

9869625
10/9/2006 1:58:00 PM \$29.00
Book - 9362 Pg - 7169-7178
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE
BY: eCASH, DEPUTY - EF 10 P.

When Recorded, Mail To:

Diversified Habitats 1, L.L.C.
Attn: Michael M. Brodsky
308 East 4500 South, Suite 200
Salt Lake City, Utah 84107

With A Copy To:

Suburban Land Reserve, Inc.
Attn: G. Scott Dean
5 Triad Center, Suite 650
Salt Lake City, Utah 84180

07-22-300-004

(Space above for Recorder's use only)

IRRIGATION WATER AND ACCESS EASEMENT

THIS IRRIGATION WATER AND ACCESS EASEMENT (this "Agreement") is entered into this 4th day of October, 2006, by and between SUBURBAN LAND RESERVE, INC., a Utah corporation ("Grantor"), and DIVERSIFIED HABITATS 1, L.L.C., a Utah limited liability company ("Grantee").

RECITALS

A. Grantor owns certain real property (the "Grantor's Property") located in the City of Salt Lake, County of Salt Lake, State of Utah. The Grantor's Property is more particularly described on Exhibit A, attached hereto and incorporated by this reference.

B. Grantee owns certain real property (the "Grantee's Property") located adjacent to, and directly north of, the Grantor's Property. The Grantee's Property is more particularly described on Exhibit B, attached hereto and incorporated by this reference.

C. Grantee desires to obtain a perpetual, non-exclusive easement on, over, and across a portion of the Grantor's Property (the "Easement Area") for the benefit of Grantee's Property, and for the purposes more particularly described herein, and Grantor is willing to grant the easement to Grantee for such purposes subject to the terms and conditions set forth herein. The Easement Area is more particularly described in Section 1.2 of this Agreement, and is approximately depicted with cross-hatch markings as shown on the drawing on Exhibit C, attached hereto and incorporated by this reference.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the conditions set forth below, the parties agree as follows:

1. **Easements.**

1.1 **Grant of Easement.** Grantor hereby conveys to Grantee a perpetual non-exclusive easement on, over and across the Easement Area for the benefit of Grantee's Property, and for the sole purpose of using, operating, maintaining, repairing, and accessing an existing above ground irrigation water canal and head gate necessary or useful for the operation of said irrigation water canal (collectively, the "**Improvements**").

1.2 **Current Location of the Easement Area.** The Easement Area will be a twenty foot (20') wide strip of land located on the Grantor's Property, being ten feet (10') on either side of the centerline of the Improvements as existing on the date of this Agreement. The approximate location of the Improvements is depicted with cross-hatch markings as shown on the drawing on Exhibit C. Grantor may, at any time after this Agreement is recorded, obtain an ALTA survey of the exact location of the Easement Area and unilaterally, without obtaining Grantee's consent, record a document that accomplishes the following: (i) terminates this Agreement; (ii) grants unto Grantee a new easement granting equivalent rights to those provided for in this Agreement; and (iii) redefines the Easement Area to the specific twenty foot (20') wide location determined by the ALTA survey.

2. **Access to Easement Area.** Pursuant to the terms and conditions of this paragraph, Grantee and its agents, servants, employees, consultants, contractors and subcontractors (collectively, "**Grantee's Agents**") will have the right to enter upon the Easement Area for the purposes permitted by this Agreement. During the time Grantee's Property remains undeveloped and no notice has been given to Grantee, Grantee's sole access to the Easement Area and Improvements will be from the roadway known as the "Duck Club Road" through an undeveloped and unmarked route using four-wheel drive vehicles or their equivalent. It is understood that Grantor is not required to maintain any formal infrastructure or roadway to any portion of the Improvements or the Easement Area. After Grantor's Property is developed, or upon written notice from Grantor to Grantee, Grantee's rights to access the Easement Area and Improvements through the undeveloped and unmarked route from the Duck Club Road will terminate and Grantee will only be able to access the Easement Area and Improvements through a route and in a manner as specified by Grantor, in Grantor's sole and absolute discretion, but said access will be adequate to provide Grantee with comparable rights to access the Improvements.

