MIDVALE CITY, UTAH RESOLUTION 2020-R-25

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN MIDVALE CITY CORPORATION AND HOLMES HOMES, INC FOR THE JORDAN BLUFFS CONDOS PROJECT

WHEREAS, pursuant to Section 10-9a-102 (2) of the Utah State Code, Midvale City (the "City") is authorized as follows: "To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with landowner's private property interests, height and location of vegetation, trees, and landscaping, unless expressly prohibited by law"; and

WHEREAS, the City adopted the Jordan Bluffs Subareas 1-3 zone ("Zone") to address environmental conditions of the site, implement projects which join new construction to the overall Midvale community in a thoughtful and constructive way, provide significant, functional, improved open space, and provide pedestrian connections within and among developments, between adjacent neighborhoods, and to the Jordan River Parkway. The Zone includes procedural and development standards to be applied in approving or disapproving a proposed development; and

WHEREAS, the Zone requires a development agreement between the property owner and the City to accompany an approved development plan to ensure the property owner complies with the development standards of the Zone and allows the property owner the right to develop in accordance with the approved plan for a specified period of time, not to exceed five years; and

WHEREAS, the parties have negotiated such agreement, and, as of the date of this Resolution, agree to enter into said agreement; and

WHEREAS, the City Council has reviewed said Development Agreement and agrees that entering into such agreement will help further the goals of the Midvale City 2016 General Plan, 2019 Housing Plan, and compliance with the Zone land use regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MIDVALE CITY, STATE OF UTAH, AS FOLLOWS:

Section 1. The Midvale City Council has reviewed the attached Development Agreement between Midvale City Corporation and Holmes Homes, Inc. ("Developer").

Section 2. The Midvale City Council, through its understanding of the goals of the Midvale City General Plan, the Zone land use regulations and the proposed Jordan Bluffs Condos Project, believes it is in the best interest of the Developer and the City to enter into such Development Agreement.

Section 3. The Midvale City Council on this date does hereby authorize the Mayor to enter into the attached agreement on behalf of the City.

PASSED AND APPROVI	ED this May day of May	, 20_	
	Robert Hale, Mayo	Ale	
ATTEST: Andreason, MMC City Recorder	Voting by City Council Quinn Sperry Paul Glover Paul Hunt Bryant Brown Dustin Gettel	"Aye"	"Nay"



When recorded, return to:

Midvale City 7505 S. Holden Street Midvale City, UT 84047 Attn: Midvale City Recorder

DEVELOPMENT AGREEMENT (JORDAN BLUFFS CONDOS PROJECT)

Midvale City, Utah

THIS DEVELOPMENT AGREEMENT (this "Development Agreement" or "Agreement") is entered into as of this May and between Holmes Homes, Inc. ("Developer") and Midvale City Corporation, a Utah municipal corporation ("Midvale City" or "City"). Developer and City are sometimes referred to herein individually, as a "Party," and collectively, as the "Parties."

- A. <u>Property</u>. Developer is under contract to purchase certain real property within Midvale City (as more particularly defined below, the "Property").
- B. <u>Jordan Bluffs Condos Project</u>. Developer intends to construct on the Property a residential housing project (as more particularly defined below, the "Jordan Bluffs Condos Project" or "Project").
- C. Zoning. The Property is zoned, pursuant to the City's Zoning Ordinance, as Jordan Bluffs Subareas 1-3 Development Zone (hereinafter referred to as "JB Subareas 1-3 Zone"). This zone, described in Chapter 17-7-10.12 of the Midvale City Municipal Code, establishes the procedural and substantive requirements for approval by the City for development on the Property. Section 17-7-10.12.2 of the Midvale City Municipal Code requires the Property to develop in accordance with this Agreement, including the development plans contained herein.
- D. Additional Regulatory Controls. The Property is part of the Sharon Steel Corporation (Midvale Tailings) Superfund Site which has been or will be remediated in accordance with a Record of Decision issued by the Environmental Protection Agency ("EPA"). Redevelopment of the Property will occur in accordance with the EPA's Record of Decision and Explanations of Significant Differences and the City's Institutional Controls as described in Section 17-7-10.12.5 of the Midvale City Municipal Code.
- E. <u>Amended and Restated Master Development Agreement</u>. The Property is subject to that certain Amended and Restated Master Development Agreement for Jordan Bluffs Project between Gardner Jordan Bluffs LC and Midvale City, recorded on April 5, 2019 as Entry No. 12963264 in Book 10767 at Page 3334 (the "MDA").

- F. <u>Subdivision Plat</u>. The Property is subject to the restrictions set forth on that certain subdivision plat entitled "Jordan Bluffs Lot 2 2nd Amended Subdivision" recorded with the County Recorder for Salt Lake County, Utah on September 9, 2019 as Entry No. 13069989 in Book 2019P at Page 254 (the "Plat").
- G. <u>State Authority</u>. Pursuant to Section 10-9a-102 of the Utah Code, Midvale City is authorized to enter into development agreements as provided therein and desires to enter into this Development Agreement in order to obtain the benefits for the City provided herein.

NOW THEREFORE, in consideration of the above recitals, terms of this Development Agreement, and the mutual benefits to be derived herefrom, the Parties agree as follows:

Article 1 The Jordan Bluffs Condos Project

- 1.1 <u>Legal Description of Property</u>. The property that is covered by this Agreement consists of approximately 21.4 acres of land located at the intersection of Bingham Junction Boulevard and 700 West and is more fully described in **Exhibit A** (the "Property").
- 1.2 <u>Description of Project</u>. The Jordan Bluffs Condos Project covered by this Development Agreement consists of a 21.4-acre residential area, including not more than 360 units. The Project includes a private parking lot system, improved open space, and recreation amenities for its residents.
- 1.3 MDA. The Parties acknowledge and agree that the MDA is in full force and effect and is binding upon and inures to the benefit of the Parties in the ownership and development of the Property.

1.4 Development of the Project.

- 1.4.1 <u>Large Scale Master Plan Approval</u>. Pursuant to the provisions of the JB Subareas 1-3 Zone in effect as of the date of this Agreement, the Midvale City Planning Commission ("Planning Commission") approved a Large Scale Master Plan for the Project on September 25, 2019. The findings, conditions of approval, and approved drawings for the Large Scale Master Plan are set forth in the letter from the City to Developer attached as **Exhibit B** (the "LSMP").
- approval for each phase of the Project from the City prior to commencement of any development activity. These site plans shall comply with the LSMP, all land use regulations of the JB Subareas 1-3 Zone, and other applicable City ordinances. Each site plan shall provide more specificity as to building, parking, and landscape configurations and other development details to supplement the development layout depicted on the LSMP. An amendment of the LSMP shall only be required if a site plan proposes a major modification to the depictions of the LSMP. For purposes of this section, a major modification means a change that significantly revises the configuration of buildings, accesses, site circulation or parking areas, or changes in building massing and height, but

shall not mean the addition of features, improvements, or amenities, including recreational amenities, to a site plan when compared to the LSMP. The City's Community Development Director shall have the discretion to determine whether a site plan proposes a major modification that would require an amendment of the LSMP. Development approval for the Project shall follow the applicable review processes set forth in the JB Subareas 1-3 Zone and Section 17-3 of the Midvale City Municipal Code.

