

Ent 108720 Bk 251 Pg 580
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Filed By: LRH
BRENDA NELSON, Recorder
MORGAN COUNTY
For: HIGHLANDS WATER COMPANY

WELL CONSTRUCTION AND WATER SUPPLY EASEMENT AGREEMENT

This Well Construction and Water Supply Agreement entered into this 31st day of July, 2007, by and between the HIGHLANDS WATER COMPANY, INC. ("Highlands"), a Utah Corporation, SODERBY, LTD. ("Soderby"), a Utah Limited Liability Company, and D & D CONCRETE, INC. ("D & D"), a Utah Corporation. Highlands, Soderby, and D & D, may be referred to individually herein as "Party" or collectively as "Parties.

R E C I T A L S

- A. Soderby is the owner of certain real property located in Morgan County, State of Utah, and more particularly described as MORGAN COUNTY PARCEL NOS.: 00-0003-3876, 00-0003-3884, 00-0003-4163 Parcel 1, and 00-0003-4163 Parcel 2 ("Soderby Parcel").
- B. D & D is the owner of certain real property located in Morgan County, State of Utah, and more particularly described as MORGAN COUNTY PARCEL NO. 00-0003-4197 ("D&D Parcel").
- C. Highlands is a Utah Corporation and the owner and operator of a water system located in Mountain Green, Morgan County, State of Utah.
- D. The Soderby and D & D parcels will be used for the improvement and construction of residential and commercial buildings.

E. In order to facilitate the development and improvement of homes and other buildings on the Soderby and D & D property, Morgan County will require that the property be serviced by culinary and secondary water systems.

F. Highlands currently operates a water delivery system within the area of the Soderby and D & D properties.

G. Because of Highland's existing skill and expertise in operating water systems for servicing residential and commercial property in the area of the Soderby and D & D property, the Parties desire to enter into this Agreement for the mutual benefit of the Parties and for subsequent owners of the Soderby and D & D property.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. **Recitals.** The foregoing recitals are incorporated herein by this reference.
2. **Wells.** As more specifically set forth in Paragraph 3, Soderby and D & D agree to furnish Highlands with an easement for access and construction of wells on the two well sites depicted on Exhibit "A" attached hereto and incorporated herein. Highlands will reserve 50% of all new ERCs (Equivalent Residential Connection) created by the well's source capacity, to be used for the development of the Soderby and D & D property listed herein.

A. **Costs and Expenses.** Highlands will be responsible to bear all costs and expenses for the drilling of the wells, together with the installation of all water delivery lines and well/pump houses within the granted easement depicted on Exhibit "A" and all storage capacity.

B. Water Rights and Shares. Highlands will provide water for delivery to the residential units on the property from existing water rights or water shares owned by Highlands, or through exchange agreements with Weber Basin Water Conservancy District. The expense to secure all water rights or water shares will be borne exclusively by Highlands.

C. Impact and Connection Fees. The costs and expenses for construction of the wells, water delivery lines, well/pump houses and storage capacity, and the purchase of water rights will be offset by Impact Fees charged to the developers of the Soderby and D & D properties and such other fees as Highlands deems reasonable to such developers and property owners.

D. Ownership and Taxes. The wells and system of lines, storage tanks and other facilities constructed for delivery of water from the wells shall be the sole and exclusive property of Highlands, and Highlands shall bear the full cost and expense of personal property taxes levied upon such items.

3. **Easement.** In order to facilitate the construction of the wells, installation of the water delivery system and connection with existing water delivery facilities of Highlands, Soderby and D & D agrees to furnish Highlands with an easement and right-of-way grant as set forth below:

A. Easement Grant. Soderby and D & D do hereby convey, grant and transfer to Highlands, and its heirs, successors and/or assigns, a perpetual non-exclusive right-of-way easement over, across, and under the Soderby and D & D parcels. Soderby and D & D further grant Highlands, its successors, heirs, and assigns an easement for drilling, construction, and maintenance of up to two

wells on the Soderby and D&D Parcels. The legal description of the easements granted to the Highlands is set forth in Exhibit "A" attached hereto and incorporated herein by this reference ("Easement").

B. Use and Scope. The following terms and conditions shall apply to this Easement:

- i) The Easement shall become effective upon execution by Soderby & D & D and Highlands and shall continue in perpetuity.
- ii) The rights created in this Easement shall be for Highlands and its successors and/or assign's perpetual-right-of way for access to and from the well sites and wells identified in Paragraph 2, and for the additional purpose of laying, maintaining, repairing, inspecting, protecting, removing and replacing, secondary water, and culinary water, and any such other improvements as are reasonably necessary^{for} drilling of the wells and installation of water delivery facilities, over, across and under the easement area.
- iii) Highlands, and its heirs, successors and/or assigns, may rough grade and lay road base along the easement area for access purposes, and may install such fences or other access restriction devices as are reasonably necessary for Highlands to control access to the completed well(s).

