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BK 6070 PG 1015

After Recording Return To:  
Oakwood Homes of Utah LLC  
500 N. Marketplace Dr., Suite 201  
Centerville, UT 84014

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
07/30/2014 04:07 PM  
FEE \$45.00 Pgs: 12  
DEP RT REC'D FOR LAYTON CITY

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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
ELLISON HOMEOWNERS ASSOCIATION

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10-300-0101 thru 0113

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made on this \_\_\_ day of June 2014 by Oakwood Homes of Utah LLC, a Delaware limited liability company (the "Declarant").

### RECITALS

A. The Declarant is the owner and/or has the right to acquire certain real property located in the City of Layton (the "City"), Davis County, Utah, more particularly described on Exhibit "A" hereto (the "Property").

B. It is the desire and intention of the Declarant to sell the Property and subject the Property to mutually beneficial restrictions under a general plan of improvement for the benefit of all the Property in the subdivision and the future owners of the Property.

C. Ellison Homeowners Association (the "Association") has been incorporated as a Utah non-profit corporation to act as a homeowners' association with the powers of managing, maintaining the Property, including roads, administering and enforcing this Declaration, and assessing and collective for, a prorated share of the costs for maintaining and repairing any and all common areas on the Property and performing such other acts as are provided or set forth in this Declaration or which generally benefit the Property.

D. All owners of lots, their successors, heirs and assigns identified in this Declaration shall have the right to enforce these covenants, conditions and restrictions.

E. Declarant has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions and restrictions (collectively, the "Covenants") for the purpose of:

- (1) Helping to insure uniformity in the development of the Lots;
- (2) Creating certain covenants and use restrictions to help protect long term property values and a desired quality of life;
- (3) To facilitate the sale by the Declarant, its successors and assigns, and by individual Owners of the land in the Community by reason of its ability to help assure such purchasers of uniformity and basic restrictions intending to preserve property values over time; and
- (4) To maintain the common areas located within the Property in accordance with City standards.

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

## ARTICLE 1- DEFINITIONS

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

- 1.1 "*Association*" means Ellison Homeowners Association.
- 1.2 "*Community*" means all of the land described in the attached *Exhibit A*.
- 1.3 "*Declarant*" means Oakwood Homes of Utah LLC, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer, in writing, all of its right, title and interest in the Property in its entirety, without reservation of any kind; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.
- 1.4 "*Improvements*" means every structure or improvement of any kind, including but not limited to landscaping required herein and any residence, deck, porch, awning, fence, garage, carport, driveway, storage shelter or other product of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).
- 1.5 "*Lot*" or "*Lots*" means a subdivided parcel, lot or plot of ground within the Property and as designated on the Plat Map.
- 1.6 "*Owner*" means the person or persons who are vested with record title and owning any Lot (including the holder of a vendee's interest under a land sale contract, unless otherwise stated in the contract) whose interest in the Lot is held in fee simple according to the records of the County Recorder of Davis County, Utah.
- 1.7 "*Plat Map*" means the plat map entitled, "Ellison Park Estates" (the "Subdivision") to be recorded among the Recorder's Office of Davis County, Utah, and any plats recorded among the Recorder's Office in substitution thereof or amendment thereof, plus any amendment annexing Additional Property as provided in Article III below.
- 1.8 "*Property*" means all of the real property described in attached *Exhibit "A"*.
- 1.9 "*Single Family Residence*" shall mean a building, house, or dwelling unit used as a residence for a Single Family, including any appurtenant garage or similar out-building.
- 1.10 "*Single Family*" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not related, together with their domestic servants, who maintain a common household in a dwelling.

## ARTICLE 2 - PROPERTY SUBJECT TO THIS DECLARATION

### 2.1 Submitted Property.

- (a) The real property which is, and shall be, transferred, held, sold, conveyed

and occupied subject to this Declaration is located in Davis County, Utah, also known as the "Community", and is described on *Exhibit "A"* attached hereto, all of which real property is also referred to herein as the "Property".

