

E-123054AW

SWIS 31-14
08-066 - 0003.0004

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When Recorded, Return to:

PacifiCorp, Property Mgt.
Attn. Roger Rigby
1407 West North Temple
Salt Lake City, UT 84140

E 1887081 B 3328 P 1699
RICHARD T. MAUGHAN, DAVIS CNTY RECORDER
2003 JUL 9 3:24 PM FEE 26.00 DEP JC
REC'D FOR FIRST AMERICAN TITLE CO OF UTA

FLOODING EASEMENT AGREEMENT

This Flooding Easement Agreement (the "Easement Agreement") is entered into this 2nd day of July 2003, by and between, CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole ("**Grantor**") and PACIFICORP, an Oregon corporation, d/b/a Utah Power & Light Company ("**Grantee**").

RECITALS

- A. Grantor owns certain real property located in Davis County, State of Utah (the "**Property**") as more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein.
- B. Grantee has constructed a dike (the "**Dike**") on an adjacent parcel of land located to the west of the Property. The Dike has interfered with the natural drainage of water and caused water to collect and impound on a portion of the Property.
- C. Grantor has agreed to grant a non-exclusive easement to Grantee to allow Grantee to continue to maintain the Dike and impound water on the Property, subject to and in accordance with the terms of this Easement Agreement.

NOW, THEREFORE, in consideration of the above recitals, the terms and conditions set forth below and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

- 1. **Grant of Easement.** Grantor hereby grants and conveys to Grantee a non-exclusive easement over and across the Property for the purpose of inundating the Property with water and incidental conservation purposes, subject to the terms and conditions of this Easement Agreement.
- 2. **Taxes.** Any increase in general ad valorem taxes assessed to the Property over the taxes payable for 2002 without reduction for any exemption or reduction (such as through the Farmland Assessment Act) due to Grantee's use or occupation of the Property shall be borne by Grantee and paid to Grantor within thirty (30) days receipt of the tax notice. Grantee shall pay all taxes and assessments levied against its improvements located on the Property.

3. **Use.** Grantee shall use and, to the extent reasonably possible, preserve the Property as wetlands and as an open space buffer and shall not develop or improve the Property. Grantee may maintain or cause to be maintained, water elevations in accordance with prudent wildlife conservation and habitat management practices as may be recommended or required by state and federal wildlife agencies. Subject to the provisions and limitations of this Section 3, Grantee shall have the right to contract with the State Division of Wildlife Resources for the management of the water impounded by the Dike. Grantee shall take reasonable efforts within its control to drain any excess water off the Property to prevent any portion of the Property from being impounded with water above historical levels and the creation of additional wetlands on the servient estate outside of the described boundaries of the Easement. Grantee may drain the Property at any time in connection with the maintenance, construction, access, or restoration of its facilities located thereon.

4. **Grantor's Reserved Use.** Grantor reserves the right to use the Property for open space credits and density requirements and the right to convey conservation easements, development rights, or other rights or interests to third parties, provided, however, that such conveyance shall not impair Grantee's ability to impound water on the Property pursuant to the terms of this Easement Agreement. Grantee agrees to cooperate with Grantor's use of the Property for such purpose, including signing any necessary or required documents.

5. **Compliance with Laws.** Grantor and Grantee shall, at all times, comply with all laws, ordinances, and regulations affecting or pertaining to its use or occupation of the Property, including environmental laws and regulations. Grantee, at its sole cost and expense, shall obtain any and all approvals and permits from the United States Army Corps of Engineers and any other applicable governmental entity concerning the use and management of the Property and the wetlands located thereon.

