

RECORDING REQUESTED AND
WHEN RECORDED, RETURN TO:

Oquirrh Point Development LC
Attn: Joe Colosimo
333 East Coventry Way
Erda, UT 84074

NOTE: THIS DOCUMENT WAS ORIGINALLY EXECUTED BY MASTER DEVELOPER ON APRIL 7, 2022 AND BY ERDA CITY ON APRIL 11, 2022. EXHIBIT A-1 HAS BEEN REVISED SO THAT THE PROPERTY DESCRIBED COINCIDES WITH CURRENT TAX PARCEL NUMBERS. THE OVERALL AREA COVERED BY THIS FIRST AMENDMENT IS THE SAME AS THE ORIGINAL AGREEMENT.

**FIRST AMENDMENT TO
MASTER DEVELOPMENT AGREEMENT
FOR
OQUIRRH POINT
A MASTER PLANNED COMMUNITY**

THIS FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT FOR OQUIRRH POINT: A MASTER PLANNED COMMUNITY (this “**First Amendment**”) is made and entered into effective this 7th day of April, 2022, by and between Erda City, a Utah municipality (“**Erda City**”), and Oquirrh Point Development LLC, a Utah limited liability company (“**Master Developer**”) (collectively, the “**Parties**”).

RECITALS

A. Tooele County, a political subdivision of the State of Utah and Master Developer entered into that certain MASTER DEVELOPMENT AGREEMENT FOR OQUIRRH POINT: A MASTER PLANNED COMMUNITY dated November 4, 2021 (the “**Original Agreement**”).

#563738

B. On January 3, 2022, the Office of the Lieutenant Governor of the State of Utah issued a Certificate of Incorporation for Erda City and as a result all the real property covered by the Original Agreement was made a part of Erda City.

C. Utah Code Ann. §10-9a-509(1)(d) provides that “[a] subsequent incorporation of a municipality or a petition that proposes the incorporation of a municipality does not affect a land use application approved by a county in accordance with Section 17-27a-508.”

D. The parties now desire to amend the Original Agreement as set forth herein.

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

TERMS

1. **Incorporation of Recitals and Exhibits and Definitions.** The foregoing Recitals and the attached Exhibits are deemed to be correct and are hereby incorporated into this First Amendment. Any capitalized terms used in this First Amendment, but not defined herein shall have the meaning ascribed to such term in the Original Agreement, with the exception that all references to Tooele County, a political subdivision of the State of Utah in the original Agreement are hereby deleted and replaced with references to Erda City.

2. **Acknowledgement and Acceptance of the Original Agreement.** Erda City acknowledges that the Original Agreement is in full force and effect with respect to the Property and that the Original Agreement has not been modified, supplemented, or amended in any way, except as modified herein. Except as provide herein Erda City now assumed all rights and obligations of the County under the Original Agreement. Erda City and Master Developer each acknowledge and represent to the other that the Original Agreement is binding upon themselves and that the other is not in default of the Original Agreement as of the date that they entered into this First Amendment.

3. **Section 5.7.1.** Section 5.7.1 is hereby deleted and replaced with the following:

“Master Developer agrees to assume all County obligations related to the intersection of SR 36 and 33rd Parkway identified in MOU, Exhibit D of the Original Agreement. If it is necessary to acquire additional property from third parties to perform the obligations in the preceding sentence, then the Master Developer shall acquire and pay for that additional property and Erda City agrees to accept the acquired property as a public right of way.”

4. **Section 5.7.2.** Section 5.7.2 is hereby deleted and replaced with the following:

“Master Developer agrees to assume all County obligations related to the 33rd Parkway as set forth in the Exchange Agreement, Exhibit E of the Original Agreement. If it is necessary to acquire additional property from third parties to perform the obligations in the preceding sentence, then the Master Developer shall acquire and pay for that additional property and Erda City agrees to accept the acquired property as a public right of way.”

