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WHEN RECORDED, RETURN TO:

SNELL & WILMER L.L.P.
Attn: Wade R. Budge
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

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09/03/2015 03:02 PM \$35.00
Book - 10359 Pg - 567-577
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
SNELL & WILMER
15 W SO. TEMPLE STE.1200
SLC UT 84101
BY: CBP, DEPUTY - WI 11 P.

Affects Parcel Nos. 33-01-126-003; 33-01-176-001;
33-01-100-038

ACCESS, UTILITY AND LANDSCAPING EASEMENT AGREEMENT

THIS ACCESS, UTILITY AND LANDSCAPING EASEMENT AGREEMENT ("Agreement") is made and entered into as of the ~~September~~ ^{1st} day of August, 2015 (the "Effective Date"), by and among Draper 400 West Holdings, LLC, a Utah limited liability company ("Draper 400"), Draper Hotel Holdings, LLC, a Utah limited liability company ("Draper Hotel"), and DUMAR, LLC, a Utah limited liability company with the address of 1559 River Oaks Dr., Sandy, UT 84093 ("DUMAR"). Draper 400, Draper Hotel, and DUMAR are sometimes referred to individually as a "Party" and collectively as the "Parties."

A. Draper 400 is the owner of that certain real property defined as the "Multi-Family Lot" and Draper Hotel is the owner of that certain real property defined as the "Hotel Lot," both more particularly described on the attached Exhibit A;

B. DUMAR is the owner of that certain real property defined as the "DUMAR Parcel," more particularly described on the attached Exhibit B; and

C. The Parties have agreed to enter into this Agreement in order to provide access, utility and landscaping easements, and define construction and maintenance responsibilities this regard to the improvements associated with those easements, all in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Easements.** For purposes of this Agreement: "DUMAR" shall include DUMAR and DUMAR's successors in interest; and "Permittees" shall mean the respective Party's successors and assigns, tenants, subtenants, and licensees to all or a portion of the Multi-Family Lot, the Hotel Lot, or the DUMAR Parcel, and its and their respective agents, invitees, customers, employees, and contractors.

(a) **Access and Utility Easements.** DUMAR conveys, declares and grants for the benefit of the Hotel Lot and Multi-Family Lot a perpetual, non-exclusive, and continuous easement and right-of-way over, upon, and across the area depicted by hatching (northern half) and crosshatching (southern half) (the "Easement Area") on the site plan (the "Site Plan") attached as Exhibit C, less and excepting that portion of the Easement Area shown on Exhibit C as parking stalls, curbing, or landscaping. The purposes of the easement granted hereby are

limited to (i) vehicular and pedestrian ingress and egress to and from the Hotel Lot and Multi-Family Lot and the public streets adjoining the Easement Area, and (ii) underground utilities leading from the public utility easements adjoining the Easement Area to the Hotel Lot and Multi-Family Lot. Under no circumstances will day or night parking be allowed in the Easement Area by tenants or guests of the Hotel Lot or Multi-Family Lot Permittees. Draper 400 and Draper Hotel grant perpetual, nonexclusive, and continuous general access through its parking lots, as they may be configured or reconfigured at any time in the future, in the location depicted on the attached Exhibit C, marked with star-markings, and the labeled "Academy Mortgage Access Easement," for the benefit of the DUMAR Parcel and its Permittees, for the purpose of vehicular and pedestrian ingress and egress from the curb cut on the Multi-Family Lot to the DUMAR Parcel. With respect to the access easement granted hereby, the owner of the DUMAR Parcel covenants to the owners of the Hotel Lot and Multi-Family Lot not to allow a use of the limited access easement described herein that would interfere with the uses of the Hotel Lot and Multi-Family Lot. Further, the owners of the Hotel Lot and the Multi-Family Lot shall reasonably cooperate with the owners of the DUMAR Parcel to provide future utilities access, if appropriate, for the future development of the DUMAR Parcel. Nothing in the foregoing covenant shall affect the location of any current or proposed improvement on Hotel Lot or the Multi-Family Lot.