Grantee will enter upon the Easement Area and Grantor's Property at its sole risk and hazard, and Grantee and its successors and assigns, hereby release Grantor from any claims relating to the condition of the Easement Area and the entry upon the Easement Area and Grantor's Property by Grantee, its agents, employees, servants, contractors and other such parties.

3. **Reservation by Grantor and Relocation of the Easement Area.** Grantor hereby reserves the right to use the Easement Area for any use not inconsistent with Grantee's permitted use of the Easement Area. Without limiting the above, Grantor also reserves the right to relocate, or require the relocation of the Improvements and the Easement Area at any time at Grantor's sole cost and expense, provided that such relocation provides Grantee with comparable easement rights and such relocation terminates the use of the easement in its prior location. Grantor's relocation right includes the right to place the Improvements underground. Grantor's

relocation rights also includes the right to relocate the entire Easement Area and the Improvements to an area located off Grantor's Property, at Grantor's sole cost and expense, provided that such relocation provides Grantee with comparable rights and such relocation will terminate the easement and the use of the easement and the Improvements in its prior location.

4. **Condition of the Easement Area.** Grantee accepts the Easement Area and all aspects thereof in "as is," "where is" condition, without warranties, either express or implied, "with all faults," including but not limited to both latent and patent defects, and the existence of hazardous materials, if any. Grantee hereby waives all warranties, express or implied, regarding the title, condition and use of the Easement Area, including, but not limited to any warranty of merchantability or fitness for a particular purpose. Grantee must obtain any and all consents, approvals, permissions, and agreements to cross, encumber or encroach upon any other easements or rights of others related to its use and improvement of the Easement Area.

5. **Maintenance, Restoration, and Crop Damage.** Grantee, at its sole cost and expense, will maintain and repair the Improvements in good order and condition. Grantee will promptly repair any damage to the Grantor's Property and Grantor's improvements located thereon (including, without limitation, any and all landscaping, trees, fences, water and/or irrigation pipes, lines and ditches, curbs, gutters, asphalt surfaces, fences, signs, lighting, etc.) caused by Grantee and/or Grantee's Agents, and will restore the Grantor's Property and the improvements thereon to the same or better condition as they existed prior to any entry onto or work performed on the Grantor's Property by Grantee and Grantee's Agents. Grantee agrees to reimburse Grantor for any reasonable income lost due to crop damage that result from Grantee's, or Grantee's Agents', entry onto or work performed on the Grantor's Property or that result from Grantee's use of the Easement Area or the Grantor's Property.

6. **Additional Improvements.** Grantee will not have the right to construct additional improvements within the Easement Area or on the Grantor's 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. **[Reserved].**

9. **Liens.** Grantee will keep the 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 Grantee will indemnify, hold harmless and agree to defend Grantor from any liens that may be placed on the 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 must be released of record within thirty (30) days.

10. **Insurance.** Grantee will ensure that prior to entering onto the Easement Area, all of Grantee's Agents and other such parties who assist with the construction, maintenance or use of the Easement Area are covered under the terms of Grantee's insurance policies as set forth

below, or that each obtain similar policies which, at a minimum, provide Grantor the same protections.

10.1 Liability Insurance Coverage and Limits. Prior to taking possession of the Easement Area, Grantee agrees to obtain and maintain a policy of general commercial liability insurance insuring Grantee's interests against claims for personal injury, bodily injury, death, property damage occurring on, in or about the Easement Area and the ways immediately adjoining the Easement Area, with a "Combined Single Limit" covering personal injury liability, bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000.00). Grantor must be endorsed as an additional insured on such policy on ISO Form CG 20 10 (10/93) or its equivalent.

10.2 Workers' Compensation Insurance. Grantee agrees to maintain and keep in force, during the term hereof, all applicable Workers' Compensation and Employers' Liability Insurance required under applicable Workers' Compensation Acts and/or applicable law.

10.3 Automobile Insurance. Grantee agrees to maintain and keep in force, during the term hereof, Automobile Liability Insurance with a minimum limit of not less than One Million Dollars (\$1,000,000.00) Combined Single Limit per accident, and coverage applying to "Any Auto."

