



W2239614

When Recorded Return Original to:

Planning and Zoning Administrator
City of Plain City
4160 W 2200 North
Plain City, UT 84404 - 9640

When Recorded Return Copy to:

Stillcreek LLC
c/o Hawkins Homes & Communities
Attn: Mike Flood
39 East Eagleridge Drive, Suite 200
North Salt Lake, UT 84054

E# 2239614 PG 1 OF 26
ERNEST D ROWLEY, WEBER COUNTY RECORDER
01-FEB-07 423 PM FEE \$70.00 DEP SGC
REC FOR: STILLCREEK LLC

For Recording Purposes Do
Not Write Above This Line

DEVELOPMENT AGREEMENT

THIS AGREEMENT (herein the "Agreement") entered into this 31st day of January, 2007, by and between STILLCREEK LLC of North Salt Lake, County of Davis, State of Utah, (hereinafter referred to as "Developer"), and, PLAIN CITY, a municipal corporation of the State of Utah located in Weber County (hereinafter referred to as the "City"), hereby agree as follows:

RECITALS

WHEREAS, Developer has presented and to the Plain City Planning Commission and the Plain City Council a proposed Preliminary Plat for the PRUD (Planned Residential Unit Development) Subdivision of, and construction of improvements on, certain land in Plain City to be known collectively as STILLCREEK VILLAGE PRUD SUBDIVISION. The Plain City Council approved by motion this development agreement on August 17, 2006.

WHEREAS, Developer is acquiring and/or is the owner of approximately 150 acres of real property located at approximately 3350 West North Plain City Road, within the City limits of Plain City, Utah as described in "Exhibit A - Legal Description" (herein known as "Property"), on which it proposes the development of residential housing (herein known as "Project"); and

WHEREAS, Developer has voluntarily represented to the Plain City Council that it will enter into this binding Development Agreement; and

WHEREAS, Developer is willing to design and develop the Project in a manner that is in harmony with the objectives of the City's General Plan and long-range development objectives, and, addresses the more specific development issues set forth in this Agreement and is willing to

abide by the terms of this Agreement; and

WHEREAS, the proposed Project is in accordance with the City land use designations, and, the proposed Project includes properties within an area currently zoned "RE-15," a current City zoning designation; and

WHEREAS, the Developer desires to develop the Property into a more creative and imaginative land use design containing various types of residential uses, and open spaces as generally shown on the Preliminary Development Plan attached hereto as "Exhibit B - Preliminary Development Plan"; and

WHEREAS, the Developer and City have agreed to the use restrictions and other limitations set forth herein upon the use and development of the Property and the Plain City Planning Commission and Plain City Council have consented to a PRUD (Planned Residential Unit Development) zoning designation for the Property, and as consideration for the granting of said approval and acceptance, Developer and City have agreed and does now agree to the provisions hereof and all other relevant ordinances of Plain City in effect at the time of approval, and

WHEREAS, the Planning and Zoning Commission and the City Council of Plain City has determined that the scope of any Planned Residential Unit Development project upon the Property must be in compliance with the intent and objectives found in Section 11-6-1 "Purpose and Intent" of the City's PRUD Ordinance; and

WHEREAS, the intent of this Development Agreement is to protect the rights of Developer's use and enjoyment of the Property while at the same time limiting any adverse impacts of the Project upon neighboring properties and the existing community and ensuring the Property should be developed in a manner consistent with the City's General Plan and city code; and

WHEREAS, all exhibits mentioned herein are attached hereto and are incorporated herein by reference; and

WHEREAS, The City, acting pursuant to its legal authority under UTAH CODE ANNOTATED § 10-9-101, et seq., and its ordinances, resolutions, and regulations and in furtherance of its land-use policies, has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

ARTICLE I ZONING & CONDITIONAL USE APPROVAL

- 1.1 With the prior granting of Conditional Use approval and upon the granting of Preliminary Plat approval of the Project, the City grants approval of a PRUD on

the Property, and after passage of said actions, both City and Developer are subject to the provisions of this Development Agreement. The action will become effective after its passage, approval, and publication and the execution and recordation of this Development Agreement in the office of the Weber County Recorder.

**ARTICLE II
SPECIFIC CONDITIONS OF THE PRUD DEVELOPMENT**

- 2.1 Developer will develop the Property subject to the conditions and limitations set forth in this Development Agreement. Further, Developer will submit such applications regarding preliminary and final plat reviews, and/or any other conditional use permits, if applicable, and any other applicable applications as may be required by the City Code, which shall comply with the City Code, as it exists at the time such applications are made, except as otherwise provided within this Agreement, and local building codes which are changed or adopted from time to time.
- 2.2 The Preliminary Development Plan represents the Developer's current concept for completion of the project. As Final Plat and Plans evolve for each phase, the City understands and agrees that certain changes or deviations from that concept may occur. If the City determines that any such change is substantially different from the original concept plan, it may require additional public comment due to potential impacts on surrounding property or the community, and, a public hearing shall be held on said proposed substantial changes in the Final Plat and Plans. Notice shall be provided as may be required by the City or State law.
- 2.3 The Preliminary Development Plan shows the conceptual layout and location for all proposed lots and fixed buildings within the Project.
- 2.4 Except for the modifications, limitations and allowances expressly set forth herein and the other terms of this Agreement, the Property can be developed and used consistent with the Planned Residential Unit Development land uses allowed by the Plain City Code. Specific clarifications, modifications, limitations, and allowances to each section are defined as follows:
 - 2.4.1 Section 11-6-2 "Use Regulations"
 - 2.4.1.1 Zones Allowed: As stated in the ordinance
 - 2.4.1.2 Conditional Use/Preliminary Development Plan Approval: With clarifications, modifications, limitations, and allowance as set forth in this agreement.
 - 2.4.1.3 Non-residential Uses: Common facilities such as a community pool, dressing facility, and pavilion, will be built on the Property for the common use of the residents in the Project.

2.4.2 Section 11-6-3 "Area Regulations": As stated in the ordinance

2.4.3 Section 11-6-4 "General Regulations"

2.4.3.1 A. Open Space: The Project shall have at least 20% open space as required by the ordinance. The attached "Exhibit C – Open Space Areas" generally delineates the open spaces that are defined below:

2.4.3.1.1 Municipal Public Open Space: All open spaces designated with a "MP" shall be dedicated to the City as "Municipal Public" upon recordation of the respective plats, and shall be for the available for the recreational use by the public in general. Due to the nature of the power line easement and in accordance with the PRUD ordinance, only 50% of the property is being included in the open space requirement calculations. Upon construction of any phase of the Project where "MP" open spaces are located, the developer will provide the following in the construction of the open spaces: grading, automatic irrigation system, turf-grass seed application, shrub & mulch beds, and, 10 trees (1-1/2" caliper minimum; mixture of deciduous and coniferous type) per acre. A detailed landscape improvement plan shall be submitted, reviewed and approved in conjunction with the final plat and construction drawings of each respective phase, which shall include, but not be limited to, all components listed herein as well as trail locations and connections (if applicable) to property adjacent to the Project. Walking trails will consist of a minimum 10' wide cross section, with a minimum 5' walking surface (surface material to be determined upon availability, practicality, and functionality at the time the landscape plan is approved on each respective phase.) Upon completion and acceptance of improvements in the "MP" open spaces, the City shall take over full control, maintenance, and liability of said open spaces, and, shall only accept said improvements in a weed free condition. The transfer of ownership shall take place upon recordation of the plat, but, transfer of maintenance responsibility shall take place one (1) year from said recordation (this will allow the Developer to complete the improvements as stated herein, and on the final landscape plan, and monitor the success of the plant material.) A public parking area will be designed and constructed by the Developer on the North side of the parkway within this open space area, if allowed within the UP&L easement.

