

DEVELOPMENT AGREEMENT

This Development Agreement is executed in duplicate this <sup>new</sup> 22<sup>nd</sup> day of <sup>13th</sup> March, 2005, by <sup>May new</sup> and between the City of Orem, a municipal corporation and political subdivision of the State of Utah, with its principal offices located at 56 North State Street, Orem, Utah 84057, hereinafter referred to as the "City;" and Ivory Development, LLC, with its principal offices located at 970 East Woodoak Lane, Salt Lake City, Utah 84117; and Thomas W. Macdonald, as authorized representative of TCU Land (hereinafter collectively referred to as "Ivory").

ENT 52731:2005 pg 1 of 12  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2005 May 17 10:58 am FEE 0.00 BY SDM  
RECORDED FOR OREM CITY CORPORATION

RECITALS

WHEREAS Ivory has a contract to purchase real property located at approximately 700 East 1200 North, Orem, Utah which is more particularly described in Exhibit "A" which is attached hereto and by reference is made a part hereof (hereinafter referred to as the "Property"); and

WHEREAS Thomas W. Macdonald, as representative of TCU Land, is the current owner of the Property; and

WHEREAS the Property is currently zoned PD-6; and

WHEREAS Ivory has submitted an application to apply the Planned Residential Development (PRD) zone to the Property; and

WHEREAS the Property is located adjacent to property that is currently zoned PD-6 which is used for business offices; and

WHEREAS the City, acting pursuant to its authority under Utah Code Section 10-9-101, *et. seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, and in the exercise of its legislative discretion, has elected to approve this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the City and Ivory hereby agree as follows:

1. **Development Requirements.** Ivory agrees to develop the Property in substantial conformance with the concept plan attached hereto as Exhibit "B" and by reference made a part hereof.

1.1. **Density.** The development on the Property shall contain a total of no more than 45 single family detached lots. The density of development on the Property shall not exceed 4.3 units per acre. The average lot size shall be at least 7, 600 square feet.

1.2. **Open Space.** The development on the Property shall contain at least 43, 000 square feet of open space-9.6 percent of the total development.

1.3. **No Attached Units.** The development on the Property shall not contain any attached units.

1.4. **Masonry Wall.** Ivory agrees to construct and maintain a seven foot masonry wall along the boundary of the Property adjacent to all other property zoned PD-6. Ivory shall construct a six foot masonry fence along the frontage of 1200 North Street and Research Way. No fence shall be constructed in such a way as to violate the restrictions applicable to clear vision areas as defined by City ordinances.

1.5. **Landscaping.** The development on the Property shall include a landscape buffer at least thirty-four feet (34') in width adjacent to 1200 North Street containing a total of at least 25,000 square feet. The landscaping area adjacent to 1200 North Street and Research Way as shown in Exhibit "B," shall be common area for all of the unit owners on the Property. Said landscaping areas shall be maintained by a homeowners' association consisting of all of the unit owners on the Property. Ivory shall also install landscaping in the front yard and in the rear yard of each residential lot on the Property.

1.6. **Amenities.** The development on the Property shall include a privately maintained park area with a picnic pavilion and recreational amenities.

1.7. **Single-Story Construction.** All residential units on the Property shall be single-story, single family, detached housing.

1.8. **Homeowners' Association.** Ivory shall require the formation of a homeowners' association consisting of all residential units on the Property. The homeowners' association shall be responsible for the maintenance of all homeowners' yards and for the maintenance of all private open space and amenities.

1.9. **Tree Planting Plan.** Ivory shall install at least one deciduous tree per residential lot. Ivory shall also install at least one evergreen tree per residential lot.

1.10. **Lighting Plan.** Ivory shall install a private neighborhood lighting system on the Property. The homeowners' association shall be responsible for maintaining the lighting system after construction and installation. The lighting system shall conform with the recommendations of the City street lighting engineer.

1.11. **Fencing.** Fences for each individual lot on the Property may extend only from the rear property line to the rear of the house constructed on the lot.

