

ORDINANCE No. 24-21

ROLL CALL

VOTING	YES	NO
STEVE LEIFSON <i>Mayor (votes only in case of tie)</i>		
CHAD ARGYLE <i>Councilmember</i>	nay	
STACY BECK <i>Councilmember</i>	x	
BRANDON B. GORDON <i>Councilmember</i>	x	
SHANE MARSHALL <i>Councilmember</i>	x	
MIKE MENDENHALL <i>Councilmember</i>	x	



ENT 211223:2021 PG 1 of 44
ANDREA ALLEN
UTAH COUNTY RECORDER
2021 Dec 22 11:29 am FEE 0.00 BY TM
RECORDED FOR SPANISH FORK CITY CORPORATI

I MOVE this ordinance be adopted: Councilmember Mendenhall
I SECOND the foregoing motion: Councilmember Beck

ORDINANCE No. 24-21

AN ORDINANCE ADOPTING A MASTER DEVELOPMENT AGREEMENT FOR SKYE MEADOWS

WHEREAS, pursuant to Utah Code Ann. §§ 10-9a-101, *et seq.*, and section 15.3.16.032 of the Spanish Fork Municipal Code, Spanish Fork City ("City") may enter into development agreements that it considers necessary or appropriate for the use and development of land within the City;

WHEREAS Dry Creek Properties, LLC ("Developer"), has requested the City enter into a development agreement to regulate the development within property

WHEREAS the City finds that the development agreement, in the exercise of its legislative discretion, after weighing broad, competing policy considerations, that the development agreement and its provisions for the development of the property described therein will further the public health, safety, and general welfare;

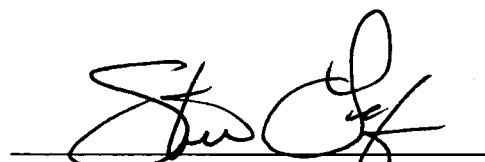
NOW THEREFORE, be it enacted and ordained by the Spanish Fork City Council as follows:

Section 1. Approval of Development Agreement. The City Council hereby adopts and approves the Master Development Agreement for Skye Meadows in a form substantially similar to the form attached to this ordinance.

Section 2. Not a Part of Municipal Code. This ordinance shall not become part of the Spanish Fork City Municipal Code.

Section 4. Effective Date. This ordinance shall take effect 20 days after publication or after passage.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH FORK,
UTAH: December 7, 2021.



STEVE LEIFSON, Mayor

Attest:



Tara Silver, City Recorder



EXHIBIT A

Master Development Agreement

for Skye Meadows

**MASTER DEVELOPMENT AGREEMENT
FOR
SKYE MEADOWS**

ENT 211223:2021 PG 4 of 44

December 7, 2021

WHEN RECORDED, RETURN TO:

BRUCE R. BAIRD
Bruce R. Baird, PLLC
2150 S 1300 East Street, Suite 500
Salt Lake City, UT 84106

ENT 211223:2021 PG 5 of 44

**MASTER DEVELOPMENT AGREEMENT
FOR
SKYE MEADOWS**

THIS MASTER DEVELOPMENT AGREEMENT is made and entered as of the ____ day of December 2021, by and between Spanish Fork City, a Utah municipality, and Dry Creek Properties, LLC, a Utah limited liability company or its assigns.

RECITALS

- A. The capitalized terms used in this MDA and in these Recitals are defined in Section 1.2 below.
- B. Master Developer is under contract to purchase and develop the Property.
- C. The City and other parties have entered into the Prior Agreements related to the Property.
- D. The City and Master Developer, and the other parties to the Prior Agreements, desire to terminate the Prior Agreements.
- E. Master Developer and the City desire that the Property be developed in a unified and consistent fashion pursuant to the General Plan and Zoning Ordinance.
- F. The Parties acknowledge that development of the Property pursuant to this MDA will result in significant planning and economic benefits to the City and its residents by, among other things, requiring orderly development of the Property and increasing property tax and other revenues to the City based on improvements to be constructed on the Property.
- G. On December 7, 2021, the City approved the Zoning Map for the Property.
- H. The Parties desire to enter into this MDA to specify the rights and responsibilities of Master Developer to develop the Property as expressed in this MDA and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this MDA.
- I. The City finds that this MDA and the Master Plan, as shown in Exhibit "B" conforms with the City's

General Plan.

J. The Parties understand and intend that this MDA is a “development agreement” within the meaning of, and entered into pursuant to the terms of UTAH CODE ANN. §10-9a-101 (2021) *et seq.*

K. This MDA and all of its associated “legislative”, “broad, competing policy-considerations” and “generally applicable” decisions regarding the development of the Project as those terms are discussed in *Baker v Carlson*, 2018 UT 59 were considered by the Planning Commission on December 1, 2021 pursuant to Utah Code Ann. § Section 10-9a-532(2)(iii) (2021), in making a recommendation to the City Council.

L. The City believes that this MDA and the Zoning of the Property constitute the completion of the “legislative”, “broad, competing policy-considerations” and “generally applicable” decisions by the City Council regarding the development of the Project as those terms are discussed in *Baker v Carlson*, 2018 UT 59.

M. The City intends that the implementation of those “legislative”, “broad, competing policy-considerations” and “generally applicable” decisions through the provisions and processes of this MDA relating to “fixed criteria” are “administrative” in nature.

N. This City’s entry into this MDA is authorized by the adoption of Ordinance # 24-21 on December 7, 2021.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, Master Developer hereby agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1. **Incorporation.** The foregoing Recitals and Exhibits “A” - “F” are hereby incorporated into this MDA.

1.2. **Definitions.** As used in this MDA, the words and phrases specified below shall have the following meanings:

1.2.1. ***Act*** means the Land Use, Development, and Management Act, UTAH CODE ANN. § 10-9a-101 (2021), *et seq.*

1.2.2. ***Addendum No. 1*** means the attachment hereto that contain the terms of this MDA that are unique to the Project.

1.2.3. ***Administrator*** means the person designated by the City as the Administrator of this MDA.

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

1.2.5. ***Buildout*** means the completion of all of the development on the entire Project in accordance with the approved plans.

1.2.6. ***City*** means Spanish Fork City, a Utah municipality.

1.2.7. ***City Consultants*** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology, or drainage for reviewing certain aspects of the development of the Project.

1.2.8. ***City's Future Laws*** means the ordinances, policies, standards, and procedures 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 MDA.

1.2.9. ***City's Vested Laws*** means the Land Use Ordinance and the Subdivision Ordinance of the City, adopted as Title 15 of the Spanish Fork Municipal Code, in effect as of the date of this MDA, a digital copy of which is attached as Exhibit "D."

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

1.2.11. ***Default*** means a material breach of this MDA as specified herein.

1.2.12. ***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.

1.2.13. ***Development*** means the development of a portion of the Property pursuant to an approved Development Application.