2.4.3.1.2 Community Public Open Space: All open spaces designated with a "CP" shall be designated as "Community Public" and upon recordation of the respective plats shall be dedicated to the Homeowners Association with a public access easement for the restricted recreational use by the general public. Time, place, and manner restrictions may be placed on the use of the "CP" open spaces, by the Homeowners Association, due to the private ownership of the property. Said open spaces are primarily limited to walking paths or trails throughout the community as designated on the final plats. Said open spaces will be owned and maintained in common by the homeowners in the Project through a Homeowners

Association. Upon construction of any phase of the Project where "CP" open spaces are located, the developer will provide the following in the construction of the open spaces: grading, automatic irrigation system (if needed), turf-grass seed application, shrub & mulch beds, and, a minimum of 10 trees (1-1/2" caliper minimum; mixture of deciduous and coniferous type) per acre. A detailed landscape improvement plan shall be submitted, reviewed and approved in conjunction with the final plat and construction drawings of each respective phase, which shall include, but not be limited to, all components listed herein as well as trail locations and connections (if applicable) to property adjacent to the Project. Walking trails will consist of a minimum 10' wide cross section, with a minimum 5' walking surface (surface material to be determined upon availability, practicality, and functionality at the time the landscape plan is approved on each phase.)

2.4.3.1.3. Community Common Open Space: All open spaces designated with a "CC" shall be designated as "Community Common" and upon recordation of the respective plats shall be dedicated to the Homeowners Association as a private common area for the restricted recreational use only by the residents of the Project and their guests. Said open spaces will be owned and maintained in common by the homeowners in the Project through a Homeowners Association. Upon construction of any phase of the Project where "CP" open spaces are located, the developer will provide the following in the construction of the open spaces: grading, automatic irrigation system (if needed), turf-grass seed application, shrub & mulch beds, and, a minimum of 10 trees (1-1/2" caliper minimum; mixture of deciduous and coniferous type) per acre. A detailed landscape improvement plan shall be submitted, reviewed and approved in conjunction with the final plat and construction drawings of each respective phase, which shall include, but not be limited to, all components listed herein as well as trail locations and connections (if applicable) to property adjacent to the Project. Walking trails will consist of a minimum 10' wide cross section, with a minimum 5' walking surface (surface material to be determined upon availability, practicality, and functionality at the time the landscape plan is approved on each phase.)

2.4.3.1.4 Community Private Open Space: All open spaces designated with a "CPV" shall be designated as "Community Private" and upon recordation of the respective plats shall be dedicated to the Homeowners Association as a private common area for the restricted recreational use only by the residents of the specific neighborhood the respective open space is located within, and their guests (ex: patio homes & townhomes.). Said open spaces will be owned and maintained in common by the respective homeowners within said neighborhood through a Homeowners Association. Upon construction of any phase of the Project where "CPV" open spaces are located, the developer will provide the following in the construction of the open spaces: grading, automatic irrigation system (if needed), turf-grass seed application, and, a minimum of 10 trees (1-1/2" caliper minimum; mixture of deciduous and coniferous type) per acre. A detailed landscape improvement plan shall be submitted, reviewed and approved in conjunction with

the final plat and construction drawings of each respective phase, which shall include, but not be limited to, all components listed herein as well as trail locations and connections (if applicable) to property adjacent to the Project. Walking trails will consist of a minimum 10' wide cross section, with a minimum 5' walking surface (surface material to be determined upon availability, practicality, and functionality at the time the landscape plan is approved on each phase.)

- 2.4.3.1.5 Fencing: The Developer has identified on "Exhibit E – Proposed Fencing Plan" the location, general type, and responsible party for installing the fencing. Any fence or wall constructed on any lot shall be approved by the Architectural Control Committee and be constructed in conformity to their guidelines. Fences along private property boundaries (if desired), that are not bordering the main parkway, are to be in accordance with the color, style, type and brand as determined by the Architectural Control Committee. In accordance city ordinance, a field fence (by City standard) as a minimum, will be constructed and placed on the perimeter of each phase that borders Agricultural use as part of the Final Plat approval of the respective phase.
- 2.4.3.2 B. Density: The base density allowed in an RE-15 zone as defined in the ordinance is 2.7 units per acre with a maximum allowance of 5.7 units per acre in a PRUD. The total number of residential units on the Property shall not exceed 520-units in the aggregate, which is calculated to be 3.46 units per acre. Specific density totals for each sub-community are defined as follows:
- 2.4.3.2.1 The Single Family Residential ("SFR") areas as identified on the Preliminary Development Plan will be developed with residential uses consisting of traditional single-family homesites. Said SFR areas consist of approximately 80-acres (including respective ROW) with a maximum of 284 units. The architecture of the units within this area is not specifically identified but general architectural design guidelines, styles, and components for this respective use will at a minimum meet the Architectural Standards as defined in City Code Section 11-6-4-M.
- 2.4.3.2.2 The Patio Home ("PH") areas as identified on the Preliminary Development Plan will be developed with residential uses consisting of fee-simple pad sites. Said PH areas consist of approximately 17.5 acres (including respective ROW and common areas) with a maximum of 83 units. The architecture of the units within this area is not specifically identified but general architectural design guidelines, styles, and components for this respective use will at a minimum meet the relevant Architectural Standards as defined in City Code Section 11-6-4-M. Developer will be required to submit to the Planning Commission for review, all elevations and architectural plans proposed in conjunction with the Final Plat submission for each respective phase.

2.4.3.2.3 The Townhome (“TH”) areas as identified on the Preliminary Development Plan will be developed with multi-family residential uses consisting of three-unit and four unit townhome units. Said TH areas consist of approximately 15 acres (including respective ROW and common areas) with a maximum of 144 units. The architecture of the units within this area is not specifically identified but general architectural design guidelines, styles, and components for this respective use will at a minimum meet the relevant Architectural Standards as defined in City Code Section 11-6-4-M. Developer will be required to submit to the Planning Commission for review, all elevations and architectural plans proposed in conjunction with the Final Plat submission for each respective phase.

2.4.3.2.4 In accordance with City Code Section 11-6-4-B, the density increase is allowed by the incorporation of the following criteria in the Project (only 1 is required by ordinance for the increase of 1 unit per acre to 3.7 upa):

2.4.3.2.4.1 #2 - “Three or more amenities such as pools, playgrounds, clubhouses, barbeques, picnic areas, pedestrian lighting,...” – The Project will include the following common amenities as a minimum: One (1) pool; One (1) pavilion & restroom facility at the pool; Three (3) “tot-lot” playgrounds; and, Three (3) half-court basketball courts.

2.4.3.2.4.2 #3 –“Improved Streetscapes” – The Project will include at least two (2) of the following features (as shown on the Preliminary Development Plan): 1) Landscaped medians along the main parkway with trees 2-1/2” caliper or larger; 2) Two (2) roundabouts along the main parkway with landscaped center islands.

2.4.3.3 C. Yard and Height Regulations: The following yard and height regulations shall apply to the Project:

2.4.3.3.1 Single Family Residential Areas (as designated on the Preliminary Development Plan as “SFR”):

- Minimum Lot Area: 8,000 square feet
- Minimum Lot Width: 80 feet (as measured at the front of the lot)
- Minimum Yard Setbacks: Front: 25 feet (measured from property line)
Rear: 25 feet (measured from the rear property line. On oddly configured lots shall be allowed a 20 feet minimum rear setback.)
Interior Side: 8 feet minimum (measured from the property line) with a total of both

side setbacks at least 18 feet. The garage side must have a minimum of 10 feet.

