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JEFFERY SMITH  
UTAH COUNTY RECORDER  
2016 Dec 19 3:20 pm FEE 213.00 BY DA  
RECORDED FOR SARATOGA SPRINGS CITY

WHEN RECORDED, RETURN TO:

CITY OF SARATOGA SPRINGS  
Attn: City Manager  
1307 N. Commerce Drive  
Saratoga Springs, Utah 84045

**AMENDED AND RESTATED  
MASTER DEVELOPMENT PLAN AGREEMENT  
FOR  
MT. SARATOGA PROJECT**

THIS AMENDED AND RESTATED MASTER DEVELOPMENT PLAN AGREEMENT FOR MT. SARATOGA PROJECT (this “**Agreement**”) is entered into and effective as of DECEMBER 14, 2016, by and between DCP SARATOGA LLC, a Utah limited liability company (“**DCP**” or “**Developer**”), and the CITY OF SARATOGA SPRINGS, a municipal corporation and political subdivision of the State of Utah (the “**City**”) (individually a “**Party**” and collectively the “**Parties**”).

This Agreement amends, replaces, and restates in its entirety that certain Master Development Plan Agreement for Mt. Saratoga Project between the City and Mt. Saratoga, Inc., Developer’s predecessor in interest, dated January 28, 2004 and recorded February 9, 2004 as Entry No. 14908:2004 in the Official Records of Utah County, as amended and modified by that certain Amendment to Master Development Plan Agreement for Mt. Saratoga Spring Project dated September 14, 2004 and recorded June 27, 2007 as Entry No. 93455:2007 (hereafter known as the “**Saratoga Heights Project**”) dated June 26, 2007 (collectively, as amended, the “**Original Development Agreement**”).

**RECITALS:**

A. DCP, Mt. Saratoga, LLC, a Utah limited liability company (“**Mt. Saratoga**”), Timp Land Holdings LLC, a Utah limited liability company (“**Timp Land**”), Jan Wilking, as Trustee of the Jan Wilking Trust dated June 11, 2004 Teri Thomas, as Trustee of The Terri Thomas Trust dated November 7, 2003 (collectively, “**Wilking**”) and Capital Security Mortgage, INC., a Utah corporation (“**CPM**”), own approximately 687.93 acres of real property located within the municipal boundaries of the City of Saratoga Springs, Utah County, State of Utah, as more particularly described in Exhibit A (the “**Property**”) attached hereto and incorporated herein.

B. DCP, Mt. Saratoga, Timp Land, Wilking and CPM have an agreement giving DCP the right to develop the Property and DCP and Edge have entered into an agreement providing for the development of the Property by DCP and Edge.

C. Developer desires and intends to develop the Property as a master-planned community to be known as Mt. Saratoga (the “**Project**”) as generally depicted on a conceptual

use map prepared by Developer and contained in the Community Plan on file with the City Recorder's Office (the "Use Map").

D. Developer's predecessor in interest and the City previously entered into the Original Development Agreement in connection with the planned development of the Property. Developer and the City desire to amend, replace, and restate the Original Development Agreement in its entirety to reflect the agreement of the Parties with respect to the development of the Property as set forth herein.

E. Developer has filed with the City a complete application for a rezone and general plan amendment to change the Property from the current zone and general plan designation to Planned Community (the "**Planned Community District**") and approve the Zoning and Land Use Map to enable development of the Project in a manner consistent with the intent of Original Development Agreement, all as provided in the City's Land Development Code (collectively, the "**Planned Community Application**"). At the time the Original Development Agreement was entered into, the Planned Community District zoning designation was not available, which zoning designation is intended for larger developments like the Project.

F. In connection with the Planned Community Application, Developer filed with the City a complete application to adopt a Community Plan (on file with the City Recorder's Office) for the Project as provided in the City's Land Development Code (the "**Community Plan**").

G. On July 28, 2016, the City's Planning Commission recommended approval of the Planned Community Application and the Community Plan and forwarded the application to the City's City Council for consideration.

H. On September 6, 2016, the City's City Council approved the Planned Community Application (the "**Planned Community District Approval**"), the Community Plan, the rezoning of the Project in accordance with the Community Plan, and an amendment to the City's General Plan, all subject to approval of this Agreement.

I. The City finds the Planned Community District Approval, the Community Plan, and the Use Map (i) do not conflict with any applicable policy of the City's General Plan; (ii) meet the spirit and intent of the City's Land Development Code; (iii) will allow integrated planning and design of the Property and, on the whole, better development than would be possible under conventional zoning regulations; (iv) provides for the installation of infrastructure improvements that will benefit not only the Project but also the City and properties in the vicinity of the Project, and (v) meet applicable use limitations and other requirements of the Planned Community District.

J. The City finds that the Community Plan: (a) is consistent with the goals, objectives, and policies of the General Plan, with particular emphasis on community identity, distinctive qualities in communities and neighborhoods, diversity of housing, integration of uses, pedestrian and transit design, and environmental protection; (b) does not exceed the number of equivalent residential units and square footage of nonresidential uses of the General Plan; (c) contains sufficient standards to guide the creation of innovative design that responds to unique conditions; (d) is compatible with surrounding development and properly integrates land uses

and infrastructure with adjacent properties; (e) includes adequate provisions for utilities, services, roadway networks, and emergency vehicle access; and public safety service demands will not exceed the capacity of existing and planned systems without adequate mitigation; (f) is consistent with the guiding standards listed in Section 19.26.06; and (g) contains the required elements as dictated in Section 19.26.07. More specific findings are contained in the written minutes and adopted findings and conditions of the Planning Commission attached hereto as Exhibit B and the written minutes and adopted findings and conditions of the City Council attached hereto as Exhibit C. Development of the Property shall be consistent with the Community Plan as adopted with the conditions of approval in Exhibits B and C, and

K. The City believes, based upon Developer's representations, that Developer has (i) sufficient control over the Property to ensure development of the Project will occur as approved and (ii) the financial capability to carry out the Project in accordance with this Agreement.

L. Developer desires to take all steps necessary to finalize approval of the Project and develop the Project as provided in this Agreement.

M. Each of the Parties is willing to enter into this Agreement in order to implement the purposes and conditions of both the Planned Community District Approval, the Community Plan, and the Use Map for the Project and to more fully set forth the covenants and commitments of each Party, while giving effect to applicable state law and the City's Land Development Code.

N. Acting pursuant to its authority under Utah Code Annotated, §§ 10-9a-101, *et seq.* ("Utah Municipal Land Use, Development, and Management Act"), and after all required public notice and hearings, the City, in its exercise of its legislative discretion has determined that entering into this Agreement furthers the purposes of the (i) Utah Municipal Land Use, Development, and Management Act, (ii) the City's General Plan, and (iii) the City's Land Development Code. As a result of such determination the City (i) has elected to approve the Project in a manner resulting in negotiation, consideration, and approval of this Agreement and (ii) has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of the City.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

### SECTION I. DEFINITIONS

Any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by the City's Land Development Code in effect on the date of the Application for the Planned Community District or, if different, by this Agreement or applicable State statute (as provided in the 2013 amended Section 102, *Definitions*, of the Utah "Impact Fee

Act”, Utah Code Annotated, Chapter 36a), as the case may be. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

1.1 **“City’s Standard Technical Specifications and Drawings”** means the standards and specifications that the City uses for construction of public and private improvements, as amended.

1.2 **“Community Plan”** means the Community Plan for the Project as approved by the City pursuant to Chapter 19.26 of the Land Development Code.

1.3 **“Culinary Water Master Plan”** means the master plan to provide culinary water within the Project as approved by City and as set forth in the Community Plan.

1.4 **“Density”** means the number of Equivalent Residential Units per acre as shown on the Use Map and as authorized under this Agreement.

1.5 **“Density Transfer”** means the ability of Developer to transfer densities as provided in Paragraph 2.4.4 of this Agreement.

1.6 **“Design Guidelines”** means the design standards and guidelines as set forth in the Community Plan.

1.7 **“Developer”** means DCP, or its approved replacement developer, assigns and successors in interest, whether in whole or in part, and DCP’s agent, Leading Edge Development, LLC, under that certain Second Amended Development and Marketing Agreement dated \_\_\_\_\_, 2016, between DCP and Leading Edge Development, LLC.

1.8 **“Development Activity”** as defined in U.C.A. § 11-36a-102(3) as amended means any construction or expansion of a building, structure, site, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for Public Facilities.

1.9 **“Development Guidelines”** means collectively: (a) the City’s Standard Technical Specifications and Drawings; (b) requirements in the Community Plan and applicable Village Plan(s); and (c) the Land Development Code.

1.10 **“Equivalent Residential Unit”** means (a) a unit of measurement used to measure and evaluate development impacts on public infrastructure including water, sewer, storm drainage, parks, roads, and public safety of proposed residential and non-residential land uses; and (b) is intended to represent the equivalent impact on public infrastructure of one single family residence.

1.11 **“Final Plat”** means a final subdivision plat of property, located within an approved Village Plan, which is approved by the City’s Land Use Authority and is recorded in the Official Records in Office of the Recorder of Utah County, State of Utah.

1.12 **“Flex Residential Use Neighborhoods”** means all Neighborhoods identified on the Use Map as Flex Residential, as set forth in the Community Plan.

1.13 **“Hillside Development Standards”** means the standards set forth in the Community Plan.

1.14 **“Land Development Code”** means the City of Saratoga Springs Zoning and Subdivision Ordinances, Title 19, as amended.

1.15 **“Land Use Application”** means any application for development within the Project submitted to the City by Developer or any other person subsequent to the execution of this Agreement.

1.16 **“Master Association”** means the association under the Master Declaration, its successors or assigns.

1.17 **“Master Declaration”** means a declaration of covenants, conditions and restrictions and reservation of easements for the Project, which will be created and recorded against the Property prior to recordation of the first Final Plat (as distinguished from various Phase or Neighborhood Declarations, which will be created and recorded with individual phases and subdivision plats throughout the Project).

1.18 **“Multi-Family Use Neighborhoods”** means all Neighborhoods identified on the Use Map as Multi-Family, in which multi-family uses are allowed.

1.19 **“Neighborhoods”** means all Neighborhoods identified within each Village on the Use Map.

1.20 **“Ordinances”** means the City of Saratoga Springs Municipal Ordinances, including the Land Development Code.

1.21 **“Open Space Master Plan”** means the master plan for Open Space within the Project set forth in the Community Plan.

1.22 **“Open Space Standards”** means the standards set forth in the Community Plan which shall supersede any conflicting Ordinance.

1.23 **“Planning Commission”** means the City of Saratoga Springs Planning Commission.

1.24 **“Planned Community District Approval”** means the City’s approval of the Use Map and zone change request for the Project on September 6, 2016.

1.25 **“Project”** means the improvement and development of the Project pursuant to this Agreement, the Development Guidelines, and the City’s Ordinances as generally depicted on the Use Map.

1.26 **“Project Improvements”** as defined in U.C.A. § 11-36a-102(14) as amended means site improvements and facilities that are: (i) planned and designed to provide service for development resulting from a Development Activity; (ii) necessary for the use and convenience

of the occupants or users of development resulting from a Development Activity; and (iii) not typically identified or reimbursed as a System Improvement.

1.27 **“Proportionate Share”** as defined in U.C.A. § 11-36a-102(15) as amended means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any Development Activity.

1.28 **“Public Facilities”** means as defined in U.C.A. § 11-36a-102(16) as amended.

1.29 **“Use Map”** means the conceptual use map submitted to the Planning Commission and City Council as part of the Community Plan.

1.30 **“Sanitary Sewer Master Plan”** means the master plan to provide sanitary sewer within the Project set forth in the Community Plan.

1.31 **“Secondary Water Master Plan”** means the master plan to provide secondary water within the Project set forth in the Community Plan.

1.32 **“Single-Family Uses”** means all Neighborhoods identified on the Use Map as Single-Family, in which single-family uses are allowed.

1.33 **“Storm Drainage Master Plan”** means the master plan to provide storm drainage within the Project set forth in the Community Plan.

1.34 **“Street Cross Sections Master Plan”** means the master plan for street cross sections within the Project set forth in the Community Plan.

1.35 **“System Improvements”** as defined in U.C.A. § 11-36a-102(21) as amended means (i) existing Public Facilities that are: (A) identified in the impact fee analysis under U.C.A. § 11-36a-304; and (B) designed to provide services to service areas within the community at large; and (ii) future Public Facilities identified in the impact fee analysis under U.C.A. § 11-36a-304 that are intended to provide services to service areas within the community at large.

1.36 **“Transportation Network Plan”** means the master plan for transportation within the Project set forth in the Community Plan.

1.37 **“Village”** means a separately developed portion of the Project for which a Village Plan and one (1) or more corresponding subdivision applications are filed with the City and thereafter approved by the City.

1.38 **“Village Plan”** means a development plan submitted for a Village as provided in the City’s Land Development Code.

## SECTION II. PLANNED COMMUNITY DISTRICT ZONE

2.1 **Designation as a Planned Community District.** In compliance with the requirements of Utah Code Ann. § 10-9a-501 *et seq.*, applicable provisions of the City’s Land

Development Code, and following a public hearing with the Planning Commission on July 28, 2016, and a public hearing with the City Council on September 6, 2016, the City, pursuant to its legislative authority, approved the Planned Community District, the Community Plan, and the Use Map. The City hereby approves the findings contained in the staff reports attached hereto as Exhibits B and C. The City agrees development of the Project may proceed as provided in this Agreement and acknowledges the Use Map and Design Guidelines are consistent with the City's Land Development Code and General Plan. Developer acknowledges that development of the Project is subject to all normally-applicable City processes as set forth in Paragraph 2.2 and the following:

2.1.1 Design Guidelines;

2.1.2 Master Declaration (and various Phase or Neighborhood Declarations, which will be created and recorded with each Village throughout the Project);

2.1.3 The City's Standard Technical Specifications and Drawings;

2.1.4 The Culinary Water Master Plan;

2.1.5 The Open Space Master Plan;

2.1.6 The Open Space Standards;

2.1.7 The Sanitary Sewer Master Plan;

2.1.8 The Secondary Water Master Plan;

2.1.9 The Street Cross Sections Master Plan;

2.1.10 The Transportation Network Plan;

2.1.11 The Hillside Development Standards; and

2.1.12 The Storm Drainage Master Plan.

**2.2 Applicable Laws and Regulations.** Except as otherwise set forth in this Agreement, all development and improvements of any sort, on-site or off-site, relating to the Project shall comply with the City's Ordinances, regulations, requirements, and procedures established by and for the City.

**2.2.1 Planned Community Approval.** Except as specified in Section 3.1.4, the Planned Community District and the Use Map shall not be affected by any inconsistent or contrary moratorium, ordinance, resolution, rule or regulation enacted by the City that prohibits or regulates the total number of Equivalent Residential Units, land uses, and site improvements shown on the Use Map.

**2.2.2 Local Roads.** The City acknowledges and agrees it has approved the cross section design of local roads in the Project as shown in the Community Plan. Except as

otherwise provided in the Community Plan and in this Agreement, such roads shall be constructed according to the City's Standard Technical Specifications and Drawings Manual.

**2.2.3 Land Use Applications.** Except as otherwise provided in Paragraphs 2.2.1 and 2.2.2 above, any Land Use Application made subsequent to the execution of this Agreement shall conform to applicable provisions of the of the City's Land Development Code in effect when a complete application is submitted, or to the extent approved with each Village and/or subdivision plat submittal.

**2.2.4 Building Permits.** Any person or entity applying for a building permit within the Project shall be subject to the building, electrical, mechanical, plumbing, fire codes and other City ordinances and fees relating to the construction of any structure in effect when such person or entity files with the City a complete application for such building permit.

**2.3 Design Guidelines.** Developer shall establish Design Guidelines for each Village. Developer and Master Association shall be solely responsible to enforce the Design Guidelines to the extent such guidelines exceed the City Ordinance requirements. Nevertheless, as a courtesy to Developer and the Master Association, the City, prior to issuing any building permit for property within the Project, may, but shall not be obligated to, request the building permit applicant to produce a letter from Developer or the Master Association indicating the building plans which are the subject of the permit application have been approved by Developer or the Master Association.

**2.4 Zoning.** The zoning for the Project is the Planned Community District and shall be shown on the City's zoning map. The following development standards shall apply to the Project:

**2.4.1 Development Area.** The entire area of the Project shall be contained within the land described on Exhibit A. Notwithstanding this Paragraph 2.4.1, the Parties acknowledge that the owners of other land adjacent to or surrounded by the Property may request to be included in the Project at a later date if approved by Developer. Such requests shall be made pursuant to the City's then applicable Ordinances and considered in the City's usual course of such business. Any change in the maximum development area of the Project shall be accomplished only pursuant to the City's then-applicable Ordinances and an amendment to this Agreement as provided in Paragraph 6.28 herein.

**2.4.2 Equivalent Residential Units/Residential Density.** The total number of Equivalent Residential Units permitted within the Project shall not exceed two-thousand four hundred (2,400) residential units, in addition to commercial and civic uses. The average number of Equivalent Residential Units or residential units per acre for the entire Project in the aggregate shall not exceed the number in the Community Plan; provided, however, that such number may be higher with respect to any individual Village. As shown on the Use Map, the Equivalent Residential Units are dispersed throughout the Project at varying densities, which may be modified pursuant to the Density Transfer provision set forth in Paragraph 2.4.4 of this Agreement. The final design for each Village is not yet completed and the Parties acknowledge that the density designed within each Village will be determined upon review and approval of a Village Plan for each such Village. In the event the ERUs or residential units are not utilized by



Developer during the term of this Agreement due to Developer's own volition, inability to provide adequate infrastructure, lack of market demand, or any other reason other than breach of this Agreement by City, the remaining unused ERUs shall expire and the property shall revert to the R-3 or equivalent zoning.

**2.4.3 Phasing.** The City acknowledges that Developer intends to submit Land Use Applications from time to time, in Developer's sole discretion, to develop and/or construct portions of the Project in Villages as generally shown on the Use Map. However, to coordinate City-provided services and facilities and services and facilities provided by other public agencies with the demand for public services and facilities generated by uses and activities within the Project, development sequencing of the Project shall provide for the logical extension, as reasonably determined by the City, of all required infrastructure and the provision of all reasonably related municipal services, including but not limited to, adequate fire protection and necessary ingress and egress. Except as specifically provided in this Agreement or the Land Development Code, such extensions shall be at the sole expense of Developer.

**2.4.4 Equivalent Residential Unit Transfers.** Since build-out of the Planned Community District will occur over many years, flexibility is necessary to respond to market conditions, site conditions, and other factors. Therefore, residential density or non-residential intensity may be transferred within the Planned Community District as necessary to improve design, accessibility, and marketability, in accordance with the guiding transfer provisions in the Community Plan.

**2.4.5 Development Applications.** Each residential development application submitted by Developer and/or its assignees who have purchased portions of the Project shall, in addition to those items required by the City's Land Development Code, or any other City Ordinance, include a statement of (a) the total number of Equivalent Residential Units allowed in the Project under this Agreement; (b) the cumulative total number of Equivalent Residential Units previously approved for all of the properties within the Project from the date of approval of this Agreement to the date of the application; (c) the number of Equivalent Residential Units and densities for which a permit is sought under the particular Village application; and (d) the balance of Equivalent Residential Units remaining allowable to the Project.

**2.5 Recordation of First Final Plat.** Developer shall record the approved Final Plat for the first Village in accordance with the City's Land Development Code.

### **SECTION III. GENERAL RIGHTS AND RESPONSIBILITIES**

#### **3.1 General Rights and Responsibilities of Developer.**

**3.1.1 Development Fees.** With respect to the development of the Project, Developer accepts and agrees to comply with the application, plan examination, building and similar fees (excluding impact fees, which are addressed separately by this Agreement) of the City in effect at the time a person or entity files with the City a complete application for a subdivision or a building permit, and the City agrees and represents that any such fee schedule will be applied uniformly within the City or any service area of the City, as applicable. Developer agrees not to challenge, contest, or bring a judicial action seeking to avoid payment of

or to seek reimbursement for such fees, so long as such fees comply with Utah law, are applied uniformly within the City or service area, as applicable, and Developer receives all credits and offsets against such fees as provided in this Agreement.

**3.1.2 Reliance.** The City acknowledges that Developer is relying on the execution and continuing validity of this Agreement and the City's faithful performance of the City's obligations under this Agreement in Developer's existing and continued expenditure of substantial funds in connection with the Project. Developer acknowledges that the City is relying on the execution and continuing validity of this Agreement and Developer's faithful performance of its obligations under this Agreement in continuing to perform the obligations of the City hereunder.

**3.1.3 Vested Rights Granted by Approval of the Planned Community District and Project.** To the fullest extent permissible under the law, Developer shall have the full benefit of any rights granted and vested under the Original Development Agreement except as modified herein, and this Agreement grants and vests in Developer all rights, consistent with the Planned Community District Approval, the Use Map, and the City's Land Development Code, to develop the Project according to the Use Map under applicable law as provided in Paragraph 2.2 of this Agreement, which rights shall continue for the duration of this Agreement. The Parties intend that the rights granted to Developer and the entitlements for the Project under this Agreement and as set forth in the Community Plan are both contractual and provided under the common law concept of vested rights. It is expressly understood by the City that Developer may assign all or portions of its rights under this Agreement, the Planned Community District Approval and the Community Plan provided such assignment conforms with the requirements of, and assignees agree to be bound by the terms of, this Agreement as provided in Paragraph 5.2, below.

**3.1.4 Statement Regarding "Compelling, Countervailing Public Interests".** The City and Developer acknowledge they are familiar with the "compelling, countervailing public interest" exception to the doctrine of vested rights in the State of Utah. The City acknowledges that as of the date of this Agreement, to the best of its knowledge, information and belief, the City is presently unaware of any material facts under which a desire of the City to modify Developer's rights under this Agreement or the Use Map would be justified by a "compelling, countervailing public interest." In accordance with Utah law, the City shall notify Developer if any such facts come to the City's attention after the execution of this Agreement, and shall take all required steps to maintain Developer's vested rights as set forth in this Agreement or the Use Map.

**3.1.5 Dedication of Infrastructure Improvements.** Unless otherwise specifically provided herein, Developer shall dedicate free and clear of liens, taxes (including rollback taxes), and encumbrances, subject to the cost sharing, reimbursement, and impact fee credit obligations of the City as set forth in Paragraphs 3.2.1 and 3.2.2, below, any System Improvements in the Project to the City when such improvements are accepted by the City.

**3.1.6 Developer's Employees and Agents.** Developer shall cause its employees and agents to act in accordance with the terms of this Agreement.

