ENT 34005:2020 PG 1 of 21
JEFFERY SMITH
UTAH COUNTY RECORDER
2020 Mar 17 1:58 pm FEE 40.00 BY SM
RECORDED FOR SARATOGA SPRINGS CITY

FIRST AMENDED DEVELOPMENT AGREEMENT

THIS FIRST AMENDED DEVELOPMENT AGREEMENT ("Amended Agreement") is made and entered into on June 19, 2018, by and between the City of Saratoga Springs, Utah, a Utah municipal corporation, hereinafter referred to as "City," and JD IV Lake Mountain, hereafter referred to as "Developer."

RECITALS:

WHEREAS, Developer is the owner and developer of unrecorded parcels in Saratoga Springs, Utah (the "Property"), which is more fully described in Exhibit A attached hereto and incorporated herein; and

WHEREAS, the Property is currently zoned Agricultural (A). Developer wishes to develop the project previously known as Lake Mountain, and currently identified as Westview Estates, which will consist of 254 single family homes on 116.99 acres with a minimum lot area of 10,000 square feet and an average lot area of 11,913 square feet ("Project"). Currently, the proposed Project does not meet the A zone requirements and therefore would not be allowed in the A zone. Therefore, in order to develop the Project, Developer wishes to place the Property in the R1-10 zone, as provided in Title 19 of the City Code, as amended (the "Zoning Request") and wishes to be voluntary bound by this Amended Agreement in order to be able to develop the Project as proposed; and

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

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

WHEREAS, on January 28, 2016, after a duly noticed public hearing, City's Planning Commission recommended approval of Developer's Zoning Request, this Amended Agreement, and reviewed the conceptual project plans attached hereto as Exhibit B ("Concept Plan"), and forwarded the application to the City Council for its consideration, subject to the findings and conditions contained in the Staff Report, Report of Action, and written minutes on file with the City Recorder; and

WHEREAS, on February 16, 2016, the Saratoga Springs City Council ("City Council"), approved Developer's Zoning Request, this Amended Agreement, and reviewed the conceptual project plans, attached hereto as Exhibit B, subject to the findings and conditions contained in the Staff Report, Report of Action and written minutes on file with the City Recorder; and

WHEREAS, in the time since the original Development Agreement was approved, the Utah Department of Transportation and Mountainlands Association of Governments have revised their plans for the location of the future Foothill Boulevard so that it will no longer be located on or adjacent to the Property, and therefore the City and Developer wish to enter into this Amended Agreement to remove the condition that Developer must install Foothill Boulevard near or adjacent to Developer's Property, which Amended Agreement will repeal, replace, and supersede the Development Agreement approved on February 16, 2016; and

WHEREAS, the Concept Plan, attached as Exhibit B, among other things, identifies land uses, number of units Developer may be able to build, and required road, open space, parks, trails, storm drain, sewer, and water improvements; and

WHEREAS, to allow development of the Property for the benefit of Developer, to ensure that the development of the Property and Project will conform to applicable ordinances, regulations, and standards, Developer and City are each willing to abide by the terms and conditions set forth herein; and

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

AGREEMENT:

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

1. Effective Date. This Amended Agreement shall become effective on the date it is executed by Developer and the City (the "Effective Date"). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals. Upon execution, this Amended Agreement shall be recorded against the Property in the Utah County Recorder's Office, with the Developer to pay all recording fees.

2. Affected Property. The property ownership map, vicinity map, and legal descriptions for the Property are attached as Exhibit "A." In the event of a conflict between the legal description and the property ownership map, the legal description shall take precedence. No other property may be added to or removed from this Amended Agreement except by written amendment to this Amended Agreement executed and approved by Developer and City. If there is any portion of the Property not owned by Developer when this Amended Agreement is signed, the owner(s) of record of such portion(s) of the Property shall execute the consent provision set forth beneath the Parties' signature blocks at the end of this Amended Agreement.

3. Zone Change, Permitted Uses, and Requirements. Subject to the terms of this Amended Agreement, the future development of the Property shall be subject to the provisions of the R1-10 zone as they exist on the effective date of this Amended Agreement with respect to the maximum allowed density and permitted and conditional uses. However, all other requirements, including but not limited to setbacks, frontage, height, access, required improvements, and architectural and design requirements on the Property shall be governed by City ordinances, regulations, specifications, and standards in effect at the time of preliminary plat application, except to the extent this Amended Agreement is more restrictive.

