

2003

Vestin Mortgage, Inc. v. First American Title Insurance Company : Brief of Appellee

Utah Supreme Court

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IN THE UTAH SUPREME COURT

VESTIN MORTGAGE, INC.,

Plaintiff and Appellant,

vs.

Case No. 20041132-SC

FIRST AMERICAN TITLE
INSURANCE COMPANY,

Defendant and Appellee.

BRIEF OF APPELLEE
FIRST AMERICAN TITLE INSURANCE COMPANY

Appeal from the Ruling of the Third Judicial District Court, Salt Lake County,
Case No. 20030941-SC, Honorable Frank G. Noel

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UTAH [REDACTED] Supreme Court
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JURISDICTIONAL STATEMENT

This Court has jurisdiction under Utah Code Annotated section 78-2-2(3) (2001).

STATEMENT OF ISSUE PRESENTED AND STANDARD OF REVIEW

As set forth in the Court's April 19, 2005 Order, the Court has granted Vestin's petition for writ of certiorari only as to the following issue:

Whether the title insurance policies unambiguously applied only to actual assessments for a Special Improvement District and did not include an obligation to provide notice of an intent to create the District and levy the assessments.

(Apr. 19, 2005 Order.) Whether an insurance policy is ambiguous is a question of law that an appellate court reviews for correctness. See Utah Farm Bureau Ins. Co. v. Crook, 1999 UT 47, ¶6, 980 P.2d 685. A contract is ambiguous only if it is unclear, omits terms, has multiple plausible meanings, or is not plain to a person of ordinary intelligence and understanding. See id.; Alf v. State Farm Fire & Cas. Co., 850 P.2d 1272, 1274-75 (Utah 1993). “[P]olicy terms are not necessarily ambiguous simply because one party seeks to endow them with a different interpretation according to his or her own interests.” First Am. Title Ins. Co. v. J.B. Ranch, Inc., 966 P.2d 834, 836 (Utah 1998). If a policy is unambiguous, “no presumption in favor of the insured arises and the policy language is construed according to its usual and ordinary meaning.” Id.

DETERMINATIVE LAW

Utah Code Ann. § 17A-3-323 (2003)

An assessment or any part or installment of it . . . shall constitute a lien against the property upon which the assessment is levied on the effective date of the ordinance levying the assessment. This lien shall be superior to the lien of any trust deed, mortgage, mechanic's or materialman's lien, or other encumbrance and shall be equal to and on parity with the lien for general tax purposes. The lien shall apply without interruption, change in priority, or alteration in any manner to any reduced payment obligations and shall continue until the

assessments, reduced payment obligations, and any interest, penalties, and costs on them are paid

Utah Code Ann. § 17A-3-323 (1990)

An assessment or any part or installment of it, any interest accruing, and the penalties and costs of collection as provided in Title 59, Chapter 2, Part 13 shall constitute a lien against the property upon which the assessment is levied on the effective date of the ordinance levying the assessment. This lien shall be superior to the lien of any trust deed, mortgage, mechanic's or materialman's lien, or other encumbrance and shall be equal to and on a parity with the lien for general property taxes. The lien shall apply without interruption, change in priority, or alteration in any manner to any reduced payment obligations and shall continue until the assessments, reduced payment obligations, and any interest, penalties, and costs on them are paid, notwithstanding any sale of the property for or on account of a delinquent general property tax, special tax, or other assessment or the issuance of a tax deed, an assignment of interest by the county, or a sheriff's certificate of sale or deed.

Eagle Mountain City Ordinance No. 06-2001

See Exhibit “5” in the attached Addendum. (R. 200-19.)

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This appeal involves Vestin Mortgage, Inc.’s (“**Vestin**”) claim that First American Title Insurance Company (“**First American**”) improperly denied coverage to Vestin under two lender’s title insurance policies, policy number 2701-A-49 (“**Policy 2701**”) and policy number 3192-A-49 (“**Policy 3192**”) (collectively, the “**Policies**”). (R. 80–98, 100–119.) The Policies relate to a residential development in Eagle Mountain City, Utah. Copies of Policy 2701 and 3192 are included in the attached Addendum as **Exhibits “1” and “2,”** respectively.

This dispute concerns whether the Policies provide insurance coverage to Vestin for purported losses it suffered when—eight months *after* First American issued the last of the two Policies—Eagle Mountain City levied assessments against much of the property in Eagle Mountain City, including Vestin’s and that of surrounding landowners. The special assessments were intended to fund construction of water lines, sewer lines, roads, and other elements of infrastructure crucial to Vestin’s property and that of surrounding landowners. Although the improvements obviously have caused the value of the benefited property to increase, and while Vestin and its successors obviously will enjoy the benefit of these improvements, Vestin nevertheless has sued, insisting that First American should pay for the benefit bestowed on Vestin’s property by the improvements. Vestin wants First American to pay its entire assessment liability of over \$2.2 million.

Vestin’s claim to coverage fails principally for one fundamental reason: Title insurance policies cover only defects and injuries existing when the policies are issued. Here, Vestin’s purported injury was caused only by the assessment lien, which did not arise until long *after* First American issued the Policies. Not only do the insuring clauses in the Policies provide no coverage, but the Policies expressly except coverage for liens arising after the Policies’ effective dates.

Faced with the plain and unequivocal language of the Policies, Vestin has scrambled for some claim to coverage premised on a condition or event that occurred before the Policies were issued. It settled on Eagle Mountain City’s creation of the special improvement district and its recorded notice of that district.¹ But these events caused Vestin no injury. At most, they suggested the prospect of an assessment liability at some unknown time in the future. All courts and commentators that have addressed this issue uniformly hold that there is no coverage under these circumstances. The trial

¹ Unfortunately for Vestin, Eagle Mountain City created the special improvement district and recorded notice of the district *after* First American issued Policy 2701. As First American contends in Part I of its argument, this is an independent basis to affirm the court of appeals decision that there is no coverage under Policy 2701.

court properly dismissed Vestin's lawsuit, the court of appeals correctly affirmed that ruling, and this Court similarly should affirm.

II. COURSE OF THE PROCEEDINGS AND DISPOSITION BELOW

Vestin filed its complaint on May 30, 2003, alleging breach of the Policies. (R. 1-52.) On July 14, 2003, First American moved to dismiss the complaint for failure to state a claim upon which relief can be granted, supported by a memorandum of points and authorities (collectively hereinafter referred to as the "**Motion**"). (R. 55-219.) Vestin filed its memorandum opposing the Motion on August 13, 2003. (R. 226-403.) On September 30, 2003, First American filed its reply memorandum in support of the Motion. (R. 412-32.) On October 17, 2003, the Honorable Frank G. Noel heard oral argument on First American's Motion, granted the Motion, and dismissed Vestin's complaint with prejudice. The trial court entered an Order of Dismissal with Prejudice (the "**Dismissal Order**") on November 5, 2003. (R. 434-38.) A true and correct copy of the Dismissal Order is included in the attached Addendum as **Exhibit "3."**

Vestin filed its notice of appeal on November 12, 2003. (R. 439-47.) In its brief and argument to the court of appeals, Vestin did not claim coverage under either the "lien" or "encumbrance" provisions of the Policies. Instead, "Vestin argue[d] that the 'various insuring clauses contained in the policies, when read in conjunction with the 'governmental police power' provisions, afford coverage to Vestin for 'defects,' 'incorrectness' and 'other matters.''" Vestin, 2004 UT App 379, ¶10. The court of appeals issued its opinion affirming the trial court on October 28, 2004, holding "that neither the SID nor the notice in this case constituted defects in Vestin's title." Id. at ¶14. The court also held that the SID and notice were not "other matters" affecting title or conditions or restrictions that rendered the Policies assurances incorrect. Id. at ¶ 16. A true and correct copy of the court of appeals' opinion is included in the attached Addendum as **Exhibit "6."**

On or about December 29, 2005, Vestin filed a petition for writ of certiorari. First American opposed Vestin's petition by a brief filed on March 2, 2005. Vestin filed its reply brief on or about March 7, 2005. On April 19, 2005, this Court entered an order granting Vestin's petition for writ of certiorari *only* as to the issue of "[w]hether the title insurance policies unambiguously applied only to actual assessments for a Special Improvement District and did not include an obligation to provide notice of an intent to create the District and levy the assessments." Implicitly, the Court denied Vestin's petition as to all other issues raised in its December 29, 2004 petition. A true and correct copy of the April 19, 2005 order is included in the attached Addendum as **Exhibit "7."**

III. STATEMENT OF RELEVANT FACTS

A. The Title Insurance Policies and Vestin's Acquisition of the Property

On or about April 14, 2000, a Nevada corporation named Capsource, Inc., doing business as Del Mar Mortgage (and now known as Vestin), loaned \$1,965,000.00 to a Utah company known as The Ranches, L.C. ("**The Ranches**"). (R. 65-66.) To secure the loan, The Ranches pledged real property located in Eagle Mountain City under a trust deed benefiting Capsource. (R. 66.) On April 26, 2000, First American issued Policy 2701 in favor of Capsource in the amount of \$1,965,000.00, thereby insuring Capsource's interest in the trust deed, subject to the limitations, exclusions, and exceptions of Policy 2701. (R. 4-5, 66; Ex. 1 attached.)

About four months later, Vestin made a \$1.8 million second loan to The Ranches. (R. 66.) As with the first loan, The Ranches pledged real property located in Eagle Mountain City under a trust deed benefiting Vestin. (R. 66.) On August 28, 2000, First American issued Policy 3192 in the amount of \$1.8 million to insure Vestin's interest in the trust deed, subject to the limitations, exclusions, and exceptions of Policy 3192. (R. 2-3, 66, Ex. 2 attached.) The property that The Ranches pledged to Vestin incident to both loans is hereafter referred to as the "**Property.**"

The Ranches subsequently defaulted on the loans and, on July 25, 2002—approximately two years after the issuance of the last of the Policies—Vestin took title to the Property by non-judicially foreclosing its trust deeds. (R. 66.) Vestin alleges that it entered into a contract to sell the Property to a third party and only then learned from a title report that the Property was within the boundaries of a special improvement district created by Eagle Mountain City (the “**SID**”). Vestin further alleges that it then also learned that in April 2001—over eight months after the last of the Policies was issued—Eagle Mountain had levied a \$2,241,348.70 assessment that was a lien on the Property. (R. 8, 66.) According to Vestin, when the prospective buyer learned of the assessment, it refused to proceed with the purchase. (R. 8, 66.)

B. Creation of the Special Improvement District and the Levy of the Assessment

As Vestin concedes in the complaint, Eagle Mountain did not declare its intention to create a special improvement district until June 20, 2000—approximately two months *after* First American issued Policy 2701 to Vestin. (R. 6, 67.) Approximately six weeks later, on August 1, 2000, Eagle Mountain adopted Resolution 14-00.² (R. 132-38.) Among other things, Resolution 14-00 determined that construction of certain improvements would be in the best interests of Eagle Mountain City, provided that a special improvement district would be the means by which the intended improvements would be built and funded, and created the SID.

On August 4, 2000, pursuant to Utah Code Annotated section 17A-3-306, Eagle Mountain City recorded with the Utah County Recorder’s Office a “Notice of Intention” (the “**SID Notice**”) to create the Special Improvement District. (R. 121-98.) A copy of the SID Notice is included as **Exhibit “4”** in the attached Addendum. The Notice advised that Eagle Mountain City intended to create the SID and *intended* to levy assessments to pay for the contemplated improvements. (R. 121-22; Ex. 4 attached.) It

² The text of Resolution 14-00 is included in the Notice of Intention, Ex. 4 attached.

also estimated the total cost of the improvements and the portion of that cost that may be paid by a special assessment that the City might levy on benefited properties.³ (R. 121; Ex. 4 attached.) Importantly, the SID Notice did not purport to levy an assessment, but instead merely expressed the City’s *intention* to do so at an unspecified time in the future. (R. 121-22; Ex. 4 attached.) The SID Notice stated that the intended assessment would be paid by affected property owners in not more than twenty annual installments. (R. 122, Ex. 4 attached.) The SID Notice *did not* mention any intended requirement that, if affected property owners sell their property, the entire assessment would be due on sale and no longer payable in small annual installments.

On April 25, 2001, almost eight months after First American issued Policy 3192 (and one year after it issued Policy 2701), Eagle Mountain adopted Ordinance No. 06-2001 (the “**Assessment Ordinance**”). (R. 200-19.) A copy of the Assessment Ordinance is included in the attached Addendum as **Exhibit “5.”** Section 3 of the Assessment Ordinance provided that the City did thereby “levy” the assessment (the “**Assessment**” or “**Assessment Lien**”). (R. 202.) The Ordinance also approved the total Assessment in an amount approximately \$3.5 million less than the estimate contained in the SID Notice.⁴ (R. 203.) And further, the Assessment Ordinance advised for the first time that the Assessment liability of affected property owners included a requirement that, if assessed property is voluntarily sold, the property’s share of the Assessment is accelerated and due in full on sale instead of being payable in small annual installments over 17 years. (R. 205-06; Ex. 5 attached.)

³ The SID Notice further advised that the SID would be divided into two zones, and that the estimated assessment owed by property owners in Zone I would be \$12,400 per developable acre and \$13,400 per developable acre for those in Zone II. (R. 122; Ex. 4 attached.)

⁴ Zone I properties were ultimately assessed at \$8,036 per developable acre and Zone II properties at \$10,511 per developable acre, or about \$3,000 to \$4,000 less than the estimate contained in the Notice of Intention recorded nine months earlier. (R. 167, Ex. 5 attached.)

C. Vestin's Claims

After its intended sale allegedly fell through, Vestin sent a notice of claim under the Policies to First American, then filed this suit, claiming that First American breached the Policies by failing to pay Vestin's assessment liability. (R. 9-10.) Importantly, in its complaint, Vestin alleged that the sole cause of its purported injury was the Assessment Lien that Eagle Mountain City levied long after First American issued both Policies. It alleges that "Vestin and the assignees have been damaged *as a result of the Assessment* in an amount of not less than \$2,241,348.70, the amount of the Assessment against the Parcels." (R. 9 (emphasis added).)

D. Key Policy Provisions

There are five Policy provisions relevant to this dispute, three of which are insuring clauses and two of which are exclusions to coverage.

1. Policy Jacket Coverage for Defects, Liens, and Encumbrances

The first insuring clause is contained in the Policy jackets:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE,
THE EXCEPTIONS FROM COVERAGE CONTAINED IN
SCHEDULE B AND THE CONDITIONS AND
STIPULATIONS, FIRST AMERICAN . . . insures, as of
Date of Policy shown in Schedule A, against loss or damage,
not exceeding the Amount of Insurance stated in Schedule A,
sustained or incurred by reason of:

...

2. Any defect in or lien or encumbrance on the title;

...

6. The priority of any lien or encumbrance over the lien
of the insured mortgage

(R. 80, 100; Exs. 1 & 2, attached.) In other words, subject to the coverage limitations in the Policies' exclusions, exceptions, and conditions and stipulations, First American insured Vestin only against losses incurred due to defects, liens, or encumbrances on the

title that existed as of the Policy dates. Moreover, the “loss or damage” must be caused by reason of the identified “defect in or lien or encumbrance on the title.”

2. Form 104 Endorsement

The second relevant insuring clause is contained in the Form 104 Endorsement, which provides that First American insures “against loss or damage which such insured shall sustain by reason of . . . [t]he existence of any *subsisting* tax or assessment lien which is prior to the insured mortgage” and “the existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy.” (R. 111; Ex. 1, attached.) In other words, for an assessment lien to be covered under the Endorsement, the lien must exist at the time First American issued the Policies. Further, for an “other matter” to be covered, it must exist when First American issued the Policies and must be the cause of the “loss or damage” sustained by the insured.

Importantly, the Form 104 Endorsement also states that “[t]his endorsement is made a part of the policy and is subject to all of the terms and provisions thereof Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy . . . *nor does it extend the effective date of the policy and any prior endorsements.*” (Emphasis added.) Under the plain language of the Endorsement, it has the same effective dates as the Policies and does not extend them.

3. Form 31 Endorsement

The third relevant insuring provision is paragraph 1 of the F.A. Form 31 Endorsement to Policy 3192, which states that First American “insures against loss which the Insured shall sustain by reason of . . . [a]ny incorrectness in the assurance which the Company hereby gives . . . [t]hat there are no covenants, conditions, or restrictions under which the lien of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired.” (R. 89; Ex. 2, attached.) As with the first two insuring provisions

at issue, for an “incorrectness” to be covered under Policy 3192, the incorrectness must be the cause of the “loss” sustained by the insured.

4. Exclusion for Post-Policy Defects, Liens, Encumbrances, and “Other Matters”

There are also two policy exclusions that have been raised by the parties. The first exclusion states:

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys’ fees or expenses which arise by reason of:

3. Defects, liens, encumbrances, adverse claims or other matters:

...

(d) attaching or created subsequent to Date of Policy

....

(R. 81, 101; Ex. 1 & 2, attached.) The Policy jackets’ coverage for “defects, liens, or encumbrances” therefore does not include any that attach or are created after the Policy dates.

5. Exception to the Police Power Exclusion

While never alleged in its complaint, in its briefs, Vestin also now claims coverage under an exception to a policy exclusion. Paragraph 1(b) of the Policies’ Exclusions from Coverage, states:

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys’ fees or expenses which arise by reason of:

1. ...

(b) Any governmental police power not excluded by
(a) above, except to the extent that a notice of the

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July 15, 2005

VIA HAND DELIVERY

Clerk of the Court
Utah Supreme Court
450 South Main Street
Salt Lake City, UT 84111

*Re: Vestin Mortgage, Inc. v. First American Title Insurance Company
Supreme Court Case No. 20041132, Trial Court Case No. 030912242*

Dear Clerk of the Court:

We are counsel for defendant and appellee First American Title Insurance Company in the above-referenced matter. On Monday, July 11, 2005, we filed our brief in this matter. The third sentence of the Summary of the Argument on page 11 currently reads: "This Court should affirm the court of appeals' decision holding that neither the SID nor the SID are covered under the insuring clauses of the Policies." This sentence should read: "This Court should affirm the court of appeals' decision holding that neither the SID nor the SID Notice are covered under the insuring clauses of the Policies."

As instructed, I have included nine copies of this letter. Thank you for your assistance in this matter.

Very truly yours,

Snell & Wilmer

Brett P. Johnson

BPJ:dw

cc: Alan L. Sullivan
John A. Snow
Stephen K. Christiansen

exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(R. 81, 101; Ex. 1 & 2, attached.) For this provision to apply, the recorded exercise of police power must be the cause of the “loss or damage” incurred by the insured.

SUMMARY OF THE ARGUMENT

The court of appeals ruled that, under the identical insuring clauses present in both Policies, neither the SID nor the SID Notice were “defects”, “incorrectnesses”, or “other matters” affecting Vestin’s title, and therefore Vestin has no coverage under either Policy. Vestin, 2004 UT App 379, ¶¶10, 14, 16. Because the three insuring clauses on which Vestin relies are identical in both Policies, the court of appeals construed the insuring clauses as they appear in both Policies. This Court should affirm the court of appeals’ decision holding that neither the SID nor the SID are covered under the insuring clauses of the Policies. But First American presented the court of appeals with an alternative basis for denying coverage under Policy 2701 alone: Because First American issued Policy 2701 before Eagle Mountain City created the SID or recorded the SID Notice, they did not exist “as of Date of Policy” and therefore they cannot be covered by Policy 2701. Thus, even if the Court somehow determines that the insuring clauses are ambiguous and therefore remands, it should only remand as to Policy 3192. Because the City created the SID and recorded the SID Notice after the effective date of Policy 2701, there is no coverage under that Policy.

Considering the insuring clauses of the Policies, the court of appeals correctly concluded that the Policies are unambiguous and that they do not cover the SID or SID Notice as “defects”, “incorrectnesses” in the Policies’ assurances to Vestin, or “other matters” affecting Vestin’s title. The insuring provisions of the Policies are unambiguous and they do not afford coverage to Vestin. The true cause of Vestin’s injury, as it alleges in its complaint, was the Assessment Lien. Had Vestin sold the Property after the SID

was created but before the Assessment Lien attached to the Property, it would have suffered no injury. Because the Lien did not arise until after First American issued the Policies, the Lien is not covered.

The court of appeals also correctly concluded that the SID and SID Notice are not “defects” under the insuring clause contained in the policy jackets. Neither the SID nor the SID Notice subjected Vestin’s title to any competing claims as of the Policy dates. Moreover, the authorities that have addressed this issue uniformly conclude that the prospect of a future assessment lien is insufficient to be a covered title defect. Simply put, the fact of a future assessment, as well as the assessment requirements, are far too uncertain and speculative to be covered by insurance. Moreover, if preliminary steps in the process of creating a lien constituted “defects,” it would render meaningless the various provisions in the Policies requiring a lien to exist pre-policy for it to be covered.

Even if the SID or SID Notice were found to fall within the definition of “defects”, “incorrectnesses”, or “other matters”, there would be no coverage under the Policies because the SID or SID Notice caused Vestin no injury. The insuring clauses of the Policies plainly require that the insured’s injury be caused by the condition about which it complains. Here, there is an irreconcilable disconnect between the cause of Vestin’s alleged injury—the Assessment Lien—and the conditions about which Vestin complains—the SID and SID Notice.

The court of appeals also concluded that the Policies do not provide coverage under the exception to the police power exclusion because Vestin’s claims are not covered by the insuring clauses in the Policies. Vestin has offered no support for its claim that coverage may be found in an exception to a policy exclusion. In fact, Vestin’s argument is defeated by the established weight of authority. Moreover, even if the exception to the police power exclusion could afford coverage, it would not in this case. The exercise of the police power to which Vestin refers is the City’s creation of the SID. The SID did not cause Vestin’s injury, the Assessment Lien did. The Assessment Lien

was an entirely distinct post-policy exercise of the police power for which there was no pre-policy notice. The exception to the exclusion does not apply, let alone provide insurance coverage.

Vestin's arguments concerning the court of appeals' alleged failure to treat First American's motion to dismiss as one for summary judgment falls outside the narrow scope of the Court's certiorari review. The only issue before the Court is whether the Policies unambiguously deny coverage for the City's creation of the SID and recording of the SID Notice.

Finally, Vestin's argument that First American has deprived Vestin of the benefit of its bargain is similarly outside the scope of this Court's certiorari review. But even if Vestin's argument is considered on its merits, the argument fails. It is Vestin which attempts to take unfair advantage of First American through its claims under the Policies. Vestin, like its neighbors, has received the benefit of improvements crucial to the development of its Property. Yet Vestin wants to accept this benefit while sticking First American with the tab. A conclusion that the SID and SID Notice are covered would not give Vestin the benefit of its bargain. It would give Vestin a windfall. A title insurance policy is a contract like any other. The parties' obligations are governed by the content of the contract. Here, the plain language of the Policies does not afford coverage to Vestin. The decision of the court of appeals should be affirmed.

ARGUMENT

I. THERE IS NO COVERAGE UNDER POLICY 2701 BECAUSE FIRST AMERICAN ISSUED THE POLICY BEFORE THE CITY CREATED THE SID OR RECORDED THE SID NOTICE.

The court of appeals ruled that, under the identical insuring clauses present in both Policies, neither the SID nor the SID Notice were "defects", "incorrectnesses", or "other matters" affecting Vestin's title, and therefore Vestin has no coverage under either Policy. Vestin, 2004 UT App 379, ¶¶10, 14, 16. First American presented an alternative

argument to the court of appeals related only to Policy 2701—namely, that Policy 2701 provides no coverage because First American issued the Policy before Eagle Mountain City created the SID or recorded the SID Notice. In other words, irrespective of the language of the three insuring clauses, Vestin had no coverage under Policy 2701 simply by virtue of its effective date. The court of appeals “fail[ed] to see how anything that occurred after the issuance of Policy 2701 implicates that policy.” Vestin, 2004 UT App 379, ¶9 n.3. But because the court concluded that there was no coverage under the three insuring clauses present in both Policies, it did not address separately First American’s argument concerning the effective date of Policy 2701 as a bar to coverage under that Policy. Id.

While the Court should affirm the court of appeals’ decision based on its construction of the three insuring clauses present in both Policy 2701 and Policy 3192, there is an independent basis for affirming the court of appeals as to Policy 2701. This Court may affirm on any grounds. Smith v. Four Corners Mental Health Ctr., Inc., 2003 UT 23, ¶42, 70 P.3d 904; accord Bailey v. Bayles, 2002 UT 58, ¶10, 52 P.3d 158. Thus, in the unlikely event that the Court reverses the lower court and remands, the Court should independently affirm the dismissal of any claim premised on Policy 2701.⁵

Vestin argues that “[t]he Policies provide coverage based on First American’s failure to identify or except the recorded Eagle Mountain SID.” (Vestin Br. at 14.) First American issued Policy 2701 on April 26, 2000. The City created the SID on August 1, 2000, and recorded the SID Notice on August 4, 2000. Because First American issued Policy 2701 before the City created the SID or recorded the SID Notice, neither the SID nor the SID Notice are covered under Policy 2701. Not only do the Policies provide no coverage for conditions arising after First American issued the Policies, but as a factual

⁵ Vestin claims damages of \$2,241,348.70. The coverage limits of Policies 2701 and 3192 are \$1,965,000.00 and \$1,800,000.00, respectively. Thus, in the event of a remand concerning the construction of the relevant insuring clauses, an affirmance as to Policy 2701 limits any liability of First American to the \$1.8 million limit of Policy 3192.

matter, First American could not have “identified” or “excepted” the SID or SID Notice because they did not exist when it issued Policy 2701.

A fundamental principle of title insurance law is that title insurance affords coverage only for risks that exist on the effective date of a policy. “That the title company insures ‘as of Date of Policy’ means that an insured is protected against loss by reason of a lien, encumbrance, or other title defect . . . only if it existed *prior to* the date the policy was issued. 1 Joyce D. Palomar, Title Insurance Law § 5:2: at 5-4 (2003) (emphasis in original).⁶ In other words, the policy date “marks the moment the title is insured.” Id. § 5.2: at 5-6. Because the conditions identified by Vestin—namely, the SID and the SID Notice—did not exist when First American issued Policy 2701, the lower courts correctly concluded that Policy 2701 affords Vestin no coverage.

The Form 104 Endorsement insures “against loss or damage” that the insured “shall sustain by reason of . . . [t]he existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy.” (R. at 117, Ex. 1 attached.) Vestin premises its claim to coverage under Policy 2701 on the contention that First American issued the Form 104 Endorsement after Eagle Mountain City created the SID or recorded the SID Notice. Vestin apparently believes that this somehow changes the effective date of Policy 2701 or gives the Form 104 Endorsement to Policy 2701 an effective date later than the Policy itself. (See R. 7–8 (Compl. at ¶ 26); R. 232.)

Vestin’s argument fails under the language of the Form 104 Endorsement, which plainly states:

⁶ Accord National Mortgage Corp. v. American Title Ins. Co., 261 S.E.2d 844, 847-48 (N.C. 1980) (“[T]itle insurance operates to protect a purchaser or mortgagee against defects in or encumbrances on title which are in existence at the time the insured takes his title. ‘It is not prospective in its operation and has no relation to liens or requirements arising thereafter.’”); Barlow Burke, Law of Title Insurance § 3.03 at 3-48 (3d ed. 2003) (“Title insurance is an indemnification agreement for the title as it exists on the effective date of the policy.”).

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy . . . *nor does it extend the effective date of the policy and any prior endorsements*

(R. 117 (emphasis added), Ex. 1 attached.) As the endorsement is subject to all of the terms and provisions of Policy 2701, it is subject to the effective date of that Policy. And further, the Form 104 Endorsement expressly states that it does not change that effective date.

Because Policy 2701 became effective before Eagle Mountain City created the SID or recorded the SID Notice, neither the SID nor the SID Notice can be covered under the Policy. The Court should affirm the court of appeals' decision concluding that there is no coverage under Policy 2701.

II. UNDER THE POLICIES, FIRST AMERICAN HAD NO OBLIGATION TO NOTIFY VESTIN OF THE CITY'S INTENT TO CREATE THE SID OR LEVY THE ASSESSMENTS.

The court of appeals affirmed the dismissal of Vestin's complaint, ruling that under the unambiguous language of the insuring clauses of both Policies, the SID and SID Notice were not "defects", "incorrectnesses", or "other matters" against which First American had insured. Vestin, 2004 UT App 379, ¶¶10, 14, 16. On appeal to this Court, Vestin raises the same arguments rejected by the court of appeals. The single issue on which this Court granted certiorari is whether the Policies unambiguously applied only to actual assessment liens and did not impose on First American an obligation to provide notice of the SID and SID Notice. (April 19, 2005 Order.) The answer to this question is "yes." Vestin's alleged injury was caused by the post-policy Assessment Lien, which the Policies unambiguously do not cover. Vestin fails in its attempt to find coverage by focusing on pre-policy preliminary steps in the assessment process. The SID and SID Notice are not covered and to so construe the Policies would render meaningless other key terms.

A. Construction of the Policies.

The court of appeals concluded that the Policies are unambiguous and do not afford coverage to Vestin. Vestin, 2004 UT App 379, ¶19 n.9. It reached this conclusion by considering the parties' intentions as determined by the plain meaning of the Policies. Id. at ¶9. Vestin argues that the Policies are unambiguous and that they provide coverage for Vestin's claim. (Vestin Br. at 39.) It further argues, however, that because Vestin interprets the Policies differently than does First American, the trial court, and the court of appeals, the Policies must be ambiguous. (Id.) But "policy terms are not necessarily ambiguous simply because one party seeks to endow them with a different interpretation according to his or her own interests," Alf, 850 P.2d at 1274-75, which is what Vestin does here.⁷

⁷ Vestin also argues that the lower courts should have considered Vestin's extrinsic "evidence" in interpreting the Policies. Vestin's "evidence" takes the form of two self-serving affidavits that opine concerning (i) one unrelated title insurance policy that First American issued to an unrelated third party, (ii) customs and practices in the title insurance industry, and (iii) customs and practices of First American itself. As a preliminary matter, the Court did not grant certiorari on the issue of whether the lower courts improperly failed to consider extrinsic evidence or treat a Rule 12(b)(6) motion as one for summary judgment. Consequently, this issue is not before the Court and the Court should reject it out of hand. Further, as noted above, because the Policies are unambiguous on their face, the Court should determine the parties' intent from the four corners of the documents, not from self-serving extrinsic evidence.

But even considering the affidavits, they offer no evidence suggesting that either First American or Vestin believed or intended that the Policies would require First American to disclose the SID or SID Notice. For example, the affidavit of Vestin officer Daniel Stubbs offers opinions on the title insurance industry and speculation about what Vestin might have done had it been aware of the SID or the due-on-sale provision that the City ultimately included in the Assessment Ordinance. Importantly, Stubbs never states that Vestin intended that the Policies would require First American to disclose the existence of the SID or the recordation of the SID Notice. And as a factual matter, the April 25 2001 Assessment Ordinance was the first public notice that the City intended the Assessment to be due on sale. The Ordinance was passed months after First American issued both Policies and therefore the due-on-sale provision is not something that First American could have disclosed. Consequently, Stubbs statements about what Vestin would have done had it known of the due-on-sale provision are irrelevant.

Insurance policies are simply contracts and the courts must construe them like ordinary contracts. Alf v. State Farm Fire & Cas., 850 P.2d 1272, 1274 (Utah 1993). This Court has stated that, “[w]hen interpreting a contract, a court first looks to the contract’s four corners to determine the parties’ intentions, which are controlling. If the language within the four corners of the contract is unambiguous . . . a court determines the parties’ intentions from the plain meaning of the contractual language as a matter of law.” Fairbourn Commercial, Inc. v. American Housing Partners, Inc., 2004 UT 54, ¶10, 94 P.3d 292.⁸ A contract is ambiguous only if it is unclear, omits terms, has multiple plausible meanings, or is not plain to a person of ordinary intelligence and understanding. See Utah Farm Bureau Ins. Co. v. Crook, 1999 UT 47, ¶6, 980 P.2d 685, 686 (citation omitted); Alf, 850 P.2d at 1274-75.

Vestin claims that “[a] policy of insurance is strictly construed against the insurer and in favor of the insured.” (Vestin Br. at 36.) This is not the law. Instead, “if a policy is not ambiguous, no presumption in favor of the insured arises and the policy language is

Similarly irrelevant is the Thomas Lea affidavit, which purports to discuss the contents of a policy First American issued to Integrated Financial Associates, an unrelated third party having no involvement in this dispute. Vestin apparently suggests that, because First American’s contract with Integrated Financial Associates had terms different than those contained in First American’s contracts with Vestin, the differences somehow render the Policies ambiguous. This argument turns the law of contract on its head. The terms that First American negotiated with Integrated Financial Associates are irrelevant to the terms that First American negotiated with Vestin.

Vestin has not offered the affidavits to aid in interpretation of an ambiguous contract, but instead to vary or supplement the terms of fully integrated and unambiguous contracts. “[T]he integrity of a written contract is maintained by not admitting parol evidence to vary or contradict the terms of the writing once it is determined to be an integration. It is also maintained by applying a rebuttable presumption that a writing which on its face appears to be an integrated agreement is what it appears to be.” Brown v. Richards, 840 P.2d 143, 148 (Utah 1992). Vestin’s extrinsic “evidence” is no evidence of contractual ambiguity, but instead parol evidence by which Vestin attempts to vary the unambiguous terms of the Policies.

⁸ Accord Green River Canal Co. v. Thayn, 2003 UT 50, ¶17, 84 P.3d 1134; Central Fla. Invs., Inc. v. Parkwest Assocs., 2002 UT 3, ¶12, 40 P.3d 599; Bakowski v. Mountain States Steel, Inc., 2002 UT 62, ¶16, 52 P.3d 1179; R&R Energies v. Mother Earth Indus., 936 P.2d 1068, 1077 (Utah 1997).

construed according to its usual and ordinary meaning.” Alf, 850 P.2d at 1274.⁹ And if a policy’s language is clear, courts may not rewrite it for a party but instead must enforce it as written. Utah Farm Bureau, 1999 UT 47, ¶6. Because the Policies are unambiguous, the Court should construe them like any other.¹⁰

The court of appeals correctly construed the Policies by first determining “whether Vestin’s claims are covered under the plain language of the coverage sections” of the Policies. Vestin, 2004 UT App 379, ¶9 & n.2; accord Elysian Inv. Group, LLC v. Stewart Title Guar. Co., 129 Cal. Rptr. 2d 372, 376 (Cal. Ct. App. 2002). Considering the Policies in their entirety, the insuring clauses unambiguously offer no coverage to Vestin.

B. Vestin’s Purported Injury was Caused by the Assessment Lien, not the SID or SID Notice.

The court of appeals ruled that Vestin failed to identify any covered condition that affected its title on the effective dates of the Policies. Vestin, 2004 UT App 379, ¶15. The court concluded that Vestin suffered no injury until the City passed the Assessment Ordinance and thereby created the Lien, well after the effective dates of the Policies. Id. ¶16. As Vestin concedes in its complaint, the sole cause of its alleged injury was the Assessment Lien itself. Vestin alleges that “Vestin and the assignees have been damaged

⁹ Accord First American, 966 P.2d 834, 836 (Utah 1998); see also Miller v. USAA Cas. Ins. Co., 2002 UT 6, ¶49, 44 P.3d 663, 676.

¹⁰ Even if there were an ambiguity in the policy language—which there is not—“[t]he rationale behind interpreting ambiguities against the insurer would not seem to apply as strongly when the transaction is between two parties of equal sophistication and equal bargaining power.” Falmouth Nat’l Bank v. Ticor Title Ins. Co., 920 F.2d 1058, 1062 (1st Cir. 1990); cf. Bushnell Real Estate, Inc. v. Nielson, 672 P.2d 746, 751 (Utah 1983) (refusing to construe contract with a real estate broker in favor of seller because “[t]here was no inequality of bargaining power”). Vestin is no barefoot Pilgrim. It is a sophisticated hard-money lender in the business of making multi-million dollar loans, just as it did in this case. In his affidavit, Vestin officer Daniel Stubbs claims to have *fifteen years* of experience in the title insurance industry. There was no inequality of bargaining power between Vestin and First American and therefore the policies should not be construed against First American.

*as a result of the Assessment*¹¹ in an amount of not less than \$2,241,348.70, the amount of the Assessment against the Parcels.” (R. 9 (emphasis added).) After First American moved to dismiss on the basis that the Assessment Lien arose post-policy and therefore is not covered, Vestin grasped for a claim to coverage independent of the Assessment Lien. It settled on the City’s creation of the SID and the recording of the SID Notice. As argued below, these were simply preliminary steps in the process of creating and levying the Assessment Lien. But Vestin has yet to explain how—as of the effective dates of the Policies—the existence of the SID and the recording of the SID Notice caused it any injury. Vestin offers no explanation because its purported injury was caused by the Lien itself, not preliminary steps in the process of creating it. Had Vestin foreclosed and sold the Property after the City had created the SID but before it passed the Assessment Ordinance and levied the Assessment, the existence of the SID would have had no legal effect on Vestin’s mortgage lien or its title. Only the Assessment Lien itself caused Vestin any alleged injury. Because the Assessment Lien did not exist when First American issued either Policy, Vestin’s claim is not covered.

As it did before the court of appeals, Vestin insists that the Policy jackets provide coverage for the alleged loss caused by the Assessment Lien. (R. 3, 5 (Compl. ¶¶ 10, 17); Vestin Brief at 18.) The Policy jackets state:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE,
THE EXCEPTIONS FROM COVERAGE CONTAINED IN
SCHEDULE B AND THE CONDITIONS AND
STIPULATIONS, FIRST AMERICAN . . . insures, *as of*
Date of Policy shown in Schedule A, against loss or damage,
not exceeding the Amount of Insurance stated in Schedule A,
sustained or incurred by reason of:

. . .

2. Any defect in or lien or encumbrance on the title;

¹¹ “Assessment” is a defined term in Vestin’s complaint. Vestin defines “Assessment” as the assessment levied by Eagle Mountain City on April 25, 2001. (R. 7 (Compl. ¶ 23).)

(R. 80, 100 (emphasis added); Exs. 1 & 2 attached.) Under this provision for harm caused by the Assessment Lien to be covered by the Policies, the Assessment Lien must have existed “as of Date of Policy.” Moreover, this provision of the Policies states that it is subject to the “Exclusions From Coverage.” Paragraph 3(d) of the Exclusions From Coverage provides that “[d]efects, liens, encumbrances, adverse claims or other matters . . . attaching or created subsequent to Date of Policy” are “*expressly excluded*” from coverage. (R. 81, 101 (emphasis added); Exs. 1 & 2 attached.)

Thus, whether the Assessment Lien is covered under the Policies depends on when the Lien attached or was created. If this occurred after the April 6, 2000 and August 28, 2000 effective dates of the Policies, any loss suffered by Vestin as a result of the Assessment Lien is not covered by the Policies. Under the Utah Municipal Improvement District Act, an assessment does not constitute a “lien against the property upon which the assessment is levied” until the “effective date of the ordinance levying the assessment.” Utah Code Ann. § 17A-3-323. Here, the City did not pass the Ordinance levying the assessment until April 25, 2001—eight months *after* the latter of the two Policy dates, and the ordinance did not become effective until April 30, 2001, when the City published it. (R. 213; Ex. 5, attached.) Thus, because the Lien was not created until April 30, 2001, it did not exist on April 20, 2000 or August 28, 2000, when First American issued the Policies.¹²

¹² The Assessment Ordinance itself confirms this conclusion. Section 3, entitled “Levy of Assessments,” states: “The Town Council of the Issuer does *hereby levy* an assessment to be assessed upon the real property identified in the Assessment List.” (R. 202 (emphasis added); Ex. 5 attached.) Thus, by its own terms, the Assessment was not levied until late April 2001, well after the Policy dates. Further, under the heading “Lien of Assessment,” the Ordinance provides that the Assessment “shall constitute a lien against the property upon which the assessment is levied *on the effective date of this Assessment Ordinance*.” (R. 208 (emphasis added); Ex. 5 attached.) The Ordinance became effective “immediately upon its passage and approval and publication as required by law.” (R. 210; Ex. 5 attached.) As a matter of law, the Assessment did not become a lien until April 30, 2001, eight months after the effective date of the latter of the two Policies. As the Assessment became a lien or encumbrance well after the Policy dates, it is “expressly excluded” from coverage.

Vestin also alleges that it is entitled to coverage under the Form 104 Endorsement to the Policies. But this Endorsement provides that First American insures “against loss or damage which such insured shall sustain by reason of . . . [t]he existence of any *subsisting* tax or assessment lien which is prior to the insured mortgage.” (R. 3-4, 6 (Compl. ¶¶ 11, 18); R. 111; Ex. 1 attached (emphasis added).) For the Assessment Lien to be covered under this endorsement, it must have been a lien “subsisting” when First American issued the Policies. “Subsistent” is defined as “to have existence.” Merriam-Webster’s Collegiate Dictionary 1174 (10th ed. 1994). As noted above, the Utah Municipal Improvement District Act states that an assessment lien is created “on the effective date of the ordinance levying the assessment.” Because the Assessment Ordinance was not effective until April 30, 2001—more than eight months after First American issued the last of the two Policies—the Lien did not exist or “subsist” when the Policies were issued.

Vestin’s injury was caused by the Assessment Lien, not the SID or SID Notice. Under the unambiguous language of the Policies, Vestin has no coverage for a post-policy lien like this one. The Court should affirm the decisions of the court of appeals.

C. The SID and SID Notice are not “Defects” Under the Policies.

The court of appeals held that neither the SID nor the SID Notice were “defects” in Vestin’s title. Vestin, 2004 UT App 379, ¶14. The court ruled that the SID and SID Notice merely exposed Vestin to the possibility of an assessment liability at some unknown, unspecified future date. Id. ¶16. Before this Court, Vestin makes the same arguments that the court of appeals considered and rejected. Vestin contends that, under

The Policies’ exceptions similarly bar coverage. Schedule B, Part 1 states that “[t]his policy *does not insure* against loss or damage . . . which arise by reason of: . . . This property lies within the boundaries of Eagle Mountain City and *is subject to all charges and assessments levied thereunder.*” (Exs. 1 & 2, attached (emphasis added).) Schedule B goes on to state that a check was made for levied assessments and that none were found. (Id.) This was a true and accurate statement, as Eagle Mountain did not levy the Assessment until eight months after First American issued Policy 3192.

the language of the policy jackets, the SID and SID Notice are covered “defects” on the title. In other words, even though the Assessment Lien itself did not exist when First American issued the Policies and is not covered, Vestin contends that the City’s notice that it *intended* to levy an assessment and *might* create a lien is covered by the Policies. (Vestin Br. at 18–22.)

The SID and SID Notice are not “defects” in Vestin’s title. Instead, they are preliminary steps in a process that ultimately led to the Assessment Lien. A leading treatise on title insurance law states that a “‘defect in title’ is said to arise when the aggregate of rights, privileges, and powers commonly known as ownership is subjected to the claim of others.” Barlow Burke, Law of Title Insurance § 3.05 at 3-71 (3rd ed. 2003). Another leading treatise offers a similar definition, stating that “a ‘defect’ exists in the insured title when a third-party claims an interest which interferes with the insured’s use of the property according to the estate or interest insured.” 1 Joyce D. Palomar, Title Insurance Law § 5.5: at 5-15 (2003). Thus, for there to have been a “defect” as of the dates of the Policies, the SID or SID Notice must have subjected Vestin’s interest in the property to a claim from the City that interfered with Vestin’s use of the property *as of the Policy dates*.¹³ This was not the case. Standing alone, the SID and SID Notice did not subject Vestin’s title to any third-party claims as of the effective dates of the Policies.

¹³ There is no Utah case directly defining “title defect” in this context, but what Utah courts have said shows that Utah law is in accord. Utah courts consider “defects” in title to be things like (i) signatures forged on a trust deed prior to the issuance of title insurance, see Zions First Nat. Bank v. National Am. Title Ins., 749 P.2d 651, 653 (Utah 1988), or an IRS tax lien that existed when the title insurance was issued. See Esonoza v. Safeco Title Ins. Co., 598 P.2d 346, 347 (Utah 1979). These are circumstances that subject an insured’s interest to another’s claim at the time of policy issuance. Consistent with the Utah case authority, Palomar offers the following examples of covered title defects: (i) forged or improperly acknowledged or delivered deeds; (ii) deeds conveyed by minors or incompetents; (iii) deeds conveyed by spouses without the other spouse’s consent or release; (iv) deeds containing inaccurate legal descriptions; (v) valid timber deeds affecting an insured title; (vi) an adverse possession claim to insured property; and (vii) an insured’s improvement’s encroachment onto adjacent land contrary to a survey. 1 Palomar, Title Insurance Law § 5.5 at 5-15 (2003). These all are circumstances subjecting an insured mortgage to adverse claims on the effective date of title insurance. The SID Notice and existence of the SID are not such claims.

Instead, Vestin’s perceived problem arose only upon Eagle Mountain’s post-policy levy of the Assessment and the attachment of the Assessment Lien. It was only that point that Vestin’s title was subjected to any third-party claims. If Vestin had sold the Property after the City created the SID but before the City levied the Assessment, Vestin’s mortgage would have been a first-position lien that was not subject to any assessment liability.

In construing the word “defect” in the Policies, Vestin argues that a “defect” is any “shortcoming, imperfection, or deficiency.” (Vestin Br. at 18.) It contends that a defect can be a burden on title so small that “title is ‘relatively’ although not perfectly, free from doubt.” (Vestin Br. at 19.) But as the court of appeals recognized, “Vestin has not identified any defect in the title to the property that existed on the effective date of the policies.” Vestin, 2004 UT App 379, ¶15. Understandably, Vestin would like to pretend that the effective dates of the Policies are meaningless, but coverage nonetheless turns on the state of title as of those dates. Barlow Burke, Law of Title Insurance, § 2.01 at 2-3 (3d ed. 2004) (stating that title insurance insures only against defects that exist when a policy is issued). At most, on the effective dates of the Policies, the SID and SID Notice provided information suggesting that, in the future, the Property *might* be subjected to an assessment lien.

1. The Established Rule is That Neither the SID nor the SID Notice can be Covered Defects, Liens, or Encumbrances.

Importantly, the Policies here are standard form title insurance documents used throughout the country.¹⁴ Construing the standardized and common language of the Policies, the court of appeals held that the SID was simply a means by which the City might levy an assessment at some unspecified future date. Vestin, 2004 UT App 379, ¶15. The court ruled that mere exposure to a potential assessment does not rise to the

¹⁴ “The forms approved by the American Land Title Association (ALTA) are in widespread use around the United States.” Barlow Burke, Law of Title Insurance § 2.04 at 2-33 (3rd ed. 2004).

level of a title defect. *Id.* ¶16.¹⁵ Although the court of appeals’ decision is the first Utah case to address the issue, all other courts and commentators that have addressed the issue uniformly conclude that the creation of an SID or the existence of an SID Notice are not covered “defects, liens, or encumbrances.” The court of appeals’ decision follows this overwhelming authority.

Vestin’s argument that the SID and SID Notice are “defects” is an argument that the mere possibility of a future tax liability is covered by title insurance. Again, in arguing that the SID and SID Notice are defects, Vestin raises the very arguments the court of appeals considered and rejected. The authorities uniformly conclude that the prospect of future liability for an assessment does not constitute a covered defect, lien, or encumbrance under a title insurance policy. “This is true even if the published ordinance or resolution authorizing the public work and the assessment expressly declare that liens *will* be levied against benefited real property if assessments are unpaid. *For coverage under the title insurance policy, the lien itself must have arisen prior to the effective date of the policy.*” 1 Joyce D. Palomar, Title Insurance Law § 5.5: at 5-21 (2003) (emphasis added).

The rule that the prospect of a future assessment is not a covered defect is sensible. The process of levying an assessment is a time consuming political process involving many complicated steps. Barlow Burke, Law of Title Insurance § 3.05[A] at 3-76.1 to 3-

¹⁵ The court of appeals reasoned that

Title insurance policies “generally have been held to include coverage for assessments existing at the time that the insurance is issued, but not to cover assessments which are rendered after that time, even though the right to levy the assessment existed at the time of the insurance.” Most importantly for this case, “unpaid future installments of an improvement assessment which have not been decreed as constituting a lien against the property *do not constitute an existing ‘requirement, lien, encumbrance, or defect.’*”

Vestin, 2004 UT App 379, ¶11 (quoting Lee R. Russ & Thomas F. Segalla, Couch on Insurance 3d § 159:36–37 (1998)) (emphasis added).

79 (2004). There are events in the assessment process that may prevent a city from ever completing or levying a proposed assessment. For example, taxpayers might object, causing elected officials to decide not to proceed. Id. Sometimes elected officials find an alternate source of funding, like state or federal grants, such that tax liens that are authorized are never levied because the source of financing for the improvements changes. Id. Similarly, there may be an error or flaw in the complicated and political assessment process, causing the process to fail or never carry through to completion. Id. “In the context of the position of a municipal government in our federal system, this hesitation to find a lien established too soon makes practical sense, both politically and legally.” Id.

Here, when First American issued the Policies, it was not known if or when the City would levy an assessment. The City could have waited ten weeks, ten months, or ten years to pass the Assessment Ordinance, or could have elected not to levy the Assessment at all. Moreover, not only was the fact and timing of the Assessment unknown, but so were its specific requirements. The events in this case highlight the uncertainties that preclude coverage as a matter of public policy. For example, when the City ultimately passed the Assessment Ordinance (long after the Policies’ effective dates), the amount of the Assessment was approximately \$3.5 million less than the estimate in the SID Notice. Just as easily, however, the amount of the assessment could have *exceeded* the estimate in the SID Notice by \$3.5 million or even \$30.5 million.¹⁶ Thus, when notice is given of an intended assessment, the fact and timing of the assessment are uncertain, as is the amount of the property owners’ liability.

