

# Planning Commission Staff Report

June 25, 2015

## Item 2

**Applicant:** Mapleton Heights LLC

**Location:** Approx. 3000 S Hwy 89

**Prepared by:** Sean Conroy, Community Development Director

**Public Hearing:** Yes

**Zone:** N/A

**Attachments:**

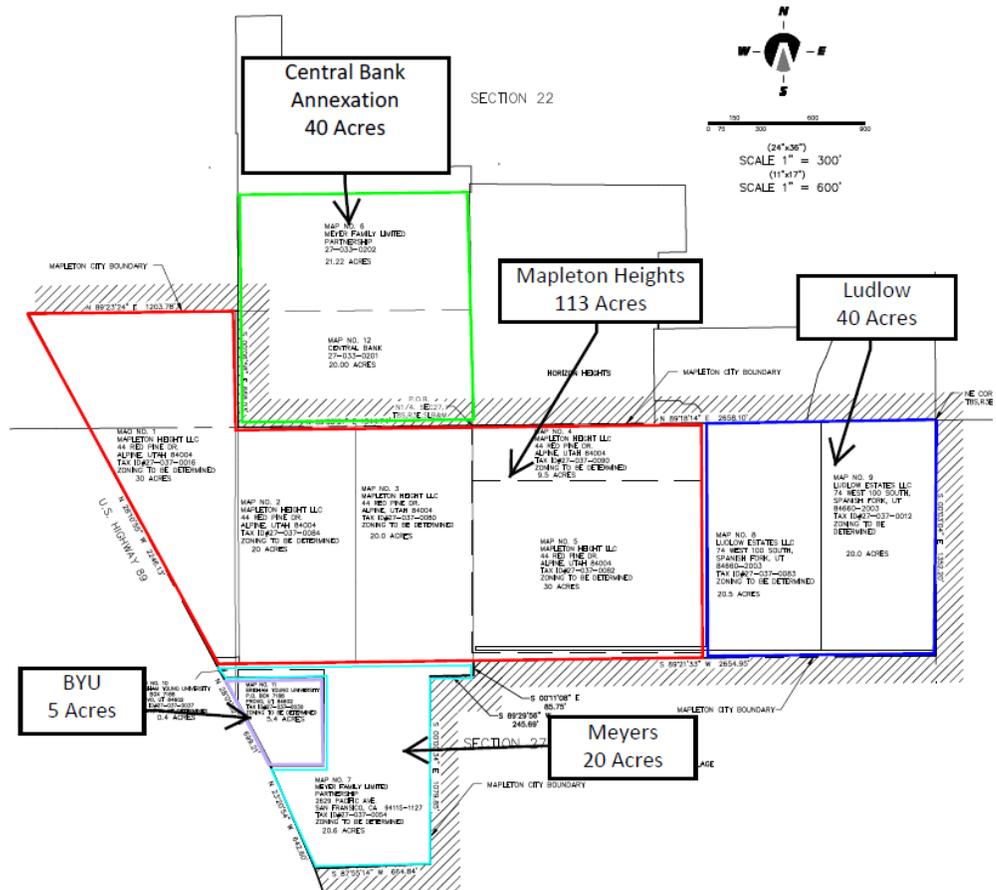
1. Application Materials.
2. DRC Comments.
3. Annexation Policy Map.
4. General Plan Map.
5. Development Agreement.

### REQUEST

Consideration of recommendations to the City Council regarding the annexation of approximately 180 acres of property located at approximately 3000 S Hwy 89, a development concept plan associated with the Mapleton Heights project (113 acres) and the zoning designations for each property within the annexation boundary.

### BACKGROUND AND PROJECT DESCRIPTION

On August 20, 2013 the City Council accepted the Mapleton Heights annexation petition consisting of 180 acres of property located south of the current Mapleton city limits. By accepting the petition, the Council did not approve the annexation, but rather agreed to allow the applicant to continue with the annexation process. The annexation area includes 113 acres owned by the project sponsor (Mapleton Heights, LLC), five acres owned by Brigham Young University, 20 acres owned by the Meyer Family Limited Partnership and 40 acres owned by the Ludlow Estates LLC. None of the properties are currently developed.



The project sponsor (Mapleton Heights) is also requesting that the City enter into a development agreement for the Mapleton Heights LLC property including a development concept plan, and that specific zoning text be adopted in the form of a Planned Development (PD) zone. The Planning Commission will be making recommendations to the City Council on the following items:

- 1) Approval of the annexation;
- 2) Approval of a development agreement and concept plan for the Mapleton Heights property;
- 3) Approval of a zoning designation of PD-4 and adoption of the zoning text for this zone for the Mapleton Heights property;
- 4) Approval of the zoning classification of General Commercial (GC-1) for a small portion of the Mapleton Heights property and all of the Meyers property; and
- 5) Approval of the zoning classification of Agricultural-Residential (A-2) for the Ludlow property and the BYU property.

## EVALUATION

**Annexation Process:** State law requires the following steps for annexation approval:

- 1) Submittal of an annexation petition with signatures from the owners of a majority of private real property (**completed**).
- 2) City Council accepts or rejects the petition (**completed**).
- 3) If accepted, within 30 days City reviews petition to determine if it meets the state code requirements. If rejected, the City informs the applicant within five days (**completed**).
- 4) If the City determines that an accepted petition meets applicable standards, the petition is certified by the City Recorder. If it is determined that the petition does not meet applicable standards the petition is rejected (**completed**).
- 5) If the petition is certified, a public notification process takes place (**completed**).
- 6) A protest period occurs (**completed**).
- 7) Planning Commission holds a public hearing (**purpose of this meeting**).
- 8) City Council holds a public hearing or hearings (**Council will hold public hearing after Planning Commission has made recommendations**).
- 9) City Council takes final action to grant the petition and by ordinance annex the area, or to deny the petition (**pending City Council public hearing**).
- 10) Within 30 days of adopting an ordinance annexing an area, the City provides the necessary documents to the lieutenant governor's office (**pending Council final action**).
- 11) Upon approval from the lieutenant governor's office, City files appropriate documents with Utah County Recorder and the Department of Health and sends out notices to each affected entity (**pending Council final action**).

Mapleton City Code Chapter 20.04.030 outlines the following annexation process in addition to the state standards:

- 1) Development Review Committee evaluates nine specific topics related to an annexation application (**see attachment "2"**).
- 2) Planning Commission Review: The Planning Commission shall consider the DRC comments, together with testimony from the petitioner and other interested parties, and make a

recommendation on the annexation and zoning districts to the city council (**this step is the purpose of this agenda item**).

- 3) City Council Review: A public hearing shall be scheduled before the city council to act upon the petition (**pending Planning Commission Review**).
- 4) City Council takes final action (**pending City Council public hearing**).

**Annexation Policy:** State law requires the City to adopt an annexation plan that includes a map of potential annexation properties and a statement of the criteria that will be used to guide annexation decisions. In accordance with state law, the City adopted an Annexation Policy in 2002. The policy identifies two primary annexation areas, Mapleton West (Big Hollow) and Mapleton South (see attachment “3”). The proposed annexation area is located in the Mapleton South area and is identified as a potential annexation candidate.

**General Plan:** The Land Use Element of the General Plan is designed as a guide to promote sound land use decisions. The Land Use Element includes a Land Use Designation Map that outlines the development potential of property throughout the City and within the annexation boundaries. The proposed annexation area contains a General Commercial designation along Highway 89 and a Medium Density Residential (approximately 3 units per acre) designation on the remaining property.

The applicant is proposing a General Plan amendment to re-designate approximately 10 acres from General Commercial to Medium Density Residential. Staff concurs with this request. General Plan Policy “E” states the following:

*“Strip commercial development will be discouraged in favor of a pattern of alternating land uses along major arterials streets (Highway 89 and 400 North) with “nodes” of commercial development separated by other uses such as residential, institutional or office, in accordance with the transportation element.”*

The Land Use Map, as currently adopted, conflicts with this policy by envisioning a strip of commercial property running almost the entire length of Highway 89. The applicant is proposing a two acre commercial lot, and the adjacent 20 acre parcel owned by the Meyers Family will be zoned commercial. This will allow for a commercial node as encouraged in the General Plan rather than a commercial strip as discouraged in the General Plan.

**PD Zone:** The applicant is requesting to use the Planned Development (PD-4) zoning designation for most of the Mapleton Heights property. According to Mapleton City Code (MCC) Chapter 18.78.010, the purpose of the PD zone is:

*“...to provide flexibility in the city's zoning scheme in order to allow for unique, innovative and well planned developments that would not be possible under one of the city's existing zoning classifications. PD zones are not intended for use in situations where a proposed development is reasonably feasible under one of the city's existing zoning classifications or in situations where the primary purpose is to obtain a relaxation of standards applicable to similar types of development in other zones.”*

The MCC further states that the PD zone is appropriate for high density residential projects near or adjacent to Highway 89, and property south of City limits that may be annexed into the City.

The proposed PD-4 text and Concept Plan outlines three lot types, ranch lots (min. 1 acre), hillside lots (min. 9,000 square feet) and estate lots (min. 6,000 square feet) with a maximum density of 285 units (approx. 3 units per acre). This combination of lot sizes is similar to adjacent master planned developments to the south (Mapleton Village & Harmony Ridge). One acre lots are proposed near the northeast corner of the project, adjacent to the existing large lot development of Horizon Heights.

The Concept Plan and Development Agreement include a pedestrian trail system that will run through the development and connect to a trail head park that will be located adjacent to the City’s proposed lateral canal trail. The trail head park will also be paid for by the developer.

Staff is supportive of the PD-4 zoning for this project for the following reasons:

- The project site is an appropriate location for the PD zone as outlined in MCC Chapter 18.78;
- The PD zone will allow for a variety of lot sizes and a more interesting development; and
- The proposed trail system and trail head park create a unique and innovative development.

**Development Agreement:** A draft development has been included as attachment “5” that outlines the agreements of both the developer and the City. Only the 113 acres owned by Mapleton Heights, LLC is subject to the development agreement and the PD-4 zoning.

**Annexation Properties not part of the Development Agreement:** Staff is proposing the following zoning designations for the properties not associated with the Development Agreement:

Property	Acreage	Proposed Zone
BYU	5	A-2
Meyers Family	20	GC-1
Ludlow	40	A-2

\*These properties may apply for alternative zoning when they are ready for development.

**Central Bank Annexation:** A separate annexation petition was filed by Central Bank at approximately the same time the Mapleton Heights annexation was filed. The Central Bank annexation consists of two 20 acre parcels located at approximately 3050 South 800 West just north of the Mapleton Heights property. In order to avoid leaving an unincorporated island, the Central Bank annexation will need to be finalized prior to final action on the Mapleton Heights annexation. The Planning Commission reviewed the Central Bank annexation proposal in December of 2014 and continued it with a request or changes. It is anticipated that it will be on the Commission’s next agenda.

