

44 00
16

E 1997593 B 3569 P 600
RICHARD T. MAUGHAN, DAVIS CNTY RECORDER
2004 JUN 25 1:37 PM FEE 44.00 DEP LHL
REC'D FOR FARMINGTON CITY CORP

WHEN RECORDED, MAIL TO:
Boyer Wheeler Farm LC
Attn: Dick Moffat
90 South 400 West #200
Salt Lake City, Utah 84101

CONSERVATION EASEMENT
(OPEN SPACE AND FARMLAND)

THIS CONSERVATION EASEMENT is made this 3rd day of May, 2004, by Boyer Wheeler Farm, a Limited Liability Company, (hereinafter "Grantor"), whose address is c/o The Boyer Company, 90 South 400 West, Suite 200, Salt Lake City, Utah 84101, in favor of Farmington City, a municipality, (hereinafter "Grantee"), whose mailing address is 130 North Main Street, Farmington Utah 84025.

RECITALS:

WHEREAS, Grantor is the sole owner in fee simple title of certain real property located in Farmington City, Davis County, State of Utah, which property is more particularly described herein at Section 2, hereinafter referred to as the "Property"; and

WHEREAS, the Property possesses unique and sensitive natural, scenic, open space, wildlife, farmland, floodplain, and/or wetland values (collectively referred to as "conservation values") of great importance to the Grantor, the Grantee, Farmington City, and the public; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by continuation of the use of the Property in such a way which does not significantly impair or interfere with those values and which provides for appropriate ecological, agricultural, open space, recreational and educational uses of the Property; and

WHEREAS, Grantor intends to preserve and protect the conservation values of the Property in perpetuity through this Easement and dedication of the same to Grantee.

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

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

1. Conveyance. Grantor hereby grants and warrants to Grantee, a perpetual conservation easement as hereinafter defined (the "Easement") over and across all the Property to preserve, restore and protect the natural, ecological, water, wildlife, open space, farmland,

Farmington Ranches East
08 - 331 - 0001 thru 0061
CA Parcels A thru E

wetland, floodplain, scenic, educational and aesthetic values present on the Property, to have and to hold unto Grantee, its successors and assigns forever.

2. Property. The Property subject to this Easement consists of approximately 10.33207 acres of the Farmington Ranches East Conservation Subdivision Development located in Farmington City, Davis County, State of Utah, and which is more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference.

3. Current Use and Condition of Property. The Property presently consists of wetlands, pasture lands, and natural open spaces and is located at approximately 100 North and 1500 West, Farmington, Utah. The existing and permitted conditions and uses of the Property are more particularly described on the Use Map set forth in Exhibit "B," attached hereto and incorporated herein by this reference. The Property has the following specific conservation values: unique, sensitive, natural, ecological, educational, scientific, scenic, aesthetic, wildlife, farmlands, water resources, wetlands, riparian communities, floodplains and open space.

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

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

6. Permitted and Conditional Uses.

a. Subject to the terms and conditions set forth in this Easement, the following activities and/or uses of the Property are permitted:

- i. Conservation of open land in its natural state.
- ii. Agricultural uses, including raising crops, class "B" livestock, as defined by and consistent with Farmington City Ordinances, and associated buildings, structures and, as approved by Farmington City, necessary access roads, excluding commercial livestock operations involving swine, poultry and mink, in designated areas only as delineated on Exhibit "B."
- iii. Pastureland for sheep, cows and horses in designated areas only as delineated on Exhibit "B" pursuant to City ordinances.
- iv. Underground utility facilities and easements for drainage, sewer, water, or other public facilities and purposes, including easements for

maintenance access to such facilities, in locations as approved by the City of Farmington, subject to restoration of the Property to its natural condition within a reasonable time frame not to exceed ninety (90) days, unless otherwise agreed to in writing by the Grantee, which restoration shall be conducted to the reasonable satisfaction of the Grantee to protect and preserve the conservation values of the Property. Nothing contained herein shall prevent the continued use of existing above-ground utility facilities to the extent permitted by law as delineated on the Use Map set forth in Exhibit "B."

v. Public streets approved by the City of Farmington in designated areas as set forth on approved subdivision plat(s).

vi. Although fencing is not encouraged, existing fences may be repaired and replaced, and new fences may be built on the Property as necessary and appropriate in connection with permitted or conditional uses such as grazing and equestrian uses.

