

**Mayor**  
Kenneth Romney

**City Engineer/  
Zoning  
Administrator**  
Ben White

**City Recorder**  
Cathy Brightwell

# **WEST BOUNTIFUL PLANNING COMMISSION**

550 North 800 West  
West Bountiful, Utah 84087

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

**Chairman**  
Denis Hopkinson

**Commissioners**  
Laura Charchenko  
Mike Cottle  
Alan Malan  
Corey Sweat

## **THE WEST BOUNTIFUL PLANNING COMMISSION WILL HOLD A MEETING BEGINNING AT 7:30 PM ON TUESDAY, NOVEMBER 28, 2017 AT THE CITY OFFICES**

Welcome. Prayer/Thought by Invitation

1. Accept agenda.
2. Consider Planned Unit Development for Kinross Estates at Porter Lane and 1100 West by Hamlet Homes.
3. Staff report.
4. Consider approval of minutes from November 14, 2017 meeting.
5. Adjourn.

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

*This notice has been sent to the Clipper Publishing Company, and was posted on the State Public Notice website and the City's website on November 21, 2017 by Cathy Brightwell, City Recorder.*

# MEMORANDUM



**TO:** Planning Commission

**DATE:** November 21, 2017

**FROM:** Ben White, City Engineer

**RE:** Kinross Estates PUD Application

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Hamlet Development has submitted a Planned Unit Development (PUD) application for a 34-lot residential subdivision on the corner of 1100 West and Porter Lane. The property is 23 acres and is in the R-1-22 zoning district. PUD applications are treated like a rezone request. A public hearing was held during the October 10<sup>th</sup> Planning Commission meeting. In the October 24<sup>th</sup> Planning Commission meeting, a motion to deny the PUD application was approved. Since that time, staff and the Mayor chair met with the developer to review the project. The Developer has revised his proposed layout to include three half acre lots on Porter Lane. The development still includes 34 lots. The lot lost on Porter Lane is included in the restricted area where home construction would not be permitted at this time.

## PROJECT DENSITY

A base density plan was previously submitted to the planning commission that contained 34 lots which could meet the zoning requirements. The PUD proposal is also for 34 lots. In short, the developer is not requesting any bonus density. The proposed lot sizes are:

- 5 lots 11,000 to 15,000 sq. ft.
- 14 lots 15,000 to 20,000 sq. ft.
- 15 lots over 20,000 sq. ft.

The seven lots closest to 1100 West that are less than 20,000 sq. ft. could be enlarged to 20,000 plus square feet by reducing the open space along 1100 West.

## DEVELOPMENT AGREEMENT

Legal Counsel has reviewed the draft development agreement. His main concern yet to be resolved is that the agreement seems to be a three way agreement with the City, Developer and a Trust which will retain ownership of Lots 8-11, although it is not an issue that needs to be addressed today. Items in the development agreement that the Planning Commission should be specifically aware of include:

- Paragraph 6.f includes the provision for a construction and sales trailer.
- Paragraph 18.j includes the requirement for the developer to provide the environmental indemnification.

## EXHIBIT A - LEGAL DESCRIPTION

- As previously stated, the property consists of 23.01 acres. The property descriptions on file with the County indicate that the property is over 24 acres. A survey of the property determined that it is only 23.01 acres.

#### EXHIBIT B - PRELIMINARY PLAT

- The plat includes the request by the Planning Commission to stub a future road south toward the easterly end of the project.
- The subdivision contains a dead-end street about 1700 feet long. The fire department's only comment was that a turn around was needed on dead ends over 150 feet.
- Notes related to the environmental restrictions for the impacted lots should be added to a final plat.
- An open space easement in favor of the city should be placed over Parcel A. This is to help protect the city open space position should land use laws change in the future.
- The pavement cross section needs to be updated to reflect the city's minimum standard requirement.

#### EXHIBIT C - IMPROVEMENT PLANS

- Curb and sidewalk is included along all of 1100 West. One of the large steel electrical towers is in the way of the curb. The curb has been modified to go around the pole.
- Proposed street lights, fire hydrants and other utility lines are included.
- Utilities need to extend all the way to the plat boundary on the dead-end streets. The east dead-end street should extend to the plat boundary or an agreement be put into place for who pays for the road extension.

#### EXHIBIT D - CCRs

- Paragraph 2.7 contains language allowing a model home sales office and a construction trailer.
- Paragraph 2.14 mirrors the city's farm animal ordinance.
- Paragraph 2.15 is worded to allow operable vehicles stored on site.
- Paragraph 2.18 lots cannot be further subdivided
- Paragraph 10.11 contains limitations on Lots 8, 9, 10 and 11 until the Department of Environmental Quality provides a release.
- Paragraph 10.12 naming the city as a third-party beneficiary is a requirement of legal counsel.

#### EXHIBIT E - DRAINAGE/GRADING PLAN

- Rear yard drains will need to be provided
- Storm drain on Porter Lane needs to be piped and not an open ditch. The pipe in the front yard is acceptable rather than being in the street.
- The drainage path through the bottom of the detention basin is included as a concrete swale.

#### EXHIBIT F - LANDSCAPE PLAN

- The development proposes park strip trees and sod in the park strip along streets with abutting lots. There are no trees proposed the 1100 West frontage with concrete in the park strip due to the adjoining land use (open space parcel).
- An agricultural fence is proposed around the boundary of the open space parcel and lots 9-11.
- An additional rail fence is proposed along the subdivision street frontage for lots 9-11.

#### EXHIBIT G - ELEVATIONS

Proposed house elevation designs are included in Exhibit G. These are actual designs the Developer intends to construct. A new “modern design” plan has been added. Additional designs beyond those provided, but of a similar architecture, are intended to be constructed as well.

#### EXHIBIT H - GEOTECHNICAL STUDY

The geotechnical study for the property has been prepared. Due to the document’s size, a paper copy was not provided. Paper copies are available at city hall for review.

#### EXHIBIT I - WETLAND STUDY

A wetland delineation and Corps of Engineers Jurisdictional Determination has been completed. Due to the document’s size, a paper copy was not provided. Paper copies are available at city hall for review.

#### EXHIBIT J - WASATCH ENVIRONMENTAL REPORT

Exhibit J contains two documents provided by Wasatch Environmental regarding the 1991 gasoline and diesel fuel pipeline leak. The first document contains an environmental summary using lay terms explaining remediation efforts and health risks. The second document is an environmental summary with more technical terms and data.

#### EXHIBIT K - DRAFT INDEMNITY AGREEMENT

A draft indemnity has been provided which would release the City and Developer of future claims resulting from the contamination.

Also included is the overall PUD description together with the Base Density Plan.

#### POSSIBLE MOTIONS

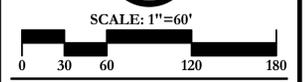
1. Motion to deny the PUD request. This motion should include rational for denying the request as well as the items that are favorable. The rational should be included because the PUD rezone request will still be forwarded to the City Council for their deliberation.
2. A motion to recommend approval of the PUD rezone request with any findings and conditions the Planning Commission wishes to include.

Due to the size of the documents, the following documents are available at city hall for review:

1. Geotechnical Study
2. Wetland Study
3. Wasatch Environmental Report
4. Drainage Calculations
5. PUD Application
6. Preliminary Title Report



3980 S. 700 E., # 22 Salt Lake City, UT 84107  
(801) 201-7494 www.edmlc.net



DEVELOPER:  
Hamlet Development  
308 East 4500 South, Suite 200  
Murray, UT 84107  
801-281-2223



**SURVEYOR'S CERTIFICATE**  
I, TYLER E. JENKINS DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR AND THAT I HOLD CERTIFICATE NO. 4938730 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY THAT BY THE AUTHORITY OF THE OWNERS, I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED BELOW, AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS AND STREETS, HEREAFTER TO BE KNOWN AS:

**KINROSS ESTATES SUBDIVISION**  
AND THAT THE SAME HAS BEEN CORRECTLY SURVEYED AND STAKED ON THE GROUND AS SHOWN ON THIS PLAT.

- NOTES
- All sanitary sewer improvements shall conform with the standards and specifications of South Davis Sewer District.
  - All culinary water improvements shall conform with the standards and specifications of West Bountiful City.
  - All improvements in the public right of way shall conform with the standards and specifications of West Bountiful City.
  - All private improvements shall conform to APWA standards and specifications.
  - Contractor to field locate and verify the horizontal and vertical location of all utilities prior to beginning work.
  - Typical setbacks are:  
Front: 30'  
Rear: 30'  
Side Interior: 10' min. 24' total  
Side Corner: 20'
  - Impacted soils information based upon a site map from Tesoro Logistics identified with project number K014TSMP5.

PROJECT STATISTICS

Total Area	23.01 Acres
Total Lots	34 (1.48 per acre)



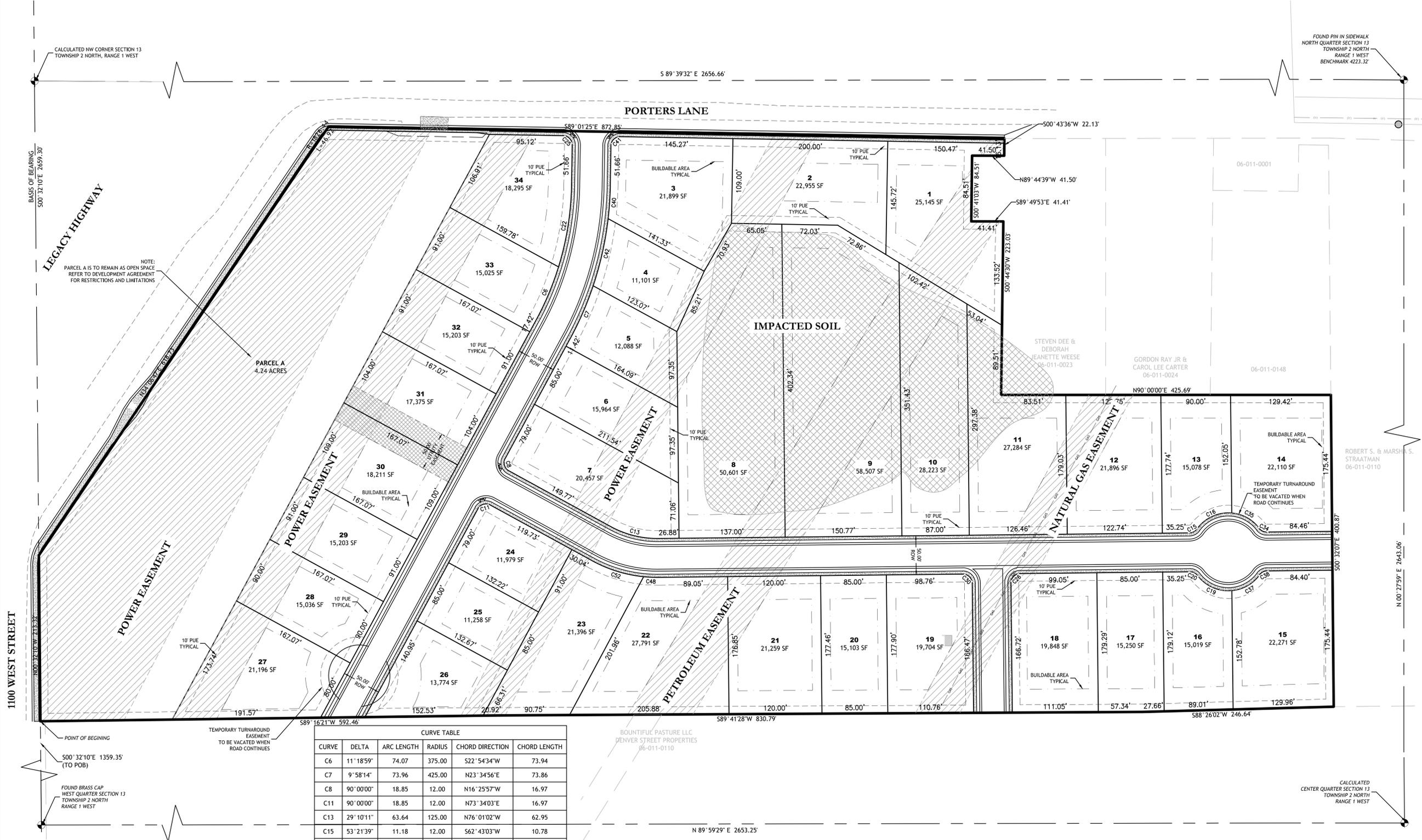
### Kinross Estates

#### Preliminary Plat

PROJECT:	1770
DRAWN BY:	NMM
REVIEWED BY:	PMD
REVISIONS:	
No. DATE	REMARKS

DATE: November 19, 2017  
SHEET NUMBER:

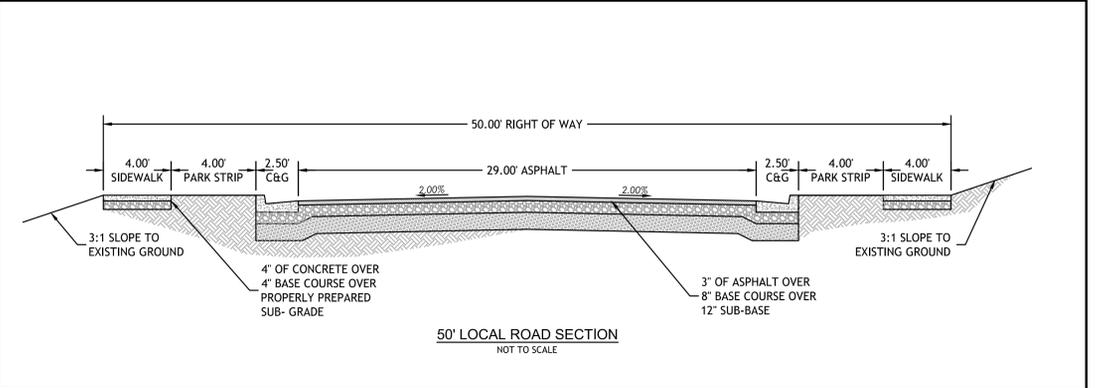
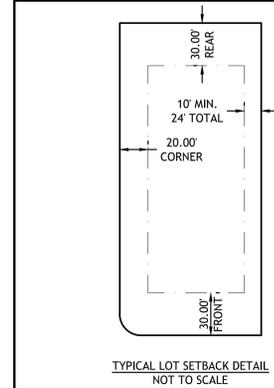
# O-2



CURVE	DELTA	ARC LENGTH	RADIUS	CHORD DIRECTION	CHORD LENGTH
C6	11°18'59"	74.07	375.00	S22°54'34"W	73.94
C7	9°58'14"	73.96	425.00	N23°34'56"E	73.86
C8	90°00'00"	18.85	12.00	N16°25'57"W	16.97
C11	90°00'00"	18.85	12.00	N73°34'03"E	16.97
C13	29°10'11"	63.64	125.00	N76°01'02"W	62.95
C15	53°21'39"	11.18	12.00	S62°43'03"W	10.78
C16	53°21'39"	51.15	54.92	S65°35'13"W	49.32
C19	53°21'39"	50.24	53.94	S66°12'58"E	48.44
C20	53°21'39"	11.18	12.00	S63°55'19"E	10.78
C22	16°16'29"	106.52	375.00	S9°06'50"W	106.16
C25	90°00'00"	18.85	12.00	S44°01'25"E	16.97
C26	90°00'00"	18.85	12.00	N44°23'52"E	16.97
C30	90°00'00"	18.85	12.00	S45°36'08"E	16.97
C34	53°21'39"	11.18	12.00	N63°55'19"W	10.78
C35	53°21'39"	41.87	44.96	N61°03'08"W	40.37
C37	53°21'39"	42.82	45.98	N60°25'23"E	41.29
C38	53°21'39"	11.18	12.00	N62°43'03"E	10.78
C40	5°40'54"	42.15	425.00	N3°49'02"E	42.13
C41	90°00'00"	18.85	12.00	N45°58'35"E	16.97
C42	11°56'20"	88.56	425.00	N12°37'39"E	88.40
C48	6°20'40"	19.38	175.00	S87°25'48"E	19.37
C52	22°49'32"	69.72	175.00	S72°50'43"E	69.26

BOUNTIFUL PASTURE LLC  
DENVER STREET PROPERTIES  
96-011-0110

N 89°59'29" E 2653.25'



CALCULATED NW CORNER SECTION 13  
TOWNSHIP 2 NORTH, RANGE 1 WEST

S 89°39'32" E 2656.66'

FOUND PIN IN SIDEWALK  
NORTH QUARTER SECTION 13  
TOWNSHIP 2 NORTH  
RANGE 1 WEST  
BENCHMARK 4223.32'

LEGACY HIGHWAY  
BASIS OF BEARING  
S00°32'10"E 2659.30'

NOTE:  
PARCEL A IS TO REMAIN AS OPEN SPACE  
REFER TO DEVELOPMENT AGREEMENT  
FOR RESTRICTIONS AND LIMITATIONS

PARCEL A  
4.24 ACRES

1100 WEST STREET  
N00°32'10"W 213.32'

POINT OF BEGINNING  
S00°32'10"E 1359.35'  
(TO POB)

FOUND BRASS CAP  
WEST QUARTER SECTION 13  
TOWNSHIP 2 NORTH  
RANGE 1 WEST

BASIS OF BEARING  
NORTH 00°32'10" WEST, BEING THE BEARING OF THE SECTION LINE BETWEEN A FOUND BRASS CAP MONUMENT AT WEST QUARTER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST AND A CALCULATED MONUMENT AT NORTHWEST CORNER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST

BOUNDARY DESCRIPTION  
BEGINNING AT A POINT ALONG THE SECTION LINE N00°32'10"W 1359.35 FEET FROM THE WEST QUARTER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE ALONG SAID SECTION LINE N00°32'10"W 213.32 FEET; THENCE N34°06'47"E 618.73 FEET; THENCE A DISTANCE OF 46.92 FEET ALONG AN ARC OF A 1,826.44 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS N34°53'14"E A DISTANCE OF 46.92 FEET); THENCE S89°01'25"E 872.85 FEET; THENCE S00°43'36"W 22.13 FEET; THENCE N89°44'39"W 41.50 FEET; THENCE S00°41'03"W 84.51 FEET; THENCE S89°49'53"E 41.41 FEET; THENCE S00°44'30"W 223.03 FEET; THENCE N90°00'00"E 425.69 FEET; THENCE S00°32'07"E 400.87 FEET; THENCE S88°26'02"W 246.64 FEET; THENCE S89°41'28"W 830.79 FEET; THENCE S89°16'21"W 592.46 FEET TO THE POINT OF BEGINNING.

CONTAINS 23.01 ACRES IN AREA

C:\Users\Nick\Dropbox\EDM\Projects\Kinross Estates\Drawings\2.Preliminary Plat.dwg

## DEVELOPMENT AGREEMENT *Kinross Estates*

This DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into effective \_\_\_\_\_, 2017 (the "**Effective Date**"), by and among KINROSS ESTATES LLC ("**Developer**"); THE THOMAS AND JEANETTE WILLIAMS FAMILY TRUST (the "**Trust**"); and WEST BOUNTIFUL CITY, a Utah municipal corporation (the "**City**").

### RECITALS

A. Developer intends to develop 23.01 acres of real property located within the City, as more particularly described in the attached **Exhibit A** (the "**Property**"). Developer proposes to subdivide the Property as a Planned Unit Development ("**PUD**") pursuant to Chapter 17.68 *et seq.* of the West Bountiful Municipal Code, as amended (the "**Code**"), under the name of "**Kinross Estates**" (the "**Subdivision**"). The proposed Subdivision will be generally consistent with the preliminary plat attached as **Exhibit B** (the "**Preliminary Plat**").

B. Following approval of the Subdivision, Developer will own Lot Nos. 1-7, 12-34, and Parcel A of the Subdivision (the "**Developer Lots**") as outlined in the Preliminary Plat (**Exhibit B**). The Trust will retain Lot Nos. 8-11 (the "**Trust Lots**"). Developer and its successors in interest are willing to maintain the Developer Lots in accordance with this Agreement and the CC&R's (as defined below). The Trust is willing to maintain the Trust Lots pending construction of single family homes on the Trust Lots in accordance with this Agreement and the CC&R's.

C. Developer desires to develop the Property as a combination of various lot sizes, targeted to a wide demographic of the population. A homeowners association (the "**HOA**") will administer the various restrictions and architectural standards applicable to the Property and the Trust will maintain the storm water detention facilities in accordance with this Agreement and the CC&R's.

D. If developed as a standard subdivision within the applicable R-1-22 zoning district, the Property would yield a maximum of thirty-four (34) lots. The Developer is requesting to develop a PUD with thirty-four (34) lots and no density bonus.

E. Following the execution of this Agreement, Developer intends to submit to the City for approval the Preliminary Plat and a final plat for the Subdivision consistent with the Preliminary Plat (the "**Final Plat**").

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

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

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

**1. DEVELOPMENT OF SUBDIVISION.** The approved uses, density, intensity, and configuration of the components of the Subdivision are depicted and described in the Preliminary Plat (**Exhibit B**); the improvement plans attached as **Exhibit C** (the "**Improvement Plans**"); the Declaration of Covenants, Conditions and Restrictions attached as **Exhibit D** (the "**CC&Rs**"); the drainage and grading plan attached as **Exhibit E** (the "**Drainage and Grading Plan**"); the landscape plan attached as **Exhibit F** (the "**Landscape Plan**"); and the elevations and house plans attached as **Exhibit G** (the "**Elevations**"). (**Exhibits C, E, F, and G** are sometimes referred to in this Agreement as the "**Drawings**.") Developer will develop the Subdivision in conformity with the requirements of this Agreement, including the Final Plat, the Drawings, and the CC&Rs; the Geo-Technical Study attached as **Exhibit H**; the Wetland Delineation and Corps of Engineers Jurisdictional Determination attached as **Exhibit I**; and the report of Wasatch Environmental, Inc., attached as **Exhibit J**.

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

**3. COMPLETION OF IMPROVEMENTS.** Developer will provide, construct, and install the Improvements in a satisfactory manner in compliance with the Subdivision Requirements. Developer will complete all the Improvements within 18 months after the date the Final Plat is recorded; provided, that upon written application submitted prior to the expiration of the 18-month period, the City, through its City Council, may extend the time for completing all of the Improvements for up to an additional six (6) months for good cause shown.

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

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

**b. Culinary Water.** All culinary water main lines within the Subdivision will be constructed and tied to the City's existing culinary water system in strict compliance with the

Code and all other applicable standards and engineering requirements of the City and the Utah State Division of Drinking Water.

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

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

**e. Storm Drainage.** Developer will construct and install adequate storm drainage collection systems, sub-surface collection systems and other surface and underground water drainage facilities in accordance with the Drawings, and in strict compliance with the Subdivision Requirements. In particular, Developer will provide rear yard drains and drain lines and a detention basin in accordance with the Drainage and Grading Plan (**Exhibit E**), as well as the Subdivision Requirements. Developer will obtain a UPDES permit from the State of Utah for storm water pollution prevention. Developer will maintain the permit in place until (1) all disturbed land within the Subdivision is stabilized (meaning paved and concreted, with homes built and landscaping installed, or vegetation re-established); or (2) Developer's construction is complete in accordance with this Agreement and all lots in the Subdivision have been conveyed to third parties, whichever occurs first.

**f. Amenity Contribution.** Developer will provide approximately four (4) acres of open space on the westerly boundary of the Property, as depicted in the Preliminary Plat (**Exhibit B**) (the "**Open Space Property**"). The Open Space Property will be offered for sale to individuals and be designated for agricultural use in order to maintain the rural feel of West Bountiful along the Legacy Highway. This requirement will be enforced by the CC&R's and an open space easement in favor of the City. The owner of the Open Space Property shall be responsible for its maintenance, including contiguous sidewalks and landscaping. Permitted uses on the property are grazing livestock and cultivation of hay. The owner shall be permitted to construct shelters on the Open Space Property designed for livestock use; provided, such shelters do not interfere with the detention basin required under this Agreement. Entrance monuments will be placed at the entrances to the Property to create a welcoming and upscale feel for its residents.

**g. Detention Basin.** A portion of the Open Space Property as depicted in the Preliminary Plat (**Exhibit B**) will act as a detention basin in accordance with the Drainage and Grading Plan (**Exhibit E**). The Open Space Property will be privately owned, the owner will maintain the detention basin and the City will maintain the associated storm drain pipes, storm drain, and boxes.

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

**i. Landscape Improvements.** Developer will provide landscape improvements to the Subdivision, in accordance with the Landscape Plan attached as **Exhibit F**.

**j. Architectural Standards.** Each dwelling will be of a design and materials specified in the Elevations attached as **Exhibit G** and the CC&Rs (**Exhibit D**). Developer will not locate dwellings of the same or similar elevation adjacent to each other or directly across the street from each other. Developer may add additional house plans to this approved list, subject to the City's written approval.

