

Mail Tax Statements to:
St. George 730 L C
8716 Spanish Ridge Ave. #120
Las Vegas, NV 89148

When Recorded Return to:
City of St. George
Attn: Legal Department
175 East 200 North
St. George, Utah 84770

SG-6-2-27-3311
SG-6-2-28-2110

DOC # 20210012693

Agreement Page 1 of 11
Gary Christensen Washington County Recorder
02/23/2021 03:06:33 PM Fee \$ 0.00
By ST GEORGE CITY



WATER SYSTEM CONTRIBUTION AGREEMENT

Divario Project, St. George, Utah

THIS WATER SYSTEM CONTRIBUTION AGREEMENT (herein "Agreement") is entered into this 14 day of FEBRUARY, 2021, by and between St. George 730, L.L.C., a Nevada limited liability company, (herein "Developer") for the project known as "Divario" (herein the "Planned Community"), and the City of St. George, a municipal corporation and political subdivision of the State of Utah (herein "City").

This Agreement is not intended to modify or replace the original Development Agreement between the parties hereto, which was recorded in the files of the Recorder for Washington County, Utah, on February 26, 2014, as Doc. No. 20140005707, (the "Development Agreement"), but only to supplement that agreement with respect to the subject matter hereof. The parties acknowledge the continuing viability of the original Development Agreement as recorded.

RECITALS

WHEREAS, Developer owns real property located within the Planned Community, as defined in the Development Agreement, which is anticipated to be serviced by the City's municipal water system which a portion shall be built as described herein and shall be known as the "Upper Pressure Zone." Said real property is identified in **Exhibit "A"** attached and incorporated herein with this reference (hereafter, the "Affected Property");

WHEREAS, it is Developer's responsibility to provide permanent on-site and off-site infrastructure to adequately service Developer's Affected Property with a system of municipal culinary water with adequate distribution capacity and water pressure at its sole cost and expense;

WHEREAS, due to its elevations and the effect of the same on anticipated water pressures, development of the Affected Property will require certain improvements and upgrades be made to the City's municipal water system to support water services to the development;

WHEREAS, Developer agrees to install certain temporary or permanent water system improvements required to service the Affected Property;

WHEREAS, the City is pursuing an application to the Bureau of Land Management ("BLM") for a right-of-way to locate certain permanent water facilities to service the Affected

Property; however, the timeline and approval of such right-of-way is uncertain, and Developer's ability to develop the Planned Community as described in the Development Agreement and approved Master Plan may be negatively impacted unless certain temporary or interim water infrastructure improvements are constructed;

WHEREAS, Developer is prepared to install at its sole cost and expense certain temporary or interim improvements to the municipal water system, including a booster pump and related infrastructure, in order to facilitate water service to the Affected Property until the BLM right-of-way is approved and permanent improvements can be made;

WHEREAS, City and Developer have agreed to cooperate as set forth herein, to facilitate said development of water infrastructure to service the Affected Property.

WHEREAS, The City, acting pursuant to its authority under UTAH CODE ANNOTATED 10-9a-101, et seq. and its ordinances, resolutions, and regulations and in furtherance of its land use policies, has made certain determinations with respect to the proposed Planned Community, and, in the exercise of its legislative discretion, has elected to approve this Agreement;

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

1. **Recitals.** The Recitals above are hereby incorporated into this agreement.
2. **Municipal Water System Development in General.** The City acknowledges its obligation to service the Planned Community with water, consistent with the obligations of the original Development Agreement. Developer acknowledges its obligation to develop infrastructure to adequately provide the water to its development. Developer is ready to develop the Affected Property. Therefore, the primary intent of the parties in entering this Agreement is to allow Developer to continue the development of the Affected Property and the Planned Community in general, by installing a booster pump as an interim solution until such time as the City obtains the BLM right of way grant needed for the Permanent Water Infrastructure (defined in section 3.b. below). In the event that the City is unable to obtain the BLM right-of-way, then the parties agree that the interim Preliminary Water Infrastructure shall serve as the permanent solution for water service to the Affected Property as provided in section 3.c. below.
3. **Developer's Obligations.** The Developer shall meet the following requirements in the manner set forth herein below.
 - a. ***Preliminary Water Infrastructure and Booster Pump.*** To begin development, Developer must complete construction of the water pressure booster pump station and related on-site infrastructure required to service the Affected Property (collectively the "Preliminary Water Infrastructure"), subject only to the City and State's review and approval of type, design, and so on, which approval will not be unreasonably withheld provided the same is recommended by Developer's professional engineer.

