



"W2640818"

# AGREEMENT

EH 2640818 PG 1 OF 60  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
14-JUN-13 412 PM FEE \$139.00 DEF SGC  
REC FOR: A & E BROWN DEV LLC

**THIS AGREEMENT** (this "Agreement"), made and entered into this 14 day of JUNE, 2013, by and among **A & E Brown Development, L.L.C.**, a Utah limited liability company (the "Company"), **Barbara B. Thomas**, an individual residing in Ogden, Weber County, Utah, individually and as Trustee of **The Barbara B. Thomas Revocable Trust** under Trust Agreement dated July 18, 2008 ("Barbara"), **Louis A. Brown** and **Diane K. Brown**, individuals residing in Farmington, Davis County, Utah, individually and as Trustee(s) of **The Louis A. Brown Living Trust** under trust instrument dated January 20, 2002, as amended (collectively, "Louis"), **Beverly B. Rasmussen**, an individual residing in North Ogden, Weber County, Utah, individually and as Trustee of **The Beverly B. Rasmussen Revocable Living Trust** under trust instrument dated February 4, 2009 ("Beverly"), **Dennis L. Brown**, an individual residing in Roy, Weber County, Utah ("Dennis") and **Deborah B. Hansen**, an individual residing in Farr West, Weber County, Utah ("Deborah") (Barbara, Louis, Beverly, Dennis and Deborah being herein sometimes collectively referred to as the "Members"), and **Louis Albert Brown** and **Dennis Lyn Brown**, as Trustees of **The Amos A. Brown Revocable Trust** under Trust Agreement dated August 23, 1999, as amended, and as Trustees of **The Ethel L. Brown Revocable Trust** under Trust Agreement dated August 23, 1999, as amended (collectively, the "Trusts") (the Company, each of the Members and each of the Trusts being herein sometimes referred to individually as a "Party" and collectively as the "Parties"),

## WITNESSETH:

**WHEREAS**, each of the Members owns a Twenty Percent (20%) interest as a member of the Company; and

**WHEREAS**, the Company owns, *inter alia*, certain real property located in Farr West, Weber County, Utah, more particularly described on Exhibit "A" (the "Property"), and certain other cash assets (the "Other Cash Assets"); and

**WHEREAS**, one or both of the Trusts owns an account at America First Credit Union (the "AFCU Account"); and

**WHEREAS**, the Parties desire to effect a distribution of a portion of the Company's assets and the Trusts' assets in a manner that Deborah will receive the Property, and Barbara, Louis, Beverly and Dennis will each receive cash in an amount equal to the value of the Property; and

**WHEREAS**, Deborah has had possession of the Property since 1983 and since that time has used the Property for residential and/or business purposes and from time to time has collected rent from tenants of the Property, and the Parties now desire that Deborah compensate and pay the Company for such use; and

**WHEREAS**, the Company owns, *inter alia*, certain real property in Farr West, Weber County, Utah, more particularly described on Exhibit "B" (the "Other Farr West Property");

**WHEREAS**, Deborah received, without consideration, an approximately Twelve Thousand Five Hundred (12,500) square foot parcel of real property immediately North of the Property in 1983 and used the same as her residence until she subsequently sold the same (which parcel was intended to be a Fifteen Thousand Eight Hundred Seventy-Four (15,874) square foot

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parcel and which discrepancy is being resolved concurrently with the execution of this Agreement pursuant to an agreement between the Company and the current owner of said parcel, Jeffrey Scott Fuller, Trustee of The Jeffrey Scott Fuller Revocable Living Trust dated August 5, 2005 ("Fuller"), including to the transfer of certain real property owned of record by the Company to Fuller (the "Fuller Transaction"), and the Parties now desire to enter into an agreement that would provide a similar benefit to Barbara, Louis, Beverly and Dennis at the time the Other Farr West Property is sold;

• **NOW, THEREFORE**, in consideration of the premises and the mutual covenants and promises set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Distribution.** The Parties hereby agree that the Company shall distribute the Property (having a value of \$[REDACTED]) to Deborah. The Parties further agree that the rental value of the Property from 1983 through the date of this Agreement is \$[REDACTED] per month, which should have been paid to the Company but rather resulted in a benefit to Deborah only. Accordingly, the total value of the benefit to Deborah pursuant to the two (2) preceding sentences is One [REDACTED] Thousand [REDACTED] Hundred [REDACTED] Dollars (\$[REDACTED]). In order to cause the benefit to Barbara, Louis, Beverly, Dennis and Deborah to be equivalent, the Parties agree that: (a) Deborah shall pay the sum of Twenty [REDACTED] Thousand [REDACTED] Hundred [REDACTED] Dollars (\$20,000) in equal shares to Barbara, Louis, Beverly and Dennis (being Seven Thousand Three Hundred Thirty Three and 40/100 Dollars [\$7,333.40] each); (b) the Trusts shall distribute the AFCU Account (with a current balance of approximately Two Hundred Thirty-Seven Thousand Eight Hundred Six Dollars [REDACTED]) in equal shares to Barbara, Louis, Beverly and Dennis (being approximately Fifty Three Thousand Four Hundred Fifty-Two Dollars [REDACTED] each); and (c) the Company shall distribute [REDACTED] Dollars (\$[REDACTED]) from the Other Cash Assets in equal shares to Barbara, Louis, Beverly and Dennis (being [REDACTED] Dollars [\$2,500] each). As a result of the foregoing payments and distributions, Deborah's net benefit is reduced to Eight Thousand Two Hundred Thirty One and 40/100 Dollars (\$8,231.40), and Barbara, Louis, Beverly and Dennis will each receive the same amount. Said distributions and payments shall be made simultaneously with the closing of the Fuller Transaction. If said closing does not take place, this Agreement shall become null, void and of no force or effect *ab initio*.

2. **Reimbursement of Expenses.** Deborah hereby agrees to pay to the Trust the sum of One Thousand Dollars (\$1,000) in partial reimbursement of the surveying and legal expenses incurred by the Trust in connection with the transactions contemplated hereby.

3. **Equalization.** Concurrently with the execution of this Agreement, the Members agree to execute an Amended and Restated Operating Agreement for the Company, in the form attached hereto as Exhibit "C", which shall provide, *inter alia*, that when the Other Farr West Property is sold, the Company will distribute from the proceeds of such sale: (a) if the Other Farr West Property has previously received approval as a residential subdivision, to each of Barbara, Louis, Beverly and Dennis an amount equal to the then fair market value of one (1) lot in such subdivision; (b) if the Other Farr West Property has not previously received approval as a residential subdivision, an amount equal to Fifteen Thousand Eight Hundred Seventy-Four

(15,874) square feet times the value per square foot of the Other Farr West Property at the time it is sold; and (c) any remaining proceeds of such sale among all of the Members. Said Amended and Restated Operating Agreement will also require Deborah to give the Company such temporary or permanent easements as shall be reasonably necessary to allow the Company and/or its developer(s) and contractor(s) to develop the Other Farr West Property.

4. **Development of Other Farr West Property.** At any time after the Property has been zoned for commercial development, the Company may notify Deborah that the Company intends to sell or develop the Other Farr West Property, whereupon Deborah shall fully cooperate with the Company and the Company's buyer(s) and/or developer(s) in effecting such development, including without limitation: (a) if desired by the Company's buyer(s) and/or developer(s), selling the Property to the Company's buyer(s) and/or developer(s) for the then fair market value thereof and conveying the same to the Company's buyer(s) and/or developer(s) concurrently with the sale or development of the Other Farr West Property; and (b) whether or not the Company's buyer(s) and/or developer(s) shall purchase any portion of the Property, granting the Company and/or the Company's developer(s) and/or contractor(s) such temporary and permanent easements as shall be reasonably necessary to allow the Company and/or the Company's developer(s) and/or contractor(s) to develop the Other Farr West Property. Further, for good and valuable consideration received, Deborah hereby grants to the Company an option, coupled with an interest, to repurchase the Property for the then fair market value thereof, and Deborah agrees to convey the same to the Company by general warranty deed at any time after the Property has been zoned for commercial development and the Company has notified Deborah that the Company intends to sell or develop the Other Farr West Property. For purposes hereof, "fair market value" shall be determined by mutual agreement of the Company (or the Company's buyer(s) and/or developer(s)) and Deborah, or if they are unable to agree, by two (2) independent appraisers, one to be appointed by the Company (or the Company's buyer(s) and/or developer(s)) and one to be appointed by Deborah. If the lower of the two (2) appraisals is within five percent (5%) of the higher appraisal, then the fair market value shall be the average of the two (2) appraisals, and shall be binding and conclusive upon all persons; however, if the lower of the two (2) appraisals is not within five percent (5%) of the higher appraisal, then the two (2) appraisers appointed as provided above shall select a third appraiser who shall also provide an appraisal, and the fair market value shall be the average of the two (2) appraisals which are closest to each other, and shall be binding and conclusive upon all persons. The transactions contemplated by this paragraph 4 shall be closed as soon as possible, and in no event more than one hundred fifty (150) days, after the Company has given Deborah the notice described hereinabove. All appraisal and closing costs relating to said transactions shall be shared by the Company and Deborah equally.

5. **Agreement with Fuller.** Deborah agrees to execute, deliver and record or cause to be recorded, simultaneously with the distributions set forth in paragraph 1 above, an agreement with Fuller in the form attached hereto as Exhibit "D".

6. **Mutual Release.** Except as provided in paragraph 7, below, each of the Parties, for and on behalf of themselves and their respective successors, assigns and affiliates (individually, a "Releasor", and collectively, "Releasors"), hereby unconditionally releases, acquits and forever discharges each of the other Parties and their respective successors, assigns and affiliates (individually, a "Releasee", and collectively, "Releasees"), of, from and for, without limitation, any and all actions, causes of action, suits, proceedings, claims, demands,

damages, costs, expenses, breach of fiduciary and/or other duties and obligations, loss of income, services, compensation and/or business opportunity, and all other liabilities whatsoever, known or unknown, developed or undeveloped, asserted or unasserted, including, but not limited to, any claim which any Releasor may now have or which may hereafter accrue on account of, or in any way arising out of or connected with, the transactions contemplated by this Agreement and/or the circumstances that gave rise to said transactions as recited herein. Each Releasor further covenants, warrants and agrees that it will never file a lawsuit or legal action asserting any claim that has been released hereby.

7. **Indemnification.** Each Party (the "Indemnifying Party") agrees to indemnify, defend in the first instance, protect, and save and hold harmless the other Parties against and in respect of any and all liability, damage, costs, deficiency, or expense (including attorney's fees) resulting from any misrepresentation, material omission, breach of warranty or nonfulfillment of any covenant or agreement on the part of the indemnifying Party under or relating to this Agreement, and any and all actions, suits, proceedings, demands, assessments, judgments, costs, legal and accounting fees, and other expenses incident to any of the foregoing. The Indemnifying Party shall have an obligation to defend in the first instance against any claim made against the other Party as the result of which liability of the Indemnifying Party might arise by reason of any of its indemnities hereunder. Written notice of any such claim shall be given promptly to the Indemnifying Party by the Party against whom it is made, and the Indemnifying Party shall be afforded a reasonable opportunity to examine and use any and all books and records of the other Party in order to defend such claim at its own cost and expense. With respect to any such claim, the Indemnifying Party's indemnities hereunder shall not be deemed to be binding on it if the other Party settles, adjusts or admits liability for such claim without first giving written notice of such claim to the Indemnifying Party and affording such Indemnifying Party sufficient time to defend or settle such claim, or if such other Party settles, adjusts or admit liability without the written consent of the Indemnifying Party after the Indemnifying Party undertakes to defend or settle such claim.

8. **No Third Party Beneficiaries.** Nothing in this Agreement shall be interpreted or construed to confer any right or remedy upon, or any duty, standard of care, liability or inference of liability to or with reference to, any person other than the Parties and their respective successors and assigns.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Utah without giving effect to any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah.

10. **Submission to Jurisdiction.** Each of the Parties submits to the jurisdiction of the Second Judicial District Court of the State of Utah in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto. Each Party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law

or at equity. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

11. **Interpretation.** In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The paragraph headings contained herein are for purposes of reference only and shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include the masculine, feminine and neuter gender, and the term "person" shall include any individual, firm, partnership (general or limited), joint venture, corporation, limited liability company, trust, association, or other entity or association or any combination thereof. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by applicable law.
12. **Incorporation of Recitals and Exhibits.** All recitals stated, and all exhibits identified, in this Agreement and in all other documents relating to the transactions contemplated hereby are incorporated herein by reference and made a part hereof.
13. **Waiver.** No failure or delay in exercising any right, power or privilege under this Agreement, whether intentional or not, shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of a right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.
14. **Succession.** This Agreement: (a) shall constitute a covenant running with the land; (b) shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and assigns; (c) shall benefit and bind every person having any fee, leasehold or other interest in any portion of the Property or the Other Farr West Property; and (d) shall benefit and be binding upon any person whose title is acquired by voluntary conveyance, judicial foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Whenever any person or term, including without limitation, "the Company", "Barbara", "Beverly", "Louis", "Dennis", "Deborah", any "Member", either of the "Trusts", "Fuller" or "Party" is referred to in this Agreement, the same shall be deemed to include all of their respective successors and assigns.
15. **Further Acts.** The Parties hereby agree for themselves, and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of this Agreement.
16. **Integration.** This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and all prior negotiations, correspondence, proposals,

discussions, understandings, representations, inducements and agreements, whether oral or written and whether made by a Party hereto or by any one acting on behalf of a Party, shall be deemed to be merged in and superseded by this Agreement and shall be of no further force or effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as set forth herein, and no Party has relied upon any representation, promise, assurance, covenant, omission or agreement not included in the terms hereof in making the decision to enter into this Agreement. This Agreement may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements among or between the Parties.

17. **Amendments.** This Agreement may not be modified, amended or changed by any oral agreement, either express or implied. No amendment, modification or change in this Agreement shall be valid or binding unless reduced to writing and signed by all of the Parties. The provisions of this and the immediately preceding sentence themselves may not be amended or modified, either orally or by conduct, either express or implied, and it is the declared intention of the Parties that no provisions of this Security Agreement, including said two sentences, shall be modifiable in any way or manner whatsoever other than through a written document signed by all of the Parties.