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

## **6. CONSTRUCTION.**

**a. Construction Period.** Developer will:

- (1) Develop the Subdivision in accordance with accepted development procedures;
- (2) Take all precautions reasonably necessary to prevent injury to persons or property during the construction period;
- (3) Take reasonable steps to contain and abate dust resulting from construction activities;
- (4) Provide such road surface, including road base and gravel, during construction as will render the streets and parking areas within the Subdivision reasonably accessible and conducive to travel by trucks and heavy equipment;
- (5) Take all necessary precautions to prevent undue amounts of dirt or debris from being tracked onto or deposited upon the properties and public streets adjoining the Subdivision;
- (6) Be responsible for all expenses incurred by the City or others in cleaning such

properties or public streets of any undue amount of dirt or debris deposited as a result of construction activities within the Subdivision;

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

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

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

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

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

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

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

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

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

e. **Stop Work Order.** In the event the City determines Developer is in violation of any provision of this Agreement, including the foregoing standards for Improvements, and

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

f. **Construction Office.** Notwithstanding anything contained herein to the contrary, a construction office located in a trailer may be erected, maintained and operated on any Lot, provided that such office is used and operated only in connection with the construction of the homes on the Lots owned by the Developer. The construction office shall be removed from the Property within 30 days of the last use and occupancy being issued by the City for the home construction on the lots owned by the Developer.

**7. DEDICATION OF PUBLIC IMPROVEMENTS.** Upon the satisfactory completion and final inspection of the Improvements, Developer will dedicate to the City all Public Improvements, including the culinary water system, storm drain lines (except for the rear yard drain lines) streets, sidewalk, curb and gutter. The owner of each lot in the Subdivision will own and maintain the rear yard drain and that portion of the rear yard drain lines within the lot's boundaries. The owner of the Open Space Parcel will maintain the detention basin shown on **Exhibit E** and the City will be responsible for the associated storm drain piping and Storm Drain Boxes. Developer will continue to repair and replace the Public Improvements as necessary during the Warranty Period, as provided below.

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

**9. SECURITY FOR DEVELOPER'S OBLIGATIONS.** To secure the satisfactory completion of the Improvements and Developer's warranty obligations under the Code and this Agreement, Developer and the City will enter into a bond agreement or agreements in a form acceptable to the City (collectively, the "**Bond Agreement**"). Under the Bond Agreement, the City or a federally insured bank will hold in a separate escrow account (the "**Escrow Account**") an amount of money specified in the Bond Agreement (the "**Proceeds**"), subject to authorized disbursements, pending expiration of the Warranty Period. The Proceeds represent 120 percent of the estimated cost of the Improvements, as itemized in the Bond Agreement. Developer will assign to the City all of its right, title, and interest in and to the principal amount of the Escrow Account as an independent guaranty for the satisfactory completion of the Improvements, and

the City will be entitled to immediate access to the Proceeds, as provided in the Bond Agreement. Developer will remain fully liable to complete and warrant the Improvements and surface of the Subdivision property even if the Proceeds are inadequate to fully cover the cost to install, repair, or replace them.

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

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

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

**b. Failure to Perform.**

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

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

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

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

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

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

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

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

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

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

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

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

**f. Costs and Attorney Fees.** The City may recover from Developer all costs necessary to complete, repair, or replace the Improvements or enforce this Agreement, including all administrative costs; inspection fees; permit fees; and reasonable attorney, engineering,

consultant, and expert witness fees, whether incurred in litigation or otherwise. The City's remedies under this Agreement, at law, and in equity are cumulative.

### **13. INDEMNIFICATION.**

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

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

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

**14. INSURANCE.** Developer will maintain during the development of the Subdivision and the Warranty Period insurance in types and amounts reasonably acceptable to the City, covering liability, damage, loss, or injury to any person or property, including damage to Developer or its property, as a result of the work of any contractor or other agent of Developer in the development of the Subdivision, including the installation or construction of the Improvements or the completion or repair of the Improvements by the City. Developer's indemnity obligations under this Agreement shall include any liability that exceeds the insurance policy limits. Developer will provide at least annually proof of the insurance required under this Agreement. If Developer fails to maintain insurance as required, the City, at its option, may obtain such insurance and collect from Developer the cost of insurance premiums as part of the City's recoverable costs, as described in Section 12.f. The City may suspend the issuance of any building permits until such insurance is in place.

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

entities or has other remedies in equity or at law that would otherwise relieve Developer of the duty to perform its obligations, or preclude the City from requiring Developer to perform its obligations, under this Agreement.

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

### **17. INSPECTION AND PAYMENT.**

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

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

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

### **18. MISCELLANEOUS PROVISIONS.**

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

**b. Expiration.** This Agreement will expire without further notice to either party if Developer does not record the Final Plat within twelve (12) months after the Effective Date; provided, that upon written application submitted prior to the expiration of the 12-month period,

the City, through its City Council, may extend the time for recording the Final Plat for up to an additional six months for good cause shown.

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

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

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

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

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

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

**i. No Partnership.** The transactions contemplated under this Agreement pertain to Developer's development of the Subdivision, including installation and warranty of the Improvements, and do not constitute a partnership, joint venture or other association among the parties.



Subdivision and the ownership and maintenance of the Trust Lots as required under this Agreement.

*[The remainder of this page is intentionally left blank; signatures on following page.]*

**Exhibit D**  
**CC&R's**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR KINROSS ESTATES HOMEOWNERS ASSOCIATION**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
KINROSS ESTATES HOMEOWNERS ASSOCIATION** (the "Declaration") made this \_\_\_\_ day of \_\_\_\_\_ 2017, by Kinross Estates, LLC, a Utah limited liability company (the "Declarant").

**RECITALS**

- A. The Declarant is the owner of certain Property in West Bountiful City, Davis County, Utah, shown on the Plat (as herein after defined), recorded among the Office of the Davis County Recorder. All the real Property situated in West Bountiful City, Davis County, Utah, which is more particularly described as Exhibit 1 attached hereto and made a part hereof by this reference and any additional land that is annexed (the "Property") shall be subject to this Declaration.
- B. It is the intention of the Declarant to develop the Property as a residential community and to insure therefore a uniform plan and scheme of development, and unto that end the Declarant has adopted, imposed and subjected the Property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens (collectively, the "Covenants"), as set forth herein for the following purposes:
- 1) To ensure uniformity in the development of the Lots (as hereinafter defined) in the Community (as hereinafter defined).
  - 2) To facilitate the sale by the Declarant, its successors and assigns, of the land in the Community by reason of its ability to assure such purchasers of uniformity.
  - 3) To make certain that the Covenants shall apply uniformly to all Lots for the mutual advantage of the Declarant, the Owners and any Mortgagee (as such capitalized terms are defined herein) and to all those who may in the future claim title through any of the above.
  - 4) To provide for the benefit of the Owners, the preservation of the value and amenities in the Community, and the maintenance of certain reserved open spaces, including but not limited to easements, charges and liens, herein below set forth, and for the creation of an Association to be delegated and assigned the powers of maintaining, administering and enforcing all applicable Covenants and Restrictions, and collecting and disbursing the assessments and charges hereinafter created; which Association shall be incorporated under the laws of the State of Utah, as a nonprofit corporation, for the purpose of exercising the functions as aforesaid.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:**

THAT the Declarant does hereby establish and impose upon the Property the Covenants for the benefit of and to be observed and enforced by the Declarant, its successors and assigns, as well as by all purchasers of Lots, to wit:

**ARTICLE I - DEFINITIONS**

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

1.1 "Association" shall mean and refer to the KINROSS ESTATES HOMEOWNERS ASSOCIATION, INC.

1.2 "Builder" shall mean any person or entity other than the Declarant, which shall, in the ordinary course of such person's business, construct a Dwelling on a Lot.

1.3 "City" means West Bountiful City, Utah.

1.4 "Community" shall mean and refer to all of the land hereby made subject to this Declaration by an instrument in writing, duly executed and recorded in the Recorder's Office and any Additional Property (as such term is hereinafter defined) that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed and recorded in the Recorder's Office. The Community is not a cooperative, nor does it contain any condominiums governed by the Utah Condominium Ownership Act.

1.5 "Declarant" shall mean and refer to Kinross Estates, LLC, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property as an entirety, without reservation of any kind; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.

1.6 "Development Period" shall mean the time between the date of recordation of this Declaration with the Recorder's Office and ending on the date the last Lot is conveyed to a Class A Member who intends to reside on such Lot. No rights, easements or other powers or privileges of Declarant under this Declaration shall terminate upon the expiration of the Development Period, unless the duration of any such right, easement, power or privilege is expressly limited to the Development Period.

1.7 "Dwelling" shall mean the residential Dwelling unit together with any other Structures on the same Lot.

1.8 "Lot" and/or "Lots" shall mean and refer to those portions of the Property that are subdivided parcels of land shown and defined as Lots or plots of ground, designated by numerals on the Plat, on which a Dwelling is proposed to be constructed.

1.9 "Mortgage" means any Mortgage or deed of trust encumbering any Lot, and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such Mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office.

1.10 "Mortgagee" means the person secured by a Mortgage.

1.11 "Plat" shall mean and refer to the Plat entitled, "KINROSS ESTATES" recorded among the Recorder's Office of Davis County, Utah, and any Plats recorded among the Recorder's Office in substitution therefor or amendment thereof, plus any Plats hereafter recorded among the Recorder's Office of any Additional Property that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed, and recorded among the Recorder's Office.

1.12 "Property" shall mean and refer to all of the real Property described in Exhibit 1 attached hereto, and any additional land at such time as it is hereafter expressly made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office. The Property governed by these CC&Rs are the Lots and parcels shown on the Plat..

1.13 "Owner" or "Owners" shall mean, refer to and include the person, firm, corporation, trustee, or legal entity, or the combination thereof, including contract sellers, holding the fee simple record title to a Lot, as said Lot is now or may from time to time hereafter be created or established, either in his,

her, or its own name, as joint tenants, tenants in common, tenants by the entireties, or tenants in co-partnership, if the Lot is held in such real Property tenancy or partnership relationship. If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, hold the record title to any one (1) Lot, whether it is in a real Property tenancy, or partnership relationship, or otherwise, all of the same, as a unit, shall be deemed a single Owner and shall be or become a single member of the Association by virtue of ownership of such Lot. The term "Owner," however, shall not mean, refer to or include any contract purchaser nor shall it include a Mortgagee.

1.14 "Structure" means any thing or device, the placement of which upon the Property (or any part thereof) may affect the appearance of the Property (or any part thereof) including, by way of illustration and not limitation, any building, trailer, garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered patio, clothesline, radio, television or other antenna or "dish," fence, sign, curbing, paving, wall, roadway, walkway, exterior light, landscape, hedge, trees, shrubbery, planting, signboard or any temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvement made to the Property or any part thereof. "Structure" shall also mean (i) any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across the Property, and (ii) any change in the grade of the Property (or any part thereof) of more than six inches (6") from that existing at the time of first ownership by an Owner hereunder other than the Declarant.

## **ARTICLE II - COVENANTS, CONDITIONS AND RESTRICTIONS**

2.1 **ADMINISTRATION; ARCHITECTURAL REVIEW COMMITTEE.** The Architectural Review Committee, which shall be appointed by the Declarant during the Development Period and thereafter by the Board of Directors of the Association (the "Architectural Review Committee") shall have all the rights, powers and duties granted to it pursuant to this Declaration. The initial members of the Architectural Review Committee are Jon Southern, Barry Gittleman, and Phil Mosher. The Architectural Review Committee shall at all times be comprised of at least three (3) members. At any time, or from time to time, during the Development Period, the initial members of the Architectural Review Committee may be replaced for any reason (including death or resignation) with other individuals selected by the Declarant in its sole discretion. All questions shall be decided by a majority of the members of the Architectural Review Committee, and such majority shall be necessary and sufficient to act in each instance and on all matters. Each member of the Architectural Review Committee, now or hereafter appointed shall act without compensation for services performed pursuant to this Declaration. The Declarant hereby grants to the Architectural Review Committee, its successors and assigns, the right to establish architectural design criteria for the Community (the "Design Guidelines"), which shall be made available to all members, and to waive such portion or portions of the Covenants numbered 2.3 through 2.23 of this Article II as the Architectural Review Committee, in its sole discretion, may deem advisable and in the best interests of the Community.

### 2.2 **ARCHITECTURAL REVIEW.**

(a) No Structure (other than construction or development by, for or under contract with Declarant) shall be constructed on any Lot nor shall any addition (including awnings and screens), change, or alteration therein or thereto (including any retreatment by painting or otherwise of any exterior part thereof unless the original color and material are used) (collectively, "Alterations") be made to the exterior of any Structure and/or contour of any Lot, nor shall any work be commenced or performed which may result in a change of the exterior appearance of any Structure until the plans and specifications, in duplicate, showing the nature, kind, shape, dimensions, material, floor plans, color scheme, location, proposed topographical changes, together with the estimated costs of said Alterations or construction, the proposed construction schedule, and a designation of the party or parties to perform the work, have been

submitted to and approved in writing by the Architectural Review Committee, its successors and assigns, and until all necessary permits and any other governmental or quasi-governmental approvals have been obtained. The approval of the Architectural Review Committee of any Structure or Alterations shall in no way be deemed to relieve the Owner of any Lot from its obligation to obtain any and all permits and approvals necessary from local governmental authorities for such Structure or Alterations.

