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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
THE VILLAS AT HARMONY PLACE P.R.U.D.  
A PLANNED RESIDENTIAL UNIT DEVELOPMENT

12-746-0115 → 0154

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
THE VILLAS AT HARMONY PLACE, P.R.U.D,  
A PLANNED RESIDENTIAL UNIT DEVELOPMENT**

THIS DECLARATION is made and executed this 17<sup>th</sup> day of August, 2010 by Perry Development, LLC, a Utah Limited Liability Company, (the "Declarant").

**RECITALS:**

Declarant is the record owner of that certain tract of land (the "Property") in the city of Layton, county of Davis, state of Utah, which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof. Declarant desires to create on said Property a P.R.U.D. development with landscaped Common Areas.

Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas in the official records of Davis County, state of Utah.

Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the powers to maintain and administer the Common Areas and collect and disburse the assessments and charges provided for in the Declaration and otherwise administer and enforce the provisions of the Declaration. For such purposes, Declarant has or will cause to be incorporated under the laws of the State of Utah, as a nonprofit corporation to administer this Declaration (the "Association").

NOW, THEREFORE, for the foregoing purposes, the Declarant declares that the Property shall be subject to this Declaration and that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

**ARTICLE I – DEFINITIONS**

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated:

1.1 Architectural Control Committee shall mean the Architectural Control Committee established by and referred to in this Declaration.

1.2 Association shall mean The Villas at Harmony Place P.R.U.D. Homeowners Association, a Utah nonprofit corporation.

1.2 Board shall mean the Board of Trustees of the Association.

1.3 Common Areas shall mean all property, including rights-of-way and utilities, owned or designated on the recorded plat as being intended ultimately to be owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto. Common Areas shall not include any of the publicly dedicated streets and related improvements on the Property, nor shall it include any of the Residential Lots on the Property. Common Areas shall also not include Limited Common Areas as are shown in crosshatch on the Plat.

1.4 Declaration shall mean this Declaration of Covenants, Conditions and Restrictions of The Villas at Harmony Place P.R.U.D.

1.5 Expansion Property shall mean any additional property added to the Property as permitted by this Declaration and shall be limited to that property shown on EXHIBIT B, attached hereto.

1.6 Living Unit shall mean a structure which is designed and intended for use and occupancy as a Single-Family residence, together with all improvements located on the same Residential Lot and used in conjunction with such residence.

1.7 Managing Agent shall mean any person or entity appointed or employed as Managing Agent pursuant to Section 4.1 of Article IV of this Declaration.

1.8 Mortgage shall mean any mortgage, deed of trust, or trust deed or the act of encumbering any property by a mortgage, deed of trust or trust deed; and mortgagee shall mean any mortgagee of a mortgage and any trustee or beneficiary of a deed of trust or trust deed.

1.9 Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Davis County, Utah) of a fee or undivided fee interest in any Residential Lot, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record. Notwithstanding any applicable theory relating to mortgages, no mortgagee shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Residential Lot owned by it.

1.10 Property shall mean the Property described in Exhibit "A" attached hereto, which includes all land covered by this Declaration, including Common Areas. If portions of property comprising the Expansion Property are added to this Declaration as permitted hereunder, "Property" shall be deemed to include any additional land added as a part of the Expansion Property.

1.11 Residential Lot shall mean and refer to any one of the subdivided

lots of land within the boundary of the Property as shown upon and designed on the Plat.

1.12 Plat shall mean and refer to the Plat of The Villas at Harmony Place P.R.U.D, NO. 1B., A Planned Residential Unit Development, prepared and certified by a licensed professional engineer, executed and acknowledged by Declarant which is being recorded in the official records of Davis County, Utah, shortly before the recording of this Declaration. In the event that the Property is expanded by addition of any portion of the Expansion Property to coverage by this Declaration as permitted hereunder, "Plat" shall refer to all subsequently filed and recorded plats that cover any part of the Expansion Property.

1.13 Member shall mean and refer to every person who holds membership in the Association.

1.14 Declarant shall mean Perry Development, LLC, and its successors and assigns. In the event that the Property is expanded and all or any portions of the Expansion Property are added to the coverage of this Declaration, as permitted hereunder, "Declarant" shall be deemed to include any persons or legal entities that initially own and also consent to add portions of the Expansion Property to coverage under this Declaration, except that such persons or legal entities shall be deemed to be Declarant only for that portion of the Expansion Property which they own and which they cause to be added to coverage under this Declaration by them.

1.15 Single Family shall mean a group of persons all legally related and comprising a family residing in a Living Unit.

## ARTICLE II - SUBMISSION AND DIVISION OF PROJECT

2.1 Submission. The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the real property situated in Davis County, State of Utah, described in Exhibit "A" attached hereto and by this reference made a part hereof. The Property is being subdivided into 36 Lots, identified as Lots 115 through 150, The Villas at Harmony Place P.R.U.D. No. 1B, A Planned Residential Unit Development, as identified in the Plat.

2.2 Division into Lots and Common Areas. The Property is hereby divided into 36 Lots, each consisting of a fee simple interest in a portion of the Property as set forth in the Plat. All portions of the Property not designated as Lots and not dedicated to the City of Layton, Utah or constituting designated public parks shall constitute the Common Area, which shall be owned by the Association for the benefit of all Owners in accordance with the provisions of this Declaration.

Layton City shall have no liability for the maintenance or regulation of

the Common Areas. The Owners shall look entirely to the Association for the same.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.1 Membership. Every Owner upon acquiring title to a Residential Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his/her ownership of such Residential Lot ceases for any reason, at which time his/her membership in the Association with respect to such Residential Lot shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Residential Lot.

3.2 Voting Rights. The Association shall have the following described two classes of Voting membership:

Class A. Class A members shall be all Owners, but excluding the Declarant until the Class B membership ceases. Class A members shall be entitled to one vote for each Residential Lot in which the interest required for membership in the Association is held.

Class B. Declarant shall be the sole Class B Member. The Class B Member shall be entitled to ten votes for each Residential Lot which it owns. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

- (a) The date on which Declarant sells to a third party purchaser its last Residential Lot in the Property.
- (b) December 31, 2025.
- (c) Declarant, by signed affidavit and acting freely, converts its Class B membership interest to Class A membership.

Notwithstanding anything in the foregoing to the contrary, the Class B Membership shall exist on a plat by plat basis such that, with respect to any additional plat filed and annexed into this Declaration on all or any portion of the Expansion Property, a new class B interest shall automatically arise in the Declarant or its assigns with respect to the any new Residential Lots created on the Property by virtue of the filing of a plat and annexation of any portion of the Expansion Property into this Declaration in accordance with Article XII hereof. Such Class B Membership Interest with respect to such newly annexed plat shall thereafter be converted to Class A membership interests in accordance with the

provisions of this Section 3.2.

