

Ent: 373863 - Pg 1 of 21  
Date: 08/27/2012 03:23 PM  
Fee: \$0.00  
Filed By: cf  
Jarry M. Houghton, Recorder  
Tooele County Corporation  
For: TOOELE CITY CORPORATION

WHEN RECORDED, RETURN TO:

Tooele City Attorney  
90 North Main Street  
Tooele, UT 84074  
(435) 843-2120

DEVELOPMENT AGREEMENT  
for  
COPPER CANYON P.U.D.  
(2012)

This DEVELOPMENT AGREEMENT for COPPER CANYON P.U.D. ("**Agreement**") is made effective as of the 13 day of April, 2012 (hereinafter the "**Effective Date**") by and between TOOELE CITY CORPORATION (hereinafter the "**City**"), a chartered city of the State of Utah, having an office at 90 North Main Street, Tooele, Utah; and PHOENIX OF COPPER CANYON, LLC, a Utah limited liability company ("**Developer**"), located at 11650 South State Street, Suite 300, Draper, Utah 84020.

RECITALS

A. Reference is made to that certain residential development known as Copper Canyon P.U.D. (the "**Project**"), located within the corporate boundaries of the City.

B. Developer's predecessors in interest previously obtained approvals for final subdivision plats and have constructed the initial phases of the Project.

C. Pursuant to that certain Real Estate Purchase Contract with an offer reference date of June 10, 2011, as amended (the "**Fieldstone/Phoenix Purchase Agreement**"), between Developer and Fieldstone Utah Investors, LLC ("**Fieldstone**"), (i) Developer acquired the remaining undeveloped area anticipated for the development of an additional 364 single family residential lots ("**Undeveloped Lots**" or "**Undeveloped Property**") in the Project (based upon a Project Concept Plan ), and (ii) Fieldstone retained 77 subdivided single family residential lots located within phases 2a and 2b of the Project ("**Improved Lots**"). The Undeveloped Lots and the Improved Lots are collectively referred to herein as the "**Lots**". The legal description of the Undeveloped Property is attached hereto as Exhibit A.

D. Pursuant to that certain Real Estate Purchase Contract with an offer reference date of 11/1, 2011, as amended ("**Fieldstone/FCC Purchase Agreement**"), between Fields of Copper Canyon, LLC, a Wyoming limited liability company ("**FCC**") and Fieldstone, FCC acquired the right to purchase the Improved Lots. As of the date of this Agreement, FCC has acquired 30 of the Improved Lots.

E. Developer desires to enter into this Agreement regarding the development of the Undeveloped Property.

F. The City desires to allow Developer to complete the development of the Project pursuant to the terms and conditions set forth herein and consistent with the City's land use regulations and policies.

G. By entering into this Agreement, the parties intend to set forth the improvement requirements for the development of the Undeveloped Property (excluding engineering and development-related requirements which are governed by Tooele City regulations and policies).

H. By entering into this Agreement, the parties intend for houses built upon the Improved Lots to comply with the City's single-family residential design standards.

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

1. Scope and Description.

1.1. Undeveloped Property. Subject to the terms set forth herein, Developer is hereby authorized to complete the development of the Project on the Undeveloped Property. Developer may construct 364 homes on the Undeveloped Property in accordance with the terms herein and consistent with the City's land use regulations and policies.

1.2. Improved Lots. To the extent that the Improved Lots are acquired by FCC, houses constructed thereon shall comply with the City's single-family residential design standards, contained in Tooele City Code Chapter 7-11b (applying R1-8 and higher density zoning standards). This Subsection 1.2 shall not be construed to confer a benefit upon FCC, but to establish the applicable single-family residential design standards for construction of the Improved Lots.

1.3. Total Lots; Location. The aggregate number of lots in the Project may not exceed 494 lots. The Project is situated on the west side of Tooele, and is approximately bounded on the south by 670 North Street, on the west by the railroad tracks, on the North by 1000 North Street, and on the east by 200 West Street. Each Lot shall contain a minimum of 6,000 square feet.

2. Water.

2.1. Developer Cost. In connection with the development of the Project, Developer shall pay the City for certain water rights necessary for the development of the Undeveloped Lots. Subject to the adjustment pursuant to this Section 2, Developer shall initially pay the sum of 3,900 for each acre foot of water required for the Undeveloped Property. Developer's cost under this Section 2 shall be paid as a condition of and in connection with each final subdivision plat approval, within 15 days of said approval and prior to plat recordation. Developer has the right to prepay the water cost for any of the Undeveloped Lots at any time prior to recording a subdivision plat. The cost per acre foot of water shall be determined under this Section 2 at the time of payment. For any prepayments made, no refund or additional payment for the cost of water will be required if the cost of water increases or decreases after the time of prepayment. The parties acknowledge and agree that no additional amount for water rights is required to be paid to the City in connection with the Improved Lots.

