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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS
(with Owners Association Bylaws)**

CENTRAL 72 TOWNHOMES AT BINGHAM JUNCTION

Midvale City, Salt Lake County, Utah

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS for the Central 72 Townhomes at Bingham Junction subdivision (together with all amendments, supplements, and other modifications hereto, the "**Declaration**") is made on this 2 day of December, 2010, by Central 72, LLC, a Utah limited liability company ("**Declarant**"), in its capacity as the owner of the Central 72 Townhomes at Bingham Junction subdivision in Midvale City, Utah (the "**City**").

RECITALS:

A. Declarant is the owner of certain real property in Midvale City, Salt Lake County, Utah, which is set forth and described on **Exhibit A**, attached hereto and made a part hereof (the "**Property**").

B. Declarant is developing on the Property a residential townhome development to be known as the Central 72 Townhomes at Bingham Junction subdivision (the "**Project**") pursuant to the Preliminary Plat Map (the "**Development Plan**") approved by the City. The Project will contain approximately 67 townhome units, but the Project may be expanded by a supplemental declaration that subjects additional land to this Declaration. The Project will also contain common areas such as open space and private roads (the "**Common Area**") which are intended to be used and enjoyed by the Owners (as defined below) pursuant to the provisions of this Declaration.

C. In furtherance of the Development Plan for the Project, Declarant intends to adopt the provisions of this Declaration for the benefit of the Property, all of which shall run with the title to the Property and each lot within the Property. In addition, Declarant has created or will create the Central 72 Townhomes Home Owners Association (the "**Association**") to which Declarant in due course will delegate and assign (1) the powers of owning, maintaining and administering the Common Area, (2) the duties of administering and enforcing this Declaration, and (3) the duties of collecting and disbursing the assessments and charges hereinafter created in

connection with the operation, maintenance, repair and replacement of the Common Area and the functions and obligations of the Association created hereunder.

ARTICLE 1

GENERAL

1.01 **General Purposes.** Declarant intends to develop the Project as a townhome neighborhood having various attached single-family residential units, open space, and private roads. Declarant intends that this Declaration establish and provide for the continued maintenance of the Project as an attractive and desirable residential community.

1.02 **Densities and Development Agreement.** The Project, including the densities allowed by the City, are set forth in the Development Plan, which Development Plan includes one or more Plats approved by the City, one or more site plans approved by the City, and the Development Agreement between Declarant and the City attached hereto as Exhibit B and made a part of this Declaration by this reference.

1.03 **Association.** Declarant has or will create the Association as a Utah non-profit corporation. The Members of the Association will be the Owners (including Declarant) of Lots (as defined below) and Units (as defined below) within the Project. Declarant intends to delegate and assign to the Association the powers of owning, maintaining and administering the Project's Common Area, the duties of administering and enforcing this Declaration, and of levying, collecting and disbursing the assessments and charges hereinafter created. As required by the Development Agreement, this Declaration shall govern any future phase of the development subject to the Development Agreement. Any owner of a lot or unit on the phase 2 property governed by this Development Agreement shall be admitted as a Member of the Association, and the Association shall cooperate with the developer of such phase 2 to ensure that the phase 2 property is made subject to the Declaration.

1.04 **Declaration.** In order to further the general purposes stated above, Declarant hereby declares that all of the Property shall at all times be owned, held, sold, conveyed, occupied, used, and enjoyed subject to the provisions of this Declaration and to the covenants, conditions, restrictions, equitable servitudes, reservations, easements, assessments, charges, and liens provided, referred to or incorporated herein, all of which shall run with such properties and all of which shall burden, benefit, and be binding upon Declarant, all other persons or entities having or acquiring any right, title or interest therein, and their respective successors, assigns, heirs, devisees and personal representatives.

1.05 **Form of Conveyancing; Leases.** Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot or a Unit shall describe the interest or estate involved substantially as follows:

Lot No. _____ as identified on the Plat recorded in the Office of the Salt Lake County Recorder as Entry _____, Map # _____ contained within Plat "____" Central 72 Townhomes at Bingham Junction subdivision, Midvale City, Salt Lake County, Utah (as such Plat may have heretofore been amended or supplemented), SUBJECT TO the Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements of the Central 72 Townhomes Home Owners Association, as recorded in the Office of the Salt Lake County Recorder as Entry _____ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Area described, and as provided for, in said Declaration (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot or Unit.

1.06 Right to Develop and Market. Notwithstanding anything in this Declaration to the contrary, no provision of this Declaration is intended or shall be construed to prevent or limit Declarant's rights to develop and market the Project and to exercise the rights reserved by Declarant as herein provided. Such rights reserved to Declarant include, but are not limited to the right to maintain a reasonable number of promotional, advertising, and/or direction signs, or similar items at any place or places on the Property, provided that any such item is of a size and in a location as is reasonable and customary and shall be of professional quality.

ARTICLE 2

DEFINITIONS

2.01 Unless otherwise expressly provided herein, capitalized words and phrases used in this Declaration shall have the following meanings:

(a) **"Articles"** shall mean the Articles of Incorporation of the Central 72 Townhomes Home Owners Association, as such Articles may be amended from time to time.

(b) **"Association"** shall mean the Central 72 Townhomes Home Owners Association to be formed by Declarant pursuant to the laws of the State of Utah.

(c) **"Board"** shall mean the Board of Directors of the Association, appointed by Declarant during the Declarant Control Period or elected by the Owners following the Change of Control Date in accordance with the Articles and Bylaws of the Association.

(d) **"Bylaws"** shall mean the Bylaws of the Association as set forth herein, as such bylaws may be amended from time to time.

(e) **“Capital Improvement Assessment”** shall mean the charge against each Owner and the Owner’s Lot or Unit for the purposes specified in Section 13.05.

(f) **“Change of Control Date”** shall mean the date on which Declarant’s Class B voting rights terminate pursuant to the provisions of Section 11.02(d).

(g) **“City”** means Midvale City, Salt Lake County, Utah.

(h) **“Common Assessment”** shall mean the charge against each Owner and the Owner’s Lot or Unit for the purposes specified in Section 13.02.

(i) **“Common Area”** shall mean any and all of the real property, Improvements, facilities and equipment which are owned or managed by the Association subject to the requirements of Utah Code section 10-9a-606, or owned by another person subject to a lease, license, easement or other arrangement in favor of Declarant or the Association, for the benefit of all of the Owners. The Common Area within the Project shall include without limitation the common open space within the Project, any private roads or drives not dedicated to and accepted by the City, and any other areas within the Project clearly intended as and identified as common area or Association property, which areas may be specified in the Development Plan and, where applicable, in other separately recorded documents identifying Common Area or specifying an interest of the Association with respect to any Common Area. Common Area shall also include any communications systems, electronic networks or cable TV systems operated, leased, or subscribed to by the Association for the benefit of all Owners within the Project. Common Area shall not include any roads dedicated to and accepted by the City. For purposes of operation, maintenance, repair obligations, and Common Expenses, any Fenced Yard (defined below) shall not be deemed to be a Common Area. Except for the Fenced Yards in Lots 120-144 Lots generally adjacent to Eastern and Southern adjacent to the outer boundaries of the Project, fences are generally not allowed within the Project.

(j) **“Common Expenses”** shall mean the expenses (including allocations for Reserves) incurred or assessed by the Association in fulfilling its duties.

(k) **“Control Transition Date”** shall mean the date determined pursuant to the provisions of Section 11.02(e) on which Declarant shall transfer all of its rights under this Declaration with respect to Phase 1 of the Project, including without limitation Class B voting rights, to the developer of the next phase governed by the Development Agreement.

(l) **“Declarant”** shall mean Central 72, LLC, and its successors and assigns to whom it assigns, in whole or in part, the rights of Declarant hereunder by an express written assignment; provided, however, in the event Phase 2 of the Project is not owned by Central 72, LLC, or an affiliate of Central 72, LLC, “Declarant” shall mean (i) with

respect to Phase 1, Central 72, LLC, and its successors and assigns to whom it assigns, in whole or in part, the rights of Declarant hereunder by an express written assignment, and (ii) with respect to Phase 2, the developer of Phase 2, and its successors and assigns to whom it assigns, in whole or in part, the rights of Declarant hereunder by an express written assignment.

(m) **“Declarant Control Period”** shall mean the period commencing on the date on which the Association is formed and ending on the Change of Control Date.

(n) **“Declaration”** shall mean this Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements, as amended from time to time.

(o) **“Design Guidelines”** shall mean the design set forth in the Development Plan approved by the City together with such additional design requirements as may be adopted by Declarant or the Design Review Committee in accordance with this Declaration, as such additional requirements may be amended from time to time. Notwithstanding any provision to the contrary, the Design Review Committee may enforce Design Guidelines that are more restrictive or supplemental to the Development Plan approved by the City, but the Design Review Committee shall have no authority to waive any requirement of the City set forth in the Development Plan.

(p) **“Design Review Committee”** shall mean the Design Review Committee for the Project created pursuant to Article 6 hereof.

(q) **“Development Agreement”** shall mean any agreement executed by the City pertaining to the development of any portion of the Project, including without limitation the Development Agreement attached to this Declaration as Exhibit B.

(r) **“Development Assignee”** shall mean any person or entity that, in conjunction with acquiring all or part of the Property from Declarant, receives an assignment of Declarant’s rights pursuant to this Declaration, including Declarant’s class B voting rights pursuant to Section 11.02 of this Declaration.

(s) **“Development Plan”** shall mean the preliminary plat for the Project approved by the City as the same may be amended from time to time, including without limitation the final Plat, together with the Development Agreement and site plan for the Project approved by the City.

(t) **“Director”** shall mean a member of the Board.

(u) **“Dissolution”** shall mean acts or non-acts by the Association that cause the voluntary or involuntary dissolution of the Association.

(v) **“Fenced Yard”** shall mean that portion of a Lot designated by Declarant as an area that may be fenced off and generally accessible only to the Owner of the Unit or Lot, which fence shall be constructed pursuant to the designs allowed in the Development Plan. Within the Property, Fenced Yards shall be available only on Lots 120-144 along the Eastern and Southern boundaries of the Property. Any fence erected on or in a Fenced Yard must be approved by the Declarant or the Design Review Committee. Notwithstanding any provision to the contrary, the Owner of the Lot with the Fenced Yard, and not the Association, shall be responsible (i) for the operation, maintenance, and repair of such Fenced Yard, (ii) the taxes assessed against such Fenced Yard and (iii) the costs of maintaining the fences, which maintenance shall be performed by the association through assessments against the Lots with Fenced Yards (Lots 120-144).

(w) **“Guest”** shall mean any family member, tenant or invitee of an Owner, or any family member, tenant or guest of such a person.

(x) **“Improvements”** shall mean all structures and appurtenances thereto of every type and kind, including, without limitation, buildings, out buildings, walkways, garages, carports, roads, street lighting, driveways, parking areas, recreational amenities, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, and related fixtures and equipment.

(y) **“Initial Common Assessment”** shall mean the assessment made against the Lot containing a Unit at the day and time of the first closing in which such Lot is transferred to an Owner other than Declarant or its affiliates, or if no transfer takes place, on the date twelve (12) months after a certificate of occupancy of similar approval of completion is issued for the Unit on such Lot. The amount of the assessment shall be equal to one-half percent (1/2%) of the total purchase price or value of the Lot and Unit combined, all as set forth in subsection 13.02(c) below. Because the Initial Common Assessment is due only after a Unit is built on a Lot, no provision or term in this Declaration shall be interpreted to prevent the collection of Common Assessments and other assessments from the Owner of the Lot prior to assessment of the Initial Common Assessment.

(z) **“Lot”** shall mean a residential townhome lot within the Project as shown on the recorded Plat and upon which an attached structure designed and intended for use and occupancy as a single-family townhome residential living unit, which may share a roof area with one or more adjacent units, is to be constructed. Selected Lots (120-144) within the Property include a Fenced Yard area.

(aa) **“Managing Agent”** shall mean any person or entity appointed or employed as an agent to manage the Common Area.

(bb) **“Member”** shall mean a member in the Association through ownership of a Lot or Unit within the Project.

(cc) **“Mortgage”** shall mean any mortgage or deed of trust or other conveyance of a Lot or Unit given to secure a loan from an institutional lender in the business of making or holding residential real estate loans, provided that the loan is used to finance the purchase of the Lot or Unit and the lien and security interest for such loan will be void and reconveyed upon the repayment of such loan, and further provided that such lender is not affiliated in any way with the Owner of the Lot or Unit.

(dd) **“Mortgagee”** shall mean a person to whom a Mortgage is made and shall include the beneficiary of a deed of trust. The term **“First Mortgagee”** shall include any Mortgagee who, by virtue of the Owner’s Mortgage holds a first and prior lien upon any Lot or Unit superior to the lien of any other Mortgagee.

(ee) **“Mortgagor”** shall mean a person who mortgages the Owner’s Lot or Unit to another (i.e., the maker of a Mortgage), and shall include the trustor of a deed of trust.

(ff) **“Owner”** shall mean the person, including Declarant, holding title of record to any Lot or Unit as reflected in the Public Records (including contract purchasers under executory contracts of sale), but excluding those persons having such interest merely as security for the performance of an obligation. For purposes of membership in the Association (i.e., voting) and being obligated to pay assessments levied against Lots and Units by this Declaration, the term shall refer to owners of Lots and Units.

(gg) **“Plat”** shall mean a recorded subdivision plat, as amended from time to time, covering Lots, Units, and/or Common Area within the Project.

(hh) **“Project”** shall mean the Central 72 Townhomes at Bingham Junction subdivision as it exists at any time.

(ii) **“Property”** shall mean the real property located in Midvale City, Utah as described on **Exhibit A** attached hereto.

(jj) **“Public Records”** shall mean the Office of the County Recorder of Salt Lake County, Utah.

(kk) **“Reserves”** shall mean those reserves anticipated in Sections 13.02(b).

(ll) **“Rules and Regulations”** shall mean the Rules and Regulations for the Project’s Common Area adopted by the Board pursuant to Section 12.03 as amended from time to time.

(mm) **“Shared Unit Area”** shall mean any area common to two or more Units, such as a shared fence, the insulated area shared between the outside walls of two adjacent Units, or the area of the roof where the two roofs come together, which feature or area is for the exclusive benefit of the Owners of the Lots sharing such common feature between them.

(nn) **“Special Assessment”** shall mean the charge against each Owner and the Owner’s particular Lot for the purposes specified in Section 13.04.

(oo) **“Specific Assessment”** shall mean the charge against a particular Owner and the Owner’s Lot for the purposes specified in Section 13.06.

(pp) **“Supplemental Assessment”** shall mean the charge against an Owner of a Lot and such Owner’s Lot for the purposes of maintaining Shared Common Lot Areas or Unit exteriors as specified in Section 13.03.

(qq) **“Transfer”** shall mean any voluntarily or involuntarily abandonment, surrender, assignment or other form of transfer by the Association of any portion of or all of the Common Area.

(rr) **“Unit”** shall mean a single-family townhome residential unit constructed upon a numbered Lot as such numbering is set forth on a recorded Plat.

ARTICLE 3

THE CENTAL 72 TOWNHOMES HOME OWNERS ASSOCIATION

3.01 **Associations.** The Central 72 Townhomes Home Owners Association shall do such things as are within its powers and as may reasonably be required to maintain the Project and its Common Area as an attractive and desirable residential community. The Members of the Association shall be the Owners, including Declarant, of Lots and Units within the Project. The duties and powers of the Association shall relate to the Project as a whole and to the ownership and use of the Common Area, their care, maintenance and upkeep, including the imposition of assessments therefor upon the Owners and their Lots and Units.

3.02 **Duties and Powers of Association.** The Association, acting through the Board, shall have the powers and duties as provided herein and in the Articles and Bylaws and such additional powers as shall be reasonable and necessary for the Association to accomplish the purposes of this Declaration.

3.03 **Operation and Maintenance.** The Association shall be responsible for the operation, management, regulation, maintenance, repair and replacement of the Common Area, Shared Unit Areas, and the exteriors of the Units, and the costs of the forgoing shall be paid through assessments levied upon the Lots as set forth herein. Without limiting the foregoing,

the Association shall as needed operate, manage, regulate, maintain, repair and replace any surface, subsurface, or above-surface Common Area, including roads, alleys, parks, trails, sidewalks or other Common Area situated on or crossing any portion of the Project.

(a) The Owners may not make any changes to the Shared Unit Areas, and they may not make changes to their Units that may affect another Unit in any material way. The Association shall be responsible for the repair and maintenance of Shared Unit Areas and the exteriors of Units, and the Association may make such Supplemental or Specific Assessments for such repair and maintenance as the Board in its reasonable discretion determines are needed to repair or maintain any exteriors or Shared Unit Areas within the Project. The cost of the maintenance and repair of exteriors, including roofs of Units and the Shared Unit Areas, shall be borne by the Owner of the Units through Supplemental or Specific Assessments levied by the Association against the affected Units or Lots as set forth herein.

(b) The financial responsibility for the maintenance of the Units rests with the Owners of the Unit, but the Association shall perform exterior maintenance and recoup its costs through a Supplemental or Specific Assessment as a convenient and efficient way to maintain the exteriors of the Units. Notwithstanding the foregoing, if the exteriors of such Units will be maintained by all of the Owners in the Building pursuant to a binding agreement among all of the Owners in the building and a licensed contractor, the Board shall not make assessments against the Units in the building for such maintenance unless the Board determines in its reasonable discretion that such maintenance is not being adequately performed.

(c) The Association Board shall have the authority to rule upon any disputes between Owners involving Shared Unit Area, and the decision of the Board shall be deemed to be final and binding absent a clearly erroneous decision.

(d) Each Owner of a Unit with a Fenced Yard must maintain the Fenced Yard as a clean and orderly yard space with patio areas, lawn, or landscaping that is generally consistent with the adjacent common area landscaping.

3.04 Health and Safety. Neither Declarant nor the Association shall have any obligation to provide services for the maintenance of health and safety within the Project.

3.05 Administration and Enforcement. The Association shall have the power to:

(a) Grant easements or rights-of-way required by utilities to serve the Common Area.

(b) Employ or contract with a manager to perform all or any part of the duties and responsibilities of the Association, and delegate its power to committees, officers and employees.

(c) Take such actions as may reasonably be necessary or desirable to comply with and enforce the Rules and Regulations.

(d) Contract with such persons as may reasonably be necessary or desirable to effectuate the purposes of this Declaration, including, without limitation, attorneys, accountants, and contractors to collect and dispose of solid waste and refuse, to maintain the landscaping, to provide security services, and the like, all with respect to the Common Area.

(e) Take such actions as may reasonably be necessary or desirable to enforce the terms and provisions of the Articles, the Bylaws, or this Declaration.

(f) Collect such assessments and enforce such liens as may be reasonably necessary or prudent to maintain the Common Area in the judgment of the Board or the City.

3.06 Insurance. The Association shall maintain such policy or policies of liability, fire and hazard insurance with respect to the Common Area and personal property owned by the Association as required herein. Unless the Owners of the individual Units within a building provide the Association with proof of a policy of fire, hazard, and liability insurance pursuant to a written agreement among all of the Owners of the Units in the building that reasonably covers the building, the Association is hereby deemed to be the agent of the Owners for the purpose of obtaining such insurance for the Owners, and the Owners of the affected Units shall bear the costs of such insurance through Supplemental or Specific Assessments.

3.07 Assessments. The Association shall levy and collect all assessments as provided herein.

3.08 Telecommunications Systems and Access. Within the Project, the Association may provide for cable television facilities and services; other telecommunications systems and access to communications programming, including Internet access via cable or telephone facilities; other audio or video program services; and other telecommunications devices as the Board may deem appropriate bearing in mind the demand of Owners therefor and the costs of delivery thereof.

3.09 Membership in the Association. Every Owner, upon acquiring title to a Lot or Unit in the Project, shall automatically become a Member of the Association and shall remain a Member until such time as the ownership of the Lot or Unit giving rise to such membership ceases, for any reason, at which time the successor Owner of the Lot or Unit shall become the successor Member with respect to such Lot or Unit.

3.10 Membership Appurtenant. Membership in the Association shall be appurtenant to and may not be separated from the fee ownership of a Lot or Unit. Ownership of a Lot or Unit

shall be the sole qualification for membership in the Association, and such membership shall not be transferred, pledged, or alienated in any way except upon the transfer of title to the Lot or Unit giving rise to such membership, and then only to the successor in interest of such title. Any attempt to otherwise transfer a membership shall be null and void, and will not be reflected upon the books and records of the Association.

3.11 Title to the Common Area. Upon the recording of the Plat, the Common Area shall be subject to the interests of the Owners in the Common Area pursuant to Utah Code section 10-9a-606 such that the Common Area may not be separately owned or conveyed independent of the other Lots and Units on the Plat. In addition, Declarant hereby agrees that it will convey or assign (where Declarant owns less than the title) all of its right, title and interest in and to the Common Area to the Association, free and clear of all encumbrances and liens, except for the following:

- (a) conditions, restrictions and reservations of easements set forth in this Declaration or any Plat;
- (b) liens for taxes and assessments;
- (c) the terms of other easements and reservations interests in Declarant's chain of title, excluding financial liens; and
- (d) any public rights of record.

The Declarant shall delay the conveyance of the title or assignment of rights as set forth in this Section 3.11 until after the recording of applicable Plats or entitling documents in the Public Records and completion of construction of any Common Area as required by this Declaration.

3.12 Taxes on Common Area. Pursuant to Utah Code section 10-9a-606(2)(a), real estate taxes or assessments levied or assessed against or upon the Common Area shall be paid by each Owner of a Lot paying an equal portion of the tax or levy assessed against the Common Area.

3.13 Damage or Destruction to Common Area. Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner:

- (a) If the insurance proceeds are sufficient to effect total restoration in the event of damage or destruction to any Common Area, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.
- (b) If the insurance proceeds are insufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed

substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Capital Improvement Assessment against each of the Owners and their Lots and Units, in accordance with the provisions of this Declaration.

3.14 Maintenance of Common Area Shared With Other Developers or Phases.

This Declaration shall govern only the Property described in Exhibit A attached hereto until future plats become subject to this Declaration through a recorded supplemental document describing such future plats and referencing this Declaration. To enable the Property to be developed pursuant to the Development Agreement and in harmony with neighboring land, the private roads shown as San Savino Way and Cannara Way and the accompanying sidewalks and pedestrian systems (collectively the "*Adjoining Roads*") shall be constructed and maintained all the way to the western boundary of the Property such that a road and sidewalk on the adjacent land immediately to the west of the Property ("*Lot 2*") can be joined to each of the Adjoining Roads at the boundary of the Property and Lot 2 in the future. Notwithstanding the foregoing, nothing herein shall be deemed to require the Association to participate in the cost of joining the roads on Lot 2 to the Adjoining Roads on the Property, which costs shall be borne solely by the owner of Lot 2. Upon the completion of any roads and accompanying sidewalks on Lot 2 connecting to the Adjoining Roads, if such roads on Lot 2 are not owned by the Association, the Association is authorized to enter into a reasonable agreement for the joint maintenance of both the Adjoining Roads and the roads and sidewalks which connect to the Adjoining Roads, provided that the costs of such maintenance are reasonably allocated to the different owners in rough proportion to the amount of roadway owned by each owner. When the Association acquires the roads on Lot 2 west of the Property, the Association shall ensure that San Savino Way and its accompanying sidewalk curves to the south and is extended and maintained to the southern boundary of Lot 2 such that a future road and pedestrian sidewalk system to be built on Lot 3 (located to the south of Lot 2) can be joined to San Savino Way and the pedestrian systems at the boundary between Lot 2 and Lot 3. This obligation with regard to Lot 3 is conditioned upon the Association acquiring the roads on Lot 2, and nothing herein shall be deemed to subject any portion of Lot 2 or Lot 3 to this Declaration until the owner of Lot 2 or Lot 3 records a supplemental declaration subjecting such real property to this Declaration.

ARTICLE 4

EASEMENTS AND THIRD PARTY RIGHTS

4.01 Easements Reserved by Declarant. As to the Property, Declarant hereby reserves to itself and its assigns the following easements:

(a) **Construction Easements and Related Rights.** Declarant hereby reserves for the benefit of Declarant and its assigns the right from time to time:

(i) to construct, maintain, repair and replace any Improvements necessary or required for the full development of the Project on the Property owned by Declarant; on the Common Area; and on portions of Lots outside of the building areas of Lots or Units which may be designated on a Plat;

(ii) to establish and use nonexclusive perpetual utility and other easements, leases, permits or licenses on, over, upon, across, above, under and through the Common Area for uses including, but not limited to access roads, paths, sidewalks and trails, mailbox structures, sprinkler systems and other landscaping changes, improvements and appurtenances (including without limitation, removal of trees and other vegetation subject to any necessary governmental approvals), ponds, drainage facilities, monuments, recreational areas and amenities, parking areas, conduit installation areas, storage facilities for supplies and equipment, earth walls and other roadway supports, lights, and signage;

(iii) to create other interests, reservations, easements, exceptions and exclusions for the best interest of the Association and for the benefit of any Owner or all Owners *provided* that any such action taken and any easement, lease, permit or license, interest, reservation, exception or exclusion established does not unreasonably impair the use of the Lots or Units designated on a Plat; and

(iv) to construct and maintain offices, prefabricated structures, booths or other structures for administrative, sales and promotional purposes relating to the Project during its development and marketing.

(b) **Landscaping and Drainage Easements.** Declarant hereby reserves for itself and its assigns an easement across the Property (except the portions thereof occupied by Improvements) and within all Common Area:

(i) to revegetate, beautify or maintain portions of the Property located adjacent to road rights of way;

(ii) to beautify and maintain portions of the Property to the extent necessary, in Declarant's judgment, to mitigate through landscaping, any potential visual impact of the Project;

(iii) to revegetate portions of the Property in order to control erosion, to beautify the Property or to restore the Property to a natural condition after damage by natural or man-made causes;

(iv) to preserve, improve, maintain, restore and revegetate natural and man-made storm drainage ways across the Property, including the building areas

of the Property which include drainage ways, and to convey water in those drainage ways; and

(v) to construct, operate, maintain, repair and replace storm detention and water quality structures on the Property, including within the building areas of Lots or Units where necessary to adequately control surface water.

(c) **Easements for the Benefit of Owners.** Declarant hereby reserves for the benefit of all the Owners, the following described perpetual non-exclusive easements over all portions of Lots located outside of any building areas designated on the Plats, for the use and enjoyment of the Lots and Units in accordance with this Declaration: Easements, including any necessary access rights, for the installation, maintenance and repair of utilities and services; for drainage over, across and upon adjacent Lots for water from normal use of adjoining Lots, and for the construction, maintenance and repair of earth walls, slopes, retaining walls and other supports, *provided* that any such action taken or any other use of such easements does not unreasonably impair the use of the Lots affected thereby. Declarant also reserves any other easements referred to on any Plat as reserved by Declarant for the use and enjoyment of the Owners.

4.02 Easements for Benefit of Association. Declarant hereby grants to the Association, its licensees, invitees, lessees, successors and assigns, a nonexclusive, perpetual easement over, upon, across, above, under and through the Property and each portion thereof to exercise any right held by or obligation imposed upon the Association under this Declaration or any other Association documents. Notwithstanding the foregoing, the Association shall not enter upon any Lot or Unit without reasonable prior notice to the Owner of the Lot or Unit, except in cases of emergency.

4.03 Other Easements. The Property shall be subject to the following easements in addition to those created in this Declaration:

(a) **Easements on Plats and of Record.** The Property shall be subject to all easements shown on any Plat, and to all easements of record.

(b) **Easements for Parking.** Temporary guest or recreational parking shall be permitted within the Common Area only within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association is hereby empowered to establish "parking" and "no parking" areas within the Common Area, as well as to enforce these parking limitations by all means lawful for such enforcement including the removal of any violating vehicle.

(c) **Easements for City and County Public Service Use.** Declarant hereby reserves and covenants for itself and all future Owners within the Project, easements for any City, county, state and federal public services, and for public utilities, including but

not limited to, the right of the police to enter upon any part of the Property for the purpose of enforcing the law.

(d) **Cable Television, Internet Service, and Similar Utilities.** Declarant hereby reserves easements in, upon, over, across and through the Property for the installation of a cable television system, internet service, or similar utilities, together with the right to grant and transfer such easements.

4.04 Nature of and Creation of Easements. Unless otherwise set forth herein, any easement reserved in this Declaration shall be deemed to be nonexclusive, and each easement in favor of an Owner shall be deemed to be appurtenant to and for the benefit of the Lot or Unit owned by such Owner. Any and all easements reserved in this Declaration shall be deemed to be in full force and effect upon recordation of this Declaration in the Public Records whether or not referred to, reserved and/or granted in any instrument of conveyance.

4.05 Limitation on Easement. Each Owner's appurtenant right and easement of use and enjoyment respecting the Common Area shall be subject to the following:

(a) The right of the Association to govern by reasonable Rules and Regulations the use of the Common Area so as to provide for the enjoyment of the Common Area in a manner consistent with the collective rights of all of the Owners;

(b) The right of the City, and any other governmental or quasi-governmental body having jurisdiction over the Property within the Project, to enjoy access and rights of ingress and egress over and across any open area contained within the Common Area for the purpose of providing police and fire protection and providing any other governmental or municipal service; and

(c) The right of the Association to dedicate or transfer any part of the Common Area to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; *provided* that such dedication or transfer must first be approved by the affirmative vote or written consent of a majority of all outstanding Member votes.

ARTICLE 5

OWNERS' RIGHTS AND OBLIGATIONS

5.01 Owners' Easements of Enjoyment. Every Owner and the Owners' Guests shall have a non-exclusive right and easement of ingress and egress and of enjoyment in, to and over the Common Area, which right and easement shall be appurtenant to and shall pass with fee title to the Owner's Lot or Unit, subject to the rights of the Association as set forth in this Declaration, the Articles and Bylaws, including the right of the Association to suspend the voting

rights and rights to use the Common Area (except, if necessary for ingress and egress to the Owner's Lot or Unit) by an Owner for any period during which any assessment against the Owner's Lot or Unit remains unpaid and delinquent or another material violation of this Declaration continues to exist, and for a period not to exceed 30 days for any single infraction of the Rules and Regulations. The Common Area shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Owners of Lots and Units set forth herein and in the Rules and Regulations.

5.02 No Exemption from Liability. No Owner shall be exempt from personal liability for assessments to be levied by the Association, nor shall the Lot or Unit owned by such Owner be released from the liens and charges thereof by waiver of the use and enjoyment of the Common Area or the facilities thereon or by abandonment of the Owner's Lot or Unit.

5.03 Maintenance Obligations of Owners. It shall be the duty of each Owner to abide by the provisions of the Declaration regarding Design Review Committee approval and the maintenance, repair and upkeep of the Owner's Lot or Unit, including without limitation any Fenced Yard, in a neat, sanitary and attractive condition. It shall also be the duty of each Owner to pay any and all assessments legally assessed pursuant to this Declaration for the maintenance of the Common Area and Shared Unit Area and for the other purposes set forth herein.

5.04 Maintenance and Repairs. Except for the exteriors of Units and the Shared Unit Areas, which shall be maintained at the cost and for the benefit of the Owner, each Owner shall, at the Owner's own cost, maintain the Owner's Unit and Lot, including without limitation any Fenced Yard, in good condition and repair at all times. In the event of the damage or destruction to all or part of any Unit, the Owner of the Lot on which such Unit is situated shall rebuild the same within a reasonable time so as to prevent the unsightly appearance and dangerous condition of a partially destroyed Unit or building in the Project. The painting, remodeling, rebuilding, or modification of any Unit exteriors or parts thereof must first be submitted to and approved by the Declarant or the Design Review Committee pursuant to its procedures. Subject to such Declarant or Design Review Committee approval, all repainting/staining and other maintenance of the exteriors of the Units shall be performed by or at the direction of the Association at the expense of the benefitted Owners of the Lots or Units, which expense may be paid through Supplemental or Specific Assessments. All Units shall be maintained by the Owners in a good and attractive condition and state of repair and in compliance with this Declaration and the Design Guidelines. No Owner shall openly or wantonly neglect his Lot or Unit or fail to take all reasonable steps to keep the same in a good and attractive condition and state of repair at all times. If an Owner fails to repair and maintain such Owner's Unit or Lot pursuant to the standards set forth in this Declaration, the Board may provide written notice to such Owner of such failure (a "*Maintenance Notice*"). If an Owner (a) fails to take the maintenance or repair action specified in a maintenance notice within one month, or (b) fails to begin such action within one month and diligently proceed until completion to the extent such maintenance or repair actions cannot reasonably be completed within one month, the Association shall have to right to perform such maintenance or repair action as the cost and expense of such Owner as a Specific Assessment pursuant to Section 13.06 of this Declaration.

5.05 Maintenance of Shared Unit Areas.

(a) **In General:** Every wall, roof area, or fence, including the foundation of adjoining Units, which is built as a part of the original construction of a Unit and placed on the boundary line between separate Units shall constitute and be a Shared Unit Area, and the Owner of a Unit immediately adjacent to a Shared Unit Area shall have the obligation and be entitled to the rights and privileges of these covenants and, to the extent not inconsistent herewith, the general rules of Utah law regarding party walls.

(b) **Rights in Shared Unit Area:** Each Owner of a Unit, which is adjacent to a Shared Unit Area, shall have the right to use the Shared Unit Area for the support and protection of the structure originally constructed thereon and all replacements thereof and shall have the right (through the Association) to keep, maintain, repair and replace therein all pipes, conduit, and ducts originally located therein and all replacements thereof.

(c) **Damage to Shared Unit Area:**

(i) If any Shared Unit Area is damaged or destroyed through the act or acts of any Owner of a Unit which is adjacent to such Shared Unit Area, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, whether such act is willful, negligent or accidental, such Owner shall forthwith proceed to rebuild or repair the same to as good a condition as in which such Shared Unit Area Existed prior to such damage or destruction without costs therefore to the Owner of the other adjoining Unit.

(ii) Any Shared Unit Area damaged or destroyed by some act or event other than one caused by the Owner of a Unit which is adjacent to such Shared Unit Area, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, shall be rebuilt or repaired by the Owners of the adjacent Units to as good a condition as in which such Shared Unit Area existed prior to such damage or destruction at joint and equal expense of such Owners, and as promptly as is reasonably possible.

(iii) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in this Section, to perform the necessary repair or rebuilding, then the Association may cause such repairs or rebuilding to be performed in the manner as provided in this Section and the cost thereof shall be charged to such Owner as a Supplemental or Specific Assessment which shall be a continuing lien on the Owner's Unit.

(d) **Change in Shared Unit Area:** Any Owner of a Unit who proposes to modify, rebuild, repair or make additions to any structure upon his Unit in any manner which requires the extension, alteration or modification of any Shared Unit Area shall first obtain the written consent thereto, as to said Shared Unit Area, of the Owner(s) of the other adjacent Unit(s) and the Association Board, in addition to meeting any other

requirements which may apply. In the event that a Shared Unit Area is altered, regardless of whether all required consents have been obtained, any express or implied warranties made by the Declarant concerning the structural integrity of the Shared Unit Area or any of the Units adjacent to the Shared Unit Area shall be null and void and the Owner who alters the Shared Unit Area shall be responsible for any and all damage caused to any of the adjacent Units or improvements thereto.

