

**RESOLUTION NO. R- -2016**

**A RESOLUTION OF EAGLE MOUNTAIN CITY, UTAH,  
AMENDING AND RESTATING THE SCENIC MOUNTAIN  
MASTER DEVELOPMENT AGREEMENT**

*PREAMBLE*

The City Council of Eagle Mountain City, Utah finds that it is in the public interest to approve the Amended and Restated Scenic Mountain Master Development Agreement as set forth more specifically in Exhibit A.

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

1. The City Council finds that all required notices and hearings have been completed as required by law to consider and approve the Amended and Restated Scenic Mountain Master Development Agreement as set forth in Exhibit A.
2. The Amended and Restated Scenic Mountain Master Development Agreement is hereby approved as set forth more specifically in Exhibit A.
3. This Resolution shall take effect upon its first publication or posting.

ADOPTED by the City Council of Eagle Mountain City, Utah, this 4th day of October, 2016.

EAGLE MOUNTAIN CITY, UTAH

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Chris Pengra, Mayor

ATTEST:

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Fionnuala B. Kofoed, MMC  
City Recorder

## CERTIFICATION

The above resolution was adopted by the City Council of Eagle Mountain City on the 4<sup>th</sup> day of October, 2016.

Those voting aye:

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

Those voting nay:

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

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Fionnuala B. Kofoed, MMC  
City Recorder

# EXHIBIT A

When Recorded Return To:

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**AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT  
FOR THE  
SCENIC MOUNTAIN DEVELOPMENT**

This *Amended and Restated Master Development Agreement for the Scenic Mountain Development* (this “Master Development Agreement” or “Agreement”) is entered into between Eagle Mountain City, a municipal corporation of the state of Utah (the “City”), Scenic Mountain Partners, LLC, a Utah limited liability company (“Scenic Mountain”), and Burntol LC, a Utah limited liability company (“Burntol”) (collectively, Scenic Mountain and Burntol are referred to as “Developer”). Together, the City and Developer are the “Parties” to this Agreement, and individually each is a “Party” hereto.

This Agreement is made with reference to the following facts.

A. Developer has submitted to the City an application for a new residential development to be known as Scenic Mountain (the “Project”). The Project consists of approximately 34 acres of land (the “Property”) located south of Highway 73. The parcel numbers of land comprising the Property are as follows:

- (i) Utah County Parcel No. 58:033:0309
- (ii) Utah County Parcel No. 66:307:0102
- (iii) Utah County Parcel No. 58:033:0269
- (iv) Utah County Parcel No. 58:033:0283
- (v) Utah County Parcel No. 58:033:0285
- (vi) Utah County Parcel No. 58:033:0154

A legal description of the Property is attached hereto as Exhibit “A.”

B. The Parties have authority to enter into this Agreement regulating the zoning and use of the Property pursuant to Utah Code Ann. § 10-9a-102(2) and Section 16.10.060 of the City Code of Eagle Mountain City (the “Code”).

C. As set forth below, the Parties intend that the Project will be zoned for residential and commercial use in accordance with Chapter 17.25 of the Code, and except as otherwise provided in this Agreement will be improved in compliance with procedures and standards in the Code and consistent with the terms of this Master Development Agreement.

D. A plan which depicts the proposed zoning for the areas within the Project, and land uses which will be allowed by the City (“Land Use Map”) is attached as Exhibit “B”.

E. Burntol is the owner of Utah County Parcel No. 58:033:0154 and is the successor in interest to Tracy K. Gibbs (“Gibbs”).

F. On or about September 10, 2009, the City, Scenic Mountain, and Gibbs entered into a *Master Development Agreement for the Scenic Mountain Development* (the “Original Agreement”) which encumbered certain land in Utah County, including the Property.

G. The City, Scenic Mountain, and Burntol (as successor in interest to Gibbs) now wish to amend and restate in its entirety the Original Agreement with the effect that this Agreement shall completely supersede and replace all of the terms, conditions, and provisions set forth in the Original Agreement.

H. The Parties wish to define the rights and responsibilities of the Parties with respect to the development of the land and funding of improvements in the Project which is approved by the City in this Agreement. This Agreement is sometimes referred to herein as the “Master Development Agreement.”

NOW, THEREFORE, in consideration of the mutual covenants and promises of the Parties contained herein, and for other valuable consideration received, the Parties agree as follows:

1. Governing Standards. The Parties agree that the recitals stated above are incorporated into and form a part of this Agreement. Persons and entities hereafter developing the Property or any portions of the Project thereon shall accomplish such development in accordance with the provisions of the Code, ordinances, and regulations (collectively “City’s Laws”) in effect as of the date of this Agreement, and the provisions of this Agreement. This Agreement contains certain requirements and conditions for development of the Property and the Project in addition to those contained in the City’s Laws. Development of the Property and the Project shall be governed by the procedures, standards and requirements of the City’s Laws in effect as of the date of this Agreement, the approved final plat or plats for the Project, and the Master Development Plan for the Project approved by the City. In the event of a conflict between the terms of the City’s Laws then in effect and the terms of this Agreement, the terms of this Agreement shall control, except as provided in Section 2.2(B) of this Agreement.

2. Zoning, Density, and Land Use Standards. The Project will be zoned for residential and commercial uses in accordance with Chapter 17.25 of the Code. The Land Use Map shall be the official zoning map for the Property.

2.1 Planning Areas and Densities. The total Project densities are as follows:

|                          |  |
|--------------------------|--|
| Total Land Area:         | 34.82 acres  |
| Total Buildable Acres:   | 28.50 acres  |
| Total Residential Units: | 289 units (169 Tier III single family and multi-family units;<br>120 Tier IV multi-family units) |
| Improved Open Space:     | Not less than 6.6 acres  |

The overall density of the Project may not exceed an average of 10.15 residential units (each a “Unit”) per buildable acre of the Project which equates to a total of 289 estimated Units. The Property is divided into two separate planning areas (each a “Planning Area” and collectively the “Planning Areas”). The 289 total Units are, pursuant to this Agreement, allocated between the two Planning Areas. The Planning Areas are depicted on the Land Use Map attached hereto as Exhibit “B.”

- A. The first Planning Area will be a Tier III cluster home and townhome development, subject to the provisions of this Agreement. This area will consist of approximately 27.63 acres, as shown on Exhibit “B”. Upon approval and execution of this Agreement, Developer shall have the right to build up to 169 residential units on the Tier III Parcel, or a gross density of 6.12 units per acre. A preliminary concept plan for the Tier III Parcel is attached hereto as Exhibit “C.”
  
- B. The second Planning Area will be a Flex Use or Tier IV development, subject to the provisions of this Agreement, and will consist of commercial office or retail development, or residential units which are typical to Tier IV subdivisions (“Tier IV Parcel”). The Flex Use Parcel will consist of approximately 7.19 acres, as shown on Exhibit “B”. Upon approval and execution of this Agreement, Developer shall have the right to build commercial office or retail uses or up to 120 residential Units on the Flex Use Parcel.

Bonus Density Requirements. At the time that any phase of a Planning Area is developed such phase must contain improvements which comply with the Residential Bonus Density Entitlement Requirements as provided in Chapter 17.30 of the current Code (hereafter the “Bonus Density Requirements”) applicable to such phase of the Planning Area. Subject to the terms of this Agreement, the Developer shall comply with all other applicable requirements for each phase subdivision within the Project as contained in the applicable Code provisions in effect as of the date of this Agreement. The City will not approve a preliminary subdivision plat or site plan for any phase of a Planning Area until Developer has demonstrated how the applicable Bonus Density Requirement for that particular phase of a Planning Area will be accomplished. Nevertheless, the final plat for each phase of a Planning Area will be approved if Developer complies with all the requirements of this Agreement and the City Code. Furthermore, nothing herein shall be deemed as requiring the Developer to build the number of Units approved for a Planning Area. The right to develop Units is not transferable between Planning Areas.