(b) The Architectural Review Committee shall consider applications for approval of plans, specifications, etc., upon the basis of conformity with this Declaration, applicable law and the Design Guidelines, if any, and shall be guided by the extent to which such proposal will insure conformity and harmony in exterior design and appearance, based upon, among other things, the following factors: the quality of workmanship; nature and durability of materials; harmony of external design with existing Structures; choice of colors; changes in topography, grade elevations and/or drainage; the ability of the party or parties designated by the Owner to complete the Structure or Alterations proposed in accordance with this Declaration, including, without limiting the foregoing, such factors as background, experience, skill, quality of workmanship, financial ability; factors of public health and safety; the effect of the proposed Structure or Alterations on the use, enjoyment and value of other neighboring properties, and/or on the outlook or view from adjacent or neighboring properties; and the suitability of the proposed Structure or Alterations with the general aesthetic appearance of the surrounding area.

(c) The Architectural Review Committee shall have the right to refuse to approve any such plans or specifications, including grading and location plans, which are not suitable or desirable in its opinion, for aesthetic or other considerations. Written requests for approval, accompanied by the foregoing described plans and specifications or other specifications and information as may be required by the Architectural Review Committee from time to time shall be submitted to the Architectural Review Committee by registered or certified mail or in person. In the event the Architectural Review Committee fails to approve or disapprove any plans within sixty (60) days of receipt thereof, such plans shall be deemed approved. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Review Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance. The Architectural Review Committee shall have the right to charge a processing fee for such requests, which shall be retained by the Association and not the Architectural Review Committee.

(d) Construction of Alterations in accordance with plans and specifications approved by the Architectural Review Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date of approval and completed within twelve (12) months of commencement of the Alterations, or within such other period as the Architectural Review Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architectural Review Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. After construction, all Structures and Alterations shall be maintained continuously in strict conformity with the plans and specifications so approved and all applicable laws.

(e) If any Structure is altered, erected, placed or maintained on any Lot other than in accordance with approved plans and specifications therefor and applicable law, such action shall be deemed to be a violation of the provisions of this Declaration and, promptly after the Association gives written notice thereof to its Owner, such Structure shall be removed or restored to its condition prior to such action, and such use shall cease, so as to terminate such violation. If within thirty (30) days after having been given such notice, such Owner has not taken reasonable steps to terminate such violation, any agent of the Association may enter upon such Lot and take such steps as are reasonably necessary to terminate such violation. Such Owner shall be personally liable to the Association for the cost thereof, to the same extent as he is liable for an Assessment levied against such Lot, and, upon the failure of the Owner to pay such cost within ten (10) days after such Owner's receipt of written demand therefor from the Association, the

Association may establish a lien therefor upon such Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

(f) Any member of the Architectural Review Committee, upon the occurrence of a violation of the provisions of this Declaration, and after the Association or the Architectural Review Committee gives written notice thereof to the Owner of the applicable Lot, at any reasonable time, may enter upon and inspect any Lot and the exterior of any Structure thereon to ascertain whether the maintenance, construction or alteration of such Structure or Alteration are in accordance with the provisions hereof.

(g) Solar Collection Systems. Any installation of solar panels or other solar collection systems on any Lot shall require the prior written approval of the Architectural Review Committee, provided, however, if a Builder has prewired for the installation of solar panels on the roof of a Dwelling, then approval of the Architectural Review Committee shall not be required for the installation of such solar panels but said installation remains subject to any requirements under applicable law. Owner shall be required to obtain building permits from the local jurisdiction for the installation of solar panels and a copy of the building permit is to be submitted to the Architectural Review Committee prior to commencement of construction.

2.3 LAND USE. The Lots, except as hereinafter provided in Section 2.4 and Section 10.11, shall be used for private and residential purposes only and no Dwelling of any kind whatsoever shall be erected, altered or maintained thereon except a private Dwelling house for the sole and exclusive use of the Owner or occupant of the Lot. None of the lots shall at any time be used for apartments or other types of multiple housing units; it being the intention of the Declarant that each and every one of the Lots be used solely for one (1) single Family attached Dwelling, and no other purposes, except such purposes as may be specifically reserved in the succeeding sections of this Declaration. No industry, business, trade or profession of any kind, whether or not for profit, shall be conducted, maintained or permitted on any part of the residential Lots except that any part of any Structure now or hereafter erected on any Lot may be used as an office or studio, provided that (i) the person using such office or studio actually resides in the Structure in which such office or studio is located, (ii) such office or studio is operated in full compliance with all applicable zoning and other laws, (iii) the operation of such office or studio does not involve the employment of any more than one (1) non-resident employee, (iv) the person owning such Lot has obtained the prior written approval of the Architectural Review Committee, and (v) such office or studio does not occupy more than twenty-five percent (25%) of the total floor area of such Structure.

2.4 AMENITY CONTRIBUTION. Developer will provide approximately four (4) acres of open space on the westerly boundary of the Property, as depicted in the Plat (Exhibit 1) (the "Open Space Parcel"). The Open Space Parcel will be offered for sale to individuals and be designated for agricultural use in order to maintain the rural feel of West Bountiful along the Legacy Highway. The owner of the Open Space Parcel shall be responsible for its maintenance, including contiguous sidewalks and landscaping. Permitted uses on the Open Space Parcel are grazing of livestock and cultivation of hay. The owners shall be permitted to construct shelters on the Open Space Parcel designed for livestock use. Entrance monuments will be placed at the entrance to the Community to create a welcoming and upscale feel for its new residents.

2.5 INTENTIONALLY OMITTED.

2.6 TEMPORARY STRUCTURES. No Structure of a temporary character, trailer, basement, tent, shack, garage, or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently. Nothing in this Declaration shall be deemed to prohibit an Owner from placing upon its Lot reasonably sized garden sheds, greenhouses or other similar accessory Structures approved in advance by the Architectural Review Committee.

2.7 **MODEL HOME AND CONSTRUCTION OFFICE.** Notwithstanding anything contained herein to the contrary, a model home and related signs, may be erected, maintained and operated on any Lot, or in any Structure now or hereafter located thereon, provided such office, and signs, are used and operated only in connection with the development and/or initial sale of any Lot or Lots, and/or the initial construction of improvements on any Lot now or hereafter laid out or created in the Community. Nothing herein, however, shall be construed to permit any real estate sales office, or sign after such initial development, sales, and/or construction is completed.

Notwithstanding anything contained herein to the contrary, a construction office located in a trailer may be erected, maintained and operated on any Lot, provided that such office is used and operated only in connection with the construction of the homes on the Lots owned by the Developer. The construction office shall be removed from the Property within 30 days of the last use and occupancy being issued by the City for the home construction on the lots owned by the Developer.

Except as expressly permitted herein above, neither any part of any Lot, nor any improvement now or hereafter erected on any Lot, shall be used for any real estate sales or construction office or trailer, nor shall any sign used in conjunction with such uses be erected.

2.8 **INTENTIONALLY OMITTED.**

2.9 **TRAFFIC VIEW.** No Structure, landscaping, shrubbery or any other obstruction shall be placed on any Lot so as to block the clear view of traffic on any streets, nor shall any planting be done on any corner Lots closer than twenty feet (20') from either street line that will exceed three feet (3') in height (except shade trees which shall be trimmed so that a clear view may be maintained to the height of eight feet (8')) as compliant with City Code

2.10 **FRONT LAWN.** The area within the front of a Dwelling shall be kept only as a lawn for ornamental or decorative planting of grass, trees and shrubbery.

2.11 **FENCES AND WALLS.** Except for fences as may be installed and/or constructed by the Declarant or Builder simultaneously with the initial construction of a Dwelling on a Lot by the Declarant and/or Builder, no fence, wall or other similar enclosure maybe built on the front of any Lot. The foregoing restriction shall not be construed to prohibit the growth of an ornamental hedge fence, which shall be kept neatly trimmed, and shall be trimmed to a hedge of not more than three feet (3') in the front yard of any Lot. Any fence to be constructed on any of the Lots shall require approval from the Architectural Committee

2.12 **NEAT APPEARANCE.** Owners shall, at all times, maintain their Lots and all appurtenances thereto in good repair and in a state of neat appearance, keeping all sidewalks contiguous to the Lot, neat, clean and in good repair, and free of ice and snow, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all Structures on the Lot, all in a manner and with such frequency as is consistent with good Property management and maintenance, pursuant and consistent with city ordinance. If, in the opinion of the Architectural Review Committee, any Owner fails to perform the duties imposed hereunder, the Association, on affirmative action of a majority of the Board of Directors, after fifteen (15) days written notice to such Owner to remedy the condition in question, and upon failure of the Owner to remedy the condition, shall have the right (but not the obligation), through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot and the improvements or Structures thereon, and the cost thereof shall be a binding, personal obligation of such Owner, as an additional assessment on the Lot.

2.13 **NUISANCES.** No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may become an annoyance or nuisance to the

neighborhood or any adjoining Property owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such properly maintained and operated devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Dwelling or upon the exterior of any other Structure constructed upon any Lot. No snowmobiles, go-carts, motorbikes, trail bikes, other loud-engine recreational vehicles or skateboard ramps shall be run or operated upon any Lot or upon any roadways serving the Property.

## 2.14 ANIMALS.

### **West Bountiful City Municipal Code 17.20.080 Farm Animal Regulations**

- A. Farm animals may be kept on properties according to the following requirements:
1. For each acre, a parcel, or adjacent properties, whether owned or leased, shall be eligible to contain or house farm animals rating one hundred (100) points or prorated for any part thereof.
    - a. Large animals such as horses, ponies, donkeys, mules, llamas and cows require a minimum area of .40 acres: Forty (40) points each.
    - b. Medium animals such as sheep and goats, and other animals of similar size: Twenty (20) points each.
    - c. Small animals such as ducks, chickens, geese, rabbits and turkeys: Four (4) points each.
    - d. Pigs, provided that pens are located at least two hundred (200) feet from neighboring dwellings: Forty (40) points each.
    - e. Miniature or pygmy farm animals will have one-half the points of the normal sized species.
  2. The points listed in Subsection A.1 above may be decreased for large, medium and small animals subject to approval of a conditional use permit by the planning commission pursuant to Chapter 17.60 of the West Bountiful Municipal Code and the provisions below.
    - a. The minimum points allowed shall be twenty-five (25) for each large animal, ten (10) for each medium animal, and two (2) for each small animal.
    - b. Neighbors adjoining the applicant's property for which the conditional use permit is requested will be notified by city staff at least five (5) days prior to the public meeting. Such notification will include the name and address of the applicant, the specific reason for the application, and the date, time and location of the planning commission meeting at which the application will be discussed.
  3. Dependent offspring, up to nine (9) months of age, shall not be counted in determining the total number of animals on the parcel(s).
  4. Adopted dependent offspring, up to nine (9) months of age, shall not be counted in determining the total number of animals on the parcel(s), subject to approval of a conditional use permit as outlined in Subsection A.2. above. Such conditional use permit shall be valid for no longer than nine months, as determined by the planning commission.
  5. Honeybees, pursuant to the requirements of Title 4, Chapter 11 of the Utah Code.
- B. For multiple properties to be eligible for combined point calculation under Subsection A, the following criteria must be met:
1. The properties shall be owned or leased by the same person or entity.
  2. All properties used for the combined point calculation must be contiguous.
  3. If one or more properties are leased:
    - a. The lease must be in writing and signed by both parties.
    - b. The leased property, in its totality, must be used in some meaningful way by lessee in the keeping of farm animals.
- C. All animals, except bees, must be kept in an area enclosed by a fence or structure sufficient to prevent escape.

- D. Setbacks for all structures shall meet applicable zoning requirements for each parcel, as well as the following requirements, as applicable.
1. No animal shelter, including pens, coops, and beehives, may be located less than six (6) feet from any property line or dwelling.
  2. Barns, stables, corrals, or similar structures used to house medium and large animals may not be located less than seventy-five (75) feet from any neighboring dwelling.
  3. An apiary, housing colonies of bees, must be at least six (6) inches above the ground and, if located less than fifteen (15) feet from a property line, a solid six (6) foot vertical barrier running along or near the property line and extending at least four (4) feet beyond the apiary in each direction is required.
- E. To protect the health, safety and welfare of the animals and the public, animal waste, debris, noise, odor, and drainage shall be kept in accordance with usual and customary health standards associated with that type of animal.
- F. Failure to comply with any portion of this section shall invalidate any use specified in this section and shall subject the owner to penalties and/or fines as specified elsewhere in this title.

*Adopted by Ord. 374-15 on 11/18/2015*

The Open Space Parcel bordering 1100 West as shown in Exhibit 1, and the Trust Lots (as defined below), are permitted to be used to graze livestock and/or to cultivate hay. Shelters for the livestock may be constructed on the Open Space Parcel and subject to the provision of paragraph 10.11.

