

E 2417505 B 4697 P 345-375  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
01/22/2009 11:07 AM  
FEE \$75.00 Pgs: 31  
DEP RTT REC'D FOR FARMINGTON CITY

**WHEN RECORDED, MAIL TO:**

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

07-272-0044, 0045, 0046  
0047, 0048

**CONSERVATION EASEMENT** D

(OPEN SPACE)

*Self* ~~98~~ THIS CONSERVATION EASEMENT is made this 7<sup>th</sup> 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: Brock Johnston  
Its: Manager and Member

**GRANTEE:**

**FARMINGTON CITY**

A Utah municipal corporation

By: Scott Harbertson  
Mayor Scott Harbertson

**ATTEST:**

Margy L. Lomax  
Margy L. Lomax, City Recorder



GRANTOR'S ACKNOWLEDGMENT

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

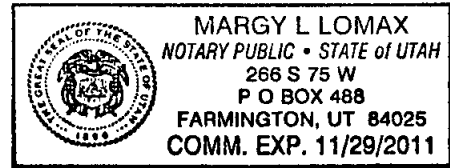
On the 7<sup>th</sup> day of January, 2008<sup>9</sup>, personally appeared before me Brock Johnston who being by me duly sworn did say that ~~she~~ he is the managing member of **RAINEY DEVELOPMENT, INC.**, a Utah corporation, and that the within and foregoing instrument was signed on behalf of said corporation by authority of its Articles of Organization and duly acknowledged to me that said corporation executed the same.

Margy L. Lomax  
\_\_\_\_\_  
Notary Public  
Residing at:

My Commission Expires:

11/29/2011

Davis Co. Utah



GRANTEE'S ACKNOWLEDGMENT

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

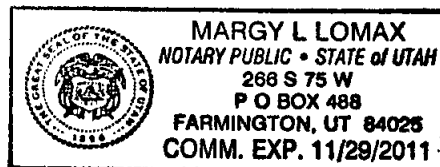
On the 7<sup>th</sup> day of Jan., 2008<sup>9</sup>, personally appeared before me Scott Harbertson, who being duly sworn, did say that he is the Mayor of **FARMINGTON CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Scott Harbertson acknowledged to me that the City executed the same.

Margy L. Lomax  
\_\_\_\_\_  
Notary Public  
Residing at:

My Commission Expires:

11/29/2011

Davis Co. UT



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF EASEMENT AREA**

ALL OF PARCELS A, B, C, D AND E OF THE TUSCANY VILLAGE PUD  
SUBDIVISION SHOWN IN THE OFFICIAL PLAT THEREOF, RECORDED IN THE  
OFFICE OF THE DAVIS COUNTY RECORDER, STATE OF UTAH.