11. Indemnification. Grantee and its successors and assigns hereby agree to indemnify, defend (with counsel acceptable to Grantor) and hold harmless Grantor, and any entity controlling, controlled by or under control with Grantor ("**Affiliates**"), and its and their Affiliates' officers, directors, employees, managers, members, agents, servants, successors, and assigns from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage caused by or arising out of: (a) the acts and omissions of Grantee and its agents, servants, employees, and/or contractors; (b) the use of the Grantor's Property and/or the Improvements by Grantee, its agents, servants, employees, or contractors; (c) any work performed on the Grantor's Property by Grantee or its successors or assigns, and their agents, servants, employees, consultants and/or contractors; and (d) above-average flow levels from the Improvements. The terms and conditions of this provision shall remain effective after the expiration or termination of this Agreement, so long as the event for which the indemnification is needed occurred prior to such expiration or termination.

12. Notices. Any notice required or desired to be given under this Agreement will be considered given: (a) when delivered in person to the recipient named below, (b) when delivered by a reputable overnight delivery service, or (c) three (3) days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage prepaid, addressed by name to the person and party intended. All notices shall be given at the following addresses:

If to Grantor:

Suburban Land Reserve, Inc.
Attn: G. Scott Dean
5 Triad Center, Suite 650

Salt Lake City, UT 84180

If to Grantee:

Diversified Habitats 1, L.L.C.
Attn: Michael M. Brodsky
308 East 4500 South, Suite 200
Salt Lake City, Utah 84107

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

13. Miscellaneous.

13.1 Interpretation. Section titles and captions to this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part of this Agreement. This Agreement has been arrived at through negotiation between Grantor and Grantee. As a result, the normal rule of contract construction that any ambiguities are to be resolved against the drafting party shall not apply in the construction or interpretation of this Agreement.

13.2 Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah.

13.3 Run with the Land/Successors. Subject to the terms and conditions of this Agreement, the easement granted herein shall run with the land, and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

13.4 Integration. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto. No covenant, representation, or condition not expressed in this Agreement will affect or be deemed to interpret, change, or restrict the express provision hereof. Any amendment or modification to this Agreement must be in writing and signed by authorized agents or officers of the parties.

13.5 Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any rights or remedy for a breach of this Agreement will constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term, or condition.

13.6 Rights and Remedies. The rights and remedies of any of the parties stated herein are not intended to be exclusive, and the exercise of one or more of the provisions of this Agreement does not preclude the exercise of any other provisions. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder may be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or will limit or affect any rights at law or by statute or otherwise of any party

aggrieved as against the other party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder will be enforceable in equity as well as at law or otherwise.

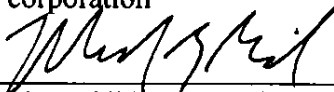
13.7 Enforceability and Litigation Expenses. If any action, suit, or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement or if a party finds it necessary to retain an attorney to enforce its rights under this Agreement, all costs and expenses of the prevailing party incident to such proceeding or retention, including reasonable attorneys' fees, will be paid by the non-prevailing party.

13.8 Authorization. Each individual executing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the party for which he/she signs to execute and deliver this Agreement in the capacity and for the entity set forth where he/she signs and that as a result of his/her signature, this Agreement is binding upon the party for which he/she signs.

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

13.10 Termination. This Agreement and all Easement rights set forth herein will be automatically terminated once: (a) Grantee decides that it will no longer use the easement granted herein, (b) the Improvements are abandoned for a period of one (1) year, or (c) Grantee is provided an alternative easement for the Improvements pursuant to the terms of this Agreement. Upon the occurrence of an event set forth in the preceding sentence, Grantor may record an instrument terminating this Agreement, as well as any and all other easements, rights-of-way or licenses Grantee may have (or may claim to have) to use the Grantor's Property.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

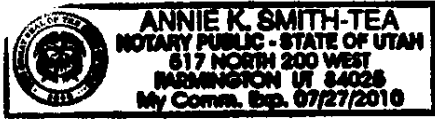
GRANTOR: SUBURBAN LAND RESERVE, INC.,
a Utah corporation
By: 
Mark B. Gibbons, President *BD BRC*

GRANTEE: DIVERSIFIED HABITATS 1, L.L.C.,
a Utah limited liability company
By: _____
Name (Print): _____
Its: _____

[acknowledgements on the following page]

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On this 5th day of October, 2006, personally appeared before me Mark B. Gibbons, known or satisfactorily proved to me to be the President of SUBURBAN LAND RESERVE, INC., a Utah corporation, who acknowledged to me that he signed the foregoing instrument as President for said corporation.