2.2. Cost Escalator. The Parties acknowledge that, due to scarcity of water rights and increasing water demands in the Tooele Valley, the market value of water rights may change over time. Consequently, the Parties agree that the \$3,900 per acre-foot cost to Developer will remain fixed until the earlier of (i) three (3) years from the Effective Date, or (ii) the date a building permit is obtained for any of the Undeveloped Lots (such calculated date is referred to as the "**Escalator Date**"). Thereafter, the cost per acre-foot will increase annually by 10% ("**Adjusted Water Cost**") on the Escalator Date and each anniversary date thereafter. At the time Developer is required to pay for the cost of water as set forth in this Section 2, the cost to Developer will be determined by the lesser of (i) the Adjusted Water Cost, or (ii) the cost for such water as reflected in a water rights appraisal obtained and paid for by Developer within 180 days prior to such payment date.

2.3. Market Adjustment. Ten (10) years after the Effective Date ("**Reset Date**"), the Adjusted Water Cost shall be reset based upon the following formula. On or after the Reset Date, Developer will be required to obtain a water rights appraisal. The parties agree that the Adjusted Water Cost for that year will equal the appraised market value of municipal water rights in Tooele City, less

\$2,500 per acre-foot. By way of example, if the water rights appraisal determines that the market value for water is \$7,500 per acre-foot, then the Adjusted Water Cost will be reset to \$5,000 (\$7,500 - \$2,500) per acre-foot. For each year after the Reset Date, the Adjusted Water Cost will continue to increase by 10%.

2.4. Water Supply. Subject to the performance of this Agreement and the obligations arising from the City's land use regulations and policies, as amended from time to time, including the above payments, and to the payment of all generally applicable City water impact fees and water rates, the City agrees to provide all water necessary for development of the Project.

2.5. Quantification of Water Rights. Chapter 7-26 of the Tooele City Code requires municipal water rights to 0.46 acre-feet of water for interior use per dwelling, and municipal water rights to 0.54 acre-feet of water for exterior use on a 10,000 square foot lot, prorated according to lot size. By way of example, a dwelling on a 6,000 square-foot lot would require municipal water rights to 0.78 acre-feet of water (0.46 interior + 0.32 exterior).

3. Concept Plan. The Concept Plan attached hereto as Exhibit B (the "**Concept Plan**"), shall be the basis for considering new preliminary plans and final subdivision plats under this Agreement. New preliminary plans and final subdivision plats will be submitted to the City and approved by the City Council in accordance with the land use regulations, policies, and procedures of the City and the State and shall be consistent with the terms of this Agreement.

4. Development Conditions. As conditions to the development of the Project, Developer agrees to the following conditions:

4.1. Restrictive Covenants. Developer agrees that each subdivided lot within the Undeveloped Property shall be made subject to Covenants, Conditions, and Restrictions ("**CC&Rs**") reasonably acceptable to the City. In connection with each phase or subphase of the Undeveloped Property, the CC&Rs will be recorded simultaneously with the recordation of each applicable subdivision plat. The parties acknowledge that the CC&Rs recorded against the Undeveloped Property are not required to be the same CC&Rs as those recorded against the initial phases of the Project or the Improved Lots.

4.2. Special Service District. The City previously formed a Special Service District for the benefit of the Project pursuant to Utah Code Annotated 17A-2-1301 *et seq.* (the "**District**"). The District was created for, among other things, maintaining recreation and open space areas and uses including the park, trails, storm water detention, and other public features, maintenance and snow removal of park strip landscaping and sidewalks on rear and side double-frontage areas, and maintenance of the fence along the railroad right-of-way. Revenue for the District is intended to be generated from monthly assessments ("**Assessments**") sent by the City to the residents of the Project. Developer agrees that a covenant to pay such assessments ("**Covenant to Pay Assessments**") will be recorded against the Undeveloped Property no later than immediately after recordation of each applicable subdivision plat. The parties acknowledge that the Covenant to Pay Assessments will not be effective until after a certificate of occupancy is obtained and the applicable Lot is sold to a third party and the applicable deed is recorded. Such assessment against a Lot will be based upon a prorated allocation of operating costs, as determined by the City, to all lots in the Project (e.g., each Lot to be allocated 1/494 of the approved assessments by the District); *provided, however*, that no assessments may be made retroactively against a Lot for any period of time prior to (i) obtaining a certificate of occupancy for such Lot, and (ii) recordation of the applicable deed for such Lot. For the avoidance of doubt, Developer will not be required to pay any assessment by the District against the Lots.

4.3. Right of Way Fence. Developer agrees to construct a six (6) foot high solid masonry fence (the "**Fence**") along the railroad right-of-way. The Fence shall be installed in conjunction with and as part of Developer's construction of Tooele Boulevard. The Fence shall be owned and maintained by the City as part of the Tooele Boulevard right-of-way.