3.3 Multiple Ownership Interests. In the event there is more than one Owner of a particular Residential Lot, the vote relating to such Residential Lot shall be exercised as such Owners may determine among themselves, but in no event shall more than one Class A vote be cast with respect to any Residential Lot. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Residential Lot concerned unless an objection is made at the meeting by another Owner of the same Residential Lot, in which event a majority in interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.

3.4 Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document to him/her of his/her Residential Lot and shall file a copy of such conveyance document with the secretary of the Association, who shall maintain a record of ownership of the Residential Lots. Any Owner who mortgages his Residential lot or any interest therein by a Mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the record of ownership.

#### ARTICLE IV - OPERATION AND MAINTENANCE

4.1 Duties of the Association. The Association shall have the obligations and duties to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

(a) The association shall accept all record owners as Members of the Association.

(b) The Association shall accept title to all Common Areas conveyed to it by the Declarant.

(c) The Association shall provide and be responsible for the management control, operation, care, maintenance, repair, replacement, and upkeep of the landscaped Common Areas in the locations as marked on the Plat, and shall keep the same in good, clean, attractive, safe and sanitary condition, unless, until and except to the extent that such responsibility is transferred to and accepted by some other authority, public agency, or utility, and such transfer is agreed to by Members holding at least two-thirds (2/3) of the votes of each class of membership of the Association.

(d) The Association shall be responsible for the management, control, operation, maintenance, repair, replacement; and upkeep of the landscaping

located in the front of each Living Unit in the area designated in crosshatched as "Limited Common Area" on the Plat. Each Living Unit Owner shall be responsible for the management, control, operation, maintenance, repair, replacement, and upkeep of the remaining landscaping not maintained by the Association and located in the front, back and sides of each such Living Unit. Should an Owner desire to change the landscaping they must first seek approval from the Architectural Control Committee as described in Article VIII below. Should the Owner be allowed to change the landscaping, such Owner will be responsible for the management, control, operation, maintenance, repair, replacement, and upkeep of said landscaping.

(e) The Association shall have the power and authority, but not the obligation, to hire a responsible corporation, partnership, firm, person or other entity to maintain the grounds that are the responsibility of the Owners and who voluntarily subscribe to such service, or to maintain the grounds of Owners who fail to properly maintain that which is their responsibility, as required by this Declaration, for so long as said Owners fail to maintain the same. The cost to maintain a Lot for an Owner, whether the maintenance is voluntary or involuntary on the part of the Owner, shall be charged to the Owner and shall be included in the assessment to the Owner as provided in Article V below.

(f) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments, levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(g) The Association shall obtain and maintain in force the policies of insurance required by Article IX of this Declaration.

(h) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by the Board with cause upon thirty (30) days written notice thereof and at any time without cause or payment of a termination fee upon ninety (90) days written notice thereof, and the term of any such agreement may not exceed three (3) years, renewable by agreement of the parties for successive three-year periods. Any Managing Agent shall be an independent contractor and not an agent or employee of the Association.

4.2 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be

done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority but not the obligation at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Residential Lot for the purpose of maintaining and repairing such Residential Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Residential Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Residential Lot in violation of Articles VII or VIII of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Residential Lots (to the extent required herein or necessitated by the failure of the Owners of such Residential Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon not less than ninety (90) days' written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or otherwise provide for:

(1) Construction, maintenance, repair and landscaping of the Common Areas and Limited Common Areas on such terms and conditions as the Board shall deem appropriate;

(2) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board, the members of the Architectural Control Committee and the Owners;



(3) The services of architects, engineers, Attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(4) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary; and

(c) The Board may delegate to a Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of \$1,000 nor the power to sell, convey, mortgage or encumber any Common Areas.

(d) Upon thirty (30) days prior written notice to the Owner, the Association shall have the power and authority but not the obligation to hire a responsible corporation, partnership, firm, person or other entity to maintain an Owner's Lot(s) should the Owner thereof fail to properly maintain the same. The cost to maintain a Lot for an Owner shall be charged to the Owner and may be included in the next scheduled monthly assessment to the Owner.

4.3 Association Rules. The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce rules and regulations governing, among other things, (a) the use and maintenance the Common Areas; (b) the use of any utility facilities owned by the Association; the collection and disposal of refuse; (d) the maintenance of animals on the Property; and (e) other matters concerning the use and enjoyment of the Property and the conduct of residents.

4.4 Limitation of Liability. No member of the Board or the Declarant acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, the Architectural Control Committee or the Managing Agent.

## ARTICLE V – ASSESSMENTS

5.1 Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his/her interest in a Residential Lot, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Residential Lot with respect to which such assessment is made until fully paid; and (b) the

personal, joint and several obligation of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Residential Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Residential Lot. In a voluntary conveyance of a Residential lot, the grantee shall be jointly and severally liable with the grantor for all unpaid monthly and special assessments, late payment fees, interest and costs of collection which shall be a charge on the Residential Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

5.2 Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvements of the Common Areas; management and supervision of the Common Areas; establishing and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance, repairs and replacement of those elements of the Common Areas that must be maintained, repaired or replaced on a periodic basis.

5.3 Monthly Assessments. The Board shall from time to time and in its discretion set the amount of the monthly assessment in an amount reasonably estimated by the Board to be sufficient to meet the obligations imposed by this Declaration and on the basis specified in Section 5.7 and 5.8 below.

5.4 Special Assessments. From and after the date set under Section 5.8 of this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas. Any such special assessment must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

5.5 Quorum Requirements. The quorum at any meeting required for any action authorized by Article 5 shall be as follows: At the first meeting

called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all of the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 5.4) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

5.6 Special Assessment on Specific Residential Lots. In addition to the monthly assessment and any special assessment authorized pursuant to Section 5.4 above, the Board may levy at any time special assessments (a) on every Residential Lot especially benefited by any improvement to planting areas or other portions of the Common Areas made on the written request of the Owner of the Residential Lot to be charged, (b) on every Residential Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs, and (c) on every Residential Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 4.2(a) of Article IV or other provisions of this Declaration. The aggregate amount of any such special assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Residential Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a special assessment against the Residential Lots benefited.

5.7 Uniform Rate of Assessment. All monthly and special assessments authorized by Section 5.3 or 5.4 above shall be fixed at a uniform rate for all Residential Lots.

5.8 Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Residential Lots as of the second month following conveyance to the Association of the Common Areas shown on the Plat. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of monthly assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

5.9 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrance of a Residential Lot and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Residential Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all

persons who rely thereon in good faith.

5.10 Effect of Nonpayment - Remedies. Any assessment not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Residential Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1½%) per month; and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Residential Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

5.11 Subordination of Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such first Mortgage or purchaser who comes into possession of a Residential Lot by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Residential Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Residential Lot from the lien of any assessment thereafter becoming due.