- 1.4.3 Project Phasing. The Project may be developed in one or more phases, as determined by Developer. For the purposes of this Agreement, any reference to phase number is based on the areas identified on the LSMP Phasing Plan. The Developer may construct the phases in any order provided that any requirement within this Agreement associated with a specific phase shall be constructed in conjunction with the corresponding phase identified in the LSMP. Developer acknowledges that the widening of 700 West, the Bingham Junction Pedestrian Crosswalk, and parts of a trail from Phase 3 that ties into the Jordan River Parkway Trail may need to be constructed beyond phase boundary lines to ensure such improvements function properly. As to construction parking, the Developer shall inform its employees, contractors, and subcontractors that they are restricted from parking on public streets. In the event that its employees, contractors, or subcontractors park on a public street, the City may require the Developer to correct the issue within a reasonable amount of time. Unless stated otherwise, private recreation amenities and guest parking within the residential development areas shall be constructed in conjunction with the adjacent units and in a timely manner to benefit the residents living in the Project. Additional specific phasing requirements are detailed below.
 - 1.4.3.1 Bingham Junction Pedestrian Crosswalk. Developer shall, at his own expense, design and construct a pedestrian crosswalk across Bingham Junction Boulevard on or about the location identified in the LSMP (the "Pedestrian Crossing"). Design of the Pedestrian Crossing shall be completed by a qualified engineer after completion of a site-specific crosswalk study and shall include, at minimum, a pedestrian refuge in the median and pedestrian activated enhancements in the form of a Rectangular Rapid Flash Beacon, Pedestrian Hybrid Beacon, or other similar crosswalk type approved by the City. City approval of the crosswalk design shall be required prior to site plan approval for Phase 1. Construction, inspection, and acceptance by the City of the Pedestrian Crossing shall be required prior to issuance of the first Certificate of Occupancy for a unit in Phase 1 of the Project. After acceptance of the Pedestrian Crossing by the City, the City shall be responsible to maintain, repair, and replace the Pedestrian Crossing in accordance with City policies and standards applicable to similar improvements in the City.
 - 1.4.3.2 Wetland Enhancements. The Parties acknowledge and agree that the wetland areas within the Project are required to be restored to a

native condition by the EPA Record of Decision and Site Management Plan for the Sharon Steel Corporation (Midvale Tailings) Superfund Site. The Parties further acknowledge that restoration of the wetland areas are the responsibility of the Master Developer as defined in the MDA. The Parties agree to cooperate in the Master Developer's efforts to complete the required restoration work.

- 1.4.3.3 700 West Trailhead. Developer shall, at his own expense, design and construct a trailhead at the eastern terminus of the Jordan River Parkway Trail on 700 West as indicated on the LSMP (the "Trailhead"). Design of the Trailhead shall include improvements, including, at a minimum, two benches, two picnic tables, one trash can, and one bicycle repair station. Subject to approval by the City and Sandy City, parking on 700 West near the Trailhead may be allowed; however, under such circumstances, it is also understood that if 700 West is reconfigured in the future (by the City and/or Sandy City) with 5 lanes (or otherwise), parking on 700 West may no longer be allowed at that time. City approval of the Trailhead design shall be required prior to site plan approval for Phase 2. Prior to issuance of the first Certificate of Occupancy for a unit in Phase 2 of the Project, (a) Developer shall convey a public access easement for the Trailhead to the City and (b) Developer shall require the Project's homeowners' sub-association to enter into a separate agreement with the City detailing repair, maintenance, and replacement responsibilities (as between the City and the homeowners' sub-association) for the Trailhead. The Trailhead design improvements (of a minimum of two benches, two picnic tables, one trash can, and one bicycle repair station), as defined in this section, will need to be installed prior to the first Certificate of Occupancy; however, landscaping around the Trailhead can be bonded for as allowed elsewhere in this Agreement.
- 1.4.3.4 <u>Public Improvements</u>. Developer shall be responsible for financing and constructing all public improvements necessary to service the Project. Public improvements shall be installed in conjunction with the corresponding phase of development. Developer is responsible for obtaining approval from Sandy City for any public improvements under its jurisdiction prior to site plan approval for any phase including such improvements.
- 1.4.4 <u>Floodplain Development</u>. The Parties acknowledge and agree that portions of the Project are located within one or more areas of special flood hazard as identified by the Federal Emergency Management Agency ("FEMA") in the report entitled, "The Flood Insurance Study for Midvale City," dated September 25, 2009 with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps and, more specifically,

on Flood Insurance Rate Map No. 49035C0431G (the "FIRM"). Developer shall be required to design all improvements within the special flood hazard area(s) to meet the requirements of Chapter 8.11 (Flood Damage Prevention) of the Midvale City Municipal Code.

- 1.4.4.1 Elevation Certificates. Developer shall provide two (2) elevation certificates for each residential unit and nonresidential structure within a special flood hazard area. The first elevation certificate shall be provided upon submittal of a building permit application for the unit or structure ("proposed elevation certificate"). The second elevation certificate shall be provided prior to issuance of a Certificate of Occupancy for each unit ("as-built elevation certificate").
- 1.4.4.2 <u>FIRM Revision</u>. The Parties agree to cooperate with each other and the Master Developer with respect to any efforts to amend the FIRM through a Letter of Map Revision Based on Fill or similar process as required by FEMA provided that City shall not be responsible for any costs incurred through this application preparation and submission process. Any structures or improvements removed from the special flood hazard area through a process approved by FEMA shall not be required to comply with floodplain development requirements, including the Elevation Certificates, specified herein.
- 1.4.5 <u>Completion of Common Area Recreation Amenities</u>. Developer shall improve at least fifteen percent (15%) of the overall site as function outdoor and/or indoor recreation amenity areas for residents of the development.
 - 1.4.5.1 Developer agrees to refine the functional amenity areas depicted on the LSMP to ensure this requirement is satisfied as part of the site plan review for each phase. Developer further agrees to complete the required recreation amenity improvements in accordance with the approved site plan(s) for the Project (together, the "Common Area Amenities").
 - 1.4.5.2 Unless noted otherwise, the Common Area Amenities shall be constructed by phase. Prior to the first Certificate of Occupancy being issued for any unit in a particular phase, Developer shall complete common area recreation amenity improvements in that particular phase or post a bond forthe completion of these improvements. Any bonded for common area recreation amenity improvements are to be completed by the end of the next June after the last building in the particular phase is completed. The bond amount shall be 100% of the estimated cost of the materials and work to complete the specific recreation amenity improvement(s).

The City shall use these bond funds to complete the required recreation amenity improvements if Developer fails to complete this requirement. Bonds in the amount of Developer's invoiced cost for any amenity component shall be immediately released to Developer upon installation of such portion of the required amenity, provided the City finds such improvements comply with the approved plan; to be clear, the City will reduce the required bond amount as applicable amenity components are installed (and pass City inspection) so that the required remaining bond amount matches the cost to install whatever required amenity improvements (or components thereof) are left to be completed. All remaining bonds shall be released to Developer upon the completion of the required recreation amenity area, following inspection and approval by the City. If Developer fails to complete the required recreation amenity area, the remaining bonds shall be disbursed to the City to cause completion of the required improvements.

- 1.4.6 <u>Landscaping</u>. Developer shall improve at least twenty-five percent (25%) of the overall site as landscaping and recreational amenity areas combined.
 - 1.4.6.1 Developer agrees to refine the landscape areas depicted on the LSMP to ensure this requirement is satisfied as part of the site plan review for each phase.
 - 1.4.6.2 Developer further agrees to complete the required landscape improvements in accordance with the approved site plan(s) for the Project.
 - 1.4.6.3 Street trees are required to be planted at a rate of at least one (1) tree per forty feet (40') of street frontage along all public roads. Street trees along Bingham Junction Boulevard shall follow the pattern established by Wasatch Residential Group in the Wasatch Jordan Bluffs Phase 1 ("Parc View") project located at 7865 South Bingham Junction Boulevard. Street trees along other public streets shall comply with the thematic site design plan and the City's Street Tree Selection Guide. Except for street trees along Bingham Junction Boulevard, which shall follow the spacing pattern identified in the Parc View project, street trees may be clustered or spaced linearly in a planter and shall be located between the sidewalk and curb or, if there is not a planter area between the sidewalk and curb, within ten feet (10') of the inside edge of the sidewalk. All parking lot trees shall comply with the applicable standard for parking lots trees.

