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Book - 9847 Pg - 9232-9243

GARY W. OTT

RECORDER, SALT LAKE COUNTY, UTAH

CITY OF DRAPER

1020 E PIONEER RD

DRAPER UT 84020

BY: KCC, DEPUTY - WI 12 P.

**AGREEMENT 10-42**

**FIRST AMENDMENT TO  
DEVELOPMENT AGREEMENT  
FOR  
KENNINGTON ESTATES  
DRAPER, UTAH**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR KENNINGTON ESTATES DRAPER, UTAH ("**First Amendment**") is entered into as of the 6<sup>th</sup> day of July, 2010, between DRAPER CITY, a municipality and political subdivision of the State of Utah (the "**City**"), KENNINGTON ESTATES HOMEOWNERS ASSOCIATION, a Utah non-profit corporation (the "**Association**"), as the homeowners association formed with respect to the single-family residential project known as Kennington Estates (the "**Project**"), and the successor in interest to certain rights of Cletus Estates, LLC, a Utah limited liability company (the "**Developer**"), and SUSAN B. DAY ("**Day**"). The City and the Association are referred to herein individually as a "party" and collectively as "parties."

**RECITALS**

A. The City and Developer entered into that certain Development Agreement for Kennington Estates dated July 17, 2007 (the "**Development Agreement**"), and recorded on August 3, 2007 as Entry No. 10183610, Book 9499, Pages 6094-97, in connection with the Project, which is more particularly described in Exhibit A attached hereto.

B. Pursuant to the Development Agreement, and in acknowledgment of a separate agreement which the Developer and Day had previously entered into relating to Developer's construction of a new home for Day within the Project (the "**New Home**"), the Developer and the City agreed that the Developer would remove an existing home that lies on Lot #2 of the Project and encroaches on Lot # 3 within the Project ("**Existing Home**") within twelve (12) months following the recording of the final plat. Notwithstanding the Development Agreement and the separate agreement between the Developer and Day, the Developer never constructed the New Home for Day, and Day continues to occupy the Existing Home.

C. Since execution of the Development Agreement, the Project was foreclosed upon by the Developer's lender, Bank of American Fork. Following such foreclosure, nine (9) of the lots within the Project (the "**Lots**") were subsequently sold by the foreclosing bank to Todcor Holdings, LLC, which continues to own three (3) of such Lots. Todcor Holdings has conveyed a total of six (6) of the Lots to persons desiring to construct personal residences upon such Lots.

D. The Association was formed by the owners of the Lots on or around April 7, 2010, for the purpose of providing for the maintenance and repair of common areas, including but not limited to, a common area park and swimming facility proposed to be located on a portion of Lot # 3 in the Project (collectively the "**Common Area Facility**"), which property is currently owned by Day and subject to an option to purchase in favor of the Association.

E. In light of the foregoing, the parties desire to amend the Development Agreement to (1) clarify that the Existing Home may remain in its current location, (2) adjust the lot line between Lot #2 and Lot #3, in connection with the planning and construction of the Common Area Facility, and (3) decrease the front yard setback within the Project to twenty (20) feet.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, the Association and Day hereby amend the Development Agreement as follows:

1. **Incorporation of Recitals and Exhibit.** The above Recitals and Exhibit attached hereto and referenced herein are hereby incorporated into this First Amendment.

2. **Existing Home.** The City, the Association and Day hereby amend Section 1 of the Development Agreement by eliminating any requirement set forth therein that the Existing Home be removed from its current location and that a New Home be constructed by or on behalf of Day. Furthermore, the parties hereby agree that the existing lot line between Lots #2 and #3, as currently identified in the final recorded plat for the Project, shall be modified, by moving such lot line further north such that there will be no encroachment of the Existing Home affecting Lot #3. The foregoing lot line adjustment is depicted in **Exhibit B** attached hereto and incorporated herein. The amended Lot #3 shall thereafter be identified as Parcel C. These lot changes will be memorialized in a future plat amendment consistent with **Exhibit B**, which application shall be submitted within one year from the date hereof. After recordation of said amended plat, the City acknowledges that the Existing Home will be in compliance with the City's zoning ordinance relating to setbacks. The parties further agree that the Association shall be entitled to improve "Parcel C" as a Common Area Facility, subject to the Association's compliance with City ordinances.