5. **Section 5.10.** Section 5.10 is hereby deleted and replaced with the following:

“**Donation of Real Property for Municipal Purposes.** Within thirty days of Erda City’s approval of Master Developer’s second final plat in the Project, Master

Developer shall dedicate to Erda City two parcels of real property with each parcel being at least three acres in size. The first parcel shall be for a new city hall and shall be located in Pod E with adequate access to 33rd parkway. The second parcel shall be located anywhere within Erda City and shall have at least 200 feet of frontage on a Erda City public road. It is anticipated that the second parcel will be used as a public works yard, however, the City will not be required to use the second parcel for such purpose. The acreage of the two parcels will both be calculated as the open space to the extent provided in the PC Zone.

6. **Section 16.4.1.** Is hereby deleted and replaced with the following:

Legal Remedies. If Erda City (a) challenges the enforceability of the Original Agreement or this First Amendment or uses Erda City funds to challenge the enforceability of the Original Agreement or this First Amendment, (b) accepts payment from any third party to challenge the enforceability of the Original Agreement or this First Amendment, or (c) outsources, assigns, or coordinates with any third party to challenge the enforceability of the Original Agreement or this First Amendment, then Master Developer may exercise all rights and seek any and all remedies available in law or equity and in equity, including, but not limited to, injunctive relief, specific performance and/or damages. All other disputes between Erda City and Master Developer concerning the Original Agreement or this First Amendment will be submitted to binding arbitration with not more than thirty days from notice for the arbitration to take place. The arbitrators award will be limited to injunctive relief and specific performance (including, a possible order for Master Developer to make payments called for in the MDA) and the parties waive the right to any and all monetary damages provided, however, the substantially prevailing party will be entitled to an award or legal fees and costs

7. **Exhibit A – description of the Property.** Exhibit A is hereby deleted and replaced with Exhibit A-1, which is attached hereto and made a part hereof.

8. **Exhibit B: Note.** The Note at the top of Exhibit B of the Original Agreement is hereby deleted and replaced with the following:

“Note: The portion of the Property directly south of Droubay Farms (parcel id:05000005) between Droubay Farms and 33rd Parkway will be used solely for (1) open space, (2) five-acre or bigger residential lots, (3) church uses, (4) civic uses, or (5) a combination of the proceeding that do not necessarily need to comply with the configuration shown below.”

9. **Exhibit C.** Exhibit C of the Original Agreement is hereby deleted and replaced with Exhibit C-1.

10. **Payments to Erda City.** Each of the payments set forth below will only become due if the applicable appeal period for the referenced event lapses without a successful appeal or a referendum petition being certified, and in such an event the payment will be due within one week

of the lapse of the later of the applicable appeal or referendum deadline. Master Developer agrees to not (a) seek an appeal or referendum on these referenced events, (b) accept payment from any third party to appeal or seek a referendum on these referenced events, or (c) outsource, assign, or coordinate with any third party to appeal or seek a referendum on these referenced events. If an appeal is filed and Erda City prevails in defeating the appeal, then the payment will be due within one week of the lapse of the final appeal rights. If the appeal challenging the event is successful, then the payment associated with that event will no longer be due or payable. If a referendum is initiated and the city recorder verifies that sufficient signatures have been obtained to place the referenced event on the ballot for the voters, then this First Amendment will be deemed withdrawn and will be of no further force nor effect. Erda City is a new City and has not yet adopted any impact fees. The payments below are intended to be payments in lieu of impact fees or assessments that could otherwise be charged against the Project. If Erda City adopts an impact fee the payment set forth below then Master Developer will be given a credit for (i) the dollar amount of all payments made, (ii) the then current value of the any property donated to Erda City in accordance with the MDA as hereby amended, and (iii) the out of pocket costs incurred by Master Developer in assuming the governmental obligations set forth in Sections 5.7.1 and 5.7.2. To the extent that Erda City adopts an impact fee Master Developer waives any right to seek a refund or to claim that the funds must be expended in six years all as provided Utah Code Ann. § 11-36a-101 et seq. Finally Master Developer acknowledges and agrees that the payments below do not violate Utah Code Ann. §11-36a-101 et seq. or any constitutional provision and waives any right to make such claim.

