



**Nibley City**  
**Planning Commission Meeting**  
Thursday, September 15, 2022  
**Nibley City Hall**  
**455 W. 3200 S.**  
Nibley, UT

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

*In accordance with Utah Code Annotated 52-4-207 and Nibley City Resolution 12-04, this meeting may be conducted electronically. The anchor location for the meeting will be Nibley City Hall, 455 West 3200 South, Nibley, Utah. The public may participate in the meeting either in person or via the Zoom meeting link provided at [www.nibleycity.com](http://www.nibleycity.com).*

1. **Public Hearing:** Resolution 22-23: Amendments to the Nibley City Moderate Income Housing Plan, an Appendix to the Nibley City General Plan
2. **Discussion and Consideration:** Recommendation for Resolution 22-23: Amendments to the Nibley City Moderate Income Housing Plan, an Appendix to the Nibley City General Plan
3. **Discussion and Consideration:** Recommendation for Firefly Estates Phase 2A and 2B Final Plat, located near 1100 West 2200 South (Applicant: Heritage Land Development, LLC)
4. **Workshop:** Transfer of Development Rights Ordinance
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  
September 15, 2022**

## **Agenda Item #1 & #2: Moderate Income Housing Plan**

### **Description**

**Public Hearing:** Resolution 22-23: Amendments to the Nibley City Moderate Income Housing Plan, an Appendix to the Nibley City General Plan

**Discussion and Consideration:** Recommendation for Resolution 22-23: Amendments to the Nibley City Moderate Income Housing Plan, an Appendix to the Nibley City General Plan

### **Department**

City Planning

### **Action Type**

Legislative

### **Recommendation**

Recommend approval of Resolution 22-23: Amendments to the Nibley City Moderate Income Housing Plan, an Appendix to the Nibley City General Plan

### **Reviewed By**

City Planner

## **Background**

SB 462, passed in the 2022 Legislative Session requires cities over 5,000 in population to adopt an implementation plan as part of the moderate-income housing plan and modifies the list of strategies that a City are required to select, for implementation as part of the Plan.

The current moderate-income housing plan, adopted in 2019, lists the following strategies:

1. Allow for and reduce regulation related to accessory dwelling units in residential zones.
2. Allow for higher density of moderate income residential developments in commercial and mixed-use zones, town center, neighborhood commercial, and other employment areas.
3. Rezone for densities necessary to assure the production of moderate income housing.
4. Partner with organizations that offer grants or additional assistance in Housing affordability.

The City has made progress implementing several of these strategies, which are reported on annually to the State.

Based upon feedback from the Planning Commission, the following strategies are recommended in the updated moderate income housing plan:

1. Reduce regulations related to internal or detached accessory dwelling units in residential zones
2. Eliminate impact fees for any detached accessory dwelling unit
3. Zone or rezone for higher density or moderate income residential development in commercial or mixed-use zones near commercial centers, or employment centers
4. Rezone for densities necessary to facilitate the production of moderate income housing
5. Implement zoning incentives for moderate income units in new developments
6. Demonstrate utilization of a moderate income housing set aside from a community reinvestment agency to create or subsidize moderate income housing
7. Partner with Bear River Association of Governments (BRAG) and Neighborhood Non-profit Housing Corporation for programs or services that promote the construction or preservation of moderate income housing

Each of these strategies are included in the State's updated list of required strategies. In addition to updated strategies, UCA 10-9a-403(2)c provides:

(c)

(i) *In drafting the implementation plan portion of the moderate income housing element as described in Subsection (2)(a)(iii)(C), the planning commission shall establish a timeline for implementing each of the moderate income housing strategies selected by the municipality for implementation.*

(ii) *The timeline described in Subsection (2)(c)(i) shall:*

- (A) *identify specific measures and benchmarks for implementing each moderate income housing strategy selected by the municipality, whether one-time or ongoing; and*  
(B) *provide flexibility for the municipality to make adjustments as needed.*

The updated draft includes an implementation plan with a timeline for each strategy. Most of the strategies are recommended to be implemented within the next 3 years, with several needing ongoing implementation. Specific benchmarks and measures include actions that the City needs to take for each strategy with a recommended timeline for implementation.

In addition to the State-mandated changes to the Plan, Staff has updated the majority of the data and facts represented in the Plan. Specifically, changes to demographics based upon more recent Census Data are provided. In general, the growth that the City has experienced continues to occur with the need for providing housing which is affordable to the growing population a continued concern.

## Agenda Item #3: Firefly Estates Phase 2A & 2B

### Description

**Discussion and Consideration:** Recommendation for Firefly Estates Phase 2A and 2B Final Plat, located near 1100 West 2200 South (Applicant: Heritage Land Development, LLC)

### Department

City Planning

### Action Type

Administrative

### Recommendation

Recommend Approval of Firefly Estates Phase 2A and 2B Final Plat with the following conditions:

### Reviewed By

City Planner, City Engineer, City Manager, Public Works



## Background

Heritage Land Development, LLC has submitted an application and supporting materials for Firefly Estates Phase 2A and 2B Final Plat. Firefly Estates received preliminary plat approval in conjunction with the approval of the R-PUD overlay zone on February 27, 2020. The applicant has proposed to split the approved Phase 2, noted on the preliminary plat into 2 sub-phases, Phase 2A, built on 3.44 acres includes 32 townhomes, 0.7 acres of common open space and the dedication of the remaining section of Meadow Lane. Phase 2B includes 15 single-family homes with 9,074 sq. ft. of common area, which will include a connecting 5' wide walkway.

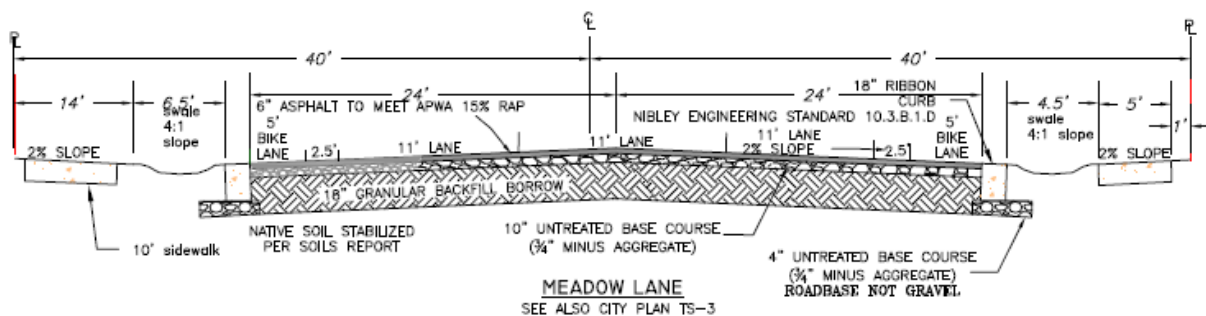
The Final Plat for these phases does not deviate from the Preliminary Plat with the exception of the plat phasing. The applicant has submitted separate plats the townhomes and single-family homes within Phase 2. Staff does not consider this to be a significant deviation.

### Zoning and Space Requirements

Staff finds that each plat meets the zoning requirements for the total number of lots, lot sizes, unit type ratio and the proportion of proposed open space as shown on the approved preliminary plat. Each of the townhome buildings meet the setback requirements of NCC 19.32.060(C).

### Streets

The Developer shows the proper dedication for the roadways with an appropriate level of connectivity. The proposed cross section design of each roadway is in accordance with the Transportation Master Plan and Nibley City Design Standards and consistent with the approved preliminary plat. Phase 2A includes the dedication of the remaining section of Meadow Lane, which will connect 1000 West in Logan to 1200 West in Nibley. This roadway includes the appropriate width (80') and a TS-3 road section, consistent with the transportation master plan.



Phase 2A also includes the dedication and improvement of half of 2200 South with curb, gutter, sidewalk, park strip and widened street to TS-7 standard.

Phase 2B connects 1000 West to 2260 South, as shown in the preliminary plat and Master Plan. The design of this street is a continuation of 2260 South from phase 1 and includes 22' of

asphalt, with wide (9.5' and 14.5') park strips and a 8' wide path to accommodate an alignment identified in the Trail Master Plan, as approved during preliminary plat.

### **Utility Lines and Easements**

The applicant has provided the proper public utility easements and utility connections on the plat according to the review of the City Engineer and Public Works Director. The City Engineer has reviewed the design of the each utility system in detail to verify that each system meets City Standards.

### **Construction Drawings**

Staff has reviewed the construction drawings and the City Engineer has determined that the drawings are sufficiently compliant with Nibley City Code and Design Standards to recommend approval of the plat. The applicant has submitted an updated set of drawings to address the comments but they still need to be verified by the City Engineer. It is recommended that the final plat is approved conditional upon the final approval of construction drawings, resolving all engineer's comments.

### **Architectural Design**

NCC 19.32.080(A) provides architectural design standards for townhomes with an R-PUD. The applicant submitted renderings in conjunction with the R-PUD approval and a description of building materials which meet the standards of this section.

### **Landscaping, Open Space Amenities and Maintenance**

The developer has submitted a Street Tree and Landscaping Plan for Phase 4 and A-D which complies with NCC 19.32.080 (B)(2)&(6), NCC 21.12.170. Street trees are proposed to be spaced every 50 feet. Landscaped areas include the proper amount trees and shrubs to meet site design requirements.

This phase of development does not include any open space amenities. A playground and swing set was approved with Phase 1. Phase 3 will include a playground, pavilion and restrooms in the 1.9 acre City Park space.

A Maintenance description is found within the Firefly Estates Homeowners Association governing documents, which is the same document approved in conjunction with Phase 1 final plat. The Common Area located within Ridgeline Park will be owned and maintained by the project Homeowners Association.

## Agenda Item #4: Transfer of Development Rights Ordinance

### Description

**Workshop:** Transfer of Development Rights Ordinance

### Department

City Planning

### Action Type

Legislative

### Recommendation

Discuss proposed Transfer of Development Rights Ordinance and associated map

### Reviewed By

City Planner

## Background

People + Place, LLC has been working with the City to Study and develop a Transfer of Development Rights Ordinance. The Transfer of Development Rights (TDR) Ordinance will provide a mechanism to preserve open space in appropriate areas and focus new population growth in areas with supportive infrastructure. The Study has been completed to inform the development of this ordinance, including case study research, community and stakeholder engagement and a market/tipping point analysis. Two joint workshops with Planning Commission and City Council were held previously to inform each respective body of the ordinance process and receive feedback to inform the ordinance. The consultant is working with City Staff to craft an ordinance with appropriate transfer ratios and designate sending and receiving zones for the TDR ordinance. A Draft Ordinance is now ready to review.

The draft ordinance provides a framework for transferring development rights from ‘sending areas’ to ‘receiving areas.’ These areas will be defined on the zoning map as overlay areas. Specifically, the ordinance includes the following sections:

- Definitions- many elements of a TDR program are unique and require specific definitions that would apply to the program
- TDR Sending Overlay Standards
  - Purposes of the Overlay, which includes preserving important open space and providing a mechanism to do so.
  - Defining permitted uses within sending areas, which focus on preservation of agriculture and open land areas.
  - Standards for identification and size of sending areas
  - Application guidelines, including required information to accompany an application.
  - A standard process for officially ‘severing’ development rights
- TDR Receiving Overlay Standards
  - Limits on density depending upon the underlying zone or situation within an eligible R-PUD area. For standard residential zones, the overall density may be increased by up to 50% with TDR. For R-PUD areas, they may be increased from 5 units/acre to 15 units/acre. This would also require a change to the R-PUD ordinance, which currently allows up to 10 units/acre.
  - Procedure for calculating allowed number of housing units
  - Application guidelines, including required information to accompany an application.
  - Guidelines regarding how zoning standards may be modified based upon the number of TDR credits applied to the development. In general, if TDR is applied to a project, minimum standards become more flexible to make development feasible within the density maximum guidelines noted above. These relaxed standards also become an incentive for
- Standard forms for Deed of Severance/Conservation Easement, TDR Certificate, Deed of Transfer

In addition to the Draft TDR Ordinance, a Draft TDR overlay zones map is provided. During the September 1 Planning Commission meeting, the content of the ordinance was reviewed. The primary purpose of this workshop is to review the map and provide feedback regarding draft sending and receiving zones.



# Nibley City Moderate Income Housing Plan

2019-2022

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Adopted by Nibley City Council on October 10, 2019

## INTRODUCTION AND OVERVIEW

Nibley City is located in southern Cache County, close to major employment areas in Logan City, and is adjacent to Highway 89/91, which serves as the primary transportation corridor to the Wasatch Front. Nibley City is also home to a young and growing population, with a median age of 23.626.5, and with 3744.3% of its population 19 years old or younger (Census Bureau, ACS 5-year estimates- 2020+8). Nibley City is a bedroom community with almost all of Nibley City residents traveling outside the City for employment, and most land uses in the City contain residential homes or agricultural use. Only a few areas within the City include industrial or commercial business and activities.

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The City's demographics provide opportunities and some challenges for economic growth, smart housing growth, and maintaining Nibley's agricultural heritage. This plan will highlight Nibley's growing population, discuss Nibley's current housing stock, and ~~talk about plan for~~ future growth, ~~including and~~ ways to allow for the building of moderate income housing. The primary sources of data were gathered from United States Census Bureau, the Utah Department of Workforce Services, and Cache County and Nibley City GIS and land use data.

In the Spring of 2019, the Utah State Legislature passed S.B. 34 Affordable Housing Modifications. This bill requires most cities in Utah to adopt a Moderate Income Housing Plan as Part of the General Plan by December 1, 2019 and includes specific guidance regarding strategies that cities must select from for implementation- These required strategies were further refined in 2022, as part of H.B. 462. This Bill also requires that cities adopt an implementation plan as part of the moderate income housing plan. The implementation plan is included at the conclusion of this document. ~~The primary sources of data were gathered from United States Census Bureau, the Utah Department of Workforce Services, and Cache County and Nibley City GIS and land use data.~~

Commented [LR1]: Need to add new legislation, as well.

This plan's conclusion includes ~~four seven recommended goals~~ strategies, including an implementation plan for each of the following as follows:

- ~~1. Allow for and reduce regulation related to accessory dwelling units in residential zones.~~ Reduce regulations related to internal or detached accessory dwelling units in residential zones
- ~~2. Eliminate impact fees for any detached accessory dwelling unit~~
- ~~3. Allow for higher density of moderate income residential developments in commercial and mixed use zones, town center, neighborhood commercial, and other employment areas.~~ Zone or rezone for higher density or moderate income residential development in commercial or mixed-use zones near commercial centers, or employment centers
4. Rezone for densities necessary to ~~assure~~ facilitate the production of moderate income housing-
5. Implement zoning incentives for moderate income units in new developments
- ~~6. Demonstrate utilization of a moderate income housing set aside from a community reinvestment agency to create or subsidize moderate income housing~~
- ~~7. Partner with Bear River Association of Governments (BRAG) and Neighborhood Non-profit Housing Corporation for programs or services that promote the construction or preservation of moderate income housing organizations that offer grants or additional assistance in Housing affordability.~~

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## POPULATION AND FUTURE GROWTH

Nibley City's population, as of ~~July 1, 2018~~ the 2020 Census, was estimated at ~~7,087~~ 7,328 people, which is a ~~340~~ % increase from the 2010 population of 5,466 (Census Bureau, 2020~~18~~). Nibley City's 2016 General Plan predicts that Nibley City will grow by 300% by 2060. Nibley City's population is expected to triple in the 40 years. Assuming that the City continues to grow at the same growth rate, the City's population is expected to triple in the next 40 years.

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| Census | Projections                        |                                       |                                      |                                      |                                      | Absolute Change<br>2020 <del>10</del> -2060 | Percent Change<br>2020 <del>15</del> -2060 <del>65</del> |
|--------|------------------------------------|---------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|---------------------------------------------|----------------------------------------------------------|
| 2010   | 2020                               | 2030                                  | 2040                                 | 2050                                 | 2060                                 |                                             |                                                          |
| 5,438  | 8,796 <sup>7.32</sup> <sub>8</sub> | 14,136 <sup>13</sup> <sub>9.875</sub> | 15,725 <sup>13.30</sup> <sub>7</sub> | 18,597 <sup>17.93</sup> <sub>1</sub> | 21,905 <sup>24.16</sup> <sub>4</sub> | 16,467 <sup>16.83</sup> <sub>6</sub>        | 330 <sup>303</sup> <sub>%</sub>                          |

(Governor's Office of Planning & Budget, 2012 Baseline Projections)

Nibley City will continue to attract residents and businesses because of its proximity to Logan and the Highway 89/91 transportation corridor. In addition, the city has a large area proposed for future annexation in its annexation plan, around 4,000 acres, which will allow for future land development. According to Cache County Assessor's Data, Nibley City currently contains more than ~~900-150~~ acres of undeveloped property within Nibley City boundaries, most of which is in agricultural use. Growth will likely take place next to existing developments first, and then will

continue to fill the undeveloped parcels within Nibley City and Nibley City's future annexation area.

Cache County and the cities surrounding Nibley are also anticipating substantial growth over the same time period. Cache County's population is expected to ~~grow by 69% in the~~double in the next ~~40~~5 years.

| Coun<br>ty | <del>2020</del> <u>2015</u>       | <del>2025-2030</del>              | <del>2035-2040</del>              | <del>2045-2050</del>              | <del>2055-2060</del>              | Absolute<br>Change<br><del>2015-</del><br><del>2065</del> <u>20-20-</u><br><u>2060</u> | Percent<br>Change<br><del>2015-</del><br><del>2065</del> <u>20-</u><br><u>2060</u> |
|------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|----------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| Cach<br>e  | <del>121,855</del> <u>133,743</u> | <del>163,344</del> <u>146,338</u> | <del>185,948</del> <u>171,969</u> | <del>207,094</del> <u>195,325</u> | <del>226,084</del> <u>212,908</u> | <del>112,890</del> <u>92,341</u>                                                       | <del>93</del> <u>69</u> %                                                          |

(Kem C. Gardner Policy Institute, The University of Utah, ~~July 2017~~January 2022)

Every County in Utah is anticipated to experience some level of growth over the next 40 years. The four primary components of this population growth are:

- *Utah's total fertility rate (average number of children born to a Utah woman in her lifetime) is projected to continue the existing trend of a slow decline. From 2015-2065, rates are projected to decline from 2.32 to 2.29. These rates are projected to remain higher than national rates that move from 1.87 to 1.86 over a similar period.*
- *In 2065, life expectancy in Utah is projected to be 86.3 for women and 85.2 for men. This is an increase of approximately 4 years for women and 6 years for men. The sharper increase for men narrows the life expectancy gap traditionally seen between the sexes.*
- *Natural increase (births minus deaths) is projected to remain positive and account for two-thirds of the cumulative population increase to 2065. However, given increased life expectancy and declining fertility, the rate and amount of natural increase are projected to slowly decline over time.*
- *Net migration accounts for one-third of the cumulative population increase to 2065. Projections show the contributions of natural increase and net migration converging over time.*

(Kem C. Gardner Policy Institute, The University of Utah, July 2017)

These anticipated factors are apparent in Cache County and will have a direct impact on projected population growth in Nibley City.

## CURRENT LAND USE AND HOUSING

With the increase in population, it is essential to evaluate Nibley City's existing housing supply.



The table below shows Nibley City's 2022+7 Housing numbers for different types of housing units. The following information and table shows the acres and percentage of Land Use within Nibley City for Agriculture and Vacant Land, Residential Land, and Commercial:

- Residential land use had the most properties and acres of land ○ 83.44.1% of properties were residential ○ 60.548.9% of total acres were residential
- Greenbelt areas were large properties ○ 0.83.9% of properties were greenbelt but totaled 9.832.7% of total acres
- There is still vacant land available for development, conservation or both ○ 9.641.0% of total acres were vacant
- Single family residential used the most land in residential development ○ 99.4% of residential land use was single family
- Townhomes were the second most common residential property type but uses the third least amount of land ○ 5.49% of properties were townhomes ○ Only 0.2% of residential areas are townhomes

A significant portion of Nibley was residential, but there was still a considerable portion that was available for development, such as agriculture, greenbelt, and vacant properties. Although Nibley has much room to grow, social as well as environmental impacts of developing should be considered in the context of its impact on Nibley, adjacent communities, and Cache Valley.

| Land Use Type  | Properties |           | Acres        |           |
|----------------|------------|-----------|--------------|-----------|
|                | #          | %         | #            | %         |
| Agriculture    | 21         | 2.20.9%   | 14148.3      | 9.00.7%   |
| Commercial     | 49         | 1.62.2%   | 468.2104     | 6.76.5%   |
| Greenbelt      | 88         | 0.83.9%   | 848.3154     | 9.832.7%  |
| Residential    | 1,907      | 83.484.1% | 1,270.8951   | 60.548.9% |
| Secondary      | 6          | 0.63%     | 74.2         | 0.40.2%   |
| Vacant*        | 196        | 10.18.6%  | 150286.7     | 9.641.0%  |
| Not classified | 31         | 1.3%      | 63           | 4.0%      |
| Total          | 2,2672.378 | -         | 2,596.51,571 | -         |

2022+9 Cache County GIS Department Parcel Data

\*Vacant included 196 properties that did not have property sizes. Therefore, the numbers in these tables are incomplete but still may represent general trends in land uses.

