



RESOLUTION 12-06-2021
A RESOLUTION APPROVING THE MASTER
DEVELOPMENT AGREEMENT FOR THE SANTAQUIN
ESTATES PLANNED UNIT DEVELOPMENT


BE IT HEREBY RESOLVED:

SECTION 1: The attached documents represent the development agreement between Santaquin City and Building Construction Partners LLC for purposes of the Santaquin Estates Planned Unit Development.

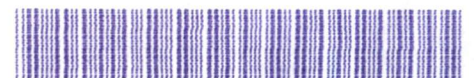
SECTION 2: This Resolution shall become effective upon passage.

Approved on this 14th day of December, 2021.

City of Santaquin,


Kirk F. Hunsaker, Mayor

Attest:


K. Aaron Shirley, City Recorder

ENT 870:2022 PG 1 of 40
ANDREA ALLEN
UTAH COUNTY RECORDER
2022 Jan 04 9:02 am FEE 0.00 BY JR
RECORDED FOR SANTAQUIN CITY CORPORATION

**MASTER DEVELOPMENT AGREEMENT
FOR
SANTAQUIN ESTATES PLANNED UNIT DEVELOPMENT**

December 14, 2021

WHEN RECORDED, RETURN TO:

Santaquin City
Attention: City Manager
275 West Main Street
Santaquin, Utah 84655

**MASTER DEVELOPMENT AGREEMENT
FOR
SANTAQUIN ESTATES PLANNED UNIT DEVELOPMENT**

THIS MASTER DEVELOPMENT AGREEMENT is made and entered into as of the 14th day of December, 2021, by and between Santaquin City, a Utah municipality and Building Construction Partners, LLC, a Utah limited liability company.

RECITALS

- A. The capitalized terms used in this MDA and in these Recitals are defined in Section 1.2, below.
- B. Master Developer owns and is developing the Property.
- C. Master Developer and the City desire that the Property be developed in a unified and consistent fashion pursuant to the Master Plan.
- D. The Parties acknowledge that development of the Property pursuant to this MDA may result in significant planning benefits to the City and its residents by, among other things requiring orderly development of the Property known as the Santaquin Estates Planned Unit Development (PUD) and an Interchange Commercially (C-1) zoned area, preserving land to be used for retention of water and debris flows from the mountains, preserving a right-of-way corridor for a re-route of the frontage road, and increasing property tax, sales taxes, and other revenues to the City based on commercial improvements to be constructed on the Property.
- E. The Parties desire to enter into this MDA to specify the rights and responsibilities of

the Master Developer to develop the Property as expressed in this MDA and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this MDA.

F. The Parties understand and intend that this MDA is a “development agreement” within the meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-101 (2018) *et seq.*

G. This MDA conforms with the intent of the City’s General Plan and the Zoning.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Master Developer hereby agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1. **Incorporation.** The foregoing Recitals and Exhibits “A” - “I” are hereby incorporated into this MDA.

1.2. **Definitions.** As used in this MDA, the words and phrases specified below shall have the following meanings:

1.2.1. **Act** means the Land Use, Development, and Management Act, Utah Code Ann. § 10-9a-101 (2018), *et seq.*

1.2.2. **Applicant** means a person or entity submitting a Development Application.

1.2.3. **Buildout** means the completion of all of the development on the entire Project in accordance with the approved plans.

1.2.4. **City** means Santaquin City, a Utah municipality.

1.2.5. **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology, or drainage for reviewing certain aspects of the development of the Project.

1.2.6. **City's Future Laws** means the ordinances, policies, standards, and procedures which may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project, which contradict or change the City's Vested Laws, and which may or may not be applicable to the Development Application depending upon the provisions of this MDA.

1.2.7. **City's Vested Laws** means the substantive ordinances, policies, standards, and procedures of the City, related to land use regulations affecting the Project (i.e., Santaquin City Code, Titles 10 and 11), in effect as of the date of this MDA, a digital copy of which is attached as Exhibit "C".

1.2.8. **Commercial Area** means those commercial, retail, office and other uses in the area shown on the Master Plan, Exhibit "F".

1.2.9. **Council** means the elected City Council of the City.

1.2.10. **Default** means a material breach of this MDA as specified herein.

1.2.11. **Denied** means a formal denial issued by the final decision-making body of the City for a particular type of Development Application but does not include review comments or "redlines" by City staff.

1.2.12. **Development** means the development of a portion of the Property pursuant to an approved Development Application.

1.2.13. **Development Application** means an application to the City for development of a portion of the Project including a Subdivision or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.14. **Development Area** means the area for development of the Project as shown on the Master Plan, Exhibit "A".

1.2.15. **Final Plat** means the recordable map or other graphical representation of land that complies with Utah Code Ann. § 10-9a-603, or any successor provision, and is approved by the City, effectuating a Subdivision of any portion of the Project.

1.2.16. **Master Developer** means Building Construction Partners, LLC and its assignees or transferees as permitted by this MDA.

1.2.17. **Master Plan** means the layout for the Development Areas, Residential Dwelling Units, approved Commercial Area, and Public Infrastructure for the Project, as set forth in Exhibit "B".

1.2.18. **MDA** means this Master Development Agreement and any amendments thereto, including all of its Exhibits.

1.2.19. **Notice** means any notice to or from any Party to this MDA that is either required or permitted to be given to another Party.

1.2.20. **Open Space** shall have the meaning specified in Section 10.08.020 of the City's Vested Laws.

1.2.21. **Outsource or Outsourcing** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application as is more fully set out in this MDA.

1.2.22. **Parcel** means a portion of the Property that is created by the Master Developer to be sold to a Subdeveloper as a Subdivision that is not an individually developable lot.

