

RESOLUTION NO. R-03-2017

**A RESOLUTION OF EAGLE MOUNTAIN CITY, UTAH,
APPROVING THE FIRST AMENDMENT TO THE
PORTER'S CROSSING TOWN CENTER
MASTER DEVELOPMENT AGREEMENT**

PREAMBLE

The City Council of Eagle Mountain City, Utah finds that it is in the public interest to approve the First Amendment to the Porter's Crossing Town Center Master Development Agreement as set forth more specifically in Exhibit A.

BE IT ORDAINED by the City Council of Eagle Mountain City, Utah:

1. The City Council finds that all required notices and hearings have been completed as required by law to consider and approve the proposed First Amendment to the Porter's Crossing Town Center Master Development Agreement as set forth in Exhibit A.
2. The First Amendment to the Porter's Crossing Town Center Master Development Agreement is hereby approved as set forth more specifically in Exhibit A.
3. This Resolution shall take effect upon its first publication or posting.


ADOPTED by the City Council of Eagle Mountain City, Utah, this 21st day of March, 2017.

EAGLE MOUNTAIN CITY, UTAH



Chris Pengta, Mayor

ATTEST:



Fionnuala B. Kofoed, MMC
City Recorder



CERTIFICATION

The above Resolution was adopted by the City Council of Eagle Mountain City on the 21st day of March, 2017.

Those voting aye:

- Adam Bradley
- Colby Curtis
- Stephanie Gricius
- Benjamin Reaves
- Tom Westmoreland

Those voting nay:

- Adam Bradley
- Colby Curtis
- Stephanie Gricius
- Benjamin Reaves
- Tom Westmoreland



Fionnuala B. Kofoed, MMC
City Recorder

EXHIBIT A

When Recorded Return To:

Eagle Mountain City
c/o Fionnuala Kofoed, City Recorder
1650 E. Stagecoach Run
Eagle Mountain, UT 84005

EAGLE MOUNTAIN CITY
MASTER DEVELOPMENT AGREEMENT
FOR THE
PORTER'S CROSSING TOWN CENTER
MASTER DEVELOPMENT

This **Master Development Agreement for Porter's Crossing Town Center** (this "**Agreement**") is entered into between Eagle Mountain City, a Utah municipal corporation (the "City") and Pony Express Land Development, Inc. a Utah corporation ("Developer").

This Agreement is made with reference to the following facts.

A. Developer has submitted to the City an application for a new development known as the Porter's Crossing Town Center (the "Project"). The Project consists of approximately 125 acres of the land (the "Property") owned by Developer and located near the intersection of Pony Express Parkway and Porter's Crossing Parkway. A legal description of the Property is attached as Exhibit 1.

B. In August, 2014, the Developer received conditional approval for the Porter's Crossing Town Center Master Development Land Use Plan.

C. Based on the conditional land use plan, City allowed Developer to plat Porter's Crossing Town Center, Phase B, Plat 1 and Parkside at Porter's Crossing Subdivision, which subdivisions are not part of this Agreement.

D. Developer has received approval of an amended Zoning Plan for the Project from the Planning Commission and City Council of Eagle Mountain City. The approved Zoning Plan, which depicts the zoning for the Project and land uses which will be allowed by the City, is attached as Exhibit 2 (the "Zoning Map").

E. Developer has prepared and submitted a Land Use Plan and Summary Illustrative Plan for the Project (together the "Land Use Plan"). A copy of the Land Use Plan is attached as Exhibit 3. The Land Use Plan depicts the general proposed housing products, land uses and layout of lots. The Parties acknowledge that the Land Use Plan is for reference only and that the

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lots, interior roads and other amenities will not develop exactly as depicted on the Land Use Plan.

F. The parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as parts of the Project as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties contained herein, the parties agree as follows:

1 **Definitions.** Unless otherwise defined in this Agreement, the words and phrases specified below shall have the following meanings:

1.1. **Administrator** means the person designated by the City as the Administrator of this Agreement.

1.2. **Applicant** means a person or entity submitting a Development Application.

1.3 **Buildout** means the completion of all of the development of the Project in accordance with the approved plans.

1.4. **City** means the Eagle Mountain City, a political subdivision of the State of Utah.

1.5. **City's Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City which may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and which may or may not be applicable to the Development Application depending upon the provisions of this Agreement.

1.6. **City's Vested Laws** means the development ordinances, policies, standards and procedures of the City in effect as of the date of this Agreement, a digital copy of which is attached as Exhibit 7.

1.7. **Council** means the elected City Council of the City.

1.8. **Default** means a material breach of this Agreement.

1.9. **Denied** means a formal denial issued by the final decision-making body of the City for a particular type of Development Application but does not include review comments or "redlines" by City staff.

1.10. **Density** means the number of Equivalent Residential Dwelling Units allowed per acre.

1.11. **Development** means the development of a Pod or a portion thereof pursuant to an approved Development Application.

1.12. **Development Application** means an application to the City for development of a portion of the Project including a Subdivision or any other permit, certificate or other authorization from the City required for development of the Project.

1.13. **Equivalent Residential Dwelling Unit** (“ERU”) means, for the purpose of calculating density, a unit of measurement used to measure and evaluate development impacts on public infrastructure such as water, sewer, storm drainage, parks, roads, and public safety of proposed residential and non-residential land uses; and is intended to represent the equivalent impact on public infrastructure of one single family residence. Every residential dwelling unit shall equal one (1) ERU and every non-residential building shall constitute a minimum of 1 ERU.

1.14. **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. § 10-9a-603, or any successor provision, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.15. **Homeowner Association(s)** (or “HOA(s)”) means one or more associations formed pursuant to Utah law to perform the functions of an association of property owners.

1.16. **Improved Open Space** means open space dedicated to the City to meet the City’s residential bonus density entitlements and improved in accordance with Eagle Mountain City Code 16.35.105 and Table 16.35.130(c).

1.17. **LUDMA** means the Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, et seq. (2015).

1.18. **Land Use Plan** means the plan for developing the Project and the zoning of the Project approved by the City on December 1, 2015, a copy of which is attached as Exhibit 2.

1.19. **Maximum Equivalent Residential Units** (ERUs) means the development on the Property up to Seven Hundred and Two (702) Equivalent Residential Dwelling Units.

1.20. **Parcel** means a Pod or a portion of a Pod that is created by the Developer that is not an individually developable lot.

1.21. **Park Plan** means the Park and Open Space Concept Plan attached hereto as Exhibit 4.

1.22. **Phase** means the development of a portion of the Project at a point in a logical sequence as determined by Developer.

1.23. **Pod(s)** means an area or the areas of the Project designated to be used for specific types of zoning as more fully illustrated on the Land Use Map.

1.24. **Project** means the total development to be constructed on the Property pursuant to this Agreement.

1.25. **Property** means that approximately one hundred and twenty five (125) acres of real property owned or controlled by Developer more fully described in Exhibit 1.

1.26. **Public Infrastructure** means those elements of infrastructure that are planned to be dedicated to the City as a condition of the approval of a Development Application.

1.27. **Subdivision** means the division of any portion of the Project into one or more developable lots.

1.28. **Subdivision Application** means the application to create a Subdivision.

1.29. **Zoning** means the zoning for each Pod as specified on the Zoning Map.

1.30. **Zoning Map** means the zoning map attached hereto as Exhibit 2.

2. **Governing Standards**. The Project shall be developed in accordance with the City's Vested Laws, the City's Future Laws (to the extent that these are applicable as otherwise specified in this Agreement), the Land Use Map and this Agreement.

