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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
5/4/2022 11:47:00 AM
FEE \$140.00 Pgs: 17
DEP eCASH REC'D FOR HOLLAND & HART LLP

When Recorded, Return To:

Holland & Hart LLP
Attention: Allison Phillips Belnap
222 South Main Street, Suite 2200
Salt Lake City, Utah 84101

(Parcel Nos. 07-007-0003, 07-007-0004,
07-008-0001, 07-008-0002, 11-168-0002)

SEWER, CONSTRUCTION, USE, AND ACCESS EASEMENT AGREEMENT

THIS SEWER, CONSTRUCTION, USE, AND ACCESS EASEMENT AGREEMENT (this "*Agreement*") is made and entered into as of September 13, 2021 (the "*Effective Date*") by and between M A S FAMILY LLC, a Utah limited liability company ("*Grantor*"), and WASATCH PEAKS RANCH, LLC, a Delaware limited liability company ("*Grantee*"). Grantor and Grantee are at times referred to herein collectively as the "*Parties*" and individually as a "*Party*".

RECITALS

A. Grantor owns a parcel of property located primarily on the east side of the Wasatch Mountains immediately south of I-84 near the mouth of Weber Canyon, State of Utah as further described in the attached Exhibit A (the "*Grantor Property*").

B. Grantee owns that certain real property located adjacent to the Grantor Property and further described in the attached Exhibit B (the "*Grantee Property*").

C. Grantor and Grantee entered into that certain Agreement Regarding Easements, Improvements, and Services dated September 13, 2021 (the "*Contract for Easement Rights*"). Pursuant to the Contract for Easement Rights, Grantor and Grantee agreed to grant each other certain easements and other rights related to access and utilities.

D. Subject to the terms and conditions set forth below and pursuant to and in accordance with the Contract for Easement Rights, and subject to the terms and conditions set forth below, Grantor desires now to grant, and Grantee desires now to accept and obtain, certain perpetual, non-exclusive utility and access easement rights appurtenant to the Grantee Property over, upon, and across the portion of Grantor's Property depicted in Exhibit C (the "*Site Plan*"), attached hereto and incorporated herein by this reference, as (i) the "Proposed North Sewer" and also marked "SS" and as further described in Exhibit D (the "*Sewer Easement Area*"), attached hereto and incorporated herein by this reference; and (ii) the "Well B Access Road" as further described in Exhibit D ("*Access Easement Area*" and, collectively with the Sewer Easement Area, the "*Easement Area*").

AGREEMENT

NOW, THEREFORE, in consideration of the promises and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. GRANT OF EASEMENTS.

1.1. **Sewer Utility Easement.** Grantor hereby grants and conveys to Grantee and its successors and assigns, and for the use of Grantee's employees, contractors, subcontractors, licensees, invitees, tenants, and agents, a perpetual, non-exclusive utility easement appurtenant to the Grantee Property over, upon, and across the Sewer Easement Area for purposes of surveying, planning, excavating, installing, constructing, reconstructing, operating, maintaining, repairing, replacing, inspecting, and removing any and all improvements and facilities required to establish, install, maintain, and operate a sewer pipeline serving and for the benefit of the Grantee Property (the "*Utility Easement*").

1.2. **Access Easement.** Grantor hereby grants and conveys to Grantee and its successors and assigns, and for the use of Grantee's employees, contractors, subcontractors, licensees, invitees, tenants, and agents, a perpetual, non-exclusive access easement appurtenant to the Utility Easement over, upon, and across the Access Easement Area for purposes of any and all vehicular and pedestrian access for the purposes of ingress to and egress from the Utility Easement Area (the "*Access Easement*" and, collectively with the Utility Easement, the "*Easements*"). This Access Easement expressly allows for access by construction vehicles, trucks and trailers, and other large vehicles that are reasonable required to complete the work contemplated and allowed by the Utility Easement.

2. **MAINTENANCE AND REPAIR OF EASEMENT AREA.** Grantee shall maintain the Easement Area in good condition and safe order at Grantee's sole cost and expense; provided however, that any Party (or its respective invitees or agents) causing any damage to the Easement Area or the improvements located therein or thereon shall be responsible and liable for any damage.

3. **PROTECTION OF EASEMENT AREA.** Grantee shall install and use construction or ground protection mats in areas where, in Grantee's sole and absolute discretion, such mats are necessary to provide reasonable protection for section(s) of the Easement Area that Grantee deems are at risk of damage from Grantee's activities and use of the Easement Area. Alternatively, or in addition to using such mats, Grantee may, without obligation and at its own expense, improve the Well B Access Road and the Easement Area. Such improvements may include, without limitation or obligation, stripping soil or other surface materials, grading, laying gravel or other fill material, and compacting such material(s).

