

After recording return to:

Williams & Hunt

c/o Marc Wangsgard

P. O. Box 45678

Salt Lake City, UT 84145

ENT 42448 BK 4618 PG 417
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1998 Apr 30 11:00 am FEE 22.00 BY SS
RECORDED FOR FRANSON NOBLE

ENCROACHMENT AGREEMENT

This Agreement is made and entered into among the Welby Jacob Water Users Company, a Utah non-profit corporation, 775 West 1600 North, Orem, Utah 84057 ("Company"), Utah County, a Utah political subdivision whose address is 100 East Center, Provo, Utah 84606 (the "County"), and Neal B. Evans, hereinafter referred to as the "Applicant."

WITNESSETH

A. The Applicant is developing land into a subdivision in Utah County as described on the attached Exhibit A. In connection with this development the Applicant is constructing public roads to provide access. The Applicant desires to obtain the right to encroach upon and construct the road across the Company's canal property at two locations.

B. The Company does not object to the encroachment, provided the terms of this Agreement are strictly adhered to and provided the construction work and facilities as constructed do not in any manner whatsoever interfere with the Company's use, operation, maintenance, and repair of its canal and related facilities.

C. The public road has been or will be dedicated to the County and the County intends to assume the rights and duties under this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits which will accrue to the parties hereto, the parties agree as follows:

1. Purpose.

The purpose of this Agreement is to set forth the conditions under which the Applicant may install two 36-inch diameter culverts in the Jacob Canal and operate and maintain a public road (hereinafter referred to as the "Works") across the Company's canal easement and right-of-way. This Agreement shall be limited to said purpose, and the Applicant shall have no right to alter the Works in any manner without the prior written approval of the Company.

2. Period.

The term of this Agreement shall be 50 years unless terminated pursuant to paragraph 8 below; provided, however, the Agreement may be extended for successive 50-year periods upon the written consent of the parties.

3. Location.

The Works shall be located across the Jacob Canal at approximately 7650 North 11000 West, Utah County.

4. Construction and Installation.

The Company has reviewed the plans, drawings, and specifications. The Applicant shall construct and install the Works strictly in accordance with the plans, drawings, and specifications approved by the Company, and the changes noted in the special provisions set forth in the attached Exhibit A.

5. Rights Reserved.

This Agreement and all rights hereunder shall be held by the Applicant, at all times subordinate and subject to the rights of the Company to operate and maintain the Jacob Canal and related facilities. The Company reserves the right to allow others to encroach upon the canal property to construct facilities which do not interfere with the Applicant's Works.

6. Hold Harmless.

The Company does not assume any liability resulting from this Agreement or the exercise thereof by the Applicant. The Applicant shall indemnify and hold the Company harmless for injury or damage to any persons or property that may result from exercise of any of the privileges herein conferred. The Company makes no warranty, express or implied, as to the extent or validity of the rights granted under this Agreement. The Applicant shall defend the Company from and against any action which challenges the Applicant's use of the land, subject to this Agreement. The Applicant shall exercise due care to avoid damage to or obstructions of the Jacob Canal and avoid any interference with the operation, maintenance and repair of said canal. The Applicant agrees that if the operation, maintenance or repair of said canal is made more expensive by reason of this Agreement, the Applicant will reimburse the Company the full amount of such additional expenses within 30 days of receipt of an itemized bill.

7. Preservation of Natural Landscape.

The Applicant shall exercise care to preserve the natural landscape and shall conduct its construction operations so as to prevent any unnecessary destruction, scarring, or defacing of the natural surroundings. All trees, native shrubbery and vegetation shall be preserved and shall be protected from damage. Upon completion of the installation of the Works, the construction site shall be smoothed and graded in a manner to conform to the natural topography of the landscape and shall be repaired, replanted, reseeded or otherwise corrected as directed by the Company at the Applicant's expense.

8. Termination.

The Company, at its option, may terminate this Agreement if the Works are not completed within two (2) years. This Agreement shall terminate automatically without further notice upon failure of the Applicant to strictly comply with its terms.

