

40/16

E 2417504 B 4697 P 329-344
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
01/22/2009 11:06 AM
FEE \$40.00 Pgs: 16
DEP RTT REC'D FOR FARMINGTON CITY

WHEN RECORDED, MAIL TO:

FARMINGTON CITY
Attn: City Manager
130 North Main
Farmington, Utah 84025

07-272-0043

CONSERVATION EASEMENT D

(CONSERVANCY LOT)

9/30

THIS CONSERVATION EASEMENT is made this 7th day of JANUARY, 2008, by **RAINEY DEVELOPMENT, INC.**, a Utah corporation, whose mailing address is 520 North 900 West, Kaysville, Utah 84037 ("Grantor"), in favor of **FARMINGTON CITY**, a municipal corporation and political subdivision of the State of Utah, whose mailing address is 130 North Main Street, P.O. Box 160, Farmington, Utah 84025 ("Grantee").

RECITALS:

WHEREAS, Grantor hereby represents and acknowledges it is the sole owner in fee simple title of certain real property located in Farmington City, Davis County, State of Utah, which property is more particularly described herein at Section 2, hereinafter referred to as the "Property," consisting of a portion of Lot 43 within the conservation subdivision known as Tuscany Village Subdivision; and

WHEREAS, the Property possesses natural, scenic and open space values consisting of upland meadows and pastureland (collectively referred to as "Conservation Values") of great importance to the Grantor, the Grantee, and residents of the Tuscany Village Subdivision; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of the use of the Property in such a way which does not significantly impair or interfere with those values; and

WHEREAS, Grantor intends to preserve and protect the Conservation Values of the Property as open space and to protect the Property from future development in perpetuity through this Easement and dedication of the same to Grantee; and

WHEREAS, Grantee is a tax exempt entity under Section 501(c) of the *Internal Revenue Code* qualified to acquire this Conservation Easement under the terms of *Utah Code Ann.* § 57-18-3, as amended.

NOW, THEREFORE, in consideration of the above and the covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Utah, particularly *Utah Code Ann.* § 57-18-1, *et seq.*, as amended, with the intention of making an easement in perpetuity, Grantor hereby agrees and conveys as follows.

1. **Conveyance.** Grantor hereby grants and warrants to Grantee, a perpetual conservation easement as hereinafter defined (the "Easement") over and across all the Property to preserve and protect as open space the upland meadows, pastureland and Conservation Values present on the Property, to have and to hold unto Grantee, its successors and assigns forever.

2. **Property.** The Property subject to this Easement consists of approximately 0.91 acres of that certain real property known as Lot 43, and designated as "Conservancy Lot" on the official plat of the Tuscany Village Subdivision, located in the Northwest Quarter of Section 31, Township 3 North, Range 1 East, Salt Lake Base and Meridian, Farmington City, Davis County, State of Utah, which plat is recorded in the office of the Davis County Recorder, State of Utah, and is more particularly described in **Exhibit "A,"** attached hereto and incorporated herein by this reference.

3. **Current Use and Condition of Property.** The Property presently consists of natural, scenic, open space, upland meadows and pastureland. The Property has the following specific Conservation Values: natural, scenic, open space, upland meadows and pastureland.

4. **Purpose.** Grantor is the fee simple title owner of the Property and is committed to preserving the Conservation Values of the Property. The purpose of this Easement is to assure that the Property will be retained in its open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Any use of the Property which may impair or interfere with the Conservation Values, unless expressly permitted in this Easement, is expressly prohibited. Grantor agrees to confine use of the Property to activities consistent with the purposes of this Easement and the preservation of the Conservation Values of the Property.

5. **Duration.** The duration of the Easement shall be perpetual.