1.2.23. **Party/Parties** means, in the singular, Master Developer or the City; in the plural Master Developer and the City.

1.2.24. **Planning Commission** means the City's Planning Commission.

1.2.25. **Project** means the total development to be constructed on the Property pursuant to this MDA with the associated public and private facilities.

1.2.26. **Property** means the real property proposed for development by Master Developer more fully described in Exhibit "A".

1.2.27. **Public Infrastructure** means those elements of infrastructure that are planned, agreed, or required to be dedicated to the City as a condition of the approval of a Development Application and pursuant to this MDA.

1.2.28. **Residential Dwelling Unit** means a structure or portion thereof designed and intended for use as a single-family detached dwelling as defined in the City's Vested Laws.

1.2.29. **Subdeveloper** means a person or an entity not "related" (as defined by Section 165 of the Internal Revenue Code) to Master Developer which purchases a Parcel for development.

1.2.30. **Subdivision** means the division of any portion of the Project into developable lots pursuant to State Law and/or the Zoning Ordinance.

1.2.31. **Subdivision Application** means the application to create a Subdivision.

1.2.32. **Zoning** means the zoning for the Property and each Development Area, in effect at the time of approval of this MDA and shown in Exhibit “I”.

1.2.33. **Zoning Ordinance** means the City’s Land Use and Development Ordinance adopted pursuant to the Act that was in effect as of the date of this MDA as a part of the City’s Vested Laws.

2. **Development of the Project.**

2.1. **Compliance with the Master Plan and this MDA.** Development of the Project shall be in accordance with the City’s Vested Laws, the City’s Future Laws (to the extent that these are applicable as otherwise specified in this MDA), the Master Plan, and this MDA.

2.2. **Accounting for Residential Units for Parcels Sold to Subdevelopers.** Any Parcel sold by Master Developer to a Subdeveloper or subsequent Subdeveloper shall include the transfer of a specified portion of the Residential Units sold with the Parcel. Upon any such transfer, Master Developer shall notify the City, the total number of Residential Units in each of the affected parcels.

2.3. **Architectural Standards.** Master Developer shall make reasonable efforts to maintain consistency of architectural design and standards in the development and agrees to meet the minimum architectural, materials, and design requirements as set forth in Santaquin City Code section 10.20.170 for residential buildings and Santaquin City Code section 10.20.120 for commercial buildings, in effect on the date of the execution of this MDA.

2.4. **Design Options for Smaller Lot Construction.** The smaller lots abutting 900 East and Main Street have significant impact on the aesthetics and usability in the area. The

Master Developer may choose design and architectural options specific to these lots from the two options described in 2.4.1 and 2.4.2 below. One of these design options must be applied uniformly to all homes within each of the three sub-areas identified as 1) homes abutting Main Street, 2) homes abutting the east side of 900 East, and 3) homes abutting the west side of 900 East, but may differ from sub-area to sub-area.

2.4.1. Front Loaded Design Option. A City approved masonry fence must be installed along the rear lot line that abuts Main Street or 900 East. In addition, the rear facing sides of the home must include additional architectural improvements to increase the aesthetics of the rear elevation (i.e. hardie board, stone/masonry, articulation, etc.)

2.4.2. Rear Loaded Design Option. Homes will face Main Street or 900 East and will require enhanced architectural elements on elevations fronting Main Street or 900 East (i.e. hardie board, stone/masonry, articulation, etc.) No fencing shall be permitted within the front setback of the property for each lot of the associated sub-area by plat note in perpetuity unless the fencing is a three foot (3') open-style decorative fence as determined by the Master Developer in their declaration of covenants, conditions, and restrictions (CC&Rs) for the Development and approved by the City.

2.5. Dedication of Property to the City.

2.5.1. Owner shall dedicate to the City by General Warranty Deed that portion of the Property more particularly described in Exhibit "D" hereto for the construction of a public roadway through the Property for the purpose of rerouting and connecting portions of SR 198 and Highland Drive.

2.5.2. Owner shall also dedicate to the City by General Warranty Deed, that portion of the Property designated on the Master Plan as Open Space and more particularly described in Exhibit "E" hereto, as Open Space, which the City may use as a debris basin. In order to receive credit towards the fifteen percent (15%) improved open space requirement, the Master Developer shall provide Seventy-Six Thousand Four Hundred Twenty-Two and 93/100 Dollars (\$76,422.93) which is considered the equivalent value to the City for Open Space improvements that would have been required within the debris basin area north of Main Street. The City shall retain said funds for future improvements related to recreational aspects of the debris basin construction.

2.5.3. Owner shall dedicate an improved park to the City by General Warranty Deed, as designated on the Master Plan and more particularly described in Exhibit "G" hereto, with the following improvements: irrigated turf, curbing improvements and a "tot lot" playground structure.

2.5.4. Owner shall dedicate an improved trail corridor along 900 East and Main Street to the City by General Warranty Deed, as designated on the Master Plan and more particularly described in Exhibit "H" hereto, with the following improvements: asphalt meandering trail, (eight-foot (8') along Main Street and ten-foot (10') along 900 East); trees, shrubs, irrigation system, fabric, and rock mulch, as approved by the City.

2.5.5. Land dedications shall be executed at the earlier of: 1) Recordation of the development plat, or 2) one-year from the execution of this MDA. Master Developer acknowledges and agrees that the dedication of said property to the City will benefit

the development of the Property and the City and is central to the City's willingness to enter into this MDA.

3. **Vested Rights.**

3.1. **Vested Rights Granted by Approval of this MDA.** To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this MDA grants Master Developer all rights to develop the Project in fulfillment of this MDA, the City's Vested Laws, the Zoning, and the Master Plan except as specifically provided herein. The Parties specifically intend that this MDA grant to Master Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2021).

