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RECORDED

2006 OCT 10 PM 4 19

C. HOBBS, CLERK

CANYON COUNTY RECORDER
BY *[Signature]*

REQUEST *[Signature]*
TYPE *[Signature]* FEE *[Signature]*

Recording Requested By and
When Recorded Return to:

City Clerk
City of Middleton
P.O. Box 487
Middleton, Idaho 83644

For Recording Purposes Do
Not Write Above This Line

**DEVELOPMENT AGREEMENT
BLUE MEADOWS SUBDIVISION**

This Development Agreement entered into by and between the City of Middleton, a municipal corporation in the State of Idaho, hereinafter referred to as "City", and Richard M Phillips and Staci Phillips Trust, whose address is 210 Murray Street, Boise, Idaho 83714, the owner of the real property described herein and applicant(s) for BLUE MEADOWS Subdivision, hereafter referred to as "Developer".

WHEREAS, the Developer has applied to the City for a zone change to R-3 for the Development of the property described as attached hereto and incorporated by reference herein on Exhibit 1 ("Property") to develop a Residential Subdivision, which includes approximately 80 acres of residential uses. The Property is currently zoned Ag. The Developer has enclosed a concept plan which is attached hereto as Exhibit 2.

WHEREAS, the City, pursuant to Section 67-6511A, Idaho Code, has the authority to conditionally rezone the property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose or use which is appropriate in the area, but for which all allowed uses for the requested zoning may not be appropriate pursuant to the Idaho Code and the Middleton City Code.

WHEREAS, the Middleton City Code allows a property owner or developer to request that an application for zoning or zoning map amendment be processed in connection with the execution of a development agreement, wherein through such development agreement, a property owner or developer may agree to make written commitments concerning the use or development of a subject parcel in exchange for the change of zoning requested; and

[Handwritten initials]

WHEREAS, the City is willing to allow the proposed development within the City Of Middleton, Idaho, subject to the terms and conditions of this Agreement and the Special Conditions attached hereto; and

WHEREAS, the City desires to induce Developer to develop the Property because the development proposed by Developer is in the public interest. The City believes that development by Developer will generate additional tax revenue, provide employment, and stimulate beneficial commercial growth and development; and

WHEREAS, the City acknowledges that Developer and its successors and/or assigns are relying upon the effectiveness of this Development Agreement in the decision to purchase the Property; and

WHEREAS, the City has approved the requested annexation and zoning to R3 subject to the following terms and/or commitments and desires to formalize and clarify the respective obligations of the parties.

WHEREFORE, the City of Middleton and the Developer do enter into this Agreement and for and in consideration of the mutual covenants, duties and obligations herein set forth, it is agreed as follows:

ARTICLE I LEGAL AUTHORITY

1.1 This Development Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Middleton City Code, Title 5, Chapter 7).

ARTICLE II ZONING ORDINANCE AMENDMENT

- 2.1 The City will adopt an ordinance amending the Middleton Zoning Ordinance to rezone the property to R-3. The Ordinance will become effective after its passage, approval, and publication and the execution and recordation of this Development Agreement.
- 2.2 This Development Agreement shall not prevent the City in subsequent actions applicable to the Property, from applying new ordinances and regulations of general application adopted by the City in exercise of its police powers that do not conflict with Developer's property rights, the parties' commitments applicable to the Property as set forth herein, or the R-3 zone classification approved hereby. Any such subsequent ordinances shall not supersede the specific commitments set forth herein.

**ARTICLE III
CONDITIONS ON DEVELOPMENT**

The sole uses(s) allowed and restrictions pursuant to this conditional rezone as reflected in this Agreement are as follows:

- 3.1 Developer shall develop the Property subject to the conditions and limitations set forth in this Agreement, and to the standards that the City has in force at the time of the annexation application for the R-3 zoning classification except as otherwise provided in this Agreement (the "Project"). Developer shall further submit such applications regarding preliminary and final plat reviews and any other applicable applications as may be required by the City.
- 3.2 Developer agrees that, unless otherwise agreed to by the Parties, the conceptual site development plan (the "Conceptual Plan") attached hereto as Exhibit B shall dictate the type of development to be constructed in each of the components of the Project. Block lengths shall apply in accordance with the approved conceptual plan. Residential densities within the Project shall not exceed three (3) dwelling units per gross acre.
- 3.3 The Project shall comply with the Middleton Comprehensive Plan and Middleton City Code, and all state and federal law as they exist in final form at the time the development application was submitted, except as otherwise provided in this Agreement and will require a complete set of plans which shall include:
 - 3.4.1 Site plan including street, curb and gutter, street signs, irrigation lines, sidewalk and site lighting;
 - 3.4.2 Underground utility plan including water, sanitary sewer, storm drainage, irrigation, and fire protection;
 - 3.4.3 Any other required improvements set forth as conditions of approval; Soils report, including bearing values, soils profile, ground water and other elements as requested by the City Engineer or Building Official;
 - 3.4.4 Review and Approval by the City Engineer and Building Official of site, utility, and landscape plans before a building permit is issued.
- 3.4 Unless otherwise agreed, Developer will at its sole expense, design and construct all public improvements as shown in this development agreement in strict accordance with the Middleton City Code in existence at the time of the development application or as otherwise provided in this Agreement.



3.5 Street Improvements and Access. Developer agrees to submit a traffic impact study to the City acceptable to the City Engineer. In particular, the traffic study shall be in accordance with the standards identified in the *Transportation Impact Analyses for Site Development*, 2005, by the Institute of Transportation Engineers. At a minimum, such a traffic impact study must consider the cumulative impacts of surrounding developments. Developer agrees to mitigate its proportionate share of adverse traffic impacts as required by the City.

3.5.1 Developer shall make any and all necessary street improvements as provided in the Conceptual Plan and required by the City Engineer pursuant to the Traffic Impact Study;

3.5.2 Developer shall construct the following street improvements to standards adopted by the City including associated curb, gutter and sidewalk per the requirements of the Middleton City Code in effect as of the effective date of this Development Agreement, and the Traffic Impact Study.

3.5.2 Project accesses shall conform to the diagram contained in Exhibit 2.

3.5.3 Review and Approval by the City Engineer and Building Official of any and all street improvements and access shall be required before building permits shall be issued.

3.5.4 Provided the Developer is in substantial compliance as determined by the City Engineer, building permits may be issued prior to the completion of secondary street improvements.

3.6 Landscape Improvements.

3.6.1 Developer shall provide landscaping on designated frontages in accordance with exhibit 2 and the provisions of the Middleton City Code in place as of the effective date of this Development Agreement.

3.6.2 Developer will provide landscaping in accordance with the provisions of the City of Middleton for R-3 zoned properties in place as of the effective date of this Development Agreement as depicted with the Conceptual Plan.

3.6.3 Developer or its successors or assigns shall maintain all site landscape areas as required by law.

3.7 Setbacks.

3.7.1 Developer shall comply with the setbacks for R-3 zoned property as provided in the Middleton City Code in effect as of the effective date of this Development Agreement.

3.8 Utilities.

3.8.1 Developer shall bring to the Property all utilities it requires for development subject to appropriate reimbursement provisions in latecomers' agreements, except for sanitary sewer, a separate agreement for sewer applies.

3.8.2 Developer shall construct all on-site utilities required for development of the Property, including sewer, water, electricity, natural gas, and any others Developer deems appropriate.

3.8.3 All on-site utilities shall be constructed underground.

3.9 Conditions, Security for Completion: All of the conditions set forth herein shall be complied with or shall be secured by a letter of credit for completion by the Developer before a Final Plat Approval or Occupancy permit will be granted. Failure to comply by a letter of credit for completion of the conditions within the time frame established in the subdivision plat approval conditions, the Middleton City Code or the terms of this Agreement shall result in a default of this Agreement by the Developer. The Developer may be allowed to provide a letter of credit for certain conditions at one hundred and fifty percent (150%) of the estimated cost of completion pursuant to Middleton City Code, and, provided the Developer is in substantial compliance, to be determined by the City Engineer, the City Council may issue building permits prior to completion of certain secondary public improvements.