2.2 Vested Rights. To the maximum extent permissible under the laws of the State of Utah and the United States, the Parties intend that this Agreement grants to Developer the right to develop the Property in fulfillment of this Agreement without modification or interference by the City except as specifically provided herein.

A. The Parties intend that the rights granted to Developer under this Agreement are contractual and, in addition, constitute “vested rights,” as that term is construed in Utah’s common law and pursuant to Utah Code Ann. § 10-9a-509 (2016) as to the provisions of this Agreement, including the approved density and number of dwelling units set forth above.

B. Notwithstanding anything to the contrary herein, any City ordinance, amendment to the City’s laws, or other development standard enacted, implemented, regulated and/or enforced by the City on or after the date of this Agreement which has the effect of prohibiting and/or materially and unreasonably restricting Developer’s rights to develop the vested densities set forth in this Agreement and the Master Development Plan for the Property, including but not limited to any ordinance, amendment, or other development standard which increases or otherwise modifies minimum lot size requirements, setbacks, frontage requirements, or other similar standards which relate to or have an effect on densities, shall be inapplicable to the Property (or modified to the extent necessary to permit Developer to develop the vested densities set forth in this Agreement and the Master Development Plan for the Property) and shall not affect or regulate the development and use of the Property, unless the City Council, on the record, finds that a compelling, countervailing public interest would be jeopardized by applying the provisions of this Agreement.

2.3 Right to Develop. The City’s approval of the Master Development Plan and the execution of this Agreement grant the Developer the right to develop the Property and construct the Project in accordance with the uses, maximum densities, improvements and general configuration of development for the Project set forth in this Agreement and the Master Development Plan for the Property. In the event of any conflict between the Code and the express terms of this Agreement or between the Code and the Master Development Plan for the Property, the express terms of this Agreement and the Master Development Plan shall control, except as provided in Section 2.2(B) of this Agreement.

2.4 UDOT Property Acquisition. Exhibit “B,” the Land Use Map, designates 7.15 acres as “Possible UDOT Acquisition For SR 73 Expansion.” In the event that UDOT or any other public entity condemns or otherwise acquires this property, reducing the size of the Project, any such reduction will reduce the total density or maximum residential units by sixty-two (62), which includes a reduction of 29 units in the Flex Use Parcel and 33 units in the Tier III Parcel, as shown on Exhibit “B.”

2.5 Approvals. The City's approval of the Master Development Plan and the execution of this Agreement grant to the Developer the right to develop the Property and construct the Project in accordance with the uses, maximum densities, improvements and general configuration of development for the Project set forth in this Agreement and the Master Development Plan for the Property. In the event of any conflict between the Code and the express terms of this Agreement or between the Code and the Master Development Plan for the Property, the express terms of this Agreement and the Master Development Plan shall control, except as provided in Section 2.2(B) of this Agreement.

2.6 Proposed Land Uses. The proposed land uses set forth on the Park and Open Space Plan (The Concept Plan) are conceptual and do not dictate the final type or layout of buildings within the Project.

2.7 Developer Flexibility. Notwithstanding any other provision of this Agreement, the Parties understand that the layout of the Project may vary slightly from the concept currently proposed by the Developer. Subject to the zoning, density, and other requirements of this Agreement, the layout and configuration of the Project as set forth in the Land Use Map, the Open Space Plan, and the other exhibits attached to this Agreement is subject to further minor revisions.

2.8 Development Requirements. Developer shall construct improvements to meet the Bonus Density Requirements within each Planning Area, and shall comply with the Park and Improved Open Space Requirements found in Chapter 16.35.105, and other development requirements found in the City Code. In addition, Developer shall be required to meet all requirements of the International Building Code and International Fire Code for all buildings in the Project.

2.9 Future Land Use Applications. The approval processes for development applications for the Project shall be as provided in this Agreement, the Master Development Plan for the Property, and the Code. Development applications shall be approved by the City if they comply with the Applicable Codes in effect on the date of this Agreement, except as provided in Section 2.2(B) of this Agreement. Nothing in this Section 2.9 shall be construed to require Developer to obtain further City zoning approval with respect to the use or density provided herein. The City and Developer shall cooperate reasonably in promptly and fairly processing applications.

2.10 Phasing. The City acknowledges that Developer, or future assignees, may develop the Project in phases. The Parties acknowledge that the most efficient and economic development of the Project depends on numerous factors, such as market conditions and demand, infrastructure planning, competition, the public interest and other similar factors. Subject to the terms and conditions of this Agreement, the timing, sequencing, location and phasing of the Project, including but not limited to construction of roads, water and storm drain systems, and other public infrastructure improvements,

including project improvements and off-site improvements, shall be as determined by Developer in its reasonable business judgment.

2.11 Approved Setbacks for Cluster/Patio Homes. Any Cluster/Patio type units approved for the Tier III Parcel as shown on the Land Use Map attached hereto as Exhibit “B” will be allowed to have a minimum front setback of 15 feet from the right of way with a minimum 22-foot garage setback, a minimum side setback of 4 feet with a minimum separation of 10 feet between Units, and a minimum rear yard setback of 10 feet. Corner lots will have a minimum side yard setback from the street of 10 feet.

2.12 Intentionally Deleted.

3. Improved Open Space and Trails. The Project is currently contemplated to contain 10.93 acres of total open space with 6.63 total acres of Improved Open Space (3.88 acres in Tier III and 2.75 acres in Tier IV). All Improved Open Space must meet the requirements set forth in Section 16.35.105 of the Code, including, but not limited to, containing 10 points per 0.1 acre or a total of 663 points for the 6.63 acres of Improved Open Space according to Table 16.35.130(c). Developer has prepared a conceptual plan for the Improved Open Space within the Tier III Parcel (“Open Space Plan”) which is attached hereto as Exhibit “C.” As set forth in the Open Space Plan, the Improved Open Space features within the Project will include the following.

A. Community Recreation Center. Each Planning Area within the Project will have a Community Recreation Center. It is the intent of Developer and City that the Community Recreation Centers will meet the clubhouse and swimming pool requirement for all Tier III and Tier IV Planning Areas within the Project. In order to meet this requirement, each Community Recreation Center must contain at least 1,200 square feet of improved space. The swimming pool must be the greater of 1,000 square feet (including water features) or sufficient size to accommodate 35% of estimated residents of the Planning Area in which the pool is located. The total equivalent value of the Community Recreation Center in the Tier III Parcel must be at least \$169,000.00 and the total equivalent value of the Community Recreation Center in the Tier IV Parcel must be at least \$120,000.00. The Community Recreation Centers will be the property of the HOA and all costs and maintenance will be the responsibility of the HOA. These facilities shall be available for use by all future residents of the Project, subject to the properly promulgated rules and regulations of the HOA uniformly applied. The construction of the Community Recreation Centers shall commence no later than upon the sale of ten percent (10%) of the number of units within the Planning Area in which the Community Recreation Center is located. The Community Recreation Centers will be bonded for with the other subdivision improvements. The construction of a pool shall commence no later than upon the sale of ten percent (10%) of the units in the Planning Area in which the pool is located. The

pool must be completed upon the sale of fifty percent (50%) of the units in the Planning Area in which the pool is located. The pool must be bonded for with the subdivision improvements.