### 3.2 General Rights and Responsibilities of the City.

3.2.1 **Project and System Improvements — Cost Sharing.** Except as otherwise provided herein, Developer shall bear the entire cost of constructing Project Improvements needed to service the Project. With respect to any System Improvements or Public Facilities that reduce the need for System Improvements, the City shall participate in the cost of constructing such improvements or facilities by (i) making an upfront payment to Developer; (ii) providing impact fee credits or refunds; or (iii) reimbursing Developer, in either case, in an amount agreed upon by the City and Developer.

#### 3.2.2 Impact Fee Credits; Reimbursement; and Pioneering Agreements.

(a) **General.** If, prior to the date an impact fee would be payable as provided under the City's Ordinances (whether through the operation of an existing Ordinance or the adoption of a new Ordinance imposing an impact fee), Developer constructs System Improvements or Public Facilities that reduce the need for System Improvements for which an impact fee is normally collected (whether through the operation of an existing Ordinance or the adoption of a new Ordinance imposing an impact fee), Developer's cost of constructing such System Improvements or Public Facilities that reduce the need for System Improvements shall be credited against the impact fees otherwise due. Developer shall also be given an impact fee credit for land dedicated to and accepted by the City for System Improvements or Public Facilities that reduce the need for System Improvements. In each instance, Developer shall submit to the City invoices, or other reasonably acceptable documentation, as determined by the City, demonstrating the reasonable and verified costs incurred for such System Improvements or, in the case of land, appraisals indicating the fair market value of the dedicated land. The amount of the credit shall be equal to the lesser of (i) the total amount of impact fees otherwise required, or (ii) the reasonable and verified costs of the System Improvements or Public Facilities that reduce the need for System Improvements paid by Developer and the fair market value of land at the time of dedication. As soon as practical after the recordation of each Final Plat that includes System Improvements (and/or Public Facilities when such is applicable), the City shall update its impact fee facilities plans and corresponding impact fee studies in order to make such System Improvements (or Public Facilities that reduce the need for System Improvements) costs eligible for credit against assessed impact fees taking into account any impact fee credits due to the owners or developers of any property outside of the Project, including, without limitation, those impact fee credits and waivers set forth in this Section 3.2.2; provided, however that the City updating its impact fee credit facilities plans and corresponding impact fee studies shall not be a condition precedent to Developer's entitlement to receive impact fee credits for any System Improvements or Public Facilities that reduce the need of System Improvements constructed by Developer.

(b) **Culinary and Secondary Water.** Developer shall receive an impact fee credit for the following:

- (i) any System Improvements or Public Facilities constructed by Developer for culinary and secondary water that reduce the need for System Improvements; and
- (ii) any cost sharing agreed to by the City in connection with the Project relating to culinary or secondary water System Improvements or Public Facilities that reduce the need for System Improvements.

Notwithstanding the foregoing, any impact fee credit shall be (i) subject to the Settlement and Culinary Water Asset Purchase and Sale Agreement dated February 2, 2005, which binds the City to collect at least \$2,000 in impact fees towards purchase of the Lake Mountain Mutual Water Company water system; and (ii) subject to the application of that certain ordinance no. 14-6 adopted by the City on April 29, 2014 with respect to the Project.

In addition, in a manner consistent with City regulations, Developer shall be eligible for reimbursement in the form of a pioneering agreement from benefitted parties in form and content reasonably acceptable to the Parties.

(c) **Sanitary Sewer.** In connection with any System Improvements or Public Facilities that reduce the need for System Improvements constructed by Developer for sanitary sewer, Developer shall receive an impact fee credit in the amount of the Upsizing Costs related to such System Improvements (and/or Public Facilities when such is applicable). In addition, in a manner consistent with City regulations, Developer shall be eligible for reimbursement in the form of a pioneering agreement from benefitted parties in form and content reasonably acceptable to the Parties.

(d) **Roads and Intersections.** Developer shall receive an impact fee credit for any System Improvements or Public Facilities that reduce the need for System Improvements constructed by Developer for roads or intersections.

(e) **Storm Water.** Developer shall receive an impact fee credit for any System Improvements or Public Facilities that reduce the need for System Improvements constructed by Developer for storm water.

(f) **Open Space.** In consideration of Developer constructing the Community Park (as defined in Section 4.7.1) in accordance with the Open Space Standards, the Parties agree that Developer will not be subject to any impact fees in connection with the construction of the Community Park or any other open space areas or improvements.

(g) **Existing Talus Ridge Credits.** In addition to the foregoing, Developer shall be entitled to receive and utilize any unused impact fee credits under that certain Talus Ridge Reimbursement Agreement and Release of All Claims, dated June 9, 2015, between Wasatch Land Company, a Utah corporation, and the City (“**Talus Ridge Agreement**”). The Parties acknowledge that the developer under the Talus Ridge Agreement is an affiliate of Developer and was unable to utilize all of the credits under

the Talus Ridge Agreement. The City and Developer hereby agree that Developer is entitled to the benefit of such unused credits.

(h) **Application.** In applying the foregoing provisions, any impact fee which is payable shall be charged as provided under the City's Ordinances and any impact fee credit shall be used to offset the amount of the impact fee due.

**3.2.3 Compliance with the City Requirements and Standards.** Except as otherwise provided in Paragraphs 2.2 and 3.1.3 of this Agreement, Developer acknowledges it shall comply with applicable laws and regulations, as set forth in Paragraph 2.2 of this Agreement, necessary for approval of a Land Use Application to develop property within the Project.

**3.2.4 Request to Exercise Eminent Domain.** In the event of a written request by Developer, the City may, in its sole and absolute discretion, exercise its power of eminent domain to obtain such easements or rights-of-way, the cost of which shall be borne by Developer. Developer shall reimburse the City for all reasonable expenses incurred in taking the requested action, including reasonable attorney's fees (or the reasonable value of what would have been charged for such legal services by a private law firm or private attorney, if the City Attorney provides such services to obtain the such property rights) and costs.

**3.2.5 Project a Part of the City.** The Project shall remain, for all purposes, including government, taxation, municipal services and protection, and consideration in all municipal matters, a part of the City. Except as otherwise provided herein, Development within the Project, and the residents and occupants thereof, shall be treated in all respects as any other development, resident, or occupant of the City is treated.

## SECTION IV. SPECIFIC RIGHTS AND RESPONSIBILITIES

### 4.1 Culinary Water.

#### 4.1.1 Developer's Obligations.

**4.1.1.1 Dedication of Water.** Developer shall convey to or acquire from the City water rights sufficient for the development of the Property according to City regulations in effect at the time of plat recordation. In connection with such obligations, Developer shall receive a credit for water rights previously conveyed to City in connection with the Project. Water rights to meet culinary water requirements must be approved for municipal use with approved sources from City owned wells or other sources at locations approved by the City. Prior to acceptance of the water rights from Developer, the City shall evaluate the water rights proposed for conveyance and may refuse to accept any right it determines to be insufficient in annual quantity or rate of flow, has not been approved for change to municipal purposes within the City and for diversion from City owned wells by the Utah State Engineer, or does not meet City regulations. In this respect, the City acknowledges that any water rights obtained from the Central Utah Water Project ("CWP Water") is from an approved source so long as Developer has paid all delivery, reservation, and capital fees charged by CWP prior to delivery to City's system. Upon delivery to City's system, City shall be responsible for operation, maintenance, and repair fees charged by CWP.

4.1.1.2 **Water System.** Developer shall, consistent with governmental requirements as of the date hereof, design and build onsite and offsite culinary water facilities, including water sources and storage and distribution facilities, of sufficient size to serve the Project, in accordance with the Culinary Water Master Plan. The facilities required to provide culinary water within a subdivision or Village Plan area shall be constructed and installed concurrently with the construction of other improvements in such subdivision or Village Plan area. All facilities necessary to provide a culinary water system installed by Developer within the Project, upon acceptance by the City, shall be owned, operated, and maintained by the City. The Parties agree that the water impact fee credits for culinary water for an Equivalent Residential Unit shall be provided in accordance with the Utah Impact Fee Act taking into account water system elements identified in City's Impact Fee Facility Plan and Analysis (source, storage, distribution, fire suppression, water rights and planning), or portions thereof, as provided by Developer.

4.1.1.3 **Easements.** As part of the preparation of a water storage and delivery system for the culinary water system, the Parties shall cooperate in granting such easements, rights-of-way, rights of entry, or other servitudes as may be reasonably necessary for the Parties to introduce into, store in, and remove water from such ponds, streams, well sites and connections onto existing City water lines and the like.

4.1.2 **The City's Obligations.** Upon dedication, acquisition and/or acceptance by the City of the water delivery system, the City shall provide all use areas served by such infrastructure within the Project with culinary water service at a level generally provided to other areas of the City.

## 4.2 **Secondary Water.**

### 4.2.1 **Developer's Obligations.**

4.2.1.1 **Dedication of Water.** Developer shall convey to or acquire from the City water rights sufficient for the development of the Property according to City regulations in effect at the time of plat recordation. In connection with such obligations, Developer shall receive a credit for water rights previously conveyed to City in connection with the Project. Water rights to meet secondary water requirements must be approved for municipal use with approved sources from City owned wells or other sources at locations approved by the City. Prior to acceptance of the water rights from Developer, the City shall evaluate the water rights proposed for conveyance and may refuse to accept any right it determines to be insufficient in annual quantity or rate of flow, has not been approved for change to municipal purposes within the City and for diversion from City owned wells by the Utah State Engineer, or does not meet City regulations. In this respect, the City acknowledges that all CWP Water is from an approved source so long as Developer has paid all delivery, reservation, and capital fees charged by CWP prior to delivery to City's system. Upon delivery to City's system, City shall be responsible for operation, maintenance, and repair fees charged by CWP.

4.2.1.2 **Water System.** Developer shall, consistent with governmental requirements as of the date hereof, design and build onsite and offsite secondary water facilities, including water sources and storage and distribution facilities, of sufficient size to serve the

Project, in accordance with the Secondary Water Master Plan. The facilities required to provide secondary water within a subdivision or Village Plan area shall be constructed and installed concurrently with the construction of other improvements in such subdivision or Village Plan area. The Parties agree that Developer will not be subject to any impact fees in connection with the secondary water System Improvements constructed or provided by Developer. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that culinary water System Improvements can provide secondary water for at least the number of Equivalent Residential Units within Village 1 and that development within Village 1 or a combination of Villages, will be allowed up to the number of Equivalent Residential Units within Village 1. All facilities necessary to provide a secondary water system installed by Developer within the Project, upon acceptance by the City, shall be owned, operated, and maintained by the City in accordance with the City's Standard Technical Specifications and Drawings. The Parties agree that the water impact fee credits for secondary water for an Equivalent Residential Unit shall be provided in accordance with the with the Utah Impact Fee Act taking into account water system elements identified in City's Impact Fee Facility Plan and Analysis (source, storage, distribution, water rights and planning), or portions thereof, as provided by Developer.

4.2.1.3 **Easements.** As part of the preparation of a water storage and delivery system for the secondary water system, the Parties shall cooperate in granting such easements, rights-of-way, rights of entry, or other servitudes as may be reasonably necessary for the Parties to introduce into, store in, and remove water from such ponds, streams, well sites, connections onto existing City water lines and the like.

4.2.2 **The City's Obligations.** Upon dedication, acquisition and/or acceptance by the City of the water delivery system, the City shall provide all use areas served by such infrastructure within the Project with secondary water service at a level generally provided to other areas of the City.

### 4.3 **Sanitary Sewer Service and Facilities.**

#### 4.3.1 **Developer's Obligations.**

4.3.1.1 **Sanitary Sewer System.** Developer shall, consistent with governmental requirements as of the date hereof, design and build sewer and waste water collection systems of sufficient size to serve the Project, in accordance with the Sanitary Sewer Master Plan. The system required to provide sewer and waste water collection services within a subdivision or Village Plan area shall be constructed and installed concurrently with the construction of other improvements in such subdivision or Village Plan area. The Parties agree that Developer will not be responsible for any impact fees in connection with the sewer and waste water collection System Improvements constructed or provided by Developer, other than any impact fee relating to treatment of waste water. The sewer and waste water collection systems installed by Developer within the Project, upon acceptance by the City, shall be owned, operated, and maintained by the City.

4.3.1.2 **Easements.** As part of the preparation of the sanitary sewer system, the Parties shall cooperate in granting such easements, rights-of-way, rights of entry, or

other servitudes as may be reasonably necessary for the Parties to introduce into and connect into existing City sewer lines and the like.

**4.3.2 The City's Obligations.** The City shall require Developer to adhere, where applicable, to such standards and requirements with respect to the sewer and waste water collection systems.

#### **4.4 Storm Water.**

**4.4.1 Developer's Obligations.** The Project is located within the service boundaries of the City. Developer shall design, fund, and construct storm water collection systems to service the Project in compliance with the Storm Drainage Master Plan. The system required to provide storm drainage services within a subdivision or Village Plan area shall be constructed and installed concurrently with the construction of other improvements in such subdivision or Village Plan area. The Parties agree that Developer will not be responsible for any impact fees in connection with the storm drainage System Improvements constructed or provided by Developer, except impact fees related to downstream improvements previously installed to which storm drainage System Improvements provided by Developer are connected.

**4.4.2 The City's Obligations.** The City shall require Developer to adhere, where applicable, to such standards and requirements with respect to the storm water collection systems.

**4.4.2.1 Dedication.** The City shall accept the dedication of and thereafter maintain all storm water collection and conveyance facilities or improvements in the Project, including but not limited to all within public roadways, so long as such roads are constructed in accordance with Paragraph 4.4.1 and are dedicated free and clear of liens and encumbrances.

#### **4.5 Transportation, Traffic Mitigation, and Landscaping.**

**4.5.1 Developer's Obligations.** Developer agrees to provide the following transportation and traffic mitigation measures:

**4.5.1.1 Roads and Intersection Improvements.** The Village Plan for each Village shall show all road and intersection improvements and shall identify which improvements Developer will construct at no cost to the City. Said improvements shall include all interior public roads. Road and intersection improvements may be located differently than shown on the Use Map and Transportation Network Plan so long as any such road connects to an existing or planned road which intersects with or abuts the exterior boundary of the Project shown on the Use Map. Road and intersection improvements shall be constructed according to the City's Standard Technical Specifications and Drawings, except as otherwise set forth in this Agreement and in the Community Plan, in phases according to a schedule determined by Developer and approved by the City, which approval shall not be unreasonably withheld, conditioned, or delayed, consistent with the actual construction schedule for a particular Village. Road cross sections shall be reviewed on a case by case basis, but shall generally only be required to be improved to half-width—as defined in the City's Standard Technical Specifications and Drawings—when the opposite side of the road in question remains



undeveloped. Subject to reimbursement by the City of its Proportionate Share of System Improvements, Developer shall dedicate such improvements to the City free and clear of liens and encumbrances upon completion and acceptance by the City.

4.5.1.2 **Certain Roads Retained.** Interior, local roads providing internal access to Multi-Family Uses shall not be dedicated to the City but shall be retained and maintained by Developer.

4.5.1.3 **Landscaping.** Upon the City's approval of each Village, Developer agrees to construct and create, at Developer's sole cost and expense, the landscape improvements as set forth in the Community Plan and Village Plan for such Village and consistent with City landscaping standards. The timing and/or sequencing of the installation of such landscaping improvements shall be as set forth in the Village Plan, so long as all landscaping in a Village is completed in conjunction with such phase.

#### 4.5.2 **The City's Obligations.**

4.5.2.1 **Road Design.** The City accepts the local and private road design, as contained and provided in the Community Plan, as the specifications and standards for road design for parkway, arterial, collector, and local roads within the Project regardless of any future hillside development ordinance that may be adopted by the City, with the exception that certain road designs have been modified from the Development Guidelines and said modifications are as shown in the Community Plan. All roadways according to the City's Transportation Master Plan are to be constructed to the City's Standard Technical Specifications and Drawings. All roads in the Project shall conform to the City's Standard Technical Specifications and Drawings except as otherwise specified in the Community Plan.

4.5.2.2 **Dedication.** Except as set forth in Paragraph 4.5.1.2, the City shall accept the dedication of and thereafter maintain all arterial, parkway, collector and public local roads in the Project so long as such roads are constructed in accordance with Paragraph 4.5.2.1 and are dedicated free and clear of liens and encumbrances, and meet the requirements for public streets identified in the Community Plan and the City's Standard Technical Specifications and Drawings.

#### 4.6 **Police and Fire Protection.**

4.6.1 The City shall provide to all residential and nonresidential areas in the Project, police and fire services.

4.6.2 Developer shall install fire hydrants within the Project in conformance with the City's Standard Technical Specifications and Drawings.

#### 4.7 **Park, Trail and Open Space Areas.**

4.7.1 **Developer's Obligations.** As required in section 19.26.06 of the Saratoga City Code, 30% of the Project will be comprised of open space. As shown in the Community Plan the open space will consist of major walking/ biking trails, public and private parks, private open space, and other recreation amenities to create the active outdoor theme of the Community

Plan. Developer shall also construct a community park and related trail systems as shown in the Community Plan (collectively, the “**Community Park**”). All open space improvements, including, without limitation, the Community Park, shall be constructed by Developer in accordance with the City’s Standard Technical Specifications and Drawings and Title 19 of the City Code. In accordance with Sections 4.1 and 4.2 of this Agreement, Developer shall be responsible for the dedication or purchase of culinary and secondary water and the installation of water facilities necessary to service the open space, parks, and trails required to be improved by Developer. Upon completion, the Community Park will be dedicated to and maintained by the City. The Master HOA will maintain the park strips bordering Mt. Saratoga Boulevard and Talus Ridge Boulevard.

#### 4.7.2 **The City’s Obligations.**

4.7.2.1 **Dedication.** The City shall accept the dedication of open space areas identified in the Community Plan as being dedicated to the City, so long as such open space areas are in compliance with Paragraph 4.7.1 and are dedicated free and clear of liens, taxes (including any rollback taxes), and encumbrances.

4.7.2.2 **Maintenance by the City.** Upon dedication and acceptance by the City of any open space area intended to be dedicated to the City, the City shall maintain each such area and any improvements thereon at a level of service consistent with City’s policies and practices for maintenance of parks, trails, and open space.

4.8 **Maintenance of Certain Areas by Owners Association.** Developer shall create a homeowners associations for the Project, which shall have the responsibility to maintain those open space areas identified in the Community Plan as not being dedicated to the City. In the event such areas are not maintained in a manner consistent with the approved plan, the City may at its option cause such maintenance to be performed and assess the cost to the affected property owners’ association, master association, or other governing body.

## SECTION V. GENERAL PROVISIONS

5.1 **Binding Effect.** The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties hereto and their successors in interest.

5.2 **Change in Developer.** Developer acknowledges that its qualifications and identity are of particular concern to the City, and that it is because of such qualifications and identity that the City is entering into this Agreement. Accordingly, Developer agrees for itself and any successor in interest of itself that during the term of this Agreement, Developer shall not convey, assign, or dispose of (“**Transfer**”) the Project or any portion thereof to another developer except as provided in this Paragraph 5.2. In the event of a Transfer of the Project, or any portion thereof, Developer 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 an agreement satisfactory to the City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by the City. In such event, the transferee of the property so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be

released from any further obligations under this Agreement as to the property so transferred. Notwithstanding the foregoing, the Parties acknowledge and agree that each entity constituting Developer shall, acting alone, be entitled (a) to enforce all the rights and to perform all the obligations of Developer hereunder and (b) to enforce such rights and perform such obligations with respect to any Village through a subsidiary entity so long as such entity is wholly owned, directly or indirectly, by either or both of the entities constituting Developer.

**5.3 No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and among the Parties that: (i) the Project is a private development; (ii) the City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership among the City and Developer; and (iii) nothing contained herein shall be construed as creating any such relationship among the City and Developer.

**5.4 Consent.** In the event this Agreement provides for consent from the City or Developer, such consent shall be deemed to be given thirty (30) days after consent is requested in writing in the event no response to the request is received within that period. All requests for consent shall be made in writing, and in no event shall consent be unreasonably withheld, conditioned, or delayed.

#### **5.5 Process for Modifying the Community Plan.**

**5.5.1 Intent.** The City acknowledges that the Community Plan and Use Map are a generalized depiction of the proposed development of the Project with specific land uses permitted as shown on the Use Map. The Parties agree that that Developer may amend the Community Plan and Use Map as set forth in 19.26

**5.5.2 Minor Amendments.** The City and Developer agree that minor amendments shall be accomplished administratively by the Planning Director. Minor amendments include (i) any amendment deemed a minor amendment under Chapter 19.26 of the Land Development Code, and (ii) simple modifications to text or exhibits such as:

5.5.2.1 minor changes in the conceptual location of streets, public improvements, or infrastructure;

5.5.2.2 minor changes in the configuration or size of parcels;

5.5.2.3 transfers of density as described within the Community Plan;

5.5.2.4 minor modification of land use boundaries; and

5.5.2.5 interpretations that facilitate or streamline the approval of unlisted uses that are similar in nature and impact to listed uses.

In the event of a conflict between this Section 5.5.2 and Chapter 19.26 of the Land Development Code, the least restrictive provision shall apply.

**5.5.3 Major Amendments.** If an amendment is deemed major by the Planning Director in accordance with Chapter 19.26 of the Land Development Code, it will be processed

as outlined in the Land Development Code. A minor modification in Section 5.5.2 shall not qualify as a major amendment.

**5.6 No Obligation to Undertake Development.** Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall impose on Developer an obligation or affirmative requirement to develop the Project or any portion thereof. If Developer undertakes to develop all or any portion of the Project pursuant to the Use Map and this Agreement, Developer agrees to abide by the terms and conditions of this Agreement and the Use Map.

## SECTION VI. MISCELLANEOUS

**6.1 Incorporation of Recitals, Introductory Paragraphs, and Exhibits.** The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

**6.2 Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control the meaning or construction of any of the provisions hereof.

**6.3 Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

**6.4 Construction.** This Agreement has been reviewed and revised by legal counsel for Developer and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

**6.5 Further Assurances, Documents and Acts.** Each Party hereto agrees to cooperate in good faith with the others, and to execute and deliver such further documents and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each Party as allowed by law.

**6.6 Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned by Developer to any other party, individual or entity without assigning the rights as well as the obligations under this Agreement and complying with Paragraph 5.2 above and any other provision herein concerning assignment. The rights of the City under this Agreement shall not be assigned, but the City is authorized to enter into a contract with a third party or create a local district to perform obligations of the City to operate and maintain any infrastructure improvement so long as such Party or entity adequately and reasonably maintains and operates such facility or improvement.

**6.7 Recording.** No later than ten (10) days after this Agreement has been executed by the City and Developer, it shall be recorded in its entirety, together with all exhibits cited in Paragraph 6.11, at Developer's expense, in the Official Records of Utah County, Utah.