6. **Permitted Uses.** Grantor retains ownership rights of the underlying fee simple title to the Property which are not expressly restricted by this Easement. Subject to the terms and

conditions set forth in this Easement, the following activities and/or uses of the Property are permitted:

a. Conservation of open land in its natural state, including, but not limited to, preservation of upland meadows.

b. Manicured lawn and related irrigation system improvements in designated areas only as delineated in the Use Map set forth in **Exhibit "B,"** attached hereto and incorporated herein by this reference; provided: (1) a barrier acceptable to the City is provided between the natural vegetation areas and the manicured lawn areas; (2) some type of boundary line designation acceptable to the City is provided to delineate the Conservation Easement Area from adjacent private property; and (3) the lawn and/or seed type is approved by the City.

c. Barrier and boundary line designations acceptable to the City in designated areas only as delineated in the Use Map set forth in **Exhibit "B,"** as deemed necessary for the protection and preservation of the natural vegetation areas.

d. Detention basin facilities and related improvements in designated areas only as delineated in the Use Map set forth in **Exhibit "B."**

e. Pastureland for Class "B" animals as defined in the Farmington City Ordinances, Section 11-29-103, as amended, including large animals kept as pets or for family food production or recreational purposes, such as horses, cows, goats and sheep. The number of Class "B" animals shall be limited to the regulations set forth in Farmington City Ordinances, Section 11-29-103, as amended.

7. **Conditional Uses.** Subject to the terms and conditions set forth in this Easement, the following activities and/or uses of the Property may be permitted by conditional use permit, subject to and in accordance with the Farmington City Ordinances, Title 11, Chapter 8, as amended, regarding conditional use permits:

a. Equestrian facilities for Class "B" animals as defined in Section 6(e).

b. Underground utility facilities and easements for sewer, water, or other public facilities and purposes, including easements for maintenance access to such facilities, in locations as approved by the City of Farmington, but not including detention basin facilities and related improvements approved in Section 6(d), subject to the rules and regulations of the U.S. Army Corps of Engineers and subject to restoration of the Property to its natural condition within a reasonable time frame not to exceed ninety (90) days, unless otherwise agreed to in writing by the Grantee, which restoration shall be conducted to the reasonable satisfaction of the Grantee to protect and preserve the Conservation Values of the Property.

8. Prohibited Uses. Subject to the terms and conditions set forth in this Easement, the following activities and/or uses of the Property are prohibited:

a. Except as otherwise expressly provided herein, any residential, commercial or industrial activity. It is expressly acknowledged that all of the underlying fee of real property protected by this Easement is contained in individual private lot ownership in such area designated as "Conservancy Lot - Restricted Use Area" on the official plat of the Tuscan Village Subdivision, as recorded in the Office of the Davis County Recorder, State of Utah. While residential use may be made of the portion of Lot 43 lying within the area designated as "Buildable Area" on the official plat thereof, the portion of such Lot 43 not included within the Buildable Area shall be subject to all the terms and conditions of this Easement, including the prohibition against any residential use of such property.

b. Except as otherwise expressly provided for herein, any development, construction or location of any man-made modification or improvements such as buildings, structures, roads, parking lots, or other improvements.

c. Any filling, dredging, excavating, mining, drilling, or exploration for and extraction of oil, gas, minerals or other resources from the Property.

d. Any dumping or storing of ashes, trash, garbage, trees, brush, dirt, junk or other material or substance on the Property.

e. Burning of any materials on the Property, except as necessary for fire protection purposes upon obtaining a burn permit from the appropriate agency.

f. The use of motor vehicles, including snowmobiles, all-terrain vehicles, motorcycles and other recreational vehicles, except as may be necessary to maintain and operate the Property in accordance with the terms and conditions of this Easement and the Maintenance Plan for the Property.

g. Hunting or trapping for any purpose other than predatory or problem animal control on the Property.

h. Advertising of any kind or nature and any billboards or signs on the Property; provided, information signs may be displayed describing the Easement and prohibited or authorized use of the same, subject to written approval of the Grantee.

i. Any cutting of trees or vegetation, except as necessary for fire protection, thinning, elimination of diseased growth, control of non-native plant species, and similar protective measures, or as otherwise permitted by the Grantee in writing.

j. The change, disturbance, alteration, or impairment of significant natural ecological features and values of the Property or destruction of other significant Conservation Values of the Property.

k. Any division, subdivision or *de facto* subdivision (through long-term leasing or otherwise) of any parcel or part of the Property; except for subdivision and dedication of the Property as necessary for appropriate public purposes, or as necessary and desirable to dedicate a portion of the underlying fee to a qualified conservation organization in accordance with the purposes and intent of this Easement for the preservation, protection and enhancement of the Conservation Values of the Property.

l. Changing the topography of the Property by placing on it any soil, dredging spoils, land fill, or other materials, except as necessary to conduct specific permitted or conditional uses.

m. Any development, location or storage of any personal property, vehicles, recreational equipment or other residential uses such as trampolines, patios, gazebos, sports courts, barbeques, etc.

n. All other uses or activities not specifically listed as a permitted use or activity or any uses or activities inconsistent with or detrimental to the stated objectives and purpose of the Easement.

