



ENT 135504:2019 PG 1 of 11
JEFFERY SMITH
UTAH COUNTY RECORDER
2019 Dec 20 12:08 pm FEE 0.00 BY SW
RECORDED FOR SARATOGA SPRINGS CITY

When Recorded, Mail To:

City of Saratoga Springs
Attn: City Recorder
1307 N. Commerce Drive, Suite 200
Saratoga Springs, UT 84045

(Space Above for Recorder's Use Only)

**PERPETUAL CULINARY WATER, SECONDARY WATER, SEWER, STORM DRAIN
AND GAS LINE EASEMENT AND AGREEMENT**

This PERPETUAL CULINARY WATER, SECONDARY WATER, SEWER, STORM DRAIN AND GAS LINE EASEMENT AND AGREEMENT (this "**Agreement**") is made and entered into effective as of the 4 day of NOVEMBER, 2019 (the "**Effective Date**"), by and between ALMA E. AND ETHEL B. RUSHTON FAMILY PARTNERSHIP, a Utah general partnership ("**Grantor**"), and the CITY OF SARATOGA SPRINGS, a Utah municipal corporation ("**Grantee**").

RECITALS

A. Grantor is the owner of that certain real property located in the City of Saratoga Springs, Utah County, Utah (the "**Grantor Property**").

B. Grantee desires to obtain and Grantor is willing to convey a perpetual utility easement over a portion of the Grantor Property subject to the terms and conditions of this Agreement.

C. "Utilities" or "utility" are defined herein to include all utility facilities, pipes, channels, ponds, ditches, boxes, facilities, and all related appurtenances owned and operated by Grantee (or their permitted assigns) for the provision of services such as water, secondary water, irrigation water, culinary water, gas, storm drainage, and sanitary sewer.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

1. **Grant of Easement.** Grantor does hereby convey, without warranty, unto Grantee for the benefit of Grantee a perpetual easement (the "**Utility Easement**") under and through that

portion of the Grantor Property more particularly described and depicted on Exhibit A, attached hereto and incorporated herein by this reference (the “**Utility Easement Area**”), for the construction, replacement, relocation, removal, operation, use, maintenance and repair of the following underground utility improvements: (i) culinary water, (ii) secondary water, (iii) sewer, (iv) storm drain, and (v) gas line, located therein from time to time (the “**Improvements**”). Grantor shall ensure, guarantee, and warrant that no other underground utility easements or licenses shall be granted to any other person or entity under and through the Utility Easement Area and that no above or below ground improvements, buildings, or facilities of any kind shall be constructed or maintained on the Utility Easement Area except for roads, trails, bike paths or other access improvements and related landscaping. All costs of the Utility Improvements and all construction, replacement, relocation, removal, operation, use, maintenance and/or repair thereof, shall be the sole responsibility of Grantee.

2. **Exclusivity: Reservations by Grantor**. Grantor hereby reserves the right to use the Utility Easement Area for any use not inconsistent with Grantee’s permitted use of the Utility Easement Area as set forth above in Section 1 provided that such use shall not interfere with Grantee’s operation of a municipal utility system related to the Improvements. In addition, Grantee may allow Grantor to grant to other third parties the right to use all or any portion of the Utility Easement Area in ways that may be contrary to Section 1 above so long as such use does not: (i) impede Grantee’s permitted use of the Utility Easement Area, (ii) damage or negatively impact the Improvements in the Utility Easement Area, (iii) Grantor uses its commercially reasonable efforts to first grant easements in areas other than the Utility Easement Area, and (iv) Grantee’s permission in writing is obtained (which shall not be unreasonable withheld, conditioned or delayed so long as items (i), (ii) and (iii) above are satisfied). In all cases, Grantor shall comply with all Grantee’s development standards and ordinances in granting such third party rights. Without limiting the foregoing, Grantor reserves the right to require the relocation of the Utility Easement Area or the Improvements at any time (or from time to time) at Grantor’s cost and expense provided Grantee shall agree in writing and all Grantee development standards and ordinances are met. If the Utility Easement Area is relocated as provided for in the previous sentence, then this Agreement shall be amended in order to terminate the easement in its previous location and to grant the easement in the new location.

