

WHEN RECORDED, RETURN TO:

Boyer Kimball Junction L.C.
c/o The Boyer Company
127 South 500 East
Salt Lake City, UT 84102

00581761 Bk01352 Pg00664-00687
ALAN SPRIGGS, SUMMIT CO RECORDER
2001 FEB 05 16:15 PM FEE \$58.00 BY DMG
REQUEST: PARK CITY TITLE

DEVELOPMENT AND EASEMENT AGREEMENT

THIS DEVELOPMENT AND EASEMENT AGREEMENT (the "Agreement") is made and entered into as of this 22nd day of January, 2001, by and among BOYER KIMBALL JUNCTION, L.C., a Utah limited liability company, and BOYER SPRING CREEK, L.C., a Utah limited liability company (together hereinafter referred to as "Boyer") or their respective assigns, and MJM5, L.C., a Utah limited liability company ("MJM"), and SPRING CREEK ANGUS RANCH, a Utah limited partnership ("SCAR") or their assigns.

RECITALS:

- A. Boyer is the owner of certain real property situated in Summit County, Utah, the legal description of which is set forth in Exhibit "A", attached hereto and incorporated herein by this reference (the "Boyer Property").
- B. SCAR is the owner of certain other real property situated in Summit County, Utah and located adjacent to the Boyer Property, the legal description of which is set forth in Exhibit "B", attached hereto and incorporated herein by this reference, and MJM will obtain title to that property pursuant to a contract with SCAR (the "MJM Property"). SCAR is a party to this Agreement for the purpose of consenting to and granting of easements in favor of Boyer and other encumbrances imposed on the MJM Property as a result hereof.
- C. The location and configuration of the Boyer Property and the MJM Property are shown on the project plan (the "Map") attached hereto and incorporated herein by this reference as Exhibit "C".
- D. The Boyer Property is to be developed subject to the terms of a certain Master Declaration of Covenants, Conditions and Restrictions which has been or will be recorded against the Boyer Property (the "Master Declaration").
- E. In connection with MJM's development of the MJM Property, Boyer desires to grant to MJM, for the benefit of the MJM Property, certain easements for vehicular, pedestrian and utility access across and upon portions of the Boyer Property specified as either a Common Roadway, which includes Uintah Boulevard access, and a Commercial Roadway, commonly known as Eastern Roadway under the terms of the Master Declaration, and in connection with Boyer's development of the Boyer Property, MJM desires to grant to Boyer, for the benefit of the

Boyer Property, certain easements for vehicular and pedestrian access, for the construction, maintenance, operation and repair of surface water drainage systems, and for the construction, maintenance and operation of certain wetlands mitigation projects across and upon specified portions of the MJM Property (which mitigation project is of mutual benefit), and to agree to certain covenants regarding development on and along the common border of the MJM Property and the Boyer Property, subject to and in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, and further in consideration of the mutual covenants and promises set forth herein, the parties hereto hereby agree as follows:

1. Access to MJM Property.

1.1 Uintah Boulevard Primary Access. Boyer hereby grants and conveys to MJM, for the benefit of the MJM Property, a perpetual non-exclusive easement for vehicular and pedestrian ingress to and egress from the MJM Property and for utilities over and across the private roadway identified on the Map as Uintah Boulevard (the "Uintah Boulevard Easement"); provided, however that ingress to and egress and utility access from the MJM Property by means of the Uintah Boulevard Easement shall occur from the access point on Uintah Boulevard identified on the Map as the MJM Primary Access Point. Uintah Boulevard is subject to the terms of a certain recorded declaration, and this Uintah Boulevard Easement shall be subject to the terms of the recorded declaration and any other instruments of record. For so long as Uintah Boulevard remains a private road, MJM agrees to pay to Boyer an equitable share of the costs of repair, maintenance and snow removal from the road.

1.2 Secondary Access. The parties contemplate that a roadway will be constructed along the common border of the MJM Property and the Boyer Property in the location designated on the Map as the "Eastern Roadway," with the center line of such road to be located on the common boundary of each such Property. The Eastern Roadway will provide shared access to Uintah Boulevard beginning on the South at the access point identified on the Map as the MJM Secondary Access Point. The proposed alignment of the Eastern Roadway as shown on the Map intersects with Uintah Boulevard at a point west of the MJM Primary Access Point. This proposed alignment may be moved to the east to create a straight alignment for the Eastern Roadway if approved by the Summit County engineer, and the parties agree to pursue such an approval before construction of the road in the alignment shown on the Map commences. All costs associated with construction and maintenance of the Eastern Roadway, including without limitation, the MJM Secondary Access Point, shall be shared equally by Boyer and MJM, provided, however, that in the event the Eastern Roadway alignment is adjusted after commencement of construction of the road, MJM shall be obligated to pay all of the incremental costs of adjusting the Eastern Roadway alignment in addition to the half of the Eastern Road costs originally projected for the road in the alignment shown on the Map. Each party hereby grants and conveys to the other party, for the benefit of the Property of the other party, a perpetual non-exclusive easement for vehicular and pedestrian ingress to and egress and for

utilities from each benefitted Property, and for utilities, over and across the Eastern Roadway (the "Eastern Road Easement"). The Eastern Road Easement shall also include such additional land as may be necessary on the respective Properties of the parties to accommodate cuts and fills made necessary by establishing the center line of the road on the common property line of the parties at the elevations established by the grading plans approved pursuant to Section 4 below. In addition, as an alternative means of obtaining secondary access to and from the MJM Property, Boyer agrees to construct at its sole cost and expense, and upon completion of the following described roads, to grant and convey to MJM, for the benefit of the MJM Property, a perpetual non-exclusive easement for vehicular and pedestrian ingress to and egress and for utilities from the MJM Property over and across the Commercial Roadway known as Main Street and the westerly Common Roadway shown on Exhibit "C" (the "Western Road Easement"). The Western Road Easement is shown in the general location anticipated for a Commercial Roadway and the westerly Common Roadway under the terms of the Master Declaration. The Western Road Easement shall cover the actual locations of the roads as constructed. The Western Road Easement shall be subject to relocation by Boyer from time to time in the operation, construction or reconstruction of improvements on the Boyer Property; provided, however that ingress to and egress from the MJM Property by means of the Western Road Easement shall occur from the access point identified on the Map as the MJM Secondary Access Point.

1.3 Final Legal Description. Upon completion of the construction of the Eastern Roadway and the Common Roadways and Commercial Roadway through the Boyer Property, the parties agree to record an amendment to this Agreement reflecting the final legal description of these roads as constructed. The legal description in that amendment shall supercede any inconsistent legal or map description contained in this Agreement.

