

RESOLUTION 03-03-2014

A RESOLUTION OF SANTAQUIN CITY APPROVING AN AMENDMENT TO THE AHLIN PROPERTY DEVELOPMENT AGREEMENT REGARDING THE PHASING OF REQUIRED DEVELOPMENT INFRASTRUCTURE IMPROVEMENTS BETWEEN SANTAQUIN CITY, RICH BARTON, AND IREWOOD NEVADA, LLC.

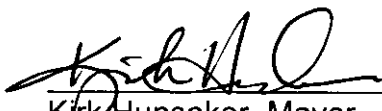
WHEREAS, the Annexation and Development Agreement for the Ahlin Annexation Project Area was entered into October 18, 2000 and was recorded in the official records of the Utah County Recorder December 11, 2000 as Entry No. 97996:2000 (the "Development Agreement"); and

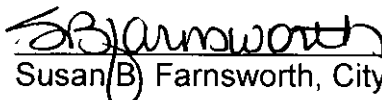
WHEREAS, Mr. Rich Barton and Irewood Nevada, LLC., have acquired title to all of the real property that is described in the Development Agreement, except for approximately 24 acres that contains the City's Pressurized Irrigation Pond, making them party to all rights, responsibilities, and obligations under the Development Agreement; and

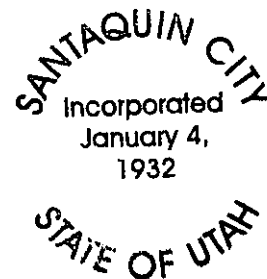
WHEREAS, Mr. Rich Barton, Irewood Nevada, LLC., and Santaquin City desire to clarify the terms of the Development Agreement pertaining to phasing of required development infrastructure.

NOW THEREFORE, LET IT BE RESOLVED, that the governing body of Santaquin City approves the First Amendment to the Ahlin Annexation and Development Agreement between Santaquin City, Mr. Rich Barton and Irewood Nevada, LLC which clarifies the phasing of required development infrastructure (See Attached).

Approved the 5th day of March, 2014.


Kirk Hunsaker, Mayor


Susan B. Farnsworth, City Recorder



ENT 15215:2014 PG 1 of 15
JEFFERY SMITH
UTAH COUNTY RECORDER
2014 Mar 06 1:46 pm FEE 38.00 BY EO
RECORDED FOR SANTAQUIN CITY CORPORATION

**FIRST AMENDMENT TO
AHLIN ANNEXATION AND DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO AHLIN ANNEXATION AND DEVELOPMENT AGREEMENT (the "Amendment") is entered into as of the 5 day of March, 2014 by and among Rich Barton ("Barton"), IREWOOD NEVADA, LLC, a Nevada limited liability company ("Irewood") and SANTAQUIN CITY, a fifth class city of the State of Utah ("City" or "Santaquin") (together, the "Parties").

RECITALS

A. WHEREAS, the Annexation and Development Agreement for the Ahlin Annexation Project Area was entered into October 18, 2000 and was recorded in the official records of the Utah County Recorder December 11, 2000 as Entry No. 97996:2000 (the "Development Agreement") a copy of which is attached hereto as Exhibit A; and

B. WHEREAS, Barton and Irewood have acquired title to all of the real property that is described in the Development Agreement ("the Land"), except for approximately 24 acres that contains the City's Pressurized Irrigation Pond; and

C. WHEREAS, the Parties desire to enter into this Amendment to clarify and modify certain development parameters for the Land as more particularly set forth herein; and

D. WHEREAS, the Parties acknowledge that this Amendment does not modify any provisions of the Development Agreement affecting any part of the Ahlin Annexation other than the Land; and

E. WHEREAS, Barton and Irewood have agreed to cooperate with the City as reasonably necessary to comply with the terms of the Development Agreement and this Amendment, and agree to be bound by the terms of this Amendment, as evidenced by their signatures below; and

F. WHEREAS, Barton and Irewood intend to take all steps necessary to develop the Land according to the Development Agreement and this Amendment; and

G. WHEREAS, this Amendment shall modify the Development Agreement with respect to the Land only as specifically set forth herein, and all provisions of the Development Agreement which are not specifically amended herein shall continue in full force and effect.

