



Nibley City
Planning Commission Meeting
Thursday, May 21, 2020
455 W. 3200 S.
Nibley, UT

6:30 p.m. Call to Order and Roll Call
 Approval of Agenda
 Approval of Minutes

1. Discussion and Consideration of a recommendation on Firefly Estates, Phase 1 Final Plat, located at approximately 1200 W and 2200 S. (Applicant: Return Development LLC)
2. **Workshop:** Accessory Dwelling Units
3. **Workshop:** Residential Planned Unit Development Code Update
4. **Workshop:** Rural Preservation Subdivision
5. Staff Report and Action Items

*Planning Commission agenda items may be tabled or continued if 1) Additional information is needed in order to take action on the item, OR 2) The Planning Commission feels there are unresolved issues that may need further attention before the Commission is ready to make a motion. **No agenda item will begin after 10:00 p.m. without a unanimous vote of the Commission.** The Commission may carry over agenda items, scheduled late in the evening and not heard, to the next regularly scheduled meeting.*

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES WILL BE PROVIDED UPON REQUEST. FOR ASSISTANCE, PLEASE CALL 752-0431 A MINIMUM OF 24 HOURS BEFORE THE MEETING.



**Nibley City Planning
Commission
Agenda Item Report
May 21, 2020**

Agenda Item #1: Firefly Estates, Phase 1 Final Plat

Description

Discussion and Consideration of a recommendation for Firefly Estates, Phase 1 Final Plat, located at approximately 1200 W and 2200 S. (Applicant: Return Development LLC)

Department

City Planning, Engineering, and Public Works

Action Type

Recommendation, Administrative

Recommendations

Review and consider recommendation to the City Council

Reviewed By

City Planner, City Engineer, City Public Works Director, City Manager

Background

Return Development has applied for final plat approval for Firefly Estates, Phase 1. Firefly Estates is a Residential- Planned Unit Development, approved by the City Council on February 27, 2020. Phase 1 contains a total of 63 lots, including 11 single family homes, 52 town homes and 0.84 acres of open space. The plat has the same general lot layout, roadways and open space as the approved preliminary plat that was approved by the City Council on February 27, 2020 and meets the space and density requirements for the R-PUD zone, in which the subdivision is

located. At the time of this writing, the City Planner, City Engineer and Public Works Director has reviewed the application and provided an initial set of comments to the applicant.

Utility Lines and Construction Drawings

Nibley City staff has reviewed the construction drawings and sent a list of several changes that would be required for final approval. Staff is awaiting the applicant's response to ensure compliance. The findings below include Staff's recommendations for revisions to the final plat and construction drawings.

Maintenance and Ownership Plan

NCC 19.32.050 provides that a maintenance and ownership plan is needed, which describes the operations and maintenance of proposed amenities and open space. The applicant has provided a copy of the proposed Covenants, Code and Restrictions for the area. This document includes a maintenance plan, which describes that the homeowners association will maintain, repair and replace the common areas and the improvements included and describes the areas in which individual homeowners are responsible. Information about insurance and costs have also been provided within the document. Insurance is described to cover 100% of replacement costs. Estimated staffing for maintenance is estimated to be 2 persons at a cost of \$1,200 per month.

Landscaping and Open Space Plan

NCC 19.32.080 provides that landscaping with suitable plants, trees, shrubs, grasses and similar materials are required. The applicant has provided a landscape plan, which mirrors the landscape plan approved with the preliminary plat and includes a range of trees and shrubs set among grass in the common areas. The applicant proposes a small 0.84 HOA-managed park space with a that includes a playground with swingset. More detail is needed to determine if this playground meets Nibley City's standards for an R-PUD zone. NCC 19.32.050 states:

Playground: an area provided for children to play on. Each Playground must be designed for children twelve and younger. A playground must include features to appeal to children within the above age group including some of the following: slides, monkey bars, ladders, tunnels, climbers, bridges, ramps, platforms, etc. All playground equipment must be of commercial grade. Each playground must include a minimum of 8 features.

The Nibley City Parks Division Manager is currently reviewing the Landscape plan and will provide comments prior to final approval.

Recommended Findings for Firefly Estates Final Plat Phase 1

1. The lots, streets, and layout match the approved preliminary plat and comply with Nibley City Code
2. Maintenance Plan and Landscape Plan complies with Nibley City Code
3. The Plat and construction drawings need the following updates:
 - a. All setbacks need to be drawn on the Plat to ensure compliance with NCC.
 - b. Standard utility easements need to be shown. 2200 South easement needs to be wide enough to fit utilities and drainage.

- c. Second Access easement needs to be drawn on the Plat and labeled as emergency access
 - d. Ground Water Note as listed in NCC 21.06.080 (B)(2) needs to be added. Staff recommends no basement.
 - e. 2260 South needs a 1 ft buffer.
 - f. Improvements on Meadow Lane need to comply with TS-3 Cross-section with the 10 ft. trail on the west side.
 - g. East Park Space should be dedicated to the City in first phase.
 - h. Fencing along parcel 03-174-0001 needs to be installed
 - i. Need to show and build 1/2 section TS-7 on 1200 W.
 - j. Update all TBC radius to 12'. This will affect the plat as well.
 - k. Bottom of ponds need to be at least 2' above ground water. Need to show ground water elevation on pond plans.
 - l. Minimum pavement structural section is 3/6/12. Update needed to meet this minimum requirement.
 - m. Ensure stormwater calculations account for 1 ft of free board in the volume provided.
 - n. "Pit Run" reference throughout plan needs to be changed to Granular Back Fill Borrow as indicated in APWA.
 - o. A 2" meter can serve up to 25 units. There are 2 options the City is considering for metering the town homes. One is to install a single 2" meter for each 25 units and individual shut off valves to each unit. A bill would be sent to the homeowners association for each 2" meter. It would be the HOA responsibility to collect and make payment. Option 2 is to run a 2" service line for each set of 25 units to a manifold system and run each unit off its own 1" meter. Update plans to reflect City's decision on metering.
 - p. Sewer and water service lines to the lots on the south need to be flipped. Water 5' from property line and then sewer 10' from water. Water meters need to be in standard location, 5' behind walk.
 - q. Ensure there is 10 ft spacing between water line and sewer. Label spacing width
 - r. There is not enough information shown to check parking requirements. Include parking stall information.
 - s. Provide directional ADA ramps at 1200 west.
 - t. Ensure bldg requirements for the townhomes/multi family meet Nibley City standards
 - u. Need to show complete ROW width on 1200 West and 2200 South, both through and beyond development
 - v. Need to show detailed designs of 1200 West and 2200 South, including widths of asphalt tie in, slopes of existing asphalt.
 - w. Provide proof that outlet and existing ditch to west at NW corner provides adequate drainage for the site.
 - x. Provide language on plat that details all utilities outside public ROW will be owned and maintained by the development
 - y. More detail is needed on landscape plan to
4. In addition to the necessary changes for the Plat and construction drawing, the following additional information is needed prior to approval:

- a. Provide proof of infiltration/percolation test. Pond needs to drain within 72 hours.
- b. Provide geotechnical pavement design to verify the minimum structural requirement.
- c. Provide signed storm water pond agreement.
- d. Approval needed from Logan City for waste collection plan prior to City Council approval. Nibley City prefers dumpsters for townhome units.
- e. .Construction Drawings must be signed by and approved by the City Engineer.

Agenda Item #2: Accessory Dwelling Units

Description

Workshop: Accessory Dwelling Units

Department

City Planning, Engineering, and Public Works

Action Type

Workshop

Recommendations

Review and continue discussion

Reviewed By

City Planner

Background

Update

This item was discussed on April 2 and May 7, with feedback incorporated into the draft ordinance. Since the last meeting, setback requirements were clarified to ensure that ADUs require 10 feet side and rear setbacks in addition to those required by other accessory structures.

An Accessory Dwelling Unit (ADU) is a secondary dwelling unit that is located on the same property as a primary dwelling unit. These take the form of basement apartments, guest houses, an apartment above the garage, etc. Nibley City's Moderate Income Housing Plan states the following as its first goal to address moderate income housing:

Allow for and reduce regulation related to accessory dwelling units in residential zones.

Nibley City currently allows for attached accessory dwelling units (ADUs). These ADUs mostly take the form of basement apartments. Nibley City should consider expanding allowances for detached ADUs within most residential zones. ADUs can be a great way to expand moderate income housing stock with minimal impacts to neighborhoods. As established above, many of Nibley City lots are larger than half an acre, which could create the opportunity for construction of ADUs throughout the city.

Moderate Income Housing Considerations

- *How large would the City allow an ADU to be in reference to the primary structure*
- *In what zones and lot sizes would a detached ADU be allowed?*
- *Parking requirements? Having no or minimal parking requirements would allow for more homeowners to build ADUs*
- *Property owner habitation*
- *Making ADUs for short-term rentals as a prohibited use*
- *Registration of ADUs so the City could track the number of units.*

Timeframe: Early 2020

(Nibley City Moderate Income Housing Plan, 2019, p 18)



The 2016 Nibley City General Plan estimated that Nibley has anywhere from 20-30 ADUs in the City, all in the form of attached apartments. These apartments can serve as a way to provide affordable housing throughout the community and can allow property owners to more fully realize the value of their property.

Attached to this report is a presentation that was given at a Utah American Planning Association conference which provides additional information about ADU.

Cache County Monthly Planning Newsletter, February 2020 also provides some great information about ADUS: [Cache County Monthly Newsletter: February 2020](#)

Agenda Item #3: Residential Planned Unit Development Code Update

Description

Workshop: Residential Planned Unit Development Code Update

Department

City Planning, Engineering, and Public Works

Action Type

Workshop

Recommendations

Review and continue discussion

Reviewed By

City Planner

Background

Update

This item was discussed on April 2 and May 7, with feedback incorporated into the draft ordinance. This is a continuation of that discussion.

Nibley City has received three applications for the new Residential Planned Unit Development (R-PUD). There has been a desire to make some changes to the ordinance to clarify open space calculation, the application process, zoning, etc.

At the City Council meeting held on March 26, 2020, the City Council passed *Ordinance 20- 08: Residential Planned Unit Development Moratorium*. This ordinance puts a six-month hold on all

new R-PUD applications. This will give the City some time to fully review the ordinance and make desired changes.

During this workshop, staff and the Planning Commission will identify key sections of code to be updated.

You can review the full code here:

[Nibley City Code 19.32 Residential Planned Unit Developments](#)

Open Space and Amenities

There has been general concern and agreement on updating the definition of open space within the development. Currently, the R-PUD code allows for open space to count any public landscaping contained within setbacks and within the right-of-way. Staff has eliminated the clause within the definition that would allow for open space within the right-of-way.

Proposed Open Space Definition

Open Space: Any space in an R-PUD that does not contain any amenities, except for park amenities, as defined herein, buildings, parking lots or private yards. All Open Space must be completely landscaped with sod, trees, xeriscape, gardens or agricultural use. Natural features such as wetlands, meadows, tree stands and Constrained and Sensitive Lands may also be considered Open Space. Landscaping within building setbacks and right-of-ways shall not be counted towards the percentage of required landscaping.

Landscaping within the ROWs and setbacks shall still be required.

Open Space for the Public

One of the concerns voiced in public hearings and by some City Council and Planning Commission members is the lack of public amenities and the perceived benefit to surrounding

neighborhoods. There has been a request for the City to require some amenities within the project to be given to the City.

Staff is requesting that the Planning Commission consider what these amenities would be like



and how they could bring benefit to the general public. Some of these benefits could be public park amenities, trail spaces, open space next to adjacent homes, etc.

Density and Housing Mix

Another concern that has been expressed by the citizens, planning commissioners, and members of the city council is they would like to see a greater variety of housing types. This could reflect a change in the split of housing type, which right now allows for 80% of the units as townhomes and a minimum of 20% need to be single-family lots. Staff has provided some preliminary below:

Single-Family, Townhome, and Open Space Mix		
Single Family/Townhome	Open Space	
20/80		40%
30/70		35%
40/60		30%
50/50		25%
All Single-Family		20%

*The townhome numbers would represent the max

Town Center Single-Family, Townhome, and Open Space Mix		
Single Family/Townhome/Condos	Open Space	
20/40/40		40%
30/30/35		35%
40/30/30		30%
50/25/25		25%

*The condos and townhomes numbers would represent the max

Single-Family Lots
Min of 10% need to be .25 Acres in size
Average Lot Size 6,000 sq. ft.
Smallest Lot 4,500 sq. ft.

These tables above are loose recommendations, staff is currently performing more analysis for feasibility.

Agenda Item #4: Rural Preservation Subdivision Code Update

Description

Workshop: Rural Preservation Subdivision

Department

City Planning, Engineering, and Public Works

Action Type

Workshop

Recommendations

Review and continue discussion

Reviewed By

City Planner

Background

Update

This item was discussed on April 2 and May 7. This is a continuation of that discussion.

Planning Commissioner Mansell has made a recommendation that the Planning Commission review and make two changes to this code:

1. Lots adjacent to existing subdivisions are 80% of the zoning minimum of the adjacent zone
2. Eliminating “islands” of open space

After reviewing these suggestions, the Planning Commission directed staff to review these and make the appropriate modifications. Staff will plan on presenting those modifications to the Planning Commission this week.

You can review the complete Rural Preservation Subdivision Code here:

[Nibley City Code 21.10.020 Rural Preservation Subdivision](#)

LOCATED IN THE SE QUARTER OF SECTION 17,
TOWNSHIP 11 NORTH, RANGE 1 EAST, SLB&M
1050 WEST 2200 SOUTH
NIBLEY, UTAH

A vicinity map showing the project site location. The map includes the following features:

- Project Site:** Indicated by a red rectangle on the east side of the map, near the intersection of 1200 W and 2200 S.
- Streets:**
 - 1200 W (horizontal street)
 - 2200 S (vertical street)
 - 3200 S (vertical street)
 - 800 W (horizontal street at the bottom)
 - SUNSET CIR (curved street in the center)
 - GRASSY LANE (vertical street on the left)
 - US Highway 89/91 (diagonal street running from the top left to the bottom right)
- Landmarks and Features:**
 - CLAYTON OPEN SPACE (labeled with a diagonal line and the word "CLAYTON")
 - CLAYTON PARK (labeled with a diagonal line and the word "CLAYTON")
 - Various building footprints and parking lots are shown throughout the map.
- Orientation:** The map is oriented with North at the top.
- Caption:** VICINITY MAP

OWNER/DEVELOPER
RETURN DEVELOPMENT
CHRISTOPHER HUFFMAN
(801)557-3170
ETHAN POPPLETON
(435)760-6934
4505 S. WASATCH BLVD, STE 150
HOLLADAY, UTAH 84124

**4505 S. WASATCH BLVD, STE 150
HOLLADAY, UTAH 84124**

GENERAL CONTRACTOR SHALL BE IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS, NIBBY CITY STANDARDS, STATE OF UTAH AND ANY OTHER APPLICABLE STANDARDS ISSUED BY THE CONTROLLING AGENCY.

1. ALL CONSTRUCTION AND MATERIALS SHALL BE IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS, NIBBY CITY STANDARDS, STATE OF UTAH AND ANY OTHER APPLICABLE STANDARDS ISSUED BY THE CONTROLLING AGENCY.

2. CONTRACTOR SHALL FIELD VERIFY ALL DIMENSIONS BEFORE CONSTRUCTION. ANY DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE OWNER.

3. CONTRACTOR SHALL REPAIR AND/OR REPLACE ANY AREAS AND/OR MATERIALS DAMAGED DURING CONSTRUCTION.

4. CONTRACTOR SHALL MAINTAIN ALL ADJACENT PROPERTY (PUBLIC & PRIVATE) FROM ALL CONSTRUCTION DEBRIS.

5. CONTRACTOR SHALL PROVIDE SMOOTH TRANSITION FROM ALL NEW CONSTRUCTION TO EXISTING CONDITIONS.

6. CONTRACTOR SHALL PROVIDE ALL NECESSARY AUTOMOBILE AND PEDESTRIAN TRAFFIC CONTROL DEVICES REQUIRED BY LOCAL, STATE, AND FEDERAL CODES AND ORDINANCES.

7. CONTRACTOR SHALL REPLACE SURVEY MONUMENTS DAMAGED DURING CONSTRUCTION. SURVEY MONUMENTS TO BE REPLACED BY A REGISTERED, LICENSED LAND SURVEYOR. TO EXISTING UTILITIES WILL BE REPAIRED AT CONTRACTORS EXPENSE.

8. CONTRACTOR TO LOCATE ALL EXISTING UTILITIES, INCLUDING FIBER OPTIC. ANY DAMAGES TO EXISTING UTILITIES WILL BE REPAIRED AT CONTRACTORS EXPENSE.

9. DIMENSIONS SHOWN ARE TO THE CENTER OF THE PIPELINE UNLESS OTHERWISE NOTED.

10. DISTANCES SHOWN ALONG PEELINES ARE HORIZONTAL DISTANCES AND NOT ACTUAL PIPE LENGTHS. MORE PIPE MAY BE REQUIRED TO COMPLETE CONSTRUCTION THAN IS DIMENSIONED IN THE PLANS.

11. THURST BLOCKS SHALL BE PLACED ON WATERLINES AT ALL DIRECTION CHANGES, FITTINGS, BENDS, ELBOWS, FIRE HYDRANTS AND GATES VALVES AS SHOWN IN THE PROJECT PLANS.

12. CONTRACTOR IS REQUIRED TO HAVE A SET OF PLANS ON THE SITE AT ALL TIMES. ANY WORK COMPLETED WITHOUT A SET PRESENT IS DONE SO AT THE CONTRACTORS RISK AND EXPENSE IF ERRORS OCCUR.

13. CONTRACTOR IS RESPONSIBLE FOR PROVIDING WATER NECESSARY FOR DUST ABATEMENT, COMPACTION, ETC.

14. THE CONTRACTOR SHALL BE RESPONSIBLE FOR SECURING SOURCES FOR GRANULAR MATERIALS, WATER, WASTE SITES, AND ANY OTHER MATERIALS SOURCES AS REQUIRED FOR PROJECT COMPLETION.

15. ANY WORK DONE WITHIN A PUBLIC RIGHT-OF-WAY SHALL BE COORDINATED WITH THE APPROPRIATE TRANSPORTATION AGENCY AND SHALL MEET THE REQUIREMENTS OF THAT AGENCY AND THE REQUIREMENTS OF ANY RIGHT-OF-WAY OR SPECIAL USE PERMITS.

16. THE CONTRACTOR SHALL COORDINATE ALL LIVE PAPS AND ANY OTHER WORK OR MANIPULATION OF THE EXISTING WATER SYSTEM WITH THE CITY.

17. ON SLOPING AREAS THE CONTRACTOR SHALL TAKE PRECAUTIONS TO MINIMIZE ANY POSSIBLE EROSION PROBLEMS IN THE TRENCHES DUE TO STORM WATER THAT MIGHT OCCUR DURING OR AFTER CONSTRUCTION AS DIRECTED OR APPROVED BY ENGINEER.

18. THE CONTRACTOR SHALL INSTALL AND MAINTAIN ALL EROSION CONTROL MEASURES AS DETAILED IN THE PROJECT PLANS UNTIL FINAL ACCEPTANCE OF THIS PROJECT.

19. THE CONTRACTOR SHALL BE REQUIRED TO TAKE ALL PRECAUTIONS NECESSARY TO INSURE THAT NO STORM WATER/SEDIMENT AND/OR CONSTRUCTION DEBRIS ARE RELEASED FROM THE SITE. ANY RELEASES SHALL BE CLEANED AND MITIGATED AT THE CONTRACTOR'S EXPENSE.

20. CONTRACTOR SHALL COORDINATE ALL CONSTRUCTION ACCESS AND RELATED TRAFFIC CONTROL WITH THE COUNTY, CITY, AND STATE ROADWAY DEPARTMENTS. THE ENGINEER SHALL REVIEW ALL TRAFFIC CONTROL PLANS.

21. ALL GATE VALVES SHALL BE LOCATED NEAR TO TEES OR CROSSES AND THEIR ASSOCIATED REDUCERS AS SHOWN ON THE PROJECT PLANS.

22. CONTRACTOR SHALL PROVIDE ALL NECESSARY FITTINGS, HARDWARE, LABOR, ETC. TO REQUIRED GRADES, ALIGNMENTS AND COVER REQUIREMENTS.

23. ALL AIR RELEASE VALVES SHALL BE INSTALLED AT THE CREST OF THE VERTICAL CURVATURE OF THE WATER LINE. CONTRACTOR SHALL RECORD ACTUAL LOCATION OF VALVES ON FIELD RECORD DRAWINGS.

24. THE CONTRACTOR SHALL COORDINATE WITH NIBBY CITY FOR ALL UTILITY INSPECTIONS PRIOR TO BACKFILLING.

25. ALL WATER SYSTEM COMPONENTS SHALL BE INSTALLED, PRESSURE TESTED, AND CHLORINATED PRIOR TO COMPLETING ANY ROADWAY CONSTRUCTION.

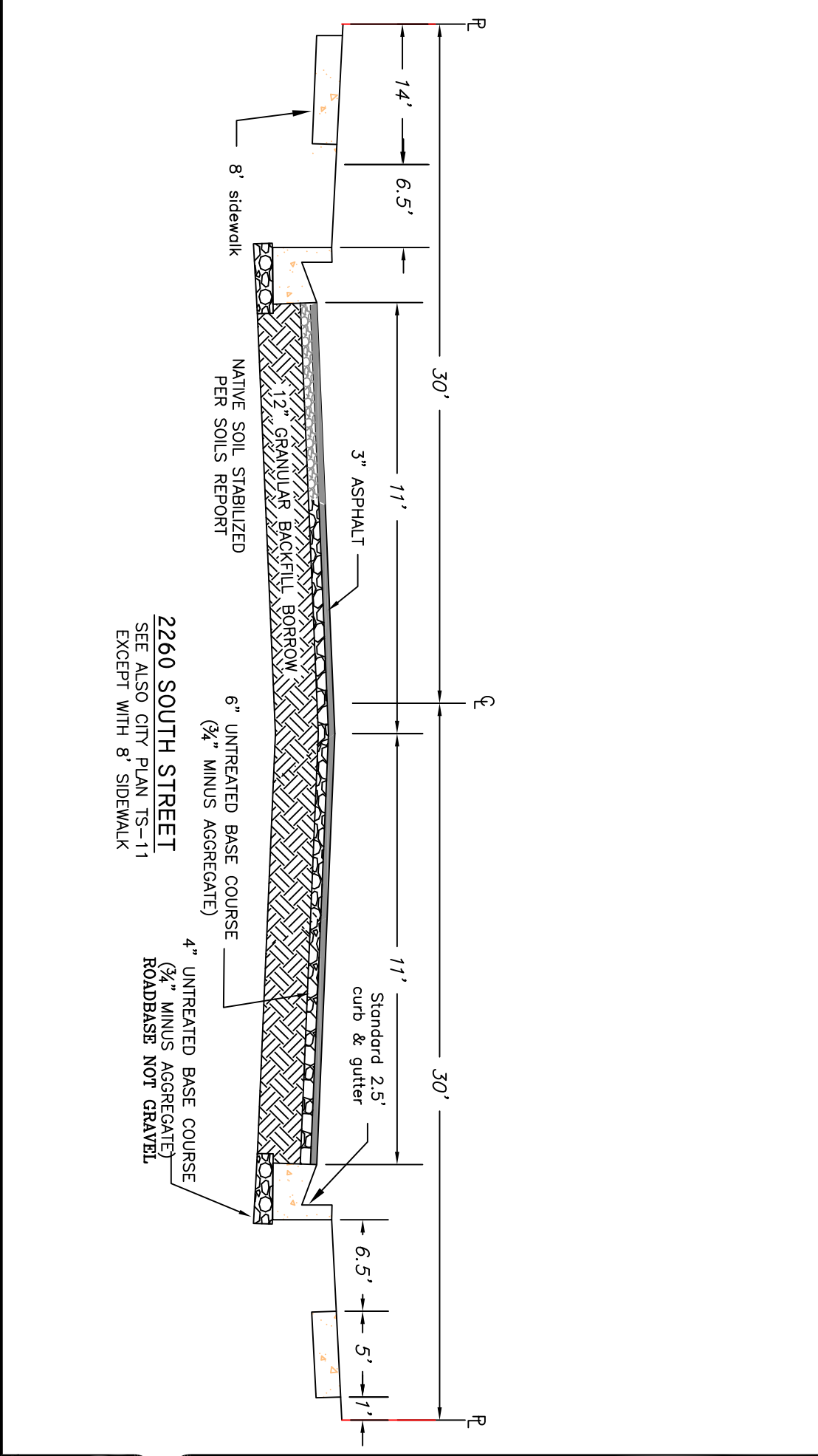
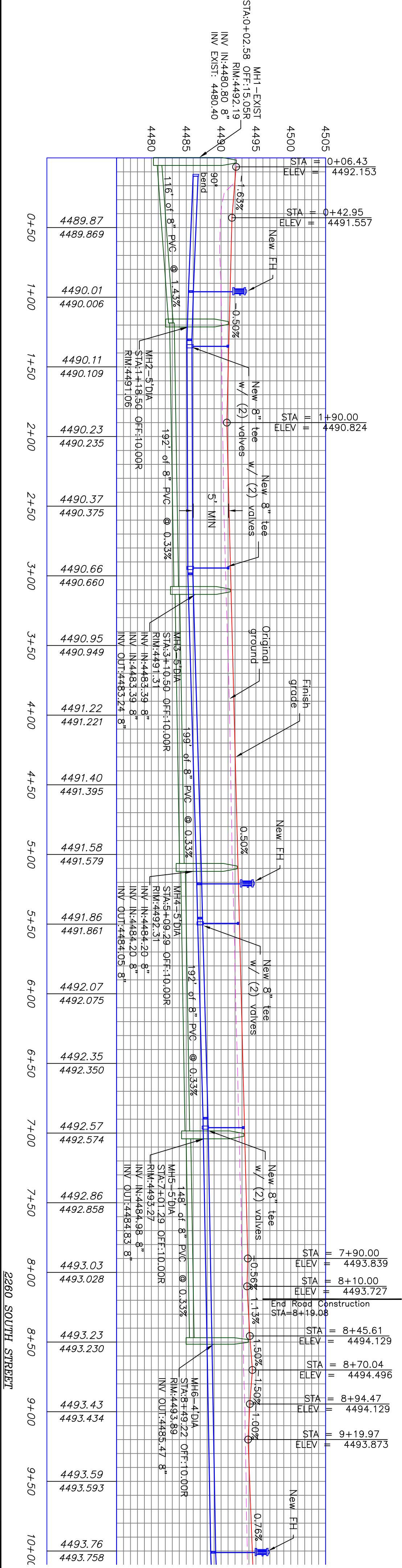
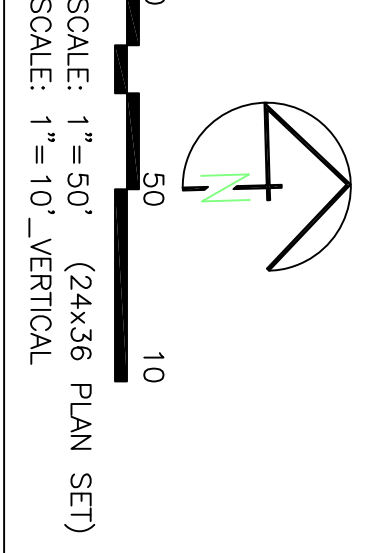
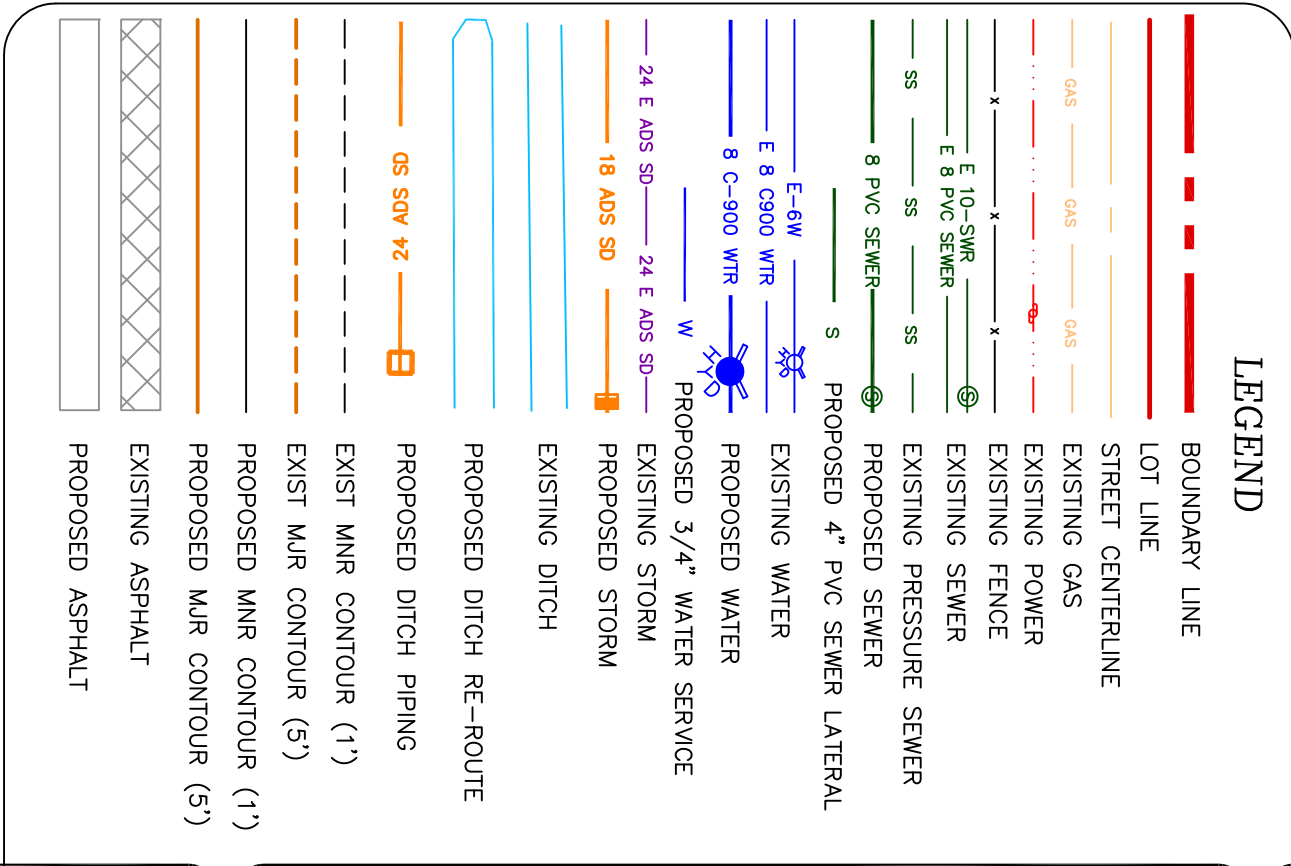
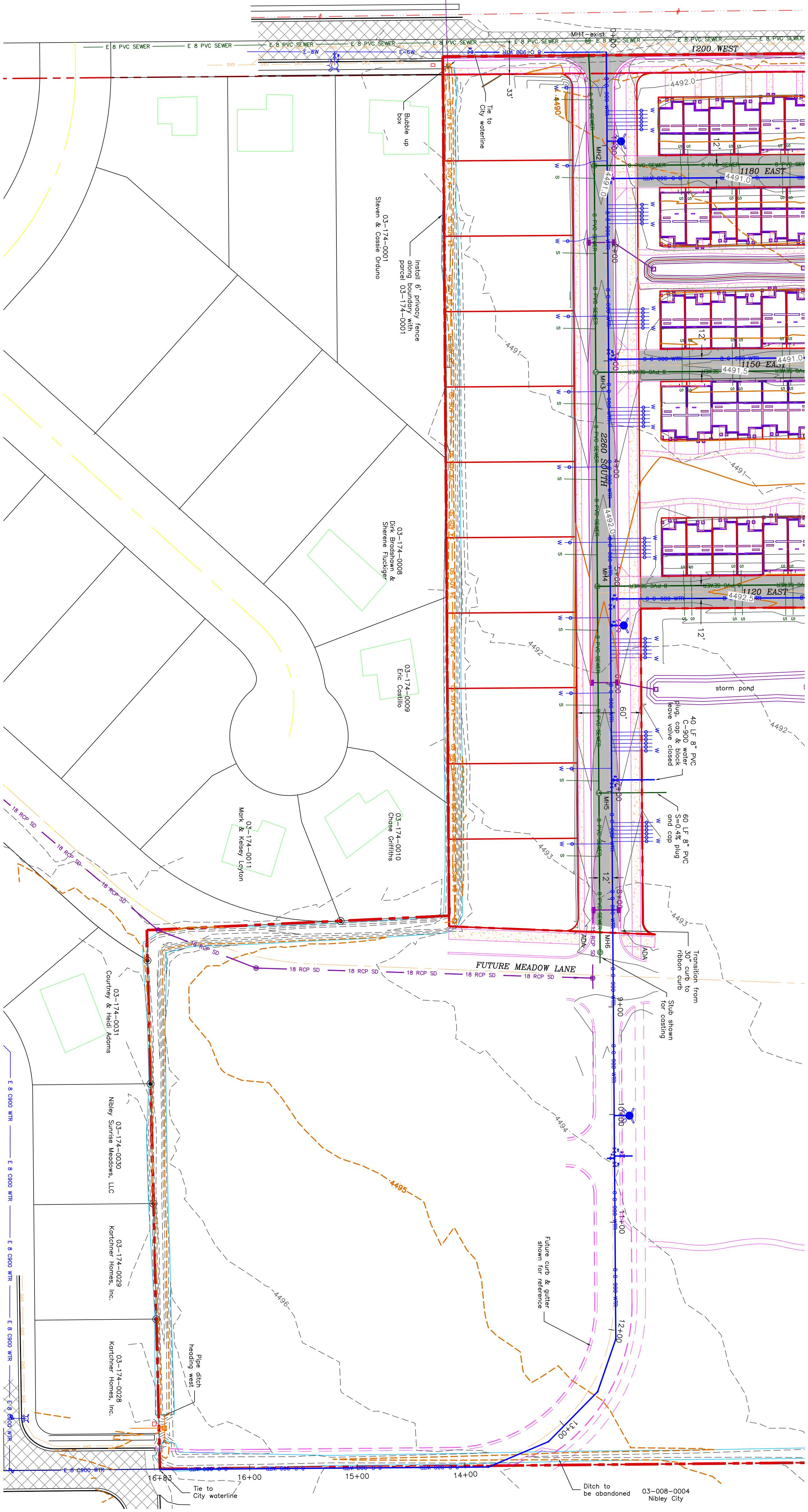
26. OWNERS, ENGINEER, AND CONTRACTOR SHALL COORDINATE VERTICAL, ELEVATIONS AND HORIZONTAL DISTANCES TO MATCH FOXBOROUGH PLANS. ANY DISCREPANCIES TO BE BROUGHT TO THE ATTENTION OF NIBBY CITY.