(e) **Arbitration:** In the event of a disagreement between Owners of Units adjoining a Shared Unit Area with respect to their respective rights or obligations as to such Shared Unit Area, upon the written request of either of said Owners to the other the matter shall be submitted to the Board and the decision of the Board shall be final and binding absent clear error.

5.06 Owners Insurance. Unless such insurance coverage is provided by the Association for the benefit of the Owner, each Owner shall be responsible to procure and maintain in force hazard insurance and liability insurance with respect to the Owner's Lot and Unit as is customary in townhome projects such as the Project and which may be consistent with such Owner's personal circumstances.

5.07 Assessments and Rules Observance. Each Owner shall be responsible for the prompt payment of any Common, Special, Specific, or Supplemental Assessments or any other assessments provided for in this Declaration and for the observance of the Rules and Regulations promulgated by the Association from time to time.

5.08 Transfer of Interests. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Lot to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration following such transfer.

ARTICLE 6

DESIGN REVIEW

6.01 Design Guidelines. Subject to the City's ordinances and building codes, Declarant intends to develop all of the Lots and to construct all of the Common Area. Such development and construction shall be completed pursuant to the Development Plan, any Development Agreement, and Declarant's plans and specifications. Design and construction of the Units shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and such other building and design criteria for the Project (collectively the "*Design Guidelines*") that may be approved from time to time or amended from time to time by the Design Review Committee. Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Project be equal or superior to that utilized for original construction. Notwithstanding any provision to the contrary, all construction completed by Declarant or one or more assignees

of this construction right by Declarant shall be and is hereby approved without regard to the approval procedures set forth below, provided that Declarant or its assignee completes the construction pursuant to the initial Design Guidelines as they may be amended from time to time by Declarant or its assignee. Unless an Owner of a Lot has received a written assignment of the specific rights of Declarant under this section 6.01, such Owner shall be subject to the procedures for approval set forth below in this Article 6.

6.02 Unit Quality and Size. The size and quality material restrictions for the Units constructed within the Project shall be set forth in the Development Plan approved by City as such may be supplemented by other Design Guidelines approved by Design Review Committee.

6.03 Design Review Committee. The Design Review Committee (the "*Committee*") shall consist of an uneven number of persons of not less than one nor more than five members, who need not be Owners. The member(s) of the Committee shall be appointed by Declarant during the Declarant Control Period and thereafter by the Board, and the members of the Committee may be members of the Board. In the event the Declarant is different for Phase 1 and for Phase 2, the Declarant of Phase 1 and the Declarant of Phase 2 shall have the right to appoint the same number of members of the Design Review Committee and shall jointly appoint one member of the Design Review Committee. The Committee may utilize professional consultants including an architect, a landscape architect, and a civil engineer. The Committee shall have and exercise all of the powers, duties and responsibilities set out in this Declaration and shall meet on such schedules as may be established by its chairman. A majority of its members shall constitute a quorum and the majority of its members present at the meeting shall be sufficient to approve action. Actions may also be approved by unanimous written consent of all Committee members.

6.04 Approval by Design Review Committee. Except for original construction by Declarant pursuant to the Development Plan approved by the City, no Improvements of any kind, including, without limitation, residence dwellings, ponds, parking areas, mail boxes, fences, walls, garages, driveways, antennae, satellite dishes, flag poles, curbs, and covered walks shall ever be erected, altered, refinished or repainted (unless of the same finish or color as the original), or removed from any lands within the Property, nor shall any excavating, clearing, removal of trees or shrubs, landscaping or other alteration of existing site conditions be done on any lands comprising the Property, unless the complete plans and specifications therefor ("*Plans and Specifications*") complying with the Design Guidelines requirements are approved by the Committee prior to the commencement of work. The Committee shall consider the materials to be used on the external features of said buildings or structures, including exterior colors, harmony of external design and existing structures within the Project; the building bulk or mass of any buildings or structures within the Project, their location with respect to topography, existing trees, finished grade elevations, and harmony of landscaping with the natural setting and surroundings; and shall ascertain whether the Improvements conform to the Design Guidelines then in effect, under this Declaration. Notwithstanding any provision to the contrary, the Design Review Committee may enforce Design Guidelines that are more restrictive or supplemental to the Development Plan approved by the City, but the Design Review Committee shall have no authority to waive any requirement of the City set forth in the Development Plan.

6.05 Approval Procedure. Two copies of the complete Plans and Specifications must be submitted to the Design Review Committee for approval or disapproval by it in writing within 30 days after submission, *provided* that Plans and Specifications for any replacement structure to be constructed in substantially the same configuration, location, architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within 10 days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Article 6, as to which respects it shall be deemed disapproved. The Committee shall disapprove Plans and Specifications submitted to it which are not sufficient for it to exercise the judgment required of it by this Article 6. In the event of a conflict between the Design Guidelines and the applicable regulations or ordinances of the City or any other governmental entity having jurisdiction, the latter shall prevail.

6.06 Construction. Once begun, any construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the common areas in the vicinity of the activity, *provided* that they shall promptly restore such areas to their prior condition when the use thereof is no longer required. The Committee shall have the authority and right at any time and from time to time at any reasonable hour to inspect construction or other activities authorized for the purpose of determining whether the same comply in all respects with the applicable Plans and Specifications as approved by it, but it shall have no duty to make such inspections.

6.07 Fee. The Committee may charge such a reasonable fee or fees for its review of Plans and Specifications as shall be determined from time to time by the Board. Such fee or fees shall be reasonable in relation to the work performed and shall be applied uniformly.

6.08 Variances. The Design Review Committee has the authority to deviate from the requirements contained in the Design Guidelines (but not the Development Plan) in extenuating circumstances, when to do otherwise would create an unreasonable hardship or burden for an Owner. The Committee does not, however, have authority to allow deviation from the requirements of the City set forth in the Development Plan, including without limitation the site plan and Development Agreement approved by the City.

6.09 General Standards. The Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on the lands within the Project conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siting, height, topography, grade and finished grade elevation in keeping with the Design Guidelines and this Declaration.

6.10 Ultimate Responsibility. Each Owner shall at all times conform and comply with all approved Plans and Specifications for the Improvements on such Owner's Lot or Unit and otherwise conform and comply in all respects with the Design Guidelines and this Declaration, as well as with all applicable laws, ordinances, building codes, rules, regulations, orders and the like of any governmental agency having jurisdiction.

6.11 Written Records. The Committee shall keep and safeguard complete written records of all applications for approval submitted to it (including one set of all Plans and Specifications so submitted) and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument, which records shall be maintained for a minimum of five years after the approval or disapproval.

6.12 Procedure for Appeal. In the event Plans and Specifications submitted to the Committee are disapproved or deemed disapproved, the Owner may appeal such disapproval or deemed disapproval in writing to the Board; *provided, however,* a written notice of appeal specifying the grounds for appeal consisting of any alleged failure by the Committee to properly apply the Design Guidelines or provisions of this Article 6 shall be received by the Board not more than 30 days following such disapproval or deemed disapproval. Within 30 days following receipt of such notice of appeal, the Board shall render a written decision determining whether the Committee properly applied the Design Guidelines, or the provisions of this Article 6. In the event the Board fails to render such decision within said 30 day period, such disapproval or deemed disapproval of the Committee shall be deemed to have been affirmed by the Board.

6.13 Non-Liability of Design Review Committee Members. Neither Declarant, the Committee, any member thereof, nor any duly authorized representative thereof shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all Plans and Specifications submitted to it solely on the basis of compliance with the Design Guidelines, any applicable provision of this Article 6, aesthetic considerations, and the overall benefit or detriment that would result to the immediate vicinity of the proposed construction or alteration and the Project generally. The Committee shall take into consideration the aesthetic aspects of the designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval from the standpoint of structural safety or conformance with building or other codes.

6.14 Variance in Event of Reconstruction. Any Owner whose Lot or Unit has suffered damage may apply for approval to the Committee for reconstruction, rebuilding, repainting or repair of the Owner's Lot or Unit in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete Plans and Specifications showing the proposed reconstruction and the end result thereof. The Committee shall grant such approval only if the design proposed by the Owner would result in a finished

structure in compliance with the then applicable Design Guidelines and the requirements of the City set forth in the Development Plan.

ARTICLE 7

RESTRICTIONS ON ALL PROPERTY

7.01 Midvale City Zoning Regulations. No lands within the Property shall ever be occupied or used by or for any building or purpose or in any manner which is contrary to this Declaration, any applicable Development Agreement, or any applicable City ordinance, and the other requirements set forth in the Development Plan approved by the City. The applicable zoning ordinances of the City are hereby incorporated in to this Declaration and are made a part hereof.

7.02 No Mining, Drilling or Quarrying. No Owner shall conduct mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, or on the surface of the Property.

7.03 No Business Uses. The Lots and Units within the Project shall be used exclusively for residential living purposes. No Lots or Units within the Project shall ever be occupied or used for any commercial or business purposes; *provided, however*, that nothing in this Section 7.03 shall be deemed to prevent (a) Declarant or its duly authorized agent from using any Lot or Unit owned by Declarant as a sales model, or (b) any Owner or the Owner's duly authorized agent from renting or leasing said Owner's Lot or Unit for residential use or, (c) any home business use authorized and licensed by the City pursuant to the City's home occupation ordinance, and approved by the Association prior to the Owner's application to the City.

7.04 Leasing Restrictions. No lease of any Unit shall be for less than the whole thereof. All leases shall be subject to the provisions of this Declaration whether or not stated therein.

7.05 Restriction of Signs. With the exception of a sign no larger than three square feet for the Owner to advertise the Owner's Lot or Unit for sale, no signs or advertising devices shall be permitted on any Lot or Unit, including, without limitation, commercial, political, informational or directional signs or devices, except signs approved in writing by the Design Review Committee in accordance with its Design Guidelines as to size, materials, color and location: (a) as necessary to identify ownership of the Lot or Unit and its address; (b) as necessary to give directions; (c) to advise of rules and regulations; (d) to caution or warn of danger; and (e) as may be required by law. Any approved signs shall be located as approved by the Design Review Committee. The Design Review Committee may develop comprehensive sign regulations. The Declarant may erect such signs in a size and color as it deems appropriate for the advertising and sale of Lots and Units within the Project.

7.06 Restrictions on Animals. No animals other than ordinary household pets (*i.e.*, ordinary, non-exotic pets that live inside the Unit) may be kept or allowed to remain on any Lot or Unit. Such ordinary household pets may not be kept or allowed to remain outside of the pet owner's Unit unless and until written authorization is obtained from the Board, and no more than two ordinary pets shall be allowed in any Unit. The Board, in its sole discretion, shall have the right to revoke such authorization at any time in its sole discretion and shall have the power to require any Owner or Guest to remove any animal or other pet belonging to them which is not disciplined or which constitutes an undue annoyance or a danger to other Owners, their Guests, or others. At all times while a pet is outside of its owner's Unit, the pet must be accompanied by a responsible individual and must be placed on a leash capable of controlling such pet. Any defecation left by any pet in or on any common area within the Development shall be immediately removed and disposed of by such pet's owner or custodian in a manner allowed by applicable laws and regulations.

7.07 Underground Utility Lines. All water, gas, electrical, telephone, and other permanent utility lines within the limits of the Property must be buried underground and may not be exposed above the surface of the ground.

7.08 No Smoking In Common Area. Smoking is restricted to areas within an Owner's Unit or Lot that will prevent smoke from being transmitted to a neighboring Lot or Unit and becoming a nuisance. Under no circumstances is smoking allowed in the Common Areas.

7.09 Maintenance of Property. All Lots and Units, including without limitation any Fenced Yard, and all improvements on any Lot or Unit shall be kept and maintained by the Owner thereof in clean, safe, attractive and sightly condition, and in good repair.

7.10 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot or Unit nor shall anything be done or placed on any Lot or Unit which is or may become a nuisance or cause significant embarrassment, disturbance or annoyance to others.

7.11 No Hazardous Activities. No activities shall be conducted on any Lot or Unit and no improvements shall be constructed on any Lot or Unit which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace if such is permitted by City ordinances.

7.12 No Unsightliness. No unsightliness shall be permitted upon any of the Property. Without limiting the generality of the foregoing: (a) any unsightly structures, facilities, equipment, tools, boats and vehicles other than operating automobiles shall be enclosed within an approved building or appropriately screened from view, except equipment and tools when in actual use for construction, maintenance or repairs; (b) no trailers, mobile homes, tractors, truck campers or trucks other than pickup trucks shall be kept or permitted to remain upon the

Property; (c) no vehicle, boat or equipment shall be constructed, reconstructed, repaired or abandoned upon the Property; (d) no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials or scrap shall be kept, stored or allowed to accumulate on the Property; (e) refuse, garbage and trash shall be placed and kept at all times in a covered container and such container shall be kept within an enclosed structure or appropriately screened from view; (f) hanging, drying or airing of clothing or household fabrics shall not be permitted on Lots or Units if visible from buildings, Lots, Units, or areas surrounding the Property.

7.13 No Annoying Lights, Sounds or Odors. No light shall be emitted from any Lot or Unit which is unreasonably bright or causes unreasonable glare or does not comply with the Rules and Regulations or Design Guidelines; no sound shall be emitted from any Lot or Unit which is unreasonably loud or annoying, including without limitation, speakers, horns, whistles, bells or other sounds devices, except security and fire alarm devices used exclusively to protect the Property or improvements thereon; and no odors shall be emitted from any Lot or Unit which are noxious or offensive to others.

7.14 Restrictions on Fences and Enclosures. In order to maintain, as nearly as possible, an open park-like feeling in the Project, the following shall apply:

(a) There shall be no front yard fencing, and fences shall only be allowed for the Fenced Yards allowed upon Lots 120-144.

(b) The type and location of any fencing must be approved in writing by the Design Review Committee prior to installation. The pre-approved fencing types are set forth in the Development Plan.

(c) Enclosures for pets may be erected only upon the written approval of the Design Review Committee.

(d) There shall be no chain link fencing without the express written approval of the Design Review Committee and the City.

7.15 No Further Subdivision of Lots. No Lot shall be divided, subdivided, partitioned, parceled or broken up into smaller lots or units.

7.16 Septic Tanks. No septic tank shall be installed upon the Property.

7.17 Fireplaces; Evaporative Coolers. No Unit within the Project shall (a) contain any coal or wood-burning fireplace, stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is fueled by natural gas only; or (b) contain a swamp cooler.

7.18 Rules and Regulations. No Owner shall violate the Rules and Regulations adopted from time to time by the Association. No such rules shall be established which violate

the intention or provisions of this Declaration or which shall unreasonably restrict the use of any Lot or Unit by the Owner thereof.

7.19 Drainage Preservation. No Owner may alter or obstruct the established drainage pattern of runoff water or storm drainage into, from or across the Owner's Lot or any other Lots in the absence of specific approval by the Design Review Committee and the City. For purposes of this Declaration, "*established drainage*" on any Lot is defined as the drainage pattern and facility in existence at the time that such Lot is conveyed to a purchaser by Declarant whether or not any Improvements are constructed thereon.

7.20 Trails and Walkways. No Owner shall have the right to alter or obstruct the maintenance, use or enjoyment of any trail and walkway adjacent to any Lot or Unit.

7.21 Parking. Parking of vehicles shall be allowed only in garages or other designated parking areas as approved by the Design Review Committee or the Board. No parking shall be allowed on streets except in designated areas pursuant to signs placed on the street by the Board or City that specifically allow for such parking. Due to the lack of driveways of sufficient length for parking, no parking is allowed in any driveway in front of the garage for a Unit.

7.22 Protection of Vegetation; Landscaping. No tree or other vegetation with a four inch diameter or greater trunk measured at least 3" above the natural soil line shall be removed without the prior approval of the Design Review Committee pursuant to the Design Guidelines. Vegetation shall be placed and maintained on all Lots and in the common areas of the Project as provided in the Design Guidelines or in landscaping plans approved by the Design Review Committee. Landscaping shall be installed pursuant to the requirements of the Development Plan. The species of any trees planted on a Lot shall be first approved by the Design Review Committee.

7.23 Excavations. No excavation shall be made on lands subject to any Plat without the approval of the Design Review Committee and any governmental entity with jurisdiction over such activity.

7.24 Occupancy. No Lots or Units shall be used for human occupancy, either temporarily or permanently, until a Certificate of Occupancy is issued by the City. No Unit shall be occupied by more than two unrelated individuals.

ARTICLE 8

INSURANCE

8.01 Hazard Insurance. The Association shall procure and maintain a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded

from coverage) of the structural Common Area, if any, owned by the Association with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as the Board may deem to be reasonable. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

- (a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and
- (b) Such other risks as shall customarily be covered with respect to facilities similar in construction, location and use.

8.02 Fidelity Coverage. The Association shall maintain fidelity coverage against dishonest acts on the part of managers, Directors, employees or volunteers responsible for handling funds collected and held for the benefit of the Association and the Members. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half (1 ½) times the Association's estimated annual operating expenses and total reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

8.03 Waiver of Subrogation. The Association hereby waives and releases all claims against the Board, the Owners, the Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or of a breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

8.04 Liability Insurance. The Association shall maintain a comprehensive policy of public liability insurance covering the Common Area. Such insurance policy shall contain a "severability of interest" clause or endorsement, which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Coverage shall have limits of liability of not less than \$1,000,000 per occurrence for personal injury and/or property damage.

8.05 Other Insurance and General. The Association shall also maintain Worker's Compensation Insurance as required by law and may maintain other liability insurance as it may deem desirable, insuring each Owner and the Association, Board and any manager, from liability in connection with the Common Area. Such insurance policies shall have severability of interest clauses or endorsements, which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners. Premiums for all insurance carried by the Association are Common Expenses.

8.06 Unit Owners Policies. Each Unit Owner shall be responsible to purchase and maintain in force appropriate hazard, content and liability insurance as such Owner shall determine to be appropriate to the Owner's needs and circumstances. The Association will not be required to file claims on any of its policies for any damage or liability claim that either should or would have been covered under any Owner's policy.

8.07 Other Insurance Provisions. All insurance required pursuant to this Article 8 shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article 8 to the contrary, any insurance required to be obtained by the Association pursuant to this Article 8 shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Area or risks being insured.

ARTICLE 9

ENFORCEMENT

9.01 Remedies and Enforcement. Declarant, the Association, any Owner, and any Mortgagee shall have the right to enforce this Declaration, the Design Guidelines and the Articles and Bylaws by appropriate proceedings at law or in equity, including the right to assess fines pursuant to the terms of this Declaration or to bring a proceeding to enjoin a violation thereof; *provided, however*, that the Association shall have the exclusive right to enforce the liens and remedies provided herein with respect to the levy, collection, and enforcement of liens for any Assessment hereunder.

9.02 Attorneys Fees and Costs. Any and all costs to enforce this Declaration, the Design Guidelines, the Articles, Bylaws, or Rules and Regulations, including without limitation all reasonable attorneys' fees, shall be paid by the Owner causing such enforcement action by any violation of Declaration, Design Guidelines, Articles, Bylaws, or Rules and Regulations, and such costs shall be deemed to be a Special Assessment against such Owner that does not require any vote of the Members.

9.03 Nuisance. Any act or omission resulting in a breach of this Declaration, the Design Guidelines, or the Articles or Bylaws is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such act or omission and may be exercised by Declarant, the Association, or any Owner.

9.04 Cumulative Remedies. All rights, options, and remedies of Declarant, the Association, or any Owner for the enforcement of this Declaration, the Design Guidelines, the Articles or Bylaws shall be deemed cumulative and none of such rights, options, or remedies shall be deemed exclusive.

9.05 **Waiver.** The failure to enforce any of the covenants contained in this Declaration, the Design Guidelines, the Articles, or Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

9.06 **Personal Covenant.** To the extent the acceptance of a conveyance of a Lot or Unit creates a personal covenant between the Owner of such Lot or Unit, other Owners, or the Association, such personal covenant shall *terminate and* be of no further force or effect from and after the date such Owner ceases to be the Owner of such Lot or Unit except for the payment of moneys which came due to the Association during the period of such ownership.

9.07 **Fines.** At the sole but reasonable discretion of the Board, in addition to other legal remedies available to the Association, any violation of this Declaration or the Rules and Regulations of the Association adopted pursuant to this Declaration by an Owner or the invitee of an Owner shall subject such Owner to the monetary fines set forth in this Section 9.07. Any fines assessed by the Board pursuant this Section 9.07 shall be assessed pursuant to the procedures set forth in Utah Code section 57-8a-207 and deemed to be Specific Assessments.

(a) **First Offense** - A written notice will be delivered to the Owner and/or resident committing the violation requesting that the violation be stopped or cured. If the offense is not corrected within 3 days, then the offender will be fined as follows: \$25 per day for the first week the violation continues; \$50 per day for the next week; and \$100 per day for each day thereafter.

(b) **Second Offense** - For the second offense of the *same violation*, a **\$25.00** fine will be assessed to the Owner, along with any additional expenses (i.e., repairs, towing, or other actions to stop the violation). In addition, if the offense is not corrected within 3 days of written notice of the fine, then the offender will be fined: \$50 per day for the first week the violation continues; \$75 per day for the next week; and \$100 per day thereafter.

(c) **Third Offense** - For the third offense of the *same violation*, a **\$100.00** fine will be assessed to the Owner, along with any additional expenses. In addition, if the offense is not corrected within 3 days of written notice of the fine, then the offender will be fined: \$100 per day for the first week the violation continues; and \$250 per day thereafter.

(d) **Additional Offenses** - For any additional offenses of the *same violation*, a **\$250.00** fine will be assessed to the Owner, along with any additional expenses. In addition, if the offense is not corrected within 3 days of written notice of the fine, then the offender will be fined \$250 per day for each day that the violation continues.

(e) Upon the cure or cessation of the violation, the Board may waive all or part of the fine in its sole discretion. The Association may enforce payment of these fines through court proceedings or enforcement of a Special Assessment lien on the Lot of an Owner liable for the fine, wherein the Lot may be sold through the exercise of a power of

sale pursuant to the remedies set forth in Section 13.16 below. The fines are not exclusive of other remedies available to the Association and may be levied and enforced in addition to other remedies, including injunctive relief or other causes of action. The Association shall have the right to seek an injunction to enjoin any violations of this Declaration or the Rule and Regulations promulgated thereunder. Any person liable for a fine hereunder shall be liable for all costs of the Association in attempting to enforce this Declaration and collect such fine, including without limitation reasonable attorneys' fees.

ARTICLE 10

RIGHTS OF MORTGAGEES

10.01 Title and Mortgagee Protection. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property, except for the foreclosure of a lien for failure to pay an assessment after at least thirty (30) days written notice to the record holder of any Mortgage. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give the same is wrongful). No amendment to this Declaration shall materially alter or affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment, provided that such protection of Mortgagees shall not be construed to prevent the Association from amendments providing for increased maintenance of the Common Area, construction of new Improvements on the Common Area, or making new assessments for the same.

10.02 Preservation of Common Area. The Common Area shall remain substantially of the same character, type and configuration as when such Common Area became part of the Project. Unless the Association shall receive the prior unanimous written approval of (a) all First Mortgagees of Lots, (b) the Owners of all Lots, and (c) the City, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Area in a way that is likely to reduce the value and utility of the Common Area to the Owners, except no such consent shall be required to grant reasonable easements for utilities and similar or related purposes or as otherwise contemplated in this Declaration.

10.03 Notice of Certain Matters Potentially Affecting Security. The Association shall give written notice to any Mortgagee of a Lot specifically requesting from the Association such notice whenever:

(a) There is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within thirty (30) days after default occurs; or

(b) Damage to the Common Area from any one occurrence exceeds One Hundred Thousand Dollars (\$100,000.00); or

(c) There is any condemnation or taking by eminent domain of any material portion of the Common Area.

10.04 Notice of Meetings. The Board shall give to any Mortgagee of a Lot specifically requesting the same from the Association, notice of all meetings of the Association; and such Mortgagee shall have the right to designate in writing a representative to attend any or all such meetings.

10.05 Right to Examine Association Records. Any Mortgagee shall, upon reasonable request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Lot securing the Mortgage.

10.06 Right to Pay Taxes and Charges. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Area and may pay overdue premiums on insurance policies pertaining to the Common Area, or secure new insurance coverage pertaining to the Common Area on the lapse of a policy; and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

10.07 No Priority Accorded. No provision of this Declaration gives or may give a Lot Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Area.

10.08 Construction. In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article 10, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

ASSOCIATION BYLAWS

THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES 11, 12, AND 13. THE MISCELLANEOUS PROVISIONS OF ARTICLE 14 OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE BYLAW PROVISIONS AND THE OTHER PROVISIONS IN THIS DECLARATION.

ARTICLE 11

BYLAWS - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

11.01 Membership. Every Owner upon acquiring title to a Lot or a Unit shall automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership of such Lot or such Unit ceases for any reason, at which time his membership in the Association with respect to such Lot or such Unit shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to, and may not be separated from, the ownership of a Lot or a Unit.

11.02 Voting Rights. The Association shall initially have two (2) classes of voting rights, votes of both classes being of equal value as to all matters except for determining the presence or absence of a quorum at Association meetings, in which case such determination shall be made as if there were no Class B voting rights.

(a) **Class A.** Each Owner of a Lot, including Declarant, whether or not a Unit has been constructed on such Lot, shall be entitled to one Class A vote for each Lot in which such Owner holds the interest required for Association membership.

(b) **Class B.** Declarant shall be the only person entitled to Class B voting rights which shall entitle Declarant to two (2) votes for each Class A voting right outstanding at the time (including those to which Declarant is entitled). The Class B votes of Declarant shall be in addition to the Class A voting rights held by Declarant by virtue of Declarant's ownership of Lots, and Declarant's Class A voting rights shall not be affected in any way by the Class B rights of Declarant. Class B voting rights shall terminate and become a nullity on the Change of Control Date. In the event the Declarant of Phase 1 and Phase 2 of the Project are different, each Declarant shall be entitled to Class B Voting Rights calculated above only with respect to the Class A voting rights outstanding with respect to the Phase in which it is the Declarant.

(c) Upon termination of the Class B voting rights, each owner of a Lot, including without limitation Declarant, regardless of whether a Unit has been constructed on the Lot, shall have equal voting rights as to all matters except as otherwise provided herein, such that each Lot Owner shall be entitled to one vote for each Lot owned.

(d) The Change of Control Date shall occur upon the satisfaction of the following conditions precedent:

(i) the expiration of ninety (90) days following the date on which ninety-five percent (95%) of the total outstanding Class A voting rights as authorized in the Project pursuant to the Development Plan are held by parties other than each Declarant, if more than one, or its affiliates, subsidiaries, or Development Assignee; or

(ii) the expiration of ten (10) days after surrender of the Class B voting rights by each Declarant, if more than one, in a writing to the Association has been recorded in the Public Records.

(e) The Control Transition Date shall occur upon the expiration of thirty (30) days following the date when the ratio of (i) the total outstanding Class A voting rights now held by the developer of a future phase governed by the Development Agreement to (ii) the total outstanding Class A voting rights still held by Declarant exceeds 9:1 (i.e., the new developer holds at least 90% of the unsold lots in the property governed by the Development Agreement). On the Control Transition Date, all of the Declarant's rights hereunder with respect to Phase 1 of the Project, including without limitation Class B voting rights, shall be transferred to the Declarant of Phase 2 of the Project. Notwithstanding the foregoing, Declarant shall retain its Class A voting rights for any Lot that it has not sold.

11.03 Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot or Unit, the vote relating to such Lot or such Unit shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the total number of votes appurtenant to such Lot or such Unit be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Lot or Unit unless an objection is made at the meeting or in writing by another Owner of the same Lot or Unit, in which event no vote will be counted with respect to such Lot or such Unit except to determine the presence or absence of a quorum.

11.04 Voting. Unless a greater than simple majority of the membership is specified as being required in the Articles, the Bylaws or elsewhere in this Declaration, such as the unanimous vote of all members required to terminate and dissolve the association pursuant to Section 14.04 below, the vote or approval of the Members shall require the approval of a simple majority of all eligible and outstanding Members' votes present in person or by proxy at a meeting of the Members at which a quorum is present.

11.05 Records of Ownership. Every Owner shall promptly cause to be duly filed of record in the Public Records the conveyance document (or in the case of a contract buyer, a copy

of the sales contract or notice of interest) to him of his or her Lot or Unit and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Lots and Units. Any Owner who mortgages his or her Lot or Unit or any interest therein shall notify the Secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the Secretary of the Association shall maintain all such information in the records of ownership. The Association may at any time obtain and rely on information from the Public Records regarding the Owners and Mortgagees of Lots and Units.

11.06 Place of Meeting. Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.

11.07 Annual Meetings. Annual meetings of the membership of the Association shall be held each year beginning in the year 2011 on such month, day and time as is set forth in the notice therefor; *provided, however*, that after the first such annual meeting, a month other than the month of the initial meeting may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected members of the Board of Directors, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.

11.08 Special Meetings. The President shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least twenty-five percent (25%) of the total votes of the Association and having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by a majority of the Owners present, either in person or by proxy.

11.09 Notice of Meetings. The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than thirty (30), days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

11.10 Quorum. Except as provided in Section 13.17, Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; *provided, however*, that such Owners collectively be entitled to cast at least thirty percent (30%) of the total Association votes eligible to vote.

11.11 Adjourned Meetings. If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than 48 hours nor more than 60 days from the time the original meeting was called, at which time the requirements for a quorum shall be reduced by one-half that required at the immediately preceding meeting.

11.12 **Officers.** The Association shall have a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board. The Board may, if needed, appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Board immediately following each annual meeting of Owners at which the new Board has been elected; *provided, however*, that until the Board is elected by the Owners pursuant to Section 11.14, the officers will be appointed by Declarant.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Board.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. The Secretary shall have charge of such books and records as the Board may direct and shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board.

11.13 **Initial Composition of Board; Declarant Control.** Declarant alone shall have the right to select the initial Board of Directors in Declarant's sole discretion, which Board shall be composed of four Directors, none of whom need be Owners. Such right of the Declarant to appoint the Board shall remain in Declarant until the termination of the Class B voting rights on the Change of Control Date as provided in Section 11.02(d), at which time the Association shall proceed to elect members of the Board in accordance with the Association's Bylaws as set forth in Section 11.14 below. No later than ten (10) days after both (i) a plat is recorded for a future phase of the property governed by the Development Agreement and (ii) the developer of such future phase provides Declarant with a written selection for a Board member, such person selected by the new developer shall be appointed to the Board to replace two of the four Board members appointed Declarant; it being agreed that the owner of the future phase shall have the right at all times to appoint one-half of the members of the Board. Thereafter, Declarant shall have the right to appoint two members of the Board and the developer of the new phase shall

have the right to appoint two members until the Control Transition Date, at which time the Declarant of Phase 1 shall transfer all of its rights under this Declaration to the Declarant of Phase 2, including without limitation the Class B voting rights and the right to appoint all Board members. In the event the Declarant of Phase 1 and the Declarant of Phase 2 are affiliates, the Declarant shall have the right, at its election to change the number of Directors from four (4) to three (3).

11.14 Board of Directors; Owner Control; Composition, Election, Vacancies. The Association, through its Board of Directors, is responsible for the maintenance of any Common Area, the determination, imposition and collection of Assessments, the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Project to the benefit and general welfare of the Owners. Subject to the provisions of Section 11.13, the Board shall be composed of at least three (3) but not more than five (5) Directors, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). The number of Directors shall be determined by the vote of the members at the first meeting of the Association after the Change in Control Date. At the first meeting of Owners to elect a Board of Directors, one shall be elected to a three-year term, one to a one-year term, and the remainder to a two-year term, unless the Association has voted to have five (5) Directors, in which case one of the remainder shall be elected to only a one-year term in such first meeting.

11.15 Indemnification of Board. Each of the Directors shall be indemnified and held harmless by the Lot and Unit Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in connection with any proceeding in which such Director may become involved by reason of being or having been a member of the Board.

11.16 Board Meetings, Quorum, Board Action. The Board may establish its rules for meetings, whether regular or special. A majority of current Board members shall constitute a quorum. The action of a majority or those Directors attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Board. Action by consent shall require the unanimous consent of all current Directors.

11.17 Deadlock.

(a) A deadlock shall be deemed to exist (a "**Deadlock**") if, at any time, any matter is required to be approved by the Association and a majority of the Directors of the Association, or if unanimous consent of the Directors is required by this Declaration, if all of the Directors of the Association, cannot consent to a current action.

(b) The Deadlock shall be resolved (i) during the Declarant Control Period, by the Declarant (if there is only one Declarant) or by the mutual agreement of each Declarant (if there is more than one Declarant), or, (ii) if the Declarant Control Period does not exist, by an agreement of the Directors of the Board, provided if the Declarant(s)

or the Directors of the Board, as applicable, cannot agree on a resolutions within ten (10) business days after the Deadlock first arises, either Declarant or a Director of the Board may submit the Deadlock to binding arbitration pursuant to the following procedure: A Declarant or Director of the Board, as applicable, may give written notice to each other Declarant or Director of the Board of the election to submit the Deadlock to arbitration. The party giving notice (the "Arbitration Notice") of the election to submit the Deadlock to arbitration shall identify in the Arbitration Notice the name of the person who s/he nominates as an arbitrator, which person must be an independent arbitrator having not less than ten (10) years of experience in resolving disputes with home owners associations in the Salt Lake County area. In the event either Declarant or a Director of the Board shall within ten (10) business days of the delivery of the Arbitration Notice object in writing to the arbitrator specified in the Arbitration Notice, the party giving the Arbitration Notice shall make a motion to the Third District Court of the State of Utah for an appointment of an arbitrator pursuant to Section 78B-11-112 of the Utah Code. The arbitration shall be conducted in accordance with the following rules and procedure: The entire procedure shall be conducted and concluded within ninety (90) days following the designation of the arbitrator. The arbitration shall proceed in accordance with the American Arbitration Association's ("AAA") rules. The rules of evidence as applied in the Utah State District Courts shall generally govern, provided that the arbitrator shall have broad discretion to hear any evidence that the arbitrator deems to be trustworthy and relevant. The parties shall proceed with the arbitration hearing before the arbitrator, who shall render a final written decision on the Deadlock within ninety days following the initiation of the arbitration. In all disputes the determination of the arbitrator shall be final and binding and shall not be subject to appeal. Each Declarant and the Association shall be responsible for the payment of their own attorneys' fees and for equal shares of the fee payable to the arbitrator incurred in resolving the Deadlock, notwithstanding the AAA rules.

