

When Recorded Please Return To:

Allison G. Behjani
RAY QUINNEY & NEBEKER P.C.
36 South State Street, #1400
Salt Lake City, Utah 84111

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04/21/2020 11:48 AM \$40.00
Book - 10930 Pg - 7619-7630
RASHELLE HOBBS
RECODER, SALT LAKE COUNTY, UTAH
ALLISON G BEHJANI
36 S STATE ST, #1400
SLC UT 84111
BY: DSA, DEPUTY - WI 12 P.

DECLARATION OF ROADWAY EASEMENTS AND MAINTENANCE COVENANTS

THIS DECLARATION OF ROADWAY EASEMENTS AND MAINTENANCE COVENANTS (the “*Declaration*”), dated as of the 10 day of April, 2020, is executed and recorded by Rockwell Estates, a Utah LLC, a (“*Grantor*”).

RECITALS

WHEREAS, Grantor is the fee simple owner of certain real property located in the City of Draper, State of Utah (the "**Property**"), more commonly known as the Porter Rockwell Subdivision, which Property is more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference; and

WHEREAS, Grantor has subdivided the Property into nine (9) separate lots (namely Lots 1 through 9), which subdivision is set forth more fully on a certain subdivision plat that has been recorded with the Salt Lake County Recorder's Office; and

WHEREAS, Grantor desires to establish, memorialize and confirm certain access easements and rights-of-way upon the Property for the purpose of ingress and egress to, from and within the subdivided Property (the "*Roadway Easements*," or "*Easements*"), which Roadway Easements are more particularly depicted in Exhibit "B" attached hereto and incorporated herein by this reference ("*Access Map*"), and which Roadway Easements, as depicted on the Access Map, include an easement upon the roadway labeled "Outlaw Place" providing access from 1300 East ("*Roadway*"); and

WHEREAS, Grantor desires to establish said Easements to both burden and benefit the Property, subject to the terms, covenants and conditions of this Declaration; and

WHEREAS, Grantor also desires to establish pursuant to this Declaration certain agreements and requirements regarding the maintenance of the Easements.

DECLARATION

NOW, THEREFORE, in consideration of the foregoing, the covenants and conditions contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby acts as follows:

1. Roadway Easements. Grantor hereby establishes the Roadway Easements, and, in connection therewith, grants and conveys to all of the fee simple owners of the Property from time to time (each, an "**Owner**" and collectively, the "**Owners**"), for use by them and by each of their successors and assigns, and by each of their tenants, subtenants, invitees, licensees, agents and contractors to whom the grantee in question (or its successors or assigns) may choose to extend or delegate such use rights (hereinafter collectively referred to as "**Permittees**"), a non-exclusive easement to, from, upon, over and across the Roadway Easements for the purposes of both vehicular and pedestrian access, ingress, and egress.

2. Maintenance and Repair of Easements. Subject to and in accordance with the terms of this Declaration, including but not limited to Section 3 below, the Owners of Lots 1 through 9 of the Property shall be responsible, at all times, to maintain the Roadway in good condition and repair as roadways and passageways for vehicular and pedestrian traffic, including, without limitation, paving with concrete or asphalt, snow removal, maintaining the landscaping upon areas adjacent to the Roadway, and other maintenance and repair activities as may be necessary and consistent with Draper City regulations and/or local standards.

3. Designated Owners.

a. Roadway Designated Owner. The Owners shall designate a responsible Owner (the "**Roadway Designated Owner**") for purposes of administering this Agreement and collecting the Roadway Maintenance Fee. An affirmative vote of a majority of the Owners of the lots described herein, or any plat thereof shall be sufficient to designate the responsible owner and assistant. Until such time as Lots 1 through 9 are sold the Grantor will be the Roadway Designated Owner, after which time the Roadway Designated Owner shall call a meeting of the lot owners for the purpose of explaining the duties of the Roadway Designated Owner and choosing a new Roadway Designated Owner. After election of the new Roadway Designated Owner, each Roadway Designated Owner shall serve for a minimum of one (1) year after which they may call all lot owners together and designate a new Responsible Owner.

