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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
CITY OF DRAPER
ATTN KATHY MONTOYA
1020 E PIONEER DR
DRAPER UT 84020
BY: AMF, DEPUTY - WI 12 P.

MASTER REIMBURSEMENT AGREEMENT draper UT

THIS MASTER REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into effective as of the 20th day of June, 2006, by and between **DRAPER CITY**, a Utah municipal corporation, ("City") and **SUNCREST, L.L.C.**, a Delaware limited liability company (fka DAE/WESTBROOK, L.L.C.) ("Master Developer").

RECITALS

A. The Traverse Mountain area is located in the southeastern portion of the City as more fully described in Exhibit "A" (the "Traverse Mountain Area");

B. Master Developer is developing a planned unit development within the Traverse Mountain Area known as the SunCrest Master Planned Community (the "Property"). The Property is more particularly described in Exhibit "B";

C. The parties have previously executed a Master Development Agreement dated the 24th day of August, 1999, providing for development of the Property (the "Master Development Agreement"). The Master Development Agreement, and other agreements between the parties provided that the parties would use best efforts to negotiate and enter into an agreement setting out the terms and conditions upon which Master Developer would be reimbursed by the City for certain public facilities that are or will be built and paid for by Master Developer;

D. Certain public improvements that Master Developer has previously installed, and some of those public improvements that may be installed in the future, both on and off the Property, have been or may be constructed larger than the standard sizes required for serving the Property or with capacity exceeding that needed for development of the Property and are intended to serve neighboring properties and to benefit the community at large;

E. These oversized facilities, as more specifically designated below, are or will be "system improvements" ("System Improvements") as defined in the State of Utah's "Impact Fees Act", Title 11, Chapter 36, *Utah Code Annotated*, ("Act");

F. The City has adopted a Capital Facilities Plan, an Impact Fee Analysis, and an Impact Fee Ordinance for a transportation impact fee for a service area containing the Traverse Mountain Area (the "Ordinance"). Pursuant to the Act and the Ordinance, the City will impose impact fees ("Transportation Impact Fees") related to the financing of the certain necessary public transportation facilities within the service area and the City may, from time to time, extend, modify or amend such plans, analyses and/or Impact Fees pursuant to the Act; and;


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G. The City is willing to reimburse Master Developer through Transportation Impact Fees collected from the owners and/or developers of property located in the Traverse Mountain Area as provided in the Act for a portion of the costs incurred by Master Developer in constructing and installing the System Improvements proportional to the benefits received from the System Improvements by the Property and by neighboring properties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Master Developer hereby agree to the following:

TERMS

1. **Incorporation of Recitals and Exhibits.** The foregoing Recitals and Exhibits "A" and "B" are hereby incorporated into this Agreement.

2. **Effective Date/Term of Agreement.** This Agreement shall become effective upon the date and year first written above ("Effective Date") and shall remain in force for a period of 30 years from the date of this Agreement or until such date as the Reimbursement Amount (as defined below), has been paid in full, whichever occurs first ("Term").

3. **Reimbursement for Road Capital Costs as System Improvements.** Master Developer has paid for the construction of what are known as Traverse Ridge Road and SunCrest Drive (the "Roads") as more fully described in the Impact Fee Analysis. An incremental portion of the Roads, and the costs thereof, are acknowledged by the City in the Impact Fee Analysis to qualify as System Improvements for which Master Developer shall be reimbursed through Impact Fees when collected by the City from owners and/or developers of properties located in the Traverse Mountain Area. The reimbursable system improvement costs of Traverse Ridge Road and SunCrest Drive set forth in the City's Impact Fee Analysis is \$7,635,963 (the "Reimbursement Amount").

4. **Collection and Payment of Reimbursements.** Transportation Impact Fees collected, or previously collected, by the City for the Roads shall be paid by the City to Master Developer in accordance with the provisions of Section 5-15-040 of the Draper City Municipal Code during the term of this Agreement. However, no payment shall be made prior to acceptance of the improvement giving rise to reimbursement by the City. For purposes of this Agreement, "acceptance" shall mean that point in time at which the City accepts the road pursuant to the Draper City Subdivision Ordinance and begins the warranty period. The City will provide an accounting of those sums received and the outstanding balances of the amounts to be reimbursed at the time each payment is made.