1.12. **Architectural Style.** The houses to be constructed on the Property shall substantially conform to the architectural style reflected in the typical home elevations contained in Exhibit "C" which is attached hereto and by reference is made a part hereof.

2. **Agreement Considered Mitigation of Impact.** In consideration for Ivory's agreement to dedicate property for street improvements as described above, the City staff shall make a recommendation to the Planning Commission and the City Council of the City of Orem to consider the terms of this Development Agreement as sufficient mitigation of the potential impact on traffic and other potential adverse impacts resulting from Ivory's request to change the zoning designation of the Property to the PRD zone.

3. **No Guarantee of Rezone.** The City makes no representation that Ivory's request to have the Property rezoned will be approved by the City Council of the City of Orem. Therefore, this Agreement shall not be binding upon Ivory unless Ivory's request for a rezone of the Property is

approved by the Orem City Council.

4. **No Limitation on Exercise of Police Power.** Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement.

5. **Compliance With All Applicable Laws.** Ivory expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Ivory from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and a site plan (if applicable), including the payment of fees and compliance with all other applicable ordinances, resolutions, including the Orem City Zoning and Subdivision Ordinances and design and construction standards.

6. **Agreement to be Recorded.** This Agreement may be recorded against the Property and shall be deemed to run with the land and shall be binding on all successors and assigns of Ivory in the ownership or development of any portion of the Property.

7. **Indemnification.** Ivory agrees to indemnify and hold the City harmless from and against any demand, claim, action, damages or loss of any type arising or resulting from the development of the Property except such demands, claims, actions, damages, or losses that are caused by the City's own negligence.

8. **Lawful Agreement.** The parties represent that each of them has lawfully entered into this Agreement, having complied with all relevant statutes, ordinances, resolutions, bylaws, and other legal requirements applicable to their operation. The parties further represent that each of them has authority to enter into this Agreement and that the individuals signing this Agreement on behalf of each party have authority to bind the party represented by the signing individual.

9. **Applicable Law.** This Agreement shall be interpreted pursuant to the laws of the State of Utah.

10. **Time of Essence.** Time shall be of the essence of this Agreement.

11. **Interpretation.** The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include the other gender. Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that both parties have participated in the preparation hereof.

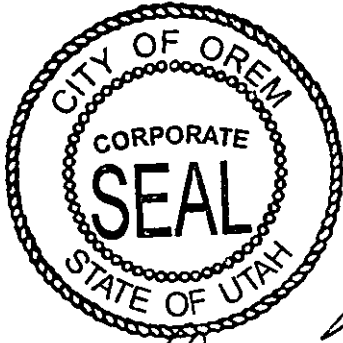
12. **Modifications**. No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement.

13. **Assignment**. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement.

14. **Relationship of Parties**. This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to a third party.

15. **Incorporation of Recitals**. The Recitals to this Agreement are incorporated by reference into the Covenants section of this Agreement as if fully set forth herein.

SIGNED and ENTERED INTO this 13<sup>th</sup> day of May, 2005.



City of Orem

By:

[Signature]  
Jim Reams, Orem City Manager

ATTEST:

[Signature]

Donna Weaver, City Recorder

DEVELOPMENT, L.L.C., BY  
IVORY LAND CORPORATION,

By:

[Signature]

Name: CHRISTOPHER P. GAMVROULAS

Title: PRESIDENT

TCU Land; by:  
Thomas W. Macdonald

[Signature]

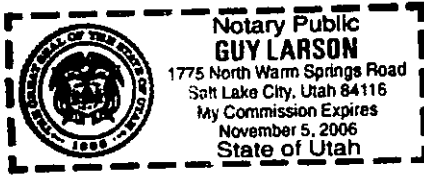
STATE OF UTAH )

:SS.

COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 22 day of MARCH, 2005, by CHRISTOPHER P. GAMVROULAS, who acknowledged that he signed this agreement for and on behalf of Ivory Land Corporation. DEVELOPMENT, LLC; and by Thomas W. Macdonald who acknowledged that he signed this agreement for and on behalf of TCU Land.

[Signature]  
NOTARY PUBLIC



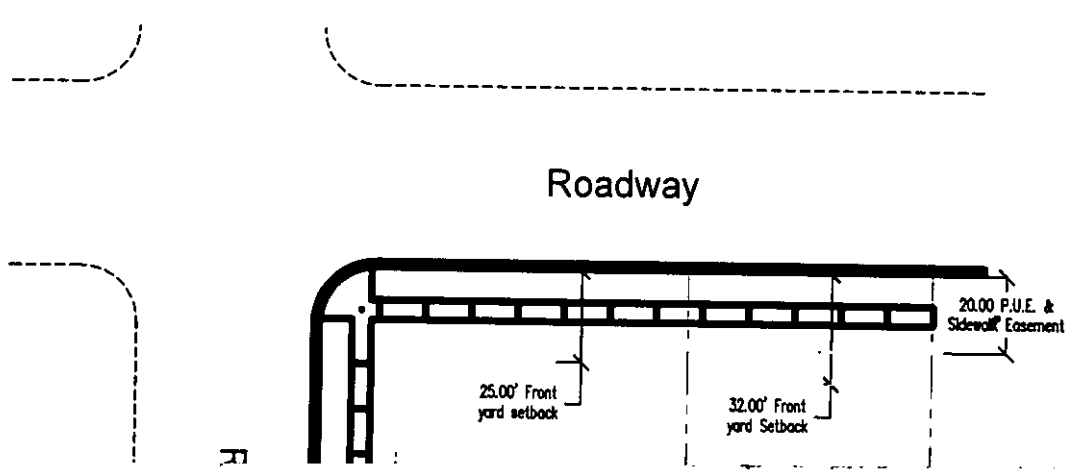
# Exhibit "A"