9. Assignment.

Upon completion of the Works and acceptance thereof by the County, the County shall assume all rights and duties of the Applicant. This Agreement shall not be assigned or transferred by the County without the prior written consent of the Company. Notwithstanding the assignment to the County and the provisions of paragraph 10, as between the Company and the Applicant, the Applicant is not released from its obligations to the Company. Further, the Applicant is not released from its obligations to the County contained in any prior written agreements between the Applicant and the County.

10. Entire Agreement.

This Agreement constitutes the entire agreement between the parties and cannot be altered except through a written instrument signed by the parties.

11. Governing Law.

This Agreement shall be enforced and governed under the laws of the State of Utah, and jurisdiction for any action based on this Agreement shall be with the District Court of Salt Lake County, State of Utah.

IN WITNESS THEREOF, the parties have executed this Agreement to be effective the ____ day of April, 1998.

WELBY JACOB WATER USERS COMPANY

By Jack McKee
Jack McKee, President

UTAH COUNTY

By David R. Herbert
Its Chairman, Board of County Commissioners
Utah County, Utah

Neal B. Evans
Neal B. Evans

STATE OF UTAH)

: ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 1998, by Jack McKee, president of Welby Jacob Water Users Company.

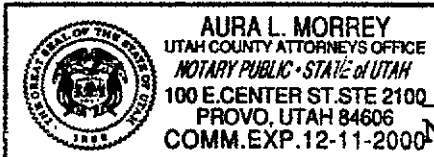
Notary Public

STATE OF UTAH)

: ss.

COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 14 day of April, 1998, by Gary R. Herbert, Utah County Commission.



Aura L. Morrey
Notary Public

STATE OF UTAH)

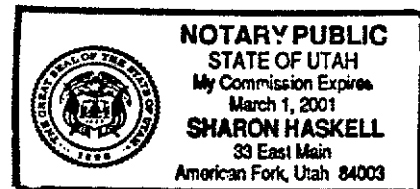
: ss.

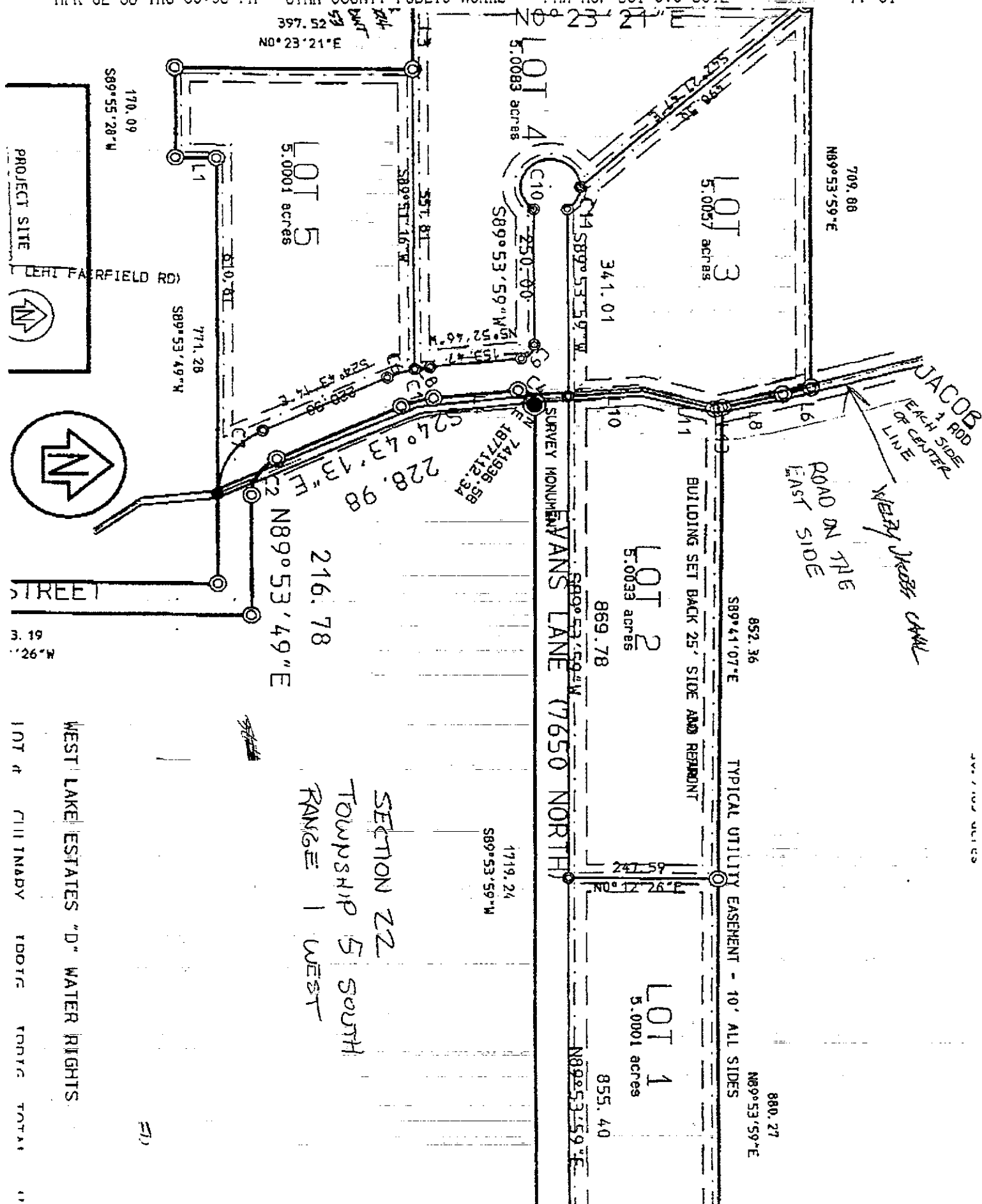
COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 14th day of April, 1998, by Neal B. Evans.