18. **Expenses of Enforcement.** In any proceeding to enforce, interpret, rescind or terminate this Agreement or in pursuing any remedy provided hereunder or by applicable law, the prevailing Party shall be entitled to recover from the other Party or Parties all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding. For purposes of hereof, the term "prevailing Party" shall include, without limitation, a Party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought. The provisions set forth in this paragraph shall survive the merger of these provisions into any judgment.

19. **Counterparts.** This Agreement may be executed in any number of counterparts and by each of the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof.

20. **Facsimile Transmission.** The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

21. **Recording.** Each Party hereby authorizes any other Party to cause this Agreement or a notice of any provision hereof (in such manner as is consistent with the intent hereof) to be recorded in the office of the County Recorder of Weber County, Utah.

22. **Disclosure.** The Parties understand and acknowledge that Louis A. Brown is a licensed real estate sales agent in the State of Utah.

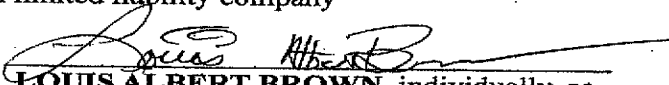
[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth opposite their respective names below.


**COMPANY:**

**A & E BROWN DEVELOPMENT, L.L.C.,** a  
Utah limited liability company


By:

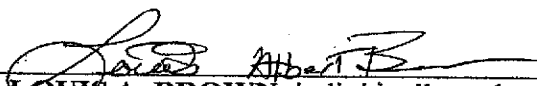
  
**LOUIS ALBERT BROWN**, individually, as  
Trustee of **The Amos A. Brown Revocable  
Trust** established by Trust Agreement dated  
August 23, 1999, as amended, and as Trustee  
of **The Ethel L. Brown Revocable Trust**  
established by Trust Agreement dated August  
23, 1999, as amended, Managers


By:

  
**DENNIS LYN BROWN**, individually, as  
Trustee of **The Amos A. Brown Revocable  
Trust** established by Trust Agreement dated  
August 23, 1999, as amended, and as Trustee  
of **The Ethel L. Brown Revocable Trust**  
established by Trust Agreement dated August  
23, 1999, as amended, Managers

**MEMBERS:**

  
**BARBARA B. THOMAS**, individually and as  
Trustee of **The Barbara B. Thomas Revocable  
Trust** under Trust Agreement dated July 18, 2008

  
**LOUIS A. BROWN**, individually and as Trustee of  
**The Louis A. Brown Living Trust** under trust  
instrument dated January 20, 2002, as amended

  
**DIANE K. BROWN**, individually and as Trustee  
of **The Louis A. Brown Living Trust** under trust  
instrument dated January 20, 2002, as amended



Beverly B. Rasmussen  
**BEVERLY B. RASMUSSEN**, individually and as  
 Trustee of **The Beverly B. Rasmussen Revocable**  
**Living Trust** under trust instrument dated February  
 4, 2009

Dennis L. Brown  
**DENNIS L. BROWN**

Deborah B. Hansen  
**DEBORAH B. HANSEN**

**TRUSTS:**

Louis Albert Brown  
**LOUIS ALBERT BROWN**, as Trustee of **The**  
**Amos A. Brown Revocable Trust** under Trust  
 Agreement dated August 23, 1999, as amended, and  
 as Trustee of **The Ethel L. Brown Revocable**  
**Trust** under Trust Agreement dated August 23,  
 1999, as amended

Dennis Lyn Brown  
**DENNIS LYN BROWN**, as Trustee of **The Amos**  
**A. Brown Revocable Trust** under Trust Agreement  
 dated August 23, 1999, as amended, and as Trustee  
 of **The Ethel L. Brown Revocable Trust** under  
 Trust Agreement dated August 23, 1999, as  
 amended

STATE OF UTAH )  
 ) : ss.  
 COUNTY OF WEBER )

The foregoing instrument was acknowledged before me this 14 day of June, 2013, by **Louis Albert Brown** (also known as **Louis A. Brown**), individually, as Trustee of **The Amos A. Brown Revocable Trust** established by Trust Agreement dated August 23, 1999, as amended, as Trustee of **The Ethel L. Brown Revocable Trust** established by Trust Agreement dated August 23, 1999, as amended, individually and as Trustee of said Trusts in their capacity as Managers of **A & E Brown Development, L.L.C.**, a Utah limited liability company, and as Trustee of **The Louis A. Brown Living Trust** under trust instrument dated January 20, 2002, as amended.

*Kelly L Hanley*  
 NOTARY PUBLIC

STATE OF UTAH )  
 ) : ss.  
 COUNTY OF WEBER )



The foregoing instrument was acknowledged before me this 14 day of June, 2013, by **Dennis Lyn Brown** (also known as **Dennis L. Brown**), individually, as Trustee of **The Amos A. Brown Revocable Trust** established by Trust Agreement dated August 23, 1999, as amended, and as Trustee of **The Ethel L. Brown Revocable Trust** established by Trust Agreement dated August 23, 1999, as amended, and individually and as Trustee of said Trusts in their capacity as Managers as Manager of **A & E Brown Development, L.L.C.**, a Utah limited liability company.

*Kelly L Hanley*  
 NOTARY PUBLIC

STATE OF UTAH )  
 ) : ss.  
 COUNTY OF WEBER )



The foregoing instrument was acknowledged before me this 14 day of June, 2013, by **Barbara B. Thomas**, individually and as Trustee of **The Barbara B. Thomas Revocable Trust** under Trust Agreement dated July 18, 2008.

*Kelly L Hanley*  
 NOTARY PUBLIC



STATE OF UTAH )  
 : ss.  
 COUNTY OF WEBER )

The foregoing instrument was acknowledged before me this 14 day of June, 2013, by **Diane K. Brown**, individually and as Trustee of **The Louis A. Brown Living Trust** under trust instrument dated January 20, 2002, as amended.

*Kelly L Hanley*  
 NOTARY PUBLIC



STATE OF UTAH )  
 : ss.  
 COUNTY OF WEBER )

The foregoing instrument was acknowledged before me this 14 day of June, 2013, by **Beverly B. Rasmussen**, individually and as Trustee of **The Beverly B. Rasmussen Revocable Living Trust** under trust instrument dated February 4, 2009.

*Kelly L Hanley*  
 NOTARY PUBLIC



STATE OF UTAH )  
 : ss.  
 COUNTY OF WEBER )

The foregoing instrument was acknowledged before me this 14 day of June, 2013, by **Deborah B. Hansen**.

*Kelly L Hanley*  
 NOTARY PUBLIC



## PROPERTY

All of the following described real property located in Weber County, Utah, to-wit:

Beginning at a point South 00°43'41" West 1332.38 feet and North 89°16'19" West 540.71 feet and South 3°43'41" West 636.31 feet from the Northeast corner of Section 1, Township 6 North, Range 2 West, Salt Lake Base and Meridian, and running thence South 3°43'41" West 185.88 feet along the westerly right of way line of 1200 West Street to the north right-of-way line of Harrisville Road; thence South 89°22'42" West 138.32 feet; thence North 0°30'19" West 158.06 feet; thence South 86°25'55" East 64.15 feet; thence North 3°06'41" East 32.19 feet; thence North 89°28'41" East 86.02 feet to the point of beginning.  
Contains 24,986 sq. ft. or 0.573 acres

15-540-0003

**EXHIBIT "B"****OTHER FARR WEST PROPERTY**

All of the following described real property located in Weber County, Utah, to-wit:

Beginning at a point South  $00^{\circ}43'41''$  West 1332.38 feet and North  $89^{\circ}16'19''$  West 540.71 feet from the Northeast corner of Section 1, Township 6 North, Range 2 West, Salt Lake Base and Meridian, and running thence South  $3^{\circ}43'41''$  West 530.19 feet along the westerly right of way line of 1200 West Street; thence South  $89^{\circ}28'41''$  West 150.00 feet; thence South  $3^{\circ}43'41''$  West 133.74 feet; thence South  $0^{\circ}30'19''$  East 158.06 feet to the north right of way line of Harrisville Road; thence South  $89^{\circ}22'42''$  West 129.68 feet along said north right of way line; thence North  $0^{\circ}30'19''$  West 1688.76 feet; thence South  $65^{\circ}16'19''$  East 81.65 feet to the said westerly right of way line of 1200 West Street; thence South  $23^{\circ}16'19''$  East 695.30 feet along said right of way line; thence South  $3^{\circ}43'41''$  West 192.86 feet along said right of way line to the point of beginning. Contains 402,406 sq. ft. or 9.2150 acres

15-540-0001 to 0003

**AMENDED AND RESTATED OPERATING AGREEMENT**

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**AMENDED AND RESTATED  
OPERATING AGREEMENT  
OF  
A & E BROWN DEVELOPMENT, L.L.C.**

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**THIS AMENDED AND RESTATED OPERATING AGREEMENT OF A & E BROWN DEVELOPMENT, L.L.C.**, a limited liability company organized under the laws of the State of Utah (the "Company"), is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the persons identified in Section 1.15, below, who are all of the Members of the Company, and amends, restates and supersedes in their entirety that certain Operating Agreement dated June 5, 1996, and all amendments thereto. Without limiting the generality of the foregoing, the Members specifically acknowledge and agree that the provisions of Section 7.9 of said Operating Agreement (as set forth in the Second Amendment to Operating Agreement) is superseded and cancelled in its entirety.

**ARTICLE 1  
DEFINITIONS**

Certain terms used in this limited liability company Operating Agreement shall have special meanings as designated in this Article:

- 1.1 **Act.** The term "Act" shall mean the Utah Revised Limited Liability Company Act, as set forth in Sections 48-2c-101 et seq., Utah Code Annotated, 1953, as amended from time to time (the "Utah Code").
- 1.2 **Additional Member.** The term "Additional Member" shall mean any Person (other than a Substitute Member) who hereafter is admitted to the Company with all the rights of a Member, pursuant to Article 10 of this Agreement.
- 1.3 **Agreement or Operating Agreement.** The term "Agreement" or "Operating Agreement" shall mean this Amended and Restated Operating Agreement, as the same may be modified or amended from time to time in accordance with Article 14 hereof. If this Agreement is executed before the filing of the Articles, it shall become effective upon the Effective Date, as permitted under Section 48-2c-503 of the Act.
- 1.4 **Articles.** The term "Articles" shall mean the Articles of Organization of the Company, filed with the Division on the Effective Date.
- 1.5 **Assignee.** The term "Assignee" shall mean a Person to whom a Member has assigned, in whole or in part, his Membership Interest in accordance with, and not in violation of,

any of the provisions of this Agreement, but who has not satisfied the requirements for becoming either an Additional Member or a Substitute Member of the Company, as provided for herein.

1.6 **Available Cash.** The term "Available Cash" shall mean for any applicable accounting period (a) the net income of the Company (after allowance for all expenditures of any kind paid or incurred during the period in question in carrying on the trade or business of the Company, including any interest, charges and fees pertaining to the Company's indebtedness), less (b) the amount of expenditures for payment of principal on any debt of the Company during the period in question, and less (c) the amount of expenditures for the payment of capital items not normally considered to be expenses in determining net income for the period in question, and (d) less increases (or plus decreases) in the amount of working capital (for this purpose defined as non-cash current assets less current liabilities) during the period in question, and other reserves as the Company may deem to be necessary (for such items as anticipated working capital requirements, amounts to be utilized by the Company in the future for the payment of principal balances of any loans, amounts of any expenditures or costs to be made or incurred by the Company of a capital nature, and amounts which the Company deems necessary to retain in the Company in order to finance additional Company activities or otherwise to meet Company obligations), and plus (e) the amount of noncash expenses, such as depreciation and amortization, accrued during the period in question, used to determine net income for that period and not offset by a corresponding capital or other expenditure which cannot be expended during that period.

1.7 **Capital Account.** The term "Capital Account" shall refer to a Person's equity in the Company, as described and adjusted in Articles 4 and 5 of this Agreement.

1.8 **Capital Contribution.** The term "Capital Contribution" shall mean any contribution made (or deemed to have been made) by a Member to the capital of the Company in (a) cash, (b) in the amount of the fair market value of any property other than cash (net of any liabilities secured by such property that the Company is considered to have assumed or taken subject to under Section 752 of the Code), or (c) in the amount of the fair market value of any services, or a binding obligation to contribute any such cash, property or services, whenever made.

1.9 **Code.** The term "Code" shall mean the Internal Revenue Code of 1986, as amended, including any applicable Treasury Regulations promulgated thereunder.

1.10 **Company.** The term "Company" shall mean the Utah limited liability company established hereunder; and as the same shall exist hereafter, pursuant to this Agreement and the Articles, and in accordance with Sections 48-2c-101 et seq., of the Act, the name of which currently is A & E Brown Development, L.L.C..

1.11 **Designated Office.** The term "Designated Office" shall have the meaning as set forth in Section 48-2c-111 of the Act, and shall be located at the place provided in Section 2.3 of this Agreement.



1.12 **Division.** The term "Division" shall mean the Division of Corporations and Commercial Code of the Utah Department of Commerce, or any other department or division of the State of Utah which hereafter may be given responsibility for administering the Act and/or accepting filings in behalf of the Company.

1.13 **Effective Date.** The term "Effective Date" shall mean the date the Articles were filed with the Division.

1.14 **Manager.** The term "Manager" shall mean, individually or collectively, as the case may be, the Person(s) appointed by the Members from time to time pursuant to Article 7 hereof, and as authorized by Section 48-2c-801 et seq. of the Act. The current Managers are Louis A. Brown and Dennis L. Brown, and they shall serve as Managers until their management is terminated in accordance with the provisions of Article 7 hereof.

1.15 **Member or Members.** The term "Member" or "Members" shall mean Barbara B Thomas, or her successor, as Trustee of The Barbara B. Thomas Revocable Trust under Trust Agreement dated July 18, 2008, Louis A. Brown and Diane K. Brown, or their successor(s), as Trustee(s) of The Louis A. Brown Living Trust under trust instrument dated January 20, 2002, as amended, Beverly B. Rasmussen, or her successor, as Trustee of the Beverly B. Rasmussen Revocable Living Trust under trust instrument dated February 4, 2009, Dennis L. Brown and Deborah B. Hansen, and any Person who is permitted to be, and becomes, a Substitute Member or an Additional Member of the Company, in accordance with the provisions of Article 10 hereof.

