

David J. Jordan (1751)  
Kenneth B. Black (5588)  
STOEL RIVES BOLEY JONES & GREY  
201 South Main Street, Suite 1100  
Salt Lake City, Utah 84111  
Telephone: (801) 328-3131

Attorneys for Plaintiff  
Westside Canadian Properties Company

**FILED**

AUG 4 1994 @ 15:48

Clerk of Summit County

By \_\_\_\_\_ Deputy Clerk

go

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

WESTSIDE CANADIAN PROPERTIES )  
COMPANY, a California general )  
partnership, )

Plaintiff, )

vs. )

VIRGINIA BEACH FEDERAL )  
SAVINGS BANK f/k/a VIRGINIA )  
BEACH FEDERAL SAVINGS AND )  
LOAN ASSOCIATION, and FOURTH )  
PRINCESS ANNE PROPERTIES, )  
INC., a Virginia corporation, )

Defendants. )

ORDER GRANTING  
SUMMARY JUDGMENT  
AND JUDGMENT

Case No. 94-03-00069 QT

The Honorable Glenn Iwasaki

00413785 Bk00833 Pg00417-00427

ALAN SPRIGGS, SUMMIT COUNTY RECORDER  
1994 AUG 31 11:17 AM FEE \$31.00 BY DMG  
REQUEST: STOEL RIVES BOLEY JONES & GREY

On August 3, 1994, plaintiff Westside Canadian Properties  
Company's ("Westside Canadian") Motion for Summary Judgment came on for  
hearing before this Court, The Honorable Glenn Iwasaki presiding. Kenneth  
B. Black of Stoel Rives Boley Jones & Grey appeared on behalf of Westside

SLC1-9155.1 21385 0001

BOOK R PAGE 391

Canadian, and John P. Ashton of Prince Yeates & Geldzahler appeared on behalf of defendants Virginia Beach Federal Savings Bank ("Virginia Beach") and Fourth Princess Anne Properties, Inc. ("Fourth Princess Anne").

Neither Virginia Beach nor Fourth Princess Anne contested Westside Canadian's Motion for Summary Judgment. Thus, having considered the pleadings, argument, and evidence, and being fully advised in the premises, the Court finds that there are no genuine issues of material fact and that Westside Canadian is entitled to judgment as a matter of law.

Therefore, for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. Westside Canadian was at all material times and currently is the lawful owner of a perpetual and permanent easement for ingress and egress reflected in an instrument entitled Grant of Easement (the "Easement"), a true and correct copy of which is attached hereto as Exhibit "A", is recorded at Page 549 of Book 475 of the Summit County Recorder, and is described as follows:

That existing dirt road entering the Southeast Quarter of Section 1, Township 1 South, Range 3 East, Salt Lake Base and Meridian, approximately 375 feet North of the Southwest Corner of the Southeast Quarter, continuing in an easterly and then southerly direction across such Southeast Quarter to a point approximately 750 feet East of the Southwest Corner of such Southeast Quarter,

thereafter entering the Northeast Quarter of Section 12, Township 1 South, Range 3 East, Salt Lake Base and Meridian, and continuing in an easterly direction across such Northeast Quarter to a point approximately 250 feet South of the Northeast Corner of the Northeast Quarter of Section 12, Township 1 South, Range 4 East, Salt Lake Base and Meridian, together with all reasonable rights of ingress and egress to such existing dirt road from the Southern intersection of Daybreaker Drive and Sacket Drive, being two dedicated roads within Section 1, Township 1 South, Range 3 East, Salt Lake Base and Meridian.

2. Pursuant to its terms, the Easement provides rights of ingress and egress over, under, and across a portion of a tract of land (the "Servient Estate") described as follows:

All of the Southeast Quarter of Section 1, Township 1 South, Range 3 East, Salt Lake Base and Meridian; all of the Northeast Quarter of Section 12, Township 1 South, Range 3 East, Salt Lake Base and Meridian.

3. Pursuant to its terms, the Easement provides access as described in the Easement to a tract of land owned by Westside Canadian (the "Dominant Estate") and fully described as follows:

All of Section 6 and 7, Township 1 South, Range 4 East, Salt Lake Base and Meridian.

