ENT 86039:2019 PG 1 of 23
JEFFERY SMITH
UTAH COUNTY RECORDER
2019 Sep 04 10:24 am FEE 40.00 BY SM
RECORDED FOR SARATOGA SPRINGS CITY

ANNEXATION AND DEVELOPMENT AGREEMENT

(Canton Ridge - a Fieldstone Homes Project)

THIS ANNEXATION AND DEVELOPMENT AGREEMENT ("Agreement") is made and entered into on August 20, 2019, by and between the City of Saratoga Springs, Utah, a Utah municipal corporation ("City"), and Fieldstone Canton Ridge Park, LLC, a Utah corporation ("Fieldstone"), and Alma E. and Ethel B. Rushton Family Partnership, a Utah general partnership ("Rushton"). Fieldstone and Rushton may be individually referred to as an "Owner," and collectively as the "Owners," and the City and the Owners are sometimes individually referred to as a "Party," and collectively as the "Parties."

RECITALS:

WHEREAS, the Owners own and/or have the right to purchase approximately 166 acres of property located in unincorporated Utah County. The specific parcels owned and/or subject to a right to purchase of each Owner are more fully described in the property ownership map, site plan, and/or legal descriptions attached as Exhibit "A" (the "Property");

WHEREAS, Owners and City wish to annex the unincorporated Property into the City ("Annexation Request") to develop the Property as a residential subdivision (the "Land Use Request") to be known as "Canton Ridge" for Fieldstone (the "Fieldstone Project"), and the remainder to be developed by Rushton or its successor(s) as a residential subdivision. Both future projects may be referred to collectively herein as the "Project");

WHEREAS, Owners and City agree that the Property will be assigned the R1-10 Zone and Low Density Residential designation in the General Plan upon annexation of the unincorporated Property into the City, with the end result that all of the Property will have the R1-10 Zone zoning designation (the "Zoning Request"), subject to the future legislative discretion of the City Council and referendum/initiative rights of City residents except as specifically stated otherwise in this Agreement;

WHEREAS, except as specifically stated otherwise in this Agreement, the Property will be subject to all City ordinances, and regulations ("City ordinances");

WHEREAS, the City desires to enter into this 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;

WHEREAS, the City desires to enter into this Agreement because the Agreement establishes planning principles, standards, and procedures to eliminate uncertainty in planning and guide the orderly development of the Property consistent with the City General Plan, City ordinances, and the conditions imposed by the Planning Commission and City Council;

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WHEREAS, Owners desires to enter into this Agreement to establish Owners' vested rights to develop the Property under the R1-10 Zone and Low Density Land Use Designation.

WHEREAS, to assist the City in its review of the Annexation Request, Land Use Request and the Zoning Request, to ensure development of the Property in accordance with Owners' representations to City, and to ensure that Owners' rights in the development of the Property under the R1-10 Zone and Low Density Land Use Designation are vested, Owners and City desire to enter voluntarily into this Agreement, which sets forth the process and standards whereby Owners may develop the Property;

WHEREAS, pursuant to its legislative authority under Utah Code Annotated § 10-9a-101, et seq. and § 10-2-401, et seq., and after all required public notice and hearings and execution of this Agreement by Owners, the City Council, in exercising its legislative discretion, has determined that entering into this Agreement furthers the purposes of the Utah Municipal Land Use, Development, and Management Act, Section 10-2-401 et seq. of the Utah Code, City's General Plan, and Title 19 of the City code (collectively, the "Public Purposes"). As a result of such determination, City has elected to approve the Annexation Request, Land Use Request, and the Zoning Request and authorize the subsequent development thereunder in accordance with the provisions of this Agreement, and the City has concluded that the terms and conditions set forth in this 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 Owners hereby agree as follows:

1. Effective Date. This Agreement shall become effective on the date it is executed by Owners and the City and the City has completed the annexation process and other requirements set forth below in Section 3 and Section 4 ("Effective Date"). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals.

2. Affected Property. The Property ownership map and/or 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 Agreement except by written amendment to this Agreement executed and approved by Owners and City.

3. Annexation Process. Owners and City hereby agree that the following steps have been taken towards annexation of the Property into the City. Owners completed an annexation petition for the Property in the form provided by the City (the "**Petition**"), and filed the Petition with the City Recorder of the City on April 12, 2018. On May 15, 2018, at a duly called and properly noticed meeting of the City Council at which a quorum was present and acted throughout, the City Council adopted by majority vote Resolution No. R18-30, accepting the Petition for purposes of Section 10-2-405 of the Utah Code (the "**Accepting Resolution**"). The

City Recorder mailed or delivered the written notification required by Section 10-2-405(2)(c)(i) of the Utah Code on June 14, 2018. The City personnel (i) published notice of the proposed annexation pursuant to Section 10-2-406(1)(a) of the Utah Code on June 19, June 26, and July 3, 2018; and, (ii) mailed notice of the proposed annexation to Affected Entities pursuant to Section 10-2-406(1)(b) of the Utah Code on June 18, 2018. Pursuant to Utah Code § 10-2-407, the City Council held a public hearing to receive input on the proposed annexation on January 15, 2019; and July 2, 2019, and the City Council continued decision on the Annexation to a later date.

