

20 pgs = 48⁰⁰
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RETURNED

MAR 24 2005

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BK 3752 PG 636

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
03/24/2005 01:41 PM
FEE \$51.00 Pgs: 20
DEP RTT REC'D FOR FARMINGTON CITY

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Bruce L. Richards
1805 South Redwood Road
P.O. Box 25785
Salt Lake City, Utah 84125-0786

NW 13, SN-1W
08-051-0187
0188
0189
0128

636

AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into and effective as of July 20, 2004 (the "Effective Date") by and among the undersigned (individually a "Party" and collectively, the "Parties"). In consideration of the covenants herein and other good and valuable consideration received, the Parties hereby agree as follows:

1. Affected Property. This Agreement shall affect, be recorded upon, and constitute a covenant running with certain property known as the Remainder Parcel, the Business Park Zone, and the Commercial Zone, located in the Farmington Preserve Project, Farmington City, Davis County, Utah, as further described on Exhibit "A" hereto (the "Property").

2. Phase 1. The Homes at Shepard Creek Condominium Homeowners Association (the "Homes") and the Estates at Shepard Creek Homeowners Association (the "Estates") hereby withdraw all of their objections and hereby consent to the rezoning, conditional use application and the "Owner-Occupied Residential Housing" (defined below) with a density of 14 units or less per acre on Phase 1 of the development proposed as of the Effective Date in the Property depicted on Exhibit "B" hereto ("Phase 1").

For purposes of this Agreement, "Owner-Occupied Residential Housing" shall mean any attached or detached residential housing units physically and legally structured and designed to be owned and occupied by separate owners.

3. Phase 2. The Homes and the Estates hereby withdraw all of their objections and hereby consent to the Owner-Occupied Residential Housing with a density of 14 units or less per acres on Phase 2 of the development proposed as of the Effective Date in the Property depicted on Exhibit "C" hereto ("Phase 2"). The Homes and the Estates shall each have a separate right to consent to any other residential development proposed for Phase 2.

4. Balance of Property. The Homes and the Estates hereby withdraw all of their objections and hereby consent to the development of Owner-Occupied Residential Housing with a density of 14 or less units per acre in the balance of the Property separate from Phase 1 and Phase 2.

5. Other Uses. Nothing in this Agreement shall be deemed to create any rights of the Homes and/or the Estates to any notice, approval, objection, or other matters relative to, or preclude, any non-residential use of any portion of the Property.

Nothing in this Agreement shall be deemed to create any rights of the Homes and/or the Estates to any notice, approval, objection, or other matters relative to, or preclude, any use allowed under applicable laws of any residential housing after the initial conveyance of a fee interest in the

housing in question to the first separate owner of that housing (including Owner-Occupied Residential Housing).

6. **Residential Zone.** The Homes and the Estates hereby approve and do not object to the consents and actions heretofore rendered and taken, and documents executed, by the Residential Zone Owners Association (the "RZOA") or its trustees or officers in connection with that certain Residential Consent given effective as of May 12, 2004 (the "Residential Consent") and this Agreement. Furthermore, the Homes and the Estates hereby consent to and ratify the RZOA becoming a Party to the Residential Consent and this Agreement and to the execution of the Residential Consent and this Agreement by the trustees and/or officers of the RZOA. Except for the matters stated earlier in this Section, the Homes and the Estates otherwise reserve all rights to dispute the organization of the RZOA, rights of the RZOA, and/or effect of the RZOA on the property of the members of the Homes or the Estates.

7. **Notice.** Notice of any future application for zoning change or conditional use approval related to any residential use of the Property subject to this Agreement shall be given by the applicant to the registered agent of the Homes and the Estates (the "Future Notice"). That Future Notice shall be a condition precedent to the effectiveness of the consent of the Homes and the Estates (which consent is set forth in Sections 1 through 4 hereof) to the residential uses contemplated in that Future Notice; provided however, that upon delivery of that Future Notice, consents to the residential uses contemplated in that Future Notice shall be deemed given by the Homes and the Estates provided those residential uses otherwise satisfy the conditions set forth in Sections 1 through 4 of this Agreement. The obligation to provide that Future Notice shall not create any further right of consent for any residential uses or other matters already deemed approved under this Agreement, including those consents contemplated in Sections 1 through 6 of this Agreement, or any other consents given in compliance with this Agreement after the Effective Date (collectively, the "Established Consents"). Any failure to give any such Future Notice shall not invalidate this Agreement or any consents given prior to that failure. The applicant shall not be obligated to give any notice to the Homes or the Estates, or any directors, officers, trustees, owners, agents or representatives thereof, with respect to any proposed nonresidential use of any portion of the Property.

8. **Farmington City.** Unless consents, including the Established Consents, are otherwise granted (or deemed granted) pursuant to this Agreement, Farmington City (the "City") will require the consent of the Homes and the Estates as a condition precedent to any future zoning changes or future conditional use approvals for residential uses on any portion of the Property. In no event shall this Agreement be deemed to require that the City require or seek the approval of the Homes or the Estates for any nonresidential uses of the Property. Nothing contained in this Agreement shall obligate the City or its representatives to approve any rezoning and/or development application for any portion of the Property unless the City determines the same to be appropriate after going through the regulatory approval processes provided in the City's laws, ordinances, rules, and regulations. Farmington City may rely upon this Agreement in connection with the matters contemplated herein.

9. **Applicability and Enforceability.** This Agreement shall only be binding upon the Parties after it is signed and delivered by all the undersigned Parties. No termination of this Agreement as to one or more Parties shall invalidate any of the Established Consents given prior to that termination.

10. **Term.** The term of this Agreement shall commence as of the Effective Date and continue in effect and automatically terminate on October 16, 2009, without the need for any

further documentation of that termination. Notwithstanding any provision in this Agreement to the contrary, this Agreement shall be null and void in the event that for any reason R. Kent Buie or his successors and assigns does not acquire Phase 1 and Phase 2 of the Property by September 1, 2004.

11. **Release.** Upon any sale, transfer or other disposition of the Property, or any portion thereof, by Excel or any subsequent owner of the Property, or any portion thereof (the "Transferor"), the Transferor shall be released and discharged from the performance and satisfaction of all duties, liabilities and obligations under this Agreement and such duties, liabilities and obligations shall thereupon become and be obligations of the subsequent owner of the Property, or the applicable portion thereof, whether or not such subsequent owner expressly assumes such duties, liabilities and obligations.

12. **Amendment.** This Agreement may be amended only by a document signed by the Homes, the Estates, the City and any of the other undersigned Parties to the extent that those other Parties then own any ownership interest in the Property over which this Agreement is recorded or would otherwise be materially adversely impacted by any such amendment. Except as expressly stated in the immediately preceding sentence, no other individuals or entities shall have any right to approve or sign any such amendment.

13. **Miscellaneous.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same document. Signatures on this Agreement may be delivered by means of personal delivery, mail, electronic signal, and/or facsimile. Except as otherwise expressly stated in this Agreement, the rights and obligations arising under this Agreement exist exclusively for the benefit and duty of the Parties executing this Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties. Any Party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions of this Agreement may be waived only in a writing executed by the Party intended to be benefited by the provisions, and a waiver by a Party of a breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions. The prevailing Party shall be entitled to be reimbursed by the non-prevailing Party for all reasonable costs, including reasonable attorneys' fees and costs, incurred by the prevailing Party in any action or defense involving this Agreement. If any portion of this Agreement is held to be unenforceable, any enforceable portion thereof and the remaining provisions shall continue in full force and effect. The interpretation and enforcement of this Agreement shall be governed by Utah law. The Parties shall cooperate together, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement. The Parties have read this Agreement and have executed them voluntarily after having been apprised of all relevant information and risks and having had the opportunity to obtain legal counsel of their choice. In the event of any conflict between the terms of this Agreement and those of any document entered into prior to this Agreement, this Agreement shall govern. This Agreement may be enforced by rights and remedies in law and in equity, including injunctive relief, and all of such rights and remedies shall be cumulative. The Parties shall perform their respective obligations under this Agreement in compliance with all applicable laws. Nothing in this Agreement shall be construed to create any partnership, joint venture, or fiduciary relationship between the Parties. Each Party hereby represents and warrants that such Party is duly authorized to enter into this Agreement and that this Agreement constitute the legal, valid, binding, and enforceable obligations of that Party.

**RESIDENTIAL ZONE OWNERS ASSOCIATION,
A Utah nonprofit corporation**

639

By: _____
Print Name: Peter S. Locke
Title: CEO

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On July 29 2004, before me, Melanie Cooper, personally appeared Peter Locke personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Melanie Cooper
Notary Public

SHEPARD'S CREEK HOMES, L.C.,
a Utah limited liability company

By: **PCH INVESTMENTS, L.C.,**
a Utah limited liability company, Managing Member

By: **PSC DEVELOPMENT COMPANY,**
a Utah corporation, Manager

By: _____
Print Name: Peter S. Cooke
Title: CEO

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On July 29 2004, before me, Melanie Cooper, personally appeared Peter Cooke, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Melanie Cooper
Notary Public

COWBOY PARTNERS, L.C.
A Utah limited liability company

By: Cowboy Group, L.C.,
A Utah limited liability company

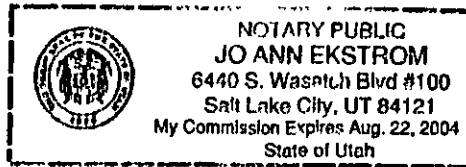
By: *Mark Cornelius*
Print Name: Mark Cornelius
Title: V.P.

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On 7/29 2004, before me, *Jo Ann Ekstrom* personally appeared Mark Cornelius, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Jo Ann Ekstrom
Notary Public



**THE HOMES AT SHEPARD CREEK CONDOMINIUM HOMEOWNERS ASSOCIATION,
A Utah nonprofit corporation**


By: Mary Mabbett Dean
Print Name: Mary Mabbett Dean
Title: President

STATE OF ~~UTAH~~ TENNESSEE,
COUNTY OF ~~SALT LAKE~~ Williamson

On July 29 2004, before me, George I. Woody, personally appeared Mary Mabbett Dean, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

George I. Woody
Notary Public



EXCEL LEGACY CORPORATION,
a Delaware corporation

By *Robert M. Siordia*
Robert M. Siordia, Chief Operating Officer

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On August 9 2004, before me, Barbara J. Johnson personally appeared Robert M. Siordia, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Barbara J. Johnson
Notary Public



IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

R. KENT BUIE,
An Individual

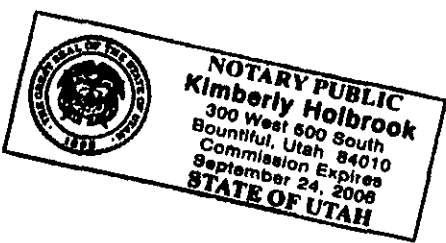
By: [Handwritten Signature]
R. Kent Buie

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On 8-10 2004, before me, Kimberly Holbrook personally appeared R. Kent Buie, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[Handwritten Signature]
Notary Public



**THE ESTATES AT SHEPARD CREEK HOMEOWNERS ASSOCIATION,
A Utah nonprofit corporation**

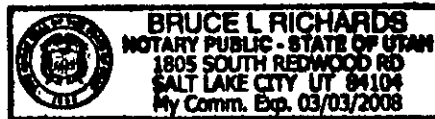
By: *Kevin Needham*
Print Name: KEVIN NEEDHAM
Title: PRESIDENT

STATE OF UTAH)
)
COUNTY OF SALT LAKE)


On July 29 2004, before me, Bruce L Richards, personally appeared Kevin Needham personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Bruce L Richards
Notary Public



**GARBETT REALTY, P.C., DBA GARBETT HOMES,
A Utah professional corporation**

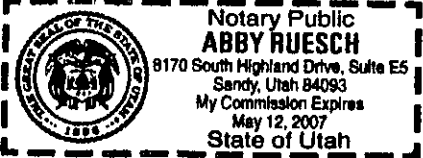
By: 
Print Name: Bryson Garbett
Title: PPST

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

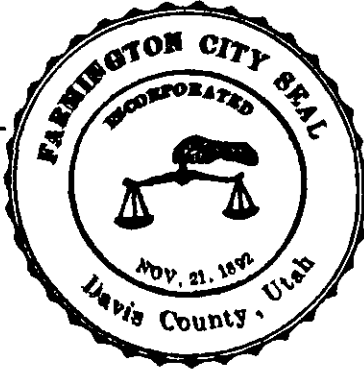
On August 30 2004, before me, Abby Ruesch, personally appeared Bryson Garbett, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public



FARMINGTON CITY



By: [Signature]
Print Name: David M. Connors
Title: Farmington City Corporation

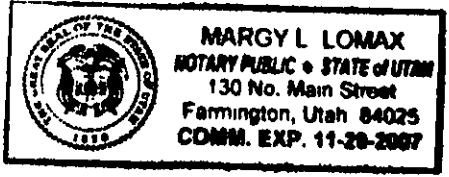
Attest:

By: [Signature]
Print Name: Margy L. Lomax
Title: Farmington City Recorder

STATE OF UTAH)
)
COUNTY OF ~~SAN JUAN~~ DAVIS)

On October 7, 2004, before me, David M. Connors, personally appeared David M. Connors personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]
Notary Public

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

REMAINDER PARCEL

BUSINESS PARK ZONE

COMMERCIAL ZONE

PARCEL C, SHEPARD CREEK SOUTHWEST SUBDIVISION, A PLANNED UNIT DEVELOPMENT, ACCORDING TO THE OFFICIAL PLAT THEREOF, DAVIS COUNTY, UTAH.

08-283-0004

NW & SW 13 37-1W

08-051-0190, 0191, 0185, 0184

ALL THAT CERTAIN REAL PROPERTY SITUATE, LYING AND BEING IN DAVIS COUNTY, STATE OF UTAH, BEING A FRACTIONAL PORTION OF SECTION 13, TOWNSHIP 3 NORTH, RANGE 1 WEST. SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 13; THENCE SOUTH 00°12'06" EAST ALONG THE WEST LINE OF SAID SECTION 13, A DISTANCE OF 1482.87 FEET; THENCE SOUTH 88°52'42" EAST 347.81 FEET; THENCE NORTH 72°22'00" EAST 86.23 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE CONTINUING NORTH 72°22'00" EAST 593.07 FEET; THENCE SOUTH 48°37'29" EAST FOR 261.11 FEET; THENCE SOUTH 21°15'52" EAST FOR 805.21 FEET; THENCE SOUTH 14°34'30" WEST 221.74 FEET; THENCE SOUTH 01°07'29" WEST 208.86 FEET; THENCE NORTH 89°27'31" WEST FOR 68.42; THENCE SOUTH 00°36'19" WEST FOR 13.87 FEET; THENCE NORTH 89°58'33" WEST FOR 82.94 FEET; THENCE SOUTH 00°39'18" WEST FOR 151.40 FEET; THENCE SOUTH 89°41'44" EAST FOR 81.63 FEET; THENCE SOUTH 89°58'33" EAST 68.37 FEET; THENCE SOUTH 01°07'29" WEST 403.70 FEET; THENCE NORTH 89°32'45" WEST 35.30 FEET; THENCE SOUTH FOR 206.08 FEET; THENCE NORTH 89°34'29" WEST FOR 587.70 FEET; THENCE SOUTH 34°29'28" WEST FOR 73.91 FEET; THENCE NORTH 01°07'05" EAST 601.85 FEET; THENCE WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 80.00 FEET AND A CENTRAL ANGLE OF 184°34'41" (CHORD BEARING AND DISTANCE OF NORTH 32°47'55" EAST 158.55 FEET); THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE, 229.79 FEET, THENCE WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 50°36'31" (CHORD BEARING AND DISTANCE OF NORTH 24°11'10" WEST 42.74 FEET); THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, 44.16 FEET; THENCE NORTH 01°07'05" EAST FOR 568.99 FEET; THENCE WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 332.50 FEET AND A CENTRAL ANGLE OF 39°59'36" (CHORD BEARING AND DISTANCE OF NORTH 18°52'43" WEST 227.41 FEET); THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, 232.09 FEET; THENCE NORTH 38°52'31" WEST FOR 463.63 FEET; THENCE WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 265.50 FEET AND A CENTRAL ANGLE OF 19°35'52" (CHORD BEARING AND DISTANCE OF NORTH 29°04'35" WEST 90.37 FEET); THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, 90.81 FEET TO THE POINT OF BEGINNING.

NW 13 37-1W

08-051-0189, 0187, 0188

ALL THAT FRACTIONAL PORTION OF SECTION 13, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 13; THENCE SOUTH 00°12'06" EAST ALONG THE WEST LINE OF SAID SECTION 13, A DISTANCE OF 488.75 FEET TO A POINT ON THE SOUTH LINE OF A 66 FOOT WIDE SHEPARD LANE, THENCE ALONG THE SOUTH LINE OF SHEPARD LANE SOUTH 89°41'42" EAST 572.38 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 333.45 FEET; THENCE SOUTH 89°43'17" EAST 395.96 FEET; THENCE SOUTH 03°37'15" EAST 477.66 FEET; THENCE SOUTH 72°22'00" WEST 593.07 FEET TO THE BEGINNING OF A NONTANGENT CURVE, HAVING A RADIUS OF 265.50 FEET, WHOSE CENTER BEARS NORTH 70°43'21" EAST WITH A CENTRAL ANGLE OF 20°23'56" (CHORD BEARING AND DISTANCE OF NORTH 9°04'41" WEST 94.03 FEET) AND FOR AN ARC DISTANCE OF 94.53 FEET; THENCE NORTH 1°07'17" EAST 315.01 FEET; THENCE NORTHWESTERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 182.50 FEET, A CENTRAL ANGLE OF 45°59'06" (CHORD BEARING AND DISTANCE OF NORTH 21°52'16" WEST 142.57 FEET) AND FOR AN ARC DISTANCE OF 148.47 FEET; THENCE NORTH 44°51'48" WEST FOR 295.20 FEET; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 117.50 FEET, A CENTRAL ANGLE OF 45°00'00" (CHORD BEARING AND DISTANCE OF NORTH 22°21'48" WEST 89.93 FEET) AND FOR AN ARC DISTANCE OF 92.28 FEET; THENCE NORTH 00°08'12" EAST FOR 129.41 FEET; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 35.00 FEET, A CENTRAL ANGLE OF 66°33'35" (CHORD BEARING AND DISTANCE OF NORTH 33°24'59" EAST 38.41 FEET) AND FOR AN ARC DISTANCE OF 40.66 FEET; THENCE SOUTH 89°41'42" EAST 421.86 FEET TO THE POINT OF BEGINNING.

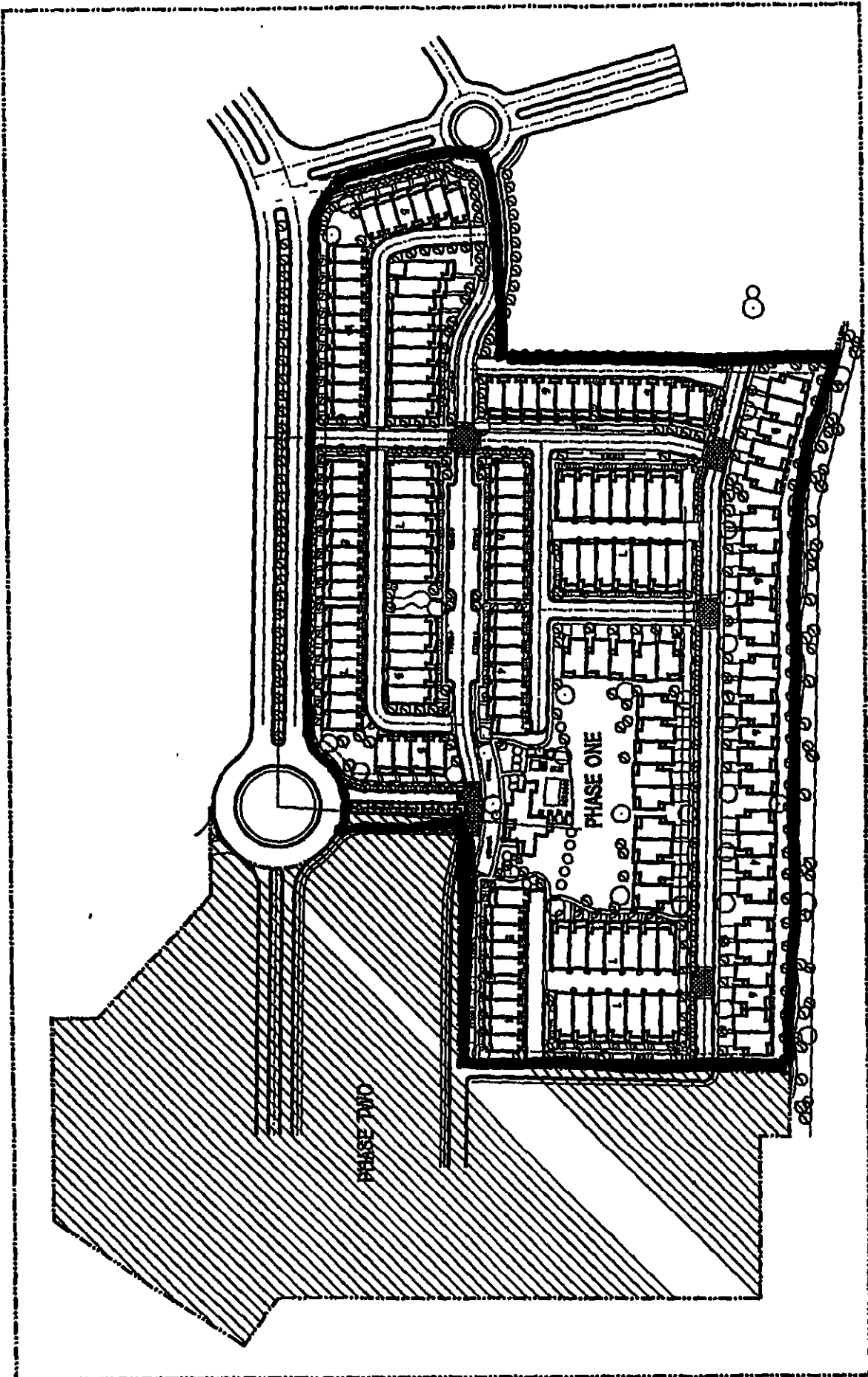
Plus and including the following:

ret-08-051-0128

BEG AT A PT, WH IS S 00°12'06" E 1482.87 FT ALG THE SEC LN AND S 88°52'42" E 347.61 FT AND N 72°22'00" E 679.30 FT FR THE NW COR OF SEC 13-T3N-R1W, SLM; RUN TH N 03°37'15" W 398.12 FT; TH S 21°14'52" E 505.18 FT; TH S 26°03'47" W 51.04 FT TO A PT ON E'LY BDY LN OF PPTY CONV IN 2865-740; TH N 48°37'29" W 180.58 FT TO THE POB. CONT 0.801 ACRES ALSO: BEG AT A PT, WH IS S 00°12'06" E 1482.87 FT ALG THE SEC LN AND S 88°52'42" E 347.61 FT AND N 72°22'00" E 679.30 FT AND S 48°37'29" E 261.11 FT AND S 21°15'52" E 392.47 FT FR THE NW COR OF SEC 13-T3N-R1W, SLM; RUN TH N 70°57'32" E 12.67 FT; TH S 18°59'18" E 93.03 FT; TH S 24°03'54" E 26.87 FT; TH S 69°40'41" W 10.28 FT; TH N 21°15'52" W 120.12 FT TO THE POB. CONT. 0.029 AC TOTAL ACREAGE: 0.830 AC.

**EXHIBIT B
DEPICTION OF PHASE 1**

652



SHEPARD CREEK TOWNHOMES

**EXHIBIT C
DEPICTION OF PHASE 2**

SHEPARD CREEK TOWNHOMES