#### 2.15 RECREATIONAL VEHICLES.

(a) Other than private passenger vehicles, RV's, ATV's, boats, vans, trucks or permitted commercial vehicles in regular operation, no other motor vehicles or inoperable, unlicensed, unregistered, junk or junked cars or other similar machinery or equipment of any kind or nature (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Lot) shall be kept on the Property or repaired on any portions of the Property except in emergencies. For the purposes hereof, a vehicle shall be deemed inoperable unless it is licensed, contains all parts and equipment, including properly inflated tires and is in such good condition and repair as may be necessary for any person to drive the same on a public highway.

(b) Commercial vehicles, owned and/or operated by Owners or Owners' tenants, may be parked in designated parking spaces, to include parking overnight, provided that such commercial vehicle is of such size that it may fit in a single parking space. Commercial vehicles not owned or operated by Owners or Owner's tenants shall not be left parked on any part of the Property, including, without limitation, any street or Lot, longer than is necessary to perform the business function of such vehicle in the area, it being the express intention of this restriction to prevent parking of commercial vehicles not owned and/or operated by Owners or Owners' tenants upon the Property, including, without limitation, the streets or Lots in the Community, for a time greater than that which is necessary to accomplish the aforesaid business purpose.

(c) Trailers, buses, tractors or any type of recreational vehicle shall not be parked, stored, maintained or repaired upon any streets.

(d) Notwithstanding the above, during construction of Dwellings, the Declarant and any Builder may maintain commercial vehicles and trailers on the Property for purposes of construction and for use as a field or sales office.

(e) No person shall operate a Vehicle in the Community other than in a safe and quiet manner and with due consideration for the rights of all Owners and occupants, or without holding a valid driver's license.

2.16 **LIGHTING AND WIRING.** The exterior lighting on Lots shall be directed downward and shall not be directed outward from, or extend beyond, the boundaries of any Lot. All wiring on any Lot shall be underground.

2.17 **ANTENNAE.** No radio aerial, antenna or satellite or other signal receiving dish, or other aerial or antenna for reception or transmission, shall be placed or kept on a Lot outside of a Dwelling, except on the following terms:

(a) An Owner may install, maintain and use on its Lot one (1) or, if approved, more than one (1) Small Antenna (as hereinafter defined) in the rear yard of a Lot, at such location, and screened from view from adjacent Dwellings in such a manner and using such trees, landscaping or other screening material, as are approved by the Architectural Review Committee, in accordance with Article II. Notwithstanding the foregoing terms of this Subsection, (i) if the requirement that a Small Antenna installed on a Lot be placed in the rear yard of a Lot would impair such Small Antenna's installation, maintenance or use, then it may be installed, maintained and used at another approved location on such Lot where such installation, maintenance or use would not be impaired; (ii) if and to the extent that the requirement that such Small Antenna be screened would result in any such impairment, such approval shall be on terms not requiring such screening; and (iii) if the prohibition against installing, maintaining and using more than one (1) Small Antenna on a Lot would result in any such impairment, then such Owner may install on such Lot additional Small Antennae as are needed to prevent such impairment (but such installation shall otherwise be made in accordance with this Subsection).

(b) In determining whether to grant any approval pursuant to this Section, neither Declarant, the Architectural Review Committee nor the Board of Directors shall withhold such approval, or grant it subject to any condition, if and to the extent that doing so would result in an impairment; provided however, that any Small Antenna shall be placed in the rear of each Lot, notwithstanding any other provision in this Section 2.18.

(c) As used herein, (i) "impair" has the meaning given it in 47 Code of Federal Regulations Part 1, Section 1.4000, as hereafter amended; and (ii) "Small Antenna" means any antenna (and accompanying mast, if any) of a type, the impairment of the installation, maintenance or use of which is the subject of such regulation. Such antennae are currently defined thereunder as, generally, being one (1) meter or less in diameter or diagonal measurement and designed to receive certain types of broadcast or other distribution services or programming.

2.18 **SUBDIVISION.** No Lot shall be divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose; provided, however, this shall not prohibit transfers of parts of Lots between adjoining Lot owners where the transfer is not for the purpose of creating a new building Lot. The provisions of this Subsection shall not apply to the Declarant and, further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any person for any purpose.

2.19 **SIGNAGE.** Except for entrance signs, directional signs, signs for traffic control or safety, Community "theme areas" or "For Sale" signs (not larger than two feet by three feet (2' x 3')), and except as provided in Section 2.7 of this Article II, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or Structure. The provisions and limitations of this subsection shall not apply to any institutional first Mortgagee of any Lot who comes into possession of the Lot by reason of any proceeding, arrangement, assignment or deed in lieu of foreclosure.

2.20 **TRASH AND OTHER MATERIALS.** No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except (a) building material during the course of construction of any approved Dwelling or other permitted Structure, and (b) firewood, which shall be cut

and neatly stored at least six inches (6") off the ground and twelve inches (12") away from any wooden Structure. No burning of trash shall be permitted on any Lot. All residential lot Owners shall place trash or other refuse into refuse containers provided by the Association at locations designated for trash deposits. Owners may not place any trash outside of such refuse containers or in any other location or container, except as designated by the Association. The cost of refuse containers shall be paid as an Association expense collected as part of the Annual Assessments.

2.21 **NON-INTERFERENCE WITH UTILITIES.** No Structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard direction or flow of any drainage channels. No poles and wires for the transmission of electricity, telephone and the like shall be placed or maintained above the surface of the ground on any Lot.

### **ARTICLE III - PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO**

3.1 **PROPERTY.** The real Property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in the Community, and is described on Exhibit 1 attached hereto, all of which real Property is referred to herein as the "Property."

3.2 **ADDITIONS TO PROPERTY.**

(a) The Declarant, its successors and assigns, shall have the right for fifteen (15) years from the date hereof or such lesser time as may be required by applicable law, to bring Additional Property within the scheme of this Declaration and within the Community (the "Additional Property") without the consent of the Class A members of the Association.

(b) The additions authorized under this Subsection shall be made by filing a supplemental declaration of record with respect to the Additional Property which shall extend the scheme of the Declaration to such Additional Property, and which Additional Property shall thereupon become part of the Property. Upon the filing of any supplemental declaration, Owners of Additional Property shall be subject to the same obligations and entitled to the same privileges as apply to the Owners of the Property. Such supplemental declaration may contain such complementary additions and modifications to the Declaration as may be necessary to reflect the different character, if any, of the Additional Property not inconsistent with the scheme of this Declaration. In no event, however, shall such supplemental declaration revoke, modify or add to the Covenants established by this Declaration for the Property as of the date hereof.

### **ARTICLE IV - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

4.1 **MEMBERSHIP.** Every Owner of a Lot that shall become and be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

4.2 **CLASSES OF MEMBERSHIP.**

(a) The Association shall have two (2) classes of voting membership:

(i) **Class A.** Except for the Declarant and any Builder, which shall initially be the Class B members, the Class A members shall be all Owners holding title to one (1) or more Lots; provided, however, that any Mortgagee or any other person or entity who holds such interest solely as security for performance of an obligation shall not be a Class A member solely on account of such interest. Each Class A member shall be entitled to one (1) vote per Lot, for each Lot owned by it, in all proceedings in which action shall be taken by members of the Association.

(ii) **Class B.** The Class B members shall be the Declarant and any Builder. The Class B members shall be entitled to three (3) votes per Lot for each Lot owned by them, in all proceedings in which actions shall be taken by members of the Association. Notwithstanding anything contained herein to the contrary, each Builder shall be conclusively deemed during the Development Period:

(A) To have given the Declarant an irrevocable and exclusive proxy entitling the Declarant, at each meeting of the membership held while such Builder holds such title, to cast the votes in the Association's affairs which such Builder holds under the foregoing provisions of this Section on each question which comes before such meeting;

(B) To have agreed with the Declarant that such proxy is given to and relied upon by the Declarant in connection with the Declarant's development, construction, marketing, sale and leasing of any or all of the Property and is coupled with an interest; and

(C) Such proxy shall cease with respect to the votes appurtenant to a Lot when a Dwelling has been constructed on such Lot and legal title to such Lot is conveyed to a person who intends to occupy such Dwelling as a residence.

(b) If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, holds the record title to any Lot, all of the same, as a unit, and not otherwise, shall be deemed a single member of the Association. The vote of any member comprised of two (2) or more persons, firms, corporation, trustees, or other legal entities, or any other combination thereof, shall be cast in the manner provided for in the Articles of Incorporation and/or By-Laws of the Association, or as the several constituents may determine, but in no event shall all such constituents cast more than one (1) vote per Lot for each Lot owned by them.

4.3 **CONVERSION.** The Class B membership in the Association shall cease and be converted to Class A membership in the Association subject to being revived upon Additional Property being annexed to the Property pursuant to this Declaration, upon the earlier to occur of (i) December 31, 2055; or (ii) at such time as the total number of votes entitled to be cast by Class A members of the Association equals or exceeds the total number of votes entitled to be cast by the Class B members of the Association. If after such conversion additional Property is made subject to the Declaration, then the Class B membership shall be reinstated until December 31, 2055, or such earlier time as the total number of votes entitled to be cast by Class A members again equals or exceeds the total number of votes entitled to be cast by Class B members. The Declarant and any Builder shall thereafter remain a Class A member of the Association as to each and every Lot from time to time subject to the terms and provisions of this Declaration in which the Declarant or the Builder then holds the interest otherwise required for Class A membership. Additionally, the Declarant or Builder can at any time, in its sole and absolute discretion give up its Class B membership and immediately convert to a Class A member.

## ARTICLE V - DECLARANT'S RESERVED RIGHTS AND OBLIGATIONS

5.1 **RESERVED RIGHTS OF DECLARANT.** Each Owner shall own its Lot subject to the following:

(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 "Drainage and Utility Easement," "Sewer Easement," "Drainage and Sewage Easement," and "Open Space," or otherwise designated as an easement area over any road, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat, except for the common side lines on the Lots, for the purposes of proper surface water drainage, for ingress and egress, for the

installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property 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, which 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 effect such purposes. Within the aforesaid easement areas, no Structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or change the direction of the flow of drainage channels or obstruct or retard the flow of water through drainage channels. The reserved easement areas of each Lot and all improvements therein, except improvements for which a public authority or utility company is responsible, shall be maintained continuously by the Owner of the Lot. In addition, Declarant reserves unto itself and its designees a non-exclusive easement over and through the Property for installation, constructions, operation and perpetual maintenance of all telecommunications distribution systems located on and/or servicing the Property or reasonably necessary to serve the Property.

(b) The reservation to Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, thru, over and across the Open Space Parcel 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.

(c) The designation of streets, avenues, roads, courts and places upon the Plat is for the purpose of description only and not dedication, and the rights of the Declarant in and to the same are specifically reserved, and the Declarant hereby reserves unto itself, and its successors and assigns, the right to grade, regrade and improve the streets, avenues, roads, courts and places as the same may be located on the Plat, including the creation or extension of slopes, banks, or excavation in connection therewith and in the construction of and installation of drainage Structures therein. The Declarant further reserves unto itself, and its successors and assigns, the bed, in fee, of all streets, avenues and public highways in the Community, as shown on the Plat.

(d) The Declarant further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other licenses or permits as the Declarant may deem necessary for the improvement of the Community in, over, thru, upon and across any and all of the roads, streets, avenues, alleys, and open space and in, over, thru, upon and across each and every Lot in any easement area set forth in this Declaration or as shown on the Plat. Declarant reserves unto itself, and its successors and assigns, the right to install electric meters and gas meters on the end walls of the Dwellings. Any maintenance required as a result of the installation of said meters shall be the responsibility of the Association.

(e) The Declarant further 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 Community except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Architectural Review Committee.

(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. Similarly, Declarant reserves the right unto itself, and its successors and assigns, and, without limitation, the Association, to enter on any Lot during normal business hours for the purpose of performing the maintenance obligations of the Association, as more particularly described in Section 6.4; provided, however, that Declarant shall have no obligation to perform such maintenance. No right shall be conferred upon any Owner by the recording of any Plat relating to the development of the Property in accordance with such Plat, Declarant expressly reserving unto itself the right to make such amendments to any such Plat or Plats as shall be advisable in its best judgment and as shall be acceptable to public authorities having the right to approval thereof.

(g) Declarant further reserves unto itself, for itself and any Builder and their respective successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Property other than those Lots conveyed to Owners for all purposes necessary or appropriate to the full and final completion of construction of the Community. Specifically, none of the provisions of Article II concerning architectural control or use restrictions shall in any way apply to any aspect of the Declarant's or Builder's activities or construction, and notwithstanding any provisions of this Declaration, none of the Declarant's or Builder's construction activities or any other activities associated with the development, marketing, construction, sales management or administration of the Community shall be deemed noxious, offensive or a nuisance. The Declarant reserves the right for itself and any Builder, and their successors and assigns, to store materials, construction debris and trash during the construction period on the Property without keeping same in containers. The Declarant will take reasonable steps, and will ensure that any Builder takes reasonable steps, to avoid unduly interfering with the beneficial use of the Lots by Owners.