27. CONTRACTOR TO COORDINATE WITH CITY, PUBLIC WORKS, DIRECTOR FOR A FIRE-CONSTRUCTION MEETING AND TESTING.

OWNER:
RETURN DEVELOPMENT
CHRISTOPHER HUFFMAN(801)557-3170
ETHAN POPPLETON (435)760-6934
4505 S. WASATCH BLVD, STE 150
HOLLADAY, UTAH 84124

DATE - APRIL 2020 DRAWING No. _____	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; padding: 5px; vertical-align: top;">PROJECT TITLE</td> <td style="padding: 5px; text-align: center;"> <i>FIREFLY ESTATES PHASE I</i> 1150 WEST 2260 SOUTH LOGAN, UTAH 84321 </td> </tr> <tr> <td style="padding: 5px; vertical-align: top;">DRAWING TITLE</td> <td style="padding: 5px; text-align: center;"> <i>INDEX SHEET</i> </td> </tr> </table>	PROJECT TITLE	<i>FIREFLY ESTATES PHASE I</i> 1150 WEST 2260 SOUTH LOGAN, UTAH 84321	DRAWING TITLE	<i>INDEX SHEET</i>
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FIREFLY ESTATES PHASE 1
2260 SOUTH STREET PGI



PROJECT TITLE

FIREFLY ESTATES PHASE 1

1150 WEST 2260 SOUTH
LOGAN, UTAH 84321

DRAWING TITLE

2260 SOUTH STREET PGI

No.	REVISIONS/ SUBMISSIONS	DATE

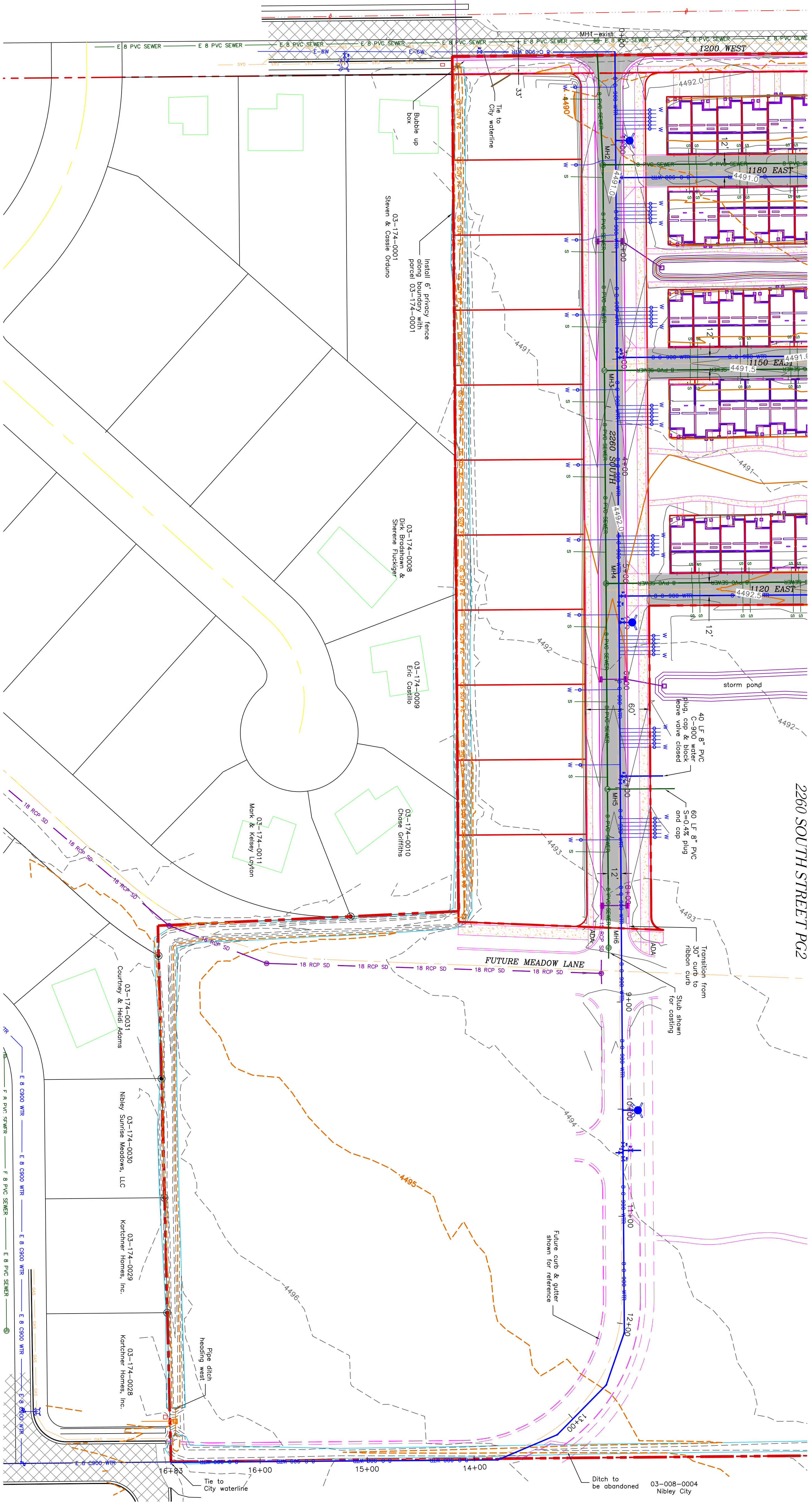
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AE ALLIANCE CONSULTING ENGINEERS
150 EAST 200 NORTH SUITE P
LOGAN, UTAH 84321
(435)755-5121
alliancelogan@yahoo.com

REGISTERED PROFESSIONAL ENGINEER
NO. 36864
MADE IN UTAH
DATE OF UTAH EXPIRATION
03/19/2020

2260 SOUTH STREET PG2



Profile view of 2280 South Street. The drawing shows the existing ground profile (blue line) and the proposed road profile (red line). The vertical curve is defined by a 0.50% grade, a 1.37% grade, and a 1.50% grade. The curve is a vertical curve with a length of 110.00 feet. The curve is defined by the following data:

- STA = 7+90.00, ELEV = 4493.839
- STA = 8+10.00, ELEV = 4493.727
- STA = 8+45.61, ELEV = 4494.129
- STA = 8+70.04, ELEV = 4494.496
- STA = 8+94.47, ELEV = 4494.129
- STA = 9+19.97, ELEV = 4493.873
- STA = 10+46.20, ELEV = 4494.831
- STA = 13+60.00, ELEV = 4498.839
- STA = 16+81.37, ELEV = 4498.437

The drawing also shows the existing ground profile (blue line) and the proposed road profile (red line). The vertical curve is defined by a 0.50% grade, a 1.37% grade, and a 1.50% grade. The curve is a vertical curve with a length of 110.00 feet. The curve is defined by the following data:

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LEGEND

	BOUNDARY LINE
	LOT LINE
	STREET CENTERLINE
	EXISTING GAS
	EXISTING POWER
	EXISTING FENCE
	EXISTING SEWER
	EXISTING PRESSURE SEWER
	PROPOSED SEWER
	PROPOSED 4" PVC SEWER LATERAL
	EXISTING WATER
	PROPOSED WATER
	PROPOSED 3/4" WATER SERVICE
	EXISTING STORM
	PROPOSED STORM
	EXISTING DITCH
	PROPOSED DITCH RE-ROUTE
	PROPOSED DITCH PRING
	EXIST MAN CONTOUR (1")
	EXIST MAN CONTOUR (5")
	PROPOSED MAN CONTOUR (1")
	PROPOSED MAN CONTOUR (5")
	EXISTING ASPHALT

SCALE: 1"=50' (24x36 PLAN SET)
SCALE: 1"=10' _VERTICAL

FIREFLY ESTATES PHASE 1

1150 WEST 2260 SOUTH
LOGAN, UTAH 84321

2260 SOUTH STREET PG2

No.	REVISIONS / SUBMISSIONS	DATE
REVIEWED :		DRAWN :
CAD FILE :		PROJECT NO. :

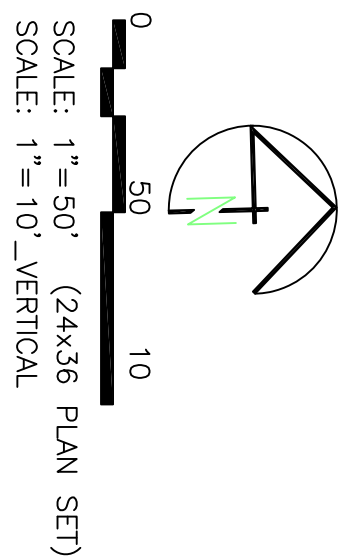
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ACE ALLIANCE CONSULTING
ENGINEERS

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FIREFLY ESTATES PHASE I
MEADOW LANE

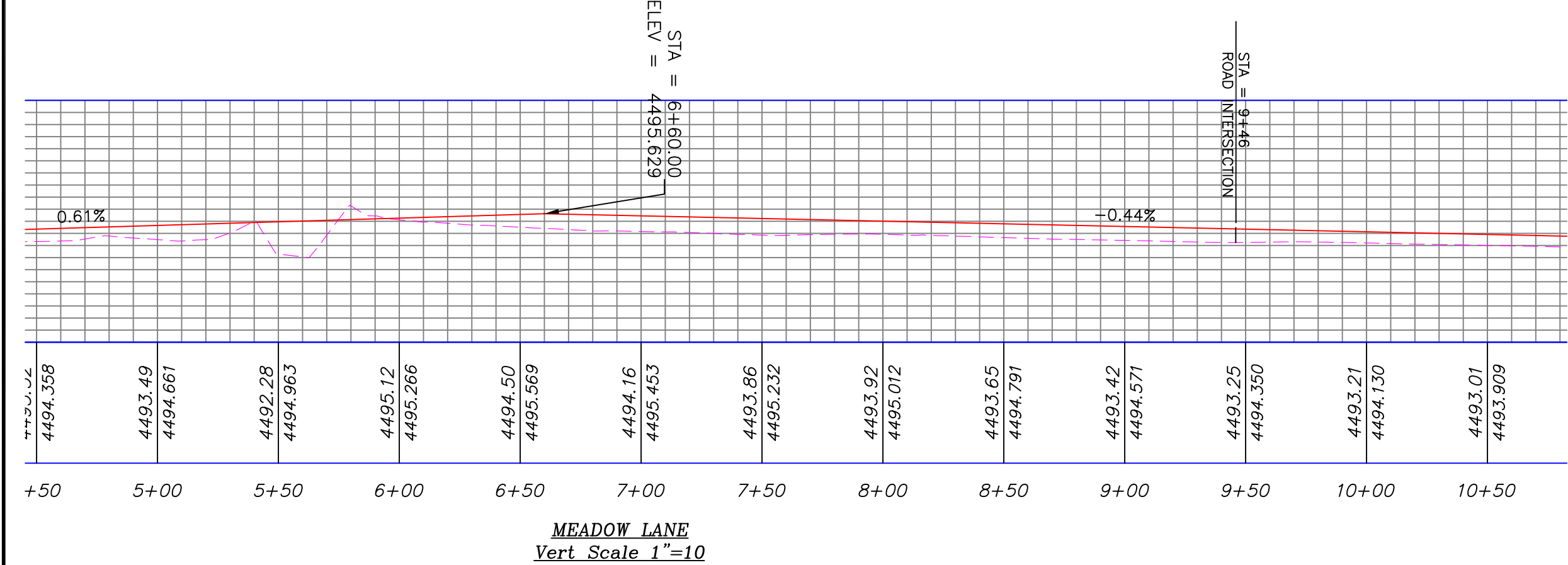
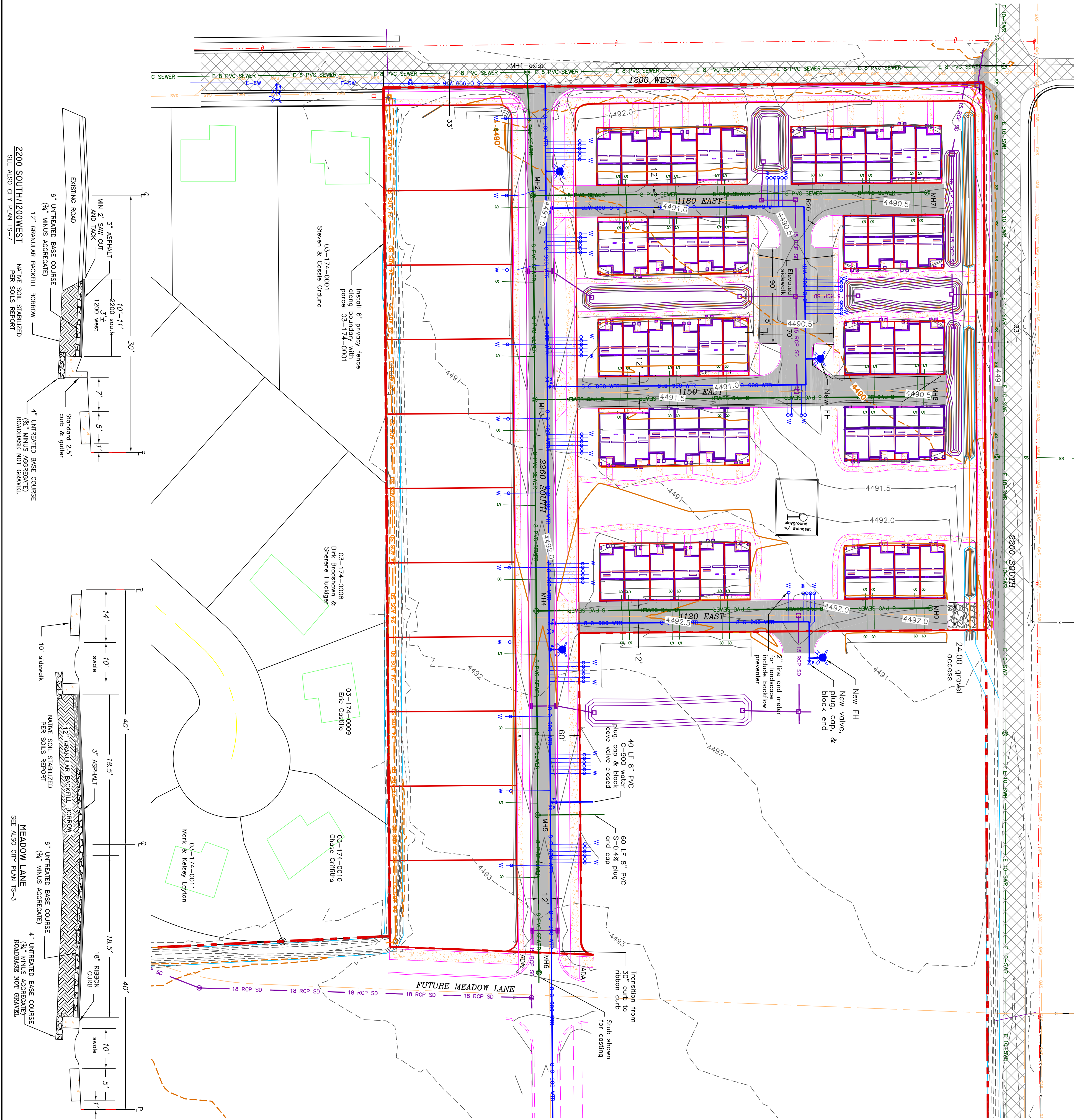


SCALE: 1"=50' (24x36 PLAN SET)
SCALE: 1"=10' VERTICAL



LEGEND

- BOUNDARY LINE
- LOT LINE
- STREET CENTERLINE
- EXISTING GAS
- EXISTING POWER
- EXISTING FENCE
- EXISTING PRESSURE SEWER
- EXISTING 10" SEWER
- 8" PVC SEWER
- PROPOSED 4" PVC SEWER LATERAL
- EXISTING WATER
- 8" C-300 WTR
- PROPOSED 3/4" WATER SERVICE
- EXISTING STORM
- 24" ADS SD
- 18" ADS SD
- EXISTING DITCH
- PROPOSED DITCH RE-ROUTE
- PROPOSED DITCH PIPING
- OS SOV #2
- EXIST MNR CONTOUR (1')
- EXIST MNR CONTOUR (5')
- PROPOSED MNR CONTOUR (1')
- PROPOSED MNR CONTOUR (5')
- EXISTING ASPHALT
- PROPOSED ASPHALT



No.	REVISIONS/ SUBMISSIONS	DATE

REVIEWED :	DRAWN :
CAD FILE :	PROJECT NO. :

OWNER:
RETURN DEVELOPMENT
CHRISTOPHER HUFFMAN(801)557-3170
ETHAN POPPLETON (435)760-6934
4505 S. WASATCH BLVD, STE 150
HOLLADAY, UTAH 84124

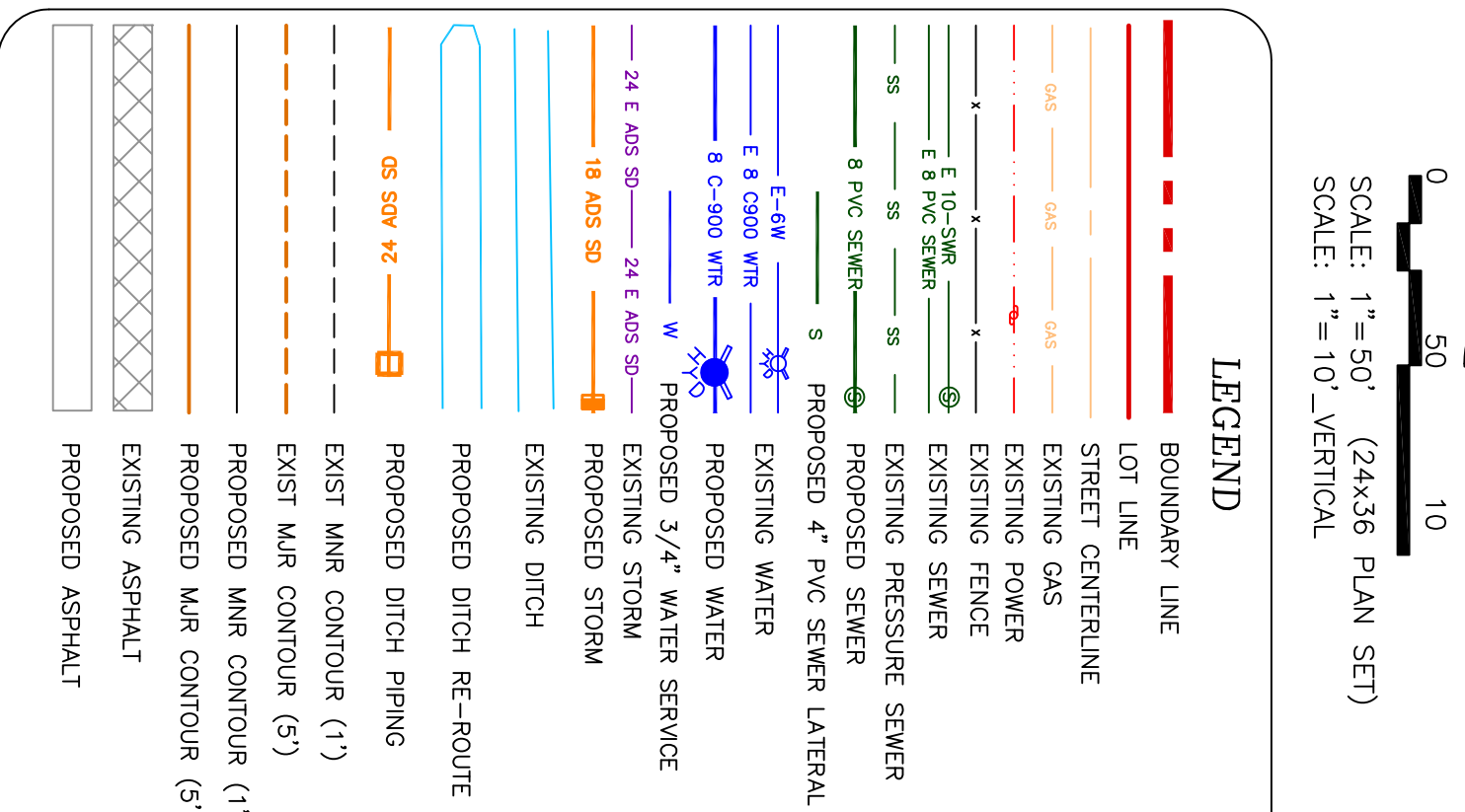
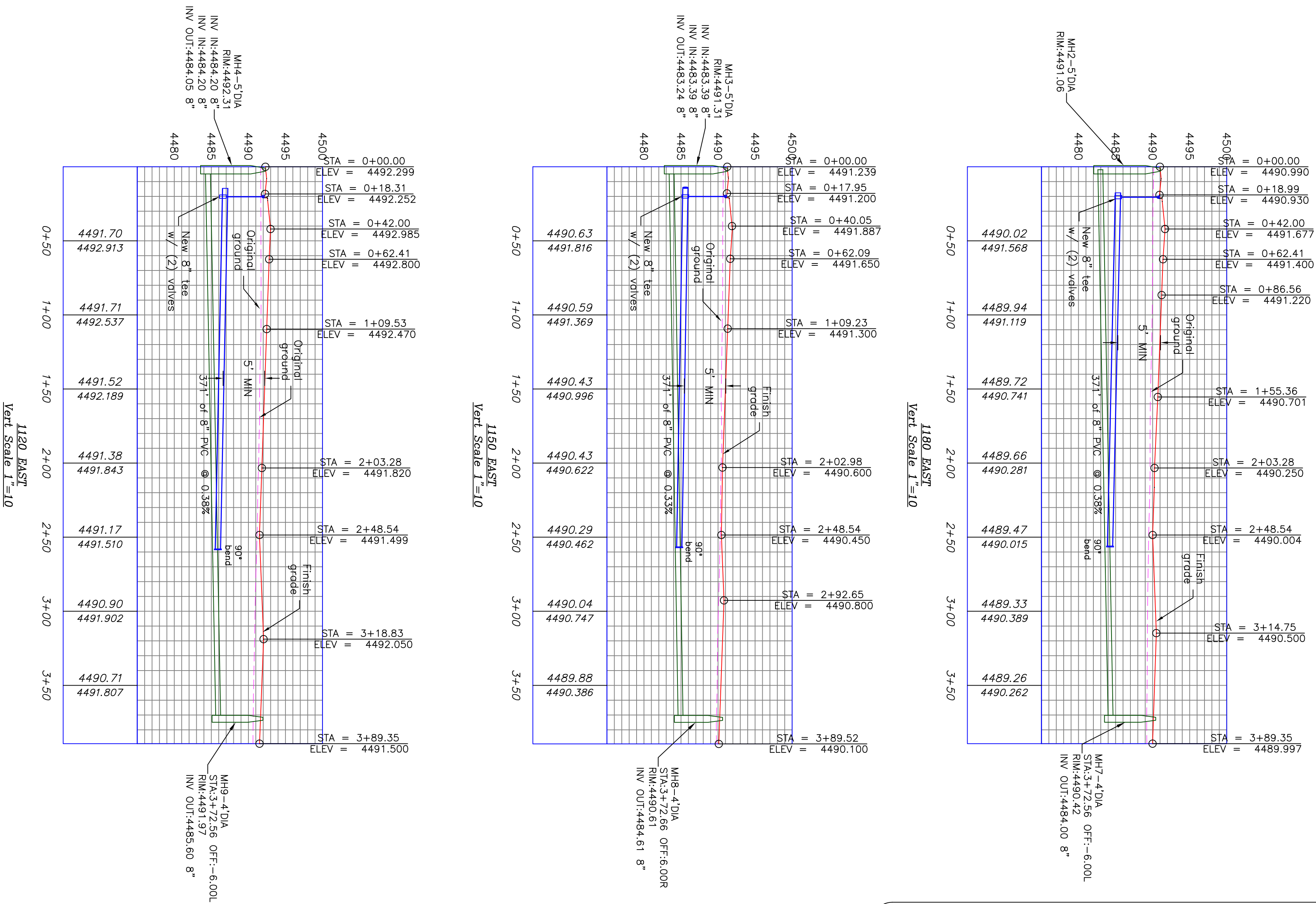
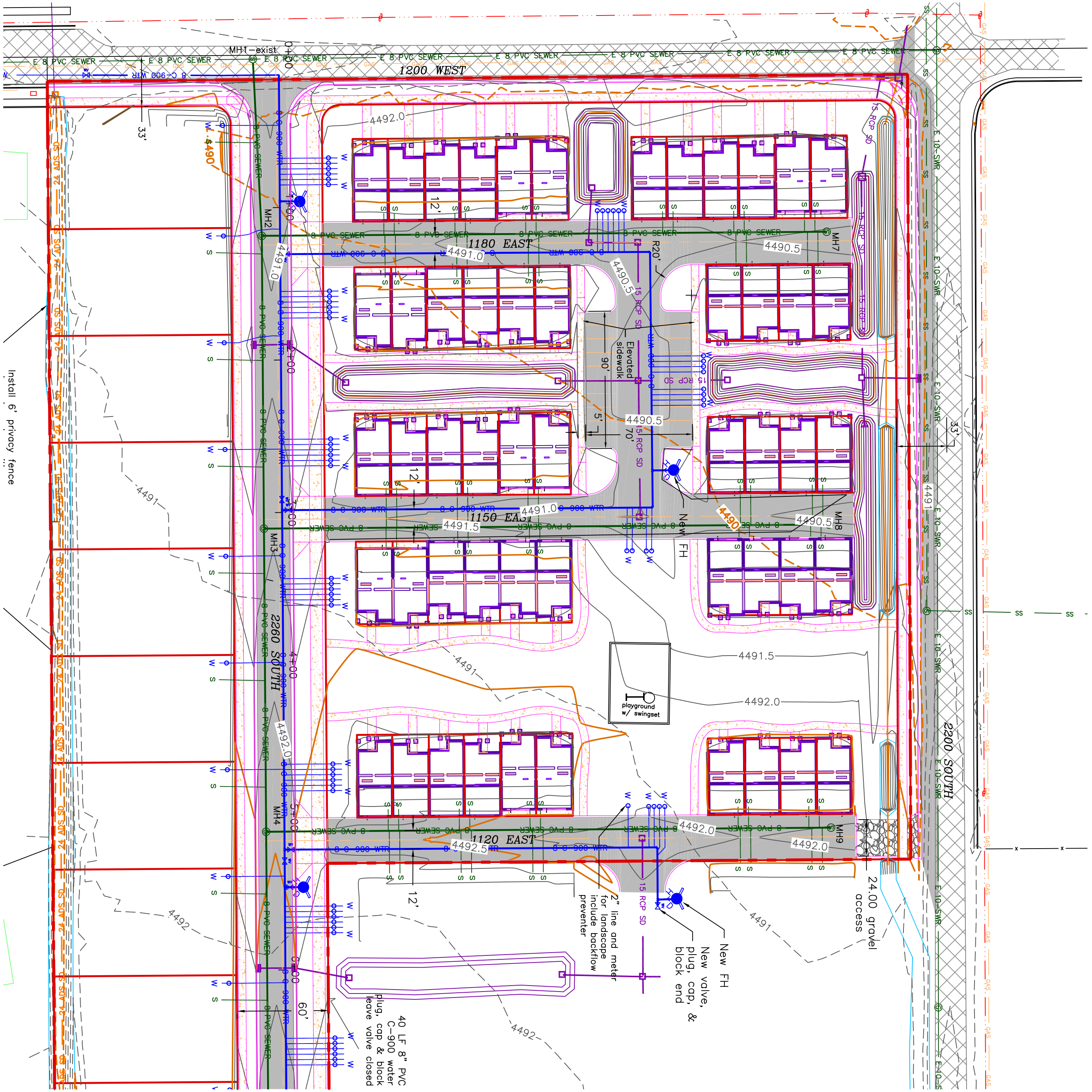
AE ALLIANCE CONSULTING ENGINEERS
150 EAST 200 NORTH SUITE P
LOGAN, UTAH 84321
(435)755-5121
allianceclogan@yahoo.com