4. Rights and Obligations under this Amended Agreement. Provided the Zoning Request is granted, and subject to the terms and conditions of this Amended Agreement, Developer shall have the vested right under this Amended Agreement to develop the maximum allowable densities and the permitted and conditional uses under the R1-10 zone as this zone exists on the effective date of this Amended Agreement if the requirements of that zone are met. Developer shall be required to apply for and obtain approval for each subdivision, plat, or site plan provided for in the Concept Plan and to otherwise comply with all City ordinances, regulations, specifications, and standards in effect at the time of preliminary plat application, except as otherwise expressly provided in this Amended Agreement. Developer's vested right of development of the Property pursuant to this Amended Agreement and the R1-10 zone 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 Amended Agreement, City ordinances, regulations, specifications, and standards (hereinafter "City regulations"), and the exhibits attached to this Amended Agreement.

5. Reserved Legislative Powers. Except as otherwise provided in this Amended Agreement, this Amended Agreement shall not limit the future exercise of the police powers of City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation, and other land use plans, policies, ordinances, and regulations after the date of this Amended Agreement. Notwithstanding the retained power of City to enact such legislation under its police powers, such legislation shall not modify Developer's rights as set forth herein unless facts and circumstances are present that meet the compelling, countervailing public interest exception to the vested rights

doctrine as set forth in *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1988), or successor case law or statute. Any such proposed change affecting Developer's rights shall be of general applicability to all development activity in City. Unless 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 Project.

6. Installation of Improvements Prior to Building Permits. In accordance with City regulations, building permits will not be issued until all improvements required in this Amended Agreement, all exhibits, and City regulations in effect at the time of preliminary plat application are installed in accordance with City regulations, accepted by the City in writing, and guaranteed by a warranty bond to guarantee that the improvements remain free from defects and continue to meet City standards for a period of one or two years as allowed in Utah Code § 10-9a-604.5. Concurrent with posting the warranty bond, Developer shall be required to enter into a warranty bond agreement on a form provided by the City. The City may allow issuance of building permits prior to installation of all improvements in accordance with current City regulations, which may change from time-to-time.

7. Water Infrastructure, Dedications, and Fees.

   a. Dedication of Water. Developer shall convey to or acquire from the City water rights sufficient for the development of the Property according to City regulations in effect at the time of plat recordation of each phase. Water rights to meet culinary and secondary water requirements must be approved for municipal use with approved sources from City owned wells or other sources at locations approved by the City. Prior to acceptance of the water rights from Developer, the City shall evaluate the water rights proposed for conveyance and may refuse to accept any right that the City determines to be insufficient in annual quantity or rate of flow, has not been approved for change to municipal purposes within the City or for diversion from City owned wells by the Utah State Engineer, or does not meet City regulations.

   b. Water Facilities for Development. Developer shall be responsible for the installation and dedication to City of all onsite and offsite culinary and secondary water improvements, including but not limited to water sources and storage and distribution facilities, sufficient for the development of Developer's Property in accordance with the City regulations in effect at the time of plat submittal. The required improvements for each plat shall be determined by the City Engineer at the time of plat submittal and may be adjusted in accordance with the then-current City regulations, this Amended Agreement, and any applicable law.

   c. City Service. City shall provide public culinary and secondary water service to the property and maintain the water system improvements intended to be public

upon Developer's installation of such improvements, Developer's dedication of the improvements to the City, and acceptance in writing by the City at the end of the warranty period so long as the improvements meet City regulations and the requirements of any applicable special service district.

8. Sewer, Storm Drainage, and Roads.

a. Developer shall be responsible for the installation and dedication to City of all onsite and offsite sewer, storm drainage, and road improvements sufficient for the development of Developer's Property in accordance with City regulations in effect at the time of preliminary plat submittal. The required improvements for each plat shall be determined by the City Engineer at the time of plat submittal and may be adjusted in accordance with the then-current City regulations, this Amended Agreement, and any applicable law.

b. As an express condition of this Amended Agreement and the Zoning Request, Developer is required to install improvements and dedicate property for the future extension of Harbor Parkway extending from the eastern boundary of Developer's property to the second intersecting road to meet the City's standard cross section (current at the time of submittal of a preliminary plat application) for a local road including all required improvements, except that sidewalks and curb and gutter shall not be required on the south side of the road. In addition, Developer shall be required to dedicate the right-of-way width for a local road extending west past the second intersecting road and continuing along the southern boundary of the Property until the western boundary of the Property. The precise location and nature of the improvements is more fully specified in Exhibit C but may be modified based on City regulations at the time of a preliminary plat application.

c. City shall provide service to Developer's property and maintain the improvements intended to be public upon dedication to the City and acceptance in writing by the City at the end of the performance bond period (as specified in City regulations), so long as the improvements meet City regulations and the requirements of any applicable special service district.

