

ENT 88916:2014 PG 1 of 15 JEFFERY SMITH UTAH COUNTY RECORDER 2014 Dec 10 1:09 pm FEE 0,00 BY CLS RECORDED FOR SARATOGA SPRINGS CITY

### EASEMENT

ESMT No. **1880** Beneficiary: **SCH** 

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into DECENDER 4<sup>rd</sup>, 2014, by the State of Utah, through the School and Institutional Trust Lands Administration, 675 East 500 South, Suite 500, Salt Lake City, Utah 84102 ("Grantor"), and the City of Saratoga Springs, a Utah municipal corporation, 1307 N. Commerce Drive, Suite 200, Saratoga Springs, Utah 84045 ("Grantee").

#### **RECITALS**

- A. Grantor is the owner of certain lands situated in Utah County, Utah (the "Subject Property") more particularly described in Exhibit A.
- B. SCP Fox Hollow LLC ("Fox Hollow"), the developer of certain lands adjacent to the Subject Property, desires to construct drainage improvements and water and debris storage areas on the Subject Property. Grantor will issue Fox Hollow a separate, temporary right of entry for such construction activities. After construction, Grantee will maintain these improvements.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

- 1. Grant of Easement. Grantor hereby grants to Grantee a perpetual easement over the Subject Property, which easement shall be for the use and maintenance of drainage control improvements and water and debris storage structures on the Subject Property (the "Improvements"). The Improvements will be constructed by Fox Hollow in material compliance with those plans attached hereto as Exhibit B (the "Improvement Plans"). Grantee will maintain the Improvements once they have been installed according to Grantee's standards and in material compliance with the Improvement Plans, accepted in writing by Grantee as currently meeting Grantee's standards, and the one-year warranty period required by Grantee by ordinance has expired.
- 2. <u>Term.</u> The term of the easement shall begin on the date first set forth herein and shall continue in perpetuity or until the Improvements are no longer necessary or in service. In the event the Improvements are not constructed by Fox Hollow within two (2) years from the date first set forth herein, this Agreement shall terminate on its own terms and without further notice.
- 3. <u>Maintenance of Improvements; Costs and Expenses</u>. Once the Improvements are accepted in writing by Grantee at the end of the 1-year warranty period, Grantee shall pay or

cause to be paid all subsequent costs and expenses in connection with the operation, repair, replacement, and maintenance of the Improvements, and hold Grantor harmless from any and all liability (including expenses for attorney's fees) which may arise from the operation and maintenance of said Improvements. All maintenance of the Improvements shall be in a first class workmanlike manner, and in accordance with the requirements of any and all laws, ordinances and regulations applicable thereto.

- 4. Assignment of Agreement. This Agreement and the rights granted under the Agreement may be not assigned by Grantee without the written consent of Grantor, which consent shall not be unreasonably withheld. The acquisition or assumption by another party under an agreement with Grantee of any right or obligation of Grantee under this Agreement shall be ineffective as to Grantor unless and until Grantor shall have been notified of such agreement and shall have recognized and approved the same in writing, and in no case shall such recognition or approval operate to relieve Grantee of the responsibilities or liabilities assumed by Grantee hereunder without Grantor's express written release thereof and the succeeding party assumes in writing all of the obligations of Grantee under the terms of this Agreement as to the balance of the term thereof, or acquires the rights in trust as security and subject to such conditions as Grantor deems necessary.
- 5. Relocation of Improvements. Grantor reserves the right to relocate or modify the location of the Improvements, in whole or in part, as may be necessary to accommodate construction issues that may arise during development of lands in the vicinity of the Subject Property. Such relocation shall be at Grantor's cost and shall provide Grantee with reasonably similar access as required pursuant to this Agreement and ordinances of the City of Saratoga Springs. The location, design, and construction of the relocated Improvements shall be approved by the City of Saratoga Springs in writing and shall be in all material respects equal to or better than the previously-installed Improvements.
- 6. <u>Compliance with Existing Laws, No Waste, Pollution Prevention</u>. Grantee, in exercising the privileges granted by the Agreement, shall comply with the provisions of all valid federal, state, county, and municipal laws, ordinances, and regulations which are applicable to the Subject Property. After acceptance of maintenance responsibilities at the conclusion of the 1-year period in paragraph 3 above, Grantee shall neither commit nor knowingly permit any waste on the Subject Property. Grantee shall take reasonable precautions to prevent pollution or deterioration of lands or waters which may result from the exercise of the privileges granted pursuant to this Agreement. Grantee shall comply with applicable industry standards and practices in constructing, operating and maintaining the Improvements.
- 7. <u>Treasure-trove and Articles of Antiquity</u>. It is hereby understood and agreed that all treasure-trove, all articles of antiquity, and critical paleontological resources in or upon the Subject Property are and shall remain the property of the State of Utah. Grantee further agrees to cease all activity on the Subject Property and immediately notify Grantor and the State of Utah, through the School and Institutional Trust Lands Administration if any discovery of human remains or a "site" or "specimen," as defined in Section 9-8-302 or 63-73-1 Utah Code