4.4. Tooele Boulevard Construction. Developer agrees to construct and pay for two lanes of Tooele Boulevard in accordance with plans and specifications determined by the City and consistent with the current Tooele Boulevard roadway, including asphalt, curb and gutter on both sides of the street, sidewalk adjacent to all Project developed areas, and public improvements. Tooele Boulevard shall be constructed concurrently with the construction of those phases or subphases of the Project that are adjacent to Tooele Boulevard. The Parties acknowledge that Tooele Boulevard shall not exceed an 84-foot right-of-way, and that the exact design cross-section shall be determined by the City in consultation with its engineer. To assure the City that Developer will not avoid the construction of Tooele Boulevard by developing phases or subphases of the Project that are not adjacent to Tooele Boulevard, Developer agrees to develop the Undeveloped Property according to the Preliminary Phasing Plan attached as part of Exhibit B-1. Exhibit B-1 may be amended from time to time by Developer with the consent of the City, which consent shall not be unreasonably withheld, so long as the obligation to construct Tooele Boulevard is not circumvented.

4.5. Parks and Recreation Facilities and Park Impact Fees Credit.

(a) The City requires a total of 15.8 acres of parks, trails, and open space (collectively the "**Open Space**") in the Project to be conveyed to the City. As of the date of this Agreement, 7.27 acres of Open Space in the Project have been conveyed previously to the City by Developer's predecessors in interest; thus, Developer is obligated to convey an additional 8.53 acres of Open Space in the Undeveloped Property to the City, as reflected in the Concept Plan. Developer acknowledges that, as part of the consideration of this Agreement, no impact fee credit is available for the value of any such conveyance of Open Space.

(b) Developer shall construct and pay for those park, recreation, and trail facilities (the "**Facilities**") to be constructed on the Undeveloped Property as contemplated by the Concept Plan, subject to specifications approved in writing by the City Parks and Recreation Director. Further, Developer shall construct and pay for the trail portion of the Facilities shown on Page PL3B of the Copper Canyon P.U.D. Phase 2B subdivision plat (see Exhibit D) in conjunction with construction on the Improved Lots for that portion of the trail not located on the Undeveloped Property. The Facilities shall be designed at Developer's expense by a professional landscape architect with public park and recreation facilities expertise. The parties acknowledge that the park associated with Copper Canyon phase 2B, as shown on Page PL4B of the Copper Canyon P.U.D. Phase 2B subdivision plat is complete (see Exhibit D). The future park on the Undeveloped Property located at the western end of the Project (the "**Remaining Park**"), as well as the trail connecting the two Project parks (the "**Trail**"), both as shown in the Concept Plan, remain to be constructed. The Remaining Park shall include permanent public restroom facilities. Developer shall bid the construction work for the Remaining Park. Developer and the City Parks and Recreation Director shall jointly review the bids and work cooperatively to select a low, responsible bidder. These Facilities shall be constructed in conjunction with and as a part of the construction of the associated adjacent Project phase or subphase that includes Facilities. The Remaining Park shall be constructed during the first ten-year term of this Agreement. Developer shall convey all completed Facilities to the City by bill of sale after they pass inspection by the City's Community Development and Parks and Recreation Department. To assure the City that Developer will not avoid the construction of the Remaining Park by developing phases or subphases of the Project that are not adjacent to the Remaining Park, Developer agrees to develop the Undeveloped Property according to the Preliminary Phasing Plan attached as part of Exhibit B-1. Exhibit B-1 may be amended from time to time by Developer with the

prior written consent of the City Council, which consent shall not be unreasonably withheld, so long as the obligation to construct the Remaining Park is not circumvented.

(c) Developer shall be entitled to a credit against parks and recreation impact fees paid on Project building permits (“**Credit for Park Impact Fees**”), pursuant to Tooele City Code 4-15, as amended, and pursuant to the Park and Special Purpose Recreation Facility Capital Facilities Plan and Impact Fee Analysis, as amended or superseded, for construction of the Facilities. The parties acknowledge and agree that as of the Effective Date, the remaining Credit for Park Impact Fees for the previously completed park in Copper Canyon P.U.D. Phase 2B of the Project is equal to \$393,201 (“**Remaining Credit Amount**”) (being the difference between the total value of eligible constructed Facilities of \$490,951 as of the Effective Date, minus the amount of parks and recreation impact fee credits paid to Fieldstone or Fieldstone affiliates of \$97,750 as of the Effective Date).

The parties acknowledge and agree that pursuant to the Fieldstone/Phoenix Purchase Agreement and the Fieldstone/FCC Purchase Agreement, such Remaining Credit Amount will be allocated among the parties as follows. The Remaining Credit Amount will first be allocated to offset the impact fees payable to the City (based upon the City’s standard impact fee schedule as amended from time to time) in connection with the 77 Improved Lots. Thus, to the extent Fieldstone retains ownership of the 77 Improved Lots, Fieldstone shall be entitled to the applicable Remaining Credit Amount in connection with such retained lots. To the extent FCC acquires the Improved Lots, then FCC shall be entitled to the applicable Remaining Credit Amount in connection with such purchased lots. The Remaining Credit Amount will be paid on a “first-in-time first-in-right” basis as building permits for the Improved Lots are obtained. Neither Fieldstone nor FCC (or their successors or assigns) are beneficiaries under this Agreement; rather, this allocation provision merely instructs the City regarding the appropriate impact fee credit payee in the administration of the City’s impact fee credit regulations.