Upon completion of the Preliminary Water Infrastructure, Developer shall grant to the City such temporary easements as are required to give the City access for operation and maintenance, and the City shall accept the same as part of the municipal water system (subject to applicable warranty periods as set forth in City ordinances). City agrees that the Preliminary Water Infrastructure may be utilized by Developer to satisfy the City's pressure requirements for service to the Affected Property until the Permanent Water Infrastructure is completed.

- b. ***Permanent Water Infrastructure.*** Subject to approval of the required BLM right-of-way and any conditions BLM imposes, Developer agrees to construct the permanent water system infrastructure planned to provide water to the Affected Property. The permanent infrastructure includes an off-site water storage reservoir of 300,000 gallons and related pipeline and appurtenances ("Permanent Water Infrastructure"). All Permanent Water Infrastructure plans and locations must be approved by City before any installation begins.
 - i. ***Developer Contribution.*** Developer agrees to construct the Permanent Water Infrastructure which is estimated at a total cost of **One Million Eight Thousand One Hundred Seventy-Six Dollars (\$1,008,176.00)** (the "Developer Contribution"). Developer shall pay the actual costs of the construction. The engineer's estimate upon which the Developer Contribution is based is attached hereto as **Exhibit "B"** and incorporated with this reference. The manner of the Developer Contribution shall be as set forth in this Agreement.
 - ii. ***Manner and Assurance of Developer Contribution.*** Developer shall have sole discretion regarding the timing of the Developer Contribution in the manner set forth below.
 1. ***Interim Improvement Surety Bond.*** Developer shall provide and the City shall accept an Improvement Surety Bond, on a form approved by City, in the amount of the Developer Contribution, which shall have an initial term of two (2) years. Developer shall provide the Improvement Surety Bond to City prior to the commencement of construction. In the event that Developer has not obtained the financing required to obtain the Lender Set-Aside Letter described below during the initial term of the Improvement Surety Bond, then Developer shall be required to renew the bond until the Lender Set-Aside Letter is delivered.
 2. ***Lender Set-Aside Letter.*** Developer shall make arrangements with its third-party construction lender ("Lender") to set aside from Developer construction financing an amount equal to the Developer Contribution. As assurance to the City of such set-aside, Developer shall obtain from Lender a written guarantee to the City (the "Lender Set-Aside Letter" which shall be on a form approved by City) that Lender will (1) retain control over the Developer Contribution set-aside funding; and (2) obtain written approval from the City prior to any release of the Developer Contribution or portions thereof to Developer as

needed to compete the Permanent Water Infrastructure. The Lender Set-Aside Letter will reference the Permanent Water Infrastructure as the "Work." The Lender Set-Aside Letter shall further state that no funds shall be released from the set-aside funds without the express written approval of the City, which shall not be unreasonably withheld.

- iii. Draw Down and Release of Developer Contribution. In the event that Developer constructs the Permanent Water Infrastructure, the set-aside funding may be drawn down for payment of the actual costs of such construction so long as the costs are verified by City and the costs are proportionate to the work performed, subject to City inspection of construction progress and approval of the same, which shall not be unreasonably withheld. Upon completion of the Permanent Water Infrastructure by Developer, any remaining Developer Contribution shall be released to the Developer.

c. ***Event of BLM Denial.***

- i. In the event that the BLM denies required access to and use of BLM property for the Permanent Water Infrastructure, then the Interim Improvement Surety Bond and/or Lender Set-Aside Letter (such as are then in effect) shall be released by City, Developer shall be released from any further obligation to construct or bear the cost of the Permanent Water Infrastructure, and the Preliminary Water Infrastructure shall continue to service the Affected Property with water, and the property upon which the Preliminary Water Infrastructure was constructed shall be permanently dedicated to the City by Developer.
- ii. Developer shall also dedicate to the City up to 1.5 acres of real property, generally located as shown on Exhibit "C", upon which the City may construct a substitute permanent water tank not to exceed 3 millions gallons in storage capacity to be screened with a 6' high integral colored masonry block wall and secured access with a wrought iron gate.
- iii. If warranted by the cost of such land being included in the City's proposed Capital Facilities Plan estimate for the permanent water tank, Developer shall receive an impact fee credit or equivalent offset equal to the fair market value of the property at the time of dedication.

