

20-34-300-002

20-03-100-002

26-03-200-001

19

PLEASE RETURN TO:
Melanie Briggs
City Recorder
8000 S. Redwood Rd.
West Jordan, UT 84088

**DEVELOPMENT AGREEMENT
FOR THE DISCOVERY PROJECT
CITY OF WEST JORDAN, UTAH**

This Development Agreement ("Agreement") is entered into as of this 15th day of March, 2005 (the "Effective Date"), by and between **Oquirrh Hills, LLC**, a Utah limited liability company, and **R. LaMar Jones and Vicky R. Jones as Trustees of The R. LaMar and Vicky R. Jones Revocable Trust** (collectively, the "Developer"), as the owner and developer of a mixed use, single-family residential and commercial project known as **Discovery** (the "Project"), and the **City of West Jordan**, a municipality and political subdivision of the State of Utah (the "City").

RECITALS:

- A. Developer owns or has the contractual right to acquire approximately 122 acres of real property located within the municipal boundaries of the City, as more fully described in Exhibit A (the "Property"), on which it proposes the development of the Project.
- B. Developer is willing to design and develop the Project in a manner that is in harmony with and intended to promote the long-range policies, goals and objectives of the City's general plan, zoning and development regulations, and the terms of this Agreement as more fully set forth below.
- C. The City, acting pursuant to its authority under Utah Code Annotated, § 10-9-101, *et seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms as more fully set forth below, Developer and the City hereby agree as follows:

- 1. **Recitals and Exhibits.** The recitals set forth above and all exhibits are hereby incorporated by reference as part of this Agreement.
- 2. **Property Affected by This Agreement.** The legal description of the Property contained within the Project boundaries is attached and specifically described in Exhibit A. No additional property may be added to this description for purposes of this Agreement except by written amendment to this Agreement executed and approved by the parties hereto.

9318215
03/09/2005 10:27 AM \$0.00
Book - 9103 Pg - 3178-3196
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
WEST JORDAN CITY
8000 S REDWOOD RD
WEST JORDAN UT 84088
BY: JLT, DEPUTY - MA 19 P.

3. **Development Agreement Subject to Approval of Rezoning.** As a condition precedent to the obligations of the parties under the terms of this Agreement, including those related to dismissal of litigation and general release of claims in paragraph 8, this Agreement is contingent upon and will only become effective at such time, and in the event, that the City Council, in the independent exercise of its legislative discretion, elects to approve the rezoning of the Property as designated on Exhibit B, following all necessary public hearings required for the approval of such rezoning and this Agreement. This Agreement is not intended to and does not bind the City Council in the independent exercise of its legislative discretion with respect to the proposed rezoning of the Property.

4. **Project Concept Plan Approval.** As part of this Agreement, the City has approved an overall concept plan for the Project which is attached hereto as Exhibit B and incorporated herein by this reference (the "Concept Plan"). The Concept Plan shall govern all future development within the Project as more fully described in this Agreement, subject to compliance with all other applicable ordinances and regulations of the City.

4.1 **Minimum Lot Size.** A minimum of not less than fifty percent (50%) of the lots in the R-1-10 zone lying south of 8600 South and designated as Area 2 on Exhibit B shall be equal to or larger than 12,000 square feet, with the remainder of the single-family residential lots in Area 2 having a minimum size of between 10,000 and 12,000 square feet.

4.2 **Minimum Home Sizes.** All of the single family residential dwelling units located in the R-1-8 zone north of 8600 South designated as Area 1 on Exhibit B shall be minimum of size "C" homes as provided in the City's Zoning Ordinance. A mix of size "E" and "F" homes shall be provided in Area 2.

5. **Vested Rights and Reserved Legislative Powers.**

5.1 **Vested Rights.** Developer shall have the vested right to develop and construct the Project in accordance with the Concept Plan approved by the City and incorporated as part of this Agreement as Exhibit B, subject to compliance with the terms and conditions of the underlying zoning regulations for each area of the Project and all other applicable ordinances and regulations of the City.

