

RESOLUTION NO. _____

DATE _____

A RESOLUTION OF THE SALT LAKE COUNTY COUNCIL APPROVING THE ACQUISITION OF A FEE INTEREST IN CERTAIN REAL PROPERTY FROM NICO INVESTMENT, LC, AS PART OF THE SURPLUS CANAL PROJECT AND THE TRANSFER OF A PORTION OF THE COUNTY'S REAL ESTATE INTEREST IN ADJACENT PROPERTY TO NICO INVESTMENT, LC

RECITALS

A. Salt Lake County ("County") is responsible for the operation and maintenance of the Surplus Canal, which is designed to divert water from the Jordan River to control flood flows.

B. Over the years, the County has acquired various types of interest from private property owners for the Surplus Canal's existing location.

C. The County is currently working on a project to clarify and make its real property interests along the Surplus Canal uniform and remove encroachments into the Surplus Canal's levee system.

D. Nico Investment, LC (the "Owner") owns a parcel of real property located in Salt Lake City that is adjacent to the Surplus Canal where the interests of the County need to be clarified and encroachments removed (the "Owner's Property").

E. Following negotiations, the County and the Owner have negotiated a Right of Way Contract to address the County's acquisition of a portion (the "Acquisition Parcel") of the Owner's Property. The Right of Way Contract is attached hereto as Exhibit 1.

F. According to the Right of Way Contract, the parties have agreed that the Owner will convey the Acquisition Parcel to the County by quit-claim deed ("Owner's Deed"). The Owner's Deed is attached to the Right of Way Contract as Exhibit A.

G. The County has an interest in the Owner's Property beyond the boundaries of the Acquisition Parcel (the "County Interest").

H. As part of this acquisition and to clear up any issues regarding ownership, the parties have also agreed in the Right of Way Contract that the County will convey the County's Interest via a quit-claim deed ("County's Deed"). The County's Deed is attached to the Right of Way Contract as Exhibit B.

I. The Right of Way Contract also compensates Owner for the demolition and replacement of certain structures at current encroach into the Acquisition Parcel and for the cost of a new fire hydrant.

J. It has been determined that the best interests of the County and the general public will be served by accepting the Owner's Deed from the Owner, quit-claiming the Occupied Property to the Owner, and complying with all of the other terms of the Right of Way Contract. This transaction will be in compliance with all applicable state statutes and county ordinances.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Salt Lake County Council (the "County Council") that the County's Interest is hereby declared surplus property.

IT IS FURTHER RESOLVED by the County Council that the Right of Way Contract ("Contract") between the County and the Owner is hereby approved and the Mayor is hereby authorized to execute the Contract, a copy of which is attached as Exhibit 1 and by this reference made a part hereof, and deliver the fully executed document to the County Real Estate Section.

IT IS FURTHER RESOLVED by the County Council that upon receipt of Owner's Deed from Owner, the Mayor and Clerk are authorized to execute such other documents as may be reasonably necessary to effectuate the terms of the approved contract, including the County's Deed, attached as Exhibit B to the Contract, and to deliver such fully executed documents to the County Real Estate Section for delivery to Owner.

APPROVED and ADOPTED this _____ day of _____, 2023.

SALT LAKE COUNTY COUNCIL

By: _____
_____, Chair

ATTEST:

Lannie Chapman
Salt Lake County Clerk

Council Member Alvord voting	_____
Council Member Bradley voting	_____
Council Member Bradshaw voting	_____
Council Member Granato voting	_____
Council Member Harrison voting	_____
Council Member Stewart voting	_____
Council Member Stringham voting	_____
Council Member Theodore voting	_____
Council Member Winder Newton voting	_____

REVIEWED AS TO FORM AND LEGALITY:

R. Christopher Preston
Deputy District Attorney

EXHIBIT 1

RIGHT OF WAY CONTRACT

RIGHT OF WAY CONTRACT*Fee Simple – Partial Acquisition*

Project No:	FP140001	Parcel No.(s):	3750:132
Project Location:	Surplus Levee Deficiency Rehabilitation Project		
County of Property:	Salt Lake County	Tax ID / Sidwell No:	15-09-277-002
Property Address:	2301 West Indiana Avenue, Salt Lake City, UT 84104		
Owner / Grantor (s):	Nico Investment, LC		
Owner's Address:	PO Box 25425, Salt Lake City, UT 84125		
Contact:	Richard Nickerson		
Contact Phone:	801-694-1106	Email:	dick@nicopumps.com

IN CONSIDERATION of the foregoing and other consideration hereinafter set forth, it is mutually agreed by the parties as follows:

The Grantor hereby agrees to convey and sell by Quit Claim deed a portion of the property located at 2301 West Indiana Avenue, Salt Lake City UT 84104, which property is more particularly described in Exhibit A, attached hereto (the "Property"), to Salt Lake County for the amount of \$752,300.00, which includes an amount paid for the fee interest in the Property and amounts paid to reimburse Grantor for certain costs to cure items (collectively, the "Total Settlement"). This contract is to be returned to Salt Lake County Real Estate Office, 2001 South State Street S3-110, Salt Lake City, UT 84190.

1. Upon signing this Right of Way contract, Grantor consents to allow Salt Lake County, its contractors, permittees, and assigns, the right to immediately occupy and commence construction or other necessary activity (such as any necessary testing (including but not limited to environmental or geotechnical testing), surveying, or other due diligence) on the Property.
2. Grantor shall leave the Property in the same condition as it was when this contract was signed except that Grantor shall remove all personal property and debris from the Property prior to Closing unless otherwise provided herein. No work, improvement, or alteration will be done to the Property other than what is provided for in this Contract. Grantor agrees to maintain the Property until Salt Lake County takes possession. Grantor agrees not to sell the Property to anyone else, or to enter into any contract that will affect the use of the Property when Salt Lake County takes possession.
3. Grantor agrees to transfer the Property free of all debris and toxic materials (including paint or other household products).
4. All fixtures and improvements are to remain with the Property, including landscaping, retaining walls, fences, etc.
5. Closing shall occur ~~on or before~~ ^{DN} ~~between Jan. 1~~ ^{Jan 31, 2023} (the "Closing") at the offices of Secured Land Title, 7090 Union Park Ave, Suite 425, Midvale, Utah (the "Title Company"). The Property will be conveyed from Grantor to Salt Lake County by Quit Claim Deed, free of all liens and encumbrances except recorded easements. A copy of the Quit Claim Deed to the County is attached as Exhibit A. Salt Lake County may, at its expense, acquire a policy of title insurance. Salt Lake County shall pay routine closing costs and escrow fees, if any. Grantor agrees to pay any and all taxes assessed against the Property to the date of Closing. Each party shall be responsible for its own fees and costs associated with this transaction, and Salt Lake County will not pay brokerage or legal fees to or for Grantor.
6. Grantor understands and agrees that Salt Lake County will not accept delivery of the Quit Claim Deed from the Right of Way Agent, and will not take ownership of the Property, unless and until Salt Lake County is satisfied with (a) the status of title to the Property, and (b) the physical and environmental condition of the Property.
7. Grantor bears all risk of loss or damage to the Property until Closing.
8. Except as otherwise provided herein, Grantor understands that at Closing, at its discretion, Salt Lake County may pay the full amount of \$171,370.00 directly to Grantor for the fee interest. **In that event, it is Grantor's responsibility to understand and fulfill any obligations to lienholders, mortgagees, or others who may have an interest in the Property or the proceeds from its sale.** Grantor shall indemnify and hold harmless the County from and against any and all claims, demands and actions, including costs, from lienholders or lessees of the Property. The Title Company will disburse funds to Grantor as follows: \$171,370.00 (fee interest being purchased (\$172,067.00) plus certain identified improvements (\$7,423.00) minus the interest released by the County (\$8,120.00, see Section 13 below)) to be released to Grantor at Closing and the remaining \$580,930.00 shall be paid to Grantor as provided below in Section 14.
9. Grantor is aware that Utah Code Ann. § 78B-6-520.3 provides that in certain circumstances, the seller of property,

which is being acquired for a particular public use, is entitled to receive an offer to repurchase the property at the same price that the seller received, before the property can be put to a different use. Grantor waives any right under Utah Code Ann. § 78B-6-520.3 that Grantor may have to repurchase the property being acquired herein.