Event	Payment Amount
<u>Estoppel Certificate.</u> Erda City’s delivery of a signed estoppel certificate on or before April 7, 2022, materially in the form of <u>Exhibit F</u> attached hereto and made a part hereof.	\$100,000.00
<u>First Amendment.</u> Erda City approving this First Amendment by April 7, 2022, and delivering a signed copy of the same to Master Developer.	\$100,000.00
<u>Subdivision Approval.</u> Erda City approving the first final plat in the Project.	\$100,000.00
\$1,000,000.00. Master Developer desires that Public Improvement District(s) be approved for roads, sewer and water infrastructure in the Project. Master Developer had agreed in the Original Agreement to pay \$1,000,000 for the construction of a city hall. That obligation has been deleted and replaced with an obligation to pay \$1,000,000 to Erda City once the PID is approved, or if a PID is not approved, then upon the later to occur of the recording of the final plat for the 750 th residential unit in the Project or seven years from the date of this First Amendment.	\$1,000,000.00
<u>PID Approval.</u> If the Public Improvement District(s) for roads, sewer and water infrastructure in the Project are fully approved by Erda City by	\$200,000.00

August 1, 2022, then Master Developer will pay an additional \$200,000.00 to Erda City.	
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11. **Waiver of Claims.** Erda City and Master Developer hereby waive any and all claims regarding the enforceability of the estoppel, the Original Agreement or this First Amendment. Instead they each affirmatively acknowledge that the estoppel, the Original Agreement or this First Amendment are fully binding and enforceable. If the legality and/or enforceability of (i) the estoppel, (ii) the Original Agreement, or (iii) this First Amendment is challenged by appeal and such appeal is ultimately successful, then this First Amendment will automatically terminate and be of no further force nor effect, and the Original Agreement without regard to the First Amendment will be binding on Erda City and Master Developer. If a referendum is initiated and the city recorder verifies that sufficient signatures have been obtained to place the matter on the ballot for the votes, then this First Amendment will be deemed withdrawn and will be of no further force nor effect, and the Original Agreement without regard to the First Amendment will be binding on Erda City and Master Developer. Master Developer agrees to not (a) seek an appeal or referendum, (b) accept payment from any third party to appeal or seek a referendum, or (c) outsource, assign, or coordinate with any third party to appeal or seek a referendum.

Erda City will not (a) challenge the enforceability of the estoppel, the Original Agreement or this First Amendment or use Erda City funds to challenge the enforceability of the estoppel, the Original Agreement or this First Amendment, (b) accept payment from any third party to challenge the enforceability of the Original Agreement or this First Amendment, or (c) outsource, assign, or coordinate with any third party to challenge the enforceability of the Original Agreement or this First Amendment. Erda City agrees to actively oppose third parties challenging the enforceability of the estoppel, the Original Agreement or this First Amendment.

12. **Binding Nature of the Original Agreement.** Except as expressly amended herein, the Original Agreement remains unchanged and fully binding upon and enforceable against Erda City and Master Developer.

13. **Phasing.** If the Public Improvement District(s) for roads, sewer and water infrastructure in the Project are fully approved by Erda City then Master Developer will fully develop Pod E no later than recording of the final plat for the 100th residential unit in the Project

Signatures commence on the following page.

IN WITNESS WHEREOF, the undersigned has caused this First Amendment to be signed, sealed and delivered as of the day first written above.