¹⁶ Utah Code Ann. section 17A-3-305(1)(e) provides that if “the action cost of the improvements exceeds the estimated cost, the governing body shall nevertheless have the right to levy assessments in excess of the estimated cost.” Further, the Utah Municipal Improvement District Act authorizes municipalities to make supplemental assessments, thereby increasing the amount for which a title insurer would be liable and adding still further uncertainty. Id. § 17A-3-319 (1990).

Not only was the amount of the Assessment uncertain, but so were the terms of payment. While the Assessment Lien is the source of Vestin's alleged injury, the Assessment Ordinance's due-on-sale requirement is the specific provision that caused Vestin's supposed harm. Under this provision, instead of being paid in installments over 17 years, the entire assessment is due at the time a property owner sells an assessed parcel. Vestin insists that the due-on-sale provision caused its intended sale of the Property to fail, thereby giving rise to its damages in this lawsuit. (Vestin Br. at 12.) But the only two events that occurred before First American issued Policy 3192¹⁷ were the City's creation of the SID and its recording of the SID Notice. The SID Notice never mentioned a due-on-sale requirement. Thus, when First American issued the Policies, it could not have known—let alone disclosed—that the entire Assessment would be due in full if the Property were sold. Thus, the specific cause of Vestin's alleged injury was unknown when First American issued the Policies and Eagle Mountain City recorded the SID Notice.

The uncertainties in this case therefore highlight the impracticability of requiring coverage for the future possibility of a post-policy assessment lien. Under the rule proposed by Vestin, it would be impossible for parties to a title insurance policy to determine and negotiate an appropriate premium when coverage would require an insurer to assume liability for a range of unknown and unforeseeable terms to assessments that might never be levied in the first place. In short, at the stage in the process where a special improvement district has been created and a possible assessment approved, neither the fact of the assessment lien nor its specific requirements can be known. The unknown and unforeseeable particularities of a future assessment are simply too great for a future assessment to be covered by insurance. Not only may the assessment never happen, but if it does, it is virtually impossible to know its terms or their effect.

¹⁷ As noted above, First American issued Policy 2701 before the City created the SID or recorded the SID Notice. Thus, no events related to the SID occurred before the effective date of Policy 2701.

Uniformity and predictability are paramount when construing the relatively standardized language of title insurance policies. This is particularly true given that coverage and liability under title insurance policies can last for decades. The law of title insurance needs to be stable and consistent to ensure predictability to the parties to these transactions. Vestin’s appeal asks the Court to reject the rule established by all courts and commentators that have considered the issue presented in this appeal. Vestin asks this Court to go where no court has gone before. There is no basis for doing so and the unambiguous language of the Policies does not support such a lonely departure from the established rule.

In affirming the trial court, the court of appeals looked to, *inter alia*, the Edwards and Strass cases from Colorado and Maryland, both of which reject coverage in response to the very arguments Vestin makes here. In Edwards v. St. Paul Title Insurance Co., 563 P.2d 979 (Colo. Ct. App. 1977). Boulder County had formed a water and sanitation district in 1965. In 1967, the defendant title company issued a title insurance policy to the buyer. The policy did not mention the existence of the improvement district. In 1969, the district levied taxes against the buyer’s property. Id. at 980. As Vestin does here, the buyer sued the title company, alleging that his property’s “inclusion in the district and the consequent exposure to assessment for district taxes was a ‘defect in or lien or encumbrance on the title’ or rendered the title unmarketable.” Id. (emphasis added). The court affirmed summary judgment in favor of the title company, holding that the taxes at issue were certified and levied after the policy date and therefore were excluded from coverage. Id. The court reasoned that “the mere existence of the district and the prospect of taxes in the future was not a lien, encumbrance, or *defect* as of the date of issuance of the policy.” Id. (emphasis added).

Strass v. District-Realty Title Insurance Corp., 358 A.2d 251 (Md. Ct. Spec. App. 1976), reached the same conclusion. In Strass, a city passed ordinances in 1969 and 1970 authorizing a future levy of assessments to pay for water and sewer improvements. After

these ordinances were passed, a title company issued title insurance policies to several buyers, which policies insured against loss or damage due to defects, liens, or encumbrances. Id. at 253. The policies did not exclude or except liability for the future assessments authorized in the 1969 and 1970 ordinances. One year after the policies were issued, the city passed an ordinance levying the assessments that had been approved pre-policy in 1969 and 1970. Id. at 253-54. The buyers sued the title company, claiming that the title policies insured against the assessments. Id. at 251-52.

Relying on a Maryland statute similar to Utah's, the court concluded that the assessments were not liens on the policy dates, but instead became liens post-policy when the assessments were levied by passage of the 1971 ordinance. "The lien arose after the effective date of each of the policies. Clearly the policies of title insurance afforded no protection against the assessments as liens." Id. at 256. As to the 1969 and 1970 ordinances authorizing a future levy of assessments, the court stated: "Those assertions of future intent cannot be said to be the equivalent to a present levy, nor to establish present liability to an eventual lien." Id. at 258. The Strass court held that, so long as the city had the option not to levy the assessments, they were not inevitable, and for coverage to exist, the assessments must be inevitable. Consequently, because the assessments were not inevitable, they were not covered. Id. As in Edwards and Strass, Eagle Mountain City had the option not to levy the Assessment. As neither the Assessment nor the

Assessment Lien were inevitable when the Policies took effect, the SID Notice and SID themselves cannot be covered defects, liens, or encumbrances on Vestin's title.¹⁸

The authorities rejecting coverage under these circumstances are far more extensive than

¹⁸ Vestin has tried to distinguish Strass on the basis that the Strass court focused on the prospective future assessment as a lien or encumbrance. (See Vestin Brief at 22-23.) The policy provision at issue in Strass was substantively similar to that at issue here, involving title insurance policies that insured against certain defects, liens, and encumbrances and excepting "defects and encumbrances arising after the effective date of this Policy." 358 A.2d at 253. While the Strass court focused on whether the future intent to levy an assessment was a covered "lien" or "encumbrance," its rationale in finding no coverage applies here as well. Moreover, as noted in Palomar's Title Insurance Law—an authority on which Vestin itself relies—"the courts use the terms defect, lien, and encumbrance interchangeably." Id. § 5:5 at 5-19. Thus, the fact that the Strass court focused on the words "lien" and "encumbrance" should not be taken to suggest the court's reasoning is not equally applicable to "defects," particularly given the underlying policy rationale for the rule.

the few discussed by the court of appeals.¹⁹ In the face of the authority against it, Vestin fails to cite a single case in which the creation of a special improvement district or the

¹⁹ See, e.g., Butcher v. Burton Abstract & Title Co., 216 N.W.2d 434, 436 (Mich. Ct. App. 1974) (“Granting that the broadest definition of the word ‘encumbrance’ might include prospective charges, the general rule is that a special assessment does not become an encumbrance until it has achieved lien status.”); Cummins v. U.S. Life Title Ins. Co., 357 N.E.2d 975, 976 (N.Y. 1976) (holding that ordinance providing that city “shall levy a special assessment” was prospective only and did not create lien as of ordinance date); Cole v. Home Title Guar. Co., 244 N.E.2d 470 (N.Y. 1968) (holding that assessments approved before issuance of title policies but levied after issuance of policies became liens post-policy and therefore were excepted from coverage); Cole v. Home Title Guar. Co., 285 N.Y.S.2d 914, 915 (N.Y. App. Div. 1967) (denying coverage because assessments at issue did not become liens until after issuance of title policies); Mayers v. Van Schaick, 268 N.Y. 320, 322-24 (N.Y. 1935) (holding that title policy insuring against existence of “any and all requirements, liens, encumbrances and defects” as of policy date did not cover unpaid installments of special assessment which had not yet become liens as of the policy date); Dokel v. Title Guar. & Trust Co., 263 N.Y.S. 438, 439-40 (NY 1933) (holding that title policy insuring against “any defect or defects” did not cover an assessment that had “not become a lien at the time the policy was issued”); see also Metropolitan Life Ins. Co. v. Union Trust Co., 27 N.E.2d 225, 227 (N.Y. 1940) (holding that, because assessment had not become lien when policy was issued, assessment was not covered as a “lien” under the policy, nor was it a “charge” or “incumbrance” under the policy); Medeiros v. Guardian Title & Guar. Agency, Inc., 257 N.E.2d 644, 647 (Ohio Ct. App. 1978) (holding that assessment did not become final until day assessment ordinance was passed and therefore assessment was excluded from coverage under title guarantee as a lien attaching or created subsequent to date of guarantee); Barlow Burke, Law of Title Insurance § 3.05[A] at 3-80 to 3-81 (3rd ed. 2003) (stating that “only the levy and lien states, if occurring before the policy date, give rise to a claim, and the effective date of the lien—as occurring before or after the ‘date of policy’—is usually determinative of the matter”); 1 Joyce D. Palomar, Title Insurance Law § 5:5: at 5-20 (2003) (“Only if the property was levied against and a lien filed prior to the policy date will the insured have a claim for the amount of the special assessment.”); Lee R. Russ & Thomas F. Segalla, Couch on Insurance 3d § 159:36–37 (1998) (quoted by Vestin court at 2004 UT App 379, ¶11) (stating that title insurance policies “generally have been held to include coverage for assessments existing at the time that the insurance is issued, but not to cover assessments which are rendered after that time, even though the right to levy the assessment existed at the time of the insurance”); 43 Am. Jur. 2d Insurance § 526 (2002) (“A prospective or contingent encroachment or lien does not render the insurer liable.”); see also Burman v. Richmond Homes, Ltd., 821 P.2d 913, 921 (Colo Ct. App. 1991) (holding that title insurer “had no duty to disclose the existence of the improvement district at closing”).

contingent possibility of a future assessment has been held to be a “defect” under a title insurance policy. Vestin cites to Leh v. Burke, 331 A.2d 755 (Pa. 1974), for the proposition that “‘assessable benefits which have not yet become liens’ have been held to be ‘encumbrances.’” (Vestin Br. at 21.) Aside from the fact that Vestin does not claim coverage for the SID and SID Notice as “encumbrances,” Leh does not stand for this proposition. While Leh involved a very different set of facts and did not involve title insurance coverage, the case follows the principles adopted by the court of appeals and outlined in Edwards and Strass—namely, that the prospect of a future defect, lien or encumbrance is insufficient to create coverage under a title insurance policy.

In Leh, the issue was whether a covenant running with the land constituted a lien or encumbrance such that a grantor was liable under a warranty deed’s covenant against encumbrances. The covenant running with the land provided that, if a road adjoining the property is paved, the landowners must pay their proportionate share of the cost of the improvements. 331 A.2d 758. Shortly after the plaintiffs took title to the property, the road was paved but the plaintiffs refused to pay their share of the costs. They sued their grantor, alleging that the covenant related to road paving violated the deed’s covenant against encumbrances. Thus, the issue was whether the road-paving covenant was an “encumbrance” that their grantor had caused to burden the land at the time title transferred to the plaintiffs. Id. at 762.

The Leh court concluded that “a claim against the land conditioned on a future event . . . is not a lien or incumbrance on the title” since it only comes into existence if a future contingency occurs. Id. at 763 (citing Gilham v. Real Estate Title, Ins. & Trust Co., 52 A. 85 (1902)). The court observed that, at the time title transferred to the plaintiffs, the assessment for road paving could not be made unless a future condition occurred—namely, construction of the road. Consequently, “the claim could not exist at the time of transfer.” Id. at 763. The Leh court held that the road-paving covenant was not an encumbrance because “there can be no encumbrance on the land where the

assessment is not yet made, thus when the construction has not yet been completed, or even begun, no encumbrance exists which the grantor is obligated to discharge.” Id. at 763–64. As in Leh, Eagle Mountain had not levied the Assessment, completed construction of the improvements, or even started them. As in Leh, there is no coverage for the mere possibility of a future assessment.²⁰

The SID was a preliminary step in the lien creation process. When the Policies issued, a future assessment was a mere possibility. Both the fact and terms of the Assessment were unknown and unforeseeable. The court of appeals rightly followed the rule adopted by all courts and commentators that have considered this issue—namely,

²⁰ Vestin also cites the 110 year-old case of Lafferty v. Milligan, 30 A. 1030 (Pa. 1895), apparently for the proposition that assessments levied after title transfers can be an encumbrance. This case, like Leh, did not involve title insurance but instead the issue of whether street improvements were an “encumbrance” that fell within a deed’s covenant against encumbrances. Id. at 1031. The court defined an “encumbrance” as “every right or interest in the land which may subsist in third persons to the diminution of the value of the land, but consistent with the passing of the fee by the conveyance.” Id. at 1031. Solely because the street improvements *had been completed* over two years before the conveyance, the court concluded that a “burden or incumbrance was imposed upon this lot for this improvement, to be made a specific lien in amount, as soon as the proceedings to ascertain the amount were completed.” Id. at 1032. Thus, because the city had completed improvements, they obviously would have to be paid for, and therefore there was “a legal right or claim in a third person, the city, on this lot.” Id.

The outcome in Lafferty is identical to that in Bel-Air Motel Corp. v. Title Ins. Corp. of Penn., 444 A.2d 1119 (N.J. Sup. Ct. 1981), a New Jersey trial court decision that is the only case that Vestin has cited involving an assessment lien. (Vestin Br. at 29–30.) The court of appeals considered the Bel-Air decision and appropriately rejected it. Vestin, 2004 UT App 379, ¶15. As in Lafferty, in Bel-Air, the city had *completed* the improvements. The city subsequently levied an assessment that was overturned shortly before the title policy issued. The city levied a reassessment after the policy date. The New Jersey trial court concluded that there was a defect in title created “when the improvement was completed.” Id. at 1122. The court reasoned that “[t]he fact that the local improvement had been completed made the eventual assessment of the property a certainty. The only question then remaining was the amount of the assessment.” Id. Both Lafferty and Bel-Air are consistent with the rule adopted and followed by the court of appeals and all of the commentators and reported cases—namely, that there is coverage for a lien, encumbrance, or defect only if it is not contingent or uncertain on the effective date of the policy. Here, the Assessment was contingent and uncertain and therefore there is no coverage under the Policies.

that the mere prospect of a future assessment is not a covered “defect.” This Court should affirm.

2. Construing “Defect” to Include the SID and SID Notice Would Render Meaningless Other Key Policy Provisions.

Vestin’s contention that the SID and SID Notice are “defects” violates a fundamental principle of contract construction that Vestin itself acknowledges—namely, that in construing a contract, the court is to “harmonize and give effect to all of [its] provisions.” Dixon v. Pro Image Inc., 987 P.2d 48, 52 (Utah 1999); accord Fuller v. Director of Finance, 694 P.2d 1045, 1048 (Utah 1985). This Court must consider each contract provision “in relation to all others.” Willard Pease Oil & Gas Co. v. Pioneer Oil & Gas Co., 899 P.2d 766, 770 (Utah 1995). This principle applies equally to title insurance policies. See First American Title Ins. Co. v. J.B. Ranch, Inc., 966 P.2d 834, 836 (Utah 1998).

Paragraph 3(d) of the Policies’ exclusions from coverage states that “[d]efects, liens, encumbrances, adverse claims or other matters . . . attaching or created subsequent to Date of Policy” are “expressly excluded” from coverage. Similarly, the Form 104 Endorsement insures “against loss or damage . . . by reason of . . . [t]he existence of any *subsisting* tax or assessment lien.” Creation and notice of a special improvement district are preliminary steps in the process of levying an assessment lien. If Vestin were correct in arguing that these preliminary steps constitute “defects,” then the foregoing exclusion and endorsement would become meaningless. In other words, if an early step in the process of creating an assessment lien were a covered “defect,” the Policies’ requirements that the lien exist pre-policy would be meaningless, allowing an insured to avoid the requirement that a lien exist or attach pre-policy. The meaning of “defect” cannot be so broad as to nullify other provisions of the Policies.

3. Section 17A-3-307(6)(c) Should not be Used to Construe the Term “Defect” in the Policies.

For the first time, Vestin contends that the decisions of the trial court and court of appeals conflict with a Utah statute. Vestin refers to Utah Code Ann. section 17A-3-307(6)(c), which uses the word “encumbrance” as a short-hand way of referring to the recorded “final approved resolution creating the district.” (Vestin Br. at 20.) Vestin argues that, because the legislature “has referred to the recording of the SID as an ‘encumbrance,’ the Court of Appeals’ decision holding it was not a ‘defect, lien, or encumbrance’ is demonstrably wrong.” (*Id.* at 21.) The Court should reject Vestin’s argument premised on section 17A-3-307(6)(c) for at least four reasons: (1) Vestin did not present the argument to the lower courts and therefore Vestin waived it on appeal; (2) Vestin does not argue that the SID or SID Notice were encumbrances and therefore the statute is irrelevant to the meaning of “defect” under the Policies; (3) there is no conflict between the statute and the court of appeals’ actual holding; and (4) the “encumbrance” language in the statute is irrelevant to any issues before this Court.

To preserve an argument on appeal, an appellant must raise the argument before the lower court. Failure to raise and preserve an argument waives the argument on appeal.²¹ Vestin concedes that it failed to raise below its argument premised on section

²¹ Carrier v. Salt Lake County, 2004 UT 98, ¶43 (“[A]s a general rule we decline to address issues raised for the first time on appeal.”); Bd. of Trs. v. Keystone Conversions, LLC, 2004 UT 84, ¶32 (“Absent plain error or extraordinary circumstances, we do not address issues raised for the first time on appeal.”); State v. Bisner, 2001 UT 99, ¶39, 37 P.3d 1073, 1085 (“Bisner failed to properly preserve this claim at the trial level, and thus waived his right to raise the issue on appeal.”); DeBry v. Cascade Enters., 935 P.2d 499, 502 (Utah 1997) (appellants’ failure to raise on appeal issues that were ripe for appeal results in “waiver of their right to raise them at a later time”).

17A-3-307(6)(c). (Vestin Br. at 20.)²² The argument should not be considered by this Court.

Apart from Vestin's failure to raise the section 17A-3-307(6)(c) argument below, the Court should reject the argument because Vestin does not contend that the SID or SID Notice were "encumbrances." Consequently, the statute's use of the term is irrelevant to the meaning of "defect" under the Policies. In its briefs and argument to the court of appeals, Vestin went to great lengths to emphasize that Vestin *was not* contending that the SID or the SID Notice were "encumbrances," stating: "Vestin does not claim coverage under either the 'lien' or 'encumbrance' provisions of the Policies." (Vestin Opening Br. at 22 n.7; see also Vestin Reply Br. at 1.) Indeed, Vestin's main argument for distinguishing the authorities cited by First American has been to contend that those authorities are inapposite because they deal with liens and encumbrances, not "defects." (Vestin Opening Br. to Ct. App. at 23–24; Vestin Reply to Ct. App. at 3–4.)

In its brief to this Court, however, Vestin now claims that "defect" is a broad term that encompasses "encumbrance" and that if something is an "encumbrance" it also is a "defect." (Vestin Br. at 21.) Vestin cannot have it both ways: the SID and SID Notice

²² Vestin contends that, although it failed to raise the statute below, the Court has "plenary power" to interpret Utah law. (Vestin Br. at 20–21.) In support, Vestin cites Covington v. Board of Review, 737 P.2d 207, 209 (Utah 1987), for the proposition that the Court has plenary power to review "most questions of statutory construction." (Vestin Br. at 21.) The language quoted in Covington does not stand for the broad proposition stated by Vestin. Instead, the language simply refers to the standard of review to be applied to decisions by administrative agencies construing statutes, which review is "plenary with no deference accorded the administrative agency's determination." Covington, 737 P.2d at 209. The other cases that Vestin cites in support of its "plenary power" argument are criminal appeals involving the plain error and exceptional circumstances doctrine. (Vestin Br. at 3 (citing but not discussing State v. Martin, 964 P.2d 313, 318 (Utah 1998) (plain error) and State v. Irwin, 924 P.2d 5, 7–11 (Utah Ct. App. 1996) (discussing plain error and exceptional circumstances doctrine). Vestin does not argue that its failure to raise the section 17A-3-307(6)(c) argument is excused under the doctrines of plain error or exceptional circumstances. These cases are inapposite.

cannot be “defects” for purposes of attempting to distinguish the weighty authority against it, while simultaneously being “encumbrances” for purposes of an eleventh hour argument that the court of appeals’ decision conflicts with an unrelated statute. And aside from contradicting its arguments before the trial court and court of appeals, as well as statements made elsewhere in its brief to this Court,²³ Vestin’s claim that an encumbrance is a “defect” violates the rule of contract construction requiring a court to give effect to all of a contract’s provisions. Green River Canal Co. v. Thayn, 2003 UT 50, ¶30. Under Vestin’s argument, the Policies’ use of the term “encumbrance” becomes meaningless.

The Court also should reject Vestin’s argument premised on section 17A-3-307(6)(c) because Vestin incorrectly suggests that the court of appeals held that the SID and SID Notice are not “encumbrances” under the Policies. The court of appeals did not so hold and therefore there is no conflict between the lower court’s decision and the reference to “encumbrance” in section 17A-3-307(6)(c). As noted above, Vestin insisted to the court of appeals that it was not contending that the SID or SID Notice were “encumbrances.” Based on Vestin’s briefs and argument, the court of appeals framed the issue as whether the Policies “afford coverage to Vestin for ‘defects,’ ‘incorrectness’ and ‘other matters.’” Vestin, 2004 UT App 379, ¶10. The court expressly noted that Vestin does not claim coverage under the “lien” or “encumbrance” provisions. Id. Thus, the issue of coverage for Vestin’s claim as an “encumbrance” was never before the court of appeals. And more importantly, the issue was not before the court because Vestin affirmatively told the court that it was not relying on the “encumbrance” language of the Policies.

²³ Oddly, two pages earlier in its brief, Vestin contends that “using multiple terms would be unnecessary if they had the same meaning.” (Vestin Br. at 19.) Under Vestin’s own logic, if an “encumbrance” is a “defect,” the term “encumbrance” has the same meaning as “defect,” rendering use of the word unnecessary.

In misunderstanding the court of appeals' holding, Vestin apparently focuses on paragraph 16 of the court's opinion, which states that "mere exposure to a potential assessment does not rise to the level of a defect, lien, or encumbrance." Vestin, 2004 UT App 379, ¶16. The court of appeals' reference to "encumbrance" in paragraph 16 is dictum, which is apparent from the remainder of the opinion, particularly paragraphs 10 through 16. In paragraph 14, the court of appeals limited its holding to the term "defect," stating: "While we hold that neither the SID nor the notice in this case constituted defects in Vestin's title, we also recognize that 'defect' may be defined as something less than a 'lien' or 'encumbrance.'" Vestin, 2004 UT App 379 ¶14. The issue of whether the SID is an encumbrance under the Policies was never before the court of appeals and the court of appeals never decided it. This appeal is to the decision of the court of appeals, and because it did not rule concerning whether the SID or SID Notice are "encumbrances," the Court need not address Vestin's statutory argument.

The Court also should reject Vestin's argument premised on section 17A-3-307(6)(c) because the statute is irrelevant to the issue now on appeal. The language on which Vestin relies in section 17A-3-307(6)(c) deals with how a municipality effects changes in property to be assessed. That issue is irrelevant to this appeal or the construction of the terms "defect" or "encumbrance" in a title insurance policy. At worst, the use of the term "encumbrance" in the statute may represent a slightly cavalier use of the word in a different context and as a short-hand way of referring to a recorded "final approved resolution creating the district." The legislature's use of the term "encumbrance" in the context of the statute in no way suggests that the same meaning should be applied to the term "encumbrance" in a title insurance policy, which is a term

of art.²⁴

III. FOR THE POLICIES TO COVER A “DEFECT”, “OTHER MATTER”, OR “INCORRECTNESS”, THE IDENTIFIED CONDITION MUST HAVE CAUSED THE INJURY.

Vestin identifies three insuring provisions under the Policy by which it claims coverage: the policy jackets’ coverage for “defects” on the title, the Form 104 Endorsement’s coverage for “other matters” affecting the validity or priority of Vestin’s lien, and the Form 31 Endorsement covering any “incorrectness” in the Policies’ assurances. Vestin has conceded that the cause of its purported injury was the Assessment Lien. Vestin has never explained how it suffered any injury independent of that purportedly caused by the Lien, let alone explained how the SID or SID Notice caused it any injury. Under the plain and unambiguous language of the insuring clauses upon which Vestin relies, for a “defect”, “other matter”, or “incorrectness” to be covered under the Policies, the condition must cause injury to Vestin on the effective date of the Policies. Even if the SID or SID Notice were somehow defects, “other matters,” or “incorrectnesses,” they would not be covered under the Policies because they caused no injury to Vestin.

The three relevant insuring provisions plainly require that, for coverage to exist, the condition relied upon by Vestin must cause the injury. For a defect to be covered

²⁴ Interestingly, the Municipal Improvement District Act also uses the word “encumbrance” synonymously with the word “lien.” Section 17A-3-323 provides that an assessment “shall constitute a lien against the property upon which the assessment is levied on the effective date of the ordinance levying the assessment.” Section 17A-3-323 further states that the assessment “lien shall be superior to the lien of any trust deed, mortgage, mechanic’s or materialman’s lien, *or other encumbrance* and shall be equal to an on a parity with the lien for general property taxes.” *Id.* (emphasis added). Thus, in the very statute in which the legislature establishes when a special assessment becomes a lien, the legislature uses the word “encumbrance” synonymously with “lien,” employing the term as shorthand for deeds, mortgages, mechanic’s or materialman’s liens, property tax liens, and other similar liens. And unlike section 17A-3-307(6)(c), which is irrelevant to the issues now before the Court, section 17A-3-323 bears directly on the issues before the Court.

under the policy jackets, the insured must “sustain” or “incur” loss or damage on the effective dates as a result of the identified defect. (R. at 80, Ex. 2 attached.) Similarly, under the Form 104 Endorsement, the Policies insure only against “loss or damage” that an insured “sustains” as a result of “other matters affecting the validity or priority of the lien.” (R. at 92, Ex. 2 attached.) Likewise, the Form 31 Endorsement insures only against “loss” that the insured “shall sustain by reason of . . . [a]ny incorrectness in the assurance” given by First American. (R. at 89, Ex. 2 attached.) Under all three insuring provisions, the condition Vestin complains of must have caused the injury. The conditions Vestin identifies are the existence of the SID and the recording of the SID Notice.

The mere existence of the SID caused no loss or damage to Vestin. As a matter of state law, the SID is nothing more than a “district created for the purpose of making improvements.” Utah Code Ann. § 17A-3-303(19) (2003). To suggest that the SID’s existence negatively affected the priority of Vestin’s lien is like suggesting that the existence of Eagle Mountain City or Utah County negatively affected the lien.²⁵ The SID was simply a means by which the City *might* levy an assessment at some unspecified future date. It was a step in a process that the City might *or might not* carry through to completion. In and of itself, the SID caused no loss or damage to Vestin. If Vestin had foreclosed on the Property and sold it before the Assessment Lien was created in April 2001, the existence of the SID would have had no legal effect on Vestin’s lien or title.

The SID Notice similarly caused no injury. The SID Notice was just that: a “notice.” The SID Notice itself did not give Eagle Mountain City any rights or take any from Vestin. The Notice did not state that an assessment would be levied, but instead

²⁵ The Court has explained that a special improvement district is “a separate arm of the government formed for public purposes” with power to levy taxes for the limited purposes of the district. Tygesen v. Magna Water Co., 119 Utah 274, 280, 298, 226 P.2d 127, 131, 139 (1950). The fact that property is contained within a special improvement district is not information that a title insurer needs to disclose. See Burman v. Richmond Homes Ltd., 821 P.2d 913, 921 (Colo. Ct. App. 1991) (holding that title insurer “had no duty to disclose the existence of the improvement district at closing”).

that the City *intended* to levy one in an estimated amount at some unspecified future date. Simply put, the Notice did not constitute a defect, other matter, or incorrectness in Vestin's title that caused any loss or harm to Vestin. Instead, when the Policies issued, the Notice was only a preliminary or initial step in a process that *might* have led to an assessment. Vestin has yet to identify any loss or damage it sustained as a result of the SID Notice itself.

Neither the SID nor the SID Notice harmed Vestin. They therefore are not covered under the insuring provisions of the Policies. The Court should affirm the decision of the court of appeals.

IV. NEITHER THE SID NOR THE SID NOTICE WAS AN "INCORRECTNESS" COVERED BY THE FORM 31 ENDORSEMENT.

Before the court of appeals, Vestin argued that there was an "incorrectness" in the Policies because the existence of the SID somehow impaired Vestin's mortgage. (Vestin Br. to Ct. App. at 31.) Vestin never explained how the SID "impaired" its mortgage. The court of appeals rejected this argument, ruling that neither the SID nor the SID notice rendered First American's assurances incorrect on the Policy dates because Vestin's mortgage could not be impaired until the City levied the Assessment Lien. Vestin, 2004 UT App 379, ¶16. On appeal to this Court, Vestin raises the same arguments that the court of appeals rejected. (Vestin Br. at 22–23.) Vestin also argues that because the Form 31 endorsement uses the word "can," the Policy provides coverage against any covenant, condition, or restriction that "may perhaps" or "may possibly" affect Vestin's lien at any time in the future. (Vestin Br. at 23–24.)

Vestin again ignores that the Policies provide coverage only as of their effective dates. The Form 31 Endorsement expressly states that it is "made a part of the policy and is subject to the schedules, conditions and stipulations therein." The Policy jacket states that the Policy insures only "as of the Date of Policy." Consequently, the Form 31 endorsement applies only to "covenants, conditions, or restrictions under which the lien

of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired” “*as of Date of Policy*.” Even accepting Vestin’s argument construing the word “can,” when First American issued Policy 3192, neither the SID nor the SID Notice could cut off, subordinate, or otherwise impair Vestin’s lien.

As the court of appeals concluded, the only condition or restriction that impaired Vestin’s mortgages was the Assessment Lien itself. The Utah Municipal Improvement District Act provides that an assessment is not a lien until the effective date of an assessment ordinance. Only at that time does the assessment lien become superior to any trust deed. Utah Code Ann. § 17A-3-323 (1990). This occurred post-policy and therefore is not covered by insurance. The SID and SID Notice were merely preliminary steps in the process that led to the levy of the Assessment and the Assessment Lien. Standing alone, the SID and SID Notice did not impair or affect the priority of Vestin’s mortgages on the Policy dates.

V. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THE SID AND SID NOTICE ARE NOT “OTHER MATTERS” AFFECTING VESTIN’S MORTGAGES.

For the same reason the SID and SID Notice are not “incorrectnesses” in the Policies’ assurances to Vestin, the court of appeals ruled that neither the SID nor the SID Notice are “other matters” affecting Vestin’s ‘mortgages. Vestin, 2004 UT App 379, ¶16. Vestin again makes the same argument that the court of appeals rejected. The Form 104 Endorsement provides that First American insures “against loss or damage which such insured shall sustain by reason of . . . [t]he existence of any *subsisting* tax or assessment lien which is prior to the insured mortgage” and “the existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than

those shown in the policy.” (R. 111 (emphasis added); Ex. 1, attached.)²⁶ On the effective dates of the Policies, neither the SID nor the SID Notice affected Vestin’s title in the property, nor did they affect the “validity” or “priority” of Vestin’s liens. As with its other claims, Vestin identifies no “loss or damage” it suffered on the Policy dates due to the existence of the SID or SID Notice. For the same reasons the SID and SID Notice do not constitute defects, liens, or encumbrances, they do not constitute “other matters” affecting title.²⁷

VI. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT VESTIN HAS NO COVERAGE UNDER THE EXCEPTION TO THE POLICE POWER EXCLUSION.

Vestin argues that Eagle Mountain City exercised a governmental police power in creating the SID and that the SID Notice constituted a notice of the exercise of that power

²⁶ The language “other matters,” as used in title insurance contracts, “is given a meaning similar to the specific items listed.” Lombardo v. Pierson, 852 P.2d 308, 312 (Wash. 1993). In the Policies, as in the one in Lombardo, the specific items listed include “defects, liens, etc. . . . matters which affect title.” Id.

²⁷ Vestin also contends that the Policies “insure against loss as a result of the title to the Property being ‘unmarketable.’” (Vestin Brief at 21.) Vestin quotes language from Bel-Air that refers to the assessment in that case as a “definite liability.” (Id.) As discussed above, the central rationale for denying coverage for the Assessment is that it *was not* a definite liability on the Policy dates. Moreover, the Policy defines “unmarketability of the title” as “an alleged or apparent *matter affecting the title to the land*, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A of the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.” (R. 81, 101 (emphasis added); Exs. 1 & 2 attached.) Under the Policies’ definition of “unmarketability,” Vestin has no claim that its title was unmarketable on the Policy dates because (i) neither the SID nor the SID Notice “affected the title” on the Policy Dates, and (ii) as a post-policy lien, the Policies expressly “excluded” and “excepted” the Assessment Lien from coverage.

In Edwards v. St. Paul Title Insurance Co., 563 P.2d 979 (Colo. Ct. App. 1977), the court rejected the very argument Vestin makes here. The court held that a buyer’s title was not rendered unmarketable due to its location in an improvement district. 563 P.2d at 980. The court reasoned that “[t]he *value of the property* is undoubtedly affected by the amount of the district taxes, but this has nothing to do with the title to the property and the *marketability of the title*.” Id. (emphasis in original). As in Edwards, even if the SID affected the value of Vestin’s Property, that is irrelevant to its “marketability.”

that First American was required to disclose. (See Vestin Br. at 27–29.) In making this argument, Vestin insists that the Policies’ exception to the exclusion for governmental exercise of the police power affirmatively creates coverage for Vestin under the Policies. The court of appeals considered this argument and concluded that “[t]he exclusions, and the exception for the exercise of recorded police power, are applicable only if Vestin’s claims are covered by the insuring clauses of the policies. If Vestin’s claims are not covered, then we need not reach the exclusions.” Vestin, 2004 UT App 379, ¶18. The court of appeals held that the exception to the police power exclusion inapplicable. Id. The court of appeals correctly reasoned that “[t]he failure of First American to exclude something that would not otherwise be included in the coverage sections of the policies does not equate to coverage for Vestin.” Id. ¶ 9n.2

Vestin nonetheless insists that, by virtue of the exception to the police power exclusion, “the Policies provide that any exercise of police power recorded in the public records is covered.” (Vestin Br. at 28.) Vestin offers no analysis, argument, or authority in support of its claim that an exception to an exclusion somehow provides insurance coverage. Vestin argument is incorrect and the court of appeals should be affirmed. An exception to an exclusion cannot affirmatively provide coverage.

Paragraph 1(b) of the Policies’ Exclusions from Coverage states:

The following matters are expressly excluded from the coverage of this policy and the Company will not pay *loss or damage, costs, attorneys’ fees or expenses which arise by reason of*:

1. . . .

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof . . . has been recorded in the public records at Date of Policy.

(R. 81, 101 (emphasis added); Ex. 1 & 2 attached.) Stated differently, the Policies cover “loss or damage” caused by the exercise of a governmental police power if a notice of the

exercise of the police power that caused the loss or damage was recorded in the public records on the policy date.

In construing this provision, the Court must look to the insuring provisions of the Policies to determine if coverage exists. If the three insuring provisions relied upon by Vestin do not create coverage, neither can the exception to the police power exclusion. This rule is clear from a case that Vestin itself cites on page 18 of its brief. In Elysian Inv. Group, LLC v. Stewart Title Guar. Co., 129 Cal. Rptr. 2d 372, 376 (Cal. Ct. App. 2002), the California Court of Appeals recently held that “[t]he insuring clauses of an insurance policy define and limit coverage,” and an insured “cannot rely upon an exclusion to coverage to extend coverage.” Id. at 379. This rule, recognized by the court of appeals, is widely followed by other courts and commentators.²⁸ Because the insuring clauses provide no coverage, Vestin has no coverage. It cannot look to the exception to

²⁸ See, e.g., Nabholz Constr. Corp. v. St. Paul Fire & Marine Ins. Co., 354 F. Supp. 2d 917, 923 (D. Ark. 2005). (“An exception to an exclusion cannot create or extend coverage where none exists under the terms the policy's basic insuring agreement.”); Ray v. Valley Forge Ins., 92 Cal. Rptr. 2d 473, 478 (Cal. Ct. App. 1999). (“Insurance policy exclusions do not create coverage. ‘[I]f the insuring clause does not cover a claimed loss, then there is no coverage. In such a circumstance, there is no need to consider policy exclusions because exclusions serve to limit coverage granted by an insuring clause and thus apply only to hazards *covered* by the insuring clause. An exclusion cannot act as an additional grant or extension of coverage.”); Kay v. United Pac. Ins. Co., 902 F. Supp. 656, 659 (D. Md. 1995) (“[E]xceptions to exclusions do not extend coverage beyond that which is otherwise provided.”); Barlow Burke, Law of Title Insurance § 4.01 at 4-3 (3rd ed. 2004) (“Exclusions are standardized exceptions to the coverage contained in an insurance policy. They provide no coverage; in fact, they negate it, whether or not the situation, interest, or event to which the exclusion refers does in fact exist.”).

the police power exclusion.²⁹

But even if an exception to an exclusion affirmatively could create coverage, none would exist under the exception to the police power exclusion. Under the plain language of the Policies, the exception applies only to “loss or damage” that “arises by reason of” the exercise of a governmental police power. Vestin presents a lengthy argument that the City created the SID through the exercise of the police power. That is irrelevant. Vestin has suffered no “loss or damage” due to the creation of the SID. Instead, as Vestin has conceded, its purported injury is a result of the Assessment Lien—a *separate* and distinct exercise of the police power that did not occur until eight months after the effective date of the last of the issued Policies. Thus, it is legally meaningless that the City created the SID before the effective date of Policy 3192 and that it was not disclosed to Vestin; Vestin suffered no loss or damage due to the creation of the SID.

Burke’s treatise on title insurance addresses the exception to the police power exclusion, explaining that: “Not until an ordinance actually levies the assessment—that is, asserts a lien for it on specific properties—does the limitation on coverage in this exclusion apply.” Barlow Burke, Law of Title Insurance (3rd ed. 2003), § 4.02[B] at 4-28 (emphasis added). In other words, in the case of special assessments, there is no relevant exercise of the police power until a municipality passes an ordinance and thereby “actually levies the assessment.” Moreover, the underlying rationale as explained by Burke applies here: when the SID Notice was recorded, it was full of inaccurate

²⁹ Vestin also argues that, by following the rules of construction requiring coverage to be determined from the insuring provisions of a policy, the court of appeals failed to construe the Policies in their entirety and give effect to all their provisions. (Vestin Br. at 40.) Vestin claims that the Court of appeals “ignored” the exception to the police power exclusion. (*Id.*) The court of appeals did no such thing. A reading of the court of appeals’ decision demonstrates that it did, in fact, consider the exceptions and exclusions in determining whether the Policies are ambiguous. The lower court discussed the police power language in paragraphs 6, 10, and 17–18, but rejected Vestin’s argument premised on that policy language. Simply because the court of appeals ruled against Vestin does not mean that it ignored the exception to the police power exclusion. Instead, it found it inapplicable.

estimates concerning the potential future assessment. For example, it did not state when the potential assessment would be levied, it substantially over-estimated the liability of the benefited properties, and—most significantly—it did not mention the due-on-sale provision that the City ultimately included in the final Assessment Ordinance. (R. 121-98; Ex. 4 attached.)

As Burke explains, a notice that an assessment may be levied in the future is not notice of the exercise of the police power. In this case, notice of the exercise of the relevant police power came only when the Assessment Ordinance was passed, eight months *after* First American issued Policy 3192. As the police power exclusion does not apply to the Special Assessment, neither does the exception to that exclusion.³⁰ Vestin has no coverage under the exception.

VII. THE COURT DID NOT GRANT CERTIORARI ON THE ISSUE OF WHETHER THE MOTION TO DISMISS SHOULD HAVE BEEN TREATED AS ONE FOR SUMMARY JUDGMENT.

Vestin argues that the trial court failed to treat First American’s motion to dismiss as one for summary judgment. (Vestin Br. at 32–35, 40–42.) In the Court’s April 19, 2005 Order, it ruled that Vestin’s “petition for Writ of Certiorari is granted only as to the following issue: Whether the title insurance policies unambiguously applied only to actual assessments for a Special Improvement District and did not include an obligation

³⁰ Ironically, Vestin cites Bel-Air Motel Corp. v. The Title Ins. Corp., 444 A.2d 1119 (N.J. Sup. Ct. 1981), to support its police power argument. This case does not support Vestin’s position. In fact, Burke relies upon Bel-Air for his foregoing statement expressly *rejecting* Vestin’s police power argument. See Burke, Law of Title Insurance § 4.02[B] at 4-28 & n.103. Vestin also cites New England Fed. Credit Union v. Stewart Title Guar. Co., 765 A.2d 450 (Vt. 2000). New England involved a deferral of permit which prohibited the construction on the property at issue of any buildings which required installation of plumbing or sewage treatment facilities. A building subsequently was built on the parcel in violation of the restriction. A subsequent owner made a claim under the title policy under the exception to the police power exclusion. The court concluded that the deferral of permit was a notice which invoked the exception. See *id.* at 454. New England does not support Vestin’s position as that case involved an exercise of police power which occurred pre-policy and actually caused the loss or damage to the insured. As noted above, the Special Improvement District caused no loss or harm to Vestin and therefore the exception to the police power exclusion does not apply.

to provide notice of an intent to create the District and levy the assessments.”

Consequently, whether the 12(b)(6) motion should have treated as a Rule 56 motion is outside the scope of the certiorari grant. The Court therefore should not address it.

VIII. VESTIN’S “BENEFIT OF THE BARGAIN” ARGUMENT FAILS.

Vestin’s final argument is that First American has deprived Vestin of the benefit of its bargain. (Vestin Br. at 43–45.) Vestin argues at length concerning the purported purpose of title insurance and the alleged injuries that Vestin suffered as a result of the Assessment Lien. But as with its motion to dismiss/summary judgment argument, these contentions are outside the narrow scope of the writ of certiorari granted by this Court. Vestin’s benefit of the bargain argument is irrelevant to whether the Policies unambiguously deny coverage. The Court should reject the argument out of hand.

But should the Court choose to consider the substance of Vestin’s argument, the Court similarly should reject it. It is Vestin who attempts to take unfair advantage through its claims under the Policies. Vestin has received the benefit of the improvements made by the City. The improvements included construction of water lines, sewer lines, roads, and other elements of infrastructure crucial to Vestin’s property, which is a large, subdivided residential development. The improvements service and benefit Vestin’s property and that of surrounding landowners, who incidentally have to *pay* for the improvements to their property. While other landowners are paying their fair share for the benefits to their property created by the improvements, Vestin wants to accept the benefits and the increased value of its property while having First American pay for the improvements through Vestin’s multi-million dollar title insurance claims. Concluding that the Policies cover Vestin’s claims would not give Vestin the benefit of its bargain. It would give Vestin a windfall.

Simplistically, Vestin argues that the purpose of title insurance is “to protect purchasers.” (Vestin Br. at 43–44.) In short, Vestin suggests that title insurance is

intended to guarantee that nothing can ever happen to affect an insured's interest in property, apparently regardless of the scope of coverage and the consideration paid by the insured for that coverage. This is not the case. A title insurance policy is a contract like any other. In this case, the parties to the contract were two sophisticated commercial entities—a title company and a commercial mortgage lender that purports to be an expert on the title industry. The scope of coverage is defined by the content of the contracts between these parties. If the policy does not state that coverage is provided, it is not. “Payment for loss is made according to the terms of the policy. This is a truism for any type of insurance, but it has special meaning for title insurance because those terms and conditions of coverage make plain, in their totality, that a title insurance policy is not agreement to guarantee or a warranty of the state of the title” Barlow Burke, Law of Title Insurance § 2.01[A] at 2-4 (3rd ed. 2004). Instead, “title insurance is a one-premium agreement to indemnify a policyholder, in amounts not exceeding the face amount of the policy, for losses caused by either on-record and off-record defects that are found in the title or interest in an insured property to have existed on the date on which the policy is issued.” Id. § 2.01 at 2-3. Thus, not only is there a direct correlation between the premium paid and the scope of coverage, but coverage is limited to losses incurred due to conditions that exist when a policy issues. Here, Vestin's purported injury is the result of an Assessment Lien that did not exist when First American issued the Policies. Not only did Vestin fail to pay First American sufficient consideration for coverage that includes contingent and speculative future liabilities, but such coverage would run contrary to fundamental principles of title insurance law.

CONCLUSION

Vestin's alleged injury resulted from Eagle Mountain's post-policy levy of the Assessment Lien. Consequently, Vestin's claim to coverage violates the fundamental precept of title insurance law—namely, that coverage exists only for conditions that exist

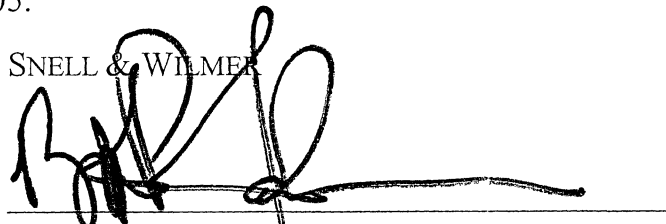
on or before the effective date of the insurance. The plain language of the Policies provides that liens arising after the effective dates of the Policies are not covered.

Given the lack of coverage for the Assessment Lien, Vestin insists that the Policies provide coverage for the City's creation of the SID and recording of the SID Notice. These are simply preliminary steps in the assessment process. Standing alone, the SID and SID Notice caused Vestin no injury and they are not covered "defects", "incorrectnesses" in the assurances given by First American, or "other matters" affecting Vestin's lien. Despite Vestin's efforts to cloud the issues and confuse the source of its injury, the court of appeals correctly construed the unambiguous language of the three insuring clauses upon which Vestin relies, concluding that the Policies afford Vestin no coverage.

First American respectfully requests that this Court affirm the decision of the court of appeals, denying coverage under Policy 2701 and Policy 3192. In the unlikely event that the Court concludes that the policy language is ambiguous, the Court should affirm the court of appeals' decision as to Policy 2701 on the independent ground that Policy 2701 was issued before the City created the SID or recorded the SID Notice and therefore they are post-policy events that are not covered under Policy 2701.

DATED this 11th day of July, 2005.

SNELL & WILMER

A handwritten signature in black ink, appearing to be "Alan L. Sullivan", written over a horizontal line.

Alan L. Sullivan

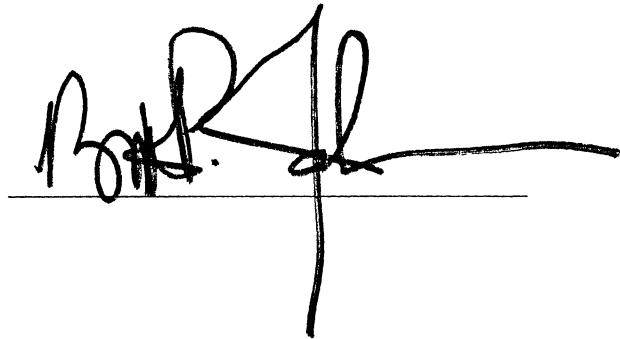
Brett P. Johnson

*Attorneys for First American Title Insurance
Company*

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 2005, two true and correct copies of the foregoing was placed in the United States Mail, postage prepaid, addressed to the following:

John A. Snow
Stephen K. Christiansen
Cassie Wray
50 South Main Street, Suite 1600
Post Office Box 45340
Salt Lake City, Utah 84145-0340

A handwritten signature in black ink, appearing to read "Robert K. [unclear]", is written over a horizontal line. The signature is stylized with a large "R" and a long horizontal stroke extending to the right.

ADDENDUM

1. Policy of Title Insurance No. 2701-A-49 (“Policy 2701”)
2. Policy of Title Insurance No. 3192-A-49 (“Policy 3192”)
3. Order of Dismissal with Prejudice
4. Eagle Mountain City Notice of Intention (the “SID Notice”)
5. Eagle Mountain City Ordinance No. 06-2001 (the “Assessment Ordinance”)
6. Vestin Mortgage, Inc. v. First Am. Title Ins. Co., 2004 UT App 379, 101 P.3d 398
7. April 19, 2005 Order granting Writ of Certiorari

Tab 1

Form No. 1056.92
(10/17/92)
ALTA Loan Policy
Form 1



WE HEREBY CERTIFY THIS TO BE
A TRUE AND CORRECT COPY OF
THE ORIGINAL DOCUMENT.