5.2 **Reserved Legislative Powers.** Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of Developer with respect to use and density under the zoning designations as referenced in Section 5.1 above under the terms of this Agreement based

upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah.

6. Requirement to Comply With Other Applicable City Ordinances and Regulations.

Developer expressly acknowledges and agrees that it shall be necessary to comply with all of the ordinances, regulations and requirements of the City for preliminary and final subdivision plat approval and commercial site plan approval for all proposed development within the Project, and nothing in this Agreement shall be deemed to relieve Developer or its successors and assigns from the obligation to comply with all applicable ordinances, regulations and requirements of the City for approval of individual subdivision plats, commercial site plans, and all other aspects of the Project, including the payment of fees and compliance with the City's design and construction standards.

6.1 Middle School Site. The parties acknowledge that a parcel of property labeled as "Middle School Site" on Exhibit B was previously sold and conveyed by warranty deed to the Board of Education of the Jordan School District without going through the subdivision approval process. The parties acknowledge that an application for subdivision plat approval for the middle school site has been submitted to the City and Developer agrees to cooperate with the City in pursuing diligently to completion the subdivision plat approval process for the Middle School Site.

7. Dismissal of Litigation and General Release of All Claims.

7.1 Dismissal of Litigation. Upon execution of this Agreement and subject to fulfillment of the zoning condition precedent in paragraph 3 of this Agreement, the parties shall cause to be executed and filed a joint stipulation and motion for an order dismissing that certain legal action currently pending in the Third Judicial District Court for Salt Lake County, State of Utah, Sandy Department, entitled and captioned as Oquirrh Hills, LLC v. West Jordan City, Civil No. 040401124, assigned to the Honorable Royal Hansen (the "Litigation").

7.2 General Release of Claims. Except for the obligations under this Agreement, Developer, for and on behalf of itself and its respective officers, managers, members, directors, employees, agents, indemnitors, insurers, successors, and assigns, hereby releases and forever discharges the City of West Jordan, together with its elected officials, employees, agents, indemnitors, attorneys, insurers, successors, and assigns from any and all claims, demands, liabilities, damages, causes of action, costs and expenses, including attorney's fees, which may now exist or hereafter accrue because of, arising out of, or in any way connected with the Litigation referenced above.

8. Successors and Assigns of Developer in the Ownership or Development of Any Portion of the Project.

8.1 **Binding Effect.** This Agreement shall be binding upon the City as well as on the successors and assigns of Developer in the ownership or development of any portion of the Project.

8.2 **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of the City, which consent shall not be unreasonably withheld. Any such request for assignment may be made by letter addressed to the City of West Jordan, and the prior written consent of the City may also be evidenced by letter from the City to Developer or its successors or assigns. This restriction on assignment is not intended to prohibit or impede the sale of parcels of fully or partially improved or unimproved land by Developer prior to construction of buildings or improvements on such parcels, so long as the Developer retains all rights and responsibilities under this Agreement.

9. **Phasing.** The Developer may proceed by platting and constructing the Project all at one time or by phase for portions of the Project as marketing conditions dictate, as long as each phase provides for a logical extension of roads, infrastructure and utilities through the Project as approved by the City, in conformance with the requirements of this Agreement and the other applicable ordinances and regulations of the City.

10. General Terms and Conditions.

10.1 **Term of Agreement.** The term of this Agreement shall be for a period of five (5) years following the date of its adoption by the City Council unless the Agreement is earlier terminated or its term modified by written amendment to this Agreement, except the release of claims in Section 8.2 and the dedication and conveyance of property for the Drainage Channel, roads, utilities, or other public improvements as required by other applicable ordinances and regulations of the City, which shall be perpetual.

10.2 **Agreement to Run With the Land.** This Agreement shall be recorded in the office of the Salt Lake County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on all successors in the ownership of any portion of the Property. The benefits of this Agreement shall inure to successors-in-interest and/or subsequent owners only if the Agreement is transferred or assigned in accordance with the provisions of Section 9.2 above.