The following table and graph show the type of housing that is currently within Nibley City.

| Housing Type             | Number of Units in 2022+7 |
|--------------------------|---------------------------|
| Single Family Homes      | 1,5271.943                |
| Townhomes                | 110.114                   |
| Mobile Homes             | 28.27                     |
| Accessory Dwelling Units | 20.30*                    |

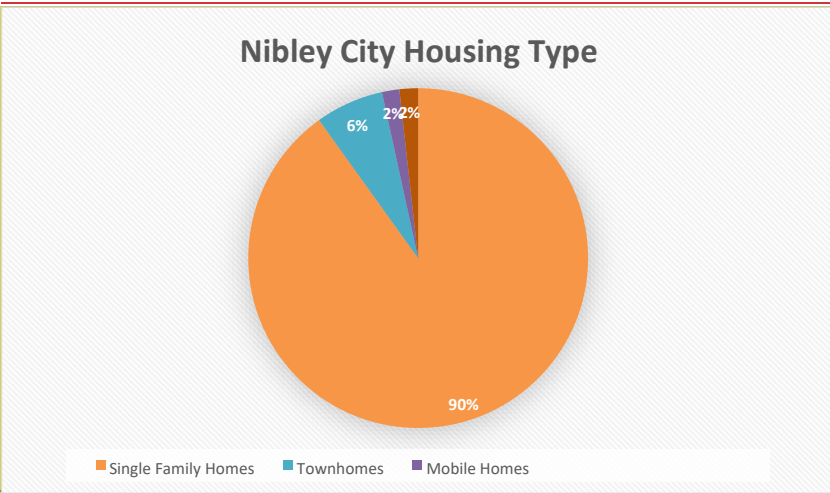
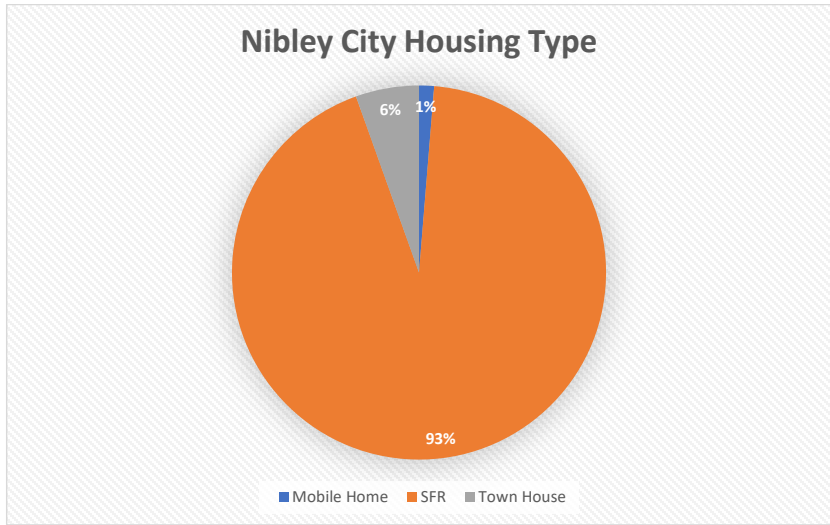
**Commented [LR2]:** Seeking updated data from County GIS

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**Commented [LR3]:** Waiting on Wendy to estimate based upon utility accounts



~~(U.S. Census Bureau. Table B25001: Total housing units. American Community Survey.) 2022 Cache County Parcel Data~~

~~\*ADU number is an estimate based on the 2016 General Plan Update.~~

As shown in the table and graph above, 93% of homes within Nibley City are single-family homes. Single-family homes make up the majority of developed land uses within Nibley City, and these developments range from .11 acre lots to five-acre lots. However, most single-family homes are located on one-third to one-half acre lots, with the majority of residential zoning on undeveloped parcels zoned for half-acre minimum lots.

|                                    |
|------------------------------------|
| Nibley City Residential Lots Sizes |
|------------------------------------|

|         |            |
|---------|------------|
| Average | .993 Acres |
| Mode    | .28 Acres  |
| Median  | .38 Acres  |

Cache County Recorder's Office, July 2, 2019

Nibley City currently ~~only~~ has ~~two-five approved~~ housing developments that are not ~~made up entirely of~~ traditional single-family homes.

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Commented [LR4]: Need to add Ridgeline, Firefly and Nibley Meadows.

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#### SPRING CREEK CROSSING PUD: TOWNHOMES



Spring Creek Crossing townhomes first started to be developed in 2007 and contains 12~~40~~ units. ~~The last four units are anticipated to be finished in the summer of 2019.~~ The development is located on Nibley Park Ave. in the northwest corner of town. The subdivision was approved as a Planned Unit Development. ~~Spring Creek Crossing is the only development within Nibley City that contains townhomes.~~

#### NIBLEY MOBILE HOME PARK



This trailer park contains 28 units and is located on 2600 S at 100 W. The park is fully developed and is currently listed as a nonconforming use within Nibley City. The City does not anticipate any further expansion of the park.

#### RIDGELINE PARK R-PUD

Ridgeline Park is a Residential-Planned Unit Development mixed-use subdivision currently under construction, which includes a mix of traditional single-family, active adult single-family, townhome, condominium units, with neighborhood commercial space. The development has been approved for 460 residential units. At the time of this writing, approximately 60 of the units are occupied or under construction.

#### FIREFLY ESTATES R-PUD

Ridgeline Park is a Residential-Planned Unit Development mixed residential subdivision currently under construction, which includes a mix of traditional single-family and townhome units. The development has been approved for 141 units. At the time of this writing approximately 42 units are under construction.  
incom

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## NIBLEY MEADOWS R-PUD

Nibley Meadows is a Residential-Planned Unit Development mixed residential subdivision. The overall development has been approved but has not began construction. The approved development includes a mix of traditional single-family and townhome units. The development has been approved for 273 units.

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## HOUSING AGE

An assessment of structure age can, in some cases, reveal whether there is a need for housing rehabilitation. In Nibley, 3.4% of residential structures were built in 1959 or earlier, 13% percent were built between 1960 and 1979, and 22.6% were built between 1980 and 1999, and 61% were built in the year 2000 or later. The above numbers suggest that the majority of homes in Nibley City are relatively new and generally in good condition.

## ESTIMATE OF THE EXISTING SUPPLY OF MODERATE INCOME HOUSING

Housing is considered affordable when households, regardless of their income, spend no more than 30% of their monthly income on housing expenses. Therefore, a cost-burdened household is that household whose housing expenses exceed 30% of their monthly income. Nibley City's Median Household income in the 2020~~17~~ American Community Survey was at \$90,650~~80,125~~, compared to Cache County's Area Median Income (AMI) which was at \$53,812~~71,000~~. According to projections of the Utah Housing and Community Development Five-Year calculator, The projections for Nibley's Medium Household Income is that it is expected to increase to \$95,979 by 2027~~5, while the AMI in Cache County has grown under 3% for the last several years, and the City predicts that the AMI will raise to under \$68,000 by 2025.~~ When planning for Moderate Income and Affordable Housing, it is essential to use the AMI instead of the City's Median Household Income, since AMI is a more accurate picture of the needs of housing for the whole area.

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### *Definitions:*

- **Affordable:** housing costs are equal to or less than 30% of a household's gross monthly income
- **Available:** a housing unit that is vacant
- **Affordable and Available:** a housing unit that is both affordable and vacant, or is currently occupied by a household at or below the defined income threshold

~~In 2015, there were 120 moderate income renter households at the 0-80 percent AMI threshold. There were 110 rental units that households at the 0-80 percent AMI threshold could afford. However, there were only 70 units that were both affordable and available. This means that there was a deficit of 50 affordable and available rental units for households at the 0-80 percent AMI threshold.~~

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| Renter Occupied Housing |                    |                    |                                                                                        |                   |                                                                                        |
|-------------------------|--------------------|--------------------|----------------------------------------------------------------------------------------|-------------------|----------------------------------------------------------------------------------------|
| AMI Level               | Households         | Affordable Units   | Surplus/Deficit of Affordable Units<br><u>Units Affordable Units-Renter Households</u> | Available Units   | Surplus/Deficit of Available Units<br><u>Units Available Units – Renter Households</u> |
| ≤ 30%                   | <del>20</del> 74   | <del>78</del> 20   | <del>+40</del>                                                                         | 0                 | <del>-74</del> 20                                                                      |
| ≤ 50%                   | <del>21</del> 445  | <del>25</del> 580  | <del>+41</del> 35                                                                      | <del>42</del> 40  | <del>-35</del> 172                                                                     |
| ≤ 80%                   | <del>58</del> 4120 | <del>55</del> 5110 | <del>-29</del> 40                                                                      | <del>40</del> 270 | <del>-50</del> 74                                                                      |

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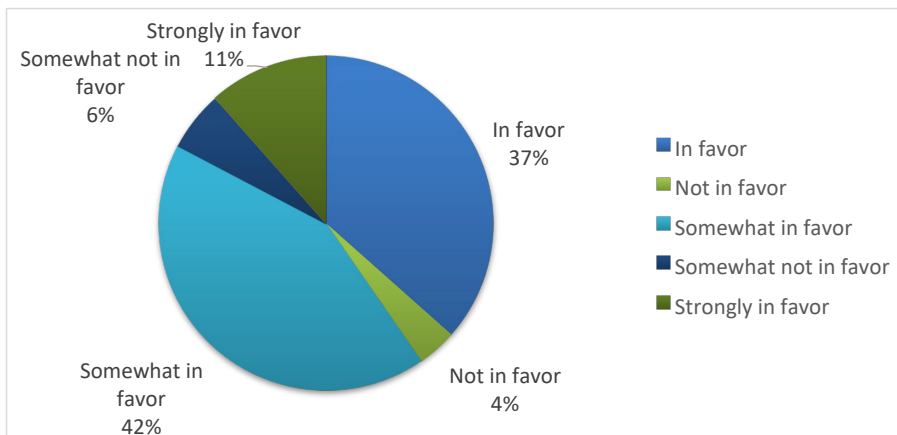
Source: Housing and Urban Development. (2018). 2011-2015 Comprehensive Housing Affordability Strategy Utah Division of Housing and Community Development 5-year Housing Projection Calculator

## PUBLIC INPUT

Nibley City, in the summer of 2018, conducted a survey about future land use within Nibley City. This data was used to help Nibley City create and adopted Nibley City's 2018 Future Land Use Map. Nibley City had a total of 52 residents that participated in the survey that was conducted at a booth during Heritage Days. There were several questions regarding housing within that survey and are presented below:

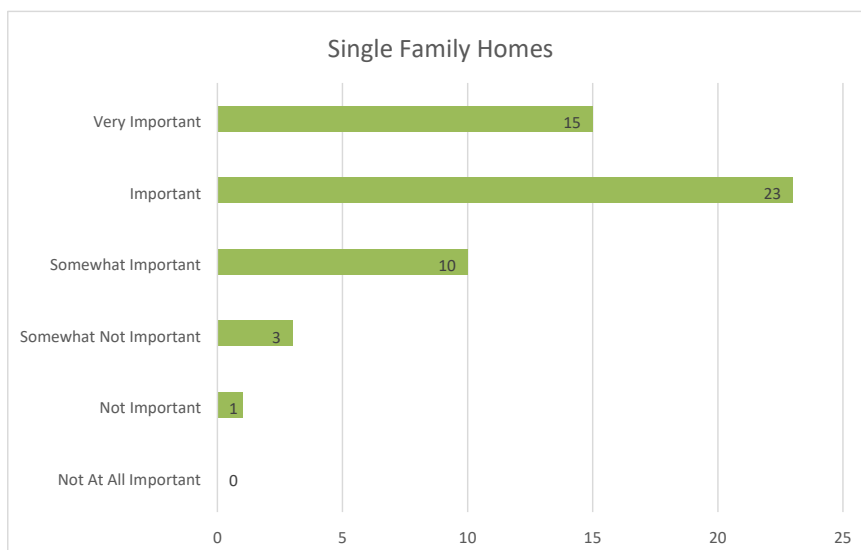
### Town Center Questions:

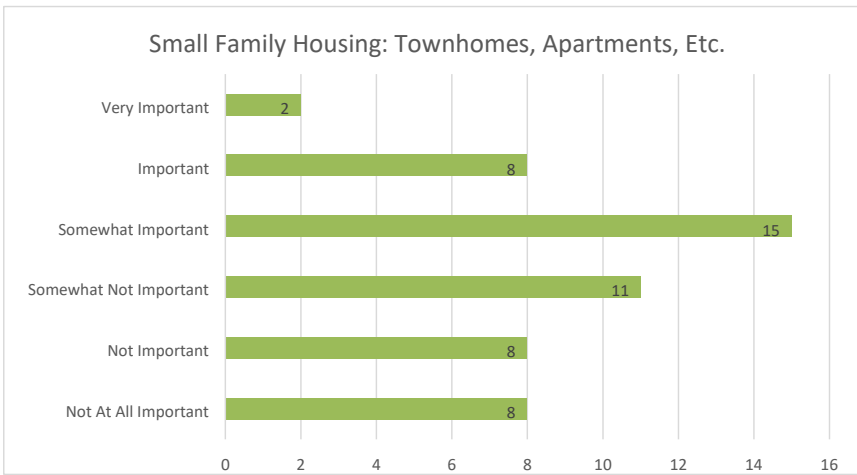
*Nibley City is examining the possibility of creating a downtown zone east of Nibley City Hall. This zone might allow commercial uses such as retail, office space, and restaurants; and/or housing with apartments, town-homes, and single-family homes, and open space with parks, trails, and courtyards. How much would you support this planning effort by the City? (This question also showed a picture of Concept 3 from the 2016 Town Center Design Study):*



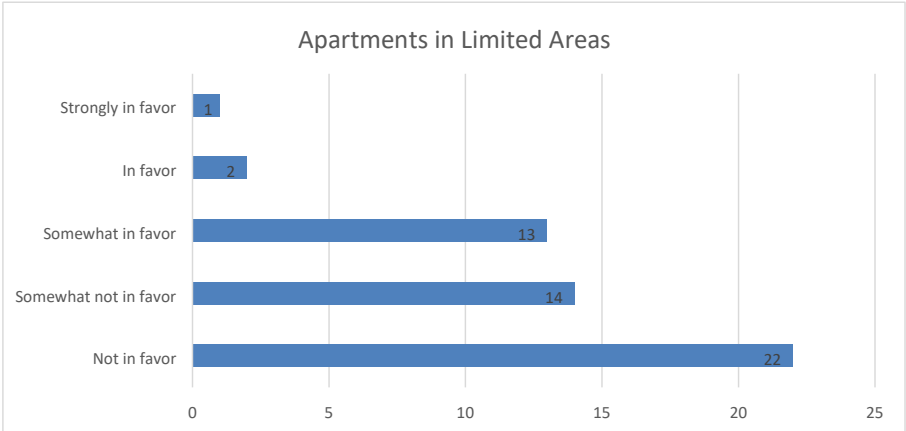
The following were the answers to the question:

*Select what you think Nibley City should make a priority in future land use planning:*

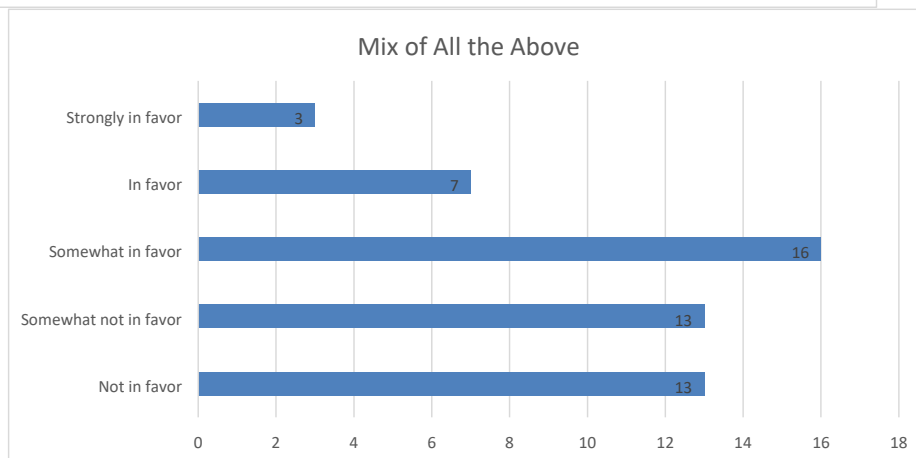
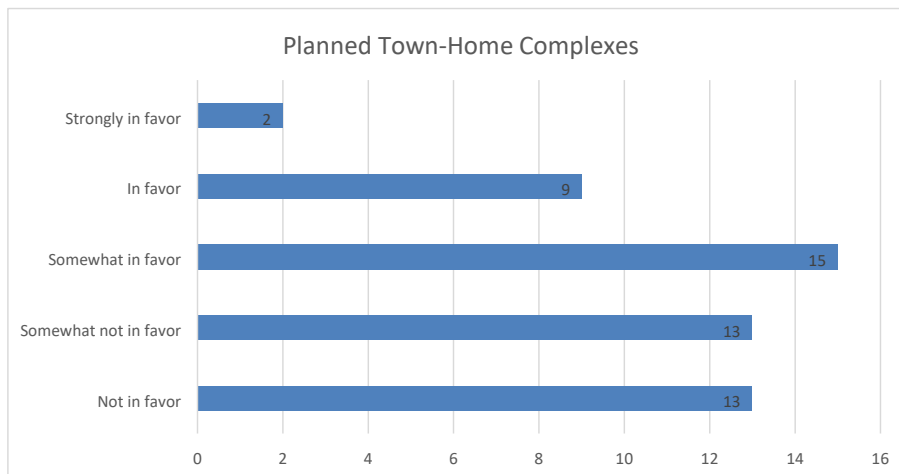




The following were responses to the following questions: *A recent study showed that Nibley has a shortage of housing available for less than \$200,000. What steps would you like to see Nibley take to help meet that need?*







In addition to a written survey, residents were presented with pictures of different types of housing and asked to give a first and second choice in, “What type of Housing do you want to see built-in Nibley City,” with orange representing their first choice and green representing their second choice.



| Picture | % First Choice | % Second Choice | Percent Total |
|---------|----------------|-----------------|---------------|
| 1       | 67.21%         | 14.29%          | 40.65%        |
| 2       | 6.56%          | 5.36%           | 5.69%         |
| 3       | 0.00%          | 1.79%           | 0.81%         |
| 4       | 11.48%         | 41.07%          | 25.20%        |
| 5       | 3.28%          | 14.29%          | 9.76%         |
| 6       | 11.48%         | 23.21%          | 17.89%        |

## FUTURE HOUSING NEEDS

Nibley City expects to continue to grow in population because of Nibley City's location within Cache Valley, its large potential annexation area, many acres of undeveloped land already in the city, and housing growth pressure in the surrounding area. Nibley City's household size has declined from 4.23 in 2009 to 3.944.04 in 202017 (American Community Survey, 202017). This figure was still larger than the statewide average of 2.843.14 people, which is the largest of any state in the nation (Census Bureau American Community Survey, 202018).

To provide housing for the anticipated population in 2030, assuming the current average of 4.04 people per household, Nibley City would need to have added 1,745 homes by 2030. Over the past five years, Nibley has issued an average of 68 new home building permits per year, although this number has increased significantly in recent years with 128 new home building permits issued in 2021. If Nibley continued to grow-add new housing at the most recent rate, 748 homes would be constructed by-between 2019 and 2030. The number of homes predicted is a shortfall of 929 units over 11 years to meet the expected 2030 population increase. The problem is exaggerated further if the number of people per household continues to fall and comes closer to the state's average number of 3.142.84 people per household. In addition to a potential housing shortage in the future with current growth rates, those seeking moderate income and affordable housing will likely have the hardest time finding a home within Nibley City.

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MODERATE INCOME AND AFFORDABLE HOUSING

The tables below contain the information of estimate of the need for moderate income housing for the next five years between 2019 and 2024.

Number of Housing Units Needed at AMI Thresholds by 2024

| AMI Threshold | Total | Owner-Occupied | Renter-Occupied |
|---------------|-------|----------------|-----------------|
| ≤30%          | 15.6  | 14             | 2               |
| ≤50%          | 32.6  | 29             | 4               |
| ≤80%          | 105.0 | 93             | 12              |
| ≤100%         | 153.3 | 135            | 16              |
| >100%         | 413.0 | 364            | 49              |

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Steps to Figuring out the Number of Moderate Income Housing for the Next Five Years

Step 1: Figure out the number of projected housing units needed by 2024.

Housing Units 2017 Estimate and 2024 Projection

|                                  | 2017  | 2024  | Difference |
|----------------------------------|-------|-------|------------|
| Total Housing Units <sup>1</sup> | 1,594 | 2,007 | 413        |
| Owner-Occupied <sup>2</sup>      | 1,473 | 1,769 | 296        |
| Renter-Occupied <sup>2</sup>     | 121   | 238   | 117        |

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Source 1: U.S. Census Bureau. Table B01003: Total Population. American Community Survey.

Source 2: U.S. Census Bureau. Table B25008: Total Population in occupied housing units by tenure. American Community Survey.

Step 2: Figure out the number of housing units by AMI threshold and tenure by levels. Housing Units AMI Threshold

| AMI Threshold | Owner | Renter | Total |
|---------------|-------|--------|-------|
| ≤30%          | 35    | 20     | 55    |
| >30 to ≤50%   | 70    | 45     | 60    |
| >50 to ≤80%   | 180   | 75     | 255   |
| >80 to ≤100%  | 170   | 0      | 170   |
| >100%         | 875   | 40     | 915   |
| Total         | 1,300 | 160    | 1,455 |

Source: Housing and Urban Development. (2018). 2011-2015 Comprehensive Housing Affordability Strategy [Data].

Step 3: Figure out the percentage of housing units by AMI thresholds.

Percentage of Households and AMI Threshold

| AMI Threshold | Total Units | Percentage of Total Units |
|---------------|-------------|---------------------------|
| ≤30%          | 55          | 3.8%                      |
| ≤50%          | 115         | 7.9%                      |
| ≤80%          | 255         | 25.4%                     |
| ≤100%         | 170         | 37.1%                     |
| >100%         | 915         | 100%                      |
| Total         | 1,455       |                           |

Step 4: Multiply the percentage of total units by the projected number of housing units needed by 2024.

Projected Number of Housing Units Needed by AMI Thresholds in 2024

| AMI Threshold | Percentage of Total Units | Projected Units by 2024 | Total |
|---------------|---------------------------|-------------------------|-------|
| ≤30%          | 3.8%                      | 413                     | 15.6  |
| ≤50%          | 7.9%                      | 413                     | 32.6  |
| ≤80%          | 25.4%                     | 413                     | 105.0 |
| ≤100%         | 37.1%                     | 413                     | 153.3 |
| >100%         | 100%                      | 413                     | 413.0 |

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**Step 5: Figure out the percentage of housing units by tenure in 2024.**

Total Percentage of Housing Units in 2024

|                                  | Total | Percentage |
|----------------------------------|-------|------------|
| Total Housing Units <sup>1</sup> | 2,007 | -          |
| Owner-Occupied <sup>2</sup>      | 1,769 | 88.1%      |
| Renter-Occupied <sup>2</sup>     | 238   | 11.9%      |

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Source 1: U.S. Census Bureau. Table B01003: Total Population. American Community Survey.

Source 2: U.S. Census Bureau. Table B25008: Total Population in occupied housing units by tenure. American Community Survey.