5.12 Non-Applicability of Assessment Provisions to Declarant. Declarant shall be exempt from the requirement to pay to the Association any assessments (whether general, special or otherwise) provided in this Article 5 and this Declaration in general in respect of any of the Residential Lots or any portion of the Property that it owns during any period of time that the Declarant owns any one Residential Lot within the Property. The provisions of this Section 5.12 may not be amended without the express written consent of the Declarant.

## ARTICLE VI - PROPERTY RIGHTS AND CONVEYANCES

6.1 Easement Concerning Common Areas. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Residential Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such owner's Residential Lot.

Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, drainage and sewer purposes for which such easements are intended for use in common with others.

6.2 Conveyancing; Leases. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Residential Lot shall be subject to the covenants, conditions, restrictions, easements, charges and liens provided for in said Declaration of Covenants, Conditions and Restrictions and all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Residential Lot. Any lease of a Residential Lot shall be in writing and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and By-laws of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the Lease.

6.3 Transfer of Title to Common Areas. Declarant shall convey to the Association title to the various Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any non delinquent assessments, charges, or taxes, imposed by governmental or quasi-governmental authorities), as each such Common Area is substantially completed or at such earlier time as the Declarant, in its sole and absolute discretions, deems appropriate.

6.4 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to govern by rules and regulations the use of the Common Areas for the Owners so as to provide for the enjoyment of the Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Residential Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;

(b) The right of the Association to suspend an Owner's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Owner's Residential Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Board;

(c) The right of Davis County and Layton City, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and

across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association, provided that such dedication or transfer must first be assented to in writing by (1) all holders of first mortgages secured by Residential Lots and (2) the Owners of at least seventy-five percent (75%) of the Residential Lots (not including Residential Lots owned by Declarant). No such dedication or transfer, however, may take place without the Association first receiving written approval from Layton City pursuant to all applicable state and city laws, rules and ordinances in effect at the time of such proposed dedication or transfer.

6.5 Reservation of Access and Utility Easements. Declarant reserves easements for access, electrical, gas, communications, cable television and other utility purposes and for sewer, drainage and water facilities, (whether servicing the Property or other premises or both) over, under, along, across and through the Property, together with the right to grant to Layton City and Davis County, or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof.

6.6 Easements for Encroachments. If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Residential Lot or if any structure constructed by Declarant on any Residential Lot now or hereafter encroaches upon any other Residential Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Residential Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Residential Lot or upon any portion of the Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

6.7 Easements for Construction and Development Activities.

Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Living Units on Residential Lots, (b) improvement of the Common Areas and construction, installation and maintenance thereon of access roads, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and construction, installation and maintenance on lands within, adjacent to, or serving the Property of walkways, and other facilities, planned for dedication to appropriate governmental authorities. Declarant reserves the right at any time to amend, alter, change, revise or re-design any aspect or portion of the Property it owns and all portions of the Common Areas for a period so long as Declarant continues to own any one Residential Lot within the Property. Declarant may alter its plans with respect to the Common Areas without any input from other Owners and without any liability to Owners or the Association. Declarant may change its proposed house plans, marketing plans, color schemes, building materials and all other matters relating to the Residential Units constructed in the Property by Declarant without any input from other Owners and without any liability to Owners or the Association. The provisions of this Section 6.7 shall not be amended without the express written consent of the Declarant.

6.8 Grant of Easement to Layton City.

Declarant hereby dedicates, grants and conveys to Layton City a perpetual right-of-way and easement over, upon and under the lands designated on the Plat as Common Area and easements for public Utility and drainage purposes as indicated on the Plat, the same to be used for the installation, maintenance and operation of public utility service lines and storm drainage facilities, the same to be maintained and managed by the Association.

6.9 Easement for Access for Maintenance, Repairs and Upkeep.

Declarant reserves perpetual easements for access over, under, along, across and through that portion of each Residential Lot which immediately abuts the Living Unit located on any neighboring Residential Lot (hereinafter referred to as the "Easement Lot"), said easement being ten (10) feet in width and the length thereof being equal to the entire length of the specific side property line of said Easement Lot abutting the Living Unit on any neighboring Residential Lot, together with the right to grant to Layton City and Davis County, or any other appropriate governmental agency or to any public utility or other corporation or association or applicable Owner of Residential Lot adjacent to an Easement Lot easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights for Maintenance, Repairs and Upkeep of any structure so situated, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by,

through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities or structures as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. The provisions of this Section 6.9 shall not be amended without the express written consent of the Declarant.

## ARTICLE VII – LAND USE RESTRICTIONS AND OBLIGATIONS

### 7.1 General Restrictions and Requirements.

(a) No improvement, excavation, fill or other work (including the installation of any wall or fence) which in any way alters any Residential Lot from its natural or improved state existing on the date such Residential Lot is first conveyed by Declarant to a purchaser shall be made or done except upon strict compliance with the provisions of this Article VII and the provisions of Article VIII.

(b) Residential Lots shall be used only for single-family residential purposes, and no more than one Living Unit shall be constructed on any Residential Lot. The facilities and improvements constituting part of the Common Areas shall be used only for the purposes and uses for which they are designed. Common Areas shall be used only for natural recreational uses which do not injure or scar the Common Areas or the vegetation thereof, increase the cost of maintenance thereof or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of their Residential Lots and Living Units or the Common Areas.

(c) Businesses, professions or trades may be operated or maintained in a Residential Lot subject to the prior written approval of the Board, which approval shall not be unreasonably withheld, subject to the following limitations: (i) any such business, profession or trade may not require heavy equipment or create a nuisance within the Project, (ii) may not noticeably increase the traffic flow to the project, (iii) may not be observable from outside the Residential Lot, and (iv) may only be carried on following approval from Layton City pursuant to all applicable state and city laws, rules and ordinances in effect at the time any such use is requested. Specifically, it is contemplated that certain businesses, professions or trade which rely heavily on the Internet and other similar type of technological advances may be operated or maintained within a Residential Lot, subject to the foregoing limitations and all other limitations of this Declaration.



(d) No noxious or offensive activity shall be carried on upon any Residential Lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Residential Lots and Living Units or the Common Areas. Without limiting the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Residential Lot and Living Unit thereon, shall be placed or used upon any Residential Lot without the prior written approval of the Architectural Control Committee.

(e) No furniture, fixtures, appliances or other goods and chattels shall be stored in such a manner as to be visible from streets.

(f) Each Residential Lot, and all improvements located thereon, shall be maintained by the Owner thereof in good condition and repair, and in such manner as not to create a fire hazard, all at the Owner's expense.

(g) All garbage, rubbish, and trash shall be kept in covered containers. In no event shall such containers be maintained so as to be visible for neighboring Residential Lots, streets or Common Areas. The storage, collection and disposal of garbage, rubbish and trash shall be in strict compliance with applicable laws and the rules and regulations of the Board.

