

When Recorded, Mail to:  
Westgate Partners, LLC  
Attn: David Tolman  
230 W. Towne Ridge Parkway, Suite 510  
Sandy, Utah 84070

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Gary W. Ott  
Recorder, Salt Lake County, UT  
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BY: eCASH, DEPUTY - EF 78 P.

**DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND PROTECTIVE RESTRICTIONS  
FOR  
WESTGATE ACLAIME AT INDEPENDENCE**

**Bluffdale, Salt Lake County, Utah**

DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND PROTECTIVE RESTRICTIONS  
FOR  
WESTGATE ACLAIME AT INDEPENDENCE

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND PROTECTIVE RESTRICTIONS FOR WESTGATE ACLAIME AT INDEPENDENCE (this "**Declaration**") is made as of this 23<sup>rd</sup> day of May, 2016, by Westgate Partners, LLC, a Utah limited liability company (collectively, "**Declarant**"), Rochelle DB-3, L.C., a Utah limited liability company ("**Rochelle**"), Chocolate Homes Westgate, LLC, a Utah limited liability company ("**Chocolate**"), Holmes Westgate Towns, LLC, a Utah limited liability company ("**Holmes Towns**"), Holmes West Gate, LLC, a Utah limited liability company ("**Holmes West Gate**") (Holmes Towns and Holmes West Gate are collectively referred to herein as "**Holmes**"), and Alpine Homes, LLC, a Utah limited liability company ("**Alpine**").

**RECITALS:**

- A. Declarant, Rochelle, Chocolate, Holmes and Alpine collectively hold legal title to certain real property located in the County of Salt Lake, State of Utah, which property is described in Exhibit A, attached hereto and incorporated herein (the "**Community**").
- B. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners, Mortgagees, Occupants or other holders of an interest in the Community, or any part thereof, certain mutually beneficial covenants, restrictions and obligations with respect to the proper development, use and maintenance of the various parcels within the Community.
- C. Declarant desires and intends that the Owners, Mortgagees, Occupants, and other persons hereafter acquiring any interest in or otherwise utilizing property within the Community, shall at all times enjoy the benefits of, and shall hold their interest subject to the rights, privileges, covenants, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the aesthetic and cooperative aspects of the Community and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Community.
- D. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Community and the interests therein conveyed and to establish thereon a planned community.
- E. In order to cause this Declaration to run with the land comprising the Community and to be binding upon the Community and the Owners thereof from and after the date of this Declaration is Recorded, Declarant hereby makes all conveyances within the Community, whether or not so provided in the conveying instruments, subject to the Covenants herein set forth; and by accepting deeds, leases, easements or other grants or conveyances to any portion of the Community, the Owners and other transferees for themselves and their

heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the Covenants (including but not limited to the obligation to pay Assessments) hereinafter set forth except to the extent such persons are specifically excepted herefrom.

- F. The Project created by this Declaration is not a cooperative. The Community is not governed by an association and the Community Association Act (U.C.A. Section 57-8a-101, *et seq.*) (“CAA”) does not apply, unless the Owners elect to amend this Declaration pursuant to the terms of this Declaration to create an association and subject the Community to the CAA.
- G. The Project is subject to certain restrictive covenants in favor of Declarant, and this Declaration is subject and subordinate to such restrictive covenants.

NOW, THEREFORE, Declarant does hereby declare and establish the following covenants, conditions, easements, and protective covenants:

## **ARTICLE I** **Definitions**

**1.1** “**Additional Fines**” means the additional fines assessed pursuant to Section 4.3(4) of this Declaration.

**1.2** “**Attached Dwelling Unit**” means a Dwelling Unit that shares a party wall, ceiling or floor with another Dwelling Unit, such as a townhome.

**1.3** “**Builder**” shall mean a Person who acquires a Parcel or a group of five or more Lots in the Community for the purpose of improving and constructing Units or other Improvements thereon for resale to the general public or other development purposes; provided, however, that the term "Builder" shall not mean or refer to Declarant or its successors.

**1.4** “**CAA**” shall mean the Community Association Act as defined in Recital F of this Declaration.

**1.5** “**Community**” means the land subject to the terms and conditions of this Declaration.

**1.6** “**Community-Wide Standards**” means those standards of aesthetics, environment, appearance, architectural design and style, maintenance, conduct and usage generally prevailing within the Community as set forth in this Declaration.

**1.7** “**Declarant**” means collectively Westgate Partners, LLC, and its successors or assigns which take title to any portion of the Community for the purpose of development and/or sale and who are designated as Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

**1.8** “**Declarant Affiliate**” means a Person that is controlling, controlled by, or under

common control with Declarant, including, without limitation, a subsidiary or an entity the principal of which is also a principal of Declarant.

**1.9** “**Declaration**” shall mean this Declaration of Covenants, Conditions, Easements, and Protective Covenants for Westgate Aclaime at Independence.

**1.10** “**Design Guidelines**” shall mean the Design Guidelines which are included within the Project Plan, and attached hereto as Exhibit D, as such Design Guidelines may from time to time be amended in accordance with the terms of the Development Agreement. A copy of the Design Guidelines, as amended from time to time, shall be on file at all times in the office of Declarant.

**1.11** “**Development Agreement**” shall collectively mean that certain Amended and Restated Development Agreement for ER Development, Inc. (Westgate Property), between ER Development, Inc., ER Investment LLC, and Bluffdale City, dated September 23, 2014, recorded on December 2, 2014 as Entry No. 11955070, and recorded again on December 3, 2014 as Entry No. 11955487, in the Office of the Salt Lake County Recorder, as such may be amended from time to time. Any land conveyed, assigned, or transferred by Deed or other written instrument to any Municipal Authority under the Development Agreement shall be Exempt Property. In the event of any conflict between this Declaration and the Development Agreement (including without limitation the Project Plan thereto), the terms of the Development Agreement shall control.

**1.12** “**Dwelling Unit**” shall mean any building or portion of a building situated upon a Lot or Parcel designed and intended for use and occupancy as a residence by a Single Family. A Dwelling Unit includes both Attached Dwelling Units and detached dwelling units.

**1.13** “**Eligible Holder**” means the Eligible Holder as defined in Section 8.1 of this Declaration.

**1.14** “**FHA**” shall mean and refer to the Federal Housing Administration.

**1.15** “**First Fine**” means the first fine assessed pursuant to Section 4.3(1) of this Declaration.

**1.16** “**First Mortgage**” means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

**1.17** “**First Mortgagee**” means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage.

**1.18** “**Governing Documents**” means all documents and applicable provisions thereof as set forth in this Declaration, any Supplemental Declaration, any Development Agreement, the Plat, Rules and Regulations, Design Guidelines, all written decisions and resolutions of the WADRC, and any lawful amendments to any of the foregoing.

**1.19** “**Improvements**” means any improvement now or hereafter constructed within the Community and includes anything that is a structure and appurtenances thereto of every type and



kind, including but not limited to any (a) Unit, building, shed, guest house, casita, pergola, swimming pool, hot tub, screening wall, accessory building, fence, or wall; (b) any walkway, garage, road, driveway or parking area; (c) any mailbox, sign, covered patio, stairs, deck, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Unit); (d) any radio or television antenna or receiving dish; (e) any paving, exterior lights, curbing, trees, shrubs, hedges, grass, windbreak, or other landscaping improvements of every type and kind; (f) any excavation, fill, retaining wall or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel, and related fixtures and equipment; and (g) any other structure of any kind or nature.

**1.20** “Land Use Classification” shall mean the classification to be established by the Declarant, which designates the type of Improvements which may be constructed on a Lot, Parcel or association land and the purposes for which such Improvements and surrounding land may be utilized.

**1.21** “Land Use Plan” shall mean the Land Use Plan, which is included within the Project Plan, as such Land Use Plan may from time to time be amended in accordance with the terms of the Development Agreement. A copy of the Land Use Plan, as amended from time to time, shall be on file at all times in the office of the Declarant.

**1.22** “Lease” shall mean a written lease or sublease for the leasing or rental of a Unit.

**1.23** “Lessee” means the lessee or tenant under a lease, oral or written, of any Unit, including an assignee of the lessee’s or tenant’s interest under a lease.

**1.24** “Live/Work Unit(s)” means Attached Dwelling Units where the portion of the first floor facing the street is a “work space” and the upper floors are residential.

**1.25** “Lot” shall mean (a) any real property within the Community designated as a Lot on any Plat or any Parcel that is developed and improved by Units.

**1.26** “Westgate Aclaiame Design Review Committee” or “WADRC” means the design review committee established by the Declarant.

**1.27** “Mortgage” means a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

**1.28** “Mortgagee” means a beneficiary or holder of a Mortgage.

**1.29** “Municipal Authority” means any applicable governmental entity or municipality that has jurisdiction over all or some part of the Community including without limitation Bluffdale City, Utah and Salt Lake County, Utah.

**1.30** “Neighborhood” shall mean two or more Lots or Parcels which share interests other than those common to all Lots or Parcels. By way of illustration and not limitation, a Single Family Residential Development, including any that may have Attached Dwelling Units,

might each be designated as separate Neighborhoods, or a Neighborhood may be comprised of more than one housing or use type with other features in common. In addition, each Parcel intended for development shall constitute a Neighborhood, subject to division by Declarant into more than one Neighborhood upon development. Where the context permits or requires, the term "Neighborhood" shall also refer to the homeowners' association which shall be established to act on behalf of the Owners within the Neighborhood. Neighborhood boundaries may be established and modified as provided herein. Each Neighborhood shall be subject to a Neighborhood Declaration.

**1.31** "Neighborhood Declaration" shall mean a declaration recorded against a Neighborhood containing restrictions on use and establishing a Land Use Classification for each Parcel covered by the Neighborhood Declaration as described herein. The Neighborhood Declaration shall identify the density allocated to the property it covers. It is contemplated that a Neighborhood Declaration will be, in contrast to a Supplemental Declaration, a more comprehensive and detailed document that more specifically regulates a Neighborhood. In the event of any conflict between this Declaration and any Neighborhood Declaration, the terms of this Declaration shall control.

**1.32** "Occupant" means any Person other than an Owner, who has actual use, possession or control of a Unit or any portion thereof, or any other Improvement located within the Community.

**1.33** "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Unit within the Community, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with Declarant the lessee (rather than the fee owner) will be considered the Owner for the purpose of exercising all right hereunder.

**1.34** "OTARD" means the Over-The-Air Reception Devices Rule as defined in Section 6.7 of this Declaration.

**1.35** "Parcel" means one or more parcels of land within the Community that is intended for future subdivision and/or development by a Builder. A Parcel is anticipated to be a large tract of land that will be subdivided into Lots and then developed based upon the Land Use Classification.

**1.36** "Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

**1.37** "Plat" shall mean the subdivision plat or record of survey map affecting the Community filed in the office of the County Recorder of Salt Lake County, Utah, attached hereto as Exhibit B, as such may be amended from time to time.

**1.38** "Project" means the development known as Westgate Aclaime at Independence, located in Bluffdale City (the "City"), Salt Lake County, Utah.

**1.39** "Project Plan" shall mean that certain Project Plan attached as Exhibit C to the

Development Agreement, as such Project Plan may from time to time be amended in accordance with the terms of the Development Agreement. A copy of the Project Plan, as amended from time to time, shall be on file at all times in the office of Declarant.

**1.40** “Public View” means, as to each Unit, visibility of a location on the lot or exterior of the Unit from a street or public or common area.

**1.41** “Record,” “Recording,” “Recorded” and “Recordation” means placing or having placed an instrument of public record in the official records of Salt Lake County, Utah.

**1.42** “Regulated Modification” means (without implication that any particular matter is permitted or prohibited by this Declaration and without limitation as to Article VI of this Declaration as set forth below) the commencement, placement, construction, reconstruction or erection of, or modification, alteration, or addition to, any building, structure, improvement, thing or device, and any usage thereof, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing within the Community as of the date of establishment of the Regulated Modification, excluding any such matters or activities conducted by Declarant or WADRC, but including by way of illustration and not of limitation:

1.42.1 any building, garage, porch, shed, bathhouse, swimming pool, hot tub, pool house, coop or cage, covered or uncovered patio, children’s play fort or play set and any other recreational devices or equipment used outside of a Unit, fence, wall or other screening device, curbing, paving, wall, trees, shrubbery and any other landscaping, fountains, statuary, lighting fixtures, signs or signboard, or any temporary or permanent living quarters, and any other temporary or permanent modification or alteration;

1.42.2 any other building, structure, improvement, thing or device, and any activities related thereto and any usage thereof, as specified from time to time by applicable Design Guidelines, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing in the Community.

1.42.3 any modifications to the structural, mechanical or electrical elements, systems or components of a Unit.

**1.43** “Related Parties” means and applies as follows:

1.43.1 Lessees or other Occupants of each Owner’s Unit are Related Parties of that Owner, and with respect to each such Owner, tenant or other occupant, Related Parties include: (i) their respective family and other household members (including in particular but without limitation all children and other dependents), (ii) their respective guests, invitees, servants, agents, representatives and employees, and (iii) all other Persons over which each has a right of control or under the circumstances could exercise or obtain a right of control.

1.43.2 Related Parties of the WADRC and Declarant include their respective officers, directors, partners, co-venturers, committee members, servants, agents, representatives and employees regarding all acts or omissions related to any of the foregoing representative

capacities.

**1.44** “Released Persons” means the Released Persons as defined in Section 7.8 of this Declaration.

**1.45** “Residence” means any Dwelling Unit situated within the Community.

**1.46** “Residential” or “Residential Areas” shall include Single Family Residential Developments, including those that have Attached Dwelling Units, and all common recreational areas and facilities associated with any of the foregoing.

**1.47** “Rules and Regulations” shall mean the current applicable Rules and Regulations as same may be supplemented, amended, modified or repealed as provided in this Declaration.

**1.48** “Second Fine” means the second fine assessed pursuant to Section 4.3(2) of this Declaration.

**1.49** “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 persons not all so related, who maintain a common household in a Dwelling Unit.

**1.50** “Single Family Residential Development” and/or “Single family Residential Use” shall mean Lots in a planned unit development or subdivision intended for Single Family occupancy in Dwelling Units, together with related areas intended for the use and enjoyment of the Owners and Residents of such Lots.

**1.51** “Supplemental Declaration” shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which may, but need not, impose, expressly or by reference, additional restrictions and obligations on the land described therein, or may modify or delete any restriction or obligation of this Declaration as same applies to the land described therein.

**1.52** “Third Fine” means the third fine assessed pursuant to Section 4.3(3) of this Declaration.

**1.53** “Telecommunications Act” means the Telecommunications Act of 1996 as defined in Section 6.7 of this Declaration.

**1.54** “Use” shall mean one or more specific types of property development and classification as set forth in this Declaration.

**1.55** “Unit” means Dwelling Unit, including any Attached Dwelling Unit, and including the applicable Lot and any Improvements constructed or located thereon. A Unit shall exclude any public or common area.

**1.56** “U.C.A.” shall mean Utah Code Annotated.

**1.57** “VA” shall mean the Veterans Administration.

1.58 “Visible Location” means a location in the Community which is in Public View.

1.59 “Warning Notice” means the Warning Notice as defined in Section 4.3 of this Declaration.

## **ARTICLE II** **Declaration**

2.1 **Declaration.** Declarant hereby declares that all of the real property described in Exhibit A shall be held, sold, and conveyed subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the Community or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof. All of the property within the Community shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration.

2.2 **Development of Community.** Notwithstanding the foregoing, no provision of this Declaration shall be construed or enforced to prevent or limit the Grantor’s right to complete development of the Community in accordance with the plan therefor as the same exists or may be modified from time to time by the Declarant nor prevent normal construction activities during the construction of Improvements within the Community. No development or construction activities shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Declaration may be granted by the WADRC, provided that such waiver shall be for a reasonable period of time. Any such waiver need not be recorded and shall not constitute an amendment of this Declaration.

2.3 **Conflicts with Law.** In the event of any conflicts between the provisions of this Declaration and the requirements of the applicable ordinances of any Municipal Authority, the more restrictive provisions shall control.

2.4 **No Condominium/Association.** Declarant and each Owner hereby agree and understand that the Community is not, by execution and recording of this Declaration, being submitted to the provisions of the Condominium Ownership Act (U.C.A. § 57-8-1, *et seq.*), and that no association is being created whereby the Declaration and the Community would be subject to the CAA. This Declaration does not constitute a declaration as provided for in the Condominium Ownership Act.

**2.5 Readjustment of Parcel Boundaries.** Declarant hereby reserves for itself and Declarant Affiliates, the right to effectuate minor realignment and adjustment of the boundary lines between Parcels that are owned by Declarant and Declarant Affiliates for purposes of proper configuration and final engineering of the Community; provided that any such realignment and adjustment does not materially affect any existing Residence or Improvement (other than landscaping) on the affected Parcel. The authority to realign and adjust such Parcel boundary lines shall be exclusively reserved to the Declarant and Declarant Affiliate, in their sole and reasonable discretion, subject to the other provisions of this Section 2.5. All Owners specifically acknowledge and agree that they shall cooperate with Declarant to effectuate such minor realignment and adjustment of the Parcel boundary lines as reasonably requested by the Declarant such as through signing an amended plat. Further, all Owners acknowledge and agree that no amendment to this Declaration or the Plat shall be required to effectuate any Parcel boundary line adjustments so long as such adjustments are made pursuant to U.C.A. §17-27-808(7), as amended, or any successor statute. More particularly, boundary line adjustments between adjacent Parcels may be executed upon the approval of the appropriate Municipal Authority and upon recordation of an appropriate deed if:

(a) No new Residence or Improvement results from the Parcel boundary line adjustment and exchange of title;

(b) The appropriate Municipal Authority and adjoining property Owners consent to the boundary line adjustment (such Owners' consent to be granted as described above);

(c) The adjustment does not result in violation of applicable Municipal Authority zoning requirements; and

(d) The appropriate Municipal Authority Records a notice of approval in accordance with U.C.A. § 17-27-808(7)(c), as amended.

**2.6 Development Plan.** Notwithstanding any other provision of this Declaration to the contrary, and subject to the appropriate Municipal Authority, Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to its plan of development with respect to any Parcels owned by the Declarant in any way which the Declarant desires including, but not limited to, changing all or any portion of the Parcels owned by the Declarant or changing the nature or extent of the uses to which such Parcels may be devoted.

**2.7 Conveyance of the Open Space Parcels and the Private Streets and Drives.** On or before the first (1<sup>st</sup>) anniversary of the recordation of this Declaration, Declarant will convey 100% of its rights, title and interest in and to Parcels A through Q (collectively, the "***Open Space Parcels***") and the private streets and drives (collectively, the "***Private Streets/Drives Parcels***"), as such Parcels are labeled on the Plat, as follows:

2.7.1 Open Space Parcels. Declarant shall convey 100% of its rights, title and

interests in and to the Open Space Parcels (by quitclaim deed or Plat dedication, as applicable) as follows: (i) Parcels M, N and O, as such Parcels are labeled on the Plat, to the homeowners' association of the Rochelle Neighborhood; (ii) Parcels G, H, I, J, K, L and P, as such Parcels are labeled on the Plat, to the homeowners' association of the Holmes Towns Neighborhood; (iii) Parcel F, as such Parcel is labeled on the Plat, to the canal company owning/operating the East Jordan Canal; and (iv) Parcels A, B, C, D, E and Q, as such Parcels are labeled on the Plat, to the City. The Neighborhoods' responsibilities regarding the maintenance, taxes, etc., of the Open Space Parcels shall be as set forth in Article III below.

2.7.2 Private Streets and Drives. Declarant shall convey, by quitclaim deed, 100% (unless otherwise specifically stated) of its rights, title and interests in and to the Private Streets/Drives Parcels as follows: (i) Parcel 33-11-379-164 [Albion Meadow Way], Parcel 33-11-379-163 [Private Driveway for Lots 162-181], Parcel 33-11-379-165 [Private Driveway for Lots 142-161], and an undivided 1/3 interest in Parcel 33-11-379-162 [Wildcat Ridge Drive/Kanarra Creek Lane/Parking Lot], as such Parcels are generally depicted on the Plat, to the homeowners' association of the Chocolate Neighborhood; (ii) Parcel 33-11-379-160 [Emerald Pools Lane/Thunder Horse Lane], and an undivided 1/3 interest in Parcel 33-11-379-162 [Wildcat Ridge Drive/Kanarra Creek Lane/Parking Lot], as such Parcels are generally depicted on the Plat, to the homeowners' association of the Rochelle Neighborhood; and (iii) Parcel 33-11-377-060 [Queens Garden Lane/Painted Horse Lane], Parcel 33-11-379-161 [White Rock Lane/Narrows Lane/Echo Canyon Lane], and an undivided 1/3 interest in Parcel 33-11-379-162 [Wildcat Ridge Drive/Kanarra Creek Lane/Parking Lot], as such Parcels are generally depicted on the Plat, to the homeowners' association of the Holmes Towns Neighborhood. The Neighborhoods' responsibilities regarding the maintenance, taxes, etc., of the Private Streets/Drives Parcels shall be as set forth in Article III below.

### **ARTICLE III** **Maintenance and Taxes**

**3.1 General Maintenance Obligations.** Each Owner will maintain its Parcel, Lot, Residence or Unit, subject to the terms and conditions of any Neighborhood Declaration if applicable. To the extent there are any common areas within any neighborhood, such common areas will be maintained by the person or entity designated to maintain such common areas, including an association, in the applicable Neighborhood Declaration.

**3.2 Neighborhood-specific Maintenance and Tax Obligations.** Certain Improvements within the Community, while for the benefit of all Owners, will provide particular benefit to certain Neighborhoods. Accordingly, the following maintenance and tax/assessment obligations shall be satisfied by the specific Neighborhood(s) as follows (individually, or collectively, the "*Neighborhood Obligation*"):

3.2.1 Chocolate Neighborhood. The homeowners' association for the Chocolate Neighborhood shall be solely responsible for: (i) 33% of the maintenance, repair and upkeep of, and 33% of the property taxes/assessments pertaining to, Parcel 33-11-379-162 [Wildcat Ridge Drive/Kanarra Creek Lane/Parking Lot]; and (ii) 100% of the maintenance, repair and upkeep of, and 100% of the property taxes/assessments pertaining to, Parcel 33-11-379-164 [Albion Meadow Way], Parcel 33-11-379-163 [Private Driveway for Lots 162-181], and Parcel 33-11-

379-165 [Private Driveway for Lots 142-161]. The cost contribution obligation of each Owner in the Chocolate Neighborhood for the maintenance/repair and tax/assessment responsibilities in this Section 3.2.1 shall be set forth in more detail in the Chocolate Neighborhood Declaration.