Sharon Haskell
Notary Public

62816.1





BK 4618

BOUNDARY

PLAT "O" BOUNDARY

Commencing at a point which lies S00°23'51"W, 143.07' along the section line and East 159.50 feet from the West 1/4 Corner of Section 22, Township 5 South, Range 1 West, Salt Lake Base and Meridian, then along the following courses and distances: N0°23'21"E, 648.141 feet; N42°27'47"W, 13.233 feet; N89°53'59"E, 709.880 feet; to the center of the Jacob-Welby Ditch, then along the ditch S14°43'19"E, 47.996 feet; and S13°35'21"E, 102.824 feet; then leaving the ditch and proceeding S89°41'07"E, 852.364 feet; N89°53'59"E, 880.270 feet; to the westerly right of way line for 11600 West Street (Lehi-Fairfield Road), then along said right of way N0°12'26"E, 315.713 feet; then N89°53'59"E, 27.891 feet; then S0°30'31"W, 1218.196 feet; then S89°53'49"W, 21.517 feet; to the start of a 2.880 foot non-tangent curve to the left, with R=130.000 and Delta=01°16'10", and whose chord bears N0°50'31"E, 2.880 feet; then N0°12'26"E, 580.885 feet to the start of a 23.642 foot curve to the left with R=15.00 feet and Delta=90°18'27", and whose chord bears N44°56'48"W, 21.270 feet; then S89°53'59"W, 1719.236 feet to the start of a 41.791 foot curve to the left with R=25.00 and Delta=95°46'44", S42°00'37"W, 37.093 feet; S5°52'45"E, 142.738 feet to the start of a 56.56 foot curve to the left with R=172.00 feet, and Delta=18°50'28", and whose chord bears S15°18'00"E, 56.306 feet; S24°43'13"E, 228.983 feet; to the start of a 82.162 foot curve to the left with R=72.00 feet and Delta=65°22'57", and whose chord bears S57°24'42"E, 77.776 feet; then N89°53'49"E, 216.776 feet; S0°12'26"W, 1063.191 feet; S66°01'18"W, 61.395 feet; N0°12'26"E, 1032.040 feet; S89°53'49"W, 771.280 feet; S1°07'22"W, 69.134 feet; S89°55'28"W, 170.088 feet; N0°23'21"E, 397.516 feet; then S89°54'16"W, 125.400 feet to the point of beginning.

Area: 30.9163 acres


15.71
12'26"E