

SECOND DRAFT

REDLINED TO 07/06/18 VERSION AFTER DRC ACCEPTED

08/14/18

**DEVELOPMENT AGREEMENT
FOR GENEVA REZONING**

September __, 2018

TABLE OF CONTENTS
(to be created later)

WHEN RECORDED, RETURN TO:

BRUCE R. BAIRD
Bruce R. Baird, PPLC
2150 South 1300 East, Suite 500
Salt Lake City, UT 84106

**DEVELOPMENT AGREEMENT
FOR
GENEVA REZONING**

THIS Development Agreement is made and entered as of the ___ day of September, 2018, by and between Draper City, a Utah municipality and Geneva Rock Products, Inc., a Utah corporation.

RECITALS

A. The capitalized terms used in this Development Agreement and in these Recitals are defined in Section 1.2, below.

B. Developer owns and is developing the Property.

C. Developer and the City desire that the Property be developed in a unified and consistent fashion pursuant to the Master Plan.

D. The Parties acknowledge that development of the Property pursuant to this Development Agreement will result in significant planning and economic benefits to the City and its residents by, among other things requiring orderly development of the Property, preserving critical open space and increasing property tax and other revenues to the City based on the work to be performed on the Property as a part of the Project.

E. The Parties desire to enter into this Development Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Development Agreement and the rights and responsibilities of the City to allow and regulate such development

pursuant to the requirements of this Development Agreement.

F. The Parties understand and intend that this Development Agreement is a “development agreement” within the meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-101 (2018) *et seq.*

G. This Development Agreement conforms with the intent of the City’s General Plan and the Zoning.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1. **Incorporation.** The foregoing Recitals and Exhibits “A” - “__” are hereby incorporated into this Development Agreement.

1.2. **Definitions.** As used in this Development Agreement, the words and phrases specified below shall have the following meanings:

1.2.1. **Access Road** means a road accessing the Steep Mountain Conservation Area as shown on Exhibit “B” and more fully specified in Section 6.

1.2.2. **Act** means the Land Use, Development, and Management Act, Utah Code Ann. § 10-9a-101 (2018), *et seq.*

1.2.3. **Administrator** means the person designated by the City as the Administrator of this Development Agreement.

1.2.4. **Applicant** means a person or entity submitting a Development Application.

1.2.5. **Buildout** means the excavation of the Project to the elevations shown on Exhibit B or a prior Notice from Developer to the City that Developer considers the excavation work on the Project and any required reclamation to be complete.

1.2.6. **City** means Draper City, a Utah municipality.

1.2.7. **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology, geology, geotechnology or drainage for reviewing certain aspects of the development of the Project.

1.2.8. **City's Future Laws** means the ordinances, policies, standards, and procedures which may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and which may or may not be applicable to the Development Application depending upon the provisions of this Development Agreement.

1.2.9. **City's Vested Laws** means the ordinances, policies, standards and procedures of the City in effect as of the date of this Development Agreement, a digital copy of which is attached as Exhibit "D".

1.2.10. **Conservation Easement** means a conservation easement over the Steep Mountain Conservation Area in a form as specified in Exhibit "C".

1.2.11. **Council** means the elected City Council of the City.

1.2.12. **Default** means a material breach of this Development Agreement as specified herein.

1.2.13. **Denied** means a formal denial issued by the final decision-making body of the City for a particular type of Development Application but does not include review comments or "redlines" by City staff.

1.2.14. **Development** means the excavation and processing of materials on a portion of the Property and all other Intended Uses pursuant to an approved Development Application.

1.2.15. **Development Agreement** means this Development Agreement including all of its Exhibits.

1.2.16. **Development Application** means an application to the City that may be required by the City's Vested Laws for Development of a portion of the Project.

1.2.17. **Developer** means Geneva Rock Products, Inc., and its assignees or transferees as permitted by this Development Agreement.

1.2.18. **Intended Uses** means those uses allowed on the Property pursuant to the Zoning, the City's Vested Laws and this Development Agreement including, but not limited to, the excavation, processing and other uses.

1.2.19. **Master Plan** means the conceptual layout for the future uses and development of the Project as illustrated in Exhibit "B".

1.2.20. **Notice** means any notice to or from any Party to this Development Agreement that is either required or permitted to be given to another party.

1.2.21. **Outsourc[e][ing]** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application as is more fully set out in this Development Agreement.

1.2.22. **Party/Parties** means, in the singular, Developer or the City; in the plural Developer and the City.

1.2.23. **Project** means the use by Developer of the Property, except for the Conservation Easement area, for any purposes allowed by the Zoning.

1.2.24. **Property** means the real property owned by and to be developed by Developer more fully described in Exhibit "A".

1.2.25. **Steep Mountain Conservation Area** means an area of approximately 78.39 acres as shown on Exhibit "B" to be subject to the Conservation Easement.

1.2.26. **Zoning** means the M-2 for the Property adopted by the City on September __, 2018.

1.2.27. **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that was in effect as of the date of this Development Agreement as a part of the City's Vested Laws.

2. Development of the Project.

2.1. Compliance with the Master Plan and this Development Agreement.

Development of the Project shall be in accordance with the City's Vested Laws, the City's Future Laws (to the extent that these are applicable as otherwise specified in this Development Agreement), the Master Plan and this Development Agreement.