**EXHIBIT "B"**  
**USE MAP OF EASEMENT**

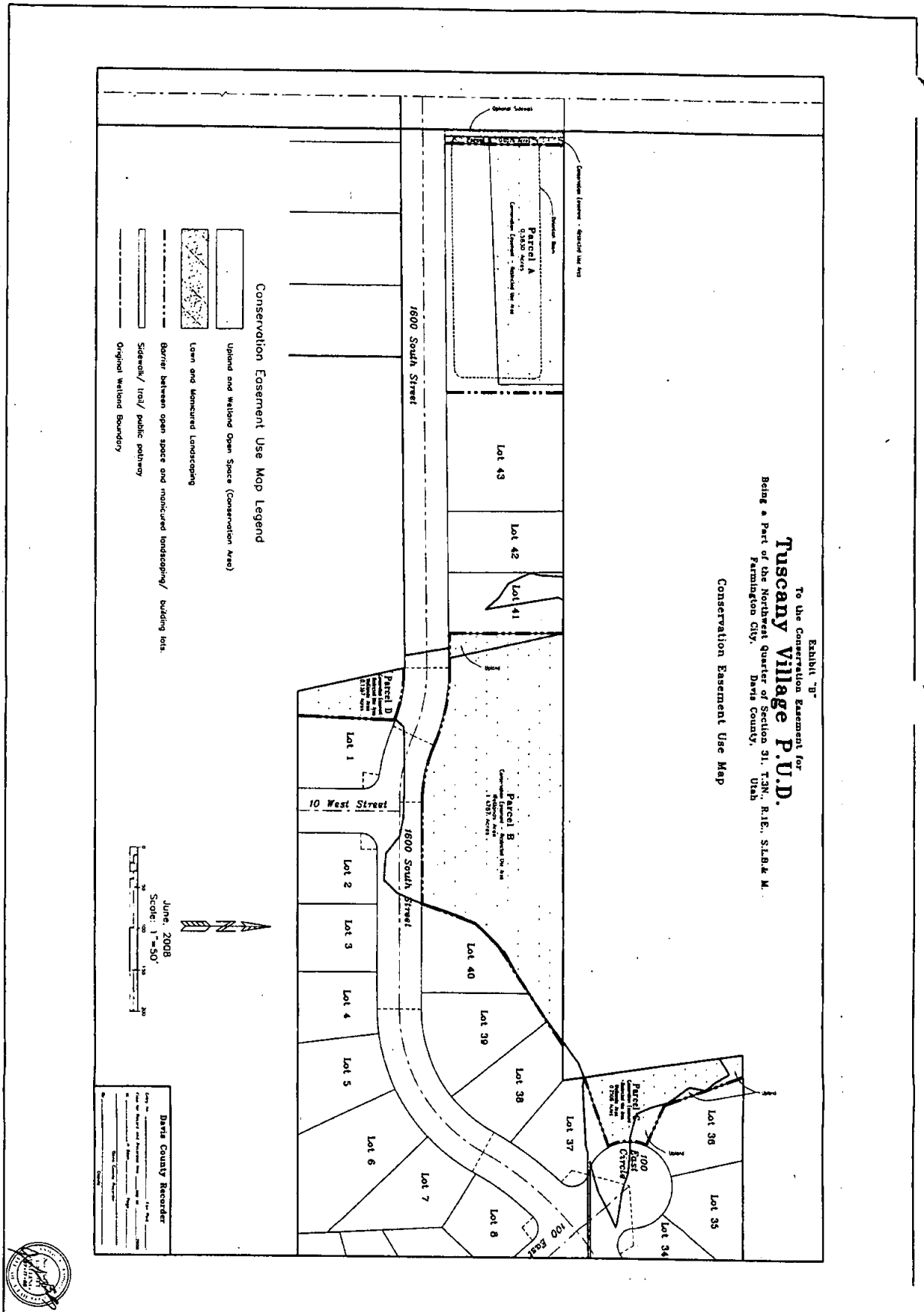


Exhibit "B"  
 To the Conservation Easement for  
**Tuscany Village P.U.D.**  
 Being a Part of the North East Quarter of Section 31, T3N., R1E., S18&16 M.  
 Farmington City, Davis County, Utah

Conservation Easement Use Map

Sheet B of 20 8	Surveyor _____ Date Surveyed _____ Drafting _____ Checked By _____ Date Approved _____ File Number _____	<b>Revisions</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Date</th> <th style="width: 80%;">Description</th> <th style="width: 10%;">By</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	Date	Description	By										<b>Tuscany Village P.U.D.</b> Conservation Easement Use Map  For Rainey Homes	 <b>Balling Engineering</b> Civil Engineering • Surveying • Planning 323 E. Pages Lane Centerville, Utah 84014 Phone: (801) 295-7237 Fax: (801) 299-0419
	Date	Description	By													



**EXHIBIT "C"**  
**MAINTENANCE PLAN**

**Exhibit "C"**  
**to the Conservation Easement for**  
**Tuscany Village PUD Subdivision**

**MAINTENANCE PLAN**

**SECTION 1- PURPOSE**

The purpose of this Maintenance Plan is to supplement the development criteria for the development of Tuscany Village PUD Subdivision as contained in the Farmington City Zoning Ordinances for Conservation Subdivisions, the Development Agreement, the Conservation Easement, and the Covenants, Considerations and Restrictions applicable to the subdivision in order to fix maintenance responsibility and provide additional maintenance guidelines, where necessary for property located within the Conservation Easement area. The Maintenance Plan is intended to provide guidelines and fix responsibility for areas within Tuscany Village PUD Subdivision that are designated as Conservation Easement and covered by the Conservation Easement recorded against the subject property.