ARTICLE 12

BYLAWS - DUTIES AND POWERS OF THE ASSOCIATION

12.01 **Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, Bylaws or the Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the City and for the maintenance and improvement of the Project:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall accept title to all Common Area conveyed to it, whether by Declarant or by others, *provided* the same is free and clear of liens and encumbrances.

(c) The Association shall maintain, repair and replace as necessary any and all Common Area, including without limitation any roads within the Project that have not been dedicated to and accepted by the City.

(d) The Association shall maintain all landscaping and plantings upon the Common Area of the Project.

(e) The Association shall have the right and authority to represent the owners regarding the real property taxes and assessments levied upon any portion of the Common Area subject to Utah Code section 10-9a-606(2)(a), including without limitation the right to contest or compromise the Common Area valuation for any such taxes or assessments.

(f) The Association shall obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.

(g) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Area, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable and as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon 30 days' written notice thereof; and the term of any such agreement shall not exceed one year, renewable by agreement of the parties for successive periods of one year each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

12.02 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of the Declaration or the Bylaws, including the power to levy and collect Assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) At any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement as required herein. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration, the Bylaws or any Rules and Regulations promulgated by the Board, or

to enforce by injunction, fine, or otherwise all of the provisions of the Declaration, the Bylaws and such Rules and Regulations.

(b) In fulfilling any of its duties under the Declaration, including its duties for the maintenance, repair, operation or administration of the Common Area and Lots (to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Area, the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:

(i) Construction, maintenance, repair and landscaping of the Common Area on such terms and conditions as the Board shall deem appropriate;

(ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board and the Owners;

(iii) Such utility services related to the Common Area as the Board may from time to time deem necessary or desirable;

(iv) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(v) Fire, police and such other protection services as the Board may deem desirable or the benefit of the Owners or any portion of the Project; and

(vi) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

(c) Notwithstanding anything herein to the contrary, the Association will not cause a Dissolution and/or a Transfer without first obtaining (i) a vote of at least 90% of the Owners in each Class of voting rights approving a Dissolution and/or a Transfer, and (ii) the prior written consent of the City. The City shall be deemed to have consented if the City does not object to the action in writing after 30 days written notice.

12.03 Association Rules and Regulations. The Board from time to time, upon thirty (30) days notice to the Owners, and subject to and not inconsistent with the provisions of the Declaration or the Bylaws, may adopt, amend, repeal and enforce reasonable Rules and Regulations governing, among other things: (a) the use of the Common Area; (b) the use of any streets, driveways or parking areas owned by the Association; (c) the collection and disposal of refuse; (d) uses and nuisances pertaining to the Project; and (e) all other matters concerning the use and enjoyment of the Property and the conduct of Owners and their invitees within the Project.

12.04 Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee of the Board, or the Managing Agent.

ARTICLE 13

BYLAWS - ASSESSMENTS

13.01 Assessments. The Association shall have the right and duty to levy and collect Common Assessments, Special Assessments, Capital Improvement Assessments, Supplement Assessments, and Specific Assessments as provided in this Declaration and Article 13. The Board may require that payment of any of such Assessments, except Specific Assessments, be made to, and collected by the Association in monthly or periodic bulk payments as directed by the Board in its discretion.

13.02 Common Assessments. The Common Assessments levied by the Association shall be used to promote the common benefit, recreation and welfare of the Owners; to meet obligations imposed on, incurred or assumed by the Association; to cover costs, including overhead and administrative costs, for the operation of the Association; and the operation, management, maintenance, repair, and replacement of the Common Area; *provided, however,* that Common Assessments shall not be used to meet the obligations imposed on the Association related to the maintenance of the exteriors of the Units or the maintenance or repair of the Shared Unit Areas. The Common Assessments shall also be used to establish adequate Reserves for maintenance, repair, and replacement of the Common Area. Except for the Initial Common Assessment as set forth in subsections 13.02(c) below, Common Assessments shall be levied against each Lot and Unit and the Owner thereof and shall be payable in 12 equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; *provided, however,* the Common Assessments for the first fiscal year of the Association shall be based upon such portion of the fiscal year as follows the date of recordation of the Declaration in the Public Records and shall be payable in such installments and at such times as the Association, in the sole discretion of the Board, may determine.

(a) **Basis of Common Assessments.** The total Common Assessments shall be based on advance estimates of cash requirements by the Association to provide for payment of all estimated Common Expenses growing out of or connected with the operation of the Association and the operation, management, maintenance, and repair of the Common Area, which estimates may include, among other things, expenses of snow removal, taxes, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto, construction of improvements, repairs and maintenance, wages for Association employees, compensation of a manager, legal and accounting fees, the creation of reasonable Reserves, surplus and/or sinking funds for the replacement of

capital items and other purposes, repayment of any loans used for the other purposes herein, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners. Common Assessments shall be made on the basis of the Association's fiscal year (which may be a calendar year). Notice of the proposed assessment for any such year shall be mailed to each Owner not later than 30 days after the beginning of the fiscal year, together with an operating budget for the upcoming fiscal year. In making advance estimates of cash requirements, the Board shall take into account the estimated collections from the Initial Common Assessment provided for in subsection 13.02(c) below. Except for the Initial Common Assessments, which are assessed at a rate equal to 1/2% of the combined value of the Lot and Unit pursuant to subsection 13.02(c) below, Common Assessments shall be assessed at a uniform rate for all Lots.

(i) The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Common Assessments for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such fiscal year.

(ii) The failure of the Association to give timely notice of any Common Assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Assessment or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date twenty (20) days after notice of such Assessment shall have been given to the Owner in the manner provided in Section 14.01.

(b) **Reserves.** Common Assessments may include reasonable amounts, as determined by the Board, collected as Reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Area, or for any other purpose as determined by the Board. All amounts collected as Reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected. Said amounts shall be segregated from and not commingled with any other funds of the Association. Such Reserves shall be deemed contributions to the capital account of the Association by the Members. The Reserves shall at all times exceed the amount required for the Change of Control Date as set forth in Section 11.02(d)(iii) above.

(c) **Initial Common Assessment.** To ensure adequate funding of the Association from the beginning of the Project, upon the day and time of the first closing in which the Lot containing a Unit is transferred for the first time to an Owner other than Declarant, an affiliate of Declarant, or the builder of the townhome, the new Owner or Buyer of the Unit upon the transfer shall pay to the Association an Initial Common Assessment equal to one-half percent (1/2%) of the total purchase price of the Lot and

Unit. For example, the purchaser of a home with a purchase price of \$300,000.00 would be required to pay the Association an Initial Common Assessment of \$1,500.00 at the time of the closing on such home. Each Lot shall be subject to and required to pay this Initial Common Assessment only once, and the Initial Common Assessment is only applicable to Lots containing a Unit. If the new Owner or buyer of the Unit fails to pay the Initial Common Assessment within ten (10) days of the date it is due as set forth above, such Initial Common Assessment shall be increased by the amount of five hundred thousand dollars (\$500.00).

(d) **Loans.** The Association may take out loans upon commercially reasonable terms to meet the obligations of the Association from time to time, and the Common Assessments shall be sufficient to service and pay off such loans according to their terms.

13.03 Supplemental Assessment. In addition to the Common Assessments, Supplemental Assessments shall be levied by the Association against the certain Lots in the same manner as, and according to the same terms and conditions applicable to, the Common Assessments, *provided* that Supplemental Assessments shall be used to meet the obligations imposed on certain Owners individually, rather than on the Association in general, related to the maintenance of the Shared Unit Areas, the exteriors of certain Units, Fenced Yards, taxes applicable only to certain Units, and other expenses that affect or benefit only a portion of the Project and which would be unfair to assess against all Units generally. Supplemental Assessments shall be assessed at a uniform rate for all Lots benefited by such an assessment. The intent of this Section 13.03 is to allow the Association to allocate and assess the expenses incurred (or expected to be incurred) by the Association related to Unit exteriors (including without limitation roofs), Shared Unit Areas, Fenced Yards, and similar areas to the extent the Board determines that the interest of the Association would be best served by having the Association undertake such obligations rather than having each individual Owner perform such work separately, and this Section 13.03 shall be interpreted and applied in a manner consistent with such intent.

13.04 Special Assessments. If and when required, Special Assessments shall be levied to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise provided in the Articles, Bylaws, or in this Declaration, a Special Assessment shall require the affirmative vote or written consent of a majority of Members. Special Assessments shall be payable in such manner and at such times, including installments over time, as the Board may determine.

13.05 Capital Improvement Assessments. If and when required, a Capital Improvement Assessment may be levied for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair or replacement of a capital improvement of or upon the Common Area, including fixtures and personal property related thereto; *provided, however,* that any such assessment in excess of One Hundred Thousand Dollars (\$100,000) in any one year shall require the affirmative vote or written consent of a majority of all outstanding Member

votes. Capital Improvement Assessments shall be levied against each Lot and Unit and the Owner thereof shall be payable in such manner and at such times, including installments over time, as the Board may determine.

13.06 Specific Assessment. In addition to the Common Assessment and Supplemental Assessment and any Special Assessment or Capital Improvement Assessment authorized pursuant to Sections 13.02, 13.03, 13.04, and 13.05, above, the Board may levy at any time Specific Assessments (a) on every Lot especially benefited (i.e., benefited to a substantially greater degree than any other Lot or Unit) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Area made on the written request of the Owner of the Lot or Unit to be charged; (b) on every Lot wherein the Owner, occupant or guest of an Owner of which shall violate this Declaration or the Rule and Regulations or otherwise cause any damage to the Common Area necessitating repairs; and (c) on every Lot or Unit as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration or upon the written request of the Owner of the Lot or Unit to be charged. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Lots according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement, which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Specific Assessment against the Lots or Units benefited.

13.07 Creation of Lien and Personal Obligation of Assessment. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Common Assessments, Special Assessments, Capital Improvement Assessments, Specific Assessments, or other assessments levied as provided herein. Each such assessment, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot or Unit and shall be a continuing lien upon the Lot or Unit against which the assessment is made. It shall have priority over any declaration of homestead recorded after the date on which this Declaration is recorded in the Public Records and shall continue until paid in full or otherwise satisfied. In a voluntary conveyance of a Lot or Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Lot or Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor, and each such assessment, together with interest, late charges, collection costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot or Unit at the time when the assessment fell due.

13.08 No Offsets or Abatement. All assessments shall be payable in the amount specified by the assessment, and no offsets or abatements against such amount shall be permitted

for any reason, including, without limitation, a claim that (a) the Association is not properly exercising its duties and powers as provided in this Declaration, or (b) an Owner has made or elects to make no use of the Common Area.

13.09 Uniform Rate of Assessment. All Common Assessments (except for the Initial Common Assessment), Special Assessments, and Capital Improvement Assessments authorized by Sections 13.02, 13.04, and 13.05, respectively, shall be assessed and allocated among the owners of the Lots or Units at a uniform rate for all Lots and Units. Furthermore, all Supplemental Assessments authorized by Section 13.03 shall be assessed and allocated among the owners of the affected Lots at a uniform rate for all such affected Lots. Notwithstanding the foregoing or any provision to the contrary, until the earlier of (i) the date a Lot has been both fully improved with a Unit and occupied for the first time for residential purposes or (ii) the Change of Control Date, the Board shall have the sole discretion to waive all or part of the Common Assessments, Supplemental Assessments, and Special Assessments otherwise applicable to a Lot without a Unit, provided that such waiver is made on a uniform basis for all such Lots without Units, or in the Board's discretion, for Lots with Units that have yet to be occupied. The Board shall be allowed to make a distinction between Lots with occupied Units and other Lots on the basis that unoccupied Lots may not create expenses related to the Common Area to the same extent as occupied Units.

13.10 Homestead Waiver. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect or from time to time hereafter.

13.11 Limitations on Certain Increases in Common and Special Assessments. The Board shall not in any fiscal year of the Association, without the affirmative vote or written consent of a majority of all outstanding Member votes, levy a Common Assessment per Lot or Unit which is more than fifty percent (50%) greater than the Common Assessment per Lot or Unit for the immediately preceding fiscal year. Nor shall the Board for any fiscal year of the Association, without the affirmative vote or the written consent of a majority of all outstanding Member votes, levy a Special Assessment against each Lot or Unit which, when aggregated as to all Lots and Units, exceeds fifty percent (50%) of the Common Expenses of the Association for such fiscal year. Notwithstanding the foregoing, the Board may make or increase Common Assessments and Special Assessments without regard to the foregoing limitations in an "*emergency situation*" which is defined as one of the following: (a) an extraordinary expenditure necessary to operate, repair or maintain the Common Area where there exists a threat to personal safety, (b) an extraordinary expenditure necessary to repair or maintain the Common Area that could not have been reasonably foreseen by the Board in preparing its budget, or (c) written demand by the City to maintain or repair any of the Common Area. However, prior to the imposition and collection of an assessment under clause (b) of the preceding sentence, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the

budgeting process, and the resolution shall be distributed to the Members with the notice of the assessment.

13.12 Date of Commencement of Assessments. Common Assessments and other assessments shall commence on the first day of the month following the conveyance of the Common Area and associated Improvements to the Association.

13.13 Reports to Members. The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, and shall cause to be distributed a copy of each such statement to each Member. The Board shall also prepare and distribute to each Member with the delivery of notice of each new proposed Common Assessment as required pursuant to Section 13.02(a), a written, itemized estimate of the Common Expenses to be incurred by the Association during such new year in performing its functions under this Declaration as well as expected income and any surplus from the prior year's assessments. Similar reports shall be delivered to the Owners of Lots with respect to each new proposed Supplemental Assessment affecting such Lots.

13.14 Excess Funds. At the end of any fiscal year of the Association, the Board may determine that all excess funds of the Association, over and above the amounts used for any purpose, may be retained by the Association and used for Reserves, or to reduce the following year's Common Assessments.

13.15 Remedies for Non-payment of Assessments. Any installment of a Common Assessment, Special Assessment, Capital Improvement Assessment, Specific Assessment, or other assessment not paid within 10 days after the due date shall bear interest from the due date of such installment to the date paid at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within 10 days after it is due, the Owner responsible therefor shall be required to pay a late charge of ten percent (10%) of the amount of the delinquent installment. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Unit, or do both if a deficiency is left after foreclosure. The lien against the Lot shall include, and the Owner shall be responsible for, any and all costs and charges incurred in connection with the collection of delinquent Assessments, and such related costs and charges shall include without limitation reasonable attorney's fees, court costs and every other expense incurred in enforcing any assessment hereunder. Failure to promptly enforce any remedy granted pursuant to this Section 13.16 shall not be deemed a waiver of any such rights. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of the Owner's Lot or Unit.

(a) **Notice of Default.** No action shall be brought to enforce any assessment lien herein, unless at least 30 days have expired following the date a Notice of Default is deposited in the United States mail, postage prepaid, to the Owner of the Lot or Unit, and a copy thereof has been recorded by the Association in the Public Records. Said Notice of Default must recite a good and sufficient legal description of the Lot or Unit, the

record Owner or reputed Owner thereof, the amount claimed (which may include interest and late charges as provided in this Section 13.16, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Association, City, or Declarant, as the case may be, as claimant. Such Notice of Default shall be signed and acknowledged by an officer of the Association, City, or Declarant, as the case may be.

(b) **Foreclosure Sale.** Any sale provided for above may be conducted by the Board, its attorney or other persons authorized by the Board in accordance with the provisions of the Utah Code Annotated, 1953, as amended, applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot or Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

(c) **Curing of Default.** Upon the timely curing of any default for which a Notice of Default was recorded by the Association, an officer of the Association shall record in the Public Records an appropriate Release of Lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Association to cover the cost of preparing and recording such release.

(d) **Certificate as to Indebtedness.** A certificate executed and acknowledged by any officer of the Association stating the indebtedness secured by the liens created hereunder upon any Lot or Unit shall be conclusive upon the Association and the Lot or Unit Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith.

(e) **Cumulative Remedies.** The assessment liens and the rights of foreclosure and sale hereunder shall be in addition to, and not in substitution for, all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

13.16 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot or Unit and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all Assessments respecting such Lot or Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

13.17 Subordination of Lien to First Mortgages. The lien of the Assessments provided herein shall be subordinate to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner

of a Lot or Unit by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any Assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Lot or Unit; *provided, however,* that to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first Mortgage, the lien shall apply to such excess. No sale or transfer of a Lot or Unit in connection with any foreclosure of a first Mortgage shall relieve any Lot or Unit from the lien of any Assessment installment thereafter becoming due.

13.18 No Abatement. No diminution or abatement of any assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Project; (b) the making of (or failure to make) any repairs or improvements to or the maintenance of any Common Area, or any part thereof; or (c) from any action taken to comply with the provision of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

ARTICLE 14

GENERAL PROVISIONS

14.01 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or any officer or Director of the Association or to the Association's Registered Agent as reflected in the Association's records at the Utah Department of Commerce, Division of Corporations and Commercial Code. Any notice required or permitted to be given to the Design Review Committee may be given by delivering or mailing the same to the Managing Agent or the Association or any member of the Design Review Committee.

14.02 Successors and Assigns. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, the City, each Owner, and their respective heirs, personal representatives, successors and assigns. This Declaration shall run with and be binding upon the Property and each Lot thereof. Declarant may assign its rights under this Declaration to a Development Assignee.

14.03 Limited Liability. Neither Declarant, the Association, the Board, the Design Review Committee nor any member, agent or employee of any of the same shall be liable to any party for any injury, damage, loss, cost or expense suffered by reason of any action or for failure to act with respect to any matter if the action taken or failure to act was in good faith and without notice.

14.04 Duration of Declaration. All provisions, covenants, conditions and restrictions contained in this Declaration shall continue and remain in full force and effect until there is recorded an instrument directing the termination of this Declaration that executed by (i) all of the Owners of the Lots and Units, (ii) all First Mortgagees then subject to this Declaration, and (iii) the City.

14.05 Use of Funds Collected by the Association. All funds collected by the Association, including assessments and reserves paid by Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for not-for-profit purposes of the Association in managing, maintaining, caring for, preserving and architecturally controlling the Property and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Member (other than as a result of the Association's managing, maintaining, caring for, preserving and architecturally controlling the Property and other than as a result of expenditures made for other permitted purposes set forth in this Declaration).

14.06 Amendment. This Declaration may be revoked or amended as follows:

(a) The Declarant may unilaterally amend this Declaration at any time until the Change in Control Date, except that any change to the rights of the City hereunder shall not be made without the written consent of the City. Consent of the Members of the Association shall not be required until after the Change in Control Date.

(b) Subsequent to the Change in Control Date, this Declaration and amendments thereto may be amended by the affirmative vote or written consent of not less than seventy-five percent (75%) of each Class of outstanding Member votes, except that any change to the rights of the City hereunder shall not be made without the written consent of the City.

(c) An amendment or revocation which only requires the execution of an instrument by Declarant shall be effective when executed by Declarant and recorded in the Public Records. An amendment which requires the affirmative vote or written consent of the Members shall be effective when executed by the President, Secretary, and attorney of the Association (who shall each certify in writing that the amendment has been so approved) and recorded in the Public Records.

(d) Notwithstanding the foregoing, any provision of the Articles, the Bylaws, or this Declaration, which expressly requires the approval of a specified percentage or specified percentages of the voting power of the Association or first Mortgagees for action to be taken under said provision, can be amended only with the affirmative vote or written consent of not less than the same percentage or percentages of the voting power of the Association and/or first Mortgagees.

14.07 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 14.07:

- (a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Owner;
- (b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed; and
- (c) Any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant, (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

14.08 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Project or the Property to the public, or for any public use.

14.09 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in any Lot or Unit in the Project shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained, referred to or incorporated herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said Lot or Unit.

14.10 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation and construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. The term "person" shall refer to a person or entity. The terms "recorded and recordation" shall refer to recording in the Public Records. The word "shall" is deemed to be imperative and the word

“may” is deemed to be permissive. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

14.11 **Severability.** Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision of this Declaration.

14.12 **Declarant’s Rights Assignable.** All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

14.13 **Condemnation.** If at any time or times an insubstantial or minor part of the Common Area or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Area. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

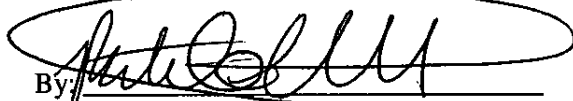
14.14 **Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, the City, and all parties who heretofore acquired or hereafter acquire any interest in a Lot, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots, all Units or in the Common Area shall be subject to, the terms of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration.

14.15 **Effective Date.** This Declaration and any amendment hereto, shall take effect upon its being filed for record in the Public Records.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:
Central 72, LLC

By Holmes Homes, Inc., its manager

By: 
Patrick Holmes, President

STATE OF UTAH)

COUNTY OF Salt Lake SS.

The within instrument was acknowledged before me this 1st day of December, 2010, by Patrick Holmes in his capacity as the President of Holmes Homes, Inc., which corporation is the manager of Central 72, LLC, owner of the Property.

V Fleming
NOTARY PUBLIC

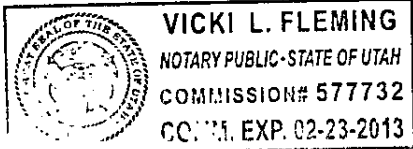


EXHIBIT A

DESCRIPTION OF THE PROPERTY

All of Lot 1, Junction at Midvale Southeast Residential Plat, according to the official plat thereof, filed in Book 2010P at Page 124 (Recorded # 10999218) of the Official Records of the Recorder of Salt Lake County, State of Utah.

Contains 205,247 sq. ft. or 4.712 acres.

EXHIBIT B
DEVELOPMENT AGREEMENT

**MIDVALE CITY, UTAH
RESOLUTION 11/09/2010 R-31**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A
DEVELOPMENT AGREEMENT BETWEEN MIDVALE CITY CORPORATION;
ARBOR GARDNER BINGHAM JUNCTION HOLDINGS LC; AND HOLMES
HOMES, INC. FOR THE CENTRAL 72 TOWN HOMES PROJECT**

WHEREAS, pursuant to Section 10-9a-102 (2) of the Utah State Code, the City is authorized as follows: "To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, and height and location of vegetation, trees, and landscaping, unless expressly prohibited by law"; and

WHEREAS, due to the unique circumstances involved in the development of the Bingham Junction property, as a former Superfund Site, the City has found it necessary and beneficial to the Developer (property owner), Home Builder and the City to enter into a Development Agreement detailing improvements to be installed by all parties, time frames in which they must be completed and limits to the cost of those improvements; and

WHEREAS, all parties have negotiated such agreement and as of the date of this Resolution agree to enter into said agreement; and

WHEREAS, the City Council has thoroughly reviewed said Development Agreement and agrees that entering into such agreement will help to further the development of the Bingham Junction Master Plan.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
MIDVALE CITY, STATE OF UTAH, AS FOLLOWS:**

Section 1. The Midvale City Council has thoroughly reviewed the attached Development Agreement between Midvale City Corporation, Arbor Gardner Bingham Junction Holdings LC and Holmes Homes, Inc.

Section 2. The Midvale City Council, through its understanding of the development challenges associated with the development of the Bingham Junction

property, believe it is in the best interest of the Developer, Home Builder and the City to enter into such agreement.

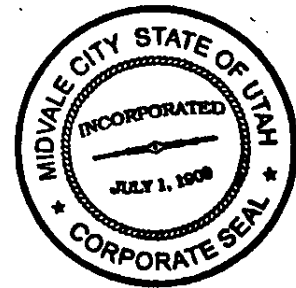
Section 3. The Midvale City Council on this date do hereby authorize the Mayor to enter into the attached agreement on behalf of the City.

PASSED AND APPROVED this 9th day of November, 2010.

JoAnn B. Seghini
JoAnn B. Seghini, Mayor

ATTEST:

Rori Anderson
Rori Anderson, MMC
City Recorder



| Voting by City Council | "Aye" | "Nay" |
|------------------------|-------------------------------------|--------------------------|
| Colleen Costello | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Paul Glover | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Robert Hale | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Brent Moore | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Wayne Sharp | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

When recorded, return to:
Midvale City
655 W. Center St.
Midvale, UT 84047

**DEVELOPMENT AGREEMENT FOR
CENTRAL 72 TOWN HOMES PROJECT WITHIN
THE JUNCTION MASTER PLANNED DEVELOPMENT
MIDVALE CITY, UTAH**

THIS DEVELOPMENT AGREEMENT (this "Development Agreement") is entered into as of this 9th day of November, 2010 by and among Arbor Gardner Bingham Junction Holdings LC ("Developer"), its successors and assigns; Holmes Homes, Inc. ("Home Builder"), its successors and assigns; and Midvale City Corporation, a Utah municipal corporation (the "City") for the Central 72 Town Homes Project, which is a portion of The Junction at Midvale Sub Area of the Bingham Junction Project. For purposes of this Development Agreement, Developer, Home Builder, and the City may be referred to herein collectively as the "Parties" and individually as a "Party."

A. Master Development Agreement. The Parties hereby acknowledge the existence and continuing applicability of that certain Master Development Agreement (the "MDA") for the Bingham Junction Project dated April 6, 2005, and that certain Development Agreement for The Junction at Midvale Sub Area of the Bingham Junction Project dated November 14, 2007 (the "Junction Agreement"). The Parties further agree that both the MDA and Junction Agreement are in full force and effect and are binding upon and inure to the benefit of the Parties in the ownership and development of the portion of the Bingham Junction Project subject to this Agreement. The Parties desire to enter into this Development Agreement in order to address various issues specific to this portion of the Bingham Junction Project which are not specifically addressed in the Junction Agreement or MDA.

B. Central 72 Town Homes Project. Developer is the current owner of a certain portion of the property subject to the MDA and the Junction Agreement. This portion of the larger Project, also known as Lot 1 and Lot 2 of the Junction at Midvale Southeast Residential Plat Subdivision, is located south of Tuscany View Drive and east of Bingham Junction Boulevard (the "Central 72 Property" or "Property"). The Central 72 Property is specifically described in **Exhibit A** attached hereto. The development intent for the Central 72 Property is a medium/high density residential townhouse project with 124 residential units to be known as the "Central 72 Town Homes Project" or the "Central 72 Project." Developer and Home Builder shall share in the development responsibilities, with Developer primarily constructing the site infrastructure and Home Builder constructing the residential units and project amenities. These responsibilities are more fully detailed in **Exhibit B**. Developer and Home Builder have entered into a

purchase agreement dated January 11, 2010 (the "Purchase Agreement") whereby Home Builder has agreed to purchase from Developer, and Developer has agreed to sell to Home Builder, the Central 72 Property in two phases.

C. Small Scale Master Plan and Preliminary Subdivision Approval. Midvale has approved a Small Scale Master Plan and a Preliminary Subdivision Plat, subject to specific conditions of approval, for the Central 72 Project. These shall be deemed to qualify as Home Builder's submittal of a Small Scale Master Plan under the MDA 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 Adoption of Recitals; Legal Description of Property. The recitals set forth above in paragraphs A through C are hereby adopted by the Parties as true and correct, and any promises, agreements, or obligations set forth therein are hereby incorporated into this Development Agreement and are enforceable provisions hereof. The Property covered by this Development Agreement consists of approximately 8.5 acres of land located at approximately 853 West Tuscany View Road and 7549 South Bingham Junction Boulevard. The Property is more fully described in **Exhibit A** attached hereto.

1.2 Project Description. The Central 72 Project covered by this Development Agreement consists of 124 residential townhouse units with a private street and alleyway system, improved open space, and recreation amenities. These are more specifically described and shown in **Exhibits C through H**.

1.3 Project Phasing. The Central 72 Project shall be developed in one or more phases, as determined by Developer and Home Builder. Developer and Home Builder acknowledge that certain roads, access drives, and other public improvements may need to be constructed beyond phase boundary lines to ensure such improvements function properly. Recreation amenities and guest parking, as shown in **Exhibit C**, shall be constructed in each phase in a timely manner to benefit the residents living in Project.

Phase 1, as shown in **Exhibit C**, encompasses the east half of the Central 72 Property (Lot 1 of Junction at Midvale Southeast Residential Plat Subdivision) and includes the Tot Lot as its primary recreation amenity, along with off-site recreation amenities for the Junction at Midvale Master Plan area. On or before the date the 30th residential townhouse unit is issued a Certificate of Occupancy by the City, in accord with the division of obligations set forth in **Exhibit B** hereto, Developer and Home Builder shall cause to be constructed: (1) the Tot Lot, including landscaping, and (2) the public sidewalk improvements along Tuscany View Road, including the planting of street trees and landscaping in the park strip, to provide Project residents with a pedestrian walkway

to the off-site recreation amenities provided by the Junction at Midvale Master Plan. The Central Park, Street Side Park Number 1, and public sidewalk improvements along Bingham Junction Boulevard, including the planting of street trees and landscaping in the park strip, shall be completed on or before the date the 10th residential townhouse unit in Phase 2 is issued a Certificate of Occupancy by the City. If landscaping needs to be planted when seasonal conditions make planting unfeasible to meet these requirements, the Home Builder may provide the City with a cash bond guaranteeing the completion of the landscaping as weather permits.

Guest parking stalls, specifically the parallel parking along the private road loop as shown in **Exhibit C**, shall be functional and clearly designated as the townhouse units adjacent to or on the opposite side of the road are completed.

1.4 Project Approval. Pursuant to the Midvale City Zoning and Subdivision Ordinance, the Central 72 Project as more particularly described in Section 1.2 above, has been approved under the Amended BJ Zone (Chapter 17-7-9), the Junction at Midvale Zone provisions (Chapter 17-7-9.12.2) and the Subdivision Ordinance (Title 16). These approvals include a Small Scale Master Plan and Preliminary Subdivision Plat. The review and approval process included lawfully advertised public hearings before the City Planning Commission on February 24, 2010 and September 8, 2010 and before the City Council on September 21, 2010. The City acknowledges and agrees that Developer and Home Builder have the vested right to develop and construct the Central 72 Project in accordance with the provisions of the Amended BJ Zone, the Junction at Midvale Zone, the MDA, the Junction at Midvale Agreement, this Development Agreement, the Small Scale Master Plan, and other presently existing ordinances and regulations of the City applicable to the subdivision. City Staff approval of one or more Final Site Plans is required to ensure all conditions of the Small Scale Master Plan approval are satisfied before Home Builder may commence construction of the townhouses within such Final Site Plan area. City Council approval of one or more final subdivision plats is required before such subdivision plat can be recorded and individual residential townhouse units on such plat may be sold. Public hearings are not required as part of the review process of Final Site Plans and Final Subdivision Plats.

Article 2

Subdivision Improvements, Performance Bonds and Guarantee of Amenities

2.1 Security for Off and On Site Public Improvements. In accord with the division of obligations set forth in **Exhibit B** hereto, Developer and Home Builder agree to complete all required off-site and on-site public improvements related to the Central 72 Project in accordance with the approved Construction Plans for the Central 72 Project as shown in **Exhibit D**. According to the bond or surety obligations assumed in **Exhibit B** hereto, Developer or Home Builder shall guarantee such improvements through one or more 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. In accord with the division of obligations set forth in **Exhibit B** hereto, Developer and Home Builder agree to bond for and construct the public improvements in such a manner as is reasonably necessary to ensure that these public improvements are completed. The Performance Bonds shall be in place prior to any construction of buildings or the recording of a Subdivision Plat.

2.2 Declaration of Covenants, Conditions and Restrictions (CC&Rs). The Central 72 Project shall have a common homeowners association, which among other things, shall be responsible for the short term and permanent maintenance of the private street, alleyways, common areas and facilities, common area landscaping, and other common area responsibilities. These maintenance obligations shall be more particularly set forth in the CC&Rs for the Central 72 Townhomes at Bingham Junction (the "Project CC&Rs") to be recorded concurrently with the Subdivision Plat for Phase 1 of the Central 72 Project. Subsequent phases and plats of the Central 72 Townhomes at Bingham Junction Subdivision shall be subject to the Project CC&Rs, and units therein shall become members in the existing Central 72 Townhomes Homeowners Association (the "HOA") governed by such Project CC&Rs, with appropriate documents to be recorded with each subsequent Subdivision Plat to ensure such plat is subject to such Project CC&Rs and accompanying HOA.

2.2.1 In recognition of the overall development plan for the Central 72 Project, Developer and Home Builder, or their successors or assigns, agree that the CC&Rs applicable to Phase 1 will be applicable to all subsequent phases of the Central 72 Project and that all phases will be governed by one home owners association. A provision shall be included in the original Project CC&Rs stating this.

2.3 Development Obligations. Developer agrees, with respect to each phase, to perform the obligations set forth in **Exhibit B** hereto as the responsibility of Developer, including without limitation providing performance bonds to the extent required by applicable City ordinances. Notwithstanding any provision to the contrary, including, without limitation, the provisions of Section 4.3 and 4.4 hereof, if Home Builder does not purchase Phase 2 of the Property in accordance with the Purchase Agreement, Developer, or its successor in interests, may elect to develop Phase 2 of the Property in compliance with the provisions of this Development Agreement and Developer (or its successor in interests) shall, for all purposes of this Development Agreement, assume the obligations of Home Builder with respect to subsequent phases.

2.4 Guarantee of Construction of Amenities. Home Builder agrees to complete the required recreation amenity improvements related to the Central 72 Project in accordance with **Exhibit C** and **Exhibit H**. Home Builder shall guarantee such improvements for each phase of the Central 72 Project purchased by Home Builder through an irrevocable commitment of funds that will be made available to the City. The City shall use these funds to complete the required recreation amenity improvements, if Home Builder fails to complete this requirement. The fund amount shall include the estimated cost of the

materials and work to complete the recreation amenities within the specified phase. The list of items to complete each recreation amenity area is included in **Exhibit I**. The fund shall be in place at the time the first Building Permit is issued for said phase of the Project. Funds in the amount of Home Builder's invoiced costs for any amenity component shall be immediately disbursed to Home Builder upon installation of such portion of the required amenities, provided that written approval by the City of the invoices shall be required before such disbursement, which approval shall not be withheld, conditioned, or delayed without substantial and material cause. All remaining funds shall be disbursed to Home Builder upon the completion of the required amenities. If Home Builder fails to complete the required recreation amenities, the remaining funds shall be disbursed to the City to complete the requirements.