(b) Declarant declares that all of the Property shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration. The easements, covenants, conditions and restrictions described in this Declaration shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each Owner.

(c) All property within the Community is subject to and must comply with the terms, conditions and zoning approvals from the City.

### ARTICLE 3- MEMBERSHIP

3.1 Membership in the Association. Each and every Owner, in accepting a deed or contract for any Lot, whether or not it shall be so expressed in such deed or contract automatically becomes a member of the Association, and agrees to be bound by such reasonable rules and regulations as may, from time to time, be established by the Association. Membership shall be appurtenant and may not be separated from ownership of the Lot.

3.2 Transfer of Membership. The membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser of such Lot, at which time his/her membership shall automatically cease and the successor Owner shall become a Member. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association. Membership in the Association is mandatory for all Owners.

3.3 Voting Rights. Declarant shall have all voting rights until such time as the Declarant sees fit to hand the Association over to the Owners or when one hundred percent of the lots are sold at which point each Member shall be entitled to one (1) vote for each Lot in which they hold the interest required by Section 3.2. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles and Bylaws of the Association.

3.4 Record of Ownership. Every Owner shall properly cause to be filed of record the deed conveying ownership of the Lot. The new Owner shall submit a copy of the deed to the Association, which shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the Association of the name and address of the mortgagee; and the Association shall maintain all such information in the record of ownership.

### ARTICLE 4 - PROPERTY RIGHTS IN LOTS

4.1 Use and Occupancy. Each Lot shall be bound by, and the Owner shall comply

with, the restrictions contained in this Declaration for the mutual benefit of the Owners.

4.2 Right of Ingress and Egress. Each Owner shall have a right of ingress to and egress from their Lot, with such right being perpetual and appurtenant to the Lot ownership.

4.3 Restrictions on Lot Division. All Owners are prohibited from any further dividing of any and all Lots subject to this Declaration.

4.4 Restrictions on Common Area Divisions. No common area may be further subdivided and is prohibited from any further development.

4.5 Easements Shown on the Plat Map. Lots shall be subject to the easements shown on the Plat.

#### ARTICLE 5 - ENCROACHMENTS

5.1 No Encroachment. No Lot shall encroach upon an adjoining Lot. If, however, an encroachment occurs due to the settlement or shifting of a structure or any other reason whatsoever beyond the control of any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue.

5.2 Conveyance Subject to Easement. The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Article without specific or particular references to such easement.

5.3 Liability. Nothing in this section shall relieve an Owner of liability in the case of the Owner's willful misconduct or failure to adhere to the Plat Map.

#### ARTICLE 6 - ARCHITECTURAL CONTROL PROVISIONS

6.1 Land Use and Building. Each Lot shall be used exclusively for the construction and occupancy of a Single Family Residence to be occupied by a Single Family. Except as may be specifically provided in this Declaration, no building shall be erected, altered, placed or permitted to remain on any Lot other than (1) one Single Family Residence.

6.2 Residence Size and Materials. All construction within the Subdivision must comply with Layton City code.

6.3 Improvements.

(a) Completion of Improvements. Construction of all Improvements, including painting and all exterior finish, shall be completed within twelve (12) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, the periods specified in this section may be extended for a reasonable length of time. The building areas shall be kept reasonably clean and in workmanlike order during the construction period. All construction activities shall

conform to city ordinances and/or regulations.

(b) Fencing. Any individual Lot fencing must be six (6) feet high and in accordance with City requirements. No fences shall be allowed in the front yards or the front setback area.

(c) No Temporary or Prefab Structures. No previously erected, used, or temporary structure, mobile home, trailer house, or any other non-permanent structure may be installed or maintained within the Property, with the exception of those temporary structures permitted pursuant to Section 6.4 below. No prefabricated housing may be installed or maintained within the Property.

