

Planning Commission Staff Report

May 12, 2016

Item 2

Applicant: DR Horton,

Matt Hanson

Location: 800 S Slant Rd

Prepared by: Sean Conroy,

Community Development

Director

Public Hearing: Yes

Zone: N/A

Attachments:

1. Application
Materials/Concept
Plan.
2. DRC Comments.

REQUEST

Consideration of recommendations to the City Council regarding the annexation of approximately 113 acres of land located at approximately 800 South Slant Road, and the approval of a development agreement and concept plan for approximately 210 residential lots.

BACKGROUND AND PROJECT DESCRIPTION

The subject property is located at approximately 800 South Slant Road, just west of Maple Ridge elementary school. DR Horton is under contract to purchase approximately 100 acres and would like to annex it into the City. DR Horton is also proposing the following:

- Approval of a development agreement;
- R-2 zoning for the entire site;
- A concept plan for 210 residential lots. Lot sizes range from 10,000 square feet (.23 acres) to 32,000 square feet (.73 acres); and
- Development of a six acre park that would be dedicated to Mapleton City.

There is also a six acre triangular shaped parcel owned by Anna Holm that would be included in the annexation, but would not be included in the development agreement and concept plan.

Below is a summary of the steps required for annexation:

- 1) Applicant submits an annexation application/petition (completed);
- 2) City Council adopts a resolution to accept or deny the petition (completed);
- 3) City reviews application to determine whether it complies with state law and then certifies the petition (completed);
- 4) A protest period occurs (completed);
- 5) Development Review Committee evaluates nine specific topics related to an annexation application (see attachment "2");
- 6) Application is reviewed by the Planning Commission (purpose of this meeting);
- 7) City Council adopts and ordinance to approve or deny the annexation (after Planning Commission makes recommendations);
- 8) Upon final approval, annexation is forwarded to the Lieutenant Governor's Office; and
- 9) Annexation plat gets recorded with the County Recorder.

EVALUATION

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 and Mapleton South. The proposed annexation area is located in the Mapleton West area and is identified as a potential annexation candidate. If this annexation is approved, approximately 130 acres of land will remain in the City’s potential annexation boundaries.

General Plan: The General Plan designation for this property is High Density Residential. This designation typically allows densities of 3-4 units per acre, with the potential for higher densities with the use of TDRs. The density of the proposed concept plan is approximately 2.25 units per acre with lot sizes ranging from 10,000 square feet to 32,000 square feet. The proposed development plan is less intense than envisioned by the General Plan.

Zoning: The applicant has requested the Residential (R-2) zoning designation. This designation allows lots sizes as small as 10,000 square feet. The R-2 zone is consistent with the proposed concept plan and with the General Plan. Staff recommends that both the DR Horton parcel and the Holm parcel be zoned R-2.

Concept Plan: The concept plan proposes a 210 lot residential subdivision. The proposal includes improvements along Slant Road (curb, gutter, sidewalk and road widening, two access points on Slant Road with two streets stubbing to the neighboring properties to the west. A six acre park is proposed near the northeast corner of the property that will include two soccer fields, a perimeter trail, a pickle ball court, tot lot, a restroom and parking. There are some existing mature trees that will be preserved as part of the park proposal

The project will utilize two primary street cross sections. There will be a wider street cross section (58’ ROW) that will include stripped bike lanes that will loop through the development (3200 W, 3900 W and 250 S). The neighborhood streets will be narrower (40’ ROW) and will include a planter between the street and the sidewalks.

The applicant has worked with staff to create a function and attractive development plan with amenities that will benefit the residents of the neighborhood as well as the city as a whole.

Development Agreement: The development agreement identifies the expectations of both the applicant and the city, and when recorded, will run with the land. The development agreement identifies the zoning (R-2), maximum density (210 lots), and the expectations for the installation of improvements including the park. The agreement also indicates that the cost of the park (land and improvements) will be reimbursed to the applicant through a parks and recreation impact fee credits.

