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JEFFERY SMITH
UTAH COUNTY RECORDER
2020 Feb 20 1:49 pm FEE 640.00 BY IP
RECORDED FOR D R HORTON

ANNEXATION AGREEMENT

(Smith/ Freeland NORTHSHORE Addition – a D.R. Horton Project)

THIS ANNEXATION AGREEMENT (hereinafter "Agreement") is made to be effective as of April 16, 2019, by and between the City of Saratoga Springs, Utah, a Utah municipal corporation, hereinafter referred to as "City," and D.R. Horton, Inc., a Delaware corporation, hereinafter referred to as "Owner" or "Developer."

RECITALS:

WHEREAS, Owner owns or is under contract to purchase approximately 55 acres of property located in unincorporated Utah County (hereinafter, the "Annexation Property"), which Annexation Property is described in Exhibit A hereto. The Annexation Property will be added to, and become part of, the project currently comprised of approximately 145 acres of property already located within the current city limits. The Annexation Property together with the 145 acres that already exist in the City are collectively described in the property ownership map, site plan, and/or legal descriptions attached collectively as Exhibit B (hereinafter "Combined Property");

WHEREAS, Owner wishes to annex the Annexation Property (approximately 55 acres) into the City (hereinafter "Annexation Request") and develop the Combined Property as a residential subdivision with mixed residential dwelling products (hereinafter, the "Project") to be known as "*Northshore*" - consistent with the general layout and approximate densities shown in the Northshore Illustrative Plan attached hereto as Exhibit C (the "Development Plan");

WHEREAS, the City adopted on May 1, 2018 an ordinance to establish the MR Zone. The Development Plan is consistent with the MR Zone. Accordingly, Owner has worked with the City to prepare and adopt the MR Zone to allow the Project to be approved and developed with the uses and densities substantially as shown in the Development Plan.

WHEREAS, Owner and City agree that approximately 117 acres of the Project have already been assigned the MR Zone. The City agrees that an approximately 1.56 acres of land will be zoned as Rural Residential Zone (RR) upon annexation of the unincorporated portions of the Project into the City, as it will be retained by the current land owners, William A. Freeland and Mandalyn Freeland, for the maintenance of their existing home and structures as currently used and located on said 1.56 acres. Additionally, approximately 53 acres of the Annexation Property (i.e., the 55 acres of Annexation Property minus the 1.56 acres of land retained by the Freelands) will be assigned the MR Zone upon annexation into the City (hereinafter, the "Zoning Request"). In addition, there is a portion of the Project comprised of approximately 27 acres already located in the City has not yet been rezoned to the MR Zone, but it will be considered for rezoning to the MR Zone pursuant to a separate rezone application, with the Owner's desired end result being that approximately 205 acres of the Combined Property (excluding only the 1.56 acre Freeland Lot), will have the MR Zone zoning designation, subject at all times to the future legislative discretion of the City Council and referendum/initiative rights of City residents;

WHEREAS, except as specifically stated otherwise in this Agreement, the Property will be subject to all City ordinances, regulations, standards, and policies (collectively "City regulations");

WHEREAS, the City desires to enter into this Agreement to promote the health, welfare, safety, convenience, and economic prosperity of the inhabitants of the City through the establishment and administration of conditions and regulations concerning the use and development of the Property;

WHEREAS, the City desires to enter into this Agreement because the Agreement establishes planning principles, standards, and procedures to eliminate uncertainty in planning and guide the orderly development of the Property consistent with the City General Plan, the City Code, and the conditions imposed by the Planning Commission and City Council;

WHEREAS, to assist the City in its review of the Annexation Request and the Zoning Request, and to ensure development of the Property in accordance with Owner's representations to City, Owner and City desire to enter voluntarily into this Agreement, which sets forth the process and standards whereby Owner may develop the Property;

WHEREAS, pursuant to its legislative authority under Utah Code Annotated § 10-9a-101, et seq. and § 10-2-401, et seq., and after all required public notice and hearings and execution of this Agreement by Owner, the City Council, in exercising its legislative discretion, has determined that entering into this Agreement furthers the purposes of the Utah Municipal Land Use, Development, and Management Act, Section 10-2-401 et seq. of the Utah Code, City's General Plan, and Title 19 of the City code (collectively, the "Public Purposes"). As a result of such determination, City has elected to approve the Annexation Request and the Zoning Request and authorize the subsequent development thereunder in accordance with the provisions of this Agreement, and the City has concluded that the terms and conditions set forth in this Agreement accomplish the Public Purposes referenced above and promote the health, safety, prosperity, security, and general welfare of the residents and taxpayers of the City.

AGREEMENT:

Now, therefore, in consideration of the recitals above and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner hereby agree as follows:

1. Effective Date. This Agreement shall be deemed effective as of April 16, 2019 (hereinafter "Effective Date").

2. Affected Property. The Annexation Property is described in Exhibit A hereto; and the Combined Property (which includes the Annexation Property as well as the Project land that is already located in the City) is described in Exhibit B hereto. No other property may be added to or removed from this Agreement except by written amendment to this Agreement executed and approved by Owner and City.

3. Zone Change and Permitted Uses. Subject to the terms of this Agreement, the portions of the Property to be annexed into the City shall, upon annexation into the City, be zoned Mixed Residential (MR), Regional Commercial (RC) and Rural Residential (RR) (i.e., the RR zone will apply to the 1.56 acres being retained by the Freelands as described above; the RC zone will apply to the approximately 13.43 acres as described in Section 9 below and as shown on Exhibit E; and the MR zone will apply to the rest of the Project). The intent of this Agreement is for the majority of the Project (except the 1.56 acre Freeland property and the approximate 13.43 acre portion of Lot 3 zoned RC), to receive the MR Zone designation and qualify to be developed in accordance with the MR Zone, with the densities shown in the Development Plan attached hereto as Exhibit C, or a maximum of 8.5 units to the acre (gross) for any portions of the Project that are actually developed as residential. This paragraph is subject at all times to the future legislative discretion of the City Council and referendum/initiative rights of City residents.

4. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police powers of City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation, and other land use plans, policies, ordinances, and regulations after the date of this Agreement. Notwithstanding the retained power of City to enact such legislation under its police power, such legislation shall not modify Owner's rights as set forth herein unless facts and circumstances are present that meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in *Western Land Equities, Inc. v. Logan*, 617 P.2d 388 (Utah 1988), or successor case law or statute. Any such proposed change affecting Owner's rights shall be of general applicability to all development activity in City. Unless City declares an emergency, Owner shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Property.