c. Failure of Applicable Designated Owner to Perform Duties. If the Roadway Designated Owner fails to properly coordinate the maintenance and repair of the applicable Roadway Easement as required by this paragraph 2, any of the other Owners benefitted by the applicable Roadway Easement may give the Roadway Designated Owner written notice of the claimed maintenance or repair failure, and the Roadway Designated Owner shall have twenty (20) days following the receipt of such written notice to cure such failure. If the Roadway Designated Owner does not cure the maintenance or repair failure within the twenty (20) day period, or if such failure is not curable within the twenty (20)

day period and the Roadway Designated Owner has not begun to cure such failure within the twenty (20) day period, any of the other Owners may, but shall not be required to, cure the maintenance or repair failure, and then seek reimbursement from the other Owners for their respective share of such expenses. Such reimbursements shall be made immediately. If any such reimbursement is not paid in full within ten (10) days after written notice, the unpaid amount shall bear interest at the rate of fifteen percent (15%) per annum from the date of receipt of the written notice until the date such amount is paid in full.

4. Maintenance Fees.

a. Establishment of West Roadway Maintenance Fee. Beginning on the date hereof, and continuing on the first business day of each calendar year thereafter, the Owners of Lots 1 through 9 shall pay to the Roadway Designated Owner an annual maintenance fee (the "**Roadway Maintenance Fee**") based upon the Roadway Designated Owner's reasonable estimate of costs to be incurred during the year for the maintenance and repair of the Roadway, as required by Section 2 above. The Roadway Designated Owner shall provide such reasonable estimate to the Roadway Maintenance Fee for the upcoming calendar year at least thirty (30) days prior to the end of the prior year. The Roadway Maintenance Fee shall be allocated equally to the Lots comprising the Property. If any such Roadway Maintenance Fee is not paid in full by the tenth (10th) day of the applicable calendar year, the unpaid amount shall bear interest at the rate of fifteen percent (15%) per annum from the applicable due date until the date such amount is paid in full.

c. Differences between Estimated and Actual Maintenance Fees. The actual costs of maintaining and repairing the applicable portions of the Roadway Easements may exceed (or be less than) the Maintenance Fees collected by the Designated Owner for a given year. In the event that the actual costs exceed the amount collected, the Designated Owner shall notify the other Owner(s) of the additional amount that is necessary to pay for all required maintenance and repairs to the applicable portions of the Roadway Easements, and each Owner shall promptly pay their required share of such amount (determined pursuant to Section 4(a) or 4(b) above) to the Applicable Designated Owner. If any such payment is not paid in full within thirty (30) days after written notice, the unpaid amount shall bear interest at the rate of fifteen percent (15%) per annum from the date of receipt of the written notice until the date such amount is paid in full. In the event that the actual costs are less than the amount collected, the Applicable Designated Owner shall either refund the excess amount to the other Owner(s), or shall apply such excess amount towards the Maintenance Fee for the following year.

e. Review of Maintenance Fee Accounting. The Owners, or their authorized agents or representatives, shall be permitted, upon ten (10) business days advance written notice to the Applicable Designated Owner, to review the accounting, books, and supporting documentation relating to the Maintenance Fees.

5. Notice of Lien. In the event that an Owner fails to pay any amount due under this

Declaration within thirty (30) days after it is due, the Applicable Designated Owner shall be entitled to record a Notice of Lien against the delinquent Owner's Lot in the amounts then due and owing. Said Notice of Lien may be foreclosed by suit, power of sale or in any other manner permitted by applicable law including, without limitation, power of sale foreclosure. Also, notwithstanding the foregoing, if the defaulting Owner gives written notice, prior to the expiration of such thirty (30) day period, that it is contesting the amount or payment in question, and provided that the defaulting Owner also either (i) posts a bond in favor of the other Owner(s) or (ii) pays the uncontested amount directly to the Owner(s) who performed the work, or caused the work to be performed, to cure the default and pays into escrow the amount being contested pending resolution, then the Owner(s) who performed the work to cure the default shall not be entitled to record a Notice of Lien against the defaulting Owner's Lot.

6. Damage to Improvements. Notwithstanding the foregoing in this Agreement, in the event an Owner, or its contractors, causes damage to the Roadway, including all curb and gutter, such Owner shall cause the damage to be repaired at its sole cost and expense. In the event such Owner fails to repair the damage, Grantor or the other Owners may cause the damage to be repaired and bill the offending Owner for the costs thereof, together with interest at fifteen percent (15%) per annum from the applicable due date until the date such amount is paid in full.

