

**MASTER DEVELOPMENT PLAN AGREEMENT  
FOR  
SARATOGA SPRINGS, UTAH**

**(IHC Health Services, Inc.)**

THIS MASTER DEVELOPMENT PLAN AGREEMENT (the "Agreement" or the "Development Agreement") is entered into effective as of April 22, 2008 (the "Effective Date"), by and between the CITY OF SARATOGA SPRINGS, UTAH (the "City") and IHC HEALTH SERVICES, INC. ("Developer").

**RECITALS**

A. Developer owns 29.777 acres of land particularly described in attached Exhibit A, which is located within the City (the "Developer's Land" or the "Property"), and which, in part, Developer desires to develop substantially in accordance with the Master Development Plan attached as Exhibit B (the "Master Development Plan").

B. Developer has proposed the Master Development Plan for the development of part of Developer's Land, which has been reviewed and approved by the City's Planning Commission and the City Council concurrently with the City's approval, as evidenced by the execution of, this Agreement.

C. In connection with the City's review and approval of the Master Development Plan and this Agreement, the City has amended the City's General Plan (the "General Plan") as and to the extent necessary, the City has amended the City's Zoning Map (the "Zoning Map"), the City has rezoned the Property and other contiguous areas as a Regional Commercial Zone ("RC Zone") pursuant to the provisions of the City's Land Development Code (the "Code" or the "Land Development Code"), and the City has approved a conditional use permit to allow for the uses on Developer's Land approved in this Agreement.

D. This Agreement is being entered into by the City and Developer to set out Developer's rights and obligations with respect to the development of part of Developer's Land pursuant to the Master Development Plan and the City's ordinances, rules and regulations.

E. Developer acknowledges that the City is relying on the faithful performance by Developer of the terms and conditions of this Agreement in consideration of the land uses and development rights for Developer's Land approved in this Agreement and in the Master Development Plan.

F. The City acknowledges that Developer is relying on the continuing validity of this Agreement and the Master Development Plan with respect to the land, uses and development rights as hereinafter set out in exchange for Developer's commitment to the expenditure of substantial funds for the improvements and facilities that Developer is obligated to provide pursuant to this Agreement.

G. The City also recognizes that the development of Developer's Land hereunder will result in tangible benefits to the City, including without limitation enhancement of the economic development efforts of the City and others in the vicinity of Developer's Land.

H. The City, acting pursuant to its authority under Utah Code Annotated, Sections 10-3-101 et seq. and 10-9a-101 et seq., the City's General Plan and the City's ordinances, rules and regulations, has made certain determinations with respect to the proposed development of

Developer's Land and, in the exercise of its legislative discretion, has elected to process and approve the use, density, general configuration and development standards pursuant to Chapter 19 of the Code, which is incorporated in and made a part hereof by this reference, resulting in the negotiation, consideration and approval of this Agreement after all necessary public hearings.

### *AGREEMENT*

NOW THEREFORE, for and in consideration of the mutual covenants, terms and conditions hereinafter set out, as well as the consideration set forth in the Recitals, the parties hereby agree as follows:

#### I. DESCRIPTION OF DEVELOPER'S LAND AND MASTER DEVELOPMENT PLAN; CONDITIONS PRECEDENT

1.1. Legal Description of Developer's Land. The legal description of Developers Land which is covered by this Agreement and the Master Development Plan is attached as Exhibit A to this Agreement and is incorporated into this Agreement by this reference. Except as otherwise specified below, no property may be added to this Agreement or the Master Development Plan except by written amendment of this Agreement upon approval by the Planning Commission and the City Council in accordance with the City's ordinances, policies and guidelines in effect at the time of such amendment.

1.2. Master Development Plan. The Master Development Plan approved by the City, as evidenced by this Agreement, provides for the proposed development of the Property as set forth in or contemplated by the Master Development Plan. The approved land uses for the Property include health care facilities, specifically, offices or clinics which provides services for the treatment and care of illness or injury, medical, dental, chiropractic offices, offices devoted to the healing arts such as licensed accredited massage therapists and licensed physical therapists, pharmacies or drugstores intended to serve patients of medical or dental professionals, a hospital, and uses incidental or related thereto (the "Approved Uses"). The Approved Uses are approved by the City as being conditional uses consistent with the uses contemplated in the RC Zone district regulations. The Approved Uses are vested under, and on the terms and conditions of, this Agreement.

Developer's Land will be developed in phases, including "Phase 1," "Phase 2," and "Future Phases" (as each term is defined below). Each such phase may consist of one or more buildings and facilities consistent with the Approved Uses or such other uses as may be approved by the City. Development of the Property will begin with the development of a medical clinic of approximately 9,457 square feet of space ("Phase 1"), together with, at some time in the future, the addition of approximately 9,000 to 10,000 square feet of additional space therefor ("Phase 2") (collectively, together with such accessory uses as may be reasonably related or incidental thereto, the "Health Care Facilities"), as generally depicted on the Master Development Plan. The City's approval of the Master Development Plan constitutes the City's approval of a concept plan pertaining to Phase 1 and Phase 2. Developer has submitted a site plan application for the final approval of Phase 1 in accordance with the City's ordinances, rules, regulations, together with the payment of any applicable fees, in effect as of the date of the date of the site plan application. At some time in the future, the Developer plans to submit a site plan application for the final approval of Phase 2 in accordance with Section 19.14 of the Code in effect as of the Effective Date or, as and to the extent required by public health, safety or welfare, any amendment to the Code then in effect. However, nothing herein shall be construed to affect the vesting of the Approved Uses. If, in addition to Phase 1 and Phase 2, other additions are made to the Health Care Facilities or other improvements are made to any part or all of the undeveloped portion of the Property in the future (the "Future Phases"), a concept plan application and a site plan application must be submitted by Developer and approved in accordance with Section 19.14 of the Code in effect as of the Effective Date or, as and to the extent required by public health, safety or welfare, any amendment to the Code then in effect.

However, nothing herein shall be construed to affect the vesting of the Approved Uses. With regard to the development of Future Phases, the City reserves the right to impose additional conditions on the Approved Uses which it deems necessary to mitigate potentially detrimental effects arising from the site plans for Future Phases, so long as the Approved Uses are not adversely affected thereby.

The Master Development Plan sets out the configurations and land use areas applicable to Developer's Land as well as the location of roads and other public, quasi public and private facilities now expected to be constructed on Developer's Land. The phasing of the development of the Property shall be as provided in the Master Development Plan and this Agreement. If the Future Phases must be developed in phases, the approval of such phasing shall be considered an "Administrative Amendment" (as defined in Section 5.3, below) to this Agreement and Developer shall submit a Master Development Plan amendment application. Refer to 4.1 of this Agreement for additional requirements regarding phasing.

Subject to the foregoing, the City hereby understands, acknowledges and agrees that the description, use, location, size and/or nature of any buildings or facilities depicted on the Master Development Plan may change over time. To the extent that any such change significantly modifies allowable height, Approved Uses or density within the Property or significantly alters the amount of land dedicated for open space and public facilities, considering the Property as a whole, or significantly changes the location of land use areas designated on the approved Master Development Plan, then the change shall be reviewed as a Master Development Plan amendment and subject to approval by the City under the Code; provided that, notwithstanding the foregoing or any other term or condition of this Development Agreement, this Development Agreement evidences and includes vested and Approved Uses for the Property and, further, an approved conditional use permit authorizing such Approved Uses. In the event Developer proposes uses within the Property which are not approved as Approved Uses within the Master Development Plan or this Development Agreement, but allowed by applicable zoning ordinances, rules or regulations, such uses shall also be subject to review and approval as amendments to the Master Development Plan. All other proposed changes shall be deemed to be minor amendments to the Master Development Plan and shall be deemed approved and incorporated into the Master Development Plan upon approval of a final site plan for the Property in the site plan approval process.

1.3. Specific Design Standards. Except as set forth in Section 2.3, below, design standards are not being specified with this Agreement, since the development of Future Phases are not being proposed at this time. Each building that will be constructed on Future Phases will be reviewed by the City's Urban Design Committee during the site plan application process. All future architecture shall be approved by the City on or before approval of the site plan for development of any Future Phases in accordance with Chapter 19.14 of the Code. If the City adopts City-wide design standards and/or guidelines in the future, then, as and to the extent the same are consistent with the terms and conditions of this Agreement, the Developer shall comply with those standards and/or guidelines.

1.4. Applicable City Ordinances and Inconsistent Development Standards. The Code authorizes the City to approve a Development Agreement containing development standards that may be inconsistent with certain provisions of the City's Code, rules and regulations. Pursuant to such authority, the development and construction of buildings and facilities associated with the Approved Uses may proceed pursuant to and consistent with the ordinances of the City in existence on the date of this Agreement that are not in conflict with the provisions of this Development Agreement, including all exhibits hereto (as qualified more fully by the following sentence, the "Applicable City Ordinances") and the terms and conditions of the balance of this Agreement and the exhibits attached hereto.

1.5. Conditions Precedent. This Agreement shall not take effect until:

1.5.1. The City Council has approved this Development Agreement, the Mayor of the City has executed this Development Agreement on behalf of the City, and the City otherwise has complied with, and satisfied, the terms and conditions of Article II, Sections 2.1 and 2.2, below, each of which shall be confirmed, in writing, (together with reasonably satisfactory evidentiary documentation thereof), by the City.

1.5.2. Developer demonstrates to the satisfaction of the City that it is the owner of the Property, by delivering to the City a copy of the deed of conveyance and a copy of the title policy verifying that Developer is the sole owner of the Property.

1.5.3. In the event these conditions are not satisfied by August 31, 2008, this Agreement shall be of no further force and effect.

1.6 Regional Transportation Plan. The City Master Transportation Plan, adopted October 11, 2005 (the "Transportation Plan") is incorporated herein by this reference. The parties acknowledge and agree that Developer may rely on the road locations, City controlled access points, road dimensions, traffic data and projections and other standards contained in the Transportation Plan in planning and developing the Property. Except as otherwise specified in this Development Agreement specific to the identified section of 400 North Street, the connection to Commerce Drive and any acceleration or deceleration uses which may be required by UDOT on SR73 (which, if any, may be set forth in a separate written agreement between Developer and UDOT), Developer shall have no responsibility to construct any transportation or other improvements located outside of the boundaries of the Property, dedicate land or otherwise implement the Transportation Plan, as that plan may be modified from time to time.

1.7 Process for Expanding Master Development Plan to Include After-Acquired Property. After the execution of this Development Agreement, Developer may from time to time, and with the approval of the City, add any land owned by Developer and located near, adjacent or contiguous to the Property to this Development Agreement and the Master Development Plan. The addition of such land shall be deemed a "Substantial Amendment" (as defined in Section 5.3, below) to this Agreement and the Master Development Plan and any land so added will be subject to the terms and conditions of this Development Agreement and will require Developer to submit a Master Development Plan amendment application. Notwithstanding the foregoing, Developer has contemplated the acquisition of a parcel of property more particularly described as Parcel B of the Wal-Mart subdivision. If Parcel B is acquired by Developer, it may be added to the Property and be covered by the terms and conditions of this Agreement by "Administrative Amendment" (as defined in Section 5.3, below).

## II. ACTIONS AND APPROVALS BY CITY

2.1. General Plan Map and Zoning. The Planning Commission has recommended, after appropriate notice and hearings, that the General Plan Map be amended, that the Zoning Map be amended, that Developer's Land be rezoned as an RC Zone, that a conditional use permit be granted to allow for the Approved Uses on the Property, that the Master Development Plan be approved and that this Development Agreement be approved. The City Council has heretofore, upon the recommendation of the Planning Commission and after public hearing and notice as required by the City's Development Code, approved the amendment of the General Plan as and to the extent necessary, approved the amendment of the Zoning Map, rezoned the Developer's Land as an RC Zone, granted a conditional use permit to allow for the Approved Uses on the Property, approved the Master Development Plan and approved this Development Agreement, the execution and delivery of this Development Agreement being evidence thereof. In approving the foregoing items, the Planning Commission and the City Council have determined that the Approved Uses are consistent with, and either permitted or conditionally allowed within, the RC Zone. If in the future the Code is amended

and a zone that is specific to health care facilities is added, Developer may, but shall not be obligated to, rezone any portion of the Property that supports health care facilities.

2.2. Approval of Master Development Plan and This Agreement. The Planning Commission has recommended, after appropriate notice and hearings, that the Master Development Plan attached to and incorporated by this Agreement be approved subject to the terms, conditions and requirements of this Agreement. Based upon the recommendation of the Planning Commission and after public hearing and notice as required by the City's Development Code, the City Council hereby approves the Master Development Plan attached to and incorporated in this Agreement subject to the terms, conditions and requirements of this Agreement, including the exhibits attached hereto. Based upon the recommendation of the Planning Commission and after public hearing and notice as required by the City's Development Code, the City Council has approved this Agreement and authorized and directed the Mayor to execute this Agreement for and on behalf of the City (the "Vesting Date").