2. Access across the MJM Property.

2.1 Access Easement. MJM and SCAR hereby agree, upon completion of the following described road, to grant and convey to Boyer, for the benefit of the Boyer Property, a perpetual non-exclusive easement for vehicular and pedestrian ingress to and egress from the Boyer Property, and for utilities, over and across the roadway to be constructed on the MJM Property and providing a connection for general vehicular traffic from the MJM Primary Access Point to the MJM Secondary Access Point identified on the Map. A possible alignment of the MJM Road is shown on Exhibit "C." The final location of the MJM Road shall be specified in the final development agreement or master plan approval covering the MJM Property and the easement shall cover the actual location of the road as constructed. MJM shall construct the MJM Road at its sole cost and expense and shall connect the MJM Road to the Eastern Roadway at the MJM Secondary Access Point. The MJM Secondary Access Point is a point described in the Redstone Master Plan as approved by Summit County. In the event the Redstone Master Plan is modified by action of the Summit County Commission, the MJM Secondary Access Point shall be modified to conform to the location specified in the revised Redstone Master Plan. The MJM Road shall be subject to relocation by MJM from time to time in the operation, construction or reconstruction of improvements on the MJM Property; provided, however that

ingress to and egress from the MJM Property by means of the MJM Road shall occur from the MJM Secondary Access Point. Service and delivery vehicles shall use only Uintah Boulevard for ingress and egress to and from the MJM Property.

2.2 Final Legal Description. Upon completion of the construction of the MJM Road through the MJM Property, the parties agree to record an amendment to this Agreement reflecting the final legal description of the MJM Road as constructed. The legal description in that amendment shall supercede any inconsistent legal or map description contained in this Agreement.

3. Wetland Mitigation and Surface Water Drainage.

3.1 Grant of Easements. MJM and SCAR hereby grant and convey to Boyer, for the benefit of the Boyer Property:

(A) Temporary Easement–Wetlands Mitigation Construction. A temporary non-exclusive construction easement over, across and upon that portion of the MJM Property identified on the Map as the Wetland Mitigation Area plus the additional portion of the MJM Property consisting of the 20 feet immediately adjacent to the Wetlands Mitigation Area, also identified on the Map as the Wetland Mitigation Construction Area, for all construction activities shown in drawings and specifications and for all other requirements in any permit issued by the U.S. Army Corps of Engineers or any other governmental entity (the “Wetland Permits”), together with a temporary, non-exclusive easement twenty (20) feet in width for ingress and egress and construction over, across and upon that portion of the MJM Property identified on the Map as the Wetland Mitigation Access Route to the extent necessary or convenient for the full and complete use, occupation and enjoyment of the construction easement hereby granted (the “Wetland Construction Easement”). Upon Boyer’s completion of all construction work authorized or required by the Wetland Permits on the Wetland Mitigation Area, or on December 31, 2002, whichever is earlier, the Wetland Construction Easement shall terminate and be of no further force or effect; and

(B) Temporary Drainage Easement. A temporary non-exclusive easement twenty (20) feet in width over, across and upon the three portions of the MJM Property identified on Exhibit “D” as the Temporary Ditch Locations and across the Wetlands Mitigation Area for the drainage and discharge of storm and other waters naturally accumulating on or discharged to the Boyer Property and for the installing, constructing, repairing and maintaining temporary ditches to convey those waters, together with all rights of ingress and egress over, across and upon the Temporary Ditch Locations (the “Temporary Drainage Easements”). The Temporary Drainage Easements shall terminate and be of no further force or

effect upon the completion of the permanent storm drainage pipelines through the MJM Property; and

(C) Permanent Drainage Easement. A permanent nonexclusive easement twenty (20) feet in width over, upon and across the Permanent Drainage Locations identified on Exhibit "D" and across the Wetlands Mitigation Area for the drainage and discharge of storm and other waters naturally accumulating on or discharged to the Boyer Property and for the installing, constructing, repairing and maintaining all pipelines and improvements authorized or required by the Wetland Permits or permits for storm drainage improvements or otherwise necessary or convenient for the full and complete use, occupation and enjoyment of the drainage and discharge easement hereby granted, together with all rights of ingress and egress over, across and upon the Permanent Drainage Locations (the "Permanent Drainage Easements"). The Permanent Drainage Locations have been identified based on the current MJM development plan and are subject to revision based on the final MJM development plan. Notwithstanding the right of MJM to relocate the Permanent Drainage Locations, MJM shall be required to provide a connection with storm drainage pipes on the Boyer Property at each of the three Discharge Points identified on Exhibit "D" along the common MJM/Boyer property line. The easements set forth in this Section 3.1 are referred to as the "Wetland and Drainage Easements"; and

(D) Additional Agreements with Respect to the Easements. The Wetland and Drainage Easements are subject to the following further agreements: (i) any of the Wetland and Drainage Easements, and all or any part of the facilities located therein, are subject to modification and relocation by MJM at MJM's sole cost and expense, provided that any such modification or relocation shall not adversely affect the validity of the Wetlands Permits, or compliance with the terms of such Wetlands Permits, the performance or capacity of the drainage systems to convey water in accordance with the standards set forth in Section 3.3(A) below, and shall not otherwise substantially adversely affect Boyer; (ii) MJM shall be entitled to use or construct other improvements within the areas affected by the Wetlands and Drainage Easements provided that such improvements or use shall not adversely affect the validity of the Wetlands Permits, or compliance with the terms of such Wetlands Permits, the performance or capacity of drainage systems to convey water; (iii) Boyer shall not be allowed to use the Permanent Drainage Easement for the conveyance of water in excess of the design capacity of the pipes.

(E) Amendment to Legal Descriptions. Upon completion of the construction of the pipes and other facilities necessary to capture and convey storm and other waters from the Boyer Property through the MJM Property, the parties agree to record an amendment to this Agreement reflecting the final legal

description of the Permanent Drainage Easement as constructed. The legal description in that amendment shall supercede any inconsistent legal or map description contained in this Agreement.

