

14-NF
When Recorded Return to:
Metropolitan Water District of Salt Lake & Sandy
Attn: General Manager
3430 East Danish Road
Cottonwood Heights, Utah 84093-2139

12529361
05/05/2017 10:53 AM \$0.00
Book - 10554 Pg - 6264-6277
GARY W. OTT
RECODER: SALT LAKE COUNTY, UTAH
METROPOLITAN WATER DIST OF SL
3430 E DANISH RD
SANDY UT 84093
BY: MSA, DEPUTY - MA 14 P.

**PARCEL NO.: 2226451002,
2226451003, 2226451004, 2226451029**

AGREEMENT

This Agreement (Agreement) is entered into by and between METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY (the District), a Utah metropolitan water district, Cottonwood Heights City, Utah, and MEMORIAL ESTATES, INC. (Memorial), a Utah corporation with its main office located in Salt Lake City, Utah.

AGREEMENT PURPOSES

The District owns and operates the Salt Lake Aqueduct (SLA) and SLA Corridor. Memorial owns a cemetery and other improvements known as Mountain View Memorial Mortuary & Cemetery with a street address of approximately 3115 East Bengal Boulevard (7800 South), Cottonwood Heights City, Salt Lake County, Utah. The SLA Corridor transects Memorial's property near the east of Memorial's property. The portion of the SLA Corridor that intersects Mountain View Memorial is held in easement by the District. MWDSL recently discovered that Memorial has buried approximately fifty concrete burial vaults, caskets, and human bodies within the SLA Corridor. The Parties wish to address these encroachments on the SLA Corridor and establish future rights and obligations with regard to Memorial's use of the SLA Corridor as described by this Agreement.

AGREEMENT TERMS

NOW, THEREFORE, for the sum of \$17,137.15 paid by Memorial and in consideration of the mutual covenants described below, the sufficiency of which is hereby acknowledged, the parties now enter into this Agreement.

1. Memorial's immediate cessation of use of the SLA Corridor for burial plots. Memorial shall immediately stop selling burial plots, and immediately stop digging graves and burying deceased persons, within the current SLA Corridor, as depicted in Exhibit A to this Agreement, which the parties have accepted as a true and correct survey of the location of the SLA and SLA Corridor. After portions of the SLA Corridor are abandoned by the District as described below, then and only then may Memorial utilize the abandoned portions of the SLA Corridor for the purposes of sales of plots and burials.

2. Disinterment. Memorial shall immediately initiate, and diligently pursue, all steps reasonable and necessary for prompt disinterment and relocation of the deceased person from plot number East B 14 B-4, which is within that portion of the SLA Corridor that will not

be abandoned by the District, including any and all associated vaults, caskets, headstones, and monuments. Such steps to be diligently pursued include any necessary legal actions. Memorial shall keep the District fully apprised of steps taken and to be taken to accomplish this disinterment and relocation, as well as the projected schedule as it may from time to time change.

3. Modification of Memorial's plat. Memorial shall immediately modify its plat of burial plots to remove the depiction of any burial plots located within any portion of the SLA Corridor that will not be abandoned by the District, and record the revised plats. Thereafter, Memorial shall not show as included in any burial plot any of the portion of the SLA Corridor that will not be abandoned by the District.

4. Limitation on Memorial's use of the SLA Corridor. Memorial shall not use or sell any part of the portion of the SLA Corridor that will not be abandoned by the District as any part of any burial plot, space for ashes, or similar use. Memorial shall not use any part of the portion of the SLA Corridor that will not be abandoned by the District for anything other than the existing road, as depicted in Exhibit A, and landscaping limited to sod, shrubs, and irrigation sprinklers without the prior written agreement of the District signed by the District's General Manager or Chair of its Board of Trustees. MWDSLS shall be under no obligation to grant any additional rights of use. Memorial shall immediately remove all trees within the SLA Corridor, as depicted in Exhibit A to this Agreement, and shall not plant or allow any new trees on any portion of the SLA Corridor that will not be abandoned by the District. Exhibit A depicts the SLA Corridor and may not reflect all existing trees. Plant varieties planted on or overhanging any portion of the SLA Corridor that will not be abandoned by the District shall not exceed four (4) feet in height at maturity. Nothing in this paragraph affects the License Agreement between the United States of America and Memorial Estates, Inc. (Contract No. 0-LM-41-00370) entered on June 28, 1990.