9. Rights and Duties of the Grantee. Grantor confers the following rights upon Grantee to perpetually maintain the Conservation Values of the Property and to accomplish the purpose of this Easement.

a. Grantee has the right to preserve the open space and to protect the Conservation Values of the Property.

b. Grantee has the right to enter upon the Property at reasonable times to monitor or to enforce compliance with this Easement and to inspect and enforce the rights herein granted; provided that such entry shall not unreasonably interfere with the Grantor's use and quiet enjoyment of the Property.

c. Grantee has the right to enjoin and prevent any activity on or use of the Property that is inconsistent with the terms or purposes of this Easement and to preserve and protect the Conservation Values of the Property.

d. Grantee has the right to require restoration of the areas or features of the Property which are damaged by activity or use inconsistent with this Easement.

e. Grantee has the right to place signs on the Property which identify the Property as being protected by this Easement.

f. Grantee has the right to engage in activities that restore the biological and ecological integrity of the Property. Possible activities include planting native vegetation and use of controlled fire to reduce the presence of undesirable vegetation.

10. Limitation. It is expressly acknowledged by the parties that Lot 43 of the Tuscan Village Subdivision is a conservation lot created in accordance with the Farmington City Ordinances, and is intended to be held in private ownership by an individual property owner and that dedication of this Easement encumbers such Lot 43 for conservation and protection purposes. The dedication of this Easement does not include the right of entry by the general public for the purposes of recreation or for any other purpose.

11. Duties of Grantor. Grantor retains ownership rights of the underlying fee simple title to the Property which are not expressly restricted by this Easement. In accordance with rights reserved in Grantor by this Easement, Grantor shall be subject to all terms, conditions and restrictions of this Easement and shall have the affirmative duty to refrain from conducting or causing to be conducted any action inconsistent with the purpose and provisions of this Easement and to take reasonable actions to preserve and protect the Conservation Values of the Property.

12. Enforcement of Easement.

a. If the Grantee determines that a violation of this Easement is occurring or threatened, the Grantee shall have all rights and remedies available by law or in equity to cure and/or prevent the violation or threatened violation, including, but not limited to, injunctive relief, specific performance, declaratory relief, restitution, reimbursement of expenses, including reasonable attorneys fees, and money damages.

b. In addition to all rights and remedies provided by law or in equity for the enforcement of the terms of this Easement, the Grantee shall have all rights of corrective action as provided by Farmington City Ordinances. Specifically, in the event that the Grantor, or any successor entity or owner, fails to maintain all or any portion of the Property in reasonable order and condition as required herein, the Grantee may assume responsibility, as a right, but not an obligation, for maintenance. The Grantee may enter the Property and take corrective action, including extended maintenance, the cost of which may be charged to the Grantor, or any successor entity or owner, including administrative costs and penalties. Such costs, if not paid within a reasonable time, shall become a lien on the delinquent property, notice of which shall be filed by the Grantee in the County Recorder's Office.

c. **Cumulative Remedies.** The remedies set forth herein are cumulative. Any, or all, of the remedies may be invoked by the Grantee if there is an actual or threatened violation of this Easement.

d. **Waiver.** A delay in enforcement shall not be construed as a waiver of the Grantee's right to enforce the terms of this Easement.

13. Extinguishment of Development Rights. Except as otherwise reserved to the Grantor in this Easement for the Buildable Area, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise or used for the purpose of calculating permissible lot yield of the Property or any other property.

14. Maintenance. It is expressly acknowledged that Grantor intends to sell and transfer ownership of the underlying fee of the Conservation Easement Area to an individual private lot owner to be known as a conservancy lot pursuant to Farmington City Ordinances, within the Tuscany Village Subdivision. The owner of Lot 43 shall be responsible for maintaining the Property at its sole cost and expense.