1.16 **Membership Interest.** The term "Membership Interest" shall mean the ownership interest of a Member (and not an Assignee) in the Company, together with all of the rights and obligations that are granted to Members under this Agreement, which may be expressed as a percentage equal to such Member's Capital Account divided by the aggregate Capital Accounts of all Members. The Membership Interests of the initial Members of the Company are set forth in Exhibit A attached to this Agreement. Changes in Membership Interests after the Effective Date, including those necessitated by the admission and termination of Members, may be recorded from time to time in a revision to said Exhibit A.

(a) **Voting of Membership Interests.** Where the Members are entitled or required to act on various matters hereunder, the Members shall be entitled to vote or take action based upon their respective Membership Interests. Different actions may require the approval of a different percentage of Membership Interests. The following shall define the percentage of the Membership Interests which are required in order to approve a particular action to be taken by the Members:

(1) **Simple Majority.** The term "Simple Majority" shall mean greater than fifty percent (50%) of the Membership Interests entitled to vote on or approve a particular matter.

(2) *Four-Fifths Majority.* The term "Four-Fifths Majority" shall mean at least eighty percent (80%) of the Membership Interests entitled to vote on or approve a particular matter.

(3) *Unanimous.* The term "Unanimous" or "Unanimously" shall mean one hundred percent (100%) of the Membership Interests entitled to vote on or approve a particular matter.

1.17 *Person.* The term "Person" shall mean any individual or entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such individual or entity where the context so requires.

1.18 *Substitute Member.* The term "Substitute Member" shall mean any Person who is a transferee of a Member's Membership Interest, and who is admitted to the Company with all the rights of a Member pursuant to Articles 10 and 11 of this Agreement.

1.19 *Treasury Regulations.* The term "Treasury Regulations" shall mean the income tax regulations promulgated under the Code and effective as of the date hereof, as modified and supplemented or superseded after the date hereof. Where a specific Treasury Regulation is referenced, the reference shall be deemed to extend to any successor regulation of similar scope, whether or not denominated by the same section number or heading.

## ARTICLE 2 FORMATION OF LIMITED LIABILITY COMPANY

2.1 *Creation.* The Company has been formed pursuant to the Act, by the filing of the Articles with the Division on the Effective Date. Pursuant to Sections 48-2c-502 and 48-2c-1901 of the Act, the Members hereby agree that, except to the extent that the provisions of the Act cannot be altered or changed by the Articles or this Agreement, where the provisions of the Articles or this Agreement conflict with the provisions of the Act, the provisions of the Articles or this Agreement shall control. With respect to any matter not provided for in the Articles or this Agreement, or to the extent that the provisions of the Act cannot be altered or changed by the Articles or this Agreement, then the terms and provisions of the Act shall apply.

2.2 *Company Name.* The name of the limited liability company established hereunder shall be A & E Brown Development, L.L.C., and the business of the Company shall be conducted under that name in the State of Utah and under such name or variations thereof, as the Members deem necessary or appropriate to comply with the requirements of any other jurisdiction in which the Company may elect to do business. The Members will use their best efforts to take the action required to comply with the Act, assumed name act, fictitious name act, or similar statute in effect in each jurisdiction or political subdivision in which the Company proposes to do business.

2.3 *Company Offices and Agent for Service of Process.* The Designated Office of the Company, where the Company records as specified in the Act shall be kept shall be 2119 West 6000 South, Roy, Utah 84067. The address of the registered agent of the Company, where

legal process may be served as designated in the Articles or amendments thereto, shall be 2119 West 6000 South, Roy, Utah 84067, and the name of the current registered agent at that address is Dennis L. Brown. The Managers may from time to time change the designated place of business of the Company and/or the registered agent or registered office, and amend the Articles or make such other filings as they shall determine to be necessary or desirable to reflect such change, and may in their discretion establish additional places of business of the Company.

**2.4 *Names and Addresses of Members.*** The full names and business street addresses of the Members of the Company are set forth on the attached Exhibit A, as the same may be revised from time to time to reflect changes in the information contained therein.

**2.5 *Number of Members.*** The Members identified herein shall constitute all of the members in the Company, and no other Person shall be admitted as a Member of the Company except as expressly provided for herein. The Members shall not sell, transfer or assign their interests in the Company except as provided in Article 9 of this Agreement.

**2.6 *Character of Business.*** The business purpose or purposes for which the Company is organized are to provide effective management and investment of Company assets, including all of the protections under the law that are afforded to the Company and its Members in connection with the activities of the Company, and (a) to hold certain assets and resources in a form of business organization having the specific characteristics of this Company so that they can be more effectively managed, controlled and invested as a business to the end of increasing the profit derived from, and the value of, such assets and resources as a whole; (b) to encourage and facilitate the Members' willingness and ability to participate in the Company's business by separating, protecting and insulating the Members' respective personal assets and resources from liability for the Company's debts, obligations and liabilities, and by separating, protecting and insulating the Company's assets and resources from the respective Members' debts, obligations and liabilities; (c) to acquire, purchase, own, lease, sell, exchange, develop and construct improvements upon, finance the acquisition, operation and development of, and the construction of improvements upon, to operate and maintain for any uses, and otherwise deal with and in, real and/or personal property, or interests therein, wherever located; (d) to invest and reinvest the assets of the Company in, and to purchase or otherwise acquire, hold, sell, transfer, exchange or otherwise dispose of, or realize upon, securities of all types and descriptions and any other interests in business ventures; (e) to provide for the orderly succession of ownership of real, personal and other property; (f) any other purposes as are necessary to protect or enhance the assets of the Company; (g) other purposes as provided in the Operating Agreement; (h) to engage in any other lawful business activity permitted under the laws of the State of Utah; and (i) to do everything necessary, proper, advisable or convenient for the accomplishment of any of the purposes, or the attainment of any of the objects, or the furtherance of any of the powers set forth herein or by law, either alone or in association with others, and incidental or pertaining to, or growing out of, or connected with, its business or powers, provided the same are not inconsistent with the laws of the State of Utah.

**2.7 *Period of Duration.*** The period of the Company's duration or term shall be ninety-nine (99) years from the Effective Date; provided, however, the Company may be

dissolved prior to the end of such term in accordance with the provisions of Article 11, below, or may extend the Company's duration or term in accordance with the applicable provisions of Act.

### ARTICLE 3 CAPITAL CONTRIBUTIONS

3.1 **Contributions to Capital.** The capital of the Company consists of the property which is more particularly described on Exhibit B attached to this Agreement. The value of said property is set forth in the Company's books and records, and related financial statements. The members hereby specifically approve, consent to and ratify the transfer of Weber County parcel no. 08-073-0002 from the Trustees of The Amos A. Brown Revocable Trust dated August 23, 1999, as amended, and of The Ethel L. Brown Revocable Trust under Trust Agreement dated August 23, 1999, as amended, to the Company rather than to the individual Members as provided in said trusts.

3.2 **Membership Interests.** The respective Membership Interests of the Members are as set forth in the attached Exhibit A. The Managers may update said Exhibit A from time to time as necessary to reflect changes in the respective Membership Interests of the Members.

3.3 **Interest on Contributions.** No interest shall be paid on the initial Capital Accounts of the Company or on any subsequent Capital Contributions made by the Members.

3.4 **Withdrawal of Capital.** No Person shall have the right to withdraw his Capital Account except in accordance with the provisions of Articles 4, 9 and 12 of this Agreement.

### ARTICLE 4 CAPITAL ACCOUNTS; DRAWING ACCOUNTS; LOANS

4.1 **Capital Accounts.** Separate Capital Accounts shall be maintained for each Member in accordance with the Code and the Treasury Regulations.

4.2 **Drawing Accounts.** Separate drawing accounts shall be maintained for each Member. At the end of each calendar year, each Member's share of profits and losses shall be credited or charged to his Capital Account. Until the end of each year, each Member's share of profits and losses shall be credited or charged to his drawing account. All distributions to or withdrawals made by a Member shall be charged to his drawing account. If at the end of any calendar year the distributions made to the Members through their drawing accounts have been completed on a pro rata basis, so that they are proportional among all Members based on their respective Capital Accounts, then at the end of any such year amounts charged to the drawing accounts of each Member shall be charged to their respective Capital Accounts. If, however, at the end of any calendar year it is determined that the distributions which have been made by the Company during that year have been made on a non-pro rata basis, then the Company shall first adjust the Capital Accounts of each Member to reflect those distributions which have been made on a pro rata basis among all of the Members, and then the Company shall reduce the drawing account of any Member who has received distributions from the Company in excess of his pro

rata share of profits (in accordance with the following paragraph), until such time as the drawing accounts of the Members are made equal by future distributions.

Until a balance in a Member's drawing account in his favor (a credit balance) is transferred to his Capital Account as provided above, it shall constitute a liability of the Company to that Member payable as provided in Section 4.3 of this Article 4, without interest; it shall not constitute a part of his Capital Account or his interest in the capital of the Company. Until a deficit in a Member's drawing account (a debit balance) is transferred to his Capital Account as provided above, it shall constitute an obligation of that Member to the Company and shall not reduce his Capital Account or his interest in the capital of the Company, regardless of whether said deficit is occasioned by the Member's drawings in excess of his share of Company profits or by charging the Member for his share of Company losses. Payment of any obligation thus owing to the Company shall be made in a manner and time determined by the Managers. If the Managers request in writing that a Member pay a debit balance on his drawing account and he is unable or unwilling to do so within thirty (30) days of such request, then the Managers may allocate such debit balance against the Member's Capital Account, in the manner provided for in the preceding paragraph.

#### 4.3 *Distribution of Available Cash.*

(a) Distributions to Members. The Company will distribute Available Cash to the Members, in proportion to their respective Membership Interests (but not to any Assignee), at such times and in such amounts as the Managers shall determine in their sole judgment.

(b) Distributions to Assignees. The Company, in the sole judgment of the Managers, shall determine in any given year if any distributions are to be made hereunder to Assignees, or whether such Assignee's proportionate share of profits instead is to be (1) held in a drawing account for such Assignee, or (2) transferred to such Assignee's Capital Account, in accordance with the provisions of Sections 4.1 and 4.2, above.

4.4 *Additional Contributions.* The Members shall not be required by the Company or the Managers to make additional Capital Contributions. The Members may make additional Capital Contributions only if: (a) such additional Capital Contributions are made pro rata by all the Members; or (b) all Members Unanimously agree in writing to any non-pro rata contribution. The fair market value of any property other than cash or widely traded securities to be contributed as an additional Capital Contribution shall be: (c) agreed upon in writing by all Members; or (d) determined by a disinterested appraiser selected by the Managers. At the time of any additional Capital Contribution, the Capital Accounts of each Member shall be adjusted to reflect the fair market value of the assets held by the Company immediately before the Capital Contribution, and then the value of the additional Capital Contribution shall be based on the fair market value of those assets compared to the amount of the additional Capital Contribution.

4.5 *Fair Market Value Adjustments.* If the Company makes a non-pro rata distribution to any Member, the Capital Account of each Member shall be adjusted to reflect the fair market value of the assets held by the Company immediately before the distribution in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f).

4.6 **Loans.** If the Company has insufficient funds to meet its obligations as they come due and to carry out its routine, day-to-day affairs, then, in lieu of obtaining required funds from third parties or selling its assets to provide required funds, the Company may, but shall not be required to, borrow necessary funds from one or more of the Members as designated by the Managers; provided that the terms of such borrowing shall be commercially reasonable and the Company shall not pledge its assets to secure such borrowing. In addition, the Company may make loans to the Members, provided that the terms of such loans are commercially reasonable, which shall not act as a distribution or alter the Capital Account of the Member borrowing from the Company.

4.7 **Allocation of Losses in Excess of Capital Account.** No allocation shall be made to a Member to the extent that the allocation causes or increases a deficit balance in the Capital Account of that Member at the end of the taxable year of the Company to which the allocation relates after the Capital Account has been reduced as required by Treasury Regulation § 1.704-1(b)(2)(ii)(d), and increased by items which a Member is obligated to restore or deemed obligated to restore under Treasury Regulation §§ 1.704-2(g)(1) and 1.704-2(i)(5).

4.8 **Qualified Income Offset.** In the event any Member unexpectedly receives an adjustment, allocation, or distribution that results in a deficit balance in such Member's Capital Account, there shall be allocated to such Member items of Company income and gain in an amount and manner sufficient to eliminate such deficit balance as quickly as possible in accordance with Treasury Regulation § 1.704-1(b)(2)(ii)(d).

4.9 **Return of Capital.** Each Member shall look solely to the Company assets for the return of his contributions to Company capital, and if the Company assets are insufficient to return such contributions, he or she shall have no recourse against any other Member for that purpose. There is no right given the Members to receive upon liquidation of the Company any property other than cash in return for his contributions. The provisions of Article 11 shall govern the procedure and computation of amounts available for distribution upon dissolution of the Company. Nothing in this paragraph is intended to modify the priority returns (if any) which may be provided for elsewhere in this Agreement.