5. Required Improvements. Except as specifically provided herein, this Agreement does not in any way convey to Owner any capacity in any City system or infrastructure or the ability to develop the Property without the need for Owner to install and dedicate to City all required improvements necessary to service the Property. Prior to dedication, Developer shall be responsible for paying all property taxes including rollback taxes prior to dedication or conveyance and prior to acceptance by City. Future development of the Property shall comply in all respects to all City regulations with respect to the required infrastructure to service the Property. Not by way limitation, the Owner shall be required to install and dedicate the following:

   a. Water Rights and Sources. When Owner develops the Property, Owner shall convey to the City water rights and sources sufficient for the development of the Property according to City regulations in effect at the time a complete application is filed. The Owner may acquire water rights and sources from the City if, in the City's sole discretion, the City has sufficient water rights and sources to service the Property.

   b. Water Facilities for Development. When Owner files a complete application for development of the Property, Owner shall be responsible for the installation and

dedication to City of all onsite and offsite culinary and secondary water improvements, including but not limited to source, storage, distribution, treatment, and fire flow facilities sufficient for the development of the Property in accordance with the City regulations current at that time. The required improvements for each plat shall be determined by the City Engineer at the time a complete application is filed and may be adjusted in accordance with the then-current City regulations and any applicable law. The City acknowledges that additional water source locations may be needed and that any capital improvement projects for culinary or secondary water service that may become necessary to develop the Project will be addressed in a timely manner; and, if required, the City will timely amend the current IFFP to include projects that may become necessary. At City's option, Developer shall install the master planned water service lines to serve the development of the Project and the City will reimburse the Developer for the additional costs with cash payments to the Developer and/or through culinary or secondary impact fee credits so long as the reimbursement amounts to be paid to Developer do not exceed the total amount of impact fees that would be paid within the Project. Developer will still be responsible for all costs associated with its own project improvements. If the additional costs exceed the total amount of impact fees to be paid by Developer, City shall also have the option to reimburse Developer through cash funds or through other compensation as mutually agreed upon by the Parties. The language in this paragraph regarding reimbursements applies only to "system improvements," as defined under Utah law.

c. Sewer and Storm Drain Improvements. When Owner develops the Property, Owner shall be responsible for the installation and dedication to City of all necessary onsite and offsite sewer and storm drain improvements sufficient for the development of Property in accordance with the then-current City regulations. The required improvements for each plat or site plan shall be determined by the City Engineer at the time of plat or site plan submittal and may be adjusted in accordance with the then-current City regulations and any applicable law. The City has identified this area in its current IFFP for service by a lift station. Owner will be responsible for its proportionate share of the costs of the sewer lift station facility. The location of the lift station facilities shall be determined in cooperation and with best practices by the parties. The City acknowledge that any sewer capital improvement projects, such as a lift station, that may become necessary to develop the Property will be addressed in timely manner. If required, the City will timely amend its current IFFP to include system projects that may become necessary. At City's option, Developer shall install the fully sized lift station for the city service area with development of the Project and the City will reimburse Developer for the additional costs with cash payments and/or through sewer impact fee credits so long as the reimbursement amounts to be paid to Developer do not exceed the total amount of impact fees that would be paid within the Project. If the additional costs exceed the total amount of impact fees to be paid by Developer, City shall also have the option to reimburse Developer through cash funds or through other compensation as mutually agreed upon by the Parties. Developer's reimbursement rights will be limited to "system improvements"

(as defined under Utah law), not for project improvements.

d. Road Improvements; 550 North Road. When Owner develops the Project, Owner shall be responsible for the installation and dedication to City of all necessary onsite and offsite road improvements sufficient for the development of Project in accordance with the then-current City regulations. The required improvements for each plat or site plan shall be determined by the City Engineer at the time of plat or site plan submittal, and may be adjusted in accordance with the then-current City regulations and any applicable law.

Developer and the City have entered into a Development Agreement (Northshore), dated October 16, 2018, as it pertains to the collector road to be known as 550 North Street, in which the parties agree that an exchange of property must occur between the parties in order to relocate and re-align 550 North. The parties acknowledge that the required exchange of property has been complicated by the underlying deed to the City property by UDOT to protect and maintain public access in perpetuity. Accordingly, the parties agree to work together in good faith to facilitate a three party trade agreement to equitably resolve the obligations of the parties as agreed in the Development Agreement and the UDOT obligation as they pertain to the city deed.

In addition, certain collector roads will border the Project and are identified by the City's Transportation Master Plan. As an express condition of this Agreement, Developer shall dedicate and improve such roads if such roads are necessary to service the needs of the Project as determined by a traffic study, which study must be performed and stamped by a licensed traffic engineer and be approved by the City in writing. At a minimum, Developer shall be required to dedicate and improve the local road cross section width for these collector roads if the traffic study determines that a local road is sufficient to meet the demands of the Project. In such a case, Developer shall dedicate the full collector road cross section width and the City will reimburse the Developer for the land value for the difference between the local road width and collector road width. At City's option, Developer shall install the full collector road width with the development of the Project and the City will reimburse the Developer for the additional costs with cash payments and/or through transportation impact fee credits so long as the reimbursement amount to be paid to Developer does not exceed the total amount of transportation impact fees that would be paid within the Project. If the additional costs exceed the total amount of impact fees to be paid by Developer, City shall also have the option to reimburse Developer through cash funds or through other compensation as mutually agreed upon by the Parties. The City shall not be responsible for reimbursing Developer's land costs for any additional dedication if the Developer chooses to install landscaping in the right-of-way as part of Developer's landscaping or open space requirements and the City accepts such landscaping as meeting the City's land development code requirements for landscaping or open space.

e. Landscaping, Fencing and Trail Improvements. When Owner develops the Property, at the time of recordation of a plat, Owner will be required to install, or guarantee the installation, of all landscaping, trail, and fencing improvements required by the then-current City regulations.

f. Power Lines. When Owner develops the Property, at Owner's expense, Owner shall bury the power lines that are required by City ordinances to be buried, with the understanding that "transmission" power poles do not need to be buried or relocated.

6. Future Pony Express Roadway. Owner agrees to dedicate to the City a 180-foot wide right of way for the future expansion and connection to Pony Express Parkway to be constructed in the area generally depicted in the Development Plan attached hereto as Exhibit "C." The City will not pay or reimburse Owner for that portion of the Pony Express right of way dedication that is necessary for Owner's project (i.e., the "project improvement" portion of the right of way) as determined by Owner's traffic study for its development. If the traffic study demonstrates that Owner's project does not require or create the need for a full 180-foot right of way dedication, then the difference between the 180-foot right of way dedication requested by the City and the smaller right of way dedication required for Owner's project (i.e., the "Reimbursable Portion") shall be the subject of a reimbursement agreement between the City and Owner. The terms of the reimbursement agreement shall comport with the terms of the parties' existing Development Agreement (i.e., reimbursement through land trades, if possible, or impact fee credits and/or cash payments), and governing Utah law pertaining to impact fees and exactions to ensure that no unlawful exactions are imposed by the City. The City agrees to amend its impact fees facility plan as necessary to fulfill its obligations under this provision. The City also agrees to pursue other funding sources, to the extent available, to pay for the Reimbursable Portion (e.g. funding from Mountainland Association of Government). In addition, the City agrees to landscape and maintain its portion of Pony Express Parkway in perpetuity until such time as the entire 180-foot wide right of way is constructed, unless Developer wishes to obtain open space credits for trail corridors along Pony Express Parkway, in which case Developer shall be required to install the trail corridor and maintain it in perpetuity.