3.2. **Exceptions.** The restrictions on the applicability of the City's Future Laws to the Project as specified in Section 3.1 are subject to the following exceptions:

3.2.1. Master Developer Agreement. City's Future Laws that Master Developer agrees in writing apply to the Project;

3.2.2. State or Federal Compliance. City's Future Laws that are generally applicable to all properties in the City and that are required to comply with State or Federal laws and regulations affecting the Project;

3.2.3. Codes. Any City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, fire, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments

and are required to meet legitimate concerns related to public health, safety or welfare;

3.2.4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons, and entities similarly situated;

3.2.5. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law;

3.2.6. Impact Fees. Impact Fees or modifications thereto that are lawfully adopted, and imposed by the City and that meet all requirements of the U. S. Constitution, Utah Constitution, law, and applicable statutes, including but not limited to Utah Code Ann. Section 11-36a-101 (2021) *et seq.*;

3.2.7. Planning and Zoning Modification. Changes by the City to its planning principles and design standards such as architectural or design requirements, setbacks, conditional use criteria, or similar items, are generally applicable across the entire City and do not materially and unreasonably increase the costs of any Development; and

3.2.8. Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(i) (2021).

3.3. Reservation of Legislative Authority. Notwithstanding anything to the contrary in

this MDA, nothing in this MDA shall limit the City Council's authority in the future to (a) enact a land use regulation; or (b) take any action allowed under Utah Code Ann. § 10-8-84 as amended.

4. **Term of Agreement.** This MDA shall expire December 31, 2031. If Master Developer is not currently in Default as of December 31, 2031 (and if any such Default is not being cured) then this MDA shall be automatically extended until December 31, 2036. This MDA shall also terminate automatically at Buildout.

5. **Zoning.**

5.1. **Map.** Upon execution of this agreement, the Property shall be zoned R-10 Residential Planned Unit Development (PUD) and Interchange Commercial C-1 as shown in Exhibit "I". Any modification to the uses of Property in a Development Area not permitted in the applicable zone, require approval of the City through the normal zoning process specified in the City's then current zoning code.

6. **Processing of Development Applications.**

6.1. **Processing of Development Applications.** Processing of Development Applications will be governed by City Code.

6.2. **Acceptance of Certifications Required for Development Applications.** Any Development Application requiring the signature, endorsement, or certification and/or stamping by a person holding a license or professional certification required by the State of Utah in a particular discipline shall be so signed, endorsed, certified or stamped signifying that the contents of the Development Application comply with the applicable regulatory standards of the City.

6.3. **Independent Technical Analyses for Development Applications.** If the City

needs technical expertise beyond the City's internal resources to determine impacts of a Development Application such as for structures, bridges, water tanks, and other similar matters which are not required by the City's Vested Laws to be certified by such experts as part of a Development Application, the City may engage such experts as City Consultants with the actual and reasonable costs being the responsibility of Applicant.

6.4. City Denial of a Development Application. If the City denies a Development Application the City shall provide a written determination advising the Applicant of the reasons for denial including specifying the reasons the City believes that the Development Application is not consistent with this MDA, the Zoning and/or the City's Vested Laws (or, if applicable, the City's Future Laws). The City may amend such written determination as necessary.

6.5. City Denials of Development Applications Based on Denials from Non-City Agencies. If the City's denial of a Development Application is based on the denial of the Development Application by a Non-City Agency, Applicant shall appeal any such denial through the appropriate procedures for such a decision and not through the processes specified below. Applicant's failure to successfully appeal any such denial shall preclude any action by Applicant against City for City's denial.

6.6. Mediation of Development Application Denials.

6.6.1. Issues Subject to Mediation. Issues resulting from the City's Denial of a Development Application that the parties are not able to resolve shall be mediated.

6.7. Mediation Process. If the City and Applicant are unable to resolve a disagreement subject to mediation, the parties shall attempt within thirty (30) calendar days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute. If the City

and Applicant are unable to agree on a single acceptable mediator they shall each, within fifteen (15) calendar days, appoint their own representative. These two representatives shall, between them, choose the single mediator. Applicant and the City shall split the fees of the chosen mediator, each Party paying 50% of the fees. The chosen mediator shall within thirty (30) calendar days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties. If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the parties, or admissible in subsequent proceedings.

7. **Application Under City's Future Laws.** Without waiving any rights granted by this MDA, Master Developer may at any time, choose to submit a Development Application for all or part of the Project under the City's Future Laws in effect at the time of the Development Application so long as said Development Application would not materially affect the development of the Project as described in the Master Plan, and Master Developer is not in current breach of this MDA.

8. **Public Infrastructure.**

8.1. **Construction by Master Developer.** Master Developer shall have the right and the obligation to construct or cause to be constructed and installed all Public Infrastructure reasonably and lawfully required as a condition of approval of the Development Application pursuant to the City's Vested Laws.

8.2. **Bonding.** Unless otherwise provided by Chapter 10-9a of the Utah Code as amended, Applicant shall provide security for any Public or private Infrastructure required by the City, in a form acceptable to the City. as specified in the City's ordinances

in effect at the time of application. Partial releases of any such required security shall be allowed as work progresses based on the City's laws then in effect.

9. Upsizing/Reimbursements to Master Developer.

9.1. "**Upsizing**". All Public Infrastructure shall be of sufficient capacity to service the entire Project at Buildout. The City shall not require Master Developer to "upsized" any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) unless financial arrangements reasonably acceptable to Master Developer are made to compensate Master Developer for the incremental or additive costs of such upsizing. For example, if an upsizing to a water pipe size increases costs by 10% but adds 50% more capacity, the City shall only be responsible to compensate Master Developer for the 10% cost increase. An acceptable financial arrangement for upsizing of improvements means reimbursement agreements, payback agreements, and impact fee credits and reimbursements. Providing Public Infrastructure with sufficient capacity to serve the entire Project at Buildout is not considered upsizing for purposes of this MDA, and all associated costs thereof are the sole responsibility of the Master Developer, and not the responsibility of the City.