5. **Exclusion of the Property from the Road Impact Fee.** Master Developer has already paid, or will pay, for traffic impacts created by development of the Property through construction of the Roads. The City therefore has credited Master Developer with prepaid traffic impact fees for developments on the Property and will not assess, levy or collect any Road Impact Fee from Master Developer for the Roads.


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6. Payment from Impact Fees for System Improvements to Master Developer.


A. Master Developer hereby specifically acknowledges that it is accepting the credits for prepaid Transportation Impact Fees on the Property, as specified in the Ordinance, together with those Transportation Impact Fees actually collected by the City and paid to Master Developer from owners and/or developers of other properties in the Traverse Mountain Area as provided herein up to the Reimbursement Amount set forth in paragraph 3, above, as full and final reimbursement for constructing the Roads. However, nothing herein shall be construed to require the City to reimburse Developer for any deficiency from the Reimbursement Amount set forth in paragraph 3, above.

B. The City acknowledges that SunCrest is relying upon the execution of this Reimbursement Agreement as satisfaction of the City's obligations as set forth in paragraph 15.c. of the Master Development Agreement.

C. All reimbursements provided for in the Agreement shall be paid to Master Developer by the City only from applicable impact fees that are actually received by the City from Traverse Mountain Area property owners. Notwithstanding anything in this Agreement to the contrary, the City shall have no obligation to make any reimbursement to Master Developer until the improvements giving rise to reimbursement by the City are completed and placed into warranty by the City and the Impact Fees from the lands other than the Property located within the Traverse Mountain Area are actually received by the City.

D. The City shall, to the extent allowable by law, use its best efforts to keep in place a Capital Facilities Plan, Impact Fee Analysis and Impact Fee Ordinance, including provisions similar to those contained in the current Impact Fee Analysis to account for increases in construction costs, and any and all other similar instruments necessary or required to provide SunCrest with reimbursement payments as set forth in, and subject to the terms and conditions of this Agreement, and, without undue delay, to adopt any new or modified capital facilities plans, impact fee analysis, and/or impact fee ordinance or other similar instruments necessary to legally collect an impact fee if any challenge to such instruments prevents the City from legally collecting such fees under the current or succeeding ordinance, plan or analysis. However, nothing herein shall be construed to prohibit the City from time to time, from amending its Impact Fee Analysis and/or Impact Fees to address changes in facts, circumstances, assumptions or the law underlying such fees, except that such amendments shall not reduce the Reimbursement Amount or exempt any of the properties in the Traverse Mountain Area from paying the Transportation Impact Fees except as may be required by law.

E. This Paragraph shall not be construed to prohibit the City from reimbursing Master Developer for any Road or other system improvements constructed by Master Developer from other sources that may become available to the City such as Federal or State grants to the extent that any such funds are designated by the grants to be used for such purposes. This Paragraph shall not be construed to require the City to seek any such grants.


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7. **Parks and Storm Water Drainage Control System.** No impact fees for parks or storm water drainage control will be collected from the Property and no reimbursements are or shall be due to Master Developer from the City for parks or the storm water drainage control system provided by Master Developer for the Property.

8. **Culinary Water System.** The parties acknowledge that this Reimbursement Agreement does not address the culinary water system for the City as a whole or for the Property. The parties further acknowledge that their obligations regarding reimbursement for the culinary water system are still governed by Paragraph 15(c) of the Master Development Agreement and Paragraph 4 of the Agreement for Granting Regulatory Approval and Assumption of Risk entered into as of the 24th day of August, 1999.

9. **Notices.** All notices, requests, demands, consents, approvals, or other communications required, permitted, or desired to be given or made under this Agreement (collectively a "Notice") shall be (1) in writing (or sent by telex, telegram, facsimile, or telecopy, and promptly confirmed in writing) and (2) addressed by the sender to the other party at the addresses set forth below:

9.1. **To SunCrest L.L.C.:**

SunCrest, L.L.C.