(b) Landscape Easement. DUMAR conveys and grants to the Multi-Family Lot, its owner and its Permittees a non-exclusive, and continuous easement to construct and maintain the landscaping as depicted on Exhibit C within the western portion of the Easement Area (the "Landscape Easement Area"). The purpose of the landscape easement created hereby is to allow the owner of the Multi-Family Lot to construct and maintain the Landscape Easement Area. The specific planting plan for the Landscape Easement Area shall be approved by Draper City and by DUMAR. The approved landscape improvements will be completed no later than 20 months from the effective date of this Agreement. Should DUMAR determine that the approved planting plan is not being installed or maintained in a timely manner, DUMAR may deliver written notice to the owner of the Multi-Family Lot and five (5) days thereafter, assuming the owner of the Multi-Family Lot has not remedied the alleged deficiency, DUMAR may proceed to complete approved improvements or maintain the same. The owners and Permittees of the Multi-Family Lot will pay DUMAR for its share of the costs of improvements or maintenance within 30 days receiving DUMAR's invoice for those costs.

2. Construction and Maintenance of Certain Improvements.

(a) Allocation of Construction and Maintenance Costs within Easement Area. The owners of the Multi-Family Lot and Hotel Lot shall be responsible for paying for the construction of all of the improvements described below in the southern portion of the Easement Area depicted with crosshatching and the words "100% Wasatch... Asphalt Area" on the Site Plan. The owners of the Multi-Family Lot and Hotel lot shall be responsible for paying all of the costs of maintenance of those same improvements until the adjoining portion of the DUMAR Parcel is developed, at which time the costs of maintenance of southern portion of the Easement Area will be split 50/50 with DUMAR. The owner of the DUMAR Parcel shall pay one half of the costs with the other half to be paid by the owners of the Multi-Family Lot and Hotel Lot for the construction and maintenance of all of the improvements described below in the northern portion of the Easement Area depicted with double hatching and the words "50/50 Cost Split... Asphalt Area" on the Site Plan, along with the improvements constituting the curb cut improvements connecting the Easement Area to the road way. The construction of improvements required by this Section 2(a) shall include, without limitation, landscaping, landscaping irrigation system, road grading, base, asphalt, curb and gutter, concrete drive entrance, and striping, all to be consistent with the depiction of the improvements on the Site Plan and to be constructed in accordance

with the construction standards of Draper City. Notwithstanding the foregoing to the contrary, after construction, DUMAR shall be responsible for all of the costs of maintenance of the parking stalls located in the northern portion of the Easement Area.

(b) Offsite Sewer Cost Sharing. Because all of the Parties will benefit from the connection to the sanitary sewer, the owners of the Multi Family Lot and the Hotel Lot shall pay one half of the cost and the owner of the DUMAR Parcel shall pay the other one half of the cost to extend the sanitary sewer to be installed in the area depicted as "50/50 Cost Split Sewer Improvements" on the Site Plan to its offsite connection point. Those costs shall include the cost of offsite right-of-way acquisition from third parties, if any, as well as all engineering, permits, and construction costs relating to the installation of the sewer line running as far north of the Parties sites as is required to make the sanitary sewer connection.

(c) Coordination/Completion. The improvement construction requirements of this Section 2 shall be satisfied upon completion of the aforementioned improvements and approval by Draper City. DUMAR shall be responsible for coordinating the initial construction of all the improvements described in this Section 2 (other than landscaping), and shall provide written budgets for all costs of construction in advance of commencing work ("Improvement Budgets") to Draper 400 and Draper Hotel for approval. Once the Improvement Budgets are approved, DUMAR may authorize the commencement of work. If during construction it appears that costs will exceed the amounts approved in the Improvement Budgets, DUMAR shall first present the proposed change orders or other evidence of the proposed extra costs for approval by the owners of the Hotel Lot and the Multi-Family Lot before agreeing to allow any contractor to proceed with work for costs in excess of the Improvement Budgets. Draper Hotel and Draper 400 shall reimburse DUMAR for their share as the construction bills become due. This same approval process shall be followed by the owner of the Multi-Family Lot for the construction of the landscape improvements described above.