9.2. "**Reimbursements**". The Parties recognize that there are several Public Infrastructure improvements within the Development Area that will provide benefit to the City. The Parties have worked in good faith to negotiate the reimbursement of non-Development Area required enhancements and or improvements within the Development Area that are above the 15% improved Open Space requirement.

9.2.1. **Main Street Road Improvements**. The Master Developer shall construct, extend, and connect Main Street from the Oak Summit subdivision to the Maverick

Gas Station area. City agrees to reimburse the Master Developer fifty percent (50%) of the actual costs of the Main Street Road Improvements as identified in Exhibit "D" which are estimated to be approximately One Hundred Sixty-Seven Thousand Dollars (\$167,000). City will reimburse said actual costs of construction utilizing funds from the Transportation Impact Fees collected from within the Development Area, on a quarterly basis based upon the number of building permits issued during the preceding quarter. At Buildout, any deficiency between the City's obligation and the total available Transportation Impact Fees from the Project will be reimbursed to the Master Developer from other City funding sources to fulfill said obligation.

9.2.2. 900 East Street and Frontage Road Improvements. The Master Developer shall construct, extend, and connect 900 East Street/Frontage Road from the existing 900 East Street (approximately 150 South Street) to the new Main Street Connection at 900 East, including the intersection of 900 East Street and Frontage Road. City is responsible for the costs of a portion of the 900 East Street/Frontage Road Improvements as identified in Exhibit "D" in an estimated amount of approximately One Hundred Ninety-Five Thousand Dollars (\$195,000) and will reimburse said actual costs of construction utilizing funds from the Transportation Impact Fees collected from within the Development Area, on a quarterly basis based upon the number of building permits issued during the preceding quarter. At Buildout, any deficiency between the City's obligation and the total available Transportation Impact Fees from the Project will be reimbursed to the Master Developer from other City funding sources to fulfill said obligation.

9.2.3. **Unimproved Portion of the Future Frontage Road.** At no cost to the City, the Master Developer shall dedicate the land for the unimproved portion of the future Frontage Road as shown in Exhibit “D” as part of the final platting of the Project. Master Developer shall have no responsibility to construct, extend, or connect the future Frontage Road from the intersection with 900 East Street to the west end of the Project. However, in the event that the Master Developer needs or wants access to south portion of the commercial parcel from any portion of the dedicated future Frontage Road, Master Developer shall front the cost to construct, extend, and connect the future Frontage Road from the intersection with 900 East Street to the west end of the Project as needed/required to accommodate such access in order to meet City access requirements per City’s Vested Laws with the City providing reimbursement in a future reimbursement agreement, as agreed by the Parties.

9.2.4. **900 East Trail Improvements.** The Master Developer shall construct, extend, and connect the 900 East Trail from Main Street to the intersection of 270 South 900 East. City is responsible for a portion of the 900 East Trail Improvements as identified in Exhibit “H” in an estimated amount of approximately Thirty-Eight Thousand Dollars (\$38,000) and will reimburse actual costs from Park Impact Fees collected from within the Development Area on a quarterly basis to fulfill the City’s portion of the obligation. At Buildout, any deficiency between the City’s obligation and the total available Park Impact Fees from the Project will be reimbursed to the Master Developer from other City funding sources to fulfill said obligation.

9.2.5. **Pressure Reducing Valve (PRV) Station Reimbursement.** The Master Developer shall install a PRV station on the culinary water system. City is

responsible for the actual cost of the PRV station identified in the City's Culinary Water Master Plan in an estimated amount of approximately Eighty-Five Thousand Dollars (\$85,000). City will reimburse said actual costs of construction utilizing funds from the Culinary Impact Fees collected from within the Development Area, on a quarterly basis based upon the number of building permits issued during the preceding quarter. At Buildout, any deficiency between the City's obligation and the total available Culinary Impact Fees from the Project will be reimbursed to the Master Developer from other City funding sources to fulfill said obligation.

9.2.6. Compliance with Bidding Requirements. All obligations of City for reimbursement of costs, as described in this Section 9.2, are contingent with Master Developer's compliance with all applicable laws regarding the bidding for construction of public improvements.

10. Default.

10.1. Notice. If Master Developer or a Subdeveloper or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a Default has occurred shall provide Notice to the other Party. If the City believes that the Default has been committed by a Subdeveloper then the City shall also provide a courtesy copy of the Notice to Master Developer.

10.2. Contents of the Notice of Default. The Notice of Default shall:

10.2.1. Specific Claim. Specify the claimed event of Default;

10.2.2. Applicable Provisions. Identify with particularity the provisions of any applicable law, rule, regulation, or provision of this MDA that is claimed to be in Default; and

10.2.3. Materiality. Identify why the Default is claimed to be material.

10.3. **Amendments to Notice of Default**. The City may amend a Notice of Default as additional information becomes available.

10.4. **Optional Cure**. If the City chooses, in its discretion, it may propose a method and time for curing the Default which shall be of no less than thirty (30) calendar days duration.

10.5. **Remedies**. If the parties are not able to resolve the Default by “Mediation,” the parties may have the following remedies.

10.5.1. Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

10.5.2. Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

10.5.3. Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by Master Developer, or in the case of a default by a Subdeveloper, development of those Parcels owned by the Subdeveloper until the Default has been cured.