- B. Parks. The Project will include several parks. A depiction of each park showing the current anticipated configuration for parks and amenities is indicated on the Open Space Plan attached hereto as Exhibit "C." Nevertheless, the Parties understand and agree that the final configuration and layout of the parks may vary from the depiction on Exhibit "C." Parks shall be fully improved prior to recording the first plat in a project, or a separate cash deposit or cash escrow must be put in place with the city with each plat to cover 150 percent of the pro rata anticipated cost of park improvements to meet the required Improved Open Space and points requirements for each plat..
- C. Improved Open Space Areas. Other Improved Open Space within the Project shall include grassy areas and other amenities typical to a neighborhood park. The Improved Open Space areas shall be the property of the HOA and all costs and maintenance shall be the responsibility of the HOA upon completion of the same.

3.1 Neighborhood Trails. As a component of the Development of the Project and the Improved Open Space, a neighborhood trail system shall be installed in the Project. The current anticipated location for the trail system is indicated on the Open Space Plan. Nevertheless, the Parties understand and agree that the final configuration and layout of the trail system may vary from the depiction on the Open Space Plan attached as Exhibit "C." The neighborhood trails shall be constructed with a solid concrete or asphalt surface or other surface reasonably acceptable to the City. Each section of the neighborhood trail shall be improved along with the infrastructure for any adjacent phase of the Planning Areas, or Developer shall place into escrow with the City reasonably sufficient funds to improve that section prior to recording a subdivision plat for any adjacent phase of the Planning Areas. Unless, and until dedicated to, and accepted by, Eagle Mountain City, the neighborhood trail shall be the property of the HOA and all costs and maintenance shall be the responsibility of the HOA upon completion of the same.

3.2 Regional Trail. An 8-foot wide asphalt trail shall be constructed within or near the gas line or power line corridor on the eastern edge of the project, as depicted on the Open Space Plan (A 10-foot wide trail shall be constructed where indicated on the plan to provide access for Questar to their facility). This trail shall be improved according to EMMC 16.35.105-A10, which requires full improvement prior to recording the first plat in the project, or a separate cash deposit or cash escrow to be put in place within the City with each plat to cover 150 percent of the pro rata anticipated cost of the trail improvements.

3.3 Exit Sign Open Space. The Project contains an open space area for a sign indicating the City boundaries for Eagle Mountain City and thanking people for visiting Eagle Mountain City (the “Exit Sign Open Space”). Developer shall work in conjunction with the City to design a sign acceptable to the City. The exit sign open space shall be dedicated to the City and all maintenance costs will be the responsibility of the City, unless a separate maintenance agreement is approved by the Developer or Home Owners’ Association and the City at a later date.

4. Slopes. A depiction of the current anticipated slope plan for the Project is attached as Exhibit “D.” Nevertheless, the Parties understand and agree that the final configuration and layout of the slope plan may vary from the depiction shown on Exhibit “D.”

5. Home Owners’ Association. Prior to the approval of any residential site plan for a residence to be constructed within the Project, a Home Owner’s Association (the “HOA”) shall be formed and organized with the State of Utah Division of Corporations and Commercial Code and covenants, conditions, and restrictions applicable to the Project (“CC&Rs”) shall be recorded against the Property. Among other things, the CC&Rs shall give the HOA authority to impose and enforce architectural controls consistent with the City’s Laws and this Agreement. A copy of current anticipated elevations for the townhome component of the Project is attached hereto as Exhibit “E.” Nevertheless, the Parties understand and agree that the final configuration of the townhome elevations may vary from the depiction shown on Exhibit “E.”

6. Buffer Area and Transitioning Requirements. Developer agrees to comply with all transitioning requirements set forth in the Code. The City and Developer agree that the current configuration of the Project does comply with the transitioning requirements.

7. Dedication of Facilities. Except as otherwise provided in this Agreement, Developer agrees to dedicate to the City, free and clear of all financial encumbrances, all required utilities, streets, utility facilities, and other public improvements for the use of utilities, roads, and other public ways. These facilities shall be dedicated in conjunction with the approvals of the respective subdivision plats within the Project.

8. Street Names and Roads. All streets within the Project shall comply with the Code with respect to street width, cross-slope, curb and gutter, sidewalks, planter strip width, street trees, number of lanes, lane widths, signed speed, parking and other requirements set forth in the Code. Notwithstanding the standards in the Code, the maximum grade of any road within the Project may not exceed 10%. All street names must be approved by the City prior to their dedication and public use.

9. Access Points. The Project contains two accesses from Cory Wride Memorial Highway (Highway 73) and one access from Mt. Airey Drive via Inverness Road. The

location of the access points is indicated on the Land Use Map Exhibit “B.” Developer shall be required to construct acceleration and deceleration lanes along Highway 73 to allow for right-in and right-out access to Highway 73. The Highway 73 access will not contain a left-out, and Developer shall post a no left turn sign to clearly indicate that left turns are not allowed. Developer shall be required to coordinate with City and the Utah Department of Transportation (UDOT) with respect to all dedicated improvements along Highway 73. The Highway 73 access shall be completed prior to the issuance of the fifteenth (15<sup>th</sup>) residential building permit within the Project.

10. Road Connection to Saratoga Springs. As noted on Exhibit “B,” the Land Use Map, a temporary park area shall be improved at the eastern end of Inverness Lane that may be improved in the future as a road connection to Saratoga Springs. This park area shall include minimal amenities and improvements. The potential road connection shall be indicated on the recorded subdivision plat for that area. Any lots adjoining this open space shall comply with corner lot setbacks.

#### 11. Utility Services and Infrastructure Improvements.

11.1 On-Site Improvements. Developer shall be responsible for all on-site utilities for the Project, including, sewer, electric, gas, water, and storm drain. Due to the location of the Project, it is not anticipated that Developer will be required to upsize utilities or other infrastructure in excess of the capacity necessary for the Project in order to service other projects. A sewer lift station will be required for the northeast portion of the project. This sewer lift station will be required to provide a force main to a point of sufficient elevation to allow for a gravity feed into the existing sewer main on Ranches Parkway. Prior to issuance of any subdivision plats for the Project, Developer shall submit to and receive approval from the City of an On-Site Utilities Concept Plan for the Project. In the event Developer is required to construct utilities or other infrastructure in excess of the capacity necessary to provide services to the Project, Developer may be entitled to reimbursement for the cost of the excess capacity. The City shall revise and amend the City Impact Fee Ordinance and payment requirements to collect the amounts required to reimburse Developer for the cost of excess capacity.

11.2 Off-Site Improvements. The City anticipates that the following off-site improvements will have to be constructed to service the Project:

- a. Sewer. City believes that enough capacity currently exists in the sewer line in Inverness Road to service the Project. The capacity shall be verified prior to any connection to the sewer line. Additional sewer may be required to accommodate a flow associated with a lift station which will be required for the northeast portion of the project.

11.3 Funding Improvements. All on-site and off-site improvements, as

described above, which are to be transferred to Eagle Mountain City under the terms of this Agreement must be reviewed and approved by Eagle City and shall be constructed in accordance with the review comments and concept approved by Eagle Mountain City. No plat for any phase of the Project may be recorded until improvements required for that particular plat are constructed by Developer, or Developer has placed into escrow adequate funds (whether through cash escrow, letters of credit, or other means reasonably satisfactory to the City Attorney) to construct the Improvements. Developer will be required to construct only that portion of the Improvements for the Project necessary under the Code to service that portion of the Project to be developed as represented by the subdivision plat or site plan under consideration. Funds will be withdrawn from the escrow to construct Improvements after design and review and approval by Eagle Mountain City of each facility for which funds are provided. Developer and City do not anticipate that Developer will be required to construct any system improvements or upsize any public infrastructure improvements as part of the Project. However, in the event Developer constructs utilities or other infrastructure in excess of the capacity necessary to provide services to the Property, Eagle Mountain City shall enter into a reimbursement agreement with Developer for cost of excess capacity. Eagle Mountain City may revise and amend the Capital Facilities Plan and Impact Fee Ordinance and payment requirements to collect the amounts required to reimburse Developer for the cost of excess capacity.

