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AGREEMENT NO. 17977

Form Approved by General Attorney  
August 1, 1941.  
Form 3362  
Sec. 1, Pages 5 and 11.

3716943

# Private Way License

THIS AGREEMENT, Made and entered into this 26th day of June, A. D. 1946, by and between WILSON McCARTHY and HENRY SWAN, as Trustees of the property of THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a corporation of the State of Delaware, hereinafter called the "Licensor," parties of the first part, and

ALBERT P. DIMOND, of Midvale, Utah  
(R.D. 1, Midvale, Utah)

hereinafter called the "Licensee," of the second part:

WITNESSETH, That the Licensor, for and in consideration of the covenants and agreements of the Licensee herein contained and upon the terms and conditions hereinafter set forth, hereby licenses and permits the construction, maintenance and use of a private way across the right of way and track or tracks of the railroad as herein specified, to-wit:

A private road crossing extending at grade at right angles over and across the 200-foot wide right of way and the main track of the Bingham Branch of The Denver and Rio Grande Western Railroad Company at Mile Post 3 plus 5032 feet of said branch near Welby, Salt Lake County, Utah, within the north half of Section 5, T. 3 S., R. 1 W., S. L. B. and M., as shown on the attached map.

RECORDED  
OCT 4 10 25 AM '92  
Denver & Rio Grande  
Rail Road  
Hayne  
900

KATH  
SALT LAKE  
UTAH

This license is expressly conditioned upon the performance by the Licensee of all and singular the covenants and agreements hereinafter set forth to be by said Licensee kept and performed, each of said covenants and agreements being hereby made a condition; and it is also hereby stipulated that a waiver by the Licensor of any breach of any condition shall in no way impair the right of the Licensor to avail itself of any subsequent breach of the same or any other condition.

PRIVATE WAY as and wherever said term is employed herein, shall mean a way for travel for pedestrians, vehicles, implements and live stock, and its use shall be limited to the Licensee, his family, servants and employes or anyone having business with the Licensee,

and said term shall include such grading, approaches, planking, ditches, drains, tiling, drain boxes, culverts, cattle guards, wing fences and fences, gates with proper hinges and latches, and such signals, bells, sign posts and signs and other safety devices as shall in the particular instance be required by the Licensor, or which may now or hereafter be prescribed and required by any law, State or Federal, or by any order of any officer or regulatory board, State or Federal, having jurisdiction over such matters.

BOOK 5411 PAGE 2619

1. If the Licensor shall elect to construct said private way or a portion thereof, and shall so notify the Licensee, the Licensee agrees to pay the Licensor, in advance, such sum of money estimated to be \$ \_\_\_\_\_, as shall be necessary to construct such portion or all of said private way, including the cost of all necessary material and the transportation thereof and the cost of all labor and superintendence. If the Licensor shall elect not to construct said private way, the Licensee shall furnish material for, and construct said private way at the sole cost and expense of the Licensee, in such manner and according to such plans as the Licensor may deem best for the safety and proper protection of the track, roadbed and premises of the Licensor. If the amount to be advanced by the Licensee as hereinbefore provided should be in excess of the amount required, the excess shall be returned to the Licensee; if such amount should not be sufficient to cover the expense of work done by the Licensor, the Licensee shall pay such additional amount to the Licensor on demand.

2. The Licensee shall, at the sole cost and expense of the Licensee, maintain, repair and reconstruct, whenever necessary and when required so to do by the Licensor, said private way and all its appurtenances in accordance with plans and in manner satisfactory to the Licensor; the Licensor, however, shall have the right, if it so elects, at any time, though it shall be under no obligations whatsoever to do so, to make necessary or proper repairs or to reconstruct said private way, notwithstanding the obligation of the Licensee to maintain, repair and reconstruct, and in the event the Licensor at any time elects to repair or reconstruct said private way, the Licensee shall, upon presentation of estimates, advance such sum of money as the Licensor may deem necessary for such repair or reconstruction, or upon bill being rendered for work already done, the Licensee shall reimburse the Licensor for the cost of such repair or reconstruction. The optional right of the Licensor to make repairs or to reconstruct said private way shall in no manner or degree relieve the Licensee from responsibility to the Licensor or to other persons or corporations for the failure of the Licensee to properly maintain or reconstruct said private way, or any structure which the Licensee agrees, as aforesaid, to maintain or reconstruct.