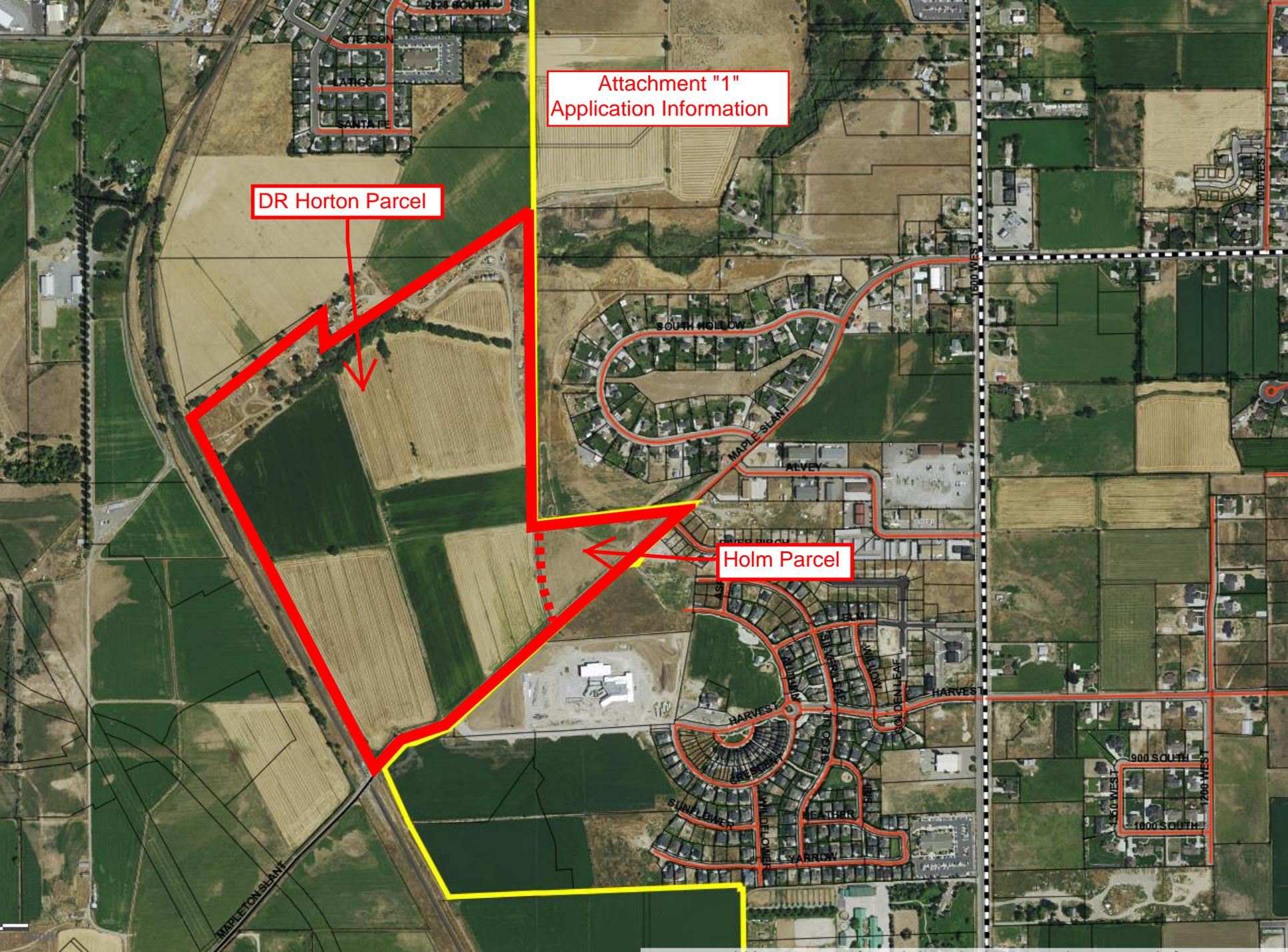
STAFF RECCOMENDATION

Recommend approval of the annexation to the City Council.