10. Grantor acknowledges and accepts the percent of ownership listed below and agrees that the portion of the total selling price received will correspond with the respective percent of ownership.
11. In addition, County shall, at Closing, convey to Owner, and Owner shall accept, a Quitclaim Deed (the "County Deed") to release any interest the County may have in the parcel of land retained by Owner, which is more particularly described in Exhibit B attached hereto. The value of the County Deed is \$8,120.00, which amount has been accounted for in the Total Settlement Agreement.
12. This Right of Way Contract contains the entire agreement between Grantor and Salt Lake County, and it shall be governed by the laws of the State of Utah. The undersigned represents and warrants that he/she/they have authority to sign on behalf of Grantor.
13. This Contract may be signed in counterparts by use of counterpart signature pages, and each counterpart signature page shall constitute a part of this Contract as if all Grantors signed on the same page.
14. Grantor acknowledges that the Total Settlement amount includes compensation for the following cost-to-cure items: (i) \$553,630.00 for: (a) demolition of two old warehouses or sheds (the "Encroaching Structures") that are partially located on the Property and (b) construction of a replacement warehouse or shed on the remaining portion of Grantor's property (the "Warehouse Fund"); and (ii) \$27,300.00 for installation of new fire hydrant, which includes: 8 x 8 hot tap, 15' of 8" C-900, a 8 x 6 reducer, a Fire Hydrant w/ gate valve, import backfill, haul off excess spoil, saw cut remove/replace asphalt, signage for traffic control, road cut permit, trench box, concrete for thrust blocks, and a concrete collar on water valve in the road (the "Fire Hydrant Fund"). **Grantor hereby expressly agrees that the Warehouse Fund and the Fire Hydrant Fund represent the full and complete amounts to be paid by Salt Lake County to reimburse Grantor for the items and actions associated with each fund, and Grantor expressly waives any claim against Salt Lake County for any actually incurred costs of demolition or construction that exceed the amounts in the Warehouse Fund or the Fire Hydrant Fund.** The full amount of the Fire Hydrant Fund and the Warehouse Fund shall be released to Grantor at Closing. Grantor shall complete all work associated with the Warehouse Fund and the Fire Hydrant Fund by December 31, 2023 (the "Completion Date"). If Grantor fails to complete the demolition of the Encroaching Structures by the Completion Date, Salt Lake County may enter onto Grantor's property and complete the demolition of the Encroaching Structures at its own cost and expense. Grantor agrees to reimburse Salt Lake County for all costs associated with the demolition of the Encroaching Structures within 30 days after receipt of a written demand from Salt Lake County for payment. If Grantor does not timely reimburse Salt Lake County for the cost of demolition reflected in the written demand, Grantor expressly allows Grantee to record a lien against Grantor's remaining real property to recover the identified costs plus any administrative costs or attorney fees incurred by Salt Lake County to recover the costs of demolition. The terms of this Section 14 shall survive Closing.
15. As soon as Grantor notifies Salt Lake County that it has completed demolition of the Encroaching Structures, Salt Lake County shall install a new fence on the boundary line between the Property and Grantor's remaining property at Salt Lake County's expense. The new fence shall be constructed of materials that are similar or equal to the current fence. At its own cost, Salt Lake County shall also modify, as necessary, the existing retaining wall at the northwest corner of Grantor's remaining property to match any new elevations caused by the construction of the new fence. The terms of this Section 15 shall survive Closing.