By way of example only, and assuming that the City impact fee at the time of development of all lots is \$2,500, if FCC acquires 70 of the Improved Lots, and Fieldstone retains (or sells to a third party other than FCC or Developer) 7 of the Improved Lots, then FCC would be allocated \$175,000 (70 x \$2,500) of the Remaining Credit Amount, Fieldstone would be allocated \$17,500 (7 x \$2,500) of the Remaining Credit Amount, and Developer would be allocated the balance of Remaining Credit Amount.

The manner of paying the applicable Credit for Park Impact Fees to the applicable party hereunder after construction of a home on a lot within the Project will be consistent with the City’s standard practices. The City shall not be obligated to make payments of the Credit for Park Impact Fees or the Remaining Credit Amount more frequently than every 90 days. To the extent that the amount of parks and recreation impact fees collected from building permits on all of the Lots is insufficient to pay Developer the total eligible impact fee credit value of the parks and recreation Facilities constructed in the Project pursuant to this Agreement, the City’s obligation to pay further parks and recreation impact fees shall terminate, and Developer hereby waives any further right Developer might otherwise have to claim parks and recreation impact fees from other developments in the City; so long as such deficiency does not arise from the mismanagement of funds or other error by the City in applying such funds.

(d) To the extent that any portion of the 15.8 or more acres of parks and open space is utilized for other purposes, such as, storm water detention, Developer shall not be entitled to any impact fee credit for improvements constructed for those other purposes.

(e) Developer acknowledges that trails are not an element of the Tooele City parks and recreation capital facilities plan (or impact fee facilities plan) for which impact fee credits are available. The City shall not have any obligation to reimburse Developer for trail facilities.

(f) Maintenance of all of the Project's park, recreation, open space, and trail facilities shall be by the Special Service District referred to in Section 4.2 above.

4.6. Architectural Design Standards. All residences constructed on the Lots shall comply with Tooele City Code Chapter 7-11b (Design Guidelines: Single-Family Residential for R1-8 and higher densities). Amendments to Chapter 7-11b shall not be applicable to the Project for a term of five (5) years from the Effective Date. After this five-year period, all duly-enacted amendments to Chapter 7-11b shall apply to the Project. The City shall consult with Developer regarding any proposed amendments to Chapter 7-11b prior to their enactment.

4.7. Reimbursements. As part of the global consideration of this Agreement, Developer shall not be entitled to reimbursements or credits except those expressly identified in this Agreement.

5. Vested Rights. Developer shall be vested with the right to develop the Undeveloped Property as contemplated by this Agreement to the fullest extent permitted under Utah law and the Tooele City regulations. Such vested rights shall be effective until ten (10) years from the Effective Date, with the option on the part of the Developer to extend such vested rights for an additional ten (10) years if (a) the terms of this Agreement have been substantially complied with by Developer and (b) Developer is proceeding with reasonable diligence in the development of the Project in the phases contemplated hereby, or (c) the terms of this Agreement are amended in such a way as to expressly modify the period of vested rights. Except as otherwise provided herein, (y) the land use regulations applicable to and governing the development of the Project as of the Effective Date shall be the existing land use regulations and policies of the City that may change from time to time, excluding engineering and technical specifications; and (z) no moratorium, ordinance, resolution, or other land use regulation or limitation, each as relating to the timing or sequencing of the development of the Project or any portion thereof, shall apply to or govern the development of the Project or any development approval, except those regulations existing as of the Effective Date of this Agreement or as otherwise provided in this Agreement. The parties acknowledge that in interpreting subsection (b) of this Section regarding reasonable diligence, various factors will be considered, including without limitation, real estate market conditions in Tooele County, interest rates, and the availability of debt financing from the banking industry.

6. Concept Landscape Plan. The Project Concept Landscape Plan is attached as Exhibit C to this Agreement (the "**Landscape Plan**"). This plan shall be the basis for landscaping specifications contained in any applicable preliminary plans and final subdivision plats.

7. Phasing Plan. The Preliminary Phasing Plan for the Project is attached hereto as part of Exhibit B-1 to this Agreement. Each phase may be separated into subphases, as approved in the reasonable discretion of the City. Developer is not required to develop each phase sequentially (i.e., phase 3 does not have to follow phase 2), provided that such phasing schedule is subject to approval by the City in its reasonable discretion, including consideration of how phasing affects the construction of Tooele Boulevard and the park, recreation, and trail Facilities.

8. Approval Process. Any revised preliminary plan and all final subdivision plats must be submitted and approved in accordance with the City's subdivision approval processes and procedures.

9. Reserved Legislative Powers. The parties agree that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations, and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to the City all such power and authority that cannot be restricted by contract. In the event the City exercises its legislative discretion to enact future

land use regulations, such land use regulations shall apply to the development of the Project only to the extent that: (a) Developer has received prior written notice and the opportunity to be heard with respect to such proposed action, and (b) the application of such land use regulations to the development of the Project is necessary to avoid a substantial risk of injury to the public health, safety and general welfare, or is required by federal or state law, provided that in the event that state or federal law precludes compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended only as necessary to comply with such state and federal laws, and the remainder of this Agreement shall remain in full force and effect to the extent that performance of the remaining provisions would not be inconsistent with the intent of this Agreement.