(h) No Residential Lot shall be re-subdivided.

(i) All improvements shall be constructed in accordance with applicable building line and setback provisions of zoning ordinances.

(j) All structures constructed on any Residential Lot shall be constructed with new materials unless otherwise permitted by the Architectural Control Committee; and no used structures shall be relocated or placed on any Residential Lot.

(k) Living Units on all Residential Lots shall measure a minimum of 1200 square feet, excluding any garage space.

(l) Living Units on all Residential Lots shall have a minimum of a two (2) car attached garage.

(m) Vehicles shall not be parked upon any of the streets or streets within the Property for a period of longer than twenty four (24) continuous hours unless prior written approval is received from the Board or as allowed by law. Furthermore, no more than two (2) cars

may be parked on any driveway of any Residential Lot for a period of more than twenty four (24) continuous hours. All other vehicles shall be parked in a garage located on a Residential Lot. No Recreational Vehicles, including Motor Homes, ATVs, Snowmobiles, boats and the like, may be parked on any street located within the Property or in the driveway of any Residential Lot.

(n) Roof and materials shall be architectural grade asphalt shingles as approved by the Architectural Control Committee or other high quality roofing materials.

(o) The exterior covering of all Living Units shall be of any one or a combination of the following: brick, native stone, manufactured stone, stucco, hardy board, hardy wood or concrete based artificial product approved by the Association. Once a Residential Unit is constructed, no Owner shall change or alter the exterior covering of the Unit unless prior written approval is obtained from the Architectural Control Committee. Notwithstanding the foregoing, certain elements of the exterior of Living Units, including but not limited to soffits, fascia, vents, gutters and flashing, may be of any suitable material typically or commonly used for such elements.

(p) No accessory building shall be constructed upon any Residential Lot unless specifically allowed by architectural standards prior approved by the Architectural Control Committee. In the absence of any architectural standards, no such accessory building shall be allowed.

(q) No exterior lighting of any sort shall be installed or maintained on a Residential Lot if the light source shines directly into a neighboring residence.

(r) No Living Unit shall be occupied until as certificate of occupancy for such Living Unit is approved and issued by Layton City.

(s) No Owner of any Residential Lot, except Declarant, shall build or permit the building thereon of any structure that is to be used as a model or exhibit unless a permit to do so is first granted by the Architectural Control Committee. The Declarant is specifically authorized to build a model home or homes within the Property.

(t) No improvement which suffers partial or total destruction shall be allowed to remain on any Residential Lot in such a state for more than six (6) months after the date of such destruction.

(u) No outside toilet, other than self-contained portable toilet

units used during construction, shall be placed or constructed on any Residential Lot or the Common Areas. All plumbing fixtures, dishwashers, garbage disposals, toilets and sewage disposal systems shall be connected to a sewage system.

(v) No Outside clotheslines and other outside clothes drying or airing facilities shall be maintained on any Residential Lot unless the same is maintained within a fenced enclosure and not visible from the streets.

(w) No drilling (except for a water well expressly permitted), refining, quarrying or mining operations of any kind shall be permitted upon any Residential Lot or the Common, and no derrick, structure, pump or equipment designed for use in any such activity shall be erected, maintained or permitted on any Residential Lot or the Common Areas.

(x) There shall be no blasting or discharge of explosives upon any Residential Lot or the Common Areas except as permitted by the Board; provided that this provision shall in no way limit or restrict Declarant in its activities in connection with and during the development and sale of Residential Lots.

(y) No signs whatsoever shall be erected or maintained upon any Residential Lot, except:

(1) Such signs as may be required by legal proceedings,

(2) Such signs as Declarant may erect or maintain on any Residential Lot prior to sale and conveyance,

(3) One "For Sale" or "For Rent" sign having a maximum face area of eight (8) square feet and a maximum height of six (6) feet and referring only to the premises on which it is situated.

(z) Except to the extent used by Declarant in connection with and during the development and sale of Residential Lots, no mobile home or similar facility shall be placed upon any Residential Lot, the Common Areas, or adjoining public streets except for temporary storage in strict accordance with the rules and regulations of the Board. No stripped down, wrecked or junk motor vehicles shall be kept, parked, stored or maintained on any Residential Lot, Common Areas, or streets.

(aa) Maintenance of any animals on any Residential

Lot shall be subject to the following restrictions and limitations:

(1) No livestock of any kind, including, but not limited to, chickens, pigs, cows, goats, sheep, horses, etc. may be kept or maintained on any Residential Lot.

(2) No dangerous or nuisance animals, as defined by the Board, may be maintained or kept on any Residential Lot.

(3) The area of any Residential Lot occupied by an animal shall be properly maintained so as not to create any noxious or offensive odors or conditions which is or may become a nuisance or may cause disturbance or annoyance to other Owners in the Project.

(4) No animals shall be permitted on the Common Areas except when accompanied by and under the control of the persons to whom they belong.

(5) The use and control of any animals shall be subject to further control by rules and regulations promulgated by the Board.

(bb) Subject to further control by rules and regulations promulgated by the Board, only one generally recognized house pet shall be kept on any Lot. House pets shall be permitted on the Common Areas when accompanied by and under the control of the person to whom they belong. No animals of any kind shall be raised for commercial purposes unless prior written approval is obtained from the Board.

(cc) There shall be no exterior fires, except fires started and controlled by the Association incidental to the maintenance and preservation of any portion of the Property and barbecue and incinerator fires contained within facilities or receptacles designed for such purposes. No Owner shall cause or permit any condition which creates a fire hazard, creates a nuisance, or is in violation of any fire prevention regulations.

(dd) There shall be no camping upon any Residential Lot or Common Areas except as permitted by the Board by written license.

(ee) No Owner or guest shall park any vehicle or cause any obstruction in front of a driveway.

7.2 Exemption of Declarant. Notwithstanding the provisions of

Section 7.1, the Declarant shall have the right to use any Residential Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and sale of all Residential Lots owned by Declarant and shall be exempt from any of the prohibitions contained in Section 7.1 that could in any way impact or render it less convenient for the Declarant to build out and construct all of the Living Unit's within the Property. The provisions of this Paragraph 7.2 shall not be amended or altered without the express written consent of the Declarant.

7.3 Enforcement of Land Use Restrictions. The following persons shall possess the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

(a) Declarant, so long as it has any interest in any of the Property or Residential Lots;

(b) Any Owner; or

(c) The Association.

(d) The Architectural Control Committee, specifically, shall possess only the rights and responsibilities of review and approval outlined in this Declaration and shall not possess the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration.