1.2.14. ***Development Application*** means a complete 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.

1.2.15. ***Development Report*** means a report containing the information specified in Sections 3.5 or 3.6 submitted to the City by Master Developer for a Development by Master Developer or for the sale of any Parcel to a Subdeveloper or the submittal of a Development Application by a Subdeveloper pursuant to an assignment from Master Developer.

1.2.16. ***Final Plat*** means the recordable map or other graphical representation of land prepared in accordance with UTAH CODE ANN. § 10-9a-603 (2021), or any successor provision, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.2.17. ***Master Plan*** means the Master Plan for the entire Project to be developed on the Property, as shown on Exhibit "B."

1.2.18. ***Master Developer*** means Dry Creek Properties, LLC and its assignees or transferees as permitted by this MDA.

1.2.19. ***MDA*** means this Master Development Agreement, including all of its Exhibits and Addendum No. 1.

1.2.20. ***Notice*** means any Notice to or from any Party to this MDA that is either required or permitted to be given to another Party.

1.2.21. ***Outsourc[e]ing*** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application as is more fully set out in this MDA.

1.2.22. ***Parcel*** means a portion of the Property that is created by the Master Developer to be sold to a Subdeveloper as a Subdivision that is not an individually developable lot as specified in Section 6.9.

1.2.23. **Party/Parties** means, in the singular, either Master Developer or the City; in the plural, both of Master Developer and the City.

1.2.24. **Phase** means one of the areas specified for each type of Development within the Project as illustrated on The Master Plan, Exhibit "B".

1.2.25. **Planning Commission** means the City's Planning Commission.

1.2.26. **Prior Agreements** means those agreements related to the Property as more fully specified in Exhibit "E."

1.2.27. **Project** means the total development to be constructed on the Property pursuant to this MDA with the associated public and private facilities, and all of the other aspects approved as part of this MDA.

1.2.28. **Property** means the real property owned and to be developed by Master Developer more fully described in Exhibit "A."

1.2.29. **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.

1.2.30. **Subdeveloper** means a person or an entity not "related" (as defined by Section 165 of the Internal Revenue Code) to Master Developer, which purchases a Parcel for development.

1.2.31. **Subdivision** means the division of any portion of the Project into developable lots pursuant to State Law and the Zoning Ordinance.

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

1.2.33. **Zoning Map** means the map of the zoning for the Property, as shown on Exhibit "C."

1.2.34. **Zoning Ordinance** means the City's Land Development Code adopted pursuant to the Act that was in effect as of the date of this MDA as a part of the City's Vested Laws.

2. **Development of the Project.**

2.1. **Compliance with this MDA.** Development of the Project shall be 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

MDA), the Zoning Map, and this MDA.

2.2. Phases. The numbering of the Phases shown on the Master Plan shall not be construed to require the Phases to be developed in any particular sequence. Provisions regarding the Development of each Phase are specified in Addendum # 1.

3. Zoning and Vested Rights.

3.1. Zoning.

3.1.1. *Zoning Map.* The City has rezoned the Property as shown on the Zoning Map in Exhibit "C."

3.1.2. *Approximate Locations.* The Parties acknowledge that the Phases shown with zoning designation on the Master Plan do not have legally specified boundaries because neither of the Parties knows at the time of the execution of this MDA precisely where the roads and other demarcating aspects of the Project will be actually located. The Master Plan establishes rough parameters for the location of the eventual zoning and this Section 3 establishes the processes for locating and establishing those zoning boundaries as the Project develops.

3.1.3. *Process.* When and as a Development Application is filed for a Subdivision of Phase that Development Application shall specify any restrictions or limitations on the Zoning other than those specified in the Master Plan such as limiting the types of Commercial Uses that may be allowed. So long as the area of land subject to the Development Application is not more than ten percent (10%) larger or smaller than shown for that Phase on the Master Plan and does not add to the types of allowable Commercial Uses or Residential Uses then the Development Application may be approved administratively, by following the City's established process for reviewing and approving preliminary and final subdivision plats. Once the Development Application is approved then the City's Zoning Map shall be deemed amended to determine and specify the zoning boundaries for that Development Application area. Any other modification to the size or uses in a Phase require approval of the City through the normal zoning process specified in the City's then current Zoning Code.

3.2. Vested Rights Granted by Approval of this MDA. To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this MDA grants Master Developer all rights to develop the Project in fulfillment of this MDA, the City's Vested Laws and the Zoning Map except as specifically provided herein. The Parties specifically intend that this MDA grant to Master Developer "vested rights" as that term is construed in Utah's common law and pursuant to UTAH CODE ANN. § 10-9a-509 (2021).

3.3. Exceptions. The restrictions on the applicability of the City's Future Laws to the Project as specified in Section 3.2 are subject to only the following exceptions:

3.3.1. ***Master Developer Agreement.*** City's Future Laws that Master Developer agrees in writing to the application thereof to the Project;

3.3.2. ***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;

3.3.3. ***Codes.*** Any City's Future Laws, including, Title 13 of the Spanish Fork Municipal Code, Policy 4 (Public Works Policies and Construction Standards), as well as updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, fire, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual on 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;

3.3.4. ***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; or,

3.3.5. ***Fees.*** Changes to the amounts of 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.

3.3.6. ***Impact Fees.*** Impact Fees or modifications thereto, which are lawfully adopted and imposed by the City. Master Developer and Subdeveloper agree that the impact fees imposed on the Master Developer by the City meet all requirements of the U. S. Constitution, Utah Constitution, law and applicable statutes, including but not limited to UTAH CODE ANN. § 11-36a-101 (2019) *et seq.*

3.3.7. ***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 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 or the net proceeds of any Development.

3.3.8. ***Processing of Development Applications.*** Changes in the City's Future Laws that relate to the processing of Development Applications, which 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.

3.3.9. ***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) (2021).

4. Term of Agreement.

4.1. **Condition Precedent.** This MDA shall not take effect until Master Developer (or assignee) takes title to the Property. If Master Developer (or assignee) has not taken title to the Property on or before March 1, 2022 then this MDA shall be void and of no effect.

4.2. **Term.** The term of this MDA shall be until December 31, 2035. If Master Developer has not been declared to be currently in Default as of December 31, 2035 (and if any such Default is not being cured) then this MDA shall be automatically extended until December 31, 2040. This MDA shall also terminate automatically at Buildout.