5.2 **INCORPORATION BY REFERENCE; FURTHER ASSURANCES.** Any all grants made with respect to any Lots shall be conclusively deemed to incorporate the foregoing reservations, whether or not specifically set forth in such instruments. At the request in writing of any party hereto, any other party shall from time to time execute, acknowledge and deliver such further assurances of such reservations as may be necessary.

5.3 **DECLARANT'S RIGHTS DURING PERIOD OF ADMINISTRATIVE CONTROL.** During the Period of Administrative Control (as described below), Declarant shall retain the authority to appoint or remove the members of the Board of Directors. For purposes of this Declaration and the By-Laws, the term "Period of Administrative Control" shall mean and refer to the period of time beginning on the date of this Declaration and ending on the first to occur of the following: (a) sixty (60) days after 75% of the Lots are conveyed to Owners, other than the Declarant or Builder; (b) seven (7) years after Declarant (or any assignee declarant) is no longer selling any Lots; or (c) the date the Declarant, after giving written notice to the Owners, records an instrument in the Office of the Davis County Recorder in which Declarant voluntarily surrenders all rights to appoint or remove the members of the Board of Directors.

## ARTICLE VI - ENCROACHMENTS

6.1 If any Structure or any part thereof, now or at any time hereafter, encroaches upon an adjoining Lot or Open Space Parcel, whether such encroachment is attributable to construction, settlement or shifting of the Structure or any other reason whatsoever beyond the control of the Board of Directors or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non-disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue. The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any

easements arising under the provisions of this Article without specific or particular reference to such easement.

## ARTICLE VII - COVENANT FOR ASSESSMENT

7.1 **COVENANT FOR ASSESSMENT.** The Declarant for each Lot owned by it within the Property, hereby covenants, and each Owner, by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in such deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association (a) in advance, an annual assessment (the "Annual Assessment") equal to the member's proportionate share of the sum required by the Association, as estimated by the Board of Directors, for annual assessments or charges, and (b) special assessments or charges, for capital improvements, such Annual Assessments and special assessments and charges to be established and collected as hereinafter provided. The Annual Assessments and special assessments or charges shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article VIII and shall be construed as a real covenant running with the land. Such assessments or charges, together with interest at a rate of twelve percent (12%) per annum, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment fell due or was payable. The personal obligation for any delinquent assessment or charge, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.

7.2 **USE OF ASSESSMENTS.** The assessments and charges levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Community, and in particular for (a) the costs of utilities and other services which may be provided by the Association for the Community as may be approved from time to time by a majority of the members of the Association; and (b) the cost of labor, equipment, insurance, materials, management and supervision incurred or expended in performing all of the foregoing.

7.3 **ANNUAL ASSESSMENT.**

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than the Declarant or a Builder, the annual assessment shall be the aggregate of \$0.00 for each Lot, payable at the rate of \$0.00 per month. The attached Budget is shown as Exhibit "2".

(b) From and after such date, the annual assessment may be increased each year by not more than fifteen percent (15%) of the annual assessment for the previous year without a vote of the membership of the Association.

(c) From and after such date the annual assessment may be increased above the fifteen percent (15%) limitation specified in the preceding sentence only by a vote of two-thirds (2/3) of each class of members of the Association, voting in person or by proxy, at a meeting duly called for such purpose.

(d) For any Lot upon which Declarant or Builder holds title to a completed Dwelling, which Dwelling shall have had a use and occupancy permit issued six (6) months prior, Declarant or Builder shall pay the assessments or charges described herein with the following allowance in each instance: annual assessments or charges made or levied against any Lot to which the Declarant or Builder hold record title shall equal twenty-five percent (25%) of the annual assessment or charge made or levied against any other Lot laid out on the Property, to the end and intent that the Declarant or Builder shall not pay more, or less, than twenty-five percent (25%) of the per Lot annual assessment established by the Association under this Section. For any Lot upon which no Dwelling has been constructed or no use and occupancy permit has yet aged six (6) months, and for any Lot upon which models are constructed by Declarant or Builder until such model is converted to residential use, no assessment or charge shall be made or levied by the

Association.

7.4 **INITIAL CAPITAL CONTRIBUTION AND REINVESTMENT FEE.** To ensure adequate funds to meet the initial operating expenses of the Association, each Owner other than Declarant and Builder shall pay to the Association an amount equal to one (1) month of the amount of the then monthly Regular Assessment for that Lot ("Initial Capital Contribution"), as determined by the Board of Directors of the Association. The payment from each Owner (except for Declarant and any Builder) shall be due at the time such Owner takes title to any Lot and shall be applicable to both initial sales of Lots and all resales of Lots. Should the buyer of a Lot which has been resold by an Owner (other than Declarant or Builder) fail to pay the Initial Capital Contribution, then the selling Owner shall be liable for such amount to the Association. In addition to the foregoing, during the Development Period, Declarant has the right, but not the obligation, to make loans from time to time to the Association if Declarant deems the same to be appropriate, in its sole and absolute discretion, to enable the Association to pay all debts and maintain sufficient cash flow. If any such loans are made, repayment will be made to the Declarant, on such terms as Declarant may require, from time to time, and be paid from the Initial Capital Contribution, as determined in the sole discretion of the Board of Directors of the Association. The amounts set forth herein are not to be considered in lieu of annual Regular Assessments or any other Assessments levied by the Association.

7.5 **SPECIAL ASSESSMENTS.** In addition to the Annual Assessments authorized above, the Association may levy in any assessment year, a special assessment, applicable for that year only, for the purpose of meeting any other deficit of the Association or any emergency or unforeseen expenses of the Association; provided that such assessment shall first be approved by two-thirds (2/3) of the votes of the members of the Association, voting in person or by proxy at a meeting duly called for such purpose.

7.6 **NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 7.3 AND 7.4.** Written notice of any meetings of members of the Association called for the purpose of taking any action authorized under Sections 7.3 and 7.4 of this Article shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all of the votes of each class of members entitled to be cast at such a meeting shall be necessary and sufficient to constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.7 **COMMENCEMENT DATE OF ANNUAL ASSESSMENTS.**

(a) Subject to Subsection 7.3(d) above, the Annual Assessments as to any Lot shall commence on the date the Lot is conveyed to any person or entity other than the Declarant. The annual assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, and shall be a lien for any month after the fifteenth (15th) day of that month.

(b) The due date of any special assessment under Section 7.4 shall be fixed in the resolution authorizing such special assessment.

7.8 **DUTIES OF THE BOARD OF DIRECTORS.**

(a) The Board of Directors shall determine the amount of the maintenance assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of annual assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis herein above provided for. Any member may prepay one or more installments of any maintenance assessment levied by the Association, without premium or penalty.

(b) At least annually the Board of Directors shall prepare and adopt a budget for the Association. The Board of Directors shall present the adopted budget to the Owners at a meeting of the Owners. A budget is disapproved if within 45 days after the date of the meeting at which the Board of Directors presents the adopted budget: (a) there is a vote of disapproval by at least 51% of all the allocated voting interests of the Owners; and (b) the vote is taken at a special meeting called for that purpose by Owners under this Declaration, the Articles of Incorporation, or the By-Laws. If a budget is disapproved, the budget that the Board of Directors last adopted that was not disapproved by Owners continues as the budget until and unless the Board of Directors presents another budget to Owners and that budget is not disapproved. During the Development Period, Owners may not disapprove a budget. Written notice of the Annual Assessments shall thereupon be sent to all members of the Association. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the Annual Assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period; but the Annual Assessment fixed for the preceding period shall continue until a new Annual Assessment is fixed. No member may exempt itself from liability for assessments by abandonment of any Lot owned by such member.

(c) The Association shall, upon demand at any time, furnish to any Owner liable for assessment, a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A charge not to exceed ten dollars (\$10.00) may be levied in advance by the Association for each certificate so delivered.

7.9 **ADDITIONAL ASSESSMENTS.** Additional assessments may be fixed against any Lot only as provided for in this Declaration. Any such assessments shall be due as provided by the Board of Directors in making any such assessment.

7.10 **NONPAYMENT OF ASSESSMENT.** Any assessment or portion thereof not paid within thirty (30) days after the due date thereof shall be delinquent and shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and shall be subject to a late charge of Ten Dollars (\$10.00) per month until paid, or ten percent (10%) of the assessment, whichever is greater, and the Board of Directors shall have the right to declare the entire balance of the assessment and accrued interest thereon to be immediately due and payable. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or without waiving any other right, at equity to foreclose the lien against the Lot in the same manner and subject to the same requirements as are specified by the law of Utah for the foreclosure of Mortgages or deeds of trust containing a power of sale or an assent to a decree, and there shall be added to the amount of such assessment the reasonable costs of preparing and filing the complaint of such action, and in the event that judgment is obtained, such judgment shall include interest on the assessment as above provided, late fees and reasonable attorneys' fees to be fixed by the court together with the cost of the action.

7.11 **SUBORDINATION OF LIEN TO MORTGAGE.** The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage(s) or deed(s) of trust now or hereafter placed upon the Lot; provided, however, that the sale or transfer of any Lot pursuant to Mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such future assessment.

7.12 **ENFORCEMENT OF LIEN; APPOINTMENT OF TRUSTEE.**

(a) The Association may establish and enforce the lien for any assessment, annual, special, or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which such assessment is made. The lien may be established and enforced for damages, interest,

costs of collection, late charges permitted by law, and attorneys' fees provided for herein or awarded by a court for breach of any of the Covenants herein.

(b) Each Owner by accepting a deed to a Lot hereby irrevocably appoints and accepts Barry Gittleman, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, as amended (including Subsection 57-1-21(1)(a)(i) or (iv)). In addition, each Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real Property for the purpose of securing his performance of the obligations set forth herein. Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to Barry Gittleman, with power of sale, the Lots and all improvements to the Lots for the purpose of securing payment of assessments under the terms of this Declaration.

7.13 **RESERVES FOR REPLACEMENTS.**

(a) The Association shall establish and maintain a reserve fund. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(b) The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member of the Association in any such reserves shall be considered an appurtenance of such Owner's Lot and shall not be separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

**ARTICLE VIII - INSURANCE AND CASUALTY LOSSES**

8.1 **HAZARD INSURANCE ON IMPROVED LOTS.** Each Owner of an improved Lot must also maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance.

8.2 **OBLIGATION OF LOT OWNER TO REPAIR AND RESTORE.**

(a) In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by the Declarant or the Architectural Review Committee; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the Architectural Review Committee and obtain its approval prior to commencing the repair, restoration or replacement.

(b) If any Owner of an improved Lot fails to maintain the insurance required by Section 8.1 of this Article, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance. Such Owner shall be personally liable to the Association for any costs incurred by the Association in obtaining such insurance, to the same extent as such Owner is liable for assessments levied against its Lot, and, upon the failure of the Owner to pay such costs within ten (10) days after such Owner's receipt of a written demand therefor from the Association, the Association may establish a lien therefor upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

## ARTICLE IX - RIGHTS OF MORTGAGEES

### 9.1 GENERAL.

(a) Regardless of whether a Mortgagee in possession of a Lot is its Owner, (i) such Mortgagee in possession shall have all of the rights under the provisions of this Declaration, the Plat, the Articles of Incorporation, the By-Laws and applicable law, which would otherwise be held by such Owner, subject to the operation and effect of anything to the contrary contained in its Mortgage, and (ii) the Association and each other Owner or person shall be entitled, in any matter arising under the provisions of this Declaration and involving the exercise of such rights, to deal with such Mortgagee in possession as if it were the Owner thereof.

(b) Any Mortgagee in possession of a Lot shall (subject to the operation and effect of the provisions of this Declaration, the Articles of Incorporation, the By-Laws and applicable law) bear all of the obligations under the provisions thereof which are borne by its Owner; provided, that nothing in the foregoing provisions of this Section shall be deemed in any way to relieve any Owner of any such obligation, or of any liability to such Mortgagee on account of any failure by such Owner to satisfy any of the same.

9.2 INSPECTION; STATEMENT AND NOTICE. A Mortgagee shall, upon delivery of a written request to the Association, be entitled to

- (a) inspect the Association's books and records during normal business hours;
- (b) receive an annual financial statement of the Association within ninety (90) days after the end of any fiscal year of the Association;
- (c) be given timely written notice of all meetings of the Membership, and designate a representative to attend all such meetings;
- (d) be given timely written notice by the Association of failure to pay assessments by the Owner of such Mortgagee's Lot which is not cured within thirty (30) days after such default commences, but the failure to give such notice shall not affect the validity of the lien for any assessments levied pursuant to this Declaration.

