When recorded, return to: Midvale City 655 W. Center St. Midvale, UT 84047 10964677
06/03/2010 03:29 PM \$84.00
Book - 9830 P9 - 7011-7048
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
NATIONAL TITLE AGENCY LLC
5295 S COMMERCE DR #250
MURRAY UT 84107
BY: SLR, DEPUTY - WI 38 P.

### DEVELOPMENT AGREEMENT FOR EAST RIVERWALK RESIDENTIAL PROJECT WITHIN THE RIVERWALK MASTER PLANNED DEVELOPMENT MIDVALE CITY, UTAH

THIS DEVELOPMENT AGREEMENT ("Development Agreement") is entered into as of this \_\_\_\_\_\_\_\_\_\_, 2010 by and among First Utah Bank, its successors and assigns ("Bank"), East Riverwalk, LLC, a Utah limited liability company ("Developer"), and Midvale City Corporation, a Utah municipal corporation ("Midvale" or "City") for the East Riverwalk Residential Project, which is a portion of that certain sub area of the Bingham Junction Project known as Riverwalk at Bingham Junction located in Midvale City, Utah.

- A. Master Development Agreement. Bank, Developer and Midvale acknowledge the existence and continuing applicability of that certain Master Development Agreement for the Bingham Junction Project dated April 6, 2005, and that certain Development Agreement for the Riverwalk Sub Area of the Bingham Junction Project dated August 1, 2006 ("Riverwalk Agreement"), both of which are binding upon and inure to the benefit of the Bank and Developer in the ownership and development of this portion of the Bingham Junction Project. Bank, Developer and Midvale desire to enter into this Development Agreement in order to address various issues specific to this portion of the Bingham Junction Project while recognizing that the remaining provisions of the Master Development Agreement and the Riverwalk Agreement continue to be applicable and remain in full force and effect.
- B. <u>East Riverwalk Residential Project</u>. Bank is the owner of a certain portion of the Property which is subject to the Master Development Agreement for the Bingham Junction Project and the Riverwalk Agreement. This portion of the property is known as Lot 3B of the Riverwalk at Bingham Junction Lot 3 & Open Space Amended Subdivision and is located north of River Gate Drive, and is bordered by the Parkview at Riverwalk Project and Midvale City Park on the west and the Midvale/Murray municipal boundary on the north. This property (the "East Riverwalk Property") is specifically described in Exhibit A attached hereto. The development intent for the East Riverwalk Property is a single-family residential project to be known as the "East Riverwalk Project". The East Riverwalk Project shall be developed in a number of phases, as determined by Developer. Developer and Bank have entered into a purchase agreement ("Purchase Agreement") whereby Developer has agreed to purchase from Bank, and Bank has agreed to sell to Developer the East Riverwalk Property. The Purchase Agreement provides Developer

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shall acquire, within 7 days of City's approval of the first Subdivision Plat for the East Riverwalk Project, the portion of the East Riverwalk Property consisting of phase 1 through 3 including 63 lots together with corresponding streets, parks and open space.

C. <u>Small Scale Master Plan and Subdivision Approval</u>. Midvale has approved a Small Scale Master Plan, subject to specific conditions of approval, for the East Riverwalk Project and Developer has submitted to the City for approval a Subdivision Plat and Declaration of Covenants, Conditions and Restrictions for the East Riverwalk Project (the "East Riverwalk CC&Rs"). These shall be deemed to qualify as Developer's submittal of a Small Scale Master Plan under the Master Development Agreement and the amended provisions of the Bingham Junction Zone as set forth in Section 17-7-9.2 of the Midvale City Code ("Amended BJ Zone").

NOW THEREFORE, in consideration of the above recitals, the parties agree as follows:

### Article 1 The Project

- 1.1 <u>Legal Description of Property</u>. The property covered by this Development Agreement consists of approximately 17.87 acres of land located at approximately 838 West River Gate Drive. This property is more fully described in Exhibit A attached hereto.
- 1.2 <u>Project Description</u>. The East Riverwalk Project covered by this Development Agreement consists of 126 detached, single-family residential units with a public and private street system, improved open space and recreation amenities as more fully described and shown in Exhibit B.
- Project Approval. Pursuant to the Midvale City Zoning and Subdivision 1.3 Ordinance, the East Riverwalk Project as more particularly described in Section 1.2 above, has been approved under the Bingham Junction Zone provisions (Chapter 17-7-9), the Riverwalk Zone provisions (Chapter 17-7-9.12.1) and the Subdivision Ordinance (Title 16). This approval includes a Small Scale Master Plan and Preliminary Subdivision Plats. The review and approval process included lawfully advertised public hearings with the Midvale City Planning Commission on January 10, 2007, January 9, 2008 and March 10, 2010 and the City Council on April 20, 2010. Midvale acknowledges and agrees that Developer shall have the vested right to develop and construct the East Riverwalk Project in accordance with the provisions of the Amended Bingham Junction Zone, the Riverwalk Zone, the Master Development Agreement, the Riverwalk Agreement, this Development Agreement, and other applicable ordinances and regulations of the City. Staff approval of Final Site Plans will be required to ensure all conditions of the Small Scale Master Plan approval are satisfied before construction can commence. City Council approval of Final Subdivision Plats will be required before single-family residential lots can be sold.