Development shall also comply with all applicable Federal, State, County or other regulatory requirements and the conditions of any permits required by such other governmental agencies.

3. Vested Rights.

3.1. **Vested Rights Granted by Approval of this Development Agreement.** To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this Development Agreement grants Developer all rights to

develop the Project in fulfillment of this Development Agreement, the City's Vested Laws, the Zoning and the Master Plan, including the Intended Uses, except as specifically provided herein. The Parties specifically intend that this Development Agreement grant to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2018).

3.2. Exceptions. Section 3.1 is subject to only the following exceptions:

3.2.1. Developer Agreement. City's Future Laws that Developer agrees in writing to the application thereof to the Project;

3.2.2. State and Federal Compliance. City's Future Laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;

3.2.3. Codes. Any City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

3.2.4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated; or,

3.2.5. Fees. Changes to the amounts of fees for the processing of Development

Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.

3.2.6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City and which meet all requirements of the U. S. Constitution, Utah Constitution, law and applicable statutes, including but not limited to Utah Code Ann. Section 11-36a-101 (2018) *et seq.*

3.2.7. Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(i) (2018).

4. Effectiveness/Term of Agreement.

4.1. **Condition Precedent to Effectiveness.** This Development Agreement, including, but not limited to the dedication the Conservation Easement, shall not become effective until thirty-five days have expired after the latter of:

4.1.1. The execution of the Development Agreement;

4.1.2. The effectiveness of the modification of the M2 Zoning District to make "Mineral Extraction" and "Basic Industries" permitted uses;

4.1.3. The effectiveness of the modified M 2 Zoning for the Steep Mountain Conservation Area; and

4.1.4. The issuance by the City of any other permit required by the City to allow Developer to conduct the excavation activities contemplated by this Development Agreement.

4.2. **Term.** The term of this Development Agreement shall be until Buildout.

5. **Conservation Easement.**

5.1. **Dedication.** Within one hundred twenty (120) days of the effectiveness of the Development Agreement Developer shall dedicate the Conservation Easement. The City shall, in perpetuity, prohibit residential, commercial, retail, office or industrial uses on the property subject to the Conservation Easement

6. **Access Road.**

6.1. **Construction.** Developer shall construct the Access Road consisting of a gated dirt road along the western and southern slopes of Steep Mountain as shown on Exhibit “B” along with a parking area at the Access Road’s eastern terminus to allow for recreation access by four-wheel drive vehicle onto the Steep Mountain Conservation Area.

6.2. **Retained Ownership.** The Access Road shall be owned and maintained by Developer.

6.3. **Temporary Closures.** Developer may temporarily, and only for such time as is reasonably necessary, close, lock or otherwise secure the Access Road as needed with reasonable advance Notice to the City for maintenance, fire safety, dust suppression activities, other similar reasons and to keep the Access Road from becoming dedicated to the public by virtue of usage pursuant to Section 72-5-104, Utah Code Ann. Except in case of an emergency Developer shall coordinate such closures with the City and shall give the City at least seventy-two (72) hours Notice of any such closure. If Developer determines that it needs to close the Access Road for an emergency then Developer shall promptly give Notice to the City of such an emergency closure and coordinate the closure and re-opening with the City.

7. Processing of Development Applications.

7.1. Outsourcing of Processing of Development Applications. Within fifteen (15) business days after receipt of a Development Application and upon the request of Applicant the City and Applicant will confer to determine whether the City desires to Outsource the review of any aspect of the Development Application to ensure that it is processed on a timely basis. If the City determines that Outsourcing is necessary to ensure the timely processing of the Development Application then the City shall promptly estimate the reasonably anticipated differential cost of Outsourcing in the manner selected by Applicant in good faith consultation with the Applicant (either overtime to City employees or the hiring of a City Consultant) and the time involved in any City processes for selecting a City Consultant such as an “RFQ” process. If Applicant notifies the City that it desires to proceed with the Outsourcing based on the City’s estimate of costs and time then Applicant shall deposit in advance with the City the estimated differential cost and the City shall then promptly proceed with having the work Outsourced. Upon completion of the Outsourcing services and the provision by the City of an invoice (with such reasonable supporting documentation as may be requested by Applicant) for the actual differential cost (whether by way of paying a City Consultant or paying overtime to City employees) of Outsourcing, Applicant shall, within ten (10) business days pay or receive credit (as the case may be) for any difference between the estimated differential cost deposited for the Outsourcing and the actual cost differential.

7.2. Acceptance of Certifications Required for Development Applications. Any Development Application requiring the signature, endorsement, or certification and/or stamping by a person holding a license or professional certification required by the State

of Utah in a particular discipline shall be so signed, endorsed, certified or stamped signifying that the contents of the Development Application comply with the applicable regulatory standards of the City. The City should endeavor to make all of its redlines, comments or suggestions at the time of the first review of the Development Application unless any changes to the Development Application raise new issues that need to be addressed.