5. Processing of Development Applications.

5.1. Outsourcing of Processing of Development Applications. Within fifteen (15) business days after receipt of a Development Application and upon the request of Master Developer the City and Master Developer may confer, in City's sole discretion, to determine whether the City desires to Outsource the review of any aspect of the Development Application to ensure that it is processed on a timely basis. If the City determines that Outsourcing is appropriate, then the City shall promptly estimate the reasonably anticipated differential cost of Outsourcing in the manner selected by the Master Developer or Subdeveloper in good faith consultation with the Master Developer or Subdeveloper (either overtime to City employees or the hiring of a City Consultant). If the Master Developer or a Subdeveloper notifies the City that it desires to proceed with the Outsourcing based on the City's estimate of costs, then the Master Developer or Subdeveloper shall deposit in advance with the City the estimated differential cost and the City shall then promptly proceed with having the work Outsourced. Upon completion of the Outsourcing services and the provision by the City of an invoice (with such reasonable supporting documentation as may be requested by Master Developer or Subdeveloper) for the actual differential cost (whether by way of paying a City Consultant or paying overtime to City employees) of Outsourcing, Master Developer or the Subdeveloper shall, within ten (10) business days pay or receive credit (as the case may be) for any difference between the estimated differential cost deposited for the Outsourcing and the actual cost differential.

5.2. Acceptance of Certifications Required for Development Applications. Any Development Application requiring the signature, endorsement, certification or stamping by a person holding a license or professional certification required by the State of Utah in a particular discipline shall be so signed, endorsed, certified or stamped signifying that the contents of the Development Application comply with the applicable regulatory standards of the City.

5.3. Independent Technical Analyses for Development Applications. If the City needs technical expertise beyond the City's internal resources to determine impacts of a Development Application such as for structures, bridges, water tanks, geology or geotechnical expertise, and other similar matters which

are not required by the City's Vested Laws to be certified by such experts as part of a Development Application, the City may engage such experts as City Consultants with the actual and reasonable costs being the responsibility of Applicant. The City Consultant undertaking any review by the City required or permitted by this MDA shall be selected from a list generated by the City for each such City review pursuant to a "request for proposal" process or as otherwise allowed by City ordinances or regulations. The Applicant may, in its sole discretion, strike from the list of qualified proposers any of such proposed consultants so long as at least three (3) qualified proposers remain for selection. The anticipated cost and timeliness of such review may be a factor in choosing the expert. The actual and reasonable costs being the responsibility of the Applicant.

5.4. 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 the denial including specifying the reasons the City believes that the Development Application is not consistent with this MDA, and/or the City's Vested Laws (or, if applicable, the City's Future Laws).

5.5. 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.

5.6. 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, the Applicant shall appeal any such denial through the appropriate procedures for such a decision and not through the processes specified below.

5.7. Mediation of Development Application Denials.

5.7.1. *Issues Subject to Mediation.* Issues resulting from the City's Denial of a Development Application that the parties are not able to resolve by "Meet and Confer" shall be mediated and include the following:

- (i) the location of On-Site Infrastructure, including utility lines and stub outs to adjacent developments,
- (ii) right-of-way modifications that do not involve the altering or vacating of a previously dedicated public right-of-way,
- (iii) interpretations, minor technical edits or inconsistencies necessary to clarify or modify documents consistent with their intended purpose of the Development Standards, and
- (iv) the issuance of building permits.

5.7.2. *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 City and Applicant 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. The 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 an 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.

5.8. Arbitration of Development Application Objections.

5.8.1. *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.

5.8.2. *Mediation Required Before Arbitration.* Prior to any arbitration, the parties shall first attempt mediation as specified in Section 5.7.

5.8.3. *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. The 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.

5.9. Parcel Sales. The City acknowledges that the precise location and details of the public improvements, lot layout and design, and any other similar item regarding the development of a particular Parcel may not be known at the time of the creation of or sale of a Parcel. Master Developer may divide property as is provided in UTAH CODE ANN. § 10-9a-103(65)(c)(v) (2021) that does not create any individually developable lots in the Parcel without being subject to any requirement in the City's Vested Laws to complete or provide security for any Public Infrastructure at the time of such division. The responsibility for completing and providing security for completion of any Public Infrastructure in the Parcel shall be that of the Master Developer or a Subdeveloper upon a subsequent re-Subdivision of the Parcel that creates individually developable lots. However, the construction of improvements shall not be allowed until Master Developer or Subdeveloper complies with the City's Vested Laws.

6. Addendum No. 1. Addendum No. 1 contains the provisions of this MDA that are unique to the development of the Project.

7. Application Under City's Future Laws. Without waiving any rights granted by this MDA, Master Developer may at any time, choose to submit a Development Application for all of the Project under the City's

Future Laws in effect at the time of the Development Application so long as Master Developer is not in current breach of this agreement.

8. Public Infrastructure.

8.1. Construction by and Master Developer. Master Developer shall have the right and the obligation to construct or cause to be constructed and installed all Public Infrastructure reasonably and lawfully required as a condition of approval of the Development Application.

8.2. Bonding. If and to the extent required by the City's Vested Laws, unless otherwise provided by Chapter 10-9a of the Utah Code as amended, security for any Public Infrastructure is required by the City Applicant shall provide it in a form acceptable to the City as specified in the City's Vested Laws. Partial releases of any such required security shall be made as work progresses based on the City's Vested Laws.

9. Upsizing/Reimbursements to Master Developer.

9.1. Upsizing. The City shall not require Master Developer to "upsized" any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) unless financial arrangements reasonably acceptable to Master Developer are made to compensate Master Developer for the incremental or additive costs of such upsizing. For example, if an upsizing to a water pipe size increases costs by 10% but adds 50% more capacity, the City shall only be responsible to compensate Master Developer for the 10% cost increase. An acceptable financial arrangement for the upsizing of improvements means reimbursement agreements, payback agreements, and impact fee credits and reimbursements.

10. Default.

10.1. Notice of Default. If Master Developer or a Subdeveloper or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a Default has occurred shall provide Notice to the other Party. If the City believes that the Default has been committed by a Subdeveloper, then the City shall also provide a courtesy copy of the Notice to Master Developer.

10.2. Contents of the Notice of Default. The Notice of Default shall:

10.2.1. ***Specific Claim.*** Specify the claimed event of Default;

10.2.2. ***Applicable Provisions.*** Identify with particularity the provisions of any applicable law, rule, regulation or provision of this MDA that is claimed to be in Default;

10.2.3. ***Materiality.*** Identify why the Default is claimed to be material; and

10.2.4. ***Optional Cure.*** If the City chooses, in its discretion, it may propose a method and time for curing the Default, which shall be of no less than thirty (30) days duration.

10.3. **Meet and Confer, Mediation, Arbitration.** Upon the issuance of a Notice of Default, the Parties shall engage in the “Meet and Confer” and “Mediation” processes specified in Sections 5.6 and 5.7. If the claimed Default is subject to Arbitration as provided in Section 5.8, then the parties shall follow such processes.

10.4. **Remedies.** If the parties are not able to resolve the Default by “Meet and Confer” or by Mediation, and if the Default is not subject to arbitration then the Parties may have the following remedies, except as specifically limited in 10.9:

10.4.1. ***Law and Equity.*** All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

10.4.2. ***Security.*** The right to draw on any security posted or provided in connection with the Project and relating to the remedying of the particular Default.

