WHEN RECORDED RETURN TO:

Gardner Jordan Bluffs, L.C.
201 South Main Street, Suite 2000
Salt Lake City, UT 84111
21-35-400-010
21-35-400-017-4001

12660574 11/16/2017 4:19:00 PM \$35.00 Book - 10620 Pg - 4583-4594 ADAM GARDINER Recorder, Salt Lake County, UT COTTONWOOD TITLE BY: eCASH, DEPUTY - EF 12 P.

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT the ("Agreement") is made this 16th day of November, 2017, between WASATCH JORDAN BLUFFS, LLC, a Utah limited liability company ("WJB") and MOUNTAIN WEST CAPITAL PARTNERS, LLC, a Utah limited liability company ("Mountain West" and together with WJB, individually and collectively, as the context may require, "Wasatch"), and GARDNER JORDAN BLUFFS, L.C., a Utah limited liability company ("Gardner"). Gardner and Wasatch are sometimes referred to herein, collectively, as the "Parties" and, individually, each a "Party."

RECITALS:

WHEREAS, Wasatch acquired from Gardner or its affiliate certain real property situated in the city of Midvale, Salt Lake County, Utah which is more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Wasatch Property");

WHEREAS, Gardner is the owner of certain parcels of real property which are more particularly described on **Exhibit B** attached hereto and made a part hereof (the "Gardner **Property**");

WHEREAS, an interceptor trench is currently located on a portion of the Wasatch Property and/or Gardner Property which is shown in the Sharon Steel Plans #1556-418-15 which is a passive system using a perforated conduit to prevent water from infiltrating under the capped portion of the Wasatch Property and Gardner Property and conveys the water south to the wetlands area near the Jordan River (the "Interceptor Trench").

WHEREAS, the Utah Department of Environmental Quality ("**DEQ**") pursuant to a cooperative agreement grant number 96829201 with the United States Environmental Protection Agency (the "**EPA**") inspects and maintains the Interceptor Trench, and the DEQ has agreed to continue to maintain and inspect the Interceptor Trench. Alternatively, Midvale City (the "**City**") or other government may maintain and inspect the Interceptor Trench.

WHEREAS, as a condition to Wasatch acquiring the Wasatch Property from Gardner and Gardner agreeing to sell the Wasatch Property to Wasatch, the Parties agreed to enter into this Agreement.

NOW, THEREFORE, for the foregoing purposes, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

- 1. <u>Definitions</u>. Certain terms which are used in this Agreement are defined in this Agreement prior to this Section.
- 2. <u>Maintenance of Interceptor Trench</u>. The Parties understand that the DEQ, the City, or other government will maintain the Interceptor Trench. However, in the event the DEQ, the City, or other government fails to maintain the Interceptor Trench, without waiving the rights the Parties may have against the DEQ, the City or other parties, the Parties agree to jointly inspect, maintain, repair and replace the Interceptor Trench (the "Maintenance Obligations"). The Parties may at any time seek the approval of the DEQ or other appropriate governmental agency for the removal of the Interceptor Trench, then upon the DEQ or other agency providing such approval and upon the removal of the Interceptor Trench, this Agreement shall terminate.
- a. The Parties may appoint a single person or entity, which may be a Party or another third party (the "Manager") who shall be obligated, on behalf of the Parties, to perform the Maintenance Obligations. Gardner shall select and contract in writing with the Manager and so long as Wasatch Residential Group, LLC, a Utah limited liability company ("WRG"), or its affiliates, own a portion of the Wasatch Property, Wasatch shall have the right to approve the Manager, which approval shall not be unreasonably withheld, conditioned or delayed and shall be given within ten (10) business days of Gardner's request for an approval of the Manager. If Wasatch disapproves of the Manager, Wasatch shall provide written notice of such disapproval within such ten (10) business day period and such notice shall give a reasonably detailed description of the reasons for disapproval. If WRG or its affiliates no longer own the Wasatch Parcel, Gardner shall not be required to obtain approval of another party for the appointment of the Manager. If Gardner conveys all of its interest in the Gardner Property, the party entitled to appoint the Manager shall be the party that owns the most square feet within the Gardner Property.
- b. Each Owner of a parcel that now or hereafter comprises the Wasatch Property or the Gardner Property shall be responsible for its proportionate share of the actual out of pocket documented and reasonable costs incurred by the Manager performing the Maintenance Obligations, based on a fraction, the numerator of which is the square footage of real property within an Owner's parcel and the denominator of which is the square footage of the entire Wasatch Property and Gardner Property (excluding any portions dedicated to a governmental entity). However, in the event any portion of the Wasatch Property or Gardner Property is divided into residential parcels which are not "for rent" residential complexes, an owner's association shall be formed for such residential parcels and such association shall be responsible for the payment and performance of costs allocated to all such residential parcels pursuant to the provisions hereof. For purposes hereof the term "Owner" means the person or entity that, at the time concerned, is the owner of record in the office of the County Recorder of Salt Lake County, Utah, of a fee interest in all or any portion of the Gardner Property or the Wasatch Property. In the event that, at any time, more than one person or entity owns the fee interest in such property, they shall constitute one (1) Owner, and liability of each such person or