10.6. **Emergency Defaults**. Anything in this MDA notwithstanding, if the City Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of Section 10.3 without the requirements of Section 10.2. The City shall give Notice to Master Developer and/or any applicable Subdeveloper of any public meeting at which an

emergency default is to be considered.

10.7. **Extended Cure Period.** If any Default cannot be reasonably cured within thirty (30) calendar days, then such cure period shall be extended so long as the defaulting party is pursuing a cure with reasonable diligence.

10.8. **Default of Assignee.** A default of any obligations assumed by an assignee shall not be deemed a default of Master Developer.

10.9. **Limitation on Recovery for Default – No Damages.** Anything in this MDA notwithstanding no Party shall be entitled to any claim for any monetary damages as a result of any breach of this MDA and each Party waives any claims thereto. The sole remedy available to Master Developer or any Subdeveloper shall be that of specific performance.

10.10. **City Inspections.** Nothing in this Section 10 shall be construed to limit the ability or authority of City's inspectors to assure compliance with construction standards and practices through the procedures applied generally to construction projects in the City.

11. **Notices.** All notices required or permitted under this MDA shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Master Developer:

BCP Development, Inc.
ATTN: Peter Evans
1250 E. 200 S.
Suite 1-D
Lehi, UT 84043

To the City:

Santaquin City

Attn: City Manager
Benjamin Reeves
275 West Main Street
Santaquin, UT 84655
breeves@santaquin.org
(801) 754-3200

With a Copy to:

Santaquin City
Attn: City Attorney
Brett B. Rich
Nielsen & Senior, P.C.
1140 South 800 East, Suite 110
Orem, UT 84097
bbr@ns-law.com
(801) 701-7074

11.1. **Effectiveness of Notice.** Except as otherwise provided in this MDA, each Notice shall be effective and shall be deemed delivered on the earlier of:

11.1.1. Hand Delivery. Its actual receipt, if delivered personally, by courier service, or by facsimile provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending party has confirmation of transmission receipt of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

11.1.2. Electronic Delivery. Its actual receipt if delivered electronically by email provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending party has an electronic receipt of the delivery of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

11.1.3. Mailing. On the day the Notice is postmarked for mailing, postage prepaid,

by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any party may change its address for Notice under this MDA by giving written Notice to the other party in accordance with the provisions of this Section.

12. **Headings.** The captions used in this MDA are for convenience only and are not intended to be substantive provisions or evidences of intent.

13. **No Third-Party Rights/No Joint Venture.** This MDA does not create a joint venture relationship, partnership or agency relationship between the City, or Master Developer. Further, the parties do not intend this MDA to create any third-party beneficiary rights. The Parties acknowledge that this MDA refers to a private development and that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements at which time all rights and responsibilities—except for warranty bond requirements under City’s Vested Laws and as allowed by state law—for the dedicated public improvement shall be the City's.

14. **Assignability.** The rights and responsibilities of Master Developer under this MDA may be assigned in whole or in part, respectively, by Master Developer with the consent of the City as provided herein.

14.1. **Sale of Lots.** Master Developer’s selling or conveying lots in any approved Subdivision or Parcels to builders, users, or Subdevelopers, shall not be deemed to be an “assignment” subject to the above-referenced approval by the City unless specifically designated as such an assignment by Master Developer.

14.2. **Related Entity.** Master Developer’s transfer of all or any part of the Property to any entity “related” to Master Developer (as defined by regulations of the Internal

Revenue Service in Section 165), Master Developer's entry into a joint venture for the development of the Project or Master Developer's pledging of part or all of the Project as security for financing shall also not be deemed to be an "assignment" subject to the above-referenced approval by the City unless specifically designated as such an assignment by the Master Developer. Master Developer shall give the City Notice of any event specified in this sub-section within fifteen (15) calendar days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

14.3. **Notice.** Master Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

14.4. **Time for Objection.** Unless the City objects in writing within thirty (30) calendar days of notice, the City shall be deemed to have approved of and consented to the assignment.

14.5. **Partial Assignment.** If any proposed assignment is for less than all of Master Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this MDA to which the assignee succeeds. Upon any such approved partial assignment Master Developer shall not be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations herein.

14.6. **Denial.** The City may only withhold its consent if the City is not reasonably

satisfied of the assignee's financial ability to perform the obligations of Master Developer proposed to be assigned or there is an existing breach of a development obligation owed to the City by the assignee or related entity that has not either been cured or in the process of being cured in a manner acceptable to the City. Any refusal of the City to accept an assignment shall be subject to the "Mediation" process specified in Section 6.6.

14.7. **Assignees Bound by MDA.** Any assignee shall consent in writing to be bound by the assigned terms and conditions of this MDA as a condition precedent to the effectiveness of the assignment. That consent shall specifically acknowledge the provisions of Section 2.

15. **Insurance and Indemnification.** Master Developer shall defend and hold the City and its officers, employees, and consultants harmless for any and all claims, liability and damages arising from the rezoning of the Property, construction on the Property, or operation performed under this MDA by (a) Master Developer or any of its contractors, subcontractors, agents or employees, or (b) any one or more persons directly or indirectly employed by, or acting as agent for Master Developer or any of its contractors or subcontractors. Nothing in this MDA shall be construed to mean the Master Developers shall defend, indemnify, or hold the City or its elected and appointed representatives, officers agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from (i) the willful misconduct or negligent acts or omissions of the City, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the City of improvements that have been dedicated to and accepted by the City.

15.1. Referendum. If sponsors of a referendum timely challenge this MDA and/or any land use regulation enacted specifically in relation to this MDA in accordance with Utah

law, and Master Developer does not rescind the same pursuant to Utah law, Master Developer shall indemnify the City for all costs and attorneys' fees incurred by the City arising from the referendum and associated proceedings.