2.3. Rights and Obligations under Master Development Plan. Subject to the terms and conditions of this Agreement and compliance with the City's ordinances, Developer shall have the vested right to preliminary and final subdivision and site plan approval to develop Developer's Land in the manner provided in the approved Master Development Plan and this Agreement. As described in Section 1.2, above, the Master Development Plan constitutes concept plan approval for Phases 1 and 2. Future Phases shall require a concept plan since the layout of Future Phases is not being approved at this time. In addition, with regard to the development of Future Phases, the City reserves the right to impose additional conditions on the Approved Uses which it deems necessary to mitigate potentially detrimental effects arising from the site plans of Future Phases. Developer shall be required to apply for and obtain approval for each concept plan and each subdivision and/or site plan provided for in the Master Development Plan and to otherwise comply with all provisions of the Land Development Code, except as otherwise expressly provided in the Master Development Plan and this Agreement. Except as otherwise expressly provided in this Agreement (including specifically Developer's rights under this Section 2.3), the requirements of this Agreement and the Master Development Plan shall be in addition to and not in lieu of the requirements of the Land Development Code and the City's other ordinances, regulations and guidelines. Developer's vested right of development of Developer's Land pursuant to this Agreement and the Master Development Plan is expressly subject to and based upon strict compliance and performance by Developer of all of the terms, conditions and obligations of Developer under this Agreement, the Master Development Plan and the other exhibits attached to this Agreement.

2.4. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of police power of the City Council in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of the City Council to enact such legislation under the police powers, excluding ordinances or resolutions of the City relating to impact, development connection or permit fees, such legislation shall only be applied to modify the vested rights described in Section 2.3 based upon policies, facts and circumstances meeting the compelling and countervailing public interest exception to the vested rights doctrine of the State of Utah. Any proposed change affecting the vested rights of Developer under this Agreement shall be of general application to all development activity in the City and, unless the City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Approved Uses and the Property under the compelling, countervailing public policy exception to the vested rights doctrine. The regulations, ordinances, policies and plans governing the permitted uses, densities, intensities, configuration, Master Development Plan, the development standards and the Approved Uses hereby vested shall be the terms and conditions of this Development Agreement and the Applicable City Ordinances in effect on the Vesting Date.

### III. INFRASTRUCTURE, DEDICATIONS AND FEES

#### 3.1. Compliance with Water Utilities Ordinance.

3.1.1. Water Connections and Water Facilities for Development of Phases 1 and 2. Water service (for culinary and irrigation uses) will be provided to Phases 1 and 2 by existing culinary water facilities owned by the City from Zone 1 (as shown on that certain map, attached hereto as Exhibit C and incorporated herein by reference), including without limitation the eighteen inch (18") culinary water line installed in State Highway 73 along the southern boundary line of the Property (the "Existing Culinary Water Facilities"), which Developer will have the right to tie into at a point near the southeast corner of the Property. Developer shall pay water connection fees to provide for culinary and irrigation water requirements for the development of Phases 1 and 2 as provided in the Master Development Plan in accordance with Section 3.5, below, and, accordingly, the City agrees to provide and make available any and all such water services to Developer and the Property for Phases 1 and 2. Any such water services shall be approved for culinary and irrigation uses. Such water connection fees shall be paid prior to the time building permits are issued for the development of Phases 1 and 2 pursuant to the Master Development Plan.

As of the Effective Date, the City confirms, acknowledges and agrees that the Existing Culinary Water Facilities are sufficient to provide water service for culinary and irrigation uses to Phases 1 and 2, but the City does not have secondary water facilities necessary to provide irrigation service to Phases 1 and 2 by way of such secondary water facilities. However, the City also acknowledges, confirms and agrees Developer is not obligated to construct off-site water facilities serving Phases 1 and 2, and Developer is permitted to use culinary water on Phases 1 and 2 for culinary and irrigation uses subject to compliance with City Ordinances, regulations and standards, including the payment of culinary water connection fees in accordance with this Subsection and/or Section 3.5, below. At such time the City elects to extend secondary water facilities to provide secondary water service to Phases 1 and 2, Developer may be required to assist in building such secondary water facilities by prepaying secondary water connection fees. If the City is unable to construct water facilities to provide secondary water service to Phases 1 and 2 without further assistance from Developer, Developer may have to assist the City further in construction of such secondary water facilities; provided that, in the event that Developer is required to assist in the construction of any such secondary water facilities beyond the amount of its total secondary water connection fees, or if such secondary water facilities will benefit other development in the City, the City will require the other benefited developments to reimburse Developer or otherwise bear their share of such excess costs on a basis hereafter agreed between the Developer and the City at the earlier of the time of any such payment by Developer or such secondary water facilities are constructed; provided further that any such excess costs shall be reimbursed at the time building permits are issued or water connections are otherwise established for any such other benefited developments; and provided that, in any case, development of Phases 1 and 2 as contemplated hereunder, shall not be delayed thereby. To the extent Developer purchases culinary water connections for its secondary water requirements, then, except as otherwise specified in this Agreement, Developer shall not be entitled to any credit, reimbursement or return of the culinary connections utilized for secondary water purposes in the event the City subsequently builds water facilities capable of providing secondary water service to Phases 1 and 2. The construction of on-site water lines and off-site water improvements, if any, to be provided by Developer shall be completed, approved and accepted by the City prior to the City being required to provide water service to such developments.

The parties anticipate entering into a separate written agreement for reimbursement by the City to Developer of any costs paid by Developer to construct the system improvement portion of any water facilities or improvements, as well as any offsite water lines or other improvements to be constructed or otherwise provided by Developer. The entering into and performance by the City of

any such reimbursement agreement shall be a condition to Developer's obligation, if any, to construct or oversize any such lines or other improvements.

### 3.1.2. Water Connections and Water Facilities for Development of Future Phases.

Water service (for culinary uses) will be provided to Future Phases by culinary water facilities owned by the City from Zones 1 and/or 2 (as shown on Exhibit C), which facilities Developer will have a right to tie into. Zone 2 (as shown on Exhibit C) shall be defined as any area unable to maintain 40 psi of residual pressure during a fire flow when connected to Zone 1 distribution lines. At such time Developer elects to proceed with the development of Future Phases, Developer shall pay water connection fees as provided in the Master Development Plan, and, subject to the terms and conditions of this Agreement, construct all necessary on or off-site lines to provide for culinary water requirements for the development of Future Phases as provided in the Master Development Plan in accordance with the applicable City Ordinances, and, accordingly, the City agrees to provide and make available any and all such water services to Developer and the Property. Any such water services shall be approved for culinary uses. Such water connection fees shall be paid prior to the time building permits are issued for the development of Future Phases pursuant to the Master Development Plan.

The City does not currently have secondary water facilities necessary to provide secondary water service to Future Phases. At such time the City elects to construct water facilities for such secondary water service, Developer may be required to assist in building such facilities by prepaying secondary water connection fees necessary for the development of any such Future Phases. If the City is unable to construct water facilities to provide secondary water service to Future Phases without further assistance from Developer, Developer may have to assist the City further in construction of secondary water facilities; provided that, in the event that Developer is required to assist in the construction of water facilities beyond the amount of its total secondary water connection fees and, such secondary water facilities will also benefit other development in the City, the City will require the other benefited developments to reimburse Developer or otherwise bear their share of such excess costs on a basis hereafter agreed between the Developer and the City at the earlier of the time of any such payment by Developer or such secondary facilities are constructed; provided further that any such excess costs shall be reimbursed at the time building permits are issued or water connections are otherwise established for any such other benefited developments. Notwithstanding the foregoing, in lieu of delaying development of Future Phases because the City is not able to build water facilities capable of providing secondary water service to Future Phases, Developer may, with the consent of the City, purchase sufficient culinary water connections to provide for the secondary water requirements for the development of Future Phases. In the event that Developer purchases culinary water connections for its secondary water requirements, then, except as otherwise specified in this Agreement, Developer shall not be entitled to any credit, reimbursement or return of the culinary connections utilized for secondary water purposes in the event the City subsequently builds water facilities capable of providing secondary water service to Future Phases.

The parties anticipate entering into a separate written agreement for reimbursement by the City to Developer of any costs paid by Developer to construct the system improvement portion of any water facilities or improvements, as well as any offsite water lines or other improvements to be constructed or otherwise provided by Developer. The entering into and performance by the City of any such reimbursement agreement shall be a condition to Developer's obligation, if any, to construct or oversize any such lines or other improvements.

### 3.2. Other Improvements and Infrastructure.

3.2.1. Sewer. Sewer service to the development covered by the Master Development Plan shall be provided by the City in accordance with the ordinances and rules and regulations of the City and Timpanogos Special Service District ("Timpanogos"), including the payment of impact fees associated with such service in accordance with Section 3.5, below. Developer shall install all sewer

lines within the Property necessary for the Approved Uses, as well as any offsite sewer lines or other improvements serving the Property to be constructed or otherwise provided by Developer as set out in Exhibit D-1 to this Agreement, in accordance with the ordinances and rules and regulations of the City and as directed by the City Engineer. Any offsite sewer lines and improvements Developer will be required to construct for the development of the Property as well as the phasing of the construction and completion of such offsite sewer lines and improvements are set out in Exhibit D-1 to this Agreement. The construction of onsite sewer lines by Developer shall be completed and approved and accepted by the City prior to the City being required to provide sewer service to such developments. Timpanogos requires payment of a "Capital Facilities Charge" which is subject to change from time to time, which change represents the cost to the District of providing the necessary facilities and improvements to meet the demands of new development. The Capital Facilities Charge is currently collected by the City but may hereafter be collected directly by Timpanogos and may hereafter be collected as a Capital Facilities Charge or as an impact fee. Developer acknowledges and agrees that said Capital Facilities Charge or impact fee by Timpanogos is separate from and in addition to sewer connection fees and sewer impact fees imposed by the City and that payment of the Timpanogos Capital Facilities Charge and the impact fee and connection fees imposed by the City for each connection is a condition to the City providing sewer service to the development covered by the Master Development Plan; provided that, notwithstanding the foregoing, the Developer reserves the right to contest the amount or payment of any such connection fees and/or charges in accordance with Section 3.5, below.

The parties anticipate entering into a separate written agreement for reimbursement by the City to Developer of any costs paid by Developer to construct the system improvement portion of any sewer facilities or improvements, as well as any offsite sewer lines or other improvements to be constructed or otherwise provided by Developer. The entering into and performance by the City of any such reimbursement agreement shall be a condition to Developer's obligation, if any, to construct or oversize any such lines or other improvements.

3.2.2. Storm Detention and Drainage. Storm water drainage service to the development covered by the Master Development Plan shall be provided by the City in accordance with the ordinances and rules and regulations of the City, including the payment of impact fees associated with such service in accordance with Section 3.5, below. Storm water from the development of Developer's Land will be detained and will be released from Developer's Land at a maximum rate equal to the lesser of the historical rate or the rate allowed by the City's standards. Developer will provide for any existing natural storm water drainage and/or drainage channels across Developer's Land as required by the City Engineer. Developer shall construct storm drains within the development covered by the Master Development Plan, as well as any offsite storm drain improvements serving the Property, as set out in Exhibit D-2 to this Agreement in accordance with the ordinances and rules and regulations of the City and as directed by the City Engineer; provided that the City understands, acknowledges and agrees that the location, size and configuration of any such improvements may change from that generally shown on the Master Development Plan, based upon, and as determined from time to time during, the development of the Property as approved by the City Engineer. All such changes shall be deemed to be minor amendments to the Master Development Plan and shall be deemed approved and incorporated into the Master Development Plan upon approval of a final site plan for the Property in the site plan approval process. Subject to the foregoing, the phasing of the construction and completion of such storm drain improvements shall be as provided in Exhibit D-2 to this Agreement and said storm drain improvements shall be approved, dedicated to and accepted by the City as provided in said Exhibit D-2, and in accordance with Applicable City Ordinances, rules and regulations.

The parties anticipate entering into a separate written agreement for reimbursement by the City to Developer of any costs paid by Developer to construct the system improvement portion of any storm detention and drainage facilities or improvements, as well as any offsite storm water lines or other improvements to be constructed or otherwise provided by Developer as set out in Exhibit



D-2. The entering into or performance of any such agreement shall not be a condition or obligation of this Development Agreement.

3.2.3. Roads. All roads to be constructed on or to provide access and other needs resulting from the development of Developer's Land in accordance with the Master Development Plan shall be constructed as set out in Exhibit D-3 to this Agreement, in accordance with the ordinances and rules and regulations of the City and as directed by the City Engineer. The phasing of the construction and completion of onsite and offsite road and/or roads covered by the Master Development Plan shall be constructed as provided in Exhibit D-3 to this Agreement; provided that the Developer shall be entitled to reimbursement from impact fees or pioneering agreements for portions of such costs equitably allocated to others as provided elsewhere in this Development Agreement or by applicable laws, rules or regulations. Further, notwithstanding any other term or condition of this Agreement, Developer's liability or obligation, cost or otherwise, to construct or improve any such roads is (a) only as and to the extent necessary for the phased development of the Property pursuant to the Master Development Plan, (b) contingent upon Developer having the necessary rights to access and construct the roads (and any related utilities and other improvements) on any affected land (other than the Property), and (c) contingent upon completion of the construction, without cost or expense to Developer, of "West Commerce Drive" (as shown on that certain Wal-Mart Subdivision Plat attached hereto as Exhibit D-3(1)). Developer will construct a public 68' wide and 150' long right of way connecting West Commerce Drive to the east boundary line of the Property, which right of way is identified on Exhibit B as "Commerce Drive Access." The City has entered into a development improvements agreement with the developer of the property shown on the Wal-Mart Subdivision Plat, which obligates such developer to install and construct such roads, utilities, drainage, improvements, and infrastructure shown on such plat, including without limitation West Commerce Drive, and the City hereby confirms that a bond (the "Bond") has been posted by such developer to ensure completion of such roads, utilities, drainage, improvements, and infrastructure. The parties acknowledge that the agreement with the Wal-Mart developer does not require the construction of the Commerce Drive Access. In the event that any such roads, utilities, drainage, improvements, or infrastructure as may be necessary or appropriate for the development of the Property shall not be completed by August 31, 2008, then, the City agrees to take all reasonable action available to prosecute the Bond and complete West Commerce Drive. All roads within the Property shall be substantially where shown on attached Exhibit D-3 and, except as otherwise agreed, in writing, by Developer and the City, shall remain private and not be dedicated or otherwise available for public use and, further, shall not be gated or otherwise restricted except as may be necessary to prevent any such dedication. Further, roads within the Property (other than Phases 1 or 2), as shown on the Master Development Plan, shall only be required to be constructed and/or dedicated as and to the extent necessary for, and in connection with, Future Phases.

