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RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Farmington City  
Attn: City Manager  
130 North Main Street  
Farmington, Utah 84025

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JAMES ASHAUER, DAVIS CNTY RECORDER  
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REC'D FOR ASSOCIATED TITLE COMPANY

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FIRST AMENDMENT TO CERTAIN GOVERNING DOCUMENTS  
FARMINGTON PRESERVE PROJECT

THIS FIRST AMENDMENT TO CERTAIN GOVERNING DOCUMENTS (the "Amendment") is made and entered into effective as of July 1, 1998 (the "Amendment Effective Date"), by and among Farmington City, a Utah municipal corporation (the "City"); Davis County, a body politic of the State of Utah (the "County"); Prows, Becknell & Alles, L.L.C., a Utah limited liability company ("Master Developer" or "PBA"); Shepard's Creek Homes, L.C., a Utah limited liability company ("SCH"); Shepard Creek Properties, L.L.C., a Utah limited liability company ("SCP"); and Farmington Preserve Master Association, a Utah non-profit corporation (the "Master Association"). Each of the foregoing entities is hereinafter individually called a "Party" and are all collectively called the "Parties."

This Amendment is also executed by certain other individuals and entities solely for the limited purposes set forth next to their respective signatures hereto and those individuals and entities do not intend to otherwise undertake any other obligations under, or become parties to, this Amendment.

R E C I T A L S

A. This Amendment is entered into in connection with the "Development Area" described on Exhibit "A" attached hereto; the "Master Concept Development Plan" attached as Exhibit "B" hereto; the "Church Parcel" described on Exhibit "C" hereto; and the following documents and any prior amendments thereto (collectively, the "Governing Documents"):

1. The Master Development Agreement dated as of October 16, 1996, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1248 and File No. 1306717, by and between the City and Master Developer (the "Master Development Agreement").

2. The Indemnification Agreement dated as of February 24, 1997, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1303 and File No. 1306718, by Master Developer for the benefit of the City (the "Indemnification Agreement").

3. The Wetlands Development Agreement dated as of October 16, 1996, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1311, and File No. 1306719, by and between Master Developer and the County (the "Wetlands Development Agreement").

4. The Wetlands Easement dated as of October 16, 1996, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1343, and File No. 1306720, by and among the County, the City and Master Developer (the "Wetlands Easement").

5. The Sewer and Storm Drain Easement dated as of February 24, 1997, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1239, and File No. 1306716, by Master Developer as grantor (the "Sewer Easement").

6. The Inter-Developer Agreement dated as of February 24, 1997, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1424, and File No. 1306728, by and among PBA; SCH; and SCP (the "Inter-Developer Agreement").

B. Master Developer, as Declarant, has also entered into that certain Declaration of Covenants, Conditions and Restrictions for Farmington Preserve Master Association dated as of February 24, 1997, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1374, and File No. 1306721 (the "Declaration"). It is anticipated that the Declaration shall be entirely amended and restated in a separate document to include some of the changes contemplated in this Amendment as well as other modifications.

C. In May, 1998, Master Developer acquired the Church Parcel consisting of in excess of five acres. The description and configuration of the Church Parcel are set forth on Exhibit "C" hereto. The final configuration of the Church Parcel differs from the configuration reflected on the Master Concept Development Plan attached as Exhibit "B" hereto. The Church Parcel is presently zoned under the City's Residential Zone (R-4). Pursuant to Section 6(1)(2) of the Master Development Agreement, the Church Parcel must be included in the overall Project.

D. The Parties desire to hereby amend the Governing Documents to accomplish the following four purposes: (1) to include the Church Parcel in the overall Project; (2) to allow each Developer greater autonomy from the Master Association and other Developers in developing its respective zone within the Project by requiring the Developers (and all others) to rely upon the City's review and approval process rather than policing each other; (3) to implement a method to administer and amend the Governing Documents without undue complexity in light of the many hundreds of ownership and other interests that individuals, entities, lenders and others will ultimately have in the Development Area; and (4) to clean-up and tailor miscellaneous matters to more accurately reflect the realities associated with the Development Area.

E. Although this Amendment by necessity requires the joint signatures and consents of both governmental and private Parties in order to be effective, nothing in this Amendment shall be deemed to create any partnership, joint venture or other "for-profit" relationship among the governmental and private Parties hereto. The governmental Parties hereto are only entering into this Amendment to further their respective public interests and policies in the manner that those governmental Parties deem to be most beneficial to their respective constituents.

F. In order to simplify the Amendment process, the Parties have determined to enter into this global amendment of all the Governing Documents rather than to enter into a separate amendment for each Governing Document. Notwithstanding that approach, nothing in this global Amendment is intended to make any individual or entity a party to, or obligated under, any Governing Document to which that individual or entity was not originally a party.

#### A G R E E M E N T

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1 Certain Definitions. Except as otherwise set forth in this Amendment, the terms used herein shall have the same meanings as set forth in the Master Development Agreement. The terms set forth below shall have the indicated meanings as used in this Amendment.

1.1 "Approving Parties" means the particular individuals and entities that must approve any amendment to a specific Governing Document. The Approving Parties for one Governing Document may not be the same as the Approving Parties for another Governing Document. The specific Approving Parties for each Governing Document are identified in Section 4 below captioned "Amendments."

1.2 "Benefitted Parties" means the Master Association, the Owner Associations and the Developers.

1.3 "Developer" means the person or entity that owns any one or more entire Zones in the Project. Developer shall not include the owner of any area less than an entire Zone in the Project, except that if two or more parties hold undivided interests in an entire Zone, then (a) all of those parties taken together shall constitute the Developer of that Zone, and (b) the consent or joinder by the holders of a majority of the fractional interests in that Zone shall be required for an approval, consent or other act of the Developer associated with that Zone. The definition of Developer set forth in this Section 1.2 is not intended to change the definition of "Developer" as used in provisions of the Governing Documents that are not expressly amended by this Amendment.

1.4 "Owner Association" means any owner association that is established and operates pursuant to covenants, conditions and restrictions recorded against any one or more entire Zones in the Project. Owner Association shall not include any association that is established and operates pursuant to covenants, conditions and restrictions recorded against less than an entire Zone in the Project. Owner Association shall not include the Master Association or any other owner association which is established and operates pursuant to covenants, conditions and restrictions recorded against all the Zones in the Project. All references to Owner Association in the Governing Documents are hereby redefined to have the meaning set forth above. [Master Development Agreement Section 3(d); Wetlands Development Agreement Recital E; and Wetlands Easement Recital F].

1.5 "Zone" means any one of the following areas: (1) the R-4 Residential Zone A; (2) the R-4 Residential Buffer Zone; (3) the Business Park Zone; (4) the Commercial Zone; (5) the Church Access Zone; and (6) the Church Parcel which is currently designated as an R-4 non-residential zone under the City's Laws, all as further depicted on the Master Concept Development Plan attached as Exhibit "B" hereto. It should be noted that the configuration of the Church Parcel on the Master Concept Development Plan differs from the final configuration of the Church Parcel. The final configuration of the Church Parcel is set forth on Exhibit "C" hereto.

## 2 Church Parcel.

2.1 Incorporation of Church Parcel Into Development Area and Project. The Church Parcel is hereby incorporated into and made a part of the Development Area. The Church Parcel is hereby incorporated as a sixth and separate Zone in the Project. The Church Parcel area as shown on Exhibit "B" hereto is revised so as to exclude all land other than that contained in the description of the Church Parcel on Exhibit "C" hereto. [See Recitals of all Governing Documents and Master Development Agreement Section 6(1)(2)].

2.2 Zoning and Conditional Use Permit. The City and Master Developer shall promptly commence and diligently pursue all actions necessary to amend the Conditional Use Permit and the Master Plan to include the Church Parcel. The zoning classification of the Church Parcel may be modified in accordance with Section 3 below.

3 Modifications of Use Restrictions.

3.1 Process. The owner of any portion of the Project shall have the right, without the consent or approval of any other person or entity that owns or has any interest in any other part of the Project, to modify any zoning, use, density, design, setback, size, height, open space, road design and dedication, traffic configuration, site plan or other requirements or restrictions (collectively, the "Use Restrictions") associated with any portion of the Project or the development thereof so long as those modifications (a) are approved by the City in accordance with the City's standard approval processes; and (b) otherwise comply with all applicable laws and ordinances. Nothing in this Amendment is intended to waive, eliminate or negate the right of any owner of any portion of the Project to voice concerns or otherwise participate in public hearings and the other standard approval processes of the City and County. Any modification to the Use Restrictions for any portion of the Project that satisfies the foregoing requirements shall be effective without the need for any further consents, approvals or amendments to the Governing Documents or documents related thereto. [Master Development Agreement Sections 6 (b)-(f)].

3.2 Consent To Certain Use Changes. All or any portion of the Business Park Zone, of the Commercial Zone and/or of the Church Parcel may be used for commercial, retail, office building, hotel, motel or other lodging uses so long as the use in question is approved, authorized and implemented in accordance with the requirements of the foregoing Section 3.1 and may be used for residential purposes so long as (but only so long as) residential usage is both (a) authorized and implemented in accordance with the requirements of said Section 3.1; and (b) consented to in writing by the Owner Association governing the entire R-4 Residential Zone A and by SCH if SCH owns any interest in the R-4 Residential Zone A at the time that such consent is requested. A separate conditional use permit shall be required for any use of any part of the Business Park Zone, any part of the Commercial Zone and/or any part of the Church Parcel other than for the purposes set forth in the Conditional Use Permit.

4 Amendments. A Governing Document may be amended only by a document signed by the specific Approving Parties associated with the Governing Document in question as identified below. No consents or approvals from any person or entity other than the Approving Parties are required to amend the respective Governing Documents. [Master Development Agreement Section 19; Wetlands Development Agreement Section 34; Wetlands Easement Section 34; and Sewer Easement 5].

4.1 Specific Governing Documents. The Master Development Agreement may be amended only by a document signed by the City and the Benefitted Parties. The Indemnification Agreement may be amended only by a document signed by the City and PBA. The Sewer Easement may be amended only by a document signed by the Owner Association(s) governing and Developer(s) owning any Zone(s) benefitted and/or burdened entirely or in part by the Sewer Easement. The Wetlands Development Agreement and Wetlands Easement may be amended only by a document signed by the City, the County, the Corps and the Benefitted Parties. The Inter-Developer Agreement may be amended only by a document signed by the Benefitted Parties.