15.2. Hazardous, Toxic and/or Contaminating Materials. Master Developer further agrees to defend and hold the City and its elected and/or appointed boards, officers, agents, employees, and consultants, harmless from any and all claims, liability, costs, fines, penalties, charges and/or claims of any kind whatsoever relating to the existence and removal of hazardous, toxic and/or contaminating materials on the Property, except where such claims, liability, costs, fines, penalties, charges and/or claims are due to the actions of the City.

15.3. Bodily Injury and Property Damage Insurance. Master Developer agrees to and shall indemnify and hold the City and its elected and appointed boards, officer, agents, employees, and consultants harmless from and against all liability, loss, damage, costs or expense (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done on or with respect to the Property by Master Developer or its agents, servants, employees, or contractors, except for willful misconduct or negligent acts or omissions of the City or its elected and appointed boards, officer, agents, employees, and consultants.

15.4. Insurance Certificates. Prior to any construction of the Property, Master Developer shall furnish or cause to be furnished to the City appropriate certificates of insurance naming the City as an additional insured, in amounts corresponding to the limits of liability specified in the Utah Governmental Immunity Act.

16. **Binding Effect.** If Master Developer sells or conveys Parcels of lands to Subdevelopers or related parties, the lands so sold and conveyed shall bear the same rights, privileges, configurations, and number of Residential Dwelling Units as applicable to such Parcel and be subject to the same limitations and rights of the City when owned by or Master Developer and as set forth in this MDA without any required approval, review, or consent by the City except as otherwise provided herein. Each sale of a Parcel shall include a written designation of the maximum number of Residential Dwelling Units allocated to that parcel.

17. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

18. **Severability.** If any provision of this MDA is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this MDA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this MDA shall remain in full force and affect.

19. **Survival.** If this MDA is terminated for any reason the provisions of Sections 2.5, 9.1, 9.2, 10.7, 14, 24, 25 and 26 shall survive the termination.

20. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this MDA which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

21. **Time is of the Essence.** Time is of the essence to this MDA and every right or responsibility shall be performed within the times specified.

22. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this MDA, the City and Master Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Master Developer. The initial representative for the City shall be the City Manager or his designee. The initial representative for Master Developer shall be Peter Evans. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this MDA and the development of the Project.

23. **Estoppel Certificate.** Upon twenty (20) days prior written request by Master Developer or a Subdeveloper, the City will execute an estoppel certificate to any third party certifying that Master Developer or a Subdeveloper, as the case may be, at that time has not been declared to be in default of the terms of this MDA, and that the City is not aware of any circumstances that would constitute such a default.

24. **Applicable Law.** This MDA is entered into in Utah County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

25. **Venue.** Any action to enforce this MDA shall be brought only in the Fourth District Court for the State of Utah, Provo Division.

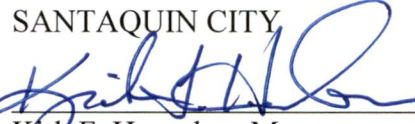
26. **Entire Agreement.** This MDA, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

27. **Mutual Drafting.** Each Party has participated in negotiating and drafting this MDA and therefore no provision of this MDA shall be construed for or against any Party based on which Party drafted any particular portion of this MDA.

28. **Recordation and Running with the Land.** This MDA shall be recorded in the chain of title for the Project. This MDA shall be deemed to run with the land. The data disk of the City's Vested Laws, Exhibit "C", shall not be recorded in the chain of title. A secure copy of Exhibit "C" shall be filed with the City Recorder and each party shall also have an identical copy.

29. **Authority.** The Parties to this MDA each warrant that they have all of the necessary authority to execute this MDA. Specifically, on behalf of the City, the signature of the Mayor is affixed to this MDA lawfully binding the City pursuant to Resolution No. 12-06-2021 adopted by the City on December 14, 2021.

IN WITNESS WHEREOF, the parties hereto have executed this MDA by and through their respective, duly authorized representatives as of the day and year first herein above written.

SANTAQUIN CITY

Kirk F. Hunsaker, Mayor

ATTEST:

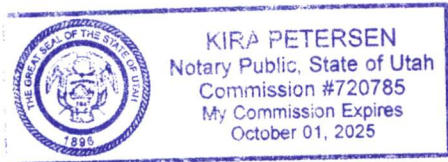

K. Aaron Shirley, City Recorder



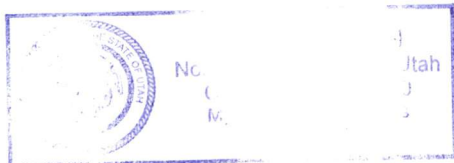
STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

On the 16 day of December, 2021 personally appeared before me Kira Peterson who being by

me duly sworn, did say that he is the Mayor of Santaquin City, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said Mayor acknowledged to me that the City executed the same.



Kira Petersen
NOTARY PUBLIC



MASTER DEVELOPER

[Signature]
(NAME), (TITLE)

MASTER DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

On the 21 day of December, 2021 personally appeared before me Jenna O. Worthen who being by me duly sworn, did say that he/she is the developer of Building Construction Partners, LLC, a Utah limited liability company, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

Jenna O. Worthen
NOTARY PUBLIC



TABLE OF EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B"	Master Plan
Exhibit "C"	City's Vested Laws
Exhibit "D"	Public Roadway Description
Exhibit "E"	Open Space Description (Debris Basin)
Exhibit "F"	Commercial Area
Exhibit "G"	Park
Exhibit "H"	Trails
Exhibit "I"	Zoning Approval Map

