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**When Recorded, Return to:
Washington City
111 North 100 East
Washington, Utah 84780**

Affects Tax Parcel Nos.:
W-5-2-35-332
W-5-2-35-342
W-5-2-35-343

DOC # 20120020907

Agreement Page 1 of 12
Russell Shirts Washington County Recorder
06/25/2012 04:24:39 PM Fee \$ 32.00
By BLACK MOUNTAIN ENTERPRISES



**DEVELOPMENT AGREEMENT
for
BROOKHAVEN FIELDS**

(Washington City, Utah)

This Development Agreement (“**Agreement**”) is entered into effective June 13, 2012, by and among, Bedford Development, LLC, a Utah limited liability company (“**Developer**”), and Washington City, a Utah municipal corporation (“**City**”).

RECITALS

A. Developer has been engaged to develop certain real property located in Washington City, Washington County, Utah, owned by Brookhaven Fields, LLC, a Utah limited liability company (“**Owner**”), and legally described on Exhibit A to this Agreement (“**Property**”).

B. Developer proposes to develop the Property in multiple phases as a residential subdivision known as Brookhaven Fields (the “**Project**”). A copy of the concept plan for the Project (“**Concept Plan**”) is attached to this Agreement as Exhibit B.

C. Developer wishes to participate in the bonus density program created under Washington City Code § 9-8A-7 (“**Bonus Density Ordinance**”) and is willing to make certain improvements to the Project to qualify for bonus density credits under the Bonus Density Ordinance.

D. The City has authorized the negotiation and adoption of development agreements under appropriate circumstances in which, among other possible factors, the proposed development (1) contains outstanding features that advance and maintain the policies, goals, and objectives of the City and the City’s applicable Concept Plan, Capital Facilities Plan, Density Bonus Program, existing applicable landscape plan, and applicable ordinances in effect at the time of the execution of this Agreement collectively, “**General Plan**” and (2) contributes to

capital improvements that benefit the City. The City has determined that the Project will contain such outstanding features and will contribute to capital improvements beneficial to the City.

E. Acting pursuant to its authority under Utah Code §§ 10-9a-101 through -803 (“**Land Use Act**”), and in the exercise of its legislative discretion, and in furtherance of the City’s land-use policies, goals, objectives, ordinances, resolutions, regulations and its General Plan, the City Council has approved this Agreement by vote taken and resolution adopted at a meeting of the City Council held June 13, 2012.

AGREEMENT

The parties agree as follows:

1. **Findings.** The City finds that the development of the Project pursuant to this Agreement and applicable City ordinances will result in meaningful planning and economic benefits to and will further the health, safety, and welfare of the City and its residents by, among other things, (a) requiring development of the Project in a manner consistent with the applicable rules, regulations, and policies of the City; and (b) providing for the installation of open space landscaping and other such improvements to enhance the aesthetic quality and beauty of the Project and the surrounding area. The City has entered into and approved this Agreement pursuant to its authority under the Land Use Act and City ordinances and has made certain determinations with respect to the Property and, in the exercise of its legislative discretion, has elected to approve this Agreement as an agreement, compromise, and settlement as to the matters covered by this Agreement.

2. **Preliminary Plat; Annexation; Phases, and Development Pursuant to this Agreement.**

(a) **Preliminary Plat.** Any preliminary plat submitted in connection with the Project, including any supporting documents submitted with the preliminary plat (as the same have been or may in the future be modified or amended) (collectively, the “**Plat**”), form an integral part of this Agreement, and the City’s approval of the Plat and the Project is conditioned on the Project being developed in accordance with this Agreement.

(b) **Annexation.** In the event adjoining land is annexed to the Project, Developer may propose (and the City will reasonably agree) to expand the Project to include additional phases under the same standards and conditions contained in this Agreement. For such purposes, any annexed property shall be deemed vested in accordance with the provisions and standards of the General Plan and this Agreement.

(c) **Phases.** Developer shall be entitled to build the Project in multiple phases at such time or times and in such manner (consistent with this Agreement) as Developer shall determine it is discretion. Offsite improvements and open space(s) applicable to each phase may be made at the time such phase is approved by the City and during the time improvements are underway.