3.2 Cost of Work and Maintenance.

(A) Wetland and Drainage Improvements Costs. Subject to the following sentence, Boyer shall be solely responsible to construct and pay for all the out-of-pocket costs associated with constructing and installing temporary and permanent storm drainage ditches, pipes, and related infrastructure, and completing all Wetland mitigation work within the Wetland Mitigation Area (which work includes the construction of detention basins for storm water discharge and control) to the extent required by the Wetlands Permits. Boyer's construction, installation and payment obligation shall include but may not be limited to ditches, pipes, detention basins and related improvements located within the Wetland and Drainage Easements), which ditches, pipes and basins will provide storm drainage for both the Boyer Property and the MJM Property; provided, however, that Boyer shall not be required to pay for any permanent storm drainage improvements benefitting only the MJM Property and located outside of the Wetland and Drainage Easements. At such time as MJM develops the MJM Property, the temporary ditches will be replaced with pipes installed by MJM in accordance with the design standards described in Section 3.3(A). Boyer agrees to pay the cost of such pipes and installation within the Permanent Drainage Easements based on an estimate of such costs provided by MJM's and Boyer's engineers provided within 90 days after the date of this Agreement. In the event no agreement is reached on estimated costs within the that period, the costs shall be determined based on actual construction bids or binding unit costs obtained by MJM in connection with the anticipated commencement of permanent pipeline construction. Each party shall bear their own costs necessary to contain and convey surface water to the Wetland and Drainage Easements, including all costs necessary to connect to the main transmission pipes to be constructed within the Permanent Drainage Easements.

(B) Land Available for Mitigation. MJM and SCAR agree to provide approximately 10.5 acres of the land area of the MJM Property shown as the wetlands mitigation areas on Exhibits "D" and "D-1" and qualifying for wetlands mitigation credit for storm water drainage detention and wetlands mitigation requirements as shown on the approved plans. In the event such acreage is not available for such purposes exclusively on the MJM Property, MJM, shall use its best reasonable efforts to secure and provide such rights on properties located to the east of the MJM Property as may be available. The use of best efforts is not intended to mean that MJM is required to purchase such rights from the adjoining property owner. It is the intent that MJM will use its best efforts to acquire the

use of said property without cost to either MJM or Boyer. Boyer shall pay all costs associated with performing required mitigation on such property up to the maximum amount of land necessary to meet the mitigation requirements for both parties. In the event Boyer and MJM require more acreage to mitigate wetlands than can be provided by the parties or through MJM's best reasonable efforts, any mitigation required of MJM shall be deemed to be constructed within the Wetland and Drainage Easements and Boyer shall have the obligation to investigate and obtain the approval of an alternative wetlands mitigation project meeting the balance of the mitigation requirements for the Boyer Property not fulfilled within the Wetland and Drainage Easements.

(C) Maintenance Costs. Until such time as MJM develops the MJM Property, the storm drainage system, including the detention ponds within the Wetland Mitigation Area, shall be maintained by Boyer at Boyer's expense. After completion of the permanent pipelines and expiration of any construction warranties, Boyer and MJM shall share equally the cost of maintaining, operating, repairing and replacing all improvements within the Wetland and Drainage Easements, including the drainage pipes and the wetlands and storm water detention basins within the Wetland and Drainage Easements.

3.3 System Design Capacity, Allocation of Risk and Indemnification. MJM and Boyer agree to the following drainage system design standards, allocation of risks and duties with respect to surface water management and discharge:

(A) Drainage System Design Standards. Boyer's proposed project has been fully engineered. Boyer has designed the storm water pipes and catch basins on the Boyer Property to capture and convey within pipes the storm water runoff anticipated from a 10 year storm event on the Boyer Property, which conforms to the requirements of Summit County, and has designed outflow pipes at the points of discharge to the MJM Property that are sufficient to convey the storm water runoff anticipated from a 25 year storm event on the Boyer Property. For events that exceed a 25 year storm, the excess water will be safely conveyed on the surface streets and gutters through the Boyer and MJM Properties. These calculations include anticipated runoff that would be directed onto the Boyer Property from the properties to the north and west of the Boyer Property. In lieu of providing additional detention on the Boyer Property for storm water in excess of that anticipated in a 10 year storm, Boyer has provided a design for the detention basins within the Wetland Mitigation Area to detain the storm water runoff anticipated from a 100 year storm event from the Boyer Property and the MJM Property, and MJM consents to the construction of joint MJM and Boyer detention capacity in that location. Exhibit "D" contains the estimated peak discharge of water from the Boyer Property at each of the South, Middle and North Discharge Points. The parties acknowledge that (i) Boyer will direct surface

flows anticipated in a 100 year storm event to the anticipated roadway connection points shown on Exhibit "C", and (ii) MJM will plan and engineer its site improvements so as to accommodate the potential storm water flows for a 100 year event by grading its site so as to contain those flows within streets and parking areas anticipated for MJM's development plan. In accordance with the criteria set forth in the preceding sentence, Boyer's and MJM's engineers have created preliminary estimates of storm flows and pipe sizes based on certain assumptions and the standards for the storm drainage system, including the estimated pipe size to be included within the Permanent Drainage Easements, and those standards have been included in Exhibit "D." In the event that changes in MJM's site plan result in changes in any of the assumptions, Boyer agrees to pay the additional cost of upsizing the transmission pipes within the Permanent Drainage Easements to the extent necessary to permit those pipes to handle sufficient storm event flows to allow the balance of flows in a 100 year storm event that exceed the capacity of the pipes to be safely conveyed through the streets and parking areas of the MJM Property. The final storm drainage system design will follow sound engineering practices and use materials typical for drainage systems in Summit County, Utah.

(B) Additional Obligations. Except for the obligation of Boyer and MJM to accommodate the storm water runoff from portions of the existing shopping center located to the north of the Boyer Property, without the written consent of the other party, neither MJM nor Boyer shall enter into any agreement voluntarily allowing any third party the right to increase the quantity of water to be conveyed through the storm drainage system to be constructed within the Wetland and Drainage Easements. Boyer and MJM (with respect to the permanent drainage pipes to be installed by MJM) shall install the storm drainage and wetlands mitigation improvements in accordance with customary engineering standards, the terms in Exhibit "D" and the requirements of the Wetlands Permit. MJM shall maintain the storm drainage facilities located on the MJM Property after installation in accordance with prudent industry practices so as to assure the free flow of surface water consistent with the engineering standards for the system. Boyer shall maintain the storm drainage facilities located on the Boyer Property after installation in accordance with prudent industry practices so as to assure the free flow of surface water consistent with the engineering standards for the system. Boyer and MJM shall not construct any improvements within the Wetland and Drainage Easements or otherwise use the Wetland and Drainage Easements in a manner that adversely affects the validity of the Wetlands Permits, the performance of drainage systems or the capacity of any of the Wetland and Drainage Easements to convey water. Except for the obligation of Boyer and MJM to accommodate the storm water runoff from portions of the existing shopping center located to the north of the Boyer Property, neither Boyer nor

