3452027 BK 7931 PG 1940

RETURNED

JAN 24 2022

After recording, please send to: Syracuse City Attn: City Recorder 1979 W. 1900 S. Syracuse, Utah 84075 E 3452027 B 7931 P 1940-1962 RICHARD T. MAUGHAN DAVIS COUNTY, UTAH RECORDER 01/24/2022 04:34 PM FEE \$0.00 Pas: 23 DEP RT REC'D FOR SYRACUSE CITY

DEVELOPMENT AGREEMENT FOR THE ANTELOPE DRIVE BRIGGS PROPERTY PROJECT (SYRACUSE CITY, DAVIS COUNTY, UTAH)

Parcel 10# 12-883-0002

RECITALS:

- A. The Developer's affiliate entity owns approximately 5.29 acres of property located at approximately 817 West 1700 South in Syracuse, Davis County, Utah, as more particularly described in **Exhibit A**, which is attached hereto and by this reference made a part hereof (the "Property"). The owner of the property is Syracuse Property Holdings LLC ("Owner").
- B. The Property is subject to the Planning and Land Use Ordinances of Syracuse City. The Property is currently zoned A-1 (Agricultural) but Developer and Owner have sought rezoning to a MXD (Mixed Use Development) and GC (General Commercial).
- C. The purpose of the MXD Zone under the City Code is "provide traditional neighborhoods where residents can work, play, shop and live that are strategically designed to create a symbiotic relationship by allowing for a combination of commercial and residential uses." The Developer intends to develop the Property into the Antelope Drive Briggs Property Project (the "Project"), which shall include both the parcels proposed to be given MXD and GC zoning designations.
- D. Under Syracuse Municipal Code § 10.92.040(C)(4), the MXD permits the development of off-site commercial projects to develop the required commercial square feet in the zone. If the Council approves the zoning request and authorizes execution of this Agreement, it confirms that the commercial intended to be built in the proposed GC zone qualifies as off-site commercial described in subsection 10.92.040(C)(4).
- E. Developer and City acknowledge that development in the MXD Zone requires a development plan and a development agreement specific to each area zoned as MXD.
- F. The City Council of Syracuse City (the "<u>City Council</u>"), acting pursuant to its authority under Utah Code § 10-9a-102(2) et seq., as amended, and the Syracuse City Code (the "<u>City Code</u>"), and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations,

has elected to enter into this Agreement, concurrent with its decision of whether to grant the zoning application.

- G. The Developer and City acknowledge that the development and improvement of the Property pursuant to this Agreement must comply with the requirements of the MXD Zone and GC Zone, as applicable, and will provide certainty useful to the Developer and to the City in ongoing and future dealings and relations among the Parties pertaining to the development of the Project.
- H. The City and Developer intend for this Agreement to provide Developer with vested entitlements for development of the Project. The City has determined that entering into this Agreement furthers the purposes of the Utah Municipal Land Use, Development, and Management Act, the City's General Plan, and the City's land use ordinances (collectively, the "Public Purposes"). As a result of such determination, the City has elected to move forward with the approvals necessary to approve the development of the Project in accordance with the terms and provisions of this Agreement and the Development Plan (described in Section 7 below). This Agreement is a "development agreement" within the meaning of and entered into pursuant to the terms of Utah Code Ann. §10-9a-102(2).

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 Developer and the City hereby agree to the following:

- Recitals; Definitions. The Recitals set forth above are incorporated herein by this reference. Any capitalized term used but not otherwise defined in this Agreement shall have the meaning ascribed to such term in the City Code.
- 2. <u>Effective Date</u>. This Agreement is effective on the date the last party executes this Agreement as indicated by the date stated under that party's signature line (the "Effective Date").
- 3. Rescission of Prior Agreement. The Parties previously processed a zoning application in 2020, which application the City Council conditionally approved pending the execution of a development agreement under consideration at the time. The 2020 development agreement was never fully executed and did not take effect, and the Developer has submitted a new zoning application to the City along with this Agreement. Upon full execution of this Agreement and upon the Council's approval of the current zoning application, the Parties agree that the prior agreement is rescinded.
- 4. <u>Compliance with Current City Ordinances.</u> Unless specifically addressed in this Agreement, the Developer agrees that the Project shall be developed in a manner that complies with applicable provisions of the City Code as they exist on the date of execution of this Agreement. The Developer understands that the Project is subject to Site Plan review and approval, and that Site Plan approval is contingent upon the Project's compliance with all relevant City ordinances. This Agreement does not modify the Planning Commission's authority related to Site Plan review. Site Plan applications shall be consistent with the themes and plan established by this Agreement, unless the City Council first approves such deviations through amendment of the Agreement.

