

After Recording, Return To:  
Brett N. Anderson  
Blackburn & Stoll, LC  
257 East 200 South, Suite 800  
Salt Lake City, Utah 84111

ENT 194390 : 2021 PG 1 of 12  
**Andrea Allen**  
**Utah County Recorder**  
2021 Nov 18 04:00 PM FEE 40.00 BY SW  
RECORDED FOR York Howell & Guymon  
ELECTRONICALLY RECORDED

## ACCESS AND UTILITIES EASEMENT AGREEMENT

(Subject to Relocation and/or Termination)

This Access and Utilities Easement Agreement (Subject to Relocation and/or Termination) (this "Agreement") is entered into this day of July 2021, by and between Saratoga 262 Partners LLC, a Utah limited liability company ("Grantor"), whose address is 10771 S. Rippling Bay, South Jordan, Utah 84009, and Alma E. and Ethel B. Rushton Family Company, LLC (f/k/a Alma E. and Ethel B. Rushton Family Partnership) ("Grantee"), whose address is 4441 South 5400 West, West Valley City, Utah 84120, with respect to the following.

### RECITALS

A. Grantor is the owner of certain parcels of real property located in Utah County, Utah that are depicted, along with the designated easements, in the surveyor's drawings attached as **Exhibit A** (the "Grantor's Property"). The Utah County parcel numbers assigned to these parcels are 58:041:0244, 58:041:0238, 58:041:0245, 58:041:0246 and 58:041:0243.

B. Grantee is the owner of certain real property located in Utah County, Utah, the legal description of which is set forth in **Exhibit B** attached hereto (the "Grantee's Property"), which parcels are located adjacent to Grantor's Property. Grantor and Grantee are parties to a Real Estate Purchase Contract for Land (with Addenda 1 through 3), executed on November 19 and 20, 2020 (the "REPC"), pursuant to which Grantor has purchased Grantor's Property from Grantee, and pursuant to which Grantor has also agreed to purchase Grantee's Property.

C. The parties desire to enter into this Agreement, for the purposes of establishing easements to provide rights of way for ingress and egress to Grantee over portions of Grantor's Property, and easements for the construction, location, repair, and maintenance of utilities and related facilities on, under, and over portions of Grantor's Property, for the use and benefit of Grantee's Property, upon the following terms and conditions.

### TERMS AND CONDITIONS

1. Establishment of Grantee's Easements. For the sum of Ten Dollars (\$10.00), and in consideration of the covenants and agreements stated herein, Grantor hereby conveys and grants to Grantee, its heirs, successors, and assigns, the following non-exclusive easements and rights of way (collectively, the "Grantee Easements"), for the use and benefit of Grantee's Property:

A. For Access. A non-exclusive easement and right of way over and across the property as depicted in **Exhibit C** attached hereto (being portions of Grantor's Property), for ingress and egress, to and from Grantee's Property (the "Access Easements").

B. For Utilities. A non-exclusive easement for the installation and maintenance of utilities, over, across, and under the property as depicted in **Exhibit C** attached hereto.

2. Uses.

A. Access Easements. The Access Easements may be used by Grantee for legal and practical access to Grantor's Property so that Grantee may install, construct, and maintain utility lines and all necessary appurtenances to provide power, water, sewer, and gas to all portions of Grantee's Property. The easements will be limited to locations for public roads and utility easements to be shown in **Exhibit A**, and shall be sufficient in nature, size, and width in the parties' reasonable judgment, to permit legal and practical access to Grantee's Property, as well as to permit installation of utilities intended to serve Grantee's Property as though developed as a residential subdivision under existing municipal standards.

B. Utilities Easements. The Utilities Easements may be used by Grantee for the construction, location, repair and maintenance of utilities servicing Grantee's Property, or any portion thereof, as well as parcels of property adjacent to Grantee's Property (pursuant to the provisions of Paragraph 3, below). Prior to installing any utilities: (1) Grantee shall provide to Grantor plans, drawings, and specifications detailing the proposed work and any remediation or restoration work; (2) upon receipt of such plans, drawings, and specifications, Grantor shall have fifteen (15) days to approve or reject the same, provided however, that Grantor's approval shall not be unreasonably withheld; and (3) Grantee shall obtain all necessary governmental permits and authorizations for the proposed work. Any installation of utilities and associated work shall be done at the sole expense of Grantee.

