


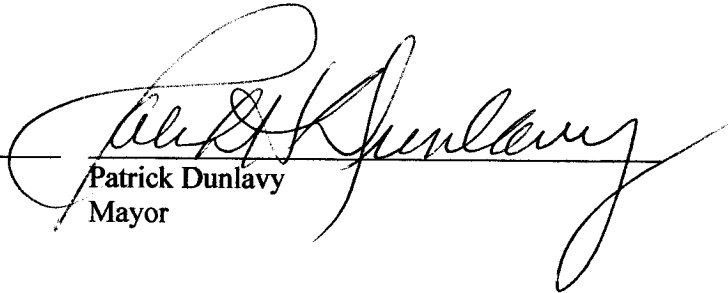
AMENDMENT 5
EXHIBIT B TO DEVELOPMENT AGREEMENT FOR THE OVERLAKE PROJECT AREA

IN WITNESS WHEREOF, the parties have executed this Amendment for purposes of amending Exhibit B to Development Agreement for Overlake Project Area, Tooele City, Tooele County, Utah, By and Between Tooele City, Utah and Tooele Associates, Limited Partnership, a Washington Limited Partnership, which amended Exhibit B is attached hereto and incorporated herein, as authorized by Tooele City Council Resolution 2007-36, by their duly authorized representatives effective as of this 3rd day of July, 2007. The amended Exhibit B is attached hereto and incorporated as Attachment 1, and Resolution 2007-36 is attached hereto and incorporated herein, with its exhibits and attachments, as Attachment 2.

ATTEST:

TOOELE CITY CORPORATION:

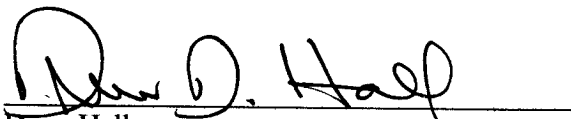

Sharon Dawson
City Recorder

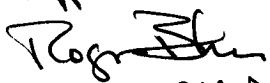

Patrick Dunlavy
Mayor

SEAL:



TOOELE ASSOCIATES L.P.
A Washington State Limited Partnership:


Drew Hall
Managing Partner

Approved as to Form:

Tooele City Attorney

Parcel numbers attached to Amendment #5.

- 11-070-0-0003 Thru 55
- 12-009-0-0002 Thru 2
- 12-035-0-0101 Thru 196
- 12-063-0-0191 Thru 194
- 12-057-0-0201 Thru 415
- 12-105-0-0416 Thru 481
- 13-042-0-0701 Thru 905
- 14-033-0-0902 Thru 903
- 12-062-0-0601 Thru 624
- 13-008-0-0601 Thru 625
- 13-084-0-0896 Thru 901
- 14-004-0-0896 Thru 902
- 12-098-0-0001 Thru 8

- 02-0143-0-0006
- 02-0143-0-0008
- 02-0145-0-0004

- 2-139-1 Thru 41
- 2-139-6

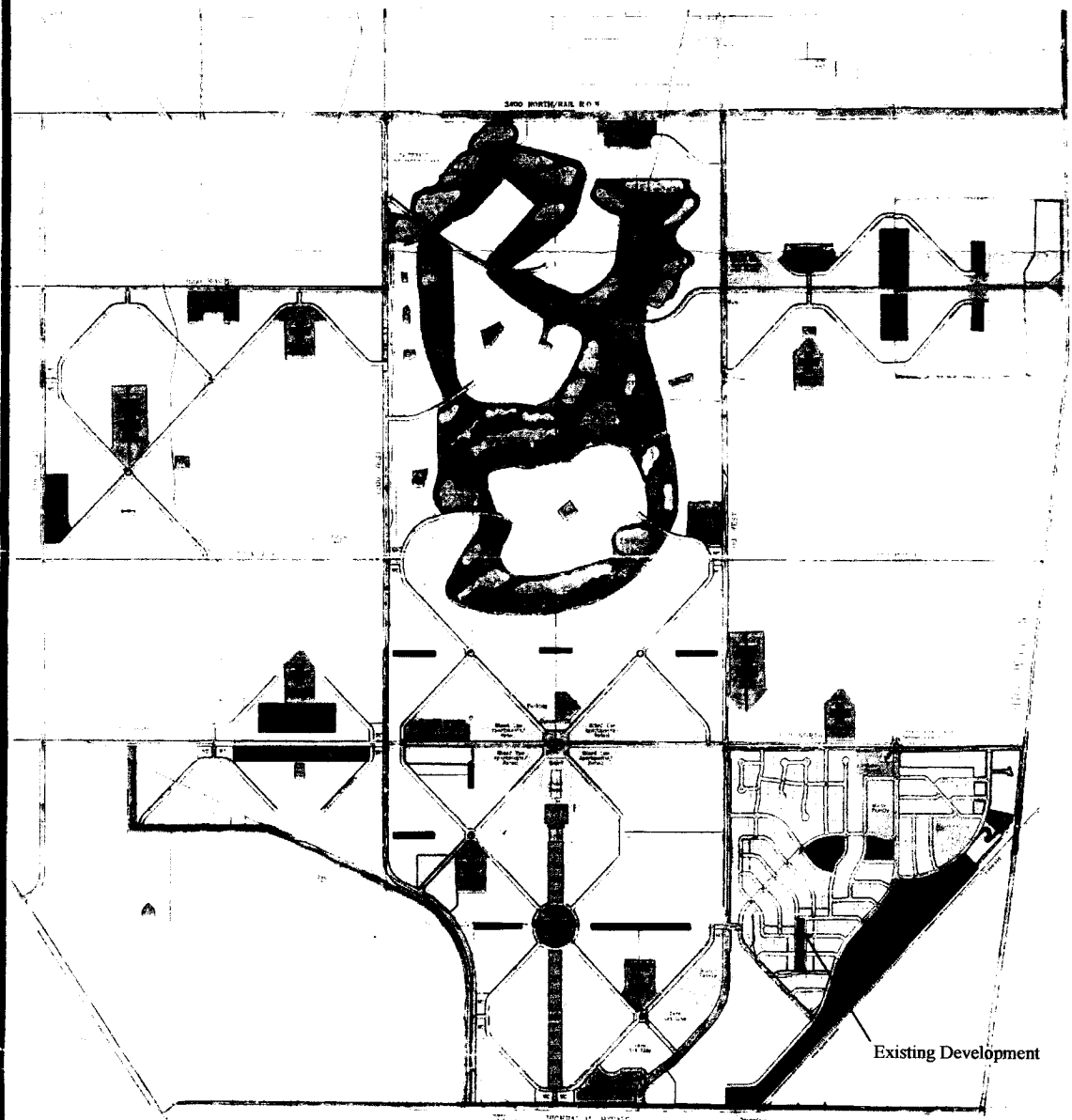
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- 2-145-15
- 2-145-16
- 3-12-2

- 2-142-1
- 2-142-2
- 2-142-4 Thru 6

- 2-126-1
- 2-126-2
- 2-126-6
- 2-126-25
- 2-126-27
- 2-128-1
- 2-128-3 Thru 5
- 2-138-2
- 2-138-3

Attachment 1

Proposed Amended Exhibit B



- Uses
- | | |
|--|---|
| <input type="checkbox"/> Single Family | <input type="checkbox"/> Religious |
| <input type="checkbox"/> Single Family - Zero Lot Line | <input type="checkbox"/> Street R.O.W. |
| <input type="checkbox"/> Multifamily | <input type="checkbox"/> Neighborhood Commercial |
| <input type="checkbox"/> Mixed Use | <input type="checkbox"/> Highway Commercial |
| <input type="checkbox"/> Educational | <input type="checkbox"/> Open Space, Parks, Golf Course |

21 June 2007

This conceptual master plan is under constant review and refinement, and is therefore subject to change and modification.

10-01-07
FRO

Attachment 2

TOOELE CITY CORPORATION

RESOLUTION 2007-36

A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING AN AMENDMENT OF EXHIBIT B TO THE DEVELOPMENT AGREEMENT FOR THE OVERLAKE PROJECT AREA TOOELE CITY, TOOELE COUNTY, UTAH, BY AND BETWEEN: TOOELE CITY, UTAH AND TOOELE ASSOCIATES, LIMITED PARTNERSHIP, A WASHINGTON LIMITED PARTNERSHIP.

WHEREAS, by letter dated January 30, 2007, Tooele Associates, L.P. requested certain amendments to Exhibit B to the Development Agreement for the Overlake Project Area Tooele City, Tooele County, Utah, by and between: Tooele City, Utah and Tooele Associates, Limited Partnership, a Washington Limited Partnership ("Development Agreement") (see the January 30, 2007, letter attached at **Exhibit 1**, and the proposed amended Exhibit B enclosed with the letter attached as **Exhibit 2**); and,

WHEREAS, the process for amending Exhibit B is defined in Development Agreement §XXI, which provides:

This Agreement, together with Exhibits hereto, which are incorporated herein by reference, constitutes the entire Agreement between the City and Tooele Associates and supercedes any prior understandings, agreements or representations verbal or written. This Agreement shall not be amended except in written form, signed and executed by the Mayor on behalf of the City, after approval by the City Council, and after the receipt of a Planning Commission recommendation for any amendments to Exhibits B-K, and by Tooele Associates through its authorized representative.

Thus, any amendment to Exhibit B must: (a) be in writing, (b) be approved by the City Council after a recommendation by the Planning Commission, and (c) be signed by the Mayor and an authorized representative of Tooele Associates, L.P.; and,

WHEREAS, Exhibit B was previously amended through this process, and is contained in Amendment 3 to the Development Agreement, effective October 6, 1999 (see the current Exhibit B, amended by Amendment 3 to the Development Agreement, attached as **Exhibit 3**); and,

WHEREAS, on April 25, 2007, the Planning Commission voted 5-2 to make a negative recommendation to the City Council regarding the proposed amended Exhibit B (see the April 23, 2007, City Administration report to the Planning Commission attached as **Exhibit 4**, and the minutes of the April 25, 2007, Planning Commission minutes attached as **Exhibit 5**); and,

WHEREAS, on May 16, 2007, with the concurrence of Tooele Associates, the City Council voted 5-0 to table action on the proposed amended Exhibit B, allowing Tooele Associates to attempt to resolve the issues raised in the April 23, 2007, City Administration report (see the May 10, 2007, City Administration report attached as **Exhibit 6**, and the minutes of the May 16, 2007, City Council meeting attached as **Exhibit 7**); and,

WHEREAS, on June 7, 2007, Tooele Associates representative, Drew Hall, and Tooele Associates planning/design consultant, Ray Whitchurch, met with City representatives to discuss and resolve the issues raised in the April 23, 2007, City Administration report; and,

WHEREAS, on June 20, 2007, Tooele City received from Mr. Whitchurch proposed revisions to proposed amended Exhibit B (attached as **Exhibit 8**); and,

WHEREAS, by e-mail dated June 20, 2007, Rachele Custer, Tooele City Planner, alerted Mr. Whitchurch to a number of corrections and revisions that Tooele Associates should address before the June 20, 2007, revisions to proposed amended Exhibit B were presented to the Planning Commission and City Council (see e-mail attached as **Exhibit 9**); and,

WHEREAS, on June 27, 2007, the Planning Commission voted 6-0 to recommend approval of the June 20, 2007, revisions to the proposed amended Exhibit B to the City Council, conditioned upon further revisions being made in response to the City Administration report to the Planning Commission and City Council dated June 20, 2007 (see the June 20, 2007, report attached as **Exhibit 10**, and the draft minutes of the June 27, 2007, Planning Commission meeting as **Exhibit 11**); and,

WHEREAS, as of the June 27, 2007, Planning Commission meeting, the revisions requested in Ms. Custer's June 20, 2007, e-mail had not been received by the City, although Mr. Whitchurch has communicated verbally to Ms. Custer that the revisions had been made and would be provided to the City prior to the Planning Commission meeting; and,

WHEREAS, the City Administration recommends that the following language be incorporated into any approval of an amended Exhibit B:

By approving this Resolution and by amending the Development Agreement with an amended Exhibit B, the City does not intend to waive its claims that Tooele Associates has materially breached the Development Agreement and that such breaches excuse and discharge the City's continued performance of the Development Agreement, as the City Council expressed in Ordinance 2005-07. Approval of the proposed amended Exhibit B is subject to Ordinance 2005-07, which provides that the City is awaiting a judicial determination of Tooele Associates' material breaches before ceasing the City's performance of the Development Agreement. Until such judicial determination, it is appropriate for the City to treat the Development Agreement as effective, while preserving and informing Tooele Associates of the City's intention to pursue the City's material breach claims against Tooele Associates.

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that

1. an amendment to Exhibit B to the Development Agreement is hereby approved, as shown in **Exhibit 12** attached hereto; and,
2. the Mayor is hereby authorized to execute on behalf of the City an amendment #5 to the Development Agreement in order to incorporate **Exhibit 12** into the Development Agreement; and,
3. this Resolution and the amendment to Exhibit B authorized thereby shall not constitute an amendment of, or be construed to amend, any other provision of the Development Agreement; and,
4. by approving this Resolution, and by amending the Development Agreement with an amended Exhibit B, the City does not intend to waive its claims that Tooele Associates has materially breached the Development Agreement and that such breaches excuse and discharge the City's continued performance of the Development Agreement, as the City Council expressed in Ordinance 2005-07. Approval of the proposed amended Exhibit B is subject to Ordinance 2005-07, which provides that the City is awaiting a judicial determination of Tooele Associates' material breaches before ceasing the City's performance of the Development Agreement. Until such judicial determination, it is appropriate for the City to treat the Development Agreement as effective, while preserving and informing Tooele Associates of the City's intention to pursue the City's material breach claims against Tooele Associates.