H. WHEREAS, the modifications set forth in this Amendment are consistent with the planning objectives and goals of the City for the Development Agreement approved pursuant to Ordinance No. 12-3-2000.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

SECTION I. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Amendment that is not otherwise defined herein shall have the meaning given in the Development Agreement. Terms defined herein are as follows:

1.1 **“Developer”** means any individual or entity, its assigns and successors in interest, whether in whole or in part, which may or may not include an Owner, that seeks approval of a final plat for subdivision of development of all or any portion of the Land or the establishment of any Project.

1.2 **“ERU”** means Equivalent Residential Unit as the term is defined in the Santaquin City Land Uses Ordinances.

1.3 **“Frontage Road”** means the road that is described in the Development Agreement that is to be constructed on the Land adjacent to I-15 and which shall run from 900 South to I-15 exit 242, commonly known as the South Santaquin interchange. The phasing plan contemplated and approved for such road is attached hereto as Exhibit B.

1.4 **“Owners”** for purposes of this Amendment means BARTON and IREWOOD who own all of the Land.

1.5 **“Plat A”** for purposes of this Amendment means that project and the area shown in Exhibit C, which is attached hereto.

1.6 **“Preliminary Plat”** means that preliminary plat for development of the Land that was approved by the City, a copy of which is attached hereto as Exhibit D.

1.7 **“Project”** means the improvement and development of the Land pursuant to the Development Agreement, as amended hereby.

1.8 **“Warranty Bond”** means ten percent of the City engineers cost of construction as outlined and set forth in the Santaquin City Code.

1.9 **“Development Standards”** means the Santaquin City construction Standard Specifications and Drawings adopted by resolution of the City Council on June 20, 2012, and as may be amended from time to time.

SECTION II. SPECIFIC AMENDMENTS

The Development Agreement shall be specifically amended as follows:

2.1 **Construction of Frontage Road.** The parties agree that the provisions of the Development Agreement that require that the construction of the Frontage Road be completed as part of the first phase of development of the Property shall be amended to provide for construction and completion of the Frontage Road as follows:

2.1.1 The construction of the Frontage Road shall not be required as a prerequisite to development of the Land, a Project, or Phase 1 except as required by the City Development Standards and those stipulations outlined in this agreement.

2.1.2 No Frontage Road construction shall be required as part of the approval of Plat A but Plat A must otherwise meet full compliance with City construction standards.

2.1.3 Developer shall construct Phases 1 through 3 of the Frontage Road in phases as outlined in Exhibit B of this agreement.

2.1.4 The City shall establish an escrow account ("Escrow") for the purpose of receiving and holding monies received from Developer for the purpose of assuring completion of that portion of the Frontage Road described in Phases 1 and 2 of Exhibit B. No interest shall accrue on any monies placed in the Escrow. Notwithstanding any provision of this First Amendment, the City neither represents, nor guarantees that the amounts deposited into the Escrow will be sufficient to commence or complete all or any portion of the Frontage Road.

2.1.5 The Developer shall deposit into Escrow an amount equal to \$3,333 per lot or \$7,042 per acre being platted in a Project, whichever is more. Deposit of these funds shall take place with the closing of each lot. However, the requirement for deposits to the Escrow shall cease when a bond, including Warranty Bond, that satisfies the applicable provisions of the Santaquin City Code and Development Standards, is posted for completion of the Phase 2 Frontage Road. Within 30 days of said bonds being posted, all amounts deposited into the Escrow shall be returned to the Owners or Developers who deposited the same, or their designees.

2.1.6 Within thirty (30) days after City's acceptance of the Frontage Road improvements, as required in Exhibit "B" attached hereto, City agrees to disburse funds from Escrow to Developer(s) on a pro rata basis according to amounts contributed to Escrow and percentage of work completed.

2.1.7 All bonding provisions of the Santaquin City Land Use Ordinances shall apply to all Projects, which includes construction of the Frontage Road. The Escrow may be drawn upon, in accordance with bonding provisions of the Santaquin City Land Use Ordinances.

2.1.8 The Parties agree that in no event shall any final plat be approved which when combined with all previously approved final plats for Projects on the Land would cause the aggregate number of approved ERUs to exceed 150 without the Phase 2 Frontage Road being fully constructed.

2.1.9 In the event that no appropriate bond for the completion of Phase 2 is delivered to the City within five (5) years of the execution of this Agreement, the City may withdraw funds from the Escrow and use said funds to reimburse the City for any and all costs: first, of the enforcement of the Development Agreement and/or this Amendment (including reasonable attorneys' fees); and next to pay for the costs of the completion of the Phase 2 Frontage Road.