C. Temporary Easements for Construction or Repair. Grantee or its agents shall also have the right to temporarily occupy and use the property adjacent to the Grantee Easements for construction and related purposes; provided, that Grantee shall remediate and restore any damage to said adjacent property at Grantee's sole expense. Any such temporary occupancy and use shall be subject to the prior approval of Grantor, provided however, that Grantor's approval shall not be unreasonably withheld.

D. Timely Construction of Improvements. Upon Grantee commencing construction of any improvements on the Grantee Easements, Grantee shall promptly complete the construction of such improvements and shall not delay construction in any manner that would unreasonably interfere with the development of Grantor's Property. If Grantee is in default under this Paragraph 2(D) and has failed to cure such default within thirty (30) days after receipt of written notice from Grantor, then, in addition to any other remedies available at law or equity, Grantor may take over the

construction of the improvements on the Grantee Easements and charge Grantee for the costs of completing such improvements.

3. Grantee Easement Perpetual: Transferability. Subject to the provisions of Paragraphs 4 and 5 hereof, the easements granted herein shall be perpetual. The easements shall be transferable to multiple purchasers or successive owners of all or any portion of Grantee's Property. Grantee may grant to one or more owners of parcels adjacent to Grantee's Property, the right to use or make use of the easements for the purpose of providing utilities or access to or from said adjacent parcels; provided, however, no owner of any adjacent parcel shall have any rights therein until Grantee expressly grants such rights.

4. Relocation of Grantee Easements. Grantor agrees, for itself and its successors and assigns, that any subdivision plat recorded with respect to all or any portion of Grantor's Property on which the easements are located shall recognize and provide for the easements. At the option of Grantor, in connection with, and at the time of recording of a final subdivision plat, the easements provided for in this Agreement may be relocated, in whole or in part, to a dedicated street or streets and/or to dedicated public utilities easements, or other portions of Grantor's Property, so long as the easements, as relocated, are sufficient in size, width, and location to permit access to and from, and the installation of utilities to serve Grantee's Property as though it were developed as a residential subdivision under then existing municipal standards. If improvements have been installed within the easements by Grantee, then Grantor shall, at Grantor's cost, reconstruct or provide replacement facilities for such improvements within the relocated easements. Upon Grantor properly relocating the easements pursuant to this Paragraph, the parties shall promptly execute and record an amendment to this Agreement to reflect the new location of the easements.

Provided that the purposes of the easements are sufficiently met through dedicated easements as part of a recorded subdivision plat, then Grantee agrees that the easements created by this Agreement shall automatically terminate as of the date of recording and be of no further force or effect, and Grantee will promptly execute any additional documents necessary to terminate the same.

5. Termination; Dedication to City. In the event Grantor purchases Grantee's Property within twelve (12) months of the date of Grantor's purchase of Grantor's Property, then this Agreement and the easements shall automatically terminate and Grantee shall cooperate with Grantor and promptly execute any additional documents necessary to terminate the same. This provision is not, however, intended to change any deadlines provided in the REPC.

At the request of Grantee, Grantor agrees to join in and dedicate the easements, or any portion thereof, to an appropriate municipal authority, provided that: (i) the plans for the final routing of any roads and installation utilities has been approved by Grantor (which approval shall not be unreasonably withheld); and (ii) such dedication has been approved and accepted by such municipal authority.

6. Maintenance and Restoration. Grantee, at its sole cost and expense, shall maintain in good order and condition and repair any improvements installed by Grantee within the Grantee Easements.

7. Liens. Grantee shall keep Grantor's Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for, or under Grantee, and shall indemnify, hold harmless, and agree to defend Grantor from any liens that may be placed on Grantor's Property and/or the property pertaining to any work performed, materials furnished or obligations incurred by, through, for, or under Grantee or any of Grantee's agents. Any such liens shall be released of record within thirty (30) days of recording.