15. Taxes. Grantor shall pay all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property, including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

16. Hold Harmless. Grantor agrees to indemnify, hold harmless and defend the Grantee, its officers, agents, representatives and employees, from and against any and all loss, liability, expense, claims, costs, suits and damages, including attorneys fees, however caused, arising out of or resulting from the acts or omissions of the Grantor, its officers, agents, representatives, invitees and assigns, in connection with Grantor's use and activities on the Property. The Grantee agrees to indemnify, hold harmless and defend the Grantor, its officers, agents, representatives, invitees and assigns, from and against any and all loss, liability, expense, claims, costs, suits and damages, including attorneys fees, however caused, resulting from the operations, acts or omissions of the Grantee, its officers, agents, representatives or employees, in connection with the Grantee's performance of its obligations under this Easement.

17. Transfer of Grantee's Interest. If the Grantee determines that it no longer is able to enforce its rights under this instrument or that it no longer desires to enforce the rights, or desires to assign enforcement rights to a qualified organization under Section 501(c)(3) and/or 170(h)(3) of the *Internal Revenue Code*, the Grantee shall be entitled to convey in whole or in part all of its rights under this instrument and deliver a copy of this instrument to an organization designated by the Grantee and described in or contemplated by Section 501(c)(3) and/or 170(h)(3) of the Code, or the comparable provision in any subsequent revision of the Code, to

ensure that the Easement is enforced. Furthermore, the Grantee is hereby expressly prohibited from subsequently transferring the Easement, whether or not for consideration, unless: (a) the Grantee, as a condition of the subsequent transfer, requires that the conservation purposes which the Easement is intended to advance continue to be carried out; and (b) the transferee is an organization qualifying at the time of the transfer as an eligible donee under Section 501(c)(3) and/or 170(h)(3) of the Code and regulations promulgated thereunder.

18. Cessation of Grantee's Existence. If Grantee shall cease to exist or if the Grantee is no longer authorized to acquire and hold conservation easements, then this Easement shall become vested in another entity. Any successor entity shall be a qualified organization for the purposes of Section 501(c)(3) and/or 170(h)(3) of the *Internal Revenue Code*.

19. Termination of the Easement. This Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Easement's purpose or by exercise of eminent domain in accordance with the provisions set forth herein. The fact that the Grantee may purchase or otherwise obtain title to the Property and therefore becomes an Owner for purposes of this Easement shall not cause a termination of this Easement by operation of the doctrine of merger or otherwise. The Grantee shall not voluntarily or willingly allow the termination of any of the restrictions of this instrument, and if any or all of the restrictions of the Easement are nevertheless terminated by a judicial or other governmental proceeding, any and all compensation received by the Grantee as a result of the termination shall be used by the Grantee in a manner consistent with the conservation purposes of the Easement.

20. Notices. Any notice, demand, request, consent, approval, or communication shall be in writing and served personally or sent by registered or certified mail, postage prepaid, return receipt requested. Notice to the Grantee shall be addressed to the following:

Farmington City
c/o City Manager
130 North Main
Farmington, Utah 84025

or to such other address as the Grantee from time to time shall designate by written notice to the Grantor. The required address for notice to the Grantor shall be the address of the most recent fee title owner of the Property as shown on the tax records of Davis County, State of Utah, or to such other address as the current fee title owner of the Property from time to time shall designate by written notice to the Grantee.

21. Title Warranty. Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances.

22. Subsequent Encumbrances. This Easement shall not restrict the right of Grantor or its successors or assigns to execute, deliver and record mortgages on the Property or to grant

other rights or easements with respect to the Property, subject to the terms and conditions set forth herein. Any lien or security interest of a mortgage and any easement or other right created subsequent to the date hereof shall be subject to and subordinate to this Easement.

23. **Environmental Warranty.** Grantor warrants that it has no actual knowledge or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability or expense, including reasonable attorney's fees arising from or with respect to any release of hazardous waste or violation of environmental laws with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee.

24. **Recordation.** The Grantee shall record this instrument in a timely fashion in the official records of Davis County, Utah and may re-record it at any time as may be required to preserve its rights in this Easement.

25. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Utah.