4. **NO PARKING/STORAGE.** Nothing herein shall be deemed to grant to any Party, their successors or assigns, employees, customers, guests, licensees, invitees, tenants, or agents, the right to park or store any vehicles, trash, landscaping materials, debris or similar property on the Easement Area. Neither Party shall unreasonably obstruct, block, or impede the other Party's use and access of the Easement Area at any time.

5. **MECHANICS” LIENS.** Grantor shall keep the Easement Area free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, Grantor in connection with the maintenance and repair obligations under this Agreement (or otherwise arising under Grantor). If any such lien arises and encumbers the Easement Area, Grantor shall either: (a) satisfy the lien, subject to a good-faith right to contest the amount due in connection therewith; or (b) contest the validity of any lien provided within thirty (30) days after it receives notice of the lien filing and bond around or the lien or otherwise cause the removal of the lien from the Easement Area.

6. **LIABILITY INSURANCE.**

6.1. Grantee shall obtain and shall at all times thereafter maintain at a minimum general liability insurance with respect to the Utility Easement Area, naming Grantor as an additional insured, and insuring against claims of bodily injury and property damage occurring on the Utility Easement Area, with minimum liability limits of no less than \$1,000,000 per occurrence and \$2,000,000 aggregate. All insurance may be provided under: (a) an individual policy covering the applicable property; (b) a blanket policy or policies which include other liabilities, properties and locations of such insuring party; or (c) a combination of any of the foregoing insurance programs.

6.2. The Parties to this Agreement have concurrently entered into that certain Well Improvements, Access, Use and Maintenance Easement Agreement, dated September 13, 2021 and recorded concurrently herewith or soon hereafter in the official records of the Morgan County Recorder’s Office, Morgan County, Utah, and the Davis County Recorder’s Office, Davis County, Utah (“*The Well B Access Easement*”). In the Well B Access Easement, the Parties have entered into a similar covenant for minimum insurance coverage with respect to the Access Easement Area and Grantee may, but shall not be required to, carry additional insurance on the Access Easement Area. However, should Grantee convey, assign, or transfer any of its rights, obligations, or interests in the Access Easement Area pursuant to and in accordance with this Agreement, then such successor or assign, unless an affiliate or subsidiary of Grantee, shall, from the date of any such assumption of the respective rights, duties, and obligations created hereunder, maintain at a minimum general liability insurance meeting the requirements detailed in Section 6.1 above with respect to the full Easement Area, naming Grantor as an additional insured, and insuring against claims of bodily injury and property damage occurring on the Easement Area.

7. **MUTUAL INDEMNITY.** Each Party (the “*Indemnifying Party*”) shall indemnify, defend and hold the other Party and its successors and assigns (the “*Indemnified Party*”) harmless from and against: (a) all claims, demands, costs, losses, expenses and liability, including reasonable attorneys’ fees and cost of suit, arising out of or resulting from the use of the Easement Area by the Indemnifying Party and/or its employees, customers, guests, licensees, invitees, tenants, or agents; and (b) any failure of the Indemnifying Party to perform its duties or obligations under this Agreement; provided, however, the foregoing obligation shall not apply to claims or demands to the extent based on the negligence or willful act or omission of the Indemnified Party.

8. **DEFAULT.** In the event of any alleged failure to perform any obligation under this Agreement (“*Default*”), the non-defaulting Party shall give the alleged defaulting Party written

notice thereof, which notice shall include a description of the acts required to cure the same with reasonable specificity. The defaulting Party shall have a period of thirty (30) days within which to cure such Default, which period shall be extended to the extent reasonably necessary to complete such cure so long as the cure was commenced within thirty (30) days after such notice is given and thereafter prosecuted with due diligence (not to exceed ninety (90) days). Any prohibited conduct under this Agreement may be enjoined and this Agreement shall be specifically enforceable. In no event shall a Party's default under any other agreement with the other Party or its affiliates constitute a default by such Party under this Agreement.