4. **City's Obligations.** City agrees to the following, subject to Developer's provision of financial security for the Permanent Water Infrastructure as set forth above.

- a. ***Will-Serve Letter.*** City will provide to Developer a Will-Serve Letter for water service to the Affected Property based upon the approval of the Washington County Water Conservancy District and upon issuance of the Improvement Surety Bond consistent with the requirements of this Agreement. City acknowledges that this Will-Serve Letter is critical to Developer's ability to obtain the financing required for the Developer Contribution anticipated herein. The Will-Serve letter shall only be issued for financing for the Affected Property and shall only be for the current approved zoning and density.

- b. ***Effect of Water Availability Upon Development Entitlement Applications.*** Given the City's Will-Serve Letter for residential water service to the Affected Property, the City agrees that, as long as this Agreement and said Will-Serve Letter remains in effect, no application for development entitlement, for the current zoning and density approved in the Development Agreement, upon the Affected Property shall be opposed by City on the basis of water serviceability or inadequacy of municipal water service in any regard. However, approval of any development entitlement may appropriately be conditioned upon Developer constructing the required public water system infrastructure as required to service the Affected Property so approved, and also conditioned upon Developer's continuing compliance with this Agreement. The City retains the right to deny or condition development entitlement for any other issues that may exist at the time of application.
 - c. ***Acceptance of Completed Preliminary Water System*** Upon completion of the Preliminary Water Infrastructure, including the proposed water system booster pump station, the City shall accept the same as part of the municipal water system (subject to applicable warranty periods as set forth in City ordinances).
5. **Developer Release.** The purposes of this Agreement shall be deemed fulfilled, and Developer released from any further obligations hereunder, in the event that either (a) the BLM has approved the right-of-way for the Permanent Water Infrastructure, and Developer has constructed the Permanent Water Infrastructure; or (b) the BLM has denied the required access to its property for the Permanent Water Infrastructure, Developer has completed construction of the Preliminary Water Infrastructure, the City has accepted the same for operation and maintenance as part of the municipal water system, Developer has donated the parcel shown in Exhibit C to the City, and the Improvement Surety Bond and/or Lender Set-Aside Letter (such as are then in effect) have been released by the City. In either event, this Agreement shall be terminated, and the parties shall not be bound further hereunder.
6. **Agreement to Run With the Land.** This Agreement shall be recorded in the Office of the Washington County Recorder, shall be deemed to run with the Property, shall encumber the same, and shall be binding on and inure to the benefit of all successors and assigns of Developer in the ownership or development of any portion of the Property.
7. **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned any other party, individual or entity without assigning also the responsibilities arising hereunder. This restriction on assignment is not intended to prohibit or impede the sale by Developer.
8. **No Joint Venture, Partnership or Third-Party Rights.** This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto nor any rights or benefits to third parties, except as expressly provided herein.

9. **Integration.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature any may only be modified by a subsequent writing duly executed and approved by the parties hereto.
10. **Notices.** Any notices, requests, or demands required or desired to be given hereunder shall be given as required in the original Developer Agreement between the parties.
11. **Law.** Any dispute regarding this agreement shall be heard and settled under the laws of the State of Utah. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include both genders, and the term "person" shall include an individual, partnership (general or limited), corporation, trust, or other entity or association, or any combination thereof. This Agreement shall bind and insure to the benefit of the parties hereto and their respective successors and assigns. The provisions of this Agreement shall be constructed as both covenants and conditions in the same manner as though the words importing such covenants and conditions were used in each separate provision hereof.
12. **Court Costs.** In the event of any litigation between the parties arising out or related to this Agreement, the prevailing party shall be entitled to an award of reasonably court costs, including reasonable attorney fees.
13. **Expenses.** The Developer and the City each shall pay their own costs and expenses incurred in preparation and execution of and performance under this Agreement, except as otherwise expressly provided herein. In the event of any action under or related to this Agreement, with or without suit, the party which is found in default, or the party against whom a right or forfeiture is successfully asserted, shall pay the costs and disbursements of such action.
14. **Waiver.** Acceptance by either party of any performance less than required hereby shall not be deemed to be a waiver of the rights of such party to enforce all of the terms and conditions hereof. No waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.
15. **Effective Date.** This Agreement shall be effective as of the date filed for public record in the office of the Recorder for Washington County, Utah.