10. Recordation. This Agreement shall be recorded against the Lots in the office of the Tooele County Recorder. The duties and obligations of the Developer and the rights and benefits of the City set forth in this Agreement shall be deemed to be covenants running with the land pursuant to applicable law. The duties and obligations of the City and the rights and benefits of the Developer set forth in this Agreement shall not be deemed to run with the land absent an assignment, as provided in Section 11, below. This Agreement shall be binding upon the Developer and its successors and permitted assigns. This Agreement shall inure to the benefit of the Developer's successors and assigns only to the extent permitted under Section 11, below.

11. Assignment. The City's duties and obligations, and the City's rights and benefits, under this Agreement, may not be assigned. The Developer's duties and obligations, and the Developer's rights and benefits, under this Agreement may be assigned only on the following conditions: (a) the Developer assigns each and all of its rights, benefits, duties and obligations under this Agreement, and (b) the City Council provides prior written consent to the assignment and the assignee, which shall not be unreasonably withheld. Said assignments shall be subject to review and approval by the City, which review is intended to ensure that the assignment satisfies the conditions of this Section 11 and to ensure that the assignee is of sufficient financial ability to assume and perform the provisions, terms, and conditions of this Agreement.

12. Attorney's Fees. If legal action or other proceeding is brought for enforcement of this Agreement because of an dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the party who prevails by enforcing this Agreement shall be entitled to recover reasonable attorney's fees and costs incurred, both before and after judgment, in addition to any other relief to which such party may be entitled.

13. Recitals. The Recitals to this Agreement are intended to provide background information only and shall not be deemed to create duties or obligations on the part of the Parties.

14. Headings. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

15. Mutual Participation in Document Preparation. Each party has participated materially in the negotiation and preparation of this Agreement and any related items; in the event of a dispute concerning the interpretation of any provision of this Agreement or any related item, both parties will be deemed to have jointly drafted this document and the rule of construction to the effect that certain ambiguities are to be construed against the party drafting a document will not apply.

16. Amendment to Agreement. Any amendment to this Agreement must be in a writing signed by duly authorized representatives of all of the Parties hereto, in conformance with state and local law, and affirmatively stating the intent of the Parties to amend this Agreement.

17. Entire Agreement. This Agreement constitutes the final expression of the Parties as to the terms of this Agreement and the subject matter hereof, and supersedes all prior agreements, negotiations, and discussions between the Parties and/or their respective counsel with respect to the subject matter covered hereby. Except as expressly stated in this Agreement, no party hereto has made any statement or representation to any other party hereto regarding the facts relied upon by said party in entering into this Agreement, and each party hereto specifically does not rely upon any statement, representation, or promise of any other party hereto in executing this Agreement, except as expressly stated in this Agreement. Each party and their attorneys, if the party so chose, had the opportunity to make such investigation of the facts pertaining to this Agreement, and all of the matters appertaining thereto, as they deem necessary.

18. No Third Party Beneficiaries. Nothing in this Agreement is intended for the benefit of any party except for the named Parties and their authorized successors and assigns. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligation any of the Parties to, any person or entity other than to each other.

19. No 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.

20. Waiver of Jury Trial. The Parties irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this contract and the transactions contemplated herein.

21. Limitation of Remedies. Developer's sole and exclusive remedies for any non-performance or breach of the City's express or implied covenants of this Agreement is declaratory relief construing this Agreement's rights and obligations, relief provided in Utah Code Ann. § 10-9a-801, and injunctive relief in conjunction with a proceeding under Utah Code Ann. § 10-9a-801. For purposes of this Agreement, and as between the Parties, including authorized successors, City decisions implementing the provisions of this Agreement shall be deemed to be land use decisions made under Utah Code Ann. Chapter 10-9a. Under no circumstances shall the City be liable to Developer or Developer's successors-in-interest or assigns for any monetary damages, including, but not limited to, costs, fees, special, general, direct, indirect, delay, compensatory, expectancy, consequential, reliance, out-of-pocket, restitution, or other damages, except for any Remaining Credit Amount, as determined under Section 4.5(c), and as stated in Section 12. Except for any Remaining Credit Amount, as determined under Section 4.5(c) and as stated in Section 12, each of the parties confirms that damages at law is an unavailable and, hence, inadequate remedy for a breach or threatened breach of the provisions hereof and that a breach of this Agreement will cause the non-breaching party to suffer irreparable harm unless an injunction issues to prevent or discontinue such breach. Nothing in this Agreement shall relieve Developer or Developer's successors-in-interest or assigns of the requirement to exhaust available administrative remedies. Following the exhaustion of any such remedies, any dispute related to, or arising from, this Agreement, except for a claim for any Remaining Credit Amount under Section 4.5(c), shall be submitted to the Third Judicial District Court, Tooele County, State of Utah, pursuant to Utah Code Ann. §10-9a-801.