4.2 Original Developers. PBA must also sign any amendment to the Master Development Agreement, the Wetlands Development Agreement, the Wetlands Easement and/or the Inter-Developer Agreement if that amendment would have a material effect on the rights and/or obligations of PBA under the Governing Document in question and if, at the time of that amendment, (a) PBA owns any interest in the Project; and/or (b) any of PBA's obligations under that Governing Document remain unfulfilled. SCP must sign any amendment to the Master Development Agreement, the Wetlands Development Agreement, the Wetlands Easement and/or the Inter-Developer Agreement if, at the time of that amendment, SCP owns any interest in the Project. SCH must sign any amendment to the Master

Development Agreement, the Wetlands Development Agreement, the Wetlands Easement and/or the Inter-Developer Agreement if, at the time of that amendment, SCH owns any interest in the Project.

5 Notice and Right to Cure. An aggrieved or complaining party shall only be required to give notice of any default under the Governing Documents to the following: (a) the Approving Parties; (b) any specific person or entity that causes the default; (c) any person or entity that prior to the giving of such notice has delivered to the person or entity giving such notice a written request that a copy of a notice such as the one being given be furnished to the requesting party; and (d) the owner(s) of record of any part(s) of the Project asserted not to be in compliance with any of the Governing Documents. Except as expressly stated above, no other person or entity shall be entitled to receive any notice of default under the Governing Documents. Any person or entity shall be entitled to cure any default under the Governing Documents. If notice of a default is not delivered to any of the parties required by the foregoing items (a) through (d) then before the aggrieved or complaining party may exercise any rights or remedies against the party that has not received notice, that non-receiving party shall be allowed the same amount of time to cure the default in question as that non-receiving party would have otherwise had if that notice of default would have been timely delivered to the non-receiving party. [Master Development Agreement Sections 13 and 24; Wetlands Development Agreement Sections 15 and 29; Wetlands Easement Sections 15 and 29; and Inter-Developer Agreement Section 25.2].

6 Transfers and Releases. [Master Development Agreement Sections 12 and 21; Wetlands Development Agreement Section 7; Wetlands Easement Section 8; Inter-Developer Agreement Section 28; and Sewer Easement Section 4]. For purposes of this Amendment, the noun "Transfer" shall mean the conveyance or other absolute transfer, other than for purposes of security, of both legal and equitable title to all or part of the land in the Project owned by an owner. The verb to "Transfer" shall mean to effect a Transfer.

6.1 Release Upon Transfer. In the event of a Transfer (including a Transfer of land owned by an owner which is also a "Developer" as that term is defined in the Governing Documents), the owner whose land is Transferred shall, upon recordation of the deed or other instrument effecting the Transfer, be released from all obligations which, under the Governing Documents, are associated with or imposed upon either the particular land so Transferred or the owner thereof (other than unperformed obligations the performance of which has previously fallen due), and all of such obligations (including any unperformed obligations the performance of which has previously fallen due) shall thereupon become and be obligations of the Transferee of the land so Transferred, whether or not such obligations are expressly assumed by such Transferee.

6.2 Mortgage Transferees. Notwithstanding the foregoing, if the Transfer in question occurs by foreclosure or trustee's sale under a mortgage or trust deed or by deed or conveyance in lieu of foreclosure, and if the Transferee is the mortgagee or beneficiary under such mortgage or trust deed (a "Mortgage Transferee"), then the release and substitution of a new obligor which are otherwise provided for in Section 6.1 shall be delayed until the date that the Mortgage Transferee itself effects a Transfer of the land involved, or a portion thereof, to another party (the "Non-Mortgage Transferee"), at which time the release and substitution of a new obligor which are provided for in Section 6.1 shall apply as regards the particular land so Transferred by the Mortgage Transferee, and the obligations associated with the land so Transferred shall become obligations of the Non-Mortgage Transferee.

Notwithstanding the foregoing, a Mortgage Transferee shall be responsible to perform the obligations associated with the land Transferred to that Mortgage Transferee if that Mortgage Transferee does not Transfer the land to a Non-Mortgage Transferee within one year following the date that the

Mortgagee Transferee acquires the land. That time period may be extended with the written consent of the Approving Parties (other than the Mortgagee Transferee) associated with the Governing Document(s) in which the obligations in question are set forth.

**6.3 Delinquent Obligations.** Any obligations the performance of which under the Governing Documents has already fallen due, but which obligations have not yet been performed, at the time of a Transfer shall remain obligations of the owner of the land Transferred, and that owner and the Transferee (or the Non-Mortgagee Transferee, if applicable) shall be jointly and severally liable for the performance of such obligations.

**6.4 PBA / Master Developer Obligations.**

**6.4.1 PBA Transferable Obligations.** Notwithstanding anything else in this Amendment or the Governing Documents to the contrary, a Transfer of any or all of the land owned by PBA in the Project shall only release PBA from its obligations under the Governing Documents to the extent that all of the following conditions are satisfied: (a) the Transferee must agree in writing to assume the Transferred obligations; (b) the Transferee must be reasonably responsible and capable of performing the Transferred obligations; (c) the same bonding and enforcement mechanisms associated with the Transferred obligations that exist relative to PBA must also exist relative to the Transferee; and (d) the Transferred obligations must only be obligations that tie directly to the specific PBA-owned land that is Transferred and not to any other land in the Development Area.

Examples of the types of Transferable obligations contemplated in Subsection (d) immediately above include, but are not necessarily limited to, the following: (i) seeking or obtaining approval of a specific site plan relating to the Transferred land; (ii) construction and maintenance of Perimeter Trail Improvements and Cross-Project Trails to the extent such Improvements and Trails lie within the land Transferred; (iii) construction of utilities and infrastructure within, and that are to serve only, the Transferred land; (iv) payment of water service fees for the Transferred land; and/or (v) maintenance of the Transferred land and improvements thereon in a safe, clean, sanitary, workable and attractive condition.

**6.4.2 PBA Non-Transferable Obligations.** By way of contrast, examples of PBA's obligations from which PBA is not released by means of PBA's Transfer of any or all of PBA's land in the Project include, but are not necessarily limited to, the following: (a) construction and dedication of the Parkway and landscaping improvements thereon; (b) construction of the Shepard Lane Improvements along the R-4 Residential Buffer Zone; (c) construction of utilities and infrastructure other than that located wholly within, and intended to serve only, the Transferred land; (d) accomplishing wetlands mitigation, water dedication and all of PBA's other obligations under the Wetlands Development Agreement; (e) matters associated with water diversion and ditches; and/or (f) paying the cost of acquisition of the land in the Wetlands Area.

**6.5 No Other Releases.** Except as provided for in the foregoing provisions of this Section 6, no person or entity shall be released from its respective obligations under the Governing Documents unless an express release in writing is given by the Approving Parties associated with the specific Governing Documents in question.

**7 Absence of Owner Association and/or Developer.** If, at any time, there is no Owner Association in existence for a particular Zone, the Developer (if there is any at the time concerned) of that Zone shall have the right and obligation to act in the capacity of the missing Owner Association. If, at any time, there is neither an Owner Association nor a Developer for a particular Zone, then (a) the consent or approval that would otherwise be required from that

Owner Association need not be obtained; and (b) if a person or entity seeks to have the Owner Association for that Zone perform some action, that person or entity is hereby authorized to perform that action, but in doing so that person or entity must behave reasonably.

8 Mitigation Plan. The Mitigation Plan must be approved by the City, County, Corps, PBA, SCP and SCH but not by any other person or entity. [Master Development Agreement Sections 6(g)(3)(c)(i) and 6(j)(5)]. [Wetlands Development Agreement Section 1.4].

9 No Design Guidelines. Neither the Master Association nor the Declaration shall establish, administer or enforce any design guidelines or any design review authority or procedures for any portion of the Project. [Master Development Agreement Section 6(k)(2)].

10 Page 2 of Wetlands Development Agreement. Page 2 of the Wetlands Development Agreement was inadvertently omitted from the recorded counterpart of that document. That Page 2 is attached as Exhibit "D" hereto and hereby incorporated into the Wetlands Development Agreement.

11 Water Dedication. Master Developer shall take all actions and pay all costs necessary to have Spring Creek Irrigation and Water Company of Farmington irrevocably dedicate to the County in perpetuity the existing non-consumptive water flows from Spring Creek to support wetlands in the Wetlands Area (the "Water Dedication"). All references in the Governing Documents to "Water Rights" are hereby changed to Water Dedication. Master Developer shall have the right, but shall not be required to convey, or have conveyed, to the County any actual water rights in any waterway or water company. Nor shall Master Developer be required to have dedicated to the County any water flows associated with Shepard Creek. The Corps has approved the Water Dedication and to that extent the Water Dedication is also approved by the County. [Wetlands Development Agreement Section 1.3].

12 Relocation of Perimeter Trail Improvements. Any Perimeter Trail Improvements that have not been relocated pursuant to Section 4.2.3.2 of the Wetlands Easement by February 27, 2002 (rather than by the end of the third year following the City's issuance of a conditional use permit for the Project, as has previously been the case) shall be deemed to be permanently located where they are unless the City thereafter agrees otherwise. [Wetlands Easement Section 4.2.3.2].

13 Completion of Certain Improvements. All references in the Inter-Developer Agreement to the date for completing certain improvements shall be changed from within three years following the "Closing" (as defined in the Inter-Developer Agreement) to February 27, 2002. [Inter-Developer Agreement Sections 8 (Shepard Lane Improvements east of the Parkway); 12 (Residential Perimeter Trail Improvements); 13 (Business Perimeter Trail Improvements); and 14 (Other Perimeter Trail Improvements)].

14 Master Developer Obligations. Master Developer shall have the right to delegate Master Developer's obligations under the Governing Documents to any person or entity. Nevertheless, that delegation shall not relieve Master Developer of the liability to perform all those obligations as contemplated in the Governing Documents. [Master Development Agreement Sections 21(a) and 28(a)].

15 Notices. Master Developer's new address for notice purposes is: 54 South Bountiful Boulevard, Bountiful, Utah 84010. SCP's new address for notice purposes is: 2605 East 3300 South, Salt Lake City, Utah 84109. [Master Development Agreement Section 13; Wetlands Development Agreement Section 29; and Wetlands Easement Section 29].