6.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

6.9 **Notices.** Any notice or communication required hereunder between the Parties shall be in writing, and may be given either personally, by overnight courier, by hand delivery or by registered or certified mail, return receipt requested or by electronic mail or facsimile. If given by overnight courier or registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the address set forth below:

If to Developer:	Leading Edge Development, LLC Attn: Curtis Leavitt and Steve Maddox 482 West 800 North, Suite 203 Orem, Utah 84057
With a copy to:	DCP Saratoga LLC PMB#449 2753 E Broadway Rd, #101 Mesa, Arizona 85204
With a copy to:	Jones Waldo 170 South Main, Suite 1500 Salt Lake City, Utah 84101 Attn: Keven Rowe
If to the City:	City of Saratoga Springs Attn: City Manager 1307 N. Commerce Drive Saratoga Springs, Utah 84045
With a copy to:	City of Saratoga Springs Attn: City Attorney 1307 N. Commerce Drive Saratoga Springs, Utah 84045

6.10 **No Third Party Beneficiary.** This Agreement is made and entered into for the sole protection and benefit of the Parties and their assigns. No other Party shall have any right of action based upon any provision of this Agreement whether as third party beneficiary or otherwise.

**6.11 Counterparts; Exhibits; Entire Agreement.** This Agreement may be executed in multiple counterparts, each of which is deemed to be an original. This Agreement, together with all the exhibits identified below, constitute the entire understanding and agreement of the Parties to this Agreement.

- Exhibit A      Legal description of Property
- Exhibit B      Planning Commission staff report and minutes
- Exhibit C      City Council staff report and minutes

**6.12 Duration.** This Agreement shall continue in force and effect for an initial term of ten (10) years from the date of this Agreement. So long as Developer is using commercially reasonable efforts to complete the development of the Project and is not in breach of any material term herein that has not been cured within a reasonable time after receipt of written notice of such breach by City, the term of this Agreement shall automatically be extended for up to two (2) successive periods of five (5) years each. Upon the termination or expiration of this Agreement, the Parties shall, at the request of either Party, execute an appropriate recordable instrument confirming that this Agreement has been fully performed, terminated, or lapsed as provided for herein.

**6.13 No Further Exactions.** Subject to the obligations of Developer hereunder, no further exactions shall be required of Developer by the City. Notwithstanding the foregoing, this paragraph shall not be construed to relieve Developer from any dedications or other requirements required by applicable law or ordinance in effect when this Agreement is executed unless otherwise provided in this Agreement.

**6.14 Good-Standing; Authority.** The Parties warrant and represent as follows:

**6.14.1 Developer.** Developer hereby represents and warrants to the City: (a) Developer is a registered business entity in good standing with the State of Utah; (b) the individual executing this Agreement on behalf of Developer is duly authorized and empowered to bind Developer; and (c) this Agreement is valid, binding, and enforceable against Developer in accordance with its terms.

**6.14.2 The City.** The City hereby represents and warrants to Developer that: (a) the City is a Utah municipal corporation; (b) the City has power and authority pursuant to enabling legislation, the Utah Land Use and Development Management Act (U.C.A. § 10-9a-101 *et seq.*), and the City's Land Development Codes to enter into and be bound by this Agreement; (c) the individual executing this Agreement on behalf of the City is duly authorized and empowered to bind the City; and (d) this Agreement is valid, binding, and enforceable against the City in accordance with its terms.

**6.15 Failure to Execute.** The failure of any Party named above to execute this Agreement shall not invalidate the Agreement with respect to any of the remaining Parties or the property owned by such Parties at the time of execution; provided the total density and Use Map shall be modified to remove that parcel and the applicable density and infrastructure.

6.16 **Concurrency.** The City desires that the resources, services and facilities needed to support development are available when a Land Use Application is approved. Notwithstanding any provision in this Agreement, the City shall not be obligated to approve a Land Use Application if infrastructure and services will not be available in a reasonable time to serve the development contemplated under such application.

6.17 **Indemnification.** Developer and the City each agree to defend and hold each other and their respective officers, employees and consultants harmless for any and all claims, liability, and damages arising out of or related to any work or activity connected with the Project, including approval of the Project; performed by a Party, its agents or employees except for willful misconduct or negligent acts or omissions of Developer or the City, as the case may be, or their respective officers, agents, employees or consultants.

6.18 **Default.** Failure by a Party to perform any of the Party's obligations under this Agreement within a thirty (30) day period (the "**Cure Period**") after written notice thereof from the other Party shall constitute a default ("**Default**") by such failing Party under this Agreement; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing Party commences its efforts to cure within the initial thirty (30) day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged Default and the manner in which said Default may be satisfactorily cured, if possible. Upon the occurrence of an uncured Default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or may terminate this Agreement. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action.

6.18.1 **Termination.** If the City elects to consider terminating this Agreement due to an uncured Default by Developer, then the City shall give to Developer written notice of the City's intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City's legislative body at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City's legislative body determines that a Default has occurred and is continuing, and elects to terminate this Agreement, the City shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated. The City may thereafter pursue any and all remedies at law or equity.

6.18.2 **No Monetary Damages Relief or Personal Liability Against the City.** The Parties acknowledge that the City would not have entered into this Agreement had it been exposed to monetary damage claims from Developer or personal liability for any of its officers, officials, or employees for any breach thereof except as set forth herein. As such, the Parties agree that specific performance, as may be determined by the court, is the intended remedy for any breach of this Agreement. In addition, no personal liability may attach to or be asserted against any City officer, official, or employee.

6.19 **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or Developer for the breach of any covenant of this

Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

**6.20 Enforcement.** The Parties to this Agreement recognize that the 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 Developer violates the rules, policies, regulations or ordinances of the City or violates the terms of this Agreement, the City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of the City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) 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 Developer. The City shall be free from any liability arising out of the exercise of its rights under this paragraph.

**6.21 Severability; Invalidity.** If the City's approval of the Project is held invalid by a court of competent jurisdiction this Agreement shall be null and void. If any provision of this Agreement shall be held to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction or as a result of any legislative action, such holding or action shall be strictly construed. Furthermore, provided the Parties are still able to retain all of the material benefits of their bargain hereunder, such provision shall be construed, limited or, if necessary, severed, but only to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall remain unaffected and this Agreement shall be construed and enforced as if such provision in its original form and content had never comprised a part hereof.

**6.22 Force Majeure.** Developer shall not be liable for any delay or failure in the keeping or performance of its obligations under this Agreement during the time and to the extent that any such failure is due to causes beyond the control and without the fault or negligence of the Party affected, including, acts of God, acts of the United States Government or the State of Utah, fires, floods, strikes embargoes, wars, terrorist acts or unusually adverse weather conditions. Upon the occurrence of any such cause, Developer shall notify the City and shall promptly resume the keeping and performance of the affected obligations after such cause has come to an end.

**6.23 Nondiscrimination.** Neither the City nor Developer nor the agents, employees, or representatives of any of them, shall discriminate against, segregate, persecute, oppress, or harass one another's agents, employees, or representatives; other developers (including any potential replacement developer); contractor or subcontractor; or the agents, employees, or representatives of any of the foregoing; tenants, owners, occupants or residents, whether actual or potential, or any other person or entity.

**6.24 No Waiver of Governmental Immunity.** Nothing in this Agreement is intended to, or shall be deemed, a waiver of the City's governmental immunity.

**6.25 Institution of Legal Action.** In addition to any other rights or remedies, any 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, 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.

6.26 **Names and Plans.** Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature developed, formulated or prepared by or at the request of Developer in connection with the Project.

6.27 **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's City Council taken with the same formality as the vote approving this Agreement.

[SIGNATURE PAGES FOLLOW]

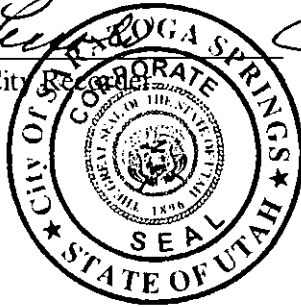
IN WITNESS WHEREOF, this Agreement has been executed by Developer, by persons duly authorized to execute the same, and by the City, acting by and through its City Council by duly authorized persons.

**CITY:**

Attest:

City of Saratoga Springs,  
a Utah Municipality

*Cindy Roberts*  
*Mayor*  
Cindy Roberts, City Recorder



By: *[Signature]*  
Jim Miller, Mayor

**DEVELOPER:**

DCP SARATOGA LLC, a Utah limited liability company

By: Daniels Capital Management LLC  
Its: Manager

By: Pronaia Capital Partners, Ltd  
Its: Manager

By: *[Signature]*  
Joseph B. Pierce, Managing Director

LEADING EDGE DEVELOPMENT, LLC,  
a Utah limited liability company,  
in its capacity as Agent for DCP pursuant to  
Section 1.7 of this Agreement

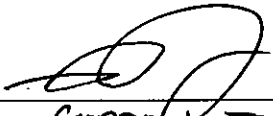
By: *[Signature]*  
Name: GORDON JONES  
Its: MANAGER

*(Signature pages continue on the following page)*

**PROPERTY OWNERS ACKNOWLEDGEMENT:**

Each of Timp, Mt. Saratoga, Wilking and CPM, who own a portion of the Property, by signing below, hereby consent to the execution of this Agreement by Developer and the City and acknowledge and agree that from and after the execution of this Agreement, the portion of the Property owned by each of them shall be subject to the terms and conditions of this Agreement.

TIMP LAND HOLDINGS LLC,  
a Utah limited liability company

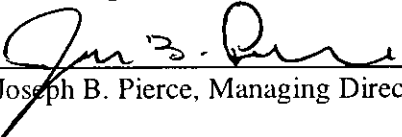
By:   
Name: GORDON JONES  
Its: MANAGER

MT. SARATOGA LLC, a Utah limited liability company

By: Daniels Capital Partners I, LLC  
Its: Member

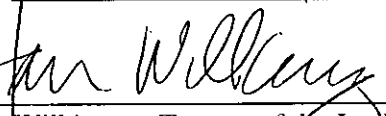
By: Daniels Capital Management LLC  
Its: Manager

By: Pronaia Capital Partners, Ltd  
Its: Manager

By:   
Joseph B. Pierce, Managing Director

CAPITAL SECURITY MORTGAGE, INC., a Utah corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

  
Jan Wilking, as Trustee of the Jan Wilking Trust dated June 11, 2004

  
Teri Thomas, as Trustee of The Teri Thomas Trust dated November 7, 2003

**PROPERTY OWNERS ACKNOWLEDGEMENT:**

Each of Timp, Mt. Saratoga, Wilking and CPM, who own a portion of the Property, by signing below, hereby consent to the execution of this Agreement by Developer and the City and acknowledge and agree that from and after the execution of this Agreement, the portion of the Property owned by each of them shall be subject to the terms and conditions of this Agreement.

TIMP LAND HOLDINGS LLC,  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

MT. SARATOGA LLC, a Utah limited liability company

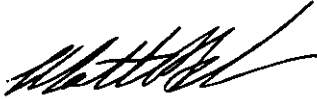
By: Daniels Capital Partners I, LLC  
Its: Member

By: Daniels Capital Management LLC  
Its: Manager

By: Pronaia Capital Partners, Ltd  
Its: Manager

By: \_\_\_\_\_  
Joseph B. Pierce, Managing Director

CAPITAL SECURITY MORTGAGE, INC., a Utah corporation

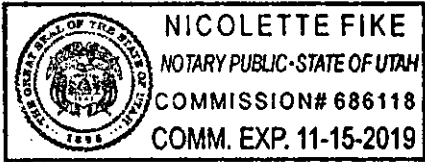
By:   
Name: Matthew P. Steiner  
Its: Vice President

\_\_\_\_\_  
Jan Wilking, as Trustee of the Jan Wilking Trust dated June 11, 2004

\_\_\_\_\_  
Teri Thomas, as Trustee of The Teri Thomas Trust dated November 7, 2003

STATE OF Utah )  
 )  
 ) :SS  
COUNTY OF Utah )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of DECEMBER, 2016, by Jim Miller, as Mayor, and Cindy Lolicola, as Recorder of the City of Saratoga Springs.

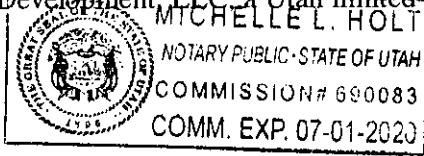


Nicolette Fike  
NOTARY PUBLIC Nicolette Fike  
Residing at: Saratoga Springs, UT

My commission expires: 11-15-19

STATE OF Utah )  
 )  
 ) :SS  
COUNTY OF Utah )

The foregoing instrument was acknowledged before me this 8 day of December, 2016, by GORDON JONES, the MANAGER of Leading Edge Development LLC, a Utah limited liability company.

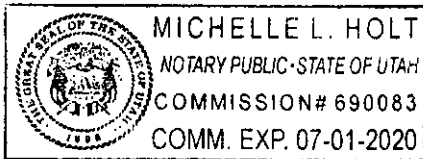


Michelle Holt  
NOTARY PUBLIC  
Residing at: Springville UT

My commission expires: 7-1-2020

STATE OF Utah )  
 )  
 ) :SS  
COUNTY OF Utah )

The foregoing instrument was acknowledged before me this 8 day of December, 2016, by Joseph B. Pierce, the Manager of DCP Saratoga LLC, a Utah limited liability company.

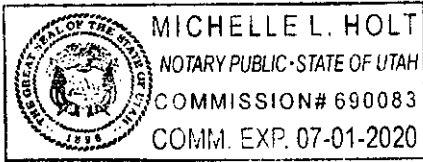


Michelle Holt  
NOTARY PUBLIC  
Residing at: Springville, UT

My commission expires: 7-1-2020

STATE OF Utah )  
 )  
 ) :SS  
COUNTY OF Utah )

The foregoing instrument was acknowledged before me this 8 day of December, 2016, by Joseph B. Pierce, Managing Director of Pronaia Capital Partners, Ltd, Manager of Daniels Capital Management LLC, Manager of Daniels Capital Partners I, LLC, Member of DCP Saratoga LLC, a Utah limited liability company.

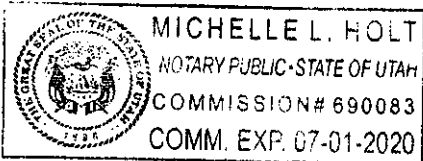


Michelle Holt  
NOTARY PUBLIC  
Residing at: Springville, UT

My commission expires: 7-1-2020

STATE OF Utah )  
 )  
 ) :SS  
COUNTY OF Utah )

The foregoing instrument was acknowledged before me this 8 day of December, 2016, by GORDON JONES MANAGER of Timp Land Holdings LLC, a Utah limited liability company.



Michelle Holt  
NOTARY PUBLIC  
Residing at: Springville, UT

My commission expires: 7-1-2020

STATE OF Arizona )  
 :SS  
COUNTY OF Maricopa )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of December, 2016, by Jan Wilking, as Trustee of the Jan Wilking Trust dated June 11, 2004..



Kristy Kay Cavanaugh  
NOTARY PUBLIC  
Residing at: 6900 E. Camelback Rd Ste 250 Scottsdale, AZ 85251

My commission expires: 7/11/2020

STATE OF Arizona )  
 :SS  
COUNTY OF Maricopa )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of December, 2016, by Teri Thomas, as Trustee of The Teri Thomas Trust dated November 7, 2003.



Kristy Kay Cavanaugh  
NOTARY PUBLIC  
Residing at: 6900 E. Camelback Rd Ste 250 Scottsdale, AZ 85251

My commission expires: 7/11/2020

STATE OF \_\_\_\_\_ )  
 :SS  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of Capital Security Mortgage, Inc., a Utah corporation.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
:SS  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Jan Wilking, as Trustee of the Jan Wilking Trust dated June 11, 2004..

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at:\_\_\_\_\_

My commission expires:\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
:SS  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Teri Thomas, as Trustee of The Teri Thomas Trust dated November 7, 2003.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at:\_\_\_\_\_

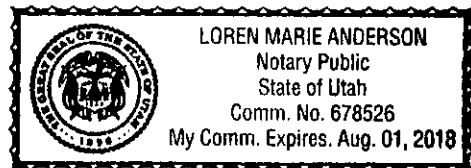
My commission expires:\_\_\_\_\_

STATE OF Utah )  
:SS  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of December, 2016, by Matthew P Steiner, the vice President of Capital Security Mortgage, Inc., a Utah corporation.

Loren Marie Anderson  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: 4747 S Wander Ln Holladay UT 84117

My commission expires: Aug 1, 2018





**EXHIBIT A**  
**Legal Description of Property**

**PROPERTY OWNED BY DCP SARATOGA LLC**

ALL THAT CERTAIN REAL PROPERTY LOCATED IN UTAH COUNTY, UTAH,  
DESCRIBED AS FOLLOWS:

**PARCEL 1 (58-034-0333)**

COMMENCING AT THE SOUTH ONE-QUARTER CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°18'23" EAST ALONG THE ONE QUARTER SECTION LINE 1287.59 FEET; THENCE MORE OR LESS ALONG THE ABANDONED NORTH LINE OF THE UNION PACIFIC RAILROAD AS FOLLOWS: SOUTH 44°46'18" EAST 511.77 FEET; SOUTH 60°29'41" EAST 346.51 FEET; SOUTH 80°34'49" EAST 671.69 FEET; NORTH 76°57'13" EAST 544.44 FEET; NORTH 57°13'14" EAST 534.05 FEET; NORTH 38°53'12" EAST 335.86 FEET; THENCE SOUTH 89°30'37" EAST ALONG THE 1/16 SECTION LINE 126.83 FEET; THENCE SOUTH 01°18'46" WEST 593.80 FEET; THENCE MORE OR LESS ALONG THE CENTERLINE OF A COUNTY ROAD AS FOLLOWS: SOUTH 81°35'52" WEST 529.53 FEET; SOUTH 52°38'36" WEST 1068.93 FEET; SOUTH 52°38'36" WEST 1068.93 FEET; THENCE NORTH 89°50'17" WEST ALONG THE SECTION LINE 1261.48 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THE FOLLOWING:

COMMENCING AT THE SOUTH ONE-QUARTER CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°18'23" EAST 66.00 FEET; THENCE SOUTH 89°50'17" EAST 445.51 FEET; THENCE SOUTH 00°18'23" WEST 66.00 FEET; THENCE NORTH 89°50'17" WEST 445.51 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING THE FOLLOWING:

COMMENCING AT THE SOUTH ONE-QUARTER CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 00°18'23" EAST ALONG THE ONE QUARTER SECTION LINE 1287.59 FEET; THENCE MORE OR LESS ALONG THE ABANDONED NORTH LINE OF THE UNION PACIFIC RAILROAD AS FOLLOWS: SOUTH 44°46'18" EAST 511.77 FEET; SOUTH 60°29'11" EAST 346.51 FEET; SOUTH 80°34'49" EAST 671.69 FEET; NORTH 76°57'13" EAST 544.44 FEET; NORTH 57°13'14" EAST 220.62 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE CONTINUING MORE OR LESS ALONG THE ABANDONED NORTH LINE OF THE UNION PACIFIC RAILROAD AS FOLLOWS: NORTH 57°13'14" EAST 313.43 FEET; NORTH 38°53'12" EAST 335.86

EXHIBIT A

FEET (335.91); THENCE SOUTH 89°30'37" EAST (SOUTH 89°30'27" EAST), ALONG THE 1/16 SECTION LINE, 126.83 FEET; THENCE SOUTH 01°18'46" WEST (SOUTH 01°18'56" WEST), 593.80 FEET; THENCE MORE OR LESS ALONG THE CENTERLINE OF A COUNTY ROAD AS FOLLOWS; SOUTH 81°35'52" WEST (SOUTH 81°36'02" WEST), 529.53 FEET; SOUTH 52°38'36" WEST (SOUTH 52°38'46" WEST), 80.18 FEET; THENCE NORTH 289.57 FEET TO THE POINT OF BEGINNING.

**PARCEL 2 (58-034-0340)**

A PARCEL OF GROUND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WESTERLY BOUNDARY OF THE UTAH POWER AND LIGHT CORRIDOR, WHICH LIES SOUTH 00°23'51" WEST ALONG THE SECTION LINE 872.14 FEET AND NORTH 89°33'29" WEST, 490.49 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 21; THENCE SOUTH 04°43'35" WEST, 860.13 FEET; THENCE SOUTH 57°13'14" WEST, 272.58 FEET; THENCE SOUTH 76°57'13" WEST, 544.44 FEET; THENCE NORTH 80°34'49" WEST, 61.27 FEET; THENCE NORTH 00°26'31" EAST 1,124.49 FEET; THENCE SOUTH 89°33'29" EAST, 882.23 FEET TO THE POINT OF BEGINNING.

**PARCEL 3 (58-034-0230)**

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 89°10'11" WEST ALONG THE SECTION LINE 1601.74 FEET; THENCE NORTH 2335.99 FEET; THENCE MORE OR LESS ALONG THE ABANDONED NORTH LINE OF THE UNION PACIFIC RAILROAD AS FOLLOWS: SOUTH 61°54'28" EAST 112.24 FEET; SOUTH 75°53'16" EAST 161.48 FEET; SOUTH 81°14'47" EAST 414.21 FEET; SOUTH 68°13'38" EAST 452.11 FEET; SOUTH 36°56'45" EAST 628.35 FEET; SOUTH 30°37'27" EAST 286.44 FEET; THENCE SOUTH 00°18'23" WEST ALONG THE ONE-QUARTER SECTION LINE 1287.57 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THE FOLLOWING:

COMMENCING AT A POINT WHICH IS NORTH 89°10'11" WEST ALONG THE SECTION LINE 1336.737 FEET AND NORTH 66.00 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN TO A POINT ON THE NORTH LINE OF A COUNTY ROAD; THENCE NORTH 89°10'11" WEST, PARALLEL TO THE SECTION LINE AND ALONG THE NORTH LINE OF SAID COUNTY ROAD, 265.00 FEET, THENCE NORTH 1438.302 FEET; THENCE SOUTH 89°10'11" EAST 265.00 FEET; THENCE SOUTH 1438.302 FEET TO THE POINT OF BEGINNING.

ALSO LESS EXCEPTING THE FOLLOWING:

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 89°10'11" WEST 1601.74 FEET; THENCE NORTH 00°00'00" EAST 66.00 FEET; THENCE SOUTH 89°10'11" EAST 1601.74 FEET, THENCE SOUTH 00°00'00" EAST 66.00 FEET TO THE POINT OF BEGINNING.