9. Open Space Improvements.

a. Developer shall be responsible for the installation of, and in some cases, dedication to City of open space improvements for each plat as determined by the City at the time of plat submittal in accordance with City regulations in effect at the time of plat submittal.

b. Developer shall be required to install and dedicate to City all open space improvements intended to be public. City shall maintain the public open space improvements upon dedication to the City and acceptance in writing by the City

so long as the improvements meet City regulations.

c. For open space improvements not dedicated to the City, Developer shall ensure that a homeowners association assumes maintenance and operation responsibilities, and Developer shall provide written documentation to City of such. If Developer is unable to immediately provide such documentation, Developer shall maintain the open space and post a maintenance bond in a form approved by the City to guarantee continued maintenance of the open space until assumption by a homeowners association.

10. Capacity Reservations. Any reservations by the City of capacities in any facilities built or otherwise provided to the City by or for the Developer shall be determined at the time of plat recordation in accordance with City regulations.

11. Upsizing of Improvements/Master Planned Improvements. The parties acknowledge and recognize that the Property is large in size, will be developed in multiple phases, and may be owned by multiple developers. As a result, there is a direct connection between: (a) the development of an individual developer's property; and (b) the entire Property and the need to provide master-planned improvements and facilities, including the need to upsize improvements and facilities. As determined by the City at time of plat submittal, Developer, or Developer's successors, agents, or assigns, may be responsible for the upsizing of improvements to service more than an individual developer's land within the Property.

12. Title – Easement for Improvements. Developer shall acquire, improve, dedicate, and convey to the City all land, rights of way, easements, and improvements for the public facilities and improvements required to be installed by Developer pursuant to this Amended Agreement. The City Engineer shall determine the alignment of all roads and utility lines and shall approve all descriptions of land, rights of way, and easements to be dedicated and conveyed to the City under this Amended Agreement. Developer shall also be responsible for paying all property taxes including rollback taxes prior to dedication or conveyance and prior to acceptance by City. Developer shall acquire and provide to the City, for 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 and obtain the City Attorney's approval of all instruments to convey and dedicate the land, rights of way, and easements hereunder to the City.

13. Sewer Fees. Timpanogos Special Service District ("TSSD") requires payment of a Capital Facilities Charge, which is subject to change from time to time. The Capital Facilities Charge is currently collected by the City but may hereafter be collected directly by TSSD and may hereafter be collected as a Capital Facilities Charge or an impact fee by the City. Developer acknowledges and agrees that said Capital Facilities Charge or impact fee by TSSD is separate from and in addition to sewer connection fees and sewer impact fees imposed by the City and that payment of the Capital Facilities Charge and the

impact and connection fee imposed by the City for each connection is a condition to the providing of sewer service to the lots, residences, or other development covered by this Amended Agreement.

14. Other Fees. The City may charge other fees that are generally applicable to development in the City, including but not limited to subdivision, plat, site plan, and building permit review fees, connection fees, impact fees, taxes, service charges and fees, and assessments. These fees are in addition and not in lieu of the consideration, promises, terms, and requirements in this Amended Agreement.

15. Wildland-Urban Interface Code. Prior to or concurrent with the approval of any site plan or subdivision plat for the Property or a portion thereof, Developer shall demonstrate compliance with the Wildland-Urban Interface Code and all other applicable building and fire codes related to the prevention of wildfires as adopted by the City. Developer may be required to record restrictions on certain lots as specified by such regulations.

16. Termination. The term of this Amended Agreement shall commence on the effective date of this Amended Agreement and shall continue for a period of ten years from said date. This Amended Agreement shall continue beyond its term as to any rights or obligations for subdivisions, plats, or site plans that have been given final approval and have been recorded prior to the end of the term of this Amended Agreement, provided that the City has proceeded in good faith to review the submissions or site plans within a reasonable time. However, this Amended Agreement shall terminate as to any subdivisions or site plans that have not been given final approval and have not been recorded prior to the end of the term of this Amended Agreement. This Amended Agreement shall also terminate at such time as all development covered by this Amended Agreement is approved and completed and all obligations of Developer have been met, at which time the City and Developer may execute a "Notice of Termination/Expiration" to be recorded against such portion of the Property to which this Amended Agreement no longer applies. Upon expiration of this Amended Agreement or breach by Developer in accordance with section 18 below, the zoning for the Property (or portion thereof owned by a breaching developer in the event of an uncured breach by one developer) shall automatically revert to the A zone for such portions of the Property that have not received final approval and have not been recorded. One or more developers and City may extend this Amended Agreement beyond its 10 year term by mutual agreement of the parties.

