

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made and entered into as of this 23 day of ~~November~~, 2016, by and between 6th STREET COTTAGES, LLC, a Utah limited liability company (hereinafter collectively referred to as "Developer"), and Draper City, a municipal corporation of the State of Utah (hereinafter referred to as the "City").

RECITALS

A. Developer is developing approximately 5.27 acres of real property as more particularly described in **Exhibit A**, attached hereto, and by this reference made a part hereof (the "Property"), on which it proposes a maintenance-free, high-end single-family residential housing development. This project will meet the needs of Draper residents who wish to downsize but remain in the city. This project fills a void for those who no longer need or want the larger estate homes. The project will be known as the "The 6th Street Cottages" (the "Project").

B. Developer desires to have the City approve the Project, notwithstanding the fact that the Project, as currently designed, may not completely satisfy all of the rules and regulations of the applicable land use ordinances of the City. The Property is to be zoned R4 subject to the development standards of this agreement. The Project will consist of 19 homes, 16 of which will be new homes, and three of which are existing and will be incorporated into the Project, as shown on Exhibit B. Developer recognizes that it may be determined at site plan stage that 16 new homes are more than can be accommodated in order that all development standards are met.

The overall property contains 5.27 acres or 229,561 square feet. There are three existing homes included in the Project. Two of the homes will be situated on true one-third acre lots (14,520 square feet), and one will be situated on a true one-half acre lot (21,780 square feet). The combined square footage of these lots (50,820 square feet) will not be used to calculate the density of the Project. As such, density will be based on 4.1 acres or 178,741 square feet. Sixteen (16) homes on 4.1 acres yields a density of 3.90 units per acre. This density conforms to the target density of the Medium Density land use designation assigned to the property, which is two to four single-family detached dwelling units per acre. The development agreement is necessary to provide for 2,850 square foot lots and common ownership of the landscaped area. R4 zoning without a development agreement requires lot sizes to be a minimum 10,000 square feet.

C. Lots 1, 2 and 3 will have a deed restriction placed on them. The final plat will contain a note that reads: "Lots 1 and 2 which front on Pioneer Street shall be perpetually limited in size to not less than 1/3 acre (14,520 square feet) each. Lot 3 which fronts 12500 South shall be perpetually limited in size to not less than 1/2 acre (21,780 square feet)." None of the three lots shall be allowed a lot line adjustment as per Utah Code 57-1-45.

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12/23/2016 08:40 AM \$0.00
Book - 10514 Pg - 1913-1924
GARY W. OTT
REORDER, SALT LAKE COUNTY, UTAH
CITY OF DRAPER
1020 E PIONEER RD
DRAPER UT 84020
BY: MSA, DEPUTY - M1 12 P.

D. Developer believes that the City has a tremendous need for this type of housing, allowing its long standing citizens whose current homes no longer meet their needs to remain in the City. Specifically these homes will consist of one level above ground with all needed functionality on that main-level. In addition to the interior livability of these homes the people seeking the homes generally want a smaller yard. In keeping with the needs and desires of this segment of home owners this community would be a fully maintained community. (Landscape maintenance, snow removal, etc.). Developer strongly believes that these new homes will provide a needed and desirable product in the general area. This small neighborhood design fills a void for those who no longer need or want the larger estate home. Nevertheless, because these homes at least in part fall conceptually somewhere between large lots and tightly packed cottage homes, Developer must obtain some flexibility from some of the current applicable standards to construct these units.

E. As consideration for the Development Agreement, the developer is guaranteeing high architectural standards not otherwise required for single-family projects. The city has the right to deny any building permit that does not conform to the rendering shown on Exhibit C of the Development Agreement. All homes will be single-family detached structures. All homes will be one-level above ground with all needed functionality on that main level including a large gathering area for family.

Specifically; the homes within the 6th Street Cottages will be designed to follow the prairie style architecture with 4' eaves and overhangs and 3/12 roof pitches. The homes will be designed to harmoniously fit together in the project providing variety and architectural flow. Traditional prairie homes use mainly brick and stucco; other materials like cement board lap siding will be used as well to reflect the region in which the project is located. A minimum of 30% brick or stone will be used on each side of the home not including window or door square footage in that equation.