10.4.3. ***Future Approvals.*** The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by Developer, or in the case of a default by a Subdeveloper, development of those Parcels owned by the Subdeveloper until the Default has been cured. The City shall not withhold the issuance of building permits to a Subdeveloper for any breach of this MDA by Master Developer.

10.5. **Public Meeting.** Before the City may impose any remedy in Section 10.4, the Party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default.

10.6. Emergency Defaults. Anything in this MDA notwithstanding, if the City Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City, then the City may impose the remedies of Section 10.4 without the requirements of Sections 10.5. The City shall give Notice to Master Developer and/or any applicable Subdeveloper of any public meeting at which an emergency default is to be considered, and the Developer and/or any applicable Subdeveloper shall be allowed to address the City Council at that meeting regarding the claimed emergency Default.

10.7. Extended Cure Period. If any Default cannot be reasonably cured within thirty (30) days, then such cure period shall be extended so long as the defaulting Party is pursuing a cure with reasonable diligence.

10.8. Default of Assignee. Default of any obligations assumed by an assignee shall not be deemed a default of Master Developer.

10.9. Limitation on Recovery for Default – No Damages. Notwithstanding anything within this MDA, no Party shall be entitled to any claim for any monetary damages as a result of any breach of this MDA and each Party waives any claims thereto except that the City may seek payment of any unpaid outsourcing fees pursuant to Section 5.1 and any independent technical analysis pursuant to Section 5.3. The sole remedy available to Master Developer or any Subdeveloper shall be that of specific performance.

11. Notice Requirements. All notices required or permitted under this MDA shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To Master Developer:

Dry Creek Properies, LC
Attn.: Mr. Mark Hampton
772 West 1000 North Circle
American Fork, UT 84003
mark@rimrock.us

To Spanish Fork City:

Spanish Fork City
Attn: City Manager
40 South Main Street
Spanish Fork, UT 84660
sperrins@spanishfork.org

With a Copy to:

Bruce R. Baird
Attn: Bruce R. Baird, PLLC
2150 S 1300 East Street, Suite 500

With a Copy to:

Spanish Fork City
Attn: City Attorney
40 South Main Street

Salt Lake City, UT 84106
bbaird@difficultdirt.com

Spanish Fork, UT 84660
vpickell@spanishfork.org

11.1. **Effectiveness of Notice.** Except as otherwise provided in this MDA, each Notice shall be effective and shall be deemed delivered on the earlier of:

11.1.1. ***Hand Delivery.*** Its actual receipt, if delivered personally or by courier service

11.1.2. ***Electronic Delivery.*** Its actual receipt, if delivered electronically by email, provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day, and the sending Party has an electronic receipt of the delivery of the Notice. If the copy is not sent on the same day, then Notice shall be deemed effective on the date that the mailing or personal delivery occurs.

11.1.3. ***Mailing.*** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any Party may change its address for Notice under this MDA by giving written Notice to the other Party in accordance with the provisions of this Section.

12. **Headings.** The captions used in this MDA are for convenience only and are not intended to be substantive provisions or evidences of intent.

13. No Third-Party Rights/No Joint Venture.

13.1. This MDA does not create a joint venture relationship, partnership, or agency relationship between the City or Master Developer. Except as provided herein, the Parties do not intend this MDA to create any third-party beneficiary rights. The Parties acknowledge that this MDA refers to a private development and that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to the Property or unless the City has accepted the dedication of such improvements at which time all rights and responsibilities—except for warranty bond requirements under City's Vested Laws and as allowed by state law—for the dedicated public improvement shall be the City's.

13.2. Fritzi Realty, Inc., a California corporation (“Fritzi”), is an intended third-party beneficiary of this MDA only insofar as pertaining to the termination of the Prior Agreements, to which it is a party, identified

in Exhibit E. Execution of this MDA by and between the City and Master Developer shall terminate the Prior Agreements identified in Exhibit E and Fritzi shall bear no further obligation and shall receive no further benefit under those agreements.

14. **Assignability.** The rights and responsibilities of Master Developer under this MDA may be assigned in whole or in part, respectively, by Master Developer with the consent of the City as provided herein.

14.1. **Sale of Lots.** Master Developer's selling or conveying lots in any approved Subdivision or Parcels to builders, end-users, or Subdevelopers, shall not be deemed to be an "assignment" subject to the above-referenced approval by the City unless specifically designated as such an assignment by Master Developer.

14.2. **Related Entity.** Master Developer's transfer of all or any part of the Property to any entity "related" to Master Developer (as defined by regulations of the Internal Revenue Service in Section 165), Master Developer's entry into a joint venture for the development of the Project or Master Developer's pledging of part or all of the Project as security for financing shall also not be deemed to be an "assignment" subject to the above-referenced approval by the City unless specifically designated as such an assignment by the Master Developer. Master Developer shall give the City Notice of any event specified in this subsection within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

14.3. **Notice of Assignment.** Master Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

14.4. **Time for Objection.** Unless the City objects in writing within twenty (20) business days of Notice, the City shall be deemed to have approved of and consented to the assignment.

14.5. **Partial Assignment.** If any proposed assignment is for less than all of Master Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this MDA to which the assignee succeeds. Upon any such approved partial assignment,

Master Developer shall not be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations herein.

14.6. Denial. The City may only withhold its consent if the City is not reasonably satisfied with the assignee's financial ability to perform the obligations of Master Developer, proposed to be assigned, or there is an existing breach of a development obligation owed to the City by the assignee or related entity that has not either been cured or in the process of being cured in a manner acceptable to the City. Any refusal of the City to accept an assignment shall be subject to the "Meet and Confer" and "Mediation" processes specified in Sections 5.6 and 5.7. If the refusal is subject to Arbitration as provided in Section 5.8, then the Parties shall follow such processes.

14.7. Assignees Bound by MDA. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this MDA as a condition precedent to the effectiveness of the assignment.

15. Binding Effect. If Master Developer sells or conveys a Parcel of land to a Subdeveloper or related party, the Parcel so sold and conveyed shall bear the same rights, privileges, and configurations applicable to such Parcel and be subject to the same limitations and rights of the City when owned by Master Developer, and as set forth in this MDA without any required approval, review, or consent by the City except as otherwise provided herein.

16. No Waiver. Failure of any 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 date any such right or any other right it may have.

17. Severability. If any provision of this MDA is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this MDA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this MDA shall remain in full force and affect.

18. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable

control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

19. **Time is of the Essence.** Time is of the essence to this MDA, and every right or responsibility shall be performed within the times specified.

20. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this MDA, the City and Master Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Master Developer. The initial representative for the City shall be the Community Development Director. The initial representative for Master Developer shall be Mark Hampton. The Parties may change their designated representatives by Notice. The representatives or their designees shall be available at all reasonable times to discuss and review the performance of the Parties to this MDA and the development of the Project.