ERDA CITY
A Utah Municipality

By: Jess Bird
Jess Bird, Erda City Chairman

ATTEST

By: Jennifer Poole
Name: Jennifer Poole
City Recorder

APPROVED AS TO FORM

By: John Brems
John Brems, Erda City Attorney

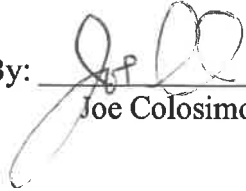
STATE OF UTAH)
):s
COUNTY OF TOOELE)

On this 21st day of November, 2022, Jess Bird personally appeared before me who being by me duly sworn, did say that he is the Erda City Council Chair and that Erda City is a political subdivision of Utah and that said instrument was signed in behalf of Erda City by authority of its governing body and said Jess Bird acknowledged to me that Erda City executed the same.



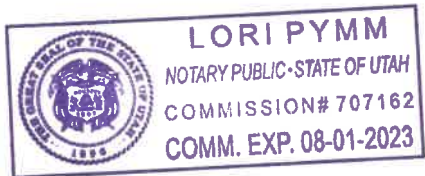
Jennifer Poole
NOTARY PUBLIC
Residing at: Tooele

MASTER DEVELOPER
Oquirrh Point Development LLC

By: 
Joe Colosimo, Manager

STATE OF UTAH)
 :S
COUNTY OF TOOELE)

On this 22 day of ~~April~~ ^{November}, 2022, Joe Colosimo personally appeared before me who being by me duly sworn, did say that he is the manager of Oquirrh Point Development LLC and that said instrument was signed in behalf of Oquirrh Point Development LLC by authority of its governing body and said Joe Colosimo acknowledged to me that Oquirrh Point Development LLC executed the same.





NOTARY PUBLIC
Residing at: 8123

Exhibit A -1

Legal Description of the Property

[OVERALL BOUNDARY DESCRIPTION OF ENTIRE PROPERTY.]

05-050-0-0010

BEG AT NE COR OF SE1/4 OF NW1/4 OF SEC 34, T2S, R4W, SLB&M, TH S 1287 FT, W 58 FT, N 147 FT, W 100 FT, S 147 FT, W 1030 FT, TH N 627 FT, TH W 132 FT, N 660 FT, TH E 1320 FT TO BEG ---SUB R/W OF INGRESS AND REGRESS OVER AND ACROSS SD PPTY AS DESC IN THAT CERTAIN WD AS REC IN BK 249 AT PG 44 AS ENTRY NO 005088 OF OFFICIAL RECDS ---EXCEPTING THEREFROM THAT PORTION THEREOF INCLUDED IN ROADS. 36.97 AC

05-050-0-0018

BEG 33 FT S & 361.5 FT W OF CENTER SEC 34, T2S, R4W, SLM, ON S LI CO RD, S 361.5 FT, E 361.5 FT, S 925.5 FT, W 1320 FT, N 1287 FT, E 958.5 FT TO BEG, CONT 36 AC 36.00 AC

05-050-0-0033

S 1/2 OF SW 1/4, SEC 34, T2S, R4W, SLB&M ---EX 1.00 AC IN RD ---LESS 2.96 AC TO UDOT #220557 THRU #220559 932/84-89 (STATE HWY 36 R/W) (BALANCE OF 5-50-15 AFTER PT TO UDOT FOR 2005 YEAR.) 76.04 AC

