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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ROSSETT GREEN P.U.D. SUBDIVISION

BK8584 PG0265

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ROSSETT GREEN P.U.D. SUBDIVISION**

THIS DECLARATION is made this 1st day of APRIL, 2002, by PERFORMANCE PROPERTIES, LLC, a Utah limited liability company, hereinafter called "Declarant."

RECITALS:

A. Declarant is the fee owner of the real property ("Property") situated in the County of Salt Lake, State of Utah, more particularly described in Exhibit A to this Declaration. Concurrently with the recording of this Declaration in the Office of the County Recorder for said county, Declarant is also recording a subdivision plat of the real property described in Exhibit "A", which plat subdivides said real property as indicated thereon and is entitled ROSSETT GREEN P.U.D. SUBDIVISION PLAT. This Declaration is being imposed upon the Property.

B. Declarant has deemed it desirable to establish covenants, conditions and restrictions upon the Property and each and every portion thereof, which will constitute a general scheme for the improvement, development and management of the project, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property.

C. It is desirable for the efficient management of the Project, and the preservation of the value, desirability and attractiveness of the Property to create a corporation to which should be delegated and assigned the powers of managing the Project, maintaining and administering the Common Areas and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessment and charges hereinafter created and referred to and to perform such other acts as shall generally benefit the Project.

D. Rossett Green Homeowners Association, Inc., a nonprofit corporation, has been incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions aforesaid.

E. Declarant will hereafter hold and convey title to all of the property subject to certain protective covenants, conditions and restrictions hereafter set forth.

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DECLARATION

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of its interest as the same may from time to time appear in the Property shall be held and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of said interests in the Property, and the owners of said interests, in the Property, and the owners of said interests, their successors and assigns. These covenants, conditions, restrictions and easements shall run with the land and shall be binding upon all parties having or acquiring any right or title in the Property or any part thereof, and shall inure to the benefit of each owner thereof and are imposed upon the Property and every part thereof as a servitude in favor of each and every of said interests as the dominant tenement or tenements.

ARTICLE I

DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

Section 1. "Architectural Committee" shall mean and refer to the committee provided for in the Article hereof entitled "Architectural Control."

Section 2. "Articles" and "Bylaws" shall mean and refer to the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended.

Section 3. "Assessments": The following meanings shall be given to the assessments hereinafter defined:

"Regular Assessment" shall mean the amount which is to be paid by each Member to the Association for Common Expenses.

"Special Assessment" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and his Lot into compliance with the provisions of this Declaration, the Articles, Bylaws, Design Guidelines or Association Rules, or any other charge designated in this Declaration, the Articles, Bylaws, Design Guidelines or the Association Rules, together with attorneys' fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

Section 4. "Association" shall mean and refer to Rossett Green Homeowners Association, Inc., a nonprofit corporation, incorporated under the laws of the State of Utah, its successors and assigns.

Section 5. "Association Rules" shall mean rules adopted by the Association pursuant to the Article hereof entitled "Duties and Powers of the Association."

Section 6. "Board" shall mean the Board of Directors of the Association.

Section 7. "Common Areas" shall mean all of the real property in the Rossett Green P.U.D. Subdivision exclusive of the Lots, and shall include the improvements located in the Common Areas and improvements located within easements upon the Lots if the improvements are for the use and/or benefit of more than one Lot. The improvements within the Common Areas shall include, without limitation, any private storm drains, private streets, private utilities (including but not limited to water lines), private parks, easements, open space, trails and slopes owned or leased from time to time by the Association for the common use and enjoyment of the Members, which initially shall be the easements, private streets and open spaces conveyed by Declarant to the Association on the subdivision plat. All other areas and improvements shall belong to owners of the Lots.

Section 8. "Common Expenses" shall mean and refer to:

- (a) costs of maintenance, management, operation, repair and replacement of the Common Areas, and all other areas on the Property which are maintained by the Association;
- (b) costs of maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Property as provided in this Declaration or pursuant to agreement with the County;
- (c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;
- (d) the costs of utilities, trash pickup and disposal, gardening and other services benefitting the Owners and their Lots to the extent such services are paid for by the Association;
- (e) the costs of insurance covering the Common Areas;
- (f) the costs of any other insurance obtained by the Association;
- (g) reasonable reserves as deemed appropriate by the Board;
- (h) the costs of bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association;
- (i) taxes paid by the Association;

(j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;

(k) amounts of Assessments not paid by Owners and not collected or recovered by the Association;

(l) costs incurred by the Architectural Committee or other committees of the Association; and

(m) the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas, this Declaration, the Articles or the Bylaws or in the furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

Section 9. "County" shall mean and refer to the County of Salt Lake, a political subdivision of the State of Utah.