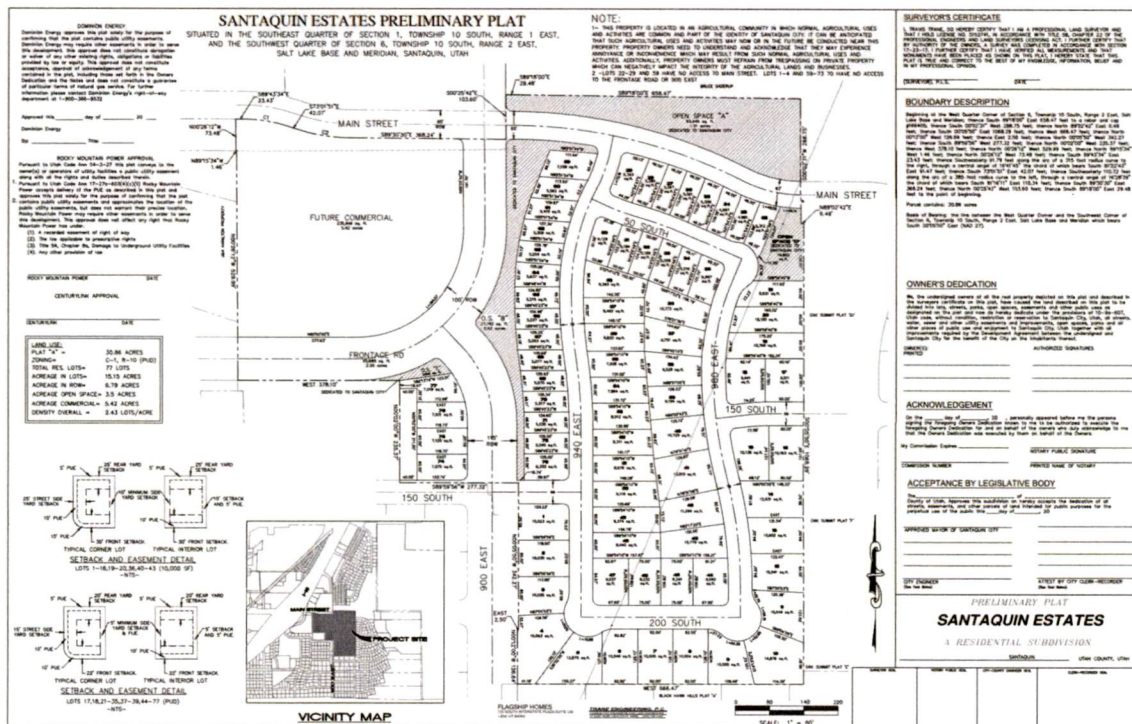
Exhibit "A" Legal Description of Property

BOUNDARY DESCRIPTION

Beginning at the West Quarter Corner of Section 6, Township 10 South, Range 2 East, Salt Lake Base and Meridian; thence South 89°18'00" East 658.47 feet to a rebar and cap #166405; thence South 00°02'31" West 288.75 feet; thence North 89°02'42" East 6.49 feet; thence South 00°05'50" East 1068.29 feet; thence West 666.47 feet; thence North 00°12'00" West 126.64 feet; thence East 2.50 feet; thence North 00°05'50" West 342.27 feet; thence South 89°59'56" West 277.32 feet; thence North 00°02'00" West 235.37 feet; thence West 378.10 feet; thence North 00°26'12" West 529.99 feet; thence North 89°15'34" West 1.46 feet; thence North 00°26'12" West 73.48 feet; thence South 89°43'34" East 23.43 feet; thence Southeasterly 91.79 feet along the arc of a 315 foot radius curve to the right, through a central angel of 16°41'45" the chord of which bears South 81°22'43" East 91.47 feet; thence South 73°01'51" East 42.07 feet; thence Southeasterly 110.72 feet along the arc of a 385 foot radius curve to the left, through a central angel of 16°28'39" the chord of which bears South 81°16'11" East 110.34 feet; thence South 89°30'30" East 368.24 feet; thence North 00°25'42" West 103.60 feet; thence South 89°18'00" East 29.48 feet to the point of beginning.

Parcel contains: 30.86 acres

Basis of Bearing: the line between the West Quarter Corner and the Southwest Corner of Section 6, Township 10 South, Range 2 East, Salt Lake Base and Meridian which bears South 00°05'50" East (NAD 27).