8. Grantor's Disclaimer. Grantee, for itself and its successors and assigns, acknowledges that Grantor has not made any representation regarding the suitability of the property upon which the Grantee Easements will be located for the purposes intended by Grantee, and further acknowledges that Grantee is relying solely upon its own investigations and/or the investigations of its professionals regarding the proposed use of such property.

9. Indemnity. Grantee, for itself and its successors and assigns, hereby agrees to indemnify, defend, and hold harmless Grantor, and its successors and assigns, from and against any and all liability, claims, demands, and causes of action of whatever nature arising in connection with Grantee's use of the easements, including, without limitation, the construction and maintenance of roads (or other improvements) or installation and maintenance of utilities thereon, except that this obligation shall not extend to claims based upon the negligent or intentional acts of Grantor, or its successors or assigns. This indemnity provision shall continue notwithstanding the termination or abandonment of the easements.

10. Right to Connect. Grantor shall have the right to connect to the sewer line and any other utilities installed by Grantee in the Utilities Easements; provided, however, that Grantor shall only connect to said sewer line or other utilities so long as such connections do not unreasonably impair the use of the easement and installed utility lines for Grantee's Property. Any such connections by Grantor shall be made at Grantor's expense and in accordance with all applicable municipal regulations.

11. Enforcement. In the event of default hereunder, the defaulting party agrees to pay reasonable attorneys' fees incurred in connection with enforcing this Agreement or securing any remedy available hereunder, whether or not such legal action is commenced.

12. Miscellaneous. Each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to Grantor and Grantee, their successors and assigns, and any person acquiring or owning an interest in Grantor's Property or Grantee's Property, and their assigns, heirs, executors, administrators, devisees, and successors. Notwithstanding the foregoing, neither Grantor nor Grantee, nor their successors or assigns, shall have any personal obligations or duties hereunder on account of events occurring or obligations arising after such party transfers its interest, respectively, in Grantor's or Grantee's Property.

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

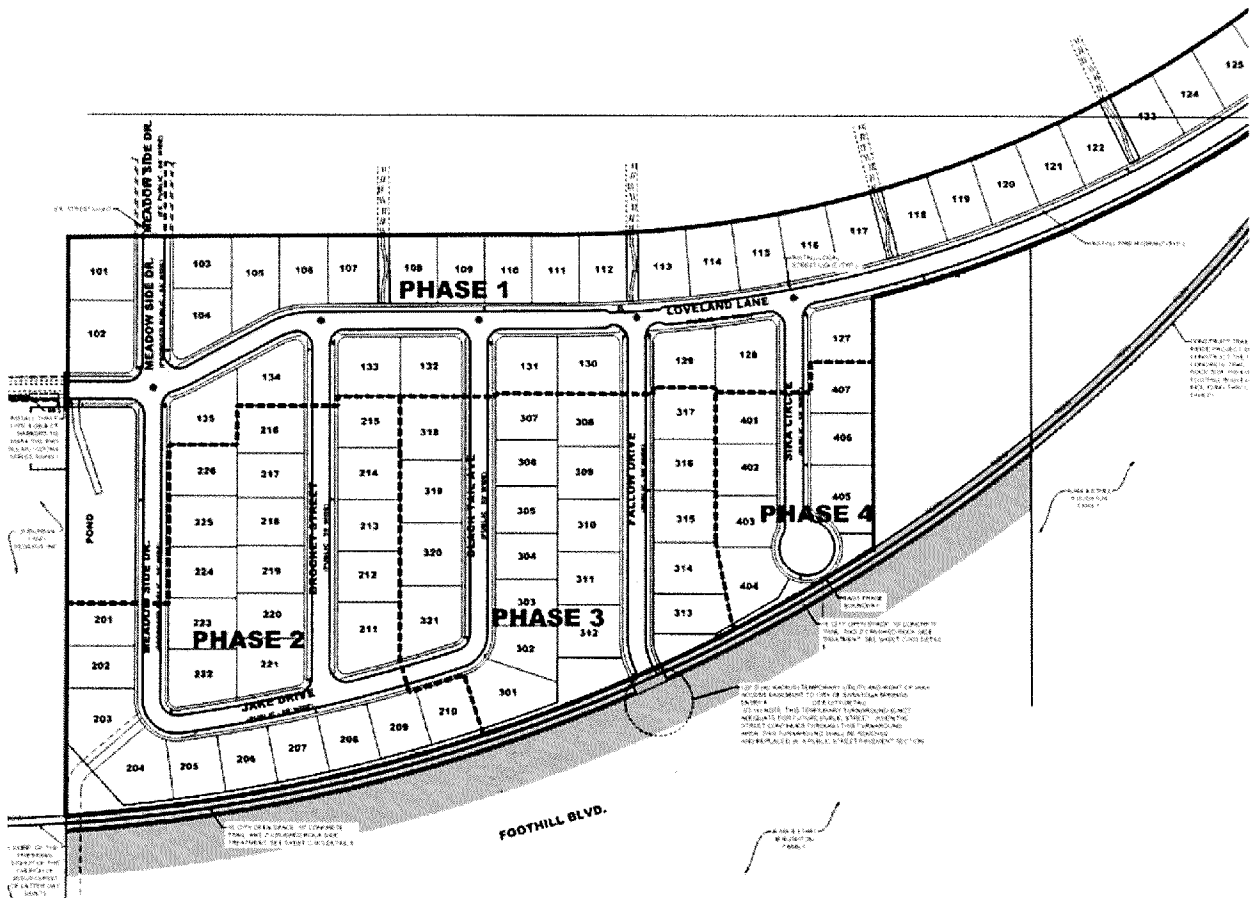
*[End of Instrument. Signature Page Follows.]*