Street Side: 20 feet (measured from the property line)

Building Height:

Minimum 1 Story; Maximum 2-1/2 stories or 35 feet as measured from the main floor.

2.4.3.3.2

Patio Home Areas (as designated on the Preliminary Development Plan as "PH"):

Min. Yard Setbacks:

Front: 15 feet (to porch) or 20 feet (to garage) – (measured from the back of sidewalk when unit is adjacent to a sidewalk or from top back of curb when no sidewalk is present.)

Rear: 20 feet minimum (measured from the rear of the unit out.)

Interior Side: 10 feet minimum between buildings

Street Side: 20 feet (measured from the back of sidewalk when unit is adjacent to a sidewalk or from top back of curb when no sidewalk is present.)

Building Height:

Minimum 1 Story; Maximum 2 stories or 30 feet as measured from the main floor.

2.4.3.3.3

Townhome Areas (as designated on the Preliminary Development Plan as "TH"):

Minimum Yard Setbacks:

Front: 15 feet (to porch) or 20 feet (to garage) – (measured from the back of sidewalk when unit is adjacent to a sidewalk or from top back of curb when no sidewalk is present.)

Rear: 15 feet minimum (measured from the rear of the unit out.) Where a unit borders adjacent property not included in the Project, the minimum rear yard setback shall be 20 feet.

Interior Side: 10 feet minimum between buildings.

Street Side: 20 feet (measured from the back of sidewalk when unit is adjacent to a sidewalk or from top back of curb when no sidewalk is present.)

Building Height:

Maximum 2-1/2 stories or 35 feet as measured from the main floor.

2.4.3.4 D. Site Development Standards - Signs: A community entrance monument and sign will be constructed at the entrance off North Plain City Road. Said sign was reviewed and approved by the City Council at the Final Plat was approved for phases 1A & 1B. All sight distance requirements will be adhered to in the design and construction of the sign and its corresponding apparatus.

2.4.3.5 E. Land Dedication, Streets, Lighting, and Utilities: The Developer and City agree to the following dedications: 1) All utilities and streets within the Project shall be constructed to City public works standards, and dedicated to the City except for the private streets in the Patio Home and Townhome sub-communities. The PH and TH utilities will be constructed to City public works construction standards, but, the R.O.W. cross sections will be narrowed to 50 feet as shown on the Preliminary Development Plan. This cross section allows for the the same pavement width of 36' as required in the 60' R.O.W. cross section (any road that stubs in to adjacent property not included in the Project, shall be stubbed in as a 60' public R.O.W.; 2) As mentioned herein, the "MP" designated open spaces will be dedicated to the City.; 3) Street lighting on public streets will be provided by the developer in accordance with the City's minimum street lighting requirements, but the operation, maintenance and ownership shall be dedicated to the City. Street lighting on the private streets will be provided by the developer in accordance with the City's minimum street lighting requirements, and operation, maintenance and ownership shall be the responsibility of the Homeowners Association.

While landscaped medians and roundabouts are constructed within City owned public R.O.W.'s, the maintenance of said landscaped areas shall be the responsibility of the Homeowners Association.

Development of each sub-community (i.e. single-family residential, patio homes, & townhomes) of the Property will be permitted through the Final Plat process and future conditional use permits for the Project will not be required.

2.4.3.6 F. Subdivision of Development: The Project will be divided into several sub-phases for Final Plat approval and development. An approximate location of the sub-phasing is defined on "Exhibit D - Sub-Phasing Plan (Approximate)."

**ARTICLE III
GENERAL CONSTRUCTION CONDITIONS OF THE PRUD DEVELOPMENT**

3.1 Compliance with Subdivision Standards. Developer agrees to comply with all of the ordinances, rules, regulations, requirements and standards of the City with respect to the construction and completion of said Project, and particularly to install and complete all of the off-site improvements required, within the timeframes stated herein, including but not limited to the following:

- 3.1.1 Rough grading and finish grading and surfacing of streets
- 3.1.2 Curbs, gutters, and waterways
- 3.1.3 Sanitary sewers, including service connection to each lot
- 3.1.4 Water lines, including service connection to each lot
- 3.1.5 Fire hydrants
- 3.1.6 Sidewalks and walkways
- 3.1.7 Traffic control signs
- 3.1.8 Street signs and numbers
- 3.1.9 Screening when required
- 3.1.10 Money for chip and seal to be paid to Plain City in addition to 10% guarantee
- 3.1.11 Monuments
- 3.1.12 Street Lighting

Said improvements and any others designated herein shall be done according to the specifications and requirements of the City or in accordance with the stamped Final Plans and Plat approved as "City Engineer Acceptance of Improvement Plans" by the City Engineer. All work shall be subject to the inspection of Plain City and any questions as to conformity with the City specifications or standards or as to the technical sufficiency of the work shall be decided by the City Engineer.

Developer agrees as consideration for the City issuing Building Permits after initial acceptance of improvements to allow the City to collect and retain utility fees for individual homes the time between initial and final acceptance of the utility lines.

The Developer agrees that with the application for the subdivision identified in the Recitals of this Agreement, he or she shall pay to Plain City, a deposit of fifty (50%) of the projected engineering checking and engineering inspection fees for each respective phase of the Project as determined by the City Engineer. The Developer also agrees to pay for all reasonable fees incurred by the City for the acting City Engineer's services relating to the Project in accordance with the Plain City Ordinance.

Building permits will be issued on condition that all improvements necessary to satisfy fire code requirements have been installed and that enough security is held in escrow and/or by other forms of acceptable bonding allowed by City Ordinance to complete all required improvements for the subdivision, including any reasonable repairs or replacement after initial installation.

- 3.2 **Time for Completion and Extension of Time.** All of the said off-site improvements, related to each respective phase of the PRUD, shall be fully installed and completed within two (2) years from the date noted on the Final Plans which are approved and stamped "City Engineer Acceptance of Improvement Plans". If not completed within two (2) years, the Subdivider may apply to the Planning Commission and City Council for an extension of time of one year with additional on-year extension after the first extension if the Planning Commission and City Council agree. Said extensions shall be subject to adequate security for the completion of said improvements being made by increasing the amount of the escrow account and/or other form of acceptable bonding allowed by City Ordinance.
- 3.3 **Security for Compliance.** As security for compliance by Developer with the ordinance, rules, regulations, requirements and standards of the City and of Developer's agreements herein stated, upon Final Plat approval and recordation of each respective phase of the PRUD, Developer will deliver to the City an acceptable third-party escrow agreement and/or other forms of acceptable financial security allowed by City Ordinance. The amount of said security shall be approved by the City Engineer representing the cost of all required improvements as determined by the City Engineer plus a 10% Contingency and 10% Warranty guarantee. The Contingency amount in addition to the remaining funds held in security are for the use of the City in the event of Developer's failure or refusal to install, complete, construct, repair, or replace any off-site improvements in accordance with the provisions of this Agreement, the escrow agreement, and all relative City codes and ordinances. The decision of the City as whether an improvement needs to be installed, constructed, completed, or replaced will be final.
- Should Developer fail or refuse to complete the said off-site improvements in accordance with the provisions hereof, and particularly within the time stated, or should Developer become insolvent before a completion thereof, then the City may, at its option, determine the cost of completing said off-site improvements on the basis of reliable estimates and bids and may apply all sums held in security (escrow, deposit, or by letter of credit) against the said cost of completion. The City may also proceed to legally obtain the escrow funds and use the proceeds therefrom to pay the cost of completing the said off-site improvements and to pay all related expense including but not limited to court cost and attorney's fees.
- The 10% Warranty guarantee as above stated, shall constitute a guarantee that the said off-site improvements are installed in accordance with the subdivision standards of the City as to quality and service-ability and shall be held by the City for a period of two (2) years from the time the last improvement is "initially accepted" by the City or until two (2) years after the time the last improvement needing repair or placement is again accepted. At the end of the two year period, the said 10% Warranty guarantee shall be returned to the Developer or obligation

released by the City, provided the off-site construction and installation of said improvements are in accordance with City standards or the repair or replacing the same so as to bring them into conformity with City standards. Developer will pay the difference to the City on demand.