22. Notices. All notices, demands, requests, or other communications required or permitted by this Agreement shall be in writing and effective when received, and delivery shall be made personally, or by registered or certified mail, return receipt requested, postage prepaid, or overnight courier, addressed as follows:



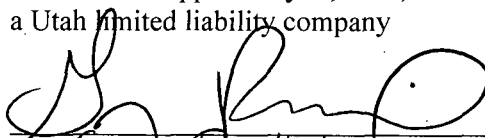
Tooele City Corporation  
Attention: Mayor  
90 North Main Street  
Tooele, UT 84074

With copy to City Attorney

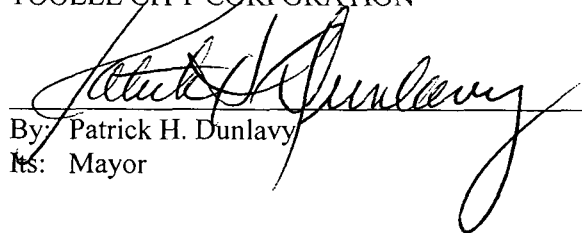
Phoenix of Copper Canyon, LLC  
Attn: Greg D. Rindlisbacher  
11650 South State Street, Suite 300  
Draper, UT 84020

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

Phoenix of Copper Canyon, LLC,  
a Utah limited liability company

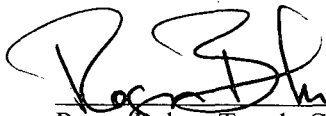
  
By: Greg Rindlisbacher  
Its: Managing Member

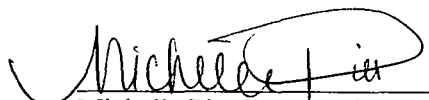
TOOELE CITY CORPORATION

  
By: Patrick H. Dunlavy  
Its: Mayor

Approved as to Form:

Attest:

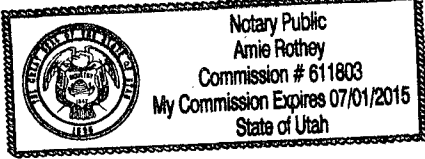
  
Roger Baker, Tooele City Attorney

  
Michelle Pitt, Tooele City Recorder



STATE OF UTAH )  
County of Salt Lake ) ss.  
 )

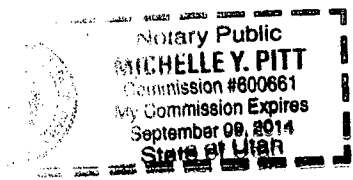
The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of June, 2012, by \_\_\_\_\_, the manager of Phoenix of Copper Canyon, LLC, on behalf of such company.



[Signature]  
Notary Public

STATE OF UTAH )  
County of Tooele ) ss.  
 )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of April, 2012, by Patrick Dunlavy as the Mayor of Tooele City Corporation.