## Overall Boundary

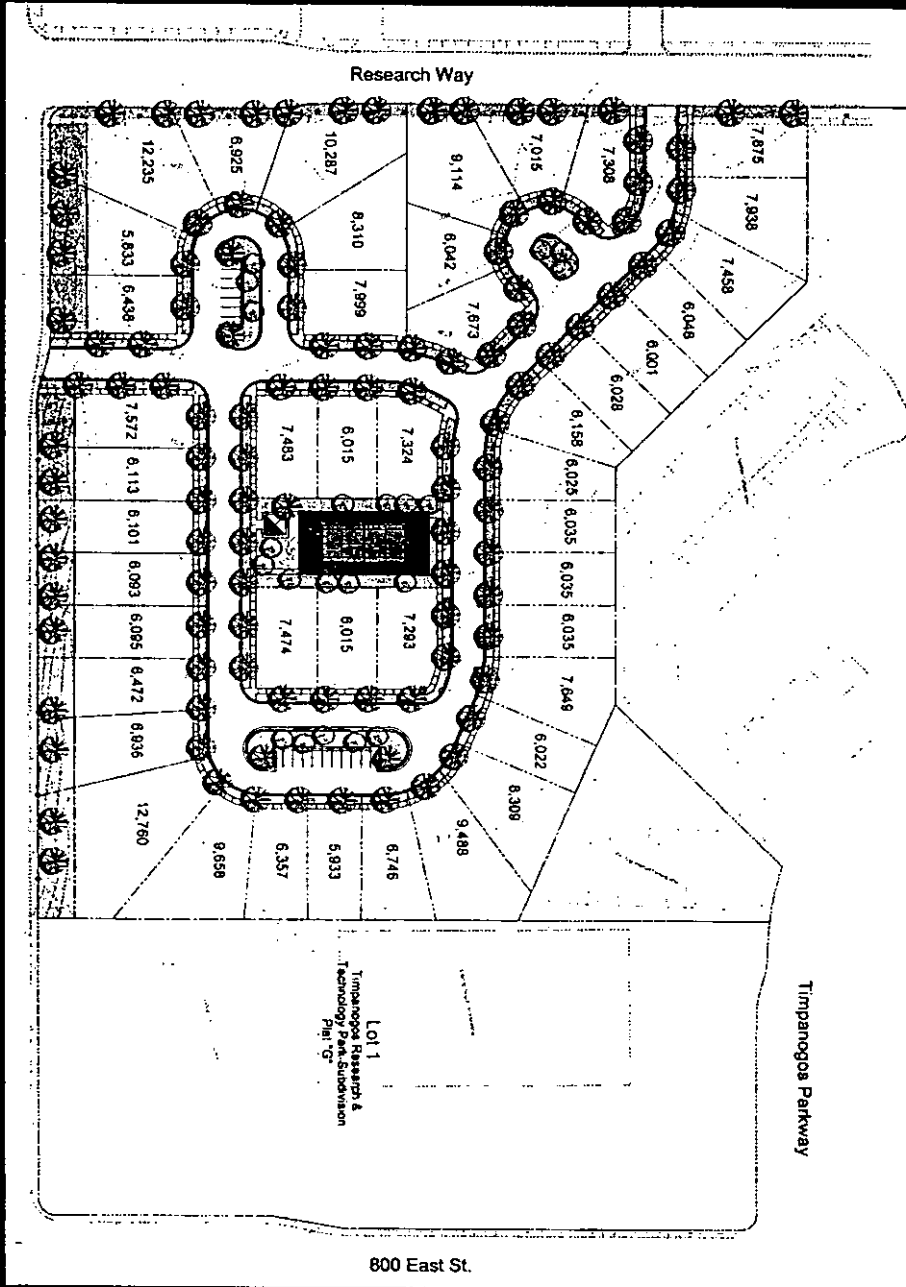
Commencing at a point located South 89°54'39" West along the Section line 328.08 feet from the Southeast corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along the Northerly boundary line of 1200 North Street, Orem, Utah, as follows: South 89°54'39" West 488.65 feet, along the arc of a 100.00 foot radius curve to the right 34.82 feet (chord bears North 80°06'54" West 34.64 feet), along the arc of a 100.00 foot radius curve to the left 34.82 feet (chord bears North 80°06'54" West 34.64 feet), South 89°54'39" West 200.00 feet; thence thence along the arc of a 15.00 foot radius curve to the right 23.59 feet (chord bears North 45°02'41" West 21.23 feet); thence along the Easterly boundary line of Research Way, Orem, Utah, as follows: North 187.85 feet, along the arc of a 100.00 foot radius curve to the left 22.41 feet (chord bears North 06°25'09" West 22.36 feet), thence along the arc of a 100.00 foot radius curve to the right 22.41 feet (chord bears North 06°25'09" West 22.36 feet), North 452.87 feet; thence East along the Northerly boundary line of lot 3, Plat "G", Timpanogos Research & Technology Park Subdivision 164.19 feet; thence South 45°00'00" East along the Northerly boundary line of lot 3, Plat "G", Timpanogos Research & Technology Park Subdivision 250.00 feet; thence East along the Northerly boundary line of lots 2 & 3, Plat "G", Timpanogos Research & Technology Park Subdivision 226.27 feet; thence South 66°45'53" East 227.18 feet to the Easterly boundary line of lot 2, Plat "G", Timpanogos Research & Technology Park Subdivision; thence South 00°07'16" East along the Easterly boundary line of lot 2, Plat "G", Timpanogos Research & Technology Park Subdivision 444.58 feet to the point of beginning.