(e) The individual members of the Architectural Control Committee may possess such right of enforcement only in the event they are also one of the parties specified in paragraphs 7.3(a), (b) or (c) above possessing such right, but not in their capacity as a Architectural Control Committee member.

7.4 Conditional Notes on Plat. Neither the Association nor any Owner of a Residential Lot shall have the authority to waive or alter the conditions or requirements set out as notes on the Plat.

## ARTICLE VIII - ARCHITECTURAL CONTROL

8.1. Organization of the Architectural Control Committee. There shall be a Architectural Control Committee consisting of not fewer than three (3) members. The members of the Architectural Control Committee need not be Owners. Declarant shall have the right to appoint, remove and increase the number of members of the Architectural Control Committee; provided that such right shall vest in the Board upon the expiration of any continuous period of eighteen (18) months during which Declarant at all times owns less than one

of the Residential Lots then covered by this Declaration. Declarant may voluntarily relinquish control of the Architectural Control Committee to the Board at any time. Whenever the Architectural Control Committee consists of more than three (3) members, it may designate subcommittees, each consisting of at least three (3) members. Unless authorized by the Board, the members of the Architectural Control Committee shall not receive any compensation, but all members shall be entitled to reimbursement from the Association for reasonable expenses incurred in the performance of any Architectural Control Committee function.

8.2 Actions Requiring Approval. No fence, wall, Living Unit, accessory or addition to a Living Unit, or landscaping or other improvement of a Residential Lot shall be constructed or performed, nor shall any alteration of any structure on any Residential Lot, including a change in exterior color, be made, unless complete plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall first be submitted to and approved by the Architectural Control Committee. The provisions of this Section 8.2 shall be inapplicable to the Declarant and shall not be amended without the express written consent of Declarant.

8.3 Standard of Architectural Control Review. Before granting any approval of plans and specifications, the Architectural Control Committee shall determine to its reasonable satisfaction that such plans and specifications (a) conform to all architectural standards contained in this Declaration and all further architectural standards promulgated from time to time by the Board and (b) provide for a structure, alteration, landscaping or other improvements in harmony as to external design and location with surrounding structures and topography.

8.4 Architectural Control Committee Rules and Architectural Standards. The Board may, upon recommendation from the Architectural Control Committee, adopt and file as a matter of public record reasonable rules related to the efficient review of plans and specifications including requirements as to the number of sets of plans and specifications to be submitted, the fixing of a review or variance request fee not exceeding Fifty Dollars (\$50.00) per review or variance request, the details to be shown on plans and specifications, and design guidelines consistent with this Declaration and covering such matters as setbacks, height limitations, restrictions on minimum or maximum size and quality of structures.

8.5 Approval Procedure. The Architectural Control Committee and any subcommittees thereof shall meet from time to time as necessary to perform the duties of the Architectural Control Committee. The vote or written consent of a majority of the Architectural Control Committee or any authorized subcommittee shall constitute the act of the Architectural Control Committee. Any plans and specifications submitted to the Architectural Control Committee shall be approved or disapproved within thirty (30) days after receipt by the

Architectural Control Committee. If the Architectural Control Committee fails to take action within such period, the plans and specifications shall be deemed to be approved as submitted.

8.6 Variance Procedure. If plans and specifications submitted to the Architectural Control Committee are disapproved because such plans and specifications are not in conformity with applicable architectural standards, the party or parties making such submission may submit a request for variance to the Architectural Control Committee, which shall make a written recommendation of approval or disapproval of the requested variance to the Board. The Board shall approve or disapprove the request for variance in writing. If the Board fails to approve or disapprove a request for variance within sixty (60) days after such request is submitted to the Architectural Control Committee, such request shall be deemed to be denied.

8.7 Nonwaiver. The approval by the Architectural Control Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications.

8.8 Completion of Construction. Once begun, any improvements, construction, landscaping or alterations approved by the Architectural Control Committee shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Architectural Control Committee.

8.9 Exemption of Declarant. The provisions of this Article 8 shall not apply to any improvement, construction, landscaping or alteration made or performed by Declarant on any Residential Lot or portions of the Common Areas at any time during that Declarant continues to own any Residential Lot in the Property. This provision shall not be amended without the express written consent of the Declarant.

8.10 Estoppel Certificate. Within thirty (30) days after written demand therefor is delivered to the Architectural Control Committee by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Board, the Architectural Control Committee shall issue an estoppel certificate in recordable form executed by any two of its members, certifying with respect to any Residential Lot of such Owner that as of the date thereof either (a) all improvements and other work made or done upon or within such Residential Lot by the Owner, or otherwise, comply with this Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also (i) identify the nonconforming improvements or work, and (ii) set forth the nature of such noncompliance. Any mortgagee or purchaser from the Owner shall be entitled to rely on such certificate with respect to the matters therein set forth.

8.11 Disclaimer of Liability. Neither the Architectural Control

Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

## ARTICLE IX INSURANCE

9.1 Liability Insurance. The Board shall procure and maintain from a company or companies holding a rating of "AA" or better from Best's Insurance Reports a policy or policies (herein called "the Policy") of Public Liability Insurance to insure the Association, the Board and the Managing Agent and employees of the Association against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the County of Davis nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be cancelled by the insurer unless it gives at least thirty (30) days' prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

9.2 Additional Insurance; Further General Requirements. The Board may also procure insurance which shall insure the Common Areas and the Association, the Board, the Managing Agent or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide: (a) a waiver of the insurer's rights of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants; (b) that it cannot be cancelled, suspended or invalidated, due to the conduct of



any particular Owner or Owners; (c) that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or any directors, officer, agent, or employee of the Association without a prior written demand that the defect can be cured and (d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

9.3 Review of Insurance. The Board shall periodically, and whenever requested by fifty percent (50%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Residential Lot and to the holder of any mortgage on any Residential Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner.

9.4 Residential Lots Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Residential Lot, home, structure, personal property and acts and events thereon.

9.5 Owners Insurance. Each Owner of a Lot, except the Declarant, shall be required at his own cost and expense to obtain and at all times maintain in full force and effect a policy or policies of fire and casualty insurance, with extended coverage endorsement, insuring the Living Unit and garage located on such Owner's Lot in an amount equal to its full insurable replacement value. Upon written request of the Association, each Owner shall provide the Association with a copy of each policy of insurance or a certificate issued by the insurance company to evidence such insurance and each such policy shall provide that it will not be cancelled or terminated by the insurance company without giving the Association at least ten (10) days advance written notice of such cancellation or termination. Such policy or policies shall waive the insurance company's right of subrogation against the Association, the Owners, the Manager, if any, and the servants, agents and guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for waiver of subrogation rights. Such policy may include a standard, non-contributory mortgagee clause or endorsement in favor of any Mortgagee who holds a Mortgage covering all or any part of the Lot. Except as otherwise required by an applicable Mortgage, the proceeds of any such insurance shall be applied to the extent necessary to repair or replace any damage or destruction by fire or other casualty. In the event that any Owner fails to obtain and maintain the insurance required by this Section, or to provide the Association with suitable evidence of such insurance, the Association shall have the right, but without any obligation, to obtain such insurance on behalf of such Owner, and the Owner shall be obligated to immediately reimburse the Association for the costs thereof. The Owner's obligation to reimburse the Association for the cost of any such insurance shall be secured by a lien upon the Owner's Lot as provide in this

Declaration with respect to Monthly and Special Assessments.

