Mayor
Kenneth Romney

City Engineer/ Zoning Administrator
Ben White

City Recorder
Cathy Brightwell

WEST BOUNTIFUL PLANNING COMMISSION

550 North 800 West
West Bountiful, Utah 84087

Phone (801) 292-4486
FAX (801) 292-6355

Chairman
Denis Hopkinson

Commissioners
Laura Charchenko
Mike Cottle
Alan Malan
Terry Turner
Corey Sweat, Alt.

THE WEST BOUNTIFUL PLANNING COMMISSION WILL HOLD ITS REGULARLY SCHEDULED MEETING AT 7:30 PM ON TUESDAY, APRIL 26, 2016 AT THE CITY OFFICES AT 550 NORTH 800 WEST

AGENDA AS FOLLOWS:

Welcome. Prayer/Thought by invitation

1. Accept Agenda.
2. Public Hearing Regarding *The Cottages at Havenwood* Subdivision.
3. Consider Preliminary Plat for The Cottages at Havenwood Subdivision.
4. Staff Report.
5. Consider Approval of April 12, 2016 Meeting Minutes.
6. Adjournment.

Individuals needing special accommodations including auxiliary communicative aids and services during the meeting should notify Cathy Brightwell at 801-292-4486 twenty-four (24) hours before the meeting.

This notice has been sent to the Clipper Publishing Company, and was posted on the State Public Notice website and the City's website on ***April 22, 2016****.*

Mayor
Kenneth Romney

City Council
James Ahlstrom
James Bruhn
Kelly Enquist
Mark Preece
Andrew Williams

WEST BOUNTIFUL CITY

550 North 800 West
West Bountiful, Utah 84087

Phone (801) 292-4486
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City Administrator
Duane Huffman

Recorder
Cathy Brightwell

City Engineer
Ben White

Public Works Director
Steve Maughan

NOTICE OF PUBLIC HEARING

A public hearing will be held by the West Bountiful Planning Commission at its regular meeting on Tuesday, April 26, 2016 at the City offices, 550 N 800 West, beginning at 7:30 p.m., or as soon thereafter as dictated by the agenda.

The purpose of the hearing is to receive public comment regarding The Cottages at Havenwood, a 39-lot P.U.D. Subdivision at 690 W 1600 North.

All interested parties are invited to participate in the hearing. Written comments may be submitted prior to the meeting.

Cathy Brightwell
City Recorder

WEST BOUNTIFUL CITY

ORDINANCE NO. 376-16

AN ORDINANCE CREATING A PLANNED UNIT DEVELOPMENT FOR 9.13 ACRES OF REAL PROPERTY (PREVIOUSLY KNOWN AS "PONY HAVEN") LOCATED WITHIN THE CITY AT APPROXIMATELY 690 WEST 1600 NORTH

WHEREAS, Chapter 17.68 of the West Bountiful Municipal Code (the "***Code***") authorizes the City Council, in its discretion and as a legislative decision following a recommendation from the Planning Commission, to allow a parcel of property to be developed as a Planned Unit Development ("***PUD***");

WHEREAS, under appropriate circumstances a PUD may permit greater flexibility and design freedom than permitted under basic zoning regulations to accomplish a well-balanced, aesthetically satisfying city and economically desirable development of building sites within a development;

WHEREAS, as part of PUD approval, the City Council may grant a density bonus based on amenities provided or other reasonable contributions of a project;

WHEREAS, a developer has requested approval of a PUD for approximately 9.13 acres of real property located at approximately 690 West 1600 North in West Bountiful, Utah, as more particularly described in the attached **Exhibit A** (the "***Property***"), in order to develop a subdivision known as The Cottages at Havenwood;

WHEREAS, the developer has requested a density bonus of thirty percent (30%) (the "***Density Bonus***"), or nine (9) lots more than would be allowed if the Property were developed according to traditional subdivision regulations, for a total density on the Property of thirty-nine (39) lots;

WHEREAS, the developer is willing to develop the Property in a manner that will benefit the community at large, including by making a payment to the City in lieu of certain amenities in the amount of $164,880.00;

WHEREAS, the City and the developer are willing to memorialize terms of the PUD development in a Development Agreement in substantially the form attached as **Exhibit B**;

WHEREAS, following execution of the Development Agreement the subdivision will still be subject to approval in accordance with Titles 16 and 17 of the Code;

WHEREAS, the West Bountiful Planning Commission has recommended approval of the PUD with a density bonus;

WHEREAS, after considering the recommendation of the Planning Commission, the City Council concludes that the features of the proposed PUD, taken as a whole, are preferable to

a traditional subdivision approved in accordance with Titles 16 and 17 of the Code. This conclusion is based in part on a showing that the proposed PUD is in accordance with the purpose, spirit and intent of Chapter 17.68 of the Code and is not hazardous, harmful, offensive or otherwise adverse to the environment, property values, the character of the neighborhood, or the health, safety and welfare of the community;

WHEREAS, the City Council concludes that approving a PUD with the Density Bonus on the Property promotes the public health, safety, and welfare, and is in the best interest of the City and its residents and the general community;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF WEST BOUNTIFUL CITY, UTAH, THAT THE PROPERTY MAY BE DEVELOPED AS A PUD WITH THE DENSITY BONUS, SUBJECT TO ALL APPLICABLE LAWS AND ORDINANCES AND IN ACCORDANCE WITH THE DEVELOPMENT AGREEMENT ATTACHED AS EXHIBIT B. THE MAYOR IS HEREBY AUTHORIZED AND DIRECTED TO EXECUTE THE DEVELOPMENT AGREEMENT ON BEHALF OF THE CITY.

This ordinance will become effective upon signing and posting.

Adopted this 26th day of April, 2016.

By:

_____
Kenneth Romney, Mayor

Attest:

_____
Cathy Brightwell, City Recorder

Voting by the City Council:	Aye	Nay
Councilmember Ahlstrom	____	_____
Councilmember Bruhn	____	_____
Councilmember Enquist	____	_____
Councilmember Williams	____	_____
Councilmember Preece	____	_____

DEVELOPMENT AGREEMENT
The Cottages at Havenwood Subdivision

This DEVELOPMENT AGREEMENT (the "***Agreement***") is made and entered into effective _____, 2016 (the "***Effective Date***"), by and between **CAPITAL REEF MANAGEMENT, LLC**, a Utah limited liability company ("***Developer***"); and **WEST BOUNTIFUL CITY**, a Utah municipal corporation (the "***City***").

RECITALS

A. Developer owns approximately 9.13 acres of real property (previously known as "Pony Haven") located within the City at approximately 690 West 1600 North, and as more particularly described in the attached **Exhibit A** (the "***Property***"). Developer proposes to subdivide the Property as a Planned Unit Development ("***PUD***") pursuant to Chapter 17.68 *et seq.* of the West Bountiful Municipal Code, as amended (the "***Code***"), under the name of "***The Cottages at Havenwood***" (the "***Subdivision***").

B. Developer desires to develop the Property as an active adult community, targeted to a demographic of the population that desires smaller lots and single-level living, maintained by a home owner's association (the "***HOA***").

C. If developed as a standard subdivision within the applicable R-1-10 zoning district, the Property would yield a maximum of thirty (30) lots. Under the City's PUD ordinance, Developer desires a density bonus for the Property of thirty percent (30%) (the "***Density Bonus***"). The Density Bonus would yield an additional nine (9) lots, for a total of thirty-nine (39) lots in the Subdivision, as depicted in the site plan attached as **Exhibit B** (the "***Site Plan***"). After due consideration, the West Bountiful City Council has directed the preparation of this Agreement and an ordinance for approval of a PUD on the Property with the Density Bonus.

D. Following the execution of this Agreement, Developer intends to submit to the City's Planning Commission and City Council for approval a preliminary plat and final plat (the "***Final Plat***") for the Subdivision consistent with the Site Plan (**Exhibit B**).

E. The City's approval of the Final Plat is subject to (1) the execution of this Agreement; (2) the delivery of security acceptable to the City for the satisfactory completion and warranty of all onsite and offsite improvements required for the Subdivision (collectively, the "***Improvements***"); and (3) compliance with the requirements of this Agreement and the City's zoning ordinances and development regulations, including Titles 16 and 17 of the Code.

F. Developer is willing to complete the Improvements and develop the Subdivision in harmony with the long-range goals and policies of the City's general plan and in compliance with the Final Plat, the Code and this Agreement. The City is willing by this Agreement to grant Developer certain development rights subject to the requirements of this Agreement, the Code, the City's subdivision standards and specifications, and all other applicable laws and requirements (collectively, the "***Subdivision Requirements***").

NOW THEREFORE, for good and valuable consideration, including the mutual covenants contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEVELOPMENT OF SUBDIVISION. The approved uses, density, intensity, and configuration of the components of the Subdivision are depicted and described in the Site Plan

(Exhibit B); the drawings attached as **Exhibits C**, **D**, and **E**, (collectively, the "***Drawings***"); and the Declaration of Covenants, Conditions and Restrictions attached as **Exhibit F** (the "***CC&Rs***"). In particular, the approved limits on modifications to standard lot size, setback, and density requirements are depicted in the Site Plan (**Exhibit B**). Developer will develop the Subdivision in conformity with the requirements of the Final Plat (which must be consistent with the Site Plan), the Drawings, and the CC&Rs.

2. OWNERSHIP OF SUBDIVISION. Prior to recordation of the Final Plat, Developer will provide the City appropriate evidence, including a preliminary title report, of Developer's ownership of all real property within the Subdivision.

3. COMPLETION OF IMPROVEMENTS. Developer will provide, construct, and install the Improvements in a satisfactory manner in compliance with the Subdivision Requirements. Developer will complete all of the Improvements within 18 months after the date the Final Plat is recorded; provided, that upon written application submitted prior to the expiration of the 18-month period, the City, through its City Council, may extend the time for completing all of the Improvements for up to an additional six months for good cause shown.

4. SPECIFIC STANDARDS FOR IMPROVEMENTS. The Improvements will be constructed and installed in accordance with the following standards:

a. Scope of Improvements. The Improvements include all onsite and offsite improvements, both those intended for public dedication (the "***Public Improvements***") and otherwise, depicted or described in the Site Plan or the Drawings.

b. Culinary Water. All culinary water main lines within the Subdivision will be constructed and tied to the City's existing culinary water system in strict compliance with the Code and all other applicable standards and engineering requirements of the City and the Utah State Division of Drinking Water. Before connecting such culinary water lines to the City's culinary water system, Developer will reimburse the City for its actual cost of installing a lateral from the City's main line in Pages Lane to the Subdivision, which cost shall not exceed $7,000.00.

c. Secondary Irrigation Water. All pressurized secondary irrigation water lines within the Subdivision will be constructed and tied to the Weber Basin Water Conservancy District main trunk line in strict compliance with all applicable standards and engineering requirements of the Weber Basin Water Conservancy District.

d. Sanitary Sewer. All sanitary sewer lines within the Subdivision will be constructed and tied to the South Davis Sewer Improvement District's main sewer trunk lines in strict compliance with all applicable standards and engineering requirements of the South Davis Sewer Improvement District.

e. Storm Drainage. Developer will construct and install an adequate storm drainage collection system, sub-surface collection system and other surface and underground water drainage facilities in accordance with the Drawings, and in strict compliance with the Subdivision Requirements. In particular, Developer will provide rear yard drains and drain lines in accordance with the Grading and Drainage Plan attached as **Exhibit C** and the Subdivision Requirements. Developer will also provide adequate pump facilities in accordance with the Pump Facilities Design attached as **Exhibit D** and the Subdivision Requirements, subject to City approval. Developer will install a 48-inch bypass storm drain line at 800 West Street subject to approval of the City and Davis County. Developer will obtain a UPDES permit from the State of Utah for storm water pollution prevention. Developer will maintain the permit in place until (1) all disturbed land within the Subdivision is stabilized (meaning paved and

concreted, with homes built and landscaping installed, or vegetation re-established); or (2) Developer's construction is complete in accordance with this Agreement and all lots in the Subdivision have been conveyed to third parties, whichever occurs first.

f. **Pump Facilities**. Developer will provide 7,000 to 8,000 square feet of open space and pump facilities, as depicted in the Site Plan (**Exhibit B**) and in accordance with the Pump Facilities Design (**Exhibit D**) and applicable Subdivision Requirements, subject to City approval. The HOA will own and maintain the open space. The City will own and maintain the pump facilities.

g. Amenity Contribution. In lieu of certain amenities, Developer will provide the City a payment of ONE HUNDRED SIXTY-FOUR THOUSAND EIGHT HUNDRED EIGHTY AND NO/100 DOLLARS (**$164,880.00**) upon recordation of the Final Plat. Of that amount $50,000 is identified for storm water enhancements, but may be used for other purposes at the City's discretion. The City will use the remaining $114,880 at its discretion for community amenities.

h. Street Improvements. All street, parking, and hardscape improvements, including curb and gutter, sidewalk, street construction, road surfacing, drainage swales, drive approaches in drainage swales, bridges, trails, walking paths, and associated road improvement structures will be constructed and fully improved in strict compliance with the Drawings, the Code, and all other applicable standards and engineering requirements of the City.

i. Landscape Improvements. Developer will provide landscape improvements to the Subdivision, including front-, side- and rear-yard landscaping of individual lots, in accordance with the Landscape Plan attached as **Exhibit E**. In particular, Developer will plant at least one tree in the park strip for each lot and provide fencing as specified in the Landscape Plan, and all side-yard fencing shall be at least 30 feet back from the front line of the improved lots. Perimeter fencing will be installed at the time the remaining Improvements are installed. The HOA will maintain all front- and side-yard landscaping and perimeter fencing.

j. Architectural Standards. All dwellings in the Subdivision will be single-story buildings with a maximum height of twenty-five (25) feet and a minimum square footage of 1500 square feet of living area (not including the garage). Each dwelling shall use the following types of exterior construction materials: brick, rock, stone, stucco, or hardy cementious siding. The front, or street-facing façade of each dwelling, shall have at least 50% brick, stone, or rock masonry. Vinyl siding shall not be allowed. All dwellings shall include an attached two-car garage as a minimum. No detached garages will be allowed. A dwelling may be built next to a dwelling with the same plan, but the exterior material colors used on such adjacent dwellings, as well as the garage element design and color, must be different. All dwellings shall further comply with the provisions of the CC&Rs (**Exhibit F**).