**Step 6: Multiply the number of housing units needed at each AMI threshold by the percentage of tenure**

Number of Housing Units Needed by Tenure at AMI Thresholds by 2024

| AMI Threshold | Total | Owner-Occupied | Renter-Occupied |
|---------------|-------|----------------|-----------------|
| ≤30%          | 15.6  | 14             | 2               |
| ≤50%          | 32.6  | 29             | 4               |
| ≤80%          | 105.0 | 93             | 12              |
| ≤100%         | 153.3 | 135            | 16              |
| >100%         | 413.0 | 364            | 49              |

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By Between 2019 and 2024, Nibley will need an additional 364 housing units to house the projected population growth. To meet the needs of moderate-income households, 105, or a quarter of housing units needed by 2024, will need to be moderate-income housing units. About 33 of those units will be needed at the 50 percent AMI threshold. Of the 33 housing units needed at the 50 percent AMI threshold, 29 should be owner-occupied housing and four renter-occupied. The 105 additional moderate-income housing units needed by-between 2019 and 2024 does not take into consideration the current deficit of moderate-income housing units. Therefore, Nibley will need more than 155 moderate-income housing units to meet the needs of current and future

moderate-income households. This figure was calculated by adding the prospective amount of needed moderate-income housing (105) with the current deficit of rental-units (55). This figure does not consider the number of owner-units needed; therefore, the total number of housing units needed by 2024, considering the current deficit and future need, will be higher than 155.

| Summary of Affordability in 2018 |                                             |                              |
|----------------------------------|---------------------------------------------|------------------------------|
| Household Income                 | Maximum Monthly Income for Housing Expenses | Maximum Mortgage Loan Amount |
| ≤30% AMI                         | \$437                                       | \$75,149                     |
| >30% to ≤ 50% AMI                | \$729                                       | \$125,249                    |
| >50% to ≤80% AMI                 | \$1,166                                     | \$200,398                    |
| >80% to ≤100% AMI                | \$1,458                                     | \$250,497                    |

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NIBLEY CITY ZONING AND SUBDIVISION OPTIONS

Nibley City currently provides for a few zoning options for residential development. The table below shows the standard by-right zoning with the minimum lot size, frontage, and setbacks.

NCC 19.22.010 Space Requirement Chart:

|    |                                         | A                   | R-E                 | R-1                 | R-1A                | R-2                 | R-2A                                          |
|----|-----------------------------------------|---------------------|---------------------|---------------------|---------------------|---------------------|-----------------------------------------------|
| A. | Minimum lot area                        | 5 acres             | 2 acres             | 1 acre              | 3/4 acre            | 1/2 acre            | 12,000 sq. ft. average size of 14,000 sq. ft. |
|    | Minimum width, measured at setback line | 200                 | 200                 | 200                 | 150                 | 100                 | 100                                           |
| B. | Setback principal uses                  |                     |                     |                     |                     |                     |                                               |
|    | Front yard                              | 30(35) <sup>3</sup> | 30(35) <sup>3</sup> | 30(35) <sup>3</sup> | 30(35) <sup>3</sup> | 30(35) <sup>3</sup> | 30(35) <sup>3</sup>                           |
|    | Side yard, interior                     | 15 <sup>3</sup>     | 15                  | 10                  | 10                  | 10                  | 10                                            |
|    | Side yard, street                       | 25(35) <sup>3</sup> | 25(35) <sup>3</sup> | 25(35) <sup>3</sup> | 25(35) <sup>3</sup> | 25(35) <sup>3</sup> | 25(35) <sup>3</sup>                           |
|    | Rear yard                               | 30                  | 30                  | 30                  | 30                  | 25                  | 25                                            |

Within these standard zones, single-family units are the primary housing type, but duplexes and attached Accessory Dwelling Units are both permitted, as long as they comply with standards listed in Nibley City Code Title 19. This standard zoning has created some struggles to provide affordable housing by limiting lot sizes and limiting multifamily housing. However, in addition to standard zoning, Nibley City allows for three other forms of subdivisions that are currently permitted and one type of subdivision that has been repealed.

#### CLUSTER SUBDIVISIONS (SEE NCC 21.10.030)

A cluster Subdivision allows for a developer to be able to decrease their lot size in exchange for preserved open space. This open space can take the form of a park or agricultural land. No density bonus accompanies these types of developments within Nibley City.

##### Current Cluster Subdivision

- Stonebridge, located at 1200 W and 2980 S

#### PLANNED UNIT DEVELOPMENT (PUD) REPEALED

Nibley City's Planned Unit Development Code was repealed in 2011. Nibley City approved a new Residential-Planned Unit Development in May of 2019 that is discussed below. The PUD ordinance allowed for greater density and flexibility for developers to negotiate with the City for ~~density and~~ open space ~~and amenities~~. There are ~~three~~ four subdivisions that have been approved and developed under the former PUD Ordinance.

##### Current PUD Subdivisions

- Spring Creek Crossing, located at Nibley Park Ave. (2350 S) and ~~around~~ 1250 W
- Sunset Parks, located at 1000 W and 2770 S
- The Cottages Community, located at 250 W and 3515 S
- Maple Valley Estates, located at 1600 W 3200 S



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## OPEN SPACE/RURAL PRESERVATION-SUBDIVISION/CONSERVATION SUBDIVISION (SEE NCC 21.10.020)

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The Open Space Rural Preservation Subdivision (renamed from Conservation Subdivision and Rural Preservation Subdivision) is a subdivision option that allows for development in R-1, R-1A, R-2, and to some extent R-2A, to receive a higher density and smaller lot size in exchange for preserved open space. The lot size and density bonus are tiered based on the percentage of the project that is dedicated as open space.

### **Current Open Space, Conservation and Rural Preservation Subdivisions**

- Maple View Estates, located east of 1200 W and south of 2600 S
- The Cottonwoods, located at Hollow Rd and 4030 S
- Apple Creek, located south of 3200 S and at 500 W
- Meadow Creek, located at 3850 S and 150 E
- Nibley Farms, located east of 1500 S and south of 3390 S
- Mt Vista, located south of 3400 S and west of 450 W

## RESIDENTIAL PLANNED UNIT DEVELOPMENT (R-PUD) (SEE NCC 19.32)

In May of 2019, Nibley City adopted Nibley City Code 19.32 Residential Planned Unit Development. This new section of code allows for a developer to apply for an overlay zone in six parts of town zoned for half-acre, three-quarter acres, or full acre lot minimums and would allow a developer to develop up to twelve-ten units per net developable acre with a mix of single-family homes and townhomes. At the time of this writing, no-three R-PUDs have been applied for or approved, as described above.

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## MINOR SUBDIVISION AND FLAG LOTS (SEE NCC 21.08.040 AND 19.46)

In 2018, Nibley City passed two ordinances that 1) allow for the development of a minor subdivision and 2) provide for the creation of flag lots. These two code updates allow property owners with more options to develop their property for moderate income housing. The minor subdivision allows for a smaller subdivision, containing five lots or less, the ability to move through a simplified subdivision approval process. The updated flag lot ordinance allows for the development of property that has little to no frontage along a public or private roadway.

## GOALS, PROJECTS AND ACTION ITEMS STRATEGIES AND IMPLEMENTATION PLAN

When planning for moderate income housing within Nibley City, it is essential to note that cities have limited ability to ensure that affordable housing is built. Nibley City will encourage and support the development of home construction and subdivision by developers and home builders. The housing market also plays a part in determining what types of homes are built within these developments and the prices at which they are sold. The following goals-strategies and implementation plan are is recommended to adopted by the Nibley City to encourage the



construction of new and moderate income housing within Nibley City and offer additional opportunities for existing and future residents to attain affordable housing.

Nibley City should provide opportunities within the City for the construction of moderate income housing. Nibley City should take the following steps to ensure the City is meeting goals listed within this plan:

- Review the objectives listed below and work to achieve the goals by the suggested time frame
- Review building permits for housing units annually and evaluate Moderate Income Housing additions to the City compared to the needed housing and goals listed within this plan
- Update this plan as needed or at a five-year minimum time frame
- Take Moderate Income Housing into consideration when reviewing rezone applications.
- ~~If possible, encourage~~Incentivize developers to build affordable housing as part of developments as a condition of the rezone

#### STRATEGY 1: REDUCE REGULATIONS RELATED TO, INTERNAL OR DETACHED ACCESSORY DWELLING UNITS IN RESIDENTIAL ZONES ALLOW FOR AND REDUCE REGULATION RELATED TO ACCESSORY DWELLING UNITS IN RESIDENTIAL ZONES.

Nibley City currently allows for attached, internal and detached accessory dwelling units (ADUs). Internal and attached accessory dwelling units are permitted in all zones of the City as 'Two-family housing,' which is inclusive of internal ADUs, attached ADUs or duplexes. In November 2020, the City adopted an ordinance which allows and regulates detached accessory dwelling units throughout Nibley City. Since this ordinance was passed, the City has only received two applications for detached accessory dwelling units. The City should conduct research to determine which barriers are currently in place to developing new ADUs, then consider specific amendments to the ADU ordinance that would encourage the construction of 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.~~

#### Specific Action Items

- Track number of ADUs that are built (ongoing)

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- Research barriers to building ADUs (Late 2023)
- Consider amendments to ADU ordinance based upon research findings (Early 2024)

Timeframe: ~~Early 2020~~ Late 2022 - Early 2024

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## STRATEGY 2: ELIMINATE IMPACT FEES FOR ANY DETACHED ACCESSORY DWELLING UNIT

Nibley City Code requires that impact fees be assessed for new detached ADUs. The ordinance provides for a rebate of these impact fees for providing affordable housing to those earning less than 50% AMI. However, it has been discussed that even with this rebate, the assessment of an impact fee for ADUs may be a barrier to building new ADUs. Furthermore, due to their limited footprint, the impact of an ADU may be lower than other housing units. The current impact fee for a new ADU is currently set at \$11,296, which includes sewer, water, transportation, park and Logan City wastewater. The City should consider eliminating impact fees for all ADUs in order to encourage production of new ADUs

### Specific Measures and Benchmarks

- Analyze the overall cost of building an ADU in relation to the impact fee (Late 2023)
- Include an analysis of impact fee costs in relation to other potential barriers noted above (Late 2023)
- Consider removing impact fee requirement for ADUs (Early 2024)

Timeframe: Late 2022 - Early 2024

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## STRATEGY 3: ZONE OR REZONE FOR HIGHER DENSITY OR MODERATE INCOME RESIDENTIAL DEVELOPMENT IN COMMERCIAL OR MIXED-USE ZONES NEAR COMMERCIAL CENTERS, OR EMPLOYMENT CENTERS ALLOW FOR HIGHER DENSITY OF MODERATE INCOME RESIDENTIAL DEVELOPMENTS IN COMMERCIAL AND MIXED-USE ZONES, TOWN CENTER, NEIGHBORHOOD COMMERCIAL, AND OTHER EMPLOYMENT AREAS

Nibley City's 2016 General Plan recommends establishing and creating a town-center area that would be composed of commercial, residential, and open space uses. The City, in May of 2019, passed an R-PUD Ordinance that would allow for the development of a town center area. This R-PUD ~~would allow~~s for some commercial areas ~~within the R-PUD and condominiums, allow~~ ~~for~~ townhomes and ~~small-lot~~ single-family homes. ~~A large portion of this area was approved as the Ridgeline Park Subdivision in April 2020 and the Subdivision is currently under construction. The northern portion of the Town Center remains vacant.~~ The City should continue to plan and update City zoning code for ~~the a-Town Ce~~nter, ~~including that would allow~~ing mixed-use ~~multi-family/commercial buildings~~ within Commercial and Neighborhood Commercial Zones ~~in the Town Center Area.~~

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Nibley City should also start to plan for the future 4400 S industrial corridor, as shown on the future land use map. Nibley City should coordinate these planning efforts with Hyrum, Wellsville, Cache County, and UDOT. The City should consider housing densities and types that would be allowed be developed along that corridor.

#### Moderate Income Housing Considerations Specific Measures and Benchmarks

- Create mixed-use areas within the ~~future~~ Town-Center area (Early 2023)
- Allow for apartments and condominiums within Neighborhood Commercial Zones attached to commercial buildings (Early 2023)
- Plan for future 4400 S Industrial Corridor (Early 2025)

Timeframe: ~~End of 2020~~ Early 2023 – Early 2025

#### STRATEGY 4: REZONE FOR DENSITIES NECESSARY TO ASSURE FACILITATE THE PRODUCTION OF MODERATE INCOME HOUSING

Nibley City ~~has recently~~ passed an R-PUD ordinance in 2019 with increased density within areas of the City. The R-PUD Overlay Zone increases the density from the underlying zone and allow up to ~~twelve~~ ten units a per-net developable acre. The City approved three separate R-PUDs in 2020, which will provide additional housing options in different parts of the City. The City should continue to work with property owners and developers in approving an appropriate amount of R-PUD Overlay Zones and Developments to help achieve the needs of affordable housing.

In addition to the R-PUD ordinance, Nibley City adopted a mixed-residential (R-M) zone which allows the development of a variety of multi-family housing types. The ordinance allows the application of the R-M zone is limited areas. The City should consider the expansion of this zone in areas with good transportation connections.

In 2022, the City has been working on a Transfer of Development Rights (TDR) Ordinance which will allow higher densities in exchange for transferring developing rights from areas of open space significance. The designation of appropriate sending and receiving zones will allow for a wider diversity of housing options within Nibley City.

Nibley City should also continue working on refining zoning criteria within the Town Center ~~Planning and Zoning Ordinance area and to~~ allow for a variety of housing types, including single-family homes, townhomes, condominiums and apartments ~~as part of that zoning criteria and development in a mixed-use setting.~~ Nibley City should involve Cache County Transit District (CVTD) in these plans to provide for adequate public transportation in the area. This would allow for residents of the Town Center to have easy access to significant employment, recreation and shopping centers in Cache Valley, as well as educational opportunities at Utah State University and Bridgerland ~~Technical~~ Technical College.

#### Specific Measures and Benchmarks Moderate Income Housing Considerations

- Create a Town Center Zoning Overlay Ordinance that would allow for mixed-use, condominiums, townhomes, and single-family homes in addition to open space and commercial uses (Early 2023)

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- Involve CVTD with Town Center and provide areas for bus stops and active transportation within the development (Early 2023)-
- Consider additional areas in which the R-M zone could apply. (Late 2022)
- Adopt TDR ordinance designating TDR receiving areas where there is good access to jobs and services (Late 2022)
- Work closely with Developers and property owners and make appropriate rezones for R-PUD developments (Ongoing)-

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Timeframe: As applications are receivedLate 2022-Ongoing

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#### STRATEGY 5: IMPLEMENT ZONING INCENTIVES FOR MODERATE INCOME UNITS IN NEW DEVELOPMENTS

Although the City has made significant progress in rezoning for densities that allow the opportunity for the development of market rate housing which is affordable to moderate-income households, the housing market has vastly outpaced the growth in incomes. Therefore, it is becoming increasing difficult to provide affordable market-rate housing. The City should consider incentivizing providing deed-restricted housing which is affordable to low and moderate-income households with new developments. A density bonus should be explored which allows for higher density with the dedication of affordable units. For example, within the R-PUD overlay zone, providing 10% of units within a development as affordable deed-restricted housing could allow for a 20% density bonus. Specific thresholds and incentives will need to be further analyzed and vetted based upon an updated affordable housing needs assessment.

##### Specific Measures and Benchmarks

- Study appropriate density bonus and incentive threshold to apply to the R-PUD zone or other zones within Nibley City. (Early 2024)
- Draft Ordinance with zoning incentives for moderate income units based upon findings of analysis for consideration (Late 2024)

Timeframe: 2024

#### DEMONSTRATE UTILIZATION OF A MODERATE INCOME HOUSING SET ASIDE FROM A COMMUNITY REINVESTMENT AGENCY TO CREATE OR SUBSIDIZE MODERATE INCOME HOUSING

The Malouf Community Reinvestment Project Area is currently in the process of being created. The CRA is anticipated to generate over \$10 million of tax increment financing over the course of 15 years. 10% of this revenue (approximately \$1 million) will be earmarked for affordable housing. The specific use of these funds will need to be explored and determined. A potential use will be to partner with Neighborhood Non-Profit Housing Corporation to develop low and moderate income housing within Nibley City.

##### Specific Measures and Benchmarks

- Determine appropriate use of TIF funds for affordable housing based upon housing needs assessment. (Late 2023)
- Apply funds to selected project(s). (Early 2024-2038)

Timeframe: 2023-2038

PARTNER WITH BEAR RIVER ASSOCIATION OF GOVERNMENTS (BRAG) AND NEIGHBORHOOD NON-PROFIT HOUSING CORPORATION FOR PROGRAMS AND SERVICES THAT PROMOTE THE CONSTRUCTION OR PRESERVATION OF MODERATE INCOME HOUSING ORGANIZATIONS THAT OFFER GRANTS OR OTHER ASSISTANCE IN HOUSING AFFORDABILITY

Nibley City has a history of working with organizations that build affordable housing or offer services. Nibley has partnered with Neighborhood Housing Solutions in the past, which constructed about two hundred homes for qualifying families. Nibley City has also worked and partnered with Bear River Association of Governments (BRAG), which offers programs to help lower-income families be able to pay for needed utilities, assist with rent, conduct required home repairs, etc. Continued partnerships with these organizations, both promoting existing programs and supporting projects to build affordable housing will help more residents obtain affordable housing.

Moderate Income Housing Considerations-Specific Measures and Benchmarks

- Nibley should be pro-active in Seeking partnerships with Neighborhood Non-profit Housing Corporation or cooperations or other non-profit organizations to in building affordable housing. (Late 2023-ongoing)
- Nibley City should Refer those in need of housing assistance to BRAG and publicize helpful information about programs that are offered through BRAG and HUD. (ongoing)

Time Frame: Current-Late 2023- Ongoing

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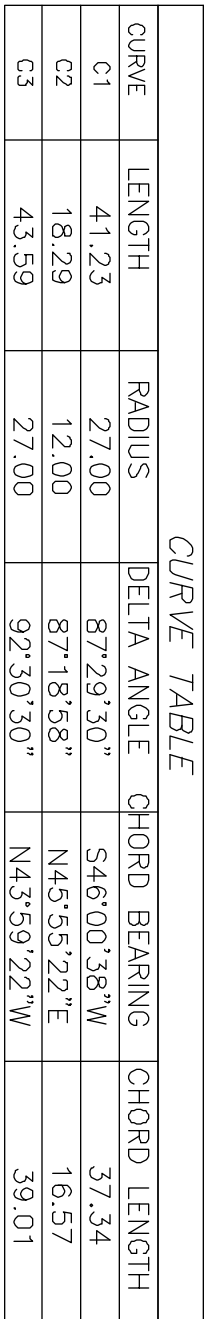






SCALE 1" = 40'-0'

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 17,  
TOWNSHIP 11 NORTH, RANGE 1 EAST, SLB&M  
NIBLEY, UTAH  
*FINAL PLAT*



PROPERTY SET FORTH AND DESCRIBED IN THIS HEREBY OFFERS AND CONVEYS TO ALL PUBLIC UTILITY OWNERS, THEIR SUCCESSORS AND ASSIGNS, A PERMANENT EASEMENT AND RIGHT-OF-WAY OVERLAND, ACROSS, AND THROUGH ALL AREAS DESIGNATED ON THIS PLAN AS PUBLIC UTILITY EASEMENTS OR UTILITY EASEMENTS FOR THE CONSTRUCTION AND MAINTENANCE OF SUBTERRANEAN, ELECTRICAL, TELEPHONE, AND APPURTENANCES, TOWNSHIP, AND DRAINAGE LINES, AND APPURTENANCES, TOGETHER WITH THE RIGHT OF ACCESS THEREON, WHICH MAY BE NECESSARY TO CONSTRUCT, MAINTAIN, REPAIR, OR ALLOWED WHICH WOULD INTERFERE WITH NONPAVEMENT UTILITY USE. IT IS UNDERSTOOD THAT IF IT BE NECESSARY TO RELOCATE SAID UTILITIES AT ANY INSTANCE OR REQUEST OF ANY PUBLIC UTILITY OWNER, THE COSTS AND EXPENSES INCURRED THEREIN WILL BE BORNE BY THE OWNER OR THE ENTITY REQUESTING OR REQUESTING THE SAME.

[illegible]

THE UTILITY EASEMENTS SHOWN ON THIS PLAN ARE APPROVED.

CENTURY LINK REPRESENTATIVE

COMCAST CABLE REPRESENTATIVE

ROCKY MOUNT POWER REPRESENTATIVE

QUESTAR REPRESENTATIVE

ATTORNEY APPROVAL

----- Date ----- City Engineer -----

I, Brian G. Lyon, a Registered Land Surveyor, hold Certificate No. 275667, as prescribed by the laws of the State of Utah, and hereby certify that by authority of the owners, I have made a survey of the tract of land shown on this plot, which is accurately described therein, and have subdivided said tract of land into lots and streets to be hereafter known as FIREFLY ESTATES, PHASE 2A, and that the same has been surveyed and staked on the ground as shown on this plot.



Part of the Southeast Quarter of Section 17, Township 11 North, Range 1 East of the Salt Lake Base and Meridian described as follows:

Commencing East Quarter Corner of said Section 17, monument with a Brass Cap monument; thence S 89°45'23" W 2115.42 feet; thence South 24.75 feet to the POINT OF BEGINNING and running

thence N 89°45'23" E 425.67 feet;

thence S 00°14'37" E 8.25 feet;

thence Southwesterly, a distance of 41.23 feet along a non tangent curve to the left of which the radius point lies S 00°14'37" E, with a radius of 22.00 feet, having a central angle of 81°79'50" and a chord that bears S 46°00'58" W 37.94 feet;

thence along the boundary of Tracts Entrées Phase 1 recorded in the Cache County Recorder's Office under Entry No. 1289425 on September 21, 2021 the next two courses;

1) thence S 89°34'51" W 382.50 feet;

2) thence N 00°25'09" W 382.75 feet to the point of beginning,

containing 3.44 acres, more or less.

The purpose of the survey was to create 32 townhouse lots from the subject property as shown on the plat attached with this application. The subject property is located on the east side of the intersection of Highway 97 and Highway 101, south of the intersection of Highway 97 and Highway 101, and north of the intersection of Highway 97 and Highway 101. The subject property is bounded by Highway 97 to the west, Highway 101 to the east, and Highway 97 to the south. The subject property is currently used for agricultural purposes, including growing crops, raising livestock, and other activities. The subject property is also used for residential purposes, including parking, private streets, storm water retention and drainage easement area.

All common areas are considered to be an easement for all public utilities, irrigation and drainage purposes. This includes the ingress/egress easements.

All required necessary public improvements and utilities shall be provided by the applicant.