entity for performance or compliance with the applicable provisions of this Agreement shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument a ("Mortgage"), the term "Owner" shall not mean or include a holder of such Mortgage (a "Mortgagee") unless and until such Mortgagee has acquired fee title to the real property encumbered by such Mortgage pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof.

- c. Notwithstanding the foregoing to the contrary, if the Interceptor Trench is damaged or destroyed as a result of the acts or omission of an Owner or its contractors, agents or employees, tenants, subtenants, licensee or invitees, such Owner shall be solely responsible for all costs to repair or replace the Interceptor Trench.
- d. Each Owner shall pay to Manager the amounts owed by such Owner within thirty (30) days of written demand from the Manager, which written demand shall include supporting invoices evidencing such costs. The provisions of this Section (d) shall survive the termination of this Agreement.
- 3. <u>Term.</u> The term of this Agreement shall be perpetual unless otherwise terminated pursuant to the provisions of this Agreement.
- 4. <u>Title and Mortgage Protection</u>. No amendment to this Agreement shall in any way affect the rights of any Mortgagee pursuant to a Mortgage that is recorded at the time of the recordation of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment. A breach of any of the covenants, provisions, or requirements of this Agreement shall not result in any forfeiture or reversion of title or of any other interest in real property. A breach of any of the covenants, provisions, or requirements of this Agreement shall not defeat, impair or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, a Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Agreement.
- 5. <u>Amendment or Termination; Duration of Agreement</u>. Except as otherwise provided herein to the contrary, this Agreement may be amended or terminated by, but only by, an instrument filed for record in the office of the County Recorder of Salt Lake County, Utah that is executed by all of the Owners of the Wasatch Property and the Gardner Property.
- 6. <u>Covenants to Run with Land</u>. This Agreement and the easements and covenants created by this Agreement are intended by the Parties to be, and shall constitute, covenants running with the land, and shall be binding upon and shall inure to the benefit of each Owner and any subsequent Owner who acquires or comes to have any interest in the Gardner Property or the Wasatch Property, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns.

