



When Recorded Return To:
 City of St. George
 City Attorney's Office
 175 East 200 North
 St. George, Utah 84770

SG-5-3-3-143, SG-5-3-3-132

BLUE HERON ESTATES DEVELOPMENT AGREEMENT

This Blue Heron Estates Development Agreement (the "Agreement") is entered into this 6 day of April, 2021, between the City of St. George, a municipal corporation of the State of Utah (hereinafter the "City"), and James J Eardley Family Partnership, Ltd. and Blue Heron Development, Inc. (hereinafter the "Owner"). City and Owner are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, Owner desires to record a final plat to subdivide parcels SG-5-3-3-132 and SG-5-3-3-143 into a twenty-two (22) lot subdivision called Blue Heron Estates, a single family residential subdivision; and

WHEREAS, as part of the required site improvements for the Blue Heron Estates subdivision, Owner is required to install the improvements along 3000 East along the frontage of Owner's parcel SG-5-3-3-143, which improvements consist of curb, gutter, asphalt pavement, sidewalk, 10-foot wide landscape strip, and realignment of existing irrigation canal; and

WHEREAS, City is currently working on the design to complete the roadway improvements along 3000 East from 1580 South to 2450 South, which improvements consist of asphalt pavement, curb, gutter, 10-foot asphalt trail, landscape strip, realignment of existing canal, and installation of new storm drain pipe; and

WHEREAS, City has proposed that if Owner will dedicate the required right-of-way, prior to the recording of any final plat for the Blue Heron Estates subdivision, for the 3000 East frontage improvements project City is currently designing, City will install the improvements along 3000 East that Owner is required to install with the development of the Blue Heron Estates subdivision, which improvements consist of asphalt pavement, curb, gutter, sidewalk, realignment of existing canal, and 10-foot landscape strip along the frontage of Owner's parcel SG-5-3-3-143; and

WHEREAS, Owner agrees to dedicate the area of parcel SG-5-3-3-143 that City needs to complete the public roadway improvements along 3000 East with City's future project, and Owner also agrees to provide a temporary paved access from the Blue Heron Estates subdivision to 3000 East, which includes a drainage culvert for the existing irrigation canal, that

City will remove and replace with the construction of City's 3000 East roadway improvement project; and

WHEREAS, City, acting pursuant to its authority under Utah Code Annotated, Section 10-9a-101, et. seq., and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has determined this Agreement is in the best interest of the citizens of the City of St. George, and, in the exercise of its legislative discretion, has elected to approve this Agreement.

NOW THEREFORE, in consideration of the premises, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Owner agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are incorporated herein by reference.
2. **The Project.** At its own expense, City shall design, stake and construct sidewalk, asphalt pavement, curb, gutter, landscape strip and realign canal along 3000 East that Owner is required to install for the development of Blue Heron Estates subdivision. At its own expense, Owner shall dedicate as public right-of-way, free and clear of all liens and encumbrances, the portion of parcel SG-5-3-3-143 as described and shown on Exhibit A that City needs to complete the roadway improvements along 3000 East as part of City's future 3000 East roadway improvement project. Owner shall dedicate this property to City, prior to the recording of any final plat for the Blue Heron Estates subdivision, see attached Exhibit B. This agreement will be null and void and fully unenforceable if Owner has not dedicated this property as public right-of-way prior to May 7, 2021.
3. **Representatives.** The representative for the City for this Project will be Wes Jenkins. The representative for the Owner will be Claudia Eardley.
4. **Changes to Contract Documents.** Changes that increase the City's cost for installation of the Improvements will not be made without written consent from all Parties or their assigns.
5. **Project Approvals and Compliance with City Design and Construction Standards.** Owner expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Owner from the obligation to comply with City Ordinances and City Standard Specifications for Design and Construction, or all applicable requirements of the City necessary for approval of any development of Owner's Property, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City, except as specifically modified or waived in this Agreement.
6. **Indemnity and Liability.** To the extent allowed by state law, the Owner shall indemnify City against all claims, demands, causes or action, suits or judgments, including but not limited

to all claims, demands, causes of action, suits or judgments for death or injuries to persons or for loss of or damage to property, arising out of or in connection with this Agreement to the extent that it relates to performance of acts of the Owner, or its agents or assigns. In the event of any such claims made or suits filed against the City, City shall give the Owner prompt written notice. Owner agrees to defend against any claims brought or actions filed against City, whether such claims or actions are rightfully or wrongfully brought or filed. In case a claim should be brought or an action filed with respect to the subject of indemnity herein, the Owner agrees that City may employ attorneys of its own selection to appear and defend the claim or action on its own behalf at the expense of the Owner. Said attorney's fees shall be reasonable and subject to review by the Owner. The Owner shall be responsible for all costs associated with any claim, demand, action, suit, appeal, or judgment, including attorney's fees for which it indemnifies or defends City.