4.10 **Taxation.** Although the Company is a limited liability company, it is the intent of the Members that the Company shall be, to the extent permissible by applicable law, treated as a partnership for federal and applicable State tax purposes and, accordingly, (a) no Member shall file any election with any taxing authority to have the Company treated otherwise, and (b) each Member hereby represents, covenants, and warrants that it shall not maintain a position inconsistent with such treatment. Each Manager agrees that, except as otherwise required by applicable law, he or she (c) will not cause or permit the Company to elect (i) to be excluded from the provisions of Subchapter K of the Code, or (ii) to be treated as a corporation (or association treated as a corporation) for any federal, State or local income tax purposes; (d) will cause the Company to make any election reasonably determined to be necessary or appropriate in order to ensure the treatment of the Company as a partnership for all income tax purposes; (e) will cause the Company to file any required tax returns in a manner consistent with its treatment as a partnership for income tax purposes; and (f) has not taken, and will not take, any action that

would be inconsistent with the treatment of the Company as a partnership for such purposes. In addition, except as otherwise expressly provided for herein, all Capital Accounts will be maintained in accordance with the Code and the Regulations, including: (g) no allocation shall be made to a Member to the extent that the allocation causes or increases a deficit balance in the Capital Account of that Member at the end of the taxable year of the Company to which the allocation relates beyond what that Member is obligated or deemed obligated to restore under this Agreement or pursuant to the penultimate sentences of Treasury Regulations Section 1.704-2(b)(1) and Treasury Regulations Section 1.704-2(i)(5), after the Capital Account has been reduced as required by Treasury Regulation § 1.704-1(b)(2)(ii)(d); and (h) in the event any Member unexpectedly receives an adjustment, allocation, or distribution that results in such a deficit balance in such Member's Capital Account, there shall be allocated to such Member items of Company income and gain in an amount and manner sufficient to eliminate such deficit balance as quickly as possible in accordance with Treasury Regulation § 1.704-1(b)(2)(ii)(d). All particular Sections of the Treasury Regulations and Code necessary to have the allocations of Profits and Losses under this Agreement recognized (as determined by the Managers in consultation with independent tax counsel) shall be deemed incorporated herein by this reference (which, together with the allocations required under the preceding sentence constitute the "Regulatory Allocations"); provided, that, any credit or charge to the Capital Accounts of the Members pursuant to the Regulatory Allocations shall be taken into account in computing subsequent allocations of Profits and Losses pursuant to Article 5 so that the net amount of any items charged or credited to Capital Accounts pursuant to the Regulatory Allocations, to the extent possible, be equal to the net amount that would have been allocated under Article 5 if the Regulatory Allocations had not occurred.

## ARTICLE 5 PROFITS AND LOSSES

**5.1 *Allocation of Profits and Losses.*** The net profits or net losses of the Company shall be credited or charged to the Members' drawing accounts and Capital Accounts in the manner provided for in Sections 4.1 and 4.2, above, taking into consideration any adjustments in the Capital Accounts of any Member or Members that have been made pursuant to Article 4, above.

**5.2 *Liability of Members.*** No Member shall personally be liable for any of the losses of the Company beyond his Capital Account in the Company. No Member shall be required to pay to the Company or any other Member any deficit or negative balance which may exist from time to time in their respective Capital Accounts as a result of the provisions hereof for the allocation to the Members of Company losses, as provided in Article 4, above.

**5.3 *Distribution in Kind.*** The Company may make distributions in kind. All Members must accept distributions in kind, including a distribution of any asset in kind, to the extent that the percentage of the asset distributed to the Member exceeds the percentage of that asset which is equal to the Member's Membership Interest.

**ARTICLE 6**  
**ACCOUNTING FOR THE COMPANY**

**6.1 Accounting Methods; Fiscal Year.** Profits and losses of the Company shall be determined on a cash basis in a manner which is consistent from year to year, and shall include gains or losses from the sale of Company assets. The Company shall also report for income tax purposes on a cash basis. The fiscal year of the Company, for both accounting and tax reporting purposes, shall be the calendar year.

**6.2 Meetings and Review of Financial Statements.**

(a) Right to Call Meetings. Any Manager or any Member or combination of Members whose interest in the Company exceeds fifty percent (50%) may call a meeting of Members by giving written notice to all Members no less than two (2) nor more than sixty (60) days prior to the date of the meeting. The notice must specify the date of the meeting and the nature of any business to be transacted. A Member may waive notice of a meeting of Members orally, in writing, or by attendance at the meeting.

(b) Proxy Voting. A Member may act at a meeting of Members through a Manager or another Member who is authorized by signed proxy.

(c) Telephonic Attendance at Meeting. Members may participate in and be considered present at any meeting by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other, or otherwise communicate with each other during the meeting.

(d) Quorum. Members whose aggregate Membership Interests exceed fifty percent (50%) of all Membership Interests will constitute a quorum at a meeting of Members. No action may be taken in the absence of a quorum.

(e) Required Vote. Except with respect to matters for which a greater minimum vote is required by this Agreement (or by any provision of the Act which cannot be changed by this Agreement), the vote of Members present or represented by proxy whose aggregate Membership Interests exceed fifty percent (50%) of the aggregate interest of all Members represented at the meeting will constitute the act of the Members at a meeting of Members.

(f) Written Consent. The Members may act without a meeting by written consent describing the action and signed by Members whose aggregate Membership Interests are at least equal to the minimum that would be necessary to take the action at a meeting at which all Members were present.

(g) No Minutes Required. Minutes from meetings shall not be required.

**6.3 Records.** The Company shall keep at its designated place of business the records required to be kept there pursuant to Section 48-2c-112 (or any successor provision) of the Act.



Said records are subject to inspection and copying at the reasonable request and at the expense of any Member during ordinary business hours. On written request, any Member shall be entitled to copies of tax returns and any financial statements prepared for the Company.

## ARTICLE 7 MANAGEMENT OF THE COMPANY

**7.1 *Management by Managers.*** Management of the Company may be vested in two (2) Managers, to be appointed as provided for herein. The current Managers of the Company are Louis A. Brown and Dennis L. Brown. Upon the death, resignation or incapacity of either or both of said Managers (or of their respective successor(s)), a new Manager shall be appointed in accordance with the provisions of this Article 7, below, to fill the vacancy thereby created, such that at all times there are two (2) Managers.

**7.2 *Number, Term and Qualifications.*** The Members may from time to time increase or decrease the number of Managers, and/or remove and replace existing Managers, with or without cause, by a Four-Fifths Majority, or by amendment to this Agreement. Each Manager shall hold office until his successor shall have been appointed. Managers need not be Members of the Company.

**7.3 *Manner of Acting.*** At all times that there are more than one Manager appointed by the Members, all powers conferred upon the Managers may be exercised by a majority of such Managers.

**7.4 *Management by Members.*** At all times when there are not one or more Managers appointed to act hereunder by the Members pursuant to Section 7.1 above, all business of the Company shall be under the exclusive management of the Members, and the agreement of a Simple Majority of the Members shall be necessary for all decisions affecting the Company. All actions which are to or may be taken by or on behalf of the Company, or regarding the management of the Company, by the Managers of the Company, as provided herein or under the Act, shall be taken by the Members at all times when there is no Manager acting hereunder.

**7.5 *Authority of Managers.*** The Managers may exercise all the powers of the Company whether derived from law, the Articles or this Agreement (except such powers as are by statute, by the Articles or by this Agreement restricted or vested solely in the Members), and shall have the right, power and authority to do, on behalf of the Company, all things which are necessary or desirable to carry out the business of the Company, including, but not limited to, the right, power and authority:

- (a) to maintain and operate Company property;
- (b) to collect all rentals and make all payments of taxes, insurance premiums, mortgage payments or other regularly scheduled obligations of the Company;

(c) to negotiate and execute contracts for services, fuel, maintenance, supplies and other similar matters, and incur and pay for reasonable expenses relating to the maintenance and operations of the Company;

(d) to employ and dismiss from employment persons, firms or corporations on behalf of the company, to aid in the operation and management of the Company, including, but not limited to, accountants, attorneys, appraisers, architects, property managers, leasing agents, brokers (any of whom may be a Member, principals of a Member or organizations having common ownership or control with a Member), on such reasonable terms and for such reasonable compensation as the Members shall deem in the best interests of the Company;

(e) to keep or cause to be kept full and true books and records which shall fully and accurately record each transaction of the Company;

(f) to obtain and keep in force adequate, comprehensive, public liability and property damage insurance, insuring the Company property against fire and such other casualties as are insured against by the usual form of extended coverage insurance;

(g) to make such elections under the tax laws of the United States, the State of Utah, and other relevant jurisdictions as to the treatment of items of Company income, gain, loss, deduction and credit, and as to all other relevant matters (including without limitation elections under Section 754 of the Internal Revenue Code of 1986, as amended) as the Managers believe necessary or desirable;

(h) in the event the Company has funds available for investment, to invest the same in such manner as the Managers deem appropriate under the circumstances and consistent with the purposes of the Company; and

(i) to reimburse the Members for any expenses incurred by them in the conduct of the business of the company.

**7.6 Restrictions on Managers.** The Managers shall not do any act in contravention of this Agreement, nor do any act which would make it impossible to carry on the ordinary business of the Company, nor, without the prior written consent of all Managers and at least one additional member, take any of the following actions:

(a) confess a judgment against the Company;

(b) admit or substitute any other person or entity as a Member;

(c) grant a deed in lieu of foreclosure to mortgages;

(d) possess Company property or assign the rights of the Company in specific Company property for other than a Company purpose;

(e) purchase, sell, trade, exchange, grant rights, easements or servitudes, or otherwise deal with Company property or enter into agreements with others with respect to the same;

(f) borrow money on the security of any Company assets or otherwise encumber all or any portion of any Company property;

(g) refinance any deed of trust, mortgage or other similar security interest placed on Company assets, or prepay the same in whole or in part; or

(h) purchase Company interests.

**7.7 Bank Accounts.** The Company shall maintain checking or other accounts in such bank or banks as the Managers shall determine, and all funds received by the Company shall be deposited therein and withdrawn therefrom under such general or specific authority as the Members shall grant to the Managers.

**7.8 Time and Attention Required of Managers.** The parties understand that the Managers may have other business activities that take a substantial portion of their time and attention. Accordingly, each Manager is required to devote to the business of the Company only the time and attention that such Manager shall deem necessary in order to fulfill the Manager's responsibilities hereunder.

**7.9 Restriction On Power Over Life Insurance or Certain Controlled Corporations.** Notwithstanding any of the other provisions of this Agreement, no Manager or Member shall have any power, either alone or in conjunction with any other Person, to exercise any incident of ownership with respect to any policy of life insurance held by the Company on the life of such Manager or Member. All such powers shall be exercised solely by the Managers, if any, who is not the insured under such life insurance policy, or if there is no Manager who is not the insured under such policy, then by a Simple Majority of Members who are not the insured under such policy. For purposes of this Agreement, the term "incident of ownership" shall have the same meaning as given in Section 2042 of the Code, as amended, and shall include the power to change the beneficiary, to surrender or cancel a policy, to assign a policy, to revoke an assignment, to pledge a policy for a loan, to obtain from the insurer a loan against the surrender value of the policy, and to distribute a policy from the Company to any Person.

In addition, notwithstanding any of the other provisions of this Agreement, no Manager or Member shall have any power to vote any stock in a "controlled corporation" within the meaning of Section 2036(b) of the Code, as amended, if and to the extent that the retention of such power would cause such stock to be included in the Manager's or Member's estate for federal estate tax purposes. Any such voting powers shall be exercised solely by the Managers, if any, who would not be restricted from voting such stock under Section 2036(b) of the Code, or if there is no such Manager then by a Simple Majority of the Members who would not be restricted from voting such stock under Section 2036(b) of the Code.

(a) Each Member does hereby irrevocably constitute and appoint the Managers, and each of them if more than one, acting either individually or jointly, as such Member's true and lawful attorney, in his, her, or its name, place and stead, to make, execute, consent to, swear to, acknowledge, record and file from time to time any and all of the following:

(1) Any certificate or other instrument to be filed by the Company or the Members under the laws of the State of Utah, or under the applicable laws of any other jurisdiction in order to conduct business in any such jurisdiction, to the extent the Company deems any such filing to be necessary or desirable.

(2) Any amendment to the Articles adopted as provided in this Agreement.

(3) Any certificates or other instruments that may be required to effectuate the dissolution and termination of the Company pursuant to the provisions of this Agreement.

(b) It is expressly understood, intended and agreed by each Member and the Member's successors and assigns that the grant of the power of attorney to the Managers pursuant to subsection (a) above is coupled with an interest, is irrevocable, and shall survive the death or legal incompetency of the Member or such assignment of the Member's Membership Interest.

(c) One of the ways that the aforementioned power of attorney may be exercised is by listing the names of the Members and having the signature of a Manager, as attorney-in-fact, appear with the notation that the signatory is signing as attorney-in-fact of the listed Members.

**7.11 Compensation to Managers.** Each Manager shall be entitled, but not required, to receive a salary or fee each year in a reasonable amount to cover his or her superintendence and management of the work and business of the Company and for maintenance of Company property, in an amount commensurate with the amount of work done by him or her each year, but in no event to exceed the salary or fee ordinarily paid for comparable managerial or maintenance services rendered by uninterested managers in similar businesses. Said salary or fee shall be deducted from Company income, like any other expense, in determining the net profit or net loss allocable to the Members under Articles 4 and 5. The payment of such salary shall be an obligation of the Company, and shall not be an obligation of the individual Members. The compensation of each Manager shall be reviewed periodically and adjusted in order to give him or her fair compensation.

## ARTICLE 8 CONTINUATION OF COMPANY IN CERTAIN EVENTS

8.1 *Withdrawal by a Member.* No Member shall have the right under this Agreement to unilaterally withdraw from the Company, or to require that his or her Membership Interest be redeemed, in whole or in part. A Member may withdraw only upon the advance written consent of all of the Members.

### 8.2 *Dissociation of Member.*

(a) Definitions. The following events shall be deemed a "Dissociation" from the Company by a Member (such Member hereinafter sometimes referred to as a "Dissociating Member"):

(1) The death of a Member;

(2) The disability of a Member;

(3) The expulsion of a Member; provided, however, that a Member may be expelled from the Company only pursuant to the provisions of Section 48-2c-710(3) of the Act with respect to a judicial determination upon application by the Company or another Member that such Member should be expelled, or if said Member is convicted of a felony or of a crime involving a breach of professional ethics, moral turpitude, or immoral conduct, and the other Members vote Unanimously to expel said Member as a result of such conduct.

(4) The insolvency of, the commission of any one of the acts set forth in Section 48-2c-708(1)(f)(i) or (ii) of the Utah Code by, or the dissolution of, a Member.

(b) Effect of Dissociation. Upon the occurrence of any of the foregoing events of Dissociation, the Company shall continue its operations and no dissolution of the Company shall take place. The Company shall be dissolved only in accordance with the provisions of Article 11, below. If under the Act the Dissociation of a Member is an event which requires that an Amendment to the Articles be filed with the Division or some other authority, or that some other action be taken by the Company, then within the time provided for under the Act for the filing of such an Amendment or taking such other action, the remaining Members shall cause such an Amendment to be properly filed or such other action to be taken. Provided, however, that failing to make any such filing or take any such other action in a timely manner shall not result in a termination or dissolution of the Company.