3.2.2 Rochelle Neighborhood. The homeowners' association for the Rochelle Neighborhood shall be solely responsible for: (i) 33% of the maintenance, repair and upkeep of, and 33% of the property taxes/assessments pertaining to, Parcel 33-11-379-162 [Wildcat Ridge Drive/Kanarra Creek Lane/Parking Lot]; (ii) 100% of the maintenance, repair and upkeep of, and 100% of the property taxes/assessments pertaining to, Parcel 33-11-379-160 [Emerald Pools Lane/Thunder Horse Lane]; and (iii) 100% of the maintenance, repair and upkeep of, and 100% of the property taxes/assessments pertaining to, Parcels M, N and O. The cost contribution obligation of each Owner in the Rochelle Neighborhood(s) for the maintenance/repair and tax/assessment responsibilities in this Section 3.2.2 shall be set forth in more detail in the Rochelle Neighborhood Declaration.

3.2.3 Holmes Towns Neighborhood. The homeowners' association for the Holmes Towns Neighborhood shall be solely responsible for: (i) 33% of the maintenance, repair and upkeep of, and 33% of the property taxes/assessments pertaining to, Parcel 33-11-379-162 [Wildcat Ridge Drive/Kanarra Creek Lane/Parking Lot]; (ii) 100% of the landscaping and irrigation maintenance, repair and upkeep of the portion of the park-strip that runs along the western boundary of Noell Nelson Drive from Coyote Gulch Way on the south to Harmon Day Drive on the north; (iii) 100% of the maintenance, repair and upkeep of, and 100% of the property taxes/assessments pertaining to, Parcels G, H, I, J, K, L and P; (iv) 100% of the maintenance, repair and upkeep of the monument signage and surrounding entry way landscaping on the northwest corner of Noell Nelson Drive and Harmon Day Drive; and (v) 100% of the maintenance, repair and upkeep of, and 100% of the property taxes/assessments pertaining to, Parcel 33-11-377-060 [Queens Garden Lane/Painted Horse Lane], and Parcel 33-11-379-161 [White Rock Lane/Narrows Lane/Echo Canyon Lane]. The cost contribution obligation of each Owner in the Holmes Towns Neighborhood for the maintenance/repair and tax/assessment responsibilities in this Section 3.2.3 shall be set forth in more detail in the Holmes Towns Neighborhood Declaration.

In the event any of the private streets or drives referenced in Sections 3.2.1 through 3.2.3 above are owned by Declarant, any property taxes/assessments pertinent thereto shall be reimbursed by the applicable Neighborhood to Declarant, in accordance with the percentages above. Any such taxes or assessments that are not reimbursed in a timely manner shall be treated as a Neighborhood Assessment in accordance with Section 3.2.4 below.

3.2.4 WADRC Self-Help. In the event the WADRC in its sole but reasonable discretion determines that a Neighborhood Obligation is not being satisfied, the WADRC shall first work in good faith to resolve the issue with the responsible Neighborhood. In the event a resolution cannot be reached, the WADRC shall have the right, but not the obligation, to impose a special assessment on each of the Owners in the responsible Neighborhood in order to fund the Neighborhood Obligation (the "*Neighborhood Assessment*"). Before imposing the Neighborhood Assessment, the WADRC will notify the affected Owners of its intent to conduct the needed maintenance and/or repairs, or pay the applicable taxes, and the need to collect the Neighborhood Assessment. Failure of any Owner to pay the Neighborhood Assessment when



due shall subject such Owner to the rights and remedies of Declarant described in Sections 4.2 through 4.5 below. The Neighborhood Assessment will be assessed against each Unit equally. Furthermore, the WADRC shall not be permitted to impose a Neighborhood Assessment in excess of Ten Dollars (\$10.00) per month, per Unit without first obtaining a majority vote of the Owners in the responsible Neighborhood.

**3.3 Maintenance of the City's Parcels.** The WADRC shall be responsible in its sole but reasonable discretion for working with the City to ensure the City's proper care and maintenance of Parcels A, B, C, D, E and Q (the "*City's Parcel(s)*"). In the event the WADRC determines in its sole but reasonable discretion that the City's Parcel(s) is/are not receiving proper care and/or maintenance by the City, the WADRC shall first work in good faith to resolve the issue with the City. In the event a resolution cannot be reached, to the extent allowable by law and with the express permission of the City, the WADRC shall have the right, but not the obligation, to impose a special assessment on each of the Owners in the Community in order to fund the needed maintenance and/or repair to the City's Parcel(s) (the "*Open Space Assessment*"). Before imposing the Open Space Assessment, the WADRC will notify the Owners in the Community of its intent to conduct the needed maintenance and/or repairs to the City's Parcel(s), and the need to collect the Open Space Assessment. Failure of any Owner to pay the Open Space Assessment when due shall subject such Owner to the rights and remedies of Declarant described in Sections 4.2 through 4.5 below. The Open Space Assessment will be assessed against each Unit equally. Furthermore, the WADRC shall not be permitted to impose an Open Space Assessment in excess of Ten Dollars (\$10.00) per month, per Unit without first obtaining a majority vote of the Owners in the Community.

#### **ARTICLE IV** **Rules and Regulations / Violations**

**4.1 Rules and Regulations.** Declarant may to adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce such reasonable Rules and Regulations applicable to the activities within the Community. Declarant shall have the right from time to time through the exercise of its business judgment promulgate reasonable rules and regulations that it deems beneficial to the Community, including, but not limited to: (i) traffic and parking regulations and other traffic control procedures, including, to the extent permitted by law, restricting parking to a single side of the street and timing that vehicles may be parked on streets; and (ii) all procedural and substantive aspects for the establishment, levy, collection and payment of fines for any violations of any Governing Documents. Rules and Regulations are of equal dignity with and may be enforceable in the same manner as the provisions of this Declaration; provided:

(a) Rules and Regulations may not be enacted retroactively (except that if any activity is subsequently covered by Rules and Regulations and such activity ceases after enactment of the Rules and Regulations covering same, then the Rules and Regulations will apply to the activity thereafter).

(b) Rules and Regulations may not be incompatible with the provisions of this Declaration.

(c) Rules and Regulations shall treat similarly situated Owners similarly,

except that Rules and Regulations may vary according to the level and type of development.

(d) Rules and Regulations may not abridge the rights of an Owner to display religious and holiday signs, symbols, and decorations inside a Unit, provided that Declarant may adopt reasonable time, place, and manner restrictions with respect to displays visible from outside a Residence or Unit.

(e) Rules and Regulations may not prohibit an Owner from displaying a United States flag on a Lot or inside a Residence or Unit, if the display complies with United States Code, Title 4, Chapter 1, The Flag or other applicable law.

(f) Rules and Regulations may not regulate the content of political signs; provided that Rules and Regulations may regulate the time, place, and manner of posting a political sign, and the Declarant may establish design criteria for political signs.

(g) Rules and Regulations may not interfere with the freedom of an Owner to determine the composition of the Owner's household; provided that an Association may: (i) require that all Occupants of a Residence or Unit be members of a single housekeeping unit consistent with applicable law; and (ii) limit the total number of Occupants permitted in each Residence or Unit on the basis of the Unit's size and facilities.

(h) Rules and Regulations may not interfere with an activity of an Owner within the confines of a Residence or Unit to the extent that the activity is in compliance with local laws and ordinances; provided that Rules and Regulations may prohibit an activity within a Unit if the activity is not normally associated with a residential use or permitted by this Declaration or (i) creates monetary costs for other Owners, (ii) creates a danger to the health or safety of occupants of other lots, (iii) generates excessive noise or traffic, (iv) creates unsightly conditions visible from outside the Unit, or (v) creates an unreasonable source of annoyance to persons outside the Unit.

(i) Rules and Regulations may not require an Owner to dispose of personal property that was in or on a Residence or Unit before the adoption of Rules and Regulations if the personal property was in compliance with all Rules and Regulations; provided that such exception only applies during the period of the Owner's ownership of the Unit and does not apply to a subsequent Owner who takes title to the Residence or Unit after adoption of such Rules and Regulations.

(j) Rules and Regulations may not unreasonably impede Declarant's or Builder's ability to satisfy existing development financing for community improvements and right to develop the Project or other properties in the vicinity of the Project.

(k) Rules and Regulations may not divest an Owner of the right to proceed in accordance with a completed application for design review, or to proceed in accordance with another approval process, under the terms of the Governing Documents in existence at the time the completed application was submitted by the Owner for review.

## **4.2 Enforcement.**

4.2.1 General. Declarant and its successors and assigns, and any Owner, have the right to enforce observance and performance of all restrictions, covenants, and conditions set forth in this Declaration, and in order to prevent a breach thereof or to enforce the observance or performance thereof have the right, in addition to all legal remedies, and all other rights and remedies set forth in this Declaration, to an injunction either prohibitive or mandatory.

4.2.2 Right to Inspect and Cure Defaults. The provisions of this provision apply to any breach of this Declaration. In addition and without prior notice, Declarant may photograph any violation or suspected violation at any time and otherwise obtain evidence to confirm the existence or non-existence of any suspected violation in any reasonable manner without liability in trespass or otherwise.

4.2.3 No Estoppel, Waiver or Liability. Failure of Declarant or any Owner to enforce any of the provisions of this Declaration will in no event be deemed a waiver of the right to do so thereafter (including without limitation as to the same or similar violation whether occurring prior or subsequent thereto). No liability may attach to Declarant or its respective Related Parties, for failure to enforce any provisions of this Declaration or any Rules and Regulations.

4.2.4 Cumulative Rights and Remedies. Each right and remedy set forth in this Declaration is separate, distinct and non-exclusive, and all are cumulative. The pursuit of any right or remedy so provided or as provided by law, or the failure to exercise a particular right or remedy, will not be construed as a waiver of such right or remedy or any other right or remedy. Without limitation of the foregoing, the provisions of this Section are declared specifically to be cumulative of the provisions of this Declaration.

4.2.5 Liability for Conduct of Related Parties. Each Owner, Lessee and Occupant must ensure that their respective Related Parties strictly comply with all applicable provisions of this Declaration. Each Owner, Lessee, and Occupant is liable for all consequences of any such violation by such party's Related Parties, and each Owner, Lessee and Occupant are jointly and severally liable for all consequences of any such violation by the Lessee's and Occupant's Related Parties. To the same extent as aforesaid each Owner, Lessee and Occupant must indemnify and hold harmless Declarant and its Related Parties from any and all claims, liabilities, damages, loss, costs, expenses, suits and judgments of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during or after proceedings in a court of competent jurisdiction, resulting, directly or indirectly, from any such violation.

4.2.6 Obligation for Payment of Costs and Expenses Resulting from Violations. Each Owner, Lessee and/or Occupant found to have committed, or who is responsible for, a violation or violations of any of the provisions of this Declaration is jointly and severally liable for payment to Declarant for, and to indemnify and to hold and save harmless Declarant and its Related Parties from, any and all claims, liabilities, damages, loss, costs, expenses, suits and judgments of whatsoever kind, including reasonable attorney's fees whether incurred prior to, during or after proceedings in a court of competent jurisdiction, incurred or attributable to any such violation(s), and must pay over to Declarant all sums of money which Declarant or its representatives may pay or become liable to pay as a consequence, directly or indirectly, of such violation(s). All such sums are secured by the continuing assessment lien established by this

Declaration. All such sums are due and payable upon demand by Declarant without the necessity of any other or further notice of any act, fact or information concerning the Declarant's rights or such Owner's or their tenant's liabilities under this Section; provided, in the case of indemnification the demand shall contain a statement setting forth the Declarant's payment or liability to pay the claim with sufficient detail to identify the basis for the payment or liability to pay.

4.2.7 Filing of Notices of Non-Compliance. At any time Declarant determines in good faith there probably exists any noncompliance with any provisions of this Declaration, Declarant may at its option cause a notice of noncompliance to be filed in the Official Public Records of Salt Lake County, Utah covering the affected Parcel, Lot, Residence, or Unit and the Owner(s) thereof at the sole cost and expense of such Owner(s). All such costs and expenses are due and payable upon demand, and are secured by the Declarant's continuing assessment lien.

**4.3 Fines.** Declarant may assess a fine against any Owner for a violation of the Declaration or any Rules and Regulations, subject to the following: (a) before assessing a fine, Declarant will (i) notify the Owner of the violation as provided herein, and (ii) inform the Owner that a fine will be imposed if the violation is not remedied. Any unpaid fines shall be treated as Assessments and subject to any applicable interest and late fees commencing as of the date of the assessment. For violation of any of the covenants contained in this Declaration or any of the Rules and Regulations, Declarant may provide written notice to an Owner identifying the violation and requesting corrective action or compliance within thirty (30) days of the notice (the "**Warning Notice**"). The following fines shall be imposed if the violation is not corrected:

- (1) First Fine. A fine of \$50.00 (the "**First Fine**") shall be imposed against the offending Owner if the violation is not corrected within the initial thirty-day period following the Warning Notice. A written notice to the offending Owner shall be provided at this time, notifying the offending Owner of the First Fine and explaining that an additional fine of \$100.00 will be imposed if the violation is not corrected within the next thirty-day period;
- (2) Second Fine. An additional fine of \$100.00 (the "**Second Fine**") shall be imposed against the offending Owner if the violation is not corrected within the second thirty-day period following the Warning Notice. A written notice to the offending owner shall be provided at this time, notifying the offending Owner of the Second Fine and explaining that an additional fine of \$200.00 will be imposed if the violation is not corrected within the next thirty-day period.
- (3) Third Fine. An additional fine of \$250.00 (the "**Third Fine**") shall be imposed against the offending Owner if the violation is not corrected within the third thirty-day period following the Warning Notice. A written notice to the offending Owner shall be provided at this time, notifying the offending Owner of the Third Fine and explaining that additional fines of \$200.00 will be imposed for each additional thirty-day period if the violation is not corrected within the next 30-day period.
- (4) Additional Fines. Additional Fines of \$500.00 each (the "**Additional Fines**") shall be imposed against the offending Owner for each additional thirty-day period in which

the violation remains uncorrected. A written notice to the offending Owner shall be sent to the Owner of each Additional Fine, continuing until the violation is fully corrected.

**4.4 Lien for Assessments.** Declarant has a lien on a Unit for Assessments and, except as otherwise provided in this Declaration, for fines, fees, charges, and costs associated with collecting an unpaid assessment, including court costs and reasonable attorney's fees, late charges, interest, and any other amount that Declarant is entitled to recover under this Declaration, at law, or an administrative or judicial decision, and a fine that Declarant imposes against the Owner. The obligation to pay assessments hereunder is part of the purchase price of each Unit when sold to an Owner, and an express vendor's lien is hereby retained to secure the payment thereof and is hereby transferred and assigned to Declarant. Additionally, a lien with a power of sale is hereby granted and conveyed to Declarant to secure the payment of such assessments. The recording of this Declaration constitutes record notice and perfection of the above-described lien. If an Assessment is payable in installments, the lien will be for the full amount of the Assessment from the time the first installment is due, unless Declarant otherwise provides in a notice of Assessment. An unpaid Assessment or fine accrues interest at the rate provided in this Declaration. The lien provided in this Section 4.4 has priority over each other lien and encumbrance on a Unit except: (a) a lien or encumbrance recorded before the Declaration is recorded; (b) a first or second security interest on the Unit secured by a Mortgage that is recorded before a recorded notice of lien by or on behalf of Declarant; or (c) a lien for real estate taxes or other governmental assessments or charges against the Unit. To evidence any lien hereunder, Declarant may prepare a written Notice of Assessment Lien setting forth the amount of the Assessments and other amounts due and owing, the name of the Owner of the Unit subject to such Assessments and amounts and a description of such Unit, which shall be signed by an officer of Declarant and may be recorded in the Official Public Records of Salt Lake County, Utah.

**4.5 Subordination of the Lien.** The lien of assessments or fines, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney's fees and costs) provided for herein, shall be subordinate to tax liens and to the lien of any First Mortgage upon any Parcel, Lot, Residence, or Unit. The sale or transfer of any Parcel, Lot, Residence, or Unit shall not affect the assessment lien. However, the sale or transfer of any Parcel, Lot, Residence, or Unit pursuant to judicial or non-judicial foreclosure (i.e., power of sale) of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer unless the Owner against whom the original assessment was made is the purchaser at the foreclosure sale (in which event such lien shall remain in full force and effect). No sale or transfer shall relieve such Parcel, Lot, Residence, or Unit from lien rights for any assessments thereafter becoming due. Where the First Mortgagee holding a First Mortgage of record or other purchaser of a Parcel, Lot, Residence, or Unit obtains title pursuant to judicial or non-judicial foreclosure of the First Mortgage, it shall not be liable for any Assessments by Declarant chargeable to such Unit which became due prior to such acquisition of title.

## **ARTICLE V**

### **Architectural Standards and Review Committees**

## **5.1 Architectural Control Committee.**

5.1.1 Organization. There is hereby established a design review committee (herein sometimes referred to as the “**WADRC**”). The WADRC shall be composed of at least two (2) persons who will be appointed by Declarant. The WADRC may from time to time designate any one of its members to act in its stead. All such persons serving on the WADRC serve at the discretion of Declarant. All decisions of the WADRC are subject to review and modification by Declarant. In the event of the death or resignation of any person serving on the WADRC, Declarant shall designate a successor or successors who will have all of the authority and power of his or their predecessor(s). Until such successor has been appointed, the remaining member or members have full authority to exercise all rights, duties and powers of the WADRC. The WADRC shall keep Declarant informed as to its activities on a continuing basis, and shall submit a written report to Declarant regarding same semi-annually or as otherwise required by Declarant. If Declarant no longer has an interest in the Community and has not appointed a successor, the members of the WADRC shall continue as members until they resign. If a member of the WADRC resigns, then the Owners shall appoint a replacement for the member of the WADRC that resigned. Furthermore, if Declarant no longer has an interest in the Community and has not appointed a successor, the WADRC may determine in its sole discretion to add additional members to the WADRC (again, the WADRC shall be composed of at least 2 persons). The Owners shall appoint any new members of the WADRC. In such an event, the decision of the Owners shall be valid so long as the majority of the Owners that vote at a meeting of the Owners where at least a quorum of fifty percent (50%) of the Owners attend or are represented.

5.1.2 Jurisdiction. The WADRC has exclusive jurisdiction on behalf of Declarant regarding: (a) implementation of all provisions of this Article V; (b) oversight of those certain maintenance obligations expressly set forth in Article III above; and (c) promulgation of all Design Guidelines pertaining to the development and construction of Improvements within the Community. If Declarant no longer has an interest in the Community and has not appointed a successor, the WADRC shall constitute the “successor declarant” and shall assume the responsibilities of, and shall constitute, the Declarant hereunder.

5.1.3 Compensation. The WADRC may employ one or more architects, engineers, attorneys or other consultants to assist the WADRC in carrying out its duties, and Declarant shall pay such consultants for services rendered. Members of the WADRC may be reasonably compensated for its services and reimbursed for reasonable expenses in such manner and amounts as may be approved by Declarant. If Declarant is obligated to pay any amount to a person serving on the WADRC or has employed one or more architects, engineers, attorneys or other consultants to assist the WADRC, the amount payable shall be allocated to any Owner making a submittal to the WADRC in the form of an application fee.

**5.2 Submission of Plans Required.** No Regulated Modification may be commenced, constructed, erected, placed, maintained or made upon any Lot or Unit or within or upon any part of the Community unless and until complete plans and specifications have been submitted to and approved in writing by the WADRC, as applicable, as to compliance with applicable Architectural Review Criteria as set forth in Section 5.5 and payment of the applicable application fee. An electronic set of plans and specifications in CAD format or two (2) complete

sets of written plans and specifications must be submitted with each request for approval. In addition to any other applicable requirements per applicable Design Guidelines, any plans and specifications to be submitted must specify, in such detail and form as the WADRC may reasonably require:

- (a) the location upon the Lot, the Unit or within the Community where the Regulated Modification will occur or be placed;
- (b) the dimensions, nature, kind, shape, height, and color scheme of, and all materials to be used in connection with, the Regulated Modification;
- (c) appropriate information concerning structural, mechanical, electrical, plumbing, grading, paving, decking and landscaping details;
- (d) intended uses; and
- (e) such other information, plans or specifications as may be requested or required by the WADRC that in the sole opinion of the WADRC is reasonably necessary to fairly and fully evaluate all aspects of the proposed Regulated Modification.

**5.3 Design Guidelines.** The Community shall be developed in accordance with the Design Guidelines attached hereto as Exhibit D. THE DESIGN GUIDELINES MAY PROVIDE FOR A FINE OF UP TO \$1,000.00 AGAINST ANY OWNER AND LOT OR UNIT SUBJECT TO THIS DECLARATION FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE WADRC OR FOR FAILURE TO COMPLY WITH ANY APPROVAL OF THE WADRC, OR MAY REQUIRE A SECURITY DEPOSIT TO ASSURE COMPLIANCE WITH APPLICABLE REQUIREMENTS. NOTWITHSTANDING THE FINE SPECIFIED ABOVE, AN OWNER MUST STILL COMPLY WITH THE TERMS OF THIS DECLARATION AND OBTAIN ALL NECESSARY APPROVALS. PAYMENT OF THE FINE DOES NOT EXCUSE NONCOMPLIANCE.

**5.4 Manner and Effect of Adoption of Design Guidelines.** Declarant shall make the Design Guidelines available to Builders or Owners upon request. The Design Guidelines may also be (but are not required to be) filed in the Official Public Records of Salt Lake County, Utah. Design Guidelines are of equal dignity with, and shall be enforceable in the same manner as, other provisions of this Declaration, provided: (a) such Design Guidelines shall not be deemed a waiver, modification, or repeal of any of the provisions of this Declaration; (b) such Design Guidelines shall not be enacted retroactively except that all repairs, modifications or maintenance performed subsequent to adoption shall be performed in such manner as to bring the Regulated Modification, so far as practicable, in compliance with all then applicable Design Guidelines; and (c) such Design Guidelines shall not conflict with this Declaration.

**5.5 Architectural Review Criteria.** The WADRC will evaluate all submitted applications for approval on the individual merits of the particular application, and based on evaluation of the compatibility of the proposed Regulated Modification with Community-Wide Standards as of the date of submission of an application and compliance with this Declaration and applicable Design Guidelines and other Rules and Regulations. The WADRC must use reasonable efforts to achieve consistency in the approval or disapproval of specific types of

Regulated Modifications. To this end, consideration will be given to (but the WADRC is not bound by) similar applications for architectural approval and the decisions and actions of the WADRC with regard thereto. The WADRC shall be subject to the limitations and conditions placed upon Declarant regarding Rules and Regulations as set forth in Section 4.1 of this Declaration regarding the adoption, amendment, modification, cancelation, limitation, creation of exceptions to, expansion, or enforcement of Design Guidelines and the review criteria.

**5.6 Disapproval by WADRC.** It is understood and agreed by each Person having or acquiring an interest in the Community that the WADRC will include aesthetic judgment in its decision making process, and approval of submitted plans will not be required simply because the plans satisfy stated objective requirements. The WADRC may disapprove any request for approval for any reasons, including the following: (i) failure to comply with any applicable Architectural Review Criteria as set forth in Section 5.5; (ii) lack of sufficient information, plans or specifications as reasonably determined by the WADRC to enable the WADRC to fairly and fully evaluate the proposed Regulated Modification or the uses thereof; or (iii) failure to include any information, plans or specifications required by applicable Governing Documents, or as may be reasonably requested by the WADRC. In the event of disapproval, the WADRC shall so notify the applicant in writing; and if disapproval is based on lack of sufficient information, plans or specifications, then the WADRC shall also notify applicant of the additional information, plans or specifications required.