16 Limitations on Liability. Throughout the Governing Documents there are various provisions concerning limitations on liability to the effect that no owner, director, officer, employee or agent of a party shall have any personal, recourse or deficiency liability associated with one or more of the Governing Documents or the Development Area. Nothing in those provisions shall limit the liability of (a) any person or entity for performance of the obligations that are imposed on that person or entity by the Governing Documents; or (b) any person or entity that has undertaken such liability in writing, as by a written guaranty, indemnification or other promise of responsibility. Nothing in this Amendment is intended to, nor shall it, create or enhance any personal liability of employees of any Parties that are governmental agencies over and above any liability that may otherwise exist under the laws applicable to those employees and governmental agencies. [See Master Development Agreement Section 26; Wetlands Development Agreement Section 18; and Wetlands Easement Section 18].

17 Jurisdiction. The Parties hereby consent to jurisdiction and venue for judicial and arbitration proceedings in Davis County, Utah. The preceding sentence shall apply in lieu of and replace Section 27 of the Master Development Agreement, Section 19 of the Wetlands Development Agreement, and Section 19 of the Wetlands Easement 19.

18 Estoppel Certificates. The City, County, Corps and Benefitted Parties shall be entitled to request and receive the estoppel certificates contemplated in the Governing Documents for the benefit of themselves and/or any other person and/or entity. No other person or entity shall be entitled to request and receive those estoppel certificates. [Master Development Agreement Section 29; Wetlands Development Agreement Section 20; and Wetlands Easement Section 20].

19 Supremacy. This Amendment is not intended to supersede or modify the 404 Permit. In the event of any conflict between this Amendment and the Governing Documents, this Amendment shall govern. In the event of any conflict among the Governing Documents other than this Amendment, then the Governing Document with the most senior recording priority among the conflicting Documents shall govern. [Master Development Agreement Section 36; Wetlands Development Agreement Section 27; Wetlands Easement Section 27; and Inter-Developer Agreement Section 31].

20 Priority and Subordination. This Amendment shall be recorded against the Development Area senior to all liens (other than liens of non-delinquent taxes and assessments) and/or trust deeds encumbering the Development Area. Each Party shall take all actions and pay all costs necessary to have any pre-existing liens (other than liens of non-delinquent taxes and assessments) and/or trust deeds on areas of the Project owned by that Party subordinated to this Amendment. All present and future lenders, lien holders and trust deed holders of any type holding liens or encumbrances on any portion of the Development Area hereby agree (a) that such liens or encumbrances shall automatically be subordinate to this Amendment, the Governing Documents and all future amendments of the Governing Documents, and (b) to execute and deliver within 10 days following delivery of a written request for the same, any additional documentation that may be reasonably required by the Benefitted Parties to confirm that subordination. [Master Development Agreement Section 38; Wetlands Development Agreement Section 35; and Wetlands Easement Section 35].

21 Insurance. The insurance requirements are hereby deleted in their entirety from the Master Development Agreement, Page 24, Section 9; and the Wetlands Easement Section 6.

22 Other Modifications To Master Development Agreement.

22.1 Assignability. In the Master Development Agreement, Page 24, Section 12, the fourth sentence is hereby deleted in its entirety.



22.2 Term. In the Master Development Agreement, Page 26, Section 20 is hereby deleted and replaced with the following:

The term of this Agreement shall commence as of the Effective Date and shall continue in full force and effect until terminated in a writing signed by all the Approving Parties required to execute any amendment to this Agreement.

Notwithstanding the foregoing, any modification, construction, implementation and/or development of existing or new improvements, entitlements and/or permitted uses in the Development Area after October 16, 2006, shall be subject to the City's then existing laws and ordinances rather than subject to this Agreement; but even after that date shall nevertheless benefit from the licenses, permits, certificates of occupancy, entitlements, zoning, uses, and/or other rights theretofore granted by the City to the respective portions of the Development Area and/or owners and users thereof.

This Agreement shall not be deemed to create any "vested rights" with respect to any modification, construction, implementation and/or development of existing or new improvements, entitlements and/or permitted uses in the Development Area after October 16, 2006, except where a property owner in the Development Area has performed substantial work and incurred substantial liabilities in good faith reasonable reliance upon a permit issued pursuant to this Agreement before October 16, 2006, and that property owner thereafter diligently completes construction and development in accordance with the terms and scope of that permit and this Agreement.

Notwithstanding anything in this Agreement to the contrary, upon termination of this Agreement for any reason, the obligations of the City and the Master Developer to each other shall terminate but none of the licenses, permits, certificates of occupancy, entitlements, zoning, uses or other rights theretofore granted by the City to the respective portions of the Development Area and/or owners and users thereof shall be rescinded or limited in any manner.

23 Other Modifications To The Inter-Developer Agreement. This Section 23 is not applicable to or binding upon the City, the County, and/or the Corps.

23.1 Remedies. In the Inter-Developer Agreement, Section 25.1 is hereby deleted in its entirety and replaced with the following: "Upon the occurrence of an Event of Default, the non-defaulting Parties shall be entitled to exercise any and all rights and remedies available at law and in equity."

23.2 Assignment and Release. In the Inter-Developer Agreement the second paragraph of Section 28 is hereby deleted in its entirety.

23.3 Miscellaneous. In the Inter-Developer Agreement, Section 31 is hereby deleted in its entirety and replaced with the following:

31. Miscellaneous. This Agreement is also governed by the following provisions:

31.1 Severability. If any portion of this Agreement is held to be unenforceable, any enforceable portion thereof and the remaining provisions shall continue in full force and effect.

31.2 Construction. The provisions of this Agreement shall be liberally construed to effectuate its purpose. The Section

headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. No rule of strict interpretation shall be applied against any Party.

31.3 Attorneys' Fees. The prevailing party in any action or defense associated with this Agreement shall be entitled to be reimbursed by the non-prevailing party for all costs, including attorneys' fees, incurred by the prevailing party in that action or defense.

31.4 Estoppel Certificates. Within 10 days following delivery to any Party of a request for an estoppel certificate respecting the status of performance under this Agreement, the Party to whom that request was delivered shall deliver to the requesting person or entity a reasonable estoppel certificate respecting such matters. That certificate shall be addressed to any lenders, purchasers, governmental agencies or other individuals or entities designated by the requesting person or entity. A Party's failure to deliver such estoppel certificate shall be presumed to mean that such Party is not aware of any defaults or delinquencies under the Agreement and is estopped from asserting the same.

31.5 No Waiver. Any Party's failure to enforce any provision of the Agreement shall not constitute a waiver of the right to enforce such provision. The right to enforce such provisions may be waived only in a writing by the Party intended to be benefitted by the provisions, and a waiver by a Party of a breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

31.6 Time of Essence. Time is expressly made of the essence with respect to the performance of each and every obligation hereunder.

31.7 Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars; civil commotions; fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

31.8 Cooperation. The Parties shall cooperate together, take such additional actions, sign such additional documentation and provide such additional information as reasonably necessary to accomplish the objectives set forth herein.

31.9 Knowledge. The Parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and risks and having had the opportunity to obtain legal counsel of their choice.

31.10 No Relationship. Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship among the Parties.

31.11 Representations and Warranties. All of the Parties hereby represent and warrant to each other that their

respective statements below are true, complete and not misleading as of the effective date of this Agreement. Each Party understands that every other Party is relying upon the truthfulness and completeness of the statements below in entering into this Agreement:

A. Organization. Each Party that is an entity is duly organized, validly existing and in good standing under the laws of the State of its organization, with full power and authority to carry out its business in all other states in which it may do business.

B. Authority. Each Party has full authority to enter into and be subject to this Agreement and to perform all of its obligations hereunder. The individuals executing this Agreement on behalf of each Party do so with the full authority of the Party that those individuals represent.

C. Enforceability. This Agreement has been duly authorized, approved, executed and delivered by each Party and constitutes the legal, valid and binding obligation of each Party enforceable in accordance with its terms. To the best of each Party's knowledge, the Agreement complies with all applicable federal, state and local laws and regulations.

D. Approvals. No registration with, or consent or approval of, or notice to, or other action by, any person or entity to this Agreement is required to make this Agreement enforceable against the Parties.

E. No Default. No Party is in default under any contract that would adversely impact that Party's ability to perform under this Agreement. No Party is subject to any pending or threatened litigation, judgement, order or other proceeding which do at present or could in the future materially and adversely affect the ability of that Party to perform its obligations under the Agreement.

F. Capacity. Each Party is properly licensed, experienced and skilled in the type of responsibilities required under the Agreement. Each party shall perform its obligations under the Agreement in a competent manner consistent with that customarily required of successful entities in comparable industries.

G. Documents. All of the statements, records, plans and other documents that the Parties have submitted to each other in connection with this Agreement are true, correct, complete and not misleading. There have been no material changes in those documents from the date that they were submitted to the Parties and the date that the Parties became bound to this Agreement.

31.12 Exhibits. All Exhibits attached to this Agreement are hereby made a part hereof and incorporated herein.

31.13 Jurisdiction. In the event that litigation is instituted under the terms of this document, the same may be brought and tried, and the parties hereby consent to jurisdiction, in the judicial jurisdiction of the courts of Davis County.

31.14 Duration. All of the indemnifications under this Agreement shall survive the termination of this Agreement with respect to circumstances existing prior to that termination.

31.15 Entire Agreement. This Agreement, together with the documents referred to herein, set forth the only and entire agreement among the Parties respecting the subject matter set forth herein; and all prior agreements, whether oral or written, shall be deemed terminated and of no further force and effect.

24 Conforming Changes to Governing Documents. In compliance with all applicable governmental and regulatory procedures and laws, the Parties shall promptly take all actions and pay their respective costs as necessary to have the master conditional use permit, the master zoning ordinance, the master site plan, the Declaration, 404 Permit and all other foundational documents, agreements, permits and authorizations associated with the Development Area modified, where reasonably necessary, to accurately reflect and support the matters and objectives set forth in this Amendment.

The County represents that the only requirement to make this Amendment effective against the County and to accomplish the objectives hereunder is for the County to sign (with notary acknowledgement) and deliver this Amendment. Consequently, the only obligation of the County under this Section is to sign (with notary acknowledgement) and deliver this Amendment.