7. Governing Law and Venue. This Agreement shall be construed according to the laws of the State of Utah. The Parties agree that venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court for the State of Utah. The Parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction.
8. Attorney's Fees. Should any party default on any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney's fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including reasonable attorney's fees, including appeals and bankruptcy proceedings. If either party commences legal action to enforce or interpret any term of this Agreement, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees, court costs, and any other costs incurred in connection with such action, whether at trial or on appeal.
9. Construction. Each of the Parties has had the opportunity to review this Agreement with counsel of their choosing, and the rule of contracts requiring interpretation of a contract against the party drafting the same is hereby waived and shall not apply in interpreting this Agreement.
10. Notices. All notices required herein, and subsequent correspondence in connection with this Agreement shall be mailed to the following:

City of St. George
Attn: City Attorney
175 East 200 North
St. George, Utah, 84770

Claudia Eardley
326 W River Willow
Washington, Utah 84780

Such notices shall be deemed delivered following the mailing of such notices in the United States mail. Adequate notice shall be deemed given at the addresses set forth herein unless written notice is given by either party of a change of address.

11. **Assignment.** Neither this Agreement, nor any of the provisions, terms or conditions hereof, can be assigned to any other party, individual or entity without prior written consent of City, which consent shall not be unreasonably withheld.
12. **No Joint Venture, Partnership or Third Party Rights.** This Agreement does not create any partnership, joint venture, undertaking, business arrangement or other arrangement between Owner and City. No term or provision of this Agreement is intended to be, nor shall be, for the benefit or obligation of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
13. **Binding Effect.** Subject to the provisions of this document above, all of the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors, heirs, representatives, officers, agents, employees, members, assigns, and receivers.
14. **Integration.** This Agreement contains all the terms and conditions pertaining to the subject matter hereof, and, except with regard to zoning and other approvals upon which this Agreement is based, supersedes all prior negotiations, representations, promises, inducements or previous agreements between the Parties, whether oral or written with respect to the subject matter. Any amendments hereto must be in writing and signed by the respective Parties.
15. **Severability.** If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
16. **Survival.** It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.
17. **Headings.** The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
18. **Counterparts.** This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.

19. Modification. The terms and conditions of this Agreement may be amended or modified only by written agreement of the Parties.

20. Authority of Parties. The Parties executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated, and that this Agreement constitutes a valid and binding agreement.

James J Eardley Family Partnership, Ltd.

Blue Heron Development, Inc.

Claudia Eardley
Claudia Eardley, General Partner

Claudia Eardley
Claudia Eardley, President

City of St. George:

Michele Randall
Michele Randall, Mayor

Approved as to form:

Q.C. April 23, 2021
City Attorney's Office

Attest:

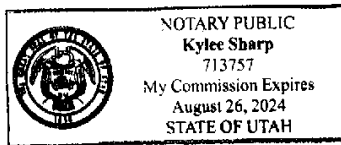
Christina Fernandez
Christina Fernandez, City Recorder




OWNER'S NOTARY

STATE OF UTAH)
)
) ss,
County of Washington)

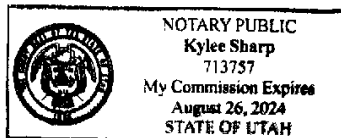
On the 6 day of April 2021, before me personally appeared, Claudia Eardley, who being by me duly sworn did say the she is a general partner in James J Eardley Family Partnership, Ltd. And that she executed the foregoing document on behalf of said limited partnership and is authorized and empowered to do so by the express consent of all the partners or the act is for carrying on the partnership business in the usual way.




Notary Public

STATE OF UTAH)
)
) ss.
County of Washington)

On the 6 day of April, 2021, before me personally appeared, Claudia Eardley, who being by me duly sworn did say the she is the president of Blue Heron Development, Inc., and that she executed the foregoing document on behalf of said corporation by authority of a resolution of its board of directors and she did acknowledge to me that the corporation executed the same for the purposes stated therein.



High Sheriff
Notary Public

CITY'S NOTARY

STATE OF UTAH)
)
) ss.
County of Washington)

On the _____ day of _____, 2021, personally appeared before me, Michele Randall, Mayor, and Christina Fernandez, City Recorder, who being by me duly sworn did say that they executed the foregoing document on behalf of said municipal corporation, being authorized and empowered to do so, and they executed the same for the uses and purposes stated therein.