POLICY OF TITLE INSURANCE

ISSUED BY
CENTURY TITLE COMPANY
290 EAST 930 SOUTH
OREM, UTAH 84058
(801) 222-9292 • FAX (801) 222-0820

First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
 - (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
 - (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
8. Any assessments for street improvements under construction or completed at Date of Policy which now have gained or hereafter may gain priority over the insured mortgage; or
9. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

First American Title Insurance Company

BY *Parker S. Kennedy* PRESIDENT

ATTEST *Mark L. Anderson*

EXCLUSIONS FROM COVERAGE

expressly excluded from the coverage of this policy if it does not pay loss or damage, costs, attorneys' fees or expenses by reason of

Any ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy use, or enjoyment of the land, (ii) the character, dimensions or location of any improvement now or hereafter erected on the land, (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part, or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy

any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy

of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would result in the loss of the rights of a purchaser for value without knowledge

of liens, encumbrances, adverse claims or other matters asserted, suffered, assumed or agreed to by the insured claimant; but not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy, resulting in no loss or damage to the insured claimant; or any claim or other matter insured against by this policy which is created or created subsequent to Date of Policy (except to the extent this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent

insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy), or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage

- 4 Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of an subsequent owner of the indebtedness, to comply with applicable domestic business laws of the state in which the land is situated
- 5 Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law
- 6 Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance
- 7 Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy state insolvency, or similar creditors' rights laws, that is based on
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination, or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor

CONDITIONS AND STIPULATIONS

DEFINITIONS OF TERMS

Words and terms when used in this policy mean:
"insured" the insured named in Schedule A. The term includes:
owner of the indebtedness secured by the insured
successor in ownership of the indebtedness except
is an obligor under the provisions of Section 12(c) of
and Stipulations (reserving however all rights and
successor that the Company would have had against
insured unless the successor acquired the indebtedness
value without knowledge of the asserted defect, lien
or claim or other matter insured against by this policy
the estate or interest in the land)
governmental agency or governmental instrumentality
or guarantor under an insurance contract or guaranty
insuring the indebtedness secured by the insured
thereof whether named as an insured herein or not
as designated in Section 2(a) of these Conditions and

"claimant" an insured claiming loss or damage
"known" actual knowledge not constructive
which may be imputed to an insured by reason of
as defined in this policy or any other records which
notice of matters affecting the land

"land" the land described or referred to in Schedule A, and
all thereto which by law constitute real property. The
include any property beyond the lines of the area
to in Schedule A, nor any right title interest estate
including streets roads avenues alleys lanes ways or
if herein shall modify or limit the extent to which a
d from the land is insured by this policy

"mortgage deed of trust trust deed or other

"records" records established under state statutes at
purpose of imparting constructive notice of matters
to purchasers for value and without knowledge
in 1(a)(iv) of the Exclusions From Coverage "public
include environmental protection liens filed in the

or desirable to establish the title to the estate or interest or the lien of the insured mortgage as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation the Company's obligations to the insured under the policy shall terminate including any liability or obligation to defend prosecute or continue any litigation with regard to the matter or matters requiring such cooperation

5 PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in or lien or encumbrance on the title or other matter insured against by this policy which constitutes the basis of loss or damage and shall state to the extent possible the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage the Company's obligations to the insured under the policy shall terminate including any liability or obligation to defend prosecute or continue any litigation with regard to the matter or matters requiring such proof of loss or damage

In addition the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination inspection and copying at such reasonable times and places as may be designated by any authorized representative of the Company all records books ledgers checks correspondence and memoranda, whether bearing a date before or after Date of Policy which reasonably pertain to the loss or damage. Further if requested by any authorized representative of the Company the insured claimant shall grant its permission in writing for any authorized representative of the Company to examine inspect and copy all records books ledgers checks correspondence and memoranda in the custody or control of a third party which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless in the reasonable judgment of the Company it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath and to produce

9 REDUCTION OF INSURANCE, REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy except payments made for costs attorneys' fees and expenses shall reduce the amount of the insurance pro tanto. However any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage

(b) Payment in part by any person of the principal of the indebtedness or any other obligation secured by the insured mortgage or any voluntary partial satisfaction or release of the insured mortgage to the extent of the payment, satisfaction or release shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby with interest thereon provided in no event shall the amount of insurance be greater than the amount of insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations

10 LIABILITY NONCUMULATIVE.

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage or any part thereof it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed assumed or taken subject or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy

11 PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed

CONTINUATION OF INSURANCE.

After Acquisition of Title. The coverage of this policy shall in force as of Date of Policy in favor of (i) an insured who acquires part of the estate or interest in the land by foreclosure, trustee's reversion in lieu of foreclosure or other legal manner which is the lien of the insured mortgage, (ii) a transferee of the estate so acquired from an insured corporation, provided the transferee is not or wholly-owned subsidiary of the insured corporation, and (iii) successors by operation of law and not by purchase any rights or defenses the Company may have against any insureds, and (iv) any governmental agency or governmental entity which acquires all or any part of the estate or interest by a contract of insurance or guaranty insuring or guaranteeing the mortgage secured by the insured mortgage.

After Conveyance of Title. The coverage of this policy shall in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an insured mortgage secured by a purchase money mortgage given by the insured, or only so long as the insured shall have reason of covenants of warranty made by the insured in any conveyance of the estate or interest. This policy shall not in force in favor of any purchaser from the insured of either (i) an interest in the land, or (ii) an indebtedness secured by a mortgage mortgage given to the insured.

Amount of Insurance. The amount of insurance after the or after the conveyance shall in neither event exceed the least

The amount of insurance stated in Schedule A, the amount of the principal of the indebtedness secured by mortgage as of Date of Policy, interest thereon, expenses of amounts advanced pursuant to the insured mortgage to assure with laws or to protect the lien of the insured mortgage prior of acquisition of the estate or interest in the land and secured reasonable amounts expended to prevent deterioration of its but reduced by the amount of all payments made, or the amount paid by any governmental agency or governmental entity, if the agency or instrumentality is the insured the acquisition of the estate or interest in satisfaction of its contract or guaranty.

CE OF CLAIM TO BE GIVEN BY INSURED WANT.

Insured shall notify the Company promptly in writing (i) in case of loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent hereinafter described

(i) in case knowledge of an insured hereunder of any claim of title or interest which is the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the insured may be liable by virtue of this policy, or (ii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected or refused. If prompt notice shall not be given to the Company, then the insured shall be deemed to have waived all liability of the Company shall terminate with regard to matters for which prompt notice is required, provided, the insured shall not be liable to the Company shall in no case prejudice the insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

USE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

Insured shall have the right, at its own cost, to institute any action or proceeding or to do any other act which may be necessary or desirable to establish the title to the estate or interest in the land, or to prevent loss or damage to the insured. The Company may take any action under the terms of this policy, whether or not it shall under, and shall not thereby concede liability or waive any part of its policy. If the Company shall exercise its rights under this policy, it shall do so diligently.

Insured shall have the right, at its own cost, to institute any action or proceeding or to do any other act which may be necessary or desirable to establish the title to the estate or interest in the land, or to prevent loss or damage to the insured. The Company may take any action under the terms of this policy, whether or not it shall under, and shall not thereby concede liability or waive any part of its policy. If the Company shall exercise its rights under this policy, it shall do so diligently.

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following options.

(a) To Pay or Tender Payment of the Amount of Insurance Purchase the Indebtedness

(i) To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) To purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment thereof.

Upon the exercise by the Company of either of the options provided for in paragraphs a(i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) To pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent hereinafter described.

(a) The liability of the Company under this policy shall not exceed the least of

(i) the amount of insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations,

(ii) the amount of unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon, or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable for

(i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements, or

(ii) construction loan advances made subsequent to Date of Policy except construction loan advances made subsequent to Date of

by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

(b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the estate or interest or the priority or enforceability of the lien of insured mortgage, as insured, the Company shall be required to pay that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment of the insured claimant of the Company's right of subrogation.

(c) The Company's Rights Against Non-Insured Obligor

The Company's right of subrogation against non-insured obligor shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guaranty, or policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

13. ARBITRATION

Unless prohibited by applicable law either the Company or insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, or service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated or when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect on the Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The laws of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, the policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by a claim asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, a validating officer or authorized signatory of the Company.

15. SEVERABILITY.

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT.

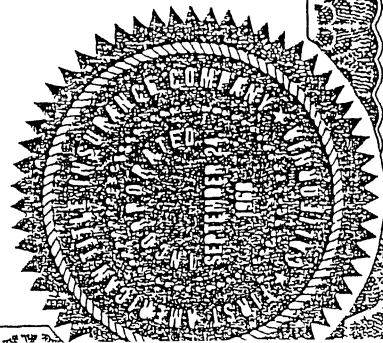
All notices required to be given the Company and any statements in writing required to be furnished the Company shall include the name

FIRST AMERICAN



First American Title Insurance Company

POLICY OF TITLE INSURANCE



First American Title Insurance Company
The Ranches L.C., A Utah Limited Liability Company

Schedule A

POLICY NO.: 2701-A-49	JACKET NO.: CW3470452	FILE NO.: 7603
AMOUNT OF INSURANCE:	\$ 1,965,000.00	PREMIUM AMOUNT: \$ 2,440.00
DATE OF POLICY:	April 26, 2000 at 08:32 AM	

1. NAME OF INSURED:

Capsource, Inc. dba Del Mar Mortgage, a Nevada Corporation, its successors and/or assigns as their interest may appear, its successors and/or assigns as their respective interests may appear.

2. The estate or interest in the land which is encumbered by the insured mortgage is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

The Ranches, L.C., a Utah Limited Liability Company

4. The insured mortgage and assignments thereof, if any, are described as follows:

See Exhibit "A" attached hereto and by this reference made a part hereof.

5. The land referred to in this policy is located in Utah and is described as follows:

Beginning at the South quarter corner of Section 25, Township 5 South, Range 2 West, Salt Lake Base and Meridian; thence North 00° 50' 24" East 2709.61 feet; thence South 89° 31' 55" East 3356.62 feet; thence South 27° 44' 23" East 136.00 feet; thence along the arc of a 497.00 foot radius curve to the left 228.89 feet (central angle = 26° 23' 15"), the chord of which bears South 49° 04' 00" West 226.87 feet; thence South 35° 52' 22" West 1515.75 feet; thence along the arc of a 397.00 foot radius curve to the left 165.45 feet (central angle = 23° 52' 39"), the chord of which bears South 23° 56' 03" West 164.25 feet; thence South 11° 59' 43" West 1072.13 feet; thence North 89° 36' 51" West 2110.51 feet to the point of beginning.

LESS AND EXCEPTING the following: Beginning at a point which is South 5.30 feet and East 648.79 feet from the West quarter corner of Section 30, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 35° 16' 23" East 206.00 feet; thence along the arc of a 597.00 foot radius curve to the left 196.45 feet (central angle = 18° 51' 15"), the chord of which bears South 45° 18' 00" West 195.57 feet; thence South 35° 52' 22" West 1373.17 feet; thence North 38° 00' 30" West 1820.42 feet; thence South 89° 31' 55" East 1945.75 feet to the point of beginning.

58:048:0026 & 58:048:0027

Exhibit "A"

4. The insured mortgage and assignments thereof, if any are described as follows: (Cont'd)

Trust Deed in the amount of \$1,965,000 00, dated April 14, 2000, by and between The Ranches, L C , a Utah Limited Liability Company, as Trustor, Century Title Company, as Trustee, and Capsource, Inc , dba Del Mar Mortgage, a Nevada Corporation, as Beneficiary, recorded April 26, 2000, as Entry No 32340 2000, Utah County Recorder's Office, Utah

Assignment of Deed of Trust dated April 25, 200, wherein the above Trust Deed (Entry No 32340 2000) was assigned to James Douglas Joslin, a single man as to an undivided \$28,000 00/\$1,965,000 00th interest and, William F Knight, Jr , a married man as his sole and separate property as to an undivided \$30,000 00/\$1,965,000 00th interest and, Daniel M Tabas, a married man as his sole and separate property as to an undivided \$250,000 00/\$1,965,000 00th interest and, David Lawrence, Trustee of the Diane Joyce Lawrence Trust dated 8/23/96 as to an undivided \$20,000 00/\$1,965,000 00th interest and, David W Brown and Patsy B Brown, husband and wife as joint tenants as to an undivided \$19,957 98/\$1,965,000 00th interest, and Eleanor T Brown, a widow and Deborah M Brown, a single woman as joint tenants as to an undivided \$11,051 26/\$1,965,000 00th interest and, Erwin F Mueller and Diane Mueller, husband and wife as community property as to an undivided \$10,000 00/\$1,965,000 00th interest and, Fred Scott ITF Manfred Wolfas to an undivided \$5,000 00/\$1,965,000 00th interest and, Gregg B Colton and Cindy H Colton, husband and wife as joint tenants as to an undivided \$10,000 00/\$1,965,000 00th interest and, George J Riesz and Ann L Riesz, Trustees of the Riesz Family Trust as to an undivided \$10,000 00/\$1,965,000 00th interest and, John T Swaine, Trustee of the John T Swaine and J Marilyn Swaine Revocable Family Trust dated 7/11/97 as to an undivided \$12,000 00/\$1,965,000 00th interest and, Maxine Thornblad, Trustee of the Maxine Thornblad Trust dated 10/25/89 as to an undivided \$22,692 30/\$1,965,000 00th interest and, Richard Fifield and Margaret Fifield, husband and wife as community property as to an undivided \$20,000 00/\$1,965,000 00th interest and, Robert Brown, an unmarried man and Janice Fae Brown-Tucker, a married woman as her sole and separate property as joint tenants as to an undivided \$10,000 00/\$1,965,000 00th interest and, Romolo R. Fusco, a widower as to an undivided \$20,000 00/\$1,965,000 00th interest, and Spectrum Capital, LLC, a California Limited Liability Company as to an undivided \$52,000 00/\$1,965,000 00th interest, and Bernard F Pincus and Sally D Pincus, Co-Trustees of the Bernard F Pincus and Sally D Pincus 1985 Family Trust Agreement as to an undivided \$12,000 00/\$1,965,000 00th interest, and Ronald O Dixon, a married man as his sole and separate property and Estella O Dixon, a widow, as joint tenants as to an undivided \$25,000 00/\$1,965,000 00th interest, and Michael J Newel, Trustee of the John Kevin Baldwin Revocable Trust UTD 7/14/94 as to an undivided \$300,000 00/\$1,965,000 00th interest, and Clarence E McDonnell, Trustee of the McDonnell Family Trust dated 1/22/92 as to an undivided \$34,000 00/\$1,965,000 00th interest, and Richard Bohn and Alice Bohn, Trustees of The Bohn Family Trust as to an undivided \$10,000 00/\$1,965,000 00th interest, and Harvey D Ader and Marjorie M Ader, Co-Trustees of the Ader Family Trust dated 1/8/98 as to an undivided \$5,000 00/\$1,965,000 00th interest, and Rosemary Carole Swan, Trustee of the Rosemary C Swan Separate Property Trust dated 7/30/99 as to an undivided \$58,909 21/\$1,965,000 00th interest, and Leighton E Gendron, Jr , an unmarried man and Nancy I Dumais, a married woman as her sole and separate property as joint tenants as to an undivided \$32,750 00/\$1,965,000 00th interest, and Anthony J Parzanese, Sr and Anna V Parzanese, husband and wife as joint tenants as to an undivided \$10,000 00/\$1,965,000 00th interest, and Milton Grossberg, a widower as to an undivided \$35,000 00/\$1,965,000 00th interest Said Assignment of Trust Deed recorded May 8, 2000, as Entry No 36185 2000, Utah County Recorder's Office, Utah

Assignment of Deed of Trust dated May 10, 2000, wherein the above Trust Deed (Entry No 32340 2000) was assigned to Mary Jean Ignacio, Trustee of the MJI Trust dated 2/24/99 as to an undivided 20,000/1,965,000th interest, and Joseph Dawson and Verla Dawson, Trustees of the Dawson Family Trust as to an undivided 22,000/1,965,000th interest, and Bruce L Dawson, a single man as to an undivided 20,000/1,965,000th interest and Tom Townsend, an unmarried man as to an undivided 18,764 31/1,965,000th interest, and William R Howell and Joyce M Howell, Trustees of the Howell 1993 Trust dated 7/19/93 as to an undivided 25,000/1,965,000th interest and Les W Olerich and Leshe E Olerich, husband and wife as joint tenants as to an undivided 10,000/1,965,000th interest and Eleanor T Brown, a widow and Deborah M Brown, a single woman as joint tenants as to an undivided 169 91/1,965,000th interest, and Calvin Bettencourt and Mabel Bettencourt, husband and wife as community property as to an undivided 11,003 20/1,965,000th interest, and Robert A Fitzner, Jr, a married man as his sole and separate property as to an undivided 40,505 77/1,965,000th interest and Norman E McKenney and Ilene D McKenney, husband and wife as joint tenants as to an undivided 10,172 32/1,965,000th interest and Louella K Hitchcock, a widow as to an undivided

Exhibit "A"

4. The insured mortgage and assignments thereof, if any are described as follows: (Cont'd)

30,000/1,965,000th interest, and John E. Edwards, Trustee of the John E. Edwards Trust dated 2/21/91 as to an undivided 8,802.56/1,965,000th interest, and First Trust Company of Onaga, N.A. FBO Imogene M. Jones, IRA as to an undivided 23,500/1,965,000th interest, and Stephen T. Lydon, a single man as to an undivided 30,000/1,965,000th interest, and Robert W. O'Krakel and Terry K. O'Krakel, husband and wife as joint tenants as to an undivided 25,000/1,965,000th interest, and Richard Donovan and Mieke Donovan, husband and wife as joint tenants as to an undivided 20,000/1,965,000th interest and First Trust Company of Onaga, N.A. FBO Robert H. Jones, IRA as to an undivided 50,000/1,965,000th interest, and Dale C. Frosch and Christine Frosch, husband and wife as joint tenants as to an undivided 50,000/1,965,000th interest. Said Assignment of Deed of Trust recorded June 13, 2000 as Entry No. 46506:2000, Utah County Recorder's Office, Utah.

Assignment of Deed of Trust dated June 9, 2000, wherein the above Trust Deed (Entry 32340:2000) was assigned to: Frank P. Oeschger, Trustee of the Oeschger Survivor Trust dated 1/24/85 as to an undivided 50,000/1,965,000th interest, and Spectrum Capital, LLC, a California Limited Liability Company as to an undivided 50,000/1,965,000th interest and Gerald Verchick and Tamilyn Verchick, husband and wife as joint tenants as to an undivided 30,000/1,965,000th interest, and Steven F. Miller and Margaret E. Miller, husband and wife as joint tenants as to an undivided 20,000/1,965,000th interest, and John V. Bilello, a single man as to an undivided 15,000/1,965,000th interest, and Eleanor T. Brown, a widow and Deborah M. Brown, a single woman as joint tenants as to an undivided 1,212.35/1,965,000th interest, and James Anderson, a single man as to an undivided 45,000/1,965,000th interest and John E. Edwards, Trustee of The John E. Edwards Trust dated 2/21/91, as to an undivided 1,197.44/1,965,000th interest, and Gary K. Andersen, a single man as to an undivided 15,000/1,965,000th interest. Said Assignment of Deed of Trust recorded June 13, 2000, as Entry No. 46507:2000, Utah County Recorder's Office, Utah.

First American Title Insurance Company
The Ranches L.C., A Utah Limited Liability Company

SCHEDULE B - PART I

EXCEPTIONS FROM COVERAGE

POLICY NO.: 2701-A-49

JACKET NO.: CW3470452

FILE NO.: 7603

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) which arise by reason of:

PART I

1. General Property Taxes for the year 2000 and subsequent years. Taxes for the year 1999 have been paid in the amount of \$93.76 under Base No. 58:048:0002 which includes this and other lands. New Tax Serial No. will be 58:048:0026 and 58:048:0027. (Current - None now due and payable.)
2. This property lies within the boundaries of Eagle Mountain City and is subject to all charges and assessments levied thereunder. (A check was made and none were found.)
3. No liability is assumed for any review and change in the assessment of subject property for agricultural use pursuant to Chapter 80, Laws of Utah 1969 (Greenbelt Act) not of record in the Office of the County Recorder.
4. Easement dated September 23, 1991, wherein U. S. West Communications, Inc., a Colorado Corporation, its successors, assigns, lessees, licensees and agents, is granted a perpetual easement to construct, reconstruct, operate, maintain and remove such telecommunications facilities upon, over, under and across said property, recorded October 17, 1991, as Entry No. 4119, in book 2844, at Page 695, Utah County Recorder's Office, Utah. (Affects the Southerly boundary line.)
5. Excepting all oil, gas and mineral rights.
6. No liability is assumed for the loss or damage arising from the exercise of the mining and drilling rights and any other privileges and immunities of the owner of the mineral estate not covered by this report and subsequent policy.
7. That portion within the bounds of The Poly Express Parkway.

First American Title Insurance Company
The Ranches L.C., A Utah Limited Liability Company

SCHEDULE B - PART II

EXCEPTIONS FROM COVERAGE

POLICY NO.: 2701-A-49

JACKET NO.: CW3470452

FILE NO.: 7603

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

1. Personal Specific Guaranty, dated April 14, 2000, by and between Capsource, Inc., dba Del Mar Mortgage, a Nevada Corporation, as Lender, and The Ranches, L.C., a Utah Limited Liability Company, as Borrower, recorded April 26, 2000, as Entry No. 32342:2000, Utah County Recorder's Office, Utah.
2. Agreement Regarding Hazardous Materials, dated April 14, 2000, by and between The Ranches, L.C., a Utah Limited Liability Company, as Borrower, Phillip W. Nolen and Scott F. Kirkland, as Guarantors, in favor of Del Mar Mortgage Inc., a Nevada Corporation, as Lender, recorded April 26, 2000, as Entry No. 32343:2000, Utah County Recorder's Office, Utah.

The Ranches L.C., A Utah Limited Liability Company
F.A. Form 31 - Restrictions, Encroachments & Minerals (Unimproved Land)

ENDORSEMENT

POLICY NO.: 2701-A-49

JACKET NO.: CW3470452

FILE NO.: 7603

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$20.00

The Company hereby insures against loss which the Insured shall sustain by reason of any of the following matters:

- (E) Any incorrectness in the assurance which the Company hereby gives:
 - (a) That there are no covenants, conditions, or restrictions under which the lien of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired;
 - (B) That there are no present violations on the land of any enforceable covenants, conditions, or restrictions;
 - (C) That, except as shown in Schedule B, there are no present encroachments onto the land of buildings, structures, or improvements located on adjoining lands.
- (F) Any future violations on the land of any covenants, conditions or restrictions occurring prior to acquisition of title to the estate or interest by the Insured, provided such violations result in impairment or loss of the lien of the mortgage referred to in Schedule A, or result in impairment or loss of title to the estate or interest if the Insured shall acquire the title in satisfaction of the indebtedness secured by the mortgage,
- (G) Any final court order or judgment requiring removal from any land adjoining said land of any encroachment shown in Schedule B.

Wherever in this endorsement any or all the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or restrictions contained in any lease.

No coverage is provided under this endorsement as to any covenants, condition, restriction or other provision relating to environmental protection.

The total liability of the Company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of the policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

The Ranches L.C., A Utah Limited Liability Company
CLTA Form 104 - Assignment of Trust Deed

ENDORSEMENT

POLICY NO.: 2701-A-49

JACKET NO.: CW3470452

FILE NO.: 7603

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

The Company hereby insures:

Lauraine Z. Painter, Trustee of the Painter 1983 Trust dated 10/17/83 as to an undivided 12,600/1,965,000th interest, and Elizabeth A. Cole, Trustee of the Elizabeth A. Cole Family Trust dated 10/7/93, as to an undivided 22,328.008/1,965,000th interest and John E. Dawson, Trustee of the John E. Dawson Separate Property Trust dated 12/5/96 as to an undivided 14,259.11/1,965,000th interest and Fred W. Stone and Marian Stone, Trustees of The Fred W. Stone and Marian Stone Family Trust as to an undivided 25,000/1,965,000th interest and Dawson Investment, Inc., a Utah Corporation as to an undivided 30,000/1,965,000th interest and Diane Jean Wertz, Trustee of the Leona Carnini Residuary Trust dated 5/16/00 as to an undivided 25,000/1,965,000th interest and Sherin E. Hollander and Sara A. Hollander, Trustees of the Sherwin E. Hollander and Sara A. Hollander Family Trust dated 3/22/00 as to an undivided 25,000/1,965,000th interest and Orville Ray Brown and Betty Lou Brown, husband and wife as joint tenants as to an undivided 25,000/1,965,000th interest and Richard O. Godmere and Evelyn K. Godmere, husband and wife as joint tenants as to an undivided 25,000/1,965,000th interest

against loss or damage which such insured shall sustain by reason of any of the following

- (A) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (B) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (C) The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
- (D) The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

The Ranches L.C., A Utah Limited Liability Company
CLTA Form 104 - Assignment of Trust Deed

ENDORSEMENT

Ann S.

POLICY NO.: 2701-A-49

JACKET NO.: CW3470452

FILE NO.: 7603

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE \$00.00

The Company hereby insures.

Capsource, Inc., dba Del Mar Mortgage as to an undivided 45,000/1,965,000th Interest
against loss or damage which such insured shall sustain by reason of any of the following

- (E) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (F) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (G) The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
- (H) The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

W. A. G.
Authorized Signatory

The Ranches L.C., A Utah Limited Liability Company
CLTA Form 104 - Assignment of Trust Deed

ENDORSEMENT

POLICY NO.: 2701-A-49

JACKET NO.: CW3470452

FILE NO.: 7603

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

The Company hereby insures:

James Douglas Joslin, a single man as to an undivided \$28,000.00/\$1,965,000.00th interest and, William F. Knight, Jr., a married man as his sole and separate property as to an undivided \$30,000.00/\$1,965,000.00th interest and, Daniel M. Tabas, a married man as his sole and separate property as to an undivided \$250,000.00/\$1,965,000.00th interest and, David Lawrence, Trustee of the Diane Joyce Lawrence Trust dated 8/23/96 as to an undivided \$20,000.00/\$1,965,000.00th interest and, David W. Brown and Patsy B. Brown, husband and wife as joint tenants as to an undivided \$19,957.98/\$1,965,000.00th interest, and Eleanor T. Brown, a widow and Deborah M. Brown, a single woman as joint tenants as to an undivided \$11,051.26/\$1,965,000.00th interest and, Erwin F. Mueller and Diane Mueller, husband and wife as community property as to an undivided \$10,000.00/\$1,965,000.00th interest and, Fred Scott ITF Manfred Wolf as to an undivided \$5,000.00/\$1,965,000.00th interest and, Gregg B. Colton and Cindy H. Colton, husband and wife as joint tenants as to an undivided \$10,000.00/\$1,965,000.00th interest and, George J. Riesz and Ann L. Riesz, Trustees of the Riesz Family Trust as to an undivided \$10,000.00/\$1,965,000.00th interest and, John T. Swaine, Trustee of the John T. Swaine and J. Marilyn Swaine Revocable Family Trust dated 7/11/97 as to an undivided \$12,000.00/\$1,965,000.00th interest and, Maxine Thornblad, Trustee of the Maxine Thornblad Trust dated 10/25/89 as to an undivided \$22,692.30/\$1,965,000.00th interest and, Richard Fifield and Margaret Fifield, husband and wife as community property as to an undivided \$20,000.00/\$1,965,000.00th interest and, Robert Brown, an unmarried man and Janice Fae Brown-Tucker, a married woman as her sole and separate property as joint tenants as to an undivided \$10,000.00/\$1,965,000.00th interest and, Romolo R. Fusco, a widower as to an undivided \$20,000.00/\$1,965,000.00th interest, and Spectrum Capital, LLC, a California Limited Liability Company as to an undivided \$52,000.00/\$1,965,000.00th interest, and Bernard F. Pincus and Sally D. Pincus, Co-Trustees of the Bernard F. Pincus and Sally D. Pincus 1985 Family Trust Agreement as to an undivided \$12,000.00/\$1,965,000.00th interest, and Ronald O. Dixon, a married man as his sole and separate property and Estella O. Dixon, a widow, as joint tenants as to an undivided \$25,000.00/\$1,965,000.00th interest, and Michael J. Newel, Trustee of the John Kevin Baldwin Revocable Trust UTD 7/14/94 as to an undivided \$300,000.00/\$1,965,000.00th interest, and Clarence E. McDonnell, Trustee of the McDonnell Family Trust dated 1/22/92 as to an undivided \$34,000.00/\$1,965,000.00th interest, and Richard Bohn and Alice Bohn, Trustees of The Bohn Family Trust as to an undivided \$10,000.00/\$1,965,000.00th interest, and Harvey D. Ader and Marjorie M. Ader, Co-Trustees of the Ader Family Trust dated 1/8/98 as to an undivided \$5,000.00/\$1,965,000.00th interest, and Rosemary Carole Swan, Trustee of the Rosemary C. Swan Separate Property Trust dated 7/30/99 as to an undivided \$58,909.21/\$1,965,000.00th interest, and Leighton E. Gendron, Jr., an unmarried man and Nancy I. Dumais, a married woman as her sole and separate property as joint tenants as to an undivided \$32,750.00/\$1,965,000.00th interest, and Anthony J. Parzanese, Sr. and Anna V. Parzanese, husband and wife as joint tenants as to an undivided \$10,000.00/\$1,965,000.00th interest, and Milton Grossberg, a widower as to an undivided \$35,000.00/\$1,965,000.00th interest. Said Assignment of Trust Deed recorded May 8, 2000, as Entry No. 36185:2000, Utah County Recorder's Office, Utah

against loss or damage which such insured shall sustain by reason of any of the following

- (A) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (B) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (C) The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
- (D) The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By:

Authorized Signatory

ENDORSEMENT

POLICY NO.: 2701-A-49

JACKET NO.: CW3470452

FILE NO.: 7603



ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

The Company hereby insures:

Mary Jean Ignacio, Trustee of the MJ1 Trust dated 2/24/99 as to an undivided 20,000/1,965,000th interest, and Joseph Dawson and Verla Dawson, Trustees of the Dawson Family Trust as to an undivided 22,000/1,965,000th interest, and Bruce L. Dawson, a single man as to an undivided 20,000/1,965,000th interest and Tom Townsend, an unmarried man as to an undivided 18,764.31/1,965,000th interest, and William R. Howell and Joyce M. Howell, Trustees of the Howell 1993 Trust dated 7/19/93 as to an undivided 25,000/1,965,000th interest and Les W. Olerich and Leslie E. Olerich, husband and wife as joint tenants as to an undivided 10,000/1,965,000th interest and Eleanor T. Brown, a widow and Deborah M. Brown, a single woman as joint tenants as to an undivided 169.91/1,965,000th interest, and Calvin Bettencourt and Mabel Bettencourt, husband and wife as community property as to an undivided 11,003.20/1,965,000th interest, and Robert A. Fitzner, Jr., a married man as his sole and separate property as to an undivided 40,505.77/1,965,000th interest and Norman E. McKenney and Ilene D. McKenney, husband and wife as joint tenants as to an undivided 10,172.32/1,965,000th interest and Louella K. Hitchcock, a widow as to an undivided 30,000/1,965,000th interest, and John E. Edwards, Trustee of the John E. Edwards Trust dated 2/21/91 as to an undivided 8,802.56/1,965,000th interest, and First Trust Company of Onaga, N.A. FBO Imogene M. Jones, IRA as to an undivided 23,500/1,965,000th interest, and Stephen T. Lydon, a single man as to an undivided 30,000/1,965,000th interest, and Robert W. O'Krakel and Terry K. O'Krakel, husband and wife as joint tenants as to an undivided 25,000/1,965,000th interest, and Richard Donovan and Mieke Donovan, husband and wife as joint tenants as to an undivided 20,000/1,965,000th interest and First Trust Company of Onaga, N.A. FBO Robert H. Jones, IRA as to an undivided 50,000/1,965,000th interest, and Dale C. Frosch and Christine Frosch, husband and wife as joint tenants as to an undivided 50,000/1,965,000th interest. Said Assignment of Deed of Trust recorded June 13, 2000 as Entry No. 46506:2000, Utah County Recorder's Office, Utah.

against loss or damage which such insured shall sustain by reason of any of the following

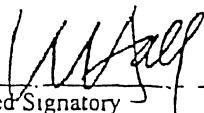
- (A) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (B) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (C) The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
- (D) The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

Authorized Signatory



The Ranches L.C., A Utah Limited Liability Company
CLTA Form 104 - Assignment of Trust Deed

ENDORSEMENT

POLICY NO.: 2701-A-49 JACKET NO.: CW3470452 FILE NO.: 7603

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

The Company hereby insures:

Assignment of Deed of Trust dated June 9, 2000, wherein the above Trust Deed (Entry 32340:2000) was assigned to: Frank P. Oeschger, Trustee of the Oeschger Survivor Trust dated 1/24/85 as to an undivided 50,000/1,965,000th interest, and Spectrum Capital, LLC, a California Limited Liability Company as to an undivided 50,000/1,965,000th interest and Gerald Verchick and Tamilyn Verchick, husband and wife as joint tenants as to an undivided 30,000/1,965,000th interest, and Steven F. Miller and Margaret E. Miller, husband and wife as joint tenants as to an undivided 20,000/1,965,000th interest, and John V. Bilello, a single man as to an undivided 15,000/1,965,000th interest, and Eleanor T. Brown, a widow and Deborah M. Brown, a single woman as joint tenants as to an undivided 1,212.35/1,965,000th interest, and James Anderson, a single man as to an undivided 45,000/1,965,000th interest and John E. Edwards, Trustee of The John E. Edwards Trust dated 2/21/91, as to an undivided 1,197.44/1,965,000th interest, and Gary K. Andersen, a single man as to an undivided 15,000/1,965,000th interest. Said Assignment of Deed of Trust recorded June 13, 2000, as Entry No. 46507:2000, Utah County Recorder's Office, Utah.

against loss or damage which such insured shall sustain by reason of any of the following

- (A) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (B) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (C) The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
- (D) The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

ENDORSEMENT

Annos

POLICY NO.: 2701-A-49

JACKET NO.: CW3470452

FILE NO.: 7603

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

All beneficial interest of John Kevin Baldwin Revocable Trust UAD 7/14/94 is hereby transferred to and the Company hereby insures:

Ernest Paul Coker and Helen Louise Coker, Trustees of the Ernest Paul Coker and Helen Louise Coker Inter-vivos Trust dated 6/7/74 as to an undivided 25,000/1,965,000th interest and Joan Ryba, an unmarried woman as to an undivided 50,000/1,965,000th interest and Erika G. Visbeek, Trustee of the Visbeek Inter-vivos Revocable Trust as to an undivided 15,000/1,965,000th interest and William D. Bauer and Annemarie J. Bauer, Co-Trustees of the Bauer Revocable Trust U/A dated 11/8/82 s to an undivided 20,000/1,965,000th interest and Rose Billich Stargrant, Trustee of The Rose Billich Stargrant Trust as to an undivided 15,000/1,965,000th interest and Giovanni Loschiavo and Elizabeth Loschiavo, Trustees of The Loschiavo Family Trust dated 3/14/96 as to an undivided 25,000/1,965,000th interest and Earl W. Porter and Joyce H. Porter, husband and wife as joint tenants as to an undivided 25,000/1,965,000th interest and John E. O'Riordan and Sonhild O'Riordan, husband and wife as joint tenants as to an undivided 37,500/1,965,000th interest and Herbert R. Marks and Jean Ciers Marks, husband and wife as joint tenants as to an undivided 14,828.08/1,965,000th interest and Robert Drey, an unmarried man as to an undivided 20,000/1,965,000th interest and Elizabeth A. Cole, Trustee of The Elizabeth A. Cole Family Trust dated 10/7/93 as to an undivided 27,671.92/1,965,000th interest and Joseph A. Lombardo and Carol Ann Lombardo, Trustees of The Lombardo Living Trust dated 2/9/00 as to an undivided 25,000/1,965,000th interest

against loss or damage which such insured shall sustain by reason of any of the following

- (A) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (B) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (C) The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
- (D) The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By:

Authorized Signatory

[Signature]

8-10-2007

ENDORSEMENT



POLICY NO.: 2701-A-49

JACKET NO.: CW3470452

FILE NO.: 7603

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

The Company hereby insures:

Jack M. Kint, a married man as his sole and separate property as to an undivided 50,000/1,965,000th interest and Robert George Bruno and Kay Ann Bruno, Trustees of The Robert George Bruno and Kay Ann Bruno Trust of 1999 as to an undivided 25,000/1,965,000th interest

against loss or damage which such insured shall sustain by reason of any of the following

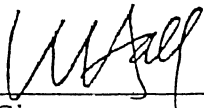
- (A) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (B) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (C) The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
- (D) The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

10-4-2007

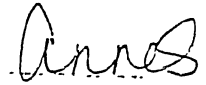
By: _____



Authorized Signatory

The Ranches L.C., A Utah Limited Liability Company
CLTA Form 104 - Assignment of Trust Deed

ENDORSEMENT



POLICY NO.: 2701-A-49

JACKET NO.: CW3470452

FILE NO.: 7603

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

The Company hereby insures:

The interests of John E. O'Riordan and Sonhild O'Riordan are hereby assigned to:

C. E. Langford, Trustee under a Declaration of Trust Dated 10/25/97 as to an undivided 15,000/1,965,000th interest

against loss or damage which such insured shall sustain by reason of any of the following

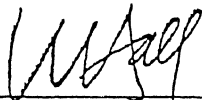
- (E) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (F) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (G) The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
- (H) The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

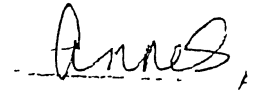
10-1-2000

By: _____



Authorized Signatory

ENDORSEMENT



POLICY NO.: 2701-A-49

JACKET NO.: CW3470452

FILE NO.: 7603

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$50.00

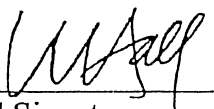
The Company hereby insures VESTIN MORTGAGE, INC., A NEVADA CORPORATION, AS TO AN UNDIVIDED 25,844.37/1,965,000TH INTEREST against loss or damage which such insured shall sustain by reason of any of the following:

- (a) The failure of the beneficial interest under the mortgage referred to in Paragraph 4 of Schedule A, to have been transferred to such insured by a valid assignment or assignments;
- (b) The existence of any reconveyance, either full or partial, of the insured mortgage, or any modification or subordination thereof, appear in the public records.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

June 13, 2001

FIRST AMERICAN TITLE INSURANCE COMPANY

By: 
Authorized Signatory

THIS MAP IS FURNISHED AS PART OF AN ENDORSEMENT AND DOES NOT REPRESENT A SURVEY OF THE LAND OR MAKE ANY REPRESENTATIONS AS TO THE SIZE, AREA, OR ANY OTHER FACTS RELATED TO THE LAND SHOWN THEREON. IT IS FURNISHED STRICTLY FOR THE PURPOSES OF GENERALLY LOCATING THE LAND. THE DESCRIPTION FURNISHED IN SCHEDULE A OF TITLE POLICY XXXX IS REFERRED TO FOR THE DESCRIPTION OF THE LAND COVERED THEREBY.

THIS DOCUMENT COPY IS FURNISHED AS AN ACCOMMODATION. THE COMPANY MAKES NO REPRESENTATIONS AS TO ITS EFFECT, SUFFICIENCY, COMPLETENESS OR ANY OTHER MATTERS THAT MIGHT BE REFERRED TO OR IMPLIED THEREIN. SHOULD YOU HAVE QUESTIONS REGARDING ITS EFFECT OR IMPACT, YOU SHOULD CONSULT INDEPENDENT LEGAL COUNSEL.

PART: 58-040-0098-111

GOV'T LOT 2

PORT CATTENDEN

MILITARY

RESERVATION

BOUNDARY

(W1/2 NE)

(E1/2 NE)

37.16 ACRES

29577-86 2337/11

PART: 58-040-0098-111

GOV'T LOT 3

41.48 ACRES

29577-86 2337/11

PART: 58-040-0111-111

GOV'T LOT 4

THOMAS B. HORNE

29577-86 2337/11

THOMAS B. HORNE
29577-86 2337/11

40.11 ACRES

58-040-0096-121

THOMAS B. HORNE
29577-86
2337/11

857,654.30'
734,026.34'

SE 1/4

1,861,390.40'
734,007.58'

1,861,406
734,04

N85

Tab 2

Form No. 1056.92
(10/17/92)
ALTA Loan Policy
Form 1



POLICY OF TITLE INSURANCE

ISSUED BY
CENTURY TITLE COMPANY
290 EAST 930 SOUTH
OREM, UTAH 84058
(801) 222-9292 • FAX (801) 222-0820

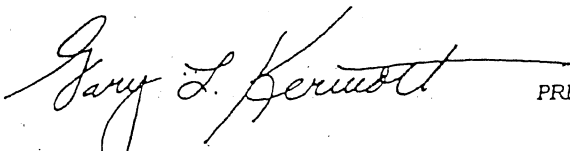
First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
 - (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
 - (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
8. Any assessments for street improvements under construction or completed at Date of Policy which now have gained or hereafter may gain priority over the insured mortgage; or
9. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

First American Title Insurance Company

BY  PRESIDENT

ATTEST  SECRETARY

CW 3481202

EXCLUSIONS FROM COVERAGE

Following matters are expressly excluded from the coverage of this policy: the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

Its of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be a taking on the rights of a purchaser for value without knowledge.

Liens, encumbrances, adverse claims or other matters: created, suffered, assumed or agreed to by the insured claimant; not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy; resulting in no loss or damage to the insured claimant; attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent

insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or (e) resulting in loss or damage which would not have been sustained if insured claimant had paid value for the insured mortgage.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of a subsequent owner of the indebtedness, to comply with applicable do business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or judgment or lien creditor.

CONDITIONS AND STIPULATIONS

DEFINITIONS OF TERMS.

Following terms when used in this policy mean:

"Insured": the insured named in Schedule A. The term also includes:

The owner of the indebtedness secured by the insured and each successor in ownership of the indebtedness except who is an obligor under the provisions of Section 12(c) of Conditions and Stipulations (reserving, however, all rights and any successor that the Company would have had against or insured, unless the successor acquired the indebtedness for value without knowledge of the asserted defect, lien, adverse claim or other matter insured against by this policy as to the estate or interest in the land);

Any governmental instrumentality or governmental instrumentality surety or guarantor under an insurance contract or guaranty warranting the indebtedness secured by the insured in any part thereof, whether named as an insured herein or not; and parties designated in Section 2(a) of these Conditions and

"Insured claimant": an insured claiming loss or damage, "Known": actual knowledge, not constructive notice which may be imputed to an insured by reason of facts as defined in this policy or any other records which give notice of matters affecting the land.

"Land": the land described or referred to in Schedule A, and affixed thereto which by law constitute real property. The term does not include any property beyond the lines of the area referred to in Schedule A, nor any right, title, interest, estate or interest abutting streets, roads, avenues, alleys, lanes, ways or nothing herein shall modify or limit the extent to which a claimant to and from the land is insured by this policy.

"Mortgage": mortgage, deed of trust, trust deed, or other instrument.

"Public records": records established under state statutes at the purpose of imparting constructive notice of matters of property to purchasers for value and without knowledge. Section 1(a)(iv) of the Exclusions From Coverage, "public records" also include environmental protection liens filed in the

or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of the Conditions and Stipulations shall not reduce pro tanto the amount of insurance afforded under this policy except to the extent that the payment reduces the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon provided in no event shall the amount of insurance be greater than the amount of insurance stated in Schedule A.

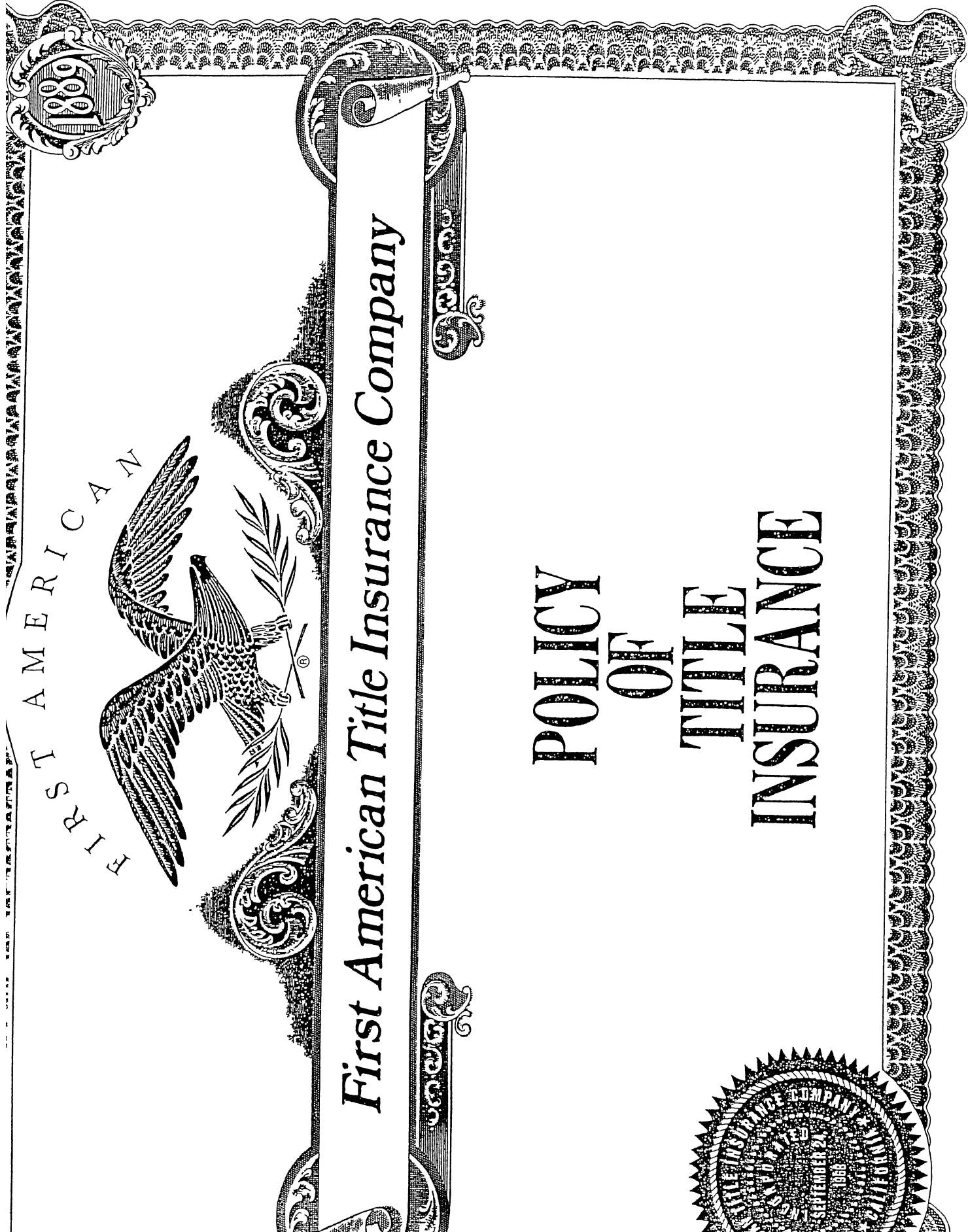
(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE.

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

11. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy and endorsement of the payment unless the policy has been lost or destroyed. In such case proof of loss or destruction shall be furnished to the



FIRST AMERICAN



First American Title Insurance Company

POLICY
OF
TITLE
INSURANCE



First American Title Insurance Company
The Ranches L.C., A Utah Limited Liability Company

Schedule A

POLICY NO.: 3192-A-49

JACKET NO.: CW3481202

FILE NO.: 8285

AMOUNT OF INSURANCE:

\$ 1,800,000.00

PREMIUM AMOUNT: \$ 2,275.00

DATE OF POLICY:

August 28, 2000 at 04:49 PM

1. **NAME OF INSURED:**

Vestin Mortgage, Inc., a Nevada corporation, its successors and/or assigns as their respective interests may appear.

2. **The estate or interest in the land which is encumbered by the insured mortgage is:**

Fee Simple

3. **Title to the estate or interest in the land is vested in:**

The Ranches, L.C., a Utah Limited Liability Company

4. **The insured mortgage and assignments thereof, if any, are described as follows:**

Deed of Trust in the amount of \$1,800,000.00, dated August 18, 2000 by and between The Ranches, L.C., a Utah Limited Liability Company, as Trustor, Century Title Company, as Trustee, and Vestin Mortgage, Inc., a Nevada corporation, as Beneficiary, recorded August 28, 2000 as Entry No. 67691:2000, Utah County Recorder's Office, Utah.

Assigned to Arthur K. Brown and Loretta Brown, Trustees of the Arthur K. Brown and Loretta Brown Revocable Living Trust dated 9/3/91 as to an undivided 15,000/1,800,000th interest and Daniel M. Tabas, a married man as his sole and separate property as to an undivided 100,000/1,800,000th interest and Joel T. Jacobs and Barbara Jacobs, Trustees of the Barbara and Joel Jacobs Trust dated 7/31/96 as to an undivided 25,000/1,800,000th interest and Raymond Mossman and Laura Irene Mossman, Trustees of the Raymond Mossman Family Trust dated 3/21/91 as to an undivided 10,000/1,800,000th interest and C. E. Langford, Trustee under a Declaration of Trust dated 10/25/97 as to an undivided 12,500/1,800,000th interest and Ronald Boris Severin, Trustee of the Severin Living Trust dated 1/19/00 as to an undivided 20,000/1,800,000th interest and Gerald Robert Gerard and Shirley Gerard, Co-Trustees of the Gerald Robert Gerard and Shirley Gerard Revocable Trust dated 9/24/98 as to an undivided 25,000/1,800,000th interest and Sunderland Corporation, a Delaware Corporation as to an undivided 1,192,500/1,800,000th interest and Steve Cottrell and Nancy Cottrell, husband and wife as joint tenants as to an undivided 50,000/1,800,000th interest and Alivce V. McConnell, an unmarried woman as to an undivided 25,000/1,800,000th interest and Daniel M. Tabas, Trustee for the Linda Jane Tabas Stempel Trust as to an undivided 100,000/1,800,000th interest and David John Wall, an unmarried man as to an undivided 25,000/1,800,000th interest and Glenn P. Hofmann and Ramona D. Hofmann, Trustees of the Glenn P. Hofmann and Ramona D. Hofmann Revocable Living Trust dated 3/7/97 as to an undivided 100,000/1,800,000th interest and Michael R. Sparks or Muriel S. Sparks, Trustees of the Sparks Family Trust dated 2/26/93 as to an undivided 25,000/1,800,000th interest and Robert Byron Lundberg and Marilyn T. Lundberg, husband and wife as joint tenants as to an undivided 25,000/1,800,000th interest and William H. Frater, a single man as to an undivided 25,000/1,800,000th interest and Yolán Lipscher, Trustee of the Lipscher Living Trust dated 11/22/91 as to an undivided 25,000/1,800,000th interest, by Assignment of Deed of Trust, dated August 18, 2000 and recorded August 28, 2000 as Entry No. 67692:2000, Utah County Recorder's Office, Utah.