(signature page to follow)

IN WITNESS WHEREOF, the parties hereunder have executed this Agreement on the date first written above.

CITY OF ST. GEORGE

Attest:

Michele Randall
Michele Randall, Mayor

Christina Fernandez
Christina Fernandez, City Recorder

Approved as to form:

Paula Houston
Paula Houston, Deputy City Attorney



ST. GEORGE 730 LLC

Mark A. Schnippel
Mark A. Schnippel
President of Plantation Inc., Manager St. George 730

Approved as to form:

Attorney for St. George 730 LLC

STATE OF NEVADA)
 ss.
COUNTY OF CLARK)

On the 02nd day of February, 2021, personally appeared before me Mark Schnippel, who being duly sworn, did say that he is the President of Plantation Inc., Manager of St. George 730 LLC and the foregoing instrument was signed on behalf of said association by authority of its articles of organization and Mark Schnippel indicated to me that said company executed the same.

Cheryl Smith
Notary Public





Exhibit "A"

Beginning at the South Quarter Corner of Section 28, Township 42 South, Range 16 West, Salt Lake Base & Meridian, and running;

thence North 01°50'37" East 2,924.50 feet along the center section line to the southwest corner of Arancio Point at Divario Phase 1;

thence easterly the following (2) courses along the southerly line of said Arancio Point at Divario Phase 1;

thence South 88°09'23" East 201.61 feet;

thence North 01°50'37" East 104.92 feet to the southerly line of Sentieri Vista Drive;

thence easterly the following (5) courses along the southerly line of said Sentieri Vista Drive;

thence North 83°50'37" East 0.70 feet;

thence East 24.23 feet along an arc of a 100.00 foot radius curve to the right (center bears South 06°09'23" East, long chord bears South 89°12'55" East 24.17 feet with a central angle of 13°52'55");

thence Southeast 296.06 feet along an arc of a 387.46 foot radius curve to the right (center bears South 07°43'23" West, long chord bears South 60°23'13" East 288.91 feet with a central angle of 43°46'50");

thence Southeast 161.51 feet along an arc of a 332.50 foot radius curve to the left (center bears North 51°30'03" East, long chord bears South 52°24'54" East 159.93 feet with a central angle of 27°49'54");

thence South 64°12'16" East 11.96 feet; to the westerly line of Cascata at Divario Phase 1;

thence southerly the following (13) courses along said westerly line of Cascata at Divario Phase 1;

thence South 11°21'46" West 99.38 feet;

thence South 56°08'13" West 11.90 feet;

thence South 33°51'47" East 87.41 feet;

thence South 39°57'49" West 41.65 feet;

thence Southwest 7.06 feet along an arc of a 25.00 foot radius curve to the right (center bears North 50°02'11" West, long chord bears South 48°03'01" West 7.03 feet with a central angle of 16°10'24");

thence South 56°08'13" West 32.10 feet;

thence South 33°51'47" East 140.00 feet;

thence North 56°08'13" East 100.53 feet;

thence North 22°15'40" East 52.37 feet;

thence South 67°44'20" East 50.00 feet;

thence South 22°15'40" West 67.60 feet;

thence South 56°08'13" West 110.23 feet;

thence South 23°40'09" West 68.19 feet to the northerly line of Cascata at Divario Phase 1B;

thence southerly the following (3) courses along said Cascata at Divario Phase 1B

thence North 66°19'51" West 43.77 feet;

thence South 23°40'09" West 158.00 feet;

thence South 66°19'51" East 349.17 feet to and along the southerly line of said Cascata at Divario Phase 1;