3.11 Expanded Use. No change in the use or restriction specified in this Agreement shall be allowed or changed without modification of this Agreement pursuant to the requirements of the Middleton City Code. In the event Developer changes or expands the use permitted by this Agreement or fails to comply with the restrictions without formal modification of this Agreement as allowed by the Middleton City Code, Developer shall be in default of this Agreement.

3.12 Commencement of Construction: The Developer shall commence construction of site infrastructure (e.g., grading of streets or installation of utilities) within five years of the effective date of this Agreement. Developer acknowledges that preliminary plat approval is valid for twelve (12) months pursuant to Middleton City Code § 6-2-3(F)(3). Upon Developers request an extension of 12 months shall be allowed for cause. In the event the Developer fails to commence construction within the time periods herein stated, the Developer shall be in default of this Agreement.

3.13 Final building Permit. Final building permit approval and construction of the improvements on the Property, in accordance with those approved plans, shall be deemed to satisfy the conditions and obligations of Developer set forth in this Development Agreement.

ARTICLE IV
AFFIDAVIT OF PROPERTY OWNERS

- 4.1 An affidavit of all owners of the Property agreeing to submit the Property to this Development Agreement and to the provisions set forth in Idaho Code Section 67-6511A and Middleton City Code shall be provided and is incorporated herein by reference.

ARTICLE V
DEFAULT

- 5.1 In the event Developer, its successors or assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, fail to faithfully comply with all of the terms and conditions included in this Agreement, this Agreement may be modified or terminated by the Middleton City Council upon compliance with the requirements of the Middleton City Code. In the event the City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended and Developer shall comply with the amended terms. Failure to comply with the amended terms shall result in default. In the event the City Council, after compliance with the requirements of the Middleton City Code, determines that this Agreement shall be terminated, the zoning of the Property shall revert to City R-3 zoning. All uses of the Property, which are not consistent with City R-3 zoning shall cease. Nothing herein shall prevent Developer from applying for any nature of use permit consistent with City R-3 zoning. A waiver by the City of any default by Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.
- 5.2 The execution of this Development Agreement and the written commitments contained herein shall be deemed written consent to change the zoning of the Property to its prior designation upon failure of the conditions imposed upon Developer by this Development Agreement.
- 5.3 **Remedies and Specific Performance.** In addition to the remedies provided by the Default provisions herein, any applicable Permits issued pursuant to this Agreement, and the proceedings Findings of Facts and Conclusions of Law issued herein may be revoked at any time for a material violation of the permit, or any material violation of any condition thereof, by motion of the City Council after notice and Developer's failure to cure such failure within thirty (30) days, followed by a due process hearing upon at least ten (10) days written notice to Developer. The City Council, after finding that Developer has exercised due diligence in curing any such



failure, may provide a reasonable extension of time for Developer to cure such failures. In the event a breach of this Agreement in addition to all other remedies at law or in equity, and as set forth in this Agreement.

5.4 Financial Assurance. In the event that certain improvements are not completed by Developer as required under this Agreement, Developer shall submit a mutually acceptable bond, cash deposit, certified check, or irrevocable bank letter of credit, or other security agreement to the City for one hundred fifty percent (150%) of the estimated costs associated with the completion thereof as estimated by the City Engineer and approved by the CITY prior to the issuance of an occupancy permit for any of the buildings within the Project for which said improvements are required to be constructed. In the event Developer fails to complete construction of the specified improvements within a period of time as required under this Agreement, the City may proceed to have such work completed. In order to accomplish this, the City may appropriate said security agreement, bond, cash, deposit, or letter of credit.

ARTICLE VI UNENFORCEABLE PROVISIONS

- 6.1 If any term, provision, commitment or restriction of this Development Agreement or the application thereof to any party or circumstances shall, to any extent be held invalid or unenforceable, the remainder of this instrument shall remain in full force and effect.
- 6.2 This Development Agreement is intended to be supplemental to all other local, City, State and Federal Code requirements, rules and regulations, and is established to assure compatibility of the resulting land use with the surrounding area. Provided, however, that to the extent this Development Agreement conflicts with any provision of the Middleton City Code, this Development Agreement shall prevail to the extent permitted by law.