The construction of onsite roads not shown in Exhibit D-3 shall be approved by the City pursuant to a site plan application for Future Phases. As and to the extent applicable, all public rights of way shall be dedicated to the City via a road dedication plat prior to any building permits being issued. As depicted on Exhibit D-3, attached hereto, publicly dedicated access shall be constructed and provided from both ends of the internal private roadway depicted on Exhibit D-3 that runs east to west through Phase 1 of the Property; provided that the internal private roadway shall not be dedicated or otherwise publicly available by reason thereof. Public roads that are required to be constructed with the development of the Property are depicted in Exhibit D-3. Public roads that will be constructed within the Property and as part of Phase 1 include: a 68' wide right of way connection from Commerce Drive to the private street, a 68' wide right of way from State Road 73 to the private street, and project frontage improvements including any necessary acceleration and deceleration lanes on State Road 73, if any, as required by UDOT pursuant to a separate written agreement between Developer and UDOT. For the purposes of the Phasing Schedule, as hereinafter defined, such public access shall be constructed concurrent with the construction of the Phase 1 improvements. Public roads that may be constructed with Future Phases above, include: 56' wide right of way along the west property line, as depicted in Exhibit D-3. All public and private roads

shall be constructed in conformance with the Applicable City Ordinances and approved construction standards, as and to the extent applicable thereto.

3.2.4. Street Lighting SID. Developer's Land shall be added to the City's Street Lighting Special Improvement District ("Lighting SID") for the maintenance of the street lighting located within public rights-of-way. The addition of Developer's land will be with the consent of the Developer after the City Council finds that inclusion of the Developer's Land will not adversely affect the owners of properties already within the Lighting SID; provided that Developer's Land being included in the Lighting SID will not be a condition to site plan approval for the Developer's Land. The Lighting SID is not for the installation of street lights but is for the maintenance of the street lights that Developer will be required to install as part of the subdivision improvements required by the City.

3.2.5 Passive Public Improvements. Developer shall install passive public improvements for the benefit of all owners, tenants and their customers within the project covered by the Master Development Plan, in locations generally depicted on the Master Development Plan and subject to the approval of the City.

3.2.6 Piping Open Irrigation Systems. In accordance with the letter signed by Scott Holbrook, Vice President of the Utah Lake Distributing Company, and attached hereto as Exhibit E, Developer has the right, but not the obligation, to re-locate and pipe the concrete irrigation ditch that falls within Phase 1 of the Property (as depicted on Exhibit B to this agreement). Subject to the review and approval of the Utah Lake Distributing Company, Developer may be obligated to pipe the old Utah Lake distribution canal and the concrete irrigation ditch within future phases of the Property (as depicted on Exhibit B) as required by the Applicable City Ordinances, but only to the extent such canal and ditch are not already piped.

3.3. Capacity Reservations. Any reservations by the Developer of capacities in any facilities built or otherwise provided to the City by or for Developer shall be for development covered by the Master Development Plan as provided in Exhibit F to this Agreement. All capacity reservations for development covered by the Master Development Plan shall terminate as soon as such development loses its approved status for failure to develop within the time allowed under this Agreement or for any other reason. Upon termination of the reservation of capacities for Developer, the City may make such capacities available for use by other development within the City that can use such capacities and, in such event, Developer shall be reimbursed for such capacities used by others on the basis set out in Exhibit F to this Agreement or otherwise within this Agreement.

3.4. Title – Easements for Improvements. Developer shall dedicate and/or convey to the City all land, rights of way and utility line easements within the Property and associated with the public facilities and/or improvements to be provided by Developer pursuant to this Agreement. The City Engineer shall approve all descriptions of the land, rights of way and easements to be acquired and/or dedicated and conveyed to the City under this Agreement. Developer shall acquire and provide to the City Attorney, for his review and approval, a title report from a qualified title insurance company covering such land, rights of way and easements. Developer shall consult with the City Attorney regarding all instruments used to convey such land, rights of way and easements to the City, the location, terms and conditions of which shall be reasonably acceptable to Development and the City, and which shall reserve to Developer, at its cost and expense, the right to relocate the same as may be reasonably necessary or appropriate in connection with the use, occupancy or development of the Property.

3.5. Impact Fees and Water Connection Fees. Impact fees for roadways, storm drainage, wastewater, parks and open space and public safety facilities shall be imposed on all subdivision lots or other development covered by the Master Development Plan in accordance with the City's Impact Fee Ordinance and shall be paid prior to the issuance of a building permit for any such development.

Connection fees for culinary and secondary water shall be paid prior to the issuance of a building permit for any such development except as they may be otherwise paid by prior arrangements between the City and the Developer. Any credits for impact fees or water connection fees based on improvements, dedications or conveyances by Developer, except as otherwise specified in this Agreement, shall be agreed to, in writing, in connection with, and as a condition precedent to, any such matters. Developer does not hereby waive Developer's right under any applicable law to challenge the legality or the amount of any such impact or connection fees based on generally applicable state or federal laws or to apply for appropriate credits or reimbursements as provided herein or by applicable law.

3.6. Intentionally deleted.

3.7. Development Application and Review Fees. Developer has paid application and review fees for the following applications: (a) the amendment of the General Plan and the Zoning Map, (b) the rezoning of the Property as an RC Zone, (c) the approval of a conditional use permit for the Approved Uses, (d) the approval of the Master Development Plan (including the approval of concept plans pertaining to Phases 1 and 2), (e) the approval of this Development Agreement, and (f) the approval of a final site plan pertaining to Phase 1. No further fees shall be charged to Developer for these approvals. All application and review fees for development or construction approvals, plan amendments and all applicable impact fees for each phase of development on the Property shall be paid at the time and in the amounts set forth in the Applicable City Ordinances, and as customarily applied, for any such phase or development; provided that the payment of impact and/or connection fees shall be in accordance with the provisions of Section 3.5, above.

3.8. Miscellaneous. Notwithstanding any other term or condition of this Agreement, the Developer shall not have any liability or obligation, cost or otherwise, for any such infrastructure or facilities which do not serve, in whole or in part, the Property, and, to the extent Developer shall pay any part or all costs or expenses therefor, Developer shall be entitled to payment, reimbursement or credit for that portion not required to serve the Property, notwithstanding any other term or condition of this Agreement.

#### IV. PHASING AND TIMING OF DEVELOPMENT – TERM OF AGREEMENT – DEFAULT

4.1. Phasing and Timing of Development. The phasing and timing of development under the Master Development Plan shall be as provided in the Phasing Schedule attached as Exhibit G to this Agreement (the "Phasing Schedule"). Developer may apply to the City for an amendment of the Phasing Schedule. Subject to the terms and conditions of this Agreement, Developer shall be entitled to approval of an amendment to the Phasing Schedule, provided such amendment does not unreasonably, adversely impact public interest or other development after the Planning Commission has reviewed such requested amendment and made its recommendations to the City Council. Any failure of Developer to comply with the Phasing Schedule that shall continue without any commencement of remedial action for more than nine (9) months, may result in the City Council terminating the Master Development Plan and this Agreement as to phases for which a subdivision or site plan has not been given final approval as well as terminating all capacity reservations for such phases after the Planning Commission shall have reviewed such failure to comply and made its recommendations to the City Council.

4.2. Term of Agreement; Continuing Approved Uses. The term of this Agreement shall commence as of the later of the Effective Date or satisfaction of the conditions precedent to the effectiveness of this Agreement as set forth in Section 1.5, above, of this Development Agreement and, then, shall continue for a period of eight (8) years thereafter. This Agreement shall continue beyond its term as to any rights or obligations for subdivisions or site plans that have been given final approval prior to the end of the term of this Agreement. This Agreement shall terminate at such time as, whichever is earlier (a) all development covered by this Agreement is approved and

completed and all obligations of Developer have been met, or (b) written agreement of the parties; provided that any reimbursement, offset or credit rights shall survive any such termination. Further, notwithstanding the termination of this Agreement for any reason, the conditional use permit allowing the Approved Uses on the Property, and the vested rights specified in this Agreement, shall survive the termination of this Agreement, and any portion of the Property that is improved in accordance with this Agreement and the site plan and subdivision and other approvals contemplated hereby shall be entitled to be used and improved, and any improvements located or permitted to be located thereon at the time of termination shall be entitled to be constructed, used, remodeled and reconstructed in accordance with the provisions of this Agreement. In addition, notwithstanding the termination of this Agreement for any reason, any portion of the Property that is the subject of a pending or approved application for preliminary or final site plan or subdivision approval or construction approval shall be entitled to be processed, approved or not approved, used and improved, and any improvements located or permitted to be located thereon at the time of termination shall be entitled to be constructed, used, remodeled and reconstructed in accordance with the provisions of this Agreement provided the owner of the portion of the Property that is the subject of the application proceeds in a commercially reasonable manner to finalize necessary approvals and thereafter proceeds in a commercially reasonable manner to commence and complete the improvements required by the application. The foregoing provisions shall apply even if such use or the improvements authorized by this Agreement do not conform to the requirements of otherwise applicable City laws and regulations at the time.

The benefits extended by the preceding subsection shall apply to the uses (subject to non-conforming use termination provisions of then applicable law) and structures permitted at the time of the termination to be constructed on parcels approved and subdivided under those subsections, regardless of when an application for a building permit is submitted for structures on any such parcel. Further, the Developer does not waive any rights Developer may have to assert the vested right to develop the Property after the expiration of the Development Agreement under then applicable laws or regulations.

Termination of this Agreement as to the Property or any portion thereof shall not affect any of such Developer's obligations to comply with the terms and conditions of any applicable zoning, or subdivision plat, site plan, building permit, or other land use entitlements approved with respect to the Property, nor shall it affect any other covenants or any other development requirements specified or created pursuant to this Agreement. Termination of this Agreement shall not affect or invalidate in any manner the following specific obligation of Developer, which shall survive the termination of this Agreement: the obligation of Developer to complete any improvements covered by any issued permit (including permits issued after the termination of this Agreement based on vested applications or the provisions of this Agreement).

4.3. Default – Remedies. If either party believes the other party to be in breach of any material term, event or condition of this Agreement, said party shall give the defaulting party 30 days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said default must be satisfactorily cured. After proper notice and expiration of said 30 day cure period or such other, longer period as may be reasonably necessary to effect any such cure (so long as the defaulting party shall commence any such cure within such thirty (30) day period and prosecute the same with reasonable due diligence), the non-defaulting party shall be entitled to all rights and remedies provided in this Agreement or available at law and in equity, including injunctive relief, specific performance and/or damages (punitive, special, consequential, and exemplary damages excepted), including but not limited to, its reasonable attorneys' fees and costs. In addition, if the City believes Developer to be in breach of this Agreement or any approval or agreement covering the development covered by this Agreement, the City may, after notice as herein provided, refuse to grant any further approvals, licenses, permits or other rights under this Agreement or any other agreement related to this Agreement until such default is cured. Notwithstanding any other term or condition of this Agreement, if any party to this Agreement shall be delayed or prevented from the

performance of any act required hereunder by reason of a strike, labor trouble, acts of terror or acts of nature and the elements or any other cause beyond the reasonable control of such party (financial inability excepted), i.e., “*force majeure*,” and such party otherwise is without fault, then performance of any such act shall be postponed for the period of the delay.

## V. FURTHER REVIEW PROCESSES AND REVIEW STANDARDS

5.1 No Further Conditional Use Review Required. No further conditional use review process is required for the Approved Uses set forth in this Agreement as and to the extent on Developer’s Land.

5.2 Site Plan Review. As set forth in Section 1.2, above, the City’s approval of the Master Development Plan constitutes the City’s approval of a concept plan pertaining to Phase 1 and Phase 2. Developer has submitted a site plan application for the final approval of Phase 1 in accordance with Section 19.14 of the Code in effect as of the date such site plan application was submitted to the City.

### 5.3 Amendments.

5.3.1. Substantial Amendments. Any amendment to this Agreement that alters or modifies the Term of this Agreement, the permitted uses, the approved density or intensity of use, the text of the Development Agreement itself, the requirement of any amenity described herein that is available to the public, the development standards, or provisions of the Development Agreement or any approved mechanism that imposes financial obligations on Developer or property owners within the Property shall be deemed a “Substantial Amendment” and shall require a noticed public hearing and recommendation by the Planning Commission and a noticed public hearing and decision by the City Council prior to the execution of such an amendment.

