivided fee simple interest of Parcel 10. The fee simple ownership of Parcel 10 is hereby quieted as follows:

a. The one-third undivided fee simple interest of A and Z Produce Co. in Parcel 10 is hereby quieted in A and Z Produce Co. free and clear of any liens, easements, rights-of-way, encumbrances and other interests whatsoever in favor of, or by virtue of, the Vina Parcels, the Vina Parties, Mr. Moss, and/or others.

b. The two-thirds, undivided fee simple interest of the Rescue Mission in Parcel 10 is hereby quieted in the Rescue Mission free and clear of any liens, easements, rights-of-way, encumbrances, and other interests whatsoever in favor of, or by virtue of, the Vina Parcels, the Vina Parties, Mr. Moss, and/or others.

5. A and Z Produce Co. is also currently the fee simple owner of record of the property located in Salt Lake County, State of Utah, more particularly described as follows, which property shall sometimes be referred to as **Parcel 12** in reference to the last two digits of its Salt Lake County tax parcel number:

Beginning at the Southwest corner of Lot 2, Block 43, Plat A, Salt Lake City Survey, running thence East 58¼ feet; thence North 99½ feet; thence West 58¼ feet; thence South 99½ feet to the place of beginning.

Together with a perpetual right-of-way for ingress, egress and regress for all purposes over the following strip of ground, to-wit: commencing 99 feet East of the Northwest corner of said Lot 2, running thence South 76 feet; thence West 40¾ feet; thence North 10½ feet; thence East 30¾ feet; thence North 65½ feet; thence East 10 feet, to the place of beginning, to be kept open for loading and

unloading goods, merchandise and other commodities from the platform along the South line of Lot 3, Block 43, Plat A, Salt Lake City Survey, together with the right of maintaining a cover or roof over said platform at the north end of said right-of-way.

Tax I.D. or Sidwell No.: 15-01-330-012

In addition, the fee simple title to **Parcel 12** is hereby quieted in A and Z Produce Co. free and clear of any liens, easements, rights-of-way, encumbrances, and other interests whatsoever in favor of, or by virtue of, the Vina Parcels, the Vina Parties, Mr. Moss and/or others.

6. A and Z Produce Co. is also currently the fee simple owner of record of the property located in Salt Lake County, State of Utah, more particularly described as follows, which property shall sometimes be referred to below as "**Parcel 13**" in reference to the last two digits of its Salt Lake County tax parcel number:

Commencing 58¼ feet East from the Southwest corner of Lot 2, Block 43, Plat A, Salt Lake City Survey, and running thence East 40¾ feet; thence North 89 feet; thence West 40¾ feet; thence South 89 feet to beginning.

Together with a perpetual right-of-way for ingress, egress and regress for all purposes over the following strip of ground, to-wit: commencing 99 feet East of the Northwest corner of said Lot 2, running thence South 76 feet; thence West 40¾ feet; thence North 10½ feet; thence East 30¾ feet; thence North 65½ feet; thence East 10 feet, to the place of beginning, to be kept open for loading and unloading goods, merchandise and other commodities from the platform along the South line of Lot 3, Block 43, Plat A, Salt Lake City Survey, together with the right of maintaining a cover or roof over said platform at the north end of said right-of-way.

Tax I.D. or Sidwell No.: 15-01-330-013

In addition, the fee simple title to **Parcel 13** is hereby quieted in A and Z Produce Co. free and clear of any liens, easements, rights-of-way, encumbrances and other interests whatsoever in favor of or by virtue of, the other Vina Parcels, the Vina Parties, Mr. Moss, and/or others.

7. **JAY DEE CLARK, STEVEN D. CLARK, and SCOTT D. CLARK** are currently the equal co-fee simple owners of record, as tenants-in-common (with no rights of survivorship), of the property located in Salt Lake County, State of Utah, more particularly described as follows, which property shall sometimes be referred to below as **Parcel 14** in reference to the last two digits of its Salt Lake County tax parcel number:

Commencing 83.5 feet West from the Southeast corner of Lot 2, Block 43, Plat "A", Salt Lake City Survey, and running thence West 147.50 feet; thence North 10 rods; thence East 147.50 feet; thence South 10 rods to the point of beginning.