2.1.10 Any development adjacent to or including a portion of the master planned right-of-way for the Frontage Road must include full improvements of that portion of the Frontage Road adjacent to or included within the Project area as outlined in Phase 3 of Exhibit B, together with all Phase 3 improvements between that portion of the Frontage Road and either the existing street improvements at 900 South, or the South Santaquin I-15 interchange, so that all portions of the Property with Phase 3 improvements shall be connected to either 900 South or to the South Santaquin I-15 Interchange.

2.1.11 Developer(s) shall install and maintain all landscaping within the Frontage Road in accordance with the terms and specifications of Exhibit "B" attached hereto.

2.1.12 The Parties agree that only the Owner and Developer are responsible for the timing and/or sequence of the development of the Land under the Development Agreement and this Amendment; that the City shall have no responsibility to allocate any portion of the 150 ERU's described in 2.1.8 and the Parties waive any and all claims against the City relating to the allocation of the ERU's between the Owners of the Land.

2.1.13 Any improvements provided by the City as described in Phase 4 of the Frontage Road Phasing Plan in Exhibit "B" attached hereto shall be constructed at the sole discretion of the City. Owners hereby waive any and all claims against the City regarding any determination regarding if and when said improvements shall be constructed.

2.2 **Maximum Densities.** The parties hereby agree that the maximum density for development of the Property shall not exceed the maximum density shown on the Preliminary Plat. The parties also agree that the maximum density for that portion of the property designated on the Preliminary Plat as Phase 1 shall not in any case exceed the maximum density shown on Phase 1 of the Preliminary Plat and that the maximum density for that portion of the property designated on the Preliminary Plat as Phase 2 shall not in any case exceed the maximum density for that portion of the property designated on the Preliminary Plat as Phase 2.

2.3 **Irewood Property Use.** The Irewood Property shall be allowed the uses provided for in the zoning ordinance existing as of June 4, 2012 and a net density of not less than 3.56 units per acre for the residential area within the Irewood Property and the Irewood Property shall continue to qualify for the same PUD density bonus as existed on June 4, 2012. Further, no additional restrictions on the development, use, type and quality of construction and density of the Irewood Property via overlay zones, conditional use, variances or zone change shall impact or effect said property it being the intent of the parties that the Irewood Property shall be developed in accordance with the zoning and development agreement affecting said property.

2.4 **Access Between Owners' Properties.** Owners agree that prior to any recordation of a plat for development on the Land, access across the Barton property will be provided to Irewood. Such access shall fully satisfy all obligations of the City set forth in paragraph 9 of the Agreement between Irewood and the City dated June 4, 2012 to assure access to the Irewood property. Irewood releases and shall hold harmless the City for any and all further responsibility to provide such access as per the June 4, 2012 Agreement.

2.5 **Extension of Utilities and Services.** The parties acknowledge that the Development Agreement anticipated that the owners of the Land would jointly and cooperatively develop the Land and would provide access and utilities to all parts of the Land. Owners agree that each Project shall be designed and constructed in such a manner that will accommodate the extension of road ways and utilities and related infrastructure to all of the Land as contemplated in the Development Agreement and illustrated in the phasing plan attached hereto as Exhibit E (Phasing Plan). The Phasing Plan anticipates the Barton property will develop first and extend utilities and roads to the Irewood property with the third phase of development. Developers will provide, at their sole expense, such extensions to Owners' properties in accordance with the City approved Phasing Plan. Any changes to the Phasing Plan must be approved by all Parties to this agreement.

2.6 **Indemnification.** Owners hereby agree to indemnify and hold harmless the City and its officers, agents and employs from any and all damages and claims of third parties arising from or related to this Amendment.

2.7 **City Improvements.** All improvements constructed on the Land shall comply with all applicable City and State regulations.

2.8 **Enforcement by City.** The City may require that any Owner or Developer enforce the design guidelines and may enforce all City Development Standards and regulations applicable within the City generally.

2.9 **Water System Improvement.** The City Council acknowledges that an 8-inch water line must be designed and constructed between Canyon Road and Pole Canyon Road in order to cure existing water system deficiencies in the area and provide for future development capacity. Developer agrees to design and construct said water line with Plat A and will be reimbursed by the city for the actual costs of such work. The actual costs of construction must be established through open, competitive bidding processes, in which the Developer agrees to utilize the lowest responsible bidder for the work.

SECTION III. MISCELLANEOUS

3.1 **Incorporation of Recitals, Introductory Paragraphs, and Exhibits.** The Recitals contained in this Amendment, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Amendment as if fully set forth herein.