**PARCEL 4 (58-034-0357)**

A PARCEL OF LAND BEING A REMAINDER PORTION OF THE PROPERTY DESCRIBED IN THAT CERTAIN WARRANTY DEED, RECORDED JULY 25, 2003, AS ENTRY NO. 114556, AND THAT CERTAIN WARRANTY DEED RECORDED SEPTEMBER 18, 2003, AS ENTRY NO. 153186, IN THE OFFICE OF THE UTAH COUNTY RECORDER, SAID REMAINDER PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH, ALONG THE EAST LINE OF THE SAID PROPERTY DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED AS ENTRY NO. 114556, 2640.00 FEET, TO THE SOUTHEAST CORNER OF LAST SAID PROPERTY; THENCE WEST, ALONG THE SOUTH LINE OF LAST SAID PROPERTY, 1391.74 FEET, TO A POINT ON THE WEST LINE OF THE PROPERTY DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED DECEMBER 17, 2003, AS ENTRY NO. 197667, AND THE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE SOUTH 00°26'31" WEST, ALONG THE WEST LINE OF LAST SAID PROPERTY AND THE PROPERTY DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED FEBRUARY 13, 2004, AS ENTRY NO. 16983, 2000.26 FEET, TO THE NORTH LINE OF THE PROPERTIES INDICATED AS "PARCEL 9" AND "PARCEL 8" IN THAT CERTAIN WARRANTY DEED RECORDED JULY 9, 1991, AS ENTRY NO. 26841; THENCE NORTH 80°34'56" WEST, ALONG LAST SAID NORTH LINE, 609.72 FEET; THENCE NORTH 60°29'48" WEST, ALONG LAST SAID NORTH LINE, 346.51 FEET; THENCE NORTH 44°43'53" WEST, ALONG LAST SAID NORTH LINE, 512.15 FEET; THENCE NORTH 30°36'41" WEST, ALONG LAST SAID NORTH LINE, 285.80 FEET; THENCE NORTH 36°55'59" WEST, ALONG LAST SAID NORTH LINE, 628.35 FEET; THENCE NORTH 68°12'52" WEST, ALONG LAST SAID NORTH LINE, 452.11 FEET; THENCE NORTH 81°14'01" WEST, ALONG LAST SAID NORTH LINE, 414.21 FEET; THENCE NORTH 75°52'30" WEST, ALONG LAST SAID NORTH LINE, 40.82 FEET, TO A POINT ON THE EAST LINE OF THE PROPERTY DESCRIBED IN THAT CERTAIN SPECIAL WARRANTY DEED RECORDED NOVEMBER 26, 2002 AS ENTRY NO. 142889; THENCE NORTH 00°12'30" EAST, ALONG LAST SAID EAST LINE, 74.53 FEET, TO THE NORTHEAST CORNER OF LAST SAID PROPERTY; THENCE NORTH 61°41'58" WEST, ALONG THE NORTH LINE OF LAST SAID PROPERTY, 140.45 FEET; THENCE NORTH 49°18'19" WEST, ALONG LAST SAID NORTH LINE, 361.50 FEET, TO A POINT ON THE SOUTH LINE OF THE PROPERTY DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED SEPTEMBER 18, 2003 AS ENTRY NO. 153187; THENCE EAST, ALONG LAST SAID SOUTH LINE, 747.14 FEET, TO THE SOUTHEAST CORNER OF LAST SAID PROPERTY; THENCE NORTH, ALONG THE

EAST LINE OF LAST SAID PROPERTY, 676.02 FEET, MORE OR LESS; THENCE EAST, 2356.81 FEET, TO THE WEST LINE OF THE PROPERTY DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED DECEMBER 30, 2003, AS ENTRY NO 201952; THENCE SOUTH, ALONG THE WEST LINE OF LAST SAID PROPERTY, 671.47 FEET, MORE OR. LESS, TO THE NORTH LINE OF LAST SAID PROPERTY DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED AS ENTRY NO, 197667; THENCE NORTH 89°10'59" WEST, ALONG LAST SAID NORTH LINE, 35.61 FEET, TO THE NORTHWEST CORNER OF LAST SAID PROPERTY; THENCE SOUTH 00°26'31" WEST, ALONG THE WEST LINE OF LAST SAID PROPERTY, 5.05 FEET, TO THE POINT OF BEGINNING.

**PARCEL 5 (58-034-0355)**

A PARCEL OF LAND, BEING THE NORTHERLY PORTION OF THE PROPERTY DESCRIBED IN THAT CERTAIN WARRANTY DEED, RECORDED JULY 25, 2003, AS ENTRY NO. 114556, IN THE OFFICE OF THE UTAH COUNTY RECORDER, SAID 52.000 ACRES MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE WEST 330.00 FEET; THENCE SOUTH 1056.00 FEET; THENCE WEST 990.00 FEET; THENCE NORTH 25.22 FEET, TO A POINT ON THE NORTHERLY LINE OF THE PROPERTY AS DESCRIBED IN THAT CERTAIN WARRANTY DEED, RECORDED JULY 25, 2003, AS ENTRY NO. 114556, AND ON THE NORTH LINE OF THE PROPERTY AS DESCRIBED AS "PARCEL 1" IN THE REPORT PREPARED BY MERIDIAN TITLE COMPANY FILE NO. 102100-AB, AND THE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE NORTH 89°00'48" WEST, ALONG LAST SAID NORTH LINE, 36.16 FEET, TO THE NORTHWEST CORNER OF LAST SAID PROPERTY; THENCE SOUTH 00°00'03" WEST, ALONG THE WEST LINE OF LAST SAID PROPERTY AND PROPERTY LINE EXTENDED, 713.78 FEET, TO THE NORTH LINE OF THE PROPERTY AS DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED DECEMBER 30, 2003, AS ENTRY NO. 201952; THENCE SOUTH 89°59'57" EAST, 0.08 FEET, TO THE NORTHWEST CORNER OF LAST SAID PROPERTY; THENCE SOUTH, ALONG THE WEST LINE OF LAST SAID PROPERTY, 220.05 FEET, MORE OR LESS; THENCE WEST 2356.81 FEET, TO THE EAST LINE OF THE PROPERTY AS DESCRIBED IN THAT CERTAIN WARRANTY DEED, RECORDED SEPTEMBER 18, 2003, AS ENTRY NO. 153187; THENCE NORTH ALONG LAST SAID EAST LINE, 590.73 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE PROPERTY AS INDICATED AS "PARCEL 1" IN THAT CERTAIN WARRANTY DEED RECORDED APRIL 14, 2003, AS ENTRY NO. 56288; THENCE EAST, ALONG LAST SAID SOUTH LINE, 82.90 FEET; TO THE WEST LINE OF THE PROPERTY AS INDICATED AS "PARCEL 2" IN THAT CERTAIN WARRANTY DEED RECORDED APRIL 14, 2003, AS ENTRY NO. 56288; THENCE SOUTH, ALONG LAST SAID WEST LINE 129.22 FEET, TO THE SOUTHWEST CORNER OF LAST SAID PROPERTY; THENCE EAST, ALONG THE SOUTH LINE OF LAST SAID PROPERTY 390.26 FEET, TO THE SOUTHEAST CORNER OF LAST SAID PROPERTY; THENCE NORTH ALONG THE EAST LINE OF LAST SAID PROPERTY 446.47 FEET, TO THE

NORTHEAST CORNER OF LAST SAID PROPERTY AND THE NORTHERLY LINE OF THE PROPERTY DESCRIBED IN THAT CERTAIN WARRANTY DEED, RECORDED JULY 25, 2003, AS ENTRY NO. 114556; THENCE EAST, ALONG LAST SAID NORTHERLY LINE 401.74 FEET; THENCE NORTH, ALONG LAST SAID NORTHERLY LINE 330.00 FEET; THENCE EAST ALONG LAST SAID NORTHERLY LINE 330.00 FEET; THENCE SOUTH ALONG LAST SAID NORTHERLY LINE 330.00 FEET; THENCE EAST ALONG LAST SAID NORTHERLY LINE 528.00 FEET; THENCE NORTH ALONG LAST SAID NORTHERLY LINE 330 FEET; THENCE EAST ALONG LAST SAID NORTHERLY LINE 660.00 FEET; THENCE SOUTH ALONG LAST SAID NORTHERLY LINE 304.78 FEET TO THE POINT OF BEGINNING.

**PARCEL 6 (58-034-0372)**

A PARCEL OF GROUND LOCATED IN THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE WESTERLY RIGHT OF WAY LINE OF THE UTAH POWER AND LIGHT PROPERTY, WHICH POINT LIES NORTH 88°57'22" WEST ALONG THE SECTION LINE 224.82 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 21, THENCE SOUTH 04°43'35" WEST ALONG SAID PROPERTY LINE, 1754.01 FEET; THENCE NORTH 89°59'57" WEST 986.86 FEET; THENCE NORTH 00°00'03" EAST 713.78 FEET; THENCE SOUTH 89°00'48" EAST 990.00 FEET; THENCE NORTH 00°59'49" EAST, 1053.70 FEET; THENCE SOUTH 88°57'22" EAST, 123.20 FEET TO THE POINT OF BEGINNING.

**PARCEL 7 (58-034-0313)**

PART OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS WEST 3630 FEET, SOUTH 1373.25 FEET, WEST 82.90 FEET AND SOUTH 443.70 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 21; RUNNING THENCE WEST 1138.10 FEET; THENCE SOUTH 163.05 FEET; THENCE WEST 429 FEET; THENCE SOUTH 660 FEET; THENCE EAST 1567.10 FEET; THENCE NORTH 823.05 FEET TO THE POINT OF BEGINNING.

**PARCEL 8 (58-034-0312)**

PART OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS WEST 3630 FEET, SOUTH 1373.25 FEET AND WEST 82.90 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 21; RUNNING THENCE WEST 808.10 FEET; THENCE NORTH 53.25 FEET; THENCE WEST 330 FEET; THENCE SOUTH 496.95 FEET; THENCE EAST 1138.10 FEET; THENCE NORTH 443.70 FEET TO THE POINT OF BEGINNING.

**PARCEL 9 (58-034-0347)**

COMMENCING SOUTH 1439.05 FEET FROM THE NORTHWEST CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 540.95 FEET; THENCE EAST 429 FEET; THENCE NORTH 660 FEET; THENCE EAST 330 FEET; THENCE NORTH 1007.69 FEET; THENCE SOUTH 33°57'55" WEST 1358.53 FEET TO THE POINT OF BEGINNING.

**PARCEL 10 (58-034-0289)**

BEGINNING AT A POINT THAT IS WEST 3630.00 FEET AND SOUTH 769.12 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 2; THENCE WEST 128.75 FEET; THENCE SOUTH 74°33'16" WEST 60.49 FEET; THENCE SOUTH 81°40'50" WEST 206.35 FEET; THENCE NORTH 17°22'00" WEST 15.18 FEET; THENCE SOUTH 69°20'51" WEST 211.02 FEET; THENCE SOUTH 51°58'34" WEST 62.87 FEET; THENCE SOUTH 20°39'09" EAST 100.00 FEET; THENCE SOUTH 69°20'51" WEST 302.99 FEET; THENCE SOUTH 259.06 FEET; THENCE EAST 891.00 FEET; THENCE NORTH 604.13 FEET TO THE POINT OF BEGINNING.

**PARCEL 11 (58-034-0290)**

PART OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WEST 3630.00 FEET AND SOUTH 1056.00 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 21; THENCE SOUTH 446.47 FEET; THENCE EAST 390.26 FEET; THENCE NORTH 446.47 FEET; THENCE WEST 390.26 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING RIGHT OF WAY:

PART OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN UNITED STATES SURVEY, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT THAT IS 4521.00 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 21; THENCE SOUTH 1114.19 FEET; THENCE NORTH 69°20'51" EAST 64.12 FEET; THENCE NORTH 1136.81 FEET; THENCE WEST 60.00 FEET TO THE POINT OF BEGINNING.

**PARCEL 12 (58-034-0359)**

COMMENCING AT THE NORTHWEST CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN, THENCE EAST 1650.00 FEET, TO A POINT ON THE NORTH LINE OF THE PROPERTY DESCRIBED IN THAT CERTAIN QUIT CLAIM DEED RECORDED AUGUST 28, 1996, AS ENTRY NO. 70667; THENCE SOUTH ALONG THE WESTERLY LINE OF SAID PROPERTY 1056.00 FEET TO THE SOUTHERLY LINE OF SAID PROPERTY; THENCE EAST, ALONG THE

SOUTHERLY LINE OF SAID PROPERTY 792.00 FEET; THENCE NORTH, ALONG THE SOUTHERLY LINE OF SAID PROPERTY 330.00 FEET; THENCE EAST ALONG THE SOUTHERLY LINE OF SAID PROPERTY 317.99 FEET, TO THE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE NORTH 726.00 FEET, TO THE NORTH LINE OF SAID PROPERTY; THENCE EAST ALONG SAID NORTH LINE 2190.01 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID PROPERTY; THENCE SOUTH ALONG THE EAST LINE OF SAID PROPERTY 1056.00 FEET, TO THE SOUTHEAST CORNER OF SAID PROPERTY; THENCE WEST ALONG THE SOUTHERLY LINE OF SAID PROPERTY 990.00 FEET; THENCE NORTH ALONG SAID SOUTHERLY LINE 330.00 FEET; THENCE WEST ALONG SAID SOUTHERLY LINE, 660.00 FEET; THENCE SOUTH, ALONG SAID SOUTHERLY LINE 330.00 FEET; THENCE WEST ALONG SAID SOUTHERLY LINE 528.00 FEET; THENCE NORTH ALONG SAID SOUTHERLY LINE, 330.00 FEET; THENCE WEST ALONG SAID SOUTHERLY LINE 12.01 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

**PARCEL 13 (58-034-0360)**

COMMENCING EAST 1650 FEET FROM THE NORTHWEST CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 1056 FEET; THENCE EAST 792 FEET; THENCE NORTH 330 FEET; THENCE EAST 318.05 FEET; THENCE NORTH 726 FEET; THENCE WEST 1110.05 FEET TO THE POINT OF BEGINNING.

**PARCEL 14 (58-034-0441)**

THE EAST 113.27 FEET OF THE FOLLOWING DESCRIBED PROPERTY BEING PARALLEL TO THE EAST LINE THEREOF:

PART OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S SURVEY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS WEST 3630.00 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 21; THENCE SOUTH 769.12 FEET; THENCE WEST 128.75 FEET; THENCE SOUTH 74°33'16" WEST 60.49 FEET; THENCE SOUTH 81°40'50" WEST 206.35 FEET; THENCE NORTH 17°22'00" WEST 15.18 FEET; THENCE SOUTH 69°20'51" WEST 211.02 FEET; THENCE SOUTH 51°58'34" WEST 62.87 FEET; THENCE SOUTH 20°39'09" EAST 100.00 FEET; THENCE SOUTH 69°20'51" WEST 302.99 FEET; THENCE NORTH 1114.19 FEET; THENCE EAST 891.00 FEET TO THE POINT OF BEGINNING.

**PARCEL 15 (58-033-0329)**

COMMENCING SOUTH 13.75 FEET & EAST 800.37 FEET FROM THE SOUTHWEST CORNER OF SECTION. 16, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SLB&M.; THENCE NORTH 0°15'56" EAST 75 FEET; THENCE NORTH 34°3'23" EAST 2053.53 FEET; THENCE NORTH 78°3'0" EAST 21.41 FEET; THENCE NORTH 12°0'0" WEST 9.83 FEET; THENCE NORTH 78°3'0" EAST 18.05 FEET; THENCE NORTH 11°49'17" WEST 32.01

FEET; THENCE NORTH 33°57'46" EAST 797.01 FEET; THENCE NORTH 78°26'26" EAST 244.44 FEET; THENCE SOUTH 0°23'26" WEST 305.02 FEET; THENCE SOUTH 0°23'26" WEST 445.29 FEET; THENCE NORTH 24°19'46" WEST 101.83 FEET; THENCE SOUTH 65°37'56" WEST 189.51 FEET; THENCE SOUTH 33°38'8" WEST 634.43 FEET; THENCE SOUTH 74°49'37" EAST 128.85 FEET; THENCE SOUTH 0°59'13" WEST 76.54 FEET; THENCE SOUTH 4°56'9" WEST 4.24 FEET; THENCE NORTH 89°0'47" WEST 196.91 FEET; THENCE SOUTH 33°38'7" WEST 1048.29 FEET; THENCE ALONG A CURVE TO THE LEFT (CHORD BEARS: SOUTH 24°53'11" EAST 64 FEET, RADIUS = 528 FEET) AN ARC LENGTH OF 64.04 FEET; THENCE SOUTH 21°24'42" EAST 153.34 FEET; THENCE ALONG A CURVE TO THE RIGHT (CHORD BEARS: NORTH 83°47'13" EAST 28.47 FEET, RADIUS = 225.22 FT) AN ARC LENGTH OF 28.49 FEET; THENCE NORTH 87°24'38" EAST 158.85 FEET; THENCE ALONG A CURVE TO THE LEFT (CHORD BEARS: NORTH 65°48'17" EAST 258.31 FEET, RADIUS = 350.74 FEET) AN ARC LENGTH OF 264.54 FEET; THENCE NORTH 44°11'56" EAST 232.61 FEET; THENCE ALONG A CURVE TO THE LEFT (CHORD BEARS: NORTH 22°35'35" EAST 258.31 FEET, RADIUS = 350.74 FEET) AN ARC LENGTH OF 264.54 FEET; THENCE NORTH 0°59'13" EAST 76.34 FEET; THENCE NORTH 0°59'14" EAST 56.03 FEET; THENCE SOUTH 89°0'47" EAST 407.31 FEET; THENCE NORTH 0°59'13" EAST 539.48 FEET; THENCE ALONG A CURVE TO THE RIGHT (CHORD BEARS: NORTH 71°53'30" EAST 33.35 FEET, RADIUS = 106 FEET) AN ARC LENGTH OF 33.49 FEET; THENCE SOUTH 0°23'26" WEST 1315.16 FEET; THENCE NORTH 89°0'48" WEST 1847.84 FEET TO THE POINT OF BEGINNING. AREA 40.639 AC.

**PARCEL 16 (58-033-0208)**

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 16; THENCE SOUTH 00°22'16" WEST 557.52 FEET ALONG THE EAST LINE OF SAID SECTION 16; THENCE WEST 2282.05 FEET; THENCE SOUTH 88°25'20" WEST 109.24 FEET; THENCE SOUTH 65°40'14" WEST 283.52 FEET; THENCE SOUTH 65°36'47" WEST 268.71 FEET; THENCE SOUTH 74°03'34" WEST 591.5 FEET; THENCE SOUTH 34°03'24" WEST 1042.25 FEET; THENCE SOUTH 26°20'47" EAST 214.71 FEET; THENCE NORTH 33°38'08" EAST 717.08 FEET; THENCE SOUTH 89°00'47" EAST 460.86 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION (SAID POINT ALSO BEING DESCRIBED BY SURVEY AS BEING NORTH 00°22'06" EAST 1237.16 FEET AND WEST 3088.24 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 16); THENCE SOUTHWESTERLY 27.16 FEET ALONG THE ARC OF A 428.00-FOOT RADIUS CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 3°38'10", SUBTENDED BY A CHORD THAT BEARS SOUTH 02°48'18" WEST 27.16 FEET; THENCE SOUTH 0°59'13" WEST 521.79 FEET TO A POINT OF INTERSECTION WITH A 350.74 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 264.53 FEET ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 43°12'43", SUBTENDED BY A CHORD THAT BEARS SOUTH 22°34'34" WEST 258.30 FEET; THENCE SOUTH 44°11'56" WEST 232.601 FEET TO A POINT OF



INTERSECTION WITH A 350.74 CURVE THROUGH A CENTRAL ANGLE OF 6°56'58", SUBTENDED BY A CHORD THAT BEARS NORTH 24°53'11" WEST 64.00 FEET; THENCE NORTH 33°38'08" EAST 1048.27 FEET; THENCE SOUTH 89°00'47" EAST 196.61 FEET TO THE POINT OF BEGINNING.

**PARCEL 17 (58-033-0243)**

PART OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EAST SECTION LINE OF SAID SECTION 16, WHICH POINT LIES SOUTH 00°22'16" WEST ALONG THE SECTION LINE 529.86 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 16, THENCE SOUTH 00°22'16" WEST, 2124.87 FEET; THENCE NORTH 88°57'14" WEST, 2649.58 FEET; THENCE NORTH 00°23'24" EAST, 1929.02 FEET; THENCE NORTH 65°40'14" EAST, 283.52 FEET; THENCE NORTH 88°25'20" EAST, 355.06 FEET; THENCE SOUTH 62°02'57" EAST, 559.95 FEET; THENCE NORTH 54°53'55" EAST, 305.11 FEET; THENCE NORTH 61°45'44" EAST, 96.31 FEET; THENCE NORTH 23°29'45" WEST, 16.36 FEET; TO THE BEGINNING OF A CURVE TANGENT TO SAID LINE; THENCE NORTHWESTERLY 33.65 FEET ALONG THE CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 954.64 FEET AND A CENTRAL ANGLE OF 02°01'11"; THENCE NORTH 30°49'21" EAST, 240.09 FEET; THENCE NORTH 40°46'48" EAST, 158.96 FEET; THENCE NORTH 71°02'02" EAST, 369.74 FEET; THENCE NORTH 67°13'32" EAST, 178.58 FEET; THENCE SOUTH 34°08'20" EAST, 138.69 FEET; THENCE SOUTH 46°39'33" EAST, 560.70 FEET TO THE POINT OF BEGINNING.

**PARCEL 18 (58-033-0328)**

COMMENCING NORTH 0°23' 24" EAST 765.26 FEET & WEST 37.16 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 16, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SLB&M.; THENCE NORTH 89°0' 47" WEST 407 FEET; THENCE NORTH 1°0' 5" EAST 401.99 FEET; THENCE NORTH 9°48' 0" EAST 5.3 FEET; THENCE NORTH 0°59' 13" EAST 121.26 FEET; THENCE SOUTH 89°0' 47" EAST 406.09 FEET; THENCE SOUTH 0°59' 13" WEST 528.49 FEET TO THE POINT OF BEGINNING. AREA 4.932 AC.

**PARCEL 19 (58-033-0186)**

COMMENCING NORTH 20.64 FEET & WEST 1364.93 FEET FROM THE EAST 1/4 CORNER OF SECTION 16, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SLB&M.; THENCE SOUTH 12°7' 19" EAST 188.61 FEET; THENCE SOUTH 12°7' 19" EAST 238.51 FEET; THENCE ALONG A CURVE TO THE LEFT (CHORD BEARS: SOUTH 17°48' 43" EAST 189.3 FEET, RADIUS = 954.64 FEET) AN ARC LENGTH OF 189.61 FEET; THENCE SOUTH 23°30' 7" EAST 16.36 FEET; THENCE SOUTH 61°45' 51" WEST 96.31 FEET; THENCE NORTH 23°32' 4" WEST 24.33 FEET; THENCE ALONG A CURVE TO THE RIGHT (CHORD BEARS: NORTH 17°50' 42" WEST 208.34 FEET, RADIUS = 1050.64 FEET) AN ARC LENGTH OF 208.68 FEET; THENCE NORTH 12°6' 53" WEST 449.27

FEET; THENCE SOUTH 89°7' 53" EAST 98.58 FEET TO THE POINT OF BEGINNING. AREA 1.451 AC.