Annotated (1953), as amended, is made on the Subject Property, and continue to cease all construction or maintenance therein until such time as the human remains, "site" or "specimen" in question has been treated to the satisfaction of the State of Utah, through the School and Institutional Trust Lands Administration.

- 8. <u>Non-Exclusive Right</u>. The right granted herein is non-exclusive and Grantor reserves the right to issue other non-exclusive licenses, easements, leases, or permits on or across the Subject Property where such uses are appropriate and compatible with the unimpeded operation and maintenance of the Improvements, or to dispose of the property by sale or exchange subject to this Agreement.
- 9. <u>Insurance</u>. Grantee shall carry liability insurance covering bodily injury, loss of life or property damage arising out of or in any way related to Grantee's activities on the Subject Property. Grantee shall carry a policy with limits of no less than \$1,000,000.00 for one person in any one occurrence and an aggregate amount of \$2,000,000.00 for two or more persons in any one occurrence. The insurance may be in the form of blanket liability coverage so long as such blanket policy does not act to reduce the limits or diminish the coverage required hereunder. Grantee's liability or the coverage limits required by this easement shall not be reduced by any insurance held by Grantor, or any of the lessees, permittees or assigns thereof.
- 10. <u>Negligent Acts</u>. Grantor and Grantee shall each be responsible for its own negligent acts which it commits or which are committed by its agents, officials or employees. Nothing in this Agreement limits, restricts or waives any of the Governmental Immunity Act provisions as they may apply to Grantor or Grantee.
- 11. Termination for Noncompliance. In the event of a default or breach of any of the terms of this Agreement by the parties, the non-defaulting party shall provide the defaulting party with written notice of the default and shall provide the non-defaulting party with thirty (30) days from the date of the notice to remedy the default or such time as is reasonably required to remedy the default. In the event the defaulting party does not remedy the default in the 30-day time period set forth in the written notice, or such longer time as granted in the non-defaulting party's sole discretion, the non-defaulting party may terminate this Agreement. Such termination shall be effective upon the non-defaulting party's giving written notice. In the event the defaulting party is the Grantee, Grantee shall immediately surrender possession of the Subject Property to Grantor and restore the Subject Property to its prior condition minus all improvements. In such event, the Parties may mutually agree that all improvements on the Subject Property be forfeited and become the property of Grantor. In addition, the parties may exercise any other right or remedy they may have at law or equity. Notwithstanding the foregoing, this Agreement shall automatically terminate as set forth in paragraph 2 if Fox Hollow does not install the Improvements in the time period set forth therein.
- 12. <u>Notice</u>. Any notice contemplated herein to be served upon Grantee shall be in writing and shall be deemed sufficient if deposited in the United States mail, postage prepaid and certified or registered, to the address heretofore set forth. Grantee represents that it has notified

other interest holders in the area surrounding the Easement, as set forth in **Exhibit C** attached hereto, of Grantee's rights and plans hereunder. Grantee represents that the location and construction of the Improvements will not unreasonably interfere with or cause damage to such other existing users.