6. **Indemnification.** Each party (the "**Indemnifying Party**") shall indemnify, defend, and hold harmless the other party (the "**Indemnified Party**") from and against any and all liability, claims, losses, costs, damages, fines, penalties, or expenses (including reasonable attorneys fees and costs) arising from the actual or alleged violation of this Easement Agreement or by reason of any personal injury, including death, or property damage caused by the negligent or intentional acts or omissions of the Indemnifying Party, its employees, agents, servants or contractors; provided, however, the Indemnifying Party does not indemnify the Indemnified Party for any claims arising from the negligent or intentional acts or omission of the Indemnified party and/or its employees, agents, servants, or contractors. In addition, Grantee hereby indemnifies, holds harmless and agrees to defend Grantor for, from and against any and all liability, claims, losses, costs, damages, fines, penalties, or expenses (including reasonable attorneys' fees and costs) arising from water encroaching into or across the Adjacent Property or any property owned by others.

7. **Notice.** Except when actual receipt is expressly required by the terms hereof, notice is considered given either: (i) when delivered in person to the recipient named below, (ii) after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage prepaid, addressed by name to the person and party intended and to the facsimile number indicated below, with machine confirmation of satisfactory transmittal. All notices shall be given to the following:

Grantor:

Property Reserve, Inc.
Attn. Roger Child
Gateway Tower East
10 East South Temple
Salt Lake City, UT 84133
Fax: (801) 240-5881

Grantee:

PacifiCorp
Attn. Property Management Department
1407 West North Temple
Salt Lake City, UT 84140
Fax: (801) 220-4373

Upon written notification, either party may designate a different individual or address for notices.

8. **Miscellaneous.**

(a) **Titles and Captions.** Section titles and captions to this Easement Agreement are for convenience only and shall not be deemed part of this Easement Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any party or subparts of this Easement Agreement.

(b) **Applicable Law.** This Easement Agreement shall be construed in accordance with and governed by the laws of the state of Utah.

(c) **Binding Effect Upon Successors.** The terms of this Easement Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, legal representatives, and assigns. This Easement Agreement may not be assigned or conveyed without the prior consent of Grantor which consent shall not be unreasonably withheld, conditioned, or delayed.

(d) **Integration.** This Easement Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supercedes all prior agreements and understandings pertaining thereto. No covenant, representation, or

condition not expressed in this Easement Agreement shall affect or be deemed to interpret, change, or restrict the express provision hereof.

(e) Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Easement Agreement or to exercise any rights or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term, or condition. Any party may by notice delivered in the manner provided in this Easement Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of any other party. No waiver shall affect or alter the remainder of this Easement Agreement but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other breach.

(f) Rights and Remedies. The rights and remedies of any of the parties shall not be mutually exclusive, and the exercise of one or more of the provisions of this Easement Agreement shall not preclude the exercise of any other provisions. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

(g) Severability. In the event any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Easement Agreement and shall in no way effect any other covenant or condition contained herein. If such condition, covenant, or other provisions shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(h) Enforceability and Litigation Expenses. If any action, suit, or proceeding is brought by a party hereto with respect to a matter or matters covered by this Easement Agreement or if a party finds it necessary to retain an attorney to enforce its rights under this Easement Agreement, all costs and expenses of the prevailing party incident to such proceeding or retention, including reasonable attorneys fees, shall be paid by the non-prevailing party.

(i) Authorization. Each individual executing this Easement Agreement represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the party for which he/she signs to execute and deliver this Easement Agreement in the capacity and for the entity set forth where he/she signs and that as a result of his signature, this Easement Agreement shall be binding upon the party for which he/she signs.

(j) Covenant. Grantor hereby specially warrants title to the Property and will defend the same against the lawful claims of all persons claiming by, through and under Grantee, subject to current taxes and assessments, reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, zoning matters, liens, encumbrances, and all other matters of record or enforceable at law or in equity.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement on the day and year first above written.

