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DOC # 20190033228

Agreement Page 1 of 14
Russell Shirts Washington County Recorder
08/20/2019 10:06:14 AM Fee \$ 40.00
By CW THE RHONE LLC



When Recorded Return To:

CW The Rhône, LLC
1222 West Legacy Crossing Blvd, #6
Centerville, UT 84014

Affects Parcel Nos.: SC-202-A
SC-73-B
SC-73-C
SC-74-A-1
SC-6-2-16-321

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of this 6th day of August, 2019, by and between CW THE RHONE, LLC, a Utah limited liability company, ("**Developer**"), and CITY OF SANTA CLARA, a municipal corporation and political subdivision of the State of Utah ("**City**"). Throughout this Agreement, the City and Developer shall collectively be referred to as "**Parties**" and individually as "**Party**".

RECITALS

- A. Developer owns certain real property located within the City's municipal boundaries described more fully in **Exhibit "A"** which is attached hereto and incorporated herein by this reference ("**Subject Property**").
- B. On March 27, 2019, the City approved Developer's proposed final plat for the Rhône Subdivision ("**Final Plat**") *comprised of 24 lots*. A true and correct copy of the Final Plat is attached hereto, marked **Exhibit "B"** and is incorporated herein by this reference.
- C. Each of the Parties are willing to enter into this Agreement in order to implement the purposes of the City's General Plan, while giving effect to applicable state law and the land management ordinances of the Santa Clara City Code (specifically Titles 16 & 17).
- D. Acting pursuant to its authority under Utah Code Annotated, §§ 10-9a-101, *et seq.*, 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: (i) the Utah Municipal Land Use, Development, and Management Act; (ii) the City's General Plan; and (iii) the City's land management ordinances. As a result of such determination, the City 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 City.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing promises, conditions, covenants

and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated fully into this Agreement as if fully set forth herein.
2. Park Dedication. Upon the approval and recordation of the Final Plat as set forth in *Exhibit "B"*, Developer shall execute a quit claim deed in favor of the City for that portion of the Subject Property consisting of 8.444 acres along the Santa Clara River ("*Park Parcel*") more fully described in Exhibit "A" as the Park Parcel. Developer shall execute a quit claim deed in substantially the same form as "*Exhibit C*" attached hereto and incorporated herein by this reference. It is the intent of the Parties that, upon receipt, the City will develop the Park Parcel into a City park at the City's expense. The scope and timing of development of the Park Parcel, if at all, will be in the sole and absolute discretion of the City. The Parties expressly acknowledge and agree that should the City determine to develop the Park Parcel into a City park it will name the facility "Graf Park".
3. Trail Improvements. City shall construct the ten (10) foot wide paved trail ("Trail") through the Subject Property as designated in the City's trails master plan along south side of the proposed Bonelli Trail roadway. Said trail construction to be in compliance with the City's standards and specifications for this type of public improvement. The cost of constructing said trail and its perpetual maintenance is to be borne by the City.
4. Park Strip Landscaping: Bonelli Trail. Developer agrees to install the park strip landscaping in the four (4) foot wide planter strip occupying the space between the south Bonelli Trail curb and the Trail. Landscaping and required irrigation system shall be designed to comply with City's landscape design standards and specifications. Within one hundred and twenty (120) days of both (i) City's approval of the park strip landscaping plan and (ii) City's completion of the Trail, Developer shall begin and complete installation of the park strip landscaping. Upon acceptance of the park strip landscaping by the City, Developer shall provide a security bond for the park strip landscaping for a period of twelve (12) months ("*Landscape Warranty Period*"). During the Landscape Warranty Period, City shall irrigate and maintain the park strip landscaping. City is responsible for perpetual maintenance of the park strip including irrigation and care.
5. Final Plat Recordation. The Parties acknowledge and agree that the Final Plat shall be allowed to record without all of the improvements on Lot 9 being installed and accepted by the City due to the potential impacts from the City's Chapel Street Bridge Project. The City has requested Developer and its contractor to hold back all street and utility improvements on Bonelli Trail approximately 60 feet from the Chapel Street intersection in front of Lot 9 to allow for the smooth transition to the Chapel Street improvements currently being installed by the City. Developer will pay the costs to install the remaining improvements at a future date when the Chapel Street improvements are completed by the City and its contractor. The Parties further acknowledge and agree that a building permit will not be issued by the City on Lot 9 until the remaining improvements have either been completed and accepted by the City, or a cash bond for the estimated cost to complete the remaining improvements is received by the City. The bond required by the City in connection with the recording of the Final Plat shall not include amounts required for these improvements at the time the Final Plat records. The Parties further acknowledge

