

**NOTICE OF REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF ST. GEORGE,
WASHINGTON COUNTY, UTAH**

Public Notice

Public notice is hereby given that the City Council of the City of St. George, Washington County, Utah, will hold a regular meeting on Thursday, May 12, 2022 commencing at 4:00 p.m. at the Crosby Family Confluence Park located at 2099 South Convention Center Drive, St. George, Utah.

The agenda for the meeting is as follows:

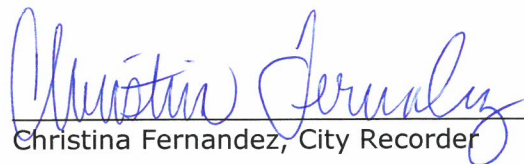
- 1. Site visit of the archeological site located south of the Dixie Center, adjacent to the Santa Clara River.**

Travel to the training room at the Energy Services Administrative Building located at 811 East Red Hills Parkway, St. George, Utah, at approximately 5:00 p.m. for the remainder of the meeting, as follows:

- 2. Consider approval of a development agreement with Toll Southwest LLC for the Regency at Desert Color – Model Home Center, Toll Brothers.**

BACKGROUND and RECOMMENDATION: The preliminary plat for Regency at Desert Color Plat A was approved by the City Council on August 19, 2021. The approval was subject to a development agreement for the model home center. Staff recommends approval.

- 3. Discussion regarding the Fiscal 2022-2023 Budget.**
- 4. Reports from the Mayor, Councilmembers, and City Manager.**
- 5. Request a closed session.**


Christina Fernandez, City Recorder

May 11, 2022
Date

REASONABLE ACCOMMODATION: The City of St. George will make efforts to provide reasonable accommodations to disabled members of the public in accessing City programs. Please contact the City Human Resource Office, 627-4674, at least 24 hours in advance if you have special needs.

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

Copy to:
Toll Southwest LLC
Attn: Dan Wright
1140 N. Town Center Drive, Suite 250
Las Vegas, Nevada 89144

Parcel No. SG-6-3-26-251

DEVELOPMENT AGREEMENT

(Regency at Desert Color – Model Home Center, Toll Brothers)

This Development Agreement (the "**Agreement**") is entered into this 28th day of April, 2022 ("**Effective Date**"), between the **CITY OF ST. GEORGE**, a municipal corporation of the State of Utah (hereinafter the "**City**"), and **TOLL SOUTHWEST LLC**, a Delaware limited liability company (hereinafter "**Owner**"). City and Owner are hereinafter collectively referred to as the "**Parties**" and each individually, a "**Party**."

RECITALS

WHEREAS, Owner desires to develop the property in Washington County, Utah identified as Assessor's Parcel No. SG-5-3-31-433-SLL (hereinafter "**Property**"), with a portion of the Property located along Agave Peak Lane, as described on the **Exhibit A** attached hereto, to be used as a model home center (the "**Model Center**"); and

WHEREAS, Agave Peak Lane was approved as part of the development approval process as a 60-foot wide public road requiring the owner to dedicate said road to the City as part of the final subdivision plat entitled, Regency at Desert Color Phase 1 (the "**Final Plat**"); and

WHEREAS, in connection with the Model Center, Owner has requested that, notwithstanding the dedication of Agave Peak Lane, City as the highway authority, allow Owner to: (i) temporarily close a portion of Agave Peak Lane for a limited time and to fence this portion of Agave Peak Lane during the allowed time period; (ii) install temporary parking lots over those portions of the Property identified as Civic Space and Lot 103 on the Final Plat, (iii) install a temporary sales office on the portion of the Property identified as Lot 104 on the Final Plat, and (iv) install a meandering 5-foot sidewalk and a temporary park on the portion of the Property identified as Lot 126 on the Final Plat, all as approximately set forth on **Exhibit B** attached hereto, which is incorporated herein by this reference (the "**Requested Use**"); and

WHEREAS, City, acting pursuant to its authority under Utah Code §10-9a-101, *et seq.*, and

in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has determined this Agreement is in the best interest of the citizens of the City of St. George, and, in the exercise of its legislative discretion, has elected to approve this Agreement.