Article 3 **Specific Conditions of Master Planned Development**

3.1 Agreement to Comply with Specific Conditions of Approval. In accordance with the division of obligations set forth in **Exhibit B**, Developer and Home Builder agree to the following conditions of approval:

3.1.1 Development Layout:

- 3.1.1.1 The Central 72 Project shall be constructed in accordance with the approved Small Scale Master Plan, **Exhibit C**, with regard to layout and design.
- 3.1.1.2 The private road shall be designed to connect with a future road on Lot 3 of the Junction at Midvale Southeast Residential Plat Subdivision. A provision shall be included in the Project CC&Rs indicating this will become a through road in the future and connect to a future road on the adjacent development parcel.
- 3.1.1.3 In all cases where garage doors face the private street, building living area shall be extended at least two feet in front of the garage door.
- 3.1.1.4 A minimum 14-foot separation between two-story buildings and two and three-story buildings is required. A minimum 18-foot separation between three-story buildings is required. All building construction shall be in compliance with the applicable Building Code¹ requirements adopted by the City on the day a complete application is submitted for a Building Permit.
- 3.1.1.5 A minimum 15% of the Property shall be developed as active, improved common area to include such uses as mini parks, picnic areas, playgrounds, pavilions, etc. These improvements shall be shown on the Final Site Plan.
- 3.1.1.6 A minimum six-foot high reinforced concrete fence, finished to be compatible with the Project, shall be constructed on the perimeter of the Property along the two east and one south boundaries. This

¹ "Building Code" is Title 15 of the City of Midvale Municipal Code.

fence shall not extend into the 30-foot landscaped setback along Tuscany View Road. This fence shall serve as the required incompatible use buffer to adjacent industrial and commercial properties. The fence section in Phase 1 shall be constructed in its entirety before a Building Permit is issued for the first townhouse building. The fence section in Phase 2 shall be constructed in its entirety before a Building Permit is issued in the second phase. A fence higher than six feet may be allowed as an Administrative Conditional Use pursuant to Section 17-7-9.12.2.3 of the Zoning Ordinance.

3.1.2 Landscaping:

- 3.1.2.1 The Central 72 Project shall comply with the Overall Landscape Plan with regard to planting areas, turf areas, and street trees as shown on **Exhibit E**. Street trees, including those in the public rights-of-way for Tuscany View Road and Bingham Junction Boulevard, must be planted at a tree density rate of at least one tree per forty feet of frontage and comply with minimum tree size requirements of the Zoning Ordinance. Street trees, in addition to those shown on **Exhibit E**, may be necessary to comply with the requirement as part of a Final Site Plan review and approval.
- 3.1.2.2 Building foundation landscaping shall be included around all units that are within public view. Public view includes all common areas within the Project.
- 3.1.2.3 Alleyways adjacent to Tuscany View Road and Bingham Junction Boulevard shall be screened by low perimeter landscaping and/or short walls/fences to minimize the impact of vehicles and headlights onto these roads.
- 3.1.2.4 Detailed landscaping and irrigation plans for all common areas and limited common areas shall be submitted as part of a Final Site Plan review and approval. These plans shall comply with Sections 17-7-9.5 C through 17-7-9.5 G and Section 17-7-9.12.2.5 H subsections 6 and 7 of the Zoning Ordinance. Installing this landscaping and irrigation shall be Home Builder's responsibility and a condition precedent to receiving a Certificate of Occupancy on adjacent units unless seasonal conditions or site construction make installation unfeasible, in which case Home Builder shall provide a cash or other reasonable security to the City until landscaping can be installed.

3.1.3 Housing Product and Architecture:

- 3.1.3.1 The Central 72 Project shall include the three model types of townhouse units included in **Exhibit F**.
- 3.1.3.2 All exterior materials and colors used in the Project shall be chosen from the materials and colors included in **Exhibit G**.
- 3.1.3.3 Each structure shall have base materials as shown in **Exhibit G** that are a minimum height of one-third the overall height of the structure,

creating a larger mass at the base of the building. The Planning Commission may allow for minor deviations to this requirement to allow the base material to terminate at visual breaks in the architecture. The Planning Commission may also approve alternative materials that are found to be a qualitative equivalent of the base materials shown in **Exhibit G**.

- 3.1.3.4 Stucco shall not exceed 25% on any front elevation or 50% on any other elevations. The Planning Commission may determine, on a case-by-case basis, that the architectural detail and excellence of a structure is such that the use of stucco in excess of this standard is warranted.
- 3.1.3.5 All buildings shall comply with the applicable Building Code² requirements adopted by the City on the day a complete application is filed for the Building Permit. Such applications shall be reviewed and approved by the City Building Official through the standard Building Permit process.

3.1.4 Amenities and Pedestrian Connections:

- 3.1.4.1 Recreation amenities for the Central 72 Project, including the Tot Lot, Central Park, and Street Side Park Number 1, shall be constructed as shown on **Exhibit C** and in more detail in **Exhibit H**. Other recreation amenities shall be reviewed and approved as part of a Final Site Plan. The timing of completion of these improvements is described in Article 1.3 and 2.4 herein.
- 3.1.4.2 The sidewalk and trail at the south end of the Central 72 Project shall be designed to connect with a future sidewalk and trail on Lot 3 of the Junction at Midvale Southeast Residential Plat Subdivision. A provision shall be included in the Project CC&Rs indicating this pedestrian system will connect to a future pedestrian system on the adjacent development parcel.

3.1.5 Junction at Midvale Thematic Elements:

- 3.1.5.1 Street lighting shall comply with the City's residential lighting standards and the Junction at Midvale Thematic Elements. Street lights shall be located in accordance with the City's street lighting standards.
- 3.1.5.2 Benches, trash receptacles, way finding signs, and project identification signs in the common areas shall comply with the Junction at Midvale Thematic Elements and the Bingham Junction Zone standards.
- 3.1.5.3 All crosswalks shall be constructed of a stamped, colored concrete material to differentiate between pedestrian and vehicular areas and shall comply with the Junction at Midvale Thematic Elements.

3.1.6 Final Site Plan Approval:

² "Building Code" is Title 15 of the City of Midvale Municipal Code.

- 3.1.6.1 Developer and Home Builder shall prepare and submit a Final Site Plan for 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 shall be in place prior to any construction of buildings.
- 3.1.7 Final Subdivision Plat Approval:
- 3.1.7.1 Developer and Home Builder shall prepare final subdivision plats to be reviewed and approved by the City Engineer, Fire Marshal, City Planner, and City Council.
 - 3.1.7.2 Developer and Home Builder shall obtain a water and sewer availability letter prior to the final subdivision plats being recorded.
 - 3.1.7.3 Developer and Home Builder 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.
 - 3.1.7.4 Developer and Home Builder shall prepare a declaration of covenants, conditions and restrictions (CC&Rs), including the creation of a homeowners association, for the development. This document shall be recorded concurrently with the subdivision plats.
 - 3.1.7.5 Prior to a subdivision plat being recorded, Developer and Home Builder shall obtain Final Site Plan approval for, at a minimum, the specific phase of the project to be recorded.
 - 3.1.7.6 Performance bonds for public improvements shall be in place prior to a subdivision plat being recorded.

Article 4
General Terms and Conditions

4.1 Construction of Agreement; Vested Rights. This Development Agreement shall be constructed and interpreted to ensure all of the Parties strictly comply with the requirements and conditions of the applicable Small Scale Master Plan, Zoning Ordinance, the Preliminary Subdivision Plat approval, MDA, Junction Agreement, and this Development Agreement. Provided the requirements set forth in the applicable Small Scale Master Plan, the currently existing City zoning ordinances, the approved Preliminary Subdivision Plat, MDA, Junction Agreement, and this Development Agreement are satisfied with regard to a Final Site Plan submitted by Developer and Home Builder, the City shall expeditiously review and approve such Final Site Plans, and the Developer and Home Builder have a vested right to build 124 townhome units

pursuant to such Final Site Plans. The rights granted to Developer and Home Builder for the Central 72 Project are vested upon the execution of this Agreement, and the promulgation or enactment by the City of any new law, ordinance, rule or regulation (or amendment thereto) shall not affect or alter the rights granted to Developer and Home Builder pursuant to this Development Agreement. Although Developer and Home Builder acknowledge that the City is restricted in its authority to limit its police power by contract, the retained power of the City to enact new legislation under the police powers of the City shall affect the vested rights of Developer and Home Builder only to the extent there is a clear showing of facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah, and under no circumstances shall any such new legislation limit Developer and Home Builder's remedies at law with regard to this Development Agreement. In addition, any proposed legislative changes affecting the vested rights of Developer and Home Builder hereunder or the conditions applicable to the Central 72 Project must be of general application to all development activity in the City; and Developer and Home Builder shall be entitled to prior written notice and an opportunity to be heard with respect any such proposed legislative change applicable to the Central 72 Project.

4.2 Laws of General Applicability. Where this Development Agreement refers to laws of general applicability to the Central 72 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 Central 72 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.

4.4 Binding Effect. This Development Agreement shall be binding on any and all successors and assigns of the Parties in the ownership or development of any portion of the Central 72 Project or Property. No individual unit owner shall be responsible for Developer and Home Builder's obligations hereunder. The obligations of Home Builder hereunder, including without limitation the obligations related to the construction of the amenities in phase 2, shall run with the land and shall be binding upon any person or legal entity that purchases phase 2 of the Project or otherwise becomes the Home Builder for the Project. Unless and until Holmes Homes, Inc. purchases phase 2 from Developer, the obligations of Holmes Homes, Inc. under this Agreement shall be limited to phase 1 of the Project. Holmes Homes, Inc. shall not be liable or responsible for the construction or installation of any improvement in phase 2 of the Project unless Holmes Homes, Inc. purchases phase 2 or otherwise becomes the Home Builder for phase 2.

4.5 Assignment and Transfer of Central 72 Project. Any transfer or assignment of this Development Agreement shall comply with the provisions of Section 11.2 of the MDA. This transfer provision does not apply to the transfer of individual townhouse units.

4.6 Duration. The term of this Development Agreement shall commence on the date the Development Agreement is executed by all parties. The term of this Development Agreement shall extend for the period of time Developer, its successors or assigns, and Home Builder, its successors or assigns, own any portion of the Central 72 Property, but in no event longer than the term of the MDA as set forth in Section 12.1 thereof.

4.7 Notices. 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:

Attn: John Gust
Arbor Commercial Real Estate L.L.C.
126 West Sego Lily Drive, Suite 275
Sandy, Utah 84070
FAX: (801) 561-8647

with a copy required for notice to:

K.C. Gardner Company, L.C.
90 South 400 West, Suite 360
Salt Lake City, Utah 84101
Attention: Christian Gardner
FAX: (801) 366-7194

Home Builder:

Attn: Brad Holmes
Holmes Homes, Inc.
126 W. Sego Lily Dr., Suite 250
Sandy, Utah 84070
FAX: (801) 572-6598

Any Party hereto may change its addresses by notice given to the other Parties in the manner required for other notices above.

4.8 Savings Clause. 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 Continuation of Terms of MDA and Central 72 Town Homes Development Agreement. All of the other provisions of the MDA and the Junction at Midvale Agreement which apply to the Central 72 Property, except as specifically modified herein, shall remain in full force and effect.

(Signatures begin on following page)

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 Arbor Gardner Bingham Junctions Holdings, LC and by a duly authorized representative of Holmes Homes, Inc. as of the above stated date.

CITY:



MIDVALE CITY CORPORATION

By: JoAnn B. Seghini
JoAnn B. Seghini, Mayor

ATTEST:

Rori L. Andreason
Rori L. Andreason, MMC
City Recorder

DEVELOPER:

ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., a Utah limited liability company, by its Managers

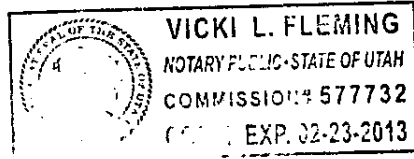
By: K.C. Gardner Company, L.C., a Utah limited liability company

By: [Signature]
Name: Chastin Gardner
Its: Manager

By: Arbor Commercial Real Estate L.L.C., a Utah limited liability company

By: [Signature]
Name: Cory Gust
Its: Member

Subscribed and sworn to me this 15th day of Nov, 2010
V. Fleming



(Notary)
Residing in Salt Lake County, Utah
My Commission expires: 2/23/10

HOME BUILDER:

HOLMES HOMES, INC.

By: [Signature]

Name: SPENCER HOLMES

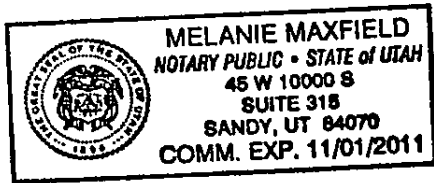
Its: VICE PRESIDENT

Subscribed and sworn to me this 15 day of NOV, 2010

[Signature]
(Notary)

Residing in Salt Lake County, Utah

My Commission expires: 11-1-11



INDEX OF EXHIBITS

| <u>Exhibit</u> | <u>Description</u> |
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|----------------|--------------------|

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| A | Legal Description of Property |
| B | Development Responsibilities between Parties |
| C | Small Scale Master Plan |
| D | Construction Plans |
| E | Landscape Plan |
| F | Building Models |
| G | Exterior Building Materials & Colors |
| H | Recreation Amenity Plans |
| I | Amenity Details List |

EXHIBIT A

Legal Description

Boundary Description

All of Lot 1, Junction at Midvale Southeast Residential Plat, according to the official plat thereof, filed in Book 2010P at Page 124 (Recorded # 10999218) of the Official Records of the Recorder of Salt Lake County, State of Utah.

Contains 205,247 sq. ft. or 4.712 acres.

TOGETHER WITH, AND INCLUDING:

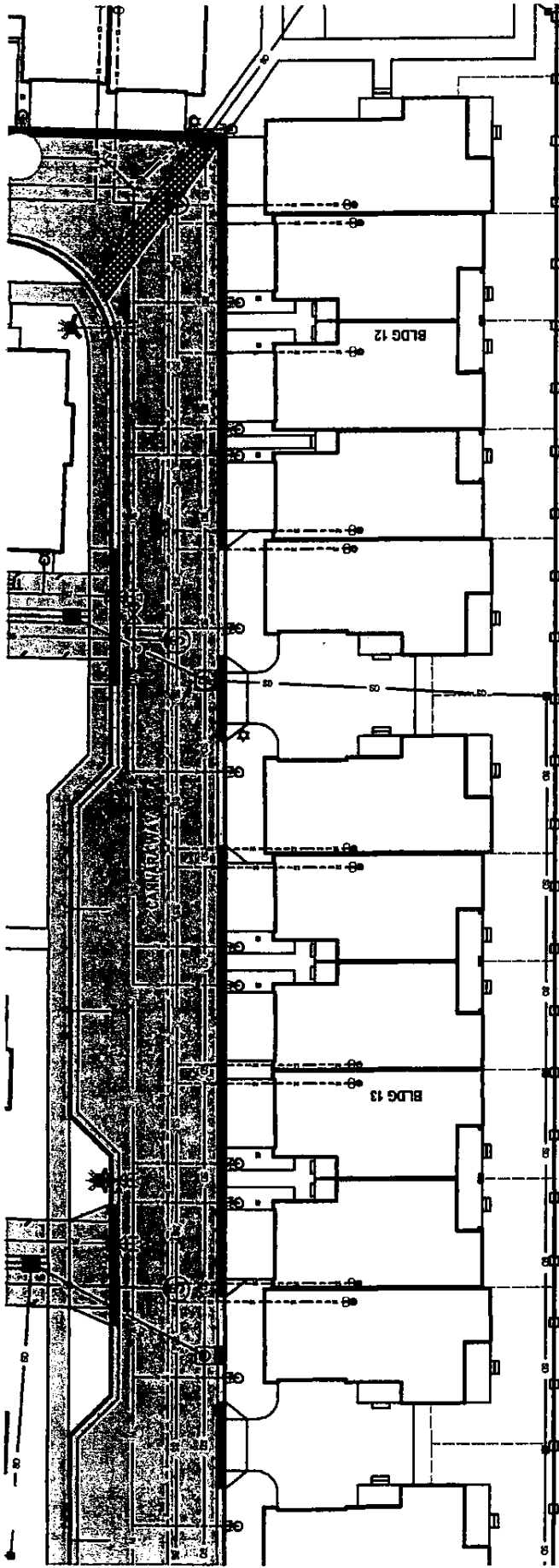
All of Lot 2, Junction at Midvale Southeast Residential Plat, according to the official plat thereof, filed in Book 2010P at Page 124 (Recorded # 10999218) of the Official Records of the Recorder of Salt Lake County, State of Utah

Contains 164,370 sq. ft. or 3.773 acres.

Central 72 Town Homes Project
Development Agreement

EXHIBIT B

Central 72 Town Homes Project
Development Agreement



| ITEM | TO BE COMPLETED BY |
|--|--------------------|
| 8" HDPE SEWER MAIN AND SEWER MANHOLES | DEVELOPER |
| 4" HDPE SEWER LATERALS (FROM MAIN TO CLEANOUT) 10" WATER MAIN (INCLUDING PIPE FITTINGS AND FIRE HYDRANTS) | DEVELOPER |
| 3/4" HDPE WATER LATERALS (FROM MAIN TO METER BOX; INCLUDING METER BOX, LID, SETTER, & PIG TAIL) | DEVELOPER |
| 12" OR LARGER HDPE STORM DRAIN PIPE (INCLUDING 6" TO 8" HDPE SD PIPE STUBBED FOR YARD DRAIN CONNECTIONS) | DEVELOPER |
| STORM DRAIN CATCH BASINS, COMBO BOXES, CLEANOUT BOXES, ORIFICE PLATE AND UNDERGROUND DETENTION IRRIGATION CONNECTION STUBS | DEVELOPER |
| ASPHALT, CONCRETE, WATERWAYS, CURB AND GUTTER, SIDEWALK (SHOWN HATCHED ABOVE ON PLAN) | DEVELOPER |
| HANDICAP ACCESS RAMP AT ALL ROAD CROSSING | DEVELOPER |
| POWER INSTALLATION UP TO THE TRANSFORMERS AND JUNCTION BOXES PER ROCKY MOUNTAIN POWER'S DESIGN | DEVELOPER |
| FENCE ON EAST AND SOUTH PROPERTY BOUNDARY (AS SHOWN ABOVE ON PLAN) | DEVELOPER |
| SITE STREET LIGHTING, STREET SIGNAGE AND STRIPING, STREET LIGHTING ALONG TUSCANY VIEW DR | DEVELOPER |
| BACKBONE FOR UTILITIES (I.E. GAS, PHONE, AND OTHER DRY UTILITIES) | DEVELOPER |
| LANDSCAPING IN PARK STRIPS ALONG BINGHAM JUNCTION BLVD AND TUSCANY VIEW DR | DEVELOPER |

| ITEM | TO BE COMPLETED BY |
|--|--------------------|
| 4" HDPE SEWER LATERALS FROM CLEANOUT INTO BUILDING | HOME BUILDER |
| 3/4" WATER METER & CONNECTION FROM METER BOX TO BUILDING | HOME BUILDER |
| 6" & 8" HDPE STORM DRAIN PIPE (FOR YARD DRAIN CONNECTIONS) | HOME BUILDER |
| 12" x 12" YARD DRAINS (12" YD) | HOME BUILDER |
| CONCRETE FROM BACK OF CURB/DRIVE TO BUILDINGS AND INTERIOR SIDEWALKS (NOT IDENTIFIED WITH HATCHING AS SHOWN ABOVE) | HOME BUILDER |
| INTERIOR PRIVATE FENCING AROUND UNITS (WHERE APPLICABLE) | HOME BUILDER |
| SITE LANDSCAPING | HOME BUILDER |
| ALL BUILDING CONSTRUCTION | HOME BUILDER |
| IRRIGATION SYSTEM (FROM IRRIGATION CONNECTION STUBS INSTALL METER BOX, METER, BACK FLOW PREVENTION, AND REMAINING IRRIGATION SYSTEM) | HOME BUILDER |
| POWER FROM JUNCTION BOX TO BUILDINGS | HOME BUILDER |
| RECREATIONAL AMENITIES INCLUDING TOT LOT, CENTRAL PARK, STREET SIDE PARK NO. 1 AND STREET SIDE PARK NO. 2 | HOME BUILDER |

EXHIBIT C

Central 72 Town Homes Project
Development Agreement

EXHIBIT D

Central 72 Town Homes Project
Development Agreement

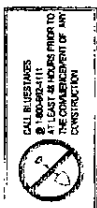


CENTRAL 72 TOWNHOMES AT BINGHAM JUNCTION

October 28, 2010

CENTRAL 72 TOWNHOMES AT BINGHAM JUNCTION

TUSCANY VIEW ROAD
MIDVALE, UTAH



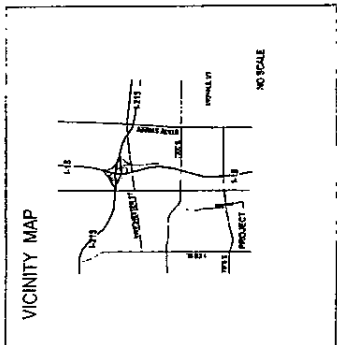
INDEX OF DRAWINGS

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| C.0.1 | SUBDIVISION PLAT PHASE 1 | C.4.0 | EROSION CONTROL PLAN |
| C.0.2 | SUBDIVISION PLAT PHASE 2 | C.5.0 | DETAIL SHEET |
| C.1.0 | OVERALL SITE PLAN | C.5.1 | DETAIL SHEET |
| C.1.1 | SITE PLAN | C.5.2 | DETAIL SHEET |
| C.1.2 | SITE PLAN | PP-1 | PLAN AND PROFILE |
| C.2.0 | GRADING AND DRAINAGE PLAN | PP-2 | PLAN AND PROFILE |
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| C.2.4 | OFFSITE MASS GRADING PLAN | PP-6 | PLAN AND PROFILE |
| C.3.0 | UTILITY PLAN | PP-7 | PLAN AND PROFILE |

NOTICE TO DEVELOPER/CONTRACTOR
THIS DRAWING IS THE PROPERTY OF ENSIGN ENGINEERING AND SURVEYING, INC. AND IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF ENSIGN ENGINEERING AND SURVEYING, INC.

UTILITY DISBURSERS
THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL EXISTING UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL UTILITIES AND SHALL BE RESPONSIBLE FOR REPAIRING ANY UTILITIES DAMAGED DURING CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

NOTICE TO CONTRACTOR
ALL CONTRACTORS AND SUBCONTRACTORS PARTICIPATING IN THIS PROJECT SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THESE DRAWINGS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL UTILITIES AND SHALL BE RESPONSIBLE FOR REPAIRING ANY UTILITIES DAMAGED DURING CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.



- GENERAL NOTES**
1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH BUILDING CODE.
 2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH ELECTRICAL CODE.
 3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH MECHANICAL CODE.
 4. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH PLUMBING CODE.
 5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH FIRE CODE.
 6. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH HEALTH AND SAFETY CODE.
 7. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH ENVIRONMENTAL CODE.
 8. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH LAND USE CODE.
 9. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH ZONING CODE.
 10. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH SUBDIVISION MAP ACT.
 11. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH LAND DEVELOPMENT ACT.
 12. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH LAND CONSTRUCTION ACT.
 13. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH LAND RECLAMATION ACT.
 14. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH LAND RECONSTRUCTION ACT.
 15. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH LAND REPAIR ACT.
 16. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH LAND RESTORATION ACT.
 17. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH LAND TREATMENT ACT.
 18. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH LAND USE AND DEVELOPMENT ACT.
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 60. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE UTAH LAND USE AND DEVELOPMENT AND CONSTRUCTION AND DEVELOPMENT AND CONSTRUCTION AND DEVELOPMENT AND CONSTRUCTION AND DEVELOPMENT AND CONSTRUCTION ACT.

DEVELOPER:
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DESIGNED BY: [Firm Name]
 DRAWN BY: [Firm Name]
 CHECKED BY: [Firm Name]
 DATE: [Date]

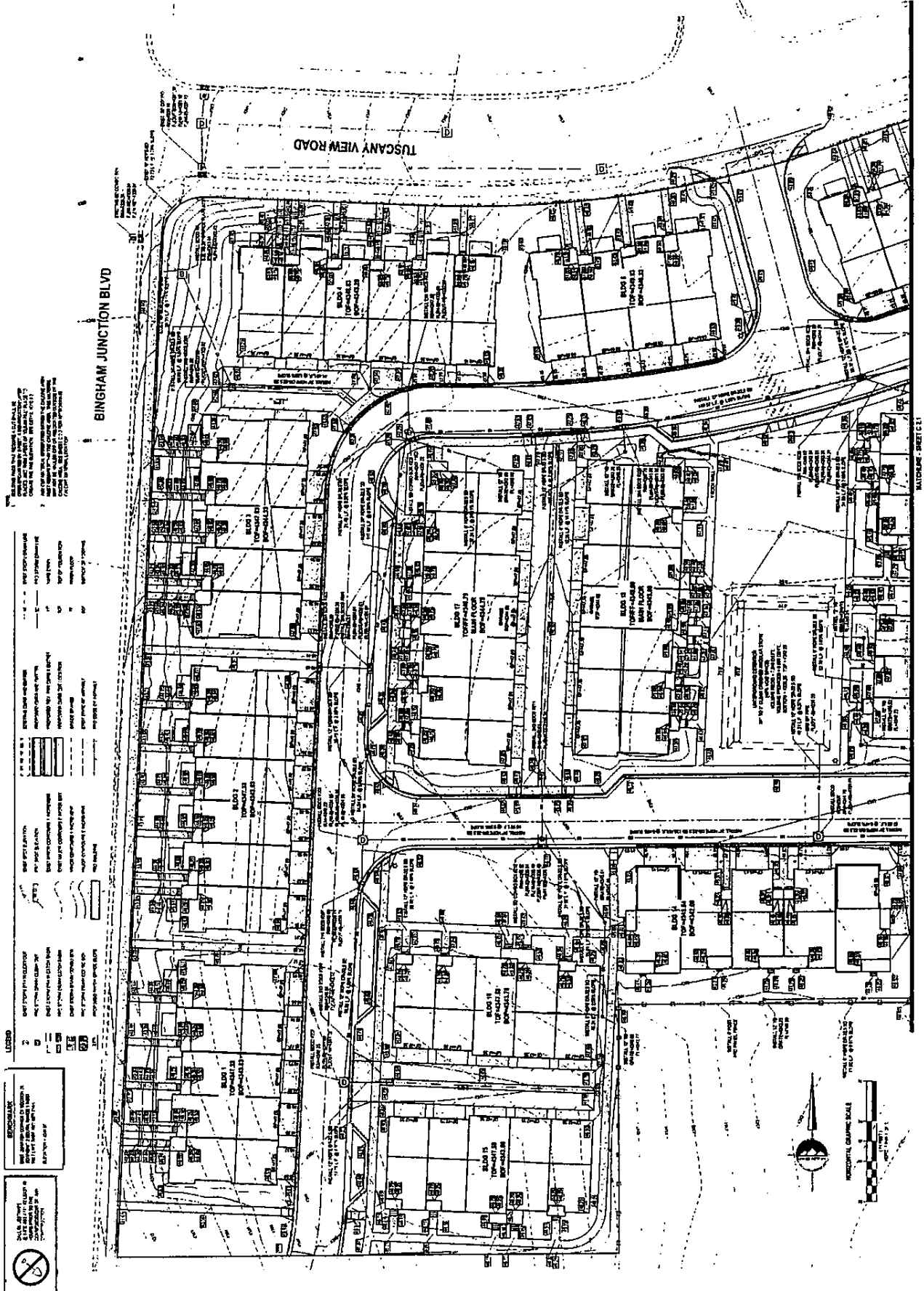
CENTRAL 72 TOWNHOMES
AT BINGHAM JUNCTION
TUSCANY VIEW ROAD
 MIDVALE, UTAH



DATE: [Date]
 SCALE: [Scale]
 SHEET: [Sheet Number]

GRADING AND DRAINAGE PLAN

C 2.0



1. ALL ELEVATIONS ARE IN FEET UNLESS OTHERWISE NOTED.
 2. ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.
 3. ALL DISTANCES ARE MEASURED FROM THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
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- LEGEND**
- 2' - 4' - 6' - 8' - 10' - 12' - 14' - 16' - 18' - 20' - 22' - 24' - 26' - 28' - 30'
 - 1" = 10'
 - 1" = 20'
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 - 1" = 40'
 - 1" = 50'
 - 1" = 60'
 - 1" = 70'
 - 1" = 80'
 - 1" = 90'
 - 1" = 100'





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 88 E. First High Road Suite
 100
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 1000 W. 1000 S.
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 Phone: 801.486.8800
 Fax: 801.486.8801

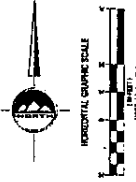
CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 TUSCANY VIEW ROAD
 MIDDLE, UTAH



GRADING AND DRAINAGE PLAN

DATE: 01/15/2010
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT NO: [Number]

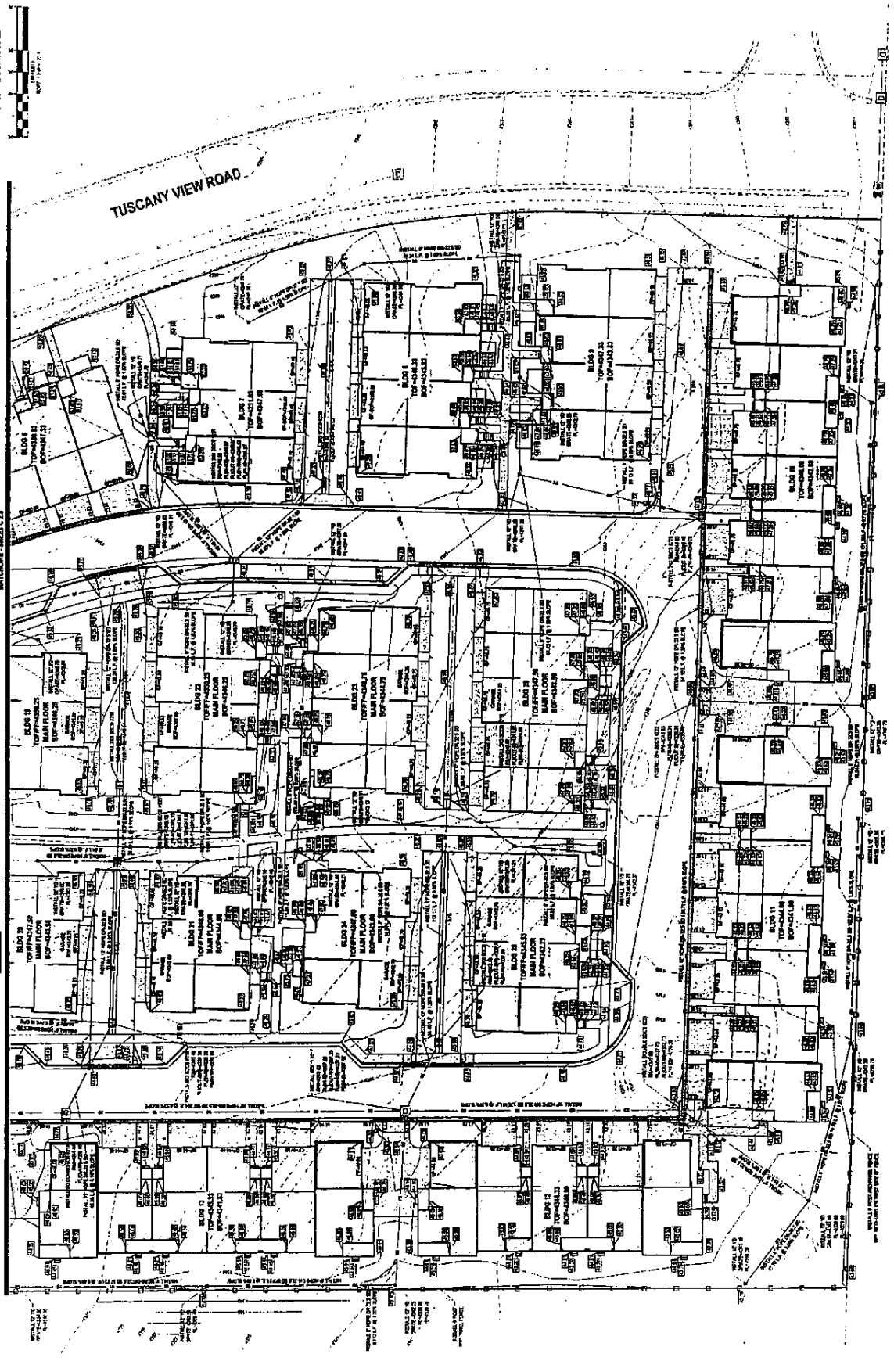
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THIS PLAN IS THE PROPERTY OF ENSIGN ENGINEERING, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC, MECHANICAL, PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF ENSIGN ENGINEERING, INC. ANY UNAUTHORIZED REPRODUCTION OR TRANSMISSION IS STRICTLY PROHIBITED. THE USER OF THIS PLAN AGREES TO HOLD ENSIGN ENGINEERING, INC. HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, THAT MAY BE ASSERTED AGAINST ENSIGN ENGINEERING, INC. BY ANY THIRD PARTY AS A RESULT OF THE USER'S USE OF THIS PLAN.