**SECTION 2- PROPERTY**

The Conservation Easement subject to this Maintenance Plan is located in the Tuscany Village PUD Subdivision, consisting of approximately 2.51 acres of that certain real property within Farmington City, Davis County, State of Utah, on the official plat map of the Tuscany Village PUD Subdivision, located in Township 3 North, Range 1 East, Salt Lake Base and Meridian, Farmington City, Davis County, State of Utah, as more particularly described in **Exhibit "1"**, attached hereto and incorporated herein by this reference.

**SECTION 3- MAINTENANCE AREAS**

Two "Maintenance Areas" are designated in this plan as follows:

- a. Upland and Wetland Open Space Property which is designated in **Exhibit "B"** to the Conservation Easement for Tuscany Village PUD Subdivision.
- b. Lawn and Manicured Landscaping which is designated in **Exhibit "B"** to the Conservation Easement for Tuscany Village PUD Subdivision.

**SECTION 4- OWNERSHIP OF CONSERVATION LAND**

- a. Parcels A, B, C, and D: Rainey Development, Inc. or its authorized successors or assigns and/or Tuscany Village Homeowners Association, subject to the terms and conditions of the Conservation Easement.
- b. Parcel E: Farmington City or its authorized successors or assigns, subject to the terms and conditions of the Conservation Easement.

## **SECTION 5- MAINTENANCE GUIDELINES AND RESPONSIBILITIES**

Upland and Wetland Open Space in Parcels A, B, C, and D: The Upland and Wetland Open Space shall be maintained by the Tuscany Village Homeowners Association, or their authorized successors or assigns, in accordance with the landscape plan submitted as part of the project and subject to the terms and conditions of the Development Agreement, Conservation Easement, and applicable provisions of the Farmington City Zoning Ordinance regarding subdivisions. The Upland and Wetland Open Space shall be maintained in its natural state (i.e. no broad leaf weeds, but natural vegetation). This may include periodic mowing, spraying, and re-vegetation. Notwithstanding the foregoing, wetlands shall be maintained in accordance with and subject to the rules and regulations of the U.S. Army Corps of Engineers.

Parcel A can contain a retention basin and allow the maintenance thereof in accordance with the terms and conditions of the Conservation Easement.

Lawn and Manicured Landscaping in Parcel E: As used herein, the terms lawn and manicured landscaping shall mean grass, irrigation systems and shrubs, plants and trees as provided for in the Farmington City landscaping plans for the parcel. A sidewalk as designed by the City is also allowed in this parcel in accordance with the terms and conditions of the Conservation Easement.

All Conservation Areas: Any disturbed areas not approved as set forth herein shall be reclaimed and revegetated in natural vegetation or as otherwise directed by the U.S. Army Corps of Engineers or Farmington City in accordance with the applicable plans and requirements for the subject area. A revegetation plan prepared by a landscape architect or other appropriate nursery professional shall be submitted.

## **SECTION 6- FUNDING MEANS FOR MAINTENANCE AND OPERATIONS**

Estimates regarding staffing needs, insurance requirements, and associated costs for applicable maintenance areas shall be provided by the respective responsible party prior to recordation of the final plat. Sufficient funding may be required regarding such obligations in accordance with Farmington City Ordinances.

All members of the Tuscany Village Homeowners Association shall be assessed annual assessments, special assessments, and maintenance charges pursuant to the protective covenants, conditions and restrictions recorded with the Tuscany Village PUD Subdivision plat, the Development Agreement, the Conservation Easement, and applicable provisions of the Farmington City Zoning Ordinance regarding Conservation Subdivisions.

## **SECTION 7- MODIFICATION**

Any changes to this Maintenance Plan must be in writing and approved by the City. Any such amendments shall be considered an amendment of the Conservation Easement and shall comply with easement amendment procedures adopted by the City.

#### **SECTION 8- CORRECTIVE ACTION**

The City may enter the premises and take corrective action, including extended maintenance. The costs of such corrective action may be charged to the property owner, condominium association, or homeowners association and may include administrative costs and penalties. Such costs shall become a lien on said properties. Notice of such lien shall be filed by the City in the County Recorder's Office. Documents creating or establishing any association or conservation organization shall reference the City's corrective action authority.