[Signature]  
Notary Public

## Exhibit A

### Legal Description of Project

## Exhibit A

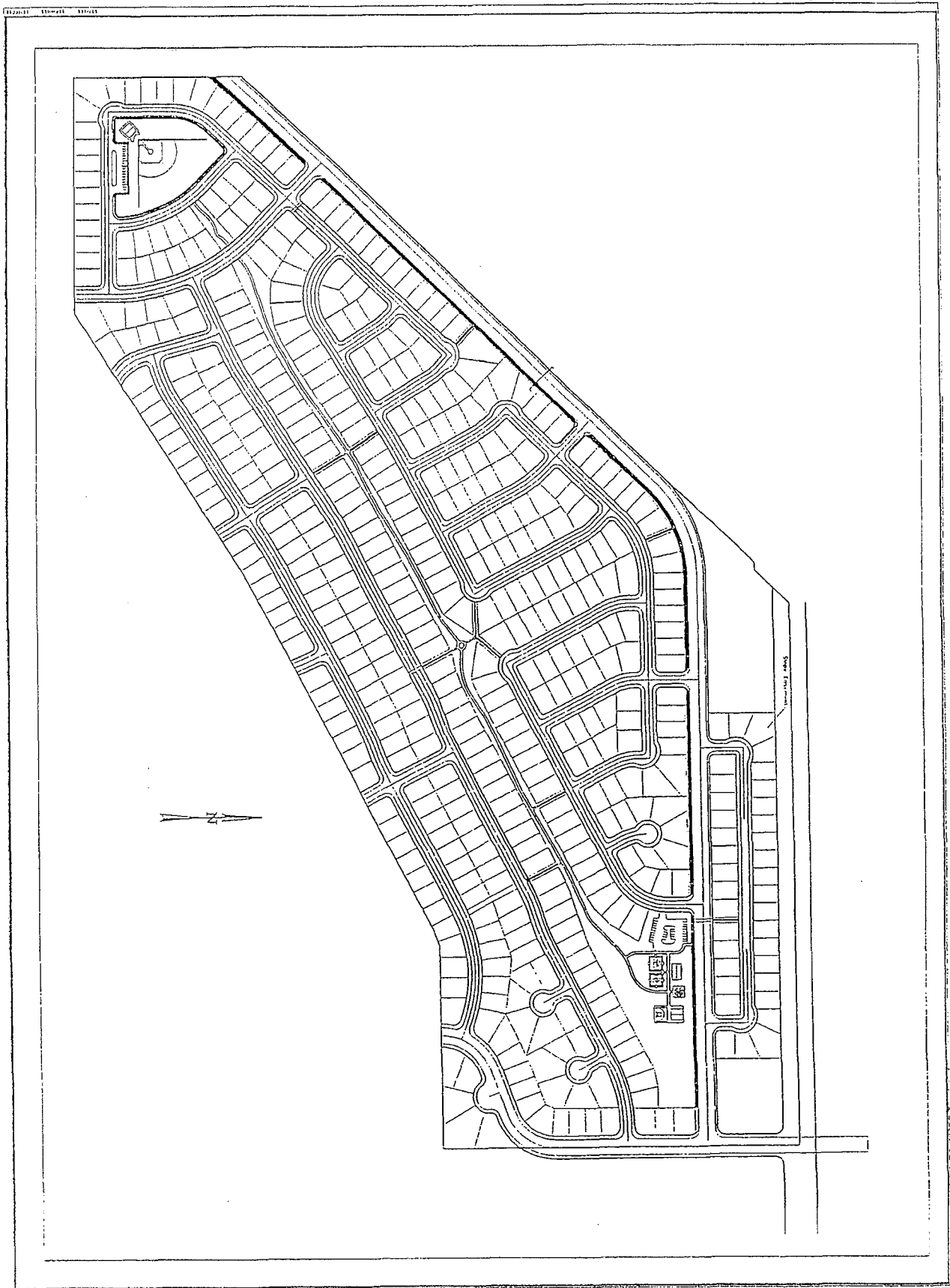
Beginning at a point on the West right of way line of 200 West street said point being South  $00^{\circ}12'53''$  East 398.62 feet along the center section line and South  $89^{\circ}47'07''$  West 42.00 feet from the North 1/4 corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian, and run thence along said 200 West as follows: South  $00^{\circ}12'53''$  East 495.83 feet to the point of a curve to the right; thence along the arc of said curve 178.15 feet, with a radius of 146.00 feet, with a delta angle of  $69^{\circ}54'52''$  South  $89^{\circ}47'07''$  West bearing to the radius point; thence South  $69^{\circ}41'59''$  West 171.26 feet to the point of a curve to the left; thence along the arc of said curve 292.97 feet, with a radius of 240.00 feet, with a delta angle of  $69^{\circ}56'32''$  South  $20^{\circ}18'01''$  East bearing to the radius point to the North line of Shetland Meadows Phase 3 and the extension of the North line of Shetland Meadows Phase 1; thence South  $89^{\circ}45'29''$  West 286.50 feet along said Shetland Meadows; thence South  $70^{\circ}20'08''$  West 60.20 feet along said Shetland Meadows to the North East corner of Copper Canyon Phase 1 Amended Subdivision as recorded in the Tooele County Recorder's Office; thence along said Copper Canyon as follows South  $62^{\circ}17'39''$  West 491.45 feet; thence South  $63^{\circ}18'55''$  West 86.67 feet; thence South  $62^{\circ}17'39''$  West 29.92 feet; thence South  $63^{\circ}18'51''$  West 382.01 feet; thence South  $62^{\circ}05'46''$  West 95.75 feet; thence South  $62^{\circ}05'22''$  West 403.05 feet; thence South  $57^{\circ}43'23''$  West 139.50 feet; thence South  $57^{\circ}43'59''$  West 60.00 feet; thence South  $57^{\circ}43'24''$  West 522.41 feet; thence South  $56^{\circ}52'20''$  West 335.68 feet to the North right of way line of 650 North Street as degenerated and shown on the West Point Meadows Phase 1 and 2 Subdivisions as recorded in the Tooele County Recorder's office; thence South  $89^{\circ}41'54''$  West 951.62 feet along said 650 North to the East right of way line of a proposed 600 West street; thence North  $00^{\circ}08'31''$  West 484.35 feet along said proposed 600 West to the Southerly and Easterly right of way line of Tooele Boulevard; thence along said Tooele Boulevard as follows North  $43^{\circ}55'20''$  East 2202.51 feet to the point of a curve to the right; thence along the arc of said curve 389.22 feet, with a radius of 487.00 feet, with a delta angle of  $45^{\circ}47'29''$  South  $46^{\circ}04'40''$  East bearing to the radius point; thence North  $89^{\circ}42'49''$  E 2013.66 feet to the point of a curve to the Right; thence along the arc of said curve 46.38 feet, with a radius of 29.50 feet, with a delta angle of  $90^{\circ}04'18''$  South  $00^{\circ}17'11''$  East bearing to the radius point to the point of beginning.

## Exhibit B

Concept Plan,  
including Preliminary Phasing Plan (Exhibit B-1)

# Copper Canyon

## Exhibit B - Concept Plan



## EXHIBIT B-1

### PHASING PLAN

The phasing set forth on Exhibit B is hereby modifying and made subject to the following:

- The next phase to be constructed will be located along the southern boundary of the Project. Thereafter, the successive phases will alternate between the northern and southern boundaries of the Project.
- Construction of Tooele Boulevard will not begin in the next phase, provided, however, that construction of Tooele Boulevard will begin no later than upon the development of those Lots that represent 40% completion of the entire Project, and Tooele Boulevard will be complete prior to development of those Lots that represent 85% completion of the entire Project.
- The Remaining Park will be constructed in connection with the development of those Lots that represent 85% completion of the entire Project.