3. **Front Yard Setbacks.** The parties agree that the front yard setback relating to each Lot within the Project, including but not limited to the Existing Home, shall be and hereby is reduced from twenty five feet (25') to twenty feet (20').

4. Notices. Any notices, requests or demands required or desired to be given hereunder shall be in writing and shall either be delivered personally or by certified mail or express courier delivery to the parties at the following addresses:

If to the City:

Draper City  
Attn: Tracy Norr  
1020 East Pioneer Road  
Draper, UT 84020

With a copy to:

Douglas Ahlstrom  
Draper City Attorney  
1020 East Pioneer Road  
Draper, UT 84020

If to the Association:

Kennington Estates Homeowners Association  
Attn: Bryan Flamm  
1099 West South Jordan Parkway  
South Jordan, UT 84095

If to Day:

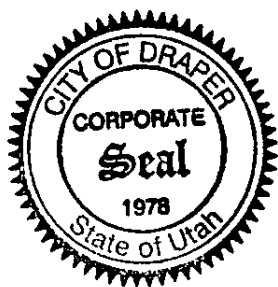
Susan B. Day  
13751 S. Kennington Court  
Draper, UT 84020

5. Ratification of Development Agreement. The Development Agreement, as amended herein, is hereby ratified and confirmed. Except as expressly amended and modified herein, the Development Agreement remains in full force and effect. To the extent that the terms of this First Amendment conflict with the Development Agreement, the terms of this First Amendment shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representatives effective as of the date first written above.

ATTEST:

By: Tracy Brown  
Draper City Recorder



CITY:

DRAPER CITY, a municipality and political subdivision of the State of Utah

By: Danell F. Smith  
Its: Mayor

ASSOCIATION:

KENNINGTON ESTATES  
HOMEOWNERS ASSOCIATION, a Utah  
non-profit corporation

By: [Signature]  
Bryan Flamm, President

DAY:

Susan B. Day  
Susan B. Day

STATE OF UTAH )  
: ss.

COUNTY OF SALT LAKE )

The foregoing First Amendment to Development Agreement for Kennington Estates Draper, Utah was acknowledged before me this 6th day of July, 2010, by Terrell H. Smith, as Mayor of Draper City, a municipality and political subdivision of the State of Utah.

Angelia J. Olsen  
Notary Public

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



The foregoing First Amendment to Development Agreement for Kennington Estates Draper, Utah was acknowledged before me this 3 day of August, 2010, by Bryan Flamm, as President of Kennington Estates Homeowners Association, a Utah non-profit corporation.

Kristen Zandi  
Notary Public

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



The foregoing First Amendment to Development Agreement for Kennington Estates Draper, Utah was acknowledged before me this 8 day of August, 2010, by Susan B. Day.