5. COVENANTS, CONDITIONS AND RESTRICTIONS. Developer will record covenants, conditions and restrictions against the Property in substantially the same form as the CC&Rs attached as **Exhibit F**. No amendment to the CC&Rs or termination of the CC&Rs may be made without the City's prior written approval. The City will be an intended third-party beneficiary of the CC&Rs for purposes of enforcing architectural standards required under the CC&Rs.

6. CONSTRUCTION.

a. Construction Period. Developer will:

(1) Develop the Subdivision in accordance with accepted development procedures;

(2) Take all precautions reasonably necessary to prevent injury to persons or property during the construction period;

(3) Take reasonable steps to contain and abate dust resulting from construction activities;

(4) Provide such road surface, including road base and gravel, during construction as will render the streets and parking areas within the Subdivision reasonably accessible and conducive to travel by trucks and heavy equipment;

(5) Take all necessary precautions to prevent undue amounts of dirt or debris from being tracked onto or deposited upon the properties and public streets adjoining the Subdivision;

(6) Be responsible for all expenses incurred by the City or others in cleaning such properties or public streets of any undue amount of dirt or debris deposited as a result of construction activities within the Subdivision;

(7) Prevent and abate weeds on property within the Subdivision in accordance with the Code for as long as Developer owns such property; and

(8) Avoid damaging streets, curbs, sidewalks, and other improvements within or adjacent to the Subdivision during development and construction; and repairing any such damage at Developer's own expense.

b. Unforeseen Circumstances. The City has provided certain drawings and other information to Developer with respect to the location of existing water lines, storm drain lines, and other subsurface infrastructure within the Subdivision or necessary for the development of the Subdivision. The City does not warrant the precise locations of such subsurface infrastructure. Any unforeseen circumstances relative to the Improvements arising during construction, including subsurface infrastructure and soil conditions, will be the sole responsibility of Developer.

c. Diligent Prosecution of Work. Developer will diligently prosecute the work of constructing and installing the Improvements to completion. All Improvements will be constructed and installed in a workmanlike manner in compliance with applicable laws and industry standards. All Improvements will be of a high quality, and will be consistent with the provisions of this Agreement.

d. Building Permit Prerequisites. The City will authorize the construction of any building within the Subdivision only after the following requirements have been satisfied:

(1) ***Fire Protection*****.** The building will be located on a lot that lies within 500 feet of a fire hydrant that is fully charged with water and under sufficient pressure to provide adequate fire protection.

(2) ***Street and Parking Surfaces*****.** The building will be located on a lot served by a street surface and parking areas improved to the extent necessary to be passable for fire fighting and other emergency equipment and apparatus. The street surface must be constructed the full width of the final street design, including curb and gutter. All street and parking surfaces must be constructed, at a minimum, with either an asphalt surface course or compacted gravel road base placed to the final finish elevation of the asphalt surface (additional thickness may be required if building construction is to begin during any month from October through March).

(3) ***Sewer Connection*****.** The City has received an acceptance letter from South Davis Sewer District approving connection to the sanitary sewer system.

(4) ***As-built Drawings*****.** Acceptable record/as-built drawings have been submitted to the City for review and acceptance.

e. Stop Work Order. In the event the City determines Developer is in violation of any material provision of this Agreement, including the foregoing standards for Improvements, and sufficient cause exists to stop the work, then, upon five (5) days' written notice to Developer, the City may shut down all work on the Subdivision and prevent further construction or building activity until Developer remedies the violation and is once again in full compliance with the provisions of this Agreement. Any such stop work order will be without prejudice to any other right or remedy of the City.

7. DEDICATION OF PUBLIC IMPROVEMENTS. Upon the satisfactory completion and final inspection of the Improvements, Developer will dedicate to the City all Public Improvements, including the culinary water system, storm drain lines (except for the rear yard drain lines), pump station, streets, sidewalk, curb and gutter. The owner of each lot in the Subdivision will own and maintain the rear yard drain and that portion of the rear yard drain lines within the lot's boundaries. The HOA will own and maintain the detention basin. Developer will continue to repair and replace the Public Improvements as necessary during the Warranty Period, as provided below.

8. WARRANTY OF IMPROVEMENTS. Developer warrants that the Improvements and any improvements restored by Developer will comply with the Subdivision Requirements and will remain in good condition, free from all defects in workmanship or materials during the Warranty Period (as defined below), without charge or cost to the City. For purposes of this Agreement, "***Warranty Period***" means the one-year period beginning on the date the City provides Developer written acceptance of the completed Improvements in accordance with Section 16.16.030.N of the Code.

9. SECURITY FOR DEVELOPER'S OBLIGATIONS. To secure the satisfactory completion of the Improvements and Developer's warranty obligations under the Code and this Agreement, Developer and the City will enter into a bond agreement or agreements in a form acceptable to the City (collectively, the "***Bond Agreement***"). Under the Bond Agreement, the City or a federally insured bank will hold in a separate escrow account (the "***Escrow Account***") an amount of money specified in the Bond Agreement (the "***Proceeds***"), subject to authorized disbursements, pending expiration of the Warranty Period. The Proceeds represent 120 percent of the estimated cost of the Improvements, as itemized in the Bond Agreement, which includes ten percent available as a holdback to ensure satisfactory completion of warranty items, as provided in the Code. Developer will assign to the City all of its right, title, and interest in and to the principal amount of the Escrow Account as an independent guaranty for the satisfactory completion of the Improvements, and the City will be entitled to immediate access to the Proceeds, as provided in the Bond Agreement. Developer will remain fully liable to complete and warrant the Improvements and surface of the Subdivision property even if the Proceeds are inadequate to fully cover the cost to install, repair, or replace them.

10. FEES AND CHARGES. Developer will pay all fees and charges required by the Code, including plat fees, storm drain impact fees, public improvement inspection fees, and water rights fees (if Developer does not dedicate water rights to the City), before the Final Plat is recorded; and all lot-specific required fees and charges, including building permit fees, before any building permit is issued.

11. DEFAULT. Developer will be in default under this Agreement if any of the following occurs:

a. Abandonment. Developer abandons the Subdivision, as determined by the City in its sole discretion.

b. Failure to Perform.

(1) *Failure to Complete Improvements.* Developer fails to complete the Improvements according to the Subdivision Requirements within the time specified in this Agreement.

(2) *Failure during Warranty Period.* The City finds any of the Improvements to be substandard or defective during the Warranty Period and, after ten (10) business days' written notice of such failure, Developer has not repaired or replaced the substandard or defective Improvements at Developer's own expense; or, if the failure is not capable of being cured within such time, Developer has not commenced to cure the failure within such time and diligently completed the cure at its own expense within a reasonable time thereafter, as determined by the City in its sole discretion.

(3) *Emergency Situation.* The City determines, in its sole discretion, that an emergency situation exists relative to the Improvements and, after verbal notice followed by written notice within three (3) days, Developer has not remedied the emergency situation within a reasonable time, as determined by the City in its sole discretion.

(4) *Other Failure.* Developer otherwise substantially fails to perform its obligations under this Agreement and, after ten (10) business days' written notice from the City of such failure, Developer has not cured the failure; or, if the failure is not capable of being cured within such time, has not commenced to cure the failure within such time and diligently completed the cure within a reasonable time thereafter, as determined by the City in its sole discretion.

c. Insolvency. Developer becomes insolvent, a receiver is appointed for Developer, or a voluntary or involuntary petition in bankruptcy pertaining to Developer is filed at any time before Developer's obligations under this Agreement have been satisfied.

d. Foreclosure. Foreclosure proceedings are commenced against any property owned by Developer within the Subdivision or such property is conveyed in lieu of foreclosure before Developer's obligations under this Agreement have been satisfied.

12. REMEDIES. In the event of Developer's default under this Agreement, the City will be entitled to pursue any remedies allowed under this Agreement, at law, or in equity, including the following:

a. Disbursement of Proceeds. The City will be entitled to withdraw some or all of the Proceeds from the Escrow Account upon written request, in accordance with the Bond Agreement. The City will utilize the withdrawn Proceeds for the purpose of satisfactorily completing, repairing, or replacing the Improvements. In the event the City receives Proceeds in excess of those required to complete, repair, or replace the Improvements, the City will pay the excess Proceeds plus interest to Developer upon final approval of the Improvements at the end of the Warranty Period.

b. Completion of Improvements by the City. The City may elect to complete, repair, or replace the Improvements, as it deems necessary. Developer hereby grants to the City, its officers, employees, agents and contractors, the unrestricted right to enter upon the Subdivision property for the purpose of completing or remedying the Improvements in the event of Developer's default. All costs the City incurs in completing or remedying the Improvements, including attorney fees, administrative fees, and court costs, whether incurred in litigation or otherwise, will be included in the cost of the

Improvements. The amount of such costs will be deducted from the Proceeds available for disbursement to Developer upon final approval of the Improvements at the end of the Warranty Period.

c. Deficiency. Upon written notice, Developer will compensate the City for all costs the City incurs as a result of Developer's failure to perform its obligations under this Agreement to the extent such costs are not covered by the Proceeds. Such costs include all costs described in Section 12.f.

d. Suspension of Building Permits. The City may suspend the issuance of new building permits within the Subdivision until: (1) the Improvements are satisfactorily completed, repaired, or replaced; (2) a substitute bond agreement has been executed and delivered to the City, and the City Council agrees to accept the substitute bond agreement; or (3) other arrangements acceptable to the City Council have been made to insure the satisfactory completion, repair, or replacement of the Improvements.

e. Specific Enforcement. The City may specifically enforce Developer's obligations under this Agreement, including the obligation to install, pay for, and warrant the Improvements.

f. Costs and Attorney Fees. The City may recover from Developer all costs necessary to complete, repair, or replace the Improvements or enforce this Agreement, including all administrative costs; inspection fees; permit fees; and reasonable attorney, engineering, consultant, and expert witness fees, whether incurred in litigation or otherwise.

The City's remedies under this Agreement, at law, and in equity are cumulative.

13. INDEMNIFICATION.

a. Generally. To the fullest extent permitted by law, Developer will indemnify, defend, and hold harmless the City and its officers, employees, agents, consultants and contractors, from and against all liability, claims, demands, suits or causes of action arising out of or otherwise resulting from the Improvements until such time as the Improvements have been finally completed, whether by Developer or by the City, and the Improvements have been approved and accepted by the City at the expiration of the Warranty Period, except to the extent of any gross negligence or intentional misconduct attributable to the City.

b. For Insufficient Proceeds. In the event the City elects to complete the Improvements or remedy substandard or defective Improvements, Developer will indemnify, defend, and hold harmless the City and its officers, employees, agents, consultants and contractors, from and against all liability in excess of the Proceeds for the payment of any labor or material liens which may result from the work of any contractor (including subcontractors and materialmen of any such contractor) hired by the City or which may arise due to insufficient Proceeds.

c. Defense of Claims. With respect to Developer's agreement to defend the City, the City will have the option of either providing for its own defense, or requiring Developer to undertake the defense of the City, either of which will be at Developer's sole cost and expense.

14. INSURANCE. Developer will maintain during the development of the Subdivision and the Warranty Period insurance in types and amounts reasonably acceptable to the City, covering liability, damage, loss, or injury to any person or property, including damage to Developer or its property, as a result of the work of any contractor or other agent of Developer in the development of the Subdivision, including the installation or construction of the Improvements or the completion or repair of the Improvements by the City. Developer's indemnity obligations under this Agreement shall include any

liability that exceeds the insurance policy limits. Developer will provide at least annually proof of the insurance required under this Agreement. If Developer fails to maintain insurance as required, the City, at its option, may obtain such insurance and collect from Developer the cost of insurance premiums as part of the City's recoverable costs, as described in Section 12.f. The City may suspend the issuance of any building permits until such insurance is in place.

15. DEVELOPER'S INDEPENDENT OBLIGATIONS. Developer's obligations to complete and warrant the Improvements and fulfill its other obligations under this Agreement and the other Subdivision Requirements: (a) are independent of any obligation or responsibility of the City, express or implied; (b) are not conditioned upon the commencement of actual construction work in the Subdivision or upon the sale of any lots or part of the Subdivision; and (c) are independent of any other remedy available to the City to secure completion of the Improvements. Developer may not assert as a defense that the City has remedies against other entities or has other remedies in equity or at law that would otherwise relieve Developer of its duty to perform, or preclude the City from requiring Developer's performance under this Agreement.

16. CONNECTION TO CITY SYSTEMS. The City will permit Developer to connect the Improvements to the City's water and storm drain systems upon Developer's performance of its obligations under this Agreement and compliance with the Subdivision Requirements, including payment of all connection, review, and inspection fees.

17. INSPECTION AND PAYMENT.

a. Inspection of Improvements. Notwithstanding any provision of this Agreement to the contrary, the Improvements, their installation, and all other work performed by Developer or its agents under this Agreement may be inspected at such times as the City may reasonably require; in particular, an inspection will be required before any trench containing Improvements is closed. Developer will pay any required connection fees, impact fees, and inspection fees required by City ordinance or resolution prior to such inspection.

b. Right to Enter Subdivision. Developer grants to the City, its officers, employees, agents and contractors, the unrestricted right to enter upon the property within the Subdivision for the purpose of inspecting, completing, repairing, or replacing the Improvements and taking any other necessary remedial action, both before and during the Warranty Period and for ninety (90) days thereafter.

c. Payment to Third Parties. Developer will timely pay all third parties for labor and materials provided for the Improvements. Developer will promptly remove all liens for labor and materials from the Subdivision property, and will indemnify, defend, and hold harmless the City and its officers, employees, agents, consultants and contractors, from and against all liability for such liens. The disbursement of Proceeds under the Bond Agreement will be conditioned on the waiver or satisfaction of all such liens.