This Resolution is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council
this ____ day of _____, 2007.

Exhibit 1

January 30, 2007

Letter from Tooele Associates



January 30, 2007

Cary Campbell
Tooele City Hall
90 North Main
Tooele, UT 94074

Michael R. Johnson
Tooele City Hall
90 North Main
Tooele, UT 94074

Paul Hansen
Tooele City Hall
90 North Main
Tooele, UT 94074

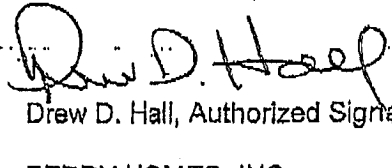
Re: *Proposed Overlake Phase 1L*

Dear Mr. Campbell, Mr. Hansen and Mr. Johnson,

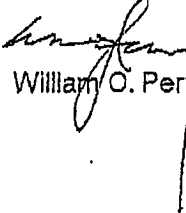
On December 4, 2006, William O. Perry IV on behalf of Perry Homes, Inc., wrote to you requesting an amendment to Exhibit B to the Development Agreement designed to resolve one of the City's concerns with proposed Overlake Phase 1L (the proposed "Exhibit B was attached to the December 4, 2006 letter). Mike Johnson, Chairman of the City Council refused to consider the request unless submitted by Tooele Associates, L.P. While we disagree with Mr. Johnson's position, nevertheless, in an effort to satisfy his request, we write to renew that request on behalf of all Overlake landowners. Please communicate to us the City's response to this request for an amendment to Exhibit B as soon as possible.

Sincerely,

TOOELE ASSOCIATES, L.P.
PERRY/TOOELE ASSOCIATES, LLC
OVERLAKE GOLF, LLC


Drew D. Hall, Authorized Signatory

PERRY HOMES, INC.
L.H. PERRY INVESTMENTS, LLC


William O. Perry IV, Authorized Signatory

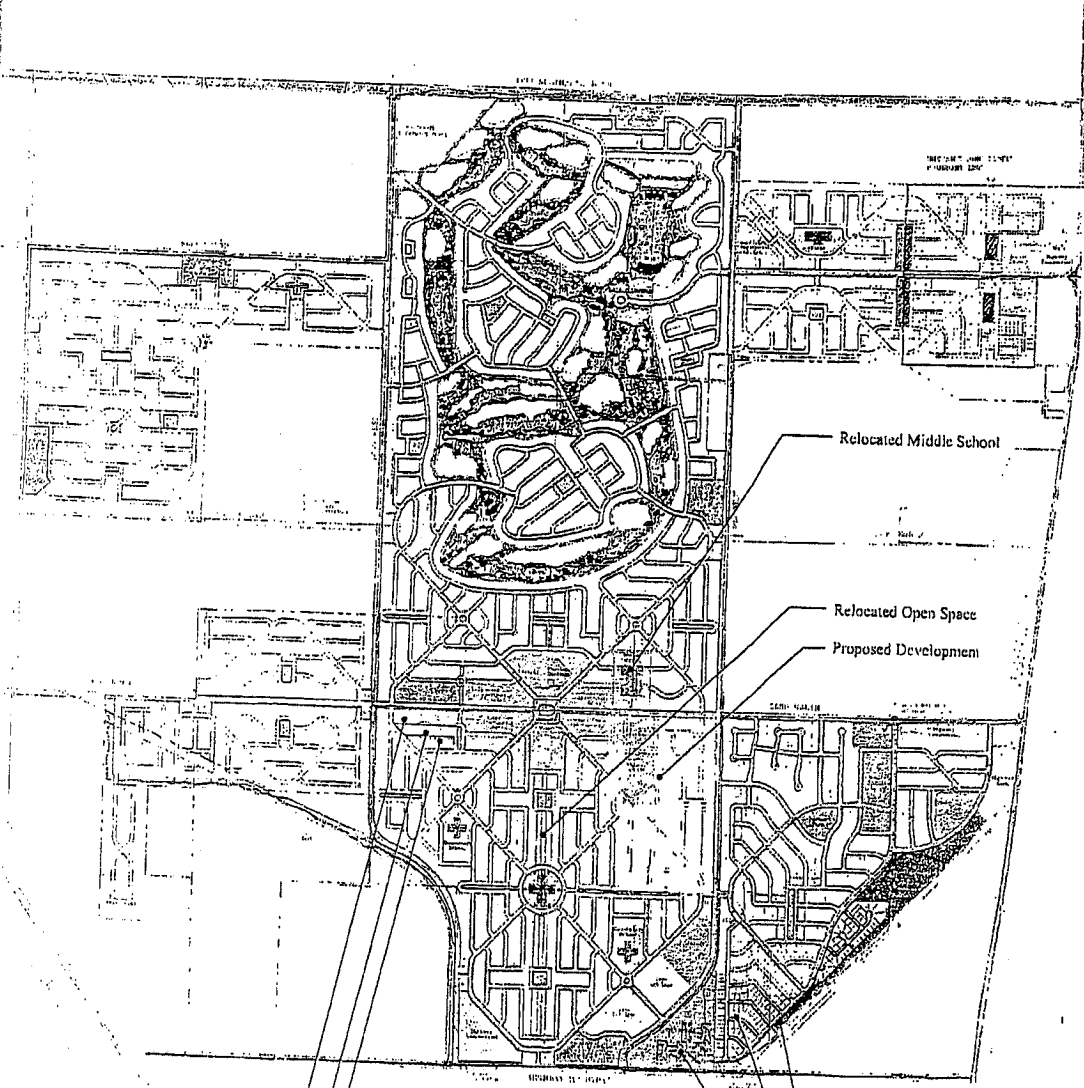
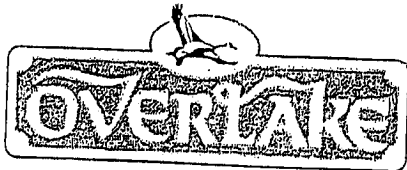
C: Mark A. Larsen
Bruce R. Baird

416 W. 2000 North
Tooele UT 84074-0610
435-843-1087
FAX 435-843-1088

Exhibit 2

Proposed Amended Exhibit B
to the Development Agreement
(dated December 4, 2006)

Proposed Amended Exhibit B



Relocated Open Space
Relocated Zero Lot Line
Relocated Road

Relocated Road
Proposed Development
Moved High School Building

4 December 2006

Exhibit 3

Current Exhibit B

to the Development Agreement

(as amended by Amendment #3 to
the Development Agreement)

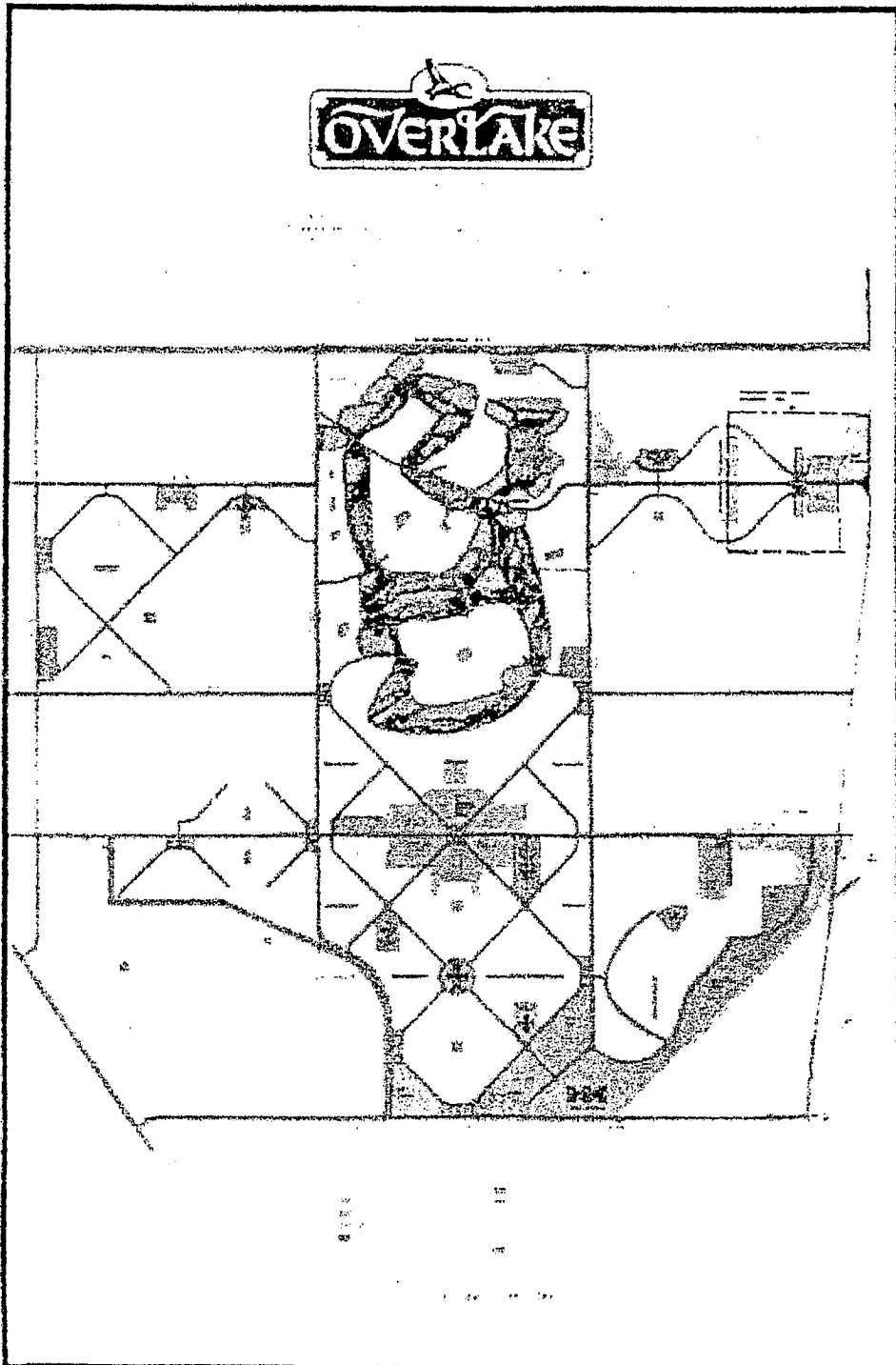


Exhibit 4

April 23, 2007

City Administration Report

Memorandum

To: Tooele City Planning Commission

From: City Administration

Date: April 23, 2007

Re: Tooele Associates, L.P.'s January 30, 2007 request to amend Exhibit B to Development Agreement for Overlake Project Area

By letter dated January 30, 2007, Tooele Associates, L.P. requested certain amendments to Exhibit B to the Development Agreement for the Overlake Project Area Tooele City, Tooele County, Utah, by and between: Tooele City, Utah and Tooele Associates, Limited Partnership, a Washington Limited Partnership ("Development Agreement").

The process for amending Exhibit B is defined in Development Agreement §XXI, which provides:

This Agreement, together with Exhibits hereto, which are incorporated herein by reference, constitutes the entire Agreement between the City and Tooele Associates and supercedes any prior understandings, agreements or representations verbal or written. This Agreement shall not be amended except in written form, signed and executed by the Mayor on behalf of the City, after approval by the City Council, and after the receipt of a Planning Commission recommendation for any amendments to Exhibits B-K, and by Tooele Associates through its authorized representative.

Thus, any amendment to Exhibit B must: (a) be in writing, (b) be approved by the City Council after a recommendation by the Planning Commission, and (c) be signed by the Mayor and an authorized representative of Tooele Associates, L.P. Exhibit B was previously amended through this process, and is contained in Amendment 3 to the Development Agreement, effective October 6, 1999. Attached are the current Exhibit B in color, and the proposed amended Exhibit B in black and white.

City Administration Recommendation. The City Administration recommends that approval of the proposed amended Exhibit B (the "Proposal") be denied, for reasons stated below.

Reasons for City Administration Recommendation.

- The proposal does not fulfill the defined purpose of Exhibit B set forth in the Development Agreement. Under the Development Agreement, the purpose of Exhibit B is to "identif[y] the location of all uses (the 'Use Areas') for the Overlake Project Area, including residential, commercial, parks, community, uses, and other uses, and the configuration of all 'Collector' and 'Sub-Collator' streets. The Overlake Development Plan shall be the basis for, and shall control

the presentation of all preliminary and final subdivision plats and site plans presented to the City for approval.” (Dev. Agr. § III.A.)

- The Proposal was submitted to accommodate the proposed Phase 1L plat, but fails to integrate the transportation network of the proposed Phase 1L plat and the remainder of the Overlake street network.
- The Proposal would have at least three streets dead-end into the backs of home lots.
- The Proposal would have at least two streets, including a collector street, dead-end into the high school site.
- The Proposal would have home lots on a substantial portion of the high school site.
- The Proposal would have a middle school site in close proximity to an existing junior high school.
- The Proposal would have home lots on a substantial portion of the regional park site.
- The Proposal would effectuate a drastic reconfiguration of the regional park site, leaving much of it unusable for regional park purposes.