7.3. Independent Technical Analyses for Development Applications. If the City needs technical expertise beyond the City's internal resources to determine impacts of a Development Application such as for structures, bridges, water tanks, and other similar matters which are not required by the City's Vested Laws to be certified by such experts as part of a Development Application, the City may engage such experts as City Consultants with the actual and reasonable costs being the responsibility of Applicant. The City Consultant undertaking any review by the City required or permitted by this Development Agreement shall be selected from a list generated by the City for each such City review pursuant to a "request for proposal" process or as otherwise allowed by City ordinances or regulations. Applicant may, in its sole discretion, strike from the list of qualified proposers any of such proposed consultants so long as at least three (3) qualified proposers remain for selection. The anticipated cost and timeliness of such review may be a factor in choosing the expert. The actual and reasonable costs being the responsibility of Applicant.

7.4. City Denial of a Development Application. If the City denies a Development Application the City shall provide a written determination advising the Applicant of the reasons for denial including specifying the reasons the City believes that the

Development Application is not consistent with this Development Agreement, the Zoning and/or the City's Vested Laws (or, if applicable, the City's Future Laws).

7.5. Meet and Confer regarding Development Application Denials. The City and Applicant shall meet within fifteen (15) business days of any Denial to resolve the issues specified in the Denial of a Development Application.

7.6. City Denials of Development Applications Based on Denials from Non-City Agencies. If the City's denial of a Development Application is based on the denial of the Development Application by a Non-City Agency, Applicant shall appeal any such denial through the appropriate procedures for such a decision and not through the processes specified below.

7.7. Mediation of Development Application Denials.

7.7.1. Issues Subject to Mediation. Issues resulting from the City's Denial of a Development Application that the parties are not able to resolve by "Meet and Confer" shall be mediated and include the following:

- (i) interpretations, minor technical edits or inconsistencies necessary to clarify or modify documents consistent with their intended purpose of the Development Standards, and
- (ii) the issuance of building permits.

7.7.2. Mediation Process. If the City and Applicant are unable to resolve a disagreement subject to mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute. If the City and Applicant are unable to agree on a single acceptable mediator they shall each, within ten (10) business days, appoint their own representative.

These two representatives shall, between them, choose the single mediator. Applicant shall pay the fees of the chosen mediator. The chosen mediator shall within fifteen (15) business days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties. If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the parties.

7.8. Arbitration of Development Application Objections.

7.8.1. Issues Subject to Arbitration. Issues regarding the City's Denial of a Development Application that are subject to resolution by scientific or technical experts such as traffic impacts, water quality impacts, pollution impacts, etc. are subject to arbitration.

7.8.2. Mediation Required Before Arbitration. Prior to any arbitration the parties shall first attempt mediation as specified in Section 7.7.

7.8.3. Arbitration Process. If the City and Applicant are unable to resolve an issue through mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable expert in the professional discipline(s) of the issue in question. If the parties are unable to agree on a single acceptable arbitrator they shall each, within ten (10) business days, appoint their own individual appropriate expert. These two experts shall, between them, choose the single arbitrator. The Parties shall each initially pay one-half (1/2) of the fees of the chosen arbitrator. The chosen arbitrator shall within fifteen (15) business days, review the positions of the parties regarding the arbitration issue and render a decision. The arbitrator shall ask the prevailing

party to draft a proposed order for consideration and objection by the other side.

Upon adoption by the arbitrator, and consideration of such objections, the arbitrator's decision shall be final and binding upon both parties. If the arbitrator determines as a part of the decision that the City's or Applicant's position was not only incorrect but was also maintained unreasonably and not in good faith then the arbitrator may order the City or Applicant to pay the entire amount of the arbitrator's fees.

8. Application Under City's Future Laws. Without waiving any rights granted by this Development Agreement, Developer may at any time, choose to submit a Development Application for all or part of the Project under the City's Future Laws in effect at the time of the Development Application so long as Developer is not in current breach of this Agreement.

9. Default.

9.1. **Notice.** If Developer or a Subdeveloper or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a Default has occurred shall provide Notice to the other Party. If the City believes that the Default has been committed by a Subdeveloper then the City shall also provide a courtesy copy of the Notice to Developer.

9.2. **Contents of the Notice of Default.** The Notice of Default shall:

9.2.1. Specific Claim. Specify the claimed event of Default;

9.2.2. Applicable Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Development Agreement that is claimed to be in Default;

9.2.3. Materiality. Identify why the Default is claimed to be material; and

9.2.4. Optional Cure. If the City chooses, in its discretion, it may propose a method

and time for curing the Default which shall be of no less than thirty (30) days duration.

9.3. Meet and Confer, Mediation, Arbitration. Upon the issuance of a Notice of Default the parties shall engage in the “Meet and Confer” and “Mediation” processes specified in Sections 7.5 and 7.7. If the claimed Default is subject to Arbitration as provided in Section 7.8 then the parties shall follow such processes.

9.4. Remedies. If the parties are not able to resolve the Default by “Meet and Confer” or by Mediation, and if the Default is not subject to arbitration then the parties may have the following remedies, except as specifically limited in 9.9:

9.4.1. Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

9.4.2. Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

9.4.3. Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by Developer, or in the case of a default by a Subdeveloper, development of those Parcels owned by the Subdeveloper until the Default has been cured.