No structures may be built within any public utility easement. This property is located in the vicinity of property that is used for agricultural purposes. It may be anticipated that such agricultural uses and activities may or may not in the future be conducted in this area and that such uses are previously existing uses. Agricultural uses and activities must be sound agricultural practices and not have a direct effect on the surrounding community.

This survey was requested by Sierra Homes, The Basis of Design is 00-07-037-23.2. The location of the Survey is located between Sections 16 and 17, T1N, R1E, S1W, and the East Quarter Corner of Section 17. The south and west lines were established along the boundary of the East Quarter Corner of Section 17.

The north line was established per deed of the City of El Dorado, Phase I. The north line was established per deed of

In witness whereof, I have hereunto set my hand this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
HERITAGE LAND DEVELOPMENT, LLC.

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, personally appeared \_\_\_\_\_, of the County of \_\_\_\_\_, State of \_\_\_\_\_, who, being by me duly sworn, depose and say for himself that he is the Manager of HERITAGE LAND DEVELOPMENT, LLC, a Utah limited liability company, and that the within and foregoing instrument, organization and he duly acknowledged to me that HERITAGE LAND DEVELOPMENT, LLC executed the same

Notary Public Signature \_\_\_\_\_  
Notary Public Full Name \_\_\_\_\_  
Commission Number \_\_\_\_\_  
My Commission Expires \_\_\_\_\_  
I, Notary Public Commissioned in Utah \_\_\_\_\_

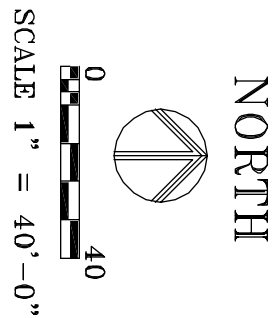
State of Utah, County of Cache, recorded and filed at the  
request of \_\_\_\_\_  
Date \_\_\_\_\_ Time \_\_\_\_\_ Fee \_\_\_\_\_  
Entry \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Index \_\_\_\_\_  
Filed in: File of plots \_\_\_\_\_  
County Recorder \_\_\_\_\_

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP  
11 NORTH, RANGE 1 EAST,  
SALT LAKE BASELINE & MERIDIAN

Owner:  
Heritage Land Development  
470 North 2450 West  
Tremonton, Utah 84337

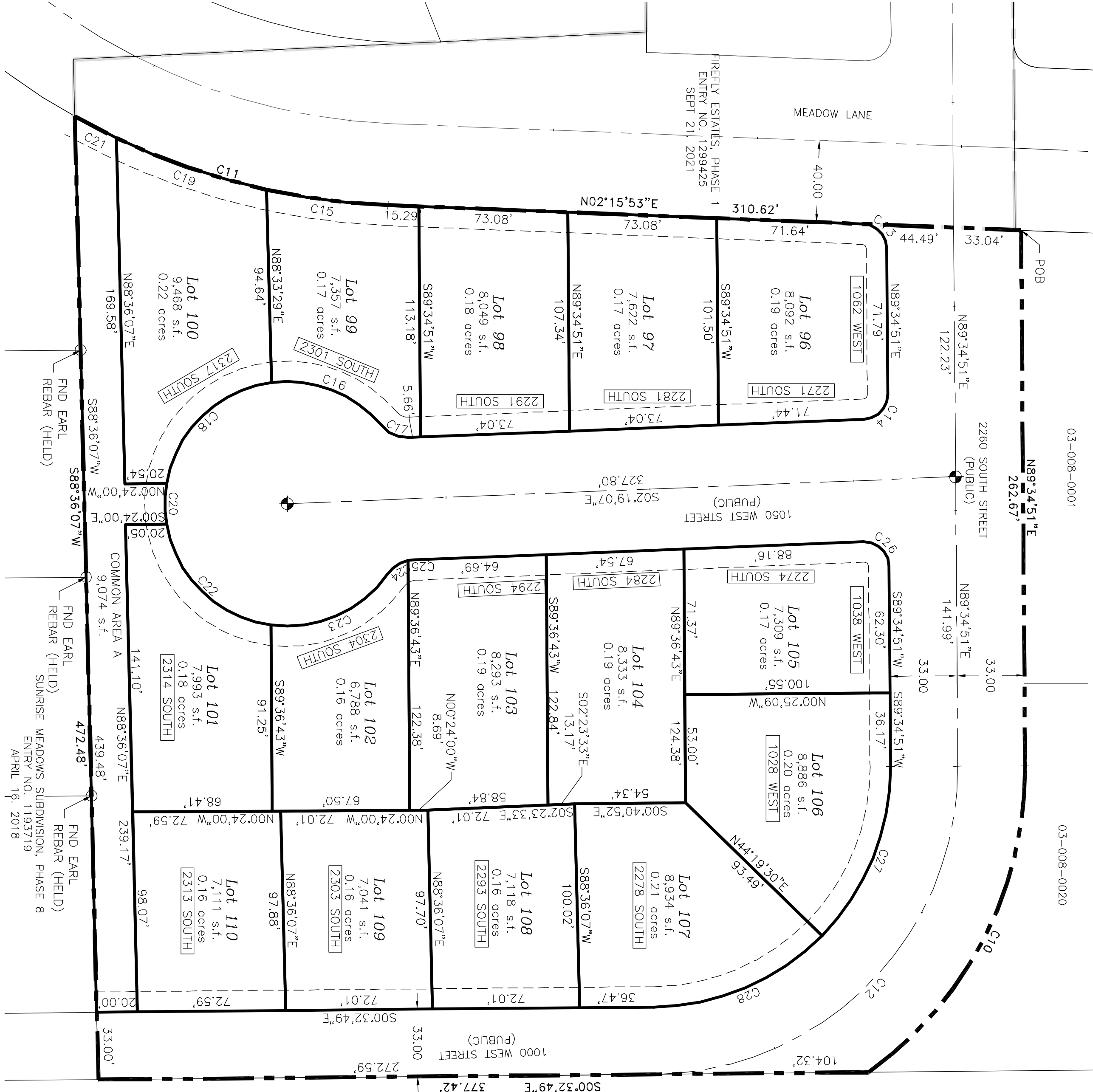






SCALE 1" = 40'-0"

**FIREFLY ESTATES, PHASE 2B**  
LOCATED IN THE SOUTHEAST QUARTER OF  
SECTION 17, TOWNSHIP 11 NORTH, RANGE 1 EAST,  
SALT LAKE BASLINE & MERIDIAN  
NIBLEY, UTAH  
**FINAL PLAT**



**UTILITY EASEMENT DEDICATION**

Areas in Nibley City have groundwater problems due to the varying depths of a fluctuating water table. No finished floor shall be built at an elevation lower than six inches (6") above finished curb or centerline of the street, whichever is higher, unless an individual lot owner is able to provide a stamped report meeting the qualifications as listed in the Nibley City Code for their lot, and unless that report is reviewed and approved by the City Engineer. The City's approval of a building permit or construction plans does not constitute a representation by the City that the proposed construction will solve groundwater problems or other hydrologic problems. In addition, concerns for building elevations and/or grading and drainage are unique to each building lot site. Responsibility for these stated concerns, and all other such concerns related to a lot or other building site, remains solely with the building permit applicant, property owner and/or contractor. Nibley City is not responsible for other such concerns, including, but not limited to, building location and/or elevation, site grading and drainage.

**DOMINION ENERGY/ROCKY MOUNTAIN POWER NOTES**

HERITAGE LAND HOLDINGS, LLC OWNER OF THE PROPERTY SET FORTH AND DESCRIBED IN THIS PLAT, HEREBY DEDICATES AND ASSIGNS ALL PUBLIC UTILITY EASEMENTS AND RIGHT-OF-WAY OVER, UNDER, ACROSS, AND THROUGH ALL AREAS DESIGNATED ON THIS PLAT AS PUBLIC UTILITY EASEMENTS OR UTILITY EASEMENTS FOR THE CONSTRUCTION AND MAINTENANCE OF SUBTERANEAN AND DRAINAGE LINES AND APPURTEANCES, TOGETHER WITH ALL NECESSARY EASEMENTS, TO THE UTILITY COMPANY, WHICH CONSTRUCTION SHALL BE ALLOWED WHICH WOULD INTERFERE WITH NORMAL UTILITY USE. IT IS UNDERSTOOD THAT IF IT BECOMES NECESSARY TO RELOCATE SAID UTILITIES AT THE INSTANCE OR REQUEST OF ANY PUBLIC ENTITY OR THE OWNER, THE COSTS AND EXPENSES INCURRED THEREBY WILL BE BORNE BY THE OWNER OR THE ENTITY REQUIRING OR REQUESTING THE SAME.

**UTILITIES APPROVAL**

THE UTILITY EASEMENTS SHOWN ON THIS PLAT ARE APPROVED:

CENTURY LINK REPRESENTATIVE

COMCAST CABLE REPRESENTATIVE

ROCKY MOUNTAIN POWER REPRESENTATIVE

DOMINION ENERGY REPRESENTATIVE

**ATTORNEY APPROVAL**

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_.

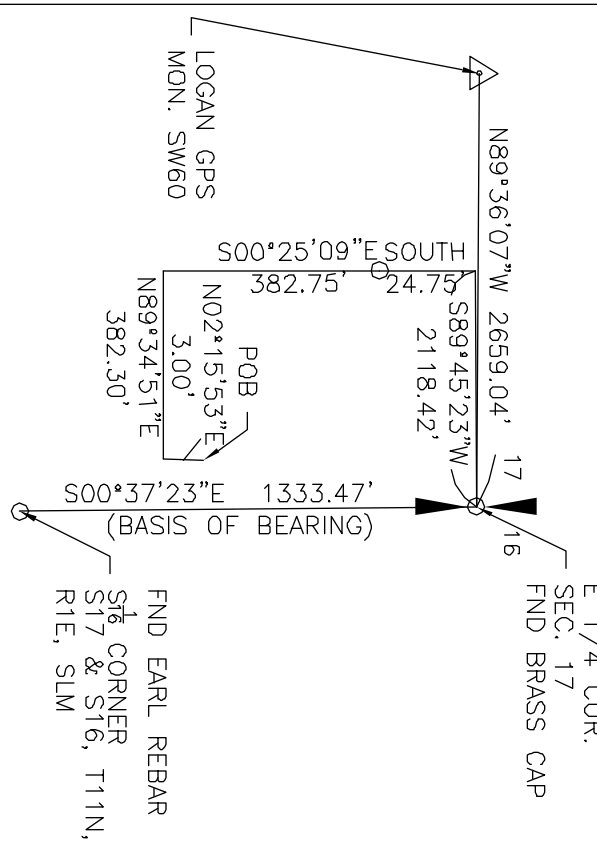
\_\_\_\_\_, City Attorney

**LEGEND**

BOUNDARY LINE  
LOT LINE  
PUBLIC UTILITY EASEMENT  
10' FRONT (UNLESS NOTED OTHERWISE)

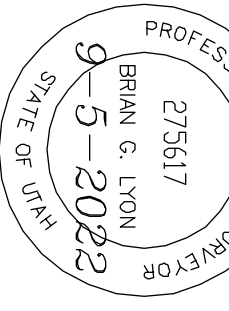
FOUND REBAR AS NOTED

**POINT OF BEGINNING TIE**



**SURVEYOR'S CERTIFICATE**

I, Brian G. Lyon, a Registered Land Surveyor, not Certificate No. 275617, as prescribed by the laws of the State of Utah, and do hereby certify that I have personally surveyed and laid out the plat shown on this page, and that the same is in accordance with the laws of the State of Utah, and that the same has been surveyed and staked on the ground as shown on this plat.



**BOUNDARY DESCRIPTION**

Port of the Section 17 Township 11 North, Range 1 East of the Salt Lake Base and Meridian described as follows:  
Commencing East Quarter Corner of said Section 17 monumented with a Brass GCP monument thence S 89°45'23" W 2118.42 feet; thence South 24°15' feet; thence along the boundary of Firefly Estates, Phase 1, thence S 89°34'51" W 472.48 feet along the boundary of Sunrise Meadows Subdivision, Phase B recorded in the Cache County Recorder's Office under Entry No. 1193719 on April 16, 2018;  
thence along the boundary of said Firefly Estates, Phase 1 the next two courses:  
1) thence Northerly, a distance of 160.91 feet along a non tangent curve to the left of which the radius point lies N 60°37'08" W, with a radius of 340.00 feet, having a central angle of 27°06'59" and a chord that bears N 15°49'23" E 159.41 feet;  
2) thence N 02°15'53" E 307.61 feet to the point of beginning, containing 4.45 acres, more or less.

**NOTES:**

- Single family lot building setbacks:  
Front 20'  
Side 5'  
Rear 15'
- All required necessary public improvements and utilities shall be financed by purchaser or seller and not by Nibley City.
- No structures may be built within any public utility easement.
- The easement shown on this plat is for the purpose of agricultural purposes. It may be anticipated that such agricultural uses and activities may or may not in the future be conducted in this area and that such uses are previously existing uses. Agricultural uses and situations must be sound agricultural practices and not bear a direct threat to public health and safety.
- 5/8" rebar with cap will be set at the intersection of the lot line with the corners. Curb pins will be set at the intersection of the lot line with the curb once it is placed.
- This survey was requested by Sierra Homes. The Basis of Bearing is N 89°34'51" E.
- The East Quarter Corner of Section 17 is located between Sections 16 and 17 and the East Quarter Corner of Section 17 is located between Sections 16 and 17.
- The south line was established along the boundary of Sunrise Meadows, Phase B. The west line was established along the boundary of Firefly Estates, Phase 1. The east line was established along the boundary of Sunrise Meadows, Phase B.
- Lot 100 is a 0.22 acre lot.
- Lot 101 is a 0.16 acre lot.
- Lot 102 is a 0.16 acre lot.
- Lot 103 is a 0.19 acre lot.
- Lot 104 is a 0.19 acre lot.
- Lot 105 is a 0.17 acre lot.
- Lot 106 is a 0.20 acre lot.
- Lot 107 is a 0.21 acre lot.
- Lot 108 is a 0.21 acre lot.
- Lot 109 is a 0.16 acre lot.
- Lot 110 is a 0.16 acre lot.
- Lot 111 is a 0.16 acre lot.
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- Lot 580 is a 0.16 acre lot.
- Lot



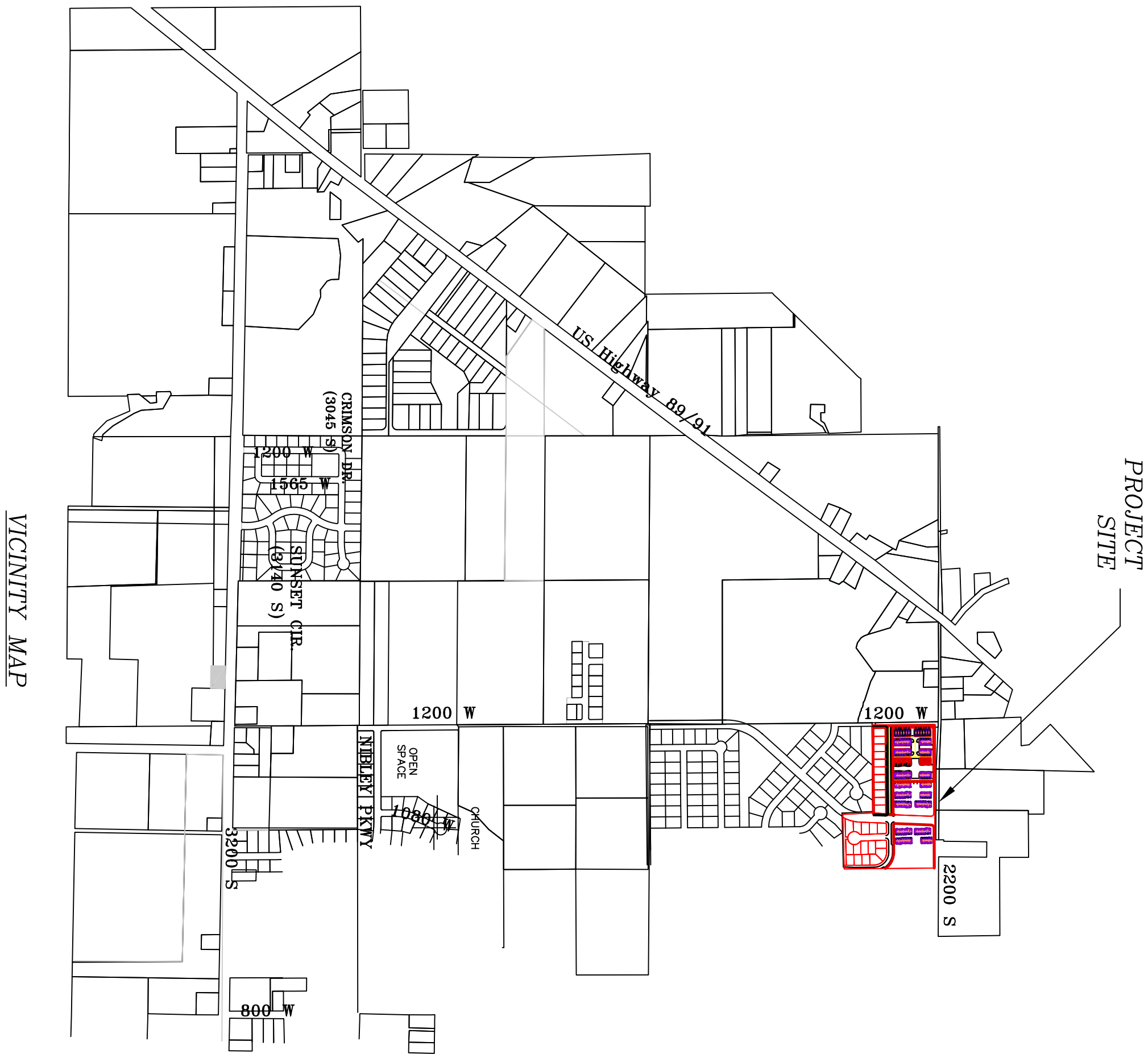
I have examined the final plans and find them to be in accordance with Nibley City requirements and standard engineering practice to the best of knowledge and belief.

DATE \_\_\_\_\_

## FIREFLY ESTATES PHASE 2

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

## INDEX SHEET



| SHEET INDEX |                           |
|-------------|---------------------------|
| SHEET NO.   | SHEET DESCRIPTION         |
| 1           | EXISTING SHEET            |
| 2           | EXISTING SITE             |
| 3           | 2260 SOUTH STREET         |
| 4           | 1050 WEST STREET          |
| 5           | MEADOW LANE               |
| 6           | PRIVATE LANE CONSTRUCTION |
| 7           | SIGNAGE AND STRIPING PLAN |
| 8           | GRADING PLAN              |
| 9           | DRAINAGE PLAN             |
| 10          | DRAINAGE PLAN 2           |
| 11          | LANDSCAPE PLAN            |
| 12          | SWPPP                     |

OWNER/DEVELOPER  
HERITAGE LAND DEVELOPMENT, LLC,  
470 N 2450 W  
TREMONTON, UT 84337

**CIVIL ENGINEER**  
**ALLIANCE CONSULTING**  
**ENGINEERS, INC.**  
**150 EAST 200 NORTH SUITE P**  
**LOGAN, UTAH 84321**  
**435-755-5121**

GENERAL NOTES (APPLICABLE TO ALL CIVIL SHEETS)

1. ALL CONSTRUCTION AND MATERIALS SHALL BE IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS, Nibley City STANDARDS, STATE OF UTAH, APWA 2012 STANDARDS AND ANY OTHER APPLICABLE STANDARDS ISSUED BY THE CONTROLLING AGENCY.

2. CONTRACTOR SHALL FIELD VERIFY ALL DIMENSIONS BEFORE CONSTRUCTION. ANY DISCREPANCIES BETWEEN CONSTRUCTION DOCUMENTS AND FIELD CONDITIONS SHALL IMMEDIATELY BE BROUGHT TO THE ATTENTION OF THE OWNER.

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

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.

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

11. THRUST 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.

13. 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 TAPS AND ANY OTHER WORK OR MANIPULATION OF THE EXISTING WATER SYSTEM WITH THE CITY.

17. ON SLOPING AREAS THE CONTRACTOR SHALL TAKE PRECAUTIONS TO MITIGATE 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 ALLEROSION CONTROL MEASURES DETAILED IN THE PROJECT PLANS UNTIL FINAL ACCEPTANCE OF THIS PROJECT.

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 CONSTRUCT VERTICAL AND HORIZONTAL BENDS IN PIPE AS NEEDED TO MEET THE 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  
PRIOR TO BACKFILLING.