26. **Attorneys Fees.** The parties herein each agree that should they default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorneys fee which may arise or accrue from enforcing this Easement, or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah, whether such remedy is pursued by filing suit or otherwise, and whether such costs and expenses are incurred with or without suit or before or after judgment.

27. **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, if found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

28. **Joint Obligation.** Subject to the provisions set forth herein, the obligations imposed by this Easement upon Grantor or Grantors shall be joint and several.

29. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Grantee, the Grantor, and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

30. **Entire Agreement.** This Easement, together with all exhibits, sets forth the entire agreement of the parties and supercedes all prior discussions and understandings.

31. **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

32. **Amendments.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may jointly amend the Easement; provided, that no amendment shall be allowed that affects the qualification of the Easement under the IRS Code 170(h), or any regulation promulgated thereunder, or the Utah Land Conservation Easement Act, as set forth in *Utah Code Ann. §§ 57-18-1, et seq.*; as amended. Any amendment to this Easement shall be consistent with the purposes of this Easement, shall not affect its perpetual duration, and shall not impair any of the significant Conservation Values of the Property. Any such amendment shall be in writing, signed by both parties, and recorded in the official records of Davis County, Utah. Any proposed amendments to this Easement shall comply with the Farmington City Conservation Easement Amendment Policy, as amended, and shall require, at a minimum, a public hearing before the City Council and fourteen (14) day advance notice to the public by publishing notice in a daily newspaper of general circulation in the City.

[Signature Page to Follow]

IN WITNESS WHEREOF, Grantor has executed this instrument on the day and year first above written.

GRANTOR:

RAINEY DEVELOPMENT, INC.
A Utah corporation

Brad Johnston
By: BRAD JOHNSTON
Its: Manager and Member

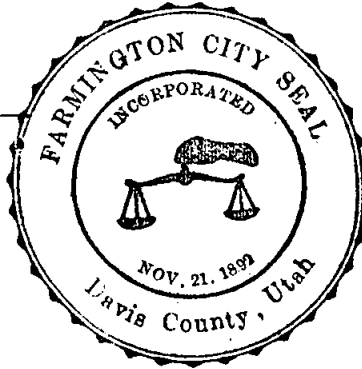
GRANTEE:

FARMINGTON CITY
A Utah municipal corporation

By: *Scott Harbertson*
Mayor Scott Harbertson

ATTEST:

Margy L. Lomax
Margy L. Lomax, City Recorder



GRANTOR'S ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

On the 7th day of January, 2008⁹, personally appeared before me Brock Johnston who being by me duly sworn did say that she/he is the managing member of **RAINEY DEVELOPMENT, INC.**, a Utah corporation, and that the within and foregoing instrument was signed on behalf of said corporation by authority of its Articles of Organization and duly acknowledged to me that said corporation executed the same.

Margy L. Lomax
Notary Public
Residing at:

My Commission Expires:

11/29/2011

Davis Co. Utah

GRANTEE'S ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

On the 7th day of January, 2008⁹, personally appeared before me Scott Harbertson, who being duly sworn, did say that he is the Mayor of **FARMINGTON CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Scott Harbertson acknowledged to me that the City executed the same.

Margy L. Lomax
Notary Public
Residing at:

My Commission Expires:

11/29/2011

Davis Co. Utah

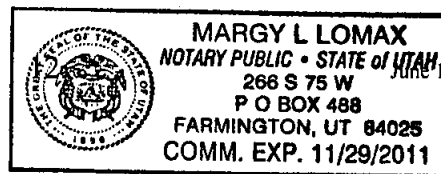
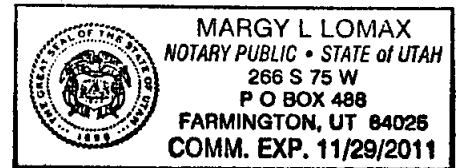