9.5. Public Meeting. Before any remedy in Section 9.4 may be imposed by the City the party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default.

9.6. Emergency Defaults. Anything in this Development Agreement notwithstanding, if the City Council finds on the record that a default materially impairs a compelling,

countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of Section 9.4 without the requirements of Sections 9.5. The City shall give Notice to Developer and/or any applicable Subdeveloper of any public meeting at which an emergency default is to be considered and the Developer and/or any applicable Subdeveloper shall be allowed to address the City Council at that meeting regarding the claimed emergency Default.

9.7. Extended Cure Period. If any Default cannot be reasonably cured within thirty (30) days then such cure period shall be extended so long as the defaulting party is pursuing a cure with reasonable diligence.

9.8. Default of Assignee. A default of any obligations assumed by an assignee shall not be deemed a default of Developer.

9.9. Limitation on Recovery for Default – No Damages. Anything in this Development Agreement notwithstanding no Party shall be entitled to any claim for any monetary damages or attorney’s fees as a result of any breach of this Development Agreement and each Party waives any claims thereto. The sole remedy available to Developer or any Subdeveloper shall be that of specific performance, notwithstanding the provisions of Section 9.4.

10. Notices. All notices required or permitted under this Development Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Developer:

Geneva Rock Products, Inc.
Attn.: James D. Golding

302 West 5400 S, Ste 200
Murray, UT 84059

With a Copy to:

Bruce R. Baird
Bruce R. Baird, LLC
2150 South 1300 East, Suite 500
Salt Lake City, UT 84106

To the City:

Draper City
Attn: City Manager
David Dobbins
1020 East Pioneer Road
Draper, UT 84020

With a Copy to:

Draper City
Attn: City Attorney
Mike Barker
1020 East Pioneer Road
Draper, UT 84020

10.1. **Effectiveness of Notice.** Except as otherwise provided in this Development Agreement, each Notice shall be effective and shall be deemed delivered on the earlier of:

10.1.1. Hand Delivery. Its actual receipt, if delivered personally or by courier service.

10.1.2. Electronic Delivery. Its actual receipt if delivered electronically by email provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending party has an electronic receipt of the delivery of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal

delivery occurs.

10.1.3. **Mailing.** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any party may change its address for Notice under this Development Agreement by giving written Notice to the other party in accordance with the provisions of this Section.

11. **Headings.** The captions used in this Development Agreement are for convenience only and are not intended to be substantive provisions or evidences of intent.

12. **No Third-Party Rights/No Joint Venture.** This Development Agreement does not create a joint venture relationship, partnership or agency relationship between the City, or Developer. Further, the parties do not intend this Development Agreement to create any third-party beneficiary rights. The Parties acknowledge that this Development Agreement refers to a private development and that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to the Property or unless the City has accepted the dedication of such improvements at which time all rights and responsibilities—except for warranty bond requirements under City’s Vested Laws and as allowed by state law—for the dedicated public improvement shall be the City's.

13. **Assignability.** The rights and responsibilities of Developer under this Development Agreement may be assigned in whole or in part, respectively, by Developer with the consent of the City as provided herein.

13.1. **Related Entity.** Developer’s transfer of all or any part of the Property to any entity “related” to Developer (as defined by regulations of the Internal Revenue Service in Section 165), Developer’s entry into a joint venture for the development of the Project or

Developer's pledging of part or all of the Project as security for financing shall also not be deemed to be an "assignment" subject to the above-referenced approval by the City unless specifically designated as such an assignment by the Developer. Developer shall give the City Notice of any event specified in this sub-section within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

13.2. **Notice.** Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

13.3. **Time for Objection.** Unless the City objects in writing within twenty (20) business days of notice, the City shall be deemed to have approved of and consented to the assignment.

13.4. **Partial Assignment.** If any proposed assignment is for less than all of Developer's rights and responsibilities then the assignee shall be responsible for the performance of each of the obligations contained in this Development Agreement to which the assignee succeeds. Upon any such approved partial assignment Developer shall not be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations herein.

13.5. **Denial.** The City may only withhold its consent if the City is not reasonably satisfied of the assignee's financial ability to perform the obligations of or Developer proposed to be assigned or there is an existing breach of a development obligation owed to the City by the assignee or related entity that has not either been cured or in the process

of being cured in a manner acceptable to the City. Any refusal of the City to accept an assignment shall be subject to the “Meet and Confer” and “Mediation” processes specified in Sections 7.5 and 7.6. If the refusal is subject to Arbitration as provided in Section 7.8 then the Parties shall follow such processes.

13.6. **Assignees Bound by Development Agreement.** Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Development Agreement as a condition precedent to the effectiveness of the assignment.

14. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

15. **Severability.** If any provision of this Development Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Development Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Development Agreement shall remain in full force and affect.

16. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

17. **Time is of the Essence.** Time is of the essence to this Development Agreement and

every right or responsibility shall be performed within the times specified.

18. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Development Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representative for the City shall be the City Manager. The initial representative for Developer shall be David Kallas. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Development Agreement and the development of the Project.

19. **Applicable Law.** This Development Agreement is entered into in Salt Lake County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

20. **Venue.** Any action to enforce this Development Agreement shall be brought only in the Third District Court for the State of Utah, Salt Lake City Division.