3.2 **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

3.3 **Severability.** If any provision of this Amendment or the application of any provision of this Amendment to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Amendment shall continue in full force and effect.

3.4 **Construction.** This Amendment has been reviewed and revised by legal counsel for Developer, Owner and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Amendment.

3.5 **Further Assurances, Documents and Acts.** Each Party hereto agrees to cooperate in good faith with the others, and to execute and deliver such further documents and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Amendment and the actions contemplated hereby. All provisions and requirements of this Amendment shall be carried out by each Party as allowed by law.

3.6 **Assignment.** Neither this Amendment nor any of the provisions, terms or conditions hereof can be assigned by the Developer or the Owner to any other party, individual or entity without assigning the rights as well as the obligations under this Amendment and complying with the other provisions herein concerning assignments. The rights of the City under this Amendment shall not be assigned, but the City is authorized to enter into a contract with a third party to perform obligations of the City to operate and maintain any infrastructure improvement so long as such party adequately and reasonably maintains and operates such facility or improvement.

3.7 **Amendment to Run with the Land.** A Memorandum of this Amendment shall be recorded against the Land and shall be deemed to run with the land.

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

3.9 **Notices.** Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by registered or certified mail, return receipt requested or by facsimile. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. If given by facsimile to the address and number for such Party set forth below (provided, however, that the notice is not effective unless a duplicate copy of the facsimile notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given upon receipt by the other Party. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the address set forth below:

If to City to:

With a copy to:

Susan Farnsworth	Nielsen & Senior
Santaquin City Recorder	15 W. South Temple, Suite 1700
275 West Main Street	Salt Lake City, Utah 84101
Santaquin, Utah 84655	Email: bbr@ns-law.com
Facsimile: (801) 754-3526	Attention: Brett B. Rich

If to Rich Barton to:

With a copy to:

	Jimmy DeGraffenreid
69 E. Hudson Lane	30 E. Deer Meadow Circle
Elk Ridge Utah 84651	Woodland Hills UT 84651

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If to Irewood Nevada, LLC to:

With a copy to:

Alan Thomson	Glen Roberts
2411 N. 750 East	334 E. Southfield Road
Provo Utah 84602	Spanish Fork Utah 84660

3.10 **No Third Party Beneficiary.** This Amendment is made and entered into for the sole protection and benefit of the Parties and their assigns, subject to the provisions of the Development Agreement. No other Party shall have any right of action based upon any provision of this Amendment whether as third party beneficiary or otherwise.

3.11 **Counterparts and Exhibits.** This Amendment may be executed in duplicate counterparts, each of which is deemed to be an original. This Amendment consists of eight (8) pages, and an additional five (5) exhibits, which together constitute the entire understanding and agreement of the Parties to this Amendment. The following exhibits are attached to this Amendment and incorporated herein for all purposes:

- Exhibit A Ahlin Annexation and Development Agreement
- Exhibit B Frontage Road Phasing Plan
- Exhibit C Foothill Village Plat A
- Exhibit D Preliminary Plat
- Exhibit E Barton Property Phasing Plan

3.12 **Duration.** This Amendment shall continue in force and effect until all obligations under the Development Agreement relating to the Land have been satisfied.


3.13 **Acknowledgment.** By its signature below Owners acknowledge that the property owned by such owner at the time of execution of this Amendment shall be subject to all of the terms and conditions of this Amendment upon execution by all Parties.

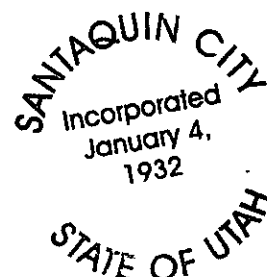
IN WITNESS WHEREOF, this Amendment has been executed by the City of Santaquin, acting by and through its City Council and by each of the Owners by duly authorized persons as of the 5 day of ~~February~~ March, 2014.