12. Proportionality of Public Improvements. Subject to any other requirements in this Agreement, the parties agree that for the purpose of avoiding unlawful exactions, all improvements that are constructed by Developer and are intended to be dedicated to, and accepted by, the City in connection with development of the Project shall be governed by the following standards regarding reimbursement.

12.1 Storm Drain and Sewer Improvements. All on-site or off-site storm drain and sewer improvements that are required for the Project and are not “system improvements” will be paid for by Developer without any rights of reimbursement. Storm drain and sewer improvements which constitute system improvements will be reimbursed as set forth below.

12.2 Roadways. All roadways within the Project shall be paid for by Developer without any rights of reimbursement. In the event other improvements are required that exceed the reasonable impacts of the Development, or if Eagle Mountain City requires Developer to further construct, expand or enhance any other off-site roadways or related improvement to expand the service capacity for other existing or future project or developments, the City agrees to reimburse Developer for all costs associated with the same; provided, that to the extent it is possible to offset the impact fees otherwise payable by Developer, the reimbursement provided for in this Section 12.2 may take the form of reimbursement credits. If such credits are not available, Developer may be reimbursed through the City’s subsequent collection of impact fees.

12.3 Oversizing. To the extent Eagle Mountain City requires Developer construct any oversized improvements to meet demands for the Property (such as culinary waterlines or sewer lines with capacity in excess of what is required to provide service to the Project), a proportionality assessment shall be performed by the City's engineer, with approval from the Developer's engineer (which approval shall not be unreasonably withheld), using applicable engineering standards, to determine the proportion of construction costs to be paid by Developer and the proportion of costs to be paid by the City. The City shall be responsible to reimburse the incremental costs of the oversized improvements (e.g., all amounts in excess of what the Developer would pay to construct improvements with capacity sufficient only for the Project).

12.4 System Improvements. The Parties do not anticipate that the Project will require Developer to construct any System Improvements. However, to the extent the Developer is required to construct any system improvements (including, without limitation, system improvements that are identified in an impact fee facilities plan), Developer shall only be required to construct such system improvements, if any, which are reasonably necessary to provide service for the Project. The Parties shall enter into reimbursement agreement to reimburse Developer for the costs incurred by Developer to construct the City's portion of the system improvements.

12.5 Compliance with Law. The provisions of this Section 12 shall be interpreted and administered in compliance with the standards for lawful exactions as set forth in Utah Code Ann. §10-9a-508 and applicable Utah case law. Nothing in this Agreement shall prohibit the parties from entering into separate reimbursement agreements for each phase, and such reimbursement agreements shall comply with the standards set forth in this Section 12 and applicable Utah law.

13. Water Rights. Developer shall comply with the Code, as amended, related to providing water rights to the City for the Project, as is required for all projects within Eagle Mountain City.

14. Sprinkler Systems for Multifamily Units. Any multi-level condominium units in the Project will require indoor fire suppression sprinkler systems. Prior to approval of any building permit for any of these units, Developer shall submit to the City a plan prepared by a qualified third-party contractor or consultant for the installation of the sprinkler system. Other housing units will be reviewed at time of submittal, and if required by the International Fire Code, may need to install an indoor fire suppression sprinkler system as well.

15. Withholding Approval Upon Default. The Parties agree that the City shall not approve or record any subdivision in the Master Development area if Developer is in default on any obligation to the City which requires the construction of roads and completion of public improvements or other utility infrastructure to serve the Project. In addition, the City may withhold approval of building permits to construct any building or

structure within the Master Development area if Developer is not current with all obligations to the City at the time of application for the development approval and/or has not completed all required improvements within the time to complete required improvements approved by the City Council.

16. Reserved Powers. The parties agree that the City reserves certain legislative powers to amend its Code to apply standards for development and construction generally applicable throughout the City. However, it is the intent of the parties to vest the Developer with the specific land uses and maximum densities for the Property specifically identified in this Agreement. Subject to the terms and conditions of this Agreement, Developer shall be required to comply with the Code and all other generally applicable standards, conditions and requirements enacted by the City to protect the safety, health and welfare of the current and future inhabitants of the City.

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

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

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

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

LIMITATION, LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES.

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

22. Integration. This Agreement constitutes the entire understanding and agreement between the Parties, and supersedes any previous agreement, representation, or understanding between the Parties relating to the subject matter hereof; provided however, that the Code shall govern the procedures and standards for approval of each subdivision and public improvement.

23. Severable. The provisions of this Agreement are severable, and should any provision hereof be deemed unenforceable or invalid, such unenforceability or invalidity provision shall not affect the remaining provisions of this Agreement.

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

25. No Modification. This Agreement may not be modified except by an instrument in writing signed by the Parties hereto.

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

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

28. Agreement to Run With the Land. This Agreement shall be recorded against the Property and shall be deemed to run with the land and shall be binding on Developer and all successors and assigns of any of the foregoing.

[This space left intentionally blank]

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2009.

**SCENIC MOUNTAIN PARTNERS, LLC**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2009.

Burntol LC.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2009

ATTEST:

**EAGLE MOUNTAIN CITY**

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

# **EXHIBIT A**

## Legal Descriptions

# **EXHIBIT B**

## Land Use Map

# **EXHIBIT C**

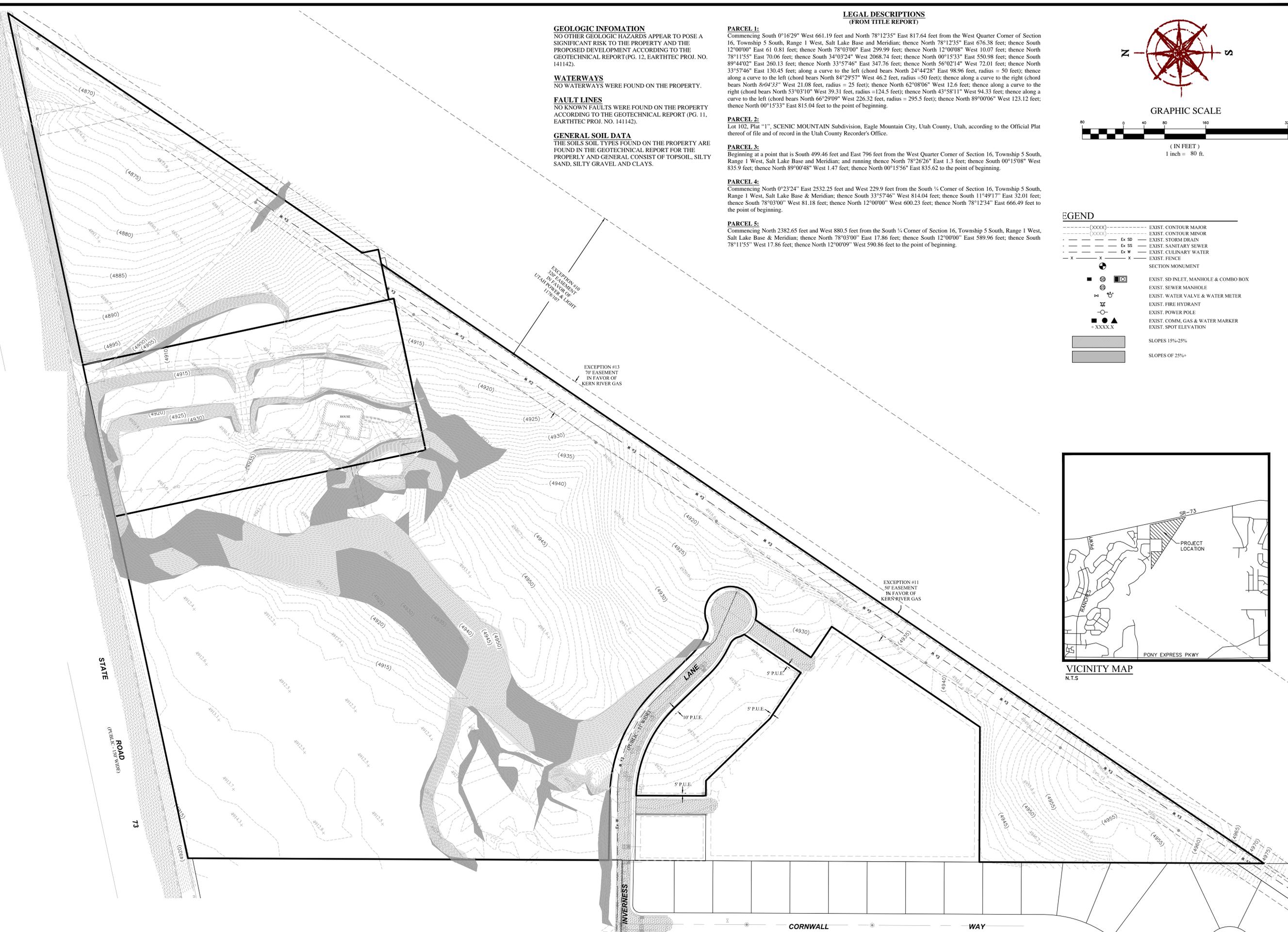
## **Park & Open Space Plan (Conceptual Site Plan)**