Section 10. "Institutional Mortgagee" shall mean and refer to a Mortgagee which is a bank, or savings and loan association or established mortgage company, or other entity chartered under Federal or state laws, any corporation or insurance company, any Federal or state agency, or any other institution specified by the Board in a recorded instrument.

Section 11. "Lot" shall mean and refer to a lot shown on any recorded final subdivision map or plat filed by the Declarant to the extent such lots or parcels are part of the Property.

Section 12. "Member" shall mean and refer to every person or entity who qualifies for membership pursuant to the Article of this Declaration entitled "Membership," including Declarant so long as Declarant qualifies for membership pursuant to said Article.

Section 13. "Mortgage" shall mean and refer to any duly recorded mortgage or deed of trust encumbering a Lot.

Section 14. "Mortgagee" shall mean and refer to the mortgagee or beneficiary under any Mortgage. A "First Mortgage" shall refer to a Mortgagee whose Mortgage has priority over any other Mortgage encumbering a specific Lot.

Section 15. "Owner" shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a Lot, including Declarant or the vendee under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

Section 16. "Project" shall mean and refer to all of the Property, together with all of the homes and other improvements constructed thereon.

Section 17. "Property" shall mean and refer to all the real property described on Exhibit A hereto, consisting of the entire Rossett Green P.U.D. Subdivision.

ARTICLE II

MEMBERSHIP

Section 1. Membership. Every Owner shall be a Member of the Association subject to the terms of this Declaration, the Articles, Bylaws and Association Rules. Every Owner shall also be subject to the terms and provisions of the Articles and the Bylaws of the Association to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership; provided, however, a Member's voting rights or privileges in the Common Areas, or both, may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules.

Section 2. Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of such Lot and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in his name to the transferee of such Owner's interest in such Lot, the Association shall have the right to record the transfer upon the books of the Association.

Section 3. Voting Rights. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules. Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership. When more than one person owns a portion of the interest required for membership, each such person shall be a Member and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Association shall not be required to recognize the vote or written assent of any such co-Owner except the vote or written assent of the co-Owner designated in a writing executed by all of such co-Owners and delivered to the Association.

Section 4. Approval of Members. In any matter requiring the consent of the Members, but not specifically provided for in this Declaration or the Articles, Bylaws, or any contract executed by the Association, a simple majority of the voting power of Members entitled to vote on such matter shall suffice.

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Members of the Association, for each Lot owned by them, respectively, hereby covenant and

agree to pay, and each Owner of any Lot by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association all Regular Assessments and Special Assessments, to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Owner further agrees and covenants, at the request of the Association, to sign a document granting to the Association the right to file a notice of claim of lien consistent with the provisions of Declaration. Each such Assessment, together with such interest, late charges and costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due. The personal obligation shall not pass to the successors in title of an Owner unless expressly assumed by such successors.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety and welfare of the Members and the management of the Project, enhancing the quality of life in the Project and the value of the Property including, without limitation, the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas.

Section 3. Regular Assessments. The amount and time of payment of Regular Assessments shall be determined by the Board after giving due consideration to the current maintenance, operational, and other costs and the future needs of the Association. The total amount of the Regular Assessments shall be allocated equally among the Lots of the subdivision. Not later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall estimate the total Common Expenses to be incurred for the forthcoming fiscal year. The Board shall then determine the amount of the Regular Assessment to be paid by each Member. Written notice of the annual Regular Assessments shall be sent to every Member. Each Member shall thereafter pay to the Association his Regular Assessment in installments as established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Member, and the date or dates when due.

Section 4. Uniform Rate of Assessment. Regular Assessments shall be fixed at an equal amount for each Lot and may be collected at intervals selected by the Board.

Section 5. Certificate of Payment. The Association shall, upon demand, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been

paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid as to the third party relying on such certificate, but shall constitute a rebuttable presumption of payment as to the Owner responsible for payment.

Section 6. Exempt Property. The following portions of the Property shall be exempt from the Assessments created herein: (a) all properties dedicated to and accepted by, or otherwise acquired by a public authority; and (b) the Common Areas. However, no land or improvements devoted to residential use shall be exempt from said Assessments.