## Exhibit C

### Landscape Plan

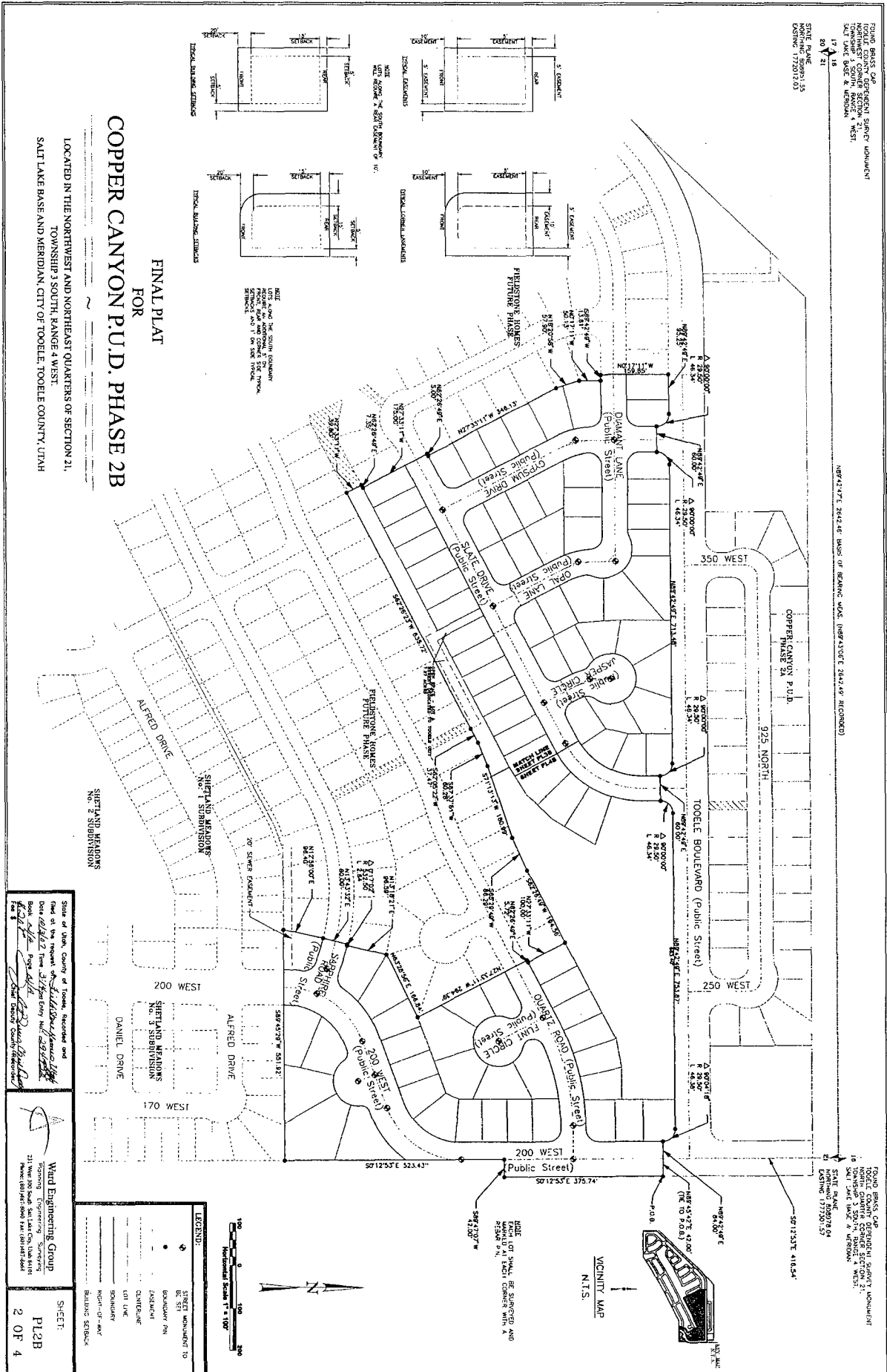
(incorporated by this reference)



## Exhibit D

Copper Canyon P.U.D. Phase 2B Subdivision Plat





State of Utah, County of Tooele, Recorder and Clerk of the Court, Tooele County, Utah, do hereby certify that the above and foregoing plat was duly recorded and filed for public record in the office of the County Recorder and Clerk of the Court, Tooele County, Utah, on this 15th day of August, 2011, at 10:00 AM.

*[Signature]*  
 County Recorder and Clerk of the Court, Tooele County, Utah

**Ward Engineering Group**  
 Planning, Engineering, Surveying  
 211 West 1000 South, Salt Lake City, UT 84143  
 Phone: (801) 488-1111 Fax: (801) 488-1111

**SHEET:**  
 PL2B  
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