25 Representations. Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing and warranting Party: (a) Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization. (b) Such Party has full authority to enter into this Amendment and to perform all of its obligations hereunder. The individual(s) executing this Amendment on behalf of such Party do so with the full authority of the Party that those individual(s) represent. (c) This Amendment constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium and equitable principles.

26 Incorporation of Recitals. The Recitals in this Amendment are hereby incorporated into this Amendment.

27 Exhibits. All Exhibits attached to this Amendment are hereby incorporated into this Amendment.

28 Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same document. This Amendment shall be effective and enforceable against the Parties even if the subordination provisions below are not signed by all the mortgagees and trustees contemplated herein.

29 Effect. This Amendment shall be effective and modify the Governing Documents only as of the Amendment Effective Date. This Amendment is hereby incorporated into the Governing Documents and made a part thereof. The Parties intend that the modifications provided for in this Amendment shall also extend to all permits, other instruments and other documents (whether recorded or not) that are in any way connected with the Governing Documents.



COUNTY SIGNATURE AND ACKNOWLEDGEMENT

DAVIS COUNTY,  
a body politic of the State of Utah

By: *Dannie R. McConkie*  
Print Name: Dannie R. McConkie  
Title: Chairperson, Board of County Commissioners

ATTEST:

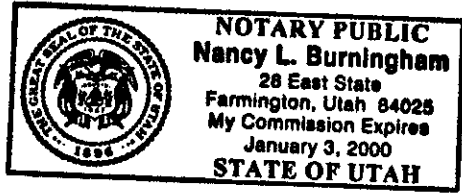
By: *Margene Isom*  
Print Name: Margene Isom  
Title: Davis County Clerk/Auditor

STATE OF UTAH                    )  
  : ss.  
COUNTY OF DAVIS                )

On the 27<sup>th</sup> day of July, 1998, personally appeared before me Dannie R. McConkie, who being by me duly sworn, did say that he/she is the \_\_\_\_\_ of Davis County, a body politic of the State of Utah, and that the within and foregoing instrument was duly signed on behalf of said entity and he/she duly acknowledged to me that said entity executed the same.

*Nancy L. Burningham*  
NOTARY PUBLIC

My Commission Expires: 1-3-2000                    Residing at: Farmington, Utah

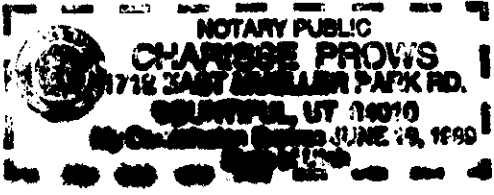


MASTER DEVELOPER SIGNATURE AND ACKNOWLEDGEMENT

PROWS, BECKNELL & ALLES, L.L.C.,  
a Utah limited liability company

By: *Richard S. Prows*  
Richard S. Prows, Manager

STATE OF UTAH )  
COUNTY OF DAVIS ) :ss.



On the 23 day of July, 1998, personally appeared before me Richard S. Prows, who being by me duly sworn, did say that he is the Manager of Prows, Becknell & Alles, L.L.C., a Utah limited liability company, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

*Charisse Prows*  
NOTARY PUBLIC

My Commission Expires:  
June 19, 1999

Residing at:  
1712 E. Mueller Park Rd.  
Bountiful, UT 84010

SCH SIGNATURE AND ACKNOWLEDGMENT

SHEPARD'S CREEK HOMES, L.C.,  
a Utah limited liability company

By: PCH Investments, L.C.,  
a Utah limited liability company, Managing Member

By: PSC Development Company,  
a Utah corporation, Manager

By: *[Signature]*  
Peter S. Cooke, President

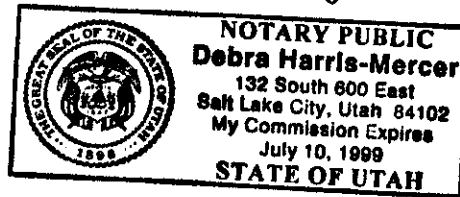
STATE OF UTAH )  
COUNTY OF Salt Lake ) :ss.

On the 21<sup>st</sup> day of July, 1998, personally appeared before me Peter S. Cooke, who being by me duly sworn, did say that he is the President of PSC Development Company, a Utah corporation, which is the Manager of PCH Investments, L.C., a Utah limited liability company, which is the Managing Member of Shepard's Creek Homes, L.C., a Utah limited liability company, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

*[Signature]*  
NOTARY PUBLIC

My Commission Expires:  
10 July 1999

Residing at:  
Salt Lake City, Utah

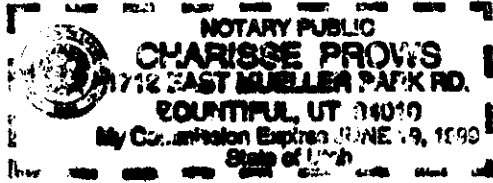




SCP SIGNATURE AND ACKNOWLEDGEMENT

SHEPARD CREEK PROPERTIES, L.L.C.,  
a Utah limited liability company

By: [Signature]  
R. Kent Buie, Manager



STATE OF UTAH )  
COUNTY OF Davis : ss.

On the 23 day of July, 1998, personally appeared before me R. Kent Buie, who being by me duly sworn, did say that he is the Manager of Shepard Creek Properties, L.L.C., a Utah limited liability company, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

[Signature]  
NOTARY PUBLIC

My Commission Expires:  
June 19, 1999

Residing at:  
1712 E. Mueller Park Rd.  
Bountiful, UT 84010

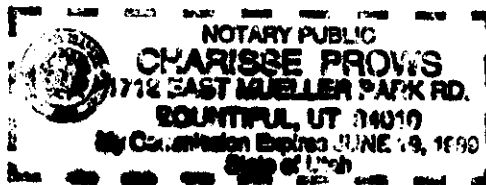
—RECORDER'S MEMO—  
LEGIBILITY OF TYPING OR PRINTING  
UNSATISFACTORY IN THE DOCUMENT  
WHEN RECEIVED

MASTER ASSOCIATION SIGNATURE AND ACKNOWLEDGEMENT

FARMINGTON PRESERVE MASTER ASSOCIATION,  
a Utah non-profit corporation

By: Richard S. Prows  
Richard S. Prows, President

STATE OF UTAH )  
COUNTY OF DAVIS ) : ss.



On the 23 day of July, 1998, personally appeared before me Richard S. Prows, who being by me duly sworn, did say that he is the President of the Farmington Preserve Master Association, a Utah non-profit corporation, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

Charisse Prows  
NOTARY PUBLIC

My Commission Expires:

June 19, 1999

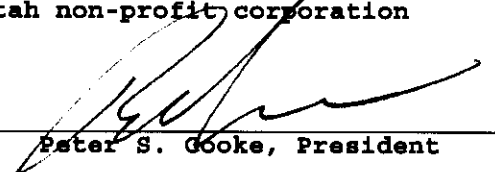
Residing at:

1712 E. Mueller Park Rd.  
Bountiful, UT 84010

—RECORDER'S MEMO—  
LEGIBILITY OF TYPING OR PRINTING  
UNSATISFACTORY IN THE DOCUMENT  
WHEN RECEIVED

THE HOMES AT SHEPARDS CREEK HOMEOWNERS ASSOCIATION, INC.  
SIGNATURE AND ACKNOWLEDGEMENT

THE HOMES AT SHEPARDS CREEK HOMEOWNERS ASSOCIATION, INC.,  
a Utah non-profit corporation

By:   
Peter S. Cooke, President

STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.

On the 29<sup>th</sup> day of July, 1998, personally appeared before me Peter S. Cooke, who being by me duly sworn, did say that he is the President of the Homes At Shepards Creek Homeowners Association, Inc., a Utah non-profit corporation, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

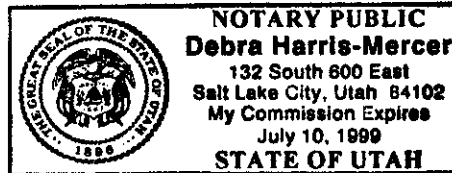
  
NOTARY PUBLIC

My Commission Expires:

10 July 1999

Residing at:

Salt Lake City, Utah





CONSENT OF GUARANTORS

The undersigned have reviewed and approved the foregoing Amendment as of the Amendment Effective Date. The Guaranty dated as of February 24, 1997 by the undersigned shall cover and include (a) all of the "Obligations" covered by such Guaranty, as those Obligations are or may be amended or affected by the foregoing Amendment; and (b) the full performance of all of PBA's obligations under the foregoing Amendment.

Richard S. Prows  
Richard S. Prows

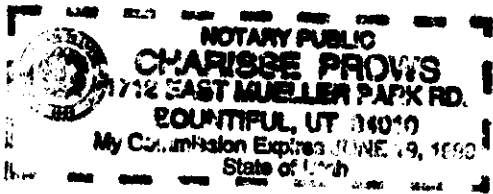
John T. Prows  
John T. Prows

Richard S. and Geraldine T. Prows Family Trust

By: Richard S. Prows  
Richard S. Prows, Trustee

By: Geraldine T. Prows  
Geraldine T. Prows, Trustee

STATE OF UTAH )  
COUNTY OF DAVIS ) : ss.



On the 23 day of July, 1998, personally appeared before me Richard S. Prows, who being by me duly sworn, duly acknowledged to me that he has the authority and capacity to sign the within and foregoing instrument and that he executed the same on his own behalf.

Charisse Prows  
NOTARY PUBLIC

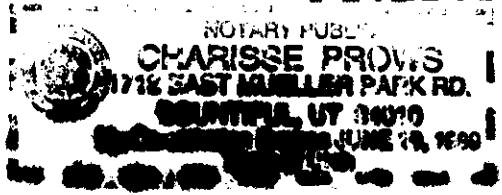
My Commission Expires:

Residing at:

June 19, 1999

1712 E. Mueller Park Rd.  
Bountiful, UT 84010

—RECORDER'S MEMO—  
LEGIBILITY OF TYPING OR PRINTING  
UNSATISFACTORY IN THE DOCUMENT  
WHEN RECEIVED



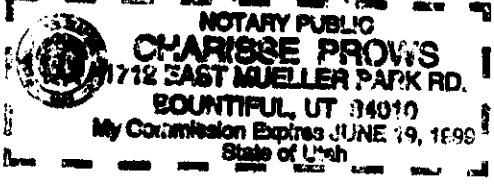
STATE OF UTAH )  
COUNTY OF Davis ) :ss.