4. Completion of Annexation Process and Adoption of Ordinance. City hereby agrees to complete the following annexation process to give effect to the terms of this Agreement. City personnel shall publish notice of a public meeting to be held by the City Council, which notice shall be in a form acceptable to the Parties. The City Council shall cause to be included on the agenda of the public meeting on July 2, 2019, and shall consider for adoption at such meeting, the following ordinances:

(i) an Ordinance approving the annexation of the Property and the City Exchange Property (defined below) into the City (the "**Annexation Ordinance**"), which Ordinance shall be in a form acceptable to the Owners; and

(ii) one or more Ordinances (i) assigning the R1-10 Zone and Low Density Land Use Designation to the Property and the City Exchange Property, (ii) amending the General Plan of the City, as may be required to implement the provisions of this Agreement and vest the development entitlements set forth herein (collectively, the "**Concurrent Ordinances**").

5. Zone and General Plan Changes and City Services. Subject to the terms of this Agreement, the Property and the City Exchange Property to be annexed into the City shall, upon annexation into the City, be assigned the zoning of the R1-10 Zone and Low Density Land Use Designation. After annexation, the City shall provide all City services to the Property and the City Exchange Property that it provides from time-to-time to other residents and properties within the City provided an Owner installs and dedicates all required onsite and offsite improvements necessary to service the Property for each plat recorded per City ordinances.

6. Right to Withdraw Petition. Owners consent to the annexation of the Property into the City based solely upon the confirmation and vesting of the rights, privileges, benefits and development entitlements described in this Agreement, and not otherwise. It is the intent, purpose and agreement of Owners and the City, and the Owners and City have and do hereby agree, that the Petition has been submitted to the City on the express condition that it be considered for legislative approval only if (i) the City Council, simultaneously or concurrently with such approval, also approves the Concurrent Ordinances, in forms acceptable to the Parties, and (ii) the City Council takes all actions necessary for the Annexation Ordinance to be and become a valid and binding obligation of the City. While it is understood that the City cannot, by accepting the Petition, bind the City Council to adopt either the Annexation Ordinance or the Concurrent Ordinances, and while the City has made no representations, express or implied, to the contrary, if the City Council does not adopt and approve the Concurrent Ordinances and execute and deliver to Owners the Concurrent Ordinances simultaneously or concurrently with the adoption and approval of the Annexation Ordinance, the Petition shall be deemed withdrawn by Owners immediately prior to the consideration by the City Council of the Annexation Ordinance, and shall

be null, void and of no force and effect. The City acknowledges and agrees that it has no power or authority to annex the Property, except upon the Petition and with the consent of Owners, that it will not do so without such consent, and that any effort or attempt to do so will be null and void.

7. Reserved Legislative Powers. Nothing in this Agreement shall 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 following the date of this Agreement. Notwithstanding the retained power of the City to enact such legislation under its police power, such legislation shall not modify an Owner'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 an Owner's rights shall be of general applicability to all development activity in City. Unless City declares an emergency, each Owner shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Property.

8. Development of the Property. Once an Owner commences any development of the Property, such Owner agrees to comply with all the terms, conditions, and requirements of this Agreement. However, notwithstanding any provision of this Agreement, such Owner shall have no obligation to develop any portion of the Property not owned by said Owner or of which such Owner has not commenced the development of as provided herein.

9. Required Improvements. Except as specifically provided herein, this Agreement does not in any way convey to an Owner any capacity in any City system or infrastructure or the ability to develop the Property without the need for such Owner to install and dedicate to City all required onsite and offsite improvements necessary to service the Property per City ordinances. Each Owner shall be responsible for paying all property taxes including rollback taxes owing on any required improvements prior to dedication or conveyance and prior to acceptance by City. Future development of the Property shall comply in all respects to all City ordinances with respect to the required infrastructure to service the Property. Not by way of limitation, each Owner shall be required to install and dedicate the City's minimum-sized infrastructure, whether or not the minimum size may have additional capacity. In addition, in consideration of granting the Zoning Request or a future zoning request by Rushton, the applicable Owner may be required to upsize certain infrastructure, as specified below. Not by way of limitation, each Owner shall be required to install and dedicate the following:

a. Water Rights and Sources. When an Owner records a plat, such Owner shall convey to the City water rights and sources sufficient for the development of the Property according to City ordinances and state law in effect at the time a final plat is recorded. The Owner may acquire water rights and sources from the City if the City has sufficient water rights and sources to service the Property. The parties acknowledge that at least a portion of the water rights required for development of the Property could be satisfied from water credits already on file with the City or held by an Owner. Such water credits are subject to an Owner providing sufficient proof of existence and right of ownership or use to the City.

b. Water Facilities for Development. When an Owner develops a portion of the Property, such Owner 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 source, storage, distribution, treatment, and fire flow facilities sufficient for the development of such property in accordance with the City ordinances current at the time a complete preliminary plat application is filed. The required improvements for each plat shall be specified by City ordinances at the time a complete preliminary plat application is filed and may be adjusted in accordance with the then-current City ordinances and any applicable law.

c. Sewer, Storm Drainage, and Roads. When an Owner develops the Property or a portion thereof, such Owner shall be responsible for the installation and dedication to City of all necessary onsite and offsite sewer, storm drainage, and road improvements sufficient for the development of the property current at the time a complete preliminary plat application is filed. The required improvements for each plat shall be specified by City ordinances at the time a complete preliminary plat application is filed and may be adjusted in accordance with the then-current City ordinances and any applicable law. The Owner shall be required to install road improvements necessary to service the needs of any recorded final plat. In order to make such determination, the Owner shall conduct a traffic study by a licensed traffic engineer and present such stamped traffic study to the City for written approval, which shall not be unreasonably withheld. Once City has approved the traffic study in writing, City and the Owner shall meet to determine the needs for construction of road surfaces on the Owner's project.