9.3 APPROVAL BY FEDERAL HOUSING ADMINISTRATION AND VETERANS ADMINISTRATION. Until the Class B membership terminates pursuant to the provisions of Article IV, Section 4.3, the consent or approval of the Federal Housing Administration, the Veterans Administration and/or the Department of Housing and Urban Development shall be obtained with respect to any of the following actions taken while a Mortgage is in effect which is insured by such entity:

- (a) an amendment of this Declaration; and
- (b) annexation of additional properties.

## ARTICLE X – MISCELLANEOUS

10.1 TERM. This Declaration shall run with the land and shall be binding for a period of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years each unless and until an instrument has been recorded, by which this Declaration, in whole or in part, is amended, modified or revoked pursuant to the provisions of Section 10.9.

10.2 **ENFORCEMENT.**

(a) Enforcement of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain the violation or to recover damages, or both. In acquiring title to any Lot in the Community, the purchaser or purchasers violating or attempting to violate any covenant, agree to reimburse the Association and/or any Owners for all costs and expenses for which it or they may be put as a result of the said violation or attempted violation, including but not limited to, court costs and attorneys' fees.

(b) These Covenants shall inure to the benefit of and be enforceable by the Association or by the Owner(s) of any land included in the Community and their respective legal representatives, successors and assigns, and all persons claiming by, through or under them.

(c) The City, as an intended third-party beneficiary of this Declaration, may bring proceedings at law or in equity to enforce the provisions of this Declaration. The City may recover its costs, including attorney fees, incurred in any such proceeding in which it is the prevailing party.

10.3 **NO WAIVER.** The failure or forbearance by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.4 **INCORPORATION BY REFERENCE ON RESALE.** In the event any Owner sells or otherwise transfers any Lot, any deed purporting to affect such transfer shall be deemed to contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration, whether or not the deed actually so states.

10.5 **NOTICES.** Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage paid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

10.6 **DETENTION BASIN.** A portion of the Open Space Property as depicted in the Preliminary Plat (**Exhibit 1**) will act as a detention basin in accordance with the Drainage and Grading Plan (**Exhibit 3**). The Open Space Property will be privately owned and the owner will maintain the detention basin and the City will maintain the associated storm drain pipes and appurtenances.

10.7 **SEVERABILITY.** Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

10.8 **CAPTIONS AND GENDERS.** The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

10.9 **AMENDMENT.**

(a) For so long as there is a Class B membership of the Association, this Declaration may be amended by an instrument in writing, signed and acknowledged by the Declarant and by the President or Vice-President and Secretary or Assistant Secretary of the Association after approval of the amendment at a meeting of the Association duly called for such purpose. The vote (in person or by proxy) or written consent of at least two-thirds (2/3) of the Association shall be required to add to, amend, revise or modify this Declaration. Following the lapse of the Class B membership in the Association, as provided in Article IV hereof, this Declaration may be amended by an instrument in writing, signed and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association with the approval, in the manner set forth above, of at least two-thirds (2/3) of the Class A members of the Association at a meeting of the Association duly called for such purpose.

(b) An amendment or modification shall be effective when executed by the President or Vice-President and Secretary or Assistant Secretary of the Association who shall certify that the amendment or modification has been approved as herein above provided. The amendment shall be recorded in the Recorder's Office of Davis County. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording. For the purpose of recording such instrument, each Owner, other than the Declarant, hereby grants to the president or Vice-President and Secretary or Assistant Secretary of the Association an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying, executing and recording said instrument. Notwithstanding anything to the contrary contained herein, in no event may any of Declarant's rights or privileges under the Articles of Incorporation or By-Laws of the Association or this Declaration be terminated, altered or amended without Declarant's prior written consent.

(c) Notwithstanding any provision of this Declaration to the contrary, no amendment or modification will be effective, nor may it be recorded, without the City's prior written consent as authorized by its city council.

10.10 **REQUIREMENTS TO TAKE LEGAL ACTIONS.** Notwithstanding the foregoing, neither the Association nor any person acting or purporting to act on its behalf shall (a) file or otherwise commence, or prosecute, in any jurisdiction whatsoever, any (i) civil, criminal or administrative proceeding in or with any court or administrative body or officer, or (ii) appeal of or objection to any decision or other action made or taken by any court or administrative body or officer, in any judicial or administrative proceeding, or (b) testify or submit evidence (except where required by law, subpoena or formal order of such court, administrative body or officer), or otherwise take a formal position on any issue under consideration, in any such proceeding or appeal, in all cases until such action is approved in writing by, or by the vote of, both Members entitled to cast at least seventy-five percent (75%) of the votes held by all Owners other than Declarant, and at least seventy-five percent (75%) of the votes of Class B Member. Nothing in this Subsection shall apply to a civil or administrative proceeding which the Association commences or prosecutes with a court or administrative body or officer (a) to collect an Assessment, or enforce or foreclose a lien securing an Assessment, (b) otherwise to enforce the Association's rights or another person's obligations under the Declaration, Bylaws or Articles on account of a default or otherwise or (c) any action taken by the Declarant at any time or action undertaken by the Architectural Committee during the Development Period. Notwithstanding the foregoing, the limitations in this section shall not apply to any proceeding brought by the City to enforce the provisions of this Declaration.

10.11 **ENVIRONMENTAL CONSIDERATION.** 3.93 acres of land within the Property and defined on the Plat as Lot numbers 8, 9, 10 and 11, owned by The Thomas and Jeanette Williams Family Trust (the "Trust Lots"), were impacted by an oil spill in 1991. Studies recently completed by Wasatch Environmental indicate that no imminent health risk is associated with the Trust Lots; however, because of levels of impacted soils below grade, the Trust Lots are not ready to be built upon. The Trust Lots may only be used for agricultural uses until such a time as the Utah Department of Environmental Quality issues a letter identifying that the Trust Lots have been cleaned to residential standards and that homes may be built upon them. The agricultural uses may include grazing of livestock and/or cultivation of hay. The Trust and any future Owner of the Trust Lots will be responsible for the maintenance of the Trust Lots along with any contiguous sidewalk and landscaping.

10.12 **CITY AS THIRD-PARTY BENEFICIARY.** The City is an intended third-party beneficiary of this Declaration.

WITNESS the hand and seal of the Declarant hereto on the day herein above first written.

**WITNESS/ATTEST:**

**DECLARANT:**  
KINROSS ESTATES, LLC  
By: Hamlet Homes IV Corporation  
Its Manager

\_\_\_\_\_ By: \_\_\_\_\_  
Barry Gittleman, President

STATE OF UTAH, COUNTY OF SALT LAKE, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_ 2017 before, me, the subscriber, a Notary Public of the State of Utah, personally appeared Barry Gittleman, known to me or suitably proven, who acknowledged himself to be the President of Hamlet Homes IV Corporation, the Manager of Kinross Estates, LLC, the Declarant named in the foregoing Declaration of Covenants, Conditions and Restrictions, and who, being authorized to do so, in my presence, signed and sealed the same and acknowledged the same to be the act and deed of the Declarant.

AS WITNESS my hand and seal.

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

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_

**CONSENT AND AGREEMENT OF TRUSTEE AND BENEFICIARY**

\_\_\_\_\_ and \_\_\_\_\_ are, respectively, the Trustee and the Beneficiary, along with The Thomas and Jeanette Williams Family Trust is the Trust and Owner of the Trust Lots under that certain Deed of Trust dated \_\_\_\_\_ and recorded as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Pages \_\_\_\_\_ of the Official Records of Davis County, Utah hereby join in the foregoing Declaration of Covenants, Conditions and Restrictions for the express purpose of subordinating all of their respective right, title and interest under such Deed of Trust in and to the real Property described in Exhibit 1 such to the operation and effect of such Declaration.

Nothing in the foregoing provisions of this Consent and Agreement of Trustee and Beneficiary shall be deemed in any way to create between the person named in such Declaration as "the Declarant" and any of the undersigned any relationship of partnership or joint venture, or to impose upon any of the undersigned any liability, duty or obligation whatsoever.

IN WITNESS WHEREOF, the Trustee and Beneficiary have executed and sealed this Consent and Agreement of Trustee and Beneficiary or caused it to be executed and sealed on its behalf by its duly authorized representatives, this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

**WITNESS/ATTEST:**

**TRUSTEE: TBD**

\_\_\_\_\_

\_\_\_\_\_  
By:  
Its: \_\_\_\_\_

**WITNESS/ATTEST:**

**BENEFICIARY: TBD**

\_\_\_\_\_

\_\_\_\_\_  
By:  
Its: \_\_\_\_\_

**WITNESS/ATTEST:**

**THE TRUST: THE THOMAS AND JEANETTE WILLIAMS FAMILY TRUST**

\_\_\_\_\_

\_\_\_\_\_  
By: Steven Larry Williams  
Its: Trustee

3

4 ***Posting of Agenda** - The agenda for this meeting was posted on the State of Utah Public Notice website*  
5 *and on the West Bountiful City website on November 9, 2017 per state statutory requirement.*

6

7 **Minutes of the Planning Commission meeting of West Bountiful City held on Tuesday, November 14,**  
8 **2017 at West Bountiful City Hall, Davis County, Utah.**

9

10 **Those in Attendance:**

11 **MEMBERS PRESENT:** Chairman Denis Hopkinson, Alan Malan, Laura Charchenko, Corey Sweat, Mike  
12 Cottle, and Council member Kelly Enquist

13 **STAFF PRESENT:** Ben White (City Engineer), Cathy Brightwell (Recorder), Debbie McKean (Secretary)

14 **VISITORS:** Duane Huffman, Paul Holden, Gary Jacketta, Mark Preece, Andy Williams, Justin Wood, Eric  
15 Eastman, James Bruhn, Shelly Bruhn, Corey Haddock, Chris Jenson, Todd Willey, Jay Gough, Mark Vlastic,  
16 Siri Vlastic, Dan Donaldson, Dave Wilding

17

18 Chairman Hopkinson opened the meeting and introduced Mark and Siri Vlastic from Landmark Design.

19 **Work Meeting:**

- 20 • **Presentation by Landmark Design- West Bountiful Parks, Open Space, Recreation, Arts & Trails**  
21 **Master Plan**

22 Mark Vlastic presented the draft copy of the West Bountiful Parks, Open Space, Recreation, Arts and  
23 Trails Master Plan. It is a draft and still subject to change. The presentation tonight is for  
24 commissioners, council members and the Parks steering committee. An open house will be held  
25 Thursday, November 16, from 6:30 – 8:30pm for the public.

26 Mr. Vlastic reviewed the steps they followed to determine the needs of the City comparing existing  
27 facilities and services and analyzing future needs based on data, technical input and public involvement.  
28 Information was obtained at a public scoping meeting, input provided from a steering committee, and  
29 results of approximately 300 respondents to a specially designed public survey.

30 Most respondents believe West Bountiful provides adequate parks and trails. Fewer agree the city  
31 provides enough recreation and arts facilities and programs. Parks are the most important facilities  
32 followed closely by trails and open space. Lakeside golf course scored higher in the “somewhat  
33 important” category than any other amenity. The majority of respondents indicate it is important to  
34 have parks within walking distance of home, and there is a desire for specialty parks, such as natural

35 open space, and trails. Arts and Recreation program participation is provided by South Davis Recreation  
36 Center and local school and community groups.

37 Mr. Vlastic described existing conditions and analyses of the city's four parks (City Park, Charnell  
38 Park, Birnam Woods Park and Jessi's Meadow Park) which consist of a little over 15 total acres, and how  
39 they could be improved to meet the needs projected out to 2027 and long term needs to 2060.  
40 Landmark Design looked at Level of Service Analysis and Distribution Analysis to evaluate the  
41 distribution of parks and open spaces to determine if service gaps exist. These analyses show there is a  
42 gap in service in the southwest portion of the city. Mr. Vlastic recommended establishing minimum park  
43 standards to meet future needs

44 Options were provided to improve current facilities and provide requested facilities. These options  
45 include redesigning Charnell Park to improve use; redesigning Birnam Woods Park with expanded play  
46 areas and a possible off-leash dog park; installing a splash pad, amphitheater or similar special feature at  
47 City Park, possibly as a joint effort with Bountiful and other regional partners; moving the city public  
48 works facilities to a new site and developing a small community/arts center in the public works current  
49 location; and developing a new sports field park on property owned by Holly Frontier off 1100 West; and  
50 develop Jessi's Meadow site into a passive nature park, a park with pickleball courts or including an  
51 amphitheater and grassy lawn area. Other implementation options could include the installation of  
52 Community Gateway/Entry Features at three key intersections (Pages Lane, 400 N/I-15, 500 S/1100 W);  
53 installation of missing trails and bike lanes; and a new restroom on the west edge of Lakeside Golf  
54 Course.