Exhibit 5

April 25, 2007

Planning Commission Meeting Minutes



TOOELE CITY PLANNING COMMISSION

April 25, 2007

Minutes

Community
Development

Place: Tooele City Hall Council Chambers
90 North Main Street, Tooele, Utah

Commission Members Present:

Shawn Milne, Chair
Phillip Montano
Jerald Sagers
Bob Gowans
Ken Spence
John Curwen
Gary Searle
Councilman Scott Wardle

Commission Member Excused:

Fran Garcia

City Employees Present:

Rachelle Custer, City Planner
Richard Jorgensen, Land Use Technician
Cary Campbell, Public Works Director
Roger Baker, City Attorney
Paul Hansen, City Engineer

Minutes prepared by Elisa Jenkins

The meeting was called to order by Chairman Milne at 7:02 p.m.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Commissioner Curwen.

2. Recommendation on a request from Tooele Associate, L.P., to amend Exhibit B to the Development Agreement for Overlake Project Area, also known as the Development Plan for the Overlake Project Area.

Presented by Rachelle Custer

Ms. Custer explained that Tooele Associates is requesting an Amendment change to Exhibit B of the Overlake Development Agreement. They are requesting subdivision changes. The City Administration recommends that approval of the

proposed amended Exhibit B be denied for reasons stated in the commissioner's packet.

Bill Perry with Perry Homes, acting for Tooele Associates addressed the commissioners. He would like to discuss the request to amend Exhibit B. There is currently litigation between Tooele Associates, Perry Homes, a number of other parties and the City of Tooele. Tooele Associates has been trying to further the development of Overlake by proceeding to obtain approvals from the Planning Commission and the City Council. In every instance so far they have been "thwarted" in their ability to do so. What they are seeing in this recommendation from the staff is nothing more than a continuation of an obstruction. They have every intention of seeing this litigation through to the very end no matter what the outcome, whether they win or loose. They feel that their constitutional rights have been "trampled" on by the city. Mr. Perry stated that seven months ago they started trying to get these plats to a City Council Hearing.

In respect to Exhibit B, this is only a Concept Plan. This master plan is under constant review and is therefore subject to change and modification. During the history of the Overlake Project the Concept Plan has been amended on at least three different occasions. During each of those amendment processes there was not nearly the rigor shown toward commenting or obstructing the amendments as there has been in this case. Their request to amend Exhibit B, is simply to "jump through a hurdle" imposed by the city administration in order to get this plat before the commissioners and the City Council in order to be heard. The city has provided no constructive input on this Exhibit, they said to propose an amendment to Exhibit B and that is what they are trying to do. They feel this is a good faith effort on their part. He stated that the city has realized tremendous benefits with the Overlake project, the city has gotten acres of free land, and they got a multi million dollar public park facility in the Overlake Golf Course. After the city benefited from this he feels they experienced "buyer's remorse". He doesn't know where the resistance is coming from; they have given the city 99% what they bargained for and have got very little in return. They have done what the city has asked them to do, it is a legitimate proposal. He asks that the commissioners make a positive recommendation on the amendment of Exhibit B.

Commissioner Montano stated that the commissioners have no knowledge of the litigation between Tooele Associates and Tooele City, because they are not involved in that.

Mr. Perry stated that he would like to answer questions, as to the facts surrounding the litigation. He stated that the citizens of Tooele should know why the city is not trying to resolve this and instead of is spending millions of dollars in legal fees.

Commissioner Searle stated that he does not think it appropriate to listen to litigation.

Drew Hall of Tooele Associates addressed the commissioners. He wanted to address two issues. 1) This concept plan was drawn up in 1997, it has to be updated. There is a need for constant change. There is a place for a high school, but they are not sure where. They were going to donate property for a High School but it was turned down. 2) Park issue – they were under the impression that the park impact fees would stay in Overlake. The city had a chance to buy property at \$5,000 an acre for park property. Mr. Hall said that one of the problems the staff had is with the streets that dead-end. He stated that street objections can be addressed as plats come forward. Things move around in a Concept Plan.

Mr. Baker stated that he does not believe that it is appropriate to discuss litigation matters at this meeting. It is an attempt to confuse the issue. As per the city administration recommendation, he stated that the request for Exhibit B is not consistent with the Development Agreement. It is not in the public's best interest to approve Exhibit B. That is their recommendation.

Commissioner Searle commented that in the year 2000 he and his wife were looking at new homes and they looked at Overlake, he remembers seeing a map of Overlake and it was made clear that it was a Concept Plan.

Mr. Milne commented that there is ongoing litigation with Tooele Assoc. and he trusts the staff to make the appropriate recommendations.

Mr. Baker reminded the commissioners that Exhibit B is more than a mere Concept Plan and amending it requires action of the Planning Commission and the City Council.

There was confusion of the roads that dead-end. Mr. Baker showed the Commissioners on the map the roads that dead-end, that the staff is referring to in the memo.

Commissioner Searle is opposed to roads that dead-end because they cause too many public safety issues. He asked if the recommendations can be worked on with the staff and presented at a future meeting.

Mr. Hall commented that he can re-do the dead-end streets and present in the future a revised Exhibit B without the dead-end streets. He also stated that this Exhibit was submitted in December, and he just got the city administration recommendation on April 24, 2007.

Mr. Baker stated that it was disingenuous of Mr. Hall to claim that he only received notice of the City's concerns yesterday. He stated that the Mayor sent a letter dated April 16th informing Tooele Associates of the issues. Mr. Hall was notified in advance.

Commissioner Montano stated that the issue of dead-end streets has come before them before. It creates too many problems. Which developer will pick up the dead-end road to be re-figured?

Commissioner Searle moved to table the recommendation to the next Planning Commission meeting held on May 9, 2007 to give Mr. Hall time to fix the suggestions made by staff. Commissioner Curwen seconded the motion.

The vote was as follows:

Commissioner Milne, no
Commissioner Montano, no
Commissioner Sagers, no
Commissioner Gowans, no
Commissioner Spence, yes
Commissioner Curwen, yes
Commissioner Searle, yes
The motion did not pass.

Commissioner Sagers stated that he felt he has been placed in an awkward position. The Commissioners are being drawn into the litigation aspect of which they know nothing about. He understands how the developer feels and he understands the city.

Commissioner Searle moved to make a recommendation to the City Council to approve a request from Tooele Associate, L.P, to amend Exhibit B to the Development Agreement for Overlake Project Area also known as the Development Plan for the Overlake Project Area. Commissioner Curwen seconded the motion. The vote was as follows:

Commissioner Milne, no
Commissioner Montano, no
Commissioner Sagers, no
Commissioner Gowans, no
Ken Spence, no
John Curwen, yes
Gary Searle, yes
The motion did not pass.

Commissioner Gowans moved to deny a request from Tooele Associate, L.P. to amend Exhibit B to the Development Agreement for Overlake Project Area also known as the Development Plan for the Overlake Project Area as presented by the staff. Commissioner Sagers seconded the motion. The vote was as follows:

Commissioner Milne, yes
Commissioner Montano, yes
Commissioner Sagers, yes
Commissioner Gowans, yes

Commissioner Spence, yes
Commissioner Curwen, no
Commissioner Searle, no

Mr. Baker wanted to clarify that he was not denying that a fax was sent to Mr. Hall yesterday, April 24, 2007. He was simply stating that a letter had been sent to him earlier in the month discussing the same issues.

Mr. Hansen wanted to clarify for the public that this item still goes to City Council; it goes with a negative recommendation.

3. **PUBLIC HEARING and MOTION Conditional Use Permit to allow tents for up to five months in the Wal Mart parking lot to protect large merchandise from weather and to keep lot clean at 99 W 1280 N by Wal Mart Stores.**

Presented by Rachelle Custer

Ms. Custer explained Wal-Mart has a Conditional Use Permit for the outside garden center. They have requested tents be set up in the outside garden center. Staff feels that erecting tents is an expansion to that use and is requiring a Conditional Use Permit. They have requested the tents be up for five months. Because this is beyond the 45 day time frame for a special occasion a conditional use permit is required.

Diamond Rental applied for a building permit for the tents on March 13, 2007. The tents were set up on March 17, 2007. Ms. Custer talked with Patrica Fail with Diamond Rental on March 19, 2007 and informed her because of the length of time a CUP was required. Ms. Custer spoke with Margo at Wal-Mart and asked what the status was on the CUP application on April 6, 2007. Wal-Mart applied for the CUP on April 6, 2007.

Chairman Milne asked who was responsible in obtaining a building permit for the tents. Ms. Custer stated that Diamond Rental erected the tents so they are responsible in obtaining a building permit. Chairman Milne noted that there was almost a three week time span from when the building permit was submitted to set up the tents and the date that the Conditional Use Application was submitted.

Amy Chidester and Margo Davis addressed the commission on behalf of Wal-Mart. They apologized for the miscommunication with Diamond Rental. Ms. Chidester stated that Wal-Mart was not aware that they needed a Conditional Use Permit to set up the tents. They apologized that things were not done in the proper order and they did not comply with the law. As soon as they became aware of the need for a CUP, they were at the city that day to apply.

Commissioner Gowans stated that he was disturbed that the tents were put up without a building permit. He stated that he and Commissioner Searle were at the

Exhibit 6

May 10, 2007

City Administration Report

Memorandum

To: Tooele City Council

From: City Administration

Date: May 10, 2007

Re: Tooele Associates, L.P.'s January 30, 2007 request to amend Exhibit B to Development Agreement for Overlake Project Area

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Thus, any amendment to Exhibit B must: (a) be in writing, (b) be approved by the City Council after a recommendation by the Planning Commission, and (c) be signed by the Mayor and an authorized representative of Tooele Associates, L.P. Exhibit B was previously amended through this process, and is contained in Amendment 3 to the Development Agreement, effective October 6, 1999. Attached are the current Exhibit B in color, and the proposed amended Exhibit B in black and white.

City Administration Recommendation. The City Administration recommends that approval of the proposed amended Exhibit B (the "Proposal") be denied, for reasons stated below.

Reasons for City Administration Recommendation.

- The proposal does not fulfill the defined purpose of Exhibit B set forth in the Development Agreement. Under the Development Agreement, the purpose of Exhibit B is to "identif[y] the location of all uses (the 'Use Areas') for the Overlake Project Area, including residential, commercial, parks, community, uses, and other uses, and the configuration of all 'Collector' and 'Sub-Collator' streets. The Overlake Development Plan shall be the basis for, and shall control the presentation of all preliminary and final subdivision plats and site plans presented to the City

for approval.” (Dev. Agr. § III.A.)

- The Proposal was submitted to accommodate the proposed Phase 1L and Sugar Plum plats, but fails to integrate the transportation network of the proposed Phase 1L and Sugar Plum plats and the remainder of the Overlake street network.
- The Proposal would have at least three streets dead-end into the backs of home lots.
- The Proposal would have at least two streets, including a collector street, dead-end into the high school site.
- The Proposal would locate home lots on a substantial portion of the high school site.
- The Proposal would locate a middle school site in close proximity to an existing junior high school.
- The Proposal would locate home lots on a substantial portion of the land reserved for a future public regional park.
- The Proposal would effectuate a drastic reconfiguration of the regional park site, leaving much of it unusable for regional park purposes.

Exhibit 7

May 16, 2007

City Council Meeting Minutes

**Tooele City Council
Business Meeting Minutes**

Date: Wednesday, May 16, 2007
Time: 7:00 p.m.
Place: Tooele City Hall Council Chambers
90 North Main Street, Tooele Utah

City Council Members Present:

Mike Johnson, Chair
Scott Wardle
Steve Bevan
Steve Pruden
John Hansen

City Employees Present:

Patrick Dunlavy, Mayor
Roger Baker, City Attorney
Glen Caldwell, Finance Director
Paul Hansen, Contract City Engineer
Cary Campbell, Public Works Director
Sharon Dawson, City Recorder
Lisa Carpenter, Deputy Recorder/City Council Liaison
Rachelle Custer, City Planner
Lieutenant Jorge Chilico
Officer Don Nelson
Sergeant Adrian Day

Minutes prepared by Elisa Jenkins

The meeting was called to order by Chairman Johnson at 7:02 p.m.

1. **Pledge of Allegiance**

The Pledge of Allegiance was led by Councilman Pruden.

2. **Mayor's Community Recognition Awards**

Presented by Mayor Patrick Dunlavy and Councilman Pruden.

Councilman Pruden explained that this award recognizes the youth in Tooele. The Elementary students are honored at the first meeting of the month and the secondary students are honored at the second meeting of the month. The students are recognized by their administrators and teachers for being outstanding citizens. He then presented the Mayor's Community Recognition Awards to the following students:

Chairman Johnson asked why Tooele Associates is not fixing the problems that the engineer they hired recommended. Mr. Baird responded that they did not submit a punch list; the punch list comes back from the city. What they submitted is what all developers submit, a set of engineered as-builds, it does not show interior fixes. The response from the city was this is sort of what we know of now, but is not final; we will get back to you later. No reputable developer in this situation and given the litigation is going to at his own risk take care of something only to come back later and say that it wasn't fixed the way they wanted it fixed. In five months they could have had some items fixed. As soon as they get the list they will get the items fixed. It is in their interest to take away every excuse the council has in turning down their plats, so they can move forward. Mr. Baird is glad to hear they will have it in a week.

Mr. Drew Hall addressed the council. He has a document signed that Phase 1B is complete. Some of these phases have been finished for ten years and they hope to have some leeway, there will be some normal wear and tear to these subdivisions. He admits that an engineer submitted some as-builds that were poorly done. The as-builds have been corrected now, and hopes to get items completed that need to be done.

Councilman Hansen moved to close the Open forum. Councilman Wardle seconded the motion. All members present voted "Aye". The Open Forum closed at 7:49 p.m.