PROJECT TITLE
FIREFLY ESTATES PHASE I
1150 WEST 2260 SOUTH
LOGAN, UTAH 84321

DRAWING TITLE
MEADOW LANE

DATE : APRIL 2020
DRAWING No. **5**

PRIVATE LANE CONSTRUCTION



SCALE: 1"=50' (24x36 PLAN SET)
SCALE: 1"=10'_VERTICAL

SCALE: 1"=50' (24x36 PLAN SET)
SCALE: 1"=10'_VERTICAL

FIREFLY ESTATES PHASE 1

1150 WEST 2260 SOUTH
LOGAN, UTAH 84321

DRAWING TITLE
PRIVATE LANE CONSTRUCTION

No.	REVISIONS/ SUBMISSIONS	DATE
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REVIEWED :	DRAWN :
CAD FILE :	PROJECT NO. :

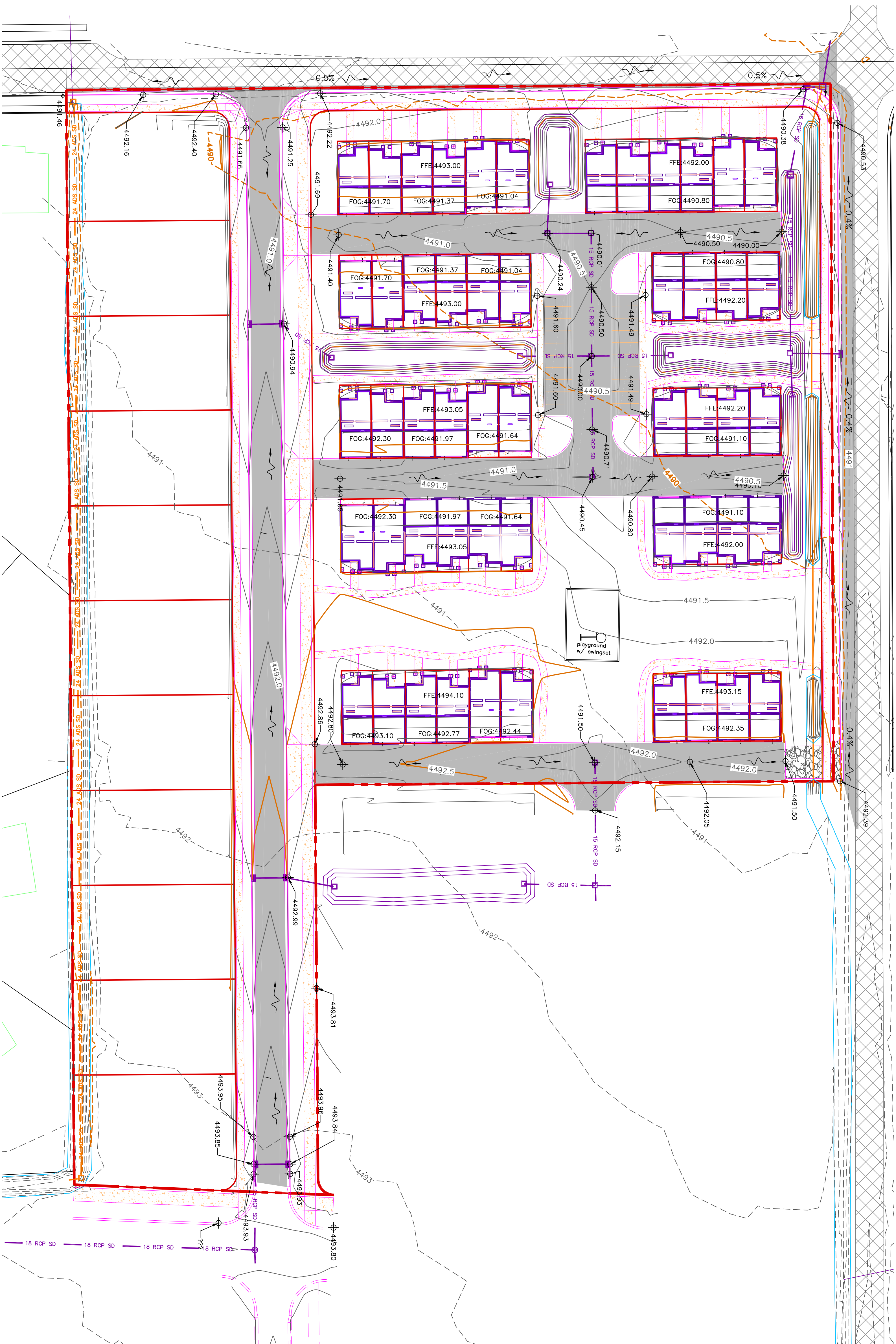
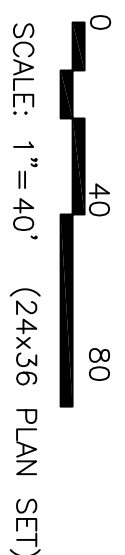
OWNER:
RETURN DEVELOPMENT
CHRISTOPHER HUFFMAN(801)557-3170
ETHAN POPPLETON (435)760-6934
4505 S. WASATCH BLVD, STE 150
HOLLADAY, UTAH 84124

AE

150 EAST 200 NORTH SUITE P
LOGAN, UTAH 84321
(435)755-5121
alliancelogan@yahoo.com

A circular professional engineer seal for M. A. Hossain, No. 368590, Registered Professional Engineer, State of Utah, Exp. 12-31-2020. The seal features the text "REGISTERED PROFESSIONAL ENGINEER" around the top half and "STATE OF UTAH" around the bottom half. In the center, it says "M. A. HOSSAIN", "NO. 368590", and "EXPIRATION DATE 12-31-2020".

GRADING PLAN



LEGEND

- BOUNDARY LINE
- LOT LINE
- EXISTING FENCE
- EXISTING STORM
- PROPOSED STORM
- EXISTING DITCH
- PROPOSED DITCH RE-ROUTE
- PROPOSED DITCH PINING
- EXIST NAR CONTOUR (1")
- EXIST MAI CONTOUR (5")
- PROPOSED NAR CONTOUR (1")
- PROPOSED NAR CONTOUR (5")
- EXISTING ASPHALT
- PROPOSED ASPHALT

FIREFLY ESTATES PHASE I
1150 WEST 2260 SOUTH
LOGAN, UTAH 84321

GRADING PLAN

No.	REVISIONS/ SUBMISSIONS	DATE
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CAD FILE :		PROJECT NO. :

OWNER:
RETURN DEVELOPMENT
CHRISTOPHER HUFFMAN(801)557-3170
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4505 S. WASATCH BLVD, STE 150
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AE

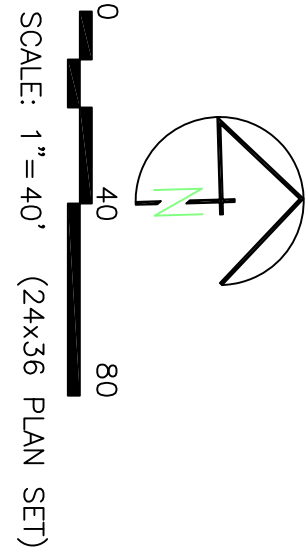
ALLIANCE CONSULTING
ENGINEERS

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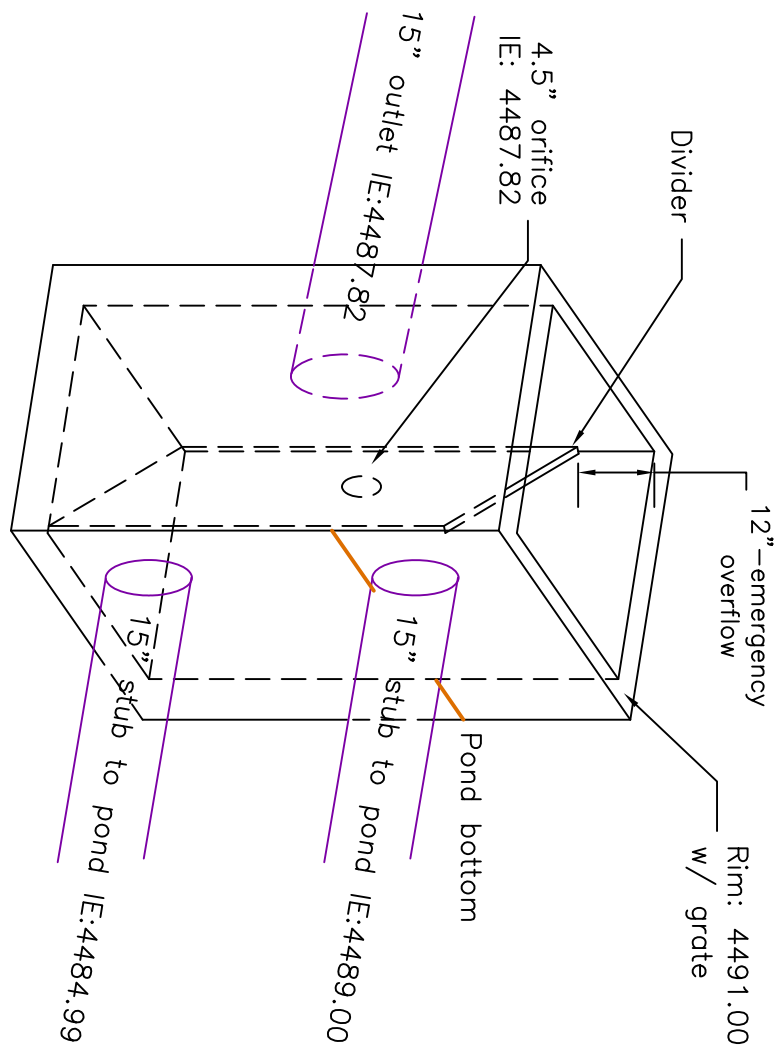
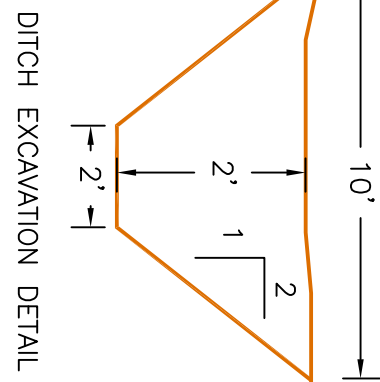


FIREFLY ESTATES PHASE 1

DRAINAGE PLAN PG1



LEGEND	
—	BOUNDARY LINE
—	LOT LINE
—	24" E AOS SD
—	18" AOS SD
—	6" SDV 72" B
—	EXISTING DITCH
—	PROPOSED DITCH RE-ROUTE
—	EXISTING MNR CONTOUR (1")
—	EXISTING MNR CONTOUR (5")
—	PROPOSED MNR CONTOUR (1")
—	PROPOSED MNR CONTOUR (5")
—	EXISTING ASPHALT
—	PROPOSED ASPHALT



4x4 OVERFLOW BOX

POUND CONSTRUCTION INFORMATION-ALL POUNDS HAVE 1" FREEBOARD

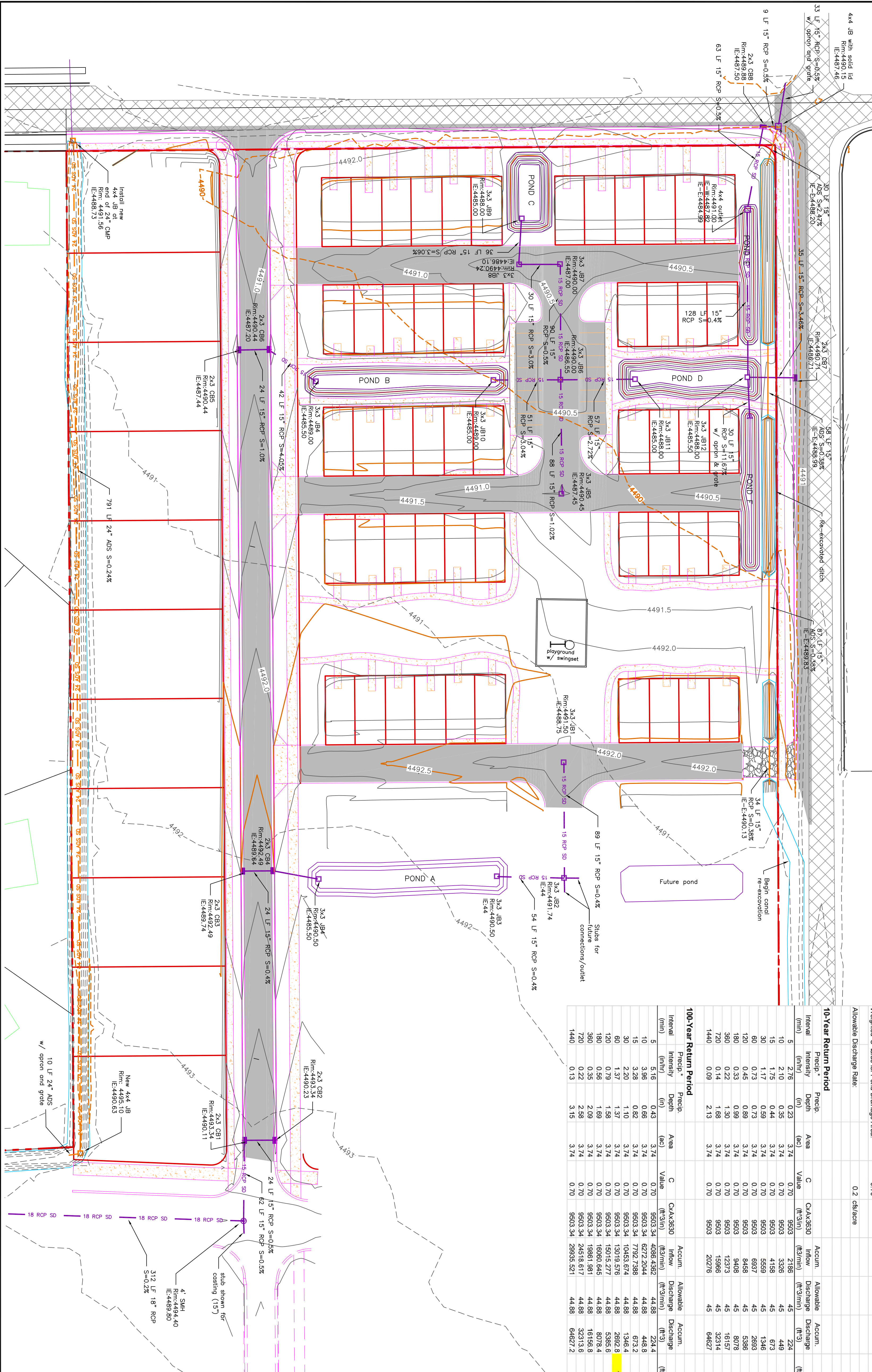
POUND TOP ELEV.	POUND BOTTOM ELEV.	EX. GROUND SLOPE	VOLUME
A	4482.50	2	2.609 CF
B	4482.20	2	
C	4481.00	3	
D	4481.00	3	
E	4481.00	2	
F	4481.00	2	

VOLUME CALCULATION FOR AREA FOR POND B,C,D,E & F

Drainage Area to Pond:	3.74	acres																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															
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10-Year Return Period	
Interval (min)	Precip. Intensity (in/hr)
5	2.76
10	2.10
15	1.75
30	1.17
60	0.73
120	0.45
180	0.33
360	0.22
720	0.14
1440	0.09

100-Year Return Period	
Interval (min)	Precip. Intensity (in/hr)
5	2.76
10	2.10
15	1.75
30	1.17
60	0.73
120	0.45
180	0.33
360	0.22
720	0.14
1440	0.09



FIREFLY ESTATES PHASE 1
1150 WEST 2260 SOUTH
LOGAN, UTAH 84321

DRAINAGE PLAN PG1

OWNER:
RETURN DEVELOPMENT
CHRISTOPHER HUFFMAN(801)557-3170
ETHAN POPPLETON (435)760-6934
4505 S. WASATCH BLVD, STE 150
HOLLADAY, UTAH 84124

No.	REVISIONS/ SUBMISSIONS	DATE

REVIEWED :	DRAWN :
CAD FILE :	PROJECT NO. :

DATE : APRIL 2020
DRAWING NO.

DRAINAGE PLAN PG2



SCALE: 1"=40' (24x36 PLAN SET)

LEGEND

	BOUNDARY LINE
	LOT LINE
	EXISTING STORM
	PROPOSED STORM
	EXISTING DITCH
	PROPOSED DITCH RE-ROUTE
	PROPOSED DITCH PIPING
	EXIST MNR CONTOUR (1")
	EXIST MNR CONTOUR (5')
	PROPOSED MNR CONTOUR (1")
	PROPOSED MNR CONTOUR (5')
	EXISTING ASPHALT
	PROPOSED ASPHALT

ALLIANCE CONSULTING
ENGINEERS

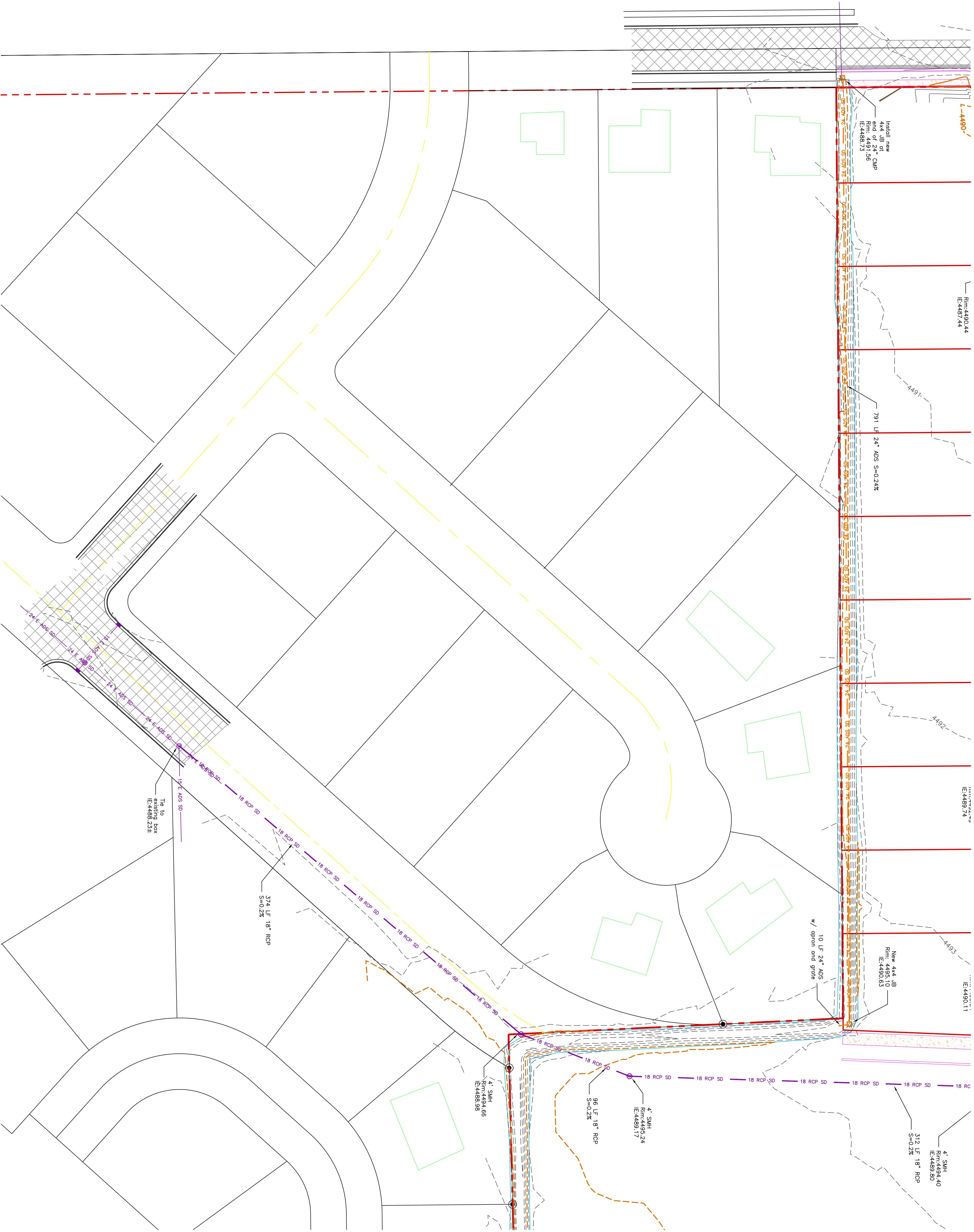
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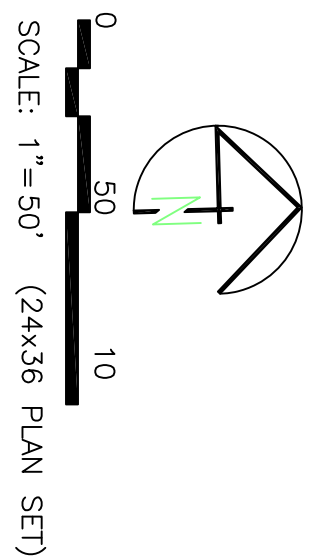
No.	REVIEWS/ SUBMISSIONS	DATE
REVIEWED :		DRAWN :
CAD FILE :		PROJECT NO. :

FIREFLY ESTATES PHASE 1
1150 WEST 2260 SOUTH
LOGAN, UTAH 84321

PROJECT TITLE
DRAINAGE PLAN PG2



FIREFLY ESTATES PHASE 1
LANDSCAPE PLAN





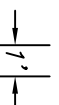
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REVISIONS/ SUBMISSIONS		DATE
No.		
REVIEWED :		DRAWN :
CAD FILE :		PROJECT NO. :

NOTES:
1. IRRIGATION SYSTEM WILL BE DESIGNED BY LANDSCAPE CONTRACTOR. LAWN AREAS WILL BE DESIGNED FOR HEAD TO HEAD COVERAGE AND ALL PLANTING AREAS WILL BE DWP IRRIGATED.



PROJECT TITLE

FIREFLY ESTATES PHASE 1

1150 WEST 2260 SOUTH
LOGAN, UTAH 84321

DRAWING TITLE

LANDSCAPE PLAN

DATE : APRIL 2020
DRAWING No. 1

DECLARATION
OF
COVENANTS, CONDITIONS,
AND RESTRICTIONS

FOR THE

FIREFLY ESTATES
HOME OWNERS ASSOCIATION

An Expandable Townhome Community

Cache County, Utah

May 2020

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EXHIBIT A – LEGAL DESCRIPTION

EXHIBIT B - BYLAWS

EXHIBIT C - MAINTENANCE ALLOCATION CHART

**DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE
FIREFLY ESTATES HOME OWNERS ASSOCIATION
AN EXPANDABLE TOWNHOME COMMUNITY**

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE FIREFLY ESTATES HOME OWNERS ASSOCIATION (“Declaration”) is effective when recorded with the Cache County Recorder’s Office by Return Development, LLC, a Utah limited liability company (“Declarant”).

RECITALS

- A. The real property situated in Cache County, Utah, described in Exhibit “A,” attached to and incorporated in this Declaration by reference, is hereby submitted, together with all buildings and improvements previously, now, or hereafter constructed in the Project, and all easements and rights appurtenant thereto, to a residential planned unit development consisting of residential Living Units and related Common Areas pursuant to Utah Code § 57-8a-101 *et seq.* that shall be known as the FIREFLY ESTATES (the “Project”).
- B. Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein, which shall run with and be a burden upon the Project.
- C. Declarant desires to create an association of homeowners, which entity shall possess the power to maintain and administer the Common Areas and the exterior of Living Units, collect and disburse assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration. It is intended that this Declaration shall serve as a binding contract between the Association and each Owner; however, nothing herein is intended to create a contractual relationship between Declarant and the Association or Declarant and any Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that this Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between Declarant and the Association.
- D. Declarant intends that the Owners, Occupants, Mortgagees, and all other persons hereafter acquiring any interest in the Project shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of planned unit ownership for the Project, and for establishing Rules for the use, occupancy, management, and enjoyment thereof.

ARTICLE I DEFINITIONS

The capitalized terms used in this Declaration shall have the meanings set forth in this Article. Unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate

- 1.1 **Act** shall mean and refer to the Utah Community Association Act, codified beginning at Section 57-8a-101, Utah Code Annotated, as the same may be amended from time to time.
- 1.2 **Additional Property** shall mean any of the real property upon which additional Lots and Living Units may be constructed and become part of the Association pursuant to Declarant's Option to Expand as set forth in Article XVIII. At no time shall any of the Lots or Living Units built on the Additional Property be deemed to be part of the Association until such portion of the Additional Property has been duly annexed in the Association and a supplemental declaration and amended plat or additional plat have been duly recorded.
- 1.3 **Architectural Control Committee** or **ACC** shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article X.
- 1.4 **Articles** shall mean and refer to the Articles of Incorporation for the Association, as amended and restated from time to time.
- 1.5 **Assessments** shall mean any monetary charge or fee imposed or levied by the Association against Owners as provided in this Declaration or other Governing Documents.
- 1.6 **Association** shall mean and refer to the Firefly Estates Home Owners Association, a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association.
- 1.7 **Board** or **Board of Directors** shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association. The Board is the governing body of the Association.
- 1.8 **Bylaws** shall mean and refer to the Bylaws of the Association as the same may be amended from time to time. A copy of the Bylaws is attached hereto as Exhibit "B."
- 1.9 **Common Areas** shall mean all roadway improvements within the Project shown on the Plat as private roads and which are not accepted for dedication by a municipal authority; all land, and the improvements situated thereon, within the Project that Declarant designates as Common Areas or Open Space on the Plat or other recorded instrument and other real property which the Association now or hereafter owns in fee for the benefit of Owners for as long as the Association is the owner of the fee, which may include without obligation or limitation, Association signs or monuments, open space, landscaped areas outside of the Limited Common Areas, street signage, lighting detached from Living Units, sidewalks, and other similar improvements; and any real property or improvements within the Project that the Association has the obligation to

maintain, repair, or replace for the common benefit of the Owners, as the Board shall determine in its sole and exclusive discretion, including, without limitation, all utility and service lines, systems and similar improvements, whether public or private-company owned, intended to serve more than one Living Unit, whether located on a Lot or lying inside of the exterior boundaries of the Living Unit.

- 1.10 **Common Expenses** shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association or its Board of Directors; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act, this Declaration, the Bylaws, or the Rules.
- 1.11 **Declarant** shall mean and refer to Return Development LLC, a Utah limited liability company, and any successor in interest.
- 1.12 **Declaration** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for the FIREFLY ESTATES HOME OWNERS ASSOCIATION, as may be amended from time to time.
- 1.13 **Design Guidelines** shall mean and refer to those requirements governing the location, color, materials, and architectural design of dwellings, structures, and improvements within the Project as adopted by the Board or ACC as provided herein.
- 1.14 **Director** shall mean and refer to an individual member of the Board of Directors.
- 1.15 **Governing Documents** shall mean collectively, the Declaration, Articles of Incorporation, Bylaws, Plat, and any Rules adopted by the Board.
- 1.16 **Limited Common Areas** shall mean and refer to those Common Areas designated on the Plat as “Common Area” or “Open Space” or as described in this Declaration as being reserved for the use and benefit of a designated Lot or Living Unit to the exclusion of other Owners. Whether or not indicated on the Plat, the Limited Common Areas include the driveways appurtenant to each Living Unit and the patio (if any) on the rear of each Living Unit.
- 1.17 **Living Unit** shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence. The Living Unit shall include, without limitation, the roofs and all exterior surfaces, exterior trim, gutters, downspouts, and foundations. The Living Unit shall also include any mechanical equipment and appurtenances located within any one Living Unit, or located without said Living Unit but designed to serve only that Living Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Living Unit or serving only the Living Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Living Unit, which are removable without jeopardizing the integrity,

soundness, safety or usefulness of the remainder of the building within which the Living Unit is located shall be deemed to be a part of the Living Unit.