Attachment "1"
Application Information

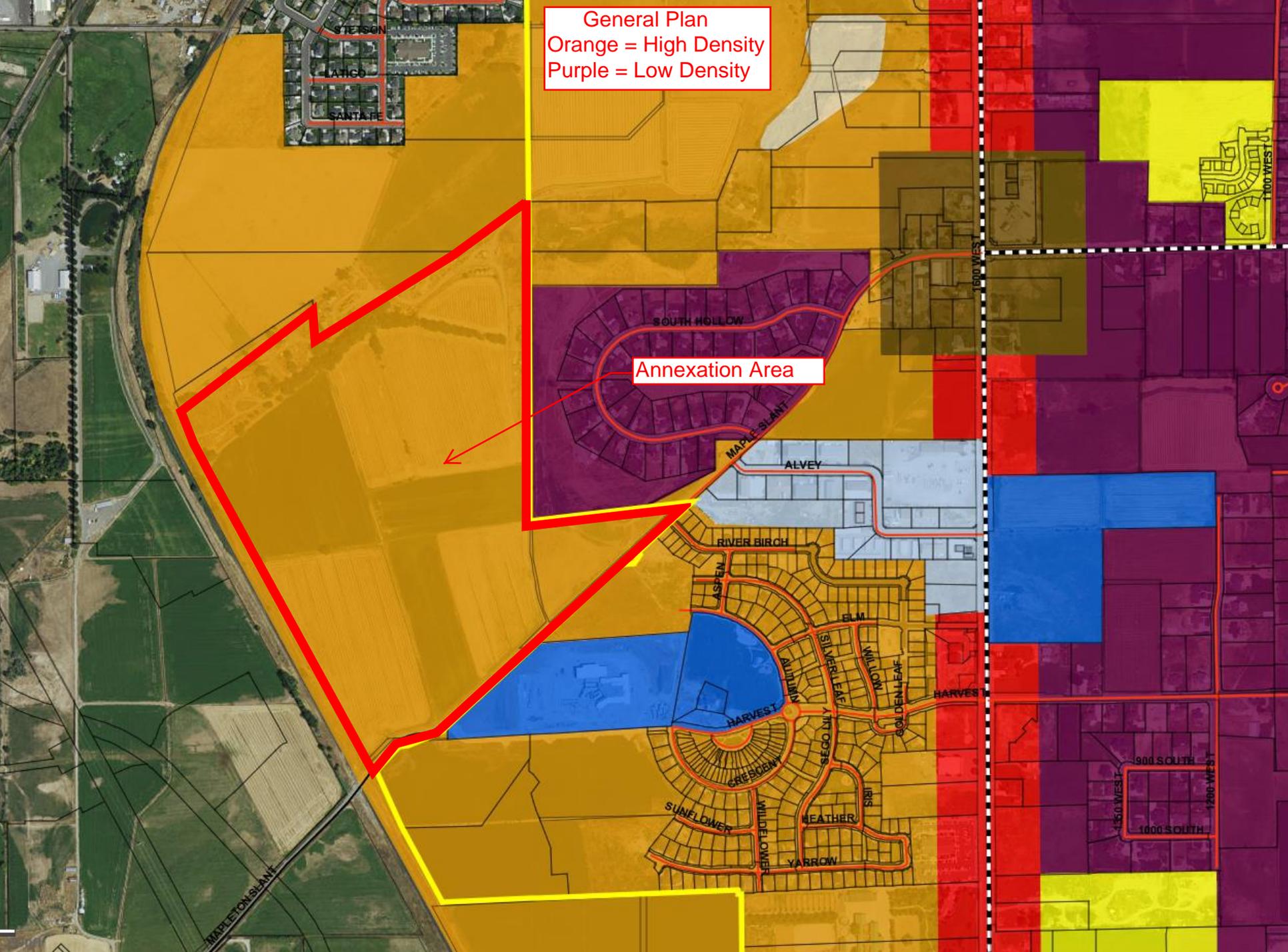
DR Horton Parcel

Holm Parcel



General Plan
Orange = High Density
Purple = Low Density

Annexation Area



MAPLETON GROVE PRELIMINARY PLAN

APRIL 2016

VICINITY MAP



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**ENGINEERS
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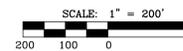