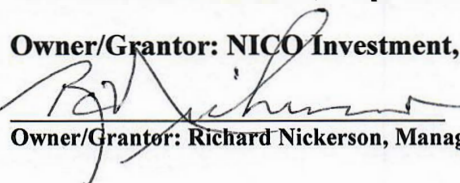
Total Settlement \$752,300.00

Grantor understands and acknowledges that this Contract is not binding until approved by the Salt Lake County Real Estate Manager and the Salt Lake County Mayor or Designee

Owner's Initials 

IN WITNESS WHEREOF, the parties have executed this Contract as of this the 2nd day of Dec., 2022.

Owner/Grantor: NICO Investment, L.C.


Owner/Grantor: Richard Nickerson, Managing Member

Salt Lake County

Exhibit Only, Do Not Sign

Mayor or Designee

Date

Approved:

Salt Lake County Real Estate Manager Date

R. Christopher Preston
Deputy District Attorney

APPROVED AS TO FORM:

Right of Way Contract
Exhibit A
Quit Claim Deed to County

(EXHIBIT A)

A parcel of land being part of an entire tract described in that Warranty Deed recorded October 1, 1998 as Entry No. 7106324 in Book 8113, at Page 1442 in the Office of said Salt Lake County Recorder. Said parcel of land is located in the Northeast Quarter of Section 9, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and is described as follows:

Beginning at the westerly corner of said entire tract at a point in the easterly right-of-way line of Indiana Avenue per that Official Map No. 15A (Indiana Ave & 900 South Right-of-Way) recorded November 15, 1983 in Book 83-11, at Page 150 and further described in that Warranty Deed recorded June 29, 1989 as Entry No. 4793787 in Book 6139, at Page 1069 in the Office of the Salt Lake County Recorder, said point being a point of non-tangency with a 507.96 – foot radius curve to the right, concave easterly (Radius point bears S. 70°24'24" E.); thence Northerly 50.78 feet along the arc of said curve, through a central angle of 05°43'39" (Chord bears N. 22°27'26" E. 50.76 feet) to the ten (10) foot offset line of the landside toe, as located by field survey; thence S. 39°06'53" E. 604.20 feet along said ten (10) foot offset line to the southerly boundary line of said entire tract; thence N. 89°48'33" W. (Deed = S. 89°53'01" W.) 56.11 feet along said southerly line to the southwesterly corner of said entire tract; thence N. 39°14'34" W. (Deed = N. 39°33' W.) 544.49 feet along the southwesterly boundary line of said entire tract to the **Point of Beginning**.

The above-described parcel of land contains 25,304 square feet in area or 0.580 acre more or less.

EXHIBIT "B": By this reference, made a part hereof,

BASIS OF BEARING: S. 89°55'39" E. along the Section line between the Northwest Corner and the Northeast Corner of said Section 9, Township 1 South, Range 1 West, Salt Lake Base and Meridian.

EXHIBIT "B"

LEGEND

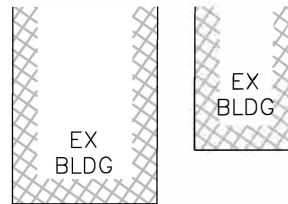
- Tract Boundary
- Centerline of Surplus Canal
- Existing Jordan River & Surplus Canal ROW
- Adjacent Parcel
- Section Line
- 10.0' Offset Landside Toe

QUITCLAIM AREA - 3750.132:C

NOTE 1:
Northeasterly right-of-way line of the As-Constructed Jordan River and Surplus Canal Levee Construction and Channel Improvement Plans created by the Corps of Engineers, U.S. Army referenced as Spec. No. 2493 and File No. JO-4-52 dated May 11, 1961. See Record of Survey Plat S2018-08-0579