b. Subject to the terms and conditions set forth in this Easement, the following activities and/or uses of the Property may be permitted as a conditional use, subject to obtaining a conditional use permit from the City of Farmington for such use in accordance with City Ordinances regarding the same:

i. Non-commercial and non-motorized recreational use of the Property, such as trails, bikeways, playing fields and playgrounds, in designated areas only as delineated on Exhibit "B."

ii. Community open space uses, such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses, excluding motorized vehicles, firearm shooting ranges and commercial uses, in designated areas only as delineated on Exhibit "B."

iii. Agricultural uses, as defined by Farmington City Ordinances, and associated buildings and structures, excluding commercial agricultural operations involving swine, poultry and mink, in designated areas only as delineated on Exhibit "B."

iv. Educational structures and improvements in designated areas as delineated on Exhibit "B." The establishment of such structures and improvements shall be limited to education purposes and shall be consistent with the conservation and agricultural uses of the Property. Residential use of such structures may be permitted as part of the conditional use permit solely to house conservation easement management or enforcement personnel.

v. Water structures, improvements, marshlands, wetlands, riparian communities and ponds may be established, constructed and maintained on the

Property, provided such structures or improvements are consistent with the conservation purposes of this Easement.

7. Prohibited Uses. Any activity on or use of the Property not specifically listed as a permitted use or activity as set forth herein and/or any activity on or use of the Property which is inconsistent with the purpose of this Easement or detrimental to the conservation values is expressly prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- a. Any residential, commercial or industrial activity, except as expressly permitted in this Easement.
- b. Any development, construction or location of any man-made modification or improvements such as buildings, structures, fences, roads, parking lots, or other improvement on the Property, except as expressly permitted in this Easement.
- c. Any filling, dredging, excavating, mining, drilling, or exploration for and extraction of oil, gas, minerals or other resources from the Property.
- d. Any dumping or storing of ashes, trash, garbage or junk on the Property.
- e. The manipulation or alteration of natural watercourses, wetlands, or riparian communities, except as expressly permitted herein or as approved by the City of Farmington as designated on approved subdivision plat(s), necessary for the use of the Property and then, in any event, only to the extent that such manipulation or alteration shall not result in a significant injury to or the destruction of significant conservation values.
- f. Burning of any materials on the Property, except as necessary for agricultural, drainage and fire protection purposes.
- g. The use of motor vehicles, including snowmobiles, all-terrain vehicles, motorcycles and other recreational vehicles, except as may be necessary to maintain and operate the Property and to maintain and operate utility lines running through the Property in accordance with the terms and conditions of such approved use and the maintenance plan for the Property.
- h. Hunting or trapping for any purpose other than predatory or problem animal control on the Property.
- i. Establishment or maintenance of any grazing or livestock feedlots on the Property, which shall be defined for purposes of this Easement as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock for hire.

j. Any agricultural use of the Property not expressly permitted herein.

k. Advertising of any kind or nature on the Property and any billboards or signs; provided, directory and information signs may be displayed describing the Conservation Easement and prohibited or authorized use of the same.

l. Any cutting of trees or vegetation, except as necessary for fire protection, thinning, elimination of diseased growth, control of non-native plant species, maintenance of landscaped areas, and similar protective measures or those activities relating to permitted agricultural uses.

m. The change, disturbance, alteration, or impairment of the significant natural ecological features and values of the Property or the destruction of other significant conservation interests on the Property.

n. The division, subdivision or *de facto* subdivision of the Property; except for subdivision and dedication of the Property as necessary to dedicate approved trails within the Property, or as necessary and desirable to dedicate a portion of the underlying fee to a qualified conservation organization in accordance with the purposes and intent of this Easement for the preservation, protection and enhancement of the conservation values of the Property.

o. Changing the topography of the Property by placing on it any soil, dredging spoils, land fill, or other material, except as necessary to conduct specific agricultural purposes or to construct other structures, conditions or improvements as permitted herein.

p. All other uses and practices inconsistent with and significantly detrimental to the stated objectives and purpose of the Easement.

8. Rights of the Grantee. Grantor confers the following rights upon Grantee to perpetually maintain the conservation values of the Property and to accomplish the purpose of this Easement.

a. Grantee has the right to enforce the terms of this Easement for the purpose of preserving and protecting the conservation values of the Property.