d. Upsizing/Reimbursements to Owner. Except as otherwise provided herein, the City shall not require either Owner or its successors and assigns to "upsize" any public infrastructure (i.e., to construct the infrastructure to a size larger than the onsite and offsite infrastructure per City ordinances required to service an approved final plat) unless financial arrangements reasonably acceptable to such Owner are made to compensate Owner for the incremental or additive cost of such upsizing, except that City shall not be required to reimburse Owner for what could be additional capacity found in the minimum-sized infrastructure needed to service the project and required by the City ordinances. By way of example only, the City shall have no reimbursement obligations if, in order to service a phase in the Project, the City ordinance requires Owners to install the minimum sized sewer line of 8" and that minimum capacity allows for additional properties beyond the Project to connect to such line.

e. Landscaping, Fencing and Trail Improvements. When an Owner develops a portion of the Property, at the time of recordation of a plat, such Owner will be required to install, or guarantee the installation, of all landscaping, trail, and fencing improvements required for that plat by City ordinances at the time a complete preliminary application is filed.

f. Power Lines. When an Owner develops a portion of the Property, at Owner's expense, such Owner shall bury the power lines that are included within a recorded plat that are required by City ordinances to be buried, with the understanding that

"transmission" power poles identified in the City's utility map do not need to be buried or relocated.

10. Exchange of Property. Within five (5) business days of the Effective Date, Fieldstone and City shall, in good faith and using commercially reasonable efforts, mutually agree on an appraiser (the "Appraiser") to determine the current fair market value of that certain portion of the Property, which is more fully described in the legal description attached as Exhibit "B" ("Fieldstone Exchange Property"), and that certain property, which is more fully described in the legal description attached as Exhibit "C" ("City Exchange Property"). In addition, Fieldstone and City shall, in good faith and using commercially reasonable efforts, mutually agree on the method and parameters of how the Appraiser will determine the current fair market value of the Fieldstone Exchange Property and the City Exchange Property. After Fieldstone and City have (i) received the appraisals from the Appraiser and (ii) mutually agreed in writing to the value of the Fieldstone Exchange Property and the City Exchange Property, respectively, City shall give the necessary notices required by the Utah Code for disposing property by a municipality. Within five (5) business days of City and Fieldstone completing the required process described in the preceding sentence, Fieldstone shall transfer the Fieldstone Exchange Property to City and City shall transfer the City Exchange Property to Fieldstone, all by special warranty deed in forms mutually agreed to by Fieldstone and City subject only to title encumbrances approved in writing by the party receiving such property. If Fieldstone and City are unable to mutually agree on the value of the Fieldstone Exchange Property and the City Exchange Property, respectively, Fieldstone and City shall, in good faith and using commercially reasonable efforts, mutually agree on a second appraiser (the "Second Appraiser") to determine the current fair market value of the Fieldstone Exchange Property and the City Exchange Property based on the method and parameters agreed to by the parties. After Fieldstone and City have (i) received the appraisals from the Second Appraiser and (ii) mutually agreed in writing to the value of the Fieldstone Exchange Property and the City Exchange Property, respectively, City shall give the necessary notices required by the Utah Code for disposing property by a municipality and the parties shall follow the conveyance process set forth above. However, if Fieldstone and City are unable to mutually agree on the value of the Fieldstone Exchange Property and the City Exchange Property using the appraisals from the Second Appraiser, the Appraiser and the Second Appraiser shall, in good faith and using commercially reasonable efforts, mutually agree on a third appraiser (the "Third Appraiser") to determine the current fair market value of the Fieldstone Exchange Property and the City Exchange Property by picking between the appraisal from the Appraiser and the appraisal from the Second Appraiser. After Fieldstone and City have received the final decision from the Third Appraiser, City shall give the necessary notices required by the Utah Code for disposing property by a municipality and the parties shall follow the conveyance process set forth above.

11. Easements; Open Space Rights; and Temporary Use of ROW.

a. Easements. Within five (5) business days of the Effective Date, Rushton and Fieldstone shall convey to City thirty-foot wide perpetual utilities easements on the portions of the Property described in Exhibit "D" (the "Easement Property"), said easement to be in a form mutually agreed to by Rushton, Fieldstone and City. For any utilities installed prior to development of the Property on the Easement Property, the City shall ensure that three appropriate utility stubs for residential development are installed without

cost to the Owners for use by the Owners at locations required by Owners subject to the payment by Owners of any connection and impact fees charged to development/buildings pursuant to City ordinances and so long as the City's master plans are followed. If Owners do not connect to the utility stubs, Owners shall be responsible for the removal and abandonment of the utility stubs in accordance with City ordinances.

b. Open Space Requirements. Fieldstone and Rushton shall each receive an acre for acre credit as fully improved with full access against their respective open space requirements under City ordinances for their development of their respective portions of the Property by using those areas of thirty feet along both the eastern edge and the western edge of the expansion of Foothill Blvd. (also known as UDOT's Mountain View Freeway Extension (SR85)), which is owned by UDOT and adjacent to their respective properties within the Project, so long as such area is improved with landscaping and recreational amenities per the City's then-current ordinances regarding open space.

c. Temporary Use of ROW. At any time until the UDOT or City improvements are installed on the expansion of Foothill Blvd., Owners shall have temporary access on and use of the area that will be improved by UDOT.

12. Time of Approval. Any approval of complete applications filed with the City or any approval required by this Agreement shall not be unreasonably withheld or delayed.