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

AGREEMENT

1. **Recitals.** The foregoing recitals are incorporated herein by reference.
2. **The Project.** Owner shall offer Agave Peak Lane for dedication to the City with the Final Plat, and upon acceptance, agrees to allow Owner to use the Property for the Requested Use as shown in Exhibit B for a Model Center during the Term (as defined in Section 3 below).
 - 2.1 Within five calendar days of the Effective Date, Owner shall provide a cash escrow, lien on model homes, or other surety acceptable to the City (the “**Improvement Security**”), for an amount sufficient to mitigate all impacts, improvements, and damages created by the Requested Uses upon the Property upon termination of this Agreement or the expiration of the Term.
 - 2.2 Upon expiration of the Term, Owner will restore the lots and roadway within the portion of Agave Peak Lane used for the Requested Use per the City approved construction plans and pavement rehabilitation requirements, including, without limitation, removal of the fence, temporary parking lots, temporary sales office, temporary park, and meandering 5-foot sidewalk, and restoration of lots, civic space, sidewalk, and the roadway constituting Agave Peak Lane (with crack seal and HA5, unless settlement or significant alligator cracking is found at final inspection, roadway replacement will occur as defined by the limits shown on Exhibit B). At all times prior to the completion of the roadway maintenance and repair work required in the preceding sentence, the Improvement Security shall remain in an amount at least sufficient to mitigate all impacts, improvements, and damages created by the Requested Uses upon the Property (collectively, “**Impact Costs**”). Once such roadway maintenance and repair work is completed as required hereby, City shall release any portion of the Improvement Security still in place intended to secure the Impact Costs.
3. **Term.** This Agreement shall commence on the Effective Date and continue for a term of no more than seven(7) years thereafter (the “**Term**”) unless earlier terminated by the Parties.
4. **Representatives.** The representative for the City for this Project will be Catherine Hasfurthur. The representative for the Owner will be Aaron Olsen and Jason Willoby.

5. Agreement to Run with the Land. Any and all of the obligations of the Parties hereunder shall run with the land and shall constitute an encumbrance thereon. The rights duties and obligations herein shall inure to the benefit of and be binding upon each Party's heirs, successors-in-interest, assigns, transferees, and subsequent purchasers of the Property.
6. Project Approvals and Compliance with City Design and Construction Standards. Owner expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Owner from the obligation to comply with City Ordinances and City Standard Specifications for Design and Construction, or all applicable requirements of City necessary for approval of any development of Owner's Property, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City, except as specifically modified or waived in this Agreement.
7. Indemnity and Liability. To the extent allowed by state law, Owner shall indemnify City against all claims, demands, causes or action, appeals, suits or judgments (collectively, "**Claims**"), including but not limited to all Claims for death or injuries to persons, or for loss of or damage to property, arising out of or in connection with this Agreement to the extent that it relates to performance of acts of Owner, or its agents or assigns. In the event of any such Claims against the City, City shall give Owner prompt written notice. Owner agrees to defend City, against any Claims against City, whether such Claims are rightfully or wrongfully brought or filed. In case a Claim should be brought with respect to the subject of indemnity herein, Owner agrees that City may employ attorneys of its own selection to appear and defend the Claim against City. City shall ensure that all costs and attorneys' fees are reasonable, and Owner shall be responsible for all costs associated with any Claim, including attorney's fees and costs, for which it indemnifies or defends City.
8. Governing Law and Venue. This Agreement shall be construed according to the laws of the State of Utah. The Parties agree that venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court for the State of Utah. The Parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction.
9. Construction. Each of the Parties has had the opportunity to review this Agreement with counsel of their choosing, and the rule of contracts requiring interpretation of a contract against the Party drafting the same is hereby waived and shall not apply in interpreting this Agreement.
10. Notices. All notices required herein, and subsequent correspondence in connection with this Agreement shall be mailed to the following:

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

Toll Southwest LLC
Attn: Dan Wright
1140 N. Town Center Drive, Suite 250

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

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

19. Modification. The terms and conditions of this Agreement may be amended or modified only by written agreement of the Parties.
20. Authority of Parties. Each Party hereby warrants and represents to the other Party that the individual or individuals executing this Agreement on behalf of such Party are duly authorized to do so in the capacity stated, and that this Agreement constitutes a valid and binding agreement.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]***