- 1.18 **Lot** shall mean and refer to each of the individual Lots within the Project, as shown on the Plat, with the exception of the Common Areas. A Lot shall include any Living Unit or other improvement constructed thereon. There shall be fifty-two (52) Lots within the Project's first phase. When the Project is fully built out and expanded, it is anticipated there will be a total of one-hundred and six (106) Lots, but in no event more than 106 Lots or Living Units. However, as set forth herein, the Project may be expanded to include additional Lots, Living Units, apartments and commercial units. Notwithstanding any other language in this Declaration, Lots 1 through 11, as shown on the Phase 1 Plat, shall not be part of the Project or subject to this Declaration.
- 1.19 **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Project.
- 1.20 **Member** shall mean and refer to a Lot Owner.
- 1.21 **Mortgage** shall mean and refer to a mortgage, deed of trust, or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.
- 1.22 **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.
- 1.23 **Occupant** shall mean and refer to any Person, other than an Owner, living, dwelling, or staying in a Living Unit. This includes, but is not limited to, all lessees, tenants, and the family members, agents, and representatives living, dwelling, or staying in a Living Unit. Occupants shall be bound by the Restrictions in this Declaration and shall be liable for any fines that are assessed for violations of the Governing Documents
- 1.24 **Owner** shall mean the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Project, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.
- 1.25 **Party Wall** shall mean and refer to a wall, including without limitation a foundation wall, that forms part of a Living Unit and is located on or adjacent to a boundary line between two or more adjoining Lots owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Living Units, which wall may be separated by a sound board between two or more Living Units.
- 1.26 **Percentage Interest** shall mean interest each owner has in the Association for the purpose of determining Assessments and votes. The Percentage Interest in the Project shall be changed at the time Declarant records an amendment to the Declaration, a supplemental Declaration, and an additional or supplemental Plat reflecting Declarant's exercise of the Option to Expand in accordance with the provisions set forth in the Article XVIII.
- 1.27 **Period of Declarant Control** shall mean the period of time during which the Declarant may enforce the Special Declarant Rights set forth in this Declaration. Such period of time shall commence on the date this Declaration is recorded and terminate on the occurrence of the earliest of the following events: (i) six (6) months after the date on which all of the Lots and Living Units have been conveyed to purchasers, including Lots and Living Units to be developed and constructed on the Additional Property and subject to the Declarant's Option to Expand; or (ii) the Declarant executes and records

a written waiver of its right to control the Association. If the Declarant elects to waive one or more, but not all, of its Special Declarant Rights, then the Period of Declarant Control shall remain effective with respect to all retained Special Declarant Rights.

- 1.28 **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.
- 1.29 **Plat** shall mean and refer to the official subdivision plat(s) of the various phases of Firefly Estates, A Townhome Community, filed and recorded in the official records of the Cache County Recorder's Office.
- 1.30 **Project** shall include the real property described in Exhibit "A," plus any additional real property added at a later date, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto and shall at any point in time mean and refer to the Firefly Estates.
- 1.31 **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.
- 1.32 **Rules** shall mean and refer to the rules, resolutions, regulations, policies, architectural guidelines, etc. adopted by the Board.

ARTICLE II PROJECT DESCRIPTION

- 2.1 **Submission.** The Declarant hereby confirms that the real property described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant hereby declares that the Project and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant, the Association, and each Owner, including their respective heirs, successors, and assigns.
- 2.2 **Name.** The Project, as submitted to the provisions of this Declaration, shall be known as Firefly Estates, A Townhome Community. The Project is not a cooperative.
- 2.3 **Description of Improvements.** The major improvements contained in the Project will include townhome buildings that are divided into Lots, each with a Living Unit. There are also Common Areas as further provided herein, along with other improvements detailed on the Plat. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements in the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats.
- 2.4 **Common Areas.** The Common Areas of the Project are identified on the Plats or defined in Article I above.
- 2.5 **Limited Common Areas.** The Limited Common Area of each Lot shall consist of the Lot's driveway and any areas that are spatially associated with that Lot. If not otherwise identified on the Plat, the Limited Common Areas of each Lot shall generally include the porches and driveways that may be outside the boundaries of the Lot. The

right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Lot and may not be severed from the ownership of the Lot. All installations or modifications of Limited Common Areas shall be approved by the Association and shall be subject to the provisions in this Declaration and the Design Guidelines. The Board shall have the power and discretion to determine the Limited Common Area boundaries if the Governing Documents are found ambiguous.

- 2.6 **Lots.** Subject to further specification herein, each Lot consists generally of all structures on or within the boundary of the Lot, including, but not limited to: (1) all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures; and (2) in all walls shared with or abutting another Lot, the Lot shall extend to the center of the wall, which shall form the boundary of the Lots sharing that wall. Subject to dividing lines between Lots, any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Lot is part of the Lot if it: (1) is part of and an integral part of the Lot's structure (such as bay windows, pop-outs, eaves, etc., not to include fences, or other appurtenant structures that merely connect to the Lot structure); or (2) was constructed as part of the original construction of the Lot. All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Lot, shall be part of the Lot. All exterior and interior doors, door jams, windows, windowsills, window frames and all components therein, skylights, garages, and garage doors, in or on the boundary of any Lot are part of the Lot
- 2.7 **Registered Agent.** The Registered Agent of the Association shall be as provided in the entity filings with the Utah State Department of Commerce, Division of Corporations and Commercial Code. The Board may change the Registered Agent without Owner vote or approval.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

- 3.1 **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event an Owner fails or refuses to transfer the membership registered in his name to the purchaser of his Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.
- 3.2 **Voting Rights.** Except as otherwise disallowed in this Declaration or the Bylaws or limited by the Special Declarant Rights reserved by the Declarant, Owners shall be entitled to one (1) vote per Lot owned.
- 3.3 **Multiple Ownership Interests.** If there is more than one Owner of a Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by

written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose except towards establishing a quorum.

- 3.4 **Record of Ownership.** Every Owner shall promptly file the conveyance document (or in the case of contract buyer, a copy of the sales contract) for his Lot with the secretary of the Association who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgagee which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as an "Individual Assessment" in accordance with the provisions of Article V.
- 3.5 **Proxies.** An Owner may give his proxy, either specific or general, to another Owner, a third person, or to a contract purchaser or his Lot to vote on all matters coming before the Association for vote provided the same is in writing, signed by the Owner, and is presented to those Association officers conducting such vote or as may be further provided in the Bylaws.

ARTICLE IV EASEMENTS AND RIGHTS IN COMMON AREAS

- 4.1 **Easement of Enjoyment.** Each Member shall have a 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. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides on such Member's Lot. This right of easement shall only extend to the Limited Common Area appurtenant to the Lot and not to other Limited Common Areas.
- 4.2 **Title to Common Areas.** The Declarant has or will convey title to the various Common Areas to the Association.
- 4.3 **Delegation of Use.** An Owner may delegate his right of use and enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside on the Project. The rights and privileges of such delegee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in the preceding Section.
- 4.4 **Association Easement.** The Association, its Board, employees, agents, and contractors shall have non-exclusive easements to use the Common Areas to perform their duties as assigned by the Governing Documents.
- 4.5 **Easement for Utility Services.** The Project is subject to a blanket easement over,

across, above, and under it for ingress, egress, installation, maintenance, repair, and replacement of utilities. Utilities include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable.

- 4.6 **Easements for Encroachments.** If any portion of a Common Area structure or improvement encroaches upon any Lot, or if any structure or improvement of a Lot encroaches upon any other Lot or the Common Area as a result of the manner in which the improvements were initially approved and constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.
- 4.7 **Party Walls.** Each wall which is built as a part of the original construction of Living Units upon the Project and placed on the dividing line between two Living Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Each Living Unit may share one or more party wall, a common roof, a common exterior back wall, and a common exterior front wall, with an adjacent Unit. The Owners acknowledge that certain repairs or maintenance to the roof or exterior walls of the Units may become necessary, which repairs or maintenance cannot be performed on one Unit only, but may necessarily involve the other attached Unit. Therefore, all repairs to the roof and to the surface of the exterior walls of all Units will be made by the Association out of Association funds.
- 4.8 **Destruction of Party Wall, Common Roof or Exterior.** If a party wall or common improvement is damaged or destroyed by the fault or negligence of one of the Owners, such damage shall be repaired by the Owner (unless the damage is covered by the Association's and Owner's insurance) to a condition equal to or better than immediately prior to the damage, and the negligent Owner or Owner at fault shall pay for any and all costs incurred to cure the damage. Should a party wall be damaged or destroyed by any cause other than by default or by an act of negligence of an Owner of the adjacent Unit, the damage shall be rebuilt or repaired to a condition equal to or better than immediately prior to the damage, at the joint expense of the Owners of the two affected Units, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Units. Should a common roof or any part of the exterior wall(s) be damaged or destroyed by any cause other than by fault or by an act of negligence of an Owner of the adjacent Unit, the damage shall be rebuilt or repaired by the Association to a condition equal to or better than immediately prior to the damage, at the expense of the Association, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Units.
- 4.9 **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner, Occupant and guest shall fully and faithfully comply with the Association's Rules and Restrictions and shall be jointly and severally liable for any fines for violations thereof.

ARTICLE V BUDGET AND ASSESSMENTS

- 5.1 **Annual Budget.** The Board shall prepare and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and other areas maintained by the Association, and for the administration, management, and operation of the Association. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted. The budget shall be made available to the Owners within thirty (30) days after adoption. Owners may disapprove a budget according to the provisions of the Act.
- 5.2 **Covenant to Pay Assessments.** After the construction of a Living Unit on a Lot, the issuance of a Certificate of Occupancy for the Living Unit on a Lot, and the closing of a sale to a purchaser of a completed Living Unit on a Lot, each Owner of a Lot with a completed, closed Living Unit, by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Association to pay to the Association the Owner's Percentage Interest of all Assessments, including without limitation, all Annual, Special, and Individual Assessments described below, and other fees, charges, levies, and fines as may be provided in the Governing Documents.
- 5.3 **Purpose of Assessments.** Assessments levied by the Association shall be used for the purpose of promoting the health, safety, and welfare of residents of the Project, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include, but is not limited to: payment of the cost of taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas and the exteriors of Living Units; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Governing Documents.
- 5.4 **Declarant's Exemption from Assessments.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lot or Living Unit owned by it until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments. However, Declarant may, but is not required, to pay a portion of the Assessments during the initial construction phase of the Project until such time as the Association has a sufficient number of Owners to be reasonably capable of paying all the Association's Common Expenses. Assessments shall begin when title to a Lot or Living Unit is conveyed by Declarant to another party.
- 5.5 **Annual Assessments.** Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than fifteen

(15) days prior to the beginning of the next calendar year. Failure to do so shall not invalidate an increase in an Annual Assessment. Each Annual Assessment shall be due and payable in monthly or quarterly installments on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

- 5.6 **Special Assessments.** The Board may levy a Special Assessment payable over such a period as the Board may determine 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 Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Special Assessments over one-thousand dollars (\$1,000) per Lot in a calendar year must be approved and assented to by a majority of the Members present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice. Notwithstanding the foregoing, Declarant may levy Special Assessments in any amount deemed necessary during the Period of Declarant Control without Owner approval.
- 5.7 **Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against the Owner or his/her Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Living Unit and its Owner into compliance with the Governing Documents; (d) costs of providing services to the Lot upon request of the Owner; and (e) attorney fees, court or collection costs, fines, and other charges relating to any of the foregoing, regardless of whether a lawsuit is filed. In addition, Individual Assessments may be levied against a Lot and its Owner specifically benefited by any improvements to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged. The aggregate amount of any such Individual Assessments shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Owner's or his/her Occupants' negligence.
- 5.8 **Allocation of Assessments.** Except for Individual Assessments, Annual and Special

Assessments shall be fixed at a uniform rate for all Lots, unless otherwise provided in the Governing Documents.

- 5.9 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 5.10 **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association owes the Owner money, that an Owner is not benefitting from or using parts of the Common Areas, or that the Association is not properly exercising its duties and powers as provided in this Declaration.
- 5.11 **Certificate Regarding Payment.** Upon the request of an Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot a reasonable fee as permitted in the Act.
- 5.12 **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorney fees shall constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorneys' 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 therefore.
- 5.13 **Billing and Collection Procedures.** The Board shall have the right to adopt Rules setting forth procedures for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is

not a resident at the Project.

- 5.14 **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.
- 5.15 **Collection Charge.** If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Delinquent accounts shall be charged a twenty-five dollar (\$25.00) late fee each month until the Owner's account (including all collection charges, costs, and attorneys' fees) is paid in full. Interest may accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. The Association may compound interest. Collection charges, interest, and/or late fees shall constitute part of the Assessment lien provided above until paid.
- 5.16 **Collection Action at Law.** The Association may exercise any or all of the following remedies to collect delinquent Assessments:
- a) The Association may suspend such Owner's voting rights.
 - b) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Cache County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except: a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.
 - c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against an Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

- d) If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.
 - e) The Association may terminate utilities paid out of the Common Expense, if any, and the right to use the Common Areas.
 - f) Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.
 - g) The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, or other law or in equity.
- 5.17 **Power of Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code §§ 57-1-20 and 57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 5.18 **Reserve Account.** The Board shall establish a reserve account to fund long- term maintenance of Common Areas and the exteriors of Living Units. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a Reserve Account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Board during the Period of Declarant Control.
- 5.19 **Account Payoff Fees.** The Association may charge a fee for providing Association payoff information needed in connection with financing, refinancing, or closing of the sale of a Lot as provided for in Utah Code § 57-8a-106. The amount of such fee shall be fifty dollars (\$50.00) or as otherwise established in the Rules. Additional paperwork required in a private sale between an Owner and purchaser may be obtained from the Association but may incur additional fees.
- 5.20 **Association Responsibility after Foreclosure.** If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Mortgagees cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Lot if the Association takes title to a Lot related to a failure to pay Assessments.

- 5.21 **Homestead Waiver.** Pursuant to Utah Code § 57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

ARTICLE VI DUTIES AND POWERS OF THE ASSOCIATION

- 6.1 **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board of Directors.
- 6.2 **Legal Organization.** The Association may be incorporated as a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.
- 6.3 **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties, and obligations:
- a) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles of Incorporation;
 - b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
 - c) The powers, duties, and obligations of a homeowner's association pursuant to the Utah Community Association Act, or any successor thereto;
 - d) The powers, duties, and obligations not reserved specifically to Owners; and
 - e) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the Association may from time to time be amended,

repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

6.4 **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

- a) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.
- b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.
- c) **Rulemaking.** The Association, through its Board of Directors, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Project as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Project. Pursuant to Utah Code section 57-8a-218(15), the requirements of Utah Code §§ 57-8a-218(1) through (13), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.
- d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.
- e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association. The Association may assess fines to Owners, Occupants, or their guests for violations of the Governing Documents in accordance with the provisions of the Governing Documents and the Act.
- f) **Title to Common Areas.** The Association shall hold title to all Common Areas conveyed to it by Declarant or other persons and pay all real property taxes and assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- g) **Employment of Agents, Advisers, and Contractors.** The Association may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association

managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project. Any agreement with a Manager shall not exceed a term of one (1) year, renewable by agreement of the parties for a successive one (1) year term, and shall be terminable by the Association upon no more than sixty (60) days' advanced notice. The Board has no authority to enter into a management agreement or contract inconsistent with the terms of the Governing Documents or that provides for a termination fee or requirement for termination for cause.

h) **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other Common Law or statutory right which the Association is granted. Other than litigation required for the collection of past due Assessments, the Association shall not commence any litigation without prior approval of a majority of the Members, if the litigation shall exceed the anticipated cost of ten thousand dollars (\$10,000.00) either in attorney fee expenses or in costs (including any expert reports).

i) **Bulk Service Agreements.** The Association shall have the right to enter agreements, as the Board deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Lots or groups of Lots. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.

6.5 **Liability.** A member of the Board or an officer of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful misconduct. In the event any Board member or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall defend, indemnify and hold harmless such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board member or officer is found by a court of law to have engaged in willful or intentional misconduct in carrying out his/her duties.

6.6 **Board of Directors.** The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions set forth in the Bylaws. The Bylaws may set forth requirements for serving on the Board. Without limiting the generality of the foregoing, the Board may appoint one or more "Committees", and such Committees (which may consist of one or more Members, as determined by the Board) shall have such authority and duties as may be determined from time to time by the Board relating to the budgeting, operation, financial management and administration of the Project ("Delegated Duties"). While any Committee established by the Board shall report to the Board regularly regarding its activities, the Board may by express directive relinquish and transfer all authority and responsibility with respect to such Delegated

Duties to an applicable Committee. Notwithstanding the foregoing, during the Period of Declarant Control, the Declarant shall have the sole authority to act as the Board of Directors, or to appoint Board Members. Declarant appointed Board Members shall not be bound by the qualification requirements in the Bylaws.

- 6.7 **Registration with the State.** In compliance with Utah Code § 57-8a-105, the Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required by law.
- 6.8 **Management.** The Project may be managed by a professional manager, selected by the Declarant, or upon the termination of the Period of Declarant Control, shall be selected by the Board to assist in the management and operation of the Project and may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause. Following the Period of Declarant Control, the Board shall have the option to either renew the contract with the Manager selected by the Declarant or hire a different Manager.

ARTICLE VII MAINTENANCE

- 7.1 **Association Maintenance.** The Association shall maintain, repair, and replace the Common Areas (including any parks that are part of the Association's Common Area) together with all improvements thereon and all easements appurtenant to the Common Area including, private utility lines serving more than one Living Unit, landscape and drainage easements, and personal property owned by the Association. The Association shall maintain, repair and replace the following exterior surfaces of the Living Units: (a) each Living Unit's exterior brick, hardie board or other material that directly makes up the exterior of a Living Unit (but not including the backing to which the exterior material is affixed) and (b) the roof of each Living Unit, including only the roof shingles and the felt and plywood undersurface to which the shingles are attached, and (c) gutters and down spouts. Maintenance, repair and replacement of all other structural parts of the Living Units, including but not limited to attic space, foundations, floor joists, and garage doors, shall remain the responsibility of the Unit Owner, unless repair or replacement is covered by the Association's insurance. Exterior maintenance by the Association shall not include glass surfaces, entry doors or garage doors. The Association shall maintain, replace, and repair the private roads in the Project including the performance of all snow removal, but the Association shall have no responsibility to maintain or repair public streets (if any) within the Project. The Association shall perform the snow removal on the sidewalks located within the Common Areas of the Project. A maintenance allocation chart has been attached hereto as Exhibit C, which further defines and clarifies Association and Owner maintenance, repair, and replacement responsibilities.

The maintenance allocations provided in this Article shall clarify, expand upon, and supersede any maintenance provisions contained in the Plat or other Governing Documents. The Common Areas and building exteriors shall be maintained in a safe

condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Board in its sole discretion shall determine the maintenance standard of the Common Areas and the exteriors of the Living Units. The Association shall have no obligation to perform any maintenance or repair to the interior of any Living Unit or any landscaping installed by an Owner without the Association's express agreement for such maintenance.

- 7.2 **Services.** The Association shall provide or contract for such services as the Board may reasonably deem to be of benefit to the Project, including, without limitation, landscaping and garbage/trash removal services (unless provided by the city) for all Lots.
- 7.3 **Owner Maintenance.** Except for the areas maintained by the Association as outlined in Section 7.1 above, each Living Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Living Unit. Each Owner shall have the maintenance responsibilities regarding the Owner's Living Unit as set forth in the Maintenance Chart Attached hereto as Exhibit "C", including the responsibility to maintain any attic space, foundation, floor joists, and garage doors that are part of a Living Unit. Such maintenance shall also include repair or replacement of window glass on such Owner's Living Unit and the repair or replacement of the portion of any utility lines that only serve that Living Unit. The Association shall have no obligation regarding maintenance or care of the interior of any Unit except as expressly covered by insurance or in the Maintenance Chart attached as Exhibit "C", or elsewhere in this Declaration. No Owner shall attach anything to the exterior their Living Unit without the prior written consent of the Board. Each Owner shall be responsible for performing all snow removal on the sidewalks and driveways located on their Lot or Limited Common Area.

The Association shall not be responsible to maintain any unapproved landscaping not included within the original construction of the Project, except at the discretion or approval of the Board.

Owners shall be responsible to maintain, repair, and replace non-perimeter fences which mark the boundaries of their Lots or the Limited Common Areas serving their respective Lots (if any). In the event, the backyard portion of a Lot or Limited Common Area is not enclosed by a fence upon initial construction, the Association may grant permission for an Owner to enclose such area with approved fencing; but, such approval must be made in writing at the discretion of the Board. No approval to enclose the Limited Common Area shall be granted unless the Owner agrees to cover the cost of construction and any necessary alterations to the existing area, as the Board so determines; and, includes a gate to enable the Association to maintain landscaping within the bounded area as provided herein. In the event an Owner fails to provide unrestricted access to the landscaped area within an enclosed fence, the Association shall have no obligation to maintain, repair, or replace such areas while access is restricted, or to maintain, repair, or replace landscaping, irrigation systems, or any other unmaintained or damaged property arising out of or resulting from the Owner's failure to provide unrestricted access.

The cost and responsibility to maintain, repair, and replace any portion of such non-

perimeter fence, which serves, benefits, or bounds one Lot or backyard Limited Common Area shall be borne exclusively by the Owner bounded thereby. When such non-perimeter fences serve, benefit, or otherwise mark a boundary of two or more Lots or backyard Limited Common Areas, the responsibility and cost to maintain, repair, and replace the shared portion of such fences shall be borne pro rata by all Owners of backyard Limited Common Areas bounded thereby.

Further descriptions of Owner maintenance, repair, and replacement responsibilities are contained in the maintenance allocation chart attached as Exhibit C.

- 7.4 **Owner Maintenance Neglect.** The Association shall have the power and authority without liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon; but only if the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration or any Rules of the Association. All costs incurred by the Association shall be assessed to the Owner as an Individual Assessment. The Board shall have the sole authority and discretion to decide whether an Owner has failed to meet its maintenance obligations. Except as necessary to prevent personal injury or property damage in an emergency, the Association shall first provide reasonable notice and an opportunity to cure before exercising the power granted herein. All costs incurred by the Association in remedying Owner maintenance neglect shall be an Individual Assessment against the Owner's Lot as provided in Article V.

The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any Rules promulgated by the Board, or to enforce by mandatory injunction or otherwise all the provisions of this Declaration and such Rules.

- 7.5 **Maintenance Caused by Owner Negligence.** If the need for maintenance or repair of Common Areas or Limited Common Areas as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth above) to which such Lot is subject.

ARTICLE VIII INSURANCE

NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.

- 8.1 **Insurance.** The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements

to other policies. Insurance premiums shall be a Common Expense.

8.2 **Property Insurance.**

- a) The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Living Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.
 - i) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Living Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Living Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.
 - ii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by “special form” property coverage.
 - iii) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Living Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
 - iv) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property’s insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.
- b) **Owner Responsibility for Payment of Deductible.** If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
 - i) The Association’s policy provides primary insurance coverage, and:
 - 1) the Owner is responsible for the Association’s policy deductible; and
 - 2) the Owner’s policy, if any, applies to that portion of the loss attributable to the Association’s policy deductible.

- ii) An Owner that has suffered damage to any combination of a Living Unit or a Limited Common Area appurtenant to a Living Unit (“Living Unit Damage”) as part of a loss, resulting from a single event or occurrence, that is covered by the Association’s property insurance policy (“a Covered Loss”) is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Living Unit Damage (“Living Unit Damage Percentage”) for that Living Unit to the amount of the deductible under the Association’s property insurance policy; and
 - iii) If an Owner does not pay the amount required under Subsection b) above within 30 days after substantial completion of the repairs to, as applicable, the Living Unit or the Limited Common Area appurtenant to the Living Unit, the Association may levy an assessment against the Owner for that amount.
- c) **Claims Under the Deductible.** If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association’s policy deductible:
- i) the Owner’s policy is considered the policy for primary coverage to the amount of the Association’s policy deductible;
 - ii) an Owner who does not have a policy to cover the Association’s property insurance policy deductible is responsible for the loss to the amount of the Association’s policy deductible; and
 - iii) the Association need not tender the claim to the Association’s insurer.
- d) **Deductible Notice.** The Association shall provide notice to each Owner of the Owner’s obligation under Subsection (b) above for the Association’s policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.
- e) The Association shall have no obligation to obtain or maintain any insurance covering Owners’ personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

8.3 **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner

because of the negligence acts of the Association or another Owner.

- 8.4 **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Declarant, the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 8.5 **Theft and Embezzlement Insurance.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board of Directors members of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, (c) officers, directors, and employees of any Manager of the Association, and(d) coverage for acts.
- 8.6 **Worker's Compensation Insurance.** The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.
- 8.7 **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association, and upon written request, to any Owner or Mortgagee.
- 8.8 **Named Insured.** The named insured under any policy of insurance shall be the Association; and the Declarant shall be listed by name as an additional insured under any and all policies of insurance. The Declarant and each Owner shall also be an insured under all property and CGL insurance policies.
- 8.9 **Right to Negotiate All Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Living Units. Each Owner hereby appoints the Association, or any Insurance

Trustee, as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

- 8.10 **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding at least 50% of the entire voting interest of the Association, the Board shall hire and appoint an insurance trustee (“Insurance Trustee”), with whom the Association shall enter an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.
- 8.11 **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner’s authority on behalf of the Association and under direct authorization of the Association, an Owner’s act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 8.12 **Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Declarant, the Association and the Owners and their respective affiliates, agents and employees.
- 8.13 **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in Part 4 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this Association.

ARTICLE IX USE RESTRICTIONS

- 9.1 **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units.
- 9.2 **Use of Lots and Living Units.** All Lots are intended to be improved with single-family Living Units and are restricted to such use. No gainful occupation, business, trade, or other nonresidential use shall be conducted on any Lot or Living Unit without the prior written consent of the Board and applicable governmental entities. However, the Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that: only normal residential activities would be observable outside of the Living Unit; the business activity does not involve persons coming on to the project who do not reside in the Project; the business activity does not involve the solicitation of Occupants or Owners; the business will not result in the increase of the cost of the Association’s insurance; and that the activities would not be in violation of applicable local ordinances.
- 9.3 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot, Living Unit, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots, Living Units, or the Common Areas, or which is a source of annoyance

to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Lot which would result in an increase in the cost of the Association's insurance or which would cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof.

- 9.4 **Recreational Vehicles.** No boats, trailers, motorhomes, large trucks, commercial vehicles, RVs, or the like belonging to Owners or other Occupants of the Project shall be parked within the Project for a period exceeding forty-eight (48) hours in any thirty-day period unless parked within the Owner's enclosed garage. No motor vehicle of any kind shall be repaired, constructed, or reconstructed upon any Lot, Private Street or other Common Areas, except for emergency repairs to vehicles. The Board is authorized to adopt Rules that vary or expand upon the restrictions set forth in this Section.
- 9.5 **Pets.** No more than one (1) pet may be kept on any single Lot, and no pet may be kept on a Lot that weighs more than 30 lbs. Within 30 days of the time a pet occupies a Living Unit, the Owner of the Living Unit shall register the pet with the Board using the Association's pet registration form. If an Owner fails to register a pet that has occupied a Living Unit for more than 30 days, the Association may fine that Owner \$200 per month until the pet is registered. No pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Project. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration including but not limited to restrictions on the types of pets, additional requirements for registration with the Association, and noise limitations. All pets must be properly licensed and registered with the appropriate governmental agency and must abide by all pet Rules adopted by the Board from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Limited Common Area of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area or Limited Common Area of another Member and shall be leashed or restrained whenever outside a Living Unit. The Association may levy Individual Assessments to Owners for any damages to the Common Areas and landscaping caused by a pet, including burn spots in the lawn from urine.
- 9.6 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, used, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a Living Unit or appurtenant structures.
- 9.7 **Nuisances.** No resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and

peaceful enjoyment of their property. The Board shall have the sole discretion and authority to determine if an activity or condition constitutes a nuisance. A nuisance includes, but is not limited to, the following:

- a) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;
- b) The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- c) The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials that constitute an eyesore as reasonably determined by the Board or otherwise causes the reputation of the Project to be lessened in the opinion of the Board;
- d) The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
- e) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;
- f) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;
- g) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests or invitees;
- h) Excessive noise (see item # 6 above) in, on or about any Lot, Living Unit or the Common Area, especially after 10:00 p.m. and before 7:00 a.m., or use of outside speakers or amplifiers;
- i) Excessive traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.;
- j) Allowing a pet to be unleashed while outside of the Living Unit;
- k) Continuous barking, meowing, or other animal noises; and
- l) Allowing a pet to urinate or defecate in the Common Areas or failing to clean up immediately any feces deposited by a pet in the Common Area.

9.8 **Smoking.** No Owner, family member of an Owner, tenant, lessee, resident, occupant, guest, business invitee, visitor or any other person (collectively referred to as “Resident”) shall smoke cigarettes, electronic cigarettes, cigars, or any other tobacco product, marijuana, illegal substance, or any other substance that emits smoke, including vaping, anywhere within the Association’s Common Area or Limited Common Area that is within 25 feet of a Unit. This prohibition shall include but not be limited to Common

Areas, enclosed Common Areas within the Project and all porches, patios and parking areas. The term “smoke”, “smoking” or “tobacco” as used herein includes the inhaling, exhaling, burning, or carrying of any lighted cigarette, cigar or other tobacco product, vaping, marijuana, illegal substance, or any other substance or item that emits smoke or a smoke-like substance.

- 9.9 **Signs.** The Association may regulate and restrict signs in the Project to the extent permitted by law. The Board may adopt Rules for the regulation of signs. Unless otherwise designated in the Rules, lawn signs are prohibited, except “For Sale” or “For Rent” signs that may be placed outside the main entry of the Living Unit or as directed by the Board. All other signs may only be erected or maintained on the Project, whether in a window or otherwise, with the prior written approval of the Board of Directors. Signs may not exceed 18" X 24" in size and may only be posted into the ground with wire or stakes no more than 1" in diameter.
- 9.10 **Trash Containers and Collection.** All garbage and trash shall be placed and kept in dumpster provided by the Association. No garbage or trash shall be placed or kept outside of a Living Unit or on a Lot.
- 9.11 **Parking.** No vehicles may be parked on the streets within the Project. Owners, Occupants, and tenants must first use their garages before other vehicles may be parked outside of the garage. No Occupant of the Project may park their vehicle in any of the guest parking stalls within the Project. No vehicle may be parked in the guest parking area for more than 24 consecutive hours. Vehicles shall not be parked at an entrance to or in front of a garage or walkway or at any other location within the Project, which would impair vehicular or pedestrian access, or snow removal. Common Area parking stalls (if any) shall be subject to and governed by Association Rules and may be assigned by the Board. The Association may charge a fee for the use of any Common Area parking stalls, which are intended to be used as vehicle parking spaces only and are restricted to such use. The Board may adopt additional Rules relating to the parking of vehicles within the Project, including, without limitation: the size and dimensions of the vehicles parked within the Project; the admission and temporary parking of vehicles within the Project; the use of the undesignated parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Board; the right to remove or cause to be removed any vehicles that are improperly parked; the time visitor spaces may be used; and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.
- 9.12 **No Storage.** No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc.
- 9.13 **Leases.** The leasing of Living Units is permitted. The Board may adopt Rules to regulate the leasing of Living Units which may include, but are not limited to: requiring a copy of each lease to be provided to the Board, reporting of name and contact information for all adult tenants, reporting of vehicle information of the tenants, and any other information deemed necessary by the Board. Unless otherwise modified by Association Rule, the following leasing restrictions shall apply: no Owner shall be permitted to lease his/her Living Unit for transient, hotel, short-term or seasonal purposes; all leases shall be for an initial term of no less than six (6) months; daily or

weekly rentals are prohibited; no Owner may lease individual rooms to separate persons or less than his or her entire Living Unit; and all leases shall provide that the tenant is subject to and shall abide by the Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within 10 days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents by a tenant, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. If the Owner fails to act accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so.