- 7. <u>Effective Date</u>. This Agreement, any amendment or termination hereof, and any supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.
- 8. <u>Titles, Captions and References</u>. All Section titles or captions in this Agreement are for convenience only, shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions of this Agreement. When this Agreement refers to a Section by number or other designation, such reference shall be deemed to be to the correspondingly numbered Section of this Agreement unless the context refers to another agreement, document or instrument.
- 9. <u>Pronouns and Plurals</u>. Whenever the contest may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.
- 10. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah, without reference to its choice of law rules that would apply the law of another jurisdiction.
- 11. <u>Counterparts</u>. This Agreement may be executed in any number of counterparts. Each such counterpart of this Agreement shall be deemed to be an original instrument, and all such counterparts together shall constitute but one agreement.
- 12. <u>Exhibits</u>. All exhibits attached to this Agreement are expressly made a part of and incorporated in this Agreement as fully as though completely set forth in this Agreement.
 - 13. Time of Essence. Time is of the essence of this Agreement.
- 14. <u>Notice</u>. Any notice, demand or request required hereunder shall be given in writing (at the addresses set forth below) by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified, first class mail, return receipt requested:

If to Wasatch:

Wasatch Jordan Bluffs, LLC Mountain West Capital Partners, LLC c/o Wasatch Residential Group, LLC Attn: Jeff Nielson and Corey Johnson 620 South State Street Salt Lake City, UT 84111

If to Gardner:

Gardner Jordan Bluffs, L.C. Attn: Christian Gardner

201 South Main Street, Suite 2000 Salt Lake City, Utah 84111

Such addresses may be changed by notice to the other Party given in the same manner as above provided. Any notice, demand or request sent pursuant to either subsection (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to subsection (c) shall be deemed received on the business day immediately following deposit with the overnight courier, and, if sent pursuant to subsection (d) shall be deemed received forty-eight (48) hours following deposit in the mail. In the event an Owner acquires an interest in the Wasatch Property or Gardner Property and does not provide notice to the other Owners of the acquiring Owner's address, the acquiring Owner's address shall be deemed to be the address of the property it acquires.

(Signatures begin on following page)

IN WITNESS WHEREOF, the undersigned parties have created this Agreement effective as of the day and year first above written.

GARDNER:

GARDNER JORDAN BLUFFS, L.C., a Utah limited liability company, by its Manager

KC GARDNER COMPANY, L.C., a Utah limited liability company

BY Christian Gardner, Manager

STATE OF UTAH	_)
) ss.	
County of SALT LAVE	,	

My commission expires:	/25
10.16.20	Notary Public



WASATCH:

WASATCH JORDAN BLUFFS, LLC,

STATE OF WITHOUT)) ss.	By: Name: Jeff Akelson Title: Manager
County of <u>sand</u> WW) The foregoing instrument was acknown	owledged before me this 15 day of NUVEMBEN,
	of Wasatch Jordan Bluffs, wehalf of said company.
My commission expires:	Notary Public
SONIA CORTEZ PEREZ NOTARY PUBLIC - STATE OF UTAH My Comm. Exp. 10/16/2020 Commission # 691238	MOUNTAIN WEST CAPTIAL PARTNERS, LLC, a Utah limited liability company By: Name: Left Nick Title: Manager
STATE OF UTAH) ss. County of SANT LAIR)	
	owledged before me this 15 day of NWEMBER, of Mountain West Capital pany, on behalf of said company.
My commission expires:	Notary Públic

CONSENT AND SUBORDINATION OF LIENHOLDER

Effective as of the <u>16</u> day of November, 2017, Wells Fargo Bank, National Association ("Wells Fargo"), as the holder of the liens encumbering the Gardner Property arising under that certain Deed of Trust, dated November <u>15</u>, 2017, from Gardner, for the benefit of Wells Fargo, and recorded on November <u>16</u>, 2017 as Entry No. <u>12660565</u> in Book <u>10620</u> at Page <u>4966</u> in the Salt Lake County Recorder's Office, as amended, restated, supplemented or otherwise modified from time to time, hereby consents to the recording of this Declaration and agrees that the liens evidenced by, and all other rights and interests of Wells Fargo arising under the foregoing documents shall be and are hereby subordinated to this Agreement.

