

2003

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

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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VESTIN MORTGAGE, INC.,

Plaintiff and Appellant,

vs.

FIRST AMERICAN TITLE  
INSURANCE COMPANY,

Defendant and Appellee.

Case No. 20030941-CA

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BRIEF OF APPELLEE  
FIRST AMERICAN TITLE INSURANCE COMPANY

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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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MAY 05 2004

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## **JURISDICTIONAL STATEMENT**

This Court has jurisdiction under Utah Code Annotated sections 78-2-2(3)(j) & (4) (2001).

## **STATEMENT OF ISSUES PRESENTED AND STANDARDS OF REVIEW**

### **Issue No. 1.**

Did the trial court correctly conclude that the language of the title insurance policies and endorsements at issue is clear and unambiguous?

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.

This issue was presented below in First American’s memorandum supporting its motion to dismiss (R. 69) and expressly was ruled upon by the trial court. (R. 435.)

### **Issue No. 2.**

Did the trial court correctly conclude that First American was not required to disclose or except from coverage the Notice of Intention and Eagle Mountain’s creation of the Special Improvement District, and that First American did not breach the policies by not doing so?

“A title insurance policy, like other insurance policies, serves as a contract between the insurer and the insured, and as such ‘is subject to the general rules of contract construction.’” Holmes Dev., LLC v. Cook, 2002 UT 38, ¶24, 48 P.3d 895 (quoting Miller v. USAA Cas. Ins. Co., 2002 UT 6, ¶49); accord J.B. Ranch, 966 P.2d at 836. Thus, an insurance policy must be construed according to its plain and ordinary meaning, unless the policy’s language is ambiguous or unclear. See id.; Miller, 2002 UT 6 at ¶49. Whether the trial court correctly construes an insurance policy is a question of law that an appellate court reviews for correctness. See Holmes Dev., 2002 UT 38 at ¶24; Rivera v. State Farm Mut. Auto. Ins. Co., 2000 UT 36, ¶29, 1 P.3d 539.

This issue was preserved below in First American’s reply memorandum supporting its motion to dismiss (R. 414) and expressly was ruled upon by the trial court. (R. 435.)

### **Issue No. 3.**

Did the trial court correctly conclude that the title policies did not afford coverage to Vestin under the policies’ exception to the police power exclusion?

“A title insurance policy, like other insurance policies, serves as a contract between the insurer and the insured, and as such ‘’is subject to the general rules of contract construction.’’” Holmes Dev., 2002 UT 38, ¶24; accord J.B. Ranch, 966 P.2d at 836. Thus, an insurance policy must be construed according to its plain and ordinary meaning, unless the policy’s language is ambiguous or unclear. See id.; Miller, 2002 UT 6 at ¶49. Whether the trial court correctly construes an insurance policy is a question of law that an appellate court reviews for correctness. See Holmes Dev., 2002 UT 38 at ¶24; Rivera, 2000 UT 36 at ¶29.

#### **Issue No. 4.**

Did the trial court correctly conclude that Vestin's claim under the title policies did not involve a covered defect, lien, or encumbrance relating to title or an "other matter" affecting the validity or priority of Vestin's lien as of the policy dates?

"A title insurance policy, like other insurance policies, serves as a contract between the insurer and the insured, and as such 'is subject to the general rules of contract construction.'" Holmes Dev., 2002 UT 38 at ¶24; accord J.B. Ranch, 966 P.2d at 836. Thus, an insurance policy must be construed according to its plain and ordinary meaning, unless the policy's language is ambiguous or unclear. See id.; Miller, 2002 UT 6 at ¶49. Whether the trial court correctly construes an insurance policy is a question of law that an appellate court reviews for correctness. See Holmes Dev., 2002 UT 38 at ¶24; Rivera, 2000 UT 36 at ¶29.

This issue was preserved below in First American's memorandum supporting its motion to dismiss (R. 70, 75-76), First American's reply memorandum (R. 419-21), and expressly was ruled upon by the trial court. (R. 435.)

#### **Issue No. 5.**

Did the trial court correctly conclude that Vestin's claim under the title policies did not involve any incorrectness in the assurances given under the policies?

"A title insurance policy, like other insurance policies, serves as a contract between the insurer and the insured, and as such 'is subject to the general rules of contract construction.'" Holmes Dev., 2002 UT 38 at ¶24; accord J.B. Ranch, 966 P.2d at 836. Thus, an insurance policy must be construed according to its plain and ordinary meaning, unless the policy's language is ambiguous or unclear. See id.; Miller, 2002 UT 6 at ¶49. Whether the trial court correctly construes an insurance policy is a question of law that an appellate court reviews for correctness. See Holmes Dev., 2002 UT 38 at ¶24; Rivera, 2000 UT 36 at ¶29.

This issue was preserved below in First American's memorandum supporting its motion to dismiss (R. 76-77) and expressly was ruled upon by the trial court. (R. 435.)

#### **Issue No. 6.**

Should First American's motion to dismiss have been treated as one for summary judgment, and if so, did Vestin adequately present any disputed issues of material fact?

A trial court's ruling on motions to dismiss or for summary judgment is reviewed for correctness. See Hunter v. Sunrise Title Co. 2004 UT 1, ¶6, 84 P.3d 1163 (stating that ruling on motion to dismiss reviewed for correctness); Tucker v. State Farm Mut. Auto. Ins. Co., 2002 UT 54, ¶5, 53 P.3d 947 (stating that ruling on motion for summary judgment reviewed for correctness). The trial court's application of Rule 4-501(2)(B) of the Utah Rules of Judicial Administration to Vestin's opposition to First American's motion to dismiss is also reviewed for correctness. See Fennell v. Green, 2003 UT App 291, ¶¶6-9, 77 P.3d 339. A trial court's decision not to admit parol evidence likewise is a question of law reviewed for correctness. See Spears v. Warr, 2002 UT 24, ¶18, 44 P.3d 742.

First American raised this issue below in its reply memorandum supporting its motion to dismiss. (R. 419.)

#### **DETERMINATIVE LAW**

##### **Utah Code Ann. § 17A-3-323 (2003)**

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.)

### **Utah Rule of Civil Procedure 12(b)**

Every defense, in law or fact, to [a] claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted . . . . If on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

### **Utah Rule of Civil Procedure 56(c)**

“The motion [for summary judgment], memoranda and affidavits shall be filed and served in accordance with CJA 4-501.” Utah R. Civ. P. 56(c).

### **Utah Rule of Judicial Administration 4-501(2)(B)**

The points and authorities in opposition to a motion for summary judgment shall begin with a section that contains a concise statement of material facts as to which the party contends a genuine issue exists . . . . Each disputed fact shall

be stated in separate numbered sentences and shall specifically refer to those portions of the record upon which the opposing party relies and, if applicable, shall state the numbered sentence or sentences of the movant's facts that are disputed. All material facts set forth in the movant's statement and properly supported by an accurate reference to the record shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the opposing party's statement.

## 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. 80-119.) The Policies relate to a residential development in Eagle Mountain, 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 Policies—Eagle Mountain City levied assessments against Vestin's property incident to a special improvement district, thereby creating a lien which primes Vestin's mortgages. The special improvement district and subsequent special assessment were intended to fund construction of water lines, sewer lines, roads, and other elements of infrastructure for Vestin's property. Although Vestin and its successors obviously will enjoy the benefit of these improvements made by Eagle Mountain City, it nevertheless wants First American to pay for this benefit through a claim under the Policies.

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 seeks coverage for a purported injury that *did not exist* when the Policies

were issued and that did not occur until long after First American issued them. The Policies expressly except coverage for post-policy matters like this. The trial court properly dismissed Vestin's lawsuit and this Court 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, ultimately granting the Motion and dismissing 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.)

## **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 called 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 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. 2 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. 1 attached.) The property which The Ranches pledged to Vestin incident to the 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 (the **"Special Improvement District"**). 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.<sup>1</sup> (R. 132-38.) Among other things, Resolution 14-00 determined that construction of certain improvements would be in the best interests of Eagle Mountain, it provided that a special improvement district would be the means by which the improvements would be built and

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<sup>1</sup> The text of Resolution 14-00 is included in the Notice of Intention, Ex. 4 attached.

funded, and it thereby created the Special Improvement District. Importantly, although Resolution 14-00 created the Special Improvement District on August 1, 2000, the Resolution did not mention assessments, the levy of assessments, or the creation of an assessment lien.

On August 4, 2000, pursuant to Utah Code Annotated section 17A-3-306, Eagle Mountain 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 Special Improvement District and *intended* to levy assessments to pay for the contemplated improvements. (R. 121-22; Ex. 4 attached.) It also estimated the total cost of the improvements and the portion of that cost which may be paid by a special assessment to be levied on benefited properties.<sup>2</sup> (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 did not mention any intended requirement that affected property owners pay the assessment liability incident to the sale of benefited property.

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

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<sup>2</sup> The SID Notice further advised that the Special Improvement District 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 for those in Zone II. (R. 122; Ex. 4 attached.)

amount approximately \$3.5 million less than the estimate contained in the Notice of Intention.<sup>3</sup> (R. 203.)

### **C. Vestin's Claims**

After its intended sale allegedly fell through, Vestin sent a notice of claim under the Policies to First American, then subsequently filed this suit. In its complaint, Vestin contends that, because the Property is contained within the Special Improvement District and subject to the Assessment, “the assurances and guaranties given by First American in the Policies of Title Insurance . . . and the Endorsements thereto, are incorrect and in error because there were conditions and restrictions under which the lien of the Trust Deeds were subordinate and otherwise impaired, among other things.” (R. 9.) Vestin contends that the Policies insure Vestin against loss or damage as a result of the title to the Property “being encumbered or unmarketable, or otherwise subject to an assessment or other matters affecting the validity or priority of the lien of the Trust Deeds.” (R. 9.) The complaint asserts a single cause of action, alleging that First American breached the Policies by failing to pay Vestin’s claims. (R. 9-10.)

### **D. Key Policy Provisions**

There are five key Policy provisions relevant to this dispute. The first is the following provision 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,

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<sup>3</sup> 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.) Further, for the first time, the Assessment Ordinance advised 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 on sale. (R. 205-06; Ex. 5 attached.)

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 against losses incurred due to defects, liens, or encumbrances on the title which existed as of the Policy dates.

The second key provision of the Policies is the Exclusions From Coverage, which 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 is not encompassed by those which attach or are created after the Policy dates.

The third relevant provision is 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.)

The fourth relevant 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.)

The fifth relevant provision is paragraph 1(b) of the Policies’ Exclusions from Coverage, which 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 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.)

### **SUMMARY OF THE ARGUMENT**

Vestin’s claim violates the fundamental principle of title insurance law—namely, that title insurance covers only defects and conditions which exist on or before the effective date of a title policy. Here, Vestin seeks coverage for a purported injury which arose eight months *after* First American issued the title policies.