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

20. CONTINUATION TO COORDINATE WITH CITY, PUBLIC WORKS, DIVISION FOR A PRE-CONSTRUCTION MEETING AND TESTING.

| 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

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



PROJECT TITLE

*FIREFLY ESTATES PHASE 2*

1150 WEST 2260 SOUTH  
LOGAN, UTAH 84321

DRAWING TITLE

## INDEX SHEET

DATE : DEC,2022

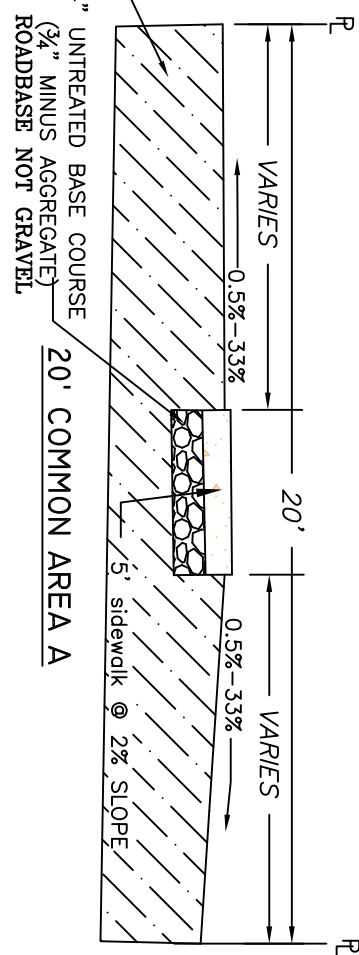
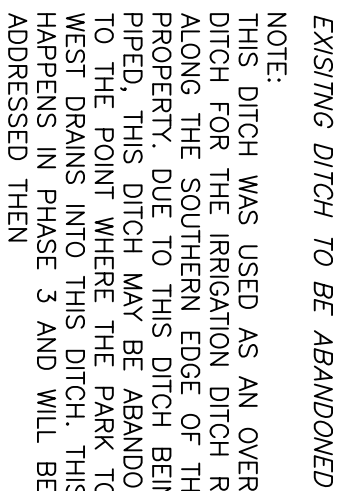
DRAWING No. 1







2260 SOUTH STREET



PROPOSED LIG

ensure that thrust blocks are installed properly and at all requisite locations

|     |
|-----|
| No. |
|     |
|     |
|     |
| REV |
| CAD |

OWN  
RET  
CHR  
ETH.  
450  
HOL

ACE

ALLIANCE CONSULTING  
ENGINEERS

---

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



*FIREFLY ESTATES PHASE 2*

1150 WEST 2260 SOUTH  
LOGAN, UTAH 84321

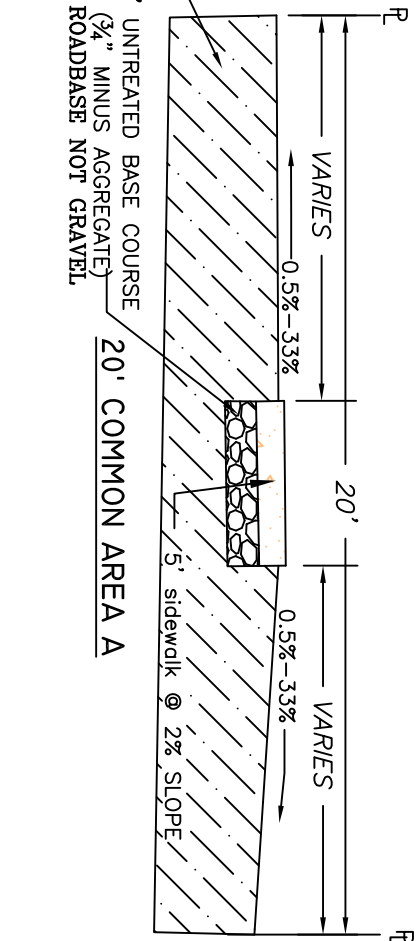
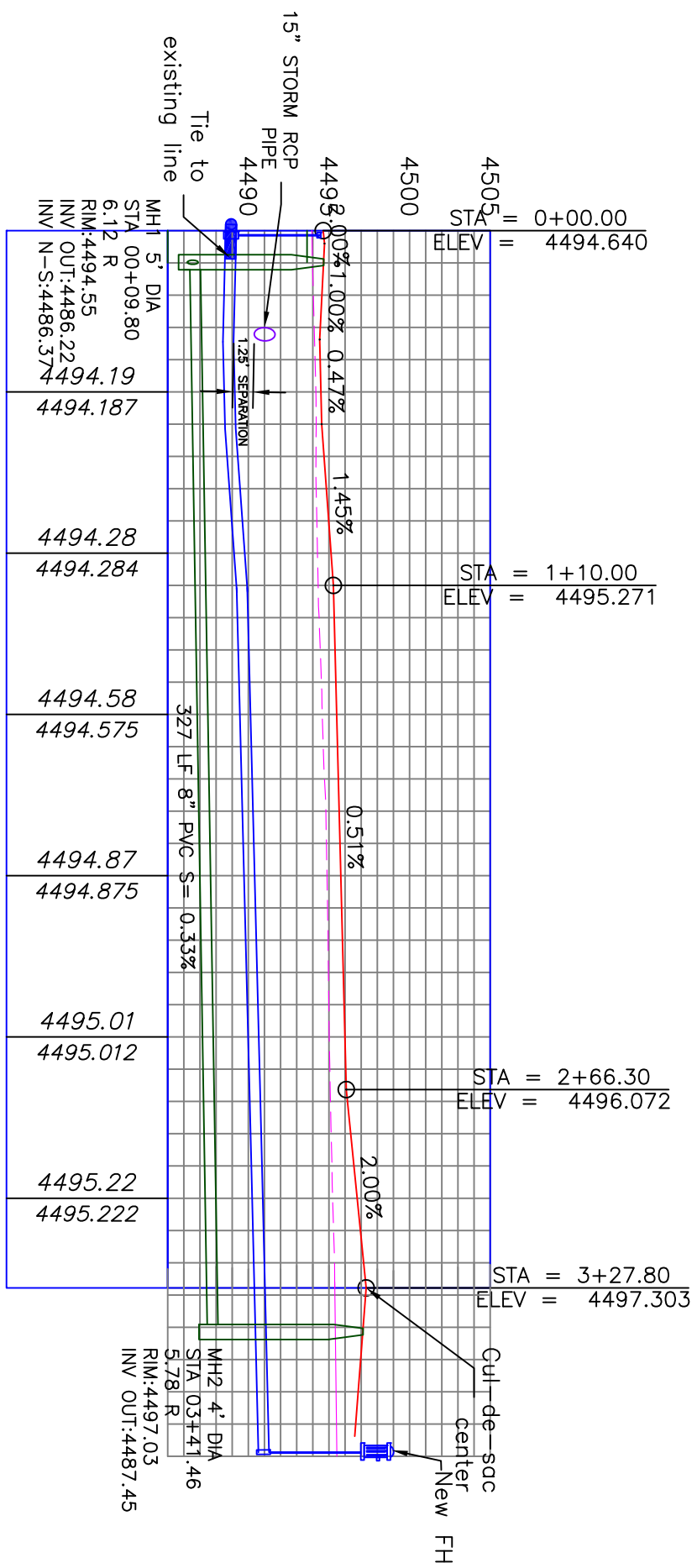
2260 SOUTH STREET

DATE : DEC,2021

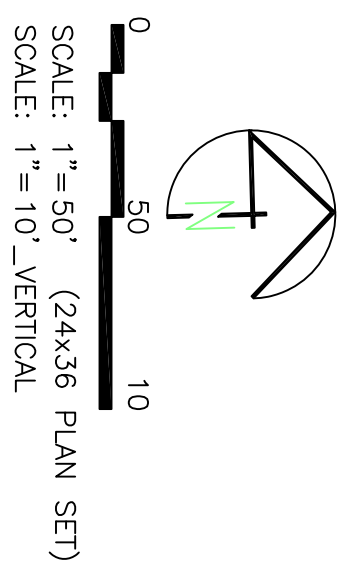
DATE : DEC,2021  
DRAWING No. 3



## 1050 WEST STREET



- | LEGEND |                                                            |
|--------|------------------------------------------------------------|
|        | BOUNDARY LINE                                              |
|        | LOT LINE                                                   |
|        | SHEET 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                                |
|        | PROPOSED 2" WATER METER W/ 4" TRUNK LINE CHANGE TO 2"      |
|        | AS SHOWN, W/ 4" SERVICE TO INDIVIDUAL UNITS WITH CDMB STOP |
|        | EXISTING STORM                                             |
|        | PROPOSED STORM                                             |
|        | EXISTING DITCH                                             |
|        | PROPOSED DITCH RE-ROUTE                                    |
|        | EXISTING DITCH PIPING                                      |
|        | EXIST NMR CONTOUR (1)                                      |
|        | EXIST MAR CONTOUR (5)                                      |
|        | PROPOSED NMR CONTOUR (0)                                   |
|        | PROPOSED MAR CONTOUR (2)                                   |
|        | EXISTING ASPHALT                                           |
|        | PROPOSED ASPHALT                                           |
|        | THURST BLOCK                                               |
|        | PROPOSED LIGHT                                             |



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

ALLIANCE CONSULTING  
ENGINEERS

---

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(435)755-5121  
alliancelogan@yahoo.com



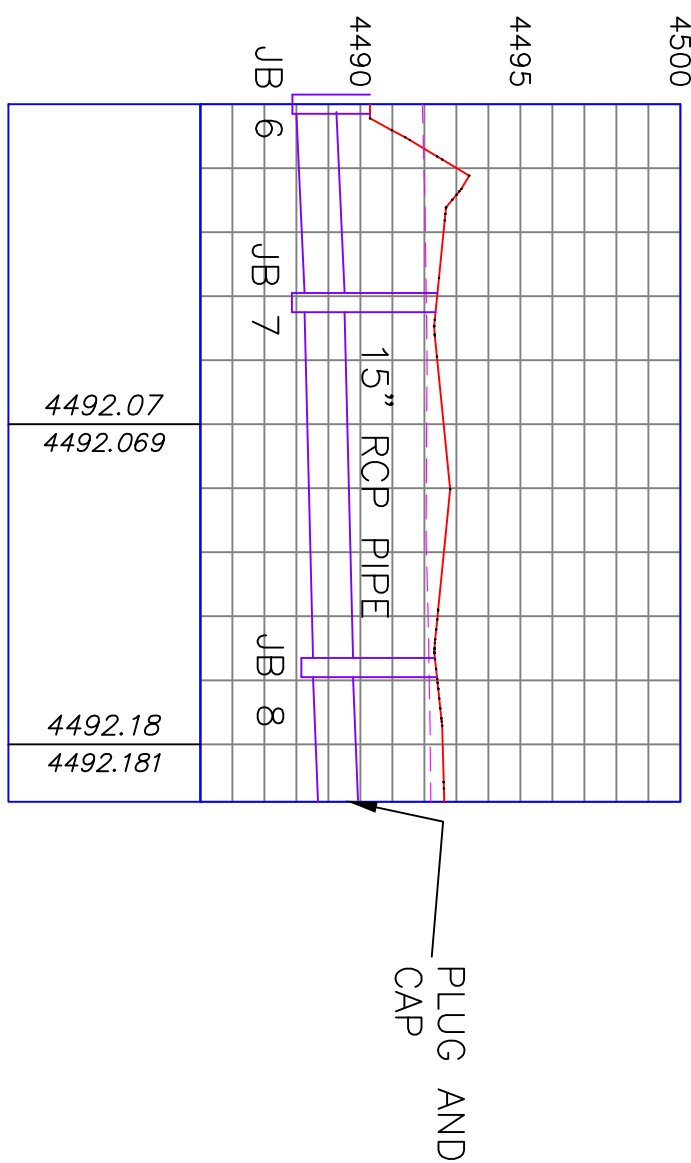
150 WEST 2260 SOUTH  
LOGAN, UTAH 84321

1050 WEST STREET

DATE : DEC,2021  
DRAWING No.

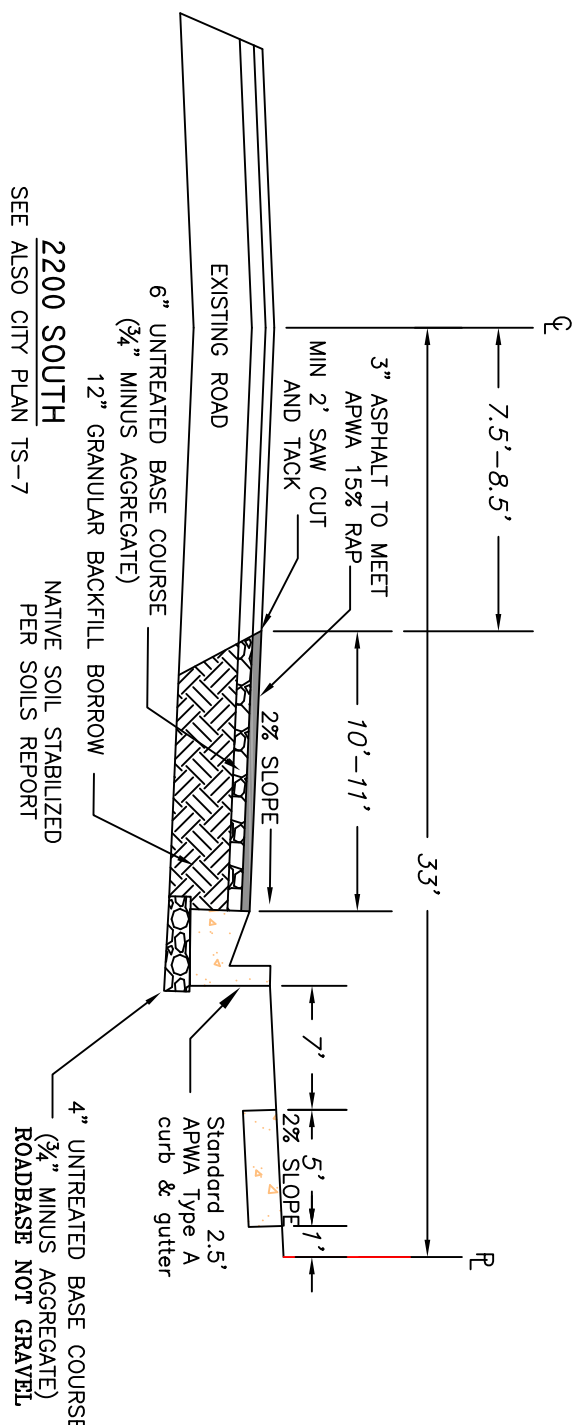


The drawing illustrates a road construction project for Meadow Lane. The plan view at the top shows the road's layout with stationing from 9+00 to 13+83. It includes property lines, easements, and numerous spot elevations. The longitudinal profile view at the bottom shows the road's vertical alignment, including grades of -0.44%, 0.76%, and 1.67%, and key station points like STA 9+46, STA 11+40.00, STA 12+99.28, STA 13+24.16, and STA 13+72.95.



## LEGEND

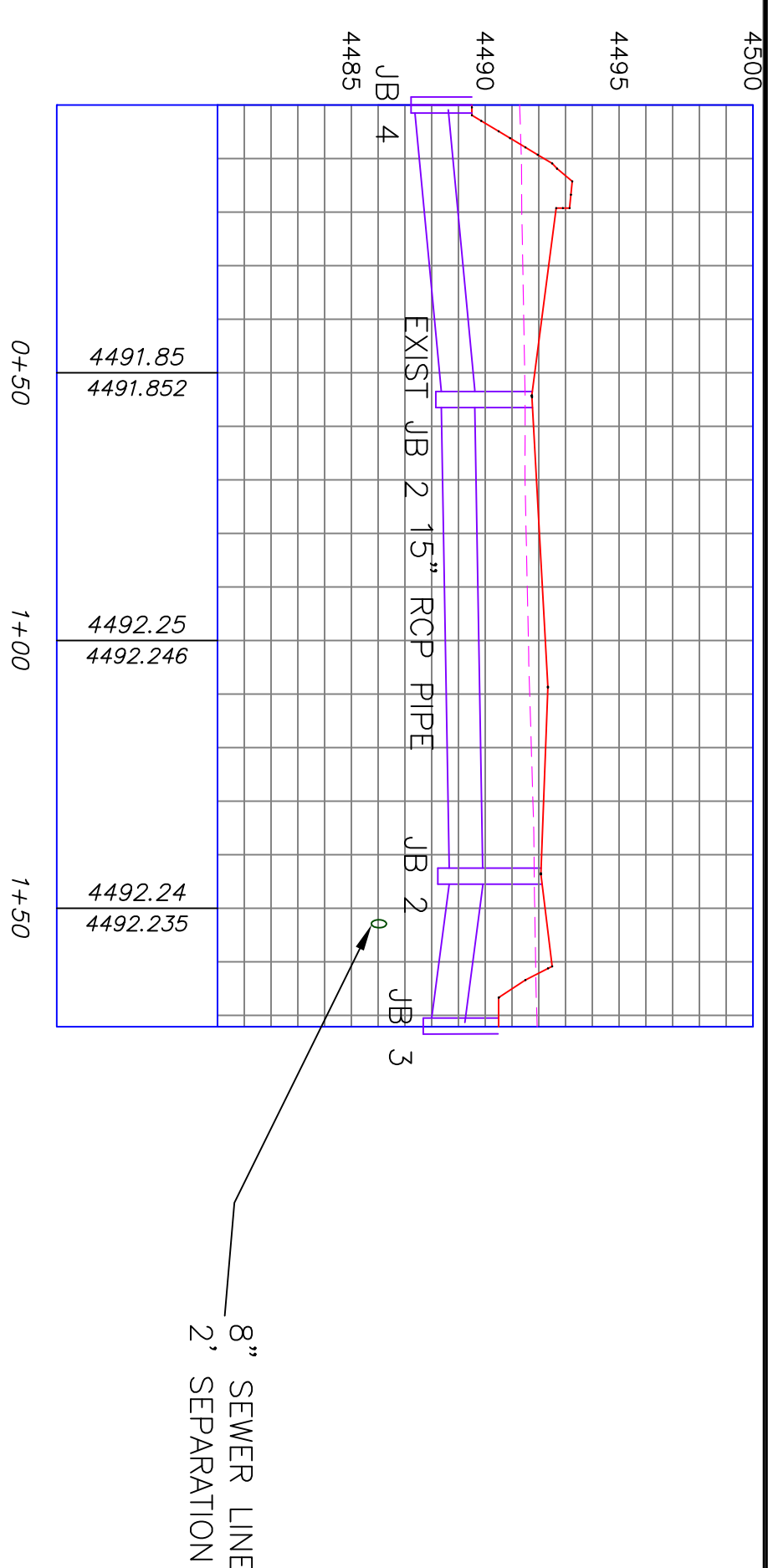
|  |                                                            |
|--|------------------------------------------------------------|
|  | BOUNDARY LINE                                              |
|  | LOT LINE                                                   |
|  | SHEET CENTRALINE                                           |
|  | EXISTING GAS                                               |
|  | EXISTING POWER                                             |
|  | EXISTING FENCE                                             |
|  | EXISTING SEWER                                             |
|  | EXISTING PRESSURE SEWER                                    |
|  | PROPOSED SEWER                                             |
|  | PROPOSED 4" PVC SEWER LATERAL                              |
|  | PROPOSED WATER                                             |
|  | PROPOSED 3/4" WATER SERVICE                                |
|  | PROPOSED 2" WATER METER W/ 4" TRUNK LINE, CHANCE TO 2"     |
|  | AS SHOWN, W/ 1" SERVICE TO INDIVIDUAL UNITS WITH COMB STOP |
|  | EXISTING STORM                                             |
|  | PROPOSED STORM                                             |
|  | EXISTING DITCH                                             |
|  | PROPOSED DITCH RE-ROUTE                                    |
|  | PROPOSED DITCH PILING                                      |
|  | EXIST NMR CONTOUR (1')                                     |
|  | EXIST MNR CONTOUR (5')                                     |
|  | PROPOSED NMR CONTOUR (0')                                  |
|  | PROPOSED ASPHALT                                           |
|  | PROPOSED LIGHT                                             |

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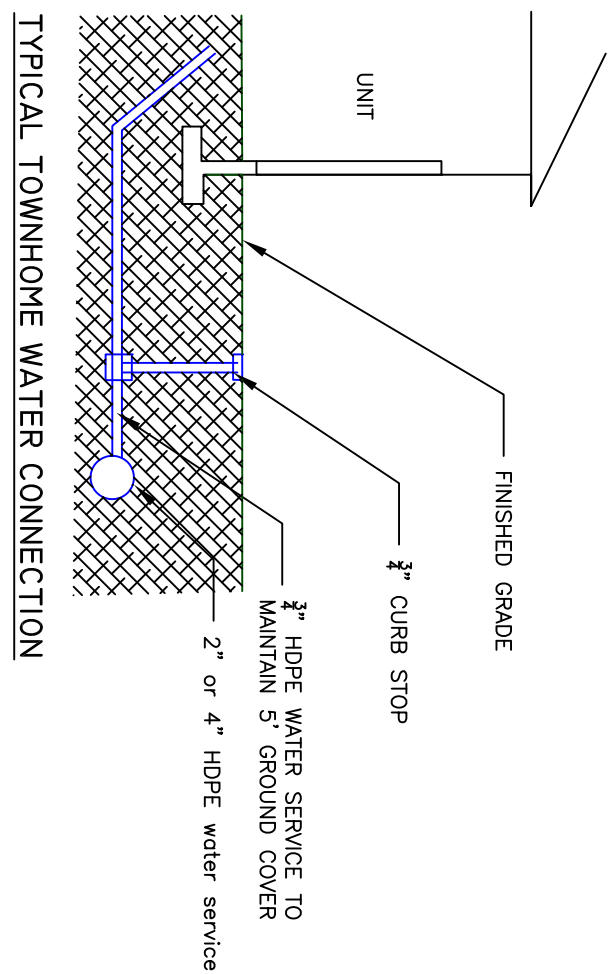
MEADOW LANE

DATE : DEC, 2021  
DRAWING No.