7. Flood-Plain. The parties acknowledge that portions of the Property are located within a Special Flood Hazard Area (SFHA) as shown on the FEMA map and attached hereto as "Exhibit D". Owner or the party selling the land, at its sole cost and expense, is responsible for bringing in sufficient fill or otherwise taking the actions necessary to remove the Property from the floodplain designation to allow for development. To remove the Property from the SFHA, certain applications will be made to FEMA and will be initiated by the Owner or the party selling the land. The City Engineer or current designee of the City, as the floodplain manager, agrees to not unreasonably withhold any approval required in the FEMA process for this application with the Owner or the party selling the land. To the extent reasonably possible and lawful, the City will not impose any design requirements or conditions for development of the Property that would have an adverse effect on the floodplain designation or otherwise impair the efforts of Owner (or the party selling the land) to remove the Property from the floodplain designation. Without limiting the scope

of the preceding sentence, the City will use its best efforts to avoid imposing unnecessary development requirements or conditions relating to Saratoga Road that would compromise or change the floodplain designation area as shown in Exhibit D.

8. Building Heights. Because the elevation of the land in the Project may be raised, the parties agree that in determining permissible building heights, height measurements will be based on the finished grade of the land in the FEMA approved Letter of Map Revision Based on Fill (LOMR-F) (not the original natural grade).

9. Commercial Development Obligation. Owner acknowledges the City's desire for commercial uses to be developed in the northern area of the Smith annexation parcels. Owner does not develop commercial land uses, but is willing to work in good faith with the City to achieve its desire for commercial uses in said area. Accordingly, consistent with the decisions of the City Council on April 16, 2019, the parties agree as follows:

   a. The eastern approximately 13.43 acres of the area identified on the Development Plan as Lot 3 (Lot 3 is comprised of approximately 22.08 acres), will be rezoned to the Regional Commercial (RC) zone upon annexation. At any time thereafter, Developer may apply for a rezone of said portion of Lot 3 through the normal rezoning process (subject to the City's legislative discretion to approve or deny as applicable to all rezoning applications).

      Should the Developer request a rezone of the area designated as RC, after reasonably attempting to market and this land as a commercial center, the land may qualify, subject to the City Council's legislative discretion, regardless of minimum acreage requirements, to be zoned to Mixed Residential (MR) and to be included as a part of the Northshore neighborhood plan. As part of the Northshore project this area may qualify, subject to the City Council's legislative discretion, for at least an equivalent density as was approved on April 16, 2019 by the city council under a separate action. The overall density within the Northshore Neighborhood plan is up to 8.5 units per acre. However, certain areas may exceed this density as long as the overall density does not exceed 8.5 units per acre. If this area is rezoned to MR at a future date it may be added to the Northshore Neighborhood Plan and may receive credit for existing and planned open space areas and dedications, all subject to the City Council's legislative discretion.

   b. The western approximately 8.65 acres of Lot 3 will be rezoned to the Mixed Residential (MR) zone upon annexation, and Owner will make commercially reasonable efforts to market that portion of Lot 3 for sale for a period of two (2) years from the time of subdivision plat recordation (i.e., the plat formally creating Lot 3) to develop said area for retail/office/neighborhood commercial uses as permitted in the MR Zone (the "Commercial Center"). After reasonably attempting to market and sale this land as a commercial center, the City agrees that this land qualifies, regardless of minimum acreage requirements, to be developed as residential pursuant to the Mixed Residential (MR) zone and included as a part of the

Northshore neighborhood plan. As part of the Northshore project this area will then qualify for an equivalent residential density as the rest of the Northshore Plan.

c. With respect to both portions of Lot 3 (i.e., the RC-zoned area and the MR-zoned area), Owner will make its best reasonable efforts to sell as much of the acreage as possible for allowed commercial uses, with all parties recognizing that given the size and location of Lot 3 (and lack of frontage), Owner may not be able to sell all of Lot 3 for commercial use/development. Owner shall make its reasonable best efforts to sell the RC-zoned area of Lot 3 first (as a priority over selling/developing the MR-zoned area of Lot 3).

d. If, after the period of two years, as described above, Owner has been unable to sell all of the MR-zoned portion of Lot 3 to an outside party for development as a Commercial Center, then Owner shall have the right to develop such MR-zoned acreage into housing for residential development consistent with the maximum approved densities in the Northshore Neighborhood Plan. Owner agrees that it shall not sell any of the MR-zoned portion of Lot 3 to any other residential builder. If a commercial buyer desires to develop the MR-zoned portion of Lot 3 for commercial uses that are not presently allowed in the MR Zone, then the City agrees to consider a rezone of said portion of Lot 3 to a different commercial zone to allow for the desired commercial development and use.

e. Owner will provide all information reasonably requested by the City in order for the City to verify that Owner is fulfilling its obligations under this Section 9 and to achieve the City Council's expressed desire for "transparency" regarding Owner's efforts to market and sell Lot 3 for commercial development.

f. Within 15 days of the end of a quarter, Owner will submit to City quarterly evidence of marketing activity of the MR-zoned portion of Lot 3 at fair market value and any proposed offers. Owner shall also list the property on the Multiple Listing Service (or equivalent public listing service). In the event Owner does not continuously market the property for commercial development, the start of the time period that residential development will be allowed will be extended accordingly. For example only, if Owner does not market the property for sale for 6 months, Owner may not develop the MR-zoned portion of Lot 3 as residential development for 2.5 years from the date of recordation of the subdivision plat for Lot 3.

10. Commencement of Site Preparation. Owner shall not commence site preparation or construction of any Property improvement on the Property until the Plans have been approved by City in accordance with the terms and conditions of this Agreement. Upon approval of the Plans, subject to the provisions of this Agreement and conditions of approval, Owner may proceed by constructing the Project all at one time or in phases as specified in City regulations. Notwithstanding the preceding sentences, Owner or the party selling the land shall be allowed to bring in fill material to the site as contemplated by Section 8 above prior to approval of the Plans so long as necessary City, state, and federal

approvals are granted first in writing.

11. Other Conditions of Approval. All other conditions of approval and development requirements for the Project will be addressed as part of the plat approval process, with appropriate conditions of approval to be imposed as part of the plat approvals for this Project. The parties intend to enter a Development Agreement setting forth their respective rights and obligations regarding the Project in further detail in connection with the plat approval process. This provision shall not be construed to allow the City to impose any conditions that constitute unlawful exactions under Utah law.