(d) **Development.** Upon execution of this Agreement by the City, Developer is authorized to proceed with the Project in accordance with this Agreement and applicable City ordinances.

3. **Construction Standards on Project.** All improvements in the Project contemplated by this Agreement will be installed in accordance and consistent with this Agreement, the General Plan, applicable City ordinances, and other applicable laws.

4. **Adjoining Subdivision.** The Project is adjoined on its east boundary by the Meadow View Estates – Phase I subdivision (“**Meadow View**”). The roads running through Meadow View are not public roads but are privately owned by Meadow View and may not conform to the requirements of a public road under City ordinances or other applicable law. One such private road within Meadow View adjoins a public road to be constructed within the Project. In the event Meadow View determines to barricade or gate its private road such that there shall be no access from the public road to be constructed on the Project, the City acknowledges and agrees that the Developer shall have no obligation whatsoever to pay or contribute to payment of the cost of any barricade or gate and shall not be obligated to post signs or otherwise notify any owner of a lot within the Project that it is precluded from using such private road owned by Meadow View. Developer consents to construction of any such barricade or gate in such a manner as to constitute a “crash gate” capable of easy penetration by any emergency vehicle desiring to gain access from the Project to Meadow View or visa versa. In the event Meadow View erects a barricade or gate as above described, the City will require as a condition of such construction that the portion of the barricade or gate facing the Project will be aesthetically acceptable to Developer (or its successors) in their reasonable discretion. Furthermore, Developer shall not be required to construct fencing on the Project on any portion of its boundary line with Meadow View, although it is permitted to do so in its discretion.

5. **Access Management Improvements.**

(a) **Internal Improvements.** Developer will construct (or cause to be constructed) the following improvements (“**Internal Improvements**”) in a good and workmanlike manner, in accordance with applicable law, and as specifically outlined in Section D of the Bonus Density Ordinance:

- (i) internal streets that interconnect within the Project;
- (ii) at least two interconnecting external streets;
- (iii) lots with at least four variations in lot sizes, each variation making up at least 10% of the lots in the Project;
- (iv) 7.95% landscaped open space within the Project;
- (v) 4.24% open space at intersection corners at the periphery of the Project;
- (vi) public trails through and along the Project;

(vii) tree-lined streets within the Project to be completed in accordance with the General Plan prior to issuance of the certificate of occupancy for each home constructed on a lot within the Project. The watering and maintenance of each park strip in front of each constructed home shall be the responsibility of the home owner. Access to water for irrigation of the park strip shall be made available by the City from water sources discussed in paragraph 5(a)(viii) below.

(viii) Irrigation and/or secondary water lines to underlie the Project which will provide irrigation/secondary water to lot owners. These water lines will be connected to irrigation and/or secondary water systems as they become available to the Project in the future. The connection cost will be paid by each individual lot or homeowner at the time the irrigation/secondary system becomes available. It is anticipated that filtered, pressurized irrigation water (made available by or through the City) may become available to the Project in the future and secondary water (provided by an irrigation system) is anticipated to become available at a future time.

(b) **External Improvements.** The following improvements (“**External Improvements**”) either have been or will be constructed in connection with the Project:

(i) **External Improvements Previously Installed.** At least two interconnecting external streets in addition to the basic minimum number required for the Project. The City acknowledges that the following improvements exist: (a) a master planned 54 inch storm drain along 3090 South Street, as shown on the City’s Master Plan; (b) a master planned 54 inch storm drain along 240 West Street, as shown on the City’s Master Plan; (c) all underground sewer lines, water lines, and other systems required by City ordinances in connection with the Project, underlying 240 West and all other Adjoining Public Roads (defined below). The City acknowledges and agrees that all improvements specified above in this paragraph have been installed and completed in accordance with City ordinances and construction standards approved by the City, that all costs incurred in connection with such improvements have been paid in full, and that neither Developer nor Owner has any obligation now or in the future to pay or reimburse for the costs for any such improvements, except for impact fees which the City may assess as described below. The City further acknowledges and agrees that neither Developer nor Owner is obligated to provide any bonding for the improvements specified above in this paragraph.