3. **Access**. Grantee and its agents, servants, employees, consultants, contractors and subcontractors (collectively, “**Grantee’s Agents**”) shall have the right to enter upon the Utility Easement Area solely for the purposes permitted by this Agreement. Grantee and Grantee’s Agents shall enter upon the Utility Easement Area at their sole risk and hazard, and Grantee and its successors and assigns, hereby release Grantor from any and all claims relating to the condition of the Utility Easement Area and the entry upon the Utility Easement Area by Grantee and Grantee’s Agents.

4. **Condition of Easement Area**. Grantee accepts the Utility Easement Area and all aspects thereof in their “AS IS,” “WHERE IS” condition, without warranties, either express or implied, “WITH ALL FAULTS,” including but not limited to both latent and patent defects, the existence of hazardous materials, if any, and any other easements, rights, or other encumbrances affecting the Utility Easement Area.

5. **Maintenance and Restoration.** Grantee, at its sole cost and expense, shall maintain and repair the Utility Improvements and any and all related improvements installed by Grantee, in good order and condition. To the extent possible considering the nature of the Improvements, Grantee shall promptly repair any damage to the Grantor Property caused by Grantee and/or Grantee's Agents, and shall restore the Grantor Property and the improvements thereon to the same condition as they existed prior to any entry onto or work performed on the Grantor Property by Grantee and Grantee's Agents. Notwithstanding the obligations of this Section 5, Grantor recognizes that the nature of the utility improvements may result in the inability of Grantee to fully restore the Grantor Property. So long as Grantee uses its best efforts to fully restore Grantor Property, Grantor waives the right to require strict performance of Grantee's restoration requirements under this paragraph.

6. **Construction of the Improvements.** Grantee will conduct all construction activities in a good and workmanlike manner in compliance with all laws, rules, and ordinances, both present and future. Upon initial completion of the Utility Improvements and any replacement or major repair of the Utility Improvements, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor of such completion. This Section shall not supersede Grantee's development standards and ordinances and the requirements of Grantor to install all necessary improvements to service the development needs of the Grantor Property or Grantor's adjacent property.

7. **Compliance with Laws.** Grantee will comply with all present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any building, zoning and land use laws.

8. **Release.** Except for Grantor's own negligence, Grantee hereby agrees to release Grantor, and any entity controlling, controlled by, or under control with Grantor, and its and their Affiliates' officers, directors, employees, managers, members, agents and servants ("**Affiliates**") from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage that may be incurred by Grantor or its Affiliates as a result of any liabilities, damages, judgments, costs, expenses, penalties, and/or injuries to persons or property caused by or arising out of, either directly or indirectly, (i) the use of the Utility Easement Area by Grantee and/or Grantee's Agents; (ii) any entry onto the Utility Easement Area and/or the Grantor Property by Grantee and/or Grantee's Agents; (iii) any work performed on the Utility Easement Area or the Improvements by Grantee and/or Grantee's Agents; (iv) any act or omission of Grantee or any of Grantee's Agents; and (v) any bodily injury, property damage, accident, fire or other casualty to or involving Grantee or Grantee's Agents and its or their property on the Utility Easement Area, the Grantor Property and/or adjacent areas.

9. **Liens.** Grantee shall keep the Utility Easement Area and the Grantor Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for, or under Grantee.

10. Notices. All notices, demands, statements, and requests (collectively, the "Notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the party to whom the notice is addressed or if such party is not available the date such notice is left at the address of the party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt requested, and (iii) on the date the notice is delivered by a courier service (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the party to whom it is directed, provided it is sent prepaid, return receipt requested. The addresses of the signatories to this Agreement are set forth below:

If to Grantor: Alma E. and Ethel B. Rushton Family Partnership
 Attn. Terry Rushton
 4441 South 5400 West
 West Valley City, Utah 84120

If to Grantee: City of Saratoga Springs
 1307 N. Commerce Drive, Suite 200
 Saratoga Springs, UT 84045
 Attn: CITY MANAGER
 Fax: 801 766-9794

11. Miscellaneous.

11.1. Binding Effect. Except as expressly stated herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, as well as the successors and assigns of such Persons. Notwithstanding the forgoing, Grantor shall have no liability related to this Agreement for obligations arising after Grantor has conveyed the Grantor Property to a third party.