18. MISCELLANEOUS PROVISIONS.

a. Covenants Run with the Land. Developer will not assign any rights or delegate any obligations under this Agreement without the City's prior written consent, which the City may withhold in its sole discretion. Subject to the foregoing, the covenants contained in this Agreement will be construed as covenants that touch and concern real property and will run with the land. Such covenants will be binding upon the successors, permitted assigns, agents, and legal representatives of Developer in the ownership or development of any portion of the Subdivision. The City may record this Agreement or a memorandum of this Agreement.

b. Expiration. This Agreement will expire without further notice to either party if Developer does not record the Final Plat within twelve (12) months after the Effective Date; provided, that upon written application submitted prior to the expiration of the 12-month period, the City, through its City Council, may extend the time for recording the Final Plat for up to an additional six months for good cause shown.

c. Severability. The provisions of this Agreement are severable, and the invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of the remaining provisions.

d. Captions. The section and paragraph headings contained in this Agreement are for the purpose of reference only and will not limit or otherwise affect the construction of any provision of this Agreement.

e. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter, and supersedes all previous or contemporaneous representations or agreements of the parties in that regard. No modification of this Agreement will be valid or binding unless made in writing and signed by both parties. Any waiver of any provision of this Agreement must be in writing and must be signed by the party waiving the provision.

f. No Third-Party Beneficiaries. This Agreement is made for the exclusive benefit of the parties and their respective heirs, successors, and assigns. No other person or entity, including lot purchasers, contractors, subcontractors, laborers, and suppliers, will have any interest under this Agreement or be classified as a third-party beneficiary. The City will not be liable to any claimant, in any way, for any obligation of Developer under this Agreement or otherwise.

g. Time of Essence. Time is of the essence in the performance of all obligations under this Agreement.

h. Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH, EXCEPT AS SUCH LAWS MAY BE PREEMPTED OR SUPERSEDED BY THE LAWS OF THE UNITED STATES. THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF THE COURTS OF THE STATE OF UTAH, OR THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF UTAH, AS THE CASE MAY BE, WITH VENUE IN DAVIS COUNTY, AS THE SOLE FORUM FOR ANY LITIGATION ARISING OUT OF THIS AGREEMENT.

i. No Partnership. The transactions contemplated under this Agreement are Developer's installation and warranty of the Improvements, and do not constitute a partnership, joint venture or other association between the parties.

j. Notices. All notices required under this Agreement must be in writing and will be deemed to have been sufficiently given or served when presented personally or when deposited in the United States Mail, by registered or certified mail, addressed as follows:

TO DEVELOPER: Capital Reef Management, LLC
893 Marshall Way, Suite A
Layton, Utah 84041

TO THE CITY: West Bountiful City
Attention: City Administrator
550 North 800 West
West Bountiful, Utah 84087

Either party may designate a different address by written notice to the other party. Any notice given under this Agreement will be deemed given as of the date delivered or mailed.

k. Warranty of Authority. The persons signing this Agreement on behalf of the parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective parties, which have agreed to be and are bound hereby.

l. Exhibits. All exhibits to this Agreement, as described in the attached exhibit list, are incorporated in this Agreement by reference.

m. Joint and Several Liability. If Developer consists of more than one person or entity, the obligations of Developer under this Agreement are joint and several.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

DEVELOPER:

CAPITAL REEF MANAGEMENT, LLC

_____

Brad Frost, Manager

THE CITY:

WEST BOUNTIFUL CITY

_____

Kenneth Romney, Mayor

ATTEST:

_____

Cathy Brightwell, City Recorder

ACKNOWLEDGMENTS

STATE OF UTAH)
: ss
COUNTY OF DAVIS)

On the _____ day of _____, 2016, appeared before me ***Brad Frost***, who, being duly sworn, did acknowledge that he is the ***Manager*** of ***Capital Reef Management, LLC***, the Developer of ***The Cottages at Havenwood*** named in the foregoing Agreement, and that he signed the Agreement as duly authorized by a resolution of its members and acknowledged to me that the LLC executed the same.

_____

NOTARY PUBLIC

STATE OF UTAH)
: ss
COUNTY OF DAVIS)

On the _____ day of _____, 2016, appeared before me ***Kenneth Romney*** and ***Cathy Brightwell***, personally known to me or proved to me on the basis of satisfactory evidence to be the Mayor and City Recorder, respectively, of West Bountiful City, who duly acknowledged that the foregoing instrument was signed on behalf of the City by authority of a duly adopted resolution of its City Council, and that the City executed the same.

_____

EXHIBIT LIST

Exhibit A	Legal Description of the Property
Exhibit B	Site Plan
Exhibit C	Grading and Drainage Plan
Exhibit D	Pump Facilities Design
Exhibit E	Landscape Plan
Exhibit F	Covenants, Conditions and Restrictions

EXHIBIT A

Legal Description of the Property

PARCEL 1:

BEGINNING AT A POINT 26.11 CHAINS WEST FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIHP 2 NORTH, RANGE 1 WEST , SALT LAKE BASE AND MERIDIAN, UNITED STATES SURVEY, AND RUNNING THENCE NORTH 18.79 CHAINS; THENCE WEST 3.885 CHAINS; THENCE SOUTH 18.79 CHAINS; THENCE EAST 3.885 CHAINS TO THE POINT OF BEGINNING.

PARCEL 2:

BEGINNING AT A POINT 26.11 CHAINS WEST FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, UNITED STATES SURVEY, AND RUNNING THENCE SOUTH 4.80 CHAINS, THENCE WEST 3.885 CHAINS, THENCE NORTH 4.80 CHAINS, THENCE EAST 3.885 CHAINS TO THE POINT OF BEGINNNG.

PARCEL 3:

ALL OF THE WESTERLY 3.29 FEET OF LOT 206, BIRNAM WOODS PHASE 2, WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH.

EXHIBIT B

Site Plan

Reeve & Associates, Inc. - Solutions You Can Build On

Vicinity Map
SCALE: 1" = 500'

LINE TABLE

LINE	BEARING	DISTANCE
L1	SOUTH	25.00'
L2	SOUTH	25.00'
L3	WEST	10.01'

CURVE TABLE

#	RADIUS	ARC LENGTH	CHD LENGTH	TANGENT	CHD BEARING	DELTA
C1	225.00'	29.85'	29.83'	14.95'	N85°43'37"W	7°36'05"
C2	175.00'	24.66'	24.64'	12.35'	N85°57'47"W	8°04'25"
C3	200.00'	28.18'	28.16'	14.11'	S85°57'47"E	8°04'25"
C4	200.00'	26.53'	26.51'	13.29'	S85°43'37"E	7°36'05"
C5	175.00'	23.22'	23.20'	11.63'	S85°43'37"E	7°36'05"
C6	225.00'	31.71'	31.68'	15.88'	N85°57'47"W	8°04'25"
C7	12.00'	19.04'	17.10'	12.19'	N45°01'20"E	90°54'00"
C8	12.00'	18.66'	16.84'	11.81'	S44°58'40"E	89°06'00"
C9	12.00'	18.76'	16.91'	11.91'	N45°12'50"W	89°34'20"
C10	12.00'	18.94'	17.03'	12.09'	S44°47'10"W	90°25'40"
C11	22.00'	34.06'	30.76'	21.51'	N45°35'00"W	88°42'22"
C12	22.00'	34.75'	31.25'	22.19'	S44°49'05"W	90°29'29"

BOUNDARY DESCRIPTION

PART OF THE NORTHEAST QUARTER OF SECTION 13 TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, U.S. SURVEY. DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE RIGHT-OF-WAY OF 1600 NORTH STREET, SAID POINT BEING S00°27'24"E 321.96 AND N89°32'36"E 661.40 FEET FROM THE CENTER OF SAID SECTION 13; THENCE N00°25'40"W 1566.01 FEET; THENCE S89°31'40"E 266.18 FEET; THENCE SOUTH 1563.72 FEET; THENCE S89°59'21"W 254.48 FEET TO THE POINT OF BEGINNING.

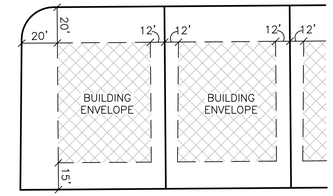
CONTAINING 407,362 SQUARE FEET OR 9.352 ACRES

NOTES:

- PROPERTY IS NOT IN A FEMA FLOOD ZONE
- ALL HOUSES WILL FRONT RIGHT OF WAY
- 6' VINYL FENCE TO BE INSTALLED AROUND PERIMETER OF DEVELOPMENT. SEE SHEET 4

LEGEND

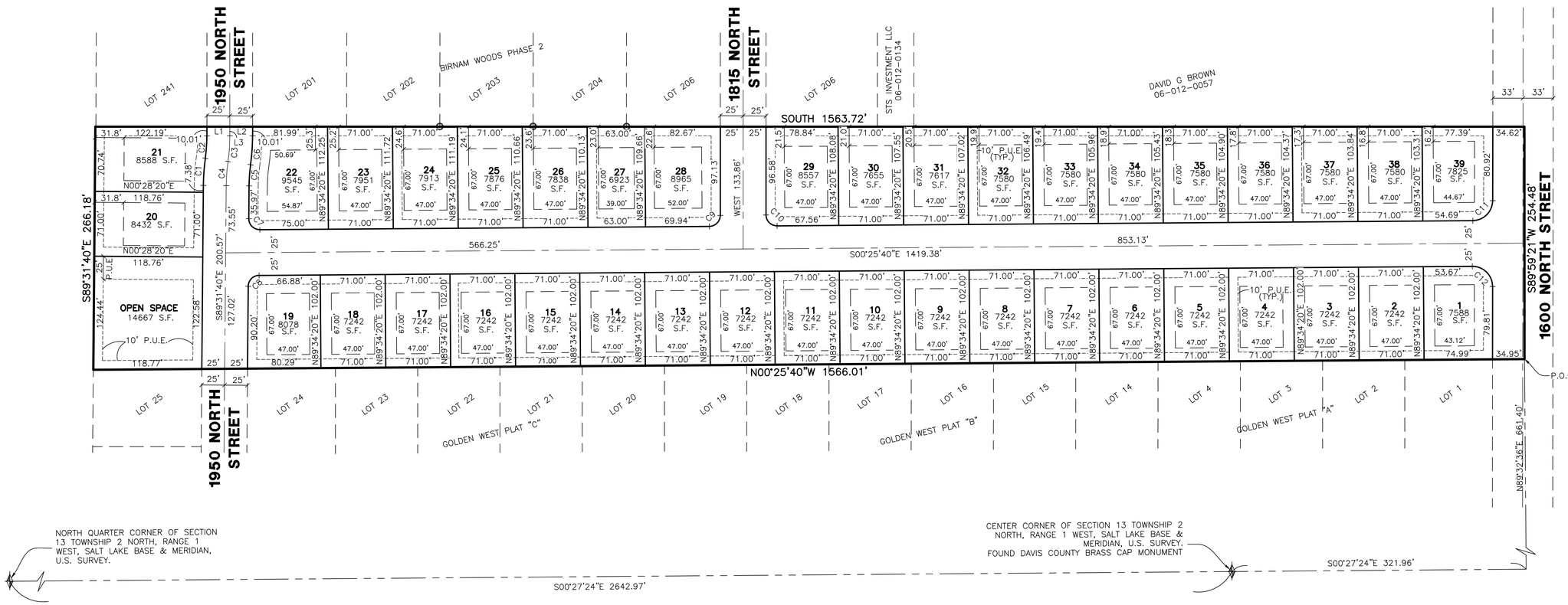
- = SECTION CORNER
- = FOUND REBAR & CAP
- P.U.E. = PUBLIC UTILITY EASEMENT
- = BOUNDARY LINE
- = LOT LINE
- = ADJOINING PROPERTY
- = EASEMENTS
- = SECTION TIE LINE



REQUESTED SET-BACK EXHIBIT
SCALE: NONE

SHEET INDEX

Sheet 1 - Preliminary Plat
Sheet 2 - Preliminary Grading/Drainage & Utility Plan
Sheet 3 - Preliminary Well Pump Detail
Sheet 4 - Preliminary Typical Home Landscape Plan
Sheet 5 - Exhibit - Davis County Public Works Stream Improvements



60 0 60 120 180
Scale: 1" = 60'

The Cottages at Havenwood

Ovation Homes, One Level Living at its Best. An Active Adult Subdivision

West Bountiful City, Davis County, Utah

Developer:
Ovation Homes
Brad Frost
893 N. Marshall Way, #A
Layton City, UT. 84041
(801) 564-3898

Reeve & Associates, Inc.
920 CHAMBERS STREET, SUITE 14, OGDEN, UTAH 84403
TEL: (801) 621-3100 FAX: (801) 621-2666 www.reeve-assoc.com
LAND PLANNERS • CIVIL ENGINEERS • LAND SURVEYORS
RWATER ENGINEERS • STRUCTURAL ENGINEERS • LANDSCAPE ARCHITECTS

REVISIONS

DATE	DESCRIPTION
4-19-16	CITY COMMENTS
4-20-16	CITY COMMENTS

The Cottages at Havenwood
PART OF THE NE 1/4 OF SECTION 13, T.2N., R.1W., S.L.B & M., U.S. SURVEY
WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH

Preliminary Plat
"Not to be Recorded"

REGISTERED PROFESSIONAL ENGINEER
375328
J. NATE REEVE
STATE OF UTAH

Project Info.
Engineer: N. Reeve
Designer: C. Cave
Begin Date: September 14, 2015
Name: The Cottages at Havenwood
Number: 5061-B50

Sheet 1 of 5 Sheets

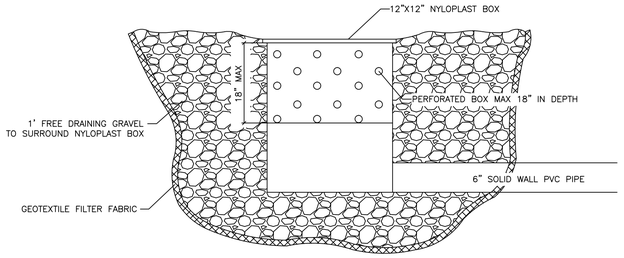
THESE PLANS AND SPECIFICATIONS ARE THE PROPERTY OF REEVE & ASSOCIATES, INC., 920 CHAMBERS STREET, SUITE 14, OGDEN, UTAH 84403, AND SHALL NOT BE PHOTOCOPIED, RE-DRAWN, OR USED ON ANY PROJECT OTHER THAN THE PROJECT SPECIFICALLY DESIGNED FOR, WITHOUT THEIR WRITTEN PERMISSION. THE OWNERS AND ENGINEERS OF REEVE & ASSOCIATES, INC. DISCLAIM ANY LIABILITY FOR ANY CHANGES OR MODIFICATIONS MADE TO THESE PLANS OR THE DESIGN THEREON WITHOUT THEIR CONSENT.