Annie K. Smith-Tea
Notary Public for Utah

STATE OF _____)
 :SS
COUNTY OF _____)

On this ____ day of October, 2006, personally appeared before me _____, known or satisfactorily proved to me to be the _____ of DIVERSIFIED HABITATS 1, L.L.C., a Utah limited liability company, who acknowledged to me that he signed the foregoing instrument as _____ for said company.

Notary Public for Utah

EXHIBIT A

(Legal Description of the Grantor's Property)

Real Property situated in the County of Salt Lake, State of Utah, specifically described as:

PARCEL NO. 1

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 1 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE N89°53'00"E, 3691.80 FEET; THENCE N0°08'06"W, 60.34 FEET; THENCE S89°51'54"W, 245.26 FEET; THENCE N17°15'39"W, 131.27 FEET; THENCE N2°54'36"W, 130.60 FEET; THENCE N29°08'08"W, 162.13 FEET; THENCE N3°16'26"E, 175.49 FEET; THENCE N29°54'36"E, 111.55 FEET; THENCE N26°14'55"W, 96.80 FEET; THENCE N11°44'16"W, 150.00 FEET; THENCE N10°45'29"E, 253.97 FEET; THENCE S78°32'13"W, 219.90 FEET; THENCE S65°54'04"W, 67.66 FEET; THENCE S35°20'26"W, 83.32 FEET; THENCE S38°04'35"W, 117.19 FEET; THENCE S58°52'23"W, 150.39 FEET; THENCE N85°13'53"W, 147.60 FEET; THENCE N62°15'28"W, 136.47 FEET; THENCE N53°26'09"W, 101.76 FEET; THENCE N51°41'57"W, 98.07 FEET; THENCE N50°23'39"W, 333.84 FEET; THENCE S71°44'27"W, 938.46 FEET; THENCE N79°49'41"W, 1503.51 FEET; THENCE N4°42'24"W, 324.82 FEET; THENCE N10°02'36"W, 1040.70 FEET; THENCE N89°56'47"W, 885.19 FEET; THENCE S0°02'13"W, 2640.66 FEET; THENCE S89°58'19"E, 1314.79 FEET TO THE POINT OF BEGINNING.

Ck By JJB 10/03/06

EXHIBIT B

(Legal Description of the Grantee's Property)