21. **Entire Agreement.** This Development Agreement, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

22. **Mutual Drafting.** Each Party has participated in negotiating and drafting this Development Agreement and therefore no provision of this Development Agreement shall be construed for or against any Party based on which Party drafted any particular portion of this Development Agreement.

23. **Recordation and Running with the Land.** This Development Agreement shall be recorded in the chain of title for the Project. This Development Agreement shall be deemed to

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF SALT LAKE)

On the ____ day of September, 2018, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of Geneva Rock Products, Inc., a Utah corporation and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

TABLE OF EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B"	Master Plan
Exhibit "C"	Form of Conservation Easement
Exhibit "D"	City's Vested Laws

Exhibit A

OVERALL PARCEL DESCRIPTION

Beginning at the East Quarter corner of Section 13, Township 4 South, Range 1 West, Salt Lake Base and Meridian, a found county monument; thence North $89^{\circ}37'16''$ East along the Quarter Section line 2284.65 feet to a point on the Salt Lake County and Utah County line; thence along said County line the following seven (7) courses: (1) South $27^{\circ}48'45''$ West along said county line 125.21 feet; (2) South $54^{\circ}46'19''$ West 1109.17 feet; (3) South $37^{\circ}42'18''$ West 2130.78 feet; (4) South $53^{\circ}01'27''$ West 592.37 feet; (5) South $83^{\circ}55'23''$ West 115.09 feet; (6) South $85^{\circ}56'42''$ West 779.73 feet; (7) North $05^{\circ}04'44''$ East 13.68 feet; thence North $00^{\circ}12'51''$ East 1068.29 feet to the offset line of a road; thence along said road offset line the following eleven (11) courses: (1) along the arc of a 205.16 foot radius curve to the right 13.13 feet through a central angle of $03^{\circ}40'05''$, the chord of which bears South $75^{\circ}12'55''$ West 13.13 feet; (2) South $77^{\circ}02'00''$ West 43.09 feet; (3) South $73^{\circ}57'33''$ West 42.53 feet; (4) South $77^{\circ}00'07''$ West 165.20 feet; (5) South $78^{\circ}44'53''$ West 72.55 feet; (6) along the arc of a 62.00 foot radius curve to the right 4.83 feet through a central angle of $04^{\circ}28'01''$, the chord of which bears South $80^{\circ}58'54''$ West 4.83 feet; (7) South $83^{\circ}12'54''$ West 37.61 feet; (8) along the arc of a 500.56 foot radius curve to the right 742.91 feet through a central angle of $85^{\circ}02'08''$, the chord of which bears North $54^{\circ}16'02''$ West 676.58 feet; (9) North $11^{\circ}44'58''$ West 17.85 feet; (10) along the arc of a 60.15 foot radius curve to the right 18.89 feet through a central angle of $17^{\circ}59'19''$, the chord of which bears North $02^{\circ}45'19''$ West 18.81 feet; (11) North $06^{\circ}14'21''$ East 92.54 feet to the 40 Acre line; thence North $89^{\circ}57'24''$ East along 40 Acre line 915.15 feet to the Southeast $1/16^{\text{th}}$ corner of said Section 13; thence North $00^{\circ}29'02''$ East along the 40 Acre line 1324.47 feet to the West $1/16^{\text{th}}$ corner of said Section 13; thence South $89^{\circ}49'00''$ East along Quarter Section line of said Section 13 1330.47 feet to the point of beginning.

Area = 151.37 Acres

**EXHIBIT “B”
Master Plan**

EXHIBIT "C"
Form of Conservation Easement

When recorded mail to:

GENEVA CONSERVATION EASEMENT

This CONSERVATION EASEMENT (“Easement”) is made this ____ day of October ____ 2018, by and between Geneva Rock Products, Inc., a Utah corporation, (“Grantor”) and **[Need to determine holder of easement, Salt Lake County?]** (“Grantee”).

RECITALS

WHEREAS, the Steep Mountain Conservation Area as defined in a Development Agreement (“Development Agreement”) entered into between Grantor and Draper City on September ____, 2018 identified approximately 78.39 acres of the Steep Mountain Conservation Area as more specifically defined by the legal description attached thereto as Exhibit 1, which by this reference are made a part hereof and together constitute the Steep Mountain Conservation Area;

WHEREAS, the Development Agreement provided that Easement would be created and recorded;

WHEREAS, the Steep Mountain Conservation Area possesses natural, ecological, scenic, aesthetic and open space values (collectively the “Conservation Values”) that are of great importance to Grantor, the people of Draper City and Salt Lake County and to the people of the State of Utah and as such are worthy of preservation;

WHEREAS, Grantee is qualified and willing to hold Easement.

