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RICHARD T. MAUGHAN
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DEVELOPMENT AGREEMENT
FOR THE
TUSCANY VILLAGE SUBDIVISION

07-272-0001
thru 0048

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the 7th day of ~~December, 2008~~, by and between FARMINGTON CITY, a Utah municipal corporation, hereinafter referred to as the "City," and RAINEY DEVELOPMENT, INC., a Utah corporation, hereinafter referred to as the "Developer."

[Handwritten signature]

RECITALS:

A. Developer owns approximately 16.7608 acres of land located within the City, which property is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property").

B. Developer desires to develop a project on the Property to be known as the Tuscany Village Subdivision (the "Project"). Developer has submitted an application to the City seeking approval of the Project as a conservation subdivision in accordance with the City's Laws.

C. On September 29, 2005, Developer received approval of a preliminary plat for the Project from the Farmington Planning Commission (the "Preliminary Plat"). Developer has applied to the City for final plat approval for the Project (the "Final Plat") which provides for the development of 43 single-family residential lots and approximately 3.42 acres designated as Conservation Land or Conservancy Lot, which shall be subject to permanent conservation easement(s) in the form attached hereto as Exhibit "B" restricting development on such Conservation Land in accordance with the City's Laws.

D. The Property is presently zoned under the City's zoning ordinance as LR and AA. The Property is subject to all City ordinances and regulations including the provisions of the City's General Plan, the City's zoning ordinances, the City's engineering development standards and specifications and any permits issued by the City pursuant to the foregoing ordinances and regulations (collectively, the "City's Laws").

E. Persons and entities hereafter developing the Property or any portions of the Project thereon shall accomplish such development in accordance with the City's Laws, and the provisions set forth in this Agreement. This Agreement contains certain requirements and conditions for design and/or development of the Property and the Project in addition to those contained in the City's Laws.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer hereby agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into this Agreement.

2. **Final Plat.** In connection with the City's review and approval of this Agreement, the City has held all public meetings necessary for the lawful approval of the Final Plat. The Final Plat is attached hereto as **Exhibit "C,"** has been approved by the City, and by this reference shall be made a part hereof. The Property shall be developed by the Developer and/or any subsequent developers as a conservation subdivision in accordance with the approved Final Plat.

3 **Development of the Project.** All portions of the Project must be developed in strict accordance with the approved Final Plat for the Project and any conditions of approval related thereto. No amendments or modifications to the approved Final Plat for any portion of the Project shall be made by the Developer or any subsequent developers without the written consent of the City. The Project shall be developed by Developer and/or Developer's successors and assigns in accordance with all of the requirements contained herein.

a. **Compliance with City Laws and Development Standards.** The Project and all portions thereof shall be developed in accordance with the City's Laws, the Preliminary Plat and Final Plat (and any conditions of approval related thereto), and this Agreement.

b. **Streets and Related Improvements.**

i. Developer will construct and/or improve, and will dedicate to the City the streets shown on the Final Plat for the Project. Construction and/or improvement of the streets shall include all curb, gutter, paving, sidewalks, park strips and related utilities as shown on the approved improvement drawings. All construction and improvement shall be in accordance with City-approved design and construction standards and requirements.

ii. Developer shall post a bond acceptable to the City for, and fully improve the streets shown on the Final Plat and the east half of the Frontage Road which abuts the west boundary of the Project prior to recordation of the Final Plat for the Project. The Frontage Road improvements shall include but not be limited to curb and gutter, 8 foot sidewalk (see paragraph 3.c.), and asphalt widening consistent with the improvements and cross sections approved for the Cave Hollow Plat K Subdivision and Rice Farm Estates PUD north of the Project. The City agrees to enter into a reimbursement agreement with the Developer whereby the City will pay the cost of an expanded widening of the pavement only from 3.5 feet wide (including sub-grade and base course) five and half (5.5) feet in width the entire length of the Property north to south as a system improvement whereby the entire pavement width of the street east to west shall be thirty six (36) feet enabling the Frontage Road to function as a major collector as identified on the City's Master Transportation Plan.

Frontage Road improvements shall also include an extension of a storm drain pipe (see paragraph 3.g.) running the full length of the Property south to north, and a 10" culinary water line (see paragraph 3.f.)

As part of the asphalt extension (street widening) along the easterly part of the Frontage Road (the 7.5 to 9.5 feet portion), the extension or widening shall overlay by at least 2 to 4 feet the asphalt seam in order to prevent further degradation of the asphalt surface.

iii. Developer shall install curb and gutter with asphalt widening (not sidewalk) consistent with the improvements and cross section approved for the East Willow Creek Subdivision south of the Project along the frontage of the property identified by the Davis County Tax I.D. #07-070-0064 to tie to existing improvements installed in the East Willow Creek Subdivision. The City agrees to enter into a reimbursement agreement with Developer to reimburse 100% of the cost of the aforesaid improvements within 30 days of invoice.

c. Conservation Land, and Constrained or Sensitive Lands.

i. Developer shall preserve open space, including all constrained or sensitive lands, within the Property as shown on the Final Plat which includes Parcels A, B, C, D and E and land contained within Lot 43, a conservancy lot as set forth in Chapter 12 of the City's Zoning Ordinance, all together identified hereby as "Conservation Land". All Conservation Land as identified on the Final Plat shall be preserved by a permanent conservation easement or easements in the form attached hereto as **Exhibit "B"**. The conservation easement or easements shall be recorded concurrently with the recording of the Final Plat for the Project.

ii. All portions of the Property above the elevation of 4218 feet above sea level are presently zoned LR and that area below the 4218 mark is zoned AA. Approximately 3.65 acres, which includes constrained lands or wetlands, must be preserved as Conservation Land, but the Developer is only allocating 3.42 acres of property as such within the Project. Nevertheless, the City hereby agrees to grant a waiver pursuant to Section 12-12-065 of the Zoning Ordinance for the remaining required 0.17 acres of Conservation Land in exchange for the Developer: 1) creating a Parcel E on the Final Plat running the full length of the Property north to south adjacent to the Frontage Road (excluding the 1600 South Street right-of-way) thereby providing an area for a buffer consistent with the area abutting the Frontage Road right-of-way in the Willow Creek Subdivision south of the Project; 2) conveying fee title for Parcel E to the City concurrent with recordation of the Final Plat for the Project; 3) paying the cost of landscape material for said buffer area to the City at one dollar (\$1.00) a square foot or approximately thirty-five-hundred dollars (\$3,500.00), not including land outside the Project, before or concurrently with the recordation of the Final Plat (City shall install landscaping and maintain the area); 4) providing a trail as set forth herein and the density or number of lots

determined for the Project was based on a yield plan consistent with AA zoning as referenced herein. Furthermore, as previously agreed, the Developer has obtained approval to rezone the area within the Project west of the elevation of 4218 feet above sea level from LR to AA further limiting the density of the project.

iii. Developer shall submit a maintenance and ownership plans for the Conservation Land acceptable to the City as set forth in the City's Zoning Ordinance prior to the recordation of the Final Plat for the Project.

iv. The Developer shall convey land and/or an easement 20 feet in width for and construct a dirt trail acceptable to the City with 10 feet of the land and/or easement on the east side of Lots 41 and 10 feet on the west side of Parcel B running the entire length of the lot from north to south as shown on the Final Plat. It is anticipated that the City may extend said trail to the north in the future. The trail is intended for pedestrian, equestrian, bicycle, and public maintenance vehicle use only—non public motorized vehicle use of the trail shall be prohibited. The City, at its sole discretion, may pave the trail in the future.

