

When Recorded Return To:
City of Clearfield
City Recorder
140 East Center St.
Clearfield, UT 84015

E 1343062 8 2168 P 224
JAMES ASHauer, DAVIS CITY RECORDER
1997 JUN 26 10:58 AM FEE 29.00 DEP REC
REC'D FOR FIRST AMERICAN TITLE CO OF UTA

AGREEMENT NO. _____

DEVELOPMENT AGREEMENT

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109-021-0028-0029
109-034-0032

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into this 10th day of June, 1997, between the City of Clearfield, a municipal corporation of the State of Utah (the "City"), and TC Residential Phoenix II, Inc., a Texas corporation ("TCR"), for the purposes and on the terms set forth herein.

1. RECITALS

1.1 JTC is the contract purchaser, pursuant to that certain Real Estate Purchase Contract ("the REPC") dated November 15, 1995, by and between JTC and William A. Vera A., and Alta L. Cowley, Jeanne W. Taft and Virginia W. Cutler (the "Cowleys"), of that certain real property consisting of approximately 64.305 acres located in Davis County, Utah, more particularly described on Exhibit "A" attached hereto and made a part hereof (the Property).

1.2 TCR is the contract purchaser, pursuant to that certain Real Estate Purchase Contract dated October 2, 1996, by and between TCR and Johansen-Thackeray & Company, Inc. ("JTC") (the "Purchase Agreement"), of that certain real property consisting of approximately 16 acres located in Davis County, Utah, more particularly described on Exhibit "A" attached hereto and made a part hereof (the "TCR Property").

1.3 TCR's obligation to purchase the TCR Property is conditioned upon TCR's reasonable satisfaction that the road east of the Property (1200 West Street) will be connected to State Road #193 on the date which is (9) months after the closing of the Purchase Agreement. Such road is to be over the real property more particularly described in Exhibit "B" attached hereto and made a part hereof (the "Road").

1.4 Following dedication of the necessary land for construction of the Road to the City, the City has agreed to construct the Road at its sole cost and expense.

1.5 The Mayor and City Council find and determine that the Road qualifies as a business expansion economic development project; that the project will assist in the creation and retention of jobs and will otherwise improve and enhance the economic welfare of the inhabitants of the city of Clearfield; that the Road will in fact serve legitimate economic development purposes; and that the Road authorized by this Agreement is reasonably proportionate to the benefits the City and the public will derive from expansion of businesses in the city.

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13079, 16853

2. SPECIFIC TERMS OF AGREEMENT.

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2.1 Road. The City hereby agrees to cause the Road to be completed on or prior to the date which is nine (9) months after issuance of building permits for the construction of an apartment development on the TCR Property, commencement of the site work for such development by TCR and dedication to Clearfield City of the real property on which the Road is to be located pursuant to Paragraph 2.2 (the "Completion Date"), at its sole cost and expense. The Road shall be located and designed as shown on Exhibit "B" attached hereto and made a part hereof.

2.2 Dedication. The City acknowledges and agrees that it will accept a dedication of the land necessary for the Road either in fee simple or in the form of a right-of-way easement. The City's obligation to construct the Road on or prior to the Completion Date is contingent upon such dedication.

3. GENERAL TERMS OF AGREEMENT.

3.1 TCR covenants and agrees that any development it constructs on the TCR Property will be completed generally in accordance with the plans and specifications approved by the Clearfield Planning Commission including open space, access, and number of parking stalls.

3.2 JTC shall cause to be dedicated to the City property for the park generally as outlined on the plans approved by the Clearfield Planning Commission on April 16, 1997.

3.3 Upon the issuance of the TCR building permits for the construction of an apartment development on the Property, TCR agrees to escrow sufficient funds with Clearfield City to accommodate the upgrade for the sanitary sewer line that will be installed when Layton City widens Angel Street in Layton City. The length of the sewer line shall not exceed 1,500 lineal feet.

3.4 Time of the Essence. Time shall be of the essence with respect to the obligations of the parties under this Agreement. Any waiver or acquiescence by either party in delayed or untimely performance by the other party, on any occasion or with respect to any event, shall not constitute a waiver of this requirement or acquiescence in delayed performance as to any other occasion or event.