ARTICLE VII ASSIGNMENT AND TRANSFER

- 7.1 After its execution, the Development Agreement shall be recorded in the office of the County Recorder at the expense of the Applicant. Each commitment and restriction on the development subject to this Agreement, shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property, adjacent property and other residential property near the Property and shall run with the land. This Development Agreement shall be binding on the City and the Applicant and owners, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns; provided, however, that if all or



any portion of the Property is divided and each owner of a legal lot shall only be responsible for duties and obligations associated with an owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels of lots within the Property. The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect only to such owner's lot or parcel.

ARTICLE VII GENERAL MATTERS

- 8.1 **Amendments.** Any alteration or change to this Development Agreement shall be made only after complying with the notice and hearing provisions of Idaho Code Section 67-6509, as required by Middleton City Code, Title 5, Chapter 7.
- 8.2 **Paragraph Headings.** This Development Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Development Agreement. As used in this Development Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.
- 8.3 **Choice of Law.** This Development Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Development Agreement. Any action brought in connection with this Development Agreement shall be brought in a court of competent jurisdiction located in Canyon County, Idaho.
- 8.4 **Notices.** Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below.

Middleton: City Clerk
City of Middleton
P.O Box 487
Middleton, Idaho 83644

Developer: Mr. Richard M. Phillips and Staci Phillips Trust

210 Murray Street
Boise, Idaho 83714

Or such other addresses and to such other persons as the parties may hereafter designate in writing to the other parties. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail, if sent by mail pursuant to the foregoing.

8.5 Attorneys' Fees and Costs. In the event an action is brought to enforce any provision of this Agreement, or in the event an action is brought to recover damages for breach of this Agreement, , the prevailing party in such action shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred, including attorneys' fees and cost incurred on appeal.

8.6 Effective Date. This Development Agreement shall be effective after delivery to each of the parties hereto of a fully executed copy of the Development Agreement.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

Dated this 4 day of October, 2006.

CITY OF MIDDLETON

By: Frank McKeown
Mayor

ATTEST:

Ellen Smith CMC
City Clerk



RP

STATE OF IDAHO)
) ss
County of Canyon)

On this 12 day of October, in the year of 2006, before me Elena Gomez, personally appeared Frank McKeever and Ellen Smith, known or identified to me, to be the persons whose names are subscribed to the within and foregoing instrument and acknowledged to me that they executed the same, and were so authorized to do so for and on behalf of said City of Middleton.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Elena Gomez
Notary Public for Idaho
Residing at Middleton, Idaho
My Commission expires: 3-14-11

Richard M. Phillips

Richard M. Phillips
By: Richard M. Phillips

Staci Phillips Trust

Richard M. Phillips
By: Richard M. Phillips
Its: Trustee

STATE OF IDAHO)
)ss
County of Ada)

On this 7 day of Sept., in the year 2006, before me, personally appeared Richard M. Phillips, known or identified to me to be the Trustee of the Staci Phillips Trust and acknowledged to me that he executed the same, and was so authorized to do so for and on behalf of Staci Phillips Trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Morita Stricker
Notary Public for Idaho
Residing at: Eagle, Id.
My Commission expires: 2/19/07

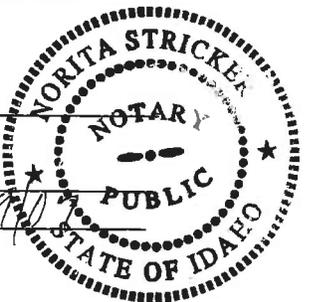


STATE OF IDAHO)
)ss.
County of Ada)

On this 7 day of Sept., in the year 2006, before me, personally appeared Richard M. Phillips, known or identified to me to be the person whose name is subscribed to the within and forgoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Morita Stricker
Notary Public for Idaho
Residing at: Eagle, Id.
My Commission expires: 2/19/07



Paradise Valley Subdivision Annexation an Zoning Application

Richard M. Phillips
210 Murray Street
Boise, Idaho 83714

BLUE MEADOWS BOUNDARY DESCRIPTION

Rev. June 6, 2005

A PORTION OF THE NORTH ½ OF SECTION 3, T.4N., R.2W., BOISE MERIDIAN, CANYON COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE EAST ¼ CORNER OF SECTION 3, T.4N., R.2W., BOISE MERIDIAN, CANYON COUNTY, IDAHO, THENCE;

S 89°26'41" W 1320.31 FEET ALONG THE MID-SECTION LINE (the basis of bearings) TO A 1/16th CORNER, THE POINT OF BEGINNING, THENCE CONTINUING ALONG THE MID-SECTION LINE

S 89°26'41" W 1320.31 FEET TO THE CENTER OF SAID SECTION, THENCE

S 89°26'41" W 1318.76 FEET TO A 1/16th CORNER, THENCE ALONG A 1/16th LINE

N 00°47'20" E 1324.68 FEET TO A 1/16th CORNER, SAID POINT ALSO BEING ON THE SOUTH RIGHT OF WAY OF FOOTHILL ROAD, THENCE ALONG THE 1/16th LINE

N 89°27'05"E 1319.81 FEET TO A 1/16th CORNER, THENCE CONTINUING ALONG A 1/16th LINE

N 89°38'09" E 1320.73 FEET TO A 1/16th CORNER, THENCE ALONG A 1/16th LINE

S 00°51'25" W 1320.19 FEET TO THE POINT OF BEGINNING.

CONTAINS 80.18 ACRES

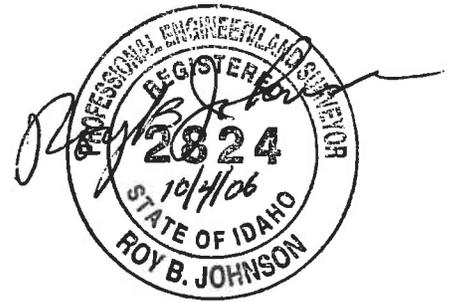
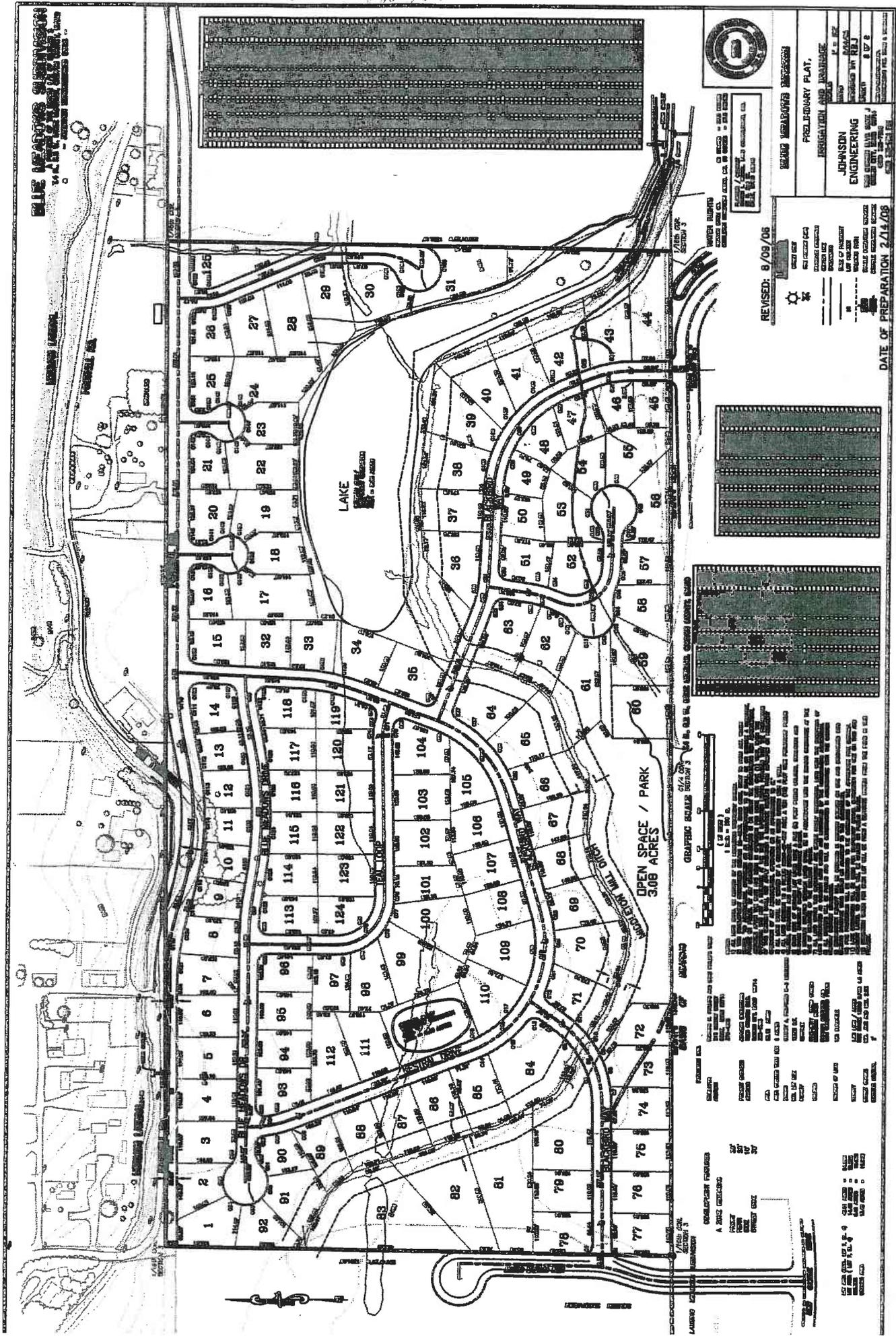


Exhibit 2

2



REVISIONS

NO.	DATE	DESCRIPTION
1	8/09/06	PRELIMINARY PLAN
2	8/09/06	REVISED PER COMMENTS
3	8/09/06	REVISED PER COMMENTS
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DATE OF PREPARATION 2/14/06

REVISIONS

PRELIMINARY PLAN

IRREGULAR AND UNUSUAL

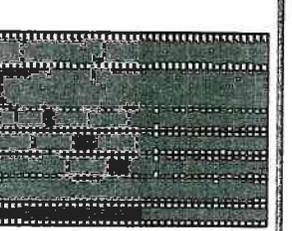
JOHNSON ENGINEERING

REGISTERED PROFESSIONAL ENGINEER

STATE OF TEXAS

NO. 12345

DATE 2/14/06



LEGEND

- PROPOSED IMPROVEMENTS
- EXISTING IMPROVEMENTS
- PROPOSED LOT LINES
- EXISTING LOT LINES
- PROPOSED DRIVEWAYS
- EXISTING DRIVEWAYS
- PROPOSED SIDEWALKS
- EXISTING SIDEWALKS
- PROPOSED UTILITY LINES
- EXISTING UTILITY LINES
- PROPOSED CURBS
- EXISTING CURBS
- PROPOSED FENCES
- EXISTING FENCES
- PROPOSED SIGNAGE
- EXISTING SIGNAGE
- PROPOSED LIGHTING
- EXISTING LIGHTING
- PROPOSED LANDSCAPING
- EXISTING LANDSCAPING
- PROPOSED TREES
- EXISTING TREES
- PROPOSED BENCHES
- EXISTING BENCHES
- PROPOSED BIKEWAYS
- EXISTING BIKEWAYS
- PROPOSED PLAY AREAS
- EXISTING PLAY AREAS
- PROPOSED WALKWAYS
- EXISTING WALKWAYS
- PROPOSED TRAILS
- EXISTING TRAILS
- PROPOSED OPEN SPACE
- EXISTING OPEN SPACE
- PROPOSED PARKING
- EXISTING PARKING

DATE OF PREPARATION 2/14/06

REVISIONS

PRELIMINARY PLAN

IRREGULAR AND UNUSUAL

JOHNSON ENGINEERING

REGISTERED PROFESSIONAL ENGINEER

STATE OF TEXAS

NO. 12345

DATE 2/14/06