

IN THE DISTRICT COURT OF HALL COUNTY, NEBRASKA

J

JAMES R. HATCH and BEVERLY HATCH,
Husband and Wife,
Plaintiffs,

Case No. CI 06-1217

vs.

DONALD G. and DEBORAH RAZEY,
Husband and Wife;
RICK S. and PATRICIA A. JOHNSON,
Husband and Wife;
GARRY and JEANNE WILLIAMS,
Husband and Wife;
RYAN and LISA CROUCH,
Husband and Wife;
SCOTT and MARY SAHLING,
Husband and Wife; AMY ANDERSON-
JOHNSON and EMILY J. ANDERSON,
Joint Tenants;
Defendants.

AMENDED
CONSENT JUDGMENT

FILED

APR 17 2008

VALORIE BENDIXEN
CLERK OF DISTRICT COURT

APR 17 11 15

COME NOW the parties, Plaintiffs, James R. and Beverly Hatch ("Plaintiffs"), proceeding on their Amended Complaint filed herein and appearing through their counsel, Stephen D. Mossman, and the Defendants Donald G. and Deborah Razey, Rick S. and Patricia A. Johnson, Garry and Jeanne Williams, Ryan and Lisa Crouch, Scott and Mary Sahling, Amy Anderson-Johnson and Emily J. Anderson (hereinafter collectively referred to as "Defendants"), proceeding on their Answer to Amended Complaint filed herein and appearing through their counsel, Patrick A. Brock, and each party having consented to the making and entering of this Consent Judgment without trial, the Court finds that the Consent Judgment should be and hereby is entered.

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



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1. The Court has jurisdiction of the parties and the subject matter of this action. The Amended Complaint filed herein constitutes a justiciable cause of action against the Defendants pursuant to **Neb. Rev. Stat. § 34-301** (Reissue 1998), **Neb. Rev. Stat. § 25-21, 149 et seq.** (Reissue 1995), and **Neb. Rev. Stat. § 25-1002 et seq.** (Reissue 1995).

2. The parties agree that settlement of these matters is in the public interest and that entry of this Consent Judgment is the most appropriate means of resolving their dispute. The parties desire to conclude this case without trial or adjudication of any issues of fact or law, without this Consent Judgment constituting an admission by the Plaintiffs or Defendants with respect to such issues. The Plaintiffs and Defendants agree to the form and entry of this Consent Judgment for the purposes of settlement only. Therefore, and for only the purposes of this Consent Judgment, the parties agree to the entry of this Order by the Court.

3. This Consent Judgment shall be in full satisfaction of all claims alleged in the Amended Complaint filed herein and any claims arising out of the same transaction or occurrences asserted therein, provided that such claims were known to the parties, or were reasonably ascertainable from information in the parties' possession, as of the date of the filing of the Consent Judgment.

4. The allegations in the Amended Complaint involve ownership and control of property owned by Plaintiffs and Defendants which includes a portion of the waters of Firethorne Lake.

5. The Plaintiffs acquired property generally described as 360 Midaro Drive through a Warranty Deed filed as Document No. 94-108186 of record in the Hall County Register of Deeds' office. The metes and bounds legal description for the property generally described as 360 Midaro Drive was corrected by a Corrective Warranty Deed filed as Document No. 96-

106142 of record in the Hall County Register of Deeds' office. A copy of the Corrective Warranty Deed with the accurate metes and bounds legal description is attached hereto as Exhibit "A" and incorporated herein by reference. The Corrective Warranty Deed contains an accurate metes and bounds legal description of 360 Midaro Drive.

6. The property generally described as 360 Midaro Drive is not subject to Restrictive Covenants filed as Document No. 94-108191 of record with the Hall County Register of Deeds.

7. The Plaintiffs also acquired property generally described as 211 Midaro Drive through a Joint Tenancy Warranty Deed filed as Instrument No. 200312595 of record in the Hall County Register of Deeds' office. The Joint Tenancy Warranty Deed is attached hereto as Exhibit "B" and incorporated herein by reference. The Joint Tenancy Warranty Deed contains an accurate metes and bounds legal description of 211 Midaro Drive.

8. The Defendants acquired interests in their property through Deeds which accurately describe the properties they acquired.

9. The Defendants' property so acquired is subject to the Restrictive Covenants.

10. The Plaintiffs and the Defendants, with the exception of Amy Anderson-Johnson and Emily J. Anderson, filed an Agreement to Modify Restrictive Covenants as Instrument No. 200408936 of record with the Hall County Register of Deeds on September 7, 2004.