#### **SECTION 9- PROHIBITED ENCROACHMENTS**

No encroachment by any structure, improvement or disturbance to the land shall be permitted into designated wetlands unless specifically authorized by the U.S. Army Corps of Engineers. No encroachment by any structure, improvement or disturbance to the land shall be permitted into Conservation Lands by private parties or adjacent landowners. Uses of the Conservation Land shall be strictly limited to those conditional and permitted uses set forth in the Conservation Easement and as shown on the applicable Use Maps.

**Exhibit "1"**  
**Legal Description of Conservation Easement**  
**for Tuscany Village PUD Subdivision**

All of Parcels A, B, C, D and E of the Tuscany Village PUD Subdivision shown on the official plat thereof, recorded in the office of the Davis County Recorder, State of Utah.

**EXHIBIT "D"**

**LIST OF ACCEPTED ENCUMBRANCES**

Acceptable encumbrances are items 9-13 as listed in the attached Title Report.

American Land Title Association Commitment – 2006

## COMMITMENT FOR TITLE INSURANCE

Issued by



STEWART TITLE GUARANTY COMPANY, a Texas Corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of Insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the Policy upon request.

This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

A smaller version of the Stewart Title Guaranty Company logo, featuring the word "stewart" in lowercase and "title guaranty company" below it, with the same stylized graphic element.

A handwritten signature in cursive script, appearing to read "Stewart Morris Jr.", written over a horizontal line.

Chairman of the Board



A handwritten signature in cursive script, appearing to read "Nelson S. Morris", written over a horizontal line.

President

A handwritten signature in cursive script, appearing to be initials, written over a horizontal line.

Authorized Countersignature

## CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security interest.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed insured and such parties included under the definition of insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.ulta.org>*

***Commitment For Title Insurance***  
***Issued By Bonneville Superior Title Company, Inc.***  
***Schedule A***

**Commitment Number:** 127585 5th Amendment

**Escrow Officer:** Nobalee Rhoades

1. **Effective date:** December 28, 2008 at 8:00 am

2. **Policy or Policies to be issued:**

(a) ALTA Owner's Policy (2006)

**Amount of Insurance:**

**Proposed Insured:**

**Premium:**

Rainey Homes, Inc.

(b) ALTA Loan Policy (2006)

**Amount of Insurance:**

**Proposed Insured:**

**Premium:**

(c) **Endorsements:**

**Premium:**

(d) **Other:**

3. **The estate or interest in the land described or referred to in this Commitment and covered herein is:**

Fee Simple

4. **Title to the said estate or interest in said land is at the effective date hereof vested in:**

See Attached Exhibit "B"

5. **The land referred to in this Commitment is situated in the County of Davis State of Utah, and is described as follows:**

See Attached Legal Description

**Tax ID No:** 07-070-0066 07-070-0085 07-070-0104 07-070-0105

**The following is shown for information purposes only:**

**The address of said property is:** N/A



***EXHIBIT "A"***

Proposed TUSCANY VILLAGE P.U.D., more particularly described as follows: Beginning at a point on the East boundary of an 80 foot wide Frontage Road to the I-15 Highway which point is North 89°13'22" East 343.50 feet along the Quarter Section line and North 0°10'51" East 929.59 feet along the centerline of said Frontage Road and North 89°26'37" East 40.00 feet from the West Quarter Corner of Section 31, Township 3 North, Range 1 East, Salt Lake Base and Meridian and running thence North 0°10'51" East 202.56 feet along said East Boundary of a Frontage Road; thence East 1160.38 feet; thence North 8°35'19" West 225.08 feet; thence East 819.20 feet to a point on the West Boundary of State Highway 106 (a 66 foot wide road); thence along said West boundary of Highway 106 in the following two courses: (1) South 0°03'35" East 525.96 feet; (2) Southerly 24.25 feet along the arc of a 5762.65 foot radius curve to the left through a central angle of 0°14'28" (chord bears South 0°10'49" East 24.25 feet); thence South 89°59'01" West 1257.60 feet; thence North 12°42'00" West 135.17 feet along the East Boundary of the Old Bamberger Railroad right of way; thence South 89°26'37" West 659.95 feet to the point of beginning.