**County Review:** Utah County has asked that the annexation boundaries include that portion of Highway 89 that is adjacent to the annexation properties. Staff has added a special condition to address this request.

**STAFF RECOMMENDATION**

Recommend that the City Council approve the proposed Annexation, Concept Plan, Development Agreement and Zoning Designations with the attached special condition.

**SPECIAL CONDITION**

The final annexation map shall include that portion of Highway 89 that is adjacent to the property included in the annexation petition.

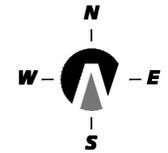
# Attachment "1" Application Materials

### LEGEND

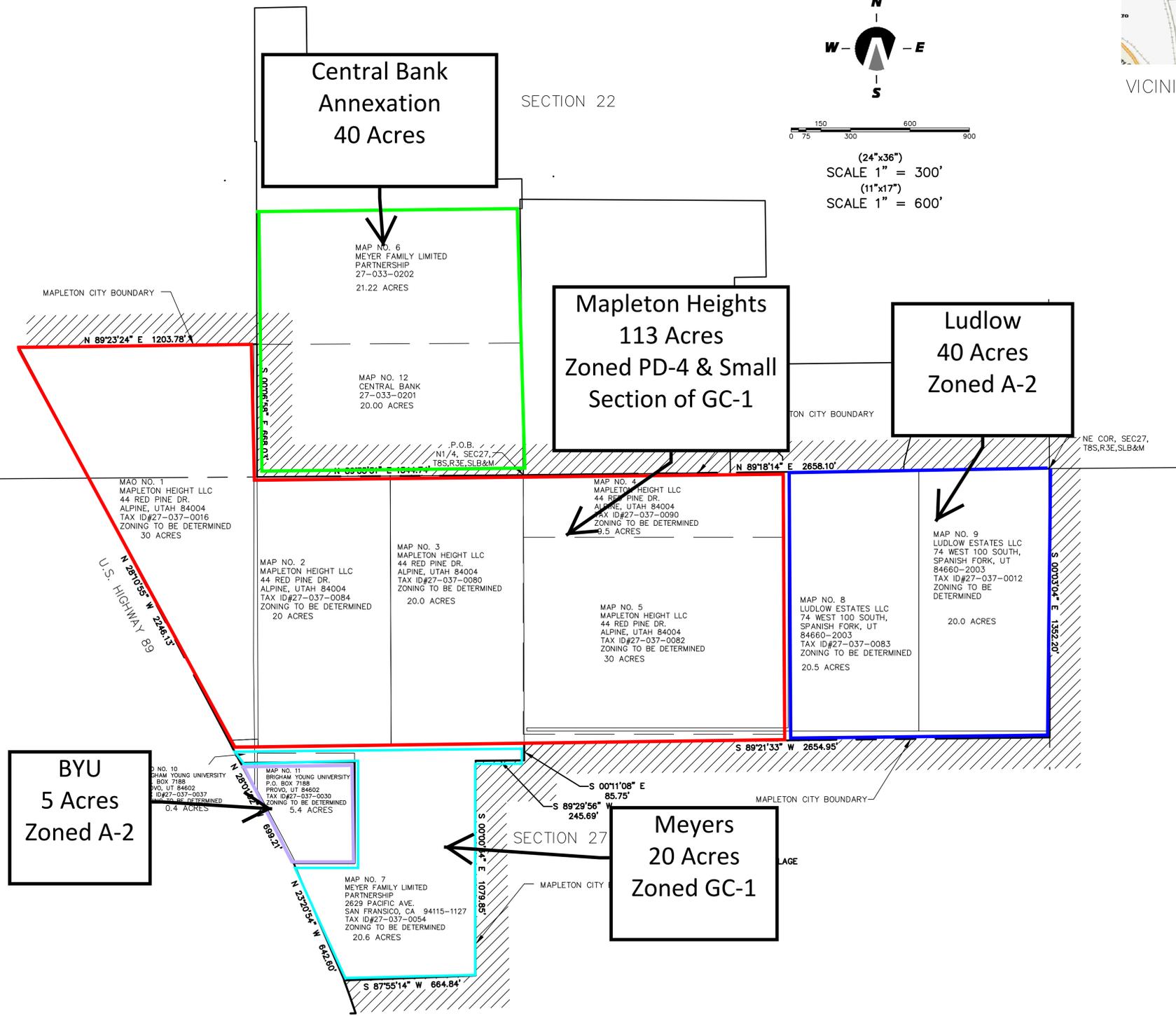
- CALCULATED POINT, NOT SET
- ANNEXATION BOUNDARY
- SECTION LINE
- DEED LINE
- EXISTING MAPLETON CITY LIMITS



VICINITY MAP



(24"x36")  
SCALE 1" = 300'  
(11"x17")  
SCALE 1" = 600'



### SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I, KIM WAYNE LUNDEBERG, AM A LICENSED SURVEYOR IN THE STATE OF UTAH HOLDING CERTIFICATE 354377 AND THAT THIS PLAT WAS PREPARED UNDER MY DIRECTION AND THAT THIS IS A TRUE AND ACCURATE MAP OF THE TRACT OF LAND TO BE ANNEXED TO MAPLETON CITY, UTAH COUNTY, UTAH.

DATE \_\_\_\_\_ KIM WAYNE LUNDEBERG, P.L.S.  
LAND SURVEYOR  
(SEE SEAL BELOW)

### BOUNDARY DESCRIPTION

A PARCEL OF LAND LOCATED IN THE SOUTH 1/2 OF SECTION 22 AND THE NORTH 1/2 OF SECTION 27, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE & MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND BRASS CAP MARKING THE NORTH 1/4 CORNER OF SAID SECTION 27, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF THE HORIZON HEIGHTS SUBDIVISION;

THENCE N.89°18'14"E. ALONG THE SECTION LINE AND THE SOUTH BOUNDARY LINE OF THE HORIZON HEIGHTS SUBDIVISION 2658.10 FEET TO A BRASS CAP MARKING THE NORTHEAST CORNER OF SAID SECTION 27 SAID POINT ALSO BEING AND THE NORTHWEST CORNER OF MAPLETON VILLAGE ANNEXATION; THENCE ALONG THE MAPLETON VILLAGE ANNEXATION FOR THE NEXT SIX CALL, 1) THENCE S.00°03'04"E. ALONG THE SECTION LINE 1352.20 FEET; 2) THENCE S.89°21'33"W. 2654.95 FEET; 3) THENCE S.00°11'08"W 85.75 FEET; 4) THENCE S.89°29'56"W. 245.69 FEET; 5) THENCE S.00°00'34"E 1079.85 FEET; 6) THENCE S.87°55'14"W 664.84 FEET; THENCE N.23°20'54"W. 642.60 FEET; THENCE N.28°01'02"W. 699.21 FEET; THENCE N.28°10'55"W. 2246.13 FEET; THENCE N.89°23'24"E. 1203.78 FEET; THENCE S.00°06'58"E. 668.03 FEET; THENCE N.89°35'31"E. 1344.74 FEET; TO THE POINT OF BEGINNING. CONTAINING 180.79 ACRES OF LAND.

### ACCEPTANCE BY LEGISLATIVE BODY

WE, THE DULY ELECTED COUNCIL OF THE CITY OF MAPLETON, UTAH, HAVE RECEIVED A REQUEST TO INITIATE PROCEDURES FOR THE ANNEXATION OF THE TRACT OF LAND SHOWN HEREON, WHICH TRACT IS CONTIGUOUS TO THE CITY, AND DO HEREBY CERTIFY: (1) THE COUNCIL HAS ADOPTED A RESOLUTION SETTING FORTH ITS INTENT TO ANNEX THE TRACT, PROVIDED NOTICE AND CONDUCTED HEARINGS ON THE MATTER, AND ADOPTED AN ORDINANCE PROVIDING FOR THE ANNEXATION OF THE TRACT TO THE CITY; ALL IN ACCORDANCE WITH THE PROVISIONS OF SECTION 10-2-418 UTAH CODE ANNOTATED, AS AMENDED, AND (2) THAT THE COUNCIL DOES HEREBY APPROVE AND ACCEPT THE ANNEXATION OF THE TRACT OF LAND SHOWN HEREON AS A PART OF MAPLETON CITY, TO BE KNOWN HEREAFTER AS THE MAPLETON HEIGHTS ANNEXATION.

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. \_\_\_\_\_

APPROVED \_\_\_\_\_ ATTEST \_\_\_\_\_  
CLERK-RECORDER  
(SEE SEAL BELOW)