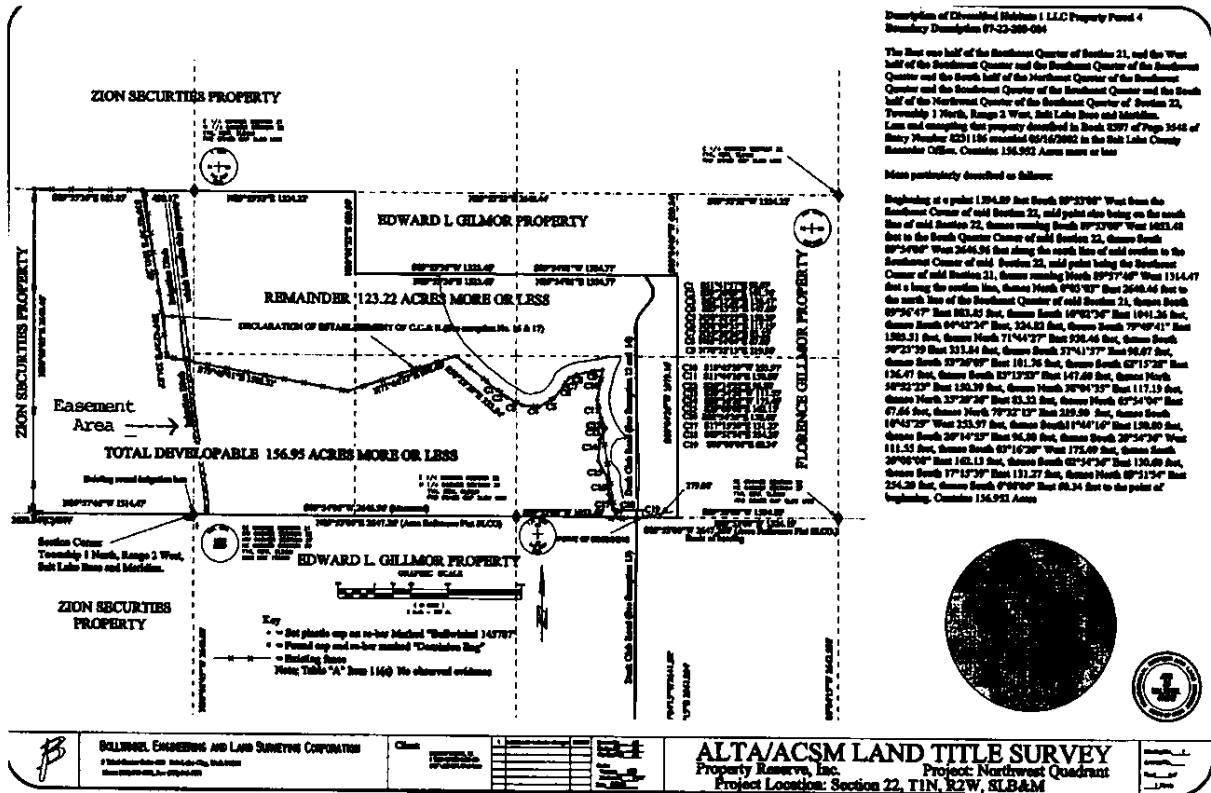
Real Property situated in the County of Salt Lake, State of Utah, specifically described as:

BEGINNING AT A POINT WHICH IS N89°53'00"E, 3691.80 FEET FROM THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 1 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE N0°08'06"W, 60.34 FEET; THENCE S89°51'54"W, 245.26 FEET; THENCE N17°15'39"W, 131.27 FEET; THENCE N2°54'36"W, 130.60 FEET, THENCE N29°08'08"W, 162.13 FEET; THENCE N3°16'26"E, 175.49 FEET; THENCE N29°54'36"E, 111.55 FEET; THENCE N26°14'55"W, 96.80 FEET; THENCE N11°44'16"W, 150.00 FEET; THENCE N10°45'29"E, 253.97 FEET; THENCE S78°32'13"W, 219.90 FEET; THENCE S65°54'04"W, 67.66 FEET; THENCE S35°20'26"W, 83.32 FEET; THENCE S38°04'35"W, 117.19 FEET; THENCE S58°52'23"W, 150.39 FEET; THENCE N85°13'53"W, 147.60 FEET; THENCE N62°15'28"W, 136.47 FEET; THENCE N53°26'09"W, 101.76 FEET; THENCE N51°41'57"W, 98.07 FEET; THENCE N50°23'39"W, 333.84 FEET; THENCE S71°44'27"W, 938.46 FEET; THENCE N79°49'41"W, 1503.51 FEET; THENCE N4°42'24"W, 324.82 FEET; THENCE N10°02'36"W, 1040.70 FEET; THENCE S89°56'47"E, 429.04 FEET TO THE WEST QUARTER CORNER OF SAID SECTION 22; THENCE N89°53'15"E, 1323.84 FEET; THENCE S0°01'52"W, 659.99 FEET; THENCE N89°53'11"E, 2647.85 FEET; THENCE S0°02'54"W, 1979.84 FEET; THENCE S89°53'00"W, 279.08 FEET TO THE POINT OF BEGINNING.

Ck By JJB 10/03/06

EXHIBIT C

(Depiction of the Approximate Location of the Easement Area)



921003/03