#### 6.4 Temporary Structures.

(a) Subject to Sections 6.4(b) and 6.4(c) below, no structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used on within the Property at any time as a residence, either temporarily or permanently.

(b) A single detached garage will be permitted on any Lot within the Property so long as: (i) such structure complies with all City code and set-back requirements; and (ii) the plan and materials for such structure have been approved by the ACC in accordance with Section 6.5(b).

(c) Declarant may place or erect temporary or portable structures to be used for the purpose of establishing a sales office within the Property. Furthermore, Declarant may place temporary sheds for storage in connection with construction, so long as such sheds are maintained in a good condition and removed no later than the date of completion of construction.

#### 6.5 Architectural Control Committee.

(a) There shall be an Architectural Control Committee (the "ACC"). The ACC shall be the Declarant at the following address: 500 N. Market Place Drive, Suite 201, Centerville, UT 84014.

(b) The ACC shall approve or deny plans for all buildings proposed for erection, placement, or alteration within the planned development within ten (10) business days of a formal written submittal. Failure of the ACC to approve or deny the plans within such time period shall not constitute an approval. The City may require that building permit applications show evidence that the ACC has approved each building plan.

(c) The ACC shall have the right, but not the duty, to enforce the terms of this Declaration by any legal means and shall be entitled to recover its costs and attorney fees from the other party in any such enforcement action by the ACC, whether or not a judicial proceeding is instituted.

6.6 Common Areas. Maintenance and landscaping shall be performed by the Association to keep common areas in their original condition and in accordance with City standards. The sole Common Area in the Community is a landscaped park strip along Gordon Avenue and Lot 101. The Association shall irrigate and maintain the common area. Maintenance shall be carried out by the Association in perpetuity and shall be paid for through the means of collection of association fees.

No alteration to the common areas is allowed without the prior written consent from the City. In due time, Declarant will deed all common areas to the Association.

6.7 Assessments. An "Initial Membership Fee" of Two Hundred Dollars (\$200.00) shall be due within the first calendar month of occupancy. A "Monthly Membership Assessment", in an amount to be determined by the Association shall be collected from each Owner on a monthly basis. The first Monthly Membership Assessment shall be due on the last day of the second month of occupancy. The Initial Membership Fee and the Monthly Membership Assessment amount shall be fixed or modified by the Association on an annual calendar year basis. The assessments shall be used by the Association to maintain and preserve the common areas. All assessments, transfer fees, late payment penalties and charges, if any, together with interest, all as set by the Association, and costs and reasonable attorney's fees shall be a lien on the Lot subordinate only to a first mortgage or first deed of trust on such Lot and may be foreclosed in the same manner as a deed of trust under Utah law. Each Owner shall be personally responsible for his or her share of assessments imposed by the Association. Assessments shall be binding upon and inure to each Owner's assigns and successors and the obligation to pay the same shall be a continuing lien on the Lot.

#### ARTICLE 7 - RESTRICTIONS ON USE

7.1 Restrictions and Requirements. The following restrictions and requirements are in addition to all other restrictions and requirements contained in this Declaration:

(a) Residential Use. Lots shall be used for residential purposes in accordance with, and subject to, the other provisions of this Declaration. Except as provided in this subsection, no trade, craft, business, profession, commercial or similar activities of any kind shall be conducted on or within any Lot or in any other portion of the Community. Nothing in this Section shall be construed so as to prevent or prohibit:

(i) Activities relating to the rental or sale of Lots;

(ii) An Owner from maintaining his or her professional personal library; keeping his or her personal business or professional records; handling his or her personal business or professional telephone calls; or conferring with business associates or customers so long as there is no significant increase in traffic or noise on or in such Owner's Lot; or

(iii) The right of Declarant, its successors and assigns or any contractor or homebuilder to construct a unit on any Lot and to store construction materials and equipment on such Lots in the normal course of construction.