EXHIBIT "B"
USE MAP OF EASEMENT

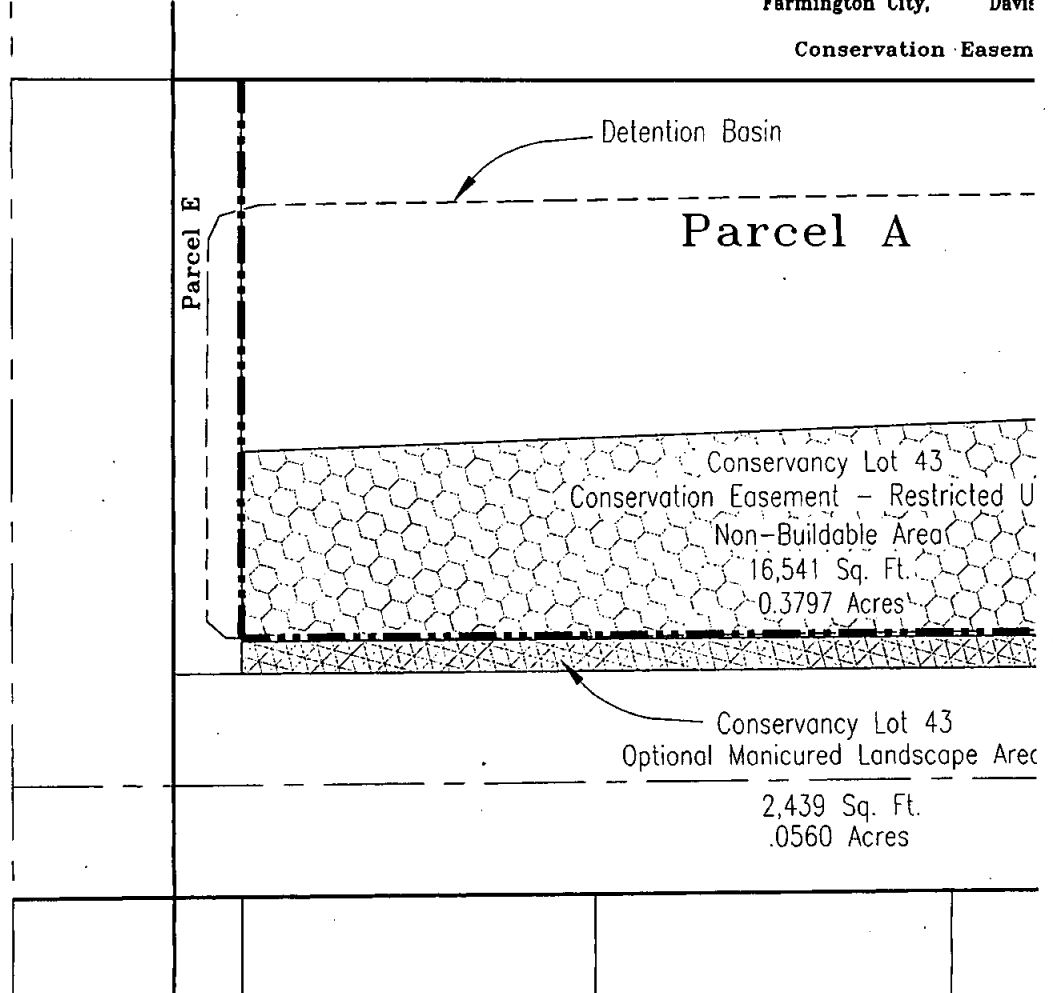
All of Lot 43 as shown on the final plat of the Tuscany Village PUD.

EXHIBIT "B"
USE MAP OF EASEMENT

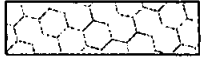
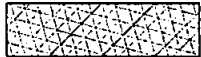