ARTICLE X - CONDEMNATION

10.1 If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Board and shall be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Board which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Residential Lot is eliminated, the Board shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Residential Lot in the Association and the Common Areas to such Owner and any first mortgagee of such Residential Lot, as their interests shall appear, after deducting the proportionate share of said Residential Lot in the cost of debris removal.

ARTICLE XI - RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first mortgagees shall be in effect:

11.1 Preservation of Regulatory Structure and Insurance. Unless the Owners of at least seventy-five percent (75%) of the Residential Lots (not including Residential Lots owned by Declarant) and such Owners' first mortgagees, if any, shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the Property.

(b) to fail to maintain insurance as required by Article IX. This Section 11.1 may be amended as provided in Section 12.2 of Article XII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

11.2 Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) all first mortgagees of Residential Lots and (2) the Owners of at least seventy-

five percent (75%) of the Residential Lots (not including Residential Lots owned by Declarant) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as reserved in Article VI hereof; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Residential Lot or the Owner thereof.

This Section 11.2 may be amended as provided in Section 12.2 Article XII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

11.3 Written Consent Deemed Approved. If an Owner or a mortgagee fails to approve or disapprove a request made pursuant to this Article XI, or any other Article in this Declaration within sixty (60) days after such request is mailed by certified mail, return receipt requested, the request shall be deemed to be approved from such Owner or mortgagee.

11.4 Notice of Matters Affecting Security. The Board shall give written notice to any first mortgagee of a Residential Lot requesting such notice whenever:

(a) there is any default by the Owner of the Residential Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within sixty (60) days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds Ten Thousand Dollars (\$10,000.00); or

(c) there is any condemnation or taking by eminent domain of the Residential Lot subject to the first mortgage or of the Common Areas; or

(d) any of the following matters come up for consideration or effectuation by the Association;

(1) abandonment or termination of the Planned Development established by this Declaration; or

(2) material amendment of the Declaration or the Articles or Bylaws of the Association; or

11.5 Notice of Meetings. The Board shall give to any first mortgagee of a Residential Lot requesting the same, notice of all meetings of the Association; and such first mortgagees shall have the right to designate in writing a representative to attend all such meetings.

11.6 Right to Examine Association Records. Any first mortgagee shall have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Residential Lot securing the mortgage; provided, that the foregoing shall not be deemed to impose upon the Association any obligation to cause its financial statements to be audited.

11.7 Right to Pay Taxes and Charges. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Area, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

11.8 Exemption from Any First Right of Refusal. Any first mortgagee who obtains title to the Residential Lot subject to the first mortgage pursuant to the remedies provided in the first mortgage, or by foreclosure of the first mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale shall be exempt from any "right of first refusal" which would otherwise affect the Residential Lot.

## ARTICLE XII - MISCELLANEOUS

12.1 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Each owner is responsible for keeping their address updated with the Association for accurate record keeping. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the managing Agent or the President of the Association. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Managing Agent or any member of the Architectural Control Committee.

12.2 Amendment. Except as may be specifically provided in any other Section of this Declaration, in which case that specific Section is controlling, this Declaration may be amended by:

- (a) the affirmative vote of a simple majority of the Owners, and
- (b) the written consent of Declarant, if such amendment is adopted at a time when Declarant holds Class B membership in the Association, and
- (c) the filing of an instrument for record in the office of the County recorder of Davis County, Utah, executed by any two officers of the Association and certifying that such amendment has been duly adopted by the affirmative vote of a majority of the Owners, has the written consent of Layton City, and, if required, has the written consent of Declarant.

12.3 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the Owners, whether present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 12.3:

- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.
- (b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.
- (c) Except as provided in the following sentence, any change in ownership of a Residential Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would increase the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.
- (d) Unless the consent of all Owners whose memberships are appurtenant to the same Residential Lot are secured, the consent of none of such Owners shall be effective.

12.4 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned without the consent or approval of the Association

or any Owner.

12.5 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision herein construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or enforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

12.6 Reciprocal Use of Trails; Waiver of Liability. The Common Areas may contain trails and walkways (the "Trails"), some of which may connect to the neighboring subdivisions that may be constructed on the Expansion Property. The Expansion Property may also contain trails and walkways in its common area (the "Expansion Property Trails"), some of which will connect with the sidewalks and trails in the Common Areas. There is hereby created a non-exclusive easement (the "Easement") for pedestrian use over all of the Trails for the benefit of the owners and the Expansion Property but only if and to the extent the owners of the Expansion Property subject their property to the Declaration as permitted under this Declaration and specifically under Article 13 hereof. No public dedication of the Easement or the Trails is created herein or is intended or shall be effected hereby or inferred from this Declaration. Neither Declarant, the Association, nor any Owner shall have any liability to any user of the Easement created herein nor to any user of the Common Areas, whether an authorized user or not, arising out of the use, existence of any defect in or upon, or the maintenance or lack of maintenance of the Easement. Declarant and the Association and the Owners shall have all the protections provided private landowners by title 57, Chapter 14 of Utah Code, including, without limitation, Sections 3 and 4 or any similar successor provision of law.

12.7 Responsibility for Storm Water Protection. Serious liability may attach to the Owner of any Residential Lot for storm and other water runoff from such Owner's Residential Lot and/or for non-compliance with the storm water protection plan (the "SWPP") for the Property. From and after Declarant's conveyance of a Residential Lot, the grantee of such conveyance shall have full and complete liability pertaining to water runoff from such Residential Lot and for strict compliance with the SWPP as to such Residential Lot, and such grantee shall indemnify and hold Declarant harmless from and against all liability, claim, suit, demand, and cost (including attorneys' fees and court costs) on account of a SWPP violation originating on or from such grantee's Residential Lot. From and after the conveyance of the Common Areas to the Association, the Association shall have full and complete liability pertaining to water runoff from the Common Areas and for strict compliance with the SWPPP as to the Common Areas, and the Association shall indemnify

and hold Declarant harmless from and against all liability, claim, suit, demand, and cost (including attorneys' fees and court costs) in relation to such Common Area run-off.