5.3.2. Administrative Amendments. Unless otherwise provided by law, all amendments to this Development Agreement that are not Substantial Amendments shall be deemed “Administrative Amendments” and may be approved and executed by the City Planner without a noticed public hearing, recommendation by the Planning Commission or action by the City Council. Administrative Amendments may be reflected in a written approval or formal written amendment to this Development Agreement. In any event, Administrative Amendments will be deemed approved upon the issuance of the applicable building permit if not covered by a specific, separate approval or a written amendment to this Development Agreement. Amendments to an approved Master Development Plan shall be deemed to be an Administrative Amendment to this Development Agreement when approved by the administrative process set forth in the Ordinance and referred to herein. Specifically, the provisions of the Code shall govern the definitions and processes for approval of major and minor amendments of a Master Development Plan. Amendments to the provision of the development standards shall be administered as a minor Master Development Plan amendment.

5.3.3. Effect of Amendment. Any amendment to this Agreement shall be operative only as to those specific portions of this Agreement expressly subject to the amendment, with all other terms and conditions remaining in full force and effect without interruption.

5.4 Right of Developer to Pay for Dedicated Outside Consultant to Assist in Permit Review and Inspection. The City agrees that the following special provisions are appropriate to allow development to proceed in the Property at an appropriate pace while also limiting the City’s need to expand its full-time staff to meet temporary requirements: If a temporary backlog in the processing of applications within the City occurs and Developer offers to pay to the City the full cost of providing one or more qualified outside development application, construction application, subdivision and/or building permit reviewers on a temporary basis, the City shall retain the services

of qualified outside development application, construction application, subdivision and/or building permit reviewers as may be necessary to process subdivision and permit applications for development in the Property. The reviewer or reviewers shall be dedicated exclusively to review the development applications, construction applications, subdivision and/or building permit applications for development in the Property, and Developer shall receive a credit against review and permit application fees otherwise payable for development activity reviewed by the dedicated reviewer or reviewers. In the event the City determines to utilize such outsourcing, the Developer will deposit in advance with the City the City's estimated cost differential between outsourcing and routine in-house review of the application, and upon completion of the outsourcing services shall immediately pay or receive credit for any differential in the actual costs incurred by the City to obtain outside or overtime review of any submitted plats, drawings and supporting materials. The City's obligation to complete the review process as outlined above is subject to the Developer and/or Developers' submittal, in a timely manner, of a complete application including all the necessary data, drawings and engineering that is required by the City to complete the review process.

## VI. GENERAL TERMS AND CONDITIONS

6.1. Agreement to Run with the Land. This Agreement shall be recorded against Developer's Land. The agreements contained herein shall be deemed to run with the land and shall be binding on and inure to the benefit of all successors in ownership of Developer's Land.

6.2. Assignment. Developer shall be entitled to transfer all, or any portion, of Developer's Land without the consent of the City. Developer agrees to provide the City with notice of any such transfer ninety (90) days prior to effecting the transfer. In the event of any transfer of all, or a portion of Developer's Land, the transferee shall be deemed to be the developer for all purposes with respect to the land so transferred and the rights and obligations directly related to the transferred land. Developer shall remain responsible for all obligations under this Agreement with respect to the remainder of Developer's Land. Notwithstanding the foregoing to the contrary, Developer shall be entitled to assign all of its rights and obligations under this Agreement to wholly-owned subsidiaries or affiliates owned, controlled or under common control by or with Developer.

6.3. Notices. Any notice given under this Agreement shall be in writing and shall be delivered personally (receipted), be sent by confirmed facsimile transmission ("Fax"), sent by a nationally-recognized overnight courier, or mailed by first class or express mail, addressed as follows:

To City: City of Saratoga Springs  
Attention: City Manager  
307 North Commerce Drive, Suite 200  
Saratoga Springs, Utah 84045  
Fax No. (801) 766-9794

To Developer: IHC Health Services, Inc.  
Attention: Corporate Real Estate Director  
36 South State Street, 22<sup>nd</sup> Floor  
Salt Lake City, Utah 84111  
Fax No. (801) 442-3178

or at such other address as any party may designate by written notice to the other party as herein provided. Notice shall be deemed given when actually received if delivered personally or by courier; if by fax, when the fax is received, except that if the fax is received after normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States mail properly addressed and postage prepaid.

6.4. Covenant for Further Assurances. The parties to this Agreement agree to reasonably cooperate with each other in effectuating the terms and conditions of this Agreement and agree to execute such further agreements, conveyances and other instruments as may be required to carry out the intents and purposes of this Agreement.

6.5. Entire Agreement. This Agreement, together with the above recitals and the exhibits attached hereto (which are incorporated in and made a part hereof by this reference), and the instruments and documents referred to herein set forth the entire agreement between the City and Developer and supersede all prior negotiations, dealings, and agreements by the parties as to the matters herein addressed.

6.6. No Third Party Beneficiaries. This Agreement does not create any third party beneficiary rights. It is specifically understood by the parties that: (a) the development of Developer's Land under this Agreement and the Master Development Plan is a private development; (b) the City has no interest in or responsibilities for or duty to third parties concerning any improvements on Developer's Land unless the City accepts the dedication of the improvements pursuant to the terms of this Agreement or in connection with final subdivision plat or site plan approval; and (c) Developer shall have full power over and exclusive control of Developer's Land subject to the obligations of Developer under this Agreement.

6.7. Waiver. No failure or delay in exercising any right, power or privilege hereunder on the part of any party shall operate as a waiver hereof. No waiver shall be binding unless executed in writing by the party making the waiver.

6.8. Time. Time is of the essence of this Agreement.

6.9. Rights of Access. The City Engineer and other representatives of the City shall have a reasonable right of access to Developer's Land and all development pursuant the Master Development Plan during development and construction to inspect or observe the work on the improvements and to make such inspections and tests as are allowed or required under the City's ordinances.

6.10 Release of Developer. In the event of a transfer of all of the remaining portion of the Property, Developer shall obtain an assumption by the transferee of the Developer's obligations under this Agreement and a replacement of any bonds or other security for the installation of public improvements, and, in such an event, the transferee shall be fully substituted as Developer under this Agreement and the Developer executing this Agreement shall be released from any further obligations with respect to this Development Agreement.

6.11 Obligations and Rights of Mortgage Lenders. Developer may finance the Property and may execute one or more mortgages, deeds of trust or other security arrangements with respect to the Property and may assign this Development Agreement to a holder of any such financial instrument without prior written notice to or consent of the City. The holder of any mortgage, deed of trust, or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Agreement by virtue of such assignment to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to all requirements and obligations of this Agreement and any pro rata claims for payments or charges against the Property, or such portion thereof, deed restrictions, or other obligations which accrue prior to the time such holder comes into possession. Nothing in this Agreement shall be deemed or construed to permit or authorize any such

holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, and, as would be the case in any assignment, the purchaser of the Property from the holder shall be subject to all of the terms and conditions of this Agreement, including the obligation to complete all required amenities and improvements. Additionally, nothing herein shall be so construed as to prohibit a mortgage or deed of trust holder from providing security for the standard installation of development improvements pursuant to the Applicable City Ordinances.

6.12. Construction; Severability. This Agreement shall be governed as to validity, enforcement, construction, effect and in all other respects by the laws of the State of Utah. The parties agree and understand that the obligations imposed under this Agreement are only such as are consistent with state and federal law. The parties also agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of this Agreement shall remain in full force and effect. The section headings and numbers are for convenience only and are not to be used to construe or interpret the provisions of this Agreement.

6.13. Survival of Developer's Obligations. Developer's rights, remedies, obligations and responsibilities under this Agreement shall survive and continue beyond termination of this Agreement as to subdivisions and/or site plans that have been given final approval and have been recorded and for all offsite or other improvements that Developer was obligated to construct or make in connection with or as a condition of such final approval.

6.14. Disputes. In the event that a dispute arises in the interpretation or administration of this Agreement or if the default mechanism contained herein shall not resolve a default under this Agreement, then prior to taking any action to terminate this Agreement and subject to the right of the City to exercise enforcement of its police powers in the event Developer is in direct violation of a provision of this Agreement or of any otherwise applicable law or regulation not in conflict with this Agreement, every continuing dispute, difference, and disagreement shall be referred to a single mediator agreed upon by the parties, or if no single mediator can be agreed upon, a mediator or mediators shall be selected from the mediation panel maintained by the United States District Court for the District of Utah in accordance with any designation process maintained by such court. The parties shall mediate such dispute, difference, or disagreement in a good faith attempt to resolve such dispute, difference or disagreement. The mediation shall be non-binding.

6.15. Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement; or to obtain any remedies consistent with the purpose of the Agreement. Legal actions shall be instituted in the Third Judicial District Court of the County of Salt Lake, State of Utah.

6.16. Construction of Agreement. This Agreement should be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits and protecting any compelling, countervailing public interest while providing reasonable assurances of continuing vested development rights. The vested rights granted in this Agreement and the rights that survive the termination of this Agreement shall be construed to be in addition to any vested rights, nonconforming use or improvement rights or other similar rights granted by applicable law.

6.17. Counterpart and Facsimile Signatures. This Agreement may be executed by facsimile and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



6.18 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING UNDER COMMON LAW OR ANY APPLICABLE STATUTE, LAW, RULE OR REGULATION. FURTHER, EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY.

6.19 Relationship of Parties. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any similar relationship between the parties. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

6.20 Costs and Expenses; Attorneys' Fees. Except as otherwise specifically provided herein, each party shall bear its own costs and expenses (including legal and consulting fees) in connection with this Agreement and the negotiation of all agreements and preparation of documents contemplated by this Agreement. In the event of a breach or dispute arising under this Agreement, the nonbreaching party or the party prevailing in such dispute shall be entitled to recover from the breaching or nonprevailing party its costs, including, without limitation, court costs, reasonable attorneys' fees, expert witness fees, fax, copy, telephone and other incidental charges.

*[signature page follows]*

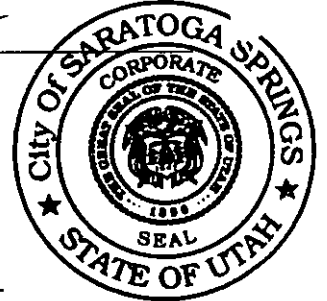
IN WITNESS WHEREOF, this Agreement has been executed by the City of Saratoga Springs, Utah, acting by and through the City Council, and by a duly authorized representative of Developer as of the above stated date.

ATTEST:

[Signature]  
City Recorder

CITY OF SARATOGA SPRINGS, UTAH

By: [Signature]  
Timothy L. Parker, Mayor



APPROVED AS TO FORM:

[Signature]  
City Attorney

IHC HEALTH SERVICES, INC.

By: [Signature]  
Its: VP

STATE OF UTAH            )  
                                  ):ss.  
COUNTY OF UTAH        )

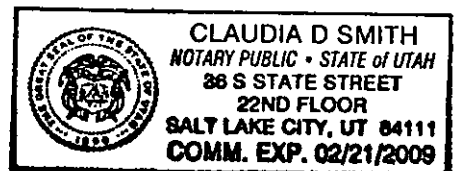
On the \_\_\_\_\_ day of \_\_\_\_\_, 2008, personally appeared before me Timothy L. Parker, who being duly sworn, did say that he is the Mayor of the CITY OF SARATOGA SPRINGS, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Timothy L. Parker acknowledged to me that the City executed the same.

\_\_\_\_\_  
Notary Public

STATE OF UTAH            )  
                                  ):ss.  
COUNTY OF Salt Lake    )

On the 4th day of September 2008, personally appeared before me D.R. Gardner who being by me duly sworn did say that s/he is the \_\_\_\_\_ of IHC HEALTH SERVICES, INC., and that the foregoing instrument was duly authorized and signed in behalf of said corporation.

[Signature]  
Notary Public



**EXHIBIT A (Refer to 1.1)**  
Legal Description of Developer's Land

**RECORD DESCRIPTIONS**

*No. NCS-269904-SLC*

All that part of the Northwest Quarter of Section 14, Township 5 South, Range 1 West, Salt Lake Base and Meridian, bounded and described as follows:

Beginning at the Northwest Corner of said Section 14, and running thence North 89°38'31" East 314.19 feet; thence South 17°18' West 220.40 feet; thence South 00°22'06" West 1081.29 feet; thence North 89°22'42" West along the North Right-of-way Line of SR-73, 250.00 feet; thence North 00°22'06" East 1287.04 feet to the point of beginning.

*No. NCS-269914-SLC*

*Parcel 1:*

Commencing North 1.96 feet and East 314.18 feet from the Northwest Corner of Section 14, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 89°38'31" East 811.86 feet; thence South 37°42'48" West 767.86 feet; thence South 17°50'25" West 503.43 feet; thence South 2°48'01" West 213.06 feet, thence North 89°22'42" West 250 feet; thence North 0°22'06" East 1081.29 feet; thence North 17°18'00" East 220.4 feet to the point of beginning.

*Parcel 2:*

Commencing North 7.03 feet and East 1126.04 feet from the Northwest Corner of Section 14, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 37°42'48" West 767.86 feet; thence South 17°50'25" West 503.43 feet; thence South 2°48'01" West 213.07 feet; thence South 89°22'42" East 250 feet; thence North 43°16'42" West 18.75 feet; thence North 2°48'00" East 199.55 feet; thence North 25°53'30" East 180.67 feet; thence North 31°05'30" East 1083.98 feet; thence South 89°38'31" West 251.21 feet to the point of beginning.