MJM will contract with any third party to increase the quantity of surface water to be accommodated by the storm drainage system by voluntarily accepting additional storm water runoff generated off of the Boyer Property or the MJM Property:

(C) Approval of Exhibit "D"; Assumption of Certain Risks. Boyer and MJM approve and accept the engineering calculations for storm drainage set forth above and in Exhibit "D," specifically including the storm event design criteria, minimum pipe sizes, detention standards and other performance criteria and each party assumes the risk of loss, damage or liability arising on the property of that party in whole or in part by reason of the application of those engineering standards. In the event the engineering of the storm drainage system within the Wetland and Drainage Easements proves, through no fault of either party under subsection (D) below, to be inadequate to address the storm drainage requirements of the Boyer and MJM Properties and thus creates a substantial risk of flood damage on the MJM Properties, the parties agree that the costs of making modifications to the storm drainage system within the Wetland and Drainage Easements shall be shared equally by the parties. Notwithstanding any inconsistent provision in this Agreement, and except under the circumstances of fault set forth in the following subsection (D), neither party shall be liable to the other party for any loss, damage or liability to third persons under storm or flood conditions that exceed the engineering design assumptions and standards for the storm drainage system set forth in this Agreement and the Exhibits hereto.

(D) Indemnities Based on Fault. Boyer shall indemnify and hold MJM harmless for any flooding, loss or damage to the MJM Property or any other claims, losses or liabilities resulting from negligent construction or maintenance of that portion of the storm drainage system located on Boyer Property. MJM shall indemnify and hold Boyer harmless for any flooding, loss or damage to the Boyer Property resulting from negligent construction or maintenance of that portion of the storm drainage system located on MJM Property. Each party agrees to indemnify the other party and any of its successors, assigns, tenants and others claiming through the other party (an "indemnified person") and hold the indemnified person harmless from any loss, damage or liability that may result from any breach of an express obligation of the party in preceding subsection 3.3 (B).

(E) Indemnities Without Fault. Except under circumstances of MJM liability under subsection (D), Boyer shall indemnify and hold MJM harmless for any flooding, loss or damage to the Boyer Property or any other claims, losses or liabilities arising from flooding on the Boyer Property. Except under circumstances of Boyer liability under subsection (D), MJM shall indemnify and

hold Boyer harmless for any flooding, loss or damage to the MJM Property or any other claims, losses or liabilities arising from flooding on the MJM Property.

4. Common Property Line Controls. MJM covenants and agrees that MJM shall improve and develop, at MJM's sole cost and expense, that portion of the MJM Property within the Eastern Road Easement and immediately to the east thereof strictly in accordance with the the following engineering drawings prepared by Sear Brown for the Redstone Project at Kimball Junction, Utah: Drawings (Revision Date 11/21/00) C-2, C-2.3, C-2.6, C-2.9 and C-3.6. MJM consents and approves the grading plans and elevations for the Eastern Roadway. Boyer shall have a temporary construction easement within and immediately adjacent to the Eastern Roadway to permit the full width grading of the Eastern Roadway to its finished elevation. Further MJM and Boyer agree to landscape the two sides of the Eastern Roadway compatibly and in accordance with the requirements of Summit County.

5. Sewer. This Agreement grants Boyer, for the benefit of the Boyer Property, an easement for sewer lines to connection with the Snyderville Basin Sewer Improvement District trunk line located on or adjacent to the MJM Property. The initial location of the sewer easement is designated on Exhibit "C." MJM reserves the right to cause the sewer trunk line to be relocated and MJM, at MJM's expense, agrees to provide Boyer with a replacement easement and a new connection to the relocated trunk line in the event the trunk line is relocated. Boyer consents to the relocation on the condition that sewer service to the Boyer Property not be interrupted and that Boyer bear no expense by reason of the relocation. Notwithstanding the preceding sentence, in the event the relocation occurs prior the Boyer's installation of its sewer service line and Boyer will save money in the installation of its line by reason of the relocation, Boyer agrees to contribute the amount of any cost savings the MJM to offset MJM's cost of relocating the trunk line.

6. [intentionally left blank]

7. Covenants to Run with the Land. Each of Boyer's and MJM's covenants and obligations set forth in this Agreement, including without limitation, each of MJM's acknowledgments set forth herein, are and shall be deemed for all purposes covenants running with the land.

8. Successors and Assigns. This Agreement shall bind and inure to the benefit of each the parties' respective successors and assigns. Specifically, and without limiting the generality of the foregoing, the sewer and the Wetlands and Drainage Easements may be relied upon by the developer of the residential portion of the Boyer Property in closing on the purchase of that portion of the Boyer Property and in designing and constructing improvements on that site.

9. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Utah.

10. Notices. All notices, demands or communication permitted or required hereunder shall be given in writing, either personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested. All notices and demands shall be considered given when so delivered or mailed and shall be addressed as follows, provided that if a party gives notice of a change of name or address, notices, demands or communication to the party giving such notice shall thereafter be given as requested in such notice:

If to Boyer: Lew Swain
 The Boyer Company
 127 South 500 East
 Salt Lake City, UT 84102

If to MJM: James Doilney
 MJM5, L.C.
 1314 Bitner Road
 Park City, UT 84098

11. Costs and Attorneys' Fees. The prevailing party in any dispute under or concerning this Agreement or the Improvements shall be reimbursed by the other party to this Agreement for all costs, expenses and attorneys' fees which the prevailing party incurs in any proceeding arising in connection with such dispute, including such costs, expenses and fees as may be incurred on appeal; in any arbitration proceeding; in any action contesting or seeking to restrain, enjoin, stay or postpone the exercise of a remedy; in any bankruptcy, probate or other proceeding involving the parties or any person comprising the parties; and in connection with all negotiations, documentation and other actions relating to any work-out or settlement of any such dispute.

12. Counterparts. This Agreement may be signed in one or more counterparts with the same effect as if the parties executing the counterparts had all executed one document. The executed counterparts taken together shall be deemed the original Agreement. The absence of any party's signature shall not affect the validity or enforceability of the Agreement against those that do sign.

13. Final Agreement. Except as otherwise expressly set forth, this Agreement is the complete and final integration of the agreements between the parties with respect to the matters covered by it and supersedes any prior or contemporaneous understanding or agreement, oral or written, with respect to the matters covered by this Agreement. The Agreement may only be modified by a writing signed by both parties. This Agreement shall inure to the benefit of, and bind all of the parties, their successors and assigns.