Recognizing that the true source of its alleged injury is not covered because it arose post-policy, on appeal Vestin stretches to identify some condition existing pre-policy that can be spun into an argument for coverage. Despite having conceded that its purported injury was caused by the post-policy assessment lien, Vestin focuses on two



preliminary steps in the process by which a municipality levies an assessment—namely, Eagle Mountain City’s recording of a notice of intention to levy an assessment and its creation of a special improvement district. Vestin argues that, because First American did not disclose these preliminary steps, Vestin’s post-policy injury resulting from the levied assessment is covered under the policies.

Unfortunately for Vestin, these early steps amounted only to preliminary information suggesting that a lien might be levied at some time in the future. The authorities almost uniformly provide that title insurance does not cover such claims. The trial court agreed, and First American respectfully asks that this Court affirm the lower court’s decision.

As argued more fully below, Vestin’s appeal fails under the unambiguous language of the policies at issue. Vestin’s alleged injury was caused post-policy when Eagle Mountain levied the assessment. As a “defect, lien, or encumbrance” arising post-policy, Vestin’s claim is barred by the plain language of the policy jackets and paragraph 3(d) of the Exclusions from Coverage, which bars coverage for “defects, liens, encumbrances, adverse claims, or other matters . . . attaching or created subsequent to Date of Policy.” The policies’ Form 104 endorsements insure against “subsisting tax or assessment liens,” confirming that an assessment lien must be in existence on the policy dates for the lien to be covered.

While Vestin contends that the special improvement district and the notice of intention are “defects” affecting Vestin’s title, that argument fails because neither of these preliminary steps meets the definition of “defect.” To be a title defect, the notice of intention or the existence of the special improvement district must have subjected Vestin’s title to a claim from Eagle Mountain on the policy dates. No such claim existed. Both leading treatises on the law of title insurance, as well as virtually all existing case authority, reject Vestin’s argument and support a denial of coverage. Moreover, if the Court construed “defect” to encompass Vestin’s claim, it would nullify other key

provisions of the title policies.

Vestin also argues that its claim is covered because the notice of intention recorded by Eagle Mountain constituted notice of the exercise of a police power—namely, the creation of the special improvement district. Vestin contends that this meets an exception to the policies’ police power exclusion. This argument also fails. While the creation of a special improvement district may be an exercise of the police power, the special improvement district caused no injury to Vestin on the policy dates. The only relevant exercise of the police power was Eagle Mountain’s levy of the assessment, which occurred eight months after the policies were issued and therefore is not covered.

Similarly flawed is Vestin’s insistence that the notice of intention and/or the special improvement district are an “incorrectness” in the policies or an “other matter” affecting the validity of Vestin’s mortgages. These preliminary steps in the process of levying an assessment did not harm Vestin, and Vestin has identified nothing incorrect in the assurance offered under the policies.

Finally, in an effort to cloud the issues and create ambiguity in the policies, Vestin turns to affidavits which vary or contradict the express terms of the policies. The policies are fully integrated and unambiguous, and Vestin’s efforts to confuse the issues through self-serving parol evidence should be rejected.

The trial court correctly concluded that Vestin failed to state a claim upon which relief can be granted. First American requests that this Court affirm that decision.

### **ARGUMENT**

#### **I. VESTIN’S ALLEGED INJURY WAS CAUSED BY THE POST-POLICY ASSESSMENT LIEN WHICH IS NOT A CONDITION COVERED UNDER THE POLICIES.**

##### **A. Title Insurance Insures Only Against Conditions Existing on or Before the Effective Date of a Policy.**

A fundamental principle of title insurance law is that title insurance affords coverage only for risks which exist on the effective date of the policy.

The insuring clauses of ALTA title insurance policies are modified by an introductory phrase which advises that risks are insured against ‘as of Date of 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); 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.”). In other words, the policy date “marks the moment the title is insured.” 1 Joyce D. Palomar § 5.2: at 5-6. Because Vestin has not identified any defect in or lien or encumbrance on the title that existed on the effective date of the Policies, the trial court correctly concluded that the Policies afford Vestin no coverage.

**B. The Assessment Lien Attached Post-Policy and Therefore is Not Covered.**

The cause of Vestin’s alleged injury is the Assessment Lien that Eagle Mountain levied against the Property. Vestin acknowledges that the Lien is the source of its purported injury. In paragraph 35 of Vestin’s complaint, Vestin 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).) Because the Assessment Lien did not exist when First American issued the Policies, Vestin’s claim is not covered under the Policies.

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 27.) 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;

...

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

(R. 80, 100 (capitalization in original) (emphasis added); Exs. 1 & 2 attached.) Under this provision, for harm caused by the Assessment Lien to be covered under 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 upon when the Lien attached or was created. If this occurred after the April 26, 2000 and August 28, 2000 effective dates of the Policies, any loss or damage suffered by Vestin as a result of the Assessment Lien is not covered under the Policies.<sup>4</sup> Under the Utah Municipal Improvement District Act, an assessment does not constitute a “lien against

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<sup>4</sup> As Vestin concedes in its complaint, Eagle Mountain did not declare its intention to create the Special Improvement District until June 20, 2000—approximately two months *after* First American issued Policy 2701. (R. 6.) It would not be credible for Vestin to suggest that the existence of the Special Improvement District and/or the prospect of the Assessment retroactively created a “lien or encumbrance” as of April 26, 2000, the date of Policy 2701. However, even if Vestin maintains its claim under Policy 2701, the claim fails for the same reasons that its claim to coverage under Policy 3192 fails.

the property upon which the assessment is levied” until the “effective date of the ordinance levying the assessment.” Utah Code Ann. § 17A-3-323 (1999).<sup>5</sup> Here, Eagle Mountain 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 the Ordinance. (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.

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

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<sup>5</sup> The Assessment could not have been a lien on the August 28, 2000 Policy date on other statutory grounds. Under the Utah Municipal Improvement Act, the Assessment could not have been levied prior to the August 28 policy date because section 17A-3-312(1) provides that assessments may be levied only “after all contracts for the making of the improvements have been let, the property price for all property acquired to make the improvements has been finally determined, and the reasonable cost of any work to be done by the municipality has been determined.” Utah Code Ann. § 17A-3-312(1). Eagle Mountain did not authorize its engineer to prepare a bid notice to contractors until August 1, 2000. (R. 135; Ex. 4 attached (Resolution No. 14-00 § 6).) Thus, the contracts for the making of the improvements had not been let as of the Policy dates. Moreover, Eagle Mountain had not determined the final cost of the improvements as of the Policy dates. When the costs were disclosed in the April 2001 Assessment Ordinance, the costs were \$7.4 million less than the estimate contained in the August 2000 Notice of Intention. Similarly, section 17A-3-317(1) requires that, before an assessment “can be levied,” an “assessment list be prepared designating each parcel of property proposed to be assessed and the amount of the assessment apportioned to this property.” Utah Code Ann. § 17A-3-317(1). Because the final costs of the improvements were not determined until much later, the assessment list apportioning costs could not have been prepared on or before the Policy dates. Thus, the Assessment could not be levied—and therefore could not be a lien—before First American issued the Policies.

by law.” (R. 210; Ex. 5 attached.)<sup>6</sup> As a matter of law, the Assessment did not become a lien until April 30, 2001, eight months after Policy 3192 was issued. As the Assessment became a lien or encumbrance well after the Policy dates, it is “expressly excluded” from coverage.<sup>7</sup>

In its complaint, Vestin also alleges that it is entitled to coverage under the Form 104 endorsement to the Policies. 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 the Policies were issued. “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

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<sup>6</sup> Vestin has no credible argument that the existence of the Special Improvement District itself created a “lien or encumbrance.” The Utah Municipal Improvement District Act defines “special improvement district” simply as a “district created for the purpose of making improvements under this part.” Utah Code Ann. § 17A-3-303(19) (1999). The Utah Supreme 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). Thus, the District itself is not a lien or encumbrance. Moreover, the fact that property is contained within a special improvement district is not information that need be disclosed by a title insurer. 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”).

<sup>7</sup> The Policies’ exceptions similarly bar coverage. Schedule B, Part 1, entitled “Exceptions From Coverage,” 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.

issued. Not only does Vestin have no claim to coverage under the Form 104 Endorsement, but the language of the Endorsement affirmatively establishes the parties' expressed intent that post-policy liens are not covered under the Policies at all.

**C. The SID Notice and Special Improvement District Caused Vestin No Injury.**

Faced with the foregoing clear and unequivocal policy language barring coverage, Vestin is left scrambling for some condition which *did* exist on the Policies' effective dates. Vestin settles on preliminary steps in the process that led to the post-policy Assessment Lien—namely, Eagle Mountain's recordation of the SID Notice and the mere existence of the Special Improvement District. Specifically, Vestin contends that, “[b]ecause the Policies did not except or exclude from coverage the Eagle Mountain SID, and because notice of the Eagle Mountain SID was recorded in the public records, the existence of the Eagle Mountain SID renders First American liable on the Policies under the insuring clauses.” (Vestin Brief at 13.)

A fatal flaw in Vestin's argument is that the SID Notice and the Special Improvement District caused no loss or harm to Vestin. The Policies plainly provide that, for a defect to be covered under the Policies, not only must it exist “as of Date of Policy,” but the “loss or damage” must be “sustained or incurred by reason of” the identified defect. (R. 80, 100; Exs. 1 & 2 attached.) Vestin has not identified any loss or damage sustained by reason of the SID Notice and the Special Improvement District. Instead, Vestin's complaint states the contrary, conceding that its alleged damages were “a result of the Assessment.” (R. 9 (Compl. ¶ 35).)

As to the SID Notice, it was merely that—a “notice.” The SID Notice itself did not give Eagle Mountain any rights, or take any from Vestin. The Notice did not state that an assessment would be levied, but instead that the City *intended* to levy one at some unspecified future date. Simply put, the Notice did not constitute a defect in Vestin's title which caused any loss or harm to Vestin. Instead, 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.

Similarly confusing is Vestin's argument that the mere existence of the Special Improvement District is a title defect which caused loss or damage to Vestin. As a matter of state law, the Special Improvement District 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 existence of the Special Improvement District 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. The Special Improvement District was simply a means by which the City might levy the intended assessment at some unspecified future date. In and of itself, the Special Improvement District 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 Special Improvement District would have had no legal effect on Vestin's lien or title. As with the SID Notice, Vestin has not explained how the existence of the Special Improvement District itself caused Vestin any loss or harm.

## **II. THE TRIAL COURT CORRECTLY CONCLUDED THAT VESTIN'S CLAIM DOES NOT INVOLVE A TITLE "DEFECT" AND THEREFORE IS NOT COVERED UNDER THE POLICIES.**

While Vestin appears to concede that its claim does not involve a covered "lien" or "encumbrance," it nonetheless argues that the Special Improvement District and the SID Notice are covered "defects" on the title. (Vestin Brief at 27.) In other words, even though the Assessment Lien did not exist when First American issued the Policies, Vestin contends that Eagle Mountain's notice that it *intended* to levy an assessment sometime in the future and its creation of a Special Improvement District to facilitate a future assessment constituted present title defects that First American should have disclosed. As with liens and encumbrances, for the SID Notice and the Special Improvement



District to be “defects” in title covered under the Policies, they must have been defects existing “as of Date of Policy.”