C. Maintenance and Repair. Highlands shall bear the costs of maintenance and repair of the easement described herein.

4. Soderby & D & D's Use of Soderby & D & D's Property. Soderby & D & D and their successors, heirs, and/or assigns, may use Soderby & D & D's parcels in any

way they deem appropriate so long as such use does not obstruct, impede, or interfere with Highlands's reasonable use of the easement granted herein.

5. **Binding Effect.** This Easement Agreement shall be binding upon the Parties hereto, and their successors and assigns. The covenants, rights, benefits and burdens created by this Easement Agreement shall run with the land.

6. **Amendment.** This Easement Agreement is subject to amendment only in writing by the unanimous consent of the Parties.

7. **Third Parties.** With the exception of the entities described below, it is the intent of the parties that no third party should obtain any rights from the terms hereof. The only parties to obtain benefit from this easement are those to whom the easement may be conveyed and the respective utility companies using the easement.

8. **Effective Date.** The Agreement shall become effective upon execution.

9. **Successors.** This Agreement shall be binding upon, and inure to the benefit of, the legal representatives, successors and assigns of the parties hereto.

10. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

11. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

12. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such

provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

13. **Captions.** The Captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.

14. **Integration.** This Agreement contains the entire and integrated agreement of the parties as of its date, and no prior or contemporaneous promises, representations, warranties, inducement, or understandings between the parties and not contained herein shall be of any force or effect.

15. **Attorney Fees.** In the event either party hereto defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney fee, incurred by the other party.

SODERBY, LTD.

By: Frank S. Gasser
Its: Dear Father

STATE OF UTAH)
COUNTY OF) : ss

On the 3rd day of August, 2007, personally appeared before me Donald D. Johnson who being by me duly sworn did say that he is the general partner of Soderby Ltd., and that the within and foregoing instrument was signed in behalf of said Partnership and Donald D. Johnson acknowledged to me that they executed the same.

Denbi Smith
NOTARY PUBLIC



DEBBI SMITH
Notary Public-State of Utah
2811 North Fairfield Road
Layton, UT 84041
My Commission Expires
August 23, 2008

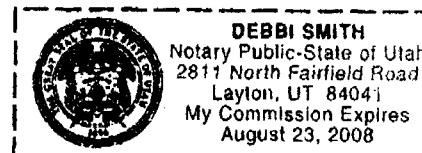
D & D CONCRETE, INC.

By: Dane D Johnson
Its: 7/15

STATE OF UTAH)
: ss
COUNTY OF)

On the 3rd day of August, 2007, personally
appeared before me Dane D Johnson who being
by me duly sworn did say that he is the President of D&D Concrete, Inc., and that the
within and foregoing instrument was signed in behalf of said Partnership and
Dane D Johnson
acknowledged to me that they executed the
same.

Debbi Smith
NOTARY PUBLIC



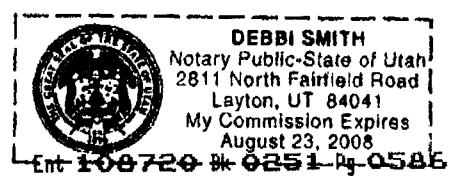
HIGHLANDS WATER COMPANY, INC.