12.8 Covenants to Run With Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and all inure to the benefit of Declarant, the Owners, all parties who hereafter acquire any interest in a Residential Lot, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Residential Lot or Living Unit shall comply with, and all interests in all Residential Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Residential Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

12.9 Duration. The covenants and restrictions of this Declaration shall remain in effect until thirty (30) years from the date this Declaration was first filed in the office of the County Recorder of Davis County, Utah, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument filed in the office of the County Recorder, executed by any two (2) officers of the Association, certifying that the Owners of at least seventy-five percent (75%) of the Residential Lots and their first mortgagees, if any, voted in favor of such termination. If any of the privileges, covenants, or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then the provision herein creating such privilege, covenant or right shall, in any event, terminate upon the expiration of twenty-one (21) years after the death of the last survivor of the now living lawful descendants of Barack Hussein Obama, the current President of the United States at the time this Declaration was recorded.

12.10 Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Davis County, Utah.  
Declarant"

#### ARTICLE XIII—ANNEXATION OF EXPANSION PROPERTY

13.1 Reservation of Option to Expand. Declarant hereby explicitly reserves an option until the twenty fifth (25) anniversary of the recording of this Declaration to expand the Property by adding all or any portion of the Expansion Property to the Property to be covered by this Declaration from time to time, without the consent of an Owner or Mortgagee. The option

to expand may be terminated prior to such anniversary only upon the filing by the Declarant of an amendment to this Declaration. Declarant expressly reserves for itself, its successors and assigns, to add any or all portions of the Additional Land at any time, at different times, in any order, without limitation; provided however that the property added shall be part of the Expansion Property. Declarant is not required to own any portion of the Expansion Property so added to coverage by this Declaration. Rather, Declarant may consent to the additional of all or any portion of the Expansion Property to coverage by this Declaration by providing written consent to the owner of such Expansion Property stating that the owner may annex into coverage under this Declaration.

13.2 Assurances. Declarant makes no assurances as the location of buildings or other improvements upon any portion of the Expansion Property. At such time as the Property is expanded, the maximum number of Living Unit's on the Expansion Property shall be no more than the maximum number of Living Units permitted by Layton City with respect to all or any portion of the Expansion Property. Declarant makes no assurances as to whether any building to be constructed on the Expansion Property will be compatible with the quality, materials, or style of the buildings contained within the initial Plat of the Property. No assurances are made by the Declarant whether any Living Units will be substantially identical or similar to those within the prior Plat or Plats. Declarant expressly reserves the right to create and designate Limited Common Areas and Common Areas on the Expansion Property and to add those areas to coverage under this Declaration. Declarant makes no assurances as to the type, size, or maximum number of such Common Areas or Limited Common Areas. In the event the Declarant decides not to itself add or to allow any of the Expansion Property to be added to the Property, Declarant shall nevertheless have the right to own, operate and develop the same without restriction. The maximum dwelling units per acre that may be created on any portion of the Expansion Property added to the Property shall be thirty (30) units per acre

13.3 No Obligation to Expand. Notwithstanding anything to the contrary herein, this Declaration is not intended, and shall not be construed so as, to impose upon the Declarant in any way with regard to: (i) the submission of any portion of the Expansion Property, (ii) the creation, construction, or addition to the Property of any plats; (iii) the carrying out in any particular way or within any particular time, any development which may be undertaken; or (iv) the taking of any particular action with respect to the Expansion Property, the Property, the Plat or any plat. Declarant may create on any portion of the Expansion Property it owns and not made subject to this Declaration, any development which would be entirely independent and unrelated to the development created by this Declaration.

14.4 Annexation by Declarant or Others. The annexation of Expansion Property into the Property covered by this Declaration shall be



effective upon the recordation in the office of the County Recorder of Davis County, Utah, of a Supplementary Declaration which (a) describes the Expansion Property being annexed, (b) declares that the Expansion Property is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to this Declaration, and (c) sets forth such additional limitations, restrictions, covenants and conditions that Declarant desires to apply to the Expansion Property. When such annexation becomes effective, the Expansion Property shall become part of the Property and shall be subject to the terms of the covenants, conditions and restrictions, which terms, covenants, conditions and restrictions run with the land, of this Declaration and any supplements or amendments thereto. Such annexation may be accomplished in one or more annexations or plats without limitation as to the size of the Expansion Property.

14.5 Limitations on Annexation. Declarant's right to annex the Expansion Property to the Property shall be subject to the following limitations:

- (a) Declarant's right to annex all or any portion of the Expansion Property shall expire twenty five (25) years from the date of the recordation of this Declaration.
- (b) Owners of Living Unit's constructed on Expansion Property shall be Members of the Association and shall have the same rights to the use and enjoyment of the Property and facilities of the Association as any other Member. The Common Areas in the Expansion Property shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens within one year of the conveyance of the first Residential Lot contained in the Expansion Property and the Association must accept the deed to such Common Areas.
- (c) Declarant shall not effectuate any annexation of land which would cause the total number of Residential Units existing or planned for the Property, including the Expansion Property to exceed six-hundred (600) total Dwelling Units.
- (d) Declarant reserves unto itself and its assigns the right to create or not to create Common Areas and facilities within any Expansion Property.

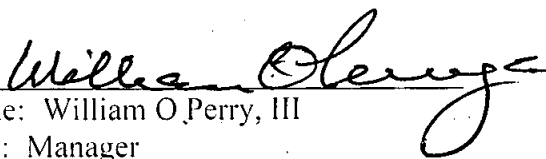
14.6 Supplemental Declaration. The annexation of the Expansion Property pursuant to this Declaration and this Article shall be made by filing and recording a Supplementary Declaration of Covenants, Conditions and Restrictions or similar instrument together with an official plat with respect to such portions of the Expansion Property which shall extend the plan of this Declaration to such Expansion Property. Such Supplementary Declaration may

contain any complementary additions or modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Expansion Property. The recordation of such Supplementary Declaration and plat shall constitute and effectuate the annexation of said real property described herein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of Residential Lots in said Expansion Property shall automatically be Members of the Association, with the original owner annexing the property into this Declaration and thereafter owning the Class B Membership Interests in the Association with respect to the new Residential Lots annexed on all Residential Lots owned by such owner until alienated or until such Class B Membership interest expires pursuant to the provisions of this Declaration.

14.7 Declarant's Right to Amend. Until all portions of the Expansion Property are included in the Property, or until the right to annex the Expansion Property to the Property expires, whichever occurs first, Declarant shall have, and is hereby vested with the right to unilaterally amend the Declaration or the Plat, or both as may be necessary, reasonable or desirable: (a) to adjust the boundaries of the Residential Lots, including adding or deleting Common Area so as to accommodate design changes or changes in the type of Residential Units to be constructed or to reconfigure the Lot configuration on the Plat; (b) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (c) to facilitate the practical, technical, administrative or functional integration of any Expansion Property into the Property.