## ANNEXATION PLAT

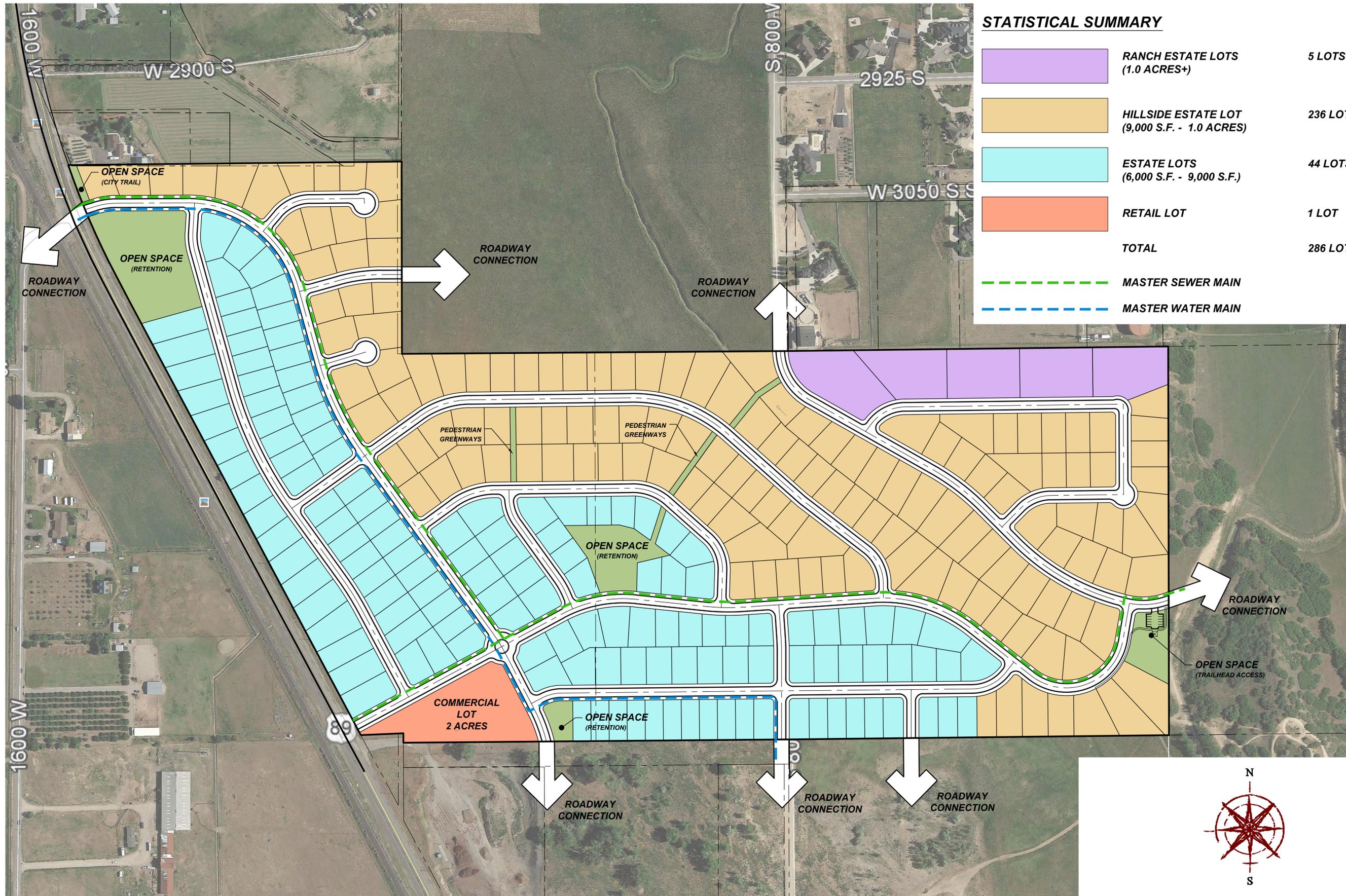
### MAPLETON RIDGE

SECTIONS 22 & 27  
T.8S., R.3E., S.L.B.&M.

**Northern ENGINEERING INC**  
ENGINEERING-LAND PLANNING  
CONSTRUCTION MANAGEMENT

1040 E. 800 N.  
OREM, UTAH 84097  
(801) 802-8992

MAPLETON CITY UTAH COUNTY, UTAH			
SCALE: 1" = 100 FEET			
SURVEYOR'S SEAL	NOTARY PUBLIC SEAL	CITY-COUNTY ENGINEER SEAL	CLERK-RECORDER SEAL



**STATISTICAL SUMMARY**

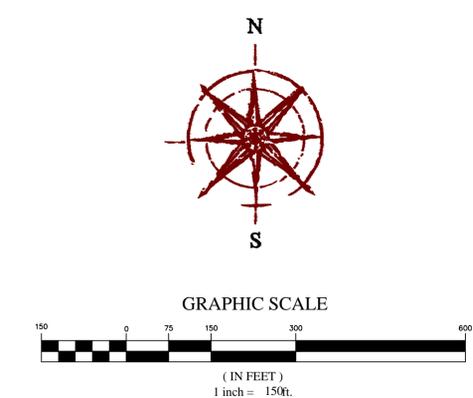
	<b>RANCH ESTATE LOTS</b> (1.0 ACRES+)	<b>5 LOTS</b>
	<b>HILLSIDE ESTATE LOT</b> (9,000 S.F. - 1.0 ACRES)	<b>236 LOTS</b>
	<b>ESTATE LOTS</b> (6,000 S.F. - 9,000 S.F.)	<b>44 LOTS</b>
	<b>RETAIL LOT</b>	<b>1 LOT</b>
	<b>TOTAL</b>	<b>286 LOTS</b>
	<b>MASTER SEWER MAIN</b>	
	<b>MASTER WATER MAIN</b>	

**Mapleton Heights**  
Mapleton City, Utah  
**Conceptual Land Use Plan**

#	DATE	DESCRIPTION
1		
2		
3		
4		
5		
6		

**Conceptual Land Use Plan**

Scale: 1"=150'  
Date: 04/07/2015  
Sheet: 01



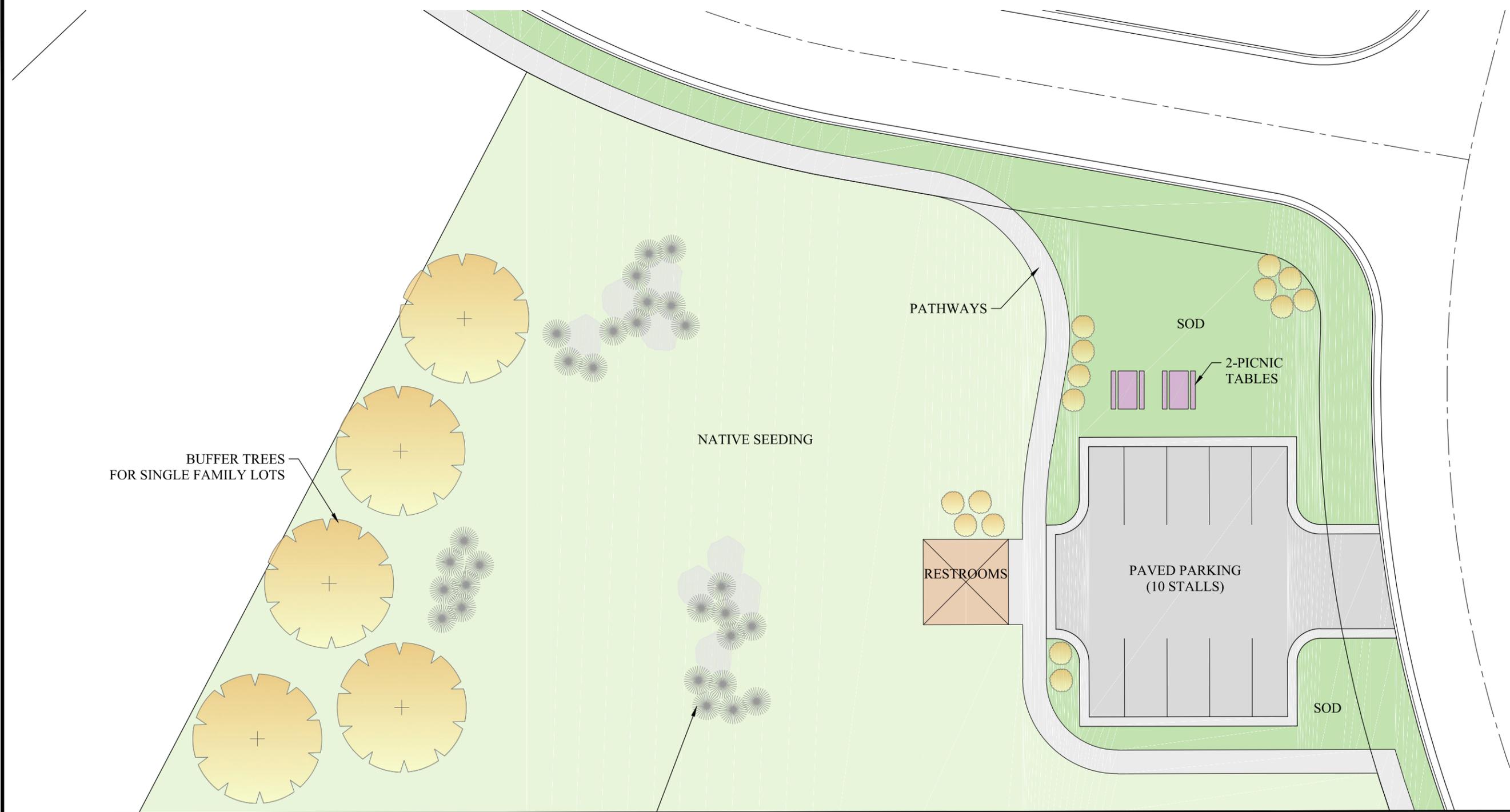
Z:\2014\14-235 Scott Hazard-Mapleton\design 14-235\dwg\concept\_sheets\Conceptual Land Use Plan.dwg

**Mapleton Heights**  
 Mapleton City  
**Conceptual Trailhead Plan**

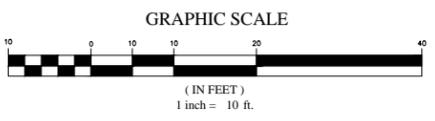
REVISION BLOCK	#	DATE	DESCRIPTION
	1		
	2		
	3		
	4		
	5		
	6		

**Conceptual Trailhead Plan**

Scale: 1"=10'  
 Date: 04/08/2015  
 Sheet:



NOTE: THE OPEN SPACE FROM THE TRAILHEAD PARKING PARCEL MAY BE USED FOR STORM WATER RETENTION OF THE PROPOSED TRAILHEAD PARKING ONLY. NO STORM WATER RETENTION FROM THE RESIDENTIAL SUBDIVISION WILL BE ALLOWED ON THE TRAILHEAD PARKING PARCEL.



# PD-4 PLANNED DEVELOPMENT-4 MAPLETON HEIGHTS

## 18.78D.010: PURPOSE AND OBJECTIVES:

## 18.78D.020: DENSITY:

## 18.78D.030: ADEQUATE PUBLIC FACILITIES:

## 18.78D.040: PERMITTED USES:

## 18.78D.050: PERMITTED ACCESSORY USES:

## 18.78D.060: CONDITIONAL USES:

## 18.78D.070: LOT REQUIREMENTS:

## 18.78D.080: SETBACK REQUIREMENTS:

## 18.78D.090: ADDITIONAL SETBACK REQUIREMENTS OR LIABILITY

## DISCLAIMERS:

## 18.78D.100: BUILDING HEIGHT:

## 18.78D.110: ARCHITECTURAL REVIEW:

## 18.78D.120: LANDSCAPING AND STREET TREE REQUIREMENTS:

## 18.78D.130: DESIGN STANDARDS:

## 18.78D.140: OPEN SPACE REQUIREMENTS:

## 18.78D.150: ENFORCEMENT:

## **18.78D.010: PURPOSE AND OBJECTIVES:**

The purposes of the PD-4 zone include the following:

1. To provide flexibility in the city's zoning scheme in order to allow for a unique, innovative and well planned development;
2. To allow appropriate high density residential development near or adjacent to Highway 89; and
3. To implement the Mapleton Heights Annexation and Development Agreement.

## **18.78D.020: DENSITY**

The overall residential density in the PD-4 zone shall not exceed two hundred and eighty five (285) dwelling units not counting accessory apartments permitted by this chapter.