Attn: Edward L. Grampp, Jr.
2021 East Village Green Circle
Draper, Utah 84020
Facsimile: (801) 571-9104

Bruce R. Baird
Hutchings Baird & Jones P.L.L.C.
9537 South 700 East
Salt Lake City, Utah 84070
Facsimile: (801) 328-1444

Monty Watson, Esq.
Terrabrook
3030 LBJ Freeway, Suite 1450
Dallas, Texas 75234
Facsimile: (972) 443-7256

9.2. **To the City:**

Draper City

Attn: City Manager
1020 East Pioneer Road
Draper, Utah 84020
Facsimile: (801) 576-6511

10. **Effectiveness of Notice.** Except as otherwise provided in this Agreement, each Notice shall be effective and shall be deemed delivered on the earlier of (1) its actual receipt, if delivered personally,


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by courier service, or by telegram or facsimile (on the condition that a copy of the telegram or facsimile notice is mailed or personally delivered as set forth herein on the same day and the sending party has confirmation of transmission receipt of the notice) or, (2) on the day the notice is postmarked for mailing by first-class, postage prepaid, certified or registered, United States mail, with return receipt requested (whether or not the return receipt is subsequently received by the sender) and actually deposited in or delivered to the United States mail. Any party may change its address for Notice under this Agreement by giving Notice to the other party in accordance with the provisions of this paragraph.

11. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior promises, representations, warranties, agreements or understandings between the parties pertaining to any reimbursements of any kind from the City to DAE/Westbrook which are not set forth herein. This Agreement is not intended to and shall not be construed to modify, amend, novate, terminate or in any other way affect any other agreement between the parties except as such agreements relate to the subjects specifically addressed in this Agreement. The other agreements of the parties that are specifically preserved include, but are not limited to:

11.1. Road Agreement. The Road Agreement dated August 6, 1996, between the City and Master Developer's predecessor-in-interest, Traverse Ranch, L.L.C., referred to as the "Road Agreement," entered into for the initial acquisition, design and construction of a portion of Traverse Ridge Road that was begun prior to the execution of this Agreement. The parties acknowledge that the Road Agreement is still in full force and effect and is binding upon the parties hereto.

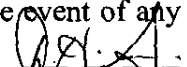
11.2. Master Development Agreement and Amendments. The Master Development Agreement for the Property, dated as of the 24th day of August, 1999, between the City and DAE/Westbrook; Amendment No. 1 to the Master Development Agreement dated as of November 1, 2000; and, Amendment No. 2 to the Master Development Agreement dated as of December 9, 2003.

11.3. Agreements for Granting Regulatory Approval and Assumption of Risk. The Agreement for Granting Regulatory Approval and Assumption of Risk entered into as of the 24th day of August, 1999, by and between the City and DAE/Westbrook pertaining to the Property, and the Assumption of Risk and Covenant to Hold Harmless entered into as of the 19th day of October, 1999, by and between the City and DAE/Westbrook pertaining to the Property, and matters relating thereto.

12. Headings. Headings contained in this Agreement are intended for convenience only and are not intended to be used to construe or limit the text herein.

13. Non-Liability of City Officials and Employees. No officer, representative, agent or employee of the City shall be personally liable to Master Developer, or any successor in interest or assignee of Master Developer, except for fraud, malice or intentional misrepresentation, in the event of any


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default or breach by the City under this Agreement, or for any act or omission arising out of, or connected to, any of the matters set forth herein, or for any amount which may become due to Master Developer or their successors or assignees, or for any obligation arising under the terms of this Agreement.

14. No Third Party Rights. The obligations of the parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to the City and the Master Developer, and their successors and assigns. The City and Master Developer alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit. This Agreement is not intended to nor shall it be construed to benefit any third party.

15. Assignability. Master Developer shall not assign Master Developer's obligations under this Agreement or any rights or interests herein without giving prior written notice to the City, except as required by lenders for financing the SunCrest Master Planned Community. Any future assignee shall consent in writing to be bound by the terms of this Agreement as a condition precedent to the assignment.

16. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective officers, agents, employees, successors and assigns.

17. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions of this Agreement may only be waived by a writing signed by the party intended to be benefited by the provisions to be waived specifically acknowledging an intent to waive such provisions. A waiver by a party of any breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

18. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

19. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

20. Relationship. Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties.

21. Time of Essence. Time is expressly made of the essence with respect to the performance of each and every obligation hereunder.