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

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

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

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

f. Grantee has the right to enter on the property to study and make ecological and scientific observation of the Property and its ecosystems.

9. Duties of the Grantor. Grantor retains ownership rights of the underlying fee simple title to the Property which are not expressly restricted by this Easement. In accordance with rights reserved in Grantor by this Easement, Grantor shall be subject to all terms, conditions and restrictions of this Easement and shall have the affirmative duty to refrain from conducting or causing to be conducted any action inconsistent with the purpose and provisions of this Easement and to take reasonable actions to preserve and protect the aesthetic, open space, farmland, floodplain, wetland and/or wildlife habitat values of the Property.

10. Enforcement of Easement.

a. Notice and Demand. If Grantee determines that Grantor is in violation of this Easement, or that a violation is threatened, the Grantee may provide written notice to the Grantor of such violation and request corrective action to cure the violation or to restore the Property. In the event Grantee determines that the violation constitutes immediate and irreparable harm, such notice shall not be required.

b. Failure to Act. If, for a 30-day period after the date of the written notice from Grantee to Grantor, the Grantor continues violating the Easement, or if the Grantor does not abate the violation and implement corrective measures requested by the Grantee, the Grantee may bring an action in law or in equity to enforce the terms of the Easement. The Grantee is also entitled to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Property. If the court determines that the Grantor has failed to comply with this Easement, the Grantor agrees to reimburse Grantee for all reasonable costs and attorneys fees incurred by the Grantee compelling such compliance.

c. Absence of Grantor. If the Grantee determines that the Easement is, or is expected to be, violated, the Grantee shall make good-faith efforts to notify the Grantor. If, through reasonable efforts, the Grantor cannot be notified, and if the Grantee determines that circumstances justify prompt action to mitigate or prevent impairment of the conservation values, then the Grantee may pursue its lawful remedies without prior notice and without waiting for Grantor's opportunity to cure. Grantor agrees to

reimburse Grantee for all costs reasonably incurred by Grantee in pursuing such remedies.

d. **Actual or Threatened Non-Compliance.** Grantor acknowledges that actual or threatened events of non-compliance under this Easement constitute immediate and irreparable harm. The Grantee is entitled to invoke the equitable jurisdiction of the court to enforce this Easement.

e. **Injunctive Relief and Restoration.** Any violation of the Easement shall be subject to termination through injunctive proceedings with the imposition of temporary restraining orders or through any other legal means, it being recognized that monetary damages and/or other non-injunctive relief would not adequately remedy the violation of the covenants and restrictions of the Easement. In addition, subject to the provisions set forth herein, the Grantee shall have the right to enforce the restoration of the portions of the Property affected by activities in violation of the Easement to the condition which existed at the time of the signing of this instrument.

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

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

11. Permitted Construction and Maintenance Activities.

a. Grantor hereby reserves the right to enter upon the Property to conduct the following activities: to construct such structures and improvements permitted herein in conjunction with permitted and conditional uses of the Property.

b. Grantor reserves the right to use, maintain, establish, construct and improve water sources, water courses, marshlands and ponds within the Property for uses permitted by this Easement, provided Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion, or improve the agricultural or wetlands potential of the Property, provided such alteration is consistent with the conservation purpose of this Easement. Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the agricultural and educational productivity of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever any water, mineral or other rights from title to the Property itself.

c. This Easement is subject to the rights of Grantor, Farmington City or any other agency or utility to enter upon the Property for the construction, installation, operation and maintenance of subsurface utilities as permitted herein. After exercise of

rights retained herein, Grantor or the permitted entity or utility company in interest, shall take reasonable actions to restore the Property to its natural condition existing prior to the conduct of any of the foregoing activities.

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

13. Maintenance. The Property shall be maintained by Grantor in accordance with the Maintenance Plan set forth as Exhibit "C," attached hereto and incorporated herein by this reference. Grantor shall be solely responsible for the upkeep and maintenance of the Property.

14. Taxes. Grantor shall pay all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property, including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor shall reimburse Grantee for the same.

15. Indemnification. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents and contractors, and the successors and assigns of each of them, collectively referred to as the "Indemnified Parties," from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee. Grantor shall keep the Property insured with comprehensive general liability insurance against claims for personal injury, death and property damage and shall name Grantee as an additional insured party on all such insurance policies, providing Grantee evidence of such insurance upon request.