(c) Purchase of Dissociating Member's Membership Interest Upon Dissociation. After a Dissociation, the Company, or if the Company determines that it is not able or willing to do so, then the remaining Members, in that order, shall have the right, at their election, by providing the Dissociating Member, or his legal representative(s) if he is deceased or disabled, with written notice within six (6) months of the date of the Dissociation, to purchase the Dissociating Member's Membership Interest. The price to be paid for the Dissociating Member's Membership Interest shall be its fair market value, as that term is defined in Section

48-2c-904 of the Act (the "Fair Market Value"), as the purchasing party and the Dissociating Member, or the legal representative(s) of the Dissociating Member if he is deceased or disabled, may agree. If the parties cannot agree upon the Fair Market Value after written notice of exercise of the purchase option is given, then Fair Market Value shall be determined two (2) independent appraisers, one to be appointed by the purchasing party and the Dissociating Member (or his legal representative(s)). If the lower of the two (2) appraisals is within five percent (5%) of the higher appraisal, then the fair market value shall be the average of the two (2) appraisals, and shall be binding and conclusive upon all parties; however, if the lower of the two (2) appraisals is not within five percent (5%) of the higher appraisal, then the two (2) appraisers appointed by the Parties shall select a third appraiser who shall also provide an appraisal, and the fair market value shall be the average of the two (2) appraisals which are closest to each other, and shall be binding and conclusive upon all parties. The parties shall act in a reasonable manner, and within a reasonable time, not to exceed three (3) months from the date the option to purchase is exercised, to complete the valuation of the Dissociating Member's Membership Interest. Once the Fair Market Value has been determined, it shall then be paid to the Dissociating Member or his representative in annual or more frequent installments over a period not to exceed five (5) years from the date of the date the option to purchase is exercised.

If the interest of a Dissociating Member is not purchased in the manner provided for above, the successors-in-interest to his Membership Interest shall become Assignees, and shall not become Substitute Members unless and until they are made Substitute Members by the other Members in accordance with the provisions of Article 10, below.

## ARTICLE 9 TRANSFER OF COMPANY INTEREST

### 9.1 *Transfers by Members.*

(a) Restrictions on Transfer. A Member may sell, assign or transfer his or her Membership Interest only in compliance with this Article 9. Any attempt to sell, assign or transfer all or a portion of a Membership Interest in the Company that is not in compliance with this Article 9 shall be null and void.

(b) Transfers to Other Members. A Member may sell, assign or transfer his Membership Interest to one of the other Members, provided the Managers have first given written consent to such sale, assignment or transfer.

(c) Transfers to Family Members. A Member may transfer or dispose of his Membership Interest as a result of his death by Will or intestacy, to his immediate family, or to a trust or entity as to which only members of his immediate family are beneficiaries or owners. A Member may transfer or dispose of his Membership Interest during life to an entity which is owned or controlled by him and his lineal descendants, or to a trust as to which he and his lineal descendants are beneficiaries. Provided, however, that in each of the instances above, in order for the transferee to attain the status of an Additional or Substitute Member hereunder, the transferee of such Membership Interest shall comply with all of the provisions of Article 10, below. For purposes of this paragraph, "lineal descendants" shall mean only the Member's

children or grandchildren. No transfer to the spouse of a Member, or to the spouse of any lineal descendant of a Member, shall be permitted under this paragraph without the Unanimous written agreement of all of the Members.

(d) Rights of First Refusal. A Member may not sell, assign or otherwise transfer all or any part of his Membership Interest to a Person who is not already a Member of the Company, or a member of his family, except as permitted under the following conditions:

(1) The Membership Interest shall first be offered in writing to the Company at the price and on the terms on which it is proposed to be sold ("the price" and "the terms"), and the Company shall have a period of thirty (30) days to accept or reject the offer in whole or in part, at the price (prorated, if the offer is accepted in part), and on the terms.

(2) If the offer is rejected in whole or in part by the Company, the Membership Interest or the remainder thereof shall next be offered in writing to the other Members of the Company for a period of thirty (30) days next following expiration of the thirty (30) day period provided in subsection 9.1(d)(1), above. The offer to the other Members shall be prorated in accordance with the ratio of the Membership Interest of each Member to the total Membership Interests of all the Members other than the one making the offer, on the terms and at prices (as to each offeree) determined by prorating the price. If all of the remaining Membership Interest of the selling Member is not disposed of under this apportionment, each Member desiring to purchase a portion of the remaining Membership Interest shall be entitled to purchase the portion that remains undisposed as his Membership Interest bears to the Membership Interests of all other Members desiring to purchase portions of the remaining Membership Interest of the selling Member.

(3) If none or only a portion of the Membership Interest of the Member desiring to sell the same is purchased in accordance with the provisions of this Section 9.1, above, then the Member may sell his Membership Interest or the remainder of it to a third party or third parties during the three (3) month period following the expiration of the thirty (30) day period referred to in Section 9.1(d)(2), but at a price not lower than the price (prorated if only a portion), and on terms no more favorable than the terms offered to the Company and the other Members as provided above. A third-party purchaser of the Membership Interest shall become a Substitute Member only after complying with all of the terms of Article 10, below. After the expiration of the three (3) month period, no portion of the interest shall be sold without first being re-offered to the Company and the remaining Members in accordance with Section 9.1(d)(1) and (2), above.

(e) Other Requirements. In the case of each permitted transfer provided for above, a sale, assignment or transfer of a Membership Interest hereunder shall only be completed and take effect after the Company has determined that it is reasonably satisfied that the following conditions (and the other requirements of this Article 9), have been met:

(1) The sale, assignment or transfer, alone or in combination with other sales, assignments or transfers, will not result in the Company's termination for federal income tax purposes;

(2) The sale, assignment or transfer is the subject of an effective registration under, or exempt from the registration requirements of, applicable state and federal securities laws; and

(3) The Company receives from the transferee the information and agreements reasonably required to permit it to file federal and state income tax returns and reports.

**9.2 Put Option for Donees of Membership Interests.** Notwithstanding the provisions of Section 9.1, above, if any Member (the "Donor Member") should determine to make a gift of his or her Membership Interest to another Member (the "Donee Member"), then each such Donee Member shall be, and he is hereby, granted the right at any time within sixty (60) days of notice to him or her of the gift being made to the Donee Member (the "Put Option Period") to sell back to the Donor Member, or to the Company, and if such right is exercised by a Donee Member, the Donor Members or the Company, as appropriate, shall have the obligation to purchase from the Donee Member exercising the option, all (but not less than all) of the Membership Interest in the Company that is being gifted to the Donee Member (the "Put Option"), at a value that is reasonably determined by the Company to be the Fair Market Value (as defined in Section 8.2, above) of the Membership Interest that is being so repurchased, or as otherwise determined in the same manner as such value is determined for the Donor Member's federal gift tax purposes. The Donee Member may exercise the Put Option by providing the Donor Member and the Company with written notice of the Donee Member's exercise of the same at any time during the Put Option Period. If the Donee Member fails to so notify the Donor Member and the Company of the exercise of said right within said time period, said right shall automatically terminate. The said right to exercise the Put Option may be effectively exercised by the Donee Member or, if such Donee Member is a minor or under any other legal disability of any kind, by the Donee Member's legal guardian, if any, or if none, by the Donee Member's natural or general guardian or grandparent (other than the Donor Member), acting solely on behalf of the Donee Member in effecting such purchase and sale and receiving payment therefor for the Donee Member's sole benefit. Notwithstanding the foregoing, however, the Put Option may not be exercised during any time that the Donee Member is subject to bankruptcy proceedings.

**9.3 Transfer Provisions Binding.** Any sale, assignment or transfer, or purported sale, assignment or transfer, of any Membership Interest, whether voluntary or involuntary, shall be null and void unless made strictly in accordance with the provisions of this Article. Any transferee who has properly acquired the Membership Interest of a Member of the Company shall be subject to all the terms, conditions, restrictions, and obligations of this Agreement, including the provisions of this Article 9; provided, however, that a transferee's status as a Substitute Member shall be governed by the provisions of Article 10, below. Any transferee who has not properly acquired the Membership Interest of a Member of the Company in accordance with this Article shall have only the rights as an Assignee, and shall not be entitled to become a Member or to participate in the management and affairs of the Company except as otherwise provided in this Agreement. If a Member transfers less than all of his Membership Interest, the Member's rights with respect to the transferred portion, including the right to vote or



otherwise participate in the Company's governance and the right to receive distributions, will terminate as of the effective date of such transfer. However, the Member will remain liable for any obligation with respect to the transferred portion that existed prior to the effective date of the transfer, including any costs or damages resulting from the Member's breach of this Agreement.

A judgment creditor of a Member may not attach any assets of the Company or cause a dissolution (as further provided in Article 11, below) of the Company, but may, upon application and order of a court of competent jurisdiction, charge the Member's Membership Interest with payment for the unsatisfied amount of a judgment, plus interest. To the extent a judgment creditor is the beneficiary of a charging order against a Member's Membership Interest, the judgment creditor shall have only the rights of an Assignee of said Membership Interest, as provided herein, and, to the extent charged, shall be entitled to receive only the share of profits and losses and distributions from the Company to which an Assignee of the Membership Interest of a Member would be entitled.

**9.4 Basis Adjustments.** Upon the occurrence of any sale, assignment or transfer of a Member's Membership Interest where the purchase price or fair market value of the transferred Membership Interest exceeds the transferor's basis in the Membership Interest, the Managers shall have, in their sole discretion, the right to elect to step up the basis of the assets held by the entity pursuant to Section 754 of the Code.

## ARTICLE 10 ADMISSION OF NEW MEMBERS

**10.1 Additional or Substitute Members.** No Person shall be admitted to the Company as an Additional Member or a Substitute Member without (a) the Unanimous written agreement of all of the Members, and (b) contemporaneous with the written consent set forth in (a) above, delivery to the Company by the Additional Member or Substitute Member of a copy of this Agreement, or other writing acceptable to the Company, executed by the Additional Member or Substitute Member by which such Person agrees to be bound by this Agreement, as well as such other documents or instruments as the Company may determine to be necessary or desirable to reflect such Person's admission as a Member of the Company. This Agreement shall be amended as necessary to conform to the changed conditions with respect to the ownership of the Company, and the Members shall file an appropriate amendment to the Articles if required by the Act to do so.

## ARTICLE 11 DISSOLUTION, WINDING UP AND CANCELLATION

**11.1 Events Causing Dissolution.** The Company shall be dissolved and its affairs shall be wound up when any one or more of the following occurs:

- (a) The term of the Company expires.
- (b) If there are no Members.

(c) If, upon the occurrence of any of the events set forth in Section 8.2, above, the business of the Company is not continued as provided therein.

(d) Upon the bankruptcy of a Member, if all of the other Members other than the bankrupt Member Unanimously vote to dissolve the Company as a result of the bankruptcy of such Member.

(e) All Members vote to dissolve the Company.

**11.2 Method of Winding Up and Cancellation.** Upon the occurrence of any event causing dissolution as provided in Section 11.1, above, the Company shall immediately commence to liquidate and wind up its affairs. The Members shall continue to share profits and losses during the period of liquidation and winding up in the same proportions as before commencement of winding up and dissolution. Any gain or loss in disposition of the Company properties in the process of liquidation and winding up shall be credited or charged to the Members in the ratio of their Capital Accounts in the Company, as provided in Article 4. The proceeds from the liquidation and winding up shall be applied in the following order:

(a) To creditors of the Company, including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company other than those liabilities to Members on account of their contributions or on account of a Member's withdrawal from the Company or pursuant to a withdrawal of capital.

(b) To the Members in repayment of the amount of their respective Capital Accounts after taking into account all Capital Account adjustments for the taxable year during which the liquidation occurs (other than those made pursuant to this subsection 11.2(b)).

For purposes of determining the amount of such distributions, all Company assets shall be valued by the liquidator at their then fair market value, and any gains or losses that arise from their sale at such valuation or, in the event of distributions to be made in kind, that would arise assuming such a sale were made, shall be allocated as specified in this Agreement and in accordance with Treasury Regulations § 1.704-1(b)(2)(iv)(f).

When all debts, liabilities, and obligations of the Company have been paid or discharged, or adequate provision has been made to do so, and all of the remaining property and assets of the Company have been distributed to the Members, Articles of Dissolution shall be executed and filed with the Division, if required by the Act.

## ARTICLE 12 ENCUMBRANCES

Except as provided in Article 9, no Member shall in any way encumber, mortgage, pledge, hypothecate, or otherwise use his Membership Interest as collateral or security for an obligation, without the prior written consent of all the Members.

### ARTICLE 13 FIDUCIARY DUTIES; INDEMNITY

#### 13.1 *Fiduciary Duties.*

##### (a) Standard of Care.

(1) *Liability for Wrongful Acts.* A Manager is liable to and will indemnify the Company for all costs, expenses or damages attributable to an act or omission that constitutes a material breach of this Agreement, gross negligence, willful misconduct, or a violation of law.

(2) *Justifiable Reliance.* A Manager may rely on the Company's records maintained in good faith and on information, opinions, reports or statements received from any Person pertaining to matters the Manager reasonably believes to be within the Person's expertise or competence.

(b) Self-Dealing. A Manager may enter into a business transaction with the Company if the terms of the transaction are no less favorable to the Company than those of a similar transaction with an independent third party. Approval or ratification by Members having no interest in the transaction constitutes conclusive evidence that the terms satisfy the foregoing condition.

13.2 *Indemnification.* The Company shall indemnify and save harmless each Manager from any personal loss or damage incurred by such Manager by reason of any act performed by such Manager for and on behalf of the Company and in furtherance of its interests.

### ARTICLE 14 AMENDMENT

This Agreement may be amended, supplemented or modified by the Unanimous written agreement of all of the Members. Upon return to the Company by the Division of a duly stamped copy of the amended or restated Articles of Organization, the Company shall promptly deliver or mail a copy of the Articles, or said amended or restated Articles of Organization, to each Member.

### ARTICLE 15 MISCELLANEOUS

15.1 *Sale of Farr West Property.* The Members agree that when the real property identified as the "Farr West Property" in the attached Exhibit B is sold, the Company will distribute from the proceeds of such sale: (a) if the West Property has previously received approval as a residential subdivision, to each of Barbara B. Thomas, or her successor, as Trustee of The Barbara B. Thomas Revocable Trust under Trust Agreement dated July 18, 2008, Louis A. Brown and Diane K. Brown (together), or their successor(s), as Trustee(s) of The Louis A. Brown Living Trust under trust instrument dated January 20, 2002, as amended, Beverly B.