This project will follow the similar architecture found in a previous project by the Developer called Granite Hollow at 2550 E. 9890 So. Sandy. The Developer agrees to guarantee that this project receives the same quality and architecture of Granite Hollow. Attached as Exhibit C to this Development Agreement is a rendering that best depicts the prairie architecture detailed above. The architecture for this project will be as per this rendering shown on Exhibit C.

Landscaping for individual homes and common areas will follow the general concepts depicted in the rendering attached as Exhibit C.

F[MGB1]. The Average lot size (or house pad) will be 2,850 square feet. The total amount of open space will be approximately 88,000 square feet (which is 2.2 acres, or 50% of the project area). All landscaping will be owned in common and maintained by the HOA. All roads will be private and maintained by the HOA. These homes will have a maintenance arrangement similar to a townhome development.

G. The Developer will construct a five foot walkway connecting 600 East and 12500 South. This walkway area consisting of approximately 1400 square feet will be landscaped and dedicated to the

City. This amenity and dedication is proposed for the general benefit of the residence in the area and the City.

H. To obtain the flexibility needed to construct the new sixteen (16) single-family residential dwelling units, Developer is willing to design the Project subject to certain conditions and standards to address any concerns of the City as more fully set forth below.

I. The roadway within 6th Street Cottages will conform to the city standard for private roads. As required by Section 9-27-150 of the Draper City Municipal Code, the standard road width for a private lane serving 11-20 single-family residential lots is 36 feet, consisting of 25 feet of asphalt, 2.5 feet curb/gutter on each side, and a 6 foot sidewalk on one side. Driveways for each home shall be a minimum 25 feet in width and a minimum 20 feet in length.

J. The water table within 6th Street Cottages may vary from home to home. The water table along with any required construction associated with ground water mediation for individual homes will be disclosed by the Developer to the HOA and future homeowners, and a note will be placed on the plat disclosing all ground water issues. The HOA will manage the maintenance and oversight of the remediation if any.

K. The developer will construct a gathering area consisting of a covered seating area to accommodate at least 20 people with a barbeque grill. The location of the gathering space is noted on Exhibit B. between lots 4 and 5.

L. The City, acting pursuant to its authority under Utah Code Annotated, Sections 10-1-202 and 10-9a-101, *et seq.*, and its land use policies, ordinances and regulations has made certain determinations with respect to the Project and, in the exercise of its legislative discretion, has elected to approve this Development Agreement.

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

AGREEMENT

1. **Definitions.** When used in this Agreement, each term shall have the meaning set forth below or elsewhere in this Agreement unless such meaning is clearly precluded by the context in which the term is used.

1.1 "Development" means any construction, renovation or expansion of the building structure, roadway, utility, or other improvement.

1.2 "Developer" means 6 Street Cottages, LLC, a Utah limited liability company, and/or as applicable any Successor Developer and their respective assigns and successors-in-interest.

1.3 “Existing Land Use Regulations” means those certain land use regulations in effect as of the date of this Agreement, including any modifications thereto contained herein. Existing Land Use Regulations does not include fees that are applicable to future development approvals, which will be those in effect at the time the application for any such development approval is submitted.

1.4 “Land Use Regulations” means laws, statutes, ordinances, codes, resolutions, rules, regulations, approvals, permits of every kind and character, programs and official policies and actions of City governing the permitted uses of land, density and intensity of use and the density, improvement and construction standards and specifications applicable to development of the Project. Land use regulations include, but are not limited to, development approvals granted by the City and the terms and conditions contained in such approvals, the Draper City Subdivision Ordinance, the City’s development standards and public improvement specifications, hillside and/or land disturbance regulations, the sensitive lands overlay regulations and geologic hazards regulations.

1.5 “Project” means the 6th Street Cottages, as defined under the terms of this Agreement.

1.6 “Project Buildout Plan” means the overall plan for development of the Project as depicted on **Exhibit B** attached to this Agreement and by this reference made a part hereof.

1.7 “Property” means the parcel of approximately 5.27 acres of real property as more particularly described in **Exhibit A** attached hereto, and by this reference made a part hereof.