Tax I.D. or Sidwell No.: 15-01-330-014

By the foregoing, it is understood and intended that each of said individuals owns an undivided one-third fee simple interest in tenancy-in-common with the other two of said individuals. In addition, the fee simple title to **Parcel 14** is hereby quieted in **JAY DEE CLARK, STEVEN D. CLARK and SCOTT D. CLARK**, as such co-fee simple owners, free and clear of any liens, easements, rights-of-way, encumbrances and other interests whatsoever in favor of, or by virtue of, the Vina Parcels, the Vina Parties, Mr. Moss, and/or others.

8. **A & Z PRODUCE II** is currently the fee simple owner of record of the property located in Salt Lake County, State of Utah, more particularly described as follows, which

property is sometimes referred to below as **Parcel 16** in reference to the last two digits of the Salt Lake County tax parcel number applicable to at least a portion of that property:

Beginning at a point which lies North 0°02'11" West 182.00 feet and South 89°57'45" West 8.02 feet from the Southeast Corner of Lot 1, Block 43, Plat "A", Salt Lake City Survey and running thence South 0°02'11" East 3.00 feet to a point of curve; thence Southwesterly 0.99 feet along a 1.00 foot radius curve to the right (chord bearing South 28°13'23" West) to a point of tangency, thence South 56°28'58" West 70.00 feet to a point of curve; thence Southwesterly 6.04 feet along a 19.00 foot radius curve to the right (chord bearing South 65°34'58" West) to a point of tangency; thence South 74°40'58" West 19.13 feet; thence North 89°59'04" West 74.24 feet; thence North 9.26 feet; thence South 67°28'30" West 200.02 feet to a point of curve; thence Southerly 72.47 feet along a 61.50 foot radius curve to the left (chord bearing South 33°43'09" West); thence North 0°01'02" West 157.07 feet; thence North 89°57'45" East 57.75 feet; thence North 147.50 feet; thence North 89°57'45" East 198.00 feet; thence South 0°01'02" East 40.00 feet; thence North 89°57'45" East 123.90 feet; thence South 0°02'11" East 90.60 feet to the point of beginning.

Tax I.D. or Sidwell Nos.: 15-01-330-016; 15-01-404-007; 15-01-404-008

In addition, the fee simple title to **Parcel 16** is hereby quieted in A & Z Produce II free and clear of any liens, easements, rights-of-way, encumbrances and other interests whatsoever in favor of, or by virtue of, the Vina Parcels, the Vina Parties, Mr. Moss, and/or others.

9. A and Z Produce Co. is also currently the fee simple owner of record of the property located in Salt Lake County, State of Utah, more particularly described as follows, which property shall sometimes be referred to below as the **Parcel 18** in reference to the last two digits of its Salt Lake County tax parcel number:

Beginning at a point 83½ feet West of the Southeast corner of Lot 2, Block 43, Plat A, Salt Lake City Survey and running thence North 147 feet; thence East 25¾ feet; thence South 147 feet; thence West 25¾ feet to the point of beginning.

Tax I.D. or Sidwell No.: 15-01-330-018

In addition, the fee simple title to **Parcel 18** is hereby quieted in A and Z Produce Co. free and clear of any liens, easements, rights-of-way, encumbrances and other interests whatsoever in favor of, or by virtue of, the Vina Parcels, the Vina Parties, Mr. Moss, and/or others.

10. The Rescue Mission is currently the fee simple owner of record of the property located in Salt Lake County, State of Utah, more particularly described as follows, which property shall sometimes be referred to in this Order as the **Rescue Mission Property**, or **Parcel 11** in reference to the last two digits of its Salt Lake County tax parcel number:

Commencing at the Northwest corner of Lot 2, Block 43, Plat A, Salt Lake City Survey, and running thence East 99 feet; thence South 65.5 feet; thence West 99 feet; thence North 65.5 feet to the place of beginning.