Rasmussen, or her successor, as Trustee of the Beverly B. Rasmussen Revocable Living Trust under trust instrument dated February 4, 2009, and Dennis L. Brown an amount equal to the then fair market value of one (1) lot in such subdivision; (b) if the Other Farr West Property has not previously received approval as a residential subdivision, an amount equal to Fifteen Thousand Eight Hundred Seventy-Four (15,874) square feet times the value per square foot of the Other Farr West Property at the time it is sold; and (c) any remaining proceeds of such sale among all of the Members.

**15.2 Development of Farr West Property.** At any time after the real property described on the attached Exhibit C (the "Hansen Property") has been zoned for commercial development, the Company may notify Deborah B. Hansen ("Hansen") that the Company intends to sell or develop the Farr West Property, whereupon Hansen shall fully cooperate with the Company and the Company's buyer(s) and/or developer(s) in effecting such development, including without limitation: (a) if desired by the Company's buyer(s) and/or developer(s), selling the Hansen Property to the Company's buyer(s) and/or developer(s) for the then fair market value thereof and conveying the same to the Company's buyer(s) and/or developer(s) concurrently with the sale or development of the Farr West Property; and (b) whether or not the Company's buyer(s) and/or developer(s) shall purchase any portion of the Hansen Property, granting the Company and/or the Company's developer(s) and/or contractor(s) such temporary and permanent easements as shall be reasonably necessary to allow the Company and/or the Company's developer(s) and/or contractor(s) to develop the Farr West Property. Further, for good and valuable consideration received, Hansen hereby grants to the Company an option, coupled with an interest, to purchase the Hansen Property for the then fair market value thereof, and Hansen agrees to convey the same to the Company by general warranty deed at any time after the Hansen Property has been zoned for commercial development and the Company has notified Hansen that the Company intends to sell or develop the Farr West Property. For purposes hereof, "fair market value" shall be determined by mutual agreement of the Company (or the Company's buyer(s) and/or developer(s)) and Hansen, or if they are unable to agree, by two (2) independent appraisers, one to be appointed by the Company (or the Company's buyer(s) and/or developer(s)) and one to be appointed by Hansen. If the lower of the two (2) appraisals is within five percent (5%) of the higher appraisal, then the fair market value shall be the average of the two (2) appraisals, and shall be binding and conclusive upon all persons; however, if the lower of the two (2) appraisals is not within five percent (5%) of the higher appraisal, then the two (2) appraisers appointed as provided above shall select a third appraiser who shall also provide an appraisal, and the fair market value shall be the average of the two (2) appraisals which are closest to each other, and shall be binding and conclusive upon all persons. The transactions contemplated by this section 15.2 shall be closed as soon as possible, and in no event more than one hundred fifty (150) days, after the Company has given Hansen the notice described hereinabove. All appraisal and closing costs relating to said transactions shall be shared by the Company and Hansen equally. Hansen agrees to give the Company such temporary or permanent easements as shall be reasonably necessary to allow the Company and/or its developer(s) and contractor(s) to develop the Farr West Property.

**15.3 Notices.** Any notices to or between the Members shall be in writing and shall be sent registered mail, return receipt requested, to the address of each Member as the same appears in the books and records of the Company. Notice shall be deemed to be received on the earlier

of the date actually received or the third day after being deposited in the United States mail as above described.

**15.4 Entire Agreement.** This Agreement shall constitute the entire contract between the parties, and there are no other or further agreements outstanding not specifically mentioned herein.

**15.5 Incorporation of Exhibits.** The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

**15.6 Construction.** It is the intent of the parties hereto that each Member be recognized as a partner for purposes of Section 704(e) of the Code, and that the distributive share of each Member in the profits and losses of the Company shall be included in his or her gross income. All provisions of this Operating Agreement shall be construed in accordance with this expressed intention.

**15.7 Invalidity.** If any part of this Agreement is or shall be invalid or unenforceable for any reason, the same shall be deemed severable from the remainder hereof, and shall in no way affect or impair the validity of this Agreement, or any other portion thereof.

**15.8 Gender.** The feminine includes the masculine and the neuter, the singular includes the plural, and vice versa, as the context may require.

**15.9 Execution of Further Instruments.** The Members shall cooperate with each other in good faith to accomplish the objectives and purposes hereof, and to that end, from time to time, they shall make, execute and deliver such other and further instruments as may be necessary or convenient in the fulfillment of this Agreement.

**15.10 Headings.** The headings in this Agreement are included solely for convenience of reference, and shall not be construed as limiting or in any other way modifying the text of the Agreement.

**15.11 Counterparts; Facsimile Signatures.** This Agreement may be signed in any number of counterparts, each of which shall constitute an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. The parties hereto agree that transmission to the other party of this Agreement with its facsimile signatures shall bind the party transmitting this Agreement by facsimile in the same manner as if such party's original signature had been delivered. Without limiting the foregoing, each party who transmits this Agreement with its facsimile signature covenants to deliver the original thereof to the other party as soon as possible thereafter.

**15.12 Agreement to be Binding.** This Agreement shall inure to the benefit of, and shall be binding upon, each of the Members and their respective personal representatives, executors, heirs, successors and assigns (including successors and assigns by operation of law and involuntary event, as well as by voluntary act).

**15.13 Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah without giving effect to any applicable conflicts of law provisions. Subject to the provisions of Section 15.17 below, the parties consent to the exclusive jurisdiction and venue of the federal and state courts residing in the county in the State of Utah where the designated office is located, for the resolution of any disputes arising under or out of this Agreement.

**15.14 Expenses of Enforcement.** In any proceeding to enforce, interpret, rescind or terminate this Agreement or in pursuing any remedy provided hereunder or by applicable law, the prevailing party shall be entitled to recover from the other party or parties all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding.

**15.15 Provisions Contrary to Act; Severability.** To the extent any provision of the Agreement varies or contradicts the general provisions of the Act, each Member hereby consents to such variation or contradiction. If any provision of this Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

**15.16 Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company, or of any creditor of any Member of the Company.

**15.17 Resolution of Disputes.** Any and all disputes arising out of or related to this agreement or the parties' performance hereunder shall be submitted to mediation before a mutually-acceptable mediator prior to initiation of arbitration, litigation or any other binding or adjudicative dispute resolution process. The parties shall: (i) mediate in good faith; (ii) exchange all documents which each believes to be relevant and material to the issue(s) in dispute; (iii) exchange written position papers stating their position on the dispute(s) and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the dispute(s), and; (iv) engage and cooperate in such further discovery as the parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the parties. Venue of the mediation shall be the state of Utah. In the event the parties are unable to agree upon a mediator, the mediator shall be appointed by a court of competent jurisdiction. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation. The prevailing party in any action to enforce in whole or in part this mediation clause shall be entitled to reimbursement of attorneys fees and costs incurred in said action.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written. Each of the undersigned hereby acknowledges that he or she has read this Agreement.

Members:

Barbara B. Thomas  
**BARBARA B. THOMAS**, as Trustee of The  
**Barbara B. Thomas Revocable Trust** under Trust  
 Agreement dated July 18, 2008

Louis A. Brown  
**LOUIS A. BROWN**, as Trustee of The Louis A.  
 Brown Living Trust under trust instrument dated  
 January 20, 2002, as amended

Diane K. Brown  
**DIANE K. BROWN**, as Trustee of The Louis A.  
 Brown Living Trust under trust instrument dated  
 January 20, 2002, as amended

Beverly B. Rasmussen  
**BEVERLY B. RASMUSSEN**, as Trustee of the  
 Beverly B. Rasmussen Revocable Living Trust  
 under trust instrument dated February 4, 2009

Dennis L. Brown  
**DENNIS L. BROWN**

Deborah B. Hansen  
**DEBORAH B. HANSEN**

**Exhibit A****Names and Addresses of Members  
and Membership Interests**

The Membership Interest in the Company that is held by each of the Members is as follows:

<b>Members</b>	<b>Membership Interests</b>
Barbara B. Thomas, or her successor, as Trustee of The Barbara B. Thomas Revocable Trust under Trust Agreement dated July 18, 2008 3590 West 1975 North Ogden, Utah 84404	20%
Louis A. Brown and Diane K. Brown, or their successor(s), as Trustee(s) of the Louis A. Brown Living Trust under trust instrument dated January 20, 2002, as amended 819 West 1775 North Farmington, Utah 84025	20%
Beverly B. Rasmussen, or her successor, as Trustee of the Beverly B. Rasmussen Revocable Living Trust under trust instrument dated February 4, 2009 556 East 2450 North North Ogden, Utah 84414	20%
Dennis L. Brown 2119 West 6000 South Roy, Utah 84067	20%
Deborah B. Hansen 2024 Heritage Drive Farr West, Utah 84404	20%
<b>TOTAL</b>	<b>100%</b>

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**Exhibit B****Capital****A. Roy Property**

All of the following described real property located in Weber County, Utah, to-wit:

PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT ON THE WEST LINE OF THE STATE HIGHWAY 50.7 FEET WEST AND 618.4 FEET NORTH 0°33' EAST FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SAID SOUTHEAST QUARTER SECTION, AND RUNNING THENCE WEST 300 FEET, THENCE NORTH 0°33' EAST 82 FEET, THENCE EAST 300 FEET TO HIGHWAY, THENCE SOUTH 0°33' WEST 82 FEET TO THE PLACE OF BEGINNING.  
(08-073-0003) ✓ *JA*

ALSO: PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT ON THE WEST LINE OF THE STATE ROAD 50.7 FEET WEST AND 246 FEET NORTH 33' EAST FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER SECTION, AND RUNNING THENCE WEST 300 FEET, THENCE NORTH 33' EAST 372.4 FEET, THENCE EAST 300 FEET TO HIGHWAY, THENCE SOUTH 33' WEST 372.4 FEET TO THE PLACE OF BEGINNING. CONTAINING 2.56 ACRES.  
(08-073-0004) ✓ *JA*

ALSO: PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT ON THE WEST LINE OF STATE HIGHWAY WHICH IS NORTH 0°33' EAST 890.09 FEET AND WEST 50.7 FEET FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER SECTION; RUNNING THENCE WEST 108 FEET; THENCE NORTH 0°33' EAST 45.6 FEET; THENCE WEST 291.3 FEET, MORE OR LESS TO THE EAST LINE OF HARMONY PARK SUBDIVISION NO 2, THENCE SOUTH 0°33' WEST ALONG SAID LINE 681 FEET; THENCE EAST 99.3 FEET; THENCE NORTH 0°33' EAST 594.4 FEET; THENCE EAST 192 FEET; THENCE SOUTH 0°33' WEST 35 FEET; THENCE EAST 108 FEET TO THE EAST LINE OF THE STATE HIGHWAY; THENCE NORTH 0°33' EAST 76 FEET TO THE POINT OF BEGINNING. ALSO ALL LAND LYING BETWEEN THE ABOVE DESCRIBED TRACT AND STATE HIGHWAY, IF ANY.

(08-073-0017) ✓ *NP*

**ALSO:** PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 170.7 FEET WEST AND 1181.4 FEET NORTH 0°33' EAST FROM THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF SOUTHEAST QUARTER, SAID POINT BEING 120 FEET WEST OF THE WEST LINE OF THE STATE HIGHWAY; RUNNING THENCE NORTH 0°33' EAST 105.6 FEET TO THE SOUTH LINE OF 4400 SOUTH STREET; THENCE WEST ALONG SAID STREET 88.7 FEET TO THE WEST LINE OF GRANTOR'S PROPERTY; THENCE SOUTH 0°33' WEST ALONG SAID LINE TO A POINT 105.6 FEET, MORE OR LESS, WEST OF BEGINNING; THENCE EAST 88.7 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING.

(08-073-0020) ✓ *NP*

**ALSO:** PART OF THE NORTHEAST QUARTER OF SOUTHEAST QUARTER SECTION 11, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT THE NORTHEAST CORNER OF LOT 27, HARMONY PARK SUBDIVISION NO. 2, WEBER COUNTY, UTAH, SAID POINT BEING WEST 450 FEET, MORE OR LESS, AND NORTH 0°33' EAST 927 FEET, MORE OR LESS, FROM THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF SOUTHEAST QUARTER; RUNNING THENCE NORTH 0°33' EAST 1.0 FEET TO ROAD; THENCE NORTH 89°44'20" EAST 189.0 FEET; THENCE SOUTH 0°33' WEST 1.0 FEET; THENCE SOUTH 89°44'20" WEST 189.0 FEET TO BEGINNING.

(08-073-0036) ✓ *NP*

**ALSO:** PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT ON THE WEST LINE OF THE STATE HIGHWAY 50.7 FEET WEST AND 700.4 FEET NORTH 0°33' EAST OF THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER SECTION, AND RUNNING THENCE NORTH 0°33' EAST 105 FEET, THENCE WEST 108 FEET, THENCE NORTH 0°33' EAST 35 FEET, THENCE WEST 192 FEET, THENCE SOUTH 0°33' WEST 140 FEET, THENCE EAST 300 FEET TO THE PLACE OF BEGINNING.