**Exhibit "B"—Vesting**

Rainey Development, Inc. as to that portion lying within parcel 07-070-0066

Raymond K. Fadel, Trustee, and Shirl K. Fadel, and Melic K. Fadel, First & Second Trustees, in succession to act in the order named individually and to succeed in the order named upon incapacity of the predecessor, for the use and benefit of Kia Lynn Fadel, Kristin Louise Fadel, and future issue of George K. Fadel per trust agreement dated April 1, 1967, Rock Manor Trust, as to an undivided one half interest of that portion lying within parcel 07-070-0085

George K Fadel Trust, George K. Fadel, Trustee, as to an undivided one half interest of that portion lying within parcel 07-070-0085

Rainey Development, Inc., as to that portion lying within parcels 07-070-0104, 07-070-0105, 07-070-0106, and 07-070-0111.

**SCHEDULE B**  
**Section 1**

*Commitment Number:* 127585

**REQUIREMENTS**

*The following requirements must be met and completed to the satisfaction of the Company before its policy of title insurance will be issued:*

- 1. Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest, mortgage or lien to be insured.*
- 2. Furnish proof of payment of all bills for labor and material furnished or to be furnished in connection with improvements erected or to be erected.*
- 3. Pay all general and special taxes now due and payable*
- 4. Any matter in dispute between you and the Company may be subject to arbitration as an alternative to court action pursuant to the rules of the American Arbitration Assoc. or other recognized arbitrator a copy of which is available on request and can be obtained from the Company. Any decision reached by arbitration shall be binding upon both you and Company. The arbitration award may include attorney's fees if allowed by state law and may be entered as a judgment in any court of property jurisdiction.*
- 5. This Commitment will be subject to defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment if not cleared prior to recordation of the insured interest.*
- 6. Release(s), reconveyance(s), or satisfaction(s), of items to be paid off.*
- 7. Notice to Applicant: If the applicant desires copies of the documents underlying any exception to coverage shown herein, the Company will furnish the same on request, if available, either with or without charge as appears appropriate.*
- 8. Notice to Applicant: The land covered herein may be serviced by districts, service companies and/or municipalities, which assesses charges for water, sewer, electricity and any other utilities, etc. which are not covered by this report or insured under a title insurance policy.*
- 9. Pay us the premiums, fees and charges for the policy. In the event the transaction for which this commitment is furnished cancels, the minimum cancellation fee will be \$120.00.*
- 10. Standard Exceptions 1 - 7 of Schedule B, Section 2, will be eliminated from the ALTA Loan Policy upon satisfaction of any underwriting requirements.*

**SCHEDULE B****Section 2**

**Commitment Number:** 127585

*This policy does not insure against loss or damage (and the Company will not pay loss or damage, costs, attorney's fees or expenses) which arises by reason of:*

**Standard Exceptions**

1. *Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by public record.*
2. *Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.*
3. *Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.*
4. *Discrepancies, conflicts in boundary lines, shortages in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.*
5. *(a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.*
6. *Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.*
7. *Any adverse claim based upon the assertion that: a) Some portion of the land forms the bed or bank of a navigable river or lake, or lies below the mean high water mark thereof; b) the boundary of the land has been affected by a change in the course or water level of a navigable river or lake; c) The land is subject to water rights, claims or title to water and to any law or governmental regulation pertaining to wetlands, d) easements for use of the surface of waters on the land for fishing, boating, swimming or similar activity.*

**Special Exceptions**

8. Taxes for the year 2009 now a lien, not yet due. See Below:

**Taxes for the year 2008 are DELINQUENT in the amount of \$1,834.77 plus interest, fees and penalties. Tax ID No. 07-070-0066.**

Taxes for the year 2008 have been paid in the amount of \$526.13. Tax ID No. 07-070-0085.

**Taxes for the year 2008 are DELINQUENT in the amount of \$1,830.96 plus interest, fees and penalties. Tax ID No. 07-070-0104.**

**Taxes for the year 2008 are DELINQUENT in the amount of \$3,912.87 plus interest, fees and penalties. Tax ID No. 07-070-0105.**

**Taxes for the year 2008 are DELINQUENT in the amount of \$2,207.30 plus interest, fees and penalties. Tax**

**SCHEDULE B**  
**Section 2**

**Commitment Number:** 127585

ID No. 07-070-0106.

**Taxes for the year 2008 are DELINQUENT in the amount of \$3,412.35 plus interest, fees and penalties.** Tax ID No. 07-070-0111.