9. **NOTICES.** All notices or other communications required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered to Grantor, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified; or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges are prepaid by the delivering Party. Any notice shall be addressed as follows:

If to Grantor: M A S Family LLC
Attn: L Dean Saunders
2957 W. 3775 S. West Haven, UT 84401

If to Grantee: Wasatch Peaks Ranch, LLC
Attn: Ed Schultz
136 E South Temple, Ste. 2425
Salt Lake City, UT 84111
eschultz@wprdevco.com

With a copy to: Holland & Hart LLP
Attn: Allison Phillips Belnap
222 S. Main St. Ste. 2200
Salt Lake City, UT 84101
agbelnap@hollandhart.com

Either Party may designate a different individual or address for notices, by giving written notice thereof in the manner described above.

10. **ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire agreement between the Parties respecting its subject matter. This Agreement shall not be modified or amended except in a writing signed by the Parties.

11. **ASSIGNMENT.** Grantee has the right to assign or otherwise transfer its rights, duties, and obligations under this Agreement, in whole or in part, without any requirements of notice to or consent of Grantor, to any third party including without limitation an affiliate or subsidiary of Grantee, the Mountain Green Sewer Improvement District, and any other sewer utility provider or service district. Any assignee or grantee of all or any part of Grantee's interest hereunder shall be liable to perform obligations under this Agreement commencing on the date of

such assignment. Any assignment permitted hereunder shall release the assignor from obligations with respect to the interests assigned accruing after the date that liability is assumed by the assignee.

12. **GOVERNING LAW.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah.

13. **PARTIAL INVALIDITY.** Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect unimpaired by the holding.

14. **FORCE MAJEURE - DELAYS.** Notwithstanding any other provision in this Agreement to the contrary, if performance of any act required to be performed by Grantee under this Agreement is in whole or in part prevented or delayed by reason of any act of God, strike, lock-out, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause, event or circumstance not the fault of Grantee, then Grantee, upon giving notice to Grantor, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or delay.

15. **NO WAIVER; NO ABANDONMENT.** No waiver of any right under this Agreement shall be effective for any purpose unless it is in writing and is signed by the Party possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement. Further, no act or failure to act on the part of Grantee shall be deemed to constitute an abandonment, surrender or termination of the Easement, except upon recordation by Grantee of a quitclaim deed or release specifically conveying the Easement back to Grantor.

16. **EASEMENTS RUN WITH THE LAND.** This Agreement, including the Easements, shall burden and run with the Grantor Property (including the Easement Area) for the benefit of the Grantee Property. This Agreement shall be binding on and inure to the benefit of all persons and entities owning or possessing the Grantor Property, all upon the terms, provisions and conditions set forth herein.

17. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument.

18. **NO DEDICATION.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of the Easement Area or any portion of the Grantor Property to or for the general public or for any public purpose whatsoever, including, but not limited to, dedication as a public street.

19. **HEADINGS FOR CONVENIENCE.** All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

20. **RECITALS AND EXHIBITS INCORPORATED.** The recitals and all exhibits to this Agreement are incorporated herein and made a part hereof as if fully set forth herein.

21. **ENFORCEMENT; ATTORNEYS' FEES**. In the event that any Party seeks to enforce the terms of this Agreement against the other Party, whether in suit or otherwise, the Party seeking to enforce this Agreement or substantially prevailing Party in any action shall be entitled to receive all reasonable costs incurred in connection therewith, including reasonable attorneys' fees and costs, from the other Party.

22. **NO PARTNERSHIP**. None of the terms or provisions of this Agreement shall be deemed to create a partnership between the Parties, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

[SIGNATURE PAGES FOLLOW]

EXHIBIT A

DESCRIPTION OF GRANTOR PROPERTY

MAS FAMILY PROPERTY

A PART OF THE SOUTHWEST QUARTER OF SECTION 26, AND THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 5 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN BEGINNING AT A POINT WHICH IS NORTH 0°18' EAST 1324 FEET ALONG THE SECTION LINE AND SOUTH 89°55' WEST 557.70 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 27, SAID POINT IS ALSO GIVEN AS 126.2 RODS EAST AND 80 RODS SOUTH FROM THE CENTER OF SAID SEC 27, RUNNING NORTH 89°55' EAST 1306.8 FEET; THENCE NORTH 5°30' WEST 453.34 FEET TO THE SOUTH LINE OF THE UTAH PACIFIC RAILROAD RIGHT OF WAY, THENCE NORTH 83°33' WEST 1268.26 FEET ALONG SAID SOUTHERN LINE; THENCE SOUTH 0°18' WEST 595.63 FEET TO THE POINT OF BEGINNING. (PARCEL NO. 00-0002-6052, MORGAN COUNTY, UTAH)

EXHIBIT B

Description of the Grantee Property

WPR Property Description

TOWNSHIP 3 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN

THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER; THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10.