21. **Applicable Law.** This MDA is entered into in Utah County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

22. **Venue.** Any action to enforce this MDA shall be brought only in the Fourth District Court for the State of Utah.

23. **Entire Agreement.** This MDA, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

24. **Termination of Prior Agreements.** The Prior Agreements are hereby terminated, superceded and of no effect on the Property or on any of the parties thereto.

25. **Mutual Drafting.** Each Party has participated in negotiating and drafting this MDA; therefore, no provision of this MDA shall be construed for or against any Party based on which Party drafted any particular portion of this MDA.

26. **Recordation and Running with the Land.** This MDA shall be recorded in the chain of title for the Project. This MDA shall be deemed to run with the land. The data disk of the City's Vested Laws, Exhibit "D,"

shall not be recorded in the chain of title. A secure copy of Exhibit "D" shall be filed with the City Recorder, and each Party shall also have an identical copy.

27. **Authority.** The Parties to this MDA each warrant that they have all of the necessary authority to execute this MDA. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this MDA lawfully binding the City pursuant to Ordinance No. 24-21 adopted by the City on December 7, 2021.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

Approved as to form and legality:

Attest:

Wynne
City Attorney

City Attorney

MASTER DEVELOPER

• •

Mark 4:30-32

By: Mark Thompson

Its: Managing Members

DRY CREEK PROPERTIES, LLC ACKNOWLEDGMENT

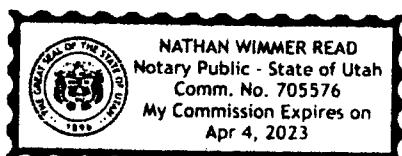
STATE OF UTAH)

1

ISS

COUNTY OF SALT LAKE)

On the 20 day of December, 2021, personally appeared before me Nathan Reed, who being by me duly sworn, did say that he is the Manager of Dry Creek Properties, L.L.C., a Utah limited liability company and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.



Mark Reed
NOTARY PUBLIC

CITY

Spanish Fork City

ENT 211223:2021 PG 25 of 44

Steve Leifson

Its: Mayor

CITY ACKNOWLEDGMENT

STATE OF UTAH)
:ss
COUNTY OF UTAH)

On the 21 day of December, 2021 personally appeared before me Steve Leifson, who being by me duly sworn, did say that he is the Mayor of Spanish Fork City, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said Mayor acknowledged to me that the City executed the same.

Jenii Ann Finch
NOTARY PUBLIC



JERRI ANN FINCH
Notary Public, State of Utah
Commission #700446
My Commission Expires
05/16/2022

TERMS

1. Definitions.

1.1. **Incorporation.** The capitalized terms used in this Addendum No. 1 shall have the meanings set forth in the MDA unless otherwise specified herein.

1.2. **Additional Definitions.** As used in this MDA, the words and phrases specified below shall have the following meanings:

1.2.1. ***Cal-Pac Avenue*** means an existing public street by that name as illustrated on the Master Plan and subject to the provisions in Section 8, below

1.2.2. ***Existing Commerical Building*** means an existing commercial building that now occupies the site of Phase 4.

1.2.3. ***Fritzi Plat*** means that plat for the Plat A Fritzi Subdivision recorded on June 18, 2012 as Entry # 50430:2012 in the books and records of the Utah County Recorder.

1.2.4. ***Minor Parcels*** shall mean parcels owned by Spanish Fork City identified as Utah County Parcel No. 25:028:0031 (899.46 square feet), 25:028:0032 (899.52 square feet), and 25:028:0033 (899.45 square feet) that are completely surrounded by the Property.

1.2.5. ***Road Dedication Parcel*** means that approximately 0.62 acre parcel shown as such on the Master Plan and specifically discussed in Section 6, below.

1.2.6. ***Telemetry Site*** means that parcel shown as such on the Master Plan and specifically discussed in Section 7, below.

1.2.7. ***Well Site*** means that parcel shown as such on the Master Plan and specifically discussed in Section 7, below.

2. Development of Phase 1.

2.1. Phase 1 shall be developed in compliance with the R-9 Zone, as shown on the Zoning Map and may be developed at any time the required infrastructure for it is in place or in progress.

3. Development of Phase 2.

3.1. Phase 2 shall be developed in compliance with the R-4 Zone, as shown on the Zoning Map and may be developed at any time the required infrastructure for it is in place or in progress.

4. Development of Phase 3.

4.1. Phase 3 shall be developed in compliance with the C-2 Commercial Zone, as shown on the Zoning Map and may be developed at any time the required infrastructure for it is in place or in progress..

5. Development of Phase 4.

5.1. Phase 4 shall be developed in compliance with the R-3 and R-4 Zones, as shown on the Zoning Map.

5.1.1. ***Specific Conditions for Phase 4.*** The last of the leases in the Existing Commercial Building expires on December 31, 2023. Those leases shall not be extended without the prior approval of the City. Phase 4 shall begin demolition of the Existing Commercial Building no later than December 31, 2024.

5.1.2. ***Elevations.*** The townhomes in Phase 4 shall have elevations substantially similar to those shown on Exhibit "F" in the reasonable determination of the Administrator.

6. Road Dedication Parcel. Upon the effectiveness of this MDA and its recording, Master Developer shall promptly donate to the City the Road Dedication Parcel by a special warranty deed in standard Utah form free of all financial encumbrances. Master Developer shall have an easement as necessary over the Road Dedication Parcel for use for utilities for the Project and to improve the Road Dedication Parcel as required to meet the open space obligations of the Project. This

dedication is to satisfy the public open space dedication requirements of the R-4 Zoned portion of the Project.

- 7. Well Site/Minor Parcels/Telemetry Site.** Concurrent with development of the first phase of the Project, Master Developer shall promptly cap the existing well on the Well Site. Master Developer shall grant the City an easement in a form reasonably acceptable to the City for the Telemetry Site for the purpose of accessing the Telemetry Site and for the City to construct and maintain certain City-related utility telemetry facilities. Master Developer shall construct electric power and SFCN telecommunications utilities in the easement granted to the City to service the Telemetry Site. Upon the completion of the activities specified above, the City shall deed the Well Site, the Minor Parcels, and any associated easements to Master Developer and the Well Site and Minor Parcels shall become a part of the Property subject to this MDA with the development rights shown on the Master Plan.
- 8. Cal-Pac Avenue.** The portion of Cal-Pac Avenue on the Property shall be vacated by the City by a subdivision plat for the Development of Phase 4 that realigns Cal-Pac Avenue.
- 9. Vacation of Fritzi Plat.** The Fritzi Plat shall be vacated by the City by a subdivision plat for the Development of Phase 4.
- 10. Impact Fee Credits.** The City acknowledges that the existing structures and uses on the property have previously had “impacts” on the City’s various system improvements under the Impact Fee Act. When impact fees are assessed by the City for the Development of the Project the City shall provide appropriate credits for the impacts of the existing uses. If there are any disputes regarding this issue then that dispute shall be resolved pursuant to the provision of Sections 5.5, 5.7 and 5.8 of the MDA. Credits shall be applied on first-come-first-served basis meaning that the first units to apply for building permit receive the credits.