GRANTOR

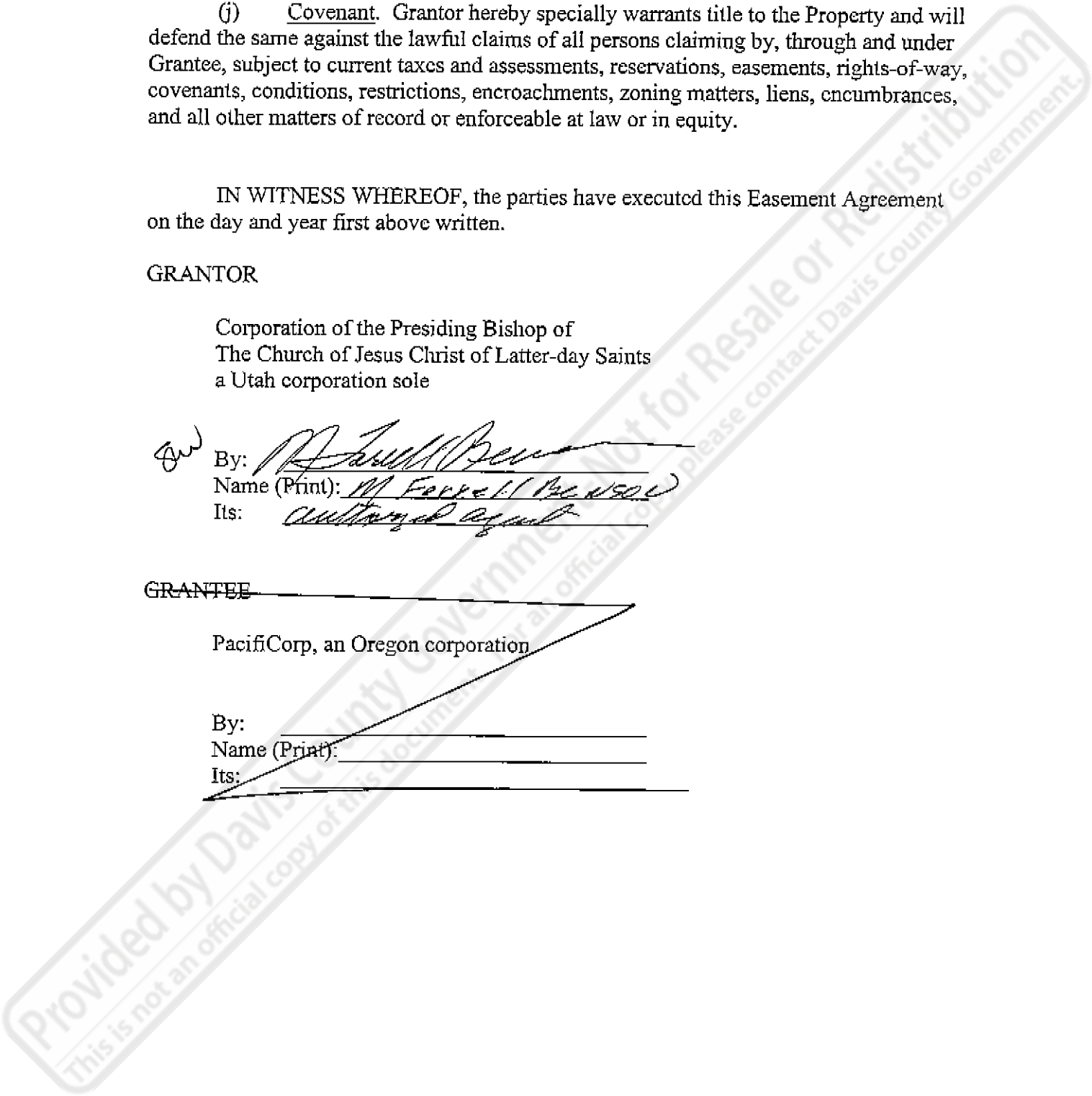
Corporation of the Presiding Bishop of
The Church of Jesus Christ of Latter-day Saints
a Utah corporation sole