3.5 Successors and Assigns. The burdens of this Agreement are binding on, and the benefits of this Agreement inure to, the parties and to all of their successors in interest and assigns.

3.6 Indemnification. Each party agrees to indemnify, defend and hold harmless, on a current basis, the other party, and its officials, officers, agents and employees, from and against all loss, damage, claims, suits, proceedings, cost and expense, including but not limited to reasonable attorney's fees, costs and experts' fees, arising or resulting from, caused or occasioned by, or related to the indemnifying party's obligations, performance and actions taken or not taken under this Agreement, where such claims or suits are brought by third parties.

3.7 Amendments/Entire Agreement. Any amendments or modifications to this Agreement must be in writing, executed by both parties, and are subject to City Council approval. This Agreement constitutes the whole and entire agreement of the parties and supersedes any negotiations, discussions, understandings, correspondence, or informal agreements of the parties on these subjects.

3.8 Governing Law. This Agreement shall be governed by, subject to and construed in accordance with all applicable local, state and federal laws, regulations and judicial decisions, and to the Charter and Code of the City of Clearfield, as such laws, regulations, judicial decisions, charter and code now exist and may hereafter be amended. Utah law shall be applied in the interpretation and enforcement of this Agreement.

3.9 Recovery of Costs. In any suit or other legal action between or involving the parties to this Agreement, the prevailing party shall be entitled to recover from the other party all costs incurred by the prevailing party in connection with such suit or legal action, including reasonable attorney's fees, costs and experts' fees, whether or not such suit or legal action proceeds to judgment or final award. The City's reasonable attorney's fees, for use of in-house counsel, shall be computed on the basis of the time expended and the prevailing hourly billing rate for private attorneys performing work of a similar nature in the Salt Lake City metropolitan area.

3.10 Notices. Wherever in this Agreement is shall be required or permitted that notice be given by either party to the other, such notice must be in writing and must be given personally, or forwarded by certified mail addressed as follows:

a. To the City:

Clearfield City Corp.

140 East Center St.

Clearfield, UT 84015

b. To JTC:

Johansen-Thackeray & Company, Inc.

2157 South Highland Drive, Suite 200

Salt Lake City, Utah 84106

Attn: John R. Thackeray

c. To TCR:
TC Residential Phoenix II, Inc.
6925 Union Park Avenue, Suite 335
Midvale, Utah 84047
Attn: Jeffrey A. Duke

With a copy to:

TC Residential Phoenix II, Inc.
2222 E. Camelback Road, Suite 250
Phoenix, Arizona 85016
Attn: Bruce C. Ward

And to:

Gallagher & Kennedy
2600 N. Central Avenue
Phoenix, AZ 84004-3020
Attn: Scott K. Henderson, Esq.

d. Either party may change the above address for notices, by written notice to the other party provided as required by this paragraph 3.7.

e. Notices given by certified mail, properly addressed, shall be deemed received upon the earlier of: actual receipt of the notice, as evidenced by the date on a signed return receipt, or the date of first attempted delivery of the notice by the U.S. Postal Department, as evidenced by notations thereof by Postal employee or agent on the envelope of a notice that is returned to the sender as unclaimed.

3.11 Waiver. Failure of either party to exercise any right or option arising out of a breach of this agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

3.12 Captions. Captions and paragraph headings used herein are for convenience only, are not a part of this Agreement, shall not be deemed to limit or alter any provisions hereof, and shall not be deemed relevant in construing this Agreement.

3.13 Counterparts. This Agreement may be executed in counterparts, each of which when executed by all of the parties, shall be deemed an original, but all of which together, when so executed, shall constitute one and the same instrument.

3.14 Third Parties. This Agreement shall not be construed to create any rights or obligations in persons or entities not parties hereto, and there are no third party beneficiaries of this Agreement. JTC acknowledges its obligations to the City and TCR under Paragraph 3.1 above for and in consideration of the benefits to be realized by JTC through the consummation of the covenants and agreements of this Agreement. JTC

shall succeed to all of TCR's rights and obligations under this Agreement if TCR fails to purchase the Property pursuant to the Purchase Agreement and JTC takes title to the Property.

3.15 Severability. If any provision of this Agreement or any portion of any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of such provision of this Agreement as each provision of this Agreement shall be deemed severable from all other provisions hereof.

EXECUTED as of the date first written above.

CITY OF CLEARFIELD, a municipal Corporation of the State of Utah

By: Neldon E. Hamblin

Name: Neldon E. Hamblin

Title: Mayor

ATTEST:

Tashina Place
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney



TC RESIDENTIAL PHOENIX II, INC., a Texas Corporation

By: Jeremy A. Duke

Name: Jeremy A. Duke

Title: V.P.

STATE OF UTAH)
) ss.
County of Davis)

E 1343062 & 2168 P 229

ACKNOWLEDGED before me this 10th day of June, 1997, by
Neldon E. Hamblin, Mayor of the City of Clearfield, a
municipal corporation of the State of Utah, on behalf of the municipal corporation.



My Commission Expires

[Signature]
Notary Public

STATE OF _____)
) ss.
County of _____)

ACKNOWLEDGED before me this ____ day of _____, 1997, by John R.
Thackeray of Johansen-Thackeray & Company, Inc., a Utah corporation of the State of
Utah, on behalf of the corporation.

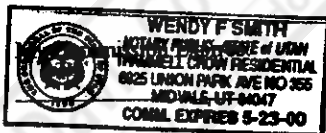
Notary Public

My Commission Expires:

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

ACKNOWLEDGED before me this 13 day of August, 1997, by
Jeffrey A. Duke of TC Residential Phoenix II, Inc., a Texas corporation of the
State of Texas, on behalf of the corporation.

[Signature]
Notary Public



John/Clearfielddraft

EXHIBIT "A"
THE PROPERTY



GREAT BASIN ENGINEERING, INC.

Consulting Engineers and Land Surveyors

P.O. Box 9287
Ogden, Utah 84409

Ogden (801) 394-4515
Salt Lake (801) 521-4529
FAX (801) 392-7544

E 1343062 B 2168 P 230
February 7, 1996



JOHANSEN - THACKERAY (CLEARFIELD)

DESCRIPTION

A part of the East Half of Section 7, Township 4 North, 1 Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Layton City and Clearfield City, Davis County, Utah:

Beginning at the East Quarter Corner of said Section 7; and running thence North $0^{\circ}10'10''$ East 2530.54 feet along the East line of said Section to the South right-of-way line of State Road No. 193; said point being 110.29 feet south $0^{\circ}10'10''$ West along said Section line from the Northeast Corner of said Section 7; and running thence South $89^{\circ}56'44''$ West 1325.13 feet along the South right-of-way line of State Road No. 193 to the West line of the East Half of the Northeast Quarter of said Section 7; said point being South $0^{\circ}06'27''$ West 103.73 feet along said West line of the East Half of the Northeast Quarter of said Section 7 from the Northwest Corner of the Northeast Quarter of the Northeast Quarter of said Section 7; and running thence South $0^{\circ}06'27''$ West 1631.99 feet along said West line of the East Half of the Northeast Quarter of said Section 7 to the North line of the Davis and Weber Counties Canal Company Property; thence along said North line of the Canal Company Property the following three (3) courses: South $53^{\circ}11'33''$ East 472.05 feet; South $53^{\circ}45'03''$ East 847.81 feet and South $63^{\circ}36'42''$ East 289.12 feet to a point on the East line of said Section 7; thence North $0^{\circ}10'30''$ East 15.24 feet along the Section line to the point of beginning.

09-021-0028+0029

Contains 64.305 Acres



EXHIBIT "B"
TCR PROPERTY

GREAT BASIN ENGINEERING, INC.

Consulting Engineers and Land Surveyors
P.O. Box 9307
Ogden, Utah 84409

Ogden (801) 394-4515
Salt Lake (801) 521-8529
FAX (801) 392-7344



E 1343062 B 2168 P 231

June 3, 1997

Revised June 23, 1997

JOHANSEN - THACKERAY (CLEARFIELD)

APARTMENT COMPLEX (INCLUDES 1200 WEST STREET WIDENING)

A part of the East Half of Section 7, Township 4 North, Range 1 West,
Salt Lake Base and Meridian, U.S. Survey:

Beginning at the East Quarter corner of said Section 7; and running thence
South 0°10'30" West 15.24 feet along the East line of said Section to the Northerly
line of the Davis and Weber Counties Canal Company Property; thence Northwesterly
three (3) courses along said Northerly line as follows: North 63°36'42"
West 289.12 feet; North 53°45'03" West 847.81 feet and North 53°11'33" West
363.01 feet; thence North 36°48'26" East 174.00 feet; thence North 5°20'26" East
98.95 feet; thence North 36°14'57" East 275.00 feet; thence South 53°45'03" East
1189.26 feet to the East line of said Section 7; thence South 0°10'10" West 588.47
feet along said East line to the point of beginning;

Contains 16.638 Acres

(Johansen.des)

09-021-0028 + 0029

MEMBER OF AMERICAN SOCIETY OF CIVIL ENGINEERS MEMBER OF UTAH COUNCIL OF LAND SURVEYORS
MEMBER OF AMERICAN CONSULTING ENGINEERS COUNCIL



GREAT BASIN ENGINEERING, INC.

Consulting Engineers and Land Surveyors

P.O. Box 9387
Ogden, Utah 84409

Ogden (801) 394-4515
Salt Lake (801) 521-6329
FAX (801) 392-7544



E 1343062 B 2168 P 232

June 23, 1997

JOHANSEN - THACKERAY (CLEARFIELD)

NEW ROAD

A part of the Northeast Quarter of Section 7 and the Northwest Quarter of Section 8, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Layton City and Clearfield City, Davis County, Utah:

Beginning at the East Quarter Corner of said Section 7; and running thence South $0^{\circ}10'30''$ West 15.24 feet along the East line of Section 7 to the North line of the Davis and Weber Counties Canal Company Property; thence North $63^{\circ}36'42''$ West 23.96 feet along said North line; thence North $0^{\circ}10'10''$ East 1426.23 feet; thence Northwestery along the arc of a 440.00 foot radius curve to the left a distance of 409.88 feet (Central Angle equals $53^{\circ}22'25''$ and Long Chord bears North $26^{\circ}31'03''$ West 395.22 feet) to a point of tangency; thence North $53^{\circ}12'15''$ West 48.62 feet to a point of curvature; thence Northwestery along the arc of a 520.00 foot radius curve to the right a distance of 482.37 feet (Central Angle equals $53^{\circ}08'59''$ and Long Chord bears North $26^{\circ}37'46''$ West 465.26 feet) to a point of tangency; thence North $0^{\circ}03'16''$ West 309.90 feet to the South line of State Highway No. 193; thence North $89^{\circ}56'44''$ East 80.00 feet along said South line; thence South $0^{\circ}03'16''$ East 309.90 feet to a point of curvature; thence Southeastery along the arc of a 440.00 foot radius curve to the left a distance of 408.16 feet (Central Angle equals $53^{\circ}08'59''$ and Long Chord bears South $26^{\circ}37'46''$ East 393.68 feet) to a point of tangency; thence South $53^{\circ}12'15''$ East 48.62 feet to a point of curvature; thence Southeastery along the arc of a 520.00 foot radius curve to the right a distance of 484.40 feet (Central Angle equals $53^{\circ}22'25''$ and Long Chord bears South $26^{\circ}31'03''$ East 467.08 feet) to a point of tangency; thence South $0^{\circ}10'10''$ West 630.77 feet to the North line of Robinwood Subdivision No. 1, Layton City, Davis County, Utah; thence South $89^{\circ}55'57''$ West 58.50 feet along said North line to the East line of said Section 7; thence South $0^{\circ}10'10''$ West 790.57 feet along said East line to the point of beginning.

pt < 09-034-0032
09-001-0028 + 0029

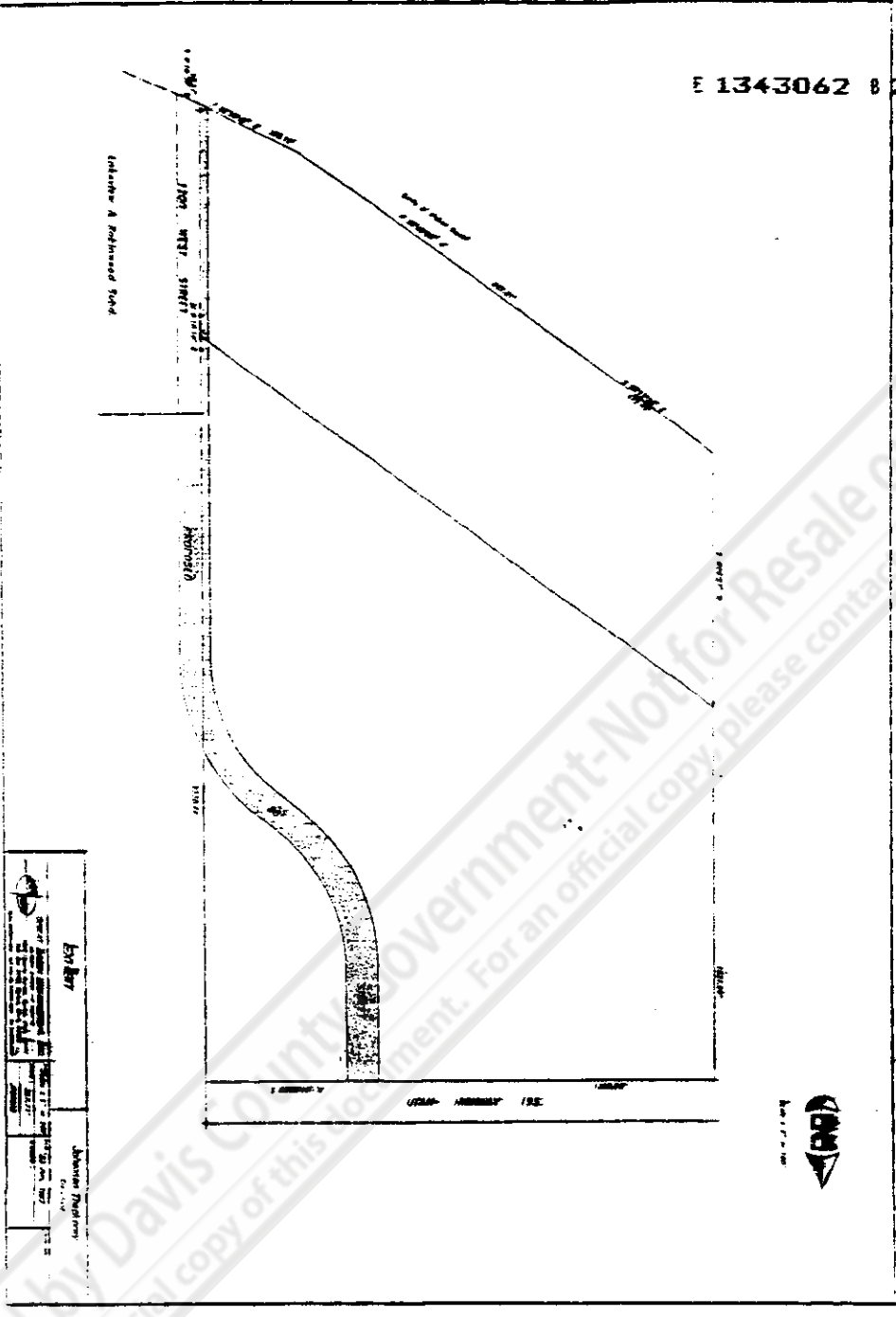
Contains 3.351 Acres

MEMBER OF AMERICAN SOCIETY OF CIVIL ENGINEERS

MEMBER OF UTAH COUNCIL OF LAND SURVEYORS

MEMBER OF AMERICAN CONSULTING ENGINEERS' COUNCIL

E 1343062 B 2168 P 233



Title A Ordinance 2002

LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6
LOT 7
LOT 8
LOT 9
LOT 10
LOT 11
LOT 12

SECTION

1/4

1/4
1/4
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1/4



EXHIBIT
1343062
B 2168
P 233
Johnson, Pauline
D. 11/11/11