17. Successors and Assigns.

a. Change in Developer. This Amended Agreement shall be binding on the successors and assigns of Developers. If any portion of the Property is transferred ("Transfer") to a third party ("Transferee"), the Developer and the Transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Amended Agreement unless prior to such Transfer Developer provides to City a letter from Transferee acknowledging the existence of this

Amended Agreement and agreeing to be bound thereby. Said letter shall be signed by the Transferee, notarized, and delivered to City prior to the Transfer. Upon execution of the letter described above, the Transferee shall be substituted as a Developer under this Amended Agreement and the persons and/or entities executing this Amended Agreement as Developer of the transferred property shall be released from any further obligations under this Amended Agreement as to the transferred property. In all events, this Amended Agreement shall run with and benefit the Property.

b. Individual Lot or Unit Sales. Notwithstanding the provisions of subsection 17.a., a transfer by a Developer of a lot or condominium dwelling unit located on the Property within a City approved and recorded plat shall not be deemed a Transfer as set forth above so long as the Developer's obligations with respect to such lot or dwelling unit have been completed. In such event, the Developer shall be released from any further obligations under this Amended Agreement pertaining to such lot or dwelling unit.

18. Default.

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

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

b. Procedure Upon Default.

i. Upon the occurrence of Default, the non-defaulting party shall give the other party thirty days written notice specifying the nature of the alleged Default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event the Default cannot reasonably be cured within thirty days, the defaulting party shall have such additional time as may be necessary to cure such Default so long as the defaulting party takes significant action to begin curing such Default within such thirty day period and thereafter proceeds diligently to cure the Default. After proper notice and expiration of said thirty day or other appropriate cure period

without cure, and subject to the following paragraph, the non-defaulting party may declare the other party to be in breach of this Amended Agreement and may take the action specified in subsection 18.c. herein. Failure or delay in giving notice of Default shall not constitute a waiver of any Default.

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

c. Breach of Agreement. Upon Default as set forth in subsections 18.a. and 18.b. above, City may, upon providing notice of default under subsection 18.a. above, declare Developer to be in breach of this Amended Agreement and City, until the breach has been cured by Developer, may do any of the following: (i) refuse to process or approve any application for subdivision, plat, or site plan approval; (ii) withhold approval of any or all building permits or certificates of occupancy applied for in the Property, but not yet issued; (iii) refuse to approve or to issue any additional building permits or certificates of occupancy for any building within the Property; and (iv) refuse to honor any obligation in this Amended Agreement. Furthermore, if the Default is not cured and this Amended Agreement is terminated, the zoning of the portion of the Property of the defaulting Developer shall automatically revert to the A zone. In addition to such remedies, City or Developer may pursue whatever additional remedies it may have at law or in equity, including injunctive and other equitable relief.

19. Rights of Access. The City Engineer and other representatives of the City shall have a reasonable right of access to the Property and all areas of development or construction pursuant to this Amended Agreement 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.

20. Entire Agreement. Except as provided herein, this Amended Agreement shall supersede all prior agreements with respect to the development of the Property including but not limited to development agreements, site plan agreements, subdivision agreements, and reimbursement agreements not incorporated herein, and all prior agreements and understandings are merged, integrated, and superseded by this Amended Agreement. Specifically, this Amended Agreement supersedes, repeals, and replaces the original Development Agreement approved by the City Council on February 16, 2016.

21. Voluntary Agreement. Developer agrees to be voluntarily bound by the requirements herein and agrees that the requirements are roughly proportionate to the impact of the Project upon the public based upon an individualized determination by the City that the requirements are related in both nature and extent to the impacts of the Project.

22. Exhibits. The following exhibits are attached to this Amended Agreement and incorporated herein for all purposes:

a. Exhibit "A" Property Ownership Map, Vicinity Map, and Legal Descriptions

b. Exhibit "B" Concept Plan

c. Exhibit "C" Harbor Parkway Improvements

23. General Terms and Conditions.

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

b. Recording of Agreement. This Amended Agreement shall be recorded at Developer's expense to put prospective purchasers, owners, and interested parties on notice as to the terms and provisions hereof. Developer shall be responsible for ensuring that this Amended Agreement is recorded and shall not hold the City liable for failure to record.

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

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

e. Construction of Agreement. This Amended Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect the health, safety, and welfare of the citizens of City.

f. State and Federal Law; Invalidity. The parties agree, intend, and understand that the obligations imposed by this Amended Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Amended Agreement becomes, in its performance, inconsistent

with state or federal law or is declared invalid, this Amended 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 Amended 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 Amended Agreement shall be null and void.

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

h. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Amended Agreement is amended by vote of the City Council taken with the same formality as the vote approving this Amended Agreement, no officer, official, or agent of City has the power to amend, modify, or alter this Amended Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.