**ARTICLE IV
ASSIGNMENT AND TRANSFER**

4.1 After its execution, the Development Agreement shall be recorded in the office of the County Recorder at the expense of the Developer. Each commitment and restriction on the Project shall be a burden on the Property, and shall be appurtenant to and for the benefit of the Property, adjacent property, and other residential property near the Property and shall run with the land. This Development Agreement shall be binding on the Developer and owners, and their respective heirs, administrators, executors, agents, legal representatives, successors, and assigns; provided, however, that if all or any portion of the Project is sold, the sellers shall thereupon be released and discharged from any and all obligations in connection with the property sold arising under this Agreement. In the event the all or any portion of the Project is sold, the sellers shall be obligated to provide, in writing, a copy of this Agreement to the new owner. The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations (unless otherwise modified by the City) arising under this Agreement with respect to the Property or portion thereof.

4.2 **Successors Enforcement.** The terms of this agreement shall be binding upon the parties hereon, their heirs, executors, administrators, assigns or any parties legally acquiring the parties interest through foreclosure, trust deed, sale, bankruptcy or otherwise. In the event either party must take legal action to enforce the terms of this agreement, the prevailing party shall have costs of court, including a reasonable attorney's fee.

**ARTICLE V
GENERAL MATTERS**

5.1.1 **Amendments, Modifications, Captions and Severability.** This instrument may be amended or modified only by an instrument of equal formality signed by the respective parties. Any alteration or change to this Development Agreement shall be made only after complying with the notice and hearing provisions of Utah Code as required by Plain City Code, if applicable.

5.1.2 If any portion of this Agreement is declared invalid by a court of competent jurisdiction, the remaining portions shall not be affected thereby, but shall remain in full force and effect.

- 5.2 **Paragraph Headings.** This Development Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. The titles or captions of this Agreement are for convenience only and shall not be deemed in any way to define, limit, extend, augment, or describe the scope, content or intent of any part or parts of the Agreement. As used in this Development Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.
- 5.3 **Waiver.** The failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a failure to perform thereof shall not constitute a waiver of any such failure to perform or any other covenant, agreement, term or condition. No waiver shall effect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other than existing or subsequently occurring failure to perform.
- 5.4 **Time is of the Essence.** Time is of the essence of this Agreement. In case either party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of the Agreement, the other party may pursue any and all remedies available in equity, or law.
- 5.5 **Applicability of Ordinance.** This agreement does not supersede, but implements the Plain City Subdivision Ordinance and all other ordinances and regulations applicable to the subdivision of land and construction of improvements thereon which were in effect at the time of the approval of this agreement by the City Council, and Developer agrees to comply in all respects with the provisions of said ordinance. No provision of this agreement shall limit the City in its rights or remedies under said subdivision ordinance or other applicable building ordinances, unless otherwise stated herein.
- 5.6 **Governing Law.** This Agreement shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah which were in effect at the time of the approval of this agreement by the City Council. This Agreement shall be further governed by PLAIN CITY ordinances in effect at the time of the approval of this Agreement by the City Council. Any action brought in connection with this Development Agreement shall be brought in a court of competent jurisdiction located in Weber County, Utah.
- 5.7 **Legal Representation.** Both the Developer and Plain City acknowledge that they each have been represented by legal counsel in negotiating this Development Agreement and that neither party shall have been deemed to have been the drafter of this agreement.
- 5.8 **Notices.** Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered

or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below;

City: City of Plain City
4160 W 2200 North
Plain City, UT 84404 - 9640

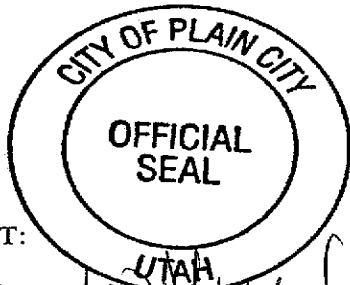
Developer: Stillcreek LLC
c/o Hawkins Homes and Communities
Attn: Mike Flood
39 East Eagleridge Drive, Ste. 200
North Salt Lake, UT 84054

Or such other addresses and to such other persons as the parties may hereafter designate. Any such notice shall be deemed given upon receipt if by personal delivery, forty-eight (48) hours after deposit in the United States mail, if sent by mail pursuant to the foregoing, or twenty-four (24) hours after timely deposit with a reputable overnight delivery service.

- 5.9 Effective Date. This Development Agreement shall be effective upon the signing and execution of this agreement by both parties.
- 5.10 Termination: This agreement terminates upon completion of the Conditions of Development or after 10 years after the Effective Date, whichever comes first.

IN WITNESS WHEREOF, the parties have executed this Development Agreement.

DATED this 31st day of January, 2007.



CITY OF PLAIN CITY, a municipal corporation organized and existing under the laws of the State of Utah

By: _____, Mayor

ATTEST:

Diane W. [Signature]
City Recorder

PATRIOT CAPITAL PARTNERS, LLC

By: *Matthew L. Hawkins*
Matthew L. Hawkins, Member

ACKNOWLEDGEMENT

State of Utah)
County of Davis) :SS

On this 31st day of January, 2007, personally appeared before me Matthew L. Hawkins, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he is a Member / Manager [title], of STILLCREEK LLC, an Idaho limited liability company, by authority of its members or its articles of organization, and he acknowledged to me that said limited liability company executed the same.

Bradford P. Margetts
Notary Public

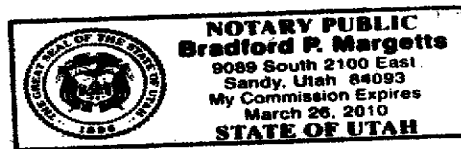


EXHIBIT A
Legal Description(s)

HAWKINS PRUD – DEVELOPMENT AGREEMENT
EXHIBIT A - LEGAL DESCRIPTIONS:

PARCEL 1:(190100005)

PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN U.S. SURVEY; BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 22; RUNNING THENCE EAST 2497.2 FEET; THENCE NORTH 75 FEET; THENCE EAST 50 FEET; THENCE NORTH 1245 FEET; THENCE WEST 2398.7 FEET; THENCE SOUTH 790.49 FEET; THENCE SOUTH 4°45'56" WEST 172.33 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 914.92 FEET, 379.05 FEET; THENCE SOUTH 5.93 FEET TO THE POINT OF BEGINNING.

PARCEL 2:(190100013)

BEGINNING AT A POINT 93 FEET WEST OF THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN; SAID POINT BEING 2547.2 FEET EAST OF THE SOUTHWEST CORNER OF SAID SECTION 22; THENCE EAST 50 FEET ALONG THE SECTION LINE; THENCE NORTH 75 FEET; THENCE WEST 50 FEET; THENCE SOUTH 75 FEET TO THE POINT OF BEGINNING.