- 1.4.7 <u>Thematic Elements</u>. Developer agrees to implement a common theme and consistency with certain elements within the Project. These thematic elements have been established by the LSMP and shall be refined as part of the site plan reviews. Thematic elements include the following: street trees, street lighting, pedestrian scaled lighting, parking lot lighting, outdoor furniture (including benches, trash receptacles, etc.), pedestrian crossings, and wayfinding signage.
- 1.4.8 <u>Future Subdivision Required</u>. Prior to selling any residential units in the Project, Developer shall further subdivide the Property into individual units/lots and common area. This subdivision plat shall be reviewed pursuant to Title 16 of the Midvale City Municipal Code.
- 1.4.9 <u>Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") and Homeowners' Sub-Association</u>. The Project shall have a common homeowners' sub-association which, among other things, shall be responsible for the short- and long-term maintenance of private parking lots, common areas and facilities, common area landscaping, and other common area responsibilities, subject to a master association. These maintenance obligations shall be more particularly set forth in the sub-association's CC&Rs for the project and shall be recorded with the first Subdivision Plat. Subsequent phases and subdivisions plats for the Project shall be subject to these CC&Rs and the property owners shall become part of the existing homeowners' sub-association. Appropriate documentation shall be recorded with each subsequent Subdivision Plat to ensure all phases and subdivision plats are subject to the same CC&Rs and part of a common homeowners' sub-association.
- 1.4.10 Security for Off- and On-Site Public Improvements. Developer agrees to complete all required off-site and on-site public improvements related to the Project in accordance with the to-be-approved site plans. As to each phase of the Project (and construction by phase), Developer shall, for such improvements associated with the particular phase, post one or more applicable infrastructure bonds consistent with the City's infrastructure bonding policies and Utah law. These bonds shall provide the financial security for the public improvements including, but not limited to, water connections and main lines, curb and gutter, public sidewalk and street improvements, surface drainage, street trees, street lighting, and other public improvements. Developer acknowledges the widening of 700 West, the Bingham Junction Pedestrian Crosswalk. and parts of a trail from Phase 3 that ties into the Jordan River Parkway Trail public improvements may need to be bonded for and constructed beyond an established phasing line in order for the development plan to function properly. As to each phase of the Project (and construction by phase), applicable infrastructure bonds pertaining to public improvements for a particular phase shall be in place prior to any construction within that phase of the Project or a subdivision plat for residential units being recorded for that particular Phase of the Project. Developer acknowledges that additional bonding may be required by Sandy Suburban Improvement District for sewer connections and related improvements.

- 1.4.11 <u>Compliance with Institutional Controls</u>. All construction activity shall comply with the applicable Institutional Controls set forth in Section 17-7-10.12.5(M) of the Midvale City Municipal Code. Developer shall obtain approval from EPA and DEQ for any activities within the project for which EPA or DEQ require a Development Site Plan.
- 1.5 <u>Vested Rights</u>. The City acknowledges and agrees that Developer has a vested right to develop and construct the Jordan Bluffs Condos Project in accordance with the provisions of the Zoning Ordinance in effect on the date hereof, the LSMP, and this Agreement; provided that Developer acknowledges and agrees that the construction and operation of the Jordan Bluffs Condos Project is subject to all Applicable Laws as defined in Section 2.3.
- Reserved Legislative Powers and Zoning Authority of the City. Notwithstanding 1.6 the provisions of Section 1.5, Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations, and exceptions set forth herein are intended to reserve to the City all of its police power that cannot, as a matter of law, be limited by contract. The City further agrees that, notwithstanding the retained power of the City to enact legislation under its police powers, such legislation shall only be applied to modify the vested rights of Developer under the terms of this Agreement if such legislation is based upon policies, facts, and circumstances that are sufficient to satisfy the compelling countervailing public interest exception to the vested rights doctrine of the State of Utah. The City further agrees that any such proposed legislative changes that may affect the vested rights of the Project shall be of general application to all development activity within the City. The City further agrees that, unless in good faith the City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed legislative change that may modify vested rights under this Agreement under the compelling, countervailing public interest exception to the vested rights doctrine.

Article 2 General Terms and Conditions

- Agreement, upon reasonable advanced notice to Developer, representatives of the City shall have the right of access to the Property and all buildings and structures thereon without charges or fees, during the period of construction for the purposes of this Agreement. Such representatives shall comply with all safety rules of Developer and its general contractor, including signing a standard construction area release. In addition, upon reasonable advanced notice to Developer, the City shall have the right to enter the Property or any buildings or improvements thereon at all reasonable times for the purpose of exercising the City's remedies, including cure rights contained in this Agreement and for the construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Property.
- 2.2 <u>Construction of Agreement</u>. This Development Agreement shall be constructed and interpreted to ensure that the Developer complies with the requirements and conditions of the MDA, LSMP, and the Zoning Ordinances.

- 2.3 Applicable Laws. Where this Development Agreement refers to laws of general applicability to the Jordan Bluffs Condos Project, then, that language shall be deemed to refer to ordinances which apply generally to other similarly situated, subdivided properties within Midvale City and any other applicable laws, rules or regulations, which apply to the ownership, development, and use of the Property, whether or not in existence on the date hereof, including without limitation any such ordinances, rules or regulations in existence on the date hereof that are subsequently amended or deleted (individually and collectively, the "Applicable Laws"). Except as otherwise provided in Section 1.5, the Applicable Laws adopted on or after the date hereof shall not apply to the Jordan Bluffs Condos Project if such laws would have a materially adverse effect on the Developer's vested rights described herein.
- 2.4 Agreements to Run with the Land. This Development Agreement shall be recorded against the Property. The agreements contained herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of all successors and assigns of the Developer in the ownership or development of any portion of the Jordan Bluffs Condos Project or the Property.
- 2.5 <u>Release of Developer</u>. In the event of a transfer of the Property, Developer shall obtain an assumption by the transferee of the obligations under this Development Agreement and, in such an event, the transferee shall be fully substituted as Developer under this Development Agreement and the Developer executing this Development Agreement shall be released from any further obligations with respect to this Development Agreement.
- 2.6 <u>Duration; Survival of Developer's Obligations and Rights</u>. The term of this Development Agreement shall commence on the date this Development Agreement is executed by both Parties and shall continue for a period of five years unless either terminated as provided herein or by agreement by both parties. In the event that this agreement is set to terminate at the conclusion of the five-year period and there are site plans that have been given final approval or there are other improvements that Developer was obligated to construct or make in connection with or as a condition of such final approval, this Development Agreement will automatically be extended with respect to the aforementioned site plans and improvements and will expire upon issuance of all Certificates of Occupancy for construction associated with such site plans and City acceptance of such improvements.
- 2.7 <u>Notices</u>. Any notice, confirmation or other communication hereunder shall be given in writing by hand delivery (receipted), nationally-recognized, overnight courier service, or United States mail to the following addresses or numbers:

Midvale City:

Midvale City Manager MIDVALE CITY CORPORATION 7505 S. Holden Street Midvale City, UT 84047 Midvale City Community Development Director MIDVALE CITY CORPORATION 7505 S. Holden Street Midvale City, UT 84047

Midvale City Attorney MIDVALE CITY CORPORATION 7505 S. Holden Street Midvale City, UT 84047

Developer:

HOLMES HOMES, INC. Attn: Patrick H. Holmes 126 W. Sego Lily Drive, Suite 250 Sandy, Utah 84070

HOLMES HOMES, INC. Attn: Eric K Davenport 126 W. Sego Lily Drive, Suite 250 Sandy, Utah 84070

Any Party hereto may change its address by notice given to the other Parties in the manner required for other notices above.

- 2.8 Savings Clause; Severability. If any provision of this Development Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remaining provisions of this Development Agreement, or the application of such provision to the persons or circumstances other than those to which it is held invalid, shall not be affected thereby or considered invalid. If any part or provision of this Development Agreement shall be determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Development Agreement except that specific provision determined to be unconstitutional, invalid, or unenforceable. If any condition, covenant, or other provision of this Development Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- 2.9 <u>No Third-Party Rights</u>. This Development Agreement does not create any third-party beneficiary rights. It is specifically understood by the Parties that: (a) the development of the Property under this Development Agreement is a private development, (b) the City has no interest in or responsibilities for or duty to third parties concerning any improvements on the Property, and (c) Developer shall have full power over and exclusive control of the Property subject to the obligations of Developer under this Development Agreement and all Applicable Laws.