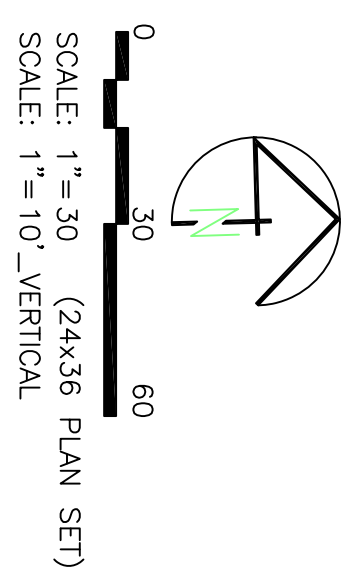
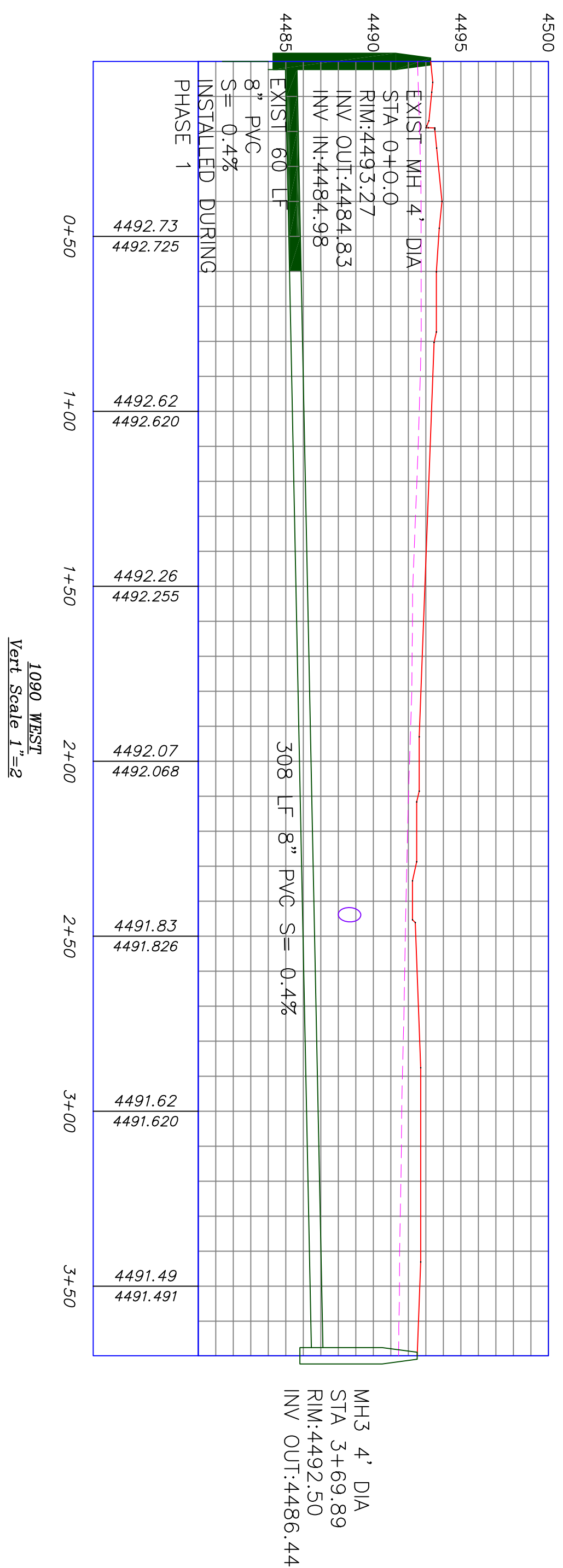
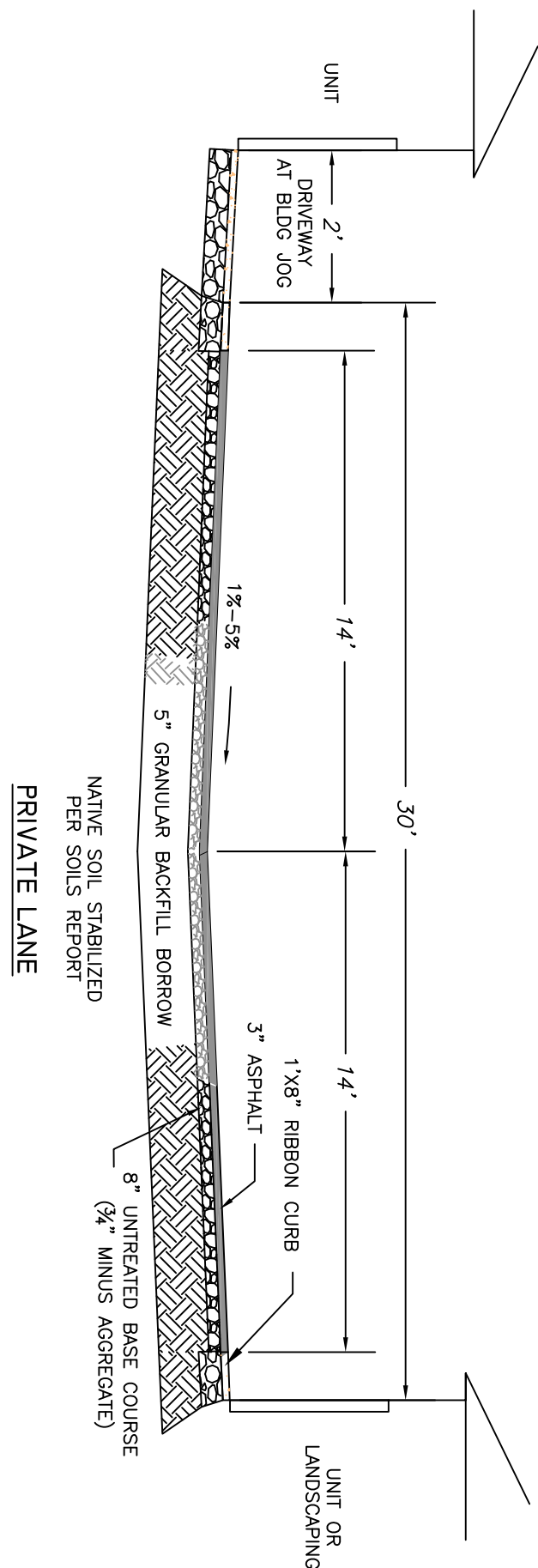
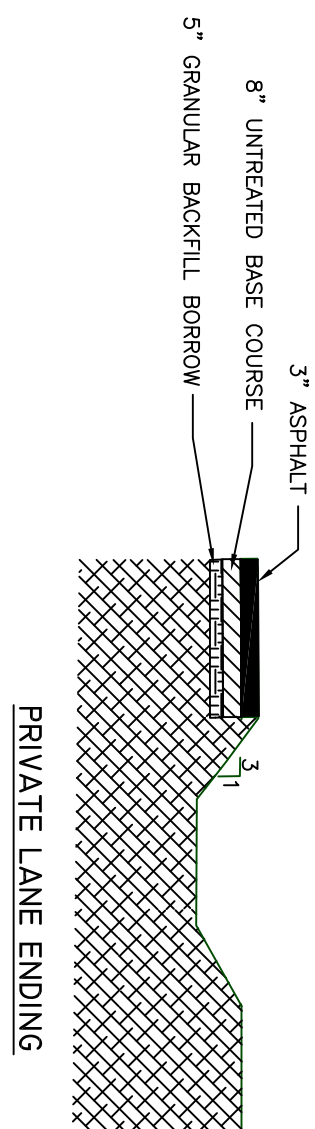




*FIREFLY ESTATES PHASE 2*  
*PRIVATE LANE CONSTRUCTION*



1. ALL CONSTRUCTION AND MATERIALS SHALL BE IN ACCORDANCE WITH THE 2017 APWA STANDARDS AND NIBLEY CITY ENGINEERING STANDARDS.
2. FOLLOW ALL AMENDMENTS TO 2017 APWA STANDARDS FOUND IN CHAPTER 10 OF NIBLEY CITY ENGINEERING STANDARDS.



### 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                                |
|  | PROPOSED 2" WATER METER W/ 4" TRUNK LINE, CHANCE TO 2"     |
|  | AS SHOWN / W 1" SERVICE TO INDIVIDUAL UNITS WITH CORB STOP |
|  | EXISTING STORM                                             |
|  | PROPOSED STORM                                             |
|  | EXISTING DITCH                                             |
|  | PROPOSED DITCH RE-ROUTE                                    |
|  | EXIST DITCH PIPING                                         |
|  | PROPOSED DITCH PIPING                                      |
|  | EXIST MNR CONTOUR (1")                                     |
|  | EXIST MNR CONTOUR (5")                                     |
|  | PROPOSED MNR CONTOUR (0.5")                                |
|  | PROPOSED MNR CONTOUR (2.5")                                |
|  | EXISTING ASPHALT                                           |
|  | PROPOSED ASPHALT                                           |
|  | PROPOSED LIGHT                                             |

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

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(435)755-5121  
alliancecelogan@yahoo.com

[illegible]

PROJECT TITLE

*FIREFLY ESTATES PHASE 2*

1150 WEST 2260 SOUTH  
LOGAN, UTAH 84321

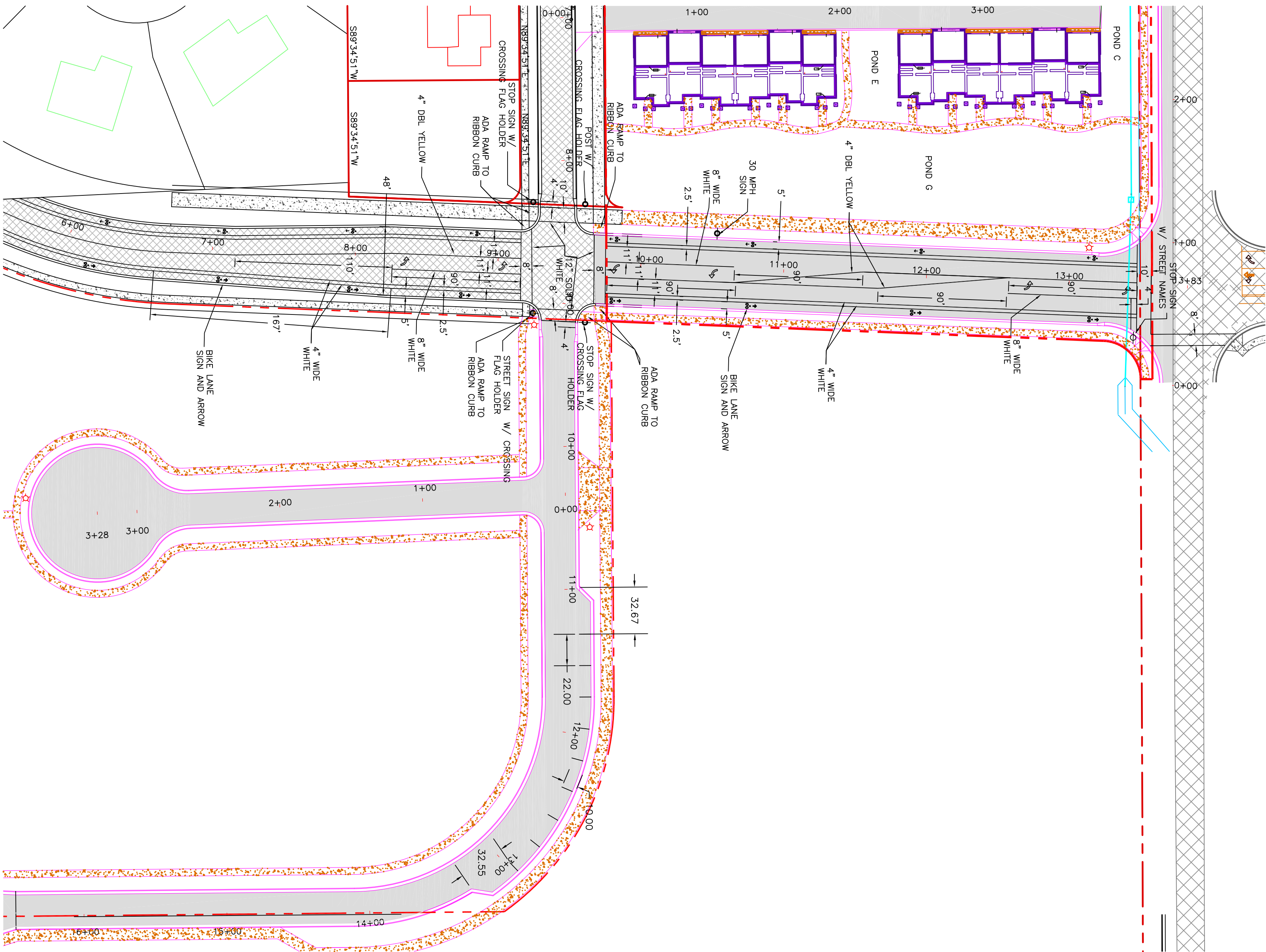
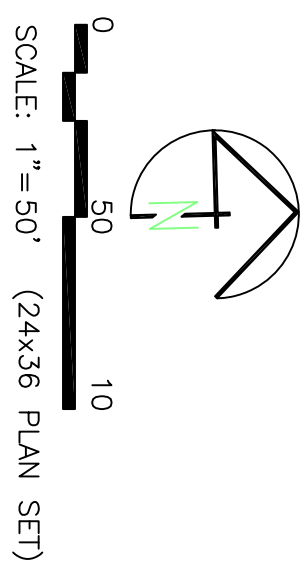
DRAWING TITLE

*PRIVATE LANE CONSTRUCTION*

DATE : DEC,2021  
DRAWING No.



FIREFLY ESTATES PHASE 2  
SIGNAGE/STRIPING PLAN



1. ALL CONSTRUCTION AND MATERIALS SHALL BE IN ACCORDANCE WITH THE 2017 APWA STANDARDS AND NIBLEY CITY ENGINEERING STANDARDS.
2. STANDARDS ALL AMENDMENTS TO 2017 APWA STANDARDS PUBLISHED AFTER 10 OF NIBLEY CITY ENGINEERING STANDARDS.

NOTE:  
ALL STRIPING AND SIGNS TO BE LOCATED BY SURVEY. CONTACT ALLIANCE CONSULTING ENGINEERS FOR STRIPING AND SIGNS TO BE STAKED



ALLIANCE CONSULTING  
ENGINEERS  
150 EAST 200 NORTH SUITE P  
LOGAN, UTAH 84321  
(435) 755-5121  
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OWNER:  
RETURN DEVELOPMENT  
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ETHAN POPPLETON (435)760-6934  
4505 S. WASATCH BLVD, STE 150  
HOLLADAY, UTAH 84124

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

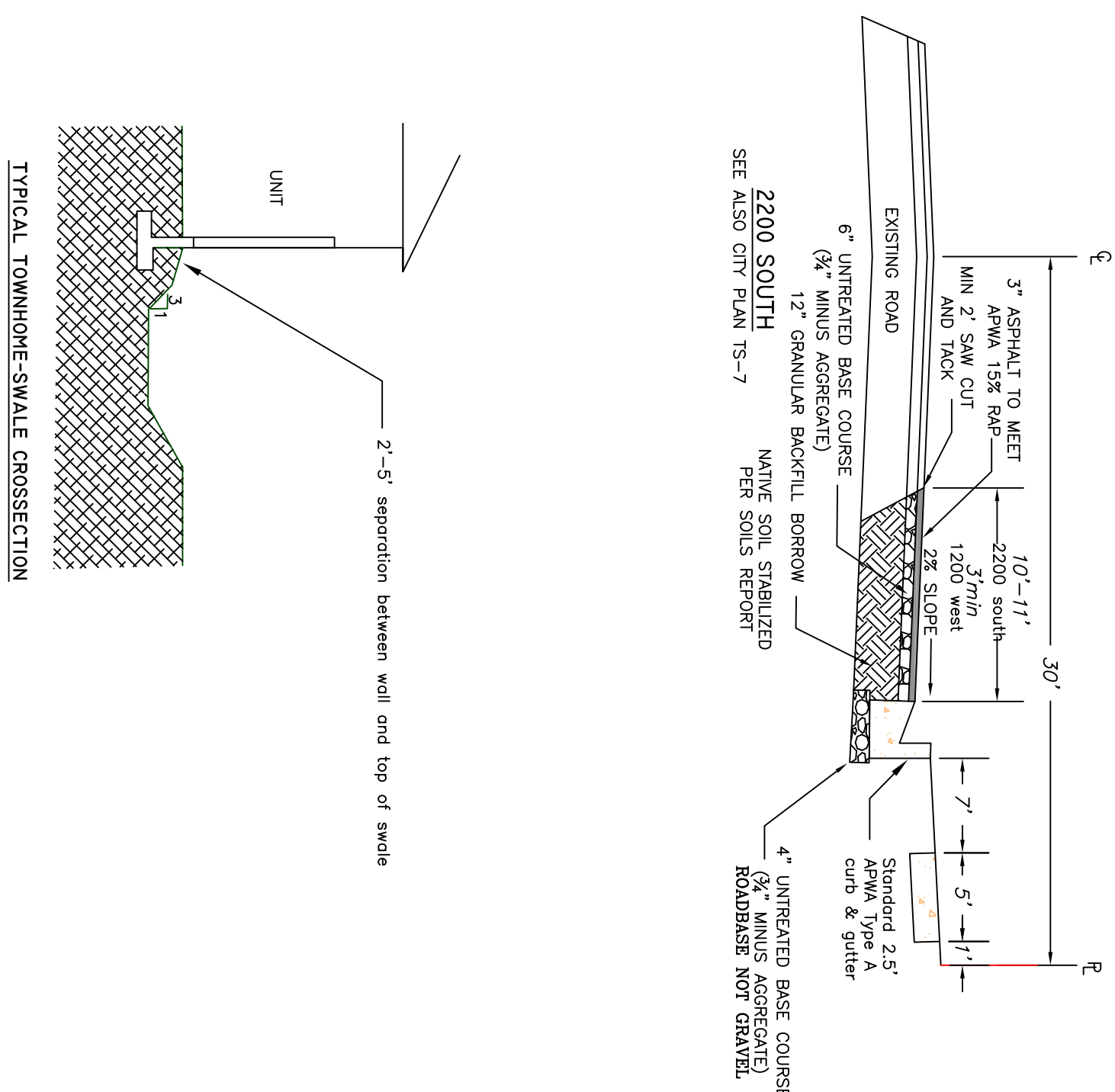
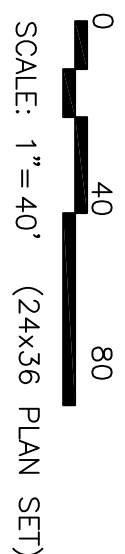
FIREFLY ESTATES PHASE 2  
1150 WEST 2260 SOUTH  
LOGAN, UTAH 84321

SIGNAGE/STRIPING PLAN

DATE : DEC.2021  
DRAWING No. 7



## GRADING PLAN



**LEGEND**

- BOUNDARY LINE
- LOT LINE
- EXISTING FENCE
- EXISTING STORM
- PROPOSED STORM
- EXISTING DITCH
- PROPOSED DITCH - RE-ROUTE
- PROPOSED DITCH - PIPING
- EXIST MNR CONTOUR (1')
- EXIST MNR CONTOUR (6')
- PROPOSED MNR CONTOUR
- PROPOSED MNR CONTOUR (0.5')
- PROPOSED MNR CONTOUR (2.5')
- EXISTING ASPHALT
- PROPOSED ASPHALT
- PROPOSED SPOT ELEVATION
- PROPOSED LIGHT
- FEE FINISH FLOOR ELEVATION
- FOS FRONT OF GARAGE

FFE: FINISH FLOOR ELEVATION  
FOG: FRONT OF GARAGE

PROPOSED SPOT ELEVATION

PROPOSED LIGHT

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

# AE

ALLIANCE CONSULTING  
ENGINEERS

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1150 WEST 2260 SOUTH  
LOGAN, UTAH 84321

DRAWING TITLE

GRADING PLAN

DATE : DEC,2021  
DRAWING No. 00



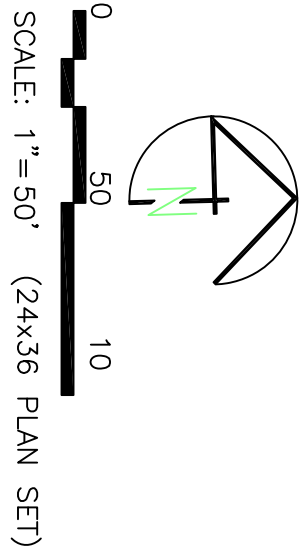








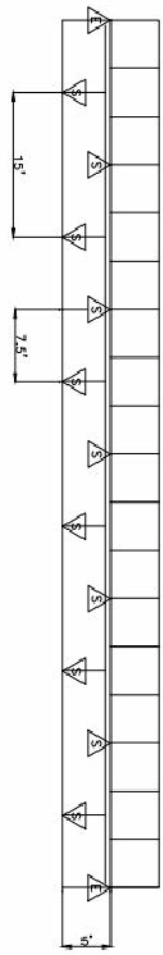
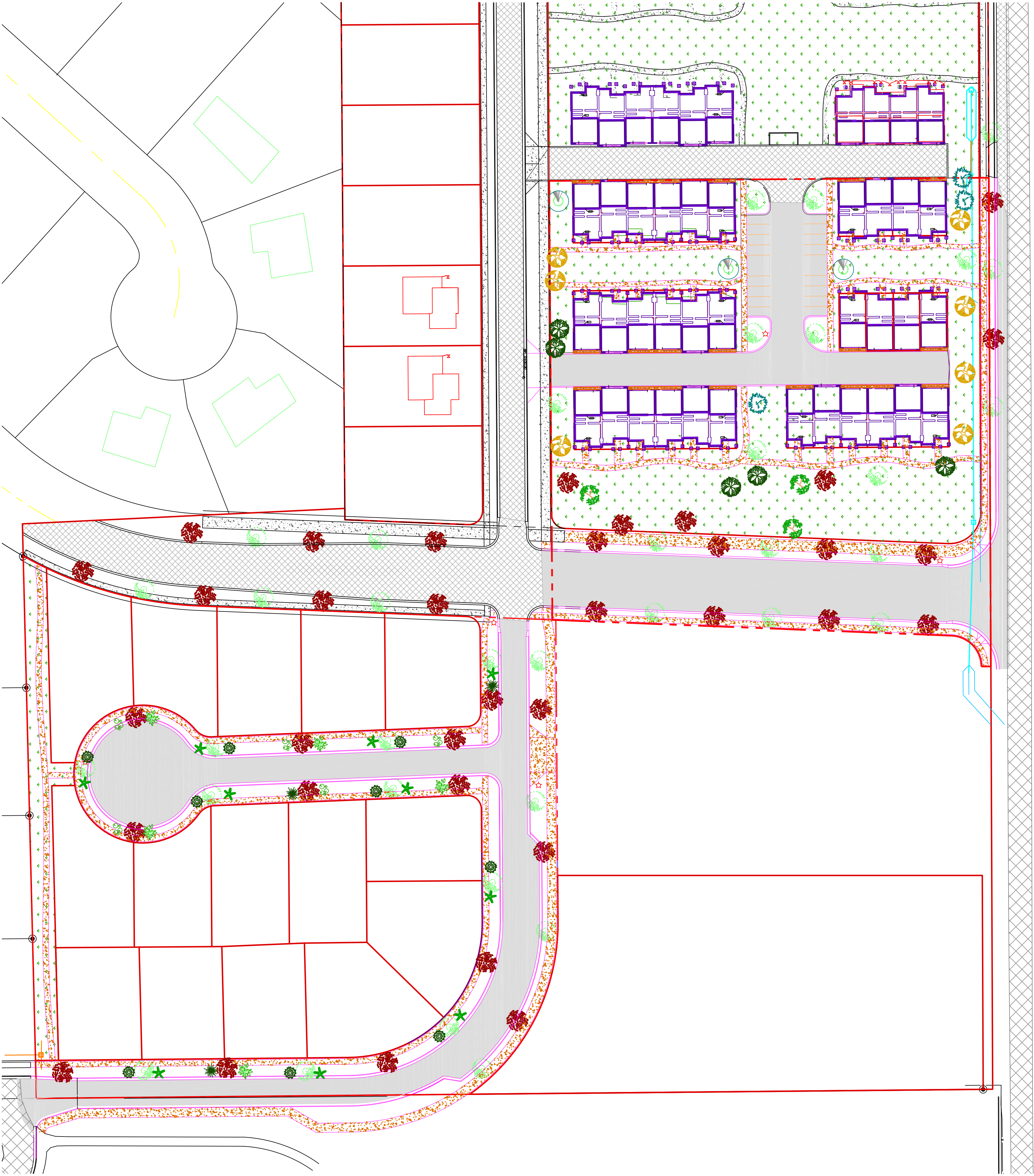
FIREFLY ESTATES PHASE 2  
LANDSCAPE PLAN



| LEGEND |                                      |
|--------|--------------------------------------|
|        | BOUNDARY LINE                        |
|        | PROPOSED GRASS                       |
|        | Honey locust 1-3 1/2" cal            |
|        | Linden (green spire) 1-3 1/2" cal    |
|        | Spring snow crabapple 1-3 1/2" cal   |
|        | Burr oak 1-3 1/2" cal                |
|        | Mole box elder 1-3 1/2" cal          |
|        | Cutleaf stepphen sunace 1-3 1/2" cal |
|        | Blackhaw viburnum 1-3 1/2" cal       |
| SHRUBS |                                      |
|        | Double flowering plum (shrub form)   |
|        | Red-osier dogwood                    |
|        | Spiraea                              |
|        | Dwarf mock orange                    |
|        | Northern gold forsythia              |