The SID Notice and the Special Improvement District are not “defects” in Vestin’s title. Instead, they are preliminary steps in the process that ultimately led to the Special Assessment, which is the cause of Vestin’s perceived injury. Unfortunately for Vestin, the Special Assessment came into existence post-policy and therefore is not covered.

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). The other leading treatise authority 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 Notice or Special Improvement District must have subjected Vestin’s interest in the property to a claim from Eagle Mountain City which interferes with Vestin’s use of the property *as of the Policy dates*.<sup>8</sup> This was not the case. As noted above, the existence of the Special Improvement District did not create a present problem with Vestin’s title, nor did the SID

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<sup>8</sup> 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 such things as (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), 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 Special Improvement District are not such claims.

Notice. Vestin's perceived problem arose only upon Eagle Mountain's post-policy levy of the Assessment and the attachment of the Assessment Lien, which in turn primed Vestin's mortgages.

**A. Overwhelming Treatise and Case Authority Supports the Denial of Coverage.**

Although there appears to be no reported Utah decision on point, denial of coverage for Vestin's claim is consistent with treatise authority and case law from throughout the country. These authorities 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).

Burke's treatise on the law of title insurance explains the rationale for this rule:

Where the lien or encumbrance is established by a process involving more than one step, and is particularly slow, a further difficulty arises. The issue then becomes whether the first step, or the start of the process, once undertaken, is sufficient to give the title insurer searching the records notice of a perfected lien, thus creating a "lien or encumbrance" for insurance purposes. . . .

*The mere existence of a municipality or taxing district, and the attendant prospect of taxes in the future is insufficient to create a lien or encumbrance. . . .*

If an ordinance is only prospective and predicts a future assessment on insured property, the insurer is not liable for not excepting it from coverage or disclosing it to the insured. . . . On a . . . practical level, the early stages of the taxing process may elicit from the taxpaying public a hue and a cry, deterring local legislators from going forward. . . .

...

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. It is sensible because the municipality may in the future decide to pay for an improvement or service, initially to be funded by taxes backed by a lien, through other means—say, a grant from the state or federal government. After all, a municipality has every incentive to look for such grants, taking as they do the tax strain off the backs of its constituents. Thus many tax liens which are authorized are never perfected, because the method of financing the improvement, service, or project changes.

[Moreover, there may be an error or flaw in the process leading up to the lien, thereby invalidating it.] A variation in the taxed area, or in the terms of the tax, is grounds for invalidating the lien, even though the construction project for which the tax is levied is described in the same terms.

Barlow Burke, Law of Title Insurance § 3.05 at 3-77 to 3-79. Here, to use Burke's words, Vestin relies on the "mere existence of a municipality or taxing district, and the attendant prospect of taxes in the future" to support its claim to coverage. As of the Policy Dates, Eagle Mountain City only had expressed an intention to levy an assessment at some unspecified time in the future. Eagle Mountain could have waited six weeks, six months, or six years to pass the Assessment Ordinance, or could have elected not to levy the Assessment at all. The contingent prospect of taxes in the future is insufficient to create a covered defect, lien, or encumbrance.

The available case law uniformly supports the denial of coverage. In Edwards v. St. Paul Title Insurance Co., 563 P.2d 979 (Colo. Ct. App. 1977), the court reached the same conclusion as did the trial court in this case. 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. See 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 date of the policy and were therefore 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).<sup>9</sup>

The case of Strass v. District-Realty Title Insurance Corp., 358 A.2d 251 (Md. Ct. Spec. App. 1976), also recommends affirmance of the trial court's decision in this case. 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 by reason of "[a]ny defect or defects" or liens and encumbrances. Id. at 253 (emphasis added). 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. See id. at 253-54. The buyers sued the title company, claiming that the title policies insured against the assessments. See id. at 251-52.

Relying on a Maryland statute substantively similar to Utah's, the court concluded that the assessments were not liens as of 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

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<sup>9</sup> In attempting to distinguish Edwards, Vestin represents that the Edwards court "did not address whether the prospective assessment constituted a 'defect' under the policy." (Vestin Brief at 23.) This simply is untrue, as established by the language quoted above.

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 the assessments “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. The potential assessments were neither liens nor encumbrances when the policies of title insurance were issued.” Id. Just as in Strass, Eagle Mountain 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 Special Improvement District themselves cannot be covered defects, liens, or encumbrances on Vestin’s title.<sup>10</sup>

Consistent with Edwards, Strass, and the trial court’s decision in this case, virtually all available case authority addressing coverage for prospective assessments as “defects, liens, or encumbrances” uniformly rejects claims to coverage. 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);

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<sup>10</sup> Vestin attempts 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 which 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 heavily 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.”

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.”); 43 Am. Jur. 2d Insurance § 526 (2002) (“A prospective or contingent encroachment or lien does not render the insurer liable.”).

**B. Vestin has Failed to Present Authority Supporting its Position.**

In the face of the foregoing authority, Vestin identifies only three cases in support of its position that the SID Notice and the Special Improvement District are title defects covered under the Policies. (See Vestin Brief at 29-30.) Each of these cases involved defects which existed on the effective dates of the title policies at issue. In other words, none of these cases supports Vestin's claim to coverage because they each involved defects which existed—and therefore affected title—as of “Date of Policy.”

The first case, Stewart Title Guar. Co. v. Greenlands Realty L.L.C., 58 F. Supp. 2d 370 (D.N.J. 1999), does not support Vestin's position because the defect at issue existed when the title policy was issued. The Greenlands court defined “defect” as the “want or absence of something necessary for completeness or perfection.” Id. at 382. The “defect” in Greenlands, a scrivener's error, was discovered on April 26, 1996, and the title insurance was issued over two months later on July 5, 1996. Clearly then, this case involved a title lacking in “something necessary for completeness”—namely, freedom from errors. The error in title was *present* at the time the title insurance was issued. See id. at 374-77. Here, there was no “defect” at the time the Policies were issued, and Vestin has failed to explain how the circumstances of this case meet the definition of “defect” offered by the Greenlands court. Neither the SID Notice nor the Special Improvement District created in Vestin's title a “want or absence of something necessary for completeness” on the Policy dates.

Vestin cites a second case which broadly defines “defect,” United Fire & Casualty Co. v. Fidelity Title Ins. Co., 258 F.3d 714 (8th Cir. 2001). However, like Greenlands, that case involved a defect which existed on the effective date of the policies—namely, a notice of adverse claim filed by a mortgage company asserting an interest in the property. See id. at 717. The notice was filed on May 14, 1996, over a month before the sale of the property and issuance of title insurance. Id. at 717. The court held that the notice of adverse claim was a defect in title because it “could only be removed by litigation.” Id.

at 719. Unlike this case, in United Fire there was a clear cloud on the title when the policy was issued.

The third and final case is Bel-Air Motel Corp. v. The Title Ins. Corp., 444 A.2d 1119 (N.J. Sup. Ct. 1981). Bel-Air involved improvements that had been approved by an ordinance and subsequently completed by the city. The city levied an assessment pre-policy, which was challenged in court and held to be invalid. The city later reassessed the affected properties. The Bel-Air court concluded that a defect was created “when the improvement was completed” pre-policy, making the “eventual assessment of the property *a certainty*.” Id. at 1122 (emphasis added). The court concluded that certain “policy exclusions must therefore be read as providing coverage with respect to the assessment liability to which the property was subject at the time of its purchase.” Id. Bel-Air, like the other two cases cited by Vestin, involved a defect which was certain and *existed* pre-policy.<sup>11</sup> When First American issued the Policies in this case, there was no existing assessment liability. Instead, the assessment liability was contingent and uncertain.

**C. Characterizing the SID Notice and Special Improvement District as “Defects” Would Render Meaningless Other Key Policy Provisions.**

Vestin’s contention that the Special Improvement District and SID Notice are “defects” violates the fundamental principle 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) (citation omitted); 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

<sup>11</sup> Not only is Bel-Air inapposite, but one leading commentator suggests that the case represents the fringe of the law of title defects. See Joyce D. Palomar, Title Insurance Law § 5:5 at 5-16 (2003).



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.” At most, the SID Notice and the Special Improvement District are preliminary steps in the process of levying an assessment. If Vestin were correct in arguing that these preliminary steps constitute “defects,” then the foregoing exclusion and endorsement would become meaningless. In other words, it would allow 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.

### **III. THE TRIAL COURT CORRECTLY CONCLUDED THAT VESTIN HAS NO POLICY COVERAGE UNDER THE EXCEPTION TO THE POLICE POWER EXCLUSION.**

Vestin argues that Eagle Mountain City exercised a governmental police power in creating the Special Improvement District and that the SID Notice constituted notice of the exercise of that power and should have been disclosed. (See Vestin Brief at 13, 19.) Although never alleged in its complaint, Vestin argued to the trial court, and now argues to this Court, that the Policies’ exception to the exclusion for governmental exercise of the police power applies and that it offers coverage to Vestin under the Policies. The trial court appropriately rejected this argument.

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 which caused the loss or damage was recorded in the public records on the policy date.

Before we deal with Vestin’s police-power argument, two important preliminary issues must be addressed. First, Vestin claims that in the Order of Dismissal with Prejudice, the trial court “concluded that the creation of the Eagle Mountain SID was not an exercise of the governmental police power.” (Vestin Brief at 18, 20.) The trial court made no such ruling. (R. 435; Ex. 3 attached.) The closest it came is paragraph 4 of the Order, which states: “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.” (*Id.*) Second, there is no reasonable argument that the police power exception affords Vestin any coverage under Policy 2701. First American issued Policy 2701 on April 26, 2000 and Eagle Mountain did not record the SID Notice until August 4, 2000—approximately three months later. Thus, the SID Notice was not recorded as of the effective date of Policy 2701 and the exception cannot apply.

Beyond the foregoing two issues, there is a more fundamental problem with Vestin’s police power argument: Under the plain language of the Policies, the exception applies only to “loss or damage” which “arises by reason of” the exercise of a governmental police power. Vestin presents a lengthy argument that the Special Improvement District was created through Eagle Mountain City’s exercise of the police power. This is irrelevant. Vestin has suffered no “loss or damage” due to the creation of the Special Improvement District. Instead, as Vestin repeatedly has conceded, its purported injury is a result of the Assessment Lien—a *separate* and distinct exercise of the police power which did not occur until eight months after the effective date of Policy

3192. Thus, it is legally meaningless that Eagle Mountain created the Special Improvement District 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 Special Improvement District.

Burke's treatise on title insurance addresses the exception to the police power exclusion, stating:

A special assessment may be predicted in a local ordinance and the property described to which it will, at some future date, attach. Usually, *this does not lay the basis for a policy claim* because the interest in the title must be described with reasonable specificity—in the case of a special assessment, such definiteness would require a statement of the amount or rate of assessment, when it is payable, and for what period of time. *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); 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”). In other words, in the case of special assessments, there is no 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: when the SID Notice was recorded, it was full of inaccurate estimates concerning the potential future assessment. For example, it did not state when the potential assessment would be levied, it significantly over-estimated the liability of the benefited properties, and—most significantly—it did not mention the due-on-sale provision which Eagle Mountain ultimately included in the final Assessment Ordinance. (R. 121-98; Ex. 4 attached.)