**AS SURVEYED DESCRIPTION**

A part of the Northwest Quarter of Section 14, Township 5 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Saratoga Springs, Utah County, Utah:

Beginning at the Northwest Corner of said Section 14; and running thence North 89°38'31" East 1376.73 feet along the Section Line to the Northwest corner of Lot 1, Plat A, Crossroads Ranchettes Subdivision as it is staked on the ground; thence along the Westerly Line of said Subdivision as it is staked on the ground the following three courses: South 31°05'30" West 1083.98 feet; South 25°53'30" West 180.67 feet; and South 2°48'00" West 199.55 feet; thence South 43°39'39" East 18.87 feet to the North Line of SR-73 as it exists at 50.00 foot half-width; thence North 89°22'42" West 749.63 feet along said North Line of SR-73 to the Section Line; thence North 0°22'06" East 1287.04 feet along said Section Line to the point of beginning.

Contains 1,297,070 sq. ft. or 29.777 acres

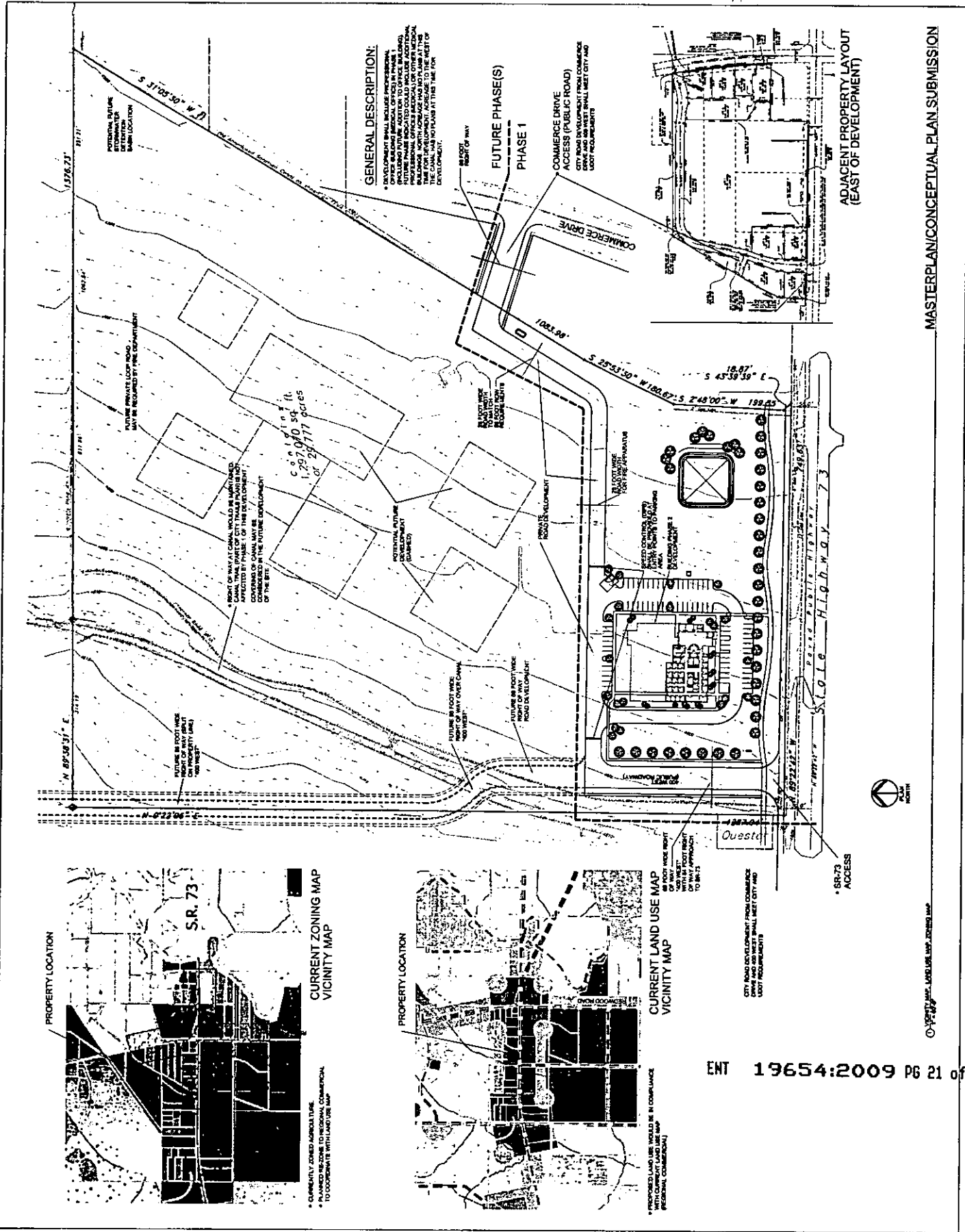
EXHIBIT B (Refer to 1.2)  
Master Development Plan

*[DRAWINGS (MP.01 AND MP.02) ATTACHED]*

**INTERMOUNTAIN  
 SARATOGA  
 SPRINGS  
 CLINIC**

DATE: 07-02-2009  
 SHEET NO: 10765.000

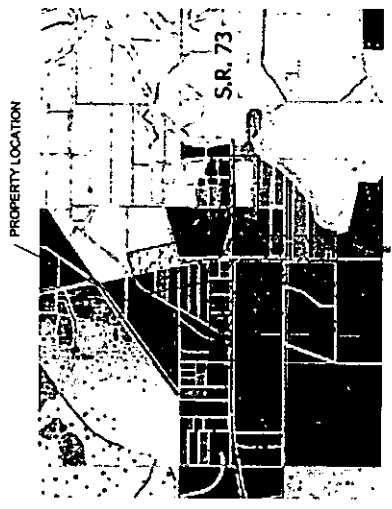
DATE: 07-02-2009  
 SHEET NO: 10765.000



**GENERAL DESCRIPTION:**  
 DEVELOPMENT SHALL INCLUDE PROFESSIONAL OFFICE BUILDING, ADDITIONAL OFFICE BUILDING, AND ADDITIONAL PARKING. FUTURE PHASE(S) COULD INCLUDE ADDITIONAL OFFICE BUILDING, ADDITIONAL PARKING, AND ADDITIONAL OFFICE BUILDING. NORTH-SOUTH ROADWAY IS NOT PLANNED AT THIS TIME. THE CANAL HAS NOT PLANNED AT THIS TIME FOR DEVELOPMENT.

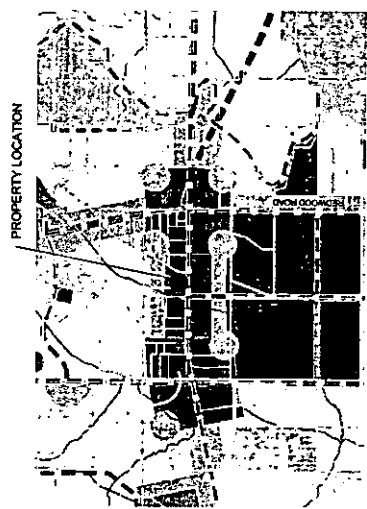
**ADJACENT PROPERTY LAYOUT  
 (EAST OF DEVELOPMENT)**

**MASTER PLAN CONCEPTUAL PLAN SUBMISSION**



**PROPERTY LOCATION**  
**CURRENT ZONING MAP**  
**VICINITY MAP**

\* CURRENTLY ZONED AGRICULTURE  
 \* PLANNED ZONING TO REGIONAL COMMERCIAL  
 \* TO COORDINATE WITH LAND USE MAP



**PROPERTY LOCATION**  
**CURRENT LAND USE MAP**  
**VICINITY MAP**

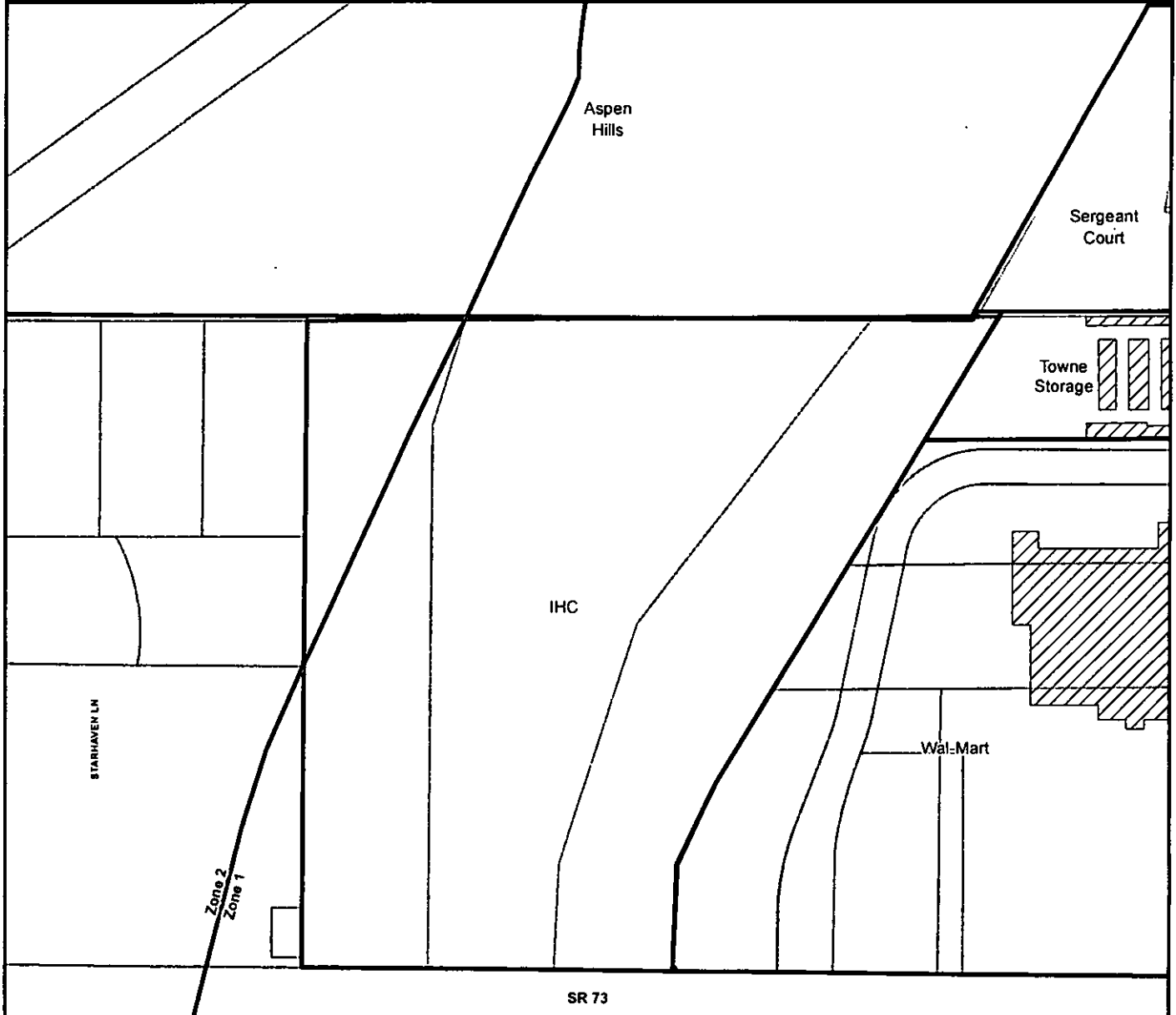
\* PROPOSED LAND USE WOULD BE IN COMPLIANCE WITH LAND USE MAP  
 \* TO COORDINATE WITH LAND USE MAP  
 \* REGIONAL COMMERCIAL



EXHIBIT C (Refer to 3.1)  
Water Service Map Depicting Zones 1 and 2





***[CITY'S WATER SERVICE MAP DEPICTING ZONES 1 AND 2 ATTACHED]***

# IHC Property Pressure Zone Boundary




ENT 19654:2009 PG 24 of 40

**Legend**

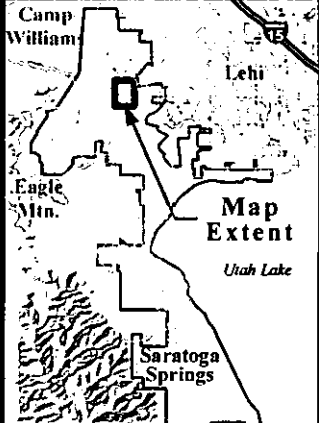
 Parcel	 Pressure Zones
 Subdivision	 Building

The represented pressure zone boundaries are for schematic purposes only and the actual zone boundary can only be determined once all facilities are installed and flow tests performed.