# EXHIBIT D

## Slope Plan

# **EXHIBIT E**

## Elevations



**GEOLOGIC INFORMATION**  
 NO OTHER GEOLOGIC HAZARDS APPEAR TO POSE A SIGNIFICANT RISK TO THE PROPERTY AND THE PROPOSED DEVELOPMENT ACCORDING TO THE GEOTECHNICAL REPORT (PG. 12, EARTHTEC PROJ. NO. 141142).

**WATERWAYS**  
 NO WATERWAYS WERE FOUND ON THE PROPERTY.

**FAULT LINES**  
 NO KNOWN FAULTS WERE FOUND ON THE PROPERTY ACCORDING TO THE GEOTECHNICAL REPORT (PG. 11, EARTHTEC PROJ. NO. 141142).

**GENERAL SOIL DATA**  
 THE SOILS SOIL TYPES FOUND ON THE PROPERTY ARE FOUND IN THE GEOTECHNICAL REPORT FOR THE PROPERTY AND GENERAL CONSIST OF TOPSOIL, SILTY SAND, SILTY GRAVEL AND CLAYS.

**LEGAL DESCRIPTIONS**  
 (FROM TITLE REPORT)

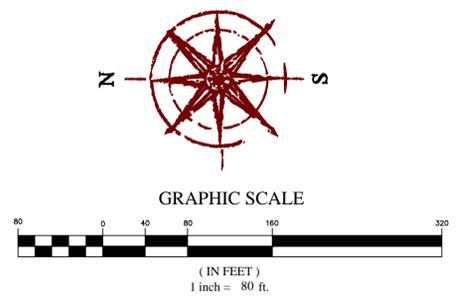
**PARCEL 1:**  
 Commencing South 0°16'29" West 661.19 feet and North 78°12'35" East 817.64 feet from the West Quarter Corner of Section 16, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 78°12'35" East 676.38 feet; thence South 12°00'00" East 61.081 feet; thence North 78°03'00" East 299.99 feet; thence North 12°00'08" West 10.07 feet; thence North 78°11'55" East 70.06 feet; thence South 34°03'24" West 2068.74 feet; thence North 00°15'33" East 550.98 feet; thence South 89°44'02" East 260.13 feet; thence North 33°57'46" East 347.76 feet; thence North 56°02'14" West 72.01 feet; thence North 33°57'46" East 130.45 feet; along a curve to the left (chord bears North 24°44'28" East 98.96 feet, radius = 50 feet); thence along a curve to the left (chord bears North 84°29'57" West 46.2 feet, radius = 50 feet); thence along a curve to the right (chord bears North 8°04'33" West 21.08 feet, radius = 25 feet); thence North 62°08'06" West 12.6 feet; thence along a curve to the right (chord bears North 53°03'10" West 39.31 feet, radius = 124.5 feet); thence North 43°58'11" West 94.33 feet; thence along a curve to the left (chord bears North 66°29'09" West 226.32 feet, radius = 295.5 feet); thence North 89°00'06" West 123.12 feet; thence North 00°15'33" East 815.04 feet to the point of beginning.

**PARCEL 2:**  
 Lot 102, Plat "1", SCENIC MOUNTAIN Subdivision, Eagle Mountain City, Utah County, Utah, according to the Official Plat thereof of file and of record in the Utah County Recorder's Office.

**PARCEL 3:**  
 Beginning at a point that is South 499.46 feet and East 796 feet from the West Quarter Corner of Section 16, Township 5 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 78°26'26" East 1.3 feet; thence South 00°15'08" West 835.9 feet; thence North 89°00'48" West 1.47 feet; thence North 00°15'56" East 835.62 to the point of beginning.

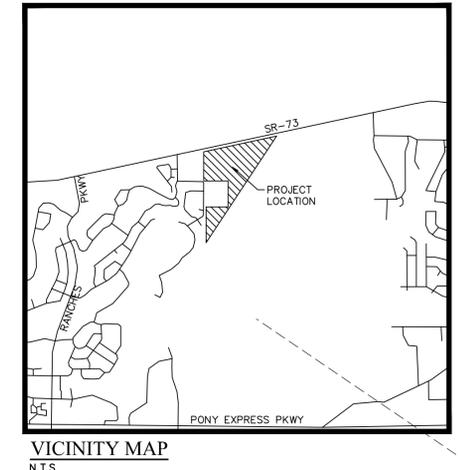
**PARCEL 4:**  
 Commencing North 0°23'24" East 2532.25 feet and West 229.9 feet from the South ¼ Corner of Section 16, Township 5 South, Range 1 West, Salt Lake Base & Meridian; thence South 33°57'46" West 814.04 feet; thence South 11°49'17" East 32.01 feet; thence South 78°03'00" West 81.18 feet; thence North 12°00'00" West 600.23 feet; thence North 78°12'34" East 666.49 feet to the point of beginning.

**PARCEL 5:**  
 Commencing North 2382.65 feet and West 880.5 feet from the South ¼ Corner of Section 16, Township 5 South, Range 1 West, Salt Lake Base & Meridian; thence North 78°03'00" East 17.86 feet; thence South 12°00'00" East 589.96 feet; thence South 78°11'55" West 17.86 feet; thence North 12°00'09" West 590.86 feet to the point of beginning.