**5.7 Approval and Conditional Approval by WADRC.**

5.7.1 Manner. The WADRC may fully approve any request for approval or approve any such request subject to compliance with conditions stated in a conditional approval. Conditions for approval may include, without limitation, requirements for modifications to plans and specifications such as upgrading or other changes as to materials or changes as to color or design or location, or requirements for addition of other improvements such as sight barrier landscaping or other devices to screen a proposed Regulated Modification from Public View. A conditional approval is effective only upon full compliance with the stated condition(s). The WADRC shall notify the applicant in writing of such approval (together with any qualifications or conditions of approval).

5.7.2 Effect. Except for fraud, misrepresentation, accident or mistake, the WADRC's approval or conditional approval is final as to each Regulated Modification covered thereby, and may not be revoked or rescinded once given except as stated in Section 5.7.1 regarding conditional approvals. Except as to compliance with this Article V, the WADRC's approval or conditional approval of an application does not constitute a waiver, modification or repeal of any Covenant contained in this Declaration, or preclude by estoppel or otherwise full enforcement of all provisions hereof. The WADRC's approval or conditional approval of an application may not be deemed a waiver of the right of the WADRC to subsequently disapprove similar requests for approval, or any of the features or elements included therein.

**5.8 Submission and Response.** Applications for WADRC approval are deemed submitted to the WADRC only upon actual receipt and payment of the applicable application review fee. All responses by the WADRC shall be in writing, and are deemed given when delivered to, or when deposited in the United States mail, postage prepaid and addressed to, the



applicant at the address specified in the application. The WADRC has no duty to respond to, and the provisions of this Section do not apply regarding, any application if the Person(s) identified in the application do not appear as Members or Owners according to the books and records of Declarant unless and until receipt of such confirmation of ownership as is satisfactory in the sole opinion of the WADRC. Lessees/Occupants shall file applications or requests for variance in the name of the Owner, and such Owner shall either appoint the Lessee/Occupant as their agent in a letter to the WADRC or join the application. Where more than one Owner applies for approval, the delivery or mailing of a response to any one of the Owners as aforesaid constitutes notice to all such Owners.

## **5.9 Implied Conditions of Approval.**

5.9.1 Applicability. Unless expressly waived or modified by the WADRC in writing, each and every approval or conditional approval of a Regulated Modification is subject to all provisions of this Article V whether or not stated in the approval or conditional approval.

5.9.2 Commencement and Completion of Work. Approval of an application for a Regulated Modification is effective for one (1) year from the date of approval. If work on a Regulated Modification is not commenced within one (1) year after approval or conditional approval, such approval or grant will become null and void and the Owner or Builder must submit a new application and obtain a new approval for the Regulated Modification, unless otherwise agreed to by Declarant. Prior approval of a Regulated Modification shall not bind the WADRC or Declarant or require the WADRC or Declarant to approve a re-submitted application for the same Regulated Modification. Upon commencement, the Owner or Builder must diligently prosecute and complete all work as soon thereafter as reasonably possible. The WADRC is authorized to set specific schedules for completion of a Regulation Modification on a case-by-case basis and/or pursuant to applicable Design Guidelines.

5.9.3 New Construction Materials Required. Only new construction materials may be used in construction of any Regulated Modification except as otherwise approved by the WADRC (such as the use of used brick). Any Regulated Modification shall be done in good and workmanlike manner using licensed contractors.

5.9.4 Compliance with Plans. All work on a Regulated Modification must proceed in strict compliance with: (i) the application and plans and specifications approved by the WADRC, (ii) any and all conditions stated by the WADRC in the approval, and (iii) any and all applicable governmental laws, rules, regulations, ordinances, and building codes.

5.9.5 Permit Requirements. Each Owner is solely responsible for full compliance with all permitting requirements of all governmental agencies having jurisdiction, and shall apply for and diligently pursue obtaining of all required permits promptly after approval or conditional approval is received. Without limitation of the foregoing, the WADRC may deny approval pending, or conditional approval upon, prior compliance with applicable permitting requirements or upon receipt of certification satisfactory to the WADRC that no such permitting requirements exist.

5.9.6 Compliance with Laws and Governing Documents. Each applicant is solely

responsible for insuring that (and nothing in the Governing Documents or any written decision of the WADRC shall be construed as a covenant, representation, guaranty or warranty that) any proposed Regulated Modification will be in compliance with applicable governmental laws, ordinances or regulations (including building codes or permit or licensing requirements), or with applicable requirements of the Governing Documents.

**5.10 Inspection Rights.** Upon reasonable notice (oral or written), any member of the WADRC or Declarant, or their designated representatives, may enter a Lot, Residence or Unit without liability for trespass or otherwise for purposes of inspecting work in progress and/or as to completion of any Regulated Modification in compliance with the approved plans, specifications, information and documentation for same, and as to compliance with any applicable provisions of the Governing Documents.

**5.11 Records.** The WADRC is not required to maintain records of any of its meetings. The WADRC and Declarant, however, must keep and maintain records evidencing their respective final decision(s) regarding all requests for approval and requests for variance for not less than four (4) years. The WADRC must also maintain a record of all current Design Guidelines, and must provide copies to Owners upon request.

**5.12 Limitation of Liability.** Neither Declarant, the WADRC, nor their respective Related Parties, are liable to any Builder, Owner, Lessee, Occupant, or any of their Related Parties, or to any other Person for any actions or failure to act or in connection with its/their obligations under this Declaration, including, but not limited to, maintenance review or oversight, any approval, conditional approval or disapproval of any application for approval or request for variance, including without limitation, mistakes in judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plans or specifications and no publication of Design Guidelines may ever be construed as representing or implying that, or as a covenant, representation, warranty or guaranty that, if followed, the Regulated Modification will comply with applicable legal requirements, or as to any matters relating to the health, safety, workmanship, quality or suitability for any purpose of the Regulated Modification. The provisions hereof are cumulative of the provisions of Section 7.8.

**5.13 Limitation of Applicability.** None of the provisions of this Article V apply to any activities of Declarant.

**ARTICLE VI**  
**Architectural and Use Restrictions**

**6.1 Signs.**

6.1.1 General. No signs, billboards, posters, banners, pennants or advertising devices of any kind, including without limitation business, professional, promotional or institutional signs, are permitted on any Unit or within any Unit if in Public View, or within or upon any portion of the Community without the prior written consent of the WADRC except as otherwise provided in this Section. Declarant or WADRC may remove or cause to be removed

any sign, billboard, poster, banner, pennant or advertising device of any kind which is not approved as aforesaid or is otherwise prohibited under this Declaration and may dispose of same as debris without liability for trespass or otherwise.

6.1.2 Prohibited Signs. No sign is permitted which is vulgar, obscene or otherwise patently offensive to persons of ordinary sensibilities. Permitted signs must be professionally printed and prepared, and must be properly installed and maintained, to avoid unsightly appearance. The good faith determination of Declarant or WADRC as to any of the foregoing is final. Except for signage for a Live/Work Unit, which shall be reviewed and approved by the WADRC, no sign is permitted outside of a Unit without the consent of the WADRC. A total of two (2) signs not to exceed a total of four (4) square feet may be placed within windows within a Unit. No sign may be illuminated. No sign may be placed closer than ten (10) feet from any street or any side or back lot line, or within any traffic sight line area as defined in Section 6.10. No Owner (or their tenants, guests or invitees) is permitted to place any sign on another Owner's Unit. Distressed, foreclosures and bankruptcy references are specifically prohibited.

6.1.3 Permitted Signs. To the extent required by law or in any event upon prior approval of the WADRC, but subject to applicable provisions of Section 6.1.2 above, each Owner is permitted to place upon (and only upon) such Owner's Unit or upon the lawn/landscaping immediately in front of such Owner's Unit (i) "political signs" whereby such Owner is promoting a political candidate, party or issue; (ii) "school" signs at the discretion of Declarant; (iii) security monitoring signs; (iv) not more than two (2) identification signs for individual residences, each with a face area of seventy-two (72) square inches or less; (v) signs (including "for sale," "for lease" and "open house" signs), the nature, size, number and location of which have been approved in advance and in writing by the WADRC or which comply with signage rules or guidelines adopted by the WADRC. Signs up to sixty-four (64) square feet in size are commercially reasonable, subject to any limitation imposed by applicable Laws; (vi) signs of Builders on any Lot or Parcel approved from time to time by Declarant as to number, size, colors, design, message content, location and type; (vii) signs (including but not limited to construction job identification signs, builders signs, and subdivision, and business identification signs) that comply with the requirements of the applicable Municipal Authority and that have been approved in writing by the WADRC as to size, colors, design, message content and location; (viii) signs advertising the name of a commercial business for a Live/Work Unit; and (ix) signs required by legal proceedings. The WADRC may reasonably regulate the period(s) of time political signs may be permitted, and the number of permitted political signs and in relationship thereto their size and location. Declarant may construct, place, install, and maintain such signs, billboards, banners, pennants, and advertising devices as are customary in connection with the sale of newly constructed residential dwellings.

## **6.2 Parking, Garages and Prohibited Vehicles.**

6.2.1 Parking/Garages. No garage shall be enclosed, modified or otherwise used so as to reduce its capacity for parking vehicles below that permitted by the Development Agreement and originally approved by the WADRC and the City, nor may any portion of a garage be diverted to any use other than the parking of vehicles and other generally accepted and customary uses of a garage. Garages may not be used for general storage and must

accommodate, in addition to any belongings, the number of automobiles designed for the garage (i.e., two-car garage will accommodate two (2) automobiles). In particular, but not in limitation of the foregoing, no portion of any garage may be used as a residence or as living quarters. Notwithstanding the foregoing, however, Declarant or a Builder may temporarily convert a garage into a sales or construction office, provided that it is converted back to a garage within thirty (30) days after cessation of construction and sale of new homes within the Community by such party. All vehicles must be parked within the garage for a Residence or Unit or temporarily on the driveway servicing the Residence or Unit.

6.2.2 Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors (except those of a size to be parked in a home's garage), vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or behind fences in improved parking areas, if any, on any Lot or Unit, unless otherwise approved by the Neighborhood homeowners' association having jurisdiction over such Lot or Unit. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Community except within enclosed garages. Notwithstanding the foregoing, vehicles that become inoperable while on the Community must be removed within seventy-two (72) hours thereof. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of Declarant. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Community during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Residence or Unit or the Neighborhood Common Area. Any vehicle parked in violation of this Section or parking rules promulgated by Declarant may be towed in accordance with the Bylaws.

6.3 Occupants Bound. All provisions of this Declaration that govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Related Parties of any Owner. Each Owner shall comply, and shall cause all of such Owner's Related Parties to comply, with this Declaration, and shall be responsible for all violations thereof and/or all damage or loss to Declarant caused by such Occupants, notwithstanding the fact that such Related Parties are fully liable and may be sanctioned for any violation of this Declaration. Any failure in compliance shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by Declarant or, in a proper case, by any aggrieved Owner or Owners. In addition, Declarant may avail itself of any and all remedies provided in this Declaration.

6.4 Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Community, except that dogs, cats, or other usual and common household pets, not to exceed the number as may be permitted on a Lot or within a Residence or Unit pursuant to the laws, codes, and ordinances of the Municipal Authority and pursuant to the following: no more than a total of two (2) dogs and/or cats per Unit. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be in Public View, unless otherwise approved by the WADRC. However, those pets which are permitted to roam free, or, in the sole discretion of Declarant, endanger the health of safety of

persons, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or Units or the owner of any portion of the Community shall be removed upon request of Declarant; if the Owner fails to honor such request, the pet may be removed by Declarant. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall at all times whenever they are outside a Unit be confined on a leash held by a responsible person or attached to a secured pole or other fixed Improvement. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to permit horses to be maintained on certain Lots and Parcels within the Community as determined solely by Declarant.

**6.5 Quiet Enjoyment; Nuisances.** No portion of the Community shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Community that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might unreasonably disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. Noise typically associated with ball fields, swimming pools and recreational centers, normal amounts of dogs barking and children playing are not prohibited.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Community, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Community.

**6.6 Unsightly or Unkempt Conditions.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot or Unit. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Community. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve (12) hours.

**6.7 Antenna and Satellite Dish Systems.** No exterior antennae, aerials, satellite dish receivers or other devices designed to transmit or receive television, radio, satellite or other signals of any kind shall be placed, allowed or maintained upon a Visible Location unless a Visible Location is the only location on a Unit where signals may be received or transmitted without substantial interference with reception. If a Visible Location is the only location on a Residence or Unit where signals may be received or transmitted without substantial interference with reception, such a device may be placed in a Visible Location approved by the WADRC, which approval shall not be unreasonably withheld; provided that the placement of small digital satellite dishes shall not require approval of the WADRC. The WADRC may require screening of any device placed in a Visible Location, unless such screening (i) unreasonably delays

installation or unreasonably increases the cost of installation, maintenance or use of the antenna, or (ii) precludes reception of an acceptable quality signal. To the extent permitted by the Telecommunications Act of 1996, as amended from time to time (the “*Telecommunications Act*”), without WADRC approval: (a) no direct broadcast satellite dish or multipoint distribution service antenna larger than one (1) meter in diameter will be allowed on a Residence or Unit, (b) no television broadcast antenna on the exterior of a Residence or Unit, and (c) no multipoint distribution service antenna mast may exceed the height of twelve feet (12’) above the center ridge of the roof. This Section 6.7 shall be interpreted to be as restrictive as possible, while at all times complying with the provisions of the Telecommunications Act. Terms used in this Section 6.7, shall be deemed to have the meanings set forth in the Over-The-Air Reception Devices Rule (“*OTARD*”) promulgated under the Telecommunications Act or other rules and regulations promulgated pursuant thereto, and where OTARD, the Telecommunications Act, or any other rule or regulation promulgated thereunder requires the WADRC to act reasonably, or respond promptly, such obligation shall be deemed a part of the WADRC’s obligations under this provision. In the event of an amendment to the Telecommunications Act which conflicts with this provision, the conflicting provision herein automatically shall be deemed deleted, and Declarant, without the joiner of any other Owner(s), may amend this provision so as to comply with the amended Telecommunications Act.

**6.8 Clotheslines, Garbage Cans, Tanks, Etc.** No clotheslines shall be erected or installed in a Visible Location and no clothing, linens or other material shall be aired or dried in a Visible Location. All above-ground storage tanks, mechanical equipment, woodpiles, yard equipment and other similar items on Lots and Units shall be located or screened so as to be concealed from Public View. No garbage or trash shall be placed or kept on any Lot or Parcel, except in covered containers of a type, size and style which are approved by Declarant or required by the applicable Municipal Authority. Garbage containers shall be stored on the side or behind Dwelling Units except on garbage collection days. All rubbish, trash and garbage shall be removed from the Lots and Parcels and shall not be allowed to accumulate thereon. Excluding trash collection days (and a reasonable period of time prior to and after such collection day), trash containers shall not be stored in areas that would allow such containers to be visible from a street. No outdoor incinerators shall be kept or maintained on any Lot or Parcel. In the event the City of Bluffdale, Utah, or the applicable governmental entity will only pick-up and empty dumpsters servicing any Neighborhood, each Owner within such Neighborhood shall cause any rubbish, trash and garbage to be regularly deposited in the dumpsters servicing such Neighborhood.

**6.9 Drainage.** Catch basins, drainage swales, and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant or a Builder may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. No Owner may interfere with the established drainage pattern over any part of the Community unless adequate provision is made for property drainage and is approved in advance by the WADRC. Established drainage shall mean and refer to the drainage which exists at the time the overall grading and development of the Community is completed by Declarant and/or the Builder. No Owner or its Related Parties shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any storm drain, drainage ditch, stream, pond or lake within the Community.

**6.10 Sight Distance at Intersections.** All property located at street intersections within the Community shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

**6.11 Construction Activities.** Normal construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials may be piled only in such areas as may be approved by the WADRC. Except for Lots or Parcels owned by Declarant, no Lot or Parcel shall be used in any manner to explore for or to remove or process any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

**6.12 Maintenance of Lawns and Plantings.** Except where otherwise provided in a Neighborhood Declaration or Supplemental Declaration, each Owner of a Lot or Parcel shall keep all shrubs, trees, hedges, grass and plantings of every kind located on:

- (a) His, her or its Lot or Parcel (including set back areas);
- (b) Planted public right-of-way areas between sidewalks (or bike paths) and the street curb on the front or side of his or her property, if any;
- (c) any other public right-of-way or easement area which abuts the Owner's Lot or Parcel and which is located between the boundary line of his or her Lot or Parcel and the paved area of any street, sidewalk, bike path or similar area; and
- (d) any non-street public right-of-way or easement area adjacent to his or her Lot or Parcel,

neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material. The WADRC may require landscaping by the Owner of all or any portion of an improved or developed Lot or an improved or developed Parcel.

**6.13 Landscaping.** The following landscape criteria shall apply to all Single Family Lots, and all landscape plans shall be approved by the WADRC. Unless required to be completed earlier by a Neighborhood Declaration, all Owners and Residents are required to install or cause to be installed all Single Family Residential Use landscaping and irrigation based on the following schedule:

- (a) Unless otherwise approved by the WADRC, front and corner side yard (including "parking strip", if any) landscaping shall be installed prior to receipt of a certificate of occupancy from the City, weather permitting.
- (b) Rear and side yard landscaping when visible from streets shall be installed within one hundred twenty (120) days of closing to an Owner, weather permitting.

(c) Interior side and rear yard landscaping shall be installed within one (1) year of closing to an Owner, weather permitting.

Builders shall offer a front yard landscape option package to Owners that meets the above minimum requirements. Owners will be required to install such landscaping within six (6) months after the Transfer of such Unit, subject to any delays caused by weather conditions. All front yards shall be fully landscaped and irrigated using a combination of turf grass, trees, shrubs, perennials, groundcovers, and/or xeriscape. Builders or Owners shall install any street trees. Owners shall be responsible for the care and replacement of any street trees.

**6.14 Fences.** All fences shall be made of Trex material unless otherwise approved by the WADRC. No vinyl fencing is permitted.

**6.15 Draperies and Window Coverings.** In no event shall windows be covered with paper, aluminum foil, bed sheets or any other materials or temporary coverings not specifically intended for such purpose. No interior or exterior reflective material shall be used as a window covering unless such material has been approved by the WADRC.

**6.16 Utility Service.** No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, and cable information highways, shall be erected, placed or maintained anywhere in or upon any Lot or Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or buildings or other structures as approved by the Declarant or the WADRC, except for:

(a) Overhead power poles and lines to perimeter of the Community as approved by Declarant; and

(b) boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices.

**6.17 Trucks, Trailers, Campers and Boats.** No motor vehicle classed by manufacturer rating as exceeding 3/4-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Parcel or on any street in the Community except on an RV pad or similar side-yard or rear-yard driveway approved by the WADRC and located behind a fence; provided, however, the provisions of this Section shall not apply to (i) pickup trucks of less than 3/4-ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level and mini-motor homes not exceeding seven (7) feet in height, and eighteen (18) feet in length which are parked as provided herein and are used on a regular and recurring basis for basic transportation, or (ii) trucks, trailers and campers parked in an approved recreational vehicle storage area within a Residential Area or other approved areas designated for such parking in Commercial Area Land Use Classifications in connection with permitted commercial activities conducted in such Commercial Area Land Use Classifications.

**6.18 Laws and Ordinances.** Every Owner and such Owner's Related Parties, shall



comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Unit and the Community, including any and all applicable zoning and land use laws and ordinances, and any violation thereof may be considered a violation of this Declaration; provided, Declarant shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

**6.19 Unoccupied Residences.** The Owner of a Unit with an unoccupied residence, including any mortgagee in possession and any mortgagee obtaining title to a Unit by foreclosure or by any deed or other arrangement in lieu of foreclosure, is liable for full observance and performance of all terms and conditions of this Declaration and all other Governing Documents, including in particular but without limitation: (i) maintaining the insurance required to be maintained by an Owner of a Unit under this Declaration; (ii) proper maintenance of the Unit and all improvements thereon; (iii) securing of the unoccupied residence, including fastening of windows and locking of all entry and garage doors, and maintenance of appropriate curtains or other permitted window covers in order to prevent unauthorized entry or use; and (iv) such other maintenance as required to avoid an appearance of abandonment or other unsightly or unkempt appearance.

## **ARTICLE VII** **General Provisions**

**7.1 Run with the Land.** The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by Declarant, each Owner, and their respective legal representatives, heirs, successors, and assigns.

**7.2 Amendment/Termination.** The Declaration may be amended or terminated at any time by Declarant. If this Declaration is terminated, Declarant shall cause to be recorded with the County Recorder of Salt Lake County, Utah, as applicable, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of Declarant, with their signatures acknowledged. This Declaration may be amended by Recording with the County Recorder of Salt Lake County, Utah, a Certificate of Amendment, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of Declarant, with their signatures acknowledged. Any amendment or termination of this Declaration shall require the approval of the FHA or VA, as applicable, if such agency has guaranteed or insured any loan on a Lot or Parcel subject to this Declaration.

**7.3 Easements for Utilities, Drainage, Etc.** There is hereby reserved unto Declarant and its designees (which may include, without limitation, the City, and any water district, municipal utility district or other utility), blanket easements upon, across, over, and under all of the Community for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems (including altering drainage and water flow), levees, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity; provided, the exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry into any Unit shall be made only after reasonable notice to the Owner or occupant thereof.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier, electric company, and natural gas supplier, easements across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Community, except as may be approved by Declarant.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement over the Community without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Community.

**7.4 Declarant Easement.** There is hereby created a nonexclusive easement for ingress and egress over, for the right to go over, under and across, and for the right to enter and remain upon, all portions of the Community, including but not limited to, any private streets and a right of access through any guard gates, key gates or other access control points, for the purpose of enabling Declarant, and Declarant's Related Parties and their respective invitees, licensees, contractors and guests to exercise Declarant's rights and obligations hereunder, and to engage in activities reasonably related to the development, management, administration, operation, maintenance, advertisement and sale or rental of the portions of the Community owned by Declarant. This easement shall be in favor of Declarant and its Related Parties and appurtenance to portions of the Community owned by Declarant. The rights of access established in this Section shall be exercised so as to reasonably minimize interference with the quiet enjoyment of a Unit by its Owner or any Occupant.

**7.5 Severability.** In the event that any provision of this Declaration is declared void, invalid or unenforceable by a regulatory agency, tribunal or court of competent jurisdiction, the remainder of this Declaration shall continue in full force and effect as if the offending provision were not contained herein, and the offending provision shall be replaced by a valid provision which comes closest to the intention of the Declaration underlying the offending provision. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**7.6 Cumulative Effect; Conflict.** In the event of a conflict between or among this Declaration and the Governing Documents, the more restrictive covenants and restrictions shall govern.