11.2. Partial Invalidity. If any term, covenant or condition of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

11.3. Captions and Recitals. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein. The Recitals set forth above are incorporated into this Agreement by reference.

11.4. Gender. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

11.5. Relationship of the Parties. Nothing contained herein shall be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

11.6. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of the parties or their successor and assigns (as determined by the provisions herein).

11.7. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

11.8. Attorney Fees. In the event any legal action or proceeding for the enforcement of any right or obligations herein contained is commenced, the prevailing party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

11.9. Assignment. Grantee may not at any time during this Agreement assign its rights and obligations under this Agreement without the prior written consent of Grantor, which consent may be granted or withheld in Grantor's sole and absolute discretion and for any reason or no reason at all. However, Grantee is hereby specifically permitted to assign its right to install a gas line to Dominion Energy.

11.10. No Public Use/Dedication. The Grantor Property is and shall at all times remain the private property of Grantor. The use of the Grantor Property is permissive and shall be limited to the express purposes contained herein by Grantee. Neither Grantee, nor its successors or assigns, nor the public shall acquire nor be entitled to claim or assert any rights to the Grantor Property beyond the express terms and conditions of this Agreement.

11.11. Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

[Signatures and acknowledgements to follow]

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

GRANTOR:

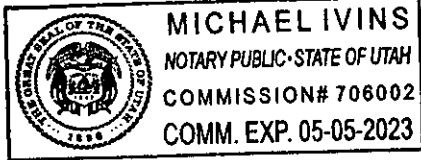
ALMA E. AND ETHEL B. RUSHTON FAMILY PARTNERSHIP, a Utah general partnership
By Its General Partners:

RUSHTON FAMILY COMPANY, LLC, a Utah limited liability company

By Lynda R. Ahlquist, manager
Lynda R. Ahlquist, Its Manager

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

The foregoing instrument was acknowledged before me this 4 day of November, 2019, by Lynda R. Ahlquist, as the Manager of Rushton Family Company, LLC, a Utah limited liability company, which is a general partner of Alma E. and Ethel B. Rushton Family Partnership, a Utah general partnership.



[Signature]
NOTARY PUBLIC

[Signatures and acknowledgments to follow]

A. LAURENCE & ELVA J. RUSHTON FAMILY COMPANY, LLC, a Utah limited liability company

By Terry L. Rushton
Terry L. Rushton, Its Manager

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

The foregoing instrument was acknowledged before me this 4 day of November, 2019, by Terry L. Rushton, as the Manager of A. Laurence & Elva J. Rushton Family Company, LLC, a Utah limited liability company, which is a general partner of Alma E. and Ethel B. Rushton Family Partnership, a Utah general partnership.



[Signature]
NOTARY PUBLIC

FLOYD & NORMA RUSHTON PROPERTIES, LLC, a Utah limited liability company

By Floyd S. Rushton
Floyd S. Rushton, Its Manager

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

The foregoing instrument was acknowledged before me this 4 day of November, 2019, by Floyd S. Rushton, as the Manager of Floyd & Norma Rushton Properties, LLC, a Utah limited liability company, which is a general partner of Alma E. and Ethel B. Rushton Family Partnership, a Utah general partnership.



[Signature]
NOTARY PUBLIC

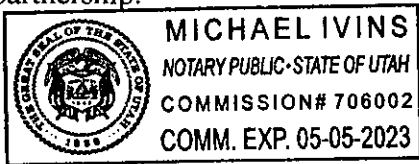
[Signatures and acknowledgments to follow]

JONES LEHI, LLC, a Utah limited liability company

By Harry R. Jones
Harry R. Jones, Its Manager

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

The foregoing instrument was acknowledged before me this 4 day of November, 2019, by Harry R. Jones, as the Manager of Jones Lehi, LLC a Utah limited liability company, which is a general partner of Alma E. and Ethel B. Rushton Family Partnership, a Utah general partnership.