PARCEL 3:(190100014)

BEGINNING AT A POINT 83 FEET WEST OF THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN; THENCE WEST 50 FEET ALONG THE QUARTER SECTION LINE; THENCE NORTH 75 FEET; THENCE EAST 50 FEET; THENCE SOUTH 75 FEET TO THE PLACE OF BEGINNING.

PARCEL 4:(190210004)

PART OF THE SOUTHWEST QUARTER SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING ON QUARTER SECTION LINE 563.71 FEET SOUTH 88°43' EAST FROM NORTHWEST CORNER OF SAID QUARTER SECTION SAID POINT BEING ON THE EAST LINE OF POST SUBDIVISION; RUNNING THENCE SOUTH 11°29'41" EAST TO CORPORATE LIMIT LINE OF PLAIN CITY TOWN AND THE NORTHWEST CORNER OF PARCEL 19-021-0027 (1993 R/P); THENCE NORTH 51°02' EAST TO NORTH QUARTER SECTION LINE; THENCE NORTH 88°43' WEST ALONG QUARTER SECTION LINE TO BEGINNING.

PARCEL 5:(190210027)

PART OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY; BEGINNING AT A POINT ON THE NORTH LINE OF PLAIN CITY ROAD, POINT BEING SOUTH 88°43'00" EAST 563.71 FEET AND SOUTH 11°29'41" EAST 376.33 FEET FROM THE NORTH WEST CORNER OF SAID QUARTER SECTION; RUNNING THENCE NORTH 51°36' EAST ALONG CENTER OF STREET TO NORTH LINE OF SAID QUARTER SECTION; THENCE NORTH 88°43' WEST ALONG QUARTER SECTION LINE TO CORPORATE LIMIT LINE AND THE NORTHEAST CORNER OF PARCEL 19-021-0004 (1993 R/P); THENCE SOUTH 51°02' WEST 45 FEET, MORE OR LESS TO THE EAST LINE OF POST SUBDIVISION; THENCE SOUTH 11°29'41" EAST ALONG SAID LINE TO THE POINT OF BEGINNING.

EXCEPT THAT PART DEEDED TO ROY LEE MILLER AND WIFE ELLEN GERALDINE MILLER. (1345-555)

PARCEL 6:(190220008)

PART OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY; BEGINNING 651.2 FEET SOUTH 88°43' EAST OF THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 27, SAID POINT BEGINNING DETERMINED BY AN EXISTING FENCE LINE SEPARATING THE FOLLOWING DESCRIBED PROPERTY FROM THE PROPERTY IMMEDIATELY ADJACENT ON THE WEST; THENCE NORTH 16° EAST 410 FEET TO THE SOUTH LINE OF PARCEL 19-022-0011; THENCE SOUTH 88°43' EAST ALONG THE SOUTH LINE OF PARCELS 19-022-0011 AND 19-022-0010 (1980 R/P) TO TOWN SITE LINE SAID POINT ALSO BEING THE NORTHWEST CORNER OF PARCEL 19-022-0016 (1980 R/P); THENCE SOUTH 44°12' WEST 190 FEET, MORE OR LESS TO A POINT NORTH 51°02' EAST 430 FEET FROM THE PLACE OF BEGINNING; THENCE SOUTH 51°02' WEST 430 FEET, MORE OR LESS, TO SOUTH LINE OF QUARTER SECTION AND THE PLACE OF BEGINNING.

PARCEL 7:(190220010)

PART OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 911.2 FEET EAST OF THE NORTHWEST CORNER OF SECTION 27; RUNNING THENCE SOUTH 2218 FEET; THENCE EAST TO CORPORATE LIMIT LINE OF PLAIN CITY TOWN AND THE WESTERLY CORNER OF PARCEL 19-022-0015 (1980 R/P); THENCE NORTH 44°12' EAST 290 FEET, MORE OR LESS, TO EAST LINE OF WEST 1/2 OF SAID QUARTER SECTION; THENCE NORTH TO A POINT 1316 FEET SOUTH OF NORTH LINE OF SECTION; THENCE WEST 19.5 FEET; THENCE NORTHEASTERLY TO NORTH LINE OF SECTION 27, 614.3 FEET EAST OF BEGINNING; THENCE WEST ALONG SECTION LINE TO BEGINNING.

PARCEL 8:(190220011)

PART OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT THE NORTHWEST CORNER OF SAID QUARTER SECTION; RUNNING THENCE EAST 911.2 FEET; THENCE SOUTH PARALLEL TO THE WEST LINE OF SAID QUARTER SECTION 2218 FEET; THENCE WEST 911.2 FEET TO WEST LINE OF SAID QUARTER SECTION; THENCE NORTH 0°18' EAST ALONG THE WEST LINE OF SAID QUARTER SECTION 2218.9 FEET TO THE PLACE OF BEGINNING.

PARCEL 9:(190220015)

PART OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY; BEGINNING 410 FEET NORTH OF THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION; THENCE NORTH 88°43' WEST 200 FEET, MORE OR LESS, ALONG QUARTER SECTION LINE TO TOWN SITE LINE; THENCE NORTH 44°12' EAST 295 FEET, MORE OR LESS TO THE EAST LINE OF WEST 1/2 OF SAID QUARTER SECTION AND A POINT NORTH 0°01' WEST TO BEGINNING, THENCE SOUTH 0°01' EAST 200 FEET, MORE OR LESS, TO BEGINNING.

PARCEL 10:(190220016)

PART OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY; BEGINNING 651.2 FEET SOUTH 88°43' EAST OF SOUTHWEST CORNER OF NORTHWEST QUARTER OF SECTION 27; THENCE SOUTH 88°43' EAST ALONG THE QUARTER SECTION LINE TO THE WESTERLY LINE OF ROAD; THENCE NORTHEASTERLY ALONG ROAD TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE NORTH 16' EAST TO A POINT 410 FEET NORTH OF THE SOUTH LINE OF THE NORTHWEST QUARTER; THENCE NORTH 88°43' WEST 200 FEET, MORE OR LESS, ALONG THE SOUTH LINE OF PARCEL 19-022-0015 (1980 R/P) TO CORPORATE LIMIT LINE OF PLAIN CITY TOWN AND THE NORTHEAST CORNER OF PARCEL 19-022-0008; THENCE SOUTH 44°12' WEST 180 FEET, MORE OR LESS TO A POINT NORTH 51°02' EAST 430 FROM THE PLACE OF BEGINNING; THENCE SOUTH 51°02' WEST 430 FEET, MORE OR LESS, TO THE SOUTH LINE OF QUARTER SECTION AND THE PLACE OF BEGINNING.