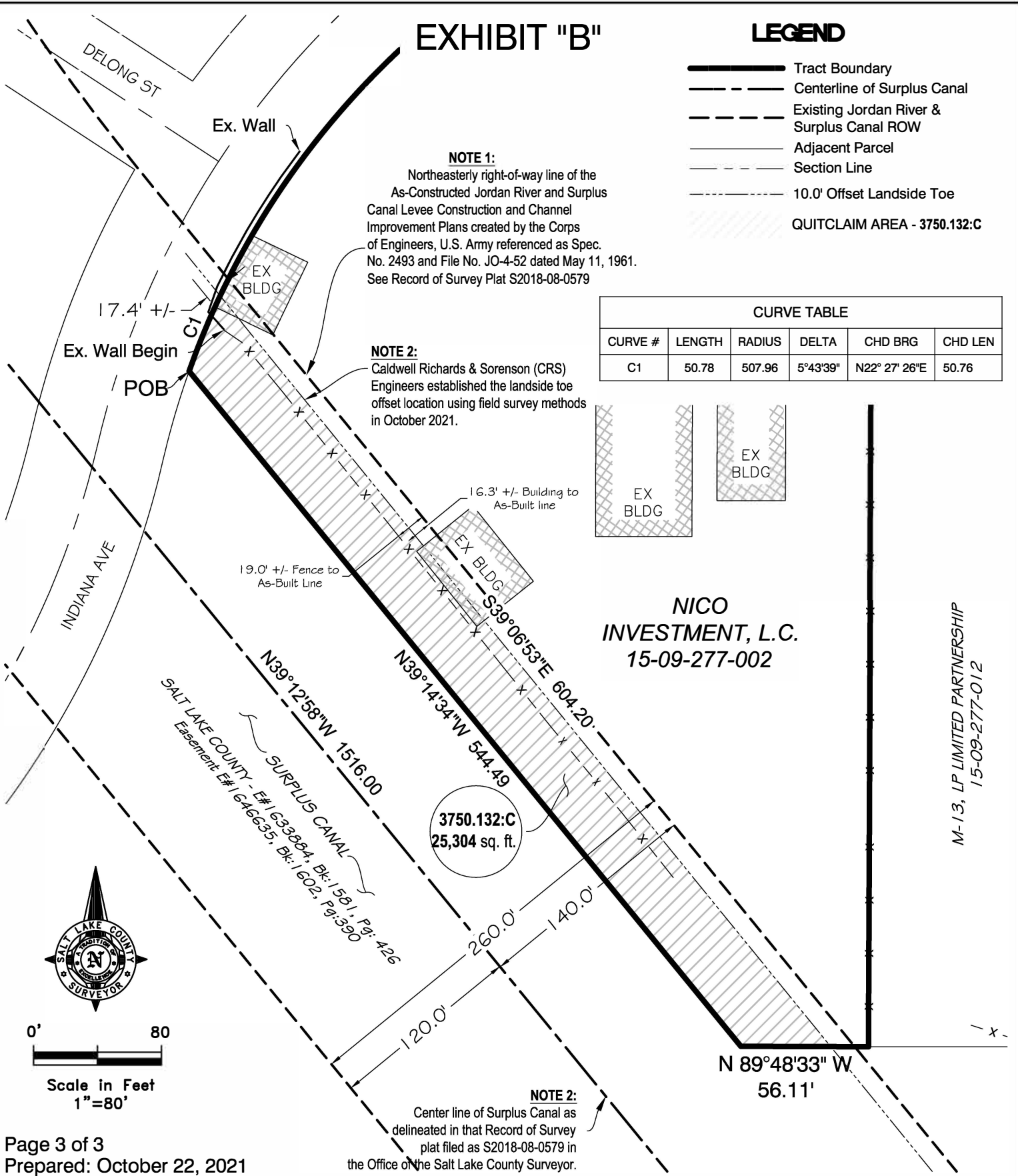
NOTE 2:
Caldwell Richards & Sorenson (CRS) Engineers established the landside toe offset location using field survey methods in October 2021.