Reeve & Associates, Inc. - Solutions You Can Build On

EXHIBIT C

Grading and Drainage Plan

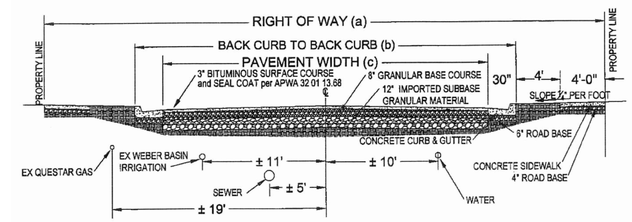
Reeve & Associates, Inc. - Solutions You Can Build On



YARD DRAIN PIPE DETAIL

LEGEND

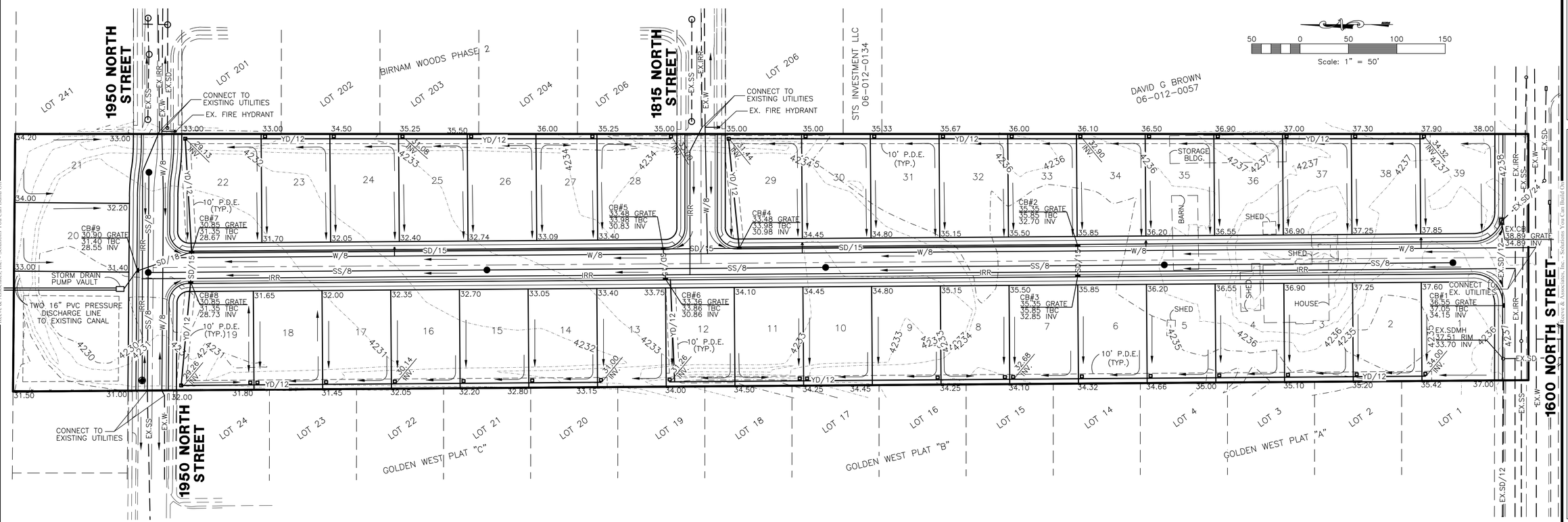
- = BOUNDARY LINE
- = LOT LINE
- = ADJOINING PROPERTY
- SS/8 = PROPOSED 8" SANITARY SEWER LINE
- EX.SS = EXISTING SANITARY SEWER LINE
- IRR = PROPOSED IRRIGATION WATER LINE
- EX.IRR = EXISTING IRRIGATION LINE
- W/8 = PROPOSED 8" CULINARY WATER LINE
- EX.W = EXISTING CULINARY WATER LINE
- = EXISTING BUILDINGS
- P.D.E. = PRIVATE DRAINAGE EASEMENT
- = EXISTING FIRE HYDRANT
- = PROPOSED FIRE HYDRANT
- = PROPOSED SANITARY SEWER/STORM DRAIN MANHOLE
- = EXISTING SANITARY SEWER/STORM DRAIN MANHOLE
- = PROPOSED SINGLE GRATE CATCH BASIN WITH BICYCLE-SAFE GRATE
- = AIR-VAC ASSEMBLY
- = PROPOSED STREET LIGHT
- SD = PROPOSED STORM DRAIN (SIZE VARIES)
- EX.SD = EXISTING STORM DRAIN
- YD/12 = PROPOSED 12" YARD DRAIN



R.O.W. (a)	(b)	(c)
50'	34'	29'
66'	50'	45'

STREET SECTION

SCALE: NONE



Scale: 1" = 50'

NOTES:

1. EXISTING BUILDINGS WILL BE REMOVED
2. CONTOURS ARE SHOWN IN ONE FOOT INTERVALS.

The Cottages at Havenwood

Ovation Homes, One Level Living at its Best. An Active Adult Subdivision

West Bountiful City, Davis County, Utah

Developer:
Ovation Homes
Brad Frost
893 N. Marshall Way, #A
Layton City, UT. 84041
(801) 564-3898

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TRAFFIC ENGINEERS • STRUCTURAL ENGINEERS • LANDSCAPE ARCHITECTS

REVISIONS

DATE	DESCRIPTION
04-19-16	City Comments
04-20-16	City Comments

The Cottages at Havenwood
WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH

Preliminary Grading/Drainage & Utility Plan "Not to be Recorded"

REGISTERED PROFESSIONAL ENGINEER 375328 J. NATE REEVE STATE OF UTAH

Project Info.
Engineer: J. NATE REEVE
Drafter: C. KINGSLEY
Begin Date: 2-24-2016
Name: The Cottages at Havenwood Subdivision
Number: 5061-B50

Sheet 2 of 5 Sheets

Reeve & Associates, Inc. - Solutions You Can Build On

Vicinity Map

SCALE: 1" = 500'

30 0 30 60 90

Scale: 1" = 30'

The Cottages at Havenwood

Ovation Homes, One Level Living at its Best. An Active Adult Subdivision

West Bountiful City, Davis County, Utah

Developer:

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REVISIONS

DATE	DESCRIPTION
4-21-16	CITY COMMENTS

The Cottages at Havenwood

PART OF THE NE 1/4 OF SECTION 13, T.2N., R.1W., S.L.B & M., U.S. SURVEY
WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH

Exhibit

Davis County Public Works Stream Improvements

Project Info.

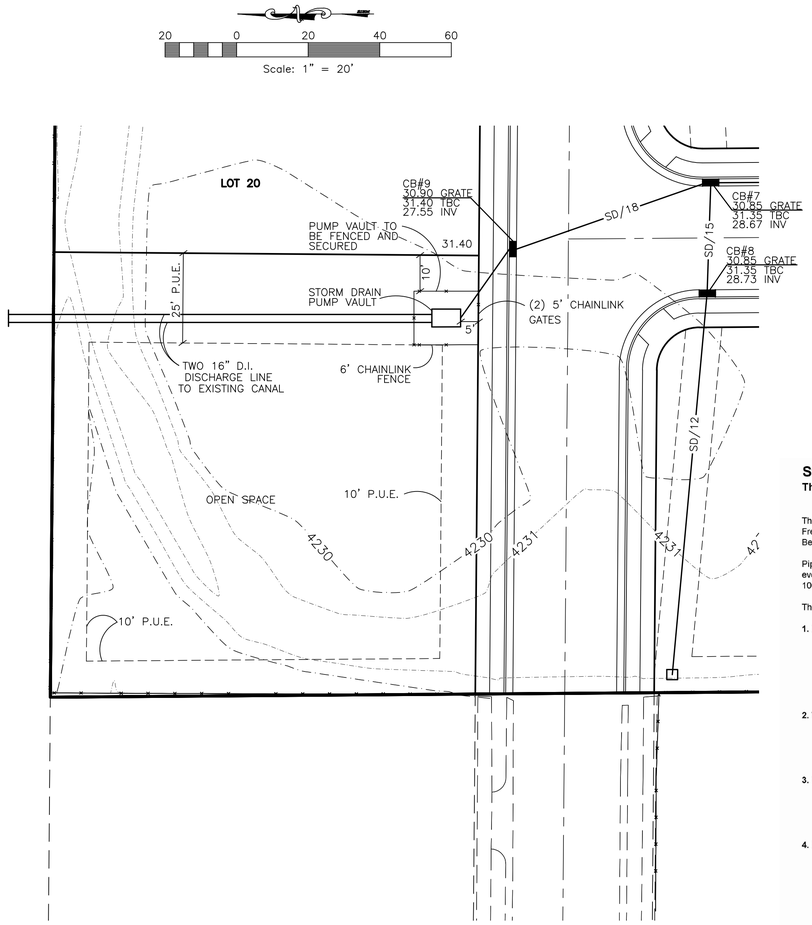
Engineer: N. Reeve
Designer: C. Cave
Begin Date: September 14, 2015
Name: The Cottages at Havenwood
Number: 5061-B50

Sheet 5 of 5 Sheets

EXHIBIT D

Pump Facilities Design

Reeve & Associates, Inc. - Solutions You Can Build On



Storm Runoff Calculations

The Cottages at Havenwood

4/20/2016 TJH

The following runoff calculations are based on the Rainfall - Intensity - Duration Frequency Curve for the West Bountiful, UT area taken from data provided by Ben White with the City of West Bountiful, UT.

Pipe capacity has been calculated to provide adequate volume for a 10-year storm event; while the Wet Well, pumps and discharge outfall lines have been sized for a 100-year storm event.

The calculations are as follows:

1. Drainage Area:

Runoff Coefficients

Paved Area	88,625	C = 0.90
Landscaped Area	179,377	C = 0.20
Roof	139,360	C = 0.90
Weighted Runoff Coefficient		C = 0.59

2. Time of Concentration:

Using Storm Water Run-Off "Overland Flow Time"

Tc = 30 minutes

3. Rainfall Intensities:

Rainfall Intensities were obtained from the Rainfall - Intensity - Duration Frequency Curve provided by Ben White with the city of West Bountiful, UT.

Rainfall Intensity for a 30 minute Time of Concentration 2.90 in/hr

4. Peak Run-off:

Runoff Coefficient	C =	0.59	
Rainfall Intensity	i =	2.90	IN./HR.
Acreage	A =	9.35	ACRES
Runoff Quantity	Q =	CIA	
Q_{100} (total)	**Q =**	**16.05**	**cfs** **(maximum cfs for a 100-yr storm)**

5. Allowable Discharge:

Per Davis County Public Works, a direct release can be utilized for the storm water which means the Allowable Discharge is equal to Q_{100}

Allowable Discharge = Q = 16.05 cfs
Q = 7203 gpm

The Wet Well will be equipped with two alternating pumps that each discharge their own 16" PVC pipe.
Each pump will have the capacity to conve **3601 gpm**

6. Wet Well Pump Sizing

A maximum pumping rate of 7203 gpm and per pump specs, the minimum cycle time between pump starts is 6 minutes.

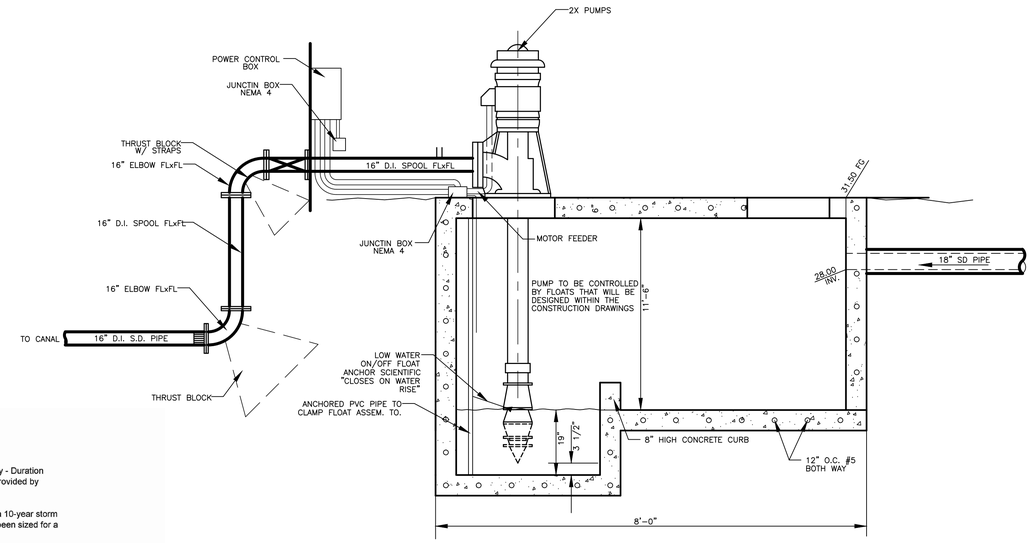
The equation to determine the minimum volume of the wet well is:

$$V_t = Q_p\ t_c/(4N)$$

where: V_t = total cycling storage volume, cf
Q_p = total capacity of all pumps, cfs
t_c = minimum allowable cycle time, s (= 3,600/max. starts per hour)
N = total number of equal-size pumps

Qp =	16.05	cfs	
tc =	360	s	(6 min cycle)
N =	2	pumps	
Vt =	722	cubic feet	

Summary:
Two pumps that combine for a discharge of 7203 gpm
Wet Well Volume is 722 cubic feet.



Storm Drain Pump Vault

SCALE: NONE

NOTE:
1) THE WET WELL PUMP VAULT WILL BE EQUIPPED WITH TWO GRUNDFOS REDUNDANT PUMPS THAT ARE CAPABLE OF DISCHARGING 3500 GPM EACH FOR A COMBINED DISCHARGE OF 7000 GPM.
2) SCADA CONNECTION IS REQUIRED FOR THE WET WELL PUMP VAULT.