- 9.14 **Solar Energy Systems.** Solar energy systems and attendant equipment shall be prohibited from being constructed or installed in the Project. Notwithstanding the forgoing, if the Board elects to allow solar energy systems in the Project, the Board may adopt Rules and regulations for the installation of solar panels or other energy conservation equipment in the Design Guidelines. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Lot, Living Unit, or townhome buildings. Solar panels or other equipment shall not be installed so as to be visible from the streets in the Project without prior approval from the ACC as a variance. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. If an approved solar energy system (installation, operation, maintenance, or otherwise) causes costs to the Association, then the Board may allocate these costs to the Owner who requested or benefit from the installation as the Board in its sole discretion determines. The costs arising under this Section shall be assessed and collected as an Individual Assessment. The ACC or the Board shall have the sole discretion to determine compliance with the Design Guidelines and this Section.
- 9.15 **Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (i) either that the restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce; and (ii) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Association or other Owners of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act.

ARTICLE X ARCHITECTURAL CONTROLS

- 10.1 **Architectural Control Committee.** The Board may appoint a three (3) member Architectural Control Committee, the function of which shall be to ensure that all improvements and landscaping within the Project harmonize with existing surroundings and structures. The ACC need not be composed of Owners. If the ACC is not appointed, the Board shall perform the duties required of the ACC. The Declarant shall act as the ACC during the Period of Declarant Control.

- 10.2 **Architectural Controls.** To maintain a degree of protection to the investment which homeowners in this area may make, homes of superior design are requisite, and designs shall be limited to those approved by the ACC. In the event of any reconstruction of an improvement or a residential Living Unit due to a casualty, the design, quality, and appearance of the reconstructed home shall be substantially the same as the structure initially built, unless otherwise approved by the ACC. No landscaping, grading, excavation, building, fence, wall, residence, or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications, have been approved in writing by the ACC. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme, and all changes in the grade within the Project, shall be subject to the prior written approval of the ACC. Once approved by the ACC, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the ACC. Subsequent to receiving approval of the ACC and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit, as needed, from the city.

Except for the initial construction authorized by Declarant, no construction, reconstruction or modification of a home or landscaping may commence without approval by the ACC of the working drawings including, but not limited to, the following:

- a) A site plan to scale showing the entire site, building, garages, walks, drives, fences, lights, and retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property line and street fronts and elevations of floors from a designated point on the street.
- b) Detailed floor plans showing dimensions and measurements.
- c) Detailed elevations, indicating all materials and colors and showing existing and finished grades.
- d) Detailed sections, cross and longitudinal.
- e) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

Specifications shall give complete descriptions and color samples of materials to be used on the exterior of the residence. The ACC will base its approval of construction plans, specifications, landscaping plans, and other alterations upon compliance with the Design Guidelines, any other design guidelines adopted by the Association. Any costs incurred by the Association in reviewing plans, specifications, or the like shall be assessed against the requesting Owner as an Individual Assessment. The ACC may also establish a reasonable fee for reviewing plans and specifications.

- 10.3 **Design Guidelines.** The Board may adopt Design Guidelines for the purpose of maintaining a consistent character and quality of appearance of the improvements within the project.

- a) The Declarant shall have sole and full authority to amend the Design Guidelines during the Period of Declarant Control. The Declarant's right to amend the

Design Guidelines shall continue even if it delegates reviewing authority to the ACC. Upon termination or delegation of the Declarant's right to amend, the Board shall have the right to amend the Design Guidelines.

- b) The Design Guidelines may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the Board and ACC. The Design Guidelines may also designate landscaping requirements. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.
- c) Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended.

10.4 **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Project. Furthermore, the provisions of this Declaration which prohibit or restrict non-residential use of Living Units, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant and/or other persons engaged in the construction of residences within the Project so long as the location of such model homes and the opening and closing hours are approved by the ACC, and the construction, operation and maintenance of such model homes otherwise complies with all of the provisions of this Declaration. The ACC may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with city ordinances and any rules of the ACC. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of residences within the Project, and no home shall be used as a model home for the sale of homes not located within the Project.

10.5 **Variances.** The ACC may authorize variances from compliance with any of the architectural provisions of this Declaration or Design Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be in writing and must be signed by all of the members of the ACC (or Board if acting as the ACC). If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

10.6 **Liability for Damages.** The ACC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it made pursuant to this Article.

ARTICLE XI ENFORCEMENT

- 11.1 **Enforcement of Governing Documents.** The Association, Declarant, or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration and other Governing Documents, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorney fees. Occupants, guests, and invitees shall be personally liable for any fine assessed as a result of their action in violation of the provisions of the Governing Documents. Failure to enforce any covenant or restriction within the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XII SPECIAL DECLARANT RIGHTS

- 12.1 **Improvements.** Declarant hereby reserves the right, without obligation, to construct:
- a) Any improvement shown on the Plat or included in the Project;
 - b) Any Additional Property, buildings, structures, or improvements that Declarant desires to construct in the Project, adjacent to the Project, or as part of any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.
 - c) Additional Phases and expand the Project as set forth in Article XVIII.
- 12.2 **Special Declarant Rights.** Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights, which shall remain in effect during the entire Period of Declarant Control, or for the maximum period allowed by law:
- a) the right to maintain sales offices, model Living Units, and signs advertising the Project or any Living Unit at any location in the Project;
 - b) the right to use easements through the Common Areas as set forth in this Declaration;
 - c) the right to grant easements to adjoining property owners, including Declarant's developments, for the shared use of Project improvements (including but not limited to access the Project's streets, storm water system and detention basin) subject to reasonable compensation agreements entered into with adjoining property owners.
 - d) the right to dedicate the roads and streets within the Project for and to public use, to grant road easements with respect thereto, and to allow such street or road to be used by owners of adjacent land;
 - e) the right to convert any part of the Project to a different regime of residential ownership;

- f) the right to create or designate additional Common Area or Limited Common Area within the Project;
- g) the exclusive right to act as the Board of Directors, or appoint or remove Board Members in Declarant's sole discretion, during the Period of Declarant Control;
- h) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
- i) the right to set all assessments for the Association including annual, special, and individual assessments;
- j) the right to set all fines and fees for the Association including but not limited to collection fees, architectural review fees, and fines for violations of Association Rules;
- k) the exclusive right to amend the Declaration, Bylaws, and Rules of the Association without approval from any Members;
- l) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration;
- m) the right to make and adopt Association Rules without being subject to the requirements of Utah Code § 57-8a-217; and
- n) pursuant to Utah Code § 57-8a-211(10), Utah Code § 57-8a-211(2) through (9), shall not apply or have any effect during the Period of Declarant Control, and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Period of Declarant Control.

12.3 Exercising Special Declarant Rights. Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

12.4 Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rules that interferes with or diminishes any Special Declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

12.5 Limitation on Improvements by Association. Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the

Common Areas as originally constructed or created by Declarant.

- 12.6 **Transfer of Special Declarant Rights.** The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person in whole or in part. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor. A contract transferring a Declarant's rights may, but shall not be required to, be recorded in the office of the Cache County Recorder.
- 12.7 **Changes by Declarant.** Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot and Living Unit prior to the contracting for the conveyance of the Lot to a purchaser.
- 12.8 **Easements Reserved to Declarant.**
- a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.
 - b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.
 - c) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.
 - d) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.
 - e) The Declarant reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration,

or as laid down and shown on the Plat, without the prior written approval of the Declarant.

- f) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

- 12.9 **No Modification of Declarant Rights.** The Special Declarant Rights in this Declaration or other Governing Documents, and specifically in this Article, shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until at least six (6) years have passed after the Period of Declarant Control has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

ARTICLE XIII RIGHTS OF FIRST MORTGAGEE

- 13.1 **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for all Assessments levied while it holds title to the Lot.
- 13.2 **Notice of Default by Owner.** In the event an Owner neglects, for a period of sixty (60) days or more, to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.
- 13.3 **Priority.** No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

ARTICLE XIV RIGHT OF ENTRY

- 14.1 **Right to Enter Lots and Living Units.** The Association acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice of at least forty-eight (48) hours to enter upon or into any Lot or Living Unit, without trespass, and regardless of whether or not the Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs or correct any violation of any of the Declaration or Rules, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such Assessment to be secured by a lien provided in Article V. Notice shall not be necessary in case of an emergency originating in or threatening such Living Unit or any other part of the Project, including the sound or sight of running water in

a Living Unit, the smell or sight of smoke in a Living Unit, abnormal or excessive noises, and foul smell. Owners shall also maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Living Unit under this Section and shall defend, indemnify and hold harmless the Association for all damages related to such entry, except for such damages resulting from intentional or willful misconduct.

ARTICLE XV REINVESTMENT FEE

- 15.1 **Adoption of Reinvestment Fee.** The Association hereby adopts a Reinvestment Fee. The amount of the Reinvestment Fee shall not exceed 0.5% of the value of the unit being sold. The Reinvestment Fee shall be paid by the purchaser of a unit whenever a unit is sold, transferred or conveyed to a new owner.
- 15.2 **Amount of Reinvestment Fee.** The Reinvestment Fee shall initially be in the amount of .5% of the sales price of the unit being sold. By written resolution, the Board is authorized to increase or decrease the amount of the Reinvestment Fee, but in no event shall the Reinvestment Fee exceed the amount of .5% of the value of the unit being transferred.
- 15.3 **Increases.** If the Board determines that an increase in the amount of the Reinvestment Fee is justified, it shall file for record in the office of the Cache County Recorder an amended Notice of Transfer Fee to this Amendment, in the form of a Board Resolution, setting forth the amount of the new Reinvestment Fee.
- 15.4 **Runs with the Land.** The Reinvestment Fee and the covenant to pay the Reinvestment Fee runs with the property described in Exhibit "A" (and any Additional Property"), and is intended to bind successors in interest and assigns of the real property described in Exhibit "A", attached hereto.
- 15.5 **No Additional Reinvestment Fees.** The existence of this Reinvestment Fee precludes the imposition of an additional Reinvestment Fee on the property described in Exhibit "A", attached hereto.
- 15.6 **Duration.** The duration of the Reinvestment Fee covenant is for a period of 50 years.
- 15.7 **Purpose.** The purpose of the Reinvestment Fee required to be paid herein is for the use and improvement of the Association's Common Areas and the other areas the Association is required to maintain.
- 15.8 **Exceptions.** The Reinvestment Fee shall not be enforced in the following circumstances or situations:
- a) an involuntary transfer;
 - b) a transfer that results from a court order;
 - i) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity;
 - ii) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or

- iii) the transfer of burdened property by a financial institution, except, a financial institution shall be required to pay the Association's costs directly related to the transfer of the burdened property in an amount of \$250.

ARTICLE XVI AMENDMENTS

- 16.1 **Amendments by Declarant.** Until after the termination of the Period of Declarant Control, the Declaration and the Plat may be amended solely by the Declarant without any additional approval required. In addition, during the Period of Declarant Control, no other amendment shall be valid or enforceable without the Declarant's prior written consent.
- 16.2 **Amendments by Association.** After the termination of the Period of Declarant Control, this Declaration may be amended upon the affirmative vote of at least fifty-one percent (51%) of the voting interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Cache County Recorder. In such instrument, the Board shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature used for voting shall be required. Notwithstanding, the foregoing, the Members' authority to amend Articles XII and XVII of this Declaration is subject to the amendment restrictions set forth therein, and any amendment purporting to modify the provisions of Articles XII and XVII shall be null and void unless such amendment is in compliance with the amendment provisions and restrictions therein.

ARTICLE XVII DISPUTE RESOLUTION

- 17.1 **Introduction.** Prior to purchasing a Lot, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Lot and Living Unit the Owner is purchasing regarding any aspect of the Project. Moreover, if any warranty is provided, it identifies only those items warranted by the Declarant or the builder. Having had the ability to inspect prior to purchasing a Lot, having received a written warranty if any warranty is provided, and having paid market price for a Lot in the condition the Lots and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any other builder or subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lot during any period when litigation is pending. For this reason, the Owners by purchasing a Lot and the Declarant agree and acknowledge that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through certain specific

alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners, as set forth herein. In addition, the Association and the Owners agree that they take ownership and possession of the Lots, Living Units and Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

17.2 Alternative Dispute Resolution Without Litigation.

- a) Bound Parties. The Declarant, the Association, the Owners, and the officers, directors, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing (collectively, “Bound Parties”), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Project and/or the Lots that may be involved or impacted. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 17.3 in a good faith effort to resolve such Claim.
- b) Claims. As used in this Article, the term “Claim” means any claim, grievance, or dispute arising out of or relating to:
 - i) the interpretation, application, or enforcement of the Governing Documents;
 - ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
 - iii) Any allegation that a condition in any of the Lots, Living Units, or Common Area is a construction defect;
 - iv) Any disagreement as to whether an alleged construction defect has been corrected;
 - v) Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any dispute;
 - vi) the design or construction of improvements on the Project, other than matters of aesthetic judgment to be determined by the Association or ACC under the Design Guidelines and other provisions of Article X hereof, which shall not be subject to review and shall not be subject to this Article.
- c) Exclusion from Definition of Claims. The following shall not be considered “Claims” unless all Parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 17.3:
 - i) any suit by the Association to collect assessments or other amounts due from any Owner;
 - ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may

deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article X of this Declaration (relating to the Design Guidelines);

- iii) any suit that does not include the Declarant, any affiliate of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;
- iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 17.3;
- v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 17.3(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article;
- vi) any suit or dispute between (a) Declarant or its affiliates and a builder, developer, contractor(s), subcontractor(s), or any other party contracted by Declarant or its affiliates, in connection with the Project;
- vii) any suit or dispute involving a governmental entity as a party; and

17.3 **Dispute Resolution Procedures.**

- a) **Notice.** The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:
 - i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;
 - ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
 - iii) the Claimant's proposed resolution or remedy;
 - iv) that the person alleged to be responsible for the acts giving rise to the Claim shall have six months to cure or resolve the Claim; and
 - v) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.
- b) **Right to Cure.** For any Claim arising from a dispute over the construction of improvements within the Project, the Claimant shall provide Respondent six months to rectify, alter or fix the claimed defect(s) in the improvements. The expiration of this six-month cure period shall be a prerequisite to Claimant's ability to initiate litigation as permitted under Section 17.4 below. For all Claims involving alleged defects in construction, the negotiation, mediation, and settlement requirements shall remain in effect during the cure period, however, the mediation deadline set forth in subsection (d) below shall be extended to expire on the same date the cure period expires.
- c) **Negotiation.** The Claimant and Respondent shall make every reasonable effort

to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

- d) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent mediator providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator's proscribed procedures and requirements for mediating claims.
 - i) **Waiver of Claim for Failure to Appear or Participate.** If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.
 - ii) **Termination of Mediation Proceedings.** If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.
 - iii) **Costs of Mediation.** Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.
- e) **Settlement.** Any Claim settlement through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate such proceedings as are necessary to enforce such agreement without the need to comply again with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney fees and court costs.

17.4 **Initiation of Litigation by Association.** The requirements of this Section are intended to be in addition to those requirements set forth in Section 57-8a-228 of the Act. After expiration of the Period of Declarant Control the Association may not bring a legal action against a Declarant, a Board of Directors, an employee, an independent contractor, an agent of the Declarant, or the previous Board of Directors related to the Period of Declarant Control unless:

- a) The Right to Cure period set forth in Section 17.3(b) above has expired;
- b) the legal action is approved in advance at a meeting by Owners holding at least 51% of the total allocated voting interests of the Owners in the Association:
 - i) Owners may be represented by a proxy specifically assigned for the purpose of voting to approve or deny the proposed legal action at the meeting. Any such proxy shall not be valid unless the proxy is notarized with each Owner certifying that they have received and reviewed the information required by Section 17.5(a) and (b) below.
- c) the Association provides each Owner with the items described in Section 17.5(a) and (b), below;
- d) the Association establishes a trust account, described in Section 17.5(c) below; and
- e) the Association first goes through the procedures described in Section 17.3 above, giving notice and an opportunity to resolve the dispute that is the basis of the Claim and proposed legal action.
- f) The procedures and approval required in the preceding subsections (a) through (e) shall not be required for actions or proceedings:
 - i) initiated by Declarant during the Period of Declarant Control on behalf of the Association;
 - ii) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
 - iii) initiated to challenge ad valorem taxation or condemnation proceedings (including bringing an action for inverse condemnation);
 - iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
 - v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended without the written consent of the Declarant for a period of 10 years following the expiration of the Period of Declarant Control. Any such amendment shall also be approved by a vote of 51% of the total votes of the Association.

17.5 Informed Vote. Before the Owners, as Members of the Association may vote to approve any claim of legal action, the Association shall first provide each Owner with:

- a) A written notice stating:
 - i) that the Association is contemplating legal action;
 - ii) the percentage vote required for approval of the litigation;
 - iii) the date, time, and location of any Member meeting that has been scheduled to discuss the litigation or to vote on the approval of the litigation;
 - iv) a description of the claims that the Association desires to pursue in sufficient detail to permit each Member to reach an informed decision

on the litigation matter; and

- b) A written report from an attorney licensed to practice in Utah, which provides an assessment of:
 - i) The likelihood that the legal action will succeed;
 - ii) The likely amount in controversy in the legal action;
 - iii) The likely cost of resolving the legal action to the Association's satisfaction; and
 - iv) The likely effect the stigma of a legal action will have on value or on an Owner's ability to market for sale, or a prospective lot buyer's ability to obtain financing for a lot due to a pending legal action.
 - v) In providing this report, the attorney shall obtain and rely on reports and assessments from experts in their field such as construction, real property, sales, or any other relevant factor in the contemplated litigation.
- c) Before the Association commences any legal action as authorized above, the Association shall:
 - i) allocate an amount equal to 10% of the cost estimated to resolve the legal action not including attorney fees; and
 - ii) place the 10% allocated funds in a trust account that the Association may only use to pay the costs to resolve the legal action.

Sections 17.4 and 17.5 do not apply to an Association that brings a legal action that has an amount in controversy of less than \$25,000.00.

- 17.6 **Strict Compliance Required.** Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions in this Article. The Bound Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant Party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Article, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. If any claims or actions falling within the scope of this Article are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied.
- 17.7 **Warranties.** The Association shall have no right to seek the performance of or take assignment of any rights in any warranties against the Declarant, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.
- 17.8 **Common Area Actions.** Unless specifically set forth in this Declaration, no action may be brought by the Association, its Board of Directors, or its Officers on behalf of

an Owner, as its respective interest may appear, with respect to any cause of action relating to the Common Areas and facilities.

- 17.9 **Amendment Limitation.** The dispute resolution restrictions contained in this Article shall not be amended, altered, or eliminated from the Declaration without the written consent of the Declarant for a period of 10 years after the expiration of the Period of Declarant Control.

ARTICLE XVIII EXPANSION

- 18.1 **Declarant's Option to Expand.** Declarant hereby exclusively reserves the option to expand the Project (the "Option to Expand") by adding Additional Property to the Project and developing Lots, Living Units and Common Area upon the terms and provisions set forth in this Article without the prior consent of the Owners or the Association. Declarant makes no representation regarding the number of Lots that may be included in the Project. Only Declarant and its assigns may exercise the Option to Expand, and Declarant and its assigns shall have the right to expand the Project and the Association even if Declarant no longer owns any Lot within an earlier phase of the Project. If the Option to Expand is exercised by Declarant or its assigns, it may do so at any time within ten (10) years after the recording of this Declaration. There is no obligation of any kind whatsoever for the Declarant or its assigns to exercise the Option to Expand. The terms and conditions of the Option to Expand shall be as follows:
- a) **106 Lot Maximum.** The real property subject to the Option to Expand shall consist of property adjacent to or within 1000 feet of the Project. Any property added to the Project pursuant to the Option to Expand shall not contain more than sixty-eight (68) additional Lots or Living Units. The additional Lots may contain additional Common Areas, which the Association shall own and be required to maintain according to the requirements found in the Declaration.
 - b) **No Restrictions Regarding Timing of Expansion.** The Option to Expand may be exercised at different times as to all or any portions of any Additional Property within ten (10) years of the date this Declaration is recorded. In the event the Option to Expand is exercised with respect to a portion of the Additional Property, the Option to Expand may subsequently be exercised with respect to any other portion of Additional Property. There are no limitations as to when or how portions of the Additional Property may be added.
 - c) **No Restrictions Regarding Location of Improvements.** Declarant shall not be restricted in the location of improvements on the Additional Property or in the number or kind of Lots, Living Units or structures that may be created on the Additional Property, except as may be required by applicable zoning requirements, ordinances or regulations, provided the Project, when completed shall not exceed one hundred Lots and Living Units.
 - d) **Uses.** The Lots and Living Units to be located on the Additional Property may be for similar uses as provided in this Declaration and may also include apartment buildings and commercial uses. Declarant reserves the right to exercise all developmental rights reserved or afforded in this Declaration with respect to any

Lots, Living Units or Common Areas located on the Additional Property.

- e) **Shared Expenses.** If Additional Property is added to the Project, or if Declarant or Declarant's assigns develop adjacent property to the Project which make use of any of the Project's Common Areas, including but not limited to access roads, utility pipes of any nature, storm water system, and detention basins, which uses are expressly authorized herein, the Declarant shall equitably apportion the cost and expense of maintaining any shared Common Areas based on the pro rata number of Lots and/or Living Units in each development that use or are benefitted by the shared Common Areas.
- 18.2 **Additional Common Areas.** Declarant reserves the right to add additional Common Areas to the Additional Property without limitation.
- 18.3 **Amending Percentage Interest.** The Percentage Interest for Assessments and votes for all Lots in the Project shall be changed at the time Declarant records an amendment to the Declaration, a supplemental Declaration, and an additional or supplemental Plat reflecting Declarant's exercise of the Option to Expand in accordance with the provisions set forth in the Article.
- 18.4 **Voting and Assessments.** After Additional Property is added to the Project, each Lot Owner shall continue to have votes for Association matters and the obligation to pay the Percentage Interest of the Common Expenses, subject to Declarant's authority to adjust the Percentage Interest as stated in this Declaration.
- 18.5 **Owner's Consent Given.** Each Owner, by execution of a contract for deed or the acceptance of a deed to a Lot in the Project, shall be deemed to have consented to all provisions of this Article XVIII, including the procedure for adjustment of the Percentage Interest. After the filing for record of any amended Declaration and/or supplemental Plat reflecting Declarant's exercise of the Option to Expand, or any other part thereof, legal and equitable title to each Lot thereby created within the Additional Property shall be vested in and held by Declarant and none of the other Owners shall have any claim or title to or interest in such Lot.
- 18.6 **No Consent Required.** Declarant shall not be required to obtain the consent of any Owners or of any other Person or entity having any right or interest in all or any portion of the Project prior to or subsequent to adding all or portions of the Additional Property.
- 18.7 **No Amendment.** No provision of this Article XVIII shall be amended without the prior written consent of Declarant, so long as Declarant or its assigns or successors owns or has the right to acquire any Lots or build Living Units on the Additional Property.
- 18.8 **Expansion of Additional Property.** In addition to the provisions for annexation specified in this Article XVIII and subject to the applicable laws in effect from time to time, the Additional Property may be expanded to include additional real property, not as yet identified. Such property may be annexed to the Additional Property in accordance with the then current applicable laws.

ARTICLE XIX MISCELLANEOUS

- 19.1 **Notices.** Any notice required or permitted to be given to any Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if

personally delivered, emailed, or if mailed, postage prepaid, to the Person who appears as an Owner, at the latest email or mailing address for such Person appearing in the records of the Association at the time notice is sent. If no email or mailing address has been provided, the physical address of the Lot owned by said Owner shall be used for notice purposes.

- 19.2 **Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast the required percentage of membership votes. The Association may use any method allowed under Utah law and the Utah Revised Nonprofit Corporation Act.
- 19.3 **Dissolution.** The Association may be dissolved by the affirmative assent in writing from 90% of the Owners. Upon dissolution of the Association, all of its agency or authority to be used for purposes similar to those provided for in the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in Article V.
- 19.4 **Interpretation and Severability.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.
- 19.5 **Covenants to Run with Land.** This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration.
- 19.6 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the Common Area facilities and buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of

the provisions of the Governing Documents with regard to anyone else.

- 19.7 **No Waiver.** Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.
- 19.8 **Condemnation.** If a portion of the Common Area is taken by eminent domain, or sold under threat thereof, and is not comprised of and does not include any Lot, the Board shall cause the award to be utilized for repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association. If a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, then that Lot's interest in the Common Areas shall be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking.
- 19.9 **Security.** The Declarant or Association shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Lot in this Association that the Association, Declarant, and the Board are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION, DECLARANT, AND BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.
- 19.10 **Effective Date.** The Declaration and any amendment hereof shall take effect upon its filing in the office of the Cache County Recorder.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative.

[Signature on Next Page]

DATED as of the ____ day of May 2020.

DECLARANT

RETURN DEVELOPMENT LLC, A Utah Limited Liability Company

By: _____

Its:

STATE OF UTAH)
 :ss.
COUNTY OF BOX ELDER)

On the ____ day of May, 2020, personally appeared before me _____
who by me being duly sworn, did say that he is an authorized representative of Return
Development LLC, and that the foregoing instrument is signed on behalf of said company
and executed with all necessary authority.

Notary Public

EXHIBIT "A"
LEGAL DESCRIPTION

The real property included in the **FIREFLY ESTATES** pursuant to this Declaration, located in Cache County, Utah, is described as follows:

Part of Section 17, Township 11 North, East of the Salt Lake Base and described as follows:
Range 1 Meridian Commencing East Quarter Corner of said Section 17 monumented with a Brass Cap monument thence S 89°45'23" W 1324.55 feet; thence South 24.75 feet to the POINT OF BEGINNING and running thence S 00°32'49" E 832.58 feet; thence S 88°36'07" W 500.50 feet (S88°35'24"W, By Record) along the north line of Sunrise Meadows Subdivision, Phase 8 and its projection thereof; thence along the boundary of Sunrise Meadows Subdivision, Phase 1 the next two courses: 1) thence N 02°44'25" W 281.04 feet (N 02°45'21" W, By Record); 2) thence S 89°34'51" W 798.01 feet (S 89°36'00" W, By Record); thence N 00°28' 44" W 564.33 feet; thence N 89°45'23" E 1,308.56 feet to the point of beginning, containing 20.11 acres, more or less.

EXHIBIT B
BYLAWS
OF
FIREFLY ESTATESS HOME OWNERS ASSOCIATION

These BYLAWS OF FIREFLY ESTATESS HOME OWNERS ASSOCIATION are effective upon recording in the Cache County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

RECITALS

- A. The Association is organized for all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.
- B. These Bylaws are adopted to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the Project known as the FIREFLY ESTATES HOME OWNERS ASSOCIATION and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

ARTICLE I
DEFINITIONS

Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Declaration of Covenants, Conditions, and Restrictions for the FIREFLY ESTATES HOME OWNERS ASSOCIATION.

ARTICLE II
APPLICATION

All present and future Owners, Mortgagees, Occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition or rental of any of the Living Units or the mere act of occupancy or use of any said Living Units or the Common Areas will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said persons.

ARTICLE III
OWNERS

- 3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year on a day and time established by the Board of Directors. The purposes of the Annual Meeting may include the election of Board Members, the distribution of financial reports and budget, a review of any revisions to the Rules, distributing the most recent

reserve study, and to transact such other business as may come before the meeting. If the election of Board Members cannot be held during the Annual Meeting, or at any adjournment thereof, the Board shall cause the election to be held either at a Special Meeting of the Owners to be convened as soon thereafter as may be convenient or at the next Annual Meeting. The Board may from time to time by resolution change the month, date, and time for the Annual Meeting. Annual Meetings shall not be required during the Period of Declarant Control, but the Declarant may hold Annual Meetings at its discretion.

- 3.2 **Special Meetings.** Special Meetings of the Owners may be called by a majority of the Board, the Declarant, the President, or upon the written request of Owners holding not less than forty percent (40%) of the voting interests of the Association. Any written request for a Special Meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a Special Meeting within 45 days of receipt of the Owner request. During the Period of Declarant Control, Special Meetings may only be called by the Declarant.
- 3.3 **Place of Meetings.** The Board may designate any place in Cache County that is reasonably convenient for the Owners as the place of meeting for any Annual or Special Meeting. If no designation is made, or if a Special Meeting is otherwise called, the place of the meeting shall be held at the office of the Association or its Manager.
- 3.4 **Notice of Meetings.** The Board shall cause written or printed notice of the date, time, and place (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Residence shall be deemed to be the Owner's registered address and notice to the Residence address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.
- 3.5 **Qualified Voters.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her share of any Assessment (together with any interest and/or late fees) at least 48 hours prior to the commencement of the meeting and is not in violation of any provision of the Governing Documents.
- 3.6 **Record Date for Notice Purposes.** The Board may designate a record date, which

shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Lots in the Project shall be deemed to be the Owners of record entitled to notice of the Owner meeting.

- 3.7 **Quorum.** At any Owner meeting, the number of Owners present, either in person or by proxy shall constitute a quorum for the transaction of business.
- 3.8 **Proxies.** At each Owner meeting, each Owner entitled to vote shall be entitled to vote in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or the Owner's attorney when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. Such instrument may allow the proxy to vote on any issue arising at any particular meeting or meetings or may set forth the specific matters or issues upon which the proxy is authorized to act. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as Secretary of the meeting) before the meeting is called to order. The Secretary shall record all proxies in the meeting minutes.
- 3.9 **Votes.** With respect to each matter submitted to an Owner vote, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Lot of such Owner, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by Owners, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. When a Lot is jointly owned, any Owner may exercise the vote for such Lot on behalf of all Co-Owners of the Lot. In the event of two (2) conflicting votes by Co-Owners of a Lot, no vote shall be counted for that Lot. In no event shall fractional or cumulative votes be exercised with respect to any Lot. Only those Owners whose accounts with the Association are not more than thirty (30) days delinquent shall be entitled to vote.
- 3.10 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived by those Members in attendance if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting.

- 3.11 **Action Taken Without a Meeting.** Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of Utah Code §16-6a-707 or § 16- 6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.
- 3.12 **Minutes of Meetings.** The Secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section does not invalidate any action taken at a meeting. Draft meeting minutes for each annual meeting of the Owners shall be made available to all Owners within thirty (30) days of the annual meeting.