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHD BRG	CHD LEN
C1	50.78	507.96	5°43'39"	N22° 27' 26"E	50.76



NICO INVESTMENT, L.C.
15-09-277-002

M-13, LP LIMITED PARTNERSHIP
15-09-277-012



Scale in Feet
1"=80'

Page 3 of 3
Prepared: October 22, 2021

NOTE 2:
Center line of Surplus Canal as delineated in that Record of Survey plat filed as S2018-08-0579 in the Office of the Salt Lake County Surveyor.

	<p>NICO INVESTMENT, L.C. JORDAN RIVER & SURPLUS CANAL Quitclaim Deed - 3750.132:C</p>	<p>Prepared by the Office of: Reid J. Demman, P.L.S. Salt Lake County Surveyor</p>
	<p>Prepared for: S.L. Co. Flood Control Engineering</p>	<p>2001 S. State St. #N1-400 Salt Lake City, Utah 84114-4575 (385) 468-8240</p>
	<p>NE 1/4, Sec. 09, T.1S, R.1W, S.L.B.&M. Work Order No. SU20160226 Real Estate No. 3750:132</p>	

Right of Way Contract
Exhibit B
Quit Claim Deed to Grantor

WHEN RECORDED RETURN TO:
NICO Investments LC
2301 West Indian Avenue
Salt Lake City, Utah 84104

Space above for County Recorder's use

QUITCLAIM DEED
Salt Lake County

Real Estate Parcel No.: **3750.132:Q**
Tax Serial No. 15-09-277-002
County Project No.: **FP140001**
Surveyor WO: **SU20160226**

SALT LAKE COUNTY, a body corporate and politic of the State of Utah, GRANTOR, hereby Quitclaim(s) to NICO Investment LC, GRANTEE, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the following described parcel of real property in Salt Lake County, Utah, to wit:

(SEE EXHIBIT A)

IN WITNESS WHEREOF, GRANTOR has caused this Quitclaim Deed to be signed and its official seal to be affixed hereto by its duly authorized officer this _____ day of _____, 20 _____.

SALT LAKE COUNTY

STATE OF UTAH)
)ss.

By: _____
 MAYOR or DESIGNEE

COUNTY OF SALT LAKE)

By: _____
 COUNTY CLERK

On this ____ day of _____, 20____, personally appeared before me _____, who being duly sworn, did say that __he is the _____ of Salt Lake County, Office of Mayor, and that the foregoing instrument was signed on behalf of Salt Lake County, by authority of law.

WITNESS my hand and official stamp the date in this certificate first above written:

Notary Public _____
My Commission Expires: _____
Residing in: _____

Acknowledgement Continued on Following Page

Real Estate Parcel No.: **3750.132:Q**
Tax Serial No. 15-09-277-002
County Project No.: **FP140001**
Surveyor WO: SU20160226

Acknowledgement Continued from Previous Page

On this ____ day of _____, 20____, personally appeared before me _____,
who being duly sworn, did say that __he is the CLERK_of Salt Lake County and that the foregoing
instrument was signed by him/her on behalf of Salt Lake County, by authority of a resolution of the SALT
LAKE COUNTY COUNCIL

WITNESS my hand and official stamp the date in this certificate first above written:

Notary Public _____

My Commission Expires: _____

Residing in: _____

(EXHIBIT A)

A parcel of land being part of an entire tract defined in those As-Constructed Jordan River and Surplus Canal Levee Construction and Channel Improvement plans created by the Corps of Engineers, U.S. Army referenced as Spec No. 2493 and File No. JO-4-52 dated May 11, 1961 and as shown on that certain Surplus Canal Centerline Survey plat filed as No. S2018-08-0579 in the office of the Salt Lake County Surveyor. Said parcel of land is located in the Northeast Quarter of Section 9, Township 1 South, Range 1 West, Salt Lake Base and Meridian and is described as follows:

Beginning at the intersection of a easterly right-of-way line of Indiana Avenue per that Official Map No. 15A (Indiana Ave & 900 South Right-of-Way) recorded November 15, 1983 in Book 83-11, at Page 150 and further described in that Warranty Deed recorded June 29, 1989 as Entry No. 4793787 in Book 6139, at Page 1069 in the Office of said Recorder and the ten (10) foot offset line of the landside toe, as located by field survey, which is 4157.19 feet S. 89°55'39" E. along the Section line and 1530.89 feet South from the Northwest Corner of said Section 9, said intersection being a point of non-tangency with a 507.96 – foot radius curve to the right, concave southeasterly (Radius point bears S. 64°40'45" E.); thence Northeasterly 11.60 feet along the arc of said curve, through a central angle of 01°18'32" (Chord bears N. 25°58'31" E. 11.60 feet) to a northeasterly right-of-way line of said As-Constructed Jordan River and Surplus Canal Levee Construction and Channel Improvement plans; thence S. 39°12'58" E. 618.60 feet along said northeasterly right-of-way to the southerly boundary of an entire tract of land described in that Warranty Deed recorded October 1, 1998 as Entry No. 7106324 in Book 8113, at Page 1442 in the Office of said Recorder; thence N. 89°48'33" W. (Record = S. 89°53'01" W.) 15.01 feet along said southerly boundary to said ten (10) foot offset line of the landside toe; thence N. 39°06'53" W. 604.20 feet along said 10.0 foot offset line of the landside toe to the **Point of Beginning**.

The above-described parcel of land contains 6,767 square feet in area or 0.155 acre, more or less.

EXHIBIT "B": By this reference, made a part hereof.

BASIS OF BEARING: S. 89°55'39" E. along the Section line between the Northwest Corner and the Northeast Corner of said Section 9, Township 1 South, Range 1 West, Salt Lake Base and Meridian.

EXHIBIT "B"

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHD BRG	CHD LEN
C1	11.60	507.96	1°18'32"	N25° 58' 31"E	11.60

LEGEND

- Tract Boundary
- Centerline of Surplus Canal
- Existing Jordan River & Surplus Canal ROW
- Adjacent Parcel
- Section Line
- 10.0' Offset Landside Toe
- QUITCLAIM AREA - 3750.132:Q

NOTE 1:
Northeasterly right-of-way line of the As-Constructed Jordan River and Surplus Canal Levee Construction and Channel Improvement Plans created by the Corps of Engineers, U.S. Army referenced as Spec. No. 2493 and File No. JO-4-52 dated May 11, 1961. See Record of Survey Plat S2018-08-0579