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

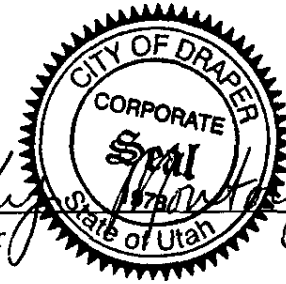
IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

“CITY”
DRAPER CITY

Danell W. Smith
Mayor

ATTEST:

Kathy Montoya
City Recorder



“MASTER DEVELOPER”
SUNCREST L.L.C.
a Delaware limited liability company

By: *[Signature]*
Its: Assistant Vice President

[Signature]
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[Signature]
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SCHEDULE OF EXHIBITS

- A Description of Traverse Mountain Area
- B Legal Description of Property



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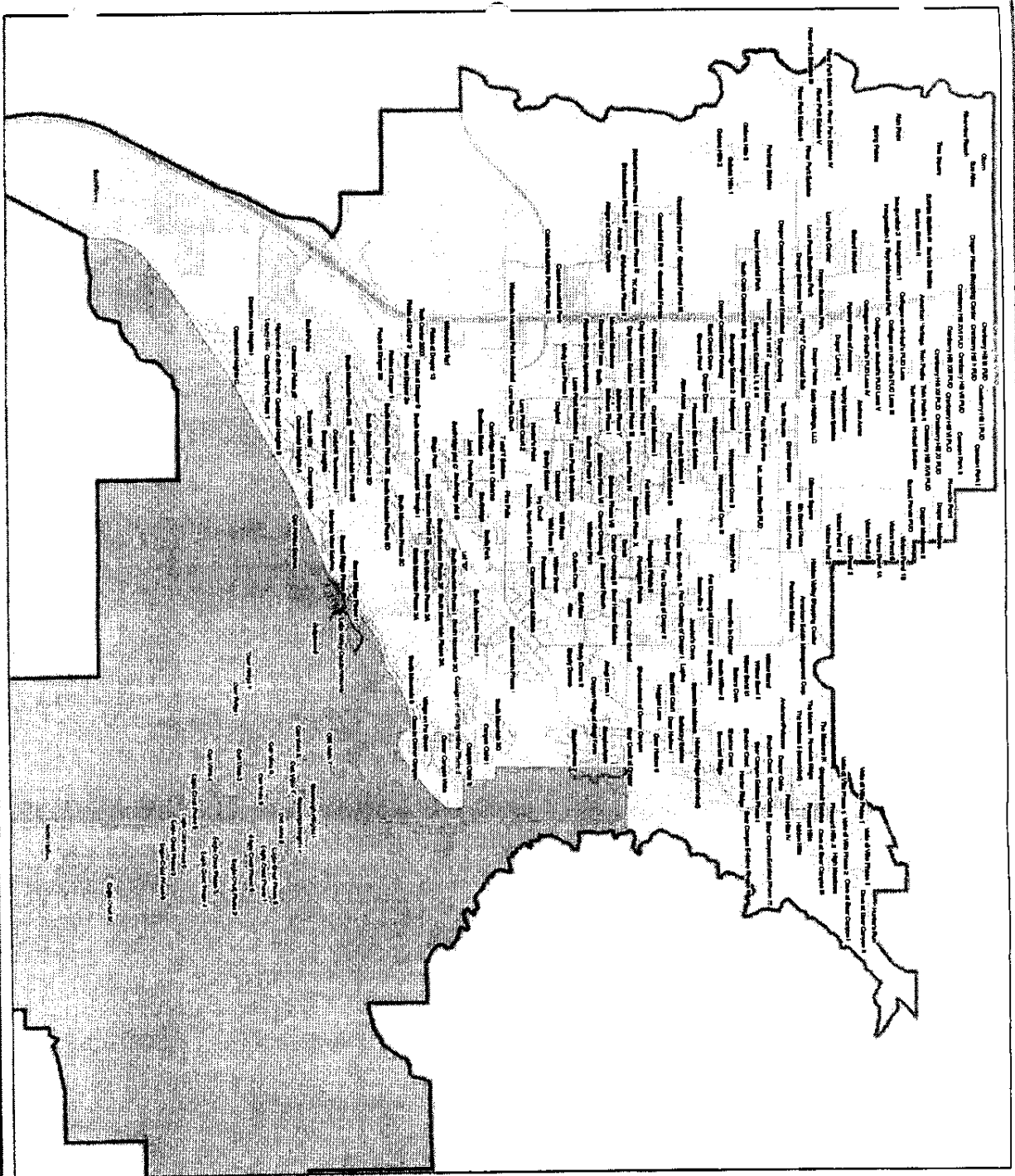
2 Agr DAE Westbrook (Master Reimb)-17