and agree that the City's contractor may not finish the street improvements on Chapel Street until early 2020 depending on the bridge construction phase of that project.

6. Vested Rights. The Parties acknowledge that City is granting, and Developer is receiving, only those rights granted herein. This Agreement does not provide or vest Developer with any rights, authorizations or approvals that are not expressly provided herein.

7. Authority. Developer warrants that the undersigned individual has full power and authority to enter into this Agreement on behalf of Developer.

8. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police powers by the City in enacting zoning, subdivision, development, transportation, environmental, open space and related land use plans, policies, ordinances and regulations after the date of this Agreement provided that the adoption and exercises of such power shall not restrict Developer's vested rights as provided herein. This Agreement is not intended and does not bind the City, particularly its City Council, in the independent exercise of its legislative discretion with respect to such zoning and subdivision regulations.

9. Assignment. Developer may assign this Agreement without the consent of the City so long as Developer assigns all of its responsibilities as well as its rights under this Agreement to the same assignee and provided that any assignee of this Agreement expressly assumes this Agreement and all of Developer's responsibilities, duties and obligations hereunder in a written instrument ("Written Assumption") which is recorded against the Subject Property or the remaining unsold platted lots owned by the Developer located within the Subject Property, in the Official Records on file in the Office of the Recorder of Washington County, State of Utah. The Written Assumption must include, among other things, provisions expressly stating that the assignee of this Agreement agrees to be bound by this Agreement and all terms and conditions hereof.

10. No Joint Venture, Partnership or Third Party Rights. This Agreement does not create any joint venture, partnership, undertaking or business arrangements between the Parties hereto, nor any rights or benefits to third parties.

11. Recording of Agreement/Binding Effect. No later than ten (10) days after this Agreement has been executed by City, this Agreement shall be recorded in its entirety, at Developer's expense, in the Official Records, on file in the Office of the Recorder of Washington County, State of Utah. Upon recording, it is the intent of the Parties that this Agreement be deemed to run with the land and inure to the benefit (or burden) of all future owner (or owners), successors or assigns thereof.

12. Severability. If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

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

14. State and Federal Law; Invalidity. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The Parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. If City's approval of the Project is held invalid by a court of competent jurisdiction this Agreement shall be null and void.

15. No Monetary Damages Relief Against City. The Parties acknowledge that City would not have entered into this Agreement had it been exposed to monetary damage claims from the Developer, its successors and assigns for any breach thereof. As such, the Parties agree that in no event shall the Developer, its successors and assigns be entitled to recover monetary damages against City for breach of this Agreement but shall only be entitled to specific performance as may be determined by a court of competent jurisdiction.

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

17. Continued Cooperation. By executing this Agreement, the Parties hereto expressly agree to continue to operate in good faith to effectuate its purpose, by giving all consents, executing all documents and providing input and assurances within a reasonable time period after said actions are requested of any Party.

18. Choice of Law, Venue and Jurisdiction. Any dispute regarding this Agreement shall be interpreted pursuant to the Law of the State of Utah. The City's land management ordinances and other ordinances shall be controlling/dispositive unless pre-empted by state or federal law. The Parties expressly agree that venue and jurisdiction for any legal proceeding related to the enforcement of this Agreement is properly placed in the District Court, in and for Washington County, State of Utah.

19. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by City or the 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.

20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document. Facsimile signatures on any counterpart of this Agreement shall be acceptable and shall constitute conclusive evidence of execution.

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

22. Notices. Any notices, requests, or demands required or desired to be given hereunder shall be in writing and should be delivered personally to the Party for who intended, or, if mailed by certified mail, return receipt requested, postage prepaid to the last known address of the Parties.

23. Attorney's Fees. Should any party default in any of the covenants, obligations, warranties, representations or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.

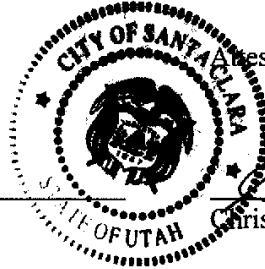
24. Integration. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the Parties hereto.

(Signature Pages to Follow)

IN WITNESS WHEREOF, this Agreement has been executed by City and by a duly authorized representative of Developer as of the date first written above.

CITY:

CITY OF SANTA CLARA
a Utah municipal corporation



Rick Rosenberg
Rick Rosenberg, Mayor

Attest:
Chris Shelley
Chris Shelley, Recorder

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

On the 16 day of July, 2019, personally appeared before me Rick Rosenberg and Chris Shelley, who duly acknowledged before me that they are respectively the Mayor and City Recorder of the City of Santa Clara, a Utah municipal corporation, and that they signed the foregoing Development Agreement on behalf of said City, pursuant to authority granted them by the Santa Clara City Council, and for the uses and purposes stated therein.

marie whitehead
Notary Public

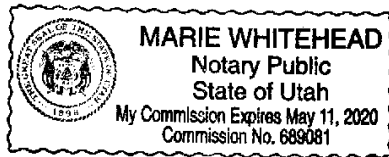


EXHIBIT "A"

(Legal Description of Subject Property)

Subject Property is comprised of both the subdivision parcel and the park parcel as described below:

SUBDIVISION PARCEL
RHÔNE SUBDIVISION BOUNDARY DESCRIPTION 12/28/2018

Commencing at the Quarter Corner common to Sections 15 and 16, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running North 89°35'38" West 2,654.71 feet along the East-West center section line and the basis of bearing to the calculated Center Quarter of said Section 16; thence South 00°29'34" West 480.06 feet along the North-South center section line to its intersection with the South boundary of that parcel of land owned by the City of Santa Clara, Utah and more particularly described in Instrument No. 310712, Book: 443, Page: 445. Said point of intersection also being the Point of Beginning.

Thence South 86°44'05" East 8.84 feet along the South boundary of said parcel to the East line of Vernon Street and a point on the West boundary of that parcel owned by Edward W. Arnold, Jr. and Romaine P. Arnold, Trustees of the Edward W. and Romaine P. Arnold Trust, dated the 20 day of August, 2015 (Arnold) as described in Instrument No. 20160037880;

thence South 02°14'25" West 12.65 feet along said West boundary to a point in an existing fence line;

thence South 49°31'24" East 228.95 feet along the South boundary of said Arnold parcel and also along said fence line to a point on the West boundary that parcel owned by Anthony and Sharon K. Moultrie (Moultrie) as described in Instrument No. 20160016582;

thence South 02°32'00" West 56.80 feet to the Southwest corner of said Moultrie parcel;

thence South 51°47'36" West 72.60 feet along the Westerly boundary of that parcel owned by Laura Graf (Graf) as described in Instrument No. 20180014306, to the Northwest corner of that parcel owned by Hans and Lori Hafen (Hafen) as described in Instrument No. 20120021368;

thence South 20°28'19" West 258.12 feet along the Westerly boundary of said Hafen parcel to the Southwest corner thereof;

thence South 69°18'44" East 175.13 feet along the Southerly boundary of said Hafen parcel to its intersection with West line 300 East Street (Old Farm Road) as dedicated to public use in Instrument No. 299149, Book: 421, Page 315;