16. Transfer of Grantee's Interest. If the Grantee determines that it no longer is able to enforce its rights under this instrument or that it no longer desires to enforce the rights, or desires to assign enforcement rights to a qualified organization under Section 501(c)(3) and/or 170(h)(3) of the *Internal Revenue Code*, the Grantee shall be entitled to convey in whole or in part all of its rights under this instrument and deliver a copy of this instrument to an organization designated by the Grantee and described in or contemplated by Section 501(c)(3) and/or 170(h)(3) of the Code, or the comparable provision in any subsequent revision of the Code, to ensure that the Easement is enforced. Furthermore, the Grantee is hereby expressly prohibited from subsequently transferring the Easement, whether or not for consideration, unless (a) the Grantee, as a condition of the subsequent transfer, requires that the conservation purposes which the Easement is intended to advance continue to be carried out; and (b) the transferee is an organization qualifying at the time of the transfer as an eligible donee under Section 501(c)(3) and/or 170(h)(3) of the Code and regulations promulgated thereunder.

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

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

19. Transfer of Grantor's Interest. The Grantor shall incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Any such transfer of interest shall be subject to the restrictions set forth in this Easement. The failure of the Grantor to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way. Upon proper and permitted conveyance of title to the Property, the Grantor shall be released from its obligations under this Easement.

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

To Grantee: Farmington City
P. O. Box 160
130 North Main Street
Farmington, UT 84025

To Grantor: Boyer Wheeler Farm, LC
Attn: Dick Moffat
90 South 400 West, Suite 200
Salt Lake City, Utah 84101

or to such other address as the Grantee or Grantor shall from time to time designate by written notice.

21. Title Warranty. Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except those set forth in Exhibit "D," attached hereto and

incorporated herein by this reference, and hereby promises to defend the same against all claims that may be made against it.

22. Subsequent Encumbrances. This Easement shall not restrict the right of Grantor or its successors or assigns to execute, deliver and record mortgages on the Property or to grant other rights or easements in respect of the Property, subject to the terms and conditions set forth herein. The grant of any easement or use restriction that might diminish or impair the agricultural viability of the Property or otherwise diminish or impair the conservation values of the Property is prohibited. Any lien or security interest of a mortgage and any easement or other right created subsequent to the date hereof shall be subject to and subordinate to this Easement.

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

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

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

26. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Easement to effect the purpose of this Easement and the policy and purpose of *Utah Code Ann.* § 57-18-1, et seq., as amended, and related provisions. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

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

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

30. Entire Agreement. This Easement, together with all exhibits, sets forth the entire agreement of the parties with respect to the subject matter hereof and supercedes all prior discussions and understandings.

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

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

GRANTOR:

Boyer Wheeler Farm, LC
By: [Signature]
Its: MANAGER

GRANTEE:

FARMINGTON CITY

By: David M. Connors
Its: Mayor



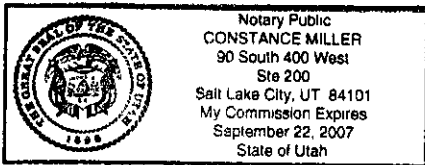
ATTEST:

[Signature]
Margy L. Lomax, City Recorder

GRANTOR'S ACKNOWLEDGMENT

STATE OF UTAH)
)
) :SS.
COUNTY OF SALT LAKE)

On the 3rd day of MAY, 2004, personally appeared before me STEVEN B. OSTLER who being by me duly sworn did say that she/he is the managing member of Boyer Wheeler Farm LC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company by authority of its Articles of Organization and duly acknowledged to me that said limited liability company executed the same.



Constance Miller
Notary Public

GRANTEE'S ACKNOWLEDGMENT

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

On the 5th day of May, 2004, personally appeared before me David M. Connors who being by me duly sworn did say that ~~she~~/he is the Mayor of Farmington City and that the within and foregoing instrument was signed on behalf of said City and duly acknowledged to me that said Farmington City executed the same.



Margy L. Lomax
Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION OF EASEMENT AREA

All of Parcel A, Parcel B, Parcel C, Parcel D, Parcel E, Farmington Ranches East Subdivision.