### Article 2 Subdivision Improvements and Performance Bond

- 2.1 Security for Off and On Site Public Improvements. The Developer agrees to complete all required off-site and on-site public improvements related to the East Riverwalk Project in accordance with the approved Construction Plans for the East Riverwalk Project. The Developer shall guarantee such improvements through one or more Subdivision Improvements Performance Bonds consistent with the City's Subdivision Ordinance, which provides the financial security for the public improvements, including, but not limited to, water, sewer, curb and gutter, sidewalk and street improvements, surface drainage, street trees, fiber optic conduit, street lighting, and other public improvements. The City and Developer agree that the foregoing public improvements shall be developed within the East Riverwalk Project in a number of phases. The improvements performance bonding for such improvements shall likewise be phased in a manner generally consistent with such development phasing. The developer acknowledges certain public improvements will need to be bonded for and constructed beyond the established phasing lines shown on the overall development plan to function properly. The Developer agrees to bond for and construct the public improvements in such a manner as to ensure the public improvements as shown in Exhibit C.
- 2.2 Declaration of Covenants, Conditions and Restrictions (CC&R's). The East Riverwalk Project shall be part of a common homeowners association, which among other things, shall be responsible for the short term and long term maintenance of private streets, common areas and facilities, common area landscaping, and other common area responsibilities, all as more particularly set forth in the East Riverwalk CC&Rs. Expressly included as part of the homeowners association's responsibilities is the snow removal in the areas designated in Exhibit D, and overseeing the continued maintenance and upkeep of houses and private yards in accordance with the approved development plan. Upon recordation of a Subdivision Plat for each phase of the East Riverwalk Project, the applicable portion of the East Riverwalk Property shall be annexed to the East Riverwalk CC&Rs by Developer.

### Article 3 Specific Conditions of Master Planned Development

- 3.1 Agreement to Comply with Specific Conditions of Approval. The Developer agrees to the following conditions of approval:
  - 3.1.1 Development Layout:
    - 3.1.1.1 The East Riverwalk Project shall be constructed in accordance with the approved Small Scale Master Plan, Exhibit B, with regard to layout and design.
    - 3.1.1.2 All residential units shall be constructed within the designated building pad area shown on each lot, excepting that the front entry porch may encroach eight feet into the front setback.

East Riverwalk Project Development Agreement

- 3.1.1.3 In all cases where garage doors face the public street or parking court, a porch element or building living area shall be extended at least two feet in front of the garage door. Garage doors must be setback a minimum of 18 feet from the property line. In cases where garage doors face the public street, the garage door shall be recessed a minimum of two feet behind the front line of the building living area. Porches, bay windows and similar projections are not considered building living area.
- 3.1.1.4 Each dwelling unit shall have a private rear yard of at least 300 square feet.
- 3.1.1.5 The side yard setbacks between dwelling units shall comply with the Building Code and provide the following separations between units: 10 feet between one-story units; 10 feet between a one-story unit and a two-story unit; and 14 feet between two-story units.
- 3.1.1.6 A perimeter project fence is required and shall be constructed in phases consistent with the phasing plans for the Project. This fence shall be a six-foot high, tan vinyl, privacy fence and shall be constructed along the project boundary, with the exception of the River Gate Drive frontage and across trail sections. Fencing shall also be constructed around the side and rear yards directly adjacent to any common areas. This is illustrated on Exhibit D. Fencing shall not be allowed in any front yards. Side yard fences shall be held back from the front plane of the dwelling unit. All fencing shall comply with Section 17-7-9.1.5 F of the Zoning Ordinance.

#### 3.1.2 Landscaping:

- 3.1.2.1 The East Riverwalk Project shall comply with the Overall Landscape Plan with regard to planting areas, turf areas, and street trees as shown on Exhibit E.
- 3.1.2.2 Interior project street trees are required to be planted at a rate of at least one tree per forty feet of frontage. These trees may be grouped or planted at reasonable intervals.
- 3.1.2.3 Efforts shall be made to buffer all side and rear fences that are within public view with landscaping. Installing this landscaping shall be the Developer's responsibility.
- 3.1.2.4 Detailed landscaping and irrigation plans for all common areas and along the public street shall be submitted as part of a Final Site Plan review and approval. These plans shall comply with Sections 17-7-9.5 C, 17-7-9.5 D and 17-7-9.12.1.5 G of the Zoning Ordinance. Installing this landscaping and irrigation shall be the Developer's responsibility.
- 3.1.2.5 Each lot shall be landscaped as generally shown on the Typical Planting Plans included as Exhibit F. Installing this landscaping and irrigation in the front yards is the Developer's responsibility and must be completed prior to occupancy of the dwelling unit.

#### 3.1.3 Housing Product and Architecture:

- 3.1.3.1 The East Riverwalk Project shall include the six housing types included in Exhibit G.
- 3.1.3.2 All primary exterior materials and colors used in the project shall be chosen from the materials and colors included in Exhibit H. Stucco may also be used as a primary wall material in limited amounts as described in 3.1.3.3 below. The stucco shall be earth tone colors, not to include white or gray, that compliment the other colors and materials on the dwelling.
- 3.1.3.3 Stucco shall be used be used only in limited amounts. It shall not exceed 25% on any front elevation or elevation facing the public street. It shall not exceed 50% on all other elevations.
- 3.1.3.4 All efforts shall be made to vary the housing types and colors throughout the project.