5. Installation of easement monuments. Memorial shall immediately cause the installation of easement monuments to delineate the portion of the SLA Corridor that will not be abandoned by the District, not to be utilized for a road, as depicted and described in Exhibit A to this Agreement. The type and spacing of easement monuments shall be as described in Exhibit B to this Agreement. Memorial shall take all steps reasonable and necessary to see that such installation is completed promptly. Memorial shall maintain such easement monuments in a good and visible condition to the reasonable satisfaction of the District.

6. Compliance with statutes. Memorial shall timely comply with any requirements of applicable statutes regarding the recording of burial plats, and the reporting of sale or use of burial plats and burial rights, including those contained in Title 8, Chapter 3 of the Utah Code, as those statutes may from time to time be enacted and amended.

7. Abandonment of Easement by the District. When Memorial has amended its plats, disinterred and relocated deceased person, removed the trees, and completed installation of the easement monuments, all as described above, the District shall fully execute and deliver to Memorial the Notice of Abandonment of Easement attached as Exhibit C to this Agreement. Memorial shall immediately cause the Notice of Abandonment to be recorded with the Salt Lake

County Recorder's Office and provide a copy of the recorded Notice of Abandonment to the District.

8. General.

(a) Binding upon successors, covenants run with the land. This Agreement is for the benefit of and is binding upon the parties hereto, their successors, heirs, and personal representatives. The covenants of Memorial expressed in this Agreement shall run with Mountain View Memorial property that is more particularly described in Exhibit D to this Agreement.

(b) Response to inquiries. Each Party shall respond promptly, completely, and honestly to the other Party's inquiries regarding any matter relating to compliance with this Agreement. Any approvals required by this Agreement shall not be unreasonably delayed, withheld or conditioned.

(c) Default. If Memorial fails to perform any of the covenants contained in this Agreement within one year from the date of this Agreement, Memorial shall be considered in material default of the Agreement. Memorial may, at least ninety days before the expiration of the one-year period, request in writing an extension of time to perform the covenants contained in this Agreement. MWDSLs may, in its sole discretion, grant or deny such request. If the District grants the request but Memorial fails to perform any of the covenants contained in this Agreement within the extended time, Memorial shall be considered in default of the Agreement.

(d) Specific Performance. The parties acknowledge that damages alone would not be an adequate remedy for the breach, including default, of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the non-breaching party, upon any breach or default of this Agreement, shall be entitled to enforcement of this Agreement by means of specific performance or injunction, including mandatory injunction.

(e) Authority. Persons signing this Agreement on behalf of any entity represent and warrant that they have full authority to enter into this Agreement for and on behalf of the entity for which they are signing.

(f) Entire Agreement. This Agreement contains the entire agreement of the parties. With the exception of the June 28, 1990, License Agreement between the United States of America and Memorial Estates, Inc. (Contract No. 0-LM-41-00370), this Agreement supersedes all prior agreements, negotiations, and understandings between the parties. This Agreement and the June 28, 1990, License Agreement between the United States of America and Memorial Estates, Inc. (Contract No. 0-LM-41-00370) shall, to the extent possible, be read so as to give effect to the provisions of both agreements. In the event of an irreconcilable conflict between the two, this Agreement shall govern.

(g) Amendment. This Agreement may be amended only by a written amendment signed by the authorized representatives of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this day of , 2017.

METROPOLITAN WATER DISTRICT
OF SALT LAKE & SANDY

By: Michael L. Wilson
Michael L. Wilson, General Manager

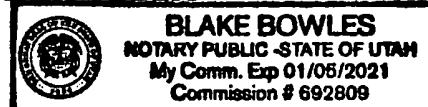
MEMORIAL ESTATES, INC.

By: 
Scott Quist, President

STATE OF UTAH)
COUNTY OF SALT LAKE) : ss.

On the 17 day of April, 2017, personally appeared before me Michael L. Wilson, and having been first duly sworn by me acknowledged that he is the General Manager of the Metropolitan Water District of Salt Lake & Sandy, that he is duly authorized to sign the foregoing Agreement on behalf of the Metropolitan Water District of Salt Lake & Sandy and that he signed the same on behalf of the Metropolitan Water District of Salt Lake & Sandy.

NOTARY PUBLIC



STATE OF UTAH)
COUNTY OF SALT LAKE)

On the 24th day of April, 2017, personally appeared before me Scott Quist, and having been first duly sworn by me acknowledged that he is the President of Memorial Estates, Inc., that he is duly authorized to sign the foregoing Agreement on behalf of Memorial Estates, Inc. and that he signed the same on behalf of Memorial Estates, Inc.