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TABULATIONS

| | |
|--------------|--------------------------------------|
| TOTAL AREA: | 93.46 ACRES |
| # OF UNITS: | 210 BUILDING LOTS, 2 OPEN SPACE LOTS |
| STREET AREA: | 17.07 ACRES |

NOTES

- CLEARING AND GRUBBING WILL BE REQUIRED ON SITE.
- ALL CONSTRUCTION TO BE IN ACCORDANCE WITH MAPLETON CITY/APWA STANDARDS.
- ALL VERTICAL DATA IS BASED ON NGVD 29 DATUM.
- CONCRETE COLLARS TO BE PLACED ON ALL MANHOLES & WATER VALVES.
- ALL CULINARY WATER LINES TO BE D.I. CLASS 350 W/POLY WRAP WITH TRACE WIRE.
- ALL PI LINES TO BE C900/C905 SDR-18 PVC WITH TRACE WIRE.
- ALL SEWER LINES TO BE SDR35 PVC OR D.I. CLASS 250.
- CONTRACTOR TO FOLLOW RECOMMENDATIONS AS PER GEOTECHNICAL REPORT.
- ALL DITCH CONSTRUCTION DETAILS TO BE PROVIDED AT FINAL.
- STORM DRAIN RUNOFF TO BE COLLECTED USING A FILL & SPILL SUMP SYSTEM.
- CONTRACTOR TO VERIFY ALL EXISTING UTILITY SIZES & ELEVATIONS PRIOR TO CONSTRUCTION.
- CENTERLINE IN PLAN & PROFILE SHEETS HAS BEEN OMITTED FOR CLARITY.
- ALL INTERIOR FENCE LINES TO BE REMOVED.
- STORM DRAIN INLETS AND DRIVEWAY TO BE COORDINATED WITH DEVELOPER AT FINAL PLAT TO ENSURE ALL CONFLICTS ARE ADDRESSED.

LEGEND

| EXISTING | |
|------------------------|--|
| WATER METER | |
| WATER | |
| WATER VALVE | |
| FIRE HYDRANT | |
| SEWER | |
| SEWER MANHOLE | |
| STORM DRAIN | |
| STORM DRAIN MANHOLE | |
| STORM DRAIN CURB INLET | |
| PI | |
| PI VALVE | |
| FENCE | |

PROPOSED

| | |
|------------------------|--|
| WATER | |
| WATER VALVE | |
| FIRE HYDRANT | |
| SEWER | |
| SEWER MANHOLE | |
| STORM DRAIN | |
| STORM DRAIN MANHOLE | |
| STORM DRAIN CURB INLET | |
| PI | |
| PI VALVE | |

DEVELOPER

DR HORTON
12351 S GATEWAY PARK PLACE
DRAPER, UT 84020
801-871-7101

OWNER

ELIZABETH HANSON
105 W SPEARFISH LN
JUPITER, FL 33477

ENGINEER

LEI CONSULTING ENGINEERS
3302 NORTH MAIN
SPANISH FORK, UTAH 84660
(801)798-0555

PROJECT NAME

MAPLETON GROVE

NOT FOR
CONSTRUCTION

MAPLETON GROVE
MAPLETON, UTAH
COVER

REVISIONS

| NO. | DATE | DESCRIPTION |
|-----|------|-------------|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |

LEI PROJECT #:

2016-0003

DRAWN BY:

RWH

CHECKED BY:

NKW

SCALE:

1" = 200'

DATE:

04/15/2016

SHEET

COVER



PRELIMINARY DESCRIPTION

A portion of Sections 9 and 16, Township 8 South, Range 3 East, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at the North 1/4 Corner of Section 16, Township 8 South, Range 3 East, Salt Lake Base and Meridian; thence S0°03'01"E along the Quarter Section Line 198.00 feet; thence N89°40'26"E 8.73 feet to the Northwest Corner of Plat "A", South Hollow Estates Subdivision; thence S0°03'49"E along the West Line of said subdivision 1378.40 feet; thence along an existing fence line the following three (3) courses: S1°30'47"E 190.43 feet; thence along the arc of a 2023.54 foot radius non-tangent curve to the left (radius bears: N83°59'30"E) 332.40 feet through a central angle of 9°24'42" (chord: S10°42'51"E 332.02 feet); thence S20°11'53"E 83.15 feet; thence S44°59'53"W 221.56 feet; thence N86°59'53"E 56.20 feet; thence S46°43'53"W 729.67 feet to the north line of that real property described in Deed Entry No. 55884:1995 in the official records of the Utah County Recorder; thence S66°39'00"W along said north line 48.63 feet; thence S87°14'53"W 249.50 feet; thence S43°29'53"W 182.24 feet to the easterly right-of-way line of the railroad; thence along said right-of-way line the following two (2) courses: N28°09'34"W 2090.56 feet; thence along the arc of a 2221.41 foot radius curve to the right 230.98 feet through a central angle of 5°57'27" (chord: N25°10'50"W 230.87 feet) to that boundary line agreement described in Deed Entry No. 53635:2014 in the official records of the Utah County Recorder; thence N52°00'53"E along said boundary line 959.15 feet; thence N53°00'00"E 138.00 feet; thence N58°30'00"E 236.95 feet; thence N58°30'00"E 236.95 feet; thence N54°04'00"E 125.18 feet; thence N53°26'42"E 157.31 feet; thence N50°57'47"E 102.95 feet; thence N49°33'41"E 165.62 feet; thence N50°48'36"E 80.34 feet; thence N62°44'07"E 2.29 feet to the Quarter Section Line; thence S0°32'00"E along the Quarter Section Line 20.67 feet; thence N89°40'26"E 681.82 feet to the northwest corner of that real property described in Deed Entry No. 32948:2015 in the official records of the Utah County Recorder; thence along said real property the following three (3) courses: N88°45'26"E 415.24 feet; thence S0°00'07"E 303.64 feet to the north line of said Section 16; thence S89°40'26"W along the Section Line 1094.22 feet to the point of beginning.

Contains: ±93.46 Acres

SECTION LINE-N0°16'11"W 2682.57
SECTION LINE-N0°16'09"W 2658.43
SECTION LINE-N0°16'09"W 2658.43

NORTHWEST CORNER SECTION 16, T8S, R3E, SLB&M (1955 UTAH COUNTY MONUMENT)
WEST 1/4 CORNER SECTION 16, T8S, R3E, SLB&M (1955 UTAH COUNTY MONUMENT)
SOUTHWEST CORNER SECTION 16, T8S, R3E, SLB&M (1955 UTAH COUNTY MONUMENT)

SECTION LINE-N89°59'00"E 2660.14
SECTION LINE-S89°19'06"W 2639.84
BASIS OF BEARING - NAD27

SOUTH 1/4 CORNER SECTION 16, T8S, R3E, SLB&M (1955 UTAH COUNTY MONUMENT)

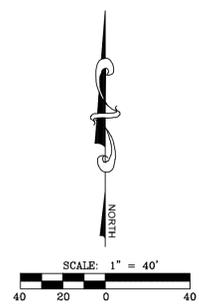
NORTH 1/4 CORNER SECTION 16, T8S, R3E, SLB&M BENCH MARK ELEV: 4699.86 (1955 UTAH COUNTY MONUMENT)