NOW, THEREFORE, in consideration of the foregoing recitals, the covenants, terms, conditions and restrictions contained herein, and pursuant to the provisions of the laws of the State of Utah, and in particular Section 57-18-1 *et seq* of the Utah Code, Grantor hereby voluntarily and irrevocably grants and conveys to Grantee and its successors-in-interest a perpetual Conservation Easement over and across all of the Steep Mountain Conservation Area to preserve and protect the Conservation Values present on the Steep Mountain Conservation Area including, but not limited to, the natural, ecological, riparian, historic, watershed, habitat, open space, scenic and passive recreation values. This Easement shall forever bind Grantor, Grantor’s successors in interest, assigns and all other users of the Steep Mountain Conservation Area, as well as Grantee and any qualified successor of Grantee as identified below. This Easement is granted in perpetuity and any mortgage lien or other encumbrance, other than any encumbrance of record existing at the time the Easement was executed and recorded shall be subordinate to the rights and intentions of this Easement and Grantee’s ability to enforce the protection of the Conservation Values described herein.

1. Purpose. It is the purpose of this Easement to assure that the Steep Mountain Conservation Area will be retained forever predominantly in its natural, scenic and/or open space condition and to prevent any use of the Steep Mountain Conservation Area that will significantly impair or interfere with the Conservation Values of the Steep Mountain Conservation Area. Grantor intends that this Easement shall limit the use of the Steep Mountain Conservation Area to such activities with the purpose of this Easement. Any activity on or use of the Steep Mountain Conservation Area inconsistent with the purposes or terms of this Easement or detrimental to the Conservation Values expressed in this Easement is expressly prohibited.
2. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:
3. Right to Preserve and Protect Conservation Values. Grantee shall have the right to preserve and protect the Conservation Values of the Steep Mountain Conservation Area.
4. Right to Enter the Steep Mountain Conservation Area. Grantee shall have the right to enter upon the Steep Mountain Conservation Area at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, its successors and assigns and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Steep Mountain Conservation Area. The general public is granted access to the Steep Mountain Conservation Area under this Easement for such purposes as may be approved by Grantee including recreational uses such as hang-gliding, hiking, picnicking, sightseeing and mountain biking. Motorized vehicles shall only be permitted on the Access Road itself except as necessary for Grantor and Grantee and Draper City to perform any functions allowed by this Easement or in the case of an emergency such as a fire or rescue. Overnight camping shall be specifically prohibited. Open fires shall be prohibited. Grantee shall have the right of immediate entry upon the Steep Mountain Conservation Area if, in Grantee's sole judgment, such entry is necessary to prevent immediate damage to, or the immediate destruction of, the Conservation Values of the Steep Mountain Conservation Area.
5. Right to Prevent Inconsistent Use. Grantee shall have the right to prevent any detrimental activity on or use of the Steep Mountain Conservation Area, by Grantor or third persons, whether or not claiming a right by, through, or under Grantor, that is inconsistent with the purpose of this Easement, and to require of Grantor or third persons the restoration of such areas or features of the Steep Mountain Conservation Area that may be damaged by any inconsistent activity or use.
6. Force Majeure. Grantor will not be obligated to send a notice to Grantee, and Grantee will not be entitled to bring an action against Grantor for undertaking any prudent activity in a bona fide emergency situation to prevent, abate, or mitigate the immediate threat of significant damage to the Steep Mountain Conservation Area resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement. Grantor will promptly notify Grantee of any injury to the Steep Mountain Conservation Area caused by such events or the efforts to prevent, abate, or mitigate any damage caused by such events.

7. **Access Road.** The Development Agreement required Grantor to construct and maintain a gated Access Road on the Steep Mountain Conservation Area and that use is specifically permitted.

24.7. **Gating.** The Development Agreement permits Grantor to close, lock or otherwise secure the Access Road as needed with reasonable advance Notice to the City for maintenance, fire safety, dust suppression activities, other similar reasons and to keep the Access Road from becoming dedicated to the public by virtue of usage pursuant to Section 72-5-104, Utah Code Ann.

8. **Consistent Uses.** The Steep Mountain Conservation Area may be used for, and Grantee shall permit all recreational, trail, use of the Access Road (except overnight camping), other traditional open space uses not inconsistent with the provisions contained herein and dust suppression facilities for adjoining properties This provision shall be construed to allow Draper City to construct and maintain additional trails on the conservation area.
9. **Grantee's Remedies.** If Grantee determines that Grantor, Grantor's successors in ownership, assigns and all other users of the Steep Mountain Conservation Area Steep Mountain Steep Mountain Conservation Area, is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor and to such owner of such violation and of Grantee's demand for corrective action sufficient to cure the violation and, where the violation involves injury to the Steep Mountain Conservation Area resulting from any use or activity inconsistent with the purpose of this Easement, to restore promptly the portion of the Steep Mountain Conservation Area so injured. If Grantor or such owner fails to cure the violation within sixty (60) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to begin curing the violation within the sixty (60) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement and to require the restoration and repair of the Steep Mountain Conservation Area. Without limiting such owner's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Steep Mountain Conservation Area. Grantee's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In addition to the rights of Grantee described above, in the event that an owner of all or any portion of the Steep Mountain Conservation Area is in violation of any of the terms of this Easement and in the event that Grantor or such owner fails to cure the violations within a one

hundred and eighty (180) day period, Grantee shall have the right to assess Grantor or any owner of the Steep Mountain Conservation Area found to be in violation the actual costs and expenses incurred by Grantee to remedy any such violation, including without limitation the costs and expenses incurred by Grantee to remove any unauthorized improvements on the Steep Mountain Conservation Area constructed by such owner and all costs and expenses incurred by Grantee to reseed or replace any vegetation damaged by such owner in violation of this Easement. In order to assess Grantor or owner of the Steep Mountain Conservation Area for such costs and expenses incurred by Grantee, Grantee shall be required to present to Grantor or such owner adequate documentation evidencing the violation of this Easement by Grantor or such owner, utilizing maps, other records and documents which were generated prior to the date of this Easement and which were updated subsequent to the date of this Easement.