10.3 **Construction of Agreement.** This Agreement shall be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining

public benefits, and protecting any compelling countervailing public interest while providing reasonable assurances of continuing vested development rights as defined in Section 5.

10.4 State and Federal Law. The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of this Agreement shall remain in full force and effect.

10.5 Relationship of Parties and No Third-Party Rights. This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto nor, unless otherwise stated, create any rights or benefits to third parties.

10.6 Laws of General Applicability. Where this Agreement refers to laws of general applicability to the Project, this Agreement shall be deemed to refer to other laws of the City of West Jordan.

10.7 Integration. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto.

10.8 Applicable Law. This Agreement is entered into under and pursuant to and is to be construed and enforceable in accordance with the laws of the State of Utah.

10.9 Notices. Any notices, requests or demands required or desired to be given hereunder shall be in writing and shall either be delivered personally or by certified mail or express courier delivery to the parties at the following addresses:

If to the Developer:

Rich Welch
CFO Land Development Manager
Liberty Homes
9075 South 1300 East
Sandy, UT 84094

If to the City:

Gary Luebbers
City Manager
8000 S. Redwood Road, #300
West Jordan, UT 84088

With a copy to:

Roger F. Cutler
West Jordan City Attorney
8000 S. Redwood Rd., #300
West Jordan, UT 84088

Tom Burdett
Director Community Development
City of West Jordan
8000 S. Redwood Road
West Jordan, UT 84088

Any party may change his address by giving written notice to the other party in accordance with the provision of this section.

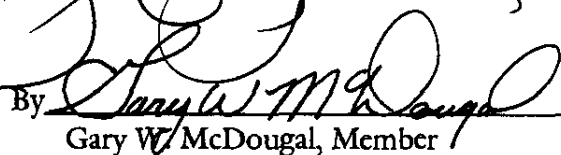
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

"Developer"

OQUIRRH HILLS, LLC.,
a Utah limited liability company

By _____
David C. Clark, Member

By  _____
Dennis E. Berrett, Member

By  _____
Gary W. McDougal, Member

//////////

By Michael L. Jones
Michael L. Jones, Member

THE R. LaMAR AND VICKY R. JONES
REVOCABLE TRUST

By _____
R. LaMar Jones, Trustee

By _____
Vicky R. Jones, Trustee

Attest:

Melanie Bras
City Recorder for City of West Jordan

119444.1

CITY OF WEST JORDAN

By Bryan Holladay
Mayor Bryan Holladay

APPROVED AS TO LEGAL FORM
West Jordan City Attorney
By: [Signature] Date: 3-1-05



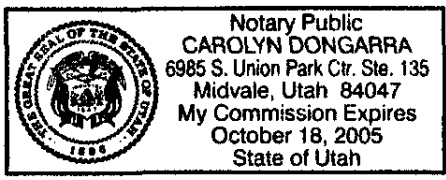
STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by David C. Clark, as a Member of and on behalf of Oquirrh Hills, LLC, a Utah limited liability company.

Notary Public

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

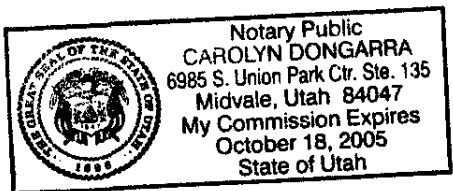
The foregoing instrument was acknowledged before me this 28th day of February, 2005, by Dennis E. Berrett, as a Member of and on behalf of Oquirrh Hills, LLC, a Utah limited liability company.



Carolyn Dongarra
Notary Public

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

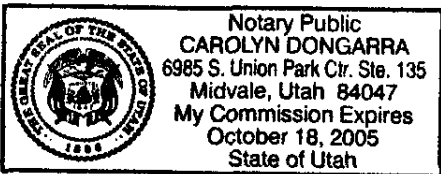
The foregoing instrument was acknowledged before me this 28th day of February, 2005, by Gary W. McDougal, as a Member of and on behalf of Oquirrh Hills, LLC, a Utah limited liability company.