As Burke states, 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.<sup>12</sup> Vestin has no coverage under the exception.

#### **IV. THE TRIAL COURT CORRECTLY CONCLUDED THAT NON-DISCLOSURE OF THE SPECIAL IMPROVEMENT DISTRICT IS NOT AN “INCORRECTNESS” IN THE POLICIES’ ASSURANCE.**

Vestin next contends that “an ‘incorrectness’ in the policies exists because there is a ‘restriction’ caused by the existence of the Eagle Mountain SID that impairs the priority” of Vestin’s trust deeds. (Vestin Brief at 31.) Vestin’s argument fails for the same reason its other arguments do—namely, Vestin focuses on a preliminary step in the process leading to the post-policy Assessment Lien, not the Lien itself. The Assessment Lien is what caused Vestin’s alleged injury and is excluded from coverage. Vestin itself has not explained how the existence of the Special Improvement District negatively affected the priority of its liens on the effective date of the Policies. Vestin’s failure in this respect is understandable because there simply is no cognizable harm which Vestin suffered due to the existence of the Special Improvement District.

In making its argument, Vestin relies on paragraph 1 of the F.A. Form 31 Endorsement to Policy 3192, which states that First American “insures against loss which

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<sup>12</sup> 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.

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.” For this Endorsement to apply, Vestin must establish the existence of a “restriction” which affects the priority of Vestin’s liens on the property as of the effective dates of the Policies. Vestin has identified none.

Vestin argues that this endorsement applies because the mere existence of the Special Improvement District “impaired” the priority of Vestin’s trust deeds. As noted above, Vestin has not explained how the existence of the Special Improvement District negatively impacted the priority of Vestin’s liens on the Policy dates. Instead, it simply states that, “[w]ithout question, the Eagle Mountain SID will diminish and injure Vestin’s trust deeds.” (Vestin Brief at 31.) It was not the Special Improvement District which affected the priority of Vestin’s liens, it was the post-policy Assessment Lien. The Utah Municipal Improvement District Act provides:

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 . . . . 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) (emphasis added). Thus, it is the Assessment Lien which “subordinated” or “impaired” Vestin’s mortgages. This occurred post-policy, and therefore is not covered by insurance. The Special Improvement District was merely a preliminary step in the process that led to the levy of the Assessment. In and of itself, it did not impair or affect the priority of Vestin’s mortgages on the Policy dates.

Because the Special Improvement District had no negative effect on Vestin's mortgages when the Policies were issued, Vestin has failed to establish any "incorrectness" in First American's assurances under the Policies. As of the Policy dates, the Assessment was merely prospective, and it did not become a lien until months after the effective dates of the Policies and endorsement. Schedule B to the Policies accurately reports that the 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.)" As there were no levied assessments when Policy 3192 was issued, the Policy correctly reported that no such levied assessments existed. Vestin has not identified any "incorrectness" in the assurances of the Policy and therefore this endorsement provides Vestin no relief.

**V. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE SID NOTICE WAS NOT AN "OTHER MATTER" AFFECTING VESTIN'S MORTGAGES.**

Vestin also argues that the SID Notice is an "other matter" affecting the validity or priority of Vestin's liens. This argument fails like the others. As of the effective date of the Policies, the SID Notice was just that—a "notice"—and it had no effect on Vestin's mortgages.

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.) 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.

On the effective dates of the Policies, the SID Notice in no way affected Vestin's title in the property, nor did it affect the "validity" or "priority" of Vestin's liens. Vestin itself offers no explanation concerning how the SID Notice affected the validity or priority of its liens on the Policy dates. Moreover, as with its other claims, Vestin identifies no "loss or damage" it suffered on the Policy dates due to the existence of the SID Notice. For the same reasons the SID Notice does not constitute a defect, lien, or encumbrance in title or an exercise of police power, it also does not constitute an "other matter" affecting title.<sup>13</sup>

## **VI. THE DISTRICT COURT CORRECTLY CONCLUDED THAT THE POLICIES ARE UNAMBIGUOUS.**

On appeal, Vestin insists that the Policies are ambiguous because Vestin's construction of the "police power" exclusion cannot be harmonized with the three

<sup>13</sup> In a footnote, Vestin contends that the Policies "insure against loss as a result of the title to the Property being 'unmarketable.'" (Vestin Brief at 32 n.12.) Vestin argues that the SID Notice and the intended assessment, "even if not yet made, still renders the title unmarketable." (*Id.*) In support of this argument, Vestin quotes language from *Bel-Air* that refers to the assessment in that case as a "definite liability." (*Id.*) As discussed in Part II.A., above, the central rationale for denying coverage for the Special Assessment is that the Assessment *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 Notice nor the Special Improvement District "affected the title" on the Policy Dates, and (ii) as explained in Part I.B., above, 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. In *Edwards*, the buyer claimed that "inclusion in the [improvement] district and the consequent exposure to assessment[s] rendered his title unmarketable." 563 P.2d at 980. The court affirmed summary judgment against the buyer, holding that his title was not rendered unmarketable due to its location in the improvement district. *See id.* 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 Special Improvement District affected the value of Vestin's Property, that is irrelevant to its "marketability."

insuring provisions upon which Vestin relies in arguing for coverage. (Vestin Brief at 14.) Vestin contends that, because its construction of the “police power” exclusion does not mesh with its construction of the other three provisions, the trial court violated the rule of construction that “a contract must be construed to give meaning to all provisions of the agreement.” (*Id.* at 17.) Specifically, Vestin argues that “the exception to the exclusion for the exercise of police power would be rendered meaningless unless it is construed to provide coverage to Vestin through the various insuring clauses of the Policies.” (*Id.* at 18.) That Vestin cannot harmonize these four Policy provisions is no surprise given that Vestin’s construction of all four is incorrect. As discussed above, none of the four Policy provisions relied upon by Vestin affords it coverage. If these provisions are given their commonly accepted meanings, there is no disconnect between the meaning and effect of the exception to the police power exclusion or the three insuring provisions Vestin cites.

“An insurance policy is merely a contract between the insured and the insurer and is construed pursuant to the same rules applied to an ordinary contract.” Alf v. State Farm Fire & Cas., 850 P.2d 1272, 1274 (Utah 1993). “[I]f a policy is not ambiguous, no presumption in favor of the insured arises and the policy language is construed according to its usual and ordinary meaning.” *Id.*; accord First American, 966 P.2d at 834; see also Miller v. USAA Cas. Ins. Co., 2002 UT 6, ¶49, 44 P.3d 663, 676.<sup>14</sup> “[C]ourts must enforce an unambiguous contract and ‘may not rewrite an insurance contract . . . if the

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<sup>14</sup> 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 a sophisticated hard-money lender in the business of making multi-million dollar loans, just as it did in this case. There was no inequality of bargaining power between Vestin and First American and therefore the policies should not be construed against First American.



language is clear.” Utah Farm Bureau Ins. Co. v. Crook, 1999 UT 47, ¶6, 980 P.2d 685, 686 (citation omitted).

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, 850 P.2d at 1274-75. “However, 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. Here, Vestin attempts to create ambiguity in the Policies through its faulty and self-serving construction of the four provisions upon which it relies. Vestin’s erroneous interpretation is apparent from consideration of the four corners of the Policies, as argued in Parts I through V, above. There is no inconsistency among the various Policy provisions at issue because Vestin has no coverage under any of them.

In a vain effort to create ambiguity in the Policies, Vestin submitted the self-serving affidavits of Daniel Stubbs and Thomas Lea. The affidavits purport to offer evidence concerning (i) unrelated title insurance policies First American issued to unrelated third parties, (ii) customs and practices in the title industry, and (iii) customs and practices of First American itself. 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 Special Improvement District. Stubbs’ affidavit is irrelevant to First American’s coverage liability under the Policies and his opinions and speculation are inadmissible and irrelevant. Similarly, the content of a policy First American issued to Integrated Financial Associates—a third party having no involvement in this dispute—is irrelevant and inadmissible. Vestin offers these affidavits to vary or supplement the terms of the Policies. Because the Policies are unambiguous and fully integrated contracts, Vestin’s affidavits violate the parol evidence rule and should not be considered.

Because the Policies are unambiguous, in construing them the Court may look only to their four corners. As the Utah Supreme Court has explained, “an unambiguous contract must be interpreted from the actual words of the contract.” R&R Energies v. Mother Earth Indus., 936 P.2d 1068, 1077 (Utah 1997); accord Ron Case Roofing & Asphalt Paving v. Blomquist, 773 P.2d 1382, 1385 (Utah 1989). The parol evidence rule requires courts “in the absence of fraud or other invalidating causes, to exclude evidence of prior or contemporaneous conversations, representations, or statements offered for the purpose of varying or adding to the terms of an integrated contract.” Hall v. Process Instruments & Control, Inc., 890 P.2d 1024, 1026 (Utah 1995). Utah courts have explained that:

[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). A court’s reliance on inadmissible parol evidence is reversible error. See id.

There are two steps to applying the parol evidence rule: “First, the court must determine whether the agreement is integrated. [Second, if] the court finds the agreement is integrated, then parol evidence may be admitted only if the court makes a subsequent determination that the language of the agreement is ambiguous.” Hall, 890 P.2d at 1027. “An agreement is integrated where the parties thereto adopt a writing or writings as the final and complete expression of the agreement.” Eie v. St Benedict’s Hosp., 638 P.2d 1190, 1194 (Utah 1981). “An apparently complete and certain agreement which the parties have reduced to writing will be conclusively presumed to contain the whole agreement.” Hall, 890 P.2d at 1026. Here, both Policies contain integration clauses that state: “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.” (R.

82, 102; Exs. 1 and 2, attached.) By their own terms, the Policies are “complete and certain agreements” and Vestin has not established the contrary.