Subject to a perpetual right-of-way for ingress, egress and regress for all purposes over the following strip of ground, to-wit: commencing 99 feet East of the Northwest corner of said Lot 2, running thence South 76 feet; thence West 40- $\frac{3}{4}$ feet; thence North 10- $\frac{1}{2}$ feet; thence East 30- $\frac{3}{4}$ feet; thence North 65- $\frac{1}{2}$ feet; thence East 10 feet, to the place of beginning, to be kept open for loading and unloading goods, merchandise and other commodities from the platform along the South line of Lot 3, Block 43, Plat A, Salt Lake City Survey, together with the right of maintaining a cover or roof over said platform at the north end of said right-of-way.

Tax I.D. or Sidwell No.: 15-01-330-011

11. All of the above-described parcels of property other than Parcel 10, Parcel 17, and Parcel 18 are commercial properties improved with a commercial warehouse or other type of commercial building, and the Parcel 10 Loading Dock serves for the loading and unloading of goods to Parcel 11, Parcel 12, Parcel 13, and Parcel 14 along the northern side of the buildings located on those parcels. Parcel 14 also has a loading dock along approximately the west 60 feet of its northern side currently containing two (2) entry doors (**Parcel 14 Loading Dock**).

12. On or about July 3, 2004, the Vina Parties filed a Complaint against A & Z Produce II with respect to Parcel 9 and Parcel 16 that is pending before the Court in the Second Litigation.

13. Notwithstanding the legal description of the A & Z Parcels and the Vina Parcels of record, if any building or attached dock of a building located in whole or in part upon Parcel 9 currently encroaches upon any portion of the A & Z Parcels, as such parcels are described of record, then the outer wall of such encroaching building and/or dock, by operation of the doctrine of *boundary by acquiescence*, shall constitute the boundary at the place of encroachment between Parcel 9 and the A & Z Parcel or Parcels so encroached upon. In addition, notwithstanding the legal description of the A & Z Parcels and the Vina Parcels of record, if any building or attached dock of a building located in whole or part upon any of the A & Z Parcels currently encroaches upon any portion of the Vina Parcels, as those parcels are described of record, then the outer wall of such encroaching building and/or dock, by operation of the doctrine of *boundary by acquiescence*, shall constitute the boundary at the place of encroachment between the A & Z Parcel or Parcels upon which such building and/or dock is located and the Vina Parcels so encroached upon. All references to the above-described A & Z Parcels and Vina Parcels shall mean and refer to such properties as their boundaries may be established by operation of this paragraph 13.

14. The Limited Commercial Easement referenced in paragraph 3 above that is and shall be reserved by, granted to, and owned by the below-described A & Z Easement Owners as more particularly described as follows:

a. Owners of Limited Commercial Easement. The Limited Commercial Easement belongs to, and shall run in favor of, the following persons and entities (sometimes referred to in this Order collectively as the “**A & Z Easement Owners**”) for the use and benefit of the West A & Z Parcels, including the additional ten and one-half feet determined by extending the northern boundary of Parcel 13 ten and one-half feet to the north, the A & Z Parties and the respective spouses of the Clarks and the successors, descendants, transferees, and assigns of the A & Z Parties who fall within any of the following categories:

(1) “**A & Z Family Members**” consisting of: (i) the respective present and future blood and adopted descendants of the Clarks (ii) the present and future spouses of the Clarks, and (iii) any present or future trust, the primary or secondary beneficiary of which is any of the Clarks. For purposes of this Order, the term “**A & Z Family Member**” shall mean and refer to one of the A & Z Family Members.

(2) Any present or future corporation, partnership, limited liability company, or other business entity the majority interest of which is now or hereafter owned by one or more of the Clarks, by one or more of the A & Z Family Members, and/or by one or more present or future trusts, the primary or secondary beneficiary of which trust is any of the Clarks or any of the A & Z Family Members.