Section 7. Special Assessments. Special Assessments shall be levied by the Board against a Lot to reimburse the Association for costs incurred in bringing an Owner and his Lot into compliance with the provisions of this Declaration, the Articles, the Bylaws, or Association Rules, or any other charges assessable pursuant to, or designated as a Special Assessment in, this Declaration, the Articles, Bylaws, Design Guidelines or Association Rules, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. In the event the Association undertakes to provide materials or services which benefit individual Lots and which can be accepted or not by individual Owners, such as tree trimming, such Owners in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

Section 8. Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lot by Declarant to an individual Owner; provided, however, that in the event the amount budgeted to meet Common Expenses for the current year provides to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate.

Section 9. No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

Section 10. Control of Common Areas. As provided in the Article hereof entitled "Rights in the Common Areas and Open Space," the Common Areas shall be conveyed to the Association. However, notwithstanding the foregoing, Declarant, its subcontractors, agents and employees shall have the right to enter upon on the Common Areas. Also, notwithstanding the foregoing, in the event that any of Declarant's subcontractors are contractually obligated to maintain the landscaping and/or other improvements on the Common Areas, such maintenance shall not be assumed by the Association until the termination of such contractual obligation. Neither such construction nor such maintenance shall in any way postpone the commencement of Assessments pursuant to this Article or entitle a Member to claim any offset or reduction in the amount of such Assessments. If any excess of Assessments collected over actual Common Expenses incurred by the Association is caused by reason of construction or maintenance of the Common Areas as aforesaid, or otherwise, such excess shall be placed in reserve to offset the future expenses of the Association in any manner designated by the Board.

Section 11. Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas and improvements thereon. All amounts collected as reserves, whether pursuant to the preceding sentence of this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

ARTICLE IV

NONPAYMENT OF ASSESSMENTS

Section 1. Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquency on said due date (the "Delinquency Date"). If any such Assessment is not paid within thirty (30) days after the Delinquency Date, a late charge of twenty Dollars (\$20.00) shall be levied and the Assessment shall bear interest from the delinquency date, at the rate of eighteen percent (18%) per annum. The Association may, at its option, and without waiving the right to foreclose its lien against the Lot, bring an action at law against the Member personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in Section 2 of this Article, to foreclose the lien against the Lot. If action is commenced, there shall be added to the amount of such Assessment the late charge, interests, the costs of preparing and filing the complaint in such action, and attorneys' fees incurred in connection with the commencement of such action and in the event a judgment is obtained, such judgment shall include said late charge, interest and a reasonable attorney's fee, together with the costs of action. Each Member vests in the Association or its assigns, the right and power to bring all actions at law and/or for lien foreclosure against such Member or Members for the collection of such delinquent Assessments.

Section 2. Notice of Lien. The Association is hereby authorized to file a notice of claim of lien against an Owner's lot pursuant to the provisions of this Declaration. Each Owner by acceptance of a deed or other conveyance creating in an Owner the interest required to be deemed an Owner, consents and agrees that the Association may record a notice of claim of lien. No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the County Recorder of the County in which the Covered Property is located. Said notice of claim of lien must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which shall include interest on the unpaid Assessment at the rate of eighteen percent (18%) per annum, a late charge of Twenty Dollars (\$20.00), plus reasonable attorneys'

fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

Section 3. Foreclosure Sale. Said Assessment lien may be enforced by sale by the Association, its attorney or any other person authorized to make the sale after failure of the Owner to make the payments specified in the notice of claim of lien within said thirty (30) day period. Any such sale provided for above is to be conducted in accordance with the provisions of the statutes of the State of Utah as said statutes may from time to time be amended, applicable to the judicial foreclosure of mortgages or deeds of trust of exercise of powers of said in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Association may appoint as the trustee to conduct said sale with a deed of trust or power of sale procedure, any person or entity qualified to act as a trustee under the Utah deed of trust statutes. The Association, through its duly authorized agents, shall have the power to bid on the Lot, using credit bid or Association funds, or funds borrowed for such purpose, at the sale, and to acquire and hold, lease, mortgage and convey the same.

Section 4. Curing of Default. Upon the timely payment, or other satisfaction, or (i) all delinquency Assessments specified in the notice of claim of lien, (ii) all other Assessments which have become due and payable with respect to the Lot as to which such notice of claim of lien was recorded and (iii) interest, late charges and attorneys' fees pursuant to this Declaration and the notice of claim of lien which have accrued, officers of the Association or any other persons designated by the Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the default Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or record such release.