3. **Zoning**. The Project will be zoned as a combination of commercial and residential as shown on the Zoning Map. In accordance with Titles 16 and 17 of the City's Vested Laws, the residential zone must be a predominately residential use, but certain commercial and mixed-use developments are allowed as a conditional use within the Project.

4. **Density**. The City has approved the Land Use Plan (attached as Exhibit 3) which divides the Project into fifteen Pods. For each Pod, the Developer shall be vested with the right to develop up to the maximum Density as indicated on the Land Use Plan for the respective Pod. Developer acknowledges the maximum Density is a ceiling, and factors as parcel configurations, residential product specifications or building code requirements may limit the Developer's

ability to build up to the maximum Density in any given Pod. Subject to the foregoing, Developer shall be entitled to transfer ERUs between Pods as follows:

- a. Pod 10 (Single Family Residential) – Pod 10 shall be capped at 12 homes with no transfers allowed to Pod 10. Transfers out may be permitted when transferring into Pods 7, 8 or 9.
- b. Pods 6, 7, 8, and 9 (Single Family Residential) - Transfers between Pods 6, 7, 8, and 9 are allowed provided that the density in any of the Pods may not increase above 110% of the density stated in the Land Use Plan (Exhibit 3).
- c. Pods 4, 5, 13, and 14 (Multi-Family Residential) - Transfers between Pods 4, 5, 13, and 14 are allowed provided that the density in any of the Pods may not increase above 110% of the density stated in the Land Use Plan (Exhibit 3).
- d. Pod 2 (Multi-Family Residential) – Pod 2 shall be capped at 180 units with no transfers allowed in or out of Pod 2.

In no case shall the density in any Parcel exceed 20.5 ERUs/acre. In no circumstance shall the total project density exceed 702 residential units. With each submittal, the Master Developer shall also submit a current account summary, by parcel and unit type, of the units presently platted, the units included in the current approval request, and the summary balance of the remaining approved total density that is not platted.

5. **Buildings and Layout.** The Land Use Plan shows certain intended product types (i.e. detached courtyard homes, single family homes, etc.) and proposed layouts for each Pod. The City and Developer acknowledge that the final product types and layout for each Pod may vary from the product types and layout indicated on the Land Use Plan, provided that such product types are compatible with existing adjacent developments and Developer maintains a variety of product types and layouts throughout the Project.

6. **Residential Areas.** The City shall not approve a preliminary plat for any residential or mixed use residential area until Developer has demonstrated how it will meet the City's Tier II, Tier III, or Tier IV bonus density requirements for that Parcel. If the required improved open space or amenities are not included in the proposed preliminary plat, Developer shall dedicate any property required to meet the open space requirements in conjunction with the recording of the Final Plat and Developer shall either improve the open space and/or install the amenities prior to recording the Final Plat or Developer shall provide a bond as set forth in paragraph 8.3.

7. **Roadways.**

7.1 The Land Use Plan depicts the major proposed roadways and access for the Project. Developer shall be responsible for constructing all roads within the Project at Developer's expense. Developer acknowledges that no direct residential driveway access is allowed from any neighborhood arterial or neighborhood collector road (as shown on the Street Exhibit attached hereto as Exhibit 4), and privacy fencing must be installed by Developer for all residential development along all neighborhood arterial or neighborhood collector roads unless the Planning Director approves removal of the fence for safety, aesthetics, or neighborhood compatibility.

7.2 The Land Use Plan shows a road connecting from the boundary of the Project to Saint Andrews Drive to the west (the "Saint Andrews Drive Extension"). The Saint Andrews Drive Extension will require the removal and possible relocation of a portion of the existing City park as shown on the Land Use Plan. Developer shall install the portion of the Saint Andrews Drive Extension outside of the Project as shown on Exhibit 4 in conjunction with the approval of any Final Plat in Pod 14. City and Developer acknowledge and agree that the Saint Andrews Drive Extension project outside of the Project area should be classified as a system improvement, and City shall enter into an impact fee reimbursement agreement with Developer, on reasonable terms on conditions, pursuant to which the City will grant Developer transportation impact fee credits for the costs (not including land costs or administrative fees) of the Saint Andrews Drive Extension. Developer acknowledges that City may require Developer to pay the transportation impact fee at the time of building permit and the City would reimburse Developer for the amount of the credit on a quarterly basis.

8. **Improved Open Spaces and Trails.**

8.1. **Park Plan.** In accordance with the City's Vested Code and the City bonus density structure, Developer must provide sufficient Improved Open Space City to meet the City's residential bonus density entitlements and improved open space points requirements for the number of ERUs in the Project. Developer has submitted a proposed Park Plan that depicts that general layout of parks, trails and improved open space for the Project. A copy of the Park Plan is attached hereto as Exhibit 5. The City has reviewed the Park Plan and the City accepts the general layout of the parks, trails and improved open space. Developer acknowledges that the City will not allow Developer to utilize areas under the electric power corridor for Improved Open Space, but Developer shall, at the request of the City, dedicate such areas to the City. Developer further acknowledges that Developer has included certain areas on the Park Plan that are currently drainages, washes or that may be necessary for detention or retention basins. City will not accept areas in washes, hillsides, detention basins or other areas unless Developer provides a plan acceptable to the City showing that Developer will improve the areas in a manner that creates usable open space in accordance with the City's Vested Laws. Developer has provided an example of an improved drainage channel, which is included as Exhibit 6. Subject to the foregoing, the City agrees that the depicted improved drainage channel area would be eligible for Improved Open Space credit.

8.2 Fencing Along Substation. The Park Plan shows a park on the north side of the Project adjacent to an existing electric substation. In order to mitigate the visual impacts of the substation, Developer agrees to construct a solid wood or vinyl fence along the north boundary of the park. City shall provide Developer with Improved Open Space point credits for the fencing based upon the actual costs to install such fencing.

8.3 Dedication and Improvement of Improved Open Space. Prior to any subdivision plat being recorded for any portion of the Property, Developer shall improve, or place into escrow with the City 150% of the funds necessary to improve, the portion of the improved open space that corresponds with the number of ERUs in the proposed Plat. For example, if the first subdivision contains 20 ERUs, Developer shall improve, or place into escrow 150 % of the funds necessary to improve, 20,000 square feet (1,000 square feet x 20 ERUs) of Improved Open Space. The Improved Open Space must be improved in conjunction with the required Improved Open Space points system in the City's Vested Code. All monies collected by the City shall be refunded upon completion of the improved open space improvements, provided that nothing herein shall not be construed to limit or reduce Developer's obligation under the Vested Laws to warrant any open space improvements or amenities or to provide a bond to warrant such improvements.

8.4. Previously Used Open Space. Developer acknowledges and agrees that the area South of Pod 14a along Smith Ranch Road and the areas on the Park Plan in light green along Pony Express Parkway to the West of Porter's Crossing Parkway, must be improved and dedicated to the City to meet the required Improved Open Space for Pod 11, and no additional improved open space credit will be provided for those areas.

8.5. Dedication of Park Improvements. City may require Developer to dedicate all Improved Open Space areas to either the City or an HOA for the Project based on the final configuration of the Improved Open Space. The City may require that Improved Open Space areas be dedicated to the City in conjunction with the subdivision plats that utilize the areas for Improved Open Space credit or with the recording of adjacent plats. The parties anticipate that all large Improved Open Space areas with play fields or other amenities will be dedicated to and maintained by the City and small open space areas will be dedicated to and maintained by the HOA.