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6.22.06



**Draper City
Transportation Facilities
Impact Fee Services Areas**

Legend

Services Areas

Transportation Services

- Zone A
- Zone B

Developments

Type

- Commercial
- Mixed
- Residential

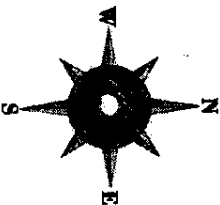


EXHIBIT B**SUNCREST DEVELOPMENT
LEGAL DESCRIPTION OVERALL BOUNDARY**

(Revised 12/24/03)

All of that certain real property situated in the counties of Salt Lake and Utah., State of Utah, all in Township 4 South, Range 1 East, Salt Lake Base and Meridian and being more particularly described as follows:

Beginning at a Utah County monument marking the East Quarter Corner of Section 14, Township 4 South, Range 1 East, thence South 00°33'23" West along the east line of said Section 14 for 1361.92 feet; thence South 89°42'28" West for 1076.44 feet; thence South 00°20'20" West for 2582.07 feet to a point on the north line of the South Half of the Northeast Quarter of Section 23; thence South 89°47'00" West along said north line for 1583.21 feet; thence North 00°14'17" East for 1322.97 feet to a Utah County monument marking the North Quarter Corner of said Section 23; thence North 89°49'17" West along the north line of said Section 23 for 2652.05 feet to the Utah County monument marking the Northwest Corner of said Section 23; thence North 89°45'27" West along the north line of Section 22 for 134.49 feet to a found rebar; thence South 62°44'11" West for 590.23 feet to a found rebar; thence South 54°43'11" West 1669.14 feet; thence South 66°22'44" West for 1540.56 feet; thence South 73°56'59" West for 899.58 feet; thence South 89°59'59" West for 2900.00 feet; thence North 00°00'01" West for 715.98 feet to a found rebar thence South 89°59'59" West for 3540.61 feet to a found rebar; thence North 01°18'43" West for 1356.48 feet to a point lying on the north line of Section 21, said point also lying on the south line of Section 16; thence North 89°47'37" West along said south line of said Section 16 for 942.32 feet to a Utah County monument marking the Southwest Corner of said Section 16; thence North 89°45'59" West along the south line of Section 17 for 2622.61 feet to a Utah County monument marking the South Quarter Corner of said Section 17; thence North 89°45'47" West continuing along the south line of said Section 17 for 2622.36 feet to a Utah County monument marking the Southwest Corner of Section 17; thence North 00°28'45" East along the west line of said Section 17 for 2632.35 feet to a Utah County monument marking the West Quarter Corner of said Section 17; thence South 89°35'12" West on the north line of the South Half of Section 18 for 1834.88 feet; thence North 50°15'33" East for 2418.18 feet to a point on the west line of Section 17; thence North 00°55'12" East along the west line of said Section 17 for 1077.09 feet to a Salt Lake County monument marking the northwest corner of said Section 17; thence along the north line of said Section 17 North 89°52'56" East 4871.78 feet to the west line of that property described in Book 8359 at Page 8817 of the Salt Lake County records; thence along said west line North 01°16'41" East 550.30 feet to the northwest corner of said property; thence along the north line of said property South 89°18'03" East 427.29 feet to the west line of Section 9 of said Township and Range; thence along said west line North 01°16'41" East 716.82 feet to the Southwest Corner of the Northwest Quarter of the Southwest Quarter (NW4SW4) of said Section 9; thence along the south line of said (NW4SW4) North 89°10'58" East 1,296.16 feet to the Southeast Corner of said (NW4SW4); thence along the east line of said (NW4SW4) North 00°49'49" East 786.27 feet to the southerly line of that property described in Book 8360 at Page 348 of said records; thence along the southerly and easterly lines of said property the following eight courses: North 75°36'19" East 54.91 feet (North 75°21'59" East 54.913 feet by record), North 76°46'18" East 409.78 feet (North 76°31'58" East 409.777 feet by record), South 43°52'42" East 147.11 feet (South 44°07'02" East 147.114 feet by record), South 89°33'24" East 22.63 feet (South 89°47'44" East 22.634 feet by record), North 08°47'29" East 167.02 feet (North 08°33'09" East 167.023 feet by record), North 00°44'35" East 231.53 feet (North 00°30'15" East 231.530