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

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

be specified therein. If either party utilizes in-house counsel in its representation thereto, the attorneys' fees shall be determined by the average hourly rate of attorneys in the same jurisdiction with the same level of expertise and experience.

k. Notices. Any notices required or permitted to be given pursuant to this Amended Agreement shall be deemed to have been sufficiently given or served for all purposes when presented personally or, if mailed, upon (i) actual receipt if sent by registered or certified mail, or (ii) four days after sending if sent via regular U.S. Mail. Said notice shall be sent or delivered to the following (unless specifically changed by the either party in writing):

To the Developer: _____
_____
_____
_____

To the City: City Manager
City of Saratoga Springs
1307 N. Commerce Drive, Suite 200
Saratoga Springs, UT 84045

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

m. Execution of Amended Agreement. This Amended Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed in counterpart form and delivered by facsimile or email (pdf format), then an original shall be provided to the other party within seven days.

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

Nothing in this Amended Agreement shall be construed to mean that Developer

shall defend, indemnify, or hold the City or its elected and appointed representatives, officers, agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from: (i) the willful misconduct or negligent acts or omissions of the City, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the City of improvements that have been offered for dedication and accepted in writing by the City for maintenance

o. Limitation on Damages. Any breach of this Amended Agreement by the City or the Developer shall not give rise to monetary damages against the other party, but shall be enforceable only by resort to an action for specific performance.

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

q. Annual Review. City may review progress pursuant to this Amended Agreement at least once every twelve months to determine if Developer has complied with the terms of this Amended Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in section 18 herein. City's failure to review at least annually Developer's compliance with the terms and conditions of this Amended Agreement shall not constitute or be asserted by any party as a Default under this Amended Agreement by Developer or City.

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

s. Title and Authority. Developer expressly warrants and represents to City that Developer (i) owns all right, title and interest in and to the Property, or (ii) has the exclusive right to acquire such interest, and (iii) that prior to the execution of this Amended Agreement no right, title or interest in the Property has been sold, assigned or otherwise transferred to any entity or individual other than to

Developer. Developer further warrants and represents that no portion of the Property is subject to any lawsuit or pending legal claim of any kind. Developer warrants that the undersigned individuals have full power and authority to enter into this Amended Agreement on behalf of Developer. Developer understands that City is relying on these representations and warranties in executing this Amended Agreement.

t. Obligations Run With the Land. The agreements, rights and obligations contained in this Amended Agreement shall: (i) inure to the benefit of the City and burden the Developer; (ii) be binding upon parties and their respective successors, successors-in-title, heirs and assigns; and (iii) run with the Property.

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

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

Attest:

City Recorder

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

By: _____
Mayor Jim Miller

DEVELOPER:

By: _____

Its: Manager Member

State of Utah
County of Utah

The foregoing instrument was acknowledged before me this 22 day of August 2018 by John D. Hudgel of JD IV Lake Mountain

Marylou Wakamatsu
Notary Public

NOTARY PUBLIC
MARYLOU WAKAMATSU
696822
COMMISSION EXPIRES
SEPTEMBER 7, 2021
STATE OF UTAH

Exhibit Summary

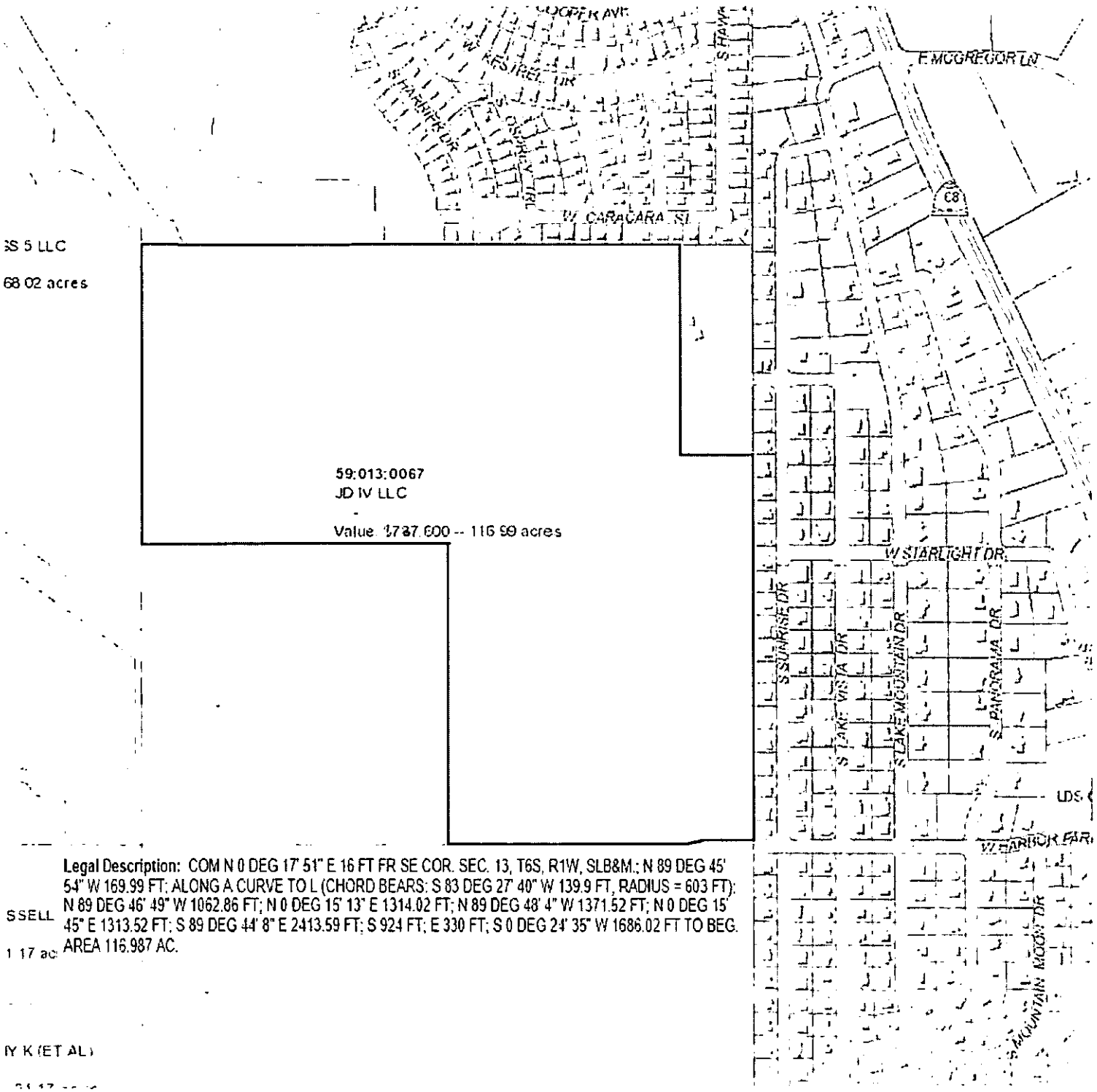
a. Exhibit "A" Property Ownership Map, Vicinity Map, and Legal Description