12. Time of Approval. Any approval required by this Agreement shall not be unreasonably withheld or delayed.

13. Term. The term of this Agreement shall be for a period of ten years from the Effective Date with one renewal term of five years, unless either Party is in Breach pursuant to the provisions of Section 16 below. However, this Agreement may terminate earlier: (i) when certificates of occupancy have been issued for all buildings and/or dwelling units in the Project; provided, however, that any covenant included in this Agreement which is intended to run with the land, as set forth in any Special Condition, shall survive this Agreement as provided by such Special Condition; or (ii) if Owner fails to proceed with the Project within a period of two years. If this Agreement is terminated due to Owner's failure to proceed with the Project, then this Agreement and the zoning on the Property shall revert to Agricultural Zone. Unless otherwise agreed to by the City and Owner, Owner's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement approved by City and Owner in writing. However, this Agreement shall continue in perpetuity for any portions of the Property contained in a final plat approved by the City Council and recorded on the property in the county recorder's office by Owner, unless City and Owner mutually agree otherwise in writing.

14. Successors and Assigns.

a. Change in Owner. This Agreement shall be binding on the successors and assigns of Owner. If the Property is transferred (hereinafter "Transfer") to a third party (hereinafter "Transferee"), Owner and the Transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such Transfer Owner provides to City a letter from Transferee acknowledging the existence of this Agreement and agreeing to be bound thereby. Said letter shall be signed by the Transferee, notarized, and delivered to City prior to the Transfer. Upon execution of the letter described above, the Transferee shall be substituted as Owner under this Agreement and the persons and/or entities executing this Agreement as Owner shall be released from any further obligations under this Agreement as to the transferred Property.

b. Individual Lot or Unit Sales. A transfer by Owner of a lot or unit located within a

City approved and recorded plat shall not be deemed a transfer or assignment requiring any advance approval of the City. So long as Owner's obligations under this Agreement with respect to such lot or dwelling unit have been completed at the time of such transfer/closing, Owner shall be released from any further obligations under this Agreement pertaining to such lot or dwelling unit.

15. Default.

a. Events of Default. Upon the happening of one or more of the following events or conditions Owner or City, as applicable, shall be in default (hereinafter "Default") under this Agreement:

i. a warranty, representation, or statement made or furnished by Owner under this Agreement is intentionally false or misleading in any material respect when it was made;
ii. a determination by City made upon the basis of substantial evidence that Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement;
iii. any other event, condition, act, or omission, either by City or Owner that violates the terms of, or materially interferes with the intent and objectives of this Agreement.

b. Procedure Upon Default.

i. Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged Default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event the Default cannot reasonably be cured within thirty days, the defaulting party shall have such additional time as may be necessary to cure such Default so long as the defaulting party takes significant action to begin curing such Default with such thirty-day period and thereafter proceeds diligently to cure the Default. After proper notice and expiration of said thirty day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in Paragraph 16.c. herein. Failure or delay in giving notice of Default shall not constitute a waiver of any Default.

ii. Any Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any

such event prevented, delayed, or stopped any required performance or effort to cure a Default.

c. Breach of Agreement. Upon Default as set forth in Subparagraphs 16.a. and 16.b. above, City may declare Owner to be in breach of this Agreement and City: (i) may withhold approval of any or all building permits (but not certificates of occupancy) applied for on the Property, but not yet issued; and (ii) shall be under no obligation to approve or to issue any additional building permits or certificates of occupancy for any building on the Property until the breach has been corrected by Owner. In addition to such remedies, City or Owner may pursue whatever additional remedies it may have at law or in equity, including injunctive and other equitable relief.

16. Entire Agreement. This Agreement shall supersede all prior agreements with respect to the subject matter hereof, not incorporated herein, and all prior agreements and understandings are merged, integrated, and superseded by this Agreement. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A: Annexation Property Description.
Exhibit B: Combined Property (Project) Description
Exhibit C: Development Plan.
Exhibit D: FEMA Floodplain Map.
Exhibit E: Zoning Map for annexed areas

17. General Terms and Conditions.

a. Incorporation of Recitals. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

b. Recording of Agreement. This Agreement shall be recorded at Owner's expense to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

c. Severability. Each and every provision of this Agreement shall be separate, several, and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provision shall not affect the enforceability of any other provision hereof.

d. Time of Performance. Time shall be of the essence with respect to the duties imposed on the parties under this Agreement. Unless a time limit is specified for the performance of such duties, each party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.

e. Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect

health, safety, and welfare of the citizens of City.

f. State and Federal Law; Invalidity. The parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.

g. Enforcement. The parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Owner violates the rules, policies, regulations, or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Owner has used its reasonable best efforts to cure such violation within such thirty days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Owner. City shall be free from any liability arising out of the exercise of its rights under this paragraph.

h. No Waiver. Failure of a 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 time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the City Council taken with the same formality as the vote approving this Agreement, no officer, official, or agent of City has the power to amend, modify, or alter this Agreement or waive any of its conditions or make any binding promise or representation not contained herein.

i. Amendment of Agreement. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties. No change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of the City Council taken with the same formality as the vote approving this Agreement.

j. Attorney Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.

k. Notices. Any notices required or permitted to be given pursuant to this Agreement shall be deemed to have been sufficiently given or served for all purposes when presented personally, or four days after being sent by registered or certified mail, properly addressed to the parties as follows (or to such other address as the receiving party shall have notified the sending party in accordance with the provisions hereof):

To the Owner:	D.R. Horton, Inc. 12351 South Gateway Park Place, Suite D-100 Draper, UT 84020 Attn: Boyd Martin, Division President E-mail: bamartin@drhorton.com
With copies to:	Melissa Trunnell, Esq. mtrunnell@drhorton.com and Paxton Guymon, Esq. Paxton@yorkhowell.com
To the City:	City Manager City of Saratoga Springs 1307 N. Commerce Drive, Suite 200 Saratoga Springs, UT 84045

l. Applicable Law. This Agreement and the construction thereof, and the rights, remedies, duties, and obligations of the parties which arise hereunder are to be construed and enforced in accordance with the laws of the State of Utah.

m. Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven days of receipt of said facsimile copy.

n. Hold Harmless and Indemnification. Owner agrees to defend, indemnify, and hold harmless City and its elected officials, officers, agents, employees, consultants, special counsel, and representatives from liability for claims, damages, just compensation restitution, inverse condemnation, or any judicial or equitable relief which may arise from or are related to any activity connected with the Property, including approval of the Project, the direct or indirect operations of Owner or its contractors, subcontractors, agents, employees, or other persons acting on its behalf which relates to the Project, or which arises out of claims for personal injury, including health, and claims for property damage. This includes any claims or suits related to the existence of hazardous, toxic, and/or contaminating materials on the

Project and geological hazards.

i. Nothing herein shall be construed to mean that Owner 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; (ii) the negligent maintenance or repair by the City of improvements that have been offered for dedication and accepted by the City for maintenance; or (iii) breach of this Agreement by the City.