(ii) **External Improvements to Be Installed.** The City acknowledges and agrees that certain above-ground improvements have been made to public roads which adjoin the Project; namely, 240 West Street, 3650 South Street, 20 East Street, and 3090 South Street (collectively, the “**Adjoining Public Roads**”). The City acknowledges and agrees that neither Developer nor Owner has any obligation now or in the future to pay or reimburse for the costs of improvements previously made to any of the Adjoining Public Roads. However, Developer, at its cost, shall be obligated to improve the Adjoining Public Roads by way of making above-the-ground improvements thereto, including grading and paving such roads, installing curb, gutter and sidewalks and other such improvements as engineered for the project and approved by the City.

(iii) **Offsite Water Line Improvement in 3090 South.** The City acknowledges and agrees that certain below ground water line improvements have been partially installed in 3090 South. The City acknowledges and agrees that a 12 inch water line is located in 3090 South and is currently stubbed approximately 840 feet west of the 20 East intersection. The City is requiring Developer to tie onto the existing water line stub and install an additional approximate 850 Lineal Feet of 12 inch water line to complete the service loop to the 240 West intersection. Developer, at its cost, acknowledges and agrees to only install approximately 850 Lineal Feet of 12 inch water line, backfill the trench to subgrade, and provide compaction tests. The City acknowledges and agrees that the City shall be obligated to pay any grading, paving, curb, gutter, and traffic control costs associated with finishing the trench surface and roadway for the additional 850 Lineal Feet water line that is installed by Developer.

(iv) **Irrigation/Secondary Water.** The City will make available irrigation and/or secondary water to the Project for open space and irrigation of the individual lots comprising the Project. Upon the formation of any irrigation system, the City will provide full access to Developer and Owner and their successors and to the owners of lots within the Project. The City shall provide such irrigation and/or secondary water to the Project at rates no greater than those rates charged other owners of lots in adjoining subdivisions or subdivisions in the general vicinity. It is anticipated the Project will incorporate a Homeowners Association to maintain the common areas of the Project. The Homeowners Association will be responsible for payment of the water fees for the common areas. Each lot owner will be responsible to pay the water fees for such owner's lot.

(c) **Costs Associated with the Internal Improvements.** Developer shall bear the cost of Internal Improvements specified in Section 5(a) above.

(d) **Costs Associated with the External Improvements.**

(i) **Above-The-Ground Improvements to the Adjoining Public Roads.** Developer shall be obligated to pay the above-the-ground costs to improve the Adjoining Public Roads as provided in paragraph 5(b)(ii) above.

(ii) **Shared Costs.** Neither Developer nor Owner shall have any obligation to pay for (or reimburse for the payment of) any improvements specified in paragraph 5(b)(i) above. Provided, to the extent the City has paid (or reimbursed for the payment of) such costs, Developer shall pay to the City impact fees as provided in paragraph 5(d)(iii) below.

(iii) **Manner of Payment.** Developer intends to develop the Project in phases as set forth in the Plat. Upon the recordation of each phase of the Plat, Developer shall pay to the City impact fees attributable to the phase recorded. Impact fees shall be based only on costs paid or reimbursed by the City attributable to the Project as specified in Paragraph 5(b)(i) above and other criteria normally used by the City to determine the amount of impact fees applicable to a subdivision generally. To the extent such Paragraph 5(b)(i) costs are directly attributable to a particular phase of the Project, such costs shall be allocated to such phase. To the extent such Paragraph 5(b)(i) costs are attributable to the entire Project, such costs shall be allocated to each phase of the Project in the same proportion that the number of lots included in such phase bears to the total number of lots in the entire Project.

(iv) **Developer's Costs.** Except as described in this Section 5, Developer will be responsible for the cost of installing and constructing the Improvements. Until an Improvement is dedicated to and accepted by the City, Developer will maintain the Improvement at its sole cost.

The term "**Improvements**" used herein shall refer to both the Internal Improvements and External Improvements.

(e) **Bonus Density Credits.** Consistent with the City's General Plan and the Bonus Density Ordinance, and conditioned on Developer's compliance with its obligations under this Agreement, the City grants the following bonus density credits to Developer and Owner in connection with the development of the Project:

Open Space Amenity	Resulting Density Increase
Interconnectivity of Internal Streets	25.00%
Interconnectivity of External Streets	15.00%
Mix of Lot Sizes (4 sizes)	20.00%
Landscaped Open Space	23.85%
Open Space at Peripheral Intersection Corners	21.20%
Trails	25.00%
Tree-Lined Streets	25.00%

(f) **Inspection of Improvements.** The City will inspect the Improvements within a reasonable time after it receives written notice from Developer stating that the Improvements are complete. The City will approve the Improvements so long as they are constructed in accordance with this Agreement and applicable City ordinances.

(g) **Supporting Documents.** If either party determines that any provision of this Agreement requires an additional document (recordable or otherwise) to protect or clarify that party's rights under this Agreement, each party will reasonably cooperate in preparing and executing such document.

(h) **Lot Sizes and Setbacks.** Lot sizes and setbacks of all houses constructed in the Project shall conform to the sizes and setbacks specified in Section C of the Bonus Density Program, notwithstanding any future changes that might be made to Section C or similar City ordinance or policy regarding sizes and setbacks.

6. **Vested Rights.** Developer has the vested right to develop the Property substantially in accordance with the Concept Plan and the Capital Facilities Plan (adopted by the City as in effect on the date of the execution of this Agreement) and to construct the Project on

the Property as it is currently zoned (RA-1), at the density allowed in the RA-1 zone currently in effect as increased by the bonus density credits granted under Section 5(e), and in accordance with this Agreement and applicable City ordinances in existence and effective as of the effective date of this Agreement, notwithstanding any future changes, modifications or amendments which may be made to the Concept Plan, the Capital Facilities Plan, the Bonus Density Program or applicable City ordinances, policies or requirements.

7. **Reserved Legislative Powers.** Nothing in this Agreement will limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environment, open space, and related land-use plans, policies, ordinances, and regulations, provided such police power is uniformly administered and not on a discriminatory basis.

8. **Subdivision Plat Approval and Compliance with City Standards.** Developer expressly acknowledges and agrees that nothing in this Agreement will be deemed to relieve Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats for the Project, including the payment of standard fees and compliance with all other applicable ordinances, resolutions, regulations, policies, and procedures of the City, including but not limited to, the City subdivision ordinance and the City standards and specifications for design and construction.

9. **Bonding for Improvements.** Developer will comply with all standard bonding-for-completion, restoration, and guarantee-of-improvement requirements of the City's construction design standards. Specifically, as a condition of recording of any final plat for the Project, Developer will provide the following:

(a) **Restoration Bond.** Prior to the start of any work Developer shall enter into a security agreement equal to 10% of the total grading costs associated with the Project, as determined by the engineer's estimate. The restoration bond will be held by the City until the grading project is determined complete by the City.

(b) **Improvement Guarantee Bond.** If Developer seeks to record the final plat prior to completion of the improvements Developer shall enter into a security agreement in the amount equal to 110% of the total cost of all public and private improvements associated with the Project, as determined by an approved engineers estimate. The security agreement will remain in effect for a period not to exceed twenty four (24) months or until the City accepts the improvements and final plat is recorded. The security agreement may be reduced in lump sum intervals as defined in Section 2.3.3 of the City's construction design standards.

(i) **Internal Common Area.** Any improvements such as grading, tree lined streets, landscaping, etc. that is associated with the internal Common Area will be completed by Developer prior to the 19th home built. The City agrees and acknowledges that this commitment by the Developer satisfies any requirements for guarantee bonding, as provided in paragraph 9(b) above, for the said improvements as shown in the Internal Common Area defined by Concept Plan Exhibit B.

(c) **Warranty Bond.** At the completion of the improvements for which completion security is required in Section 9(a), Developer will provide the City with a warranty bond (or other form of security allowed by the City's subdivision ordinance) in the amount of 10% of the construction costs referred to in Section 9(a). The warranty bond shall remain in effect for a period of twelve (12) months from the time the security agreement is accepted by the City Attorney.

(d) **Application.** In case of any discrepancy between the bonding/security provisions in this Agreement and the City's subdivision ordinance provisions regarding bonding/security, the provisions of this Agreement will control.

10. **Previous Agreements.** This Agreement is the exclusive agreement of the parties and replaces and supersedes all prior agreements between the parties (and prior parties) pertaining to the Property.

11. **Miscellaneous.**

(a) **Agreement to Run with the Land.** This Agreement will be recorded against the Property and will be deemed to run with the land and will inure to the benefit of and be binding on all successors and assigns of Developer and Owner as to the ownership or development of any portion of the Property. Additionally, Developer will provide appropriate notes on the final plat and appropriate provisions in any restrictive covenants prior to recordation giving notice of the primary provisions of this Agreement.

(b) **Assignment.** Developer may not assign this Agreement unless the assignee assumes both the rights and responsibilities under this Agreement and unless the City gives prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed.

(c) **No Joint Venture, Partnership, or Third-Party Rights.** It is not intended by this Agreement to, and nothing contained in this Agreement will, create any partnership, joint venture, or other arrangement between Developer and the City. No term or provision of this Agreement is intended to, or will, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation will have any right or cause of action under this Agreement.

(d) **Integration.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and integrates all prior conversations, discussions, or understandings and may only be modified by a subsequent writing duly executed by the parties.

(e) **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement will remain in full effect.

(f) **Legal Fees.** If either party defaults on its obligations under this Agreement, the defaulting party will pay all costs and expenses, including a reasonable attorney's fee, resulting from the nondefaulting party's enforcing this Agreement or pursuing any

remedy provided in this Agreement or by law, whether the remedy is pursued by filing suit or otherwise.

(g) **Survival.** The terms, covenants, and conditions of this Agreement will survive any legal act or conveyance required under this Agreement.

(h) **Headings.** The section and other headings contained in this Agreement are for reference purposes only and will not affect the meaning or interpretation of this Agreement.

(i) **Owner. The Owner** shall be a third-party beneficiary to the rights and benefits of the Developer under this Agreement.

Signatures and Acknowledgments Follow

The parties have executed this Agreement as of the date first mentioned above.

DEVELOPER:

Bedford Development, LLC

By: Robert Smith

Name: ROBERT SMITH

Title: Manager

OWNER:

Brookhaven Fields, LLC

By: Robert Smith

Name: ROBERT SMITH

Title: Manager

CITY:

Washington City,
a Utah municipality

By: Kenneth F. Neilson

Name: Kenneth F. Neilson

Title: Mayor

Attest:

Danice B. Bulloch
City Recorder



State of Utah)
) ss.
County of Washington)

The foregoing instrument was acknowledged before me on June 25, 2012,
by Robert Smith, Manager of Bedford Development, LLC. and by Robert Smith, Manager of
Brookhaven Fields, LLC.

Teresa A. Payton
Notary Public



State of Utah)
) ss.
County of Washington)

The foregoing instrument was acknowledged before me on June 21, 2012, by
Kenneth F. Neilson and Danice B. Bulloch of Washington City.

Tara C. Pentz
Notary Public

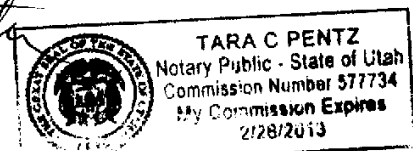


Exhibit A

Legal Description of the Property

A portion of Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 3 of the Richard Morris Entry located in Section 35, Township 42 South, Range 15 West, Salt Lake Base and Meridian, according to the official plat thereof, records of Washington County, State of Utah, being more particularly described as follows:

Beginning at a point which is located S 89°07'23" E along the section line 50.68 feet and S 0°52'37" W 33.00 feet from the West ¼ corner of said Section 35, said point also being on the South right of way line of 3090 South Street and running thence S 89°07'23" E, along said South right of way line 1259.65 feet to a point on the Easterly block line of Block 3 of said Richard Morris Entry; thence S 0°17'49" W along said block line 664.81 feet to a point on the extension of the North boundary of Meadow View Estates Amended, according to the official plat thereof, records of Washington County; thence along said North boundary N 89°09'32" W 641.62 feet to the Northwest corner of said subdivision; thence S 0°13'32" W along the West line of said subdivision and along the West line of Lots 1 and 16 of said Richard Morris Entry 1945.46 feet to a point on the South line of Block 3 of said Richard Morris Entry; thence N 89°17'33" W along said South line 633.88 feet to the Easterly right of way line of 240 West Street; thence N 0°08'52" E along said right of way line 2592.34 feet to the point of a 20.00 foot radius curve to the right; thence along the arc of said curve 31.67 feet and through a central angle of 90°43'40" to the point of beginning.

Contains 47.91 acres

Exhibit B

Concept Plan

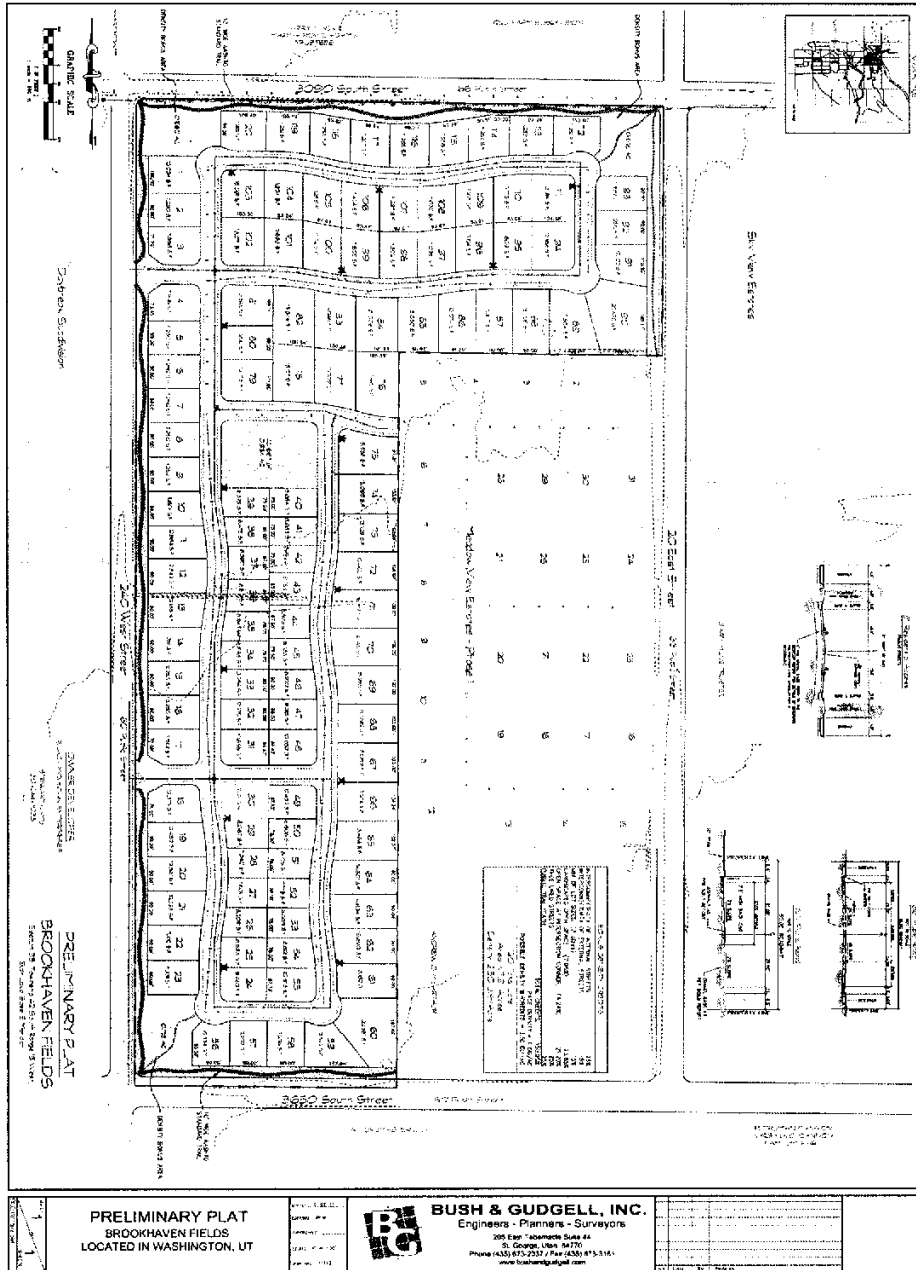


Exhibit B to Development Agreement (Brookhaven Fields/Washington City)