**LEGEND**

|              |                                      |
|--------------|--------------------------------------|
| ---(XXXX)--- | EXIST. CONTOUR MAJOR                 |
| ---(XXXX)--- | EXIST. CONTOUR MINOR                 |
| - - - - -    | Ex SD - EXIST. STORM DRAIN           |
| - - - - -    | Ex SS - EXIST. SANITARY SEWER        |
| - - - - -    | Ex W - EXIST. CULINARY WATER         |
| - X - X -    | EXIST. FENCE                         |
| ⊕            | SECTION MONUMENT                     |
| ⊕            | EXIST. SD INLET, MANHOLE & COMBO BOX |
| ⊕            | EXIST. SEWER MANHOLE                 |
| ⊕            | EXIST. WATER VALVE & WATER METER     |
| ⊕            | EXIST. FIRE HYDRANT                  |
| ⊕            | EXIST. POWER POLE                    |
| ⊕            | EXIST. COMM. GAS & WATER MARKER      |
| ⊕            | EXIST. SPOT ELEVATION                |
| ▭            | SLOPES 15%-25%                       |
| ▭            | SLOPES OF 25%+                       |

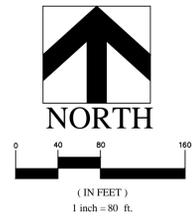


**EXISTING CONDITIONS MAP**  
 SCENIC MOUNTAIN  
 EAGLE MOUNTAIN, UTAH

**REVISION BLOCK**

| # | DATE    | DESCRIPTION                    |
|---|---------|--------------------------------|
| 1 | 1/26/16 | ADDED SHEET 3 - ADJT. PROPERTY |
| 2 |         |                                |
| 3 |         |                                |
| 4 |         |                                |
| 5 |         |                                |
| 6 |         |                                |

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**GENERAL NOTE:**

MINIMUM 10 FOOT SEPARATION BETWEEN BUILDINGS.

- FLEX USE
- TIER III - TOWNHOMES
- TIER III - CLUSTER HOMES

| Description                          | Square Feet | Acres | Percent |
|--------------------------------------|-------------|-------|---------|
| Total Area of Overall Project        | 1,516,628   | 34.82 | 100%    |
| Total Unbuildable Land (25%+ Slopes) | 275,175     | 6.32  | 18%     |
| Total Buildable Acreage              | 1,241,453   | 28.50 | 82%     |
| Tier III Residential Area            | 1,203,421   | 27.63 | 79%     |
| Flex Use Area                        | 313,207     | 7.19  | 21%     |
| Improved Open Space                  | 289,000     | 6.63  |         |

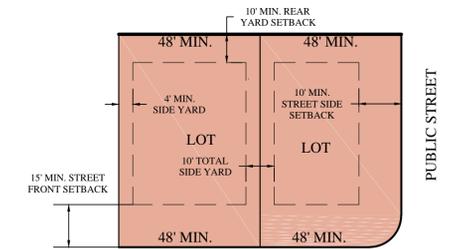
  

| Densities        | Upto No. Units | Units/Acre |
|------------------|----------------|------------|
| Tier III Density | 169            | 6.12       |
| Flex Use Density | 120            | 16.69      |
| Overall Density  | 289            | 10.14      |

| Improved Open Space Calculation | Units | Acres |
|---------------------------------|-------|-------|
| 1000 sq feet per unit required  | 289   | 6.63  |

\*See conceptual Open Space plan for proposed Improved Open Space areas in Tier III Residential Area



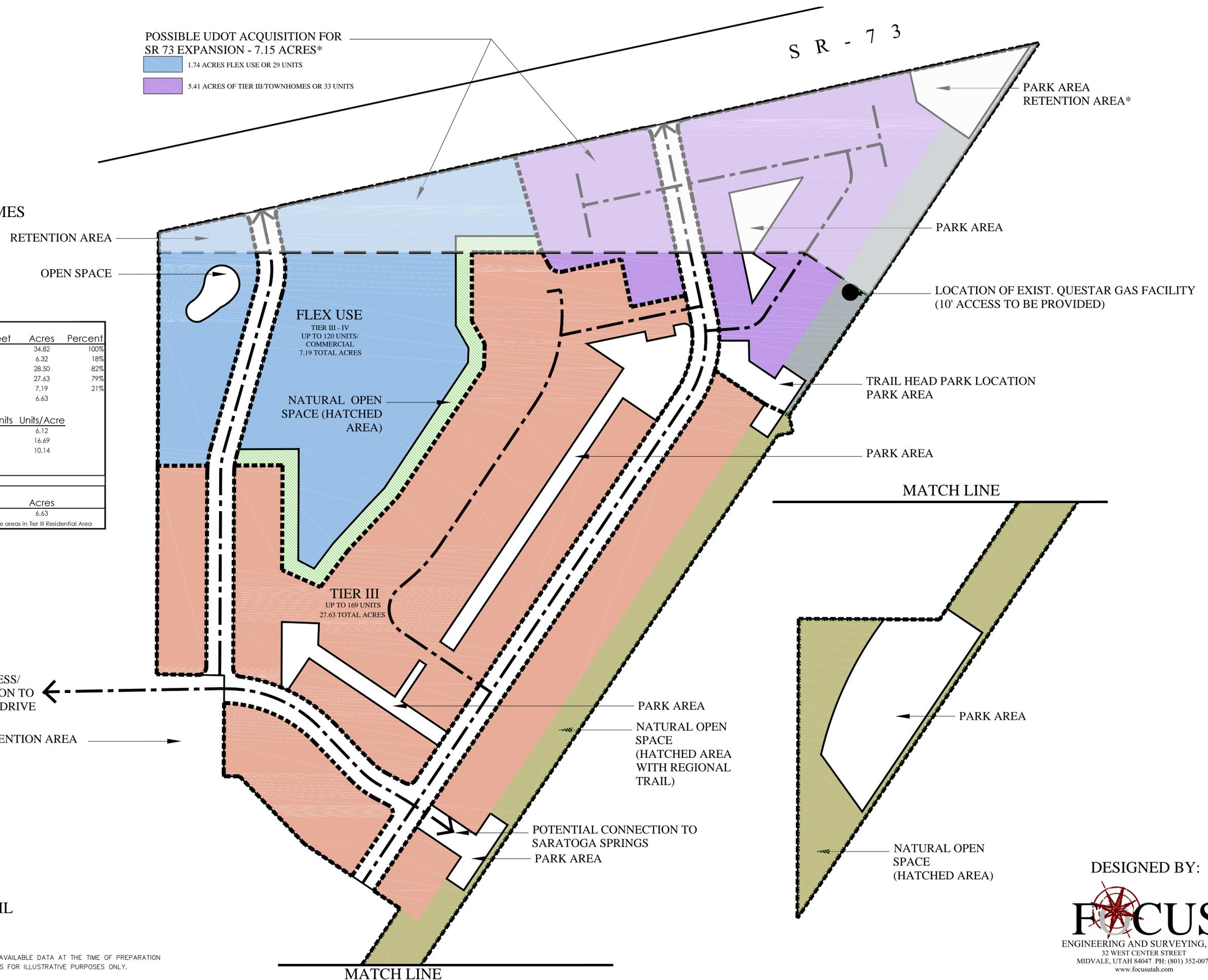
**CLUSTER SETBACK DETAIL**

**GENERAL NOTE:**

INFORMATION PROVIDED ON THIS PLAN IS BASED ON THE BEST AVAILABLE DATA AT THE TIME OF PREPARATION AND MAY CHANGE AT ANYTIME FOR ANY REASON. THIS PLAN IS FOR ILLUSTRATIVE PURPOSES ONLY.