v. The City agrees to enter into a reimbursement agreement with the Developer whereby the City will pay the cost of widening the sidewalk on the Frontage Road (including sub-grade and base course) from five (5) feet to eight (8) feet, and 4 inches thick, the entire length of the Property north to south as a system improvement as identified on the City's Trail Master Plan.

d. Floodway or Flood Plain Protection. Developer shall identify the FEMA 100 year flood plain on the Final Plat for the Project as set forth in the Farmington City Subdivision Ordinance.

e. Building Permits. The City shall not issue any building permit on any lot or for any unit within the Project until water, fully-operational fire hydrants, sewer and any utility located under the street surface, including necessary grading, storm drains and/or subsurface drainage facilities pursuant to a subdivision grading and drainage plan required and approved by the City for the Project, are installed by the Developer and accepted by the City and/or appropriate agencies. The City shall not issue any building permits on any lot within the Project until the Developer provides "as-built" drawings acceptable to the City which have been prepared and certified by an engineer licensed by the State of Utah for all required public improvements related to the Project. Except as provided for in Section 12-2-045 of the Farmington City Code, no building permits shall be issued within the Project until the Developer provides continuous access to units or sites throughout the Project by a street or streets acceptable to the City with an all-weather asphalt or concrete surface sufficient to provide access for emergency vehicles. Developer hereby agrees to perform all work necessary to ensure that the streets will remain fully accessible at all times. The Developer agrees at the earliest time weather permits, to install, at Developer's sole expense, permanent hard surface material on all streets in the subdivision in accordance with the City's specifications.

f. Utilities and Infrastructure.

i. Developer shall install or cause to be installed natural gas, underground electrical service, sanitary sewer, culinary and pressure irrigation water supply systems, and storm drainage facilities as required by the City for the Project up to the boundary lines of the Project and any off-site improvements required to serve the Project. Such installations shall be done according to the reasonable and customary design and construction standards of the utility providers and the City Engineer.

As a mutual benefit to both parties, Developer has agreed to bond for and extend a 10 inch culinary water line from the northerly boundary of the Project southerly in the Frontage Road and to connect it to a culinary water line at the west end of Lund Lane south of the Project. City agrees to enter into a reimbursement agreement with the Developer whereby the City will pay one half the cost incurred to install an 8 inch culinary water line and the upsizing cost of increasing the pipe size from 8 inches to 10 inches in the Frontage Road adjacent to the East Willow Creek Subdivision up to and including the connection at Lund Lane. In addition, the City will reimburse Developer for the marginal cost of the pipe over and above an 8 inch water line for that portion of the water line in the Frontage Road north of the north boundary of the East Willow Creek Subdivision to 1600 South Street.

ii. Developer shall make arrangements with and shall comply with the requirements of the Central Davis Sewer District to provide public sanitary sewer service to the Project and all phases thereof.

iii. All off-site improvements will be constructed and installed in a timely manner in order to coincide with development of the various phases of the Project.

iv. Developer shall make arrangements with and shall comply with all of the requirements of the Benchland Irrigation District ("Benchland") to provide secondary water service to each lot within the Project. Where appropriate, Developer shall construct secondary water lines and facilities for the Project in a manner acceptable to Benchland in order to ensure delivery of secondary water to properties located within the Project.

v. All public improvements for the Project shall be constructed and installed at the Developer's sole expense in accordance with the City's construction standards and the City's Laws.

g. Grading and Drainage, Storm-water Run-off, Erosion Control, and Revegetation Plans. Developer shall provide grading and drainage, erosion control and revegetation plans for the Project for review and approval by the City. These plans for the Project shall be prepared by a licensed engineer, and a landscape architect or other appropriate nursery professional mutually agreed upon by the parties. These plans shall

identify the type and show the location of existing vegetation, the vegetation to be removed and method of disposal, or stabilization measures to be installed while new vegetation is being established. All areas of the Project cleared of natural vegetation in the course of construction shall be replanted with vegetation possessing erosion control characteristics at least equal to the natural vegetation which was removed. Developer shall prepare an erosion control plan and implement best management practices (BMP's) altogether acceptable to the City designed to minimize erosion and displacement of soils from the site consistent with the City's Storm Water Management Plan. Developer shall post a bond acceptable to the City to ensure implementation of the grading and drainage, erosion control, and revegetation plans for the Project. The warranty period for this bond shall not be less than two growing seasons from the time the planting of the revegetation is complete.

The Farmington City Storm Drain Master Plan calls for a regional detention basin to be located in the vicinity of the Property. Portions of the regional detention basin may be located on the Property. Until such time as the regional detention basin, or portions thereof, are constructed on the Property or off-site, the Developer shall design and provide a temporary detention basin acceptable to the City and designed appropriately to contain the storm water run-off from the Project. Developer shall provide an easement to the City for a detention basin located at the west end of the Property to only serve the drainage needs for the Project. In the event that said temporary detention basin is incorporated as part of a larger regional detention basin it shall become a permanent detention basin. In the event the City acquires property or an easement outside the Property for a detention basin designed to contain storm water for the entire region including storm water from the Project, the City shall abandoned and revoke the temporary basin and easement located at the west end of the Project. Conservation easement or easements shall prevent lots from being built in the Conservation area in the event the drainage easement is terminated.

As set forth in paragraph 3.b. above the Developer shall install and bond for a storm drain pipe concurrent with the recordation of the Final Plat as approved by the City Engineer to convey storm water south to north along the entire length of the western boundary of the Property. Moreover, Developer shall install an 24 inch to 36 inch storm drain pipe in a manner acceptable to the City from the east side of 200 East (including an inlet box) westerly in rights-of-way within the Project to a detention basin located in the northwest portion of the Project. City agrees to enter into a reimbursement agreement with the Developer whereby the City will pay to the Developer forty-two percent (42%) of the cost incurred for the construction of said east to west storm drain pipe.

h. Easements. All required easements, including temporary construction easements, for infrastructure improvements will be granted at no cost to the City and its contractors by the Developer and its successors and assigns for the construction of any public improvements required by the City. These easements shall be subject to the approval of the City Engineer and the City Attorney. Developer hereby agrees to grant and convey at no cost to the City a satisfactory easement for drainage pipes across the Property to be shown on and dedicated as part of final plats for each phase of the Project in locations mutually satisfactory to the City and the Developer. The City shall have the right to determine the amount of

flows to be passed through the easement. The drainage easements shall provide for the flow of water and drainage over and through the Property at the locations specified in said easements.

i. Dedication and Donation. Prior to, or concurrent with, the recording of the final plat for the Project in the office of the Davis County Recorder, the Developer agrees to dedicate, transfer and voluntarily donate to the City all required easements for the purposes of constructing, installing, operating, maintaining, repairing and replacing public utilities and improvements located within the Project by the Developer. Developer will take such actions as are necessary to obtain release of any monetary encumbrances on any property to be dedicated to the City at the time of final plat approval for the Project and to cause the owner of the Property to dedicate and donate the same without cost to the City.

j. Required Changes. If any revisions or corrections of plats or plans already approved by the City shall be required by any other governmental entity having jurisdiction or lending institutions involved in financing, the Developer and the City shall cooperate where appropriate to obtain or develop reasonable, mutually acceptable alternative plans or plats. Developer shall have the sole duty and responsibility to obtain approval from any other governmental entities having jurisdiction with respect to the Project as needed.

k. Construction Standards and Requirements. All construction shall be conducted and completed in accordance with the development standards of the City, the City's Laws and the terms of this Agreement. All required public improvements for the Project shall be constructed in accordance with the City's construction standards and shall be dedicated to the City. Prior to commencing any construction or development of any building, structures or other work or improvements within the Project, the Developer shall secure any and all permits which may be required by the City or any other governmental entity having jurisdiction over the work. Except for the City's obligations set forth in the parties' Sales Agreement, the Developer shall construct, or cause to be constructed, all improvements for the Project in conformity with all applicable federal, state and/or local laws, rules and regulations.

i. Security. Developer shall provide the City with security in a form satisfactory to the City to guarantee the installation and completion of all public improvements to be constructed by Developer within the Project and/or the Property or any portion thereof, as required in accordance with the City's Laws.