FERN HANSON FAMILY LIMITED PARTNERSHIP ENTRY NO. 11760:1987 PARCEL NO. 26-056:0048
FERN HANSON FAMILY LIMITED PARTNERSHIP ENTRY NO. 11760:1987 PARCEL NO. 26-059:0069
FERN HANSON FAMILY LIMITED PARTNERSHIP ENTRY NO. 11760:1987 PARCEL NO. 26-056:0048
HOLLEY ENTRY NO. 10586:2014 PARCEL NO. 26-059:0063
HOLLEY ENTRY NO. 124508:2008 PARCEL NO. 26-059:0061
SALISBURY INVESTMENTS LLC ENTRY NO. 35681:2011 PARCEL NO. 27-007:0011
HOLM ENTRY NO. 6211:2007 PARCEL NO. 27-007:0022
ALPINE HOMES, LLC ENTRY NO. 21358:2014 PARCEL NO. 27-007:0171
BOARD OF EDUCATION NERO SCHOOL DISTRICT ENTRY NO. 54624:2000 PARCEL NO. 27-007:0107
RIPLEY ENTRY NO. 155535:2006 PARCEL NO. 27-005:0043



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MAPLETON GROVE
 MAPLETON, UTAH
PARK EXHIBIT

| REVISIONS | |
|-----------|--|
| 1 - | |
| 2 - | |
| 3 - | |
| 4 - | |
| 5 - | |

LEI PROJECT #:
2016-0003
 DRAWN BY:
JLR
 CHECKED BY:
NKW
 SCALE:
1" = 40'
 DATE:
04/13/2016

SHEET
1

LEI PROJECT # 2016-0003 04/13/2016 11:58 AM 4/13/2016 11:58 AM

**DRAFT ANNEXATION AND DEVELOPMENT AGREEMENT
MAPLETON GROVE**

a Residential Community

MAPLETON GROVE ANNEXATION AND DEVELOPMENT AGREEMENT

D.R. Horton, Inc., a Delaware corporation (“**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 _____, 2016, 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 _____ 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 residential community to be commonly known as "Mapleton Grove" (the “**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 as allowed by applicable Utah law;

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 "**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 and certificates of occupancy have been issued for all approved and fully-constructed residential dwellings in the Project.

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 R-2 with minimum lot sizes of 10,000 square feet and 80 feet of frontage.. The Property is comprised of approximately 100 acres. The Project shall be constructed in a manner consistent with the R-2 Zone as adopted in the Mapleton City Code and shall consist of a maximum of 210 residential units as shown on the approved Project Concept Plan (see Exhibit B).

4. Project Amenities.

A. **Neighborhood Park:** Developer shall develop a park that will be approximately 6.15 acres in size and completion, and shall be dedicated to, and maintained by, the City as part of the final phase of the project. The park design and amenities shall be consistent with the Park Concept Plan described in Exhibit “C” unless otherwise modified as part of the final plat approval of the phase or phases that include the park. In exchange for the construction and dedication of the park, the City shall provide Developer with credits against park impact fees (which would otherwise be payable in connection with the issuance of building permits in this Project) in an amount equal to the actual costs incurred by Developer to construct the park improvements as reflected in Exhibit “C” and to include the land value of the park parcel less the areas being used for storm drain retention.

5. Compliance with City Requirements and Standards. All applicable provisions of the Mapleton City Code and Utah Code § 10-9a, as constituted on the effective date of this Agreement shall be applicable to the Project except as expressly modified by this Agreement. 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 except as expressly provided in this Agreement, nothing in this Agreement shall be deemed to relieve it from its obligations to comply with all applicable requirements 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.

6. Vested Rights. Following annexation and re-zoning as described herein, Developer shall have the vested right to develop and construct the Project on the Property in accordance with the R-2 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, including, without limitation, the right to construct up to 210 single-family residential dwellings. The Parties intend that the rights granted to Developer under this Agreement are contractual and are in addition to 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.

7. **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.

8. **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 reasonably determines to be necessary.

9. **Conditions of Approval and Annexation Fees.** With respect to the development of the Project, 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 impact fees, but reduced by the credit set forth in Section 4A above, 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). No additional impact fees shall be charged. For clarification, water and sewer fees will be paid at the time of plat recordation, on a phase-by-phase basis. Park, pressurized irrigation, and public safety fees will be paid in connection with the issuance of building permits (less the credit received for parks in Section 4A above).

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.

10. **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, so long as Developer's vested rights, as set forth in this Agreement, are honored to the fullest extent allowed by applicable law.