thence South 07°06'40" West 460.46 feet along the West line of 300 East Street

thence North 59°25'10" West 153.15 feet to a point of curvature;

thence Northwesterly, a distance of 415.60 feet along the arc of a 1,525.00 foot radius curve to the right, through a central angle of 15°36'52" to a point of tangency;

thence North 43°48'18" West 312.98 feet to a point of curvature;

thence Northwesterly, a distance of 390.90 feet along the arc of a 625.00 foot radius curve to the left, through a central angle of 35°50'07" to a point of tangency;

thence North 79°38'25" West 55.85 feet;

thence North 10°21'35" East 50.00 feet along a radial line;

thence Northwesterly, a distance of 31.42 feet along the arc of a 20.00 foot radius, non-tangent curve to the right (Radius point bears: North 10°21'35" East), through a central angle of 90°00'00" to a point of tangency;

thence North 10°21'35" East 64.92 feet to the Southwest corner of that parcel conveyed to David Adolph and Janiel Cox Moss, Trustees of the D&J Moss Family Trust (Moss) as described in Instrument No. 540431, Book: 1025, Page 186;

thence continuing North 10°21'35" East 57.79 feet more or less to the Southwest corner of Summerwood Estates Subdivision as shown in Instrument Number 737746, Book: 1429, Page: 2068 and running the following seven (7) courses along the Southerly and Easterly boundary of said subdivision;

thence South 80°43'05" East 382.90 feet;

thence South 12°11'55" West 32.83 feet;

thence South 56°17'05" East 57.90 feet;

thence South 46°11'05" East 64.45 feet;
thence South 56°17'05" East 71.60 feet;
thence North 04°22'55" East 187.34 feet;
thence North 02°37'55" East 122.80 feet to the Southwest corner of Andrea's Garden Subdivision as shown in Instrument No. 20170020930;
thence South 86°44'05" East 327.22 feet along the South boundary of said subdivision to its intersection with the West line of Vernon Street and the West line of that City of Santa Clara, Utah parcel heretofore described as Instrument No. 310712, Book: 443, Page: 445;
thence South 02°14'25" West 0.62 feet along the West line of said parcel to the Southwest corner thereof;
thence South 86°44'05" East 40.67 feet along the South line of said parcel to the Point of Beginning.

Containing approximately 572,268 square feet or 13.137 acres.

PARK PARCEL *(to be conveyed to City of Santa Clara pursuant to terms above)*
**AGGREGATE REMAINDER OF COLE WEST HOME, LLC PROPERTY
IN SANTA CLARA, UTAH – (GRAF PARK SANTA CLARA RIVER
PARCEL)**