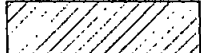
Exhibit
To the Conservati
Tuscany Vill

Being a Part of the Northwest Quarter of
Farmington City, Davis

Conservation Easem

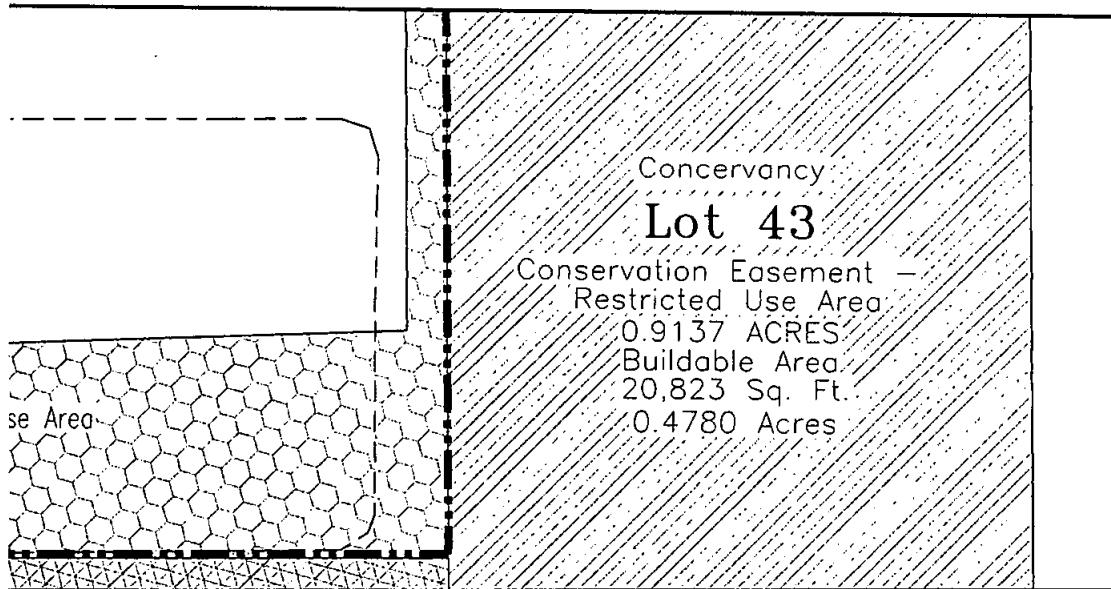


Conservancy Lot Usemap Legend

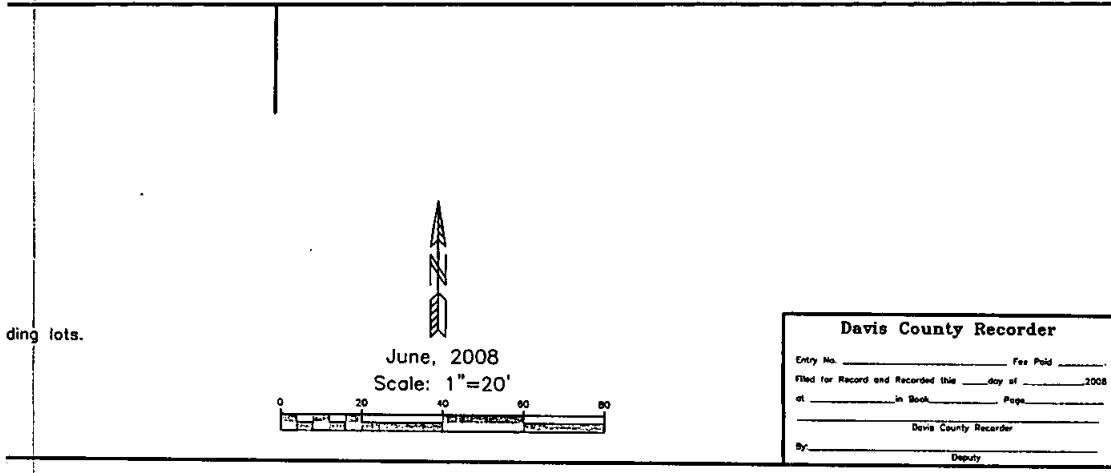
-  Open Space
-  Manicured Landscaping
-  Barrier between open space and manicured landscaping/ buil
-  Buildable Area

"B"
 on Easement for
age P.U.D.
 Section 31, T.3N., R.1E., S.L.B. & M.
 County, Utah

ent Use Map



1600 South Street



Davis County Recorder

Entry No. _____ Fee Paid _____
 Filed for Record and Recorded this ____ day of _____, 2008
 of _____ in Book _____ Page _____
 _____ Davis County Recorder
 By _____ Deputy

16



Balling Engineering
 Civil Engineering • Surveying • Planning
 323 E. Pages Lane
 Centerville, Utah 84014
 Phone: (801) 295-7237
 Fax: (801) 299-0419

Tuscany Village P.U.D.
 Conservation Easement Use Map -
 for Conservancy Lot 43
 For Rainey Homes

Revisions		By
Date	Description	

Surveyor	
Date Surveyed	
Drafting	
Checked By	
Date Approved	
File Number	