ii. City shall give written notice of any claim, demand, action or proceeding which is the subject of Owner's hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Owner shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

o. Relationship of Parties. The contractual relationship between City and Owner arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third-party beneficiary rights. It is specifically understood by the parties that: (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Owner, (ii) the Project is a private development; (iii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property; and (iv) Owner shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in this Agreement.

p. Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any Default or breach, to specifically enforce any covenants or agreements set forth in this Agreement or to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fourth District Court, State of Utah, or in the Federal District Court for the District of Utah.

q. Title and Authority. Owner expressly warrants and represents to City that Owner (i) owns all right, title and interest in and to the Property, or (ii) has the exclusive right to acquire such interest, and (iii) that prior to the execution of this Agreement no right, title or interest in the Property has been sold, assigned or otherwise transferred to any entity or individual other than to Owner. Owner further warrants and represents that no portion of the Property is subject to any lawsuit or pending legal claim of any kind. Owner warrants that the undersigned individuals have full power and authority to enter into this Agreement on behalf of Owner. Owner understands

that City is relying on these representations and warranties.

r. Headings for Convenience. All headings and captions are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by City and by a duly authorized representative of Owner to be effective as of the Effective Date.

Attest:

City Recorder

City of Saratoga Springs, a political subdivision of the State of Utah

By: _____
MARK CHRISTENSEN
ITS: CITY MANAGER

OWNER:
D.R. Horton, Inc., a Delaware corporation

By: _____
Its: Vice President

State of Utah

County of SaltLake

The foregoing instrument was acknowledged before me this 5 day of February 2020 by Adam R. Losee, of D.R. Horton, Inc., a Delaware corporation.

Notary Public

KRISEL P TRAVIS
NOTARY PUBLIC • STATE OF UTAH
My Commission Expires January 31, 2023
COMMISSION NUMBER 704334

Exhibit "A"

Legal Description of Annexation Property

PORTION OF PROJECT to by ANNEXED TO SARATOGA SPRINGS CITY BOUNDARY SMITH AND FREELAND ANNEXATION BOUNDARIES

South Smith PARCEL

A PORTION OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, LOCATED IN SARATOGA SPRINGS, UTAH, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EXISTING MUNICIPAL BOUNDARY OF SARATOGA SPRINGS CITY, BEING LOCATED S89°49'47"W ALONG THE SECTION LINE 1197.70 FEET FROM THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE ALONG SAID MUNICIPAL BOUNDARY THE FOLLOWING SIX (6) COURSES: S89°49'47"W ALONG THE SECTION LINE 600.52 FEET; THENCE N0°00'30"W 1027.64 FEET; THENCE N89°45'41"E 468.03 FEET; THENCE N0°10'01"W 244.16 FEET; THENCE S89°18'31"E 129.75 FEET; THENCE S0°09'45"E 1270.41 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±14.86 ACRES

Freeland PARCEL

A PORTION OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 1 WEST, AND OF SECTION 19, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN SARATOGA SPRINGS, UTAH, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EXISTING MUNICIPAL BOUNDARY OF SARATOGA SPRINGS CITY, BEING LOCATED S0°10'34"E ALONG THE SECTION LINE 638.09 FEET AND EAST 211.34 FEET FROM THE EAST 1/4 CORNER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE ALONG SAID MUNICIPAL BOUNDARY THE FOLLOWING FOUR (4) COURSES: S0°31'59"W 351.94 FEET; THENCE S89°59'28"W 674.11 FEET; THENCE N2°16'44"W 30.04 FEET; THENCE N0°03'01"E 320.90 FEET; THENCE N89°54'22"E 678.30 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±5.46 ACRES

North Smith PARCEL

A PORTION OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 1 WEST, AND OF SECTION 19, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN SARATOGA SPRINGS, UTAH, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EXISTING MUNICIPAL BOUNDARY OF LEHI CITY, BEING LOCATED S0°08'33"E ALONG THE SECTION LINE 773.05 FEET AND EAST 239.23 FEET FROM THE NORTHEAST CORNER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE S0°36'46"W ALONG SAID MUNICIPAL BOUNDARY 836.71 FEET TO THE MUNICIPAL BOUNDARY OF SARATOGA SPRINGS CITY; THENCE ALONG SAID MUNICIPAL BONDARY THE FOLLOWING FIVE (5) COURSES: N89°40'30"W 1556.32 FEET; THENCE N0°07'53"W 1082.75 FEET; THENCE S89°39'39"E 858.74 FEET; THENCE S2°06'55"W 20.28 FEET; THENCE S89°44'32"E 4.77 FEET TO AN EXISTING FENCE LINE AND THE EASTERLY BOUNDARY OF THAT REAL PROPERTY DESCRIBED IN DEED ENTRY NO. 27395:2010 IN THE OFFICIAL RECORDS OF THE UTAH COUNTY RECORDER; THENCE ALONG SAID FENCE LINE AND REAL PROPERTY THE FOLLOWING TWO (2) COURSES: S2°13'59"W 223.58 FEET; THENCE S89°30'30"E 713.72 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±34.86 ACRES

EXHIBIT "B"

LEI Job No. 17-0110

(March 11, 2019)

NORTHSHORE-OVERALL PROJECT LEGAL DESCRIPTION

A portion of the Southeast Quarter and Northeast Quarter of Section 24, Township 5 South, Range 1 West, and the Southwest Quarter and Northwest Quarter of Section 19, Township 5 South, Range 1 East, Salt Lake Base and Meridian, located in Saratoga Springs, Utah.