**POSSIBLE UDOT ACQUISITION FOR SR 73 EXPANSION - 7.15 ACRES\***

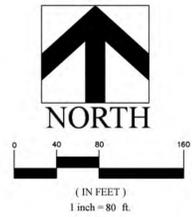
- 1.74 ACRES FLEX USE OR 29 UNITS
- 5.41 ACRES OF TIER III/TOWNHOMES OR 33 UNITS



DESIGNED BY:

**FOCUS**<sup>®</sup>  
ENGINEERING AND SURVEYING, LLC  
32 WEST CENTER STREET  
MIDVALE, UTAH 84047 PH: (801) 352-0075  
www.focusutah.com

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**PARK AND OPEN SPACE PLAN**

| Description                                  | Square Feet | Acres | Percent |
|--|-------------|-------|---------|
| Total Area of Overall Project                | 1,516,628   | 34.82 | 100%    |
| Total Unbuildable Land (25%+ Slopes)         | 275,175     | 6.32  | 18%     |
| Tier III (Single Family, Pad, and Townhomes) | 1,203,421   | 27.63 | 79%     |
| Tier IV (Condo Development)                  | 313,207     | 7.19  | 21%     |
| Improved Open Space (Six Park Areas)         | 168,953     | 3.88  |         |
| Undeveloped Open Space                       | 306,988     | 7.05  |         |
| Total Open Space                             | 475,941     | 10.93 |         |

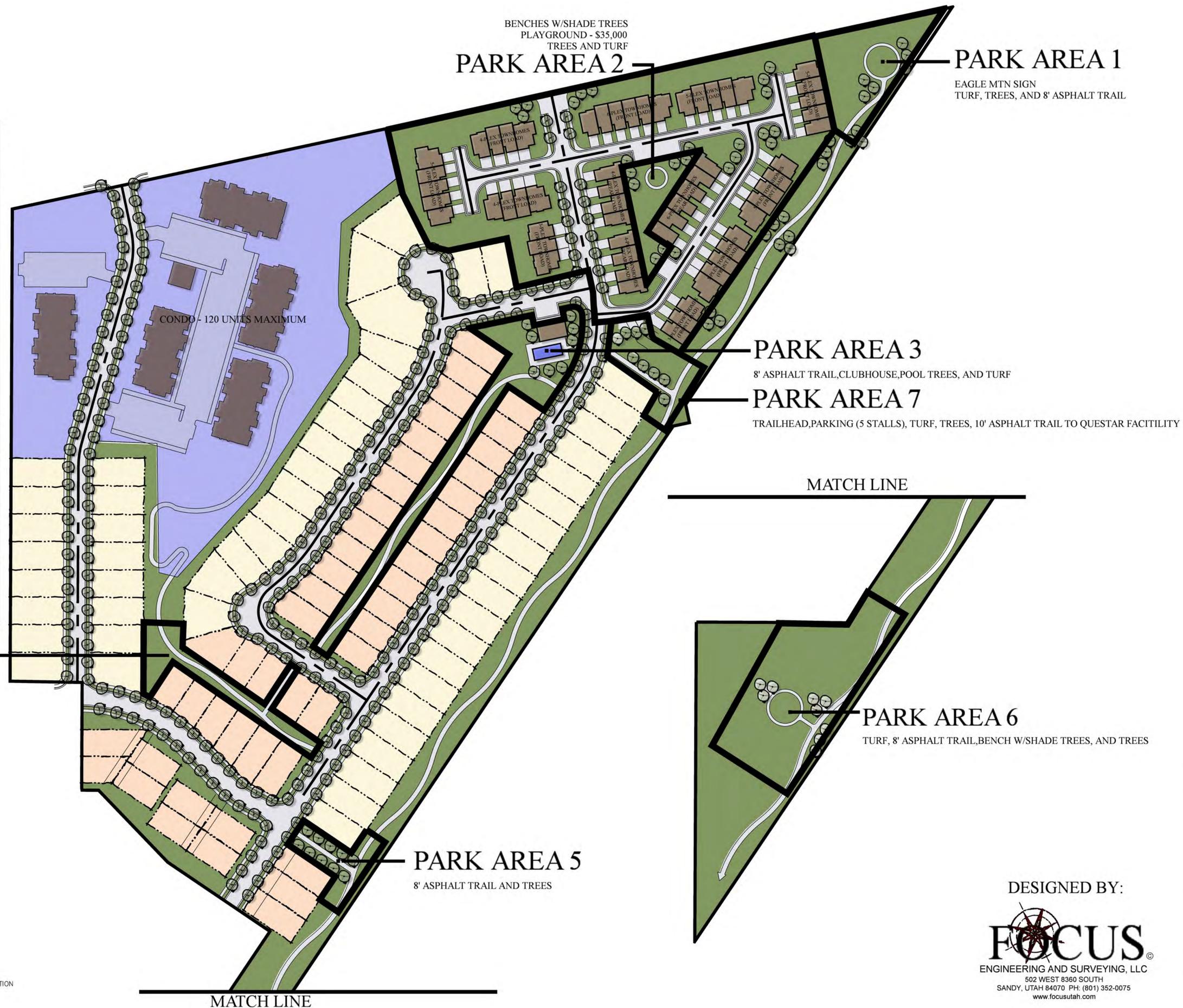
  

| Denisites        | No. Units | Units/Acre |
|------------------|-----------|------------|
| Tier III Density | 169       | 6.12       |
| Tier IV Density  | 120       | 16.69      |
| Overall Density  | 289       | 8.30       |

| Unit Counts              | Unit Count |
|--------------------------|------------|
| Single-Family Lots       | 100        |
| Townhomes (East Village) | 61         |
| Condominiums             | 120        |
| Total                    | 281        |

| Description                  | Square Feet | Acres       | Percent |
|------------------------------|-------------|-------------|---------|
| Park Area 1                  | 24,825      | 0.57        | 15%     |
| Park Area 2                  | 12,322      | 0.28        | 7%      |
| Park Area 3                  | 35,582      | 0.82        | 21%     |
| Park Area 4                  | 16,054      | 0.37        | 10%     |
| Park Area 5                  | 10,584      | 0.24        | 6%      |
| Park Area 6                  | 53,758      | 1.23        | 32%     |
| Park Area 7                  | 15,828      | 0.36        | 9%      |
| Total Improved Open Space    | 168,953     | 3.88        | 100%    |
| Total Trail Length (8" Wide) | 4,314       | Lineal Feet |         |



**PARK AREA 4**  
TURF, 8' ASPHALT TRAIL AND TREES

**PARK AREA 5**  
8' ASPHALT TRAIL AND TREES

**PARK AREA 6**  
TURF, 8' ASPHALT TRAIL, BENCH W/SHADE TREES, AND TREES

**PARK AREA 3**  
8' ASPHALT TRAIL, CLUBHOUSE, POOL TREES, AND TURF

**PARK AREA 7**  
TRAILHEAD, PARKING (5 STALLS), TURF, TREES, 10' ASPHALT TRAIL TO QUESTAR FACILITY

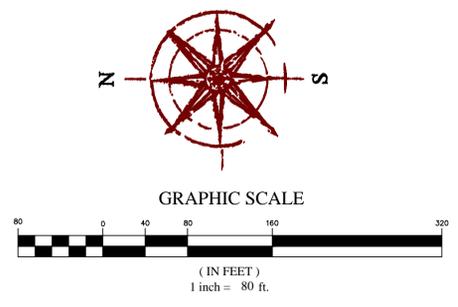
**PARK AREA 2**  
BENCHES W/SHADE TREES  
PLAYGROUND - \$35,000  
TREES AND TURF

**PARK AREA 1**  
EAGLE MTN SIGN  
TURF, TREES, AND 8' ASPHALT TRAIL

**GENERAL NOTE:**  
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DESIGNED BY:  
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**LEGEND**

|       |                             |
|-------|-----------------------------|
| —     | BOUNDARY                    |
| —     | ROW                         |
| —     | CENTERLINE                  |
| —     | LOT LINE                    |
| - - - | EASEMENT                    |
| —     | 15" SD                      |
| —     | 8" SS                       |
| —     | 8" W                        |
| —     | 8" SW                       |
| —     | CONTOUR MAJOR               |
| —     | CONTOUR MINOR               |
| —     | Ex SD                       |
| —     | Ex SS                       |
| —     | Ex W                        |
| —     | Ex SW                       |
| —     | EXIST. FENCE                |
| —     | EXIST. CONTOUR MAJOR        |
| —     | EXIST. CONTOUR MINOR        |
| —     | SIGN                        |
| —     | STREET LIGHT                |
| —     | SD MH, INLET, AND COMBO     |
| —     | SEWER MANHOLE               |
| —     | VALVE, TEE & BEND           |
| —     | WATER BLOW-OFF              |
| —     | FIRE HYDRANT                |
| —     | STREET MONUMENT (TO BE SET) |
| —     | EXIST. STREET MONUMENT      |
| —     | EXIST. SD INLET & MH        |
| —     | EXIST. SEWER MH             |
| —     | EXIST. VALVE, TEE, & BEND   |
| —     | EXIST. FIRE HYDRANT         |
| —     | SPOT ELEVATION              |

**MAJOR BASIN CHARACTERISTICS:**  
 THE PROPERTY FALLS WITHIN "ZONE X" OF THE CURRENT FEMA FLOOD-PLAIN MAP (PANEL No. 4903C0600G). "ZONE X" CONTAINS AREAS DETERMINED TO BE OUTSIDE THE 500-YEAR FLOOD-PLAIN.