Area: 446,286 sq. ft. 10.25 acres

800 East St.

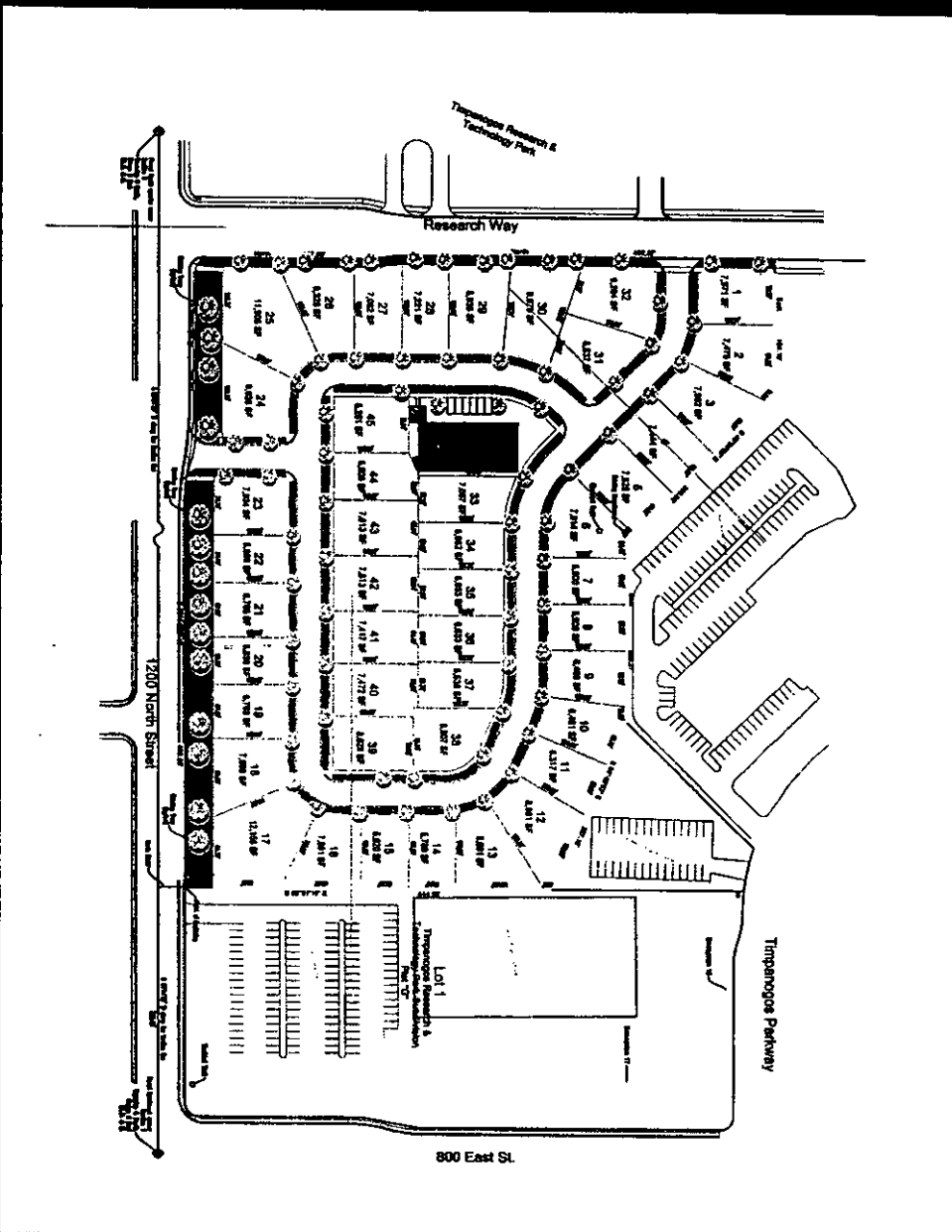


# Plan A - PRD



- 45 single family detached lots
- Number of units per acre: 4.3
- Average lot size: 7,260 sq ft.
- Open Space: 41,595 9.3 percent of total acreage
- Average lot width at 30 ft. building setback: 57 ft.

# Plan B - PRD



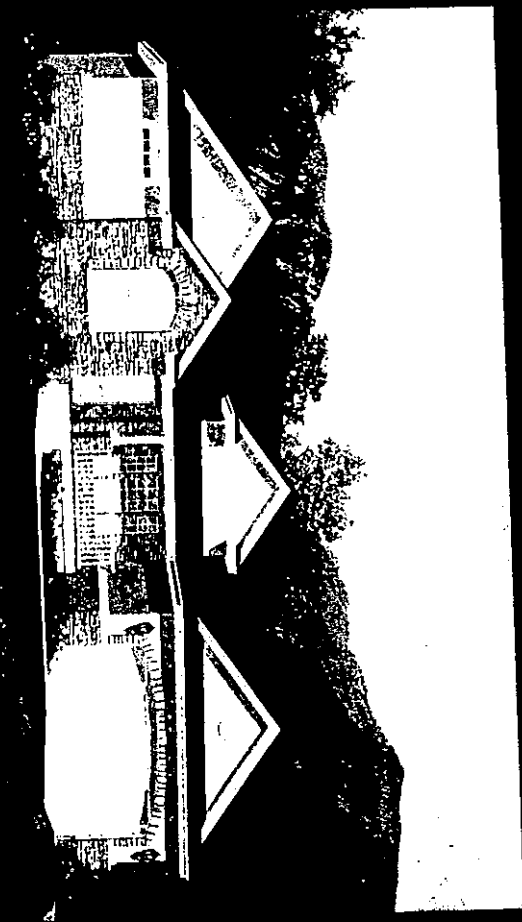
- 45 single family detached lots
- Number of units per acre: 4.3
- Average lot size: 7,607 Sq. ft.
- Open Space: 43,029 sq ft – 9.6 percent of total acreage
- Average lot width at 30 ft. building setback: 64 ft.



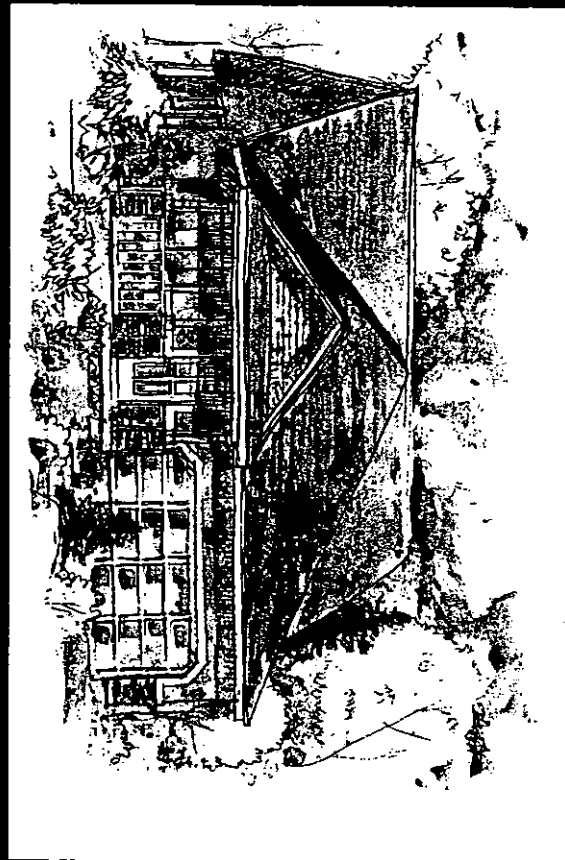
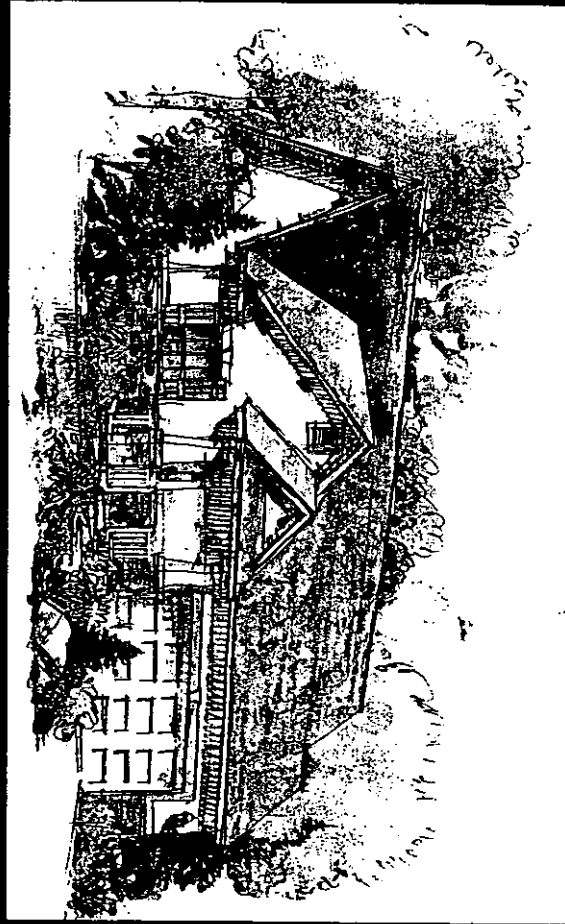
# Typical Home Elevations



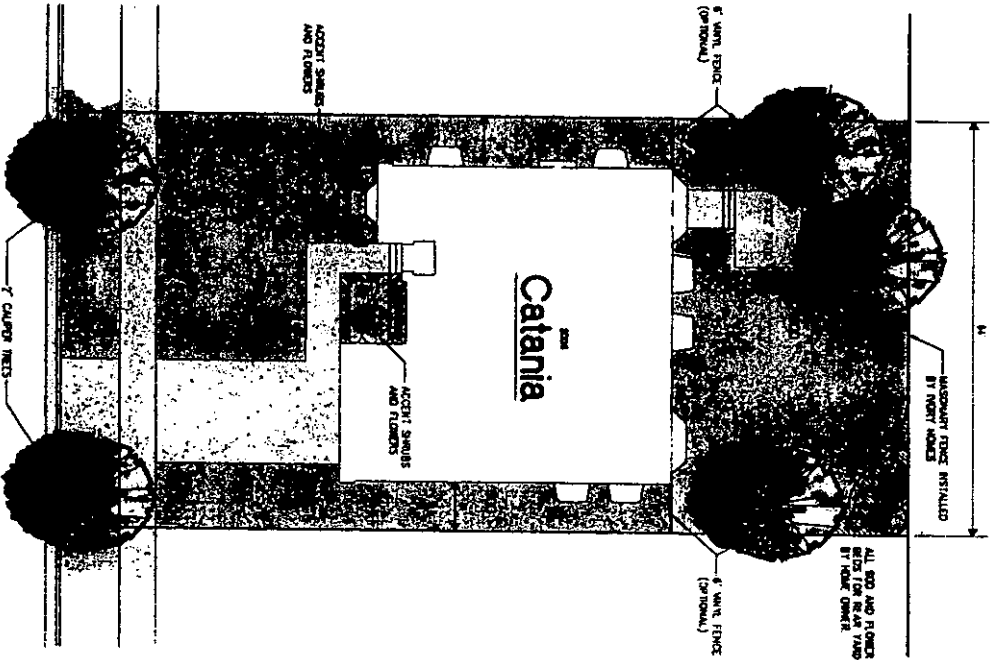
# Typical Home Elevations



# Typical Home Elevations



# Typical Landscaping & Fencing Detail



*Typical Landscaping  
Da Vinci Place*



- Future Homeowner's to choose from 3 typical front yard landscaping plans
- Ivory to install front yard landscaping and rear yard sod
- Homeowner's will have the option to plant trees, gardens, flower beds in rear yards
- Ivory to install masonry fence around the entire perimeter of the project
- Homeowner's will have the option of installing vinyl fencing along side yards – said side yard fencing will be allowed only up to the rear corner of home