Assignment of Deed of Trust, dated September 2, 2000, wherein Sunderland Corporation, a Delaware Corporation assigns and transfers all beneficial interest to Kenneth H. Wyatt and Phyllis P. Wyatt, Trustees of the Kenneth H. Wyatt and Phyllis P. Wyatt Revocable Trust dated 6/4/86 as to an undivided 125,000/1,800,000th interest and Terrence B. Gleeson and Penny S. Gleeson, husband and wife as joint tenants as to an undivided 25,000/1,800,000th interest Daniel L. Larson and Erin E. Larson, husband and wife as joint tenants as to an undivided 25,000/1,800,000th interest and Thomas r. Fischer and Cindy L. Fischer, husband and wife as joint tenants as to an undivided 25,000/1,800,000th interest, recorded October 4, 2000 as Entry No. 78343:2000, Utah County Recorder's Office, Utah.

Assignment of Deed of Trust, dated September 27, 2000, wherein Arthur K. Brown and Loretta Brown, Trustees of the Arthur K. Brown and Loretta Brown Revocable Living Trust dated 9/3/91 as to an undivided 15,000/1,800,000th interest and Daniel M. Tabas, a married man as his sole and separate property as to an undivided 100,000/1,800,000th interest and Joel T. Jacobs and Barbara Jacobs, Trustees of the Barbara and Joel Jacobs Trust dated 7/31/96 as to an undivided 25,000/1,800,000th interest and Kenneth H. Wyatt and Phyllis P. Wyatt, Trustees of the Kenneth H. Wyatt and Phyllis P. Wyatt Revocable Trust dated 6/4/86 as to an undivided 125,000/1,800,000th interest and Raymond Mossman and Laura Irene Mossman, Trustees of the Raymond Mossman Family Trust dated 3/21/91 as to an undivided 10,000/1,800,000th interest and Terrence B. Gleeson and Penny S. Gleeson, husband and wife as joint tenants as to an undivided 25,000/1,800,000th interest and C.E. Langford, Trustee under a Declaration of Trust dated 10/25/97 as to an undivided 12,500/1,800,000th interest and Ronald Boris Severin, Trustee of the Severin Living Trust dated 1/19/00 as to an undivided 20,000/1,800,000th interest and Steve Cottrell and Nancy Cottrell, husband and wife as joint tenants as to an undivided 50,000/1,800,000th interest and Alice V. McConnell, an unmarried woman as to an undivided 25,000/1,800,000th interest and Daniel M. Tabas, Trustee Linda Jane Tabas Stempel Trust as to an undivided 100,000/1,800,000th interest and Glenn P. Hofmann and Ramona D. Hofmann, Trustees of the Glenn P. Hofmann and Romana D. Hofmann Revocable Living Trust dated 3/7/97 as to an undivided 100,000/1,800,000th interest and Michael R. Sparks or Muriel S. Sparks, Trustees of the Sparks Family Trust dated 2/26/93 as to an undivided 25,000/1,800,000th interest and Robert Byron Lundberg and Marilyn T. Lundberg, husband and wife as joint tenants as to an undivided 25,000/1,800,000th interest and William H. Frater, a single man as to an undivided 25,000/1,800,000th interest and Yolan Lipscher, Trustee of the Lipscher Living Trust dated 11/22/91 as to an undivided 25,000/1,800,000th interest and Thomas R. Fischer and Cindy L. Fischer, husband and wife as joint tenants as to an undivided 25,000/1,800,000th interest, assigns and transfers all beneficial interest to DM Mortgage Investors, LLC, a Nevada Limited Liability Company as to an undivided 732,500/1,800,000th interest, recorded October 16, 2000 as Entry No. 81529:2000, Utah County Recorder's Office, Utah.

Assignment of Deed of Trust, dated September 27, 2000, wherein Sunderland Corporation, a Delaware Corporation assigns and transfers all beneficial interest to DM Mortgage Investors, LLC, a Nevada Limited Liability Company as to an undivided 992,500/1,800,000th interest, recorded October 16, 2000 as Entry No. 81530:2000, Utah County Recorder's Office, Utah.

Assigned of Deed of Trust, dated September 27, 2000, wherein Gerald Robert Gerard and Shirley Gerard, Co-Trustees of The Gerald Robert Gerard and Shirley Gerard Revocable Trust dated 9/24/98 transfers and assigns to DM Mortgage Investors, LLC, a Nevada Liability Company as to an undivided 25,000/1,800,000th interest, recorded October 16, 2000 as Entry No. 81531:2000, Utah County Recorder's Office, Utah.

Assignment of Deed of Trust wherein David John Wall assigns and transfers to DM Mortgage Investors, LLC, a Nevada Limited Liability Company as to an undivided 25,000/1,800,000th interest, by Assignment of Deed of Trust, dated September 27, 2000 and recorded October 26, 2000 as Entry No. 84685:2000, Utah County Recorder's Office, Utah.

5. The land referred to in this policy is located in Utah and is described as follows:

Beginning at the South quarter corner of Section 30, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 57' 05" West 1473.81 feet; thence South 21° 53' 28" West 42.70 feet; thence North 89° 57' 33" West 1063.40 feet; thence North 89° 36' 51" West 563.32 feet; thence North 11° 59' 43" East 1072.13 feet; thence along the arc of a 397.00 foot radius curve to the right 165.44 feet (central angle = 23° 52' 39"), the chord of which bears North 23° 56' 03" East 164.25 feet; thence North 35° 52' 22" East 1515.75 feet; thence along the arc of a 497.00 foot radius curve to the right 413.49 feet (central angle = 47° 40' 06"), the chord of which bears North 59° 49' 25" East 401.67 feet; thence North 83° 32' 28" East 498.77 feet; thence South 39° 41' 56" East 1718.28 feet; thence South 00° 03' 10" West 1327.42 feet to the point of beginning.

SCHEDULE B - PART I

EXCEPTIONS FROM COVERAGE

POLICY NO.: 3192-A-49

JACKET NO.: CW3481202

FILE NO.: 8285

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) which arise by reason of:

PART I

1. General Property Taxes for the year 2000 and subsequent years. Taxes for the year 1999 have been paid in the amount of \$93.76 for Tax Serial No. 58:048:0002. New Tax Serial No. will be 58:048:0033 and 58:040:0149 (Said property lies within Greenbelt.) (Current - None now due and payable.)
2. This property lies within the boundaries of Eagle Mountain City and is subject to all charges and assessments levied thereunder. (A check was made and none were found.)
3. Special Improvement District dated August 11, 1998, in favor of The Town of Eagle Mountain, recorded August 18, 1998, as Entry No. 82982, in Book 4742, at Page 281, and revised in Resolution No. 02-99 as The Eagle Mountain Special Improvement District No. 98-1, recorded May 7, 1999 as Entry No. 53845, in Book 5078, at Page 854, Utah County Recorder's Office, Utah. (Current - None now due and payable.)
4. No liability is assumed for any review and change in the assessment of subject property for agricultural use pursuant to Chapter 80, Laws of Utah 1969 (Greenbelt Act) not of record in the Office of the County Recorder.
5. Excepting all oil, gas and mineral rights.
6. No liability is assumed for the loss or damage arising from the exercise of the mining and drilling rights and any other privileges and immunities of the owner of the mineral estate not covered by this report and subsequent policy.
7. Easement dated March 17, 1980, wherein Utah Power and Light Company, a corporation, its successors in interest and assigns are granted a perpetual easement and right-of-way for the erection, operation, and continued maintenance, repair, alteration, inspection, relocation and replacement of the electric transmission and distribution circuits on and over said property, recorded March 4, 1981, as Entry No. 6227, in Book 1898, at Page 545, Utah County Recorder's Office, Utah.
8. That portion lying within the bounds of The Pony Express Parkway.

9. Easement dated September 23, 1991, wherein U. S. West Communications, Inc., a Colorado Corporation, its successors, assigns, lessees, licensees and agents, is granted a perpetual easement to construct, reconstruct, operate, maintain and remove such telecommunications facilities upon, over, under and across said property, recorded October 17, 1991, as Entry No. 41119, in Book 2844, at Page 695, Utah County Recorder's Office, Utah.

First American Title Insurance Company
The Ranches L.C., A Utah LIMITED Liability Company

SCHEDULE B - PART II

EXCEPTIONS FROM COVERAGE

POLICY NO.: 3192-A-49

JACKET NO.: CW3481202

FILE NO.: 8285

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

1. Deed of Trust in the amount of \$5,000.00, dated August 18, 2000 by and between The Ranches, L.C., a Utah Limited Liability Company, as Trustor, Century Title Company, as Trustee, and Vestin Mortgage, Inc., a Nevada corporation, as Beneficiary, recorded August 28, 2000 as Entry No. 67473:2000, Utah County Recorder's Office, Utah.
2. Subordination Agreement dated September 1, 2000, wherein Vestin Mortgage, inc, a Nevada corporation as Beneficiary on Trust Deed (Entry No. 67473:2000 subordinates their lien to the lien of Vestin Mortgage, Inc., a Nevada corporation shown as Trust Deed (Entry No. 67691:2000, said Subordination Agreement recorded October 13, 2000 as Entry No. 80996:2000, and corrected by that certain Affidavit to Correct recorded October 26, 2000 as Entry No. 84680:2000, Utah County Recorder's Office, Utah.
3. Personal Specific Guaranty, dated August 15, 2000 by and between Vestin Mortgage, Inc., a Nevada Corporation and The Ranches, L.C., a Utah limited liability company, recorded August 28, 2000 as Entry No. 67474:2000, Utah County Recorder's Office, Utah.
4. Agreement Regarding Hazardous Materials, dated August 15, 2000, by and between The Ranches, L.C., a Utah limited liability company, as Borrower, and Scott F. Kirkland and Phillip W. Nolen, as Guarantors, and Vestin Mortgage, Inc., a Nevada corporation, as Lender, recorded August 28, 2000 as Entry No. 67475:2000, Utah County Recorder's Office, Utah.

The Ranches L.C., A Utah Limited Liability Company
F.A. Form 31 - Restrictions, Encroachments & Minerals (Unimproved Land)

ENDORSEMENT

POLICY NO.: 3192-A-49

JACKET NO.: CW3481202

FILE NO.: 8285

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$228.00

The Company hereby insures against loss which the Insured shall sustain by reason of any of the following matters:

1. Any incorrectness in the assurance which the Company hereby gives:
 - (a) That there are no covenants, conditions, or restrictions under which the lien of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired;
 - (b) That there are no present violations on the land of any enforceable covenants, conditions, or restrictions;
 - (c) That, except as shown in Schedule B, there are no present encroachments onto the land of buildings, structures, or improvements located on adjoining lands.
2. Any future violations on the land of any covenants, conditions or restrictions occurring prior to acquisition of title to the estate or interest by the Insured, provided such violations result in impairment or loss of the lien of the mortgage referred to in Schedule A, or result in impairment or loss of title to the estate or interest if the Insured shall acquire the title in satisfaction of the indebtedness secured by the mortgage;
3. Any final court order or judgment requiring removal from any land adjoining said land of any encroachment shown in Schedule B.

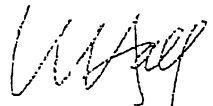
Wherever in this endorsement any or all the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or restrictions contained in any lease.

No coverage is provided under this endorsement as to any covenants, condition, restriction or other provision relating to environmental protection.

The total liability of the Company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of the policy and is subject to the schedules, conditions and stipulations therein, except as modified by the provisions hereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: 

Authorized Signatory

The Ranches L.C., A Utah Limited Liability Company
CLTA Form 103.7 - Land Abuts Street

ENDORSEMENT

POLICY NO.: 3192-A-49

JACKET NO.: CW3481202

FILE NO.: 8285

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

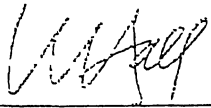
CHARGE: \$50.00

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the land to abut upon a physically open street known as

Ridge Route Road
Eagle Mountain, UT 84043

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: 

Authorized Signatory

The Ranches L.C., A Utah Limited Liability Company
CLTA Form 116.7 - Subdivision Map Act Endorsement

ENDORSEMENT

POLICY NO.: 3192-A-49

JACKET NO.: CW3481202

FILE NO.: 8285

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

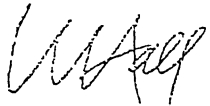
CHARGE: \$228.00

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason for the failure of the land described as Parcel 58:048:0033, 58:040:0149, in Schedule A, Item No. 5 to constitute a lawfully created parcel according to the Subdivision Map Act (Section 66410, et seq., of the California Government Code) and local ordinances adopted pursuant thereto.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____


Authorized Signatory

ENDORSEMENT

POLICY NO.: 3192-A-49

JACKET NO.: CW3481202

FILE NO.: 8285

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

The Company hereby insures:

Arthur K. Brown and Loretta Brown, Trustees of the Arthur K. Brown and Loretta Brown Revocable Living Trust dated 9/3/91 as to an undivided 15,000/1,800,000th interest and Daniel M. Tabas, a married man as his sole and separate property as to an undivided 100,000/1,800,000th interest and Joel T. Jacobs and Barbara Jacobs, Trustees of the Barbara and Joel Jacobs Trust dated 7/31/96 as to an undivided 25,000/1,800,000th interest and Raymond Mossman and Laura Irene Mossman, Trustees of the Raymond Mossman Family Trust dated 3/21/91 as to an undivided 10,000/1,800,000th interest and C. E. Langford, Trustee under a Declaration of Trust dated 10/25/97 as to an undivided 12,500/1,800,000th interest and Ronald Boris Severin, Trustee of the Severin Living Trust dated 1/19/00 as to an undivided 20,000/1,800,000th interest and Gerald Robert Gerard and Shirley Gerard, Co-Trustees of the Gerald Robert Gerard and Shirley Gerard Revocable Trust dated 9/24/98 as to an undivided 25,000/1,800,000th interest and Sutherland Corporation, a Delaware Corporation as to an undivided 1,192,500/1,800,000th interest and Steve Cottrell and Nancy Cottrell, husband and wife as joint tenants as to an undivided 50,000/1,800,000th interest and Alivce V. McConnell, an unmarried woman as to an undivided 25,000/1,800,000th interest and Daniel M. Tabas, Trustee for the Linda Jane Tabas Stempel Trust as to an undivided 100,000/1,800,000th interest and David John Wall, an unmarried man as to an undivided 25,000/1,800,000th interest and Glenn P. Hofmann and Ramona D. Hofmann, Trustees of the Glenn P. Hofmann and Ramona D. Hofmann Revocable Living Trust dated 3/7/97 as to an undivided 100,000/1,800,000th interest and Michael R. Sparks or Muriel S. Sparks, Trustees of the Sparks Family Trust dated 2/26/93 as to an undivided 25,000/1,800,000th interest and Robert Byron Lundberg and Marilyn T. Lundberg, husband and wife as joint tenants as to an undivided 25,000/1,800,000th interest and William H. Frater, a single man as to an undivided 25,000/1,800,000th interest and Yolana Lipscher, Trustee of the Lipscher Living Trust dated 11/22/91 as to an undivided 25,000/1,800,000th interest

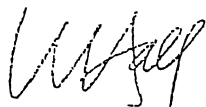
against loss or damage which such insured shall sustain by reason of any of the following

4. The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
5. The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
6. The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
7. The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____



Authorized Signatory

ENDORSEMENT

POLICY NO.: 3192-A-49

JACKET NO.: CW3481202

FILE NO.: 8285

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

The Company hereby insures:

Kenneth H. Wyatt and Phyllis P. Wyatt, Trustees of the Kenneth H. Wyatt and Phyllis P. Wyatt Revocable Trust dated 6/4/86 as to an undivided 125,000/1,800,000th interest and Terrence B. Gleeson and Penny S. Gleeson, husband and wife as joint tenants as to an undivided 25,000/1,800,000th interest Daniel L. Larson and Erin E. Larson, husband and wife as joint tenants as to an undivided 25,000/1,800,000th interest and Thomas r. Fischer and Cindy L. Fischer, husband and wife as joint tenants as to an undivided 25,000/1,800,000th interest

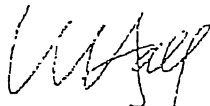
against loss or damage which such insured shall sustain by reason of any of the following

- (a) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (b) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (c) The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
- (d) The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____



Authorized Signatory

ENDORSEMENT

POLICY NO.: 3192-A-49

JACKET NO.: CW3481202

FILE NO.: 8285

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

The Company hereby insures:

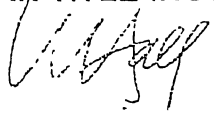
DM Mortgage Investors, LLC, a Nevada Limited Liability Company as to an undivided 732,500/1,800,000th interest

against loss or damage which such insured shall sustain by reason of any of the following

- (a) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (b) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (c) The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
- (d) The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: 

Authorized Signatory

The Ranches L.C., A Utah Limited Liability Company
CLTA Form 104 - Assignment of Trust Deed

ENDORSEMENT

POLICY NO.: 3192-A-49

JACKET NO.: CW3481202

FILE NO.: 8285

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

The Company hereby insures:

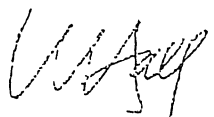
DM Mortgage Investors, LLC, a Nevada Limited Liability Company as to an undivided 992,500/1,800,000th interest

against loss or damage which such insured shall sustain by reason of any of the following

- (a) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (b) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (c) The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
- (d) The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except. **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: 
Authorized Signatory

The Ranches L.C., A Utah Limited Liability Company
CLTA Form 104 - Assignment of Trust Deed

ENDORSEMENT

POLICY NO.: 3192-A-49

JACKET NO.: CW3481202

FILE NO.: 8285

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

The Company hereby insures:

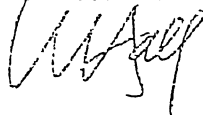
DM Mortgage Investors, LLC, a Nevada Liability Company as to an undivided 25,000/1,800,000th interest

against loss or damage which such insured shall sustain by reason of any of the following

- (a) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (b) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (c) The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
- (d) The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY



By: _____
Authorized Signatory

The Ranches L.C., A Utah Limited Liability Company
CLTA Form 104 - Assignment of Trust Deed

ENDORSEMENT

POLICY NO.: 3192-A-49

JACKET NO.: CW3481202

FILE NO.: 8285

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

CHARGE: \$00.00

The Company hereby insures:

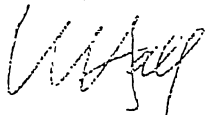
DM Mortgage Investors, LLC, a Nevada Limited Liability Company as to an undivided 25,000/1,800,000th interest

against loss or damage which such insured shall sustain by reason of any of the following

8. The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
9. The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
10. The existence of other matters affecting the validity or priority of the lien of the insured mortgage, other than those shown in the policy except: **NONE**
11. The existence of any federal tax lien or bankruptcy proceeding affecting the title to the estate or interest referred to in Schedule A shown by the public records, other than those shown in the policy, except: **NONE**

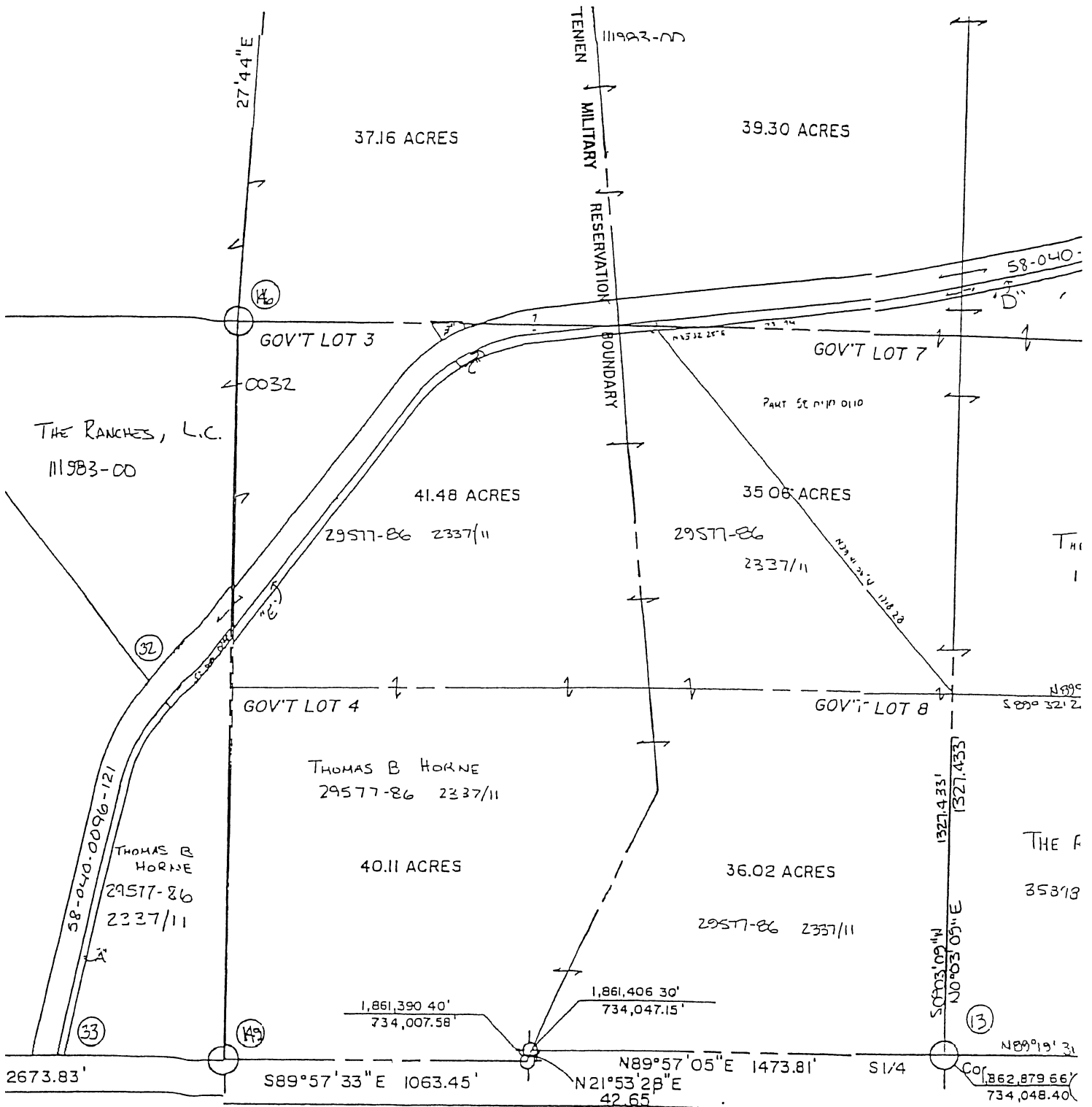
This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: 

Authorized Signatory

Parcel 5



RDC TO MEET THE JULY 1, 1978
SECTION 59-5-(112, 113, 114, 115)
STATE CODE AS INTERPRETED
PLAT STANDARDS COMMITTEE (SPSC)

NOTES: "A" (112) THOMAS B HORNE 29577-86 2337/11
"B" (33) THE RANCHES, L.C. 32339-00
"C" (40) THE RANCHES, L.C. 32339-00
"D" (41) THE RANCHES, L.C. 11983-99



THIS MAP IS FURNISHED AS PART OF AN ENDORSEMENT
AND DOES NOT REPRESENT A SURVEY OF THE LAND OR
IMPLY ANY REPRESENTATIONS AS TO THE SIZE, LOCATION



THIS DOCUMENT COPY IS FURNISHED AS AN
ACCOMMODATION. THE COMPANY MAKES NO
WARRANTY AS TO THE ACCURACY OF THE INFORMATION

Tab 3

FILED DISTRICT COURT
Third Judicial District

NOV - 5 2003

By *[Signature]* SALT LAKE COUNTY
Deputy Clerk

ORDER PREPARED AND SUBMITTED BY

Alan L. Sullivan (3152)
Brett P. Johnson (7900)
SNELL & WILMER
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

*Attorneys for Defendant First American Title
Insurance Company*

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH**

VESTIN MORTGAGE, INC., a Nevada
corporation,

Plaintiff,

vs.

FIRST AMERICAN TITLE
INSURANCE COMPANY, a California
corporation,

Defendant.

**ORDER OF DISMISSAL WITH
PREJUDICE**

Case No. 030912242

Honorable Frank G. Noel

Defendant First American Title Insurance Company's ("**First American**") Motion to Dismiss came on for hearing before the Honorable Frank G. Noel on October 17, 2003, at 9:00 a.m. Brett P. Johnson and Alan L. Sullivan of SNELL & WILMER appeared for First American. John A. Snow of VanCott Bagley Cornwall & McCarthy appeared for plaintiff Vestin Mortgage, Inc. ("**Vestin**"). Based upon the written memoranda, the arguments of counsel, the record herein, and for other good cause shown, the Court hereby concludes as a matter of law:

1. The language of the title insurance policies and endorsements at issue in this case is clear and unambiguous.

2. As of the dates of the title insurance policies and endorsements, the Notice of Intention recorded by Eagle Mountain City on August 4, 2000, was a notice of the City's future intent to levy a special assessment. On the policy and endorsement dates the contemplated special assessment was not inevitable and the City had the option not to levy the assessment. Because the special assessment was prospective, indefinite, and contingent on the policy and endorsement dates, the Notice of Intention did not create, nor was it, a defect in or lien or encumbrance on Vestin's title in the property, nor was it an "other matter" affecting the validity or priority of Vestin's mortgage.

3. Similarly, under the policies and endorsements, the Special Improvement District created by Eagle Mountain City on August 1, 2000, was not a defect in or lien or encumbrance on Vestin's title in the property.

4. As the Notice of Intention advised only of the possible future levy of an assessment, the Notice was not a notice of the exercise of a governmental police power.

5. In the policies and endorsements, First American was not required to disclose, nor was it required to except from coverage, the Notice of Intention and the Special Improvement District. First American did not breach the policies or endorsements by not disclosing or excepting from coverage the Notice of Intention and the Special Improvement District. Moreover, the nondisclosure the Notice of Intention and the Special Improvement District is not an incorrectness in the policies, the endorsements, or the representations of First American.

Based upon the foregoing conclusions of law, the Court hereby ORDERS, ADJUDGES, AND DECREES as follows:

1. Pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure, Vestin has failed to state a claim upon which relief can be granted.

2. All claims for relief alleged in Vestin's complaint are hereby dismissed with prejudice.

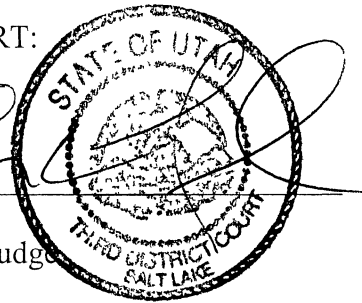
3. First American is hereby awarded its costs of court.

DATED this 5 day of Nov., 2003.

BY THE COURT:



Frank G. Noel
District Court Judge



CERTIFICATE OF SERVICE BY THE CLERK OF THE COURT

I hereby certify that I caused to be mailed to the following a true and accurate copy of the foregoing, postage prepaid, on the _____ day of _____, 2003:


Alan L. Sullivan
Brett P. Johnson
SNELL & WILMER
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004

John A. Snow
Cassie Wray
50 South Main Street, Suite 1600
Post Office Box 45340
Salt Lake City, Utah 84145-0340

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2003, a true and correct copy of the foregoing was placed in the United States Mail, postage prepaid, addressed to the following:

John A. Snow
Cassie Wray
50 South Main Street, Suite 1600
Post Office Box 45340
Salt Lake City, Utah 84145-0340



Tab 4

NOTICE OF INTENTION

PUBLIC NOTICE IS HEREBY GIVEN that on the 20th day of June, 2000, the Town Council of Eagle Mountain, Utah County, Utah (the "Town") adopted a resolution declaring its intention to create a special improvement district to be known as Eagle Mountain, Special Improvement District No. 2000-1 (the "District"). It is the intention of the Town Council to make the improvements described herein within the District and to levy special assessments as provided in Title 17A, Chapter 3, Part 3, Utah Code Annotated 1953, as amended, on the real estate lying within the District for the benefit of which such assessments are to be expended in the making of such improvements.

DESCRIPTION OF DISTRICT

The boundaries of the proposed District shall coincide with the legal description set forth in Exhibit "A", all being located within the boundaries of the Town. Certain properties within the District will not be assessed because the original developer of said properties has agreed to pay that portion of the costs of the Improvements herein described attributable to said properties.

INTENDED IMPROVEMENTS

For purposes of equitably assessing properties for the benefit received by the improvements proposed to be installed and constructed within the District, the District will be divided into two zones—Zone I and Zone II. The properties included within each zone are described in Exhibit "A". The intended improvements to be constructed within each zone will consist of those improvements described in Exhibit "B", and all related engineering and land planning (the "Improvements"), all being located within the boundaries of the District.

ESTIMATED COST OF IMPROVEMENTS

The total cost of Improvements in the District as estimated is \$19,350,000 of which approximately \$3,800,000 will be paid with respect to those properties that will not be assessed, leaving a remainder of \$15,550,000, which shall be paid by special assessments to be levied against the property abutting upon the streets to be improved or upon property which may be affected or specifically benefitted by such Improvements. The Town Council has determined that only those parcels within the boundaries of the proposed District, the owners of which have a present intent to develop said parcels, shall be benefitted by the proposed Improvements. The property owners' portion of the total estimated cost of the Improvements to be assessed may be financed during the construction period by the use of interim warrants, in which case the interest on said warrants will be assessed to the property owners. In lieu of utilizing a guaranty fund, the Town intends to create a special reserve fund to secure payment of the special assessment bonds (the "Bonds") that the Town anticipates issuing to finance the proposed Improvements. The reserve fund will be initially funded with proceeds of the Bonds in an amount equal to approximately ten percent of the total amount of Bonds to be issued. The Town anticipates applying any monies remaining in the reserve fund to the final payment on the Bonds which, in turn, would offset the final assessment payments to be made by the owners of property benefitted by such Improvements, all of which will be further described in the assessment ordinance to be adopted by the Town. In addition, the estimated costs of assessment will

include estimated overhead costs that the Town projects to incur in the creation and administration of the District. The estimated cost to be assessed against the properties within each zone within the District and the method of assessment shall be as follows:

ZONE I

<u>Improvements</u>	<u>Estimated Assessment</u>	<u>Method of Assessment</u>
All Zone I improvements described in <u>Exhibit "B"</u>	\$12,400	Per acre

ZONE II

<u>Improvements</u>	<u>Estimated Assessment</u>	<u>Method of Assessment</u>
All Zone I and Zone II improvements described in <u>Exhibit "B"</u>	\$13,400	Per acre

LEVY OF ASSESSMENTS

It is the intention of the Town Council to levy assessments as provided by the laws of Utah on all parcels and lots of real property to be benefitted by the proposed Improvements within the District. The purpose of the assessment and levy is to pay those costs of the Improvements that the Town will not assume and pay. The method of assessment shall be by acre as set forth herein.

The assessments may be paid by property owners in not more than twenty (20) annual installments with interest on the unpaid balance at a rate or rates fixed by the Town Council, or the whole or any part of the assessment may be paid without interest within fifteen (15) days after the ordinance levying the assessment becomes effective. The assessments shall be levied according to the benefits to be derived by each property within the District. Other payment provisions and enforcement remedies shall be in accordance with Title 17A, Chapter 3, Part 3, Utah Code Annotated 1953, as amended.

A map of the proposed District, copies of plans, profiles and specifications of the proposed Improvements and other related information are on file in the office of the Engineer who will make such information available to all interested persons.

TIME FOR FILING PROTESTS

Any person who is the owner of record of property to be assessed in the District described in this Notice of Intention shall have the right to file in writing a protest against the creation of the District or to make any other objections relating thereto. Protests shall describe or otherwise identify the property owned of record by the person or persons making the protest and shall indicate the total acreage represented by said protest. Protests shall be filed with the Town Clerk of Eagle Mountain, Utah, on or before 4.00 p.m. the 31st day of July, 2000. Thereafter at 7:00 p.m. on the 1st day of August, 2000, the Town Council will meet in public meeting offices of the Town Council at 1680 East Heritage Drive, Eagle Mountain, Utah, to consider all protests so filed and hear all objections relating to the proposed District.

After such consideration and determination, the Town Council shall adopt a resolution either abandoning the District or creating the District either as described in this Notice of Intention or with deletions and changes made as authorized by law; but the Town Council shall abandon the District and not create the same if the necessary number of protests as provided herein have been filed on or before the time specified in this Notice of Intention for the filing of protests after eliminating from such filed protests: (i) protests relating to property or relating to a type of Improvement which has been deleted from the District and (ii) protests which have been withdrawn in writing prior to the conclusion of the hearing. The necessary number of protests shall mean protests representing one-half of the acreage to be assessed.

BY ORDER OF THE TOWN COUNCIL OF EAGLE MOUNTAIN, UTAH

Janet Valentine
Town Clerk

Published in the New Utah

Publication Dates: June 28, July 5, July 12, and July 19.

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MEADOW RANCH SID 2000-1 LEGAL DESCRIPTION:

BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 18, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89 DEGREES 06'47" EAST ALONG SECTION LINE 2634.30 FEET TO THE NORTHEAST CORNER OF SAID SECTION; THENCE SOUTH 00 DEGREES 13'53" WEST ALONG SECTION LINE 2621.67 FEET TO THE EAST QUARTER CORNER OF SAID SECTION; THENCE SOUTH 89 DEGREES 30'41" EAST 1320.05 FEET; THENCE SOUTH 1307.71 FEET; THENCE SOUTH 89 DEGREES 13'40" WEST 1325.70 FEET; THENCE NORTH 00 DEGREES 14'20" EAST 9.51 FEET; THENCE NORTH 89 DEGREES 30'43" WEST 2648.88 FEET; THENCE SOUTH 00 DEGREES 26'48" WEST 142.12 FEET; THENCE ALONG THE ARC OF A 5804.56 FOOT RADIUS CURVE TO THE LEFT 605.47 FEET (CENTRAL ANGLE = 05 DEGREES 58'35"), THE CHORD OF WHICH BEARS SOUTH 77 DEGREES 11'52" WEST 605.19 FEET; THENCE SOUTH 74 DEGREES 12'34" WEST 1945.07 FEET ALONG THE NORTHERLY RIGHT OF WAY OF STATE ROAD 73; THENCE NORTH 00 DEGREES 42'04" EAST 2151.84 FEET; THENCE SOUTH 89 DEGREES 32'03" EAST 2447.01 FEET; THENCE NORTH 00 DEGREES 26'48" EAST 2641.01 FEET TO THE POINT OF BEGINNING.

CONTAINS 381.2535 ACRES

THE RANCHES SID 2000-1 LEGAL DESCRIPTION:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 25, TOWNSHIP 5 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00 DEGREES 50'24" EAST 2709.61 FEET; THENCE SOUTH 89 DEGREES 31'55" EAST 1296.93 FEET; THENCE NORTH 01 DEGREE 38'58" EAST 2604.26 FEET; THENCE SOUTH 89 DEGREES 15'07" EAST 1333.69 FEET ALONG SECTION LINE TO THE NORTHWEST CORNER OF SECTION 30, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89 DEGREES 43'21" EAST 1135.80 FEET ALONG SECTION LINE; THENCE NORTH 34 DEGREES 16'08" EAST 74.04 FEET ALONG SECTION LINE; THENCE NORTH 35 DEGREES 40'00" EAST 535.26 FEET; THENCE NORTH 08 DEGREES 30'00" WEST 853.01 FEET; THENCE NORTH 88 DEGREES 19'10" EAST 1135.48 FEET; THENCE SOUTH 00 DEGREES 31'41" WEST 1279.11 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 30; THENCE SOUTH 89 DEGREES 18'39" EAST 2759.83 FEET ALONG SECTION LINE TO THE NORTHEAST CORNER OF SAID SECTION 30; THENCE NORTH 00 DEGREES 18'58" WEST ALONG SECTION LINE 2654.18 FEET TO THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 5 SOUTH, RANGE 1 WEST; THENCE NORTH 00 DEGREES 54'13" WEST ALONG SECTION LINE 1466.45 FEET; THENCE NORTH 89 DEGREES 05'47" EAST 1131.69 FEET; THENCE NORTH 00 DEGREES 14'17" EAST 2395.75 FEET TO THE SOUTHERLY RIGHT OF WAY OF STATE ROAD 73; THENCE NORTH 89 DEGREES 14'02" EAST 309.94 FEET ALONG SAID RIGHT OF WAY; THENCE ALONG THE ARC OF A 5804.70 FOOT RADIUS CURVE TO THE LEFT 1114.39 FEET ALONG SAID RIGHT OF WAY (CENTRAL ANGLE = 10 DEGREES 59'59"), THE CHORD OF WHICH BEARS NORTH 83 DEGREES 44'03" EAST 1112.68 FEET; THENCE NORTH 78 DEGREES 14'03" EAST 2847.09 FEET ALONG SAID RIGHT OF WAY; THENCE SOUTH 00 DEGREES 15'56" WEST ALONG SECTION LINE 1978.86 FEET TO THE NORTHEAST CORNER OF SAID SECTION 20; THENCE SOUTH 00 DEGREE 12'55" WEST 2672.98 FEET ALONG SECTION LINE TO THE EAST QUARTER CORNER OF SAID SECTION 20; THENCE NORTH 89 DEGREES 17'20" WEST 2657.50 FEET; THENCE SOUTH 00 DEGREES 10'38" EAST 2665.33 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 20; THENCE SOUTH 89 DEGREES 02'12" EAST 1753.67 FEET ALONG SECTION LINE; THENCE SOUTH 24 DEGREES 56'36" EAST 1.83 FEET; THENCE SOUTH 27 DEGREES 20'12" EAST 47.37 FEET; THENCE SOUTH 57 DEGREES 17'38" EAST 197.83 FEET; THENCE SOUTH 08 DEGREES 13'30" EAST 205.40 FEET; THENCE SOUTH 6 DEGREES 15'52" EAST 197.12 FEET; THENCE NORTH 56 DEGREES 02'26" EAST 94.61

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FEET; THENCE SOUTH 08 DEGREES 08'50" WEST 127.18 FEET; THENCE SOUTH 50 DEGREES 12'10" EAST 48.04 FEET; THENCE NORTH 54 DEGREES 39'22" EAST 113.62 FEET; THENCE NORTH 84 DEGREES 28'44" EAST 91.65 FEET; THENCE SOUTH 61 DEGREES 28'58" EAST 66.30 FEET; THENCE SOUTH 14 DEGREES 21'48" EAST 108.76 FEET; THENCE NORTH 83 DEGREES 40'59" EAST 142.28 FEET; THENCE SOUTH 01 DEGREE 24'52" EAST 106.51 FEET; THENCE SOUTH 36 DEGREES 37'17" EAST 218.46 FEET; THENCE SOUTH 57 DEGREES 34'13" EAST 67.83 FEET; THENCE SOUTH 33 DEGREES 23'06" EAST 136.30 FEET; THENCE SOUTH 56 DEGREES 31'12" EAST 155.18 FEET; THENCE NORTH 88 DEGREES 54'29" EAST 166.94 FEET; THENCE SOUTH 33 DEGREES 10'35" WEST 40.34 FEET; THENCE SOUTH 03 DEGREES 43'36" WEST 215.05 FEET; THENCE NORTH 89 DEGREES 18'58" WEST 562.05 FEET; THENCE SOUTH 00 DEGREES 37'28" WEST ALONG SECTION LINE 1321.95 FEET TO THE EAST QUARTER CORNER OF SECTION 29, TOWNSHIP 5 SOUTH, RANGE 1 WEST; THENCE NORTH 89 DEGREES 22'40" WEST 1327.62 FEET; THENCE SOUTH 00 DEGREES 47'19" WEST 1322.55 FEET; THENCE SOUTH 89 DEGREES 23'00" EAST 1331.56 FEET; THENCE SOUTH 00 DEGREES 37'03" WEST ALONG SECTION LINE 1322.41 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 29; THENCE NORTH 89 DEGREES 23'20" WEST 1335.51 FEET ALONG SECTION LINE; THENCE SOUTH 01 DEGREE 06'47" WEST 668.63 FEET; THENCE WEST 964.50 FEET; THENCE NORTH 08 DEGREES 19'32" EAST 188.28 FEET; THENCE NORTH 21 DEGREES 20'13" WEST 307.90 FEET; THENCE NORTH 75 DEGREES 37'07" WEST 360.84 FEET; THENCE NORTH 50 DEGREES 33'36" WEST 359.75 FEET; THENCE NORTH 87 DEGREES 55'48" WEST 372.18 FEET; THENCE NORTH 68 DEGREES 11'55" WEST 217.19 FEET; THENCE NORTH 49 DEGREES 57'01" WEST 403.93 FEET; THENCE NORTH 27 DEGREES 19'57" WEST 448.95 FEET; THENCE NORTH 01 DEGREE 06'45" EAST 461.65 FEET; THENCE NORTH 43 DEGREES 40'04" EAST 136.29 FEET; THENCE NORTH 59 DEGREES 44'37" WEST 62.25 FEET; THENCE SOUTH 37 DEGREES 46'33" WEST 453.55 FEET; THENCE SOUTH 70 DEGREES 53'37" WEST 724.58 FEET; THENCE SOUTH 15 DEGREES 08'19" WEST 888.60 FEET; THENCE SOUTH 89 DEGREES 59'15" WEST 68.85 FEET ALONG SECTION LINE TO THE SOUTHWEST CORNER OF SAID SECTION 29; THENCE NORTH 89 DEGREES 19'31" WEST 2657.40 FEET ALONG SECTION LINE TO THE SOUTH QUARTER CORNER OF SAID SECTION 30; THENCE SOUTH 89 DEGREES 57'05" WEST 1473.81 FEET ALONG SECTION LINE; THENCE SOUTH 21 DEGREES 53'28" WEST 42.70 FEET; THENCE NORTH 89 DEGREES 57'33" WEST 1063.40 FEET ALONG SECTION LINE TO THE SOUTHWEST CORNER OF SAID SECTION 30, TOWNSHIP 5 SOUTH, RANGE 1 WEST; THENCE NORTH 89 DEGREES 36'51" WEST 2673.83 FEET ALONG SECTION LINE TO THE POINT OF BEGINNING.

CONTAINS 2113.5351 ACRES

Sent By: Epic Engineering;
Received: 6/23/00 8:54PM;
Sent By: FJ Clark & Associates;

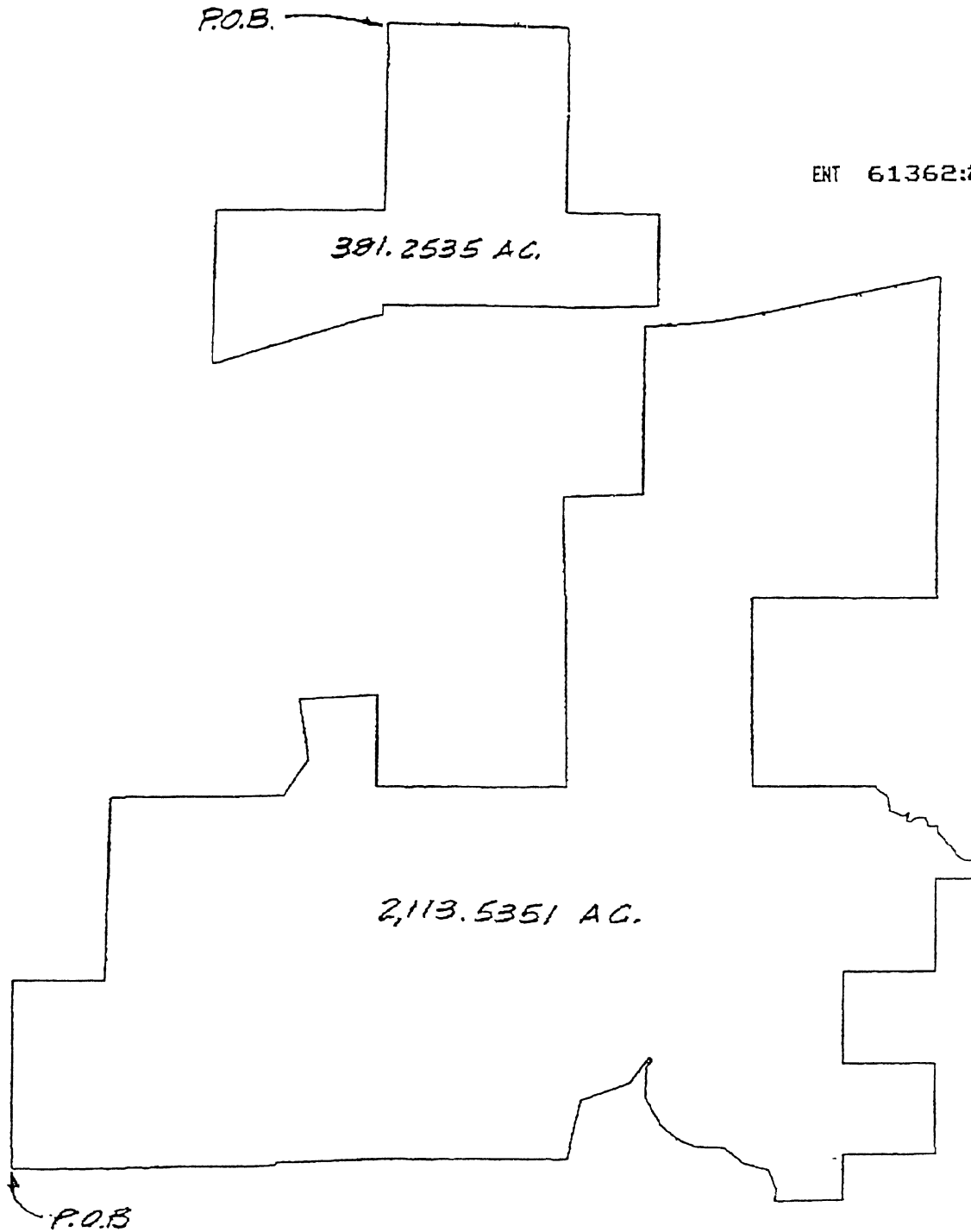
435 654 6622;
801 224 5230 -> Epic Engineer;
801 224 5230;
JUN-27-00 0:00AM;
Jun-23-00 9:00PM;

Page 5

Page 3

Page 3

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Exhibit "B"
Zone 1
INTENDED IMPROVEMENTS

1. 10' wide asphalt trails, (and short sections of concrete at intersections), on the west side of The Ranches Parkway from SR 73 to Pony Express Parkway; and on the north side of Pony Express Parkway from Tickville Wash to the south end of Ash Point subdivision; and on the south side of Pony Express Parkway from The Ranches Parkway to Tickville Wash.
2. Installation of irrigation and landscaping on The Ranches Parkway from SR 73 to Pony Express Parkway; and the north side of Pony Express Parkway from Tickville Wash to the south end of Ash Point subdivision; and on the south side of Pony Express Parkway from The Ranches Parkway to Tickville Wash; and in the medians of Pony Express Parkway from The Ranches Parkway to Tickville Wash; and in the medians of The Ranches Parkway.
3. 1" seal coat, (plant mix), on SR 73 on the highway widenings done at entrance to The Ranches Parkway.
4. Striping, (after 2" overlay), on The Ranches Parkway and on Pony Express Parkway.
5. Well engineering, drilling, piping, pump, connections, equipment, housing, testing, etc., for the new well located on the golf course clubhouse hill.
6. Installation of fencing on west side of The Ranches Parkway from SR 73 to Pony Express Parkway; and the north side of Pony Express Parkway from Tickville Wash to the south end of Ash Point subdivision; and on the south side of Pony Express Parkway from The Ranches Parkway to the south side of Ruby Valley.
7. Installation of an 8' asphalt trail on the Paul Evans Trailway from Pony Express Parkway running northeasterly to Red Hawk Ranch Park; and south of Red Hawk Ranch Park from Sparrow Hawk Way to the Grant Smith Trailway (under the power lines).

8. Installation of irrigation and landscaping, (including pedestrian trail), on the Paul Evans Trailway from the future community center site running north easterly to Red Hawk Ranch Park; and south of Red Hawk Ranch Park from Sparrow Hawk Way to the Grant Smith Trailway.
9. Installation of irrigation and landscaping, (including horse and pedestrian trails, and soccer fields, and around tree nursery), on the Grant Smith Trailway from Pony Express Parkway running southwesterly to the southern boundary of the master plan under the power lines.
10. Installation of irrigation and landscaping, (including trails), on the four corners of The Ranches and Pony Express Parkways.
11. Installation of trails, irrigation and landscaping in the Red Hawk Ranch 11-acre park, including trails, structures and ball fields.
12. Installation of trails, irrigation, landscaping, trails, and playground equipment in the following neighborhood parks:
 - A. Saddlerock Ranch (in Ash Point)
 - B. Smith Ranch (in Saddleback)
 - C. Smith Ranch (in Porter's Crossing)
 - D. Lake Mountain Ranch (in Kiowa Valley #1)
 - E. Lake Mountain Ranch (northwest)
 - F. Prairie Gate Ranch (in Mt. Airey - east)
 - G. Prairie Gate Ranch (in Mt. Airey - wetlands)
 - H. Prairie Gate Ranch (in Mt. Airey - southwest)
 - I. Prairie Gate Ranch (in Sweetwater - R1-N18/19)
 - J. Prairie Gate Ranch (on Grant Smith Trailway)
 - K. Paul Evans Trailway (next to Chimney Rock)
 - L. Paul Evans Trailway (S W detention basin)
 - M. Paul Evans Trailway (next to community center)
 - N. Eagle Mountain Ranch (S E)
 - O. Eagle Mountain Ranch (N W)
 - P. Circle 5 Ranch (Lonetree)
 - Q. Circle Five Ranch (SE)
 - R. Oquirrh Mountain Ranch (S W)
 - S. Meadow Ranch (both)
13. Installation of trails in Meadow Ranch.