9. Northwest Residential Area. The Land Use Element currently depicts a 2.71 acre residential area in the northwest corner of the Project that is designated as Pod 10. The Land Use Plan contemplates that Pod 10 will be accessed from the west through North Berwick Drive. Developer acknowledges that a portion of the area in Pod 10 may be encumbered by an easement(s) in favor of Rocky Mountain Power or Questar Gas that were transferred to Rocky Mountain Power or Questar Gas by the City. The City currently owns the property to extend Berwick Drive. The City shall cooperate in good faith to allow Developer to construct a road to extend Berwick Drive to provide access for Pod 10 provided that the development of Pod 10

does not encumber easements granted by the City to Rocky Mountain Power or Questar or otherwise encumber any recorded or unrecorded easements areas necessary to operate existing gas or electric facilities.

10. **Community Improvements.** In conjunction with City's Vested Laws, Developer must contribute \$2,000 per buildable acre of land within the Project to fund construction of community wide improvements above and beyond the required park improvements. Developer agrees that prior to recording each subdivision plat, Developer shall place into a community improvement escrow fund for the Project (the "Improvement Fund") established with the City sufficient funds to meet the required community improvements. For example, if the first subdivision plat is for 10 acres, Developer will place \$20,000 in the Improvement Fund. The City and Developer agree that it is the intent of Developer to utilize the funds to construct a skate park, splash park, tennis court(s), volleyball courts, soccer fields, or other approved community improvements in addition to landscaping and other improvements required by the City's Vested Code for Improved Open Space. Developer may also construct approved improvements and receive a credit from the City against future contributions for the amount of the improvement. For example, if Developer constructed a \$200,000 skate park after receiving approval from the City, Developer would receive credit for 100 acres. In the event the funds in the Improvement Fund are not utilized by Developer or the HOA for the Project within 5 years of recordation of the first subdivision plat for the Project, the City shall have discretion to utilize the funds in any manner which the City deems appropriate to meet the intents and purposes for the use of the monies. Developer acknowledges that the requirements of this paragraph 10 are separate and distinct from the requirements to meet the City's Tier II, III and IV improved open space requirements and that Developer will not receive point credits for the improvements constructed with community improvement fund dollars.

11. **Commercial Areas.** All Commercial Development shall comply with the City's Vested Laws, including requirements for parking, landscaping, lighting and setbacks.

12. **Vested Rights Granted by Approval of this Agreement.** Except as provided in paragraph 13 below, to the maximum extent permissible under the laws of Utah and the United States and at equity, the City and Developer intend that this Agreement grants Developer all rights to develop the Project in fulfillment of this Agreement, the City's Vested Laws and the Land Use Map except as specifically provided herein. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The parties specifically intend that this Agreement and the Land Use Map grant to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2015).

13. **Exceptions to Vested Rights.** The restrictions on the applicability of the City's Future Laws to the Project are subject to the following exceptions:

13.1. **Developer Agreement.** City's Future Laws that Developer agrees in

writing to the application thereof to the Project;

13.2. State and Federal Compliance. City's Future Laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;

13.3. Codes. City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

13.4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated;

13.5. Fees. Changes to the amounts of fees (but not changes to the times provided in the City's Vested Laws for the imposition or collection of such fees) for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law;

13.6. Planning and Zoning Modification. Changes by the City to its planning principles and design standards such as architectural or design requirements, setbacks or similar items so long as such changes do not work to reduce the Maximum Equivalent Residential Units, are generally applicable across the entire City to the respective Zones within the Project and do not materially and unreasonably increase the costs of any Development; and

13.7. Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(i) (2015).

14. **Tax Benefits.** The City acknowledges that Developer may seek and qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring portions of the Property to the City or to a charitable organization for Open Space. Developer shall have the sole responsibility to claim and qualify for any tax benefits sought by Developer by reason of the foregoing. The City shall reasonably cooperate with Developer to the maximum extent allowable under law to allow Developer to take advantage of any such tax benefits.

15. **Dedication of Facilities.** Except as provided in a reimbursement agreement which may be entered between the City and the Developer, the Developer agrees to construct,

dedicate and donate free and clear of all encumbrances to the City all required improvements and land for City owned utilities, streets, utility facilities and improvements.

16. **Washes and Slopes.** The portion of Tickville Wash within the Project must either be piped or a 100-foot buffer from the top of the bank must be shown on any subdivision plat that includes the 100-foot buffer area. Developer shall also submit to and receive approval from the Planning Director of a slope stability report with each preliminary plat located along a natural wash or a slope greater than 25%.

17. **Utility Services and Infrastructure Improvements.** The City's Engineering Department has reviewed the proposed Land Use Plan for the Project. Except as provided herein, the City does not anticipate that the Project will require the Developer to construct any additional offsite improvements. Developer shall be required to construct all onsite utilities unless otherwise agreed to by City and Developer. In the event Developer constructs utilities or other infrastructure in excess of the capacity necessary to provide services to the Property, Developer may be entitled to reimbursement for the cost of the excess capacity. The City shall revise and amend the City Impact Fee Ordinance and payment requirements to collect the amounts required to reimburse Developer for the cost of excess capacity.

18. **Water Rights.** Developer shall comply with the City's Vested Laws and City's Future Laws, as applicable, related to providing water to the City for the Project.

19. **Withholding Approval Upon Default.** The parties agree that the City shall not approve or record any subdivision in the Project if Developer is in default on any obligation to the City which requires the construction of roads and completion of public improvements or other utility infrastructure to serve the development project. In addition, the City may withhold approval of building permits to construct any building or structure if Developer is not current with all obligations to the City at the time of application for the development approval and/or has not completed all required improvements within the time to complete required improvements approved by the City Council.

20. **City Denial of a Development Application.** If the City denies a Development Application the City shall provide a written determination advising the Applicant of the reasons for denial including specifying the reasons the City believes that the Development Application is not consistent with this Agreement, the Land Use Plan and/or the City's Vested Laws (or, if applicable, the City's Future Laws).

21. **Meet and Confer regarding Development Application Denials.** The City and Applicant shall meet within fifteen (15) business days of any Denial to resolve the issues specified in the Denial of a Development Application.

22. **City Denials of Development Applications Based on Denials from Non-City Agencies.** If the City's denial of a Development Application is based on the denial of the

Development Application by a Non-City Agency, Developer shall appeal any such denial through the appropriate procedures for such a decision and not through the processes specified below.

23. **Mediation of Development Application Denials.**

23.1. **Issues Subject to Mediation.** Issues resulting from the City's Denial of a Development Application that are not subject to arbitration provided in Section 24 shall be mediated.

23.2. **Mediation Process.** If the City and Applicant are unable to resolve a disagreement subject to mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute. If the parties are unable to agree on a single acceptable mediator they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator. Applicant shall pay the fees of the chosen mediator. The chosen mediator shall within fifteen (15) business days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties. If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the parties.

24. **Arbitration of Development Application Objections.**

24.1. **Issues Subject to Arbitration.** Issues regarding the City's Denial of a Development Application that are subject to resolution by scientific or technical experts such as traffic impacts, water quality impacts, pollution impacts, etc. are subject to arbitration.

24.2. **Mediation Required Before Arbitration.** Prior to any arbitration the parties shall first attempt mediation as specified in Section 23.