Carolyn Dongarra
Notary Public

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

The foregoing instrument was acknowledged before me this 28th day of February, 2005, by Michael L. Jones, as a Member of and on behalf of Oquirrh Hills, LLC, a Utah limited liability company.



Carolyn Dongarra
Notary Public

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by R. LaMar Jones, as Trustee of The R. LaMar and Vicky R. Jones Revocable Trust.

Notary Public

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Vicky R. Jones, as Trustee of The R. LaMar and Vicky R. Jones Revocable Trust.

Notary Public

If to the City:

Gary Luebbers
City Manager
8000 S. Redwood Road, #300
West Jordan, UT 84088

With a copy to:

Roger F. Cutler
West Jordan City Attorney
8000 S. Redwood Rd., #300
West Jordan, UT 84088

Tom Burdett
Director Community Development
City of West Jordan
8000 S. Redwood Road
West Jordan, UT 84088

Any party may change his address by giving written notice to the other party in accordance with the provision of this section.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

"Developer"

OQUIRRE HILLS, LLC.,
a Utah limited liability company

By 
David C. Clark, Member

By _____
Dennis E. Berrett, Member

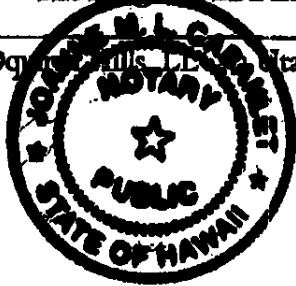
By _____
Gary W. McDougal, Member

////////////////

joel
joel

Hawaii
STATE OF UTAH)
City & County of Honolulu : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 25th day of February, 2005, by David C. Clark, as a Member of and on behalf of Oquirrh Hills, LLC, a Utah limited liability company.



Joanne M.L. Cabanlet
Notary Public *Joanne M.L. Cabanlet*
My Commission Expires: *5-9-08*

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Dennis E. Berrett, as a Member of and on behalf of Oquirrh Hills, LLC, a Utah limited liability company.

Notary Public

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Gary W. McDougal, as a Member of and on behalf of Oquirrh Hills, LLC, a Utah limited liability company.

Notary Public

By _____
Michael L. Jones, Member

**THE R. LaMAR AND VICKY R. JONES
REVOCABLE TRUST**

By *R. LaMar Jones*
R. LaMar Jones, Trustee

By *Vicky R. Jones*
Vicky R. Jones, Trustee

Attest:

CITY OF WEST JORDAN

City Recorder for City of West Jordan

By _____
Mayor Bryan Holladay

119641

STATE OF ~~UTAH~~ OREGON)
 : ss.
COUNTY OF ~~SANTO SPIRITO~~)
 UMATILLA

The foregoing instrument was acknowledged before me this 26th day of February, 2005, by Michael L. Jones, as a Member of and on behalf of Oquirrh Hills, L.I.C, a Utah limited liability company.

Bergetta J Spain
Notary Public

STATE OF ~~UTAH~~ OREGON)
 : ss.
COUNTY OF ~~SANTO SPIRITO~~)
 UMATILLA

The foregoing instrument was acknowledged before me this 26th day of February, 2005, by R. LaMar Jones, as Trustee of The R. LaMar and Vicky R. Jones Revocable Trust.

R. LaMar Jones
Bergetta J Spain
Notary Public



STATE OF ~~UTAH~~ OREGON)
 : ss.
COUNTY OF ~~SANTO SPIRITO~~)
 Umatilla

The foregoing instrument was acknowledged before me this 26th day of February, 2005, by Vicky R. Jones, as Trustee of The R. LaMar and Vicky R. Jones Revocable Trust.