55 Mr. Vlastic then talked about acquisition, construction and improvement costs. Implementation  
56 should be flexible to match specific funding options and opportunities. He suggested the city attempt to  
57 acquire new sites that extend existing open space corridors and properties, and explore opportunities  
58 that expand the range and types of open space in the city, including the permanent preservation of  
59 cultural landscapes and agricultural land for the benefit of future generations.

60 Estimated costs were provided for specific projects. The primary funding source is the Recreation,  
61 Arts, and Parks (RAP) funds, which will be in effect through April 1, 2027. A conservative estimate is that  
62 the tax will provide between \$2.5 and \$3 million during the next decade. An additional funding source is  
63 the Parks and Recreation Impact Fees. He provided several other potential secondary funding sources  
64 including state and federal funds and various grants.

65 Mr. Vlastic concluded his presentation by reviewing the Goals and Policies for Parks and Open Space:

- 66 1. Assure that residents of West Bountiful have access to adequate parks.
- 67 2. Improve the maintenance and operations in public parks.
- 68 3. Ensure that critical open spaces, habitat areas and natural features are maintained and  
69 protected.
- 70 4. Assure that residents of West Bountiful have access to high quality recreational and cultural  
71 programs and facilities.
- 72 5. Assure that the West Bountiful trail system meets public needs and expectations.
- 73 6. Assure that trails are safe.
- 74 7. Promote water conservation and similar practices to help ensure the West Bountiful parks and  
75 recreation system is sustainable and resilient.
- 76

77 **Questions/Comments:**

78 **Eric Eastman** - Lots to digest. He wants to take some time to go through the plan thoroughly. Mark  
79 invited comments via the website or to write down their thoughts and comments.

80 **Chairman Hopkinson** likes the outline, analytical data and diagrams; it's been well studied.

81 **Justin Wood** - Multi-purpose sports field(s) could be matched through the Utah Youth Soccer  
82 Association.

83 **Alan Malan** would like to see more parking options.

84 **Duane Huffman** – the waste water line on the 1100 West Holly Property needs to be addressed. He  
85 thanked Mr. Vlasic for the presentation and reminded the audience of the open house on Thursday.

86

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87

88 **REGULAR MEETING:**

89 The regular Planning Commission Meeting was called to order at 7:40 pm by Chairman Denis Hopkinson.  
90 Laura Charchenko offered a prayer.

91

92 **1. Accept Agenda**

93 Chairman Hopkinson reviewed the agenda. Corey Sweat moved to accept the agenda as presented.  
94 Mike Cottle seconded the motion. Voting was unanimous in favor among members present.

95

96 **2. Public hearing to Consider a Proposed 27-lot Residential Subdivision, High Gate Estates,  
97 between 1100 West and 1450 North south of Mill Creek Canal.**

98 **ACTION TAKEN:**

99 *Corey Sweat moved to open the public hearing at 7:42 pm to Consider a Proposed 27 -lot Residential*  
100 *Subdivision, High Gate Estates, between 1100 West and south of Mill Creek Canal. Alan Malan*  
101 *seconded the motion and voting was unanimous in favor.*

102 **Public Comment:**

- 103
- Eric Eastman, resident, asked about the specific location of the development which Ben White  
104 responded is approximately 50 South on 1100 West. He wanted to know more about the  
105 approval process. Chairman Hopkinson explained this is not a final decision, it is just a planning  
106 concept. Mr. Eastman feels that there is a lot of work left to do and several issues to be solved.  
107 He hopes that the work will be done before it goes to City Council. He gave the example of  
108 Hamlet Homes in Birnam Woods. He encouraged them to stand their ground and make the  
109 right decisions when allowing developers to develop in our city.

- 110 • James Bruhn, resident, asked how this develop may fit with other development to the south; he  
111 does not see any stub roads. Mr. White pointed out the 1450 West stub road and the area at  
112 the west end of the entrance road that will allow access to the south, if and when needed.

113 **ACTION TAKEN:**

114 *Laura Charchenko moved to close the public hearing at 7:56 pm. Corey Sweat seconded the motion*  
115 *and voting was unanimous in favor.*

116

117 **3. Consider Preliminary Plat for High Gates Estates**

118 Commissioners received a memorandum in their packet from Ben White dated November 9, 2017  
119 regarding High Gate Subdivision that described challenges with the development of the property.

120 Chairman Hopkinson stated that they have studied and discussed this plat and the requests of the  
121 developer are within the city standards and designs. Two of the developers intend to build homes in the  
122 subdivision and become West Bountiful residents.

123 Ben White stated that the concept is complete, but many of the detail plans are not completed at this  
124 point. He briefly reviewed all the things discussed in past meetings regarding this development. He  
125 stated that all appear to be ready for them to press forward with further planning and recapped some of  
126 the highlights of the development. He made some suggestions regarding whether to pave 1450 W all  
127 the way to the property line and what to do with the stub road to the west. There was also discussion  
128 regarding the remnant parcel along the entrance to the subdivision.

129 Chairman Hopkinson invited Dave Wilding (Project Engineer) who is engineering this project to take the  
130 stand. Mr. Wilding noted that the sewer issues are still being worked through with South Davis Sewer.  
131 Ben White pointed out the two options (a lift station or pumping) that could be used to solve the issues.  
132 Mr. Wilding said that the option of pumping seems to be the best solution to solve the issues; the lift  
133 station is not favorable with the developer or the Sewer District. Mr. Wilding informed them that there  
134 are some negotiations being made with Davis County regarding storm drainage which may allow them  
135 to discharge into the canal. He is optimistic they will come out with a good solution.

136 **Commissioner's Comments Included:**

137 **Corey Sweat-** Inquired about the Holly drain line that runs through Lot 6 & 7. Ben pointed out that they  
138 could either leave it alone, or re-route it which would make it non-existent. Mr. Wilding stated that they  
139 are discussing some solutions and feels that this can be worked out favorably.

140 **Mike Cottle-** Inquired about the asphalt and why there should be a delay in putting asphalt between lots  
141 26 and 27. Mr. White explained there may be reasons to wait to pave roads that do not provide service  
142 to anywhere right now.

143 **Alan Malan-** He was concerned about the entrance, an 800 ft. road with undevelopable remnant  
144 parcels. Ben White stated that the road right-of-way is not considered the same as a remnant parcel,  
145 yet is still serves the same. He feels like there should be curb, gutter and sidewalk on both sides of the  
146 street. He is in favor of having 1450 West paved now and not waiting until later.

147 **Laura Charchenko**- Does not like dead end streets and is in favor of keeping a bond in place to pave  
148 1450 West later. She likes the landscaping plan and islands at the entrance of the development. Does  
149 not feel like it is necessary to have two street lights in each the cul-de-sac, one is sufficient.

150 Dave Wilding, the engineer representing the developers, explained the entrance of the subdivision and  
151 its beauty and function and said they plan to have the HOA maintain that area. Mr. White explained the  
152 various options regarding the remnant parcel and whether it makes sense to designate the entire area  
153 as street right-of-way. If not, our Code requires it to be attached to adjoining properties.

154 Chairman Hopkinson said he likes having the trail affect versus the curb, gutter, and sidewalk. He  
155 explained the various options for the motion to be made this evening and called for a vote.

156 **ACTION TAKEN:**

157 ***Alan Malan moved to table the preliminary plat for Onion Patch Securities, LLC developing a 27 1-acre***  
158 ***lots until all documents are received. Corey Sweat seconded the motion. Voting was 4 to 1, Alan***  
159 ***Malan, Denis Hopkinson, Corey Sweat and Mike Cottle voted Aye and Laura Charchenko voted Nay***

160

161 **4. Consider Request for Conditional Use by Artisan Custom Metal Works at 1116 West 500 South**

162 Commissioner packets included a memorandum dated, November 9, 2017 from Ben White and Cathy  
163 Brightwell regarding a Conditional Use for Artisan Custom Metal Works, the Conditional Use Permit  
164 Application, photos of products being made, letter from the applicant, and list of permitted uses in the  
165 C-H District, WBMC Section 17.34.

166 Cathy Brightwell introduced the request from Artisan Custom Metal Works. They plan to lease a small  
167 space for their business specializing in metal fabrication of custom railing, fencing, gates, spiral stairs,  
168 mailboxes, etc., it will not be a large operation. She said it is not clear if the business is allowed in the  
169 Commercial Highway District. WBMC, Section 17.34.040, provides a list of conditional uses for the zone  
170 and, (L) lists Indoor fabrication, machining or welding or materials or equipment not for resale  
171 (emphasis added) as being allowed. The applicant believes this business is more like a neighboring  
172 cabinet shop which is allowed in (G). They also claim that (N.) applies which states, Other commercial  
173 businesses which are similar to those listed in this section and Section 17.34.020, as determined by the  
174 planning commission. Ms. Brightwell explained that each and every business type cannot be included in  
175 the list, so it is up to the Commissioner's discretion to decide if it fits or not.

176 Mr. Dan Donaldson, owner of the building, came forward to answer questions.

177 **Alan Malan** pointed out the definition of "resale" and does not believe this business qualifies as a  
178 "resale" type of business, so it should be allowed. Mr. Malan asked Mr. Donaldson some questions  
179 about the building. He wants to make sure that a copy of 51B for welding rules and conditions and  
180 adhered by. Mr. Donaldson feels that this business owner is very conscientious and aware of all the  
181 restrictions concerning welding.

182 **Laura Charchenko** asked where the nearest fire hydrant is located.

183 **Corey Sweat** inquired about Mr. Donaldson's confidence in the business owner. He is concerned that  
184 the Fire Marshall may not be as restrictive as they should be. He encouraged him to be careful

185 regarding the fire hazards that come with welding. Some discussion took place regarding the materials  
186 that will be welded. Mr. Donaldson thinks that mostly aluminum products will be used.

187 **Mike Cottle** was also concerned about the welding aspect but feels more confident in allowing this  
188 business after the discussion and information that has been shared this evening.

189 **ACTION TAKEN:**

190 *Corey Sweat moved to approve the conditional use permit for Artisan Custom Metal Works at 1116*  
191 *West 500 South, Unit 11 provided applicant gets approval from the fire marshal and that the fire*  
192 *marshal is fully aware of the type of business he is doing; that there be no outdoor storage; and that a*  
193 *West Bountiful business license be obtained, with the following Findings: the proposed use at the*  
194 *particular location is necessary or desirable to provide a service or facility that will contribute to the*  
195 *general well-being of the neighborhood and the community and conditions be imposed in the*  
196 *conditional use permit will mitigate the reasonably anticipated detrimental effects of the proposed*  
197 *use and accomplish the purposes of this subsection. Alan Malan seconded the motion and voting was*  
198 *unanimous in favor.*

199

200 **5. Discuss Possible Code Changes to Open Space Limitations in Title 16- Subdivisions, and**  
201 **Construction Standard Requirements.**

202 Commissioner packets included a memorandum from Ben White dated, November 9, 2017 regarding  
203 Title 16 Open Space Parcels and Construction.

204 Mr. White introduced the discussion on Title 16 Open Space Parcels and Construction Standard  
205 Requirements by pointing out that the High Gate Subdivision application has brought the remnant  
206 parcel issue to the forefront. Is the municipal code too restrictive regarding open space parcels outside  
207 of a planned unit development? WBMC 16.12.060(H) reads, "All remnants of lots below minimum size  
208 leftover after the subdivision of a large tract must be added to adjacent lots rather than allowed to  
209 remain as unusable parcels." He said it is unclear if this is what we really want when considering its  
210 application in each zone; in a one-acre zone, no remnant parcel can be less than one acre. Staff suggests  
211 replacing "minimum size" with "2000 square feet."

212 There was some discussion and it was decided that no language change needs to be made and that  
213 determinations can be made for individual developments. Ben White explained the difference between  
214 parcels (private) and right of way (public) and the rights that exist with each. Further discussion took  
215 place.

216 The consensus was that language remains as is for now.

217

218 **6. Staff Report**

219 Ben White-no report.

220 Cathy Brightwell- no report.

221

222 7. Consider Approval of Minutes from October 24, 2017.

223 ACTION TAKEN:

224 *Laura Charchenko moved to approve of the minutes of the October 24, 2017 meeting as corrected.*

225 *Alan Malan seconded the motion and voting was unanimous in favor.*

226

227

228 8. Adjournment

229 ACTION TAKEN:

230 *Alan Malan moved to adjourn the regular session of the Planning Commission meeting at 9:05 p.m.*

231 *Laura Charchenko seconded the motion. Voting was unanimous in favor.*

232

233 .....

234

235 *The foregoing was approved by the West Bountiful City Planning Commission on November 14, 2017, by*

236 *unanimous vote of all members present.*

237

238 \_\_\_\_\_

239 *Cathy Brightwell – City Recorder*