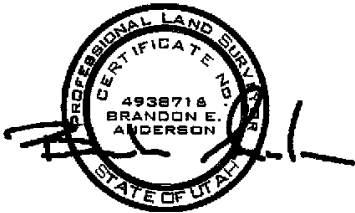
thence South 81°35'41" East 75.94 feet along the southerly line of said Cascata at Divario Phase 1;

thence South 16°46'16" West 63.94 feet;



thence South 33.67 feet along an arc of a 377.50 foot radius curve to the right (center bears North 73°13'44" West, long chord bears South 19°19'33" West 33.66 feet with a central angle of 05°06'35");
thence South 68°07'09" East 45.00 feet;
thence South 62°27'05" East 100.56 feet;
thence South 72°00'41" East 128.78 feet to the westerly line of Cecita Crest at Divario Phase 1;
thence southerly the following (9) courses along said westerly line of Cecita Crest at Divario Phase 1;
thence South 17°59'19" West 122.56 feet;
thence South 30°09'15" West 48.11 feet;
thence South 49°49'37" West 165.69 feet;
thence South 40°10'23" East 128.06 feet;
thence South 15°04'57" East 50.96 feet;
thence South 25°23'24" East 149.33 feet;
thence Southeast 885.39 feet along an arc of a 941.00 foot radius curve to the left (center bears North 76°02'33" East, long chord bears South 40°54'45" East 853.09 feet with a central angle of 53°54'36");
thence South 46°16'01" East 51.32 feet;
thence South 71°27'04" East 118.56 feet;
thence South 57°12'12" West 109.67 feet;
thence South 43°57'13" West 30.36 feet;
thence South 00°15'31" East 185.22 feet;
thence South 12°37'03" East 158.84 feet;
thence South 34°53'41" West 187.59 feet;
thence South 34°53'41" West 68.88 feet to the section line;
thence North 88°32'37" West 1,727.00 feet along said section line to the Point of Beginning.

Containing 3,554,047 square feet or 81.59 acres.



January 26, 2021

Exhibit "B"



352 East Riverside Drive, Suite A-2, St. George, Utah 84790

**CONCEPTUAL
 OPINION OF COST**

JOB NO: 1286-20-023A
PROJECT: Divario Water Pump Station
Upper Tank and Pipeline

CLIENT: 730 St. George, LLC
PREPARED: Ray Allton
DATE: October 14, 2020

UPPER PRESSURE ZONE TANK ELEV 3135

ITEM	UNITS	QUANTITY	PRICE	TOTAL
1.0 Repurpose Pump Station to Fill Upper Tank	lump	1	25,000.00	25,000
2.0 Tank Structural Concrete (20 ft high x 60 ft diameter)	gallon	400,000	1.10	440,000
3.0 Tank Earthwork (100 ft x 100 ft x 5 ft deep)	cu yd	2,000	8.00	16,000
4.0 Access Road Earthwork (2,800 ft L by 25 ft W x 2 ft deep)	cu yd	5,200	8.00	41,600
5.0 12" Water Line and Fittings (PA-13 bounday to Upper Tank)	ln ft	2,800	62.00	173,600
6.0 Air Release Valve for 12" Water Line	each	1	6,000.00	6,000
7.0 Access Road Base Type 2 6" Thick (2,800 ft L x 20 ft W)	sq ft	56,000	0.75	42,000
8.0 Chain Link Fence and Gate (200 ft x 200 ft)	ln ft	800	28.00	22,400
9.0 Tank SCADA System	lump	1	3,000.00	3,000
10.0				0
Construction Subtotal				769,600
<i>Mobilization</i>			3%	23,088
<i>Engineering</i>			8%	61,568
<i>Contingency</i>			20%	153,920
TOTAL				1,008,176