Notary Public



Bush and Gudge, Inc.
Engineers • Planners • Surveyors
St. George, Utah
www.bushandgudge.com

Exhibit "A"
Legal Description

Beginning at the Southwest corner of Lot 3, Block 6, Robert C. Lund's Entry in the Southwest Quarter of the Northeast Quarter of Section 3, Township 43 South, Range 15 West, Salt Lake Base and Meridian, said point being on the east right-of-way line of 3000 East Street, said point also lies South 00°42'05" West along the section line 2316.76 feet, and East 45.00 feet from the North Quarter Corner of said Section, and running thence North 00°42'05" East along said lot and said right-of-way line 296.41 feet; thence South 89°00'05" East 24.50 feet; thence South 00°39'54" West 132.44 feet; thence South 89°20'06" East 11.29 feet; thence South 00°29'25" West 164.04 feet to the south line of said Lot 3; thence North 88°59'49" West along said line 36.47 feet to the point of beginning.

Containing 9,181 square feet or 0.21 acres.

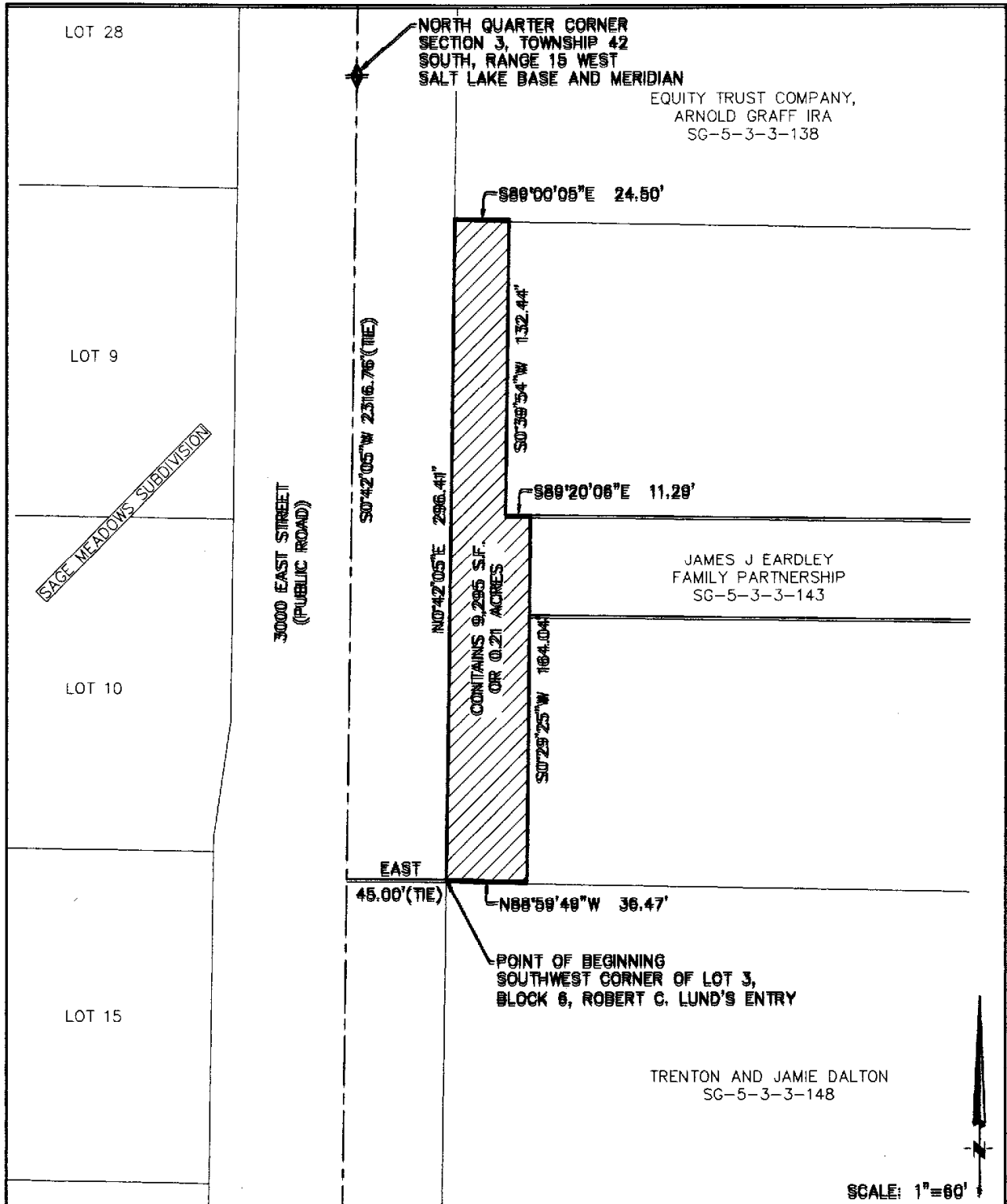


EXHIBIT B
QUIT CLAIM PARCEL
B & G 201009



BUSH & GUDGELL, INC.
Engineers - Planners - Surveyors
205 East Tabernacle Suite #4
St. George, Utah 84779
Phone (435) 673-2387 / Fax (435) 673-3161