24.3. **Arbitration Process.** If the City and Applicant are unable to resolve an issue through mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable expert in the professional discipline(s) of the issue in question. If the parties are unable to agree on a single acceptable arbitrator they shall each, within ten (10) business days, appoint their own individual appropriate expert. These two experts shall, between them, choose the single arbitrator. Applicant shall pay the fees of the chosen arbitrator. The chosen arbitrator shall within fifteen (15) business days, review the positions of the parties regarding the arbitration issue and render a decision. The arbitrator shall ask the prevailing party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, and consideration of such objections, the arbitrator's decision shall be final and binding upon both parties. If the arbitrator determines as a part of the decision that the City's or Applicant's position was not only incorrect but was also maintained unreasonably and not in good faith then the arbitrator may order the City or Applicant to pay the arbitrator's fees.

25. **Impact Fees.** The Developer agrees to pay all impact fees when due at subdivision approval, subdivision recordation or upon application for building permits from the City as set forth more specifically in the City Impact Fee Ordinance as it may be amended from time to time.

26. **Annual Review of Compliance.** The parties agree that the City may conduct an annual review of compliance by the Developer within the terms of this Agreement. It shall be an event of default if the Developer has failed to fund roads, parks or other utility infrastructure facilities required by this Agreement or by the City Vested Laws, or if work remains incomplete on public infrastructure facilities without having received an adequate extension of time for the completion of such facilities from the City. It shall be an event of default if Developer fails to deposit adequate collateral for the improvements required by this Agreement or fails to cure any defect discovered by the City upon inspection of any infrastructure utility facilities.

27. **Default Notice.** Upon the occurrence of an event of default, the City shall provide not less than fifteen (15) days notice to Developer of a meeting of the City Council where the Developer's default shall be heard and reviewed by the City Council. The Developer shall be entitled to attend the hearing and comment on the evidence presented concerning the default. Upon a finding by the City Council that the Developer is in default, the City Council may order that work in the Project be stayed until the default is cured or may issue such further directions to City staff and to the Developer as deemed appropriate under the circumstances.

28. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the successors, heirs and assigns of the parties hereto, and to any entities resulting from the reorganization, consolidation, or merger of any party hereto.

29. **Integration.** This Agreement constitutes the entire understanding and agreement between the parties, and supersedes any previous agreement, representation, or understanding between the parties relating to the subject matter hereof; provided however, that the City's Vested Laws (or, if applicable, the City's Future Laws) shall govern the procedures and standards for approval of each subdivision and public improvement.

30. **Not Severable.** The provisions of this Agreement are not severable, and should any provision hereof be deemed void, unenforceable or invalid, such provision shall affect the remainder of this Agreement, and shall provide grounds for dissolution of the Agreement at the option of the parties in the exclusive discretion of each of them.

31. **Waiver.** Any waiver by any party hereto of any breach of any kind or character what so ever by the other party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement on the part of the other party.

32. **No Modification.** This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

33. **Governing Law.** This Agreement shall be interpreted, construed and enforced according to the laws of the State of Utah.

34. **Developers' Remedies Upon Default.** Developer acknowledges and agrees that Developers' sole and exclusive remedy under this Agreement shall be specific performance of the development rights granted in this Agreement and City's obligations under this Agreement. IN NO EVENT SHALL CITY BE LIABLE TO DEVELOPERS, THEIR SUCCESSORS OR ASSIGNS, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES.

35. **Costs of Enforcement.** In the event of default on the part of any party to this Agreement, that party shall be liable for all legal costs and expenses incurred by the other parties enforcing the provisions of this Agreement, whether or not legal action is instituted.

36. **Agreement to Run With the Land.** This Agreement shall be recorded against the Property and shall be deemed to run with the land and shall be binding on Developer and all successors and assigns. For recording purposes, the City may omit any Exhibits to this Agreement, provided that a full copy of the Agreement shall be on file with the Eagle Mountain City Recorder's Office and available to the public.

Dated this 16 day of January, 2018.

PONY EXPRESS LAND DEVELOPMENT, INC.

By: [Signature]

Print Name: LARRY Shelton

Title: President

STATE OF UTAH)

)

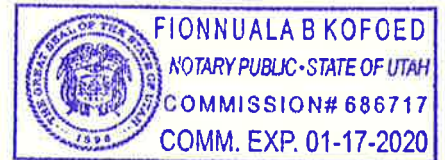
COUNTY OF Utah)

On the 16 day of January, 2018, personally appeared before me Larry Shelton, who did personally acknowledge to me that he had authority to and did execute the foregoing easement on behalf of the Pony Express Land

Development, Inc.



NOTARY PUBLIC



ATTEST:

EAGLE MOUNTAIN CITY



City Recorder



Tom Westmoreland, Mayor Pro Tempore

Approved as to form:



City Attorney

EXHIBIT 1

Legal Description

BOUNDARY DESCRIPTION

Part of the Southeast Quarter of Section 20, Township 5 South, Range 1 West of the Salt Lake Base and Meridian described as follows:

Commencing at the Southeast Corner of Section 20, Township 5 South, Range 1 West of the Salt Lake Base and Meridian monumented with a Brass Cap; thence N00°11'38"E 1344.45 feet along the east line of the Southeast Quarter of said Section 20; thence West 903.39 feet to the Southeast Corner of Lot 13, Parkside at Porter's Crossing Subdivision recorded on February 23, 2015 under Entry No. 13765:2015 and the POINT OF BEGINNING and running along the west right of way line of a point on the west right of way line of the POINT OF BEGINNING on the west right of way of Gazelle Run and Smith Ranch Road the next ten courses:

- 1) thence S 00°26'26" W 243.15 feet;
- 2) thence Southerly, 105.78 feet along a curve to the left having a radius of 525.50 feet and a central angle of 11°31'58" and a chord that bears S 05°19'33" E 105.60 feet;
- 3) thence Southerly, a distance of 95.51 feet along a reverse curve to the right having a radius of 474.50 feet and a central angle of 11°31'58" and a chord that bears S 05°19'33" E 95.35 feet;
- 4) thence S 00°26'26" W 98.23 feet;
- 5) thence Southwesterly, 240.58 feet along a curve to the right having a radius of 224.50 feet and a central angle of 61°23'55" and a chord that bears S 31°08'24" W 229.23 feet;
- 6) thence S 61°50'21" W 260.35 feet;
- 7) thence Southwesterly, 211.65 feet along a curve to the left having a radius of 300.50 feet and a central angle of 40°21'20" and a chord that bears S 41°39'42" W 207.31 feet;
- 8) thence S 21°29'01" W 49.56 feet;
- 9) thence Southerly, 71.68 feet along a curve to the left having a radius of 200.00 feet and a central angle of 20°32'08" and a chord that bears S 11°12'57" W 71.30 feet;
- 10) thence S 00°56'53" W 63.79 feet to the north right of way line of Pony Express Parkway;

thence N 89°09'51" W 23.00 feet along said right of way;

thence along the boundary of Amended Plat "A" Plum Creek Condominiums the next seven courses:

- 1) thence N 00°00'55" W 444.97 feet (North 444.81 feet, By Record);
- 2) thence S 77°17'47" W 71.19 feet (S77°18'42"W 71.19 feet, By Record);
- 3) thence S 89°59'05" W 33.11 feet (West, 33.11 feet, By Record);
- 4) thence N 66°33'52" W 61.53 feet (N66°32'57"W 61.53 feet, By Record);
- 5) thence N 39°33'20" W 186.78 feet (N39°32'25"W 186.78 feet, By Record);
- 6) thence N 31°47'08" W 140.72 feet (N31°46'13"W 140.72 feet, By Record);
- 7) thence S 74°28'57" W 97.56 feet (S74°29'52"W 97.56 feet, By Record);

thence N 33°57'21" E 798.71 feet;

thence North 20.19 feet;

thence N 33°40'00" E 268.74 feet;

thence S 89°17'19" E 83.94 feet to the boundary of said Parkside at Porter's Crossing Subdivision;

thence along said boundary the next three courses:

- 1) thence S 33°40'00" W 205.90 feet;
- 2) thence S 56°26'02" E 342.23 feet;
- 3) thence S 71°22'33" E 128.82 feet to the point of beginning, containing 16.97 acres, more or less.