PARCEL 11:(190220056)

PART OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; BEGINNING AT A POINT LOCATED SOUTH 88°43'00" EAST 563.71 FEET FROM THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER, SAID POINT BEING ON THE EAST LINE OF POST SUBDIVISION, AND RUNNING THENCE NORTH 11°29'41" WEST 402.23 FEET ALONG SAID LINE TO THE NORTHEAST CORNER OF POST SUBDIVISION; THENCE NORTH 89°24'13" WEST 481.64 FEET TO THE WEST LINE OF SAID SECTION; THENCE NORTH 00°16'00" EAST ALONG SAID WEST LINE 23.45 FEET, MORE OR LESS TO THE SOUTHWEST CORNER OF THE ENGLAND AND LUDLOW PROPERTY (19-022-0011); THENCE SOUTH 88°43'00" EAST 651.38 FEET, ALONG THE SOUTH LINE OF SAID PROPERTY TO THE NORTHWEST CORNER OF THE ENGLAND AND LUDLOW PROPERTY (19-022-0008); THENCE SOUTH 00°16'00" WEST 410.00 FEET TO THE SOUTH LINE OF SAID QUARTER SECTION; THENCE NORTH 88°43'00" WEST 87.67 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION OF ENTIRE PROPERTY AS SURVEYED:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 00°35'30" EAST 5.93 FEET ALONG THE WEST SECTION LINE OF SECTION 22; THENCE ALONG A 908.94 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARING NORTH 22°22'44" EAST, CHORD LENGTH 376.60 FEET) 379.35 FEET; THENCE NORTH 06°15'22" EAST 172.33 FEET; THENCE NORTH 01°29'26" EAST 790.49 FEET; THENCE SOUTH 88°30'34" EAST 2340.80 FEET; THENCE SOUTH 01°29'25" WEST 1245.01 FEET; THENCE SOUTH 88°30'13" EAST 50.01 FEET; THENCE SOUTH 01°29'26" WEST 75.00 FEET TO THE SOUTH LINE OF SECTION 22; THENCE NORTH 88°30'33" WEST 1020.49 FEET ALONG SAID SECTION LINE; THENCE SOUTH 11°00'33" WEST 1334.62 FEET; THENCE EAST 19.50 FEET; THENCE SOUTH 00°20'14" WEST 1164.20 FEET; THENCE SOUTH 51°36'05" WEST 430.32 FEET; THENCE NORTH 40°13'39" WEST 86.83 FEET, MORE OR LESS, TO AN EXISTING FENCE; THENCE SOUTH 50°36'52" WEST 127.99 FEET, MORE OR LESS, ALONG SAID FENCE LINE; THENCE SOUTH 39°21'57" EAST 84.59 FEET, MORE OR LESS, ALONG SAID FENCE LINE; THENCE SOUTH 51°36'05" WEST 274.22 FEET; THENCE NORTH 11°28'04" WEST 813.53 FEET; THENCE NORTH 89°13'57" WEST 481.09 FEET TO THE WEST LINE OF SECTION 27; THENCE NORTH 00°31'08" EAST 2228.01 FEET ALONG THE SAID WEST LINE OF SECTION 27 TO THE POINT OF BEGINNING.

CONTAINING 149.93 ACRES, MORE OR LESS

19-022-0010, 0011, 0015 /
 19-010-0005, 0013, 0014 /
 19-248-0001 TO 0003 / KL
 19-249-0001 TO 0018 /

EXHIBIT B
Preliminary Development Plan

EXHIBIT B - Preliminary Development Plan (2/28/06)

SUMMARY

A: Total Community Acreage	149.93 Ac
B: Streets & D.O.M.	36.79 Ac
C: Net Inseparable Acreage (A-B)	113.65 Ac
D: Open Space ** 100% usage	28.74 Ac
E: Open Space ~ 50% usage	8.19 Ac
F: Total Preserved Open Space	33.96 Ac
G: Total Open Space Credit (21.26%)	31.87 Ac
Single-family traditional lots	384 Lots
Pedic Units (single and two-beds)	283 Units
Townhomes	144 Units
Total Units	811 Units
Density (Dwelling Units Per Acre)	3.42 DU/Ac
Gross Density (# of total units/A)	4.51 DU/Ac
Net Density (# of total units/C)	4.51 DU/Ac

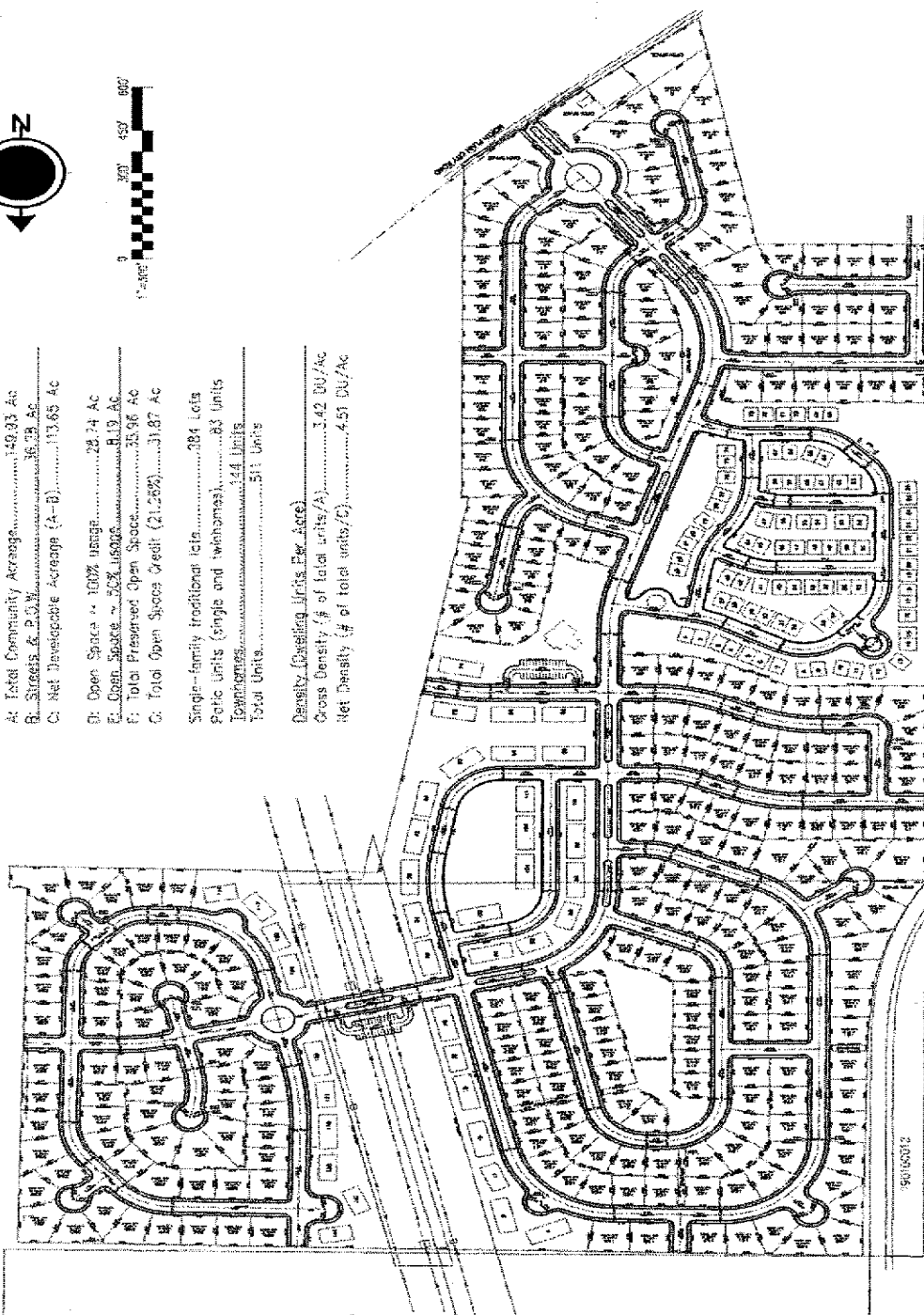
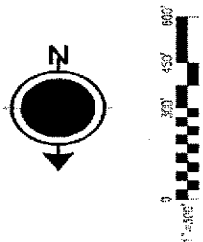