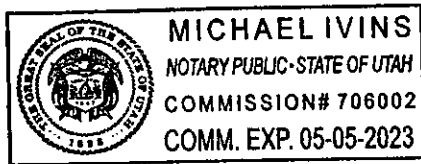
[Signature]
NOTARY PUBLIC

ELSIE LOVELACE, LLC, a Utah limited liability company

By Brad D. Turpin
Brad D. Turpin, Its Manager

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

The foregoing instrument was acknowledged before me this 4 day of November, 2019, by Brad D. Turpin, as the Manager of Elsie Lovelace, LLC, a Utah limited liability company, which is a general partner of Alma E. and Ethel B. Rushton Family Partnership, a Utah general partnership.




[Signature]
NOTARY PUBLIC

[Signature and acknowledgment to follow]

GRANTEE:

City of Saratoga Springs, a Utah municipal corporation

By: 
Name: MARK CHRISTENSEN
Title: CITY MANAGER

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

On this 18 day of DECEMBER, 2019, personally appeared before me MARK CHRISTENSEN, who indicated to me that he/she is a CITY MANAGER of THE CITY OF SARATOGA SPRINGS, a Utah municipal corporation, and that he/she duly acknowledged to me that he/she executed the foregoing instrument as a free and voluntary act for and on behalf of the said municipal corporation

My Commission Expires: 04-12-2020


Notary Public for Utah

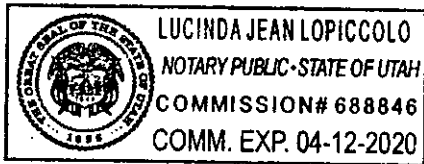


EXHIBIT A

Legal description and depiction of the Utility Easement Area

30' WIDE PERMANENT EASEMENT (PARCEL #1)

A portion of the Southwest Quarter of Section 34, Township 5 South, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point located N0°23'55"W along the Quarter Section Line 632.90 feet from the South 1/4 Corner of Section 34, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence northwesterly along the arc of a 3030.00 foot radius non-tangent curve to the right (radius bears: N42°34'26"E) 446.94 feet through a central angle of 8°27'05" (chord: N43°12'01"W 446.54 feet); thence East 38.72 feet; thence southeasterly along the arc of a 3000.00 foot radius non-tangent curve to the left (radius bears: N50°33'37"E) 390.10 feet through a central angle of 7°27'01" (chord: S43°09'53"E 389.82 feet) to the Quarter Section Line; thence S0°23'55"E along the Quarter Section Line 41.18 feet to the point of beginning.

Contains: ±0.29 Acres

±12,557 Sq. Ft.

30' WIDE PERMANENT EASEMENT (PARCEL #2)