~~NOTARY PUBLIC~~



EXHIBIT A

*METROPOLITAN WATER DISTRICT OF SALT LAKE AND SANDY
RECORD OF SURVEY*

1/4 OCT 1968

RECORD OF SURVEY

27

BENGAL BLVD

Digitized by srujanika@gmail.com

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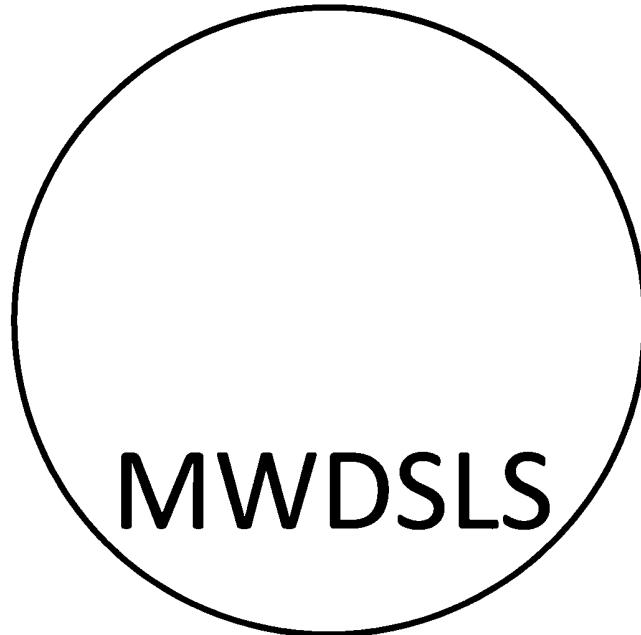
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BK 10554 PG 6269

EXHIBIT B

EXHIBIT B
MONUMENT TYPE AND SPACING

Monuments used to delineate the Salt Lake Aqueduct Corridor through the Mountain View Memorial Mortuary & Cemetery shall be in the form shown below:



Monuments shall be centered on the easement line no more than 25-feet apart. Placement orientation will be coordinated with District staff.

EXHIBIT C

When Recorded Return To:

NOTICE OF PARTIAL ABANDONMENT OF EASEMENT

NOTICE IS GIVEN TO ALL PERSONS that with regard to the property described herein, the METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY (the "District") hereby abandons portions of the easement interest held by the District through the Memorial Estates Cemetery with a street address of 3115 East Bengal Boulevard, Cottonwood Heights, Utah 84123. Said easement is more particularly described as:

West side:

A portion of Metropolitan Water District of Salt Lake and Sandy Tract 432 Perpetual Easement, as originally conveyed by Warranty Deed of Easement, Entry No. 1094159 in Book 559 at Page 200, recorded Sept. 8, 1947 in the office of the Salt Lake County Recorder, being the westerly eight (8) feet of said tract lying between Station 1838+91.47 and Station 1845+80, in the Southeast Quarter of Section 26, Township 2 South, Range 1 East, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at the intersection of the north right of way line of Bengal Boulevard and the westerly line of said Metropolitan Water District of Salt Lake and Sandy Tract 432 easement, which point lies N. 89°57'58" W. along the section line, a distance of 1,789.33 feet; and N. 00°02'02" E., a distance of 40.00 feet from the Southeast corner of said Section 26, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence along said westerly line N. 06°33'21" W., a distance of 679.86 feet; thence N. 83°26'39" E., a distance of 8.00 feet; thence S. 06°33'21" E., a distance of 680.79 feet to said north line of Bengal Boulevard; thence along said north line N. 89°57'58" W., a distance of 8.05 feet to the Point of Beginning.

The above described portion of land contains 5,442 sq. ft., or 0.125 acres, more or less.

East side:

A portion of Metropolitan Water District of Salt Lake and Sandy Tract 432 Perpetual Easement, as originally conveyed by Warranty Deed of Easement,

Entry No. 1094159 in Book 559 at Page 200, recorded Sept. 8, 1947 in the office of the Salt Lake County Recorder, being the easterly ten (10) feet of said tract lying between Station 1838+91.47 and Station 1845+80, in the Southeast Quarter of Section 26, Township 2 South, Range 1 East, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at the intersection of the north right of way line of Bengal Boulevard and the easterly line of said Metropolitan Water District of Salt Lake and Sandy Tract 432 easement, which point lies N. $89^{\circ}57'58''$ W. along the section line, a distance of 1,638.33 feet; and N. $00^{\circ}02'02''$ E., a distance of 40.00 feet from the Southeast corner of said Section 26, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence along said north line N. $89^{\circ}57'58''$ W., a distance of 10.07 feet; thence N. $06^{\circ}33'21''$ W., a distance of 696.04 feet; thence N. $83^{\circ}26'39''$ E., a distance of 10.00 feet to said easterly line; thence along said easterly line S. $06^{\circ}33'21''$ E., a distance of 697.20 feet to the Point of Beginning.

