

18

When Recorded, Return to:
Angie Olsen
Draper City
1020 East Pioneer Road
Draper, Utah 84020

14-144

11926160
10/08/2014 09:55 AM \$0.00
Book - 10266 Pg - 717-734
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
CITY OF DRAPER
BY: LHA, DEPUTY - MA 18 P.

The Cottages at Country Oaks Development Agreement

This Development Agreement ("Agreement") is made and entered into as of this 15th day of July, 2014 by and between Gough Homes, LLC a Utah limited liability company, (hereinafter collectively referred to as "Developer"), and Draper City, a municipal corporation of the State of Utah (hereinafter referred to as the "City").

RECITALS

A. Developer is developing approximately 5.8 acres of real property as more particularly described in Exhibit A, attached hereto, and by this reference made a part hereof (the "Property"), on which it proposes the development of single-family residences know as The Cottages at Country Oaks.

B. Developer desires to have the City approve the Project, notwithstanding the fact that the Project, as currently designed, may not completely satisfy all of the rules and regulations of the applicable land-use ordinances of the City. The Property is zoned RM 1, and the Project would result in (24) new homes being built, with (2) existing homes remaining. There will be three phases. Phase one will consist of (9) new homes, Phase two will consist of (9) new homes and Phase three will consist of (6) new homes and (2) existing homes. Phases one and three will be developed concurrently. Phase two will be developed at a later date. There is very high demand from Draper City residents for a new home project that consists of higher end homes on smaller lots in the proposed project area. This project will satisfy the demand of many baby boomers and/or retirees who are now empty nesters. These long-time Draper City residents no longer are in need of their large homes on their large lots, but they want to stay in Draper with their families.

C. The project will be an example for future projects of this type. The project will incorporate design standards outlined in the proposed Conditions, Covenants and Restrictions (CCRs) to ensure an attractive, high end home. The subdivision entrances and its boundary along 1300 East will have a 6' high stone fence with an integrated wrought iron element along the top. The park strip and entries will be landscaped with trees, shrubs and sod. The interior of the subdivision will feature ornate street lights. Developer will also grant certain real property to the City for the expansion of 1300 East as part of the subdivision.

D. The City, acting pursuant to its authority under Utah Code Annotated, Sections 10-1-202 and 10-9a-101, et seq., and its land use policies, ordinances and regulations has made certain determinations with respect to the Project and, in the exercise of its legislative discretion, has elected to approve this Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree as follows:

AGREEMENT

1. Definitions. When used in this Agreement, each term shall have the meaning set forth below or elsewhere in this Agreement unless such meaning is clearly precluded by the context in which the term is used.

1.1 "Development" means any construction, renovation or expansion of the building structure, roadway, utility, or other improvement.

1.2 "Developer" means Gough Homes, LLC a Utah limited company, and/or as applicable, any Successor Developer and their respective assigns and successors-in-interest.

1.3 "Existing Land Use Regulations" means those certain land use regulations in effect as of the date of this Agreement, including any modifications thereto contained herein. Existing Land Use Regulations does not include fees that are applicable to future development approvals, which will be those in effect at the time the application for any such development is submitted.

1.4 "Land Use Regulations" means laws, statutes, ordinances, codes, resolutions, rules, regulations, approvals, permits of every kind and character, programs and official policies and actions of City governing the permitted uses of land, density and intensity of use and the density, improvement and Construction standards and specifications applicable to development of the Project Land use regulations include, but are not limited to, development approvals granted by the City and the terms and conditions contained in such approvals, the Draper City Subdivision Ordinance, the City's development standards and public improvement specifications, hillside and/or land disturbance regulations, the sensitive lands overlay regulations and geologic hazards regulations.

1.5 "Property" means the parcel of approximately 5.8 acres of real property as more particularly described in Exhibit A attached hereto, and by this reference made a part hereof.

1.6 "ROW Parcel" the excess land adjacent to 1300 East, that is not required to be dedicated with the subdivision approval. ROW Parcel shall be granted and conveyed to the City to allow the City a right of way for the improvement of 1300 East.

1.8 "Successor Developer" means any person or entity developing one or more phases of the Project.

2. Conveyance of ROW Parcel to City. In consideration of the mutual covenants herein, Developer shall grant and convey to the City by special warranty deed in a form approved by the City, which approval shall not be unreasonably conditioned or withheld, the ROW Parcel. The ROW Parcel shall be determined during the subdivision approval process and shall be conveyed with the recordation of the plat. The ROW Parcel shall consist of any additional property not required to comply with the existing ordinances applicable for the widening of 1300 East, as required in the subdivision process. This grant of property shall be made at no additional cost to the City or expectation of reimbursement of impact fees, either in cash or by credit, inasmuch as the cost of such property and any improvements required thereon have already been included in the consideration for this agreement.

3. Project Buildout Plan.

3.1 Property Affected by this Agreement. The legal description of the property contained within the Project boundaries is attached and specifically described in Exhibit A. No additional property may be added to this description for purposes of this Agreement except by written amendment to this Agreement executed and approved by the parties hereto.

3.2 Approval of Project Buildout Plan. An overall Project Buildout Plan for the Project is depicted on Exhibit B, which is attached hereto and incorporated herein by this reference. The Developer shall construct Phase 1 and 3 initially, which shall consist of up to (15) new homes and (2) existing homes. Phase 2 will consist of up to (9) new home and shall be recorded no later than 5 years after final approval of the Project. The Project has been designed and approved for the use and density not to exceed a maximum of twenty-four (24) new single-family residential dwelling homes and two (2) existing single-family residential dwelling homes, subject to compliance with the terms and conditions of this Agreement. The City agrees and acknowledges that notice of the public meeting for the City's review of the Project Buildout Plan was contemporaneous with the review of this Agreement and was made pursuant to section 17-1-085 of the Draper City Subdivision Ordinance such that approval of this Agreement and the attached Project Buildout Plan by the City Council shall be deemed to be final approval of the concept plan pursuant to Draper City Subdivision Ordinance section 17-2-050(a).

3.3 Compliance with Project Buildout Plan. The location and specific layout of the Project as depicted on Exhibit B is conceptual in nature and shown for the purpose of illustrating a potential development configuration that is consistent with the transportation and infrastructure needs of the Project in compliance with the requirements of the City. Both the City and Developer intend to preserve some flexibility to modify the layout of the Project to respond to the more detailed design and engineering information, which will be provided as part of the subdivision plat approval process. Developer or a Successor Developer may submit applications for preliminary and final plat approval that reflect some limited modifications to the Project Buildout Plan, such as minor relocation of lots and streets in order to improve layout or safety standards, minimize the amount of grading, improve design efficiency for utilities, reduce cuts and fills, or achieve other similar goals and objectives as proposed by the Developer and approved by the City consistent with the other terms and conditions of this

Agreement. Accordingly, the City will approve any preliminary or final plat applications submitted by Developer, that are generally consistent with the approved Project Buildout Plan. The City agrees and acknowledges that open space is not required or desirable for the Project.

3.4 Home Variety. To avoid an undesirable aesthetic impression that may be created by building neighboring uniform models, developer shall provide for a variety of models with different building elevations and finishes for the homes in the Project by adhering to the following requirements: (A) at least three different models must exist on each street between any model with the same building elevations, and (B) each model with the same building elevations in the project must have different exterior finishes or color schemes such that no two models in the Project are exactly the same.

4. Vested Rights and Reserved Legislative Powers.

4.1 Vested Rights. Developer shall have the vested right to have preliminary and final subdivision plats approved and to develop and construct the Project for the use, density, and configuration for a maximum of not to exceed twenty-four (24) new single family residential dwelling homes and two (2) existing single family residential dwelling homes generally depicted in Exhibits B and C. As referenced in paragraph 3.3 above, Developer may submit applications for preliminary and final plat approval that reflect some limited modifications to the Project Buildout Plan represented in Exhibits B and C, and still achieve the lot yield of (24) new single-family residential dwelling homes and (2) existing single-family residential dwelling homes, subject to compliance with the Supplemental Development Standards, the Existing Land Use Regulations and the other terms and conditions of this Agreement. Notwithstanding any provision to the contrary, Developer shall be entitled to develop (24) new single-family residential dwelling homes and (2) existing dwelling homes pursuant to the Project Buildout Plan or future modifications thereof, and such right shall be deemed to supersede or control over any contrary interpretation of existing ordinances of the City. Nevertheless, Developer shall comply with all Supplemental Development Standards and Existing Land Use Regulations of the City to the extent such are consistent with Developer's vested rights to build (24) new single-family residential dwelling homes and (2) existing single family residential dwelling homes.

4.2 Reserved Legislative Powers. Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the Existing Land Use Regulations and Supplemental Development Standards which are applicable to the Project under the terms of this Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed legislative changes affecting the Land Use Regulations, Supplemental Development Standards and terms and conditions of this Agreement applicable to the Project shall be of general application to all development activity in the City; and, unless the City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect any proposed change and its applicability to the

Project under the compelling, countervailing public interest exception to the vested rights doctrine.

5. Preliminary and Final Subdivision Plat Approval. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve it from the obligation to comply with all of the applicable requirements for the approval of preliminary and final subdivision plats for all proposed development within the Project consistent with the Existing Land Use Regulations and Supplemental Development Standards which are applicable to the Project under the terms and conditions of this Agreement. Approval by the City of the Project Buildout Plan shall be deemed to have satisfied the requirements of the Existing Land Use Regulations for review of a concept plan by the City for purposes of the Project. Developer shall prepare and submit for review, comment and approval by the City, architectural and design standards for the Project at the time of preliminary subdivision plat approval.

6. Development standards. Except as otherwise set forth in the Project Buildout Plan attached hereto as Exhibit B and C or in this Agreement, Developer shall adhere to the applicable provisions of the Draper City Municipal Code, including without limitation the Supplementary Development Standards of the City set forth at Chapter 9-27. Notwithstanding the foregoing, the City agrees and acknowledges that the following requirements have been modified pursuant to this Agreement and are not to be applicable to the Project:

- a. Any requirement regarding the amount or percentage of masonry that must be included on the Homes as found in section 9-32-030(b)(3) of the Draper City Municipal Code and as depicted in any provision of such code or any exhibit thereto;
- b. Any requirement regarding the minimum amount of open space required under section 9-32-030(e) of the Draper City Municipal Code.
- c. Any setback or lot size requirement that conflicts with the Project Buildout Plan attached hereto as Exhibit B and C.

7. Successors and Assigns.

7.1 Binding Effect. This Agreement shall be binding upon the successors and assigns of Developer in the ownership or development of any portion of the Project.

7.2 Assignment. Neither this Agreement nor any of its provisions, terms or conditions may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of the City, which consent shall not be unreasonably withheld. Any such request for assignment may be made by letter addressed to the City, and the prior written consent of the City may also be evidenced by letter from the City to Developer or its successors or assigns.

8. Default. In the event either party fails to perform its obligations hereunder or to comply with the terms hereof, within thirty (30) days after giving written notice of default, the non-defaulting party may, at its election, have the following remedies:

a. All rights and remedies available at law and in equity, including injunctive relief specific to performance and/or damages;

b. The right to withhold all further approvals, licenses, permits, or other rights associated with any activity or development described in this Agreement until such default has been cured; and

c. The rights and remedies set forth herein shall be cumulative.

9. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, be by certified mail, return receipt requested, postage prepaid, to such party at its address shown below.

To Developer:

Gough Homes, LLC
8186 S. 1300 West
West Jordan, UT 84088

To the City:

Draper City

Attention: Draper City Manager
1020 E. Pioneer Road
Draper, UT 84020

Any party may change its address or notice by giving written notice to the other party in accordance with the provisions of this section.

10. General Terms and Conditions.

10.1 Term of Agreement. The term of this Agreement shall be for a period of six (6) years following the date of its adoption.

10.2 Agreement to Run with the Land. This Agreement shall be recorded in the office of the Salt Lake County Recorder against the Property and is intended to and shall be deemed to run with the land and shall be binding on all successors in the ownership of any portion of the Property.

10.3 Entire Agreement. This Agreement, together with the exhibits hereto, integrates all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the parties hereto with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the respective parties hereto.

10.4 Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

10.5 Non-liability of City Officials or Employees. No officer, representative, agent, or employee of the City shall be personally liable to Developer, in the event of any default or breach by the City or for any amount which may become due, or its successors or assignees, for any obligation arising out of the terms of this Agreement.

10.6 No Third-Party Rights. The obligations of the parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to the City and Developer. The City and Developer alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.

10.7 Severability. Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions, and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

10.8 Waiver. No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

10.9 Governing Law. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

10.10 Exhibits. Any exhibit to this Agreement is incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or of such exhibit. An unattached exhibit is available from the records of the parties.

10.11 Homeowner's Association. A Homeowner's Association shall be created to govern its internal affairs including, but not limited to, providing maintenance of any required common areas or specified park strip areas. Developer shall prepare and submit for review, comment and approval by the City, which approval shall not be unreasonably withheld or delayed, proposed conditions, covenants and restrictions ("CC&Rs"), as may be amended from time to time, for the Homeowner's Association. The CC&Rs shall incorporate by reference the Supplementary Development Standards of the City set forth at Chapter 9-27 of the Draper City Municipal Code. The CC&Rs shall provide that all roads within the Project are private roads to be maintained by the Homeowner's Association and that the City shall have no responsibility for such roads.

10.12 Attorneys Fees. In the event a dispute arises between the parties hereto, with respect to this Agreement, the prevailing party to any action, brought to enforce the terms of this Agreement shall be entitled to recover against the other party the costs, expenses and attorney's fees incurred in such action.

10.13 Subdivision Design Guidelines

- 1) Exhibit "B" pertains to the subdivision identified by the concept plan attached titled "The Cottages at Country Oaks". This concept plan is labeled with an approximate location of 12543 South 1300 East, Draper, UT. The following describes the subdivision details:
 - a. Maximum total new lots: 24
 - b. Phases: The subdivision will be completed in 3 phases as shown on the concept plan.
 - c. Subdivision layout:
 - i. Street layout: The subdivision will be designed in a "horseshoe" pattern that will allow 2 ingress/egress points adjacent to 1300 East, as well as a private lane along the south boundary of the subdivision.
 - ii. Fire access: The right of way will comply with Fire Department requirements including paved surface width and turn radius minimum.
 - d. Right of way: The right of way width for Phase 1 & 2 will be 32 feet. The right of way for Phase 3 will be 26' and will be reduced to 16' in front of the existing home referenced as lot 22 on the concept plan (Ex. B).

e. Subdivision landscape requirements:

- i. Street trees: A minimum of 2 street trees will be required for each single family residential lot located in the subdivision. These street trees will comply with Draper City's street tree ordinance for type and location.
- ii. Perimeter buffer: The perimeter will be planted with shade trees that provide privacy buffering for the neighbors along the north, east, and south perimeters.

f. Subdivision type:

- i. This will be a private subdivision with private streets and common areas maintained by the Home Owners Association (HOA).
- ii. Phases 1 and 2 will be a Planned Unit Development (PUD) with lot pads ranging approximately in size from 1,950 SF to 2,500 SF, as illustrated on the concept plan (Exhibit B). The remaining area will consist of limited common area and common area that will be defined in the HOA Articles of Incorporation and bylaws.
- iii. Phase 3 will consist of single family lots ranging in approximate size as illustrated on the concept plan (Exhibit B). The remaining area will be common area that will be defined in the HOA Articles of Incorporation and bylaws.
- iv. The HOA will be governed by bylaws recorded against the property.
- v. The HOA will be responsible for the upkeep and repairs of the private streets and will be required to keep the streets in a condition that will be accessible to the Fire Department at all times.

g. Buffering:

- i. This part of the development agreement addresses the manner in which the 2 parcels known as 12607 South 1300 East and 1375 Country Oak Lane are to be developed as shown on the concept plan (Exhibit B). The Developer is sensitive to the existing homes in the area and the developed ½ acre lots directly south of this proposed subdivision. As such, Developer agrees to create a buffer zone. This will allow the area to transition from a low, to medium, then high density single family use. Lots to be created on Country Oak Lane, east of the existing house at 12607 S. 1300 E. will be single family and not less than a net (the lot size minus the right of way dedication) of 11,000 square feet. The Lots to the north of the existing house at 1375 Country Oak Lane, accessed via a cul-de-sac, will be single family and the lot size shall range from approximately 6,000 – 9,500 square feet. By so doing a buffer zone is established and eliminates any concerns of abrupt land use change.

To accommodate this action the Developer needs flexibility to construct said buffer zone. The following list addresses those considerations,

a) Country Oak Lane (Private right of way) and the cul-de-sac (Private right of way), will be 26' wide with the exception of the far east end of Country Oak Lane, which will remain a 16' right of way. That portion of the lane services the existing houses at 1375 East and 1405 East Country Oak Lane, it is approximately 96' total length and is currently 16' wide paved. Due to the existing landscape and grade of the driveway accessing the home at 1375 East Country Oak Lane, any widening would place a burden rather than a benefit to an area already existing and is fully functional.

b) Both existing homes at 1375 E. County Oak Lane and 12607 S. 1300 East shall remain in place (Not to be demolished or altered).

c) Setbacks are depicted on the concept plan (Exhibit B)

g) Setback standards for existing homes will not be addressed since the houses already exist and are to remain in place in the new subdivision development.

2) Developer desires to work with the city and neighbors to create a superior development that will be aesthetically pleasing, desirable, and marketable to residents wishing to live in a nice area, without the hassles of a large lot. As such,

a) Trees in the buffer zone will be left in place, to the extent that they do not interfere with the buildable area of the lots or the required subdivision improvements.

b) Developer will install a stone and wrought iron fence along 1300 East and a vinyl fence or other approved fencing around the perimeter of the subdivision as depicted on the concept plan (Exhibit B).

[signatures on following page]

IN WITNESS WHEREOF, this agreement is executed as of the date first written above.

Developer:

Gough Homes, LLC

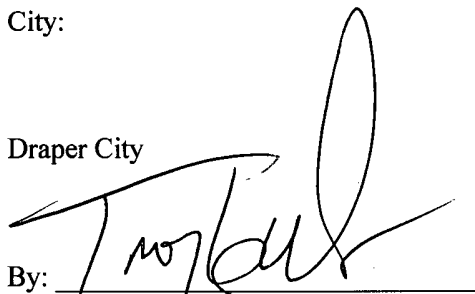
By: 

Print Name: Blaine Gough

Title: Senior Developer

City:

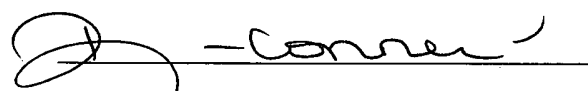
Draper City

By: 

Troy K. Walker, Mayor



Attest:



Rachelle Conner, City Recorder

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the day and year first written above.

STATE OF UTAH)

: ss

COUNTY OF SALT LAKE)

On this 30th day of July, 2014, personally appeared before me Blaine G. Gough who being duly sworn did confirm that he/she is a authorized signer of Gough Homes, LLC, a Utah limited liability company, and that the foregoing instrument was signed on behalf of said company by authority of its operating agreement, and acknowledged to me that said company is bound by the same.

*Com. Expires
4/1/15*

Linda Mandet
Notary

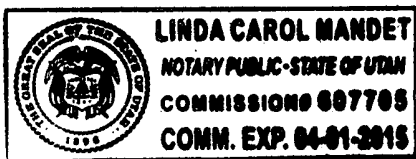


STATE OF UTAH)

: ss

COUNTY OF SALT LAKE)

On this 30th day of July, 2014, personally appeared before me Troy Walker, who being duly sworn did confirm that he is the duly elected Mayor of Draper City and that the foregoing instrument was signed on behalf of Draper City.



Linda Mandet
Notary

Exhibit A Cottages at Country Oaks Legal Description

BEGINNING AT A POINT ON THE EAST RIGHT OF WAY LINE OF 1300 EAST STREET SAID POINT BEING NORTH 89° 47'39" EAST 33.00 FEET FROM THE NORTHWEST CORNER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 00° 17'17" EAST 404.95 FEET ALONG SAID EAST RIGHT OF WAY; THENCE SOUTH 89° 42'43" EAST 245.37 FEET TO A POINT OF THE SOUTHERLY LINE OF UTAH TRANSIT AUTHORITY; THENCE SOUTHERLY ALONG SAID SOUTHERLY RIGHT OF WAY ALONG THE ARC OF A 2450 FOOT RADIUS CURVE TO THE RIGHT 372.06 FEET(CHORD BEARS SOUTH 48° 23'33" EAST 371.71 FEET); THENCE SOUTH 00° 24"19" EAST 281.84 FEET; THENCE NORTH 89° 52'12" WEST 49.00 FEET; THENCE SOUTH 00° 07'26" EAST 16.00 FEET; THENCE NORTH 89° 52'35" WEST 478.60 FEET TO A POINT ON SAID EAST RIGHT OF WAY; THENCE NORTH 00° 07'25" EAST 139.80 FEET ALONG SAID EAST RIGHT OF WAY TO THE POINT OF BEGINNING.

CONTAINS 5.798 + /- ACRES

Exhibit B

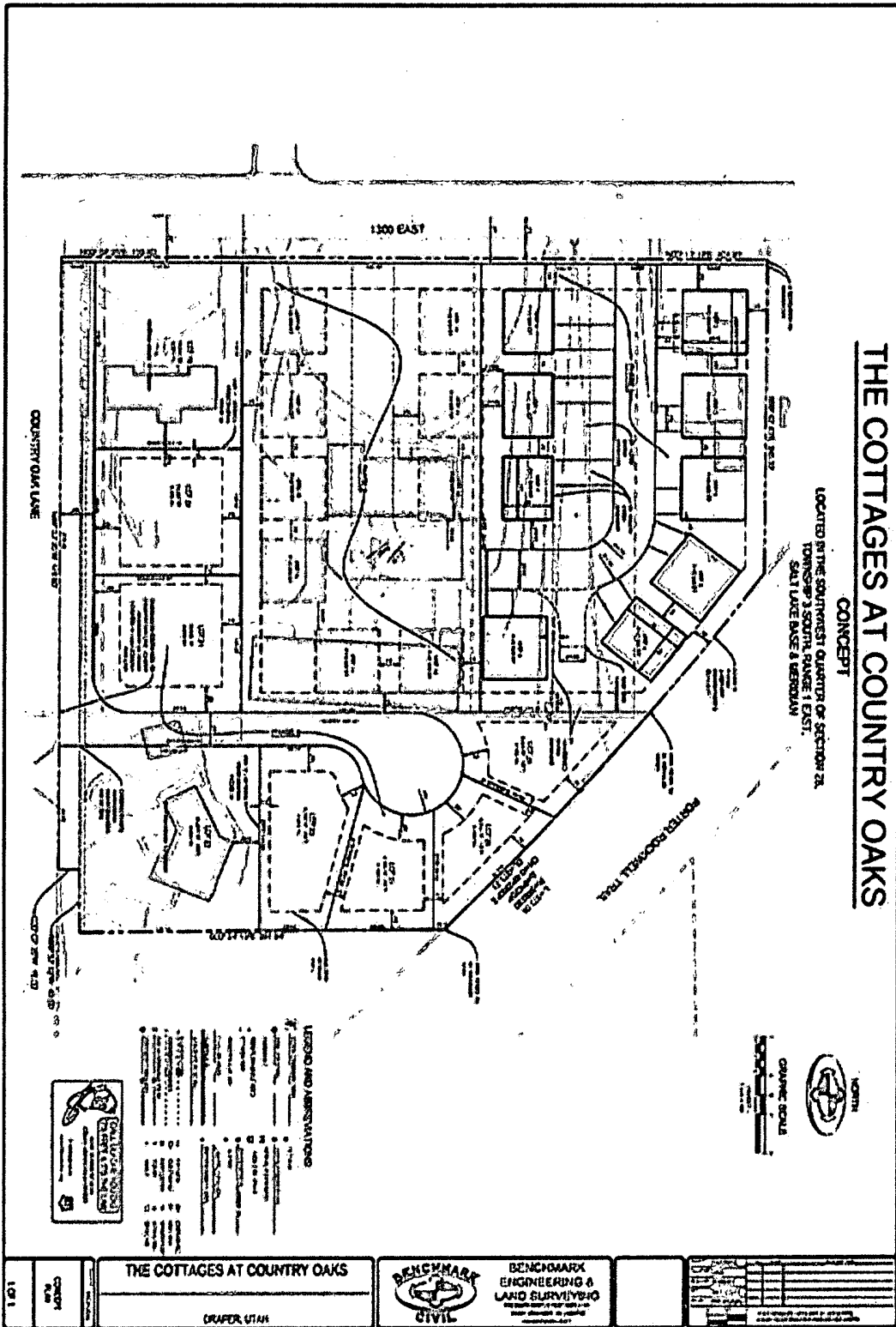
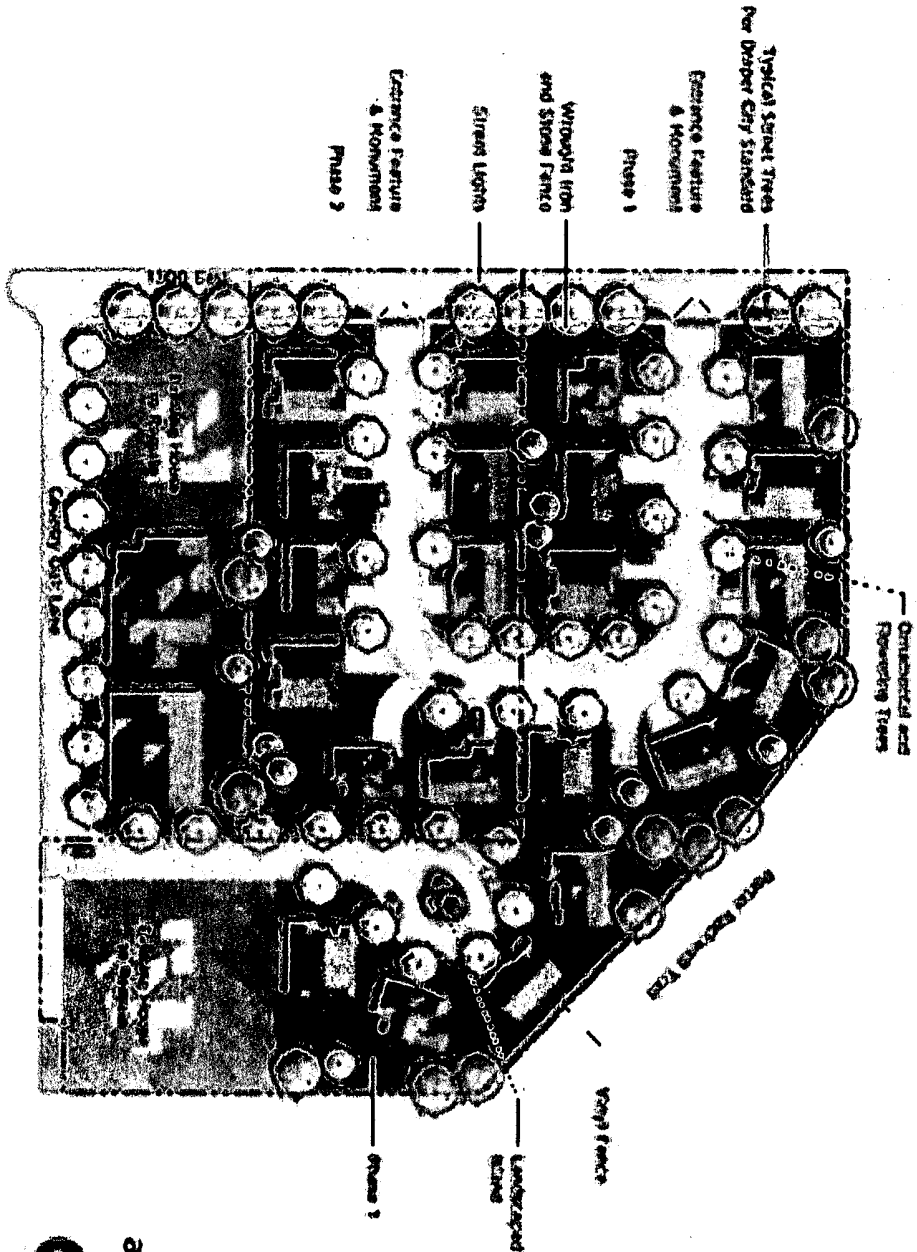


Exhibit B

Exhibit C.1



The Cottages
at Country Oaks
SECTION 100 PLAN

GENSLER

ARCHITECTS

100 N. LAUREL ST. SUITE 200
 CHICAGO, IL 60610
 TEL: 312.269.7000
 WWW.GENSLER.COM

Exhibit C.2

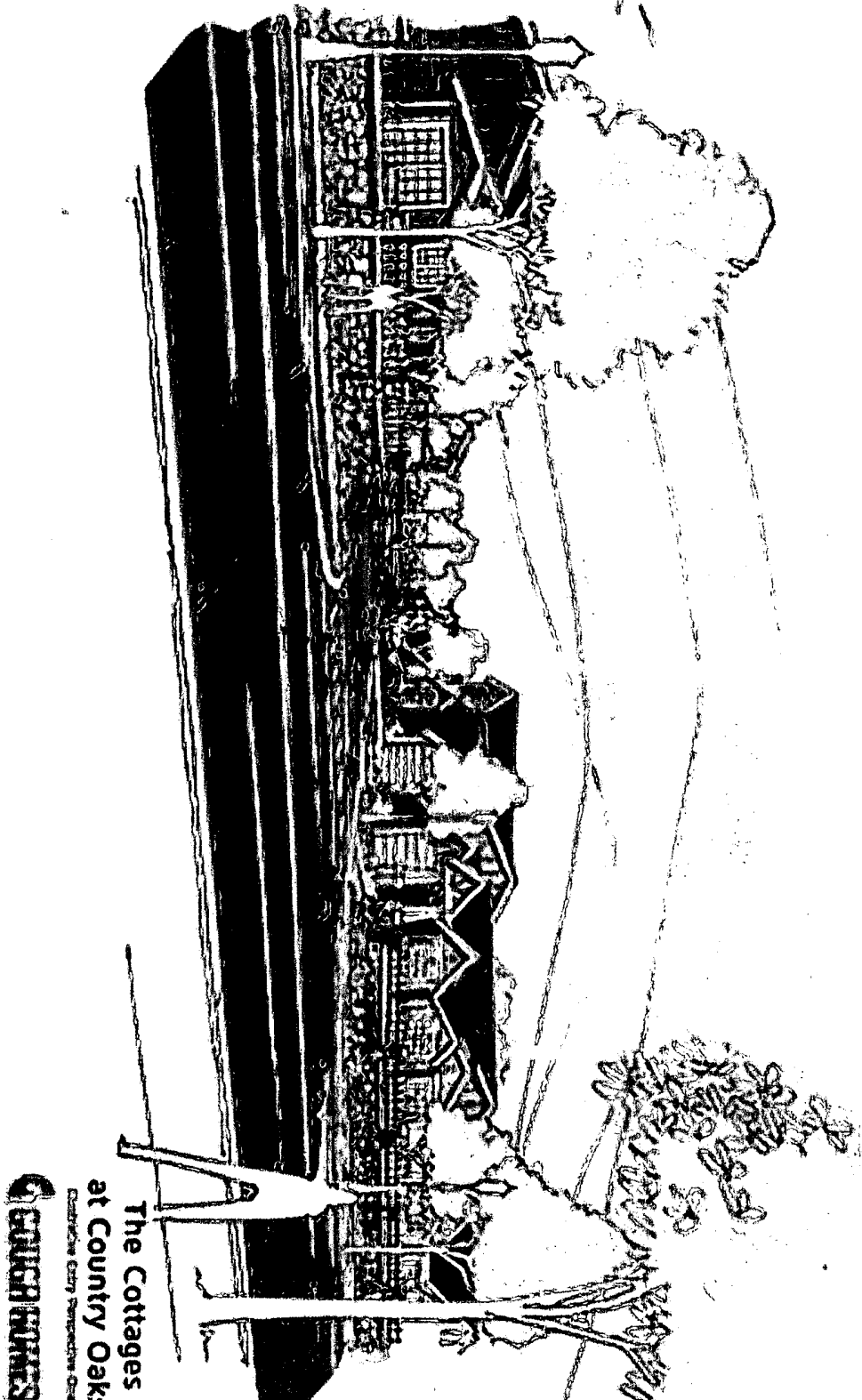
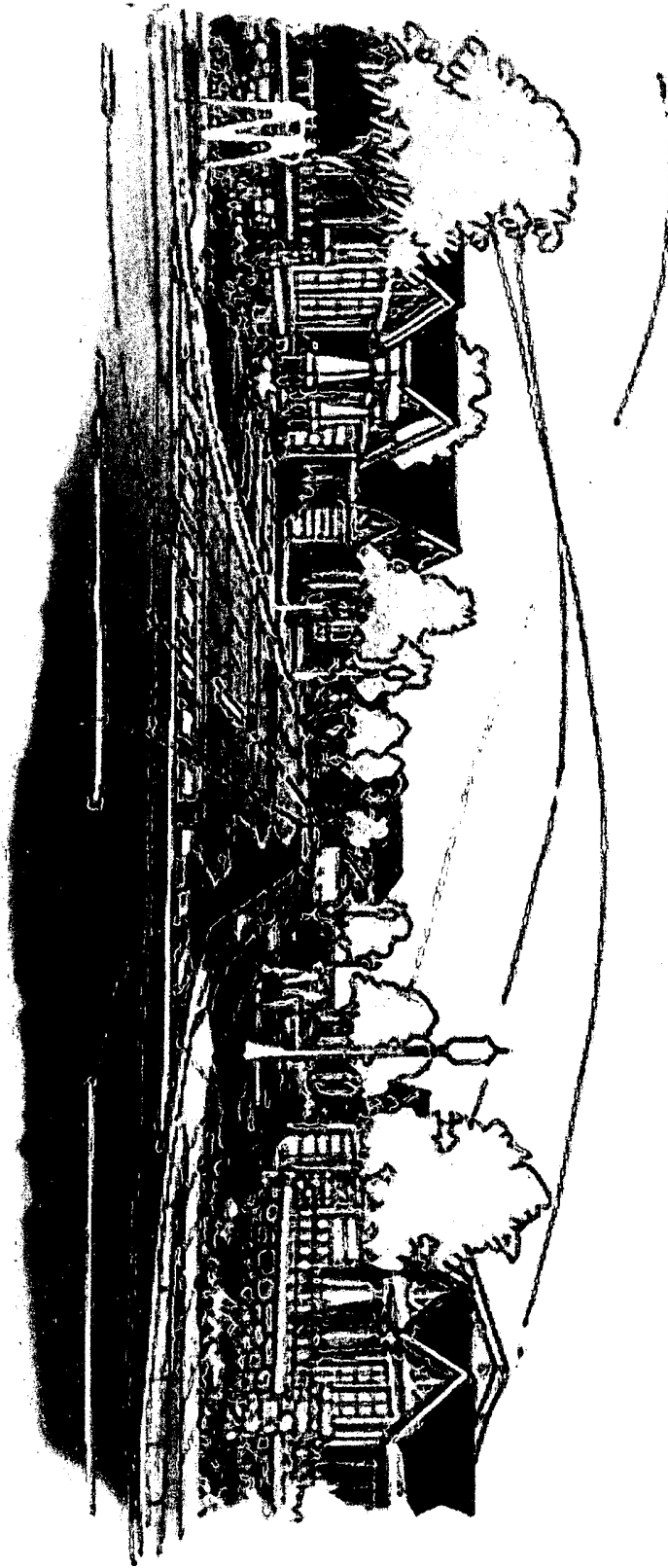
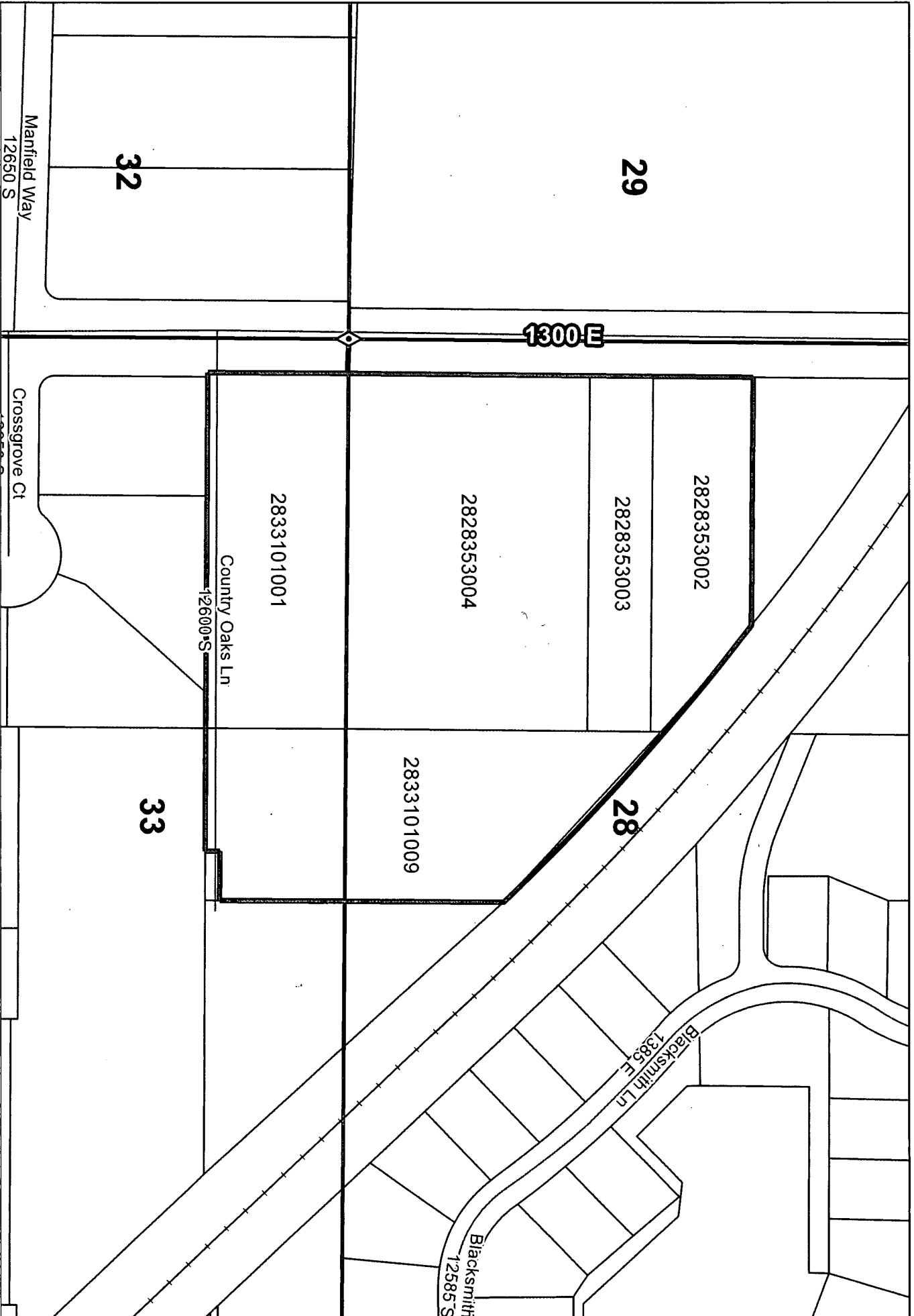


Exhibit C.3



The Cottages
at Country Oaks
Resort & Country Club
Country Oaks



The Cottages at Country Oaks