### 3.1.4 Trail System and Amenity Package:

- 3.1.4.1 The East Riverwalk Project shall include a portion of the continuous trail system that serves the Bingham Junction area and shall link to Lot 3A of the "Riverwalk at Bingham Junction Lot 3 & Open Space Amended Subdivision" to the east and the Midvale City Park to the west. The trail shall be at least eight feet wide and include stamped asphalt or concrete at pedestrian crosswalks. This trail system is shown on the Overall Landscape Plan in Exhibit E. Construction of the trail system shall be phased consistent with the phasing plans for the Project.
- 3.1.4.2 Recreation amenities for the East Riverwalk Project shall be constructed as part of Phase 1 as shown on the Overall Landscape Plan in Exhibit E.

### 3.1.5 Riverwalk Thematic Elements:

- 3.1.5.1 Street lighting shall comply with the City's residential lighting standards and the Riverwalk Thematic Elements.
- 3.1.5.2 Benches and trash receptacles in the common areas shall comply with the Riverwalk Thematic Elements.
- 3.1.5.3 The street trees along River Gate Drive shall comply with the Riverwalk Thematic Elements.
- 3.1.5.4 Way finding signs and crosswalk treatments shall comply with the Riverwalk Thematic Elements.

#### 3.1.6 Final Site Plan Approval:

3.1.6.1 The Developer shall prepare and submit a Final Site Plan for each phase of the project that is consistent with the Small Scale Master Plan and complies with the provisions of this Development Agreement, the Zoning Ordinance, and all requirements of the City

Engineer, Fire Marshal and Building Official. This submittal shall include layout, landscaping, irrigation, grading, infrastructure, trails, sidewalks, street lighting, building elevations and any other details of the project required for review and approval.

... ----- .. . . .

- 3.1.6.2 Performance bonds for public improvements in each phase shall be in place prior to any construction on that phase of development.
- 3.1.7 Final Subdivision Plat Approval:

. .---- . . . . .

- 3.1.7.1 The Developer shall prepare final subdivision plats to be reviewed and approved by the City Engineer and City Council.
- 3.1.7.2 The final subdivision plats shall include the approved building pads for each lot as reflected on the January 9, 2008 approved Small Scale Master Plan for the Property, and notes regarding building separation and garage location.
- 3.1.7.3 The Developer shall obtain a water and sewer availability letter prior to the final subdivision plats being recorded.
- 3.1.7.4 The Developer shall provide evidence that a courtesy notice has been sent to Questar Gas, Rocky Mountain Power, Comcast Cable, Utopia and Qwest Communications regarding the utility easements on the subdivision plats prior to the subdivision plats being recorded.
- 3.1.7.5 The Developer shall prepare a declaration of covenants, conditions and restrictions (CC&Rs), including the creation of a homeowners association, for the development. This document shall address the required maintenance of private yards. This document shall be recorded concurrently with the subdivision plats.
- 3.1.7.6 Prior to a final subdivision plat approval, the Developer shall obtain final site plan approval for the specific phase of the project.

### Article 4 General Terms and Conditions

- 4.1 <u>Construction of Agreement</u>. This Development Agreement shall be constructed and interpreted to ensure that the Developer strictly complies with the requirements and conditions of the Small Scale Master Plan Development, the Zoning Ordinance, and the subdivision plat approval.
- 4.2 <u>Laws of General Applicability</u>. Where this Development Agreement refers to laws of general applicability to the East Riverwalk Project, that language shall be deemed to refer to laws which apply to all other subdivided properties within Midvale City.
- 4.3 Agreements to Run with the Land. This Development Agreement shall be recorded against the East Riverwalk Property. The agreements contained herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of all successors and assigns as described in 4.4 below.

East Riverwalk Project Development Agreement

- 4.4 <u>Binding Effect</u>. This Development Agreement shall be binding on any and all successors and assigns of the Developer in the ownership or development of any portion of the East Riverwalk Project or Property. No individual lot owner shall be responsible for Developer's obligations hereunder, except maintaining his/her house and yard in accordance with the approved development plan.
- 4.5 Assignment and Transfer of East Riverwalk Project. Any transfer or assignment of this Development Agreement shall comply with the provisions of Section 11.2 of the Master Development Agreement. Notwithstanding the foregoing, upon Developer's acquisition of the East Riverwalk Property or applicable portion thereof, Bank shall be automatically released from any and all obligations and liability arising under this Agreement with respect to all or such portion of the East Riverwalk Property acquired by Developer.
- 4.6 <u>Duration</u>. The term of this Development Agreement shall commence on the date the Development Agreement is executed by both parties. The term of this Development Agreement shall extend for the period of time Developer, its successors or assigns own any portion of the East Riverwalk Property, but in no event longer than the term of the Master Development Agreement as set forth in Section 12.1 thereof.
- 4.7 <u>Notices</u>. Any notice, confirmation or other communication hereunder shall be given in writing by mail or facsimile at the following addresses or numbers:

Midvale City:

Midvale City Manager 655 W. Center St. Midvale, UT 84047 FAX: (801) 567-0518

Midvale City Community & Economic Development Director 655 W. Center St.