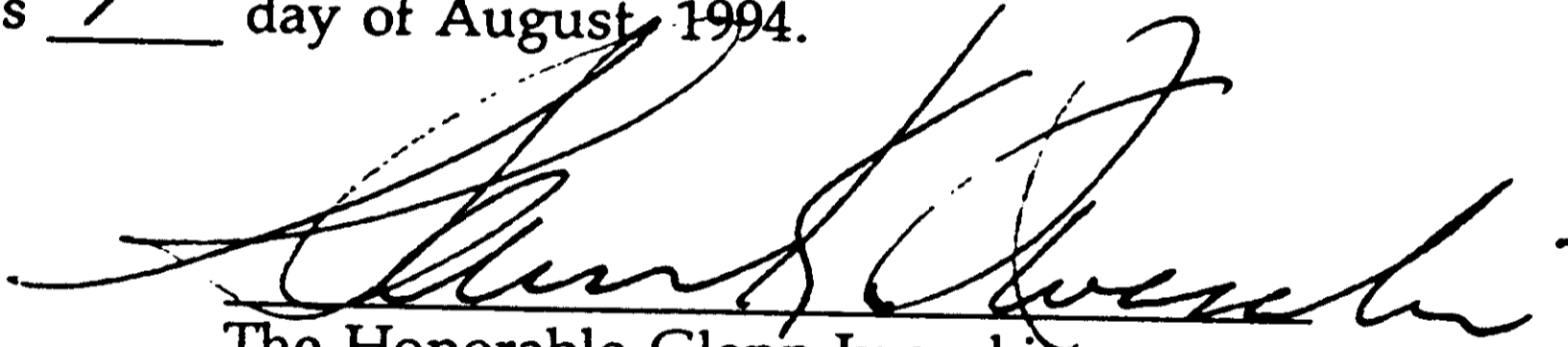
4. The Easement, including all terms and provisions therein, is valid, binding, and effective; runs with the land; is appurtenant to the Dominant Estate; burdens the Servient Estate; and is binding upon the assigns, successors, tenants, and personal representatives of the parties to the

Easement, including, without limitation, plaintiff Westside Canadian and defendants Virginia Beach and Fourth Princess Anne.

5. Westside Canadian's title to the Easement shall be, and hereby is, quieted against all claims of Virginia Beach, Fourth Princess Anne, and/or their respective assigns, successors, tenants, and personal representatives.

6. Plaintiff Westside Canadian and defendants Virginia Beach and Fourth Princess Anne shall each bear their own respective costs and attorney's fees.

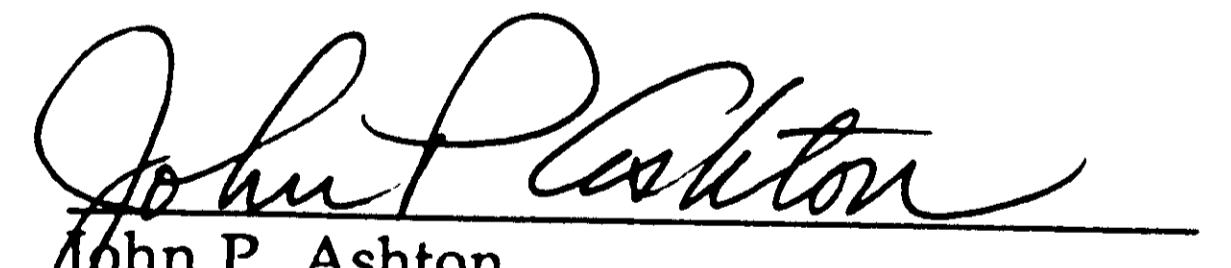
DATED this 3<sup>rd</sup> day of August, 1994.



The Honorable Glenn Iwasaki  
Judge of the Third Judicial District Court

APPROVED AS TO FORM:

PRINCE, YEATES & GELDZAHLER  
John P. Ashton  
David K. Broadbent  
Thomas J. Erbin



John P. Ashton  
Attorneys for Defendants  
Virginia Beach Federal Savings Bank and  
Fourth Princess Anne Properties, Inc.

00413785 Br.00833 Pg00420

EXHIBIT A

REC'D NOTICE  
289616

*Parsons, Behle & Latimer*

APR 27 AM 9:53

RECORDED

*BN 14*

WHEN RECORDED, RETURN TO:

Val R. Antczak, Esq.  
PARSONS, BEHLE & LATIMER  
P. O. Box 11898  
Salt Lake City, Utah 84147

GRANT OF EASEMENT

This Grant of Easement is made this 11th day of APRIL, 1988, between THE JEREMY, LTD., a Utah limited partnership (hereinafter referred to as the "Grantor"), by and through its general partner, JEREMY SERVICE CORPORATION, a Utah corporation, and AMERICAN SAVINGS & LOAN ASSOCIATION, a federal association (hereinafter referred to as the "Grantee").

The following recitals of fact are a material part of this instrument:

D. Grantor is the owner of a tract of land described as follows and hereinafter referred to as "Parcel 1":

All of the Southeast Quarter of Section 1, Township 1 South, Range 3 East, Salt Lake Base and Meridian; all of the Northeast Quarter of Section 12, Township 1 South, Range 3 East, Salt Lake Base and Meridian.