3. The Licensee agrees to pay to the Licensor, in advance, the sum of Five Dollars (\$5.00), as consideration for license and permit herein granted.

4. If at any time after the installation of said private way, any law, State or Federal, or any officer or regulatory board or commission, State or Federal, having jurisdiction, shall require any alterations, changes or improvements of said private way and of its appurtenances, as herein defined, or any additional safeguards, protection, signals or warnings, the same shall be constructed, maintained and operated at the sole expense of the Licensee, as herein provided with respect to maintenance, repair, reconstruction, etc., in paragraph 2 hereof.

5. The Licensee shall not enter upon the premises for the purpose of constructing said private way nor for the purpose of repairing or renewing the same, without special written license or permit first had and obtained from the Licensor, or the Licensor's duly authorized agent, except in cases of emergency when work is necessary to avert loss or damage to property. All work of construction, maintenance, operation or reconstruction shall be done by the Licensee in such manner as to cause no interference with the constant, continuous and uninterrupted use of the tracks and property of the Licensor as to operation, maintenance, renewals or possible new construction by the Licensor.

6. This license shall not be deemed to give the Licensee exclusive possession of any part of the premises described, but the Licensor shall have unimpaired right to retain its track or tracks as now owned and operated at the place of construction of such private way, and nothing shall be done or suffered to be done by the Licensee at any time that shall in any manner impair the usefulness or safety of said track or tracks of the Licensor or of any track or improvement to be hereafter constructed. The Licensor shall have the right at any and all times hereafter to construct, maintain and operate such additional tracks, structures and improvements where said private way is to be constructed and across the same, as it may from time to time elect; and in case of any change at any time in the arrangement, construction or plan of the Licensor's tracks, or in case of the construction of any buildings or improvements by the Licensor, said private way shall be altered or entirely removed by the Licensee at the sole cost and expense of the Licensee, in such manner as may be necessary to conform to the tracks, buildings or improvements of the Licensor as so changed, altered or improved, and if the Licensee shall fail to do any of the things in this paragraph enumerated, the Licensor may do or cause the same to be done at the cost of the Licensee.

BOOK 5411 PAGE 2620

7. The Licensee assumes the entire burden and duty of keeping the gates at said private way locked when not in use, and the sole duty and burden of preventing the use of said private way by any persons, firms or corporations, other than those mentioned herein for whose benefit said private way is licensed; and assumes all liability for damage to or destruction of property, injury to or the death of persons resulting from the use of said private way by persons other than those for whose benefit said private way is licensed, or resulting from the failure on the part of the Licensee to keep the gates closed and locked and the said private way and all of its appurtenances in safe condition.

8. The Licensee shall at all times protect, indemnify and save harmless the Licensor from any and all claims, demands, judgments, costs, expenses, and all damage of every kind and nature made, rendered or incurred by or in behalf of any person or corporation whatsoever, in any manner due to or arising out of any injury to or death of any person, or damage to property of any person or persons whomsoever, including the parties hereto and their officers, families, servants and employees, or in any manner arising from or growing out of the construction, maintenance, operation, repair, extension, renewal, existence, use or removal of said private way, or the failure to properly construct, operate, maintain, renew or remove the same, and from all costs and expenses, including attorney's fees connected in anywise with the matters and things contained in this agreement. Neither the right of supervision by the Licensor of the location, installation, operation and maintenance of said private way, nor the exercise or failure to exercise said right, nor the approval or failure to disapprove, by the Licensor of the location, installation, operation and maintenance of said private way, nor the election of the Licensor to construct or reconstruct the whole or any part, or to repair said private way, shall be deemed a waiver of the obligations of the Licensee contained in this paragraph or a release therefrom, or from any other obligation of this agreement resting upon said Licensee that is hereinbefore or hereinafter expressed or implied.