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14. Construction of Pony Express Parkway extension, (running southwesterly from the south end of Rockwell Village to the southernmost boundary of The Ranches Master Plan), including all underground utilities, curb and gutter, 4 lanes of paving, trails, landscaping, undergrounding of power lines, fencing, striping, and street signage.
15. Construction of the following ranch loop roads, (including all utilities, curb and gutter, 2 lanes of paving, trails & landscaping where applicable, striping and street signage).:
 - A. Circle 5 Ranch to Oquirrh Mountain Ranch, (from Pony Express Parkway through Circle 5 and Oquirrh Mountain and back to Pony Express Parkway) – approximately 4,800 lf.
 - B. Smith Ranch to Lake Mountain Ranch, (from Jacob's Well in Smith Ranch through Lake Mountain Ranch and back through Smith Ranch to Pony Express Parkway) – approximately 9,800 lf.
 - C. Prairie Gate Ranch, (from Mt. Airey through Willow Creek and Eagle's Gate and connecting to The Ranches Parkway) – approximately 4,500 lf.
 - D. Half-mile Road, (from The Ranches Parkway to Cedar Pass Ranch – through Prairie Gate Ranch) – approximately 2,600 lf.
 - E. Eagle Mountain Ranch, (from Pony Express Parkway running southeasterly through Eagle Mountain Ranch and returning westerly to Pony Express Parkway) – approximately 10,650 lf.
16. Purchase of a portion of the property for the Town of Eagle Mountain's 138kv transmission line easement.

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17. Installation DLC cabinets as follows:
 - A. 2 in Smith Ranch
 - B. 1 in Red Hawk Ranch
 - C. 2 in Lake Mountain Ranch
 - D. 2 in Prairie Gate Ranch
 - E. 2 in Oquirrh Mountain Ranch
 - F. 1 in Meadow Ranch
18. Gas regulator station

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Exhibit "B"
Zone 2
INTENDED IMPROVEMENTS.

1. Construction of a 1,000,000 gallon water storage tank on Inspiration Point, (between Red Hawk Ranch and Eagle Mountain Ranch -- next to The Ranches' first water tank).

Eagle Mountain, Utah

August 1, 2000

A regular meeting of the Town Council of the Town of Eagle Mountain, Utah County, Utah, was held on August 1, 2000, at the hour of 7:00 p.m. at its regular meeting place in Eagle Mountain, Utah, at which meeting there were present the following members who constituted a quorum:

Paul Bond	Mayor <u>Absent</u>
David A. Albrecht	Councilmember
Greg Kehl	Councilmember
Brigham S. Morgan	Councilmember
Bert Ankrom	Councilmember

Also present:

John D Newman	Town Administrator
Janet Valentine	Town Clerk

Absent:

After the meeting had been duly called to order and the minutes of the preceding meeting read and approved, the following proceedings, among others, were duly had and taken:

The Town Clerk notified the Town Council that the Notice of Intention to establish Eagle Mountain, Utah Special Improvement District No. 2000-1 (the "District"), authorized by the resolution adopted by the Town Council on the 20th day of June, 2000, had been published in the New Utah, a newspaper of general circulation in Eagle Mountain, Utah, said notice having been published four times, once during each week for four consecutive weeks, the last publication being not less than five (5) nor more than twenty (20) days prior to July 31, 2000, and that the affidavit of publishing said Notice of Intention with a copy of the Notice as published was duly filed in her office; also that a copy of such Notice of Intention to create the District has been mailed by United States Mail, postage prepaid, to each owner of land affected by or specially benefitted by such improvements as said property is described in said Notice insofar as the names and addresses of said owners could be ascertained from the most recent available county assessment books and that it also has been

mailed by the United States Mail, postage prepaid, to "Owner" at the street number of each piece of improved property to be affected by said assessment, said Notices having been mailed not later then ten (10) days after the first publication of the Notice of Intention; that the Notice of Intention has been on file in her office during all regular office hours from the 20th day of June, 2000, to the 31st day of July, 2000, for the examination of any interested parties; that said Notice directed that all persons desiring to protest and oppose the creation of the District might appear and file in writing said protests and objections.

The Town Clerk then presented a statement stating that written protests against the creation of the District and the making of the proposed improvements therein were received by her in her office by 5:00 p.m. on the 31st day of July, 2000.

The names of the protestants and descriptions of their property are as follows:

Property Owner

Total number of acres protesting creation
of district or proposed improvements
thereof:

_____0_____

Total number of acres affected or
to be benefitted:

The Town Council then considered each and every protest so filed, whether written or oral, and heard each and every person who wished to be heard in protest against the creation of the District and the construction of said improvements therein.

After consideration of such protests and the statements of those persons heard as aforesaid, it was determined that the total acres represented by said protests is less than fifty percent (50%) of the total acreage to be assessed within the District and is a percentage insufficient to legally protest creation of the District.

Councilmember Greg Kehl introduced the following resolution in writing, which was fully discussed, and moved its adoption:

RESOLUTION NO. 14-00

A RESOLUTION TO CREATE EAGLE MOUNTAIN, UTAH SPECIAL IMPROVEMENT DISTRICT NO. 2000-1 DESCRIBED IN THE NOTICE OF INTENTION CONCERNING THE DISTRICT AND AUTHORIZING THE TOWN OFFICIALS TO PROCEED TO MAKE IMPROVEMENTS AS SET FORTH IN THE NOTICE OF INTENTION TO CREATE THE DISTRICT; AUTHORIZING THE CITY ENGINEER TO PREPARE A NOTICE TO CONTRACTORS FOR SEALED BIDS WITH RESPECT TO THE CONSTRUCTION OF THE IMPROVEMENTS; AND RELATED MATTERS.

BE IT RESOLVED by the Mayor and Town Council of Eagle Mountain, Utah County, Utah:

Section 1. The Town Council of Eagle Mountain, Utah County, Utah, hereby determines that it will be in the best interest of the Municipality to construct certain improvements within the Municipality. The specific description of the nature of the improvements is more particularly set out in the Notice of Intention which has been published and mailed as required by law.

Section 2. The Town Council has heretofore considered each and every protest filed and has heard each and every person who wished to be heard in protest against the creation of the District or making of any of the improvements therein or on any other matter pertinent to the District.

Section 3. The improvements proposed and described in the Notice of Intention to create the District are hereby authorized, and the District is hereby created.

Section 4. As required by law, the Town Clerk is hereby authorized and directed to file a copy of the Notice of Intention and resolution creating the District as finally approved, together with a list of properties proposed to be assessed described by tax

identification number and legal description, in the Utah County Recorder's office within five days from the date hereof.

Section 5. In addition to the requirements of Section 4 hereof, immediately upon its adoption, this Resolution shall be placed in the records of the Town where it will be continuously available for public inspection on a reasonable basis at the office of the Town during regular business hours of the Town, from and after the date hereof through and including the last date of issuance of the bonds or such other time as is determined by the Town.

Section 6. The Town Engineer is hereby authorized to prepare a notice to contractors for the receipt of bids for the construction of improvements. Said notice shall specify the time and place for the receipt of sealed bids and shall publish the notice one time in a newspaper having general circulation in the Municipality at least fifteen (15) days before the date specified for the receipt of sealed bids. The Town Council shall in open session at the time specified in the notice, open, examine and publicly declare the bids and may reject any or all bids when deemed for the public good and, at such or a later meeting, shall reject all bids other than the lowest and best bid of a responsible bidder. If the price bid by the lowest and best responsible bidder exceeds the estimated costs as determined by the Town Engineer, the Town Council may nevertheless award a contract for the price so bid. The Town Council may in any case refuse to award a contract and may obtain new bids after giving a new notice to contractors or may determine to abandon the district or not to make some of the improvements proposed to be made.

Councilmember Bert Ankrom seconded the motion to adopt the foregoing Resolution. The Resolution was thereupon put to a vote and unanimously adopted on the following recorded vote:

Those voting AYE:

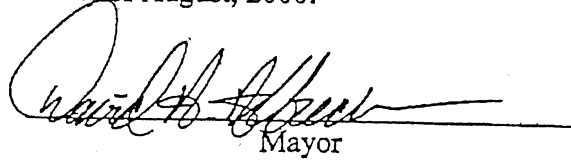
David A. Albrecht	Mayor
	Pro Tem
Greg Kehl	Councilmember
Brigham S. Morgan	Councilmember
Bert Ankrom	Councilmember

Those voting NAY:

None

Thereupon the motion was approved by the Mayor and made a matter of record by the Town Clerk.

ADOPTED AND APPROVED this 1st day of August, 2000.


Mayor

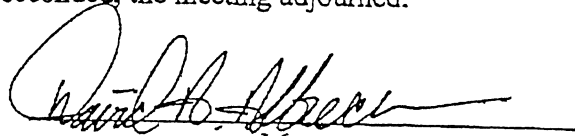
ATTEST:


Town Clerk

(SEAL)

(Here follows other business not pertinent to the above.)

Pursuant to motion duly made and seconded, the meeting adjourned.


Mayor

ATTEST:

Town Clerk

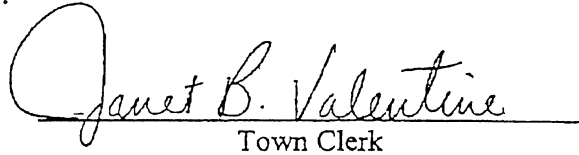


STATE OF UTAH)
: ss.
COUNTY OF UTAH)

I, Janet Valentine, the duly appointed, qualified Town Clerk of Eagle Mountain, Utah County, Utah, do hereby certify as follows:

That the foregoing pages constitute a full, true and correct copy of the record of proceedings of the Town Council of Eagle Mountain, Utah County, Utah, held on August 1, 2000, insofar as said proceedings relate to the hearing of protests against the establishment of the Eagle Mountain, Utah Special Improvement District No. 2000-1 and a resolution establishing said special improvement district as the same appears of record in my office. I personally attended said meeting, and the proceedings were in fact as specified in said minutes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Municipality this 1st day of August, 2000.


Town Clerk



STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

CERTIFICATE OF FILING

I, Janet Valentine, the duly qualified and acting Town Clerk of Eagle Mountain, Utah County, Utah, do hereby certify that on the 1 day of August, 2000, pursuant to Section 17A-3-307, Utah Code Annotated 1953, as amended, a copy of the Notice of Intention and resolution creating Eagle Mountain, Utah Special Improvement District No. 2000-1, as finally approved, together with a list of properties proposed to be assessed described by tax identification number and legal description, was filed in the Utah County Recorder's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Municipality this 1 day of August, 2000.


Town Clerk



CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Janet Valentine, the undersigned Town Clerk of Eagle Mountain, Utah County, Utah (the "Town"), do hereby certify, according to the records of the Town in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-6(2), Utah Code Annotated, 1953, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time and place of the August 1, 2000, public meeting held by the Town as follows:

(a) By causing a Notice, in the form attached hereto as Exhibit "A", to be posted at the Town's principal offices on July 31, 2000, at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained to posted and available for public inspection until the completion of the meeting; and

(b) By causing a copy of such Notice, in the form attached hereto as Exhibit "A", to be delivered to the New Utah, on July 31, 2000, at least twenty-four (24) hours prior to the convening of the meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this 1st day of August, 2000.



Janet B. Valentine
Town Clerk

EXHIBIT "A"

ENT 61362:2000 PG 23 of 45

NOTICE OF MEETING

AGENDA
TOWN COUNCIL MEETING
Tuesday, August 1, 2000

Work Session at 4:00 p.m. - Policy Session at 7:00 p.m.
Eagle Mountain Community Center, 1668 East Heritage Drive
Eagle Mountain, Utah 84043

.....
WORK SESSION - No Action or Minutes Taken - 4:00 to 6:30 p.m. - Eagle
Mtn. Town Office, Conference Room

1. Warrant Register/Stephan Gabrielson
2. Partial Bond Releases/Korey Walker
 - a. Castle Rock Subdivision
 - b. Sage Valley, Plat A
3. Protest Hearing SID 2000-1 (The Ranches, LC)
4. Minor Developments/Ken Leetham, Shawn Warnke
 - a. Waiver of roof pitch & setback for Lot 92 in North Ranch Subdivision
5. Major Developments/Ken Leetham, Shawn Warnke
 - a. Overland Trails, Phase 2B-extension of approved plat
 - b. Overland Trails, Phases I, II & II-B relating to the park and landscaping requirements
 - c. Approval of the Development Agreement for Overland Trails, Phase III, Plats A & B
6. Consolidated Fee Schedule Amendment
7. License Agreement with UDOT (for bonding under SR-73 in connection with the Sage Valley Improvements)
8. Vehicles
9. Other Business
10. Goals

INTERMISSION - CHANGE OF VENUE
(Continued on the following pages)

POLICY SESSION - 7:00 TO 10:30 p.m. - Eagle Mtn. Community, 1668 E.
Heritage Dr., Eagle Mtn.

1. Roll Call
2. Pledge of Allegiance
3. Approval of Minutes (no minutes available)
4. General Discussion/Questions/Announcements
Pony Express Days Report; Candy Bateman, Chair
5. Appointments.
6. Public Notices
7. Public Comment
8. Protest Hearing. *To receive public comments regarding the creation of Eagle Mountain, Utah Special Improvement District 2000-1 (The Ranches, LC) (Installation of asphalt trails; Installation of irrigation and landscaping; Seal coat and striping of road; Well engineering, drilling, piping, pump, connections, equipment, housing, testing, etc.; Installation of fencing)*
 - a. Open Public Hearing (7:15 p.m. or as soon thereafter as it may be heard)
 - b. Receive Public Comment
 - c. Close Public Hearing
9. Consideration and Approval of a Resolution to create Eagle Mountain, Utah Special Improvement District No. 2000-1 (Installation of asphalt trails; Installation of irrigation

- and landscaping; Seal coat and striping of road; Well engineering, drilling, piping, pump, connections, equipment, housing, testing, etc.; Installation of fencing)
10. Minor Development Approvals
 - a. Waiver of roof pitch & setback for Lot 92 in North Ranch Subdivision
 11. Major Development Approvals
 - a. Overland Trails, Phase 2B-extension of approved plat
 - b. Overland Trails, Phases I, II & II-B relating to the park and landscaping requirements
 - b. Approval of the Development Agreement for Overland Trails, Phase III, Plats A & B.
 12. Consideration and Approval of a Resolution Amending the Eagle Mountain Consolidated Fee Schedule
 13. License Agreement with UDOT (for boring under SR-73 in connection with the Sage Valley Improvements)
 14. Motion to approve Consent Agenda items as follows: (Refer to Work Session)
 - a. Warrant Register
 - b. Partial Bond Releases
 15. Vehicles purchase
 17. Motion to adjourn into a Closed Executive Session for the purpose of discussing personnel issues, potential litigation and/or public safety/security
 18. Motion to adjourn the Closed Executive Session and Return to Open Session
 19. Any Actions from the Closed Executive Session
 20. Adjournment

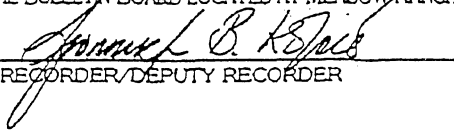
Eagle Mountain, Utah

IN COMPLIANCE WITH THE AMERICAN WITH DISABILITIES ACT, PERSONS NEEDING AUXILIARY COMMUNICATIVE AIDS AND SERVICES FOR THESE MEETINGS SHOULD CONTACT JANET VALENTINE (801) 766-5988, GIVING AT LEAST 48 HOURS ADVANCE NOTICE.

THE PUBLIC IS INVITED TO ATTEND ALL TOWN COUNCIL MEETINGS

CERTIFICATE OF POSTING

THE UNDERSIGNED, DULY APPOINTED TOWN CLERK, DOES HEREBY CERTIFY THAT THE ABOVE NOTICE AND AGENDA WAS POSTED IN THREE PUBLIC PLACES WITHIN EAGLE MOUNTAIN TOWN LIMITS ON THIS 28TH DAY OF JULY, 2000. THESE PUBLIC PLACES BEING 1) INSIDE BULLETIN BOARD AT THE TOWN OFFICES, 1680 E. HERITAGE DR., EAGLE MOUNTAIN, UTAH; 2) OUTSIDE BULLETIN BOARD AT THE TOWN OFFICES, EAGLE MOUNTAIN, UTAH 3) THE BULLETIN BOARD LOCATED AT MEADOW RANCH SUBDIVISION, HWY 73, EAGLE MOUNTAIN, UTAH.


RECORDER/DEPUTY RECORDER

**SID 2000-1
LEGAL DESCRIPTION**

Parcel 1: (MEADOW RANCH LEGAL DESCRIPTION)

All Properties with the following tax id numbers _____ included within the following legal description: 58:033:0075; 58:033:0076; 58:033:0077; 46:489:0101 through 46:489:0500; 46:490:0201 through 46:490:0500; 46:491:0301 through 46:491:0500; and 46:536:0409 through 46:536:0434

Beginning at the North quarter corner of Section 18, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 06'47" East along section line 2634.30 feet to the Northeast corner of Said Section; thence South 00° 13' 53" West along Section line 2621.67 feet to the East quarter corner of said Section; thence South 89° 30' 41" East 1320.05 feet; thence South 1307.71 feet; thence South 89° 13' 40" West 1325.70 feet; thence North 00° 14' 20" East 9.51 feet; thence North 89° 30' 43" West 2648.88 feet; thence South 00° 26' 48" West 142.12 feet; thence along the arc of a 5804.56 foot radius curve to the left 605.47 feet (central angle = 05° 58' 35"), the chord of which bears South 77° 11' 52" West 605.19 feet), thence South 74° 12' 34" West 1945.07 feet along the northerly right of way of State Road 73; thence North 00° 42' 04" East 2151.84 feet; thence South 89° 32' 03" East 2447.01 feet; thence North 00° 26' 48" East 2641.01 feet to the point of beginning. Containing approximately 381.2535 acres

Parcel 2: (THE RANCHES LEGAL DESCRIPTION)

All Properties with the following tax id numbers _____ included within the following legal description: 58:033:0095; 58:041:0029; 58:048:0032; 58:048:0033; 58:048:0028; 58:040:0030; 58:040:0117; 58:040:0112; 58:040:0149; 58:040:0013; 58:040:0115; 58:040:0110; 58:040:0059; 58:040:0147; 58:040:0146; 58:040:0109; 58:040:0161; 58:040:0162; 58:040:0163; 58:040:0134; 58:040:0028; 58:040:0119; 58:040:0132; 58:040:0091; 58:040:0143; 58:040:0156; 58:040:0157; 58:040:0130; 58:040:0128; 58:040:0122; 58:040:0118; 58:040:0099; 58:040:0087; 58:040:0084; 58:040:0090; 58:040:0093; 58:040:0133; 58:040:0066; 58:040:0136; 58:034:0124; 58:034:0167; 58:034:0168; 58:034:0155; 58:034:0162; 58:043:0169; 58:034:0170; 58:034:0149; 58:034:0152; 58:034:0150; 58:034:0148; 58:034:0160; 58:034:0158; 58:034:0171; 58:034:0172; 58:034:0166; 58:034:0157; 58:034:0193; 58:034:0194; 58:034:0153; 58:034:0188; 58:034:0187; 58:034:0121; 58:034:0164; 58:034:0181; 58:034:0182; 58:034:0180; 58:040:0159; 58:033:0112; 58:033:0113; 58:033:0117; 58:033:0109; 58:040:0164; 58:033:0111; 58:033:0106; 58:033:0107; 58:033:0116; 58:033:0100; 58:033:0097; 58:040:0160; 58:033:0114; 58:033:0115; 58:033:0098; 58:033:0099; 58:040:0155; 58:040:0096; 58:040:0138; 58:040:0140; 58:040:0148; 51:333:0001-0500; 37:132:0001-0500; 36:809:0001-0038; 34:301:0001-0079; 36:849:0001-0500; 52:797:0001-0032; 52:812:0033-0500; 51:329:0001; 52:740:0001-0049; 37:141:0001-0500; 46:543:0001-0071; 38:302:0001-0500; 39:135:0001-0500; 58:033:0114; 53:231:0079-0108; 53:234:0109-0144; 49:382:0179-

0200

Beginning at the South quarter corner of Section 25, Township 5 South, Range 2 West, Salt Lake Base and Meridian; thence North 00° 50' 24" East 2709.61 feet; thence South 89° 31' 55" East 1296.93 feet; thence North 01° 38' 58" East 2604.26 feet; thence South 89° 15' 07" East 1333.69 feet along section line to the Northwest corner of Section 30, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 43' 21" East 1135.80 feet along the section line; thence North 34° 16' 08" East 74.04 feet along the Section line; thence North 35° 40' 00" East 535.26 feet; thence North 08° 30' 00" West 853.01 feet; thence North 88° 19' 10" East 1135.48 feet; thence South 00° 31' 41" West 1279.11 feet to the North quarter corner of said Section 30; thence South 89° 18' 39" East 2759.83 feet along the section line to the Northeast corner of said Section 30; thence North 00° 18' 58" West along the section line 2654.18 feet to the West quarter corner of Section 20; Township 5 South, Range 1 West; thence North 00° 54' 13" West along the section line 1466.45 feet; thence North 89° 05' 47" East 1131.69 feet; thence North 00° 14' 17" East 2395.75 feet to the Southerly right of way of State Road 73; thence North 89° 14' 02" East 309.94 feet along said right of way; thence along the arc of a 5804.70 foot radius curve to the left 1114.39 feet along said right of way (central angle = 10° 59' 59"), the chord of which bears North 83° 44' 03" East 1112.68 feet; thence North 78° 14' 03" East 2847.09 feet along said right of way; thence South 00° 15' 56" West along Section line 1978.86 feet to the Northeast corner of said Section 20; thence South 00° 12' 55" West 2672.98 feet along section line to the East quarter corner of said Section 20; thence North 89° 17' 20" West 2657.50 feet; thence South 00° 10' 38" East 2665.33 feet to the South quarter corner of said Section 20; thence South 89° 02' 12" East 1753.67 feet along the section line; thence South 24° 56' 36" East 1.83 feet; thence South 27° 20' 12" East 47.37 feet; thence South 57° 17' 38" East 197.83 feet; thence South 08° 13' 30" East 205.40 feet; thence South 67° 15' 52" East 197.12 feet; thence North 56° 02' 26" East 94.61 feet ; thence South 08° 08' 50" West 127.18 feet; thence South 50° 12' 10" East 48.04 feet; thence North 54° 39' 22" East 113.62 feet; thence North 84° 28' 44" East 91.65 feet; thence South 61° 28' 58" East 66.30 feet thence South 14° 21' 48" East 108.76 feet; thence North 83° 40' 59" East 142.28 feet; thence South 01° 24' 52" East 106.51 feet; thence South 36° 37' 17" East 218.46 feet; thence South 57° 34' 13" East 67.83 feet; thence South 33° 23' 06" East 136.30 feet; thence South 56° 31' 12" East 155.18 feet; thence North 88° 54' 29" East 166.94 feet thence South 33° 10' 35" West 40.34 feet; thence South 03° 43' 36" West 215.05 feet; thence North 89° 18' 58" West 562.05 feet; thence South 00° 37' 28" West along section line 1321.95 feet to the East quarter corner of Section 29, Township 5 South, Range 1 West; thence North 89° 22' 40" West 1327.62 feet; thence South 00° 47' 19" West 1322.55 feet; thence South 89° 23' 00" East 1331.56 feet; thence South 00° 37' 03" West along section line 1322.41 feet to the Southeast corner of said Section 29; thence North 89° 23' 20" West 1335.51 feet along section line; thence South 01° 06' 47" West 668.63 feet; thence West 964.50 feet; thence North 08° 19' 32" East 188.28 feet ;thence North 21° 20' 13" West 307.90 feet; thence North 75° 37' 07" West 360.84 feet ;thence North 50° 33' 36" West 359.75 feet; thence North 87° 55' 48" West 372.18 feet; thence North 68° 11' 55" West 217.19 feet;

thence 49° 57' 01" West 403.93 feet; thence North 27° 19' 57" West 448.95 feet ;thence North 01° 06' 45" East 461.65 feet; thence North 43° 40' 04" East 136.29 feet; thence North 59° 44' 37" West 62.25 feet; thence South 37° 46' 33" West 453.55 feet thence South 70° 53' 37" West 724.58 feet; thence South 15° 08' 19" West 888.60 feet; thence South 89° 59' 15" West 68.85 feet along section line to the Southwest corner of said Section 29; thence North 89° 19' 31" West 2657.40 feet along section line to the South quarter corner of said Section 30; thence South 89° 57' 05" West 1473.81 feet along section line; thence South 21° 53' 28" West 42.70 feet ;thence North 89° 57' 33" West 1063.40 feet along section line to the Southwest corner of said Section 30, Township 5 South, Range 1 West; thence North 89° 36' 51" West 2673.83 feet along section line to the point of beginning. Containing approximately 2,113.5351 acres

Total SID 2000-1 Legal contains approximately 2,494.7886 acres

Less and excepting from the above mentioned parcels the following Subdivision legal

Parcel 1:

Lots 1 through and including 79, Plat "A", ASH POINT AT SADDLE ROCK RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's Office, Utah. (34:301:0001 through and including 34:301:0079) Contains approximately 15.3919 acres

Parcel 2:

Lots 1 thorough and including Lot 88, Plat "A" DIAMOND SPRINGS AT RED HAWK RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's, Utah. (37:132:0001 through 37:132:0088) Contains approximately 9.7765 acres

Parcel 3:

Lots 1 through and including 65 and Lot 89, Plat "B", DIAMOND SPRINGS AT RED HAWK RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's, Utah. (37:141:0001 through 37:141:0065; 37:141:0089) Contains approximately 8.3035 acres

Parcel 4:

Lots 1 through and including Lot 25; Plat "A", FRIDAY'S STATION AT RED HAWK RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's, Utah. 39:135:0001 through 39:135:0025) Contains approximately 5.3224 acres)

Parcel 5:

Beginning at a point located South 1622.55 feet and East 2102.13 feet from the North quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; running thence South 89° 22' 40" East 520.01 feet; thence South 00° 37' 28" West 345.01 feet; thence North 89° 22' 32" West 270.00 feet; thence South 00° 37' 20" West 25.00 feet; thence North 89° 22' 40" West 265.00 feet; thence North 00° 37' 20" East 75.00 feet; thence along the arc of a 15.00 foot radius curve to the right 23.56 feet (curve has a central angle of 90° 00' 00" and a chord bearing North 45° 37' 20" East 21.21 feet); thence North 00° 37' 20" East 50.00 feet; thence along the arc of a 15.00 foot radius curve to the right 23.56 feet (curve has a central angle of 90° 00' 00" and a chord bearing North 44° 22' 40" West 21.21 feet); thence North 00° 37' 20" East 200 feet; thence along the arc of a 15.00 foot radius curve to the right 23.56 feet (curve has a central angle of 90° 00' 00" and a chord bearing North 45° 37' 20" East 21.21 feet) to the point of beginning. (Plat "A", Porter's Crossing Subdivision, Eagle Mountain City, Utah.) (49:382:0179-0200) Containing approximately 4.37 acres

Parcel 6:

Beginning at a point located South 1992.36 feet and East 2083.11 feet from the North quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; running thence South 89° 22' 40" East 265.00 feet; thence North 00° 37' 22" East 25.00 feet; thence South 89° 22' 32" East 270.00 feet; thence South 00° 37' 28" West 460.00 feet; thence North 89° 22' 32" West 265.00 feet; thence South 00° 37' 20" West 25.00 feet; thence North 89° 22' 40" West 520.00 feet; thence North 00° 37' 20" East 75.00 feet; thence along the arc of a 15.00 foot radius curve to the right 23.56 feet (curve has a central angle of 90° 00' 00" and a chord bearing North 45° 37' 20" East 21.21 feet); thence North 00° 37' 20" East 50.00 feet; thence along the arc of a 15.00 foot radius curve to the right 23.56 feet (curve has a central angle of 90° 00' 00" and a chord bearing North 44° 22' 40" West 21.21 feet); thence North 00° 37' 20" East 65.00 feet; thence along the arc of a 100.00 foot radius curve to the right 157.08 feet (curve has a central angle of 89° 59' 58" and a chord bearing North 45° 37' 19" East 141.42 feet); thence South 89° 22' 40" East 165.02 feet; thence North 00° 37' 20" East 50.00 feet; thence along the arc of a 15.00 foot radius curve to the right 23.56 feet (curve has a central angle of 90° 00' 00" and a chord bearing North 44° 22' 40" West 21.21 feet); thence North 00° 37' 20" East 75.00 feet to the point of beginning. (Porter's Crossing Plat "B") (58:040:0157) Containing approximately 5.9856 acres

Parcel 7:

Commencing at a point which is North 89° 02' 40" West 591.92 feet along section line and South 570.60 feet from the North quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence as follows: South 50° 18' 03" East 784.97 feet; thence 314.52 feet along the arc of a 280 foot radius curve to the right,

(chord bears South 18° 07' 16" East 298.24 feet); thence South 14° 03' 32" West 682.18 feet; thence 159.87 feet along the arc of a 280 foot radius curve to the right, (chord bears South 30° 24' 57" West 157.71 feet); thence South 46° 46' 22" West 58.50 feet; thence 21.26 feet along the arc of a 15 foot radius curve to the left, (chord bears South 06° 09' 36" West 19.53 feet); thence South 55° 32' 50" West 60.00 feet; thence 213.29 feet along the arc of a 220 foot radius curve to the left, (chord bears North 62° 13' 35" West 205.03 feet); thence West 153.81 feet; thence 380.84 feet along the arc of a 1030 foot radius curve to the right (chord bears North 79° 24' 27" West 378.68 feet); thence North 68° 48' 54" West 568.48 feet; thence North 34° 00' 01" East 1574.65 feet to the point of beginning. (To be known as Plat "A", Liberty Farms Subdivision) (58:040:0118; 0099; 0087; 0084) Containing approximately 21.713 acres

Parcel 8:

Lots 1 through and including Lot 32, Plat "A" SADDLEBACK SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's, Utah. (52:797:0001 through 52:797:0032) Containing approximately 9.20 acres

Parcel 9:

Beginning at a point located South 1360.30 feet and East 216.78 feet from the North quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence along the arc of a 380.00 foot radius curve to the left 350.17 feet, (curve has a central angle of 52° 47' 54" and a chord bearing North 59° 48' 21" East 337.91 feet); thence North 33° 25' 57" East 46.88 feet; thence along the arc of a 15.00 foot radius curve to the right 23.56 feet, (curve has a central angle of 90° 00' 00" and a chord bearing North 78° 25' 57" East 21.21 feet); thence South 56° 34' 03" East 206.47 feet; thence along the arc of a 15.00 foot radius curve to the right 19.42 feet, (curve has a central angle of 74° 10' 30" and a chord bearing South 19° 28' 47" East 18.09 feet); thence South 72° 23' 32" East 50.00 feet; thence along the arc of a 100.00 foot radius curve to the right 188.99 feet, (curve has a central angle of 108° 17' 10" and a chord bearing North 71° 45' 02" East 162.10 feet); thence South 54° 06' 23" East 76.14 feet; thence along the arc of a 100.00 foot radius curve to the right 120.29 feet, (curve has a central angle of 68° 55' 23" and a chord bearing South 19° 38' 41" East 113.17 feet); thence South 75° 11' 00" East 50.00 feet; thence along the arc of a 150.00 foot radius curve to the right 128.01 feet, the chord bears South 39° 16' 01" West 124.16 feet; thence South 54° 06' 23" East 117.34 feet; thence South 35° 53' 37" West 150.00 feet; thence North 54° 06' 23" West 90.00 feet; thence South 35° 53' 37" West 20.00 feet; thence North 54° 06' 23" West 503.93 feet; thence South 53° 48' 46" West 59.79 feet; thence South 63° 35' 18" West 131.20 feet; thence South 77° 07' 34" West 131.72 feet; thence North 03° 47' 42" West 123.57 feet to the point of beginning. (TO BE KNOWN AS PLAT "B" SADDLEBACK SUBDIVISION). Containing approximately 4.0493 acres (52:812:0033-0500)

Parcel 10:

Beginning at a point located South 1533.25 feet and East 437.07 feet from the North quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; running thence Easterly along the arc of a 2501.00 foot radius curve to the right 106.76 feet (said curve has a central angle of 24° 28' 00" and a chord bearing North 87° 01' 43" East 105.95 feet); thence North 09° 15' 43" East 29.67 feet; thence North 35° 53' 37" East 95.00 feet; thence South 54° 06' 23" East 400.00 feet; thence North 35° 53' 37" East 20.00 feet; thence South 54° 06' 23" East 90.00 feet; thence North 35° 53' 37" East 315.00 feet; thence South 54° 06' 23" East 105.00 feet to the point of a curvature of a 15.00 foot radius curve to the right; thence Southerly along the arc of said curve 23.56 feet (said curve has a central angle of 90° 00' 00" and a chord bearing South 09° 06' 23" East 21.21 feet); thence South 54° 06' 23" East 60.00 feet; thence South 35° 53' 37" West 450.00 feet; thence North 54° 06' 23" West 180.00 feet; thence South 86° 57' 58" West 183.02 feet; thence North 54° 06' 23" West 216.99 feet; thence North 81° 58' 19" West 75.97 feet; thence North 21° 34' 46" West 101.96 feet; thence North 15° 12' 18" West 60.00 feet to the point of beginning. (TO BE KNOWN AS PLAT "C" SADDLEBACK SUBDIVISION.) (58:040:0122) Containing approximately 4.65 acres

Parcel 11:

Lots 1 through and including Lot 49, Plat "A" SUNDANCE AT RED HAWK RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's, Utah. (52:740:0001 through 53:740:0049) Containing approximately 14.0931 acres

Parcel 12:

Beginning at a point located South 1956.10 feet and East 1043.49 feet from the North quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; running thence North 35° 53' 37" East 665.00 feet; thence North 41° 36' 17" East 50.25 feet; thence North 35° 53' 37" East 50.00 feet to the point of curvature of a 15.00 foot radius curve to the right; thence Easterly along the arc of said curve 23.56 feet to the point of tangency (said curve has a central angle of 90° 00' 00" and a chord bearing North 80° 53' 37" East 21.21 feet); thence South 54° 06' 23" East 32.68 feet; thence South 35° 53' 37" West 80.00 feet; thence South 09° 06' 23" East 14.14 feet; thence South 54° 06' 23" East 170.00 feet; thence South 40° 41' 23" West 20.07 feet; thence South 54° 06' 23" East 7.39 feet; thence South 35° 53' 37" West 75.94 feet; thence South 08° 16' 05" West 25.52 feet; thence Easterly along the arc of a 75.00 foot radius curve to the right 36.16 feet to the point of tangency (said curve has a central angle of 27° 37' 33" and a chord bearing South 67° 55' 09" East 35.81 feet); thence South 54° 06' 23" East 30.00 feet; thence South 35° 53' 37" West 250.00 feet; thence South 40° 39' 26" West 60.21 feet; thence South 35° 53' 37" West 90.00 feet; thence

South 21° 51' 27" West 20.62 feet; thence South 35° 53' 37" West 100.00 feet; thence South 54° 58' 30" West 52.91 feet; thence North 54° 06' 23" West 12.70 feet to the point of curvature of a 75.00 foot radius curve to the right; thence Northwesterly along the arc of said curve 4.55 feet (said curve has a central angle of 3° 28' 45" and a chord bearing North 52° 22' 00" West 4.55 feet); thence South 39° 22' 23" West 110.00 feet; thence Northwesterly along the arc of a 185.00 foot radius curve to the right 202.28 feet (said curve has a central angle of 62° 38' 52" and a chord bearing North 22° 46' 57" West 192.35 feet); thence North 54° 06' 23" West 109.46 feet to the point of beginning. (To be known as Plat "A", Three Crossings Subdivision.) (53:231:0079-0108) Containing approximately 5.11 acres

Parcel 13:

Beginning at a point located South 2197.34 feet and East 1206.84 feet from the North quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; running thence North 39° 22' 23" East 110.00 feet; thence Southeasterly along the arc of a 75.00 foot radius curve to the left 4.55 feet (said curve has a central angle of 3° 28' 45" and a chord bearing South 52° 22' 00" East 4.55 feet) to the point of tangency; thence South 54° 06' 23" East 12.70 feet; thence North 54° 58' 30" East 52.91 feet; thence North 35° 53' 37" East 100.00 feet; thence North 21° 51' 27" East 20.62 feet; thence North 35° 53' 37" East 90.00 feet; thence North 40° 39' 26" East 60.21 feet; thence North 35° 53' 37" East 110.00 feet; thence South 54° 06' 23" East 234.31 feet to the point of tangency of a 365.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 120.09 feet (said curve has a central angle of 18° 51' 06" and a chord bearing South 63° 31' 56" East 119.55 feet); thence South 13° 08' 21" West 20.04 feet; thence South 30° 45' 01" West 111.54 feet; thence South 54° 06' 23" East 36.55 feet to the point of curvature of a 15.00 foot radius curve to the left; thence Easterly along the arc of said curve 19.19 feet (said curve has a central angle of 73° 17' 33" and a chord bearing North 89° 14' 51" East 17.91 feet); thence South 37° 23' 55" East 50.00 feet; thence Southwesterly along the arc of a 100.00 foot radius curve to the left 90.72 feet to the point of tangency (said curve has a central angle of 51° 58' 45" and a chord bearing South 26° 36' 42" West 87.64 feet); thence South 00° 37' 20" West 65.00 feet to the point of curvature of a 15.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 23.58 feet (said curve has a central angle of 90° 00' 00" and a chord bearing South 44° 22' 40" East 21.21 feet); thence South 00° 37' 20" West 75.00 feet; thence North 89° 22' 40" West 170.94 feet to the point of curvature of a 335.00 foot radius curve to the right; thence Northwesterly along the arc of said curve 206.23 feet to the point of tangency (said curve has a central angle of 35° 16' 17" and a chord bearing North 71° 44' 31" West 202.99 feet); thence North 54° 06' 23" West 306.98 feet to the point of curvature of a 185.00 foot radius curve to the right; thence Northwesterly along the arc of said curve 11.23 feet (said curve has a central angle of 3° 28' 45" and a chord bearing North 52° 22' 00" West 11.23 feet) to the point of beginning. (To be known as Three Crossings Subdivision Plat "B") (53:234:0109 - 0144) Containing approximately 6.11 acres

Parcel 14:

Beginning at a point located South 1355.10 feet and East 1543.46 feet from the North quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; running thence South 54° 06' 23" East 284.14 feet to the point of curvature of a 530.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 326.27 feet to the point of tangency (said curve has a central angle of 35° 16' 17" and a chord bearing South 71° 44' 32" East 321.14 feet); thence South 89° 22' 40" East 23.51 feet; thence Southwesterly along the arc of a 15.00 foot radius curve to the left 23.56 feet to the point of tangency (said curve has a central angle of 90° 00' 00" and a chord bearing South 45° 37' 20" West 21.21 feet); thence South 00° 37' 20" West 200.00 feet to the point of curvature of a 15.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 23.56 feet (said curve has a central angle of 90° 00' 00" and a chord bearing South 44° 22' 40" East 21.21 feet); thence South 00° 37' 20" West 50.00 feet; thence Southwesterly along the arc of a 15.00 foot radius curve to the left 23.56 feet to the point of tangency (said curve has a central angle of 90° 00' 00" and a chord bearing South 45° 37' 20" West 21.21 feet); thence South 00° 37' 20" West 150.00 feet to the point of curvature of a 15 foot radius curve to the left; thence Southeasterly along the arc of said curve 23.56 feet (said curve has a central angle of 90° 00' 00" and a chord bearing South 44° 22' 40" East 21.21 feet); thence South 00° 37' 20" West 50.00 feet; thence North 89° 22' 40" West 165.02 feet to the point of curvature of a 100.00 foot radius curve to the left; thence Southwesterly along the arc of said curve 66.36 feet (said curve has a central angle of 38° 01' 15" and a chord bearing South 71° 36' 42" West 65.15 feet); thence North 37° 23' 55" West 50.00 feet; thence Westerly along the arc of a 15 foot radius curve to the right 19.19 feet to the point of tangency (said curve has a central angle of 73° 17' 33" and a chord bearing South 89° 14' 51" West 17.91 feet); thence North 54° 06' 23" West 36.55 feet; thence North 30° 45' 01" East 111.54 feet; thence North 13° 08' 21" East 20.04 feet; thence Northwesterly along the arc of a 365.00 foot radius curve to the right 120.09 feet to the point of tangency (said curve has a central angle of 18° 51' 06" and a chord bearing North 63° 31' 56" West 119.55 feet); thence North 54° 06' 23" West 234.31 feet; thence North 35° 53' 37" East 140.00 feet; thence North 54° 06' 23" West 30.00 feet to the point of curvature of a 75.00 foot radius curve to the left; thence Northwesterly along the arc of said curve 36.16 feet (said curve has a central angle of 27° 37' 33" and a chord bearing North 67° 55' 09" West 35.81 feet); thence North 08° 16' 05" East 25.52 feet; thence North 35° 53' 37" East 75.94 feet; thence North 54° 06' 23" West 7.39 feet; thence North 40° 41' 23" East 20.07 feet; thence North 54° 06' 23" West 170.00 feet; thence North 09° 06' 23" West 14.14 feet; thence North 35° 53' 37" East 80.00 feet to the point of beginning. (To be known as Three Crossings Subdivision Plat "C") (58:040:0130) Containing approximately 5.57 acres

Parcel 15:

Lots 1 through and including Lot 76, Plat "A" CHIMNEY ROCK AT RED HAWK RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of

record in the office of the Utah County Recorder's Office, Utah. (36:810:0001 through 36:810:0076) Containing approximately 17.9406 acres.

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Parcel 16:

Lots 1 through and including Lot 35, Plat "A", CRITTENDEN CORNER RED HAWK RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's, Utah. (36:809:0001 through 36:809:0035) Containing approximately 12.5712 acres

Parcel 17:

Lots 1 through and including Lot 37, Plat "A", ROCKWELL VILLAGE AT RED HAWK RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's, Utah. (51:333:0001 through 51:333:0037) Containing approximately 12.3348 acres

Parcel 18:

Lots 1 through and including Lot 67, Plat "A", CASTLE ROCK AT RED HAWK RANCH R1 - N11 SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's, Utah. (36:849:0001 through 0067) Containing approximately 18.9870 acres

Parcel 19:

Lots 1 through and including Lot 62 and Lots 65 through 67, and Lots 70 through 72, Plat "A", MT. AIREY AT RED HAWK RANCH R1-N26,27 SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's, Utah. (46:543:0001 through 0062; 46:543:0062 through 0065; 46:543:0035; 46:543:0036; 43:543:0039; 46: 543:0055; 46:543:0055; 46:543:0057; 46:543:0058; 46:543:0060; 46:543:0061) Containing approximately 25.6147 acres

Parcel 20:

Lots 1 through and including Lot 56, Plat "A", KENNEKUK AT RED HAWK RANCH R1-N13, 15(S) SUBDIVISION, Eagle Mountain, Utah, Containing approximately 16.7914 acres

Parcel 21:

Beginning at a point which is East 7816.83 feet and North 658.00 feet from the Southwest corner of Section 18, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence 190.00 feet along the arc of a 603.00 foot radius curve to the left, (curve has a central angle of 18° 03' 12" and a chord bearing North 00° 08' 08" West 189.22 feet); thence North 09° 09' 44" West 595.593 feet; thence North 78° 14' 03" East 1051.667 feet; thence South 41° 37' 21" West 867.00 feet thence South 46° 12' 47" West 271.90 feet; thence South 43° 47' 13" East 50.00 feet; thence South 46° 12' 47" West 186.44 feet; thence North 81° 06' 32" West 62.87 feet to the point of beginning. (To be known as Eagle Mountain Business Campus, Plat "A") (38:302:0001) Containing approximately 8.5528 acres

LESS AND EXCEPTING from the above mentioned parcel, the following:

Commencing at a point East 7750.37 feet and North 1256.48 feet from the Southwest corner of Section 18, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 80° 50' 16" East 141.96 feet; thence North 10° 45' 32" East 79.990 feet; thence North 72° 51' 59" East 148.23 feet; thence North 58° 50' 28" East 162.97 feet; thence South 31° 09' 32" East 75.670 feet; thence 366.44 feet along the arc of a 743.79 foot radius curve to the left (chord bears South 43° 12' 03" West 362.745 feet; thence 113.79 feet along the arc of a 93.150 foot radius curve to the right, (chord bears South 64° 05' 02" West 106.846 feet; thence North 80° 55' 11" West 49.33 feet; thence North 09° 04' 49" East 10.00 feet; thence 63.720 feet along the arc of a 288.560 foot radius curve to the left, (chord bears North 87° 02' 20" West 63.591 feet; thence North 09° 09' 44" West 127.37 feet to the point of beginning. (Known as Lot 1) Containing approximately 1.5929 acres; and,

Commencing at a point East 7816.83 feet and North 658.00 feet from the Southwest corner of Section 18, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence 190.00 feet along the arc of a 603.00 foot radius curve to the left, (chord bears North 0° 08' 08" West 189.215 feet); thence North 09° 09' 44" West 218.72 feet; thence 11.09 feet along the arc of a 218.56 foot radius curve to the right, (chord bears North 89° 57' 22" East 11.089 feet; thence South 88° 33' 38" East 99.46 feet; thence 113.12 feet along the arc of a 143.15 foot radius curve to the left, (chord bears North 69° 44' 04" East 110.20 feet; thence South 48° 22' 39" East 195.26 feet; thence South 46° 12' 47" West 225.06 feet; thence South 43° 47' 13" East 50.00 feet; thence South 46° 12' 47" West 186.44 feet; thence North 81° 06' 32" West 62.87 feet to the point of beginning. (Known as Lot 4) Containing approximately 2.0835 acres.