11. As the property generally described as 360 Midaro Drive was not subject to the original Restrictive Covenants, it was not impacted by the Agreement to Modify Restrictive Covenants.

12. On July 5, 2007, the Defendants herein purported to amend the Restrictive Covenants and Agreement to Modify Restrictive Covenants through a Second Amendment and

Modification of Restrictive Covenants filed as Instrument No. 200705653 of record with the Hall County Register of Deeds.

13. The Amended Complaint filed herein, in part, challenges the validity and legal effect of the Second Amendment and Modification of Restrictive Covenants.

14. The Answer to Amended Complaint filed herein, in part, challenges the validity and legal effect of the Agreement to Modify Restrictive Covenants.

15. IT IS THEREFORE ORDERED:

- A. The Court establishes the boundaries and quiets the title of the Plaintiffs' property generally described as 360 Midaro Drive as the current metes and bounds of the legal description, including the waters of Firethorne Lake, as set forth in Exhibit "A".
- B. The Court declares that the original Restrictive Covenants, the Agreement to Modify Restrictive Covenants and the Second Amendment and Modification of Restrictive Covenants are null, void and of no legal effect with respect to the Plaintiffs' property generally described as 360 Midaro Drive.
- C. The Court issues a permanent injunction enjoining Defendants from asserting any claim of interest in the real estate including the waters of Firethorne Lake or any portions thereof within the current metes and bounds legal description attached as Exhibit "A" and permanently enjoins the Defendants from trespassing thereon.

16. IT IS FURTHER ORDERED:

- A. The Court establishes the boundaries and quiets the title of the Plaintiffs' property generally described as 211 Midaro Drive as the current metes and bounds of the legal description, including the waters of Firethorne Lake, as set forth in Exhibit "B".
- B. The Court declares that the Second Amendment and Modification of Restrictive Covenants are null, void and of no legal effect with respect to Plaintiffs' property generally described as 211 Midaro Drive.
- C. The Court declares that the Agreement to Modify Restrictive Covenants are valid as they relate to the property generally described as 211 Midaro Drive until October 1, 2014 at which time said Restrictive Covenants (as amended) shall be automatically renewed for successive periods of ten years each unless amended by the vote of the owners of two-thirds of the lots on the property.
- D. The Court enjoins the Defendants from trespassing on the property generally described as 211 Midaro Drive including the waters of Firethorne Lake or any portions thereof within the current metes and bounds legal description attached as Exhibit "B" during the timeframe set forth in Paragraph 16(C).

17. The Plaintiffs agree to mark the water boundary of the properties generally described as 360 Midaro Drive and 211 Midaro Drive with buoys or other visible markers. The Plaintiffs further agree to not enter upon the Defendants' property

including the waters of Firethorne Lake during the timeframe set forth in Paragraph 16(C).

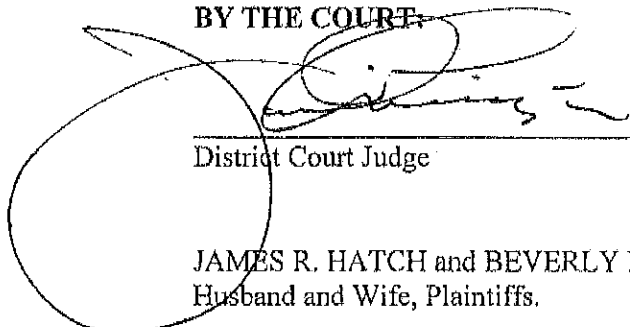
18. This Consent Judgment shall be binding on the parties hereto, their respective successors, heirs, executors, administrators and assigns.

19. The parties shall pay their own attorney's fees and court costs incurred herein.

20. The undersigned consent without further notice to the form and entry of the foregoing Consent Judgment.

DATED THIS 16 day of April, 2008, in Hall County, Nebraska.

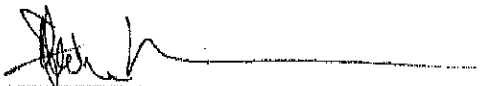
~~BY THE COURT:~~



District Court Judge

JAMES R. HATCH and BEVERLY HATCH,
Husband and Wife, Plaintiffs.