b. Exhibit "B" Concept Plan

c. Exhibit "C" Harbor Parkway Improvements

Exhibit "A"

Property Ownership Map, Vicinity Map, and Legal Description



Legal Description: COM N 0 DEG 17' 51" E 16 FT FR SE COR. SEC. 13, T6S, R1W, SLB&M.; N 89 DEG 45' 54" W 169.99 FT; ALONG A CURVE TO L (CHORD BEARS: S 83 DEG 27' 40" W 139.9 FT, RADIUS = 603 FT); N 89 DEG 46' 49" W 1062.86 FT; N 0 DEG 15' 13" E 1314.02 FT; N 89 DEG 48' 4" W 1371.52 FT; N 0 DEG 15' 45" E 1313.52 FT; S 89 DEG 44' 8" E 2413.59 FT; S 924 FT; E 330 FT; S 0 DEG 24' 35" W 1686.02 FT TO BEG. AREA 116.987 AC.

Exhibit "B"

Concept Plan

NORTH

CONCEPT NARRATIVE RESIDENTIAL

LOCATED IN SARATOGA SPRINGS, UTAH COUNTY, UTAH

ORIGINAL PROPERTY	116.8 ACRES
SINGLE FAMILY LOTS	764
TOTAL DENSITY	3.29 UNITS/ACRE
ZONE 2 (CULINARY WATER)	
ZONE 3 (CULINARY WATER)	

ZONE REQUIREMENTS

ZONE:	R-3
LOT SIZE:	10,000 SF
FRONTAGE:	80'
CUL-DE-SAC RADIUS	55'
ROW WIDTH	56'

PROPOSED FUTURE DRAINAGE SCHEME

THE SUBDIVISION WILL PROVIDE DETENTION ON-SITE IN ACCORDANCE WITH CITY STANDARDS AND OUTFALL TO AN ACCEPTABLE DISCHARGE POINT LOCATED TO THE NORTH TO THE REAR OF LOT 8291 IN THE VILLAGES AT HAWKS LANDING 2. AN EASEMENT MAY BE REQUIRED WITH A PAVED SURFACE. STORM WATER WILL ALSO NEED TO BE CLEANED OF ALL OILS, FLOATABLES AND 80% OF TOTAL SUSPENDED SOLIDS (TSS) 110 MICRONS OR LARGER.

SENSITIVE LANDS

THE PROPERTY MAY CONTAIN SENSITIVE LANDS AS DEFINED IN SECTION 19.03.02 INCLUDING SLOPES IN EXCESS OF 30%. ADDITIONAL INFORMATION AND/OR STUDIES MAY BE REQUIRED PRIOR TO PRELIMINARY APPROVAL.