Parcel 22:

Beginning at a point which is South 89° 02' 40" East along the section line 1121.80 feet and North 120.62 feet from the Northwest corner of Section 29, Township 5 South,

Range 1 West, Salt Lake Base and Meridian; thence North 00° 50' 36" East 9.00 feet; thence North 16° 51' 19" East 42.65 feet; thence along the arc of a 15.00 foot radius curve to the left 12.96 feet (curve has a central angle of 49° 30' 07" and a chord bearing North 66° 05' 33" East 12.56 feet); thence along the arc of a 60.00 foot radius curve to the right 58.67 feet (curve has a central angle of 56° 01' 21" and a chord bearing North 69° 21' 10" East 56.36 feet); thence along the arc of a 15.00 foot radius curve to the left 13.91 feet (curve has a central angle of 53° 07' 48" and a chord bearing North 70° 47' 56" East 13.42 feet); thence North 44° 14' 02" East 146.75 feet; thence along the arc of a 15.00 foot radius curve to the left 13.91 feet (curve has a central angle of 53° 07' 48" and a chord bearing North 17° 40' 08" East 13.42 feet); thence along the arc of a 60.00 foot radius curve to the right 57.10 feet (curve has a central angle of 54° 31' 27" and a chord bearing North 18° 21' 57" East 54.97 feet); thence along the arc of a 15.00 foot radius curve to the left 13.91 feet (curve has a central angle of 53° 07' 48" and a chord bearing North 19° 03' 46" East 13.42 feet); thence North 07° 30' 08" West 71.94 feet; thence along the arc of a 95.00 foot radius curve to the left 71.91 feet (curve has a central angle of 43° 22' 15" and a chord bearing North 29° 11' 16" West 70.21 feet); thence along the arc of a 155.00 foot radius curve to the right 97.43 feet (curve has a central angle of 36° 00' 52" and a chord bearing North 32° 51' 57" West 95.83 feet); thence North 66° 10' 32" West 143.81 feet; thence West 192.66 feet; thence North 28° 51' 45" East 50.53 feet; thence along the arc of a 80.00 foot radius curve to the right 314.00 feet (curve has a central angle of 224° 53' 08" and a chord bearing North 33° 05' 44" East 147.88 feet); thence along the arc of a 15.00 foot radius curve to the left 16.16 feet (curve has a central angle of 61° 43' 35" and a chord bearing South 65° 19' 29" East 15.39 feet); thence North 83° 38' 43" East 39.65 feet; thence along the arc of a 175.00 foot radius curve to the right 52.55 feet (curve has a central angle of 17° 12' 19" and a chord bearing South 87° 35' 07" East 52.35 feet); thence South 78° 58' 58" East 160.28 feet; thence along the arc of a 470.00 foot radius curve to the left 91.83 feet (curve has a central angle of 11° 11' 40" and a chord bearing South 84° 34' 48" East 91.68 feet); thence North 89° 49' 22" East 258.79 feet; thence North 77° 24' 55" East 46.72 feet; thence South 00° 10' 38" East 526.92 feet; thence North 89° 09' 24" West 321.76 feet; thence along the arc of a 15.00 foot radius curve to the left 7.87 feet (curve has a central angle of 30° 02' 39" and a chord bearing South 59° 15' 22" West 7.78 feet); thence South 44° 14' 02" West 146.75 feet; thence along the arc of a 15.00 foot radius curve to the left 13.91 feet (curve has a central angle of 53° 07' 48" and a chord bearing South 17° 40' 08" West 13.42 feet); thence along the arc of a 60.00 foot radius curve to the right 26.70 feet (curve has a central angle of 25° 29' 47" and a chord bearing South 03° 51' 07" West 26.48 feet); thence North 89° 09' 24" West 126.54 feet to the point of beginning. (WILLOW SPRINGS SUBDIVISION Plat "A".) (58:034:0148) Containing approximately 6.5271 acres

Parcel 23:

Commencing at a point which is South 89° 02' 40" East 713.82 feet along the section line and South 1248.83 feet from the Northwest corner of Section 29, Township 5

South, Range 1 West, Salt Lake Base and Meridian; thence South 68° 48' 54" East 209.23 feet; thence 21.34 feet along the arc of a 15 foot radius curve to the right, (chord bears South 28° 03' 08" East 19.59 feet); thence 227.80 feet along the arc of a 175 foot radius curve to the left, (chord bears South 24° 34' 51" East 212.05 feet; thence South 21° 11' 06" West 221.28 feet; thence North 68° 48' 54" West 376.00 feet; thence 23.56 feet along the arc of a 15 foot radius curve to the right, (chord bears North 23° 48' 54" West 21.21 feet; thence North 21° 11' 06" East 352.00 feet; thence 23.56 feet along the arc of a 15 foot radius curve to the right, (chord bears North 66° 11' 06" East 21.21 feet to the point of beginning. (To be known as Chimney Rock at Red Hawk Ranch, Plat "B") (58:040:0091) Containing approximately 3.0043 acres

Parcel 24:

Commencing at a point which is North 89° 18' 39" West 705.76 feet along the section line and South 788.65 feet from the Northwest corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence 24.22 feet along the arc of a 15 foot radius curve to the left, (chord bears North 64° 55' 43" East 21.67 feet); thence South 68° 48' 54" East 363.03 feet; thence 23.56 feet along the arc of a 15 foot radius curve to the left, (chord bears South 23° 48' 54" East 21.21 feet); thence South 21° 11' 06" West 285.14 feet; thence 114.88 feet along the arc of a 175 foot radius curve to the left, (chord bears South 39° 59' 26" West 112.83 feet); thence South 58° 47' 46" West 166.92 feet; thence 128.42 feet along the arc of a 175 foot radius curve to the left, (chord bears South 79° 49' 09" West 125.56 feet); thence 42.08 feet along the arc of a 50 foot radius curve to the left, (chord bears North 55° 02' 52" West 40.85 feet); thence 76.84 feet along the arc of a 50 foot radius curve to the right, (chord bears North 74° 57' 55" West 69.50 feet); thence North 28° 59' 34" West 17.64 feet; thence North 18° 40' 20" East 575.85 feet to the point of beginning. (To be known as Rockwell Village at Red Hawk Ranch, Plat "B".) Containing approximately 4.6898 acres

Parcel 25:

Commencing at the North quarter corner of Section 30, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 18' 39" East 1724.800 feet; thence South 0° 41' 21" West 290.440 feet; thence South 18° 40' 20" West 287.000 feet; thence North 71° 19' 40" West 656.900 feet; thence South 18° 40' 20" West 592.100 feet; thence South 71° 19' 40" East 95.320 feet; thence 43.020 feet along the arc of a 50.000 foot radius curve to the right, (chord bears South 46° 40' 50" East 41.705 feet); thence 111.850 feet along the arc of a 65.000 foot radius curve to the left, (chord bears South 71° 19' 40" East 98.552 feet; thence 43.020 feet along the arc of a 50.000 foot radius curve to the right, (chord bears North 84° 01' 30" East 41.705 feet); thence South 71° 19' 40" East 21.160 feet; thence 221.080 feet along the arc of a 225.000 foot radius curve to the right, (chord bears South 43° 10' 44" East 212.293 feet; thence South 15° 01' 48" East 298.860 feet; thence 212.630 feet along the arc of a 225.000 foot radius curve to the left, (chord bears South 42° 06' 10" East 204.806 feet); thence South 69° 10' 32" East 69.000 feet; thence South 61° 12' 22" East 33.610 feet;

thence 515.720 feet along the arc of a 597.000 foot radius curve to the right, (chord bears South 48° 25' 10" West 499.833 feet); thence South 73° 10' 01" West 79.960 feet; thence North 27° 41' 04" West 220.280 feet; thence North 21° 52' 21" West 328.320 feet; thence North 71° 03' 53" West 115.290 feet; thence North 44° 42' 37" West 333.770 feet; thence North 19° 24' 00" West 155.790 feet; thence North 27° 45' 31" West 52.150 feet; thence North 77° 52' 35" West 111.800 feet; thence North 51° 20' 25" West 186.630 feet; thence North 18° 56' 20" West 269.640 feet; thence North 48° 20' 18" East 162.490 feet; thence North 50° 26' 25" East 96.620 feet; thence North 09° 37' 52" West 135.500 feet; thence South 78° 42' 47" West 292.150 feet; thence North 00° 32' 20" East 409.290 feet to the point of beginning. (TO BE KNOWN AS Plat "B", RUBY VALLEY SUBDIVISION) (58:040:0109) Containing approximately 38.9819 acres

Parcel 26:

Lots 101 through and including Lot 158 less and excepting 129, 130, 137, 139, 142, 143, 144, 145, and 146, Plat "1", MEADOW RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Recorder, Utah County, Utah. (46:489:0101, etc) Containing approximately 70.6717 acres

Parcel 27:

Lots 201 through Lot 231; less and excepting Lots 221 and 227, Plat "2", MEADOW RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Recorder, Utah County, Utah. (46:490:0201, etc) Containing approximately 41.2999 acres

Parcel 28:

Lots 301 through and including Lot 331, less and excepting Lots 313, 314, 316, 318, and 319, Plat "3", MEADOW RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Recorder, Utah County, Utah. (46:491:0301; etc.) Containing approximately 32.7461 acres

Parcel 29 :

Lots 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, and 434 Plat "4" MEADOW RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the Utah County Recorder's Office, Utah. (46:538:0409; etc.) Containing approximately 40.742 acres

Also, less and excepting from the SID 2000-1 legal description, the following open space, park and roadway legals:

Parcel 30:

Commencing at a point which is South 60° 20' 02" East 245.62 feet from the Southwest corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 09' 24" East 1898.89 feet; thence North 00° 10' 38" West 1644.17 feet; thence North 89° 49' 22" East 28.00 feet; thence along the arc of a 2075.00 foot radius curve 452.37 feet (Delta = 12° 29' 28"), chord = North 06° 04' 05" East 451.47 feet; thence North 77° 41' 10" West 28.00 feet; thence along the arc of 2103.00 foot radius curve 376.17 feet (Delta = 10° 14' 56"), chord = North 17° 26' 17" East 375.67 feet; thence North 22° 33' 45" East 73.00 feet; thence South 67° 26' 15" East 28.00 feet; thence North 22° 33' 45" East 670.00 feet; thence North 67° 26' 15" West 28.00 feet; thence North 22° 33' 45" East 256.69 feet; thence along the arc of 1897.00 foot radius curve 1516.89 feet (Delta = 45° 48' 55"), chord = North 00° 20' 42" West 1476.80 feet; thence North 23° 15' 09" West 75.23 feet; thence along the arc of 603.00 foot radius curve 300.38 feet (Delta = 28° 32' 28"), chord = North 08° 58' 55" West 297.28 feet; thence South 89° 42' 41" East 43.00 feet; thence along the arc of 560.00 foot radius curve 297.18 feet (Delta = 30° 24' 21"), chord = North 20° 29' 29" East 293.71 feet; thence North 54° 18' 21" West 43.00 feet; thence along the arc of 603.00 foot radius curve 100.00 feet (Delta = 09° 30' 06"), chord = North 40° 26' 42" East 99.89 feet; thence North 45° 11' 46" East 19.94 feet; thence along the arc of 397.00 foot radius curve 376.65 feet (Delta = 54° 21' 30"), chord = North 18° 01' 00" East 362.68 feet; thence North 09° 09' 44" West 588.87 feet; thence along the arc of 5804.70 foot radius curve 175.09 feet (Delta = 01° 43' 42"), chord = North 79° 05' 53" East 175.08 feet; thence North 78° 14' 03" East 31.03 feet; thence South 09° 09' 44" East 595.59 feet; thence along the arc of 603.00 foot radius curve 190.00 feet (Delta = 18° 03' 12"), chord = South 00° 08' 08" East 189.22 feet; thence North 81° 06' 32" West 43.00 feet; thence along the arc of 560.00 foot radius curve 354.84 feet (Delta = 36° 18' 18"), chord = South 27° 02' 36" West 348.93 feet; thence South 45° 11' 46" West 19.94 feet; thence along the arc of 440.00 foot radius curve 414.82 feet (Delta = 54° 00' 59"), chord = South 18° 11' 16" West 399.62 feet; thence North 81° 10' 47" East 43.00 feet; thence along the arc of 397.00 foot radius curve 100.00 feet (Delta = 14° 25' 56"), chord = South 16° 02' 11" East 99.74 feet; thence South 23° 15' 09" East 75.23 feet; thence along the arc of 2103.00 foot radius curve 620.00 feet (Delta = 16° 53' 30"), chord = South 14° 48' 24" East 617.76 feet; thence South 83° 38' 21" West 28.00 feet; thence along the arc of 2075.00 foot radius curve 973.48 feet (Delta = 26° 52' 48"), chord = South 07° 04' 45" West 964.57 feet; thence South 69° 28' 51" East 28.00 feet; thence along the arc of 2103.00 foot radius curve 75.00 feet (Delta = 02° 02' 36"), chord = South 21° 32' 27" West 75.00 feet; thence South 22° 33' 45" West 256.69 feet; thence North 67° 26' 15" West 28.00 feet; thence South 22° 33' 45" West 743.00 feet; thence along the arc of 1925.00 foot radius curve 246.47 feet (Delta = 07° 20' 10"), chord = South 18° 53' 40" West 246.31 feet; thence South 74° 46' 25" East 28.00 feet; thence

along the arc of 1897.00 foot radius curve 320.00 feet (Delta = 09° 58' 02"), chord = South 10° 14' 34" West 329.58 feet; thence North 84° 44' 26" West 28.00 feet; thence along the arc of 1925.00 foot radius curve 182.66 feet (Delta = 05° 26' 12"), chord = South 02° 32' 27" West 182.59 feet; thence South 00° 10' 38" East 370.00 feet; thence North 89° 49' 22" East 28.00 feet; thence South 00° 10' 38" East 1277.84 feet; thence South 89° 09' 24" East 2502.99 feet; thence South 00° 50' 36" West 206.00 feet; thence North 89° 09' 24" West 4607.91 feet; thence along the arc of 347.00 foot radius curve 437.09 feet (Delta = 72° 10' 16"), chord = South 54° 45' 28" West 408.76 feet; thence South 18° 40' 20" West 1542.16 feet; thence along the arc of 528.00 foot radius curve 176.22 feet (Delta = 19° 07' 20"), chord = South 28° 13' 59" West 175.40 feet; thence North 70° 49' 44" East 226.03 feet; thence along the arc of 322.00 foot radius curve 180.27 feet (Delta = 32° 04' 33"), chord = North 34° 42' 36" East 177.92 feet; thence North 18° 40' 20" East 1542.16 feet; thence along the arc of 553.00 foot radius curve 696.57 feet (Delta = 72° 10' 16"), chord = North 54° 45' 28" East 651.43 feet to the point of beginning. (To be known as The Ranches Parkway and Pony Express Parkway) (58:034:0152) Containing approximately 61.3289 acres

Parcel 31:

Commencing at a point which is North 89° 18' 39" West 1063.35 feet along section line and South 1803.04 feet from the Northwest corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence as follows: South 71° 19' 40" East 301.73 feet; thence South 89° 48' 08" East 161.52 feet; thence North 60° 47' 19" East 115.29 feet; thence North 52° 11' 47" East 224.71 feet; thence North 12° 27' 14" East 14.18 feet; thence North 32° 22' 53" West 90.00 feet; thence 17.86 feet along the arc of a 970 foot radius curve to the right, (chord bears North 58° 08' 47" East 17.86 feet); thence South 31° 12' 38" East 90.00 feet; thence South 76° 06' 37" East 14.17 feet; thence North 62° 45' 41" East 192.14 feet; thence North 41° 16' 13" East 118.90 feet; thence North 21° 11' 06" East 57.38 feet; thence South 68° 48' 54" East 103.51 feet; thence South 21° 11' 06" West 110.00 feet; thence South 62° 56' 54" West 216.80 feet; thence South 09° 49' 38" West 14.07 feet; thence South 35° 26' 52" East 90.00 feet; thence 20.00 feet along the arc of a 420 foot radius curve to the right, (chord bears South 53° 11' 17" West 20.00 feet); thence North 38° 10' 34" West 90.00 feet; thence North 83° 27' 04" West 14.07 feet; thence South 47° 59' 56" West 93.96 feet; thence South 32° 43' 31" West 100.30 feet; thence North 84° 01' 23" West 77.77 feet; thence South 12° 16' 41" West 90.00 feet; thence South 06° 53' 11" East 13.23 feet; thence 54.13 feet along the arc of a 45 foot radius curve to the left, (chord bears South 48° 39' 17" West 50.92 feet); thence North 77° 01' 23" West 83.42 feet; thence South 21° 33' 57" West 115.01 feet; thence South 88° 57' 47" West 342.24 feet; thence South 01° 02' 13" East 160.67 feet; thence South 88° 57' 47" West 181.28 feet; thence 177.56 feet along the arc of a 170 foot radius curve to the right, (chord bears North 61° 06' 56" West 169.60 feet); thence North 31° 11' 40" West 114.63 feet; thence 375.17 feet along the arc of a 803 foot radius curve to the left, (chord bears North 43° 16' 48" East 371.77 feet) to the point of beginning. (Paul Evans Trailway South) Containing approximately 6.2439 acres

Parcel 32:

Beginning at the Southeast corner of Section 30, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North $01^{\circ} 08' 59''$ East 1073.09 feet; thence North $58^{\circ} 13' 09''$ West 692.02 feet; thence North $26^{\circ} 56' 62''$ West 637.77 feet; thence North $54^{\circ} 05' 47''$ West 208.71 feet; thence North $34^{\circ} 31' 01''$ East 596.63 feet; thence South $27^{\circ} 00' 39''$ East 213.04 feet; thence South $18^{\circ} 05' 18''$ East 264.25 feet; thence South $21^{\circ} 30' 57''$ East 251.41 feet; thence North $73^{\circ} 00' 59''$ East 146.72 feet; thence along the arc of a 975.00 foot radius curve to the right 179.12 feet (central angle = $10^{\circ} 31' 33''$), the chord of which bears South $11^{\circ} 56' 36''$ East 178.87 feet; thence South $77^{\circ} 29' 09''$ West 99.49 feet; thence South $21^{\circ} 52' 07''$ West 100.14 feet; thence South $19^{\circ} 38' 43''$ East 283.95 feet; thence North $79^{\circ} 38' 35''$ East 376.64 feet; thence North $15^{\circ} 08' 19''$ East 328.47 feet; thence North $34^{\circ} 00' 01''$ East 1026.67 feet; thence South $89^{\circ} 22' 34''$ East 567.85 feet; thence South $02^{\circ} 43' 26''$ West 1208.59 feet; thence South $37^{\circ} 46' 33''$ West 453.55 feet; thence South $70^{\circ} 53' 37''$ West 724.58 feet; thence South $15^{\circ} 08' 19''$ West 888.60 feet; thence South $89^{\circ} 59' 15''$ West 68.85 feet to the point of beginning. (Nathan Ricks donated Open Space) (58:040:0115) Containing approximately 54 acres

Parcel 33:

Commencing at a point which is South $89^{\circ} 02' 40''$ East along section line 172.42 feet and South 664.54 feet from the Southwest corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence as follows: thence South $68^{\circ} 48' 54''$ East 629.16 feet; thence 23.56 feet along the arc of a 15 foot radius curve to the right, (chord bears South $23^{\circ} 48' 54''$ East 21.21 feet); thence South $21^{\circ} 11' 06''$ West 709.60 feet; thence 23.56 feet along the arc of a 15 foot radius curve to the right, (chord bears South $66^{\circ} 11' 06''$ West 21.21 feet); thence North $68^{\circ} 48' 54''$ West 629.16 feet; thence 23.56 feet along the arc of a 15 foot radius curve to the right, (chord bears North $23^{\circ} 48' 54''$ West 21.21 feet); thence North $21^{\circ} 11' 06''$ East 709.60 feet; thence 23.56 feet along the arc of a 15 foot radius curve to the right, (chord bears North $66^{\circ} 11' 06''$ East 21.21 feet) to the point of beginning. (Red Hawk Ranch Park) (51:329:0001) Containing 11.1873 acres

Parcel 34:

Commencing at a point which is North $89^{\circ} 18' 39''$ West 559.07 feet along the section line from the Northeast corner of Section 30, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence 325.46 feet along the arc of a 553 foot radius curve to the right, (chord bears South $35^{\circ} 31' 58''$ West 320.79 feet); thence South $18^{\circ} 40' 20''$ West 398.59 feet; thence North $79^{\circ} 17' 51''$ West 33.27 feet; thence North $71^{\circ} 19' 40''$ West 237.05 feet; thence North $18^{\circ} 40' 20''$ East 287.00 feet; thence North $00^{\circ} 41' 21''$ East 290.44 feet; thence South $89^{\circ} 18' 39''$ East 475.96 feet along section line to the point of beginning. (Ruby Valley , Plat "A") (41:384:0001) Containing approximately 4.4342 acres

Parcel 35:

Lots 76, 77 and 79, Plat "A", ASH POINT AT SADDLE ROCK RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's Office, Utah. (34:301:0076: 34:301:0077: and 34:301:0079) Contains approximately 1.07 acres (Ash Point at Saddle Rock Ranch Park)

Parcel 36:

Commencing at a point South 2133.32 feet and East 2171.5 feet from the North quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence 23.56 feet along the arc of a 15.00 foot radius curve to the right, (chord bears South 44° 22' 40" East 21.212 feet; thence South 0° 37' 20" West 150.00 feet; thence 23.56 feet along the arc of a 15.00 foot radius curve to the right, (chord bears South 45° 37' 20" West 21.212 feet; thence North 89° 22' 40" West 325.010 feet; thence 23.56 feet along the arc of a 15.00 foot radius curve to the right (chord bears North 44° 22' 40" West 21.212 feet; thence North 0° 37' 20" East 65.00 feet; thence North 45° 37' 19" East 141.422 feet; thence South 89° 22' 40" East 240.010 feet to the point of beginning. (To be known as Porter's Crossing at Smith Ranch Plat "B" Park) (58:040:0156) Containing approximately 1.4144 acres

Parcel 37:

Commencing at a point South 610.72 feet and West 625.56 feet from the North quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 34° 00' 01" West 1452.810 feet; thence South 68° 48' 54" East 428.950 feet; thence 23.560 feet along the arc of a 15.00 foot radius curve to the left, (chord bears North 66° 11' 06" East 21.212 feet); thence North 21° 11' 06" East 61.900 feet; thence 50.210 feet along the arc of a 225.00 foot radius curve to the right, (chord bears North 27° 34' 41" East 50.106 feet; thence North 33° 58' 16" East 18.280 feet; thence 194.900 feet along the arc of a 275.00 foot radius curve to the right, (chord bears North 54° 16' 29" East 190.846 feet; thence North 13° 50' 19" West 35.390 feet; thence North 33° 58' 16" East 517.240 feet; thence South 88° 10' 45" East 36.320 feet; thence North 15° 29' 03" West 12.510 feet; thence 151.056 feet along the arc of a 175.00 foot radius curve to the right, (chord bears North 09° 14' 36" East 146.410 feet; thence North 33° 58' 16" East 276.410 feet; thence 22.060 feet along the arc of a 15.00 foot radius curve to the left, (chord bears North 08° 09' 53" West 20.125 feet; thence North 50° 18' 03" West 398.090 feet to the point of beginning. (To be known as Lot 69, Plat "A", Liberty Farms at Smith Ranch Subdivision - Grant B. Smith Trailway.) Containing Approximately 13.7514 acres

Parcel 38:

Commencing at a point South 1292.91 feet and East 781.46 feet from the North quarter

corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence 188.99 feet along the arc of a 100.00 foot radius curve to the right, (chord bears North 71° 45' 02" East 162.094 feet; thence South 54° 06' 23" East 76.14 feet; thence 120.29 feet along the arc of a 100.00 foot radius curve to the right, (chord bears South 19° 38' 41" East 113.168 feet; thence 193.870 feet along the arc of a 100.00 foot radius curve to the right, (chord bears South 70° 21' 19" West 164.904 feet; thence North 54° 06' 23" West 76.14 feet; thence 126.160 feet along the arc of a 100.00 foot radius curve to the right, (chord bears North 18° 14' 58" West 117.149 feet to the point of beginning. (To be known as Saddleback Park at Smith Ranch) Containing approximately 1.0707 acres

Parcel 39:

Lot 75, Plat "A", CHIMNEY ROCK AT RED HAWK RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's, Utah. (36:810:0075) (E. Paul Evans North Trailway) Containing approximately 4.1952 acres)

Parcel 40:

Lot 63, 64, 68, and 69, Plat "A", MT. AIREY AT RED HAWK RANCH R1- N26,27 SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the Utah County Recorder's Office, Utah. (46:543:0063, 0064, 0068, and 0069) (Mt. Airey at Red Hawk Ranch R1-N26,27 Park) Containing approximately 5.0255 acres

Parcel 41:

Commencing at a point East 7721.55 feet and North 1435.21 feet from the Southwest corner of Section 18, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 78° 14' 03" East 449.54 feet; thence South 31° 09' 32" East 48.17 feet; thence South 58° 50' 28" West 162.97 feet; thence South 72° 51' 59" West 148.23 feet; thence South 10° 45' 32" West 79.99 feet; thence South 80° 50' 16" West 141.96 feet; thence North 09° 09' 44" West 181.04 feet to the point of beginning. (Known as Lot 5) (The Ranches Entry Monument) Containing approximately 1.2962 acres

Parcel 42:

Commencing South 1322.33 feet and West 591.46 feet from the East quarter corner of Section 18, Township 5 south, Range 1 West, Salt Lake Base and Meridian; thence North 89° 30' 43" West 1485.870 feet; thence North 08° 33' 30" East 526.180 feet; thence North 19° 32' 25" East 387.64 feet; thence South 70° 27' 35" East 441.34 feet; thence 59.290 feet along the arc of a 800.000 foot radius curve to the left, (chord bears South 72° 34' 58" East 59.276 feet; thence South 15° 17' 38" West 189.690 feet; thence South 80° 56' 29" East 273.93 feet; thence North 78° 52' 12" East 276.820 feet;

thence North 73° 25' 28" East 237.320 feet; thence South 12° 35' 17" East 187.010 feet; thence North 77° 24' 43" East 226.000 feet; thence 31.420 feet along the arc of a 20.00 foot radius curve to the left, (chord bears North 32° 24' 43" East 28.287 feet; thence South 12° 35' 17" East 90.000 feet; thence 31.420 feet along the arc of a 20.000 foot radius curve to the left, (chord bears North 57° 35' 17" West 28.287 feet; thence South 77° 24' 43" West 227.110 feet; thence South 12° 35' 17" East 170.750 feet; thence South 00° 29' 17" West 229.780 feet to be point of beginning. (Known as Lot C Plat "1" MEADOW RANCH SUBDIVISION Open Space) Containing approximately 21.3598 acres

Parcel 43:

Commencing at a point North 505.58 feet and East 52.69 feet from the West quarter corner of Section 18, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 32' 03" East 1654.36 feet; thence South 0° 27' 57" West 100.00 feet; thence South 33° 17' 56" West 311.72 feet; thence South 19° 39' 24" East 803.67; thence South 74° 12' 34" West 1842.18 feet; thence North 0° 42' 04" East 31.29 feet; thence North 74° 12' 34" East 408.710 feet; thence North 00° 42' 04" East 169.980 feet; thence 355.310 feet along the arc of a 1000.000 foot radius curve to the left, (chord bears North 80° 31' 20" East 353.444 feet); thence North 70° 20' 36" East 635.150 feet; thence South 19° 39' 24" East 167.330 feet; thence North 74° 12' 34" East 233.990 feet; thence North 11° 04' 03" East 198.750 feet; thence North 19° 39' 24" West 300.220 feet; thence South 70° 20' 36" West 210.000 feet; thence 20.000 feet along the arc of a 750.000 foot radius curve to the left, (chord bears North 20° 25' 15" West 19.999 feet); thence North 70° 20' 36" East 210.270 feet; thence North 26° 25' 25" West 288.570 feet; thence North 47° 26' 24" West 241.300 feet; thence North 60° 34' 34" West 239.520 feet; thence North 72° 33' 56" West 265.590 feet; thence North 89° 32' 03" West 766.530 feet; thence North 00° 42' 04" East 20.000 feet to the point of beginning. (To be Known as Plat "2" MEADOW RANCH SUBDIVISION Open Space) Containing approximately 9.9241 acres.

Parcel 44:

Commencing at a point South 627.37 feet and East 2488.57 feet from the West quarter corner of Section 18, Township 5 South Range 1 West, Salt Lake Base and Meridian; thence 100.370 feet along the arc of a 2000.000 foot radius curve to the left, (chord bears North 02° 54' 19" East 100.359 feet); thence South 88° 31' 56" East 216.330 feet; thence South 70° 27' 35" East 459.710 feet; thence South 19° 32' 25" West 153.100 feet; thence North 71° 22' 27" West 636.720 feet to the point of beginning. (To be known as Plat "3" MEADOW RANCH SUBDIVISION Open Space) Containing approximately 2.2284 acres; and,

Commencing at a point South 619.79 feet and East 1693.80 feet from the West quarter corner of Section 18, Township 5 South, Range 1 West, Salt Lake Base and Meridian;

thence North 0° 27' 57" East 100.000 feet; thence South 89° 32' 03" East 749.090 feet; thence 100.100 feet along the arc of a 1950 foot radius curve to the right, (chord bears South 02° 56' 18" West 100.089 feet; thence North 89° 32' 03" West 744.770 feet to the point of beginning. (To be known as Plat "3" MEADOW RANCH SUBDIVISION Open Space) Containing 1.7156 acres.

Parcel 45:

Lots 431, 432, 433, and 434, Plat "4", MEADOW RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder's Office, Utah. (46:536:0431; 46:536:0432; 46:536:0433 and 46:536:0434) (to be known as Plat "4", MEADOW RANCH SUBDIVISION Open Space) Containing approximately 22.838 acres

Property either released from SID 2000-1 or to be released prior to funding - 690.5078 acres

Total acreage in SID 2000-1 after less and excepted property - 1804.2808 acres

RESOLUTION NO. 02-99

ENT 53845 BK 5078 PG 854
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1999 May 07 5:00 pm FEE 115.00 BY SS
RECORDED FOR TOWN OF EAGLE MOUNTAIN

Eagle Mountain, Utah

May 4, 1999

A meeting of the Town Council of Eagle Mountain, Utah County, Utah was held on Tuesday, the 4th day of May, 1999, at the hour of ~~5:00~~^{7:00} p.m., at 1680 East Heritage Drive, Eagle Mountain, Utah 84043, at which meeting there were present and answering roll call the following members who constituted a quorum:

Robert E. Bateman, II	Mayor
Diane D. Bradshaw	Councilmember
Daniel A. Valentine	Councilmember
D. Cyril Watt	Councilmember
William E. Chipman	Councilmember

Also present:

John D Newman	Town Administrator
Janet B. Valentine	Town Clerk
Gerald H. Kinghorn	Town Attorney

Absent:

William E. Chipman	Councilmember
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After the meeting had been duly called to order and other matters not pertinent to this resolution had been discussed, the Town Clerk presented to the Town Council a Certificate of Compliance with Open Meeting Law with respect to this May 4, 1999 meeting, a copy of which is attached hereto as Exhibit "A".

Councilmember Dan Valentine introduced the following resolution in writing, which was read in its entirety, and moved its adoption:

RESOLUTION NO. 02-99

A RESOLUTION REVISING THE NOTICE OF INTENTION ADOPTED BY THE TOWN COUNCIL OF EAGLE MOUNTAIN, UTAH IN CONNECTION WITH THE CREATION OF EAGLE MOUNTAIN UTAH SPECIAL IMPROVEMENT DISTRICT NO. 98-1; AND RELATED MATTERS.

WHEREAS, pursuant to the Utah Municipal Improvement District Act, Title 17A, Chapter 3, Part 3, Utah Code Annotated 1953, as amended (the "Act") on June 30, 1998, the Town Council of Eagle Mountain, Utah County, Utah (the "Town") adopted Resolution No. 12-98, wherein it approved a Notice of Intention (the "Notice of Intention") to construct certain municipal improvements described therein and to create Eagle Mountain, Utah Special Improvement District No. 98-1 (the "District") to finance said improvements; and

WHEREAS, after publishing the Notice of Intention and mailing it to the owners of record of all properties anticipated to be benefitted by the construction of the improvements described therein and after holding a public hearing with respect to the creation of the District, the Town created the District by Resolution No. 15-98 adopted on August 11, 1998; and

WHEREAS, since the creation of the District, certain changes with respect to (i) the improvements to be constructed within the District, (ii) the properties proposed to be assessed, (iii) the method of fairly and equitably assessing properties for benefits to be received and (iv) the period of time over which assessments may be levied have been proposed by, and consented to by all of the owners of properties proposed to be assessed within the District, as evidenced by certain Acknowledgments, Waivers and Consents attached hereto as Exhibit "B"; and

WHEREAS, pursuant to Section 17A-3-307(4) of the Act, the Town Council hereby finds that inclusion of certain additional assessable property within the District as described in Exhibit "C" attached hereto will not adversely affect the owners of properties already included within the District, and that the Acknowledgment Waiver and Consent of the owners of the property to be added to and improved within the District constitutes written consent thereto; and

WHEREAS, the Town Council desires to approve an addendum to Resolution No. 15-98 and to record the same as provided in Section 17A-3-307 of the Act.

BE IT RESOLVED by the Town Council of Eagle Mountain, Utah County, Utah:

Section 1. The following sections of the Notice of Intention set forth in Resolution 12-98, upon which the District has been created are hereby amended with the

unanimous consent of all owners of property to be assessed within the District as represented by the Acknowledgments, Waivers and Consents attached hereto as Exhibit "A" to read as follows:

INTENDED IMPROVEMENTS

The improvements will consist of the construction and paving of approximately 2.6 miles of asphalt road, the construction of a concrete curb planter median in the center of said road, the installation of sewer, water, telecommunications, electrical and gas improvements within the road right of way, the construction of landscaping and park improvements and the replacement of above ground electric transmission lines with underground electric transmission lines (collectively, the "Improvements"). Said Improvements will begin at the intersection of State Highway 73, proceed south to the intersection of the Lehi-Fairfield Road (the "Pony Express Parkway"), then both east and west to the boundary of the District. The electric transmission lines to be installed underground are located along the Pony Express Parkway.

The roadway will be known as The Ranches Parkway. The proposed location of said Improvements is shown on Exhibit "D" attached hereto and incorporated by reference.

ESTIMATED COST OF IMPROVEMENTS

The total cost of Improvements in the District as estimated by the Engineer, including overhead costs of the Town and the funding of a debt service reserve fund, is \$12,885,000, of which the Town will pay \$0, leaving a remainder of \$12,885,000 which shall be paid by a special assessment to be levied against the property abutting upon the streets to be improved or upon property which may be affected or specifically benefitted by such Improvements. The Town Council has determined that only those parcels within the boundaries of the proposed District, the owners of which have a present intent to develop said parcels, shall be benefitted by the proposed Improvements as indicated on the map attached hereto as Exhibit "B". The property owners' portion of the total estimated cost of the Improvements may be financed during the construction period by the use of interim warrants, in which case the interest on said warrants will be assessed to the property owners. In lieu of utilizing a guaranty fund, the Town intends to create a special reserve fund to secure payment of the special assessment bonds (the "Bonds") anticipated to be issued to finance the proposed Improvements. The reserve fund will contain two subaccounts—a capitalized interest reserve subaccount and a debt service reserve subaccount. The capitalized interest reserve subaccount will be funded with proceeds of the Bonds in an amount sufficient to pay up to thirty-one months' interest on the Bonds. The debt service reserve subaccount shall be initially funded with proceeds of the Bonds in an amount equal to approximately ten percent of the total principal amount of Bonds to

be issued. The Town anticipates applying any moneys remaining in the debt service reserve subaccount to the final payment on the Bonds which, in turn, would offset the final assessment payments to be made by the owners of property benefitted by such Improvements, all of which will be further described in the assessment ordinance to be adopted by the Town. In addition, the estimated costs of assessment include estimated overhead costs which the Town expects to incur in the creation and administration of the District. The estimated cost to be assessed against the properties within the District and the method of assessment shall be as follows:

<u>Area within the District</u>	<u>Improvements to be Acquired and Constructed within the Area</u>	<u>Estimated Assessment</u>	<u>Method of Assessment</u>
The Ranches Subdivisions	Roads; sewer, water, gas, electric and telecommunications improvements; landscaping and parks and underground electrical lines	\$11,817	Per developable acre
Meadow Ranch Subdivision	Water, gas, electric, and telecommunications improvements; landscaping and parks and underground electrical lines	\$7,853	Per developable acre

LEVY OF ASSESSMENTS

It is the intention of the Town Council to levy assessments as provided by the laws of Utah on all parcels and lots of real property to be benefitted by the proposed Improvements within the District. The purpose of the assessment and levy is to pay those costs of the Improvements which the Town will not assume and pay. The method of assessment shall be by developable acre as set forth herein.

The assessments may be paid by property owners in not more than eleven (11) annual installments with interest on the unpaid balance beginning December 15, 2002 at a rate or rates fixed by the Town Council. The assessments shall be levied according to the benefits to be derived by each property within the District. Other payment provisions and enforcement remedies shall be in accordance with Title 17A, Chapter 3, Part 3, Utah Code Annotated 1953, as amended.

A map of the proposed District, copies of plans, profiles and specifications of the proposed Improvements and other related information are on file in the office of the Engineer who will make such information available to all interested persons.

Section 2. All other provisions of the Notice of Intention adopted as part of Resolution No. 12-98 consistent with the above described amendments shall remain in full force and effect and are hereby reaffirmed.

Exhibit "A"

Parcel 1:

Commencing at a point South 0° 15' 55" East 559.95 feet and South 89° 44' 05" West 2.59 feet from the East quarter corner of Section 17, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 760.69 feet; thence North 89° 12' 37" West 1068.69 feet; thence North 79° 50' 12" West 44.01 feet; thence South 77° 03' 34" West 231.65 feet; thence North 0° 00' 40" East 506.98 feet; thence North 78° 03' 00" East 1367.20 feet to the point of beginning. (A portion of 58:033:0082)

Parcel 2:

Commencing at the Southeast corner of Section 17, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 89° 00' 02" West 894.22 feet; thence North 27° 41' 32" East 323.81 feet; thence North 16° 26' 01" West 104.4 feet; thence North 42° 26' 38" West 176.92 feet; thence North 72° 29' 34" West 151.82 feet; thence South 57° 59' 32" West 79.91 feet; thence South 34° 55' 42" West 404.96 feet; thence North 0° 16' 35" East 683.58 feet; thence North 52° 24' 47" East 296.69 feet; thence North 85° 49' 44" East 75.66 feet; thence North 5° 35' 18" East 83.82 feet; thence South 77° 44' 08" East 92.29 feet; thence North 21° 46' 01" East 177.34 feet; thence North 79° 34' 17" West 206.83 feet; thence South 88° 56' 42" East 1068.69 feet; thence South 0° 15' 55" West 1320.65 feet to the point of beginning. (58:033:0079)

Parcel 3:

Commencing at a point North 1320 feet and East 3100.17 feet from the Southwest corner of Section 17, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence West 1463.37 feet; thence North 85° 27' 00" East 1607.52 feet; thence South 78° 14' 03" West 196.12 feet; thence South 31° 09' 33" East 102.29 feet to the point of beginning. (58:033:0083)

Parcel 4:

Commencing at a point North 1320 feet and East 3960 feet from the Southwest corner of Section 17, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence West 510.61 feet; thence North 41° 37' 22" East 207.64 feet; thence North 85° 27' 00" East 373.82 feet; thence South 184.8 feet to the point of beginning. (58:033:0084)

Parcel 5:

Commencing at a point East 1858.13 feet from the Southwest corner of Section 17, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 41° 45' 41" East 356.68 feet; thence North 32° 25' 01" West 201.68 feet; thence North 51° 20' 25" West 348.04 feet; thence North 19° 07' 11" West 233.23 feet; thence North 04° 53'

57" West 317.2 feet; thence along the arc of a 5804.7 foot radius curve to the right (chord bears South 88° 32' 08" West 141.52 feet); thence South 89° 14' 02" West 150.85 feet; thence North 135.51 feet; thence East 1780.18 feet; thence South 31° 09' 33" East 21.21 feet; thence along the arc of a 743.79 foot radius curve to the right (chord bears North 59° 55' 23" East 67.68 feet); thence along the arc of a 35 foot radius curve to the left (chord bears North 34° 41' 55" East 32.68 feet); thence along a tangent curve to the right (radius = 50 feet, arc = 228.44 feet); thence along the arc of a 75 foot radius curve to the left (chord bears South 76° 17' 19" West 32.09 feet); thence along the arc of a 693.79 foot radius curve to the left (chord bears South 58° 42' 54" West 126.26 feet); thence South 48° 22' 40" East 203.68 feet; thence North 41° 37' 22" East 296.68 feet; thence East 510.61 feet; thence South 127.13 feet; thence South 77° 19' 29" West 333.57 feet; thence South 27° 13' 31" West 540.37 feet; thence South 44° 52' 22" West 901.92 feet; thence West 892.87 feet to the point of beginning. (58:033:0080)

Parcel 6:

Commencing at a point East 3685.86 feet from the Southwest corner of Section 17, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 21° 10' 22" East 758.99 feet; thence South 676.85 feet; thence South 34° 55' 42" West 37.7 feet; thence West 252.55 feet to the point of beginning. (58:033:0081)

Parcel 7:

Commencing at a point East 8366.91 feet and North 1217.26 feet from the Southwest corner of Section 18, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 48° 22' 39" West 203.7 feet; thence along the arc of a 693.79 foot radius curve to the right (chord bears North 58° 42' 55" East 126.28 feet; thence along the arc of a 75 foot radius curve to the right (chord bears North 76° 17' 19" East 32.09 feet; thence along a tangent curve to the left (radius = 50 feet, arc = 228.44 feet); thence along a tangent curve to the right (radius = 35 feet, arc = 34 feet); thence along a tangent curve to the left (radius = 743.79 feet, arc = 67.72 feet); thence North 31° 09' 32" West 123.51 feet; thence North 78° 14' 03" East 601.62 feet; thence South 41° 37' 21" West 577.93 feet to the point of beginning. (58:033:0078)

Parcel 8:

Commencing North 0° 15' 56" East 302.32 feet and West 745.01 feet from the Southeast corner of Section 17, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 27° 41' 32" West 961.34 feet; thence South 33° 36' 27" West 484.6 feet; thence along the arc of a 207.44 foot radius curve to the left (chord bears South 4° 30' 16" West 200.56 feet); thence South 47° 30' 21" West 88.46 feet; thence along the arc of a 86.37 foot radius curve to the left (chord bears North 82° 21' 12" West 115.97 feet); thence South 54° 58' 54" West 756.25 feet; thence South 68° 46' 54" West 174.35 feet; thence North 66° 09' 12" West 87.32 feet; thence North 20° 49' 20" West 69.64 feet; thence North 16° 21' 54" East 539.28 feet; thence North 20° 30'

59" West 172.1 feet; thence North 56° 20' 12" East 531.09 feet; thence North 50° 20' 52" East 592.81 feet; thence North 25° 24' 59" East 93.94 feet; thence North 26° 21' 05" West 73.75 feet; thence North 34° 55' 42" East 765.42 feet; thence North 57° 59' 32" East 79.91 feet; thence South 72° 29' 34" East 151.82 feet; thence South 42° 26' 38" East 176.92 feet; thence South 16° 26' 01" East 104.4 feet to the point of beginning. (58:034:0121)

Parcel 9:

Commencing at a point South 0° 12' 55" West 41.97 feet and West 1508.78 feet from the Northeast corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 34° 55' 42" West 60.07 feet; thence North 52° 15' 54" West 243.29 feet; thence South 53° 43' 16" West 686.91 feet; thence South 43° 01' 03" West 652.78 feet; thence along the arc of a 2103 foot radius curve to the left (chord bears North 14° 48' 24" West 617.76 feet); thence North 23° 15' 09" West 75.23 feet; thence along the arc of a 397 foot radius curve to the right (chord bears North 16° 02' 12" West 99.74 feet); thence along the arc of a 162.45 foot radius curve to the left (chord bears North 85° 15' 55" East 210.45 feet); thence North 44° 52' 22" East 1094.96 feet ; thence North 27° 13' 31" East 540.37 feet; thence North 77° 19' 29" East 630.08 feet; thence South 79° 34' 17" East 250.84 feet; thence South 21° 46' 01" West 177.34 feet; thence North 77° 44' 08" West 92.29 feet; thence South 5° 35' 18" West 83.82 feet ;thence South 85° 49' 44" West 75.66 feet; thence South 52° 24' 47" West 344.38 feet; thence South 21° 10' 22" West 830.99 feet; thence South 52° 15' 54" East 205.66 feet to the point of beginning. (58:034:0122)

Parcel 10:

Commencing at a point North 0° 54' 13" West 1466.45 feet from the West quarter corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 89° 05' 47" East 1131.69 feet; thence North 0° 14' 17" East 2395.75 feet; thence North 89° 14' 02" East 309.94 feet; thence along the arc of a 5804.7 foot radius curve to the left (chord bears North 88° 32' 08" East 141.52 feet); thence South 4° 53' 57" East 317.2 feet; thence South 19° 07' 11" East 233.23 feet; thence South 51° 20' 25" East 348.04 feet; thence South 32° 25' 01" East 201.68 feet; thence South 41° 45' 41" West 631.39 feet; thence West 150 feet; thence South 12° 46' 01" West 92.2 feet; thence South 12° 40' 46" East 466.96 feet; thence South 5° 59' 09" East 236.25 feet; thence South 10° 30' 31" West 224.84 feet; thence South 25° 07' 15" West 358.82 feet; thence South 71° 39' 13" West 759.16 feet; thence South 57° 05' 28" West 94.34 feet; thence South 37° 26' 14" West 140.25 feet; thence North 62° 35' 21" West 84.35 feet; thence North 80 feet ; thence North 72° 23' 47" West 156.67 feet; thence North 26° 33' 42" East 65 feet; thence along the arc of a 75 foot radius curve to the right (chord bears North 12° 16' 36" West 116.84 feet); thence North 40° 51' 40" West 480.16 feet to the point of beginning. (58:034:0120)

Parcel 11:

Commencing at a point North 25.52 feet and West 1461.8 feet from the Northeast corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 34° 55' 42" West 82.32 feet; thence North 52° 15' 54" West 114.2 feet; thence South 89° 00' 02" East 137.47 feet to the point of beginning. (58:034:0124)

Parcel 12:

Commencing at a point North 1327.08 feet and West 7.32 feet from the Southwest corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 0° 18' 58" West 1327.08 feet; thence North 0° 54' 13" West 1349.91 feet; thence South 89° 10' 37" East 101.1 feet; thence South 40° 51' 40" East 322.82 feet; thence along the arc of a 75 foot radius curve to the left (chord bears South 12° 16' 36" East 116.84 feet); thence South 26° 33' 42" West 65 feet; thence South 72° 23' 47" East 156.67 feet; thence South 80 feet; thence South 62° 35' 21" East 84.35 feet; thence North 37° 26' 14" East 140.25 feet; thence North 57° 05' 28" East 94.34 feet; thence North 71° 39' 13" East 759.16 feet; thence North 25° 07' 15" East 177.94 feet; thence South 89° 10' 37" East 1169.48 feet; thence South 0° 10' 39" East 2676 feet; thence North 89° 10' 00" West 2642.19 feet to the point of beginning (58:034:0126)

Parcel 13:

Commencing at a point South 1231.23 feet and East 19.42 feet from the Northwest corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 40° 51' 40" East 157.29 feet; thence North 89° 10' 37" West 101.06 feet; thence North 0° 54' 13" West 177.52 feet to the point of beginning. (58:034:0127)

Parcel 14:

Commencing at a point North 0.02 feet from the East quarter corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 89° 17' 20" West 2657.47 feet; thence North 0° 10' 39" West 1880.02 feet; thence North 43° 01' 03" East 562.34 feet; thence North 53° 43' 16" East 641.72 feet; thence South 89° 00' 02" East 72.63 feet; thence South 52° 15' 54" East 197.53 feet; thence South 26° 21' 10" East 73.75 feet; thence South 25° 24' 59" West 93.94 feet; thence South 50° 20' 52" West 592.81 feet; thence South 56° 20' 12" West 531.09 feet; thence South 20° 30' 59" East 172.1 feet; thence South 16° 21' 54" West 539.28 feet; thence South 20° 49' 20" East 69.64 feet; thence South 66° 09' 12" East 87.32 feet; thence North 68° 46' 54" East 174.35 feet; thence North 54° 58' 54" East 756.25 feet; thence along the arc of an 86.37 foot radius curve to the right (chord bears South 82° 21' 12" East 115.97 feet); thence North 47° 30' 21" East 88.46 feet; thence along the arc of a 207.44 foot radius curve to the right (chord bears North 4° 30' 16" East 200.56 feet); thence North 33° 36' 27" East 484.6 feet; thence North 27° 41' 32" East 637.55 feet; thence South 89° 00' 02" East 894.23 feet; thence South 0° 12' 55" West 2672.95 feet to the point of beginning. (58:034:0123)

Parcel 15:

Commencing at the South quarter corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 0° 10' 38" West 123.6 feet; thence South 89° 09' 24" East 1214.97 feet; thence South 125.96 feet; thence North 89° 02' 44" West 1214.77 feet to the point of beginning. (58:034:0128)

Parcel 16:

Beginning at a point which is North 00° 18' 58" West 118.44 feet along Section line from the Southwest corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 00° 18' 58" West 1208.65 feet along the section line; thence South 89° 10' 00" East 1590.63 feet; thence South 00° 10' 38" 1208.87 feet; thence North 89° 09' 24" West 1587.70 feet to the point of beginning. (A part of 58:034:0008)

Parcel 17:

Commencing at a point South 29.84 feet and East 1831.48 feet from the Northwest corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 03' 59" East 847.96 feet; thence South 0° 10' 39" East 28.24 feet; thence South 44° 52' 22" West 91.59 feet; thence along the arc of a 162.45 foot radius curve to the right (chord bears South 85° 15' 55" West 210.54 feet); thence along the arc of a 397 foot radius curve to the left (chord bears South 16° 02' 12" East 99.74 feet); thence South 23° 15' 09" East 75.23 feet; thence along the arc of a 2103 foot radius curve to the right (chord bears South 14° 48' 24" East 617.76 feet); thence North 43° 01' 03" East 90.47 feet; thence South 0° 10' 39" East 536.73 feet; thence North 89° 10' 37" West 1169.48 feet; thence North 25° 07' 15" East 180.84 feet; thence North 10° 30' 31" East 224.84 feet; thence North 5° 59' 09" West 236.25 feet; thence North 12° 40' 46" West 466.96 feet; thence North 12° 46' 01" East 92.2 feet; thence East 150 feet; thence North 41° 45' 41" East 234.72 feet to the point of beginning. (58:034:0125)

Parcel 18:

A portion of Lot 8, Section 19, Township 5 South, Range 1 West, Salt Lake Base and Meridian, described as follows: Beginning at a point West 1123.20 feet and North 1245.760 feet from the South quarter corner of Section 19, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 82° 21' 55" East 1143.420 feet; thence North 0° 27' 01" East 185.46 feet; thence South 88° 19' 10" West 1135.47 feet to the point of beginning. (A portion of 58:034.0028)

Parcel 19:

The Southwest quarter of the Southeast quarter of Section 30, Township 5 South, Range 1 West, Salt Lake Base and Meridian. (58:040:0013)

Parcel 20:

Commencing at the North quarter corner of Section 30, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 18' 39" East 1379.92 feet; thence South 0° 35' 57" West 1342.67 feet; thence South 89° 31' 48" East 506.15 feet; thence South 28° 59' 34" East 12.4 feet; thence along a 50 foot radius curve to the right (chord bears South 74° 57' 55" East 69.49 feet); thence along a 50 foot radius curve to the left (chord bears South 55° 02' 52" East 40.85 feet); thence along the arc of a 175 foot radius curve to the left (chord bears North 79° 49' 09" East 125.55 feet); thence North 58° 47' 46" East 53.69 feet; thence South 89° 31' 48" East 508.61 feet; thence South 21° 11' 06" West 1.12 feet; thence along the arc of a 15 foot radius curve to the left (chord bears South 23° 49' 07" East 21.21 feet); thence 68° 48' 54" East 71.98 feet; thence South 01° 08' 59" West 37.97 feet; thence South 21° 11' 07" West 24.33 feet; thence South 68° 48' 54" East 8.87 feet; thence South 01° 08' 59" West 163.24 feet; thence South 62° 56' 54" West 158.67 feet; thence South 09° 49' 38" West 14.07 feet; thence South 35° 26' 52" East 90 feet; thence along the arc of a 20 foot radius curve to the left (chord bears South 53° 11' 17" West 20 feet); thence North 38° 10' 34" West 90 feet; thence North 83° 27' 04" West 14.07 feet; thence South 47° 59' 56" West 93.36 feet; thence South 32° 43' 31" West 100.3 feet; thence North 84° 01' 27" West 77.77 feet; thence South 12° 16' 41" West 90 feet; thence South 06° 53' 11" East 13.23 feet; thence along the arc of a 45 foot radius curve to the left (chord bears South 48° 39' 17" West 50.92 feet); thence North 77° 01' 23" West 83.42 feet; thence South 21° 33' 57" West 115.01 feet; thence South 62° 44' 13" East 131.59 feet; thence South 71° 28' 45" East 78.49 feet; thence South 7° 42' 42" East 119.75 feet; thence South 27° 52' 54" East 522.02 feet; thence South 83° 55' 25" East 83.54 feet; thence South 01° 08' 59" West 1531.41 feet; thence North 58° 13' 9" West 692.02 feet; thence North 26° 56' 32" West 637.77 feet; thence North 54° 05' 47" West 208.71 feet; thence North 72° 42' 05" West 469.58 feet; thence North 46° 15' 26" West 636.94 feet; thence South 84° 45' 29" East 618.01 feet; thence North 77° 16' 06" East 691.72 feet; thence North 07° 32' 22" West 193.64 feet; thence North 23° 27' 56" East 279.24 feet; thence North 70° 49' 44" West 1663.17 feet; thence North 54° 40' 07" West 546.74 feet; thence North 89° 32' 16" West 327.98 feet; thence North 43° 14' 11" West 1607.06 feet; thence North 34° 16' 08" East 74.04 feet; thence North 88° 34' 03" East 1309.62 feet to the point of beginning.