Security provided by the Developer shall also include funds to ensure revegetation acceptable to the City consistent with a revegetation plan prepared by Developer and approved by the City for all cuts and fills or any and all graded and disturbed areas related to the Project.

ii. Inspection by the City. The City may, at its option, perform periodic inspections of the improvements being installed and constructed by the Developer and its assigns or their contractors. No work involving excavation shall be covered

until the same has been inspected by the City's representatives and/or the representatives of other governmental entities having jurisdiction over the particular improvements involved. Developer, or its assigns as the case may be, shall warrant the materials and workmanship of all public improvements installed by Developer and its contractors within the Project and to be dedicated to the City for a period of twelve (12) months from and after the date of final inspection and approval by the City of the improvements in that phase. All buildings shall be inspected in accordance with the provisions of the International Building Code.

iii. **Maintenance During Construction.** During construction, the Developer and the City and their contractors shall keep the Project and all affected public streets therein, free and clear from any unreasonable accumulation of debris, waste materials, mud, and any nuisances created by their actions, and shall contain their construction debris and provide dust and mud control so as to prevent the scattering via wind and/or water.

4. **Payment of Fees.** The Developer shall pay to the City all required fees in a timely manner. Fees shall be paid in those amounts which are applicable at the time of payment of all such fees, pursuant to and consistent with standard City procedures and requirements, adopted by City.

5. **City Obligations.** Subject to Developer complying with all of the City's Laws and the provisions of this Agreement, the City agrees to maintain the public improvements dedicated to the City following satisfactory completion thereof and acceptance of the same by the City and to provide standard municipal services to the Project including, but not limited to, police and fire protection subject to the payment of all fees and charges charged or levied therefor by the City.

6. **Indemnification and Insurance.** Developer hereby agrees to indemnify and hold the City and its officers, employees, representatives, agents and assigns harmless from any and all liability, loss, damage, costs or expenses, including attorneys fees and court costs, arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to property of any person which shall occur within the Property or any portion of the Project or occur in connection with any off-site work done for or in connection with the Project or any phase thereof which shall be caused by any acts or omissions of the Developer or its assigns or of any of their agents, contractors, servants, or employees at any time. Developer shall furnish, or cause to be furnished, to the City a satisfactory certificate of insurance from a reputable insurance company evidencing general public liability coverage for the Property and the Project in a single limit of not less than One Million Dollars (\$1,000,000) and naming the City as an additional insured.

7. **Right of Access.** Representatives of the City shall have the reasonable right of access to the Project and any portions thereof during the period of construction to inspect or observe the Project and any work thereon.

8. **Assignment.** The Developer shall not assign this Agreement or any rights or interests herein without giving prior written notice to the City. Any future assignee shall consent in writing to be bound by the terms of this Agreement as a condition precedent to the assignment.

9. **Notices.** Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To Developer: Rainey Development, Inc.
Attn: Brock Johnston
520 North 900 West
Kaysville, Utah 84037

To the City: Farmington City
Attn: City Manager
130 North Main Street
Farmington, Utah 84025-0160

10. **Default.** In the event any party fails to perform its obligations hereunder or to comply with the terms hereof, within thirty (30) days after giving written notice of default, the non-defaulting party may, at its election, have the following remedies:

- a. All rights and remedies available at law and in equity, including injunctive relief, specific performance and/or damages.
- b. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or any development described in this Agreement until such default has been cured.
- c. The right to draw upon any security posted or provided in connection with the Project.
- d. The right to terminate this Agreement.
- e. The rights and remedies set forth herein shall be cumulative.

11. **Attorneys Fees.** In the event of any lawsuit between the parties hereto arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled, in addition to the remedies and damages, if any, awarded in such proceeding, to recover their costs and a reasonable attorneys fee.

12. **Entire Agreement.** This Agreement together with the Exhibits attached thereto and the documents referenced herein, and all regulatory approvals given by the City for the Property and/or the Project, contain the entire agreement of the parties and supersede any prior promises, representations, warranties or understandings between the parties with respect to the subject matter hereof which are not contained in this Agreement and the regulatory approvals for the Project, including any related conditions.

13. **Headings.** The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

14. **Non-Liability of City Officials, Employees and Others.** No officer, representative, agent, or employee of the City shall be personally liable to the Developer, or any successor-in-interest or assignee of the Developer in the event of any default or breach by the City or for any amount which may become due Developer, or its successors or assigns, for any obligation arising under the terms of this Agreement unless it is established that the officer, representative, agent or employee acted or failed to act due to fraud or malice.

15. **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns.

16. **No Third-Party Rights.** The obligations of Developer set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City. The parties hereto alone shall be entitled to enforce or waive any provisions of this Agreement.

17. **Recordation.** This Agreement shall be recorded by the City against the Property in the office of the Davis County Recorder, State of Utah.

18. **Relationship.** Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties hereto.

19. **Termination.** Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the Project is not completed within three (3) years from the date of this Agreement or in the event the Developer does not comply with the City's Laws and the provisions of this Agreement, the City shall have the right, but not the obligation at the sole discretion of the City, which discretion shall not be unreasonably applied, to terminate this Agreement and/or to not approve any additional phases for the Project. Such termination may be effected by the City by giving written notice of intent to terminate to the Developer set forth herein. Whereupon, the Developer shall have sixty (60) days during which the Developer shall be given an opportunity to correct any alleged deficiencies and to take appropriate steps to complete the Project. In the event Developer fails to satisfy the concerns of the City with regard to such matters, the City shall be released from any further obligations under this Agreement and the same shall be terminated.

20. **Severability.** If any portion of this Agreement is held to be unenforceable or invalid for any reason by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

21. **Amendment.** This Agreement may be amended only in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

“CITY”

FARMINGTON CITY

ATTEST:

Margy L. Lomas
City Recorder

By: Scott C. Smith
Mayor



“DEVELOPER”

RAINEY DEVELOPMENT, INC.

By: Bruce J. Gator
its: MANAGER

CITY ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

gd

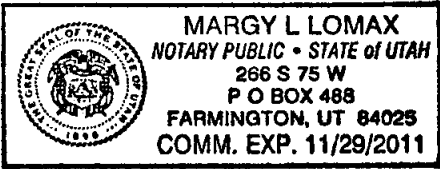
On the 7th day of Jan., ²⁰⁰⁹~~2008~~, personally appeared before me Scott C. Harbertson, who being duly sworn, did say that he is the Mayor of **FARMINGTON CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Scott C. Harbertson acknowledged to me that the City executed the same.