Section 5. Cumulative Remedies. The lien provided under this Article and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. Appointment of Architectural Committee. Declarant shall initially appoint an Architectural Committee consisting of not less than three (3) persons who need not be Members. Declarant shall retain the right to appoint, augment or replace members of the Architectural Committee so long as it owns a single majority of the lots. At such time as Declarant no longer owns a majority of the lots, the right to appoint, augment or replace members of the Architectural Committee shall automatically be transferred to the Board.

Section 2. General Provisions.

(a) The Architectural Committee may establish reasonable rules and may assess a reasonable fee for submission of plans in connection with review of plans and specification including, without limitation, the number of sets of plans to be submitted.

(b) The Architectural Committee may delegate its plan review responsibilities to one or more members of such Architectural Committee. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Architectural Committee. Unless any such rules regarding submission of plans are complied with, such plans and specifications shall be deemed not submitted. The Architectural Committee may also employ such architects, engineers and other consultants as it deems necessary to carry out its responsibilities.

(c) The address of the Architectural Committee shall be the principal office of the Association as designated by the Board pursuant to the Bylaws. Such address shall be the place for the submittal of plans and specifications and the place where the current design guidelines shall be kept.

(d) The establishment of the Architectural Committee and the systems herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter, modify or otherwise have control over the Dwellings or Lots as may otherwise be specified in this Declaration, the Bylaws or in any Association Rules.

Section 3. Design Guidelines; Approval and Conformity of Plans. The Architectural Committee shall, from time to time, adopt, promulgate, amend and repeal design guidelines to be administered through the Architectural Committee; provided, however, that the design guidelines shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the design guidelines as they may from time to time be adopted, amended or repealed shall be delivered to each Owner in the same manner established in this Declaration for the delivering of notice. Upon such deliver, said design guidelines shall have the same force and effect as if they were set forth in and were a part of this Declaration. The design guidelines, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Institutional Mortgagee upon request. The design guidelines shall include, among other things, the following restrictions and limitations which are hereby imposed upon the Owners:

(a) If the design guidelines so provide, no building, fence, wall or other Structure shall be commenced, erected or maintained upon the Covered Property, nor shall any landscaping be commenced, installed or maintained upon the Covered Property, nor shall any addition to or change in the exterior of any Dwelling, Structure or other improvement or landscaping be commenced, erected, installed or maintained unless and until plans and specifications therefor have been submitted to an approved by the Architectural Committee;

(b) Time limitations for the completion of any improvements for which approval is required pursuant to the design guidelines; and

(c) All completed improvements shall strictly and completely conform to the plans and specifications approved by the Architectural Committee pursuant to the design guidelines.

In addition, the design guidelines may include such other limitations and restrictions as the Architectural Committee in its reasonable discretion shall adopt including, without limitation, the regulation of the following: construction; reconstruction, exterior addition, change or alteration to or the maintenance of any building, structure, wall, fence, landscaping, drainage, or grade, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of such Dwelling or structure.

Plans and specifications are not approved for engineering design, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any Structure constructed from such plans and specifications.

Section 4. Appeal. In the event plans and specifications submitted to an Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to Declarant, so long as Declarant retains the right to appoint the Architectural Committee, and thereafter to the Board. The written request must be received by Declarant or the Board, as appropriate, not more than thirty (30) days following the final decision of the Architectural Committee. Declarant or the Board, as appropriate, shall submit such request to the Architectural Committee for review, whose written recommendations will be submitted to Declarant or the Board, as appropriate. Within forty-five (45) days following receipt of the request for appeal, Declarant or the Board, as appropriate, shall render its written decision.

Section 5. Non-Applicability to Declarant. The provisions of this Article shall not apply to any Lot owned by Declarant or prior to its first conveyance to a member of the public, nor shall the provisions of this Article apply to Common Areas prior to conveyance to the Association.

ARTICLE VI

DUTIES AND POWERS OF THE ASSOCIATION

Section 1. General Duties and Powers of the Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(a) enforce the provisions of this Declaration, the Articles and the Bylaws by appropriate means and carry out the obligations of the Association hereunder, including without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, the promulgation of the Association Rules as provided in the Bylaws and Section 2 of this Article, which shall include the establishment of a system of fines or penalties enforceable as Special Assessments;

(b) acquire, maintain and otherwise manage all of the Common Areas and all facilities, improvements and landscaping thereon, and all personal property acquired by the Association;

(c) pay any real and personal property taxes and other charges assessed against the Common Areas unless the same are separately assessed to the Owners;

(d) obtain, for the benefit of the Common Areas, all water, gas and electric, refuse collections and other services, if any;

(e) obtain, for the benefit of the Lots, all water and other utility or other services needed to serve the Lots.