## **18.78D.030: ADEQUATE PUBLIC FACILITIES:**

In addition to the specific development standards contained in this chapter, areas zoned to the PD-4 shall comply with section [17.04.130](#), "Availability Of Adequate Public Facilities", of this code.

## **18.78D.040: PERMITTED USES:**

The following uses shall be permitted in the PD-4 zone:

Customary residential household pets as defined in section [18.08.345](#) of this title.

Home occupations, subject to the provisions of section [18.84.380](#) of this title.

Public facilities.

Residential Facilities For Elderly Persons subject to the provisions of section 18.84.370 of this title.

Residential Facilities For Persons With A Disability subject to the provisions of section 18.84.370 of this title

Single-family residential dwelling unit.

Temporary fruit and vegetable stands, for the sale of produce raised on the premises, that shall not exceed one hundred (100) square feet; are maintained in an orderly manner.

The following standards only apply to lots greater than twenty thousand (20,000) square feet: The raising, care and keeping of limited numbers of livestock and fowl excluding swine for family food production or recreation. Also barns, corrals, pens and coops and other structures for the care and keeping of domestic livestock and fowl, subject to the following:

A. The number of animals kept shall not exceed one animal unit for each twenty thousand (20,000) square feet of a lot. No livestock or fowl shall be kept on any lot containing less than twenty thousand (20,000) square feet.

B. No structure for the housing of livestock or fowl or corrals for the close confinement of livestock shall be located closer than one hundred feet (100') to an existing dwelling on an adjacent lot or fifty feet (50') to such a dwelling on the same lot.

#### **18.78D.050: PERMITTED ACCESSORY USES:**

Accessory uses and structures are permitted in the PD-4 zone, provided they are incidental to the main residential dwelling unit, and do not substantially alter the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:

Accessory buildings such as barns, garages, carports, greenhouses, gardening sheds, recreation rooms, and similar structures which are customarily used in conjunction with and are incidental to a principal use or structure and in accordance with section 18.26.020 of this title and the following:

A. Accessory structures on lots with less than twenty thousand (20,000) square feet shall be limited to a footprint size that is no greater than the main structure, with a height no taller than the main structure.

B. For lots greater than twenty thousand (20,000) square feet, the maximum size on any accessory building, barn, garage or otherwise, shall be limited to no more than one hundred twenty five percent (125%) of the footprint of the main dwelling.

Accessory apartments are subject to the provisions of section 18.84.410 of this title.

Swimming pools and incidental cabanas subject to any and all requirements of the international building code (IBC).

### **18.78D.060: CONDITIONAL USES:**

The following is a list of conditional uses. Such uses may be approved by issuance of a conditional use permit from the planning commission. Uses not specified herein as "permitted" or "conditional" shall be considered prohibited.

Places of worship

Private schools

Utility Facilities

### **18.78D.070: LOT REQUIREMENTS:**

For the purpose of this chapter, the detached residential lots are separated into two (2) different districts, according to the Mapleton Heights conceptual plan, each with unique requirements. These areas are defined by geographical area as shown in the Mapleton Heights Annexation and Development Agreement.

A. Ranch Estate lot requirements:

1. Minimum area: 43,560 square feet.
2. Minimum frontage: 100 feet. Cul de sac lots and lots on bulbs shall have the minimum frontage measured at the front yard setback line.
3. Minimum depth: 100 feet.

B. Hillside Estate lot requirements:

1. Minimum area: 9,000 square feet.
2. Minimum frontage: 70 feet. Cul de sac lots and lots on bulbs shall have the minimum frontage measured at the front yard setback line.
3. Minimum depth: 100 feet.

C. Estate lot requirements:

1. Minimum area: 6,000 square feet.
2. Minimum frontage: 55 feet. Cul de sac lots and lots on bulbs shall have the minimum frontage measured at the front yard setback line..
3. Minimum depth: 75 feet.

### **18.78D.080: SETBACK REQUIREMENTS:**

For the purpose of this chapter, the detached residential lots are separated into three (3) different districts according to the Mapleton Heights Concept Plan, each with unique requirements:

A. Ranch Estate lot setbacks:

1. All structures shall maintain a front yard setback of no less than twenty five (25') measured from the property line to the foundation of the main structure. If the garage doors face the street, the garage, whether attached or detached, shall be setback at least thirty ~~twenty~~ feet (30~~20~~') from the front property line. For corner lots, the secondary frontage setback will be 10'.
2. The main structure shall maintain a rear yard setback of no less than twenty five feet (25') measured from the rear property line to the foundation of the main building. Detached accessory buildings may be constructed in accordance with section 18.26.020 of this title.
3. The main structure shall maintain a side yard setback of no less than ten feet (10') measured from the property line to the foundation of the structure. Detached accessory buildings may be constructed in accordance with section 18.26.020 of this title.

B. Hillside Estate lot setbacks:

1. All structures shall maintain a front yard setback of no less than twenty feet (20') measured from the property line to the foundation of the main structure. If the garage doors face the street, the garage, whether attached or detached, shall be setback at least twenty five feet (25') from the front property line. For corner lots, both street frontages must comply with the front yard setback.
2. The main structure shall maintain a rear yard setback of no less than twenty feet (20') measured from the rear property line to the foundation of the main building. Detached accessory buildings may be constructed in accordance with section 18.26.020 of this title.
3. The main structure shall maintain a side yard setbacks of no less than ten feet (10') measured from the property line to the foundation of the structure. Detached accessory buildings may be constructed in accordance with section 18.26.020 of this title.

C. Estate lot setbacks:

1. All structures shall maintain a front yard setback of no less than fifteen (15') measured from the property line to the foundation of the main structure. If the garage doors face the street, the garage, whether attached or detached, shall be setback at least twenty feet (20') from the front property line. For corner lots, the secondary frontage setback will be 10'.
2. The main structure shall maintain a rear yard setback of no less than twenty feet (20') measured from the rear property line to the foundation of the main building. Detached accessory buildings may be constructed in accordance with section 18.26.020 of this title.
3. The main structure shall maintain a side yard setback of no less than Five feet (5') measured from the property line to the foundation of the structure. Detached accessory buildings may be constructed in accordance with section 18.26.020 of this title.

C. Projections Into Yards: The following structures or features may be erected on or projected into any required yard:

1. Fences and walls in conformance with this code and approval by the planning and zoning director. Other city codes or ordinances also apply.
2. Landscape elements including trees, shrubs, agricultural crops, and other plants.
3. Necessary appurtenances for utility service.
4. The structures listed below may project into a minimum front or rear yard not more than four feet (4'), and into a minimum side yard not more than two feet (2'):
  - a. Cornices, eaves, belt courses, sills, buttresses, or other similar architectural features.
  - b. Fireplace structures and bays, provided that they are not wider than eight feet (8') measured generally parallel to the wall of which they are a part.
  - c. Stairways, balconies, door stoops, fire escapes, awnings, and planter boxes or masonry planters not exceeding twenty four inches (24") in height.
  - d. Porte-cochere over a driveway in a side yard, providing such structure is not more than one story in height and twenty four feet (24') in length, and is entirely open on at least three (3) sides except for necessary supporting columns and customary architectural features

#### **18.78D.090: ADDITIONAL SETBACK REQUIREMENTS OR LIABILITY DISCLAIMERS:**

Nothing in this chapter shall be construed to preclude Mapleton City from setting additional setback requirements, or requiring inclusion of liability disclaimers associated with physical hazards of a geologic nature. Such additional requirements are to be part of any final plat or development agreement.

#### **18.78D.100: BUILDING HEIGHT:**

Building Height: No lot or parcel of land in the PD-4 zone shall have a building or structure which exceeds a height of two (2) stories with a maximum of forty feet (40') as defined in section [18.08.170](#) of this title.

#### **18.78D.110: LANDSCAPING AND STREET TREE REQUIREMENTS:**

All landscaping shall conform to the requirements found in [title 17, chapter 17.15](#) of this code.

#### **18.78D.120: DESIGN STANDARDS:**

Design elements including, but not limited to, street width, curb radii, drainage facilities, sidewalks, curb and gutter, fencing, and block standards shall conform to the Mapleton Heights concept plan and Mapleton City standards.

#### **18.78D.130: OPEN SPACE REQUIREMENTS:**

Per the Mapleton Heights Annexation and Development Agreement, the developer shall dedicate a trail head park to the City consistent with the project Concept Plan. Any and all other parks, retention basins, play fields, inter-block walkways, and protected natural areas shall be maintained by the homeowners' association or the property owner of the property on which the open space is located.

**18.78D.140: ENFORCEMENT:**

If the city deems that open space and parks maintained by homeowners' associations are not being kept to Mapleton City standards, the city shall have the right to cause such improvements and maintenance to be done and any such expenses by the city shall be assessed to any of the homeowners' associations of the PD-4 zone. In the event of the dissolution or inactivity of any homeowners' associations in the PD-4 zone, Mapleton City shall have the right to assume title of the open space and parks, and the city shall then charge the individual property owners within the applicable areas for the improvements, maintenance, and administrative fees required for the above mentioned open space and parks.

# Attachment “2”

## DRC Comments

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### MAPLETON CITY DEVELOPMENT REVIEW COMMITTEE MINUTES

June 9, 2015

125 West Community Center Way (400 North), Mapleton, Utah 84664

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Mapleton Heights LLC has submitted an annexation petition to annex approximately 180 acres of property located at approximately 3000 South and Highway 89. The property is currently located in unincorporated Utah County. The applicant is also requesting approval of a Planned Development zone for the property owned by Mapleton Heights LLC as well as approval of a concept plan and development agreement.

According to Mapleton City Code (MCC) Chapter 20.04.030 the Development Review Committee is required to review nine topics associated with the project. These items are listed below followed by a brief response to each item.

*1. Whether the proposed property is within the growth management boundary of the general plan;*

Response: State law requires the City to adopt an annexation plan that includes a map of potential annexation properties and a statement of the criteria that will be used to guide annexation decisions. In accordance with state law, the City adopted an Annexation Policy in 2002. The policy identifies two primary annexation areas, Mapleton West (Big Hollow) and Mapleton South. The proposed annexation area is located in the Mapleton South area and is identified as a potential annexation candidate.

*2. Present and proposed land use and zoning;*

Response: None of the land in the proposed annexation boundary has been developed with structures. The uses of land in the annexation boundary include, or have included, agricultural, gravel mining, and composting. The proposed land uses include single-family residential with a mix of densities, general commercial and agricultural residential. The General Plan land use designations include general commercial and medium density residential.

