

## **SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

This Settlement Agreement and Release of All Claims ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the following parties: John Henry Dudley and Kathryn Marie Dudley, as Trustees of the John Henry Dudley and Kathryn Marie Dudley 2009 Family Trust ("Dudleys"), Steamboat Canal and Irrigation Company, a Wyoming Corporation ("Steamboat"), and County of Washoe, a political subdivision of the State of Nevada ("County").

WHEREAS, there has been pending in the Second Judicial District Court of Nevada, Washoe County, an action entitled: JOHN HENRY DUDLEY and KATHRYN MARIE DUDLEY, as Trustees of the JOHN HENRY DUDLEY and KATHRYN MARIE DUDLEY 2009 FAMILY TRUST, Plaintiffs, versus STEAMBOAT CANAL AND IRRIGATION COMPANY, a Wyoming Corporation; COUNTY OF WASHOE, a political subdivision of the State of Nevada; BLACK AND WHITE CORPORATIONS; ABLE AND BAKER COMPANIES; RED AND GREEN PARTNERSHIPS; AND JOHN DOES I through X, inclusive.

WHEREAS, this lawsuit involves allegations the Dudleys have made against Steamboat and County that generally involve water from the Steamboat ditch escaping the ditch and damaging the Dudleys' house and property located at 35 Francovich Court, Reno, Nevada (A.P.N. 041-063-03), the details of which are set forth in the Complaint filed by the Dudleys April 12, 2017. That Complaint is incorporated by this reference.

WHEREAS, the parties hereto desire to memorialize their intentions to fully settle, once and for all, all claims and controversies of any kind presently existing between and among them as of this date;

WHEREAS, this Agreement is made in the interest of avoiding expense, delays and inconvenience relating to the prosecution or defense of the lawsuit herein, with the purpose of achieving the mutual desires of the parties.

In consideration of the execution of this Settlement Agreement and Release of All Claims, and the promises and commitments herein, and other good and valuable consideration, the receipt and adequacy of which are all acknowledged, the parties hereto agree as follows:

## AGREEMENT

1. The above-referenced Recitals are incorporated herein as though fully set forth;
2. In consideration of the mutual promises and covenants contained herein, Steamboat agrees to do the following:
  - a) Pay Dudleys the total sum of FIFTY THOUSANDS DOLLARS (\$50,000), to be paid by Steamboat's insurance carrier, Northfield Insurance Company, within 30 days of the date on which Dudleys sign and deliver this Agreement.
  - b) Complete a repair of the Steamboat ditch, located behind the Dudleys' house, as follows:
    - 1) Solely at Steamboat's expense, repairs are to be made as set forth in the December 4, 2018 letter from Dyer Engineering Consultants, a copy of which is attached hereto as Exhibit A, and by this reference incorporated herein. Repairs will start just upstream from the existing head gate, and include a filter fabric as part of the rip-rap assembly and be concluded before the start of irrigation season, 2019.
    - 2) Marv Davis to approve plans prepared by Dyer Engineering, with said approval not to be unreasonably withheld by Mr. Davis.
    - 3) All work is to be performed by a licensed contractor in substantial compliance with the Dyer Engineering Consultants plan, as approved, including obtaining any permits required for any such work.
3. In consideration of the mutual promises and covenants contained herein, County shall pay the Dudleys the total sum of FIFTY THOUSAND DOLLARS (\$50,000);
4. The above payments shall be made payable to: "John H. Dudley," checks to be received within thirty days of this Agreement being signed by the Dudleys and delivered. The Dudleys will stipulate to dismiss their Complaint upon receipt of all settlement funds, and the parties understand the Court will maintain jurisdiction herein if there is any issue with the Steamboat repairs as outlined in paragraph 2(b) above.
5. The parties hereby forever release and discharge each other and their respective insurance companies (including Steamboat carrier Northfield Insurance Company), as well as all officers, employees, agents, partners, attorneys, successors and assigns of each party

being released from all claims, demands, causes of action, damages or liabilities of any kind and character, whatsoever, whether known or unknown, foreseen or unforeseen, actual or contingent, or nonexistent, existing at the present time, that are related to or arising out of the allegations set forth in the Complaint, but excluding any claims arising from assertions by Steamboat or Dudleys related to the size or scope of Steamboat's right of way or easement, which claims are expressly reserved by both Dudleys and Steamboat. Regardless of any other language in this Settlement Agreement and Release, nothing in this document shall, or be construed to, relieve Steamboat of any obligation of maintenance of its ditch, or its duty to keep its water in its ditch, in the future; all past alleged defalcations being within the scope of this Release.

The parties expressly understand and recognize that their present injuries, damages or losses may not be fully known and may be more numerous or more serious than now expected. The undersigned specifically recognize and accept the risk of the possible existence of a presently existing but unknown and unanticipated injury or damage resulting from the allegations set forth in the Complaint, and which may be discovered after the execution of this Agreement or the possibility that a known injury or damage may be or become more serious than now expected, provided such harm has heretofore been sustained.