By Their Attorneys
MATTSON, RICKETTS, DAVIES,
STEWART & CALKINS
134 South 13th Street, Suite 1200
Lincoln, NE 68508
Telephone No.: (402) 475-8433
Facsimile No.: (402) 475-0105
E-mail: sdm@mattsonricketts.com

By: 
Stephen D. Mossman, #19859
One of Said Attorneys

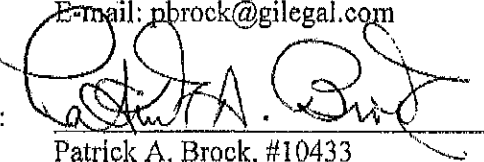
and

DONALD G. AND DEBORAH RAZEY, RICK S. AND
PATRICIA A. JOHNSON, GARRY AND JEANNE
WILLIAMS, RYAN AND LISA CROUCH, SCOTT AND
MARY SAHLING, AMY ANDERSON-JOHNSON AND
EMILY J. ANDERSON, Defendants

By Their Attorneys

CUNNINGHAM, BLACKBURN, FRANCIS,
BROCK & CUNNINGHAM
222 North Cedar Street
P.O. Box 2280
Grand Island, NE 68802
Telephone No.: (308) 384-2636
Facsimile No.: (308) 384-6556
E-mail: pbrock@gilegal.com

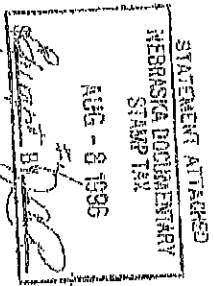
By:



Patrick A. Brock, #10433
One of said Attorneys

S. Massman +
P. Brock

*Doc. # 2300
01/24/2000
Hall County, Neb*



CASH _____
CHECK 10.00
[Signature]
SERVING _____
CASH _____
CHECK _____

98 AUG 8 AM 11 58

STATE OF NEBRASKA)
COUNTY OF HALL) SS

Entered as Document No.
98-106142

**Corrective
WARRANTY DEED**

Correction to 1st deed 360 Misad

THOMAS L. ANDERSON, a single person; DONALD S. ROUSH and MAUREN C. ROUSH, Husband and Wife; and MICHAEL D. ROUSH, a single person, GRANTOR, whether one or more, in consideration of ONE AND NO/100 DOLLAR (\$1.00) and to correct the Deed filed in the Register of Deeds Office of Hall County, Nebraska, as Document No. 94-108186 and other good and valuable consideration, receipt of which is hereby acknowledged, conveys to JAMES R. HATCH, GRANTEE, the following described real estate (as defined in Neb. Rev. Stat. §76-201) in Hall County, Nebraska:

*Correction
in the
Description*

A tract of land comprising a part of the North Half of the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Twenty-Seven (27), Township Eleven (11) North, Range Nine (9) West of the 6th P.M., Hall County, Nebraska, said tract being more particularly described as follows: With reference to the Southeast corner of said N $\frac{1}{2}$ SW $\frac{1}{4}$; thence running on an assumed bearing of N 90° 00' 00" W on the South line of said N $\frac{1}{2}$ SW $\frac{1}{4}$ for a distance of 725.63 feet to a point on the East line of a tract of land surveyed by L.R. Rudd on July 13, 1937 and recorded in Hall County Surveyor's Book #1 on page 486; thence N 00° 04' 24" W on the East line of said tract surveyed by L.R. Rudd for a distance of 2.56 feet to the Northeast corner of the tract surveyed by L.R. Rudd, thence N 01° 26' 02" W for 60.02 feet to the actual POINT OF BEGINNING; thence S 89° 55' 19" W parallel with the North line of the tract surveyed by L.R. Rudd for 720.83 feet; thence N 01° 26' 02" W for 316.47 feet; thence N 01° 22' 28" W for 160.00 feet; thence N 69° 50' 00" E for 760.16 feet; thence S 01° 26' 02" E for 735.98 feet to the POINT OF BEGINNING, said tract containing 10.029 acres more or less.

Grantor covenants (jointly and severally, if more than one), with the Grantee that Grantor:

- (1) is lawfully seized of such real estate and that it is free from encumbrances except easements and restrictions of record;
- (2) has legal power and lawful authority to convey the same;
- (3) warrants and will defend the title to the real estate against the lawful claims of all persons.

Executed: August 8, 1996.



98-102324

LEGAL DESCRIPTION

A tract of land comprising a part of the North Half of the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Twenty-Seven (27), Township Eleven (11) North, Range Nine (9) West of the 6th P.M., Hall County, Nebraska, said tract being more particularly described as follows: With reference to the Southeast corner of said N $\frac{1}{2}$ SW $\frac{1}{4}$; thence running on an assumed bearing of N 90° 00' 00" W on the South line of said N $\frac{1}{2}$ SW $\frac{1}{4}$ for a distance of 725.63 feet to a point on the East line of a tract of land surveyed by L.R. Rudd on July 13, 1937 and recorded in Hall County Surveyor's Book #1 on page 486; thence N 00° 04' 24" W on the East line of said tract surveyed by L.R. Rudd for a distance of 2.56 feet to the Northeast corner of the tract surveyed by L.R. Rudd, thence N 01° 26' 02" W for 60.02 feet to the actual POINT OF BEGINNING; thence S 89° 55' 19" W parallel with the North line of the tract surveyed by L.R. Rudd for 720.83 feet; thence N 01° 26' 02" W for 316.47 feet; thence N 01° 22' 28" W for 160.00 feet; thence N 69° 58' 00" E for 760.16 feet; thence S 01° 26' 02" E for 735.98 feet to the POINT OF BEGINNING, said tract containing 10.029 acres more or less.