NOTES:

1. IRRIGATION SYSTEM WILL BE DESIGNED BY LANDSCAPE CONTRACTOR. LAWN AREAS WILL BE DESIGNED FOR HEAD DRAIN COVERAGE AND ALL PLANTING AREAS WILL BE DRIP IRRIGATED.
2. ALL GRASS TO BE KENTUCKY BLUEGRASS
3. TO LAY SOD IN PARK STRIPS CONTROLLED BY THE HOA



- NOTES:
1. STRIPS IRRIGATION TO BE DESIGNED BY LANDSCAPE CONTRACTOR.
  2. STRIPS IRRIGATION TO BE DESIGNED FOR HEAD DRAIN COVERAGE AND ALL PLANTING AREAS WILL BE DRIP IRRIGATED.
  3. TO LAY SOD IN PARK STRIPS CONTROLLED BY THE HOA

TYPICAL STRIP IRRIGATION HEAD PATTERN

Typical Irrigation for Parkstrips

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HOLLADAY, UTAH 84124

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

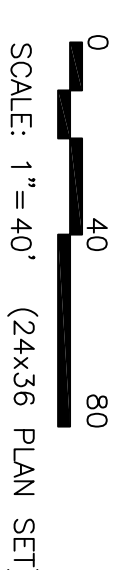
PROJECT TITLE  
**FIREFLY ESTATES PHASE 2**  
1150 WEST 2260 SOUTH  
LOGAN, UTAH 84321

DRAWING TITLE  
**LANDSCAPE PLAN**

DATE : MARCH 2022  
DRAWING No. 11



## SWPPF



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

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*FIREFLY ESTATES PHASE 2*  
1150 WEST 2260 SOUTH  
LOGAN, UTAH 84321

DRAWING TITLE *SWPPP*

→ N

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 passerby 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.<br>Before point of connection/Meter – HOA.                                               |
| Plumbing Main Line                                                                                                                                        |   | X | Point of connection/Meter to the unit - Owner.<br>Before point of connection/Meter – HOA.                                               |
| Plumbing Leak                                                                                                                                             |   | X | Point of connection/Meter to the unit - Owner.<br>Before point of connection/Meter – HOA.                                               |
| Plumbing – Clogging/Stoppage                                                                                                                              |   | X | Point of connection/Meter to the unit - Owner.<br>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<br>- 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 |                                              |

## **19.48 Transfer of Development Rights**

### **19.48.010 Definitions**

**Agritourism:** tourist related activities that support agriculture such as tours, events, farm to table restaurants, fruit and vegetable stands, etc.

**Bonus Density Multiplier:** The portion of Transferrable development rights which are transferred to a development divided by the base number of lots allowed, as defined by Section 19.48.030(4)(k) below.

**Conservation Easement:** an easement, covenant, restriction, or condition in a deed, will, or other instrument signed by or on behalf of the record owner of the underlying real property for the purpose of preserving and maintaining land or water areas predominantly in a natural, scenic, or open condition, or for recreational, agricultural, cultural, wildlife habitat or other use or condition consistent with the protection of open land.

**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.

**Deed of Severance:** an instrument executed by a property owner and Nibley City by which theoretical developments rights are severed from a Sending Property. A Deed of Severance may be combined with a Conservation Easement. A Deed of Severance shall be in substantially the same form as shown in Exhibit\_\_\_.

**Deed of Transfer:** by the owner of a theoretical development right transferring development rights from a sending area to a receiving property. A Deed of Transfer shall be in substantially the same form as shown in Exhibit\_\_\_.

**Determination of Eligibility:** a process performed by the City Planner or designee that determines the number of transferrable development rights possible to be eligible for transfer from a Sending Property.

**Development Rights:** the right of the owner of a parcel of land, under land development regulations in Part 3 of this Title as of date ordinance becomes effective or upon annexation, whichever is later, to place that parcel and the structures thereon to a particular use or to develop that land and the structures thereon to a particular area, density, bulk, or height.

**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.

**Receiving Area:** an overlay zoning district established by Nibley City designated as an area in which purchased development rights may be used.

**Receiving Property:** a lot or parcel within a receiving area and within which development rights are increased pursuant to a transfer of development rights affixed to the property.

**Sending Area:** one or more areas identified by this ordinance and rezoned with the Transfer of Development Rights Sending Overlay Zone as an area from which development rights are authorized to be severed and transferred to a receiving area.

**Sending Property:** a lot or parcel within a sending area from which development rights are authorized to be severed.

**Severance of Development Rights:** the process by which development rights from a sending property are severed pursuant to this ordinance.

**Transfer of Development Rights:** the process by which development rights from a sending property are affixed to one or more receiving properties.

**Transferable Development Rights (TDRs):** all or that portion of development rights that are transferred or are transferable.

**Transfer of Development Rights Certificate or TDR Certificate:** a certificate issued by the Nibley City Planner or designee that indicates a number of Transferable Development Rights that have been authorized for a Sending Property, which may be transferred to a Receiving Property.

#### **19.48.020 Transfer of Development Rights Sending Overlay**

The Transfer of Development Rights Sending Overlay Zone is intended to preserve areas in Nibley City that have an agricultural or natural open space use. This intent is accomplished through a voluntary program called Transfer of Development Rights (TDR). This TDR program creates new theoretical development rights and allows for the transfer of those development rights in accordance with provisions contained in this Overlay zone. These provisions are intended to shift development potential and/or rights to areas that are more appropriate for residential development.

**Commented [RP1]:** Update 19.08.010 to include both sending and receiving overlay zones

1. The purposes of this Transfer of Development Rights Program, or TDR Program, include, but are not limited to:
  - a. Protect and enhance private property rights by enabling the transfer of potential development rights.
  - b. Maintain the rural heritage of Nibley City.
  - c. Promote the public health, safety, and general welfare of Nibley City by establishing procedures, methods, and standards for the transfer of development rights.
  - d. Establish a procedure enabling Nibley City and its landowners to voluntarily sever development rights from a sending property.
  - e. Establish procedures for the formal transferring of development rights from a sending property, tracking those, and then to establish the use of those transferred development rights on a receiving property.
  - f. Establish certain incentives for attaching development rights to receiving properties.
  - g. Preserve open space, scenic views, agricultural, riparian and critical/sensitive lands.

- h. Protect lands, resources and structures of aesthetic, architectural, recreational, and historic significance.
    - i. Assist in shaping the character and direction of the development of Nibley City.
  - 2. Permitted Uses within Sending Areas after a Deed of Severance and conservation easement is recorded. Uses not listed are not allowed:
    - a. Agricultural and horticultural uses, including grazing of animals in compliance with NCC 19.34 Animal Land Use Regulations, raising crops, wholesale nurseries, and associated buildings that are specifically needed to support active, viable, and permitted agricultural and 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.
    - b. Public rights of way and easements, including quasi-public utility easements
    - c. Commercial horse riding, training and boarding stables.
    - d. Silviculture, in keeping with established standards for selective harvesting and sustained yield forestry
    - e. One (1) single-family dwelling and one Accessory Dwelling Unit on parcels with 20 or more acres.
    - f. Municipal facilities required for local service and/or recreation needs.
    - g. Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the conserved land.
    - h. The creation and Transfer of Development Rights in accordance with this chapter
    - i. Restoration, maintenance, enhancement of native vegetation.
    - j. Publicly accessible recreational lands and facilities including trails, parks and natural lands.
    - k. Agritourism
    - l. Conservation of open land in its natural state, e.g., meadows, tree stands, wetlands, forestland.
  - 3. Conditional uses within Sending Areas:
    - a. Home Occupations as per the definition in 19.04 for existing and permitted residences.
    - b. Seasonal fruit, vegetable, tree, and hay retail sales in structures of less than 500 square feet when at least some of the products being sold are raised on the premises. Subject to having access, parking, and any utility needs approved by the City.
  - 4. Sending Areas Identified.
    - a. Sending Areas are property that have been zoned with the Transfer of Development Rights Sending Overlay Zone, which overlay zone confers special rights and obligations as set forth in this chapter in addition to the underlying zoning regulations. Once a Deed of Severance and conservation easement is recorded, no uses other those expressly permitted herein are permitted, regardless of the underlying zoning. The Transfer of Development Rights Sending Overlay Zone may be applied to agricultural lands and open spaces as shown on the Official Zoning Map of Nibley City. For agricultural parcels, Sending Areas shall be no smaller than ten (10) acres. For areas of historical significance, Sending Areas shall be no smaller than five (5) acres. For areas identified as sending areas along the Blacksmith Fork River, an undisturbed area at least 150' in depth from the high-water mark and at least 200' in length or a trail easement at least 200' in length shall be

**Commented [JJ2]:** Policy - note that Home Occs are a CUP in all zones - change to CU?

**Commented [RP3]:** Cover seems wrong, unless the intent is to just blanket allow sending areas in all ag/open space areas.

Is the intent to just allow all sending zones if the property is right? Or do you want to rezone the property to allow sending zones?



eligible as a Sending Area, as long as it is located parallel to the River and covers the length of the subject property from property line to property line. Connecting parcels smaller than the minimum may be considered on a case by case basis, by the City Council where such connections provide a continuous, usable trail segment.

- b. A property owner may apply to have their property be designated as a Sending Area and rezoned to receive the Transfer of Development Rights Sending Overlay Zone through the City's rezoning process set forth in 19.02.
- c. Where a property is partially contained within a Sending Area, only the portion of the property contained within the Sending Area may be used for the purposes of determining transferable development rights (TDRs).
- d. A Deed of Severance and a Conservation Easement shall be recorded on the Sending Area property from which potential development rights were severed, and the property can thereafter only be used as outlined in this section. The conservation easement requires the formal commitment from a non-profit, Land Trust, or the City for long term management of the sending property. All applicable fees, including stewardship fees, for the transfer must be paid prior to recording the Deed of Severance and Conservation Easement.
- e. Any landowner within the Transfer of Development Rights Sending Overlay Zone may apply to have potential development rights calculated and created for their property based on formulas contained herein. The entire property shall be submitted for calculation of potential development rights at the time of application with the City.
- f. All Sending Areas and property within the Transfer of Development Rights Sending Overlay Zone are eligible for a determination of potential development rights, provided that properties owned by the State or Federal agencies and existing conservation subdivisions shall not be eligible for TDR credits or severance of potential development rights.

**Commented [RP4]:** We should use this phrase throughout to identify this as a specific zone that must be applied for and then granted by the City.

#### 5. Determination of Transferable Development Rights.

- a. The City Planner or designee shall establish and maintain a system for monitoring the determination, severance, ownership, assignment, and transfer of development rights.
- b. The record owner of property within the Transfer of Development Rights Sending Overlay Zone shall file a Determination of Eligibility Application, with an associated fee, to determine the number of development rights available to be severed from a sending property shall be filed with the City.
- c. The following information shall accompany the application:
  - i. A map that includes the following:
    - 1. The boundary map of the subject property.
    - 2. A legal description including the acreage of the property.
    - 3. Current zoning.
  - ii. Use of the property.
  - iii. Title policy or title documentation.
  - iv. Existing water rights needed to continue the current use on the property. Total water rights available to the property.
  - v. Applicable fees.
  - vi. For agricultural parcels, commitment to farming by the owner or a lease for 10 years
  - vii. Annexation status, if applicable

viii. Slope and floodplain mapping

- d. Nibley City shall determine the number of development rights using the following formula, and rounded to the nearest whole number:
- i.  $TDRs = A \times B$  for agricultural property or  $TDR = A \times OSA$  for open space properties
  - ii. Where TDR means Transferrable Development Rights, A means the total area (acres) of the property, B means the allowable potential development rights on an agricultural property, OSA means the allowable potential development rights on an open space property.
  - iii. For agricultural parcels, the per acre potential development units to transfer shall be 3.
  - iv. For open space parcels from the Blacksmith Fork area, the per acre potential development units to transfer shall be 4. If only a trail easement is offered, it shall be eligible for a minimum of 1 credit. All parcels participating in the TDR program along Blacksmith Fork shall provide conservation easements and/or trail easements from property line to property line. Parcels or areas offered and located further than 150' from the high water mark of the Blacksmith Fork River shall only be eligible for 3 credits per acre.

6. Severance of Development Rights.

- a. Any proposed severance of development rights may be initiated only upon application (Eligibility Application) to the City by the record owners of the sending properties. Once an Eligibility Application/determination is completed, a TDR Certificate shall be issued. The issuance of a TDR Certificate alone does not constitute a severance of development rights, and no development rights can be transferred solely on the basis of a TDR Certificate.
- b. Nibley City may not require property owners to sever development rights as a condition of the development of any property.
- c. A severance of development rights occurs after the owner of the sending property receives a signed TDR Certificate with the number of allotted TDRs from the City and records a Deed of Severance. The Deed of Severance must transfer development rights to one or more parties, which may include the grantor, and may, but is not required to, affix development rights to one or more receiving properties.
- d. The Deed of Severance must be executed by the property owners of the development rights being severed, and by any lien holders of such property.
- e. No Deed of Severance may be recorded under this ordinance unless the Deed of Severance contains a copy of the TDR Certificate signed by the City indicating the number of TDRs being severed.
- f. The Deed of Severance must contain a Conservation Easement, both of which shall run with the land and must assure that the prohibitions against the use and development of the sending property will bind the landowner and every successor in interest to the landowner. Such conservation easements shall include a legally binding commitment letter from a non-profit, local Land Trust, or the City.
- g. The Deed of Severance and Conservation Easement shall be recorded in the office of the Cache County Recorder. Upon recordation of the Deed of Severance:
  - i. The TDRs are severed from the sending property.
  - ii. The conservation easement shall be in compliance with the permitted uses in the Transfer of Development Rights Sending Overlay.

- h. The Deed of Severance shall be in a form substantially similar to the Deed of Severance attached as an exhibit to this ordinance and must otherwise comply with the requirements of this ordinance. Any changes to the deed attached as an exhibit in a particular case shall be in a form that is approved by the Nibley City Attorney.

#### **19.48.030 Transfer of Development Rights Receiving Overlay**

The creation of the Transfer of Development Rights Receiving Overlay Zone and designation of Receiving Properties is intended to preserve the areas in Nibley to retain its rural heritage by designating areas that could receive density that is transferred from a Sending area.

This TDR program creates development rights and allows for the transfer of development rights in accordance with provisions contained in the Overlay. These provisions are intended to shift existing development potential or rights to areas that are more appropriate for residential development.

1. Permitted Uses in Receiving Areas are limited to those uses which are permitted in the underlying zoning districts or as modified in 4 (k) below.
2. Permitted Uses that include written additional standards – such standards shall still apply.
3. Receiving Areas Identified.
  - a. Receiving areas shall be designated on the official Zoning Map of Nibley City and shall function as overlay zones, such that all the provisions of the underlying zone shall apply, unless altered by the provisions of the overlay.
  - b. Where a property is partially contained within a Receiving Area, only the portion of the property contained within the Receiving Area may be used for the purposes of applying transferable development rights (TDRs).
  - c. A property owner may apply to have their property be designated as a Receiving Area and rezoned to receive the Transfer of Development Rights Receiving Overlay Zone through the City's rezoning process set forth in 19.02.
  - d. The City Council may designate additional areas as a Receiving Area through the City's rezoning process. The Zoning Map should be updated upon designation. For future receiving area designations, the Planning Commission and City Council, in accordance with City Code, shall consider the ability of the property, utilities, nearby roadway networks, transportation system capacities and options, and other land use characteristics to accommodate additional density on the property.
  - e. A receiving property that brings TDR credits to their property may only use the development rights permitted in accordance with the existing zoning regulations applicable to the receiving property and as shown in the table below:

| Base Zoning                                    | Base Density                      | Receiving Area<br>Allowable Density Increase           |
|------------------------------------------------|-----------------------------------|--------------------------------------------------------|
| R-1, R-1A, R-2, R-2A Zones                     | As per zone                       | Up to 50% increase over the existing zone requirements |
| R-PUD eligible areas                           | 5 units per net developable acre  | Up to 15 units per net developable acre                |
| R-M eligible areas                             | 10 units per net developable acre | Up to 20 units per net developable acre                |
| Commercial mixed use Buildings within C or C-N | As per existing zone              | Up to 15 units per net developable acre                |

**Commented [JJ5]:** Policy - suggesting a change in base density to the R-PUD and housing types allowed in the zone

**Commented [LR6]:** Need to add section for R-PUD ordinance that limits density without TDR.

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zones

- f. Procedure for Calculating Allowed Number of Housing Units: The Allowed Number of Units including the density bonus for transferrable development rights shall be determined as follows. The developer shall follow the process outlined below to determine allowable number of units of the proposed subdivision and use these properties in developing the subdivision plats. All calculations and measurements shall be clearly documented in order and following the process outlined below and submitted with the preliminary plat application. All calculations will be based on the parcel's current zone at the time of application and the associated Lot Standards.

**Commented [LR7]:** This is similar to 21.10.020 for Open Space Subdivisions

- i. Provide to the City the total area contained within the subdivision plat.
- ii. Provide to the City the total area being dedicated to rights-of-way.
- iii. Provide to the City the total acres of Constrained and Sensitive Land.
- iv. Provide the City the total Net Developable Land area as defined within this section.
- v. State the area of proposed Open Space Land.
- vi. Calculate Open Space Ratio.
- vii. Calculate the Base Number of Lots per zone:
  - 1) Base Number of Lots R-1 = Net Developable Land / 1 acre
  - 2) Base Number of Lots R-1A = Net Developable Land / .75 acres
  - 3) Base Number of Lots R-2 = Net Developable Land / 0.5 acres
  - 4) Base Number of Lots R-2A = Net Developable Land / 0.32 acres
- viii. Determine density bonus based upon the following: number of TDRs to be transferred to the project / Base number of Lots = Bonus Density multiplier
- ix. Total allowed lots = Base number of lots + Base number of lots multiplied by the Bonus Density multiplier with the limits noted above.

4. Properties designated as receiving areas and with proof of transferred development credits, as shown in City and County records, shall be vested in the density of the underlying zone plus the additional development credits up to the limits shown in "e" above. Transfer of Development Rights to Receiving Properties shall comply with the following:
- a. Any proposed transfer of development rights may be initiated only upon completing an Eligibility application by the owners of the sending properties, holders of a TDR Certificate, or owners of the receiving properties.
  - b. Nibley City may not require property owners to transfer or receive a transfer of development rights as a condition of the development of any property, however no increases in density beyond what the existing zone allows shall be given without proof of transferrable development credits from a sending property.
  - c. The record owner of receiving property within the Transfer of Development Rights Receiving Overlay Zone shall file an application for a determination of eligibility to determine the number of transferrable residential development rights available to be transferred and affixed to one or more receiving properties in compliance with this ordinance. Such application shall include:
    - i. A completed determination of eligibility application and TDR Certificate from the sending property.
    - ii. A tax map, plat or site plan outlining the boundaries of the property for each lot, tract

- or parcel as described in the deed.
- iii. The existing zoning of the property.
  - iv. A title policy or other title documentation for the receiving property including a legal description of the receiving property.
  - v. A copy of a survey plat of the proposed receiving parcel prepared by a surveyor licensed in the State of Utah.
  - vi. Water shares or rights necessary to support the new project as provided in NCC 21.12.020.
  - vii. A statement of the number of residential development rights proposed to be transferred and affixed as residential development rights to one or more receiving properties, and calculations upon which the number is based.
  - viii. All applicable fees.
  - ix. A signed conservation easement agreement covering the sending property with a certified Land Trust, non-profit organization or Nibley City
  - x. Any additional information required by Nibley City, shown in the application, as necessary to determine the number of residential development rights that qualify for transfer.
- d. The City shall provide a written statement of the maximum number of TDRs available to be transferred and affixed to one or more receiving properties.
  - e. A transfer of development rights occurs when the owner of the development rights records a Deed of Transfer against the receiving property in the land records of Cache County.
  - f. The Deed of Transfer shall be executed by the sending area property owners of the development rights being transferred, and any lien holders of such property owners, and shall identify the development rights being severed, and the sending properties and/or the receiving properties, as applicable.
  - g. No Deed of Transfer may be recorded among the land records of Cache County unless the Deed of Transfer contains a copy of the signed TDR Certificate by the City Planner indicating the number of residential development rights being transferred and/or affixed to one or more receiving properties.
  - h. Upon recordation of the Deed of Transfer, the transferable development rights are conveyed to one or more parties and/or are affixed to one or more receiving properties stated in the Deed of Transfer.
  - i. The Deed of Transfer shall be in a form substantially similar to the Deed of Transfer attached as exhibit "C" to this ordinance and shall otherwise comply with the requirements of this ordinance and any changes to the deed attached as an exhibit in a particular case shall be in a form that is approved by the Nibley City Attorney.
  - j. Any transfer of development rights to a receiving property pursuant to this ordinance only authorizes an increase in maximum residential density over the base density as per the table in "d" above.
  - k. The existing zoning district regulations may be reduced/modified in terms of the following table:

|         | <a href="#">R-M Eligible Areas</a>        | R-PUD Eligible Areas | R-1 | R-1A | R-2                       | R-2A |
|---------|-------------------------------------------|----------------------|-----|------|---------------------------|------|
| Minimum | Bonus Density Multiplier (BDM)- Less than |                      |     |      | Bonus Density Multiplier- |      |

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|                                                                       |                                                                                                                           |                                                                         |                                                                       |                                                                        |                                                                     |
|-----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|-----------------------------------------------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------------|
| front yard setback (rear or side-loaded units)                        | 1.0: 20'. Greater than 1.0: 15'.                                                                                          | 30'                                                                     |                                                                       | Less than 0.25: 30'. Greater than 0.25: 25'                            |                                                                     |
| Minimum front yard setback (front-loaded units)                       | 20'                                                                                                                       |                                                                         |                                                                       |                                                                        |                                                                     |
| Minimum side yard, interior setback                                   | To the minimum required by the IBC                                                                                        | 10'                                                                     |                                                                       | Bonus Density Multiplier- Less than 0.25: 10'. Greater than 0.25: 8'   |                                                                     |
| Minimum side yard, street setback                                     | 20'                                                                                                                       | 30'                                                                     |                                                                       | Bonus Density Multiplier- Less than 0.25: 30'. Greater than 0.25: 25'  |                                                                     |
| Minimum rear yard setback                                             | Bonus Density Multiplier- Less than 1.0: 15'. Greater than 1.0: 10'.                                                      | 30'                                                                     |                                                                       | Bonus Density Multiplier- Less than 0.25: 25'. Greater than 0.25: 20'  |                                                                     |
| Minimum Lot width measured at front yard setback line (single-family) | Bonus Density Multiplier- Less than 1.0: 50 ft. Greater than 1.0: 40 sq. ft.                                              | Bonus Density Multiplier- Less than 0.25: 125'. Greater than 0.25: 100' |                                                                       | Bonus Density Multiplier- Less than 0.25: 100'. Greater than 0.25: 75' |                                                                     |
| Minimum Lot Area (Single-family)                                      | Bonus Density Multiplier- Less than 1.0: 4,500 sq. ft. Greater than 1.0: 3,500 sq. ft.                                    | BDM- Less than 0.25: 18,000 sq. ft. Greater than 0.25: 12,000 sq. ft.   | BDM- Less than 0.25: 14,000 sq. ft. Greater than 0.25: 11,000 sq. ft. | BDM- Less than 0.25: 12,000 sq. ft. Greater than 0.25: 9,000 sq. ft.   | BDM- Less than 0.25: 8,000 sq. ft. Greater than 0.25: 6,000 sq. ft. |
| Minimum Lot Area (Two-family)                                         | Bonus Density Multiplier- Less than 1.0: 8,000 sq. ft. Greater than 1.0: 6,000 sq. ft.                                    |                                                                         |                                                                       |                                                                        |                                                                     |
| Minimum Open Space required                                           | Bonus Density Multiplier- Less than 1.0: 35% of net developable acreage. Greater than 1.0: 25% of net developable acreage | -                                                                       | -                                                                     | -                                                                      | -                                                                   |
| Unit                                                                  | =                                                                                                                         | Bonus Density                                                           | Same as underlying Zone                                               |                                                                        |                                                                     |

**Commented [JJ8]:** How does that work for townhouses?

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|                    |  |                                                                                                                                                  |  |
|--------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Types & Unit Split |  | Multiplier- Less than 1.0 : greater than 40% of units shall be single-family. Greater than 1.0: greater than 20% of units shall be single-family |  |
|--------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------|--|

L. Developments in R-PUD eligible areas – housing types may include flexible attached units with building lengths no greater than 150'. Projects with bonified TDR credits, shall, when the application meets all City standards, be approved after appropriate administrative processing for a subdivision or conditional use.