feet by record), North 22°01'23" West 47.33 feet (North 22°15'43" West 47.330 feet by record), and North 07°19'03" West 64.23 feet (North 07°33'23" West 64.229 feet by record) to the north line of the South Half of said Section 9; thence along said north line North 88°28'47" East 714.46 feet to the Center Quarter Corner of Section 9; thence along said north line North 88°28'47" East 2589.19 feet to a Salt Lake County brass cap marking the East Quarter Corner of said Section 9; thence along the north line of the South Half of Section 10 of said Township and Range South 89°44'13" East 315.61 feet; thence South 00°00'05" West 0.62 feet to an existing Bush & Gudgell rebar & cap as described in a Boundary Survey prepared by Bush & Gudgell, Inc. dated December 7, 1995, thence continuing South 00°00'05" West 1317.02 feet to an existing Bush & Gudgell rebar & cap; thence South 89°53'02" East 1606.75 feet to the westerly right-of-way line of the Salt Lake Aqueduct as acquired by the Metropolitan Water District of Salt Lake City and shown on Salt Lake Aqueduct Right of Way Plat Drawing No.'s 1.3-Q-7 & 1.3-Q-8, prepared by the U.S. Bureau of Reclamation, dated August 31, 1943; thence along said westerly right-of-way line South 30°20'11" East 1538.15 feet (South 30°30' East by record); thence South 62°30'42" East 93.89 feet to the easterly right-of-way line of said Salt Lake Aqueduct; thence continuing South 62°30'42" East 168.34 feet; thence Southeasterly 284.16 feet along a 636.00 foot radius curve to the right through a central angle of 25°35'56" and a long chord of South 49°42'44" East 281.80 feet; thence Northeasterly 179.87 feet along a 230.00 foot radius non-tangent curve to the left through a central angle of 44°48'25" and a long chord of North 24°52'07" East 175.32 feet; thence North 02°27'54" East 204.95 feet; thence North 89°41'36" East 433.74 feet; thence South 00°10'32" West 49.69 feet; thence South 89°59'52" East along the south line of said Section 10 for 2665.49 feet to a Utah County monument marking the southeast corner of Section 10; thence North 00°06'53" East along the east line of said Section 10 for 2607.72 feet to a Utah County monument marking the east quarter corner of said Section 10; thence North 00°06'53" East continuing along the east line of said Section 10 for 1233.76 feet to a point, said point marking the southwest corner of Jay V. Beck and purported to lie on the Salt Lake, Utah County line, all as described in Deed Book 7428 at page 280; thence North 51°02'30" East along said line for 2226.30 feet to a point on the north line of Section 11; thence North 89°05'18" East along the north line of said Section 11 for 3631.04 feet to a stone marking the northeast corner of said Section 11; thence South 00°07'58" East along the east line of said Section 11 for 1330.59 feet to the northeast corner of the south half of the northeast quarter of said Section 11; thence South 89°23'02" West along said north line for 2685.15 feet to the northwest corner of the south half of the northeast quarter of said Section 11; thence South 00°07'39" West for 2624.64 feet to the northwest corner of the south half of the southeast quarter of said Section 11; thence North 89°45'56" East along the north line of the south half of the southeast quarter of said Section 11 for 1342.54 feet to the northeast corner of the southwest quarter of the southeast quarter of said Section 11; thence South 00°15'27" West for 1309.88 feet to the southeast corner of the southwest quarter of the southeast quarter of said Section 11; thence South 00°22'46" East to the east line of the west half of the northeast quarter of Section 14 for 2647.93 feet; thence South 89°33'59" East for 1346.64 feet to the POINT OF BEGINNING.

Containing 165,071,409 square feet or 3,789.518 acres.

LESS AND EXCEPT (83.003 Acre Michel)

That certain real property situated in the northwest quarter of Section 15 and the northeast quarter of Section 16 all in Township 4 South, Range I East, Salt Lake Base and Meridian being more particularly described as follows:

Commencing at a Utah County monument marking the north quarter corner of said Section 15; thence

South 89°59'56" West along the north line of said Section 15 for 1978.51 feet to a found rebar; said rebar being the POINT OF BEGINNING; thence South 00°00'07" West for 2630.30 feet to a found rebar; thence South 89° 59'56" West for 1374.60 feet to a found rebar; thence North 00°00'07" East for 2630.30 feet to a found rebar; thence North 89°59'56" East for 1374.60 feet to the POINT OF BEGINNING

ALSO LESS AND EXCEPT the Salt Lake Aqueduct (Alpine-Draper Tunnel) as acquired by Metropolitan Water District of Salt Lake City.