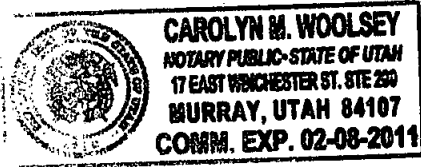
14.8 Expansion of Definitions. In the event the Property is expanded through the annexation of all or any portion of the Expansion Property, the Definitions used in this Declaration automatically shall be expanded to encompass and refer to the Property as so expanded by the Expansion Property.

**PERRY DEVELOPMENT, LLC** a  
Utah limited liability company

By:   
Name: William O. Perry, III  
Title: Manager

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

On the 17<sup>th</sup> day of August, 2010, personally appeared before me William O Perry, III, Manager of the Declarant who did acknowledge to me that the foregoing instrument was signed on behalf of Declarant by authority.



Carolyn M Woolsey  
Notary Public

## EXHIBIT A

## DESCRIPTION OF PROPERTY

**BOUNDARY DESCRIPTION**

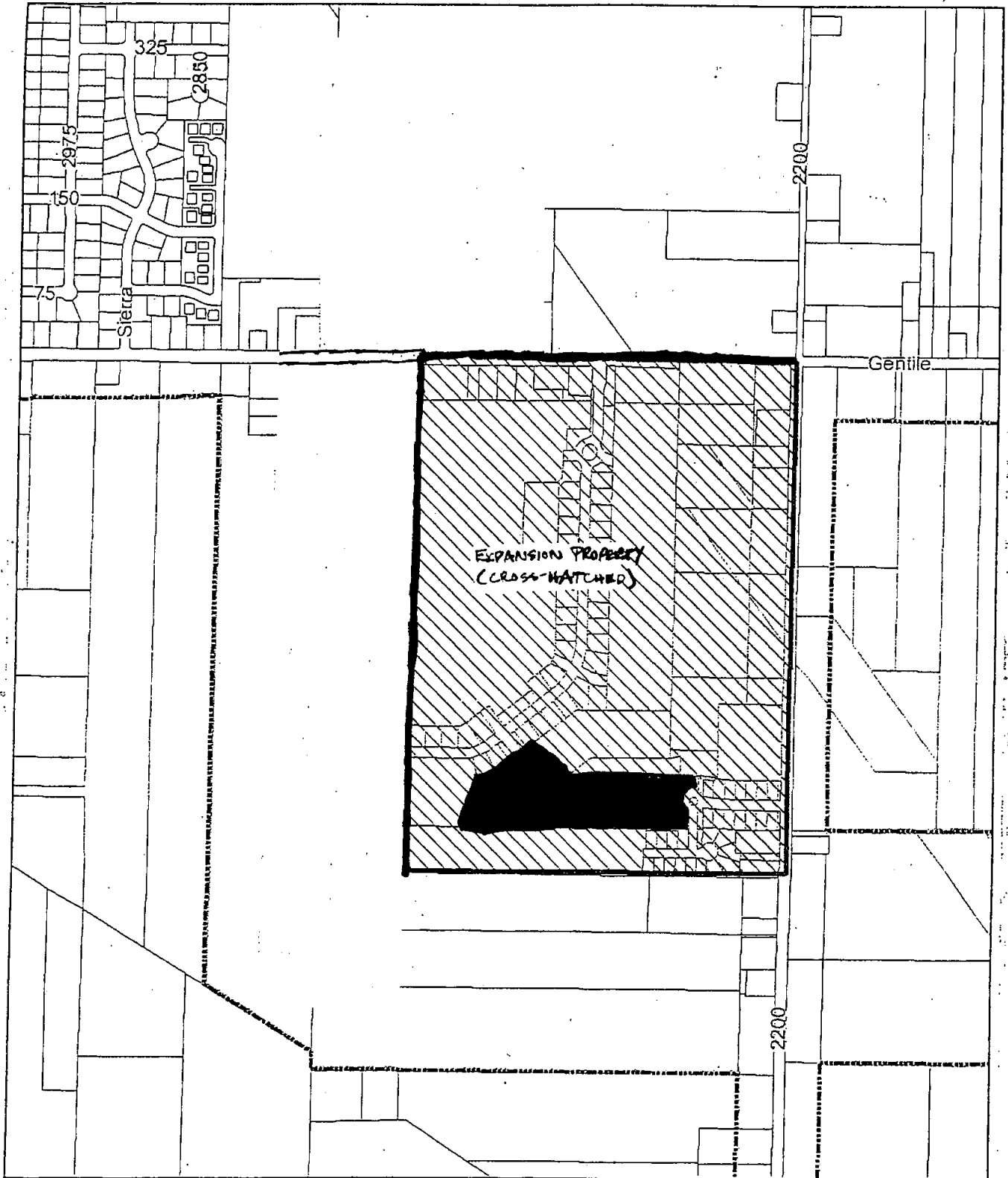
*A part of the Northeast Quarter of Section 25, Township 4 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey:*

*Beginning at a point 547.79 feet North 89°49'48" West along the Quarter Section line from the Southeast corner of said Quarter Section; and running thence North 89°49'48" West 1020.99 feet along said Quarter Section line; thence North 75°58'31" West 66.87 feet; thence South 17°25'08" West 60.51 feet; thence North 72°34'52" West 182.68 feet; thence North 17°25'08" East 268.39 feet; thence North 87°16'52" East 49.11 feet; thence North 52°01'04" East 176.37 feet; thence South 37°58'56" East 107.50 feet; thence North 52°01'04" East 20.00 feet; thence North 56°46'53" East 60.208 feet; thence South 37°58'56" East 125.40 feet; thence Southeasterly along the arc of a 170.00 foot radius curve to the left a distance of 44.51 feet (Long Chord Bears South 45°28'57" East 44.38 feet); thence North 52°01'04" East 215.65 feet; thence South 89°49'48" East 544.95 feet; thence South 0°10'12" West 46.68 feet; thence South 89°49'48" East 54.93 feet to the West boundary of The Villas at Harmony Place PRUD 1A,\*in Layton City, Davis County, Utah; thence five (5) courses along said Westerly boundary as follows: South 0°11'01" West 55.01 feet; thence Southwesterly along the arc of a 52.50 foot radius curve to the right a distance of 82.45 feet (Long Chord bears South 45°10'36" West 74.24 feet); thence South 0°12'26" West 60.00 feet; thence Southeasterly along the arc of a 52.50 foot radius curve to the right a distance of 82.48 feet (Long Chord bears South 44°49'24" East 74.26 feet); thence South 0°11'01" West 77.99 feet to the point of beginning.*

*Contains 9.002 Acres*

*\*Not yet recorded*

EXHIBIT B  
MAP OF EXPANSION PROPERTY



Perry Development LLC

- City Boundary
- Property
- Railroad
- Streams