	Wells Fargo Bank, National Association By: January R.
	Name: Daniel R Stanworth
	Title: VP.
State of UTAH)	
) ss. County of Sa4 Lake)	
The foregoing instrument wa	as acknowledged before me on November 15th, 2017, by
Daniel Stanworth, t	he Vice President of Wells Fargo Bank,
National Association, by and on bel	nalf of said national association.
JESSICA MARTINEZ Notary Public – State of Utah Comm. No. 694873 My Commission Expires on	Notary Public Public

4813-9765-9732, v. 5

EXHIBIT A

WASATCH PROPERTY LEGAL DESCRIPTION

Those certain real properties located in Salt Lake County, State of Utah, and more particularly described as:

PROPOSED PHASE I

A portion of the Northeast quarter of Section 35 and the Southeast quarter of Section 26, Township 3 South, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point located South 00°12'34" West along the section line 1,463.28 feet and West 957.12 feet from the Northeast corner of Section 35, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence Northwesterly along the arc of a 465.00 foot radius non-tangent curve to the right (radius bears: North 32°22'05" East) 131.35 feet through a central angle of 16°11'04" (chord: North 49°32'23" West 130.91 feet); thence North 41°26'51" West 195.76 feet; thence along the arc of a curve to the left with a radius of 235.00 feet a distance of 221.55 feet through a central angle of 54°00'55" (chord: North 68°27'18" West 213.43 feet) to a point of reverse curvature; thence along the arc of a curve to the right having a radius of 20.00 feet a distance of 29.63 feet through a central angle of 84°52'29" (chord: North 53°01'31" West 26.99 feet) to a point of reverse curvature; thence along the arc of a curve to the left having a radius of 841.00 feet a distance of 79.67 feet through a central angle of 05°25'41" (chord: North 13°18'07" West 79.64 feet); thence North 16°00'58" West 253.77 feet; thence along the arc of a curve to the right with a radius of 759.00 feet a distance of 399.90 feet through a central angle of 30°11'16" (chord: North 00°55'19" West 395.29 feet); thence North 14°10'19" East 165.04 feet; thence along the arc of a curve to the left with a radius of 846.00 feet a distance of 271.58 feet through a central angle of 18°23'35" (chord: North 04°58'31" East 270.42 feet); thence North 04°13'16" West 170.59 feet; thence North 40°23'21" East 42.72 feet; thence North 84°59'59" East 301.21 feet; thence South 00°17'44" East 412.35 feet; thence North 89°51'10" East 152.07 feet; thence South 00°22'38" East 153.75 feet; thence South 89°51'10" West 67.00 feet; thence South 00°22'38" East 145.00 feet; thence North 89°51'10" East 13.37 feet; thence South 00°39'00" East 178.80 feet; thence North 89°40'06" East 234.95 feet; thence South 00°22'30" East 562.48 feet; thence South 87°09'51" West 61.15 feet; thence South 01°34'34" East 118.60 feet; thence South 43°02'31" West 176.48 feet to the point of beginning. (aka Proposed Phase I)

PROPOSED PHASE II

A portion of the Northeast quarter of Section 35, Township 3 South, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point located South 00°12'34" West along the section line 1,463.28 feet and West 957.12 feet from the Northeast corner of Section 35, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence North 43°02'31" East 176.48 feet; thence South 44°57'24" East 294.72 feet; thence South 89°39'38" East 628.13 feet; thence South 00°12'34" West 555.63 feet;

thence South 87°46'28" West 182.08 feet; thence along the arc of a curve to the left with a radius of 535.00 feet a distance of 34.57 feet through a central angle of 03°42'10" (chord: South 85°55'23" West 34.57 feet); thence South 84°04'18" West 217.54 feet; thence along the arc of a curve to the right with a radius of 465.00 feet a distance of 30.05 feet through a central angle of 03°42'10" (chord: South 85°55'23" West 30.05 feet); thence South 87°46'28" West 62.60 feet; thence North 07°13'32" West 70.98 feet; thence along the arc of a curve to the left with a radius of 535.00 feet a distance of 56.09 feet through a central angle of 06°00'26" (chord: North 10°13'45" West 56.07 feet); thence North 13°13'58" West 131.36 feet; thence along the arc of a curve to the left with a radius of 535.00 feet a distance of 414.58 feet through a central angle of 44°23'56" (chord: North 35°25'57" West 404.28 feet); thence North 57°37'55" West 173.00 feet to the point of beginning. (aka Proposed Phase II)