(3) Any present or future corporation, partnership, limited liability company, or other business entity the majority interest of which is now or hereafter owned by

any corporation, partnership, limited liability company, or other business entity the majority interest of which is owned by one or more of the Clarks, by one or more of the A & Z Family Members, and/or by one or more present or future trusts, the primary or secondary beneficiary of which trust is any of the Clarks or any of the A & Z Family Members.

The Limited Commercial Easement shall continue in favor of A and Z Produce Co. only so long as the majority ownership thereof is owned by one or more of the Clarks or by one or more of the A & Z Family Members. Similarly, the Limited Commercial Easement shall continue in favor of A & Z Produce II only so long as the majority ownership thereof is owned by the one or more of the Clarks or by one or more of the A & Z Family Members.

b. Nature of Limited Commercial Easement. The Limited Commercial Easement grants the A & Z Easement Owners the right to make deliveries ("A & Z Deliveries") to and from the West A & Z Parcels along the Parcel 10 Loading Dock and along the west sixty (60) feet of the Parcel 14 Loading Dock ("Docks"), as such Docks are currently configured or as they may be hereafter physically modified (so long as any physical modification of the Docks does not encroach upon Parcel 9 as the boundaries of Parcel 9 are established by this Order) starting at the hour of 3:00 a.m. and continuing forward to 2:00 p.m., daily. However, during any period of time a private club or other business operating from Parcel 9 ceases operating (including closing operations) earlier than 3:00 a.m., A & Z Deliveries may be made during such period of time from and including the

later of the hour such business operations cease, or 11:30 p.m., and continuing forward (i) until 2:00 p.m. of the immediately following day, if the A & Z Deliveries cannot commence as early as 11:30 p.m., or (ii) 8:00 a.m. of the following day, if A & Z Deliveries can commence as early as 11:30 p.m. By way of example, if private club operations operating from Parcel 9 (including closing operations) were to cease as of 1:00 a.m., then A & Z Deliveries could be made between the hours of 1:00 a.m. of that day and continuing forward until 2:00 p.m. of that day during the period of time such club operations cease at 1:00 p.m. By way of further example, if private club operations operating from Parcel 9 were to cease as of 11:30 p.m. of one day, then A & Z Deliveries could be made between the hours of 11:30 p.m. of that day and continuing forward only until 8:00 a.m. of the immediately following day. A & Z Deliveries to the West A & Z Parcels via the Docks across Parcel 9 at times other than described above will be strictly based upon permission of the fee simple owner or owners of Parcel 9 at the time of such A & Z Deliveries, which permission shall not be unreasonably withheld. It is understood that withholding such permission for the purpose of avoiding a conflict between A & Z Deliveries and the contemporaneous use of Parcel 9 by the then fee simple owners of Parcel 9 would not be deemed unreasonably withholding such permission. This Limited Commercial Easement shall be an easement upon, and shall run with, the land of Parcel 9 until terminated by operation of a "Triggering Event" as described in subparagraph 14. d. below, and no fence or other improvement may be erected, constructed, or placed upon Parcel 9 by any current or future owner of Parcel 9 or other person or entity that would

restrict, impede, or otherwise materially interfere with the use of the Limited Commercial Easement by the A & Z Easement Owners in the manner and for the purposes described in this paragraph 14.

c. Relation Back of Limited Commercial Easement. Due to the 1941 Amended Decree identified below, the Limited Commercial Easement relates back in time to the Date of the 1941 Amended Decree with respect to use of the West 99 feet of Parcel 9 and along the railroad spur located on Parcel 9, and, due to the historical use by the predecessors in interest of the A & Z Parties of Parcel 9 in connection with the West A & Z Parcels, the Limited Commercial Easement relates back in time to June 25, 1961 (20 years following the Date of the 1941 Amended Decree) with respect to the use of the remainder of Parcel 9. Such 1941 Amended Decree is that *Order Amending Findings of Fact, Conclusions of Law and Decree* issued by the Third Judicial District Court In And For Salt Lake County, State of Utah on or about June 24, 1941, which 1941 Amended Decree was recorded in the official records of Salt Lake County, State of Utah on August 29, 1941 as entry No. 912523 in Book 284 at Page 55, and the Date of that 1941 Amended Decree shall be June 24, 1941. The fact that the Limited Commercial Easement relates back in time as set forth in the immediately two preceding sentences shall not be construed (i) to extend the duration of the Limited Commercial Easement beyond the duration thereof described in subparagraph 14.a. above and subparagraph 14.d. below, (ii) to grant the A & Z Parties easement or other rights in Parcel 9 greater than the Limited Commercial Easement as described in this Order, or (iii) to limit the