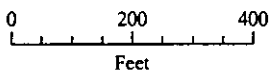
CITY OF




SARATOGA SPRINGS



Map Extent



0 200 400  
Feet

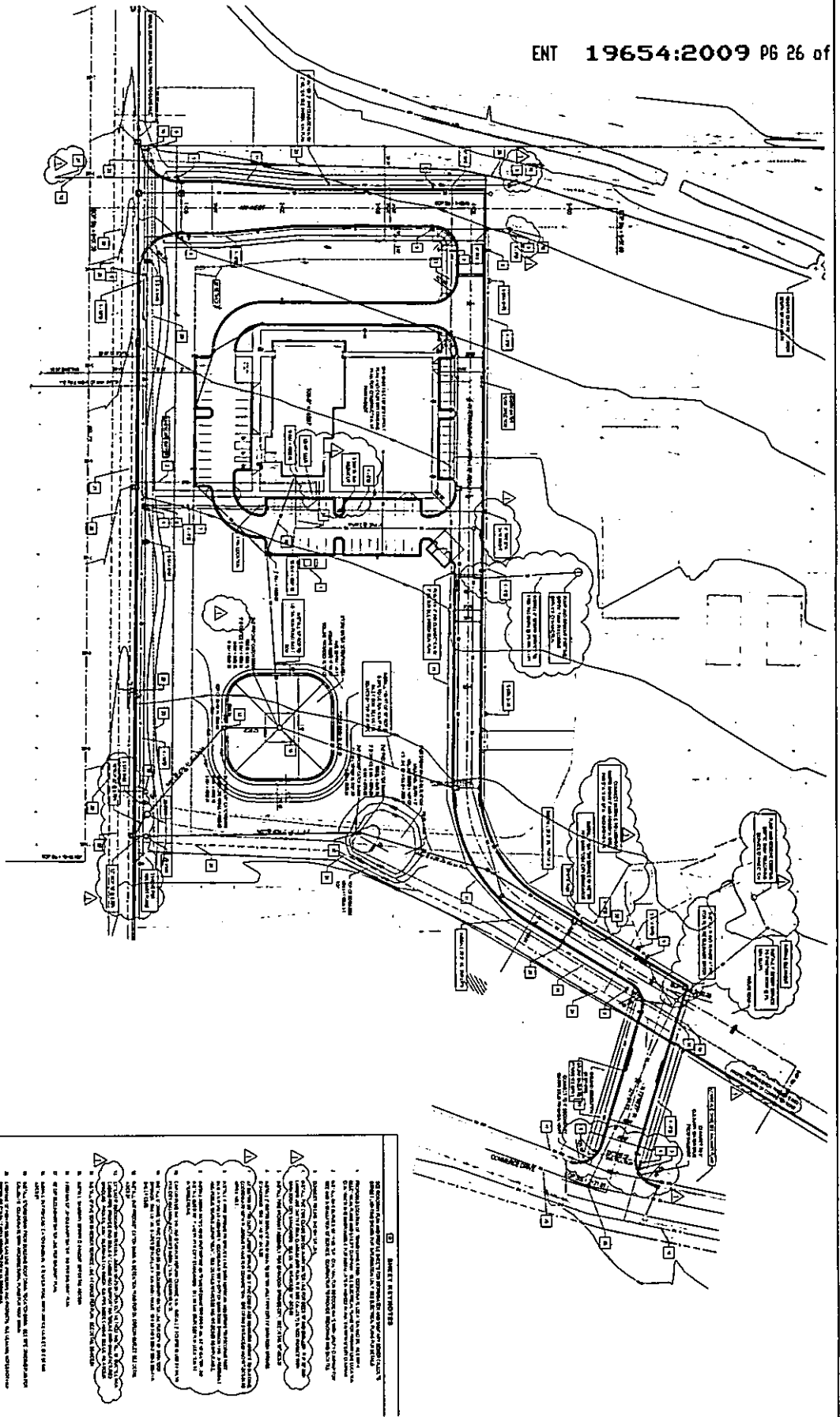


File: S:\GIS\Utilities\MapSupport\IHC\_PressureZones.mxd



EXHIBIT D-1 (Refer to 3.2.1)  
Required Sewer Lines

*[SITE UTILITY PLAN ATTACHED]*



**1** SEE NOTE 1

**2** SEE NOTE 2

**3** SEE NOTE 3

**4** SEE NOTE 4

**5** SEE NOTE 5

**6** SEE NOTE 6

**7** SEE NOTE 7

**8** SEE NOTE 8

**9** SEE NOTE 9

**10** SEE NOTE 10

**11** SEE NOTE 11

**12** SEE NOTE 12

**13** SEE NOTE 13

**14** SEE NOTE 14

**15** SEE NOTE 15

**16** SEE NOTE 16

**17** SEE NOTE 17

**18** SEE NOTE 18

**19** SEE NOTE 19

**20** SEE NOTE 20

**21** SEE NOTE 21

**22** SEE NOTE 22

**23** SEE NOTE 23

**24** SEE NOTE 24

**25** SEE NOTE 25

**26** SEE NOTE 26

**27** SEE NOTE 27

**HKS**



Intermountain  
Healthcare

**INTERMOUNTAIN  
SARATOGA  
SPRINGS  
CLINIC**

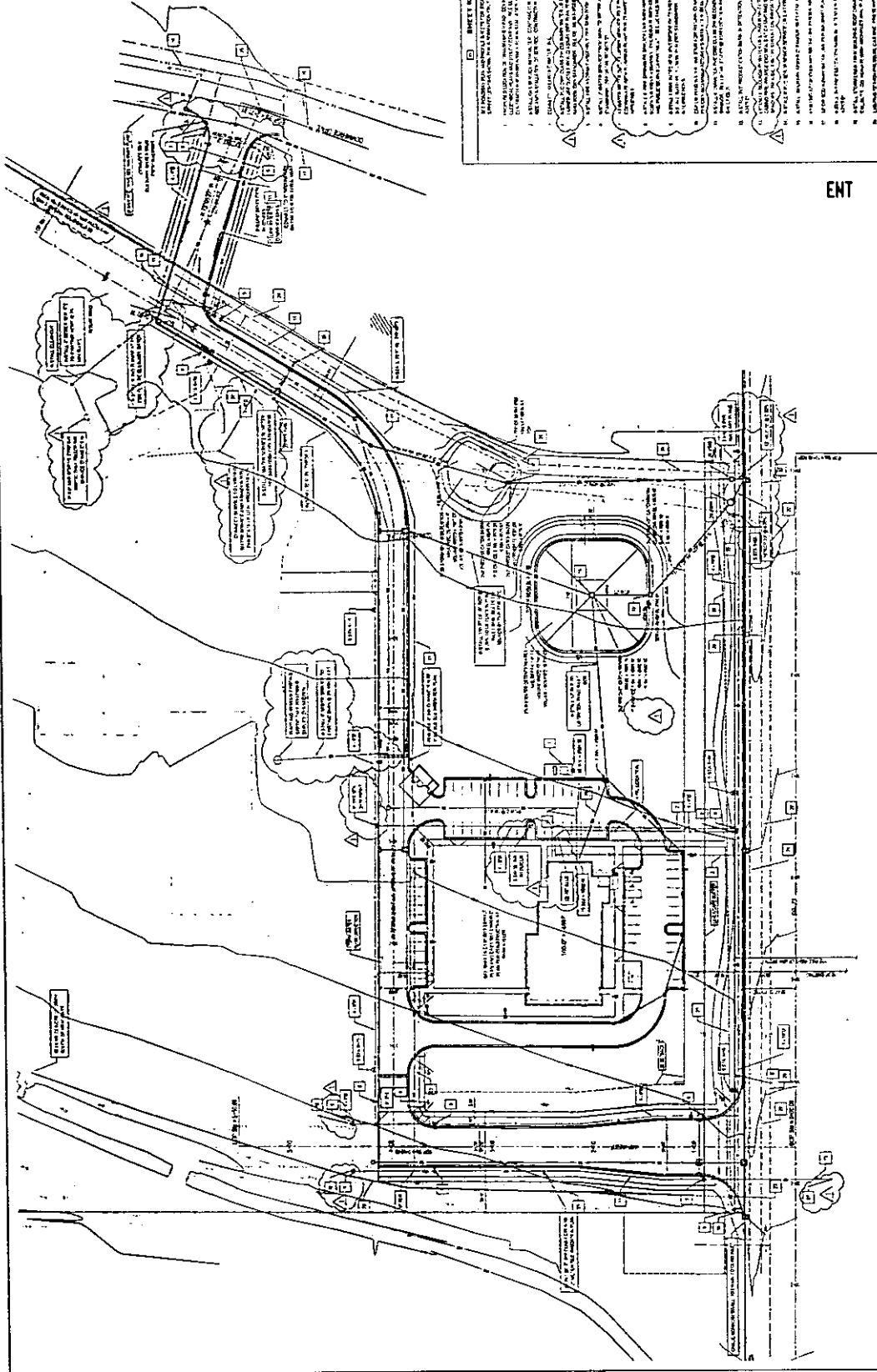
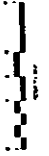
Construction  
Documents

DATE	DESCRIPTION
10/15/2009	ISSUE FOR PERMITTING
07/28/2009	ISSUE FOR CONSTRUCTION
03/24/08	ISSUE FOR DESIGN
03/24/08	ISSUE FOR DESIGN
03/24/08	ISSUE FOR DESIGN

PROJECT NO. 10783-000  
SITE UTILITY PLAN  
DATE 03/24/08  
SCALE AS SHOWN  
**C1.01**

EXHIBIT D-2 (Refer to 3.2.2)  
Required Storm Drainage Facilities

*[SITE UTILITY PLAN ATTACHED]*

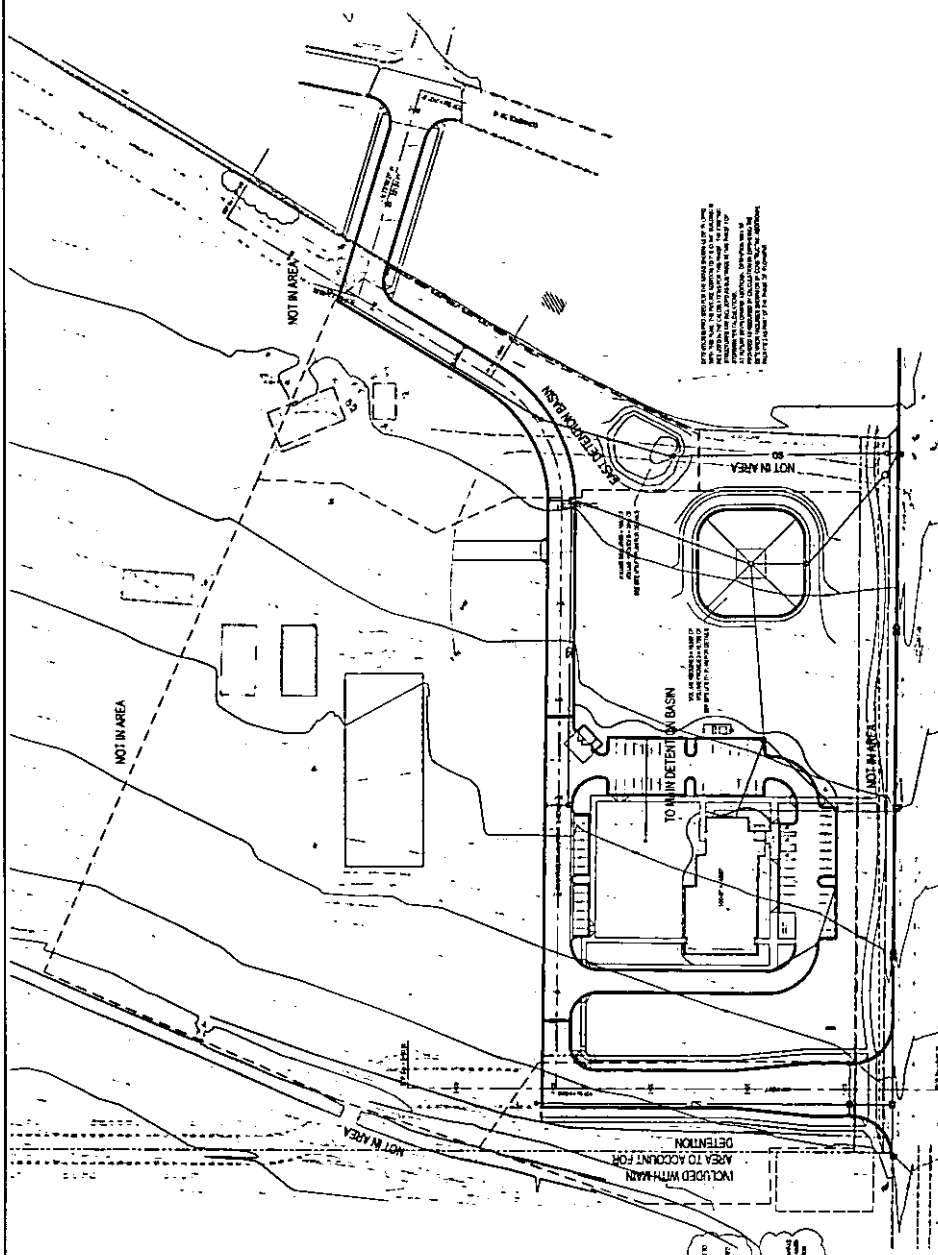


- GENERAL NOTES:**
1. REFER TO ALL SHEETS FOR CONSTRUCTION DETAILS AND SPECIFICATIONS.
  2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL RESIDENTIAL CODE (IRC).
  3. ALL UTILITIES SHALL BE DEPTH MARKED AND PROTECTED.
  4. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL RESIDENTIAL CODE (IRC).
  5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL RESIDENTIAL CODE (IRC).
  6. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL RESIDENTIAL CODE (IRC).
  7. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL RESIDENTIAL CODE (IRC).
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  9. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL RESIDENTIAL CODE (IRC).
  10. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL RESIDENTIAL CODE (IRC).