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REVISIONS

DATE	DESCRIPTION
04-19-16	City Comments
04-20-16	City Comments

The Cottages at Havenwood
WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH

Preliminary Well Pump Detail
"Not to be Recorded"

REGISTERED PROFESSIONAL ENGINEER
375328
J. NATE REEVE
STATE OF UTAH

Project Info.
Engineer: J. NATE REEVE
Drafter: C. KINGSLEY
Begin Date: 2-24-2016
Name: The Cottages at Havenwood Subdivision
Number: 5061-B50

Sheet 3 of 5 Sheets

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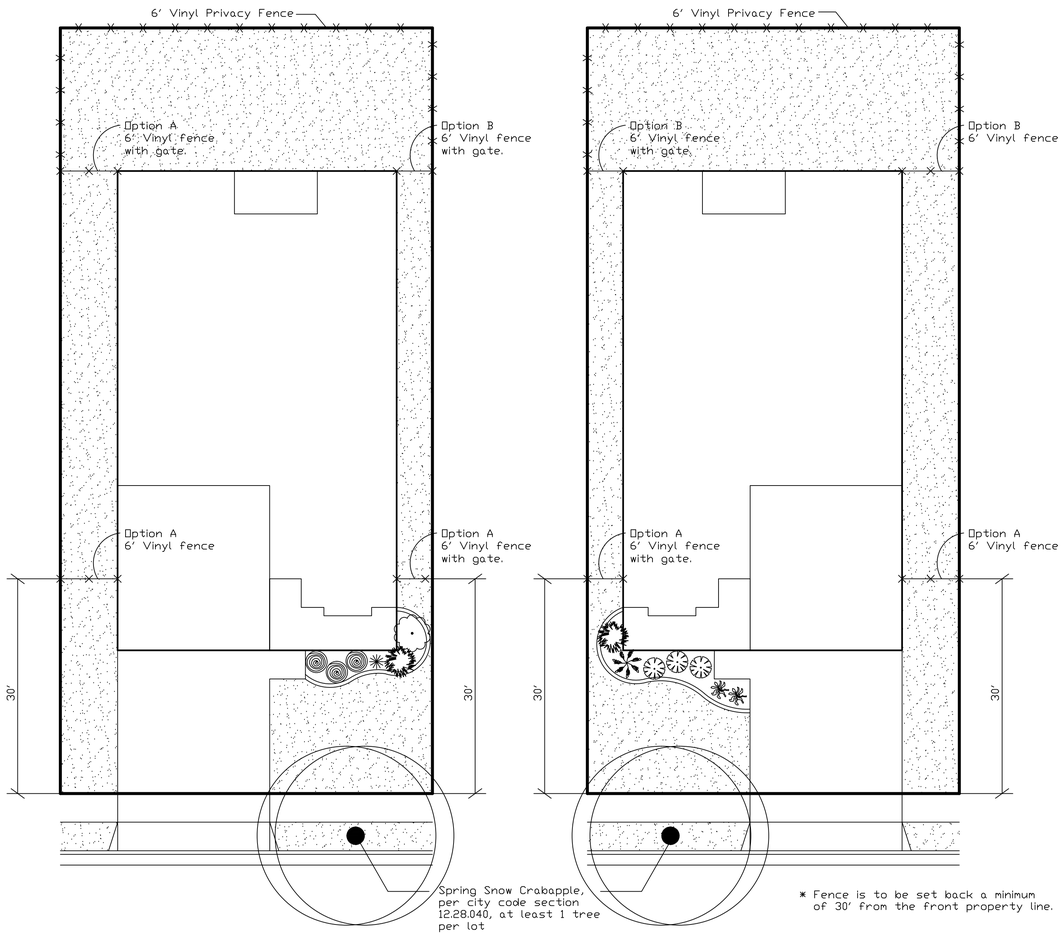
Reeve & Associates, Inc. - Solutions You Can Build On

EXHIBIT E

Landscape Plan

Reeve & Associates, Inc. - Solutions You Can Build On



Plant Table

*TREES

Symbol	Scientific Name	Common Name	Planting Size
	Malus 'Spring Snow'	Spring Snow Crabapple	2" cal.

SHRUBS

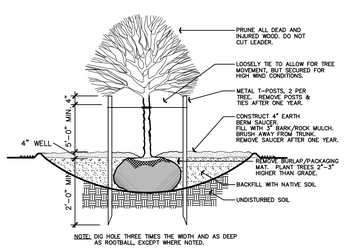
Symbol	Scientific Name	Common Name	Planting Size
	Euonymus alatas 'Compacta'	Dwarf Burning Bush	5 gal.
	Pinus mugo 'Pumilio'	Dwarf Mugo Pine	5 gal.
	Spiraea japonica 'Magic Carpet'	Magic Carpet Spirea	5 gal.
	Rosa noatrum	Flower Carpet Rose	5 gal.

PERENNIALS

Symbol	Scientific Name	Common Name	Planting Size
	Calamagrostis 'Karl Foerster'	Karl Foerster Grass	5 gal.
	Hemerocallis 'Stella de Oro'	Stella de Oro Daylily	1 gal.
	Iris pallida 'Variegata'	Variegated Sweet Iris	1 gal.

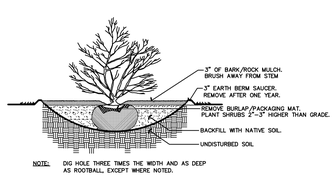
Turf Grass - To be sodded.

* A 6' vinyl privacy fence will be installed along the perimeter of project site



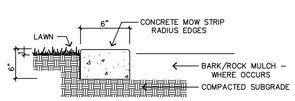
DECIDUOUS TREE PLANTING

SCALE: NOT TO SCALE



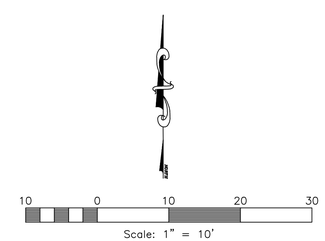
SHRUB PLANTING

SCALE: NOT TO SCALE



CONCRETE MOW STRIP

SCALE: NOT TO SCALE



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REVISIONS

DATE	DESCRIPTION

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WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH

Preliminary Typical Home Landscape Plan
"Not to be Recorded"

REGISTERED PROFESSIONAL ENGINEER
375328
J. NATE REEVE
STATE OF UTAH

Project Info.
Engineer: J. NATE REEVE
Drafter: D. REYNOLDS
Begin Date: 2-24-2016
Name: The Cottages at Havenwood Subdivision
Number: 5061-B50

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EXHIBIT F

Covenants, Conditions and Restrictions

When recorded mail to:

Craig Jacobsen, Esq.
893 North Marshall Way, Suite A
Layton, Utah 84041

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

For The Cottages at Havenwood,
a PUD Subdivision and Adult Community
West Bountiful, Davis County, Utah

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for the Cottages at Havenwood, a PUD subdivision and adult community (the "Declaration") is made and executed on this __ day of _____, 2016, by Capital Reef Management, LLC, a Utah limited liability company (hereinafter "Declarant").

R E C I T A L S:

A. This Declaration will take effect on the date recorded at the office of the Davis County Recorder (the "Effective Date").

B. Declarant is the owner of certain real property located at approximately 690 West 1600 North, West Bountiful, in Davis County, Utah and more particularly described as follows (the "Property"):

PARCEL 1:
BEGINNING AT A POINT 26.11 CHAINS WEST FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIHP 2 NORTH, RANGE 1 WEST , SALT LAKE BASE AND MERIDIAN, UNITED STATES SURVEY, AND RUNNING THENCE NORTH 18.79 CHAINS; THENCE WEST 3.885 CHAINS; THENCE SOUTH 18.79 CHAINS; THENCE EAST 3.885 CHAINS TO THE POINT OF BEGINNING.

PARCEL 2:
BEGINNING AT A POINT 26.11 CHAINS WEST FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, UNITED STATES SURVEY, AND RUNNING THENCE SOUTH 4.80 CHAINS, THENCE WEST 3.885 CHAINS, THENCE NORTH 4.80 CHAINS, THENCE EAST 3.885 CHAINS TO THE POINT OF BEGINNNG.

PARCEL 3:

ALL OF THE WESTERLY 3.29 FEET OF LOT 206, BIRNAM WOODS PHASE 2, WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH.

The project is intended primarily to be operated as housing for persons, 55 years of age or older, pursuant to the Fair Housing Act and Housing for Older Persons Act of 1995, with over 80% of the Lots being occupied by at least one person 55 years of age or older. The Board must approve all new owners so as to ensure compliance with the above-stated ratio with respect to the desired age restrictions, which approval requires that the new Owner or occupant certify that at least one person occupying the lot is 55 years of age or older. Absent express approval of the Board, no persons under the age of 18 are permitted to visit for a period longer than one month. Nevertheless, the Board reserves the right to make, in its sole discretion, limited exceptions to the one month limit for extenuating circumstances.

C. Declarant desires to subject the Property to the terms of this Declaration. Declarant intends to develop a residential subdivision on the Property pursuant to the Community Association Act, Utah Code Sections 57-8a-101, *et seq*. Declarant will develop and convey all of the Lots within the Subdivision subject to a general plan of development, and subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Subdivision. The Common Areas are those areas so depicted in the recorded Plat(s), as amended, and as described in this Declaration.

D. Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the powers to maintain and administer the Common Areas and collect and disburse the assessments and charges provided for in this Declaration and otherwise administer and enforce the provisions of this Declaration. For such purposes, contemporaneously with the recording of this Declaration, Declarant will register with the Utah Department of Commerce The Cottages at Havenwood Homeowners Association, Inc. (the "Association").

E. The Association is governed by the terms of this Declaration, the Articles of Incorporation for The Cottages at Havenwood Homeowner's Association, Inc., and the Bylaws for The Cottages at Havenwood Homeowner's Association, Inc., which are attached hereto as Exhibit "A" and shall be recorded in the Davis County Recorder's Office contemporaneously with the recording of this Declaration.

F. Declarant declares that the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any portion thereof. The covenants, conditions, restrictions, reservations, easements and

equitable servitudes set forth herein shall run with each Lot located on the Property, including any additions thereto, and shall be binding upon all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, and its successors in interest; and may be enforced by any Owner and its successors in interest and by the Association.

G. Notwithstanding the foregoing, no provision of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Subdivision Improvements, (2) use of any Lot owned by the Declarant as a model home, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City ordinances; and (4) assignment of Declarant's rights under this Declaration in whole or part. This Declaration shall be binding upon the Declarant as well as its successors in interest, and may be enforced by the Declarant, the Association, or by any Owner of a Lot within the subdivision on the Property.

COVENANTS, CONDITIONS AND RESTRICTIONS

DEFINITIONS

Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Declaration, shall have the following meanings:

(A) "Act" means the Community Association Act, Utah Code Ann. Sections 57-8a-101 *et seq.*

(B) "Architectural Review Board" or "ARB" shall mean the architectural review board created by this Declaration, the Bylaws, and/or Articles of Incorporation.

(C) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as a regular assessment, special assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.

(D) "Articles" shall mean the Articles of Incorporation of the Association, as amended from time to time.

(E) "Association" shall mean THE COTTAGES AT HAVENWOOD HOMEOWNERS ASSOCIATION, INC. and as the context requires, the officers and directors of that Association.

(F) "Board" or "Board of Directors" shall mean the duly elected and acting Board of Directors of THE COTAGES AT HAVENWOOD HOMEOWNERS ASSOCIATION, INC.

(G) "Bylaws" shall mean the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto as Exhibit "A."

(H) "City" shall mean West Bountiful City, Utah and its appropriate departments, officials and boards.

(I) "County" shall mean Davis County, Utah and its appropriate departments, officials and boards.

(J) "Common Areas" shall mean all property, including the Detention Basin(s) designated on the recorded Plat(s), including any structures related to the operation or maintenance of the Detention Basin(s), as being intended ultimately to be owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all of the easements appurtenant thereto. The Association shall maintain the Common Areas.

(K) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (B) providing facilities, services and other benefits to Owners as set forth in this Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the Assessments, charges, fines, penalties and liens imposed pursuant hereto; (E) operating the Association; and (F) creating reserves for any such costs, expenses and liability as required by this Declaration or other applicable laws and ordinances.

(L) "Declarant" shall mean and refer to Capital Reef Management, LLC, a Utah limited liability company, and to its successors or assigns.

(M) "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for the Cottages at Havenwood, a PUD Subdivision and Adult Community, together with any subsequent amendments or additions.

(N) "Dwelling" shall mean the single family residence built or to be built on any Lots, including the attached garage.

(O) "Family" shall mean one household of persons related to each other by blood, adoption or marriage consisting of not more than three persons in a two-bedroom dwelling and not more than four persons in a three-bedroom dwelling.

(P) "Governing Documents" shall mean this Declaration, Bylaws, Articles,

Rules and any other documents or agreements binding upon an Owner.

(Q) "Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, dwellings, garages, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(R) "Lot" shall mean any numbered building Lot shown on any official and recorded Plat(s) of all or a portion of the Subdivision.

(S) "Manager" shall mean any entity or person engaged by the Board of Directors to manage the Project.

(T) "Member" shall mean and refer to every person who holds membership in the Association, including an Owner and the Declarant as set forth herein.

(U) "Plat(s)" shall mean an official and recorded plat of The Cottages at Havenwood, a PUD Subdivision and Adult Community, when recorded, as approved by the City and recorded in the office of the Davis County Recorder, as it may be amended from time to time.

(V) "Property" shall have the meaning set forth in the recitals.

(W) "Rules" mean any instrument adopted by the Board to govern the Association.

(X) "Subdivision" shall mean all phases of The Cottages at Havenwood, a PUD Subdivision and Adult Community and all Lots, and other property within the Subdivision as shown on the Plat(s) covering the Property.

(Y) "Subdivision Improvements" shall mean all subdivision improvements to be installed outside the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and/or private road access and utility service to the Lots, and including other construction work required to comply with any conditions of City or County or other governmental agencies to the approval of the Subdivision or any Plat(s) thereof.

ARTICLE I

EASEMENTS

1.1 Easement Concerning Common Areas. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise

alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access and utility easements for use in common with others.

1.2 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to govern by Rules the use of the Common Areas for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;

(b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.

(c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, utility access/installation, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer any part of the Common Areas to any third party for such purposes and subject to such conditions as may be agreed to by unanimous vote of the Board, subject to West Bountiful City's written consent.