EXHIBIT "C"**MAINTENANCE PLAN**

A Homeowners' Association will be established for the purposes of owning and maintaining all open space parcels into perpetuity. While the developer will be responsible for the initial installation of landscaping (hydroseed, etc.) It is anticipated that the dues collected from the HOA will cover the costs of ongoing maintenance. The Maintenance Plan will consist of the following four steps:

1. An assessment will be provided by a landscape professional acceptable to the City and the developer (i.e. Ellis Landscaping). Soils will be analyzed to determine the viability of existing vegetation.
2. Revegetate all areas disturbed during construction, which should consist of park strip areas and possibly some areas behind sidewalk where public utilities may be installed. The subdivision design minimizes these areas because most areas east of 1525 West would be maintained by property owners.
3. Hydroseed the disturbed areas with a native vegetation that is acceptable to Farmington City.
4. Ongoing maintenance should be limited to periodic spraying of broadleaf weed killer, to prevent weeds from overtaking the natural vegetation, combined with the occasional cutting of grasses that interfere with sightlines and other public safety requirements.

EXHIBIT "D"**LIST OF ACCEPTED ENCUMBRANCES**

- 1 Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes of assessments on real property or by the public records.
- 2 Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof
- 3 Easements, claims of easement or encumbrances which are not shown by the public records.
- 4 Discrepancies, conflicts in boundary line, shortage in area, encroachments or any other facts which a correct survey would disclose, and which are not shown by the public records.
- 5 Unpatented mining claim reservations or exceptions in patents or in acts authorizing the issuance thereof water rights, claims, or title to water
- 6 Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
- 7 Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this commitment

- 8 General taxes for the year 2004 are accruing as a lien but are not yet due and payable Serial No 08-072-0014 2003 taxes were paid in the amount of \$30 32

- 9 Said property is located within the boundaries of Weber Basin Water Conservancy District, Mosquito Abatement District, Central Davis Sewer Improvement District and Farmington City (451-2383), and is subject to the charges and assessments levied thereunder

- 10 Easement in favor of SALT LAKE PIPE LINE COMPANY, a Nevada Corporation, the right of way from time to time to lay, construct, reconstruct, replace, renew, repair, maintain, operate, change the size of, increase the number of, and remove pipe lines and appurtenances thereof, for the transportation of oil, petroleum, gas, gasoline, water or other substances, or any thereof, and to erect, install, maintain, operate, repair, renew, add to and remove telegraph, telephone or power lines and appurtenances thereof on a single line of poles or underground, as Grantee from time to time and place to place may elect, with the right of ingress and egress to and from the same, over and through, under or along that certain parcel of land, recorded July 23, 1949, as Entry No 107247, in Book 4, Page 592, records of Davis County, Utah (Affects the Easterly line of subject property as shown on ALTA survey dated October 17, 2003, prepared by Ted M Biehn of Robinson, Biehn & Biehn)

- 11 Deed of Easement to THE UNITED STATES OF AMERICA, a perpetual easement to construct, reconstruct, operate and maintain an underdrain consisting of an underground pipeline and appurtenant structures on, over or across subject property, recorded August 3, 1967, as Entry No 311488, in Book 371, Page 559, records of Davis County, Utah (30 feet wide traversing through subject property, as shown on ALTA survey prepared by Ted M Biehn of Robinson, Biehn & Biehn)

- 12 Terms and Conditions of EASEMENT AGREEMENT, in favor of Qwest Corporation, a Colorado corporation, its successors, assigns, lessees, licensees and agents, a perpetual easement to construct, reconstruct, modify, change, add to, operate, maintain and remove such telecommunications facilities and electrical facilities, and appurtenances, from time to time, as Grantee may require upon, over, under and across An easement 12 00 feet in width, being at 12 00 feet adjacent and abutting the Westerly right of way line of the Denver & Rio Grand Western Railroad, with the easterly line of said 12 00 foot easement, recorded November 26, 2003, as Entry NO 1936105, in Book 3425, at Page 679, records of Davis County, Utah (Affects the Easterly 12 00 feet)

- 13 Rights of way for canals, laterals, ditches, roads and utilities, if any, over, under or across said land including, but not limited to, the following CLARK LANE AND 1525 WEST STREET

- 14 A Deed of Trust dated March 16, 2004, executed by BOYER WHEELER FARM, L C , a Utah Limited Liability Company , as Trustor in the amount of \$540,000 00 in favor of BONNEVILLE TITLE COMPANY , as Trustee and WARNER BROS DEVELOPMENT, LLC as Beneficiary recorded May 19, 2004, as Entry No 1971353, Book 3500, Page 1283, records of Davis County, Utah