01-401-0-0002

A PARCEL OF LAND, SITUATE IN THE NORTH HALF OF SECTION 3, TOWNSHIP 3 SOUTH, RANGE 4 WEST SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SECTION LINE, SAID POINT BEING SOUTH 89°39'05" WEST 1028.72 FEET FROM THE NORTH QUARTER CORNER OF SECTION 3, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING: THENCE SOUTH 00°25'27" EAST 1,225.05 FEET TO THE NORTH LINE OF THE DEDICATED PUBLIC RIGHT-OF-WAY ON FILE IN THE TOOELE COUNTY RECORDER'S OFFICE IN ENTRY #278669; THENCE SOUTH 89°38'34" WEST 1,481.56 FEET ALONG SAID NORTH LINE TO THE EAST LINE OF STATE ROAD- 36; THENCE NORTH 00°25'00" WEST 554.68 FEET ALONG SAID EAST LINE TO THE SOUTH LINE OF D.R. DAVIS PUD AMENDED SUBDIVISION ON FILE IN THE TOOELE COUNTY RECORDERS OFFICE IN ENTRY #252513; THENCE NORTH 89°39'0.5" EAST 908.51 FEET ALONG SAID SOUTH LINE TO THE SOUTHEAST CORNER OF SAID SUBDIVISION; THENCE NORTH 00°25'43" WEST 670.59 FEET ALONG EAST LINE OF SAID SUBDIVISION TO THE SECTION LINE.; THENCE NORTH 89°39'06" EAST 573.03 FEET ALONG SAID SECTION LINE, TO THE POINT OF BEGINNING. OUT OF 3-7-37, 3-7-38, & 3-7-39 FOR 2023 YEAR. 27.68 ACRES. OUT OF 3-7-41 PER ENTRY # 538592 FOR 2023 YEAR. 27.68 AC

01-401-0-0001

AS SURVEYED BOUNDARY DESCRIPTION A PARCEL OF LAND, SITUATE IN THE NORTH HALF OF SECTION 3, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 3, TOWNSHIP 3 SOUTH, RANGE

4 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING: THENCE NORTH 89°39'05" EAST 2,641.25 FEET ALONG THE SECTION LINE TO THE EAST SECTION LINE OF SAID SECTION; THENCE SOUTH 00°25'49" EAST 1,224.50 FEET ALONG SAID SECTION LINE TO THE NORTH LINE OF THE DEDICATED PUBLIC RIGHT-OF-WAY ON FILE IN THE TOOELE COUNTY RECORDER'S OFFICE IN ENTRY #278669; THENCE SOUTH 89°38'34" WEST 3,670.10 FEET ALONG SAID NORTH LINE; THENCE NORTH 00°25'27" WEST 1,225.05 FEET TO THE QUARTER SECTION LINE; THENCE NORTH 89°39'05" EAST 1,028.72 FEET ALONG SAID SECTION LINE, TO THE POINT OF BEGINNING. OUT OF 3-7-20, 3-7-36, & 3-7-37 FOR 2023 YEARS. 103.19 ACRES. OUT OF 3-7-40 FOR 2023 YEAR. 103.19 AC

01-401-0-000R

THE SOUTH 100 FEET OF THE FOLLOWING DESCRIPTION: BEG AT A POINT WHICH LIES S 00°24'31" E, ALONG THE EAST LINE OF SECTION 3, T3S, R4W, SLB&M, A DISTANCE OF 1124.43 FT FROM THE NE CORNER OF SAID SEC 3, THENCE CONTINUING ALONG SAID SECTION LINE S 00°24'31" E, A DISTANCE OF 200.00 FEET; THENCE S 89°40'05" W, A DISTANCE OF 2641.31 FEET; THENCE S 89°40'10" W, A DISTANCE OF 2641.33 FT TO THE WEST LINE OF THE NW 1/4 OF SAID SEC 3; THENCE ALONG SAID W LINE N 00°24'08" W, A DISTANCE OF 200.00 FEET; THENCE N 89°40'10" E, A DISTANCE OF 2641.32 FEET; THENCE N 89°40'05" E, A DISTANCE OF 2641.30 FEET TO THE EAST LINE OF THE NE 1/4 OF SD SEC 3, AND THE POB. - ---- EXCEPTING THEREFROM THAT PORTION LYING WITHIN STATE HIGHWAY 36 ON THE WEST. ----- LESS AND EXCEPTING 03-007-0-0033 (0.324 AC) FIRST TIME OF RECORD 2016. 11.64