Midvale, UT 84047

FAX: (801) 567-0518

Midvale City Attorney 655 W. Center St. Midvale, UT 84047

FAX: (801) 567-0518

Developer:

Nathan Shipp 1099 W. South Jordan Pkwy. South Jordan, UT 84095 FAX: (801) 495-3415

Bank:

Nathan Anderson First Utah Bank 11025 S. State St. Sandy, UT 84070 FAX: (801) 523-8333

The Developer, City and Bank may change their addresses by notice given to the other parties as required above.

- 4.8 <u>Savings Clause</u>. If any provision of this Development Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remaining provisions of the Development Agreement, or the application of such provision to the persons or circumstances other than those to which it is held invalid, shall not be affected thereby or considered invalid.
- 4.9 <u>Continuation of Terms of Master Development Agreement and Riverwalk</u>

  <u>Agreement.</u> All of the other provisions of the Master Development Agreement and

  Riverwalk Agreement which apply to the East Riverwalk Property, except as specifically

  modified herein, shall remain in full force and effect.
- Acknowledgment. As owner of the East Riverwalk Property, the Bank hereby consents to the execution of this Development Agreement by the Developer, the City and the Bank and recording of the same with the Salt Lake County Recorder's office against the East Riverwalk Property. To the extent that the Bank retains ownership of any portion(s) of the East Riverwalk Property, the City, Developer and the Bank hereby expressly acknowledge and agree that unless the Bank elects in its sole discretion to engage in the physical development of the East Riverwalk Property, the Bank shall not have any performance or other obligations under this Development Agreement, whether such obligations relate to bonding, constructing improvements, or otherwise. Notwithstanding the foregoing, any future development of the portion of the East Riverwalk Property retained by the Bank, whether by the Bank or any successor(s) in interest to the Bank (as owner(s) of any portion of the East Riverwalk Property), shall be subject to, and occur in accordance with, the terms and conditions of this Development Agreement. The Developer, the City and the Bank further acknowledge and agree that, notwithstanding anything to the contrary herein, Developer shall not have any performance or other obligations under this Development Agreement, whether relating to bonding, constructing improvements, or otherwise, with respect to any portion of the East Riverwalk Property to which the Developer does not take title.

IN WITNESS WHEREOF, this Development Agreement has been executed by Midvale City Corporation, acting by and through the Midvale City Council, by a duly authorized representative of East Riverwalk, LLC (Developer), and by a duly authorized representative of First Utah Bank (Bank), as of the above stated date.

STATE MIDVALE CITY CORPORATION CITY: ATTEST: Rori L. Andreason, MMC City Recorder First Utah Bank BANK: un a anderor Its: Senior Vice President Subscribed and sworn to me this 12 day of Notary Public ADINE K. McALISTI Residing in Salt Lake County, Utah My Commission expires: 34-12 East Riverwalk, LLC DEVELOPER: Its: Manager Subscribed and sworn to me this

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Residing in Salt Lake County, Utah My Commission expires:

East Riverwalk Project
Development Agreement

### **EXHIBIT A**

### Legal Description

### **Boundary Description**

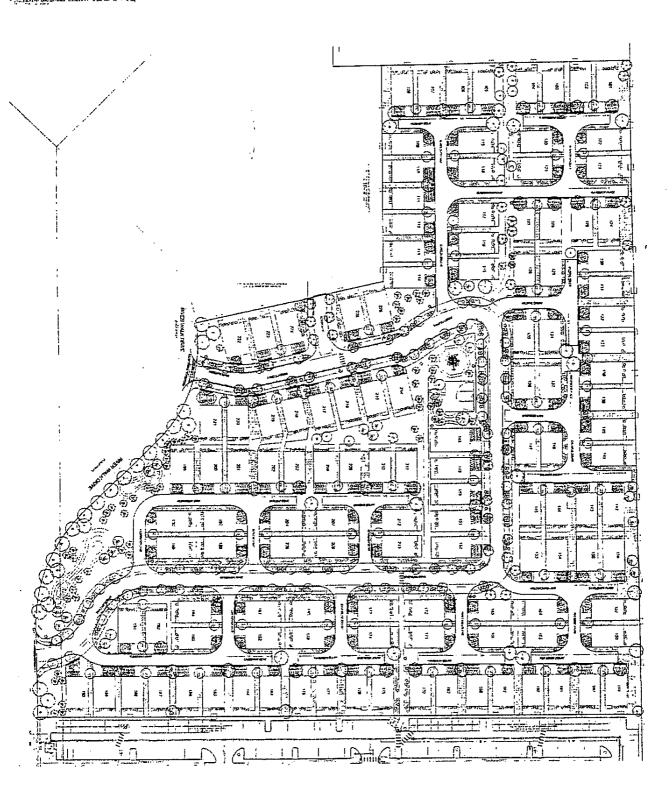
All of Lot 3B, River Walk at Bingham Junction Lot 3 & Open Space Amended Subdivision as found and on file at the Salt Lake County Recorder's Office, Book 2007 at Page 169, Recorded #10065358.

Contains 778,503 sq. ft. or 17.87 acres.