Margy L. Lomax
Notary Public
Residing at:

My Commission Expires:

11/29/2011

Davis Co. UT



DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this 7th day of January, 2008⁹, personally appeared before me, Brock Johnston, who being by me duly sworn, did say that he/~~she~~ is the Manager of **RAINEY DEVELOPMENT, INC.**, a Utah corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledgment to me that said corporation executed the same.

Margy L. Lomax
Notary Public
Residing at:

My Commission Expires:

11/29/2011

Davis Co. Utah

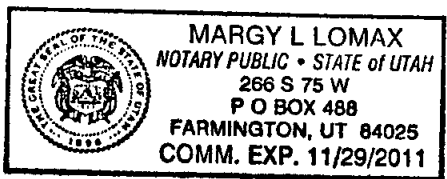


EXHIBIT "A"**PROPERTY DESCRIPTION**

Beginning at a point on the East Boundary of an 80 ft. Wide Frontage Road to the I-15 Highway which point is N89°13'22"E 343.50 ft. along the Quarter Section Line and N0°10'51"E 929.59 ft. along the centerline of said Frontage Road and N89°26'37"E 40.00 ft. from the West Quarter Corner of Section 31, T.3N., R.1E., S.L.B.& M. and running thence N0°10'51"E 202.56 ft. along said East Boundary of a Frontage Road; thence East 1,160.38 ft.; thence N8°35'19"W 225.08 ft.; thence East 819.20 ft. to a point on the West Boundary of State Highway 106 (a 66 ft. wide road); thence along said west boundary of Highway 106 in the following two courses: (i) S0°03'35"E 525.96 ft., (ii) Southerly 24.25 ft. along the arc of a 5,762.65 ft. radius curve to the left through a central angle of 0°14'28" (chord bears S0°10'49"E 24.25 ft.); thence S89°59'01"W 1,257.60 ft.; thence N12°42'00"W 135.17 ft. along the East Boundary of the Old Bamberger Railroad Right of way; thence S89°26'37"W 659.95 ft. to the point of beginning.

Containing 16.7608 Acres.

EXHIBIT "B"
CONSERVATION EASEMENT FORM

WHEN RECORDED, MAIL TO:

Farmington City
Attn: City Manager
130 North Main
P.O. Box 160
Farmington, Utah 84025

CONSERVATION EASEMENT

(OPEN SPACE)

THIS CONSERVATION EASEMENT is made this 7th day of January, 2008, by **RAINEY DEVELOPMENT, INC.**, a Utah corporation, whose mailing address is 520 North 900 West, Kaysville, Utah 84037 ("Grantor"), in favor of **FARMINGTON CITY**, a municipal corporation and political subdivision of the State of Utah, whose mailing address is 130 North Main, P.O. Box 160, Farmington, Utah 84025 ("Grantee").

RECITALS:

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

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

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

WHEREAS, Grantor intends to preserve and protect the Conservation Values of the Property as open space and to protect the Property from future development in perpetuity through this Easement and dedication of the same to Grantee; and

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

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

1. **Conveyance.** Grantor hereby grants and warrants to Grantee, a perpetual conservation easement as hereinafter defined (the "Easement") over and across all the Property to preserve, restore and protect the unique, sensitive, natural, scenic, aesthetic, open space, wildlife, ecological, floodplain and wetland values present on the Property, to have and to hold unto Grantee, its successors and assigns forever.

2. **Property.** The Property subject to this Easement consists of approximately 2.51 acres of that certain real property located in Farmington City, Davis County, State of Utah, designated as Parcels A, B, C, D and E and noted as "Conservation Easement - Restricted Use Area" on the official plat map of the Tuscany Village PUD Subdivision, located in the Northwest Quarter of Section 31, Township 3 North, Range 1 East, Salt Lake Base and Meridian, Farmington City, Davis County, State of Utah, which plat is recorded in the Office of the Davis County Recorder, State of Utah, and which Property is more particularly described in **Exhibit "A,"** attached hereto and incorporated herein by this reference.

3. **Current Use and Condition of Property.** The Property presently consists of wetlands, pasture lands, and natural open spaces. The existing, permitted, and conditional uses of the Property are more particularly described herein and designated on the Use Map set forth in **Exhibit "B,"** attached hereto and incorporated herein by this reference. The Property has the following specific conservation values: unique, sensitive, natural, scenic, aesthetic, open space, wildlife, ecological, floodplain and wetlands.

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

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

6. **Permitted and Conditional Uses.**

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

i. Conservation of open land in its natural state, including, but not limited to, preservation of wetland and upland areas.

ii. Manicured lawn and related irrigation system improvements in designated areas only as delineated in the Use Map set forth in **Exhibit "B,"** attached hereto and incorporated herein by this reference; provided: (1) a barrier acceptable to the City is provided between the natural vegetation areas and the manicured lawn areas; (2) some type of boundary line designation acceptable to the City is provided to delineate the Conservation Easement Area from adjacent private property; and (3) the lawn and/or seed type is approved by the City.

iii. Barrier and boundary line designations acceptable to the City in designated areas only as delineated in the Use Map set forth in **Exhibit "B,"** as deemed necessary for the protection and preservation of the natural vegetation areas.

iv. Detention basin facilities and related improvements in designated areas only on Parcel A as delineated in the Use Map set forth in **Exhibit "B."**

v. Sidewalks, trails or public pathways in designated areas only as delineated in the Use Map set forth in **Exhibit "B."**

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

i. Water structures, improvements, marshlands, wetlands, riparian communities and ponds may be established, constructed and maintained on the Property, provided such structures or improvements are consistent with the Conservation Values and purposes of this Easement.

ii. Underground utility facilities and easements for drainage, sewer, water, or other public facilities and purposes, including easements for maintenance access to such facilities, in locations as approved by the City of Farmington, subject to the rules and regulations of the U.S. Army Corps of

Engineers and subject to restoration of the Property to its natural condition within a reasonable time frame not to exceed ninety (90) days, unless otherwise agreed to in writing by the Grantee, which restoration shall be conducted to the reasonable satisfaction of the Grantee to protect and preserve the Conservation Values of the Property.

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

iv. Shrubs, plants and trees as part of the manicured landscaping areas in designated areas only as delineated in the Use Map set forth in **Exhibit "B."**

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

a. Any residential, commercial or industrial activity, except as expressly permitted in this Easement.

b. Any development, construction or location of any man-made modification or improvements such as buildings, structures, fences, roads, parking lots, or other improvement on the Property, except as expressly permitted in this Easement.

c. Any filling, dredging, excavating, mining, drilling, or exploration for and extraction of oil, gas, minerals or other resources from the Property.

d. Any dumping or storing of ashes, trash, garbage or junk on the Property.

e. The manipulation or alteration of natural watercourses, wetlands, or riparian communities, except as expressly permitted herein or as approved by the City of Farmington and the U.S. Army Corps of Engineers, necessary for the use of the Property and then, in any event, only to the extent that such manipulation or alteration shall not result in a significant injury to or the destruction of significant Conservation Values.

f. Burning of any materials on the Property, except as necessary for agricultural, drainage and fire protection purposes.

g. The use of motor vehicles, including snowmobiles, all-terrain vehicles, motorcycles and other recreational vehicles, except as may be necessary to maintain and operate the Property in accordance with the terms and conditions of such approved use and the maintenance plan for the Property.

h. Hunting or trapping for any purpose other than predatory or problem animal control on the Property.

i. Establishment or maintenance of any grazing or livestock feedlots on the Property, which shall be defined for purposes of this Easement as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock for hire.