EXHIBIT C
Open Space Areas

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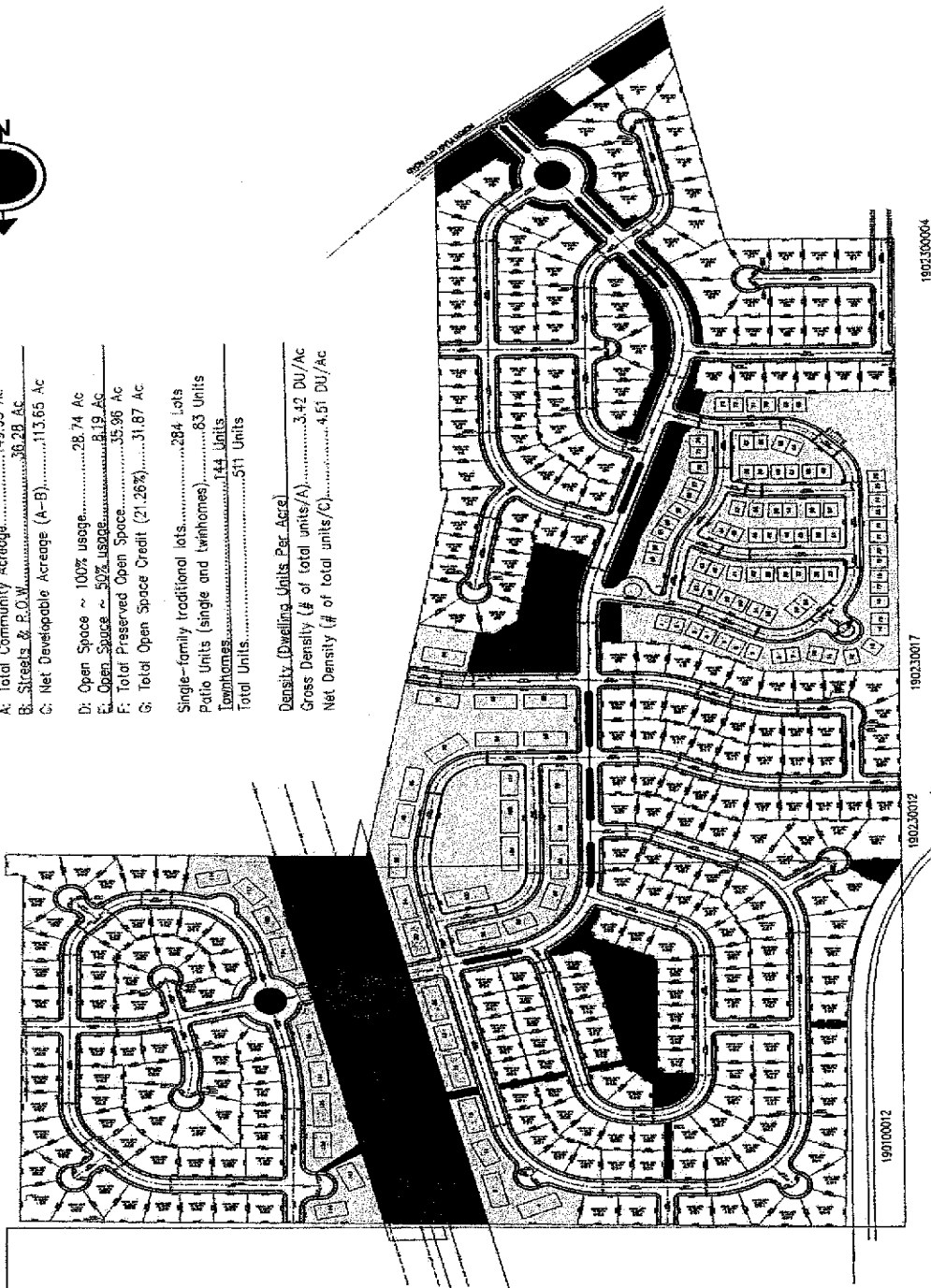


EXHIBIT C - Open Space Areas



SUMMARY

A: Total Community Acreage.....	149.93 Ac
B: Streets & R.O.W.....	36.28 Ac
C: Net Developable Acreage (A-B).....	113.65 Ac
D: Open Space ~ 100% usage.....	28.74 Ac
E: Open Space ~ 50% usage.....	8.19 Ac
F: Total Preserved Open Space.....	35.96 Ac
G: Total Open Space Credit (21.26%).....	31.87 Ac
Single-family traditional lots.....	284 Lots
Patio Units (single and twinhomes).....	83 Units
Townhomes.....	144 Units
Total Units.....	511 Units
Density (Dwelling Units Per Acre).....	3.42 DU/Ac
Gross Density (# of total units/A).....	4.51 DU/Ac
Net Density (# of total units/C).....	4.51 DU/Ac



190100012

190230012

190230017

190230064

MP - "Municipal Public" Open Space (less ROW)

CP - "Community Public" Open Space

CC - "Community Common" Open Space

CPV - "Community Private" Open Space (less ROW and building pads)

EXHIBIT D
Sub-Phasing Plan (Approximate)

EXHIBIT D - Sub-Phasing Plan (Approximate)

SUMMARY

1. Total Units	1,350
2. Single-Family	1,350
3. Total Units	1,350
4. Single-Family	1,350
5. Total Units	1,350
6. Single-Family	1,350
7. Total Units	1,350
8. Single-Family	1,350
9. Total Units	1,350
10. Single-Family	1,350
11. Total Units	1,350
12. Single-Family	1,350
13. Total Units	1,350
14. Single-Family	1,350
15. Total Units	1,350
16. Single-Family	1,350
17. Total Units	1,350
18. Single-Family	1,350
19. Total Units	1,350
20. Single-Family	1,350
21. Total Units	1,350
22. Single-Family	1,350
23. Total Units	1,350
24. Single-Family	1,350
25. Total Units	1,350
26. Single-Family	1,350
27. Total Units	1,350
28. Single-Family	1,350
29. Total Units	1,350
30. Single-Family	1,350
31. Total Units	1,350
32. Single-Family	1,350
33. Total Units	1,350
34. Single-Family	1,350
35. Total Units	1,350
36. Single-Family	1,350
37. Total Units	1,350
38. Single-Family	1,350
39. Total Units	1,350
40. Single-Family	1,350
41. Total Units	1,350
42. Single-Family	1,350
43. Total Units	1,350
44. Single-Family	1,350
45. Total Units	1,350
46. Single-Family	1,350
47. Total Units	1,350
48. Single-Family	1,350
49. Total Units	1,350
50. Single-Family	1,350
51. Total Units	1,350
52. Single-Family	1,350
53. Total Units	1,350
54. Single-Family	1,350
55. Total Units	1,350
56. Single-Family	1,350
57. Total Units	1,350
58. Single-Family	1,350
59. Total Units	1,350
60. Single-Family	1,350
61. Total Units	1,350
62. Single-Family	1,350
63. Total Units	1,350
64. Single-Family	1,350
65. Total Units	1,350
66. Single-Family	1,350
67. Total Units	1,350
68. Single-Family	1,350
69. Total Units	1,350
70. Single-Family	1,350
71. Total Units	1,350
72. Single-Family	1,350
73. Total Units	1,350
74. Single-Family	1,350
75. Total Units	1,350
76. Single-Family	1,350
77. Total Units	1,350
78. Single-Family	1,350
79. Total Units	1,350
80. Single-Family	1,350
81. Total Units	1,350
82. Single-Family	1,350
83. Total Units	1,350
84. Single-Family	1,350
85. Total Units	1,350
86. Single-Family	1,350
87. Total Units	1,350
88. Single-Family	1,350
89. Total Units	1,350
90. Single-Family	1,350
91. Total Units	1,350
92. Single-Family	1,350
93. Total Units	1,350
94. Single-Family	1,350
95. Total Units	1,350
96. Single-Family	1,350
97. Total Units	1,350
98. Single-Family	1,350
99. Total Units	1,350
100. Single-Family	1,350