11. UDOT. The Parties acknowledge that the design of the Project as shown in the Master Plan requires the approval of UDOT for certain accesses onto UDOT roads. If UDOT does not approve then the Parties shall work together to reconfigure the Project to meet any of UDOT's demands to allow Master Developer the same number and types of units and uses and to amend this MDA if so required. If there are any disputes regarding this issue then that dispute shall be resolved pursuant to the provision of Sections 5.5, 5.7 and 5.8 of the MDA.

12. Additional Requirements. The Master Developer shall adopt the conditions of approval imposed by the City Council from its meeting on December 7, 2021, and include them into the design of the Project. The City Manager and City Attorney are authorized to make minor, immaterial changes to this MDA to incorporate the City Council Conditions so long as they do not change material, substantive aspects of the MDA.

13. Further Assurances, Documents, and Acts. Each of the Parties agrees to cooperate in good faith with the others, and to execute and deliver such further documents, and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each party as allowed by law without delay or cost to the other party.

TABLE OF EXHIBITS

ENT 211223:2021 PG 30 of 44

Exhibit "A"	Legal Description of Property
Exhibit "B"	Master Plan
Exhibit "C"	Zoning Map
Exhibit "D"	City's Vested Laws
Exhibit "E"	Prior Agreements
Exhibit "F"	Townhome Elevations

**Exhibit A
Legal Description**

ENT 211223:2021 PG 31 of 44

BOUNDARY DESCRIPTION:**EAST PARCEL**

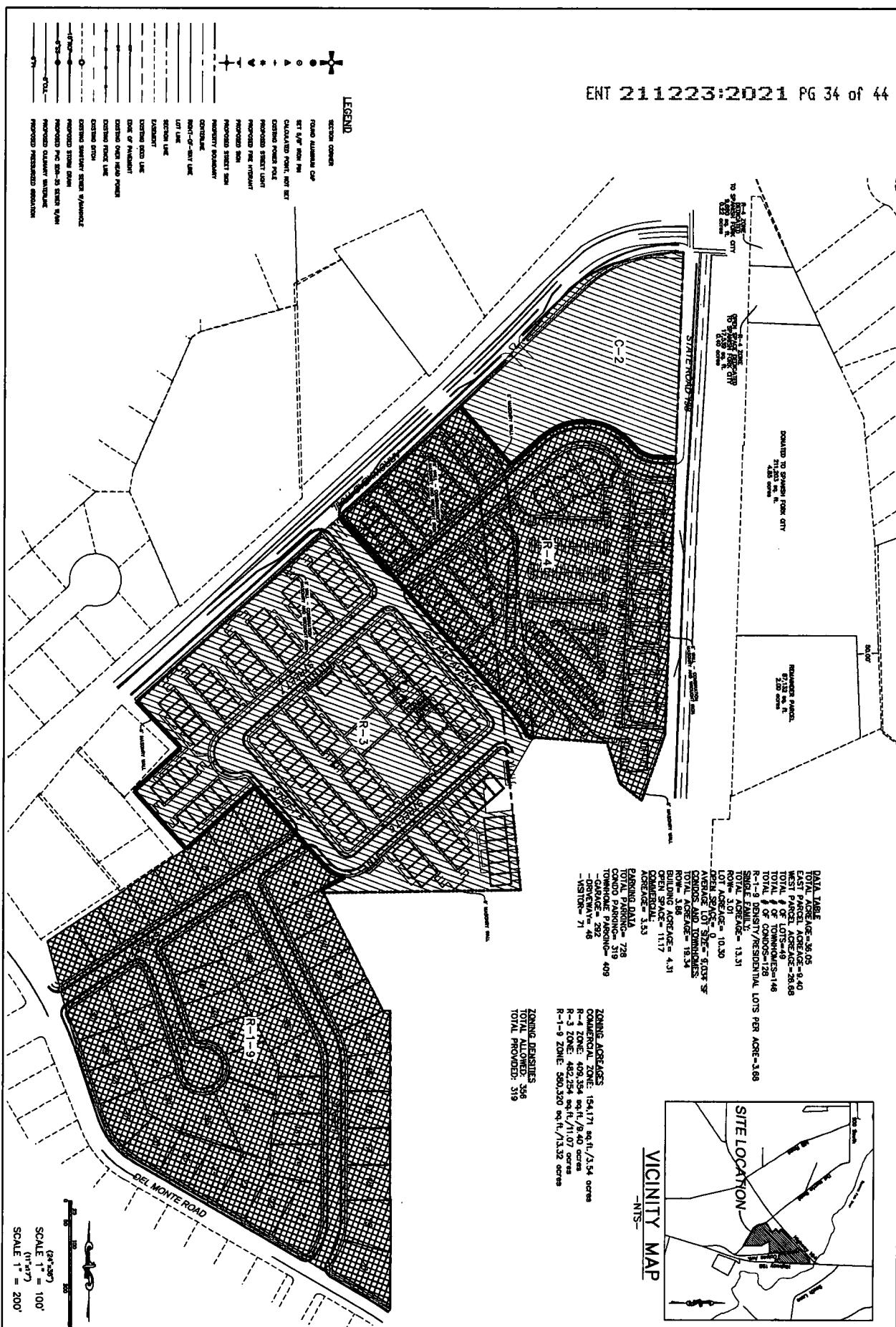
BEGINNING AT A POINT WHICH LIES N00°12'30"W 387.27 FEET AND WEST 355.02 FEET FROM THE EAST 1/4 CORNER OF SECTION 25, TOWNSHIP 8 SOUTH, RANGE 2 EAST, SLB&M. AND RUNNING THENCE S02°03'25"W 1054.81 FEET; THENCE S02°29'47"W 48.60 FEET; THENCE S18°43'45"W 160.32 FEET; THENCE N52°07'16"W 64.21 FEET; THENCE N17°48'52"W 97.55 FEET; THENCE N85°53'54"W 171.57 FEET; THENCE N06°11'57"W 563.03 FEET; THENCE NORTHWESTERLY 166.07 FEET ALONG THE ARC OF A 266.00 FOOT RADIUS CURVE TO THE LEFT THROUGH THE CENTRAL ANGLE 35°46'14" THE CHORD BEARS N24°05'04"W 163.38 FEET; THENCE N41°58'11"W 57.62 FEET; THENCE NORtheASTERLY 13.35 FEET ALONG THE ARC OF A 8.50 FOOT RADIUS CURVE TO THE RIGHT THROUGH THE CENTRAL ANGLE 90°00'00" THE CHORD BEARS N03°01'49"E 12.02 FEET; THENCE N48°01'49"E 27.52 FEET; THENCE N43°54'42"E 77.68 FEET; THENCE N42°35'03"E 253.49 FEET; THENCE NORtheASTERLY 123.02 FEET ALONG THE ARC OF A 318.10 FEET RADIUS CURVE TO THE RIGHT THROUGH THE CENTRAL ANGLE 22°09'32" THE CHORD BEARS N60°45'30"E; THENCE N78°59'41"E 133.67 FEET; THENCE S88°00'21"E 27.38 FEET TO THE POINT OF BEGINNING. CONTAINS 9.40 ACRES.