9. If the Licensee shall fail to locate, construct, operate, repair, extend, renew or remove said private way in accordance with the terms of this agreement and to the entire satisfaction of the Licensor, or shall fail to pay to the Licensor any sum of money for the construction, repair, extension, renewal or removal of said private way, or shall fail to adjust the said private way to any changes made by the Licensor, or shall in any respect fail to keep and perform any of the conditions, stipulations, covenants and provisions of this agreement to be kept and performed by the said Licensee, this agreement shall at the option of the Licensor be void and of no effect; and this license shall cease and the Licensor shall have the right to remove said private way and restore the right of way and premises of the Licensor at any time thereafter at the sole expense of the Licensee. Any forfeiture hereunder may be claimed by the Licensor without notice to the Licensee. Any notice herein provided for shall be sufficiently given and delivered if mailed in an envelope properly stamped and addressed to the Licensee at the last known post office address, or if no address is known, at the post office nearest to the place where the said private way is located.

10. Nonuser of such private way for the purpose for which it was originally constructed, continuing at any time for the period of one year, shall constitute an abandonment of this license. Unless so abandoned or terminated, as hereinabove or hereinafter provided, this license and agreement shall remain in full force and effect until terminated by written notice given by the Licensor not less than sixty days in advance of the date of such termination; but it is understood that if at any time the maintenance and operation of said private way shall be inconsistent with the use by the Licensor of the right of way for railroad purposes, this license shall immediately cease *ipso facto*.

11. The covenants, stipulations and conditions of this agreement shall extend to and be binding upon the Licensor, its successors and assigns, and shall extend to and be binding upon the Licensee and the heirs, administrators, executors, successors and assigns of the Licensee (as the context may admit), and the term "Licensee" used herein shall be held to include such persons, copartnerships or corporations as are mentioned herein as of the second part. The Licensee shall not assign this license or any interest therein directly or indirectly, nor incur the same without the written consent of the Licensor first had and obtained.

12. Notwithstanding the above or anything elsewhere herein contained, it is understood that the Trustees of the property of The Denver and Rio Grande Western Railroad Company, parties of the first part herein, are acting under appointment of the District Court of the United States for the District of Colorado in a proceeding for reorganization of said Railroad Company under Section 77 of the Federal Act in Relation to Bankruptcy, as amended; and it is agreed that upon termination of said trusteeship

of The Denver and Rio Grande Western Railroad Company, this agreement (if not theretofore terminated as provided herein) and all the obligations of the Trustees hereunder, shall be terminated unless this agreement be accepted and adopted by the party in whom the title to or possession of the railroads now in the Trustees' charge is then vested, in manner provided by order or decree of said Court, or otherwise. In any event, this agreement shall not be binding or obligatory upon the Trustees after their discharge as such, or in their personal capacity.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first hereinabove written.

WILSON McCARTHY and HENRY SWAN, as Trustees  
of the property of THE DENVER AND RIO GRANDE  
WESTERN RAILROAD COMPANY.

By

Wilson McCarthy

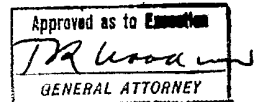
By

Henry Swan

Albert P. Dimond

Albert P. Dimond,

Licensee.