**7.7 Use of the Words "WESTGATE ACLAIME AT INDEPENDENCE"**. No Person shall use the term "*WESTGATE ACLAIME AT INDEPENDENCE*," or "*ACLAIME*," or any derivative thereof in any printed or promotional material without the prior written consent of Declarant. However, any Owner may use the terms "*WESTGATE ACLAIME AT INDEPENDENCE*," or "*ACLAIME*" in printed or promotional matter where such term is used solely to specify that their particular property is located within "Westgate Aclaime at Independence."

**7.8 Limitation of Liability; Indemnification.**

7.8.1 Non-Liability of Officials. To the fullest extent permitted by law, none of the following Persons (the “**Released Persons**”) shall be liable to any Member, Owner, Lessee, Occupant, or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which the following Persons reasonably believed to be within the scope of their representative duties: (i) every director and officer of Declarant, (ii) every member of the WADRC, (iii) Declarant and the Declarant Related Parties, and (iv) all employees of Declarant. Each Owner, Occupant and other Person having any interest in the Community or entering upon or using any portion of the Community is deemed to acknowledge and accept the following:

(a) None of the Released Persons shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant or other Person entering upon or making use of any portion of the Community. Each Owner, Occupant and other Person assumes all risks associated with the use and enjoyment of the Community, including but not limited to, any recreational facilities upon or within the Community.

(b) None of the Released Persons shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of any utility line, equipment or substation, adjacent to, near, over, or on the Community. Each Owner, Occupant and other Person assumes all risks of personal injury, illness or other loss or damage arising from the presence of malfunction of any utility line, equipment or substation adjacent to, near, over or on the Community.

(c) No provision of this Declaration or any other Governing Document shall be construed or interpreted as creating a duty by any of the Released Persons to protect or further the health, safety or welfare of any Person.

7.8.2 Liability Arising From Conduct of Owners. Each Owner, Lessee, Occupant, and their respective Related Parties hereby indemnifies, holds harmless, and agrees to defend (with counsel reasonably acceptable to the indemnified party) the Declarant and its Related Parties from and against all claims, damages, suits, judgments, court costs, attorney’s fees, attachments and all other legal actions caused through the willful or negligent act or omission of an Owner, a Lessee, an Occupant, or their respective Related Parties.

7.8.3 Subsequent Statutory Authority. If any applicable law, whether state or federal, is construed or amended to further eliminate or limit liability or authorizing further indemnification than as permitted or required by this Section 7.8, then liability will be limited or expanded to the fullest extent permitted by such applicable law.

7.8.4 No Impairment. Any repeal, amendment or modification of this Section 7.8 may not adversely affect any rights or protection existing at the time of the amendment.

**7.9 Request for Payoff Information**. An Owner may request payoff information from Declarant needed in connection with the financing, refinancing, or closing of an Owner’s Parcel by: (a) providing written notice to the designated manager for Declarant requesting the payoff information, which notice must contain (i) the name, telephone number, and address of

the person making the request, and (ii) the facsimile number or email address for delivery of the payoff information, and (b) a written consent for the release of the payoff information, which identifies the person requesting the information as a person to whom the payoff information may be released, and signed and dated by the Owner of the Parcel for which the payoff information is requested. Declarant may charge a fee associated with providing the payoff information, which fee shall not exceed the amount permitted under applicable law and shall be subject to any requirements set forth in applicable law.

**7.10 Notices.** Any notice provided under this Declaration shall be provided in writing and sent or transmitted by one of the following means: (a) personally served (and if no one is home, posted on the door of a Dwelling Unit), (b) sent by overnight courier by a national delivery service that maintains tracking information, or (c) sent by United States certified mail, return receipt requested, with postage prepaid; addressed to the Owner at the address provided by the Owner to Declarant at the address of Declarant. An Owner may by notice at any time and from time to time designate a different address to which notices shall be sent. Such notices, demands or declarations shall be deemed sufficiently served or delivered for all purposes hereunder when delivered or when delivery is denied if attempted to be delivered at the appropriate address. Declarant may provide notice by electronic means, including text message, email, or through Declarant's website; provided, however, an Owner, upon written notice to Declarant, may require Declarant to provide secondary notice to the Owner by First Class United States mail.

**7.11 Captions.** All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

**7.12 Declarant's Disclaimer of Representations.** Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a Plat or other instrument Recorded in the office of the County Recorder of Salt Lake County, Utah, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Community can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect. Not as a limitation of the generality of the foregoing, the Declarant expressly reserves the right at any time and from time to time to amend the Land Use Plan.

**7.13 Interpretation of Covenants.** Except for judicial construction, Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Declarant's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by the covenants and provisions hereof.

**ARTICLE VIII**  
**Mortgagee Provisions**

The following provisions are for the benefit of holders of First Mortgages on Units in the Community. The provisions of this Article apply to both this Declaration, notwithstanding any other provisions contained therein.

**8.1 Notices of Action.** An institutional holder, insurer, or guarantor of a First Mortgage who provides written request to Declarant (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, therefore becoming an *Eligible Holder*), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects any Unit on which there is a First Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or charges owed on a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of this Declaration or other Governing Documents relating to such Unit or the Owner or occupant thereof which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by Declarant and covering the Unit upon which there is a First Mortgage held, insured, or guaranteed by such Eligible Holder; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Holders.

**8.2 Applicability of Article VIII.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration or Utah law for any of the acts set out in this Article.

**ARTICLE IX**  
**Declarant's Rights**

**9.1 Transfer of Rights.** Any or all of the special rights and obligations of Declarant set forth in this Declaration or the other Governing Documents may be transferred to other Persons, provided that the transfer shall neither reduce an obligation nor enlarge a right beyond that contained herein or in the other Governing Document, as applicable, and provided further, no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the public records of Salt Lake County, Utah.

**9.2 Construction and Sale Activity.** Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sale of Units shall continue, it shall be expressly permissible for Declarant and any builder designated by Declarant to maintain

and carry on upon portions of the Community such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices, and Declarant and such designated builder(s) shall have easements for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Units owned by Declarant as models and sales offices, respectively.

**9.3 Application to Declarant.** Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, Declarant's Related Parties or contractors, or parties designated by Declarant in connection with the Community. Without limiting the generality of this Article IX in any way, and notwithstanding anything to the contrary contained in this Declaration, (a) Declarant is expressly exempted from the provisions of this Declaration requiring submission to or authorizations by the WADRC, (b) Declarant shall have the right to erect, operate and maintain one or more administrative and sales offices on any portion of the Community owned by or leased to Declarant, and (c) neither the provisions of Article V, nor the Design Guidelines, nor any comparable provisions in any Governing Document shall apply to Improvements built by Declarant, and any Improvements built by Declarant may have an architectural style and present general aesthetics that are quite different from the architectural style and aesthetics elsewhere in the Community.

**9.4 No Recordation.** So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions or similar instrument affecting any portion of the Community, including without limitation any Neighborhood Declaration or Supplemental Declaration, without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

*[Signature and notary acknowledgment on following page.]*

IN WITNESS WHEREOF, the parties have executed this Declaration as of the date first above written.

WESTGATE PARTNERS, LLC,  
a Utah limited liability company

By: [Signature]  
Name: DAVID S. TOLMAN  
Title: Managing Member

STATE OF UTAH     )  
  ) ss.  
County of Salt Lake )

On the 26 day of May, 2016, personally appeared before me David S. Tolman, known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument on behalf of WESTGATE PARTNERS, LLC, a Utah limited liability company, and who acknowledged to me that said entity executed it.



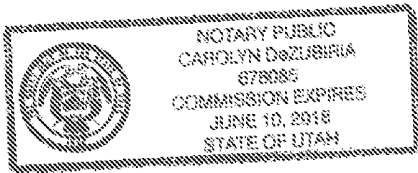
[Signature]  
NOTARY PUBLIC

ROCHELLE DB-3, L.C.,  
a Utah limited liability company

By: *[Signature]*  
Name: DAVID C. CLARK  
Title: MEMBER-MANAGER

STATE OF UTAH )  
County of Salt Lake ) ss.

On the 25<sup>th</sup> day of May, 2016, personally appeared before me David C. Clark, known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument on behalf of ROCHELLE DB-3, L.C., a Utah limited liability company, and who acknowledged to me that said entity executed it.



*Carolyn DeZubiria*  
NOTARY PUBLIC



CHOCOLATE HOMES WESTGATE, LLC,  
a Utah limited liability company

By: [Signature]  
Name: Ross Holliday  
Title: Managing Member

STATE OF UTAH )  
County of Salt Lake ) ss.

On the 23<sup>rd</sup> day of May, 2016, personally appeared before me Ross Holliday, known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument on behalf of CHOCOLATE HOMES WESTGATE, LLC, a Utah limited liability company, and who acknowledged to me that said entity executed it.



[Signature]  
NOTARY PUBLIC

HOLMES WESTGATE TOWNS, LLC,  
a Utah limited liability company

By: [Signature]  
Name: DARON SMITH  
Title: SECRETARY

STATE OF UTAH     )  
                                  ) ss.  
County of Salt Lake

On the 24 day of May, 2016, personally appeared before me Daron Smith known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument on behalf of HOLMES WESTGATE TOWNS, LLC, a Utah limited liability company, and who acknowledged to me that said entity executed it.



[Signature]  
NOTARY PUBLIC

HOLMES WEST GATE, LLC,  
a Utah limited liability company

By: [Signature]  
Name: DARON SMITH  
Title: SECRETARY

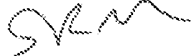
STATE OF UTAH )  
                  ) ss.  
County of Salt Lake

On the 24 day of May, 2016, personally appeared before me Daron Smith, known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument on behalf of HOLMES WEST GATE, LLC, a Utah limited liability company, and who acknowledged to me that said entity executed it.



[Signature]  
NOTARY PUBLIC

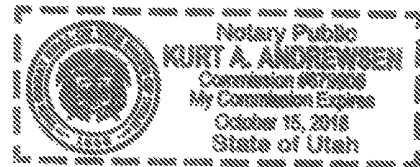
ALPINE HOMES, LLC,  
a Utah limited liability company

By:   
Name: S. Ross Mitchell  
Title: Vice President

STATE OF UTAH     )  
                          ) ss.  
County of Salt Lake

On the 15 day of April, 2016, personally appeared before me S. Ross Mitchell, known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument on behalf of ALPINE HOMES, LLC, a Utah limited liability company, and who acknowledged to me that said entity executed it.

  
NOTARY PUBLIC



CONSENT

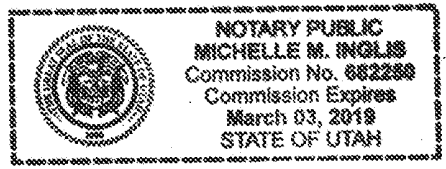
In accordance with the terms of that certain Deed of Trust, Security Agreement, Fixture Filing, and Assignment of Rents dated JUNE 5, 2015 (the "Deed of Trust"), the undersigned of this Consent (the "Undersigned") has an interest in all or a portion of the property more fully described in this DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR WESTGATE ACLAIME AT INDEPENDENCE (the "Encumbered Property"). The Undersigned hereby acknowledges and agrees that any foreclosure of the Deed of Trust shall not extinguish this Declaration or the rights and easements granted hereunder, and the purchaser at any such foreclosure sale shall take title subject to this Declaration. Further, the Undersigned hereby consents to the execution and recordation of this Declaration.

*Greg Ripplinger*

STATE OF UTAH )  
 : ss  
COUNTY OF SALT LAKE )

On the 25 day of May 2016, personally appeared before me Greg Ripplinger and the signer of the foregoing instrument, who duly acknowledged before me that he executed the same on behalf of said trust for its stated purpose.

*Michelle M Inglis*  
Notary Public



**EXHIBIT A**

[Legal Description of Community]

That certain land located in Salt Lake County, Utah, and as described as follows:

All of the lots, parcels, private streets, private driveways, common areas and limited common areas contained within the official plat of WESTGATE ACLAIME AT INDEPENDENCE SUBDIVISION, situated in the Southwest Quarter of Section 11, Township 4 South, Range 1 West, Salt Lake Base & Meridian, Bluffdale City, Salt Lake County, Utah, according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder under Entry No. 12088684.

**[Tax Parcels Numbers on following pages]**

L	ST	33-11-376-015	L	142	33-11-379-150	L	346	33-11-377-010
L	ST	33-11-377-060	L	143	33-11-379-151	L	347	33-11-378-004
L	ST	33-11-379-160	L	144	33-11-379-152	L	348	33-11-378-005
L	ST	33-11-379-161	L	145	33-11-379-153	L	349	33-11-378-006
L	ST	33-11-379-162	L	146	33-11-379-154	L	350	33-11-378-007
L	ST	33-11-379-163	L	147	33-11-379-155	L	351	33-11-378-008
L	ST	33-11-379-164	L	148	33-11-379-156	L	352	33-11-378-002
L	ST	33-11-379-165	L	149	33-11-379-157	L	353	33-11-378-001
L	101	33-11-381-002	L	150	33-11-379-158	L	354	33-11-376-014
L	102	33-11-381-003	L	151	33-11-379-159	L	355	33-11-376-013
L	103	33-11-381-004	L	152	33-11-379-149	L	356	33-11-376-012
L	104	33-11-381-005	L	153	33-11-379-148	L	357	33-11-376-011
L	105	33-11-381-006	L	154	33-11-379-147	L	358	33-11-376-010
L	106	33-11-381-007	L	155	33-11-379-146	L	359	33-11-376-009
L	107	33-11-381-008	L	156	33-11-379-145	L	360	33-11-376-008
L	108	33-11-381-009	L	157	33-11-379-144	L	361	33-11-376-007
L	109	33-11-381-010	L	158	33-11-379-143	L	362	33-11-376-006
L	110	33-11-381-011	L	159	33-11-379-142	L	363	33-11-376-005
L	111	33-11-381-012	L	160	33-11-379-141	L	364	33-11-376-004
L	112	33-11-381-013	L	161	33-11-379-140	L	365	33-11-376-003
L	113	33-11-381-014	L	162	33-11-379-130	L	366	33-11-376-002
L	114	33-11-381-015	L	163	33-11-379-131	L	T/182	33-11-379-040
L	115	33-11-380-028	L	164	33-11-379-132	L	T/183	33-11-379-041
L	116	33-11-380-027	L	165	33-11-379-133	L	T/184	33-11-379-042
L	117	33-11-380-026	L	166	33-11-379-134	L	T/185	33-11-379-043
L	118	33-11-380-025	L	167	33-11-379-135	L	T/186	33-11-379-044
L	119	33-11-380-024	L	168	33-11-379-136	L	T/187	33-11-379-045
L	120	33-11-380-023	L	169	33-11-379-137	L	T/188	33-11-379-046
L	121	33-11-380-022	L	170	33-11-379-138	L	T/189	33-11-379-047
L	122	33-11-380-021	L	171	33-11-379-139	L	T/190	33-11-379-048
L	123	33-11-380-019	L	172	33-11-379-129	L	T/191	33-11-379-049
L	124	33-11-380-018	L	173	33-11-379-128	L	T/192	33-11-379-050
L	125	33-11-380-017	L	174	33-11-379-127	L	T/193	33-11-379-051
L	126	33-11-380-016	L	175	33-11-379-126	L	T/194	33-11-379-052
L	127	33-11-380-015	L	176	33-11-379-125	L	T/195	33-11-379-053
L	128	33-11-380-014	L	177	33-11-379-124	L	T/196	33-11-379-054
L	129	33-11-380-013	L	178	33-11-379-123	L	T/197	33-11-379-055
L	130	33-11-380-012	L	179	33-11-379-122	L	T/198	33-11-379-028
L	131	33-11-380-011	L	180	33-11-379-121	L	T/199	33-11-379-027
L	132	33-11-380-010	L	181	33-11-379-120	L	T/200	33-11-379-026
L	133	33-11-380-009	L	337	33-11-377-001	L	T/201	33-11-379-025
L	134	33-11-380-008	L	338	33-11-377-002	L	T/202	33-11-379-024
L	135	33-11-380-007	L	339	33-11-377-003	L	T/203	33-11-379-023
L	136	33-11-380-006	L	340	33-11-377-004	L	T/204	33-11-379-022
L	137	33-11-380-005	L	341	33-11-377-005	L	T/205	33-11-379-021
L	138	33-11-380-004	L	342	33-11-377-006	L	T/206	33-11-379-020
L	139	33-11-380-003	L	343	33-11-377-007	L	T/207	33-11-379-019
L	140	33-11-380-002	L	344	33-11-377-008	L	T/208	33-11-379-018
L	141	33-11-380-001	L	345	33-11-377-009	L	T/209	33-11-379-017

L	T/210	33-11-379-004	L	T/259	33-11-379-086	L	T/308	33-11-377-041
L	T/211	33-11-379-003	L	T/260	33-11-379-087	L	T/309	33-11-377-040
L	T/212	33-11-379-002	L	T/261	33-11-379-088	L	T/310	33-11-377-039
L	T/213	33-11-379-005	L	T/262	33-11-379-089	L	T/311	33-11-377-038
L	T/214	33-11-379-006	L	T/263	33-11-379-090	L	T/312	33-11-377-037
L	T/215	33-11-379-007	L	T/264	33-11-379-091	L	T/313	33-11-377-017
L	T/216	33-11-379-008	L	T/265	33-11-379-092	L	T/314	33-11-377-016
L	T/217	33-11-379-009	L	T/266	33-11-379-093	L	T/315	33-11-377-015
L	T/218	33-11-379-010	L	T/267	33-11-379-083	L	T/316	33-11-377-014
L	T/219	33-11-379-011	L	T/268	33-11-379-082	L	T/317	33-11-377-013
L	T/220	33-11-379-012	L	T/269	33-11-379-081	L	T/318	33-11-377-012
L	T/221	33-11-379-013	L	T/270	33-11-379-080	L	T/319	33-11-377-019
L	T/222	33-11-379-014	L	T/271	33-11-379-079	L	T/320	33-11-377-020
L	T/223	33-11-379-039	L	T/272	33-11-379-078	L	T/321	33-11-377-021
L	T/224	33-11-379-038	L	T/273	33-11-379-077	L	T/322	33-11-377-022
L	T/225	33-11-379-037	L	T/274	33-11-379-076	L	T/323	33-11-377-023
L	T/226	33-11-379-036	L	T/275	33-11-379-075	L	T/324	33-11-377-024
L	T/227	33-11-379-035	L	T/276	33-11-379-074	L	T/325	33-11-377-025
L	T/228	33-11-379-034	L	T/277	33-11-379-057	L	T/326	33-11-377-026
L	T/229	33-11-379-033	L	T/278	33-11-379-058	L	T/327	33-11-377-027
L	T/230	33-11-379-032	L	T/279	33-11-379-059	L	T/328	33-11-377-028
L	T/231	33-11-379-031	L	T/280	33-11-379-060	L	T/329	33-11-377-029-
L	T/232	33-11-379-030	L	T/281	33-11-379-061	L	T/330	33-11-377-030
L	T/233	33-11-379-029	L	T/282	33-11-379-062	L	T/331	33-11-377-031
L	T/234	33-11-379-118	L	T/283	33-11-379-063	L	T/332	33-11-377-032
L	T/235	33-11-379-117	L	T/284	33-11-379-064	L	T/333	33-11-377-033
L	T/236	33-11-379-116	L	T/285	33-11-379-065	L	T/334	33-11-377-034
L	T/237	33-11-379-115	L	T/286	33-11-379-066	L	T/335	33-11-377-035
L	T/238	33-11-379-114	L	T/287	33-11-379-067	L	T/336	33-11-377-036
L	T/239	33-11-379-113	L	T/288	33-11-379-068	P	A	33-11-377-011
L	T/240	33-11-379-112	L	T/289	33-11-379-069	P	B	33-11-379-001
L	T/241	33-11-379-111	L	T/290	33-11-379-070	P	C	33-11-377-058
L	T/242	33-11-379-110	L	T/291	33-11-379-071	P	D	33-11-377-059
L	T/243	33-11-379-101	L	T/292	33-11-379-072	P	E	33-11-378-003
L	T/244	33-11-379-102	L	T/293	33-11-379-073	P	F	33-11-376-001
L	T/245	33-11-379-103	L	T/294	33-11-377-056	P	G	33-11-377-018
L	T/246	33-11-379-104	L	T/295	33-11-377-055	P	H	33-11-377-052
L	T/247	33-11-379-105	L	T/296	33-11-377-054	P	I	33-11-377-057
L	T/248	33-11-379-106	L	T/297	33-11-377-053	P	J	33-11-379-119
L	T/249	33-11-379-107	L	T/298	33-11-377-051	P	K	33-11-379-100
L	T/250	33-11-379-108	L	T/299	33-11-377-050	P	L	33-11-379-084
L	T/251	33-11-379-109	L	T/300	33-11-377-049	P	M	33-11-379-056
L	T/252	33-11-379-099	L	T/301	33-11-377-048	P	N	33-11-379-015
L	T/253	33-11-379-098	L	T/302	33-11-377-047	P	O	33-11-379-016
L	T/254	33-11-379-097	L	T/303	33-11-377-046	P	P	33-11-381-001
L	T/255	33-11-379-096	L	T/304	33-11-377-045	P	Q	33-11-380-020
L	T/256	33-11-379-095	L	T/305	33-11-377-044			
L	T/257	33-11-379-094	L	T/306	33-11-377-043			
L	T/258	33-11-379-085	L	T/307	33-11-377-042			



**EXHIBIT B**

[Project Plan to Follow]

Exhibit B  
Aclaime at Independence Westgate  
Major Change Amendment Project Plan  
Design Guidelines



**ACLAIME™**

Attn: David Tolman  
230 W. Towne Ridge Parkway  
Suite 510  
Sandy, UT 84070

Prepared by:

**stevemplan**

Steve McCutchan  
6740 South 1300 East  
Suite 200  
Cottonwood Heights, UT 84121

Draft: August 14, 2014

## 1. MAJOR CHANGE PROJECT PLAN AMENDMENT

Aclaime at Independence proposes a Major Change Project Plan Amendment to accomplish the following.

- a. Incorporate 2.29 acres of property into the Aclaime at Independence Westgate Project Plan from the adjacent parcel being purchased from the Union Pacific Railroad.
- b. Revise the Conceptual Land Use Plan for Aclaime at Independence Westgate (the Erickson Property).
- c. Create open spaces and parks that will contribute to the quality of life for future neighborhood residents.
- d. Provide a range of for sale homes including single family detached and attached homes.
- e. Propose Design Guidelines that will be necessary with the changes contemplated by the Major Change Amendment.

## 2. ACLAIME AT INDEPENDENCE WESTGATE CONCEPTUAL PROJECT PLAN

Figure 1 is the proposed Aclaime at Independence Westgate Conceptual Project Plan. The Project Plan area includes the original area of the Westgate Parcel that has been estimated to be 29.8 acres and 2.29 acres along the western boundary of the property acquired by Aclaime Bluffdale LLC from the Union Pacific Railroad. The overall area of the Westgate Parcel is now approximately 32.1 acres. The figure at right illustrates the original Westgate Property and the additional Union Pacific Property.