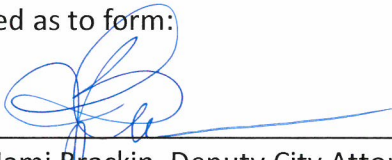
CITY:

CITY OF ST. GEORGE,

a municipal corporation of the State of Utah

By: _____
Michele Randall, Mayor

Approved as to form:

By:  _____
Jami Brackin, Deputy City Attorney

Attest:

Christina Fernandez, City Recorder

State of Utah)
) ss.
County of Washington)

On this _____ day of _____, in the year 20____, before me, _____, a notary public, personally appeared _____, proved on the basis of satisfactory evidence to be the person(s) whose name(a) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same.

Witness my hand and official seal.

Notary Public

(seal)

OWNER:

TOLL SOUTHWEST LLC,

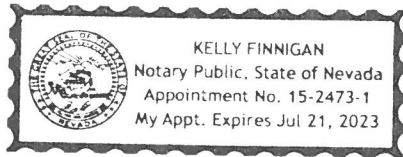
a Delaware limited liability company

By: 
Name: Dan Wright
Title: Vice President, Community Planning

State of Nevada)
) ss.

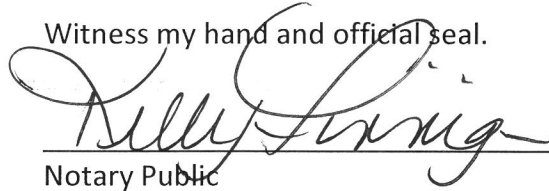
County of Clark)

On this 28th day of April, in the year 2022, before me, Kelly Finnigan, a notary public, personally appeared Dan Wright, proved on the basis of satisfactory evidence to be the person(s) whose name(a) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same.



(seal)

Witness my hand and official seal.


Notary Public



Bush and Gudgell, Inc.
Engineers • Planners • Surveyors
St. George, Utah
www.bushandgudgell.com

EXHIBIT "A"

(Regency At Desert Color 3.22 Acre Parcel Description)

Beginning at a point that lies South 88°45'57" East along the section line 1745.97 feet and due North 1148.83 feet, from the South Quarter Corner of Section 26, Township 43 South, Range 16 West, Salt Lake Base and Meridian, and running thence South 89°13'19" West 150.00 feet; thence South 00°46'41" East 23.59 feet; thence South 89°13'19" West 0.88 feet; thence westerly along a 90.00 foot radius curve to the right, (long chord bears North 68°55'52" West a distance of 66.98 feet), center point lies North 00°46'41" West through a central angle of 43°41'38", a distance of 68.63 feet; thence North 47°05'03" West 398.53 feet; thence North 42°54'57" East 158.00 feet; thence North 47°05'03" West 39.97 feet; thence northwesterly along a 103.00 foot radius curve to the left, (long chord bears North 53°05'35" West a distance of 21.57 feet), center point lies South 42°54'57" West through a central angle of 12°01'06", a distance of 21.61 feet; thence northwesterly along a 18.50 foot radius reverse curve to the right, (long chord bears North 37°58'19" West a distance of 13.34 feet), center point lies North 30°53'52" East through a central angle of 42°15'39", a distance of 13.65 feet; thence northerly along a 48.00 foot radius reverse curve to the left, (long chord bears North 20°15'03" West a distance of 5.71 feet), center point lies South 73°09'31" West through a central angle of 06°49'07", a distance of 5.71 feet; thence North 42°54'57" East 109.57 feet; thence South 47°05'03" East 450.00 feet; thence South 31°40'42" East 91.39 feet; thence South 00°46'41" East 137.62 feet, to the point of beginning.

Containing 140,115 square feet or 3.22 acres.