*3. Present and potential demand for various municipal services;*

Response: The proposed annexation area will create a demand for City services including the provision of culinary and secondary water, sanitary sewer, police and fire protection and general parks and recreational services. Annexation fees and/or impact fees will be required in order for the proposed development to pay its fair share for the provision of public services. Per the subdivision code and the proposed development agreement, the developer will be responsible for installing all required on and off-site utilities to service the project site.

*4. Distances from existing utility lines, public schools, parks, and shopping areas;*

Response: The closest water line is located adjacent to the property just north of the northwest corner of the project site. The closest sewer line is located at approximately 2600 South. There

is no pressurized irrigation currently available in the area. As mentioned in item #3, the applicant will be required to install all necessary on and off-site utilities to service the project site.

The development will be part of the Nebo School District, which includes four elementary schools, one junior high school and one high school in the area. Mapleton City has several parks that can be used and enjoyed by the residents of the proposed development. In addition, the proposed development agreement includes requirements for some recreational amenities in the project area including a bike/pedestrian trail system and a trail head park. Mapleton has limited shopping opportunities but several neighborhood, community and regional shopping areas are located in the vicinity.

*5. Specific time tables for extension of services to the area and how these services would be financed;*

Response: There is a possibility that water and sewer extensions will be installed by an adjacent developer to the south in the near future. However, if the adjacent developer does not extend the utilities prior to development of the subject property, the developer of the subject property would be responsible for installing all necessary utilities.

*6. Potential impact on existing and proposed streets;*

Response: While the proposed development is proposing connectivity with adjacent City streets and future developments, the primary impact will be on Highway 89. As the development of the project occurs, UDOT will determine whether improvements along Highway 89 are necessary. The applicant has submitted a traffic study that indicates that Highway 89 will continue to operate at a Level of Service "A" or "B" level with project build-out.

*7. The effect that the annexation will have upon city boundaries and whether the annexation will create potential for islands, or difficult service areas;*

Response: Central Bank is proposing an annexation that consists of 40 acres just north of the subject annexation. The Central Bank annexation must be finalized prior to finalizing the subject annexation to avoid the creation of an island. Upon approval of both annexations, there will be no remaining unincorporated islands or peninsulas east of Highway 89.

*8. An estimate of potential revenue versus potential service costs.*

Response: The primary revenue sources that will come to the City as a result of the proposed development include property taxes and annexation/impact fees. Annexation/impact fees are imposed when property is developed to pay for all or a portion of the costs of providing public services to and for the new development. These fees are implemented to help reduce the economic burden on the City that result from population growth.

Providing additional rooftops in the City has a secondary benefit of increasing the potential for commercial opportunities, and therefore the potential for increased sales tax revenues in the City.

*9. Any agreements or requirements upon which the annexation is conditioned.*

Response: The annexation approval will be conditioned upon approval of a concept plan and development agreement that will outline in detail the conditions associated with annexation acceptance.

# Mapleton

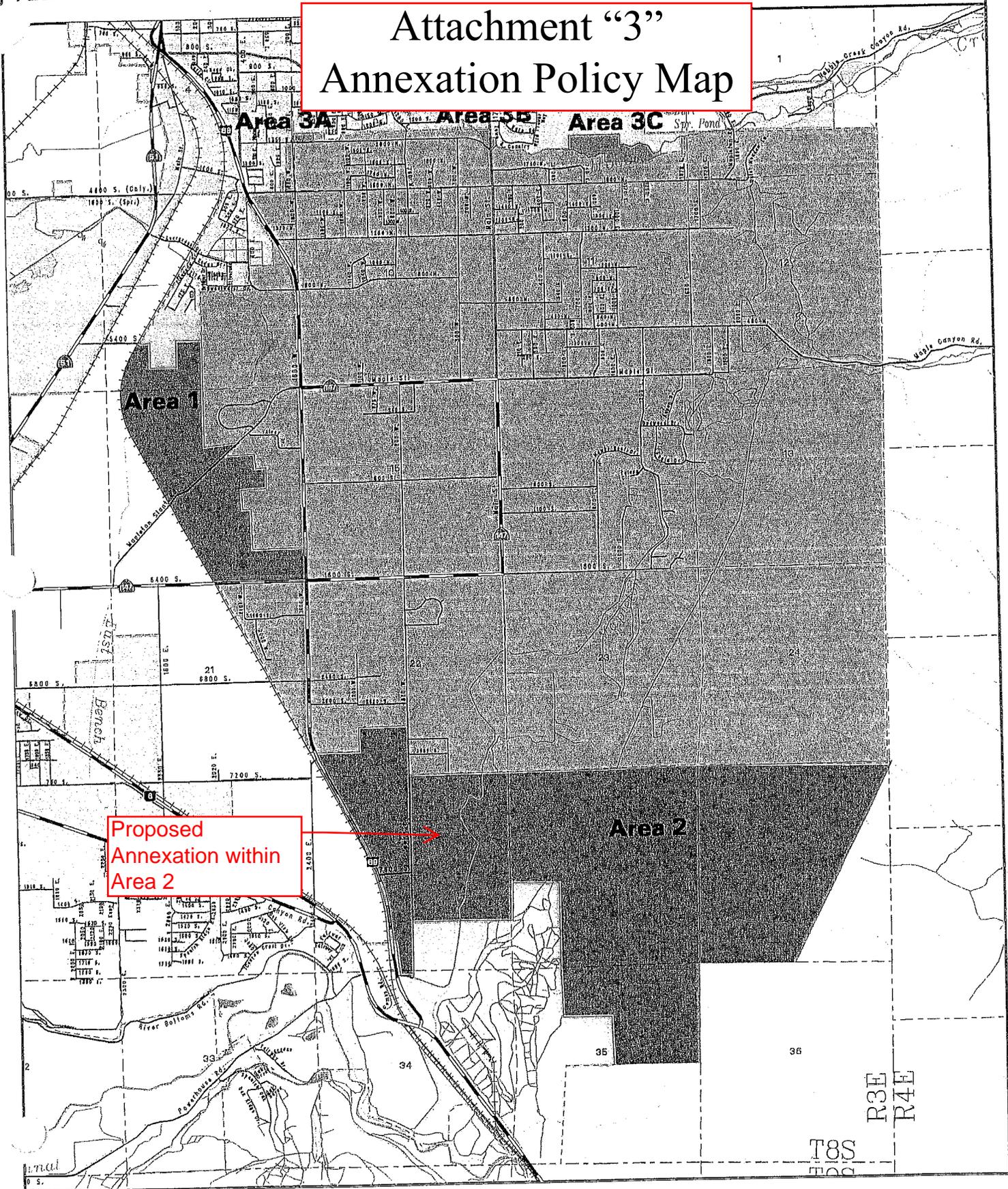
## Annex Declaration

-  Annexation Declaration
-  De-annexation Declaration
-  Incorporated Cities



Scale 1:40000

# Attachment "3" Annexation Policy Map

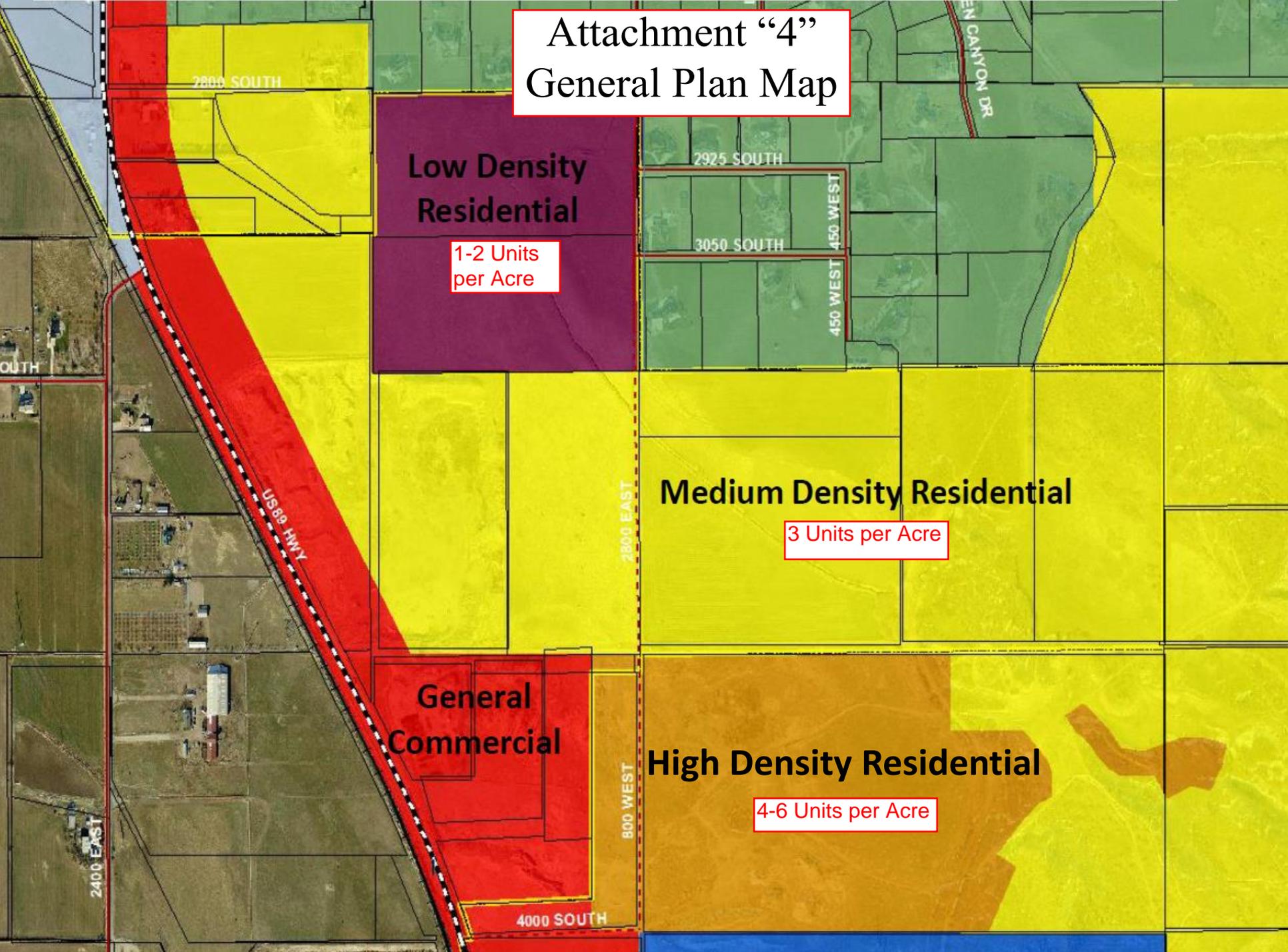


Proposed  
Annexation within  
Area 2

R3E  
R4E

T8S

# Attachment "4" General Plan Map



Attachment “5”  
Development Agreement

ANNEXATION AND DEVELOPMENT AGREEMENT

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**MAPLETON HEIGHTS**

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# MAPLETON HEIGHTS ANNEXATION AND DEVELOPMENT AGREEMENT

Mapleton Heights, LLC (“**Developer**”) and Mapleton City Corporation, a Utah Municipal Corporation (“**the City**”) hereby make and enter into this Annexation and Development Agreement (“**the Agreement**”) this \_\_\_\_ day of \_\_\_\_\_, 2014, in connection with and to govern the annexation and development of certain property owned or controlled by Developer and that is more particularly described hereafter.

