

T 87821

Ent 1177133 Bk 1963 Pg 1881
Date: 3-Aug-2017 03:21 PM Fee \$30.00
Cache County, UT
Michael Gleed, Rec. - Filed By JA
For HICKMAN LAND TITLE COMPANY

SECONDARY WATER EASEMENT

For valuable consideration, receipt of which is hereby acknowledged, Bankhead Properties, LLC ("Bankhead"), hereby grants and conveys to JHB Properties, Inc. ("JHB") and its successors and assigns, a limited and nonexclusive easement to repair and maintain an underground pipeline system providing secondary water to JHB. Bankhead and JHB may be referred to herein collectively as the "Parties" or individually as a "Party."

RECITALS

- A. JHB is a Utah limited liability company that owns the property comprising the Mountain Vista Subdivision ("Benefitted Property") as more fully described in the official subdivision plat map recorded with the Cache County Recorder.
- B. Bankhead is a Utah limited liability company and is the owner of certain land described in Exhibit A ("Burdened Property") that immediately adjoins the Mountain Vista Subdivision land owned by JHB.
- C. A secondary water pipeline intended to service the lots within the Mountain Vista Subdivision has been constructed on the Burdened Property in the areas depicted on the map included as Exhibit B.
- D. Bankhead desires to grant JHB and its successors and assigns, a perpetual Easement over the Burdened Property for the limited purposes provided herein.
- E. The Parties desire to further define the rights and obligations of each Party, and to establish an agreement for the maintenance and upkeep of the improvements located within the Burdened Property.

EASEMENT AGREEMENT

In consideration of the foregoing, and the mutual covenants of the Parties contained in this Secondary Water Easement ("Easement"), Bankhead and JHB agree as follows:

1. Grant of Easement. Subject to the rights and restrictions set forth in this Easement, Bankhead hereby grants and conveys to JHB a permanent and nonexclusive easement over, upon, and across a limited portion of the Burdened Property, the current location of which easement is depicted on Exhibit B. The scope of the easement is limited to access across, over, and upon the Burdened Property for:

- a. the maintenance, repair, and replacement of the secondary water lines in

the areas of the Burdened property shown on Exhibit B and consistent with the terms set forth in this agreement;

- b. the closure and termination of the secondary water pipeline if ever necessary;
- c. the reclamation, remediation, or repair of any improvements, landscaping, or disturbances to the land within the Burdened Property made during the maintenance, repair, or replacement of the secondary water pipeline by JHB, including its successors and assigns;
- d. the Easement shall only apply to necessary repairs or emergency access, and only after reasonable notice has been given to Bankhead. Bankhead shall retain the first right to maintain, repair, and replace the Easement Improvements located within the boundaries of the Burdened Property. The granting of this Easement shall not be construed to permit JHB or its successors or assigns any type of right-of-way, or general use rights in and to the Burdened Property; and
- e. the Easement shall consist of no less than five (5) feet on each of both sides of the Easement Improvements.

Ent 1177133 Bk 1963 Pg 1882

The Easement is granted by Bankhead as a right and benefit of JHB as the owner of the Benefitted Property along with its successors and assigns, and any subsequent purchaser of a Mountain Vista Subdivision lot and their successors, heirs, assigns and beneficiaries, subject to the provisions of this Easement.

2. Maintenance, Repair, and Replacement. JHB (or its successors or assigns) shall have the right and obligation to maintain, repair, and replace the secondary water pipeline ("Easement Improvements") located within the boundaries of the Benefitted Property and beginning at the inlet side of the shutoff valve located at approximately 900 South and north of the system as depicted in Exhibit B hereto. Bankhead shall have the right and obligation to maintain, repair, and replace the Easement Improvements located within the boundaries of the Burdened Property. The Easement Improvements shall be kept in good condition and repair and in accordance with all applicable laws, ordinances, rules, regulations, and governmental requirements.

3. Cost Allocation. JHB (or its successors or assigns) shall be responsible to cover all maintenance, repair, and, replacement costs of the Easement Improvements within the boundaries of the Benefitted Property and for the restoration of any damaged or altered improvements or landscaping caused by the maintenance, repair, or replacement of the Easement Improvements. Bankhead (or its successors or assigns) shall be responsible to cover all maintenance, repair, and, replacement costs of the Easement Improvements within the boundaries of the Burdened Property and for the

restoration of any damaged or altered improvements or landscaping caused by the maintenance, repair, or replacement of the Easement Improvements.

4. Risk Allocation. JHB (or its successors or assigns) shall defend, indemnify, and hold Bankhead harmless from any and all injury or damages arising out of or relating to the Easement and Easement Improvements. The parties acknowledge and agree that these obligations to defend, indemnify, and hold Bankhead harmless will transfer to each successor or assign of JHB.

Ent 1177133 Bk 1963 Pg 1883

5. Restriction on Use. Neither JHB, Bankhead, nor any of their successors or assigns shall place any obstruction to or upon the secondary water pipeline whatsoever, except as is necessary in connection with the Parties' maintenance, repair, and replacement obligations. Neither Party shall erect or place any building or other improvement upon or over the secondary water pipeline, except as agreed to by both Parties or as set forth in paragraph 6 of this Agreement.