LEGEND

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| 1 | EXISTING IMPROVEMENTS | 2 | PROPOSED IMPROVEMENTS |
| 3 | EXISTING SIDEWALKS | 4 | PROPOSED SIDEWALKS |
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SALT LAKE CITY
 400 East 100 South
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TOOELE
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 Tooele, UT 84074
 Phone: 801.863.2500

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DESIGNED BY:
 ENGINEERED BY:
 SURVEYED BY:
 CHECKED BY:
 DATE:

**CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 TUSCANY VIEW ROAD
 MIDVALE, UTAH**



PROJECT NO.
 SHEET NO.
 DATE:

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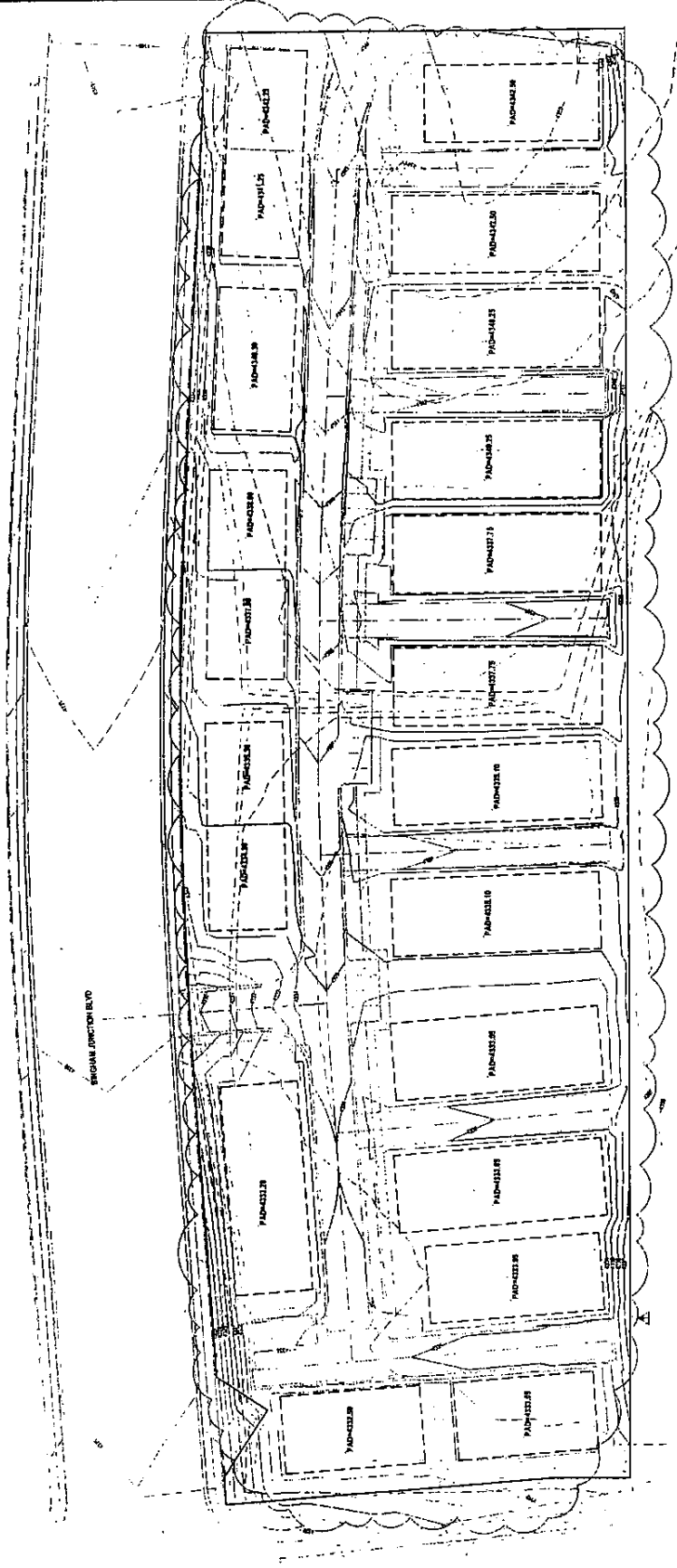
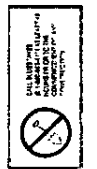
DATE: 01/15/11
 DRAWN BY: J. HARRIS
 CHECKED BY: J. HARRIS
 PROJECT: C-24

LEGEND

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| 1 | EXIST. CONCRETE DRIVE | 1 | EXIST. SIDEWALK |
| 2 | EXIST. ASPHALT DRIVE | 2 | EXIST. SIDEWALK |
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| 99 | EXIST. ASPHALT DRIVE | 99 | EXIST. SIDEWALK |
| 100 | EXIST. ASPHALT DRIVE | 100 | EXIST. SIDEWALK |

NOTES

1. ALL DIMENSIONS UNLESS OTHERWISE NOTED.
2. ALL DIMENSIONS TO FACE UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS TO CENTERLINE UNLESS OTHERWISE NOTED.
4. ALL DIMENSIONS TO SURFACE UNLESS OTHERWISE NOTED.
5. ALL DIMENSIONS TO CENTERLINE UNLESS OTHERWISE NOTED.
6. ALL DIMENSIONS TO SURFACE UNLESS OTHERWISE NOTED.
7. ALL DIMENSIONS TO CENTERLINE UNLESS OTHERWISE NOTED.
8. ALL DIMENSIONS TO SURFACE UNLESS OTHERWISE NOTED.
9. ALL DIMENSIONS TO CENTERLINE UNLESS OTHERWISE NOTED.
10. ALL DIMENSIONS TO SURFACE UNLESS OTHERWISE NOTED.



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 PHD-41270
 PHD-41271
 PHD-41272



MILY LAKE CITY
 1471 North Park Blvd
 320
 Midvale, UT 84047
 Phone: (801) 261-1234
 Fax: (801) 261-1234

LAYTON
 Phone: (801) 541-1100

PLEASANT GROVE
 Phone: (801) 796-1100

TOOELE
 Phone: (435) 383-2800

www.ensign.com/ut

Ensign Construction
 10000 South Main Street
 Suite 100
 Midvale, UT 84047
 Phone: (801) 261-1234
 Fax: (801) 261-1234

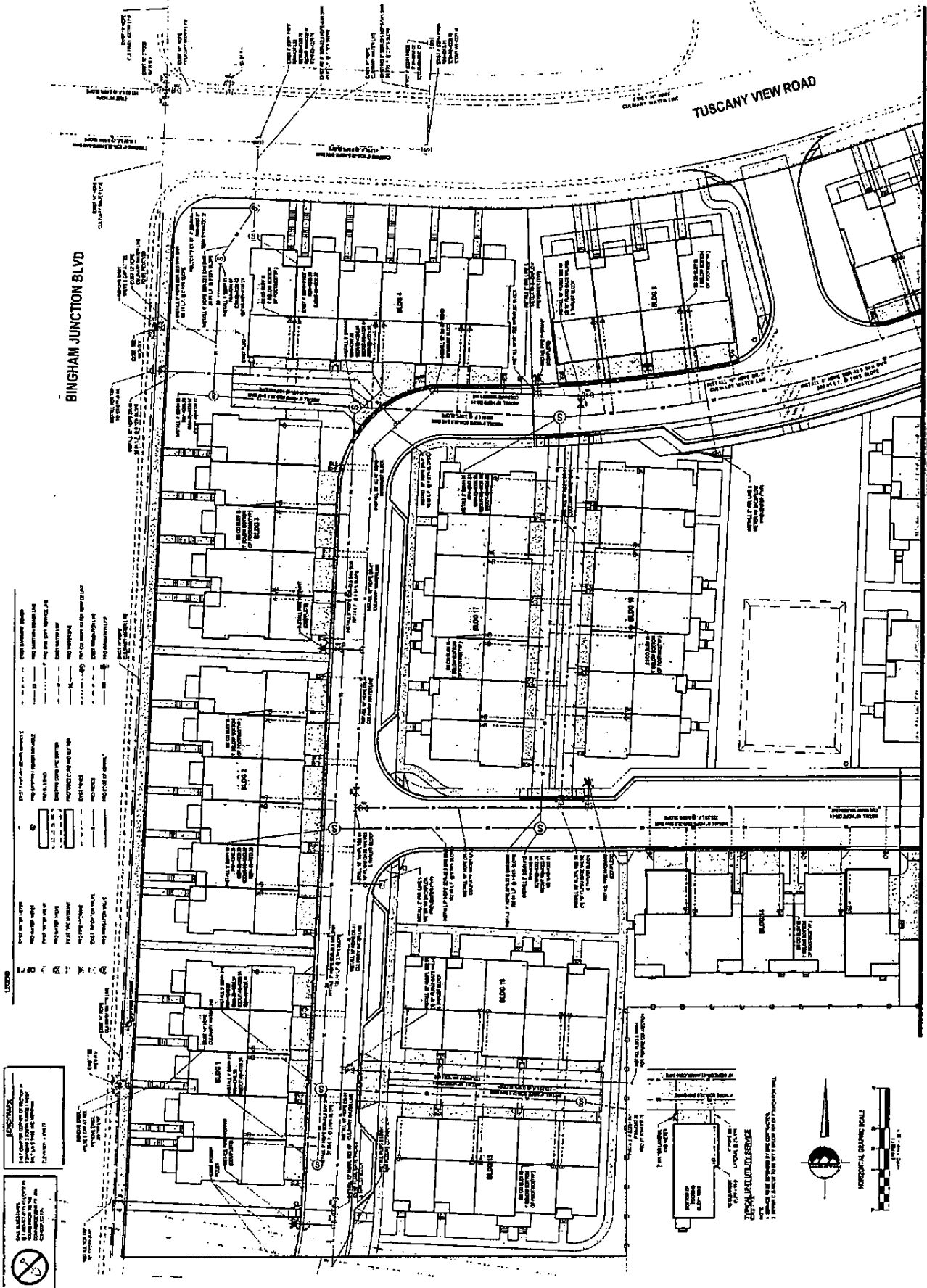
CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 TUSCANY VIEW ROAD
 MIDVALE, UTAH



UTILITY PLAN

DATE: 08/14/2018
 DRAWN BY: [Name]
 CHECKED BY: [Name]

C-3.0





BALTY LAKE CITY
 100 F. Park Lane Road
 Bldg. 100
 Phone: 801.225.5229
 Fax: 801.225.5489

LAYTON
 Phone: 801.341.1100

REAR EAST GROUND
 Phone: 801.798.8100

TOWSON
 Phone: 801.543.2900

Phone: 801.798.1000

Phone: 801.225.5229

Phone: 801.225.5489

Phone: 801.225.5489

Phone: 801.225.5489

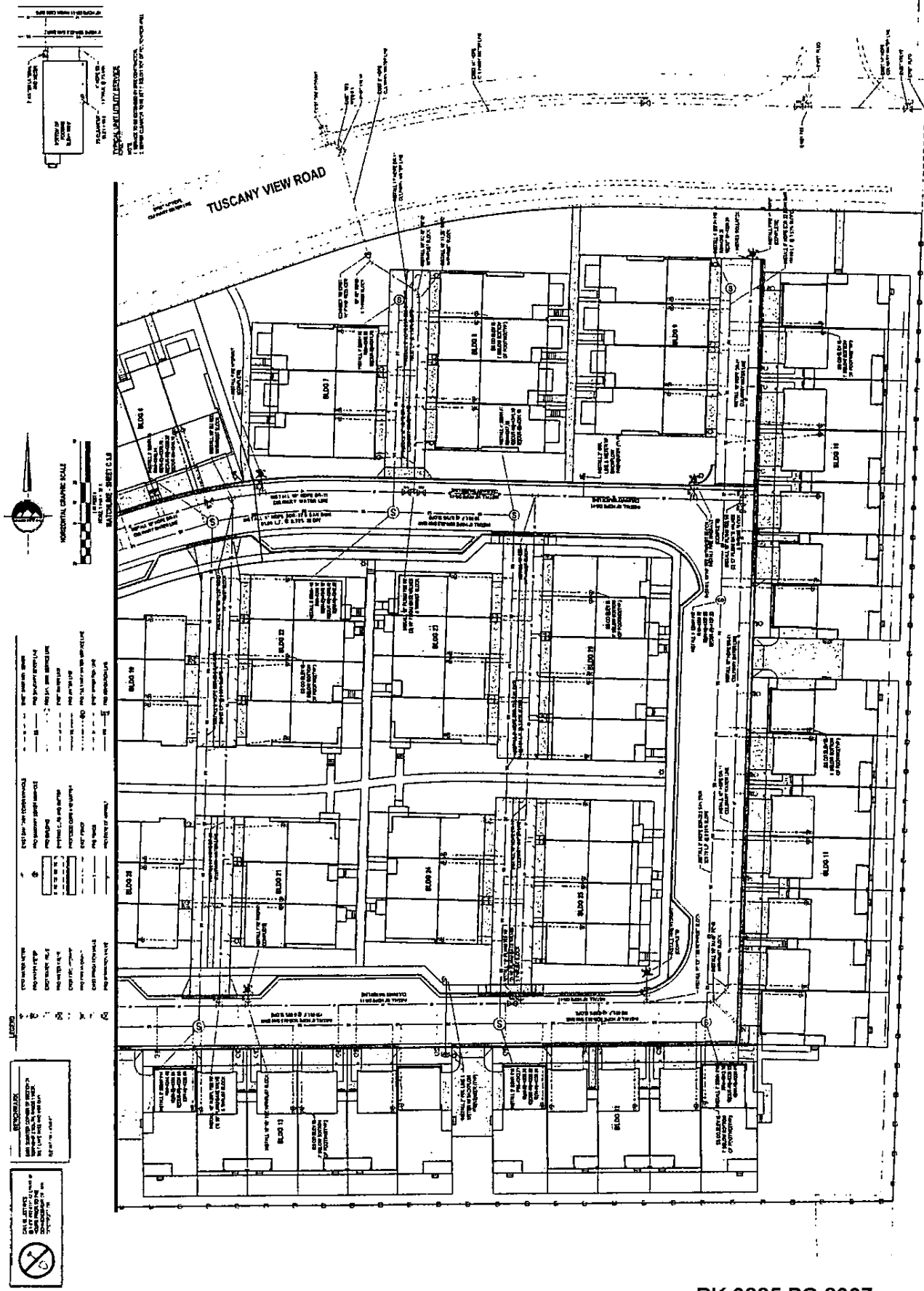
CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 TUSCANY VIEW ROAD
 MIDVALE, UTAH



UNITARY PLAN

Scale: 1/8" = 1'-0"

C3.1





BALT LAKE CITY
 315 East 10th Street
 Salt Lake City, UT 84102
 Phone: (801) 462-1000
 Fax: (801) 462-1001

PROJECT
 PROJECT NO. 1000

CLIENT
 MIDVALE, UT

DESIGNER
 ERICSON CONTROL PLAN

CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 TUSCANY VIEW ROAD
 MIDVALE, UTAH

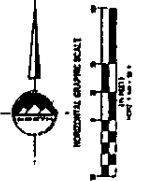
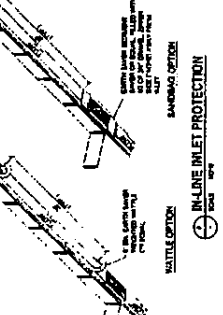
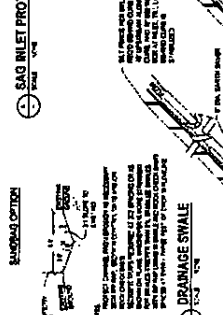
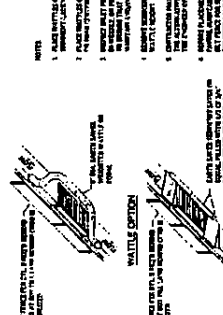
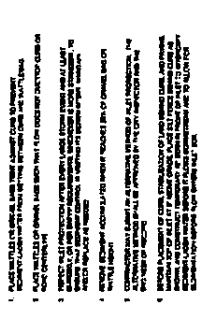
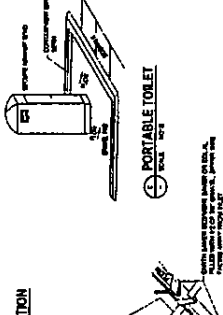
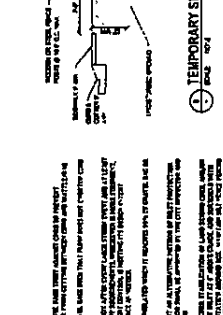
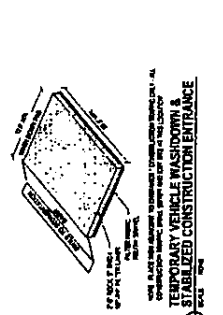
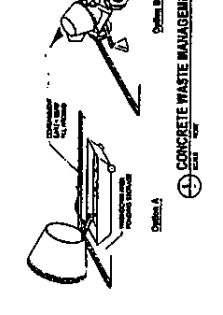
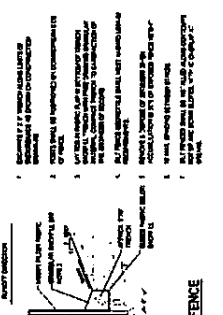
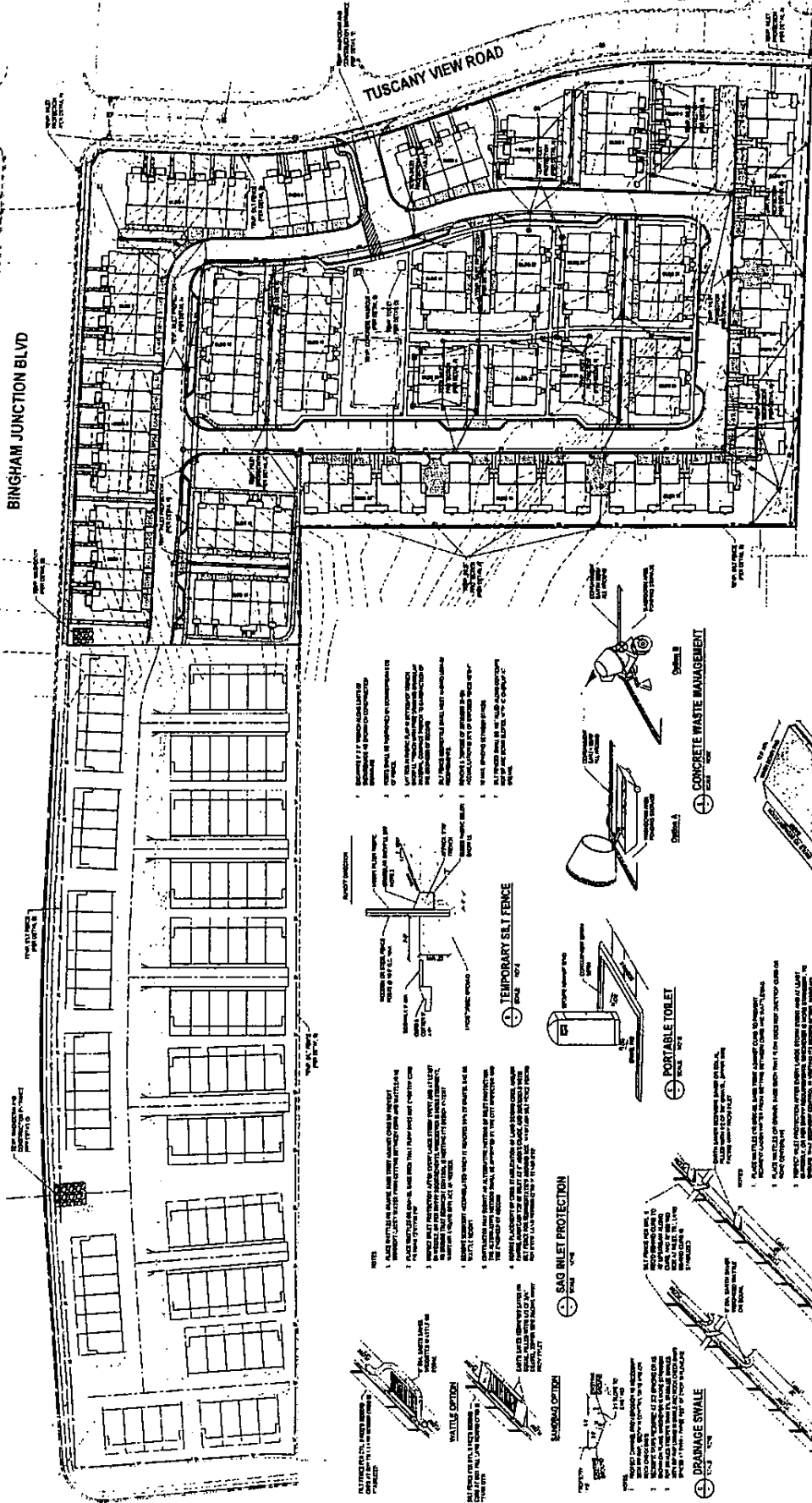


ERICSON
 CONTROL PLAN

C 4.0

NOTICE
 ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF SALT LAKE CITY CONSTRUCTION STANDARDS AND SPECIFICATIONS, LATEST EDITION.

REVISIONS
 ALL REVISIONS SHALL BE INDICATED BY A NUMBER AND DATE.





BALT LANE CITY
 80 E. Park View Blvd.
 Salt Lake City, UT 84143
 Phone: 801.252.5279
 Fax: 801.252.5499

LAYTON
 200 W. 1000 S.
 Layton, UT 84040
 Phone: 801.768.8145

PROBLEMS ABOVE
 200 W. 1000 S.
 Layton, UT 84040
 Phone: 801.768.8145

TABLE
 Phone: 801.252.5279

PROJECT
 12/15/10

CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 TUSCANY VIEW ROAD
 MIDVALE, UTAH



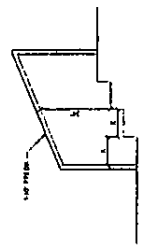
DETAIL SHEET

C5.1

TABLE OF HANDRAIL SIZES

| Material | Height | Section |
|---------------------|--------------|--------------------|
| 304 Stainless Steel | 36" (914 mm) | 1.5" x 1.5" x 1/8" |
| 304 Stainless Steel | 36" (914 mm) | 1.5" x 1.5" x 1/8" |
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| 304 Stainless Steel | 36" (914 mm) | 1.5" x 1.5" x 1/8" |

NOTE: ALL HANDRAILS SHALL BE FINISHED TO MATCH THE FINISH OF THE ADJACENT WALL OR SURFACE.



4 TYPICAL HANDRAIL Scale: 1/8" = 1'-0"

Hallbrook® Extended Cover LUMINAIRE

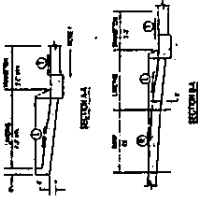
Approved for use in wet locations. The luminaire is designed for use in wet locations and is suitable for use in wet locations. The luminaire is designed for use in wet locations and is suitable for use in wet locations. The luminaire is designed for use in wet locations and is suitable for use in wet locations.

NOTES:

1. See drawing for details.
2. See drawing for details.
3. See drawing for details.
4. See drawing for details.
5. See drawing for details.
6. See drawing for details.
7. See drawing for details.
8. See drawing for details.
9. See drawing for details.
10. See drawing for details.



3 ACCESSIBLE RAMP SECTIONS Scale: 1/8" = 1'-0"



HALLBROOK® EXTENDED COVER LUMINAIRE

| Material | Height | Section |
|---------------------|--------------|--------------------|
| 304 Stainless Steel | 36" (914 mm) | 1.5" x 1.5" x 1/8" |
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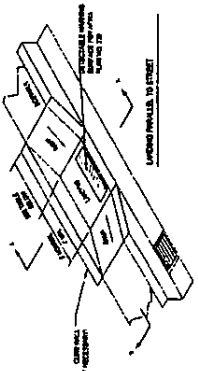
Approved for use in wet locations. The luminaire is designed for use in wet locations and is suitable for use in wet locations. The luminaire is designed for use in wet locations and is suitable for use in wet locations. The luminaire is designed for use in wet locations and is suitable for use in wet locations.

NOTES:

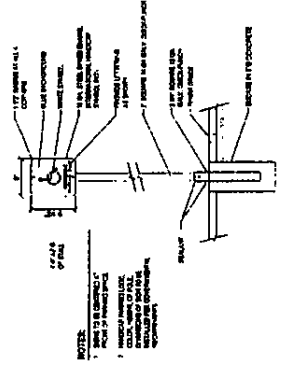
1. See drawing for details.
2. See drawing for details.
3. See drawing for details.
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9. See drawing for details.
10. See drawing for details.



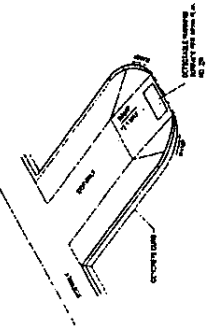
8 STREET LIGHT Scale: 1/8" = 1'-0"



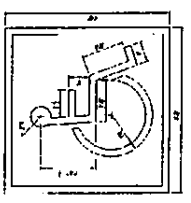
2 ACCESSIBLE RAMP (APWA) Scale: 1/8" = 1'-0"



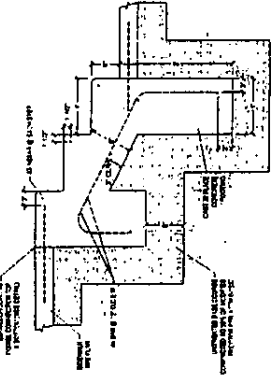
6 ACCESSIBLE PARKING SIGN Scale: 1/8" = 1'-0"



1 HANDICAP ACCESS RAMP Scale: 1/8" = 1'-0"



5 STALL PAVEMENT MARKING Scale: 1/8" = 1'-0"



7 STAIR DETAIL Scale: 1/8" = 1'-0"



SALT LAKE CITY
 RE: 1740 895 504
 4400 W. 1000 S.
 Phone: 907.262.5277
 Fax: 907.262.5189

LAYTON
 Phone: 907.531.1100

PLEASANT GROVE
 Phone: 907.788.1445

TOOELE
 Phone: 907.842.3200

UTAH
 Phone: 907.476.2200

UTAH
 Phone: 907.476.2200

UTAH
 Phone: 907.476.2200

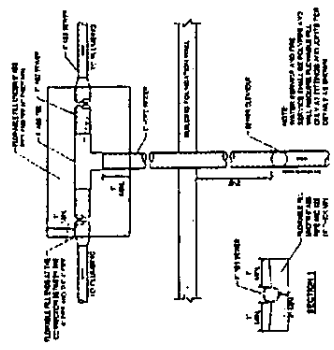
CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 TUSCANY VIEW ROAD
 MIDVALE, UTAH



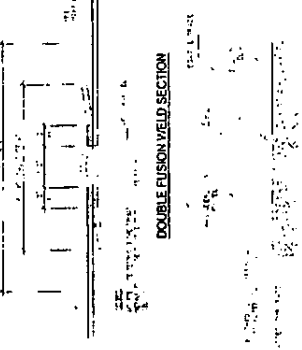
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 PROJECT: 1740 895 504
 SHEET: 1740 895 504

DETAIL SHEET

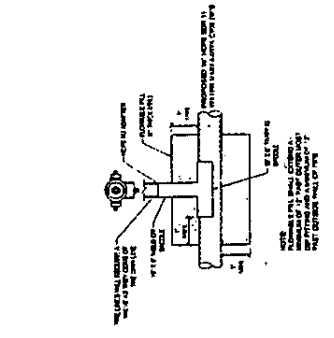
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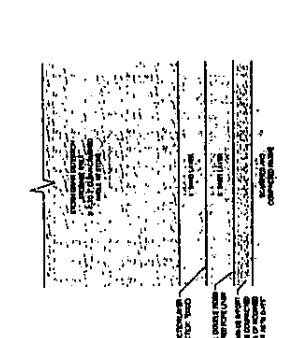
1 SEWER CONNECTION IN BUILDING
 SHEET 1740 895 504



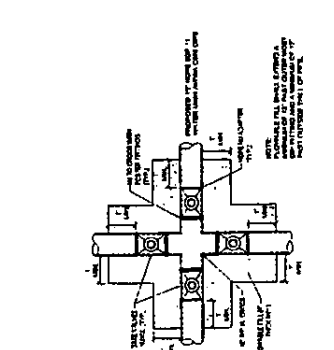
2 DOUBLE FUSION WELD SECTION
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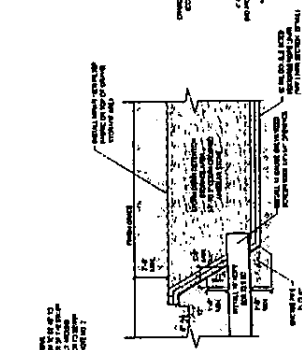
3 FIRE HYDRANT DETAIL
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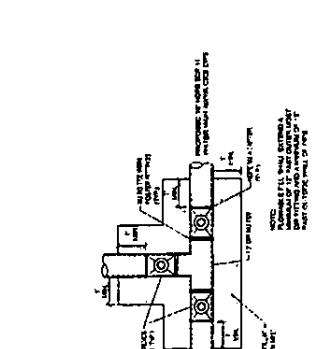
4 LINER SECTION DETAIL
 SHEET 1740 895 504



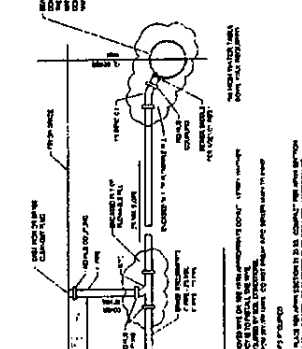
5 10" WATERLINE CROSS
 SHEET 1740 895 504



6 STORM DETENTION INLET/OUTLET
 SHEET 1740 895 504

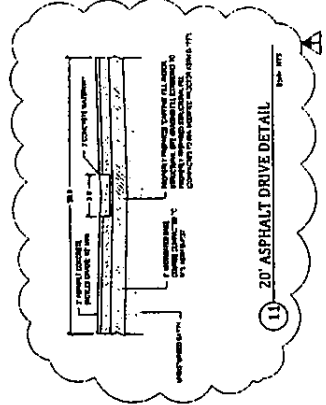


7 10" WATERLINE TEE
 SHEET 1740 895 504

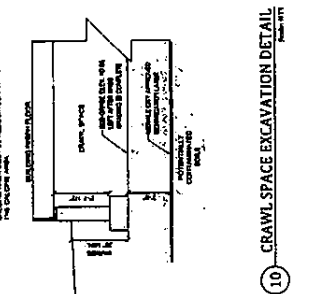


8 SEWER LATERAL CONNECTION
 SHEET 1740 895 504

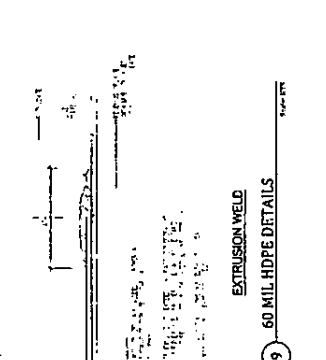
NOTES:
 1. CONTRACTOR SHALL BE RESPONSIBLE TO OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL HEALTH DEPARTMENT AND LOCAL WATER UTILITY.
 2. ALL PIPE SHALL BE 100% TESTED AND APPROVED BY THE LOCAL HEALTH DEPARTMENT AND LOCAL WATER UTILITY.
 3. ALL PIPE SHALL BE 100% TESTED AND APPROVED BY THE LOCAL HEALTH DEPARTMENT AND LOCAL WATER UTILITY.
 4. ALL PIPE SHALL BE 100% TESTED AND APPROVED BY THE LOCAL HEALTH DEPARTMENT AND LOCAL WATER UTILITY.
 5. ALL PIPE SHALL BE 100% TESTED AND APPROVED BY THE LOCAL HEALTH DEPARTMENT AND LOCAL WATER UTILITY.



9 20" ASPHALT DRIVE DETAIL
 SHEET 1740 895 504



10 CRAWL SPACE EXCAVATION DETAIL
 SHEET 1740 895 504



11 EXTRUSION WELD
 SHEET 1740 895 504



SALT LAKE CITY
25 Forth Street, Suite 200
Midvale, UT 84047
Phone: 801.282.8275
Fax: 801.282.8275

LAYTON
Phone: 801.547.1127

PLEASANT GROVE
Phone: 801.798.8141

TOOELE
Phone: 435.843.3300

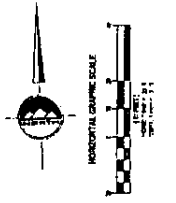
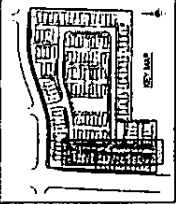
UTAH COUNTY
SOLUTIONS TO YOUR PROBLEMS
CONSTRUCTION & DESIGN
SPECIALTY CONTRACTORS
SINCE 1978

CENTRAL 72 TOWNHOMES
AT BINGHAM JUNCTION
TUSCANY VIEW ROAD
MIDVALE, UTAH



PLAN AND
PROFILE

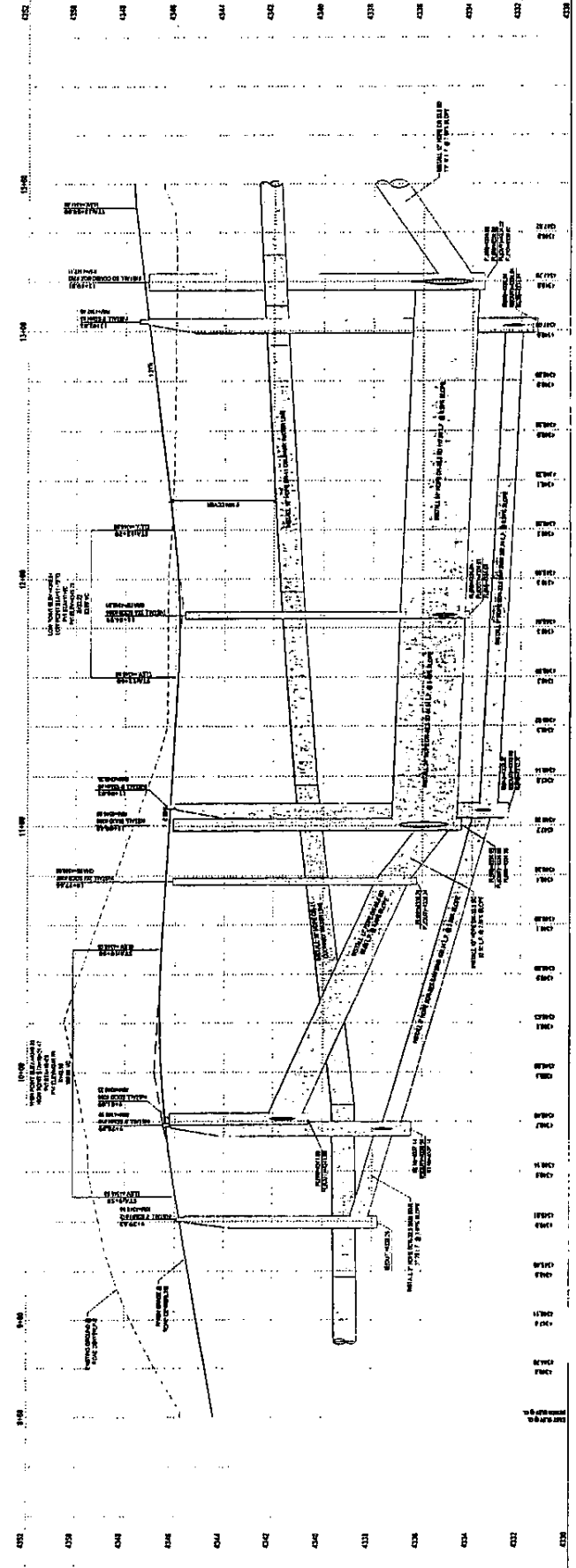
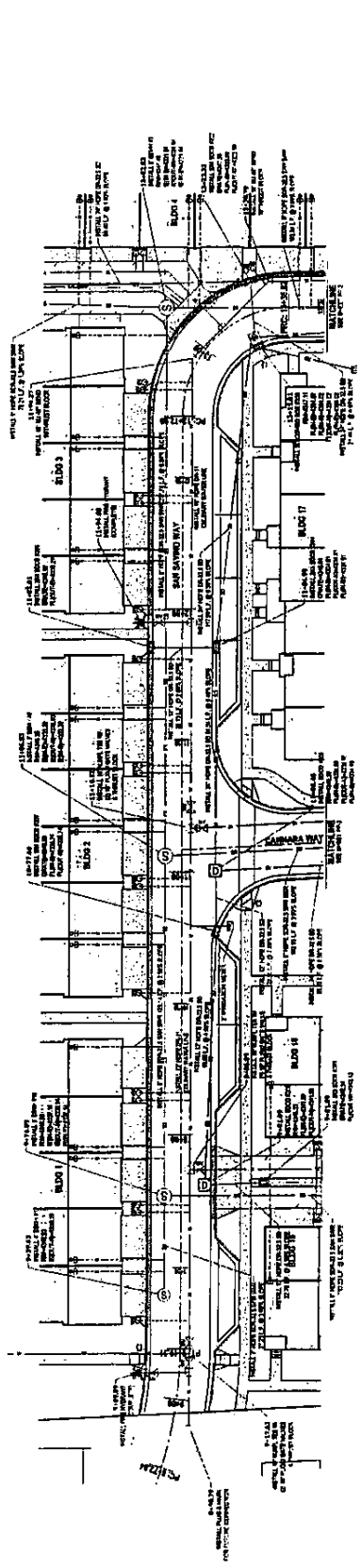
PP-1



- NOTES:**
1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF SALT LAKE COUNTY SPECIFICATIONS AND STANDARDS.
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SALT LAKE COUNTY.
 3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
 4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.