By: [Signature]
Name (Print): M. Farrell Benson
Its: Authorized Agent

GRANTEE

PacifiCorp, an Oregon corporation

By: _____
Name (Print): _____
Its: _____



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GRANTOR

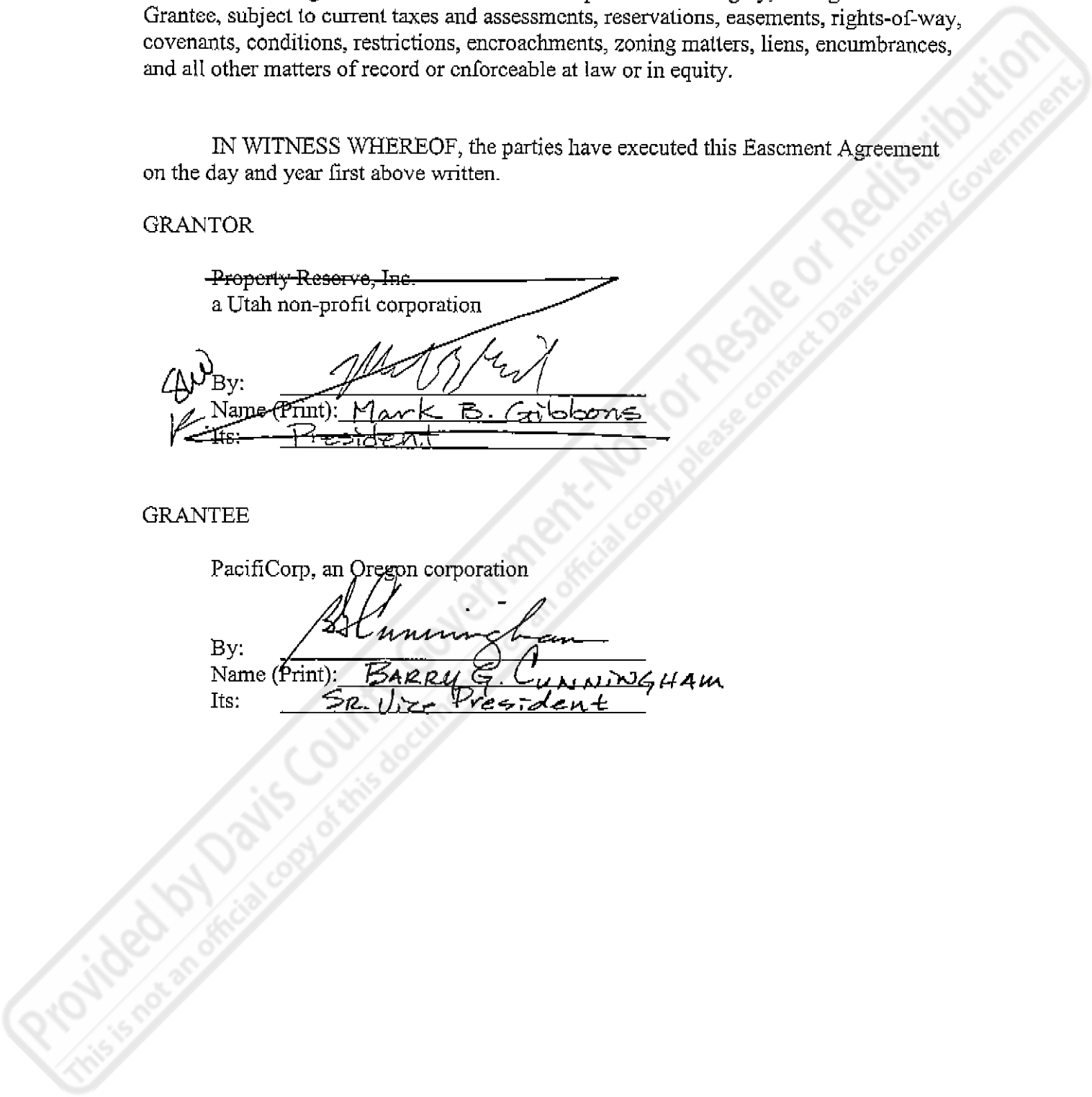
~~Property Reserve, Inc.~~
a Utah non-profit corporation

By: [Signature]
Name (Print): Mark B. Gibbons
Its: President

GRANTEE

PacifiCorp, an Oregon corporation

By: [Signature]
Name (Print): BARRY G. CUNNINGHAM
Its: SR. Vice President



STATE OF UTAH)
 :ss
COUNTY OF SALT LAKE)

On this 9th day of July, 2003, personally appeared before me M. Farrell Benson, personally known to me to be the Authorized Agent of the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah Corporation Sole, who acknowledged to me that he signed the foregoing instrument as Authorized Agent for said Corporation, that the seal impressed on the within instrument is the seal of said corporation, and the said M. Farrell Benson acknowledged to me that the said Corporation executed the same.