14. Binding Arbitration. Any dispute arising under the terms of this Agreement or performance pursuant hereto that is not resolved within by good faith negotiation within 30 days after a notice of dispute is sent by one party hereunder to the other shall be resolved by binding

arbitration conducted in Salt Lake City, Utah under the commercial arbitration rules of the American Arbitration Association.


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

“BOYER”

BOYER KIMBALL JUNCTION, L.L.C.


By 
Its Manager

BOYER SPRING CREEK, L.L.C.

By 
Its Manager

“MJM”

MJM5, L.C.

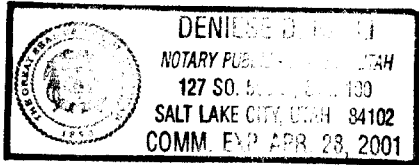
By 
Its managemember

SPRING CREEK ANGUS RANCH

By Laula M. Swaner, Ph.D
Its Gen'l Partner

STATE OF UTAH)
)
) : ss.
COUNTY OF Salt Lake)

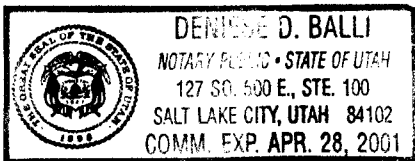
The foregoing instrument was acknowledged before me this 31 day of January 2001
by A. Roger Boyer, the Manager of Boyer Spring Creek, L.L.C., a
Utah limited liability company.



Denise D. Balli
Notary Public

STATE OF UTAH)
)
) : ss.
COUNTY OF Salt Lake)

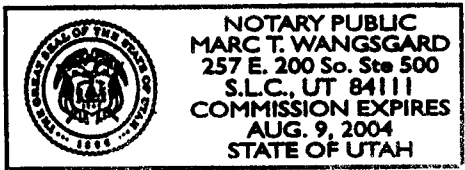
The foregoing instrument was acknowledged before me this 31 day of January 2001
by A. Roger Boyer, the Manager of Boyer Kimball Junction, L.L.C.,
a Utah limited liability company.



Denise D. Balli
Notary Public

STATE OF UTAH)
)
) : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 22nd day of January 2001
by James Doilney, the Manager + Member of MJM5, L.C., a Utah limited
liability company.

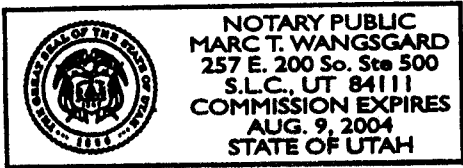


Marc T. Wangsgard
Notary Public

STATE OF UTAH)
 : ss.
COUNTY OF Salt Lake)

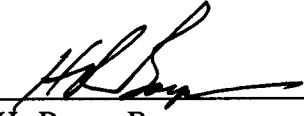
The foregoing instrument was acknowledged before me this 19th day of January 2001 by Paula M. Swaner PhD, the General Partner of Spring Creek Angus Ranch, a Utah limited ~~liability~~ partnership.

Marc T Wangsgard
Notary Public



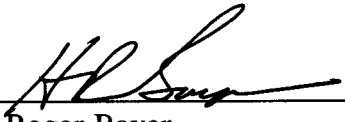
BOYER SPRING CREEK, L.C.,
a Utah limited liability company, by its Manager

THE BOYER COMPANY, L.C., a Utah limited
liability company

By: 
H. Roger Boyer
Chairman and Manager

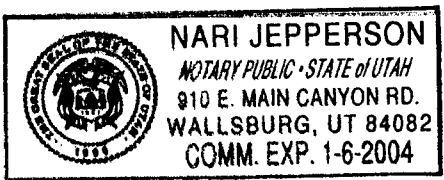
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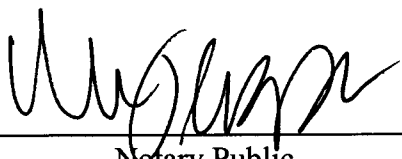
THE BOYER COMPANY, L.C., a Utah limited
liability company

By: 
H. Roger Boyer
Chairman and Manager

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

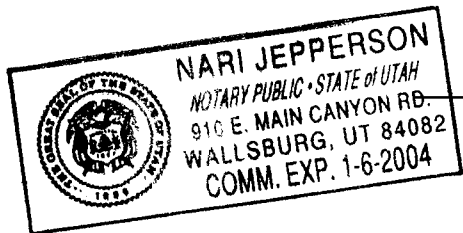
The foregoing instrument was acknowledged before me this 22nd day of January 2001
by H. Roger Boyer, Chairman and Manager of The Boyer Company, as manager of Boyer Spring
Creek, L.C., a Utah limited liability company.




Notary Public

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

The foregoing instrument was acknowledged before me this 22nd day of Jan 2001 by H. Roger Boyer, Chairman and Manager of The Boyer Company, as manager of Boyer Kimball Junction, L.C., a Utah limited liability company.



Nari Jepperson
Notary Public

EXHIBIT A

(LEGAL DESCRIPTION OF BOYER + EQUIMARK)

Lot 7A description (Boyer Spring Creek):

Beginning at a point on the East line of Lot 7, The Village at Kimball Junction, a subdivision in the West half of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, said point being N 0°16'14"W 1238.18 feet from the Southeast Corner of said Lot 7; thence N 0°16'14"W 826.33 feet; thence S 89°43'46"W 1115.17 feet; thence S 0°27'00"W 15.00 feet; thence N 89°33'00"W 165.00 feet; thence S 0°27'00"W 232.83 feet; thence S 89°33'00"E 186.82 feet; thence S 31°25'02"W 187.41 feet; thence S 58°34'58"E 191.33 feet; thence S 31°25'02"W 33.35 feet; thence S 58°34'58"E 21.15 feet; thence S 31°25'02"W 17.61 feet; thence S 58°34'58"E 81.60 feet; thence N 31°25'02"E 79.23 feet; thence N 76°25'02"E 55.53 feet; thence S 58°34'58"E 45.91 feet; thence N 31°25'02"E 48.44 feet; thence S 58°34'58"E 80.94 feet; thence S 31°25'02"W 21.00 feet; thence S 58°34'58"E 44.00 feet; thence S 31°25'02"W 17.50 feet; thence S 58°34'58"E 206.00 feet; thence N 31°25'02"E 31.50 feet; thence S 58°34'58"E 44.00 feet; thence N 31°25'02"E 13.55 feet; thence S 58°34'58"E 215.00 feet; thence S 31°25'02"W 5.00 feet; thence S 58°34'58"E 88.00 feet; thence N 31°25'02"E 5.00 feet; thence S 58°34'58"E 44.00 feet; thence N 31°25'02"E 88.90 feet; thence S 58°34'58"E 38.54 feet; thence N 89°43'46"E 114.04 feet to the point of beginning.
Contains 18.554 acres