Beginning at a point located N0°10'34"W along the Section Line 8.48 feet and West 103.61 feet from the Southeast Corner of Section 24, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence West 174.94 feet to the intersection with the southerly line of that real property described in Deed Entry No. 96711:2016; thence along said real property the following fourteen (14) courses: N80°44'22"E 36.65 feet; thence N69°06'55"E 103.01 feet; thence N29°48'55"W 20.26 feet; thence S68°18'12"W 92.75 feet; thence S80°44'22"W 60.37 feet; thence S85°38'36"W 67.83 feet; thence S88°49'39"W 16.19 feet; thence S89°34'52"W 277.93 feet; thence S89°57'27"W 163.58 feet; thence S89°26'51"W 162.70 feet; thence N88°57'40"W 175.05 feet; thence S88°19'44"W 25.94 feet (the previous nine courses follow along an existing fence line); thence S4°09'58"E 0.75 feet; thence S67°24'21"W 5.64 feet; thence West 0.72 feet to the southerly extension of an existing fence line; thence N0°07'30"W along said fence line 3.73 feet; thence S83°10'42"W 17.24 feet along the extension of and the north line of that real property described in Deed Entry No. 167823:2006; thence continuing along said north line S89°49'09"W 580.79 feet to an existing fence line; thence S0°05'00"E along said fence line 1.61 feet to the north line of that real property described in Deed Entry No. 167823:2006 in the official records of Utah County; thence along said north line the following six (6) courses: N89°46'30"W 44.62 feet; thence N89°43'48"W 256.26 feet; thence S89°41'22"W 239.13 feet; thence S89°56'36"W 278.42 feet; thence N89°32'36"W 44.87 feet; thence West 0.86 feet; thence N0°07'43"W along the Quarter Section Line and an existing fence line 1005.01 feet; thence N89°45'14"E 668.11 feet; thence N0°14'29"W 798.08 feet; thence N89°30'02"E 2.23 feet; thence North 113.07 feet; thence S89°45'46"W 153.72 feet; thence N0°14'14"W 713.17 feet to an existing fence line; thence N89°43'24"E along said fence line 814.05 feet to a fence corner in the west line of that real property described in Deed Entry No. 117221:2013; thence along said real property the following two (2) courses: N0°16'25"W 0.80 feet; thence N0°03'11"E 186.55 feet to the south line of that real property described in Deed Entry No. 11728:2013; thence along said real property the following two (2) courses: West 1.10 feet; thence N0°04'00"W 463.54 feet; thence N0°08'11"W along an existing fence line 1495.70 feet to a fence corner and the north line of that real property described in Deed Entry No. 85173:2018; thence along said real property and an existing fence line the following three (3) courses: S89°25'33"E 863.78 feet; thence S2°20'27"W 248.43 feet; thence S89°28'33"E 715.17 feet; thence S0°40'27"W 387.31 feet; thence S89°34'33"E 7.43 feet; thence S0°45'27"W 446.88 feet; thence N89°57'00"E 7.43 feet; thence South 58.55 feet to the south line of that real property described in Deed Entry No. 85173:2018; thence N89°40'00"W along said real property 8.41 feet; thence South 658.08 feet; thence West 9.17 feet to the northeast corner of that real property described in Deed Entry No. 117221:2013; thence S0°31'08"W along said real property 634.91 feet to an existing fence; thence along an existing fence line the following eight (8) courses: N89°25'18"W 680.77 feet; thence S1°26'00"W 326.59 feet; thence S2°10'00"E 15.56 feet; thence S89°08'00"E 218.29 feet; thence S89°52'00"E 103.93 feet; thence N89°51'00"E 193.61 feet; thence N87°40'00"E 59.82 feet; thence N88°40'00"E 110.27 feet to a rebar and cap (Wilson) marking the northeast corner of that real property described in Deed Entry No. 36827:1992, also being at a fence corner; thence

S0°37'00"W along the westerly right-of-way line of Saratoga Road 638.64 feet to the north line of that real property described in Deed Entry No. 125178:2009; thence along said real property the following three (3) courses: N89°46'12"W 659.09 feet; thence S0°03'24"E 42.81 feet; thence S0°49'21"E 117.33 feet; thence S89°10'39"W 200.00 feet; thence S0°49'21"E 200.00 feet; thence N89°10'39"E 200.00 feet; thence N0°49'21"W 11.02 feet; thence S89°46'11"E 656.09 feet; thence South 692.23 feet to the southeasterly right-of-way line of Saratoga Road; thence along said right-of-way along the arc of a 619.50 foot radius non-tangent curve to the right (radius bears: N67°57'34"W) 454.77 feet through a central angle of 42°03'36" (chord: S43°04'14"W 444.62 feet) to the point of beginning.
Contains: ±210.94 Acres

LESS AND EXCEPTING THEREFROM THE FOLLOW DESCRIBED PARCEL OWNED BY SARATOGA SPRINGS CITY:
Beginning at a point located 1,104.90 feet West and 2,264.96 feet South, from the Northeast Corner of Section 24, Township 5 South, Range 1 West, SLB&M to the POINT OF BEGINNING running: thence West a distance of 200.00 feet; thence South a distance of 200.00 feet; thence East a distance of 200.00 feet; thence North a distance of 200.00 feet to said POINT OF BEGINNING.

Net Area of Project Contains: ±210.02 Acres

To include Harbor Parcel Description:

A portion of the Northwest Quarter of Section 30, Township 5 South, Range 1 East, Salt Lake Base and Meridian, located in Saratoga Springs, Utah, more particularly described as follows:
Beginning at a point located South 50.00 feet from the Northwest Corner of Section 30, Township 5 South, Range 1 East, Salt Lake Base and Meridian (Basis of Bearing: N0°10'34"W along the Section Line from the Southeast Corner to the East 1/4 Corner of Section 24, Township 5 South, Range 1 West, Salt Lake Base and Meridian); thence N89°30'22"E 250.42 feet; thence N0°29'38"W 26.58 feet; thence S89°24'27"E 38.95 feet; thence N89°42'01"E 222.02 feet; thence N89°58'23"E 76.52 feet; thence N89°04'52"E 166.99 feet; thence N89°38'06"E 74.69 feet; thence N89°21'34"E 112.46 feet; thence N89°34'23"E 220.22 feet; thence S87°35'38"E 63.07 feet; thence S8°31'58"E 95.26 feet; thence S19°36'32"E 21.26 feet; thence S14°30'26"E 28.26 feet; thence S3°00'41"E 30.72 feet; thence S7°55'53"E 75.51 feet; thence S8°21'28"E 80.49 feet; thence S13°52'27"E 19.12 feet; thence S5°19'44"E 92.05 feet; thence S16°18'12"W 130.77 feet; thence S29°32'10"E 7.79 feet; thence S12°58'58"W 216.83 feet to the settlement boundary of Utah Lake; thence along said boundary the following four (4) courses: N81°57'02"W 437.45 feet; thence N72°41'56"W 257.18 feet; thence N87°26'46"W 528.61 feet; thence S85°36'38"W 1.87 feet; thence North 586.40 feet to the point of beginning.

Contains: ±19.59 Acres

Total Project Area ±229.61 Acres

Exhibit "C"

Development Plan
(see Attached)