Project Name: [illegible]
 Project Location: [illegible]
 Project Status: [illegible]

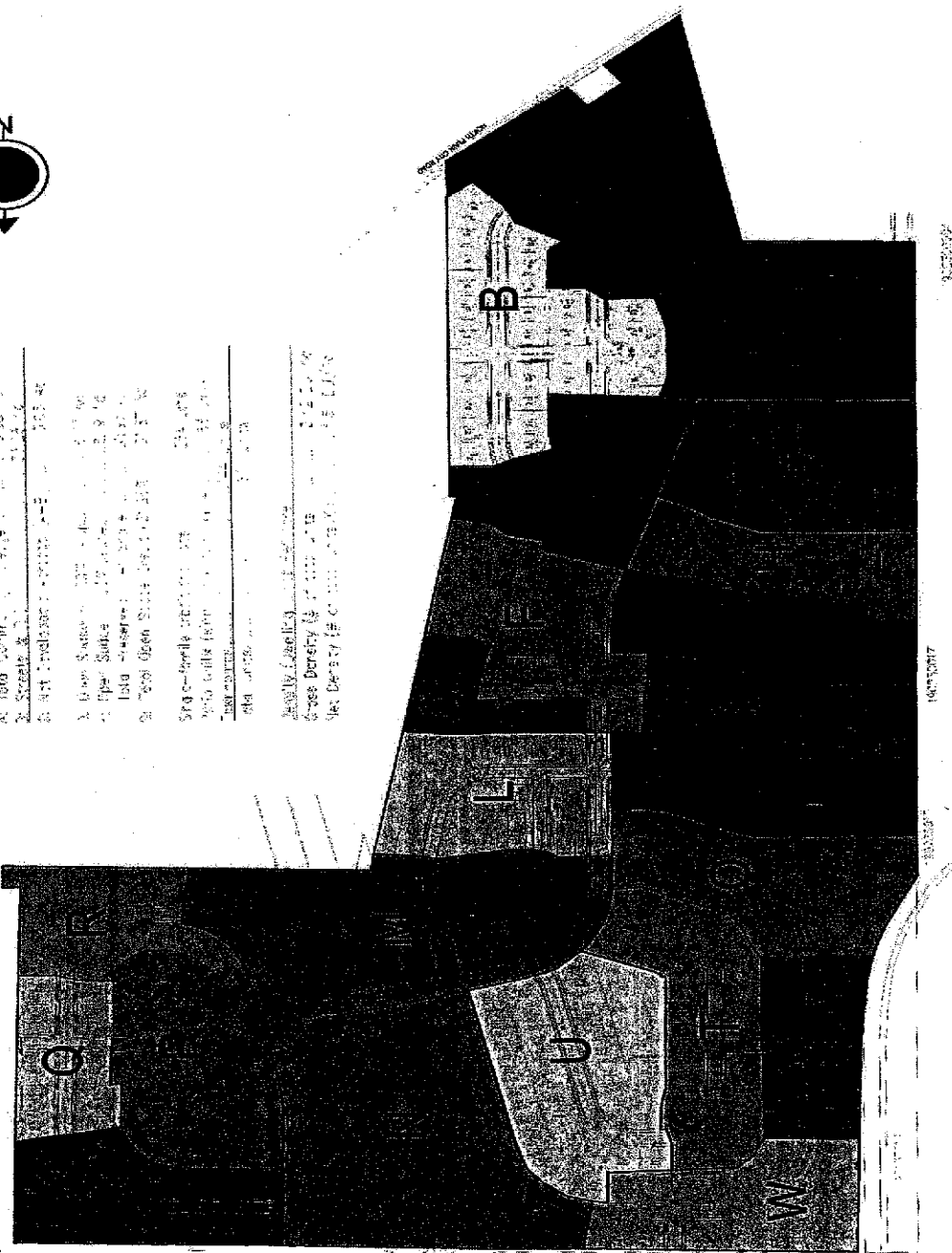
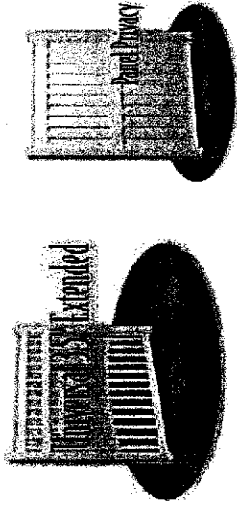
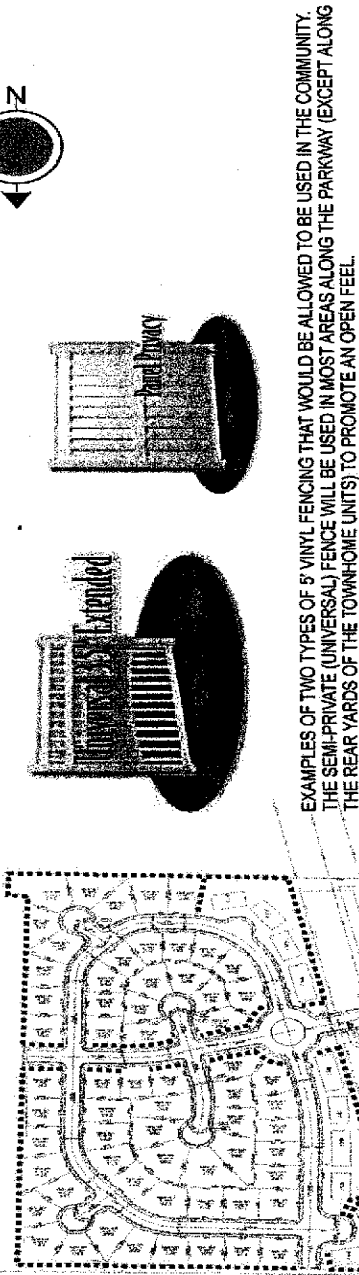
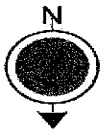


EXHIBIT E - Proposed Fencing Plan



EXAMPLES OF TWO TYPES OF 5' VINYL FENCING THAT WOULD BE ALLOWED TO BE USED IN THE COMMUNITY. THE SEMI-PRIVATE (UNIVERSAL) FENCE WILL BE USED IN MOST AREAS ALONG THE PARKWAY (EXCEPT ALONG THE REAR YARDS OF THE TOWNHOME UNITS) TO PROMOTE AN OPEN FEEL.

- FENCE TYPE 1: Vinyl fencing installed by Developer in conjunction with each respective phase. Color, style, type, and brand to be determined by the Architectural Control Committee.
- FENCE TYPE 2: Vinyl fencing installed by the builder of the units in conjunction with each respective phase. Color, style, type, and brand to be determined by the Architectural Control Committee.
- FENCE TYPE 3: Vinyl fencing installed by the builder of the homes. Color, style, type, brand & necessity is to be determined by the Architectural Control Committee.
- FENCE TYPE 4: As a minimum, City required farm field fencing installed by Developer in conjunction with each respective phase. At the time a permanent fence is to be installed (if desired by the owner), the color, style, type, and brand to be determined by the Architectural Control Committee.

ALL OTHER FENCING SHALL BE SUBJECT TO THE REQUIREMENTS FOUND IN THE CC&R'S. ALL PROPERTIES BORDERING OPEN SPACES AND THE MAIN PARKWAY WILL BE REQUIRED BY COVENANT TO BE OF THE SAME COLOR, STYLE, TYPE AND BRAND AS THE ARCHITECTURAL CONTROL COMMITTEE DETERMINES.