Because the Policies are final and fully integrated, parol evidence is admissible only if the Court first finds that they are somehow ambiguous. See Hall, 890 P.2d at 1026-27. As noted above, contractual ambiguity is a question of law and Vestin has failed to identify any actual ambiguity in the policies. That is because the language of the Policies is clear, and they offer Vestin no coverage. The parol evidence rule precludes this Court’s consideration of the terms of First American’s policy with a third party and Vestin’s self-serving views of customs and practices in the title insurance industry.<sup>15</sup>

### 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 which exist on or before the effective date of the insurance. Despite Vestin’s efforts to cloud the issues and confuse the source of its injury, the trial court correctly concluded that the Policies afford Vestin no coverage, and that Vestin has failed to state a claim upon which

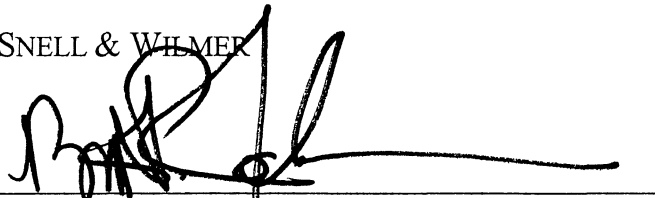
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<sup>15</sup> By submitting and purporting to rely upon irrelevant affidavits and inadmissible extrinsic evidence, Vestin tried to convert First American’s Motion to Dismiss into one for summary judgment, thereby creating “disputed issues of material fact.” Even if the extrinsic evidence offered by Vestin were relevant or material—which it is not—Vestin has failed to identify any disputed issues of material fact. Rule 4-501(2)(B) of the Utah Rules of Judicial Administration requires that Vestin’s opposition memorandum “contain a verbatim restatement of each of the movant’s statement of facts as to which the party contends a genuine issue exists followed by a concise statement of material facts which support the party’s contention.” As Vestin did not comply with Rule 4-501(2)(B) or specifically identify any material facts in dispute, its request to treat First American’s motion as one for summary judgment appropriately was disregarded. Cf. Fennell v. Green, 2003 UT App 291, ¶¶ 7-9, 77 P.3d 339 (discussing purpose of Rule 4-501(2)(B) and consequences of failure to comply). As to the affidavits and unrelated title insurance policy referred to on pages 11-12 and 24-26 of Vestin’s Brief, this material should not be considered as an evidentiary matter. The affidavits contain irrelevant and self-serving statements and legal conclusions by affiants purporting to opine as experts about customs and practices in the title industry. As an evidentiary matter, the affiants’ statements lack proper foundation and reliability, and as argued more fully above, are barred by the parol evidence rule.

relief can be granted. First American respectfully requests that this Court affirm the decision of the trial court.

DATED this 5th day of May, 2004.

SNELL & WILMER



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Alan L. Sullivan

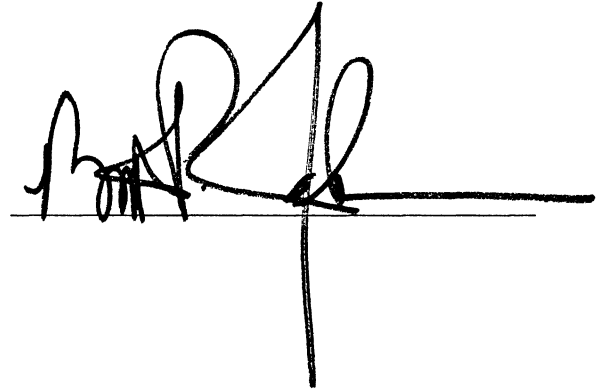
Brett P. Johnson

*Attorneys for First American Title Insurance  
Company*

## CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2004, 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 "John A. Snow", is written over a horizontal line. A vertical line extends downwards from the end of the signature.

## **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”)**

Tab 1

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



THIS COPIY MUST BE  
THE 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.

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 *Parker S. Kennedy* PRESIDENT

ATTEST *Mark R. Arnesen*

T  
W 3470452



## EXCLUSIONS FROM COVERAGE

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

- a) 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.
- 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.

rights 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 binding on the rights of a purchaser for value without knowledge.

defects, 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; or 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 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 a subsequent owner of the indebtedness, to comply with applicable local 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 act 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.

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

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

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

and: the land described or referred to in Schedule A, and is 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 in adjoining streets, roads, avenues, alleys, lanes, ways or anything herein shall modify or limit the extent to which a title is 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 time for the purpose of imparting constructive notice of matters of real 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 requested documents, or

### 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, in which case proof of loss or destruction shall be required.

## CONTINUATION OF INSURANCE.

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

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

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

(i) The amount of insurance stated in Schedule A,

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

## NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of litigation as set forth in Section 4(a) below, (ii) in case knowledge of the insured of any claim of title or interest which is adverse to 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 (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected or repudiated. If prompt notice shall not be given to the Company, then the insured shall terminate with regard to matters for which prompt notice is required, provided, that failure to notify 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.

## DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(i) Upon written request by the insured and subject to the options set forth in Section 6 of these Conditions and Stipulations, the Company, at its cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim against the insured or the lien of the insured mortgage, as insured, 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 be required hereunder, and shall not thereby concede liability or waive any rights of the insured. If the Company shall exercise its rights under this policy, it shall do so diligently.

(j) Whenever the Company shall have brought an action or defended a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its discretion, to appeal from any adverse judgment or order.

(k) In all cases where this policy permits or requires the Company to defend or provide for the defense of any action or proceeding, the Company shall secure to the insured the right to prosecute or defend the action or proceeding, and all appeals therein, and permit the insured to use, at its option, the name of the insured for this purpose or to request the Company to request the insured at the Company's

## following options

(a) To Pay or Tender Payment of the Amount of Insurance or 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 therefor.

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 herein 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 in effect. 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 the insured mortgage or its enforceability is not affected, may release, substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the principal or interest from the lien of the insured mortgage, or release any collateral security from 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 title to the estate or interest or the priority or enforceability of the lien of the 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, or be 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 the 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, 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 the 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, service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters where 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 where the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated 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 action 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 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 to include that provision and all other provisions shall remain in full force and effect.

## 16. NOTICES, WHERE SENT.

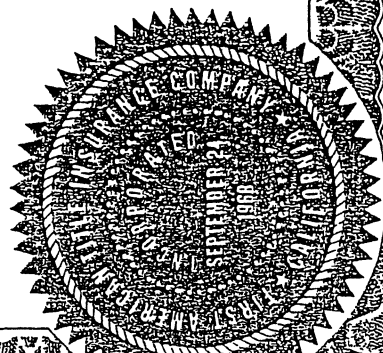
All notices required to be given to the Company and any state or local government shall be in writing and shall include the name and address of the insured.

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 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

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 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

## 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

*Anna S.*

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: *W. A. Self*  
Authorized Signatory

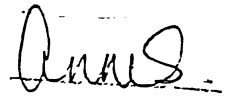
The Ranches L.C., A Utah Limited Liability Company  
CLTA Form 104 - Assignment of Trust Deed

## 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: \_\_\_\_\_

*[Signature]*  
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 MJT 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

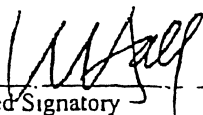
- (A) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (B) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (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

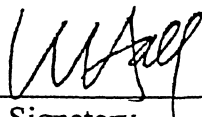
- (A) The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
- (B) The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
- (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.

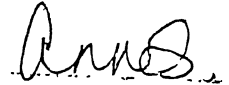
FIRST AMERICAN TITLE INSURANCE COMPANY

By: \_\_\_\_\_

Authorized Signatory



ENDORSEMENT



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:

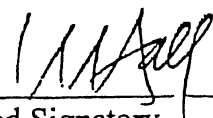
Ernest Paul Coker and Helen Louise Coker, Trustees of the Ernest Paul Coker and Helen Louise Coker Inter-vivos Trust dated 6/7/74 as to an undivided 25,000/1,965,000th interest and Joan Ryba, an unmarried woman as to an undivided 50,000/1,965,000th interest and Erika G. Visbeek, Trustee of the Visbeek 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 as 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

8-10-200

**ENDORSEMENT**

*AnnueS*

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**

*10-4-2000*

By: \_\_\_\_\_

*W. A. Gelf*  
Authorized Signatory



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

## ENDORSEMENT

*Annos*

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.

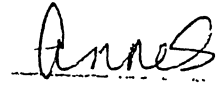
FIRST AMERICAN TITLE INSURANCE COMPANY

*10-1-2000*

By: \_\_\_\_\_

*W. A. Gelf*  
Authorized Signatory

## ENDORSEMENT



POLICY NO.: 2701-A-49

JACKET NO.: CW3470452

FILE NO.: 7603

ISSUED BY

### FIRST AMERICAN TITLE INSURANCE COMPANY

**CHARGE: \$50.00**

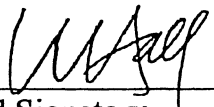
The Company hereby insures VESTIN MORTGAGE, INC., A NEVADA CORPORATION, AS TO AN UNDIVIDED 25,844.37/1,965,000TH INTEREST against loss or damage which such insured shall sustain by reason of any of the following:

- (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 NUMBER 1111 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

ORT  
CRATTENDEN

MILITARY

RESERVATION

BOUNDARY

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

40.11 ACRES

THOMAS B. HORNE  
29577-86  
2337/11

58-040-0096-121

THOMAS B. HORNE

29577-86 2337/11

1,857,654.30'  
734,026.34'

SE 1/4

1,861,390.40'  
734,007.58'

1,861,417.40'  
734,007.58'

NE

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

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:

- (a) 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.
- (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.

Rights 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 binding on the rights of a purchaser for value without knowledge.

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

- (a) created, suffered, assumed or agreed to by the insured claimant;
- (b) 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;
- (c) resulting in no loss or damage to the insured claimant;
- (d) 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 the insured claimant had paid value for the insured mortgage.

4. Unenforceability of the lien of the insured mortgage because of the invalidity or failure of the insured at Date of Policy, or the inability or failure of 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 condition thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection law 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 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 lien creditor.

## CONDITIONS AND STIPULATIONS

### DEFINITIONS OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A. The term "insured" also includes:

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

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which give constructive notice of matters affecting the land.

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

(e) "mortgage": mortgage, deed of trust, trust deed, or other instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters affecting real property to purchasers for value and without knowledge, except to the extent that such records are excluded from coverage, "public

records" are those records which are required to be recorded in the public records 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

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

(a) All payments under this policy, except payments for medical 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 these Conditions and Stipulations shall not reduce pro tanto the amount of 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 then be increased by accruing interest and advances made to protect the insured mortgage and secured thereby, with interest the amount 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 of 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 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 which case proof of loss or destruction shall be furnished to the

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

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

(c) **Amount of Insurance.** The amount of insurance after the termination or after the conveyance shall in neither event exceed the least

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

#### NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The 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 herein described (ii) in case knowledge of the insured of any claim of title or interest which might cause loss or damage for which the insured may be liable by virtue of this policy, or (iii) if title to the estate or interest in the land or the insured mortgage, as insured, is rejected or encumbered. If prompt notice shall not be given to the Company then the insured's liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required, provided that failure to notify 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.

#### DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

- a) Upon written request by the insured and subject to the options set forth in Section 6 of these Conditions and Stipulations, the Company, at its cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim to the title or interest as insured but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause to represent the insured as to those stated causes of action and to be liable for and will not pay the fees of any other counsel. The insured will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured by this policy.
- b) The Company shall have the right at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or the lien of the insured mortgage, as insured, or to prevent loss or damage to the insured. The Company may take any other action under the terms of this policy, whether or not it shall be hereunder, and shall not thereby concede liability or waive any part of this policy. If the Company shall exercise its rights under this policy, it shall do so diligently.
- c) Whenever the Company shall have brought an action or instituted a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right in its discretion, to appeal from any adverse judgment or order.
- d) In all cases where this policy permits or requires the Company to defend or provide for the defense of any action or proceeding, the Company shall secure to the Company the right to so prosecute or provide for the defense in the action or proceeding and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose.