3. **No Interference; Use.** Except to the extent reasonably necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the easements granted in this Agreement shall be constructed or erected, nor shall any Party in any other manner obstruct or interfere with the use of such rights-of-way and easements. The owners of the Multi Family lot and the Hotel Lot, along with their Permittees, tenants, or guests, will not be allowed to park vehicles or locate other obstructions, or allow others to park vehicles or locate other obstructions, on the Easement Area. Only the tenants and Permittees of DUMAR and their employee's will be allowed to park in the designated parking stalls located on the DUMAR Parcel and within the Easement Area.

4. **Indemnification.** Each Party shall indemnify, defend and hold harmless the other Parties and their affiliates, members, managers, agents, tenants, and representatives for, from and against all claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property resulting from the negligent or willful act or omission of the indemnifying Party or its Permittees, arising out of the performance of any of the obligations set forth in this Agreement, the indemnifying Party's or its Permittees' use of the Easement Area, or the indemnifying Party's breach of this Agreement, except to the extent such claims are due solely to the gross negligence or willful act or omission of another Party or its Permittees.

5. **Rights Run With The Land.** The easements, covenants, and responsibilities referenced herein touch, concern, and run with the land and are binding upon all successors-in-title of the Parties. With the exception of the obligation to construct or reimburse for construction costs as set forth in Section

2 above, upon the transfer of a property described herein the transferor shall automatically be released effective upon such transfer as to the part transferred for all obligations arising under this Agreement from and after the date of the transfer. If a property burdened or benefitted hereby is hereafter further divided by further subdivision, lot split, separation of ownership or by lease or other means, all parts shall enjoy the benefit of the easement hereby created.

6. **No Public Dedication.** The provisions of this Agreement are not intended to and do not constitute a dedication for public use of the Easement, and the rights herein created are for the private use and for the benefit only of the Parties hereto and their successors and assigns and Permittees.

7. **Amendments.** No modification, waiver, or amendment of any provision of this Agreement shall be made except by a written agreement signed by the Parties or their respective successors-in-title.

8. **Authority.** Each Party, and the individual executing this Agreement below, covenants to the other that he/she has full authority and authorization to enter into this Agreement.

9. **Miscellaneous.** This agreement may be executed in one or more counterparts, each of which, when taken together, constitutes the original. If any term, provision or condition contained in this Agreement shall to any extent be deemed invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and each remaining term, provision and condition of this agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement, including any Exhibits, shall constitute the entire agreement between the Parties relating to the subject matter of this Agreement.

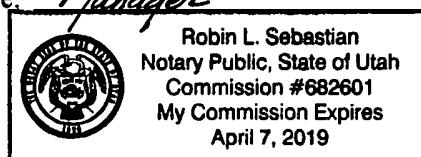
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

DRAPER 400:

**DRAPER 400 WEST HOLDINGS, LLC, a Utah
limited liability company**

STATE OF UTAH)
COUNTY OF Salt Lake) ss.

By: Jeff Nelson
Name: Jeff Nelson
Title: Manager


Robin L. Sebastian
Notary Public, State of Utah
Commission #682601
My Commission Expires
April 7, 2019

Jeff Nelson, as Manager of Draper 400 West Holdings, LLC, a Utah limited liability company.

WITNESS my hand and official seal.

John L Sebastian
Notary Public

My Commission Expires: April 7, 2019

DRAPER HOTEL:

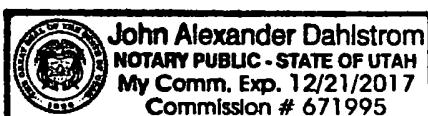
DRAPER HOTEL HOLDINGS, LLC, a Utah limited liability company

By: MJN
Name: MICHAEL J. NIELSON
Title: MANAGING MEMBER

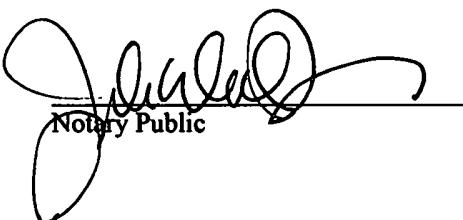
STATE OF UTAH)
COUNTY OF Salt Lake)
) ss.
)

The foregoing instrument was acknowledged before me this 18th day of Sept, 2015, by Michael J. Nielson as Managing Mem of Draper Hotel Holdings, LLC, a Utah limited liability company.