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

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

l. Any cutting of trees or vegetation, except as necessary for fire protection, thinning, elimination of diseased growth, control of non-native plant species, maintenance of manicured lawn areas, and similar protective measures.

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

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

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

p. Any development, location, or storage of any personal property, vehicles, recreational equipment, or other residential uses such as trampolines, patios, gazebos, sports courts, barbeques, etc.

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

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

r. Grantee has the right to enforce the terms of this Easement for the purpose of preserving and protecting the Conservation Values of the Property.

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

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

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

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

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

x. Grantee has the right to engage in activities that restore the biological and ecological integrity of the Property. Possible activities include planting native vegetation and use of controlled fire to reduce the presence of undesirable vegetation.

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

10. **Enforcement of Easement.**

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

b. Failure to Act. If, for a 30-day period after the date of the written notice from Grantee to Grantor, the Grantor continues violating the Easement, or if the Grantor does not abate the violation and implement corrective measures requested by the Grantee, the Grantee may bring an action in law or in equity to enforce the terms of the Easement.

The Grantee is also entitled to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Property. If the court determines that the Grantor has failed to comply with this Easement, the Grantor agrees to reimburse Grantee for all reasonable costs and attorneys fees incurred by the Grantee compelling such compliance.

c. **Absence of Grantor.** If the Grantee determines that the Easement is, or is expected to be, violated, the Grantee shall make good-faith efforts to notify the Grantor. If, through reasonable efforts, the Grantor cannot be notified, and if the Grantee determines that circumstances justify prompt action to mitigate or prevent impairment of the Conservation Values, then the Grantee may pursue its lawful remedies without prior notice and without waiting for Grantor's opportunity to cure. Grantor agrees to reimburse Grantee for all costs reasonably incurred by Grantee in pursuing such remedies.

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

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

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

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

11. **Permitted Construction and Maintenance Activities.**

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

b. This Easement is subject to the rights of Grantor, Farmington City or any other agency or utility to enter upon the Property for the construction, installation, operation and maintenance of underground public utilities as permitted herein. The responsible person, entity or utility company in interest, shall, at its sole cost and expense,

promptly restore the Property affected by such activities to as near as reasonably practicable the same condition as existed immediately prior to such activities. Nothing herein shall be deemed a grant of an easement to Farmington City or to any utility; the foregoing is set forth only to establish uses or activities which may be allowed on the Property.

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

13. **Maintenance.** The Property shall be maintained by Grantor in accordance with the Maintenance Plan set forth as **Exhibit "C,"** attached hereto and incorporated herein by this reference. Grantor shall be solely responsible for the upkeep and maintenance of the Property. If Grantor fails to maintain the Property in accordance with the Maintenance Plan, the Grantee may provide or cause to be provided such maintenance necessary to preserve and protect the Conservation Values of the Property. Any costs incurred by the Grantee in providing such maintenance shall be reimbursed by Grantor within thirty (30) days from receipt of invoicing from Grantee.

14. **Taxes.** Grantor shall pay all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property, including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor shall reimburse Grantee for the same within thirty (30) days from receipt of invoicing from Grantee.

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

16. **Transfer of Grantee's Interest.** If the Grantee determines that it no longer is able to enforce its rights under this instrument or that it no longer desires to enforce the rights, or desires to assign enforcement rights to a qualified organization under Section 501(c)(3) and/or 170(h)(3) of the *Internal Revenue Code*, the Grantee shall be entitled to convey in whole or in part all of its rights under this instrument and deliver a copy of this instrument to an organization designated by the Grantee and described in or contemplated by Section 501(c)(3) and/or

170(h)(3) of the Code, or the comparable provision in any subsequent revision of the Code, to ensure that the Easement is enforced. Furthermore, the Grantee is hereby expressly prohibited from subsequently transferring the Easement, whether or not for consideration, unless (a) the Grantee, as a condition of the subsequent transfer, requires that the conservation purposes which the Easement is intended to advance continue to be carried out; and (b) the transferee is an organization qualifying at the time of the transfer as an eligible donee under Section 501(c)(3) and/or 170(h)(3) of the Code and regulations promulgated thereunder.

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

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

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

20. **Notices.** Any notice, demand, request, consent, approval, or communication shall be in writing and served personally or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the following, or to such other address as the Grantee or Grantor shall from time to time designate by written notice.

To Grantee: Farmington City
Attn: City Manager
130 North Main
P.O. Box 160
Farmington, Utah 84025

To Grantor: RAINEY DEVELOPMENT, INC.
 Attn: Brock Johnston
 520 North 900 West
 Kaysville, Utah 84037

21. **Title Warranty.** Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except those set forth in **Exhibit "D,"** attached hereto and incorporated herein by this reference, and hereby promises to defend the same against all claims that may be made against it.

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

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

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

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

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

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

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

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

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

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

32. **Amendments.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may jointly amend the Easement; provided, that no amendment shall be allowed that affects the qualification of the Easement under the IRS Code 170(h), or any regulation promulgated thereunder, or the Utah Land Conservation Easement Act, as set forth in *Utah Code Ann. §§ 57-18-1, et seq.*, as amended. Any amendment to this Easement shall be consistent with the purposes of this Easement, shall not affect its perpetual duration, and shall not impair any of the significant Conservation Values of the Property. Any such amendment shall be in writing, signed by both parties, and recorded in the official records of Davis County, Utah. Any proposed amendments to this Easement shall comply with the Farmington City Conservation Easement Amendment Policy, as amended, and shall require, at a minimum, a public hearing before the City Council and fourteen (14) day advance notice to the public by publishing notice in a daily newspaper of general circulation in the City.

[Signature Page to Follow]

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

GRANTOR:

RAINEY DEVELOPMENT, INC.

A Utah corporation

By: _____

Its: Manager and Member

GRANTEE:

FARMINGTON CITY

A Utah municipal corporation

By: _____

Mayor Scott Harbertson

ATTEST:

Margy L. Lomax, City Recorder

GRANTOR'S ACKNOWLEDGMENT

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

On the ____ day of _____, 2008, personally appeared before me _____ who being by me duly sworn did say that she/he is the managing member of **RAINEY DEVELOPMENT, INC.**, a Utah corporation, and that the within and foregoing instrument was signed on behalf of said corporation by authority of its Articles of Organization and duly acknowledged to me that said corporation executed the same.

My Commission Expires:

Notary Public
Residing at:

GRANTEE'S ACKNOWLEDGMENT

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

On the ____ day of _____, 2008, personally appeared before me Scott Harbertson, who being duly sworn, did say that he is the Mayor of **FARMINGTON CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Scott Harbertson acknowledged to me that the City executed the same.