ARTICLE IV BOARD OF DIRECTORS

- 4.1 **Powers.** The Project and the affairs and business of the Association shall be managed by the Board of Directors. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.
- 4.2 **Number and Qualifications.** The property, business, and affairs of the Association shall be governed and managed by a Board of Directors composed of either three (3) or five (5) persons, as determined by the Board. Board Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Lot in the Project. No two (2) Board Members may reside in the same Living Unit or be business partners if the business is related to their ownership of a Lot. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manger, agent, trustee, or beneficiary of such Owner may be a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board shall automatically terminate. During the Period of Declarant Control, the Qualification requirements of these Bylaws shall not apply and the Declarant may exercise all powers of the Board as permitted by law.
- 4.3 **Election.** During the Period of Declarant Control, Board Members shall be appointed by Declarant. Following the Period of Declarant Control, the election of Board Members shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The Association may accept written ballots for Board Member election voting purposes from those Members unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.
- 4.4 **Term of Office.** During the Period of Declarant Control, Board Member terms shall

- be determined exclusively by Declarant. Following the Period of Declarant Control, the Owners shall elect Board Members for two (2) year terms. The terms shall be staggered and overlap so that elections for Board Member positions are held each year at the Annual Meeting. Board Members may serve consecutive terms if elected.
- 4.5 **Regular Meetings.** The Board shall hold meetings at least quarterly or more often at the discretion of the Board. During the Period of Declarant Control, Board Meetings shall be held at the discretion of the Declarant so long as at least one Board Meeting is held each year and a Board Meeting is held each time the Association increases a fee or raises an Assessment.
- 4.6 **Special Meetings.** Special meetings of the Board may be called by the President or a majority of Board Members on at least two (2) business days' prior notice to each Board Member.
- 4.7 **Meeting Notice.** The person or persons authorized to call Board meetings may fix any place, within Cache County, as the place for holding the meeting and shall provide a conference call-in number for Board Members not able to attend in person. Notice shall be given personally, by email, or by telephone, including text message at least two (2) business days' in advance of the meeting. By unanimous consent of the Board, Board meetings may be held without call or notice to the Board Members, but notice shall always be provided to those Owners who have requested notice of Board meetings.
- 4.8 **Quorum and Manner of Action.** A majority of the then authorized number of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided shall be the act of the Board. The Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.
- 4.9 **Owner Attendance.** Any Owner may request notice of Board meetings by requesting such notice from a Board Member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board Members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific period of time during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak
- 4.10 **Open Meetings.** Except as provided below in (a) through (f), following the Period of Declarant Control, Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:
- a) Consult with legal counsel of the Association to obtain legal advice and discuss legal matters;
 - b) Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
 - c) Discuss a labor or personnel matter;

- d) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- f) Discuss a delinquent assessment.

During the Period of Declarant Control, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Owners.

- 4.11 **Board Meetings Generally.** The Board may designate any place in Cache County as the place of meeting for any regular or special Board meeting. The Board may allow attendance and participation at any Board meeting by telephone or any other electronic means that allows for Board Members to communicate orally in real time. Following the Period of Declarant Control, if a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.
- 4.12 **Board Action.** Notwithstanding noncompliance with any provision within this Article, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with this Article may not bring the challenge more than sixty (60) days after the Board has taken the action in dispute.
- 4.13 **Compensation.** No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein contained shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.
- 4.14 **Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Board Member who is appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Board Member it appoints at any time. A Board Member elected by the Owners after the Period of Declarant Control may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by the other active Board Members upon the occurrence of any of the following: failure to attend three (3) consecutive Board meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.

- 4.15 **Vacancies.** If vacancies occur in the Board during the Period of Declarant Control, the Declarant shall appoint a Board Member to fill the vacancy. Following the Period of Declarant Control, if vacancies occur in the Board for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor.
- Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.
- 4.16 **Action Without a Meeting.** Board Members have the right to take any action in the absence of a meeting which they could take at a meeting subject to the requirements of Utah Code §16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.
- 4.17 **Waiver of Notice.** Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.
- 4.18 **Adjournment.** The Board may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.
- 4.19 **Meeting.** A Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

ARTICLE V OFFICERS

- 5.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be appointed by the Board.
- 5.2 **Election, Tenure, and Qualifications.** The officers of the Association shall be elected by the Board of Directors at the first Board meeting following each Annual Meeting of the Owners. Each officer shall hold such office until the next ensuing meeting of the Board following the Annual Meeting of the Owners and until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.
- 5.3 **Subordinate Officers.** The Board may appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.
- 5.4 **Resignation and Removal.** Any officer may resign at any time by delivering a written

resignation to any member of the Board or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board Members at any time, with or without cause.

- 5.5 **Vacancies.** If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by majority vote of the Board at any regular or special Board meeting.
- 5.6 **President.** The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board.
- 5.7 **Vice President.** The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board or Owners. The Vice President shall perform such other duties as required by the Board of Directors.
- 5.8 **Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board may require. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.
- 5.9 **Treasurer.** The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board.
- 5.10 **Compensation.** No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

ARTICLE VI COMMITTEES

- 6.1 **Designation of Committees.** The Board may designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A

committee shall not have powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate a committee at any time.

- 6.2 **Proceeding of Committees.** Each committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.
- 6.3 **Quorum and Manner of Acting.** At each committee meeting, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The committee members shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may only exercise the authority granted to it by the Board.
- 6.4 **Resignation and Removal.** A committee member may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any committee member.
- 6.5 **Vacancies.** If any vacancy shall occur in any committee designated by the Board due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

ARTICLE VII INDEMNIFICATION

- 7.1 **Indemnification.** In addition to the indemnification provisions and requirements set forth in the Declaration, no Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's

willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to defend, indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

- 7.2 **Other Indemnification.** The defense and indemnification herein provided shall not be deemed exclusive of any other right to defense and indemnification to which any person seeking indemnification may be entitled under the Acts or under any agreement, vote of disinterested Board Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent that all Board Members, officers, and committee members be and hereby are defended and indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The defense and indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.
- 7.3 **Insurance.** The Board, in its discretion, may direct that the Association purchase and maintain Directors and Officers insurance on behalf of any person who is or was a Board Member, officer, committee member, Manager or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, Manager, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to defend or indemnify such person against liability under the provisions of this Article.
- 7.4 **Settlement by Association.** The right of any person to be defended and/or indemnified shall be subject always to the right of the Association through the Board, in lieu of such defense and/or indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VIII RULES AND REGULATIONS

- 8.1 **Rules.** The Board shall have the authority to adopt and establish by resolution such Association Rules as it deems necessary for the maintenance, operation, management, and control of the Project. The Board may from time to time, by resolution, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and residents. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all Rules adopted by the Board shall be sent to all Owners at least ten (10) days prior to the effective date thereof.

ARTICLE IX AMENDMENTS

- 9.1 **Amendments by Declarant.** During the Period of Declarant Control, the Declarant acting alone may amend, alter, or repeal and adopt new Bylaws for any reason, without Owner approval. No other amendment shall be valid or enforceable during the Period of Declarant Control unless the Declarant has given written consent to such amendment. Any amendment during the Period of Declarant Control shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the Cache County Recorder.
- 9.2 **Amendments by Association.** After termination of the Period of Declarant Control, the Bylaws may be amended by the Owners upon the affirmative vote of more than fifty-one percent (51%) of the voting interest of the Association. Any amendment(s) shall be effective upon recordation in the office of the Cache County Recorder. In such instrument the President shall execute the amendment and certify that the vote required by this Section has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any Owner signature shall be required. No amendment shall restrict, limit, or impair any Declarant rights without the express written consent of the Declarant.

ARTICLE X MISCELLANEOUS PROVISIONS

- 10.1 **Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.
- 10.2 **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.
- 10.3 **Conflicts.** These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

EXHIBIT C

MAINTENANCE ALLOCATION CHART

ITEM	HOA	OWNER	NOTES
GENERAL NOTE			Shared items are to be resolved between the Owners involved in use of the item.
A/C Pad & Unit		X	
Address Numbers		X	
Attic		X	
Cable/Satellite TV		X	
Ceiling		X	
Fireplace, Flue, & Vent Pipes – Cleaning & Repair		X	
Circuit Breakers for Unit		X	
Door and Door Frames - Exterior		X	
Door and Door frames - Interior		X	
Door Hardware		X	
Door steps/stoops/porch		X	
Doorbell		X	
Drains – Living Unit & Limited Common Patio/Porch		X	
Dryer Vent Cleaning		X	
Electrical Wiring/Panel		X	
Exterior Wall Finishes (Rock/Stucco/Siding, etc.)	X		
Fences that boarder the exterior of the Project	X		
Interior Fences (bordering Lots) - future replacement		X	
Interior Fences (bordering Lots) - repairs from wind/shifting		X	
Fence - repair damage caused by resident/guests		X	
Fireplace Component, including spark arrestor		X	
Floor Coverings		X	
Foundation - Structural		X	
Foundation – Cracks, cosmetic		X	
Front Landing/Porch		X	
Furnace		X	
Garage Door Openers, Springs, Hinges, Parts		X	
Garage Doors Paint, Repair, Replace		X	
Gas Pipes		X	
Gate Hardware & Locks		X	
Hose Bib/Faucet/Spigot		X	
Hot Water Heater		X	
Insurance Coverage – Property (attached buildings)	X		
Insurance Coverage - HO6 Policy		X	
Insurance Coverage - Loss Assessment		X	

Insurance Deductible	X	X	Per Act. Deductible assessed to Owners pro-rata in which a loss takes place. Deductible on Owners HO6 Policy is Owner's responsibility.
Irrigation Lines / Heads - outside yard areas	X		
Landscape - outside fenced yard areas	X		
Landscape - fenced yard area		X	if applicable
Lights - Garage Fixtures & Bulbs		X	
Lights - Eaves (Electrical Issue/Replacement)		X	
Lights - Eaves Bulb		X	
Lights - Porch Fixture & Bulb		X	
Limited Common Area Driveways		X	
Limited Common Area Patios		X	
Limited Common Area Porches		X	
Limited Common Area Sidewalks		X	
All Concrete Located on a Lot or on the Limited Common Area Associated with a Lot (this includes the maintenance, repair and replacement of the concrete)		X	
Mailbox & Stand/Structure			USPS
Mailbox Lock & Key		X	
Paint - Exterior Finishes, doors, garage doors, etc.		X	
Paint - Interior		X	
Patio Slab		X	
Pest Control Interior		X	
Phone Lines		X	
Plumbing Valves, Pressure Regulator		X	Point of connection/Meter to the unit - Owner. Before point of connection/Meter – HOA.
Plumbing Main Line		X	Point of connection/Meter to the unit - Owner. Before point of connection/Meter – HOA.
Plumbing Leak		X	Point of connection/Meter to the unit - Owner. Before point of connection/Meter – HOA.
Plumbing – Clogging/Stoppage		X	Point of connection/Meter to the unit - Owner. Before point of connection/Meter – HOA.
Plumbing Pipes Inside Unit		X	
Rain Gutters – clean-out, repair, replacement	X		
Rain Gutters - drains away from building	X		
Roof - future replacement	X		
Roof Leak	X		
Screen Doors		X	*Must be approved by DRC
Sewer pipes – portion serving one unit		X	
Sewer pipes - portion to more than one unit	X		
Shutters		X	
Skylights		X	
Sliding Glass Doors		X	
Snow Removal – Driveways & Sidewalks on Lots or in Limited Common Areas		X	
Snow Removal – Private Roads and Sidewalks on the Common Area (per Plat)	X		
Storm Drains	X		*Private road areas only
Street Lights	X		*unless handled by Rocky Mountain Power

Streets – Private (excluding concrete approach to garage - Asphalt only)	X		
Termites, pests, rodents, insects, etc.		X	
Trash		X	
TV Reception		X	
Utility Doors		X	
Vent covers - Exterior		X	
Walkways to individual unit- not shared		X	
Wall - Bearing Interior Wall		X	
Wall - Partition Interior Wall		X	
Water - Culinary		X	
Water - Landscape	X		*Unless metered to the individual unit owner
Weatherstripping		X	
Window Boxes		X	
Window Frames		X	
Window Glass & Screens		X	

Chapter 19.XX
Accessory Dwelling Units (ADUs)

A. Purpose

1. This chapter establishes approval criteria and outlines processing procedures for accessory dwelling units (ADUs).
2. The purpose of this chapter is to allow accessory dwelling units within single-family detached dwellings in zoning districts specified in this title, to establish the conditions under which accessory dwelling units are regulated under this chapter, and to set forth criteria and standards to be required of accessory dwelling units when this chapter is applicable.

B. Definitions

1. Accessory Dwelling Unit: A residential dwelling unit, but not a Mobile Home as defined by this title, located on the same lot as a single-family dwelling unit, either within the same building as the single-family dwelling unit or in a detached building. Secondary dwelling units shall be developed in accordance with the standards set forth in this chapter and only in those zoning districts where the use is listed as a special review use.

Commented [SN1]: Should we allow a mobile home as an ADU? No mobile homes or camping trailers. How do we define what a mobile home is?

C. Accessory Dwelling Unit Approval Required

1. Accessory Dwelling Units shall be considered permitted by right when they comply with the standards and provisions of this title. Accessory Dwelling Units that existed prior to the adoption of this ordinance, that have not received formal approval, shall be considered illegal until approved in compliance with these provisions
2. Short Term Rental, as defined within this title, shall be a prohibited use within ADUs.
3. No ADU shall be built on registered wetland or flood plain
4.

Commented [SN2]: Prohibit Short Term Rentals.

D. Application

1. Persons shall make application for an accessory dwelling unit on forms prepared by MUNICIPALITY. No accessory dwelling unit application shall be processed without the submission of the application, all supporting materials as required by this chapter, and the processing fee. Incomplete applications shall not be processed under any circumstances.
2. Supporting Materials. The Accessory Dwelling Unit application shall be submitted with the materials listed herein.

- a. Notarized letter: a notarized letter of application shall be provided by the property owner stating that such owner will occupy the property except for bona fide temporary absences
- b. Floor Plan: A floor plan showing the floor in which the accessory apartment will be located shall be provided
- c. Parking Plans: A parking plan shall be submitted showing where off-street parking will be provided.
- d. Fire Extinguisher(s): Evidence of a fire extinguisher in the accessory dwelling unit shall be provided.
- e. Fee: The processing fee as required by the consolidated fee schedule as approved by the City council shall be paid in full.

E. Approval Criteria

1. Proposed accessory dwelling units in compliance with the following criteria to ensure the health and safety of occupants and that preserve the residential characteristic of the neighborhood shall be approved
2. Owner Occupation: the owner(s) of the residence shall live either in the dwelling in which the accessory dwelling unit was created or the ADU, except for bona fide temporary absences
3. Fire, building, and health codes. The design and size of the accessory dwelling unit shall conform to all applicable standards in the fire, building, and health codes. All necessary permits shall indicate the area to be designated for accessory dwelling unit use.
4. Exterior Appearance: The accessory dwelling unit shall be incorporated into the residence so that to the degree reasonably feasible, the appearance of the building remains that of a single-family residence, including landscaping, installation of separate utility meters for accessory dwelling units is prohibited. Separate addresses and mailboxes shall be placed on all accessory dwelling units regulated by this chapter as required for public safety purposes. All entrances to [attached](#) accessory dwelling units shall be located on the rear or side of the building.
5. Parking: Off-street parking for [one-two](#) vehicles, shall be provided for use by the tenants of the accessory dwelling unit
6. One Accessory Dwelling Unit: Only one accessory dwelling unit shall be created [within a for each](#) single-family dwelling [lot](#).
7. Detached Structures: Accessory dwelling units may be permitted in a detached structure [so long as the setbacks of the detached structure are maintained](#).
8. ~~Size criteria:~~

F. Size, Height and Zoning

1. ADU shall have the following size requirements:

- a. Shall have the minimum size of 300 sq. ft.
- b. For ~~detached~~ ADUs, the ADU shall follow ing the sizing and setback requirements for other accessory buildings as listed in NCC 19.24, in addition to maintaining a minimum rear and side setback of 10 feet in all zones. No detached ADUs shall be larger than 1,50001,200 sq. ft.
- ~~b-c.~~ Detached ADUs shall not be permitted on lots smaller than 12,000 sq. ft.
- d. The total square footage of all detached ADUs shall not occupy more than twenty five percent (25%) of the rear yard.
- e. Detached ADUs shall be limited to two stories and shall not exceed the height of the primary single-family dwelling.

2. ADU Use within Commercial, Neighborhood Commercial, and Industrial Zones

- a. Commercial buildings within Neighborhood Commercial Zones shall be allowed to have up to two attached accessory dwelling units. ADUs shall be attached to the building. Dwelling Units shall be located either on the rear of the building or on the second story.
- b. Any Neighborhood Commercial Building shall supply two additional off-street parking for each ADU.
- c. Each ADU shall have a separate access apart from the commercial access to the building
- d. Each ADU must meet all applicable building, zoning, and fire code requirements.

~~e-c.~~

G. Noncompliance

1. Owners of the single-family dwelling where the accessory dwelling unit use has been approved shall be responsible for their property's compliance with the city's ordinances and conditions of approval. Single-family owners who fail to maintain or violate the city's ordinances regulating accessory apartment use or conditions upon which approval was contingent may have the permit revoked. Notice of violation shall be given to the owner of the residence containing the accessory apartment use providing 14 days to correct a violation before the permit is revoked. Persons aggrieved by the revocation of their permit may use the appeal process to have their grievances heard.

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19.32 Residential Planned Unit Developments (PUD)[19.32.010 Purpose And Intent](#) [19.32.020](#)[Definitions And Standards](#) [19.32.030](#)[Use Regulations](#)[19.32.040 Area And Density Regulations](#)[19.32.050 Open Space Amenities](#) [19.32.060](#)[General Requirements](#)[19.32.070 Approval Process](#)[19.32.080 Development Standards](#)**HISTORY***Repealed by Ord. 11-07 on**7/7/2011 Amended by Ord. 18-10**on 5/23/2019***0 Purpose And Intent**

- A. Intent: This section provides enabling authority and standards for the review and approval of applications for Residential Planned Unit Developments (R-PUD's). The intent of this ordinance is to provide an alternative to traditional subdivision design by encouraging innovation and offering some flexibility in the design of residential developments, which may incorporate the permanent preservation of amenities, agricultural lands and other valuable natural and cultural resources, as well as providing a variety of amenities for the enjoyment and benefit of the citizens of Nibley.
- B. Purpose: An R-PUD is an overlay rezone. That is, applicants apply for the overlay to be applied, allowing them to receive the density outlined herein in exchange for public amenities, all while retaining the original zoning of the property. The Planning Commission and City Council may approve, deny or approve the R-PUD with conditions, and no applicant has any entitlement to the approval of an R-PUD.

HISTORY*Adopted by Ord. 18-10 on 5/23/2019***19.32.020 Definitions And Standards**

- A. Amenity: Natural or man-made feature which enhances the development. These include features such as picnic areas, walking paths/trails outside of required sidewalks, playgrounds, sports fields, club houses, swimming pools, splash pads, etc.
- B. Buffer: A landscape and planted area along a public right-of-way, street, or neighboring development, a buffer must be at least thirty (30') feet wide. Buffers must be landscaped, at the sole cost of the developer, and shall provide for every hundred (100) linear feet of buffer six trees and fifteen (15) shrubs. Tree and shrub species must be approved by the City's arborist or the City's Park Director. Trees and shrubs shall be planted within thirty (30) feet of the right-of-way or R-PUD boundary where required. Irrigation system shall be installed by the developer and shall be designed and installed to Nibley City Standards. Buffer areas shall be owned and maintained by an Owners Association.
- C. Condominium: A multiple-unit dwelling containing individually-owned dwelling units and jointly- owned shared areas and facilities, which dwelling, or development is subject to the provisions of state and local laws.

D. Constrained and Sensitive Land: Land which is generally unbuildable without engineered ground modifications, or which contains features including, but not limited to Federal, State, or municipally designated wetlands, water bodies, floodplains, slopes greater than 20%, faults, canals, and other geologically or environmentally sensitive features that require mitigation, special insurance, or permits from government authorities to allow development. This land may be used as amenities if it complies fully with conditions within this chapter for qualification of amenities.

E. Dwelling Unit: Any building or portion thereof which is designed for or occupied by one family for living, sleeping, and/or eating purposes. A dwelling unit may include up to two (2) persons per unit to whom rooms are rented in addition to a family related by blood, marriage or adoption, but if the number of such additional persons exceeds two (2) or if they use or are furnished separate cooking facilities, whether temporary or permanent, such additional persons shall be considered a separate dwelling unit.

Commented [SN1]: ADUs?

F. Meadows: Land vegetated with native species of grasses, trees, forbs, and flowers, either undisturbed or constructed, that can be sustained without supplemental irrigation. Actively used pasture and agricultural land are not considered Meadows under this definition.

G. Net Developable Land: Net Developable land shall include the total area of the proposed development minus land that is required by Nibley City Ordinance to be dedicated to the City, including, but not limited to:

1. Public access rights-of-way, including roadways and sidewalks
2. Land required to be dedicated along waterways
3. Preservation lands with infrastructure installed to City standards by the developer as part of the development process (public and private parks, trails, etc.)
4. Constrained and Sensitive Land, as defined herein
5. Easements, lands dedicated to the City for preservation space but without public rights of access, and other utility or general rights-of-way without public access.
6. Constrained and Sensitive Land, land dedicated along waterways, and other natural landscape or open space land may be considered net developable land when calculating for density if such land can be enhanced with trails, public access, picnic areas, park amenities, or other improvements.

H. Open Space: Any space in an R-PUD that does not contain any amenities, except for park amenities, as defined herein, buildings, parking lots or private yards. All Open Space must be completely landscaped with sod, trees, xeriscape, gardens or agricultural use. Natural features such as wetlands, meadows, tree stands and Constrained and Sensitive Lands may also be considered Open Space. ~~Landscaping within the rights-of-way including public sidewalks and trails, and private and public parks shall also be counted as Open Space.~~

Commented [SN2]: What about parking lots for parks?

I. Patio Home: A detached, single-family unit situated on a reduced-size lot and with reduced setbacks.

J. Private Parks: A tract of land presently owned or controlled and used by a private entity or group and to which only members of that private entity or group have access or use rights. Private Parks must contain at least one amenity as defined herein. Private Parks must contain one (1) tree for every 1,000 sq. ft. and 60% of the area must be planted with sod. Sod and tree requirement may be altered for approved club houses, sport courts/fields, swimming pools, splash pads, covered pavilions or other approved recreation uses.

K. Owners' Association: A community association which is organized within a development in which individual owners share common interest and responsibilities for open space, landscaping, or

facilities.

- L. Public Park: A publicly-owned tract of land landscaped and developed for the general public. Public Parks, as defined for R-PUD, must contain at least one amenity as defined herein. Public Parks must contain one (1) tree for every 1,000 sq. ft. and 60% of the area must be planted with sod. All landscaping must meet Nibley City Standards. Sod and tree requirement may be altered for approved, sport courts/fields, swimming pools, splash pads, covered pavilions or other approved recreation uses. Public Parks shall be placed on the border of each development so that it may easily be accessed by the community as a whole. Each public park must contain a public bathroom.
- M. Single Family Dwelling Unit: A dwelling unit owned in fee and located on an individual lot and which is not attached to any other dwelling unit by any means.
- N. Town Center Area: The area as labeled on R-PUD Application Map as "Town Center Area."
- O. Townhome: A dwelling unit, with a private entrance, which is part of a structure whose dwelling units are attached horizontally in a linear arrangement and having a totally exposed front and rear wall to be used for access, light, and ventilation. Each townhome unit must be on its own parcel.
- P. Tree Stand: A group or cluster of trees within a geographic location that are occurring naturally or artificially.
- Q. Waterway: Surface water runoff and drainage, drainage ditches and irrigation waterways, whether surface or subsurface and natural waterways including creeks, streams, springs, rivers, ponds, and wetlands.
- R. Planned Unit Development: For the purpose of this chapter "residential planned unit development" (R-PUD) means an integrated design for the development of residential uses to allow flexibility and initiative in site and building design and location, in accordance with an approved plan and imposed general requirements, as specified by this chapter.

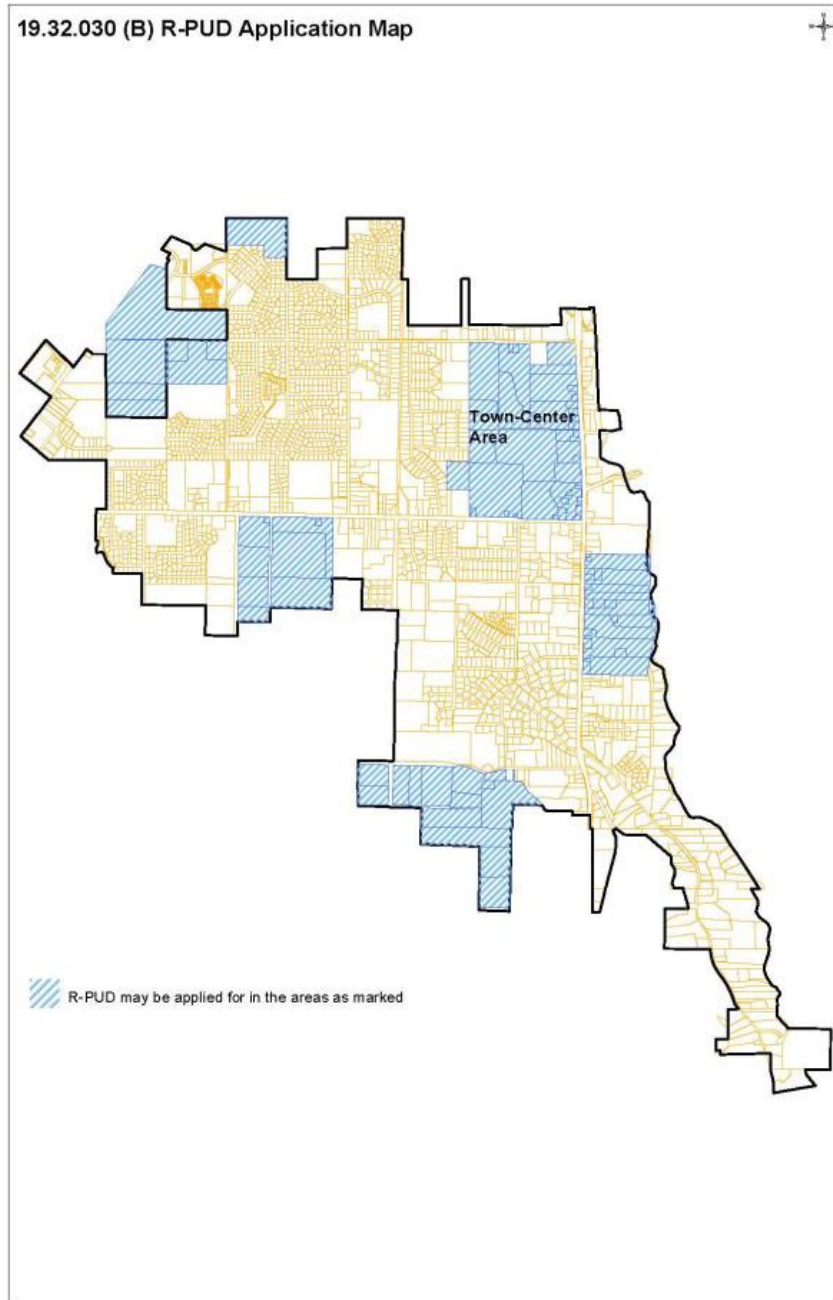
HISTORY

*Adopted by Ord. 18-10 on
5/23/2019 Amended by Ord. 19-16
on 10/10/2019*



0 Use Regulations

- A. An R-PUD may be applied for by following the steps listed in 19.32.070 (A) on properties designated on the R-PUD Application Map in NCC 19.32.030(B). These areas keep their base zoning, with that zoning's standards, conditions, and restrictions, unless the City Council approves the use of the R-PUD through an R-PUD application process. R-PUDs are prohibited in all other areas. The City Council, with a recommendation from the Planning Commission, may make changes to what parcels are labeled on the R-PUD Application Map by following proper ordinance change procedures.
- B. R-PUD Application Map



C. The following are permitted uses in an R-PUD:

1. Single Family and Townhome dwelling units may be permitted uses, as defined within this ordinance.

~~4. Within the Town Center, Single Family, Patio Homes, Townhomes and Condominiums may be permitted uses, as defined within this ordinance.~~

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2. All other uses not defined within this chapter shall comply with the underlying zone, lot size, and the Land Use Chart in NCC 19.20, unless otherwise specified within this ordinance.

D. Any uses not specifically permitted or conditionally permitted are prohibited.

E. Animal Use: All animal uses shall be in accordance with Nibley City Code.

F. Up to 30% of the Net Developable Area may be approved for neighborhood commercial use as part of an R-PUD. These uses shall comply with Nibley's City's Neighborhood Commercial Zone Use Chart and standards as listed in NCC 19.14.050. ~~Commercial use must be concentrated in one location.~~ These parcels shall be labeled on the plat as Neighborhood Commercial.

G. When calculating density for dwelling units, any Neighborhood Commercial area shall be subtracted from the Net Developable Area of the R-PUD.

HISTORY

Adopted by Ord. 18-10 on
5/23/2019 Amended by Ord. 19-16
on 10/10/2019

0 Area And Density Regulations

A. Housing Types: Only single-family homes and town homes are allowed in the R-PUD in residential areas, except as allowed in the Town-Center Area. The density shall be based on Net Developable Acres of the development as follows:

1. Single Family Homes: Equal to or less than 5 units per Net Developable Acre

a. Single Family Home R-PUD must contain a minimum of 50 units.

2. A Mix of Single Family and Townhomes: Equal to or less than 12 units per Net Developable Acre. Up to 80% of dwelling units can be townhomes.

a. A Mix of Single Family and Townhomes R-PUD must contain a minimum of 120 units.

Commented [LR3]: This may need to go down if % of townhomes goes down.

B. Town-Center: The area as marked on R-PUD Application Map in NCC 19.32.030 (B) as Town- Center Area shall have the following Housing Requirements.

1. Single Family Home Development and Mix of Single Family and Townhome Development shall be governed by NCC 19.32.040 (A).

2. A Mix of Single Family, Townhomes and Condominiums: Equal to or less than 12 units per Net Developable Acres. Up to 40% of the units can be condominiums, and a minimum of 40% of homes must be single family homes.

Commented [LR4]: This may need to go down if % of townhomes goes down.

C. A proposed R-PUD adjacent to existing single-family homes must place single family homes adjacent to the established single-family homes unless otherwise buffered by an arterial roadway or 300-foot width of open space including a landscaped Buffer as defined within this chapter.