(f) grant easements where necessary for vehicular and pedestrian ingress and egress, utilities and sewer facilities over the Common Areas for the benefit of individual Lots within the Property and/or to serve the Property as provided in the Article hereof entitled "Rights in the Common Areas";

(g) contract for and maintain such policy or policies of insurance as may be required by the Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members;

(h) delegate its powers to committees, officers, or employees as provided in the Bylaws, employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association;

(i) establish and maintain a working capital and contingency fund in an amount to be determined by the Board;

(j) have the duty to maintain architectural control over the property and appoint Architectural Committees in connection therewith, pursuant to the Article hereof entitled "Architectural Control";

(k) have the power of entry upon any Lot where necessary in connection with inspection, construction, maintenance or repair for the benefit of the Common Areas, or the Owners;

(l) provide snowplowing service for the benefit of the Owners and their Lots;

(m) acquire real property easements, or other interests in real property by lease or purchase for the benefit of individual Lots within the Covered Property, offices or other facilities that may be necessary or convenient for the management of the Common Areas, the administration of the affairs of the Association or for the benefit of the Members or any of them; and

(n) negotiate contracts for portions of the Common Areas, provided that any such contract with an affiliate of Declarant having a term of more than one (1) year shall require the majority vote or written approval of the Members.

Section 2. Association Rules. The Board shall also have the power pursuant to the procedures set forth in the Bylaws to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules"). The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be delivered to each Owner in the same manner established in this Declaration for the delivering of notices. Upon such delivery, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Institutional Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, the Articles or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

Section 3. Delegation of Powers. The Association shall have the right according to law, to delegate any of its powers under this Declaration, the Articles and Bylaws, provided however, no such delegation, whether to a professional management company, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

ARTICLE VII

REPAIR AND MAINTENANCE

Section 1. Repair and Maintenance by Association. Without limiting the generality of the statement of duties and powers contained in this Declaration, the Association shall have the duty to accomplish the following upon the Lots, Common Areas or other land in such manner and at such times and the Board shall prescribe:

(a) maintain all access easements, private streets and adjacent streetscapes within the Covered Property.

(b) maintain, repair, restore, replace and make necessary improvements to the Common Areas; and

(c) maintain all utility and drainage facilities and easements located on the Common Areas in accordance with the requirements of the applicable flood control district.

Section 2. Repair and Maintenance by Owner. Except as the Association shall be obligated to repair and maintain as may be provided in this Declaration, every Owners shall;

(a) maintain the exterior of his Dwelling, walls, fences and roof of his Dwelling in good condition and repair; and

(b) install and thereafter maintain in attractive and viable condition all landscaping in accordance with the provisions of this Article.

Section 3. Right of Association to Maintain and Install. In the event any Owner fails to maintain the exterior of his Dwelling or the walls, fences and roof thereof, or to install and thereafter maintain landscaping on his Lot in accordance with this Article, the Association may cause such maintenance and installation to be accomplished as hereinafter set forth.

(a) Upon finding by the Board of a deficiency in such maintenance or installation, the Board shall give notice of deficiency to the responsible Owner which shall briefly describe the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its power under this Subsection to a duly appointed committee of the Association.

(b) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of such notice.

(c) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt and which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine adverse witnesses. If the Board or any such committee renders a decision against the responsible Owner, it shall further set a date by which the deficiency is to be corrected by the responsible Owner. A decision of such committee may be appealed by the Board, but a decision of the Board shall be final.

(d) If the deficiency continues to exist after the time limitation imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance or installation to be accomplished.

(e) If the Association pays for all or any portion of such maintenance or installation, such amount shall be a Special Assessment to the affected Owner and Lot.

ARTICLE VIII

INSURANCE

Section 1. Types. The Association, to the extent available, may obtain and continue in effect in its own name and insurance as the Board deems appropriate, including but not limited to:

(a) A comprehensive policy of public liability insurance covering the Common Areas for claims for personal injury and/or property damage.

(b) A policy of fire and casualty insurance with extended coverage for the full replacement value of the improvements situated on the Common Areas and with clauses waiving subrogation against Members and the Association and persons upon the Covered Property with the permission of a Member, and which may afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsements, by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as may customarily be covered with respect to similar developments in the area of the Property.