21-23-476-008 " .. " -009

BK 9830 PG 7020

# **EXHIBIT B**







Small Scale Master Plan

BK 9830 PG 7022

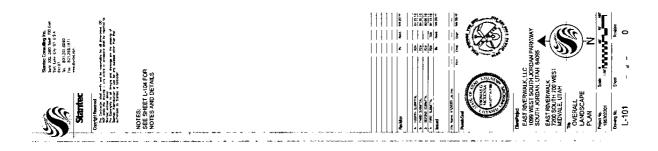
# **EXHIBIT C**



# **EXHIBIT D**

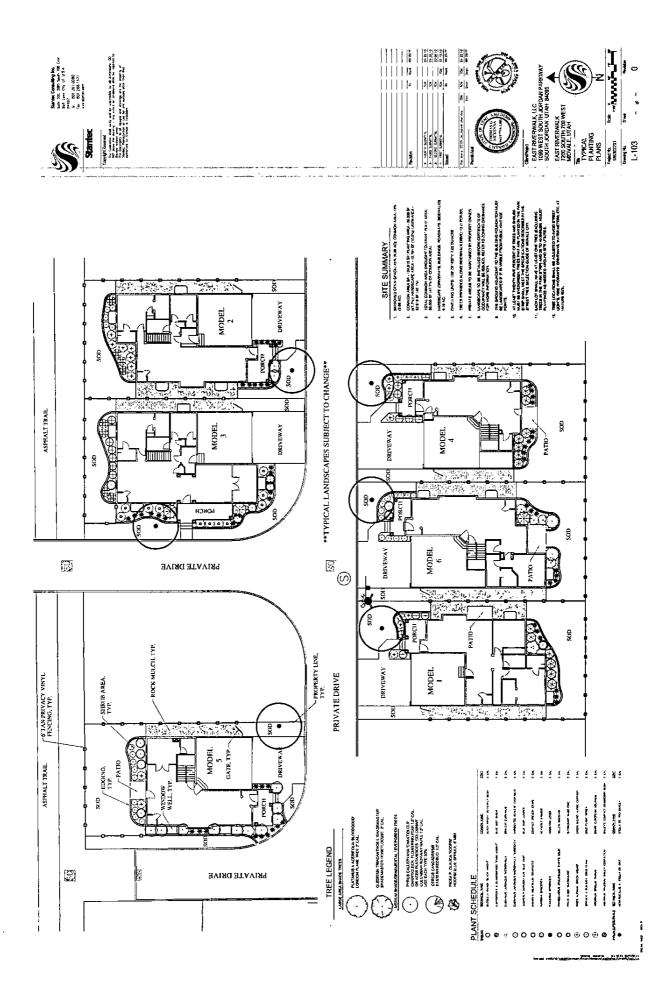


## **EXHIBIT E**

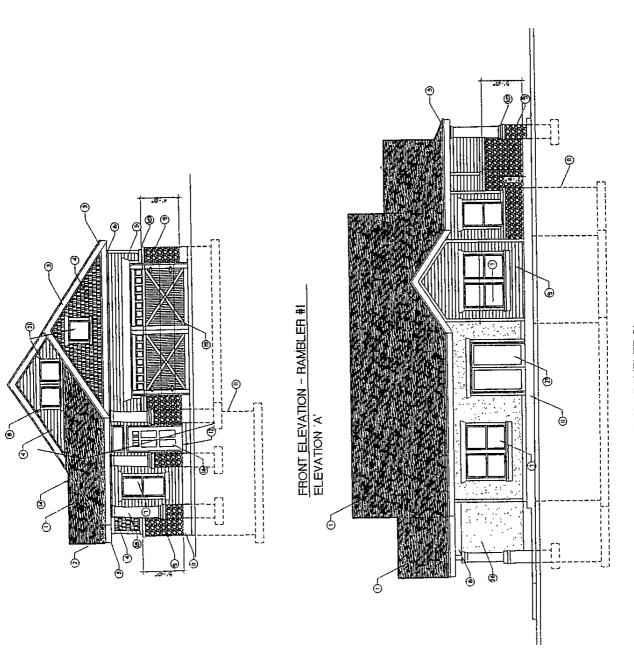