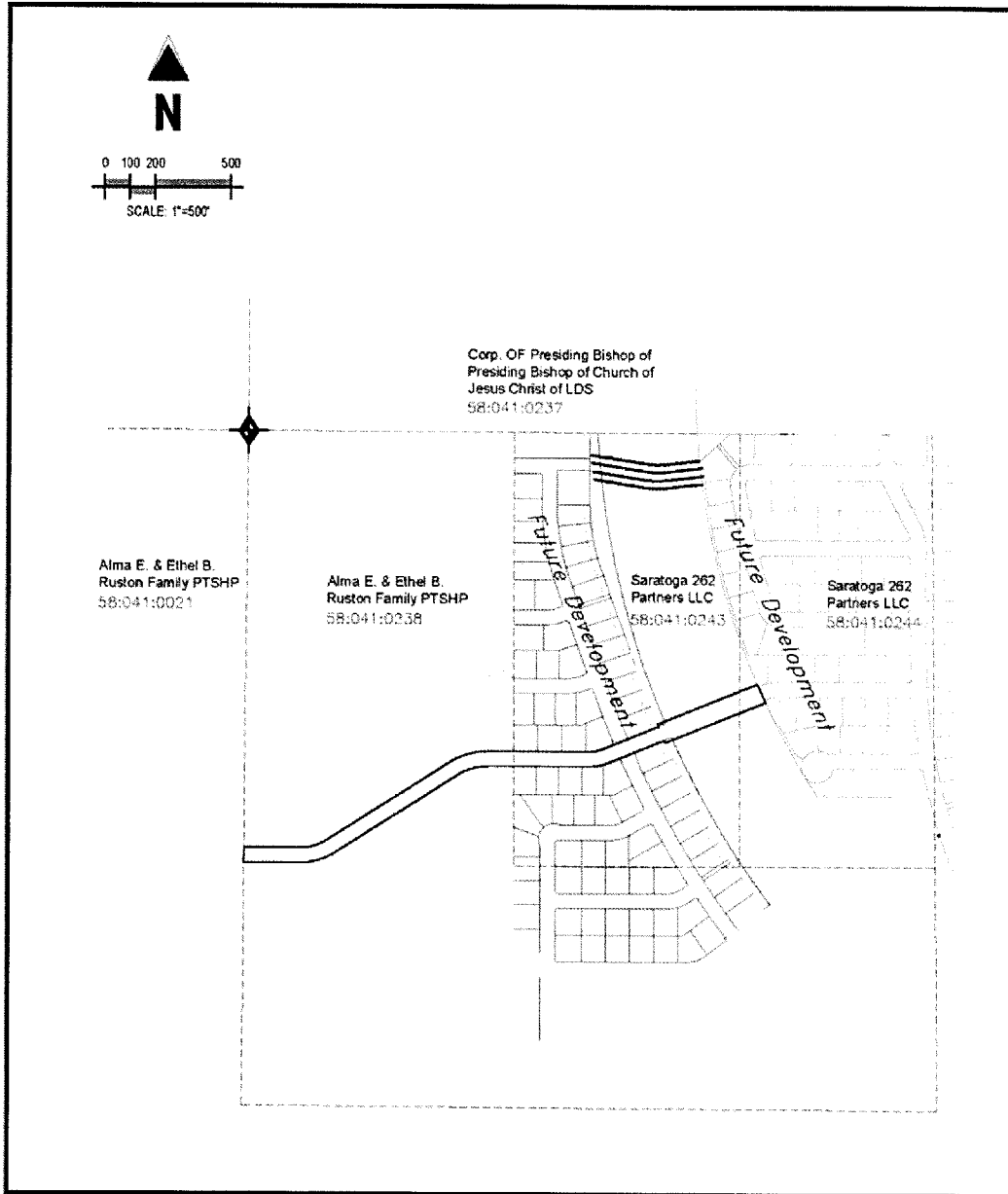
**EXHIBIT A**

**GRANTOR'S PROPERTY WITH EASEMENTS**

Land located in Utah County, Utah, Parcel No. 58:041:0244:



Land located in Utah County, Parcels 58:041:0246, 58:041:0245, 58:041:0243,  
58:041:0238



Saratoga Springs  
Utah  
58:041:0243  
58:041:0238  
EXHIBIT A

Project No.	PGM0005
Drawn By:	JRA
Checked By:	JRA
Date:	11/12/2021

**Galloway**

6162 S Willow Drive, Suite 520  
Orem, UT 84057  
801.223.8884 • Galloway.US.com



**EXHIBIT B**

LEGAL DESCRIPTION OF GRANTEE'S PROPERTY

Land located in Utah County, Utah:

Parcel 1: [58-041-0021]

The Southeast Quarter of Section 33, Township 5 South, Range 1 West, Salt Lake Base and Meridian.

EXHIBIT C

## LEGAL DESCRIPTION OF ACCESS AND UTILITIES EASEMENTS

## PARCEL 1

A PORTION OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED S89°50'07"E ALONG THE QUARTER SECTION LINE 2023.79 FEET AND SOUTH 1012.82 FEET FROM THE WEST 1/4 CORNER OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN; THENCE N68°07'36"E 21.63 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT 41.99 FEET WITH A RADIUS OF 110.00 FEET THROUGH A CENTRAL ANGLE OF 21°52'24", CHORD: N79°03'48"E 41.74 FEET; THENCE EAST 557.24 FEET; THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT 114.18 FEET WITH A RADIUS OF 2230.50 FEET THROUGH A CENTRAL ANGLE OF 02°55'59", CHORD: N01°49'34"W 114.17 FEET; THENCE N00°21'34"W 450.61 