(c) Fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Association.

Section 2. Waiver By Members. As to each of said policies which will not be voided or impaired thereby, the Members whereby waive and release all claims against the Association, the Board, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

Section 3. Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association.

ARTICLE IX

RESIDENTIAL AREA COVENANTS

Section 1. Planned Use and Building Type. No lot shall be used except for single family residential purposes. No building shall be erected, altered, placed, or permitted to remain

on any lot other than detached single family dwellings not to exceed two stories in height with a private garage for not less than two vehicles and for not more than four vehicles. Three car garages will be required for all homes unless otherwise approved by the Architectural Control Committee.

Section 2. Architectural Control. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure upon the lot have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and to location in respect with topography and finish grade elevation. No fence or wall shall be erected; placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved. All requests for approval shall be as provided herein. Two sets of plans must be submitted for this purpose, one set will remain in the developer's office.

Section 3. Dwelling Quality and Size. Except as otherwise provided herein, no dwelling shall be permitted on any lot wherein the ground floor area of the main structure, exclusive of one store open porches and garages, shall be less than 2000 square feet for single story homes. For two store homes the combined footage for both floors shall not be less than 3,200 square feet. The Rossett Green Homeowners Association Architectural Control Committee shall have the right, at its sole discretion, to approve homes for construction where the floor area is less than specified above.

Section 4. County and Other Approval. Approval of any improvements by the Architectural Control Committee does not constitute approval by any governmental entity and shall not excuse or waive compliance with any requirement of such entity. By approving plans, the Architectural Control Committee assumes no responsibility for plan conformity to any other criteria other than the requirements of this Declaration of Protective Covenants.

Section 5. Building Location.

- (a) Building Location must conform to the requirements of Salt Lake County.
- (b) For the purpose of this covenant, eaves, steps, and porches shall not be considered as a part of a building, provided however, that this shall not be construed to permit any portion of a building on a lot to encroach upon any other lot.

Section 6. Roofing and Exterior Materials. All exterior materials utilized on dwellings and other structures shall consist of stone, brick, wood and etc. Acrylic stucco may also be used as a siding material. Aluminum, steel and vinyl siding may only be used for soffit and fascia unless otherwise approved by the Architectural Control Committee in writing. The roofing material for all homes or other structures built on any lot shall be either cedar shingles, tile or architectural grade laminated shingle.

Section 7. Chimneys. Chimneys of approved exterior materials may not exceed the height required by appropriate governmental agencies. Exposed metal flues are not permitted with the exception of copper.

Section 8. Paving. Driveway and other flat paved areas may be concrete, exposed aggregate concrete, stamped concrete, asphalt, quarry tile, brick or paving blocks. Gravel areas are not permitted.

Section 9. Solar Equipment. Solar panels are to be integrated into roof design. Panels and frames must be copper or compatible with roof colors and all equipment must be screened from view.

Section 10. Antennas. All antennas are restricted to the attic or interior of the residence. It is mandatory that all homes be pre-wired for cable reception. Satellite dish antennas shall be allowed if their location and size are approved by the Architectural Control Committee.

Section 11. Pools, Spas, Fountains, Gamecourts. Any desired pools, spas, fountains and gamecourts must be approved by the Architectural Control Committee and shall be located to avoid impacting adjacent properties with light or sound. No gamecourt shall be located in front or side yards. Pool heaters and pumps must be screened from view and sound insulated from neighboring houses. Nothing herein shall be construed as permitting the construction of skateboard areas and/or ramps, which structures are prohibited.

Section 12. Sheet Metal, Flashing and Vents. All sheet metal, flashing, vents and pipes must be colored to match the material to which they are attached or from which they project, with the exception of copper, which is allowed in any event.

Section 13. Mechanical Equipment. All air conditioning, heating equipment, and swamp coolers are not permitted on roofs or through windows and approved by the Architectural Control Committee.

Section 14. Gas and Electric Meters. Meter locations are to be designed into the architecture of the dwelling and screened from view.

Section 15. Exterior Lighting. To provide site and road lighting, each lot Owner is required to use in the front yard a minimum of four (4) Hubbell Hercules Louver lights Model No. 571-3-7FBV fluorescent ground lights, or such other quantity and/or model as designated and/or approved by the Architectural Control Committee. The lights must be photo cell controlled, and shall be installed when the property is initially landscaped. In addition to the foregoing, Owners shall be permitted to utilize accent and spot lights on their Living Units.