LEGEND:

| | |
|----|-------------------------------------|
| 1 | EXISTING CONCRETE |
| 2 | EXISTING MASONRY |
| 3 | EXISTING METAL DECKING |
| 4 | EXISTING ROOFING |
| 5 | EXISTING FLOORING |
| 6 | EXISTING PAINT |
| 7 | EXISTING FINISHES |
| 8 | EXISTING UTILITIES |
| 9 | EXISTING STRUCTURES |
| 10 | EXISTING LANDSCAPE |
| 11 | EXISTING DRIVEWAYS |
| 12 | EXISTING SIDEWALKS |
| 13 | EXISTING STAIRS |
| 14 | EXISTING ELEVATORS |
| 15 | EXISTING MECHANICAL |
| 16 | EXISTING ELECTRICAL |
| 17 | EXISTING PLUMBING |
| 18 | EXISTING HVAC |
| 19 | EXISTING INSULATION |
| 20 | EXISTING GLAZING |
| 21 | EXISTING DOORS |
| 22 | EXISTING WINDOWS |
| 23 | EXISTING ROOF STRUCTURE |
| 24 | EXISTING FOUNDATION |
| 25 | EXISTING RETAINING WALLS |
| 26 | EXISTING FENCES |
| 27 | EXISTING SIGNAGE |
| 28 | EXISTING UTILITIES (UNDERGROUND) |
| 29 | EXISTING UTILITIES (OVERGROUND) |
| 30 | EXISTING STRUCTURES (ADJACENT) |
| 31 | EXISTING LANDSCAPE (ADJACENT) |
| 32 | EXISTING DRIVEWAYS (ADJACENT) |
| 33 | EXISTING SIDEWALKS (ADJACENT) |
| 34 | EXISTING STAIRS (ADJACENT) |
| 35 | EXISTING ELEVATORS (ADJACENT) |
| 36 | EXISTING MECHANICAL (ADJACENT) |
| 37 | EXISTING ELECTRICAL (ADJACENT) |
| 38 | EXISTING PLUMBING (ADJACENT) |
| 39 | EXISTING HVAC (ADJACENT) |
| 40 | EXISTING INSULATION (ADJACENT) |
| 41 | EXISTING GLAZING (ADJACENT) |
| 42 | EXISTING DOORS (ADJACENT) |
| 43 | EXISTING WINDOWS (ADJACENT) |
| 44 | EXISTING ROOF STRUCTURE (ADJACENT) |
| 45 | EXISTING FOUNDATION (ADJACENT) |
| 46 | EXISTING RETAINING WALLS (ADJACENT) |
| 47 | EXISTING FENCES (ADJACENT) |
| 48 | EXISTING SIGNAGE (ADJACENT) |
| 49 | EXISTING UTILITIES (ADJACENT) |
| 50 | EXISTING STRUCTURES (ADJACENT) |





SALT LAKE CITY
 100 WEST NORTH AVENUE
 SUITE 100
 SALT LAKE CITY, UT 84103
 PHONE: 313.222.2222
 FAX: 313.222.2222

JAYTON
 PHONE: 313.222.2222

PLEASANT GROVE
 PHONE: 313.222.2222

FOOSELE
 PHONE: 313.222.2222

WESTWOOD INDUSTRIAL
 PHONE: 313.222.2222

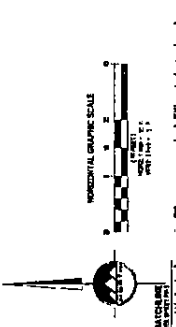
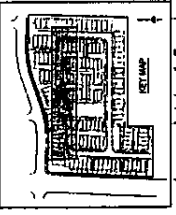
WESTWOOD INDUSTRIAL
 PHONE: 313.222.2222

**CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 TUSCANY VIEW ROAD
 MIDVALE, UTAH**



PLAN AND
 PROFILE

PP-2

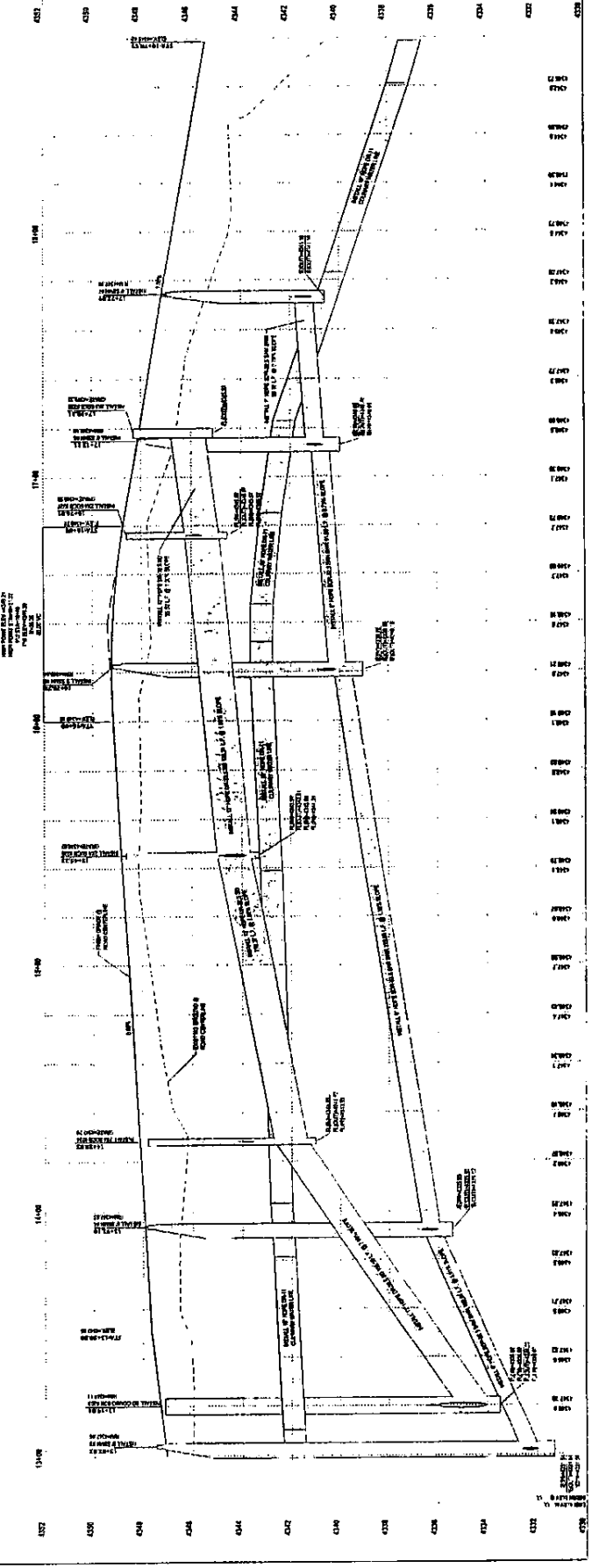
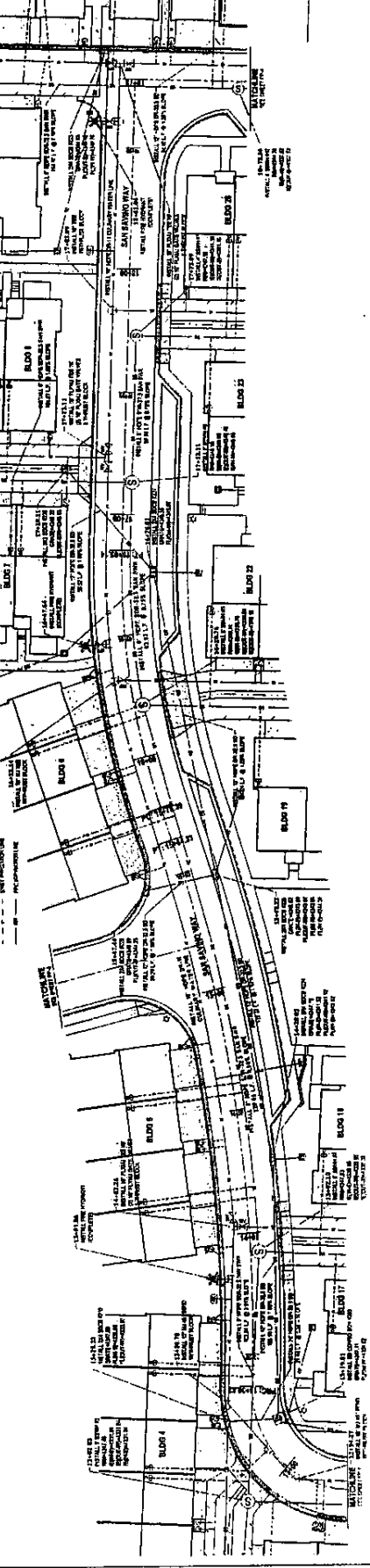
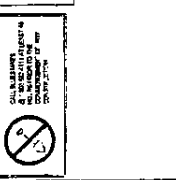


- 1. ALL DIMENSIONS TO CENTERLINE UNLESS OTHERWISE NOTED.
- 2. DIMENSIONS TO FACE OF CURB UNLESS OTHERWISE NOTED.
- 3. DIMENSIONS TO FACE OF SIDEWALK UNLESS OTHERWISE NOTED.
- 4. DIMENSIONS TO FACE OF DRIVE UNLESS OTHERWISE NOTED.
- 5. DIMENSIONS TO FACE OF DRIVE UNLESS OTHERWISE NOTED.
- 6. DIMENSIONS TO FACE OF DRIVE UNLESS OTHERWISE NOTED.
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- 5. DIMENSIONS TO FACE OF DRIVE UNLESS OTHERWISE NOTED.
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- 1. ALL DIMENSIONS TO CENTERLINE UNLESS OTHERWISE NOTED.
- 2. DIMENSIONS TO FACE OF CURB UNLESS OTHERWISE NOTED.
- 3. DIMENSIONS TO FACE OF SIDEWALK UNLESS OTHERWISE NOTED.
- 4. DIMENSIONS TO FACE OF DRIVE UNLESS OTHERWISE NOTED.
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- 10. DIMENSIONS TO FACE OF DRIVE UNLESS OTHERWISE NOTED.





SALT LAKE CITY
 221 WEST 1000 SOUTH
 SALT LAKE CITY, UT 84119
 PHONE (801) 466-1000
 FAX (801) 466-1001

LAYTON
 PHONE (801) 466-1000

PLEASANT BROVE
 PHONE (801) 466-1000

TOOELES
 PHONE (435) 463-9997

WEST VALLEY CITY
 PHONE (801) 466-1000

UTAH COUNTY
 PHONE (435) 463-9997

UTAH COUNTY
 PHONE (435) 463-9997

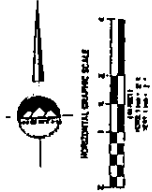
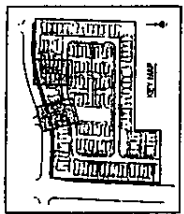
CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 TUSCANY VIEW ROAD
 MIDVALE, UTAH



PLAN AND
 PROFILE

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 DRAWN BY: [Name]
 CHECKED BY: [Name]

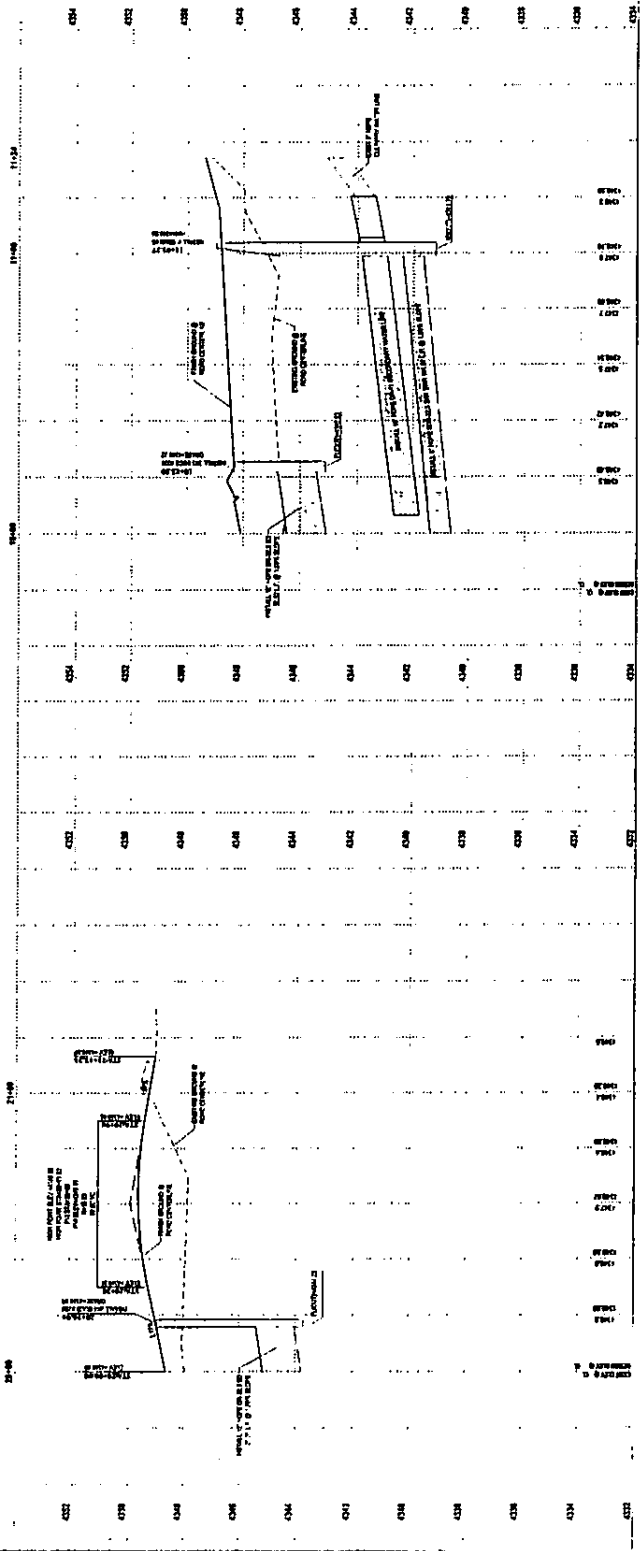
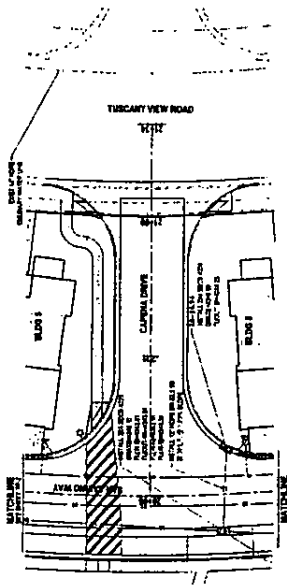
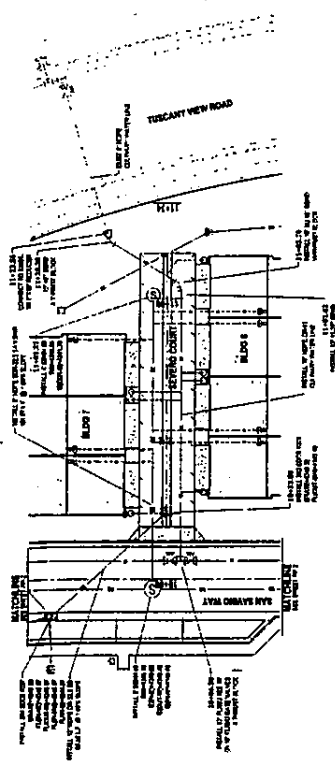
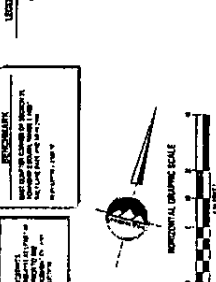
PP-5



1. ALL DIMENSIONS TO FACE UNLESS OTHERWISE NOTED.
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| SYMBOL | DESCRIPTION |
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| [Symbol] | CONCRETE |
| [Symbol] | ASPHALT |
| [Symbol] | GRAVEL |
| [Symbol] | PAVEMENT |
| [Symbol] | LANDSCAPE |
| [Symbol] | PLANTING |
| [Symbol] | WATER |
| [Symbol] | SEWER |
| [Symbol] | ELECTRICAL |
| [Symbol] | MECHANICAL |
| [Symbol] | STRUCTURAL |

| SYMBOL | DESCRIPTION |
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| [Symbol] | CONCRETE |
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| [Symbol] | PAVEMENT |
| [Symbol] | LANDSCAPE |
| [Symbol] | PLANTING |
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| [Symbol] | ELECTRICAL |
| [Symbol] | MECHANICAL |
| [Symbol] | STRUCTURAL |





BALT LAKE CITY
 87 East Van Ness Blvd
 Salt Lake City, UT 84143
 Phone: 201.253.0529
 Fax: 801.271.1441

LAYTON
 PLEASANT GROVE
 Phone: 801.467.1175
 Phone: 801.781.6142

TABLES
 Phone: 801.467.1299
 Phone: 801.467.1274

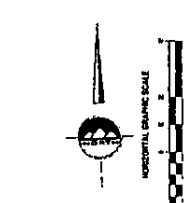
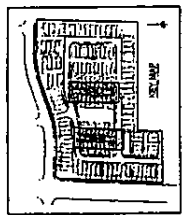
DESIGNER
 PROJECT ENGINEER
 CHECKER
 DATE

CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 TUSCANY VIEW ROAD
 MIDVALE, UTAH



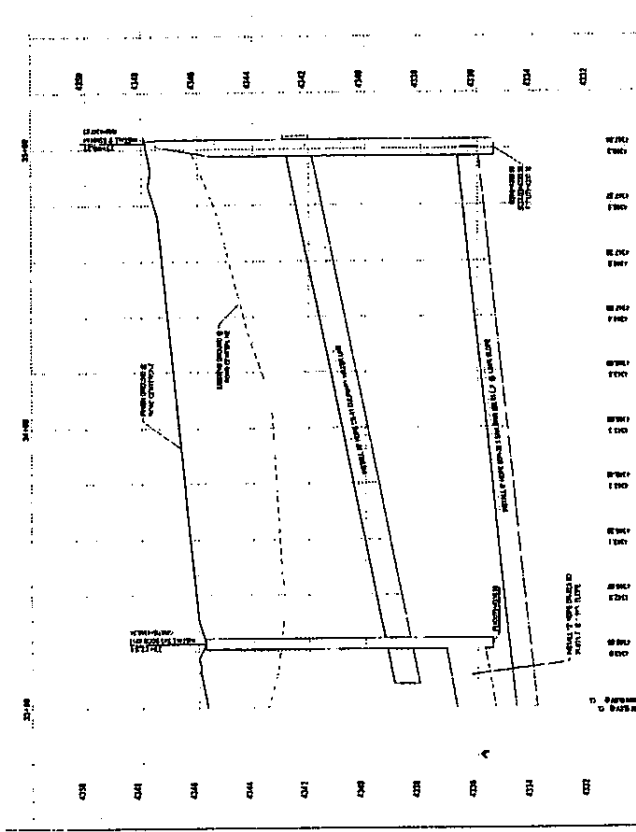
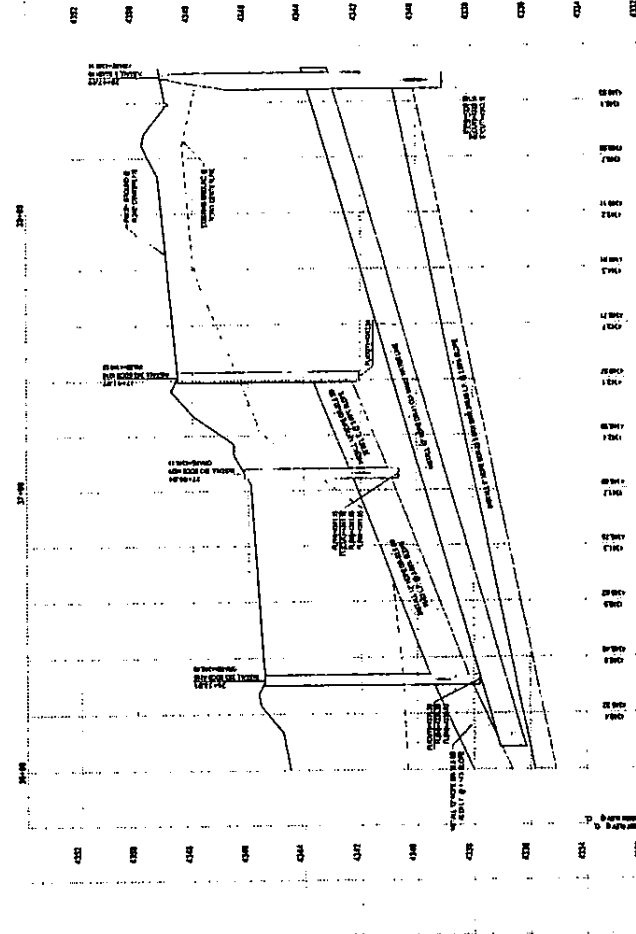
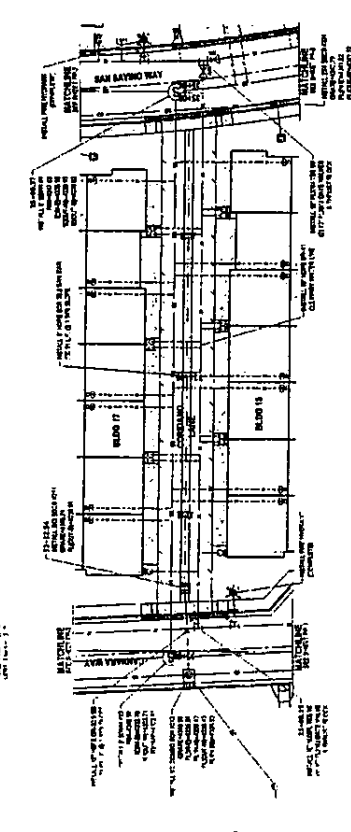
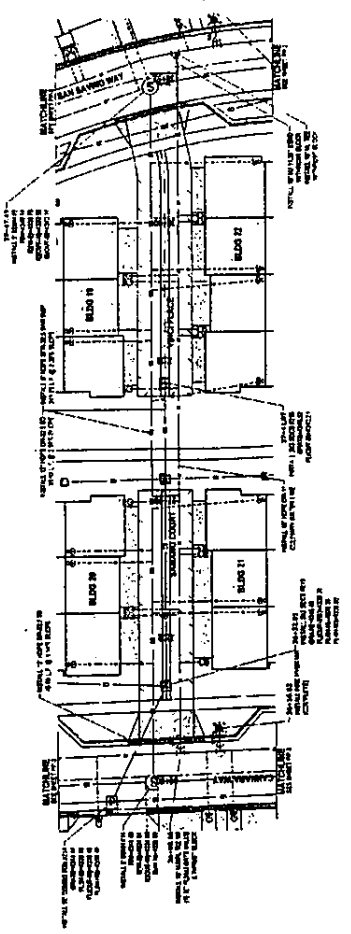
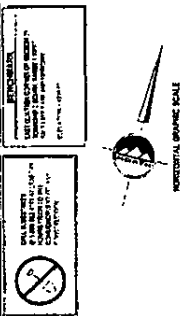
PLAN AND
 PROFILE

PP-6



- 1. ALL DIMENSIONS TO FACE UNLESS OTHERWISE NOTED.
- 2. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE CITY OF SALT LAKE CITY ENGINEERING STANDARDS AND SPECIFICATIONS.
- 3. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE NOTED.

- LEGEND**
- 1. CONCRETED CURB AND GUTTER
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845 S. LAKE CITY
 SUITE 100
 SALT LAKE CITY, UT 84143
 PHONE: 313.443.2800
 FAX: 313.443.2800
 WWW: ENSIGN.COM

PROJECT: PLEASANT GROVE
 SHEET: PG 8918

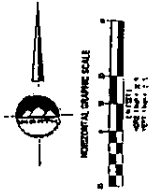
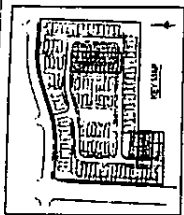
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 SECTION: 36

CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 TUSCANY VIEW ROAD
 MIDVALE, UTAH



PLAN AND
 PROFILE

PP-7



NOTES:
 1. ALL WORK TO BE ACCORDING TO THE SPECIFICATIONS AND THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS, UTAH, 2005 EDITION, WITH THE LATEST AMENDMENTS.
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS.
 3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.

| SYMBOL | DESCRIPTION |
|----------|------------------------------|
| (Symbol) | 1. 1/2" CONC. SLAB ON GRADE |
| (Symbol) | 2. 4" CONC. SLAB ON GRADE |
| (Symbol) | 3. 6" CONC. SLAB ON GRADE |
| (Symbol) | 4. 8" CONC. SLAB ON GRADE |
| (Symbol) | 5. 10" CONC. SLAB ON GRADE |
| (Symbol) | 6. 12" CONC. SLAB ON GRADE |
| (Symbol) | 7. 14" CONC. SLAB ON GRADE |
| (Symbol) | 8. 16" CONC. SLAB ON GRADE |
| (Symbol) | 9. 18" CONC. SLAB ON GRADE |
| (Symbol) | 10. 20" CONC. SLAB ON GRADE |
| (Symbol) | 11. 22" CONC. SLAB ON GRADE |
| (Symbol) | 12. 24" CONC. SLAB ON GRADE |
| (Symbol) | 13. 26" CONC. SLAB ON GRADE |
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| (Symbol) | 15. 30" CONC. SLAB ON GRADE |
| (Symbol) | 16. 32" CONC. SLAB ON GRADE |
| (Symbol) | 17. 34" CONC. SLAB ON GRADE |
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| (Symbol) | 19. 38" CONC. SLAB ON GRADE |
| (Symbol) | 20. 40" CONC. SLAB ON GRADE |
| (Symbol) | 21. 42" CONC. SLAB ON GRADE |
| (Symbol) | 22. 44" CONC. SLAB ON GRADE |
| (Symbol) | 23. 46" CONC. SLAB ON GRADE |
| (Symbol) | 24. 48" CONC. SLAB ON GRADE |
| (Symbol) | 25. 50" CONC. SLAB ON GRADE |
| (Symbol) | 26. 52" CONC. SLAB ON GRADE |
| (Symbol) | 27. 54" CONC. SLAB ON GRADE |
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| (Symbol) | 32. 64" CONC. SLAB ON GRADE |
| (Symbol) | 33. 66" CONC. SLAB ON GRADE |
| (Symbol) | 34. 68" CONC. SLAB ON GRADE |
| (Symbol) | 35. 70" CONC. SLAB ON GRADE |
| (Symbol) | 36. 72" CONC. SLAB ON GRADE |
| (Symbol) | 37. 74" CONC. SLAB ON GRADE |
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| (Symbol) | 39. 78" CONC. SLAB ON GRADE |
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| (Symbol) | 41. 82" CONC. SLAB ON GRADE |
| (Symbol) | 42. 84" CONC. SLAB ON GRADE |
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| (Symbol) | 45. 90" CONC. SLAB ON GRADE |
| (Symbol) | 46. 92" CONC. SLAB ON GRADE |
| (Symbol) | 47. 94" CONC. SLAB ON GRADE |
| (Symbol) | 48. 96" CONC. SLAB ON GRADE |
| (Symbol) | 49. 98" CONC. SLAB ON GRADE |
| (Symbol) | 50. 100" CONC. SLAB ON GRADE |

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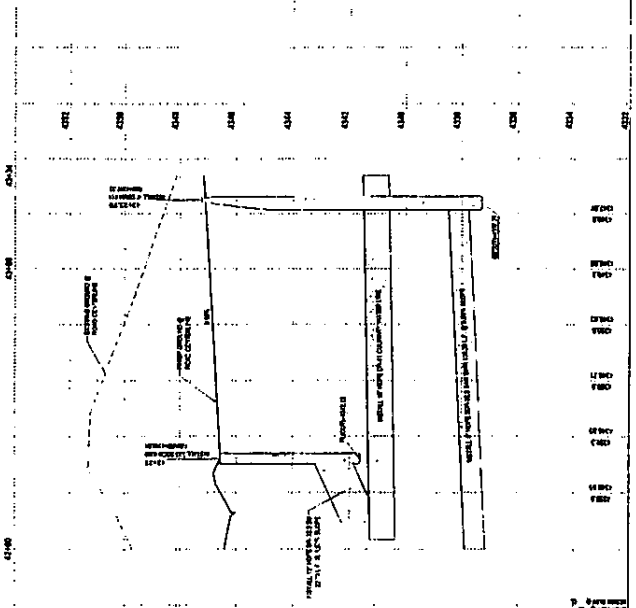
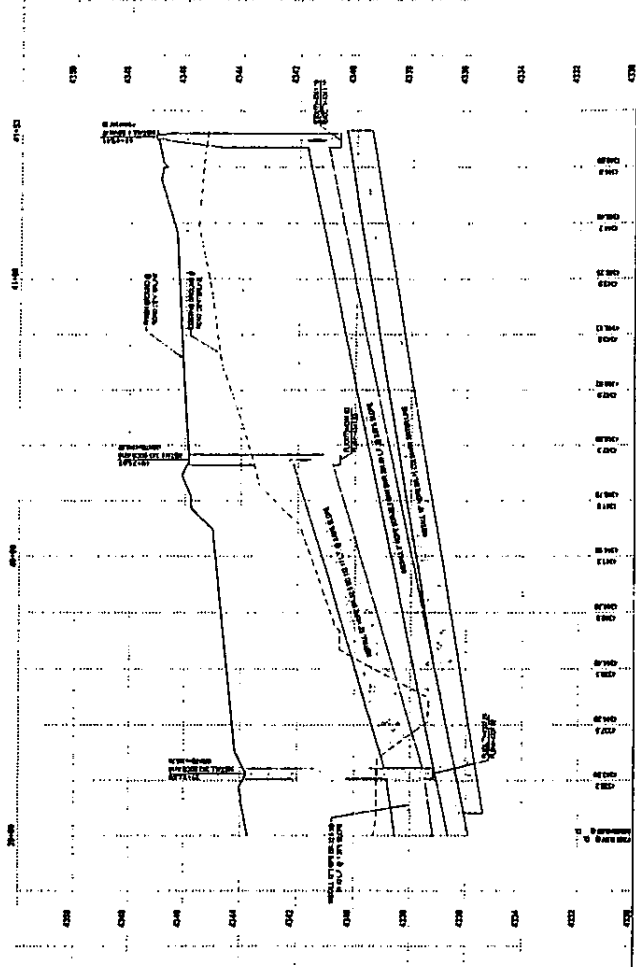
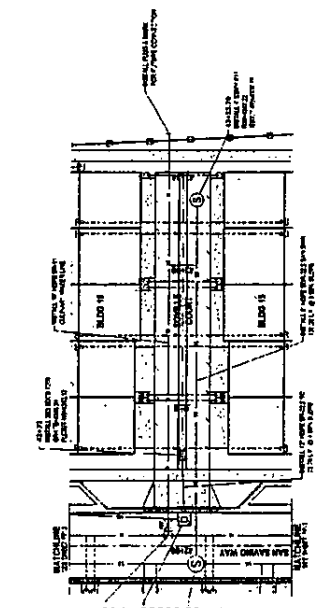
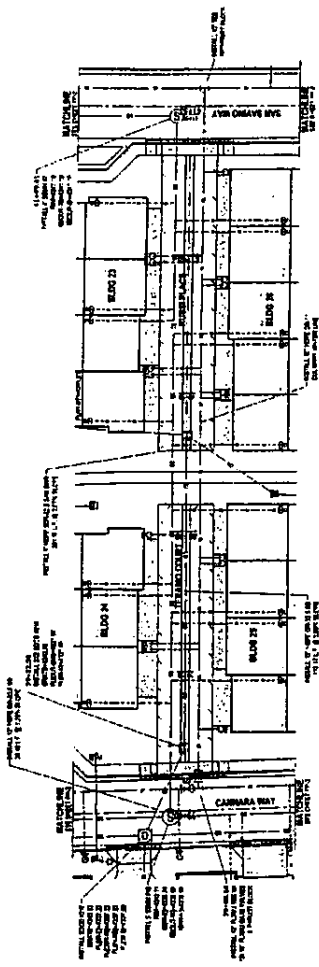


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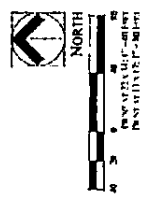
Central 72 Town Homes Project
Development Agreement

PLANT LIST

| NO. | SYM. | PLANT TYPE | PLANTING RATE | PLANTING METHOD | PLANTING DATE |
|-----|------|------------|---------------|----------------------|---------------|
| 27 | AA | Small Tree | 2' x 4' | See List Below | 1 |
| 28 | A | Shrub Tree | 2' x 4' | Common Hawthorn | 1 |
| 29 | B | Shrub Tree | 2' x 4' | American Blue Spruce | 1 |
| 30 | C | Shrub Tree | 2' x 4' | Japanese Maple | 1 |
| 31 | D | Shrub Tree | 2' x 4' | Red-twig Dogwood | 1 |
| 32 | E | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 33 | F | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 34 | G | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 35 | H | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 36 | I | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 37 | J | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 38 | K | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 39 | L | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 40 | M | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 41 | N | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 42 | O | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 43 | P | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 44 | Q | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 45 | R | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 46 | S | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 47 | T | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 48 | U | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 49 | V | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 50 | W | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 51 | X | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 52 | Y | Shrub Tree | 2' x 4' | Blackberry | 1 |
| 53 | Z | Shrub Tree | 2' x 4' | Blackberry | 1 |

PLANTING NOTES

1. Quantities shown on this plan are for information only. If any discrepancies are noted, the contractor shall be responsible for providing and installing all plants and trees shown on this plan.
2. All plants and trees shall be installed in accordance with the specifications and standards of the Utah Department of Transportation.
3. All plants and trees shall be installed in accordance with the specifications and standards of the Utah Department of Transportation.
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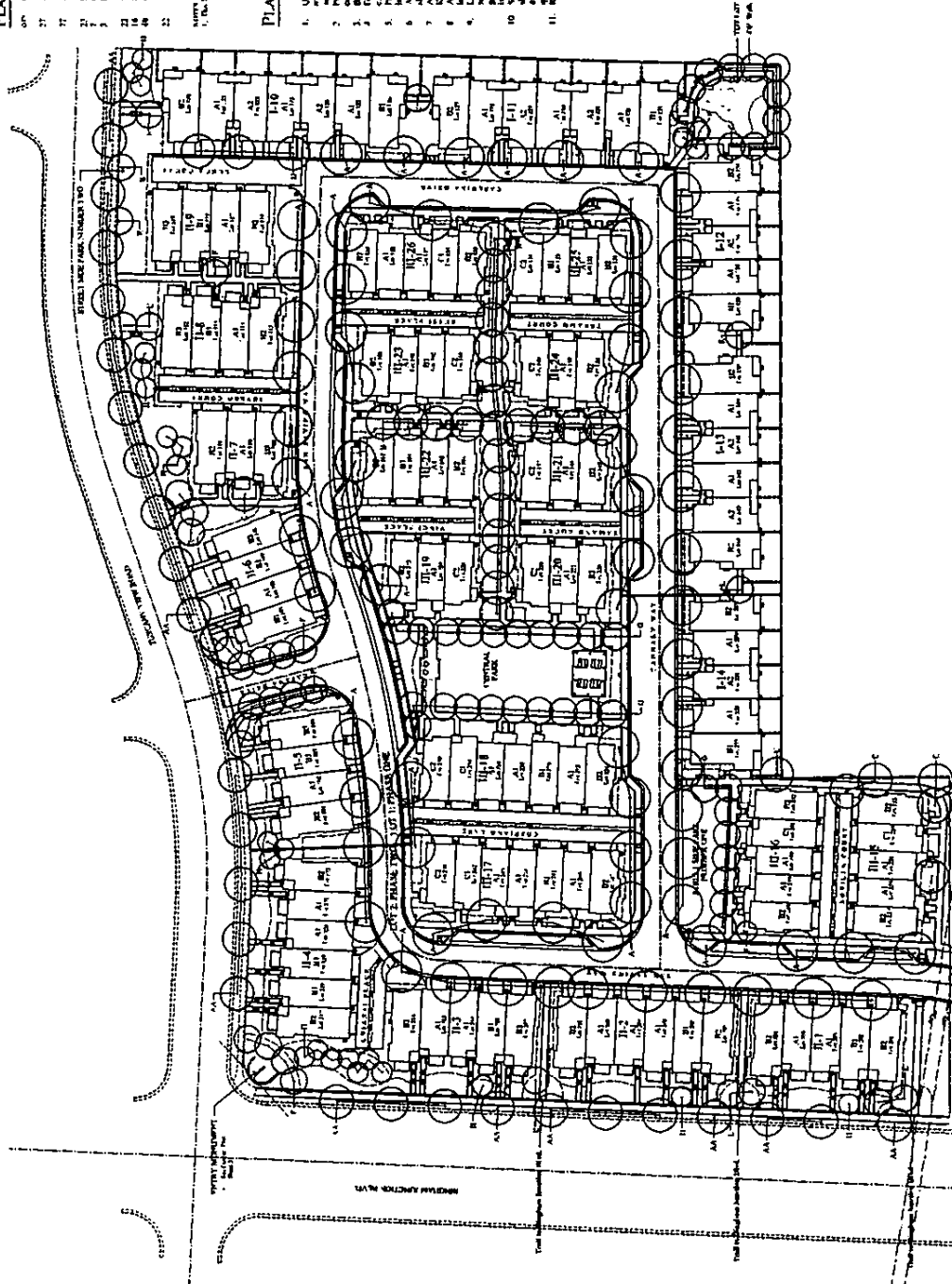
DESIGNED BY: R. MICHAEL KELLY
 CONSULTANT
 1725 EAST 1000 SOUTH
 SALT LAKE CITY, UT 84143

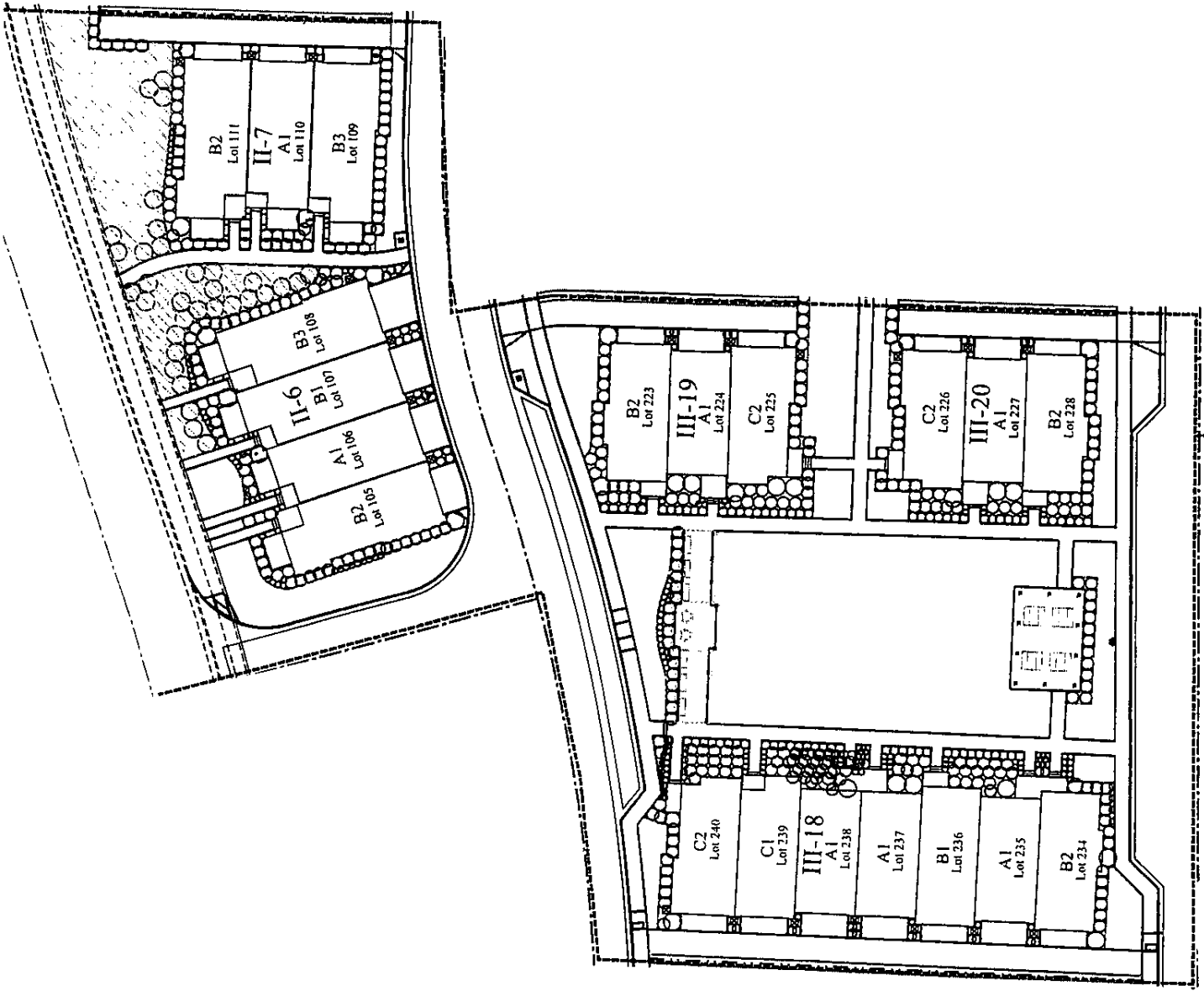
PREPARED BY:
 R. MICHAEL KELLY
 CONSULTANT

Planting Plan
CENTRAL 72 TOWN HOMES
 AT BINGHAM JUNCTION
 MIDVALE, UTAH




HOLMES HOMES
 126 WEST STREET MAIN DRIVE, SUITE 250
 SANDY, UTAH

R. MICHAEL KELLY
 CONSULTANT
 1725 EAST 1000 SOUTH
 SALT LAKE CITY, UT 84143





LEGEND

-  Shrubs and Groundcover Beds
-  Lawn
-  Gravel



NORTH

CENTRAL 72 TOWN HOMES
 AT BINGHAM JUNCTION
 MIDVALE, UTAH

HOLMES HOMES
 126 WEST SEGA LILLY DRIVE, SUITE 250
 SANDY, UTAH

R. MICHAEL KELLY
 CONSULTANTS
 101 E. SPRING ST. SUITE 200
 SANDY, UTAH 84070

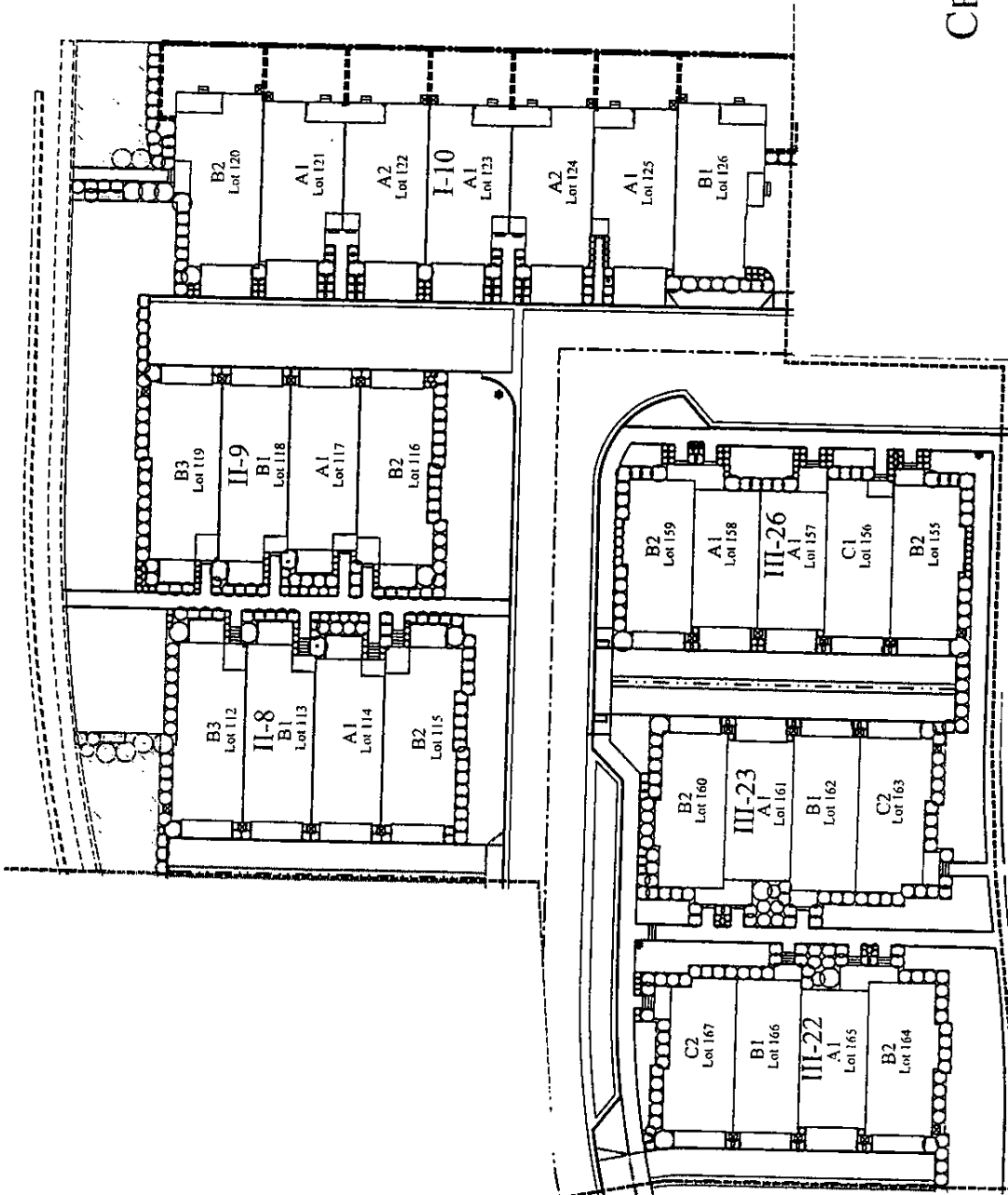


NORTH




CENTRAL 72 TOWN HOMES AT BINGHAM JUNCTION MIDVALE, UTAH

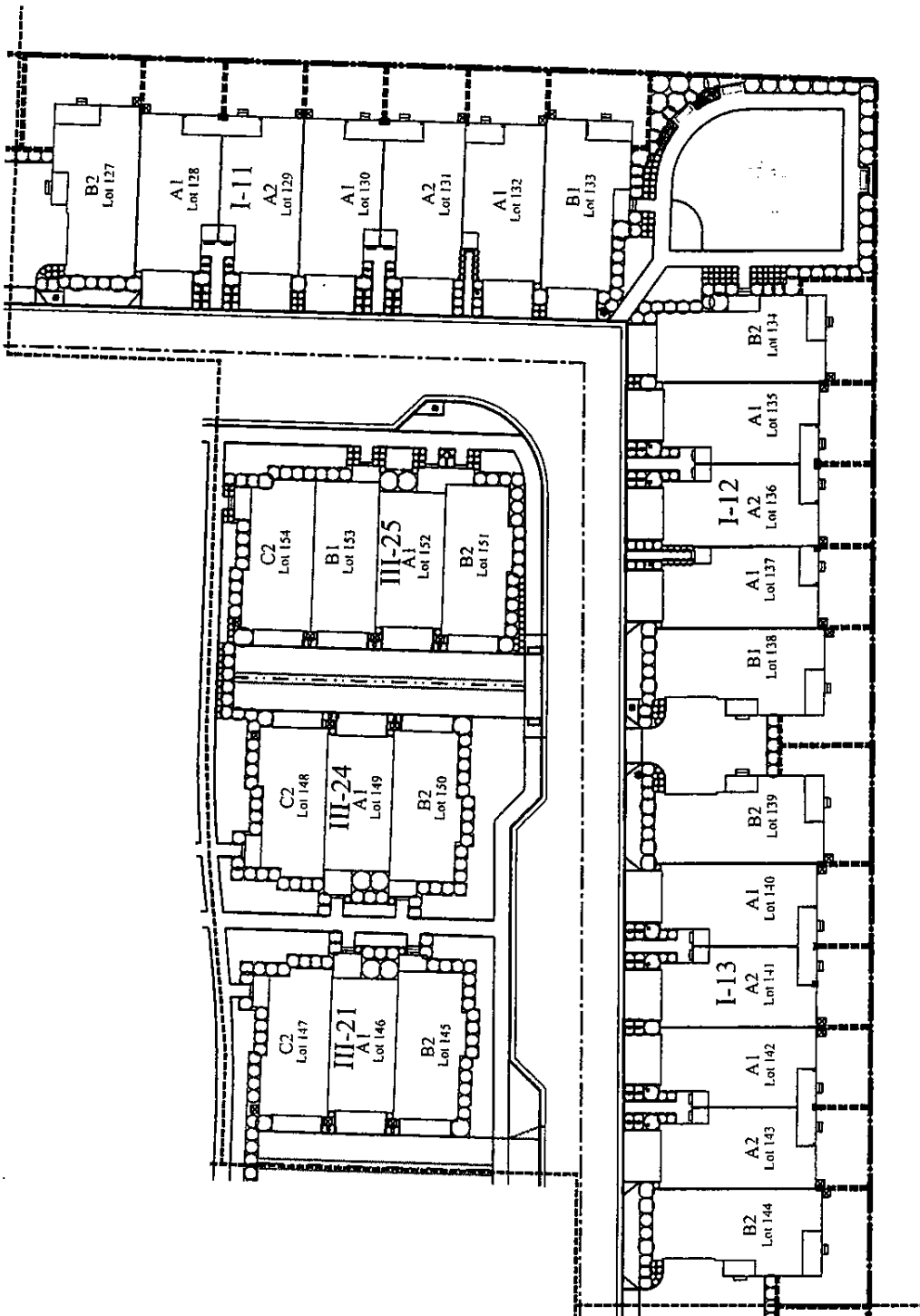
HOLMES HOMES
126 WEST SAND LILY DRIVE, SUITE 250
SANDY, UTAH

R. MICHAEL KELLY
CONSULTANT
1000 S. 1000 E. SUITE 100
SANDY, UTAH 84070



LEGEND

-  Shrubs and Groundcover Beds
-  Lawn
-  Gravel






CENTRAL 72 TOWN HOMES
 AT BINGHAM JUNCTION
 MIDVALE DRIVE

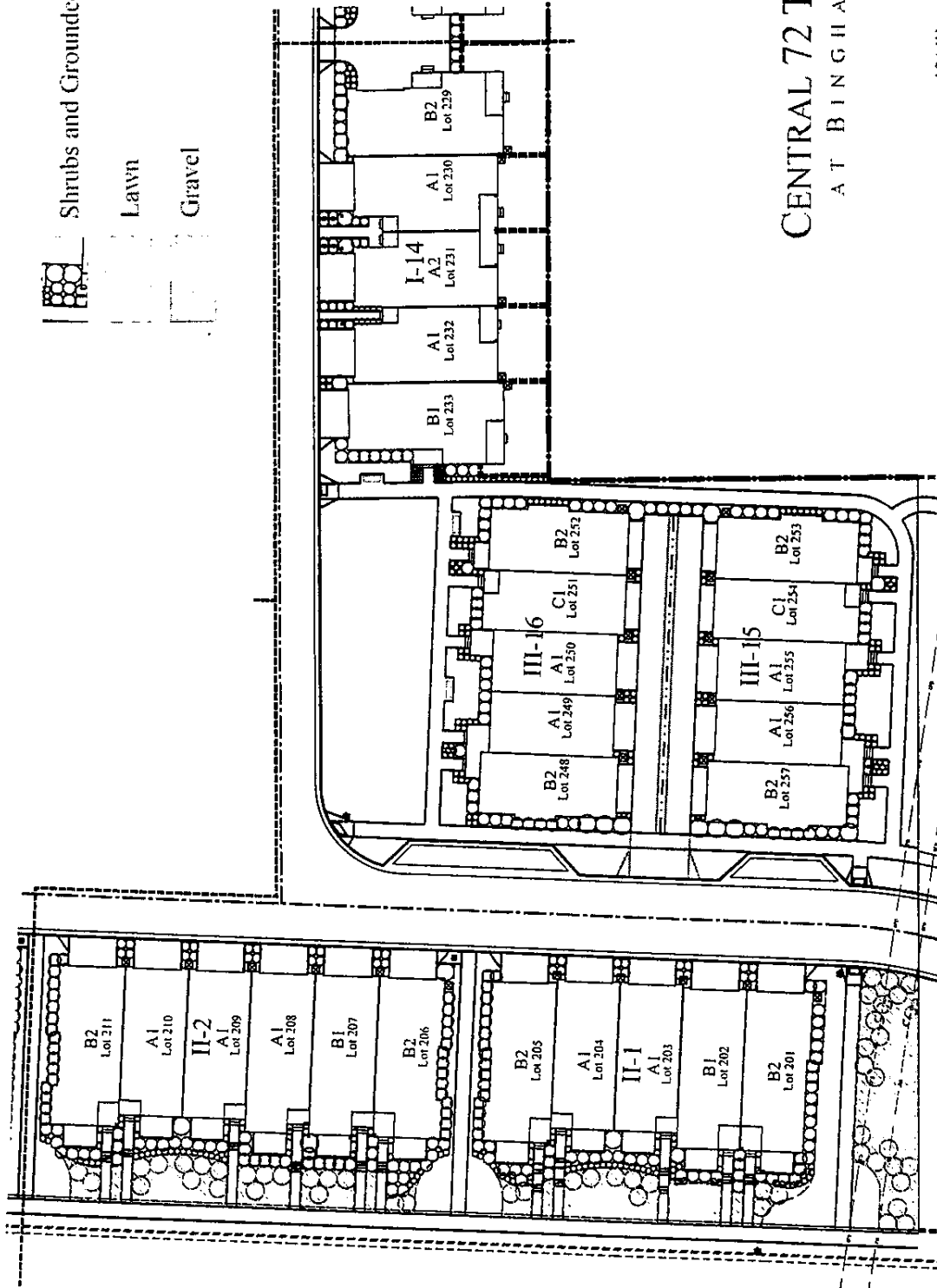
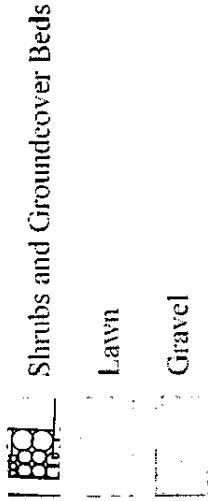
HOLMES HOMES
 126 West SEGGER'S DRIVE, SUITE 250
 SANDY, UTAH

R. MICHAEL FEELEY
 ARCHITECT
 126 West SEGGER'S DRIVE, SUITE 250
 SANDY, UTAH 84070

LEGEND

-  Shrubs and Groundcover Beds
-  Lawn
-  Gravel

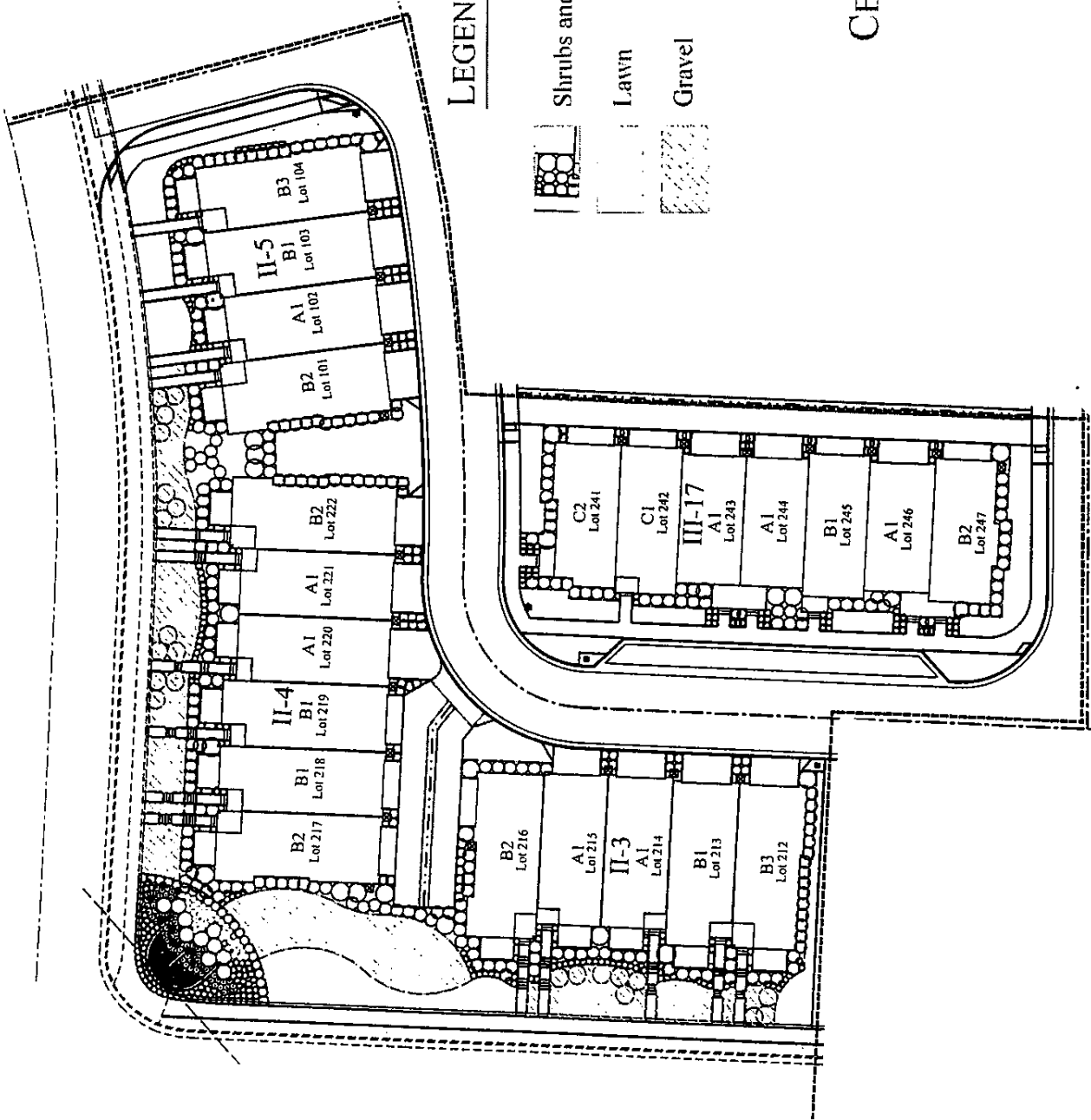
LEGEND



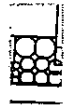
CENTRAL 72 TOWN HOMES
 AT BINGHAM JUNCTION
 MIDVALE, UTAH

HOLMES HOMES
 126 WEST SEGO LILY DRIVE, SUITE 250
 SANDY, UTAH

R. MICHAEL KELLY
 CONSULTANTS
 126 WEST SEGO LILY DRIVE, SUITE 250
 SANDY, UTAH 84070



LEGEND



Shrubs and Groundcover Beds

Lawn

Gravel



CENTRAL 72 TOWN HOMES
 AT BINGHAM JUNCTION
 MIDVALE, UTAH

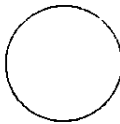
HOLMES HOMES
 126 WEST SEGO LILY DRIVE, SUITE 250
 SANDY, UTAH

R. MICHAEL KELLY
 ARCHITECT
 1400 FLANNERY LANE, SUITE 100, SANDY, UT 84070
 TEL: 781-344-4444 FAX: 781-344-4444

EXHIBIT F

Central 72 Town Homes Project
Development Agreement

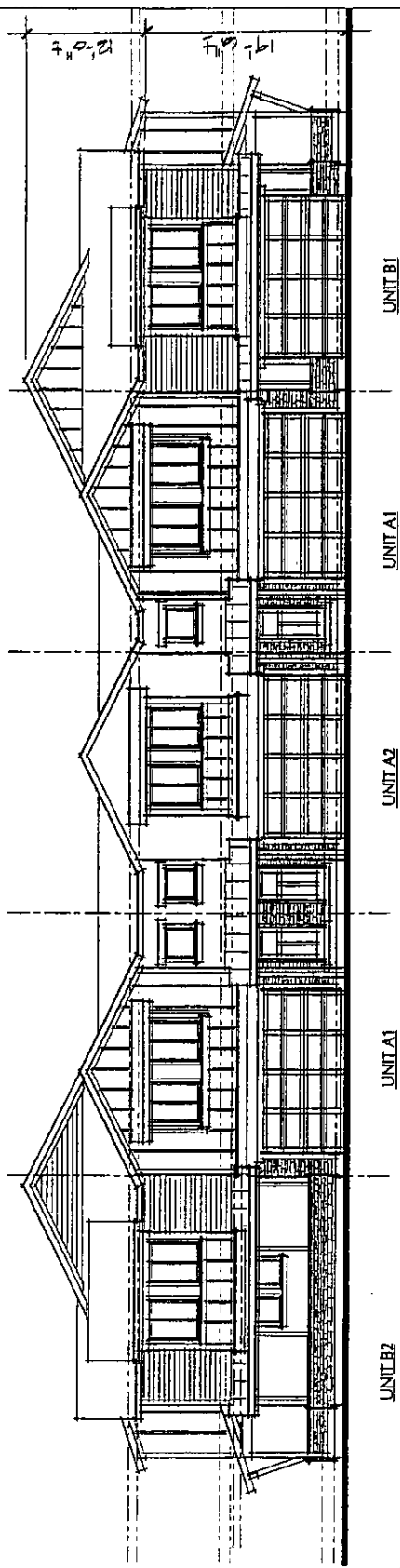
HOLMES HOMES
 © 2004 All Rights Reserved



CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 BUILDING TYPE I



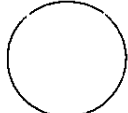
| | | |
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| DATE | BY | APP'D |
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FRONT ELEVATION - 5 PLEX

STUCCO PERCENTAGE = 19.9%

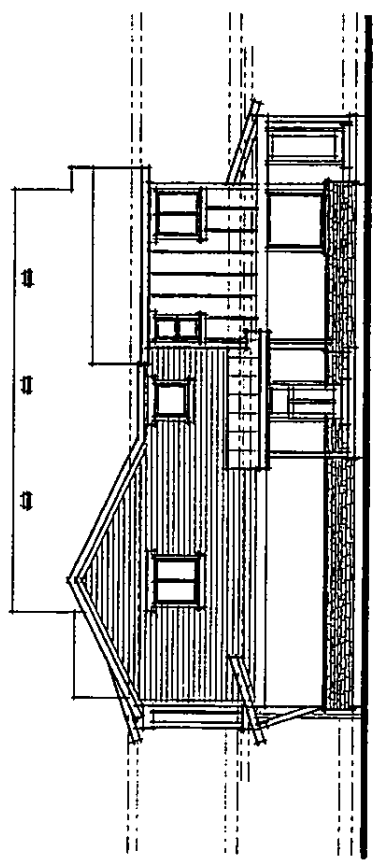
The use of these plans and the information contained herein is limited to the project and location specified. Any other use of these plans without the written consent of the architect is prohibited.



CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 BUILDING TYPE I

HOLMES HOMES
 A Family Tradition Since 1890

| | |
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| Drawn by: P.C.C. | |
| File: | |
| Date: | |
| Project No.: | |
| Sheet No.: | |

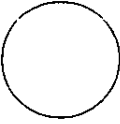


UNIT B1

RIGHT ELEVATION - 5 PLEX

STUCCO PERCENTAGE = 25.21%

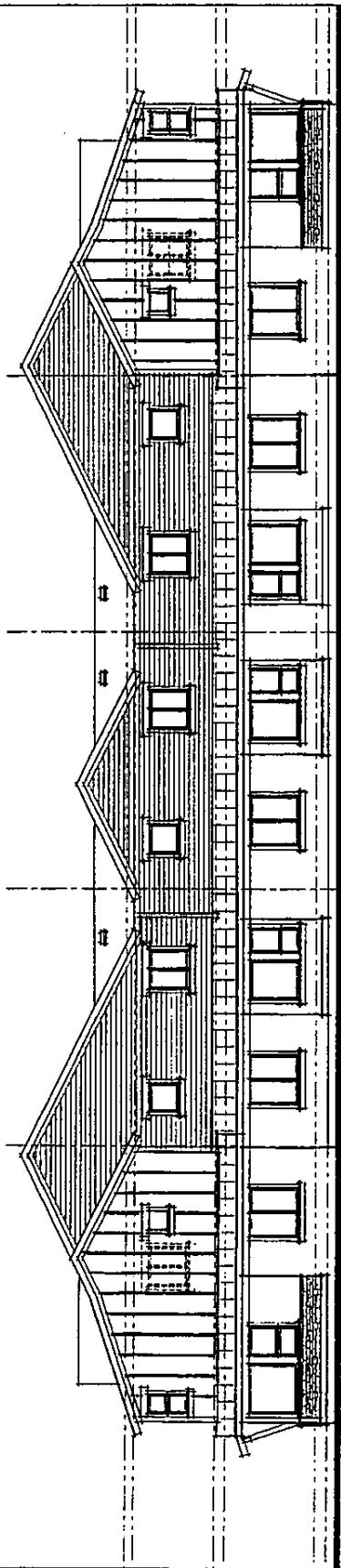
HOLMES HOMES
 © 2004 of Holmes Homes



CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 BUILDING TYPE I



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| DATE | BY | APP'D |
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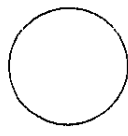


UNIT B2
 UNIT A1
 UNIT A2
 UNIT A1
 UNIT B1

REAR ELEVATION - 5 PLEX

STUCCO PERCENTAGE = 22.6%

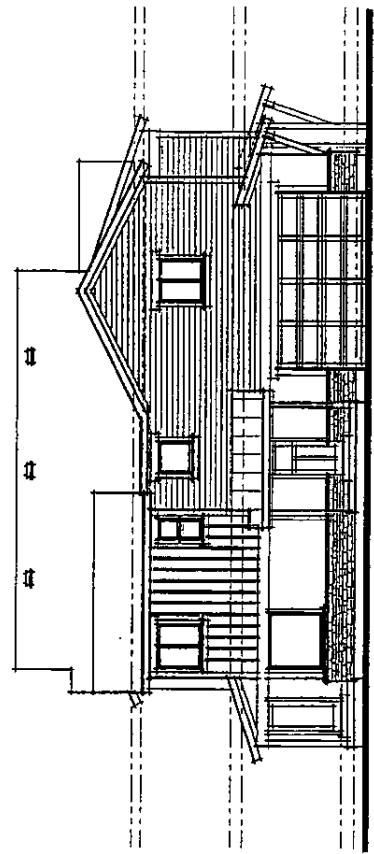
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**CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 BUILDING TYPE I**

HOLMES HOMES
 A Family Tradition Since 1890

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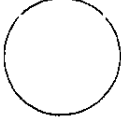
UNIT B2

LEFT ELEVATION - 5 PLEX

STUCCO PERCENTAGE = 16.81%

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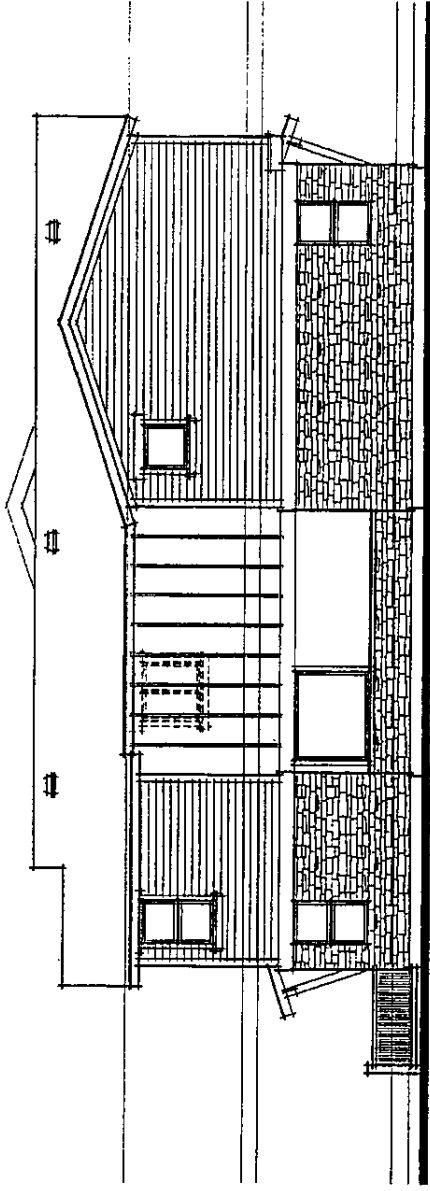
HOLMES HOMES
 A FORTUNE BUILT SINCE 1900



CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 BUILDING TYPE II



| | | | | | | | |
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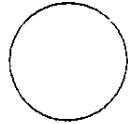


UNIT B3

RIGHT SIDE ELEVATION - 4 PLEX

STUCCO PERCENTAGE *5.26%

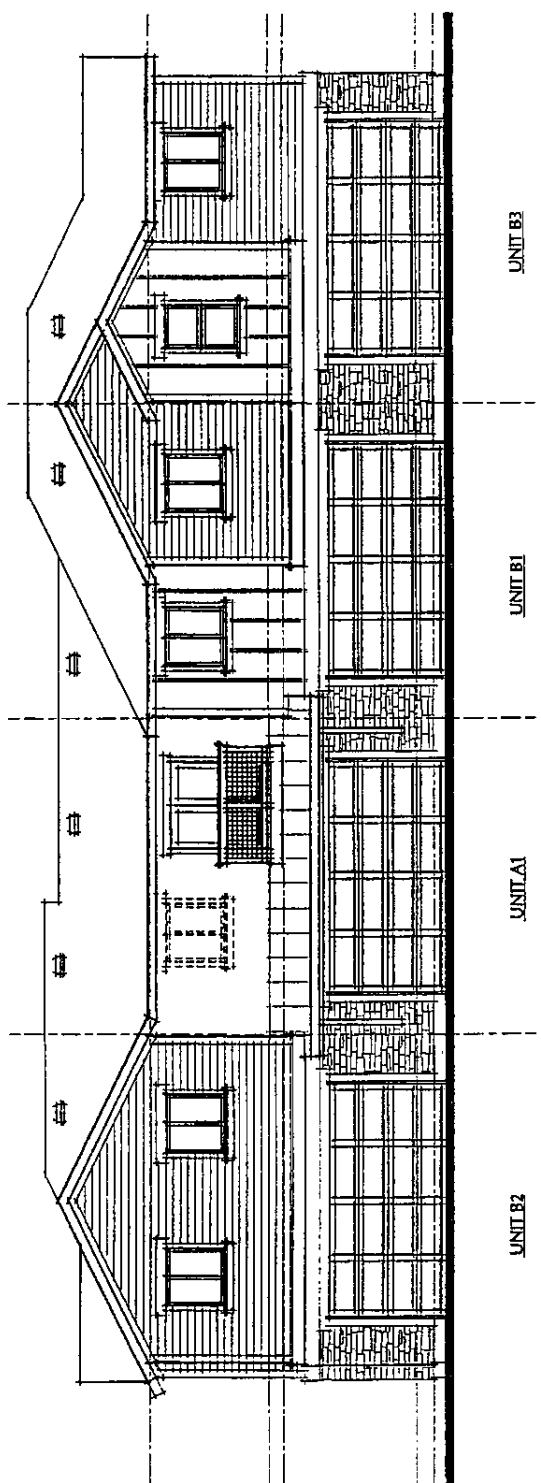
This set of drawings shall be used to construct the building in accordance with the Building Code of the City of Bingham Junction, Utah. The contractor shall be responsible for obtaining all necessary permits and for complying with all applicable laws, codes, and regulations. The contractor shall also be responsible for obtaining all necessary approvals from the appropriate authorities. The contractor shall also be responsible for obtaining all necessary approvals from the appropriate authorities.