SEWER NOTE

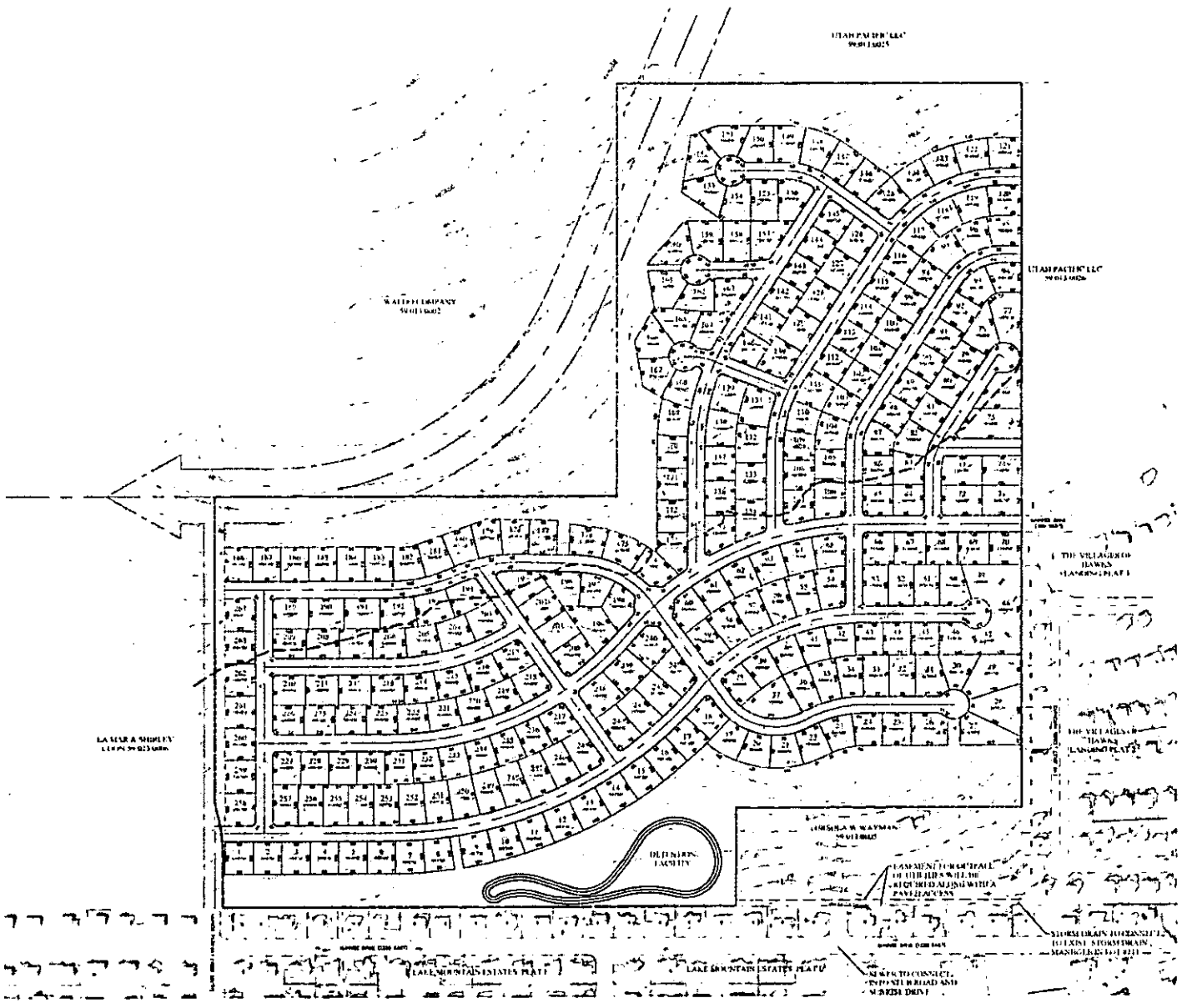
SEWER WILL CONNECT TO THE EXISTING SEWER LINE IN SUNRISE DRIVE AND LAKE VISTA DRIVE.

LEGAL DESCRIPTION

COM N 28.42 FT & E -18.11 FT FR SE COR. SEC. 13, T6S, R1W, SLB&M.; N 89 DEG 43' 54" W 1761.04 FT; ALONG A CURVE TO L (CHORD BEARS: S 61 DEG 47' 31" W 1781.81 FT, RADIUS = 603 FT) ARC LENGTH = 1787.47 FEET; N 89 DEG 48' 48" W 1024.98 FT; N 0 DEG 13' 12" E 1314.02 FT; N 89 DEG 46' 4" W 1371.62 FT; N 0 DEG 13' 49" E 1313.62 FT; S 89 DEG 44' 8" E 2413.98 FT; S 824 FT; E 339 FT; S 0 DEG 24' 35" W 1878.02 FT TO BEG.