Section 16. Metal Awnings. Metal awnings, metal “lean-tos.” or metal patio covers shall not be permitted on any Lot.

Section 17. Construction Time Following Purchases. The purchaser or owner of any building lot within the subdivision who or which purchases from Declarant, shall within one year from the purchase date of said lot, commence construction and having commenced construction upon said lot, shall continue therewith and have the dwelling structure upon the lot ready for occupancy as a residence within 18 months from the date construction is commenced. Landscaping of any dwelling shall be completed within 12 months after the initial occupancy.

Section 18. Easement. For the installation of and maintenance of utilities and drainage facilities, areas are reserved as shown on the recorded plat. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the area, or which may obstruct or retard the flow of water through drainage channels in the easement. The easement area of each of the lots and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

Section 19. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No clothes line or storage or any articles which are unsightly in the opinion of the Architectural Control Committee will be permitted. No automobiles or other vehicles are to be stored on streets or front yards or side yards unless they are in running condition, properly licensed, and are being regularly used. No trailers, campers, boats, or other recreational vehicles shall be stored on the streets or on the yards of any lot unless parked in an enclosed garage. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Lot, Private Street or other Common Areas, except that these restrictions shall not apply to emergency or minor repairs to vehicles.

Section 20. Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, barn, or other out building shall be used on any lot at any time as a residence either temporarily or permanently.

Section 21. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste and all such items smut be kept in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each lot and its abutting street are to be kept free of trash, weeds and other refuse by the lot owner. No unsightly material or objects are to be stored on any lot in view of the general public.

Section 22. Animals and Pets. Dogs, cats or other household pets may be kept as permissible within current zoning regulations provided that they are not kept, bred, or maintained

for any commercial purpose and are restricted to the owner's premises and under the owner's control. Whenever a pet is allowed to leave a Lot, it shall be kept on a leash or in a cage. Any droppings from household pets in any outside area shall be cleaned up immediately by the owner or owners of said household pets. No pets shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance. The exterior structure for the care, housing or confinement of any such pets shall be maintained by the lot Owner and approved by the Architectural Control Committee. Any Owner or other resident within the Development who violates this Section shall be subject to such penalties as the Association by resolution may provide. No horses or other farm animals shall be allowed on any lots within the subdivisions.

If in the opinion of the Architectural Control Committee, any of the aforementioned animals or pets become an annoyance, nuisance or obnoxious to other owners within the subdivisions, the committee may require a reduction in the number of animals or pets permitted or removal of any such animal or pet.

Section 23. Landscaping. Trees, lawns, shrubs or other plantings provided by the owner of each respective lot shall be properly nurtured and maintained.

Section 24. Street Trees. The owner of each lot shall be required to install one 2 inch caliper shade tree of a variety specified by the Architectural Control Committee for each 30 feet of street frontage. The trees shall be centered between the sidewalk and curb. Trees shall be installed when the property is initially landscaped. Architectural Control Committee may, at its sole option elect to waive or reduce this requirement for any or all lots.

Section 25. Recreational and Commercial Vehicles and Boats. No campers, trailers, large trucks and commercial vehicles belonging to Owners or other residents of the Property or guests shall be parked within the Development, except for temporary parking not to exceed forty-eight (48) hours.

Section 26. Subdivision of Lots. No owner of any lot within the subdivision shall at any time be permitted to subdivide his lot into two or more sublots less in square foot area than the area of the lot at the time of its initial purchase.

ARTICLE X

EASEMENTS

Section 1. Easements for installation and maintenance of utilities and drainage facilities, and all other easements, are reserved in those easement areas on the Lots as shown on the recorded plat or herein set forth.

Section 2. Wherever sanitary sewer, culinary water, irrigation water, electricity, gas, telephone and cable television or drainage lines and/or facilities are installed within the subject

property, the owners of any lot served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the lots owned by others, or to have utility companies enter upon the lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below. Any premises so entered shall be restored by those entering to as near its original condition as is reasonably possible.

ARTICLE XI

COMMON AREAS, OWNERSHIP AND MANAGEMENT

Section 1. Common Areas and Facilities. The common areas and facilities of the subject property are as defined in this Declaration and include the area located contiguous to Creek Road and the area on west side of Rossett Green Lane, and those areas and facilities more particularly designated as such on the plat attached hereto as Exhibit "A" and by this referenced made a part hereof.