- 5. <u>Contract Dependent upon Zoning Approval.</u> The Parties agree that the terms of this Agreement are only applicable if the City Council approves the pending zoning application. The approval of this Agreement may only occur in conjunction with an approval of that application. The approval of this Agreement shall be an administrative action.
- 6. <u>Future Land Use Applications.</u> This Agreement does not authorize or promise any zoning or other approvals for future applications, including the commercial portion of the Project. The Developer intends to submit a zoning application for the commercial portion of the Project to General Commercial (GC). The application shall undergo the land development process and shall only be approved if the Council determines that the application is in the best interests of the City.
- 7. Zoning and Permitted Uses. If zoning approval is provided by the City Council, then Developer shall develop and use the Property in accordance with the requirements of the Development Plan attached hereto as Exhibit B (the "Development Plan") and applicable provisions of the City Code that are not inconsistent with this Agreement or the Exhibits hereto. The Project is a mixed-use development with no more than 54 townhome units, along with a commercial component of not less than five-thousand three-hundred (5,300) square feet of tenant building space.
 - 7.1. <u>Density</u>. The maximum residential density permitted for this project is 12 units per acre, which is no greater than 54 total units for the Development. Forty-nine (49) units may contain two (2) stories, and five (5) units may contain three (3) stories.
 - 7.2. <u>Common Space</u>. The Project contains 41 % landscaped area, along with a tot lot (the "<u>Common Space</u>"). The Common Space is shown on the Development Plan (Exhibit B). The Common Space will be owned and maintained by the property owner or a homeowner's association (the "<u>HOA</u>"). It will also include the on-site stormwater detention basin required by state and local ordinances. The Common Space and amenities are to be used for calculation in this Project only, and may not be used as credit toward any other common space or amenity requirements at other developments or properties.
 - 7.3. <u>Layout; Circulation and Connectivity</u>. The layout of the residential portion of the Project as shown in the Development Plan (Exhibit B) is hereby approved by the City. All internal roads within the Project will be privately owned and maintained, and shall be constructed in accordance with applicable City Codes and regulations.
 - 7.4. <u>Cross-Access Easements</u>. The Developer shall provide perpetual non-exclusive public access easements on the North, East and West connections provided on the Development Plan.
 - 7.5. <u>Building Height</u>. Homes built within the Project may not exceed thirty feet (30') in height, with the exception of five (5) townhome units, identified as TH-1 on the Development Plan, which may exceed thirty feet (30'), but which may not exceed forty feet (40') in height. For purposes of this section, height is measured from grade to crown.

7.6. Architecture. All homes and buildings within the Project shall meet the architectural standards of the City Code. The architectural theme and elevations are attached to this Agreement as Exhibit C and are incorporated into this Agreement by reference. The elevations and drawings in Exhibit C are attached as concepts and illustrative of themes only and may not necessarily comply with all City building requirements. Notwithstanding any other provision of this Agreement, Developer shall strictly comply with the following requirements related to architectural thematic elements in the Project:

7.6.1. Residential Buildings.

- a) Front porches are to be at least six feet (6') wide for each unit;
- b) Windows shall be provided in each front door;
- Window mulliuons, variation, size, quantity and location shall match what has been provided in the Development Plan exhibits;
- d) Custom corbel accent, as provided in the Development Plan;
- e) All three-story units shall have rear-fed garages;
- f) All units shall be configured to prevent backing out of residential units directly into commercial traffic; and
- g) Craftsman columns with masonry, as provided in the Development Plan.