WEST PARCEL

THENCE WEST 572.82 FEET AND SOUTH 400.79 FROM THE EAST PARCEL POINT OF BEGINNING; AND RUNNING THENCE SOUTHEASTERLY 13.35 FEET ALONG THE ARC OF A 8.50 FOOT RADIUS CURVE TO THE RIGHT THROUGH THE CENTRAL ANGLE 90°00'00" THE CHORD BEARS S86°58'11"W 12.02 FEET; THENCE S41°58'11"E 57.62 FEET; THENCE SOUTHEASTERLY 124.86 FEET ALONG THE ARC OF A 200.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH THE CENTRAL ANGLE 35°46'14" THE CHORD BEARS S24°05'04"E 122.84 FEET; THENCE S06°11'57"E 908.03 FEET; THENCE N83°55'36"W 37.35 FEET; THENCE S83°59'18"W 20.49 FEET; THENCE S06°00'42"E 24.12 FEET; THENCE S83°59'18"W 5.00 FEET; THENCE S06°00'42"E 54.34 FEET; THENCE N84°05'26"E 62.24 FEET; THENCE S06°11'57"E 183.01 FEET; THENCE S89°05'03"W 459.55 FEET; THENCE S27°17'51"E 304.71 FEET; THENCE N89°48'42"E 16.97 FEET; THENCE S00°06'27"E 318.50 FEET; THENCE S00°06'37"E 117.67 FEET; THENCE N89°43'47"E 2.63 FEET; THENCE S00°27'34"W 249.93 FEET; THENCE N60°02'57"W 715.52 FEET; THENCE N43°01'46"W 55.87 FEET; THENCE N21°02'15"W 139.28 FEET; THENCE N16°28'27"W 163.36 FEET; THENCE N15°31'00"W 165.20 FEET; THENCE N56°34'40"E 385.51 FEET; THENCE N43°13'43"W 180.40 FEET; THENCE N47°33'19"E 146.20 FEET; THENCE N43°52'56"W 149.47 FEET; THENCE N48°01'49"E 936.64 FEET TO THE WEST PARCEL POINT OF BEGINNING. CONTAINS 26.78 ACRES.

**Exhibit B
Master Plan**

ENT 211223:2021 PG 33 of 44



SKYE MEADOWS

**ATLAS
ENGINEERING
L.L.C.**

PHONE: 801-655-0586
FAX: 801-655-0109
946 E. 800 N. SUITE A
SPANISH FORK, UT 84660

MASTER PLANNED DEVELOPMENT

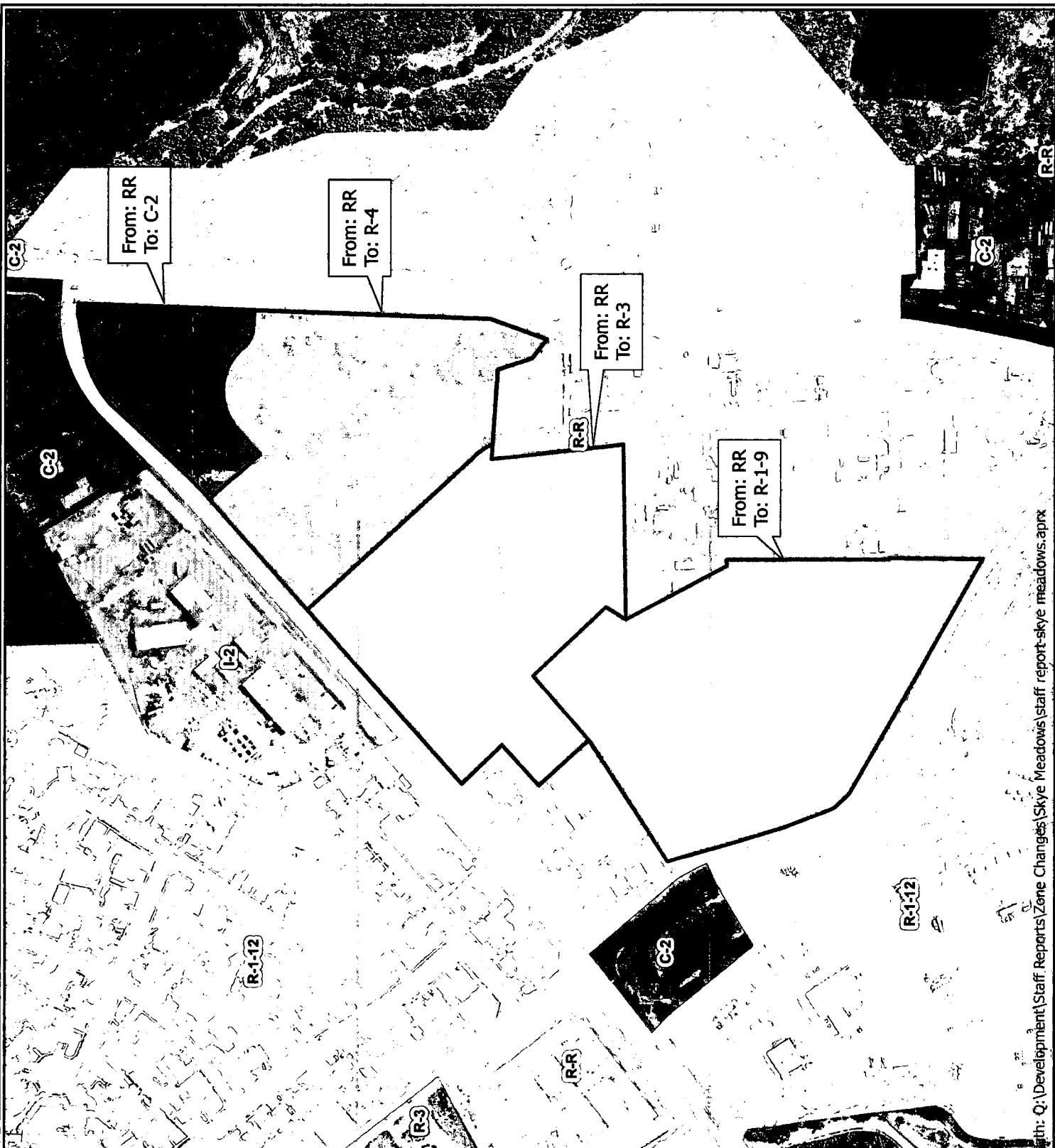
SPANISH FORK, UTAH

SHEET NO.