(08-073-0002) ✓ *NP*

**B. Farr West Property**

All of the following described real property located in Weber County, Utah, to-wit:

Beginning at a point South 00°43'41" West 1332.38 feet and North 89°16'19" West 540.71 feet from the Northeast corner of Section 1, Township 6 North, Range 2 West, Salt Lake Base and Meridian, and running thence South 3°43'41" West 530.19 feet along the westerly right of way line of 1200 West Street; thence South 89°28'41" West 150.00 feet; thence South 3°43'41" West 133.74 feet; thence South 0°30'19" East 158.06 feet to the north right of way line of Harrisville Road; thence South 89°22'42" West 129.68 feet along said north right of way line; thence North 0°30'19" West 1688.76 feet; thence South 65°16'19" East 81.65 feet to the said westerly right of way line of 1200 West Street; thence South 23°16'19" East 695.30 feet along said right of way line; thence South 3°43'41" West 192.86 feet along said right of way line to the point of beginning. Contains 402,406 sq. ft. or 9.2150 acres

15-540-0001 to 0003

C. Cash and Investment Accounts

America First Credit Union account no. \_\_\_\_\_, including all subaccounts thereunder

D. Farm Machinery, Equipment and Tools

Two Farm Tractors  
Two spring tooth cultivators  
One disk  
One furrow attachment  
One spray machine  
Several ladders, buckets and other fruit picking equipment  
Several hand tools, i.e., shovels, rakes, hoes, pick and brooms.  
Three small trailers

E. Other Assets

16' small fishing boat  
Two outboard motors (25 horsepower) (2.5 horsepower)  
Rubber raft

## EXHIBIT C

## HANSEN PROPERTY

All of the following described real property located in Weber County, Utah, to-wit:

Beginning at a point South  $00^{\circ}43'41''$  West 1332.38 feet and North  $89^{\circ}16'19''$  West 540.71 feet and South  $3^{\circ}43'41''$  West 636.31 feet from the Northeast corner of Section 1, Township 6 North, Range 2 West, Salt Lake Base and Meridian, and running thence South  $3^{\circ}43'41''$  West 185.88 feet along the westerly right of way line of 1200 West Street to the north right-of-way line of Harrisville Road; thence South  $89^{\circ}22'42''$  West 138.32 feet; thence North  $0^{\circ}30'19''$  West 158.06 feet; thence South  $86^{\circ}25'55''$  East 64.15 feet; thence North  $3^{\circ}06'41''$  East 32.19 feet; thence North  $89^{\circ}28'41''$  East 86.02 feet to the point of beginning.  
Contains 24,986 sq. ft. or 0.573 acres

15-540-0003

**EXHIBIT "D"**

**FULLER AGREEMENT**

Exhibit "D"

## AGREEMENT

EH 2640818 PG 1 OF 15  
 ARNOLD D ROWLEY, WEBER COUNTY RECORDER  
 14 JUN-13 3:59 PM FEE \$40.00 DEP SGC  
 REC FOR: A/E BROWN REV LLC

**THIS AGREEMENT** (this "Agreement"), made and entered into this JUNE day of JUNE, 2013, by and between **A & E Brown Development, L.L.C.**, a Utah limited liability company ("Brown") and **Jeffrey Scott Fuller**, individually and as Trustee of **The Jeffrey Scott Fuller Revocable Living Trust** dated August 5, 2005 ("Fuller") (Brown and Fuller being herein sometimes referred to individually as a "Party" and collectively as the "Parties", and the transactions contemplated by this Agreement being herein sometimes collectively referred to as this "Transaction"),

## WITNESSETH:

**WHEREAS**, Brown owns certain real property located in Weber County, Utah, more particularly described on Exhibit "A" (the "Brown Property"); and

**WHEREAS**, at the time Fuller or Fuller's predecessor(s) in interest acquired from Brown or Brown's predecessor(s) in interest that certain 12,500 square foot parcel located at 1565 North 1200 West and identified as Weber County parcel no. 15-02-0057 (the "Existing Fuller Property"), it was intended that some or all of the Brown Property be included as a part of the Existing Fuller Property; and

**WHEREAS**, Brown is willing to transfer the Brown Property to Fuller subject to the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and promises set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Transfer to Fuller.** Brown hereby agrees to transfer and convey to Fuller, by quit claim deed, all of the Brown Property. Brown is not obligated to provide title insurance covering the Brown Property, but will cooperate with Fuller if Fuller desires to purchase title insurance covering the Brown Property at Fuller's expense. Fuller shall pay all general and special taxes and assessments against the Brown Property for the calendar year 2013 and thereafter.
2. **Reimbursement of Expenses.** Fuller hereby agrees to pay to Brown the sum of One Thousand Dollars (\$1,000) in partial reimbursement of the surveying and legal expenses incurred by Brown in connection with this Transaction.
3. **Closing.** Unless otherwise agreed in writing by the Parties, the Transaction contemplated by this Agreement shall be closed within ten (10) business days after satisfaction of all of the Conditions set forth in paragraph 5 below (the "Closing"). At Closing, Brown shall deliver to Fuller the deed described in paragraph 1, above, fully executed and properly acknowledged, and Fuller shall deliver to Brown the payment required by paragraph 2 above in immediately available funds. In the event the Conditions set forth in paragraph 5 below are not satisfied or waived on or before June 14, 2013, this Agreement shall be null, void and of no force or effect *ab initio*.
4. **Possession.** Unless otherwise agreed in writing by the Parties, Brown shall deliver possession of the Brown Property to Fuller upon Closing.

5. **Right to Cancel.** The obligation of Brown to close this Transaction is conditioned upon the occurrence of all of the following (collectively, the "Conditions") prior to Closing:

- a. execution by Brown and all of its members, Barbara B. Thomas (or her trust), Louis A. Brown (or his trust), Beverly B. Rasmussen, Dennis L. Brown and Deborah B. Hansen, of a written agreement effecting a partial distribution of Brown's assets to its Members, and of an amended and restated operating agreement for the operation, management and distribution of Brown's remaining property (the "Related Brown Transactions");
- b. approval by Farr West City and recording of a subdivision plat relating to this Transaction and the Related Brown Transactions; and
- c. execution, delivery and recording by Fuller and Deborah B. Hansen of an agreement in the form attached hereto as Exhibit "B".
- d. payment by Fuller of the partial reimbursement set forth in paragraph 2 above.

If any of the Conditions have not occurred at or prior to Closing, Brown may either waive the same and proceed to Closing or terminate this Agreement without further liability to Fuller.

6. **Covenants, Representations and Warranties of Brown.** The Parties acknowledge and agree that the Brown Property has been in the possession of Fuller or Fuller's predecessor(s) in interest for many years, and the Parties hereby agree that the Brown Property will be conveyed to Fuller "as is" and without any covenant, representation or warranty whatsoever, except as follows:

- a. Brown has full power and authority to enter into this Agreement and complete this Transaction.
- b. This Agreement is valid and enforceable against Brown in accordance with its terms (except as such enforcement may be subject to bankruptcy, insolvency, or other laws relating to creditors' rights generally).
- c. Brown has not entered into any agreement or contract with respect to the Brown Property or granted any interest in the Brown Property that is inconsistent with Brown's obligation to quit claim the Brown Property to Fuller. Brown shall not, prior to any termination of this Agreement and without Fuller's prior written consent, enter into or execute any easement, encumbrance, lease, or other agreement with respect to the Brown Property, or execute, record or consent to any declaration of covenants, conditions and restrictions or other similar document with respect to the Brown Property.
- d. Brown has not dealt with any finder, broker or realtor in connection with this Transaction. Brown agrees to indemnify Fuller and to hold Fuller harmless from, any claim, demand or suit for any brokerage commission, finder's fee or similar charge with respect to the execution of this Agreement or this transaction based on any act by or agreement or contract with

Brown, and for all losses, obligations, costs, expenses and fees (including attorneys' fees) incurred by Fuller on account of or arising from any such claim, demand or suit.

The covenants, representations, agreements, and warranties of Brown contained herein or in any certificate or document delivered pursuant to the provisions hereof are true, complete and accurate on and as of the date of execution hereof and shall be true, complete and accurate as of the Closing date, and shall survive the consummation of this Agreement, the delivery and recordation of the quit claim deed conveying the Brown Property to Fuller and the Closing of this Transaction.

**7. Covenants, Representations and Warranties of Fuller.** Fuller hereby covenants, represents and warrants to Brown as follows:

- a. Fuller has full power and authority to enter into this Agreement and complete this Transaction.
- b. This Agreement is valid and enforceable against Fuller in accordance with its terms (except as such enforcement may be subject to bankruptcy, insolvency, or other laws relating to creditors' rights generally).
- c. The execution and delivery of this Agreement and all related documents and instruments does not, and the consummation of this Transaction will not, violate any provision of any charter, bylaw, mortgage, lien, lease, agreement, instrument, order, judgment, or decree to which Fuller is a party or by which Fuller is bound or affected, and will not violate any restriction of any kind or character whatsoever to which Fuller is subject. No consent of any lender, creditor of Fuller or its predecessor(s) in interest, governmental body or agency, or any other person, is necessary in order for Fuller to enter into this Transaction or to consummate this Transaction in accordance with all of the provisions contained herein and in any other documents delivered in connection with this Transaction.
- e. Neither the execution and the delivery of this Agreement nor the consummation of this Transaction is subject to any requirement that Fuller obtain any consent, approval or authorization of, or make any declaration or filing with, any governmental authority or third party that has not been obtained or that, in any case or in the aggregate, if not obtained or made would render the execution, delivery or consummation illegal or invalid, or would constitute a default under this Agreement.
- f. Fuller has not dealt with any finder, broker or realtor in connection with this Transaction. Fuller agrees to indemnify Brown and to hold Brown harmless from, any claim, demand or suit for any brokerage commission, finder's fee or similar charge with respect to the execution of this Agreement or this transaction based on any act by or agreement or contract with Fuller, and for all losses, obligations, costs, expenses and fees (including attorneys' fees) incurred by Brown on account of or arising from any such claim, demand or suit.

The covenants, representations, agreements, and warranties of Fuller contained herein or in any certificate or document delivered pursuant to the provisions hereof are true, complete and accurate on and as of the date of execution hereof and shall be true, complete and accurate as of



the Closing date, and shall survive the consummation of this Agreement and the Closing of this Transaction.

8. **Trees, Sprinklers and Landscaping.** The Parties acknowledge that there are currently trees on the West end of the Brown Property which is described as Parcel 1 on Exhibit "A" and near the North boundary of the Existing Fuller Property that encroach on the adjoining real property owned by Brown to the West and North thereof (current Weber County serial no. 15-002-0001) (the "Remaining Brown Property"). The Parties agree that said trees may remain without interference by Brown until Brown or its successor or developer shall sell or develop the Remaining Brown Property, whereupon Brown or its successor or developer may remove said trees provided Brown or its successor or developer shall replace those on the West (but not on the North) with three (3) three (3) to five (5) foot Douglas fir trees at such places on the West portion of said Parcel 1 (conveyed to Fuller hereunder) as Fuller shall designate, provided they do not result in any further encroachment. Further, Brown shall repair any damage to Fuller's current sprinkler system caused by the removal of said trees. Fuller may continue to occupy the North portion of the Remaining Brown Property on which Fuller may have sprinklers and landscaping for the purpose of maintaining the same until Brown or its successor or developer notifies Fuller that it intends to sell or develop said property, whereupon Fuller shall, at Fuller's sole cost and expense, relocate said sprinklers and any portion of said landscaping that it desires to retain onto Fuller's own property within thirty (30) days after such notice. Any such sprinklers and/or landscaping not removed within said period shall thereupon become the property of Brown.

9. **Development of Remaining Brown Property.** At any time after the Brown Property and the Existing Fuller Property has been zoned for commercial development, Brown may notify Fuller that Brown intends to sell or develop the Remaining Brown Property, whereupon Fuller shall fully cooperate with Brown and Brown's buyer(s) and/or developer(s) in effecting such development, including without limitation: (a) if desired by Brown's buyer(s) and/or developer(s), selling the Brown Property and the Existing Fuller Property to Brown's buyer(s) and/or developer(s) for the then fair market value thereof and conveying the same to Brown's buyer(s) and/or developer(s) concurrently with the sale or development of the Remaining Brown Property; and (b) whether or not Brown's buyer(s) and/or developer(s) shall purchase any portion of the Brown Property and/or the Existing Fuller Property, granting Brown and/or Brown's developer(s) and/or contractor(s) such temporary and permanent easements as shall be reasonably necessary to allow Brown and/or Brown's developer(s) and/or contractor(s) to develop the Remaining Brown Property. Further, for good and valuable consideration received, Fuller hereby grants to Brown an option, coupled with an interest, to repurchase the Brown Property and to purchase the Existing Fuller Property for the then fair market value thereof, and Fuller agrees to convey the same to Brown by special warranty deed at any time after the Brown Property and the Existing Fuller Property has been zoned for commercial development and Brown has notified Fuller that Brown intends to sell or develop the Remaining Brown Property. For purposes hereof, "fair market value" shall be determined by mutual agreement of Brown (or Brown's buyer(s) and/or developer(s)) and Fuller, or if they are unable to agree, by two (2) independent appraisers, one to be appointed by Brown (or Brown's buyer(s) and/or developer(s)) and one to be appointed by Fuller. If the lower of the two (2) appraisals is within five percent (5%) of the higher appraisal, then the fair market value shall be the average of the two (2) appraisals, and shall be binding and conclusive upon all persons; however, if the lower of the two (2) appraisals is not within five percent (5%) of the higher appraisal, then the

two (2) appraisers appointed as provided above shall select a third appraiser who shall also provide an appraisal, and the fair market value shall be the average of the two (2) appraisals which are closest to each other, and shall be binding and conclusive upon all persons. The transactions contemplated by this paragraph 9 shall be closed as soon as possible, and in no event more than one hundred fifty (150) days, after Brown has given Fuller the notice described hereinabove. All appraisal and closing costs relating to said transactions shall be shared by the Parties equally.

10. **Risk of Loss.** The risk of loss with respect to the Brown Property shall be upon Fuller until Closing. Fuller shall, at its sole cost, take reasonable steps to protect the Brown Property from damage and deterioration prior to Closing. In the event of any loss or damage to or condemnation of the Brown Property prior to Closing, Fuller may either waive such loss, damage or condemnation and proceed to close this Transaction, or cancel this Agreement.

11. **Reimbursement.** In the event either Party ("Defaulting Party") shall fail to make any payment or discharge any obligation required of it hereunder above within thirty (30) days after the same is due, the other Party shall have the right, but not the obligation, to make such payment and/or discharge such obligation, and the amount so paid by the said other Party shall be payable by the Defaulting Party to the other Party on demand and shall bear interest at the rate of one and one-half percent (1½%) per month from the date paid until reimbursed to the other Party. This remedy is optional to such other Party, and the election of such remedy by such other Party shall not constitute a waiver by such other Party of its right to proceed against the Defaulting Party for default as elsewhere provided herein. In the event such other Party elects this remedy, then the Defaulting Party's failure to reimburse such other Party on demand shall constitute an act of default by the Defaulting Party under this Agreement.