10. Assignment. Grantee may not transfer or assign its interest in the Steep Mountain Conservation Area created by this Easement except to a “qualified organization” (within the meaning of Section 170(h)(3) of the Code, which is organized or operated primarily or substantially for one or more of the conservation purposes specified in Section 170(h)(4)(a) of the Code. Any such “qualified organization” shall agree to enforce the conservation purposes protected by this Easement. Grantee agrees that it will, in the event of any assignment, choose an assignee which is a “qualified organization” other than a governmental unit referred to in Section 170(c)(1) of the Code, which has conservation of natural resources as a substantial organizational purposes. Grantee represents to Grantor that its present intention is to assign its interest in this Easement only in connection with dissolution of Grantee. Grantee shall obtain the prior written consent of Grantor before making any assignment of this Easement.
11. Amendments. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement; provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of Utah. Any such amendment shall be consistent with the purpose of this Easement, shall not affect its perpetual duration, shall not permit residential, commercial or industrial development of the Steep Mountain Conservation Area and shall not permit any impairment of the significant Conservation Values of the Steep Mountain Conservation Area. Any such amendment shall be filed in the County Recorder’s office of Salt Lake County, Utah. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.
 - 11.1. No amendment shall be approved without the express written approval of Draper City as adopted by a formal Resolution or Ordinance of the City and the Parties acknowledge that Draper City is expressly intended to be a third-party beneficiary of this Section 11.1. No amendment of this Easement shall require the amendment of the Development Agreement.
 - 11.2. No amendment shall be allowed if it would create private inurement or private benefit.

- 11.3. Proposed amendments that exceed the discretion granted to the Grantor and Grantees pursuant to this Provision are permitted only if they are authorized by a Utah court having jurisdiction, and in evaluating any such proposed amendment, the court shall apply the law of charitable trusts as then in effect in the State of Utah. Nothing in this Section shall require Grantor or Grantees to (i) agree to any amendment; or (ii) consult or negotiate regarding any amendment.
12. Subsequent Transfers. Grantor agrees that reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which Grantor conveys any interest in the Steep Mountain Conservation Area (including any leasehold interest). Grantor will notify Grantee in writing of any conveyance of interest by sending written notice to Grantee as provided in Section 18. Grantor agrees to provide notice of this Easement to successor owners of interest, and to any potential purchasers or subsequent owners of the Steep Mountain Conservation Area. In the event Grantor elects to sell some or all of the Steep Mountain Conservation Area, Grantor agrees to provide notice of this Easement in any sale or solicitation materials or information. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.
13. Recordation. Grantee shall record this instrument in a timely fashion in the official records of the Recorder of Salt Lake County, Utah and may re-record it any time as may be required to preserve its rights in this Easement.
14. General Provisions.
- 14.1. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Utah.
- 14.2. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in order to promote and favor the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 14.3. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- 14.4. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that has been executed and acknowledged by Grantee and by all of the owners of the Steep Mountain Conservation Area at the time of such amendment, and

the amendment shall be recorded in the official records of the Recorder of Salt Lake County, Utah.

- 14.5. No Forfeiture. Nothing contained herein shall result in a forfeiture or reversion of Grantor’s title in any respect.
- 14.6. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Steep Mountain Conservation Area.
- 14.7. Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in the Steep Mountain Conservation Area or in any portion of the Steep Mountain Conservation Area is conclusively deemed to have notice of this Easement and its contents, and to have consented to the application and enforcement of each of the provisions of this Easement against such person’s the Steep Mountain Conservation Area, whether or not there is any reference to this Easement in the instrument by which such person acquires title to such person’s interest in any portion of the Steep Mountain Conservation Area.
- 14.8. Termination of Rights and Obligations. A party’s rights, obligations and liability under this Easement terminate upon transfer of the party’s interest in the Easement or The Steep Mountain Conservation Area, except that liability for a person’s acts or omissions occurring prior to such transfer shall survive the transfer. Consequently, upon the conveyance by Grantor of all of Grantor’s right, title and interest in and to the Steep Mountain Conservation Area or any portion of the Steep Mountain Conservation Area, Grantor’s rights, obligations and liability arising under this Easement shall terminate with respect to the portion of the Steep Mountain Conservation Area so granted or conveyed by Grantor, effective as of the date of such transfer, and the transferee of such interest in the Steep Mountain Conservation Area shall be conclusively deemed to have consented to the assumption by such transferee of all rights, obligations and liability arising under this Easement with respect to the Steep Mountain Conservation Area owned by such transferee, which shall continue in effect for so long as such transferee owns an interest in the Steep Mountain Conservation Area.
- 14.9. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon the construction of interpretation hereof.
- 14.10. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties, and each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

GRANTOR
Geneva Rock Products, Inc.