13. Term. The term of this Agreement shall be for a period of ten years from the Effective Date and shall automatically renew for one successive period of ten years, unless either party is in breach pursuant to 16.c. below. However, this Agreement may terminate upon the earlier to occur of: (i) when certificates of occupancy have been issued for all buildings and/or dwelling units on the Property; provided, however, that any covenant included in this Agreement which is intended to run with the land, as set forth in any special condition, shall survive this Agreement as provided by such special condition; or (ii) if the parties mutually agree to terminate the Agreement in writing. Unless otherwise agreed to by the City and the Owners, each Owner's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement approved by City and Owners in writing. However, this Agreement shall continue in perpetuity for any portions of the Property contained in a final plat approved by the City Council and recorded on the property in the county recorder's office by an Owner, unless City and such Owner mutually agree otherwise in writing.

14. Vested Rights. The rights established by this Agreement, including, but not limited to, the right of each Owner to develop the Property under the R1-10 Zone and Low Density Land Use Designation, shall vest immediately upon the Effective Date, shall run with the land, and shall be irrevocable for the Term. For clarification, any "land use application" of an Owner for the purposes of Section 10-9a-509, et seq., of the Utah Code, and all such future applications, amendments, and submissions related thereto shall be entitled to be considered under the R1-10 Zone and Low Density Land Use Designation pursuant to the terms of such provision.

15. Successors and Assigns.

a. Change in Owner. This Agreement shall be binding on the successors and assigns of each Owner. If any portion of Property is transferred ("Transfer") to a third party ("Transferee"), the applicable Owner and the Transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless, prior to such Transfer, the Owner provides to City a letter from Transferee acknowledging the existence of this 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 the applicable Owner under this Agreement and the persons and/or entities executing this Agreement as an Owner shall be released from any further obligations under this Agreement as to the transferred Property.

b. Individual Lot or Unit Sales. Notwithstanding the provisions of Subparagraph 15.a., a transfer by an Owner of a lot or 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 Owner's obligations with respect to such lot or dwelling unit have been completed. In such event, the Owner shall be released from any further obligations under this Agreement pertaining to such lot or dwelling unit.

16. Default.

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

i. a warranty, representation, or statement made or furnished by an Owner under this Agreement is intentionally false or misleading in any material respect when it was made;

ii. a warranty, representation, or statement made or furnished by City under this Agreement is intentionally false or misleading in any material respect when it was made;

iii. a determination by City made upon the basis of substantial evidence that an Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement;

iv. a determination by an Owner made upon the basis of substantial evidence that City has not complied in good faith with one or more of the material terms or conditions of this Agreement;

v. any other event, condition, act, or omission, either by City or an Owner that violates the terms of, or materially interferes with the intent and objectives of this 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, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in Paragraph 16.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, contractor delays, governmental restrictions, governmental regulations, governmental controls, governmental delays, 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 Subparagraphs 16.a. and 16.b. above, City or an Owner may pursue whatever remedies it may have at law or in equity, including injunctive and other equitable relief.

17. Entire Agreement. This Agreement shall supersede all prior agreements with respect to the subject matter hereof, not incorporated herein, and all prior agreements and understandings are merged, integrated, and superseded by this Agreement. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A: Property Description.
Exhibit B: Fieldstone Exchange Property Description.
Exhibit C: City Exchange Property Description.
Exhibit D: Easement Property Description.

18. General Terms and Conditions.

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

b. Recording of Agreement. This Agreement shall be recorded at the Owners' expense to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

c. Severability. Each and every provision of this Agreement shall be separate, several, 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 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 Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect 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 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 or any other covenant or obligation of the City hereunder is held invalid by a court of competent jurisdiction, this Agreement shall be null and void, provided, however, that in the event this Agreement has been partially performed, the Parties shall be restored—to the extent reasonably possible—to the position they were in prior to entering into this Agreement.

g. Enforcement. The Parties to this Agreement recognize that the Parties have the right to enforce the terms of this Agreement by seeking an injunction to compel compliance. In the event either Party violates the terms of this Agreement, the Party not in violation 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 a court of competent jurisdiction if the Party in violation 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 the violating party. The Parties 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. No officer, official, or agent of City has the power to amend, modify, or alter this Agreement or waive any of its conditions or make any binding promise or representation not contained herein.

i. Amendment of Agreement. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the Parties.

j. Attorney Fees. Should any Party hereto employ an attorney for the purpose of enforcing this Agreement or any judgment based on this 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.

k. Notices. Any notices required or permitted to be given pursuant to this Agreement shall be deemed to have been sufficiently given or served for all purposes when presented personally, or four days after being sent by registered or certified mail, properly addressed to the parties as follows (or to such other address as the receiving party shall have notified the sending party in accordance with the provisions hereof):

To Fieldstone:	Fieldstone Canton Ridge Park, LLC 12896 South Pony Express Road, Suite 400 Draper, Utah 84020 Attn: Jason Harris, VP of Land Acquisitions Email: jharris@fieldstonehomes.com
With a copy to:	Kirton McConkie 50 East South Temple, Suite 400 Salt Lake City, Utah 84111 Attn: Tyler Buswell tbuswell@kmclaw.com
To Rushton:	Alma E. and Ethel B. Rushton Family Partnership Attn. Terry Rushton 4441 South 5400 West West Valley City, Utah 84120
To the City:	City Manager City of Saratoga Springs 1307 N. Commerce Drive, Suite 200 Saratoga Springs, UT 84045

l. Applicable Law. This 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 Agreement. This Agreement may be executed in multiple parts as originals or by electronic copies of executed originals; provided, however, if executed and evidence of execution is made by electronic copy, then an original shall be provided to the other party within seven days of receipt of said electronic copy.

n. Hold Harmless and Indemnification.