On the 23 day of July, 1998, personally appeared before me John Prows, who being by me duly sworn, duly acknowledged to me that he has the authority and capacity to sign the within and foregoing instrument and that he executed the same on his own behalf.

Charisse Prows  
NOTARY PUBLIC

My Commission Expires: Residing at:

June 19, 1999 1712 E. Mueller Park Rd. Bountiful, UT 84010



STATE OF UTAH )  
COUNTY OF Davis ) :ss.

On the 23 day of July, 1998, personally appeared before me Richard S. Prows and Geraldine T. Prows, who being by me duly sworn, did say that they are the trustees of the Richard S. and Geraldine T. Prows Family Trust, and that the within and foregoing instrument was duly signed on behalf of said entity and they duly acknowledged to me that said entity executed the same.

Charisse Prows  
NOTARY PUBLIC

My Commission Expires: Residing at:

June 19, 1999 1712 E. Mueller Park Rd. Bountiful, UT 84010

—RECORDER'S MEMO—  
LEGIBILITY OF TYPING OR PRINTING  
UNSATISFACTORY IN THE DOCUMENT  
WHEN RECEIVED

SUBORDINATION OF DEEDS OF TRUST

CMW MORTGAGE HOLDINGS, INC. The undersigned hereby agree that this Amendment and each of the Governing Documents referred to in this Amendment shall be senior in priority to that certain Trust Deed, Assignment or Rents and Security Agreement dated as of January 24, 1997, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1448, and File No. 1306729, among SCH as trustor, First American Title Insurance Company as trustee, and CMW Mortgage Holdings, Inc., successor in merger to Independent Lending Corporation DBA Construction Lending Corporation of America as beneficiary securing a loan in the amount of \$5,000,000. That Trust Deed shall be subordinate and subject to this Amendment and each of the Governing Documents notwithstanding the fact that such Trust Deed was recorded earlier in time than this Amendment and/or the Governing Documents. The beneficiary under such Trust Deed hereby requests that the trustee thereunder join in this subordination.

CMW MORTGAGE HOLDINGS, INC.,  
a Delaware corporation, successor in merger to  
Independent Lending Corporation DBA  
Construction Lending Corporation of America

By: \_\_\_\_\_  
David M. Nilsson, Vice President

STATE OF \_\_\_\_\_ )  
  ) :ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 1998, personally appeared before me David M. Nilsson, who being by me duly sworn, did say that he is the Vice President of CMW Mortgage Holdings, Inc., a Delaware corporation, successor-in-merger to Independent Lending Corporation DBA Construction Lending Corporation of America, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_ Residing at: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FIRST AMERICAN TITLE INSURANCE COMPANY,  
as Trustee under the above-referenced Trust Deed

*ASSOCIATED TITLE COMPANY, AGENT FOR FATCO*

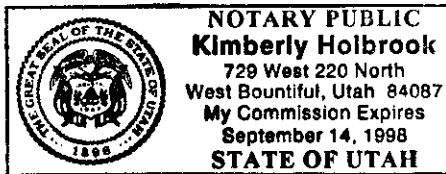
By: *[Signature]*  
Print Name: *WAM PHILLIPS*  
Title: *Vice President*

STATE OF *Utah* )  
COUNTY OF *Davis* ) :ss.

On the *23rd* day of *July*, 1998, personally appeared before me  
*WAM PHILLIPS*, who being by me duly sworn, did say that he is the  
*Agent*, of First American Title Insurance Company and that the  
within and foregoing instrument was duly signed on behalf of said entity and  
he/she duly acknowledged to me that said entity executed the same.

*[Signature]*  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_ Residing at: \_\_\_\_\_





LARSEN WHOLESALE ENTERPRISES. The undersigned hereby agree that this Amendment and each of the Governing Documents referred to in this Amendment shall be senior in priority to that certain Trust Deed dated as of October 17, 1996, and recorded in the Official Records of Davis County on October 18, 1996, at Book 2055, Page 1063, and File No. 1281528, among PBA as trustor, Associated Title Company as trustee, and Dean Craig Larsen as beneficiary securing a loan in the amount of \$254,761.24, the beneficial interest under which said Trust Deed was assigned by said beneficiary to Larsen Wholesale Enterprises by that certain Assignment of Trust Deed dated as of November 20, 1996, and recorded in the Official Records of Davis County on November 25, 1996, at Book 2067, Page 1379, and File No. 1289242.

That Trust Deed shall be subordinate and subject to this Amendment and to each of the Governing Documents notwithstanding the fact that such Trust Deed was recorded earlier in time than this Amendment and/or the Governing Documents. The beneficiary under such Trust Deed hereby requests that the trustee thereunder join in this subordination.

LARSEN WHOLESALE ENTERPRISES,  
successor in interest to  
Dean Craig Larsen

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF UTAH                    )  
  : ss.  
COUNTY OF \_\_\_\_\_         )

On the \_\_\_\_\_ day of \_\_\_\_\_, 1998, personally appeared before me \_\_\_\_\_, who being by me duly sworn, did say that he is the \_\_\_\_\_ of Larsen Wholesale Enterprises successor-in-interest to Dean Craig Larsen, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Residing at:

\_\_\_\_\_

ASSOCIATED TITLE COMPANY,  
as Trustee under the above-referenced Trust Deed

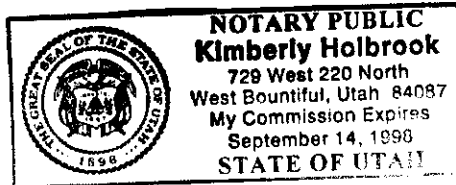
By: [Signature]  
Print Name: Glen Dillman  
Title: Vice-President

STATE OF UTAH )  
COUNTY OF Davis ) :ss.

On the 23rd day of July, 1998, personally appeared before me Glen Dillman, who being by me duly sworn, did say that he is the Vice President of Associated Title Company, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

[Signature]  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_ Residing at: \_\_\_\_\_



**FIRST SECURITY BANK.** The undersigned hereby agree that this Amendment and each of the Governing Documents referred to in this Amendment shall be senior in priority to the following:

(a) that certain Trust Deed dated as of September 26, 1996, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1484, and File No. 1306732, among PBA as trustor, Associated Title Company as trustee and the First Security Bank ("FSB") as beneficiary, securing a loan in the amount of \$1,250,000;

(b) that certain Trust Deed dated as of December 19, 1996, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2221, Page 291, and File No. 1370741, among PBA as trustor, Associated Title Company as trustee and FSB as beneficiary, securing a loan in the amount of \$1,550,000;

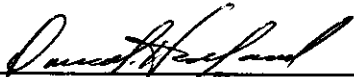
(c) that certain Assignment of Deed of Trust dated as of February 27, 1997, and recorded in the Official Records of Davis County on February 28, 1997, at Book 2100, Page 800, and File No. 1307097, between PBA as assignor and FSB as assignee pertaining to that certain All-Inclusive Trust Deed dated as of February 26, 1997, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1463, and File No. 1306730, among SCP as trustor, Associated Title Company as trustee and PBA as beneficiary, securing a loan in the amount of \$2,874,471;

(d) that certain Collateral Assignment dated as of March 12, 1997, and recorded in the Official Records of Davis County on March 25, 1997, at Book 2109, Page 668, and File No. 1312281, between PBA as assignor and FSB as assignee; and

(e) that certain Assignment of Deed of Trust Proceeds dated as of February 26, 1997, but not yet recorded, between PBA as assignor and FSB as assignee.

Those Trust Deeds, Assignments and Collateral Assignment shall be subordinate and subject to this Amendment and each of the Governing Documents notwithstanding the fact that such Trust Deeds, Assignments and Collateral Assignment were recorded or given earlier in time than this Amendment and/or the Governing Documents. The beneficiary under such Trust Deed hereby requests that the trustee thereunder join in this subordination.

FIRST SECURITY BANK OF UTAH, N.A.

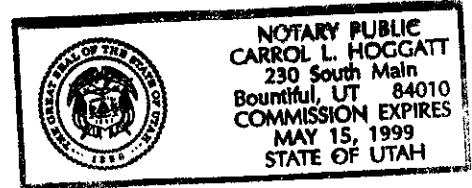
By:   
 Print Name: David T. HALFORD  
 Title: Vice President

STATE OF UTAH )  
 )  
COUNTY OF Davis ) :ss.  
 )

E 1428481 B 2336 P 427

On the 23 day of July, 1998, personally appeared before me David P. Halford, who being by me duly sworn, did say that he is the Vice President of First Security Bank of Utah, N.A. and that the within and foregoing instrument was duly signed on behalf of said entity and he/she duly acknowledged to me that said entity executed the same.

Carrol L. Hoggatt  
NOTARY PUBLIC



My Commission Expires:

Residing at:

May 15, 1999

Bountiful, Utah

ASSOCIATED TITLE COMPANY,  
as Trustee under each of the Trust Deeds  
identified above as Items (a) and (b)

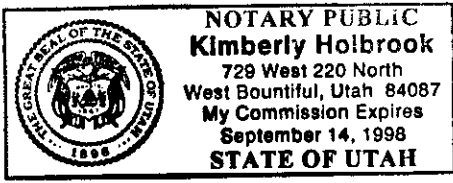
By: [Signature]  
Print Name: Glen S. Phillips  
Title: Vice President

STATE OF UTAH )  
COUNTY OF Davis ) :ss.

On the 23rd day of July, 1998, personally appeared before me  
Glen S. Phillips, who being by me duly sworn, did say that he is the  
Vice President of Associated Title Company, and that the within and  
foregoing instrument was duly signed on behalf of said entity and he duly  
acknowledged to me that said entity executed the same.

NOTARY PUBLIC [Signature]

My Commission Expires: \_\_\_\_\_ Residing at: \_\_\_\_\_



SHEPARD'S CREEK HOMES, L.C. The undersigned hereby agrees that this Amendment and each of the Governing Documents referred to in this Amendment shall be senior in priority to that certain Trust Deed dated as of January 30, 1996, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1490, and File No. 1306733, among PBA as trustor, Fidelity Title Insurance Company as trustee and the undersigned as beneficiary securing a loan in the amount of \$250,000. That Trust Deed shall be subordinate and subject to this Amendment and each of the Governing Documents notwithstanding the fact that such Trust Deed was recorded earlier in time than this Amendment and/or the Governing Documents. The beneficiary under such Trust Deed hereby requests that the trustee thereunder join in this subordination.