#### 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 therefor.

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 herein 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

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against the 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 its 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 the 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 principal 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 the 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, 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 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 action 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 or 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

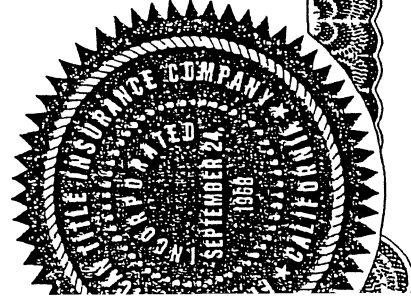
All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the name

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.: 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 Yolan 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.

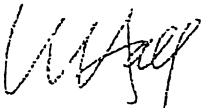
Wherever in this endorsement any or all the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or restrictions contained in any lease.

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**

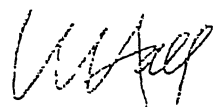
**CHARGE: \$50.00**

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

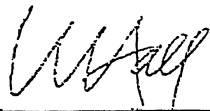
CHARGE: \$228.00

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 Yolan 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

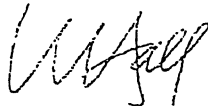
against loss or damage which such insured shall sustain by reason of any of the following

- (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

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**

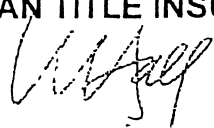
The Company hereby insures:

DM Mortgage Investors, LLC, a Nevada Limited Liability Company as to an undivided 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**

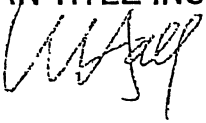
**CHARGE: \$00.00**

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**

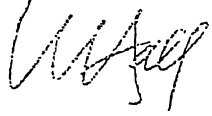
The Company hereby insures:

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

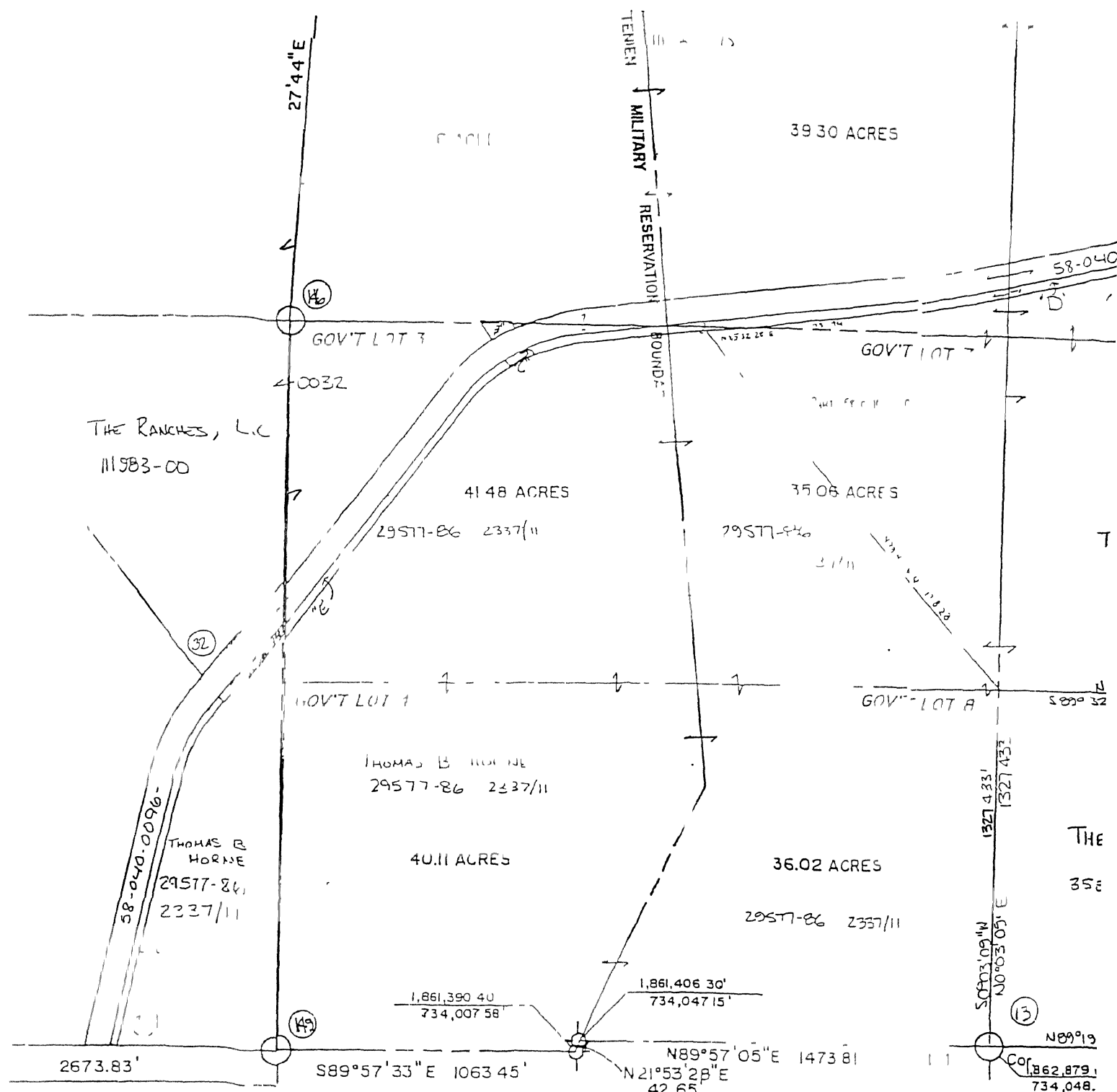
- 8 The failure of the beneficial interest under the mortgage referred to in paragraph 4 of Schedule A to have been transferred to such insured by a valid assignment or assignments;
9. The existence of any subsisting tax or assessment lien which is prior to the insured mortgage except: **NONE**
10. The 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 (SF 3)

NOTES. "A" (112) THOMAS B THORNE 29377-86  
"B" (33) THE RANCHES, LC 32339-00  
"C" (40) THE RANCHES, LC. 32339-00  
"D" (47) THE RANCHES, LC. 111983-99

Tab 3



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.

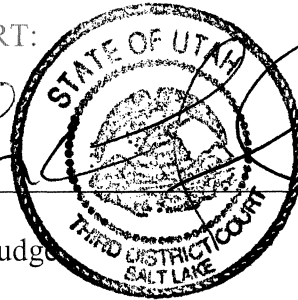
2. All claims for relief alleged in Vestin's complaint are hereby dismissed with prejudice.

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

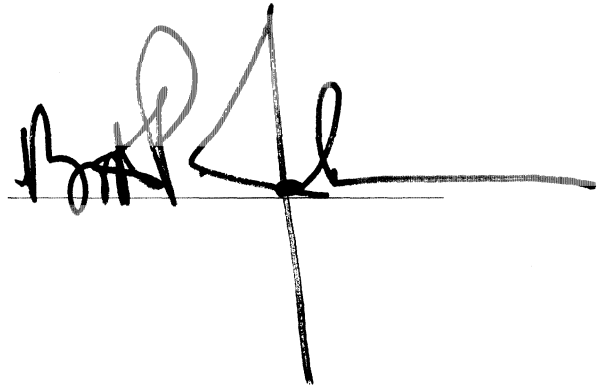
John A. Snow  
Cassie Wray  
50 South Main Street, Suite 1600  
Post Office Box 45340  
Salt Lake City, Utah 84145-0340

---

CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> 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

A handwritten signature in black ink, appearing to be "Mark", is written over a horizontal line. A vertical line extends downwards from the signature.

Tab 4

## NOTICE OF INTENTION

ENT 61362:2000 PG 1 of 45  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2000 Aug 04 4:38 pm FEE 144.00 BY JW  
RECORDED FOR TOWN OF EAGLE MOUNTAIN

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.

ENT 61362:2000 PG 5 of 45

**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

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;

435 654 6622; Jun-27-r 0:00AM;  
801 224 5230 -> Epic Engineer ; Page 3

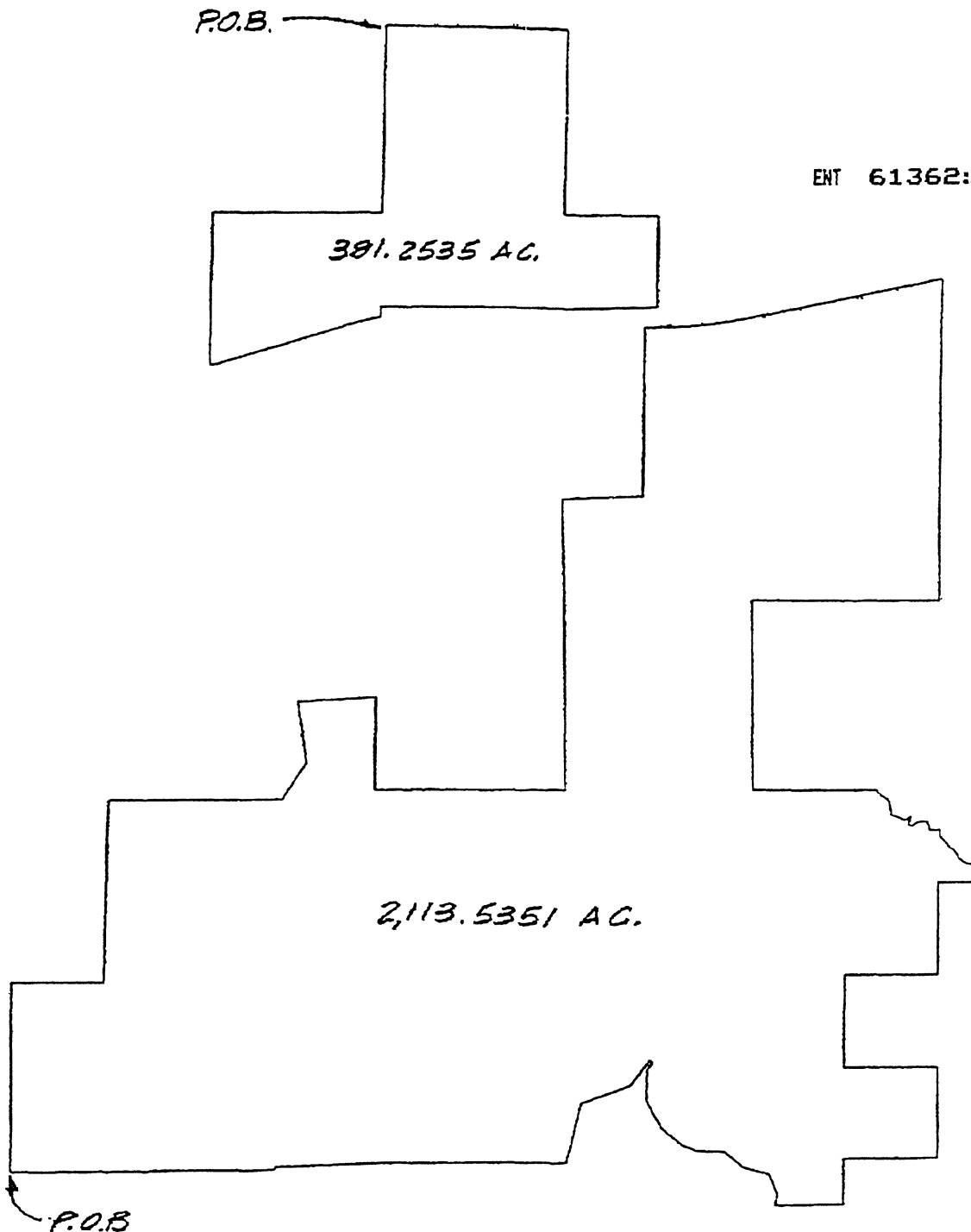
Page 5

Sent By: FJ Clark & Associates;

801 224 5230;

Jun-23-00 9:00PM;

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.