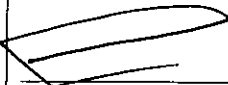
SANTAQUIN CITY

 _____, Mayor


ATTEST:

By: 
 Susan B. Farnsworth, City Recorder

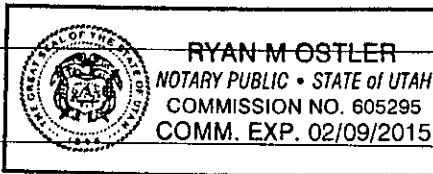


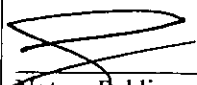
State of Utah
County Of Utah
Subscribed and sworn/affirmed to before me this
25 day of Feb, 2014,


Notary Public

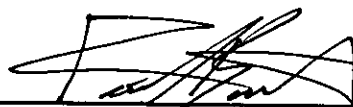
IREWOOD NEVADA, LLC:


By: Alan Thomson, Manager



State of Utah
County Of Utah
Subscribed and sworn/affirmed to before me this
25 day of Feb, 2014,


Notary Public



Rich Barton

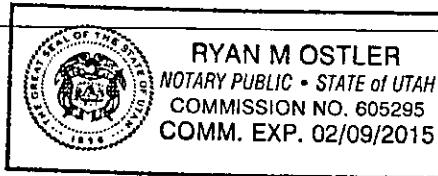
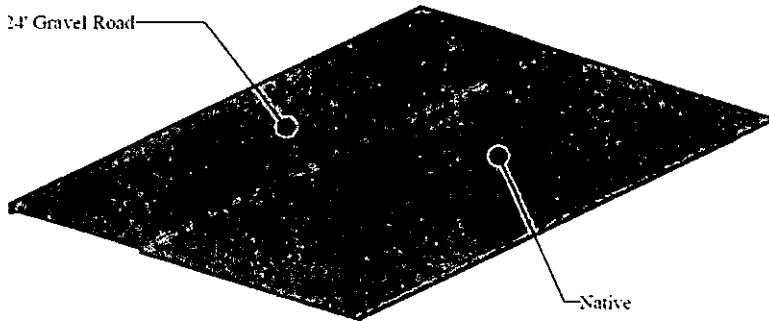


Exhibit A: Annexation and Development Agreement

Exhibit B: Frontage Road Phasing Plan

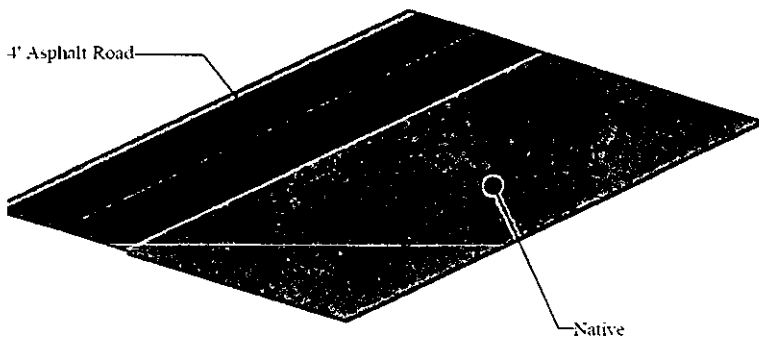
Phase 1



Phase 1 Description:

Coincident to construction of a second Project or phase on the Land, Developer shall provide a 24' wide emergency access road that will be constructed from the I-15 south Santaquin interchange to existing street improvements in 900 south. A public right-of-way easement, in favor of Santaquin City, shall also be provided across the length of the access road. Such road does not need to be paved, but must have a carrying capacity for all City emergency response vehicles and equipment.

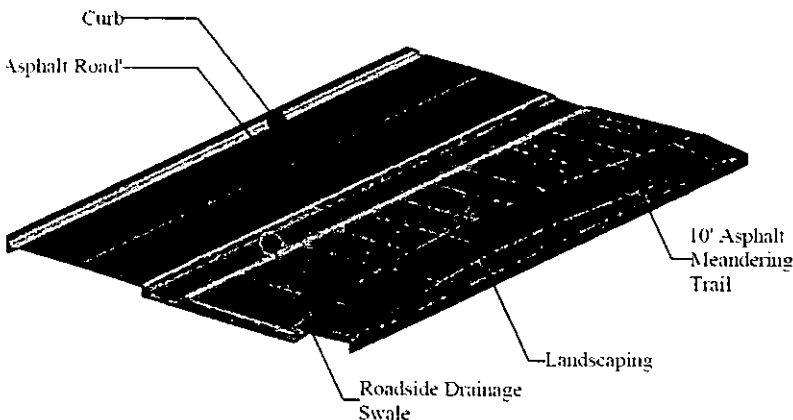
Phase 2



Phase 2 Description:

Prior to 150 equivalent residential units being constructed on the Land, Developer shall provide a 24' wide asphalt surface road that shall be constructed from the I-15 south Santaquin interchange to existing street improvements in 900 south. The road must be bonded (as per the terms of Section 2 of this Amendment) and constructed to meet city rural local road standards, excepting the right-of-way width which shall meet the Frontage Road Cross Section standards. The payments to Escrow, outlined in Section 2 of this Amendment, shall go toward these improvements.