EXHIBIT B
(MODEL CENTER PLAN)

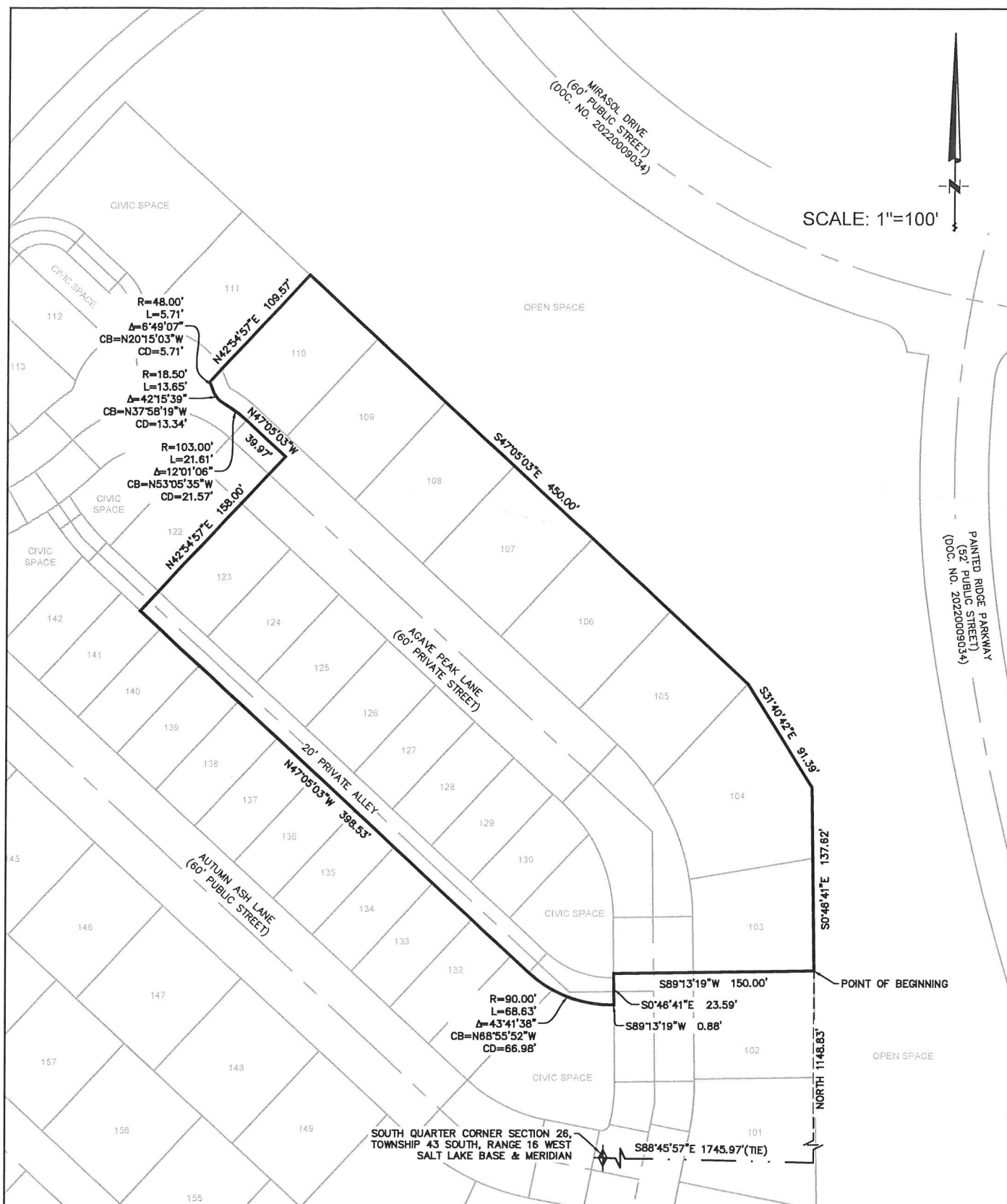


EXHIBIT B - Model Area

Regency At Desert Color 3.22 Acre Parce

B & G 221521



BUSH & GUGGELL, INC.

