

When Recorded Return to:

Brandon Green
City Manager
City of Fruit Heights
910 South Mountain Road
Fruit Heights, Utah 84037

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**DEVELOPMENT AGREEMENT
FOR**

ORCHARD FARMS PLANNED RESIDENTIAL UNIT DEVELOPMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the 2 day of June, 2010, by and between FRUIT HEIGHTS CITY, a Utah municipal corporation, hereinafter referred to as the "City", and FAIRVIEW ESTATES, LLC, a Utah limited liability company, hereinafter collectively ("Developer") a Utah limited liability company "Developer".

RECITALS

A. Developer owns and/or is developing approximately 31 acres of land located within the City, which property is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property").

B. Developer desires to develop a project on the Property to be known as the Orchard Farms Planned Residential Unit Development (PRUD) (the "Project"): Developer has submitted an application to the City seeking approval of the Project as a subdivision in accordance with the City's Laws.

C. Developer has received conceptual approval of a Planned Residential Unit Development Master Plan for the Project from the Fruit Heights City Council (the "Conceptual Approval"). It is anticipated that Developer will apply to the City for preliminary and final master plan approval for the Project, in accordance with this agreement. The Conceptual Approval provides for the development of 183 dwelling units and approximately 13.49 acres of Open Space as graphically represented on Exhibit "B," (the "Conceptual Plan").

D. The Property is presently zoned under the City's zoning ordinance as R-3 with a PRUD Overlay. The Property is subject to all City ordinances and regulations including the provisions of the City's General Plan, the City's zoning ordinances, the City's engineering development standards and specifications and the Conceptual Approval issued by the City pursuant to the foregoing ordinances and regulations (collectively, the "City's Laws").

E. Persons and entities hereafter developing the Property or any portions of the Project thereon shall accomplish such development in accordance with the City's Laws, and the provisions set forth in this Agreement. This Agreement contains certain requirements and

conditions for the design and/or development of the Property and the Project in addition to those contained in the City's Laws.

AGREEMENT

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

1. Incorporation of Recitals. The above Recitals are hereby incorporated into this Agreement.

2. Conceptual Master Plan. The Conceptual Plan, attached hereto as Exhibit "B", has been approved by the City, and by this reference shall be made a part hereof. The Property shall be developed by the Developer and/or any subsequent developers as a subdivision and/or an approved Site Plan or Condominium Plat in accordance with the approved Conceptual Plan. The Developer and the City acknowledge and agree that the Conceptual Plan (including the landscape and other plans) attached hereto as Exhibit "B" does not (and cannot at this stage of planning) contain all of the detail necessary for construction and installation of the improvements for the Property. As such, the Developer and the City shall cooperate on the approval of future versions and refinements of such plans as long as they are substantially consistent with the plans approved herewith. In determining whether or not submitted plans are substantially consistent with the approved Conceptual Plan, Developer shall be allowed to reduce project densities and to adjust the size and footprint of multi-family buildings in its judgment and discretion. The phasing plan attached in Exhibit "C" hereto is preliminary in nature and Developer shall have the right, after obtaining City staff approval, to amend the phasing plan, provided that critical infrastructure, including Nicholls Road and project amenities shall be installed as set forth in this Agreement and in an orderly manner to support the Project and to avoid over burdening existing City infrastructure.

3. Development of the Project. The Project shall be developed as follows:

(a) Compliance with City Laws and Development Standards. The Project and all portions thereof shall be developed in accordance with the City's Laws and the Conceptual Approval and Conceptual Plan. This Agreement is not intended to deviate from applicable City Ordinances, rules or regulations.

(b) Further Land Use Approvals Required. Prior to any construction on the site, the following land use approvals shall be required:

- i) PRUD Overlay approval
- ii) Preliminary Plat and Preliminary PRUD plan approval
- iii) Conditional Use and Site Plan approval
- iv) Final Plat and Final PRUD Plan approval

The required approvals listed in subparagraphs i, ii and iii may be processed and receive concurrent approvals. Upon submittal of land use applications which are in compliance with the City's laws and consistent with the Conceptual Approval and the Conceptual Plan, the Developer shall be entitled to approval of the same.

(c) Streets and Related Improvements.

(i) The Property is currently served in its undeveloped condition by Nicholls Road. Developer hereby agrees to realign and reconstruct Nicholls Road within the boundaries of the Project in accordance with the approved street cross section drawings attached hereto as Exhibit "D" and incorporated herein by reference. Developer anticipates phasing construction of the road, in accordance with the Phasing Plan attached hereto as Exhibit "C" and incorporated herein by reference. In the event Developer desires to change the Phasing Plan, such change shall be approved by the City as long as said construction can be accomplished without compromising the ability of the road to continue to serve as well or better than it currently functions, such approval not to be unreasonably withheld.

(ii) Developer will construct and/or improve the streets shown on the Conceptual Plan for the Project. Construction and/or improvement of the streets within the Project shall include all curb, gutter, paving, sidewalks, park strips and related utilities as shown on the approved improvement drawings. Street shown as public streets shall be dedicated in accordance with the City's ordinance requirements. All construction and improvement shall be in accordance with City-approved design and construction standards and requirements, or as more specifically shown in the drawings contained herein. Public and Private Street Cross sections and lighting plans shall comply with those shown in Exhibit "B."

(iii) Developer shall post security acceptable to the City at the time and in the form required by City Ordinances to ensure the adequate installation of the improvements.

(d) Landscaping. Developer shall install landscaping at the project entry on Main Street, along the full Main Street frontage and along the Nicholls Road right of way and throughout the Project as shown in the Landscaping Plan, attached hereto as Exhibit "E," and incorporated herein by reference. Developer shall provide security at the time and in the form required by City Ordinances to ensure the adequate installation thereof. Developer shall include a requirement in the CC&Rs for the Project that the homeowners' association shall sufficiently and adequately maintain landscaping for which it is responsible and replace all damaged landscaping along with any damaged or dead tree with a similar tree of comparable size and/or quality in a timely manner, weather permitting, for a period not less than one year from the original installation.

(e) Public Trail Improvements. Developer shall construct a public trail in the in area shown as Open Space on the Northern portion of the Property running the length of the boundary of the Property, generally as shown on Exhibit "F", attached hereto and incorporated herein by reference. Developer shall begin construction of the Trail at approximately the same time as the City begin constructing the portion of a trail that connects to the Trail on property currently controlled by the City and Developer shall complete its construction of the Trail at approximately the same time that the City completes its portion. In lieu of constructing the trail, Developer may deposit with the City funds sufficient for the City to construct the trail in an amount shown on Exhibit "G". The City may only use the funds deposited for the Trail to actually construct the Trail at the same time the City constructs the portion of a trail that connects to the Trail on property currently controlled by the City. Also, the City may only use the funds deposited for the Trail to build the Trail to the same configuration as the trail built on the City property. If the cost of constructing the Trail is less than the monies deposited by Developer than any excess shall be returned to Developer. The trail shall be in the same general design as the trail section shown in Exhibit "F", and shall be dedicated to the City. The City shall be responsible to maintain the trail perpetually upon acceptance of the same and passage of the warranty period.

(f) Building Elevations, Set Back Requirements, and Garages:

Developer agrees to generally conform to the building elevations for the multi-family homes as shown in Exhibit "H". This provision shall not require that Developer construct buildings in the same footprint as shown. Structures in the Project shall use high quality exterior finishes to include stone, brick and stucco combinations, hardy board siding, raw timber, copper detailing, shutters and other high-quality exterior siding products as approved by the the City and any Architectural Review Committee (ARC). Aluminum siding shall be allowed only for soffit and fascia. Additional architectural design features such as porches, bays, cantilevers, columns, balconies, landscaped window wells, gridded windows and soffit crowns shall be included throughout the development to provide a variety and relief of the buildings. Sophisticated architectural lines, steep roof pitches and dramatic entries shall be used to make a statement on the craft of the Buildings. Buildings may be allowed to deviate from the specific design shown, however, architecture and architectural materials shall remain consistent with the provisions set forth herein and those shown on Exhibit "H". The parties acknowledge their understanding that the City has granted the PRUD overlay and approved the conceptual plan based on Developer's commitment to construct high quality units in the Project. The architecture shown and the materials listed for external elevations shall remain consistent.

City and Developer agree that all front yard, side yard and rear yard setbacks for the Project shall comply with Exhibit "B" and must be shown on the Final Plats and plans for the Project.

(g) Common Area/Open Space.

(i) Developer shall preserve open space within the Property as shown on the Conceptual Master Plan (Exhibit "B"), and the Open Space Map attached hereto as Exhibit "I" and incorporated herein by reference, and as finally determined in any final plat and final PRUD plan. Certain portions shall be dedicated to the City, as generally shown in Exhibit "I." All Open Space, as identified in any Final Plat, shall be preserved perpetually.

(ii) Developer shall identify the FEMA 100 year flood plain on the Final Plat and/or Site Plan of the Project as set forth in the Fruit Heights City Subdivision Ordinance. The Developer shall meet all the requirements of the City's Flood Plain Ordinance.

(iii) Developer may convey fee title or a conservation easement to or over all or a portion of the Open Space to a third party, including a Home Owner's Association, provided the residents of the Project are entitled to continue to use (subject to reasonable restrictions) the Open Space so conveyed or encumbered.

(iv) The City shall maintain all public water and storm drain facilities located within the Project after acceptance of the construction and passage of the warranty period. All necessary easements shall be provided through the Project in order to provide adequate access for the City to maintain said public facilities.

(v) Except as otherwise set forth in this Agreement, the homeowners' association shall maintain all common areas within the Project. The homeowners' association shall also maintain all entry monuments within the Project, the park strip landscape improvements, and the subsurface drains located along or near property lines and related systems as shown on the Subdivision plat for the Project.

(h) Building Permits. The City shall not issue any building permit on any lot or for any unit within the Project until all the improvements set forth in Section 11-4-2 of the City's Ordinances have been completed as shown on the approved construction drawings for the development phase in question. This may include off-site improvements as necessary and as shown on the approved construction drawings. Approved construction drawings shall be defined as drawings containing the approval text and signature of the City Engineer. This will only be given after final approval from the City Council for the phase in question is received.

(i) Utilities and Infrastructure.

(i) Developer shall install or cause to be installed natural gas, underground electrical service, sanitary sewer, culinary and pressure irrigation water supply systems, and storm drainage facilities as required by the City for the Project up to the boundary lines of the Project and any off-site improvements

required to serve the Project. Such installations shall be done according to the reasonable and customary design and construction standards of the utility providers and the City Engineer.

(ii) Developer shall make arrangements with and shall comply with the requirements of the Central Davis Sewer District to provide public sanitary sewer service to the Project and all phases thereof.

(iii) All off-site improvements will be constructed and installed in a timely manner in order to coincide with development of the various phases of the Project.

(iv) Developer shall provide secondary water service to all maintained landscaping within the Project including along Main Street and Nicholls Road, as well as each lot within, and to the multi-family portions of, the Project. It shall be the responsibility of the Developer to make arrangements with and to satisfy any lawful requirements of the Hights Creek Irrigation Company ("Hights Creek") regarding open space areas (excluding the Open Space north of Nicholls Road) and common or private areas and to provide secondary water service with the required water shares to serve each lot and all irrigable areas within the Project. Where appropriate, Developer shall construct secondary water lines and facilities for the Project in order to ensure delivery of secondary water to properties located within the Project. Nothing herein shall be construed as adoption by the City of the standards and requirements of Hights Creek.

(v) Developer shall comply with all requirements of Davis County Flood Control for discharge of storm water into Baer Creek for the Project and all phases thereof.

(vi) Developer shall comply with all requirements of the Utah Department of Transportation (UDOT) for improvements along Main Street (SR-273) and the intersection of Main Street and Nicholls Road as they relate to the Project and any and all phases thereof.

(vii) All applicable public improvements for the Project shall be constructed and installed at Developer's sole expense in accordance with the utility master plans shown in Exhibit "J", the City's construction standards, and the City's Laws.

(j) Grading and Drainage, Storm-water Run-off, Erosion Control, and Revegetation Plans. Developer shall provide grading and drainage, erosion control and revegetation plans for the Project for review and approval by the City Engineer, the Public Works Department, Davis County Flood Control, the Fire Department, the Planning Department, Central Davis Sewer District and Hights Creek Irrigation consistent with those shown in Exhibit "B." These plans for the Project shall be prepared by a licensed engineer, and a landscape architect or other appropriate nursery

professional mutually agreed upon by the parties. These plans shall identify the type and show the location of existing vegetation, the vegetation to be removed and method of disposal, or stabilization measures to be installed while new vegetation is being established. The City shall provide Developer with review comments regarding the landscape plan. All areas of the Project cleared of natural vegetation in the course of construction excepting those areas intended for construction of structures, shall be replanted with vegetation possessing erosion control characteristics at least equal to the natural vegetation which was removed. Developer shall prepare an erosion control plan and implement best management practices altogether acceptable to the City designed to minimize erosion and displacement of soils from the site consistent with the City's Storm Water Management Plan. Developer shall post a bond acceptable to the City to ensure implementation of the grading and drainage, erosion control, and revegetation plans for the Project. The initial warranty period for this bond shall comply with state law regarding warranty periods.

(k) Dedication and Donation. Prior to, or concurrent with, the recording of the Final Plat for any phase of the Project in the office of the Davis County Recorder, Developer agrees to dedicate, transfer and voluntarily donate to the City all required easements for the purposes of constructing, installing, operating, maintaining, repairing and replacing public utilities and improvements located within the relevant portion of the Project by Developer. Developer will take such actions as are necessary to obtain release of any monetary encumbrances on any property to be dedicated to the City at the time of Final Plat approval for the Project and to cause the owner of the Property to dedicate and donate the same without cost to the City.

(l) Required Changes. If any revisions or corrections of plats or plans already approved by the City shall be required by any other governmental entity having jurisdiction or lending institutions involved in financing, Developer and the City shall cooperate where appropriate to obtain or develop reasonable, mutually acceptable alternative plans or plats. Developer shall have the sole duty and responsibility to obtain approval from any other governmental entities having jurisdiction with respect to the Project as needed.

(m) Construction Standards and Requirements. All construction shall be conducted and completed in accordance with the development standards of the City, the City's Laws and the terms of this Agreement. Prior to commencing any construction or development of any building, structures or other work or improvements within the Project, Developer shall secure any and all permits which may be required by the City or any other governmental entity having jurisdiction over the work. Developer shall construct, or cause to be constructed, all improvements for the Project in conformity with all applicable federal, state and/or local laws, rules and regulations.

(i) Inspection by the City. The City may, at its option, perform periodic inspections of the improvements being installed and constructed by

Developer and its assigns or their contractors. No work involving excavation shall be covered until the same has been inspected by the City's representatives and/or the representatives of other governmental entities having jurisdiction over the particular improvements involved. Developer, or its assigns as the case may be, shall warrant the materials and workmanship of all public improvements installed by Developer and its contractors within the Project and to be dedicated to the City for a period of twelve (12) months from and after the date of final inspection and approval by the City of the improvements in that phase in accordance with state law. All buildings shall be inspected in accordance with the provisions of the International Building Code, as adopted by the state.

(ii) Maintenance During Construction. During construction, Developer and the City and their contractors shall keep the Project and all affected public streets therein, free and clear from any unreasonable accumulation of debris, waste materials, mud, and any nuisances created by their actions, and shall contain their construction debris and provide dust and mud control so as to prevent the scattering via wind and/or water.

(n) Conditions, Covenants and Restrictions. Developer shall execute and record with the Davis County Recorder's Office a document containing the conditions, covenants and restrictions ("CCRs") for the Project. The CCRs shall, among other things, provide as follows:

(i) The homeowner's association, to be established by the CCRs, shall maintain any private roads, including asphalt, curb, gutter and sidewalk within the Project.

(ii) Developer, or the declarant under the CCRs or the successor homeowner's association, shall be responsible for snow removal of all privately owned streets, sidewalks and parking lots of the Project.

(iii) The homeowner's association, to be established by the CCRs, shall be responsible for maintenance of all landscaping within the open space of the Project as well as the landscaping along Nicholls Road and Main Street.

4. Payment of Fees. Developer shall pay to the City all required fees in a timely manner. Fees shall be paid in those amounts which are applicable at the time of payment of all such fees, pursuant to and consistent with standard City procedures, requirements, adoption by City.

5. City Obligations. Subject to Developer complying with all of the City's Laws and the provisions of this Agreement, the City agrees to maintain the public improvements dedicated to the City following satisfactory completion thereof and acceptance of the same by the City and to provide standard municipal services to the Project including, but not limited to, police and fire protection subject to the payment of all fees and charges charged or levied therefore by the City.

6. Zoning and Vested Rights.

(a) Vested Rights Granted by Approval of this MDA. The City and Master Developer intend that this Agreement grants Master Developer the right, subject to further land use approvals, to develop the Project in fulfillment of this Agreement. To that end, Master Developer or Developers developing property with the Project shall be entitled to approval of preliminary and final plats and plans so long as such plats and plans are consistent with, and in accordance with the intent of this Agreement and the Exhibits attached hereto. The Parties intend to grant the Master Developer and the City all applicable contractual and statutory and common law rights and obligations that currently exist as of the date of entering this Agreement. The parties specifically intend that this Agreement grants to Master Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann., §10-9a-509 (2009), or its successor section(s).

(b) Invalidity. Master Developer and its successors and assigns, covenant not to bring suit to have any of the City's Vested Laws declared to be unlawful, unconstitutional or otherwise unenforceable. If any of the City's Vested Laws are declared to be unlawful, unconstitutional or otherwise unenforceable then Developer will, nonetheless comply with the terms of this Agreement. Developer shall also in that event cooperate with the City in adopting and agreeing to comply with a new enactment by the City which is materially similar to any such stricken provisions and which implements the intent of the parties in that regard as manifested by this Agreement.

(c) Exceptions. The restrictions on the applicability of the City's Future Laws to the Project as specified in this Section 6 are subject to only the following exceptions:

(i) Master Developer Agreement. City's Future Laws that Master Developer agrees in writing to the application thereof to the Project;

(ii) Compliance with State and Federal Laws. City's Future Laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;

(iii) Safety Code Updates. City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare; or,

(iv) Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.

(v) Fees. Changes to the amounts of fees (but not changes to the times provided in the City's Vested Laws for the imposition or collection of such fees) for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.

(vi) Countervailing, Compelling Public Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann., §10-9a-509(1)(a)(i) (2009), or its successor section(s), or decisions of Courts of record interpreting such section(s)

(vii) Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed and collected.

(d) City Denial of a Development Application. If the City denies a Development Application the City shall provide a written determination advising the Applicant of the reasons for denial including specifying the reasons the City believes that the Development Application is not consistent with this Agreement, the Approved PUD and/or the City's Vested Laws (or, if applicable, the City's Future Laws).

(e) Meet and Confer regarding Development Application Denials. The City and Applicant shall meet within fifteen (15) business days of any Denial to resolve the issues specified in the Denial of a Development Application.

(f) City Denials of Development Applications Based on Denials from Non-City Agencies. If the City's denial of a Development Application is based on the denial of the Development Application by a Non-City Agency, Master Developer shall appeal any such denial through the appropriate procedures for such a decision and not through the processes specified below.

(g) Mediation of Development Application Denials.

(i) Issues Subject to Mediation. Issues resulting from the City's Denial of a Development Application shall be subject to mediation as set forth herein.

(ii) Mediation Process. If the City and Applicant are unable to resolve a disagreement subject to mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the issue in dispute. If the parties are unable to agree on a single acceptable mediator they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator. Applicant shall pay the fees of the chosen mediator. The chosen mediator shall within fifteen (15) business days, review the positions of the parties regarding the

mediation issue and promptly attempt to mediate the issue between the parties. If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the parties.

7. Indemnification and Insurance. Developer hereby agrees to indemnify and hold the City and its officers, employees, representatives, volunteers, agents and assigns harmless from any and all liability, loss, damage, costs or expenses, including attorneys' fees and court costs, arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to property of any person which shall occur within the Property or any portion of the Project or occur in connection with any off-site work done for or in connection with the Project or any phase thereof which shall be caused by any acts or omissions of Developer or its assigns or of any of their agents, contractors, servants, or employees at any time. Developer shall furnish, or cause to be furnished, to the City a satisfactory certificate of insurance from a reputable insurance company evidencing general public liability coverage for the Property and the Project in a single limit of not less than One Million Dollars (\$1,000,000) and naming the City its officers, employees, representatives and volunteers as an additional insured.

8. Right of Access. Representatives of the City shall have the reasonable right of access to the Project and any portions thereof during the period of construction to inspect or observe the Project and any work thereon.

9. Assignment. Developer shall not assign this Agreement or any rights or interests herein without giving prior written notice to the City. Any future assignee shall consent in writing to be bound by the terms of this Agreement as a condition precedent to the assignment.

10. 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, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To Developer:

Fairview Estates, LLC
Attn: Chris Gamvroulas
978 East Woodoak Lane
Salt Lake City, Utah 84117

To the City:

Fruit Heights City
Attn: City Manager
910 South Mountain Road
Fruit Heights, Utah 84037

11. Default. In the event any 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 performance and/or damages.

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

(c) The right to draw upon any security posted or provided in connection with the Project.

(d) The right to terminate this Agreement.

(e) The rights and remedies set forth herein shall be cumulative.

12. Attorneys' Fees. In the event of any lawsuit between the parties hereto arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled, in addition to the remedies and damages, if any, awarded in such proceeding, to recover their costs and reasonable attorneys' fees.

13. Entire Agreement. This Agreement together with the exhibits attached hereto and the documents referenced herein, and all regulatory approvals given by the City for the Property and/or the Project, contain the entire agreement of the parties and supersede any prior promises, representations, warranties, discussions or understandings between the parties with respect to the subject matter hereof which are not contained in this Agreement and the regulatory approvals for the Project, including any related conditions of approval. Representations, warranties and statements made by Developer or any other party during the course of obtaining the above-mentioned regulatory approvals shall not be binding upon Developer, unless the same are expressly required as a condition to granting the regulatory approval in question.

14. 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.

15. Non-Liability of City Officials, Employees and Others. No officer, representative, agent, or employee of the City shall be personally liable to Developer, or any successor-in-interest or assignee of Developer in the event of any default or breach by the City or for any amount which may become due Developer, or its successors or assigns, for any obligation arising under the terms of this Agreement unless it is established that the officer, representative, agent or employee acted or failed to act due to fraud or malice.

16. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns.

17. No Third-Party Rights. The obligations of Developer set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City. The parties hereto alone shall be entitled to enforce or waive any provisions of this Agreement.

18. Recordation. This Agreement shall be recorded by the City against the Property in the office of the Davis County Recorder, State of Utah.

19. Relationship. Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties hereto.

20. Termination. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the Project is not completed within three (3) years from the date of this Agreement or in the event Developer does not comply with the City's Laws and the provisions of this Agreement, the City shall have the right, but not the obligation at the sole discretion of the City, which discretion shall not be unreasonably applied, to terminate this Agreement and/or to not approve any additional phases for the Project. Such termination may be effected by the City by giving written notice thereof to Developer. Whereupon, Developer shall have sixty (60) days during which Developer shall be given an opportunity to correct any alleged deficiencies and take appropriate steps to complete the Project. In the event Developer fails to satisfy the concerns of the City with regard to such matters, the City shall be released from any further obligations under this Agreement and the same shall be terminated.

21. Severability. If any portion of this Agreement is held to be unenforceable or invalid for any reason by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

22. Amendment. This Agreement may be amended only in writing signed by the parties hereto.

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 hereinabove written.

CITY:

FRUIT HEIGHTS CITY
a Utah municipal corporation

ATTEST:

Susan R. Cranford
Deputy City Recorder

Todd Stevenson
Todd Stevenson, Mayor

DEVELOPER:

FAIRVIEW ESTATES, LLC

By: *Carl P. Jurek*
Its: MANAGER

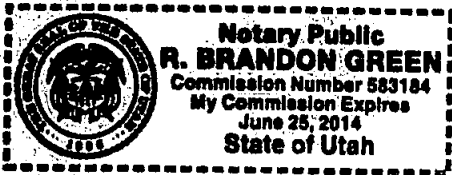
CITY ACKNOWLEDGMENT

STATE OF UTAH)

: ss.

COUNTY OF DAVIS)

On the 2 day of June, 2010, personally appeared before me Todd Stevenson, who being duly sworn, did say that he is the Mayor of FRUIT HEIGHTS CITY, a Utah municipal corporation and that the foregoing instrument was signed on behalf of the City by authority of its governing body and said Todd Stevenson acknowledged to me that the City executed the same.



R. Brandon Green
Notary Public

DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)

: ss.

COUNTY OF ~~DAVIS~~ Salt Lake)

On this 2 day of June 2010, personally appeared before me, Christopher Camvrakis, who being by me duly sworn, did say that he is the Manager of Fairview Estates, a LLC, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its Articles of Organization and duly acknowledgment to me that said limited liability executed the same.

[Signature]
Notary Public

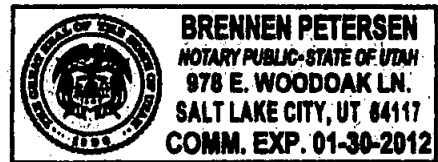


EXHIBIT "A"
Legal Description of Property and Map

ORCHARD FARMS P.R.U.D
09-15-10

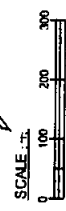
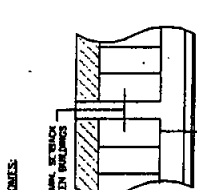
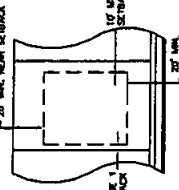
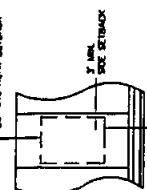
ORCHARD FARMS P.R.U.D. AS-SURVEYED LEGAL DESCRIPTION

COMMENCING AT THE CENTER OF SECTION 2, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE ALONG THE QUARTER SECTION LINE NORTH $00^{\circ}05'00''$ EAST, 293.01 FEET TO THE POINT OF BEGINNING; THENCE NORTH $77^{\circ}21'49''$ EAST, 17.12 FEET; THENCE SOUTH $82^{\circ}33'44''$ EAST, 80.54 FEET; THENCE SOUTH, 397.89 FEET; THENCE SOUTH $51^{\circ}28'50''$ EAST, 286.94 FEET; THENCE SOUTH $38^{\circ}31'10''$ WEST, 1298.22 FEET; THENCE NORTH $42^{\circ}54'03''$ WEST, 124.62 FEET; THENCE NORTH $42^{\circ}52'27''$ WEST, 213.43 FEET; THENCE NORTH $42^{\circ}50'14''$ WEST, 310.14 FEET; THENCE NORTH $42^{\circ}12'21''$ WEST, 179.83 FEET; THENCE NORTH $42^{\circ}42'07''$ WEST, 96.45 FEET; THENCE NORTH $42^{\circ}18'51''$ WEST, 60.62 FEET; THENCE NORTH $42^{\circ}42'25''$ WEST, 132.78 FEET; THENCE NORTH $56^{\circ}18'56''$ EAST, 298.31 FEET; THENCE NORTH $66^{\circ}21'56''$ EAST, 123.56 FEET; THENCE NORTH $54^{\circ}20'07''$ EAST, 15.41 FEET; THENCE NORTH $82^{\circ}51'08''$ EAST, 163.08 FEET; THENCE NORTH $12^{\circ}08'58''$ EAST, 538.90 FEET; THENCE NORTH $64^{\circ}21'57''$ EAST, 661.82 FEET TO A POINT ON THE QUARTER SECTION LINE; THENCE ALONG THE QUARTER SECTION LINE SOUTH $00^{\circ}05'00''$ WEST, 280.01 FEET TO THE POINT OF BEGINNING.

CONTAINS: 31.91 ACRES MORE OR LESS

NOTES:

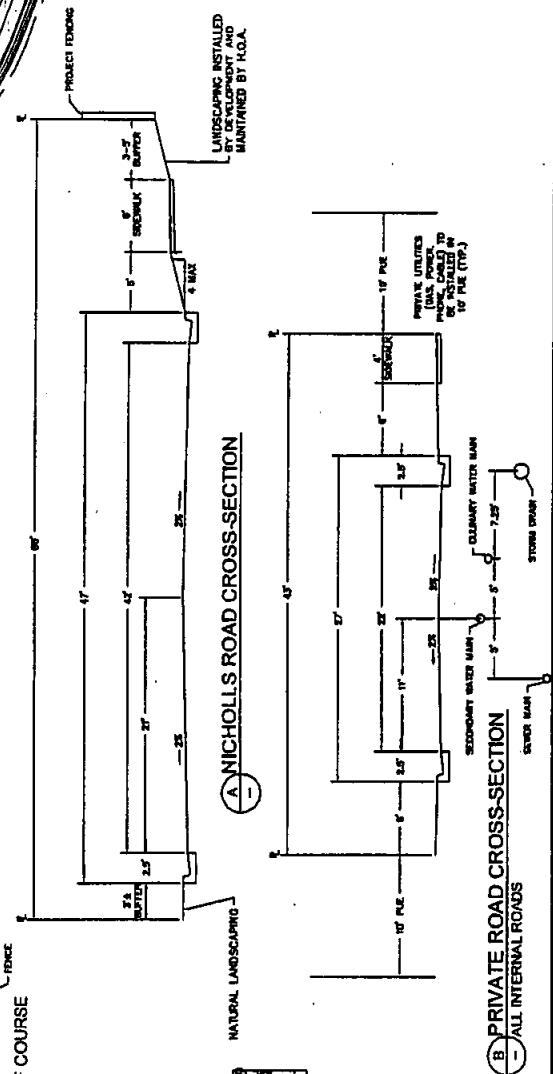
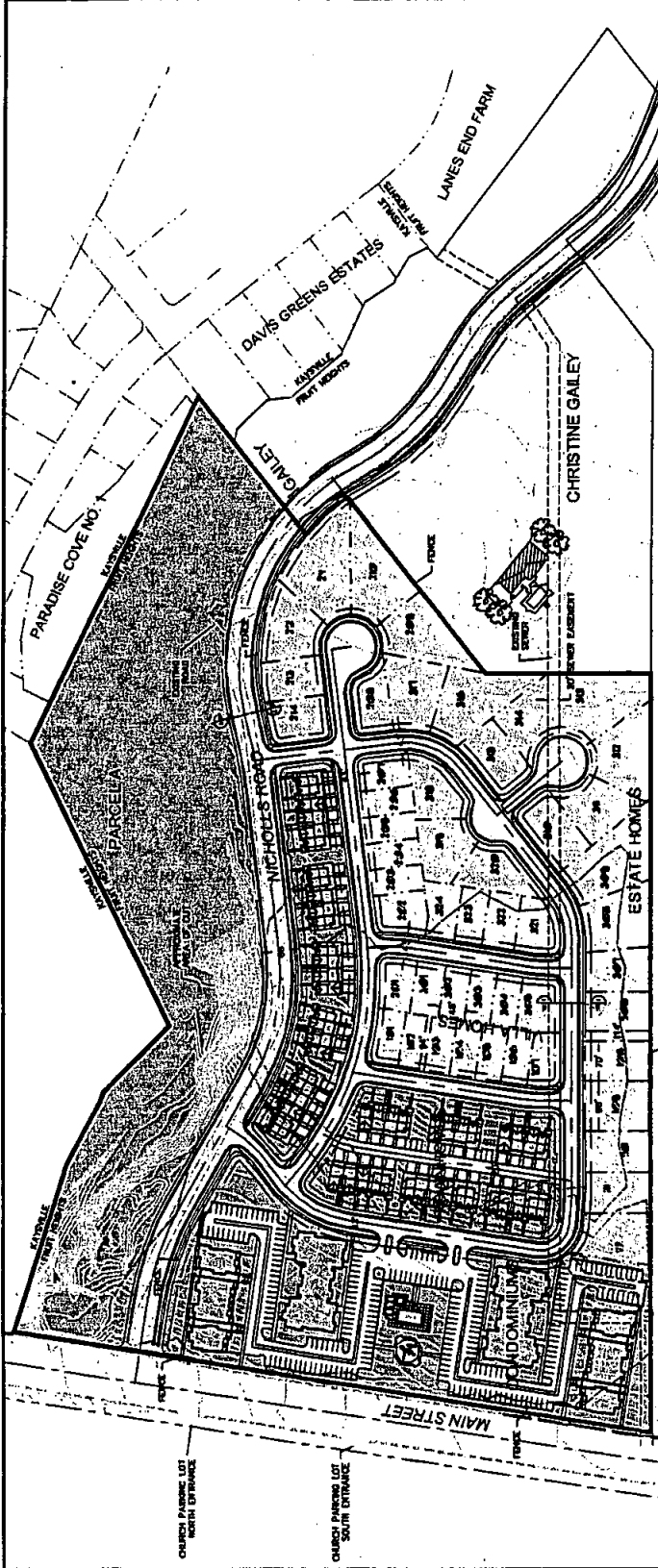
MINIMUM SETBACK SUMMARY
 VILLA HOMES (LOTS 101-107)
 20'-0" REAR SETBACK
 20'-0" SIDE SETBACK
 20'-0" FRONT SETBACK
 ESTATE HOMES (LOTS 108-112)
 20'-0" REAR SETBACK
 15'-0" SIDE SETBACK
 20'-0" FRONT SETBACK



DATE	DESCRIPTION
12/23/70	CITY SUBMITTAL
01/19/70	CITY SUBMITTAL

FAIRVIEW ESTATES
 PRELIMINARY PLAT

BENBINGHAM
 2
 11
 12/23/70
 01/19/70
 12/23/70

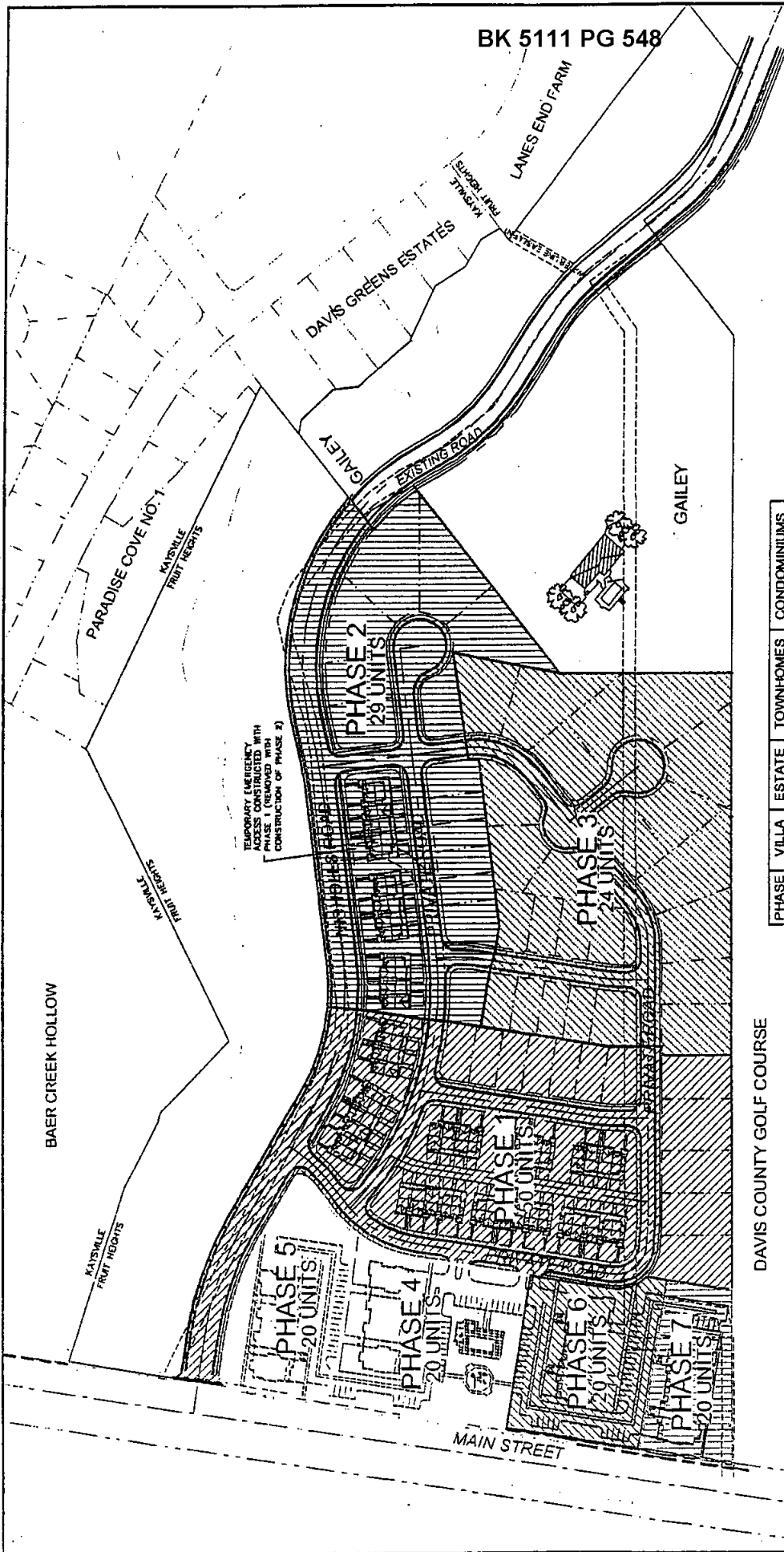


CONCEPT	NO. OF UNITS	SQ. FT. OF PARKING SPACES
CONCEPT	100	10,000
CONCEPT	200	20,000
CONCEPT	300	30,000
CONCEPT	400	40,000
CONCEPT	500	50,000
CONCEPT	600	60,000
CONCEPT	700	70,000
CONCEPT	800	80,000
CONCEPT	900	90,000
CONCEPT	1000	100,000
CONCEPT	1100	110,000
CONCEPT	1200	120,000
CONCEPT	1300	130,000
CONCEPT	1400	140,000
CONCEPT	1500	150,000
CONCEPT	1600	160,000
CONCEPT	1700	170,000
CONCEPT	1800	180,000
CONCEPT	1900	190,000
CONCEPT	2000	200,000

NOTE: ALL UNITS WILL HAVE 2-CAR GARAGES AND 20' LONG DRIVEWAYS

DISCLAIMER: THE INFORMATION CONTAINED HEREIN IS NOT GUARANTEED. ALL ILLUSTRATIONS ARE SUBJECT TO CHANGE DURING FINAL PLATTING.

EXHIBIT "C"
Phasing Plan



DAVIS COUNTY GOLF COURSE
 PHASING PLAN

BRINGHAM ENGINEERING
 1000 N. 1000 E. SUITE 100
 OGDEN, UT 84403
 PHONE: (435) 771-1110
 FAX: (435) 771-1111
 PROJECT NO. 1111111111
 SHEET NO. 3 OF 11



PHASE	VILLA	ESTATE	TOWNHOMES	CONDOMINIUMS
1	7	5	38	0
2	7	7	15	0
3	9	15	0	0
4	0	0	0	20
5	0	0	0	20
6	0	0	0	20
7	0	0	0	20

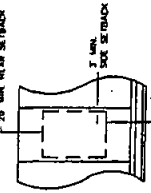
DISCLAIMER: THE INFORMATION OBTAINED HEREIN IS PRELIMINARY IN NATURE AND SHOULD BE CHECKED FOR ACCURACY. ALL ILLUSTRATIONS ARE SUBJECT TO CHANGE.

DATE: 03/23/00
 CITY: SUBMITTAL
 DATE: 05/19/00
 CITY: SUBMITTAL

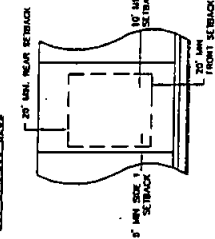
EXHIBIT "D"
Approved Cross Sections

NOTES:

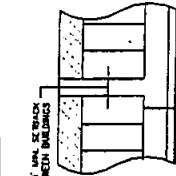
MINIMAL SETBACK SUMMARY
 TALL HOUSES (LOIS 100-107,
 200-207, 208-209, 210-212)



ESTATE HOMES (LOIS 108-112,
 200-214, 208-209)



TOWNHOMES



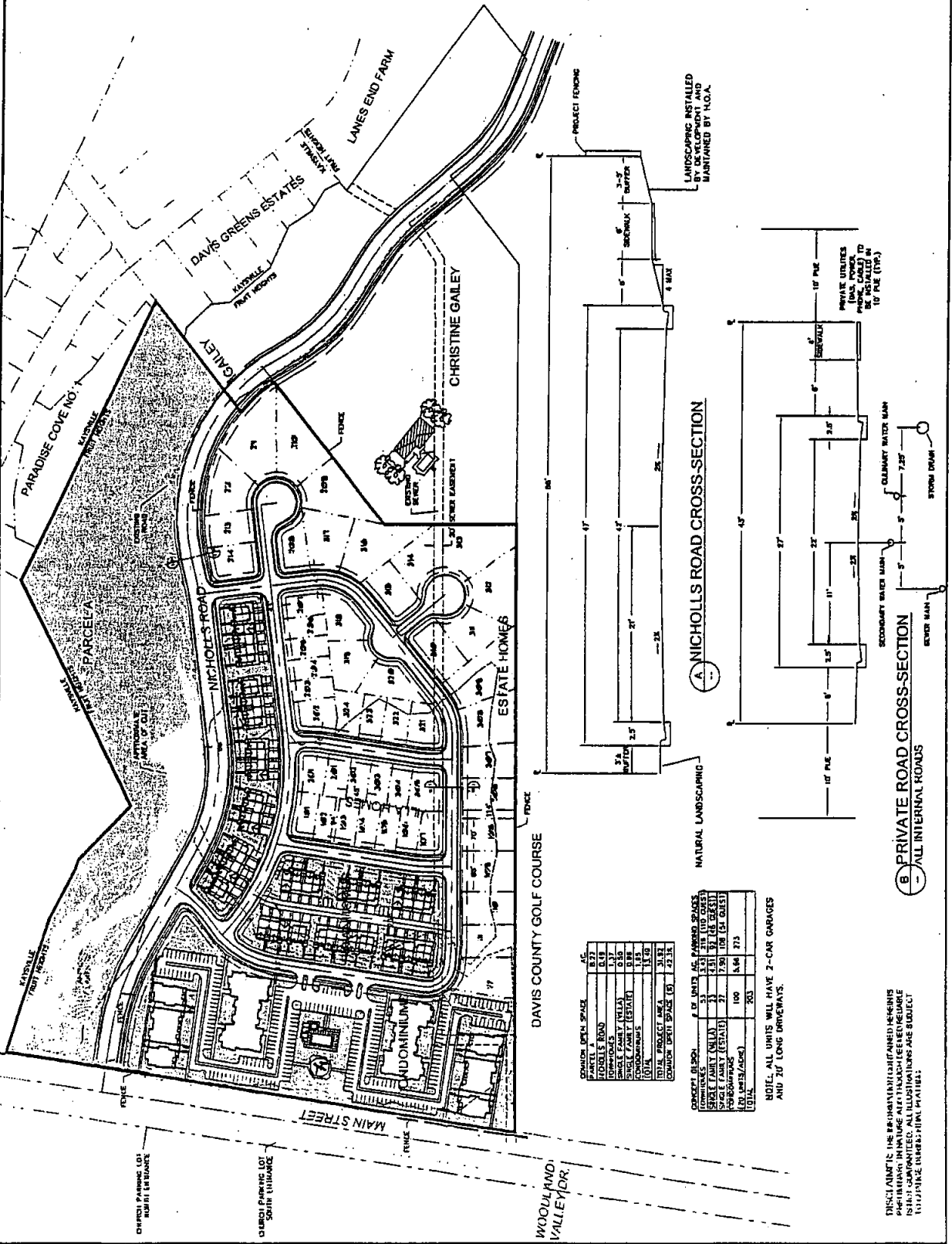
CUT AREA (MAX = 9')
 FILL AREA (MAX = 5')



No.	Date	Revisions
1	12/23/78	CITY SUBMITTAL
2	12/23/78	CITY SUBMITTAL
3	12/23/78	CITY SUBMITTAL

FAIRVIEW ESTATES
 PRELIMINARY PLAT

BINGHAM ENGINEERING
 2000 N. 100th Ave., Suite 100
 Edina, MN 55425
 Phone: (612) 935-1111
 Fax: (612) 935-1112
 Project No.: 03/18/2010
 Date: 12/21/07
 Sheet No.: 2 of 11

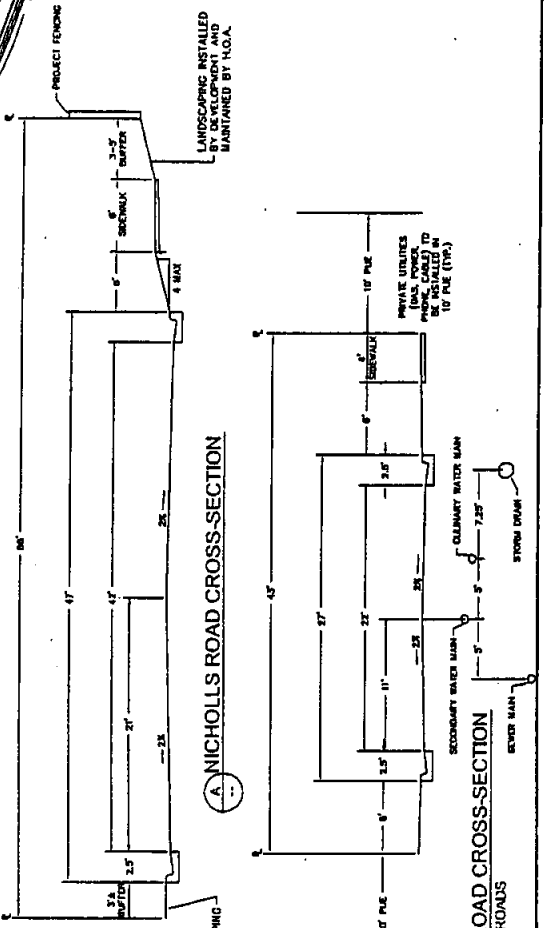


COMMON UNIT SPACE	# OF UNITS	TOTAL SQUARE FEET
APARTMENT	10	10,000
CONDOMINIUM	10	10,000
SINGLE FAMILY (TYPICAL)	10	10,000
SINGLE FAMILY (ESTABLISHED)	10	10,000
TOTAL	40	40,000

COMMON UNIT SPACE	# OF UNITS	TOTAL SQUARE FEET
APARTMENT	10	10,000
CONDOMINIUM	10	10,000
SINGLE FAMILY (TYPICAL)	10	10,000
SINGLE FAMILY (ESTABLISHED)	10	10,000
TOTAL	40	40,000

NOTE: ALL UNITS WILL HAVE 2-CAR GARAGES AND 20' LONG DRIVEWAYS.

NICHOLLS ROAD CROSS-SECTION

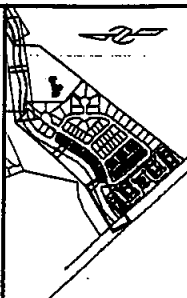


PRIVATE ROAD CROSS-SECTION
 - ALL INTERNAL ROADS

PLEASE NOTE: THE DIMENSIONS SHOWN HEREIN ARE APPROXIMATE. ALL DIMENSIONS ARE SUBJECT TO SURVEY INSTRUMENTATION.

NOTES:

KEY MAP



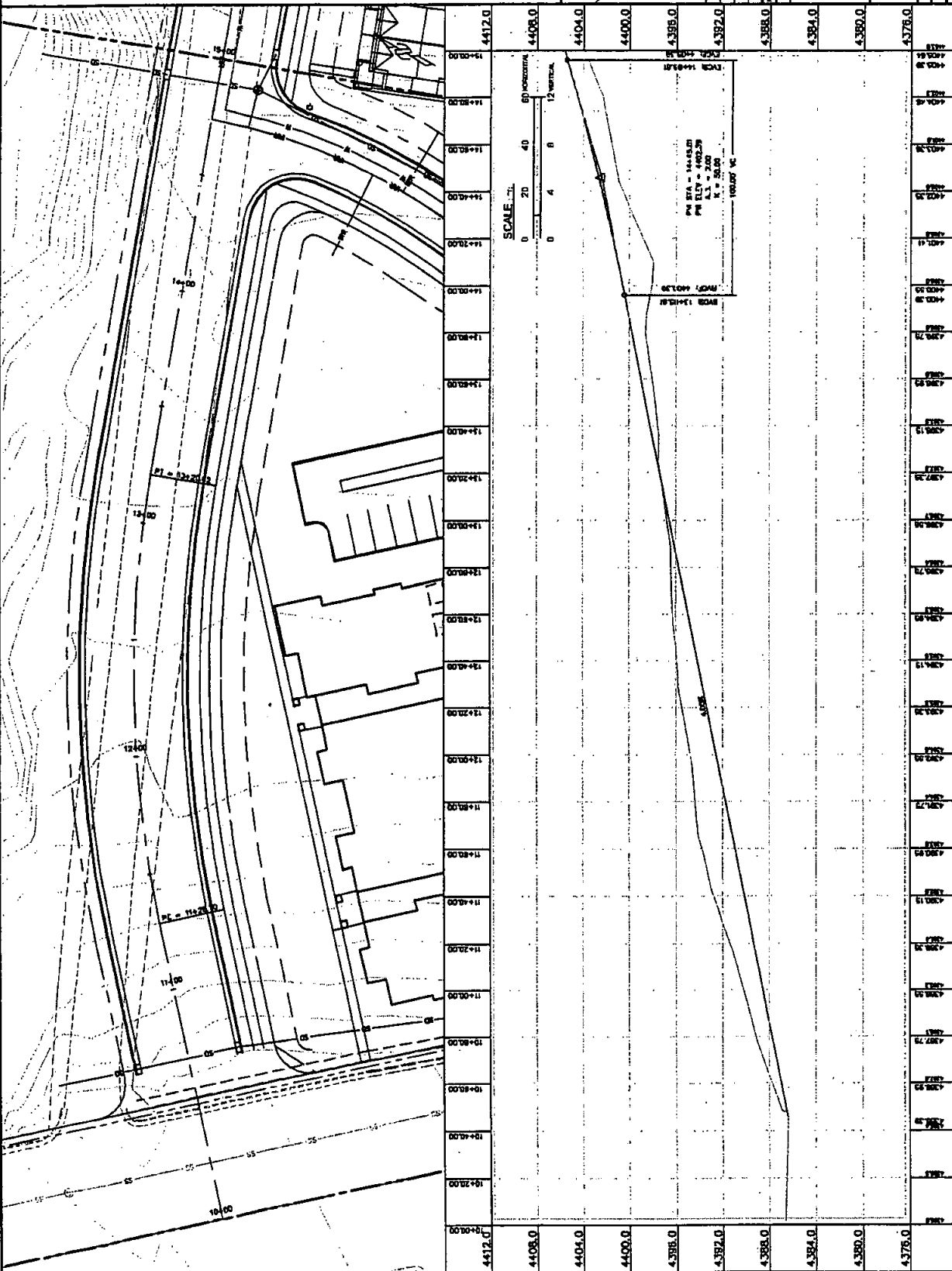
NO.	DATE	DESCRIPTION

ORCHARD FARMS
 PLAN AND PROFILE:
 NICHOLLS ROAD
 STA: 10+00 TO STA: 15+00

B BINGHAM ENGINEERING
 1000 S. 17th St., Suite 100
 Lincoln, NE 68502
 (402) 441-1170
 Fax: (402) 441-1171
 E-mail: bbingham@bbengr.com
 Website: www.bbengr.com

PROJECT NO. 17-010
 DATE: 11/17/10
 DRAWING NO. 17-010-01
 SHEET NO. 551 OF 551

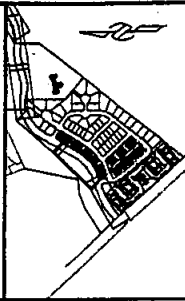
PP01



STATION	ELEVATION
10+00.00	4382.00
10+20.00	4383.00
10+40.00	4384.00
10+60.00	4385.00
10+80.00	4386.00
11+00.00	4387.00
11+20.00	4388.00
11+40.00	4389.00
11+60.00	4390.00
11+80.00	4391.00
12+00.00	4392.00
12+20.00	4393.00
12+40.00	4394.00
12+60.00	4395.00
12+80.00	4396.00
13+00.00	4397.00
13+20.00	4398.00
13+40.00	4399.00
13+60.00	4400.00
13+80.00	4401.00
14+00.00	4402.00
14+20.00	4403.00
14+40.00	4404.00
14+60.00	4405.00
14+80.00	4406.00
15+00.00	4407.00
15+20.00	4408.00
15+40.00	4409.00
15+60.00	4410.00
15+80.00	4411.00
16+00.00	4412.00

NOTES:

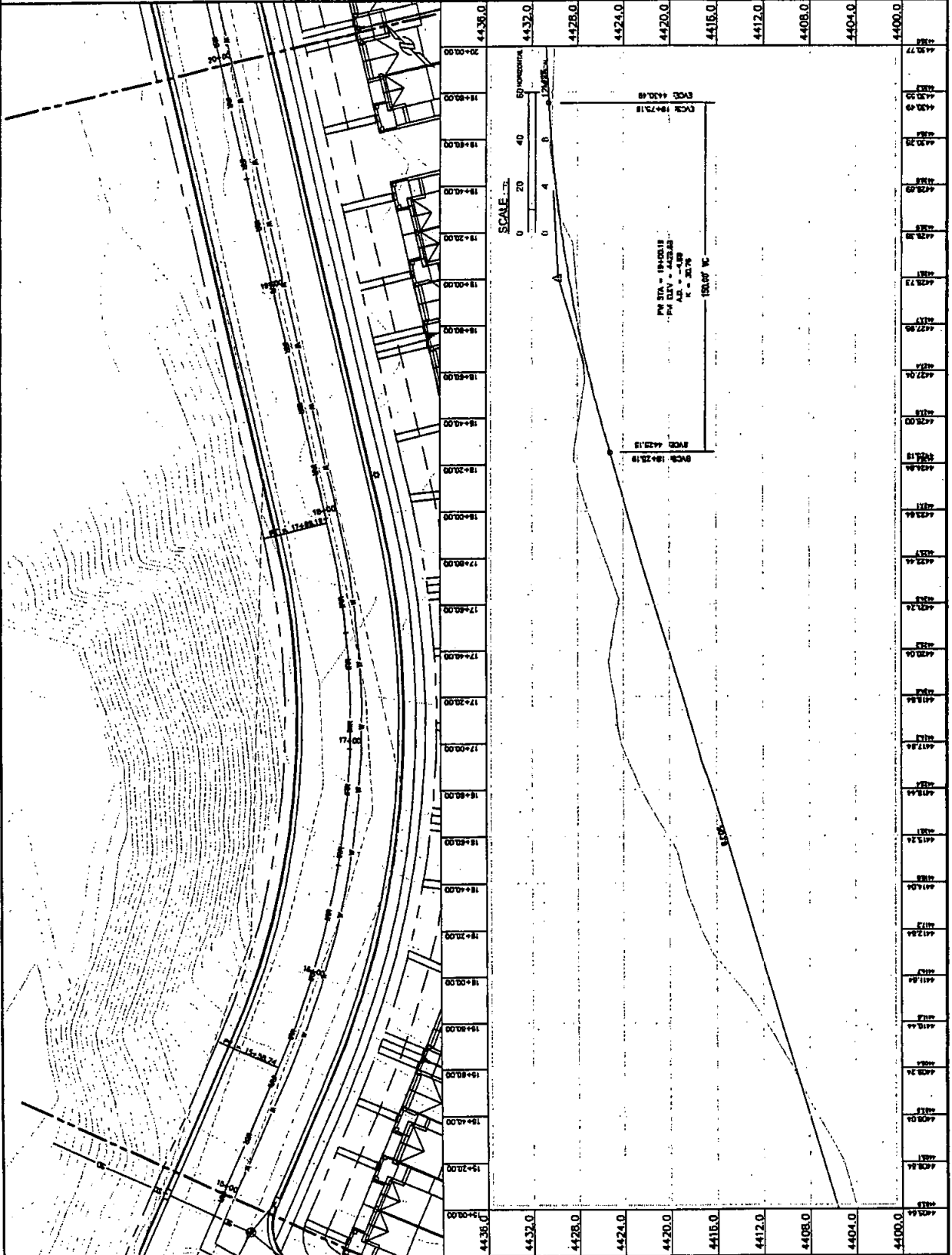
KEY MAP



ORCHARD FARMS
 PLAN AND PROFILE
 NICHOLLS ROAD
 STA: 15+00 TO STA: 20+00

BINGHAM ENGINEERING
 1001 S. 10th St., Suite 100
 Lincoln, NE 68502
 Phone: (402) 441-1111
 Fax: (402) 441-1112
 Email: info@binghameng.com
 Website: www.binghameng.com

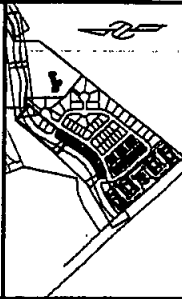
PROJECT: Orchard Farms
 DATE: 08/17/2010
 DRAWING NO: 1710
 SHEET NO: 552
 TOTAL SHEETS: 552



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NOTES:

KEY MAP



NO.	DATE	DESCRIPTION

ORCHARD FARMS
 PLAN AND PROFILE
 NICHOLLS ROAD
 STA:20+00 TO STA:25+00

BINGHAM ENGINEERING
 P.P.03
 1000 West 10th Street, Suite 100
 Lincoln, Nebraska 68502
 Phone: (402) 441-1111
 Fax: (402) 441-1112
 E-mail: bingham@bingham-engineering.com

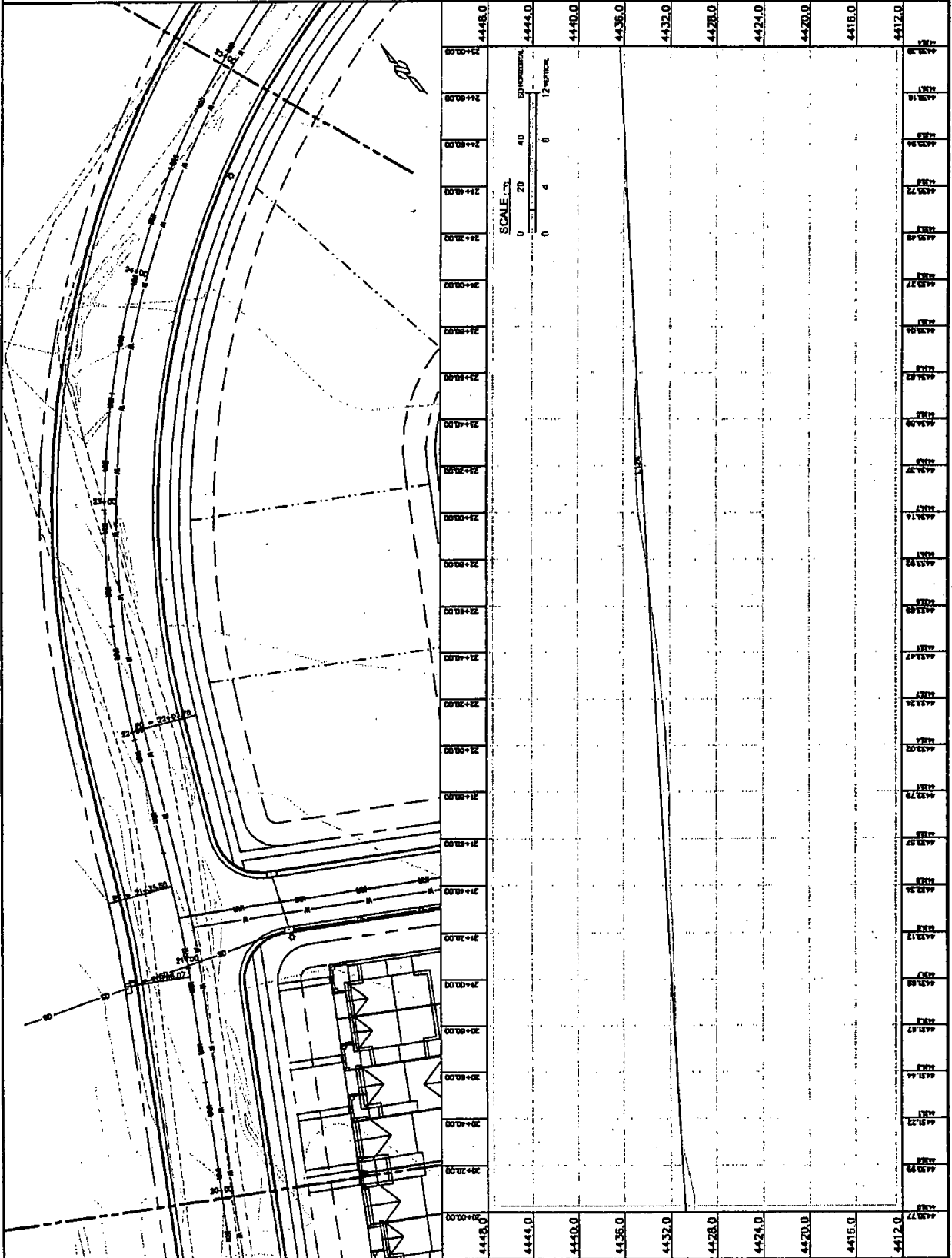
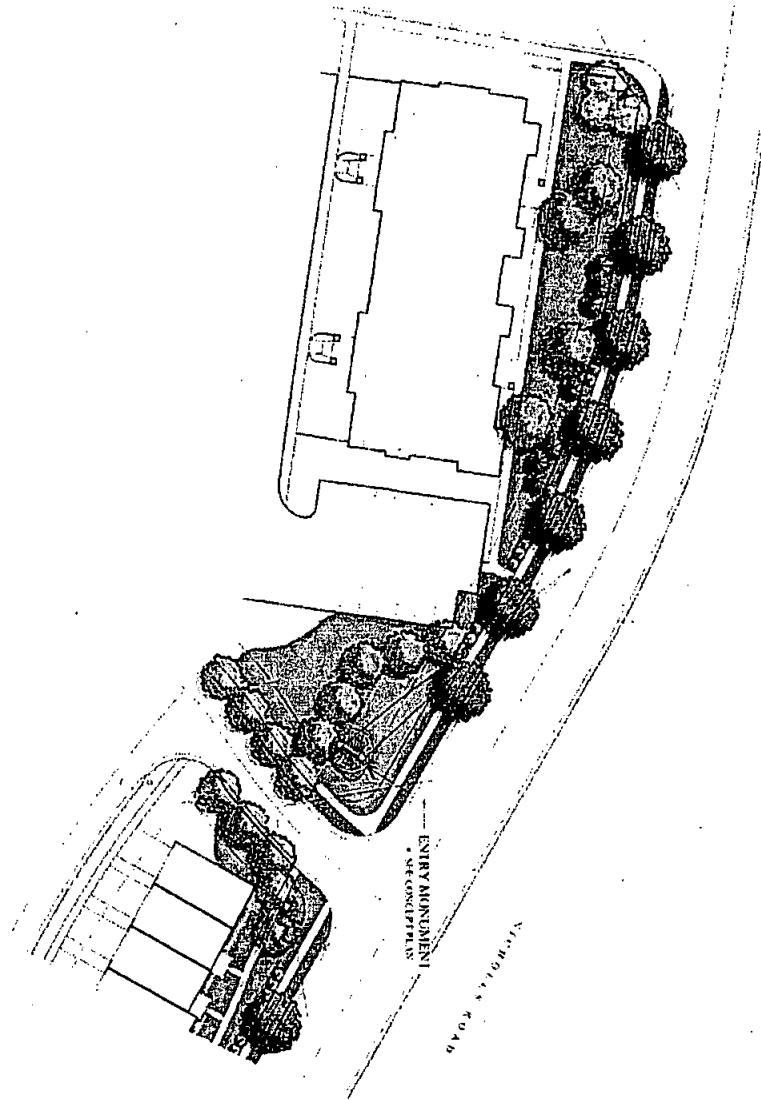
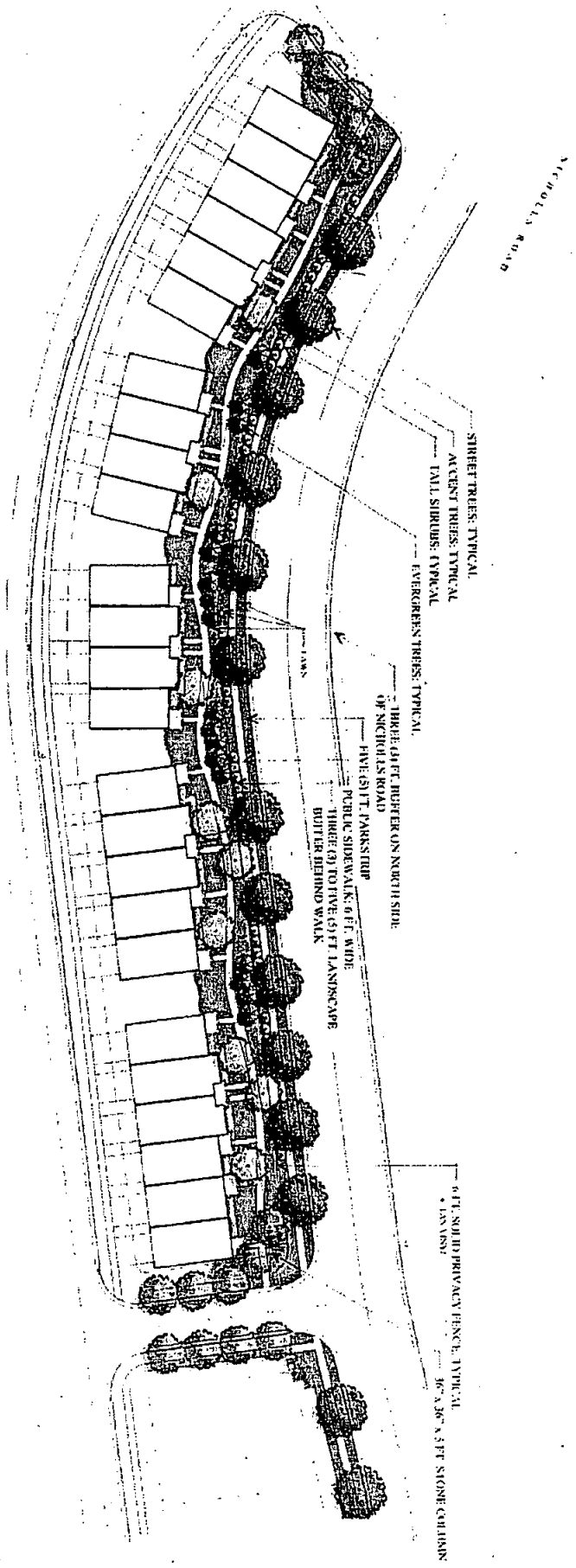


EXHIBIT "E"
Landscaping Plans



ORCHARD FARMS
 10000 SHERBORN ROAD
 SUITE 100
 FARMINGTON, CT 06030
 TEL: 860.673.1234
 FAX: 860.673.1235
 WWW.orchardfarms.com

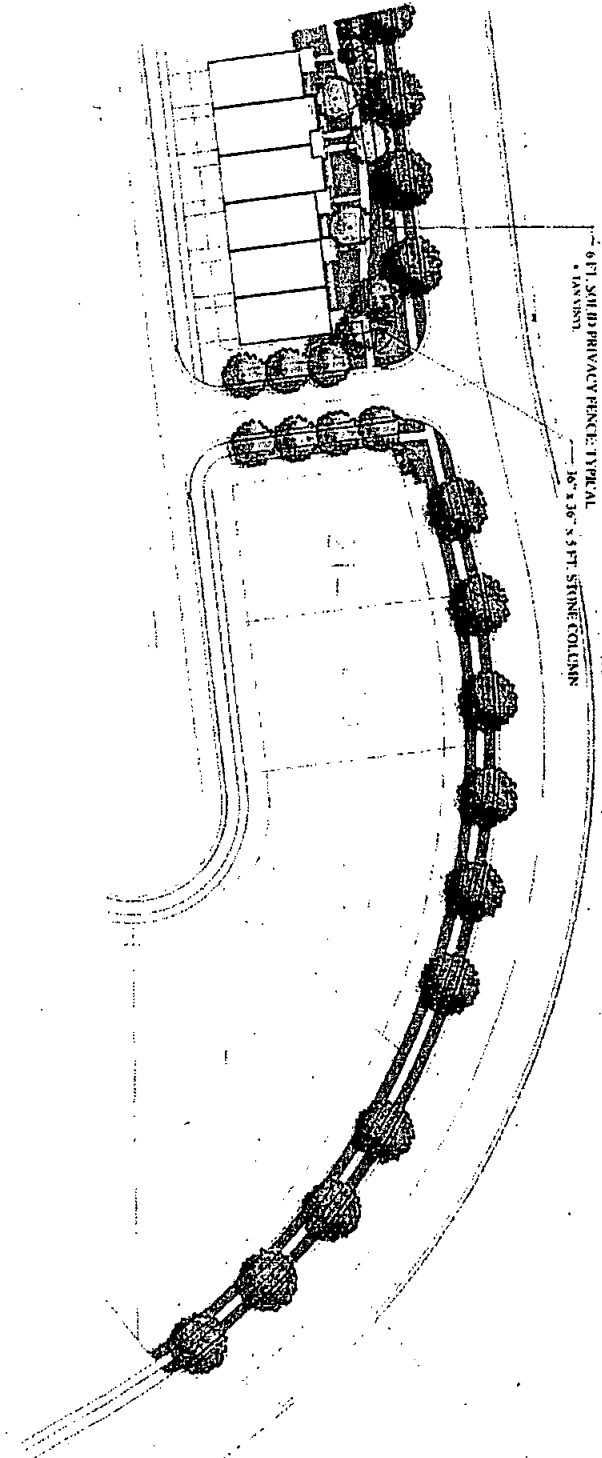




ORCHARD FARMS

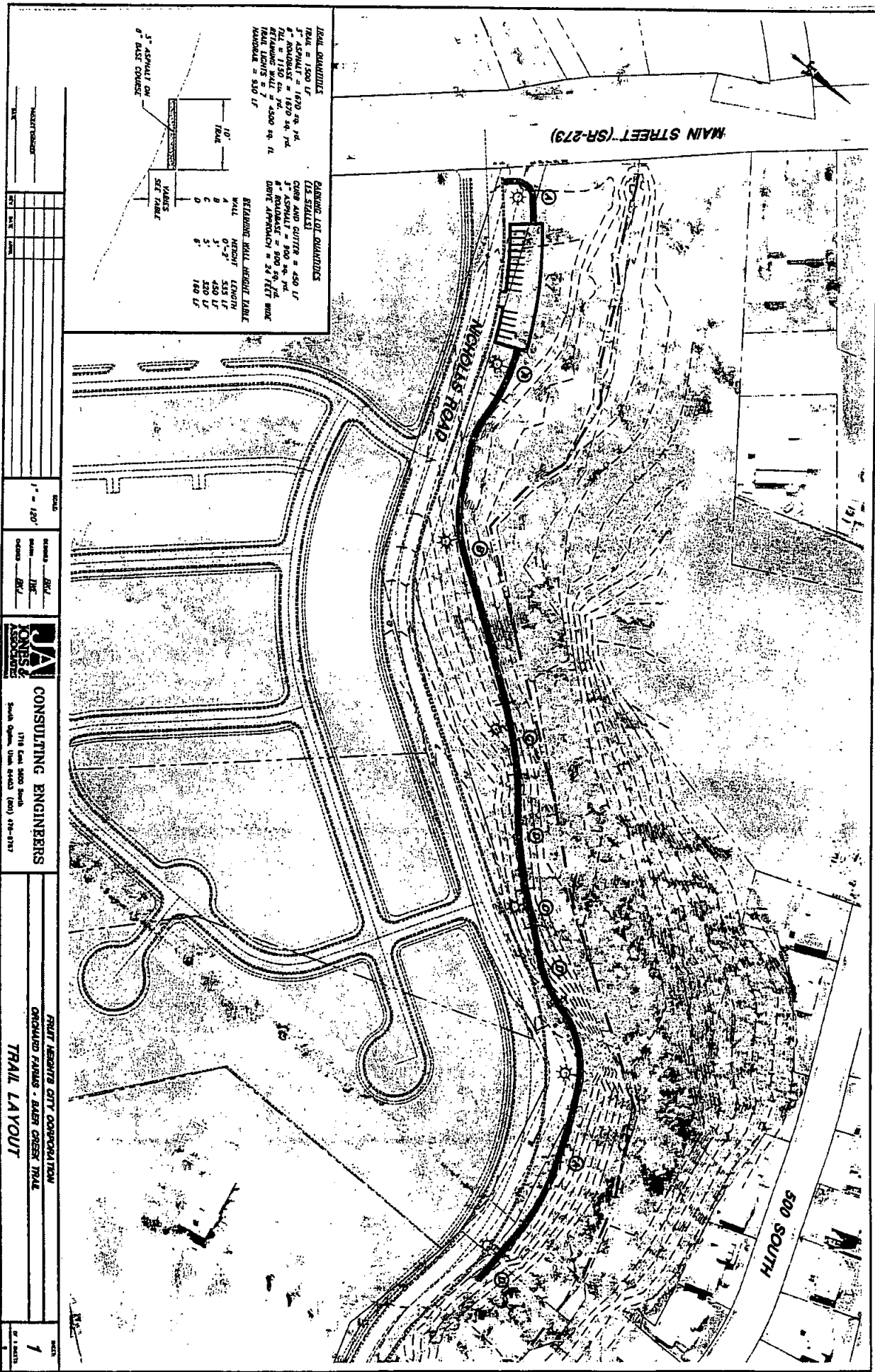
JOHN DEWITT
 ARCHITECT
 1000 N. 10TH ST.
 SUITE 100
 DENVER, CO 80202
 TEL: 303.733.1111
 WWW.JDARCHITECT.COM





ORCHARD FARMS
 Home Development
 27 Ave. 50th St
 Southfield, MI 48034
 734.431.1111
 www.orchardfarms.com

EXHIBIT "F"
Trail Plan



CONSULTING ENGINEERS
 1718 East 3600 South
 South Ogden, Utah 84403 (801) 478-9187

FRUIT HEIGHTS CITY CORPORATION
 ORCHARD FARMS - BERRY CREEK TRAIL
TRAIL LAYOUT

DATE: 1
 OF 1 SHEETS

EXHIBIT "G"
Trail Cost Estimate

Ivory Development Cost Estimate- Baer Creek Trail West End

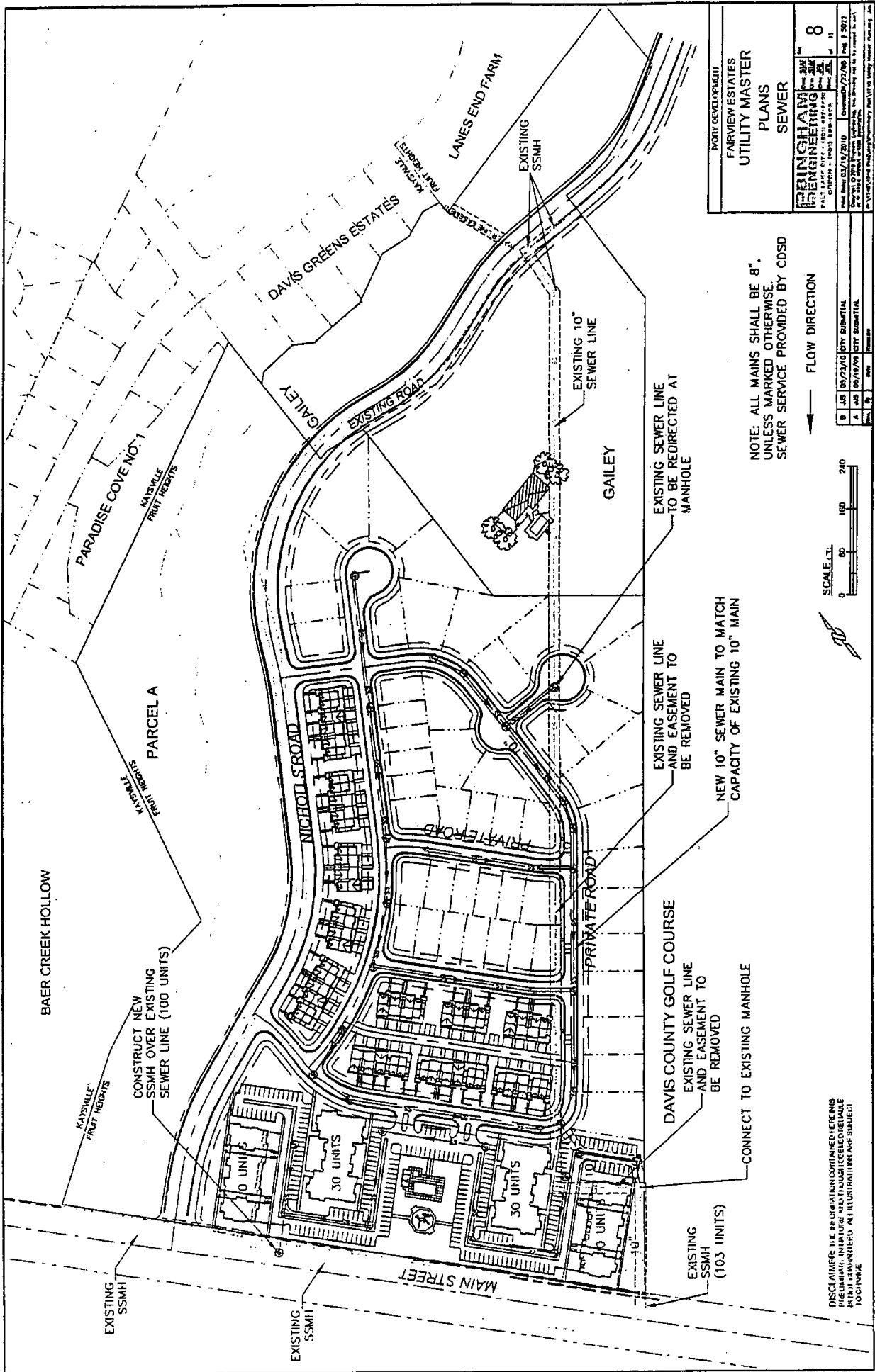
Item	Description	Quantity	Unit	Unit Price	Total	Notes
1	Construct Asphalt pavement trail(3" asphalt over 8" base)	1670	sy	\$16.11	\$26,903.70	
2	Furnish and install imported structural backfill material	2100	ton	\$9.00	\$18,900.00	
3	Construct retaining wall (1'-3' High)	985	sf	\$7.50	\$7,387.50	Rock Retainer
4	Construct retaining wall (4'-6' High)	480	sf	\$8.50	\$4,080.00	Rock Retainer
5	Furnish and install railing along trail	930		\$10.00	\$9,300.00	4' Wrought Iron
6	Furnish and install Trail lights	7	each	\$1,000.00	\$7,000.00	Bollard
Subtotal					\$73,571.20	

Subtotal Project Cost \$73,571.20
 10% contingency \$7,357.12

Overall Total \$80,928.32

EXHIBIT "I"
Open Space Map

EXHIBIT "J"
Utility Master Plans



NORTH DEVELOPMENT
 FAIRVIEW ESTATES
 UTILITY MASTER
 PLANS
 SEWER
 8

BRINGHAM ENGINEERING
 PAUL BRAY, P.E., P.E.C.
 1000 S. 1000 E., SUITE 100
 OGDEN, UT 84403
 TEL: 435-771-7700
 FAX: 435-771-7701
 WWW.BRINGHAMENGINEERING.COM

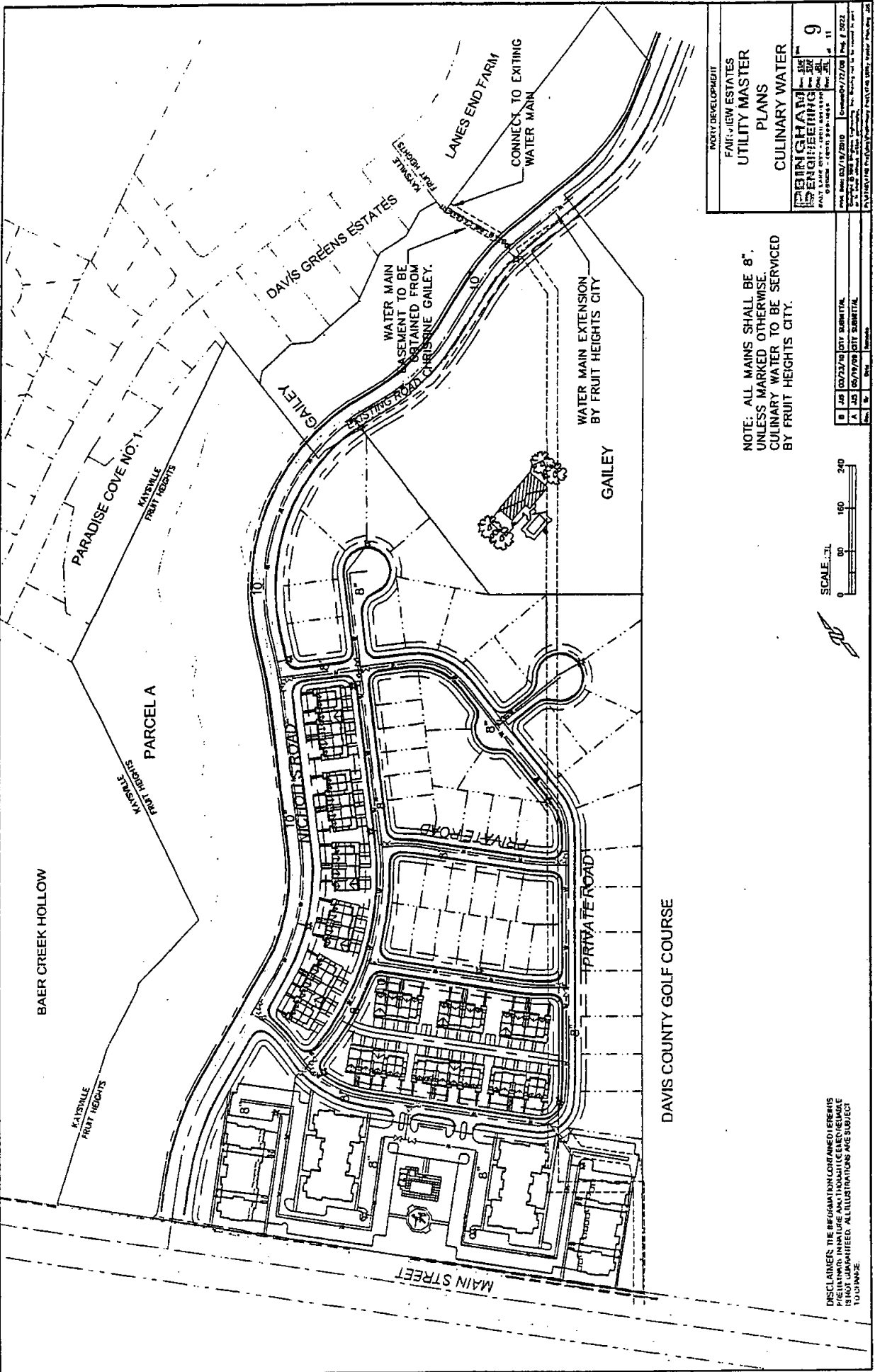
NOTE: ALL MAINS SHALL BE 8"
 UNLESS MARKED OTHERWISE.
 SEWER SERVICE PROVIDED BY CDSO

SCALE: 1" = 40'
 0 80 160 240

FLOW DIRECTION

DESIGNED BY	DATE	BY	DATE
CHKD BY	DATE	CHKD BY	DATE
APPROVED BY	DATE	APPROVED BY	DATE

DISCLAIMER: THE INFORMATION CONTAINED HEREIN IS PRELIMINARY, INCOMPLETE AND TENTATIVE. IT IS SUBJECT TO CHANGE WITHOUT NOTICE. ALL DIMENSIONS ARE SHOWN UNLESS OTHERWISE NOTED.



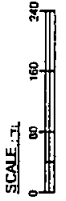
NOTICE/DEVELOPER/OWNER
 FAIRVIEW ESTATES
 UTILITY MASTER
 PLANS
 CULINARY WATER

9

BINGHAM ENGINEERING
 1000 S. 1000 E. SUITE 100
 SALT LAKE CITY, UTAH 84143
 TEL: 313.888.8888 FAX: 313.888.8888
 WWW.BINGHAMENGINEERING.COM

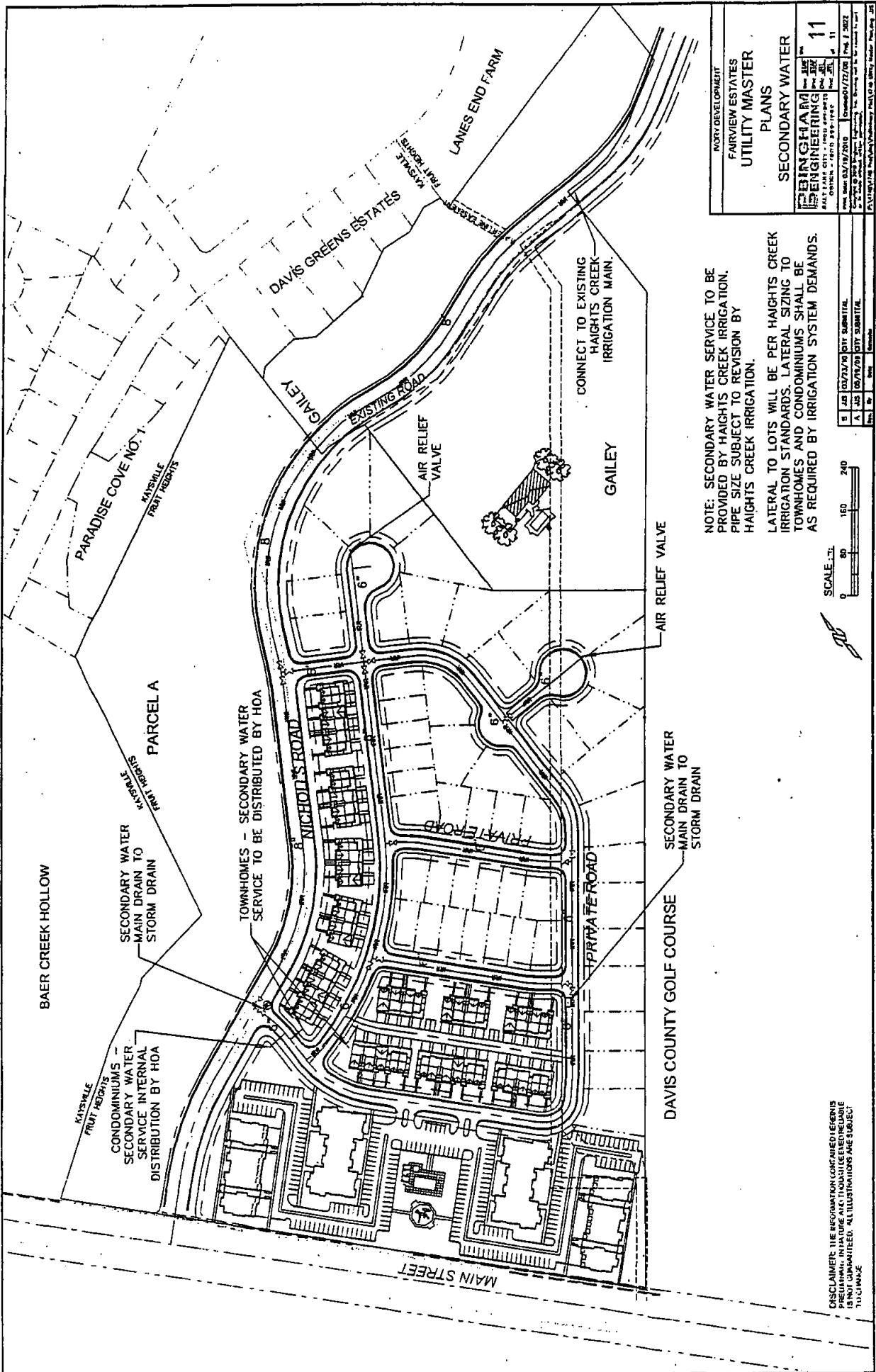
Project No: 03/18/2010 Date: 05/17/2010
 Scale: 1" = 40' 1/2" Sheet No: 9 of 11

NOTE: ALL MAINS SHALL BE 8", UNLESS MARKED OTHERWISE. CULINARY WATER TO BE SERVICED BY FRUIT HEIGHTS CITY.



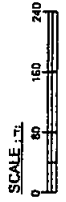
DISCLAIMER: THE INFORMATION CONTAINED HEREIN IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. ALL ILLUSTRATIONS ARE SUBJECT TO CHANGE.

B	JAS	05/23/19	CITY SUBMITTAL
A	JAS	05/19/09	CITY SUBMITTAL



NOTE: SECONDARY WATER SERVICE TO BE PROVIDED BY HAIGHTS CREEK IRRIGATION. PIPE SIZE SUBJECT TO REVISION BY HAIGHTS CREEK IRRIGATION.

LATERAL TO LOTS WILL BE PER HAIGHTS CREEK IRRIGATION STANDARDS. LATERAL SIZING TO TOWNHOMES AND CONDOMINIUMS SHALL BE AS REQUIRED BY IRRIGATION SYSTEM DEMANDS.



NORTH DEVELOPMENT
 FAIRVIEW ESTATES
 UTILITY MASTER
 PLANS
 SECONDARY WATER

B Bingham
ENGINEERING
 1111
 1111
 1111
 1111

PROJECT: 1111
 DATE: 05/19/2010
 DRAWN: 05/19/2010
 CHECKED: 05/19/2010
 SCALE: 1" = 60'

DISCLAIMER: THE INFORMATION CONTAINED HEREIN IS PRELIMINARY AND SUBJECT TO CHANGE WITHOUT NOTICE. THE INFORMATION IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF THE ENGINEER.