## **EXHIBIT F**

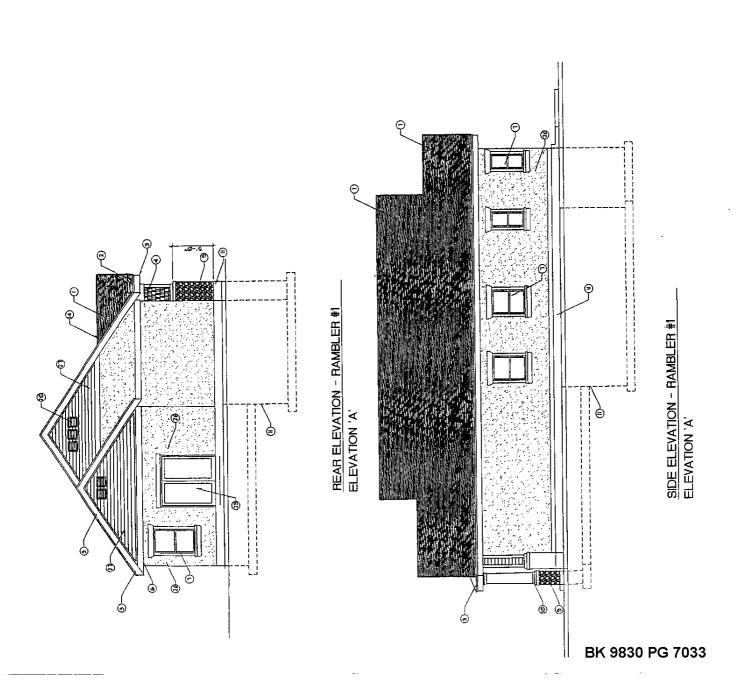


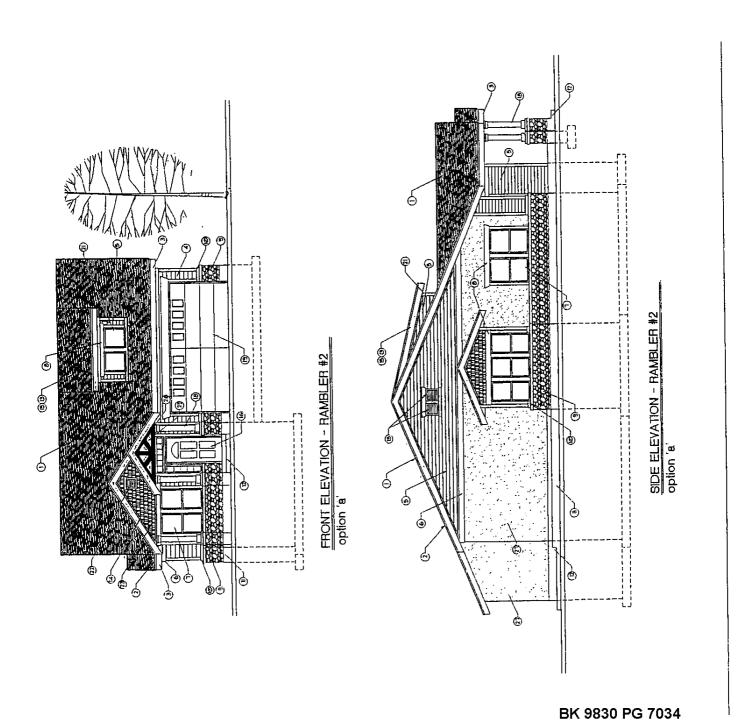
# **EXHIBIT G**

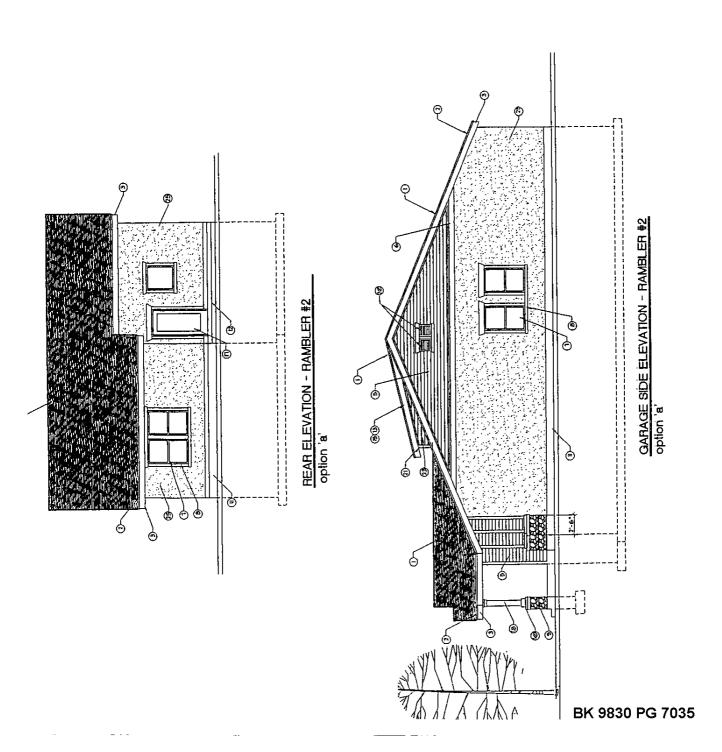


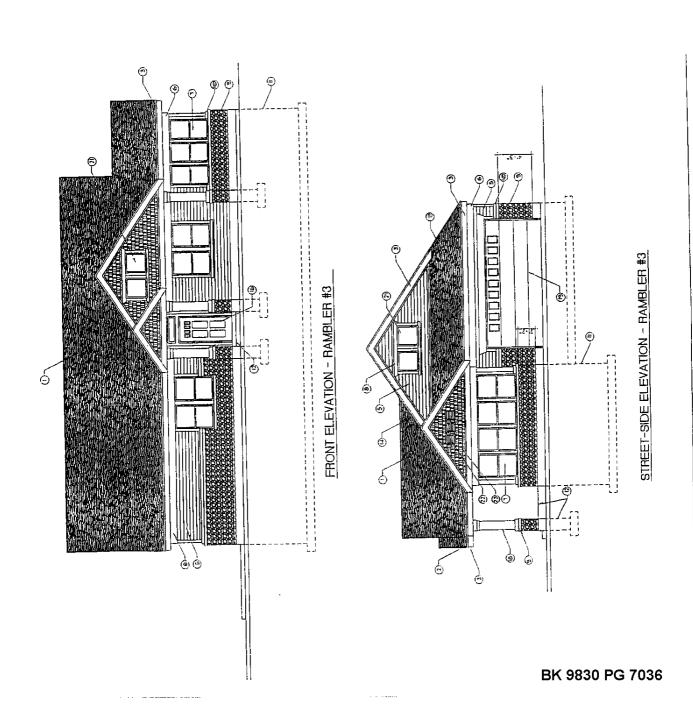
SIDE ELEVATION - RAMBLER #1 ELEVATION 'A'