Engineers - Planners - Surveyors

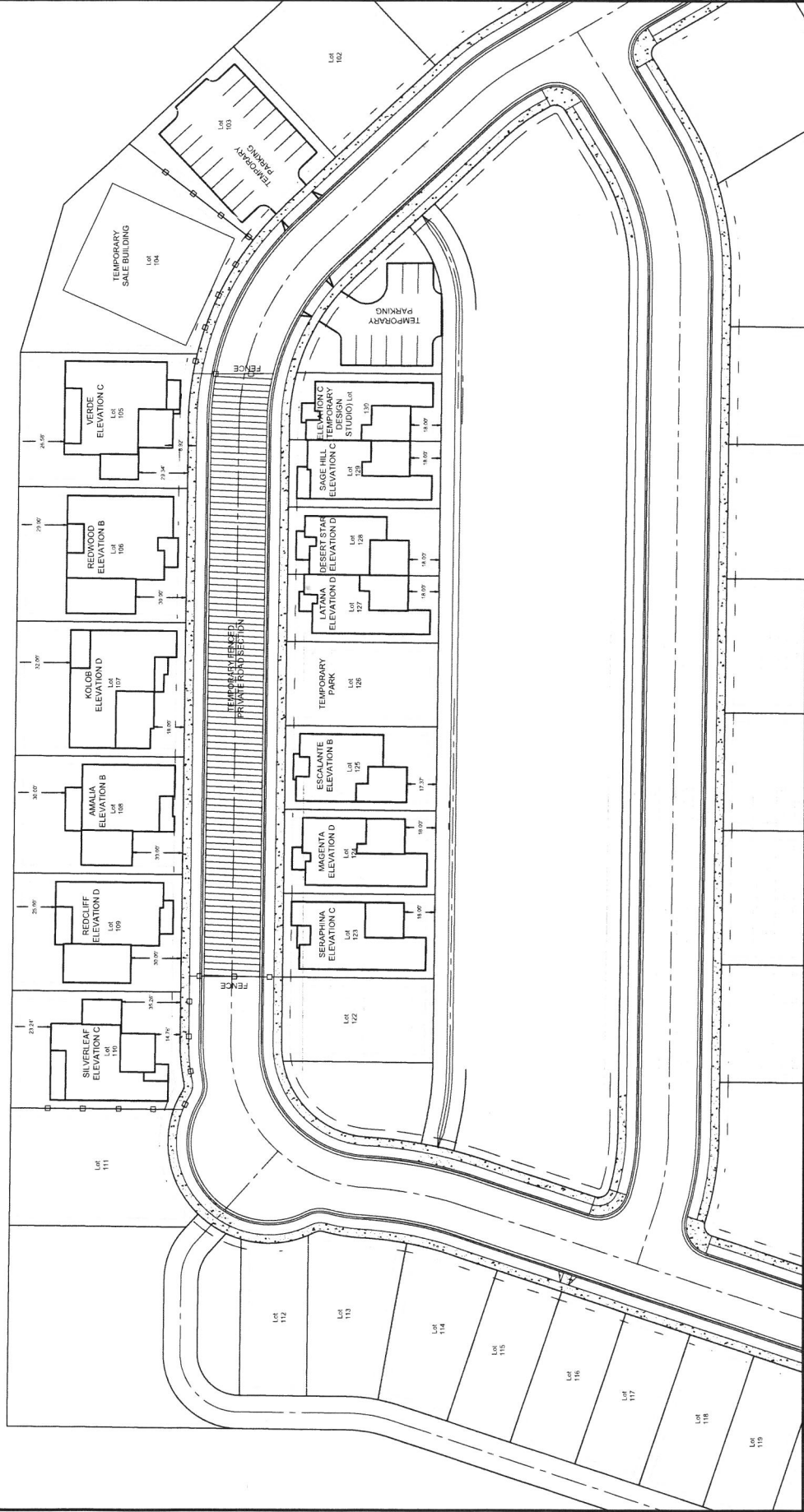
205 East Tabernacle Suite #4

St. George, Utah 84770

Phone (435) 673-2337 / Fax (435) 673-3161

REGENCY AT DESERT COLOR PERMIT

MODEL COMPLEX HOME AREA



DATE: _____		DRAWN: _____		CHECKED: _____		APPROVED: _____		JOB NO. 211007	
MODEL HOME AREA PRELIMINARY LAYOUT REGENCY AT DESERT COLOR									
BUSH & GUDGELL, INC. Engineers - Planners - Surveyors 205 East Taborville Suite 44 St. George, Utah 84770 Phone (435) 673-2337 / Fax (435) 673-3161 www.bushandgudgell.com									
101	102	103	104	105	106	107	108	109	110
111	112	113	114	115	116	117	118	119	120