7.6.2. Commercial Building.

- a) At least one consolidated pedestrian crossing across the two drive aisles, which connects the sidewalk abutting Antelope Drive to building, and which crossing shall utilize concrete or a different paving material from the material used for the drive aisles, and painted with clear markings for pedestrian crossing.
- Awnings and trellis shall be placed over first floor windows and doors, as provided in the Development Plan;
- Masonry shall be utilized on the first floor, as provided in the Development Plan;
- d) A corner architectural feature shall be provided as found in the Development Plan;
- e) Window variation and mullions shall be as provided in the Development Plan;
- f) No parking shall be provided between Antelope Drive and the building, as provided in the Development Plan;
- Second story windows and exterior wall heights shall give the appearance of twostories, as shown in the Development Plan; and
- h) Gas, electrical, and other meters or utilities shall be screened with architectural structure and landscaping, unless prohibited from doing so by a utility company, in which case they shall be screened using landscaping and be painted to match the building.
- Future Commercial Site Plan. If the Developer obtains zoning for the commercial
 portion of the Project, then it shall submit a Site Plan in conformance with the provisions of
 Subsection 7.6.2 of this Agreement.
 - 8.1. The Parties may amend this Agreement to permit deviations from those provisions, but they are otherwise to be strictly applied, regardless of the underlying requirements of the General Commercial Zone.
 - 8.2. The Developer shall not submit any applications for building permits on the residential portion of the Project until it has first submitted a Site Plan application

- for the commercial portion, in conformance with the Development Plan and Subsection 7.6.2 of this Agreement. Any applications for building permits that are filed prior to the Site Plan shall be held without approval by the City. Developer agrees that permits held pursuant to this subsection shall not be subject to challenge or the protections identified in section 10-6-160 of the Utah Code related to time limits for building permit approvals or similar sections of code, until after a conforming Site Plan application has been submitted.
- 8.3. The Parties acknowledge and agree that the residential components of this Project are only acceptable to the City if paired with high quality commercial development. If the Developer submits a site plan for the commercial component that is not in conformance with the Development Plan and Subsection 7.6.2 of this Agreement, the City shall provide notice to Developer of such nonconformance and Developer shall have thirty (30) days to correct the items required to bring the site plan into conformance. If Developer fails to re-submit a conforming site plan within such time period, the City may rezone the residential property back to A-1. The Developer waives any challenge or legal action related to a rezone undertaken as a result of Developer's failure to comply with this section, including a waiver of any damages suffered as a result of the change.
- Development Plan and Development Agreement. The Development Plan and this
 Agreement are in conformance with section 10.92.040 of the City Code.
 - 9.1. Minimum Acres. The Project is approximately 5.29 total acres.
 - 9.2. <u>Landscaping</u>. Landscape shall be installed by the Developer in accordance with landscaping plans to be approved by the City, which approval will not be unreasonably withheld or delayed.
 - 9.3. <u>Wetlands</u>. The Project shall be developed in compliance with any wetlands delineation and mitigation plans approved by the US Army Corps of Engineers, if applicable. The City will not take ownership or maintenance of any wetlands, which maintenance shall become the responsibility of the HOA upon its establishment.
- Off-Site Commercial Building. The development of the commercial building identified in the Development Plan shall be considered an off-site commercial project.
 - 10.1. The development of the commercial building shall occur no later than simultaneously with the first residential unit developed. Occupancy shall not be granted to any residential unit until the commercial building shell has passed final inspection. This section does not require a final occupancy permits to have been issued for the commercial building, as these are issued following tenant improvements.
 - 10.2. The commercial potion of the Project shall remain commercial and may not be converted into residential uses unless the City Council agrees to an amendment of this Agreement. This Agreement shall be recorded against that parcel and run with the land.