**PARCEL 20 (58-033-0182)**

COMMENCING NORTH 230.98 FEET & WEST 1327.91 FEET FROM THE EAST 1/4 CORNER OF SECTION 16, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SLB&M.; THENCE SOUTH 32°52' 45" WEST 113.65 FEET; THENCE SOUTH 12°7' 19" EAST 117.46 FEET; THENCE NORTH 89°7' 53" WEST 98.58 FEET; THENCE NORTH 12°6' 53" WEST 95.31 FEET; THENCE NORTH 57°6' 56" WEST 117.21 FEET; THENCE NORTH 78°26' 26" EAST 259.29 FEET TO THE POINT OF BEGINNING. AREA 0.567 AC.

**PARCEL 21 (58-034-0353)**

BEGINNING SOUTH 1405.59 FEET FROM THE NORTHWEST CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 33.46 FEET; THENCE NORTH 33°57'55" EAST 1358.53 FEET; THENCE NORTH 0°00'10" WEST 46.23 FEET; THENCE SOUTH 33°40'00 WEST 1,369.14 FEET TO THE POINT OF BEGINNING.

**PARCEL 22 (58-034-0341)**

A PARCEL OF GROUND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT WHICH LIES SOUTH 00°23'51" WEST ALONG THE SECTION LINE 872.14 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 21; THENCE SOUTH 00°23'51" WEST, 451.40 FEET; THENCE NORTH 89°33'58" WEST, 127.54 FEET; THENCE SOUTH 38°53'12" WEST, 335.86 FEET; THENCE SOUTH 57°13'14" WEST, 97.59 FEET; THENCE NORTH 04°43'35" EAST, 770.09 FEET; THENCE SOUTH 89°33'29" EAST, 360.13 FEET TO THE POINT OF BEGINNING.

**PROPERTY OWNED BY MT. SARATOGA LLC**

ALL THAT CERTAIN REAL PROPERTY LOCATED IN UTAH COUNTY, UTAH, DESCRIBED AS FOLLOWS:

COMMENCING WEST 3743.27 FEET FROM THE NORTHEAST CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN; THENCE SOUTH 769.12 FEET; THENCE WEST 15.48 FEET; THENCE SOUTH 74°33'16" WEST 60.49 FEET; THENCE SOUTH 81°40'50" WEST 206.35 FEET; THENCE NORTH 17°22'0" WEST 15.18 FEET; THENCE SOUTH 69°20'51" WEST 211.02 FEET; THENCE SOUTH 51°58'34" WEST 62.87 FEET; THENCE SOUTH 20°39'9" EAST 100 FEET; THENCE

SOUTH 69°20'51" WEST 302.99 FEET; THENCE NORTH 1114.19 FEET; THENCE EAST 777.73 FEET TO BEGINNING. AREA 16.089 ACRES.

PARCEL NO. 58-034-0442

**PROPERTY OWNED BY CAPITAL SECURITY MORTGAGE INC**

ALL THAT CERTAIN REAL PROPERTY LOCATED IN UTAH COUNTY, UTAH, DESCRIBED AS FOLLOWS:

COMMENCING NORTH 0°22' 6" EAST 1958.04 FEET & WEST 2691.22 FEET FROM THE SOUTHEAST CORNER OF SECTION 16, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SLB&M.; THENCE SOUTH 24°19' 46" EAST 151.48 FEET; THENCE SOUTH 0°59' 13" WEST 455.35 FEET; THENCE ALONG A CURVE TO THE LEFT (CHORD BEARS: SOUTH 76°14' 40" WEST 49.14 FEET, RADIUS = 106 FEET); THENCE SOUTH 0°59' 13" WEST 11.3 FEET; THENCE NORTH 89°0' 47" WEST 406.15 FEET; THENCE SOUTH 0°59' 13" WEST 30.72 FEET; THENCE NORTH 74°49' 37" WEST 128.54 FEET; THENCE NORTH 33°38' 8" EAST 634.43 FEET; THENCE NORTH 65°37' 56" EAST 189.51 FEET TO THE POINT OF BEGINNING. AREA 5.203 AC.

PARCEL NO. 58-033-0288

**PROPERTY OWNED BY TIMP LAND HOLDINGS, LLC**

ALL THAT CERTAIN REAL PROPERTY LOCATED IN UTAH COUNTY, UTAH, DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 89°10'58" WEST 293.97 FEET; THENCE NORTH 4°43'35" EAST 909.37 FEET; THENCE SOUTH 89°59'58" EAST 225.82 FEET; THENCE SOUTH 0°25'42" WEST 910.5 FEET TO THE POINT OF BEGINNING.

TAX SERIAL NO. 58-034-0324

**PROPERTY OWNED BY TRUSTEES OF WILKING AND THOMAS TRUSTS**

ALL THAT CERTAIN REAL PROPERTY LOCATED IN UTAH COUNTY, UTAH, DESCRIBED AS FOLLOWS:

PARCEL NO. 58-034-0323

A PORTION OF THAT REAL PROPERTY DESCRIBED IN DEED ENTRY NO. 1466:2014 IN THE OFFICIAL RECORDS OF THE UTAH COUNTY RECORDER DESCRIBED AS FOLLOWS:

COMMENCING N89°10'59"W 424.28 FEET FROM THE EAST 1/4 CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE N89°10'59"W 912.19 FEET; THENCE N0°00'03"E 891.46 FEET; THENCE S89°59'57"E 986.86 FEET; THENCE S4°43'35"W 907.53 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±19.58 ACRES

SAID PARCEL BEING DESCRIBED BY SURVEY AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY BOUNDARY OF THE UTAH POWER AND LIGHT COMPANY PROPERTY AS DEFINED BY SURVEY, BEING LOCATED N89°11'06"W ALONG THE QUARTER SECTION LINE 458.76 FEET FROM THE EAST 1/4 CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE N89°11'06"W ALONG THE QUARTER SECTION LINE 877.71 FEET; THENCE N0°00'04"W 891.46 FEET; THENCE N89°59'56"E 957.51 FEET TO THE WESTERLY BOUNDARY OF THE UTAH POWER AND LIGHT COMPANY PROPERTY AS DEFINED BY SURVEY; THENCE S5°03'00"W ALONG SAID BOUNDARY LINE 907.49 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±18.92 ACRES

**PARCEL NO. 58-034-0358**

ALL OF THAT REAL PROPERTY DESCRIBED IN DEED ENTRY NO. 1465:2014 IN THE OFFICIAL RECORDS OF THE UTAH COUNTY RECORDER DESCRIBED AS FOLLOWS:

COMMENCING SOUTH 8.27 FEET AND EAST 579.94 FEET FROM THE WEST 1/4 CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE S89°11'00"E 209.26 FEET; THENCE S49°18'19"E 437.72 FEET; THENCE S61°41'58"E 140.45 FEET; THENCE S0°12'30"W 73.54 FEET; THENCE N75°53'16"W 166.84 FEET; THENCE N61°54'28"W 252.69 FEET; THENCE N49°30'49"W 433.45 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±1.85 ACRES

SAID PARCEL BEING DESCRIBED BY SURVEY AS FOLLOWS:

BEGINNING AT A POINT LOCATED S89°11'06"E ALONG THE QUARTER SECTION LINE 574.34 FEET FROM THE WEST 1/4 CORNER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE S89°11'06"E ALONG THE QUARTER SECTION LINE 214.89 FEET; THENCE S49°18'19"E 437.76 FEET; THENCE S61°41'58"E 140.45 FEET; THENCE S0°12'30"W 73.54 FEET; THENCE N75°53'16"W 166.84 FEET; THENCE N61°54'28"W 61.03 FEET TO THE EASTERLY LINE

OF THAT REAL PROPERTY DESCRIBED IN DEED ENTRY NO. 44273:204 IN THE OFFICIAL RECORDS OF THE UTAH COUNTY RECORDER; THENCE ALONG SAID REAL PROPERTY THE FOLLOWING THREE (3) COURSES: N0°00'38"E 11.15 FEET; THENCE N61°54'36"W 141.52 FEET; THENCE N49°30'57"W 433.45 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±1.92 ACRES

**EXHIBIT B**  
**Planning Commission Report and Minutes**



**Planning Commission  
 Staff Report**

**Rezone, General Plan Amendment, Community Plan, Master Development Agreement  
 Mt. Saratoga  
 Thursday, July 28, 2016  
 Public Hearing**

<b>Report Date:</b>	Thursday, July 21, 2016
<b>Applicant:</b>	Edge Homes, LLC
<b>Owners:</b>	DCP Saratoga LLC, Capital Security Mortgage, Jan Wilkins, Mt Saratoga LLC
<b>Location:</b>	~1200-1900 West, between Pony Express Parkway and SR 73
<b>Major Street Access:</b>	State Road 73, Pony Express Parkway
<b>Parcel Number(s) &amp; Size:</b>	Size: ~688 acres 580330243, 580330329, 580330208, 580330328, 580330288, 580340442, 580340289, 580340347, 580340312, 580340313, 580340360, 580340441, 580340359, 580340355, 580340372, 580340333, 580340357, 580340323, 580340324, 580340340, 580340341, 580340230
<b>Parcel Zoning:</b>	R-3
<b>Adjacent Zoning:</b>	R-3, RR, RA-5
<b>Current Use of Parcel:</b>	Vacant
<b>Adjacent Uses:</b>	Residential, Agricultural, undeveloped
<b>Previous Meetings:</b>	PC Work Session 1/14/16 CC Work Session 2/2/16
<b>Previous Approvals:</b>	None
<b>Land Use Authority:</b>	City Council
<b>Type of Action:</b>	Legislative
<b>Future Routing:</b>	Public Hearing with City Council
<b>Author:</b>	Sarah Carroll, Senior Planner

- A. Executive Summary:**  
 The applicant is requesting approval of a General Plan Amendment and Rezone to change the designations of the property from Low Density Residential (R-3) to Planned Community (PC). They are also requesting approval of a Community Plan (CP) and Master Development Agreement (MDA) to master plan approximately 688 acres of property for residential and commercial uses. The CP lays out general densities and configurations, however future approvals must be obtained prior to construction, including Village Plans and subdivision plats. These future approvals will involve additional Planning Commission public hearings and City Council

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meetings, and will give the neighbors additional opportunities to see more specific plans prior to finalization.

**Recommendation:**

**Staff recommends that the Planning Commission conduct a public hearing on the applications, take public comment, review and discuss the proposal, and choose from the options in Section I of this report.** Options include forwarding a recommendation for approval with conditions to the City Council, continuing the item for additional information, or forwarding a recommendation for denial.

- B. Background:** The property is currently zoned R-3, Low Density Residential and was previously approved to be developed as a Planned Unit Development (PUD). The previous Master Development Agreement was approved in 2004 and was valid for 8 years, expiring on January 28, 2012. In 2008, an application was received to revise the approved MDA, but did not progress due to market conditions at that time. In 2013, changes were made to the Land Development Code to prevent the PUD from being used for future development.

The subject property is a hillside area with sensitive lands and slopes greater than 30 percent. The applicant would like to cluster housing types and preserve sensitive lands and that type of flexibility is now offered in the Planned Community District Zoning. The proposed MDA is intended to reinstate and amend the MDA that expired in 2012.

The Planning Commission held a work session on January 14, 2016 and the City Council held a work session on February 2, 2016. Minutes from those meetings are attached.

Based on the feedback received at these work sessions the applicant has reduced the proposed number of units from 2,649 to 2,553 and added two-family and three-family units to reduce the number of multi-family units. Two-family and three-family units were not included in the referendum.

- C. Specific Request:**

The application covers approximately 688 acres and proposes residential and commercial development and large amounts of open space as shown in the Community Plan and summarized below:

- Total acres: 687.93
- Community Commercial acreage: 7.50
- Residential/Civic acreage: 445.45
- Open space acreage: 234.98 (34.2% of overall acreage)
- Residential units: 2,553

Density is based on the overall project area minus the commercial acreage which results in 2,553 units within 680.43 acres and equates to 3.75 units per acre. Product type is broken down as follows:

Single family units: 988 (39%)  
 Single family units in flex neighborhoods: 285 minimum (11%)  
 Two and three family units in flex neighborhoods: 284 maximum (11%)  
 Multi-family units: 996 (39%)

The applicant is requesting approval of a rezone from R-3 to PC and a general plan amendment from Low Density Residential to Planned Community. They are also requesting approval of the proposed Community Plan and Master Development Agreement.

A brief outline of items in the CP that the Planning Commission and Council may wish to discuss further include, but are not limited to the following:

- The Community Plan includes some street designs for hillside areas that have been reviewed by the Development Review Committee (DRC) and the Fire Chief. These include a 2000' block length and a 750' cul-de-sac in hillside areas as identified in the CP. Staff has reviewed these and finds them acceptable in limited hillside locations as identified in the CP in order to avoid vast cuts in the hillside.
- Open space proposals are included and match the pending open space ordinance; the proposed points exceed the requirements of the pending open space ordinance.
- The Design Guidelines outline proposed lot sizes, setbacks, architectural styles, etc.
- Hillside standards are included in the CP; staff would like to propose these standards city-wide for hillside developments and a Code Amendment is anticipated to do so.
- Phasing of open space and amenities is proposed and outlined in the CP
- The applicant is requesting a waiver to the 20' buffer strip in some locations as outlined later in this report.
- A 63' cross section is proposed for a portion of Talus Ridge Blvd that is adjacent to an area with 30% slopes. This results in a sidewalk adjacent to the homes, but not adjacent to the steep slopes. The DRC has reviewed this request and finds it acceptable, a sidewalk that is not abutting homes would not see any snow removal or the City would be responsible.
- The applicant is proposing that the City own and maintain 205 acres of open space, including a trail and park network that will be installed by the developer.
- There are some 30% slopes shown in the CP that are proposed to be graded subject to further review under future applications. These areas included manmade areas, a portion of a drainage channel and areas one-half acre or smaller.

**D. Process:**

**General Plan Amendment and Rezone**

Section 19.17.03 of the City Code outlines the requirements for a rezone and General Plan amendment; first is a formal review of the request by the Planning Commission in a public hearing, with a recommendation forwarded to the City Council. The City Council then holds a public hearing and is the land use authority.



**Community Plan**

Section 19.26 of the Code describes development in the PC zone:

- (a) For a large-scale planned community district, an overall governing document is first approved, known as the District Area Plan (Section 19.26.13).
  - *The property does not exceed 2000 acres, therefore no DAP is required.*
- (b) A Community Plan is then proposed and approved (Sections 19.26.03-19.26.08). The Community Plan lays out the more specific guidelines for a sub-district within the DAP.
  - *The applicant has proposed a Community Plan for the entire property, which plan contains proposed guidelines for the property.*
- (c) Following and / or concurrently with the Community Plan, a Village Plan is proposed and approved (Sections 19.26.09 – 19.26.10). The Village Plan is the final stage in the Planned Community process before preliminary and final plats, addressing such details specific to the sub-phase as open space, road networks, and lots for a sub-phase of the Community Plan.
  - *The applicants are not yet proposing their first Village Plan(s); such plan(s) will come at a later date and be reviewed according to 19.26 of the Code and also according to the standards in any approved Community Plan.*

The approval process for the Community Plan includes:

1. A public hearing and recommendation by the Planning Commission (*scheduled for July 28, 2016*).
2. A public hearing and final decision by the City Council (19.26 states that the process is per Section 19.17, which addresses Code amendments / rezones and requires hearings with the Council.)

The Community Plan and MDA will vest the property in terms of density and general configuration and overarching themes and standards, however future approvals of Village Plans and subdivision plats will be required prior to beginning construction. Both of these approvals require Planning Commission and City Council review, and will provide the public additional opportunities to review the plans and provide input as specific subdivision layouts and phasing plans are proposed and finalized.

- E. **Community Review:** This item has been noticed as a public hearing in the *Daily Herald*; and mailed notices sent to all property owners within 300 feet.

During the public hearing for ABC Great Beginnings Rezone, one member of the public commented on the proposed density as it relates to Proposition 6.

- G. **General Plan:** The applicant is requesting a general plan amendment from Low Density Residential to Planned Community.

**Land Use Designation**

The applicant is requesting approval of a rezone and General Plan Amendment to designate the property as Planned Community. The Planned Community Land Use Designation is described in the General Plan below:

Planned Community. The Planned Community designation includes large-scale properties within the City which exceed 500 acres in size. This area is characterized by a mixture of land uses and housing types. It is subject to an overall Community Plan that contains a set of regulations and guidelines that apply to a defined geographic area. Required Village Plans contain regulations that apply to blocks of land and provide specific development standards, design guidelines, infrastructure plans and other elements as appropriate. Development in these areas shall contain landscaping and recreational features as per the City's Parks, Recreation, Trails, and Open Space Element of the General Plan.

The property exceeds 500 acres in size, and thus qualifies for consideration under the PC zone and designation. The proposal includes a Community Plan that contains regulations for the development of the property.

Staff analysis: If the rezone and GP amendment are approved the CP and MDA will be consistent with the Planned Community Land Use Designation.

**Density**

The proposed density is 3.75 units per acre. The Planned Community Zone does not identify a specific density; densities are approved and managed by the governing Community Plan.

**Proposition 6**

Per Proposition 6, which was approved in November 2013, the General Plan has been amended to limit the percentage of multi-family dwelling units in the City. Multi-family is limited to a maximum of 27%; the specific language is as follows:

- (a) require 73% of the dwelling units to be single family, detached housing;
- (b) limit single family units with a common wall and single story to no more than 11% of the dwelling units in the City;
- (c) limit multi-family, single story units to no more than 7% of the total dwelling units;
- (d) limit multi-family units with two stories to no more than 11 % of the dwelling units; and
- (e) limit multi-family units with more than two stories to no more than 2% of the dwelling units.

On July 21, 2016, staff updated the review of housing types. Based on the recorded developments, ~79.91% of the recorded lots/units are single family detached units; ~9.58% are multi-family two stories; ~8.93% are multi-family more than two stories. While (d) and (e) above have been exceeded, the overall count for multi-family does not exceed 27%.

The proposed community plan specifies that 39% of the units are intended to be multi-family, with the remainder in single family and flex neighborhoods (single, two, and three-family units).

The specific layout of these units has not yet been provided, and will be reviewed at a later date following the finalization of the Community Plan, however townhomes and stacked units are expected and would fall under (d) and (e) above. While the limit in the General Plan for these unit types has been exceeded, the Planning Commission and City Council may consider permitting them, in this case, for several reasons:

- The General Plan is advisory, and with a finding of good cause, the Land Use Authority may choose to approve a development that is not fully consistent with the General Plan. Such good cause would be the preservation of hillside areas and sensitive lands, large-scale infrastructure, and vast amounts of open space and an amenities schedule that exceeds the expectations of the pending open space ordinance.
- The items outlined below result in a unique project that does not exceed an overall density of 3.75 units per acre.
- The proposed CP includes major infrastructure including, but not limited to, a collector road connecting SR73 and Pony Express Parkway, improvements on arterial roadways, a water tank, a secondary water pond, storm drain and sewer infrastructure as outlined in the CP.
- The proposed CP includes 234.98 acres of open space (34.2% of overall acreage) and over 11 miles of trails; of which ~205 acres is proposed to be public open space and includes ~30 acres of improved open space.
- An amenities schedule to accommodate the needs of the projected population.
- The MDA is intended to modify and extend the MDA that was approved in 2004. The 2004 MDA included 524 Multi-family units.
- An application to amend the 2004 MDA was submitted in 2008, prior to Proposition 6, which was not fully processed and remained open and active. That application included a request for 574 multi-family units.
- The previous applications were PUD's which are no longer allowed by Code.
- The CP and MDA codify an application that was submitted prior to Proposition 6 (in 2008), which application also included multi-family units.
- Within the project ~70 acres out of ~688 acres is indicated for multi-family units; this is ~10% of the land area within the project.
- The majority of the project acreage will be open space, single-family, two-family, and three-family units consistent with the intent of the Proposition.

Staff analysis: consistent. The Land Use Authority may consider a proposal that exceeds the limits of the general plan if good cause is found. The CP contains proposals that will be a public benefit including preservation of hillside areas and sensitive lands, large-scale infrastructure, ~32% open space, and an amenities schedule that exceeds the expectations of the pending open space ordinance. ~205 acres are proposed to be public open space; including ~11 miles of trails and ~30 acres of open space to be improved by the developer. The majority of the project acreage is proposed for open space, single-family, two-family, and three-family development and is consistent with the intent of Proposition 6. Therefore, if the General Plan is amended then the MDA and CP will be generally consistent with the General Plan.

**H. Code Criteria:****Rezone and General Plan Amendments**

Rezoning and General Plan amendments are legislative decisions; therefore the Council has significant discretion when making a decision on such requests, and the Commission when making a recommendation. Therefore, the Code criteria below are provided as guidelines, and are not binding requirements.

Section 19.17.04 outlines the requirements for both a Rezone and a General Plan Amendment, and states:

The Planning Commission and City Council shall consider, but not be bound by, the following criteria when deciding whether to recommend or grant a general plan, ordinance, or zoning map amendment:

1. the proposed change will conform to the Land Use Element and other provisions of the General Plan;

***Consistent.** The application conforms to the Planned Community category identified in the General Plan.*

2. the proposed change will not decrease nor otherwise adversely affect the health, safety, convenience, morals, or general welfare of the public;

***Consistent.** The CP outlines that multi-family neighborhoods are located near the major roadways as to limit the impacts on single-family and flex neighborhoods. The project includes arterial roadways, the extension of Talus Ridge Blvd, per the City's Transportation Master Plan, major infrastructure and ~32% open space including ~11 miles of trails and ~30 acres of developed park space. Guidelines are included for ridgeline development to minimize the visual impact from other locations in the City and design standards are included. Village Plans have not yet been submitted and will allow for a more detailed review of each neighborhood.*

3. the proposed change will more fully carry out the general purposes and intent of this Title and any other ordinance of the City; and

***Consistent.** The application is consistent with the expired approval in that the R-3 PUD designation allowed for a maximum of 4 units per acre; the CP proposes 3.75 units per acre. The Planned Community zone is intended for projects over 500 acres and allows flexibility and clustering that is not currently described in any other zone. The Planned Community designation is characterized by a mixture of land uses and housing types.*

4. in balancing the interest of the petitioner with the interest of the public, community interests will be better served by making the proposed change.