My Commission Expires:

Notary Public
Residing at:

EXHIBIT "A"

LEGAL DESCRIPTION OF EASEMENT AREA

EXHIBIT "B"
USE MAP OF EASEMENT

EXHIBIT "C"
MAINTENANCE PLAN

EXHIBIT "D"

LIST OF ACCEPTED ENCUMBRANCES

WHEN RECORDED, MAIL TO:

FARMINGTON CITY
Attn: City Manager
130 North Main
Farmington, Utah 84025

CONSERVATION EASEMENT

(CONSERVANCY LOT)

THIS CONSERVATION EASEMENT is made this _____ day of _____, 2008, by **RAINEY DEVELOPMENT, INC.**, a Utah corporation, whose mailing address is 520 North 900 West, Kaysville, Utah 84037 ("Grantor"), in favor of **FARMINGTON CITY**, a municipal corporation and political subdivision of the State of Utah, whose mailing address is 130 North Main Street, P.O. Box 160, Farmington, Utah 84025 ("Grantee").

RECITALS:

WHEREAS, Grantor hereby represents and acknowledges it is the sole owner in fee simple title of certain real property located in Farmington City, Davis County, State of Utah, which property is more particularly described herein at Section 2, hereinafter referred to as the "Property," consisting of a portion of Lot 43 within the conservation subdivision known as Tuscany Village Subdivision; and

WHEREAS, the Property possesses natural, scenic and open space values consisting of upland meadows and pastureland (collectively referred to as "Conservation Values") of great importance to the Grantor, the Grantee, and residents of the Tuscany Village Subdivision; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of the use of the Property in such a way which does not significantly impair or interfere with those values; and

WHEREAS, Grantor intends to preserve and protect the Conservation Values of the Property as open space and to protect the Property from future development in perpetuity through this Easement and dedication of the same to Grantee; and

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

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

1. **Conveyance.** Grantor hereby grants and warrants to Grantee, a perpetual conservation easement as hereinafter defined (the "Easement") over and across all the Property to preserve and protect as open space the upland meadows, pastureland and Conservation Values present on the Property, to have and to hold unto Grantee, its successors and assigns forever.

2. **Property.** The Property subject to this Easement consists of approximately 0.91 acres of that certain real property known as Lot 43, and designated as "Conservancy Lot" on the official plat of the Tuscan Village Subdivision, located in the Northwest Quarter of Section 31, Township 3 North, Range 1 East, Salt Lake Base and Meridian, Farmington City, Davis County, State of Utah, which plat is recorded in the office of the Davis County Recorder, State of Utah, and is more particularly described in **Exhibit "A,"** attached hereto and incorporated herein by this reference.

3. **Current Use and Condition of Property.** The Property presently consists of natural, scenic, open space, upland meadows and pastureland. The Property has the following specific Conservation Values: natural, scenic, open space, upland meadows and pastureland.

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

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

6. **Permitted Uses.** Grantor retains ownership rights of the underlying fee simple title to the Property which are not expressly restricted by this Easement. Subject to the terms and

conditions set forth in this Easement, the following activities and/or uses of the Property are permitted:

- a. Conservation of open land in its natural state, including, but not limited to, preservation of upland meadows.
- b. Manicured lawn and related irrigation system improvements in designated areas only as delineated in the Use Map set forth in **Exhibit "B,"** attached hereto and incorporated herein by this reference; provided: (1) a barrier acceptable to the City is provided between the natural vegetation areas and the manicured lawn areas; (2) some type of boundary line designation acceptable to the City is provided to delineate the Conservation Easement Area from adjacent private property; and (3) the lawn and/or seed type is approved by the City.
- c. Barrier and boundary line designations acceptable to the City in designated areas only as delineated in the Use Map set forth in **Exhibit "B,"** as deemed necessary for the protection and preservation of the natural vegetation areas.
- d. Detention basin facilities and related improvements in designated areas only as delineated in the Use Map set forth in **Exhibit "B."**
- e. Pastureland for Class "B" animals as defined in the Farmington City Ordinances, Section 11-29-103, as amended, including large animals kept as pets or for family food production or recreational purposes, such as horses, cows, goats and sheep. The number of Class "B" animals shall be limited to the regulations set forth in Farmington City Ordinances, Section 11-29-103, as amended.

7. **Conditional Uses.** Subject to the terms and conditions set forth in this Easement, the following activities and/or uses of the Property may be permitted by conditional use permit, subject to and in accordance with the Farmington City Ordinances, Title 11, Chapter 8, as amended, regarding conditional use permits:

- a. Equestrian facilities for Class "B" animals as defined in Section 6(e).
- b. Underground utility facilities and easements for sewer, water, or other public facilities and purposes, including easements for maintenance access to such facilities, in locations as approved by the City of Farmington, but not including detention basin facilities and related improvements approved in Section 6(d), subject to the rules and regulations of the U.S. Army Corps of Engineers and subject to restoration of the Property to its natural condition within a reasonable time frame not to exceed ninety (90) days, unless otherwise agreed to in writing by the Grantee, which restoration shall be conducted to the reasonable satisfaction of the Grantee to protect and preserve the Conservation Values of the Property.

8. **Prohibited Uses.** Subject to the terms and conditions set forth in this Easement, the following activities and/or uses of the Property are prohibited:

a. Except as otherwise expressly provided herein, any residential, commercial or industrial activity. It is expressly acknowledged that all of the underlying fee of real property protected by this Easement is contained in individual private lot ownership in such area designated as "Conservancy Lot - Restricted Use Area" on the official plat of the Tuscan Village Subdivision, as recorded in the Office of the Davis County Recorder, State of Utah. While residential use may be made of the portion of Lot 43 lying within the area designated as "Buildable Area" on the official plat thereof, the portion of such Lot 43 not included within the Buildable Area shall be subject to all the terms and conditions of this Easement, including the prohibition against any residential use of such property.

b. Except as otherwise expressly provided for herein, any development, construction or location of any man-made modification or improvements such as buildings, structures, roads, parking lots, or other improvements.

c. Any filling, dredging, excavating, mining, drilling, or exploration for and extraction of oil, gas, minerals or other resources from the Property.

d. Any dumping or storing of ashes, trash, garbage, trees, brush, dirt, junk or other material or substance on the Property.

e. Burning of any materials on the Property, except as necessary for fire protection purposes upon obtaining a burn permit from the appropriate agency.

f. The use of motor vehicles, including snowmobiles, all-terrain vehicles, motorcycles and other recreational vehicles, except as may be necessary to maintain and operate the Property in accordance with the terms and conditions of this Easement and the Maintenance Plan for the Property.

g. Hunting or trapping for any purpose other than predatory or problem animal control on the Property.

h. Advertising of any kind or nature and any billboards or signs on the Property; provided, information signs may be displayed describing the Easement and prohibited or authorized use of the same, subject to written approval of the Grantee.

i. Any cutting of trees or vegetation, except as necessary for fire protection, thinning, elimination of diseased growth, control of non-native plant species, and similar protective measures, or as otherwise permitted by the Grantee in writing.

j. The change, disturbance, alteration, or impairment of significant natural ecological features and values of the Property or destruction of other significant Conservation Values of the Property.

k. Any division, subdivision or *de facto* subdivision (through long-term leasing or otherwise) of any parcel or part of the Property; except for subdivision and dedication of the Property as necessary for appropriate public purposes, or as necessary and desirable to dedicate a portion of the underlying fee to a qualified conservation organization in accordance with the purposes and intent of this Easement for the preservation, protection and enhancement of the Conservation Values of the Property.

l. Changing the topography of the Property by placing on it any soil, dredging spoils, land fill, or other materials, except as necessary to conduct specific permitted or conditional uses.

m. Any development, location or storage of any personal property, vehicles, recreational equipment or other residential uses such as trampolines, patios, gazebos, sports courts, barbeques, etc.

n. All other uses or activities not specifically listed as a permitted use or activity or any uses or activities inconsistent with or detrimental to the stated objectives and purpose of the Easement.

