

2ND AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("AGREEMENT") is dated May 30, 2006, effective as provided in Section 5 of this Agreement, and entered into between EXECUTIVE CORPORATION OF CLEARWATER, INC., a Florida corporation ("OWNER"), and the CITY OF CLEARWATER, FLORIDA, a political subdivision of the State of Florida acting through its City Council ("COUNCIL"), the governing body thereof ("CITY").

RECITALS:

A. Sections 163.3220 – 163.3243, Florida Statutes, which set forth the Florida Local Government Development Agreement Act ("ACT"), authorize the CITY to enter into binding development agreements with persons having a legal or equitable interest in real property located within the corporate limits of the City.

B. Under Section 163.3223 of the ACT, the CITY has adopted Section 4-606 of the City of Clearwater Community Development Code ("CODE"), establishing procedures and requirements to consider and enter into development agreements.

C. OWNER owns approximately 44.2 acres m.o.l. of real property ("PROPERTY") in the corporate limits of the City, more particularly described on Exhibit "A" attached hereto and incorporated herein.

D. OWNER or its successor, desires to develop the Property as a townhome community, consisting of not more than 280 units, generally conforming to the concept plan ("CONCEPT PLAN") shown on Sheet 1 of 2 on Exhibit "B" attached hereto and incorporated herein.

E. The PROPERTY currently has a land use designation of Recreation/Open Space and is zoned OS/R.

F. In order to develop the PROPERTY, consisting of 44.2 acres, with up to 280 residential units, OWNER has requested that the City place the following on the PROPERTY: (i) a land use designation of Residential Urban (7.5 units/acre) and (ii) a zoning designation of MDR (Medium Density Residential).

G. The CITY and OWNER have determined that it would be mutually beneficial to enter into a development agreement governing the matters set forth herein and have negotiated this AGREEMENT in accordance with the CODE and the ACT.

KEN BURKE, CLERK OF COURT  
PINELLAS COUNTY FLORIDA  
INST#: 2006206960 06/01/2006 at 02:40 PM  
OFF REC BK: 15155 PG: 2700-2714  
DocType:AGM RECORDING: \$129.00

H. The CITY has found that the terms of, and future development orders associated with, this AGREEMENT are consistent with the City Comprehensive Plan and the CODE.

I. On May 31, 2005, the CITY and the OWNER entered into a Development Agreement, which the parties wish to amend and restate in its entirety as set forth below.

#### STATEMENT OF AGREEMENT

In consideration of and in reliance upon the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound and in accordance with the ACT, agree as follows:

SECTION 1. RECITALS The above recitals are true and correct and are a part of this AGREEMENT.

SECTION 2. INCORPORATION OF THE ACT This AGREEMENT is entered into in compliance with and under the authority of the CODE and the ACT, the terms of which as of the date of this AGREEMENT are incorporated herein by this reference and made a part of this AGREEMENT. Words used in this AGREEMENT without definition that are defined in the ACT shall have the same meaning in this AGREEMENT as in the ACT.

SECTION 3. PROPERTY SUBJECT TO THIS AGREEMENT The PROPERTY is subject to this AGREEMENT.

SECTION 4. OWNERSHIP The PROPERTY is owned in fee simple by OWNER.

SECTION 5. EFFECTIVE DATE/DURATION OF THIS AGREEMENT

5.1 This AGREEMENT shall become effective as provided for by the ACT and shall be contingent upon

5.1.1 Obtaining final approval, and effectiveness of a land use designation of Residential Urban and a zoning designation of MDR as requested on the PROPERTY; and

5.1.2 Conveyance by OWNER of the PROPERTY to Beazer Homes Corp., a Tennessee corporation, or assigns.

5.2 This AGREEMENT shall continue in effect until terminated as defined herein but for a period not to exceed ten (10) years.

SECTION 6. OBLIGATIONS UNDER THIS AGREEMENT

6.1 Obligations of the OWNER

6.1.1. The obligations under this AGREEMENT shall be binding on OWNER, its successors or assigns.

6.1.2. At the time of development of the PROPERTY, OWNER will submit such applications and documentation as are required by law and shall comply with the City's CODE applicable at the time of development review.

6.1.3. The following restrictions shall apply to development of the PROPERTY:

6.1.3.1 The PROPERTY shall be developed substantially in conformance with the CONCEPT PLAN. The estimated population density and maximum building intensity are shown on the CONCEPT PLAN. The locations of the ponds and roads shown on the CONCEPT PLAN are approximate and may change as a result of the requirements of applicable regulatory agencies or other design considerations.

6.1.3.2 Building height shall not exceed 35 feet (two stories).

6.1.3.3 The architectural style of the townhomes to be constructed on the Property shall be substantially as shown on the renderings attached hereto as Exhibit "C."

6.1.3.4 The landscape buffering for the westerly side of the Property adjacent to existing residential development shall be substantially as described on Sheet 2 of 2 on Exhibit "B.". Building setbacks shall meet the requirements of the CODE and may be located in whole or in part within the landscape buffer.

6.1.3.5 The OWNER shall construct at its cost an extension of a turn lane on Countryside Blvd. as shown on the CONCEPT PLAN and shall post the security therefor as required by CODE §4-606 G.1.e.

6.1.3.6 The OWNER shall grant (i) a utility easement for water service five (5) feet on either side of the constructed water lines on the PROPERTY and (ii) simultaneously with vacation by the CITY of that portion of the easement recorded in O.R. Book 4223, Page 1502, of the Public Records of Pinellas County, Florida, a replacement easement that relates to the remaining active wells operated by the CITY on the Property.

6.1.3.7. The project to be developed on the PROPERTY shall not have vehicular access to Laurelwood Drive.

6.1.3.8 On the west side of Enterprise Road, the OWNER shall extend north to the project entrance (+/- 400 feet) the existing SB to WB right turn lane at the Enterprise Road/Countryside Blvd. intersection, all at the OWNER's cost.

6.1.3.9. The OWNER shall buffer any residential structures located opposite the entrance to the Tampa Bay Water property to the east with a six foot high opaque fence, so as to diminish any adverse impact of headlights of vehicles exiting the Tampa Bay Water property.

6.1.3.9. Egress from the PROPERTY onto Enterprise Road shall permit only a right out movement. Ingress into the PROPERTY from Enterprise Road shall permit right in and left in movements.

6.1.4 Prior to issuance of the first building permit for the PROPERTY, Owner shall record a deed restriction encumbering the PROPERTY, which deed restriction shall be approved as to form by the City Attorney (which approval shall not be unreasonably withheld) and which will generally describe the development limitations of this AGREEMENT. The deed restriction shall be perpetual and may be amended or terminated only with the consent of the CITY, which consent shall not be unreasonably withheld.

## 6.2. Obligations of the City

6.2.1 Concurrent with the approval of this AGREEMENT, the COUNCIL shall promptly process amendments to the land use plan and zoning designation for the PROPERTY as set forth in Recital F above, all in accordance with the CODE.

6.2.2 City will approve site and construction plans for the PROPERTY that are consistent with the Comprehensive Plan and the CONCEPT PLAN and that meet the requirements of the CODE.

6.2.3 The City shall consider the vacation of the easement recorded in O.R. Book 4223, Page 1502, of the Public Records of Pinellas County, Florida.

6.2.4 The final effectiveness of the redesignations referenced in Section 6.2.1. is subject to:

6.2.5.1 The provisions of Chapter 125 and 163, Florida Statutes, as they may govern such amendments; and

6.2.5.2 The expiration of any appeal periods or, if an appeal is filed, at the conclusion of such appeal.

SECTION 7. PUBLIC FACILITIES TO SERVICE DEVELOPMENT The following public facilities are presently available to the PROPERTY from the sources indicated below. Development of the PROPERTY will be governed by the concurrency ordinance provisions applicable at the time of development approval. With respect to

transportation, the concurrency provisions for the proposed development have been met.

- 7.1. Potable water from the CITY.
- 7.2. Sewer service is currently provided by the CITY.
- 7.3. Fire protection from the CITY.
- 7.4. Drainage facilities for the parcel will be provided by OWNER.
- 7.5. Reclaimed water from the CITY, if available.
- 7.6. Solid waste from the CITY.

SECTION 8. REQUIRED LOCAL GOVERNMENT PERMITS The required local government development permits for development of the PROPERTY include, without limitation, the following:

- 8.1. Site plan approval(s) and associated utility licenses, access, and right-of-way utilization permits;
- 8.2. Construction plan approval(s);
- 8.3. Building permit(s); and
- 8.4. Certificate(s) of occupancy.

SECTION 9. CONSISTENCY The CITY finds that development of the PROPERTY consistent with the terms of this AGREEMENT is consistent with the City Comprehensive Plan.

SECTION 10. TERMINATION

10.1. If OWNER's obligations set forth in this AGREEMENT are not followed in a timely manner, as determined by the City Manager, after notice to OWNER and an opportunity to be heard, existing permits shall be administratively suspended and issuance of new permits suspended until OWNER has fulfilled its obligations. Failure timely to fulfill its obligations may serve as a basis for termination of this AGREEMENT by the CITY, at the discretion of the CITY and after notice to OWNER and an opportunity for OWNER to be heard.

**SECTION 11. OTHER TERMS AND CONDITIONS**

11.1. Except in the case of termination, until ten (10) years after the date of this AGREEMENT, the PROPERTY shall not be subject to downzoning, unit density reduction, or intensity reduction, unless the CITY has held a public hearing and determined:

11.1.1 That substantial changes have occurred in pertinent conditions existing at the time of approval of this AGREEMENT; or

11.1.2 This AGREEMENT is based on substantially inaccurate information provided by OWNER; or

11.1.3 That the change is essential to the public health, safety or welfare.

**SECTION 12. COMPLIANCE WITH LAW** The failure of this AGREEMENT to address any particular permit, condition, term or restriction shall not relieve OWNER from the necessity of complying with the law governing such permitting requirements, conditions, terms or restrictions.

**SECTION 13. NOTICES** Notices and communications required or desired to be given under this Agreement shall be given to the parties by hand delivery, by nationally recognized overnight courier service such as Federal Express, or by certified mail, return receipt requested, addressed as follows (copies as provided below shall be required for proper notice to be given):

If to OWNER: Executive Corporation of Clearwater, Inc.  
5260 South Landings Drive, Ariel #704  
Fort Myers, FL 33919

With copy to: Timothy A. Johnson, Jr., Esquire  
Johnson, Pope, Bokor, Ruppel & Burns, LLP  
911 Chestnut St.  
Clearwater, FL 33756

If to CITY: City Council of City of Clearwater  
c/o City Manager  
112 South Osceola Avenue  
P. O. Box 4748  
Clearwater, FL 33756

Properly addressed, postage prepaid, notices or communications shall be deemed delivered and received on the day of hand delivery, the next business day after deposit with an overnight courier service for next day delivery, or on the third (3<sup>rd</sup>) day following deposit in the United States mail, certified mail, return receipt requested. The parties

may change the addresses set forth above (including the addition of a mortgagee to receive copies of all notices), by notice in accordance with this Section.

SECTION 14. INTENTIONALLY OMITTED.

SECTION 15. MINOR NON-COMPLIANCE OWNER will not be deemed to have failed to comply with the terms of this AGREEMENT in the event such non-compliance, in the judgment of the City Administrator, reasonably exercised, is a minor or inconsequential nature.

SECTION 16. COVENANT OF COOPERATION The parties shall cooperate with and deal with each other in good faith and assist each other in the performance of the provisions of this AGREEMENT and in achieving the completion of development of the PROPERTY.

SECTION 17. APPROVALS Whenever an approval or consent is required under or contemplated by this AGREEMENT such approval or consent shall not be unreasonably withheld, delayed or conditioned. All such approvals and consents shall be requested and granted in writing.

SECTION 18. COMPLETION OF AGREEMENT Upon the completion of performance of this AGREEMENT or its revocation or termination, a statement evidencing such completion, revocation or termination shall be signed by the parties hereto and recorded in the official records of the CITY.

SECTION 19. ENTIRE AGREEMENT This AGREEMENT (including any and all Exhibits attached hereto all of which are a part of this AGREEMENT to the same extent as if such Exhibits were set forth in full in the body of this AGREEMENT), constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof.

SECTION 20. CONSTRUCTION The titles, captions and section numbers in this AGREEMENT are inserted for convenient reference only and do not define or limit the scope or intent and should not be used in the interpretation of any section, subsection or provision of this AGREEMENT. Whenever the context requires or permits, the singular shall include the plural, and plural shall include the singular and any reference in this AGREEMENT to OWNER includes OWNER's successors or assigns. This AGREEMENT was the production of negotiations between representatives for the CITY and OWNER and the language of the Agreement should be given its plain and ordinary meaning and should not be construed against any party hereto. If any term or provision of this AGREEMENT is susceptible to more than one interpretation, one or more of which render it valid and enforceable, and one or more of which would render it invalid or unenforceable, such term or provision shall be construed in a manner that would render it valid and enforceable.

SECTION 21. PARTIAL INVALIDITY If any term or provision of this AGREEMENT or the application thereof to any person or circumstance is declared invalid or

unenforceable, the remainder of this AGREEMENT, including any valid portion of the invalid term or provision and the application of such invalid term or provision to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall with the remainder of this AGREEMENT continue unmodified and in full force and effect. Notwithstanding the foregoing, if such responsibilities of any party thereto to the extent that the purpose of this AGREEMENT or the benefits sought to be received hereunder are frustrated, such party shall have the right to terminate this AGREEMENT upon fifteen (15) days notice to the other parties.

SECTION 22. CODE AMENDMENTS Subsequently adopted ordinances and codes of the CITY which are of general application not governing the development of land shall be applicable to the PROPERTY, and such modifications are specifically anticipated in this AGREEMENT.

SECTION 23. GOVERNING LAW This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Florida without regard to the conflict of laws principles of such state.

SECTION 24. COUNTERPARTS This AGREEMENT may be executed in counterparts, all of which together shall continue one and the same instrument.

Section 25. TERMINATION OF DEVELOPMENT AGREEMENT. The Development Agreement entered into by the parties on May 31, 2005, is hereby terminated.

IN WITNESS WHEREOF, the parties have hereto executed this AGREEMENT the date and year first above written.

[End of Substantive Provisions, Signature Page to follow.]

WITNESSES:

EXECUTIVE CORPORATION OF  
CLEARWATER, INC.,  
a Florida corporation

Ginger Barkhausen  
Printed Name: Ginger Barkhausen

By: S. Lee Crouch  
S. Lee Crouch  
President

Jackie Skillaugh  
Printed Name: Jackie Skillaugh

Countersigned:

CITY OF CLEARWATER, FLORIDA

Frank V. Hibbard  
Frank V. Hibbard  
Mayor

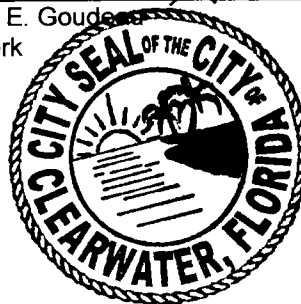
By: William B. Horne II  
William B. Horne II

Approved as to form:

Attest:

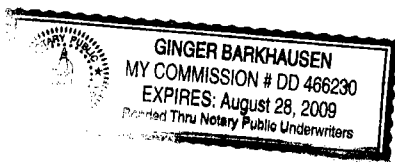
Leslie K. Dougall-Sides  
Leslie K. Dougall-Sides  
Assistant City Attorney

Cynthia E. Goude  
Cynthia E. Goude  
City Clerk



STATE OF FLORIDA     )  
COUNTY  
~~CITY~~ OF LEE            )

The foregoing instrument was acknowledged before me this 15 May  
2006, by S. Lee Crouch, as President of EXECUTIVE CORPORATION OF  
CLEARWATER, INC., a Florida corporation, on behalf of the corporation, who  is  
personally known to me or who  produced FLDL as identification.

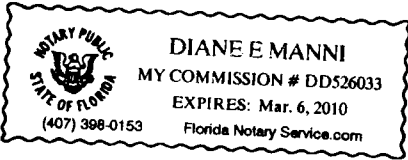


Ginger Barkhausen  
Notary Public  
Print Name: Ginger Barkhausen  
Ginger Barkhausen

STATE OF FLORIDA )

CITY OF PINELLAS )

The foregoing instrument was acknowledged before me this May 30, 2006, by Frank V. Hibbard, as Mayor of the City of Clearwater, Florida, who  is personally known to me or who  produced identification.



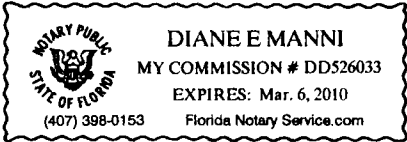
Diane E. Manni  
Notary Public

Print Name: DIANE E. MANNI

STATE OF FLORIDA )

CITY OF PINELLAS )

The foregoing instrument was acknowledged before me this May 30, 2006, by William B. Horne II, City Manager of the City of Clearwater, Florida, who  is personally known to me or who  produced identification.



Diane E. Manni  
Notary Public

Print Name: DIANE E. MANNI

Exhibits:

- A Legal Description of Property
- B Concept Plan
- C Building Elevations

05/12/06 07:58 PM  
45403.108701  
#359033 v2 - Beazer/Countryside/Development Agreement (Amended)

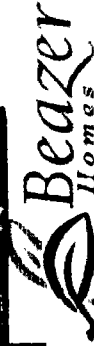
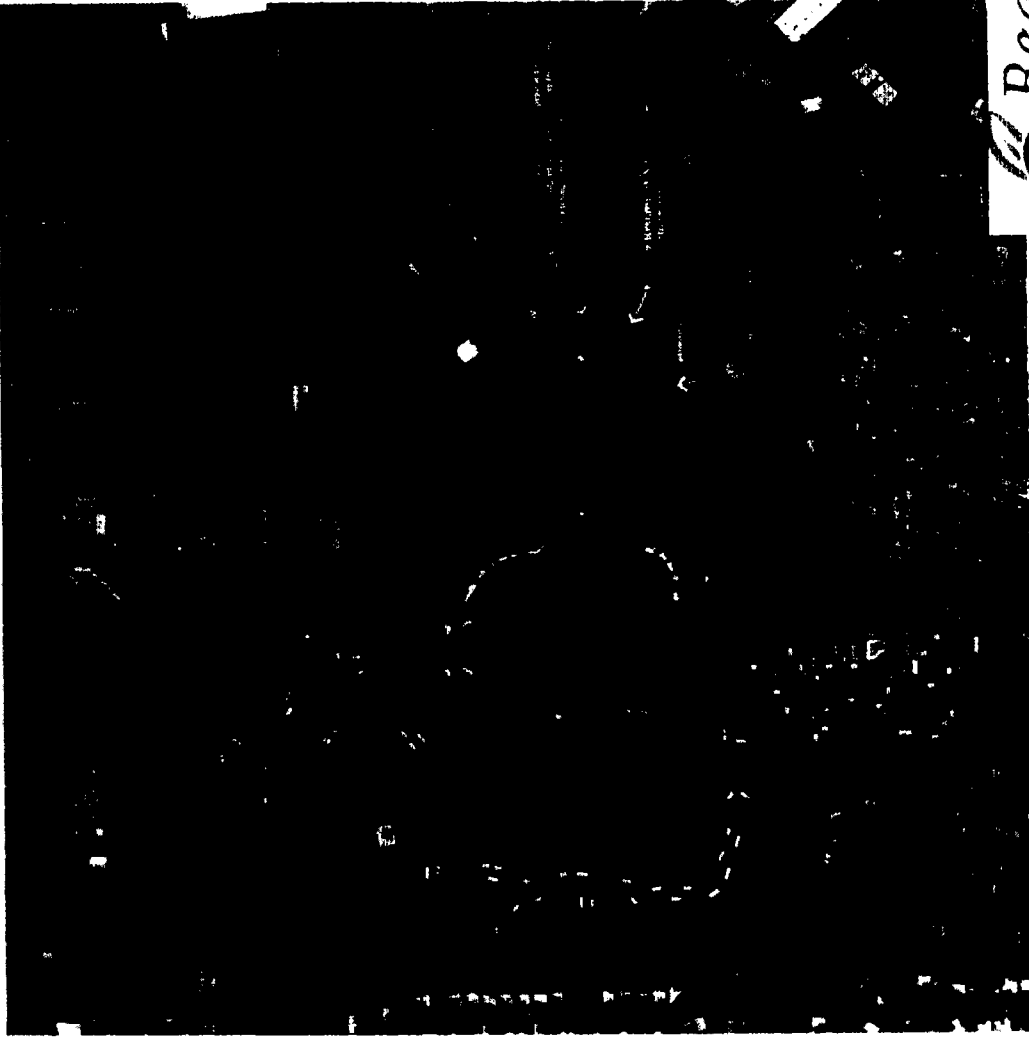
Deleted: 05/12/06 04:53 PM

## EXHIBIT "A"

### LEGAL DESCRIPTION:

A tract of land lying in Sections 30 and 31, Township 28 South, Range 16 East, City of Clearwater, Pinellas County, Florida and being more particularly described as follows:

COMMENCE at the West 1/4 Corner of said Section 30; thence run South  $0^{\circ}19'55''$  East, along the west line of said Section 30, for 444.65 feet; thence South  $89^{\circ}55'13''$  East for 50.01 feet to the POINT OF BEGINNING; thence continue South  $89^{\circ}55'13''$  East for 1558.45 feet to a point on the west line of "Dunedin Industrial Park" as recorded in Plat Book 64, Page 76, Records of Pinellas County, Florida; thence South  $0^{\circ}04'47''$  West for 937.36 feet to the southwest corner of said Plat; thence South  $89^{\circ}55'13''$  East, along the south line of said plat, for 247.55 feet to a point on the westerly right-of-way line of Enterprise Road; thence 16.61 feet along the said westerly right-of-way line and the arc of a curve that is concave to the northeast, having a radius of 895.00 feet, a chord length of 16.61 feet and a chord bearing of South  $9^{\circ}27'20''$  East to a point of compound curvature with a curve that is also concave to the northeast; thence 261.09 feet along the arc of said curve having a radius of 330.00 feet, a chord length of 254.33 feet and a chord bearing of South  $32^{\circ}39'10''$  East to a point of tangency; thence South  $55^{\circ}19'05''$  East for 345.77 feet to a point of curvature of a curve that is concave to the southwest; thence 96.09 feet along the arc of said curve having a radius of 170.00 feet, a chord length of 94.82 feet and a chord bearing of South  $39^{\circ}07'31''$  East to a point of tangency; thence South  $22^{\circ}55'56''$  East for 143.70 feet to a point of curvature of a curve that is concave to the northeast; thence 286.62 feet along the arc of said curve having a radius of 405.00 feet, a chord length of 280.68 feet and a chord bearing of South  $43^{\circ}12'18''$  East to a point of reverse curvature with a curve that is concave to the southwest; thence 102.23 feet along the arc of said curve having a radius of 250.00 feet; a chord length of 101.52 feet and a chord bearing of South  $51^{\circ}45'54''$  East to a point of compound curvature with a curve that is concave to the west; thence 49.17 feet along the arc of said curve having a radius of 30.00 feet, a chord length of 43.85 and a chord bearing of South  $6^{\circ}54'15''$  West to a point of tangency, the same point being on the northwesterly right-of-way line of Countryside Boulevard; thence South  $53^{\circ}51'32''$  West, along said right-of-way line, for 592.43 feet to a point of curvature of a curve that is concave to the southeast, thence 1059.47 feet along the arc of said curve having a radius of 1960.00 feet, a chord length of 1046.62 feet and a chord bearing of South  $38^{\circ}22'24''$  West; thence, leaving said right-of-way line, North  $67^{\circ}06'44''$  West for 164.15 feet; thence North  $10^{\circ}30'36''$  West for 674.31 feet; thence North  $62^{\circ}54'47''$  West for 114.19 feet to a point on the arc of a curve that is concave to the northwest; thence 98.14 feet along the arc of said curve having a radius of 490.00 feet, a chord length of 97.97 feet and a chord bearing of North  $21^{\circ}20'58''$  East; thence South  $85^{\circ}55'13''$  East for 382.97 feet; thence North  $53^{\circ}18'37''$  East for 254.00 feet; thence North  $10^{\circ}04'50''$  West for 228.53 feet; thence North  $36^{\circ}15'14''$  East for 111.61 feet; thence North  $14^{\circ}28'28''$  West for 444.10 feet; thence North  $58^{\circ}15'59''$  West for 446.79 feet; thence South  $74^{\circ}34'52''$  West for 206.75 feet to a point on the arc of a curve that is concave to the southwest; thence 37.09 feet along the arc of said curve having a radius of 590.00 feet, a chord length of 37.08 feet and a chord bearing of North  $17^{\circ}13'11''$  West; thence North  $62^{\circ}12'34''$  East for 288.57 feet; thence North  $3^{\circ}59'27''$  West for 431.05 feet; thence North  $44^{\circ}05'26''$  West for 445.53 feet; thence South  $79^{\circ}28'45''$  West for 983.07 feet; thence North  $0^{\circ}19'55''$  West for 393.61 feet to the POINT OF BEGINNING.



**COUNTRYSIDE EXECUTIVE  
GOLF COURSE  
CONCEPT PLAN**

Not to Exceed 200 Yds



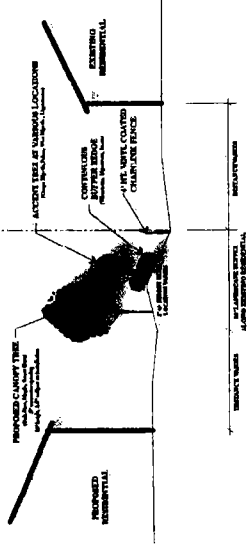
**LEGEND**

- Project Boundary
- Stormwater Management System
- Estimated Wetland Limits
- Proposed Roads
- Proposed Building Locations<sup>(1)</sup>
- Proposed 6' Height Fence - Location A
- Proposed 4' Height Fence - Location B

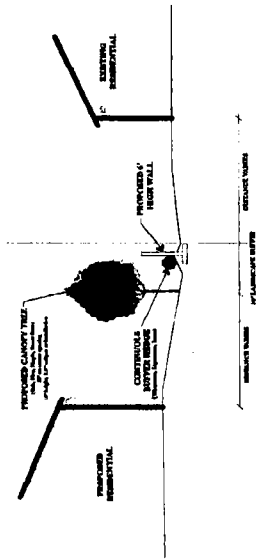
**Preliminary Land Use Data Table**

Project Area: 44.1 Acres

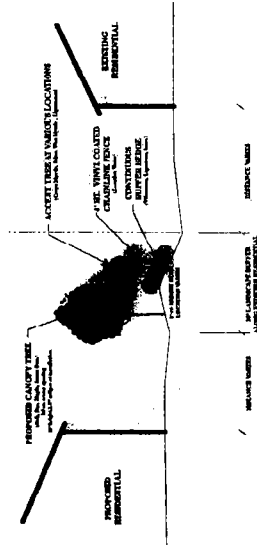
- General Notes**
1. Symbol represents approximate boundaries of future buildings and building structures. Proposed buildings are to be 3, 1, 1 and 1 units.
  2. Data used is approximate and based on best available public sources.
  3. This plan is conceptual and based on development parameters. A master plan, based on this plan, final locations of buildings, roads and ponds may change and will be shown on future plan sheets.
  4. Estimated population is 200 x 3.2 = 640 people.
  5. 30' building height will be constructed (average property) for the entire building footprint. The maximum height of buildings will be 30' and 30' for the entire building footprint. The 30' building height will be constructed for the entire building footprint. The 30' building height will be constructed for the entire building footprint. The 30' building height will be constructed for the entire building footprint.
  6. Project may contain up to 2 recreational areas, whether air will be adjacent existing recreational area.
  7. Building height will be around 30 feet.
  8. The Owner or the property owner's consultant for the Property shall verify and maintain the accuracy of any data used and may be responsible for any errors or omissions in this plan or the Property, including existing environmental properties.



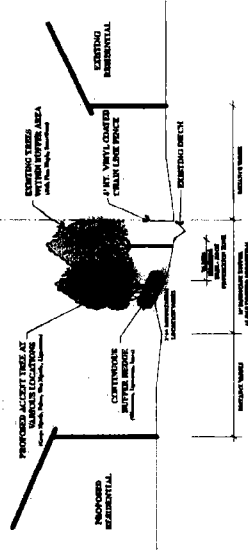
4' Ht. Fence - Location A  
Not Approved to Drain



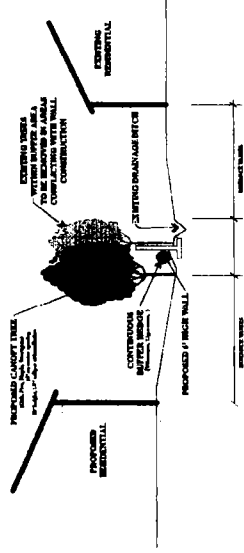
Buffer with Wall  
Not Approved to Drain



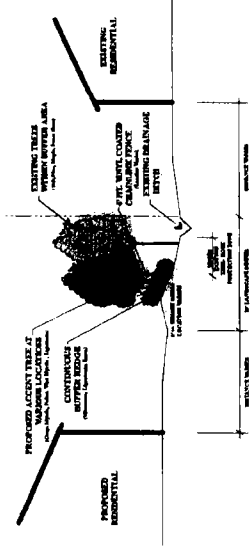
4' Ht. Fence - Location B  
Not Approved to Drain



4' Ht. Fence - Location A  
Approved to Drainage Ditch



Buffer with Wall  
Approved to Drainage Ditch



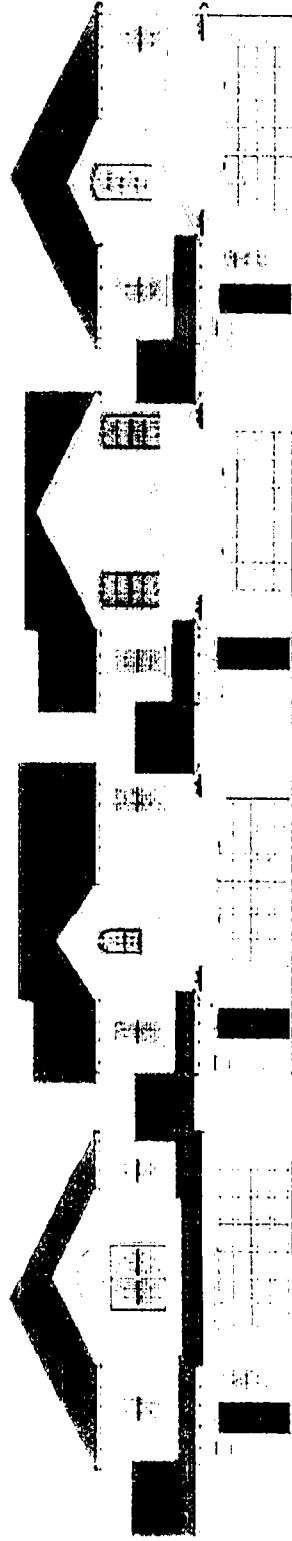
4' Ht. Fence - Location B  
Approved to Drainage Ditch

COUNTRYSIDE EXECUTIVE GOLF COURSE  
CONCEPT PLAN - TYPICAL SECTIONS

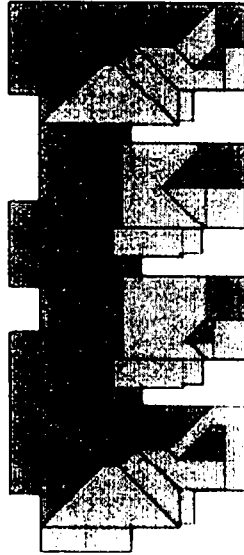


# Countryside Townhouse

## 4 UNIT VENETIAN ELEVATION



Front Elevation



Roof Layout



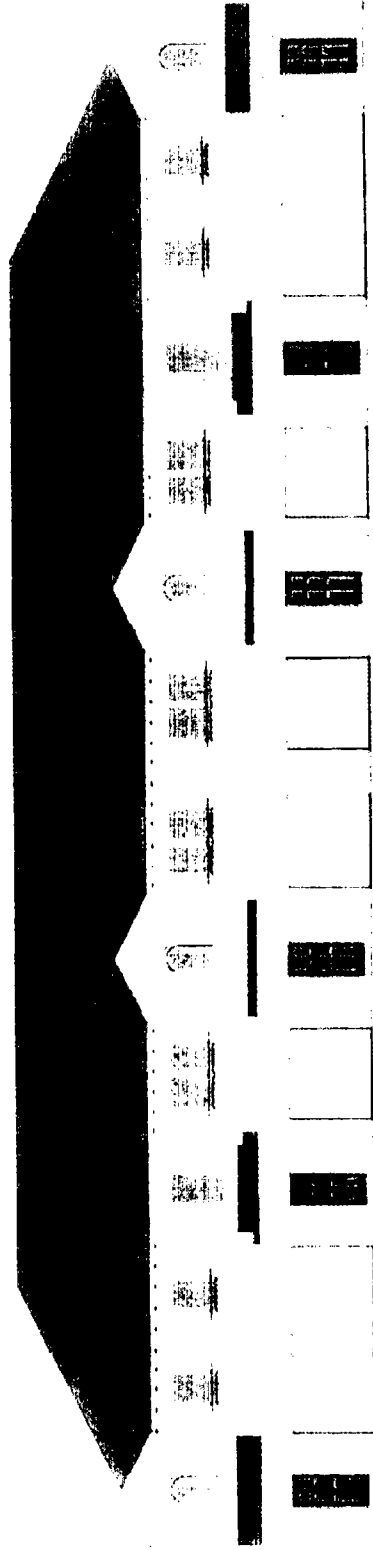
Rear Elevation

TEMPERATURES MAY VARY BY 10% FROM ACTUAL CHARACTERISTICS OF THE UNIT. FLOOR PLANS ARE FOR INFORMATION ONLY. FLOOR PLANS ARE SUBJECT TO CHANGE WITHOUT NOTICE. ALL DIMENSIONS ARE APPROXIMATE. ALL DIMENSIONS ARE APPROXIMATE. ALL DIMENSIONS ARE APPROXIMATE. ALL DIMENSIONS ARE APPROXIMATE.

*Beazer*  
Homes

# Countryside Townhouse

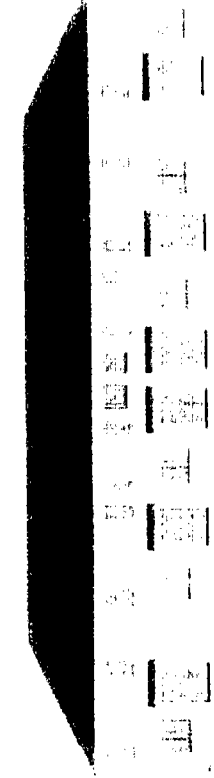
## 6 UNIT VENETIAN ELEVATION



Front Elevation



Roof Layout



Rear Elevation

BEAZER  
Homes