Phase 3

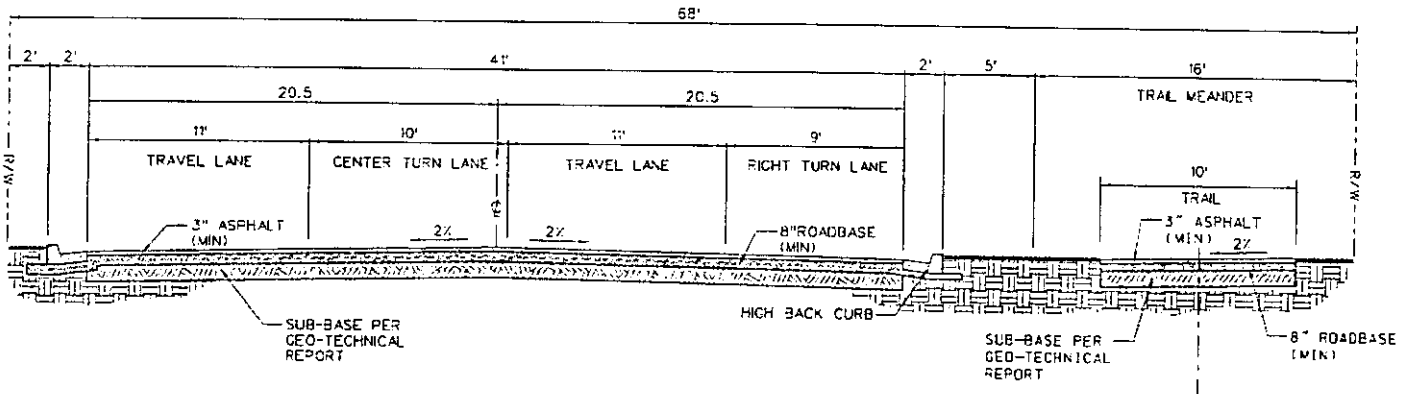
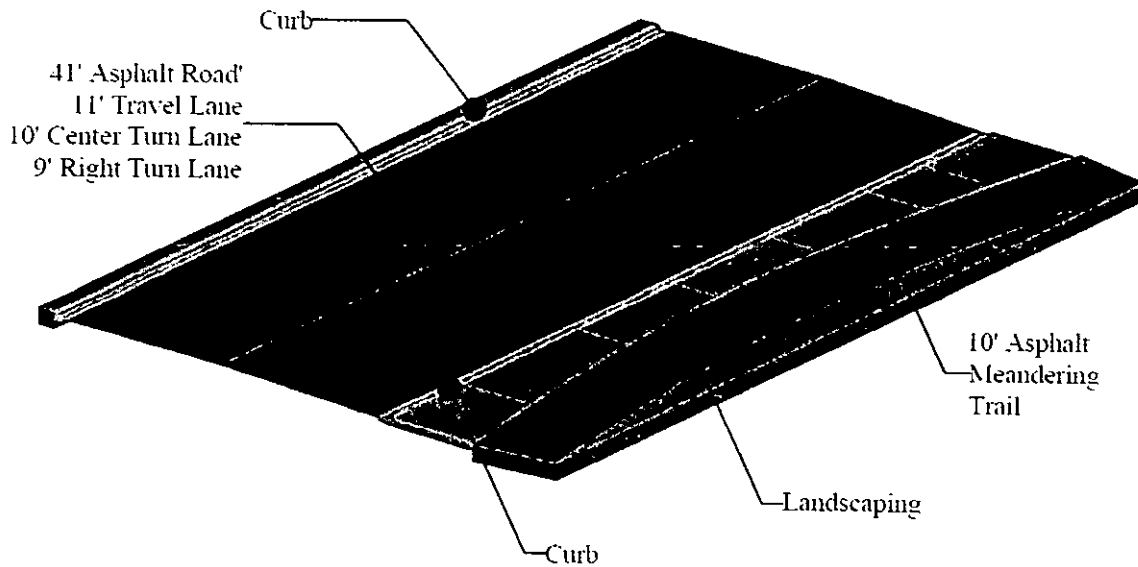