1.8 “Successor Developer” means any person or entity developing one or more phases of the Project.

2. **Conveyance to City.** Other than the conveyance item listed in Item (F), the Developer does not believe there are additional conveyances that the City may need from this property. If a situation arises during the development of the property in which additional easements from this project are needed by the City, the Developer agrees to work with the City to define and establish them if needed.

3. **Project Buildout Plan.**

3.1 Property Affected by this Agreement. The legal description of the property contained within the Project boundaries is attached and specifically described in **Exhibit A**. No additional property may be added to this description for purposes of this Agreement except by written amendment to this Agreement executed and approved by the parties hereto.

3.2 Approval of Project Buildout Plan. An overall Project Buildout Plan for the Project is depicted on **Exhibit B**, which is attached hereto and incorporated herein by this reference. The Project has been designed and approved for the use and density not to exceed a maximum of nineteen (19) single-family residential dwelling units, subject to compliance with the terms and conditions of this Agreement. The City agrees and acknowledges that notice of the public meeting for the City’s review of the Project Buildout Plan was contemporaneous with the review of this Agreement and was made pursuant to section 17-1-085 of the Draper City Subdivision Ordinance such that approval of this

Agreement and the attached Project Buildout Plan by the City Council shall be deemed to be final approval of the concept plan pursuant to Draper City Subdivision Ordinance section 17-2-050(a).

3.3 Compliance with Project Buildout Plan. The location and specific layout of the Project as depicted on **Exhibit B** is conceptual in nature and shown for the purpose of illustrating a potential development configuration that is consistent with the transportation and infrastructure needs of the Project in compliance with the requirements of the City. Both the City and Developer intend to preserve some flexibility to modify the layout of the Project to respond to the more detailed design and engineering information which will be provided as part of the subdivision plat approval process. Developer or a Successor Developer may submit applications for preliminary and final plat approval that reflect some limited modifications to the Project Buildout Plan, such as minor relocation of lots and streets in order to improve layout or safety standards, minimize the amount of grading, improve design efficiency for utilities, reduce cuts and fills, or achieve other similar goals and objectives as proposed by the Developer and approved by the City consistent with the other terms and conditions of this Agreement. Accordingly, the City will not reject any preliminary or final plat applications submitted by Developer which is generally consistent with the approved Project Buildout Plan. Because of (1) the ample open space park immediately adjacent to the Project and (2) the fact that the smaller footprint of the homes in the Project leave approximately 50% of the typical building lot open in the Project, the City agrees and acknowledges that additional open space is not required or desirable for the Project, even if the Project Buildout Plan may not contain the full amount of open space that may otherwise be required for the Project if the adjacent open space and overall Project design were not taken into account.

3.4 Submission of Site Plan to Planning Commission. Contemporaneous with the submission of this Agreement to the City for approval, Developer shall also submit (a) a site plan application to the Planning Commission of the City containing the applicable portions of Exhibit B pursuant to the procedures otherwise set forth in section 9-5-090 of the Draper City Municipal Code, and (b) a land disturbance permit application to the City Engineer containing the portions of Exhibit B requested for such permit. Developer shall implement any conditions imposed (i) by the Planning Commission in the approval of the site plan and (ii) by the City Engineer in the approval of the land disturbance permit.

4. **Vested Rights and Reserved Legislative Powers.**

4.1 Vested Rights. Developer shall have the vested right to have preliminary and final subdivision plats approved and to develop and construct the Project for the use, density and configuration for a maximum of not to exceed sixteen (16) single-family residential dwelling units as generally depicted on the Project Buildout Plan attached hereto as **Exhibit B**. As referenced in paragraph 3.3 above, Developer may submit applications for preliminary and final plat approval that reflect some limited modifications to the Project Buildout Plan and still achieve the lot yield of sixteen (16) single-family residential dwelling units, subject to compliance with the Supplemental Development Standards, the Existing Land Use Regulations and the other terms and conditions of this Agreement. Notwithstanding any provision to the contrary, Developer shall be entitled to develop sixteen (16) single-family residential dwelling units pursuant to the Project Buildout Plan or future modifications thereof, and such right shall be deemed to supersede or control over any contrary interpretation of existing ordinances of the City. Nevertheless, Developer shall comply with all Supplemental

Development Standards and Existing Land Use Regulations of the City to the extent such are consistent with Developer's vested rights to build sixteen (16) single-family residential dwelling units pursuant to the Project Buildout Plan and this Agreement.

4.2 **Reserved Legislative Powers.** Developer acknowledges 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. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the Existing Land Use Regulations and Supplemental Development Standards which are applicable to the Project under the terms of this Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed legislative changes affecting the Land Use Regulations, Supplemental Development Standards and terms and conditions of this Agreement applicable to the Project shall be of general application to all development activity in the City; and, unless the City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect any proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

5. **Preliminary and Final Subdivision Plat Approval.** Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve it from the obligation to comply with all of the applicable requirements for the approval of preliminary and final subdivision plats for all proposed development within the Project consistent with the Existing Land Use Regulations and Supplemental Development Standards which are applicable to the Project under the terms and conditions of this Agreement. Approval by the City of the Project Buildout Plan shall be deemed to have satisfied the requirements of the Existing Land Use Regulations for review of a concept plan by the City for purposes of the Project. Developer shall prepare and submit for review, comment and approval by the City, architectural and design standards for the Project at the time of preliminary subdivision plat approval.

6. **Development Standards.** Except as otherwise set forth in the Project Buildout Plan attached hereto as Exhibit B or in this Agreement, Developer shall adhere to the applicable provisions of the Draper City Municipal Code, including without limitation the Supplementary Development Standards of the City set forth at Chapter 9-27. Notwithstanding the foregoing, the City agrees and acknowledges that the following requirements have been modified pursuant to this Agreement and are not be applicable to the Project:

- a. any setback or lot size requirement that conflicts with the Project Buildout Plan attached hereto as Exhibit B;
- b. any fencing requirement found in table 9-10-3 of the Draper City Municipal Code that would unduly interfere with the view, use or enjoyment of the adjacent open space by residents of the Project, it being understood that residents of the Project may desire fencing that takes advantage of the open space adjacent to their lots or community; and
- c. any other standard conflicting with the Project Buildout Plan attached hereto as Exhibit B.

7. **Successors and Assigns.**

7.1 **Binding Effect.** This Agreement shall be binding upon the successors and assigns of Developer in the ownership or development of any portion of the Project.

7.2 **Assignment.** Neither this Agreement nor any of its provisions, terms or conditions may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of the City, which consent shall not be unreasonably withheld. Any such request for assignment may be made by letter addressed to the City, and the prior written consent of the City may also be evidenced by letter from the City to Developer or its successors or assigns.

8. **Default.** In the event either party fails to perform its obligations hereunder or to comply with the terms hereof, within thirty (30) days after giving written notice of default, the non-defaulting party may, at its election, have the following remedies:

a. All rights and remedies available at law and in equity, including injunctive relief specific to performance and/or damages;

b. The right to withhold all further approvals, licenses, permits, or other rights associated with any activity or development described in this Agreement until such default has been cured; and

c. The rights and remedies set forth herein shall be cumulative.

9. **Notices.** Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, be by certified mail, return receipt requested, postage prepaid, to such party at its address shown below.

To Developer:

6 Street Cottages LLC.
2825 E Cottonwood Parkway #500
Salt Lake City, Utah 84121

To the City:

Draper City
Attention: Draper City Manager
1020 E. Pioneer Road
Draper, UT 84020

Any party may change its address or notice by giving written notice to the other party in accordance with the provisions of this section.

10. **General Terms and Conditions.**

10.1 Term of Agreement. The term of this Agreement shall be for a period of fifteen (15) years following the date of its adoption.

10.2 Agreement to Run with the Land. This Agreement shall be recorded in the office of the Salt Lake County Recorder against the Property and is intended to and shall be deemed to run with the land and shall be binding on all successors in the ownership of any portion of the Property.

10.3 Entire Agreement. This Agreement, together with the exhibits hereto, integrates all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the parties hereto with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the respective parties hereto.

10.4 Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

10.5 Non-liability of City Officials or Employees. No officer, representative, agent, or employee of the City shall be personally liable to Developer, in the event of any default or breach by the City or for any amount which may become due, or its successors or assignees, for any obligation arising out of the terms of this Agreement.

10.6 No Third-Party Rights. The obligations of the parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to the City and Developer. The City and Developer alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.

10.7 Severability. Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions, and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

10.8 Waiver. No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

10.9 Governing Law. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

10.10 Exhibits. Any exhibit to this Agreement is incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or of such exhibit. An unattached exhibit is available from the records of the parties.

10.11 Homeowner's Association. A Homeowner's Association shall be created to govern its internal affairs including, but not limited to, providing maintenance of any common areas and park strip areas. Developer shall prepare and submit for review, comment and approval by the City, which approval shall not be unreasonably withheld or delayed, proposed conditions, covenants and restrictions ("CC&Rs"), as may be amended from time to time, for the Homeowner's Association. The CC&Rs shall incorporate by reference the Supplementary Development Standards of the City set forth at Chapter 9-27 of the Draper City Municipal Code.

10.12 Attorneys Fees. In the event a dispute arises between the parties hereto, with respect to this Agreement, the prevailing party to any action, brought to enforce the terms of this Agreement, shall be entitled to recover against the other party the costs, expenses and attorney's fees incurred in such action.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the day and year first written above.

6th Street Cottages LLC, a Utah
Limited Liability Company



By: [Signature]
Printed Name: JEFF MANSELL
Title: MANAGER

Draper City

By: [Signature]
Printed Name: TROY K. WALKER
Title: _____

ATTEST:

[Signature]
City Recorder

Exhibit A
Legal Description

OVERALL LEGAL

BEGINNING AT A POINT NORTH 19°33'26" WEST 368.97 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 30, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING; THENCE NORTH 87°58'00" WEST 585.79 FEET TO THE CALCULATED EAST RIGHT-OF-WAY OF 600 EAST STREET; THENCE THE FOLLOWING THREE COURSES; 1) NORTH 05°32'33" EAST 34.24 FEET TO A POINT OF CURVATURE; 2) NORTHEASTERLY ALONG THE ARC OF A 500.00 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 42.84 FEET (CHORD BEARS NORTH 03°05'17" EAST) TO A POINT OF TANGENCY; 3) NORTH 00°38'00" EAST 186.18 FEET TO THE SOUTHWEST CORNER OF LOT 2, HEUSER MINOR SUBDIVISION; THENCE SOUTH 87°34'16" EAST ALONG THE SOUTH BOUNDARY LINE OF SAID LOT 112.27 FEET; THENCE SOUTH 87°18'19" EAST 48.07 FEET; THENCE SOUTH 88°07'09" EAST 90.37 FEET TO THE NORTHWEST CORNER OF A LESS AND EXCEPTING PARCEL BOOK 8720 PAGE 5217; THENCE SOUTH 87°26'37" EAST ALONG SAID PARCEL AND A FENCE LINE 124.93 FEET TO THE SOUTHWEST CORNER OF LOT 2, FLOYD SWASEY SUBDIVISION; THENCE NORTH 01°15'09" WEST ALONG THE WEST LINE OF SAID LOT 171.52 FEET TO THE SOUTHWEST CORNER OF LOT 1 OF SAID SUBDIVISION; THENCE NORTH 00°01'21" WEST ALONG THE WEST BOUNDARY OF SAID LOT 32.40 FEET; THENCE NORTH 01°27'27" WEST ALONG THE WEST BOUNDARY OF SAID LOT 108.33 FEET TO THE NORTHWEST CORNER OF LOT 1; THENCE EAST ALONG THE NORTH BOUNDARY OF SAID LOT 126.86 FEET; THENCE NORTH 89°59'58" EAST 80.77 FEET; THENCE SOUTH 282.08 FEET; THENCE NORTH 89°12'00" 169.65 FEET; THENCE SOUTH 75.20 FEET TO THE NORTH LINE OF AN ADJACENT DEED WITH A FENCE LINE CALL AND USING EVIDENCE OF A PAST FENCE; THENCE SOUTH 88°29'46" WEST ALONG EVIDENCE OF SAID FENCE 165.93 FEET; THENCE SOUTH 00°38'00" WEST 221.16 FEET TO THE POINT OF BEGINNING. CONTAINS 229,365 SQUARE FEET, 5.27 ACRES

Exhibit B
Project Buildout Plan

(Concept Attached Hereto)

Exhibit B Site Plan

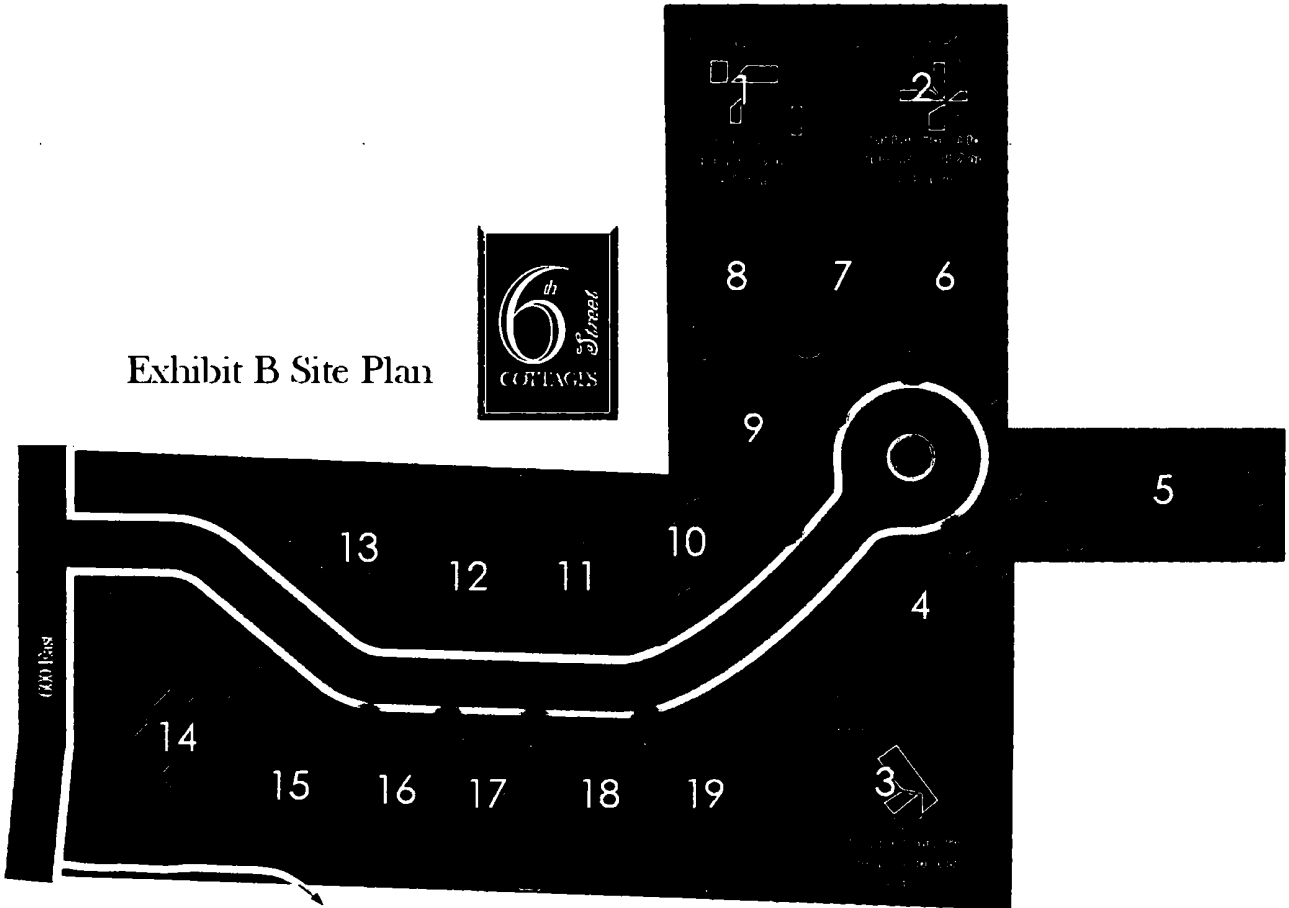


Exhibit C
Architectural Renderings