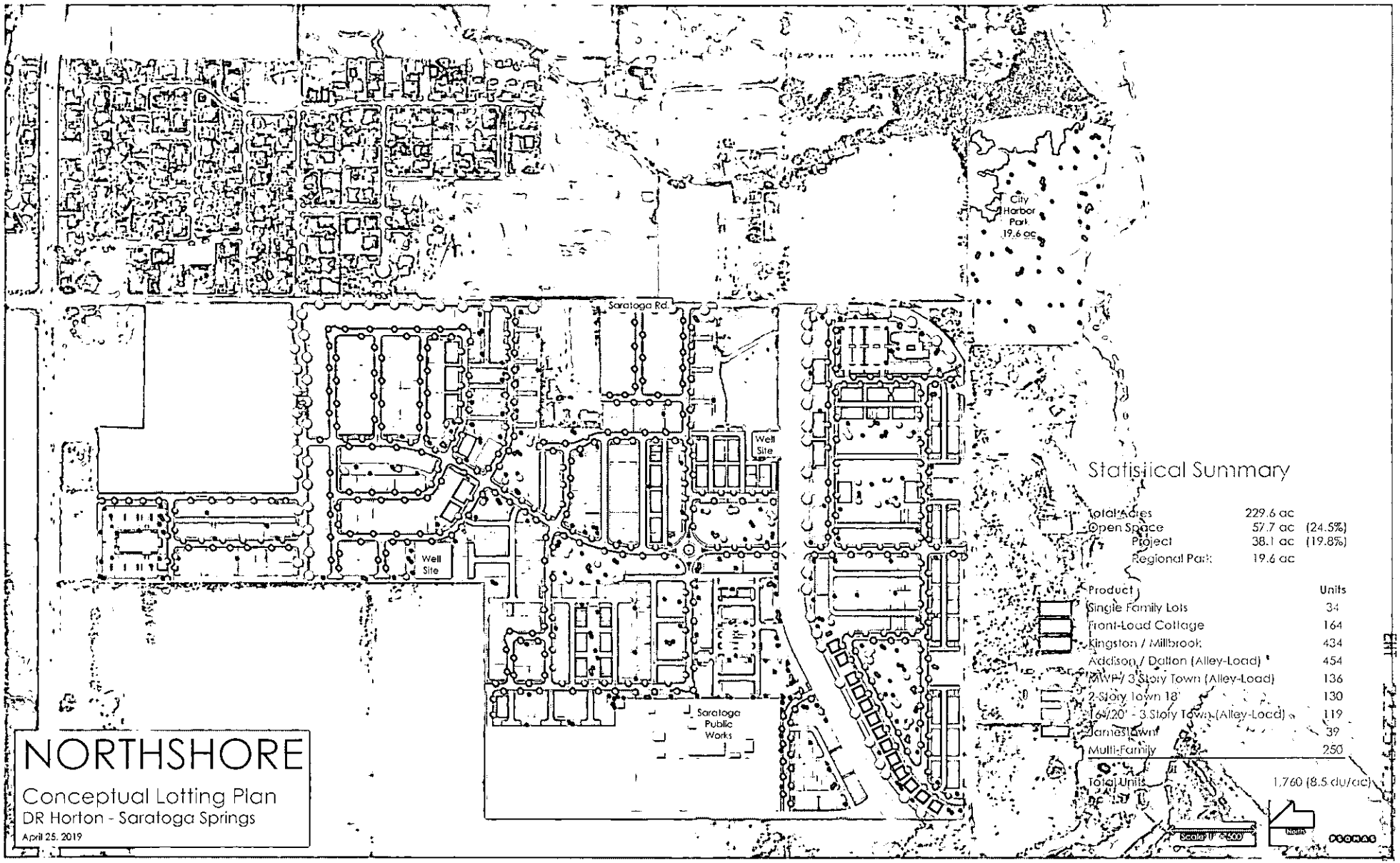
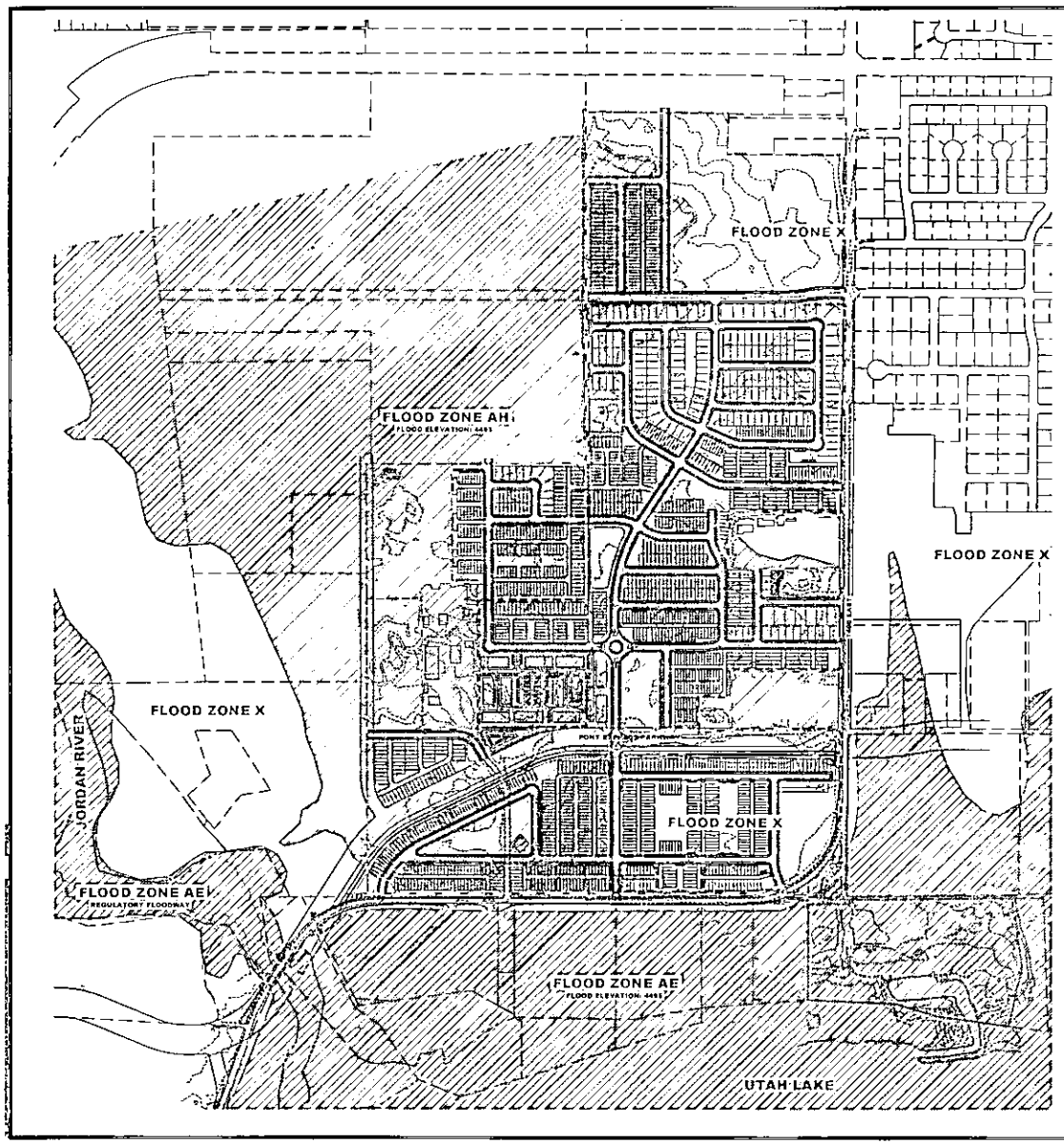
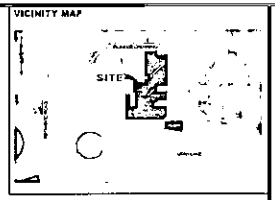


Exhibit "D"

FEMA Floodplain Map
(see Attached)