- 2.10 <u>Integration</u>. Except as otherwise specified and agreed in writing, this Development Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and integrates all prior conversations, discussions, or understandings of whatever kind or nature, and may only be modified by a subsequent writing duly executed by the Parties hereto. By this reference, the foregoing recitals and the attached exhibits are incorporated in and made a part of this Development Agreement.
- 2.11 <u>Further Assurances</u>. The Parties to this Development Agreement agree to reasonably cooperate with each other in effectuating the terms and conditions of this Development Agreement and, further, agree to execute such further agreements, conveyances, and other instruments as may be required to carry out the intent and purpose of this Development Agreement.
- 2.12 <u>Waiver: Time of Essence</u>. No failure or delay in exercising any right, power, or privilege hereunder on the part of any Party shall operate as a waiver hereof. No waiver shall be binding unless executed in writing by the Party making the waiver. Time is of the essence of this Development Agreement.
- Obligations and Rights of Mortgage Lenders. Developer may finance the Property and may execute one or more mortgages, deeds of trust, or other security arrangements with respect to the Property and may assign this Development Agreement to a holder of any such financial instrument without prior written notice to or consent of the City. The holder of any mortgage, deed of trust, or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Development Agreement by virtue of such assignment to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Development Agreement which pertain to the Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to all requirements and obligations of this Development Agreement and any pro rata claims for payments or charges against the Property, or such portion thereof, deed restrictions, or other obligations which accrue prior to the time such holder comes into possession. Nothing in this Development Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Development Agreement, and, as would be the case in any assignment, the purchaser of the Property from the holder shall be subject to all of the terms and conditions of this Development Agreement, including the obligation to complete all required amenities and improvements. Additionally, nothing herein shall be so construed as to prohibit a mortgage or deed of trust holder from providing security for the standard installation of development improvements pursuant to the Applicable Laws.
- 2.14 <u>Disputes</u>. In the event that a dispute arises in the interpretation or administration of this Development Agreement or if the default mechanism contained herein shall not resolve a default under this Development Agreement, then prior to taking any action to terminate this Development Agreement every continuing dispute, difference, and disagreement shall be

referred to a single mediator agreed upon by the Parties. If no single mediator can be agreed upon, a mediator or mediators shall be selected from the mediation panel maintained by the United States District Court for the District of Utah in accordance with any designation process maintained by such court. The Parties shall mediate such dispute, difference, or disagreement in a good faith attempt to resolve such dispute, difference, or disagreement. The mediation shall be non-binding. Notwithstanding the foregoing, the Parties agree that the City retains the right to exercise enforcement of its police powers in the event Developer is in direct violation of a provision of this Development Agreement or of any Applicable Law.

- 2.15 <u>Institution of Legal Action; Restriction on Remedies</u>. In the event that the mediation does not resolve a dispute, either Party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in this Development Agreement or to enjoin any threatened or attempted violation of this Development Agreement, or to terminate this Development Agreement; provided, however, the Parties agree that in no event shall either Party seek or be entitled to punitive money damages for any breach, default or violation of this Development Agreement. Legal actions shall be instituted in the Third Judicial District Court of the County of Salt Lake, State of Utah.
- 2.16 <u>Counterparts</u>. This Development Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 2.17 <u>Costs and Expenses; Attorneys' Fees</u>. Except as otherwise specifically provided herein, each Party shall bear its own costs and expenses (including legal and consulting fees) in connection with this Development Agreement and the negotiation of all agreements and preparation of documents contemplated by this Development Agreement. In the event of a breach or dispute arising under this Development Agreement, the non-breaching Party or the Party prevailing in such dispute shall be entitled to recover from the breaching or non-prevailing Party its costs, including, without limitation, court costs, reasonable attorneys' fees, expert witness fees, fax, copy, telephone, and other incidental charges.
- 2.18 <u>Temporary Land Use Regulations</u>. The Project shall be excluded from any moratorium or other temporary land use regulations adopted pursuant to Utah Code Ann. § 10-9a-504, unless such a temporary land use regulation is found on the record by the City Council to be necessary to avoid jeopardizing a compelling, countervailing public interest.

IN WITNESS WHEREOF, this Development Agreement has been executed by Midvale City Corporation, acting by and through the Midvale City Council, and by a duly authorized representative of Developer as of the above stated date.

[signature pages follow]

CITY:

MIDVALE CITY CORPORATION

By: Rembushe
Robert M. Hale, Mayor
AFFEST:
Rori L. Andreason, MMC City Recorder
APPROVED AS TO FORM:
Lisa A. Garner
City Attorney
STATE OF UTAH)
COUNTY OF SALT LAKE : ss)
On the 25 day of, 2020, personally appeared before me Robert M.Hale, who being by me duly sworn did say he is the Mayor of Midvale City Corporation, and that the within and foregoing instrument was signed on behalf of such Corporation.
Notary Public Residing at: MOVALE LITS
My Commission Expires:
RORI L ANDREASON NOTARY PUBLIC-STATE OF UTAH

DEVELOPER:	
	Holmes Homes, Inc. a Utah corporation
	By: Its:
STATE OF UTAH)	
COUNTY OF SALT LAKE)	
, who being by	me duly sworn did say he/she is the oration, and that he/she had signed the within and foregoing ration.
	Notary Public Residing at:
My Commission Expires:	

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NOTARY SIGNATURE AND SEAL

EXHIBIT A

Legal Description of the Property

That certain real property located in Salt Lake County, Utah, as more particularly described as follows:

Parcel 1: (743 West Bingham Junction Boulevard)

Lot 202A, Jordan Bluffs Lot 2 2nd Amended Subdivision

Parcel 2: (752 West Bingham Junction Boulevard)

Lot 203, Jordan Bluffs Lot 2 2nd Amended Subdivision

EXHIBIT B

Large Scale Master Plan

[attachment follows]



HOLMES HOMES

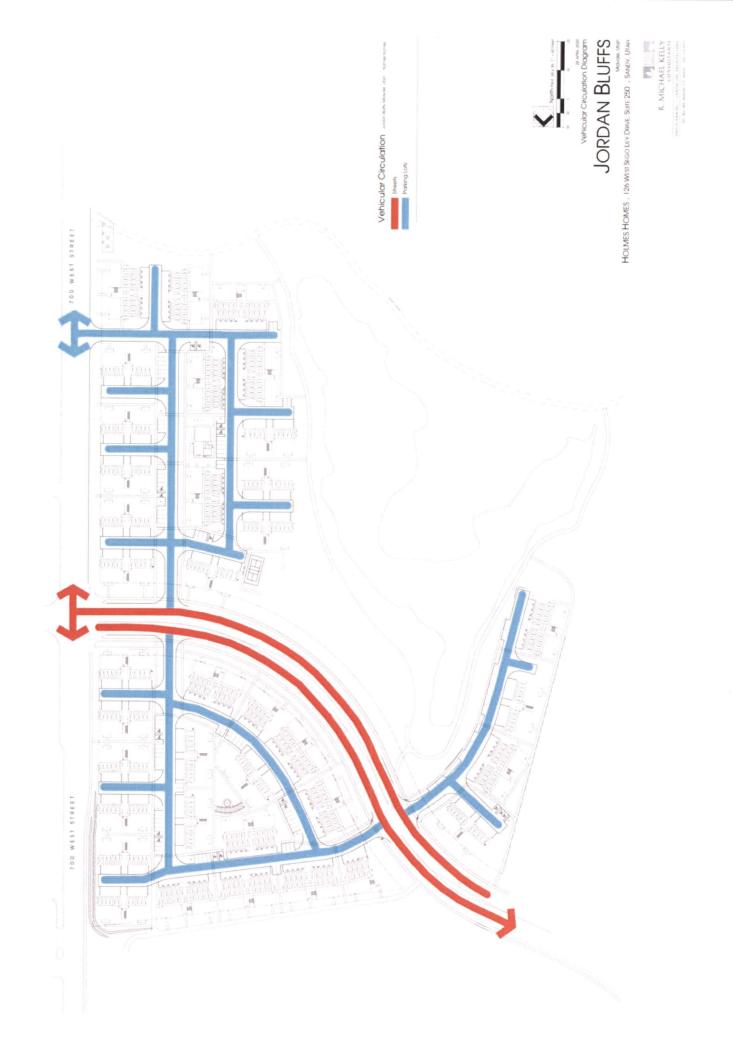
JORDAN BLUFFS - HYBRID SITE PLAN 3 STORY FLATS

MIDVALE, UTAH

Σ 7

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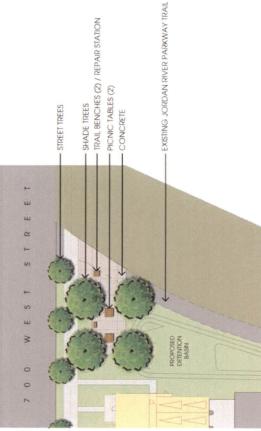




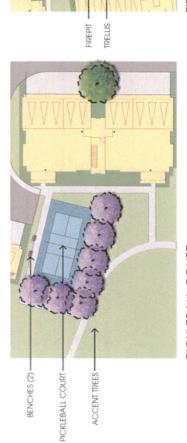


R. MICHAEL KELLY
CONSULTAND
AND CONSULTAND
TO be see stocked 12 tasks out to pro-

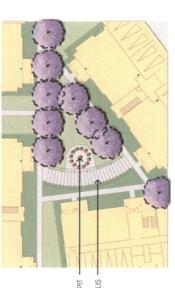




JORDAN RIVER PARKWAY TRAILHEAD



PICKLEBALL COURT



FIREPIT GATHERING AREA



Amenities: Site Plans JORDAN BLUFFS

HOLMES HOMES , 126 WEST SEGO LLY DRIVE, SUITE 250 , SANDY, UTAH





FIREPIT



TRELLIS



PICKLEBALL COURT

Outdoor Recredion Amenities JORDAN BLUFFS Machine Land Models USA WEST SEGO LEY DRIVE, SUITE 250 , SANDY, UTAH



BENCHES



PLAYGROUND



STREET TREES



LIGHT FIXTURE

PARKING LOT TREE



ACER 'WARREN RED'





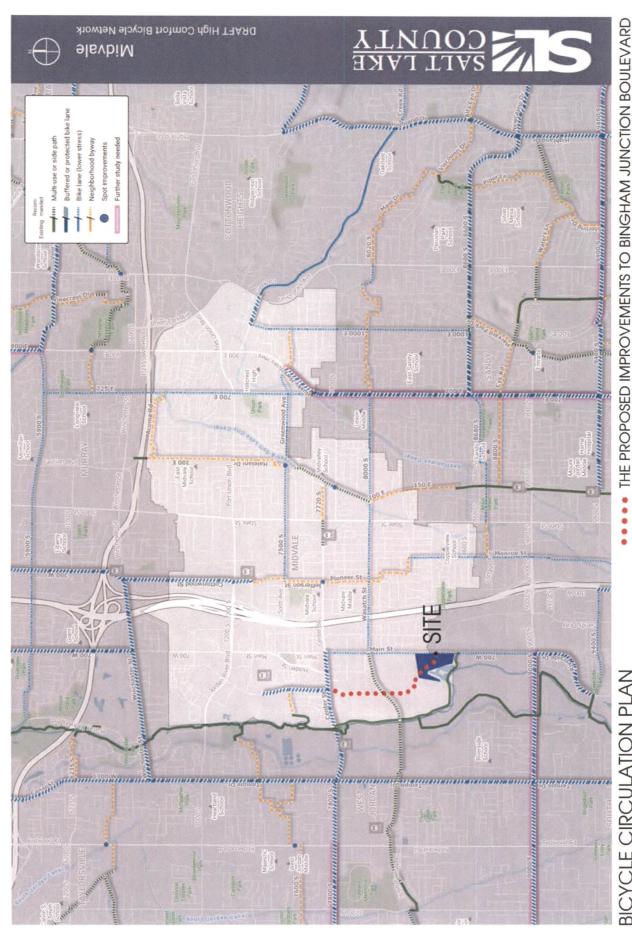
PYRUS CALLERYANA 'ARISTOCRAT'

MALUS X 'RASPBERRY SPEAR'

ACER PLATANOIDES 'DEBORAH'

Thematic Design Elements JORDAN BLUFFS MAGGIN DRIVE, SUITE 250 , SANDY, UTAH

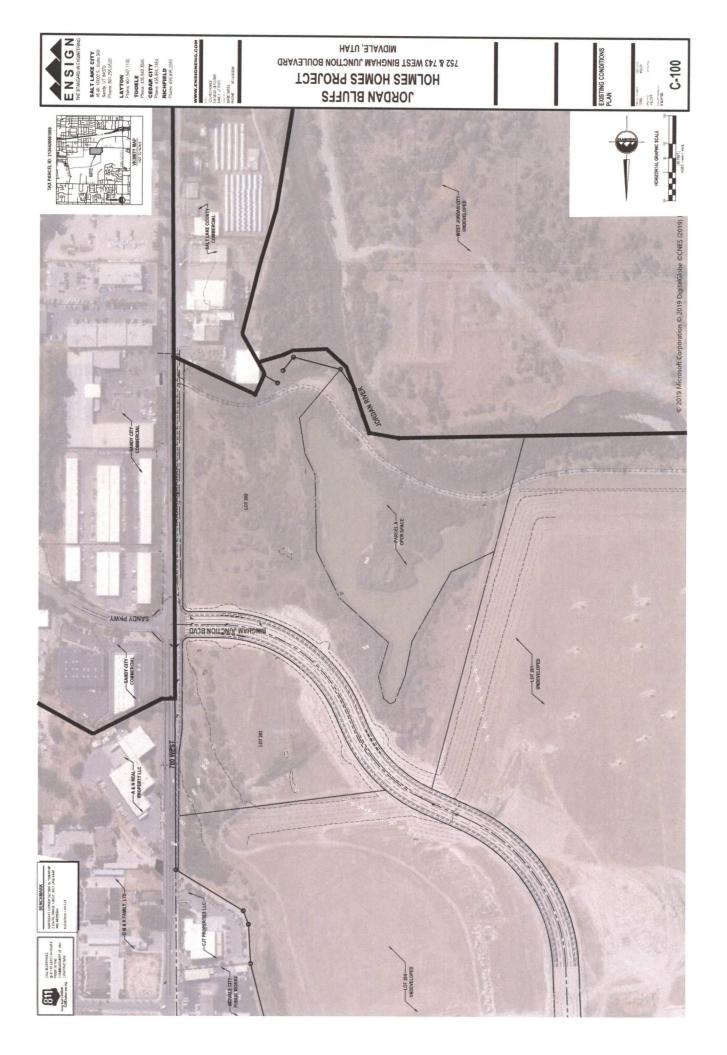


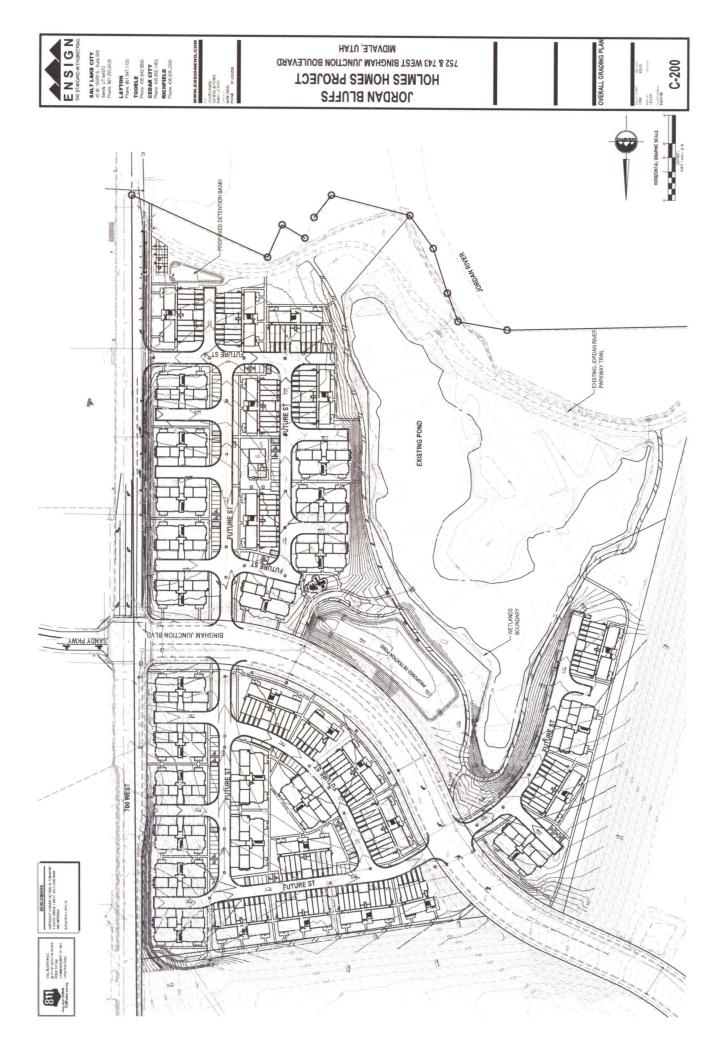


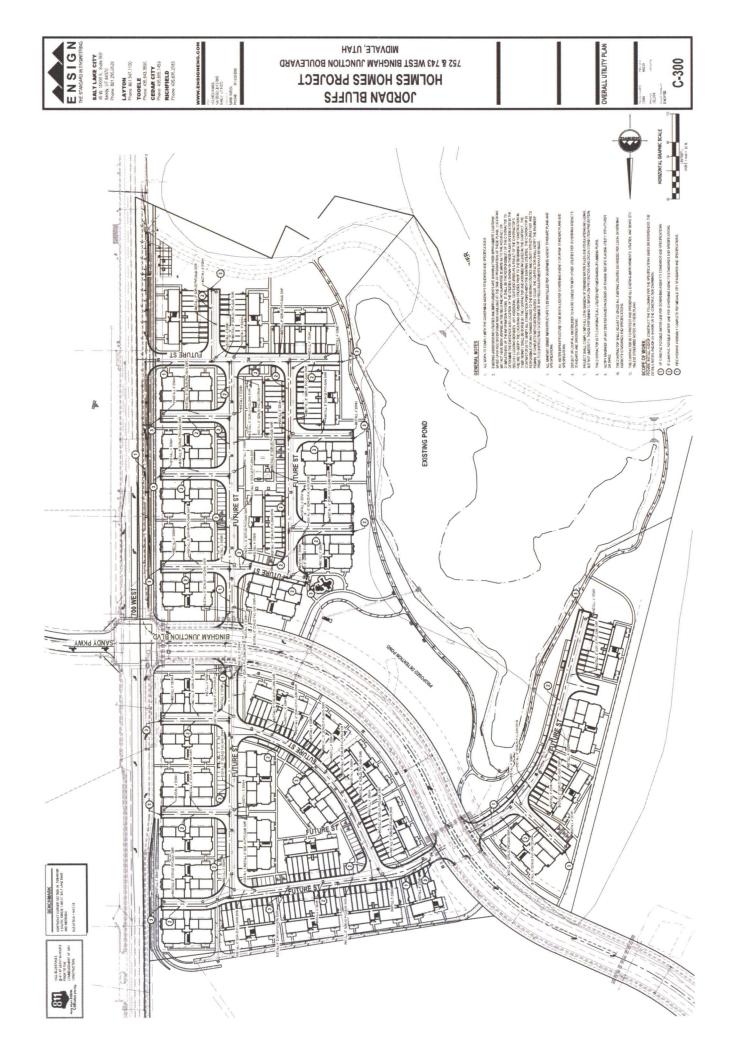
BICYCLE CIRCULATION PLAN JORDAN BLUFFS, MIDVALE, UTAH ... HOLMES HOMES

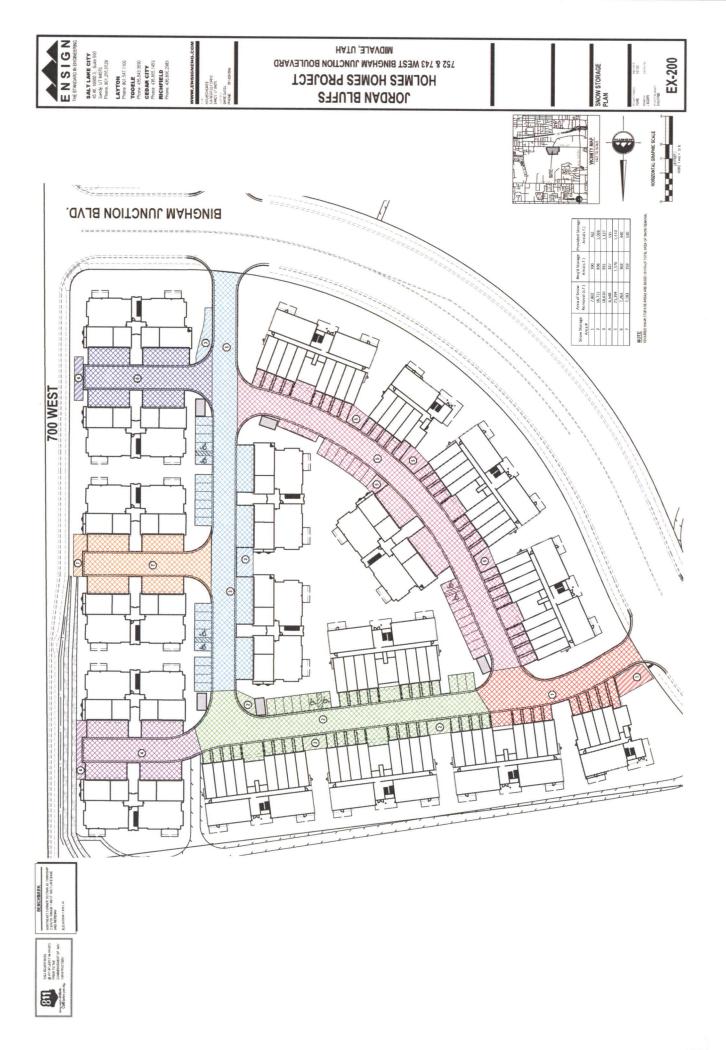
INCLUDE A BIKE LANE WITHIN THE JORDAN BLUFFS DEVELOPMENT

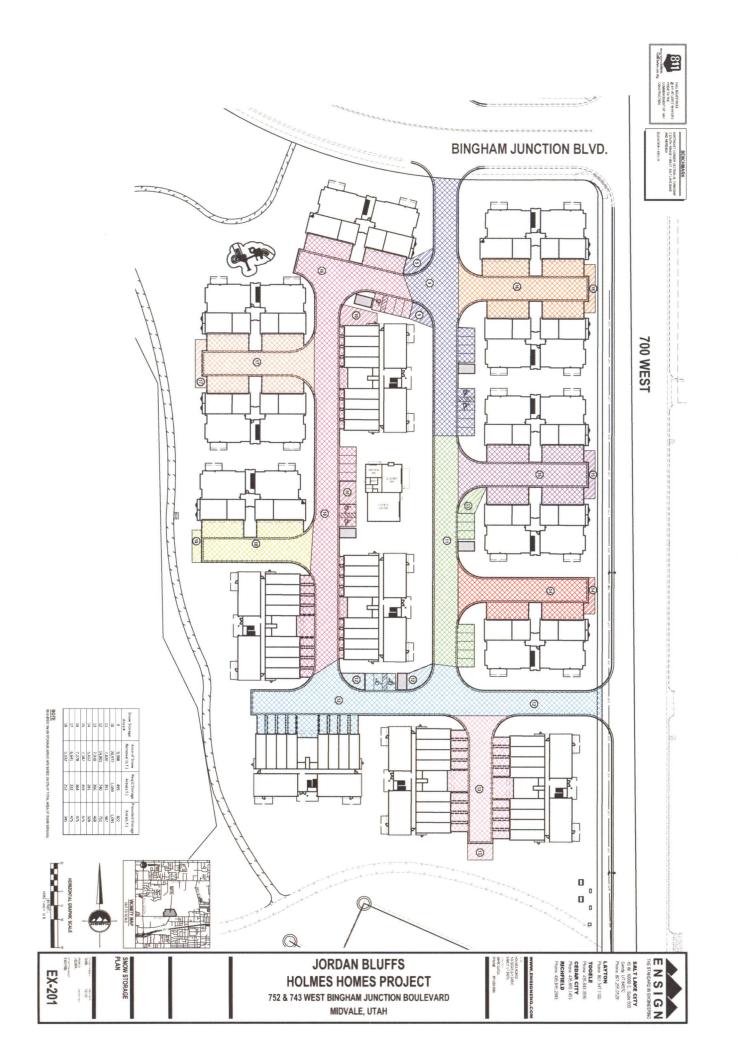








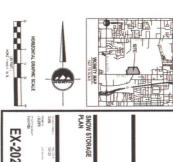












EX-202

JORDAN BLUFFS
HOLMES HOMES PROJECT
752 & 743 WEST BINGHAM JUNCTION BOULEVA

VARD MIDVALE, UTAH



SALT LAKE CITY
45% (1000.5 Sate 500
5 Sate), 11 50/70
Phone 81 255.5 1 100
Phone 81 55.5 1 100
Phone 83 55.5 1 100
Phone 45.6 55.2 100
Phone 45.6 55.2 100





	002306		
	SUBFACE		
223	DRIVEWAYS		
41	COVERED		
	PROVIDED:		
	TOTAL REQUIRED		
90	GUEST	804 SPACES	TOTAL PARKING:
	FOR 3 BR UNITS	24.3 DU/AC	DENSITY:
	FOR 2 BR UNITS	360 DU	TOTAL UNITS:
	REQUIRED:	14.8 AC Net	SITE AREA:

UNIT DATA:

TOTAL,	PLAN 5	PLAN 4	PLAN 3	PLAN 2	PLAN 1	PLAN #
ALL UNITS						
	3 BR, 2 BA	2 BR, 2 BA	3 BR, 2 BA	3 BR, 2 BA	2 BR, 2 BA	PLAN TYPE
	1,367	1,092	1,443	1,426	1,117 SF	CZ
	SF	SF	35	3F	SF	AKEA
360	120	80	64	64	32	VIV
	33%	22%	18%	18%	9%	XIX
470,760	164,040	87,360	92,352	91,264	35,744 SF	IOIALA
SF	SF			SF	SF	KEA.

COVER/PROJECT DATA FLOOR PLANS/ROOF PLAN/SECTION, BUILDING TYPE 1 FLOOR PLANS/ROOF PLAN, BUILDING TYPE 2

FLOOR PLANS/ROOF PLAN/SECTION, BUILDING TYPE 3

ENLARGED UNIT FLOOR PLANS
ELEVATIONS, BUILDING TYPE 1, COLOR SCHEMES 1-4
ELEVATIONS, BUILDING TYPE 2
ELEVATIONS, BUILDING TYPE 3, COLOR SCHEMES 1-4

01 02-03 04 05-06 07-08 07-18 09-12 13 11-17 118-31 32-33 34-35 RENDERINGS

REC BUILDING FLOOR PLAN/ROOF PLAN/SECTION REC BUILDING ELEVATIONS REC BUILDING RENDERINGS

0

JORDAN BLU BLUFFS

HOLMES

SCHEMATIC SITE/BUILDING DESIGN







ORDAN BLU

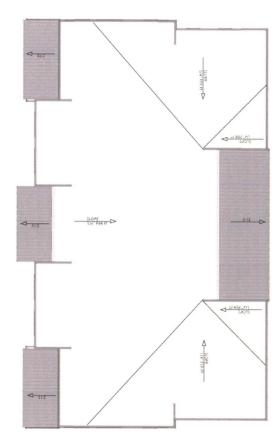
BLUFFS

BUILDING 1 PLANS - 10 UNIT BUILDING

SCALE 1'05

J Z M K
P A R T N E R S
1004122

02





ROOF PLAN

SECTION A

BUILDING 1 ROOF PLAN, SECTIONS

HOLMES

JORDAN BLUFFS CONDOS

90.1 31V O.8





FIRST FLOOR

ROOF PLAN

HOLMES

JORDAN BLUFFS CONDOS

30 VTF 1.08.

PARTNERS



PLAN 4 2BR 2BA 1,092 SF

BUILDING 3 PLANS - 10 UNIT BUILDING

FIRST FLOOR

SECOND AND THIRD FLOORS

PLAN 5 3BR 2BA 1,367 SF

HOLMES

JORDAN BLUFFS CONDOS

53'-9"

FAIROGE

PLAN 5

PARKING

PLAN 5

PLAN 4 28P FLAT PLAN 5

PLAN 4 28R FLAT

ROOF PLAN

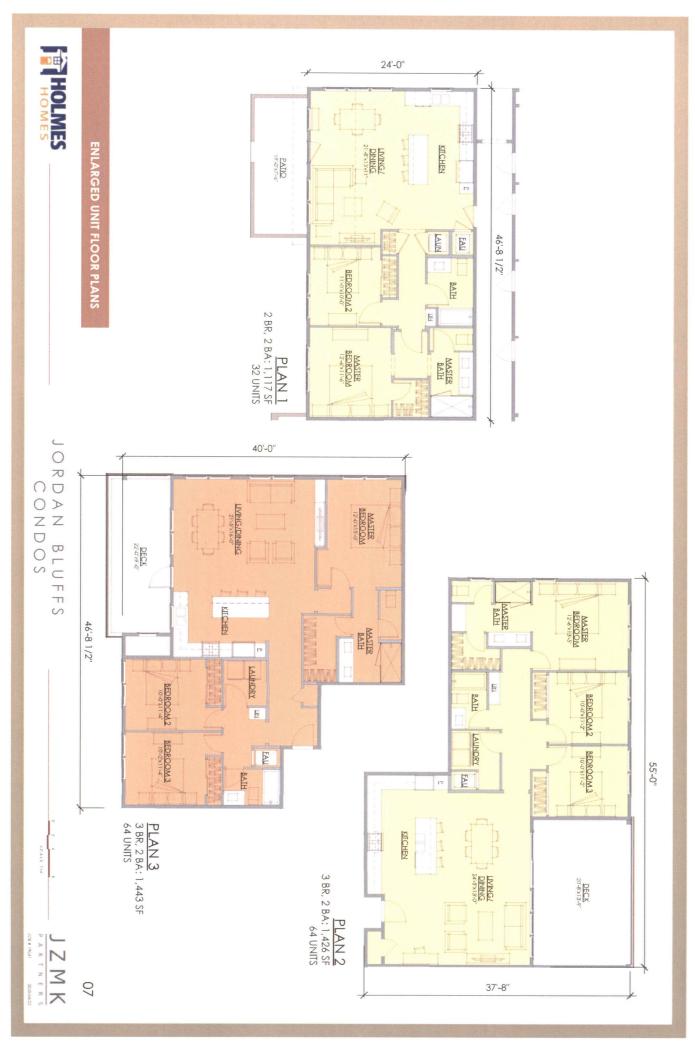
SECTION B

BUILDING 3 PLANS - 10 UNIT BUILDING

HOLMES

JORDAN BLUFFS CONDOS

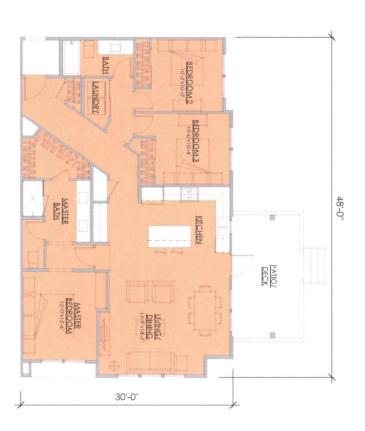
30.1.37V.J.f.





PLAN 5 3 BR. 2 BA: 1,367 SF 120 UNITS

PLAN 4 2 BR, 2 BA: 1,092 SF 80 UNITS



ENLARGED UNIT FLOOR PLANS

HOLMES

JORDAN BLUFFS CONDOS

SCALE Lot





REAR ELEVATION

-STUCCO

WOOD GARAGE DOOR

OVER DECK

BUILDING 1 ELEVATIONS, COLOR SCHEME 1

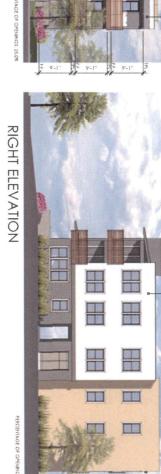


HOLMES

CONDOS BLUFFS

SCALE TWE









BUILDING 1 ELEVATIONS, COLOR SCHEME 2

HOLMES

JORDAN BLU BLUFFS







WOOD GARAGE DOOR

88





BUILDING 1 ELEVATIONS, COLOR SCHEME 3

HOLMES

CONDOS BLUFFS

SCALE TOS

PARTNERS









BUILDING 1 ELEVATIONS, COLOR SCHEME 4

STUCCO

WOOD GARAGE DOOR

HOLMES

JORDAN BLUFFS CONDOS

SCALE 1'98

PARTNERS



FRONT ELEVATION





RIGHT ELEVATION



REAR ELEVATION

-WOOD GARAGE DOOR







JORDAN BLUFFS CONDOS



 $\overline{\omega}$

BUILDING 2 ELEVATIONS







RIGHT ELEVATION





0

H

WITH FOAM TRIM AT STUCCO

REAR ELEVATION



PERCENTAGE OF OPENINGS: 25.0%

LEFT ELEVATION

CONDOS BLUFFS

HOLMES

BUILDING 3 ELEVATIONS, COLOR SCHEME 1

SCALE 1'08



FRONT ELEVATION



RIGHT ELEVATION





REAR ELEVATION



LEFT ELEVATION

BUILDING 3 ELEVATIONS, COLOR SCHEME 2

HOLMES

JORDAN BLUFFS CONDOS

PARTNERS



FRONT ELEVATION





RIGHT ELEVATION







LEFT ELEVATION

BUILDING 3 ELEVATIONS, COLOR SCHEME 3

HOLMES

JORDAN BLU CONDOS BLUFFS

J Z M K
P A R T N E R S
J06 (1904) 2000-04-22



FRONT ELEVATION





RIGHT ELEVATION

PERCENTAGE OF OPENINGS



LEFT ELEVATION

PERCENTAGE OF OPENINGS: 25.0%



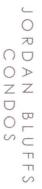


REAR ELEVATION

0-

SEDING

HOLMES















HOLMES

JORDAN BLUFFS CONDOS





HOLMES

JORDAN BLUFFS CONDOS













RENDERING: BUILDING 3 SIDE





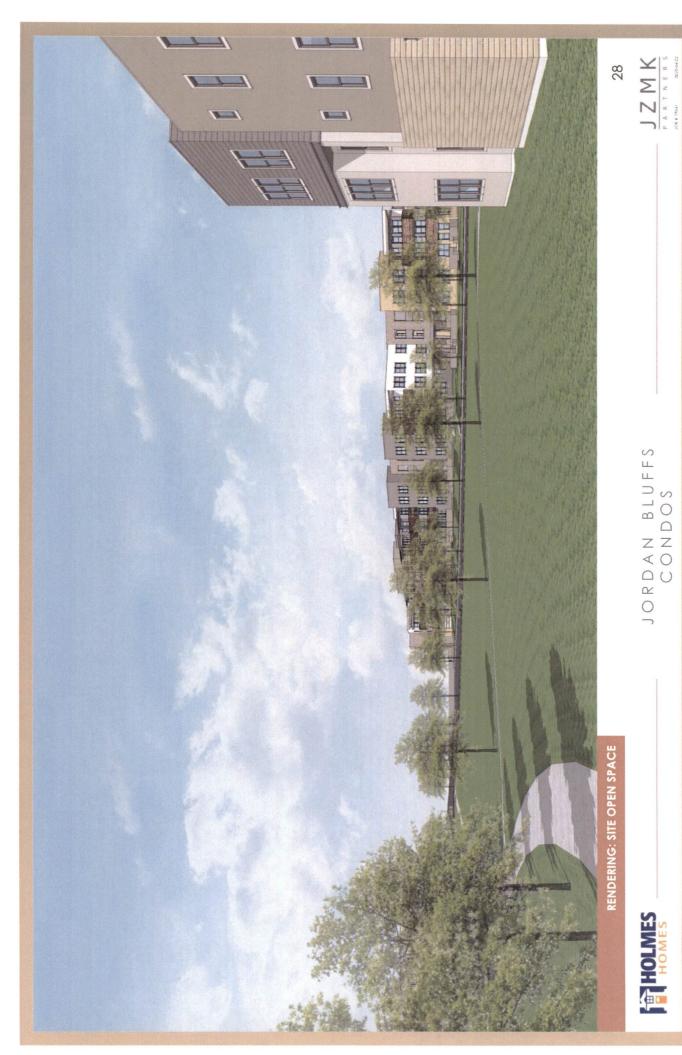


RENDERING: BINGHAM JUNCTION BLVD





















RENDERING: 700 WEST STREET





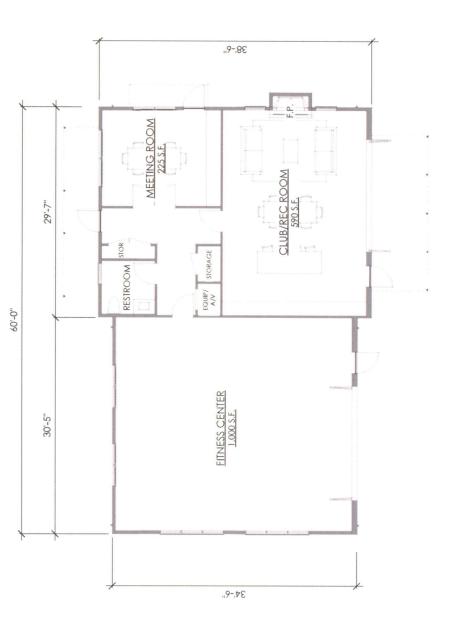








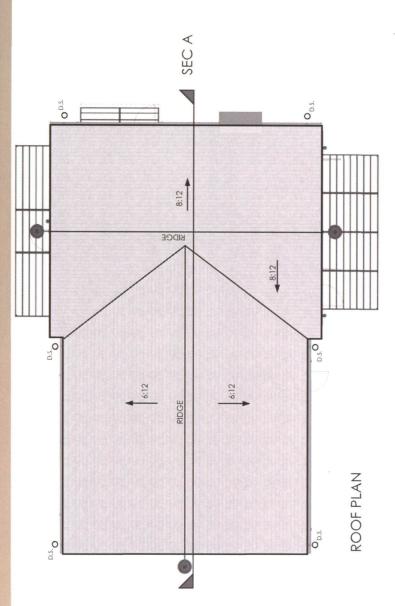


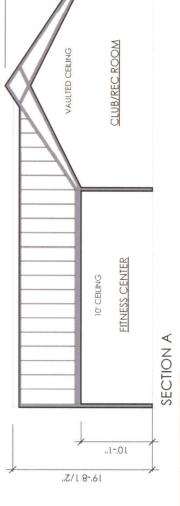


SCALE: 1" = 4"

RECREATION BUILDING - FLOOR PLANS







51,-0..

..1-.01

RECREATION BUILDING - ROOF PLAN & SECTION



JORDAN BLUFFS CONDOS

SCALE: 1" = 4"

EAST ELEVATION



WEST ELEVATION

RECREATION BUILDING - ELEVATIONS



SCALE: 1" = 4"



SOUTH ELEVATION



NORTH ELEVATION

RECREATION BUILDING - ELEVATIONS

JORDAN BLUFFS CONDOS

SCALE: 1" = 4"



RECREATION BUILDING - RENDERING







RECREATION BUILDING - RENDERING







RECREATION BUILDING - RENDERING