PROPOSED PHASE III

A portion of the Northeast quarter of Section 35, Township 3 South, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point located South 00°12'34" West along the section line 1,463.28 feet and West 957.12 feet from the Northeast corner of Section 35, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence South 57°37'55" East 173.00 feet; thence along the arc of a curve to the right with a radius of 535.00 feet a distance of 414.58 feet through a central angle of 44°23'56" (chord: South 35°25'57" East 404.28 feet); thence South 13°13'58" East 131.36 feet; thence along the arc of a curve to the right with a radius of 535.00 feet a distance of 56.09 feet through a central angle of 06°00'26" (chord: South 10°13'45" East 56.07 feet); thence South 07°13'32" East 70.98 feet; thence South 87°46'28" West 813.31 feet; thence along the arc of a curve to the right with a radius of 17.50 feet a distance of 27.50 feet through a central angle of 90°02'17" (chord: North 47°12'24" West 24.76 feet); thence North 02°11'16" West 894.78 feet; thence along the arc of a curve to the left with a radius of 841.00 feet a distance of 123.30 feet through a central angle of 08°24'01" (chord: North 06°23'16" West 123.19 feet); thence Southeasterly along the arc of a non-tangent curve to the left having a radius of 20.00 feet (radius bears: North 79°24'43" East) a distance of 29.63 feet through a central angle of 84°52'29" (chord: South 53°01'31" East 26.99 feet) to a point of reverse curvature; thence along the arc of a curve to the right having a radius of 235.00 feet a distance of 221.55 feet through a central angle of 54°00'55" (chord: South 68°27'18" East 213.43 feet); thence South 41°26'51" East 195.76 feet; thence along the arc of a curve to the left with a radius of 465.00 feet a distance of 131.35 feet through a central angle of 16°11'04" (chord: South 49°32'23" East 130.91 feet) to the point of beginning. (aka Proposed Phase III)

EXHIBIT B

GARDNER PROPERTY LEGAL DESCRIPTION

Those certain real properties located in Salt Lake County, State of Utah, and more particularly described as:

Beginning at a point on the Section line being South 00°12'34" West 2102.21 feet along the Section line from the Northeast Corner of Section 35, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

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thence South 00°12'34" West 79.62 feet along the section line;
       thence South 77°21'33" West 407.54 feet;
       thence South 39°54'40" East 125.53 feet;
       thence South 12°21'11" East 52.85 feet;
       thence South 08°28'42" West 112.58 feet;
       thence South 02°50'06" East 70.43 feet;
       thence South 14°03'34" East 230.09 feet;
       thence South 03°23'34" East 140.14 feet;
       thence South 20°38'28" East 50.85 feet;
       thence South 58°43'52" East 280.30 feet to section line;
       thence South 00°29'40" East 1,803.42 feet along said section line;
       thence North 65°55'16" West 317.16 feet;
       thence South 24°04'44" West 75.08 feet;
       thence North 59°54'19" West 55.73 feet;
       thence South 23°47'27" West 47.77 feet;
       thence South 38°00'44" West 59.69 feet;
       thence North 75°55'41" West 171.55 feet;
       thence North 35°42'23" West 85.29 feet;
       thence North 18°07'28" West 98.62 feet;
       thence North 20°33'59" West 64.11 feet;
       thence North 80°30'01" West 105.53 feet;
       thence South 88°37'38" West 1,286.49 feet;
       thence North 24°58'40" West 838.81 feet;
       thence Northwesterly 1,395.88 feet along the arc of a 4,000.00 foot radius curve to the
right (center bears North 65°01'20" East and the chord bears North 14°58'50" West 1,388.81 feet
with a central angle of 19°59'40") along the east bank of said Jordan River;
       thence North 05°00'36" West 1,109.12 feet along the east bank of said Jordan River;
       thence North 07°17'20" East 282.82 feet along the east bank of said Jordan River;
       thence North 03°53'39" East 154.63 feet along the east bank of said Jordan River;
       thence North 124.58 feet along the east bank of said Jordan River;
       thence North 47°59'09" West 30.66 feet along the east bank of said Jordan River;
       thence North 37°43'31" West 42.50 feet along the east bank of said Jordan River;
       thence North 05°35'12" West 145.43 feet along the east bank of said Jordan River;
       thence North 15°41'49" West 136.97 feet along the east bank of said Jordan River;
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thence North 28°15'14" West 307.98 feet along the east bank of said Jordan River;