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.

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:

<del>Paul Bond</del>	Mayor <del>Absent</del>
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:

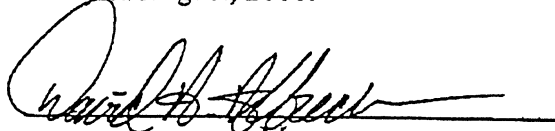
David A. Albrecht	Mayor
	Pro Tem
Greg Kehl	Councilmember
Brigham S. Morgan	Councilmember
Bert Ankrom	Councilmember

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

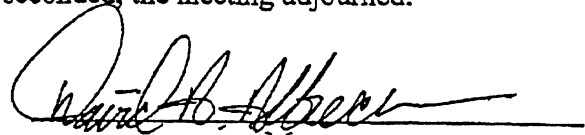
ATTEST:

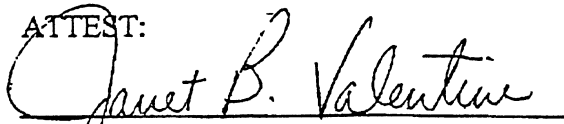
  
Town Clerk

(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 )

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.

Janet B. Valentine  
 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.



  
Town Clerk

EXHIBIT "A"

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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 boring 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 28<sup>TH</sup> 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  $00^{\circ} 50' 36''$  East 9.00 feet; thence North  $16^{\circ} 51' 19''$  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  $49^{\circ} 30' 07''$  and a chord bearing North  $66^{\circ} 05' 33''$  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  $56^{\circ} 01' 21''$  and a chord bearing North  $69^{\circ} 21' 10''$  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  $53^{\circ} 07' 48''$  and a chord bearing North  $70^{\circ} 47' 56''$  East 13.42 feet); thence North  $44^{\circ} 14' 02''$  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  $53^{\circ} 07' 48''$  and a chord bearing North  $17^{\circ} 40' 08''$  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  $54^{\circ} 31' 27''$  and a chord bearing North  $18^{\circ} 21' 57''$  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  $53^{\circ} 07' 48''$  and a chord bearing North  $19^{\circ} 03' 46''$  East 13.42 feet); thence North  $07^{\circ} 30' 08''$  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  $43^{\circ} 22' 15''$  and a chord bearing North  $29^{\circ} 11' 16''$  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  $36^{\circ} 00' 52''$  and a chord bearing North  $32^{\circ} 51' 57''$  West 95.83 feet); thence North  $66^{\circ} 10' 32''$  West 143.81 feet; thence West 192.66 feet; thence North  $28^{\circ} 51' 45''$  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  $224^{\circ} 53' 08''$  and a chord bearing North  $33^{\circ} 05' 44''$  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  $61^{\circ} 43' 35''$  and a chord bearing South  $65^{\circ} 19' 29''$  East 15.39 feet); thence North  $83^{\circ} 38' 43''$  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  $17^{\circ} 12' 19''$  and a chord bearing South  $87^{\circ} 35' 07''$  East 52.35 feet); thence South  $78^{\circ} 58' 58''$  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  $11^{\circ} 11' 40''$  and a chord bearing South  $84^{\circ} 34' 48''$  East 91.68 feet); thence North  $89^{\circ} 49' 22''$  East 258.79 feet; thence North  $77^{\circ} 24' 55''$  East 46.72 feet; thence South  $00^{\circ} 10' 38''$  East 526.92 feet; thence North  $89^{\circ} 09' 24''$  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  $30^{\circ} 02' 39''$  and a chord bearing South  $59^{\circ} 15' 22''$  West 7.78 feet); thence South  $44^{\circ} 14' 02''$  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  $53^{\circ} 07' 48''$  and a chord bearing South  $17^{\circ} 40' 08''$  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  $25^{\circ} 29' 47''$  and a chord bearing South  $03^{\circ} 51' 07''$  West 26.48 feet); thence North  $89^{\circ} 09' 24''$  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  $89^{\circ} 02' 40''$  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 GS  
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~~ <sup>7:00</sup> 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  $0^{\circ} 10' 38''$  West 123.6 feet; thence South  $89^{\circ} 09' 24''$  East 1214.97 feet; thence South 125.96 feet; thence North  $89^{\circ} 02' 44''$  West 1214.77 feet to the point of beginning. (58:034:0128)

Parcel 16:

Beginning at a point which is North  $00^{\circ} 18' 58''$  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  $00^{\circ} 18' 58''$  West 1208.65 feet along the section line; thence South  $89^{\circ} 10' 00''$  East 1590.63 feet; thence South  $00^{\circ} 10' 38''$  1208.87 feet; thence North  $89^{\circ} 09' 24''$  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  $89^{\circ} 03' 59''$  East 847.96 feet; thence South  $0^{\circ} 10' 39''$  East 28.24 feet; thence South  $44^{\circ} 52' 22''$  West 91.59 feet; thence along the arc of a 162.45 foot radius curve to the right (chord bears South  $85^{\circ} 15' 55''$  West 210.54 feet); thence along the arc of a 397 foot radius curve to the left (chord bears South  $16^{\circ} 02' 12''$  East 99.74 feet); thence South  $23^{\circ} 15' 09''$  East 75.23 feet; thence along the arc of a 2103 foot radius curve to the right (chord bears South  $14^{\circ} 48' 24''$  East 617.76 feet); thence North  $43^{\circ} 01' 03''$  East 90.47 feet; thence South  $0^{\circ} 10' 39''$  East 536.73 feet; thence North  $89^{\circ} 10' 37''$  West 1169.48 feet; thence North  $25^{\circ} 07' 15''$  East 180.84 feet; thence North  $10^{\circ} 30' 31''$  East 224.84 feet; thence North  $5^{\circ} 59' 09''$  West 236.25 feet; thence North  $12^{\circ} 40' 46''$  West 466.96 feet; thence North  $12^{\circ} 46' 01''$  East 92.2 feet; thence East 150 feet; thence North  $41^{\circ} 45' 41''$  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  $82^{\circ} 21' 55''$  East 1143.420 feet; thence North  $0^{\circ} 27' 01''$  East 185.46 feet; thence South  $88^{\circ} 19' 10''$  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

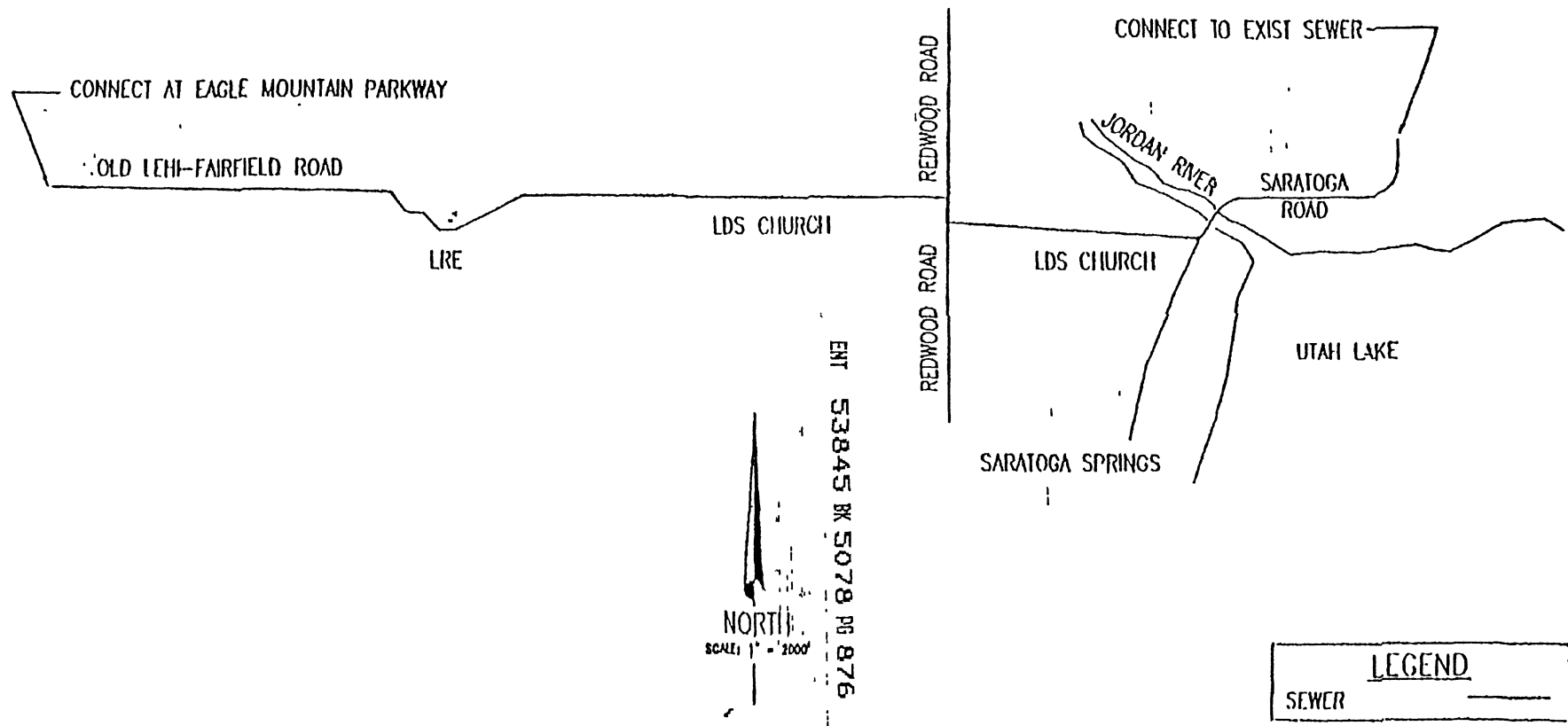
Property Owner	Parcel Number	Land Serial Number	Acreage (By Parcel #)	Acreage (By Property Owner)	Developable Acreage (By Property Owner)
The Limited Partnership Of Glenn E. Smith	1	58:033:0082	18.83		
	2	58:033:0079	32.16		
	3	58:033:0083	1.92		
	4	58:033:0084	1.7		
	5	58:033:0080	47.49		
	6	58:033:0081	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		
				594.58	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	58:040:0083 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	80.98		
	37	46:491:0301-0331 (Less and excepting 0313, 0314, 0316, 0318, 0319)	38.69		
	36	46:490.0201-0231 (Less and excepting 0221 and 0227)	51.22		
	30	58:033:0078	17.03		
				249.48	11
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	
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	1,11

EXHIBIT "B"

ACKNOWLEDGMENTS, WAIVERS AND CONSENTS

# EXHIBIT "B"



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

SEWER IMPROVEMENT

SCALE 1" = 2000' FILE 05 MAY 1998 DATE 05 MAY 1998



EXHIBIT "C"