(PARCEL NOS. 070070003, 070070004, DAVIS COUNTY, UTAH)

SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THE EAST HALF OF NORTHEAST QUARTER AND NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 14.

(PARCEL NOS. 07-008-0001, 07-008-0002, DAVIS COUNTY, UTAH)

TOWNSHIP 4 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN

THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 20.

(PARCEL NO. 11-168-0002, DAVIS COUNTY, UTAH)

EXHIBIT C

Site Plan

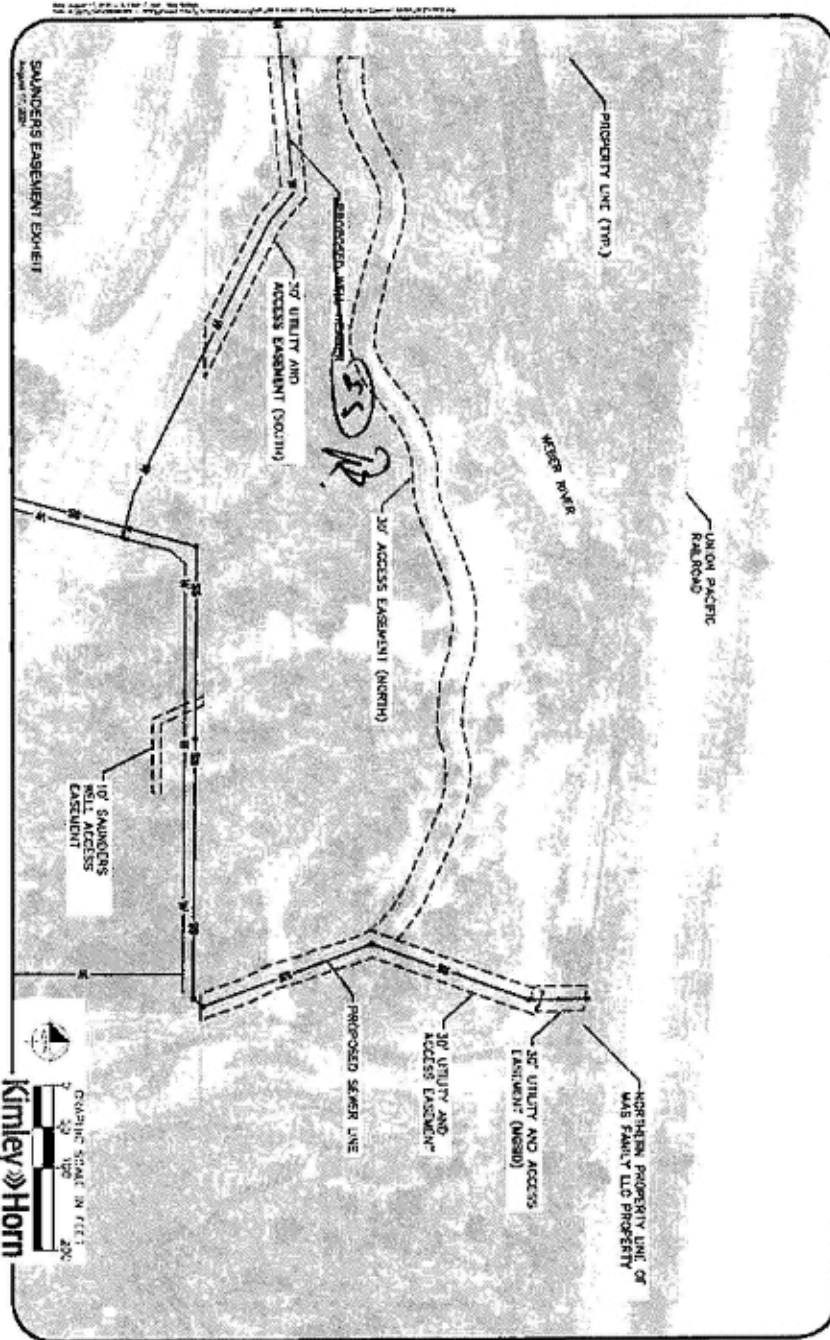


EXHIBIT D

Easement Area Legal Descriptions

[attached]

PS
35

30' UTILITY AND ACCESS EASEMENT (NORTH)