VKJ-7-A

Lot 7B description (Equimark):

Beginning at a point on the East line of Lot 7, The Village at Kimball Junction, a subdivision in the West half of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, said point being N 0°16'14"W 906.94 feet from the Southeast Corner of said Lot 7; thence S 60°10'50"W 379.24 feet; thence N 58°34'58"W 467.70 feet; thence S 31°25'15"W 323.60 feet; thence S 67°09'15"W 154.43 feet; thence N 89°23'22"W 90.22 feet; thence N 38°02'57"W 42.24 feet; thence N 0°36'38"E 108.13 feet; thence N 58°34'58"W 153.33 feet; thence N 0°27'00"E 105.79 feet; thence N 31°25'02"E 136.12 feet; thence N 0°26'38"E 332.59 feet; thence N 58°34'58"W 64.59 feet; thence N 0°27'00"E 105.72 feet; thence N 31°25'02"E 127.81 feet; thence S 58°34'58"E 191.33 feet; thence S 31°25'02"W 33.35 feet; thence S 58°34'58"E 21.15 feet; thence S 31°25'02"W 17.61 feet; thence S 58°34'58"E 81.60 feet; thence N 31°25'02"E 79.23 feet; thence N 76°25'02"E 55.53 feet; thence S 58°34'58"E 45.91 feet; thence N 31°25'02"E 48.44 feet; thence S 58°34'58"E 80.94 feet; thence S 31°25'02"W 21.00 feet; thence S 58°34'58"E 44.00 feet; thence S 31°25'02"W 17.50 feet; thence S 58°34'58"E 206.00 feet; thence N 31°25'02"E 31.50 feet; thence S 58°34'58"E 44.00 feet; thence N 31°25'02"E 13.55 feet; thence S 58°34'58"E 215.00 feet; thence S 31°25'02"W 5.00 feet; thence S 58°34'58"E 88.00 feet; thence N 31°25'02"E 5.00 feet; thence S 58°34'58"E 44.00 feet; thence N 31°25'02"E 88.90 feet; thence S 58°34'58"E 38.54 feet; thence N 89°43'46"E 114.04 feet; thence S 0°16'14"E 331.24 feet to the point of beginning.
Contains 17.514 acres or 762,901 sq. ft.

VKJ-7-B

EXHIBIT B

(LEGAL DESCRIPTION OF MJM)

AS SURVEYED DESCRIPTION:

Beginning at the intersection of the Southerly Right of Way Line of 1'80 and an existing fence line, said point being South 89°47'32" East along the Section Line 2665.60 feet and South 00°05'40" East 662.65 feet and South 68°45'09" East 3.77 feet from the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'00" East 2662.16 feet between said Northwest Corner and the West Quarter Corner of said Section 19) and running thence along said Southerly Right of Way Line of 1'80 the following four (4) courses: 1) thence South 68°45'09 East 62.00 feet to a Right of Way Brass Cap; 2) thence South 70°15'49 East 121.75 feet to a Right of Way Brass Cap; 3) thence South 72°09'40 East 1244.63 feet to a Right of Way Brass Cap; thence South 72°06'12 East 1372.87 feet to the East Line of said Section 19; thence South 00°05'56 East along said East Section Line 3084.91 feet; thence North 89°41'21 West 1333.00 feet to the West Line of the Southeast Quarter of the Southeast Quarter of said Section 19; thence North 00°05'48 West along said West Line 582.50 feet; thence North 89°54'04 East 952.94 feet; thence North 00°05'56 West 2550.00 feet; thence South 89°54'04 West 475.00 feet; thence North 00°05'56 West 150.00 feet; thence South 89°54'04 West 760.00 feet; thence South 00°05'56 East 405.73 feet; thence South 89°54'04 West 365.00 feet; thence South 00°05'56 East 2273.56 feet to the North Line of the Southwest Quarter of said Southeast Quarter of said Section 19; thence North 89°41'24 West along said North Line 671.86 feet to an existing fence line; thence along said existing fence line the following six (6) courses: 1) thence North 00°57'31 East 74.76 feet; 2) thence North 00°20'28 West 336.55 feet; 3) thence North 00°12'18 West 160.01 feet; 4) thence North 00°18'34 West 1602.70 feet; 5) thence North 00°09'53 West 636.03 feet; 6) thence North 00°27'26 West 528.69 feet to the point of beginning.

Containing 101.76 acres more or less.

PP-79

NARRATIVE:

The survey was prepared for MJM5, L.L.C.

The purpose of the survey is to resurvey the property for the owner of same.

The Basis of Bearing and the Monuments used are as shown hereon.

The Property Report used for this survey was provided by High Country Title, Commitment File No. S-19349.

- * Final Boundary pending on the recordation of a Boundary Adjustment Agreement with Quitclaim between Boyer Spring Creek, L.C./Boyer Kimball Junction, L.C./John W. Jarman, individually and as the personal representative of Helen B. Jarman, deceased/Swaner Memorial Park Foundation.

RTE 224

WEST
COMMON
ROAD

UINTA BLVD

BOYER MAIN STREET (MAY BE RE-NAMED)