Each Owner 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 the direct or indirect operations of such Owner or its contractors, subcontractors, agents, employees, or other persons acting on its 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 Project and geological hazards.

City agrees to defend, indemnify, and hold harmless each Owner and its officials, officers, agents, employees, owners, subsidiaries, consultants, and representatives from liability for claims, damages, or any judicial or equitable relief which may arise from or are related to the direct or indirect operation of City or its contractors, subcontractors, agents, employees, elected officials, or other persons acting on its behalf which relates to the Project, or which arises out of claims of 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 Project and geological hazards.

i. Nothing herein shall be construed to mean that an Owner or City shall defend, indemnify, or hold the other Party 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 other Party, or its boards, officers, agents, or employees; (ii) the negligent installation of improvements that have been offered for dedication and accepted by the City for maintenance; or (iii) breach of this Agreement by the other Party.

ii. The Parties shall give written notice of any claim, demand, action or proceeding which is the subject of this hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, the Party receiving said notice shall be entitled to participate in the defense of such claim. Each Party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

o. Relationship of Parties. The contractual relationship between City and the Owners arising out of this Agreement is one of independent contractor and not agency. This 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 Agreement shall be reserved to City and the Owners, (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) each Owner shall have the full power and exclusive control of that portion of the Property that it owns, subject to the obligations of such Owner set forth in this Agreement.

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

q. Authority. The Parties warrant that the undersigned individuals have full power and authority to enter into this Agreement on their behalf. The Parties understand that each is relying on these representations and warranties in executing this Agreement.

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

[*Signatures and Acknowledgements to Follow*]

[City Signature Page to Annexation and Development Agreement]

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

CITY:

Attest:

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

City Recorder

By: _____
Mayor

State of Utah

County of Utah

The foregoing instrument was acknowledged before me this 20 day of August 2019 by Jim Miller, the Mayor of City of Saratoga Springs, a political subdivision of the State of Utah.

Notary Public

LUCINDA JEAN LOPICCOLO
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 688846
COMM. EXP. 04-12-2020

[Fieldstone Signature Page to Annexation and Development Agreement]

FIELDSTONE:

Fieldstone Canton Ridge Park, LLC,
a Utah corporation

By: _____

Its: Assistant Secretary

State of Utah

County of Salt Lake

The foregoing instrument was acknowledged before me this 2 day of August 2019 by Jason Harris, the assistant secretary of Fieldstone Canton Ridge Park, LLC., a Utah corporation.

Ashley Hawker
Notary Public

ASHLEY HAWKER
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 697101
COMM. EXP. 09-26-2021

[Rushton Signature Pages to Annexation and Development Agreement]

RUSHTON:

ALMA E. AND ETHEL B. RUSHTON FAMILY PARTNERSHIP, a Utah general partnership
By Its General Partners:

RUSHTON FAMILY COMPANY, LLC, a Utah limited liability company

By Lynda R. Ahlquist
Lynda R. Ahlquist, Its Manager

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

The foregoing instrument was acknowledged before me this 30th day of July, 2019, by Lynda R. Ahlquist, as the Manager of Rushton Family Company, LLC, a Utah limited liability company, which is a general partner of Alma E. and Ethel B. Rushton Family Partnership, a Utah general partnership.

CALLAN MERRICK
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 691017
COMM. EXP. 09-16-2020

NOTARY PUBLIC

A. LAURENCE & ELVA J. RUSHTON FAMILY COMPANY, LLC, a Utah limited liability company

By Terry L. Rushton
Terry L. Rushton, Its Manager

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

The foregoing instrument was acknowledged before me this 29 day of July, 2019, by Terry L. Rushton, as the Manager of A. Laurence & Elva J. Rushton Family Company, LLC, a Utah limited liability company, which is a general partner of Alma E. and Ethel B. Rushton Family Partnership, a Utah general partnership.

MICHAEL IVINS
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 706002
COMM. EXP. 05-05-2023

NOTARY PUBLIC

FLOYD & NORMA RUSHTON PROPERTIES, LLC,
a Utah limited liability company

By _____
Floyd S. Rushton, Its Manager

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

The foregoing instrument was acknowledged before me this 29 day of July, 2019, by Floyd S. Rushton, as the Manager of Floyd & Norma Rushton Properties, LLC, a Utah limited liability company, which is a general partner of Alma E. and Ethel B. Rushton Family Partnership, a Utah general partnership.

MICHAEL IVINS
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 706002
COMM. EXP. 05-05-2023

_____
NOTARY PUBLIC

JONES LEHI, L.L.C., a Utah limited liability company

By _____
Harry R. Jones, Its Manager

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

The foregoing instrument was acknowledged before me this 31 day of July, 2019, by Harry R. Jones, as the Manager of Jones Lehi, L.L.C, a Utah limited liability company, which is a general partner of Alma E. and Ethel B. Rushton Family Partnership, a Utah general partnership.

MICHAEL IVINS
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 706002
COMM. EXP. 05-05-2023

_____
NOTARY PUBLIC

ELSIE LOVELACE, L.L.C., a Utah limited liability company

By Brad D. Turpin
Brad D. Turpin, Its Manager

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

The foregoing instrument was acknowledged before me this 30 day of July, 2019, by Brad D. Turpin, as the Manager of Elsie Lovelace, L.L.C., a Utah limited liability company, which is a general partner of Alma E. and Ethel B. Rushton Family Partnership, a Utah general partnership.