## PROPERTY DESCRIPTION

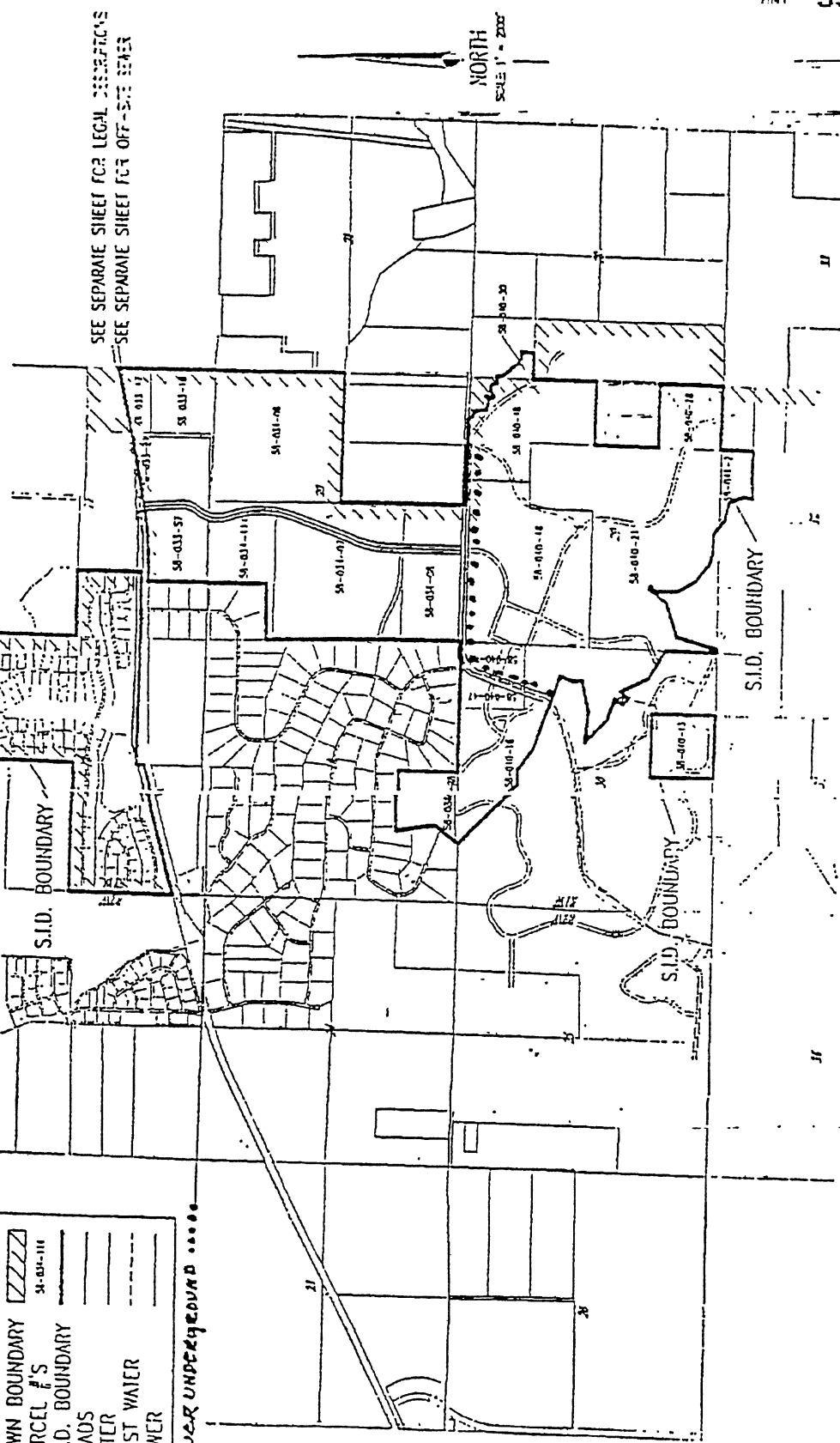
Beginning at a point South 89° 22' 34" East 1267.250 feet from the West quarter corner of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89° 22' 34" East 1380.75 feet; thence North 0° 57' 33" East 1329.82 feet; thence South 89° 12' 25" East 1323.75 feet; thence 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

LEGEND	
TOWN BOUNDARY	ZZZZ
PARCEL #'S	54-031-111
S.I.D. BOUNDARY	---
ROADS	---
WATER	---
EXIST WATER	---
SEWER	---

Power underground .....



SEE SEPARATE SHEET FOR LEGAL DESCRIPTIONS  
SEE SEPARATE SHEET FOR OFF-SITE SEWER

NORTH  
SCALE 1" = 200'

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

ROADS, WATER, SEWER, GAS, POWER, TELEPHONE	SCALE 1" = 200'	DATE: 21 JUN 1998	BY: [Signature]	REV: [Signature]
--	--------------------	-------------------	-----------------	------------------

CI

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:

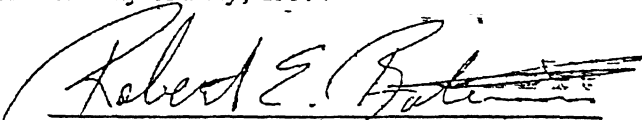
Those voting AYE:	
Robert E. Bateman, II	Mayor
Diane D. Bradshaw	Councilmember
Daniel A. Valentine	Councilmember

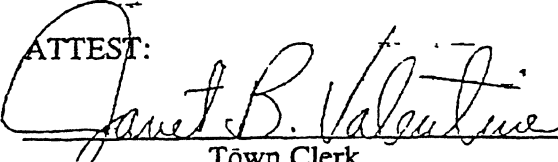
Those voting NAY:  
NONE

ABSTAINED: D. Cyril Watt

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

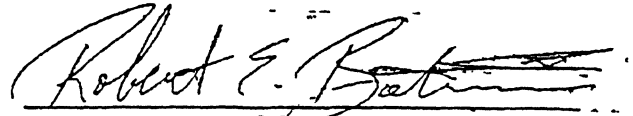
ADOPTED AND APPROVED this 4th day of May, 1999.

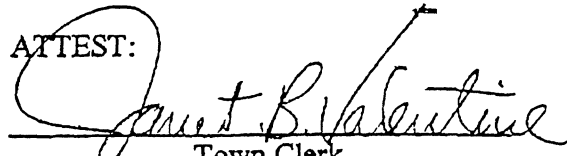
  
Mayor

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 5<sup>th</sup> day of May, 1999.

  
 Town Clerk



EXHIBIT "A"

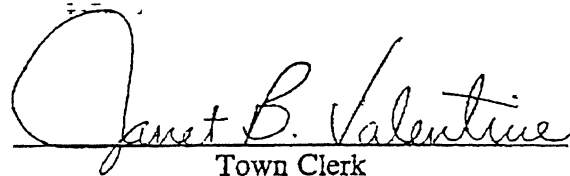
## CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

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 5<sup>TH</sup> 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 Gam 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/Jenniter 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.

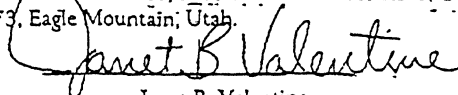
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THE PUBLIC IS INVITED TO ATTEND ALL OPEN TOWN COUNCIL MEETINGS

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 30<sup>TH</sup> 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

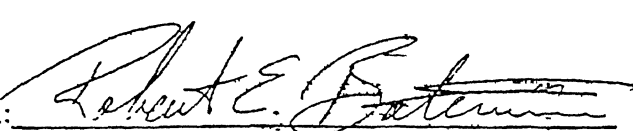
AGENDA  
EAGLE MOUNTAIN TOWN COUNCIL MEETING  
Tuesday, May 4, 1999 at 7:00 p.m.  
Eagle Mountain Community Center, 1668 East Heritage Drive  
Eagle Mountain, Utah 84043

EHT 53845 BK 5078 PG 887

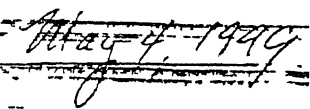
Page 2 of 2  
May 4, 1999

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

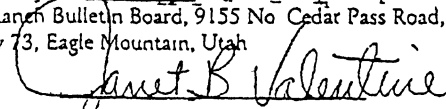
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THE PUBLIC IS INVITED TO ATTEND ALL OPEN TOWN COUNCIL MEETINGS

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CERTIFICATE OF POSTING

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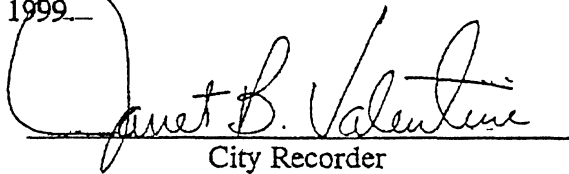
  
Janet B. Valentine  
Town Clerk

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 7<sup>TH</sup> 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 7<sup>TH</sup> 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.

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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.

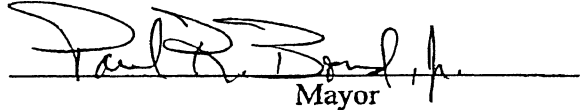
Section 15. Notice to Property Owners. The Treasurer is hereby authorized and directed to give notice of assessment by mail to the property owners in the District. Said notice shall, among other things, state the amount of the assessment and the terms of payment. A copy of the form of notice of assessment 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 25<sup>TH</sup> day of April, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Town this 25<sup>TH</sup> 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

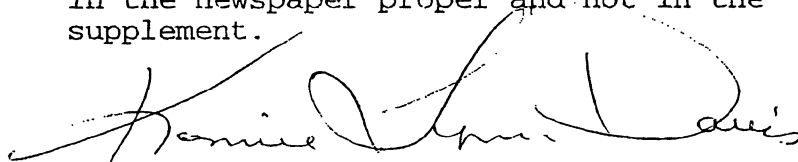
## The Daily Herald

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

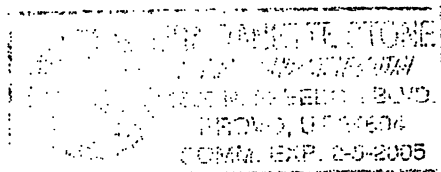


EXHIBIT "A"

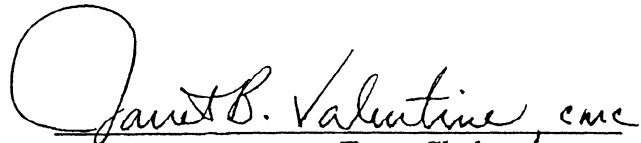
CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

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 25<sup>TH</sup> day of April, 2001.

  
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 24<sup>TH</sup> 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\*

<sup>(1)</sup> First year that debt service will be paid from assessments. Interest to September 1, 2004, is funded from Bond proceeds.

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\* 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**

<u>Date</u>	<u>Principal</u>	<u>Interest on Bond Debt Service</u>	<u>Annual Bond Debt Service</u>	<u>Administration Component Interest</u>	<u>Combined Total Annual SID Payments</u>
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

<sup>(1)</sup> 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.