E. Grantee is the owner of a tract of land described as follows and hereinafter referred to as "Parcel 2":

All of Section 6 and 7, Township 1 South, Range 4 East, Salt Lake Base and Meridian.

00413785 Bk00833 Pg00421

F. Grantor wishes to grant and Grantee wishes to receive an easement over, under and across that part of Parcel 1

BOOK R PAGE 395

475 PAGE 549

described as follows and hereinafter referred to as the "Easement Premises":

That existing dirt road entering the Southeast Quarter of Section 1, Township 1 South, Range 3 East, Salt Lake Base and Meridian, approximately 375 feet North of the Southwest Corner of the Southeast Quarter, continuing in an easterly and then southerly direction across such Southeast Quarter to a point approximately 750 feet East of the Southwest Corner of such Southeast Quarter, thereafter entering the Northeast Quarter of Section 12, Township 1 South, Range 3 East, Salt Lake Base and Meridian, and continuing in an easterly direction across such Northeast Quarter to a point approximately 250 feet South of the Northeast Corner of the Northeast Quarter of Section 12, Township 1 South, Range 4 East, Salt Lake Base and Meridian, together with all reasonable rights of ingress and egress to such existing dirt road from the Southern intersection of Daybreaker Drive and Sacket Drive, being two dedicated roads within Section 1, Township 1 South, Range 3 East, Salt Lake Base and Meridian.

NOW, THEREFORE, in consideration of the payment of \$10 and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

1. GRANT OF EASEMENT. Grantor hereby grants to Grantee, its heirs and assigns, as an easement appurtenant to Parcel 2, a perpetual easement for ingress and egress over, under and across the easement premises.

2. USE OF EASEMENT PREMISES. Use of the easement premises is not confined to present uses of Parcel 2, the present buildings thereon, or present means of transportation. Exclusive

-2-

BOOK 475 PAGE 550

00413785 Bk00833 Pg00422

BOOK R PAGE 396

use of the easement premises is not hereby granted. The right to use the easement premises, likewise for ingress and egress is expressly reserved by Grantor.

3. ADDITIONS TO DOMINANT TENEMENT. Said easement is also appurtenant to any land that may hereafter come into common ownership with Parcel 2 and that is contiguous to Parcel 2. An area physically separated from Parcel 2 but having access thereto by means of public ways or private easements, rights or licenses is deemed to be contiguous to Parcel 2.

4. DIVISION OF DOMINANT TENEMENT. If Parcel is hereafter divided into two or more parts by separation of ownership or by lease, all such parts shall enjoy the benefit of the easement hereby created.

5. WARRANTIES OF TITLE. Grantor warrants that it has good and indivisible fee simple title to the easement premises.

6. IMPROVEMENT OF EASEMENT. Grantee shall have the right to improve the easement premises with a concrete, asphalt or similar surface.

7. RELOCATION OF EASEMENT. Grantor grants to Grantee the right to relocate the easement premises as follows:

a. Grantee shall first notify the Grantor of the proposed relocation by mailing notice to Grantor as its last address furnished pursuant hereto showing the proposed relocation, probable commencement and completion dates, all by mailing

00413785 Bk00833 Pg00423

300. 475 PAGE 551

BOOK R PAGE 397

the same, postage prepaid, at least 30 days prior to the commencement of relocation.

b. The easement premises shall not be moved more than 250 feet from their present location.

c. Upon the completion of the relocation, Grantor shall deliver to the Grantee an Easement Grant in recordable form granting the new easement to Grantee and shall furnish Grantee, at Grantee's expense, evidence of title satisfactory to Grantee showing an unencumbered easement in such Grantee, whereupon the change in location of the easement premises shall become effective, and appropriate releases of the prior location shall be executed in recordable form and exchanged between the parties hereto, their successors and assigns.

8. RUNNING UP BENEFITS AND BURDENS. All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the assigns, successors, tenants and personal representatives of the parties hereto.

9. TERMINATION OF COVENANT LIABILITY. Whenever transfer of ownership of either parcel takes place, liability of the Transferor for breach of covenant occurring thereafter automatically terminates, except that the Grantor herein remains liable to breaches of covenants of title set forth in paragraph 5.

10. ATTORNEYS' FEES. Either party may enforce this instrument by appropriate action and such a party prevail in



litigation, it shall recover as part of its costs a reasonable attorney's fee.

11. CONSTRUCTION. The rule of strict construction does not apply to this grant. This grant will be given a reasonable construction so that the intention of the parties to convey a commercially usable right of enjoyment on the Grantee will be implemented.