9. **Rights and Duties of the Grantee.** Grantor confers the following rights upon Grantee to perpetually maintain the Conservation Values of the Property and to accomplish the purpose of this Easement.

a. Grantee has the right to preserve the open space and to protect the Conservation Values of the Property.

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

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

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

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

f. Grantee has the right to engage in activities that restore the biological and ecological integrity of the Property. Possible activities include planting native vegetation and use of controlled fire to reduce the presence of undesirable vegetation.

10. **Limitation.** It is expressly acknowledged by the parties that Lot 43 of the Tuscan Village Subdivision is a conservation lot created in accordance with the Farmington City Ordinances, and is intended to be held in private ownership by an individual property owner and that dedication of this Easement encumbers such Lot 43 for conservation and protection purposes. The dedication of this Easement does not include the right of entry by the general public for the purposes of recreation or for any other purpose.

11. **Duties of Grantor.** Grantor retains ownership rights of the underlying fee simple title to the Property which are not expressly restricted by this Easement. In accordance with rights reserved in Grantor by this Easement, Grantor shall be subject to all terms, conditions and restrictions of this Easement and shall have the affirmative duty to refrain from conducting or causing to be conducted any action inconsistent with the purpose and provisions of this Easement and to take reasonable actions to preserve and protect the Conservation Values of the Property.

12. **Enforcement of Easement.**

a. If the Grantee determines that a violation of this Easement is occurring or threatened, the Grantee shall have all rights and remedies available by law or in equity to cure and/or prevent the violation or threatened violation, including, but not limited to, injunctive relief, specific performance, declaratory relief, restitution, reimbursement of expenses, including reasonable attorneys fees, and money damages.

b. In addition to all rights and remedies provided by law or in equity for the enforcement of the terms of this Easement, the Grantee shall have all rights of corrective action as provided by Farmington City Ordinances. Specifically, in the event that the Grantor, or any successor entity or owner, fails to maintain all or any portion of the Property in reasonable order and condition as required herein, the Grantee may assume responsibility, as a right, but not an obligation, for maintenance. The Grantee may enter the Property and take corrective action, including extended maintenance, the cost of which may be charged to the Grantor, or any successor entity or owner, including administrative costs and penalties. Such costs, if not paid within a reasonable time, shall become a lien on the delinquent property, notice of which shall be filed by the Grantee in the County Recorder's Office.

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

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

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

14. Maintenance. It is expressly acknowledged that Grantor intends to sell and transfer ownership of the underlying fee of the Conservation Easement Area to an individual private lot owner to be known as a conservancy lot pursuant to Farmington City Ordinances, within the Tuscan Village Subdivision. The owner of Lot 43 shall be responsible for maintaining the Property at its sole cost and expense.

15. Taxes. Grantor shall pay all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property, including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

16. Hold Harmless. Grantor agrees to indemnify, hold harmless and defend the Grantee, its officers, agents, representatives and employees, from and against any and all loss, liability, expense, claims, costs, suits and damages, including attorneys fees, however caused, arising out of or resulting from the acts or omissions of the Grantor, its officers, agents, representatives, invitees and assigns, in connection with Grantor's use and activities on the Property. The Grantee agrees to indemnify, hold harmless and defend the Grantor, its officers, agents, representatives, invitees and assigns, from and against any and all loss, liability, expense, claims, costs, suits and damages, including attorneys fees, however caused, resulting from the operations, acts or omissions of the Grantee, its officers, agents, representatives or employees, in connection with the Grantee's performance of its obligations under this Easement.

17. Transfer of Grantee's Interest. If the Grantee determines that it no longer is able to enforce its rights under this instrument or that it no longer desires to enforce the rights, or desires to assign enforcement rights to a qualified organization under Section 501(c)(3) and/or 170(h)(3) of the *Internal Revenue Code*, the Grantee shall be entitled to convey in whole or in part all of its rights under this instrument and deliver a copy of this instrument to an organization designated by the Grantee and described in or contemplated by Section 501(c)(3) and/or 170(h)(3) of the Code, or the comparable provision in any subsequent revision of the Code, to

ensure that the Easement is enforced. Furthermore, the Grantee is hereby expressly prohibited from subsequently transferring the Easement, whether or not for consideration, unless: (a) the Grantee, as a condition of the subsequent transfer, requires that the conservation purposes which the Easement is intended to advance continue to be carried out; and (b) the transferee is an organization qualifying at the time of the transfer as an eligible donee under Section 501(c)(3) and/or 170(h)(3) of the Code and regulations promulgated thereunder.

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

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

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

Farmington City
c/o City Manager
130 North Main
Farmington, Utah 84025

or to such other address as the Grantee from time to time shall designate by written notice to the Grantor. The required address for notice to the Grantor shall be the address of the most recent fee title owner of the Property as shown on the tax records of Davis County, State of Utah, or to such other address as the current fee title owner of the Property from time to time shall designate by written notice to the Grantee.

21. Title Warranty. Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances.

22. Subsequent Encumbrances. This Easement shall not restrict the right of Grantor or its successors or assigns to execute, deliver and record mortgages on the Property or to grant

other rights or easements with respect to the Property, subject to the terms and conditions set forth herein. Any lien or security interest of a mortgage and any easement or other right created subsequent to the date hereof shall be subject to and subordinate to this Easement.

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

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

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

26. **Attorneys Fees.** The parties herein each agree that should they default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorneys fee which may arise or accrue from enforcing this Easement, or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah, whether such remedy is pursued by filing suit or otherwise, and whether such costs and expenses are incurred with or without suit or before or after judgment.

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

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

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

30. **Entire Agreement.** This Easement, together with all exhibits, sets forth the entire agreement of the parties and supercedes all prior discussions and understandings.

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

32. **Amendments.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may jointly amend the Easement; provided, that no amendment shall be allowed that affects the qualification of the Easement under the IRS Code 170(h), or any regulation promulgated thereunder, or the Utah Land Conservation Easement Act, as set forth in *Utah Code Ann. §§ 57-18-1, et seq.*, as amended. Any amendment to this Easement shall be consistent with the purposes of this Easement, shall not affect its perpetual duration, and shall not impair any of the significant Conservation Values of the Property. Any such amendment shall be in writing, signed by both parties, and recorded in the official records of Davis County, Utah. Any proposed amendments to this Easement shall comply with the Farmington City Conservation Easement Amendment Policy, as amended, and shall require, at a minimum, a public hearing before the City Council and fourteen (14) day advance notice to the public by publishing notice in a daily newspaper of general circulation in the City.

[Signature Page to Follow]

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

GRANTOR:

RAINEY DEVELOPMENT, INC.