5. **PUBLIC HEARING and MOTION on Tooele Associates, L.P.'s
January 30, 2007, Request to Amend Exhibit B to Development
Agreement for Overlake Project Area.**

Presented by Roger Baker

Mr. Baker explained that Tooele Associates, L.P. (TA) has made a request to make certain amendments to Exhibit B to the Development Agreement for the Overlake Project. That Exhibit is referred to in the Development Agreement as the Development Plan for Overlake. What the council has before them is Exhibit B as it exists today as it was approved by both parties several years ago. The council has in their packets the city administration recommendation to deny the proposed amended Exhibit B, with the reasons set forth in the summary to the council. Their transportation system for the proposed Phase II subdivision is not integrated with the larger project. The proposed Sugar Plum subdivision takes a huge chunk of property set aside for a future public regional park. The city administration does not believe that this is in the best interest of the city or the Overlake subdivision. There are a number of inconsistencies such as roads, potential lots, the school sites and other items of that nature. The city wonders why this amendment is necessary, why isn't the Exhibit alright the way it stands now, why Overlake can't be developed under the current Exhibit B.

Chairman Johnson understands that an application for a subdivision has been made, which is now tied into the need to amend Exhibit B.

Mr. Baker responded that any amendment to Exhibit B must be in writing, and be approved by the City Council after a recommendation by the Planning Commission. The Planning Commission made three motions at their meeting held April 25, 2007 regarding amending Exhibit B. 1) The first motion was made to table, to allow TA to fix suggestions made by staff, the vote was 4-3, and the motion did not pass. 2) The second motion was to amend Exhibit B, the vote was 5-2, and the motion did not pass. 3) The third motion was to deny the request to amend Exhibit B, the vote was 5-2, and this motion did pass.

Chairman Johnson stated that this was a public hearing.

Mr. Bruce Baird addressed the council. He finds it unusual for the city attorney to give the staff report, he has never seen this in his more than twenty years of development practice. He has never seen a staff report before without any back up, there is nothing in the staff report that indicates anybody with qualifications has reviewed it. He would like to comment on the Planning Commission meeting. TA received the staff report just a few days before the Planning Commission meeting. It was not clear on which streets dead-end and needed to be fixed. He feels it is irrelevant because this is a concept plan. Concept plans don't have dead-end streets, they have big pictures, they do not show that kind of detail. Mr. Baird stated that Mr. Baker told the council tonight that the Planning Commission voted negatively on this recommendation. Technically that is true, he asks the council to listen to the tape, because he did listen to the tape and he feels like they were "brow beaten" by Mr. Baker.

Councilman Wardle stated that he was at the Planning Commission meeting and the statement about being "brow beaten" by Mr. Baker is not true.

Mr. Baird stated that the Development Agreement and a Concept Plan are always a look ahead plan. As the market condition changes, and factors change, such as the city taking park impact fees away from TA, such as the change for the high school site. Concept Plans are always changing. Mr. Baird does not understand the first bullet point from the staff. This Exhibit B has been amended by the council three times in the past. The first time was to change the high school site. The second time was to add the John Tooele Property in the northeast corner. The third time was to move the alignment of 400 west. Those were reasonable based requests. Another basis in the staff report for denial was that home lots were located on the high school site, those are proposed to be moved. TA stands ready, willing and able to discuss with the city the appropriate locations for those sites. That's how concept plans are normally done; the city's planning department working in good faith with the developer, proposes a change, both parties agree on it, it then comes to city council and then is a done deal. If the city denies the

concept plan he guarantees further litigation, and TA will be back with a new Exhibit B addressing every issue to address. He feels that it will get to the point that a judge will say, you have no legitimate basis to turn their request down. If they have to change the layouts they will change the layouts. If the council wants to approve they should approve Exhibit B, if they want to deny, then deny it and there will be more litigation. If the council approves the changes to Exhibit B it will produce revenue for the city in the way of building permits and fees, and more residents. It will save the city money in court fees. There is no reason to turn down this proposal. If there are comments from the audience he asks the council to strive to keep the comments to the issue at hand. Mr. Baird will be happy to answer any questions.

Chairman Johnson asked Mr. Baird to put aside the litigation for a moment. All the city is doing is a development agreement which is a contract between the city and TA. Chairman Johnson understands that developer is asking the city to amend the contract. He has not heard a good reason to do so. What does the city get by amending the contract? The city staff has told the council that there are problems with the proposed amended Exhibit B. Putting aside all of the other issues, he wants to know why this is good for the city and why should the council approve the amendments to Exhibit B.

Mr. Baird responded that there is no legitimate harm to the city to approve; there is no good reason to turn down the proposal. Concept plans by their nature, as everybody can testify, are simply plans that will have to be changed in the future.

Councilman Wardle stated that Mr. Hall told the Planning Commission that he would fix the dead-end streets. He wonders why this has not been done yet, and why the staff's recommendations have not been taken care of.

Mr. Baird responded that TA did not receive the staff's recommendation until the day before the last meeting, which gave them no time to do so. This is not a final plat approval, it is a concept plan. If the council would like to approve this development subject to TA bringing to the city engineer, or someone in the city, a plan that shows those dead-end streets removed they would be happy to do so.

Mr. Drew Hall addressed the council. He stated that Commissioner Searle made the recommendation at the Planning Commission Meeting to table this motion so that TA could fix the problems in the staff report, but the motion was denied. That is a reasonable request. It is unreasonable to assume how over a twenty year period that things would not change. That is why this is a concept plan and it is always changing. They are perfectly happy to look at density, and park properties and all the other acreages. They are trying to move things around because things have not turned out how they were on the initial map. They knew when they did the map, things would change. He would like to address the park issue; he thought that he had an agreement with the city that they could purchase park property (150 acres) for \$5,000 an acre. In exchange the park impact fees would

stay in Overlake. They are not removing the park; they are simply moving it to another area. One improvement that would be made is that 400 West would be completed; this would be in the best interest of the city. Aaron Drive would also be completed. They are not increasing density, and they are not dealing with lot sizes right now, those are plat issues. They are trying to move a few pieces around which is normal. In 1997 how could the city envision what the city would look like today? It is the same thing for them; they are trying to move things around so they will work. He also would like to address the school issue. Mr. Hall's requirement was that the school is a walkable school and so the School District decided to move it across the street. He can't control where the School District purchases property. Mr. Hall has no money to build parks; the city told TA that Overlake doesn't need any more parks right now. The intention of Exhibit B is a concept plan and it would be changed on a regular basis, they did not expect to have the type of opposition that they are getting.

Chairman Johnson stated that they have had the staff recommendations for a certain amount of time.

Mr. Hall wanted to clarify that he received the staff recommendation two days before the Planning Commission Meeting that was held April 25, 2007. Mr. Hall indicated that the city claimed they had sent an earlier letter addressing the same issues, but he never saw it. Councilman Searle made a motion to allow Mr. Hall to fix the issues in the staff report, but that motion was denied.

Councilman Hansen stated that he would like to see this issue tabled so that Mr. Hall could address the staff recommendations. Mr. Hall stated he would accept that.

Chairman Johnson stated that this is a public hearing.

Melanie Hammer, a resident of Overlake addressed the council. Ms. Hammer has lived in Overlake for nine and a half years. Ms. Hammer attended the Planning Commission meeting referred to by Mr. Baird. She did not witness a "brow beating" by Mr. Baker, but she did witness a lively discussion about what is best by all involved. She wants what is best for her family and her neighbors. She looked at the master plan on the wall of the Overlake selling trailer ten years ago when she built her house; she understands that things have changed. She understands a concept plan, but she is against anything that takes the Regional Park from Overlake. There are many things in Overlake that have not come to pass and there are many things that are not finished. She stated that 400 West is an eyesore, and 2000 North was landscaped a few years ago and the landscaping has died. She has a hard time believing that the regional park will be moved somewhere else. Ms. Hammer asked Mr. Baird who would build a home right next to the railroad tracks and he assured her that they would be nice homes. She does not want to see more multi-family homes in Overlake; there are enough there

now. Ms. Hammer stated that Tooele City needs more parks, the parks are overcrowded.

Maresa Manzione, a resident of Overlake also addressed the council. Her house was the fifth home built in Overlake. She has some concerns about moving the Regional Park in Overlake. She understands that it may not be built any time soon, but she is concerned that it will never be built according to the proposed amended Exhibit B. There is a need for this park, her kids play softball and they play until all hours of the night to try to accommodate everyone. Ms. Manzione also has not seen a lot of things come to pass that she was promised. She understands a concept plan and that things change. She was told that the same house would not be built next to each other, and was also told that larger homes would be intermixed with smaller homes to keep their property value up; they were also told that garage entrances would be in the back or on the side. Ms. Manzione stated that all of these items have changed since she moved in. She doesn't believe that Mr. Hall will take the Regional Park and move it.

Mr. Tim Fullmer is a resident of Overlake, and an employee of Tooele City. He has not lived in Overlake very long. He moved out of the Salt Lake area to this particular neighborhood because of character of this neighborhood. What he sees with the desire to change Exhibit B is to change the character of the neighborhood. He understands a Concept Plan and that things change. Of the 201 lots that Overlake has proposed, 79% of them have lots that are less than 7,000 feet. They are proposing a series of small homes on small lots. That would be in direct contradiction to the intent of the agreement, which is "they want a creation of a quiet safe pedestrian oriented neighborhood, with a balance mix of lot sizes that would encourage a heterogeneous mix of homeowners, first time homeowners, single persons, family". He is opposed to changing Exhibit B, because it will change the character of the neighborhood.

Kathryn Lowe, a resident of Overlake resident addressed the council. She has lived in Overlake for five years; she lives across the street from where the proposed park is supposed to be. When she purchased her home the proposed park was a factor. Ms. Lowe understands a Concept Plan. It would be nice if TA would show the residents where they propose to move the park. Ms. Lowe stated that if Mr. Hall would attend the homeowners meeting he would realize that all of the residents are waiting for the park. This is a concept that the residents "bought into" when they chose to move to Overlake.

Mr. Bill Perry Jr., with Perry Homes, they are also part of the litigation with TA and Tooele City, addressed the council. They have economic interests in Overlake, and feel like they have been dealt with unfairly. Concept Plans have to change, with the very size of this project Concept Plans are going to change, and this won't be the last time. The Development Agreement (DA) requires that they have a number of lot sizes that require a certain size of home. If the council would look at the 13-14 locations that Perry Homes is building in Salt Lake County right

now. They have a substantial number of house plans that range from \$250,000 to over \$1 million. If Perry Homes is ever able to develop in Overlake, it is their intent to include a wide mix of quality residential construction in harmony with the DA. He wants to say to the residents that have raised concern, that by amending Exhibit B, it does not amend the intent of the DA, the Regional Park, or the open space or the mix of houses. This particular amendment does not in any way propose to change the DA. The Concept Plan shows that most of the large lots will be interspersed with the golf course, and probably around park space.

Councilman Wardle stated that he was concerned about changing the regional park, and having houses too close to the railroad track. There was an incident in Salt Lake where the train shook the foundation of homes next to the railroad tracks. Mr. Perry stated that an engineer would be hired during the planning process to determine how far away from the railroad tracks homes need to be.

Mr. Perry stated that there might not be a need to move the park space in Overlake if they had the funds available from the city to build the parks. They would probably be willing to build the park. There are no funds to build parks in Overlake, he wants the residents to know that.

Mr. Hall stated that there are parks along the railroad tracks and between the homes. The homes are further away from the railroad tracks than e.g. Tracks in Salt Lake. He wants the council to understand there is still room for a Regional Park in Overlake. Councilman Wardle wanted to know what the buffer zone is between the railroad tracks and the homes. Mr. Hall replied that it is what is required, he stated probably 240-250 feet. Lenders have requirements about building by railroad tracks.

Mr. Perry stated that those issues are plat issues, not concept plan issues. There have already been changes to the concept plan. They are here with a concept plan, trying to get the council's approval. Mr. Perry stated that if the concept plan doesn't get approved, they will make changes to the criteria that the council wants and be back.

Councilman Hansen understands a concept plan. He doesn't feel comfortable approving without a positive recommendation from the Planning Commission. He would suggest that Mr. Hall deal with the staff recommendation issues and bring the plan back to the Planning Commission. He is uncomfortable in approving or disapproving.

Chairman Johnson stated that he does not want to approve with a list of conditions, it causes too many problems. He stated that the Regional Park is a concept that many residents in Overlake have bought into. He also stated that the city has never said that the Regional Park would not be built, just not this year. He also stated that he would have a tough time voting for the amendment to Exhibit B if it removes the Regional Park.

Councilman Bevan recommended tabling the issue to let TA make the corrective recommendations and bring back to the Planning Commission.

Councilman Hansen moved to close the public hearing. Councilman Bevan seconded the motion. All members present voted "Aye." The public hearing closed at 8:35 p.m.

Councilman Wardle stated that he is concerned if the council tables the issue that TA will see it as a way to stop development. Mr. Perry stated from his perspective that it would be in good faith on the council's part to table the issues so that TA could move quickly to resolve the issues. TA will not hold it against the city.

Chairman Johnson stated again the he would not vote in favor of Exhibit B if it removes the park from Overlake, but agrees that the other issues could be dealt with.

Councilman Bevan moved to table Tooele Associates, L.P.'s January 30, 2007, Request to Amend Exhibit B to Development Agreement for Overlake Project area so that TA may fix the staff recommendations. Staff will deal with it in a timely matter to get back to the Planning Commission. Councilman Hansen seconded the motion. All members present voted "Aye".