**Consistent.** *The applicant is keeping an overall density of 3.75 units per acre, only placing higher densities on a small portion of the property (~10%); this density is the result of preserving ~32% of the project area as open space. The CP also includes an amenities package that exceeds the requirements of the pending open space ordinance and includes ridgeline development guidelines, design guidelines, theming, and large scale infrastructure and roadway improvements.*

**Community Plan**

**Section 19.26.06 – Guiding Standards of Community Plans**

The standards for a Community Plan are below:

1. Development Type and Intensity. The allowed uses and the conceptual intensity of development in a Planned Community District shall be as established by the Community Plan.  
*Staff finding: complies. The Community Plan contains general densities and locations, capped at an overall maximum density.*
  
2. Equivalent Residential Unit Transfers.  
*Staff finding: complies. The Community Plan contains a maximum of 2,553 units, and a provision for density to be transferred between Village Plans within the development area. The proposed transfers include a 20% limitations as allowed by Title 19.26.*
  
3. Development Standards. Guiding development standards shall be established in the Community Plan.  
*Staff finding: complies. The Community Plan contains standards and regulations to govern the development within future Village Plans and then subdivision plats and site plans. The majority of the project will be subject to the standards in the Development Code, with some items such as density, lot size, setbacks, and architecture governed more specifically in the Community Plan.*
  
4. Open Space Requirements.  
*Staff finding: complies. The Code requires 30% of the project to be placed in protected open space. The applicant is proposing a plan that meets this requirement, per the proposed Community Plan definitions of allowable open space and in accordance with the limitations in Section 19.26 of the Code.*
  
5. No structure (excluding signs and entry features) may be closer than twenty feet to the peripheral property line of the Planned Community District boundaries.
  - a. The area within this twenty foot area is to be used as a buffer strip and may be counted toward open space requirements, but shall not include required back yards or building set back areas.
  - b. The City Council may grant a waiver to the requirement set forth in this Subsection upon a finding that the buffer requirement will result in the creation of non-

functional or non-useable open space area and will be detrimental to the provision of useful and functional open space within the Project.

*Staff finding: up for discussion. Much of the plan complies, and in portions the applicants have requested a waiver to this requirement (see page 20, Exhibit 2). The waiver is requested where single family lots are proposed adjacent to the periphery.*

**19.26.07 – Contents of Community Plans**

The items summarized below are required to be part of a Community Plan:

1. Legal Description. *Provided*
2. Use Map. *Provided*
3. Buildout Allocation. *Provided*
4. Open Space Plan. *Provided*
5. Guiding Principles. *Provided*
5. Utility Capacities. *Provided – see Engineering staff report*
6. Conceptual Plans. Other elements as appropriate - conceptual grading, wildlife mitigation, open space management, hazardous materials remediation, fire protection. *Provided.*
8. Additional Elements.
  - a. responses to existing physical characteristics of the site *Provided*
  - b. findings statement *Provided*
  - c. environmental issues *Basic information provided*
  - d. means to ensure compliance with standards in Community Plan *Provided*
9. Application and Fees. *Provided*

**19.26.05 – Adoption and Amendment of Community Plans**

The criteria for adoption of a Community Plan are below:

- a. is consistent with the goals, objectives, and policies of the General Plan, with particular emphasis placed upon those policies related to community identity, distinctive qualities in communities and neighborhoods, diversity of housing, integration of uses, pedestrian and transit design, and environmental protection;
 

*Staff finding: consistent. See Section G of this report.*
- b. does not exceed the number of equivalent residential units and square footage of nonresidential uses of the General Plan;
 

*Staff finding: complies. The General Plan does not identify ERUs or square footage for the Planned Community designation, and the overall density proposed carries forward the allowable range under the existing Low Density Residential PUD land use. Square footages of commercial development will be guided by the pending Community Commercial zone.*
- c. contains sufficient standards to guide the creation of innovative design that responds to unique conditions;

**Staff finding: up for discussion.** *The proposed standards will guide the development and will permit the proposed densities and maintain quality of design (see Design Guidelines, pg. 51-53 of CP). During the work sessions the PC and CC had concerns with the proposed minimum lot size of 2,500 square feet and suggested more variety. The minimum lot sizes now range from 3,500 to 5,000 square feet with an indication that “more appropriate site specific standards will be established at the Village Plan level”.*

- d. Is compatible with surrounding development and properly integrates land uses and infrastructure with adjacent properties;  
**Staff finding: up for discussion.** *Village 5 Neighborhood 3 is proposed for multi-family development and is adjacent to an existing Rural Residential development. However, there is a 100’ wide powerline corridor between these developments and the CP includes standards for ridgeline development. The other two multi-family developments are not adjacent to existing development and are located with direct access to an arterial roadway.*
  
- e. Includes adequate provisions for utilities, services, roadway networks, and emergency vehicle access; and public safety service demands will not exceed the capacity of existing and planned systems without adequate mitigation;  
**Staff finding: pending.** *The applicants are working with engineering to ensure that adequate infrastructure can be provided, and identifying appropriate mitigation as necessary. The impacts of City-wide growth on public safety are evaluated by the City Council on an annual basis to determine staffing needs.*
  
- f. Is consistent with the guiding standards listed in Section 19.26.06; and  
**Staff finding: up for discussion.** *The application complies with standards 1-4, however the project is requesting a partial exemption from standard 5 as outlined on page 8 of this report (this is regarding the 20’ periphery setback).*
  
- g. contains the required elements as dictated in Section 19.26.07.  
**Staff finding: complies.** *The application contains the required items.*

**Master Development Agreement**

Section 19.26.11 requires a Master Development Agreement, subject to the legislative discretion of the City Council. Approval shall generally conform to and include by reference, if appropriate, the requirements found in Section 19.13.06 (now 19.13.07), except for the plat, site plan, and CCR’s or elevations are not required until later.

19.13.07(2) outlines the requirements for the contents of an MDA. The proposed MDA includes the required contents listed in this section; except that bond documents are not practical at this particular stage of development and will be required with each preliminary plat. If the Planning Commission and City Council add requirements, the MDA will be updated to include those requirements.

**I. Recommendation and Alternatives:**

**Staff recommends that the Planning Commission discuss the applications and choose from the options below.**

**OPTION 1: POSITIVE RECOMMENDATION FOR APPROVAL WITH CONDITIONS**  
*(Separate motions are provided for the Rezone and GPA and for the CP and MDA)*

**Motion for Rezone and General Plan Amendment:**

“Based upon the information and discussion tonight, I move to forward a recommendation for approval of the Rezone and General Plan Amendment, from Low Density Residential (R-3) to Planned Community (PC) for the MT Saratoga project, as identified in the Community Plan, with the Findings and Conditions in the staff report:”

**Findings**

1. The Rezone and General Plan Amendment will not result in a decrease in public health, safety, and welfare as outlined in Section G of the staff report, which section is hereby incorporated by reference.
2. The Rezone and General Plan Amendment are consistent with Section 19.17.04 of the Code, as articulated in Section H of the staff report, which section is hereby incorporated by reference.

**Conditions:**

1. The rezone shall not be recorded until accompanied by a finalized Community Plan and MDA. The Community Plan shall in all respects be consistent with the MDA.
2. The MDA is in draft format and is still being finalized. Final approval shall be granted by the City Council.
3. Any other conditions added by the Planning Commission or City Council: \_\_\_\_\_

**Motion for Community Plan and Master Development Agreement:**

“Based upon the information and discussion tonight, I move to forward a recommendation for approval of the Community Plan and Master Development Agreement for the MT Saratoga project, as identified in the Community Plan, with the Findings and Conditions in the staff report:”

**Findings**

1. The Community Plan and Master Development Agreement are consistent with the General Plan, as articulated in Section G of the staff report, which section is hereby incorporated by reference.
2. The Community Plan and Master Development Agreement are consistent with the Land Development Code, as articulated in Section H of the staff report, which section is hereby incorporated by reference.



**Conditions:**

1. All requirements of the City Engineer shall be met.
2. All other Code requirements shall be met.
3. The rezone shall not be recorded until accompanied by a finalized Community Plan and MDA. The Community Plan shall in all respects be consistent with the MDA.
4. Any other conditions added by the Planning Commission or City Council: \_\_\_\_\_

**OPTION 2: CONTINUANCE**

The Planning Commission may choose to continue the application. "I move to **continue** the [Rezone, General Plan Amendment, Community Plan, MDA] for MT Saratoga to the [DATE], with direction to the applicant and Staff on information and / or changes needed to render a decision, as follows:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**OPTION 3: NEGATIVE RECOMMENDATION**

The Planning Commission may choose to forward a negative recommendation:

"Based upon the information and discussion tonight, I move to forward a recommendation for **denial** of the Rezone, General Plan Amendment, Community Plan, and Master Development Agreement for the MT Saratoga project, as identified in the Community Plan, with the Findings below:

1. The applications are not consistent with the General Plan, as articulated by the Planning Commission: \_\_\_\_\_, and/or
2. The applications do not comply with Section 19.17.04 of the Development Code, as articulated by the Planning Commission: \_\_\_\_\_, and/or
3. The applications do not further the general welfare of the residents of the City, as articulated by the Planning Commission: \_\_\_\_\_.

"I also move to forward a recommendation for denial of the MT Saratoga Community Plan and MDA based on the Findings below:

1. The applications are not consistent with the General Plan, as the current designation is Low Density Residential and not Planned Community.
2. The applications do not comply with Section 19.04 of the Development Code, regarding Land Use Zones, specifically:
  - a. the request exceeds the allowed density in the R-3 zone.
  - b. there are proposed uses that are not allowed in the R-3 zone; and

- c. setbacks, lot widths, lot sizes, and other development standards are not consistent with the R-3 zone; and
  - d. Community Plans are not permitted in the R-3 zone.
3. The MT Saratoga Community Plan and MDA do not further the general welfare of the residents of the City, as articulated by the Planning Commission.

**J. Exhibits:**

- 1. City Engineer's Report
- 2. Location & Zone Map
- 3. General Plan Map
- 4. PC Work Session Minutes 1/14/16
- 5. CC Work Session Minutes 2/2/16
- 6. Proposed Community Plan
- 7. *DRAFT* MDA (to be added later)

**City of Saratoga Springs  
Planning Commission Meeting  
July 28, 2016**

Regular Session held at the City of Saratoga Springs City Offices  
1307 North Commerce Drive, Suite 200, Saratoga Springs, Utah 84045

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Minutes

**Present:**

Commission Members: Kirk Wilkins, Sandra Steele, David Funk, Ken Kilgore, Troy Cunningham, Brandon MacKay

Staff: Kimber Gabryszak, Planning Director; Mark Christensen, City Manager; Sarah Carroll, Senior Planner; Kevin Thurman, City Attorney; Gordon Miner, City Engineer; Nicolette Fike, Deputy Recorder

Others: Steve Maddox, Melanie Jex, Amanda Yates, Jayden Yates, Christine Finlinson, Patricia Pikus, Lee Pikus, Curtis Levitt, Brandon Watson, Greg Magleby, Lisa Swearingen, Vaughn Barrett, Caral Barratt, Greg Larson, Garner Oleson, Kelsey Dean, Koren Ashknazi, Clark Layman, Jen Morrison

**Excused:** Hayden Williamson

**Call to Order - 6:32 p.m.** by Vice Chair David Funk

1. **Pledge of Allegiance** - led by Jayden Yates

2. **Roll Call** – A quorum was present

3. **Public Input**

**Public Input Open** by Vice Chair David Funk

No input tonight.

**Public Input Closed** by Vice Chair David Funk

Chairman Wilkins arrived at this time.

4. **Public Hearing: Rezone from R-3 to Planned Community, General Plan Amendment from Low Density Residential to Planned Community, Community Plan, and Master Development Agreement for Mount Saratoga, located approximately 1200-1900 West, between Pony Express Parkway and SR73, Edge Homes Applicant.**

Senior Planner Carroll presented the plans. The application covers approximately 688 acres and proposes residential and commercial development and large amounts of open space. Density is based on the overall project area minus the commercial acreage which results in 2,553 units within 680.43 acres and equates to 3.75 units per acre. The applicant is requesting a waiver to the 20' buffer strip in some locations. The applicant is proposing that the City own and maintain 205 acres of open space, including a trail and park network that will be installed by the developer. The applicant will be required to install a water tank. There are some slopes they are requesting to be cut and filled. Sarah reviewed sensitive lands and hillside standards, proposed design guidelines, and architectural standards.

Applicant Steve Maddox mentioned that they have tried to employ as much labor in the front end and to understand the land and not just doing something one dimensional. The infrastructure is their biggest stumbling block as the highest point in the City. They have tried to go above what is asked by the City to enhance the community. The exceptions they have asked for are not cost saving but will make things efficient and be able to build on the hillsides. They have tried to implement their expertise along with their engineer and City staff. They are asking for setbacks based on livability and design, not because they are trying to make additional units. They have taken over 6 projects in the city that became dysfunctional

during the recession. This is one they have been able to take more of a raw canvas on. They feel their 11 miles of trails will be a tremendous asset to the community. They are trying to make it harmonious with the natural surroundings and have connectivity. They have some commercial along Pony Express; they do not have a user for that yet. They will start in the south and move north and want to be able to connect thru Talus Ridge Blvd. the first year.

**Public Hearing Open by Chairman Kirk Wilkins**

Koren Ashknazi commented that they are a rural neighborhood, and she noted their Sage Hills area doesn't have city infrastructure and they were annexed without their say to the City. They are happy to have the new neighbors but she is concerned about a connector road through Sage Hill. The cul-de-sac today is all broken because of the trucks serving Edge Homes. She is concerned about all the traffic through there. She would like to keep their area private with their 5 acres. The City hasn't given them utilities and wants to keep it rural but if they want to develop the connector then the city should give them sidewalks and lights and things.

Lisa Swearingen is a realtor for century 21. She supports this development. Everything Edge Homes has done has been well done. There is a lot of demand for these houses. She feels it brings many tax dollars to the City.

Melanie Jex is excited for all the trail development and welcomes the new homes. Her concern is for the added traffic on 800 West that feeds to Talus Ridge Blvd. She would like for a plan to be in place for a turn lane to be striped in and out of Sunrise Meadows for the increased traffic.

Amanda Yates likes the plan and welcomes the growth but is concerned for their road on Sage Hill with the road not being able to support the infrastructure and traffic. Also the road is used for exercise a lot. She is concerned with how many high density units there are planned and having them attract higher crime.

Commissioner Wilkins commented that they would try to answer all the questions after public comment.

Jen Morrison, resident of Eagle Mountain, was concerned about possible connectors to Eagle Mountain. (Senior Planner Carroll responded they tried but were not allowed to connect to Eagle Mountain.) She wanted to know what the buffer was between this and their retention pond. She wanted to know where the multifamily housing was planned and if it would affect their traffic. She would like to see a preservation plan for sensitive resources in the development.

Lee Pikus has owned 5 acres in the Sage Hills area. He wants to know what happens if the water can't get in place, and if it would be a well or piped. He is concerned about the connection to the existing cul-de-sac and that road won't be able to handle the traffic that goes through that road. He asked who would improve that road so that it could connect. Why do they need so many rentals instead of single family homes, it costs more to the police for the problems.

Christine Finlinson noted the many changes they have seen in the city since they built. She would like to urge them to change the zoning and amend the general plan and master plan, the plans that were in existence when Saratoga was adopted are no longer appropriate for the growth we see here. When they were annexed into the City they weren't given many options, they have tried to be good citizens with the City and have worked with them for roads and things. What they are asking now is to encourage them to allow Edge Homes to go forward with their development because they would also like to have the same option to develop in the future, they are not at that point yet.

Vaughn Barrett lives in the Sage Hills area, that directly borders this development on the west. He hopes they will try to hold the line on high density, he understands there is a need but it is a slippery

slope, which is his primary concern. He is concerned about water; Sage Hills has been slow to develop because of the difficulty of getting water. They were told years ago that they were in the wrong pressure zone (3) for culinary water, those west of them share that pressure designation. It's an opportunity to mesh and provide water to future development in this area. For years they enjoyed access on their western boundary as a gentleman's agreement, they request somehow that access be maintained to the western boundary of their property. He understands this is a phased plan and they have time to consider and adjust a little bit.

Greg Larsen echoed the concern about increased traffic on 800 W. especially during school season. He noted it would be good if there was some land reserved for a school and noted the overcrowding this will make in the existing school. He was concerned also about water availability and about traffic on Sage Hills. Either the access needs to change or the existing roads need to be improved greatly. He also thinks that people will want to buy homes to live and stay and they don't need so much high density. The high density will cripple the School without working with the school district. He asked if someone could go over the open space plan a little more.

Clark Layman is concerned about the added homes around his blocking views and crowding. He is concerned about the water and where it will be coming from. He is concerned about the high density housing. He has been in many different types of cities and one common thing is that crime usually finds its way into those types of communities, especially with rentals.

**Public Hearing Closed by Chairman Kirk Wilkins**

Steve Maddox addressed some of the public questions. He noted Water is their number one concern also. They have met with the Central Utah Water Conservancy District. They will pump water into a million gallon tank and in addition do a second pond which will support the zone. The infrastructure the City is committed to is well beyond capacity for 15 years of growth.

He noted the density is equivalent to what they have done at Talus Ridge. He believes the low income they refer to are the children of his generation that need to afford housing. They have created pockets of HOA open space to control people's idea of a well-groomed lawn and maintenance and longevity to increase value and livability. He doesn't build apartments for rent. He feels it will be a community to allow people to both start and retire here. The Open space is a hybrid of groomed areas, amenities, and natural space. They feel they have planned not just what is best for this community but the whole City. They have been in communication with the school district and the LDS church. There are not specific sites identified for churches yet, the church will choose their own places later. The district has already identified where they want a school and what type of school.

Steve Maddox addressed the traffic and striping on 800, they feel they can work with City to procure that. The connection on Sage is not a request of Edge homes, but of the City for connectivity. They are in support of staff's recommendation, it is many years out and they can look at connectivity for all services. They would hope people can ride trails in Nov. They hope the amenity package encourages people to get outside. They want to be harmonious and not destroy what is there. He isn't aware of another project that will have this large amount of open space. Clustering will allow for preserving some of that.

Steve Maddox commented that they are trying to protect some of the natural features of the area. There was a buffer of about 180 feet from the border to an Eagle Mountain residence. He is not building for-rent product. He noted they are building this product in many communities and it is about a 40% empty nester ratio in their products. Seniors that want to be a part of the community, but not care for a yard.

Senior Planner Carroll addressed the question of developing the connectivity to Sage Hills. They will require a traffic study and will review the loading on the road and see what improvements are required on that road. The Code does require interconnection for many reasons. There is the main road that leads out to 73 from Sage Hills and at that time they will review traffic and see what impact that has on adjacent roads. It is an old County Road that is being maintained by the City. She pointed out a footprint area for a future Elementary School.

Senior Planner Carroll noted areas for the tanks and ponds, higher in elevation than the homes. She noted the trail intended to maintain access to the power line corridor. The access road would stay. The improved trail would lead to a variety of interests like the equestrian center nearby.

Senior Planner Carroll spoke further to open space; she noted the manicured lots, darker green on the map, with amenities. Lighter green was native with trails. The darker lines are trail system. The developer will improve roads in their project traffic studies will decide if things need to be done outside the development.

City Manager Christensen feels many comments were very appropriate; right now the Sage Hills area is treated more like a rural area, it is on wells and septic systems, connection with Mt Saratoga would allow us to build infrastructure which would be available to service that area in concept. It will be Central Utah Water and will require booster stations and pumps. It will become a stronger overall system as more capital projects are added to provide a more consistent service for the City. With this application we will have access to an elevation that will allow them to build the infrastructure for the zone 3 area. It would not be connected across SR 73 on different elevations. He noted it would be able to upsize the pond servicing Sunrise Meadows. It will be addressed at the various phases of this project. The plan they have will address those problems. In order to repair the old Sage Hills road it could need a complete rebuild. It is currently on the Road Maintenance Plan based on an engineer's estimate.

City Manager Christensen touched on speaking with the school district; he has met with them several times in the last few weeks. We are actively working with them on growth issues and they are looking in the site for a future school.

City Manager Christensen addressed the question of crime and high density. If you look at the theory of development the lower densities have a higher economic cost, around 5-6 units per acre the density actually is more of a break even. Will high density equal crime? The answer is greater population equals crime; that is the better indicator. The fear of rental units is what people ascribe to crime, where this project is owner occupied it is not necessarily the factor. From a large standpoint we have seen crime increase in the City as we have seen the population increase. It's not necessarily occurring in high density areas.

City Engineer Miner commented that they will have to bring infrastructure, right now we can't service water with what we have now, and that is why they are bringing it. It will bring it not only for their development; it will have the opportunity to help other developments.

Commissioner Steele noted when you talk about the cul-de-sac and only servicing a few lots, with the connectivity there would be more traffic so that may move it up to be fixed. She thanked the public for coming. It seems counterintuitive, but the City becomes better infrastructure wise with added improvements. Development does benefit everybody. It's good to see designs that meet our code. She asked how wide the alleyways were. Brandon Watson with Edge Homes noted the alleyways were 20-24' wide banded by apron of some sort about 2 feet. Commissioner Steele was concerned with alleyways less than 24 feet. There will be garage door openers. On page 52 of the plan she is concerned about the color scheme and floor plan mixing. Steve Maddox noted there was a redundancy built into it so they are not allowed to replicate within 3 homes of each other. They self-regulate that as a matter of good business. Commissioner Steele mentioned that this developer has done things before we asked and beyond what has been asked and she is confident they will do it in the manner they say they will do it.

Commissioner Kilgore asked about percentages required for proposition 6, they didn't seem to add up correctly. Senior Planner Carroll remarked that he was correct that they added to over 100% but that was the exact wording of the proposition. Planning Director Gabryszak noted it requires no less than 73% to be single family. Of the other ranges you can have up to those numbers. We don't have any single story town homes; there are a handful of duplexes. We are still well within the guidelines regardless of the category. Commissioner Kilgore asked about the culinary water for outdoor uses. City Engineer Miner noted it was temporary. As the development and infrastructure comes online the secondary would become permanent. Steve Maddox commented they are targeting 500ish units to make sure the pond is in place ahead of time. He explained that the flex was to allow for building whichever type unit what was more needed, but it has

a cap on the amount of units. Commissioner Kilgore asked what kind of tax impact it would be to take over the 205 acres. City Manager Christensen said they budget a few thousand per manicured acre, much of this is trails which is cheaper to maintain and less water. Similar area around the benches has proved to be successful. It is a City Council decision to make if they accept it. Commissioner Kilgore asked if the engineer and fire chief were ok with filling and cutting the slopes. City Engineer Miner replied that it can be done. City Manager Christensen said there are engineering standards they are required to meet. Commissioner Kilgore mentioned lighting was not mentioned in the plan. Senior Planner Carroll replied as it stands they are subject to our Code. He also mentioned that there was nothing about ADU's, which would then also be subject to City Code. Commissioner Kilgore noted they were asking for waiver on some of the boarders and if staff had any issues. Senior Planner Carroll replied in those locations there wasn't a concern.