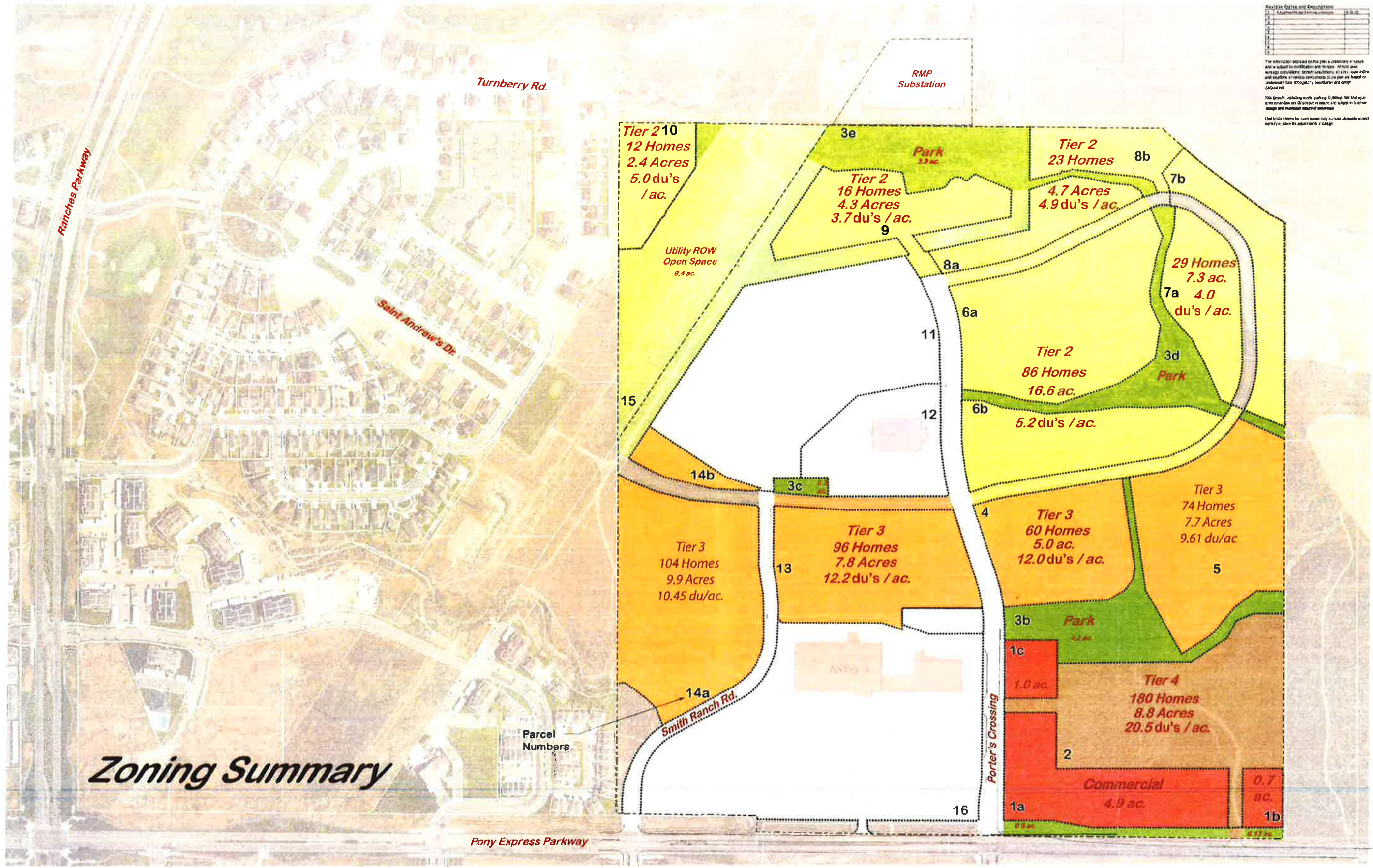
EXHIBIT 2

Zoning Map

Parcel Data and Descriptions

Parcel Number	Area (Acres)	Units / Acres
1a	4.9	
1b	0.7	
1c	1.0	
2	8.8	180 Homes
3a	3.9	Park
3b	2.2	Park
3c	0.2	
3d	7.3	29 Homes
3e	3.9	Park
4	5.0	60 Homes
5	7.7	74 Homes
6a	16.6	86 Homes
6b	5.2	
7a	4.0	
7b	4.7	
8a	4.3	
8b	4.7	
9	4.3	16 Homes
10	9.9	104 Homes
11		
12		
13	7.8	96 Homes
14a	10.45	104 Homes
14b	9.9	104 Homes
15	2.4	12 Homes
16	4.9	Commercial
Utility ROW	9.4	Open Space

The information depicted on this plan is preliminary in nature and is subject to modification and revision. All final area and number of units are dependent on final site plan and engineering. General conditions of sale shall apply and shall be subject to the terms and conditions of the purchase agreement. Use shall be shown for each parcel size purpose already shown. Use shall be shown for each parcel size purpose already shown. Use shall be shown for each parcel size purpose already shown.