7. Indemnification. Each Owner shall indemnify and hold the other Owners from and against all claims, demands, liabilities, losses, costs, damages, penalties and expenses, including, but not limited to, reasonable attorneys' fees and legal costs, arising out of or resulting from the use by such Owner or its Permittees of the Roadway Easements.

8. Landscape Requirements. After transfer of each Lot from Declarant, the Owner of the applicable Lot shall plant a minimum number and species of trees and vegetation as shown on the tree plan attached hereto as Exhibit "C" (the "**Landscape Plan**"), as required by Draper City. In the event the Landscape Plan does not include a tree for an applicable Lot, such Owner shall follow the Landscape Plan for all front yard landscaping. Each tree will be spaced evenly and will follow the Landscape Plan. Notwithstanding the foregoing sentence, if the development of the applicable Lot includes a driveway plan that interferes with the Landscape Plan, each Owner may move the required tree to the other side of the driveway; provided in no event shall a tree be closer than twenty (20) feet from the neighboring tree. All trees shall be within five (5) feet of the property line. Each Owner shall be required to deposit with Declarant, or as directed by Declarant, Draper City, the sums set forth on Exhibit "D" attached hereto (the "**Deposit**") to ensure that the trees and other vegetation are planted according to the Landscape Plan. Draper City will release the Deposit to each Owner upon completion of the landscaping shown in the Landscape Plan for the applicable Lot and according to the terms determined by Draper City.

9. Amendment or Modification. Except as otherwise provided in Section 1(a) or this Section 7, this Declaration may be amended or modified from time to time only by a recorded document executed by all of the Owners of the Property. The consent or approval of no other person shall be required to accomplish any amendment or modification hereto. Notwithstanding the foregoing, so long as Grantor is the fee simple owner of any Lot within the Property, Grantor

may unilaterally amend this Declaration for any reason; provided, however, any such amendment shall not materially adversely affect title to any Lot or any Owner's interests in the Easements granted hereunder without the consent of the affected Owner.

10. Covenants Run with the Land. All of the provisions, agreements, rights, powers, covenants, conditions, obligations, and easements contained in this Declaration shall be binding upon and inure to the benefit of the fee simple owners of the Property, their respective successors, assigns, heirs, devisees, executors, administrators, subsidiaries, representatives, lessees, sublessees, members and all other persons or entities acquiring either tenement, or any portion thereof or interest therein. All of the provisions, agreements, rights, powers, covenants, conditions, obligations and easements contained in this Declaration shall be covenants running with the Property, both for the benefit of each tenement and as a burden upon each, pursuant to the applicable laws of the State of Utah.

11. Attorneys' Fees. If a lawsuit is commenced or any other action taken to enforce or interpret any of the provisions of this Declaration, the prevailing or non-defaulting party, as applicable, shall have the right to recover its reasonable attorneys' fees and legal costs from the unsuccessful or defaulting party, as applicable, including all such fees and costs incurred in bankruptcy proceedings and in any appellate process.

12. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah. The courts of Salt Lake County, State of Utah shall have exclusive jurisdiction over any and all disputes arising out of this Declaration.

13. Severability. The invalidity or unenforceability of any provision of this Declaration with respect to a particular party or set of circumstances shall not in any way affect the validity or enforceability of any other provision hereof, or the same provision when applied to another party or to a different set of circumstances.

14. No Public Dedication. Nothing contained herein shall constitute a dedication to public use of any portion of the easement or as an acknowledgment or admission by the owners of any prior dedication or of the prior creation of any public right upon any portion of the easement.

15. Entire Agreement. This Declaration, including the attached exhibits, contains the entire agreement with respect to the subject matter of this Declaration.

16. Notices. Notices, demands, and statements required or desired to be given hereunder shall be in writing and shall be by personal delivery thereof or by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, addressed to a good and sufficient address for the intended recipient. The date notice is deemed to have been given shall be the date of actual delivery to the party concerned.

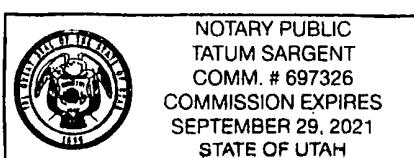
IN WITNESS WHEREOF, Grantor has executed this Declaration as of the date first above written. *Al d*

Al J. H.

By: Andrew Flamm
Name: Rockwell Estates, LLC
Its: Manager

STATE OF UTAH)
COUNTY OF SALT LAKE)

On this 10th day of April, 2020, personally appeared before me Andrew Flamm, who being by me duly sworn, acknowledged to me that he executed the foregoing document as Manager of Kirkwell Estates LLC, a Utah LLC, for its stated purpose.