SHEPARD'S CREEK HOMES, L.C.,  
a Utah limited liability company


By: PCH Investments, L.C.,  
a Utah limited liability company, Managing Member

By: PSC Development Company,  
a Utah corporation, Manager

By:   
Peter S. Cooke, President

STATE OF UTAH )  
COUNTY OF Salt Lake ) :ss.

On the 29<sup>th</sup> day of July, 1998, personally appeared before me Peter S. Cooke, who being by me duly sworn, did say that he is the President of PSC Development Company, a Utah corporation, which is the Manager of PCH Investments, L.C., a Utah limited liability company, which is the Managing Member of Shepard's Creek Homes, L.C., a Utah limited liability company, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

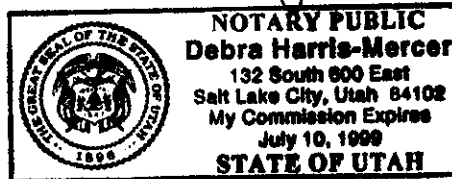
  
NOTARY PUBLIC

My Commission Expires:

Residing at:

10 July 1999

Salt Lake City, Utah



FIDELITY TITLE INSURANCE COMPANY,  
as Trustee under the above-referenced Trust Deed

*Assoc. Trustee Company, Agent for FNTC*

By: *[Signature]*  
Print Name: *GARY S. PHILLIPS*  
Title: *VICE PRESIDENT*

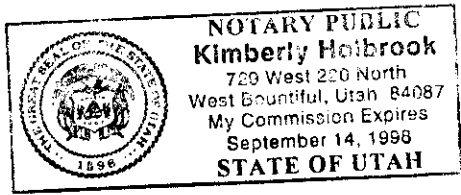
STATE OF UTAH )  
COUNTY OF *Davis* ) :ss.

On the *23rd* day of *July*, 1998, personally appeared before me  
*GARY S. PHILLIPS* *Agent*, who being by me duly sworn, did say that he is the  
of Fidelity Title Insurance Company, and that the within and  
foregoing instrument was duly signed on behalf of said entity and he duly  
acknowledged to me that said entity executed the same.

*[Signature]*  
NOTARY PUBLIC

My Commission Expires:

Residing at:



CB COMMERCIAL C/O ELDON HAACKE. The undersigned hereby agrees that this Amendment and each of the Governing Documents referred to in this Amendment shall be senior in priority to that certain Trust Deed dated as of February 26, 1997, and recorded in the Official Records of Davis County on February 28, 1997, at Book 2100, Page 802, and File No. 1307098, among PBA as trustor, Associated Title Company as trustee and the undersigned as beneficiary securing a loan in the amount of \$210,468.27. That Trust Deed shall be subordinate and subject to this Amendment and each of the Governing Documents notwithstanding the fact that such Trust Deed was recorded earlier in time than this Amendment and/or the Governing Documents. The beneficiary under such Trust Deed hereby requests that the trustee thereunder join in this subordination.

CB COMMERCIAL

By: Eldon Haacke  
Eldon Haacke, Agent

STATE OF UTAH )  
COUNTY OF Salt Lake ) :ss.

On the 29<sup>th</sup> day of July, 1998, personally appeared before me Eldon Haacke, who being by me duly sworn, did say that he is the Agent of CB Commercial, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

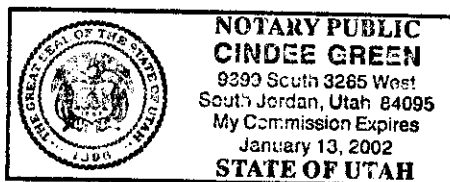
Cindee Green  
NOTARY PUBLIC

My Commission Expires:

January 13, 2002

Residing at:

9899 S. 3265 W.  
So Jordan UT 84095



—RECORDER'S MEMO—  
LEGIBILITY OF TYPING OR PRINTING  
UNSATISFACTORY IN THE DOCUMENT  
WHEN RECEIVED



ASSOCIATED TITLE COMPANY,  
as Trustee under the above-referenced Trust Deed

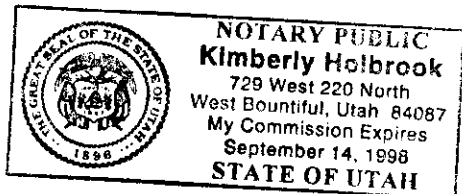
By: [Signature]  
Print Name: Gary S Phillips  
Title: VIC-PRESIDENT

STATE OF UTAH )  
COUNTY OF Davis ) :SS.

On the 23rd day of July, 1998, personally appeared before me Gary S Phillips, who being by me duly sworn, did say that he is the Vice president of Associated Title Company, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

[Signature]  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_ Residing at: \_\_\_\_\_



—RECORDER'S MEMO—  
LEGIBILITY OF TYPING OR PRINTING  
UNSATISFACTORY IN THE DOCUMENT  
WHEN RECEIVED

**ROBERT AND JOYCE STREBEL.** The undersigned hereby agree that this Amendment and each of the Governing Documents referred to in this Amendment shall be senior in priority to that certain Deed of Trust With Assignment of Rents dated as of January 29, 1997, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1406, and File No. 1306722, among FBA as trustor, Associated Title Company as trustee and the undersigned as beneficiary securing a loan in the amount of \$270,540. That Trust Deed shall be subordinate and subject to this Amendment and to each of the Governing Documents notwithstanding the fact that such Trust Deed was recorded earlier in time than this Amendment and/or the Governing Documents. The beneficiary under such Trust Deed hereby requests that the trustee thereunder join in this subordination.

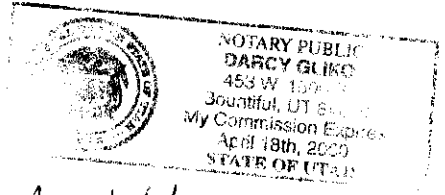
Robert Strebel  
Robert Strebel

Joyce Strebel  
Joyce Strebel

STATE OF UTAH )  
 )  
COUNTY OF Davis )  
 ) :ss.

On the 31st day of July, 1998, personally appeared before me Robert Strebel and Joyce Strebel, who being by me duly sworn, duly acknowledged to me that they each have the authority and capacity to sign the within and foregoing instrument and that they each executed the same on their own behalf.

Darcy Glick  
NOTARY PUBLIC



My Commission Expires:  
04/18/00

Residing at:  
Bountiful, Utah

—RECORDER'S MEMO—  
LEGIBILITY OF TYPING OR PRINTING  
UNSATISFACTORY IN THE DOCUMENT  
WHEN RECEIVED

ASSOCIATED TITLE COMPANY,  
as Trustee under the above-referenced Trust Deed

By: [Signature]  
Print Name: Garrett S Phillips  
Title: VICE-PRESIDENT

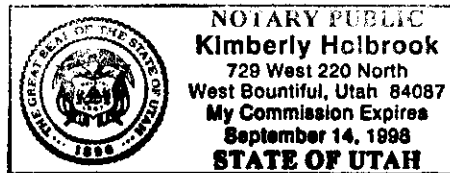
STATE OF UTAH )  
 ) :ss.  
COUNTY OF DAVIS )

On the 23rd day of July, 1998, personally appeared before me Garrett S Phillips, who being by me duly sworn, did say that he is the VICE PRESIDENT of Associated Title Company, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

[Signature]  
NOTARY PUBLIC

My Commission Expires:

Residing at:

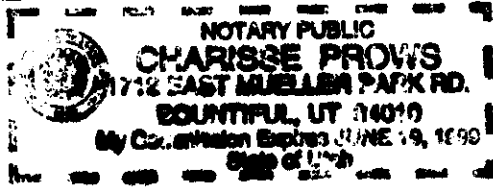


PROWS, BECKNELL & ALLES, L.L.C. The undersigned hereby agree that this Amendment and each of the Governing Documents referred to in this Amendment shall be senior in priority to that certain All-Inclusive Trust Deed dated as of February 26, 1997, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1463, and File No. 1306730, among SCP as trustor, Associated Title Company as trustee and PBA as beneficiary, securing a loan in the amount of \$2,874,471.10. That Trust Deed shall be subordinate and subject to this Amendment and to each of the Governing Documents notwithstanding the fact that such Trust Deed was recorded earlier in time than this Amendment and/or the Governing Documents. The beneficiary under such Trust Deed hereby requests that the trustee thereunder join in this subordination.

PROWS, BECKNELL & ALLES, L.L.C.,  
a Utah limited liability company

By: *Richard S. Prows*  
Richard S. Prows, Manager

STATE OF UTAH )  
COUNTY OF Davis ) :ss.



On the 23 day of July, 1998, personally appeared before me Richard S. Prows, who being by me duly sworn, did say that he is the Manager of Prows, Becknell & Alles, L.L.C., a Utah limited liability company, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

*Charisse Prows*  
NOTARY PUBLIC

My Commission Expires:  
June 19, 1999

Residing at:  
1712 E. Mueller Park Rd.  
Bountiful, UT 84010

—RECORDER'S MEMO—  
LEGIBILITY OF TYPING OR PRINTING  
UNSATISFACTORY IN THE DOCUMENT  
WHEN RECEIVED

ASSOCIATED TITLE COMPANY,  
as Trustee under the above-referenced Trust Deed

By: [Signature]  
Print Name: Garth S. Phillips  
Title: VICE-PRESIDENT

STATE OF UTAH )  
COUNTY OF Davis ) : ss.

On the 23rd day of July, 1998, personally appeared before me Garth S. Phillips, who being by me duly sworn, did say that he is the vice president of Associated Title Company, and that the within and foregoing instrument was duly signed on behalf of said entity and he duly acknowledged to me that said entity executed the same.