MICHAEL IVINS
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 706002
COMM. EXP. 05-05-2023

NOTARY PUBLIC

EXHIBIT "A"

Legal Description

THE SOUTHWEST ¼ OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, LOCATED IN SARATOGA SPRINGS, UTAH.

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERDIAN, THENCE N0°29'13"E ALONG THE SECTION LINE 2653.78 FEET TO THE WEST ¼ OF SAID SECTION 34; THENCE S89°50'7"E ALONG THE QUARTER SECTION LINE 2702.98 FEET TO THE CENTER OF SAID SECTION 34; THENCE S0°23'55"E ALONG THE QUARTER SECTION LINE 2660.75 FEET TO THE SOUTH ¼ OF SAID SECTION 34; THENCE N89°41'30"W ALONG THE SECTION LINE 2744.09 FEET TO THE POINT OF BEGINNING. CONTAINS +/- 166.14 ACRES.

EXHIBIT "B"

Legal Description of the Fieldstone Exchange Property

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED S89°50'07"E ALONG THE QUARTER SECTION LINE 1941.72 FEET AND SOUTH 807.51 FEET FROM THE WEST 1/4 CORNER OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN; THENCE SOUTHEASTERLY ALONG THE ARC OF A 3000.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS BEARS: N70°21'00"E) 1036.18 FEET THROUGH A CENTRAL ANGLE OF 19°47'22" (CHORD: S29°32'41"E 1031.04 FEET); THENCE WEST 508.41 FEET; THENCE NORTH 896.97 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±4.53 ACRES

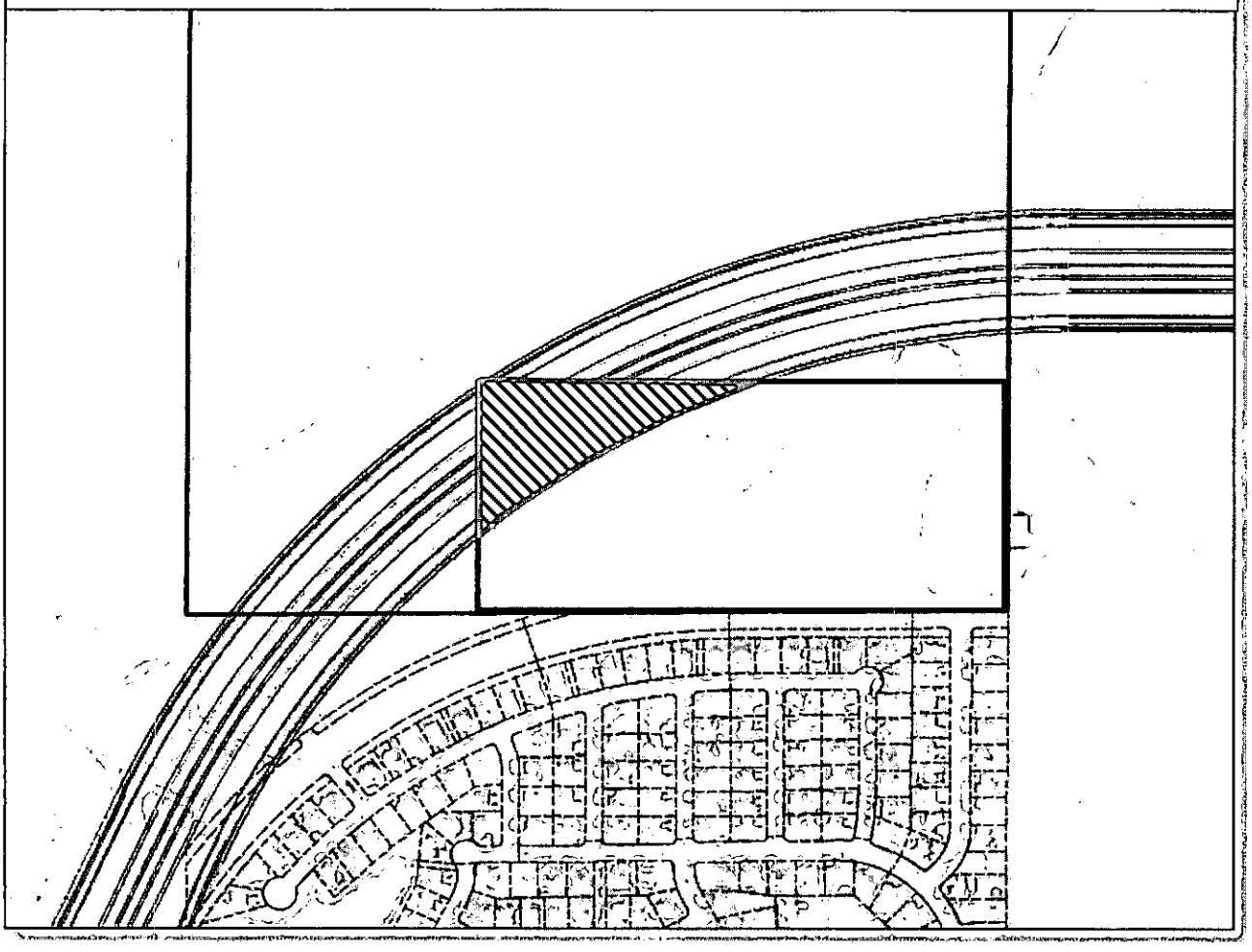


EXHIBIT "C"