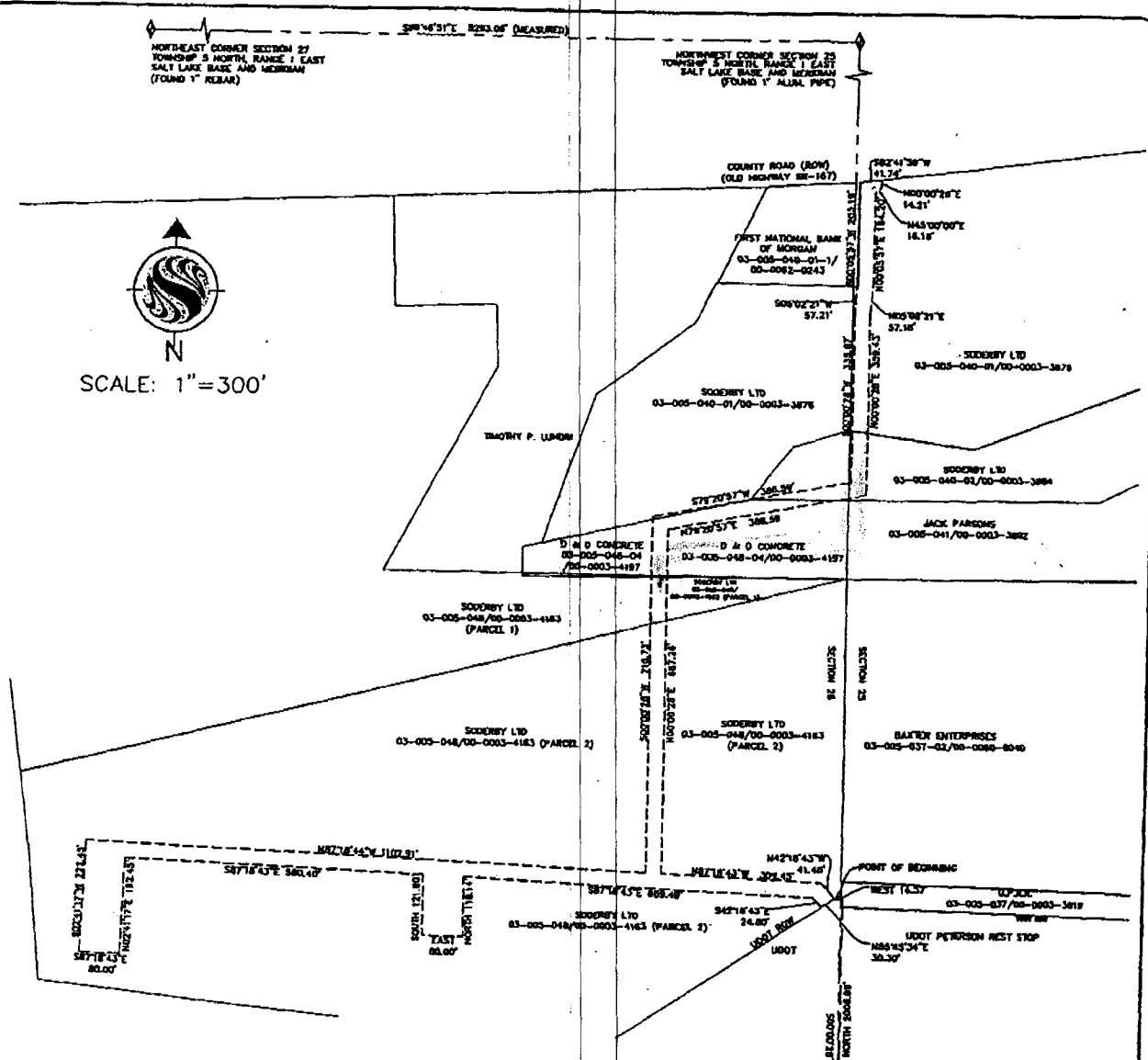
By: Rodger Smith
Its: Rodger Smith
President

STATE OF UTAH)
: ss
COUNTY OF)

On the 3 day of August, 2007, personally
appeared before me Rodger Smith who being
by me duly sworn did say that he is the President of Highlands Water Company, Inc., and
that the within and foregoing instrument was signed in behalf of said Partnership and
Rodger Smith acknowledged to me that they executed the
same.

Debbi Smith
NOTARY PUBLIC





BEGINNING at a point on the Northerly right of way line of Interstate 84 which point is North 2006.99 feet and West 14.57 feet from the Southwest Corner of Section 25, Township 5 North, Range 1 East, Salt Lake Base and Meridian; thence North 42°18'43" West 41.45 feet; thence North 87°18'43" West 309.45 feet; thence North 00°00'28" East 687.26 feet; thence North 79°20'57" East 388.59 feet; thence North 00°00'28" East 359.43 feet; thence North 05°02'21" East 57.18 feet; thence North 00°05'57" East 184.20 feet; thence North 45°00'00" East 18.18 feet; thence North 00°00'28" East 14.21 feet to the Southerly right of way line of Old Highway SR-187; thence along said Southerly right of way South 82°41'59" West 41.74 feet; thence South 00°05'57" East 203.19 feet; thence South 05°02'21" West 57.21 feet; thence South 00°00'28" West 335.87 feet; thence South 79°20'57" West 388.59 feet; thence South 00°00'28" West 710.73 feet; North 87°18'43" West 1102.91 feet; thence South 02°41'17" West 222.45 feet; thence South 57°18'43" East 80.00 feet; thence North 02°41'17" East 192.45 feet; thence South 87°18'43" East 580.40 feet; thence South 121.90 feet; thence East 80.00 feet; thence North 118.14 feet; thence South 87°18'43" East 689.49 feet; thence South 42°18'43" East 24.80 feet; thence North 55°45'34" East 30.30 feet to the terminus of the herein described easement.
Containing 120.244 Square feet or 2.76 acres.

"Exhibit A"
Water Line Easement
Affecting Soderby and D&D Concrete
Properties



Stantec

Stansel Consulting Inc.
3985 S 700 E Ste. 300
Salt Lake City, UT
84107-2540
Tel. 801.261.0090
Fax. 801.256.1671

Start Number

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