GRANTEE
??????

By: _____
Its: _____

By: _____,
Its: _____

GRANTEE ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF SALT LAKE)

On the ____ day of _____, 201__, personally appeared before me _____ who being by me duly sworn, did say that he/she is the _____ of _____, and that said instrument was signed in behalf of _____ by authority of its _____ and said _____ acknowledged to me that the _____ executed the same.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

GRANTOR ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF SALT LAKE)

On the ____ day of _____, 201__, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of Geneva Rock Products, Inc., a Utah corporation and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

Exhibit 1

STEEP MOUNTAIN CONSERVATION AREA DESCRIPTION

Beginning at the East Quarter corner of Section 13, Township 4 South, Range 1 West, Salt Lake Base and Meridian, a found county monument; thence North $89^{\circ}37'16''$ East along the Quarter Section line 2284.65 feet to a point on the Salt Lake and Utah County line; thence South $27^{\circ}48'45''$ West along said county line 125.21 feet; thence South $54^{\circ}46'28''$ West along said line 610.34 feet; thence along a road offset line the following twenty-seven (27) courses: (1) North $89^{\circ}44'09''$ West 218.81 feet; (2) South $83^{\circ}06'50''$ West 71.07 feet; (3) North $06^{\circ}58'27''$ West 87.02 feet; (4) South $82^{\circ}21'54''$ West 594.46 feet; (5) South $73^{\circ}30'03''$ West 97.28 feet; (6) along the arc of a 550.29 foot radius curve to the left 436.32 feet through a central angle of $45^{\circ}25'45''$, the chord of which bears South $50^{\circ}45'04''$ West 424.98 feet; (7) South $28^{\circ}38'49''$ West 64.86 feet; (8) along the arc of a 109.61 foot radius curve to the right 53.17 feet through a central angle of $27^{\circ}47'33''$, the chord of which bears South $42^{\circ}32'44''$ West 52.65 feet; (9) South $56^{\circ}26'30''$ West 411.97 feet; (10) along the arc of a 38.00 foot radius curve to the left 18.55 feet through a central angle of $27^{\circ}58'22''$, the chord of which bears South $42^{\circ}27'19''$ West 18.37 feet; (11) South $28^{\circ}28'08''$ West 29.33 feet; (12) along the arc of a 133.94 foot radius curve to the right 106.13 feet through a central angle of $45^{\circ}23'58''$, the chord of which bears South $51^{\circ}10'15''$ West 103.37 feet; (13) South $73^{\circ}52'14''$ West 106.01 feet; (14) along the arc of a 150.00 foot radius curve to the left 52.53 feet through a central angle of $20^{\circ}03'54''$, the chord of which bears South $63^{\circ}50'17''$ West 52.26 feet; (15) South $53^{\circ}48'20''$ West 85.16 feet; (16) along the arc of a 146.27 foot radius curve to the right 93.43 feet through a central angle of $36^{\circ}35'52''$, the chord of which bears South $72^{\circ}06'15''$ West 91.85 feet; (17) North $89^{\circ}35'49''$ West 274.72 feet; (18) along the arc of a 100.00 foot radius curve to the left 24.32 feet through a central angle of $13^{\circ}55'60''$, the chord of which bears South $83^{\circ}26'11''$ West 24.26 feet; (19) along the arc of a 387.35 foot radius curve to the left 154.65 feet through a central angle of $22^{\circ}52'31''$, the chord of which bears South $65^{\circ}01'56''$ West 153.62 feet; (20) South $53^{\circ}35'40''$ West 128.96 feet; (21) along the arc of a 100.00 foot radius curve to the left 17.58 feet through a central angle of $10^{\circ}04'31''$, the chord of which bears South $48^{\circ}33'25''$ West 17.56 feet; (22) along the arc of a 2086.55 foot radius curve to the right 420.98 feet through a central angle of $11^{\circ}33'36''$, the chord of which bears South $49^{\circ}17'57''$ West 420.27 feet; (23) along the arc of a 218.73 foot radius curve to the right 90.91 feet through a central angle of $23^{\circ}48'46''$, the chord of which bears South $65^{\circ}29'13''$ West 90.25 feet; (24) South $77^{\circ}23'36''$ West 308.93 feet; (25) along the arc of a 500.61 foot radius curve to the right 793.81 feet through a central angle of $90^{\circ}51'08''$, the chord of which bears North $57^{\circ}10'50''$ West 713.22 feet; (26) North $11^{\circ}44'58''$ West 27.30 feet; (27) North $06^{\circ}13'37''$ East 102.13 feet to the 40 Acre line; thence North $89^{\circ}57'24''$ East along 40 Acre line 915.15 feet to the Southeast $1/16^{\text{th}}$ corner of said Section 13; thence North $00^{\circ}29'02''$ East along the 40 Acre line 1324.47 feet to the West $1/16^{\text{th}}$ corner of said Section 13; thence South $89^{\circ}49'00''$ East along Quarter Section line of said Section 13 1330.47 feet to the point of beginning.

Area = 78.39 Acres