- 11. <u>Homeowner Association or Sole Ownership</u>. The Development is contemplated as a mixed-use development that will remain under sole ownership. As such, all Common Areas and maintenance requirements shall be the responsibility of the sole owner of the property or HOA, as applicable.
 - 11.1. <u>Future Subdivision.</u> Should the Developer or a successor in interest later wish to sell condominium units into separate ownership, then they shall be required to undergo the subdivision process and receive City approval for that subdivision. In such a case, prior to the sale or subdivision of any lots, the Developer or a successor in interest shall first create an HOA which shall be responsible for maintenance of all Common Space and Common Amenities located within the Project. The HOA shall be formed at the time of recording of the final plat and shall be governed by enforceable and duly recorded Declaration Covenants, Conditions and Restrictions (the "<u>CC&R's</u>"), the form of which must be approved in advance by the City, which approval will not be unreasonably withheld or delayed. The use and restrictions of Common Space and the Common Amenities within the Project are private and will be governed by the CC&R's and such other rules, regulations and guidelines adopted by the HOA. All maintenance of the Common Space and Common Amenities shall be performed and managed by the HOA.

Onsite Improvements.

12.1. The Developer (and/or any subsequent owner of the Project) shall be responsible for the installation of all onsite parking, drive aisles, water, sewer, and storm drainage improvements sufficient for the development of the Project in accordance with the City Code. The water, sewer, stormwater detention basin, and storm drain connections shall be made where and as approved by the City, which approval will not be unreasonably withheld. The existing utilities for the property owners to the West are privately owned and approvals for connection to those mains shall be approved by the utility owner. The City does not object to connecting to those mains, provided they are adequately sized to service the development. The City shall have no responsibility of maintenance related to the improvements; the City's liability for such infrastructure ends at the connection to the main line.

13. Culinary Water.

- 13.1. The Developer shall meet or exceed the minimum culinary water requirements set forth in the Utah Division of Drinking Water R309-105 and Syracuse City Engineering Standards and Specifications.
- 13.2. R309-105-9 (Minimum Water Pressure) governs minimum water pressures and sets the minimum peak day demand requirement for this development at 40 psi. The City's mainline pressure at ground level during peak day demand is 45 psi. As a result, any construction higher than one story will require a means to increase the water pressure to meet or exceed the 40 psi peak day demand threshold. Any higher

pressure zone created by this development will be required to install a backflow preventer to protect the integrity of the City's system. The backflow preventer shall be installed and maintained as set forth in R309-105-12 (Cross Connection Control).

- Two connections to the City's culinary system will be required.
- 14. <u>Water Share Contribution</u>. In connection with the development of the Project, upon the application for a building permit for the first building in the Development, Developer will transfer to the City all of the shares of water required for irrigation purposes, with the right to receive at least 13.9188 acre feet of water annually, in accordance with Syracuse Municipal Code § 8.10.090.
- 15. <u>Vested Rights</u>. The City and Developer intend that this Agreement be construed to grant Developer all vested rights to develop the Project in fulfillment of the terms and provisions of this Agreement and the laws and ordinances that apply to the Property as of the Effective Date of this Agreement. The Parties intend that the rights granted to Developer under this Agreement are contractual and are in addition to those rights that exist under statute, common law and at equity. If the City adopts different ordinances in the future, Developer shall have the right, but not the obligation, to elect to submit a development application under such future ordinances, in which event the development application will be governed by such future ordinance(s). By electing to submit a development application under a new future ordinance, however, Developer will not be deemed to have waived its right to submit or process other development applications under the City Code that apply as of the Effective Date of this Agreement. Notwithstanding this section, the site plan and development applications shall not be inconsistent with the themes and plan established by this Agreement, without prior City Council approval of those submissions, which decision shall not be unreasonably delayed, and if approved, shall serve as an amendment to this Agreement.
- 16. <u>Assignment</u>. Neither this Development Agreement nor any of the provisions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Development Agreement. [See 21.2] The Project may not be assigned to multiple developers only a single assignment of the entire Project shall be permissible.
- 17. <u>Integration</u>. This Development Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature between the Parties, and may only be modified by a subsequent writing duly executed by the Parties hereto.
- 18. <u>Severability</u>. If any part or provision of the Agreement shall be adjudged unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific part or provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

Notices.

Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be (a) served personally upon the party for whom intended, (b) sent by nationally recognized express delivery service, or (c) or if mailed, be by certified mail, return receipt requested, postage prepaid, to such party at its address shown below. Additionally, any such notices, requests and demands may be sent by electronic mail, so long as such notice is also delivered by one of the methods describe above.

To Developer:

Wright Development Group, Inc. 1178 W. Legacy Crossing Blvd., Ste. 100 Centerville, Utah 84014 Attn: Spencer Wright Email: spencer@wrightdevelopment.com

With a Copy to:

Wright Development Group, Inc. 1178 W. Legacy Crossing Blvd., Ste. 100 Centerville, Utah 84014 Attn: Amy Dolce Email: amy@wrightdevelopment.com

To the City:

Syracuse City Attorney 1979 West 1900 South Syracuse, Utah 84075 Email: proberts@syracuseut.com

With a Copy to:

Syracuse City Manager
1979 West 1900 South
Syracuse, UT 84075
Email: bbovero@syracuseut.com

Any party may change its address or notice by giving written notice to the other party in accordance with the provisions of this section.

Amendment.

The Parties or their successors in interest may, by written agreement, choose to amend this Agreement at any time. Any amendment of a substantial provision of this Agreement shall require

the prior approval of the City Council and must be recorded in the Davis County Recorder's Office to be effective.

21. General Terms and Conditions.

- 21.1. Termination of Agreement. The term of this Agreement shall commence on the Effective Date of this Agreement and shall continue in full force and effect until the earlier of the following events: (i) certificates of occupancy have been issued for all dwelling units to be constructed in the Project, or (ii) ten (10) years from the date on which this Agreement is recorded with the Davis County Recorder's Office; provided, however, that if Developer is not in breach of any material provisions of this Agreement when said 10-year period expires, and any portions of the Project have not been completely built-out, then this Agreement shall automatically be extended for an additional period of five (5) years. When public improvements have been constructed and accepted by County (after expiration of applicable warranty periods), the Developer and/or the subsequent Owner/Developer shall be released from and have no continuing obligations with respect to such improvements.
- 21.2. Successors and Assigns. This Agreement shall be binding on the successors and assigns of Developer and future owners with respect to the portion of the Project they own. 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 Developer or Owner under this Agreement and the transferor shall be released from any further obligations under this Agreement as to the transferred property. In all events, this Agreement shall run with and benefit the Property.
- 21.3. Default & Remedies. If either the Developer or the City fails to perform their respective obligations under the terms of this Agreement, the party believing that a default has occurred shall provide written notice to the other Party specifically identifying the claimed event of default and the applicable provisions of this Agreement claimed to be in default. The defaulting Party shall immediately proceed to cure or remedy such default or breach within sixty (60) calendar days after receipt of such notice. The Parties shall meet and confer in an attempt to resolve the default but, in the event they are not able to do so, the Parties shall have the rights and remedies available at law and in equity, including injunctive relief or specific performance, but excluding the recovery of monetary damages. Any delay by a Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article shall not operate as a waiver of such rights.
- 21.4. Non-liability of City Officials or Employees. No officer, representative, agent, or employee of the City shall be personally liable to the Developer or any successor-in-interest or assignee of the Developer, in the event of any default or breach by the City or for any amount which may become due, the Developer, or its successors or assignee, for any obligation arising out of the terms of this Agreement.
- 21.5. <u>Referendum or Challenge</u>. Both Parties understand that any legislative action by the City Council is subject to referral or challenge by individuals or groups of citizens, including zoning approval. The Developer agrees that the City shall not be found to be in

breach of this Agreement if such a referendum or challenge is successful and overturns the land use decision. In such a case, this Agreement is void at inception.

- 21.6. Ethical Standards. The Developer represents that it has not: (a) provided an illegal gift or payoff to any officer or employee of the City, or former officer or employee of the City; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in Utah Code Ann. § 10-3-1301 et seq. and 67-16-3 et seq.; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any officer or employee of the City or former officer or employee of the City to breach any of the ethical standards set forth in State statute or City ordinances.
- 21.7. No Officer or Employee Interest. It is agreed that no officer or employee of the City has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement. No officer, manager, employee or member of the Developer, or any member of any such persons' families shall serve on any City board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises the Developer's operations, or authorizes funding or payments to the Developer. This section does not apply to elected offices.
- 21.8. Governing Law & Venue. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah. Any action taken to enforce the provisions of this Agreement shall have exclusive venue in the Second District Court of the State of Utah, Farmington Division.