LESS AND EXCEPTING the following:

Commencing at the North quarter corner of Section 30, Township 5 South, Range 1 West, Salt Lake Base and meridian; thence South 89° 18' 39" East 90.23 feet; thence South 0° 33' 25" West 1266.34 feet; thence North 89° 32' 16" West 327.98 feet; thence North 43° 14' 11" West 1607.06 feet; thence North 34° 16' 08" East 74.041 feet; thence North 88° 34' 03" East 1309.405 to the point of beginning. (A portion of 58:040:0067)

Parcel 21:

Commencing at a point North 6.24 feet and West 519.13 feet from the Northeast corner of Section 30, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 18° 40' 21" West 1409.93 feet; thence North 89° 31' 47" West 423.33 feet;

thence North 0° 35' 56" East 1342.67 feet; thence South 89° 18' 39" East 860.75 feet to the point of beginning. (58:040:0047)

Parcel 22:

Commencing at a point South 0.01 feet and East 0.65 feet from the Northwest corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 02' 40" East 1263.49 feet; thence South 01° 08' 59" West 2667.67 feet, thence North 89° 22' 35" West 1092.71 feet; thence along the arc of a 965 foot radius curve to the right (chord bears North 17° 32' 28" East 212.53 feet); thence 23° 51' 49" East 867.82 feet; thence along the arc of a 15 foot radius curve to the right (chord bears North 67° 31' 28" East 20.71 feet); thence North 23° 08' 52" East 60.03 feet; thence along the arc of a 15 foot radius curve to the right (chord bears North 23° 48' 54" West 21.21 feet); thence North 68° 49' 24" West 60 feet; thence North 21° 11' 06" East 709.6 feet; thence along the arc of a 15 foot radius curve to the left (chord bears North 23° 49' 07" West 21.21 feet); thence South 68° 49' 07" East 69.99 feet; thence North 21° 11' 06" East 75 feet; thence along the arc of a 325 foot radius curve to the left (chord bears North 01° 15' 25" East 221.55 feet); thence North 71° 19' 43" East 99.01 feet; thence North 07° 18' 49" West 61.74 feet; thence North 12° 11' 19" East 422.81 feet; thence North 37° 32' 31" West 25.07 feet; thence North 89° 09' 24" West 1025.24 feet; thence South 8° 01' 12" East 256.89 feet; thence South 56° 23' 20" East 40.46 feet; thence South 68° 48' 54" East 82.88 feet; thence along the arc of a 225 foot radius curve to the right (chord bears South 13° 57' 29" West 56.61 feet); thence South 21° 11' 06" West 98.84 feet; thence South 68° 48' 42" East 75 feet; thence along the arc of a 15 foot radius curve to the left (chord bears South 66° 10' 53" West 21.21 feet); thence South 21° 11' 06" West 708.5 feet; thence North 89° 31' 55" West 508.66 feet; thence North 58° 47' 46" East 113.29 feet; thence along the arc of a 175 foot radius curve to the left (chord bears North 39° 59' 26" East 112.82 feet); thence North 21° 11' 06" East 285.11 feet; thence along the arc of a 15 foot radius curve to the left (chord bears North 23° 48' 54" West 21.21 feet); thence North 68° 48' 54" West 363 feet; thence along the arc of a 15 foot radius curve to the left (chord bears South 64° 55' 43" West 21.67 feet); thence South 18° 40' 20" West 575.8 feet; thence South 28° 51' 54" East 5.29 feet; thence North 89° 31' 55" West 82.95 feet; thence North 18° 40' 20" East 1409.97 feet; thence South 89° 18' 39" East 519.92 feet to the point of beginning. (58:040:0065)

Parcel 23:

Commencing at a point South 1358.89 feet and East 1869.56 feet from the North quarter corner of Section 30, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 18° 40' 20" East 575.85 feet; thence along the arc of a 15 foot radius curve to the right (chord bears North 64° 55' 43" East 21.67 feet); thence South 68° 48' 54" East 363.03 feet; thence along the arc of a 15 foot radius curve to the right (chord bears South 23° 48' 54" East 21.21 feet); thence South 21° 11' 06" West 285.14 feet; thence along the arc of a 175 foot radius curve to the right (chord bears South 39° 59' 26" West 112.83 feet); thence South 58° 47' 46" West 166.92 feet; thence along the arc of a 175 foot radius curve to the right (chord bears South 79° 49' 09" West 125.56

feet); thence along the arc of a 50 foot radius curve to the right (chord bears North 55° 02' 52" West 40.85 feet); thence along the arc of a 50 foot radius curve to the left (chord bears North 74° 57' 55" West 69.5 feet); thence North 28° 59' 34" 17.64 feet to the point of beginning. (58:040:0059)

Parcel 24:

Commencing North 89° 18' 39" West 410.428 feet and South 1852.761 feet from the Northwest corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 84° 01' 23" East 77.768 feet; thence South 60° 32' 56" East 100 feet; thence along the arc of a 420 foot radius curve to the left (chord bears South 26° 42' 08" West 40.287 feet); thence South 66° 02' 48" East 140 feet; thence along the arc of a 280 foot radius curve to the right (chord bears South 19° 33' 21" West 42.937 feet); thence South 74° 50' 29" East 110 feet; thence along the arc of a 170 foot radius curve to the left (chord bears South 0° 25' 40" East 91.355 feet); thence South 66° 08' 11" East 333.731 feet; thence South 23° 51' 49" West 197 feet; thence along the arc of a 965 foot radius curve to the left (chord bears South 15° 43' 59" West 272.955 feet); thence along the arc of a 230 foot radius curve to the right (chord bears South 10° 49' 00" West 25.791 feet); thence North 83° 55' 25" West 242.52 feet; thence North 27° 52' 54" West 522.024 feet; thence North 7° 42' 42" West 119.747 feet; thence North 71° 28' 45" West 78.491 feet; thence North 62° 44' 13" West 131.586 feet; thence North 21° 33' 57" East 115.008 feet; thence South 77° 01' 23" East 83.424 feet; thence along the arc of a 45 foot radius curve to the right (chord bears North 48° 39' 17" East 50.923 feet); thence North 6° 53' 11" West 13.227 feet; thence North 12° 16' 41" East 90 feet to the point of beginning. (58:040:0063)

Parcel 25:

Commencing at a point at the North quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 02' 12" East 513.08 feet; thence South 0° 57' 35" West 1328.28 feet; thence North 89° 12' 25" West 513.07 feet; thence South 0° 57' 33" West 1329.81 feet; thence North 89° 22' 35" West 1383.83 feet; thence North 01° 08' 59" East 2667.64 feet; thence South 89° 02' 40" East 1374.94 feet to the point of beginning. (58:040:0049)

Parcel 26:

Commencing at a point South 8.620 feet and East 512.930 feet from the North quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 02' 12" East 1240.5 feet; thence South 27° 20' 12" East 49.25 feet; thence South 57° 17' 38" East 197.83 feet; thence South 8° 13' 30" East 205.40 feet; thence South 67° 15' 52" East 197.12 feet; thence North 56° 02' 26" East 94.61 feet; thence South 8° 08' 50" West 127.18 feet; thence South 50° 12' 10" East 48.04 feet; thence North 54° 39' 22" East 113.62 feet; thence North 84° 28' 44" East 91.65 feet; thence South 61° 28' 59" East 66.30 feet; thence South 14° 21' 48" East 108.77 feet; thence North 83° 40' 59" East 113.80 feet; thence South 0° 37' 26" West 2067.68 feet;

thence North 89° 41' 18" West 1327.66 feet; thence North 0° 47' 34" East 1325.86 feet; thence North 89° 12' 26" West 810.71 feet; thence North 0° 57' 34" East 1328.29 feet to the point of beginning. (A part of 58:040:0048)

Parcel 27:

Commencing at a point South 1.87 feet and East 171.47 feet from the West quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 22' 34" East 1095.77 feet; thence South 2° 43' 26" West 1208.59 feet; thence South 37° 46' 33" West 453.55 feet; thence South 70° 53' 37" West 724.58 feet; thence South 15° 08' 19" West 888.6 feet; thence South 89° 59' 15" West 68.85 feet; thence North 1° 08' 59" East 2604.54 feet; thence South 83° 55' 25" East 158.98 feet; thence along the arc of a 230 foot radius curve to the left (chord bears North 10° 49' 00" East 25.79 feet); thence along the arc of a 965 foot radius curve to the right (chord bears North 9° 24' 39" East 60.9 feet) to the point of beginning. (58:040:0064)

Parcel 28:

The Southeast quarter of the Southeast quarter of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian. (58:040:0028)

Parcel 29:

Commencing at a point South 568.95 feet and West 6.2 feet from the Northwest corner of Section 28, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 83° 40' 59" East 28.49 feet; thence South 1° 24' 52" East 106.51 feet; thence South 36° 37' 17" East 218.46 feet; thence South 57° 34' 13" East 67.83 feet; thence South 33° 23' 06" East 136.3 feet; thence 56° 31' 12" East 155.18 feet; thence North 88° 54' 29" East 166.94 feet; thence South 33° 10' 35" West 40.34 feet; thence South 3° 43' 36" West 215.04 feet; thence North 89° 18' 58" West 562.05 feet; thence North 0° 37' 28" East 752.96 feet to the point of beginning. (85:040:0030)

Parcel 30:

Commencing at a point North 0° 26' 48" East 1182.21 feet and West 11.31 feet from the South quarter corner of Section 18, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence along the arc of a 5804.56 radius curve to the left (chord bears South 77° 08' 27" West 593.7 feet); thence South 74° 12' 34" West 54.38 feet; thence North 19° 39' 24" West 803.67 feet; thence North 33° 17' 56" East 311.72 feet; thence South 89° 32' 03" East 744.77 feet; thence South 88° 13' 54" East 50.05 feet; thence along the arc of a 2000 foot radius curve to the right (chord bears South 7° 27' 55" West 217.88 feet); thence South 10° 35' 16" West 401.55 feet; thence along the arc of a 500 foot radius curve to the left (chord bears South 0° 12' 24" West 180.2 feet); thence South 28° 03' 17" East 81.48 feet to the point of beginning. (58:033:0076)

Parcel 31:

Commencing South 1479.28 feet and East 2418.57 feet from the West quarter corner of Section 18, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 28° 03' 17" West 68.88 feet; thence along the arc of a 500 foot curve to the right (chord bears North 0° 12' 24" East 180.22 feet); thence North 10° 35' 16" East 401.59 feet; thence along the arc of a 2000 foot radius curve to the left (chord bears North 7° 27' 58" East 217.85 feet); thence South 71° 22' 27" East 636.55 feet; thence South 8° 33' 30" West 580.12 feet; thence along the arc of a 5804.59 foot radius curve to the left (chord bears South 82° 44' 26" West 591.98 feet) to the point of beginning (58:033:0077)

Parcel 32:

Commencing at a point South 0° 13' 53" West 749.08 feet from the Northeast corner of Section 18, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 0° 13' 53" West 1234.45 feet; thence West 343.82 feet; thence North 76° 55' 32" West 351.05 feet; thence South 88° 56' 10" West 57.11 feet; thence South 89° 59' 07" West 331.98 feet; thence South 0° 00' 53" East 204.29 feet; thence South 89° 59' 07" West 263.87 feet; thence South 5° 05' 44" West 522.11 feet; thence South 03° 40' 01" East 419.78 feet; thence South 15° 34' 24" West 117.59 feet; thence along the arc of a 750 foot radius curve to the right (chord bears North 72° 26' 36" West 51.92 feet); thence 70° 27' 35" West 441.34 feet; thence North 19° 32' 25" East 394.64 feet; thence North 89° 32' 03" West 622.57 feet; thence 78° 57' 56" West 20.41 feet; thence North 89° 33' 12" West 230 feet; thence North 0° 26' 48" East 23.15 feet; thence North 89° 32' 03" West 51 feet; thence North 0° 26' 48" East 796.84 feet; thence South 89° 33' 12" East 281 feet; thence North 89° 12' 35" East 20 feet; thence North 87° 44' 40" East 289.71 feet; thence along the arc of a 950 foot radius curve to the left (chord bears South 3° 28' 52" East 40.64 feet); thence North 85° 17' 35" East 275.51 feet; thence North 60° 31' 18" East 482.15 feet; thence North 64° 28' 09" East 243.37 feet; thence along the arc of a 600 foot radius curve to the left (chord bears North 31° 28' 42" West 124.34 feet); thence North 37° 25' 33" West 146.82 feet; thence along the arc of a 650 foot radius curve to the right (chord bears North 34° 59' 35" West 55.18 feet); thence North 57° 26' 23" East 309.12 feet; thence North 30° 48' 10" West 126.32 feet; thence North 0° 19' 26" West 50.14 feet; thence South 85° 59' 33" East 422.2 feet; thence North 4° 00' 27" East 206.3 feet; thence South 85° 59' 33" East 694.81 feet to the point of beginning. (58:033:0074)

Parcel 33:

Commencing at a point on the Northeast corner Section 18, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 06' 47" East 2634.3 feet; thence South 0° 13' 53" West 749.08 feet; thence North 85° 59' 33" West 694.81 feet; thence South 4° 00' 27" West 206.3 feet; thence North 85° 59' 33" West 422.2 feet; thence South 0° 19' 26" East 50.14 feet; thence South 30° 48' 10" East 126.32 feet; thence South 57° 26' 23" West 309.12 feet; thence along the arc of a 650 foot radius curve to the left (chord bears South 34° 59' 35" East 55.18 feet); thence along the arc of a 600 foot radius curve to the right (chord bears South 31° 28' 42" East 124.34 feet);

thence South 64° 28' 09" West 243.37 feet; thence South 60° 31' 18" West 482.15 feet; thence South 85° 17' 35" West 275.51 feet; thence along the arc of a 950 foot radius curve to the right (chord bears North 3° 28' 52" West 40.64 feet); thence 87° 44' 40" West 289.71 feet; thence South 89° 12' 35" West 20 feet; thence North 89° 33' 12" West 281 feet; thence North 0° 26' 48" East 1844.17 feet to the point of beginning. (58:033:0075)

Parcel 34:

Commencing at a point South 1446.86 feet and West 29.13 feet from the Northwest corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 68° 48' 54" East 94.74 feet; thence South 21° 11' 06" West 110 feet; thence South 62° 56' 54" West 58.23 feet; thence North 01° 08' 59" East 163.32 feet to the point of beginning (58:040:0066)

Parcel 35:

Lots 101 thru and including 158, Plat "1", MEADOW RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the Utah County Recorder's Office, Utah.

LESS AND EXCEPTING Lots 129, 130, 137, 139, 142, 143, 144, 145, and 146, Plat "1" MEADOW RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the Utah County Recorder's Office, Utah. (46:489:0101 thru 0158 **less** 0129, 0130, 0137, 0139, 0142, 0144, 0145, 0146.)

Parcel 36:

Lots 201 thru and including 231, Plat "2", MEADOW RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the Utah County Recorder's Office, Utah.

LESS AND EXCEPTING Lots 221 and 227, Plat "2" MEADOW RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the Utah County Recorder's Office, Utah. (46:490:0201 thru 0231 **less** 0221 and 0227)

Parcel 37:

Lots 301 thru and including 331, Plat "3", MEADOW RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the Utah County Recorder's Office, Utah.

LESS AND EXCEPTING Lots 313, 314, 316, 318, and 319, Plat "3", MEADOW RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the Utah County Recorder's Office, Utah. (46:491:0301 thru 0331 **less** 0313,

0314, 0316, 0318, and 0319)

Parcel 38:

Beginning at a point from the North quarter corner of Section 32, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 28' 40" East 1335.51 feet ; thence South 1° 06' 46" West 669.422 feet; thence West 964.500 feet; thence North 8° 19' 32" East 188.28 feet; thence North 21° 20' 13" West 307.90 feet, thence North 75° 37' 07" West 360.84 feet; thence North 50° 33' 36" West 190.131 feet; thence South 89° 28' 40" East 223.19 feet to the point of beginning. (A portion of 58:041:0029)

Parcel 39:

Beginning at a point South 89° 22' 34" East 1267.250 feet from the West quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 22' 34" East 1380.75 feet; thence North 0° 57' 33" East 1329.82 feet; thence South 89° 12' 25" East 1323.75 feet; thence South 0° 47' 32" West 1325.89 feet; thence South 0° 47' 19" West 165.00 feet; thence North 89° 22' 34" West 2713.96 feet; thence North 2° 43' 26" East 165.110 feet to the point of beginning. (A portion of 58:040:0054)

Parcel 40:

Beginning at a point South 1221.03 and East 1209.74 feet from the West quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 2° 43' 30" East 232.927 feet; thence South 89° 22' 34" East 2741.33 feet; thence South 0° 47' 19" West 1669.288 feet; thence North 89° 28' 40" West 1558.701 feet; thence North 50° 33' 36" West 169.619 feet; thence North 87° 55' 48" West 372.18 feet; thence North 68° 11' 55" West 217.19 feet; thence North 49° 57' 01" West 403.93 feet; thence North 27° 19' 57" West 448.95 feet; thence North 1° 06' 45" East 461.65 feet; thence North 43° 40' 04" East 136.29 feet; thence North 59° 44' 37" West 62.25 feet to the point of beginning. (A portion of 58:040:0054)

Parcel 41:

Beginning at a point South 178.72 feet and East 1259.33 feet from the West quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 22' 34" East 2713.96 feet; thence South 0° 47' 19" West 810.00 feet; thence North 89° 22' 34" West 2741.33 feet; thence North 2° 43' 26" East 810.54 feet to the point of beginning. (A portion of 58:040:0054)

Parcel 42:

Lots 1 thru 9, 38, 39, 40, 53 thru 62, and 66 thru 88, Plat "A", DIAMOND SPRINGS AT RED HAWK RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat

thereof on file and of record in the Utah County Recorder's Office, Utah. (37:132:0001 thru 0009; 37:132:0038,0039,0040; 37:132:0053 thru 0062; and 37:132:0066 thru 0088)

Parcel 43:

Lots 1 thru and including 47, Plat "A", SUNDANCE AT RED HAWK RANCH SUBDIVISION, Eagle Mountain, Utah, according to the official plat thereof on file and of record in the Utah County Recorder's Office, Utah. (52:740:0001 thru 0047

Parcel 44:

Commencing at a point at the Southwest corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 0° 18' 58" West 118.442 feet; thence South 89° 09' 24" East 1686.105 feet; thence North 0° 10' 38" West 1208.888 feet; thence South 89° 10' 0" East 206.030 feet; thence South 0° 10' 38" East 1208.937 feet; thence South 89° 09' 24" East 747.120 feet; thence South 0° 10' 09" East 123.606; thence North 89° 02' 39" West 2639.051 feet to the point of beginning. (A portion of 58:034:0008)

Parcel 45:

Beginning at a point which is South 89° 02' 40" East 1891.54 feet along the Section line and North 122.13 feet from the Southwest corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 00° 10' 38" West 1208.93 feet; thence South 89° 09' 58" East 747.12 feet; thence South 00° 10' 38" East 1209.06 feet; thence North 89° 09' 24" West 747.12 feet to the point of beginning (A portion of 58:034:0008)

Parcel 46:

Beginning at a point which is South 89° 02' 40" East 1587.10 feet along the Section line and North 121.54 feet from the Southwest corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 00° 10' 38" West 1208.87 feet; thence South 89° 10' 00" East 98.40 feet; thence South 00° 10' 38" East 1208.89 feet; thence North 89° 09' 24" West 98.40 feet to the point of beginning. (A part of 58:034:0008

Parcel 47:

Beginning at the North quarter corner of Section 30, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 18' 39" East 90.23 feet along the section line; thence South 00° 33' 25" West 1266.34 feet; thence North 89° 32' 16" West 327.98 feet; thence North 43° 14' 11" West 1607.06 feet; thence North 34° 16' 08" East 74.04 feet along the Section line; thence North 35° 40' 00" East 535.26 feet; thence North 08° 30' 00" West 853.01 feet; thence South 82° 21' 55" East 1143.42 feet;

thence South $00^{\circ} 31' 41''$ West 1093.89 feet to the point of beginning (A portion of 58:034:0028 and 58:040:0067)

Parcel 48:

Commencing at a point which is South $89^{\circ} 02' 40''$ East along section line 172.42 feet and South 664.54 feet from the Southwest corner of Section 20, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South $68^{\circ} 49' 54''$ East 629.16 feet; thence 23.56 feet along the arc of a 15.00 foot radius curve to the right, (chord bears South $66^{\circ} 11' 06''$ West 21.21 feet); thence South $21^{\circ} 11' 06''$ West 709.60 feet; thence 23.56 feet along the arc of a 15 foot radius curve to the right, (chord bears South $66^{\circ} 11' 06''$ West 21.21 feet); thence North $68^{\circ} 48' 54''$ West 629.16 feet; thence 23.56 feet along the arc of a 15.00 foot radius curve to the right, (chord bears North $23^{\circ} 48' 54''$ West 21.21 feet); thence North $21^{\circ} 11' 06''$ East 709.60 feet; thence 23.56 feet along the arc of a 15.00 foot radius curve to the right, (chord bears North $66^{\circ} 11' 06''$ East 21.21 feet) to the point of beginning. (51:329:0001)

Assessment List - SID 98-1 - Town of Eagle Mountain

Property Owner	Parcel Number	Land Serial Number	Acreage (By Parcel #)	Acreage (By Property Owner)	Devalopable Acreage (By Property Owner)
The Limited Partnership Of Glenn E. Smith	1	58.033.0082	18.83		
	2	58.033.0079	32.16		
	3	58.033.0083	1.92		
	4	58.033.0084	1.7		
	5	58.033.0080	47.49		
	6	58.033.0081	2.22		
	11	58.034.0124	0.11		
	12	58.033.0126	152.99		
	13	58.033.0127	0.14		
	14	58.033.0123	129.65		
	17	58.033.0125	30.81		
				418.02	203.02
The Ranches, L.C.	7	58.033.0078	2.23		
	8	58.034.0121	32.19		
	9	58.034.0122	31.12		
	10	58.034.0120	45.11		
	15	58.034.0128	3.48		
	19	58.040.0013	40.78		
	21	58.040.0047	19.77		
	22	58.040.0065	59.59		
	25	58.040.0049	100		
	28	58.040.0048	97.88		
	27	58.040.0064	50.48		
	29	58.040.0030	5.19		
	34	58.040.0068	0.22		
	39	58.040.0054	50.68		
	42	A portion of : 58.040:0067 and a portion of 58.034:0048	56.06		
				594.56	502.07
Frederick K. and Robyn R. Ball	16	A portion of 58.034.0008	44.09	44.09	44.09
Nathan W. and Connie S. Ricks	16	A Portion of 58.034:008	23.46	23.46	23.46
Stanford J. & Nathan W. Ricks	20	A portion of 58.040:0067	107.51		
	18	A portion of 58.034:0028	2.32		
				109.83	84.8
Roman Catholic Diocese of SLC	23	58.0034:0059	4.69	4.69	4.69
Sundance Homes	24	58.040.0063 and 37:132:1 through 9,38,39,40 and 37:132:53-62,66-88	18.08	18.08	18.08
Grant R. Gifford		52:740.0001 through 0047	14.09	14.09	14.09

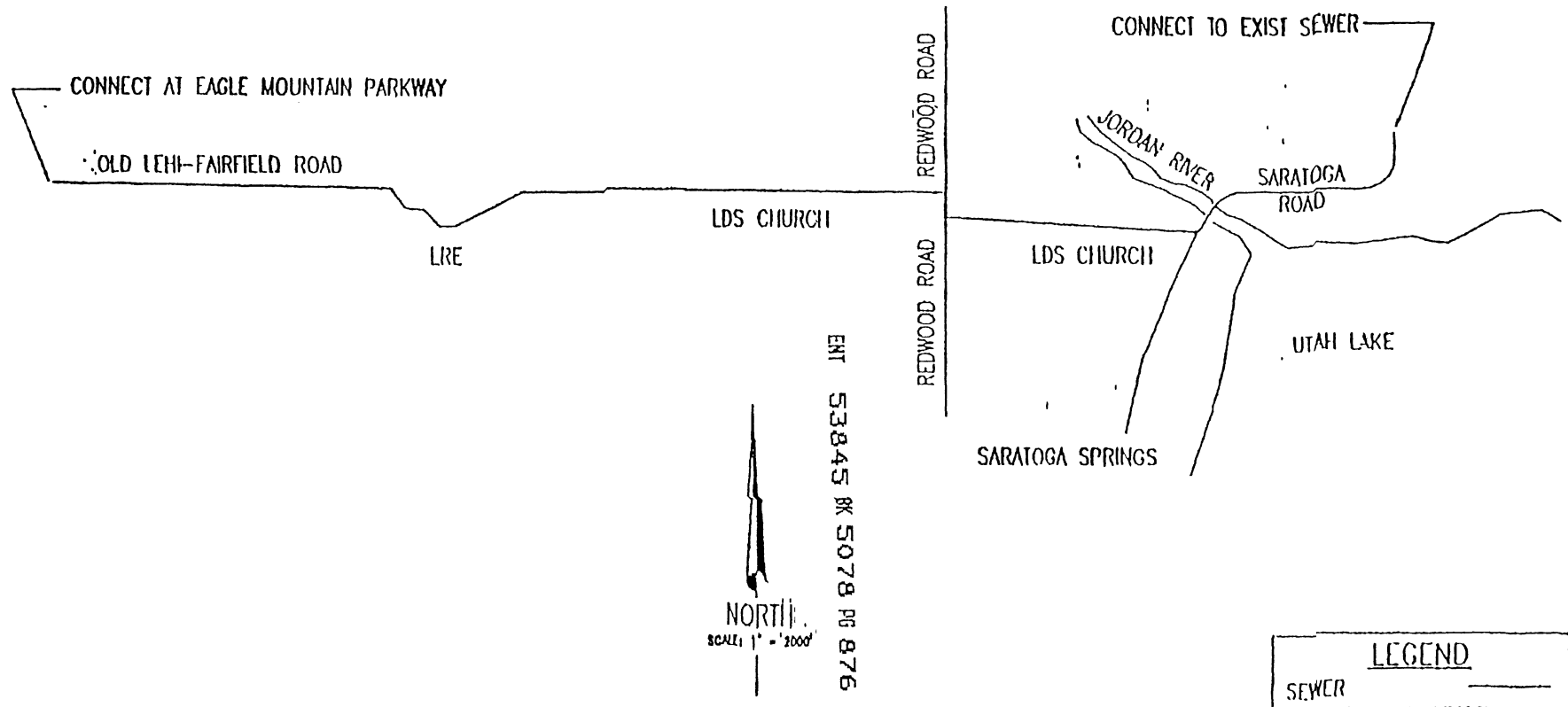
Stanford J Ricks	28	58 040 0028	40 49	40 49	
Meadow Ranch, L C	32	58 033 0074	83 58		
	33	58 033 0075	80 08		
	37	46 491 0301-0331 (Less and excepting 0313, 0314,0316,0318,0319)	36 69		
	36	46 490 0201-0231(Less and excepting 0221 and 0227)	51 22		
	30	58 033 0078	17 03		
				249 48	16
Communities of Apostolic United Brethren	31	58 033 0077	10 32		
	35	46 489 0101-0158 (less and excepting 0129,0130,0137 0139 0142,0143,0144 0145 0146)	92 03		
				102 35	6
State of Utah	41	A portion of 58 040 0054	50 72		
	40	A portion of 58 040 0054	99 34		
	38	58 041 0029	17 05		
				167.11	-
Town of Eagle Mountain	16	A portion of 58 034 0008	13 05		
		51 329 001	11 19		
				24 24	
Totals			1810 49	1,810 49	1,16

ENT 53845 BK 5078 PG 874

EXHIBIT "B"

ACKNOWLEDGMENTS, WAIVERS AND CONSENTS

EXHIBIT "B"



TOWN OF EAGLE MOUNTAIN - SPECIAL IMPROVEMENT DISTRICT #198-1

SARATOGA SPRINGS LINE

SCALE 1" = 2000' DATE OF MAP 1998 DRAWN BY C. J. HARRIS

EXHIBIT "C"

PROPERTY DESCRIPTION

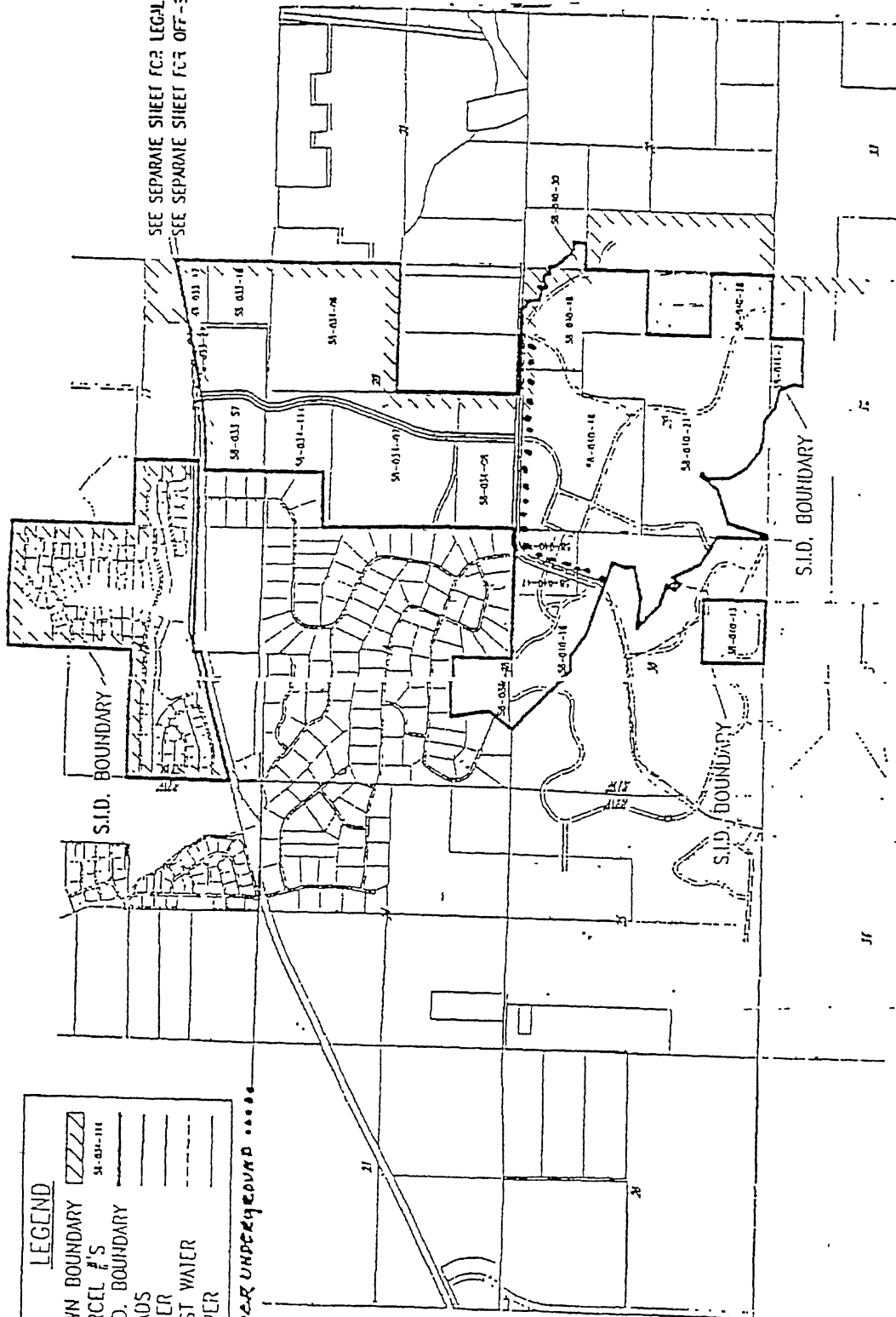
Beginning at a point South 89° 22' 34" East 1267.250 feet from the West quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 22' 34" East 1380.75 feet; thence North 0° 57' 33" East 1329.82 feet; thence South 89° 12' 25" East 1323.75 feet; thence South 0° 47' 32" West 1325.89 feet; thence South 0° 47' 19" West 165.00 feet; thence North 89° 22' 34" West 2713.96 feet; thence North 2° 43' 26" East 165.110 feet to the point of beginning.

EXHIBIT "D"

MAP OF PROPOSED IMPROVEMENTS

POWER UNDERGROUND

NORTH
SCALE 1" = 20'



TOWN OF EAGLE MOUNTAIN - SPECIAL IMPROVEMENT DISTRICT #98-1

ROADS, WATER, SEWER, GAS, POWER, TELEPHONE	SCALE 1"=3000'	DATE 23 JUN 1998 REV	DATE & DESIGNED BY CJ
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Councilmember Diane Bradshaw seconded the motion to adopt the foregoing resolution. The motion and resolution were unanimously adopted on the following recorded vote:

Those voting AYE:

Robert E. Bateman, II	Mayor
Diane D. Bradshaw	Councilmember
Daniel A. Valentine	Councilmember

ABSTAINED: D. Cyril Watt Councilmember

Those voting NAY:

NONE

Councilmember Dan Valentine then introduced the following resolution in writing, which was fully discussed, and moved its adoption.

RESOLUTION NO. 03-99

A RESOLUTION REVISING RESOLUTION NO. 15-98 TO CREATE EAGLE MOUNTAIN, UTAH SPECIAL IMPROVEMENT DISTRICT NO. 98-1 AND RELATED MATTERS.

BE IT RESOLVED by the Mayor and Town Council of Eagle Mountain, Utah County, Utah:

Section 1. The Town Council has previously created Eagle Mountain, Utah Special Improvement District No. 98-1 adopted on August 11, 1998 ("Resolution No. 15-98") in conformance with a Notice of Intention adopted on June 30, 1998 (the "Notice of Intention").

Section 2. Since the creation of the District, the Town Council has determined to make certain changes in the Notice of Intention as described in Resolution No. 02-99 which has previously been adopted by the Town Council.

Section 3. The Town Council desires to revise Resolution No. 15-98 to reflect the modifications and revisions to the Notice of Intention.

Section 4. The improvements proposed and described in the Revised Notice of Intention approved by Resolution No 2-99 are hereby authorized, and the District is hereby recreated in accordance with said revisions.

Section 5. As required by law, the Town Clerk is hereby authorized and directed to file a copy of the Revised Notice of Intention and this resolution recreating the District as finally approved, together with a list of properties proposed to be assessed

described by tax identification number and legal description, in the Utah County Recorder's office within five days from the date hereof.

Section 6. In addition to the requirements of Section 5 hereof, immediately upon its adoption, this Resolution shall be placed in the records of the Town where it will be continuously available for public inspection on a reasonable basis at the office of the Town during regular business hours of the Town, from and after the date hereof through and including the last date of issuance of the bonds or such other time as is determined by the Town.

Councilmember Diane Bradshaw seconded the motion to adopt the foregoing Resolution. The Resolution was thereupon put to a vote and unanimously adopted on the following recorded vote:

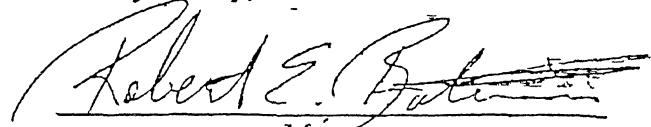
Those voting AYE: .	
Robert E. Bateman, II	Mayor
Diane D. Bradshaw	Councilmember
Daniel A. Valentine	Councilmember

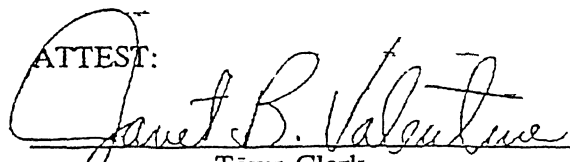
Those voting NAY:
NONE

ABSTAINED: D. Cyril Watt

Thereupon the motion was approved by the Mayor and made a matter of record by the Town Clerk.

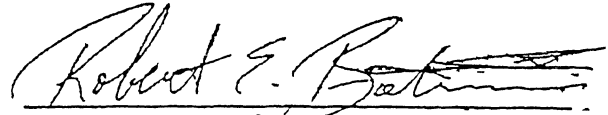
ADOPTED AND APPROVED this 4th day of May, 1999.

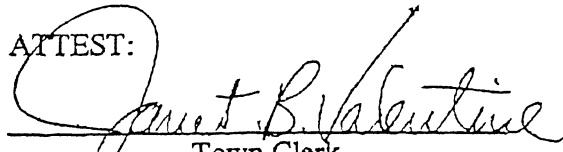

Mayor

ATTEST:

Town Clerk



After the conduct of other business not pertinent to the above, the meeting was, on motion duly made and seconded, adjourned.


Mayor

ATTEST:

Town Clerk



STATE OF UTAH)
 : ss.
 COUNTY OF UTAH)

I, Janet B. Valentine, the duly chosen and qualified Town Clerk of Eagle Mountain, Utah County, Utah, do hereby certify as follows:

1. That the foregoing typewritten pages constitute a full, true and correct copy of the record of proceedings of the Town Council taken at a meeting thereof held in said Municipality on May 4, 1999 at the hour of 6:00 p.m., insofar as said proceedings relate to the amendment of the Notice of Intention of the Town Council to create Special Improvement District No. 98-1 as the same appears of record in my office; that I personally attended said meeting, and that the proceedings were in fact held as in said minutes specified.

2. That due, legal and timely notice of said meeting was served upon all members as required by law.

3. That the above resolution was deposited in my office on May 4, 1999, has been recorded by me, and is a part of the permanent records of Eagle Mountain, Utah County, Utah.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and affixed the seal of said Municipality this 5th day of May, 1999.


 Town Clerk



EXHIBIT "A"

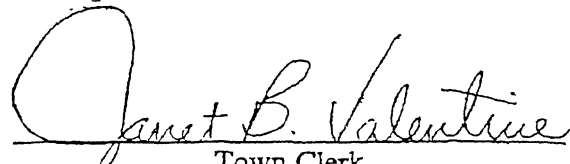
CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, the undersigned Town Clerk of Eagle Mountain, Utah County, Utah (the "Town"), do hereby certify, according to the records of the Town in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-6(2), Utah Code Annotated, 1953, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time and place of the May 4, 1999 public meeting held by the Town Council as follows:

(a) By causing a Notice in the form attached hereto as Schedule "1", to be posted at the Town's principal offices at 1680 East Heritage Drive, Eagle Mountain, Utah 84043, at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and

(b) By causing a copy of such Notice, in the form attached hereto as Schedule "1", to be delivered to the New Utah on APRIL 30, 1999, at least twenty-four (24) hours prior to the convening of the meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this 5TH day of May, 1999.


Town Clerk



SCHEDULE "1"

NOTICE OF MEETING

AGENDA
EAGLE MOUNTAIN TOWN COUNCIL MEETING
Tuesday, May 4, 1999 at 7:00 p.m.
Eagle Mountain Community Center, 1668 East Heritage Drive
Eagle Mountain, Utah 84043

Page 1 of 2
May 4, 1999

ENT 53845 BK 5078 PG 886

WORK SESSION - No Action or Minutes Taken - 4:30 to 6:30 p.m. - 2218 E. Valley Drive, Eagle Mtn.

1. Warrant Register/Jeri Wilson
2. Class II Preliminary Plat Approvals/Ken Leetham
 - A. Ruby Valley & Ash Point (R-5 N-1 through 4)
 - B. Jacob's Well (R-6 N-3)
 - C. Town Center South & Business Park
 - D. Jake Garn Airport, Phase I Subdivision
 - E. Cedar Trail Villages
3. Class II Final Plat Approval/Ken Leetham
 - A. Liberty Farm (R-6 N-2)
 - B. Eagle Point, Plat D - Revised
 - C. Sage Valley, Plat B
4. Eagle Mountain Wastewater Treatment System Alternative
5. Eagle Mountain Fire Station Claims
6. Proposal to Revise the Eagle Mountain Development Code

INTERMISSION - Change of Venue

POLICY SESSION - 7:00 TO 10:30 p.m. Eagle Mountain Community Center

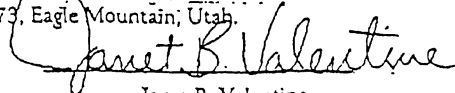
1. Roll Call
2. Pledge of Allegiance
3. Approval of Agenda
4. Approval of Minutes (March 30, 1999 & April 20, 1999)
5. General Discussion/Questions/Announcements
6. Appointments:
7. Public Comment
8. Report to Town Council regarding the Eagle Mountain Arts Council/Jennifer Morgan
9. Patterson's request for a waiver of the minimum porch size requirements for certain homes in their project/Wayne Patterson
10. Motion to approve Consent Agenda items as follows
 - A. Warrant Register
 - B. Consideration to Approve Eagle Mountain Fire Station Claims
11. Consideration of a Resolution revising the Notice of Intention adopted on June 30, 1998 in connection with the creation of Eagle Mountain, Utah Special Improvement District No. 98-1 in order to make certain changes with respect to (i) the improvements to be constructed, (ii) the properties proposed to be assessed, (iii) the method of assessing properties, and (iv) the period of time over which assessments may be levied; and related matters.

THE PUBLIC IS INVITED TO ATTEND ALL OPEN TOWN COUNCIL MEETINGS

in Compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting, notify Janet Valentine, Clerk/Recorder at the Eagle Mountain Town Offices at least 3 days in advance.

CERTIFICATE OF POSTING

The undersigned, duly appointed Town Clerk, does hereby certify that the above notice and agenda was posted in three public places within Eagle Mountain Town Limits on this 30TH day of APRIL 1999. These public places being 1) the Town Offices, 1680 E. Heritage Dr., Eagle Mountain, Utah, 2) Cedar Pass Ranch Bulletin Board, 9155 No. Cedar Pass Road, Eagle Mountain; and 3) the Bulletin Board located at Meadow Ranch Subdivision, Hwy 73, Eagle Mountain, Utah.



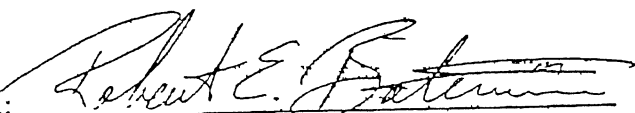
Janet B. Valentine
Town Clerk

AGENDA
EAGLE MOUNTAIN TOWN COUNCIL MEETING
Tuesday, May 4, 1999 at 7:00 p.m.
Eagle Mountain Community Center, 1668 East Heritage Drive
Eagle Mountain, Utah 84043

ENT 53845 BK 5078 PG 887

Page 2 of 2
May 4, 1999

12. Consideration of an Ordinance confirming the assessment rolls and levying an assessment against properties in Special Improvement District 98-1 for the purpose of paying costs of constructing, acquiring and installing improvements as set forth in the Notice of Intention and Revised Notice of Intention; and related matters
13. Consideration of a Bond Resolution authorizing the issuance and sale of Special Assessment Bonds with regard to Special Improvement District No. 98-1, fixing the maximum interest rates to be borne thereby; and related matters
14. Consideration to approve a Eagle Mountain Wastewater Treatment System Concept Level Facilities Plan
15. Class II Preliminary Plat Approvals:
 - A. Ruby Valley & Ash Point (R-5 N-1 through 4)
 - B. Jacob's Well (R-6 N-3)
 - C. Town Center South & Business Park
 - D. Jake Garn Airport Phase I Subdivision
 - E. Cedar Trail Villages
16. Class II Final Plat Approvals
 - A. Liberty Farm (R-6 N-2)
 - B. Eagle Point, Plat D - Revised
 - C. Sage Valley, Plat B
17. Consideration to Give Authorization to Revise the Eagle Mountain Development Code
18. Motion to adjourn into a Closed Executive Session for the purpose of discussing personnel issues
19. Any action from the Closed Executive Session.
20. Adjournment

Approval: 
Mayor Robert E. Bateman

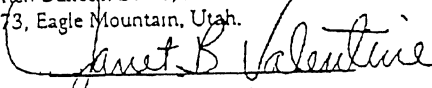
Date: May 4, 1999

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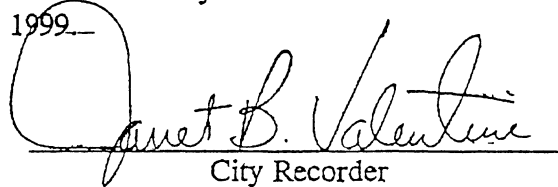

Janet B. Valentine
Town Clerk

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

CERTIFICATE OF FILING

I, Janet B. Valentine, the duly qualified and acting Town Clerk of Eagle Mountain, Utah County, Utah do hereby certify that on the 7TH day of May, 1999, pursuant to Section 17A-3-307, Utah Code Annotated 1953, as amended, a copy of the Revised Notice of Intention and resolution creating Eagle Mountain, Utah Special Improvement District No. 98-1, as finally approved, together with a list of properties proposed to be assessed described by tax identification number and legal description, was filed in the Utah County Recorder's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Municipality this 7TH day of May, 1999.



City Recorder



Tab 5

ORDINANCE NO. O 06-2001

Eagle Mountain, Utah

April 25, 2001

The Town Council of Eagle Mountain, Utah County, Utah met in special session on Tuesday, the 25th day of April, 2001, at its regular meeting place. The following members of the Town Council were present:

Paul R. Bond, Jr.
David A. Albrecht
Bert E. Ankrom

Mayor
Councilmember
Councilmember

Also present:

Janet B. Valentine
John D Newman
Gerald H. Kinghorn

Town Recorder
Town Administrator
Town Attorney

Absent:

Greg D. Kehl
Brigham S. Morgan

Councilmember
Councilmember

After the meeting had been duly called to order and after other matters not pertinent to this resolution had been discussed, the Town Clerk presented to the Town Council a Certificate of Compliance With Open Meeting Law with respect to this April 25, 2001 meeting, a copy of which is attached hereto as Exhibit "A".

The following assessment ordinance (the "Assessment Ordinance") was then introduced in writing, was fully discussed, and pursuant to motion duly made by Councilmember David A. Albrecht, and seconded by Councilmember Bert E. Ankrom, adopted by the following vote:

YEA:

Paul R. Bond, Jr.
David A. Albrecht
Bert E. Ankrom

Mayor
Councilmember
Councilmember

NAY:

NONE

The Assessment Ordinance was then signed by the Mayor in open meeting and recorded by the Town Clerk in the official records of Eagle Mountain, Utah. The Assessment Ordinance is as follows:

ASSESSMENT ORDINANCE NO. O 06-2001

AN ASSESSMENT ORDINANCE confirming the assessment rolls and levying an assessment against certain properties in Eagle Mountain, Utah Special Improvement District No. 2000-1, Utah County, Utah for the purpose of paying the costs of acquiring, constructing and installing irrigation, landscaping, trails, wells, fencing, utilities, curb and gutter, roads, a gas regulator station and a water storage tank and other related improvements (collectively, the "Improvements") and completing any miscellaneous work necessary to complete the improvements in a proper and workmanlike manner; establishing a Reserve Fund; establishing the effective date of this Assessment Ordinance; and related matters.

BE IT ORDAINED BY THE TOWN COUNCIL OF EAGLE MOUNTAIN, UTAH COUNTY, UTAH:

Section 1. Determination of Costs. All costs and expenses for the making of completed improvements within the District have been determined, the property price for all property to be acquired to make the improvements has been finally determined and the reasonable cost of any work to be done has been determined and a contingency has been added to cover unforeseeable costs as provided by law. In addition, the Town of Eagle Mountain, Utah County, Utah (the "Issuer") has entered into an agreement with certain property owners within the District herein defined wherein said owners have agreed to pay final costs of improvements in excess of the total estimated costs, including the contingency.

Section 2. Approval of Assessment List; Findings. The Town Council (the "Council") of the Issuer hereby confirms the assessment list for Eagle Mountain, Utah Special Improvement District No. 2000-1 (the "District"), a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference (the "Assessment List"), and hereby confirms that the Assessment List is just and equitable; that each piece of property to be assessed within the District will be benefitted in an amount not less than the assessment to be levied against said property; and that no piece of property listed in the Assessment List will bear more than its proportionate share of the cost of such improvements.