## RECITALS

**A. WHEREAS** Developer desires to annex real property owned or controlled by Developer into the City’s boundaries that is currently located in the unincorporated County and is located generally at 3000 South and 1600 West in Utah County, Utah, and which is legally described in Exhibit A (“**Property**”) attached hereto and made a part of this Agreement;

**B. WHEREAS** the Developer and the City have entered into negotiation to outline certain conditions and terms for development under which Developer would like to petition for annexation;

**C. WHEREAS** the Parties intend to enter into this Agreement to allow Developer and the City to agree on issues considered essential to the annexation, and this process will lead to development of the property into an attractive community (“**Project**”) that functions in a way that will add quality of life to future residents while allowing the City to provide municipal services in a cost effective and efficient manner and that is in harmony with and intended to promote the City’s Comprehensive General Plan, applicable zoning ordinances, and the construction and development standards of the City and allow the Developer to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below;

**E. WHEREAS** development of the Project pursuant to this Agreement is acknowledged by the parties to be generally consistent with the Act, and the Code and to operate to the benefit of the City, Developer, and the general public;

**F. WHEREAS** approval of this Agreement does not grant subdivision approval, site plan approval, or approval of any building permit, or other land use activity regulated by the City’s ordinances, and Developer expressly acknowledges that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats, nor does it limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement;

**G. WHEREAS** acting pursuant to its legislative authority under Utah Code Ann. § 10-9a-101, et seq., and after all required public notice and execution of this Agreement by Developer, the City Council of the City, in exercising its legislative discretion, has determined that entering into this Agreement generally furthers the purposes of the Utah Municipal Land Development and Management Act, the City’s General Plan, and the Mapleton City Code (collectively, the “**Public Purposes**”). As a result of such determination, the City has elected to consider the Project and the development authorized hereunder in accordance with the provisions of this Agreement;

**H WHEREAS** the Developer, in compliance with Utah law and its governing documents, has authorized the undersigned to execute this Agreement;

**I. WHEREAS** the Parties intend to take all steps necessary to finalize the annexation of the property and to develop the Project according to this Agreement;

**J. WHEREAS** Developer and the City have cooperated in the preparation of this Agreement;

**K. WHEREAS** the Developer, in compliance with Utah law and its governing documents, has authorized the undersigned to execute this Agreement; and

**L. WHEREAS** the City has approved a Concept Plan for the Project (“**Project Concept Plan**”), attached as Exhibit B and incorporated herein by reference,

Now, therefore, in consideration of the premises recited above and the terms, conditions, and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer hereby agree as follows:

## **SECTION I – DEFINITIONS**

Unless the context requires a different meaning, any term or phrase used in this Agreement shall have that meaning given to it by the City’s Zoning Ordinance in effect on the date a complete application is received by the City. Certain other terms and phrases are referenced below. In the event of a conflict between two or more definitions, that definition which provides the most restrictive development latitude shall prevail.

## **SECTION II – SPECIFIC TERMS AND CONDITIONS**

**1. Term.** The term of this Agreement shall commence on, and the effective date of this Agreement shall be, the effective date of City action approving this Agreement. This Agreement shall terminate when each party has fulfilled its commitments as outlined in this Agreement.

**2. Agricultural Use To Remain in Undeveloped Areas - Irrigation Ditches.** Any portion of the Property for which a plat has not been recorded shall be maintained in agricultural use. Agricultural use need not be maintained for any portion of the Property which is subject to a recorded plat. Irrigation ditches on the Property shall be maintained as at present unless the ditch owner in consultation with the applicable irrigation company approves piping, realignment, abandonment, or otherwise authorizes a change in the configuration or use of a ditch.

**3. Zoning Classification – Allowed Uses.** Subject to the recitals and terms of this Agreement, the zoning classification on the Property shall be a Planned Development (PD – 4) Zone. The project shall be constructed in a manner consistent with the the PD-4 zone as adopted in the Mapleton City Code and shall consist of a maximum of 285 residential units and one commercial parcel as depicted on the approved Project Concept Plan (see Exhibit B). According to Mapleton City Code Chapter 18.78.010, the PD zones are designed “...to provide flexibility in the city's zoning scheme in order to allow for unique, innovative and well planned developments that would not be possible under one of the city's existing zoning classifications.” The following elements are required in order to provide an innovative development that qualifies for the PD-4 zoning:

- A. Trailhead Park. Developer shall dedicate to the City as a part of the phase providing road access to the Trailhead park shown on the Concept Plan (Exhibit “B”) as a condition of receiving the PD-4 zoning. A final detailed park plan based on the Trail Head Concept Plan (Exhibit “C”) shall be submitted with the subdivision plat for the phase containing the park. Developer shall be responsible for paying for water and sewer laterals, water rights and a 2-stall modular restroom unit. The Trailhead Park shall be improved and installed by the City consistent with the final approved park plan. Upon approval of a construction bid for the park, Developer shall establish a cash deposit account with the City to cover the costs of the park. If the deposit account is inadequate to pay for the actual final cost of completion of the improvements, Developer shall be responsible for the deficiency. Additionally, no further building or construction permits shall be issued until the deficiencies have been covered. If City determines to add amenities that are above and beyond the scope of the plan as shown in Exhibit “C”, City shall cover those costs. Developer shall not be responsible for paying any impact fees, connections fees, meter costs or other similar costs related to the improvements for the Trailhead park.
- B. Pedestrian Trails: Developer shall install a ten foot (10’) wide trail system on one side of the street that connects Highway 89 to the Trailhead Park and runs through the proposed project as depicted in the Project Concept Plan (see Exhibit B). The trail shall be

installed in-lieu of sidewalks for the side of the road that the trail is located. The trail may be built in phases as part of the required improvements for each subdivision plat that is recorded.

**4. Compliance with City Requirements and Standards.** All provisions of the Mapleton City Code and Utah Code § 10-9a-509, as constituted on the effective date of this Agreement shall be applicable to the project proposed on the Property except as expressly modified by this Agreement. This includes, but is not limited to, road profiles. The parties acknowledge that in order to proceed with development of the Property, Developer shall comply with the requirements of this Agreement and other requirements generally applicable to development in Mapleton City. Developer expressly acknowledges that nothing in this Agreement shall be deemed to relieve it from its obligations to comply with all applicable requirement of the City necessary for approval and recordation of subdivision plats and site plans for the Project, or any other portion of the property involved in the Project, in effect at the time of developmental approval, or re-approval in the event of expiration, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies, and procedures of the City.

**5. Vested Rights.** Following annexation and rezoning as described herein, Developer shall have the vested right to develop and construct the Project on the Property in accordance with the PD - 4 Zone and the Concept Plan subject to compliance with the terms and conditions of this Agreement and other applicable City Laws as more fully set forth in this Agreement. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The parties specifically intend that this Agreement grants to Developer “vested rights” as that term is defined in Utah’s statutory code and construed in Utah’s common law. The Parties understand and agree that the Project will be required to comply with future changes to City Laws that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the City that would be applicable to the Project:

- A. Developer Agreement. Future laws that Developer agrees in writing to the application thereof to the Project;
- B. Compliance with State and Federal Laws. Future laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;
- C. Safety Code Updates. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes,

such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare.

- D. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.
- E. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.
- F. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed and collected.

**6. Infrastructure.** The Developer expressly acknowledges and agrees to the requirement to install all necessary infrastructure as stated in Mapleton City Code Chapter 17.16, at their own expense, and further acknowledges and agrees, as a condition precedent to the City's issuance of a building permit or approval of a subdivision application, to pay all applicable fees associated with connection to water, sewer, storm drainage, and/or any pressurized irrigation water facilities, in addition to any other connection fees that may apply. The City provides or is soon to provide the following utilities, which need to be brought to the property by the Developer, at no cost to the City, in order to develop the Property: culinary water; sewer; and pressurized irrigation. Developer shall design, build, and dedicate to the City adequate delivery systems for each of these utilities according to the City specifications and standards including all distribution lines, conduit, street lights, valving, fire hydrants, meters, and other required services to meet the needs for the Project as a condition of development. All facilities necessary to provide adequate utility services installed within the Project, upon formal acceptance by the City through a recorded dedication deed, shall be owned, operated, and maintained by the City. Developer or its successors or assigns shall be responsible for such infrastructure until such time as the City accepts the improvements in the manner set forth herein. In the event that a third party installs any of the infrastructure described above adjacent to and/or through Developers property, Developer shall connect to this infrastructure and pay any required reimbursement fees as part of final plat approval. The Developer may tie into existing utility infrastructure provided there is adequate capacity in the infrastructure by the as determined City Engineer.

A. Utility Reimbursement. In the event that the City or a third party installs infrastructure, including culinary water and/or sanitary sewer, the City shall cause the infrastructure to be sized to accommodate Developer's project. If/when Developer

connects to said infrastructure, Developer shall be required to pay a reimbursement. The reimbursement is to be a pro rata share of construction, costs of the sewer and water project, determined by a method of cost apportionment based on the benefit to the Developer from the improvements.

*Utility reimbursements* must be conditioned upon:

- Construction of the water or sewer facility according to plans and specifications approved by the City;
- Inspection and approval of the water or sewer facility by the City;
- Transfer to the City of the water or sewer facility, without cost to the City, upon acceptance by the City of the water or sewer facility;
- The City shall verify and approve of all contracts and costs related to the water and sewer facility.

Upon a final determination of the costs related to the water and sewer facilities, the City shall send by certified mail a notice within thirty (30) business days to Developer outlining the total reimbursement due. The city shall also record a notice with the Utah County recorder.

Developer shall reimburse the City for its equitable share of the actual costs of constructing and upsizing these facilities as follows:

#### Culinary Water.

*Lineal foot.* At the time any subdivision plat is recorded that contains a portion of the culinary water line the Developer shall pay to the City the pro rata share of the “Reimbursement Based on Frontage Benefit” based on the lineal footage of the culinary water line in the plat as a percentage of the total length of the culinary water line as actually constructed that runs across the Project Property.