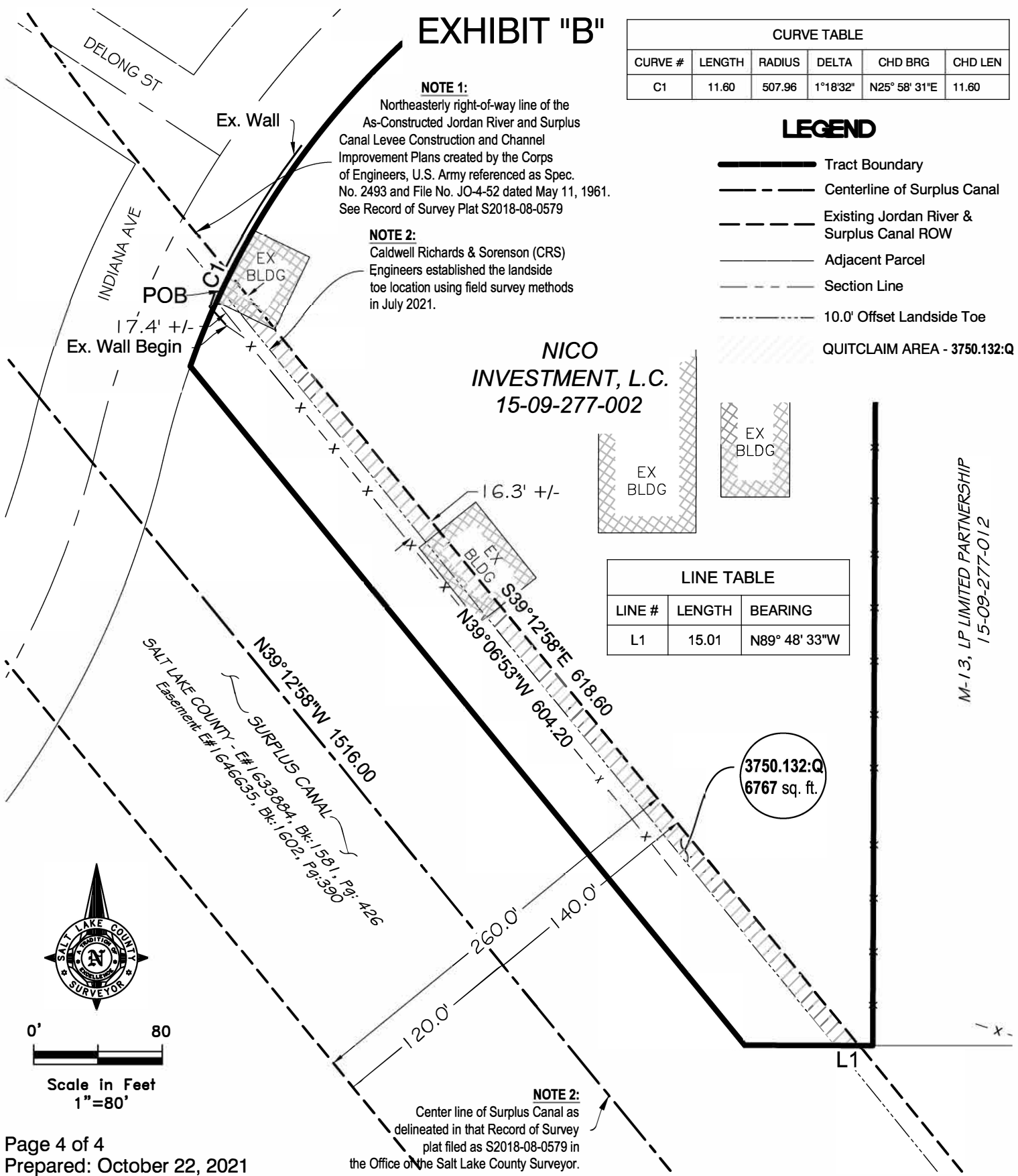
NOTE 2:
Caldwell Richards & Sorenson (CRS) Engineers established the landside toe location using field survey methods in July 2021.

NICO INVESTMENT, L.C.
15-09-277-002

LINE TABLE		
LINE #	LENGTH	BEARING
L1	15.01	N89° 48' 33"W

M-13, LP LIMITED PARTNERSHIP
15-09-277-012

3750.132:Q
6767 sq. ft.



SALT LAKE COUNTY - E#1633884, Bk:1581, Pg: 426
Easement E#1646635, Bk:1602, Pg:390



Scale in Feet
1"=80'

Page 4 of 4
Prepared: October 22, 2021

NOTE 2:
Center line of Surplus Canal as delineated in that Record of Survey plat filed as S2018-08-0579 in the Office of the Salt Lake County Surveyor.



SALT LAKE COUNTY
JORDAN RIVER & SURPLUS CANAL
Quitclaim Deed - 3750.132:Q
Prepared for:
S.L. Co. Flood Control Engineering
NE 1/4, Sec. 09, T.1S, R.1W, S.L.B.&M.
Work Order No. SU20160226 Real Estate No. 3750:132

Prepared by the Office of:
Reid J. Demman, P.L.S.
Salt Lake County Surveyor
2001 S. State St. #N1-400
Salt Lake City, Utah 84114-4575
(385) 468-8240