WITNESS my hand and official seal.



My Commission Expires: 12/21/2017


John Alexander Dahlstrom
Notary Public

DUMAR:

~~DUMAR, LLC, a Utah limited liability company~~

By: 
Name: Diane Shaw
Title: Managing Member

STATE OF UTAH)
COUNTY OF Salt Lake) SS.

The foregoing instrument was acknowledged before me this 1st day of September, 2015, by Duane Shaw, as Managing Member of UMAR, LLC, a Utah limited liability company.

WITNESS my hand and official seal.

Carrie Eupson
Notary Public

My Commission Expires: **5.15.2018**

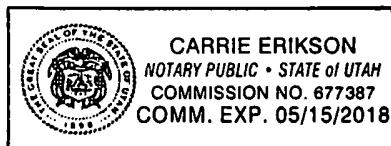


Exhibit A
(Legal Description of Multi-Family Lot and Hotel Lot, both located in Salt Lake County)

Multi-Family Lot:

Beginning at a point on a 40 acre line, said point being also on the South Right-of-Way line of 12490 South Street as described in that certain Quit Claim Deed Entry No. 6716223 in Book 7735 at Page 937 of Official Records, said point is South 89°37'14" West along the North Section line 1346.29 feet and South 00°32'04" West along said 40 acre line 625.00 feet from the North Quarter Corner of Section 1, Township 4 South, Range 1 West, Salt Lake Base and Meridian; thence along said North Right-of-Way Line, North 89°46'20" East 410.02 feet; thence South 00°32'04" West 824.94 feet; thence North 89°27'56" West 409.99 feet to a point on the 40 acre line; thence North 00°32'04" East 819.49 feet along said 40 acre line to the point of beginning.

Parcel No. 33-01-126-003

Hotel Lot:

Beginning at a point on a 40 acre line, said point is South 89°37'14" West along the North Section Line 1346.29 feet and South 00°32'04" West along said 40 acre line 1444.49 feet from the North Quarter corner of Section 1, Township 4 South, Range 1 West, Salt Lake Base and Meridian; thence South 89°27'56" East 409.99 feet; thence South 00°32'04" West 158.97 feet to the Northwesterly Right-of-Way Line of Bangerter Highway; thence along said Northwesterly Right-of-Way Line, the following two (2) courses: (1) Southwesterly 473.03 feet along the arc of a 2371.59 foot radius curve to the left, chord bears South 50°24'08" West 472.24 feet, (2) South 44°35'42" West 70.36 feet to a point on the 40 acre line; thence North 00°32'04" East 513.91 feet along said 40 acre line to the point of beginning.

Parcel No. 33-01-176-001

Exhibit B
(Legal Description of DUMAR Parcel, located in Salt Lake County)

Beginning on the North line of Section 1, Township 4 South, Range 1 West, Salt Lake Base & Meridian at a point 93.782 feet South 89°37'14" West from the North quarter corner of said Section 1, Township 4 South, Range 1 West; thence South 89°37'14" West 1252.51 feet along said North line to the 40 acre line; thence South 0°32'04" West 172.72 feet along said 40 acre line; thence South 89°55'30" East 410.00 feet; thence South 0°32'04" West 2443.73 feet to a point on the quarter section line; thence South 89°55'30" East 883.58 feet along said quarter section line to the intersection with a fence line produced; thence North 0°21'51" West 2626.38 feet along said fence line and said fence line produced to the point of beginning. LESS AND EXCEPTING therefrom any portion lying within the bounds of 13800 South Street. ALSO, LESS AND EXCEPTING therefrom the following:

Beginning at a point 3148.67 feet West along the Section line from the East quarter corner of Section 1, Township 4 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 35°30'09" East 801.75 feet; thence North 316.84 feet; thence South 35°30'09" West 1190.94 feet; thence East 226.02 feet to the point of beginning.

