

1999 NOV 19 PM 3:37

MTC 48950-LW
**AGREEMENT AND LICENSE TO ENCROACH
UPON PRIVATE PROPERTY**

THIS AGREEMENT AND LICENSE is entered into by and between Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole, with offices at 50 East North Temple Street, 12th Floor (Property #502-1340), Salt Lake City, Utah 84150 ("LICENSOR") and Ira and Nettie Gilbert, husband and wife, 477 Division Street, Klamath Falls, Oregon 97601 ("LICENSEES").

RECITALS

A. LICENSEES are the owners of two lots located at 477 Division Street, Klamath Falls, Oregon 97601, more particularly described as:

Lots 6 and 7, Block 25 of Industrial Addition to the City of Klamath Falls, Oregon, according to the duly recorded plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

B. LICENSOR is the owner of property contiguous to the southwest boundary of LICENSEES' property, LICENSOR's property being more particularly described as:

Lots 3, 4 and 5, Block 25 of Industrial Addition to the City of Klamath Falls, Oregon, according to the duly recorded Plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

C. LICENSEES wish to maintain existing split rail and solid wood fences constructed and located within the boundaries of LICENSOR's property, together with bushes, flowers and other landscaping also located upon LICENSOR's property.

D. LICENSOR is willing to grant said LICENSEES a license to encroach upon and maintain the fences and landscaping at their present location on the northwest boundary of Lot 5 of LICENSOR's property.

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LICENSE

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the parties agree as follows:

1. LICENSEES acknowledge that their fences, bushes, flowers and other landscaping encroach upon Lot 5 of LICENSOR's property in the manner generally depicted on a copy of a Topographic Map of LICENSOR's property attached hereto as Exhibit "A" and by this reference made a part hereof.
2. LICENSOR hereby grants to LICENSEES a revocable license for LICENSEES' fences, bushes, flowers and other landscaping to encroach upon LICENSOR's property as they now exist, as depicted on Exhibit "A." LICENSEES shall not enlarge or expand the area of encroachment in any manner.
3. LICENSEES hereby agree, at their own cost and expense, to maintain their fences, bushes, flowers and landscaping in a clean and pleasing manner, including appropriate repairs to the fences as needed.
4. LICENSOR hereby specifically reserves the right at any time and for any reason to reduce the allowed area of encroachment or to revoke this License in its entirety. The right to reduce or completely revoke this License shall be at the absolute discretion of LICENSOR without regard to any expenditure of time or money by LICENSEES upon the fences or landscaping and without any obligation to reimburse LICENSEES for any such expenditure. LICENSOR shall be entitled to reduce the area of encroachment and to later revoke this License at will.

5. The right of LICENSOR to reduce or revoke the License granted hereby shall be exercised by written notification, personally delivered or sent to LICENSEES at the address listed herein above, and shall become effective sixty (60) days following the date of receipt of said written notice. Prior to the expiration of the sixty (60) days, LICENSEES, at their own expense, shall move or remove said fences and landscaping to the extent required by the written notice and restore the encroachment area to a condition commensurate with LICENSOR's contiguous property. Upon failure of LICENSEES to properly move or remove the fences and landscaping as required, LICENSOR shall be entitled to do so through such means as LICENSOR may determine. In the event the cost of moving or removal is more than minimal, LICENSEES shall be liable for and obligated to immediately reimburse LICENSOR for the costs of such moving or removal upon demand.

6. LICENSEES hereby agree to hold harmless, defend and indemnify LICENSOR from and against any and all claims for injury, death, loss or damages of any kind arising from or in any way connected with the presence or maintenance of LICENSEES' encroachments on LICENSOR's property pursuant to this License or otherwise.

7. The License granted hereby is for the sole use and benefit of LICENSEES and shall not extend to any heirs, assignees or other successors in interest, unless said successor is holding said interest for the sole benefit of LICENSEES or the survivor of them.

8. Any notice allowed or required pursuant hereto shall be in writing and shall be deemed given and received upon personal delivery or three (3) business days after deposit in the U.S. mails, postage prepaid, certified with return receipt requested, and sent to the address of either party as first listed above, or at such other address as either party shall provide to the other by notice in the manner set forth herein.

9. Recitals A through D are hereby incorporated in and made a part of this Agreement and License.

10. This Agreement and License constitutes the entire agreement of the parties with respect to the subject matter hereof and supercedes any and all former agreements or understandings, whether oral or written. Any amendment or other alteration hereof shall be in writing and properly executed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement and License to Encroach upon Private Property, effective as of the 16 day of November, 1999.

LICENSOR:

CORPORATION OF THE PRESIDING BISHOP
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation sole

By: [Signature]
Its: Authorized Agent

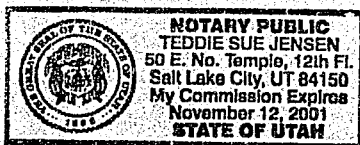
LICENSEES:

[Signature]
Ira Gilbert

[Signature]
Nettie Gilbert

STATE OF UTAH)
 : SS
 COUNTY OF SALT LAKE)

On the 3rd day of November, 1999, before me personally appeared Edwin J. Pond, who is known to me to be an authorized agent of Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole, who acknowledged to me that he executed the foregoing instrument as an authorized agent of said corporation, and the said Edwin J. Pond acknowledged to me that the said corporation executed the same.



Teddie Sue Jensen
 Notary Public

STATE OF OREGON)
 : SS.
 COUNTY OF Klamath)

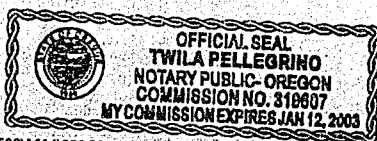
On the 16 day of November, 1999, before me personally appeared Ira Gilbert, known to me to be the person described in the foregoing instrument, and who duly acknowledged to me that he executed the foregoing instrument.