efficacy of this Order or of any quitclaim deed executed by the A & Z Parties in connection with the Settlement Agreement extinguishing easement and other rights of the A & Z Parties in and to Parcel 9 other than the Limited Commercial Easement being reserved unto the A & Z Easement Owners.

d. Duration of Easement. At such time as (i) none of the A & Z Easement Owners are using any of the warehouses on the West A & Z Parcels for warehouse activities, (ii) none of the West A & Z Parcels are owned by any of the A & Z Easement Owners or (iii) December 31, 2030 , whichever first occurs, ("**Triggering Event**"), the Limited Commercial Easement shall terminate.

15. Consistent with this Court's prior rulings in this Litigation, any agreement that the Rescue Mission enters into with the Vinas in resolving this Litigation with respect to Parcel 10 does not, and shall not, bind either the A & Z Parties or Parcel 10, as a parcel of property, and no order of this Court in implementing such settlement or in resolving the disputes between the Vina Parties with the Rescue Mission shall modify or impair the provisions of this Order insofar as this Order (a) quiets title to the A & Z Parcels, including Parcel 10, (b) grants rights to the A & Z Parties in and to any property, or (c) imposes obligations upon any person or property in favor of the A & Z Parties and/or in favor of the A & Z Parcels (collectively "**A & Z Rights**"). The language of this Order dealing with and/or affecting such A & Z Rights shall control in the event of any conflict between (i) such language and (ii) the language of any other order or settlement agreement resolving or addressing issues as between the Rescue Mission and the Vina Parties that might otherwise affect such A & Z Rights. The Vina Parties are settling their

disputes in this Litigation with the Rescue Mission by a separate settlement agreement, and this Order shall not be contingent upon or affected by such settlement between the Vina Parties and the Rescue Mission.

16. This Order completely resolves and disposes with prejudice all claims between the Vina parties, Mr. Moss, and the A & Z Parties as set forth in the pleadings in this Litigation and in connection with the Litigation Parcels and Parcel 17, and each Party shall bear his/her/its respective attorneys fees and costs incurred in this Litigation. Subject to the provisions of this Order, the Litigation as between the Vina Parties and the A & Z Parties in connection with, and arising out of the Litigation Parcels and Parcel 17, including the ownership and use thereof, as well as all claims, causes of action, complaints, counterclaims and other claims that could have been asserted by the Vina Parties and the A & Z Parties in connection with the Litigation Parcels and Parcel 17, are hereby dismissed with prejudice.

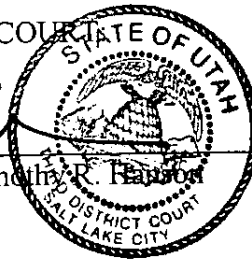
17. The Settlement Agreement, a copy of which has been provided by counsel to the Court, is hereby approved by the Court, and this Order is entered for the purpose of effectuating the terms thereof, which Settlement Agreement shall survive the entry of this Order.

18. A certified copy of this Order may be recorded in the official records of Salt Lake County, State of Utah.

DATED this 17 day of April, 2006.

BY THE COURT

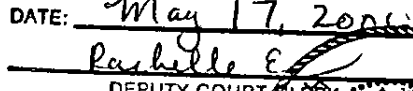

Judge Timothy R. Hanson



Order, Judgment, and Decree - DLB - clean - 3-28-06
GAEDS\DOCS\10641\0015\HB1931DOC

I CERTIFY THAT THIS IS A TRUE COPY OF A:
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY, STATE
OF UTAH.

DATE: May 17, 2006


DEPUTY COURT CLERK