Porter's Crossing Village Center Plan

AMENDED

December 22, 2015

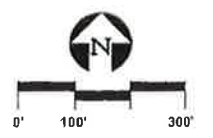


EXHIBIT 3

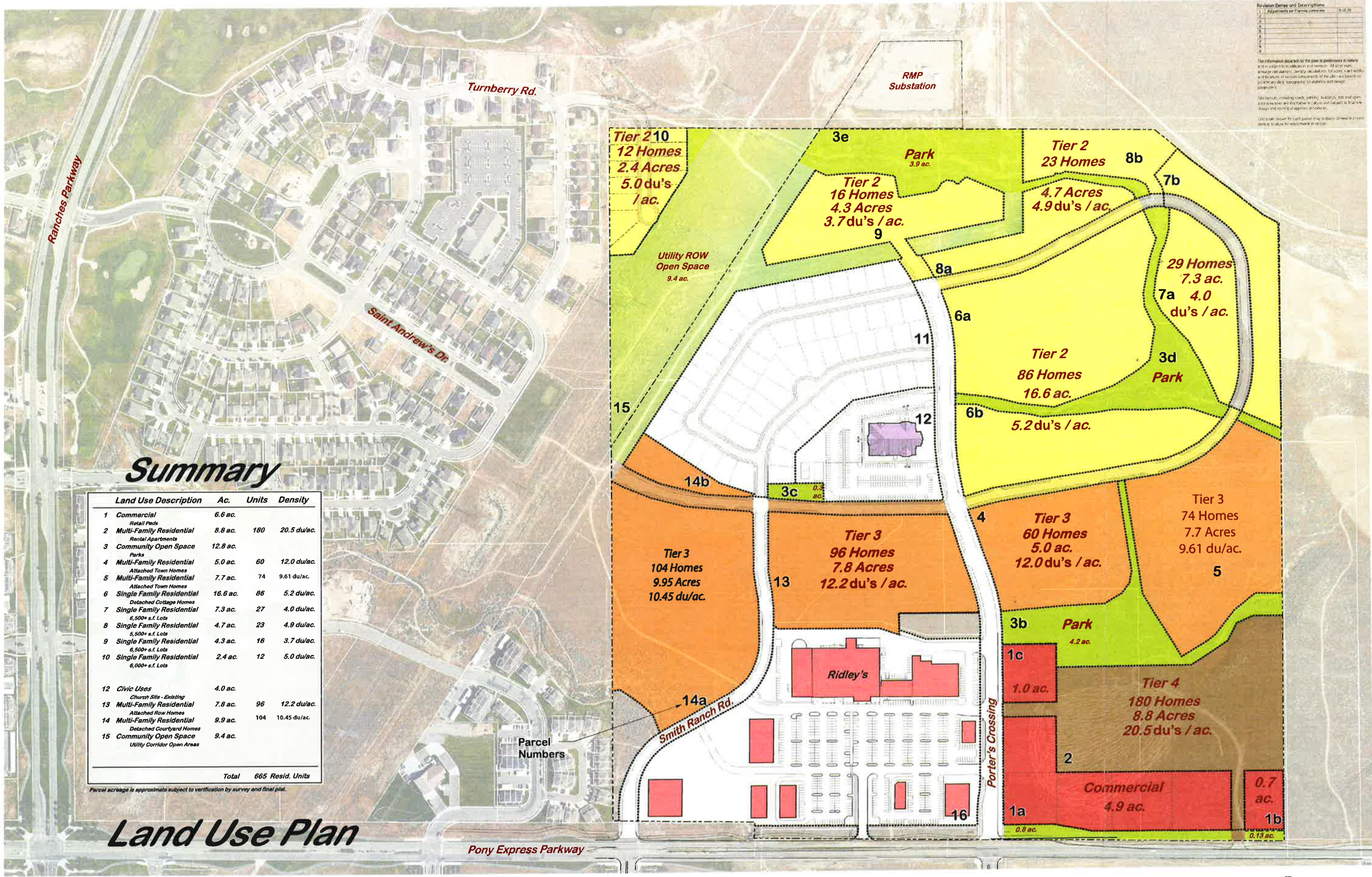
Land Use Plan

Revision Dates and Descriptions
 1. Adjustments per Planning Commission 12-22-15
 2.
 3.
 4.
 5.

The information provided on this plan is preliminary in nature and is subject to modification and revision. All lot and acreage calculations, density calculations, lot sizes, road widths, and structure of various components of the plan are based on preliminary data, topography, soil studies and design parameters.

Site layout, including roads, parking, buildings, lots and open space is shown and is illustrative in nature and subject to final design and municipal approval procedures.

Units shown for each parcel may include those in existing lots to allow for adjustments in design.



Summary

Land Use Description	Ac.	Units	Density
1 Commercial Retail Peds	6.6 ac.		
2 Multi-Family Residential Rental Apartments	8.8 ac.	180	20.5 du/ac.
3 Community Open Space Parks	12.8 ac.		
4 Multi-Family Residential Attached Town Homes	5.0 ac.	60	12.0 du/ac.
5 Multi-Family Residential Attached Town Homes	7.7 ac.	74	9.61 du/ac.
6 Single Family Residential Detached Cottage Homes	16.6 ac.	86	5.2 du/ac.
7 Single Family Residential 6,500+ s.f. Lots	7.3 ac.	27	4.0 du/ac.
8 Single Family Residential 5,500+ s.f. Lots	4.7 ac.	23	4.9 du/ac.
9 Single Family Residential 6,500+ s.f. Lots	4.3 ac.	16	3.7 du/ac.
10 Single Family Residential 6,000+ s.f. Lots	2.4 ac.	12	5.0 du/ac.
12 Civic Uses Church Site - Existing	4.0 ac.		
13 Multi-Family Residential Attached Row Homes	7.8 ac.	96	12.2 du/ac.
14 Multi-Family Residential Detached Courtyard Homes	9.9 ac.	104	10.45 du/ac.
15 Community Open Space Utility Corridor Open Areas	9.4 ac.		
Total		665 Resid. Units	

Parcel acreage is approximate subject to verification by survey and final plat.

Land Use Plan



Porter's Crossing Village Center Plan

December 22, 2015

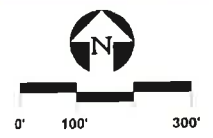


EXHIBIT 4

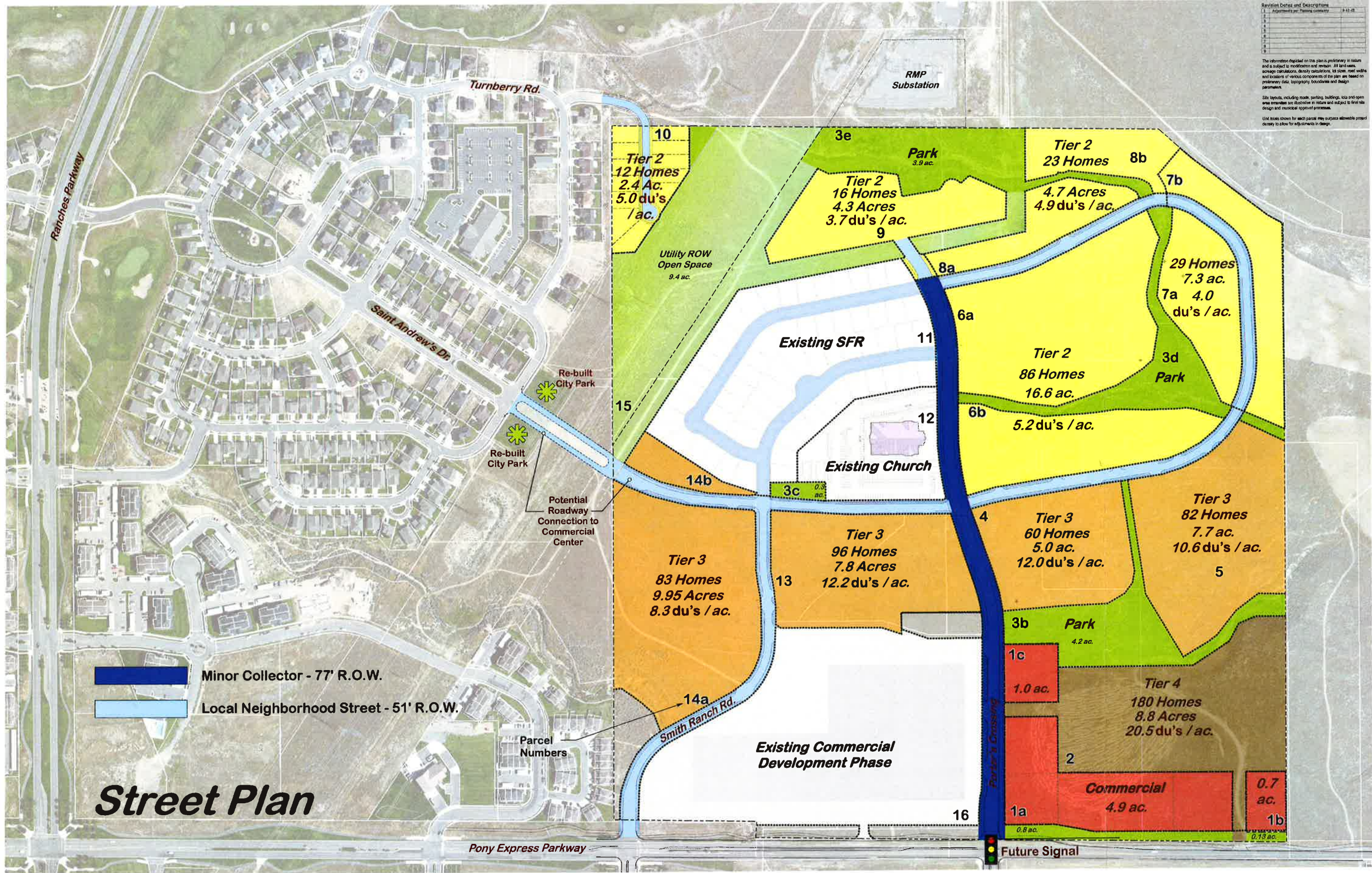
Street Plan

Revision	Date	Description
1	12/30/15	Initial Plan
2		
3		
4		
5		
6		
7		
8		
9		
10		