Kristen Zandi  
Notary Public

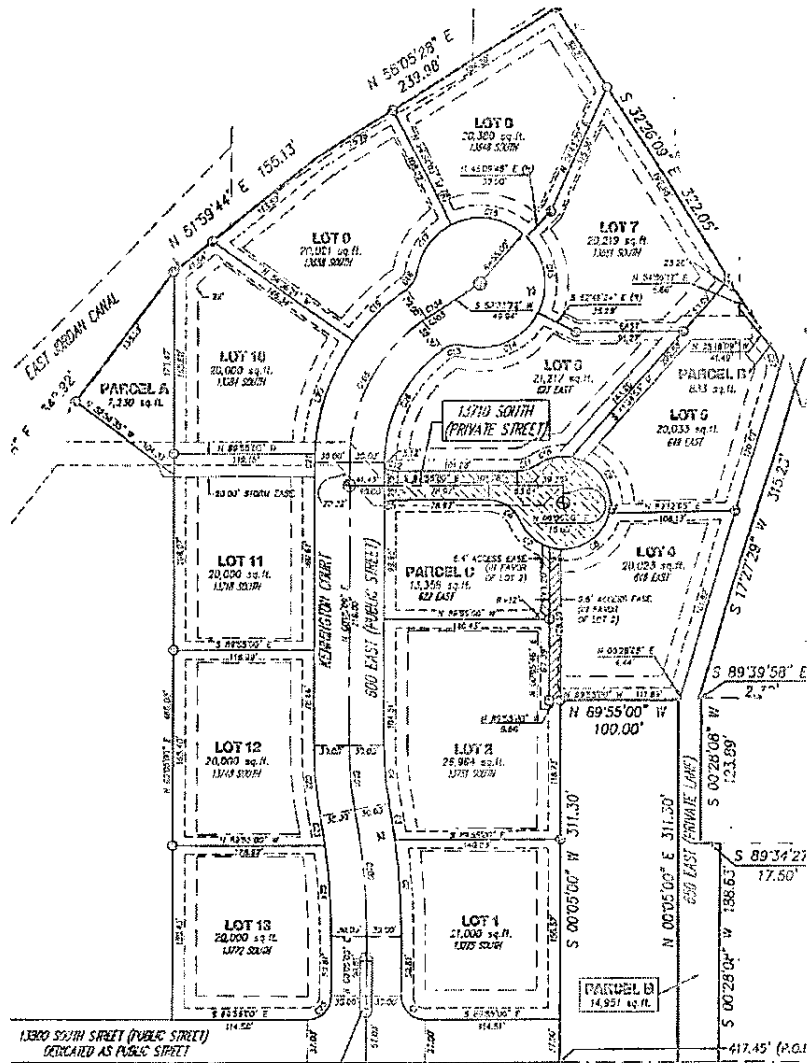


## EXHIBIT A

### PROPERTY DESCRIPTION

Beginning at a point being North 89°55'00" West, 417.45 feet along the section line from the East Quarter Corner of Section 6, Township 4 South, Range 1 East, Salt Lake Base and Meridian; and running thence along the section line North 89°55'00" West, 863.91 feet; thence North 01°26'18" East, 164.88 feet to a point on a southerly boundary of the "East Jordan Canal"; and running thence along said "East Jordan Canal" the following ten (10) courses and distances: (1)North 43°10'55" East, 21.42 feet; thence (2)North 41°42'01" East, 118.03 feet; thence (3)North 49°18'49" East, 32.56 feet; thence (4)North 59°45'14" East, 108.43 feet; thence (5)North 58°37'05" East, 102.98 feet; thence (6)South 00°45'43" East, 19.16 feet; thence (7)North 47°37'12" East, 34.37 feet; thence (8)North 37°03'25" East, 342.92 feet; thence (9)North 51°59'44" East, 155.13 feet; thence (10)North 58°05'28" East, 239.98 feet to a point on a Westerly boundary of the Becki Stevens property (Entry# 5234522, Book: 6440 Page: 0979); and running thence along said Becki Stevens Property the following two (2) courses: (1)South 32°26'09" East, 322.05 feet; thence (2)North 56°59'29" East, 59.48 feet to a point on a Westerly boundary of the Ted A. Zimmerman property (Entry# 5111842, Book: 6346 Page: 0911); thence along said Ted A. Zimmerman property the following four (4) courses: (1)South 16°50'31" West, 53.75 feet; thence (2)North 57°28'20" East, 8.70 feet; thence (3)South 17°27'29" West, 315.23 feet; thence (4)South 89°39'58" East, 2.32 feet to a point on a Westerly boundary of the Chad Halter property (Entry# 7943083, Book: 8477 Page: 3168); thence along said Chad Halter property the following two (2) courses: (1)South 00°28'08" West, 123.89 feet; thence (2)South 89°34'27" East, 17.50 feet; thence South 00°28'08" West, 188.63 feet; thence North 89°55'00" West, 34.99 feet to a point on a Easterly boundary of the Reid Dixon property (Entry# 7481357, Book: 8313 Page: 7837); thence along said Reid Dixon property the following three (3) courses: (1)North 00°05'00" East, 311.30 feet; thence (2)North 89°55'00" West, 100.00 feet; thence (3)South 00°05'00" West, 311.30 feet to the point of beginning.