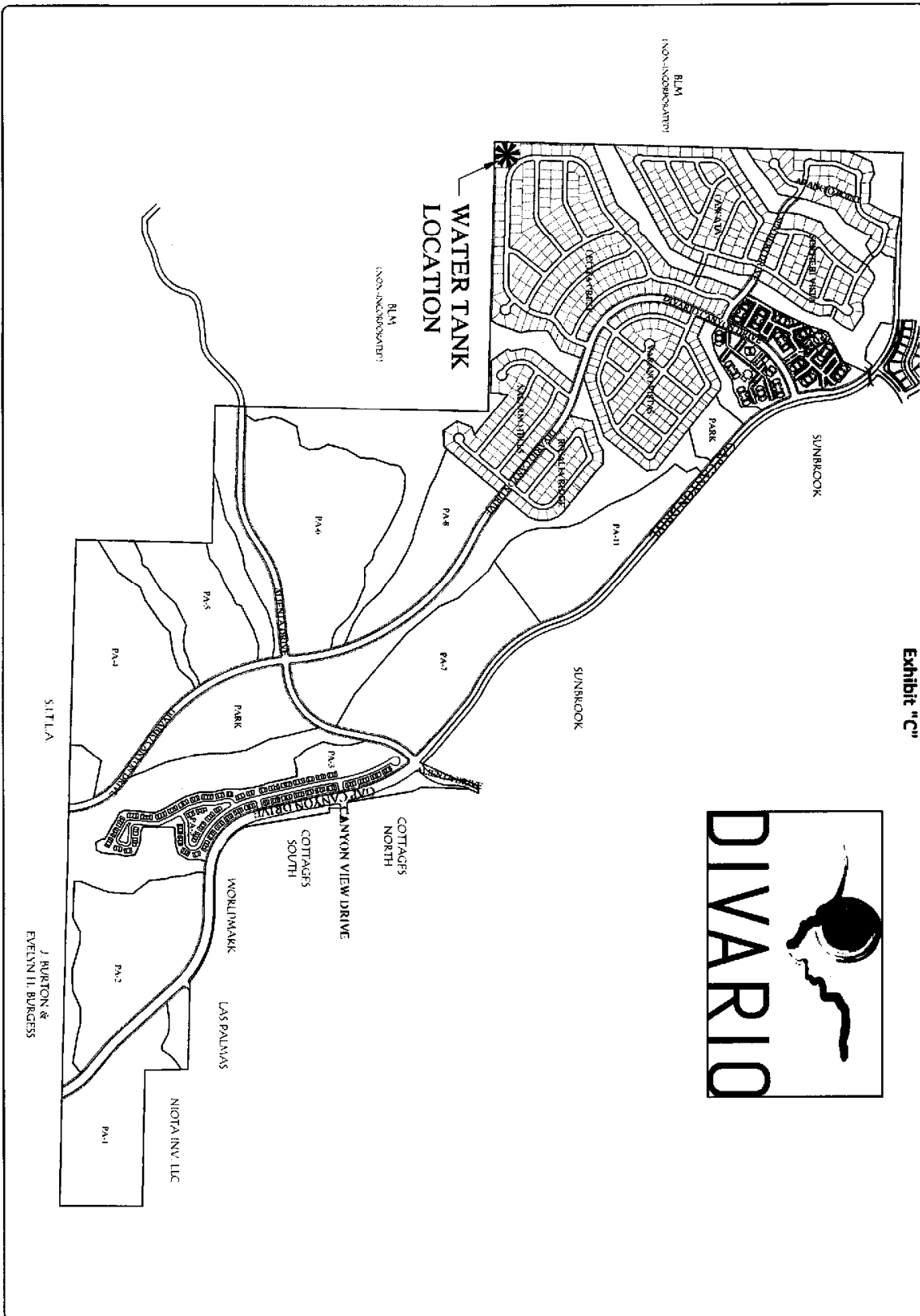


Exhibit "C"

	<p>WATER TANK LOCATION EXHIBIT DIVARIO AT ST. GEORGE ST. GEORGE UTAH</p>	<p>ROSENBERG ASSOCIATES CIVIL ENGINEERS • LAND SURVEYORS</p>	<table border="1"> <tr> <td>DATE</td> <td>02/23</td> </tr> <tr> <td>BY</td> <td>MM</td> </tr> <tr> <td>CHECKED</td> <td>MM</td> </tr> <tr> <td>DATE</td> <td>MM</td> </tr> <tr> <td>BY</td> <td>MM</td> </tr> <tr> <td>CHECKED</td> <td>MM</td> </tr> <tr> <td>DATE</td> <td>MM</td> </tr> </table>	DATE	02/23	BY	MM	CHECKED	MM	DATE	MM	BY	MM	CHECKED	MM	DATE	MM
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