Beginning at a point being 476.10 feet South 89°27'09" East and 1519.01 feet North 00°32'51" East from the Southwest Corner of Section 26, Township 5 North, Range 1 East, Salt Lake Base and Meridian, said Southeast Corner being a 2 1/2" Brass Cap monument set by the BLM in 1952, and running thence, North 19°29'05" East 209.43 feet; thence North 74°53'20" East 30.99 feet; thence South 70°39'55" East 4.49 feet; thence South 19°29'05" West 213.18 feet; thence southerly 27.39 feet along the arc of a 133.00 foot radius curve to the right, through a central angle of 11°47'51", (chord bears South 20°59'05" East 27.34 feet); thence southerly 61.56 feet along the arc of a 620.63 foot radius reverse curve to the left, through a central angle of 5°40'59", (chord bears South 17°55'39" East 61.53 feet); thence South 15°44'26" East 27.69 feet; thence South 25°52'21" East 43.42 feet; thence South 19°18'39" East 59.20 feet; thence South 40°38'44" East 1.54 feet to the southerly property line of Grantor's property, thence, along said southerly property line, North 89°34'41" West 32.47 feet; thence North 19°18'39" West 47.96 feet; thence North 25°52'21" West 44.36 feet; thence North 15°44'26" West 29.04 feet; thence northerly 63.20 feet along the arc of a 650.63 foot radius curve to the right, through a central angle of 5°33'56", (chord bears North 17°52'08" West 63.18 feet); thence northwesterly 33.40 feet along the arc of a 103.00 foot radius curve to the left, through a central angle of 18°34'41", (chord bears North 24°22'30" West 33.25 feet) to the Point of Beginning.

Contains 12,954 Sq. Ft. or 0.29 Ac.

(Portion of Parcel No. 00-0002-6052, Morgan County, Utah)

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3

30' ACCESS EASEMENT (NORTH)

Beginning at a point being on the west line of grantor's property line, said point also being 571.53 feet North 89°49'08" West and 1477.04 feet North 00°15'01" East from the Southeast Corner of Section 27, Township 5 North, Range 1 East, Salt Lake Base and Meridian, said Southeast Corner being a 2 1/2" Brass Cap monument set by the BLM in 1952, and running thence, along said west line of grantor's property line, North 00°15'01" East 30.00 feet; thence South 89°28'46" East 27.14 feet; thence northeasterly 54.53 feet along the arc of a 110.00 foot radius curve to the left, through a central angle of 28°24'15", (chord bears North 76°19'07" East 53.98 feet); thence North 62°06'59" East 55.42 feet; thence easterly 89.51 feet along the arc of a 110.00 foot radius curve to the right, through a central angle of 46°37'20", (chord bears North 85°25'39" East 87.06 feet); thence South 71°15'40" East 35.39 feet; thence South 75°02'39" East 72.65 feet; thence northeasterly 64.82 feet along the arc of a 70.00 foot radius curve to the left, through a central angle of 53°03'34", (chord bears North 78°25'34" East 62.53 feet); thence North 51°53'48" East 54.02 feet; thence northeasterly 85.36 feet along the arc of a 135.00 foot radius curve to the right, through a central angle of 36°13'39", (chord bears North 70°00'37" East 83.94 feet); thence North 88°07'26" East 9.88 feet; thence northeasterly 40.93 feet along the arc of a 110.00 foot radius curve to the left, through a central angle of 21°19'07", (chord bears North 77°27'53" East 40.69 feet); thence North 66°48'19" East 60.34 feet; thence easterly 129.10 feet along the arc of a 190.00 foot radius curve to the right, through a central angle of 38°55'54", (chord bears North 86°16'16" East 126.63 feet); thence South 74°15'47" East 27.58 feet; thence South 84°55'57" East 39.83 feet; thence easterly 22.51 feet along the arc of a 55.00 foot radius curve to the left, through a central angle of 23°26'43", (chord bears North 83°20'41" East 22.35 feet); thence southeasterly 110.64 feet along the arc of a 147.00 foot reverse curve to the right, through a central angle of 43°07'27", (chord bears South 86°48'57" East 108.05 feet); thence South 65°19'19" East 92.96 feet; thence southeasterly 35.98 feet along the arc of a 150.00 foot radius curve to the right, through a central angle of 13°44'38", (chord bears South 58°27'00" East 35.90 feet); thence South 51°34'41" East 10.18 feet; thence southeasterly 20.28 feet along the arc of a 133.00 foot radius curve to the right, through a central angle of 8°44'17", (chord bears South 47°12'33" East 20.26 feet); thence South 19°29'03" West 35.36 feet; thence northwesterly 32.20 feet along the arc of a 103.00 foot radius curve to the left, through a central angle of 17°54'51", (chord bears North 42°37'16" West 32.07 feet); thence North 51°34'41" West 10.18 feet; thence northwesterly 28.79 feet along the arc of a 120.00 foot radius curve to the left, through a central angle of 13°44'38", (chord bears North 58°27'00" West 28.72 feet); thence North 65°19'19" West 92.97 feet; thence westerly 88.08 feet along the arc of a 117.00 foot radius curve to the left, through a central angle of 43°07'57", (chord bears North 86°48'42" West 86.01 feet); thence westerly 34.78 feet along the arc of a 85.00 foot radius reverse curve to the right, through a central angle of 23°26'43", (chord bears South 83°20'41" West 34.54 feet); thence North 84°55'57" West 42.63 feet; thence North 74°15'47" West 30.38 feet; thence westerly 108.72 feet along the arc of a 160.00 foot radius curve to the left, through a central angle of 38°55'54", (chord bears South 86°16'16" West 106.64 feet); thence South 66°48'19" West 60.34 feet; thence southwesterly 52.09 feet along the arc of a 140.00 foot radius curve to the right, through a central angle of 21°19'07", (chord bears South 77°27'53" West 51.79 feet); thence South 88°07'26" West 9.88 feet; thence southerly 66.39 feet along the arc of a 105.00 foot radius curve to the left, through a central angle of 36°13'39", (chord bears South 70°00'37" West 65.29 feet); thence South 51°53'48" West 54.02 feet; thence southerly 92.61 feet along the arc of a 100.00 foot radius curve to the right, through a central angle of 53°03'34", (chord bears South 78°25'34" West 89.33 feet); thence North 75°02'39" West 73.64 feet; thence North 71°15'40" West 36.39 feet; thence southwesterly 65.10 feet along the arc of a 80.00 foot radius curve to the left, through a central angle of 46°37'20", (chord bears South 85°25'39" West 63.32 feet); thence South 62°06'59" West 55.42 feet; thence southwesterly 69.40 feet along the arc of a 140.00 foot radius curve to the