Exhibit "B"



10183610  
08/03/2007 12:08 PM \$22.00  
Book - 9499 Pg - 6094-6097  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
CITY OF DRAPER  
1020 E PIONEER RD  
DRAPER UT 84020  
BY: ZJM, DEPUTY - WI 4 P

**AGREEMENT 07-39**  
**DEVELOPMENT AGREEMENT**  
**FOR**  
**KENNINGTON ESTATES**  
**DRAPER, UTAH**

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into this 17<sup>th</sup> day of July, 2007, by and between Cletus Estates, LLC, a Utah limited liability company (the "**Master Developer**"), as the owner and developer of the single-family residential project known as Kennington Estates (the "**Project**"), and Draper City, a municipality and political subdivision of the State of Utah (the "**City**").

**AGREEMENT**

**NOW, THEREFORE**, the parties hereby agree as follows:

1. **Existing Home May Remain for 12 Months.** The parties acknowledge that the Master Developer has entered into an agreement with Susan B. Day ("**Day**") dated October 25, 2006 entitled the Amended Option Agreement (the "**Day Agreement**") pertaining to, in pertinent part, the construction of a new home for Day within the Project (the "**New Home**") and the corresponding demolition of Day's existing home that lies on Lot #2 of the Project and encroaches on Lot #3 within the Project (the "**Existing Home**"). The Master Developer represents that the Day Agreement resolved all pertinent issues between the Master Developer and Day, including the construction of a New Home within twelve (12) months following the recording of the final plat for the Project and the Master Developer's commitment to use its best efforts to allow Day to reside in the Existing Home until the New Home is completed. Should the New Home not be completed within the twelve (12) month period contemplated in this paragraph, the Master Developer understands that it will be required to immediately remove the Existing Home from Lot #2 so as to remove the encroachment affecting Lot #3. The Master Developer does not believe that any term of this Agreement is in conflict with the Day Agreement, but expressly understands that the terms of this Agreement supercede those in the Day Agreement should any conflict be determined.

2. **Knowledge.** The parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and risks and having had the opportunity to consult with legal counsel of their choice.

3. **Supremacy.** In the event of any conflict between the terms of this Agreement and those of any document referred to herein, this Agreement shall govern.

4. **No Relationship.** Nothing in this Agreement shall be construed to create any partnership, joint venture, or fiduciary relationship between the parties.



5. **Priority.** This Agreement shall be recorded against the Property senior to the Protective Covenants, all Master Association covenants, and any debt security instruments encumbering the Property.

6. **Amendment.** This Agreement may be amended only in writing signed by the parties hereto.

7. **No Waiver.** Any party's failure to enforce any provision of the Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

8. **Notices.** Any notices, requests or demands required or desired to be given hereunder shall be in writing and shall either be delivered personally or by certified mail or express courier delivery to the parties at the following addresses:

If to the Master Developer:

Cletus Estates, LLC  
138 East 12300 South, Suite C, No. 177  
Draper, UT 84020

With a copy to:

Jeffrey N. Walker  
HOLMAN & WALKER, LC  
9533 South 700 East, Suite 100  
Sandy, UT 84070

If to the City:

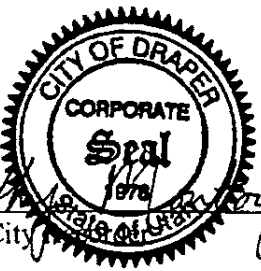
Draper City  
Layne P. Long, City Manager  
1020 East Pioneer Road  
Draper, UT 84020

With a copy to:

Douglas Ahlstrom  
Draper City Attorney  
1020 East Pioneer Road  
Draper, UT 84020

Any party may change his address by giving written notice to the other party in accordance with the provisions of this section.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first date written above.