[Signature]  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_ Residing at: \_\_\_\_\_

NOTARY PUBLIC  
**Kimberly Holbrook**  
729 West 220 North  
West Bountiful, Utah 84087  
My Commission Expires  
September 14, 1998  
STATE OF UTAH

EXHIBIT "A"  
DESCRIPTION OF DEVELOPMENT AREA

DESCRIPTION OF TOTAL PROJECT UPLAND AREAS

All that certain real property situate, lying and being in Davis County, State of Utah, described as follows:

All that fractional portion of Section 13, Township 3 North, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Commencing at the Northwest corner of said Section 13; thence South 00°12'06" East, along the west line of said Section 13, a distance of 468.75 feet to a point on the south line of 66 foot wide Shepard Lane; thence, along the south line of said Shepard Lane, South 89°41'42" East 44.36 feet to the TRUE POINT OF BEGINNING of the Parcel herein described; thence continue along the south line of said Shepard Lane, South 89°41'42" East 528.01 feet; thence South 333.45 feet; thence South 89°43'17" East 395.96 feet; thence South 3°37'15" East 477.66 feet; thence South 48°37'29" East 261.11 feet; thence South 21°15'52" East 805.21 feet; thence South 14°34'30" West 221.74 feet; thence South 1°07'29" West 777.63 feet; thence North 89°32'45" West 35.30 feet; thence South 206.08 feet; thence North 89°34'29" West 587.70 feet; thence South 34°29'26" West 73.91 feet; thence North 55°30'34" West 280.00 feet; thence North 0°17'17" East 252.04 feet; thence North 89°42'43" West 260.00 feet; thence North 19°48'35" West 279.17 feet; thence South 86°37'26" West 34.04 feet; thence North 89°42'40" West 125.15 feet; thence North 0°08'11" East 0.60 feet; thence North 89°25'55" West 23.19 feet; thence North 19°47'19" West 319.58 feet to the beginning of a curve to the right, having a radius of 25.00 feet and a central angle of 110°54'49"; thence northeasterly, along the arc of said curve, 48.39 feet; thence South 88°52'30" East 102.71 feet; thence North 0°00'18" East 327.89 feet; thence North 0°15'42" West 332.80 feet; thence North 1°07'18" East 311.61 feet; thence South 88°52'42" East 343.94 feet; thence North 1°07'17" East 636.00 feet; thence North 89°47'42" West 343.98 feet; thence North 1°07'10" East 50.00 feet; thence North 1°05'46" East 233.72 feet; thence South 89°41'57" East 19.33 feet; thence North 0°00'11" East 100.00 feet to the POINT OF BEGINNING.

Containing 71.16 Acres, more or less.

W<sup>1</sup>/<sub>2</sub>-13 } 3N-1W  
 E<sup>1</sup>/<sub>2</sub>-14 }  
 The Homes @ Shepard Creek Ph 1 - Units 1 to 40 + common area  
 08-053-0050, 0013, 0049, 0045, 0046, 0016, 0017, 0048  
 08-051-0022, 0023, 0114, 0118, 0130 to 0134  
 08-051-0124 to 0128, 0120,  
 08-053-0009, 0001, 0003, 0010, 0011  
 08-058-0007 + 0013  
 08-222-0001 to 0041

E 1/2 - 14 + W 1/2 - 13

4

08-058-0007 + 0013

E 1428481 B 2336 P 439

DESCRIPTION OF PROPOSED  
WETLANDS AREA

All that certain real property situate, lying and being in Davis County, State of Utah, described as follows:

All that portion of Sections 13 and 14, Township 3 North, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Commencing at the Northwest corner of said Section 13; thence South 00°12'06" East, along the west line of said Section 13, a distance of 468.75 feet to a point on the southerly line of 66-foot wide Shepard Lane; thence along the southerly line of said Shepard Lane South 89°41'42" East 572.38 feet; thence SOUTH 333.45 feet to an existing fence line on the northerly line of the lands of Farr, as described in the QUIT-CLAIM DEED recorded as entry 383319, Book 520, at Page 888, Davis County Records, and shown on that certain Survey filed as Number 001898, Davis County Surveyor's Office; thence, along said fence line and said property line, South 89°43'17" East 395.96 feet to the TRUE POINT OF BEGINNING of this description; thence describing said parcel of land, South 89°43'17" East 59.35 feet to a point on the westerly right-of-way line of State Highway 89, from which a 2 1/2 inch iron pipe with brass cap, at Station 675+00 bears North 21°16'06" West 334.76 feet; thence along said westerly right-of-way line the following three (3) courses:

- 1) South 21°16'06" East 1680.99 feet;
- 2) South 18°24'06" East 933.67 feet to the beginning of a curve to the right, having a radius of 594.81 feet;
- 3) southwesterly, along the arc of said curve, a distance of 1326.29 feet to a point on the easterly right-of-way line of Interstate Highway 15; thence along said easterly right-of-way line the following nine (9) courses:

- 1) North 70°38'42" West 109.53 feet;
- 2) North 60°41'36" West 416.80 feet;
- 3) North 55°52'29" West 330.36 feet;
- 4) North 55°10'08" West 476.91 feet;
- 5) North 52°08'17" West 791.39 feet to the beginning of a curve to the right, having a radius of 22,798.31 feet;
- 6) northwesterly, along the arc of said curve, a distance of 99.99 feet to a 2 1/2 inch iron pipe with brass cap stamped Station 641+00, 120'RT.;
- 7) North 44°41'33" West 100.50 feet to a 2 1/2 inch iron pipe with brass cap stamped Station 642+00, 130'RT.;
- 8) North 50°20'35" West 623.13 feet to the beginning of a curve to the right, having a radius of 22,788.31 feet;
- 9) northwesterly, along the arc of said curve, a distance of 768.38 feet to the northwesterly line of that certain real property conveyed to The City of Farmington, by SPECIAL WARRANTY DEED, recorded as entry 998127, Book 1545, at Page 501, Davis

08-053-0013, 0049, 0045, 0046, 0017, 0016, 0048, 0009

08-053-0001, 0010, 0011, 0003,



WETLANDS AREA  
(continued)

County Records; thence, along said property line, North 43°03'18" East 175.39 feet to an angle point in said property line; thence continue on said property line South 62°38'42" East 309.65 feet; thence continue on said property line South 49°59'42" East 289.57 feet to the southeasterly corner of said City of Farmington property; thence continue South 49°59'42" East 380.43 feet to the beginning of a curve to the left, having a radius of 350.00 feet; thence easterly and northerly, along the arc of said curve, an arc distance of 599.73 feet to the most westerly corner of Lot 344 of OAKRIDGE COUNTRY CLUB ESTATES, PLAT III; Thence along the boundary of said OAKRIDGE COUNTRY CLUB ESTATES, PLAT III the following eleven (11) courses:

- 1) South 37°38'33" East 110.39 feet;
- 2) South 02°03'34" West 88.75 feet;
- 3) South 01°12'59" East 136.92 feet;
- 4) South 19°42'31" East 100.00 feet;
- 5) South 00°25'10" West 70.00 feet;
- 6) South 38°29'12" East 77.10 feet;
- 7) South 00°25'10" West 95.00 feet;
- 8) South 89°34'52" East 202.69 feet to the easterly line of 60-foot wide 1100 West Street;
- 9) North 19°47'19" West, on said easterly line, 319.58 feet to the beginning of a curve to the right, having a radius of 25.00 feet;
- 10) northeasterly, along the arc of said curve, an arc distance of 48.40 feet to the south line of 60-foot wide 900 North Street;
- 11) South 88°52'30" East, on said south line, 102.71 feet to the easterly boundary of said OAKRIDGE COUNTRY CLUB ESTATES, PLAT III; thence South 21°15'51" East 357.98 feet to the northerly line of that certain real property conveyed to Max Kerr, being the first parcel of land described in the SPECIAL WARRANTY DEED recorded as entry 939968, Book 1435, at Page 443, Davis County Records; thence along the boundary of said parcel of land the following seven (7) courses:

- 1) South 89°42'40" East 34.84 feet;
- 2) South 19°47'39" East 276.83 feet;
- 3) South 89°42'43" East 260.00 feet;
- 4) South 00°17'17" West 252.036 feet;
- 5) South 55°30'34" East 280.00 feet;
- 6) North 34°29'26" East 73.914 feet;
- 7) South 89°34'29" East 409.10 feet; thence, leaving said boundary of said parcel of land, South 89°34'29" East 178.60 feet to a point on the westerly line of the second parcel of land conveyed to Max Kerr by SPECIAL WARRANTY DEED recorded as entry 939968, Book 1435, at Page 443, Davis County Records; thence along the boundary of said lands of Max Kerr, NORTH 206.08 feet to the northwest corner thereof; thence along the north line of

WETLANDS AREA  
(continued)

last said Kerr parcel, South 89°32'45" East 35.30 feet; thence leaving said Kerr parcel, North 01°07'29" East 777.63 feet; thence North 14°34'30" East 221.74 feet; thence North 21°15'52" West 805.21 feet; thence North 48°37'29" West 261.11 feet; thence North 03°37'16" West 477.66 feet to the point of beginning.