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT 67.80 FEET WITH A RADIUS OF 140.00 FEET THROUGH A CENTRAL ANGLE OF 27°44'46", CHORD: N14°13'57"W 67.14 FEET; THENCE N28°06'20"W 166.10 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT 82.89 FEET WITH A RADIUS OF 239.50 FEET THROUGH A CENTRAL ANGLE OF 19°49'46", CHORD: N18°11'27"W 82.48 FEET; THENCE S89°45'56"E 278.82 FEET; THENCE S00°23'17"E 20.00 FEET; THENCE N89°45'56"W 254.56 FEET; THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT 52.52 FEET WITH A RADIUS OF 219.50 FEET THROUGH A CENTRAL ANGLE OF 13°42'33", CHORD: S21°15'03"E 52.39 FEET; THENCE S28°06'20"E 166.10 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT 77.48 FEET WITH A RADIUS OF 160.00 FEET THROUGH A CENTRAL ANGLE OF 27°44'46", CHORD: S14°13'57"E 76.73 FEET; THENCE S00°21'34"E 450.61 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT 134.35 FEET WITH A RADIUS OF 2210.50 FEET THROUGH A CENTRAL ANGLE OF 03°28'56", CHORD: S02°06'02"E 134.33 FEET; THENCE WEST 578.53 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT 34.36 FEET WITH A RADIUS OF 90.00 FEET THROUGH A CENTRAL ANGLE OF 21°52'24", CHORD: S79°03'48"W 34.15 FEET; THENCE S68°07'36"W 20.86 FEET; THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT 20.01 FEET WITH A RADIUS OF 3000.00 FEET THROUGH A CENTRAL ANGLE OF 00°22'56", CHORD: N24°04'09"W 20.01 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±0.82 ACRES ±35,512 SQ. FT.