Attest:  Kathleen M. [Signature]  
Draper City

**DRAPER CITY**, a municipality and political subdivision of the State of Utah

By Danell F. Smith  
Its Mayor

**CLETUS ESTATES, LLC**, a Utah limited liability company

By Mark G. [Signature]  
Its MANAGER

CITY ACKNOWLEDGEMENT

STATE OF UTAH )  
 )  
 ) :SS.  
COUNTY OF SALT LAKE )

On the 17<sup>th</sup> day of July, 2007, personally appeared before me Darrell H. Smith, who being duly sworn, did say that he is the Mayor, of **DRAPER CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Darrell H. Smith acknowledged to me that the City executed the same.

Linda Mandet  
NOTARY PUBLIC

My Commission Expires:

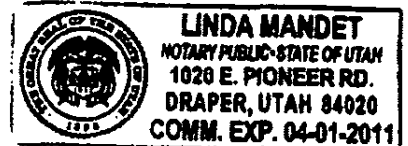
4/1/2011

Residing at:

Salt Lake Co.

DEVELOPER ACKNOWLEDGEMENT

STATE OF UTAH )  
 )  
 ) :SS.  
COUNTY OF SALT LAKE )



On the 20<sup>th</sup> day of July, 2007, personally appeared before me Mark G. Richards, who being duly sworn, did say that he/she is a Manager of **CLETUS ESTATES, LLC** a limited liability company, and that the foregoing instrument was duly authorized by the limited liability company at a lawful meeting held by authority of its operating agreement and signed in behalf of said limited liability company.

Kathy Montoya  
NOTARY PUBLIC

My Commission Expires:

4/17/2011

Residing at:

Salt Lake County



BK-9499 PG 6097

BK 9847 PG 9242

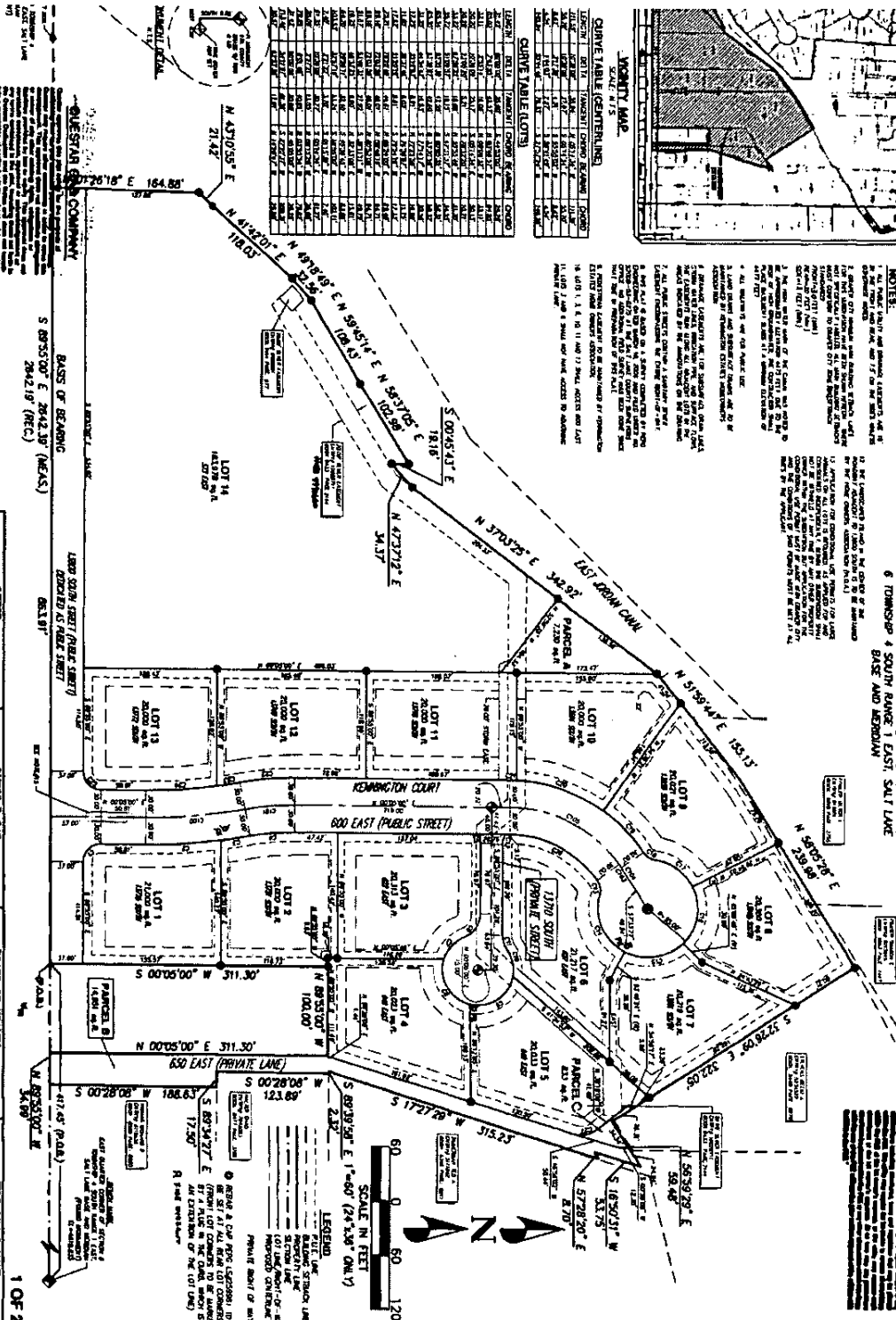
LOCATED IN THE NORTH EAST QUARTER OF SECTION  
6 TOWNSHIP 4 SOUTH RANGE 1 EAST, SALT LAKE  
BASE AND MERIDIAN

the same time, the fact that the company is not a public company, and that it is not a subsidiary of a public company, means that the company is not subject to the same level of scrutiny as a public company. This is a significant advantage for the company, as it allows it to maintain a higher level of confidentiality and control over its operations. However, it also means that the company is not subject to the same level of oversight as a public company, which could be a disadvantage for investors. The company's decision to remain a private company is a strategic one, and it is likely that the company will continue to maintain this status for the foreseeable future.





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141.0E	102.0W	1.0E	10.013.3E	0.0E
141.5E	102.0W	1.0E	10.013.3E	0.0E

Year	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500
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[illegible]

ROCKY MOUNTAIN POWER  
APPROVED THIS 26<sup>th</sup> DAY  
OF May A.D. 2022  
By *[Signature]*

APPROVED THIS 30th DAY OF MAY 1917  
 JAMES E. HARRIS  
 CHIEF OF BUREAU  
 DEPARTMENT OF AGRICULTURE  
 WASHINGTON, D. C.

APPROVED AND FORWARDED	DATE	APPROVED AND FORWARDED	DATE
			
SPECIAL AGENT IN CHARGE		SPECIAL AGENT IN CHARGE	

[illegible][illegible]

**PENG ENGINEERING, LLC**  
670 W. 118TH ST. APOD • DEERFIELD, IL 60015  
PH: (847) 967-5571 • FAX: (847) 967-5591

\$12,820.00      Paid 11-01-06  
CASH      PAID TO THE ORDER OF

RECORDED & INDEXED

TOTAL COUNTRY OF ILL. LAKE RECORDS AND FEES AT THIS TIME \$12,820.00

THESE DOCUMENTS ARE NOT VALID UNLESS SIGNED BY AN OFFICIAL OF THE COUNTY CLERK'S OFFICE.

[illegible]