Vicky R. Jones
Bergetta J Spain
Notary Public



EXHIBIT 'A'

Boundary Description - Discovery Phase 1 (Area 1)

Beginning at a point which lies South 89°52'00" East along the South line of the Southwest quarter of Section 34, Township 2 South, Range 2 West, Salt Lake Base & Meridian, 1537.40 feet and North 00°08'00" East 67.72 feet from the Southwest corner of said Section 34; and traversing thence

North 00°46'52" West 248.37 feet; thence
South 89°24'05" West 260.46 feet; thence
North 08°02'35" East 1224.08 feet; thence
South 89°59'26" East 1029.80 feet; thence
North 00°46'52" West 1007.08 feet; thence
South 89°59'26" East 150.01 feet; thence
South 00°46'52" East 2489.99 feet; thence
North 89°52'00" West 908.82 feet to a point on a curve to the right, having a radius of 520.00 feet and a central angle of 08°00'23"; thence along the arc of said curve a distance of 72.66 feet, said arc subtended by a chord bearing North 85°53'44" West, a distance of 72.61 feet; thence North 89°53'33" West 127.48 feet to the point of beginning.

Containing 1,991,014 sf or 45.71 acres, more or less.

Boundary Description - Discovery Phase 1 (Area 2)

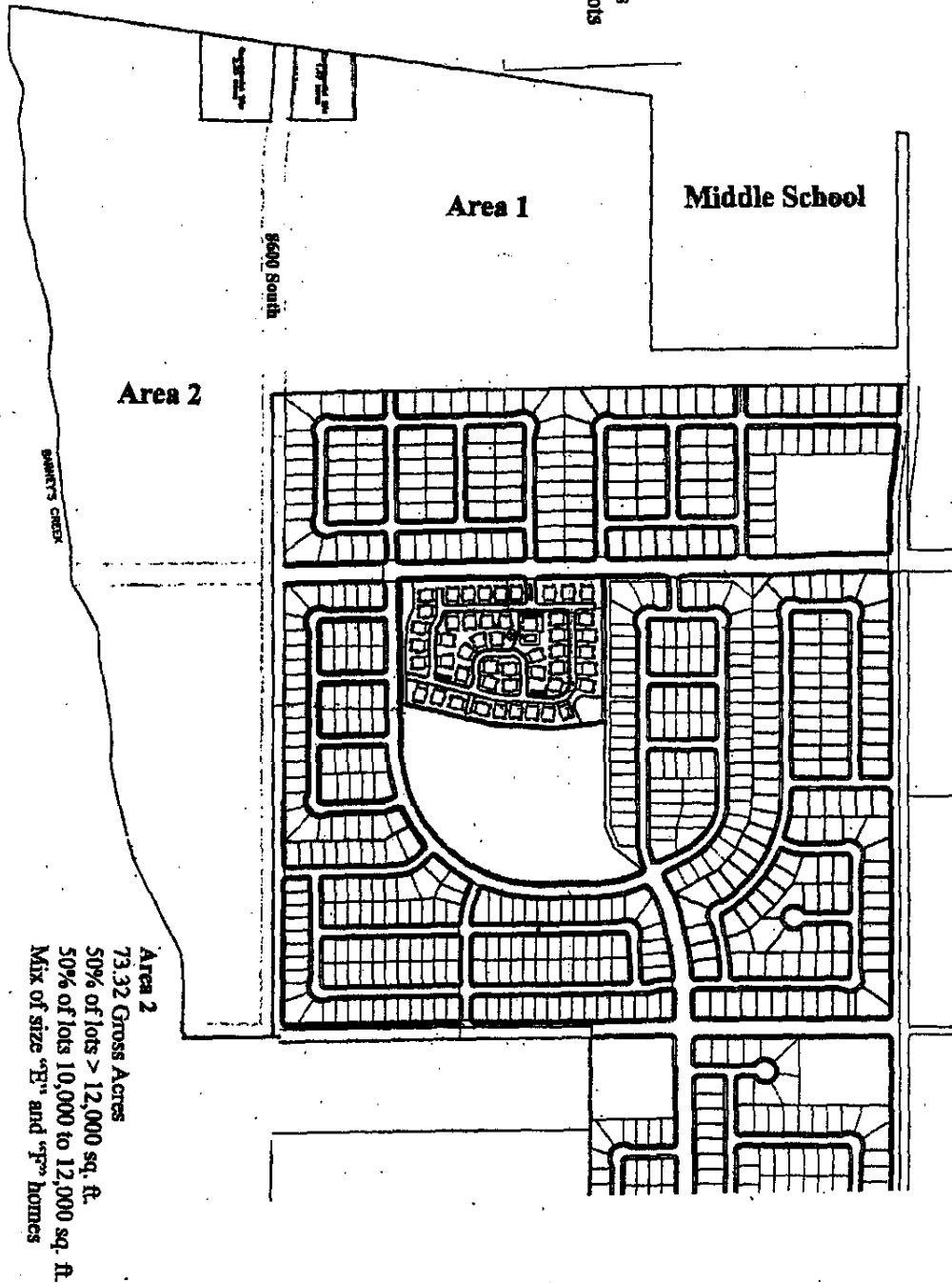
Beginning at a point which lies South 89°52'00" East along the South line of the Southwest quarter of Section 34, Township 2 South, Range 2 West, Salt Lake Base & Meridian, 1536.05 feet and South 00°08'00" East 22.97 feet from the Southwest corner of said Section 34; and traversing thence