Entered As Instrument No
0200312595

STATE OF NEBRASKA)
COUNTY OF HALL) SS

2003 SEP 19 PM 3 22

Kathy Stewart
REG OF DEEDS

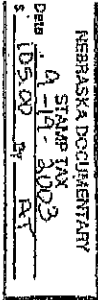
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REFUNDS:

CASH _____

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JOINT TENANCY WARRANTY DEED

MICHAEL D. ROUSH, a single person, MARLENE C. ROUSH, a single person and DANA JELINEK AKA DANA L JELINEK AND RONALD V JELINEK, wife and husband GRANTORS, in consideration of One Dollar (\$1.00) and Other Valuable Consideration received from GRANTEE,

JAMES R. HATCH AND BEVERLY J. HATCH, HUSBAND AND WIFE

conveys to GRANTEE, as joint tenants and not as tenants in common, the following described real estate (as defined in Neb. Rev. Stat. 76-201):

LOT TWO (2), FIRETHORNE ESTATES SECOND SUBDIVISION,
IN THE CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA.

GRANTOR covenants (jointly and severally, if more than one) with GRANTEE that GRANTOR:

- (1) is lawfully seized of such real estate and that it is free from encumbrances except easements, reservations, covenants and restrictions of record;
- (2) has legal power and lawful authority to convey the same;
- (3) warrants and will defend title to the real estate against the lawful claims of all persons.

Executed: September 16, 2003

Michael D. Roush
MICHAEL D ROUSH

Marlene C. Roush
MARLENE C ROUSH

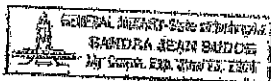
Dana Jelinek
DANA JELINEK AKA DANA L JELINEK

Ronald V. Jelinek
RONALD V JELINEK

STATE OF NEBRASKA

COUNTY OF HALL

The foregoing instrument was acknowledged before me on 16th of September 2003 by Michael D. Roush, a single person



Sandra Jean Bette
Notary Public

My Commission Expires:



James + Beverly Hatch
211 Midway Dr
Grand Island, NE 68801
Lot 2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A tract of land comprising a part of Lots 3 and 4, Island and part of the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$), all in Section 27, Township 11 North, Range 9 West of the 6th P.M., Hall County, Nebraska, said tract being more particularly described as follows: With reference to the West Quarter corner of said Section 27; thence running on an assumed bearing of S 01 23'04" E on the West line of said Section 27 for a distance of 348.91 feet; thence N 89 49'59" E for 432.82 feet; thence N 01 23'29" W for 352.81 feet; thence N 89 17'44" E for 227.12 feet to the actual POINT OF BEGINNING; thence N 89 17'44" E for 142.98 feet; thence S 01 20'41" E for 356.28 feet; thence N 89 49'59" E for 364.48 feet; N 01 22'45" W for 360.07 feet; thence N 89 17'07" E for 138.92 feet; thence N 00 51'02" W for 625.06 feet; thence N 75 20'47" E for 8.52 feet; thence N 80 35'25" E for 143.87 feet; thence S 31 40'02" E for 86.44 feet; thence S 67 11'10" E for 588.34 feet; to the Northwest corner of Lot 4, FIRETHORNE ESTATES SUBDIVISION, an addition to the City of Grand Island, Hall County, Nebraska, thence S 09 24'02" W on the West line of Lots 4 and 3 of said subdivision for 887.07 feet to the Southwest corner of said Lot 3; thence S 69 58'00" W for 410.16 feet to a point on the East line of Lot 1 of said subdivision; thence S 47 27'08" E 362.61 feet; thence N 89 49'49" E 507.24 feet to a point on the West line of Lot 1 of said subdivision; thence N 01 23'10" W 60.00 feet Northerly of the Northwest corner thereof; thence S 89 49'59" W for 60.01 feet; thence N 01 23'04" W for 354.94 feet to the POINT OF BEGINNING, said tract containing 19.82 acres more or less.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]