1.3 Reservation of Access and Utility Easements. Declarant hereby reserves an easement for access, and utilities (including but not limited to electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be

exercised in such manner so as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

1.4 Easements for Encroachments. If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Lot or if any structure constructed by Declarant on any Lot now or hereafter encroaches upon any other Lot or upon any portion of the Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

1.5 Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for (a) the construction of dwellings on Lots; (b) to maintain sales offices, management offices and models through the Project; (c) to maintain one or more advertising signs on the Common Area, and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners; and (d) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roadways, walkways and other facilities, planned for dedication to appropriate governmental authorities.

1.6 Easement in Favor of Association. The Lots, Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(a) For inspection during reasonable hours of the Lots, Common Area in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;

(b) For inspection, maintenance, repair and replacement of portions of the Common Areas;

(c) For correction of emergency conditions on one or more Lots or on

portions of the Common Areas;

(d) For the purpose of enabling the Association, the Architectural Review Board or any other committees appointed by the Association or Board to exercise and discharge during reasonable hours their respective rights, powers and duties; and

(e) For inspection during reasonable hours of the Lots, Common Area in order to verify that the Owners and occupants, and their guests, tenants and invitees, are complying with the provisions of the Governing Documents.

ARTICLE II

COMMON AREAS

2.1 The Common Areas shall be and are hereby conveyed to the Association, a Utah non-profit corporation, subject to this Declaration and subject to appropriate access by governmental authorities, including all law enforcement and fire protection authorities.

2.2 The Common Areas consist of areas designated on the recorded Plat(s), including the Detention Basin(s) designated on the recorded Plat(s), including any structures related to the operation or maintenance of the Detention Basin(s), together with any rights or way and utilities, as shown on the recorded Plat(s).

2.3 Notwithstanding anything contained in this Declaration to the contrary, all Common Areas appurtenant to each recorded Plat of the Subdivision shall be conveyed to the Association upon recordation of a Plat depicting such Common Areas, reserving a perpetual, nonexclusive easement for ingress and egress and development access across, under, over and upon such roads, rights of way and utilities located on the Property to and from any real property both (i) owned by the Declarant and (ii) located adjacent to or in the same area of the Property. Said easement being reserved to the Declarant, its successors and assigns, is intended hereby to run with the land in perpetuity to burden the Property for the benefit of Declarant's real property located near or adjacent to the Property, subject to the payment of a prorata share of the costs of maintenance thereof. The Association shall maintain the Common Areas.

ARTICLE III

OWNERS

3.1 " Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot which is part of the Property, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is

sold under a recorded contract of sale and the contract specifically so provides, then the purchaser (rather than the fee Owner) will be considered the Owner. If a Lot is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors, the lessee (rather than the fee owner) will be considered the Owner.

ARTICLE IV

MEMBERSHIP

4.1 One (1) membership in the Association shall be granted per Lot. No Owner, whether one (1) or more Persons, shall have more than one (1) membership in the Association per Lot owned. In the event the Owner of a Lot is more than one (1) Person, voting rights and rights of use and enjoyment shall be exercised as provided by this Declaration and as agreed amongst such interest holders. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the Bylaws. The membership rights of a Lot owned by a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association, subject to the provisions of this Declaration and the Bylaws. Notwithstanding the foregoing, the Declarant, as owner of the Undeveloped Land, shall also be granted voting rights as a Class “B” Member, as defined below.

ARTICLE V

VOTING

5.1 The Association shall have two (2) classes of voting membership, Class "A" and Class "B", as follows:

(A) Class "A". Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Class "A" membership shall be entitled to one (1) equal vote for each Lot in which they are an Owner. There shall be only one (1) vote per Lot. In any situation where an Owner is entitled personally to exercise the vote for his Lot and more than one (1) Person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those Persons determine among themselves and advise the Board, in writing, prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

(B) Class "B". The Class "B" Member shall be Declarant. In all matters requiring a vote, the Class "B" membership shall receive ten (10) votes for each recorded Lot owned by Declarant. The

Class “B” membership shall also be entitled to appoint the members of the Board of Directors during the Class “B” Control Period.

ARTICLE VI

CONTROL PERIOD

6.1 The Class "B" Member Control Period runs until the first of either (1) When the total number of votes for the Class B Member is less than the total number of votes for the Class A Members; or (2) When, at its discretion, the Class B member so determines.

ARTICLE VII

HOMEOWNERS ASSOCIATION

7.1 The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Association shall be comprised of the Owners of Lots within the Project, and is established to perform the following functions and exercise the following rights and powers for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Association is deemed an appurtenance to the Lot, and is transferable only in conjunction with the transfer of the title to the Lot. The Association shall serve as the organizational body for all Owners.

7.2 Enforcement Powers. The Association shall have the power to enforce these covenants by actions in law or equity brought in the name of the Association, and the power to retain professional services needed for the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record and/or foreclose liens against an Owner’s Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) terminate an Owner’s right to utilize Common Area and/or amenities; and (5) any other action or remedy allowed by the Governing Documents or Utah law. The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. However, this shall not limit the individual right of Owner(s) personally to enforce these covenants in their own name. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances or other matters of general application and interest to the Owners. Owners may appear individually. The Association shall have the authority to compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Lot, an Owner or Owners to enforce the Governing Documents, and the Association prevails in a court of law, then the Association shall have the right to assess the costs of such litigation against the lot(s) or Owner(s) in question. The Board of Directors shall be afforded discretion to utilize its

reasonable judgment to determine whether and how to impose fines, record liens, pursue legal action, otherwise enforce the Governing Documents and when/how to settle/compromise claims/disputes.

7.3 Maintenance of Yard, Common Areas by the Association. The Association shall

(1) maintain the front yard areas (excluding driveways) and the side yard areas adjacent to dedicated streets in the Subdivision and (2) maintain and operate the Detention Basin(s), including any structures related to the operation or maintenance of the Detention Basin(s), and any other Common Areas shown on the Plat or acquired by the Association. The Association shall have the authority to assess its members for the costs of said maintenance and for restoring any damage to any such property owned by the Association.

(A) Snow Removal. The maintenance performed by the Association shall include the removal of snow from all sidewalks and driveways within the Subdivision and any other Common Area requiring snow removal. The costs for said snow removal shall be a common expense and borne by all Lot Owners.

7.4 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Association. The Association has the power to levy assessments against each Lot as necessary to carry out these functions. An equal assessment shall be levied against all Lots, whether vacant or improved. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Lot, be deemed to covenant and agree to pay to the Association the assessments described in these covenants, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable.

(A) All such amounts shall be, constitute and remain: (1) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (2) the personal, joint and several obligations of the Owner(s) of such Lot when the assessment becomes due. No Owners may exempt themselves or their Lot from liability for payment of assessments by waiver of their rights in the Common Areas or by abandonment of their Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

(B) The Association may levy special assessments for the purpose of defraying, in whole or in part any expense or expenses not

reasonably capable of being fully paid with funds generated by other assessments. No special assessment will be levied without approval of a majority of a quorum of the Owners at a special meeting called for that purpose or upon the written consent of a majority of Owners.

(C) In addition, the Association may levy a special assessment (1) on every Lot, the Owner or occupant of which causes any damage to the Common Areas necessitating repairs, and (2) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken under the provisions of the Governing Documents. The aggregate amount of any such special assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Lots(s) according to the cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work.

(D) The Association may levy a reserve fund assessment, as set forth in this article.

(E) The Association may levy other assessments or fees, as authorized by the Governing Documents.

7.5 Budget. The Board of Directors is authorized and required to adopt a budget for each fiscal year, no later than 30 days prior to the beginning of the fiscal year. The adopted budget shall be presented to the Owners at or before each annual meeting. The Board shall provide a copy of the approved budget to all Owners within 30 days after the adoption of the budget or adoption of a revised budget. The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously anticipated. The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories. Unless otherwise established by the Board, regular Assessments shall be paid in equal monthly installments. The Association shall not borrow money without the approval of at least 67% of a quorum of Owners who attend a meeting to vote on the issue or 67% of all Owners if the vote is completed by written ballet provided to all Owners.

7.6 Reserve Fund Analysis. Following the Class B Control Period, the Board of Directors shall cause a reserve analysis to be conducted no less frequently than

every five (5) years to analyze the cost of repairing, replacing or restoring Common Area that has a useful life of three years or more and a remaining useful life of less than 30 years. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

(A) The Board may not use money in a reserve fund:

(i) For daily maintenance expenses, unless a majority of the Owners vote to approve the use of reserve fund money for that purpose;

(ii) For any purpose other than the purpose for which the reserve fund was established, unless a majority of the Owners vote to approve the use of reserve fund money for that purpose; or

(iii) In the event that the Association experiences a surplus in any fiscal year, the Board may elect to place said surplus in the reserve fund account.

7.7 Reserve Fund Account Creation. Based on the results of the reserve analysis, the Board shall create a reserve fund account that is separate and distinct from the Association's general account, into which the Board shall cause to be deposited those Common Area assessments collected from Owners. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners, which assessment shall be collected on the same terms and conditions as other common expenses, in an amount sufficient to fund the reserve fund according to the findings of the reserve analysis.

7.8 Transfer Fee. The Board shall have power to levy a one-time transfer fee when a change in ownership of a Lot occurs in an amount to be determined by the Board, but no more than a maximum fee of $450.00

7.9 Date of Commencement of Assessments on Improved Lots. The assessments provided for herein shall commence as to each fully improved Lot (having received a certificate of occupancy) on the first day of the first month following: (i) the date of conveyance of the Lot to the Owner; or (ii) the effective date of the first budget, whichever is later. Assessments shall be due and payable in a manner and on a schedule as the Board may provide.

7.10 Assessments on Unimproved Lots. Until a Lot has been fully improved with a completed Dwelling and occupied for the first time for residential purposes, the periodic assessment applicable to such Lot shall be five percent (5%) of the periodic assessment which would otherwise apply to such Lot.

7.11 Fines. The Association shall have the power to assess a fine against an Owner (or a Lot) for a violation of the terms and conditions of the Governing Documents in accordance with the requirements of the Act.

7.12 Hearing Process. The Board shall have authority to create a reasonable hearing process applicable when the Association takes an adverse action related to any particular Owner or Lot.

7.13 Association Rules. The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce rules and regulations governing, among other things, (a) the use of the Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; (e) other matters concerning the use and enjoyment of the Property and the conduct of residents; and additional architectural guidelines, as deemed necessary by the Board. Any rules promulgated by the Board may not contradict the Governing Documents. All rules adopted by the Board shall be provided to all Owners within thirty (30) days of their adoption.

7.14 Statement of Account. Any Owner may request the Association to provide a statement of his account to any lender or prospective buyer of that Lot showing the assessments to be paid in full, or the amount of any past due assessments. The Buyer or Lender for whom such statement was prepared will be entitled to rely on its accuracy, and will not be held liable for any amounts now shown on the statement. The Association may charge a fee, not to exceed $50.00 for providing such statements.

7.15 Availability of Documents. The Board may adopt a record retention or other document management policy.

7.16 Indemnity of Association Board and Officers. The Association will indemnify the officers, agents and Board of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under this Declaration.

7.17 Election. The elections for members of the Board of Directors, or any other matter which is presented to the Association, each Owner, including the Declarant, shall be entitled to cast one vote for each Lot he or she owns. In the case of a Lot with multiple Owners, the Owners will agree among themselves how the vote applicable to that Lot will be cast, and if no agreement can be reached, no vote will be received from that Lot. Any of the multiple Owners appearing at the meeting in person or by proxy is deemed to be acting with proper authority for all the other Owners of that Lot unless the other Owners are also present or have filed written objections to that Owner's representation of the other Owners of the Lot in question.

7.18 Notice of Election, Notice of Meeting. Notice of any meeting for the election of members to the Board of Directors or for any other purpose shall be sent to

the Owners at their last known address provided to the Board or Declarant. If an Owner has failed to provide such information, there shall be no obligation on the part of the Board or the Declarant to search for a contact address. Notice will be mailed not less than 21 days, nor more than 60 days in advance of the meeting. Any notice will state the purpose of the meeting, and the time, date and place of the meeting. At any such meeting, a quorum will exist if 51% of the voting rights are present. Those present at the meeting may vote to continue the meeting to any date within 30 days. Notice of the continued meeting will be given by mail, and at the subsequent continued meeting, a quorum will consist of those members present. The Chairman of the Board will give notice of any meetings, and will chair meetings of the Owners.

7.19 Special Meeting. When circumstances warrant, a special meeting of the Owners may be called by the Board of Directors or by 10% of the Lot owners in the Subdivision. No business may be conducted at a special meeting without a full quorum of the 51% voting rights of the Lots being present in person or by written proxy.

7.20 Number of Board, Officers, Term of Office. Unless otherwise provided in the By-Laws of the Association, there shall be three members of the Board of Directors, who will serve for terms of three years, or until their successors have been elected. At such time as the first Board of Directors is named, which may by appointment by the Declarant or by election from among the Members, the Directors will draw lots to divide themselves into terms of one, two and three years. Members of the Board of Directors may serve consecutive terms, and may also serve as officers of the Association. The Declarant may appoint not only the first Board of Directors, but also the officers, who shall be Board members and shall consist of a President, Vice-President and Secretary/Treasurer. Once appointed or elected, that officer shall serve in that capacity for the duration of his/her term as a Director.

7.21 Independent Accountant. The Association may retain the services of an independent accountant to assist the Board of Directors and Officers to maintain accurate financial records of the Association.

7.22 Professional Management. The Board or Declarant may also retain the services of a professional property manager to assist in any and all aspects of management that otherwise would be performed by the Board or Declarant.

ARTICLE VIII

NON-PAYMENT OF ASSESSMENTS AND REMEDIES

8.1 Delinquent Assessment. Any assessment not timely paid shall be delinquent and the Association may invoke any and all remedies to recover said delinquent assessments including by suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

8.2 Due Date, Charges and Interest. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the tenth of each month. The Board may charge a late fee in an amount set by the Board, but not to exceed $50, for each unpaid or late assessment. In addition to late fees, interest shall accrue on all unpaid balances, including prior, unpaid interest and attorney fees (resulting in compounding interest), late fees, and assessments at 18% per annum or 1.5% per month. The Board may also impose other reasonable charges related to collection.

8.3 Lien. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

8.4 Foreclosure. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged had such Lot not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

8.5 Other Remedies. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner, the respective Lot, and/or other obligees jointly and severally.