thence North 04°52'14" West 66.01 feet along the east bank of said Jordan River; thence North 05°54'45" East 189.03 feet along the east bank of said Jordan River to the south line of 7800 South;

thence North 74°43'59" East 64.19 feet along 7800 South;

thence North 81°38'00" East 249.51 feet along 7800 South;

thence North 74°46'34" East 146.30 feet along 7800 South;

thence Northeasterly 195.95 feet along the arc of a 4,829.15 foot radius curve to the right (center bears South 15°12'57" East and the chord bears North 75°56'48" East 195.94 feet with a central angle of 02°19'30") along 7800 South;

thence North 59°42'12" East 103.69 feet along 7800 South;

thence Northeasterly 494.28 feet along the arc of a 4,861.15 foot radius curve to the right (center bears South 11°49'30" East and the chord bears North 81°05'17" East 494.07 feet with a central angle of 05°49'33") along 7800 South;

thence South 81°32'25" East 102.50 feet along 7800 South;

thence North 85°15'24" East 147.80 feet along 7800 South;

thence North 77°33'30" East 153.21 feet along 7800 South;

thence North 84°59'59" East 25.96 feet along 7800 South;

thence South 40°23'21" West 42.72 feet;

thence South 04°13'16" East 170.59 feet;

thence Southwesterly 271.58 feet along the arc of a 846.00 foot radius curve to the right (center bears South 85°46'44" West and the chord bears South 04°58'31" West 270.42 feet with a central angle of 18°23'35");

thence South 14°10'19" West 165.04 feet;

thence Southerly 399.90 feet along the arc of a 759.00 foot radius curve to the left (center bears South 75°49'41" East and the chord bears South 00°55'19" East 395.29 feet with a central angle of 30°11'16");

thence South 16°00'58" East 253.77 feet;

thence Southeasterly 202.98 feet along the arc of a 841.00 foot radius curve to the right (center bears South 73°59'02" West and the chord bears South 09°06'07" East 202.48 feet with a central angle of 13°49'42");

thence South 02°11'16" East 894.78 feet;

thence Southeasterly 27.50 feet along the arc of a 17.50 foot radius curve to the left (center bears North 87°48'44" East and the chord bears South 47°12'24" East 24.76 feet with a central angle of 90°02'17");

thence North 87°46'28" East 724.49 feet;

thence North 87°46'28" East 151.42 feet;

thence Northeasterly 30.05 feet along the arc of a 465.00 foot radius curve to the left (center bears North 02°13'32" West and the chord bears North 85°55'23" East 30.05 feet with a central angle of 03°42'10");

thence North 84°04'18" East 217.54 feet;

thence Northeasterly 34.57 feet along the arc of a 535.00 foot radius curve to the right (center bears South 05°55'42" East and the chord bears North 85°55'23" East 34.57 feet with a central angle of 03°42'10");

thence North 87°46'28" East 182.08 feet to the point of beginning.

Contains 9,731,747 Square Feet or 223.410 Acres