(Remainder of page is intentionally blank)

3452027 BK 7931 PG 1950

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

	WRIGHT DEVELOPMENT GROUP, INC.
	By: Smally
	Date: Decompose 21, 2021
	Date: DEconder 21, 2021
STATE OF UTAH)
COUNTY OF DAVIS	: ss.)
On this 26 day of 3	ecember, 2021, personally appeared before me
Spencer A. Winglet	the authorized President , whose
	or proven on the basis of satisfactory evidence, to be the person
who executed the Development Agr	eement on behalf of said company and who duly acknowledged
to me that he/she executed the same	for the purposes therein stated.
NOTARY PUBLIC	
JULIE B. BOYLE 708511	July & Doga
COMMISSION EXPIRES OCTOBER 14, 2023 STATE OF UTAH	Notary Public

SYRACUSE CITY

Attest: Cassie Z. Brown, MMC City Recorder	Seal H	Dave Maughan, Mayor
STATE OF UTAH)	
COUNTY OF DAVIS	: ss.)	
On this 20 day of	of January	, 2022, personally appeared before me

Mayor Dave Maughan , the authorized signer of Syracuse City, whose identity is personally known to me, to be the person who executed the Development Agreement on behalf of Syracuse City, and who duly acknowledged to me that he executed the same for the purposes therein stated.

Notary Public

Approved as to Form:

Paul H. Roberts City Attorney STA STA

STATE OF UTAH NOTARY PUBLIC MARISA GRAHAM COMMISSION #700465 MY COMMISSION EXPIRES: 05-16-2022

EXHIBIT A

Description of the Property/Project

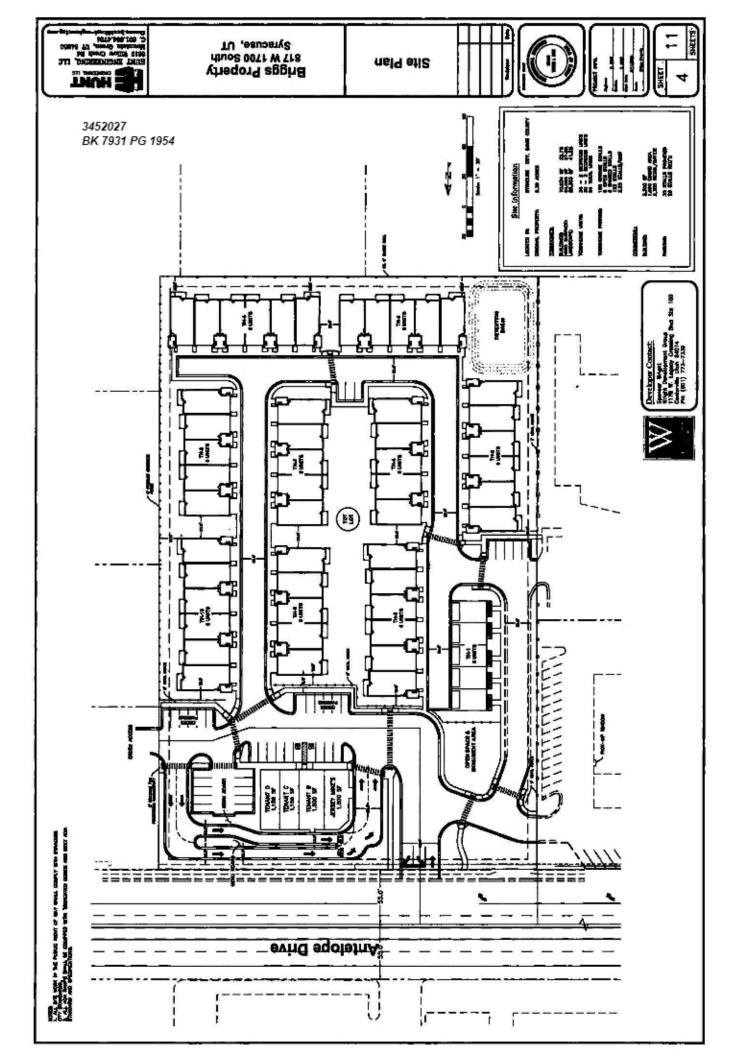
All of Lot 2, Briggs & Sons Subdivision.