The 2.29 acres acquired from Union Pacific is currently not part of the area covered by the original Independence Development Agreement. The Development Agreement for Aclaime at Independence Westgate will include the 2.29 acres. The property is shown as Mixed Use on the

recently adopted Bluffdale City General Plan, but is currently zoned R-1-43 CRO (Cluster Residential Overlay). It will need to be approved for rezoning to the Mixed Use (MU) Zone prior to the approval of the Development Agreement and Project Plan.

Inclusion of the 2.29 acres into the Development Agreement would also add to the number of dwelling units permitted. The Aclaime at Independence Westgate Project Plan proposes an additional 0.5 acres of open space (22% of 2.29 acres), the 2.29 acres allow an additional sixteen (16) dwelling units based upon Bluffdale City Code Section 11-11G-18 Table 3.

The original Project Plan shows 2.3 acres of active open space on the Westgate Property. 22% of 2.29 acres is an additional 0.504 acres, or 0.5 acres of open space. The minimum Active Open Space required by the original Independence Project Plan with the addition of the Union Pacific parcel is 2.8 acres.

The Project Plan proposes four (4) residential types including 44 minimum 50' by 90' front loaded garage single family detached lots, 27 40' by 95' front loaded single family detached lots, 40 minimum 40' by 75' alley loaded single family detached lots and 155 alley loaded urban townhomes. The total number of lots and units is 266.

Aclaime at Independence Westgate was allocated 249 homes in the original Independence Development Agreement and Project Plan. The additional 16 dwelling units from the Union Pacific Property increases the total number of dwelling units to 266. One (1) dwelling unit will need to be transferred from the Bland Property, or Aclaime at Independence Market Place project.

Table 1 is a Statistical Summary of the Aclaime at Independence Westgate Conceptual Plan. The area acreage and density numbers included in the Statistical Summary are approximations. As a part of platting, final engineering and similar approvals, the acreage and density numbers will be refined. The final approvals of plats and final engineering plans shall not be held to the exact numbers included but reasonable updates.

# Aclaiame at Independence Westgate

Property Area (Acres): 32.1

## Home Builders:

Holmes Homes



Area: 6.0

No. of Units: 103

Density (DU/Ac): 17.2

Liberty Homes



Area: 3.3

No. of Units: 52

Density (DU/Ac): 15.8

Chocolate Homes



Area (Acres): 4.5

No. of Units: 40

Density (DU/Ac): 8.9

Alpine Homes



Area (Acres): 3.0

No. of Units: 27

Density (DU/Ac): 9.0

Brighton Homes



Area (Acres): 3.6

No. of Units: 21

Density (DU/Ac): 6.3

Liberty Homes



Area (Acres): 3.2

No. of Units: 23

Density (DU/Ac): 6.3

Developer Area:



Area (Acres): 8.5

Total

Area (Acres): 32.1

No. of Units: 266

Density (DU/Ac): 8.3

Open Space:

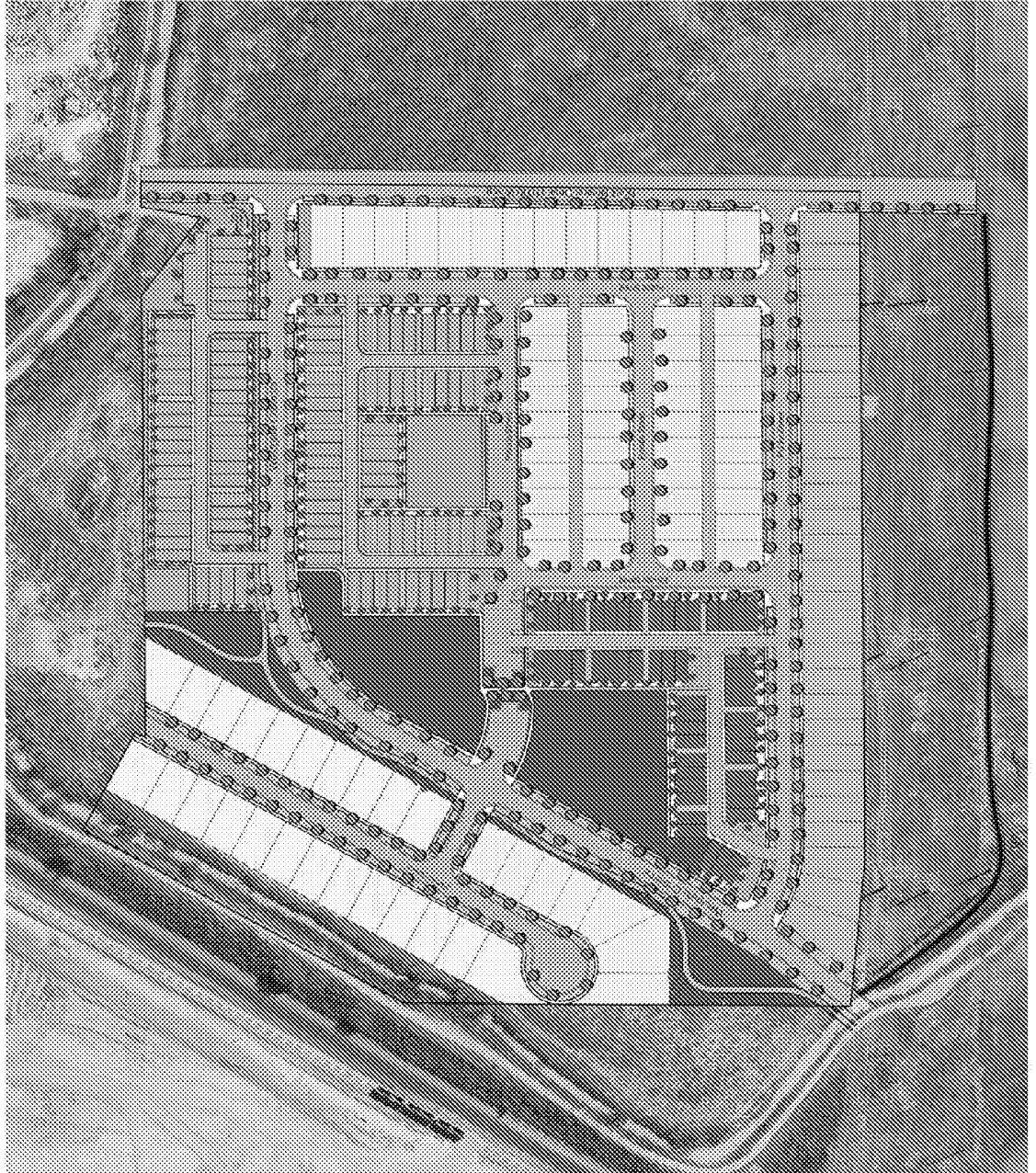


Public Active (Acres): 3.6

Private Active (Acres): 1.6

Private Passive (Acres): 1.1

Total (Acres): 6.3



stevemplan  
1000 West 10th Street  
Suite 100  
Vancouver, BC V6P 3E7  
Tel: 604.681.1111  
www.stevemplan.com

## conceptual site plan

August 11, 2014



Figure 1

**Table 1**

**Aclaime at Independence Westgate  
Concept Plan Statistical Summary**

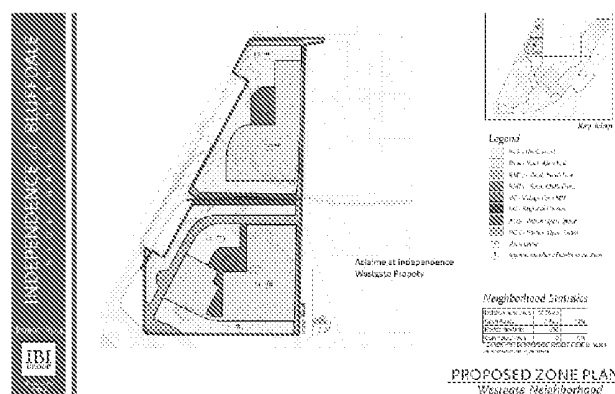
Residential Type	Open Space Type	Acres	Residential Density (DU/Ac)	No. of Units
Urban Townhome Units		9.3	16.7	155
40' x 75' Alley Loaded SFD		4.5	8.9	40
40' x 95' Front Loaded SFD		3.0	9.0	27
50' x 90' SFD		6.9	6.4	44
	Public Active	3.6		
Westgate Collector		4.8		
<b>Total</b>		<b>32.1</b>	<b>8.3</b>	<b>266</b>
	Private Active	1.6		
	Private Passive	1.1		
Total Active Open Space		5.2		
Total Passive Open Space		1.1		
<b>Total Open Space</b>		<b>6.3</b>		

a. Alternative Land Use Plan

The Land Use Plan included in Figure 1 and Table 1 depends upon the cooperation of the adjoining property owner to the north. Extension of the Neighborhood Public Road in the northwest corner and the extension of ten (10) foot trail over the north property line will require grading on the adjacent property. In the event that a reasonable agreement with the property owner to the north cannot be reached in a reasonable time frame, Figure 1A and Table 1A illustrate an Alternative Land Use Plan that is permitted by this Project Plan.

b. Open Space Plan

The Independence Project Plan (included as Figure 2A) proposed two open space areas within the Aclaime at Westgate boundaries. 2.3 acres were shown as Active Open Space in the form of parks and 1.3 acres was shown as Active Open Space along a realigned East Jordan Canal, or a total of 3.6 acres. The East Jordan Canal has not been aligned and no longer crosses the Aclaime at Independence Westgate property in the proposed realigned location. Therefore, the original Independence Project Plan delineates only the 2.3 acres of Active Open Space on the property.



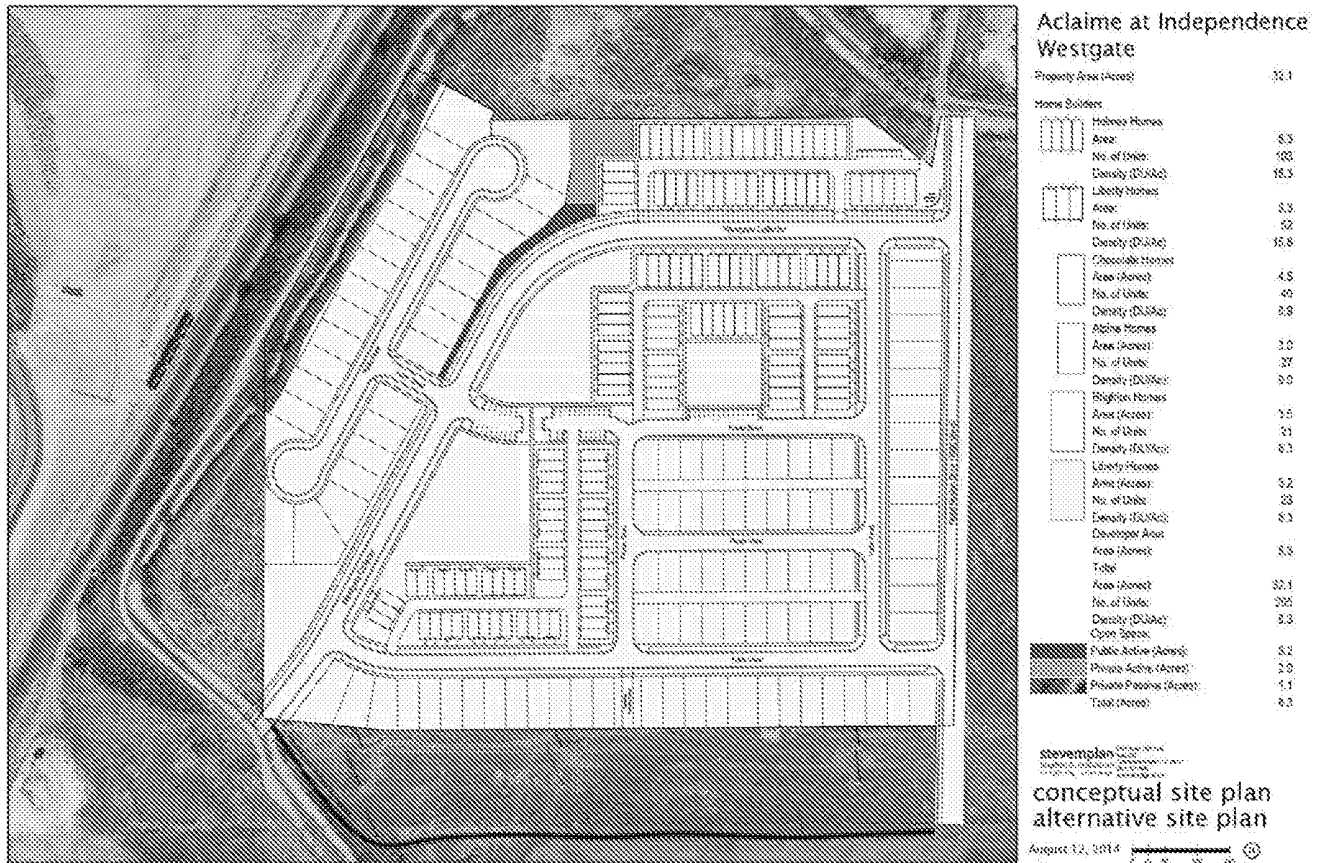


Figure 1A

<b>Residential Type</b>	<b>Open Space Type</b>	<b>Acres</b>	<b>Residential Density (DU/Ac)</b>	<b>No. of Units</b>
Urban Townhome Units		9.6	16.1	155
40' x 75' Alley Loaded SFD		4.5	8.9	40
40' x 95' Front Loaded SFD		3.0	9.0	27
50' x 90' SFD		6.7	6.4	43
	Public Active	3.2		
Westgate Collector		5.1		
<b>Total</b>		<b>32.1</b>	<b>8.3</b>	<b>265</b>
	Private Active	2.0		
	Private Passive	1.1		
Total Active Open Space		5.2		
Total Passive Open Space		1.1		
<b>Total Open Space</b>		<b>6.3</b>		

As stated previously, Aclaime at Independence adds 2.29 acres of Union Pacific property. Using the percentage of open space required in the original Project Plan, or 22%, the 2.29 additional acres requires an additional 0.504 acres of open space, or 0.5 acres rounded off. Therefore, based upon the Independence Project Plan, Aclaime at Independence is required 2.3 plus 0.5 acres, or 2.8 acres of Active Open Space.

Aclaime at Independence Westgate Conceptual Land Plan proposes a unique open space and parks plan that combines parks and trails primarily located along Aclaime at Independence Westgate collector street. The plan proposes to enhance the collector street creating the first segment of a “parkway” that will extend through Aclaime at Independence Westgate and travel south into the Day and Barlow Properties.

Figure 2 is an Open Space Plan that illustrates the areas dedicated to active public parks, active private parks and passive private open space. Table 2 is a comparison of the open space and parks originally approved in the Independence Development Agreement and Project Plan and what is proposed herein. Under the heading “Original Project Plan”, Table 2 shows the additional 0.5 acres in open space that is needed with the addition of the 2.29 acre Union Pacific Railroad property.

During the process of preparing final plats and engineering plans, it is possible that some of the acreages listed in Table 1 may need minor revisions from the numbers listed in Table 1. Minor revisions for the purposes of rectifying the engineering plans for the property are allowed based upon Staff approval.

Also included are seven (Figures 2A- 2G) three dimensional conceptual representations of the proposed development of the Aclaime at Independence Westgate Active Public Open Spaces. The conceptual representations illustrate the following.

- The location of the ten (10) foot asphalt trail meandering along the north and west sides of the Westgate Collector.
- The development of a “Pickle Ball” court, a half-court basketball court and a playground on the north park east of the Westgate Collector.
- A parking area east of the Westgate Collector dedicated to the park areas that includes 15 parking spaces.
- An open play area large enough to accommodate a U-10 soccer field on the south park east of the Westgate Collector.
- A pavilion and seating area located along the asphalt trail in the southwest corner of the property.
- Landscaped shrub areas in various locations along the east and west side of the Westgate Collector.

The two large park areas along the east side of the Westgate Collector will also serve as detention basins as shown on the conceptual representations.



**Table 2  
Open Space Comparison**

Original Project Plan		Major Change Amendment	
Open Space Type	Acres	Open Space Type	Acres
Active Public Open Space	2.3	Active Public Open Space	3.6
Addition of 2.2 Acres (UP Property)	0.5	Active Private Open Space	1.6
		Passive Private Open Space	1.1
<b>Totals</b>	<b>2.8</b>	<b>Totals</b>	<b>6.3</b>



**Aclaime at Independence Westgate**

Property Area (Acres):	32.3
<b>Home Builders:</b>	
Homes Homes	
Area:	8.0
No. of Units:	103
Density (DU/Ac):	17.2
Liberty Homes	
Area:	3.3
No. of Units:	52
Density (DU/Ac):	15.8
Chocolate Homes	
Area (Acres):	4.5
No. of Units:	40
Density (DU/Ac):	8.9
Alpine Homes	
Area (Acres):	3.0
No. of Units:	27
Density (DU/Ac):	9.0
Brighton Homes	
Area (Acres):	3.8
No. of Units:	21
Density (DU/Ac):	6.3
Liberty Homes	
Area (Acres):	3.2
No. of Units:	23
Density (DU/Ac):	6.3
Developer Area:	
Area (Acres):	8.5
<b>Total</b>	
Area (Acres):	32.1
No. of Units:	268
Density (DU/Ac):	8.3
<b>Open Space:</b>	
Public Active (Acres):	3.6
Private Active (Acres):	1.6
Private Passive (Acres):	1.1
<b>Total (Acres):</b>	<b>6.3</b>