**SUB-BASIN DESCRIPTIONS:**  
 THE PROPERTY CURRENTLY RESIDES ON UNDEVELOPED LAND ON THE WEST SIDE OF SR-73. A RIDGELINE BISECTS THE PROPERTY AND HISTORICALLY THE PROPERTY DRAINS AWAY FROM THIS RIDGE FROM EAST TO WEST AND WEST TO EAST. THE HOMES WILL GRADED IN SUCH A FASHION AS TO PROMOTE POSITIVE DRAINAGE AWAY FROM ANY STRUCTURE IN ACCORDANCE WITH ALL APPLICABLE CODES AND REGULATIONS.

**PROPOSED SYSTEM NARRATIVE:**  
 THE PROPOSED STORM DRAIN CONVEYANCE SYSTEM WILL BE DESIGN TO ACCOMMODATE THE 10-YEAR STORM EVENT AND IN ACCORDANCE WITH EAGLE MOUNTAIN STANDARDS AND SPECIFICATIONS. SIGNIFICANT EARTHWORK IS EXPECTED ON THE SITE HELP DIRECT STORM WATER INTO THE PUBLIC SYSTEM HISTORICAL DRAINAGE PATTERNS. MULTIPLE DETENTION FACILITIES WILL BE CONSTRUCTED TO ACCOMMODATE THE NEEDS OF THIS PROJECT.

**EROSION CONTROL NARRATIVE:**  
 EROSION CONTROL BEST MANAGEMENT PRACTICES SHALL BE IMPLEMENTED IN ACCORDANCE WITH AN APPROVED STORM WATER POLLUTION PREVENTION PLAN. THESE BEST MANAGEMENT PRACTICES (BMP'S) SHALL CONTROL BOTH ONSITE WATER AND OFFSITE WATER ENTERING THE PROPOSED DEVELOPMENT AND SHALL PREVENT ANY SILTS AND/OR DEBRIS FROM ENTERING INTO THE PUBLIC STORM WATER SYSTEM.

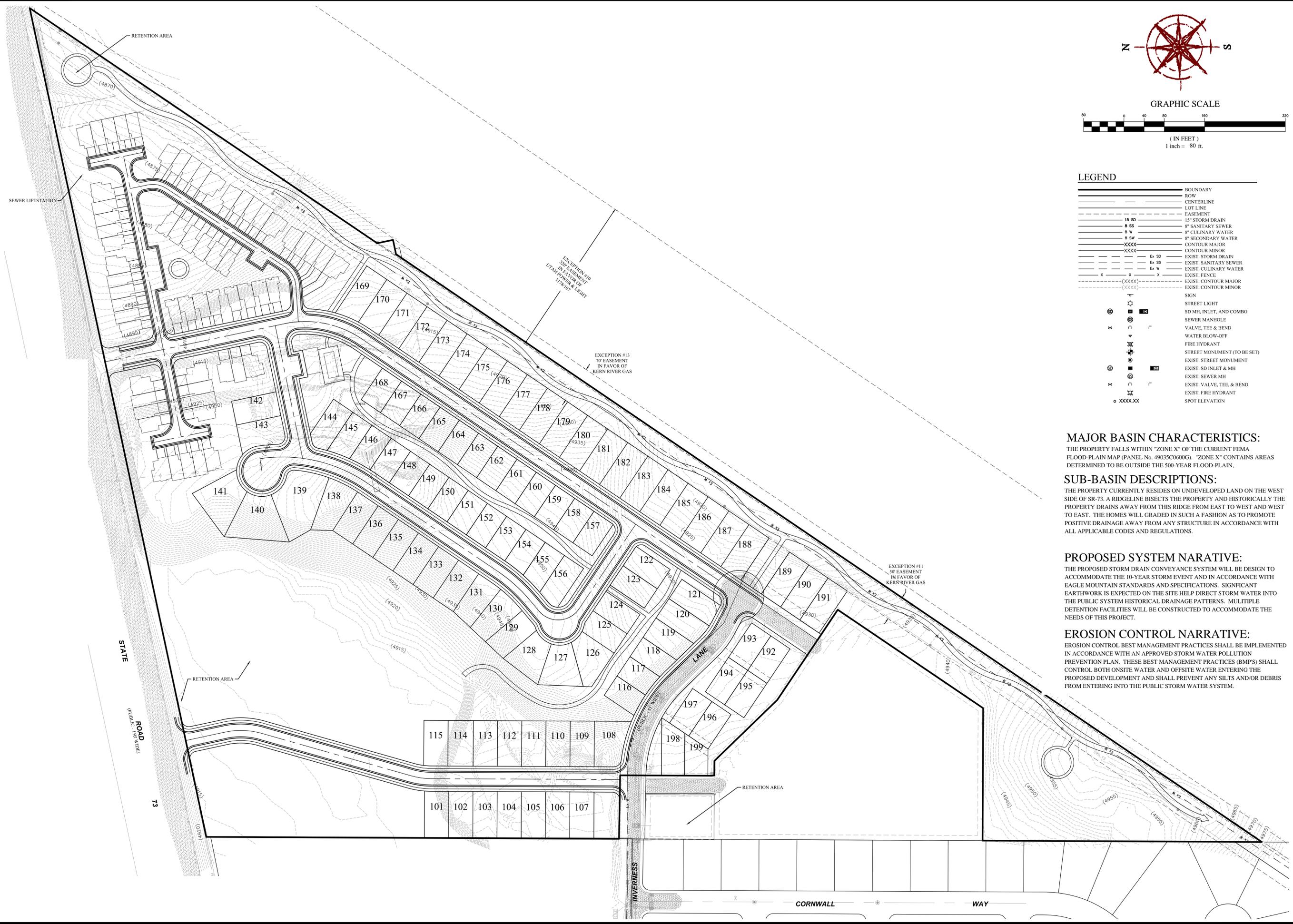
**GRADING, DRAINAGE AND  
 EROSION PLAN  
 SCENIC MOUNTAIN  
 EAGLE MOUNTAIN, UTAH**

**REVISION BLOCK**

| # | DATE    | DESCRIPTION                    |
|---|---------|--------------------------------|
| 1 | 1/26/16 | ADDED SHEET 3 - ADDT. PROPERTY |
| 2 |         |                                |
| 3 |         |                                |
| 4 |         |                                |
| 5 |         |                                |
| 6 |         |                                |

Scale: 1"=80'  
 Date: 07-15-16  
 Sheet: C03

Drawn: GBD  
 Job #: 15-220





**FRONT LOADED FRONT ELEVATION**

1/8"



**ALLEY LOADED FRONT ELEVATION**

1/8"



**ALLEY LOADED FRONT ELEVATION** 1/8"



**ALLEY LOADED FRONT ELEVATION** 1/8"