- 13. <u>Liens.</u> After acceptance of the improvements after the 1-year warranty period as specified in paragraph 3 above, Grantee shall not suffer or permit to be enforced against the Subject Property or any part thereof, and shall indemnify and hold Grantor harmless for, from, and against (i) any mechanics', materialman's, contractor's, or subcontractor's liens arising from; and (ii) any claim for damage growing out of the work of, any construction, repair, restoration, replacement, or improvement done by or on behalf of Grantee on the Subject Property. Grantee shall pay or cause to be paid all of such liens, claims, or demands before any action is brought to enforce the same against the Subject Property. If Grantee shall in good faith contest the validity of any such lien, claim, or demand, then Grantee shall, at its expense, defend itself and Grantor and any of the lessees and assigns thereof against the same and shall pay and satisfy any adverse judgment that may be rendered thereon prior to execution thereof and in the event of any such contest Grantee shall at the request of Grantor provide such security and take such steps as may be required by law to release the Subject Property from the effect of such lien.
- 14. <u>Fire Prevention</u>. After acceptance of the improvements after the 1-year warranty period as specified in paragraph 3 above, Grantee shall at all times observe reasonable precautions to prevent fire on the Subject Property proximately caused by Grantee's actions and shall comply with all applicable laws and regulations of any governmental agency having jurisdiction. In the event of a fire on the Subject Property proximately caused by Grantee which necessitates suppression action that incurs cost, Grantee shall pay for such costs.
- 15. <u>Utah Law Applies, Successors and Assigns; No Third Party Beneficiaries.</u> This Agreement shall be interpreted and governed by the laws of the State of Utah and the provisions hereof shall inure to and be binding upon the successors and assigns of each party. There are no intended third party beneficiaries to this Agreement.
- 16. <u>Right to Inspect</u>. Grantor reserves the right to inspect the Subject Property at any time and recall Grantee for correction of any violations of stipulations contained herein. If Grantee fails to correct such violations within a reasonable time Grantor may, after thirty (30) days written notice, re-enter and terminate this Agreement.
- 17. Covenant Running with the Land. The grant and other provisions of this Agreement shall constitute a covenant running with the land, and shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns, all of which persons may enforce any obligation created by this Agreement.
- 18. <u>No Waiver</u>. No waiver of conditions by Grantor of any default of Grantee or failure of Grantor to timely enforce any provisions of this Agreement shall constitute a waiver of or constitute a bar to subsequent enforcement of the same or other provisions of this Agreement.

No provision in this Agreement shall be construed to prevent Grantor from exercising any legal or equitable remedy it may otherwise have.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties have entered into this Agreement.

GRANTOR: STATE OF UTAH, SCHOOL AND

INSTITUTIONAL TRUST LANDS

**ADMINISTRATION** 

By:

Kevin S. Čarter, Director

GRANTEE: CITY OF SARATOGA SPRINGS

By:

Its:

City Manager

ATTEST:

City Recorder...

GARATOGA SORINGS A
SEAL URATE OF UTATE

APPROVED AS TO FORM SEAN D. REYES ATTORNEY GENERAL

BY:

Special Assistant Attorney General

STATE OF UTAH	)	
	:	§
COUNTY OF SALT LAKE	)	

On the 4 day of Occommon, 2014, personally appeared before me Kevin S. Carter, who being duly sworn did say that he is the Director of the Utah School and Institutional Trust Lands Administration, and authorized to execute the above instrument.

My commission expires

8-9-15

Notary Public, residing at:

SL.CO.



# **Exhibit A**Legal Description of Subject Property

A parcel of land located in the Southeast Quarter of Section 11, Township 6 South, Range 1 West, Salt Lake Base & Meridian, U.S. Survey.