steveplan  
conceptual open space plan  
August 11, 2014

**Figure 2**

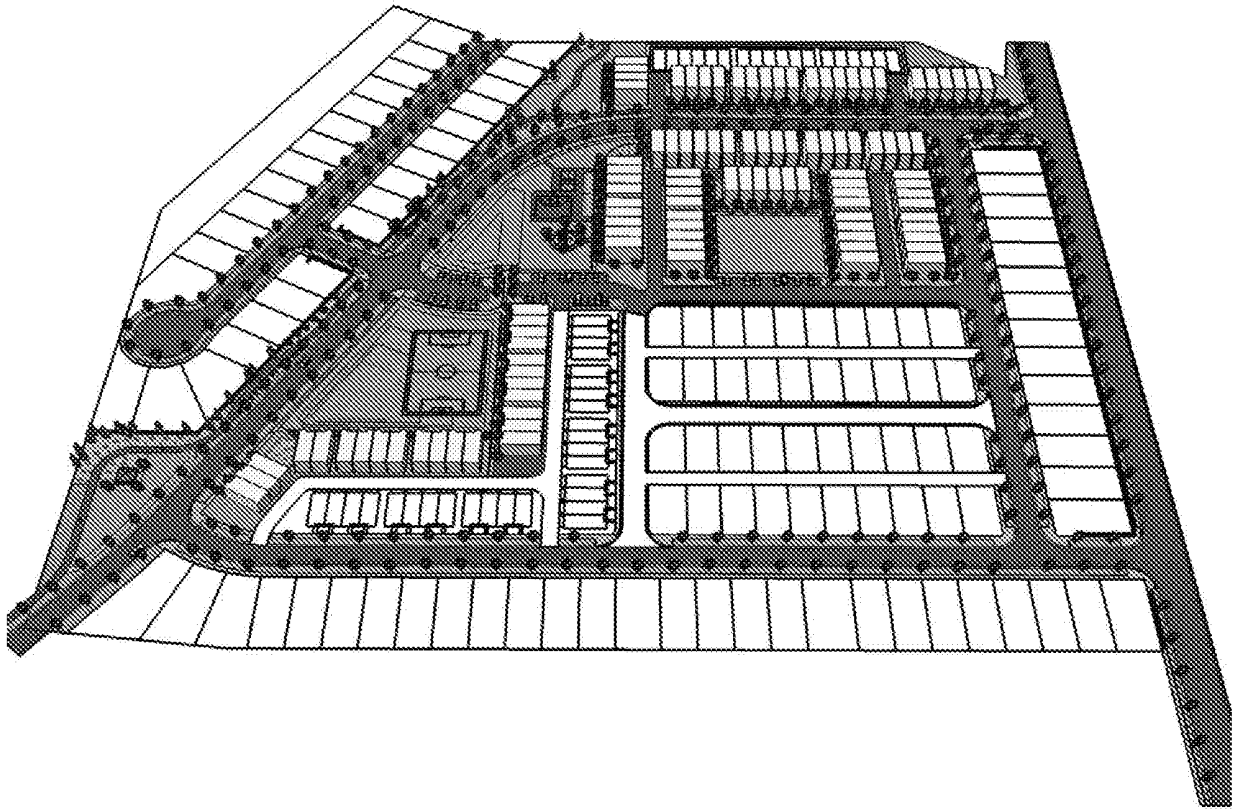


Figure 2A - Overall View Looking North

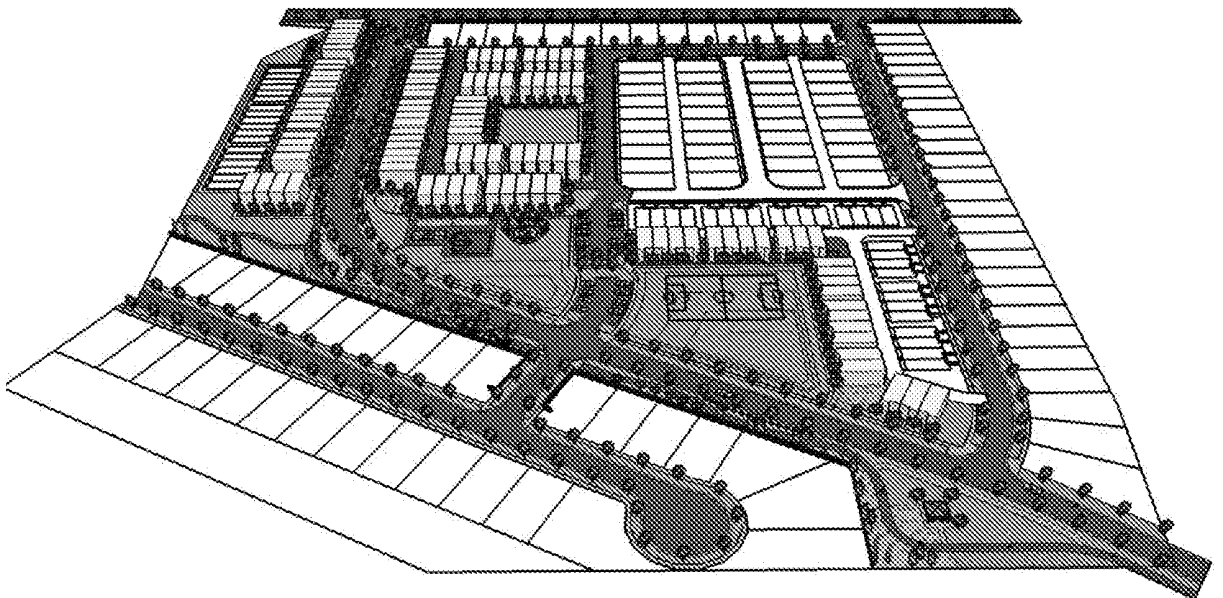


Figure 2B - Overall View Looking East

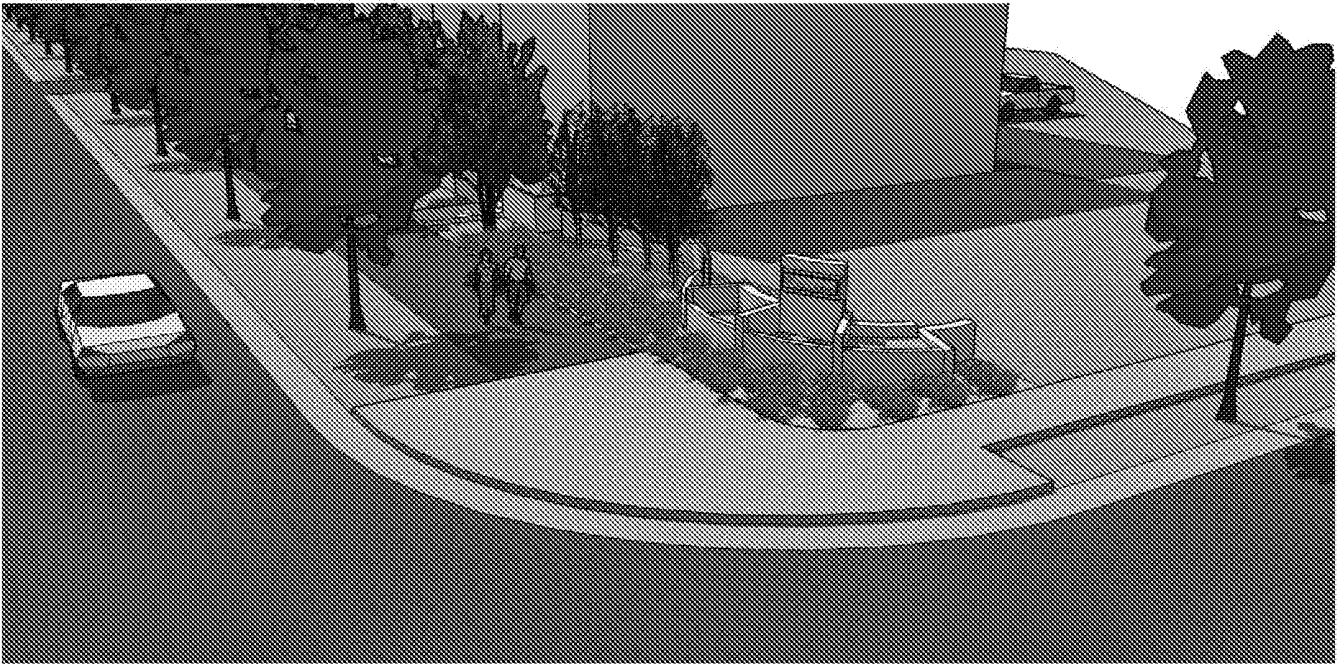


Figure 2C - Entry Monument

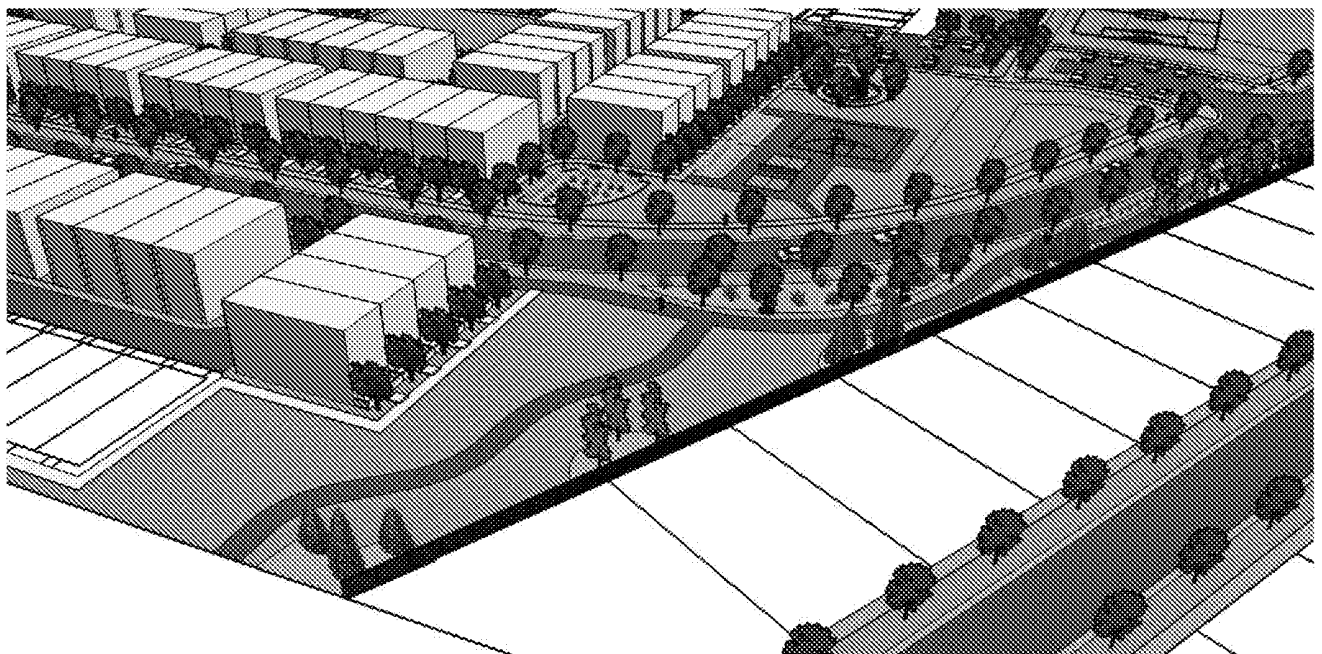


Figure 2D - Northwest Corner

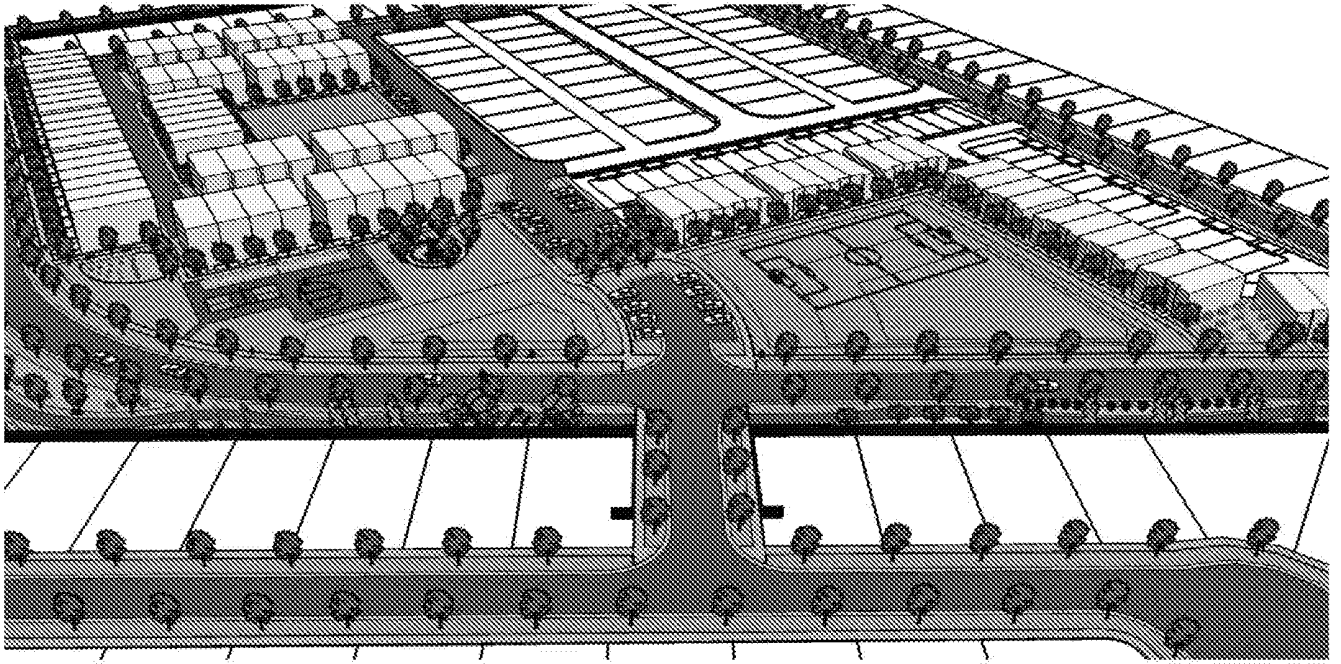


Figure 2E - Central Parks

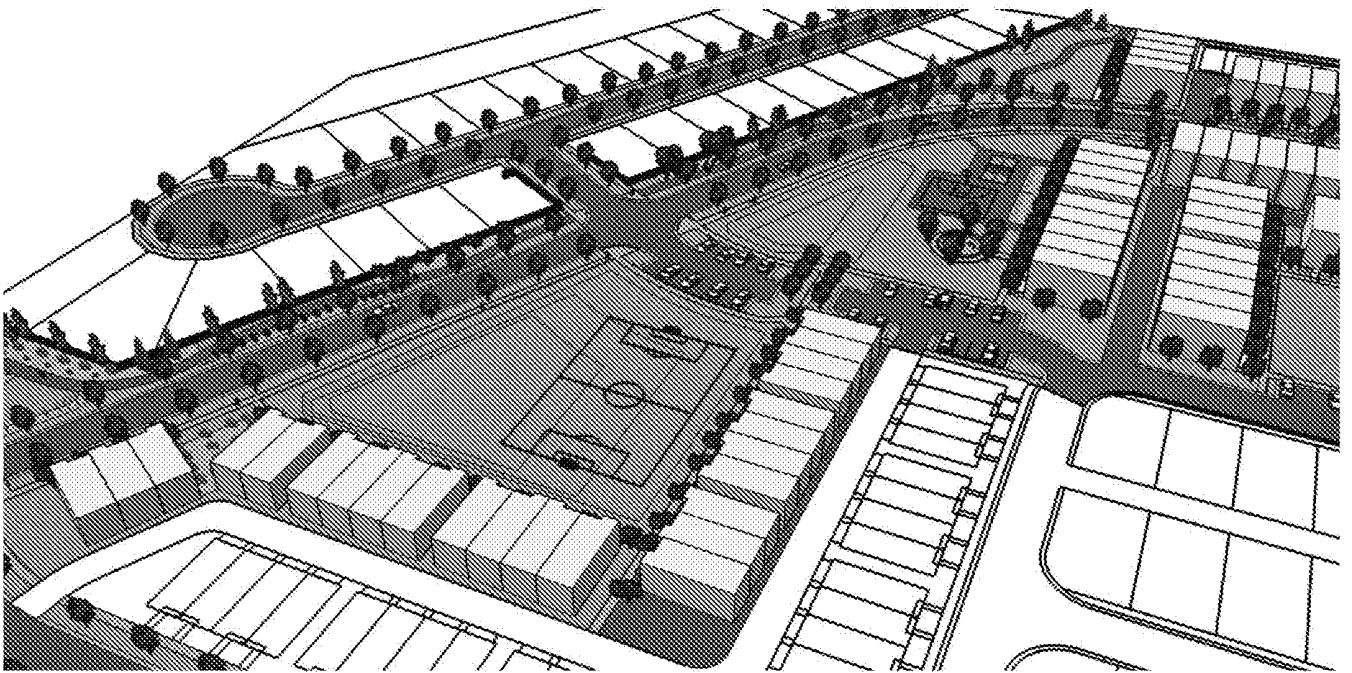


Figure 2F - Central Parks

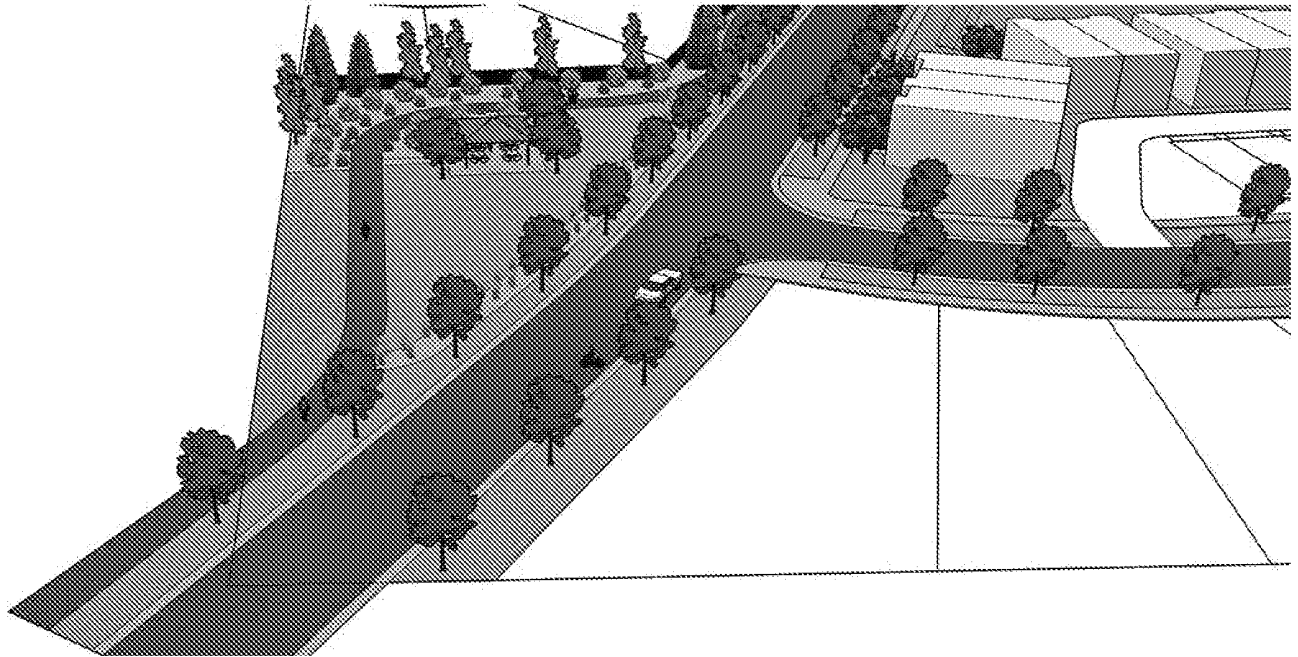


Figure 2G - Southwest Corner Park

c. Conceptual Trails Plan

Aclaime at Independence Westgate proposes that the City trail through the property be a part of the collector street creating a parkway. The collector street will continue south into the Day and Barlow properties and the City trail will continue adjacent to the collector street. This will provide trail access to the Jordan School District planned public elementary and middle schools planned in the Day and Barlow properties.

The trail will be located initially on the north side of the collector street and will transition to the west side as the collector turns southwest. The trail will be located within an approximately 29 foot parkway created from the 16.5 foot public parkway and an approximately 12.5 feet added by the developer. The trail is a ten (10) foot wide asphalt trail constructed to the City's trail specifications.

Figure 2H is the Conceptual Trail Plan. It includes a site plan showing the location of the trail and both a cross section and plan view of how the trail is located within the approximately 29 foot parkway.

d. Street Cross Sections

Figure 3 includes street cross sections for Noell Nelson Drive (1000 West), the Westgate collector, public streets, private streets and the private alleys. The cross sections also illustrate the open space easements that being added to the Westgate collector to create the Westgate parkway.

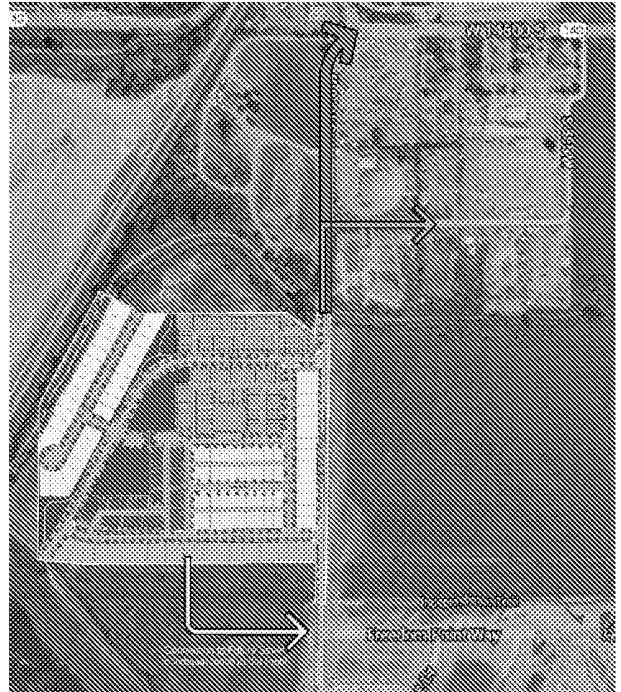


Regarding the construction of Noell Nelson Drive, as part of the development of Aclaime at Independence Westgate, the developer will construct the full improvement on the west side of the street and the improvement to the back of curb on the east side of the street as shown on Figure 3.

e. Secondary Access Options

With the initial construction, the developer will construct Noell Nelson Drive (1000 West) -- west side full improvements and east side curb and gutter --, from the where it abuts Noell Nelson Drive in Independence at the Point to the northern boundary of the property.

The figure to the right illustrates the Noell Nelson Drive connection to 14600 South (shown in red), a temporary connection to 14730 South (shown in orange) and a temporary connection streets to be constructed in Independence at the Point (shown in yellow). The actual location of the street connection through Independence at the Point depends upon the approved development plan.



f. Private Streets and Alley Snow Removal

Snow removal within the public rights-of way will be performed by Bluffdale City. Snow removal on private streets such as the single private street and the private alleys will need to be performed by the homeowner associations. The snow that is removed from the private street and alleys cannot be moved into the public right-of-way. Therefore, a conceptual plan has been prepared that illustrates how the snow should be removed and where it should be deposited. Figure 4 is a private street and alley snow removal plan.

g. On-Street and Off-Street Parking in Residential Areas

Aclaime at Independence Westgate Conceptual Site Plan includes 40 alley-loaded single family detached lots and 155 alley-loaded townhomes. As part of the development of the site plan, we have reviewed both the availability of on-street and off-street parking. It is also important to insure that emergency and snow removal vehicles have a clear access way. Therefore, we have proposed a on-street parking plan for Aclaime at Independence Westgate that limits on-street parking to one side of the street. This will leave a twenty-one (21) foot wide open access way that will not be impeded by on-street parking.

Bluffdale City Code Section 7-2-4 restricts parking on city streets during winter months and during snowstorms. Future residents will need to comply with Bluffdale City Codes regarding winter parking.

Figure 5 is illustrates the location of off-street parking, on-street parking on a single side of the street and the street sides where parking would be restricted.



Connection to be Constructed by Aclaime at Independence Westgate

Trail to Be Constructed by Independence at the Point

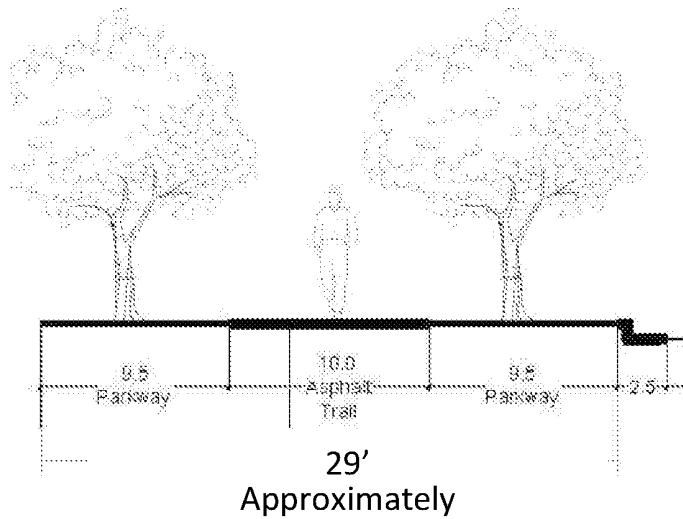
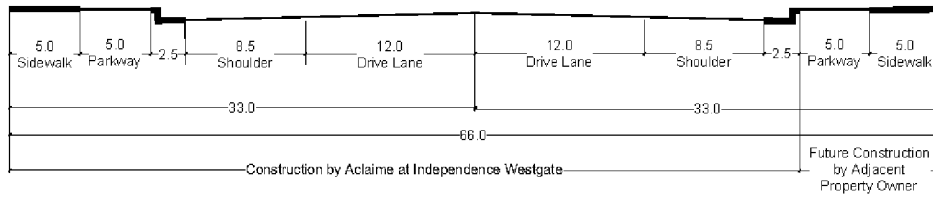
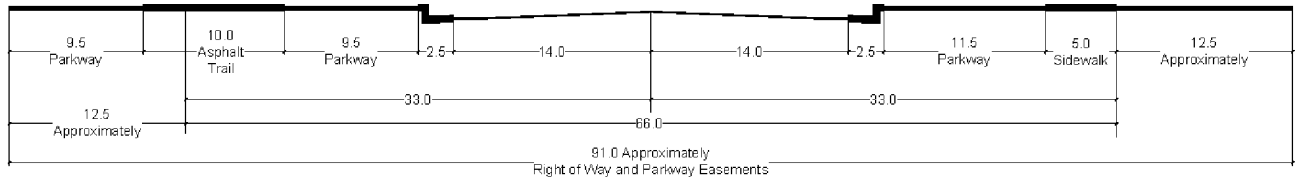