D. The City may approve single family homes that do not meet the required setbacks and lot size, i.e. patio

homes. These homes shall not be counted toward the single-family home requirements contained in this section and shall be counted toward the number of townhomes.

HISTORYAdopted by Ord. 18-10 on5/23/2019 Adopted by Ord. 19-16

on 10/10/2019

**0 Open Space Amenities**

A. Each R-PUD shall provide the following types and amounts of open space and amenities:

Min Open Space Requirement	
<u>Dwelling Type</u>	<u>Percentage of Net Developable Acres Required to be used for Amenities and Open Space</u>
Single Family	20%
A Mix of Single Family, Townhomes and Condominiums	35%

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Minimum Amenity						
Number of Units	Park Area	Pavilion	Swing Set	Playground	Clubhouse, Pool, or Splashpad	Sports Court/Fields
Less Than 100	1.5 Acres	—	—	1	—	—
101-150	2.5 Acres	—	1	1	—	
151-200	3.5 Acres	—	1	2	—	1
201-250	4.5 Acres	1	1	2	—	1
251-300	5.5 Acres	1	1	2	1 of the above options	1
301-400	6.5 Acres	2	2	3	2 of the above options (At least one pool or Splashpad)	2
401-500	7.5 Acres	2	2	3	2 of the above options (At least one pool or Splashpad)	2
501+	*	*	*	*	*	*

1. Development over 500 units must supply adequate and proportional amenities based on the table above.\

2. Development containing under a total of 20 gross acres must provide a minimum open space as

follows:

- a. Single Family: 20% open space as defined within this Chapter or 3 acres of open space, whichever is greater
- b. Mix: 35% Open space as defined within this Chapter or 5.5 acres of open space, whichever is greater

3. Development may be phased according to NCC 21.02.080 and the Development Agreement. The City Council may extend phasing deadlines within the development agreement based on the size of the project and proposed amenities. Public and Owners' Association-owned amenities shall be fully developed and operational in conjunction with each phase of the subdivision as a percentage of the total developed value of the subdivision (for example, if 25% of the dollar value of the development is being constructed, then a minimum of 25% of the dollar value of the built-out amenities must be developed). The determination of value, construction sequencing, and acceptance criteria shall be specified in the Development Agreement. Until improvements are accepted by the City for the attendant phase, no permits shall be issued for subsequent phases.

3-a. (An applicant may also escrow or bond for future improvements)

Commented [SN5]: Outline that developers may bring in a single phase at a time.

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- 4. All amenities designed and designated to be transferred to City ownership and maintenance must meet Nibley City Design Standards. The City must review and approve any improvements that will be owned and maintained by the City as part of the construction drawing review.
- 5. This chart does not cover all potential amenities. The applicant may apply for other amenities that would benefit the R-PUD. Any proposed amenities not listed, must be approved by the City Council. The City Council may also allow a substitution of amenities on the table above. These substitutions may only be approved if the cost, value and use of the amenity matches or is greater than the require amenity. An applicant may add additional amenities above and beyond the requirements of this section.
- 6. Public and Private Park space may be combined or spread throughout the development. Each Park shall be a minimum of .25 acres. Each dwelling unit shall be within a quarter mile of a park within the development, unless otherwise approved by the City Council. Parks may be public or private. Each public park development and placement within an R-PUD shall be agreed upon by the applicant and the City Council. Park space may not include alleyways, back yards, gangways, front yards, forecourts, private patios, porches, driveways, etc.; unless proper amenities and access are provided.
- 7. All amenities shall meet any federal, state, city, or other standards that apply.
- 8. Sports Courts/Fields: include a facility/amenity that is built for one of the following: Tennis Court, Pickleball Court, Basketball Courts, Soccer field, Volleyball pit, Baseball field, Softball field, wallball, golf course, disc golf course, or others as approved by the City Council.
- 9. Picnic Area: Two or more picnic tables for use by 10 or more persons.
- 10. Pavilion: A covered picnic area. Each Pavilion must be designed for use of a minimum ten or more people.
- 11. Club House: A building available to community members to house a club or social organization not conducted for private profit. Club Houses shall be owned and maintained by a homeowner's association. A club house shall be at least 1000 sq. ft. in size.
- 12. Playground: an area provided for children to play on. Each Playground must be designed for children twelve and younger. A playground must include features to appeal to children within the above age group including some of the following: slides, monkey bars, ladders, tunnels, climbers, bridges, ramps, platforms, etc. All playground equipment must be of commercial grade. Each playground must include a minimum of 8 features.

Commented [SN6]: List as number one.

13. Pool: A recreation facility designed and intended for water contact activities that serves an R-PUD. No pool shall be less than 800 sq. ft.
14. Splashpad: A recreation facility with sprinklers, fountains, nozzles and other devices or structures that spray water. Splashpads shall contain some above ground features.

B. Maintenance of Amenities

1. All R-PUDs must establish and maintain in perpetuity an Owners Association if there are open space and amenity under common ownership, or as otherwise required by federal, state or Nibley City law. The Developer shall be a member of said Owners Association while the subdivision is being developed. ~~The Owners Association for Mix developments shall have office space for the Owners Association constructed a part of the development.~~
2. Costs: Unless otherwise agreed to by the City, the cost and responsibility of maintaining amenities shall be borne by the fee owner of the property that is part of the R-PUD or Owners Association.
3. Preliminary Maintenance Plan: A Preliminary Maintenance Plan shall be submitted with the preliminary plat for proposed maintenance of amenities within the development. This plan shall outline the following:
 - a. The proposed ownership and responsibility for maintenance of the amenities;
 - b. The proposed use of the amenities' and how each parcel of amenities meets the standards listed in this Chapter;
 - c. The size of each amenities parcel; and
 - d. The proposed concept plan for landscaping of the amenities.
4. Final Maintenance Plan: The developer shall submit a plan outlining maintenance and operations of the amenities and providing for and addressing the means for the permanent maintenance of the amenities within the proposed R-PUD application for the subdivision. The developer shall provide a final maintenance plan with the final plat and the plan shall contain the following:
 - a. Documents and plans as listed in for the Preliminary Maintenance Plan.
 - b. A description of the use of the amenities and how that use complies with this Chapter;
 - c. The establishment of necessary regular and periodic operation and maintenance responsibilities for the various kinds of amenities (e.g., lawns, playing fields, meadow, pasture, wetlands, stream corridors, hillsides, clubhouse, pool, woodlands, etc.);
 - d. The estimated staffing needs, insurance requirements, and associated costs.
 - e. The landscaping plans for parcels that will be owned by an Owners Association or by the City.
5. Approval: The Final Maintenance Plan must be approved by the City Council prior to or concurrent with final plat approval for the subdivision. The Final Maintenance Plan shall be recorded against the property within the subdivision before any property or lots are sold or transferred and shall include provisions for the City's corrective action rights as set forth herein. Any changes or amendments to the Final Maintenance Plan must be approved by the City Council.
6. The developer shall offer an approved letter of credit, bond or escrow for all proposed

Commented [SN7]: Add in list of items needed for an application

improvements as set forth in NCC 21.14.

7. Failure to Maintain: The City may assume responsibility for the maintenance and operation of any portion of any amenity or common facility within an R-PUD in the event the party responsible for maintaining or operating the amenity fails to do so in accordance with the terms of this Ordinance, the approved Maintenance Agreement, any Conditional Use Permits, Business Licenses or any other agreements between the City and the developer, owners, or other parties responsible for maintaining or operating amenities. If the City assumes responsibility under this paragraph, any remaining development escrow or bond funds may be forfeited, costs, fees, and liens for maintenance costs shall be assessed as described herein, and any permits, licenses or operating agreements may be revoked or suspended by the City in the City's sole discretion. Owners shall not impede the City in its efforts to maintain the amenities.
8. Corrective Action: The City may enter onto any amenity provided as part of an R-PUD and take such corrective action, including extended maintenance, repairs, modifications, or the execution of additional agreements, as the City determines is necessary for the amenity to satisfy the terms of this Ordinance, the approved Maintenance Agreement, any Conditional Use Permits, Business Licenses or any other agreements between the City and the developer, owners, or other parties responsible for maintaining or operating amenities. The costs of such corrective action shall be charged to the owners and may include administrative costs, legal costs, and penalties. Such costs shall become a lien on said properties. Notice of such lien shall be filed by the City in the county recorder's office. The maintenance plan and all other documents creating or establishing any Association or conservation organization for the property shall reference the City's corrective action authority set forth herein and shall be recorded against the property before any property or lots are sold or transferred.
9. Implementation and Maintenance: The developer of the subdivision shall fund implementation and maintenance of the amenities until such time as the control of the amenity is transferred to the owner listed in the maintenance plan. The developer shall address the implementation, development, maintenance and transfer procedures in the sensitive area designation plan map or master development plan, as applicable.
10. Maintenance Access: The developer of the subdivision shall provide sufficient maintenance access from a dedicated right-of-way to all amenities and constrained and sensitive lands within the R-PUD to allow the owner of the property to have sufficient access.

HISTORY

*Adopted by Ord. 18-10 on
5/23/2019 Amended by Ord. 19-16
on 10/10/2019*



0 General Requirements

- A. The R-PUD should be compatible with surrounding land uses, building types and physical features of the site. Specific requirements are included below:
- B. Determination of Net Developable Land:
 1. In calculating what portion of the project is considered developable, areas designated as constrained and sensitive land may not be included in the project size.
 2. If the constrained and sensitive land, property along waterways or other natural landscapes may reasonably be turned into a publicly-accessible amenity, it may be re-

included in the project size.

3. Net Developable Land must comply with the definition within this chapter.

C. Site Development Standards: The following shall serve as the setback/site development standards for each proposed R-PUD.

	Single-Family Home	Townhome	Patio Home	Condo
Minimum Lot Size (sq. ft.)	4,500	—	—	—
Minimum Frontage	50'	—	—	—
Primary-Use Setbacks				
Front Yard	20'	20'	20'	30'
Front Porches	10'	10'	10'	10'
Side Yard	5'	10'	0'	10'
Side Yard Porches, Deck, Overhangs	5'	5'	0'	5'
Side Yard Adjacent to Streets	20'	20'	20'	25'
Rear Yard	15'	15'	15'	15'
Maximum Height	40'	40'	40'	40'

Accessory-Use Setbacks	Single-Family Home	Townhome	Patio Home	Condo
Front Yard	20'	20'	20'	20'
Side Yard	3'	3'	3'	3'
Side Yard Street	20'	20'	20'	20'
Rear Yard	1'	1'	1'	1'
Maximum Height	15'	15'	15'	15'

1. Setback and frontage requirements shall apply to each building, and not each dwelling unit
2. All other setbacks shall comply with Nibley City Code.
3. All buildings and landscaping shall comply with NCC 19.24.110 Clear View of Intersecting Streets as amended.

D. Signs: Any signs proposed for the development, other than traditional street signs, must conform to Nibley City Code.

E. All property developed as Townhomes or Condominiums, must be subject to covenants, conditions and restrictions and must be subject to and governed by an owner's associations in compliance with Utah Code Annotated Title 57.

1. In addition, each owner's association must have a governing board made up of property owners within the R-PUD, but general administration and maintenance of the development may be handled with a property manager. Any R-PUD that contains

townhome must have onsite management, outside professional management or onsite point of contact.

F. Amenities and Open Space: Maintenance and ownership of amenities and Open space may be provided for under one of the following options as approved by the City Council in the City Council's discretion. The City may require any Amenities or Open Space within the R-PUD to be dedicated to Nibley City in order to fulfill goals listed in the Parks, Trails, and Recreation and Open Space Master Plan, or to further public good and advance goals within the General Plan or other Master Plans of the Nibley City:

1. Dedication of the land to Nibley City as a public park or parkway system; or
2. Granting to the city a permanent amenities easement on and over the said private amenities to guarantee that the amenities remain perpetually in recreation use, with ownership and maintenance being the responsibility of a homeowners' association established with articles of association and bylaws; or
3. Adoption of covenants, conditions, and restrictions and creation of an owners' association that provides for the payment of common expenses for the upkeep of common areas and facilities.

G. Bond: For each phase, the developer shall be required to provide guarantees as set forth in NCC 21.14.

H. Subsequent Subdivision: If the R-PUD is to be subsequently divided either as a subdivision into phase development parcels or separately owned and operated units, such division boundaries shall be indicated on the development plan and preliminary subdivision approval concurrently obtained in the case of a subdivision.

I. Subdivision Regulations: Any part of an R-PUD that is proposed as a subdivision is subject to the provisions of the subdivision title and the standards, conditions, and restrictions of the base zoning, unless superseded by the provisions of this ordinance.

HISTORY

*Adopted by Ord. 18-10 on
5/23/2019 Amended by Ord. 19-16
on 10/10/2019*



0 Approval Process

A. An R-PUD is an overlay zone. That is, developers apply for the overlay to be applied, allowing them to receive the density bonuses outlined herein in exchange for public amenities, all while retaining the original zoning of the property. The City Council, with a recommendation from the Planning Commission, may approve, deny or approve with conditions as a legislative action and no applicant has any entitlement to the approval of an R-PUD.

B. Application Submission: An application for an R-PUD shall be submitted to the City with all required documents, maps, plats and plans as listed below.

C. Procedure:

1. An R-PUD shall go through the following process to gain approval:
 - a. Development Committee: An applicant shall have a preliminary meeting with a development committee composed of applicable City staff, and other elected and appointed official as appointed by the Mayor and approved by the City Council.

Overlay Zone Application: Applicants shall submit an R-PUD Overlay Zone and preliminary plat application with the following:

- (1) A complete development plan application that is duly signed by the property owner or the owner's representative and that includes a legal description of the property and a nonrefundable application fee.
- (2) A vicinity map showing the approximate location of the subject parcel in relation to other major areas of the city.
- ~~(3)~~ A general description of the proposed development, together with a map indicating the general development pattern, land uses, densities, intensities, open spaces, parks and recreation, and how the project is coordinating with existing and planned trails, sidewalks and pedestrian walkways and any other important elements within or adjacent to the project.
- ~~(3)~~~~(4)~~ Preliminary Maintenance Plan as defined within this Chapter
- ~~(4)~~~~(5)~~ Sufficient detail to indicate how the proposed development complies with the development standards for residential and nonresidential uses according to Nibley City Code and Design Standards.
- ~~(5)~~~~(6)~~ A description of architectural design standards that will apply to all buildings within the development plan.
- ~~(6)~~~~(7)~~ A data table showing the total number of lots/units. Existing and proposed infrastructure including proposed roadways, utility locations and capacities and the estimated impacts of the proposed development plan on all public utilities including culinary water, secondary water, wastewater, transportation, storm drainage, fire protection, solid waste, parks and recreation demands of the proposed project.
- ~~(7)~~~~(8)~~ Existing physical characteristics of the site including all constrained and sensitive land
- ~~(8)~~~~(9)~~ Identify how environmental issues, if any, will be protected or mitigated, i.e., wetlands, historical sites, endangered plants and animals.
- ~~(9)~~~~(10)~~ Conceptual information relating to storm drainage including 100-year 24-hour drainage flows, 10-year 24-hour stormwater flows and proposed storm drainage facilities.
- ~~(10)~~~~(11)~~ Major street layout that meets Nibley City standards.
- ~~(11)~~~~(12)~~ A general description of controlling entities and methods such as the use of CC&Rs, Owners Associations, architectural or design review committees or associations proposed to ensure that internal compatibility related to issues such as site design and architecture will be maintained over the life of the project.
- ~~(12)~~~~(13)~~ A list of property owners' names and addresses within three hundred feet (300') of the subject property and stamped and pre-addressed envelopes (return address to be left blank) for all property owners within three hundred feet (300') of the proposed development.
- ~~(13)~~~~(14)~~ A list of land adjacent in the same ownership.
- ~~(14)~~~~(15)~~ An electronic file of all submitted plans in PDF format or other electronic format determined by city staff. Such other information shall be included as may be necessary to determine that the contemplated arrangement of

uses makes it desirable to apply regulations and requirements differing from those ordinarily applicable under this title.

b. Preliminary Plat: A preliminary plat that complies with Nibley City Subdivision Code and all other applicable code for the subdivision. Preliminary plat approval may be granted at the same time of approval of the overlay zone.

c. Approval with Development Agreement:

(1) Before an R-PUD Overlay Zone can be approved, the City Council and applicant must enter into a development agreement which shall be recorded on title to the real property that is the subject of the development and which shall be binding upon and shall run with that property. The development agreement must include the following provisions:

- (A) That the development must be developed in a way that is substantially similar to the site plan and proposed amenity improvements and open space.
- (B) That the preliminary site plan and all supporting documentation shall be attached to the development agreement.
- (C) That any development of the proposed real property shall not exceed the number of units as listed on the preliminary plat.

(2) The applicant shall provide the necessary documentation to establish that any holders of interests that are superior on title to the development agreement, including, but not limited to, liens, mortgages, deeds of trust, and other similar devices have been made subordinate to the development agreement.

(3) Signing and recording of the development agreement, and the subordination to the development agreement of any superior interests on title, must be accomplished before an R-PUD Overlay Zone may be approved.

d. Final Subdivision Approval: Once the overlay zone and development agreement have been recorded, an applicant may apply for final plat approval. An applicant shall provide the following:

- (1) An applicant shall follow the standards as listed in NCC §21 for Final Plat approval of a subdivision.
- (2) An applicant must submit all construction and civil engineering drawings and detailed plans for all amenities for the proposed phase of the development. These shall include landscape drawings and details. The City Engineer shall review and ensure all plans meet Nibley City standards.
- (3) A maintenance plan and ownership plan for all improvements, amenities, and open space that complies with the terms of this chapter.
- (4) The Planning Commission shall review and make a recommendation for final plat approval, approve with conditions, or denial to the City Council.
- (5) The City Council shall approve, approve with conditions, or deny the final plat application base on the standards listed within Nibley City Code, Design Standards, and the applicant's compliance with the Development Agreement.

Commented [SN8]: Reword so that it is clear that the R-PUD does not get approval until Development agreement is signed a recorded, but can be recorded at the same meeting.

D. R-PUD Considerations: In approving with conditions, denying or approving an R-PUD proposal, the Planning Commission and City Council shall consider the following in addition to all other considerations required by law:

1. Design of Buildings: The architectural design of buildings and their relationship on the site and their relationship to development beyond the boundaries of the development.
2. Streets and Parking: Which streets shall be public, and which shall be private, the entrances and exits to the development, and the provisions for internal and external traffic circulation and off-street parking.
3. Type, Size, and Location of ~~A~~menities.
4. Landscaping and Screening: The landscaping and screening as related to the several uses within the development and as a means of its integration into its surroundings.
5. Signs: The size, location, design and nature of signs, if any, and the intensity and direction or area of floodlighting.
6. Ability to Complete Project: The demonstrated ability of the proponents of the R-PUD to financially carry out the proposed project under total or phase development proposals within the time limit established.
7. Criteria for Issuing Conditional Use Permit: Criteria used in NCC 19.28 of this title.

E. Revisions: In the event an approved preliminary or final site plan requires revision by the developer, the site plan, and its revision shall be approved by the Nibley City Council with the recommendation of the Planning Commission. In the event revision is for a final site plan, all property owners in the development shall be notified in writing by the Planning Commission that a revision has been submitted and will be considered by the Planning Commission.

F. Building Permit Issuance: The building inspector shall not issue any permit for the proposed building or use within the project unless such building or use is in accordance with the approved development plan and any conditions imposed, including completion of amenities. Time Limit: Unless there is substantial action leading toward completion of a R-PUD or an approved phase thereof within three years from the date of approval, such approval shall expire unless after reconsideration of the progress of the project an extension is approved by the City Council.

HISTORY

*Adopted by Ord. 18-10 on
5/23/2019 Amended by Ord. 19-16
on 10/10/2019*

0 Development Standards

These standards are intended to create R-PUD developments that will establish permanent neighborhoods and provide a sense of community. To meet the intent of this section, the following provisions shall be applied to all new multi-family residential and mixed-use developments. For exterior remodels, these standards shall be required. Commercial areas of an R-PUD must comply with Nibley City Commercial design standards for commercial developments.

A. Townhome, Patio Homes, and Condominium Architectural Standards

1. General Design Concepts. New development shall be designed for its specific context within Nibley City. Developments shall possess a similar design theme, and the site shall

be designed such that the overall development is cohesive. Building architecture, exterior materials, and colors shall coordinate.

2. All facades shall include architectural treatments to provide visual interest and to differentiate individual units. These design standards shall be applicable to all sides of a building, with each façade (front, rear, and side) being required to meet the terms of this Section.
3. Building Materials. The majority of each façade (51% or more of the wall area excluding windows and doors) shall be constructed of the following hard surface building materials: brick, stone, stucco, treated or split face decorative block (CMU), fiber cement siding, concrete, composite siding, or other durable building material as approved by the City Council. EIFS or untreated concrete block (CMU) may be allowed as an accent or secondary material only. The Planning Commission may approve metal as an exterior building material and as a primary material on a case-by-case basis if an applicant can show that the type of metal is of a high grade and provides architectural quality to a building.
4. Vertical Separation. Buildings in excess of one (1) story in height shall exhibit architectural detailing that establishes a vertical separation between lower and upper stories. This may be accomplished by a mid-façade cornice or trim, a change in material, style or color, a façade step-back or roof pitch with dormer windows, or other methods
5. Building Entrances. Building entrances shall have porches and shall be oriented toward the street or an open space area and provide connecting pedestrian access between the street, parking or open space areas.
6. Variation. Townhome dwellings units shall be designed with architectural wall variations spaced at intervals of thirty (30) to fifty (50) feet in linear width, depending on the size of the building. The following architectural features shall be incorporated into the design of the building:
 - a. Change in building materials;
 - b. Building projections measuring at least twelve(12) inches in depth based on the scale of the proposed building;
 - c. Awnings and lighting, or another architectural variation as approved on a case-by- case basis that creates visual interest.
7. Garages. Townhomes shall be designed oriented toward exterior public roads with rear loading garages accessed by a paved parking area or alleyway, except along Highway 165 and 89/91 as approved. Rear loading garages are highly encouraged for townhomes located on interior project roads with units oriented toward a road or common courtyard area. Front loading garages may be allowed for townhomes that do not have any portion of the building adjacent to a current or planned public road or street outside of the development. Multiple unit structures shall have garages incorporated into the primary structure. At least fifty percent (50%) of units shall contain a two-car garage. Detached garages are prohibited in R-PUDs

B. Site Design Standards.

1. Natural features. R-PUDs shall respect and maintain natural features such as existing trees, hills, drainages, wetlands, bodies of water, or other natural features.
2. A landscaping plan for the front yards shall be included. The landscaping plan shall include at least one (1) tree for every dwelling unit, and two (2) shrub of five (1) gallon

size for each dwelling units. Coniferous trees shall be at least six (6) feet in height and the deciduous trees shall be at least one and a half (1.5) inches in caliper.

Commented [SN9]: Should this be fore just for Townhomes and Condos? Right now applies to all dwelling Units

3. Connectivity. R-PUD shall provide connectivity with the surrounding area and throughout the development. All improvements shall consider vehicle, bicycle, and pedestrian access.

- a. Street Design: All street designs shall comply with the General Plan and Transportation Master Plan including Nibley City's street standards and connectivity requirements. Each development shall provide at least two working access points that provide access to an existing street right-of-way. Additional access points may be required in order to facilitate an adequate and convenient circulation system within the City. Such additional access points will be located where they will implement the City's Transportation Master Plan, connect to existing street rights of way, or provide access for the logical development of adjacent, undeveloped properties.
- b. All streets are encouraged to incorporate traffic calming and beautification methods as listed in Nibley City design standards and Transportation Master Plan. This included islands, bulb-outs, roundabouts, etc. Each traffic calming measure shall be approved by the City Engineer.
- c. All Streets shall be dedicated public streets built to Nibley City Code and standards. Private drives shall only be built to access parking courts or garages that are located directly behind each unit.
- d. Private Drives/Alleyways provide vehicular access to parking and dwelling units but do not provide primary pedestrian access to units. Private Drives are intended to be used primarily for vehicular circulation and dwelling access and should be visually distinct from streets.
 - (1) Private drives shall be a minimum width of 20 ft.
 - (2) All private drives shall be perpendicular, within 10 degrees, to the street they connect to.
 - (3) Driveways that access a single dwelling unit are not considered private drives or an alleyway
- e. Developments shall provide a pedestrian access to the development border at intervals at a minimum of 660 feet unless expressly prohibited by conflicting with previously developed subdivisions or land use as determined by the land use authority. These access points shall be aligned with other trail systems, street right-of-way, or amenities and shall match the layout and size of the connection. A connection shall contain a minimum of eight ft (8") sidewalk.
- f. No dwelling units in an R-PUD shall have driveway access to any arterial roadway as listed in Nibley's Transportation Master Plan. Townhome units may face and have frontage along arterial roadways but must have rear loading garages. Public and private parks, open space or Buffering as defined within this chapter may also be along arterial roads.

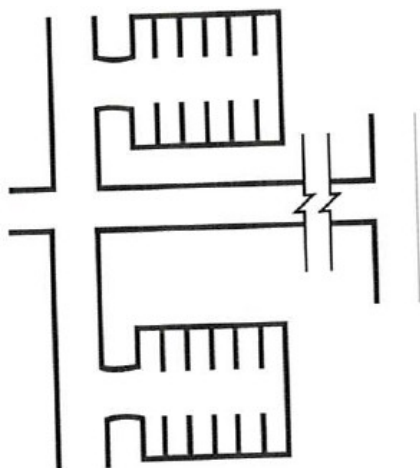
Commented [SN10]: Clarify that streets meet this standard.

4. Pedestrian circulation. R-PUD shall provide a circulation map and show the following improvements to for pedestrian circulation and safety:

- a. Pedestrian walkways that interconnect the adjacent street(s), amenities, parking areas, building entries, adjacent sites and adjacent master planned trails where

applicable. Each building located along a public road must provide a sidewalk connection from the building entrance to the public sidewalk.

- b. Walkways shall be hard surfaced with concrete.
 - c. Crosswalks shall be placed where pedestrian walkways cross streets and internal roads and shall be painted or made of concrete.
 - d. The development shall provide connections to the Nibley City trail system. These trails must be dedicated to the City and built to Nibley City standards as listed in the Trails Master Plan and Nibley City Design Standards.
5. Parking: Each R-PUD shall provide 2 primary parking spaces for each unit. Primary parking must be contained in a garage, carports, driveway, or parking court. An R-PUD shall provide one guest parking spot for every three units. Guesting parking may be located in parking courts or on street parking maintained by the owner association.
- a. Individual parking courts shall contain no more than 20 parking spaces and shall be physically and visually separated by a landscape area a minimum of 10 feet in width from any adjacent right-of-way. The separation shall be landscaped with grass, trees, or xeriscape plants.



- b. A parking court of any length shall consist of no more than one double-loaded parking aisle.
- c. Parking courts shall be located in the interior of the development and located between or in the rear of buildings for townhome developments.
- d. On-street parking shall be limited to local roads only. On-street parking shall have dedicated and marked spaces and must be approved by the City Engineer,
- e. Parking Courts shall be paved and built to Nibley City parking lot standards.

6. Landscaping: All portions of the lot not improved with structures or other impervious surfaces shall be maintained with suitable landscaping of plants, trees, shrubs, grasses, or similar landscaping materials.
- a. Landscaping shall also be installed in all park strips to the same standards as other onsite landscaping. Asphalt, concrete, bricks, pavers, railroad ties, and other nonvegetative material are not allowed in the park strip area between the curb and sidewalk. Xeriscaping is permitted. The developer should plant street trees of an approved species and size along all street. Trees should be planted at intervals of every 50 feet and must meet Nibley City Standards.
 - b. Buffering: R-PUD developments shall provide buffering along Highway 89/91 or Highway 165, or along the boundary of an R-PUD that is adjacent to commercial, or industrial zones. Buffering landscaping is not required if commercial or industrial zones are separated by a public street from the R-PUD. Buffering shall meet the standards within this ordinance.
 - c. Natural Landscape: All open space land dedicated to natural use must maintain its natural landscaping and plant life.
7. Fences:
- a. Permitted Fences: Dwelling units are allowed to install and construct fences in compliance with NCC 19.24.090. Vinyl fences are only permitted in an R-PUD for the purpose to mark property lines of individual dwelling units.
 - b. Fencing to mark the boundary of the development or amenities must meet the following standards:
 - (1) Opaque fences or walls must only be 4 feet tall. Any fencing above 4 feet must be at a minimum 80% transparent.
 - (2) Fencing and walls must be constructed out of concrete, bricks, rock, or metal bars. Chain link and vinyl fences are prohibited unless used to mark the property boundary of the dwelling unit. Wood may only be used in a rail or agricultural-type fencing. Other materials may be approved by the Planning Commission based on the longevity of the material and if the material will aesthetically enhance the property. Walls and fencing shall also comply with NCC 19.24.090 and other fencing setback requirements as contained within Nibley City Code.

A. 1. a.

2.

HISTORY

*Adopted by Ord. 18-10 on
5/23/2019 Amended by Ord. 19-16
on 10/10/2019*

21.10.020 Open Space Subdivision~~Rural Preservation Subdivision~~**Open Space Subdivision**

A. Purpose: The purpose of this section is to provide for subdivision development within Nibley City in a manner that:

1. Helps preserve the rural feeling of Nibley City as outlined in the General Plan;
2. Provides Open Space Land with a specific purpose that provides visual and physical access to the public.
3. Supports adopted City policies to conserve a variety of irreplaceable and environmentally sensitive resources and agricultural lands as set forth in the General Plan;
4. Protects constrained and sensitive lands, including, but not limited to, those areas containing sensitive features such as steep slopes, floodplains, and wetlands, by setting them aside from development;
5. Provides Open Space Land, including those areas containing unique or natural features such as meadows, grasslands, tree stands, streams, stream corridors, berms, waterway, farmland, wildlife corridors and/or habitat, historical buildings and/or sites, archeological sites, and green space, by setting them aside from development;
6. Reduces erosion and sedimentation by the retention of existing vegetation and the minimization of development on steep slopes and other constrained and sensitive lands;
7. Provides for a diversity of lot sizes to accommodate a variety of age and income groups and residential preferences, so that the community's population diversity may be enhanced;
8. Provides incentives for the creation of greenway systems and Open Space Land within the City for the benefit of present and future residents.
9. Creates neighborhoods with direct visual and/or physical access to Open Space Land;
10. Maintains and creates scenic views and elements of the City's rural and scenic character and minimizes perceived density by maintaining views of new development from existing roads.