CONT. 5.29 ACRES.

3452027 BK 7931 PG 1953

EXHIBIT B

Development Plan



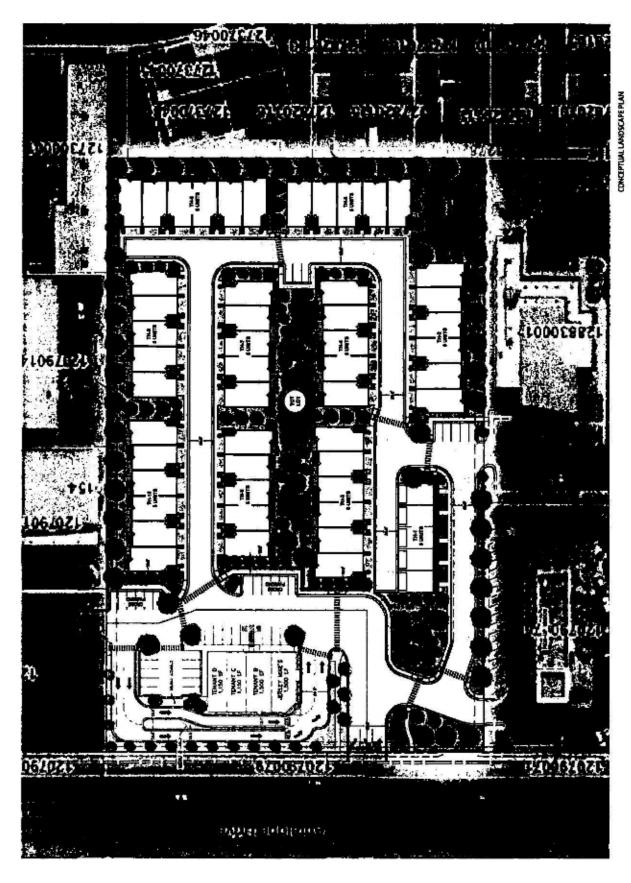
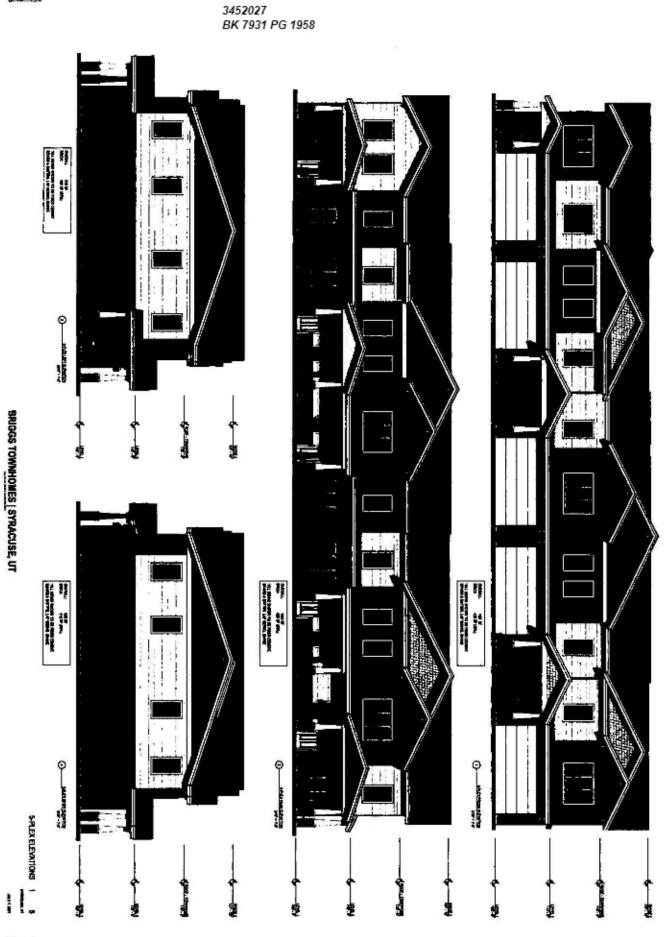