Figure 2H  
Conceptual Trails Plan

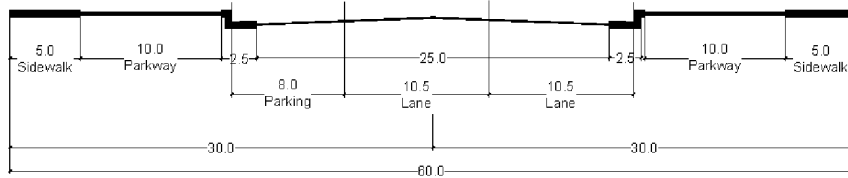
1000 West - 66' ROW



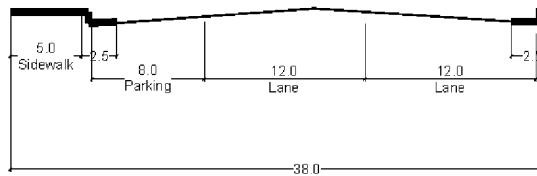
Westgate Collector - 66' ROW



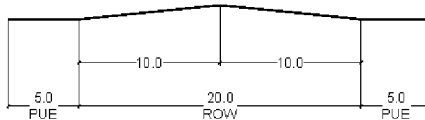
Public Street - 60' ROW



Private Street - 38' ROW



Private Alley



Aclaime at Independence Westgate

June 12, 2014

cross sections  
Figure 3



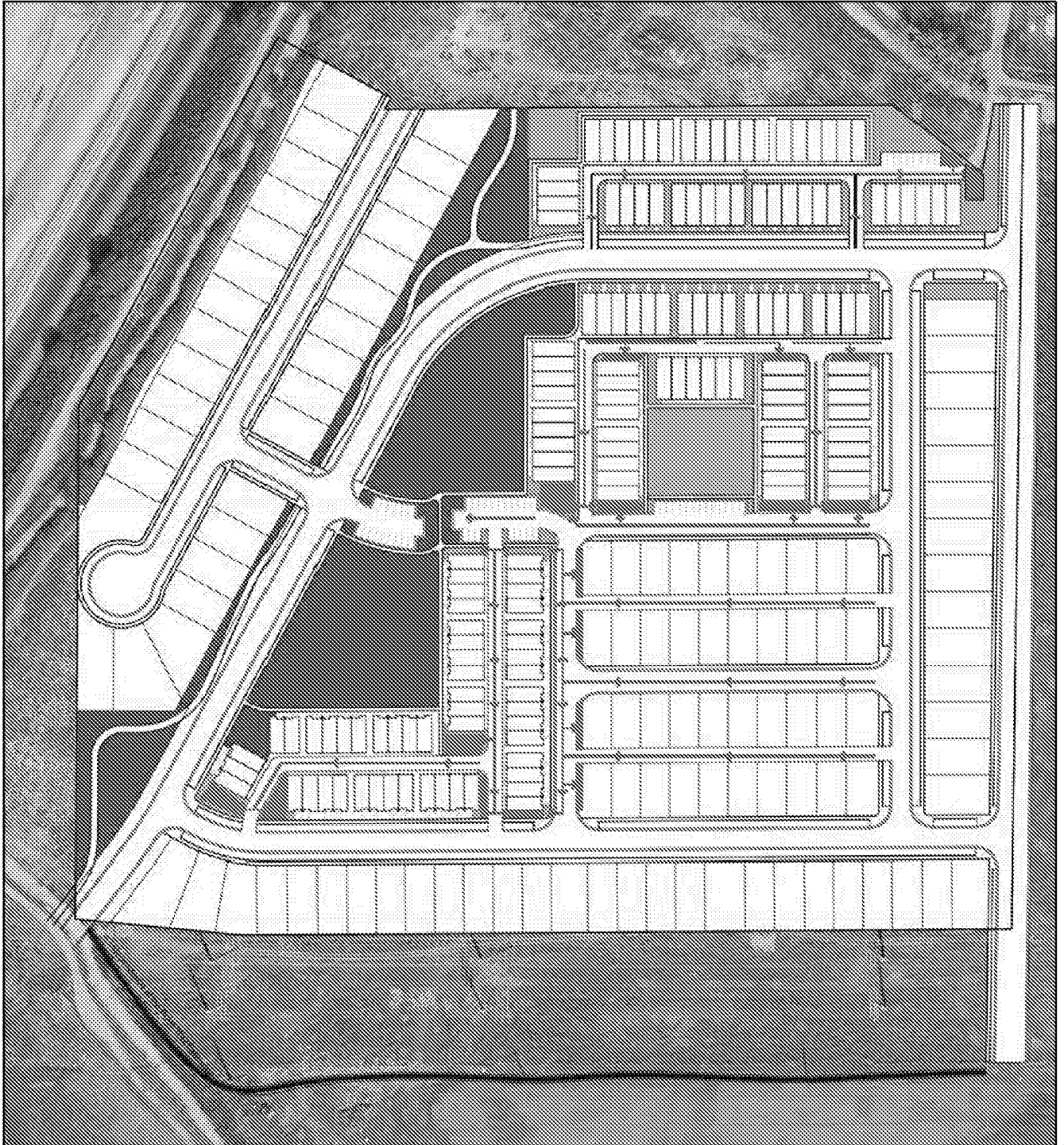


Figure 4 – Private Street Snow Removal Plan

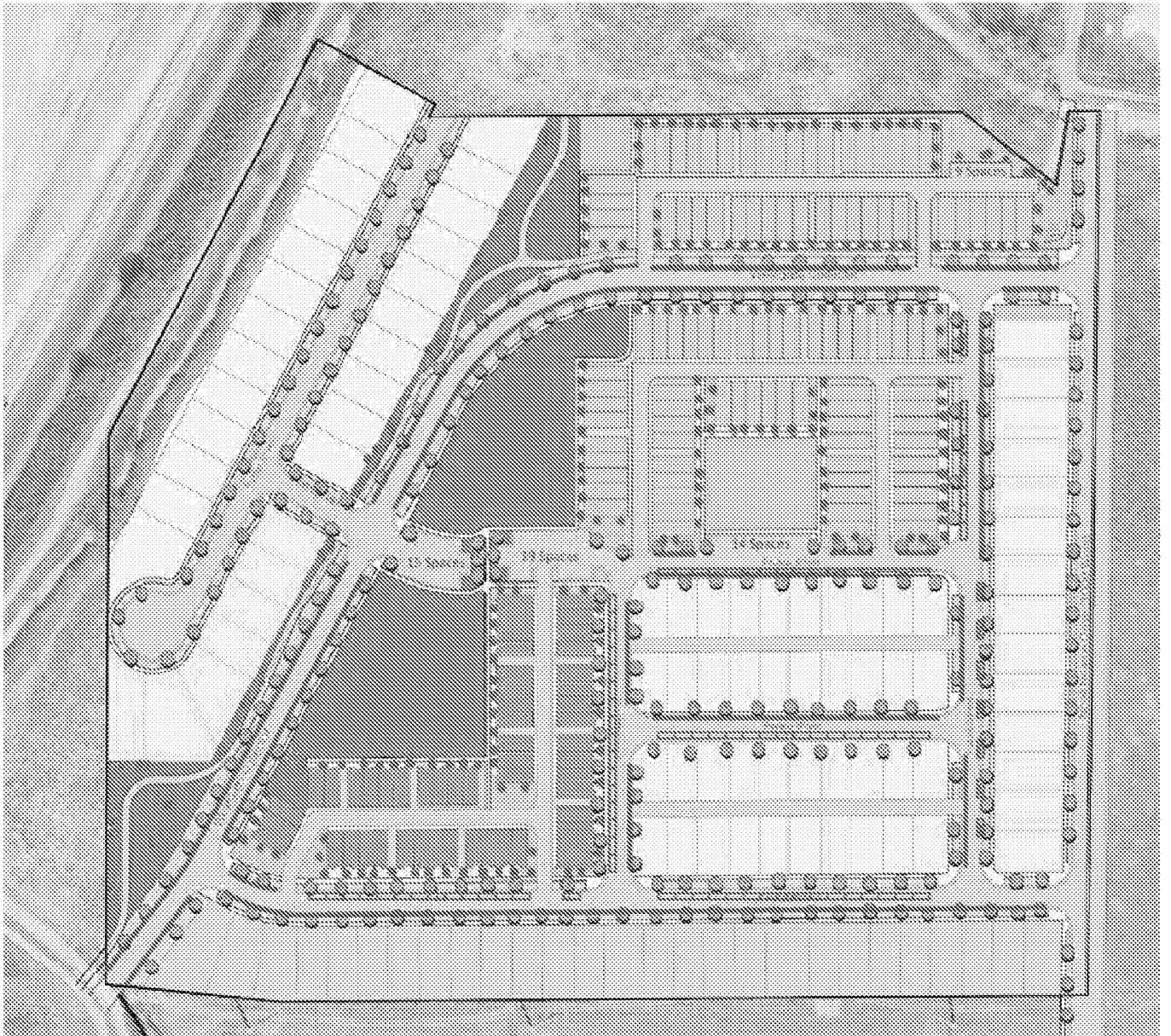


Figure 5 – Parking Plan

### 3. DESIGN GUIDELINES

Aclaime at Independence Westgate proposes four residential unit types, three single family detached lots . The following are standards for each of the unit types.

#### a. Single Family Detached Homes

There are 44 front-loaded single family detached homes on minimum 50' by 90' foot lots, 27 front-loaded single family detached homes on 40' by 95' lots and 40 alley-loaded single family detached homes on minimum 40 by 75 foot lots.

##### (1) Setbacks

- (a) Front yard setbacks shall be a minimum of ten (10) feet. Front accessed garages facing a street shall be setback a minimum of twenty (20) feet.
- (b) Interior side yard setbacks shall be a minimum of five (5) feet. Sideyards adjacent to a street or alley shall be setback a minimum of ten (10) feet.
- (c) Rear yards shall be setback a minimum of ten (10) feet. Garages facing an alley shall be setback a minimum of five (5) feet.

All other development standards shall be subject to the requirements of Section 11-11G-12 Table 2 of the Mixed Use (MU) Zone.

All single family detached homes require approval of the Aclaime at Independence Design Review Committee (AIDRC).

Figures 6, 7 and 8 are conceptual front elevation renderings of the front-loaded and alley-loaded single family detached homes.

#### b. Townhome Units

##### (1) Setbacks

- (a) Front yard setbacks shall be a minimum of ten (10) feet.
- (b) Sideyard separations between buildings shall be a minimum of ten feet. Sideyards adjacent to a street or alley shall be setback a minimum of ten (10) feet.
- (c) Rear yards shall be setback a minimum of ten (10) feet. Garages facing an alley shall be setback a minimum of five (5) feet.

All other development standards shall be subject to the requirements of Section 11-11G-12 Table 2 of the Mixed Use (MU) Zone.

##### (2) Architectural Guidelines

All townhome units within the Westgate Property require approval of the Aclaime at Independence Design Review Committee (AIDRC) and City Site Plan approval.

Figure 9 are the conceptual elevations of the townhome units.

c. Thematic Fencing

Fencing constructed throughout the Westgate Property shall be constructed to the thematic criterion established herein. The thematic criterion includes the following.

- (1) All fencing shall be constructed of “Trex” brand fencing and the “Seclusions” model. The thematic color is “Woodland Brown”.
- (2) All fencing shall be a height of minimum six (6) feet except fencing in a front yard area shall be a maximum three (3) feet in height.
- (3) Fencing adjacent to the canal may be chain link fencing that is vinyl coated, black in color.

Figure 10 are conceptual illustrations of the proposed fencing.

d. Street Tree Plan

A street tree plan shall be submitted for each phase of the development and shall be reviewed by the City at the preliminary plat stage. The following table shall be a guide for the selection of trees to be planted within the development. Shade trees shall be used within public rights-of-way as street trees. Ornamental trees shall be used in other areas of the development.

**Shade Trees**

Common Name	Botanical Name	Height (Ft)	Spreading (Ft)	Notes
Ash, Green	<i>Fraxinus pennsylvanica</i>	45-55	30	Glossing yellow fall color, fall leaves drop in a day.
Ash, White	<i>Fraxinus americana</i>	50-60	30	Leaves yellow to red-purple in fall. Aromatic Purple odor.
Bass, American	<i>Liriodendron americana</i>	60-80	30	Use 4' radius and Pioneer sub-species-they resist disease.
Honey Locust	<i>Gleditsia triacanthos</i>	30-35	30	Produces 7" long seedpods, Varies in form, is thornless.
Japanese Pagoda Tree	<i>Sophora japonica</i>	20-40	30	Green leaflets, white flower clusters late summer, takes root.
Keraway Maple	<i>Acer platanoides</i>	20-40	30	
Mountain Ash	<i>Sorbus aucuparia</i>	20-30	30	Brilliant display of orange-red fruit in fall.
Oak, English	<i>Quercus robur fastigiata</i>	45-65	30	Fastigiata is columnar with ridged and furrowed branches.
Oak, Swamp White	<i>Quercus bicolor</i>	30-60	30	Bark becomes deeply ridged and furrowed with age.
Oak, Bur	<i>Quercus macrocarpa</i>	70-85	30	Gray-brown bark becomes deeply ridged and furrowed.
Yellow	<i>Zelkova serrata</i>	40-70	30	Green Vasear Village Green varieties best. Fast grower.
London Planetree	<i>Platanus x acerifolia</i>	30-60	30	Spotted bark.
Basswood	<i>Tilia americana</i>	30-40	30	Compact growth.

**Ornamental Trees**

Common Name	Botanical Name	Height (Ft)	Spreading (Ft)	Notes
Cherry, Flowering	<i>Prunus serrulata (weeping)</i>	15-30	20	Good Spring and Fall color.
Crabapple	Flowering Malus (weeping only)	10-25	20	Flower and fruit color depends on cultivar.
Goldenrain Tree	<i>Koeleria paniculata</i>	30-40	25	Rich yellow flowers June-July.
Hawthorn	<i>Crataegus</i>	15-30	20	Thorns, white flowers in May, reddish fruit Fall. Weeping.
Maple	<i>Amar Ginnala / Acer ginnala</i>	15-35	20	Leaves turn shades of yellow, orange and red in fall.
Maple	<i>Acer batianicum</i>	15-30	20	Rich consistent red.
Pear, Flowering	<i>Prunus calleryana</i>	30-50	25	White flowers in Spring, Red in Fall.
Plum, Flowering	<i>Prunus cerasifera</i>	15-30	20	White to Pink flowers, Red and purple leaved varieties.
Redbud, Eastern	<i>Cercis canadensis</i>	20-30	20	Gorgeous, pinkish-purple flower in Spring.



Figure 6:  
Typical 50' x 90' Lot Homes

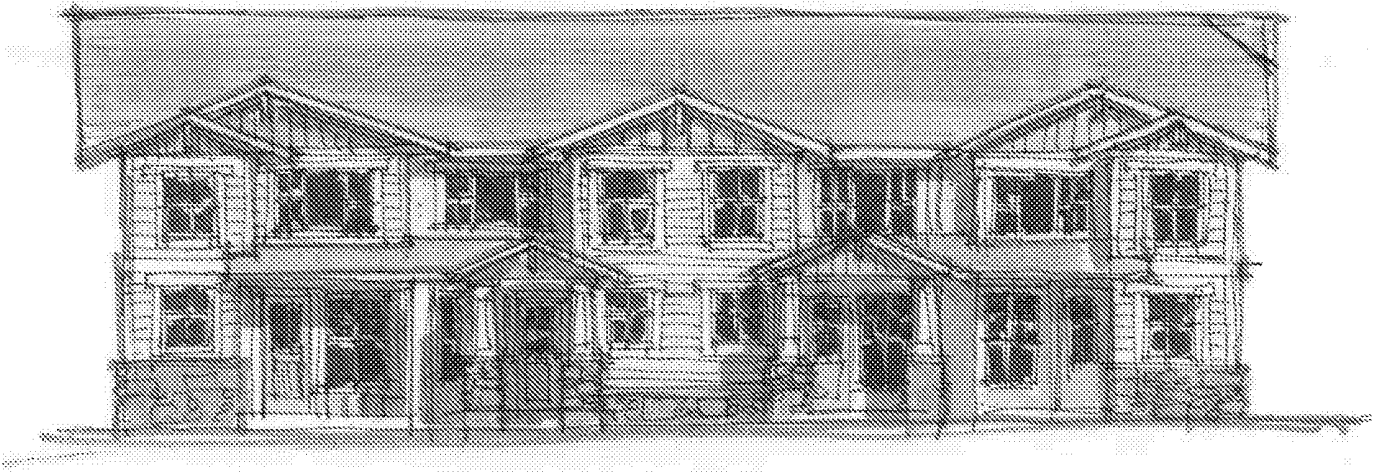




Figure 7:  
Typical 40' x 95'; Lot Homes



Figure 8:  
Typical 40' x 75' Lot Homes



Liberty Homes

Figure 9:  
Typical Urban Townhomes





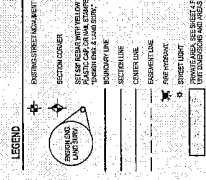
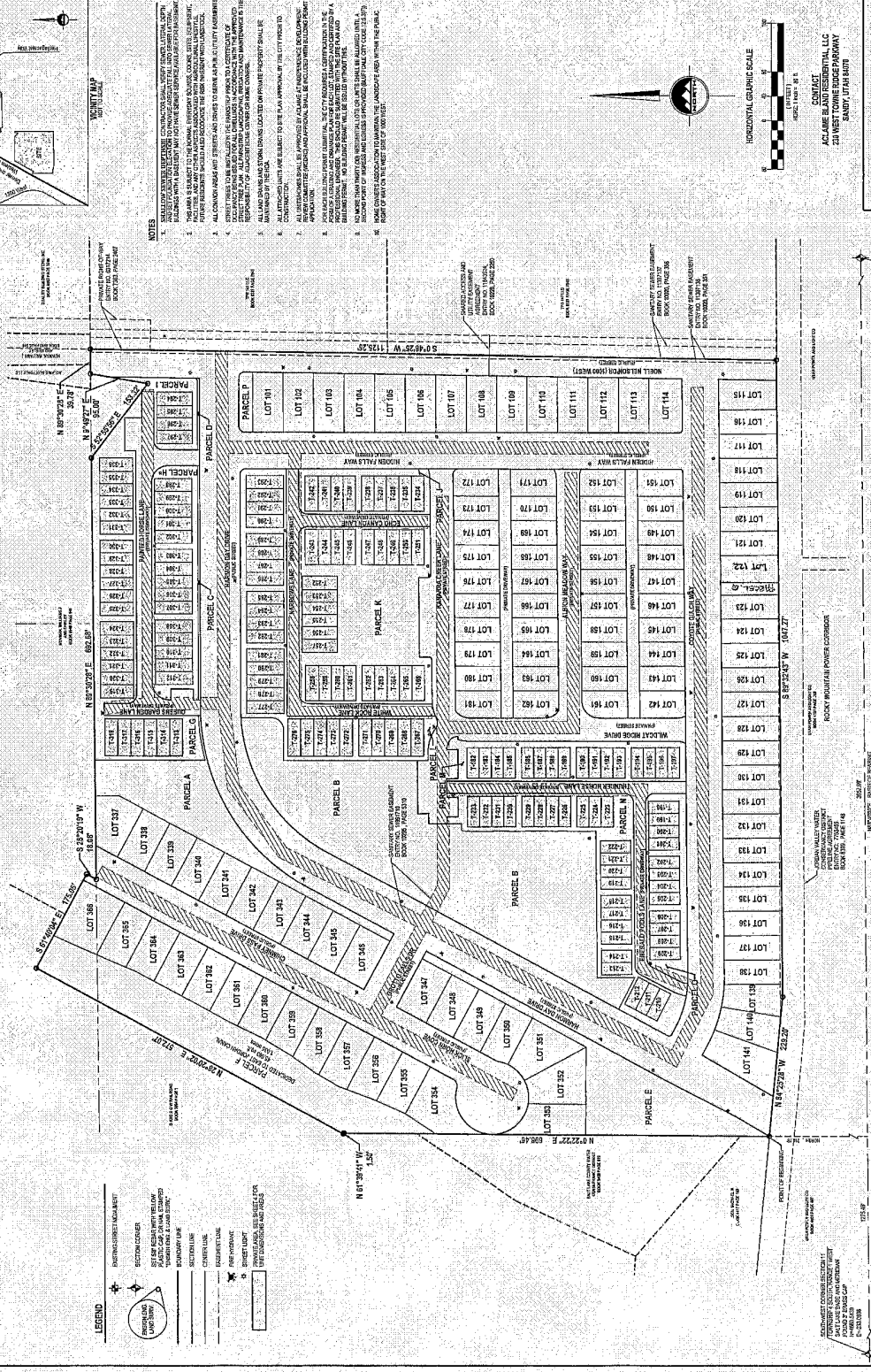
Figure 10  
Examples of Aclaime at Independence Westgate  
Community Fencing

**EXHIBIT C**

[Plat to Follow]

# WESTGATE ACLAIME AT INDEPENDENCE SUBDIVISION

LOCATED IN THE SOUTHWEST QUARTER OF SECTION 11,  
TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE & MERIDIAN  
BLUFFDALE CITY, SALT LAKE COUNTY, UTAH



**OWNER'S DEDICATION**  
I, the undersigned, do hereby dedicate to the public use of the City of Bluffdale, Utah, the following described property, to-wit: the property described in the attached plat, and the same shall be held in trust for the use and benefit of the City of Bluffdale, Utah, and the same shall be subject to the same laws, regulations, and ordinances as other public property owned by the City of Bluffdale, Utah.

**UNITED LIABILITY COMPANY ACKNOWLEDGMENT**  
I, the undersigned, do hereby acknowledge that I am a member of the United Liability Company, and that I am authorized to execute this instrument on behalf of the United Liability Company.

**LENDER'S CONSENT**  
I, the undersigned, do hereby consent to the execution of this instrument on behalf of the lender.

**LENDER'S ACKNOWLEDGMENT**  
I, the undersigned, do hereby acknowledge that I am a lender, and that I am authorized to execute this instrument on behalf of the lender.

**STATE OF UTAH**  
COUNTY OF BLUFFDALE

**NOTARIAL PUBLIC**  
I, the undersigned, do hereby certify that I am a Notary Public in and for the State of Utah, and that I am authorized to execute this instrument on behalf of the Notary Public.

**PLANNING COMMISSION APPROVAL**  
APPROVED THIS 12th DAY OF JUNE 2015 BY THE PLANNING COMMISSION OF THE CITY OF BLUFFDALE, UTAH.

**CITY COUNCIL APPROVAL**  
APPROVED THIS 23rd DAY OF JUNE 2015 BY THE CITY COUNCIL OF THE CITY OF BLUFFDALE, UTAH.

**APPROVAL BY STATE**  
APPROVED THIS 23rd DAY OF JUNE 2015 BY THE STATE OF UTAH.

**BURVEYOR'S CERTIFICATE**  
I, the undersigned, do hereby certify that I am a Licensed Professional Surveyor in the State of Utah, and that I am authorized to execute this instrument on behalf of the Surveyor.

**BOUNDARY DESCRIPTION**  
The boundary description of the property is as follows: ...

**WESTGATE ACLAIME AT INDEPENDENCE SUBDIVISION**  
A plat of the Westgate Aclaieme at Independence Subdivision, located in the southwest quarter of section 11, township 4 south, range 1 west, salt lake & meridian, bluffdale city, salt lake county, utah.

**OWNER'S DEDICATION**  
I, the undersigned, do hereby dedicate to the public use of the City of Bluffdale, Utah, the following described property, to-wit: the property described in the attached plat, and the same shall be held in trust for the use and benefit of the City of Bluffdale, Utah, and the same shall be subject to the same laws, regulations, and ordinances as other public property owned by the City of Bluffdale, Utah.

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**LENDER'S CONSENT**  
I, the undersigned, do hereby consent to the execution of this instrument on behalf of the lender.

**LENDER'S ACKNOWLEDGMENT**  
I, the undersigned, do hereby acknowledge that I am a lender, and that I am authorized to execute this instrument on behalf of the lender.

**STATE OF UTAH**  
COUNTY OF BLUFFDALE

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APPROVED THIS 12th DAY OF JUNE 2015 BY THE PLANNING COMMISSION OF THE CITY OF BLUFFDALE, UTAH.