B. Definitions: For the purpose of this section, the following words shall have the meanings set forth herein:

1. OPEN SPACE LAND: Any parcel or area of land dedicated under this section as indicated on a ~~Rural Preservation Subdivision~~ **Open Space Subdivision** Plat for the access and/or visual enjoyment of the public. Open Space Land must meet the standards and requirements of this section. Open Space Land may not be contained in the privately-owned parcel except as specifically allowed in this ordinance. Open Space Land must have 25% of its border adjacent to public access right-of-way, easement, or City park or contain a trail open to the public which traverses or runs adjacent to the Open Space Land. Open Space Land area shall not be included in setback areas calculations for principal or accessory uses.
2. CONSTRAINED AND SENSITIVE LAND: Land which is generally unbuildable without engineered ground modifications, or which contains features including, but not limit to Federal, State, or municipally designated wetlands, floodplains, slopes greater than 20%, faults, designated canals per Nibley Ordinance and other geologically or environmentally sensitive features that require mitigation, special insurance or permits from government authorities to allow development. This land may be used as Open Space Land if it

complies fully with conditions within this ordinance for qualification of Open Space.

3. **WATERWAY:** Surface water runoff and drainage, drainage ditches and irrigation waterways, whether surface or subsurface and natural waterways including creeks, streams, springs, rivers, ponds, and wetlands.
4. **TREE STAND:** A group or cluster of trees within a geographic location that are occurring naturally or artificially.
5. **MEADOWS:** Land vegetated with native species of grasses, trees, forbs, and flowers, either undisturbed or constructed, that can be sustained without supplemental irrigation. Actively used pasture and agricultural land are not considered Meadows under this definition.
6. **PASTURE:** A fenced enclosure or confined area used for the grazing of livestock or small animals which contains sufficient vegetation to serve as the principle food source for the livestock confined therein.
7. **NET DEVELOPABLE LAND:** Net Developable Land shall include the total area of the proposed development minus land that is required by Nibley City ordinance to be dedicated to the City including, but not limited to:
 8. Public access rights-of-way
 9. Land required to be dedicated along waterways
10. Preservation lands with infrastructure installed to City standards by the developer as part of the development process (parks, trails, etc.)
11. Constrained and Sensitive Land as defined herein
12. Easements, lands dedicated to the City for preservation space but without public rights of access, and other utility or general rights-of-way without access to the public shall be included as Net Developable Land.
13. Net Developable Land may be calculated for the purposes of concept review and preliminary plat approval based on either rule of thumb as outlined in the Lot Standards chart for the underlying zone of the proposed subdivision or based on actual measurements derived from the proposed plat. Calculation of Net Developable Land for final plat approval shall use actual measured Net Developable Land area. The proponent shall demonstrate compliance with this provision by calculation based on values demonstrably derived from the proposed final plat.

C. Applicability:

1. The election to develop the property as a ~~Rural Preservation Subdivision~~Open Space Subdivision is voluntary and provided to developers as an alternative to the standard subdivision process codified in NCC 19 and NCC 21. The intent of this section and the ~~rural preservation subdivision~~Open Space Subdivision options is to encourage the creation and development of flexible designed Open Space Land and variety in lot size and conformation. ~~Rural Preservation Subdivision~~Open Space Subdivisions may be developed within applicable residential zones of the City. ~~Rural Preservation Subdivision~~Open Space Subdivisions shall be developed in accordance with and subject to the development standards, conditions, procedures and regulations of this section and with all other applicable subdivision ordinances and zoning regulations of the City which are not otherwise in conflict with the provisions of this section.
2. In cases of conflict with other Nibley City ordinances, the terms of this section shall govern.
3. Development Options: In R-1, R-1A, and R-2 zones in Nibley City, developers may elect to develop a ~~Rural Preservation Subdivision~~Open Space Subdivision. R-2A zones may

also be developed under the terms of this ordinance; in such cases, the R-2A zoned property shall be treated as R-

2 for the purposes of calculating underlying base density, number of lots, bonus density, lot sizes, and all other provisions outlined in this ordinance. If the zone is not listed above, it does not qualify for a ~~Rural Preservation Subdivision~~Open Space Subdivision.

4. Developers desiring to develop the property as ~~Rural Preservation Subdivision~~Open Space Subdivision are subject to the development standards, conditions procedures and regulations of this section.

D. Application Process:

1. Applications for a ~~Rural Preservation Subdivision~~Open Space Subdivision shall be submitted and processed in accordance with the requirements and procedures set forth in the City Subdivision Ordinance, including submission and approval of schematic, preliminary and final plans or plats, and any additional procedural requirements set forth in this section, including, but not limited to, submission of a sensitive area designation plan and maintenance plan.
2. Pre-application Meeting: Applicants for a ~~Rural Preservation Subdivision~~Open Space Subdivision shall have a pre- application meeting with the Development Committee as established in NCC 21.06.030 to review the application and answer questions provided by the applicant. Prior to this meeting, the developer shall submit the draft plan of the proposed subdivision and shall include the following:
 - a. Zoning and parcel location
 - b. Total gross acres
 - c. Estimated right-of-way dedication
 - d. Estimated Constrained and Sensitive Land
 - e. Estimated Net Developable Land
 - f. Estimated Open Space Dedication and proposed uses.
 - g. Total number of lots based on density bonus
 - h. Estimated lot sizes and subdivision layout.
3. Sensitive Area Designation Plan Map: All applications for a ~~Rural Preservation Subdivision~~Open Space Subdivision shall include a sensitive area designation plan map prepared in accordance with the provisions set forth herein and submitted with the preliminary plat. The sensitive areas designation plan map shall identify all constrained and sensitive lands within the property boundaries as set forth in this section. The sensitive area designation plan map shall also clearly identify all-natural or cultural resources present on the property, including, but not limited to those defined in this ordinance (geographic features, meadows, tree stands, streams, stream corridors, floodwalls, berms, waterways, canals, irrigation ditches, farmland, pastures, wildlife corridors and/or habitat; historic buildings and/or sites; archeological sites; cultural features and green space). Applicants are solely responsible for the accuracy and designation of constrained and sensitive lands as defined in this ordinance, and natural and cultural resources as defined by the United States, State of Utah, Cache County, and Nibley City on the sensitive area designation plan map for their project and applicable adjacent property. The applicant shall include all sensitive areas within four hundred feet(400') of the developments property boundaries as noted in City, County, State, and Federal records.
4. Maintenance Plan for preserved Open Space Land: The developer must submit a Preliminary Maintenance Plan in accordance with subsection M,2 of this section and with

the preliminary plat. For final plat application, the developer must submit a Final Maintenance Plan in accordance with subsection M,3 of this section. The Final

Maintenance Plan shall be attached to the Development Agreement required by NCC 21 and recorded with the Final for the property.

E. Dimensional Standards:

1. The lot standards within a ~~Rural Preservation Subdivision~~ Open Space Subdivision shall be determined in accordance with the Lot Standards Chart.

Lot Standards Chart					
Zone	Open Space Ratio (OSR) ^{Note 1}	Incentive Multiplier	Average Residential Lot Size	Minimum Residential Lot Size	Frontage ^{Note 2}
R-1	$0.25 \leq \text{OSR} < 0.30$	1.25	$\geq 18,700 \text{ ft}^2$	$\geq 17,000 \text{ ft}^2$	$\geq 100 \text{ ft}$
	$0.30 \leq \text{OSR} < 0.35$	1.30	$\geq 16,700 \text{ ft}^2$	$\geq 15,000 \text{ ft}^2$	$\geq 100 \text{ ft}$
	$0.35 \leq \text{OSR} < 0.40$	1.35	$\geq 14,700 \text{ ft}^2$	$\geq 13,000 \text{ ft}^2$	$\geq 95 \text{ ft}$
	$0.40 \leq \text{OSR}$	1.40	$\geq 12,700 \text{ ft}^2$	$\geq 11,000 \text{ ft}^2$	$\geq 90 \text{ ft}$
R-1A	$0.25 \leq \text{OSR} < 0.30$	1.25	$\geq 14,000 \text{ ft}^2$	$\geq 12,000 \text{ ft}^2$	$\geq 100 \text{ ft}$
	$0.30 \leq \text{OSR} < 0.35$	1.30	$\geq 13,000 \text{ ft}^2$	$\geq 11,000 \text{ ft}^2$	$\geq 95 \text{ ft}$
	$0.35 \leq \text{OSR} < 0.40$	1.35	$\geq 12,000 \text{ ft}^2$	$\geq 10,000 \text{ ft}^2$	$\geq 90 \text{ ft}$
	$0.40 \leq \text{OSR}$	1.40	$\geq 11,000 \text{ ft}^2$	$\geq 9,000 \text{ ft}^2$	$\geq 85 \text{ ft}$
R-2 and R-2A	$0.25 \leq \text{OSR} < 0.30$	1.20	$\geq 13,200 \text{ ft}^2$	$\geq 11,500 \text{ ft}^2$	$\geq 95 \text{ ft}$
	$0.30 \leq \text{OSR} < 0.35$	1.25	$\geq 12,200 \text{ ft}^2$	$\geq 10,500 \text{ ft}^2$	$\geq 90 \text{ ft}$
	$0.35 \leq \text{OSR} < 0.40$	1.30	$\geq 10,200 \text{ ft}^2$	$\geq 9,000 \text{ ft}^2$	$\geq 85 \text{ ft}$
	$0.40 \leq \text{OSR}$	1.35	$\geq 9,200 \text{ ft}^2$	$\geq 7,800 \text{ ft}^2$	$\geq 80 \text{ ft}$
Notes:					
1. The OSR is the ratio of the area of the Open Space Land divided by the area of the Net Developable Land.					
2. Frontage is determined at the front setback line.					

2. Procedure for Calculating Allowed Number of Lots: The Allowed Number of Lots including the density bonus for a ~~Rural Preservation Subdivision~~ Open Space Subdivision shall be determined as follows using the appropriate Incentive Multiplier from the Lot Standards Chart. The developer shall follow the process outlined below to determine allowable properties of the proposed subdivision and use these properties in developing the preliminary and final plats. All calculations and measurements shall be clearly documented in order and following the process outlined below and submitted with the plat applications:

- a. The subdivision must be in one of the approved zones as listed within the ~~Rural Preservation Subdivision~~ Open Space Subdivision requirements, and all calculation will be based on the parcel's current zone at the time of application and the associated Lot Standards Chart with the exception of R-2A zones: R-2A zones shall be treated as R-2 zones for the purposes of this ordinance.
- b. Provide to the City the total area contained within the subdivision plat.
- c. Provide to the City the total area being dedicated to rights-of-way.
- d. Provide to the City the total acres of Constrained and Sensitive Land.
- e. Provide the City the total Net Developable Land area as defined within this section.
- f. State the area of proposed Open Space Land.
- g. Calculate Open Space Ratio.
- h. Calculate the Base Number of Lots per zone:

$$(1) \text{ Base Number of Lots R-1} = \text{Net Developable Land} / 1 \text{ acre}$$

(2) Base Number of Lots R-1A = Net Developable Land / .75 acres

(3) Base Number of Lots R-2 and R-2A = Net Developable Land / 0.5 acres

i. Determine Incentive Multiplier

(1) Determine Incentive Multiplier based on the Lot Standards Chart, the applicable zone, and the Open Space Ratio.

j. Calculate total allowed

(1) Total allowed lots = Base number of lots multiplied by the Incentive Multiplier

3. Phasing of lot sizes: Open Space Subdivision located in R-2 and R-2A zones and adjacent to an existing subdivision shall have the lots that border that subdivision shall be 80% of the sizes of the minimum of lots size for the underlying zone. Open Space Subdivisions in R-1 and R-1A zones shall have the lots that boarder other subdivision shall be a minimum of 14,000 sq. ft.

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F. Lot Area, Frontages, and Zoning Regulations:

1. The subdivision, along with each lot within the subdivision, shall meet and comply with the minimum lot sizes, average lot sizes, and frontages shown on the Lot Standards Chart. Except for these requirements, the Zoning Regulations (NCC 19) for the underlying zone shall apply to ~~Rural Preservation Subdivision~~Open Space Subdivisions, unless otherwise noted within this section.

G. Conservancy Lots:

1. Open Space Land and Constrained and Sensitive Land may be included within individual residential lots when such areas can be properly protected and preserved in accordance with the intent and purpose of this section. Such lots shall be known and referred to as "conservancy lots". These lots must contain a minimum of 0.5 acres of Open Space Land, except for areas approved by Nibley City as defined Landscape Buffers, and that Open Space Land must meet the design standards and use standards within this section.
2. Regulations: Open Space Land and Constrained and Sensitive land within a Conservancy Lot shall remain subject to all regulations and requirements for such land as set forth herein, including, but not limited to, use, design, maintenance, ownership and permanent protection. Open Space Land must be developed and maintained within the first year of the date of issuance of a Notice to Proceed under NCC 21.
3. The portion of each Conservancy Lot that is not Open Space Land must meet the minimum lot size on the applicable Lot Standards Chart and shall be the portion of the Conservancy Lot used to calculate the average and minimum lot size within the subdivision.

H. Use Regulation: Use of the land in a ~~Rural Preservation Subdivision~~Open Space Subdivision that is not Open Space Land is subject to any restrictions set forth in NCC 19, unless otherwise specified within this section, for the zone in which the land is located. Use of Open Space Land within a ~~Rural Preservation Subdivision~~Open Space Subdivisions is subject to the following:

1. Permitted Uses on Open Space Land: The following uses are permitted in Open Space Land areas:

a. Street rights-of-way may traverse Open Space Land if permitted under City

ordinances; provided, areas encumbered by such facilities and/or rights-of-way shall not be counted as Open Space Land when computing the Open Space Ratio in the Lot Standards Chart.

- b. Utility rights-of-way or easements, including above ground and underground utilities may traverse Open Space Land if permitted by City ordinance; areas encumbered by such facilities and/or rights-of-way may be counted as Open

Space Land when computing the Open Space Ratio in the Lot Standards Chart so long as the rights-of-way and easements otherwise meet the requirements of this ordinance for Open Space Land.

- c. Agricultural and horticultural uses, including raising crops wholesale nurseries and associated buildings that are specifically needed to support active, viable horticultural operations. Wholesale nurseries must obtain an operating permit and business license from the City and must comply with all fencing and maintenance requirements of this ordinance.
- d. Conservation of open land in its natural state; e.g., meadows, tree stands, wetlands, forestland.
- e. Waterways along with dedicated public access rights-of-way or easements along one or both sides.
- f. Underground utility easements for drainage, access, sewer or water lines, electric lines or other public purposes.
- g. Active noncommercial recreation areas, such as trails, playing fields, playgrounds, courts, and multipurpose trails. These parcels shall be maintained by the City or an owners' association and shall be open to the public if maintained by the City, or residents within the ~~Rural Preservation Subdivision~~Open Space Subdivision if maintained by a functional owners association.
- h. Agricultural uses excluding livestock operations involving swine, poultry, and mink. Open Space Land of less than one-half (0.5) acre may be used as landscaped buffers for roadways, landscaped entrances to subdivisions, neighborhood "pocket parks" or similar amenities that meet standards and uses listed herein.
- i. Fencing that is rural in character. All fencing must be transparent, such as rail fences, post fences, or wire fences and architecturally appropriate to the use as determined by the City Planner. Chain link fences are not permitted on Open Space Land. All applicants must receive a fence permit from the City before construction of any proposed fence.
- j. Golf courses, not including commercial miniature golf. A development plan must be turned in as part of the approval process that outlines ownership, development, and building plans.
- k. Neighborhood Open Space Land uses such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses. Neighborhood Open Space Land must be owned and maintained by an owners' association or the City.
- l. Pasture for sheep, goats, cows, horses or other animals approved by Nibley City code. Pasture and animal density must conform with Nibley City Animal Land Use Regulations and be enclosed with appropriate fencing.
- m. Silviculture, in keeping with established standards for selective harvesting and sustained yield forestry.
- n. Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the Open Space Land. These facilities must be built to Nibley City Design Standards and Specifications, must contain a tree for every 300 square feet and planted around the perimeter, an irrigation system must be installed, and be planted with grass or natural vegetation

2. Prohibited Uses on Open Space Land: The following uses shall be considered prohibited in Open Space Land areas:

- a. Motor vehicles are prohibited except as necessary to maintain and operate the property and/or utility facilities within the property. Recreational motorized off-road vehicle usage including but not limited to motorcycles, dirt bikes, go-carts, OHVs, dune buggies, side-by-sides and their derivatives, and snowmobiles are prohibited.
- b. Firearm ranges, and other uses similar in character and potential impact are prohibited.
- c. Advertising of any kind and any billboards or signs; provided, directory and information signs may be displayed describing the easement and prohibited or authorized the use of the same.
- d. Any cutting of trees or vegetation, except as reasonably necessary for fire protection, thinning, elimination of diseased growth, control of non-native plant species, maintenance of landscaped areas, and similar protective measures or those activities relating to permitted agricultural uses or other uses allowed within this section.
- e. Any development, construction or location of any manmade modification or improvements such as buildings, structures, roads, parking lots, or other improvements, except as may be necessary to support a permitted use.
- f. Any dumping or storing of ashes, trash, garbage, vehicles, trailers, recreational vehicles or other equipment except for equipment needed to maintain the land.
- g. Any filling, dredging, excavating, mining, drilling, or exploration for and extraction of oil, gas, minerals or other resources from the property.
- h. Any residential, commercial or industrial activity except as specifically permitted in this ordinance.
- i. Burning of any materials, except as necessary for agricultural, drainage and fire protection purposes.
- j. Changing the topography of the property by placing on it any soil, dredging spoils, landfill, or other materials, except as necessary to conduct specifically permitted purposes.
- k. Hunting or trapping for any purpose other than predatory or problem animal control.
- l. The change, disturbance, alteration, or impairment of significant natural ecological features and values of the property or destruction of other significant conservation interests on the property.
- m. The division, subdivision or de facto subdivision of the property.
- n. The use of motor vehicles, including snowmobiles, all-terrain vehicles, motorcycles and other recreational vehicles.
- o. All other uses and practices inconsistent with and detrimental to the stated objectives and purpose of this section.

3. Constrained and Sensitive Lands: Except for passive recreational activities, no development or residential uses shall be permitted within Constrained and Sensitive Lands

4. Open Space Land Coordination: Open Space Land shall be consolidated and located on the border of proposed subdivision and be located adjacent to undeveloped land where possible. The City may make exceptions for internal trails, constrained and sensitive lands. Open Space Land shall be coordinated and located to maximize the continued use of the space. To create larger areas of Open Space Land and to combine Open Space Land from a variety of developments, Open Space Land shall be coordinated either with existing adjacent Open Space Land or with planned future Open Space Land. If no adjacent parcels of land are planned for development, Open Space Land shall be planned to provide the greatest likelihood of adjoining future developments' Open Space Land.

Commented [LR2]: Need to clarify and provide trails.
Need to articulate where we need parks.

5. Open Space Lands: Standards pertaining to the quantity, quality, configuration, use, permanent protection, ownership, and maintenance of the Open Space Land within a rural preservation Subdivision Open Space Subdivision shall be complied with as provided herein.

I. Open Space Land Design Standards: Open Space Land shall be located and designed within the Rural Preservation Subdivision Open Space Subdivision to add to the visual amenities of neighborhoods and the surrounding area by maximizing the visibility of Open Space Land. Designated Open Space Land within a Rural Preservation Subdivision Open Space Subdivision shall also comply as defined in this section, permitted uses as listed in this section, and meet three (3) or more of the following standards:

1. Significant Areas and Natural Landscape: Open Space Land shall include the most unique and sensitive resources and locally significant features of the property within the subdivision. Specifically, meadows, waterways and wetlands as defined in this Ordinance, and tree stands and contain a minimum of 0.5 acres. Other uses include berms, wildlife corridors and/or habitat and must extend a minimum of 15' on each side of the feature. This Open Space Land may also contain historic buildings and/or sites, archeological sites, and cultural features. The maintenance plan shall outline how the property will be preserved and maintained. The maintenance plan must specify what type of feature(s) that is being preserved and how the property will be maintained.
2. Contiguous Land: Open Space Land within a Rural Conservation Subdivision shall be contiguous within the subdivision, or to other Open Space Land in adjacent subdivisions or developments to provide for large and integrated Open Space Land areas within the City.
3. Agricultural Land: Privately held Open Space Land that is used for agricultural purposes as defined in this Ordinance and is 0.5 acre or greater in size.
4. Buffering: Open Space Land shall be designed to provide buffers and to protect scenic views as seen from existing public rights-of-way and from public parks or trails. Buffering area along public rights-of-way or street must be at least thirty (30') feet wide. Buffering must be landscaped, at the sole cost of the developer and shall provide for every hundred (100) linear feet of buffer, six (6) trees and fifteen (15) shrubs. Tree and shrub species must be approved by the City's arborist or the City's Park Director. Trees and shrubs shall be planted within thirty (30) feet of the right-of-way or public park. Irrigation shall be provided by the developer and shall be designed and installed to Nibley City Standards for City parks current at the time of approval of Final Plat. Open Space buffer areas shall be under single ownership.
5. Pedestrian Access: Developer shall provide pedestrian access to Open Space Land which is open to public or owners' association member use. Access methods can be a trail, park, recreation space, or neighborhood gathering space.
6. Recreation Space: Open Space Land maybe designated as recreation space or park space, including maintained grass, trails, picnic areas, playgrounds, sports fields or other

recreation and park amenities. These recreation spaces are conditional upon the City Council's approval, and amenities must be approved by the City Council before final approval of the maintenance plan can be given. Publicly and owners' association owned open spaces shall be fully developed and operational in conjunction with each phase of

the subdivision as a percentage of the total developed value of the subdivision (for example, if 25% of the dollar value of the development is being constructed, then a minimum of 25% of the dollar value of the built-out Recreation Space must be developed). The determination of value, construction sequencing, and acceptance criteria shall be specified in the development agreement; until improvements are accepted by the City for the attendant phase, no permits shall be issued for subsequent phases.

7. Stormwater Basin: These facilities must be built to Nibley City Design Standards and Specifications, must contain a tree for every 300 square feet and planted and clustered around the perimeter basin area; an irrigation system must be installed, and be planted with grass, natural vegetation and shrubs. The stormwater basin can be a local or regional basin and must be owned and maintained by Nibley City.

J. Permanent Protections of Open Space Land:

1. Conservation Easement: All Open Space Land shall be permanently restricted from future development by a conservation easement or other method of protection and preservation acceptable to the City. Under no circumstances shall any development be permitted in the Open Space Land at any time, except for those permitted or conditional uses listed herein and approved in conjunction with the ~~rural preservation subdivision~~Open Space Subdivision. All conservation easements, or another acceptable method of protection and preservation of the Open Space Land within a ~~Rural Preservation Subdivision~~Open Space Subdivision, shall be approved by the City Council and recorded prior to or concurrent with the recording of the final plat for the ~~Rural preservation subdivision~~Open Space Subdivision.
2. Terms and Conditions: All conservation easements, or another acceptable method of protection and preservation of the Open Space Land within a ~~Rural Preservation Subdivision~~Open Space Subdivision, shall be in substantially the same form as the standard conservation easement form provided by the City and shall include, at a minimum, the following terms and/or conditions:
 - a. Legal description of the easement;
 - b. Description of the current use and condition of the property;
 - c. Permanent duration of easement;
 - d. Permitted and conditional uses;
 - e. Prohibited development and/or uses;
 - f. Maintenance responsibilities and duties; and
 - g. Enforcement rights and procedures.
3. Marking of Open Space Land: Open space land shall be marked at each corner and property line intersection with a minimum 4" diameter x 3' deep concrete monument provided with an aluminum or brass cap cast or epoxied into the monument. Caps shall be stamped "Nibley Conservation Marker, Do Not Remove", and an arrow stamped into the cap perpendicular to the Open Space boundary line and pointing into the Open Space. Monuments shall be placed such that the top 6" of the monument is above finished grade at the monument location.
4. Grantee: Unless otherwise approved by the City Council, the grantee of a conservation easement shall consist of one of the following acceptable entities which entity shall be qualified to maintain and enforce such conservation easement: land trust, conservation organization, or governmental entity. The City may, but shall not be required to, accept, as grantee, a conservation easement encumbering Open Space Lands within a ~~Rural~~

~~Preservation Subdivision~~ Open Space Subdivision, provided there is no cost of acquisition to the City for the

easement and sufficient access to and maintenance responsibilities regarding the Open Space Land are provided.

K. Ownership of Open Space Land:

1. Undivided Ownership: Unless otherwise approved by the City Council and subject to the provisions set forth in this section, the underlying fee Ownership of the Open Space Land shall remain in single Ownership and may be owned and maintained by one of the following entities: homeowners' association, land trust, conservation organization, governmental entity, or private individual.
2. Property Not Subject to Subdivision: Property subject to a conservation easement, or another acceptable method of protection and preservation, shall not be subdivided.
3. Nibley City may at its sole discretion opt to take ownership of Open Space Land at the subdivision approval stage. The developer shall landscape the property with sod, grass, trees and an irrigation system or other natural landscape features as appropriate as determined by the City Council.
4. Owners' Association: Open Space Land may be held in common ownership by a Home Owners' or other acceptable Owners' Association, subject to all the provisions for Owners' Associations set forth in state law, the City Code, and the following:
 - a. A description of the organization of the proposed Association, including its bylaws, and all documents governing ownership, maintenance, and use restrictions for Open Space Land, including restrictive covenants for the subdivision, shall be submitted by the developer with the final plat application.
 - b. The proposed association shall be established, funded and operating (with financial subsidization from the Developer, if required in by the City in the development agreement) prior to or concurrent with the recording of the final plat for the subdivision;
 - c. Membership in the association shall be mandatory for all purchasers of property within the subdivision and their successors in title.
 - d. The association shall be the responsible party for maintenance and insurance of its Open Space Land under the Final Maintenance Plan for the subdivision;
 - e. The bylaws of the association and restrictive covenants for the subdivision shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in dues. Such dues shall be paid with the accrued interest before the lien may be lifted; and
 - f. Written notice of any proposed transfer of Open Space Land by the Association or the assumption of maintenance for the Open Space Land must be given to all members of the Association and to the City no less than thirty (30) days prior to such event.
 - g. The owners' association shall be required to provide a bond or line of credit to the City for the cost of one year of maintenance of property owned by the Association, to be maintained by the Association for as long as the Association owns the Open Space.
 - h. In the event of a failure of the owners' association to maintain the properties in accordance with the requirements of the development agreement, the City shall revoke the owners' association's bond, determine an appropriate assessment for the operation and maintenance of the open space, and assess all properties of the Subdivision on a monthly basis for said maintenance.

5. Private Ownership: A conservation parcel may be owned by a private individual or entity. Such parcels shall have a defined purpose and restrictions recorded in the maintenance plan and comply with this section.

L. Maintenance of Open Space Lands:

1. Costs: Unless otherwise agreed to by the City, the cost and responsibility of maintaining Open Space Land shall be borne by the owner of the underlying fee of the Open Space Land.
2. Preliminary Maintenance Plan: A Preliminary Maintenance Plan shall be turned in with the preliminary plat for proposed maintenance of Open Space Land within the subdivision. This plan shall outline the following:
 - a. The proposed Ownership of the Open Space Land;
 - b. The party that will be responsible for maintenance of the Open Space Land;
 - c. The proposed use of the Open Space Land and how each parcel of Open Space Land meets the standards listed within this section;
 - d. The size of each Open Space Land parcel; and
 - e. The proposed concept plan for landscaping of the Open Space Land.
3. Final Maintenance Plan: The developer shall submit a plan outlining maintenance and operations of the Open Space Land and providing for and addressing the means for the permanent maintenance of the Open Space Land within the proposed ~~Rural Preservation Subdivision~~Open Space Subdivision application for the subdivision. The developer shall provide a final maintenance plan with the final plat and the plan shall contain the following:
 - a. Ownership agreements for Open Space Land;
 - b. A description of the use of the Open Space Land and how that use complies with this section;
 - c. The establishment of necessary regular and periodic operation and maintenance responsibilities for the various kinds of Open Space Land (e.g., lawns, playing fields, meadow, pasture, wetlands, stream corridors, hillsides, cropland, woodlands, etc.);
 - d. The estimated staffing needs, insurance requirements, and associated costs, and define the means for funding the maintenance of the Open Space Land, and the operation of any common facilities located thereon, on an ongoing basis, including means for funding long-term capital improvements as well as regular yearly operating and maintenance costs; and
 - e. The landscaping plans for parcels that will be owned by an owners association or by the City.
 - f. Approval: The Final Maintenance Plan must be approved by the City Council prior to or concurrent with final plat approval for the subdivision. The Final Maintenance Plan shall be recorded against the property within the subdivision and shall include provisions for the City's corrective action rights as set forth herein. Any changes or amendments to the Final Maintenance Plan must be approved by the City Council.
4. The developer shall offer an approved letter of credit, bond or escrow for all proposed

improvements and must complete all proposed open space improvements within the first

three years of approval. If a designated open space parcel is planned to be maintained by a single property owner, the developer shall maintain that property until title is transferred to a new property owner.

5. Failure to Maintain: For all open space designated under the terms of this Ordinance, including privately held Open Space Lands, the responsible party for the maintenance of the Open Space Land in accordance with the terms of this ordinance, the approved maintenance agreement, any conditional use permits, business licenses or any other agreements between the City and the responsible party, or the operation of any common facilities located thereon fails to maintain all or any portion of the Open Space Land or common facilities in accordance with the aforementioned agreements and ordinances, the City may assume responsibility for the maintenance and operation of the Open Space Land. If the City assumes responsibility under this paragraph, any remaining development escrow or bond funds may be forfeited, liens for maintenance costs shall be assessed as described herein, and any permits, licenses or operating agreements may be revoked or suspended by the City in the City's sole discretion. The owner shall not impede the City in their efforts to maintain the open space.
6. Corrective Action: The City may enter the premises and take corrective action, including extended maintenance. The costs of such corrective action may be charged to the property Owner and may include administrative costs and penalties. Such costs shall become a lien on said properties. Notice of such lien shall be filed by the City in the county recorder's office. The maintenance plan and all other documents creating or establishing any Association or conservation organization for the property shall reference the City's corrective action authority set forth herein and shall be recorded against the property.
7. Implementation and Maintenance: The developer of the subdivision shall fund implementation and maintenance of the conservation easement until such time as the control of the easement is transferred to the long-term manager. The developer shall address implementation, development, maintenance and transfer procedures in the sensitive area designation plan map or master development plan, as applicable.
8. Maintenance Access: The developer of the subdivision shall provide sufficient maintenance access from a dedicated right-of-way to all Open Space Land and constrained and sensitive lands within the ~~Rural preservation subdivision~~ Open Space Subdivision.

HISTORY

Adopted by Ord. [18-05](#) on 7/19/2018