6. Right to Relocate Pipeline. Bankhead (or its successors or assigns) hereby reserves the right to modify or change the route of the secondary water pipeline to other locations to accommodate future development or improvement of the Burdened Property. If the owner of the Burdened Property elects to reroute the secondary water pipeline, then all costs and expenses associated with the relocation of the pipeline shall be borne by Burdened Property owner. Any relocation shall be performed when demand for secondary water is low and conducted as expeditiously as possible based on a standard of reasonableness. The Parties agree that no modifications to the secondary water pipeline shall be permitted that unreasonably limit or reduce the flow of water below the flow rate of the initial pipeline system. Prior to any relocation, Bankhead shall provide at least 30 days' written notice to JHB (or its successors or assigns) and the Wellsville City Manager allowing for a period of protest or objection.

7. Notice. The parties shall give all notices and communications between the parties by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid (v) electronic mail to the party's known email address, or to the address that a party has notified to be that party's address for the purposes of this section. Additionally, Notice to the Mountain Vista Subdivision owners may be done by a physical posting in a conspicuous location on or around the subdivision. A notice given under this Agreement will be effective on the other party's receipt of it; if posted, at the time of posting; or if mailed, on the earlier of the other party's receipt of it and the third Business Day after mailing it.

8. Condemnation. In the event the Parties' respective property or any portion thereof is taken by power of eminent domain, or is conveyed under threat of

condemnation, the obligations hereunder of the Party owning such property shall be abated to the extent of the taking. Proceeds from any taking of the respective properties shall belong exclusively to the respective Party over or owning such property.

9. Non-Use. No obligation arising from or out of this Easement or any right granted under this Easement, shall lapse because of non-use.

10. Duration. The Easement shall perpetually run with the Burdened and Benefitted Properties described in Exhibit A, including any partition or division of such property. The rights, covenants, and obligations contained in this Easement shall bind, burden, and benefit the Parties and their respective successors, assigns, heirs, lessees, mortgagees, and beneficiaries under any deeds of trust.

11. Conformance with Governmental Requirements. The Parties shall cause all their respective uses of the Burdened Property to be in conformance with all applicable federal, state, county, and municipal laws, ordinances, regulations, and requirements.

Ent 1177133 Bk 1963 Pg 1884

12. Recording. This Easement shall be recorded in the official records of Cache County, Utah.

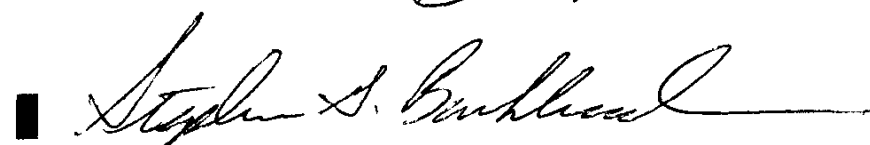
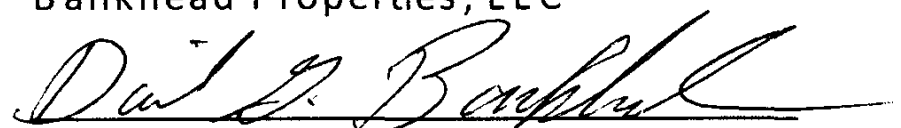
13. Waiver. Failure of either Party at any time to require performance of any provision of this Easement shall not limit such Party's right to enforce such provision, nor shall any waiver of breach of any provision of this Easement constitute a waiver of any succeeding breach of such provision or waiver of such provision itself.

14. Governing Law. This Easement shall be governed by and construed in accordance with the laws of the State of Utah. If a Party hereto brings an action in any judicial or arbitral tribunal to enforce any provision of this Easement, the prevailing Party, as determined by the tribunal, shall be entitled to recover its attorney fees, costs, and expenses incurred in connection with such action.

15. Amendment and Termination. This Easement may be amended and/or terminated only by a written agreement signed by representatives of both Parties, or their successors or assigns. Said amendment and/or notice of termination shall be recorded in the official records of Cache County, Utah.

IN WITNESS WHEREOF, the Parties have executed this Secondary Water Easement agreement as of this 2 day of August, 2017.

Bankhead Properties, LLC

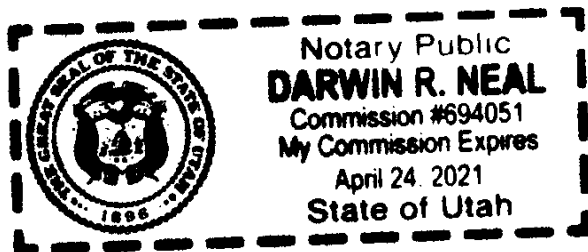


By: David G Bankhead and Stephen G Bankhead

Its: Managers

STATE OF UTAH)
) ss.
COUNTY OF Cache)

On the 2 day of August 2017, personally appeared before me
David G Bankhead and Stephen G Bankhead, who by me being duly sworn, did say that
he/she is a representative of Bankhead Properties, LLC and that he/she is authorized to
execute this Agreement.