6. **Resolution 2007-23 A Resolution of the Tooele City Council Adopting the Budget Officer's Tentative Budget for Tooele City Fiscal 2007-2008, and Establishing the Time and Place of a Public Hearing to Consider its Adoption.**

Presented by Mayor Patrick Dunlavy

Mayor Dunlavy reported that he his simply meeting the statutory requirement for the budget. City administration will await the councils input. The Budget Hearing and Public Hearing will be held on June 20, 2007. The budget is balanced and is fiscally conservative. There will be copies available at the front desk.

Councilman Hansen moved to approve Resolution 2007-23. Councilman Pruden seconded the motion. All members present voted "Aye".

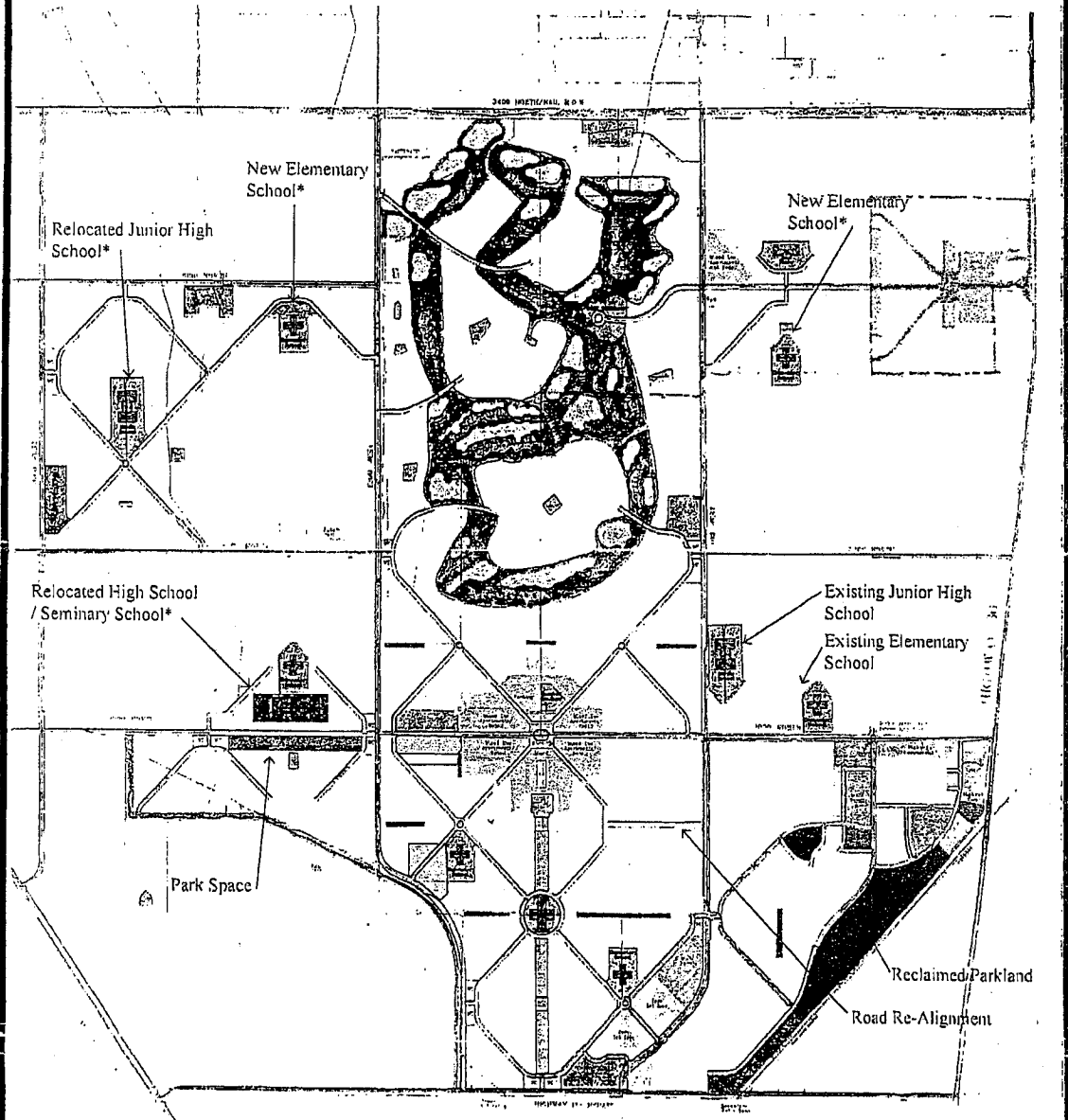
John Wright addressed the council. He asked the council as they consider the budget that they keep in mind the youth in Tooele. He would like to see a facility for the youth in Tooele. The youth are important in Tooele; he would like to see money allocated for parks. Mr. Wright stated that anytime you take open grass away from kids, you remove their quality of life. Chairman Johnson stated that it

Exhibit 8

Proposed Amended Exhibit B

(dated June 20, 2007)

Proposed Amended Exhibit B



	Proposed Road		Existing Road
	Proposed Driveway		Existing Driveway
	Proposed Sidewalk		Existing Sidewalk
	Proposed Utility		Existing Utility
	Proposed Fence		Existing Fence
	Proposed Wall		Existing Wall
	Proposed Gate		Existing Gate
	Proposed Gate Post		Existing Gate Post
	Proposed Gate Post Cap		Existing Gate Post Cap
	Proposed Gate Post Base		Existing Gate Post Base
	Proposed Gate Post Cap Base		Existing Gate Post Cap Base
	Proposed Gate Post Base Cap		Existing Gate Post Base Cap
	Proposed Gate Post Base Cap Base		Existing Gate Post Base Cap Base

20 June 2007

* Pursuant to suggestions from TCSD This conceptual master plan is under constant review and refinement, and is therefore subject to change and modification

Exhibit 9

June 20, 2007, e-mail

from Rachelle Custer to Ray Whitchurch

Roger Baker

From: Rachelle Custer
Sent: Wednesday, June 20, 2007 5:43 PM
To: 'Ray Whitchurch'
Cc: Roger Baker; Cary Campbell
Subject: RE: Overlake 6-20-07

Ray,

Thank you for addressing the prior concerns. I have found a few more items that I would like you to address in reviewing the current and proposed exhibits side by side.

1. Can you remove the label "Reclaimed Parkland"? The label makes sense only in relation to the previous unaccepted proposal to amend Exhibit B. It should be labeled as in the original Exhibit B: "Regional Park."
2. Does this proposal reflect an increase in park acreage above the current Exhibit B (see new park in southwest, the "mall" south of the town center, and the extension of the regional park to the south)? If so, what is the increase in acreage, and why was the acreage increased?
3. The current Exhibit B shows the regional park beginning immediately south of the Episcopal church site. Does the new proposal intend to shift the regional park boundary further south to create additional commercial acreage.
4. In the northeast corner, under the label for the New Elementary School, the diagonal roads have been eliminated and no longer hook up with the roads on the JohnTooee parcel. Please add these roads back in.
5. Also in the northeast corner, the park spaces in the current Exhibit B don't carry over into the new Exhibit B. They should be shown and colored in green, unless the proposal is to eliminate them.
6. Also in the northeast and southeast corners, the highway commercial has lost its blue and legibility. Both should be added back in to clarify the intended use.
7. In the northwest corner, the label indicates a New Elementary School. This school already shows on the current Exhibit B and thus is not a new location. The word "New" should be removed.
8. The blue area south of the town center does not show as blue in the proposed Exhibit. The blue should be added back in, if it is intended to be highway commercial. If it is intended to be something else, a land use should be proposed.
9. The proposed Exhibit B shows 3 new use areas west of the town center and south of 2000 North. Are they proposed to be multi-family, mixed use, single-family zero-lot-line, or some other use?
10. It would be helpful to redo the land use legend so that it is more readable, perhaps enlarging the color swatches and the font. Also, many of the land use labels on Exhibit B land use areas are no longer legible. It may be difficult in the future to remember what land use these areas are intended to be.

Thank You
Rachelle Custer
City Planner

6/28/2007

Exhibit 10

June 20, 2007

City Administration Report

Memorandum

To: Tooele City Planning Commission
Tooele City Council

From: City Administration

Date: June 20, 2007

Re: Tooele Associates, L.P.'s January 30, 2007 request to amend Exhibit B to Development Agreement for Overlake Project Area

By letter dated January 30, 2007, Tooele Associates, L.P. requested certain amendments to Exhibit B to the Development Agreement for the Overlake Project Area Tooele City, Tooele County, Utah, by and between: Tooele City, Utah and Tooele Associates, Limited Partnership, a Washington Limited Partnership ("Development Agreement").

The process for amending Exhibit B is defined in Development Agreement §XXI, which provides:

This Agreement, together with Exhibits hereto, which are incorporated herein by reference, constitutes the entire Agreement between the City and Tooele Associates and supercedes any prior understandings, agreements or representations verbal or written. This Agreement shall not be amended except in written form, signed and executed by the Mayor on behalf of the City, after approval by the City Council, and after the receipt of a Planning Commission recommendation for any amendments to Exhibits B-K, and by Tooele Associates through its authorized representative.

Thus, any amendment to Exhibit B must: (a) be in writing, (b) be approved by the City Council after a recommendation by the Planning Commission, and (c) be signed by the Mayor and an authorized representative of Tooele Associates, L.P. Exhibit B was previously amended through this process, and is contained in Amendment 3 to the Development Agreement, effective October 6, 1999. Attached are the current Exhibit B in color, and the proposed amended Exhibit B in black and white.

On April 25, 2007, the Planning Commission voted 5-2 to make a negative recommendation to the City Council regarding then-submitted proposed amended Exhibit B. On May 16, 2007, with the concurrence of Tooele Associates, the City Council voted 5-0 to table action on the proposed amended Exhibit B, allowing Tooele Associates to attempt to resolve the issues raised by the City Administration report and recommendation (attached as Exhibit 1). On June 7, 2007, Drew Hall and his planning/design consultant, Ray Whitchurch, met with City representatives to discuss and resolve those issues. The proposed amended Exhibit B has now been revised and is attached as Exhibit 2 for Planning Commission consideration on June 27, 2007, and City Council consideration on July 3, 2007.

City Administration Recommendation. The City Administration recommends that approval of the proposed amended Exhibit B, attached as Exhibit 2, (the "Proposal") be granted, for reasons stated below.

Reasons for City Administration Recommendation.

- Unlike the proposed amended Exhibit B previously presented to the Planning Commission and City Council, the Proposal better fulfills the defined purposes of Exhibit B set forth in the Development Agreement: "identif[y] the location of all uses (the 'Use Areas') for the Overlake Project Area, including residential, commercial, parks, community, uses, and other uses, and the configuration of all 'Collector' and 'Sub-Collector' streets. The Overlake Development Plan shall be the basis for, and shall control the presentation of all preliminary and final subdivision plats and site plans presented to the City for approval." (Dev. Agr. § III.A.)
- The Proposal eliminates the previous lack of street integration by removing individual residential streets and restoring connectivity to Collector and Sub-Collector streets.
- The Proposal establishes school sites that reflect existing schools outside the Overlake Project Area and are represented to reflect the suggestions of the Tooele County School District.
- The Proposal restores the Regional Park site configuration in the current Exhibit B.

A number of issues remain, which the City Administration is confident can be answered by Tooele Associates in a timely and satisfactory manner. These questions are stated below. Because of the importance of Exhibit B as the Development Plan for the Overlake Project Area, any approval of the Proposal should be conditioned upon these issues being fully addressed.

- The label "Reclaimed Parkland" should be removed and the "Regional Park" label reinstated.
- The Proposal may reflect an increase in park acreage above the Development Agreement and current Exhibit B (see new park in southwest, the "mall" south of the town center, and the extension of the regional park to the south). Tooele Associates should identify if there is an increase in acreage, the amount of the increase, and why the acreage was increased. An increase in acreage may require an amendment to Section X, and may or may not be desired by the City.
- The current Exhibit B shows the regional park beginning immediately south of the Episcopal church site. The Proposal appears to shift the regional park site's northern boundary further south to create additional commercial acreage. Is this the case? How does it affect the size and configuration of the regional park site?
- In the northeast section, under the label "New Elementary School," the diagonal sub-collector streets have been eliminated and no longer hook up with the streets on the JohnTooele parcel. These streets should be restored.
- Also in the northeast area, the park areas in the current Exhibit B don't carry over into the Proposal. They should be restored.
- In the northwest area, the label indicates "New Elementary School." This school already shows on the current Exhibit B. The word "New" should be removed.

- Many use areas have lost their color and label legibility, so that the intent of Exhibit B for those areas can no longer be determined without reference to previous iterations of the Exhibit. The colors and labels should be restored. The land use legend should also be redone for clarity and legibility.
- The Proposal shows three new use areas west of the town center and south of 2000 North that appear to be multi-family, mixed use, single-family zero-lot-line. They should be defined so that the Planning Commission and City Council can decide whether these higher-density areas are desired.

In addition, if the Proposal is approved, the City Council should make clear that by such approval, the City does not intend to waive its claims that Tooele Associates has materially breached the Development Agreement and that such breaches excuse and discharge the City's continued performance of the Development Agreement, as the City Council expressed in Ordinance 2005-07. The City Administration recommends approval of the Proposal in light of Ordinance 2005-07, which provides that the City is awaiting a judicial determination of Tooele Associates' material breaches before ceasing the City's performance of the Development Agreement. Until such judicial determination, it is appropriate for the City to treat the Development Agreement as effective, while preserving and informing Tooele Associates of the City's intention to pursue the City's material breach claims against Tooele Associates.

Exhibit 11

June 27, 2007

Planning Commission Meeting Minutes—Draft

Draft

TOOELE CITY PLANNING COMMISSION
JUNE 27, 2007
Minutes

Place: Tooele City Hall Council Chambers
90 North Main Street, Tooele, Utah

Commission Members Present:

Shawn Milne, Chair
Phil Montano
Jerald Sagers
Bob Gowans
Ken Spence
John Curwen
Councilman Scott Wardle

Commission Members Excused:

Gary Searle
Fran Garcia

City Employees Present:

Rachelle Custer, City Planner
Roger Baker, City Attorney
Paul Hansen, Contract City Engineer

Minutes prepared by Elisa Jenkins

The meeting was called to order by Chairman Milne at 6:59 p.m. Chairman Milne excused Commissioner Searle and Commissioner Garcia from the meeting.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Chairman Milne.

2. Recommendation on Overlake amended Exhibit B by Tooele Associates.

Presented by Rachelle Custer

Ms. Custer stated that this proposed amended Exhibit B was brought before the Planning Commission last month. There were some issues that the Planning Commission asked the developer to address. The developer has addressed those issues. There is a staff report in the commissioner's packets of the items that the developer was asked to fix. Staff recommends a favorable recommendation on Exhibit B to the City Council with the condition that the items addressed in the staff report be taken care of prior to the City Council meeting.

Mr. Baker stated that most of the second set of bullet items in the staff report has been corrected. Administration has not seen any documentation on them yet, that is why the administration put a condition to have the items taken care of before the July 3rd City Council meeting.

Councilman Wardle stated that this is a good step toward a positive recommendation.

Commissioner Curwen moved to make a positive recommendation to the City Council on Overlake amended Exhibit B by Tooele Associations with the conditions set forth in the staff memo. Commissioner Sagers seconded the motion. The vote was as follows:

Shawn Milne, yes
Phil Montano, yes
Jerald Sagers, yes
Bob Gowans, yes
Ken Spence, yes
John Curwen, yes

3. **PUBLIC HEARING and Recommendation on preliminary plan approval for The Cove at Overlake amended a 62 unit condo project to be located at 1920 N Berra Blvd by Tooele Development Associates.**

Presented by Rachelle Custer

Ms. Custer reported that The Cove at Overlake was a previously approved high-density project. The developer has decided to move away from the high-density layout and go to two unit condo. There are 31 building with a total of 62 units. This will be a private development with private roads and HOA maintained common area. The development will be internally designed with all drive approaches being internal. There will be a fence constructed around the perimeter of the project. Due to the narrow private street there will not be any off-street parking allowed. There will be "no parking" signs along the streets in the development. The developer will have an underground detention area and will provide a guest parking area above the underground detention pond. There is also a small guest parking area on the South East portion of lot 39. The parking areas are shown as open space on the preliminary plat. Ms. Custer requested that they be marked as common parking areas on the final. The developer will construct a 4' sidewalk on the internal block of the development. The applicant will need to provide a letter from ODRC approving the project to be constructed in Overlake. Staff recommends approval of this subdivision with the condition of ODRC approving the project.

Commissioner Montano asked if the sidewalks should be 5ft. Ms. Custer stated that this is a private development so the city is allowing the 4ft sidewalk on one side of the road. It will all be maintained privately.

Commissioner Sagers asked about the maintenance on the fence. Ms. Custer stated they will maintain the perimeter.

Exhibit 12

Proposed Amended Exhibit B

(Dated _____, 2007)

To be provided by Tooele Associates—
not received as of June 29, 2007.

Memorandum

To: Tooele City Planning Commission
Tooele City Council

From: City Administration

Date: June 20, 2007

Re: Tooele Associates, L.P.'s January 30, 2007 request to amend Exhibit B to Development Agreement for Overlake Project Area

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The process for amending Exhibit B is defined in Development Agreement §XXI, which provides:

This Agreement, together with Exhibits hereto, which are incorporated herein by reference, constitutes the entire Agreement between the City and Tooele Associates and supercedes any prior understandings, agreements or representations verbal or written. This Agreement shall not be amended except in written form, signed and executed by the Mayor on behalf of the City, after approval by the City Council, and after the receipt of a Planning Commission recommendation for any amendments to Exhibits B-K, and by Tooele Associates through its authorized representative.

Thus, any amendment to Exhibit B must: (a) be in writing, (b) be approved by the City Council after a recommendation by the Planning Commission, and (c) be signed by the Mayor and an authorized representative of Tooele Associates, L.P. Exhibit B was previously amended through this process, and is contained in Amendment 3 to the Development Agreement, effective October 6, 1999. Attached are the current Exhibit B in color, and the proposed amended Exhibit B in black and white.

On April 25, 2007, the Planning Commission voted 5-2 to make a negative recommendation to the City Council regarding then-submitted proposed amended Exhibit B. On May 16, 2007, with the concurrence of Tooele Associates, the City Council voted 5-0 to table action on the proposed amended Exhibit B, allowing Tooele Associates to attempt to resolve the issues raised by the City Administration report and recommendation (attached as Exhibit 1). On June 7, 2007, Drew Hall and his planning/design consultant, Ray Whitchurch, met with City representatives to discuss and resolve those issues. The proposed amended Exhibit B has now been revised and is attached as Exhibit 2 for Planning Commission consideration on June 27, 2007, and City Council consideration on July 3, 2007.

City Administration Recommendation. The City Administration recommends that approval of the

proposed amended Exhibit B, attached as Exhibit 2, (the "Proposal") be granted, for reasons stated below.

Reasons for City Administration Recommendation.

- Unlike the proposed amended Exhibit B previously presented to the Planning Commission and City Council, the Proposal better fulfills the defined purposes of Exhibit B set forth in the Development Agreement: "identif[y] the location of all uses (the 'Use Areas') for the Overlake Project Area, including residential, commercial, parks, community, uses, and other uses, and the configuration of all 'Collector' and 'Sub-Collector' streets. The Overlake Development Plan shall be the basis for, and shall control the presentation of all preliminary and final subdivision plats and site plans presented to the City for approval." (Dev. Agr. § III.A.)
- The Proposal eliminates the previous lack of street integration by removing individual residential streets and restoring connectivity to Collector and Sub-Collector streets.
- The Proposal establishes school sites that reflect existing schools outside the Overlake Project Area and are represented to reflect the suggestions of the Tooele County School District.
- The Proposal restores the Regional Park site configuration in the current Exhibit B.

A number of issues remain, which the City Administration is confident can be answered by Tooele Associates in a timely and satisfactory manner. These questions are stated below. Because of the importance of Exhibit B as the Development Plan for the Overlake Project Area, any approval of the Proposal should be conditioned upon these issues being fully addressed.

- The label "Reclaimed Parkland" should be removed and the "Regional Park" label reinstated.
- The Proposal may reflect an increase in park acreage above the Development Agreement and current Exhibit B (see new park in southwest, the "mall" south of the town center, and the extension of the regional park to the south). Tooele Associates should identify if there is an increase in acreage, the amount of the increase, and why the acreage was increased. An increase in acreage may require an amendment to Section X, and may or may not be desired by the City.
- The current Exhibit B shows the regional park beginning immediately south of the Episcopal church site. The Proposal appears to shift the regional park site's northern boundary further south to create additional commercial acreage. Is this the case? How does it affect the size and configuration of the regional park site?
- In the northeast section, under the label "New Elementary School," the diagonal sub-collector streets have been eliminated and no longer hook up with the streets on the JohnTooele parcel. These streets should be restored.
- Also in the northeast area, the park areas in the current Exhibit B don't carry over into the Proposal. They should be restored.
- In the northwest area, the label indicates "New Elementary School." This school already shows on the current Exhibit B. The word "New" should be removed.
- Many use areas have lost their color and label legibility, so that the intent of Exhibit B for those areas can no longer be determined without reference to previous iterations of the Exhibit. The colors and labels should be restored. The land use legend should also be redone for clarity and legibility.

- The Proposal shows three new use areas west of the town center and south of 2000 North that appear to be multi-family, mixed use, single-family zero-lot-line. They should be defined so that the Planning Commission and City Council can decide whether these higher-density areas are desired.

In addition, if the Proposal is approved, the City Council should make clear that by such approval, the City does not intend to waive its claims that Tooele Associates has materially breached the Development Agreement and that such breaches excuse and discharge the City's continued performance of the Development Agreement, as the City Council expressed in Ordinance 2005-07. The City Administration recommends approval of the Proposal in light of Ordinance 2005-07, which provides that the City is awaiting a judicial determination of Tooele Associates' material breaches before ceasing the City's performance of the Development Agreement. Until such judicial determination, it is appropriate for the City to treat the Development Agreement as effective, while preserving and informing Tooele Associates of the City's intention to pursue the City's material breach claims against Tooele Associates.

TOOELE CITY COUNCIL

(For)

(Against)

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

ABSTAINING: _____

MAYOR OF TOOELE CITY

(Approved)

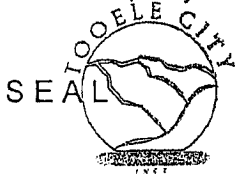
(Disapproved)

[Signature]

ATTEST:

[Signature]

Sharon Dawson, City Recorder



Approved as to Form:

[Signature]
Roger Baker, City Attorney

B-8520

EXHIBIT 'A'

PARCEL I: A parcel of land situate within the West half and the Northeast quarter of Section 16 and within Section 17, Township 3 South, Range 4 West, Salt Lake Base and Meridian, said parcel being more particularly described as follows:

Beginning at the Southwest corner of said Section 16; and running thence North $89^{\circ}43'05''$ East along the South line of said Section 16, 391.88 feet to a point which intersects the Northwesterly right-of-way line of the Union Pacific Railroad; thence along said railroad right-of-way line, North $44^{\circ}40'04''$ East, 1350.74 feet; thence North $45^{\circ}20'08''$ West 642.00 feet; thence North $44^{\circ}39'52''$ East 2188.21 feet to the beginning of a curve to the left, said curve having a delta angle of $44^{\circ}53'29''$ and a radius of 843.00 feet (chord bears North $22^{\circ}13'07''$ East, 643.73 feet); thence along the arc 660.49 feet to the point of tangency; thence North $0^{\circ}13'38''$ West 873.25 feet; thence North $89^{\circ}42'18''$ East, 1449.08 feet; thence North $23^{\circ}20'19''$ East, 873.24 feet to a point which intersects the Southerly right-of-way line of 2000 North Street, said point lies 60.00 feet perpendiculary Southerly from the North line of said Section 16; thence South $89^{\circ}42'18''$ West along a line parallel to the North line of said Section 16 and along the Southerly right-of-way line of said 2000 North Street, 1836.20 feet to a point in the center section line of said Section 16; thence South $89^{\circ}50'26''$ West along said Southerly right-of-way line, 638.02 feet to the Northeast corner of Lot 15 of OVERLAKE ESTATES PHASE 1A SUBDIVISION, according to the Official Plat thereof; continuing thence along said Southerly right-of-way line of 2000 North Street the following 10 courses: North $82^{\circ}25'46''$ West, 70.44 feet; thence South $89^{\circ}42'22''$ West 146.09 feet; thence South $82^{\circ}56'33''$ West 44.98 feet; thence South $89^{\circ}42'22''$ West 55.74 feet; thence North $82^{\circ}56'32''$ West, 86.52 feet to the beginning of a non-tangent curve to the left, said curve having a delta angle of $89^{\circ}56'00''$ and a radius of 25.00 feet (chord bears South $44^{\circ}44'22''$ West, 35.33 feet); thence along the arc 39.24 feet; thence South $89^{\circ}38'20''$ West, 59.98 feet to the beginning of a non-tangent curve to the left, said curve having a delta angle of $90^{\circ}04'00''$ and a radius of 25.00 feet (chord bears North $45^{\circ}15'38''$ West, 35.38 feet); thence along the arc 39.30 feet; thence South $78^{\circ}56'59''$ West 52.28 feet; thence South $89^{\circ}42'22''$ West, 34.62 feet to the Northwest corner of Lot 43 of said Subdivision; thence North $82^{\circ}42'39''$ West, 71.79 feet; thence South $89^{\circ}48'46''$ West, 152.03 feet; thence South $77^{\circ}29'09''$ West, 45.54 feet; thence North $88^{\circ}56'51''$ West 69.98 feet; thence South $89^{\circ}42'22''$ West, 245.69 feet; thence North $85^{\circ}42'58''$ West, 100.18 feet; thence South $89^{\circ}42'22''$ West, 118.02 feet to the beginning of a curve to the left, said curve having a delta angle of $89^{\circ}56'46''$ and a radius of 25.00 feet (chord bears South $44^{\circ}43'59''$ West 35.34 feet); thence along the arc, 39.25 feet; thence South $83^{\circ}09'43''$ West 60.40 feet to the beginning of a non-tangent curve to the left, said curve having a delta angle of $90^{\circ}03'14''$ and a radius of 25.00 feet (chord bears North $45^{\circ}16'01''$ West, 35.37 feet); thence along the arc, 39.29 feet to the point of tangency; thence South $89^{\circ}42'22''$ West 200.11 feet; thence North $87^{\circ}31'20''$ West, 141.57 feet to the beginning of a non-tangent curve to the left, said curve having a delta angle of $89^{\circ}57'04''$ and a radius of 25.00 feet (chord bears South $44^{\circ}43'50''$ West, 35.34 feet); thence along along the arc, 39.25 feet; thence crossing from said Section 16 into said Section 17, South $89^{\circ}40'17''$ West 84.01 feet to the beginning of a non-tangent curve to the left, said curve having a delta angle of $90^{\circ}03'24''$ and a radius of 25.00 feet (chord

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bears North $45^{\circ}16'06''$ West 35.37 feet); thence along the arc, 39.29 feet to the point of tangency, said point lies 42.00 feet perpendicularly Southerly from the North line of said Section 17; thence South $89^{\circ}42'12''$ West parallel to the North line of said Section 17, 856.99 feet to the beginning of a curve to the left, said curve having a delta angle of $89^{\circ}56'54''$ and a radius of 25.00 feet (chord bears South $44^{\circ}43'45''$ West 35.34 feet); thence along the arc, 39.25 feet; thence South $89^{\circ}39'37''$ West 60.00 feet to the beginning of a non-tangent curve to the left, said curve having a delta angle of $90^{\circ}03'06''$ and a radius of 25.00 feet (chord bears North $45^{\circ}16'15''$ West, 35.37 feet); thence along the arc, 39.29 feet to the point of tangency; thence continuing on a parallel line with said section line, South $89^{\circ}42'12''$ West 1286.67 feet to the beginning of a curve to the left, said curve having a delta angle of $90^{\circ}00'00''$ and a radius of 25.00 feet (chord bears South $44^{\circ}42'12''$ West, 35.36 feet); thence along the arc, 39.27 feet to the point of tangency; thence South $0^{\circ}17'48''$ East 352.68 feet to the beginning of a curve to the right, said curve having a delta angle of $15^{\circ}45'18''$ and a radius of 1030.00 feet (chord bears South $7^{\circ}34'51''$ West, 282.33 feet); thence along the arc, 283.22 feet to the beginning of a reverse curve to the left, said curve having a delta angle of $15^{\circ}42'11''$ and a radius of 970.00 feet (chord bears South $7^{\circ}36'24''$ West, 265.02 feet); thence along the arc, 265.85 feet to the point of tangency; thence South $0^{\circ}14'42''$ East, 276.15 feet; thence North $89^{\circ}42'12''$ East 1319.61 feet; thence South $0^{\circ}17'48''$ East, 150.16 feet; thence South $6^{\circ}32'25''$ West 503.42 feet; thence South $89^{\circ}42'12''$ West, 1488.73 feet to a point which intersects the center section line of said Section 17; thence continuing South $89^{\circ}42'12''$ West 677.24 feet; thence South $0^{\circ}16'11''$ East, 3396.48 feet to a point which intersects the South line of said Section 17; thence North $89^{\circ}43'49''$ East along said South section line, 676.57 feet to the South quarter corner of said Section 17; thence North $89^{\circ}43'19''$ East along the South line of said Section 17, 2647.21 feet to the Southeast corner of said Section 17 and the point of beginning.

This legal description includes OVERLAKE ESTATES PHASE 1-B SUBDIVISION, A Subdivision of Tooele City, according to the Official Plat thereof, recorded in the Office of the County Recorder of Tooele County, Utah.

EXCEPTING THEREFROM, all roads.

EXCEPTING THEREFROM, OVERLAKE ESTATES 1-A SUBDIVISION, A Subdivision of Tooele City, according to the Official Plats thereof, recorded in the Office of the County Recorder of Tooele County, Utah.

ALSO EXCEPTING THEREFROM, a parcel of land deeded to MOUNTAIN FUEL SUPPLY COMPANY, described as follows:

Beginning at a point South $89^{\circ}42'18''$ West 850.47 feet along the section line and South 313.98 feet from the Northeast corner of Section 16, Township 3 South, Range 4 West, Salt Lake Base and Meridian; thence South $81^{\circ}04'10''$ East 40.00 feet; thence South $0^{\circ}47'40''$ West 70.00 feet; thence North $81^{\circ}04'10''$ West 40.00 feet; thence North $0^{\circ}47'40''$ East 70.00 feet to the point of beginning.

Together with a right-of-way for ingress and egress described as follows:

Beginning at a point on the Southerly right-of-way line of 2000 North Street, South $89^{\circ}42'18''$ West 1053.77 feet and South $0^{\circ}17'42''$ East 60.00 feet from the Northeast corner of Section 16, Township 3 South, Range 4 West, Salt Lake Base

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and Meridian; thence along said Southerly right-of-way line North $89^{\circ}42'18''$ East 58.00 feet to the CUSP of a curve concave to the Southeast, said curve having a central angle of 90° and a radius of 25.00 feet (Chord bears South $44^{\circ}42'18''$ West 35.36 feet); thence 39.27 feet along the arc of said curve; thence South $0^{\circ}17'42''$ East 255.00 feet to the beginning of a curve to the left said curve having a central angle of 90° and a radius of 20.00 feet (Chord bears South $45^{\circ}17'42''$ East 28.28 feet); thence 31.42 feet along the arc of said curve; thence North $89^{\circ}42'18''$ East 104.51 feet to the beginning of a curve to the left, said curve having a central angle of $80^{\circ}54'38''$ and a radius of 20.00 feet (Chord bears North $49^{\circ}14'59''$ East 25.95 feet); thence 28.24 feet along the arc of said curve; thence North $8^{\circ}47'40''$ East 27.75 feet to the beginning of a curve to the right, said curve having a central angle of $90^{\circ}00'10''$ and a radius of 5.00 feet (Chord bears North $53^{\circ}51'45''$ East 7.08 feet); thence 7.87 feet along the arc of said curve; thence South $81^{\circ}04'10''$ East 14.68 feet; thence South $0^{\circ}47'40''$ West 100.00 feet; thence North $81^{\circ}04'10''$ West 23.08 feet to the beginning of a curve to the right, said curve having a central angle of $89^{\circ}51'50''$ and a radius of 5.00 feet (Chord bears North $36^{\circ}00'15''$ West 7.06 feet); thence 7.04 feet along the arc of said curve to the beginning of a curve to the left, said curve having a central angle of $93^{\circ}05'22''$ and a radius of 20.00 feet (Chord bears North $40^{\circ}45'01''$ West 30.44 feet); thence 34.59 feet along the arc of said curve; thence South $89^{\circ}42'18''$ West 85.61 feet to the beginning of a curve to the left, said curve having a central angle of 90° and a radius of 20.00 feet (Chord bears South $44^{\circ}42'18''$ West 28.28 feet); thence 31.42 feet along the arc of said curve; thence South $89^{\circ}42'18''$ West 33.00 feet; thence North $0^{\circ}17'42''$ West 340.00 feet to the point of beginning.

Also property located in Northeast quarter of Section 16, Township 3 South, Range 4 West, Salt Lake Base and Meridian; Beginning at a point South $89^{\circ}42'18''$ West 850.47 feet along the section line and South 313.98 feet and South $81^{\circ}04'10''$ East 24.00 feet from the Northeast corner of Section 16, Township 3 South, Range 4 West, Salt Lake Base and Meridian; thence North $8^{\circ}47'40''$ East 261.10 feet to the South line of 2000 North Street; thence North $89^{\circ}42'18''$ East 16.20 feet along said South line of 2000 North Street; thence South $0^{\circ}47'40''$ West 263.70 feet; thence North $81^{\circ}04'10''$ West 16.00 feet to the point of beginning.

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EXHIBIT 'A'

PARCEL II

That portion of the following described property lying within the bounds of the Northwest quarter of the Northeast quarter of Section 18, Township 3 South, Range 4 West, Salt Lake Base and Meridian: Beginning at the East quarter corner of Section 18, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence North $89^{\circ}33'03''$ West 1322.97 feet to the Northeast corner of the Northwest quarter of the Southeast quarter of Section 18; thence South $0^{\circ}26'48''$ West 2641.53 feet to the Southeast corner of the Southwest quarter of the Southeast quarter of Section 18; thence along the South line of said Section 18 North $89^{\circ}32'28''$ West 1322.38 feet to the South quarter corner of said Section 18; thence continuing along the said South line North $89^{\circ}32'28''$ West 769.09 feet to the East line of State Highway at a point on the arc of a 17,221.80 foot radius curve to the left; thence along the arc of said 17,221.80 foot radius curve a distance of 446.44 feet (long chord bears North $33^{\circ}27'56''$ West 446.43 feet); thence continuing along said East line of said Highway North $34^{\circ}12'30''$ West 338.7 feet, more or less, to the Southwest corner of the property deeded by Warranty Deed dated January 12, 1984 and recorded January 16, 1984 as Entry No. 360368, in Book 217 at Page 204, of Official Records; thence along the South line of said parcel South $89^{\circ}34'32''$ East 1207.60 feet, more or less, to the East line of the West half of said Section 18; thence North $0^{\circ}26'01''$ West 3670.95 feet, more or less, along said East line to the South right of way line of the Western Pacific Railroad; thence along said South line South $66^{\circ}23'01''$ East to a point that is on the East line of said Section 18 and North $0^{\circ}27'35''$ East 557.1 feet, more or less, from the point of beginning; thence South $0^{\circ}27'35''$ West 557.1 feet, more or less, to the point of beginning.

PARCEL III

Beginning at the Northwest corner of Section 16, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence along the North line of said Section 16, South $89^{\circ}33'38''$ East 2643.91 feet to the North quarter corner of said Section 16; thence continuing along said North line South $89^{\circ}33'38''$ East 1862.58 feet to the West line of the State Highway; thence along said West line as follows: South $24^{\circ}17'55''$ West 56.66 feet; thence North $88^{\circ}59'10''$ East 60.97 feet; thence South $7^{\circ}17'24''$ West 706.15 feet; thence North $82^{\circ}42'36''$ West 20.00 feet; thence South $7^{\circ}17'24''$ West 496.96 feet to the North line of the Union Pacific Railroad right of way; thence along said North line of the Union Pacific Railroad as follows: South $44^{\circ}40'04''$ West 869.91 feet; thence South $45^{\circ}19'56''$ East 20.00 feet; thence South $44^{\circ}40'04''$ West 1059.18 feet to the South line of the Southwest quarter of the Northeast quarter of said Section 16; thence along said South line North $89^{\circ}38'07''$ West 409.28 feet to the Southwest corner of said Southwest quarter of the Northeast quarter; thence along the East line of the Northeast quarter of the Southwest quarter of said Section 16 South $0^{\circ}30'37''$ West 420.50 feet to said North line of the Union Pacific Railroad right of way; thence along said North line of the Union Pacific Railroad as follows: South $44^{\circ}40'04''$ West 1237.56 feet; thence North $45^{\circ}19'56''$ West 20.00 feet; thence South $44^{\circ}40'04''$ West 1888.05 feet to the South line of said Section 16; thence along said South line of Section 16 North $89^{\circ}32'28''$ West 450.73 feet to the Southwest corner of said Section 16;

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thence North 89°32'28" West 2647.12 feet to the South quarter corner of Section 17, Township 3 South, Range 4 West, Salt Lake Base and Meridian; thence along the South line of said Section 17 North 89°32'28" West 1323.56 feet to the Southwest corner of the Southeast quarter of the Southwest quarter of said Section 17; thence along the West line of said Southeast quarter of the Southwest quarter North 0°28'05" East 1203.08 feet to the East line of the Western Pacific Railroad right of way; thence along said East line as follows: North 1°05'54" East 535.64 feet to a point of curvature of a 1488.21 foot radius curve to the left; thence along the arc of said 1488.21 foot radius curve to the left 149.86 feet (long chord bears North 1°47'09" West 149.79 feet) to the West line of the Northeast quarter of the Southwest quarter of Section 17; thence along said West line of the Northeast quarter of the Southwest quarter of Section 17 North 0°28'05" East 753.61 feet to the Northwest corner of said Northeast quarter of the Southwest quarter of said Section 17; thence along the South line of the Northwest quarter of said Section 17 North 89°33'03" West 287.11 feet to the North line of said Western Pacific Railroad right-of-way at a point on a 1488.21 foot radius curve to the left; thence along the arc of said 1488.21 foot radius curve to the left 786.37 feet (long chord bears North 51°14'45" West 777.24 feet); thence continuing along said North line of the Western Pacific Railroad North 66°23'01" West 4784.87 feet to the West line of the Northeast quarter of the Northwest quarter of Section 18, Township 3 South, Range 4 West, Salt Lake Base and Meridian; thence along said West line of the Northeast quarter of the Northwest quarter North 0°25'28" East 276.87 feet to the South line of Section 7, Township 3 South, Range 4 West, Salt Lake Base and Meridian; thence along said South line of Section 7 South 89°33'38" East 1325.54 feet to the South quarter corner of said Section 7; thence North 0°25'43" East 1320.69 feet to the Northwest corner of the Southwest quarter of the Southeast quarter of said Section 7; thence South 89°34'01" East 2646.43 feet to the Northeast corner of the Southeast quarter of the Southeast quarter of said Section 7; thence North 0°23'56" East 1320.96 feet to the West quarter corner of Section 8, Township 3 South, Range 4 West, Salt Lake Base and Meridian; thence North 0°23'56" East 2641.93 feet to the Northwest corner of said Section 8; thence South 89°35'04" East 2645.71 feet to the North quarter corner of said Section 8; thence along the North line of said Section 8 South 89°35'04" East 457.15 feet; thence South 0°21'36" West 1321.29 feet to the North line of the Southwest quarter of the Northeast quarter of said Section 8; thence South 89°34'43" East 2189.20 feet to the Northeast corner of the Southeast quarter of the Northeast quarter of said Section 8; thence along the East line of said Section 8 South 0°19'57" West 1321.51 feet to the East quarter corner of said Section 8; thence South 0°19'57" West 2643.02 feet to the point of beginning.

EXCEPTING THEREFROM, that portion lying within the bounds of the Southeast quarter of the Northeast quarter of Section 18, Township 3 South, Range 4 West, Salt Lake Base and Meridian.

EXCEPTING THEREFROM PARCEL I SHOWN ABOVE.

SUBJECT TO a County Road right of way as the same may be found to intersect said parcel as disclosed by the Official Plat Map on file in the Tooele County Recorder's Office.

EXCEPTING THEREFROM, THE FOLLOWING: Beginning at the Northwest corner of Section 8, Township 3 South, Range 4 West, Salt Lake Base and Meridian, a found Brass Cap Tooele County Survey Monument; and running thence North

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89°40'42" East along the Section line 62.00 feet to a point which lies 62.00 feet left of the Section line at Engineers Station 82+85.91, said point also lies on the Easterly right-of-way line of 1200 West Street; thence along said right-of-way South 00°21'41" East 2642.09 feet to a point on the Section line, said point lies 62.00 feet left at Engineers Station 109+27.90; thence South 00°22'17" East along said Easterly right-of-way line 2580.09 feet to an intersection point of 1200 West Street right-of-way and 2000 North Street right-of-way; said parcel also being 62.00 feet left of the Section line at Engineers Station 135+08.09 1200 West Street=Station 47+84.79 2000 North Street; thence North 89°41'45" East along said Northerly right-of-way of 2000 North Street 2586.50 feet, said point also lies 62.00 feet left of the South quarter corner of Section 8, at Engineers Station 72+51.29; thence North 89°42'12" East along said Northerly right-of-way line 2648.88 feet to a point on the Section line, said point lies 62.00 feet left of the Section line at Engineers Station 108+00.24; thence South 00°22'31" East along said Section line 62.00 feet to the Southeast corner of Section 8, a found Brass Cap, said point also lies on the North boundary line of Overlake Estates Phase 1B, Subdivision; thence South 89°42'12" West along the Section line 62.00 feet to a point which lies on the West boundary line of said Subdivision; thence South 00°14'42" East 62.00 feet to a point on the Southerly right-of-way line of 2000 North Street and the Westerly boundary line of Overlake Estates Phase 1B Subdivision, said point also lies 62.00 feet right of the Section line at Engineer Stations 99+38.19; thence South 89°42'12" West along the Southerly right-of-way line of 2000 North Street 2586.90 feet to a point which lies on the Section line, said point also lies 62.00 feet right of the Section line at Engineers Station 73+51.28; thence South 89°41'45" West along said Southerly right-of-way 2648.44 feet; thence South 89°42'30" West 42.00 feet to a point of intersection on the Southerly right-of-way of 2000 North Street and the Westerly right-of-way line of 1200 West Street; thence North 00°17'07" West along the Westerly right-of-way line 62.00 feet to a point on the Section line, said point also lies 42.00 feet right of the Section line at Engineers Station 135+69.96; thence North 00°22'17" West along the Westerly right-of-way line of 1200 West Street 1321.04 feet to a point which lies 42.00 feet right of the Section line at Engineers Station 122+48.92; thence North 89°42'06" East 42.00 feet to a point which lies on the Section line; thence North 00°22'17" West along the said Section line 1321.04 feet along the Section line to a point which lies on the West quarter corner of Section 8, a found brass cap, said point also at Engineers centerline station 109+27.90; thence North 00°21'41" West along the Section line 2642.07 feet to the point of beginning.

EXCEPTIONS THEREFROM, THE FOLLOWING:

Beginning at the West quarter of Section 5, Township 3 South, Range 4 West, Salt Lake Base and Meridian, a found Brass Cap, Tooele County Survey Monument; and running thence North 89°33'02" East 62.00 feet along the quarter Section line to a point which lies on the Easterly right-of-way line of 1200 West Street; said point also lies 62.00 feet left of the Section line at Engineers Station 56+54.58; thence South 00°17'51" East 2631.36 feet along said Easterly right-of-way line of 1200 West to the Southeast corner of said parcel; thence South 89°40'42" West 62.00 feet along the Section line to the Southwest corner of said Section 5; thence North 00°17'51" West 2631.22 feet along said Section line to the point of beginning.

PARCEL IV

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The Southwest quarter of Section 4, Township 3 South, Range 4 West, Salt Lake Base and Meridian.

LESS AND EXCEPTING, the South 110 feet thereof.

ALSO, LESS AND EXCEPTING THE FOLLOWING: Beginning at a point which is East 33 feet and South 100 feet from the Northwest corner of the Southwest quarter of the Southwest quarter of Section 4, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence East 200 feet; thence South 200 feet; thence West 200 feet; thence Northerly parallel to the Section line 200 feet to the point of beginning.

PARCEL V

The South half of Section 5, Township 3 South, Range 4 West, Salt Lake Base and Meridian.

LESS AND EXCEPTING THE FOLLOWING: Beginning at the Southeast corner of said Section 5; and running thence West 323.53 feet more or less; thence North 110 feet; thence East 323.53 feet; thence South 110 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM, THE FOLLOWING:

Beginning at the West quarter of Section 5, Township 3 South, Range 4 West, Salt Lake Base and Meridian, a found Brass Cap, Tooele County Survey Monument; and running thence North $89^{\circ}33'02''$ East 62.00 feet along the quarter Section line to a point which lies on the Easterly right-of-way line of 1200 West Street; thence point also lies 62.00 feet left of the Section line at Engineers Station 56+54.58; thence South $00^{\circ}17'51''$ East 2631.36 feet along said Easterly right-of-way line of 1200 West to the Southeast corner of said parcel; thence South $89^{\circ}40'42''$ West 62.00 feet along the Section line to the Southwest corner of said Section 5; thence North $00^{\circ}17'51''$ West 2631.22 feet along said Section line to the point of beginning.

PARCEL VI

The South half of the North half of Section 5, Township 3 South, Range 4 West, Salt Lake Base and Meridian.

LESS AND EXCEPTING that portion deeded to the Los Angeles and Salt Lake Railroad Company, a Utah Corporation, by Warranty Deed reorded April 15, 1985 as Entry No. 366891 in Book 227 at Page 996, more particularly described as follows: The North 200.0 feet of the South half of the North half of Section 5, Township 3 South, Range 4 West, Salt Lake Base and Meridian.

EXCEPTING THEREFROM, THE FOLLOWING: Part of the South half of the North half of Section 5, Township 3 South, Range 4 West, Salt Lake Base and Meridian, more particularly described as follows: Beginning on the West quarter corner of Section 5, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence North $00^{\circ}21'10''$ West 1127.36 feet along the West line of said Section 5 to the South line of the North 200.00 feet of the South half of the North half of said Section 5; thence North $89^{\circ}36'50''$ East 1650.00 feet along said South line of the Northwesterly line of OVERLAKE ESTATES PHASE I; thence South $40^{\circ}42'36''$ West 1494.93 feet along said Northwesterly line to the

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East-West quarter line of said Section 5; thence South 89°32'53" West 668.00 feet along said East-West quarter line to the point of beginning.

EXCEPTING THEREFROM, TOOELE CITY SEWER PLANT, MORE PARTICULARLY DESCRIBED AS FOLLOWS: A Parcel of land, located within the Northwest quarter corner of Section 5, Township 3 South, Range 4 West, Salt Lake Base and Meridian, and being more particularly described as follows: Beginning at the West quarter corner of said Section 5, a found Tooele County Brass Cap; and running thence North 00°23'23" West (North 00°21'10" West Deed) along the West line of said Section 5, 1127.321 feet (1127.36 Deed), to the South line of the North 200.00 feet of the South half of the North half of said Section 5; thence North 89°36'50" East 1650.000 feet along said South line; thence South 40°41'21" West 1494.448 feet, (South 40°42'36" West 1494.93 feet Deed) to the East-West quarter line of said Section 5; thence South 89°33'02" West (South 89°32'53" West Deed), along said East-West quarter line 668.000 feet to the point of beginning.

PARCEL VII

The South half of the South half of Section 6, Township 3 South, Range 4 West, Salt Lake Base and Meridian.

EXCEPTING THEREFROM, THE FOLLOWING:

Beginning at the Southeast corner of Section 6, Township 3 South, Range 4 West, Salt Lake Base and Meridian, a found Brass Cap, Tooele County Survey Monument; and running thence South 89°40'54" West 42.00 feet along the Section line to the Southwest corner of said parcel being at Engineer's Station 82+85.89 42.00 feet right of Section line, said point also being on the Westerly right-of-way line of 1200 West Street; thence North 00°17'51" West 1315.63 feet along said Westerly right-of-way line of 1200 West Street to the Northwest corner of said parcel being at Engineer's Station 69+70.25 42.00 feet right of Section line; thence North 89°42'14" East 42.00 feet to a point on Section line being the Northeast corner of said parcel; thence South 00°17'51" East 1315.61 feet along said Section line to the point of beginning.

PARCEL VIII

The Northwest quarter of Section 7, Township 3 South, Range 4 West, Salt Lake Base and Meridian.

PARCEL IX

The North half of the Northeast quarter of Section 8, Township 3 South, Range 4 West, Salt Lake Base and Meridian.

LESS AND EXCEPTING THE FOLLOWING TWO PARCEL:

- A. The East 323.53 feet of said North half of the Northeast quarter.
- B. The West 457.15 feet, more or less, of said North half of the Northeast quarter.

PARCEL X

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Beginning at the North quarter corner of Section 9, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence East 2163.53 feet; thence South 703.86 feet; thence West 34.89 feet; thence North 170.0 feet; thence West 1280 feet, more or less; thence North $54^{\circ}11'45''$ West 1047.50 feet, more or less, to the point of beginning.

PARCEL XI

Beginning 100 feet West, more or less, from the Northeast corner of Section 9, Township 3 South, Range 4 West, Salt Lake Base and Meridian, said point also being on the West right-of-way line of Highway U-36; and running thence South $6^{\circ}55'18''$ West along said West right-of-way line 320 feet; thence West 50 feet; thence South 75 feet; thence West 247.5 feet, more or less; thence South 264 feet; thence East 247.5 feet; thence South 60 feet; thence South $6^{\circ}55'18''$ West 50 feet, more or less; thence West 292.39 feet, more or less; thence North 784.01 feet, more or less, to the North line of said Section 9; thence East 384.61 feet, more or less, to the point of beginning.

PARCEL XII

Beginning at the center of Section 9, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence North 520.81 feet; thence East 1332.91 feet; thence North $21^{\circ}51'55''$ East 973.65 feet, more or less; thence East 703.86 feet, more or less, to the West right-of-way line of Highway U-36; thence South $6^{\circ}55'18''$ West 1479.675 feet; thence West along the South line of the Northeast quarter of said Section 9, 2222.8 feet, more or less, to the point of beginning.

PARCEL XIII

The West half of the Southeast quarter of the Northwest quarter of Section 18, Township 3 South, Range 4 West, Salt Lake Base and Meridian.

That portion of the Northeast quarter of the Northwest quarter of Section 18, Township 3 South, Range 4 West, Salt Lake Base and Meridian, lying Southerly of the Western Pacific Railroad Right-of-Way.

ALSO: Beginning at a point on the North line of the Southwest quarter of Section 18, Township 3 South, Range 4 West, Salt Lake Base and Meridian, which is also North $00^{\circ}19'26''$ West 2641.32 feet along the East line of the Southwest quarter and South $89^{\circ}42'33''$ West, more or less, 1325.14 feet (Northwest corner of the Northeast quarter of the Southwest quarter of said Section 18), from the South one quarter corner; and running thence North $89^{\circ}42'33''$ East 326.14 feet; thence South $00^{\circ}17'27''$ East 60 feet; thence South $89^{\circ}42'33''$ West 1570.32 feet to a point on the East right-of-way line of said Utah State Highway 112; thence North $34^{\circ}53'23''$ West 72.89 feet along said East line to a point on the North line of the Southwest quarter of said Section; thence North $89^{\circ}42'33''$ East, more or less, 1205.56 feet along said North line to the point of beginning.

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EXHIBIT 'A'
PARCEL XIV

A tract of land 20.0 feet square with the center located 198.00 feet West and 152.00 feet South of the Northeast corner of Section 16, Township 3 South, Range 4 West, Salt Lake Base and Meridian, the East side of which has a bearing of North $0^{\circ}03'09''$ East and the South side of which has a bearing of South $89^{\circ}56'51''$ East.

TOGETHER WITH a Water Line Easement as follows: A perpetual easement to construct, reconstruct, operate, repair, replace and maintain a water line and appurtenant structures on, over, across and through a strip of land 20.0 feet wide, lying 10.0 feet on each side of and parallel and adjacent to an existing water line which runs from the well located at the center of the above described tract of land and connects to the water line described below.

ALSO TOGETHER WITH a perpetual easement to construct, reconstruct, operate, repair, replace and maintain a water line and appurtenant structures on, over, across and through a strip of land 20.00 feet wide, lying 10.00 feet on each side of and parallel and adjacent to the following described centerline: Beginning at a point which is West 200.27 feet and South 156.00 feet from the Northeast corner of Section 16, Township 3 South, Range 4 West, Salt Lake Base and Meridian, and running thence South $82^{\circ}23'18''$ West 13.30 feet; thence North $07^{\circ}45'13''$ West 109.77 feet; thence South $88^{\circ}26'30''$ West 148.32 feet; said point being North $89^{\circ}56'51''$ West 376.49 feet and South $00^{\circ}03'09''$ West 53.45 feet from said Northeast corner of Section 16.

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John Tooele Parcel

The Southeast $\frac{1}{4}$ of Section 4, Township 3 South, Range 4 West, Salt Lake Base and Meridian. Excepting therefrom, that portion thereof included in public roads and rights-of-way. Also excepting therefrom, the East $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 4, Township 3 South, Range 4 West, Salt Lake Base and Meridian. Containing 138.519 acres, more or less.