Section 2. Ownership - Association of Property Owners. The Association shall own, administer and manage the Common Areas upon the terms and conditions specified in this Declaration. All common expenses shall be shared and allocated equally owner the lots within the subject property with each lot considered to hold one share with the total lots representing 100% of such shares.

Section 3. By-Laws of Property Owners Association. The procedure for administration and management of the common areas and facilities of the subject property shall be governed by the Bylaws, a copy of which is available to the owners of the Lots from the Association.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens and Association Rules, the Association shall have the exclusive right to enforcement thereof. The Association or any Member shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto.

Failure by the Association, Declarant or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles and the Bylaws, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same covenant, condition or restriction.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for a successive period of ten (10) years, unless an instrument, signed by a majority of the then Members has been recorded, at least one (1) years prior to the end of any such period agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Covered Property and the Common Areas. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Amendments. Subject to the other provisions of this Declaration, including, without limitation, the Article hereof entitled "Insurance," this Declaration may be amended only by the affirmative vote of not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members, and, further, this amendment provision shall not be amended to allow amendments by the vote of less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members.

Section 6. Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and neuter.

Section 7. Nuisance. The result of every act or omissions, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

Section 8. Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Special Assessment with respect to the Lot involved in the action.

Section 9. Notices. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice or, if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the mail within Salt Lake County, Utah, shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivery on all such co-Owners.

(b) Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice or, if no such address is furnished, to any office of the Mortgagee in Salt Lake County, Utah, or, if no such office is located in said County, to any office of such Mortgagee.

Section 10. Obligations of Declarant. So long as Declarant is utilizing the easement described in the Section entitled "Construction and Sales" of the Article in this Declaration entitled "Easements," Declarant shall not be subject to the provisions of the Article entitled "Architectural Control" or the provisions of the Article entitled "Use Restrictions."

Section 11. Effect of Declaration. This Declaration is made with the intent to establish a general scheme for the use, occupancy and enjoyment of the Covered Property and each and every Lot and portion thereof. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

Section 12. Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant, or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

Section 13. Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee or any other committee of the Association or any member of such Board of committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, ct, omissions, error, negligence or the like make in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 14. Leases. Any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a "lease") shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws and the Association Rules. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing. Any Owner who shall lease his Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, Bylaws and Association Rules.

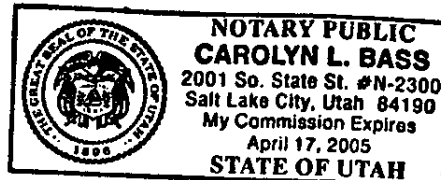
Section 15. Construction by Declarant. Nothing in this Declaration shall limit the right of Declarant and its successors in interest to alter the Common Areas or the Lots, or to construct such additional improvements as Declarant and its successors in interest deem advisable prior to completion and sale of the Lots or Common Areas. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant any time prior to acquisition of title by a purchaser from Declarant to establish on the Property additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Project.

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

PERFORMANCE PROPERTIES, LLC,
a Utah limited liability company

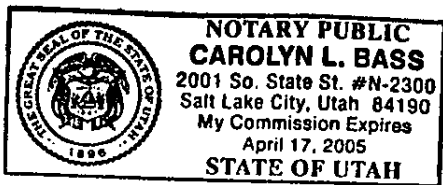
By 
Jay A. Chamberlain, Manager

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



On this 1st day of April, 2002, personally appeared before me Jay A. Chamberlain, who being by me duly sworn did say that he the said Jay A. Chamberlain is the

Manager of Performance Properties, LLC and has executed the same.



Carolyn L. Bass
NOTARY PUBLIC
Residing in Salt Lake City, Utah

My Commission Expires:

April 17, 2005

EXHIBIT A

Legal Description of the Property

Beginning at a point that is N.89°41'22"W along the section line 1322.08 feet from the Center of the Section 34, Township 2 south, Range 1 East, Salt Lake Base and Meridian; thence South 610.00 feet to the Northeast Corner of The Oaks Subdivision as recorded in book 85-2, Page 25; thence N.59°14'30"W. 77.32 feet; thence N.29°00'23"W. 23.60 feet; thence N.48°01'57"W. 34.39 feet; thence N.78°08'33"W. 60.90 feet; thence N.62°47'33"W. 15.11 feet; thence North 508.358 feet; thence S.89°41'22"E. 176.496 feet to the point of beginning.

CONTAINS 5 LOTS ON 2.24 ACRES.

22-34-305-036

BK8584PG0294