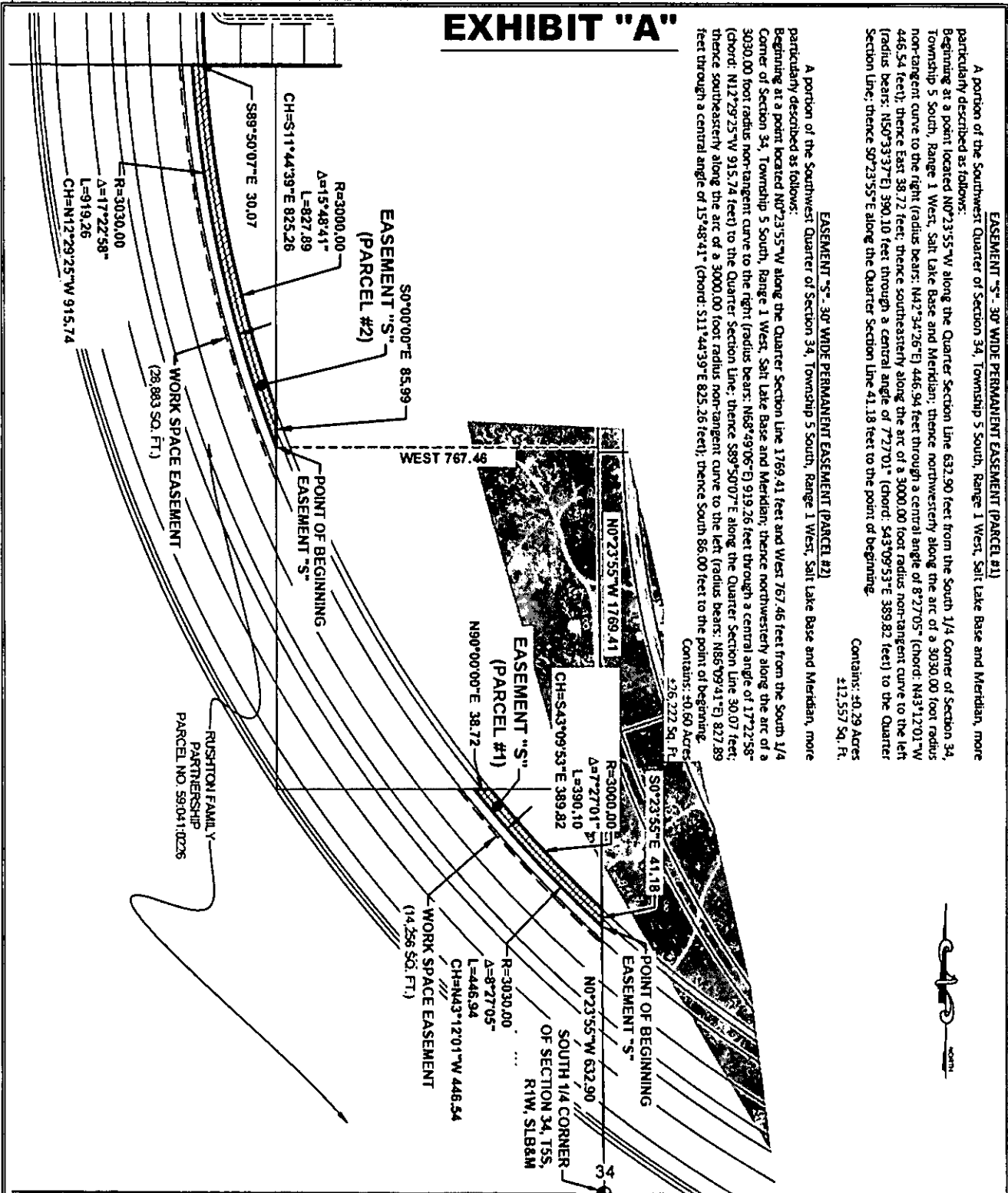
A portion of the Southwest Quarter of Section 34, Township 5 South, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point located N0°23'55"W along the Quarter Section Line 1769.41 feet and West 767.46 feet from the South 1/4 Corner of Section 34, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence northwesterly along the arc of a 3030.00 foot radius non-tangent curve to the right (radius bears: N68°49'06"E) 919.26 feet through a central angle of 17°22'58" (chord: N12°29'25"W 915.74 feet) to the Quarter Section Line; thence S89°50'07"E along the Quarter Section Line 30.07 feet; thence southeasterly along the arc of a 3000.00 foot radius non-tangent curve to the left (radius bears: N86°09'41"E) 827.89 feet through a central angle of 15°48'41" (chord: S11°44'39"E 825.26 feet); thence South 86.00 feet to the point of beginning.

Contains: ±0.60 Acres

±26,222 Sq. Ft.

EXHIBIT "A"



1	LB PROJECT # 2018-0058 DRAWN BY CAP SCALE 1" = 300' DATE: 3/21/2019	DRAWING "S" LOCATION: SW QUARTER OF SECTION 34, T5S, R1W, SLB&M RUSHTON FAMILY PARTNERSHIP, PARCEL NO. 58:041:0226	 ENGINEERS - SURVEYORS PLANNERS
	• A Utah Corporation • 2302 N. Main Street South Salt Lake, UT 84143 Phone: 801.798.0025 Fax: 801.798.9392 office@l-l-eng.com www.l-l-eng.com		