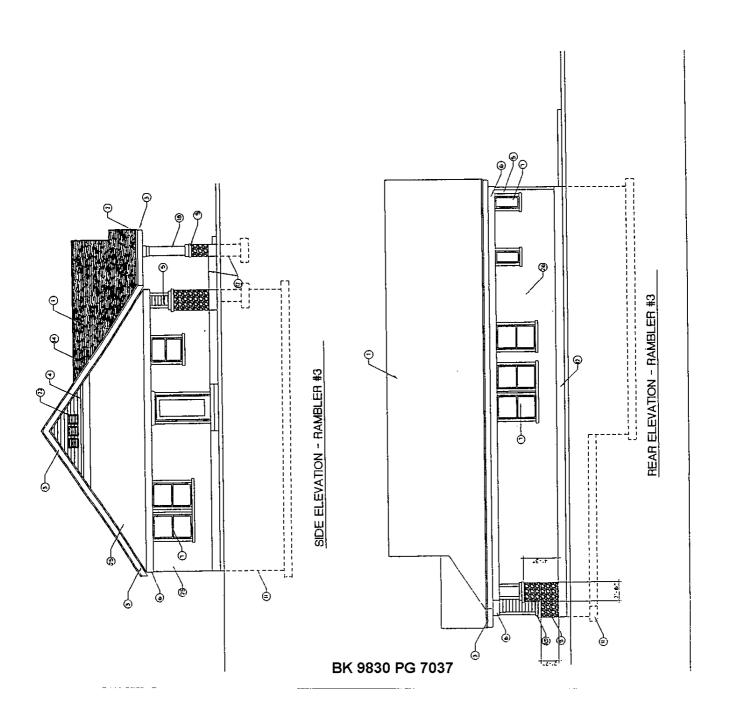
BK 9830 PG 7032

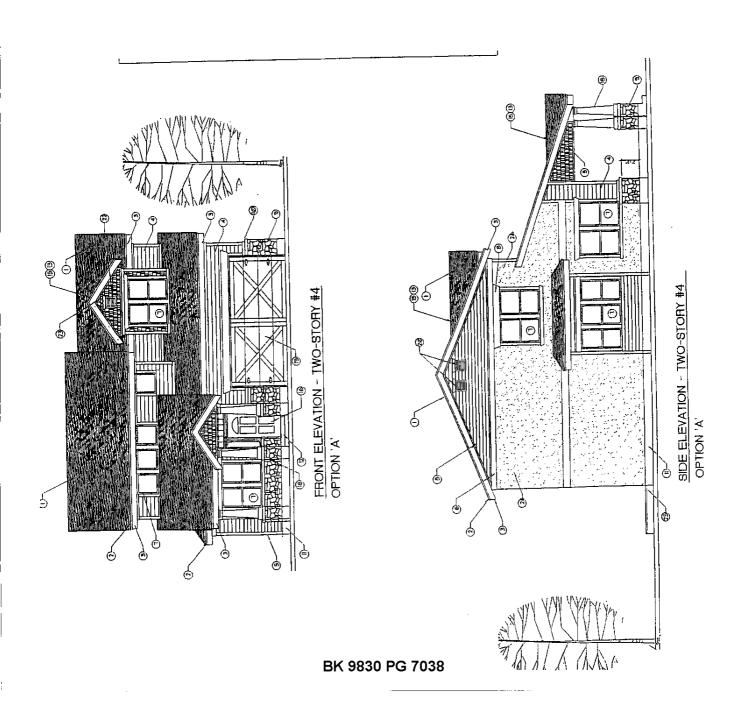


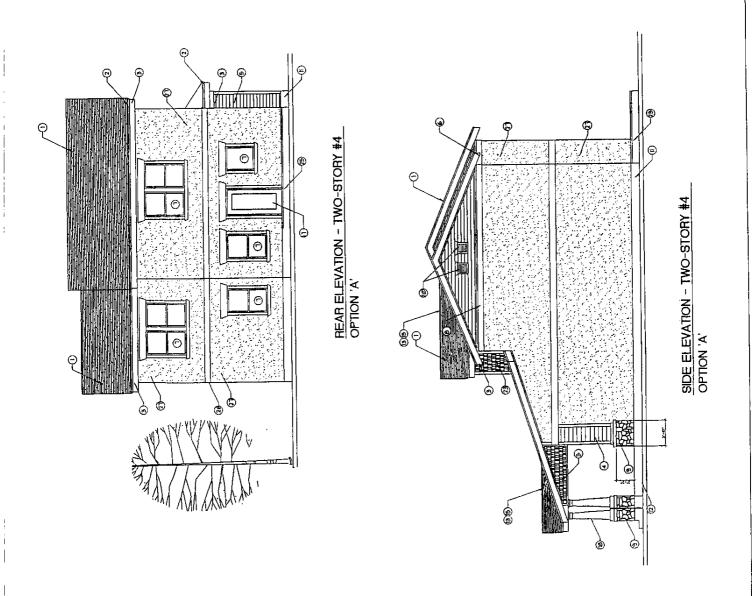






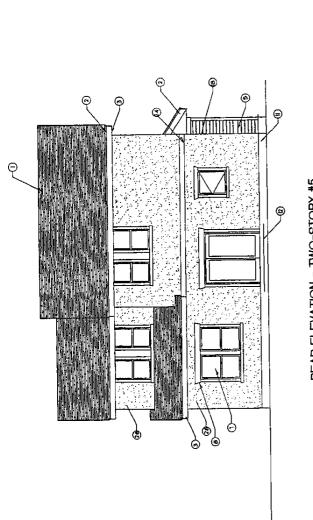




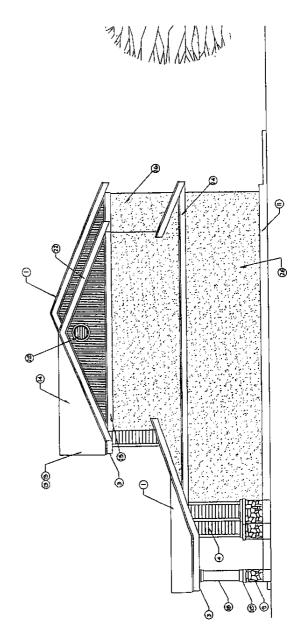