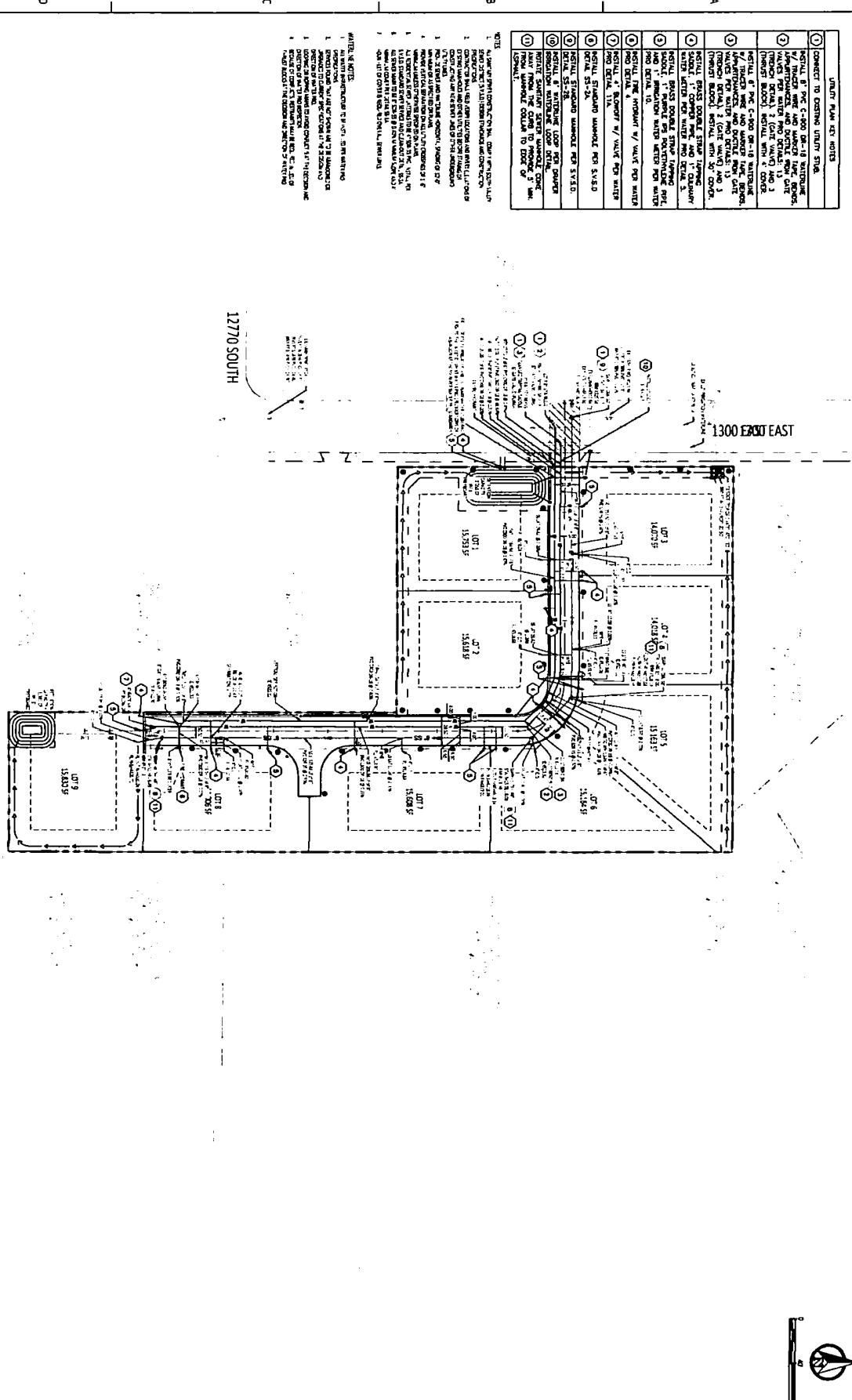
Tatjana
Notary Public

EXHIBIT A
(Legal Description of the Property)

Lots 1 through 9 of Porter Rockwell Estates Subdivision as identified on the Plat thereof recorded in the Salt Lake County Recorder's Office.