(b) Drainage System. There shall be no interference with the established drainage patterns or systems over or through any Lots so as to affect any other Lot or any real property outside the Property. The term "established drainage" shall mean the detention basin, drainage swales, conduits, inlets and outlets designed and constructed for the Property.

(c) Offensive Activities. No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of cars, car parts and appliances, or other noxious or offensive activities shall be permitted on or in any Lot or other portion of the Property, nor shall anything be done in or placed upon or within any Lot which interferes with or

jeopardizes the enjoyment of other Lots or which is a source of unreasonable annoyance to other Owners.

(d) Unlawful Activities. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

(e) Animals.

(i) The keeping of any animal by a Lot Owner shall be in compliance with any Davis County or Layton City ordinances.

(ii) Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Property. Any inconvenience, damage or unpleasantness caused by such animals shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of wastes of their animals from all portions of the Property.

(f) Rubbish and Trash. No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container or within a trash enclosure screened from public view. All such waste and garbage must be promptly and periodically removed.

(g) Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Property unless such vehicle is within a garage. A vehicle shall be deemed in an "extreme state of disrepair" when its presence offends the occupants of the other Lots.

(h) Noise Disturbance. Residents shall exercise extreme care about making noises or the use of musical instruments, radios, televisions, or amplifiers and may not disturb other residents.

## ARTICLE 8 - DECLARANT RIGHTS AND CONTROL

8.1 Other Rights. In addition to any other rights under this Declaration, Declarant:

(a) Sales Office and Model. Shall have the right to maintain sales offices and models on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales offices and models during reasonable hours any day of the week.

(b) For Sale Signs. May maintain a reasonable number of "For Sale" signs, the size of which may be determined by Declarant.

(c) Right to Add Property. Declarant reserves the right to unilaterally annex additional property to the Property in its sole discretion.

8.2 Easements Reserved to Declarant.



(a) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, is hereby expressly granted.

(b) The Declarant further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other licenses or permits as the Declarant may deem necessary for the improvement of the Community in, over, through, upon and across any and all of the roads, streets, avenues, and alleys and in, over, through, upon and across each and every Lot in any easement area set forth in this Declaration or shown on the Plat Map.

(c) The Declarant further reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way or easements, including easements in the areas designated as storm water management reservation, to public use all as shown on the Plat Map.

#### **ARTICLE 9 - OWNER MAINTENANCE OBLIGATIONS**

9.1 Lots/Declarant Improvements. Maintenance of the Lots and all structures, landscaping and all other Improvements thereon shall be the sole responsibility of the Owner thereof who shall maintain such Lot in accordance with this Declaration. The maintenance of all improvements constructed by Declarant, including walls, entry monuments and other similar structures shall be the sole responsibility of the Owner of the Lot upon which such Improvement has been erected.

#### **ARTICLE 10 - COMPLIANCE AND ENFORCEMENT**

10.1 Compliance. Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration. Failure to comply therewith shall be grounds for an action or suit maintainable by an aggrieved Owner. An Owner seeking to enforce the provisions of this Declaration shall be entitled to his or her costs and attorney fees in any action in which the Owner prevails.

10.2 Injunctive Relief. Nothing in this section shall prevent an Owner or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

#### **ARTICLE 11 - INSURANCE**

11.1 Hazard Insurance on Improved Dwelling Lot Property Lots. Each Owner of an improved Lot shall at all times maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to and not less than one hundred percent (100%) of the current replacement value of the Improvements

on such Lot.

11.2 Obligation of Dwelling Lot Property to Repair and Restore. In the event of any damage or destruction of the Improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed Improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such Improvements originally approved by the Declarant.

## ARTICLE 12 - AMENDMENT AND DURATION

### 12.1 Amendments.

(a) Approval Required. So long as Declarant owns any lot in the Community, Declarant shall have the right to amend this Declaration without the consent of any other Owner, unless consent is otherwise required from City. Thereafter, an amendment to this Declaration may be submitted.