**MJM PRIMARY ACCESS
POINT & POINT OF 100 YR
FLOOD OVERFLOW**

**WETLAND MITIGATION
ACCESS ROUTE**

**WETLAND MITIGATION
AND STORM WATER
DETENTION AREA**

**20' WIDE TEMPORARY
WETLAND MITIGATION
CONSTRUCTION AREA**

**MJM SECONDARY ACCESS
POINT & POINT OF 100 YR
FLOOD OVERFLOW**

0058 1761 Bk01352 Pg00683

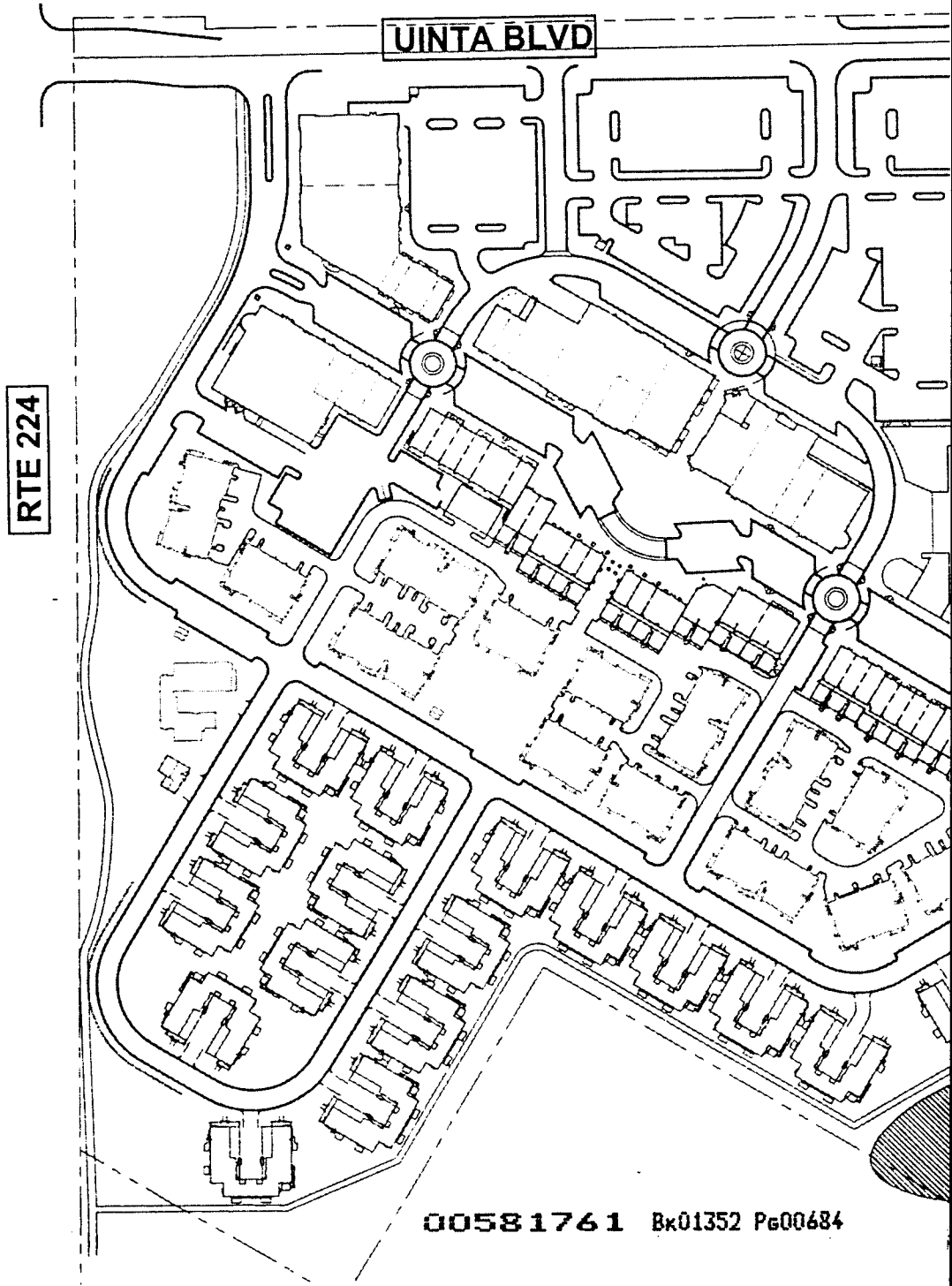
**ADDITIONAL WETLAND
MITIGATION AREAS
SEE EXHIBIT D-1**

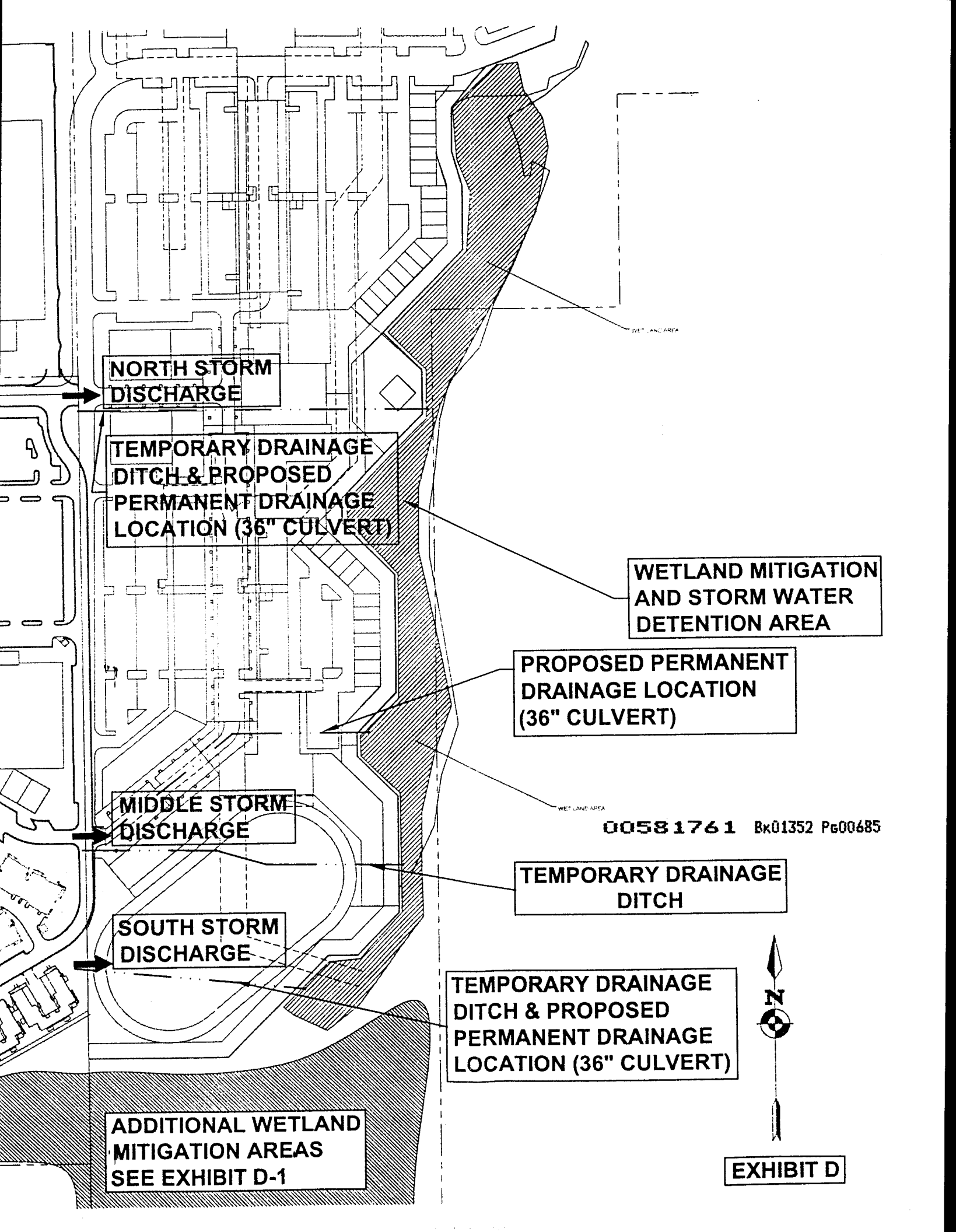


EXHIBIT C

**PEAK DISCHARGE AT
BOYER / MJM PL**

| STORM (YEAR) | RAINFALL (IN.) | South Culvert Peak (CFS) | Middle Culvert Peak (CFS) | North Culvert Peak (CFS) |
|-----------------|-------------------|--------------------------------|---------------------------------|--------------------------------|
| 2 | 1.00 | 8.95 | 6.57 | 8.95 |
| 10 | 1.50 | 30.03 | 26.45 | 14.63 |
| 25 | 1.80 | 45.44 | 42.47 | 17.60 |
| 100 | 2.20 | 72.44 | 70.38 | 22.15 |





NORTH STORM DISCHARGE