Beginning at a point on the grantors' east property line, said point lies South 00°17'21" West 695.79 feet along the section line from the East Quarter corner of said Section 11; and running thence South 00°17'21" West 41.83 feet along said section line and said east line of the grantors' property; thence leaving the grantors' east property line and the east line of said Section 11 South 73°34'08" West 53.46 feet; thence South 44°45'22" West 66.93 feet; thence South 72°36'12" West 22.74 feet; thence South 30°36'59" West 34.92 feet; thence South 42°39'46" West 30.15 feet; thence South 80°11'13" West 49.63 feet; thence South 35°45'22"West 58.62 feet; thence South 54°35'11" West 76.63 feet; thence South 81°46'43" West 57.32 feet; thence North 69°10'27" West 14.79 feet; thence South 72°43'13" West 44.45 feet; thence South 56°51'21" West 110.54 feet; thence South 44°26'51" West 57.69 feet; thence South 62°18'38" West 40.49 feet; thence South 14°58'32" West 15.58 feet; thence South 51°38'22" West 98.82 feet; thence South 62°27'58" West 59.18 feet; thence South 53°10'33" West 76.19 feet; thence North 78°27'15" West 123.00 feet; thence South 36°40'26" West 39.83 feet; thence South 64°54'37" West 18.89 feet; thence South 33°21'40" West 54.96 feet to the south line of the grantors' property; thence North 89°43'44" West 46.36 feet along said south line of the grantors' property; thence leaving the grantors' south line North 30°34'39" East 30.17 feet; thence North 33°42'39" East 61.55 feet; thence North 64°54'37" East 20.00 feet; thence North 36°40'27" East 54.82 feet; thence South 79°14'40" East 75.61 feet; thence South 78°05'35" East 54.53 feet; thence North 53°40'35" East 61.16 feet; thence North 62°28'41" East 52.24 feet; thence North 52°22'09" East 88.63 feet; thence North 14°58'13" East 19.81 feet; thence North 62°43'31" East 50.86 feet; thence North 44°29'05" East 56.36 feet; thence North 56°29'39" East 118.30 feet; thence North 72°43'53" East 62.68 feet; thence South 79°31'41" East 20.75 feet; thence North 83°48'22" East 37.80 feet; thence North 54°33'51" East 59.62 feet; thence North 35°11'04" East 67.33 feet; thence North 79°36'16" East 53.99 feet; thence North 33°20'56" East 44.79 feet; thence North 42°17'04" East 17.05 feet; thence North 73°17'07" East 23.19 feet; thence North 44°45'06" East 67.26 feet; thence North 73°31'04" East 75.80 feet to a point on the east line of said Section 11 and the east line of the grantors' property, said point being the Point of Beginning.

Contains 49,905 sq. ft. or 1.146 acres

#### Together with:

A parcel of land located in the Southeast Quarter of Section 11, Township 6 South, Range 1 West, Salt Lake Base & Meridian, U.S. Survey. The boundaries of said parcel of land are more particularly described as follows:

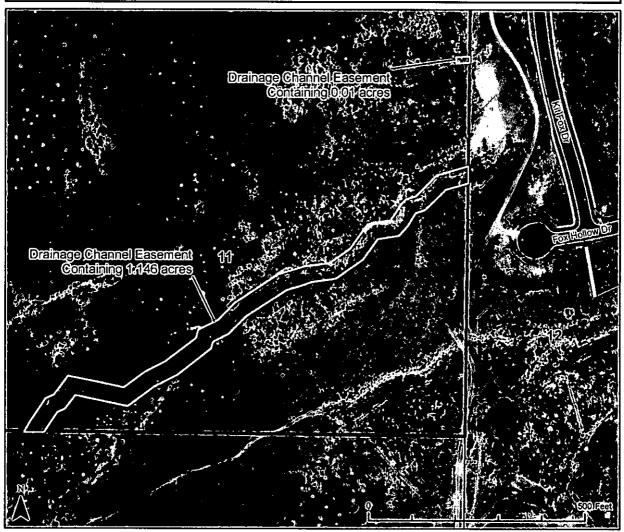
Beginning at a point on the grantors' east property line, said point lies South 00°17'21" West 448.30 feet along the section line from the East Quarter corner of said Section 11; and running thence South 00°17'21" West 14.37 feet along said section line and the east line of the grantors' property; thence South 87°04'45" West 30.42 feet; thence North 01°16'58" West 14.17 feet; thence North 86°44'10" East 30.82 feet to the point of beginning.