[Signature]
Notary Public

JHB Properties, LLC

[Signature]

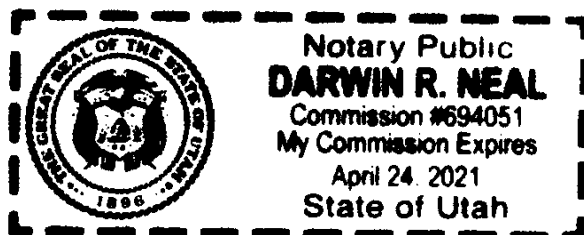
By: David Bankhead

Its: President

STATE OF UTAH)
) ss.
COUNTY OF Cache)

Ent 1177133 Bk 1963 Pg 1885

On the 2 day of August 2017, personally appeared before me
David Bankhead, who by me being duly sworn, did say that
he/she is a representative of JHB Properties, LLC and that he/she is authorized to
execute this Agreement.



[Signature]
Notary Public

EXHIBIT A

Legal Description of Burdened Property

Parcel No. 10-040-0001

Beginning at the Northwest corner of the Southeast Quarter of Section 10, Township 10 North, Range 1 West of the Salt Lake Meridian, and running thence East 130 rods; thence South 80 rods; thence West 130 rods; thence North 80 rods to beginning, containing 65 acres, LESS right-of-way for USA Canal and to State Road, net 54.51 acres, LESS parcel 10-040-0017 described as follows: Beginning 22.88 feet West of a point by record 212 feet West and 952.69 feet South 32°30' 1" West by record from the East Quarter corner of said Section 10, and running thence South 32°49' 1" 42' 11" West 371.86 feet; thence North 82°51' 1" 57' 11" West 63.08 feet; thence North 18°33' 1" 37' 11" West 347.37 feet; thence South 86°48' 10" 11" East 377.56 feet to beginning, containing 1.63 acres. Also, beginning 2168 feet North and running thence North 260 feet to center line of canal; thence Southwesterly along highway to beginning, containing 0.48 acres.

Containing 50.50 acres more or less

Ent 1177133 Bk 1963 Pg 1886

Legal Description of Benefited Property

Parcel No. 10-038-0043

344.5

Lots 1, 2, 7 and 8 and Fractional Lots 9 and 10, Block 37, Plat "B" of Wellsville City Survey. ALSO, beginning 334.5 feet South of the Northwest corner of said Block 37, and running thence East 20 rods; thence South 150.5 feet; thence West 20 rods; thence North 150.5 feet to beginning, and situate in the Northeast Quarter of Section 10, Township 10 North, Range 1 West of the Salt Lake Meridian.

Containing approximately 6.44 acres.

Parcel No. 10-038-0205

All Lot 6 Block 37 Plat "B" Wellsville City Survey Northeast Quarter of Section 10 Township 10 North Range 1 West.

Containing approximately 1.25 acres.

The Secondary Water Pipeline is also described as:

An irrigation easement for the installation, operation and maintenance of an irrigation line located in Southeast Quarter of Section 10, Township 10 North, Range 1 West of the Salt Lake Baseline and Meridian. The easement may partially or completely lie within the GRANTOR'S property. The easement shall be 10 feet in width, 5 feet on each side of the as-constructed centerline of said facilities.

Centerline Description

Commencing at the Northwest Corner of Section 10, Township 10 North, Range 1 West of the Salt Lake Baseline and Meridian thence N89°55'20"E 5302.66 feet to the Northeast Corner of said Section 10; thence S17°56'33"W 2798.49 feet to a point on the south right of way line of 900 South Street and the POINT OF BEGINNING and running

thence S 03°24'56" W 117.21 feet;

thence S 10°03'50" W 47.23 feet;

thence along the south side of an irrigation ditch of the next seven courses:

1) thence N 77°08'19" W 65.67 feet;

2) thence N 84°54'27" W 41.14 feet;

3) thence S 88°36'27" W 41.35 feet;

4) thence S 78°42'30" W 61.32 feet;

5) thence S 71°49'23" W 144.48 feet;

6) thence S 76°54'04" W 60.72 feet;

7) thence S 65°58'15" W 20.62 feet;

Ent 1177133 Bk 1963 Pg 1887

thence S 29°12'13" W 20.18 feet;

thence S 01°47'54" W 20.71 feet;

thence along the east side of Highway 23 the next two courses:

1) thence S 18°21'41" E 310.71 feet;

2) thence S 32°05'51" E 20.06 feet;

thence S 59°03'03" E 20.35 feet;

thence S 80°47'46" E 20.19 feet;

thence S 86°20'00" E 534.47 feet more or less to the west right of way line of Highway 89/91 and the point of terminus.

Approximate current location of Secondary Water Pipeline: ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