It is further understood that this Agreement includes any and all purported claims for relief and causes of action averred to, or which could have been averred to, in that certain action filed with the Second Judicial District Court in and for Washoe County, on or about April 12, 2017, bearing case number CV17-00714, as well as any and all claims arising out of the same facts which could have been filed in any court of law or any type of arbitrator or administrative body.

6. This Agreement does not include any dismissal, waiver or release of any claims that may arise in the future between these parties that is based on a set of facts materially different from those made in the Complaint herein.

7. The parties agree that this Agreement is executed as a compromise of disputed claims and that the consideration given for this Agreement is not to be construed as an admission of liability or responsibility by the parties or entities discharged herein (Steamboat and County), including their officers, agents, attorneys, servants and/or employees, and any and all other persons, firms or corporations, such liability being expressly denied. All claims herein are disputed and this settlement shall never be treated as evidence of liability (which is expressly denied), nor as an admission of liability or responsibility at any time or in any manner as to any party herein, including but not limited to establishing in any manner the size or scope of the easement/right of way behind the Dudley's house.

8. The parties agree and acknowledge that all negotiations by them and their representatives, in connection with this settlement and Agreement, have been conducted in complete good faith, without evidence of bad faith, collusion, unfair practices or tortious conduct of any kind.

9. The Agreement is the product of collaboration among the parties. No provision of this Agreement shall be construed against any party by virtue of the involvement of that party or its attorney in drafting this Agreement.

10. The parties further agree that they shall use reasonable and good faith efforts to ensure that they do not engage in any vilification of any other party, and shall refrain from making any false, negative, critical or disparaging statements, implied or expressed, concerning other parties, and that all parties will refrain from engaging in any behaviour which may be considered harassment and that the parties will engage, to the extent necessary, in a civil manner, including when Steamboat is required to conduct routine maintenance in the ditch behind the Dudley house. Steamboat may remove any barbed wire from the gate across the ditch at Dudley's property at its own expense, provided there is no material damage to the gate. Dudleys reserve the right to add pickets, or otherwise modify their gate, provided same does not materially interfere in Steamboat's access to or use of its easement

11. This Agreement constitutes the entire integrated Agreement between the parties, and supercedes any and all prior understandings, representations, warranties or agreements pertaining to the subject matter of this Agreement. No prior oral agreements, understandings or representations shall change, modify or amend any part of this Agreement. This Agreement may be modified only by written agreement fully executed by the parties.

12. The parties agree that should any provision of this Agreement be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable; the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision shall be deemed not to be a part of this Agreement.

13. The parties state they have carefully read the foregoing Agreement in its entirety, have the opportunity to confer with an attorney of their own choosing, and know and understand the contents thereof and intend to be bound thereby.

14. The parties agree to perform any and all acts as well as execute any and all documents, which may be reasonably necessary to fully carry out the provisions and intent of this Agreement.

15. The parties represent and warrant that as of the date of the execution of the Agreement, they have the sole right and authority to execute this Agreement on their behalf and on behalf of any corporate entity, partnership or other business entity with regard to the subject matter of this Agreement, and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim or demand relating to any right surrendered by virtue of the Agreement.

16. This Agreement, and the rights, remedies or obligations provided for hereunder, shall be construed and enforced in accordance with the laws of the State of Nevada. Venue for any action to enforce or interpret this Agreement shall be the District Court for the Second Judicial District, State of Nevada, County of Washoe only.

**IN WITNESS WHEREOF**, the undersigned has executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2019.

By \_\_\_\_\_  
JOHN HENRY DUDLEY, individually  
as Trustee of the John Henry Dudley and  
Kathryn Marie Dudley 2009 Family

Trust

STATE OF NEVADA     )  
  )ss.  
COUNTY OF WASHOE    )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared JOHN HENRY DUDLEY known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

**WITNESS** my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

**IN WITNESS WHEREOF**, the undersigned has executed this Agreement this  
\_\_\_\_ day of \_\_\_\_\_, 2019.

By \_\_\_\_\_  
KATHRYN MARIE DUDLEY  
individually as Trustee of the John Henry  
Dudley and Kathryn Marie Dudley 2009  
Family Trust

STATE OF NEVADA     )  
                                  )ss.  
COUNTY OF WASHOE   )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me the undersigned, a  
Notary Public in and for said State, personally appeared KATHRYN MARIE DUDLEY  
known to me to be the person whose name is subscribed to the within instrument and  
acknowledged to me that she executed the same.

**WITNESS** my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

Washoe County:

By: \_\_\_\_\_

Chair

Washoe County Commission

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Washoe County Clerk

STEAMBOAT CANAL AND IRRIGATION  
COMPANY

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF NEVADA     )  
  )ss.  
COUNTY OF WASHOE    )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me the undersigned, a  
Notary Public in and for said State, personally appeared \_\_\_\_\_ known  
to me to be the \_\_\_\_\_ for the STEAMBOAT CANAL AND IRRIGATION  
COMPANY, and the person whose name is subscribed to the within instrument and  
acknowledged to me that he/she executed the same.

**WITNESS** my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC