

BLUFFDALE CITY, UTAH
RESOLUTION NO. 2005-01

**A RESOLUTION AUTHORIZING BLUFFDALE CITY TO ENTER INTO THE
MEMORANDUM OF UNDERSTANDING WITH FRONTAGE HOMES, INC. AND
SOUTH FARM, LLC**

WHEREAS, Frontage Homes, Inc. ("Frontage"), a Utah corporation and successor in interest to Bluffdale Mountain Homes L.C., and South Farm, LLC, ("South Farm") a Utah limited liability company (Frontage and South Farm, collectively, the "Landowners") along with other certain real property owners within Planning Area No. 4 (the "Other Property Owners") are engaged in litigation (the "Litigation") regarding the disconnection of various properties from the political jurisdiction of Bluffdale City (the "City")(all parties collectively referred to as the "Parties");

WHEREAS, the Parties desire to try to resolve their differences by way of a settlement of the Litigation;

WHEREAS, the Landowners, to explore settlement, have presented a Memorandum of Understanding which is unacceptable to the City; and

WHEREAS, prior to spending the significant time and money necessary to draft the documents required to implement an acceptable settlement, the City needs to be assured that pursuing a settlement is feasible; and

WHEREAS, the attached Memorandum of Understanding ("MOU") prepared by the City outlines various terms of a possible settlement.

**NOW, THEREFORE, BE IT RESOLVED BY THE BLUFFDALE CITY
COUNCIL:**

Section 1. The Bluffdale City Mayor is authorized to enter into and present to the Landowners the attached MOU.

Section 2. The Landowners shall have up to and including January 31, 2005, in which to accept the attached MOU.

Section 3. The Mayor and other appropriate City officials are authorized to perform all acts they deem necessary and appropriate to implement the matters authorized in this resolution including, without limitation, negotiating with the Landowners acceptable dates required by paragraphs 2.1 and 2.2 of the MOU.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made this ___ day of January, 2005 by and between Bluffdale City (the "City"), a municipal corporation, Frontage Homes, Inc. ("Frontage"), a Utah corporation, and South Farm, LLC, ("South Farm") a Utah limited liability company (Frontage and South Farm, collectively, the "Landowners").

RECITALS

Whereas, the City, the Landowners (collectively referred to as "Parties") and other certain real property owners within Planning Area No. 4 (the "Other Property Owners") are engaged in litigation (the "Litigation") regarding the disconnection of various properties from the political jurisdiction of the City;

Whereas, the Parties desire to resolve their differences and the Other Property Owners by way of a settlement of the Litigation; and,

Whereas, prior to spending the significant time and money necessary to draft the documents required to implement a settlement and, during that time slowing down the litigation, the Parties each need to be assured of the intent of the other Parties in pursuing such a settlement.

Now, therefore, in consideration of the foregoing Recitals and the following mutual promises the Parties agree to the following:

TERMS

1. General Methodology of Resolution. The Parties contemplate that their disputes and the resulting Litigation will be resolved by the Parties entering into at least two development agreements (one between the City and Frontgate¹("the Frontgate Development Agreement") and the other between the City and South Farm ("the South Farm Development Agreement")). The issues related to the Other Property Owners will be resolved as provided in Paragraph 6, below. The processes for adopting the development agreements and the terms of the development agreements are more fully outlined below.

2. Process for Adopting the Development Agreements and Zoning.

2.1. Zoning. The Parties acknowledge that the City may have to adopt a zoning amendment. If the City determines a zoning amendment ordinance is required the City shall complete the zoning amendment ordinance process no later than _____.

2.2. Development Agreements. Also immediately upon execution of this MOU the Parties shall begin negotiating and drafting in good faith the Frontgate Development _____

¹ The Parties acknowledge that Frontgate is the successor and interest of Bluffdale Mountain Homes, L.C. and some other property owners in Planning Area # 4.

Section 4. This resolution shall become effective immediately upon passage.

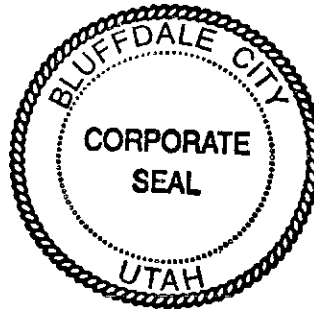
Dated this 11th day of January, 2005.

BLUFFDALE CITY

By: *Steph M. ...*
Mayor

ATTEST:

Jeddie K. Bell
City Recorder



Voting by the City Council:

	"AYE"	"NAY"
Councilmember Briggs	<u> x </u>	<u> </u>
Councilmember Clark	<u> x </u>	<u> </u>
Councilmember Kelley	<u> x </u>	<u> </u>
Councilmember Maxfield	<u> </u>	<u> x </u>
Councilmember Speed	<u> </u>	<u> x </u>

Agreement and the South Farm Development Agreement. The Parties intend to complete and execute the development agreements no later than _____.

3. General Provisions of the Development Agreements. The Frontgate Development Agreement and the South Farm Development Agreement shall each:

3.1. Length of Term/Extensions. Be for an initial term of fifteen (15) years with two (2) extensions of five (5) years each which shall be automatic unless there is an uncured material default.

3.2. Binding Effect. Vest the properties with the uses, densities and other provisions of the City's laws in effect as of date of the execution of the development agreement providing vesting to the maximum extent allowable under Utah statutes or common law.

3.3. Plan Processing Protocols/Outsourcing. Contain provisions mandating the timely processing of plats and other applications for the development of the properties and providing for the outsourcing by the City of application reviews if the City is unable to process such development applications in a timely fashion. Timely Fashion shall be as the City or its Outsourcing agent shall take no longer than (30) days from the date of submittal to the City staff to review a development application and/or plat and return the application to the applicant with staff comments and concerns. Staff shall take no longer than (15) days from the time applicant submits the redlined application back to staff to review and refer the redline changes to Regulatory body (Planning Commission or City Council) review and hearing process of a development application shall take no longer than (45) days from the date of referral from City staff to the regulatory body to conduct public hearings and render a decision.

3.4. Connectivity to Existing and Proposed City Infrastructure. Contain provisions relating to the mandatory connectivity between the Landowners' developments and existing and future infrastructure of the City.

3.5. Construction of the Infrastructure. Provide for the mutual design, timing, approval, construction and methodology for financing the infrastructure necessary to allow the developments contemplated by the development agreements. The Parties generally intend to follow the methodology and financing used by South Farm in Herriman. Notwithstanding the forgoing, the Landowners and other property owners shall be responsible for constructing and paying for all on site infrastructure.

3.6. Impact Fees. Contain provisions relating to impact fees that the City may adopt in the future in light of the system and project improvements to be constructed by the Landowners.

3.7. Shall designate non buildable areas i.e. those areas exceeding a 30% slope, environmentally sensitive areas, and open space areas.

3.8. Shall prohibit clustering in area specified for low density (1-2 dwelling units per acre).

3.9. **After-Acquired Property.** Contain provisions allowing property acquired after the execution of the development agreements within Planning Area # 4 to be added to the development agreements with comparable lot sizes, uses and other development characteristics under certain circumstances.

3.10. **Miscellaneous Provisions.** The development agreements shall contain all of the provisions that are now part of the standard practice for such agreements in the State of Utah including, but not limited to provisions relating to reasonable phasing, flexibility, opting into later adopted ordinances, exemptions from moratoriums, certificates of compliance and other provisions.

4. **Specific Provisions of the South Farm Development Agreement.** The South Farm Development Agreement shall provide for development as configured on the map attached as Exhibit "A". More specifically:

4.1. **Grant of Density.** The City will grant a total overall gross density as shown in the total of the "alternative" column on attached Exhibit "B".

4.2. **Commercial Hub Location.** The commercial hub location (14400 South) and its size, sixty (60) acres, will be approved by the City as proposed in Exhibit "A".

4.3. **Welby-Jacob Canal Buffering.** The buffering of the transition area immediately west of the Welby-Jacob Canal of (1) acre will be as proposed in Exhibit "A".

4.4. **Open Space, Parks, and Trails.** Shall be set forth in the Development Agreement.

4.5. **Uses.** The uses of South Farm's property will be as proposed in Exhibit "A".

5. **Specific Provisions of the Frontgate Development Agreement.** The Frontgate Development Agreement shall:

5.1. Provide for a low density buffer zone as shown on Exhibit "A".

5.2. Provide for an overall gross density of up to 2.5 units per acre.

5.3. If the golf course is designated or presented as open space, require the golf course to be owned by the City or a Special District acceptable to the City.

5.4. Provide for golf course development costs to be paid by the property owners and/ or an acceptable Special District.

6. **Other Property Owners.** The Other Property Owners shall have until January 31, 2006, to negotiate development agreements with the City for their properties. The negotiations shall be conducted in good faith. The basic provisions of these development agreements shall be similar to the Frontgate Development Agreement and the South Farm Development Agreement as outlined above.

7. **Mountain View Transportation Corridor.** The City shall, in a form and manner acceptable to the Landowners, commit to support the current UDOT location and alignment of the Mountain View Transportation Corridor, including intersections.

8. **Stay of Litigation.** So long as all Parties believe that reasonable progress is being made to complete the settlement of this matter the Parties shall stay the litigation and extend the times for completion of discovery. All settlement negotiations, including this MOU, shall be conducted pursuant to Rule 408, Utah Rules of Evidence.

9. **Termination.** At any time, either the Landowners or the City may give notice to the other party that this MOU is terminated and that the Litigation will be pursued aggressively.

10. **Dismissal of Litigation.** At such time as the Frontgate Development Agreement and the South Farm Development Agreement are both executed and recorded then the Litigation shall be dismissed with prejudice and with all Parties bearing their own costs, attorneys' fees, and expenses.

11. **Confidentiality.** The Parties acknowledge that this is in all of their best interests to conduct negotiations towards settlement in a private manner and therefore agree, to the maximum extent allowable by law, to keep this MOU and any negotiations towards the development agreements private and confidential.

APPROVED BY FRONTGATE HOMES,
INC., a Utah Corporation

APPROVED BY SOUTH FARM, L.C.,
A Utah limited liability company

By: _____
ROBERT A. JONES, President

By: _____
Vice President of the Managing
Member, Soventures, Inc.

APPROVED BY BLUFFDALE CITY:

WAYNE MORTIMER, Mayor

Date

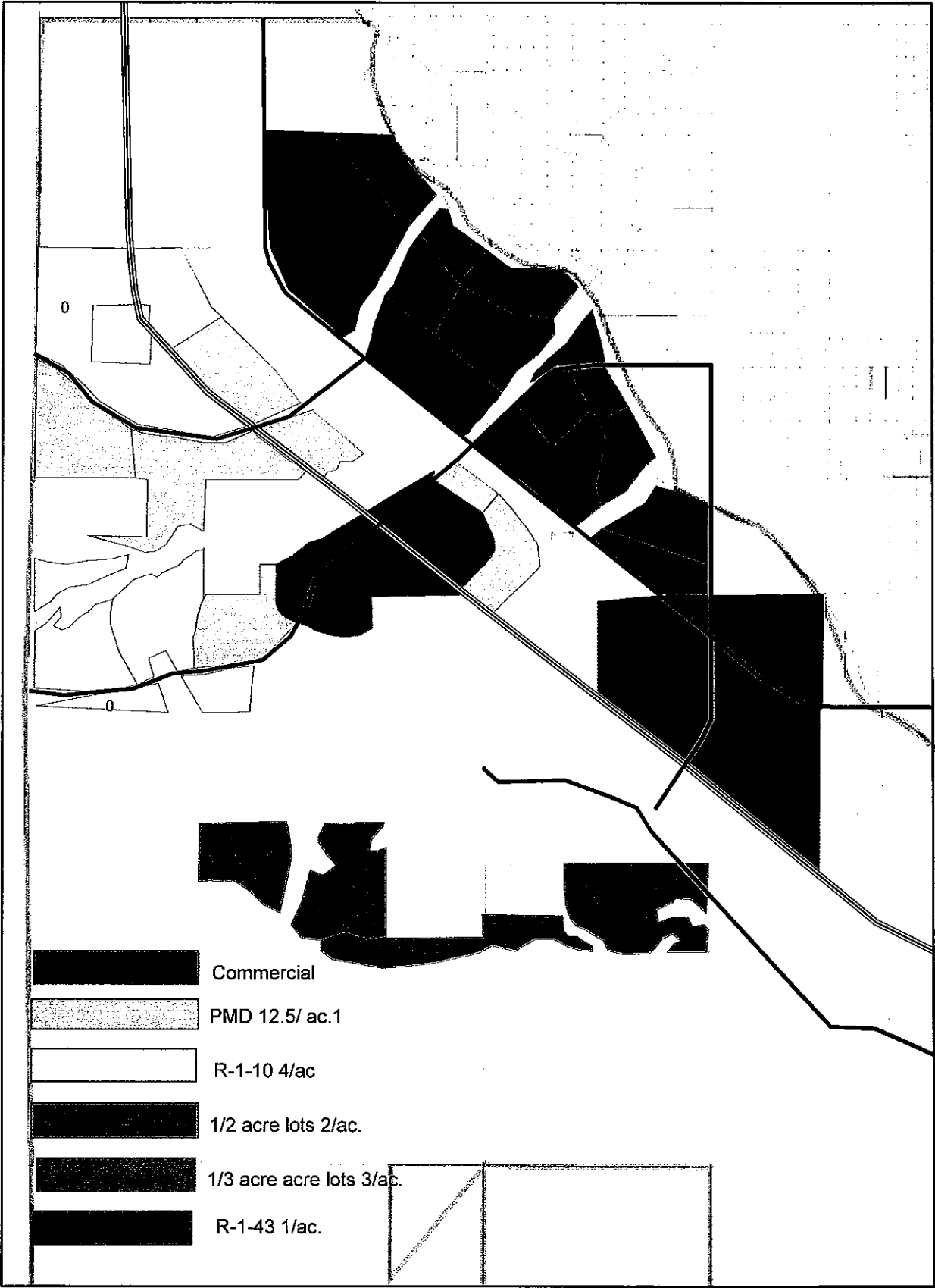
APPROVED AS TO FORM:

BRUCE R. BAIRD
Attorney for Petitioner

HOLLIS S. HUNT
Attorney for Petitioner

APPROVED AS TO FORM:

DALE F. GARDINER
Attorney for Respondent



Craig Briggs moved to reject the Memorandum of Understanding that was presented to us by Frontgate Homes and South Farm LLC. Laurie Maxfield seconded the motion. Vote on motion: Laurie Maxfield-Aye, Morris Clark-Aye, Craig Briggs-Aye, Jesse Kelley-Aye, Martha Speed-Aye. The motion passed.

Craig Briggs moved to adopt Resolution Number 2005-01, a Memorandum of Understanding that we would make as a counter-proposal to Frontgate Homes and South Farm LLC which is a resolution authorizing Bluffdale City to enter into a Memorandum of Understanding. Item 4.1 on the Memorandum of Understanding that was prepared by our legal counsel reads: "The City will bring out a total overall gross density as shown in the total of the alternative column on attached Exhibit B". I would like to add definition that by gross density it means it doesn't include non-buildable sites. I would like to attach to the Memorandum of Understanding as Exhibit A Land Pattern Map A to the Proposal #7 given to us by legal counsel with Exhibit B attached to that showing the density that we would be willing to accept. Morris Clark seconded the motion. Vote on motion: Laurie Maxfield-Nay, Morris Clark-Aye, Craig Briggs-Aye, Jesse Kelley-Aye, Martha Speed-Nay. The motion passed.