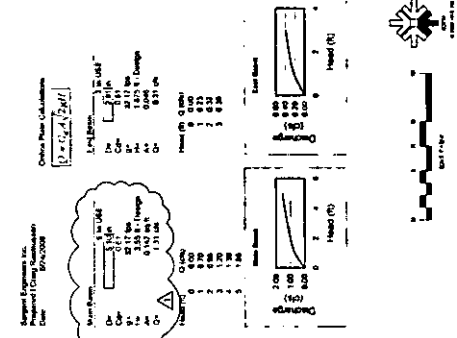


DATE	DESCRIPTION
08/11/09	ISSUE FOR PERMIT
08/11/09	ISSUE FOR CONSTRUCTION
08/11/09	ISSUE FOR AS-BUILT

PROJECT NO. 19654  
 SHEET NO. 2-33-06  
 DATE 08/11/09



CALCULATION OF STORAGE AREA IS BASED ON THE FOLLOWING ASSUMPTIONS:  
 1. STORAGE AREA IS BASED ON THE DETENTION TIME OF 30 MINUTES.  
 2. STORAGE AREA IS BASED ON THE DETENTION TIME OF 30 MINUTES.  
 3. STORAGE AREA IS BASED ON THE DETENTION TIME OF 30 MINUTES.  
 4. STORAGE AREA IS BASED ON THE DETENTION TIME OF 30 MINUTES.



ENT 19654:2009 PG 29 of 40

Sargent Engineers, Inc. 10000 Westpark Drive, Suite 1000, Dallas, TX 75243  
 Project: Intermountain Healthcare Clinic - Saratoga Clinic  
 Date: 08/11/09  
 Prepared By: [Name]

Flow Type	Peak (CFS)	Time (hr)
Inflow	1,200	0.5
Outflow	800	1.5

Sargent Engineers, Inc. 10000 Westpark Drive, Suite 1000, Dallas, TX 75243  
 Project: Intermountain Healthcare Clinic - Saratoga Clinic  
 Date: 08/11/09  
 Prepared By: [Name]

Flow Type	Peak (CFS)	Time (hr)
Inflow	1,200	0.5
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Sargent Engineers, Inc. 10000 Westpark Drive, Suite 1000, Dallas, TX 75243  
 Project: Intermountain Healthcare Clinic - Saratoga Clinic  
 Date: 08/11/09  
 Prepared By: [Name]

Flow Type	Peak (CFS)	Time (hr)
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 Date: 08/11/09  
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 Project: Intermountain Healthcare Clinic - Saratoga Clinic  
 Date: 08/11/09  
 Prepared By: [Name]

Flow Type	Peak (CFS)	Time (hr)
Inflow	1,200	0.5
Outflow	800	1.5

EXHIBIT D-3 (Refer to 3.2.3)  
Required Roads

*[DRAWINGS (MP.01 AND MP.02) ATTACHED]*

INTERMOUNTAIN SARATOGA SPRINGS CLINIC

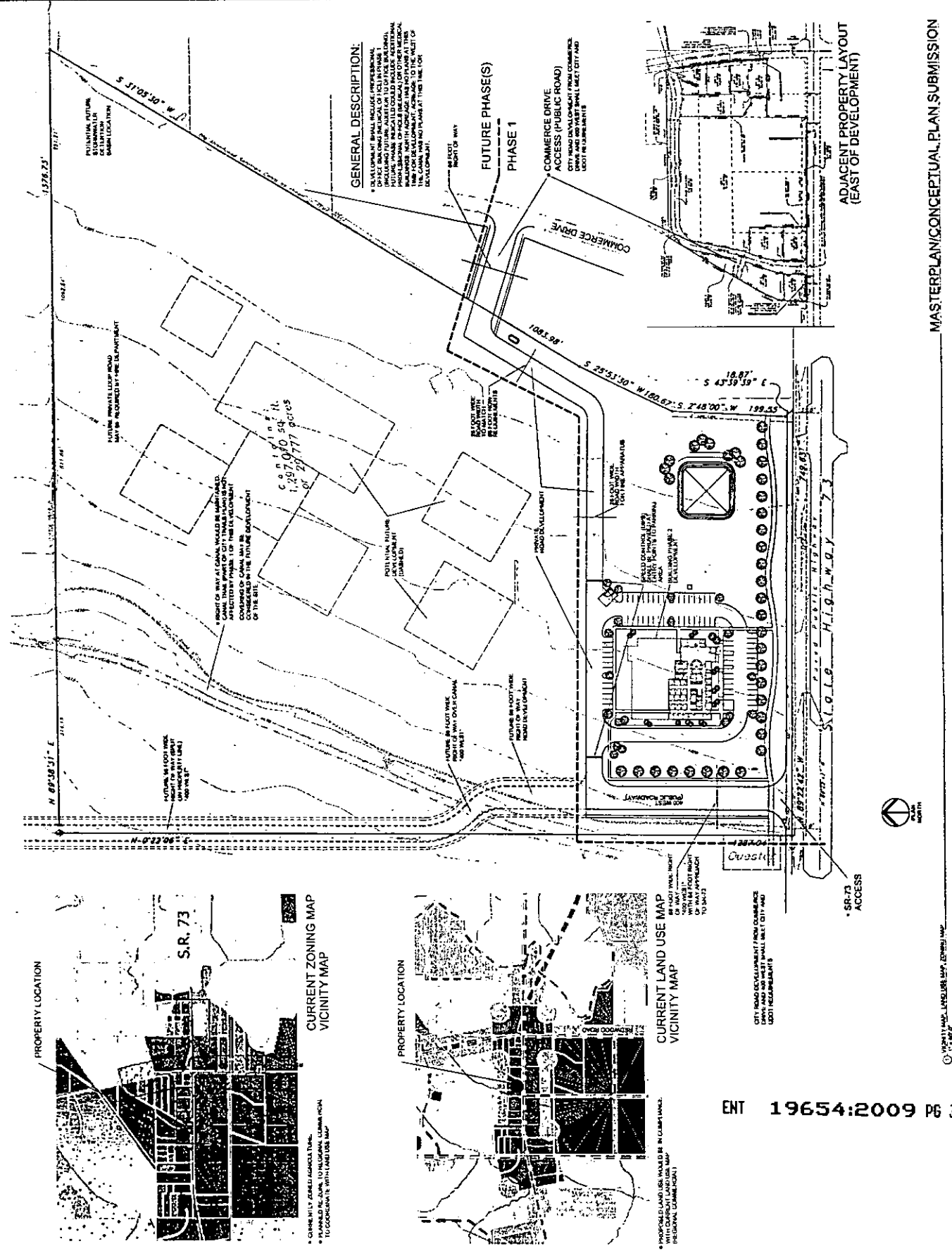
INTERMOUNTAIN SARATOGA SPRINGS CLINIC

DATE: 07-07-2009

DATE: 07-07-2009

DESCRIPTION, VICINITY AND USES MAPS

MP.01

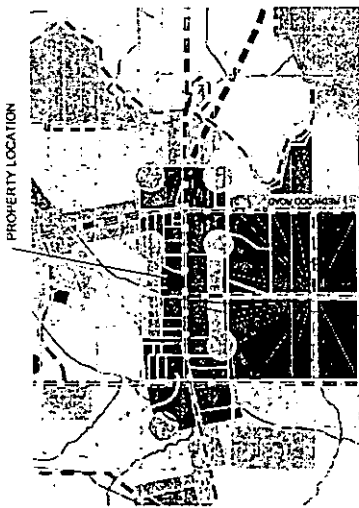
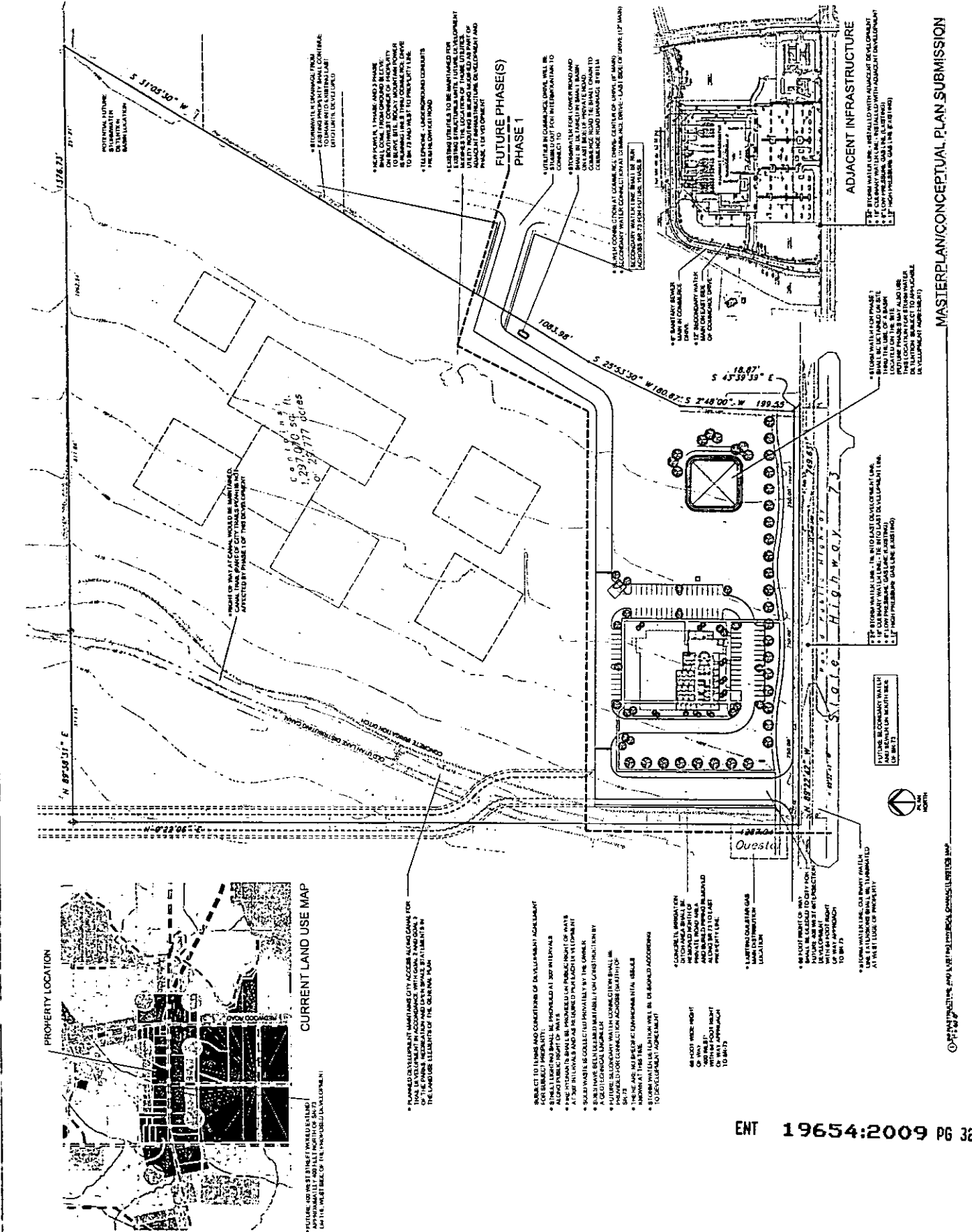


ARCHITECT  
1400 MARKET ST., SUITE 1100  
SAN ANTONIO, TEXAS 78205  
PHONE: (214) 592-9100  
WWW.HKS.COM

**INTERMOUNTAIN  
SARATOGA  
SPRINGS  
CLINIC**

DATE: 07-22-2008  
PROJECT NUMBER:  
10753.000

PROJECT TYPE:  
INFRASTRUCTURE  
EXISTING  
CHARACTERISTICS



**PROPERTY LOCATION**

**CURRENT LAND USE MAP**

\* FUTURE LOCATION OF WEST STREET PARK (EXISTING) APPROXIMATELY 400 FEET NORTH OF SITE ON THE WEST SIDE OF THE INTERMOUNTAIN DEVELOPMENT.

\* PLANNED DEVELOPMENT MASTER PLAN CITY ACCESS ALONG CANAL FOR TRAIL DEVELOPMENT IN ACCORDANCE WITH LOCAL AND COUNTY REGULATIONS AND REQUIREMENTS IN THE LAND USE ELEMENTS OF THE CURRENT PLAN.

\* DEVELOPMENT SHALL BE PROVIDED AT 300 FEET INTERVALS ALONG PUBLIC RIGHT-OF-WAY.

\* AT THE INTERVALS AND AS INDICATED THAT EACH LEVEL IS 10 FEET.

\* SOLID WASTE IS COLLECTED PRIVATELY BY THE OWNER.

\* SOME HAVE BEEN ISSUED PERMITS FOR LAND DEVELOPMENT.

\* ALL DEVELOPMENT SHALL BE IN ACCORDANCE WITH LOCAL AND COUNTY REGULATIONS AND REQUIREMENTS IN THE LAND USE ELEMENTS OF THE CURRENT PLAN.

\* FUTURE DEVELOPMENT SHALL BE IN ACCORDANCE WITH LOCAL AND COUNTY REGULATIONS AND REQUIREMENTS IN THE LAND USE ELEMENTS OF THE CURRENT PLAN.