GENERAL NOTE

INFORMATION PROVIDED IS THIS FROM THE BEST AVAILABLE DATA AT TIME OF PREPARATION AND MAY CHANGE AT ANYTIME FOR ANY REASON. PLAN SHOWN IS FOR ILLUSTRATIVE PURPOSES ONLY.



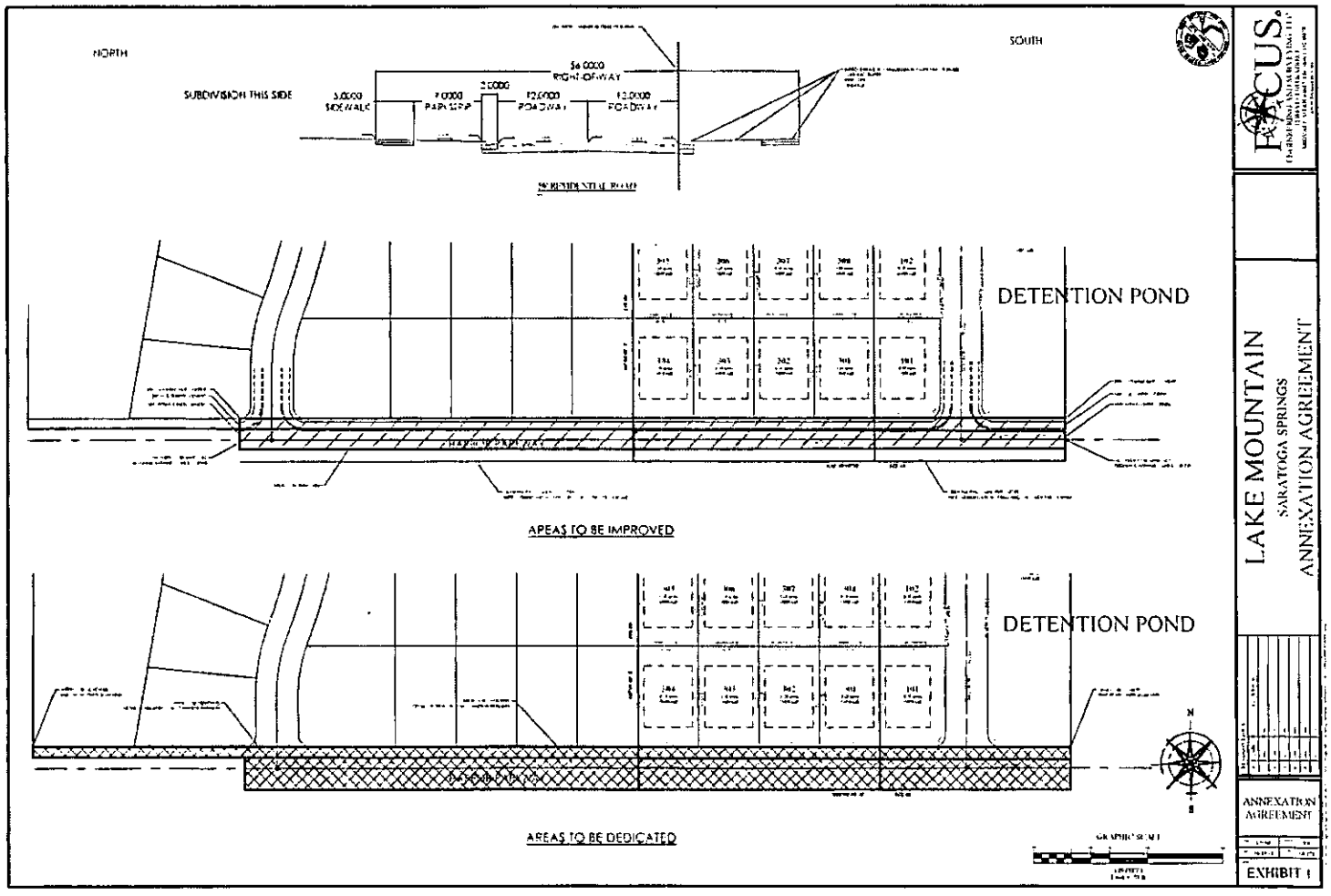
DESIGNED BY:

FOCUS
ENGINEERING AND SURVEYING, LLC

ENT 34005:2020 PG 19 of 21

Exhibit "C"

Harbor Parkway Improvements


NORTH
SOUTH
SUBDIVISION THIS SIDE
DETENTION POND
AREAS TO BE IMPROVED
DETENTION POND
AREAS TO BE DEDICATED
LAKE MOUNTAIN
SARATOGA SPRINGS
ANNEXATION AGREEMENT
ANNEXATION AGREEMENT
EXHIBIT I