12. **Default and Remedies.** If either Party fails to perform any of its obligations under this Agreement or if any of a Party's representations or warranties contained in this Agreement shall be untrue, inaccurate or incomplete at any time, and that failure continues for ten (10) days after receipt by such Party (the "Defaulting Party") of written notice from the other Party, the Defaulting Party shall be in default and such other Party may as its remedies for the Defaulting Party's failure: (i) without waiving any rights or remedies, proceed to consummate this Transaction; (ii) cancel this Agreement; and/or (iii) pursue any other remedy available at law or in equity.

13. **No Third Party Beneficiaries.** Other than Brown's successor(s), buyer(s), developer(s) and contractor(s) referred to in paragraphs 8 and 9 above, nothing in this Agreement shall be interpreted or construed to confer any right or remedy upon, or any duty, standard of care, liability or inference of liability to or with reference to, any person other than the Parties and their respective successors and assigns.

14. **Notices.** Any notices, consents, agreements, elections, amendments, approvals and other communications provided for or permitted by this Agreement or otherwise relating to this Agreement shall be in writing and shall be deemed effectively given to a Party upon the earliest to occur of the following: (i) upon personal delivery to such Party; (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; (iv) one (1) day after deposit with a nationally

recognized overnight courier, specifying next day delivery, with written verification of receipt; or (v) upon actual receipt by the Party to be notified via any other means (including public or private mail, electronic mail or telegram); provided, however, that notice sent via electronic mail shall be deemed duly given only when actually received and opened by the Party to whom it is addressed. All communications to be sent to a Party shall be sent to the address set forth below or to such other address as a Party shall designate from time to time in writing notice to the other Parties in accordance with the provisions of this paragraph.

Brown: A & E Brown Development, L.L.C.  
2119 West 6000 South  
Roy, Utah 84067

Fuller: Jeffrey Scott Fuller, Trustee  
1565 North 1200 West  
Farr West, Utah 84404

Notice is deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery or confirmed facsimile, on the date of delivery to the overnight courier service, if that service is used, and on the date of deposit in the mail, if mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

15. **Survival.** All of the covenants, agreements, representations and warranties set forth in this Agreement survive the Closing, and do not merge into any bill of sale, assignment or other instrument executed or delivered in connection with this Transaction.

16. **Time of Essence; Dates of Performance.** Time is expressly declared to be of the essence of this Agreement. In the event that any date for performance by either Party of any obligation hereunder required to be performed by such Party falls on a Saturday, Sunday or nationally established holiday, the time for performance of such obligation shall be deemed extended until the next business day following such date.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Utah without giving effect to any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah.

18. **Submission to Jurisdiction.** Each of the Parties submits to the jurisdiction of the Second Judicial District Court of the State of Utah in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto. Each Party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or at equity. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON

CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THIS TRANSACTION OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

19. **Interpretation.** In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The paragraph headings contained herein are for purposes of reference only and shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include the masculine, feminine and neuter gender, and the term "person" shall include any individual, firm, partnership (general or limited), joint venture, corporation, limited liability company, trust, association, or other entity or association or any combination thereof. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by applicable law.

20. **Incorporation of Recitals and Exhibits.** All recitals stated, and all exhibits identified, in this Agreement and in all other documents relating to this Transaction are incorporated herein by reference and made a part hereof.

21. **Waiver.** No failure or delay in exercising any right, power or privilege under this Agreement, whether intentional or not, shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of a right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

22. **Succession.** This Agreement: (a) shall constitute a covenant running with the land; (b) shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and assigns; (c) shall benefit and bind every person having any fee, leasehold or other interest in any portion of the Brown Property, the Existing Fuller Property or the Remaining Brown Property; and (d) shall benefit and be binding upon any person whose title is acquired by voluntary conveyance, judicial foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Whenever any person or term, including without limitation, "Brown", "Fuller", "Party", or "Deborah B. Hansen" is referred to in this Agreement, the same shall be deemed to include all of their respective successors and assigns.

23. **Further Acts.** The Parties hereby agree for themselves, and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of this Agreement.

24. **Integration.** This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and all prior negotiations, correspondence, proposals, discussions, understandings, representations, inducements and agreements, whether oral or written and whether made by a Party hereto or by any one acting on behalf of a Party, shall be deemed to be merged in and superseded by this Agreement and shall be of no further force or effect. There are no representations, warranties, or agreements, whether express or implied, or

oral or written, with respect to the subject matter hereof, except as set forth herein, and no Party has relied upon any representation, promise, assurance, covenant, omission or agreement not included in the terms hereof in making the decision to enter into this Agreement. This Agreement may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements among or between the Parties.

25. **Amendments.** This Agreement may not be modified, amended or changed by any oral agreement, either express or implied. No amendment, modification or change in this Agreement shall be valid or binding unless reduced to writing and signed by all of the Parties. The provisions of this and the immediately preceding sentence themselves may not be amended or modified, either orally or by conduct, either express or implied, and it is the declared intention of the Parties that no provisions of this Security Agreement, including said two sentences, shall be modifiable in any way or manner whatsoever other than through a written document signed by all of the Parties.

26. **Expenses of Enforcement.** In any proceeding to enforce, interpret, rescind or terminate this Agreement or in pursuing any remedy provided hereunder or by applicable law, the prevailing Party shall be entitled to recover from the other Party or Parties all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding. For purposes of hereof, the term "prevailing Party" shall include, without limitation, a Party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought. The provisions set forth in this paragraph shall survive the merger of these provisions into any judgment.

27. **Counterparts.** This Agreement may be executed in any number of counterparts and by each of the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof.

28. **Facsimile Transmission.** The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

29. **Recording.** Each Party hereby authorizes the other Party to cause this Agreement or a notice of any provision hereof (in such manner as is consistent with the intent hereof) to be recorded in the office of the County Recorder of Weber County, Utah.

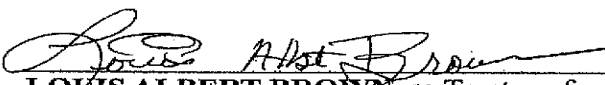
30. **Disclosure.** The Parties understand and acknowledge that Louis A. Brown, a member of A & E Brown Development, L.L.C., is a licensed real estate sales agent in the State of Utah.

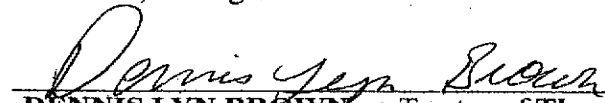
[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth opposite their respective names below.


**BROWN:**

**A & E BROWN DEVELOPMENT, L.L.C., a**  
Utah limited liability company

By:   
**LOUIS ALBERT BROWN**, as Trustee of  
**The Amos A. Brown Revocable Trust**  
established by Trust Agreement dated August  
23, 1999, as amended, and as Trustee of **The**  
**Ethel L. Brown Revocable Trust** established  
by Trust Agreement dated August 23, 1999, as  
amended, Managers

By:   
**DENNIS LYN BROWN**, as Trustee of **The**  
**Amos A. Brown Revocable Trust** established  
by Trust Agreement dated August 23, 1999, as  
amended, and as Trustee of **The Ethel L.**  
**Brown Revocable Trust** established by  
Trust Agreement dated August 23, 1999, as  
amended, Managers

**FULLER:**

  
**JEFFREY SCOTT FULLER**, individually and as  
Trustee of **The Jeffrey Scott Fuller Revocable**  
**Living Trust** dated August 5, 2005

STATE OF UTAH )

EH 2640816 PG 10 OF 15

COUNTY OF WEBER )

: ss.

The foregoing instrument was acknowledged before me this 14 day of June, 2013, by **Louis Albert Brown**, as Trustee of **The Amos A. Brown Revocable Trust** established by Trust Agreement dated August 23, 1999, as amended, and as Trustee of **The Ethel L. Brown Revocable Trust** established by Trust Agreement dated August 23, 1999, as amended, Managers of **A & E Brown Development, L.L.C.**, a Utah limited liability company.

  
 NOTARY PUBLIC


STATE OF UTAH )

: ss.

COUNTY OF WEBER )

The foregoing instrument was acknowledged before me this 14 day of June, 2013, by **Dennis Lyn Brown**, as Trustee of **The Amos A. Brown Revocable Trust** established by Trust Agreement dated August 23, 1999, as amended, and as Trustee of **The Ethel L. Brown Revocable Trust** established by Trust Agreement dated August 23, 1999, as amended, Managers of **A & E Brown Development, L.L.C.**, a Utah limited liability company.

  
 NOTARY PUBLIC


STATE OF UTAH )

: ss.

COUNTY OF WEBER )

The foregoing instrument was acknowledged before me this 14 day of June, 2013, by **Jeffrey Scott Fuller**, Trustee of **The Jeffrey Scott Fuller Revocable Living Trust** dated August 5, 2005.

  
 NOTARY PUBLIC


**EXHIBIT "A"**

**BROWN PROPERTY**

All of the following described real property located in Weber County, Utah, to-wit:

**Parcel 1:** Beginning at a point South 00°43'41" West 1332.38 feet and North 89°16'19" West 540.71 feet and South 3°43'41" West 630.19 feet from the Northeast corner of Section 1, Township 6 North, Range 2 West, Salt Lake Base and Meridian, and running thence South 3°43'41" West 6.12 feet along the westerly right of way line of 1200 West Street; thence South 89°28'41" West 150.00 feet; thence North 3°43'41" East 106.12 feet; thence North 89°28'41" East 25.00 feet; thence South 3°43'41" West 100.00 feet; thence North 89°28'41" East 125.00 feet to the point of beginning.

Parcel Contains 3408 sq. ft. or 0.0782 acres.

15-540-0002  
Pr

**Parcel 2:** Beginning at a point South 00°43'41" West 1332.38 feet and North 89°16'19" West 540.71 feet and South 3°43'41" West 636.31 and South 89°28'41" West 86.02 feet from the Northeast corner of Section 1, Township 6 North, Range 2 West, Salt Lake Base and Meridian, and running thence South 3°06'41" West 32.19 feet; thence North 86°25'55" West 64.15 feet; thence North 3°43'41" East 27.62 feet; thence North 89°28'41" East 63.98 feet to the point of beginning.

Parcel Contains 1913 sq. ft. or 0.043 acres.

15-540-0002  
Pr



**EXHIBIT "B"**

**FULLER - HANSEN AGREEMENT**

## AGREEMENT

**In Consideration** of the mutual covenants and promises set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, **Jeffrey Scott Fuller**, Trustee of **The Jeffrey Scott Fuller Revocable Living Trust** dated August 5, 2005 ("Fuller"), of Farr West, Weber County, State of Utah, and **Deborah B. Hansen** ("Hansen"), of Farr West, Weber County, State of Utah (Fuller and Hansen being herein sometimes referred to individually as a "Party" and collectively as the "Parties") hereby acknowledge and agree as follows:

1. **Fuller Property.** Fuller owns the following described real property located in Weber County, Utah, to-wit:

Beginning at a point South 00°43'41" West 1332.38 feet and North 89°16'19" West 540.71 feet and South 3°43'41" West 630.19 feet from the Northeast corner of Section 1, Township 6 North, Range 2 West, Salt Lake Base and Meridian, and running thence South 3°43'41" West 6.12 feet along the westerly right of way line of 1200 West Street; thence South 89°28'41" West 150.00 feet; thence North 3°43'41" East 106.12 feet; thence North 89°28'41" East 25.00 feet; thence South 3°43'41" West 100.00 feet; thence North 89°28'41" East 125.00 feet to the point of beginning.

Parcel Contains 3408 sq. ft. or 0.0782 acres.  
(the "Fuller Property")

15-540-0002  
FT

2. **Hansen Property.** Hansen owns the following described real property located in Weber County, Utah:

Beginning at a point South 00°43'41" West 1332.38 feet and North 89°16'19" West 540.71 feet and South 3°43'41" West 636.31 feet from the Northeast corner of Section 1, Township 6 North, Range 2 West, Salt Lake Base and Meridian, and running thence South 3°43'41" West 185.88 feet along the westerly right of way line of 1200 West Street to the north right-of-way line of Harrisville Road; thence South 89°22'42" West 138.32 feet; thence North 0°30'19" West 158.06 feet; thence South 86°25'55" East 64.15 feet; thence North 3°06'41" East 32.19 feet; thence North 89°28'41" East 86.02 feet to the point of beginning.

Contains 24,986 sq. ft. or 0.573 acres  
(the "Hansen Property")

15-540-0003

3. **Retaining Wall.** A rock retaining wall exists on a portion of the Fuller Property and on a portion of the Hansen Property (the "Retaining Wall").


4. **Maintenance.** The Retaining Wall shall be maintained by Fuller in order to preserve existing grades between the Fuller Property and the Hansen Property.

5. **Modifications.** If either of the Parties shall desire to modify the Retaining Wall in any way (the "Modification"), such Party must obtain the written permission of the other Party and from Farr West City (and/or any other applicable jurisdiction) before doing so, and if such permission is given, shall begin and complete the Modification within thirty (30) days and shall pay all expenses of the Modification, of repairing any damage caused by such Party or its

contractor, and of restoring the other Party's property to substantially the same condition as before the Modification.

6. **Easements.** Each Party shall give the other Party such temporary easements as shall be reasonably necessary to allow said other Retaining Wall Party and/or its contractor(s) to perform the Modification.


7. **Succession.** The above provisions: (a) shall constitute covenants running with the land; (b) shall be binding upon and inure to the benefit of each Party and their respective successors and assigns; (c) shall benefit and bind every person having any fee, leasehold or other interest in any portion of the Fuller Property or the Hansen Property; and (d) shall benefit and be binding upon any person whose title is acquired by voluntary conveyance, judicial foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Whenever the term "Party" is used in this instrument, the same shall be deemed to include all of their respective successors and assigns.

  
JEFFREY SCOTT FULLER, individually and as  
Trustee of The Jeffrey Scott Fuller Revocable  
Living Trust dated August 5, 2005

  
DEBORAH B. HANSEN

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF WEBER        )

The foregoing instrument was acknowledged before me this 14 day of June, 2013, by **Jeffrey Scott Fuller**, individually and as Trustee of **The Jeffrey Scott Fuller Revocable Living Trust** dated August 5, 2005.

  
NOTARY PUBLIC



STATE OF UTAH )  
 : ss.  
 COUNTY OF WEBER )

The foregoing instrument was acknowledged before me this 14 day of June, 2013, by **Deborah B. Hansen**.

*Kelly L Hanley*  
 NOTARY PUBLIC