TEMPORARY DRAINAGE DITCH & PROPOSED PERMANENT DRAINAGE LOCATION (36" CULVERT)

WETLAND MITIGATION AND STORM WATER DETENTION AREA

PROPOSED PERMANENT DRAINAGE LOCATION (36" CULVERT)

MIDDLE STORM DISCHARGE

00581761 Bk01352 Pg00685

TEMPORARY DRAINAGE DITCH

SOUTH STORM DISCHARGE

TEMPORARY DRAINAGE DITCH & PROPOSED PERMANENT DRAINAGE LOCATION (36" CULVERT)

ADDITIONAL WETLAND MITIGATION AREAS SEE EXHIBIT D-1



EXHIBIT D

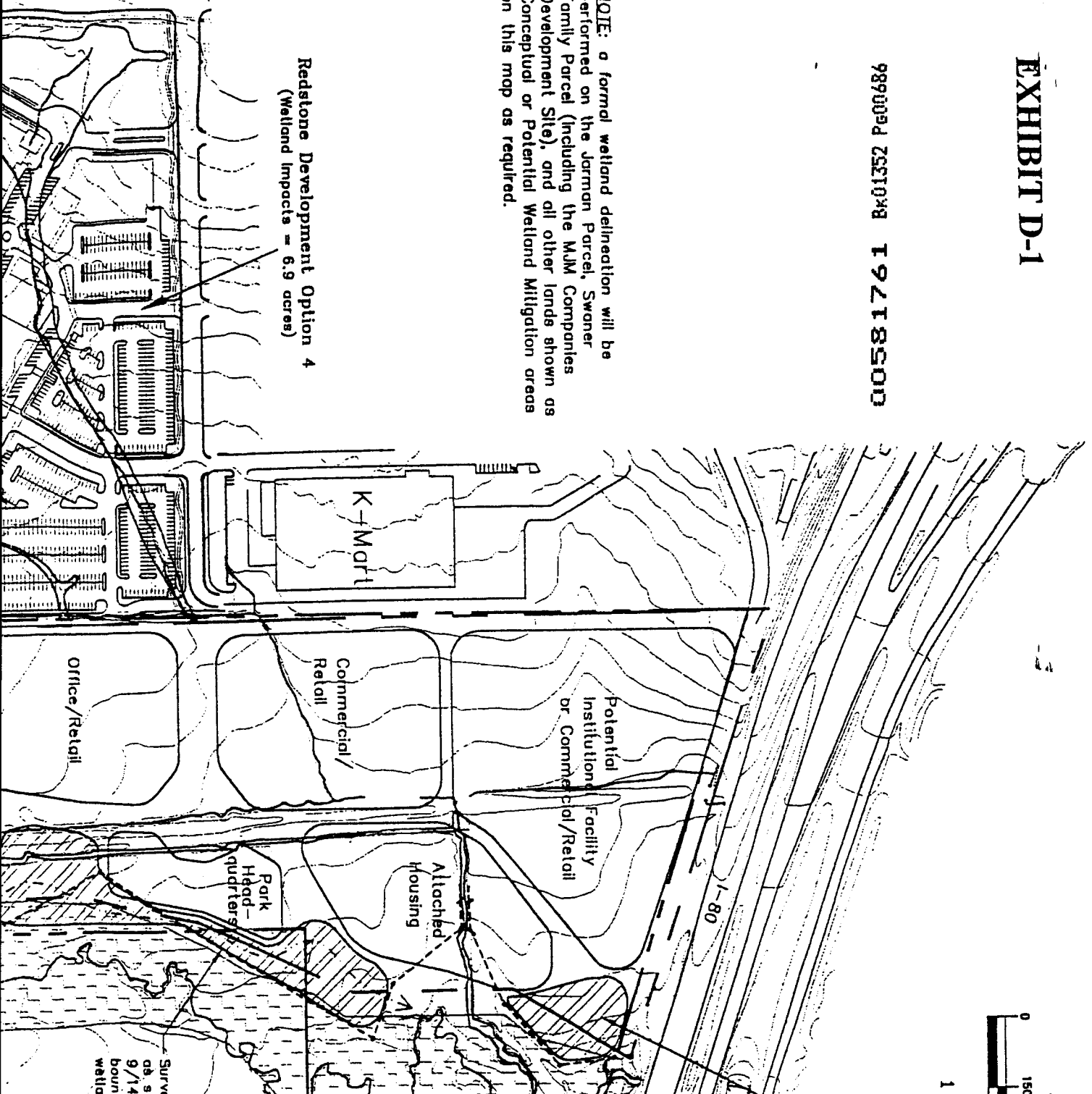
Conceptual Wetland Mitigation and Storm Water Detention Plan

EXHIBIT D-1

98909D 25E10X8 19218500

NOTE: a formal wetland delineation will be performed on the Jordan Parcel, Swoner Family Parcel (including the M/M Companies Development Site), and all other lands shown as Conceptual or Potential Wetland Mitigation areas on this map as required.

Redstone Development Option 4
(Wetland Impacts = 6.9 acres)



Surveyed
08/9
9/14
hours
wetland