Section 3. Levy of Assessments. The Town Council of the Issuer does hereby levy an assessment to be assessed upon the real property identified in the Assessment List. The assessments levied upon each parcel of property therein described shall be in the amount set forth in the Assessment List.

The assessments hereby levied are for the purpose of acquiring, constructing and installing irrigation, landscaping, trails, wells, fencing, utilities, curb and gutter, roads, a gas regulator station and a water storage tank and other related improvements (collectively, the "Improvements") and of completing any miscellaneous work necessary

to complete the improvements in a proper and workmanlike manner. Said improvements are more particularly described in the Assessment List.

The assessments are hereby levied and assessed upon each of the parcels of real property described in the Assessment List at equal and uniform rates according to the extent that they are specially benefitted by the improvements acquired or constructed within the District.

Section 4. Cost of Improvements; Amount of Total Assessments. The total cost of the improvements in the District, including overhead costs, the costs of funding a reserve fund, and a contingency with respect to incomplete work, is \$16,799,282 of which \$4,864,282 will be paid with respect to those properties that will not be assessed. The amount to be assessed against property affected or benefitted by the improvements in the District is \$11,935,000, which amount does not exceed in the aggregate the sum of: (a) the total estimated contract price or prices for the improvements under contract to be duly let to the lowest and best responsible bidders therefor, including the costs of engineering, designing, and inspection; (b) the reasonable cost of utility services, maintenance, labor, materials or equipment supplied by the Issuer, if any; (c) the property price, if any; (d) connection fees, if any; (e) overhead costs not to exceed fifteen percent (15%) of the sum of (a), (b), (c) and (d); (f) where the assessment is levied prior to the time all of the improvements in the District are entirely completed and accepted, an amount for contingencies of not to exceed 10% of the sum of (a), (b) and (c); and (g) an amount sufficient to fund a reserve fund.

Section 5. Method and Rate. The total assessment for the District is levied in accordance with the following method and at the following rates:

<u>Area within the District</u>	<u>Improvements</u>	<u>Assessment</u>	<u>Method of Assessment</u>
Zone I	[as described in Revised Notice of Intention]	\$8,036	Per developable acre
Zone II	[as described in Revised Notice of Intention]	\$10,511	Per developable acre

Section 6. Payment of Assessments.

Approximately 1,276.5 acres within the District are intended to have residential and/or commercial structures built on them and are therefore deemed "developable." The remaining 527.9 acres in the District are to be used for roadways, parks, a golf course or other open spaces and are therefore deemed "undevelopable." The assessment against each parcel of property is based upon the number of developable acres. The total parcel, however, is subject to the lien of the assessment, including the undevelopable acreage.

(A) Payments toward the cost of construction of the improvements in the amount of \$4,864,282 have already been paid by the developer with respect to certain properties within the District benefited, but not assessed. By Acknowledgment Waiver and Consent, the property owners of the remaining benefitted properties within the District have waived the right to pay cash for their assessments during a cash prepayment period. The remaining assessments shall be payable in seventeen (17) substantially equal annual installments including interest on the unpaid balance of the assessment at the same rate as the rate or rates of the special assessment bonds anticipated to be issued by the Issuer plus six-tenths of one percent. The assessment payment schedule is set forth in Exhibit "C" attached hereto, but may be adjusted from time to time as herein provided. The assessment payment dates shall fall on September 1 of each year beginning September 1, 2004, until all assessments have been paid in full. Interest shall accrue from the effective date of this Assessment Ordinance until paid.

(B) If prepayment of an assessment, or any part thereof, arises out of a need of the property owner to clear the assessment lien from a portion (the "Release Parcel") of a parcel now being assessed (the "Assessed Parcel"), the assessment lien upon the Release Parcel may be released by the Issuer, as follows:

(i) The total acreage of the Release Parcel shall be calculated by adding the total developable acreage to be released plus the acreage of undevelopable property required by the Issuer to be released with respect to the developable property to be released. (The attorney for the Issuer shall determine for the Issuer the amount of undevelopable property to be released.) The property owner shall submit the legal description of the Release Parcel which shall include the total developable and undevelopable acreage of said parcel.

(ii) The property owner shall prepay an assessment applicable to the Release Parcel calculated by the Treasurer as follows: (total developable acreage to be released) x (the applicable assessment per developable acre set forth in Section 5 hereinabove) x (125%).

(iii) The Treasurer or the Attorney for the Issuer must determine that the partial release of lien upon payment of the prepayment amount determined under (ii) above does not diminish the security of the Issuer based upon the amount of the remaining assessment of the Assessed Parcel compared with the amount and value of the Assessed Parcel remaining to secure such assessment. For purposes of this subparagraph (iii), security of the Issuer will not be considered diminished if the fair market value of the Assessed Parcel subject to the assessment (after release of the Release Parcel) equals or exceeds three times the sum of the remaining unpaid assessment on such Assessed Parcel plus any other unpaid assessment liens on such Assessed Parcel. In determining the value of the remaining land, the Treasurer or the Attorney for the Issuer is

entitled to, but need not rely on, credible evidence or documentation presented by the owner of said property.

(iv) Any premiums and/or interest and administrative costs, if applicable, must also be paid for any prepayment as provided in subsection (e) herein.

For purposes of determining prepayment amounts provided in (ii) above, regularly scheduled assessment payments shall not be taken into account. For example, should a property owner desire to clear the assessment lien from a Release Parcel after the lien of the Assessed Parcel has been reduced through regularly scheduled payments, said property owner would need to prepay a portion of the then outstanding assessment as determined under (ii) above. The regularly scheduled assessment payments previously made would not entitle the property owner to release a Release Parcel without such prepayment.

Eighty percent (80%) of the principal prepayment made pursuant to this subsection (B)(ii) above shall be applied by the Treasurer to reduce the next succeeding principal assessment installments coming due hereunder. The remaining 20% of the principal prepayment made pursuant to subsection (B)(ii) above shall be deposited in the Stabilization Reserve Fund as described in Section 12 herein.

(C) In the event all or any portion of the property assessed hereunder is subdivided into smaller parcels as evidenced by a subdivision plat approved by the Issuer and recorded at the County Recorder's office of Utah County, the Issuer may elect, at its discretion, to allocate the assessment balance on the previously undivided property on a proportionate basis based on area. All property transferred to the Issuer to be used for an essential governmental function shall not be assessed. An essential governmental function is a function of a type described under Section 115 of the Internal Revenue Code of 1986, as amended (the "Code"), when conducted by the Issuer. The required annual assessment installment payments for each subdivided parcel shall be allocated proportionately on an area basis so that the aggregate total of all of the annual assessment installments for each of the subdivided parcels will equal the total annual assessment installment for the previously undivided property. When an assessment lien is perfected for each of the subdivided parcels, the total assessment levied against the previously undivided property will be released having been replaced by the aggregate of the assessments allocated to each of the subdivided parcels. A release of the new assessment lien for a given subdivided parcel will be delivered by the Issuer at the time the assessment balance for that subdivided parcel is paid in full.

(D) To reduce the administrative costs of the District, the Town Council hereby determines that in the event legal title to all or any portion of the property assessed hereunder is voluntarily transferred to another person or entity which is unrelated to the prior owner, the owner of said assessed property shall be

required to prepay that portion of the assessment applicable to the transferred parcel (based upon the calculation described in Subsection (B) above). The following transfers shall not, however, require a prepayment of assessment under this subsection (D): (1) a contribution of a parcel of property to the Issuer for an essential governmental function as defined in subsection (c) above, (2) an involuntary transfer resulting from an act of bankruptcy or the exercise of a contractual remedy resulting in the transfer of title and (3) a transfer of title upon payment in full of a real estate purchase contract entered into on or prior to the date hereof. For purposes of this subsection (D), parties are deemed to be unrelated if they are not related persons within the meaning of Section 144(a)(3) of the Code.

(E) All unpaid installments of an assessment levied against any piece of property may be paid prior to the dates on which they become due, but any such prepayment to release the assessment lien of a Release Parcel must be calculated in accordance with Section 6(B)(ii) above. In addition all prepayments must include (i) an additional amount equal to the interest which would accrue on the prepaid assessment to the next succeeding date on which interest is payable on any special assessment bonds ("Assessment Bonds") to be issued pursuant to a bond resolution adopted by the Issuer (the "Bond Resolution") ; (ii) such additional amount as, in the opinion of the Treasurer, is necessary to assure the availability of money to pay interest on the Assessment Bonds corresponding to the prepaid assessment as interest becomes due and payable; and (iii) any premiums which may be charged and become payable on the Assessment Bonds corresponding to the prepaid assessment which may be called on a redemption date in order to utilize the assessments paid in advance. The Treasurer shall calculate and deliver written notice of the total prepayment amount to the property owner upon the property owner's written request.

Section 7. Aggregation of Assessments. To provide additional security for the payment of assessments, the Issuer shall require that all assessments of all properties owned by the same owner be aggregated such that a single unified assessment shall be assessed against all properties owned by the same owner. Since various properties within the District are currently being acquired by a single owner pursuant to certain real estate purchase contracts entered into on or prior to the date hereof, the Issuer shall, after title to said properties has been transferred pursuant to said real estate purchase contracts, amend this Assessment Ordinance for the purpose of aggregating the assessments of all of such properties.

Section 8. Default in Payment. If a default occurs in the payment of any installment of principal or interest, when due, the Treasurer, on behalf of the Council, shall take one of two actions within fifteen (15) days after such default: (1) declare the unpaid amount delinquent and subject to collection as provided herein, or (2) accelerate payment of the total unpaid balance of the assessment and declare the whole of the unpaid principal and interest to be immediately due and payable and subject to collection as provided herein. If the Treasurer fails to determine which action to take within said fifteen (15) day period, then all assessment payments shall be accelerated as described in

(2). Interest shall accrue and be paid on all amounts declared to be delinquent or accelerated and immediately due and payable at the same rate or rates of interest as are applied to delinquent real property taxes for the year in which the assessment installment becomes delinquent (the "Delinquent Rate"). In addition to interest charges at the Delinquent Rate, costs of collection, as approved by the Treasurer on behalf of the Council, including, without limitation, attorneys' fees, trustee's fees and court costs, incurred by the Issuer and the Trustee for the Assessment Bonds or required by law shall be charged and paid on all amounts declared to be delinquent or accelerated and immediately due and payable.

The Treasurer shall then give immediate notice, in writing, of the default to the owner of the property in default, as shown by the last available equalized assessment rolls of Utah County. Notice shall be effective upon deposit of the notice in the U.S. Mail, postage prepaid, and addressed to the owner as shown on the last equalized assessment rolls of Utah County. The notice shall provide for a period of thirty (30) days in which the owner shall pay the installments then due and owing, after which the Treasurer, at the direction of the Council, shall immediately initiate a summary sale pursuant to Section 17A-3-324(2) and related pertinent provisions of the Act, of all property in default in the manner provided for actions to foreclose trust deeds. The Council hereby designates the trustee as defined in the Bond Resolution or any successor thereof as trustee (the "Trustee"), to carry out such foreclosure, and such Trustee shall be deemed to have a power of sale and all other rights, power and authority necessary to legally and lawfully foreclose the lien for delinquent assessments, provided, however, that if an entity other than the trustee defined in the Bond Resolution is selected by the Council, such selection shall occur prior to the expiration of the thirty (30) day cure period referenced herein. The Trustee so selected must satisfy the qualifications for a trustee set forth in Section 57-1-21, Utah Code Annotated 1953, as amended, or any successor statute. If for any reason, the Trustee cannot perform the powers and responsibilities herein provided, it may appoint with the consent of the Council, a qualified trustee to serve as trustee. If at the sale no person or entity shall bid and pay the Issuer the amount due on the assessment plus interest and costs, the property shall be deemed sold to the Issuer for these amounts. The Issuer shall be permitted to bid at the sale.

The remedies provided herein for the collection of assessments and the enforcement of liens shall be deemed and construed to be cumulative and the use of any one method or means of collection or enforcement shall not deprive the Issuer of the use of any other method or means. The amounts of accrued interest and all costs of collection, including trustee's fees, attorneys' fees and costs, shall be added to the amount of the assessment up to, and including, the date of foreclosure sale.

Section 9. Remedy of Default. If prior to the final date payment may be legally made under a final sale or foreclosure of property to collect delinquent assessment installments, the property owner pays the full amount of all unpaid installments of principal and interest which are past due and delinquent with interest on such installments at the rate or rates set forth in Section 8 herein to the payment date, plus all Trustee's fees, attorneys' fees and other costs of collection, the assessment of said owner shall be restored and the default removed, and thereafter the owner shall have the right to make

the payments in installments as if the default had not occurred. Any payment made to cure a default shall be applied, first, to the payment of Trustee's fees, attorneys' fees and other costs incurred as a result of such default; second, to interest charged on past due installments, as set forth above; third, to the interest portion of all past due assessments; and last, to the principal portion of all past due assessments.

Section 10. Lien of Assessment. An assessment or any part or installment of it, any interest accruing and the penalties, Trustee's fees, attorneys' fees and other costs of collection shall constitute a lien against the property upon which the assessment is levied on the effective date of this Assessment Ordinance. Said lien shall be superior to the lien of any trust deed, mortgage, mechanic's or materialman's lien or other encumbrance and shall be equal to and on a parity with the lien for general property taxes and the lien of any other assessments on the property. The lien shall continue until the assessment and any interest, penalties and costs on it are paid, notwithstanding any sale of the property for or on account of a delinquent general property tax, special tax or other assessment or the issuance of tax deed, an assignment of interest by the governing entity or a sheriff's certificate of sale or deed.

Section 11. Reserve Fund. The Issuer does hereby establish a reserve fund (the "Reserve Fund") in lieu of funding a special improvement guaranty fund, as additional security for the special assessment bonds ("Assessment Bonds") to be issued by the Issuer with respect to the District. The Reserve Fund shall contain two subaccounts, a capitalized interest reserve account (the "Capitalized Interest Reserve Account") and a debt service reserve account (the "Debt Service Reserve Account"). The Capitalized Interest Reserve Account shall be initially funded from proceeds of the Assessment Bonds in an amount equal to \$2,358,743.23 which amount shall be used to pay interest on the Assessment Bonds as the same falls due on February 1, 2002, February 1, 2003 and February 1, 2004. The Debt Service Reserve Account shall be initially funded from proceeds of the Assessment Bonds in an amount equal to \$1,193,500 (the "Debt Service Reserve Requirement"). The cost of initially funding the Reserve Fund is included in the assessments of the property owners. The moneys on deposit in the Reserve Fund shall, upon the final payment of the Assessment Bonds, be applied to the final assessment payment obligation of the assessed properties. If the amounts on deposit in the Reserve Fund exceed the final assessment obligation, any excess amounts shall be paid by the Issuer to the owners whose properties were subject to the final assessment payment obligation, as an excess assessment payment.

In the event insufficient assessments are collected by the Issuer to make the debt service payments on the Assessment Bonds, the Issuer shall draw on the Debt Service Reserve Account to make up such deficiency. In the event the amount on deposit in the Debt Service Reserve Account is less than the Debt Service Reserve Requirement, the Issuer will replenish the Debt Service Reserve Account as provided in the Bond Resolution authorizing the issuance of the Assessment Bonds. If the amount on deposit in the Debt Service Reserve Account exceeds the Debt Service Reserve Requirement, excess moneys shall be transferred to the Bond Fund established under the Bond Resolution to be applied toward the next assessment payment obligation coming due.

Section 12. Stabilization Reserve Fund. To provide additional security for the payment of assessments hereunder and to assure the marketability of the Assessment Bonds, the Issuer does hereby establish a special stabilization reserve fund (the "Stabilization Reserve Fund"). The Stabilization Reserve Fund shall be funded with a portion of all prepayments collected by the Issuer constituting 20% of the principal prepayment referenced in Section 6(b)(ii) which shall be deposited therein. When moneys in the Stabilization Reserve Fund have accumulated in excess of \$1,193,500 (the "Stabilization Reserve Requirement") and the Debt Service Reserve Fund is fully funded, moneys in excess of the Stabilization Reserve Requirement shall be immediately transferred by the Trustee, to the Bond Fund established under the Bond Resolution to be used by the Issuer to redeem Assessment Bonds and to pay premium, if any, and interest accruing on said redeemed Bonds to the date on which said Bonds are redeemed as described in the Bond Resolution authorizing the issuance of the Assessment Bonds. In the event the Debt Service Reserve Account is ever drawn on to make debt service payments on the Assessment Bonds, the Issuer shall immediately replenish the Debt Service Reserve Account to the Debt Service Reserve Requirement with moneys on deposit in the Stabilization Reserve Fund.

Section 13. Investment Earnings All investment earnings on the Reserve Fund and the Stabilization Reserve Fund shall be maintained in said Funds respectively and applied in the same manner as the other moneys on deposit therein as provided in the Bond Resolution authorizing the issuance of the Assessment Bonds.

Section 14. Contestability. No assessment shall be declared void or set aside in whole or in part in consequence of any error or irregularity which does not go to the equity or justice of the assessment or proceeding. Any party who has not waived his objections to same as provided by statute may commence a civil action against the Issuer to enjoin the levy or collection of the assessment or to set aside and declare unlawful this Assessment Ordinance.

Such action must be commenced and summons must be served on the Issuer not later than 30 days after the effective date of this Assessment Ordinance. This action shall be the exclusive remedy of any aggrieved party. No court shall entertain any complaint which the party was authorized to make by statute but did not timely make or any complaint that does not go to the equity or justice of the assessment or proceeding.

After the expiration of the 30-day period provided in this section:

(A) The special assessment bonds issued or to be issued against the District and the assessments levied in the District shall become incontestable as to all persons who have not commenced the action provided for in this section; and

(B) No suit to enjoin the issuance or payment of the bonds, the levy, collection or enforcement of the assessment, or in any other manner attacking or questioning the legality of the bonds or assessments may be instituted in this state, and no court shall have authority to inquire into these matters.

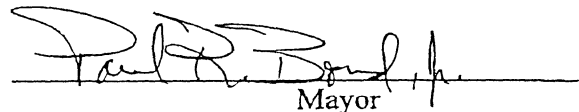
Section 15. Notice to Property Owners. The Treasurer is hereby authorized and directed to give notice of assessment by mail to the property owners in the District. Said notice shall, among other things, state the amount of the assessment and the terms of payment. A copy of the form of notice of assessment is available for examination upon request at the office of the Town Clerk.

Section 16. All Necessary Action Approved. The officials of the Issuer are hereby authorized and directed to take all action necessary and appropriate to effectuate the provisions of this Assessment Ordinance.

Section 17. Repeal of Conflicting Provisions. All ordinances or parts thereof in conflict with this Assessment Ordinance are hereby repealed.

Section 18. Publication of Ordinances. Immediately after its adoption, this Assessment Ordinance shall be signed by the Mayor and Town Clerk and shall be recorded in the ordinance book kept for that purpose. This Assessment Ordinance shall be published once in the New Utah News, a newspaper having general circulation within the boundaries of the Issuer, and shall take effect immediately upon its passage and approval and publication as required by law.

PASSED AND APPROVED by the Town Council of the Issuer, this 25th day of April, 2001.


Mayor

ATTEST:


Town Clerk



STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

I, Janet B. Valentine, the duly appointed, qualified and acting Town Clerk of the Town of Eagle Mountain, Utah County, Utah (the "Town"), do hereby certify that the above and foregoing is a full, true and correct copy of the record of proceedings had by the Town Council at its meeting held on the 25th of April, 2001, insofar as the same relates to or concerns Eagle Mountain, Utah Special Improvement District No. 2000-1 as the same appears of record in my office.

I further certify that the Assessment Ordinance levying the special assessments was recorded by me in the official records of the Town on the 25TH day of April, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Town this 25TH day of April, 2001.

Janet B. Valentine, cmc
Town Clerk



PROOF OF PUBLICATION

Attached to this page is the Proof of Publication, indicating by the affidavit of the publisher that the said Ordinance levying the special assessments which was contained in the Assessment Ordinance adopted by the Town Council on the 25th day of April, 2001, was published one time in the Daily Herald, a newspaper of general circulation within the Town of Eagle Mountain.

PROOF OF PUBLICATION

from

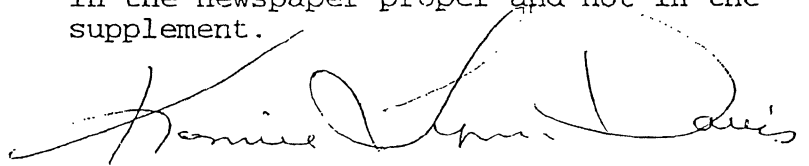
The Daily Herald

STATE OF UTAH

Utah County

{ ss. _____

I, Konnie Lynn Davis, being first duly sworn depose and say that I am the Legal Billing Clerk of the Daily Herald, a newspaper of general circulation, published seven times each week at Provo, Utah, County of Utah; that the notice attached hereto, #505679-ASSESSMENT ORDINANCE N, and which is a copy, was published in said newspaper, the first publication having been made on the 30th day of April, 2001, and the last on the 30th day of April, 2001; that said notice was published in the regular and entire issue of every number of the paper during the period and times of publication, and the same was published in the newspaper proper and not in the supplement.



Subscribed and sworn before me
this 30th day of April, 2001


Notary Public

Residence: Eagle Mountain, Utah

My commission expires February 5, 2005

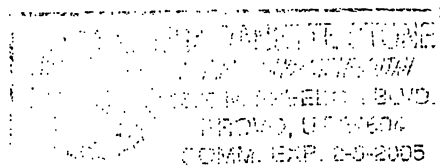


EXHIBIT "A"

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Janet B. Valentine, the undersigned Town Clerk of the Town of Eagle Mountain, Utah County, Utah (the "Town"), do hereby certify, according to the records of the Town in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-6(2), Utah Code Annotated, 1953, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time and place of the April 25, 2001 public meeting held by the Town as follows:

(A) By causing a Notice, in the form attached hereto as Schedule "1", to be posted at the Town's principal offices on APRIL 24, 2001, at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and

(B) By causing a copy of such Notice, in the form attached hereto as Schedule "1", to be delivered to the New Utah News on APRIL 24, 2001, at least twenty-four (24) hours prior to the convening of the meeting.

IN WITNESS WHEREOF, I have hereunto subscribed by official signature this 25TH day of April, 2001.

Janet B. Valentine, cmc
Town Clerk



SCHEDULE "1"

NOTICE OF MEETING

AGENDA
SPECIAL TOWN COUNCIL MEETING
Wednesday, April 25, 2001 at 6:00 p.m.
Eagle Mountain Community Center, 1668 East Heritage Drive
Eagle Mountain, Utah 84043

POLICY SESSION 6:00 P.M.

1. Roll Call
2. Pledge of Allegiance
3. Consider resolution revising Notice of Intention with respect to Eagle Mountain, Utah Special Improvement District No. 2000-1
4. Consider assessment ordinance confirming the assessment rolls and levying an assessment against certain properties in Eagle Mountain, Utah Special Improvement District No. 2000-1, Utah County, Utah for the purpose of paying the costs of acquiring, constructing and installing irrigation, landscaping, trails, wells, fencing, utilities, curb and gutter, roads, a gas regulator station and a water storage tank and other related improvements and completing any miscellaneous work necessary to complete the improvements in a proper and workmanlike manner; establishing a Reserve Fund; establishing the effective date of the Assessment Ordinance, and related matters.
5. Consider bond resolution authorizing the issuance and providing for the sale of \$11,935,000 town of Eagle Mountain, Utah Special Assessment Bonds, Series 2001 (Special Improvement District No. 2000-1), fixing the maximum interest rates to be borne thereby, prescribing the form of bonds, maturity and denomination of said bonds; creating a reserve fund as provided by statute and a stabilization reserve fund, a bond fund, and a construction fund; and related matters.
6. Adjournment

IN COMPLIANCE WITH THE AMERICAN WITH DISABILITIES ACT, PERSONS NEEDING AUXILIARY COMMUNICATIVE AIDS AND SERVICES FOR THESE MEETINGS SHOULD CONTACT JANET VALENTINE (801) 766-5988, GIVING AT LEAST 48 HOURS ADVANCE NOTICE.

THE PUBLIC IS INVITED TO ATTEND ALL TOWN COUNCIL MEETINGS

CERTIFICATE OF POSTING

THE UNDERSIGNED, DULY APPOINTED TOWN CLERK, DOES HEREBY CERTIFY THAT THE ABOVE NOTICE AND AGENDA WAS POSTED IN THREE PUBLIC PLACES WITHIN EAGLE MOUNTAIN TOWN LIMITS ON THIS 24TH DAY OF APRIL, 2001. THESE PUBLIC PLACES BEING 1) INSIDE BULLETIN BOARD AT THE TOWN OFFICES, 1680 E. HERITAGE DR., EAGLE MOUNTAIN, UTAH; 2) OUTSIDE BULLETIN BOARD AT THE TOWN OFFICES, EAGLE MOUNTAIN, UTAH 3) BULLETIN BOARD AT THE MORCO EXPRESS GROCERY STORE, TOWN CENTER


RECORDER/DEPUTY RECORDER

EXHIBIT "B"

ASSESSMENT LIST

EXHIBIT "C"

INITIAL ASSESSMENT REPAYMENT SCHEDULE*

⁽¹⁾ First year that debt service will be paid from assessments. Interest to September 1, 2004, is funded from Bond proceeds.

* The repayment schedule shall be adjusted as prepayments of assessments are made as described in the Assessment Ordinance. The Issuer shall, upon request, provide to the property owners a revised Assessment Payment Schedule as adjustments are made.

EXHIBIT "C"

INITIAL ASSESSMENT REPAYMENT SCHEDULE*

TOWN OF EAGLE MOUNTAIN, UTAH

SID 2000-1 (The Ranches)

Table Showing Debt Service and Annual Administration Component Interest

<i>Date</i>	<i>Principal</i>	<i>Interest on Bond Debt Service</i>	<i>Annual Bond Debt Service</i>	<i>Administration Component Interest</i>	<i>Combined Total Annual SID Payments</i>
2/1/02	\$ -	\$ 734,696.91	\$ 734,696.91	\$ 71,610	\$ 806,306.91
2/1/03	-	983,237.50	983,237.50	71,610	1,054,847.50
2/1/04	-	983,237.50	983,237.50	71,610	1,054,847.50
2/1/05	350,000	983,237.50	1,333,237.50	69,510	1,402,747.50
2/1/06	375,000	955,237.50	1,330,237.50	67,260	1,397,497.50
2/1/07	405,000	925,237.50	1,330,237.50	64,830	1,395,067.50
2/1/08	435,000	892,837.50	1,327,837.50	62,220	1,390,057.50
2/1/09	475,000	856,515.00	1,331,515.00	59,370	1,390,885.00
2/1/10	515,000	816,852.50	1,331,852.50	56,280	1,388,132.50
2/1/11	555,000	773,850.00	1,328,850.00	52,950	1,381,800.00
2/1/12	600,000	728,062.50	1,328,062.50	49,350	1,377,412.50
2/1/13	650,000	678,562.50	1,328,562.50	45,450	1,374,012.50
2/1/14	705,000	624,937.50	1,329,937.50	41,220	1,371,157.50
2/1/15	765,000	566,775.00	1,331,775.00	36,630	1,368,405.00
2/1/16	825,000	503,662.50	1,328,662.50	31,680	1,360,342.50
2/1/17	895,000	435,600.00	1,330,600.00	26,310	1,356,910.00
2/1/18	970,000	361,762.50	1,331,762.50	20,490	1,352,252.50
2/1/19	1,050,000	281,737.50	1,331,737.50	14,190	1,345,927.50
2/1/20	1,135,000	195,112.50	1,330,112.50	7,380	1,337,492.50
2/1/21	1,230,000	101,475.00	1,331,475.00		1,331,475.00
	\$ 11,935,000	\$ 13,382,626.91	\$ 25,317,626.91	\$ 919,950	\$ 26,237,576.91

(1) First year that debt service will be paid from assessments. Interest to September 1, 2004, is funded from Bond proceeds.

The repayment schedule shall be adjusted as prepayments of assessments are made as described in the Assessment Ordinance. The Issuer shall, upon request, provide to the property owners a revised Assessment Payment Schedule as adjustments are made.

Tab 6

Vestin Mortgage, Inc., a Nevada corporation, Plaintiff and Appellant, v. First American Title Insurance Company, a California corporation, Defendant and Appellee.

Case No. 20030941-CA

COURT OF APPEALS OF UTAH

2004 UT App 379; 101 P.3d 398; 511 Utah Adv. Rep. 28; 2004 Utah App. LEXIS 413

October 28, 2004, Filed

PRIOR HISTORY: [***1] Third District, Salt Lake Department. The Honorable Frank G. Noel.

DISPOSITION: Affirmed.

LexisNexis(R) Headnotes

COUNSEL: Cassie Wray, John A. Snow, and Stephen Christiansen, Salt Lake City, for Appellant.

Alan L. Sullivan and Brett P. Johnson, Salt Lake City, for Appellee.

JUDGES: James Z. Davis, Judge. **WE CONCUR:** Russell W. Bench, Associate Presiding Judge, William A. Thorne Jr., Judge.

OPINIONBY: James Z. Davis

OPINION: [**399] Before Judges Bench, Davis, and Thorne.

DAVIS, Judge:

[*P1] Vestin Mortgage, Inc. (Vestin) appeals from a trial court order dismissing Vestin's claim with prejudice for failure to state a claim upon which relief can be granted. We affirm.

BACKGROUND

[*P2] Capsource, Inc. (Capsource), doing business as Del Mar Mortgage, now known as Vestin, made two separate loans to The Ranches, L.C. (The Ranches). Both

loans were secured by real property (the property) located in Eagle Mountain City (Eagle Mountain) pursuant to trust deeds for the benefit of Vestin and its predecessor. Capsource first loaned \$ 1,965,000 to The Ranches on or about April 14, 2000. On April 26, 2000, First American Title Insurance Company (First [***2] American) issued Policy No. 2701-A-49 (Policy 2701), insuring Capsource's interest under the first trust deed in the amount of \$ 1,965,000. On or about August 18, 2000, Vestin loaned The Ranches \$ 1,800,000, and on August 28, 2000, First American issued Policy No. 3192-A-49 (Policy 3192) in the amount of \$ 1,800,000 to insure Vestin's interest under the second trust deed. As part of Policy 2701 and Policy 3192 (collectively, the policies), First American also issued Endorsement F.A., ALTA Form 31. Vestin assigned some or all of its right, title, and interest in the trust deeds to various third parties.

[*P3] On June 20, 2000, Eagle Mountain adopted a resolution declaring its intention to create a special improvement district (SID), for the purpose of constructing certain improvements and assessing real property situated within the boundaries of the SID. On August 1, 2000, Eagle Mountain adopted Resolution 14-00, which created the SID. The resolution, however, did not mention assessments, the levy of assessments, or the creation of an assessment lien. Several days later, on August 4, 2000, Eagle Mountain recorded with the Utah County Recorder's Office a "Notice of Intention" [***3] (the notice) to create the SID. In addition to providing notice that Eagle Mountain intended to create the SID and intended to levy assessments to pay for improvements, the notice estimated the total cost of the improvements and the portion of the cost which would

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511 Utah Adv. Rep. 28; 2004 Utah App. LEXIS 413, ***

be paid for by the SID. However, the notice did not levy an assessment -- Eagle Mountain n1 did not levy the assessment until April 25, 2001 when it adopted Ordinance No. 06-2001. The assessment for the entire SID, approved by Ordinance No. 06-2001, totaled \$ 16,799,282, [**400] approximately \$ 3,500,000 less than the estimate contained in the notice. In addition to levying the assessment, the ordinance provided for the acceleration of the assessment upon the voluntary transfer of title to property within the SID.

n1 "The governing body of a municipality may: . . . levy assessments on the property within the district that is benefitted by the improvements" *Utah Code Ann. § 17A-3-304(3)(b)* (1999).

[*P4] After the [***4] creation of the SID, First American issued CLTA Form 104 Endorsements to the policies, to insure the interests of the assignees of Vestin's interest in the trust deeds. The endorsements were issued as of the date of the recording of the assignments, and became effective as of the date of issuance.

[*P5] The Ranches eventually defaulted on the loans from Vestin and its predecessor and, on July 25, 2002, Vestin took title to the property through nonjudicial foreclosure of its trust deeds. According to Vestin, it was only when it entered into a contract to sell the property to a third party that Vestin learned from a title report that the property was within the boundaries of the SID. At that point, Vestin realized that Eagle Mountain had levied a \$ 2,241,348.70 assessment on the property in April 2001, which upon the voluntary sale of the property would become immediately due and payable. Vestin alleges that when the prospective buyer learned of the assessment, it refused to proceed with the purchase. Vestin then filed a claim under the policies, contending that the policies insured against the assessment of the SID. First American, however, denied Vestin's claim.

[*P6] [***5] The policies and endorsements include several clauses relevant to Vestin's claim for coverage. The policy jacket contains the following language:

SUBJECT TO THE EXCLUSIONS
FROM COVERAGE, THE
EXCEPTIONS FROM COVERAGE
CONTAINED IN SCHEDULE B AND
THE CONDITIONS AND
STIPULATIONS, FIRST AMERICAN . .
. . insures, as of Date of Policy shown in
Schedule A, against loss or damage, not
exceeding the Amount of Insurance stated

in Schedule A, sustained or incurred by
the insured by reason of:

. . . .

2. Any defect in or lien or
encumbrance on the title;

3. Unmarketability of the title;

. . . .

6. The priority of any lien or
encumbrance over the lien of the insured
mortgage

The Exclusions From Coverage section provides:

The following matters are expressly
excluded from the coverage of this policy
and [First American] will not pay loss or
damage, costs, attorneys' fees or expenses
which arise by reason of:

1.

(b) Any governmental police power
not excluded by (a) above, except to the
extent that a notice of the exercise thereof
or a notice of a defect, lien or
encumbrance resulting from a violation or
alleged violation affecting the land has
been recorded in [***6] the public
records at Date of Policy.

. . . .

3. Defects, liens, encumbrances,
adverse claims or other matters:

. . . .

(d) attaching or created subsequent to
Date of Policy

The CLTA Form 104 Endorsement states:

[First American] hereby insures:

[The assignees of Vestin in the
mortgage] . . . against loss or damage
which such insured shall sustain by reason
of any of the following

. . . .

(B) The existence of any subsisting
tax or assessment lien which is prior to
the insured mortgage

(C) The existence of other matters
affecting the validity or priority of the lien

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of the insured mortgage, other than those shown in the policy . . .

Finally, the F.A. Form 31 Endorsement provides:

[First American] hereby insures against loss which the Insured shall sustain by reason of any of the following matters:

[**401] 1. Any incorrectness in the assurance which [First American] hereby gives:

(a) That there are no covenants, conditions, or restrictions under which the lien of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired . . .

[*P7] After First American denied Vestin's claim for coverage [***7] under the policies, Vestin sued First American alleging a breach of the insurance contract. First American moved to dismiss the complaint pursuant to Utah Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. The trial court granted First American's motion and dismissed Vestin's complaint with prejudice. Vestin appeals the trial court's order of dismissal.

ISSUES AND STANDARDS OF REVIEW

[*P8] Vestin argues that the trial court erred by granting First American's motion to dismiss. The propriety of a motion to dismiss is a question of law, which we review for correctness, giving no deference to the decision of the trial court. See *Wagner v. Clifton*, 2002 UT 109, P8, 62 P.3d 440. More specifically, Vestin asserts that the trial court erred by concluding as a matter of law that Vestin's claims are not covered under the policies and that the policies are unambiguous. "The trial court's interpretation of a contract presents a question of law, which we review for correctness." *Green River Canal Co. v. Thayne*, 2003 UT 50, P16, 84 P.3d 1134.

ANALYSIS

[*P9] We determine the extent of an insurer's [***8] liability by reference to the provisions of the title insurance policy. See *Cummins v. U.S. Life Title Ins. Co. of N.Y.*, 40 N.Y.2d 639, 357 N.E.2d 975, 975, 389 N.Y.S.2d 319 (N.Y. 1976).

When interpreting a contract, a court first looks to the contract's four corners to determine the parties' intentions, which are controlling. If the language within the four corners of the contract is

unambiguous . . . a court determines the parties' intentions from the plain meaning of the contractual language as a matter of law.

Fairbourn Commercial, Inc. v. American Hous. Partners, Inc., 2004 UT 54, P10, 94 P.3d 292 (alteration in original) (quotations and citation omitted). "We will attempt to harmonize all of the contract's provisions and all of its terms when determining whether the plain language of the contract is ambiguous." *Wagner*, 2002 UT 109 at P16 (quotations and citation omitted). Vestin's argument that the policies are ambiguous is based upon its reading of the exclusions to the policies; however, before we can review the exclusions, we must first determine whether Vestin's claims are covered by the insuring clauses of the policies. n2 If [***9] Vestin's claims are not covered by the policies, then the exclusions are not relevant. We, therefore, begin our analysis by determining whether Vestin's claims are covered under the plain language of the coverage sections of the policies. n3

n2 Vestin argues "that in order for First American to avoid liability, First American was required to disclose and except the Eagle Mountain SID from coverage." Additionally, Vestin claims that if it "had been made aware of the Eagle Mountain SID and that the Assessment became immediately due and payable upon voluntary transfer of title[,] . . . Vestin may not have made the loans at all to avoid the issue of acceleration of the Assessment upon voluntary transfer."

The first part of Vestin's argument is illogical: since the disclosure would be in the form of an exclusion, Vestin would have no claim even if the claim were otherwise covered. The second part of Vestin's claim suggests a claim sounding in equity grounded on detrimental reliance, rather than the breach of contract claim, which is the subject matter of this action. The real issue in this case is whether Vestin's claim is covered by the policy. The failure of First American to exclude something that would not otherwise be included in the coverage sections of the policies does not equate to coverage for Vestin. If Vestin's claim does not fall within the coverage of the policy, then it must fail. [***10]

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n3 Although we fail to see how anything that occurred after the issuance of Policy 2701 implicates that policy, because of our ruling herein, we need not address that issue separately.

[*P10] Vestin does not claim coverage under either the "lien" or "encumbrance" provisions of the policies; rather, Vestin argues that the "various insuring clauses contained in the policies, when read in conjunction [**402] with the 'governmental police power' provisions, afford coverage to Vestin for 'defects,' n4 'incorrectness' n5 and 'other matters.'" n6 We first determine whether the SID and the recorded notice constitute a "defect" on the property title, "an incorrectness in assurance" or "other matter affecting title." We conclude that they do not.

n4 The policy jackets insure Vestin against any loss or damage resulting from any defect in the title as of the date of the policies.

n5 The F.A. Form 31 Endorsement insures Vestin against loss which it shall sustain by reason of any of the following matters: "any incorrectness in the assurance which [First American] hereby gives: (a) That there are no covenants, conditions, or restrictions under which the lien of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired." [***11]

n6 In the CLTA Form 104 Endorsement, First American insures the assignees of Vestin in the mortgage "against loss or damage which such insured shall sustain by reason of . . . the existence of any subsisting tax or assessment lien which is prior to the insured mortgage," and "the existence of other matters affecting the validity or priority of the lien of the insured mortgage." By its terms, the endorsement insures the assignees and applies to liens prior to the insured mortgage.

[*P11] Because we, like the parties, were unable to find Utah law that directly resolves the dispute, we look to treatises and other jurisdictions for guidance. "Title insurance, as opposed to other types of insurance, does not insure against future events." 43 Am. Jur. 2d Insurance § 529 (2003). Moreover, "a prospective or contingent encroachment or lien does not render the insurer liable." Id. Title insurance policies "generally have been held to include coverage for assessments

existing at the time that the insurance is issued, but not to cover assessments which [***12] are rendered after that time, even though the right to levy the assessment existed at the time of the insurance." Lee R. Russ & Thomas F. Segalla, Couch on Insurance 3d § 159:36 (1998). Most importantly for this case, "unpaid future installments of an improvement assessment which have not been decreed as constituting a lien against the property do not constitute an existing requirement, lien, encumbrance, or defect." Id. § 159:37.

[*P12] In *Edwards v. St. Paul Title Insurance Co.*, 39 Colo. App. 235, 563 P.2d 979 (Colo. Ct. App. 1977), the insured under a title insurance policy sued the insurance company for damages when a tax was levied on his property two years after the date of issuance of the policy. See *id.* at 980. The insurance policy provided coverage for "any defect in or lien or encumbrance on the title." Id. The insurance company, however, had not mentioned anywhere in the policy that the property was situated within a particular water and sanitation district, which had been formed two years prior to the issuance of the policy. See *id.* At the time the plaintiff bought the property and the policy was issued, "there were no district [***13] taxes or assessments due or payable or certified to the treasurer's office, and thus there was obviously no lien against the property for such taxes." Id. The Colorado Court of Appeals held that "the mere existence of the district and the prospect of taxes in the future was not a lien, encumbrance, or defect as of the date of issuance of the policy." Id.

[*P13] Similarly, in *Strass v. District-Realty Title Insurance Corp.*, 31 Md. App. 690, 358 A.2d 251 (Md. Ct. Spec. App. 1976) the Court of Special Appeals of Maryland concluded that city assessments for the installation of water and sewer lines "were not encumbrances until they were inevitable and that as long as the City had the option to levy them or not, they were not inevitable until they were levied." *Id.* at 258. Therefore, "the potential assessments were neither liens nor encumbrances when the policies of title insurance were issued." n7 Id.

n7 The policy provision insuring against defects in *Strass v. District-Realty Title Insurance Corp.*, 31 Md. App. 690, 358 A.2d 251 (Md. Ct. Spec. App. 1976) was substantially similar to the policies in this case. See *id.* at 253. The policy insured against direct loss or damage by reason of "any defect or defects in the title of the Insured." Id.

[***14]

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[*P14] Vestin asserts that the term "defect" must be given a broader interpretation than the terms "lien" or "encumbrance," otherwise it would have been unnecessary to use all three terms in the policy if they each had the same meaning. While we hold that neither the SID nor the notice in this case constituted [*403] defects in Vestin's title, we also recognize that "defect" may be defined as something less than a "lien" or "encumbrance." The fact that the SID and notice did not amount to a "defect," "lien," or "encumbrance," does not mean that all three terms are given the same meaning.

[*P15] Vestin has not identified any defect in the title to the property that existed on the effective date of the policies. Both policies were issued to Vestin months before the SID assessments were levied in April 2001 by Eagle Mountain's adoption of Ordinance No. 06-2001. n8 The policies insuring Vestin's title to the property provided coverage only for defects that existed as of the effective date of the policies. Prior to the approval of Ordinance No. 06-2001, the assessments were contingencies not covered by the insuring provisions of the policies. Prior to the adoption of Ordinance [*15] No. 06-2001, Eagle Mountain may have decided not to levy any assessment at all. Unlike *Bel Air Motel Corp. v. Title Insurance Corp. of Pennsylvania*, 183 N.J. Super. 551, 444 A.2d 1119, 1122 (N.J. Super. Ct. Law Div. 1981), relied upon by Vestin, where the assessments were "a certainty," the assessments in this case may or may not have been inevitable. As First American pointed out, "The Special Improvement District was simply a means by which the City might levy the intended assessment at some unspecified future date." *

n8 First American issued Policy 2701 on April 26, 2000 and Policy 3192 on August 28, 2000.

[*P16] Since virtually all private property in the State of Utah lies within the boundaries of a governmental entity which may or may not take an action affecting the property, we are persuaded that the correct rule in this jurisdiction is one that recognizes that mere exposure to a potential assessment does not rise to the level of a defect, lien, or encumbrance. The prospective [*16] nature of the SID and the notice also preclude them from constituting "other matters" affecting title or from rendering First American's assurances incorrect. Neither the SID nor the notice were conditions, or restrictions under which the lien of the mortgage could be cut off, subordinated, or otherwise impaired because there was no impairment until there was a lien.

[*P17] Vestin argues that the police power exception to the exclusions provision is central to both its claim for coverage and to demonstrate that the policies are ambiguous. We conclude that neither of Vestin's applications of the police power exclusion is correct.

[*P18] Vestin claims that "the policies provide coverage for the exercise of 'any governmental police power . . . ' that is recorded in the public records." (Third and fourth alterations in original.) Therefore, according to Vestin, "First American's" acknowledgment that the creation of the Eagle Mountain SID and the Notice of Intention constitute the exercise of police power confirms that Vestin's claim is covered under the police power provision of the policies." This assertion, however, is incorrect. Nowhere do the policies state that [*17] they cover the exercise of any recorded police power. Vestin improperly relies on an exception to the exclusions. The Exclusions From Coverage section states:

The following matters are expressly excluded from the coverage of this policy and [First American] will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. . . .

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

The exclusions, and the exception for the exercise of recorded police power, are applicable only if Vestin's claims are covered by the insuring clauses of the policies. If Vestin's claims are not covered, then we need not reach the exclusions. Vestin fails to demonstrate how an exception to an exclusion is tantamount to coverage. The exclusions and their exceptions are important only as they may apply to something that would otherwise be included in the coverage section of the policies. Because the existence of the SID and the notice [*18] of Eagle Mountain's intention [*404] to levy assessments do not affect Vestin's title and, therefore, are not covered by the policies, the exclusions to the policies and the recorded police power exception to those exclusions are not applicable.

[*P19] Finally, according to Vestin, an ambiguity exists concerning the scope of coverage under the policies "because the insuring clauses of the policies provide

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coverage to Vestin." Having determined that the police power exception to the exclusions has no application to Vestin's claim, we conclude that the policies are unambiguous. n9

n9 Our conclusion that the police power exception to the exclusions is not applicable to Vestin's claim does not mean that the exception would not apply in other cases -- cases in which a particular exercise of recorded police power is first determined to be covered under the policy. Because the exception could have application in other appropriate situations we are able "to harmonize all of the contract's provisions and all of its terms," *Wagner v. Clifton*, 2002 UT 109, P16, 62 P.3d 440 (quotations and citation omitted), and contrary to Vestin's claim, the exception is not rendered meaningless.

Furthermore, because we conclude that the policies are unambiguous we need not consider Vestin's claim that First American's motion to dismiss should have been treated as a motion for summary judgment. Having determined that the policies are unambiguous, we are not left with a factual question as to the intent of the parties. See

id. at P18 ("A court may only consider extrinsic evidence if, after careful consideration, the contract language is ambiguous or uncertain." (quotations and citation omitted)).

[***19]

CONCLUSION

[*P20] The applicable provisions of the policies are not ambiguous under the facts of this case, and Vestin's claims are not covered under the policies. Accordingly, the trial court's dismissal of the complaint for failure to state a claim upon which relief can be granted is affirmed.

James Z. Davis, Judge

[*P21] WE CONCUR:

Russell W. Bench,

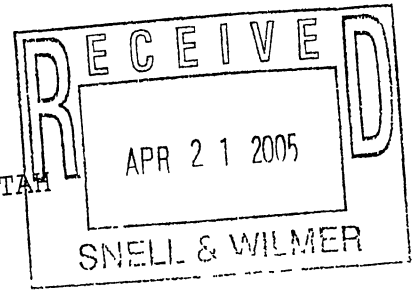
Associate Presiding Judge

William A. Thorne Jr., Judge

Tab 7

IN THE SUPREME COURT OF THE STATE OF UTAH

-----oo0oo-----



Vestin Mortgage, Inc.
Petitioner,

No. 20041132-SC

v.

First American Insurance Title Co.,
Respondent.

ORDER

This matter is before the court upon a Petition for Writ of Certiorari, filed on December 29, 2004.

IT IS HEREBY ORDERED, pursuant to Rule 45 of the Utah Rules of Appellate Procedure, that the Petition for Writ of Certiorari is granted only as to the following issue:

Whether the title insurance policies unambiguously applied only to actual assessments for a Special Improvement District and did not include an obligation to provide notice of an intent to create the District and levy the assessments.

A briefing schedule will issue hereafter. Pursuant to rule 2, the court suspends the provision of rule 26(a) that permits the parties to stipulate to an extension of time to submit their briefs on the merits. The parties shall not be permitted to stipulate to an extension. Additionally, absent extraordinary circumstances, no extensions will be granted by motion. The parties shall comply with the briefing schedule upon its issuance.

FOR THE COURT:

April 19, 2005
Date

Christine M. Durham
Christine M. Durham,
Chief Justice

CERTIFICATE OF MAILING

I hereby certify that on April 20, 2005, a true and correct copy of the foregoing ORDER was deposited in the United States mail to the parties listed below:

JOHN A. SNOW
STEPHEN CHRISTIANSEN
CASSIE WRAY
VAN COTT BAGLEY CORNWALL & MCCARTHY
50 S MAIN STE 1600
PO BOX 45340
SALT LAKE CITY UT 84145-0340

ALAN L. SULLIVAN
BRETT P JOHNSON
SNELL & WILMER
15 W S TEMPLE STE 1200
SALT LAKE CITY UT 84101-1333


and a true and correct copy of the foregoing ORDER was hand delivered to a personal representative of the court listed below:

PAULETTE STAGG
COURT OF APPEALS
450 S STATE ST
PO BOX 140230
SALT LAKE CITY UT 84114-0230

and a true and correct copy of the foregoing ORDER was deposited in the United States mail to the court listed below:

THIRD DISTRICT, SALT LAKE
ATTN: SOPHIE ORVIN / JODI BAILEY
450 S STATE ST
PO BOX 1860
SALT LAKE CITY UT 84114-1860

Dated this April 20, 2005.

By 
Deputy Clerk

Case No. 20041132
Court of Appeals Case No. 20030941