(b) Additional Approval Requirements. No amendment may create, limit or diminish any special Declarant rights, change the boundary of any Lot or uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment. No person, firm or entity shall change, modify or amend any of the conditions of this Declaration without first obtaining City approval.

(c) Execution and Recordation. An amendment shall not be effective until the amendment is certified and recorded in the Recorder's Office of Davis County, Utah.

12.2 Duration. This Declaration perpetually shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Property.

## ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 Invalidity; Number; Captions. The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

13.2 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration, restricting or regulating the

Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

13.3 Non-Waiver. Failure by Declarant or any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

13.4 Waiver, Precedent and Estoppel. No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Declarant or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Declarant or Owner as to any similar matter.

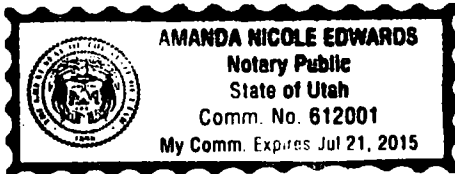
IN WITNESS WHEREOF, Declarant has executed, delivered and recorded this Declaration as of the date and year first above written.

OAKWOOD HOMES OF UTAH, LLC,  
a Delaware limited liability company

By: [Signature]  
Its: VP Land

STATE OF UTAH )  
                                          :SS.  
County of            )

On this 30 day of July, 2014, personally appeared before me James Dodin, whose identity is personally known to me and who by me duly sworn, did say that he is the VP Land of Oakwood Homes of Utah LLC, and signed in behalf of said company by the appropriate authority.



[Signature]  
Notary Public

ELLISON PARK ESTATES PHASE 1

BEGINNING AT A POINT ON THE SOUTH LINE OF GORDON AVENUE SAID POINT BEING LOCATED NORTH 89°50'40" EAST COINCIDENT WITH THE SECTION LINE 1630.23 FEET AND SOUTH 00°11'10" WEST 42.00 FEET FROM THE NORTHWEST CORNER OF SECTION 19, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 89°50'40" EAST COINCIDENT WITH SAID SOUTH LINE 193.04 FEET TO A POINT ON A NON TANGENT ARC, SAID POINT BEING ON THE EASTERLY LINE OF THAT CERTAIN LAYTON CITY PARCEL DESCRIBED IN DEED AND RECORDED AT THE OFFICE OF THE DAVIS COUNTY RECORDER AS ENTRY # 2269809, IN BOOK 4281, PAGE 254; THENCE SOUTHWESTERLY ALONG THE EASTERLY LINE OF SAID PARCEL THE FOLLOWING (4) COURSES: (1) SOUTHWESTERLY 25.35 FEET ALONG THE ARC OF A 16.32 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 89°00'17" (LONG CHORD BEARS SOUTH 44°41'10" WEST 22.88 FEET, CENTER BEARS SOUTH 00°48'33" EAST 16.32 FEET) TO A POINT OF TANGENCY, (2) SOUTH 00°11'10" WEST 99.29 FEET, (3) SOUTH 03°02'49" WEST 60.11 FEET, AND (4) SOUTH 00°11'10" WEST 1024.48 FEET TO THE NORTH LINE OF THAT CERTAIN PARCEL RECORDED AS ENTRY 2215128, IN BOOK 4150, ON PAGE 1349 AT THE OFFICE OF THE DAVIS COUNTY RECORDER; THENCE SOUTH 89°50'40" WEST ALONG SAID NORTH LINE 174.00 FEET TO THE EAST LINE OF THAT CERTAIN PARCEL DESCRIBED IN ENTRY 1849390, BOOK 3261, PAGE 857; AND THENCE NORTH 00°11'10" EAST ALONG SAID EAST LINE 1200.00 FEET TO THE SOUTH LINE OF SAID GORDON AVENUE AND THE POINT OF BEGINNING. CONTAINING: 209,293 SF OR 4.81 ACRES (13 LOTS)