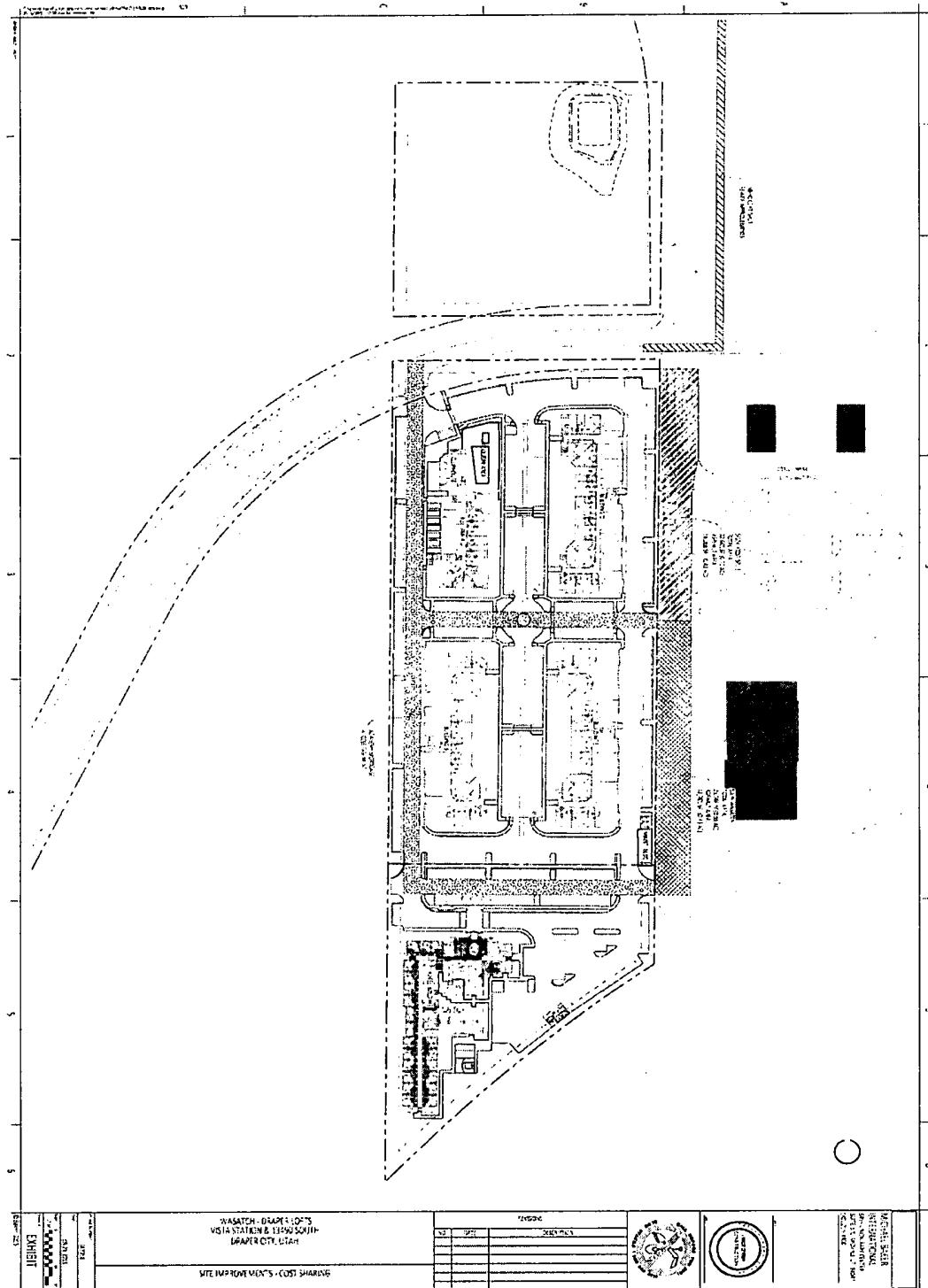
- ALSO, LESS AND EXCEPTING the following tracts identified as Parcels 28:A, 28:B and 28:C, as described in that certain Final Order of Condemnation, recorded January 20, 2000, as Entry No. 7557540, in Book 8337, at Page 1234, of official records, to-wit: Parcel 28:A; A parcel of land in fee for the purpose of constructing thereon an expressway known as Project No. 0154, being part of an entire tract of property, situate in the East 1/4 Northwest 1/4 of Section 1, Township 4 South, Range 1 West, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows: Beginning in the Easterly boundary line of said entire tract at a point 22.860 meters perpendicularly distant Northerly from the center line of said project, which point is 28.584 meters North 89°58'03" West (record: South 89°37'14" West) along the North Section line and 382.348 meters South 0°02'16" West (record: South 0°21'51" East) from the North quarter corner of said Section 1; thence South 0°02'16" West (record: South 0°21'51" East) 46.603 meters to a point 22.860 meters radially distant Southerly from said center line opposite Engineer Station 32+503.644; thence Southwesterly 292.573 meters along the arc of a 677.140-meter radius curve to the left (chord bears South 66°06'36" West 290.303 meters) along a line concentric to said center line to a Westerly boundary line of said entire tract; thence North 0°56'22" East (record: North 0°32'04" East) 56.394 meters along said Westerly boundary line to a point 22.860 meters radially distant Northwesterly from said center line, opposite Engineer Station 32+234.229; thence Easterly 287.545 meters along the arc of a 722.860-meters radius curve to the right (chord bears North 67°49'55" East 285.652 meters) along a line concentric to said center line to the point of beginning. Parcel 28:B; A parcel of land in fee for the purpose of constructing thereon a detention pond incident to the construction of an expressway known as Project No. 1054, being part of an entire tract of property, situate in the Northeast 1/4 Northwest 1/4 of Section 1, Township 4 South, Range 1 West, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows: Beginning at the intersection of the Easterly boundary line of said entire tract and the Northerly highway right of way line of 13490 South Street of said project, which point is 28.584 meters North 89°58'03" West (record: South 89°37'14" West) along the section line and 169.501 meters South 0°02'16" West (record: South 0°21'51" East) from the North quarter corner of said Section 1; thence North 0°02'16" East (record: North 0°21'51" West) 57.230 meters along said Easterly boundary line; thence North 60°18'15" West 48.888 meters; thence North 29°04'02" East 12.981 meters; thence North 60°55'58" West 5.000 meters; thence South 29°04'02" West 12.926 meters; thence North 60°18'15" West 11.772 meters; thence South 28°41'03" West 47.754 meters; thence South 61°18'57" East 67.175 meters; thence South 0°02'16" West 15.556 meters to said Northerly highway right of way line; thence South 89°49'22" East 21.000 meters along said highway right of way line to the point of beginning. Parcel 28:C; A parcel of land in fee for the purpose of constructing thereon an access road incident to the construction of an expressway known as Project No. 0154, being part of an entire tract of property, situate in the Northeast 1/4 Northwest 1/4 of Section 1, Township 4 South, Range 1 West, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows: Beginning at a point in the Easterly boundary line of said entire tract, which point is 28.584 meters North 89°58'03" West (record: South 89°37'14" West) along the North section line and 169.501 meters South 0°02'16" West (record: South 0°21'51" East) from the North quarter corner of Section 1; thence South 0°02'16" West (record: South 0°21'51" East) 21.946 meters to a point 10.973 meters perpendicularly distant Southerly from the center line of 13490 South Street of said project; thence North 89°49'22" West 259.753 meters along a line parallel to said center line to a Westerly boundary line of said entire tract at a point opposite Engineer Station 10+146.989; thence North 0°56'22" East (record North 0°32'04" East) 21.948 meters along said Westerly boundary line to a point 10.973 meters perpendicularly distant Northerly from said center line, opposite Engineer Station 10+147.281; thence South 89°49'22" East 259.407 meters along a line parallel to said center line to the point of beginning.

Parcel No. 33-01-100-038

21899328

Exhibit C
(Site Plan and depiction of Easement Areas)

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