BK 9830 PG 7040

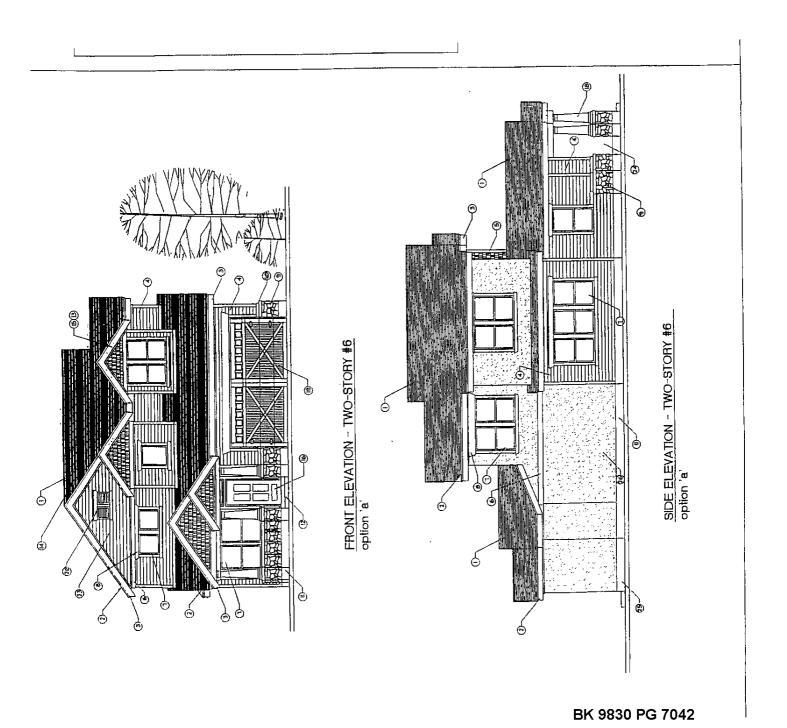
SIDE ELEVATION - TWO-STORY #5

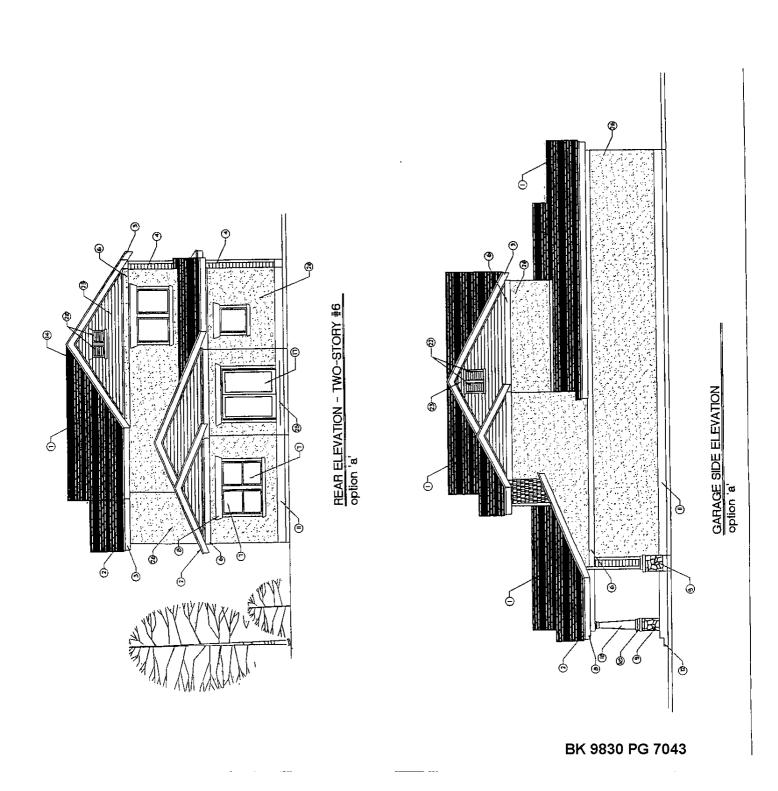


REAR ELEVATION - TWO-STORY #5



SIDE ELEVATION - TWO-STORY #5





## **EXHIBIT H**

State and from the district and