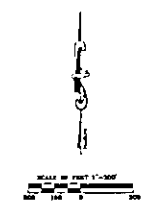
VICINITY MAP



NOTES

1. DRAINAGE ACROSS PROPERTY LINES SHALL NOT EXCEED THAT WHICH EXISTED PRIOR TO GRADING. EXCESS OR CONCENTRATED DRAINAGE SHALL BE CONTAINED ON SITE OR REDIRECTED TO AN APPROVED DRAINAGE FACILITY. LOTS SHALL BE GRADED TO DRAIN SURFACE WATER AWAY FROM FOUNDATION WALLS. THE GRADING SHALL FALL A MINIMUM OF 6 INCHES WITHIN THE FIRST 10 FEET.
2. AREA SHOWN HEREON FALLS WITHIN FLOOD ZONE "X" AREA DETERMINED TO BE OUTSIDE OF 500 YEAR FLOOD PLAIN AS PER FIRM MAP NO 49049C0161G WITH AN EFFECTIVE DATE OF JULY 17, 2002, AND FLOOD ZONE "AH" FLOOD DEPTHS OF 1 TO 3 FEET (DETERMINED FLOOD ELEVATION 4481 AS PER FIRM PANEL NO. 49049C0161G & EFFECTIVE DATE OCTOBER 16, 1982 REVISED JULY 17, 2002
3. ALL FILL MATERIAL SHALL BE FREE OF GARBAGE, CONSTRUCTION DEBRIS, AND ANY OTHER TYPE OF DELETERIOUS MATERIAL. THE LANDOWNER SHALL BE RESPONSIBLE TO CLEAN UP AND REMOVE ANY SUCH MATERIAL IF IT IS PLACED.
4. FILL MATERIAL AND PREPARATION WITHIN STREETS TO BE PER GEOTECHNICAL REPORT.

ALL FILL MATERIAL SHALL BE FREE OF GARBAGE, CONSTRUCTION DEBRIS, AND ANY OTHER TYPE OF DELETERIOUS MATERIAL. THE LANDOWNER SHALL BE RESPONSIBLE TO CLEAN UP AND REMOVE ANY SUCH MATERIAL IF IT IS PLACED.



SCALE IN FEET 1"=300'

OWNER / DEVELOPER

D·R·HORTON
America's Builder

ENGINEER

- A Utah Corporation -
ENGINEERS
SURVEYORS
PLANNERS

NORTHSHORE
CITY OF SARATOGA SPRINGS, UTAH COUNTY, UTAH

FLOOD PLAIN EXHIBIT

LEI PROJECT #	7013-0002
DRAWN BY	BLS
CHECKED BY	NKW
SCALE	1"=300'
DATE	3-7-2019
SHEET	1

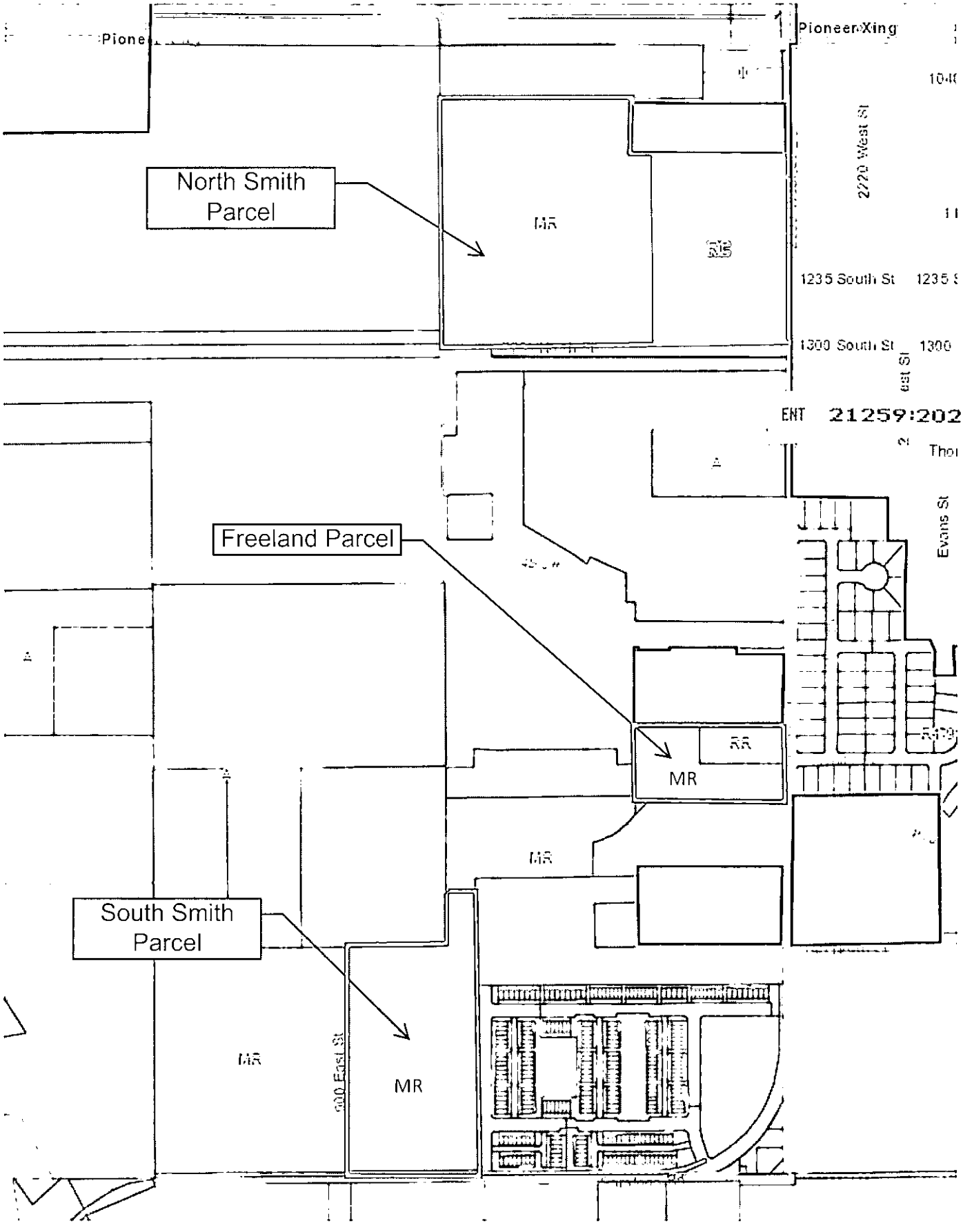
Exhibit "E"

Zoning Map for North Smith Parcel

Zoning Map for South Smith Parcel

Zoning Map for Freeland Parcel

(see Attached)


North Smith Parcel
Freeland Parcel
South Smith Parcel
Pioneer Xing
2220 West St
1235 South St
1300 South St
Evans St
MR
RR
MR
MR
MR
600 East St