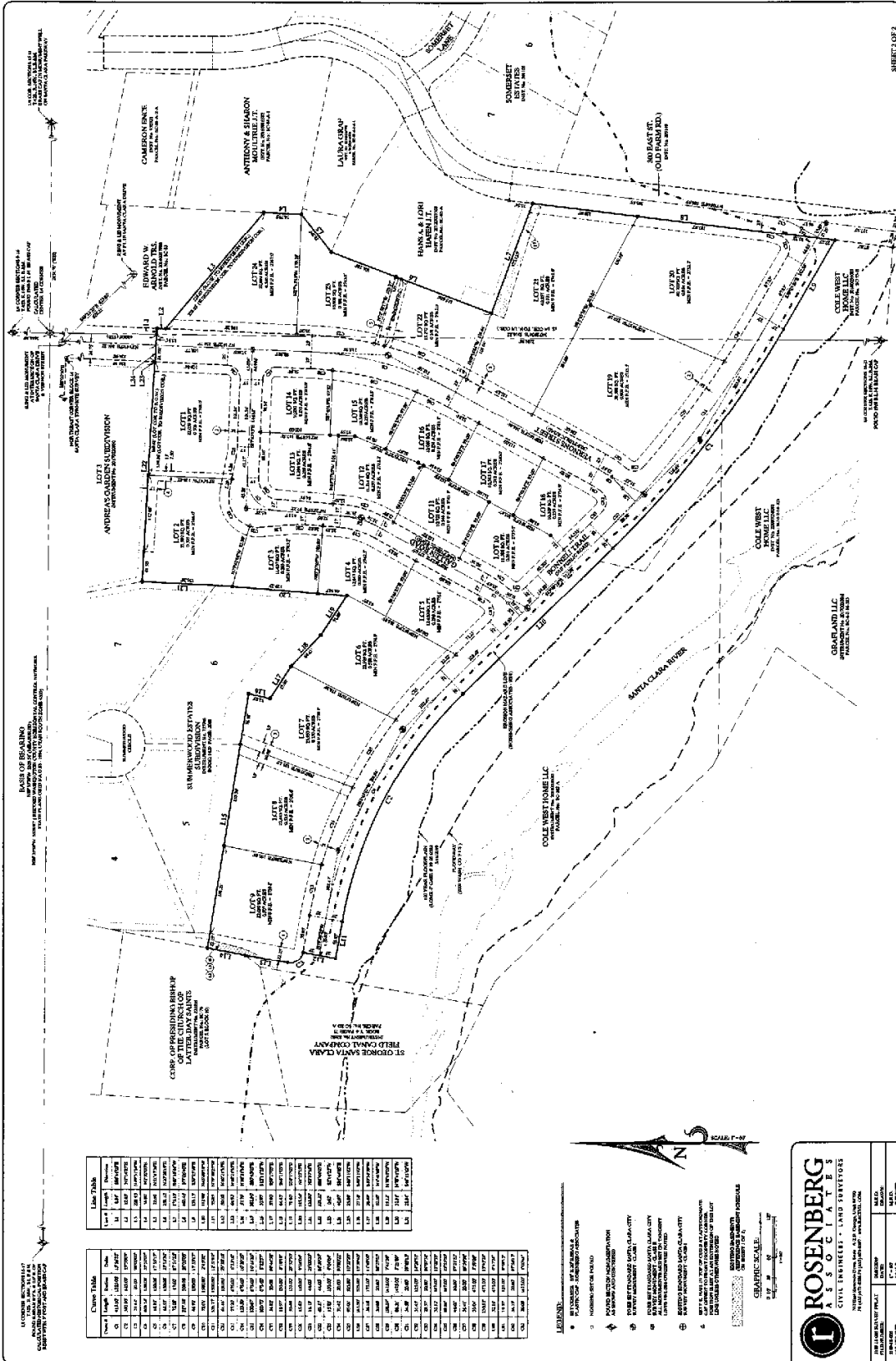
Commencing at the Quarter Corner common to Sections 15 and 16, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running North 89°35'38" West 2,654.71 feet along the East-West center section line and the basis of bearing to the calculated Center Quarter of said Section 16; thence South 00°29'34" West 1,416.78 feet along the North-South center section line to its intersection with the South boundary of Bonelli Trail, a proposed 50.00 foot wide public street in Santa Clara, Utah. Said point of intersection also being the Point of Beginning.

Thence Southeasterly, a distance of 18.29 feet along proposed Bonelli Trail and the arc of 1,525.00 foot radius, non-tangent curve to the left (radius point bears: North 31°16'04" East), through a central angle of 00°41'14" to a point of tangency;
thence South 59°25'10" East 153.15 feet along proposed Bonelli Trail to its intersection with the West line or 300 East Street (Old Farm Road) as dedicated to public use in Instrument No. 299149, Book: 421, Page 315; thence South 07°06'40" West 87.82 feet along 300 East Street to the Southwesterly corner thereof;
thence North 85°45'57" West 138.46 feet, returning to a point on the North-South center section line; thence South 00°29'34" West 193.43 feet along the North-South center section line;
thence North 55°15'00" West 311.51 feet;
thence North 27°42'00" West 200.00 feet;
thence North 62°12'00" West 105.81 feet;
thence North 40°39'00" West 53.32 feet to a point on the East-West 1/16 line of the Southwest Quarter of said Section 16, Township 42 South, Range 16 West;
thence North 89°24'08" West 137.79 feet along the 1/16 line to its intersection with Block 4, Santa Clara Townsite and Field Survey as defined by historical fences, lines of historical occupation and fence line surveys. The most recent survey of which having been conducted by Thomas Torgersen P.L.S. and on file in the Office of the Recorder as Survey No. 6340-14;