\* STORM WATER RUNOFF SHALL BE MANAGED ACCORDING TO DEVELOPMENT REGULATIONS.

\* CONCRETE RETENTION STRUCTURE SHALL BE PROVIDED AT 300 FEET INTERVALS ALONG PUBLIC RIGHT-OF-WAY.

\* AT THE INTERVALS AND AS INDICATED THAT EACH LEVEL IS 10 FEET.

\* SOLID WASTE IS COLLECTED PRIVATELY BY THE OWNER.

\* SOME HAVE BEEN ISSUED PERMITS FOR LAND DEVELOPMENT.

\* ALL DEVELOPMENT SHALL BE IN ACCORDANCE WITH LOCAL AND COUNTY REGULATIONS AND REQUIREMENTS IN THE LAND USE ELEMENTS OF THE CURRENT PLAN.

\* FUTURE DEVELOPMENT SHALL BE IN ACCORDANCE WITH LOCAL AND COUNTY REGULATIONS AND REQUIREMENTS IN THE LAND USE ELEMENTS OF THE CURRENT PLAN.

\* STORM WATER RUNOFF SHALL BE MANAGED ACCORDING TO DEVELOPMENT REGULATIONS.

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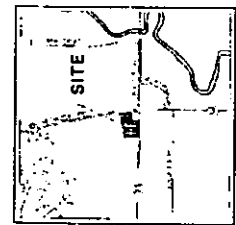
\* STORM WATER RUNOFF SHALL BE MANAGED ACCORDING TO DEVELOPMENT REGULATIONS.

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EXHIBIT D-3 (1) (Refer to 3.2.3)  
Saratoga Wal-Mart

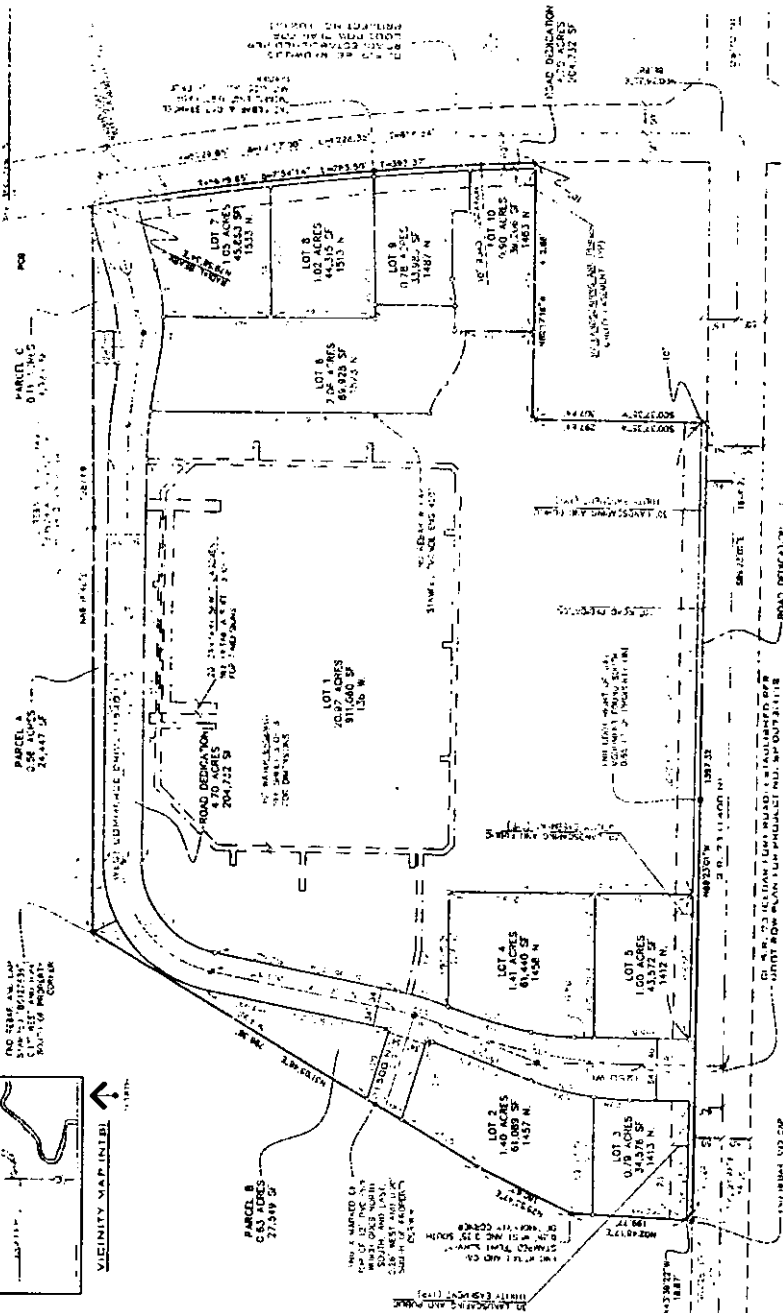
*[RECORDED WAL-MART PLAT ATTACHED]*



# SARATOGA WAL-MART SUBDIVISION

A PART OF THE NORTHWEST QUARTER OF SEC. 14, TOWNSHIP 5 SOUTH, RANGE 1 WEST SALT LAKE BASE AND MERIDIAN, CITY OF SARATOGA SPRINGS, COUNTY OF UTAH, STATE OF UTAH  
JULY 2007

QUETAB D&S COMPANY



12575 sheet 1 of 3

LOT	ACRES	SQ. FT.
1	20.27	89,925
2	1.40	61,000
3	0.78	33,962
4	1.41	61,000
5	1.00	43,750
6	1.08	46,925
7	1.00	43,750
8	1.08	46,925
9	0.78	33,962
10	1.40	61,000

TRACT	ACRES	SQ. FT.
1	22.40	97,000
2	1.40	61,000
3	0.78	33,962
4	1.41	61,000
5	1.00	43,750
6	1.08	46,925
7	1.00	43,750
8	1.08	46,925
9	0.78	33,962
10	1.40	61,000

**STATE OF UTAH**  
SARATOGA WAL-MART SUBDIVISION  
SARATOGA SPRINGS, UTAH

**COMPREHENSIVE SUBDIVISION MAP**  
SARATOGA WAL-MART SUBDIVISION  
SARATOGA SPRINGS, UTAH

**COMPREHENSIVE SUBDIVISION MAP**  
SARATOGA WAL-MART SUBDIVISION  
SARATOGA SPRINGS, UTAH

**COMPREHENSIVE SUBDIVISION MAP**  
SARATOGA WAL-MART SUBDIVISION  
SARATOGA SPRINGS, UTAH

**COMPREHENSIVE SUBDIVISION MAP**  
SARATOGA WAL-MART SUBDIVISION  
SARATOGA SPRINGS, UTAH

12575 sheet 2 of 3

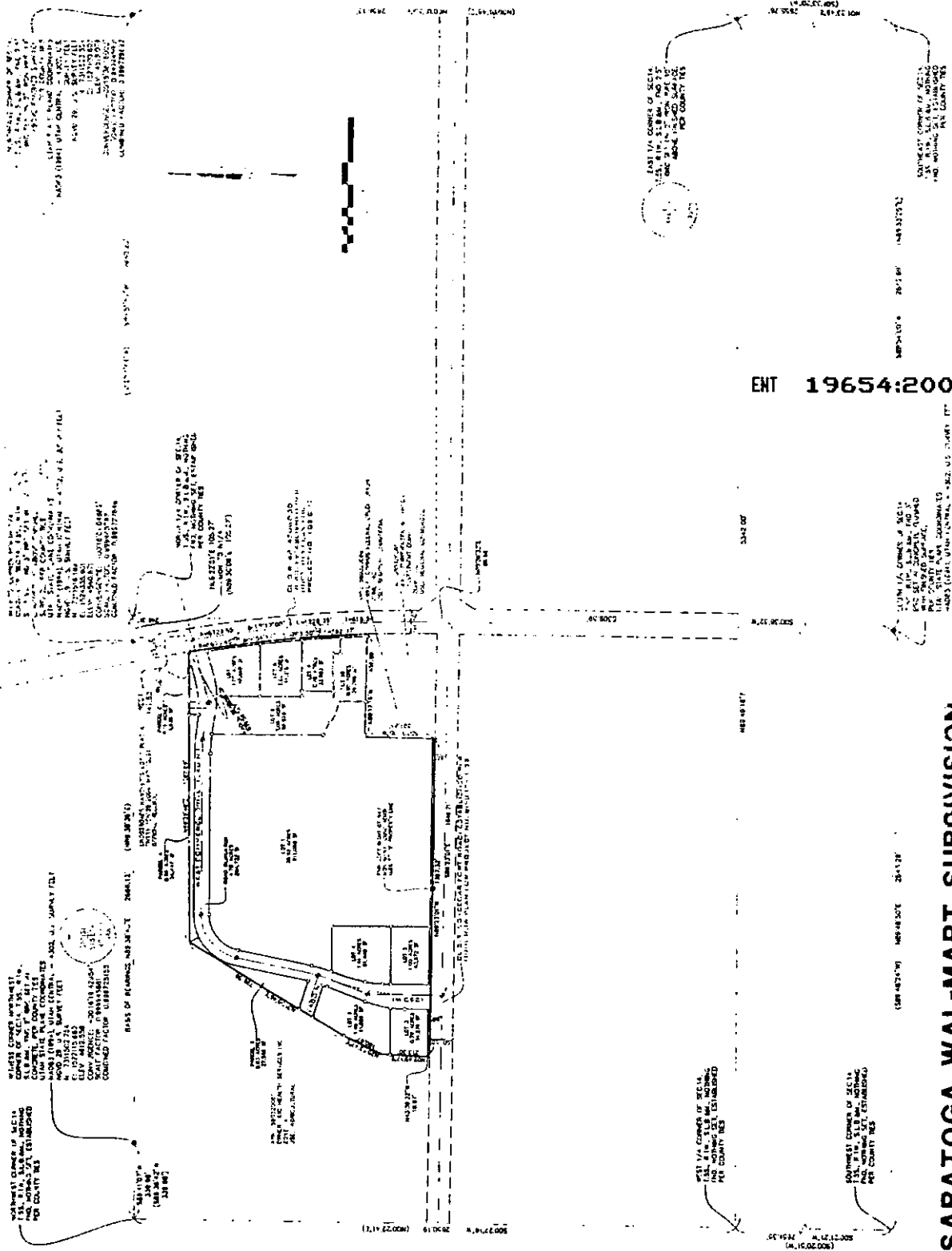
- 1. BY THE STATE OF NEW YORK
- 2. BY THE COUNTY OF SARATOGA
- 3. BY THE TOWN OF SARATOGA
- 4. BY THE VILLAGE OF SARATOGA
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- 48. BY THE VILLAGE OF SARATOGA
- 49. BY THE CITY OF SARATOGA
- 50. BY THE COUNTY OF SARATOGA



**SARATOGA WAL-MART SUPER**  
 A PART OF THE NORTHWEST QUARTER OF SECTION 12,  
 TOWNSHIP 4 NORTH, RANGE 12 WEST, COUNTY OF  
 SARATOGA, STATE OF NEW YORK



SHEET 2 OF 3



ENT 19654:2009 PG 35 of 40

**SARATOGA WAL-MART SUBDIVISION**  
 SHEET 2 OF 3



EXHIBIT E (Refer to 3.2.6)  
Canal Company Approval Letter

*[ATTACHED]*

ENT 19654:2009 PG 37 of 40

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## UTAH LAKE DISTRIBUTING COMPANY

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1156 South State Suite #104

Orem, Utah 84097

225-6746

Saratoga Springs City

March, 10, 2008

Dear Saratoga Springs City:

I am writing concerning irrigation water and a lateral ditch on the Intermountain Health Care (IHC) property at a starting point of approximately 1/3 mile north of S.R. 73 at Utah Lake Distributing Company (ULDC) canal. At the described starting point of a canal head gate and weir, the lateral ditch that can carry water north must stay in place, however the ditch portion going south to S.R. 73 then continuing east is a system that as far as I can determine serves no ULDC shareholders or water users other than IHC.

In as much as IHC wishes to eliminate or remove this portion of the lateral ditch, I see no conflict or problem. Typically, lateral ditches including this one are not the responsibility or under the control of ULDC.

Thank you,



Scott Holbrook  
U.L.D.C. Vice President

**EXHIBIT F (Refer to 3.3)**  
Capacity Reservations

Developer hereby reserves all capacities necessary to serve Phases 1 and 2 in any facilities built by, or otherwise provided to, the City. Developer's reservation of all capacities necessary to serve Futures Phases in any facilities built by, or otherwise provided to, the City shall be confirmed by Developer and the City as and when necessary.

EXHIBIT G  
Phasing Schedule

Phase	Completion Date
Phase 1	Two (2) years from the later of the Effective Date of Agreement or the satisfaction of the conditions precedent set forth in Section 1.5 of the Development Agreement (no later than two (2) years following August 31, 2008)
Phase 2 and Future Phases	The Developer has not yet determined the time frame of the future development, if any, of any part of the Property, including Phase 2 and the Future Phases. However, the roads depicted on the Master Development Plan that will not be built with Phase 1 are required in future phase(s), as indicated in the Development Agreement.

***[SEE EXHIBIT B MAP FOR DEPICTION OF PHASES WITHIN PROPERTY AND  
SUBJECT TO DEVELOPMENT AGREEMENT]***