Proposals for use of TDR credits within the R-PUD eligible areas as currently shown in NCC 19.32.030, shall become administrative and not require the rezone process in order to apply TDR credits to the R-PUD project. R-PUD projects shall follow the development standards and approval process of NCC 19.32, except as provided in this chapter.

**Commented [LR9]:** If we are going to have this restriction, we should add it to R-PUD chapter, as well, so this is not more restrictive than regular R-PUD

**Commented [JJ10R9]:** Assumes 25' wide units?

When Recorded, return to:  
Nibley City  
Attn: City Planner  
455 West 3200 South  
Nibley, UT 84660

Affected Parcel No(s). \_\_\_\_\_

### **Deed of Severance and Conservation Easement**

This Deed of Severance and Conservation Easement ("Deed") is made this \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ ("Grantor") and Nibley City, a Utah municipal corporation ("Holder").

### **RECITALS**

WHEREAS Grantor is the sole owner in fee simple of certain real property, which is more particularly described in Exhibit A, attached hereto and incorporated by this reference ("Property");

WHEREAS Grantor desires to sever the development rights from the Property, which rights may be transferred to other receiving property within Nibley City pursuant to Chapter 19.48 of the Nibley Municipal Code TDR Program;

WHEREAS Grantor desires to convey and dedicate a conservation easement created pursuant to Utah Code Ann. §57-18-1 *et. seq.* on the Property to Holder; and

WHEREAS Holder desires to accept the dedication of conservation easement to further the stated goals of the TDR Program;

NOW, THEREFORE, Grantor and Holder, for and in consideration of the foregoing do hereby agree as follows:

### **Severance of Transferable Development Rights**

The development rights associated with the Property are hereby severed and converted to Transferable Development Rights (TDRs). The TDRs severed from the Property are eligible to transfer to other places within Nibley City consistent with the TDR Program and are evidenced by that certain Certificate of Transferable Development Rights No. \_\_\_\_\_. Further development of the Property is prohibited except as in accordance with the TDR Program.

### **Conservation Easement**

In consideration of the TDRs granted and the severance of the development rights from the Property, Grantor does hereby grant and convey, pursuant to and in accordance with Utah Code Ann. § 57-18-1 *et. seq.*, in perpetuity, to Holder, its assigns and successors in interest, a conservation easement in said real property of the Grantor of the nature and character and to the extent hereinafter expressed, to be and to constitute a servitude upon said real property of the Grantor, which estate, interest, easement and servitude will result from the covenants and restrictions set out below and hereby imposed upon the use of said property of said Grantor, and to that end and for the purpose of accomplishing the intent of the parties hereto, said Grantor covenants on behalf of itself, its heirs, successors and assigns, with Holder and its assigns to do and refrain from doing, severally and collectively, upon the Grantor's said property, the various acts hereinafter mentioned. Grantor commits by this easement to \_\_\_\_\_ use for a period of at least ten years via a lease or continued ownership. A non-profit organization, land trust, or the City hereby commits to long term management of the Property in accordance with the Nibley City TDR Program and

the rights, limitations, and restrictions set forth in this Deed. Grantor and/or developer has provided evidence of commitment by said entity and payment of any associated fees. The managing entity is:

Name:

Entity Type:

Physical Address:

Signature of Managing Entity: \_\_\_\_\_

Name and Title of Signer: \_\_\_\_\_

The restrictions hereby imposed upon the use of said property of the Grantor, and the acts which said Grantor so covenants to do and refrain from doing upon its said property in connection therewith are and shall be as follows:

1. The easement property herein described shall be kept in a manner consistent with the TDR Program.
2. Except as allowed by the TDR Program, there shall be on or in the easement property no fillings, excavating, removal of topsoil, sand, gravel, rock, minerals, or other materials nor any building of roads or change in the topography of the land in any manner, other than that caused by the forces of nature, or as reserved hereafter.
3. Herbicides and pesticides can be sprayed, when it is necessary for the raising of crops. Fencing will be allowed where necessary for farming operations or confining livestock.
4. No power lines with voltage in excess of 12kV may be erected, nor any interest in the easement property shall be granted for this purpose. The Grantor reserves the right and easement on the real property to maintain and repair existing telephone, electric, water wells, or other utility lines or mains needed to provide for the needs of the Grantor, its successors or assigns. The area needed to repair said facility shall be the minimum necessary to accomplish the task as agreed upon in writing by the Grantor and Grantee. Upon completion, the area shall be restored to its previous state or as near as practical.
5. The land shall at all times be kept free of garbage, trash, and inoperable machinery; and no other unsightly material shall be allowed to accumulate or be stored thereon.
6. Each and every other activity or construction which might reasonably endanger the natural, agricultural, or scenic state of the easement property is forbidden.
7. Nibley City reserves the right to periodically inspect said property for violations of the easement property, and if upon sixty (60) days advance written notice the Grantor has not eliminated said violations, Nibley City may remove or eliminate, at the expense of the landowner, any violation by Grantor of the easement. A Nibley City authorized representative may enter upon said lands for the purpose of inspection. Said easement is not a public easement.
8. Nibley City reserves the right to post or clearly mark the boundaries of said easement.

The conservation easement granted hereunder and the covenants heretofore made are subject to the following rights of the Grantor which are expressly reserved hereunder.

1. Except as expressly limited herein, the Grantor reserves for itself, its heirs, successors and assigns, all rights as owner of the easement property, including the right to use the easement property for all ownership purposes not inconsistent with this easement or the TDR Program, including agricultural uses or other uses allowed by the TDR Program.

2. The right to build structures for agricultural use and occupancy subject to following applicable rules of the TDR Program, building codes, and setback regulations.
3. The lands of the Grantor, herein above referred to and to which the provisions of this instrument apply, are situated in Nibley City, Cache County of Utah, the State of Utah, and are more particularly described as follows:
  - a. See Attached "Exhibit A: Property Description".

TO HAVE AND TO HOLD unto Nibley City and its assigns forever. The covenants agreed to and the restrictions imposed, as aforesaid, shall be binding upon the grantor, its heirs, successors, and assigns, and each of them, and shall constitute a servitude upon the above described land.

IN WITNESS WHEREOF, the Grantor has hereunto set hand on the day and year first above written,  
Signed and acknowledged in the presence of the notary public below:

\_\_\_\_\_  
Printed Name of Grantor

\_\_\_\_\_  
Signature of Grantor

\_\_\_\_\_  
Date

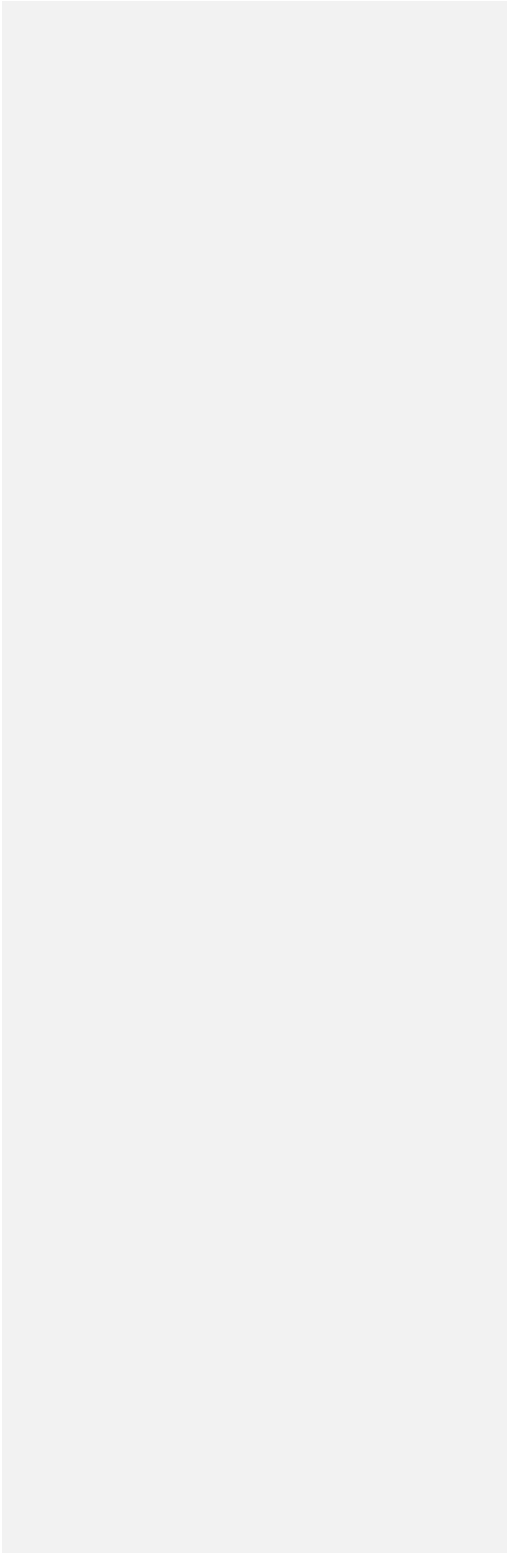
CACHE COUNTY, STATE OF UTAH

Before me, a notary public in and/or said county and state, personally appeared the above-named Grantor, who acknowledged that he/she did sign the forgoing instrument and that the same is his/her free act and deed whereof I hereunto set my hand and official seal this day \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public



**EXHIBIT A: PROPERTY DESCRIPTION**



## EXHIBIT B: TRANSFERABLE DEVELOPMENT RIGHTS CERTIFICATE

### Certificate of Transferable Development Rights

TDR Certificate Number: #

This document certifies that:

1. Owners of real property located in Nibley, Utah, have filed a Determination of Eligibility Application with the Nibley City Community Development Department to determine whether the property is eligible for the creation of Transferable Development Rights.
2. The Nibley City Planner has determined that the property is eligible for the creation of Transferable Development Rights in accordance with Chapter 19.48 of the Nibley City Municipal Code.
3. The Nibley City Planner has determined the number of Transferable Development Rights that the property is eligible for in accordance with Chapter 19.48 of the Nibley City Municipal Code.
4. The owners of the property have signed a Deed of Severance and a Conservation Easement or trail easement has been established with \_\_\_\_\_.
5. This Certificate represents the creation of Transferable Development Rights that will become valid and enforceable in accordance with Chapter 19.48 of the Nibley City Municipal Code upon the lawful and proper recordation of the Deed of Severance and Conservation Easement.
6. The following number of Transferable Development Rights are created and severed from the property identified by the Parcel ID Number below and further described by the attached legal description.
7. The Transferable Development Rights represented by this Certificate are eligible to be transferred to Receiving Areas in Nibley City in accordance with Chapter 19.48 of the Nibley Municipal Code.

Transferable Development Rights granted: \_\_\_\_\_

Property from which Transferable Development Rights originated (Cache County Parcel ID Number):

\_\_\_\_\_

\_\_\_\_\_  
Signature of City Planner

\_\_\_\_\_  
Date

## EXHIBIT C: DEED OF TRANSFER

### Deed of Transfer

When Recorded, return to:  
Nibley City Planner  
455 West 3200 South  
Nibley, UT 84660

Affected Parcel No.: \_\_\_\_\_

Deed of Transfer Number: \_\_\_\_\_

Name(s) of Owners: \_\_\_\_\_

This document certifies that:

1. Owners are the holders of a Certificate of Transferable Development Rights (TDR Certificate) No. \_\_\_\_\_, which evidences transferable development rights (TDRs) eligible for transfer to a receiving property consistent with Nibley City pursuant to Chapter 19.48 of the Nibley City Municipal Code.
2. Owners have filed a Determination of Eligibility Application with the Nibley City Community Development Department to determine whether the TDRs are eligible to be transferred to receiving property within Nibley City.
3. The Nibley City Planner has determined, in accordance with Chapter 19.48 of the Nibley City Municipal Code, that \_(number) TDRs are eligible to be transferred to property located at \_\_\_\_\_, County Parcel No(s). \_\_\_\_\_ (Receiving Property).
4. This Certificate represents the transfer of TDRs that will become valid and enforceable in accordance with Chapter 19.48 of the Nibley City Municipal Code upon the lawful and proper recordation of this Deed of Transfer.
5. Up on recordation of this Deed of Transfer, the TDRs associated with TDR Certificate No. \_\_\_\_\_ shall be extinguished. Holder of the TDR Certificate shall surrender the TDR Certificate before this Deed of Transfer is issued.

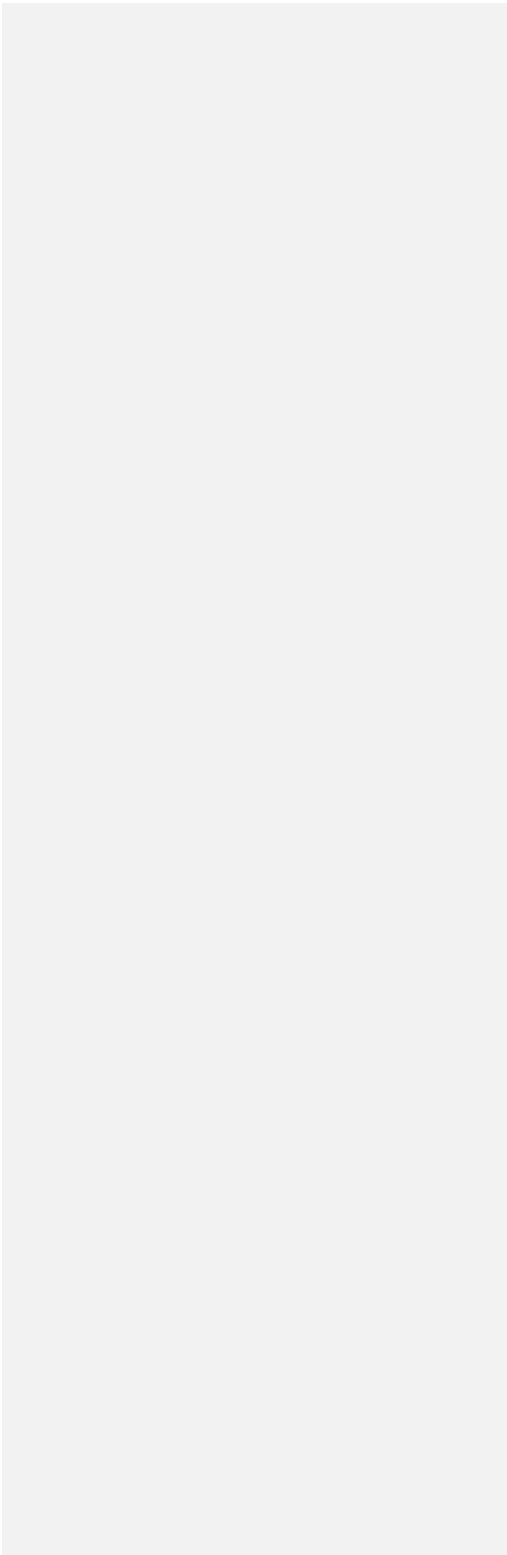
Transferable Development Rights: \_\_\_\_\_

Cache County Parcel ID Number: \_\_\_\_\_

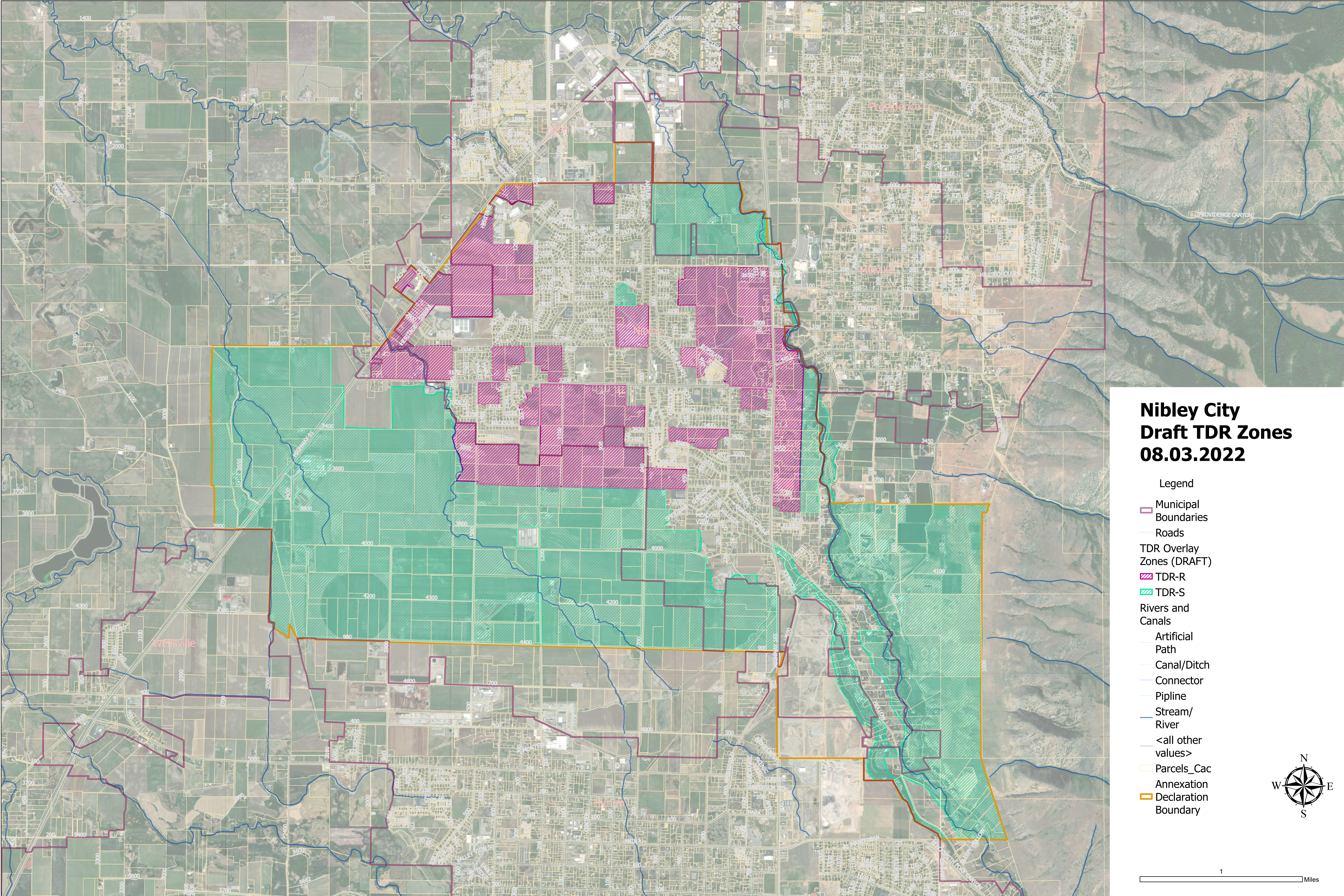
\_\_\_\_\_  
Signature of City Planner

\_\_\_\_\_  
Date

Legal Description:







# Nibley City Draft TDR Zones 08.03.2022

- Legend
- Municipal Boundaries
  - Roads
  - TDR Overlay Zones (DRAFT)
    - TDR-R
    - TDR-S
  - Rivers and Canals
    - Artificial Path
    - Canal/Ditch
    - Connector
    - Pipeline
    - Stream/River
    - <all other values>
  - Parcels\_Cac
  - Annexation
  - Declaration Boundary