Contains 436 sq. ft. or 0.010 acres



### ESMT 1880 - Drainage Channel Easement for Henry Walker Homes

Township 6 South Range 1 West, SLB&M, Within NE4SE4 of Section 11 Utah County



Drainage Channel Easement

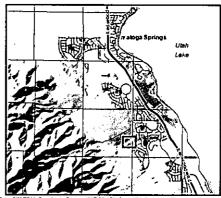
Land Ownership and Administration

Private

State Trust Lands

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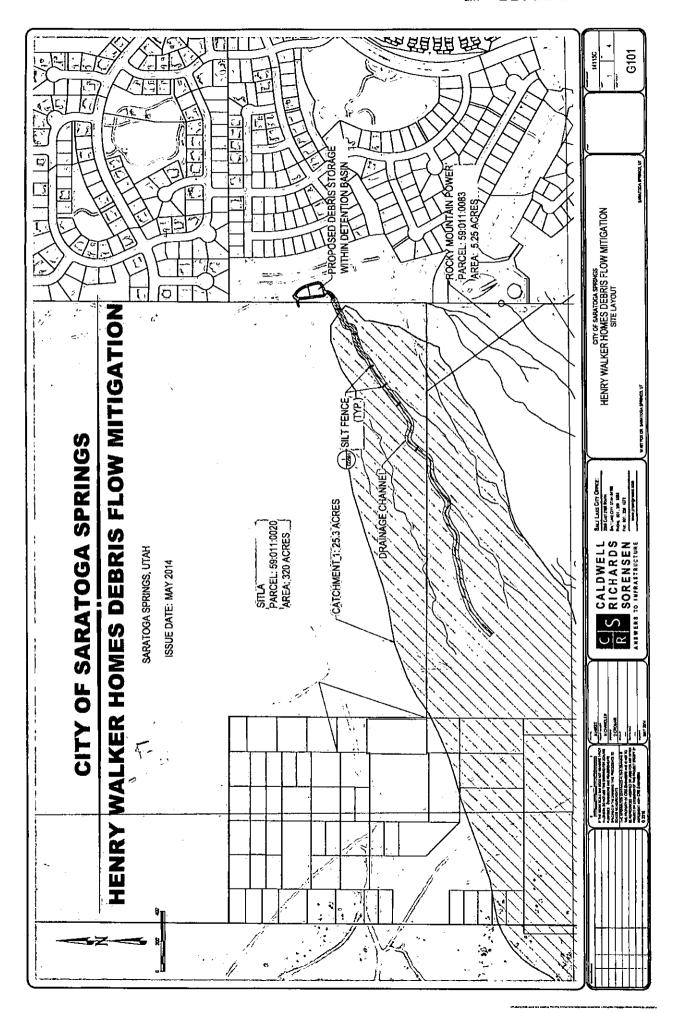