The above described portion of land contains 6,967 sq. ft., or 0.160 acres, more or less.

The District's historical interest in the Subject Properties is as follows:

1. On September 4, 1947, the District was granted a hundred and fifty-foot wide perpetual easement by Warranty Deed of Easement, recorded on September 8, 1947 as Entry No. 1094159, in Book 559, at Page 200, books and records of the Salt Lake County Recorder.

2. On July 8, 1952, the District transferred its easement to the United States of America, Bureau of Reclamation ("USBR") by Warranty Deed, recorded on September 11, 1952 as Entry No. 1299614, in Book 953, at Page 57, books and records of the Salt Lake County Recorder.

3. On October 2, 2006, USBR transferred its interests in the easement back to the District via Quit Claim Deed recorded on October 2, 2006, as Entry No. 9862736, Book 9359, Pages 6770 to 6929, in the books and records of the Salt Lake County Recorder. That transfer by USBR was pursuant to the terms of the Provo River Project Transfer Act, 118 Stat. 2212, Pub. Law. 108-382, and the contract authorized by the Provo River Project Transfer Act, Contract No. 04-WC-40-8950.

DATED this ____ day of _____, 20__.

DISTRICT:

METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY

Michael L. Wilson, General Manager

STATE OF UTAH)
: SS.
COUNTY OF SALT LAKE)

On the ___ day of _____, 20___, personally appeared before me Michael L. Wilson, and having been first duly sworn by me acknowledged that he is the General Manager of the Metropolitan Water District of Salt Lake & Sandy, that he was duly authorized by the Board of Trustees of the Metropolitan Water District of Salt Lake & Sandy to execute the above Notice of Partial Abandonment of Easement for and on behalf of the Metropolitan Water District of Salt Lake & Sandy, and that he executed the above Notice of Partial Abandonment of Easement on behalf of the Metropolitan Water District of Salt Lake & Sandy.

NOTARY PUBLIC

EXHIBIT D

Parcel 22-26-451-002

COM 660 FT N & 528 FT E FR SW COR OF SW 1/4 OF SE 1/4 SEC 26T 2S R 1E SL MER E 220.15 FT N 320.13 FT E 43.53 FT N 6^37'30" W 342.16 FT N 89^43' W 224.204 FT; S 660 FT TO BEG 3.52 AC 4373-0432

Parcel 22-26-451-003

COM 1650.15 FT W & 40 FT N FR SE COR SEC 26 T 2S R 1E SL MER W 66 FT N 79.21 FT N'LY ALG CURVE TO LEFT 187.203 FT N 28^ W 8.48 FT N'LY ALG CURVE TO RIGHT 219.45 FT N 100 FT N'LY ALG CURVE TO LEFT 44.29 FT W 82.21 FT N 320.13 FT E 43.53 FT N 6^37'30" W 342.16 FT 89^43' E 66.48 FT S 6^37'30" E 673.25 FT S'LY ALG CURVE TO RIGHT 51.92 FT S 100 FT S'LY ALG CURVE TO LEFT 187.2 FT S 28^ E 120.25 FT S 191.81 FT TO BEG 2.28 AC 4373-0432

Parcel 22-26-451-004

COM 1650.15 FT W & 231.81 FT N FR SE COR SEC 26, T 2S, R 1E, SL MER, N1105.71 FT M OR L; N 89^43' W 181.97 FT S 6^37'30" E 673.25 FT; S'LY ALG CURVE TO RIGHT 51.92 FT; S 100 FT; S'LY ALG CURVE TO LEFT 187.2 FT; S 28^ E 120.25 FT TO BEG. 2.98 AC 4373-0432

Parcel 22-26-451-029

COM 1716.5 FT W & 40 FT N FR SE COR OF SEC 26 T 2S R 1E SL MER N 79.21 FT N 15^ W 187.203 FT N 28^ W 8.48 FT N 12^ 46' W 219.45 FT N 100 FT N 15^ W 44.29 FT W 170.56 FT S 623.46 FT N 89^26'30" E 110 FT N 74.17 FT; N 76^08' E 41.25 FT; S 83.65 FT; N 89^26'30" E 118.68 FT TO BEG 3 AC M OR L 4096-0355