9. Said property is located within the boundaries of Weber Basin Water Conservancy District, Mosquito Abatement District, Central Davis Sewer Improvement District, Farmington Area Pressurized Irrigation District (451-2105) and Farmington City (451-2383), Farmington City Utah Special Improvement District No. 99-1, and Benchland Water District, and is subject to the charges and assessments levied thereunder.
10. Easements and rights of way of record or enforceable in law and equity for any existing roads, streets, alleys, ditches, reservoirs, utilities, canals, pipe lines, power, telephone, sewer, gas or water lines now existing over, under or across subject property.
11. Excepting all oil, gas and other minerals of every kind and description underlying the surface of the land.
12. Easement in favor of the Telluride Power Company, a Colorado Corporation, for the right to erect, operate and maintain telephone circuits and appurtenances attached to a single line of poles or other supports on and over the following tract of land: Part of Southwest and Northwest Quarters of Section 31, Township 3 North, Range 1 East of the Salt Lake Meridian, U.S. Survey, being adjacent to and along the East boundary line of the present right of way of the Salt Lake and Ogden Railway Company, recorded April 29, 1910, in Book <sup>a</sup>C°, Page 435 and 440, of Official Records. (Exact location not disclosed)
13. Subject to an Easement, by and between Jay W. Parker and Lucille Parker and Floyd Jay Parker, a 10 foot Private Sewer Easement, upon the terms and conditions therein provided, recorded April 9, 1997, as Entry No. 1315717, in Book 2115, Page 342, of Official Records. (Affects the South 10 feet of Parcel 07-070-0111)
14. A Construction Trust Deed dated November 8, 2007 executed by JMR Holdings, LLC (as to Parcel 1), Rainey Homes, Inc. (as to Parcel 2, 3, 4 and 5) and Joe M. Rainey (as to Parcels 2, 3 and 4), as Trustors in the amount of \$4,082,000.00, in favor of Bank of Utah as Trustee and as Beneficiary, recorded November 30, 2007, as Entry No. 2324647, in Book 4419, Page 1626, of Official Records.
15. An Assignment of Rents to secure an indebtedness executed by JMR Holdings, LLC (as to Parcel 1), Rainey Homes, Inc. (as to Parcels 2, 3, 4 and 5); and Joe M. Rainey (as to Parcels 2, 3 and 4), in the amount of \$4,082,000.00, in favor of Bank of Utah, dated November 8, 2007 and recorded November 30, 2007, as Entry No. 2324648, in Book 4419, Page 1637, of official records.
16. Subject to the Terms, Conditions and Stipulations of the Trust referred to herein.  
REQUIREMENT: A copy of the instrument creating said trust must be submitted for review.
17. The rights of parties in possession of subject property under unrecorded Contracts, Leases, Rental or Occupancy Agreements and any claims and/or liens thereunder.
18. Legal description contained herein contains gaps and/or overlaps as disclosed by mathematical comparison of adjoining property.
19. Public Utility and drainage easement and incidentals as reserved on proposed plat.

*SCHEDULE B*  
*Section 2*

*Commitment Number:* 127585

20. Any protective covenants that may be filed on said proposed plat.
21. Final approval and recording of proposed plat.

NOTE: Judgments have been checked against the following:

JMR Holdings, LLC  
Raymond K. Fadel  
Shirl K. Fadel  
Melic K. Fadel  
Kia Lynn Fadel  
Kristin Louise Fadel  
George K. Fadel  
George K Fadel Trust  
Rock Manor Trust  
Joe M. Rainey  
Rainey Homes, Inc.

There were no judgments founds.

*Bonneville Superior Title Company, Inc.*

Privacy Policy Notice

**PURPOSE OF THIS NOTICE**

Title V of the Gramm-Leach-Bailey Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a nonaffiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of Bonneville Superior Title Company, Inc. and Stewart Title Guaranty Company.

We may collect nonpublic personal information about you from the following sources:

Information we receive from you, such as on applications or other forms.

Information about your transactions we secure from our files, or from our affiliates or others.

Information we receive from a consumer reporting agency.

Information that we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to nonaffiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to the following types of nonaffiliated companies that perform marketing services on our behalf or with whom we have joint marketing agreements:

Financial service providers such as companies engaged in banking, consumer finance, securities and insurance.

Non-financial companies such as envelope stuffers and other fulfillment service providers.

**WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.**

We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.