## PARCEL 2

An easement for Ingress and Egress running over, through, and under the following described property being a part of the Southwest Quarter of Section 34, Township 5 South, Range 1 West, Salt Lake Base & Meridian, U.S. Survey, more particularly described as follows:

Beginning at a point which is 1638.26 feet South  $0^{\circ}29'13''$  West along the section line from the West Quarter Corner of said Section; running thence South  $89^{\circ}30'55''$  East 224.92 feet to a point of curvature; thence northeasterly along the arc of a 170.50 foot radius curve to the left a distance of 97.56 feet (central angle equals  $32^{\circ}47'05''$  and long chord bears North  $74^{\circ}05'33''$  East 96.24 feet); thence North  $57^{\circ}42'00''$  East 584.49 feet to a point of curvature; thence northeasterly along the arc of a 279.50 foot radius curve to the right a distance of 157.57 feet (central angle equals  $32^{\circ}18'00''$  and long chord bears North  $73^{\circ}51'00''$  East 155.49 feet); thence EAST 404.69 feet to a point of curvature; thence northeasterly along the arc of a 120.00 foot radius curve to the left a distance of 45.81 feet (central angle equals  $21^{\circ}52'24''$  and long chord bears North  $79^{\circ}03'48''$  East 45.53 feet); thence North  $68^{\circ}07'36''$  East 242.53 feet to a non-tangent point on a curve; thence northwesterly along the arc of a 3425.00 foot radius curve to the right a distance of 10.00 feet (central angle equals  $0^{\circ}10'02''$  and long chord bears North  $23^{\circ}13'09''$  West 10.00 feet, bearing to center equals North  $66^{\circ}41'50''$  East); thence North  $68^{\circ}07'36''$  East 425.12 feet to a non-tangent point on a curve; thence southeasterly along the arc of a 3000.00 foot radius curve to the left a distance of 79.06 feet (central angle equals  $1^{\circ}30'36''$  and long chord bears South  $24^{\circ}04'09''$  East 79.06 feet, bearing to center equals North  $66^{\circ}41'09''$  East); thence South  $68^{\circ}07'36''$  West 425.49 feet to a non-tangent point on said 3425.00 foot radius curve; thence northwesterly along the arc of said 3425.00 foot radius curve a distance of 10.01 feet (central angle equals  $0^{\circ}10'03''$  and long chord bears North  $24^{\circ}22'27''$  West 10.01 feet); thence South  $68^{\circ}07'36''$  West 244.51 feet to a point of curvature; thence southwesterly along the arc of a 179.00 foot radius curve to the right a distance of 68.34 feet (central angle equals  $21^{\circ}52'24''$  and long chord bears South  $79^{\circ}03'48''$  West 67.92 feet); thence WEST 404.69 feet to a point of curvature; thence southwesterly along the arc of a 220.50 foot radius curve to the left a distance of 124.31 feet (central angle equals  $32^{\circ}18'00''$  and long chord bears South  $73^{\circ}51'00''$  West 122.67 feet); thence South  $57^{\circ}42'00''$  West 584.49 feet to a point of curvature; thence southwesterly along the arc of a 229.50 foot radius curve to the left a distance of 131.32 feet (central angle equals  $32^{\circ}47'05''$  and long chord bears South  $74^{\circ}05'33''$  West 129.54 feet); thence North  $89^{\circ}30'55''$  West 224.92 feet to said section line; thence North  $0^{\circ}29'13''$  East 59.00 feet along said section line to the point of beginning.