Tax Parcel Nos. 28-33-102-048

EXHIBIT B
(Access and Utilities Map)



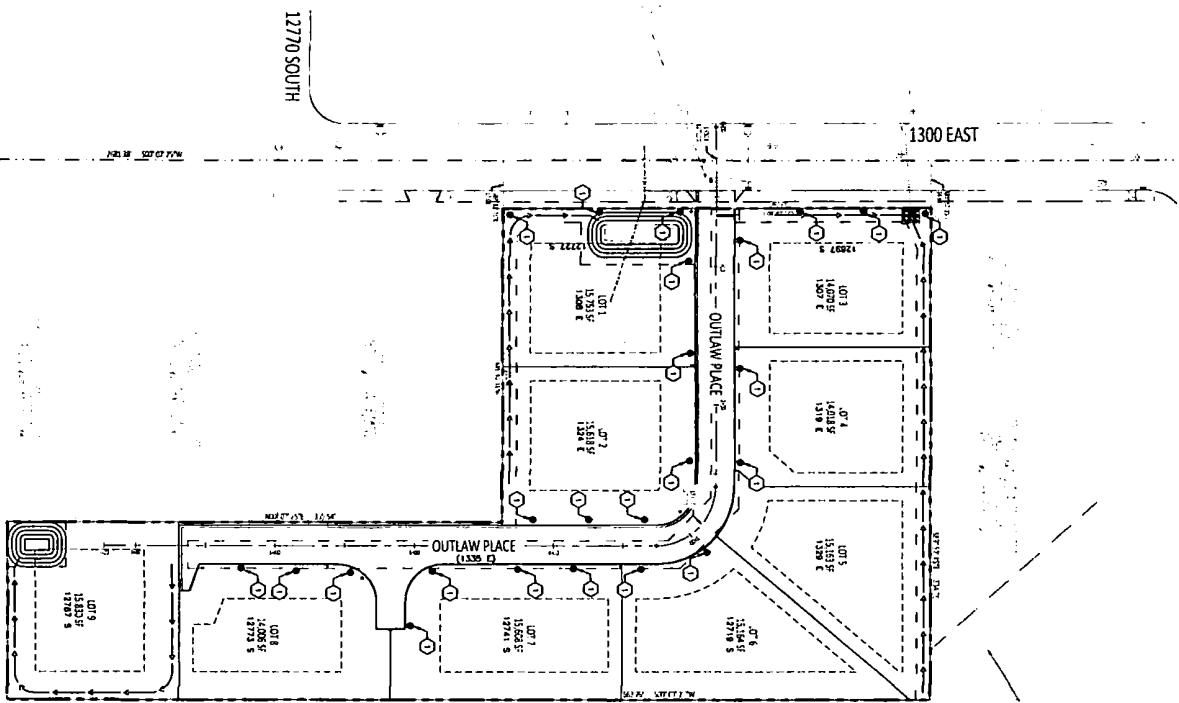
BK 10930 PG 7627

EXHIBIT C
(Landscape Plan)

TREE PLAN KEY NOTES
APPROVAL STATE STREET MAPS/PLAT MAP INDEX



Michael Baker
MICHAEL BAKER
INTERNATIONAL
PROFESSIONAL PLANNING
SPECIALISTS
1300 EAST 1000 SOUTH
BOULDER, COLORADO 80302
303-494-5440



Porter Rockwell Estates 12700 South 1300 East Draper, Utah 84020	DN PARTNERS LLC 1000 S. 1300 E. STE 102 DRAPER, UTAH 84020
TREE PLAN	
Permit No. 127000	1300S
100-11-223	1300E
1"	40'
Permit	C-701

REVISONS	
NO.	DATE
1	05/07/2019
	DRAPER CITY SUBMITTAL
2	06/07/2019
	DRAPER CITY SUBMITTAL
3	07/15/2019
	S.Y.S.D SUBMITTAL
4	12/10/2019
	DRAPER CS COMMENTS
4	01/02/2020
	ADDITIONAL PLANNING COMMENTS

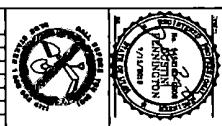


EXHIBIT D

(Deposit Amounts)

Lot	Bond Amount
1	\$ 2,346
2	\$ 2,085
3	\$ 2,200
4	\$ 1,595
5	\$ 1,238
6	\$ 1,526
7	\$ 2,002
8	\$ 1,826
9	<u>\$ 1,238</u>