Twila Pellegrino
 Notary Public

STATE OF OREGON)
 : SS.
 COUNTY OF Klamath)

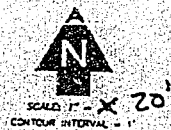
On the 16 day of November, 1999, before me personally appeared Nettie Gilbert, known to me to be the person described in the foregoing instrument, and who duly acknowledged to me that she executed the foregoing instrument.



Twila Pellegrino
 Notary Public

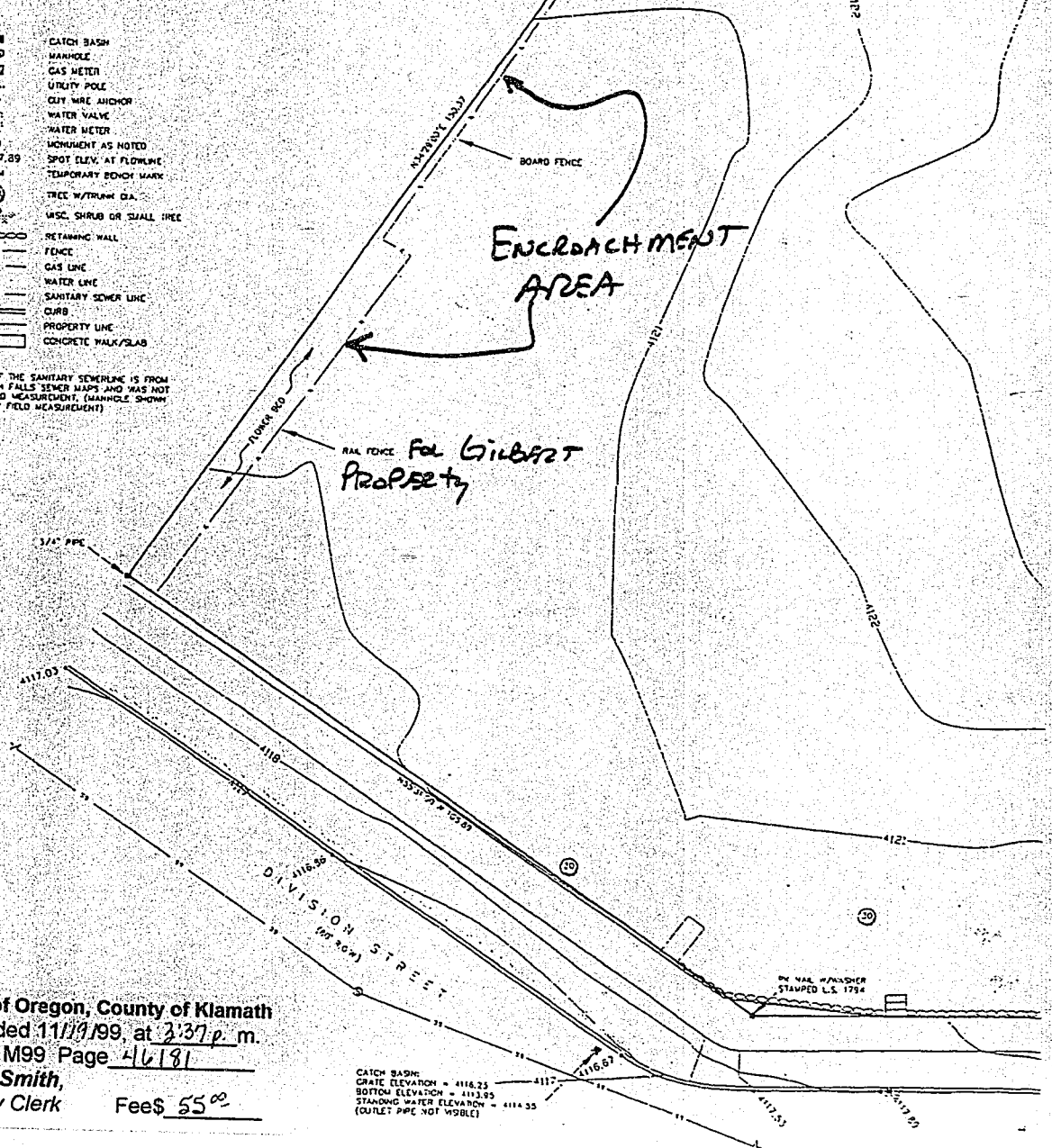
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EXHIBIT "A"
to
Agreement and License to
Encroachment Upon Private Property



- CATCH BASIN
- MANHOLE
- GAS METER
- UTILITY POLE
- GUY WIRE ANCHOR
- WATER VALVE
- WATER METER
- MONUMENT AS NOTED
- SPOT ELEV. AT FLOWLINE
- TEMPORARY BENCH MARK
- TREE W/TRUNK DIA.
- WISC. SHRUB OR SMALL TREE
- RETAINING WALL
- FENCE
- GAS LINE
- WATER LINE
- SANITARY SEWER LINE
- CURB
- PROPERTY LINE
- CONCRETE WALK/SLAB

NOTE:
THE LOCATION OF THE SANITARY SEWERLINE IS FROM
CITY OF KLAMATH FALLS SEWER MAPS AND WAS NOT
LOCATED BY FIELD MEASUREMENT. (MANHOLE SHOWN
WAS LOCATED BY FIELD MEASUREMENT)



State of Oregon, County of Klamath
Recorded 11/19/99, at 3:37 p. m.
In Vol. M99 Page 46181
Linda Smith,
County Clerk

Fee \$ 55.00