The information depicted on this plan is preliminary in nature and is subject to modification and revision. All lot areas, acreage calculations, density calculations, lot sizes, road widths and locations of various components of the plan are based on preliminary field, topographic, hydrological and design parameters.

Site layouts, including roads, parking, buildings, lots and open area envelopes are illustrative in nature and subject to final site design and municipal approval processes.

Unit labels shown for each parcel may surpass allowable project density to allow for adjustments in design.



Porter's Crossing Village Center Plan

December 30, 2015

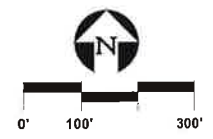
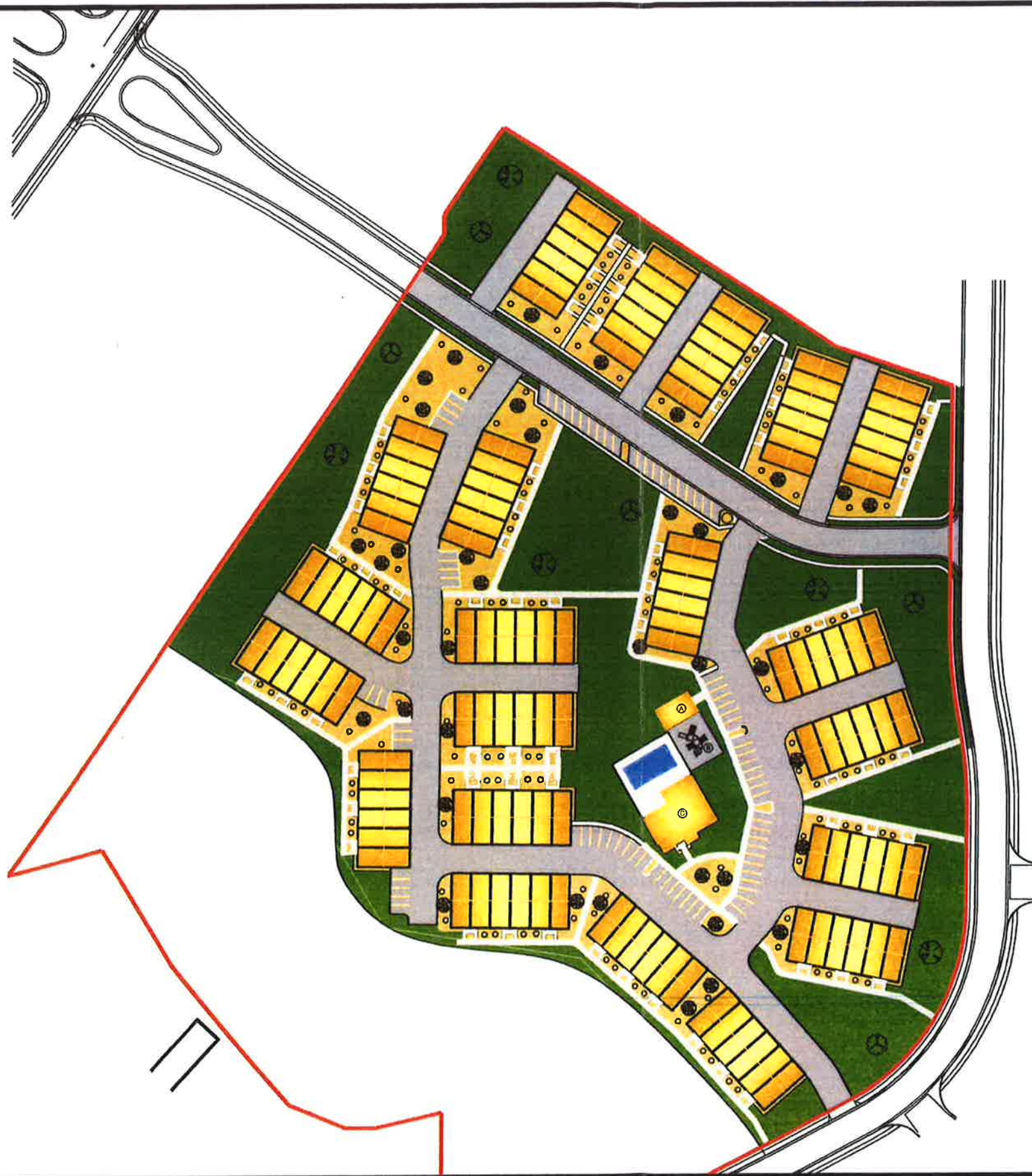


EXHIBIT 5

Park Plan



Turf Area: 94,525 SF (70%)
 Xeriscape Area: 40,511 SF (30%)

- | | |
|--|---|
| <p> Flame Amur Maple Clump
 <i>Acer ginnata</i> 'Flame' Clump
 (Min. 1.5" Cal.)
 Qty. - 5 </p> <p> Shademaster Locust
 <i>Gleditsia tri. inermis</i> 'Shademaster'™
 (Min. 1.5" Cal.)
 Qty. - 5 </p> | <p> Crimson Ruby Jap. Barberry
 <i>Berberis thunbergii</i> "Crimuzam"
 (Min. 1 Gal.)
 Qty. - 135 </p> <p> Ivory Halo Dogwood
 <i>Cornus alba</i> 'Ballhalo'™
 (Min. 1 Gal.)
 Qty. - 40 </p> |
|--|---|

Landscape Notes:
 All Landscaped areas to be irrigated.
 All planter beds shall be irrigated through the use of drip lines instead of spray heads to minimize water loss through evaporation.