Deborah F. Thiesen
Notary Public for Utah

Commission expires: 10/13/2004

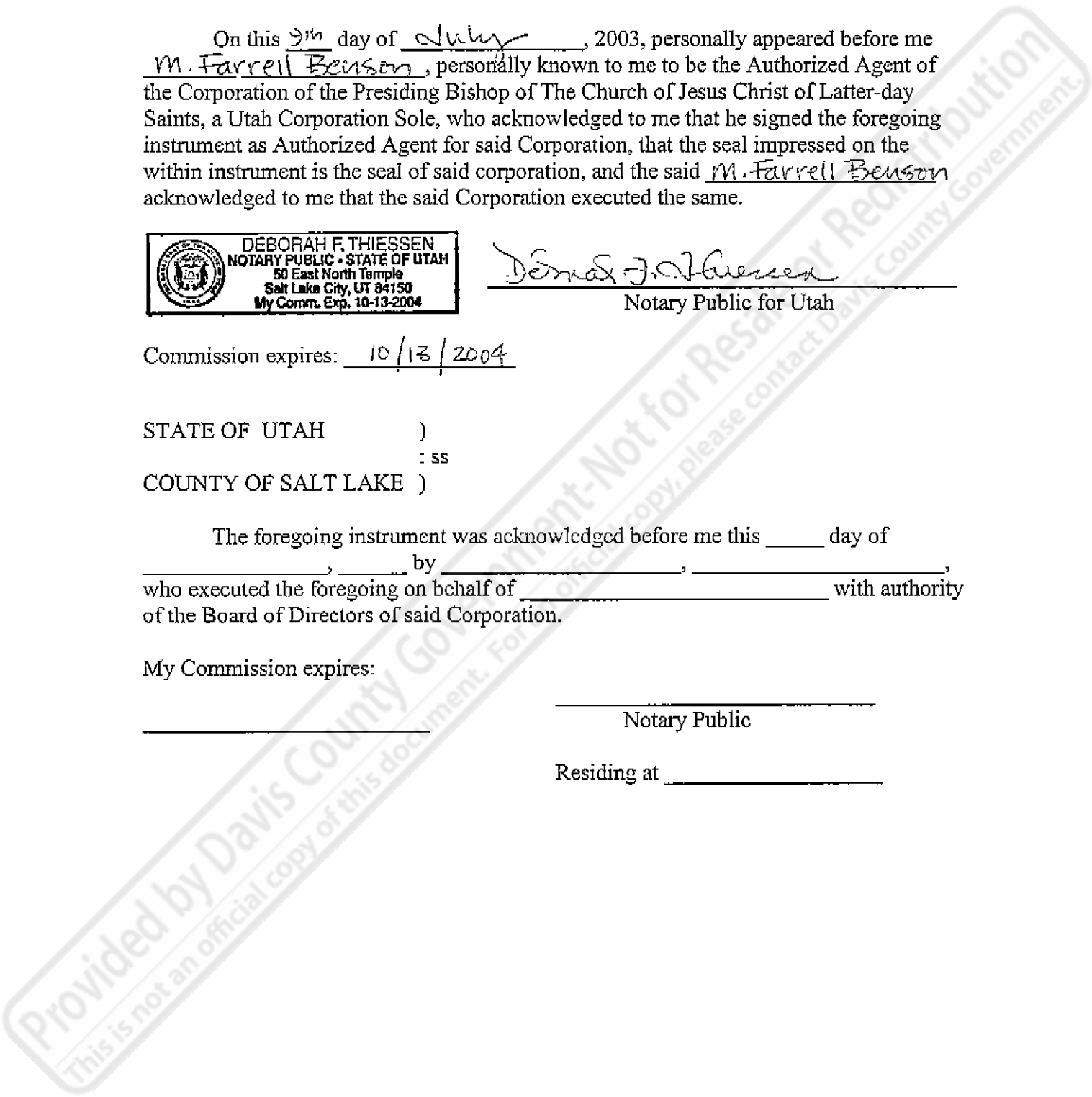
STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by _____, _____, _____ who executed the foregoing on behalf of _____ with authority of the Board of Directors of said Corporation.