8.6 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents.

8.7 Appointment of Trustee. The Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a- 4022 to Craig T. Jacobsen, Esq., a licensed member of the Utah State Bar, or his duly qualified designee, with power of sale, any Lot and all improvements thereon for the purpose of securing payment of

Assessments under the terms of this Declaration..

ARTICLE IX

SUBORDINATION OF THE LIEN TO INSTITUTIONAL FIRST AND SECOND MORTAGES

9.1 The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any institutional first or second Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of an institutional first or second Mortgage, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding an institutional first or second Mortgage of record or other purchaser of a Lot obtains title pursuant to remedies under the Mortgage, its successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale or transfer.

ARTICLE X

USE RESTRICTIONS AND MAINTENANCE OBLIGATIONS

10.1 Single Family. All Lots shall be used only for single-family residential purposes, and no more than one Dwelling shall be constructed on any Lot. "Single Family" shall mean one household of persons related to each other by blood, adoption or marriage consisting of not more than three persons in a two bedroom Dwelling and not more than four persons in a three bedroom Dwelling.

10.2 Zoning Regulations/ Ordinances. The lawfully enacted zoning regulations and ordinances of the City and/or County, and any building, fire, and health codes are in full force and effect in the Project. No Lot may be occupied in a manner that is in violation of any applicable statute, law or ordinance.

10.3 Licensed Contractor. Unless the Architectural Review Board gives a

written waiver of approval to an Owner, no Improvement may be constructed, remodeled or altered on any Lot except by a licensed contractor, duly qualified and licensed by the appropriate governmental authorities.

10.4 No Mining Uses. The property within the Subdivision shall be used for residential purposes only, and no mining, drilling, prospecting, mineral exploration or quarrying activity will be permitted.

10.5 No Business or Commercial Uses. No portion of the Subdivision may be used for any commercial business use, provided, however, that nothing in this provision is intended to prevent (a) the Declarant, or other builders, from using one or more Lots for purposes of a construction office or sales office during the actual period of construction of the Subdivision Improvements or until 100 % of the Lots are sold in the Subdivision, whichever occurs later, or (b) the use by any Owner of his/her Lot for a home occupation pursuant to City or County ordinance. Businesses, professions or trades may not require heavy equipment or create a nuisance within the Project, and may not noticeably increase the traffic flow to the Project.

10.6 Livestock, Poultry and Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner's control; provided further that no more than two such household pets shall be kept on any Lot. "Control," for the above purposes shall mean that the animal is kept on a leash or lead, within a vehicle, within the residence of the Owner, or within fenced confines on the premises of the Owner. Fierce, dangerous or vicious animals or animals that cause a nuisance by barking or other offensive activity shall not be permitted. The Board of Directors is empowered to order the removal of any animal that is deemed to be dangerous or vicious, and may levy a recurring penalty upon an Owner who does not comply with such order.

10.7 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowners' insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than properly supervised and contained barbecues).

10.8 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot, including the creation or loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots.

10.9 Automobiles and Other Vehicles. No automobiles, trailers, boats, R.V.'s,

or other vehicles are to be parked or stored on the front street, side street, driveway, or anywhere else on the Lot. With the exception of a single car that may remain in the driveway, any other vehicle must be stored within the garage on the Lot.

10.10 No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during construction of any Dwelling unit or addition); open storage or construction equipment; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers in an enclosure such as a garage; lawn or garden furniture except during the season of use; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that is visible from any other Lot or any public street.

10.11 No Annoying Lights. Any outdoor lighting shall be subject to approval by the Architectural Committee, and no outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the confines of the Lot on which it is installed. This shall not apply to street lighting maintained by the City.

10.12 No Annoying Sounds. No speakers, windbells, windchimes, or other noise making devices may be used or maintained on any Lot which create noise that might reasonably be expected to be unreasonably or annoyingly loud to adjoining Lots, except for security or fire alarms.

10.13 Sewer Connection Required. All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted on any Lot. All Dwelling units must be connected to the sanitary sewer system.

10.14 No Fuel Storage. No fuel oil, gasoline, propane (except one propane tank that is part of an outdoor gas barbecue grill), or other non-portable fuel storage tanks may be installed or maintained on the property. Dwellings shall be heated with natural gas, solar, or electric heat. Propane or other such containerized fuels may be used only during construction of the Dwelling until the permanent heating system is installed and operational.

10.15 No Transient Lodging Uses. The Lots are to be used for residential housing purposes only, and shall not be rented in whole or in part for transient lodging purposes, boarding house, a bed and breakfast, or other uses for providing accommodations to travelers. No leases of any Dwelling on a Lot shall be for a period of less than 30 days. No Dwelling on a Lot shall be subjected to time interval ownership.

10.16 Restriction on Signs. The Subdivision may be identified by permanent

signs to be installed by Declarant or at Declarant's direction. No signs will be permitted on any Lot or within the Subdivision, except for traffic control signs placed by the City, temporary signs warning of some immediate danger, or signs not in excess of eight square feet identifying the contractor and/or architect of any Dwelling while it is under construction. Signs indicating the Lot is for sale may be placed in accordance with City sign regulations, and no such sign may exceed eight square feet. The Declarant may erect signs and other advertising material at the entrances to the Subdivision announcing the availability of Lots and giving sales information. No permanent signs stating the address or the name of the Owner of any Lot may be installed without the advance consent of the Architectural Review Board.

10.17 Completion Required Before Occupancy. No Dwelling may be occupied prior to its completion and the issuance of a certificate of occupancy by the City and/or County.

10.18 Dwelling to be Constructed First. No garage, out building or other Improvement may be constructed prior to the construction of the Dwelling on the Lot.

10.19 Underground Utilities. All gas, electrical, telephone, television, and any other utility lines in the Project are to be underground, including lines within any Lot which service installations entirely within that Lot. No above-ground propane tanks may be installed on any Lot.

10.20 Sewer Connection Required. All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted on any Lot. All Dwelling units must be connected to the sanitary sewer system.

10.21 Drainage. No Owner shall alter the direction of natural drainage from his/her Lot without first using reasonable means to dissipate the flow energy. The Owners shall be responsible to maintain their rear yard drains and drain lines so as to ensure proper drainage of both their privately owned property and Common Areas. If necessary at a future date to maintain proper drainage of Common Areas, the Association will be entitled to seek permission to connect to or extend the rear yard drains, which permission shall not be unreasonably refused, provided that the Association pays for all related work and restoration.

10.22 No Transient Lodging Uses. The Lots are to be used for residential housing purposes only, and shall not be rented in whole or in part for transient lodging purposes, boarding house, a bed and breakfast, or other uses for providing accommodations to travelers. No leases of any Dwelling on a Lot shall be for a period of less than 90 days. No Dwelling on a Lot shall be subjected to time interval ownership.

10.23 No Re-Subdivision. No Lot may be re-subdivided.

10.24 Combination of Lots. No Lot may be combined with another Lot.

10.25 Construction. No Dwelling or structure shall be permitted to remain incomplete for a period in excess of one (1) year from the date of commencement of construction unless any delays are approved in writing by the Architectural Review Board. Declarant is exempt from this restriction.

10.26 Duty to Maintain. It is the obligation of each Owner to maintain his Lot at all times in order to preserve and enhance the enjoyment of the Subdivision. The Owner of each Lot shall maintain his Lot, including the rear yards, those side yards that are not adjacent to a street or private lane, and the driveway to each such Lot, and the improvements on the Lot in a good state of repair and in an attractive, safe and healthy condition.

10.27 Repair by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision. In addition, each Owner hereby grants to the Association a lien on the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages or pursuant to the rights provided the Association in the Governing Documents. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the rate of 18% per annum or 1.5% monthly.

10.28 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Architectural Review Board. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the Architectural Review Board.

10.29 Repair Following Damage. In the event of casualty loss or damage to the

improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Architectural Committee, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Architectural Committee, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

ARTICLE XI

INSURANCE

11.1 Casualty Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not available, then at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction to the Common Areas and Limited Common Areas from any insured hazard.

11.2 Liability Insurance. The Board, or its duly authorized agent, shall also obtain a public liability policy covering the Common Areas and Limited Common Areas, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, their invitees, guest, successor or assigns. The public liability policy shall be in an adequate amount as determined by the Board from time to time.

11.3 Premiums. Premiums for all insurance on the Common Areas and Limited Common Areas shall be Common Expenses of the Association and shall be included in the Base Assessment.

11.4 Name of the Association. All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefited parties, as further identified in below. Such insurance shall be governed by the provisions hereinafter set forth:

(A) All policies shall be written with a company licensed to do business in Utah which holds a Best's rating of A or better and

is assigned a financing size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or if not available, the most nearly equivalent rating.

(B) All policies on the Common Areas and Limited Common Areas shall be for the benefit of the Association, its Members, and Mortgagees providing construction financing on the Common Areas and Limited Common Areas.

(C) Exclusive authority to adjust losses under policies obtained by the Association on the Property shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(D) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants or their Mortgagees.

(E) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction along the Wasatch Front, State of Utah area.

(F) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;

(iv) a statement that no policy may be canceled,

subject to non- renewal on account of the conduct of any Trustee, officer, or employee of the Association or its duly authorized manager without prior demand, in writing, delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or any Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non- renewal.

11.5 Worker's Compensation. In addition to the other insurance required by this section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law; the Board's and officers' liability coverage, if reasonably available, a fidelity bond or bonds on the Board, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the Board's best business judgment. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

ARTICLE XII

DAMAGE & DESTRUCTION

12.1 Claims of Adjustment. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas and Limited Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas and Limited Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas and Limited Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

12.2 Repairs Mandatory. Any damage or destruction to the Common Areas and Limited Common Areas shall be repaired or reconstructed unless the Members, representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct, and

West Bountiful City approves such decision in writing. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction Mortgagees providing construction financing for such damaged property.

12.3 Unrepaired Common Area. In the event, that it should be determined that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

ARTICLE XIII

DISBURSEMENT OF PROCEEDS

13.1 If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas and Limited Common Areas shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and the Mortgagee(s) as their interest may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Lot and may be enforced by such Mortgagee.

ARTICLE XIV

REPAIR AND RECONSTRUCTION ASSESSMENT

14.1 If the damage or destruction to the Common Areas and Limited Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners on the same basis as provided for Base Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE XV

CONDEMNATION

15.1 Whenever all or any part of the Common Areas and Limited Common Areas shall be taken (or conveyed in lieu of a taking) or is under threat of condemnation by any authority having the power of condemnation/eminent domain, the Board, acting on the written direction of Members representing at least seventy five (75%) percent of the total Association vote, is entitled to act on behalf of the Association to defend or settle the taking proceeding. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the common areas on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Members representing at seventy-five percent (75%) of the total vote of the Association shall otherwise agree (and West Bountiful City approves such decision in writing), the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements of the Common Areas and Limited Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE XVI

WEST BOUNTIFUL CITY AS THIRD-PARTY BENEFICIARY

West Bountiful City is an intended third-party beneficiary to all provisions of this Declaration and shall have all of the benefits and rights of the Association, the Board of Directors and any Owner to enforce all provisions of this Declaration. Nevertheless, West Bountiful City is not a party to this Declaration, and may not be held liable for any provision of this Declaration or for the enforcement or lack of enforcement thereof.

ARTICLE XVII

ARCHITECTURAL REVIEW BOARD

17.1 Purpose. It is the intention and purpose of this Declaration to impose architectural standards on the improvements to any Lot of a type and nature that result in buildings which are architecturally compatible in terms of lot coverage, proportion, materials, colors and general appearance. To accomplish this goal, the Declarant hereby

establishes the Architectural Review Board, which is empowered to oversee and enforce the Architectural Design Standards set forth in this Declaration.

17.2 Architectural Review Board Created. The Architectural Review Board ("ARB") will consist of three members, at least two of whom shall be members of the Board of Directors of the Association. The initial ARB will consist of three people appointed by the Declarant, who do not need to be Owners. At the time that all Lots on the Property have been built on, all of the members of the ARB will be elected by the Owners; however, the ARB may wish and is authorized to retain a qualified planning, design or architectural professional to handle the day to day work of the ARB.

17.3 Approval by ARB Required. No Improvements of any kind will be made on any Lot without the ARB's prior written approval. Approval of the ARB will be sought in the following manner:

(A) Plans Submitted. Two complete sets of the plans for the construction of any new Dwelling or Improvements must be submitted to the ARB for review. In the case of an addition or modification of an existing Dwelling, the ARB may waive any of the foregoing it feels are unnecessary to its review of the remodel or addition.

(B) Review. Within 30 days from receipt of a complete submission, the ARB will review the plans and make an initial determination whether or not the plans comply with the conditions imposed by the Declaration. If they do not, the plans will be rejected. If they are in compliance, the ARB will approve the plans. The ARB may also approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans for review. The ARB will review preliminary plans, and make its comments known to the Owner provided, however, that no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission. Upon approval, the ARB will sign a copy of the plans, one of which shall be left with the ARB. No construction that is not in strict compliance with the approved plans will be permitted.

(C) Failure to Act. If the ARB has not approved or rejected any submission within 45 days after submission of complete plans, the submission is deemed to have been disapproved. If the plans are disapproved as a result of the ARB's failure to act, then the applicant may send, by certified mail, return receipt requested, notice to any member of the ARB that if the plans are not either approved or disapproved, as submitted, within 15 days

from the date the notice is MAILED, then the plans will be deemed to be approved. If within such 15 day period, the ARB fails to respond to the notice by either approving or disapproving the plans, then the plans will be deemed to have been approved; provided, however, that the submission and Improvements do not, in fact, violate any conditions imposed by the Governing Documents.

17.4 Variances. Variances to the design standards contained in this Declaration may be granted when strict application would create an unforeseen or unreasonable hardship to the Owner of any Lot, provided, however, that any variance granted is consistent with the intent of the Governing Documents. The ARB cannot grant any variance that has the effect of modifying applicable zoning or building code regulations. The burden of obtaining a variance is entirely on the applicant.

17.5 General Design Review. The ARB will use its best efforts to provide a consistent pattern of development, and consistent application of standards of the Governing Documents. These standards are, of necessity, general in nature, and it is the ARB's responsibility to apply them in a manner that results in a high quality, attractive and well-designed community.