Recreation Area Notes:
 Note: All amenities and improvements are to be constructed and maintained in accordance with the 'Stipulation Regarding Improvement Bond for Trailhead PUD Plat A'

- A- Shed / Pavillion
- B- Tot Lot
- C- Clubhouse

Line is 200'



LANDSCAPE PLAN
 PORTER RANCH
 EAGLE MTN., UT

EXHIBIT 6

Example Improved Drainage Channel

PORTER RANCH TOWNHOMES DRAINAGE PLAN



ALLIANCE CONSULTING ENGINEERS
 130 EAST 200 NORTH SUITE P
 LOGAN, UTAH 84321
 (435)755-5121
 allianceeng@allianceeng.com

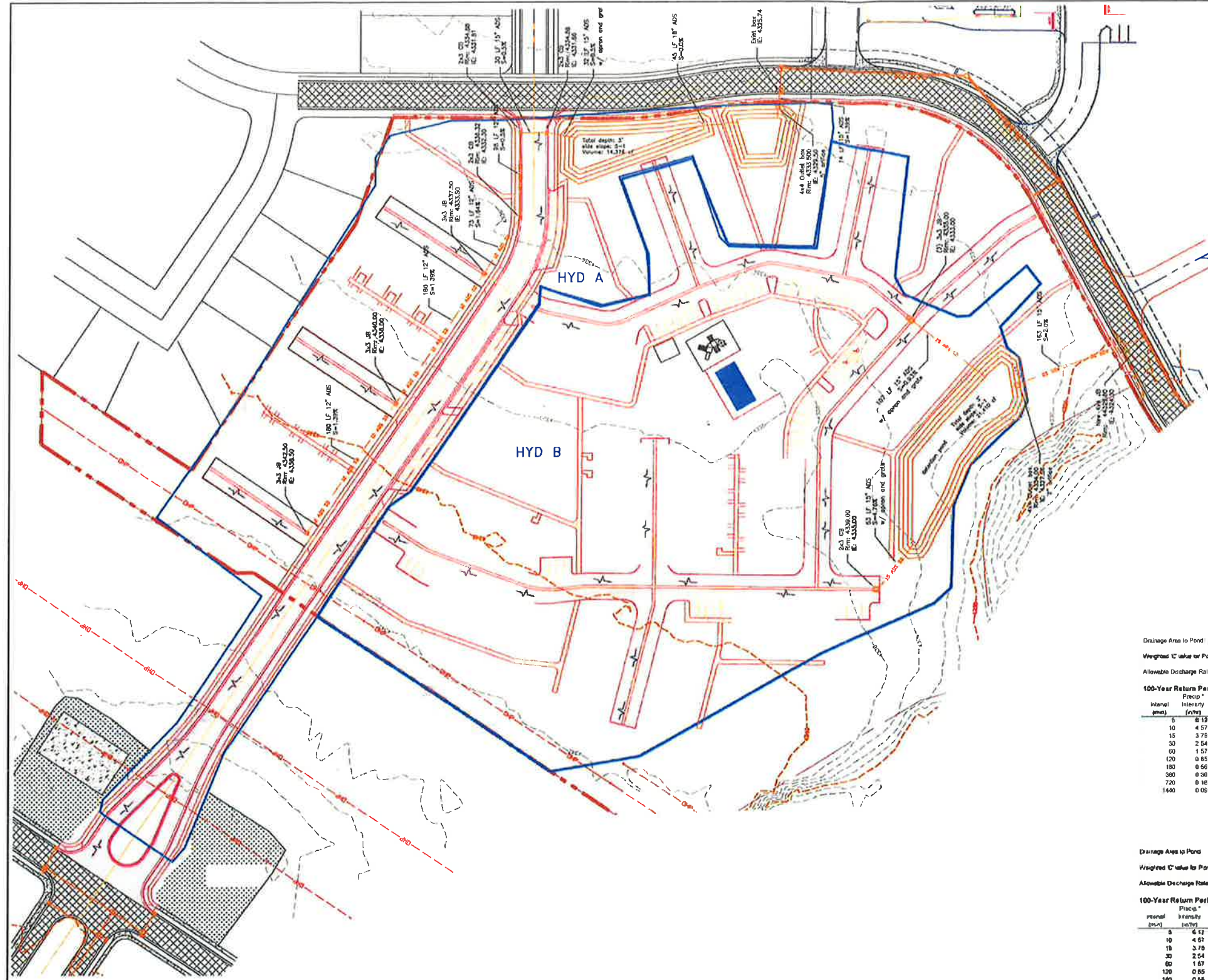
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DATE	REVISION / EXPLANATIONS

PROJECT TITLE: **PORTER RANCH TOWNHOMES**
 PART OF THE SOUTHWEST QUARTER OF SECTION 20,
 TOWNSHIP 35N, RANGE 12W,
 SALT LAKE BASIN AND MERIDIAN,
 EAGLE MOUNTAIN, UTAH

DATE: JAN, 2017

DRAWING NO.



0 30 60 120
 SCALE: 1" = 60' (24x36 PLAN SET)

LEGEND

- PROPERTY LINE
- EXISTING STORM LINE
- PROPOSED STORM LINE
- PROPOSED SLOPE DIRECTION
- HYDROLOGY BOUNDARY

AREA A
 Drainage Area to Pond: 4.66 acres
 Weighted C value for Pond Drainage Area: 0.60
 Allowable Discharge Rate: 0.2 cfs/acre

100-Year Return Period

Inlet Intensity (in/hr)	Precip Intensity (in/hr)	Depth (in)	Area (ac)	C Value	CxAc3630 (ft³/30m)	Accum Inflow (ft³/30m)	Allowable Discharge (ft³/30m)	Accum Discharge (ft³)	Required Storage (ft³)	
5	0.13	0.51	4.66	0.54	9811.104	5003.6936	56.92	279.6	4774	0.11
10	4.57	0.76	4.66	0.58	9811.104	7476.107	55.92	599.2	8917	0.16
15	3.75	0.94	4.66	0.58	9811.104	9251.7383	55.92	838.8	9423	0.19
30	2.54	1.27	4.66	0.58	9811.104	12460.178	55.92	1677.6	10763	0.25
60	1.57	1.57	4.66	0.58	9811.104	16403.527	55.92	3355.2	12048	0.28
120	0.85	1.80	4.66	0.58	9811.104	16380.967	55.92	6719.4	9870	0.23
180	0.56	1.99	4.66	0.58	9811.104	16360.107	55.92	10065.8	6515	0.15
360	0.36	1.78	4.66	0.58	9811.104	17463.972	55.92	20131.2	0	0.00
720	0.18	1.97	4.66	0.58	9811.104	18327.993	55.92	40262.4	0	0.00
1440	0.09	2.04	4.66	0.58	9811.104	20014.775	55.92	80524.8	0	0.00

AREA B
 Drainage Area to Pond: 7.68 acres
 Weighted C value for Pond Drainage Area: 0.60
 Allowable Discharge Rate: 0.2 cfs/acre

100-Year Return Period

Inlet Intensity (in/hr)	Precip Intensity (in/hr)	Depth (in)	Area (ac)	C Value	CxAc3630 (ft³/30m)	Accum Inflow (ft³/30m)	Allowable Discharge (ft³/30m)	Accum Discharge (ft³)	Required Storage (ft³)	
5	0.12	0.51	7.68	0.60	16683.48	8528.6748	61.82	458.8	8048	0.18
10	4.57	0.76	7.68	0.60	16683.48	12712.817	61.82	918.2	11704	0.21
15	3.75	0.94	7.68	0.60	16683.48	15748.205	61.82	1378.8	14370	0.23
30	2.54	1.27	7.68	0.60	16683.48	21188.02	61.82	2757.6	16430	0.42
60	1.57	1.57	7.68	0.60	16683.48	26192.054	61.82	5515.2	20876	0.47
120	0.85	1.80	7.68	0.60	16683.48	26189.081	61.82	11030.4	17105	0.29
180	0.56	1.99	7.68	0.60	16683.48	26189.081	61.82	16545.6	11649	0.27
360	0.36	1.78	7.68	0.60	16683.48	29658.984	61.82	33011.2	0	0.00
720	0.18	1.97	7.68	0.60	16683.48	32968.450	61.82	66182.4	0	0.00
1440	0.09	2.04	7.68	0.60	16683.48	34134.299	61.82	132364.8	0	0.00

EXHIBIT 7

Vested Laws