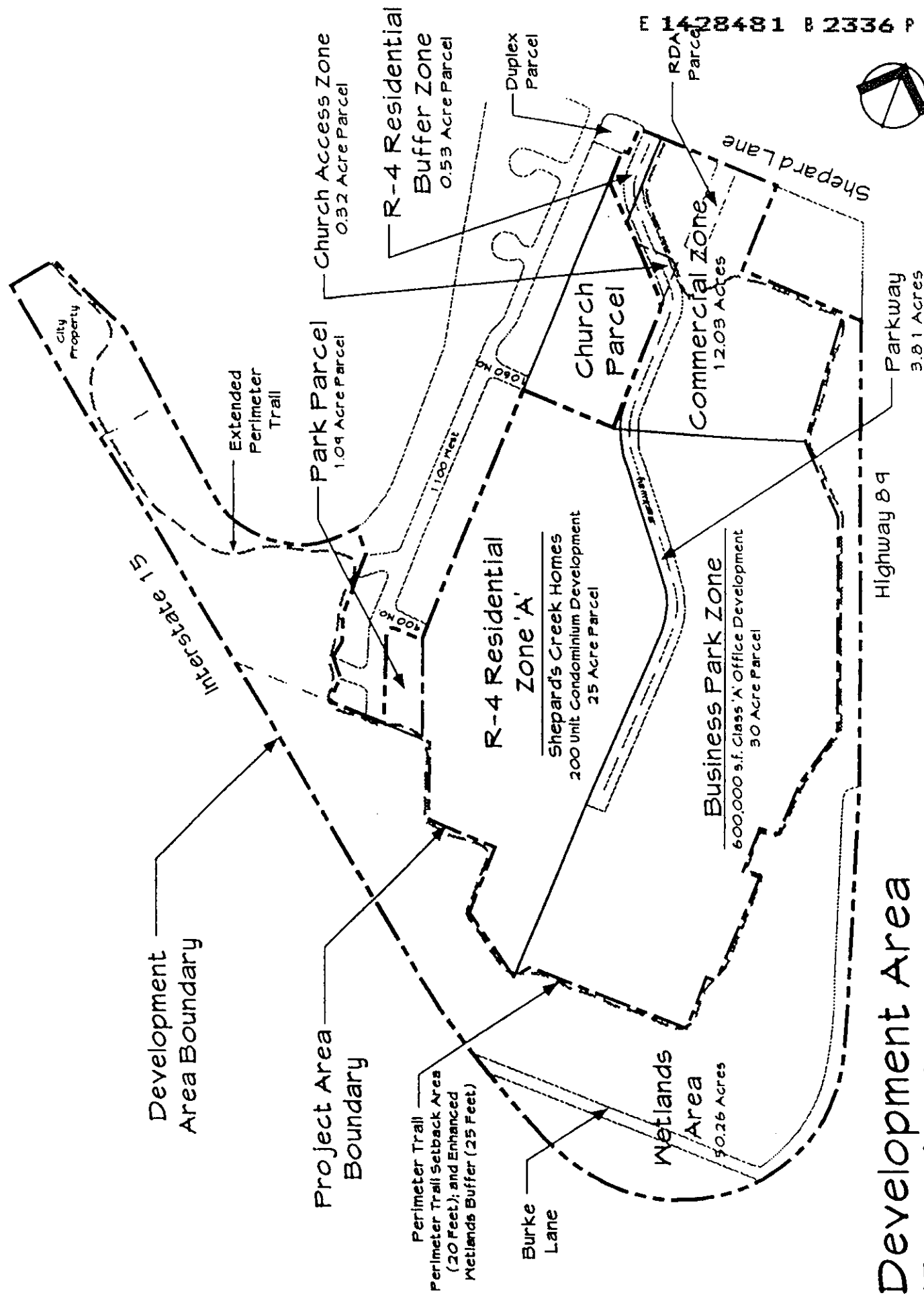
containing 53.406 acres of land more or less.

Subject to existing rights-of-way and easements of record.

2S162700.SWL  
5/21/96

EXHIBIT "B"

MASTER CONCEPT DEVELOPMENT PLAN



North  
September 23, 1996 0444

# Development Area Farmington Preserve

EXHIBIT "C"

DESCRIPTION OF CHURCH PARCEL

E 1428481 B 2336 P 445

**LEGAL DESCRIPTION  
REVISED OVERALL CATHOLIC CHURCH PROPERTY**

All that certain real property situate, lying and being in Davis County, State of Utah, described as follows:

All that fractional portion of Section 13, Township 3 North, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

BEGINNING at the Northwest corner of that certain real property conveyed to the Roman Catholic Bishop of Salt Lake, by Warranty Deed, recorded as Entry No. 1099237, Book 1727, at Page 1237, Davis County Records, said point being 852.55 feet South and 21.24 feet East of the Northwest corner of said Section 13; thence North 01°07'18" East for 50.00 feet; thence North 01°05'46" East for 89.51 feet; thence South 89°43'17" East for 61.27 feet to the west right-of-way line of Shepard Creek Parkway, thence along said west line the following (5) five calls:

1) thence with a curve to the left having a radius of 182.50 feet, a central angle of 18°08'25" (chord bearing and distance of South 35°47'36" East - 57.54 feet) and for an arc distance of 57.78 feet;

2) thence South 44°51'48" East for 295.20 feet;

3) thence with a curve to the right having a radius of 117.50 feet, a central angle of 45°59'06" (chord bearing and distance of South 21°52'16" East - 91.79 feet) and for an arc distance of 94.30 feet;

4) thence South 01°07'17" West for 315.01 feet;

5) thence with a curve to the left having a radius of 330.50 feet, a central angle of 20°04'32" (chord bearing and distance of South 08°54'59" East - 115.21 feet) and for an arc distance of 115.80 feet; thence South 72°22'00" West for 21.21 feet; thence North 88°52'42" West for 343.94 feet to a point on the easterly boundary of Oakridge Country Club Estates "Plat III"; thence North 01°07'18" East along said easterly boundary for 630.50 feet to the POINT OF BEGINNING.

Containing 5.1325 Acres

08-051-0120  
0124  
0130

E 1428 81 B 2336 P 446

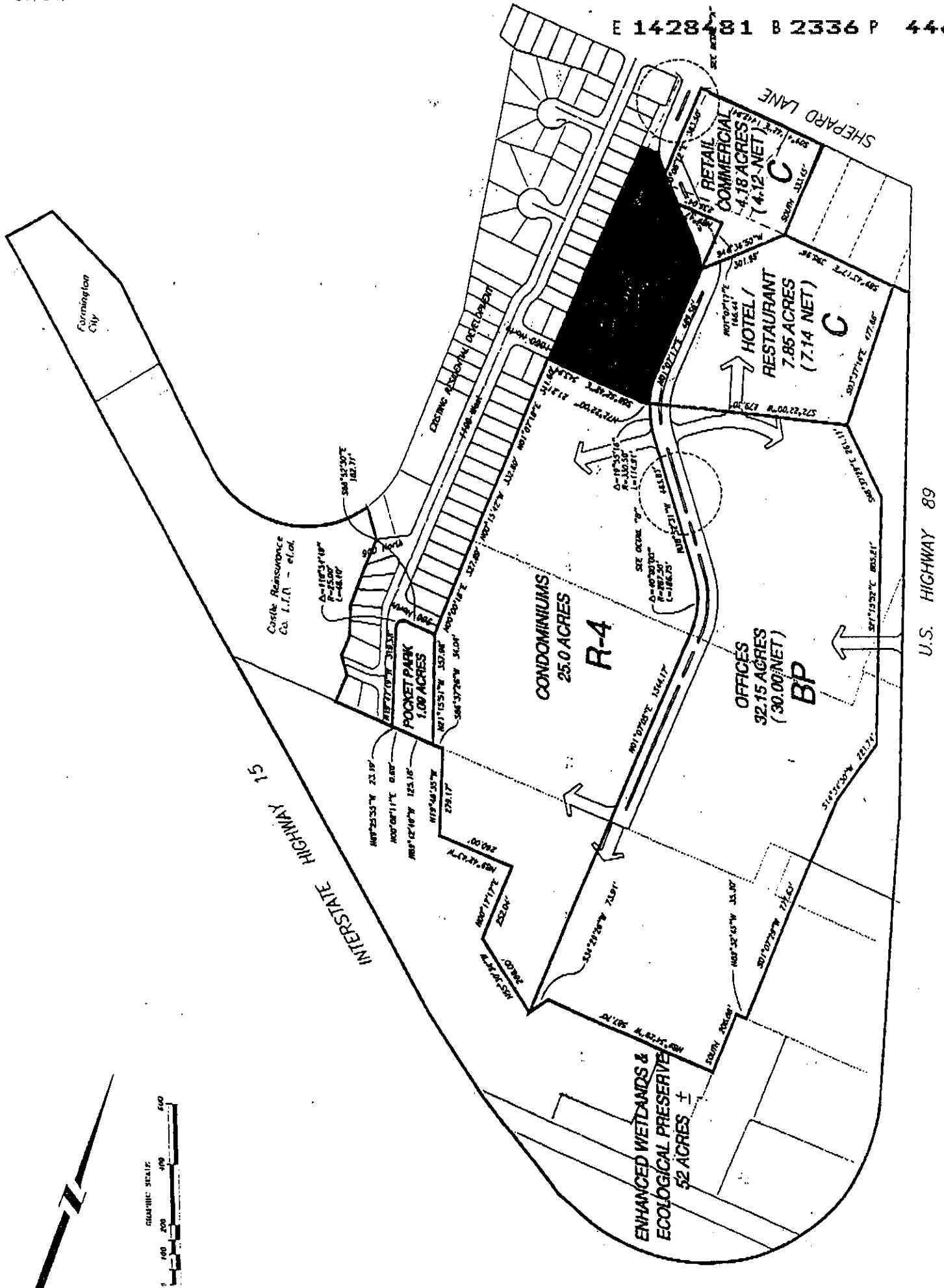


EXHIBIT "D"

PAGE 2 OF WETLANDS DEVELOPMENT AGREEMENT



D. The Wetlands Area is composed of the following three sections: (1) the land that Master Developer shall acquire and convey to the County consisting of approximately 10.90 acres (the "Master Developer Wetlands Property"); (2) the land that the County shall acquire through acquisition or eminent domain from private parties consisting of approximately 39.356 acres (the "County Wetlands Property"); and (3) the land including a water detention basin that the City shall convey to the County for wetlands purposes consisting of approximately 3.15 acres (the "City Property"). The Wetlands Area is further described on Exhibit "C" attached hereto.

E. Master Developer, the master association for the Project (the "Master Association"), individual entities that own and are responsible for the development of any one or more portions of the Project (the "Developers"), and/or the owners associations governing any portion of the Project (the "Owner Associations") shall develop and maintain the Project consisting of approximately 69.18 acres. The County shall develop and maintain the Wetlands Area consisting of approximately 53.406 acres. The City shall own the Park Parcel consisting of approximately 1.09 acres.

F. A portion of the Development Area is currently owned by Max Kerr as further described on Exhibit "E" hereto (the "Kerr Property"). The County intends to acquire the Kerr Property and convey an easement for sewer purposes across the Kerr Property for the benefit of the Central Davis County Sewer District (the "Sewer District").

G. Master Developer intends to make its conveyances and contributions required under this Agreement in accordance with the requirements of Section 170 of the Internal Revenue Code.

H. The County has the responsibility for flood control issues in connection with Shepard Creek, Spring Creek and the Wetlands Area.

I. The Parties desire to cooperate with each other in connection with the development, mitigation, enhancement, preservation of the Wetlands Area.

#### A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good, valuable and adequate consideration, the Parties hereby agree as follows:

1 Master Developer's Obligations and Release. Master Developer shall take all actions and pay all costs necessary to perform the following obligations: