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Agreement Page 1 of 44
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DEVELOPMENT AGREEMENT FOR STUCKI FARMS

THIS DEVELOPMENT AGREEMENT for Project (the «Agreement») is entered into and effective as of the 9th day of November, 2011, by and among South Landing Development, LLC, («Developer»), a Wyoming limited liability company, and Washington City, a municipal corporation and political subdivision of the State of Utah («City») (individually a «Party» and collectively the «Parties»).

RECITALS:

A. Developer owns or controls by the terms of an option agreement approximately 592 acres of real property located within the municipal boundaries of Washington City, Washington County, State of Utah, as more particularly described in Exhibit «A» (the «Property») attached hereto and incorporated herein.

B. Developer desires and intends to develop the Property as a master-planned community currently known as Stucki Farms (the «Project») as generally depicted on a preliminary site plan dated November 8, 2006 and prepared by Developer (the «Preliminary Site Plan») attached hereto as Exhibit «B» and incorporated herein.

C. [Reserved].

D. [Reserved].

E. On June 20, 2006, Developer filed with City a complete application (Application # Z-06-06) to rezone the Property from current PUD and OS Zones to the Planned Community Development Zone (the «PCD Zone») and approve the Preliminary Site Plan to enable development of the Project, all as provided in City's Land Use Ordinances (the «PCD Application»).

F. On October 18, 2006, City's Planning Commission recommended approval of the PCD Application subject to certain findings and conditions as set forth in Exhibit «C», attached hereto and incorporated herein, and forwarded them to City's City Council for consideration.

G. On November 8, 2006, City's City Council approved the PCD Application (the «PCD Zone Approval») subject to certain findings and conditions as set forth in Exhibit «D», attached hereto and incorporated herein and subject to approval of this Agreement.

H. City finds the PCD Zone Approval and the Preliminary Site Plan (i) do not conflict with any applicable policy of City's General Plan; (ii) meet the spirit and intent of City's Land Use Ordinance; (iii) will allow integrated planning and design of the Property and, on the whole, better development than would be possible under conventional zoning regulations; (iv)

meet applicable use limitations and other requirements of the PCD Zone; and (v) meet the density limitations of the General Plan.

I. City believes, based upon Developer's representations, that Developer has (i) sufficient control over the Property to ensure development of the Project will occur as approved; (ii) the financial capability to carry out the Project; and (iii) the capability to start construction within one (1) year of approval of this Agreement.

J. Developer desires to take all steps necessary to finalize approval of the Project and develop the Project as provided in this Agreement.

K. Each of the Parties is willing to enter into this Agreement in order to implement the purposes and conditions of both the PCD Zone Approval and the Preliminary Site Plan for the Project and to more fully set forth the covenants and commitments of each Party, while giving effect to applicable state law and City's Land Use Ordinance.

L. Acting pursuant to its authority under Utah Code Annotated, §§ 10-9a-101, et seq., and after all required public notice and hearings, City, in its exercise of its legislative discretion has determined that entering into this Agreement furthers the purposes of the (i) Utah Municipal Land Use, Development, and Management Act, (ii) City's General Plan, and (iii) City's Land Use Ordinance. As a result of such determination City (i) has elected to approve the Project in a manner resulting in negotiation, consideration, and approval of this Agreement and (ii) has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of City.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

SECTION I. DEFINITIONS

Any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by City's Land Use Ordinance in effect on the date of the Application for the PCD Zone or, if different, by this Agreement, as the case may be. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

1.1 "City's Construction Design Standards" means the standards and specifications that City uses for construction of public improvements.

1.2 "Commercial Uses" means neighborhood convenience, sales, and other commercial uses, pedestrian oriented commercial uses, business and professional office uses, and commercial storage uses located as shown on the Preliminary Site Plan.

1.3 "Culinary Water Master Plan" means a comprehensive plan to provide culinary water within the Project as approved by City and in accordance with City's Culinary Water Master Plan.

1.4 **“Density”** means the number of dwelling units per acre as shown on the Preliminary Site Plan and as authorized under this Agreement.

1.5 **“Density Transfer”** means the ability of Developer to transfer densities from areas within the Project to other areas within the Project including transferring such densities from one type of use to another type of use, for example, and not by way of limitation, transferring density from Multi-Family Uses to Single-Family Uses as provided in Paragraph 2.4.4 of this Agreement.

1.6 **“Design Guidelines”** means the design standards and guidelines (including the landscape plan) adopted by Developer and approved by City, as may be amended from time to time, applicable to the Project.

1.7 **“Developer”** means South Landing Development, LLC, a Utah limited liability company, or its approved replacement developer, assigns and successors in interest, whether in whole or in part.

1.8 **“Development Activity”** means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities.

1.9 **“Development Guidelines”** means collectively, the (a) Design Guidelines; (b) Master Declaration (and declarations developed and recorded against individual Phases); Culinary Water Master Plan; Secondary Water Plan; Sanitary Sewer Master Plan; Storm Water and Drainage Control Master Plan; Transportation Master Plan; and City’s Construction Design Standards.

1.10 **“Development Phase”** means a separately developed portion of the Project for which a Site Plan and one (1) or more corresponding subdivision applications are filed with City and thereafter approved by City.

1.11 **“Dixie REA”** means Dixie Escalante Rural Electrical Association, which is, to the extent Dixie REA has been franchised and permitted to provide power by Washington City within Washington City boundaries, the electrical power provider to the area where the Project is located, as more particularly described pursuant to franchise or other agreement between the City and Dixie REA.

1.12 **“Final Plat”** means a final subdivision plat of property, located within an approved Development Phase, which is approved by City’s governing body and is recorded in the Official Records in Office of the Recorder of Washington County, State of Utah.

1.13 **“Land Use Application”** means any application for development within the Project submitted to City by Developer or any other person subsequent to the execution of this Agreement.

1.14 **“Land Use Ordinance”** means Washington City Zoning and Subdivision Ordinances.

1.15 **“Master Association”** means the _____, a Utah corporation, its successors or assigns.

1.16 **"Master Declaration"** means that certain Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Project and which is recorded against portions of the Property corresponding to an approved Development Phase (as distinguished from various Phase or Neighborhood Declarations, which will be created and recorded with individual phases and subdivision plats throughout the Project).

1.17 **"Multi-Family Uses"** means all permitted attached residential uses located as shown on the Preliminary Site Plan as Medium High Density designations.

1.18 **"Ordinances"** means the Washington City Municipal Ordinances, including City's Land Use Ordinance.

1.19 **"Planning Commission"** means the Washington City Planning Commission.

1.20 **"PCD Zone Approval"** means City's approval of the Preliminary Site Plan and zone change request (Application # Z-06-06) for the Project on November 8, 2006, which was subject to certain findings and conditions set forth in Exhibit "D".

1.21 **"Preliminary Site Plan"** means the conceptual site plan map attached hereto as Exhibit "B", and approved by the Washington City Council on November 8, 2006 as part of Developer's PCD Application (Application # Z-06-06).

1.22 **"Primary Trail System"** mean the trails within the Project that coincide with City's master planned trails that may be accepted by City as public trails upon conveyance of developer.

1.23 **"Project"** means the improvement and development of the Project pursuant to this Agreement, the Development Guidelines, and City's Ordinances as generally depicted on the Preliminary Site Plan.

1.24 **"Project Improvements"** means, with respect to the Project, site improvements and facilities that are planned and designed to provide service for development resulting from Development Activity and necessary for the use and convenience of the occupants or users of development resulting from Development Activity. "Project Improvements" does not mean System Improvements.

1.25 **"Project Master Plan"** means collectively the Development Guidelines and PCD Zone Approval.

1.26 **"Proportionate Share"** means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any Development Activity.

1.27 **"Sanitary Sewer Master Plan"** means a comprehensive plan to provide sanitary sewer within the Project as approved by City and in accordance with City's Wastewater Collection System Master Plan.

1.28 **"Secondary Water Master Plan"** means the secondary water system to be developed and used by Developer for irrigation purposes and not for culinary use.

1.29 **"Single-Family Uses"** means all permitted detached single-family residential uses located as shown on the Preliminary Site Plan as Medium Density, Low Density and Very Low Density designations.

1.30 **"Site Plan"** means a site plan submitted for a Development Phase as provided in City's Land Use Ordinance.

1.31 **"Storm Water and Drainage Control Master Plan"** means a comprehensive plan to provide storm water and drainage control within the Project as approved by City and in accordance with City's Storm Water Master Plan.

1.32 **"SWPPP Permit"** means an approved storm water pollution prevention plan.

1.33 **"System Improvements"** means existing public facilities owned and/or operated by City that are designed to provide services to service areas within the community at large; and future public facilities identified in a capital facilities plan that are intended to provide services to service areas within the community at large. "System Improvements" does not mean Project Improvements.

1.34 **"Transportation Master Plan"** means the Washington City Transportation Master Plan.

1.35 **"Utility Master Plan"** means a comprehensive plan to provide electrical power, natural gas, telephone, and cable/fiber optic service within the Project.

SECTION II. PLANNED COMMUNITY DEVELOPMENT ZONE

2.1 **Designation as a Planned Community Development.** In compliance with the requirements of Utah Code Ann. § 10-9a-501 et seq., applicable provisions of City's Land Use Ordinance, and following a public hearing on November 8, 2006, City, pursuant to its legislative authority, approved the PCD Zone and the Preliminary Site Plan. City agrees development of the Project may proceed as provided in this Agreement and acknowledges the Preliminary Site Plan and Design Guidelines are consistent with City's Land Use Ordinance and General Plan. Developer acknowledges that development of the Project is subject to all normally-applicable City processes as set forth in Paragraph 2.2 and the following:

2.1.1 Design Guidelines;

2.1.2 Master Declaration (and various Phase or Neighborhood Declarations, which will be created and recorded with each development phase throughout the Project);

2.1.3 Culinary Water Master Plan;

2.1.4 Sanitary Sewer Master Plan;

2.1.5 Storm Water and Drainage Control Master Plan;

2.1.6 City's Construction Design Standards;

2.1.7 Secondary Water Master Plan;

2.1.8 Transportation Master Plan; and

2.1.9 Utility Master Plan.

2.2 Applicable Laws and Regulations. Except as otherwise set forth in this Agreement, all development and improvements of any sort, on-site or off-site, relating to the Project shall comply with City's Ordinances, regulations, requirements, and procedures established by and for City.

2.2.1 PCD Approval. The PCD Zone and the Preliminary Site Plan shall not be affected by any inconsistent or contrary moratorium, ordinance, resolution, rule or regulation enacted by City that prohibits or regulates the total number of residential dwelling units, land uses, and site improvements shown on the Preliminary Site Plan.

2.2.2 Local Roads. City acknowledges and agrees it has approved the cross section design of certain local roads in the Project as more particularly described on the "Road Cross Section Designs" attached hereto as Exhibit "E". Such roads shall be constructed according to City's Construction Design Standards except as otherwise provided in Exhibit "E", which refers to road cross section designs per this Agreement.

2.2.3 Land Use Applications. Except as otherwise provided in Paragraphs 2.2.1 and 2.2.2 above, any Land Use Application made subsequent to the execution of this Agreement shall conform to applicable provisions of the of City's Land Use Ordinance in effect when a complete application is submitted, or to the extent approved with each Development Phase and/or subdivision plat submittal.

2.2.4 Building Permits. Any person or entity applying for a building permit within the Project shall be subject to the building, electrical, mechanical, plumbing, fire codes and other City ordinances relating to the construction of any structure in effect when such person or entity files with City a complete application for such building permit.

2.2.5 Later Enacted State or Federal Law. The rights and obligations of the Parties under this Agreement shall be subject to later enacted State and Federal laws and regulations, to the extent corresponding with local ordinance enacted consequent to such state and federal laws.

2.3 Design Guidelines. Developer has established Design Guidelines for each Development Phase. Developer and Master Association shall be solely responsible to enforce the Design Guidelines to the extent such guidelines exceed City Ordinance requirements. Nevertheless, as a courtesy to Developer and the Master Association, City, prior to issuing any building permit for property within the Project, may request the building permit applicant to produce a letter from Developer or the Master Association indicating the building plans which are the subject of the permit application have been approved by Developer or the Master Association.

2.4 Zoning. The zoning for the Project is the PCD Zone and is shown on City's zoning map. The following development standards shall apply to the Project:

2.4.1 Maximum Development Area. The entire area of the Project shall be contained within the land described on Exhibit "A". Notwithstanding this Paragraph 2.4.1, the Parties acknowledge that the owners of other land adjacent to or surrounded by the Property may request to be included in the Project at a later date if approved by Developer. Such requests shall

be made pursuant to City's then applicable Ordinances and considered in City's usual course of such business. Any change in the maximum development area of the Project shall be accomplished only pursuant to City's then-applicable Ordinances and an amendment to this Agreement as provided in Paragraph 6.28 herein.

2.4.2 Residential Units. The total number of residential units permitted within the Project shall not exceed two thousand four hundred thirty six (2,436). As shown on the Preliminary Site Plan, residential dwelling units are dispersed throughout the Project at varying densities, which may be modified pursuant to the Density Transfer provision set forth in Paragraph 2.4.4 of this Agreement. The final density identified for each Development Phase is not yet specifically authorized by this Agreement and the Parties acknowledge that the density allowed in each Development Phase will be determined upon review and approval of a Site Plan for each such Development Phase.

2.4.3 Phasing. City acknowledges that Developer intends to submit multiple Land Use Applications from time to time, in Developer's sole discretion, to develop and/or construct portions of the Project in Development Phases. However, to coordinate City-provided services and facilities and services and facilities provided by other public agencies with the demand for public services and facilities generated by uses and activities within the Project, development sequencing of the Project shall provide for the logical extension, as reasonably determined by City, of all required infrastructure and the provision of all reasonably related municipal services, including but not limited to, adequate fire protection and necessary ingress and egress.

2.4.4 Density Transfers. Developer's transfer of density units from one Development Phase or more to others within the Project shall be approved provided that (a) the total number of residential units does not exceed the number of residential units authorized for the Project; (b) the proposed transfer does not assign any density to park or open spaces shown on the Preliminary Site Plan; (c) any compatibility standards for uses on adjoining parcels as set forth in City's Land Use Ordinance are satisfied; and (d) infrastructure is sufficient and available to meet the demands created by such transfer, as reasonably determined by City. Density transfers shall be initiated by notice to City from Developer which describes the Development Phase from which density is to be transferred, describes the Development Phase to which density is to be transferred and summarizes the impact of such transfer on infrastructure improvements. The Density Transfer shall be considered approved and complete when a subdivision application submitted by Developer, including the extension or expansion of required infrastructure improvements, is approved by City.

2.4.5 Development Applications. Each residential development application submitted by Developer and/or its assignees who have purchased portions of the Project shall, in addition to those items required by City's Land Use Ordinance, or any other City Ordinance, include a statement of (a) the total number of residential dwelling units allowed in the Project under this Agreement; (b) the cumulative total number of residential dwelling units previously approved for all of the properties within the Project from the date of approval of this Agreement to the date of the application; (c) the number of dwelling units and densities for which a permit is sought under the particular Development Phase application; and (d) the balance of residential dwelling units remaining allowable to the Project. Each commercial development application submitted by Developer and/or its assignees who have purchased portions of the Project shall include, in addition to those items required by City's Land Use Ordinance, or any other City Ordinance, a statement of (a) the total number of square feet of gross floor area of Commercial Uses for which a permit is sought under the particular Development Phase application; (b) the

cumulative total number of square feet of gross floor area of Commercial Uses previously approved for all of the properties within the Project from the date of approval of this Agreement to the date of the application; and (c) the types of Commercial Uses that are being proposed.

2.5 Recordation of First Final Plat. Developer shall record the approved Final Plat for the first Development Phase within one (1) year of approval of this Agreement, and as required by City's Land Use Ordinance, subject to any authorized extension.

SECTION III. GENERAL RIGHTS AND RESPONSIBILITIES

3.1 General Rights and Responsibilities of Developer.

3.1.1 Development Fees. With respect to the development of the Project, Developer accepts and agrees to comply with the application, plan examination, building and similar fees (excluding impact and connection fees) of City in effect at the time a person or entity files with City a complete application for a subdivision or a building permit, and City agrees and represents that any such fee schedule will be applied uniformly within City or any service area of City, as applicable. Developer acknowledges the Project requires infrastructure supported by impact and connection fees and finds such fees to be a reasonable monetary expression of public facility improvements required to support the Project. Developer agrees not to challenge, contest, or bring a judicial action seeking to avoid payment of or to seek reimbursement for such fees, so long as such fees comply with Utah law, are applied uniformly within City or service area, as applicable, and Developer receives all credits and offsets against such fees as provided in Paragraphs 3.2.2 and 3.2.4 below, or a Reimbursement Agreement as provided in Paragraph 3.2.3 below.

3.1.2 Reliance. City acknowledges that Developer is relying on the execution and continuing validity of this Agreement and City's faithful performance of City's obligations under this Agreement in Developer's existing and continued expenditure of substantial funds in connection with the Project. Developer acknowledges that City is relying on the execution and continuing validity of this Agreement and Developer's faithful performance of its obligations under this Agreement in continuing to perform the obligations of City hereunder.

3.1.3 Vested Rights Granted by Approval of the PCD and Project. To the fullest extent permissible under the law, this Agreement grants and vests in Developer all rights, consistent with the PCD Zone Approval, the Preliminary Site Plan, and City's Land Use Ordinance, to develop the Project according to the Preliminary Site Plan under applicable law as provided in Paragraph 2.2 of this Agreement. The Parties intend that the rights granted to Developer and the entitlements for the Project under this Agreement are both contractual and provided under the common law concept of vested rights. It is expressly understood by City that Developer may assign all or portions of its rights under this Agreement and the PCD Zone Approval provided such assignees agree to be bound by the terms of this Agreement as provided in Paragraph 5.2, below.

3.1.4 Statement Regarding "Compelling, Countervailing Public Interests". City and Developer acknowledge they are familiar with the "compelling, countervailing public interest" exception to the doctrine of vested rights in the State of Utah. City acknowledges that as of the date of this Agreement, to the best of its knowledge, information and belief, City is presently unaware of any material facts under which a desire of City to modify Developer's rights under this Agreement or the Preliminary Site Plan would be justified by a "compelling, countervailing public interest." City shall immediately notify Developer if any such facts come

to City's attention after the execution of this Agreement, and shall take all reasonable steps to maintain Developer's vested rights as set forth in this Agreement or the Preliminary Site Plan.

3.1.5 Construction Mitigation. Developer shall provide the following measures, all to the reasonable satisfaction of City's Public Works Director, to mitigate the impact of construction within the Project. Developer shall also adhere to the usual construction impact mitigation measures required by City. Additional reasonable site-specific mitigation measures may be required. The following measures shall be included in each application for approval of a Site Plan for any Development Phase:

3.1.5.1 Limits of disturbance, vegetation protection and the revegetation plan for all construction, including construction of public improvements (an SWPPP permit being required on any construction involving a parcel in excess of one [1] acre in size).

3.1.5.2 Construction staging, temporary Project-related on-site batch plants, and materials stockpiling and recycling to keep all excavated materials on one (1) or more sites during infrastructure and construction of any Development Phase of the Project. The location of such areas shall be approved by City prior to construction of a Development Phase.

3.1.5.3 Construction traffic routing plan to minimize traffic impacts on City roads and residential areas by requiring construction traffic to use roads approved by City.

3.1.5.4 Mitigation of dust throughout construction, pursuant to Rule R-307-205 of the Utah Administrative Code, applicable City Ordinances, and any other applicable statute or regulation.

3.1.5.5 Protection of existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed.

3.1.6 Demonstration of Ability. Developer shall demonstrate that Developer possesses or is reasonably certain to receive the financial resources (money, equity, loans, and the like) necessary to undertake and complete the Project's development. If and at any time Developer fails to perform its obligations under this Agreement, City may request, and Developer shall provide, reasonable evidence that it still possesses or is reasonably certain to receive the financial resources necessary to continue the contemplated development within the Project.

3.1.7 Dedication of Infrastructure Improvements. Unless otherwise specifically provided herein, Developer shall dedicate, subject to the cost sharing, reimbursement, and impact fee credit obligations of the City as set forth in Paragraphs 3.2.2, 3.2.3, and 3.2.4 below, any System Improvements in the Project to City when such improvements are accepted by City.

3.1.8 Developer's Employees and Agents. Developer shall cause its employees and agents to act in accordance with the terms of this Agreement.

3.2 General Rights and Responsibilities of City.

3.2.1 Reserved Legislative Powers. This Agreement shall not limit the future exercise of the police powers of City to enact ordinances, standards, or rules regulating development. City acknowledges, however, that any exercise of its legislative or police powers which alters or modifies this Agreement to Developer's legal detriment may render City liable to

such remedies as may be available to Developer under such circumstances. Notwithstanding the foregoing, after the date of this Agreement, City shall not enact any temporary zoning regulation that prohibits or regulates the erection, construction, reconstruction, or alteration of any building or structure in the Project which is inconsistent with the terms of the Preliminary Site Plan and the PCD Zone Approval unless the temporary zoning regulation:

- (a) complies in all respects with applicable state law;
- (b) was enacted to reasonably alleviate or otherwise reasonably respond to a legitimate, bona fide threat to public health and safety for which application to the Property is determined by City to be necessary and cannot be sufficiently addressed by application only to other development in the City; and
- (c) has a period of effectiveness not to exceed six (6) months with no renewal provisions.

3.2.2 Project and System Improvements – Cost Sharing. Developer shall bear the entire cost of constructing Project Improvements needed to service the Project. Developer shall also bear the initial cost of constructing System Improvements required as a result of the Project but shall be entitled to be reimbursed or credited for the cost of such System Improvements except for Developer's Proportionate Share of System Improvements costs. System Improvements may include, but are not limited to, the following regardless of whether such improvements are located within the Project or off site: easements and rights-of-way, road construction, curb and gutter and curb cuts, sidewalks, road signs, water distribution facilities, fire hydrants, storm drainage facilities, road signalization and telecommunications equipment and conduit, road lighting, electrical utilities, flood control facilities, bridges, parks, survey monuments, water rights, landscaping and revegetation.

3.2.3 Reimbursement Agreement. Prior to constructing any System Improvements required for the Project authorized by approval of a Site Plan, Final Plat, or other Land Use Application, Developer and City shall execute an agreement whereby Developer shall be reimbursed by City for the cost of constructing such System Improvements less Developer's Proportionate Share thereof. Developer shall furnish an estimate of the cost of constructing such System Improvements prepared by an engineer registered to practice in the State of Utah and approved by City. The reimbursement agreement shall assure that neither Developer nor City bears more than their respective Proportionate Share of the cost of System Improvements and shall take into consideration the provisions of Paragraph 3.2.4 below.

3.2.4 Impact Fee Credits. If, prior to the date an impact fee would be payable as provided under City's Ordinances, Developer constructs System Improvements for which an impact fee is normally collected, Developer's cost of constructing such System Improvements shall be credited against the impact fees otherwise due. Developer shall also be given an impact fee credit for land dedicated to and accepted by City for System Improvements. In each instance, Developer shall submit to City invoices, or other reasonably acceptable documentation, as determined by City, demonstrating the reasonable and verified costs incurred for such System Improvements or, in the case of land, appraisals indicating the fair market value of the dedicated land. The amount of the credit shall be equal to the lesser of (i) the total amount of impact fees otherwise required, or (ii) the reasonable and verified costs of the System Improvements paid by Developer and the fair market value of land at the time of dedication. If an impact fee credit for dedicated land is calculated using the fair market value at the time of dedication, such credit shall be based on the amount of the impact fee payable at the time of dedication. In applying the

foregoing provisions, any impact fee which is payable shall be charged as provided under City's Ordinances and any impact fee credit shall be used to offset the amount of the impact fee due.

3.2.5 Compliance with City Requirements and Standards. Except as otherwise provided in Paragraphs 2.2 and 3.1.3 of this Agreement, Developer acknowledges it shall comply with applicable laws and regulations, as set forth in Paragraph 2.2 of this Agreement, necessary for approval of a Land Use Application to develop property within the Project.

3.2.6 Power of Eminent Domain. City may, in its sole and absolute discretion, and only in the event Developer needs to obtain easements or rights-of-way for the purpose of constructing infrastructure improvements for the Project and is otherwise unable to negotiate a reasonably acceptable contract for such easements or rights-of-way, upon the request of Developer, may exercise its power of eminent domain to obtain such easements or rights-of-way, the cost of which shall be borne by Developer. Developer shall reimburse City for all reasonable expenses incurred in taking the requested action, including reasonable attorney's fees and costs.

3.2.7 Project a Part of City. The Project shall remain, for all purposes, including government, taxation, municipal services and protection, and consideration in all municipal matters, a part of City. Except as otherwise provided herein, Development within the Project, and the residents and occupants thereof, shall be treated in all respects as any other development, resident, or occupant of City is treated.

SECTION IV. SPECIFIC RIGHTS AND RESPONSIBILITIES

4.1 Water.

4.1.1 Developer's Obligations.

4.1.1.1 Water System. Developer shall, consistent with governmental requirements as of the date hereof, except as otherwise provided in Paragraph 2.2.5 of this Agreement, design, build, and dedicate to City culinary water facilities of sufficient size to serve the Project, according to City specifications and standards, including all distribution lines, fire flow, and irrigation needs for the Project. The facilities required to provide culinary water within a subdivision or Site Plan area shall be constructed and installed concurrent with the construction of other improvements in such subdivision or Site Plan area. All facilities necessary to provide a culinary water system installed by Developer within the Project, upon acceptance by City, shall be owned, operated, and maintained by City.

4.1.1.2 Easements. As part of the preparation of a water storage and delivery system for the culinary water system, the Parties shall cooperate in granting such easements, rights-of-way, rights of entry, or other servitudes as may be reasonably necessary for Parties to introduce into, store in, and remove water from such ponds, streams, lakes, well sites, connections onto existing Washington County Water Conservancy District water lines, and the like, as may exist or be constructed on the Project for both Project and System water delivery system(s).

4.1.2 City's Obligations. Upon dedication, acquisition and/or acceptance by City of the water delivery system, City shall provide all use areas served by such infrastructure within the Project with culinary water service at a level generally provided to other areas of City.

4.1.2.1 Reimbursement and Impact Fee Credits. Developer shall be reimbursed or credited for water System Improvements costs as provided in Paragraphs 3.2.2, 3.2.3, and 3.2.4 above.

4.1.2.2 [Reserved].

4.2 Sanitary Sewer Service and Facilities.

4.2.1 Developer's Obligations. The Project is located within the service boundaries of City. Developer shall design, fund, and construct sewer and waste water collection systems to service the Project in compliance with all regulations and specifications of City.

4.2.2 City's Obligations. City shall require Developer to adhere, where applicable, to such standards and requirements with respect to the sewer and waste water collection systems.

4.3. [Reserved].

4.4 Transportation, Traffic Mitigation, and Landscaping.

4.4.1 Developer's Obligations. Developer agrees to provide the following transportation and traffic mitigation measures:

4.4.1.1 Roads and Intersection Improvements. The Site Plan for each Development Phase shall show all road and intersection improvements and shall identify which improvements Developer will construct at no cost to City. Road and intersection improvements may be located differently than shown on the Preliminary Site Plan so long as any such road connects to an existing or planned road which intersects with or abuts the exterior boundary of the Project shown on the Preliminary Site Plan. Road and intersection improvements shall be constructed according to City's Construction Design Standards, except as otherwise set forth in this Agreement and in the Development Guidelines, in phases according to a schedule determined by Developer and approved by City, which approval shall not be unreasonably withheld, conditioned, or delayed, consistent with the actual construction schedule for a particular Development Phase. When road construction (specifications/cross sections) and layout are subject to discretionary design decisions by City, Developer shall have the opportunity to provide data and information to support the inclusion, exclusion, or modification of any such design prior to approval by City. City shall reasonably review and approve or reject Developer's suggested design changes. Subject to reimbursement by City of its Proportionate Share of System Improvements, Developer shall dedicate such improvements to City upon completion and acceptance by City.

4.4.1.2 Reimbursement and Impact Fee Credits. Developer, in partnership with successors, assignees, adjoining landowners or acting alone, shall construct all roads required for the Project. Developer shall be reimbursed or credited for road System Improvements costs as provided in Paragraphs 3.2.2, 3.2.3, and 3.2.4 above.

4.4.1.3 Landscaping. Upon City's approval of each Development Phase, Developer agrees to construct and create, at Developer's sole cost and expense, the landscape improvements as set forth in the Design Guidelines for such Development Phase. The timing and/or sequencing of the installation of such landscaping improvements shall be during the

time that adjacent portions of the Project within its associated Development Phase are being developed and prior to the occupancy of the buildings within said adjacent portions, and so long as all landscaping in a Development Phase is completed in conjunction with such phase. Except as otherwise agreed between City and Developer pursuant to an approved Development Phase (and as then accordingly reflected in the Master and Phase Declarations), the Master Declaration shall include provisions which obligate the Master Association to provide continuous maintenance of any such landscaping provided in a public right-of-way pursuant to an agreement with City. Such agreement shall also include a provision requiring the Master Association to maintain the lower canopy of mature trees within or abutting a public or private right of way at a minimum height of thirteen feet six inches (13' 6") or more to preserve access for fire prevention apparatus. Developer acknowledges that such landscaping shall be deemed a Project Improvement and that but for Developer's desire to provide such landscaping, City would not otherwise establish landscaping in a public right-of-way.

4.4.2 City's Obligations.

4.4.2.1 [Reserved].

4.4.2.2 **Road Design.** City accepts the road design, as contained and provided in the Development Guidelines, as the specifications and standards for road design for parkway, arterial, collector, and local roads within the Project, with the exception that certain road designs have been modified from the Design Guidelines and said modifications are as shown on Exhibit "E". All roads in the Project shall conform to City's Construction Design Standards except as otherwise shown on Exhibit "E" attached hereto and made a part hereof. City acknowledges the road cross section designs shown on Exhibit "E" vary from City's Construction Design Standards and that such roads may be constructed as shown thereon.

4.4.2.3 **Dedication.** City shall accept the dedication of and thereafter maintain all arterial, parkway and collector roads in the Project so long as such roads are constructed in accordance with section 4.4.2.2 and are dedicated free and clear of liens and encumbrances.

4.4.2.4 **Access Management Plan.** The Access Management Plan is shown on Exhibit "G". Unless otherwise approved on a case by case basis as preliminary plats and site development plans are being reviewed, street and driveway accesses shall conform to the Washington City Access Management Plan. The Access Management Plan includes provisions for access to adjacent properties and interconnectivity between Project villages. Some accesses shall be limited to right in and right out only as shown on Exhibit "G".

4.5 Police and Fire Protection.

4.5.1 City shall provide to all residential and nonresidential areas in the Project, police and fire services. Developer shall dedicate to City a two (2) acre parcel for the construction of a public safety building/fire station. Said property shall be located in the southwest corner of the Project's Village 12, bordering the open space to the south and fronting Washington Fields Road. The site selection shall be made jointly by City and Developer. Developer shall bear the entire cost of providing all utilities, communication cables, conduits, and fiber optic cables (if a fiber optic system is within the Project) to the two (2) acre site.

4.5.2 Developer shall deed to City, at no out of pocket cost to City, the two (2) acre parcel for the public safety building/fire station. Developer has the choice of receiving

impact fee credits related to public safety in an amount not to exceed the parcel's appraised value at the time the parcel is deeded to City, or to simply gift the parcel to City.

4.5.3 Developer shall install fire hydrants within the Project in conformance with City's Construction Design Standards.

4.6 Park and Open Space Areas.

4.6.1 **Developer's Obligations.** In recognition and consideration that Developer shall be required to provide and improve park and recreational amenities within the Project, the Parties agree as follows:

4.6.1.1 **Parks, Trails, Recreation/Community Center, Ball Fields, Lakes and Open Space Areas.** Developer has provided for and shall improve approximately one hundred ninety one point five (191.5) acres of open space areas within the Project, including, but not limited to, six point six (6.6) acres for a recreation/community center, sixteen point three (16.3) acres of parks, sixteen point three (16.3) acres of ball fields, twenty five point four (25.4) acres of lakes, and one hundred twenty six point nine (126.9) acres of open space areas that include a network of trails as generally shown on the Exhibit "F" schematic attached hereto.

4.6.1.2 **Conveyance to City.** Upon installation of improvements to City's satisfaction, Developer shall convey to City fee title to all or a portion of the Primary Trail System as shown on Exhibit "F" that City determines would be beneficial to accept. Additional conveyance of recreational facilities and park land within the Project based on City's ratio of six (6) acres of park land per one thousand (1,000) residents (the "Minimum Park Land Requirement") may be considered at a later date under a separate agreement. If additional recreational facilities and park land are to be accepted by City, they shall be conveyed by special warranty deed, at no cost to City, free and clear of liens and encumbrances, except non-delinquent taxes, easements, covenants, conditions and restrictions and rights-of-way of record, and only after the installation of improvements to City's satisfaction. Developer shall be entitled to reimbursement or impact fee credit as provided in this Agreement, including Paragraphs 3.2.2, 3.2.3, and 3.2.4 above, for improvements made to the park sites and for land conveyance beyond the Minimum Park Land Requirement. Developer and City shall negotiate in good faith regarding the amount of the reimbursement or impact fee credit, including sums expended by Developer for improvement of public park areas. City acknowledges and agrees that, under the terms of this Agreement, the open space within the Project substantially exceeds City's minimum requirements for open area and green space.

4.6.1.3 **Private Parks and Open Space - Timing of Construction.** Parks and open space are planned and intended throughout the Project of varying types and sizes as generally shown on Exhibit "F". Private parks and open space shall be completely developed by Developer primarily for use by Project residents. Each private park and open space area shall be developed and available for use upon occupancy of seventy-five percent (75%) of the dwelling units in a Development Phase which includes the park and open space area. The acreage of such private parks shall be included in open space requirements applicable to the Project. Park land acreage shall be identified on the Site Plan for each Development Phase.

4.6.1.4 **Public Parks - Timing of Conveyance.** If public park land is to be conveyed to City at any time, it shall be conveyed no later than the recording of a subdivision plat for the nearest neighborhood area adjacent to a park identified on Exhibit "F" attached hereto. Public park land may also include public trails, public fishing and other ponds,

recreational facilities, ball fields and other similar uses. Developer shall provide curb, gutter, and sidewalk where a public park abuts a public or private road.

4.6.1.5 Trails Plan. Trails are planned for the Project as generally shown on Exhibit "F". A trails implementation plan, along with a schedule for improvements (also shown on Exhibit "F") shall be provided prior to the first Development Phase of the Project, which preliminary trails plan shall be subject to revisions and changes and thereafter finalized for each Development Phase as each such phase is approved by City. The trails plan shall differentiate between public and private trails. Public trails shall be provided consistent with City's Master Trail Plan. Any public trail planned as of the date hereof which is intended to connect to the boundary of the Project shall be continued through the Project as a public trail. Developer shall construct and dedicate to City the public trails shown on Exhibit "F" that City is willing to accept. Such trails shall be constructed according to AASHTO design guidelines and the trail design shall be shown on the construction drawings of each plat or site plan where trails are to be improved.

4.6.2 City's Obligations.

4.6.2.1 Park and Trail Facilities. Upon dedication and acceptance by City of public park and trail areas, after installation of improvements by Developer to City's satisfaction, City shall provide to all residential and nonresidential use areas within the Project, trails, and park, and recreational services at a level generally provided to other areas of City, and at a level of service which maintains the area in at least the same condition as at the time of dedication to the City, subject to Developer's obligations as set forth herein.

4.6.2.2 Use of Park and Recreation Impact Fees. As permitted by applicable Utah law and City Ordinances, and as practical as determined by City, City shall use park and recreation impact fees received as a result of the Project to improve public parks and trails located within or reasonably near the Project. Said impact fees shall be collected as provided in City's Ordinances. City acknowledges Developer shall receive a park impact fees credit for Developer-provided public park System Improvements as provided in Paragraphs 3.2.2, 3.2.3, and 3.2.4 above, and according to an agreement between City and Developer as provided in Paragraph 4.6.1.2 above.

4.7 [Reserved].

4.8 Maintenance of Common Areas, Trails, Detention Ponds and Road Landscaping. Developer shall create a homeowners association for the Project, which shall have the responsibility to maintain all common areas, private trails, detention or retention ponds, and road landscaping on collector and arterial roads.

4.9 Additional Miscellaneous Requirements. Developer is responsible for the following miscellaneous requirements:

4.9.1 Signage Plan. A Signage Plan for each Development Phase shall be submitted to City for review and approval prior to the submittal of any Land Use Application for its associated Development Phase. The Signage Plan shall include sign types, locations, lighting, dimensions, heights, materials and colors, and shall include provisions for temporary signs as well as permanent signs.

4.9.2 Lighting Plan. A Lighting Plan for each Development Phase shall be submitted to City for review and approval prior to the submittal of any Land Use Application for its associated Development Phase. The Lighting Plan shall include lighting for streets, parking lots, pedestrian ways, park and open space areas, building accents, etc.

4.9.3 Future Development Area – Possible Airport Acquisition. The area identified on the Preliminary Site Plan as “Future Development Area – Possible Airport Acquisition” shall be improved concurrently with the last Development Phase. Improved as it relates to this paragraph refers to but is not limited to the allowance of undisturbed natural open space, landscape improvements installed to mitigate disturbed natural open space, and additional landscape improvements to accent the natural open space. Developer shall submit an improvement plan and schedule to City for review and approval prior to the submittal of any Land Use Application in the last Development Phase. City understands that negotiations between Developer and St. George City concerning the area for possible airport acquisition may be time consuming and City will not unreasonably prohibit any Land Use Application submittal for the last Development Phase due to ongoing negotiations between Developer and St. George City. Nothing in this Agreement prevents or prohibits Developer and St. George City from jointly developing the improvement plan and schedule and/or jointly installing the improvements according to their own independent agreement(s).

4.9.4 FAA Regulations and Disclosure. Project is subject to height restrictions as outlined in Federal Regulations Title 14, Part 77, and is subject to disclosure statements and avigation easements in the form of notes on all Final Plats and Site Plans within Project.

4.9.5 Water Model. A water model for Project shall be submitted to City for review and approval prior to the submittal of any Land Use Application.

4.9.6 Sewer Model. A sewer model for Project shall be submitted to City for review and approval prior to the submittal of any Land Use Application.

4.9.7 Hydrology Report. A hydrology report shall be submitted to City for review and approval prior to the submittal of any Land Use Application.

4.9.8 Southern Parkway. A portion of Project lies within the alignment of the future Southern Parkway; a transportation route to connect I-15 at Mile Post 2 to SR-9 within the Hurricane City limits. It is Developer’s responsibility to negotiate with City for the Parkway’s acquisition and improvements. Unless otherwise approved by City, Parkway dedication and improvements shall be required during the development of the Development Phase that adjoins the Parkway.

4.9.9 Access to Adjoining Properties. Developer is responsible for providing access to the adjoining properties that would otherwise be prevented from having access due to Project design and development, as well as utility stubbing to adjacent properties. Access shall be as approved by City and in conformance with City’s Construction Design Standards.

4.9.10 Irrigation Model. An irrigation model utilizing a secondary water system for Project shall be submitted to City for review and approval prior to the submittal of any Land Use Application for Villages 9-10 and 17-19.

SECTION V. GENERAL PROVISIONS

5.1 **Binding Effect.** The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties hereto and their successors in interest.

5.2 **Change in Developer.** Developer acknowledges that its qualifications and identity are of particular concern to City, and that it is because of such qualifications and identity that City is entering into this Agreement. Accordingly, Developer agrees for itself and any successor in interest of itself that during the term of this Agreement Developer shall not convey, assign, or dispose of ("Transfer") the Project or any portion thereof to another developer except as provided in this Paragraph 5.2. Any replacement developer shall have financing and skill reasonably satisfactory to City to develop the Project and shall provide City with documentation of the expertise and financial capability of its principals. In the event of a Transfer of the Project, or any portion thereof, Developer and the transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such Transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by City. Alternatively, prior to such Transfer, Developer shall obtain from the transferee a letter (i) acknowledging the existence of this Agreement and (ii) agreeing to be bound thereby. Said letter shall be signed by the transferee, notarized, and delivered to City in connection with the Transfer. In such event, the transferee of the property so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the property so transferred. Notwithstanding the foregoing, a Transfer by Developer of individual subdivision lots within an approved Development Phase to a builder, individual, or other developer shall not be deemed to be a Transfer subject to the above requirement for approval.

5.3 **No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and among the Parties that: (i) the Project is a private development; (ii) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership among City and Developer; and (iii) nothing contained herein shall be construed as creating any such relationship among City and Developer.

5.4 **Consent.** In the event this Agreement provides for consent from City or Developer, such consent shall be deemed to be given thirty (30) days after consent is requested in writing in the event no response to the request is received within that period. All requests for consent shall be made in writing, and in no event shall consent be unreasonably withheld, conditioned, or delayed.

5.5 **Process for Modifying the PCD.**

5.5.1 **Intent.** City acknowledges that the PCD Zone Approval and Preliminary Site Plan are a generalized depiction of the proposed development of the Project with specific land uses permitted as shown on the Preliminary Site Plan. This Agreement contemplates that Developer may modify the Preliminary Site Plan so long as the total number of units allowed and land uses permitted depicted and described in the Preliminary Site Plan are not changed or increased. Subject to this limitation, and as provided in this paragraph, Paragraph 2.4.4 and other related provisions throughout this Agreement, Developer is specifically entitled to, and City hereby grants to Developer, the right to change and/or adjust the exact location of various development uses and densities under the provisions of this Agreement between or among Development Phases shown on the Preliminary Site Plan, or any amendment approved pursuant to this paragraph, and subject to an area limitation of + or - two (2) acres for each Development

Phase as shown on the Preliminary Site Plan. The purpose of this provision is to allow Developer the opportunity to change the configuration of uses shown on the Preliminary Site Plan to reflect future changes in economic factors, development, ownership or other relevant matters so long as such changes do not require the uncompensated relocation of public improvements which have been constructed or which materially and adversely impact other public improvements depicted and planned on the Preliminary Site Plan, as reasonably determined by City. Any proposed modification of the Preliminary Site Plan which increases the total density allowed or adds other land uses or property not depicted or described in the Preliminary Site Plan shall be accomplished only as provided in PCD Ordinance and other related provisions of City's Land Use Ordinance, as amended.

5.5.2 Submittal of Proposal. If Developer or its successors and assigns, desire to modify the Preliminary Site Plan as described in Paragraph 5.5.1 above, Developer shall submit a Preliminary Site Plan Modification proposal together with any required fee to City. Any modifications which, after consultation with City's staff, are deemed to be within the scope of modifications permitted by Paragraph 5.5.1, as reasonably determined by City, may be modified by Developer by providing City with a modified Preliminary Site Plan containing the revision date and supplemental summary referencing the revision date. Said supplemental summary shall briefly detail the changes made to the modified Preliminary Site Plan. Said modifications shall be deemed effective upon City approval of a modified Preliminary Site Plan and the supplemental summary.

5.5.3 City Acceptance of Preliminary Site Plan Modification Proposal. City shall have fifteen (15) calendar days after receiving a Preliminary Site Plan Modification proposal to inform Developer whether City considers the Preliminary Site Plan Modification proposal to be complete. If City does not notify Developer in writing of any additional information required to complete the proposal, the Preliminary Site Plan Modification proposal shall thereafter be deemed complete. If City determines the Preliminary Site Plan Modification proposal is not complete as submitted, City shall notify Developer in writing within the fifteen (15) days specifying in detail any incomplete or missing information. Upon receipt of additional information, if City does not notify Developer in writing within fifteen (15) days after receiving the additional information requested, the Preliminary Site Plan Modification proposal shall be deemed complete. If City determines that the required additional information for the Preliminary Site Plan Modification Application is not complete as submitted, City shall notify Developer in writing within fifteen (15) days thereafter and shall specifically identify the additional information required to complete the Preliminary Site Plan Modification Application.

5.5.4 City Review. City shall have forty five (45) calendar days to review the changes in the Preliminary Site Plan Modification proposal after said proposal is accepted as complete or deemed complete. If City does not object within forty five (45) days, the final completed Preliminary Site Plan Modification proposal shall be deemed accepted by City and shall constitute a modification of the PCD Zone Approval and Preliminary Site Plan, provided that any such modification conforms to applicable law set forth in Paragraph 2.2 of this Agreement.

5.5.5 City's Objections. If City objects to the Preliminary Site Plan Modification proposal, City shall specify in writing with reasonable detail the reasons City believes that the proposal is not consistent with City's General Plan or other policies, plans and ordinances of general applicability allowed by this Agreement and the vested rights conveyed by this Agreement.

5.5.6. Mediation. City and Developer shall meet within fifteen (15) calendar days ("Mediation Deadline"), after receiving an objection asserted by City pursuant to the preceding paragraphs, to mediate and resolve all outstanding issues.

5.5.7 Arbitration. If City and Developer are unable to resolve the issues via mediation pursuant to the preceding paragraphs, by the Mediation Deadline, the Parties shall attempt within seven (7) days to appoint a mutually acceptable land use planning expert to arbitrate the terms of the Preliminary Site Plan Modification proposal. The Party requesting the arbitration shall pay the fees to initiate the arbitration. If the Parties are unable to agree on a single acceptable arbitrator they shall each, within seven (7) additional days, appoint their own individual land use planning expert. These two land use planning experts shall, between them, choose the single arbitrator within the next seven (7) calendar days. The chosen arbitrator shall within fifteen (15) days, review the positions of the Parties regarding the Preliminary Site Plan Modification Application and issue a decision. The arbitrator shall ask the prevailing Party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, after consideration of such objections, the arbitrator's decision shall be final and binding upon both Parties and shall constitute an approved modification of the PCD Zone Approval and the Preliminary Site Plan. As part of the arbitrator's decision, the arbitrator shall determine the payment of the arbitrator's costs based on to the success or failure of each Party's position in the arbitration.

5.6 No Obligation to Undertake Development. Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall impose on Developer an obligation or affirmative requirement to develop the Project or any portion thereof. If Developer undertakes to develop all or any portion of the Project pursuant to the Preliminary Site Plan and this Agreement, Developer agrees to abide by the terms and conditions of this Agreement and the Preliminary Site Plan.

SECTION VI. MISCELLANEOUS

6.1 Incorporation of Recitals, Introductory Paragraphs, and Exhibits. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

6.2 Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control the meaning or construction of any of the provisions hereof.

6.3 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

6.4 Construction. This Agreement has been reviewed and revised by legal counsel for Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

6.5 Further Assurances, Documents and Acts. Each Party hereto agrees to cooperate in good faith with the others, and to execute and deliver such further documents and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each Party as allowed by law.

6.6 Assignment. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned by Developer to any other party, individual or entity (except an approved replacement developer) without assigning the rights as well as the obligations under this Agreement and complying with Paragraph 5.2 above and any other provision herein concerning assignment. The rights of City under this Agreement shall not be assigned, but City is authorized to enter into a contract with a third party to perform obligations of City to operate and maintain any infrastructure improvement so long as such Party adequately and reasonably maintains and operates such facility or improvement.

6.7 Recording. No later than ten (10) days after this Agreement has been executed by City and Developer, it shall be recorded in its entirety, together with all exhibits cited in Paragraph 6.11, at Developer's expense, in the Official Records of Washington County, Utah.

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

6.9 Notices. Any notice or communication required hereunder between the Parties shall be in writing, and may be given either personally, by overnight courier, by hand delivery or by registered or certified mail, return receipt requested or by facsimile. If given by overnight courier or registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. If given by facsimile to the address and number for such Party set forth below (provided, however, that the notice is not effective unless transmission is confirmed and a duplicate copy of the facsimile notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given upon receipt by the other Party. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the address set forth below:

If to Developer: South Landing Development, LLC
Attn: David Larson
P.O. Box 4099
Jackson, WY 83001

With a copy to: Snow Jensen & Reece
Attn: Curtis Jensen
912 West 1600 South, Suite B200
St. George, Utah 84770
Fax No: 435.628.3275

If to City: Washington City
C/O City Manager
111 North 100 East
Washington, Utah 84780
Fax No: 435.656.6370

With a copy to: Washington City Attorney
Attn: Jeffrey N. Starkey
Durham Jones & Pinegar
192 East 200 North, 3rd Floor
St. George, Utah 84770
Fax No: 435.628.1610

6.10 **No Third Party Beneficiary.** This Agreement is made and entered into for the sole protection and benefit of the Parties and their assigns. No other Party shall have any right of action based upon any provision of this Agreement whether as third party beneficiary or otherwise.

6.11 **Counterparts and Exhibits; Entire Agreement.** This Agreement may be executed in multiple counterparts, each of which is deemed to be an original. This Agreement consists of twenty-six (26) pages, and the seven (7) (A through G) exhibits identified below, which together constitute the entire understanding and agreement of the Parties to this Agreement.

| | |
|-------------|--|
| Exhibit "A" | Legal Description of Project |
| Exhibit "B" | Preliminary Site Plan |
| Exhibit "C" | Planning Commission Recommendation of Approval, Application # Z-06-06 |
| Exhibit "D" | City Council Approval, Application # Z-06-06 |
| Exhibit "E" | Road Cross Section Designs |
| Exhibit "F" | Open Space and Parks Schematic Plan |
| Exhibit "G" | Access Management Plan |

6.12 **Duration.** This Agreement shall continue in force and effect for a term of fifteen (15) years from the date of execution by both parties. Notwithstanding the foregoing, this Agreement shall become null and void if (i) initial construction of the infrastructure in a Development Phase does not begin within five (5) years of the date of this Agreement, or (ii) construction and development cease for a period of ten (10) consecutive years during the term of the Agreement. Upon the happening of either of such events, all approvals or development rights and obligations of City shall lapse unless extended by City's City Council. Upon the termination of this Agreement, the Parties shall, at the request of either Party, execute an appropriate recordable instrument confirming that this Agreement has been fully performed, terminated, or lapsed as provided for herein.

6.13 **No Further Exactions.** Subject to the obligations of Developer hereunder, no further exactions shall be required of Developer by City. Notwithstanding the foregoing, this paragraph shall not be construed to relieve Developer from any dedications or other requirements required by applicable law or ordinance in effect when this Agreement is executed unless otherwise provided in this Agreement.

6.14 **Good-Standing; Authority.** The Parties warrant and represent as follows:

6.14.1 **Developer.** Developer hereby represents and warrants to City: (a) Developer is a registered business entity in good standing with the State of Utah; (b) the individual executing this Agreement on behalf of Developer is duly authorized and empowered to bind Developer; and (c) this Agreement is valid, binding, and enforceable against Developer in accordance with its terms.

6.14.2 City. City hereby represents and warrants to Developer that: (a) City is a Utah municipal corporation; (b) City has power and authority pursuant to enabling legislation, the Utah Land Use and Development Management Act (U.C.A. §-10-9a-101 et seq.), and City's Land Use Ordinances to enter into and be bound by this Agreement; (c) the individual executing this Agreement on behalf of City is duly authorized and empowered to bind City; and (d) this Agreement is valid, binding, and enforceable against City in accordance with its terms.

6.15 Failure to Execute. The failure of any Party named above to execute this Agreement shall not invalidate the Agreement with respect to any of the remaining Parties or the property owned by such Parties at the time of execution; provided the total density and Preliminary Site Plan shall be modified to remove that parcel and the applicable density and infrastructure.

6.16 Concurrence. City desires that the resources, services and facilities needed to support development are available when a Land Use Application is approved. Notwithstanding any provision in this Agreement, City shall not be obligated to approve a Land Use Application if infrastructure and services will not be available in a reasonable time to serve the development contemplated under such application.

6.17 Indemnification. Developer and City each agree to defend and hold each other and their respective officers, employees and consultants harmless for any and all claims, liability, and damages arising out of or related to any work or activity connected with the Project, including approval of the Project; performed by a Party, its agents or employees except for willful misconduct or negligent acts or omissions of Developer or City, as the case may be, or their respective officers, agents, employees or consultants.

6.18 Default. Failure by a Party to perform any of the Party's obligations under this Agreement within a thirty (30) day period (the "Cure Period") after written notice thereof from the other Party shall constitute a default ("Default") by such failing Party under this Agreement; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing Party commences its efforts to cure within the initial thirty (30) day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged Default and the manner in which said Default may be satisfactorily cured, if possible. Upon the occurrence of an uncured Default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or may terminate this Agreement. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action.

6.18.1 Termination. If City elects to consider terminating this Agreement due to an uncured Default by Developer, then City shall give to Developer written notice of City's intent to terminate this Agreement and the matter shall be scheduled for consideration and review by City's legislative body at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If City's legislative body determines that a Default has occurred and is continuing, and elects to terminate this Agreement, City shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated. City may thereafter pursue any and all remedies at law or equity.

6.18.2 No Monetary Damages Relief Against City. The Parties acknowledge that City would not have entered into this Agreement had it been exposed to monetary damage claims from Developer for any breach thereof except as set forth herein. As such, the Parties agree that specific performance, as may be determined by the court, is the intended remedy for any breach of this Agreement. In the event specific performance is not available as a remedy to Developer for the City's breach hereof, then Developer shall be entitled to pursue any and all remedies at law or equity.

6.19 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by City or Developer for the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

6.20 Enforcement. The Parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer. City shall be free from any liability arising out of the exercise of its rights under this paragraph.

6.21 Severability; Invalidity. If City's approval of the Project is held invalid by a court of competent jurisdiction this Agreement shall be null and void. If any provision of this Agreement shall be held to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction or as a result of any legislative action, such holding or action shall be strictly construed. Furthermore, provided the Parties are still able to retain all of the material benefits of their bargain hereunder, such provision shall be construed, limited or, if necessary, severed, but only to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall remain unaffected and this Agreement shall be construed and enforced as if such provision in its original form and content had never comprised a part hereof.

6.22 Force Majeure. Developer shall not be liable for any delay or failure in the keeping or performance of its obligations under this Agreement during the time and to the extent that any such failure is due to causes beyond the control and without the fault or negligence of the Party affected, including, acts of God, acts of the United States Government or the State of Utah, fires, floods, strikes embargoes, wars, terrorist acts or unusually adverse weather conditions. Upon the occurrence of any such cause, Developer shall notify City and shall promptly resume the keeping and performance of the affected obligations after such cause has come to an end.

6.23 Nondiscrimination. Neither City nor Developer nor the agents, employees, or representatives of any of them, shall discriminate against, segregate, persecute, oppress, or harass one another's agents, employees, or representatives; other developers (including any potential replacement developer); contractor or subcontractor; or the agents, employees, or representatives of any of the foregoing; tenants, owners, occupants or residents, whether actual or potential, or any other person or entity.

6.24 **No Waiver of Governmental Immunity.** Nothing in this Agreement is intended to, or shall be deemed, a waiver of City's governmental immunity.

6.25 **Institution of Legal Action.** In addition to any other rights or remedies, any Party may institute legal action to cure, correct, or remedy any Default or breach, to specifically enforce any covenants or agreements set forth in this Agreement, to enjoin any threatened or attempted violation of this Agreement, or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fifth District Court, State of Utah, or in the Federal District Court for the District of Utah.

6.26 **Names and Plans.** Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature developed, formulated or prepared by or at the request of Developer in connection with the Project.

6.27 **Annual Review.** City may review progress pursuant to this Agreement at least once every twelve (12) months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in Paragraph 6.18 of this Agreement. City's failure to review at least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any Party as a Default under this Agreement.

6.28. **Amendment of Agreement.** This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the Parties. No change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of the City's City Council taken with the same formality as the vote approving this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been executed by Developer, by persons duly authorized to execute the same, by City, acting by and through its City Council by duly authorized persons as of the 9th day of NOVEMBER, 2011.



Attest:

Danice B. Bulloch
City Recorder

CITY:

City of Washington, a Utah municipal corporation and political subdivision of the State of Utah.

By: Kenneth Neilson
Mayor

DEVELOPER:

South Landing Development, LLC

By: Paul S. Lee

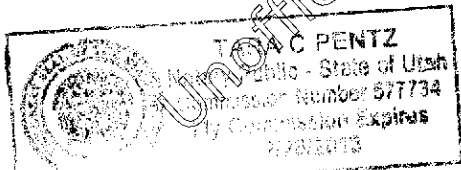
Its: owner - managing director

STATE OF UTAH

ss.

COUNTY OF WASHINGTON)

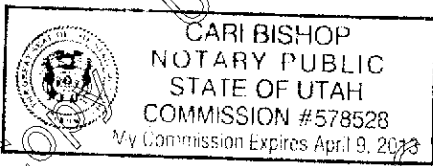
On this 9th day of November 2011, before me personally appeared KENNETH NEILSON and DANICE B. BULLOCH whose identities are personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that they are respectively the Mayor and Recorder of WASHINGTON CITY, and that the foregoing document was signed by them by authority, and they acknowledged before me that Washington City executed the document and that the document was the act of Washington City for its stated purpose.



Todd C. Pentz
Notary Public
Residing at: 111 N. 100 E.
Washington UT 84780

STATE OF UTAH)
)
) ss.
COUNTY OF Washington)

On the 20 day of July 2012, personally appeared before me Ken Carlson whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is the Managing Director of SOUTH LANDING DEVELOPMENT, LLC, and did duly acknowledge to me that the foregoing document was entered into on behalf of such entity by authority of its organizational documents and that the document was the act of SOUTH LANDING DEVELOPMENT, LLC, for its stated purpose.



Cari Bishop
Notary Public
Residing at: 111 N 100 E
Washington UT 84780

Parcel #s 1 W-5-3-12-3211
" " " 440
" " " 441
" " " 111
" " " 112
" " " 113
" " " 114
" " " 333
" " " 334
" " " 335
" " " 336

W-MSF-1A (Lot #s)

Exhibit A

ORDINANCE #2006-37

AN ORDINANCE AMENDING THE ZONING
ORDINANCE OF WASHINGTON CITY, UTAH

WHEREAS, the City Council of Washington City, Utah, desires to amend the Zoning Ordinance of Washington City, and

WHEREAS, the Planning Commission of Washington City, Utah recommended that the amendment be adopted.

BE IT ORDAINED BY THE CITY COUNCIL OF WASHINGTON CITY, UTAH, that the following described property is hereby amended from PUD and OS to PCD Zone and known as Application # Z-06-06. Said property is located at the southwestern end of Washington Fields Road west of Warner Valley Road at approximately 5000 South 900 East, and more particularly described as follows:

Beginning at the North Quarter Corner of Section 12, Township 43 South, Range 15 West, Salt Lake Base & Meridian, and running; thence South 01°08'31" West 2,643.26 feet along the Center Section line to the Center Quarter Corner of said Section 12; thence South 01°08'31" West 191.14 feet along the Center Section line to the Northerly line of Heaton Minor Subdivision; thence North 88°51'28" West 660.00 feet along said north line; thence South 01°08'31" West 660.00 feet along the West line of said Heaton Minor Subdivision; thence South 88°51'29" East 505.30 feet along and past the South line thereof, to the Easterly line of Stucki Farms Subdivision; thence South 01°08'31" West 375.00 feet along said East line to the Northerly line of Lot 4, said Stucki Farms Subdivision; thence South 88°51'29" East 154.70 feet along said north lot line to a point on the Center Section line of said Section 12; thence South 01°08'31" West 1,411.10 feet along said Center Section line to the South Quarter Corner of said Section 12; thence North 88°55'3" West 2,640.17 feet along the South Section line to the Southeast Corner of Said Section 12; thence North 88°47'53" West 2,639.26 feet along the South line of Section 11 Township 43 South, Range 15 West, Salt Lake Base & Meridian, to the South Quarter Corner of said Section 11, thence North 00°56'02" East 5,365.51 feet along the Center Section line to the North Quarter Corner of said Section 11; thence South 88°55'05" East 2,658.72 feet along the North Section line, to the Westerly Section line of Section 1 Township 43 South, Range 15 West, Salt Lake Base & Meridian, thence North 01°01'59" East 1,697.53 feet along said West line; thence South 88°58'01" East 463.23 feet; thence South 02°26'24" West 43.91 feet; thence South 88°41'15" East 51.39 feet; thence North 02°28'34" East 44.16 feet; thence South 88°58'01" East 807.20 feet to the Easterly line of Sectional lot 9, of said Section 1; thence South 01°06'51" West 1,786.81 feet along the East line of Sectional lots 9, and 16 to the Northerly Section line of said Section 12; thence South 88°50'03" East 1,320.71 feet along said North line to the Point of Beginning. Containing 30,029,330 square feet or 689.379 acres.

PASSED AND ORDERED POSTED this 8th day of November 2006.

Washington City



Terrill Clove
Terrill Clove, Mayor

Attest:

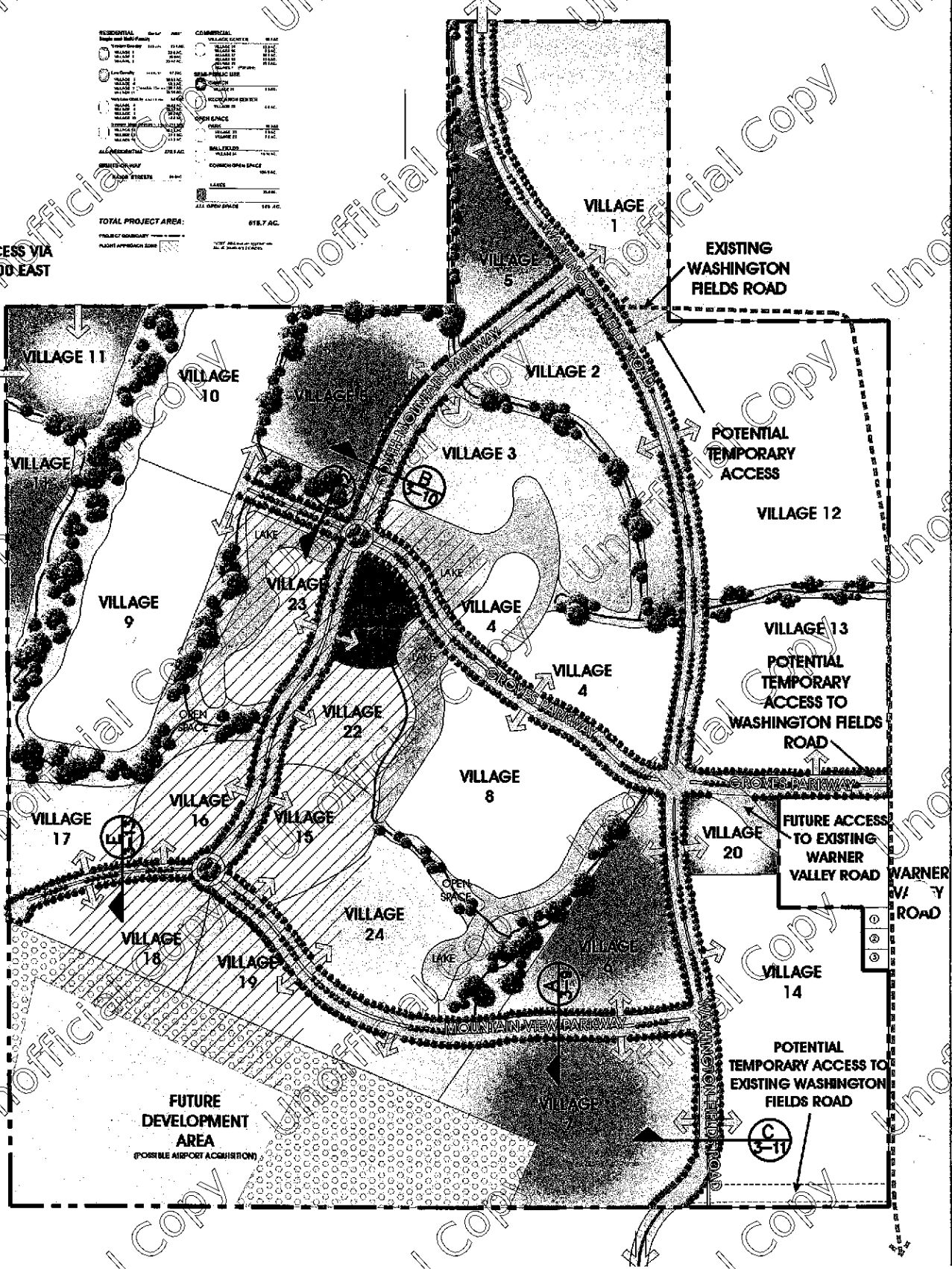
Danice B. Bulloch
Danice B. Bulloch, City Recorder

Exhibit "B"
 November 8, 2006

| RESIDENTIAL | Commercial |
|-------------------------|----------------|
| Single and Multi-Family | VILLAGE CENTER |
| Office | VILLAGE 1 |
| Hotel | VILLAGE 2 |
| Warehouse | VILLAGE 3 |
| Industrial | VILLAGE 4 |
| Public Use | VILLAGE 5 |
| Public Use | VILLAGE 6 |
| Public Use | VILLAGE 7 |
| Public Use | VILLAGE 8 |
| Public Use | VILLAGE 9 |
| Public Use | VILLAGE 10 |
| Public Use | VILLAGE 11 |
| Public Use | VILLAGE 12 |
| Public Use | VILLAGE 13 |
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| Public Use | VILLAGE 98 |
| Public Use | VILLAGE 99 |
| Public Use | VILLAGE 100 |

TOTAL PROJECT AREA: 615.7 AC.
 PROJECT BOUNDARY: [Symbol]
 FLIGHT APPROACH ZONE: [Symbol]

ACCESS VIA S. 300 EAST



main reason for the denial was because there was not an indication that there was an easement agreement in effect. He suggested that Mr. Gledhill and other property owners need to get together with public works to work out access. The City can not provide access to all the parcels that the court divided.

Mr. Christensen stated the immediate 10 acres north is zoned OS and if there is a need for access the property owners need to do a zone change.

Commissioner Burnette closed Public Hearing

Commissioner Burnette stated there is no way to know what is going on to the North and the effect it will have on Noble Way.

Commissioner Kinder motioned to table to November 1, 2006 to allow time to correct items.

Commissioner Wiley seconded motion.

Motion passed unanimously.

- B. Public Hearing and consideration of [REDACTED] to change present zone PUD and OS to PCD located at South Western End of Washington Fields Road and West of Warner Valley Road. Applicant: Karl Larsen

Commissioner Kinder abstained from this item

Background

The applicant is requesting approval to rezone approximately 616.7 acres located at the southwestern end of Washington Fields Road and west of Warner Valley Road from PUD and OS to PCD. The land uses planned for the PCD will conform to the City's General Plan and the Airport Vicinity Land Use Plan. There is a mix of uses proposed within 24 villages on the site. There will be various residential densities on approximately 373.1 acres; with a maximum of 2,436 units for a density of 6.53 du/ac on the residential portion, or 3.95 du/ac for the overall PCD. There will also be approximately 58.5 acres of commercial uses, a 3.3-acre church site, a 6.6-acre recreation center site, and 185 acres of open space in the form of parks, ball fields, common open space and lakes. The PCD will be known as South Mountain. The PUD portion of the site was previously known as Red Hawk, and the entire site was most recently known as The Groves until this PCD request was formerly submitted as South Mountain.

Surrounding zoning is A-20 and OS to the north, OS to the east and south, and OS and Washington County zoning to the west. Surrounding land uses are vacant properties to the north and south, and vacant and single family home properties to the east and west; with the homes being near Warner Valley Road and along the western ridge. Village 11 is isolated from the rest of the PCD on the west side of the ridge and actually falls within the Bonus Density area designation of the General Plan Land Use Map. However, the intent of the General Plan is being met with the Village being a part of the overall development. But if it is decided that Village 11

Washington City
Planning Commission Meeting
October 18, 2006

will become a separate development from the rest of the PCD or part of another development that is not part of this PCD, the Bonus Density area designation will apply.

Lots 4-9 of the Stucki Farms Subdivision are included as part of the PCD and are located along its eastern boundary. These lots must be vacated out of the subdivision prior to any further

subdividing over the boundaries of the lots. A network of trails is shown throughout the development. Some of them are 6' wide and some are 10' wide. The trails shown in the areas of the City's master planned trails will have to be continuous 10' wide trails that meet AASHTO standards. There are several wells on the site that will be used for irrigation purposes.

This request was heard by the Planning Commission on September 20, 2006. Staff pointed out several items that needed to be addressed or that needed further clarification. Most of those items have been adequately addressed, but further information received by staff shows that part of the Southern Parkway (Southern Corridor) goes through the northeast corner of Village 12.

Although this is a major item, improvement responsibilities can be addressed in the development agreement (see Conditions). Most of the outstanding items are typographical errors or are minor enough that staff feels that this request can be forwarded to the City Council. Please note the following:

- 1) The Southern Parkway (Southern Corridor) is not shown on the exhibits as traversing the property but its alignment goes through the northeast corner of Village 12. This may reduce the number of units that will be allowed in Village 12. Improvement responsibilities must be addressed in the development agreement (see Conditions).
- 2) Access must be provided to the parcels north and west of Village 5, east of Village 1 and north of Village 12, and the six parcels northeast of Village 14 (see Conditions).
- 3) List the City's street address rather than a P. O. Box number.
- 4) The Zoning Comparison Sheet still has the number 7 listed for recreation center density.
- 5) Staff did not see the correction to Construction and Maintenance Responsibility, which should read "some of the common facilities" because some common areas and open space will not be accepted by the City.
- 6) Staff is okay with reviewing signage plans and lighting standards for each village prior to or along with the development review of the villages (see Conditions).
- 7) Staff did not see the traffic engineer responses to the traffic impact study concerns (although the concerns can easily be addressed).
- 8) Staff did not see the civil engineer responses to the drainage study concerns (although the concerns can easily be addressed).
- 9) Staff is okay with the new wording about the PCD Master Plan on Page 1-6 of the Design Guidelines, but the standards are being reviewed and approved now, not at the time of preliminary plat submittal.
- 10) The new statement concerning Mountain View Parkway was not included on Page 2-6 of the Design Guidelines.
- 11) Again, the street cross sections, including whether a trail or sidewalk will be allowed on only one side of the streets, must be approved by the City (see Conditions).

Washington City
Planning Commission Meeting
October 18, 2006

- 12) The wrong page number for retaining walls was listed on Page 3-18 of the Design Guidelines.
- 13) The tree caliper size was still incorrectly listed on Page 3-22 of the Design Guidelines.
- 14) On item #11 of the regulations for guest homes, remove the statement "unless the City Council grants a greater height."

Recommendation

Staff recommends that the Planning Commission recommend approval of Z-06-06 to the City Council, based on the following findings and subject to the following conditions:

Findings

1. That the PCD conforms to the intent of the land use designations of the General Plan, as conditioned.
2. That the PCD conforms to the PCD intent and provisions of the Zoning Ordinance, as conditioned.
3. That the PCD conforms to the intent of the Draft Airport Vicinity Land Use Plan reviewed by the Planning Commission.
4. That the project will incorporate infrastructure to adequately serve the land uses and densities proposed for the development.

Conditions

1. All individual and project-wide studies and master plans concerning grading, drainage, traffic, and utilities, including the design and installation of infrastructure improvements, shall be approved by the City.
2. A water model to verify City requirements will be met shall be submitted for review and approval prior to the submittal of a preliminary plat.
3. A sewer model to verify City requirements will be met shall be submitted for review and approval prior to the submittal of a preliminary plat.
4. A hydrology report shall be submitted for review and approval prior to the submittal of a preliminary plat.
5. Any variations from the City's Construction Design Standards shall be specifically approved by the City Council, and all street designs shall be approved by the Public Works Department in conformance with what is specifically approved by the City Council. (The manner in which the PCD is adopted will dictate the standards).
6. The applicant shall enter into a development agreement with Washington City prior to the submittal of a preliminary plat or commercial site plan.
7. Southern Parkway (Southern Corridor) improvement responsibilities shall be outlined in the development agreement. The placement of the Southern Parkway may reduce the total number of units proposed in Village 12.
8. Access shall be provided to the parcels north and west of Village 5, east of Village 1 and north of Village 12, and the six parcels northeast of Village 14.
9. The entire development is subject to height restrictions as outlined in Federal Regulations Title 14, Part 77, and is subject to disclosure statements and avigation easements, due to the future location of the St. George Replacement Airport.

Washington City
Planning Commission Meeting
October 18, 2006

10. A signage plan and lighting standards shall be approved for each village prior to or along with any development review proposals in the villages.

Mr. McGuire stated that to the north there would need to have an access. This would be in the recommendation of approval to allow access. Also between Village 13 and Village 14 there will need to be access. A lot of text changes have been resubmitted with the correction made. The remaining items need to be made before they go to City Council. The main issue is the Southern Parkway issue, there is a lot to be done with that area but there will be a development agreement for this project and they will address issues in that. The height restriction will need to be addressed in the airport area. Mr. McGuire state there was not a signage and lighting plan but staff does not have a problem if they do the plans Village by Village as long as they comply with Condition 10 and let staff review it.

Commissioner Burnette asked for clarification of Condition 9.

Mr. McGuire state this is just disclosure stated and will be recorded on the plat.

Commissioner Hirschi asked if there are any concerns with utilities.

Mr. McGuire stated this was known as Red Hawk and so the City put in a water tank but the project did not happen so the City will be very careful to watch how and what is going on out in that area. Things will be worked out in the development agreement.

Commissioner Burnette opens the Public Hearing
None

Commissioner Burnette closes the Public Hearing

Commissioner Wiley motioned to recommend approval to City Council with the findings and condition of staff.

Commissioner Gren seconded the motion.

Motion passed unanimously.

Commissioner Kinder resumes his seat.

PRELIMINARY PLAT

- A. Public Hearing and consideration for the Preliminary Plat for New Warm Springs Phase 5 located at approximately 940 North and 350 East. Applicant: John Graham

Background

Mr. McGuire stated the applicant is requesting approval of a preliminary plat for New Warm Springs Phase 5 located at approximately 940 North 350 East. The site is zoned R-1-6 and 64 lots are being proposed on approximately 14.26 acres. The site is currently vacant. A detention basin is proposed at the southwest corner of the site and will be reviewed in detail along with the

Exhibit "D"

Washington City Council
Regular Meeting
November 8, 2006

Applicant: Steve Wilson & Troy Braithwaite

Mr. Ellerman reviewed:

The applicant has already received approval from the City Council for this subdivision under a different name (Caldicot Park Subdivision) on November 22, 2005. Since that time, the owners have decided to change the name to the Silverstone Estates at Washington Fields Subdivision. Nothing else has changed from the prior approval from last year.

The Planning Commission recommended approval (by a four to one vote) of the final plat for Silverstone Estates at Washington Fields Subdivision, based on the following findings and subject to the following conditions:

Findings

1. That the final plat conforms to the approved preliminary plat.

Conditions

1. All improvements shall be completed or bonded for prior to recording the final plat.
2. A current title policy shall be submitted prior to recording the final plat.
3. Any referenced control monuments related to this subdivision shall be in place prior to recordation of the final plat. A stamped and signed letter from a professional land surveyor licensed in the state that verifies that the referenced control monuments are in place shall be submitted to the Community Development Department for filing prior to plat recordation.

Council Member Bundy stated he is not in favor of the name change as there are several phases of Silverstone in the Green Springs area.

Steve Wilson stated they originally asked for Silverstone Estates, which the County Recorders Office was okay with. However, staff recommended adding at the Washington Fields because of the theme of the homes.

Council Member Bundy suggested the name be reconsidered.

Mr. McGuire stated this is an approved subdivision, however Staff felt the needed to bring the name change back to Council for approval.

Council Member VanDerHeyden made a motion to approve Final Plat with the new name of "Silver Hawk Estates" located at approximately 3090 South 300 East. Council Member Bundy seconded the motion, which passed unanimously.

8. PUBLIC HEARINGS

- A. **Public Hearing for consideration of Zone Change request Z-06-06 to change present zone from PUD and OS to PCD located at the southwest end of Washington Fields Road west of the Warner Valley Road intersection at**

Washington City Council
Regular Meeting
November 8, 2006

approximately 5000 South 900 East. Applicant: Karl Larsen

Mr. McGuire reviewed:

The applicant is requesting approval to rezone approximately 616.7 acres located at the southwestern end of Washington Fields Road and west of Warner Valley Road from PUD and OS to PCD. The land uses planned for the PCD will conform to the City's General Plan and the Airport Vicinity Land Use Plan. There is a mix of uses proposed within 24 villages on the site. There will be various residential densities on approximately 373.1 acres, with a maximum of 2,436 units for a density of 6.53 du/ac on the residential portion, or 3.95 du/ac for the overall PCD. There will also be approximately 58.5 acres of commercial uses, a 3.5-acre church site, a 6.6-acre recreation center site, and 185 acres of open space in the form of parks, ball fields, common open space and lakes. The PCD will be known as South Mountain. The PUD portion of the site was previously known as Red Hawk, and the entire site was most recently known as The Groves until this PCD request was formerly submitted as South Mountain.

Surrounding zoning is A-20 and OS to the north, OS to the east and south, and OS and Washington County zoning to the west. Surrounding land uses are vacant properties to the north and south, and vacant and single family home properties to the east and west, with the homes being near Warner Valley Road and along the western ridge. Village 11 is isolated from the rest of the PCD on the west side of the ridge and actually falls within the Bonus Density area designation of the General Plan Land Use Map. However, the intent of the General Plan is being met with the Village being a part of the overall development. But if it is decided that Village 11 will become a separate development from the rest of the PCD or part of another development that is not part of this PCD, the Bonus Density area designation will apply.

Lots 4-9 of the Stucki Farms Subdivision are included as part of the PCD and are located along its eastern boundary. These lots must be vacated out of the subdivision prior to any further subdividing over the boundaries of the lots. A network of trails is shown throughout the development. Some of them are 6' wide and some are 10' wide. The trails shown in the areas of the City's master planned trails will have to be continuous 10' wide trails that meet AASHTO standards. There are several wells on the site that will be used for irrigation purposes.

This request was first heard by the Planning Commission on September 20, 2006. Staff pointed out several items that needed to be addressed or that needed further clarification. Only one adjoining property owner spoke at the public hearing and wanted to make sure that the development would not block access to his property. Most of those items were adequately addressed from that meeting when the updated materials were submitted for the Planning Commission's October 18, 2006 meeting, but staff pointed out that we received additional information that shows part of the Southern Parkway (Southern Corridor) going through the northeast corner of Village 12. Although this is a major item, improvement responsibilities can be addressed in the development agreement (see Conditions). The other outstanding items were typographical errors or were minor enough that staff felt that the request could be forwarded to the City Council. There were no public comments at this last public hearing. The applicant has since taken care of the other outstanding items previously addressed, including the alignment of the Southern Parkway, and they are reflected in the materials the City Council is receiving with this report.

Washington City Council
Regular Meeting
November 8, 2006

The Planning Commission recommended approval of Z-06-06 on a 4-0 vote with one Commissioner abstaining, based on the following findings and subject to the following conditions:

Findings

1. That the PCD conforms to the intent of the land use designations of the General Plan, as conditioned.
2. That the PCD conforms to the PCD intent and provisions of the Zoning Ordinance, as conditioned.
3. That the PCD conforms to the intent of the Draft Airport Vicinity Land Use Plan reviewed by the Planning Commission.
4. That the project will incorporate infrastructure to adequately serve the land uses and densities proposed for the development.

Conditions

1. All individual and project-wide studies and master plans concerning grading, drainage, traffic, and utilities, including the design and installation of infrastructure improvements, shall be approved by the City.
2. A water model to verify City requirements will be met shall be submitted for review and approval prior to the submittal of a preliminary plat.
3. A sewer model to verify City requirements will be met shall be submitted for review and approval prior to the submittal of a preliminary plat.
4. A hydrology report shall be submitted for review and approval prior to the submittal of a preliminary plat.
5. Any variations from the City's Construction Design Standards shall be specifically approved by the City Council, and all street designs shall be approved by the Public Works Department in conformance with what is specifically approved by the City Council.
6. The applicant shall enter into a development agreement with Washington City prior to the submittal of a preliminary plat or commercial site plan.
7. Southern Parkway (Southern Corridor) improvement responsibilities shall be outlined in the development agreement. The placement of the Southern Parkway may reduce the total number of units proposed in Village 12.
8. Access shall be provided to the parcels north and west of Village 5, east of Village 1 and north of Village 12, and the six parcels northeast of Village 14.
9. The entire development is subject to height restrictions as outlined in Federal Regulations Title 14, Part 77, and is subject to disclosure statements and aviation easements, due to the future location of the St. George Replacement Airport.
10. A signage plan and lighting standards shall be approved for each village prior to or along with any development review proposals in the villages.

Council Member Bundy clarified if the potential buyers would be notified of their close proximity to the airport.

Mr. McGuire stated it is a condition of approval.

Washington City Council
Regular Meeting
November 8, 2006

City Attorney Starkey stated we may need to have the Fire Chief get involved regarding the safety issues for emergency vehicles.

Council Member Bundy stated he does not want to proceed when a development agreement should be in place.

Mr. Shaw stated all of the large PCD applications have come in with different types of street cross sections. We have ASHTO standards we have to follow, and would scrutinize these designs very carefully.

Korey Kinder stated the road cross sections are determined by following standards. Many of the items will come in with construction plans. The maximum number of homes would be 2400.

Carl Larsen stated they have been reviewing their development extensively with St. George City, Washington City, and the Airport Task Force. The proposal meets all of the standards which have been presented.

Council Member VanDerHeyden made a motion to leave the public hearing. Council Member Bundy seconded the motion; which passed unanimously.

B. Consideration of approval of an Ordinance 2006-37 adopting Zone Change Z-06-06 to change present zone from PUD and OS to PCD.

Council Member Arbuckle made a motion to approve Ordinance 2006-37 adopting Zone Change Z-06-06 to change present zone from PUD and OS to PCD. Council Member VanDerHeyden seconded the motion; which passed with the following roll call vote:

| | |
|------------------------------------|------------------|
| <i>Council Member Arbuckle</i> | <i>Aye</i> |
| <i>Council Member VanDerHeyden</i> | <i>Aye</i> |
| <i>Council Member Bundy</i> | <i>Aye</i> |
| <i>Council Member Heaton</i> | <i>Abstained</i> |

9. NEW BUSINESS

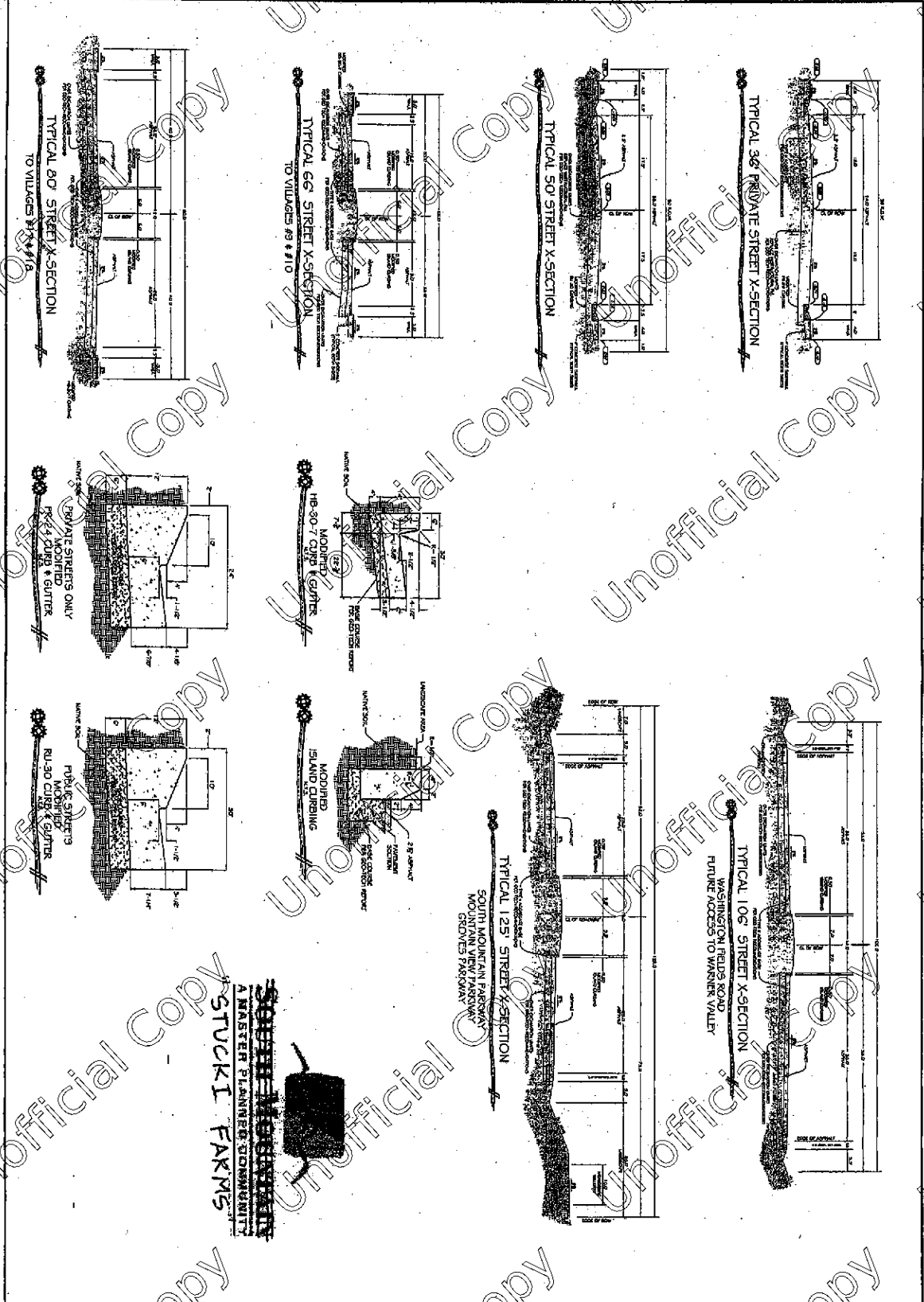
**A. Discussion and consideration to allow early building permits to be issued for a Clubhouse with pool and 2 Model Homes in The Villas @ Sienna Hills.
Applicant: Ken Miller / Dry Canyon Homes Inc.**

Ken Miller stated the applicant is requesting to be allowed to pull early building permits for the model homes and the clubhouse with pool.

Council Member Heaton made a motion to allow early building permits to be issued for a Clubhouse with pool and 2 Model Homes in The Villas @ Sienna Hills. Council Member VanDerHeyden seconded the motion; which passed with Council Member Bundy abstaining.

10. REPORT OF OFFICERS

EXHIBIT E



SOUTH MOUNTAIN
 A MASTER PLANNER COMMUNITY
STUCKI FARMS

PREMIER
 Design & Engineering
 800 SOUTH RIVER RD. SUITE 207, GEORGE OAH WA 98544

EXHIBIT E
 STREET CROSS SECTIONS & CURBING DETAILS
 FOR
 SOUTH MOUNTAIN STUCKI FARMS
 LOCATED IN SECTIONS 1, 11, AND 12, TOWNSHIP 43 SOUTH, RANGE 15 WEST
 SALT LAKE BASE AND MERIDIAN, WASHINGTON COUNTY, UTAH



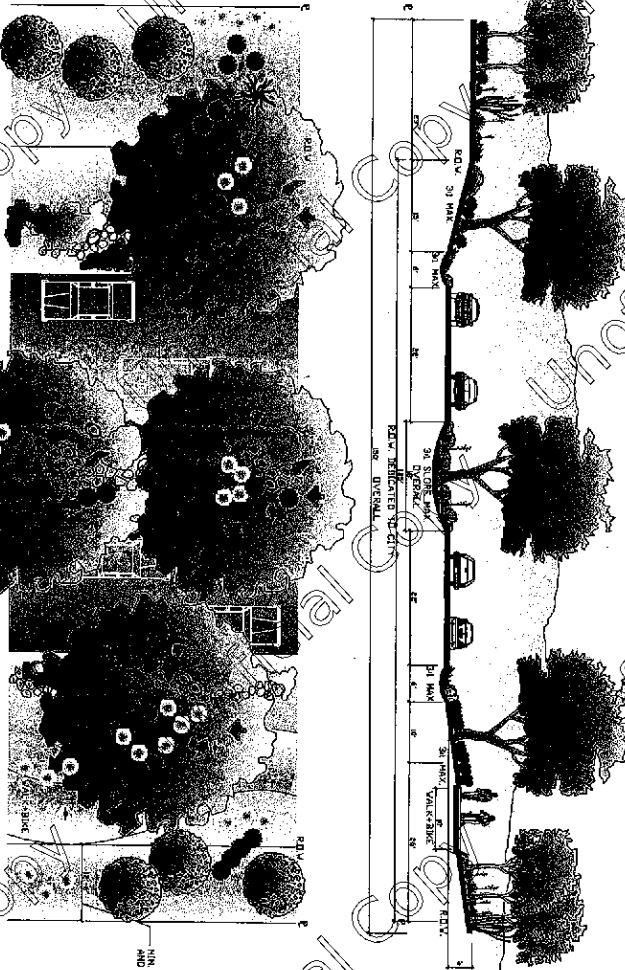
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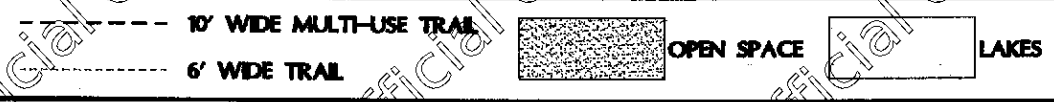
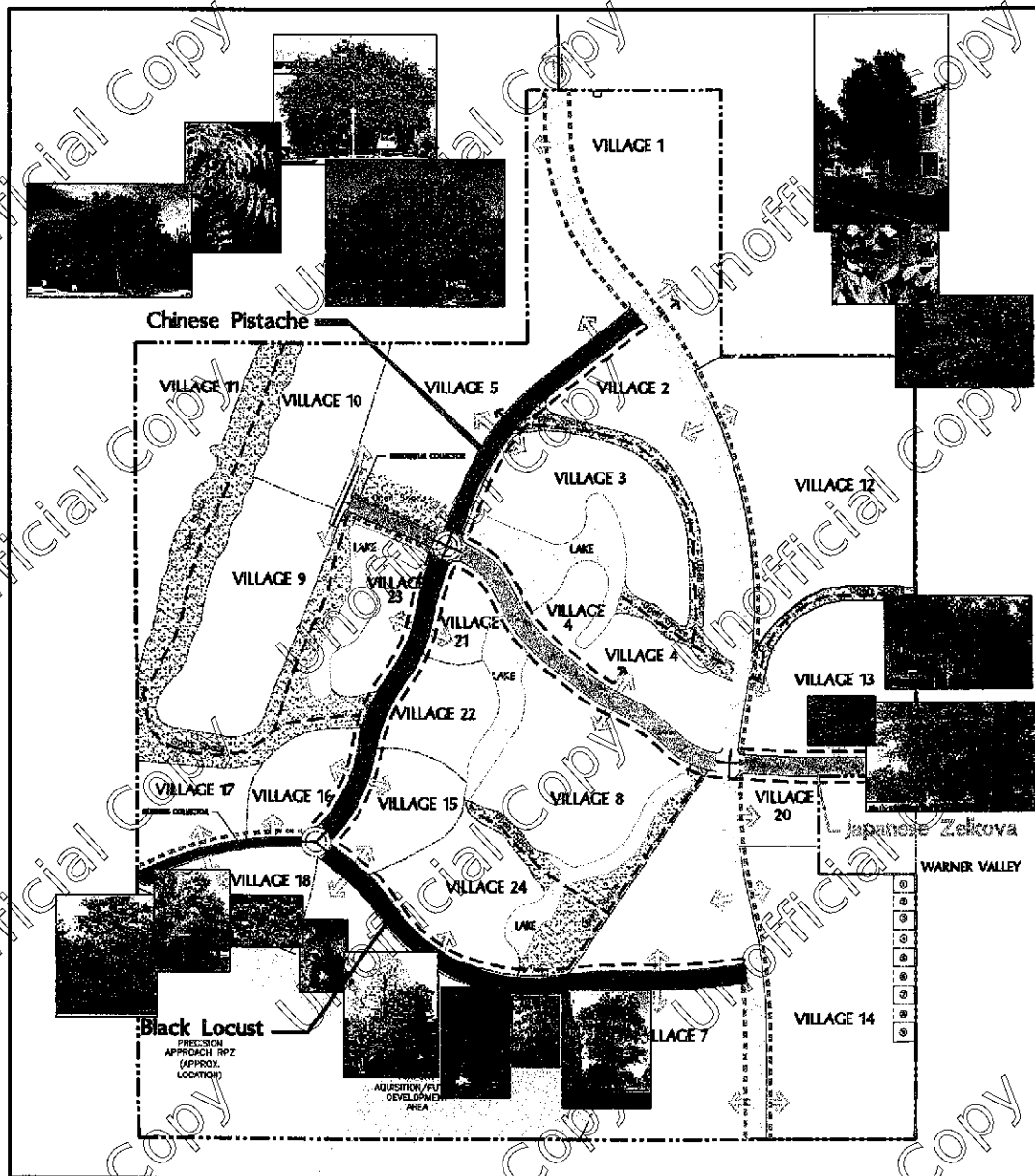
STANTEC CONSULTING INC. 7251 W. Charleston Blvd. Las Vegas, NV 89117 Ph (702) 258-0115


~~South Mountain~~
STUCKI FARMS
Washington City, UT

125' R.O.W.




3/23/2006



 **Stantec**

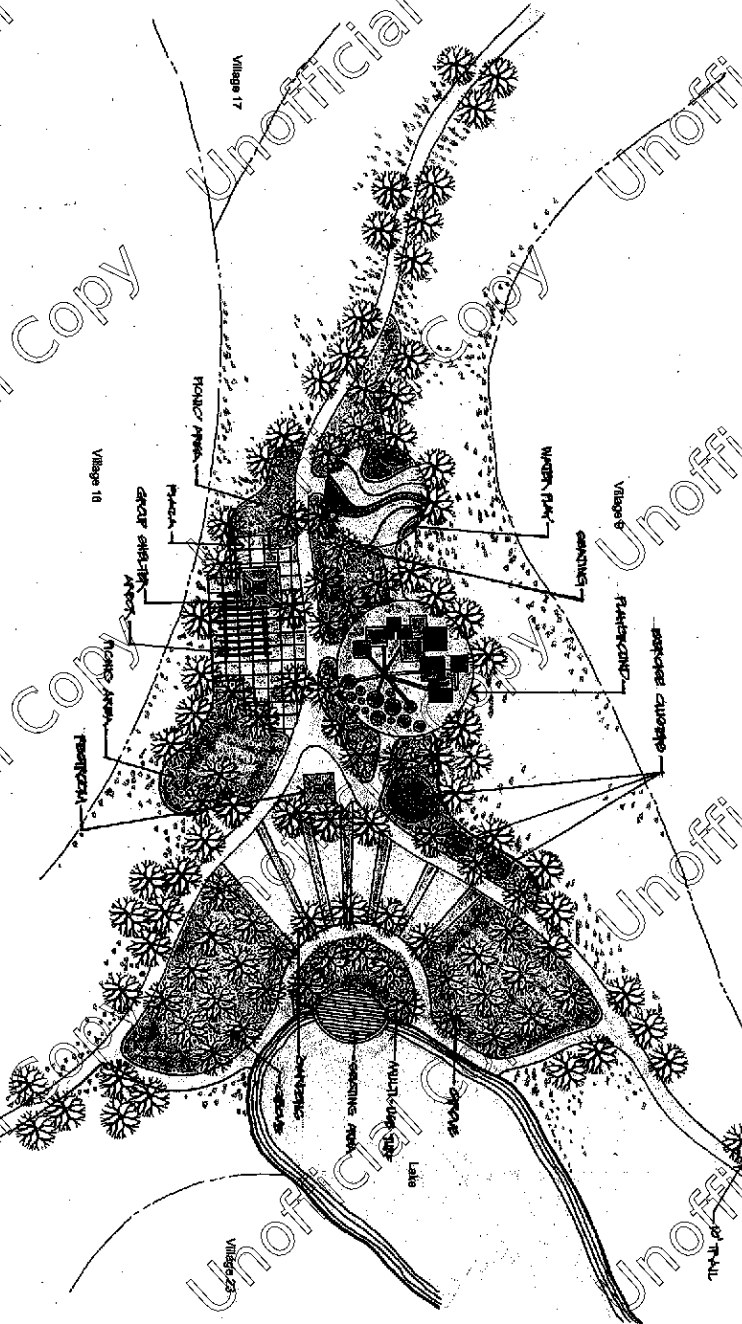
SOUTH MOUNTAIN
STREET TREE STUDY
A Master Planned Community
Washington City, Utah

"STUCKI FARMS"


N
N.T.S.

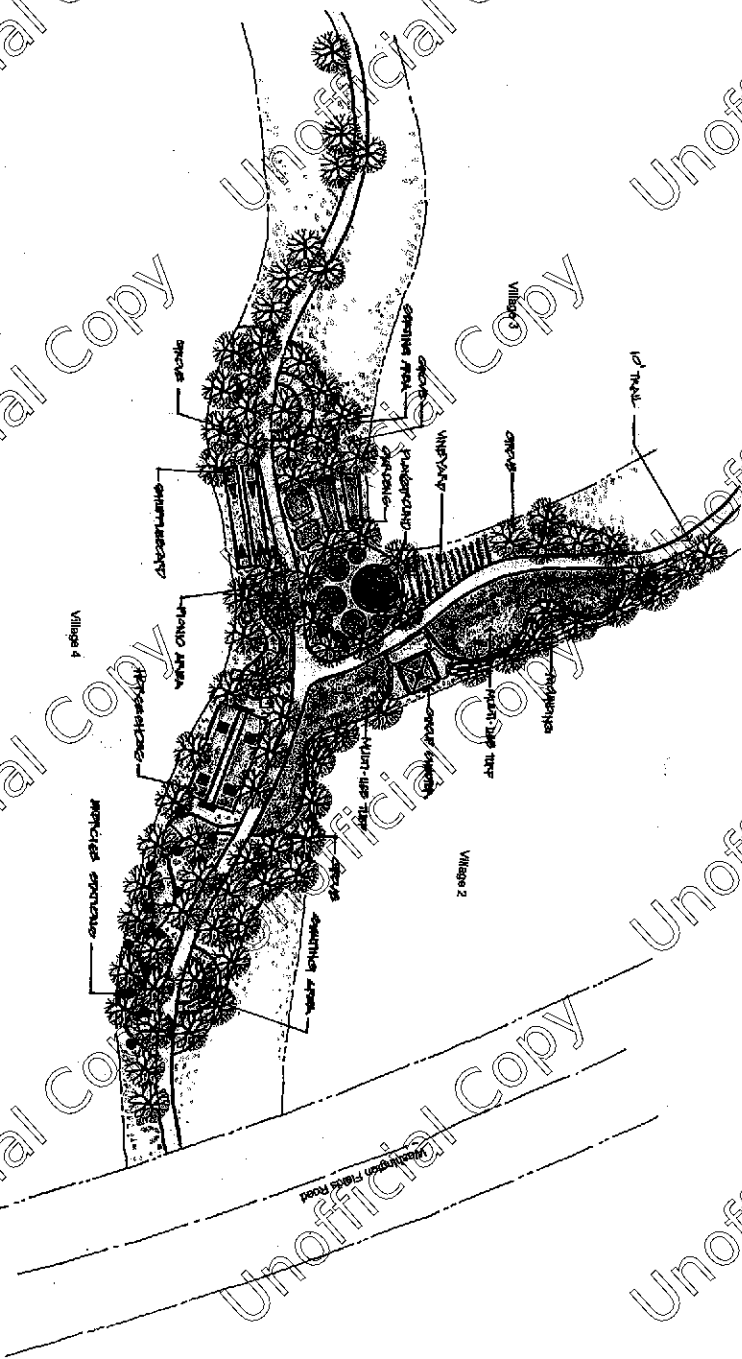
STUCKI FARMS
Park Node / Open Space
Scale: 1" = 40' - 0"

Seattle, WA: 2012
A RURAL LIFE COMMUNITY WASHINGTON COUNTY, WA



Stucki Farms, Inc. / 1234 5th Avenue / Project Number: 123456789
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STUCKI FARMS
Park/Road / Open Space
Scale 1/8" = 1'-0"
South - Mountain View
AMENDED USE COMPLAINT, WASHINGTON COUNTY, OREGON



STUCKI FARMS
Park Model / Open Space
Scale 1" = 40'



SOUTH-MOUNTAIN ANIMATED USER COMMENTS, WASHINGTON COUNTY, USA

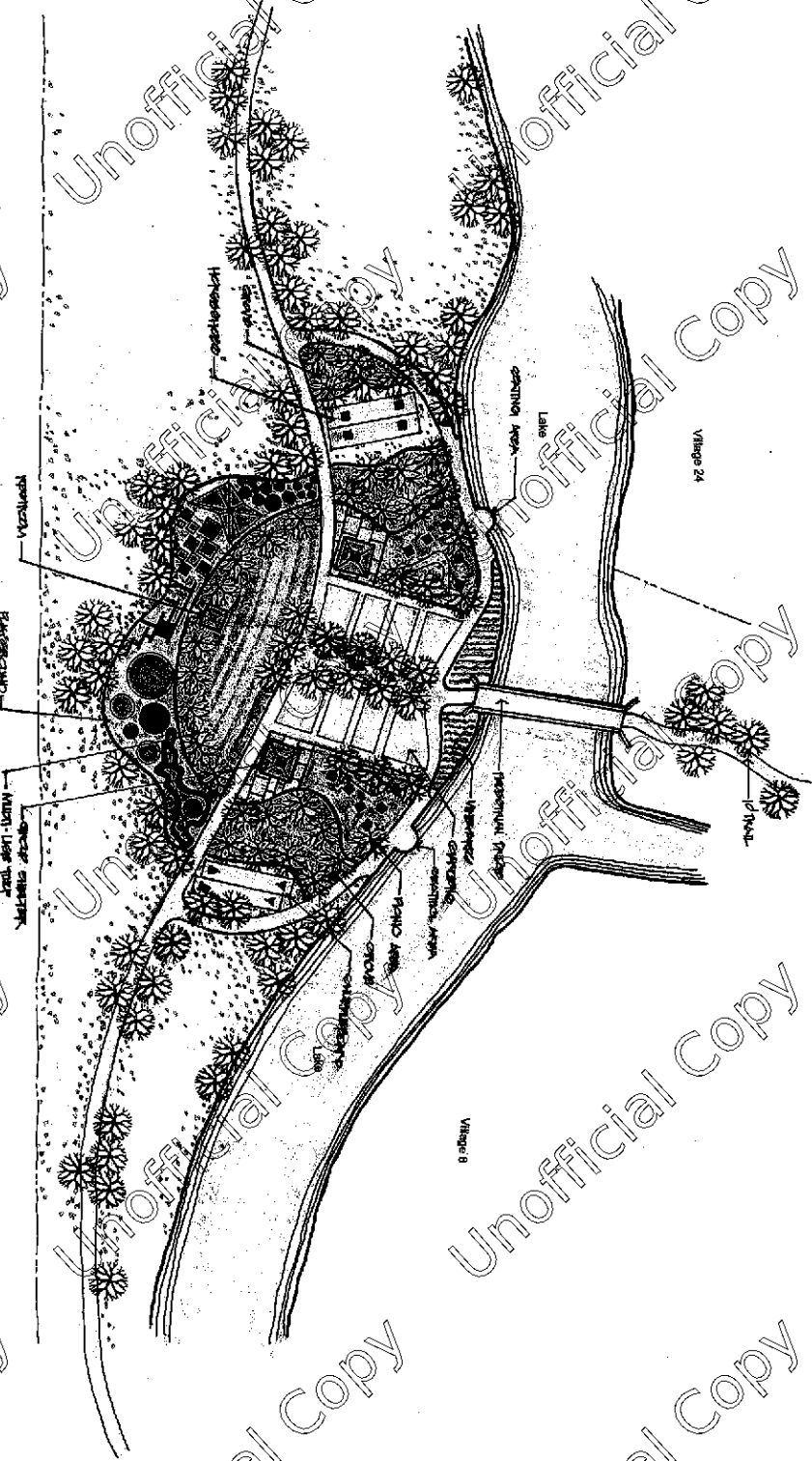
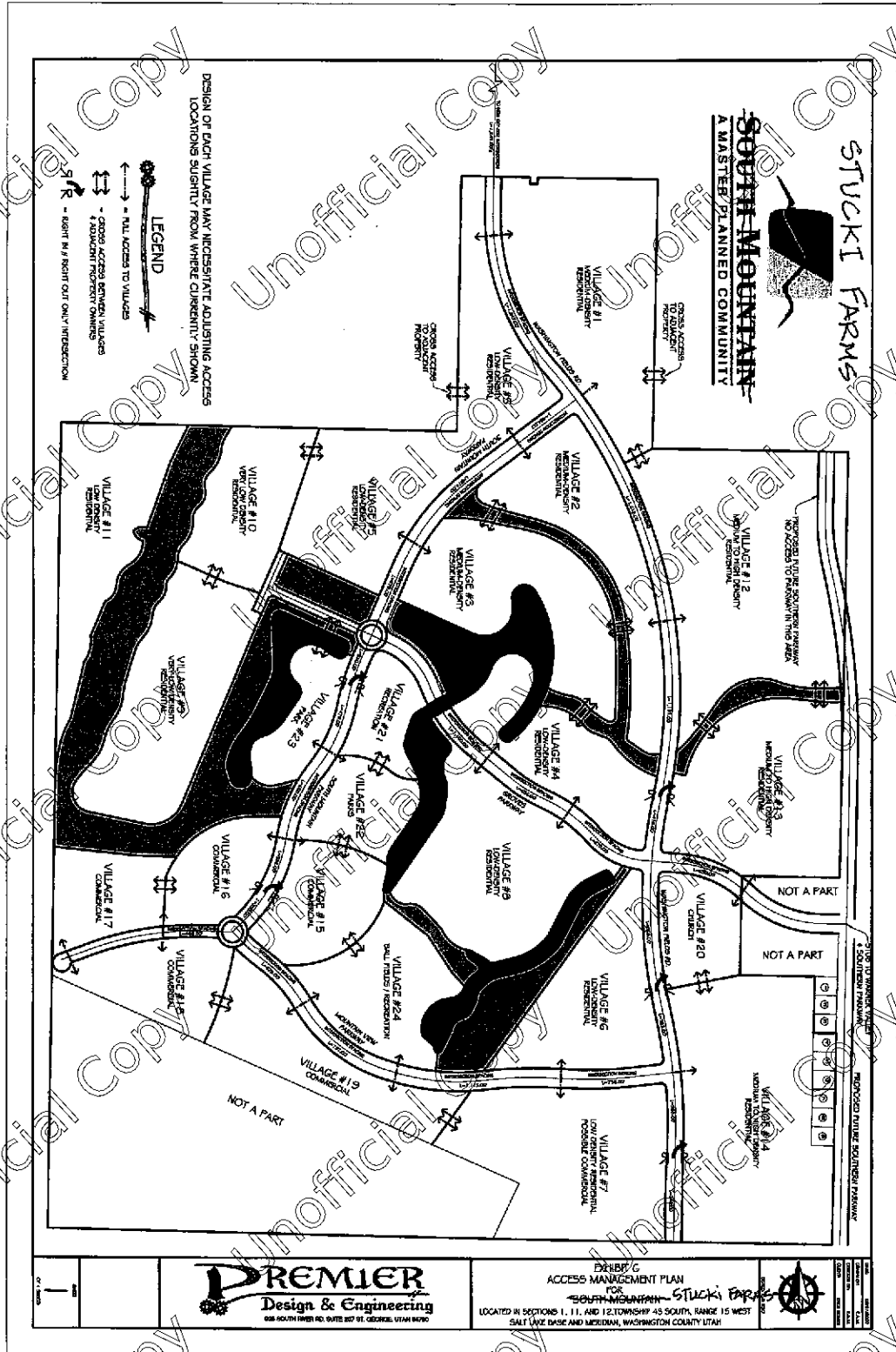


EXHIBIT 'G'



PREMIER
 Design & Engineering
 808 SOUTH PINE RD. SUITE 207 ST. GEORGE, UTAH 84790

DATE: 7/25/12
 SHEET: 44 OF 44
 PROJECT: STUCKI FARMS SOUTH MOUNTAIN
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

DATE: 7/25/12
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| | |
|-------------|-----------------------------|
| DATE | 7/25/12 |
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