**CITY COUNCIL APPROVAL**  
APPROVED THIS 23rd DAY OF JUNE 2015 BY THE CITY COUNCIL OF THE CITY OF BLUFFDALE, UTAH.

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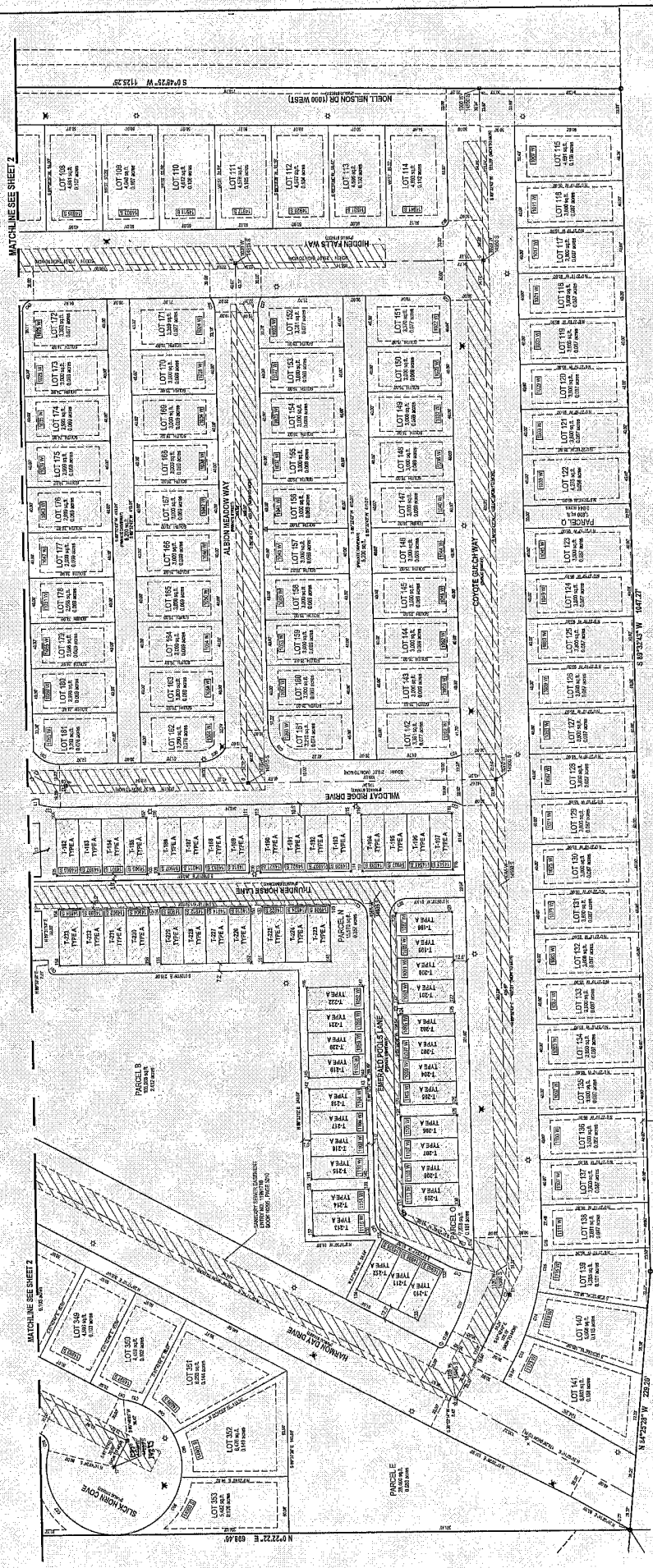
**APPROVAL BY STATE**  
APPROVED THIS 23rd DAY OF JUNE 2015 BY THE STATE OF UTAH.





# WESTGATE ACLAIME AT INDEPENDENCE SUBDIVISION

LOCATED IN THE SOUTHWEST QUARTER OF SECTION 11,  
TOWNSHIP 4 SOUTH, RANGE 10 WEST, MERIDIAN 10 WEST,  
BLUFFDALE CITY, SALT LAKE COUNTY, UTAH



UTAH POWER AND LIGHT CO  
BLOCK 801 PHASE 200

UTAH POWER AND LIGHT CO  
BLOCK 801 PHASE 200

UTAH POWER AND LIGHT CO

**WESTGATE ACLAIME AT  
INDEPENDENCE SUBDIVISION**  
LOCATED IN THE SOUTHWEST QUARTER OF SECTION 11,  
TOWNSHIP 4 SOUTH, RANGE 10 WEST, MERIDIAN 10 WEST,  
BLUFFDALE CITY, SALT LAKE COUNTY, UTAH

PROJECT NO. 2088 0834

OWNER: WESTGATE ACLAIME LLC  
PREPARED BY: J. J. ZIMMERMAN, INC.  
DATE: 08/23/10

**EN SIGN**

REGISTERED PROFESSIONAL ENGINEER  
No. 2088 0834

DATE: 08/23/10

**LEGEND**

- EXISTING IMPROVEMENTS
- PROPOSED IMPROVEMENTS
- PROPERTY BOUNDARIES
- SECTION CORNER
- SECTION LINE
- SECTION CORNER
- SECTION LINE
- SECTION CORNER
- SECTION LINE
- SECTION CORNER
- SECTION LINE

**UTAH POWER AND LIGHT CO  
BLOCK 801 PHASE 200**

UTAH POWER AND LIGHT CO  
BLOCK 801 PHASE 200

UTAH POWER AND LIGHT CO

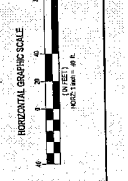
**LEGEND**

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- PROPOSED IMPROVEMENTS
- PROPERTY BOUNDARIES
- SECTION CORNER
- SECTION LINE
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**UTAH POWER AND LIGHT CO  
BLOCK 801 PHASE 200**

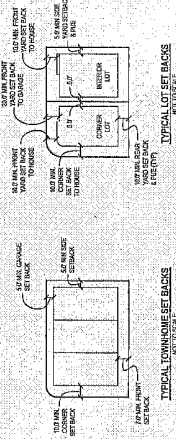
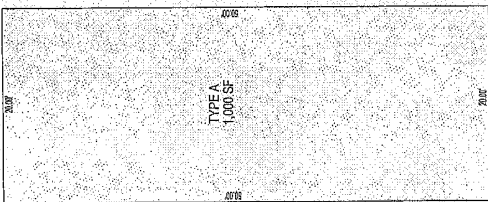
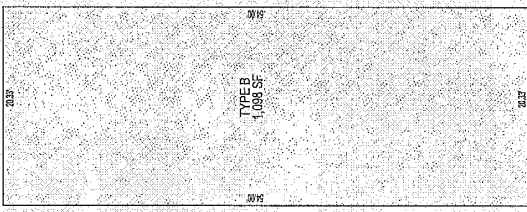
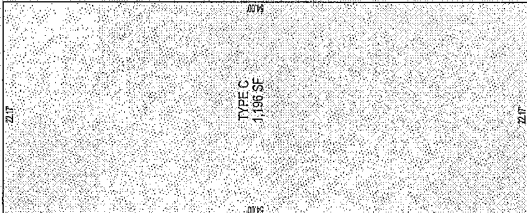
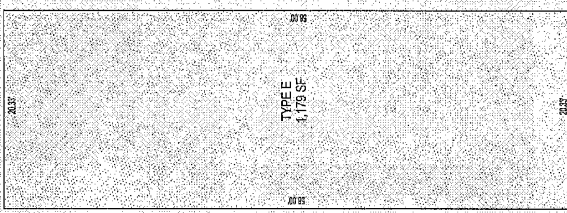
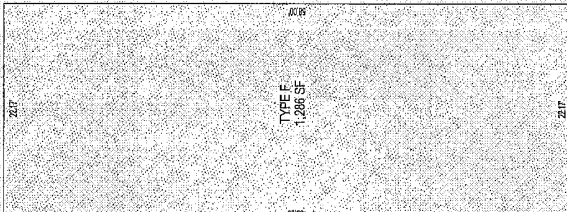
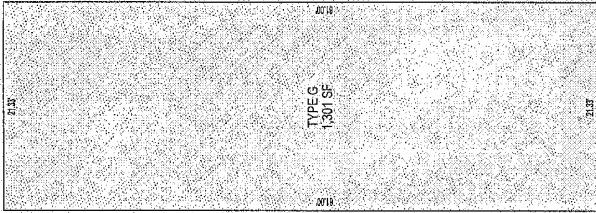
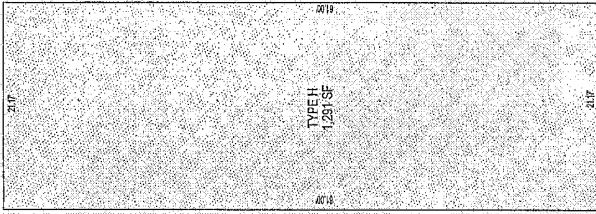
UTAH POWER AND LIGHT CO  
BLOCK 801 PHASE 200

UTAH POWER AND LIGHT CO



# WESTGATE ACCLAIM AT INDEPENDENCE SUBDIVISION

LOCATION IN THE SOUTHWEST QUARTER OF SECTION 11,  
TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN  
BLUFFDALE CITY, SALT LAKE COUNTY, UTAH



POINT	EASTING	NORTHING	POINT	EASTING	NORTHING
1	5004.00	2000.00	17	5004.00	2000.00
2	5004.00	2000.00	18	5004.00	2000.00
3	5004.00	2000.00	19	5004.00	2000.00
4	5004.00	2000.00	20	5004.00	2000.00
5	5004.00	2000.00	21	5004.00	2000.00
6	5004.00	2000.00	22	5004.00	2000.00
7	5004.00	2000.00	23	5004.00	2000.00
8	5004.00	2000.00	24	5004.00	2000.00
9	5004.00	2000.00	25	5004.00	2000.00
10	5004.00	2000.00	26	5004.00	2000.00
11	5004.00	2000.00	27	5004.00	2000.00
12	5004.00	2000.00	28	5004.00	2000.00
13	5004.00	2000.00	29	5004.00	2000.00
14	5004.00	2000.00	30	5004.00	2000.00
15	5004.00	2000.00	31	5004.00	2000.00
16	5004.00	2000.00	32	5004.00	2000.00
17	5004.00	2000.00	33	5004.00	2000.00
18	5004.00	2000.00	34	5004.00	2000.00
19	5004.00	2000.00	35	5004.00	2000.00
20	5004.00	2000.00	36	5004.00	2000.00
21	5004.00	2000.00	37	5004.00	2000.00
22	5004.00	2000.00	38	5004.00	2000.00
23	5004.00	2000.00	39	5004.00	2000.00
24	5004.00	2000.00	40	5004.00	2000.00
25	5004.00	2000.00	41	5004.00	2000.00
26	5004.00	2000.00	42	5004.00	2000.00
27	5004.00	2000.00	43	5004.00	2000.00
28	5004.00	2000.00	44	5004.00	2000.00
29	5004.00	2000.00	45	5004.00	2000.00
30	5004.00	2000.00	46	5004.00	2000.00
31	5004.00	2000.00	47	5004.00	2000.00
32	5004.00	2000.00	48	5004.00	2000.00
33	5004.00	2000.00	49	5004.00	2000.00
34	5004.00	2000.00	50	5004.00	2000.00
35	5004.00	2000.00	51	5004.00	2000.00
36	5004.00	2000.00	52	5004.00	2000.00
37	5004.00	2000.00	53	5004.00	2000.00
38	5004.00	2000.00	54	5004.00	2000.00
39	5004.00	2000.00	55	5004.00	2000.00
40	5004.00	2000.00	56	5004.00	2000.00
41	5004.00	2000.00	57	5004.00	2000.00
42	5004.00	2000.00	58	5004.00	2000.00
43	5004.00	2000.00	59	5004.00	2000.00
44	5004.00	2000.00	60	5004.00	2000.00
45	5004.00	2000.00	61	5004.00	2000.00
46	5004.00	2000.00	62	5004.00	2000.00
47	5004.00	2000.00	63	5004.00	2000.00
48	5004.00	2000.00	64	5004.00	2000.00
49	5004.00	2000.00	65	5004.00	2000.00
50	5004.00	2000.00	66	5004.00	2000.00
51	5004.00	2000.00	67	5004.00	2000.00
52	5004.00	2000.00	68	5004.00	2000.00
53	5004.00	2000.00	69	5004.00	2000.00
54	5004.00	2000.00	70	5004.00	2000.00
55	5004.00	2000.00	71	5004.00	2000.00
56	5004.00	2000.00	72	5004.00	2000.00
57	5004.00	2000.00	73	5004.00	2000.00
58	5004.00	2000.00	74	5004.00	2000.00
59	5004.00	2000.00	75	5004.00	2000.00
60	5004.00	2000.00	76	5004.00	2000.00
61	5004.00	2000.00	77	5004.00	2000.00
62	5004.00	2000.00	78	5004.00	2000.00
63	5004.00	2000.00	79	5004.00	2000.00
64	5004.00	2000.00	80	5004.00	2000.00
65	5004.00	2000.00	81	5004.00	2000.00
66	5004.00	2000.00	82	5004.00	2000.00
67	5004.00	2000.00	83	5004.00	2000.00
68	5004.00	2000.00	84	5004.00	2000.00
69	5004.00	2000.00	85	5004.00	2000.00
70	5004.00	2000.00	86	5004.00	2000.00
71	5004.00	2000.00	87	5004.00	2000.00
72	5004.00	2000.00	88	5004.00	2000.00
73	5004.00	2000.00	89	5004.00	2000.00
74	5004.00	2000.00	90	5004.00	2000.00
75	5004.00	2000.00	91	5004.00	2000.00
76	5004.00	2000.00	92	5004.00	2000.00
77	5004.00	2000.00	93	5004.00	2000.00
78	5004.00	2000.00	94	5004.00	2000.00
79	5004.00	2000.00	95	5004.00	2000.00
80	5004.00	2000.00	96	5004.00	2000.00
81	5004.00	2000.00	97	5004.00	2000.00
82	5004.00	2000.00	98	5004.00	2000.00
83	5004.00	2000.00	99	5004.00	2000.00
84	5004.00	2000.00	100	5004.00	2000.00

**WESTGATE ACCLAIM AT  
INDEPENDENCE SUBDIVISION**  
 LOCATION IN THE SOUTHWEST QUARTER OF SECTION 11,  
 TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN  
 BLUFFDALE CITY, SALT LAKE COUNTY, UTAH  
 PROJECT NUMBER: 12087624  
 DATE OF THIS COUNTY RECORD AND RECORD NUMBER: THE  
 RECORD OF DEEDS AT BLUFFDALE CITY, UTAH  
 PREPARED BY: **Acclaim**  
 DATE: 10/12/2015  
 COUNTY: Salt Lake  
 DEPUTY: **Acclaim**  
 \$403.00  
 www.pls.com/record



SHEET 4 OF 4  
 PROJECT NUMBER: 12087624  
 DRAWN BY: PKM  
 CHECKED BY: PKM  
 DATE: 10/12/2015

**EXHIBIT D**

[Design Guidelines to Follow]

**stevemplan, llc**  
**Stephen G. McCutchan**  
land planning urban design  
1750 East Janella Way  
Sandy, UT 84093  
**801-557-6945**  
**stevemplan@gmail.com**

June 16, 2015

Re: Westgate Development Review Committee Approval Information

**BACKGROUND**

As part of Bluffdale City's approval of the Westgate Development Agreement, the Westgate Development Review Committee (WDRC) was established and empowered to review specific development proposals including architectural and landscape architectural reviews. The City requires WDRC approval of all plans prior to submittal to the City for permit review and approval. The WDRC is comprised of Dave Tolman, Vice President of Aclaime Dynamics, and Steve McCutchan, President of Stevemplan, LLC and a professional land planner and urban designer.

**DESIGN GUIDELINES**

Within the approval of the Westgate Development Agreement, the "Design Guidelines" were limited to the setbacks for each lot and a series of architectural elevation photos or drawings that provided a general concept of the anticipated appearance of the homes to be constructed. The design guidelines were purposely left general to allow home builders a wide range of construction options.

In addition, the WDRC has established four basic guidelines that would be used in the review of submitted architectural plans. Those guidelines are the following.

- No vinyl siding shall be permitted. Stucco, masonry, fiber cement siding and / or similar construction products shall be used on all exterior walls.
- Where masonry is used on the front exterior at corners, it shall be wrapped around to the side exterior a minimum of 24 inches.
- Rooflines shall not be flat or at a low angle, generally described as less than a 6:12 pitch.
- Garages should be placed in line with the front elevation, be extended no more than five feet in front of the front elevation or be recessed behind the front elevation.
- End units that are exposed to a street, public or private, should including additional treatment including, but not limited to, the possible addition of wainscoting, additional windows and window or door surrounds.

**SUBMITTAL FORMAT AND APPROVAL LETTER**

The City requires that the WDRC provide a letter outlining our approval and to stamp a set of plans. We are requesting both a set of digital plans for our records and a printed set of plans that will be stamped. Digital plans shall be delivered via email or Dropbox (or similar) to both Dave Tolman (dave@aclaimegroup.com) and Steve McCutchan (stevemplan@gmail.com).



## FEES

The WDRC has established a fee schedule for the review and approval of plans. Fees shall be made payable to stevemplan, LLC at the time of submittal for WDRC review and approval. The fees are the following:

### Single Family Detached Homes:

\$750.00 for each floor plan. Multiple elevation treatments for each floor plan shall be shown on the plans including the depiction of color combinations. Typical front yard conceptual landscaping and irrigation plans for each floor plan shall also be submitted for review and approval. Landscape plans shall include a single street tree along the frontage and two additional street trees on a street side yard. Specific street trees have been assigned to each of the Westgate streets. The street tree list is attached.

Fencing and gates (single side) shall be constructed between dwellings. The approved fencing for Westgate is "Trex" brand, "Seclusions" model and the "Woodland Brown" color. The location of the fencing shall be shown on the typical landscape plan. Exterior property line fencing may also be required based upon your agreement with Westgate Partners, LLC.

Your homeowners will be required by the C, C and R's to install the aforementioned Trex fencing on any side or rear property line that they elect to fence. We are requiring that the model homes be fully fenced (front, side and rear unless already required by your agreement) to illustrate to the homeowners the appearance of the community fencing.

### Single Family Attached Homes:

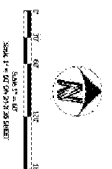
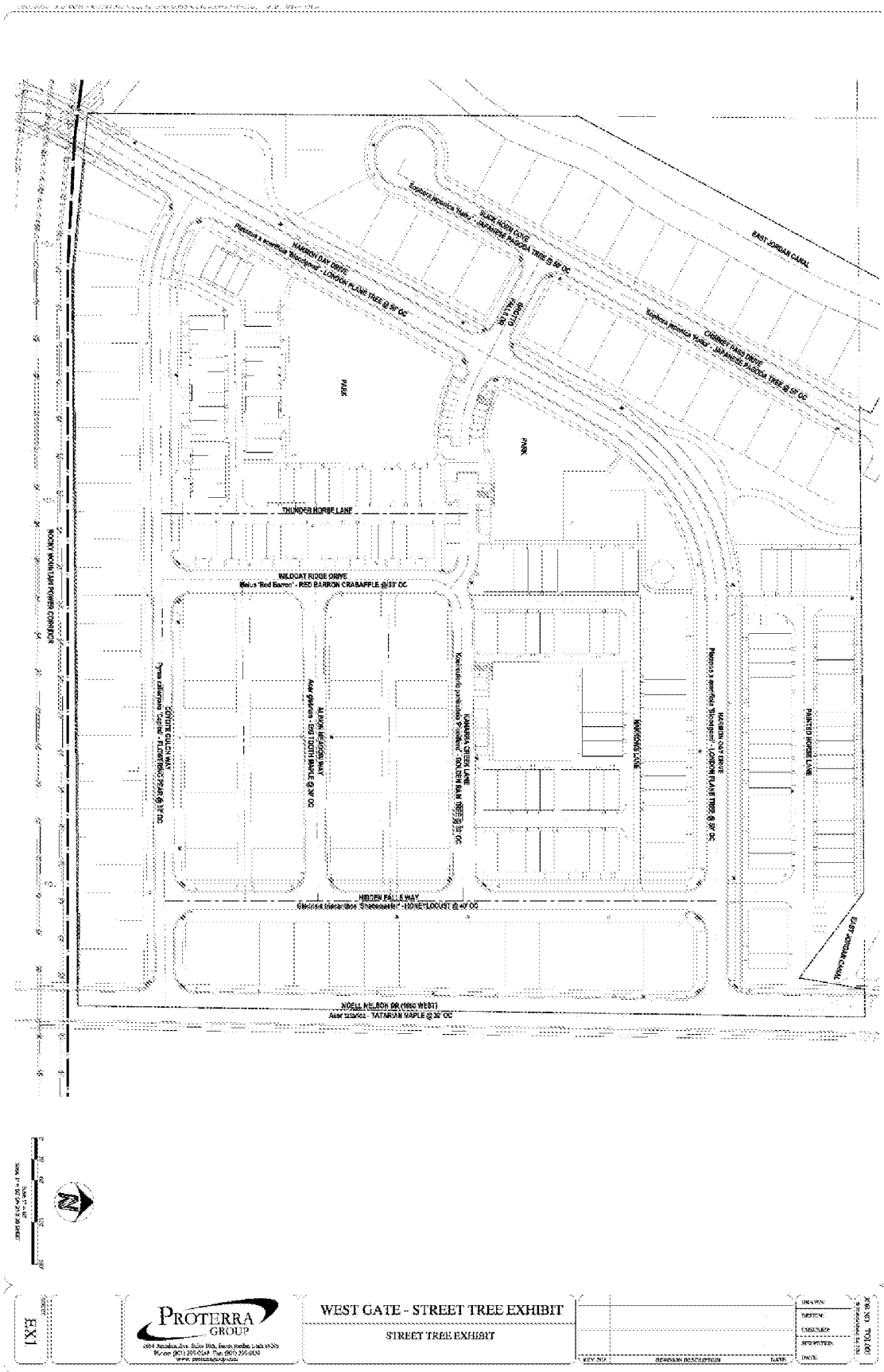
\$750.00 for each attached building group. A single building group shall be any combination of attached floor plans as long as the same floor plans are used in each group. The submittal shall include depictions of each combination, elevation treatments and color combinations.

\$1,000 for site plan and landscaping approval. The submitted plan shall include a detailed site plan that shows setbacks from streets, drives, parking areas, property lines and other buildings and a detailed landscape plan that includes plant location, species and irrigation.

### Commercial or Industrial:

\$5,000 for architectural, site planning, landscape / irrigation and signage approval. The submitted plans shall include all building plans, detailed site plans including compliance with Title 11 Chapter 12, the Off Street Parking chapter of the Land Use Ordinance, landscape and irrigation plans and plans for all building and free standing signage including compliance with Title 11, Chapter 22, Signs and Outdoor Advertising.

If there are any questions, you may contact either Dave at 801-201-7720 or Steve at 801-557-6945.



EX-1



**WEST GATE - STREET TREE EXHIBIT**  
 STREET TREE EXHIBIT

REV. NO.	REVISION DESCRIPTION	DATE	DATE

DESIGNER:  
 CHECKED:  
 DATE WRITTEN:  
 DATE:

DATE PLOTTED:  
 BY TOL: C.S. 10/1