A Utah corporation

By: _____

Its: Manager and Member

GRANTEE:

FARMINGTON CITY

A Utah municipal corporation

By: _____

Mayor Scott Harbertson

ATTEST:

Margy L. Lomax, City Recorder

GRANTOR'S ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

On the ____ day of _____, 2008, personally appeared before me _____ who being by me duly sworn did say that she/he is the managing member of **RAINEY DEVELOPMENT, INC.**, a Utah corporation, and that the within and foregoing instrument was signed on behalf of said corporation by authority of its Articles of Organization and duly acknowledged to me that said corporation executed the same.

My Commission Expires: _____
Notary Public
Residing at: _____

GRANTEE'S ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

On the ____ day of _____, 2008, personally appeared before me Scott Harbertson, who being duly sworn, did say that he is the Mayor of **FARMINGTON CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Scott Harbertson acknowledged to me that the City executed the same.

My Commission Expires: _____
Notary Public
Residing at: _____

EXHIBIT "A"

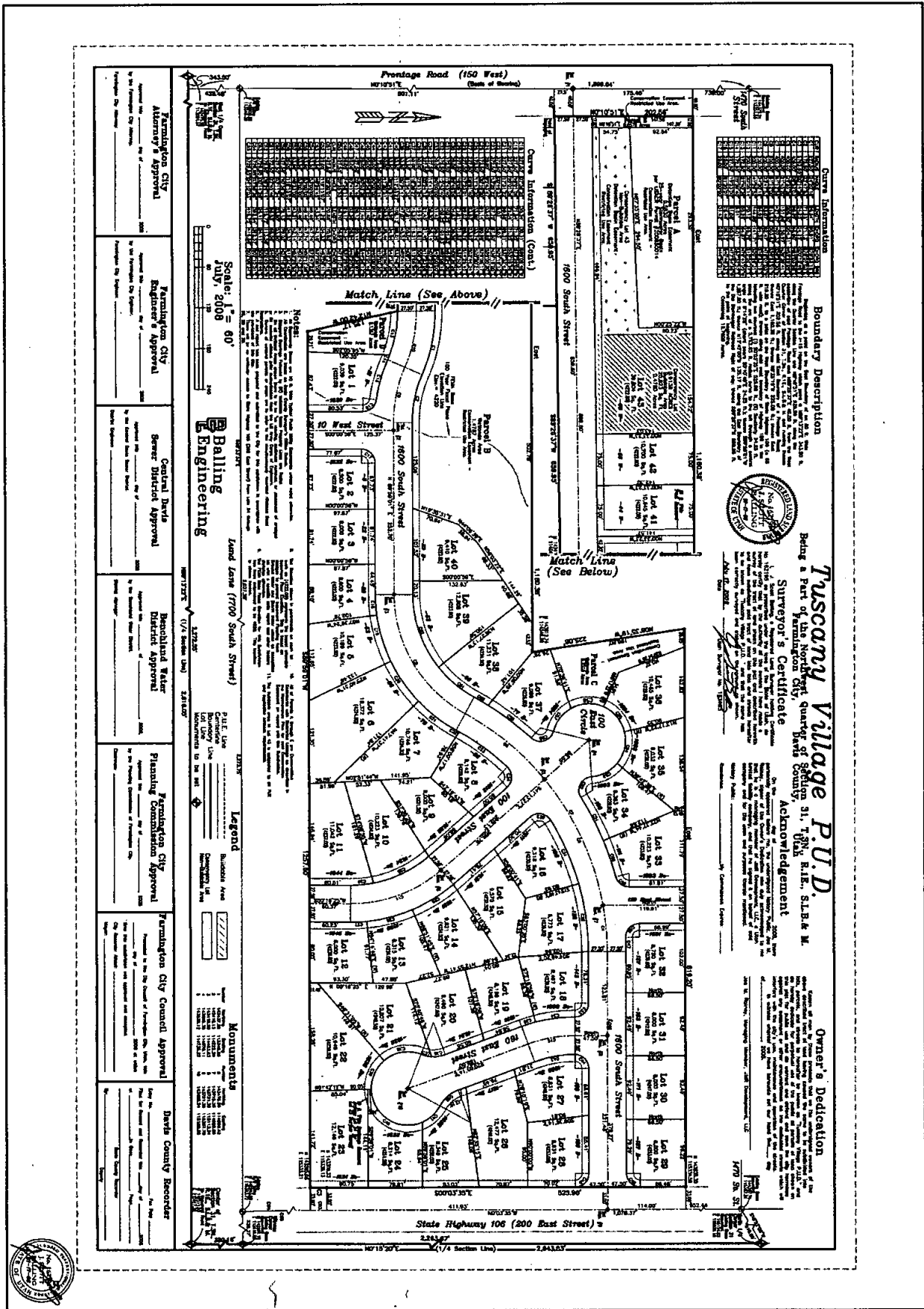
LEGAL DESCRIPTION OF CONSERVATION EASEMENT AREA

EXHIBIT "B"
USE MAP OF EASEMENT

EXHIBIT "C"

FINAL PLAT

EXHIBIT "C"



Boundary Description
 This plat is a part of the Northern Quarter of Section 31, T38N, R16E, S18&19E, Salt Lake County, Utah, and is subject to the provisions of the Utah Subdivision Map Act, Chapter 2, Title 2, Utah Code, and the provisions of the Utah Subdivision Map Act, Chapter 2, Title 2, Utah Code, and the provisions of the Utah Subdivision Map Act, Chapter 2, Title 2, Utah Code.

Owner's Dedication
 The undersigned, the owner of the above described property, do hereby dedicate the same to the public for the use and enjoyment of the same as a public street, and the same shall be a part of the public highway system of the State of Utah.



Supervisor's Certificate
 I, the undersigned, Supervisor of Davis County, Utah, do hereby certify that the above described property is a part of the Northern Quarter of Section 31, T38N, R16E, S18&19E, Salt Lake County, Utah, and is subject to the provisions of the Utah Subdivision Map Act, Chapter 2, Title 2, Utah Code, and the provisions of the Utah Subdivision Map Act, Chapter 2, Title 2, Utah Code, and the provisions of the Utah Subdivision Map Act, Chapter 2, Title 2, Utah Code.

Acknowledgement
 I, the undersigned, the owner of the above described property, do hereby acknowledge the above described property as a part of the Northern Quarter of Section 31, T38N, R16E, S18&19E, Salt Lake County, Utah, and is subject to the provisions of the Utah Subdivision Map Act, Chapter 2, Title 2, Utah Code, and the provisions of the Utah Subdivision Map Act, Chapter 2, Title 2, Utah Code, and the provisions of the Utah Subdivision Map Act, Chapter 2, Title 2, Utah Code.

Farmington City Attorney's Approval
 Approved by _____

 Farmington City Attorney

Farmington City Engineer's Approval
 Approved by _____

 Farmington City Engineer

Central Davis District Approval
 Approved by _____

 Central Davis District

Benjamin Taylor District Approval
 Approved by _____

 Benjamin Taylor District

Farmington City Planning Commission Approval
 Approved by _____

 Farmington City Planning Commission

Farmington City Council Approval
 Approved by _____

 Farmington City Council

Davis County Recorder
 Approved by _____

 Davis County Recorder



Revisions			
Date	Description	By	
10/15/07	Approved for Construction	SB	

Tuscany Village P.U.D.
 Final Plat
 For Rainey Homes

Balling Engineering
 Civil Engineering • Surveying • Planning
 323 E. Pages Lane
 Centerville, Utah 84514
 Phone: (801) 295-7237
 Fax: (801) 299-0419