Commissioner MacKay asked about the concession on the 205 acres. Senior Planner Carroll replied that every home pays a park impact fee. Because the developer is installing the amenities and improved areas they are asking they not pay that credit for each building permit. It would have to be discussed further; there are some state law criteria. City Manager Christensen mentioned that a lot of open space may not qualify, it may require amendments, but some others that would qualify for park credit. We try to find a balance what is proposed meets the intent of our Master Plan. Commissioner MacKay asked what amenities they have for disabled or elderly. Steve Maddox noted that many of the buyers they have coming are an older demographic. Everything they do will be ADA compliant. Each Village will be part of independent HOA's, individual pods would be HOA controlled with the accessible items and tot lots and things.

Commissioner Cunningham commented about Utah Rock coming in to help with preservation, whatever method they do he is hoping for some sort of markers to explain about native features. Steve Maddox welcomed any input he may have for preservation.

Commissioner Funk thanked the community for their comments. He also shares some of their concerns. He thanked the developer for their plans and wasn't sure we could get another developer that would go to the lengths they did and develop the plans like they did. He suggested to the residents of Sage Hills, if they truly wanted to be rezoned that they request that of the City. He knows that the City doesn't always do things as fast as the citizens want them to. He knows the City is strapped on time and money. One thing he didn't hear was about people that head up that way with 4 wheelers and what impact that would have on them or on the developer. It may be something they want to look into. Talus Ridge Dev. has caused a large amount of increased traffic on 800 W. and it's already being impacted and he isn't sure if the City has looked it or not yet but they may want to look at it for restriping. He is very pleased with what they are doing; he is a little concerned about some of the slight changes from our normal code. One is the 18 foot setback of the garage rather than the 20 feet, the covered vs. the enclosed parking, should probably be allowed, question on the buffer zone waiver on the east side. Senior Planner Carroll responded that the Community Plan Zone allows it and specifically requires the applicant to request a waiver.

Commissioner Wilkins asked about impact fees, what the decision hinges on and what the City leans toward. City Manager Christensen noted it is up to City Council. Things we want to look at are if we need to amend our parks master plan to include trails and things. Commissioner Wilkins is concerned about the 18' driveways as well especially with larger vehicles. With the parking he is ok with that. He is ok with the waiver on the buffer on the east side.

Commissioner Steele would ask if they vote tonight if they could separate the Master Development Agreement out. Planning Director Gabryszak noted they have worked to make sure the relevant code changes are in the Community Plan not the Master Development Agreement, they can break them up. Senior Planner Carroll noted the Master Development Agreement solidifies everything they have gone over tonight with legal language. The attorneys are still working on some fine details. There is a condition that it is in draft format and still needs finalized and they can forward the draft to City Council. If it was

postponed it would postpone the project considerably. City Manager Christensen noted that conditions of the rezone are tied up in it; if they table it will prevent them for taking action on the rezone. Commissioner Kilgore noted he had reviewed it and it appeared to have been based on the previous Master Development Agreement that was approved. He asked the applicant what he thought about the new amenity point system. Steve Maddox thinks it's fantastic, transparent and fair.

**Motion made by Commissioner Funk that Based upon the information and discussion tonight, I move to forward a recommendation for approval of the Rezone and General Plan Amendment, from Low Density Residential (R-3) to Planned Community for the MT Saratoga project, as identified in the Community Plan, with the findings and conditions in the staff report. Seconded by Commissioner Cunningham. Aye: Sandra Steele, David Funk, Kirk Wilkins, Ken Kilgore, Troy Cunningham, Brandon MacKay. Motion passed 6 - 0.**

**Motion made by Commissioner Steele that Based upon the information and discussion tonight, I move to forward a recommendation for approval of the Community Plan for the MT Saratoga project, as identified in the Community Plan, with the Findings and Conditions in the staff report. Seconded by Commissioner Funk. Aye: Sandra Steele, David Funk, Kirk Wilkins, Ken Kilgore, Troy Cunningham, Brandon MacKay. Motion passed 6 - 0.**

**Motion made by Commissioner Funk that Based upon the information and discussion tonight, I move to forward a recommendation for approval of the Master Development Agreement for the MT Saratoga project, as identified in the Community Plan, with the Findings and Conditions in the staff report. Seconded by Commissioner Kilgore. Aye: David Funk, Kirk Wilkins, Ken Kilgore, Troy Cunningham, Brandon MacKay. Motion passed 5 - 0. Abstain: Sandra Steele.**

Commissioner Steele would like the record to show she abstained due to not having enough time to review the document.

A short break was taken at this time.

**5. Work Session: Accessory Dwelling Units Code Amendments.**

Planner I Baron presented the proposed amendments. He reviewed some of the revisions due to feedback. There was a recommendation to look at Provo City definition, which was included in the Staff report. There was a revision bringing lot size up to 8000 sq. ft. The parking was changed to a min. of 2 parking spaces. There was a table prepared of subdivisions CC&R's that may or not allow Accessory Dwelling Units (ADU).

Commissioner Wilkins asked what the process would be for a neighborhood to go through if their CCR's don't address it. Planning Director Gabryszak replied they could form an HOA and go through process to allow it. HOA's could amend their own CCR's to allow it. There can be a difference between those that are part of a Master Development Agreement or those that are only the subdivision. Those would not be allowed to have ADU's because they were not allowed in the Master Development Agreement the City agreed to. Staff is no longer recommending an overlay zone based on CCR's and where they are allowed. They recommend a citywide program, allowed regardless of CCR's, and put in place enough requirements so you don't see them pop up everywhere. They are trying to keep it minimal so you can do it and retrofit to meet the requirements but not make it so low that it's unsafe and have too many impacts on neighborhoods. We feel those protection are going to be enough. As developers come through the City they can choose whether they want to allow it in their CCR's, anything they are silent about defaults to City Code. If they are in a Master Development Agreement that clearly says single family they can't allow it. They would have to amend the Master Development Agreement.

Commissioner Kilgore asked about max size for an ADU, 1000 sq. ft. or 1/3 of the main home whichever is larger. A 1200ft. home could have a 1000 ft. Apartment. He thinks a minimum makes sense for lot size.



Commissioner Steele noted on Item #6 shall provide parking, what kind of development, residential or commercial required that. Staff replied Non-residential.

Commissioner Funk asked looking at the patio and lawn area, would they be allowed to put up a fence. Planning Director Gabryszak would recommend that they allow a fence but not a 6 foot fence, more like a 3 foot decorative fence so people could see out. Commissioner Wilkins mentioned that they had to build fences along trails. Planning Director Gabryszak noted in this location perhaps they may not require a fence in some areas along the trail.

7. **Approval of Minutes:**  
a. **July 14, 2016**

Motion made by Commissioner Steele to approve the minutes of July 14, 2016. Seconded by Commissioner Funk. Aye: Sandra Steele, David Funk, Kirk Wilkins, Ken Kilgore, Troy Cunningham, Brandon MacKay. Motion passed 6 - 0.

8. **Reports of Action.** – No reports of Action.

9. **Commission Comments.** – No comments

10. **Director's Report:**

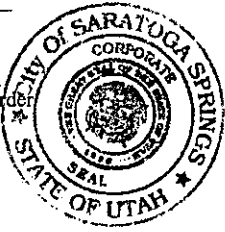
- a. **Council Actions** – approved Annexation Policy Plan, Discount Tire with reduction in parking, amendment to River Heights D.
- b. **Applications and Approval**
- c. **Upcoming Agendas** – on the 11<sup>th</sup> it will be a joint meeting with City Council. They will be talking about updates to the General Plan.
- d. **Other**

11. **Motion to enter into closed session.** - No closed session was held.

12. **Meeting Adjourned at 9:53 p.m. by Chairman Kirk Wilkins**

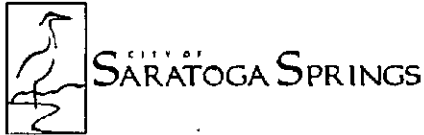
11 Aug 2016  
Date of Approval

Nicolette Fike  
Nicolette Fike, Deputy City Recorder



Kirk Wilkins  
Planning Commission Chair  
Kirk Wilkins

**EXHIBIT C**  
**City Council report and minutes**



**City Council  
 Staff Report**

**Rezone, General Plan Amendment, Community Plan, Master Development Agreement  
 Mt. Saratoga  
 Tuesday, September 6, 2016  
 Continued from August 16, 2016**

Report Date:	Thursday, September 1, 2016
Applicant:	Edge Homes, LLC
Owners:	DCP Saratoga LLC, Capital Security Mortgage, Jan Wilkins, Mt Saratoga LLC
Location:	~1200-1900 West, between Pony Express Parkway and SR 73
Major Street Access:	State Road 73, Pony Express Parkway
Parcel Number(s) & Size:	Size: ~688 acres 580330243, 580330329, 580330208, 580330328, 580330288, 580340442, 580340289, 580340347, 580340312, 580340313, 580340360, 580340441, 580340359, 580340355, 580340372, 580340333, 580340357, 580340323, 580340324, 580340340, 580340341, 580340230
Parcel Zoning:	R-3
Adjacent Zoning:	R-3, RR, RA-5
Current Use of Parcel:	Vacant
Adjacent Uses:	Residential, Agricultural, undeveloped
Previous Meetings:	PC Work Session 1/14/16 CC Work Session 2/2/16 PC Public Hearing 7/2/16
Previous Approvals:	None
Land Use Authority:	City Council
Type of Action:	Legislative
Future Routing:	None
Author:	Sarah Carroll, Senior Planner

**A. Executive Summary:**

The applicant is requesting approval of a General Plan Amendment and Rezone to change the designations of the property from Low Density Residential (R-3) to Planned Community (PC). They are also requesting approval of a Community Plan (CP) and Master Development Agreement (MDA) to master plan approximately 688 acres of property for residential and commercial uses. The CP lays out general densities and configurations, however future approvals must be obtained prior to construction, including Village Plans and subdivision plats. These future approvals will involve additional Planning Commission public hearings and City Council

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meetings, and will give the neighbors additional opportunities to see more specific plans prior to finalization.

**Recommendation:**

Staff recommends that the City Council conduct a public hearing on the applications, take public comment, review and discuss the proposal, and choose from the options in Section I of this report. Options include approval with conditions, continuing the Item for additional information, or denial.

- B. **Background:** The property is currently zoned R-3, Low Density Residential and was previously approved to be developed as a Planned Unit Development (PUD). The previous Master Development Agreement was approved in 2004 and was valid for 8 years, expiring on January 28, 2012. In 2008, an application was received to revise the approved MDA, but did not progress due to market conditions at that time. In 2013, changes were made to the Land Development Code to prevent the PUD from being used for future development.

The subject property is a hillside area with sensitive lands and slopes greater than 30 percent. The applicant would like to cluster housing types and preserve sensitive lands and that type of flexibility is now offered in the Planned Community District Zoning. The proposed MDA is intended to reinstate and amend the MDA that expired in 2012.

The Planning Commission held a work session on January 14, 2016 and the City Council held a work session on February 2, 2016. Minutes from those meetings are attached.

Based on the feedback received at these work sessions the applicant had reduced the proposed number of units from 2,649 to 2,553 for the August 16<sup>th</sup> City Council meeting and added two-family and three-family units to reduce the number of multi-family units. Two-family and three-family units were not included in the referendum.

New information:

The City Council held a work session with the applicant on August 30, 2016 and made several suggestions that are included and attached in the revised plan. The applicant has left the open space ownership up for discussion and is requesting that that City own and maintain the Community Park of ~201 acres.

The revisions include:

- Pg. 2
  - The total unit count has been reduced to 2,400 units, and 27% multi-family
  - The overall density is now 3.52 units per acre (681.13 net acres residential/civil)
  - The community park is now 201 acres (previously 205 acres). The total open space is 219.62 acres (31.9%)
- Pg. 5
  - Indicates the density is 3.73, but that has been reduced to 3.52

- The commercial property has been designated as Regional Commercial (previously Community Commercial, but there was a concern that the Community Commercial zone does not yet exist)
  - Church and civic site are clarified
- Pg. 6-8
  - Village 5 Neighborhood 3 was previously 350 condos and has been reduced to 183 Flex Residential units (-167 units).
  - Village 5 Neighborhood 1 increased from 166 to 200 units (+34 units).
  - Village 3 Neighborhood 2 increased from 186 to 201 units (+15 units)
  - Village 3 Neighborhood 3 increased from 167 to 182 units (+15 units)
  - Village 1 Neighborhood 5 was shown as 50 units or an elementary school and now shows only an elementary school (-50 units).
  - All other Neighborhoods have the same unit count as the previous plan
  - Potential church sites are now shown on the plan (5 sites).
- Pg. 9
  - Numbers updated per page 10
  - Pg. 10 numbers of amenities reduced because 350 condos were removed – removed amenities associated with V5N3
- Pg. 11
  - Powerline corridor trails called out as natural dirt surfaces, and connectivity will be provided to Eagle Mountain paralleling trails
  - Pg. 14
  - Consolidated park areas, so all manicured areas are above 5 acres, parks are 5.56-13.96 acres
- Pg. 15
  - Detail changed for powerline corridor trails.
  - Possible road connections shown to Eagle Mountain (pg. 8 also)
- Pg. 16
  - Note added that this is intended to be open space phasing only
  - Pg. 20
  - Added more detail about the buffer exception requests (area 1,2,3 updated)
  - Added requirement for 110' deep lots adjacent to Pony Express Parkway
- Pg. 21
  - ERU transfer, #7 changed. No net increase in ERU if church/school sites change or move
  - Removed ERU numbers related to use types to eliminate confusion
- Pg. 25
  - Updated graphic to match amenity package as well as showing a road leading over to Eagle Mountain
- Pg. 39
  - Mt. Saratoga – trails on both sides
  - Talus Ridge Blvd – trail on one side, sidewalk on the other
- Pg. 40
  - Added a section of phasing Mt Saratoga Blvd

- Pg. 41
  - Added a graphic to display Mt Saratoga Blvd Phasing
- Pg. 42
  - Graphic for "63" collector" needs to be updated to show a trail on one side (this is for Talus Ridge Blvd)
- Pg. 43
  - Added to the note that they will be working with MAG on the cross section
- Pg. 47
  - A Master HOA will be in charge of the park strips along Mt. Saratoga Blvd and Talus Ridge Blvd.
  - Requesting that the City take all of the parks and trails in the Community Park, 201 acres
- Pg. 50
  - If trees are removed they are required to be replaced according to Code.
- Pg. 51
  - Listed minimum lot size by Village, and average lot size by neighborhood
  - Village 5 Neighborhood 2, minimum of 12,000 on eastern edge
  - Village 5 Neighborhood 3, minimum of 10,000 on eastern edge
  - Added clarification to two and three-family lot frontage
- Pg. 52
  - Increased driveway to 20' (previously 18')
  - Parking, changed to 1 enclosed (previously 1 covered), clarified tandem parking
  - Clarified MF stacked and townhomes
  - Requesting a height of 40' for stacked units (this matches the R-14 zone), previously 45'
- Pg. 53
  - Perimeter buffering needs to be increased to 20' unless buffer has been reduced.

C. **Specific Request:**

The application covers approximately 688 acres and proposes residential and commercial development and large amounts of open space as shown in the Community Plan and summarized below:

Total acres: 687.93  
 Community Commercial acreage: ~~7,506.80~~  
 Residential/Civic acreage: ~~445.45~~462.13  
 Open space acreage: ~~234.98~~219.62 (34.231.9% of overall acreage)  
 Residential units: ~~2,553~~2,400

Density is based on the overall project area minus the commercial acreage which results in ~~2,553~~ 2,400 units within ~~680.43~~681.13 acres and equates to ~~3,753.52~~ units per acre. Product type is broken down as follows:

Single family units: 988 (3941%)

Single family units in flex neighborhoods: ~~285-383~~ minimum (1116%)  
 Two and three family units in flex neighborhoods: ~~284-383~~ maximum (1116%)  
 Multi-family units: ~~996-646~~ (3927%) 216 townhomes, 430 condominiums max

The applicant is requesting approval of a rezone from R-3 to PC and a general plan amendment from Low Density Residential to Planned Community. They are also requesting approval of the proposed Community Plan and Master Development Agreement.

A brief outline of items in the CP that the City Council may wish to discuss further include, but are not limited to the following:

- The Community Plan includes some street designs for hillside areas that have been reviewed by the Development Review Committee (DRC) and the Fire Chief. These include a 2000' block length and a 750' cul-de-sac in hillside areas as identified in the CP. Staff has reviewed these and finds them acceptable in limited hillside locations as identified in the CP in order to avoid vast cuts in the hillside.
- ~~A 63' cross section is proposed for a portion of Talus Ridge Blvd that is adjacent to an area with 30% slopes. This results in a sidewalk adjacent to the homes, but not adjacent to the steep slopes. The DRC has reviewed this request and finds it acceptable, a sidewalk that is not abutting homes would not see any snow removal or the City would be responsible.~~
- The Design Guidelines outline proposed lot sizes, setbacks, architectural styles, etc.
- ~~The Design Guidelines specify two categories for multi-family, but it is not clear in which situations these would be applied. It is most likely for attached versus stacked units.~~
- Hillside standards are included in the CP; staff would like to propose these standards city-wide for hillside developments and a Code Amendment is anticipated to do so.
- There are some 30% slopes shown in the CP that are proposed to be graded subject to further review under future applications. These areas included manmade areas, a portion of a drainage channel and areas one-half acre or smaller.
- The applicant is requesting a waiver to the 20' buffer strip in some locations as outlined later in this report.
- Phasing of open space and amenities is proposed and outlined in the CP.
- Open space proposals are included and match the pending open space ordinance; the proposed points exceed the requirements of the pending open space ordinance.
- The applicant is proposing that the City own and maintain 205 acres of open space, including a trail and park network that will be installed by the developer
- The applicant is asking that the City maintain the park strips along the arterial and collector in locations where no lots front the street.
- The applicant is asking for impact fee credits for the ~~205-201~~ acre community park.

**D. Process:**

**General Plan Amendment and Rezone**

Section 19.17.03 of the City Code outlines the requirements for a rezone and General Plan amendment; first is a formal review of the request by the Planning Commission in a public

hearing, with a recommendation forwarded to the City Council. The City Council then holds a public hearing and is the land use authority.

**Community Plan**

Section 19.26 of the Code describes development in the PC zone:

- (a) For a large-scale planned community district, an overall governing document is first approved, known as the District Area Plan (Section 19.26.13).
  - *The property does not exceed 2000 acres, therefore no DAP is required.*
- (b) A Community Plan is then proposed and approved (Sections 19.26.03-19.26.08). The Community Plan lays out the more specific guidelines for a sub-district within the DAP.
  - *The applicant has proposed a Community Plan for the entire property, which plan contains proposed guidelines for the property.*
- (c) Following and / or concurrently with the Community Plan, a Village Plan is proposed and approved (Sections 19.26.09 – 19.26.10). The Village Plan is the final stage in the Planned Community process before preliminary and final plats, addressing such details specific to the sub-phase as open space, road networks, and lots for a sub-phase of the Community Plan.
  - *The applicants are not yet proposing their first Village Plan(s); such plan(s) will come at a later date and be reviewed according to 19.26 of the Code and also according to the standards in any approved Community Plan.*

The approval process for the Community Plan includes:

1. A public hearing and recommendation by the Planning Commission (*held July 28, 2016*).
2. A public hearing and final decision by the City Council (19.26 states that the process is per Section 19.17, which addresses Code amendments / rezones and requires hearings with the Council.)

The Community Plan and MDA will vest the property in terms of density and general configuration and overarching themes and standards, however future approvals of Village Plans and subdivision plats will be required prior to beginning construction. Both of these approvals require Planning Commission and City Council review, and will provide the public additional opportunities to review the plans and provide input as specific subdivision layouts and phasing plans are proposed and finalized.

- E. **Community Review:** This item was noticed as a public hearing in the *Daily Herald*; and mailed notices sent to all property owners within 300 feet prior to the public hearing with the Planning Commission and prior to the public hearing with the City Council on August 16, 2016. At the July 28, 2016 public hearing with the Planning Commission members of the public commented and voiced concerns; minutes from that meeting are attached.

The City Council held a public hearing on August 16, 2016. Minutes from that meeting outline the concerns voiced by the public and are attached.

- G. **General Plan:** The applicant is requesting a general plan amendment from Low Density Residential to Planned Community.

**Land Use Designation**

The applicant is requesting approval of a rezone and General Plan Amendment to designate the property as Planned Community. The Planned Community Land Use Designation is described in the General Plan below:

Planned Community. The Planned Community designation includes large-scale properties within the City which exceed 500 acres in size. This area is characterized by a mixture of land uses and housing types. It is subject to an overall Community Plan that contains a set of regulations and guidelines that apply to a defined geographic area. Required Village Plans contain regulations that apply to blocks of land and provide specific development standards, design guidelines, infrastructure plans and other elements as appropriate. Development in these areas shall contain landscaping and recreational features as per the City's Parks, Recreation, Trails, and Open Space Element of the General Plan.

The property exceeds 500 acres in size, and thus qualifies for consideration under the PC zone and designation. The proposal includes a Community Plan that contains regulations for the development of the property.

Staff analysis: if the rezone and GP amendment are approved the CP and MDA will be consistent with the Planned Community Land Use Designation.

**Density**

The proposed density is ~~3-753.52~~ units per acre. The Planned Community Zone does not identify a specific density; densities are approved and managed by the governing Community Plan.

**Proposition 6**

Per Proposition 6, which was approved in November 2013, the General Plan has been amended to limit the percentage of multi-family dwelling units in the City. Multi-family is limited to a maximum of 27%; the specific language is as follows:

- (a) require 73% of the dwelling units to be single family, detached housing;
- (b) limit single family units with a common wall and single story to no more than 11% of the dwelling units in the City;
- (c) limit multi-family, single story units to no more than 7% of the total dwelling units;
- (d) limit multi-family units with two stories to no more than 11 % of the dwelling units; and
- (e) limit multi-family units with more than two stories to no more than 2% of the dwelling units.

On July 21, 2016, staff updated the review of housing types. Based on the recorded developments, ~79.91% of the recorded lots/units are single family detached units; ~9.58% are



multi-family two stories; ~8.93% are multi-family more than two stories. While (d) and (e) above have been exceeded, the overall count for multi-family does not exceed 27%.