SANTAQUIN ESTATES
 Master Plan Exhibit

Exhibit "B"
 Master Plan

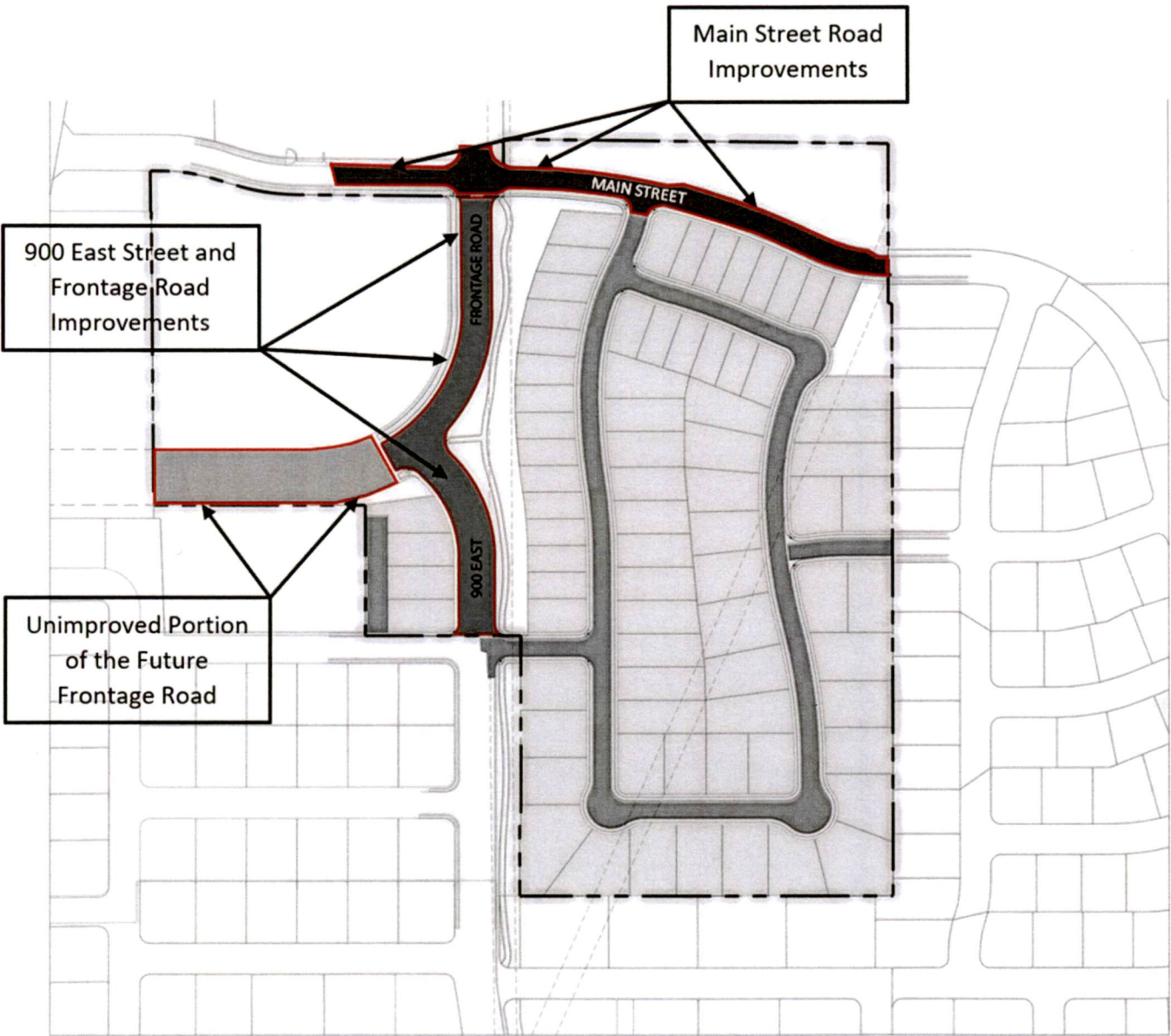
Exhibit "C"
City's Vested Laws

ENT

870:2022 PG 34 of 40

Exhibit "D"
Public Roadway Description

ENT 870:2022 Pg 35 of 40





SANTAQUIN ESTATES
 Open Space Exhibit - Debris Basin

Open Space Description (Debris Basin)

Exhibit "E"



SANTAQUIN ESTATES
Commercial Area

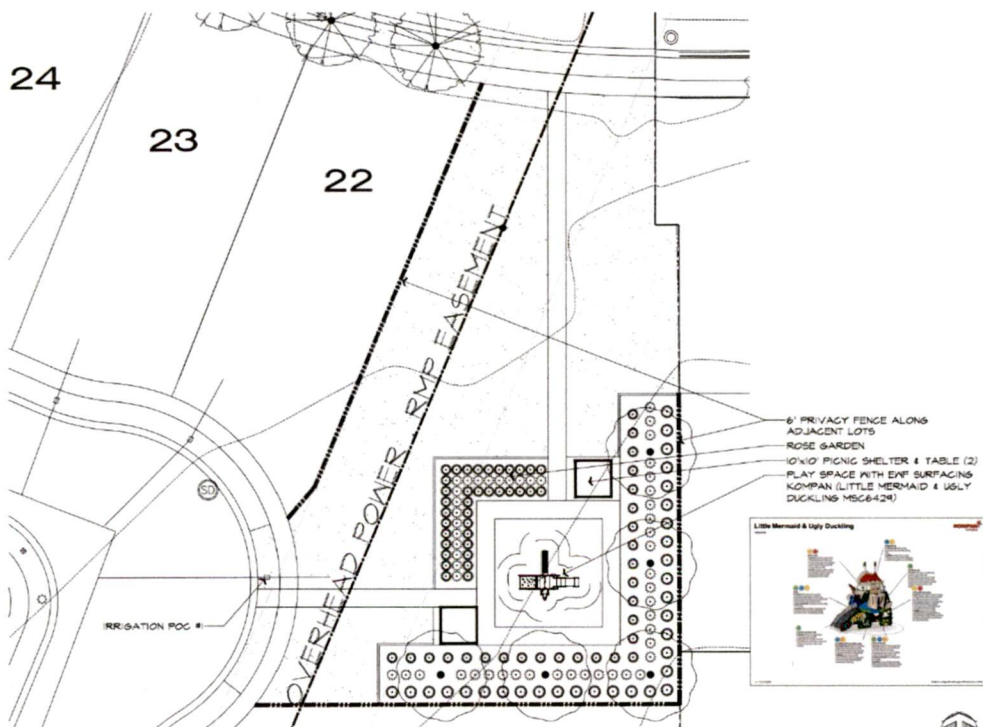
Commercial Area

Exhibit "F"

Exhibit "G"
Park



SANTAQUIN ESTATES
Open Space Exhibit - Parks



SANTAQUIN ESTATES
LANDSCAPE PLANS
Main Street & 900 East - Santaquin - Utah
DECEMBER 2021
LANDSCAPE
concept plan



SANTAQUIN ESTATES
 Open Space Exhibit - Trails

Exhibit "H"
 Trails

Exhibit "I"
Zoning Approval Map