thence North $61^{\circ}17'33''$ West 18.78 feet along
said Block 4; thence North $44^{\circ}11'32''$ West
456.64 feet along said Block 4;
thence North $63^{\circ}21'02''$ West 31.63 feet along said Block 4 to its intersection with the East
line of Chapel Street, a proposed 66.00 foot wide public street in Santa Clara, Utah;
thence North $10^{\circ}21'35''$ East 214.56 feet along proposed Chapel Street to a point of curvature;
thence Northeasterly, a distance of 31.42 feet along proposed Chapel Street and the arc of a
20.00 foot radius curve to the right through a central angle of $90^{\circ}00'00''$ to a point of tangency
and a point on the Southerly boundary of proposed Bonelli Trail;
thence South $79^{\circ}38'25''$ East 55.85 feet along proposed Bonelli Trail to a point of curvature;
thence Southeasterly, a distance of 390.90 feet along proposed Bonelli Trail and the arc of a
625.00 foot radius curve to the right through a central angle of $35^{\circ}50'07''$ to a point of tangency;
thence South $43^{\circ}48'18''$ East 312.98 feet along proposed Bonelli Trail to a point of curvature;
thence Southeasterly, a distance of 397.30 feet along proposed Bonelli Trail and the arc of a
1,525.00 foot radius curve to the left through a central angle of $14^{\circ}55'38''$ to the Point of
Beginning.

Containing approximately 367,843 square feet or 8.444 acres.

EXHIBIT "B"
(Final Plat)



Lot No.	Area (sq. ft.)	Area (sq. ft.)	Area (sq. ft.)
1	10,000	10,000	10,000
2	10,000	10,000	10,000
3	10,000	10,000	10,000
4	10,000	10,000	10,000
5	10,000	10,000	10,000
6	10,000	10,000	10,000
7	10,000	10,000	10,000
8	10,000	10,000	10,000
9	10,000	10,000	10,000
10	10,000	10,000	10,000
11	10,000	10,000	10,000
12	10,000	10,000	10,000
13	10,000	10,000	10,000
14	10,000	10,000	10,000
15	10,000	10,000	10,000
16	10,000	10,000	10,000
17	10,000	10,000	10,000
18	10,000	10,000	10,000
19	10,000	10,000	10,000
20	10,000	10,000	10,000
21	10,000	10,000	10,000
22	10,000	10,000	10,000
23	10,000	10,000	10,000
24	10,000	10,000	10,000

LEGEND:

- 1. BOUNDARY OF ALTERNATIVE
- 2. PLANNING/CONSTRUCTION
- 3. HOUSING SERVICE FIELD
- 4. POWER/TELEPHONE/CONDUIT
- 5. WATER/SEWERAGE
- 6. STREETS
- 7. PUBLIC UTILITY
- 8. PUBLIC UTILITY
- 9. PUBLIC UTILITY
- 10. PUBLIC UTILITY
- 11. PUBLIC UTILITY
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- 22. PUBLIC UTILITY
- 23. PUBLIC UTILITY
- 24. PUBLIC UTILITY

GRAPHIC SCALE:
 1" = 100'

ROSENBERG
 S O C I A L S
 CIVIL ENGINEERING - LAND SURVEYING
 1000 W. 10TH ST. SUITE 100
 WASHINGTON, DC 20004
 TEL: 202.331.1111
 FAX: 202.331.1112
 WWW.ROSENBERG-SOCIALS.COM

DATE: 08/20/19
 DRAWN BY: [Name]
 CHECKED BY: [Name]

SHEET 1 OF 3