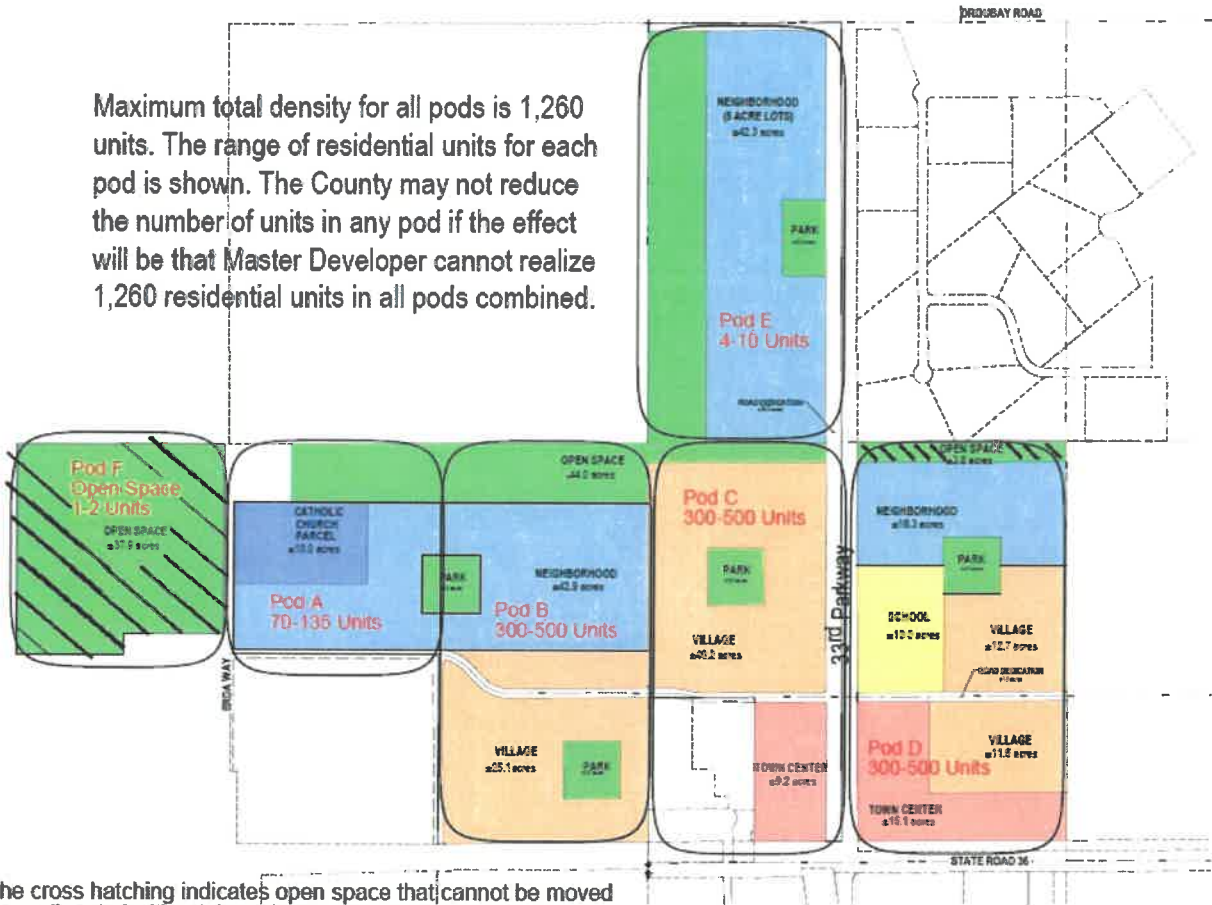
01-401-0-0007

S 1/2 OF NW 1/4 SEC 3, T3S, R4W, SLB&M ---EX 1 1/2 AC STATE RD. ---LESS 2.24 AC TO UDOT (219836 929/246). BALANCE DESC OF 3-7-5 FOR 2005 YEAR. 76.26 AC ---LESS 0.001 AC TO TOOELE COUNTY (#346111). BALANCE OF 3-7-13 AFTER 3-7-34 FOR 2011 YEAR. 76.259 AC

Exhibit C-1

The Pod Plan

Maximum total density for all pods is 1,260 units. The range of residential units for each pod is shown. The County may not reduce the number of units in any pod if the effect will be that Master Developer cannot realize 1,260 residential units in all pods combined.