right, through a central angle of $28^{\circ}24'15''$, (chord bears South $76^{\circ}19'07''$ West 68.70 feet); thence North $89^{\circ}28'46''$ West 27.00 feet to the Point of Beginning.

Contains 34,047 Sq. Ft. or 0.78 Ac.

(Portion of Parcel No. 00-0002-6052, Morgan County, Utah)



**SAUNDERS EASEMENTS
PARCEL NO. 00-0002-6052**

30' UTILITY AND ACCESS EASEMENT (SOUTH)

Beginning at a point being on the west line of grantor's property line, said point also being 571.53 feet North 89°49'08" West and 1391.14 feet North 00°15'01" East from the Southeast Corner of Section 27, Township 5 North, Range 1 East, Salt Lake Base and Meridian, said Southeast Corner being a 2 1/2" Brass Cap monument set by the BLM in 1952, and running thence, along said west line of grantor's property line, North 00°15'01" East 30.14 feet; thence North 84°43'42" East 169.44 feet; thence South 50°16'18" East 51.10 feet; thence South 63°31'18" East 201.09 feet to the south line of grantor's property line; thence, along said south line of grantor's property line, North 89°34'41" West 68.30 feet; thence North 63°31'18" West 143.22 feet; thence North 50°16'18" West 42.16 feet; thence South 84°43'42" West 159.91 feet to the Point of Beginning.

Contains 11,504 Sq. Ft. or 0.264 Ac.

95
53

30' UTILITY AND ACCESS EASEMENT (MGSID)

Beginning at a point being 544.07 feet South 89°27'09" East and 1717.11 feet North 00°32'51" East from the Southwest Corner of Section 26, Township 5 North, Range 1 East, Salt Lake Base and Meridian, said Southeast Corner being a 2 1/2" Brass Cap monument set by the BLM in 1962, and running thence, North 00°36'55" West 67.53 feet, more or less, to the Grantor's north property line, thence, along said north property line, South 83°19'01" East 30.25 feet; thence South 00°36'55" East 55.93 feet; thence South 74°53'20" West 30.99 feet to the Point of Beginning.

Contains 1,852 Sq. Ft. or 0.04 Ac.

(Portion of Parcel No. 00-0002-6052, Morgan County, Utah)