*Oversizing/Offsite.* At the time any building permit is obtained for constructing a home on any lot in the Project the applicant for the permit shall pay to the City the pro rata share of the “Reimbursement Based on ERUs” based on the ERU as a percentage of the total ERUs accommodated by the water line.

#### Sanitary sewer.

*Lineal foot.* At the time any subdivision plat is recorded that contains a portion of the sanitary sewer line the Developer shall pay to the City the pro rata share of the “Reimbursement Based on Frontage Benefit” based on the lineal footage of the sanitary sewer line in the plat as a percentage of the total length of the sanitary sewer line as actually constructed that runs across the Project Property.

*Oversizing/Offsite.* At the time any building permit is obtained for constructing a home on any lot in the Project the applicant for the permit shall pay to the City the pro rata

share of the “Reimbursement Based on ERUs” based on the ERU as a percentage of the total ERUs accommodated by the water line.

**7. Easements.** Developer shall grant to the City, at no cost to the City, all easements necessary for the operation, maintenance, and replacement of all utilities located within the Project as the City determines to be necessary.

**8. Conditions of Approval and Annexation Fees.** With respect to the development of the Subject Area, Developer accepts and agrees to pay an annexation fee for each Equivalent Residential Unit (ERU) proposed as part of the project. The annexation fee shall be equal to the most recently adopted City residential or commercial impact fees (based on development type) and shall be paid in the same manner (i.e. water and sewer portion due at plat recoding and public safety, pressurized irrigation and recreation due at building permit). Petitioner acknowledges that the development requires infrastructure supported by annexation fees and finds the fees currently imposed to be a reasonably monetary expression of exaction that would otherwise be required. Developer agrees not to challenge, contest, or bring a judicial action seeking to avoid payment of or to seek reimbursement for such fees, so long as such fees are applied uniformly within the City or service area.

- A. Sewer Impact Fees. Petitioner may prepay its sewer impact fees for any phase of the development of the Mapleton Heights Property, and upon payment of such impact fees, City will guaranty sewer connections for an equal number of ERUs.

**9. Reserved Legislative Powers.** This Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards, or rules regulating development or zoning. Nothing herein shall be construed to limit the ability of the City Council to exercise its police powers to enact zoning ordinances, some of which may affect the Project.

**10. Subdivision Plat Approval.** Either concurrently with, or subsequent to, approval of the annexation petition, as determined by Developer pursuant to applicable requirements of the Mapleton City Code, Developer shall cause one or more subdivision plats (the “**Subdivision Plats**”) to be prepared for the Project Property. Such plats shall conform to applicable requirements of the Mapleton City Code.

- A. Installation of Subdivision Improvements: No subdivision plat shall be recorded until either:
  - (1) The required improvements have been completed in accordance with Mapleton City Code Chapter 17.16.010; or
  - (2) A performance guarantee and a durability bond have been submitted in accordance with Mapleton City Code Chapter 17.20.

**11. Standard for Approval of Subdivision Plats.** All subdivision plats must be approved in accordance with Mapleton City Code Chapter 17 and must conform to applicable requirements of the Mapleton City Code, State and Federal Law, and this Agreement. The City acknowledges that certain portions of the project need to be contoured with mass grading in order to allow the development of the Project in compliance with the Project Concept Plan and that the City will approve this contouring in compliance with Project Concept Plan as a part of the subdivision approval process.

**12. Satisfaction of Water Rights Requirements.** Developer agrees that prior to approval of a final plat for, any parcel of property that is included in the Project, the owner of the subject parcel shall either dedicate water rights to the City, as specified by, or as determined in accordance with the provisions of the City Code or other applicable law. The City shall not be required to approve any plat, until such requirements are fully satisfied.

**13. Commencement of Site Preparation.** Developer shall not commence site preparation or construction of any Project improvement on the Property until such time as subdivision plat or plats have been approved by City in accordance with the terms and conditions of this Agreement.

**14. Construction Mitigation.** Developer shall provide the following measures, all to the reasonable satisfaction of the City, to mitigate the impact of any construction within the Project. Developer shall also adhere to existing construction impact mitigation measures required by the City Code. Additional reasonable site-specific mitigation measures may be required. The following measures shall be included in each application for development of any final plat:

- A. Limits on disturbance, vegetation protection, and the re-vegetation plan for all construction, including construction of public improvements;
- B. Protection of existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed.

**15. Project Phasing and Timing.** Upon approval of a Subdivision Plat or Plats, Developer shall proceed by constructing the entire Project at one time or in a minimum of two (2) approved phases.

- A. Parcel Sales. Developer may obtain approval of a Subdivision that does not create any individually buildable lots in the Parcel without being subject to any requirement in the City Laws to complete or provide security for the Project Infrastructure at the time of such subdivision except that the City may require as a part of the Subdivision of the Parcel the construction of perimeter infrastructure such as curb and gutter, sidewalks and fire hydrants

if reasonably necessary given the location of the Parcel Sale in relation to other development and the respective timing of the completion of such developments. The responsibility for completing and providing security for completion of any Project Infrastructure in the Parcel shall be that of the Developer or a Subdeveloper upon a further Subdivision of the Parcel that creates individually buildable lots.

**16. Changes to Project.** No material modifications to Subdivision Plats shall be made after approval by City without City Council's written approval of such modification. Developer may request approval of material modifications to Project Plans from time to time as Developer may determine necessary or appropriate. For purposes of this Agreement, a material modification shall mean any modification which (i) increases the number of lots in a subdivision plat, or (ii) substantially changes the location of public roads. Modifications to the Subdivision Plat which do not constitute material modifications may be made without the consent of City Council prior to plat recording. In the event of a dispute between Developer and City as to the meaning of "material modification," no modification shall be made without express City Council approval. Modifications shall be approved by the City Council if such proposed modifications are consistent with City's then-applicable rules and regulations and are consistent with the standard for approval set forth in this Agreement.

**17. Commencement of Site Preparation.** Developer shall not commence site preparation or construction of any Project improvement on the Property until such time as subdivision plat or plats have been approved by City in accordance with the terms and conditions of this Agreement.

**18. Construction Mitigation.** Developer shall provide the following measures, all to the reasonable satisfaction of the City, to mitigate the impact of any construction within the Project. Developer shall also adhere to existing construction impact mitigation measures required by the City Code. Additional reasonable site-specific mitigation measures may be required. The following measures shall be included in each application for development of any final plat:

- A. Limits on disturbance, vegetation protection, and the re-vegetation plan for all construction, including construction of public improvements;
- B. Protection of existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed.

**19. Time of Approval.** Any approval required by this Agreement shall not be unreasonably withheld or delayed and shall be made in accordance with applicable procedures set forth in the Mapleton City Code.

**20. Successors and Assigns.** This Agreement shall be binding on the successors and assigns of Developer. Notwithstanding the foregoing, a purchaser of the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to any portion of the Project so transferred. In the event of a sale or transfer of the Project, or any portion thereof, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by City.

**21. Later Acquired Property.** If Developer acquires any additional property contiguous to the subject Property, the newly acquired property will not be part of this Agreement unless and until an amended Agreement is approved by the City Council.

**22. Default.**

A. Events of Default. Upon the happening of one or more of the following events or conditions Developer or City, as applicable, shall be in default ("Default") under this Agreement:

- (1) A warranty, representation or statement made or furnished by Developer under this Agreement is intentionally false or misleading in any material respect when it was made.
- (2) A determination made upon the basis of substantial evidence that Developer or City has not complied in good faith with one or more of the material terms or conditions of this Agreement.
- (3) Any other event, condition, act or omission, either by City or Developer, (i) violates the terms of, or (ii) materially interferes with the intent and objectives of this Agreement.

B. Procedure Upon Default.

- (1) Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event that the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such default so long as the defaulting party takes action to begin curing such default within such thirty (30) day period and thereafter proceeds diligently to cure the

default. After proper notice and expiration of said thirty (30) day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in Paragraph C herein. Failure or delay in giving notice of default shall not constitute a waiver of any default.

- (2) Any Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.

C. Breach of Agreement. Upon Default as set forth in Paragraphs A and B above, City may declare Developer to be in breach of this Agreement and City (i) may withhold approval of any or all building permits or certificates of occupancy applied for in the Project, but not yet issued; and (ii) shall be under no obligation to approve or to issue any additional building permits or certificates of zoning compliance for any building within the Project until the breach has been corrected by Developer. In addition to such remedies, either City or Developer (in the case of a default by the City) may pursue whatever additional remedies it may have at law or in equity, including injunctive and other equitable relief.

D. Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in this Agreement or to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fourth District Court, State of Utah, or in the Federal District Court for the District of Utah. The option to institute legal action, at least in the case of defaults, is available only after the cure provisions are complied with.

### **Section III – GENERAL TERMS AND CONDITIONS**

**1. Scope of Agreement.** The parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with local, state,

and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with local, state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with local, state, or federal law, as the case may be, and the balance of this Agreement shall remain in full force and effect.

**2. Recording of Agreement.** In the event City approves the Project and all Conditions Precedent have been met, the provisions of this Agreement shall constitute real covenants, contracts and property rights, and equitable servitudes which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. This Agreement shall be recorded as a covenant running with the Property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof. The City or Developer may cause this Agreement, or a notice concerning this Agreement, to be recorded with the Utah County Recorder.

**3. Transfer/Assignment of Property.**

- A. General. The Developer shall have the right, with the City's written consent, to assign or transfer all or any portion of its rights and obligations under this Agreement to any party acquiring an interest or estate in the Project or any portion thereof, except as specifically set forth below.
- B. Consent. The City may not unreasonably withhold its consent to such an assignment.
- C. Notice. Developer shall provide written notice acknowledged by the City of any proposed or completed assignment or transfer. In the event the City does not object in writing within thirty (30) days of receipt of said written notice, the City shall be deemed to have approved of and consented to the assignment.
- D. Rights and Obligations. In the event of an assignment, the transferee shall succeed to all of Developer's rights and obligations under this Agreement. Notwithstanding, Developer selling or conveying individual lots or parcels of land to builders, individuals, or other developers shall not be deemed to be an assignment subject to the above requirement for approval unless specifically designated as an assignment by Developer.
- E. Related Party Transfer. Developer's transfer of all or any part of the Property to any entity "related" to Developer (as defined by regulations of the Internal Revenue Service), Developer's entry into a joint venture for the development of the Project or

Developer's pledging of part or all of the Project as security for financing shall also not be deemed to be an "assignment" subject to the above-referenced approval by the City unless specifically designated as such an assignment by the Developer.

- F. Partial Assignment. If any proposed assignment is for less than all of Developer's rights and responsibilities then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.