17.6 Declarant, Board and ARB not Liable. The Declarant, the members of the Board of Directors, and the ARB members shall not be liable to the applicant or to the Owners of any Lots within the Subdivision for their actions, inactions, or approval or disapproval of any set of plans submitted to the ARB for review. Each Owner has an equal right to enforce these covenants against every other Owner, and may independently seek redress against another Owner if he/she believes such Owner has failed to comply with Governing Documents.

17.7 Limitations on Review. The ARB's review is limited to those matters expressly granted in this Declaration. The ARB shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws or ordinances affecting the development or improvement of real property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in plans to bring them into conformity with applicable codes must be approved by the ARB prior to construction.

17.8 Exclusion of Declarant. Neither Declarant nor its assign/designated builder are subject to any review or conditions imposed upon other Lot owners by the ARB. Declarant and its designated builder need not receive any approval from the ARB

ARTICLE XVIII

ARCHITECTURAL RESTRICTIONS ON IMPROVEMENTS

18.1 Number of Dwellings. Only one Dwelling may be constructed on any Lot.

18.2 Attached Garage. All Dwellings shall have an attached garage for at least two cars and a maximum of four cars, unless prior written approval of the ARB is first obtained. No detached garages will be allowed.

18.3 Architectural Standards. All Dwellings in the Subdivision will be single-story buildings with a maximum height of twenty-five (25) feet and a minimum square footage of 1500 square feet of living area (not including the garage). Each Dwelling shall use the following types of exterior construction materials: brick, rock, stone, stucco, or Hardy cementious siding. The front, or street-facing façade of each home, shall have at least 50% brick, stone or rock masonry. Vinyl siding shall not be allowed. A Dwelling may be built next to a Dwelling with the same plan, but the exterior color materials used on such adjacent Dwellings, as well as the garage element design and color, must be different.

18.4 Out Buildings. No storage building, out building, or habitable structure may be permitted on any Lot unless prior written approval of the ARB is first obtained.

18.5 Construction Completion. When construction has started on any residence or other structure, work thereon must be completed within twelve months, weather permitting.

18.6 Windows. All windows must be of at least double pane. No mirrored or reflective glass may be used.

18.7 Antennas. All antennas must be enclosed within the Dwelling. If possible, any satellite dishes must be located and screened in a manner so that they are not directly visible from adjoining Lots or streets. Solar panels will be permitted only with the consent of the ARB, and if permitted at all, must lie flat against the roof and may not differ in pitch or color from the roof surface on which they are mounted.

18.8 No Used or Temporary or Prefab Structures. No previously erected, used, or temporary structure, mobile home, trailer house, or any other non-permanent structure may be installed or maintained on any Lot. No prefabricated housing may be installed or maintained on any Lot.

18.9 Driveways. Every garage shall be serviced by a driveway, which shall be of sufficient width and depth so as to park two vehicles side by side completely out of the street right of way. However, as required by other sections of this Declaration, only one (1) automobile is allowed to be parked in the driveway. All driveways are to be constructed of concrete. No other driveway materials will be allowed unless prior written approval of the ARB is first obtained.

18.10 Finished Lot Grading. Lot owners and builders are responsible to complete the final grading of the entire Lot so that the finish grading complies with City ordinance, lender requirements and proper water control, as well as any applicable master grading plan for the entire Development, as opposed to a slope plan determined solely for that particular Lot.

18.11 All Dwelling Construction is Subject to Prior Approval by the Architectural Committee. Prior to construction, all dwelling plans must be reviewed and approved by the ARB, as set forth in Article XVII, above, and all dwelling construction must meet Architectural restrictions and architectural guidelines and the other requirements of these Covenants.

18.12 Landscaping. All landscaping for the Development shall conform to the Development Agreement executed with West Bountiful City and the landscape plan attached as Exhibit E, thereto. In particular, each Lot shall have at least one tree in the park strip. Each Lot shall have vinyl perimeter fencing. All side-yard fencing shall be set at least 30 feet back from the front line of the improved Lot. The HOA will maintain all front and side yard landscaping and perimeter fencing.

ARTICLE XIX

ANNEXATION

19.1 Annexation. Additional phases of the Cottages at Havenwood may be added to the Property pursuant to the following procedures, and subject to the limitations as follows:

19.2 Annexation by Declarant. Declarant may from time to time and in its sole discretion expand the Property subject to this Declaration by the annexation of all or part of contiguous land that currently is undeveloped or not zoned for PUD.

19.3 No Obligation to Annex or Develop. Declarant has no obligation hereunder to annex any additional land to the Property or to develop or preserve any portion of any additional land in any particular way or according to any particular time schedule. No land other than the Property, as defined on the date hereof and land annexed thereto in accordance with the terms of this Article shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat or map filed by Declarant or described or referred to in any documents executed or recorded by Declarant.

ARTICLE XX

OTHER PROVISIONS

20.1 Violation Deemed a Nuisance. Any violation of these Covenants which is

permitted to remain on the Property is deemed a nuisance, and is subject to abatement by the Association or by any other Owner.

(A) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot), by any other Owner, or by the Association as an association of property owners. In any action brought to enforce these Covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including attorney fees and costs of court.

(B) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.

(C) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(D) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

20.2 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining Covenants shall remain in full force and effect.

20.3 Limited Liability. Neither the Declarant, the Board, the ARB nor its individual members, nor any other Owner shall have personal liability to any other Owner for actions or inactions taken under these Covenants, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority, under these Covenants, and without malice.

20.4 Amendment. After their recording, no modifications or amendments may be made to this Declaration or any covenants set forth herein without the written approval of West Bountiful City. Subject to the foregoing, during the Class B Control Period, the Declarant can modify the covenants set forth herein without a vote of other Members; thereafter, these covenants can be modified by the affirmative vote of the Members representing sixty-seven (67%) percent of the total votes of the Association.

20.5 Constructive Notice. All persons who own, occupy or acquire any right, title or interest in any Lot in the Subdivision are conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the Covenants, Conditions and Restrictions against their Lot, whether or not there is any reference to this Declaration in the instrument by which they acquire their interest in any Lot.

20.6 Notices. All notices under this Declaration are deemed effective 72 hours after mailing, whether delivery is proved or not, provided that any mailed notice must be postage pre-paid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.

20.7 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Subdivision. Paragraph headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

20.8 Mortgagee Protection Provision. The breach of any of the foregoing covenants shall not defeat or render invalid the lien of any mortgage or deed of trust lien on the Property that is made in good faith and for value; provided, however, that all of the covenants contained herein shall be binding upon and effective against any owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale or other foreclosure proceeding, from and after the date of such foreclosure, trustee's sale or other foreclosure proceeding.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

Executed on the date stated above

Capital Reef Management, LLC
A Utah limited liability company

By: _____ Brad Frost
Its: Managing Member

STATE OF UTAH)
: ss
COUNTY OF DAVIS)

On this ___ day of_____, 2016, personally appeared before me Brad Frost, who being by me duly sworn, did say that he is a Managing Member of Capital Reef Development, LLC, a Utah Limited Liability Company, and that the within and foregoing instrument was signed on behalf of said Limited Liability Company by authority and said member duly acknowledged to me that said Limited Liability Company executed the same.

_____
Notary Public

Residing at:

_____

My Commission Expires:_____

West Bountiful City **PENDING** **April 12, 2016**
Planning Commission

Posting of Agenda - The agenda for this meeting was posted on the State of Utah Public Notice website and the West Bountiful City website, and sent to Clipper Publishing Company on April 11, 2016 per state statutory requirement.

Minutes of the Planning Commission meeting of West Bountiful City held on Tuesday, April 12, 2016, at West Bountiful City Hall, Davis County, Utah.

Those in Attendance:

MEMBERS PRESENT: Vice Chairman Terry Turner, Alan Malan, Mike Cottle, Laura Charchenko, Corey Sweat, and Council member Andy Williams.

MEMBERS/STAFF EXCUSED: Chairman Denis Hopkinson.

STAFF PRESENT: Ben White (City Engineer) and Cathy Brightwell (City Recorder) Debbie McKean (Secretary)

VISITORS: Derek Christensen, Cory and Breanna Stultz, and Debra Marshall

The Planning Commission Meeting was called to order at 7:30 p.m. by Vice Chairman Turner. Mike Cottle offered a prayer.

I. Accept Agenda

Vice Chairman Turner reviewed the agenda. Mike Cottle moved to accept the agenda as presented. Alan Malan seconded the motion. Voting was unanimous in favor among members present.

Business Discussed:

II. Consider Conditional Use Application for Cory Stultz to Build a Detached Garage that Exceeds 25 feet at 1497 North 950 West

Commissioner's packets included the following information: memorandum dated April 8th, 2016 from Ben White regarding accessory building taller than 20 feet at1497 North 950 West, Conditional Use Permit Application from Cory and Breanna Stultz with a site plan.

Memorandum included the following information:

- Stultz's desire to construct a new home on Lot 10 of the Ranches at Lakeside subdivision and to build a detached garage for their "toys." Their plans exceed the 20 foot height limitation and they need a conditional use permit.
- The placement of their home and detached garage comply with zoning setback regulations. To comply with Section 17.20.060 they need the conditional use permit.
- List of proposed affirmative findings.
- Suggestion for a motion if approved by commission.

Ben White introduced the applicant and showed the proposed area on a site plan projected on a screen. He explained the reason for the need to have the additional height for this structure. It will be used to store his "toys" that need the height. The height is the only concern regarding this structure.

Mr. Stultz was called to the stand and asked what they would like to do with the building. He answered that he needs a place to store their big "toys". The building is only one story high with no upper floor.

Commissioners Comment:

Mike Cottle is familiar with the lot and sees no issues along with all other Commissioners.

ACTION TAKEN:

Corey Sweat moved to approve the Conditional Use Permit for Cory Stultz to build a detached garage that exceeds 20 feet in height at 1497 North 950 West with the following findings in the Conditional Use ordinance, Section 17.60.040, the proposed use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity, will not inordinately impact schools, utilities, and streets, will provide for appropriate buffering of uses and buildings, proper parking and traffic circulation, the use of building materials and landscaping which are in harmony with the area, and compatibility with adjoining uses; will comply with the regulations and conditions specified in the R-1-22 land zoning ordinance. Mike Cottle seconded the motion and a friendly amendment was made by Laura Charchenko to cap the height at 28 feet. Corey Sweat accepted the amendment and no further discussion was needed. Voting was unanimous in favor.

III. Discuss Olsen Farms 8 Subdivision Request by Terry Olsen.

Ben White introduced the discussion for Olsen Farms 8 Subdivision as requested by Terry Olsen (not present). He showed the property for discussion on the projection. He gave some previous history of the area in regards to annexation and pre-development. Mr. White explained that Mr. Olsen would like to begin developing his property and divide it for family inheritance purposes since his former wife has passed away. There is a ½ acre parcel at the north

end of the property that is not developable. The property currently has portions in two separate zones, the R-1-10 and R-1-22. Current ordinances require that if a property covers more than one zone, the more restrictive zone applies to the entire property, R-1-22. The majority of one of the proposed lots is in the R-1-10 zone and he would like to have the entire property re-zoned to R-1-10. Most utilities are in place, and curb and gutter is in place except for a 100 feet or so along Pages Lane that will need to be completed.

Ben White offered some options and food for thought when considering this proposal and rezoning. A Public Hearing is needed and will be scheduled for the first meeting in May. Subdivision approval and rezone can be done at the same time.

IV. Discuss 1450 West Annexation and One Lot Plat for Al Jones.

Ben White introduced this issue stating that Mr. Jones (not present) would like to annex a property he is considering purchasing into our city; the property is adjacent to but outside of city limits. It is a 5 acre parcel and he intends to build one home on the property. He must own the property before he can request an annexation.

Mr. White gave a bit of history of the property and future development of roads in that area. An application for annexation will come to the Commission first and then City Council will make the decision as to what restrictions and requirements will be required for building a road for that 5 acre piece of property. They will have to abide by fire code with all conditions.

Mr. Malan wants to see some agreements in place for curb, gutter and sidewalk. We can provide water services to property outside our city (they are charged a higher fee) but residents cannot participate as a citizen of West Bountiful.

There was discussion about neighbors in the area and whether the annexation should include more than one property owner. Staff commented that they will invite other property owners in the area to see if they are interest in annexing as well.

Debra Marshall, a nearby resident on 400 North, asked to make a comment. She informed the Commission that they would like to see this property as part of our city to provide police protection and see the property is cared for by property owners as there have been some problems with trespassing on the vacant property. She believes many other West Bountiful homeowners in that area would be in favor of the annexation as well.

Alan Malan inquired about how many homeowners are in that area. Response was that there are five or six..

V. Staff Report

Ben White reported:

- Ovation Homes will probably be on next Council agenda to discuss their development agreement. If the development agreement is completed and approved at next week's City Council meeting they would like to move forward as quickly as possible. Notice must be posted by this Friday in order to make the necessary notice for a Public Hearing at the next Planning Commission meeting. Commissioners agreed to have staff set the Public Hearing at the next scheduled meeting and cancel it if agreement was not met during the next Council meeting.

- Update on Pages Lane is that the waterline is almost complete. Lines must be chlorinated, and bacteria and pressure tested which will take a week then they will begin hooking into the individual residences. Upon completion of the water system they will begin storm drain, then the road rebuild in May. Questar has run into delays due to unforeseen obstacles underground. Century Link is onsite and in the process of moving their lines. Construction must be done by the end of June or daily penalty fees can be charged.
- Bountiful's 400 North project is currently installing waterlines with the road rebuild beginning shortly on the east side of 5th West. The west side will begin later in the summer and not be completed until after school starts.
- The new Basketball court at the City Park is nearly complete.

VI. Approval of Minutes of March 8, 2016.

ACTION TAKEN:

Alan Malan moved to approve of the minutes dated March 8, 2016 as presented. Corey Sweat seconded the motion and voting was unanimous in favor among those members present.

VII. Adjournment

ACTION TAKEN:

Alan Malan moved to adjourn the regular session of the Planning Commission meeting. Laura Charchenko seconded the Motion. Voting was unanimous in favor. The meeting adjourned at p.m.

. . . . . .

The foregoing was approved by the West Bountiful City Planning Commission on April 26, 2016, by unanimous vote of all members present.

_____

Cathy Brightwell – City Recorder