BOOK 5411 PAGE 2622

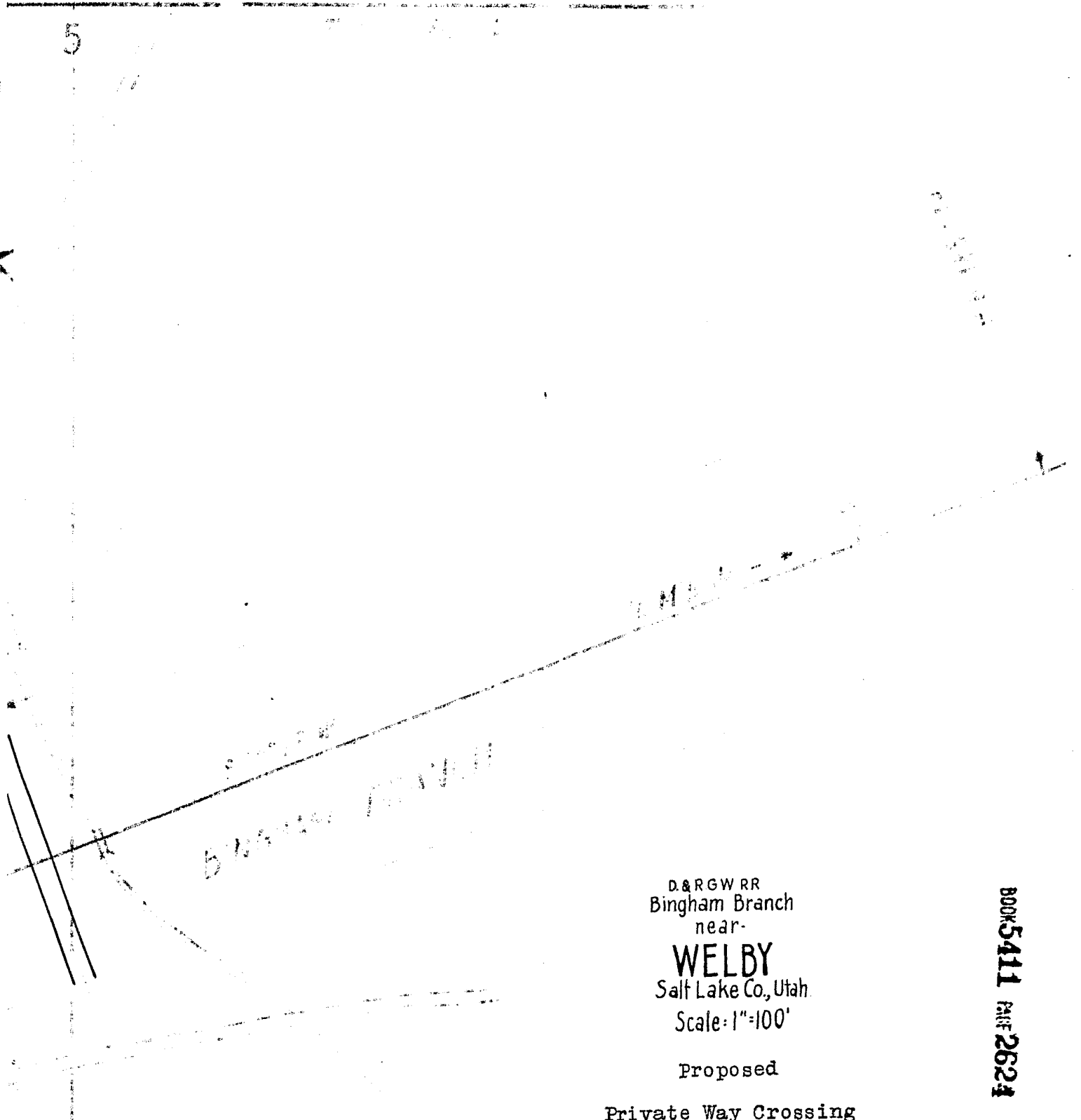
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D. & R. G. W. R. R.  
Bingham Branch  
near-  
**WELBY**  
Salt Lake Co., Utah.  
Scale: 1"=100'

Proposed  
Private Way Crossing  
ALBERT P. DIMOND

BOOK 5411 PAGE 2624

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