The cross hatching indicates open space that cannot be moved or reallocated without the written consent of Erda City and the Master Developer. The cross hatched open space in Pod D will be at least 100 feet wide.

Exhibit F

ESTOPPEL CERTIFICATE

APRIL 7, 2022

Oquirrh Point Development, LLC

Attn: Joseph Colosimo

333 East Coventry Way

Erda, UT 84074

Re: Master Development Agreement for Oquirrh Point: A Master Planned Community dated November 4, 2021 (the "MDA") by and between Tooele County (the "County") and Oquirrh Point Development LLC ("Master Developer") recorded January 3, 2022 at Entry #: 563738

Dear Mr. Colosimo:

You have advised us that Oquirrh Point Development, LLC, a Utah limited liability company ("Seller") intends to sell to, and/or cause the conveyance to HHJC Associates, LLC, and its successors and assigns (collectively, "Purchaser"), some or all of the property described in Exhibit A of the MDA (the "Property"). In regard thereto, Seller as Master Developer has requested this Estoppel Certificate from the undersigned pursuant to Section 21 of the MDA. Unless defined herein, all capitalized terms used herein shall have their meaning as defined in the MDA.

After extensive negotiation, the MDA was signed by Tooele County and Seller (acting as Master Developer) effective November 4, 2021. Erda City was officially incorporated after the MDA was signed. The Property is now part of Erda City. Therefore, Erda City is providing this estoppel certificate.

Pursuant to Section 21 of the MDA, Erda City hereby certifies to Seller and Purchaser at Purchaser's assigns and lenders (collectively, the "Relying Parties") as follows as of the date hereof:

1. The MDA attached hereto is in full force and effect with respect to the Property and has not been modified, supplemented or amended in any way, except that Erda City has now assumed all rights and obligations of the County under the MDA.

2. The Property is now part of Erda City.
3. Pursuant to Utah Code Annotated §10-9a-509(1)(d) Erda City is bound by the terms of the MDA.
4. Erda City is the proper party to give this Estoppel Certificate.
5. Pursuant to Section 32 of the MDA, Erda City hereby appoints and designates the following to act as liaison under the MDA and to receive notice pursuant to Section 17 of the MDA:

John Brems
10717 Watery Way
South Jordan, UT 84009
john@bremslaw.com

6. Seller is not in default of any of its obligations under the MDA, nor is there any event or condition which, with the passage of time, the giving of notice, or both, would constitute a default by Seller under the MDA.
7. All entitlements and vested rights with respect to the Property remain in full force and effect as set forth in the MDA.
8. Erda City acknowledges that it has been advised of the proposed sale of some or all of the Property to Purchaser.
9. This Estoppel Certificate is delivered for the benefit of Seller, and Purchaser and its successors and assigns, any lenders providing funds to Purchaser to be secured by the Property, and any title company insuring Purchaser's acquisition of the Property. Erda City acknowledges that the aforementioned parties intend to rely upon the representations, certifications and warranties set forth herein, and that this Estoppel Certificate shall act as a waiver by Erda City of any claim it may have against the aforementioned parties to the extent such claim is based upon facts contrary to those asserted in this Estoppel Certificate.

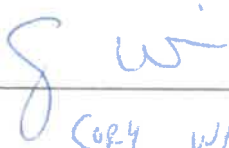
(Signatures commence on the next page.)

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be signed, sealed and delivered as of the day first written above.

ERDA CITY
A Utah Municipality

By: 
Jess Bird, Erda City Chairman

ATTEST

By: 
Name: CORY WARNICK
City Recorder

APPROVED AS TO FORM

By: 
John Brems, Erda City Attorney