**CENTRAL 72 TOWNHOMES
 AT BINGHAM JUNCTION
 BUILDING TYPE II**



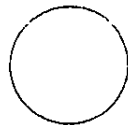
| | |
|------|-------------|
| DATE | DESCRIPTION |
| | |
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REAR ELEVATION - 4 PLEX

STUCCO PERCENTAGE = 10.4%

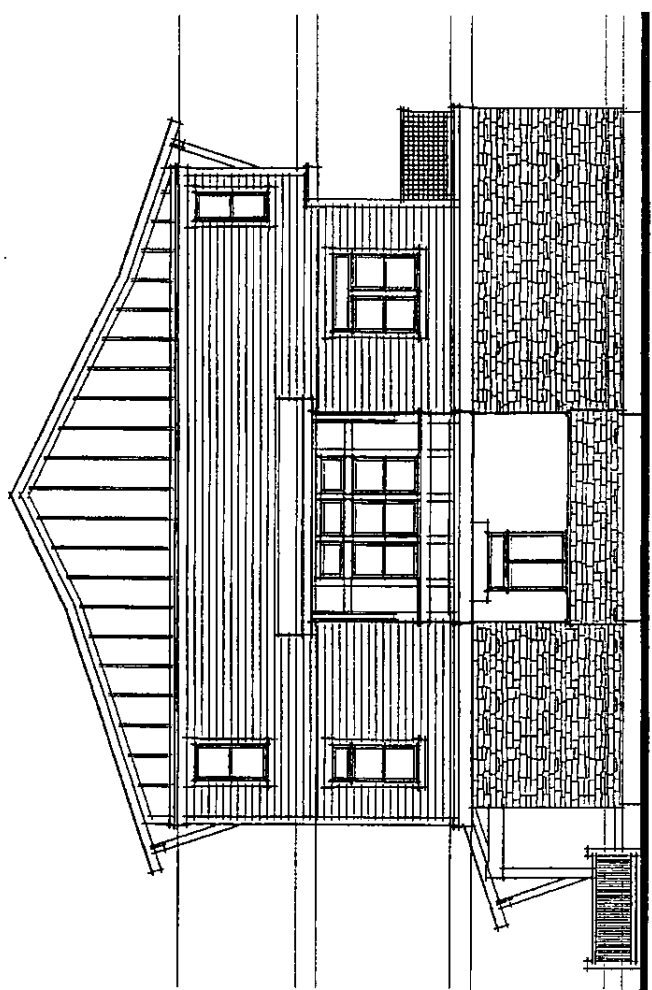
The information on this drawing is for informational purposes only. It is not intended to be used for any other purpose. The user of this drawing is responsible for obtaining all necessary permits and approvals. The user of this drawing is also responsible for ensuring that the drawing is used in accordance with the applicable laws and regulations.



BINGHAM JUNCTION
CENTRAL 72 TOWNHOMES
BUILDING TYPE III

A Family Tradition Since 1890
HOLMES HOMES

| | |
|------------|----|
| Drawn by | AC |
| Checked by | |
| Scale | |
| Date | |

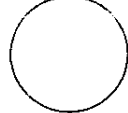


UNIT B2

RIGHT ELEVATION - 4 PLEX

STUCCO PERCENTAGE = 4.64%

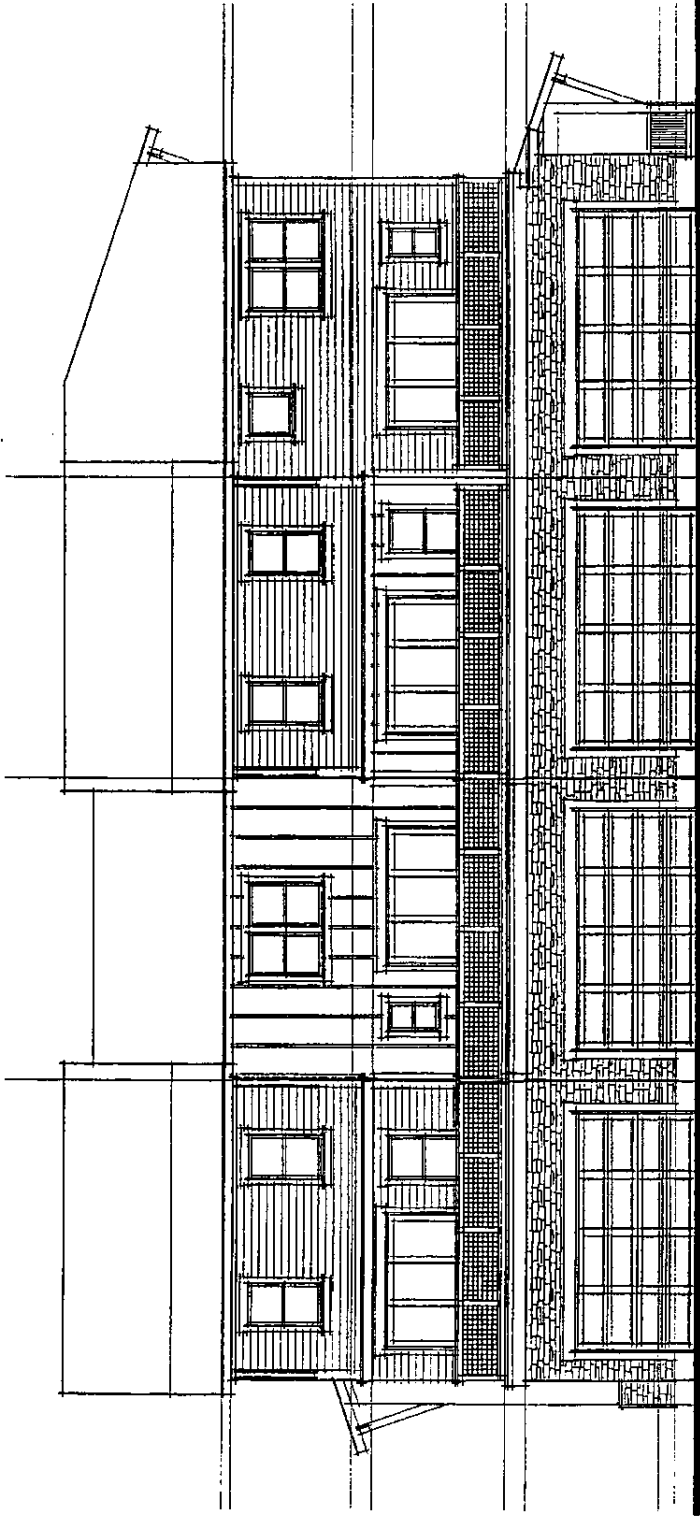
1. All dimensions are to be finished unless otherwise noted.
 2. All elevations are to be shown as indicated.
 3. All elevations are to be shown as indicated.
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BINGHAM JUNCTION
CENTRAL 72 TOWNHOMES
BUILDING TYPE III



| | |
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| Sheet No. | 9885 |
| Date | |
| Scale | |
| Author | |
| Checker | |
| Appr. | |



UNIT C2

UNIT B1

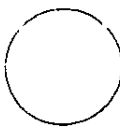
UNIT A1

UNIT B2

REAR ELEVATION - 4 PLEX

STUCCO PERCENTAGE = 11.3%

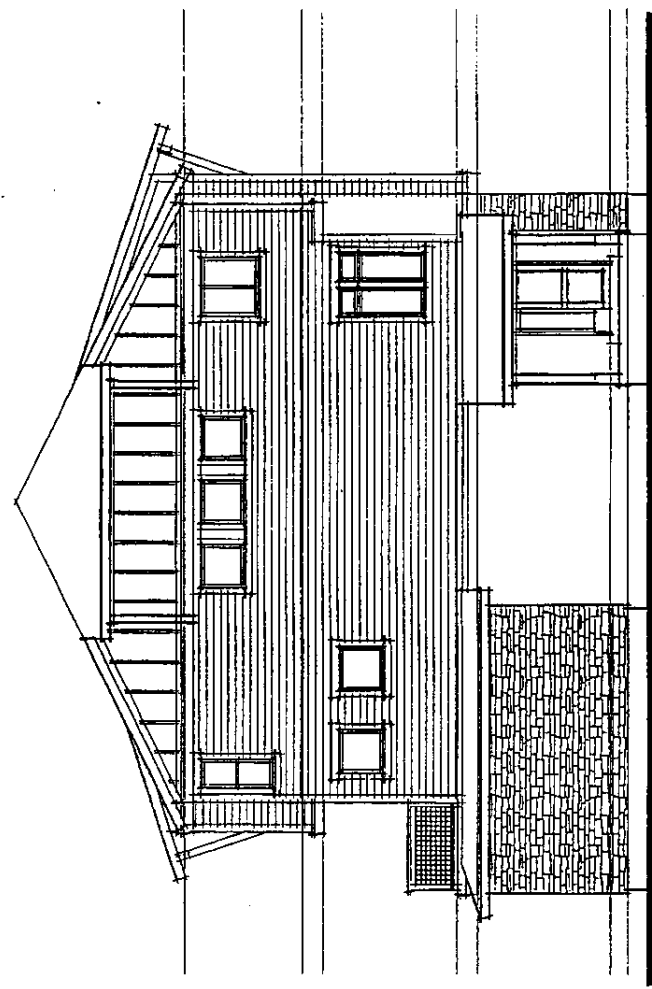
The use of these drawings shall be limited to the project for which they were prepared. Any other use without the written consent of the architect is prohibited. The architect shall not be responsible for errors or omissions in these drawings. The architect shall not be responsible for any conditions not shown on these drawings. The architect shall not be responsible for any conditions not shown on these drawings.



BINGHAM JUNCTION
CENTRAL 72 TOWNHOMES
BUILDING TYPE III



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UNIT C2

LEFT ELEVATION - 4 PLEX

STUCCO PERCENTAGE = 10.25%

EXHIBIT G

Central 72 Town Homes Project
Development Agreement

BK 9885 PG 8939

**CENTRAL 72 TOWNHOMES
AT BRIGHTON JUNCTION**

EXTERIOR MATERIALS COLOR PALETTE

| | |
|------------------------------|---|
| Roof Shingles - Main Porch | Black Oak, Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Main Porch | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Balcony | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Staircase | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Entry | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Living Room | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Dining Room | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Kitchen | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Bathroom | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Bedroom | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Hallway | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Closet | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Laundry | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Garage | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Staircase | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Entry | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Living Room | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Dining Room | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Kitchen | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Bathroom | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Bedroom | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Hallway | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Closet | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Laundry | Storm Grey, Natural Wood, Weathered Wood |
| Exterior Paint - Garage | Storm Grey, Natural Wood, Weathered Wood |



BLACK OAK



STORM GREY

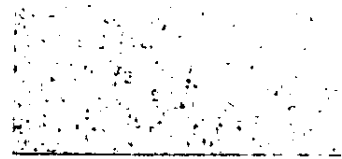


NATURAL WOOD

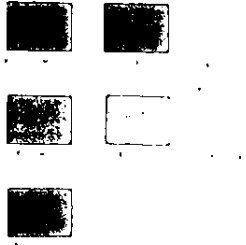


WEATHERED WOOD

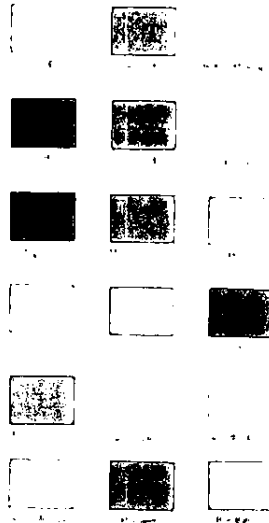
ROOF SHINGLES



ROOFING (Porches, Bays, etc.)

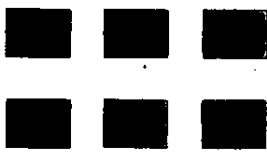


TRIM COLOR PALETTE

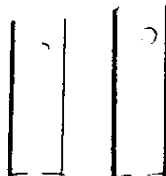


SIDING COLOR PALETTE

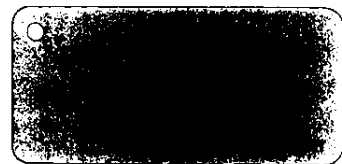
STUCCO COLOR PALETTE



ACCENT COLOR PALETTE



WINDOWS



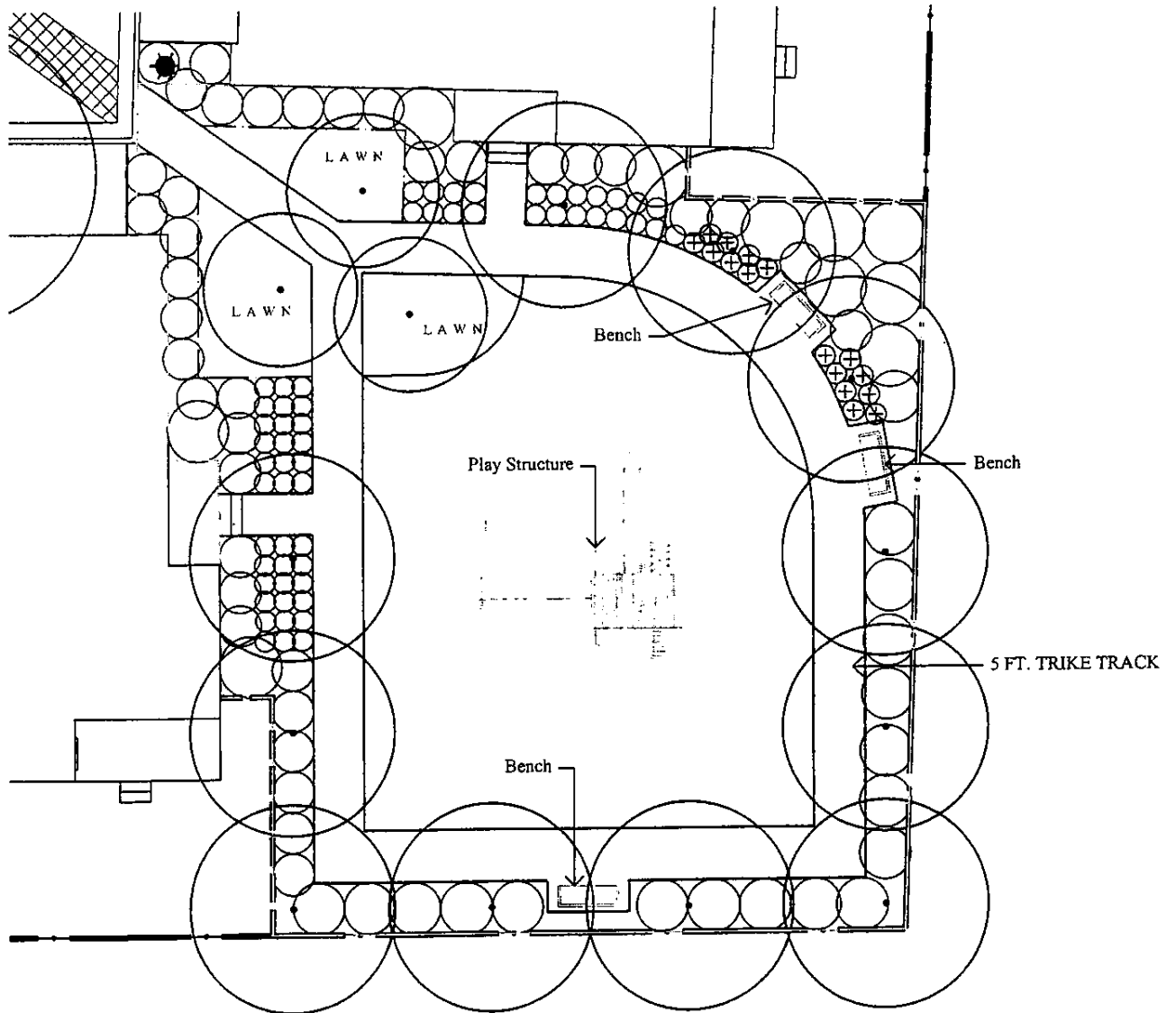
FASCIA & SOFFIT



STONE

EXHIBIT H

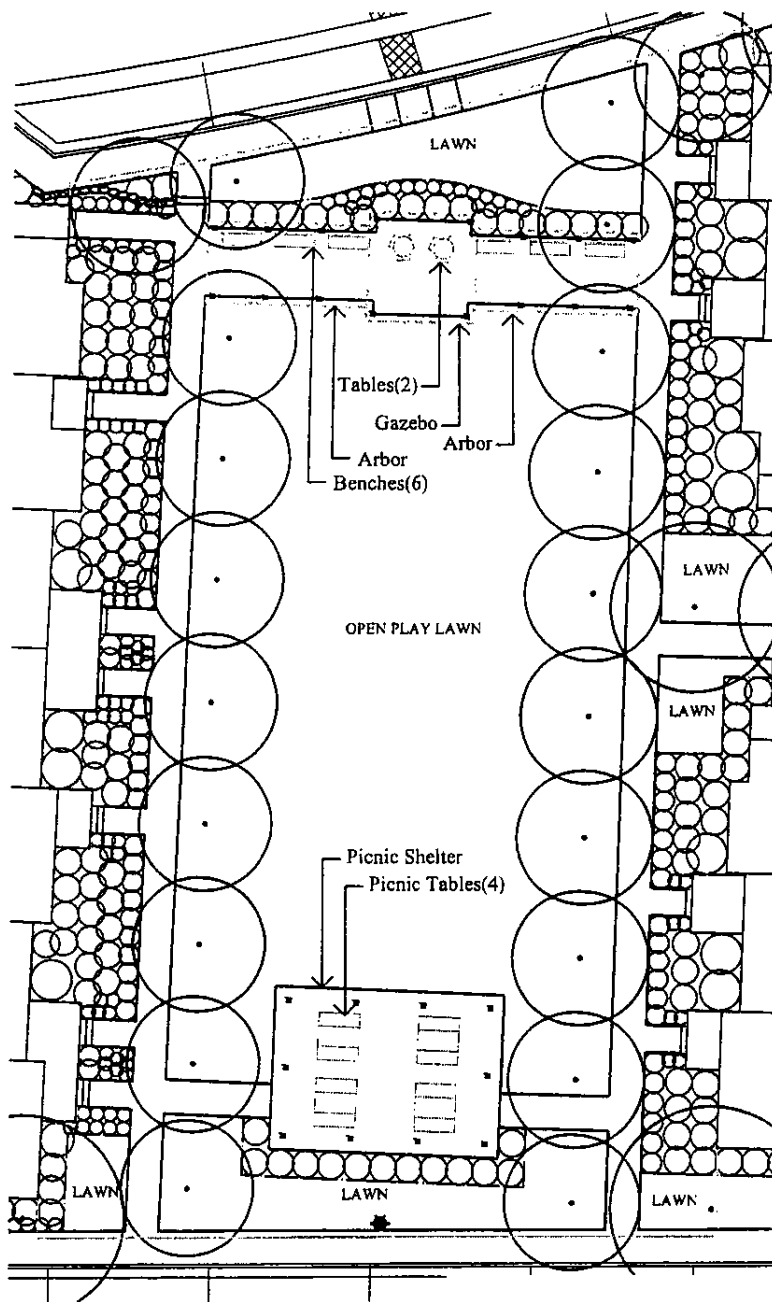
Central 72 Town Homes Project
Development Agreement



CENTRAL 72 TOWN HOMES
AT BINGHAM JUNCTION
MIDVALE, UTAH

HOLMES HOMES
126 WEST SEGO LILY DRIVE, SUITE 250
SANDY, UTAH

R. MICHAEL KELLY
CONSULTANTS
126 WEST SEGO LILY DRIVE, SUITE 250
SANDY, UTAH

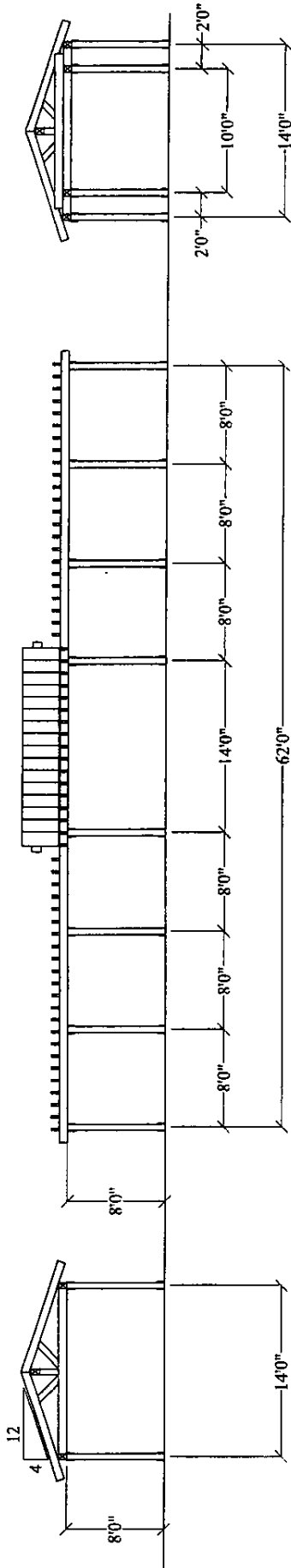


CENTRAL 72 TOWN HOMES
AT BINGHAM JUNCTION
MIDVALE, UTAH

HOLMES HOMES
126 WEST SEGO LILY DRIVE, SUITE 250
SANDY, UTAH

R. MICHAEL KELLY
CONSULTANTS

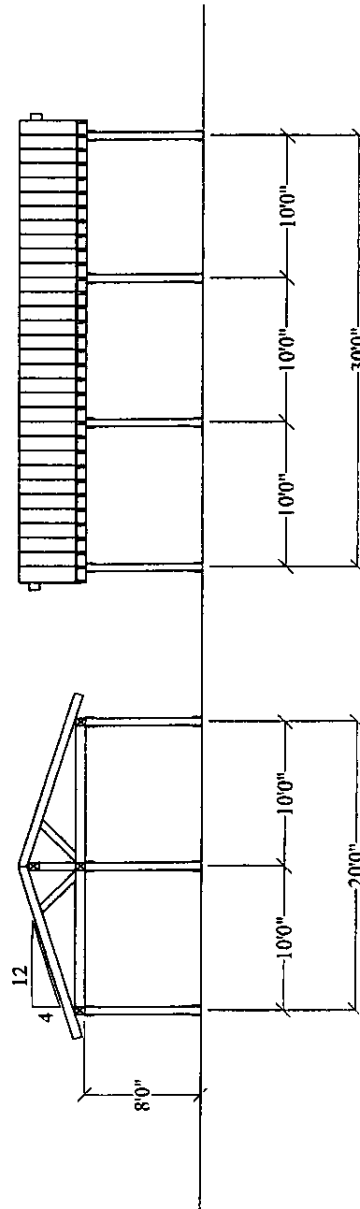
DATE: 10/15/03
SCALE: 1/8" = 1'-0"



EAST AND WEST ELEVATIONS
GAZEBO
 1/8" = 1 FOOT

NORTH AND SOUTH ELEVATIONS
GAZEBO WITH ARBOR
 1/8" = 1 FOOT

SECTION THROUGH ARBOR
GAZEBO WITH ARBOR
 1/8" = 1 FOOT



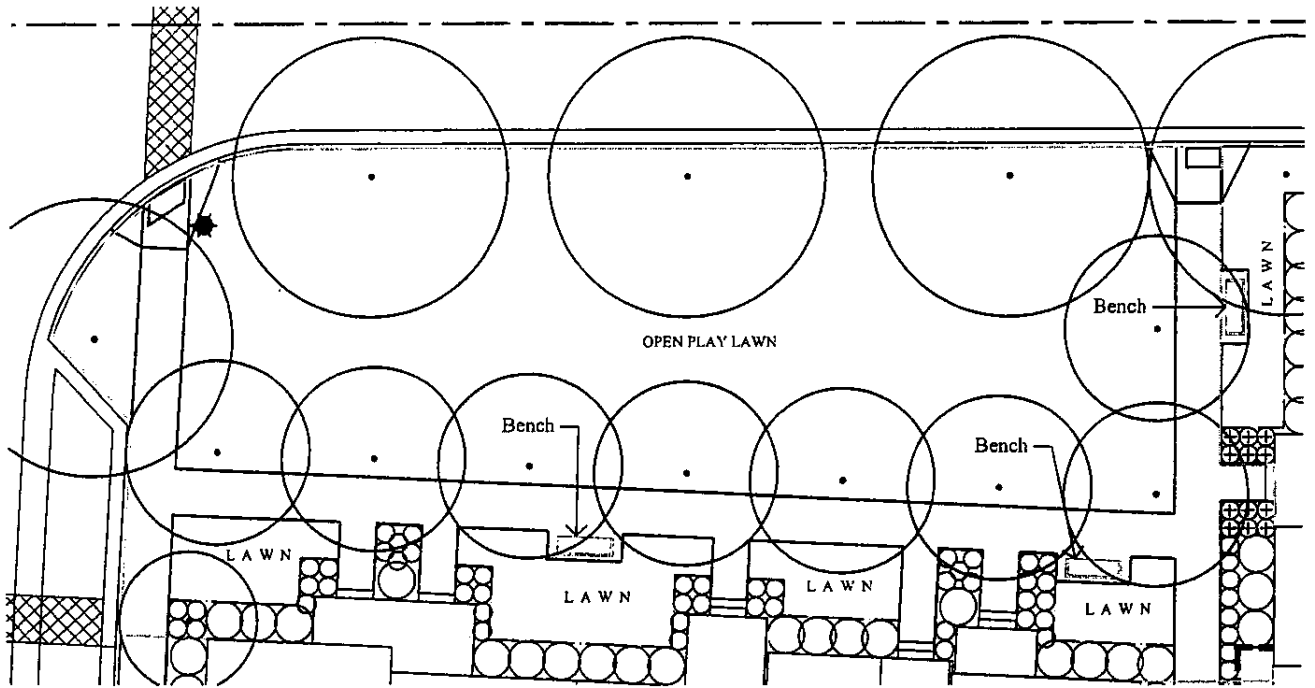
EAST AND WEST ELEVATIONS
PICNIC SHELTER
 1/8" = 1 FOOT

NORTH AND SOUTH ELEVATIONS
PICNIC SHELTER
 1/8" = 1 FOOT

CENTRAL 72 TOWN HOMES
 AT BINGHAM JUNCTION
 MIDVALE, UTAH

HOLMES HOMES
 126 WEST SOUTH LAY DRIVE, SUITE 250
 SANDY, UTAH

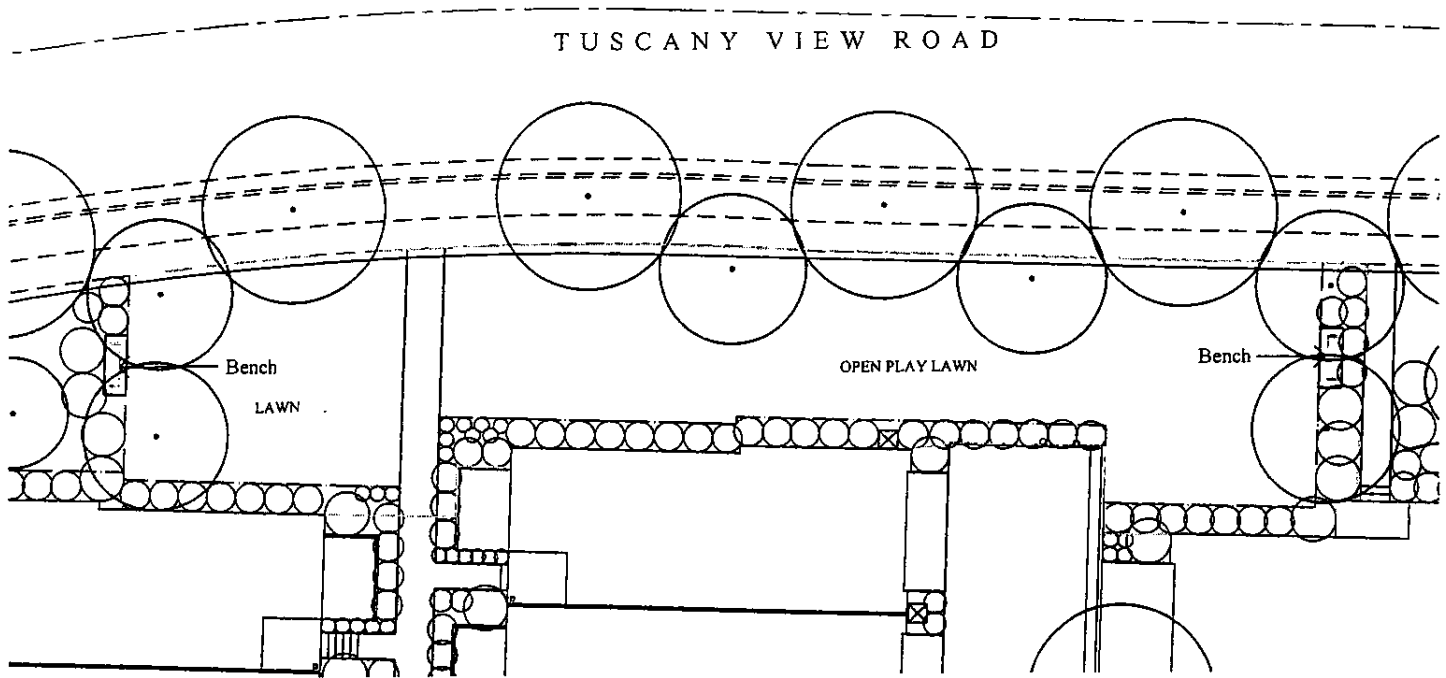
R. MICHAEL KELLY
 CONSULTANT
 1000 WEST 1200 SOUTH
 SALT LAKE CITY, UTAH 84119



CENTRAL 72 TOWN HOMES
AT BINGHAM JUNCTION
MIDVALE, UTAH

HOLMES HOMES
126 WEST SEGO LILY DRIVE, SUITE 250
SANDY, UTAH

R. MICHAEL KELLY
CONSULTANTS
1240 FIVE STAR DRIVE, SUITE 100
SANDY, UTAH 84070



CENTRAL 72 TOWN HOMES
AT BINGHAM JUNCTION
MIDVALE, UTAH

HOLMES HOMES
126 WEST SEGO LILY DRIVE, SUITE 250
SANDY, UTAH

R. MICHAEL KELLY
CONSULTANTS
225 WEST 1000 SOUTH, SUITE 200
MIDVALE, UTAH 84042

EXHIBIT I

Central 72 Town Homes Project
Development Agreement

EXHIBIT I

CENTRAL 72 AT BINGHAM JUNCTION

OPEN SPACE AMENITIES

CENTRAL PARK

The Central Park features these amenities:

- open play lawn and trees as shown on the Planting Plan, sheets 5 and 8;
- an irrigation system as shown on the Irrigation Plan, sheet 13;
- a broad concrete walkway with:
 - a painted wood gazebo with a roof of galv-alum as shown on sheet 4,
 - attached painted wood arbors as shown on sheet 4,
 - six (6) benches, attached to the concrete, and
 - two (2) portable tables, each with three (3) portable chairs;
- a painted wood picnic shelter with a roof of galv-alum and sits over a concrete pad as shown on sheet 4; and
- provided with the picnic shelter are four (4) portable picnic tables.

TOT LOT

The Tot Lot is located in the southeast corner of the project and features these amenities:

- a concrete walkway surrounding the play area;
- three (3) benches, located adjacent to the walkway and attached to the concrete;
- play equipment;
- trees and shrubs as shown on the Planting Plan, sheets 5 and 10; and
- an irrigation system as shown on the Irrigation Plan, sheet 15.

STREET SIDE PARK NUMBER ONE

This park is located just south and west of the Central Park and includes:

- an open play lawn and trees as shown on the Planting Plan, sheets 5 and 7;
- an irrigation system as shown on the Irrigation Plan, sheet 12; and
- three (3) benches, attached to a concrete pad.

STREET SIDE PARK NUMBER TWO

This park is located at Tuscany View Road and includes:

- an open play lawn and trees as shown on the Planting Plan, sheets 5 and 9;
- an irrigation system as shown on the Irrigation Plan, sheet 14; and
- two (2) benches, attached to a concrete pad.