Legal Description of the City Exchange Property

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF THE BENCHES PLAT 10 SUBDIVISION ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER, SAID POINT BEING LOCATED N89°45'56"W ALONG THE QUARTER SECTION LINE 2703.01 FEET FROM THE EAST 1/4 CORNER OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN; THENCE S89°45'56"E ALONG THE QUARTER SECTION LINE 90.00 FEET TO THE EAST EDGE OF THAT BUFFER ZONE ADJACENT TO AND RUNNING ALONG THE EASTERLY SIDE OF FOOTHILL BOULEVARD; THENCE ALONG THE EASTERLY EDGE OF SAID BUFFER ZONE THE FOLLOWING TWO (2) COURSES: S0°23'17"E 880.46 FEET; THENCE ALONG THE ARC OF A 2070.00 FOOT RADIUS CURVE TO THE LEFT 2114.49 FEET THROUGH A CENTRAL ANGLE OF 58°31'38" (CHORD: S29°39'07"E 2023.75 FEET); THENCE NORTHWESTERLY ALONG THE ARE OF A 2145.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (RADIUS BEARS: N18°15'05"E) 257.02 FEET THROUGH A CENTRAL ANGLE OF 6°51'55" (CHORD: N68°18'58"W 256.87 FEET); THENCE N64°53'00"W 74.92 FEET; THENCE ALONG THE ARC OF A 3000.00 FOOT RADIUS CURVE TO THE RIGHT 382.18 FEET THROUGH A CENTRAL ANGLE OF 7°17'57" (CHORD: N61°14'02"W 381.92 FEET) TO THE WEST EDGE OF THAT BUFFER ZONE ADJACENT TO AND RUNNING ALONG THE WESTERLY SIDE OF FOOTHILL BOULEVARD; THENCE NORTHWESTERLY ALONG THE WESTERLY EDGE OF SAID BUFFER ZONE ALONG THE ARC OF A 2250.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (RADIUS BEARS: N49°27'59"E) 936.96 FEET THROUGH A CENTRAL ANGLE OF 23°51'34" (CHORD: N28°36'14"W 930.20 FEET) TO THE QUARTER SECTION LINE (ALSO BEING THE WEST BOUNDARY OF THE BENCHES SUBDIVISION PLAT 12; THENCE N0°23'55"W ALONG THE QUARTER SECTION LINE (ALSO BEING THE WEST BOUNDARY OF THE BENCHES SUBDIVISION PLAT 12, THE BENCHES PLAT 11 AND THE BENCHES PLAT 10) 1512.40 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±8.50 ACRES

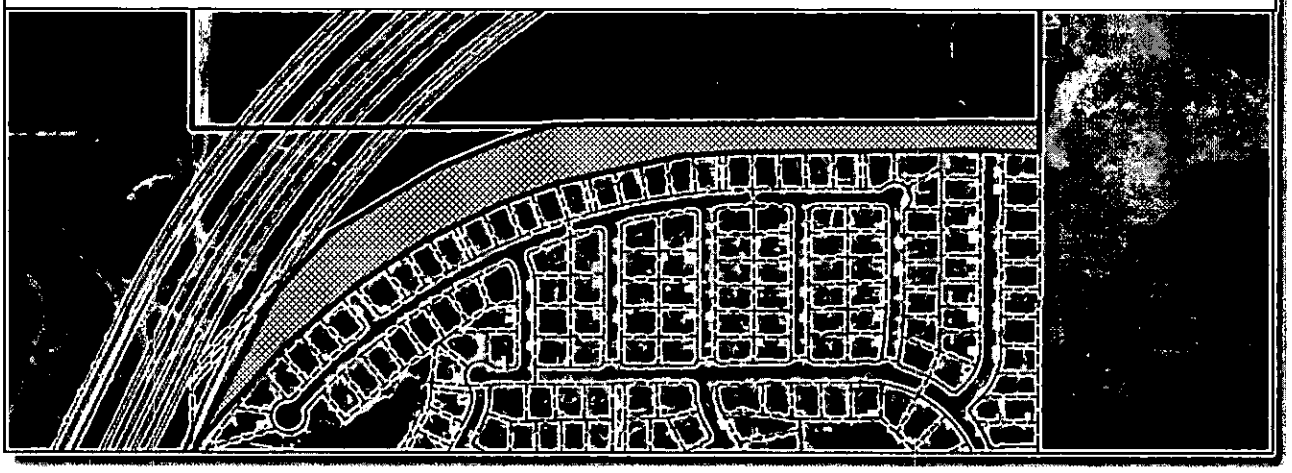


EXHIBIT "D"

Legal Description of Easement Property

30' WIDE PERMANENT EASEMENT (PARCEL #1)

A portion of the Southwest Quarter of Section 34, Township 5 South, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point located N0°23'55"W along the Quarter Section Line 632.90 feet from the South 1/4 Corner of Section 34, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence northwesterly along the arc of a 3030.00 foot radius non-tangent curve to the right (radius bears: N42°34'26"E) 446.94 feet through a central angle of 8°27'05" (chord: N43°12'01"W 446.54 feet); thence East 38.72 feet; thence southeasterly along the arc of a 3000.00 foot radius non-tangent curve to the left (radius bears: N50°33'37"E) 390.10 feet through a central angle of 7°27'01" (chord: S43°09'53"E 389.82 feet) to the Quarter Section Line; thence S0°23'55"E along the Quarter Section Line 41.18 feet to the point of beginning.