**4. Severability.** If any paragraph of this Agreement, or portion thereof, is declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will not be affected and each paragraph of this Agreement will be valid and enforceable to the fullest extent permitted by law.

**5. Time of Performance.** Time shall be of the essence with respect to the duties imposed on the parties under this Agreement. Unless a time limit is specified for the performance of such duties each party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.

**6. Construction of Agreement.** This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect health, safety, and welfare of the citizens of City. This Agreement has been reviewed and revised by legal counsel for each of the Parties and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

**7. State and Federal Law.** The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. If City's approval of the Project is held invalid by a court of competent jurisdiction, this agreement shall be null and void.

**8. Enforcement.** The parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer

period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer.

**9. No Waiver.** Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the City Council of City, taken with the same formality as the vote approving this agreement, no officer, official or agent of City has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.

**10. Entire Agreement.** This Agreement shall supersede all prior agreements with respect to the subject matter hereof, not incorporated herein, and all prior agreements and understandings are merged herein. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties.

**11. Attorneys Fees.** If either party commences any litigation whatsoever, including but not limited to insolvency, bankruptcy, arbitration, declaratory relief, or other litigation proceedings, including appeals or rehearings, and whether or not an action has actually commenced, for the judicial interpretation, reformation, enforcement, or rescission of this Agreement or any addenda or attachments whatsoever, the prevailing party will be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court and other costs incurred. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for the purposes of determining whether a party is entitled to recover its costs or attorneys' fees. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.

**12. Applicable law.** This Agreement and the construction thereof, and the rights, remedies, duties, and obligations of the parties which arise hereunder, are to be construed and enforced in accordance with the laws of the State of Utah.

**13. Notices.** Any notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, or four (4) days after being sent by registered or certified mail, properly addressed to the parties as follows:

To the Developer:     Mapleton Heights, LLC  
                                  44 Red Pine Drive  
                                  Alpine, UT 84004

To the City:                   Mapleton City Attorney  
  125 N Community Center Way  
  Mapleton, Utah 84664

**14. Execution of Agreement.** This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

**15. Hold Harmless.** Developer shall hold City, its officers, agents, employees, consultants, special counsel, and representatives harmless from liability for damages or equitable relief arising out of claims for personal injury or property damage arising from direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf, in connection with the Project.

- A. The agreements of Developer in Paragraph M shall not be applicable to (1) any claim arising by reason of the negligence or intentional actions of City, or (2) attorneys' fees under Paragraph I herein.
- B. City shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Developer shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

**16. Relationship of Parties.** This Agreement is not intended to create any partnership, joint venture or other arrangement between City and Developer. This Agreement is not intended to create any third party beneficiary rights for any person or entity not a party to this Agreement. It is specifically understood by the parties that: (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Developer, (ii) the Project is a private development; (iii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property; and (iv) Developer shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.

- A. Certificate of Compliance. Upon fifteen (15) business days prior written request by Developer or a Subdeveloper, the City will execute a certificate of compliance to any third party seeking to purchase all or a portion of the Property or lend funds against the same generally in the form attached as Exhibit D certifying that Developer or a Subdeveloper, as the case may be, is not in default of the terms of this Agreement.

**17. Title and Authority.** Developer expressly warrants and represents to City that it is a limited liability company in good standing and that such company owns or controls all right, title and interest in and to the Property and that no portion of the Property, or any right, title or interest therein has been sold, assigned or otherwise transferred to any other entity or individual. Developer further warrants and represents that no portion of the Property is subject to any lawsuit or pending legal claim of any kind. Developer warrants that the undersigned individual has full power and authority to enter into this Agreement on behalf of Developer. Developer understands that City is relying on such representations and warranties in executing this Agreement.

**18. Headings for Convenience.** All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

**19. Exhibits.** All exhibits referred to herein are made a part of this Agreement as incorporated by reference date.

**20. Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; “shall” is mandatory, “may” is permissive.

**21. Further Assurances, Documents, and Acts.** Each of the Parties agrees to cooperate in good faith with the other and to execute and deliver such further documents, and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each party as allowed by law.

**22. Assignments.** Neither this Agreement nor any of the provisions, terms, or conditions hereof can be assigned by the Developer to any other party, individual, or entity without assigning the rights as well as the obligations under this Agreement. The rights of the City under this Agreement shall not be assigned.

**23. Electronic Transmission and Counterparts.** Electronic transmission (including email and fax) of a signed copy of this Agreement, any addenda, and any exhibits, and the retransmission of any signed electronic transmission, shall be the same as delivery of an original. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but only all of which together shall constitute one instrument and execution.

[signature pages follow]

This Development Agreement has been executed by City, acting by and through its City Council, pursuant to a City Council motion authorizing such execution, and by a duly authorized representative of Developer as of the date first written above.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year first above written.

**Mapleton Heights, LLC**

\_\_\_\_\_  
Signature – authorized representative

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINTED NAME – authorized representative

STATE OF UTAH            )  
  )ss.  
COUNTY OF UTAH        )

The foregoing was duly acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_, who personally appeared before me and signed and executed the foregoing document.

\_\_\_\_\_  
Notary Public

(Notary Seal)

**Mapleton City, a Utah Municipal Corporation**

\_\_\_\_\_  
Mayor

**Attest**

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

STATE OF UTAH            )  
                                  )ss.  
COUNTY OF UTAH        )

The foregoing was duly acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_, who personally appeared before me and signed and executed the foregoing document.

\_\_\_\_\_  
Notary Public

(Notary Seal)

**EXHIBIT A**  
**Legal Description**

**COMPOSITE BOUNDARY DESCRIPTION**

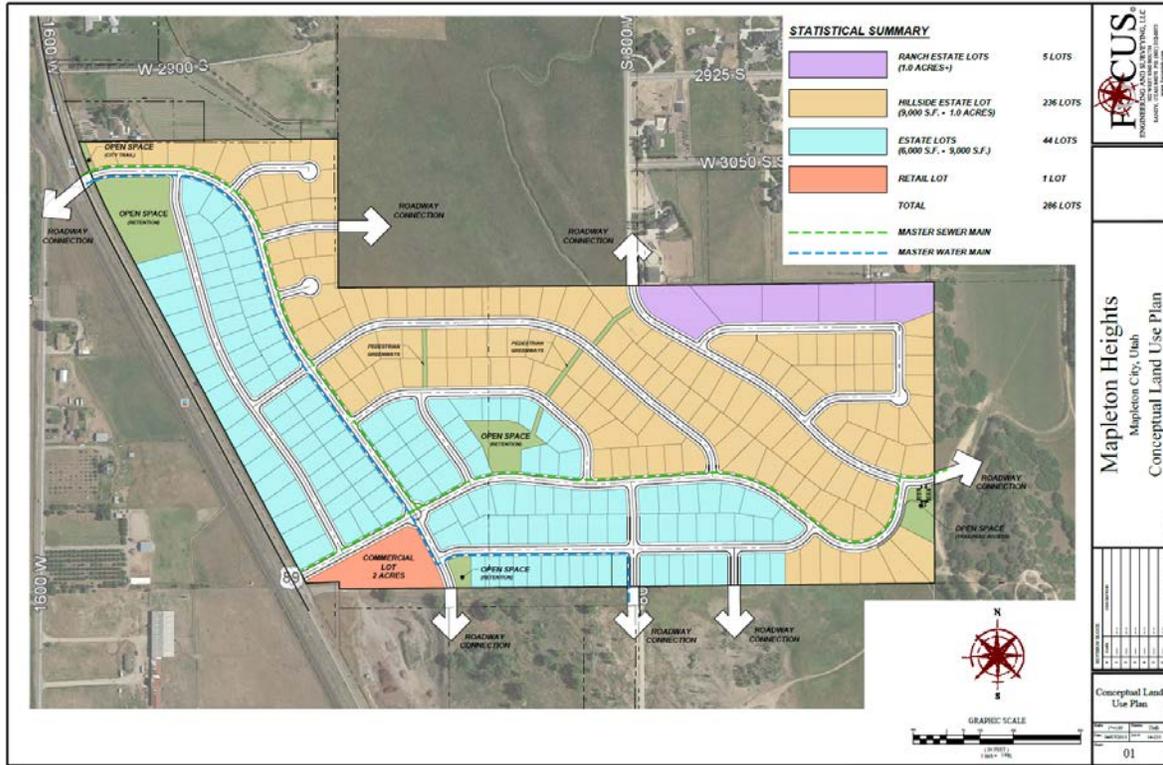
A portion of the SW1/4 of Section 22, and the NW1/4 and NE1/4 of Section 27, Township 8 South, Range 3 East, Salt Lake Base & Meridian, located in Mapleton, Utah, more particularly described as follows:

All of the Real Property described in the following four (4) documents: a Boundary Line Agreement recorded as Entry No. 132727:2005, a Warranty Deed recorded as Entry No. 40435:2006, and a Special Warranty Deed recorded as Entry No. 24146:2007, and a Boundary Line Agreement recorded as Entry No. 41840:2014, all according to the Official Records of Utah County, more particularly described by Survey as follows:

Beginning at the North ¼ Corner of Section 27, T8S, R3E, S.L.B.& M.; thence N89°18'12"E along the Section line 1,329.04 feet; thence S0°07'06"E along the 1/16<sup>th</sup> (40 acre) Section line 1334.36 feet; thence S89°21'36"W 1,327.38 feet parallel with, and 16.50 feet north of the south line of the NW1/4 of the NE1/4 of said Section 27 to the ¼ Section line; thence S0°11'21"E along the ¼ Section line 16.50 feet; thence S89°30'17"W 1,344.60 feet; thence N0°11'44"W 32.93 feet; thence S87°31'02"W 148.78 feet; thence along the east line of US Highway 89 the following 6 (six) courses and distances: N28°10'55"W 1,639.24 feet; thence N27°44'31"W 209.34 feet; thence N26°27'29"W 80.71 feet; thence N24°21'25"W 64.34 feet; thence N22°44'03"W 126.70 feet; thence N19°24'41"W 109.27 feet to the south line of VIRGINIA ESTATES "A" Subdivision, according to the Official Plat thereof on file in the Office of the Utah County Recorder; thence N89°24'01"E along said plat 1,161.91 feet to the west line of the SE1/4 of the SW1/4 of Section 22; thence S0°05'58"E along the 1/16<sup>th</sup> (40 acre) line 668.06 feet to the north line of said Section 27; thence N89°35'31"E along the Section line 1,345.26 feet to the point of beginning.

Contains: 113.11+/- acres

# EXHIBIT B Project Concept Plan



# EXHIBIT C

## Trailhead Park Concept Plan