12. NOTICE. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if signed by the respective persons giving them and delivered by hand, or deposited in the mail (registered, return receipt requested), properly addressed and postage prepaid:

(a) If to Jeremy, to it at:

William T. Blair, Jr.  
8770 North Jeremy Road  
Park City, Utah 84060

With a copy to:

R. Dennis Ickes  
Nielsen & Senior  
1100 Beneficial Life Tower  
36 South State Street  
Salt Lake City, Utah 84111

(b) If to American Savings, to it at:

American Savings & Loan Association  
77 West 200 South  
Salt Lake City, Utah 84101  
Attn: Roger Sanders

00413785 Bk00833 Pg00425

800- 475 PAGE 553

-5- BOOK R PAGE 399

With a copy to:

Scott M. Matheson  
Val R. Antczak  
Parsons, Behle & Latimer  
185 South State Street, Suite 700  
P.O. Box 11898  
Salt Lake City, UT 84147-0898

13. RELEASE OF EASEMENT. Grantee may herein terminate this instrument by recording a release and providing notice of such release to Grantor in accordance with paragraph 12 hereof, whereupon all right, duties and liabilities hereby created shall terminate. For convenience, such instrument may run to "the owner or owners and parties interested" in Parcel 1.

IN WITNESS WHEREOF, Grantor and Grantee have hereto set their hands and seals this 11<sup>th</sup> day of April, 1988.

GRANTOR:

THE JEREMY, LTD.,  
a Utah limited partnership

By: [Signature]  
JEREMY SERVICE CORPORATION

AMERICAN SAVINGS & LOAN ASSOCIATION, a federal association

By: [Signature]  
Its Sr. V.P.

800-475 PAGE 554

-6-

00413785 Bk00833 Pg00426


BOOK R PAGE 400

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

On the 11<sup>th</sup> day of April, 1988, personally appeared before me William Blair, who being by me duly sworn, did say that he is the President of Jeremy Service Corporation, the general partner of The Jeremy, Ltd., and that the within and foregoing instrument was signed in behalf of said corporation and the limited partnership by authority of a resolution of its Board of Directors, and said William Blair duly acknowledged to me that said corporation and general partner executed the same.

My Commission Expires:  
7/31/90

Margie O. Gillman  
NOTARY PUBLIC  
at: 2162 W. 1st St. D.  
S.L.C., Ut.



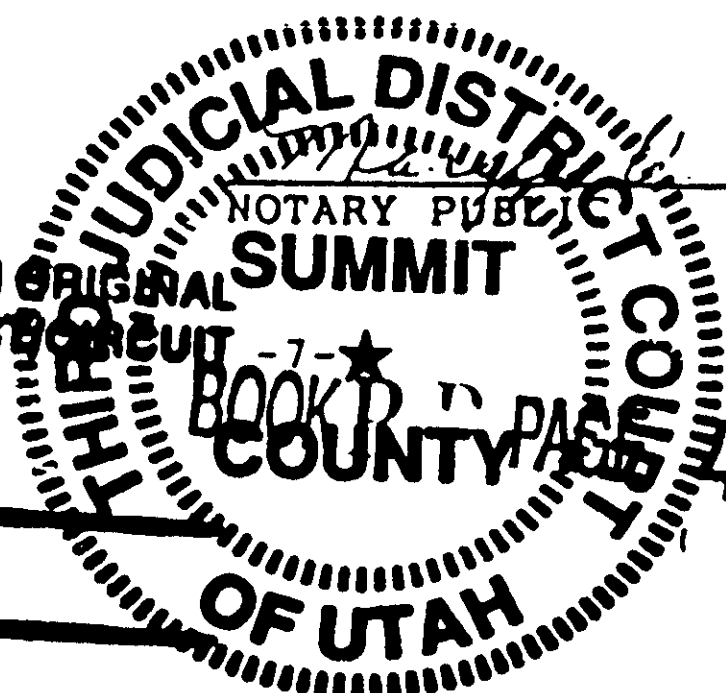
STATE OF UTAH )  
 )  
COUNTY OF SALT LAKE ) : ss

On the 11<sup>th</sup> day of April, 1988, personally appeared before me Roger J. Sanders who being by me duly sworn, did say that he is the Sr. Vice President of AMERICAN SAVINGS & LOAN ASSOCIATION, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said Roger J. Sanders duly acknowledged to me that said corporation executed the same.

00413785 Bk00833 Pg00427

94-03-00069  
I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SUMMIT COUNTY, STATE OF UTAH.

DATE: Aug 31 1994  
Roger J. Sanders  
DEPUTY COUNTY CLERK



THIRD JUDICIAL DISTRICT COURT  
SUMMIT COUNTY, UTAH  
BOOK 1 PAGE 401

Gillman  
800-475-5555