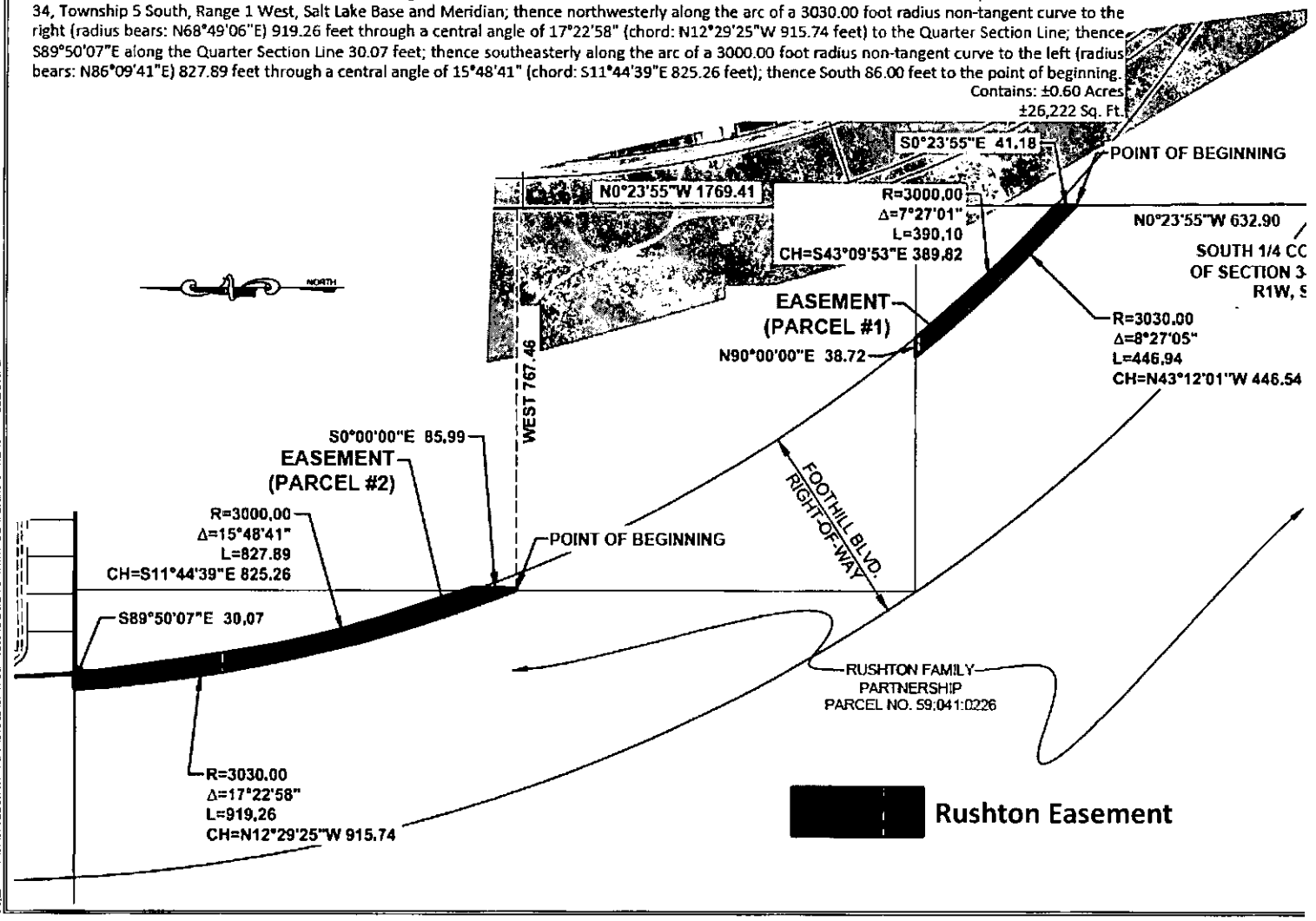
Contains: ±0.29 Acres
±12,557 Sq. Ft.

30' WIDE PERMANENT EASEMENT (PARCEL #2)

A portion of the Southwest Quarter of Section 34, Township 5 South, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point located N0°23'55"W along the Quarter Section Line 1769.41 feet and West 767.46 feet from the South 1/4 Corner of Section 34, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence northwesterly along the arc of a 3030.00 foot radius non-tangent curve to the right (radius bears: N68°49'06"E) 919.26 feet through a central angle of 17°22'58" (chord: N12°29'25"W 915.74 feet) to the Quarter Section Line; thence S89°50'07"E along the Quarter Section Line 30.07 feet; thence southeasterly along the arc of a 3000.00 foot radius non-tangent curve to the left (radius bears: N86°09'41"E) 827.89 feet through a central angle of 15°48'41" (chord: S11°44'39"E 825.26 feet); thence South 86.00 feet to the point of beginning.

Contains: ±0.60 Acres
±26,222 Sq. Ft.



30' WIDE PERMANENT EASEMENT

A portion of the Southwest Quarter of Section 34, Township 5 South, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point located N0°23'55"W along the Quarter Section Line 958.42 feet and West 264.70 feet from the South 1/4 Corner of Section 34, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence West 38.72 feet; thence northwesterly along the arc of a 3030.00 foot radius non-tangent curve to the right (radius bears: N51°01'32"E) 940.95 feet through a central angle of 17°47'34" (chord: N30°04'41"W 937.17 feet); thence North 85.99 feet; thence southeasterly along the arc of a 3000.00 foot radius non-tangent curve to the left (radius bears: N70°21'00"E) 1036.18 feet through a central angle of 19°47'22" (chord: S29°32'41"E 1031.04 feet) to the point of beginning.

Contains: ±0.68 Acres
±29,642 Sq. Ft.