Phase 3 Description:

Developer shall provide full Frontage Road right-of-way and phase 3 improvements when a Project or phase boundary abuts the Frontage Road corridor as shown on the Preliminary Plan in Exhibit D. The City shall reimburse portions of the trail improvements where such are included in capital improvement plans and paid by Developer. Curbing will be on the west side but landscaping and a drainage swale will be maintained by the developer on the east side of the road. Developer

shall be responsible to install and pay for the curb & gutter and Frontage Road improvements and a sidewalk equivalent amount towards the 10' asphalt trail. City shall be responsible for the costs of installing the park portion of the Frontage Road including lawn and trees and the remainder cost of the 10' asphalt meandering trail.

Phase 4



Phase 4 Description

Phase 4 includes complete buildout of the planned asphalt surface, curb and gutter on both sides of the road, and maintained landscaping and trail on the east side of the road. It is anticipated that the City will complete phase 4 as needed.

Exhibit C: Foothill Village Plat A

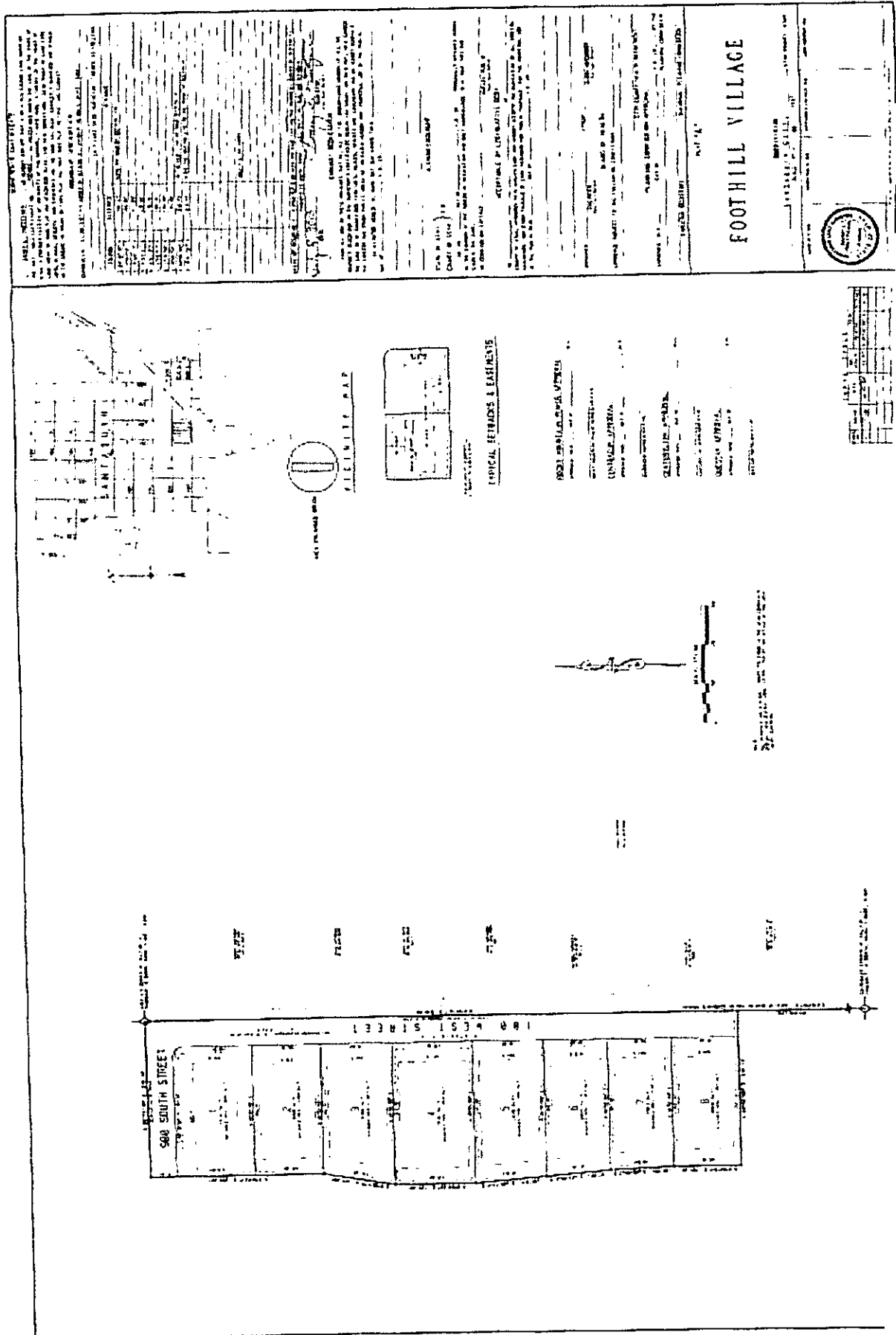


Exhibit D: Preliminary Plat

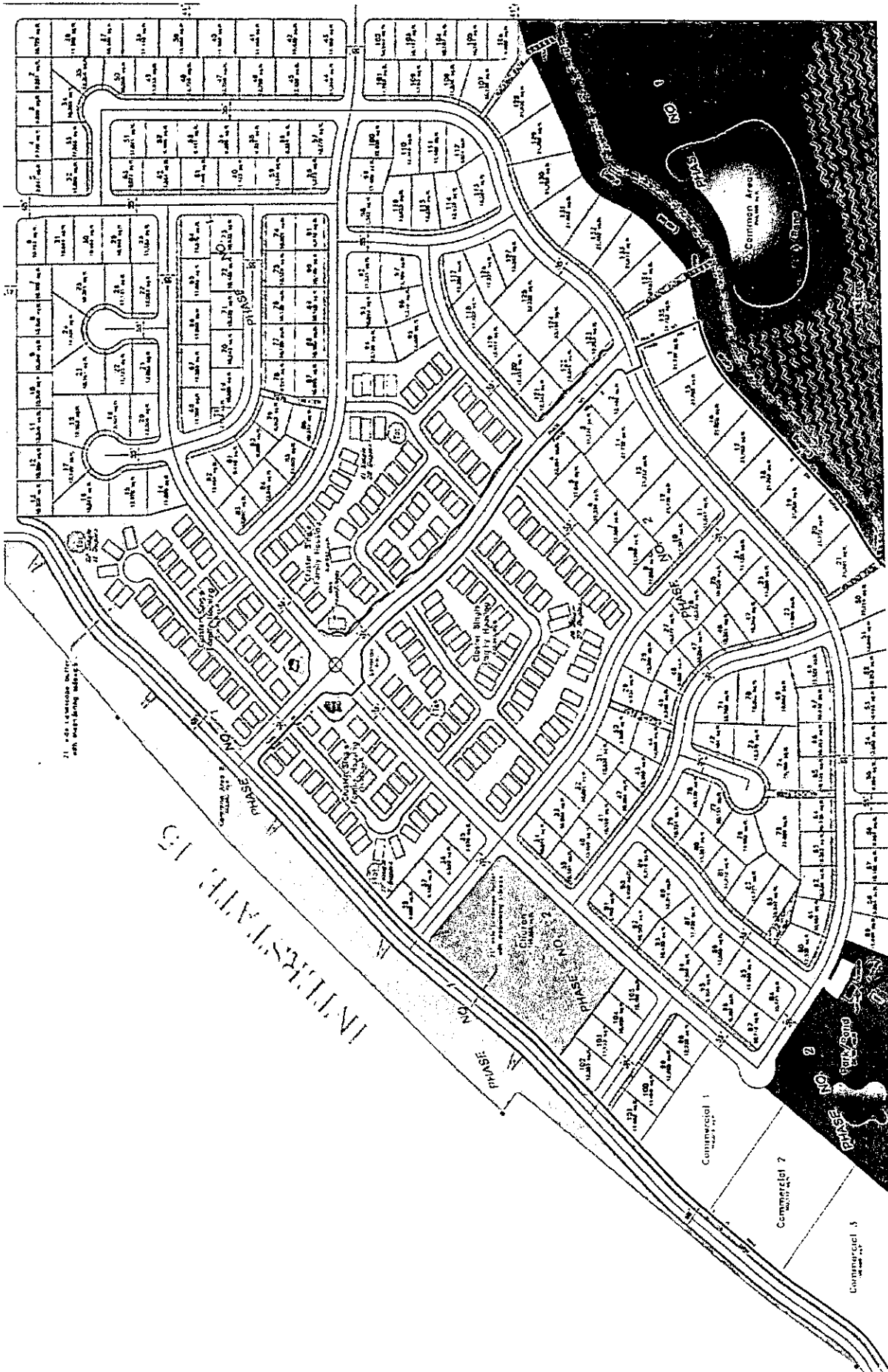


Exhibit E: Barton Property Phasing Plan