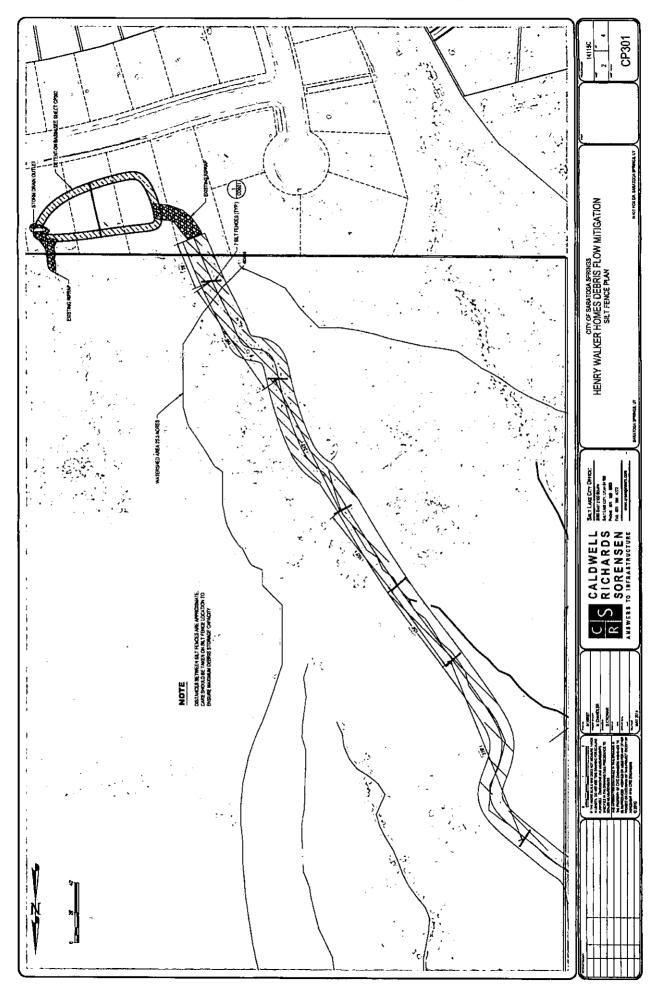


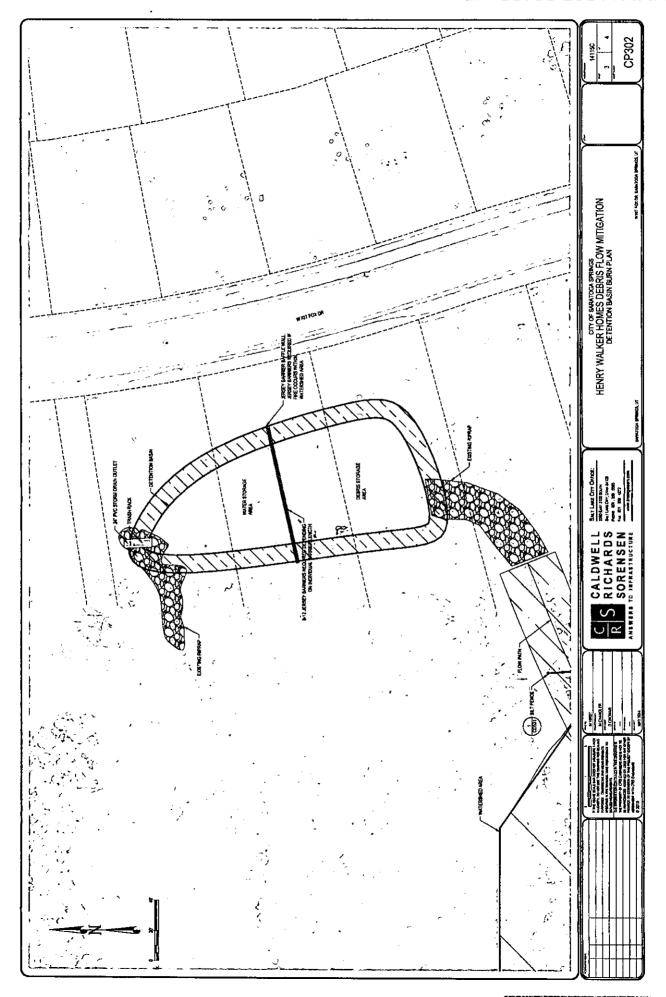
Osto. 6/11/2014 Coordinate System: NAD 63 UT16 Zone 12H Projection: Transverse Morceto.

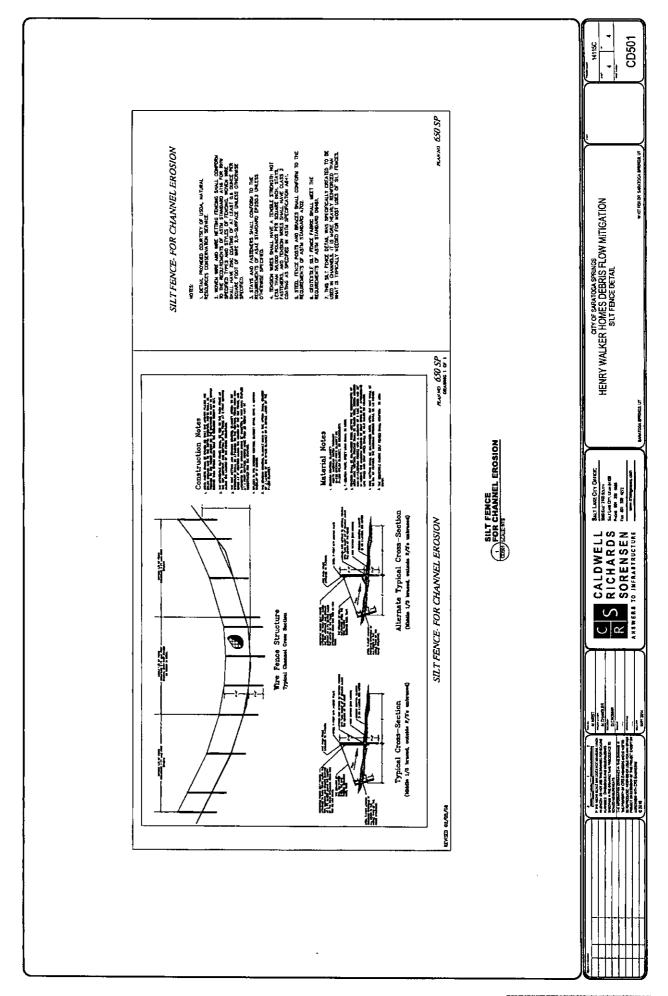
Exhibit B
Improvement Plans

(Attached)









## **Exhibit C**Holders of Other Interests

**Grazing Permit** 

GP22121.002

Exp: June 29, 2017

Zale Vacher PO Box 265 Goshen, UT 84633

Range Improvement

RIP 464.0

Exp. August 27, 2032

Bureau of Land Management Attn: Realty Specialist 170 South 500 East Vernal, UT 84078-2727