South 81°53'33" East 116.23 feet to a point on a curve to the left, Having a radius of 610.00 feet and a central angle of 08°00'14"; thence Along the arc of said curve a distance of 85.21 feet, said arc Subtended by a chord bearing South 85°53'40" East, a distance of 85.14 feet; thence
South 89°52'00" East 867.81 feet; thence
South 89°51'27" East 2690.51 feet; thence
South 00°08'19" West 358.24 feet to a point which lies on the centerline of Barney's Creek; Thence along said centerline the following twenty-six (26) courses:
South 89°00'52" West 335.52 feet;
South 65°19'33" West 289.40 feet;
South 58°28'09" West 159.25 feet;
South 85°27'30" West 100.88 feet;
South 77°24'05" West 78.20 feet;
South 65°25'42" West 158.34 feet;
North 88°26'04" West 185.05 feet;
South 83°22'58" West 120.52 feet;
South 77°41'37" West 110.20 feet; t
South 84°52'24" West 224.61 feet;
South 63°34'33" West 242.15 feet;
South 88°54'24" West 116.03 feet;
South 81°44'02" West 273.58 feet;
South 86°47'28" West 182.26 feet;


South 84°05'32" West 118.41 feet;
South 74°53'29" West 110.73 feet;
North 85°44'25" West 182.43 feet;
South 83°00'36" West 113.48 feet;
South 75°41'06" West 195.54 feet;
South 75°21'09" West 182.12 feet;
North 89°46'55" West 161.91 feet;
South 82°51'47" West 232.41 feet;
North 08°21'32" West 143.85 feet;
South 58°52'31" West 87.76 feet;
South 76°59'39" West 70.38 feet;
North 87°49'19" West 176.39 feet; thence
North 08°02'35" East 777.55 feet; thence
South 89°53'41" East 348.24 feet; thence
North 00°16'31" East 282.20 feet to the point of beginning.

Containing 2,945,422 sf or 67.62 acres, more or less.

Area 1
 48.95 Gross Acres
 166 Residential Lots
 3.39 DU/Acre
 "C" size homes



Area 2
 73.32 Gross Acres
 50% of lots > 12,000 sq. ft.
 50% of lots 10,000 to 12,000 sq. ft.
 Mix of size "E" and "F" homes

11 | **Exhibit B** |  | **Discovery** | 11-20-04

Phase 1

Beginning at the South quarter corner of Section 34, Township 2 South, Range 2 West, Salt Lake Base & Meridian; and traversing thence

North 89°52'00" West 1416.09 feet along the South line of the Southwest quarter of said Section 34 to a point which lies on the Easterly Right of Way line of U-111; thence

North 08°02'35" East 1539.91 feet along said Easterly Right of Way line; thence

South 89°59'26" East 1029.78 feet; thence

North 00°46'52" West 1007.08 feet to a point which lies on the South Right line of 8200 South Street; thence

South 89°59'26" East 150.01 feet along said South Right of Way line; thence

South 00°46'52" East 2535.10 feet to the point of beginning, which point is also said South quarter corner of said Section 34.