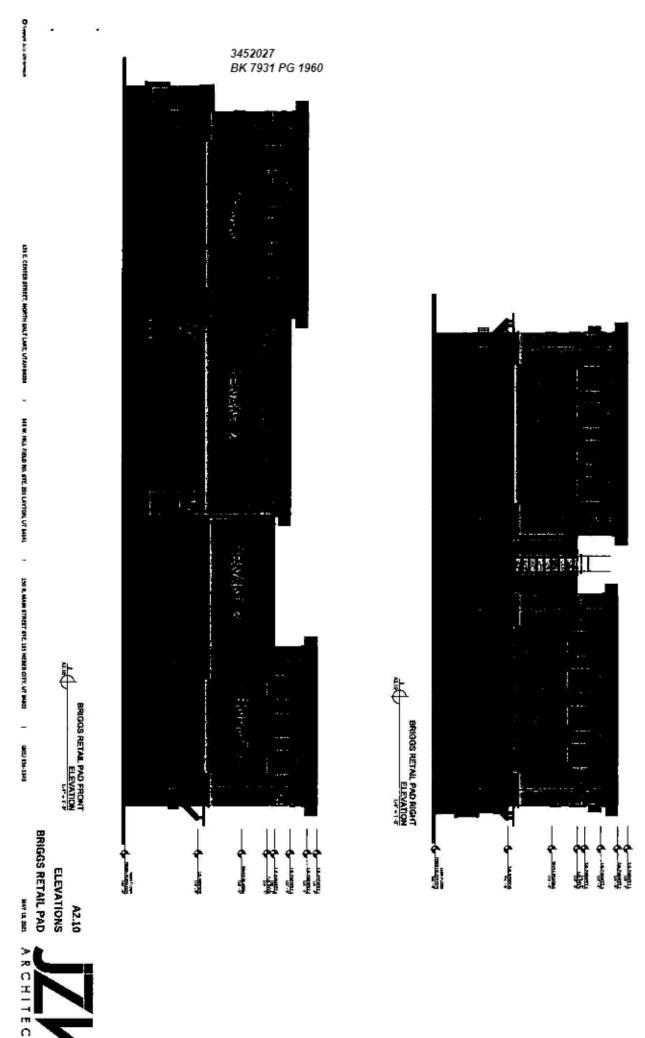


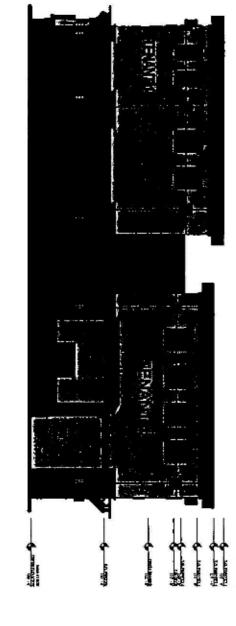
EXHIBIT C

Architectural Theme and Elevations









BRIGGS RETAIL PAD LEFT ELEVATION

BRIGGS RETAIL PAD REAR ELEVATION BRIGGS RETAIL PAD ELEVATIONS MAY 18, 2023 A2.20

121 E. CONTR STREET, MORTH BALT LANE UTAH HIGH

MIS NO. HILL FIELD RD. STE 251 LAYTON, UT \$8841.

250 N, MARK STREET SHE 101 HEBEK OFF UT BAD12

PET-905 (59m)



PRIGGS BETAIL PAD CORNER





MENT, HELL PERLORD, STK. 265 LAYTON, UT BADES

150 M. MAIN STREET STE. 101 HESSEN GITY. UT 14412

461-468-136

NAY 10, 25(2).