MPD

**Exhibit C
Zoning Map**

ENT 211223:2021 PG 35 of 44



Skye Meadows Zone Change



1" = 350 Ft

Legend

- Spanish Fork Boundary
- Skye Meadows Subdivision
- sky meadows R-1-9
- sky meadows R-3
- sky meadows R-4
- sky meadows C-2

Print Date: 12/14/2021



Spanish Fork City GIS
40 South Main St
Spanish Fork, UT 84660
GIS Phone Numbers:
(801) 804-4571 (Administrator)
(801) 804-4570 (Intern)
(801) 804-4572 (Intern)

Disclaimer: Spanish Fork City makes no warranty with respect to the accuracy, completeness, or usefulness of these maps. Spanish Fork City assumes no liability for direct, indirect, special, or consequential damages resulting from the use or misuse of these maps or any of the information contained herein. Portions may be copied for incidental uses, but may not be resold.

Exhibit D
City's Vested Laws

A digital copy of Spanish Fork City's Vested Laws has been provided to the Developer and a copy is retained by the Spanish Fork City Recorder.

Exhibit E
Prior Agreements

1. Fritzi Site Plan Phasing Agreement by and between Fritzi Realty, Inc., a California corporation, and Spanish Fork City, a Utah municipal corporation, dated December 7, 2010.
2. Addendum to Site Plan Phasing Agreement by and between Fritzi Realty, Inc., a California corporation, and Spanish Fork City, a Utah municipal corporation, dated April 2, 2013.
3. [Well] Agreement by and between Spanish Fork City, a Utah municipal corporation, and Fritzi Realty, a California corporation, dated March 25, 1991, recorded on March 26, 1991, as Entry No. 10437, Book 2773, Page 609, in the office of the Utah County Recorder.

Exhibit F
Townhome Elevations



SKYE MEADOWS TOWNHOMES
RENDERINGS
ADDRESS
SPANISH FORK, UT

REVISION DESCRIPTION

DATE



SKYE MEADOWS TOWNHOMES
RENDERINGS
ADDRESS
SPANISH FORK, UT

REVISION DESCRIPTION	DATE



SKYE MEADOWS TOWNHOMES
RENDERINGS
ADDRESS
SPANISH FORK, UT

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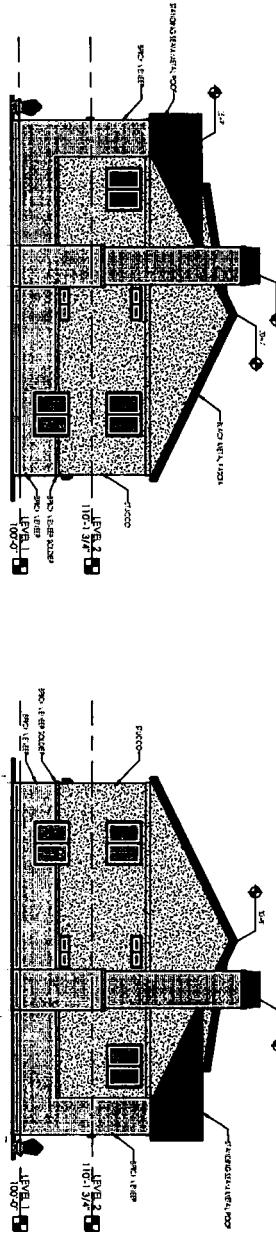
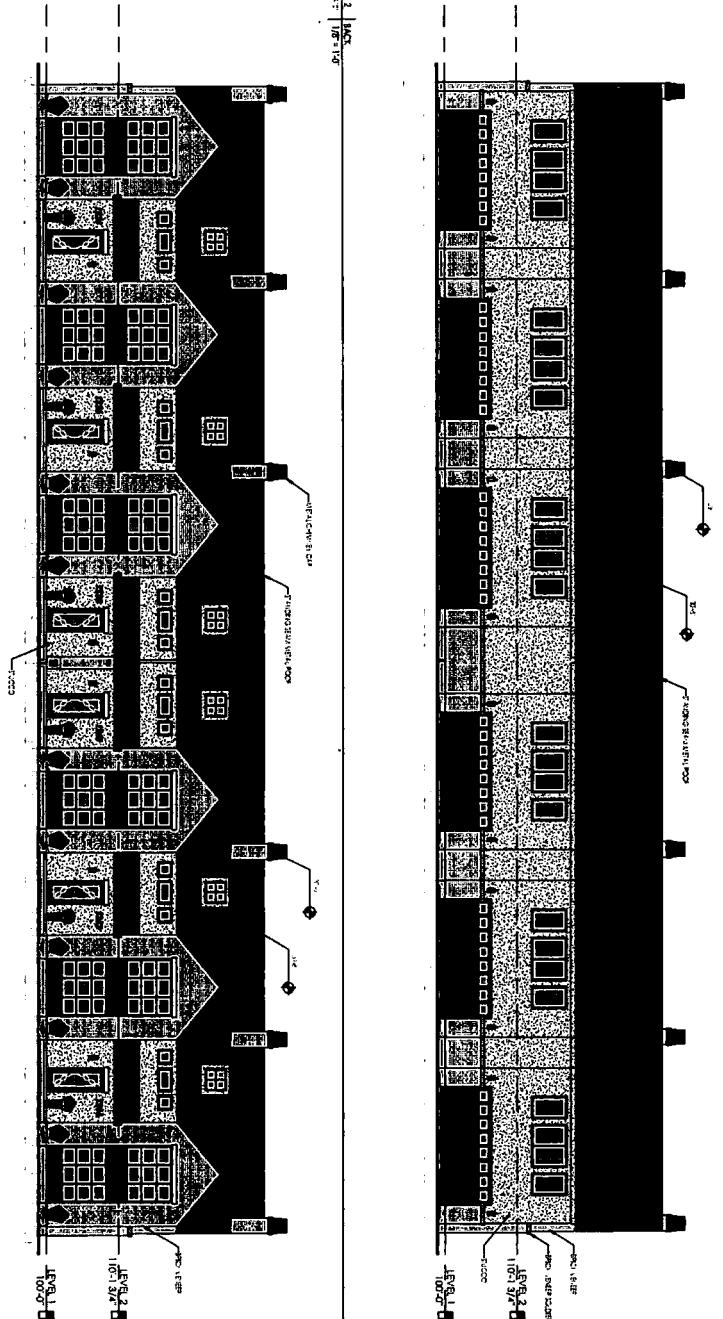
SKYE MEADOWS TOWNHOMES

RENDERINGS

ADDRESS
SPANISH FORK, UT

REVISION DESCRIPTION

DATE



SKYE MEADOWS TOWNHOMES
ELEVATIONS
ADDRESS
SPANISH FORK, UT