Contains 2,132,300 sf or 48.95 acres, more or less.

Phase 2

Beginning at the South quarter corner of Section 34, Township 2 South, Range 2 West, Salt Lake Base & Meridian; and traversing thence

South 89°51'27" East 2648.78 feet; thence
South 00°08'19" West 358.14 feet; thence
South 89°00'52" West 335.52 feet; thence
South 65°19'33" West 289.40 feet; thence
South 58°28'09" West 159.25 feet; thence
South 85°27'30" West 100.88 feet; thence
South 77°24'05" West 78.20 feet; thence
South 65°25'42" West 158.34 feet; thence
North 88°26'04" West 185.05 feet; thence
South 83°22'58" West 120.52 feet; thence
South 77°41'37" West 110.20 feet; thence
South 84°52'24" West 224.61 feet; thence
South 63°34'33" West 242.15 feet; thence
South 88°54'24" West 116.03 feet; thence
South 81°44'02" West 273.58 feet; thence
South 86°47'28" West 182.26 feet; thence
South 84°05'32" West 118.41 feet; thence
South 74°53'29" West 110.73 feet; thence
North 85°44'25" West 182.43 feet; thence
South 83°00'36" West 113.48 feet; thence
South 75°41'06" West 195.54 feet; thence
South 75°21'09" West 182.12 feet; thence
North 89°46'55" West 161.91 feet; thence
South 82°51'47" West 232.41 feet; thence
North 80°21'32" West 143.85 feet; thence
South 58°52'31" West 87.76 feet; thence
South 76°59'39" West 70.38 feet; thence
North 87°49'19" West 176.39 feet; thence
North 08°02'35" East 1085.73 feet; thence
South 89°52'00" East 1416.10 feet to the point of beginning.

Containing 3,212,314 sf or 73.74 acres, more or less.

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 05-17

**A RESOLUTION AUTHORIZING THE EXECUTION
BY THE MAYOR OF A DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF WEST JORDAN AND
OQUIRRH HILLS, LC**

WHEREAS, the City Council of the City of West Jordan desires to enter into a Developer Agreement between the City of West Jordan and Oquirrh Hills, LC, for the Discovery Phase One Subdivision; and

WHEREAS, the Mayor is authorized to execute this agreement pursuant to Utah Code Annotated 10-3-1223,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Mayor is authorized and directed to execute the attached agreement entitled as follows:

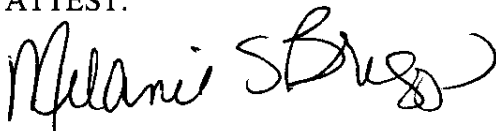
“Oquirrh Hills, LC, for the Discovery Phase One Subdivision”

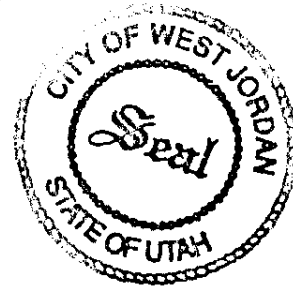
Section 2. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 1 day of March 2005.


BRYAN D. HOLLADAY
Mayor

ATTEST:


MELANIE S. BRIGGS, CMC
City Recorder



Voting by the City Council

Rob Bennett
Kathy Hilton
Mike Kellermeyer
Stuart Richardson
Kim V. Rolfe
Lyle C. Summers
Mayor Bryan D. Holladay

"AYE"	"NAY"
<input checked="" type="checkbox"/>	_____
<u>Absent</u>	_____
<input checked="" type="checkbox"/>	_____
<u>Absent</u>	_____
<input checked="" type="checkbox"/>	_____
<input checked="" type="checkbox"/>	_____