Contains: 138,026 sq.ft. or 3.169 acres

## PARCEL 3

An easement for Ingress and Egress running over, through, and under the following described property being a part of the Southwest Quarter of Section 34, Township 5 South, Range 1 West, Salt Lake Base & Meridian, U.S. Survey, more particularly described as follows:

Beginning at a point which is 1638.26 feet South  $0^{\circ}29'13''$  West along the section line from the West Quarter Corner of said Section; running thence South  $89^{\circ}30'55''$  East 224.92 feet to a point of curvature; thence northeasterly along the arc of a 170.50 foot radius curve to the left a distance of 97.56 feet (central angle equals  $32^{\circ}47'05''$  and long chord bears North  $74^{\circ}05'33''$  East 96.24 feet); thence North  $57^{\circ}42'00''$  East 584.49 feet to a point of curvature; thence northeasterly along the arc of a 279.50 foot radius curve to the right a distance of 157.57 feet (central angle equals  $32^{\circ}18'00''$  and long chord bears North  $73^{\circ}51'00''$  East 155.49 feet); thence EAST 404.69 feet to a point of curvature; thence northeasterly along the arc of a 120.00 foot radius curve to the left a distance of 45.81 feet (central angle equals  $21^{\circ}52'24''$  and long chord bears North  $79^{\circ}03'48''$  East 45.53 feet); thence North  $68^{\circ}07'36''$  East 242.53 feet to a non-tangent point on a curve; thence northwesterly along the arc of a 3425.00 foot radius curve to the right a distance of 10.00 feet (central angle equals  $0^{\circ}10'02''$  and long chord bears North  $23^{\circ}13'09''$  West 10.00 feet, bearing to center equals North  $66^{\circ}41'50''$  East); thence North  $68^{\circ}07'36''$  East 425.12 feet to a non-tangent point on a curve; thence southeasterly along the arc of a 3000.00 foot radius curve to the left a distance of 79.06 feet (central angle equals  $1^{\circ}30'36''$  and long chord bears South  $24^{\circ}04'09''$  East 79.06 feet, bearing to center equals North  $66^{\circ}41'09''$  East); thence South  $68^{\circ}07'36''$  West 425.49 feet to a non-tangent point on said 3425.00 foot radius curve; thence northwesterly along the arc of said 3425.00 foot radius curve a distance of 10.01 feet (central angle equals  $0^{\circ}10'03''$  and long chord bears North  $24^{\circ}22'27''$  West 10.01 feet); thence South  $68^{\circ}07'36''$  West 244.51 feet to a point of curvature; thence southwesterly along the arc of a 179.00 foot radius curve to the right a distance of 68.34 feet (central angle equals  $21^{\circ}52'24''$  and long chord bears South  $79^{\circ}03'48''$  West 67.92 feet); thence WEST 404.69 feet to a point of curvature; thence southwesterly along the arc of a 220.50 foot radius curve to the left a distance of 124.31 feet (central angle equals  $32^{\circ}18'00''$  and long chord bears South  $73^{\circ}51'00''$  West 122.67 feet); thence South  $57^{\circ}42'00''$  West 584.49 feet to a point of curvature; thence southwesterly along the arc of a 229.50 foot radius curve to the left a distance of 131.32 feet (central angle equals  $32^{\circ}47'05''$  and long chord bears South  $74^{\circ}05'33''$  West 129.54 feet); thence North  $89^{\circ}30'55''$  West 224.92 feet to said section line; thence North  $0^{\circ}29'13''$  East 59.00 feet along said section line to the point of beginning.

Contains: 138,026 sq.ft. or 3.169 acres