My Commission expires:

Notary Public

Residing at _____



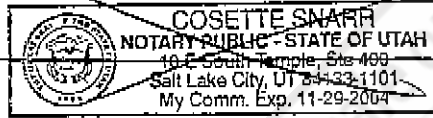
STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 30 day of June, 2003, by Mark B. Gibbons, who executed the foregoing on behalf of Property Reserve, Inc. with authority of the Board of Directors of said Corporation.

My Commission expires:

11-29-2004

Colette Snarr
Notary Public



STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

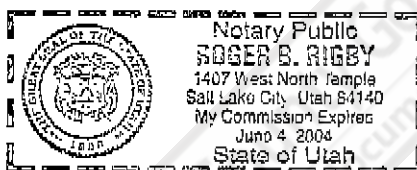
The foregoing instrument was acknowledged before me this 2nd day of July, 2003 by Barry Cunningham Sr. V.P., who executed the foregoing on behalf of PACIFICORP with authority of the Board of Directors of said Corporation.

My Commission expires:

6-4-2004

Roger B. Rigby
Notary Public

Residing at Salt Lake



Provided by Davis County Government. For an official copy of this document, please contact Davis County Government. This is not an official copy of this document.

EXHIBIT A
(Legal Description of the Property)

A tract of land situate in the N1/2 of the SW1/4 , and the SE1/4 of the SW1/4 of Section 15, T.3N., R.1W., S.L.M., Davis County, Utah, described as follows:

Beginning on the north boundary line of the Grantor's land at a point 749 feet east, more or less, along the quarter section line from the west one quarter corner of Section 15, T.3N., R.1W., S.L.M., thence S.37°21'48"E. 3123.21 feet, more or less, along the top of the dike to the east boundary line of said land, thence N.0°02'24"W. 964.35 feet, thence S.83°08'40"W. 63.77 feet, thence N.30°24'27"W. 47.92 feet, thence N.14°36'57"W. 46.88 feet, thence N.67°48'49"W. 115.47 feet, thence N.60°52'39"W. 33.85 feet, thence N.42°39'02"W. 56.27 feet, thence N.34°26'51"E. 22.24 feet, thence N.2°35'09"E. 63.59 feet, thence N.28°01'24"W. 97.49 feet, thence N.57°46'05"W. 71.13 feet, thence N.62°08'30"W. 100.79 feet, thence N.64°22'39"W. 87.69 feet, thence N.38°10'29"W. 59.16 feet, thence N.60°29'25"W. 106.98 feet, thence N.3°50'26"W. 146.89 feet, thence N.3°10'46"W. 116.81 feet, thence N.34°58'36"W. 140.64 feet, thence N.32°37'31"W. 143.19 feet, thence N.50°39'19"W. 43.37 feet, thence S.75°54'58"W. 88.70 feet, thence S.40°37'12"W. 48.48 feet, thence S.88°19'28"W. 46.49 feet, thence N.56°42'58"W. 68.24 feet, thence N.24°41'13"W. 83.62 feet, thence N.2°43'53"W. 29.06 feet, thence N.34°06'26"W. 141.67 feet, thence N.26°35'10"W. 248.65 feet, to the north boundary line of said land, thence S.89°51'10"W. 576.49 feet, more or less, along said north boundary line to the point of beginning; containing 29.26 acres, more or less.

Tax Parcels: 08-067-0001
08-057-0028
08-066-0004
08-066-0003
08-067-0005
08-065-0031
08-065-0007