The proposed community plan specifies that ~~39.27~~27% of the units are intended to be multi-family, with the remainder in single family and flex neighborhoods (single, two, and three-family units). The specific layout of these units has not yet been provided, and will be reviewed at a later date following the finalization of the Community Plan, however townhomes and stacked units are expected and would fall under (d) and (e) above. While the limit in the General Plan for these unit types has been exceeded, the Planning Commission and City Council may consider permitting them, in this case, for several reasons:

- The General Plan is advisory, and with a finding of good cause, the Land Use Authority may choose to approve a development that is not fully consistent with the General Plan. Such good cause would be the preservation of hillside areas and sensitive lands, large-scale infrastructure, and vast amounts of open space and an amenities schedule that exceeds the expectations of the pending open space ordinance.
- The items outlined below result in a unique project that does not exceed an overall density of ~~3,753.52~~ units per acre.
- The proposed CP includes major infrastructure including, but not limited to, a collector road connecting SR73 and Pony Express Parkway, improvements on arterial roadways, a water tank, a secondary water pond, storm drain and sewer infrastructure as outlined in the CP.
- The proposed CP includes ~~234.98~~219.621 acres of open space (~~34.23~~1.9% of overall acreage) and over 11 miles of trails; of which ~~~201~~205 acres is proposed to be public open space and includes ~~~30~~38.57 acres of improved open space.
- An amenities schedule to accommodate the needs of the projected population.
- The MDA is intended to modify and extend the MDA that was approved in 2004. The 2004 MDA included 524 Multi-family units.
- An application to amend the 2004 MDA was submitted in 2008, prior to Proposition 6, which was not fully processed and remained open and active. That application included a request for 574 multi-family units.
- The previous applications were PUD's which are no longer allowed by Code.
- The CP and MDA codify an application that was submitted prior to Proposition 6 (in 2008), which application also included multi-family units.
- Within the project ~~~70~~5.42 acres out of ~688 acres is indicated for multi-family units; this is ~~~100.8~~% of the land area within the project.
- The majority of the project acreage will be open space, single-family, two-family, and three-family units consistent with the intent of the Proposition.

Staff analysis: consistent. The Land Use Authority may consider a proposal that exceeds the limits of the general plan if good cause is found. The CP contains proposals that will be a public benefit including preservation of hillside areas and sensitive lands, large-scale infrastructure, ~32% open space, and an amenities schedule that exceeds the expectations of the pending open space ordinance. ~~~205~~201 acres are proposed to be public open space; including ~11 miles of trails

and ~30-38 acres of open space to be improved by the developer. The majority of the project acreage is proposed for open space, single-family, two-family, and three-family development and is consistent with the intent of Proposition 6. Therefore, if the General Plan is amended then the MDA and CP will be generally consistent with the General Plan.

**H. Code Criteria:**

**Rezone and General Plan Amendments**

Rezoning and General Plan amendments are legislative decisions; therefore the Council has significant discretion when making a decision on such requests. Therefore, the Code criteria below are provided as guidelines, and are not binding requirements.

Section 19.17.04 outlines the requirements for both a Rezone and a General Plan Amendment, and states:

The City Council shall consider, but not be bound by, the following criteria when deciding whether to recommend or grant a general plan, ordinance, or zoning map amendments:

1. the proposed change will conform to the Land Use Element and other provisions of the General Plan;

*Consistent. The application conforms to the Planned Community category identified in the General Plan.*

2. the proposed change will not decrease nor otherwise adversely affect the health, safety, convenience, morals, or general welfare of the public;

*Consistent. The CP outlines that multi-family neighborhoods are located near the major roadways as to limit the impacts on single-family and flex neighborhoods. The project includes arterial roadways, the extension of Talus Ridge Blvd, per the City's Transportation Master Plan, major infrastructure and ~32% open space including ~11 miles of trails and ~30 acres of developed park space. Guidelines are included for ridgeline development to minimize the visual impact from other locations in the City and design standards are included. Village Plans have not yet been submitted and will allow for a more detailed review of each neighborhood.*

3. the proposed change will more fully carry out the general purposes and intent of this Title and any other ordinance of the City; and

*Consistent. The application is consistent with the expired approval in that the R-3 PUD designation allowed for a maximum of 4 units per acre; the CP proposes 3.75 units per acre. The Planned Community zone is intended for projects over 500 acres and allows flexibility and clustering that is not currently described in any other zone. The Planned Community designation is characterized by a mixture of land uses and housing types.*

4. in balancing the interest of the petitioner with the interest of the public, community interests will be better served by making the proposed change.

*Consistent. The applicant is keeping an overall density of ~~3.75~~ 3.52 units per acre, only placing higher densities on a small portion of the property (~10.08%); this density is the result of preserving ~32% of the project area as open space. The CP also includes an amenities package that exceeds the requirements of the pending open space ordinance and includes ridgeline development guidelines, design guidelines, theming, and large scale infrastructure and roadway improvements.*

**Community Plan**

**Section 19.26.06 – Guiding Standards of Community Plans**

The standards for a Community Plan are below:

1. Development Type and Intensity. The allowed uses and the conceptual intensity of development in a Planned Community District shall be as established by the Community Plan.  
*Staff finding: complies. The Community Plan contains general densities and locations, capped at an overall maximum density.*
2. Equivalent Residential Unit Transfers.  
*Staff finding: complies. The Community Plan contains a maximum of 2,553 units, and a provision for density to be transferred between Village Plans within the development area. The proposed transfers include a 20% limitations as allowed by Title 19.26.*
3. Development Standards. Guiding development standards shall be established in the Community Plan.  
*Staff finding: complies. The Community Plan contains standards and regulations to govern the development within future Village Plans and then subdivision plats and site plans. The majority of the project will be subject to the standards in the Development Code, with some items such as density, lot size, setbacks, and architecture governed more specifically in the Community Plan.*
4. Open Space Requirements.  
*Staff finding: complies. The Code requires 30% of the project to be placed in protected open space. The applicant is proposing a plan that meets this requirement, per the proposed Community Plan definitions of allowable open space and in accordance with the limitations in Section 19.26 of the Code.*
5. No structure (excluding signs and entry features) may be closer than twenty feet to the peripheral property line of the Planned Community District boundaries.

- a. The area within this twenty foot area is to be used as a buffer strip and may be counted toward open space requirements, but shall not include required back yards or building set back areas.
- b. The City Council may grant a waiver to the requirement set forth in this Subsection upon a finding that the buffer requirement will result in the creation of non-functional or non-useable open space area and will be detrimental to the provision of useful and functional open space within the Project.

*Staff finding: up for discussion. Much of the plan complies, and in portions the applicants have requested a waiver to this requirement (see page 20, Exhibit 26). The waiver is requested where single family lots are proposed adjacent to the periphery.*

**19.26.07 – Contents of Community Plans**

The items summarized below are required to be part of a Community Plan:

- 1. Legal Description. **Provided**
- 2. Use Map. **Provided**
- 3. Buildout Allocation. **Provided**
- 4. Open Space Plan. **Provided**
- 5. Guiding Principles. **Provided**
- 5. Utility Capacities. **Provided – see Engineering staff report**
- 6. Conceptual Plans. Other elements as appropriate - conceptual grading, wildlife mitigation, open space management, hazardous materials remediation, fire protection. **Provided.**
- 8. Additional Elements.
  - a. responses to existing physical characteristics of the site **Provided**
  - b. findings statement **Provided**
  - c. environmental issues **Basic information provided**
  - d. means to ensure compliance with standards in Community Plan **Provided**
- 9. Application and Fees. **Provided**

**19.26.05 – Adoption and Amendment of Community Plans**

The criteria for adoption of a Community Plan are below:

- a. Is consistent with the goals, objectives, and policies of the General Plan, with particular emphasis placed upon those policies related to community identity, distinctive qualities in communities and neighborhoods, diversity of housing, integration of uses, pedestrian and transit design, and environmental protection;
 

*Staff finding: consistent. See Section G of this report.*
- b. does not exceed the number of equivalent residential units and square footage of nonresidential uses of the General Plan;
 

*Staff finding: complies. The General Plan does not identify ERUs or square footage for the Planned Community designation, and the overall density proposed carries forward the allowable range under the existing Low Density Residential PUD land use. Square footages of commercial development will be guided by the pending*

*Community Commercial zone.*

- c. contains sufficient standards to guide the creation of innovative design that responds to unique conditions;  
*Staff finding: up for discussion. The proposed standards will guide the development and will permit the proposed densities and maintain quality of design (see Design Guidelines, pg. 51-53 of CP). During the work sessions the PC and CC had concerns with the proposed minimum lot size of 2,500 square feet and suggested more variety. The minimum lot sizes now range from 3,500 to 5,000 square feet with an indication that "more appropriate site specific standards will be established at the Village Plan level".*
- d. is compatible with surrounding development and properly integrates land uses and infrastructure with adjacent properties;  
*Staff finding: up for discussion. Village 5 Neighborhood 3 is proposed for multi-family development and is adjacent to an existing Rural Residential development. However, there is a 100' wide powerline corridor between these developments and the CP includes standards for ridgeline development. The other two multi-family developments are not adjacent to existing development and are located with direct access to an arterial roadway.*
- e. Includes adequate provisions for utilities, services, roadway networks, and emergency vehicle access; and public safety service demands will not exceed the capacity of existing and planned systems without adequate mitigation;  
*Staff finding: pending. The applicants are working with engineering to ensure that adequate infrastructure can be provided, and identifying appropriate mitigation as necessary. The impacts of City-wide growth on public safety are evaluated by the City Council on an annual basis to determine staffing needs.*
- f. is consistent with the guiding standards listed in Section 19.26.06; and  
*Staff finding: up for discussion. The application complies with standards 1-4, however the project is requesting a partial exemption from standard 5 as outlined on page 8 of this report (this is regarding the 20' periphery setback).*
- g. contains the required elements as dictated in Section 19.26.07.  
*Staff finding: complies. The application contains the required items.*

**Master Development Agreement**

Section 19.26.11 requires a Master Development Agreement, subject to the legislative discretion of the City Council. Approval shall generally conform to and include by reference, if appropriate, the requirements found in Section 19.13.06 (now 19.13.07), except for the plat, site plan, and CCR's or elevations are not required until later.

19.13.07(2) outlines the requirements for the contents of an MDA. The proposed MDA includes the required contents listed in this section; except that bond documents are not practical at this particular stage of development and will be required with each preliminary plat. If the City Council adds requirements, the MDA will be updated to include those requirements.

**I. Recommendation and Alternatives:**

**Staff recommends that the City Council discuss the applications and choose from the options below.**

**OPTION 1: APPROVAL WITH CONDITIONS**

*(Separate motions are provided for the Rezone and GPA and for the CP and MDA)*

**Motion for Rezone and General Plan Amendment:**

“Based upon the information and discussion tonight, I move to approve the Rezone and General Plan Amendment, from Low Density Residential (R-3) to Planned Community (PC) for the Mt. Saratoga project, as identified in the Community Plan, with the Findings and Conditions in the staff report:”

**Findings**

1. The Rezone and General Plan Amendment will not result in a decrease in public health, safety, and welfare as outlined in Section G of the staff report, which section is hereby incorporated by reference.
2. The Rezone and General Plan Amendment are consistent with Section 19.17.04 of the Code, as articulated in Section H of the staff report, which section is hereby incorporated by reference.

**Conditions:**

1. The rezone shall not be recorded until accompanied by a finalized Community Plan and MDA. The Community Plan shall in all respects be consistent with the MDA.
  2. Any other conditions added by the City Council: \_\_\_\_\_
- 

**Motion for Community Plan and Master Development Agreement:**

“Based upon the information and discussion tonight, I move to approve the Community Plan and Master Development Agreement for the Mt. Saratoga project, as identified in the Community Plan, with the Findings and Conditions in the staff report:”

**Findings**

1. The Community Plan and Master Development Agreement are consistent with the General Plan, as articulated in Section G of the staff report, which section is hereby incorporated by reference.
2. The Community Plan and Master Development Agreement are consistent with the Land Development Code, as articulated in Section H of the staff report, which section is hereby incorporated by reference.

**Conditions:**

1. All requirements of the City Engineer shall be met.
2. All other Code requirements shall be met.
3. The rezone shall not be recorded until accompanied by a finalized Community Plan and MDA. The Community Plan shall in all respects be consistent with the MDA.
4. The errors noted on pages 2 and 3 of this staff report shall be corrected in the CP.
5. Any other conditions articulated by the City Council: \_\_\_\_\_  
\_\_\_\_\_

**OPTION 2: CONTINUANCE**

The City Council may choose to continue the application. "I move to continue the [Rezone, General Plan Amendment, Community Plan, MDA] for Mt. Saratoga to the [DATE], with direction to the applicant and Staff on information and / or changes needed to render a decision, as follows:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**OPTION 3: NEGATIVE RECOMMENDATION**

The City Council may choose to forward a negative recommendation:

"Based upon the information and discussion tonight, I move to deny the Rezone, General Plan Amendment, Community Plan, and Master Development Agreement for the Mt. Saratoga project, based on the Findings below:

1. The applications are not consistent with the General Plan, as articulated by the City Council: \_\_\_\_\_, and/or
2. The applications do not comply with Section 19.17.04 of the Development Code, as articulated by the City Council: \_\_\_\_\_, and/or
3. The applications do not further the general welfare of the residents of the City, as articulated by the City Council: \_\_\_\_\_

"I also move to deny the Mt. Saratoga Community Plan and MDA based on the Findings below:

1. The applications are not consistent with the General Plan, as the current designation is Low Density Residential and not Planned Community.
2. The applications do not comply with Section 19.04 of the Development Code, regarding Land Use Zones, specifically:
  - a. the request exceeds the allowed density in the R-3 zone.
  - b. there are proposed uses that are not allowed in the R-3 zone; and

- c. setbacks, lot widths, lot sizes, and other development standards are not consistent with the R-3 zone; and
  - d. Community Plans are not permitted in the R-3 zone.
3. The MT Saratoga Community Plan and MDA do not further the general welfare of the residents of the City, as articulated by the City Council: \_\_\_\_\_

J. Exhibits:

- 1. City Engineer's Report
- 2. Location & Zone Map
- 3. General Plan Map
- 4. PC Work Session Minutes 1/14/16
- 5. CC Work Session Minutes 2/2/16
- 6. PC Minutes 7/28/16
- 7. CC draft minutes 8/16/16
- 8. Proposed Community Plan
- 9. Proposed Master Development Agreement



**CITY OF SARATOGA SPRINGS  
CITY COUNCIL MEETING MINUTES**

Tuesday, September 6, 2016

City of Saratoga Springs City Offices

1307 North Commerce Drive, Suite 200, Saratoga Springs, Utah 84045

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**City Council Work Session**

**Call to Order:** 6:00 p.m. by Council Member Shellie Baertsch

**Present** Council Members Chris Porter, Shellie Baertsch, and Bud Poduska. Council Member Michael McOmber was excused.

Council Member Stephen Willden arrived at 6:15 p.m.

Mayor Jim Miller joined the meeting via phone teleconference at 6:38 p.m.

**Staff** City Manager Mark Christensen, Assistant City Manager Spencer Kyle, Planning Director Kimber Gabryszak, City Engineer Gordon Miner, Public Relations Economic Development Manager Owen Jackson, Capital Facilities Manager Mark Edwards, City Recorder Cindy LoPiccolo

**Presenters:** Architects Jill Jones, AJC, Greg Kloberdanz, PEC and Lars Anderson, PEC

**Sports Complex Review.** Architect Jones presented architectural proposals for the Sports Complex structures for scorekeeper, restroom and maintenance/storage structures; reviewed findings of site visits to Spanish Fork, Orem and Draper facilities, noted flat roofs, combination of concessions, scorekeeper and restrooms in one structure with smaller upper scorekeeper areas most cost effective, and identified the committee preferences for modern architecture, incorporation of a military theme, and cost effectiveness by limiting structure massing. Features of translucent durable window material, structure materials and interior and/or exterior screening to protect line of sight into public restrooms were discussed.

Council Member Baertsch expressed preference for pitched roof for safety, modern but not industrial architecture with incorporation of some natural organic materials i.e. stone or nicer concrete masonry unit (CMU), and wood; green versus red accent.

Council Member Poduska referred to the example showing a dark green metal roof with shallow pitch, possible cement hardi-board. Council concurred preference for this type of architecture with inclusion of pitched roof or sufficient height to deter climbing on top of the structure.

Architect Anderson presented two layout options for the Sports Complex and cost projections, one plan for 25 acres and another for 30 acres, noting the differences in regard to access, parking, and fields, and advising the 30 acre plan provides for tournaments. Reported cities visited recommended 100 stalls per field, these plans provide 70 for the 25 acre plan and 75 for the 30 acre plan, starting out underparked, however, the southern portion will be developed for parking at a future phase. Reviewed the cost sheet and breakdown which includes bringing culinary and secondary water and sewer to the site and plans for extension of Pony Express parkway.

Council discussed tournaments and use expectations for each plan, explored options for cutting costs, and discussed possible beneficiaries and sponsorships for scoreboards, lighting and other park components.

Council Member Baertsch recommended adjustment of parking on the inside at the eastern edge to provide for pedestrian access, roadway sidewalks, and continuation of sidewalk along the northern edge for completion around the circumference.

Council Member Willden commented he is not comfortable at this point deciding on a budget or amount of expenditure for this project without information; needs a cost analysis outlining what can be anticipated in regard to a bond that will pay for the project, the expectation on bond payback, impact fees, maintenance, and what this

City Council Meeting

September 6, 2016

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269

270 Break 8:04 p.m. to 8:15 p.m.

271

272 1. Legacy Farms Village Plan 3 Plats 3A-E – Preliminary Plats, Applicant/Owner: D.R. Horton, Inc.

273

274 Planner Kara Knighton presented the staff report and recommendation for Legacy Farms Village Plan 3 Plats 3A-E Preliminary Plats. Planner Knighton reported these plats combined contain a total of 196 single family and multi-family units and 14 Equivalent residential Units applied to a church site. Planner Knighton reviewed the location of the plats and advised the Planning Commission held a public hearing on August 25, 2016 and forward a positive recommendation with conditions.

279

280 Krisel Travis, representing D.R. Horton, provided information in regard to green space and adjustment of lot plans to make accommodation for utilities, the ERUs allotted for the church and advised the unit count is the same.

281

282

283 Council Member Baertsch recommended alignment of lot lines as much as possible where four lots come together between residences to assist residents with fencing, and have driveways access off the least traffic impacted roads.

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323 Council Member Baertsch thanked the developer for working with the City and response to the Council's requests,  
 324 and is appreciative of the reduction of multi-family. Requested clarification in regard to Mt. Saratoga Blvd.  
 325 phasing and effect to Talus Ridge noting concern with Village 3 multi-family traffic impact; and inquired about  
 326 timing of the connection to the east. Greg Magelby, LEI Engineering, reported the connection would occur in  
 327 conjunction with Village 4 and they are working with Rocky Mt. Power for those easements; referred to report  
 328 talking about the phasing noting multi family would not be constructed in Village 3 until the road was completed,  
 329 traffic would not necessarily be traveling down into Talus Ridge prior to the connections.

330  
 331 In response to Council Member Baertsch's inquiry, Engineer Magelby reported the zone 3 tank will service inside  
 332 the development and the zone 2 tank will serve outside the development and some of Village 1, the tank site was  
 333 relocated to a hill contour line so not to stand in the middle of open space. Council Member Baertsch clarified  
 334 appropriate requirements for pending utilities and church locations will be in place and part of the final approval.  
 335

336 Council Member Baertsch clarified cost of maintenance for open space and manicured acreage; noted she is  
 337 comfortable with the buffer change; suggested page 21 in regard to use equivalents say single family detached  
 338 unit for consistency and clarity; and inclusion of a condition that a note be included on the modified collector road  
 339 on page 42 that a trail would be included in lieu of sidewalk because of the situation at that location.

340  
 341 In response to Council Member Baertsch, City Engineer Miner reported the plan presented sets the design criteria  
 342 for geometric design of the roads and establishes the maximum speeds, traffic calming has been taken into  
 343 consideration with designed vertical and horizontal curvature of the streets, although additional traffic calming  
 344 measures could be done if necessary.

345  
 346 Council Member Poduska commented he has reviewed the proposed project extensively and appreciates the  
 347 developer's flexibility and willingness to work with the City  
 348

349 Council Member Willden expressed appreciation for the developer and staff's hard work, and appreciates the R-  
 350 4 comparative density and reduction in multi-family units. In response to Council Member Willden's inquiry,  
 351 City Manager Christensen advised there would most likely be minimal maintenance involved with the natural  
 352 open space, possibly some weed control a couple of times a year, other areas such as ballfields will be maintained  
 353 weekly.  
 354

355 Council Member Porter concurred with comments and expressed appreciation for the overall project, open space  
 356 and consolidation of the parks, in favor of the City taking the open space as well as park acreage for future use  
 357 noting maintenance could break even, the area would serve as a public amenity and a future destination noting  
 358 older cities wish they had park area like this, would hate to lose this opportunity for future use. In response to  
 359 Council Member Porter's inquiry, Engineer Magelby advised the cul de sac to the west was designed so it could  
 360 continue and there will be no lots in the backside there.  
 361

362 Motion by Council Member Baertsch to approve the Mt. Saratoga rezone and General Plan amendment according  
 363 to information and discussion tonight, including all staff findings and conditions, was seconded by Council  
 364 Member Poduska

365 Roll Call Vote: Council Members Porter, Baertsch, Willden, and Poduska – Aye.

366 Motion carried 4-0; Council Member McOmber excused.  
 367

368 Motion by Council Member Baertsch to approve the Mt. Saratoga Community Plan and Master Development  
 369 Agreement, Ordinances 16-15 (9-6-16) and 16-16 (9-6-16), including all staff findings and conditions including  
 370 the one added tonight, and language on the Master Development Agreement modified in accordance with the  
 371 water contracts being finalized, was seconded by Council Member Porter

372 Roll Call Vote: Council Members Willden, Poduska, Porter, and Baertsch – Aye.

373 Motion carried 4-0; Council Member McOmber excused.  
 374

483  
484 City Manager Christensen discussed cross sections comparison with 2100 and advised if Council has dpecific  
485 concerns to provide them to the City Engineer to forward to the Consultant.  
486

487 **CLOSED SESSION:**  
488

489 Motion by Council Member Willden to enter into closed session for the purchase, exchange, or lease of property,  
490 discussion regarding deployment of security personnel, devices, or systems; pending or reasonably imminent  
491 litigation, the character, professional competence, or physical or mental health of an individual, was seconded by  
492 Council Member Porter  
493 Roll Call Vote: Council Members Willden, Poduska, McOmber and Porter - Aye.  
494 Motion carried 4-0; Council Member Baertsch excused.  
495

496 The meeting moved to closed session at 10:29 pm.  
497

498 Present: Mayor Miller, Council Members Porter, Willden, Baertsch, Poduska, City Manager Mark Christensen,  
499 Assistant City Manager Spencer Kyle, City Recorder Cindy LoPiccolo.  
500

501 Closed Session Adjourned at 10:47 p.m.  
502

503 **ADJOURNMENT:**  
504

505 There being no further business, Mayor Miller adjourned the Policy Meeting at 11:30 p.m.  
506

507   
508  
509  
510 Jim Miller, Mayor

511  
512 Attest:

513  
514   
515  
516 Cindy LoPiccolo, City Recorder

517  
518 Approved: 9-20-16