11. **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. The Project may be platted and developed in phases.

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.

12. **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.

13. **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.

14. **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; provided, however, that this provision shall not be construed to impair Developer's statutory right to construct improvements prior to recording the approved subdivision plat(s).

15. 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.

16. 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.

17. 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.

18. 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.

19. Public Improvements; Proportionality Assessments. For the purpose of avoiding unlawful exactions, all improvements that are constructed by Developer and are intended to be dedicated to, and accepted by, the City shall be governed by the following standards regarding payment and reimbursement:

- a. All on-site utilities and improvements that are not "system improvements" will be paid for by Developer without any rights of reimbursement. For purposes of this Agreement, the term "system improvements" shall mean and include improvements that are the subject of an impact fee facility

plan, and any other improvement that is designed to provide service or capacity in excess of the minimum requirements necessary for this Project (i.e., designed to provide service or capacity to more than just this Project).

- b. All internal roadways within the project shall be paid for by Developer without any rights of reimbursement.
- c. To the extent the City requires Developer to construct any system improvements (such as, without limitation, culinary waterlines or sewer lines with capacity in excess of what is required to provide service to the Project), the City shall be responsible to pay the incremental costs of the oversized improvements (e.g., all amounts in excess of what the Developer would pay to construct improvements with capacity sufficient only for the Property) in accordance with applicable State law.
- d. Prior to the construction of any system improvements, Developer and City shall enter into a reimbursement agreement addressing the amount, method and timing for the City to reimburse Developer for the City's portion of the expenses for the system improvements. To the extent necessary, the City shall amend its Impact Fee Facilities Plans (the "IFFPs") to incorporate such system improvements as part of a funding plan if the improvements are not already the subject of the City's IFFPs. The term of each reimbursement agreement shall be set forth in the reimbursement agreement, and Developer's rights of reimbursement thereunder shall survive any termination or expiration of this Agreement. Developer shall not be required to construct any system improvements without a mutually-acceptable reimbursement agreement in place for such system improvements or mutually-acceptable impact fee credits. Reimbursements and impact fee credits shall be based on actual costs incurred for the subject system improvements, not on estimates or bids. If the parties cannot agree on the terms of a reimbursement agreement, Developer shall be allowed to proceed with construction of "project" sized improvements (i.e., minimum improvements necessary for this Project only) so that the Project will not be delayed.

The provisions of this Section 19 shall be interpreted and administered in compliance with the standards for lawful exactions as set forth in Utah Code Ann. §10-9a-508 and applicable Utah case law. The determinations of the size and design of improvements to be constructed, cost-sharing, or reimbursement for the same, and applicability of the standards described in this Section 19, shall be made on a plat-by-plat basis at the time of plat approval.

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: D.R. Horton, Inc.
 Attn: John Linton
 12351 S. Gateway Park Place, Suite D100
 Draper, Utah 84020
 Email: JBLinton@drhorton.com

With a copy to: Paxton@yorkhowell.com

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 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.

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 _____, 2016 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 _____, 2016 by _____, who personally appeared before me and signed and executed the foregoing document.

Notary Public

(Notary Seal)

EXHIBIT A

Legal Description
Project Name
Project Area

Project Concept Plan

EXHIBIT B

Park Concept Plan

EXHIBIT C

MAPLETON CITY DEVELOPMENT REVIEW COMMITTEE MINUTES

May 3, 2016

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

An application has been submitted to annex approximately 113 acres into Mapleton City located at approximately 800 South and Slant Road. The property is currently located in unincorporated Utah County. The applicant is also requesting approval of R-2 zoning for the property as well as approval of a concept plan and development agreement for approximately 93 acres of the property.

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 West 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. The land use of the property located within the annexation area has been primarily agricultural in nature. The General Plan land use designation for this property is high 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: There are existing utility lines in the vicinity of the project and preliminary projects on water and sewer impacts indicate that the City's infrastructure can handle the proposed development. 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 the development of a six acre park within the development. 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: Per the development agreement, the applicant will be responsible for installing the necessary utilities to service the property. With the exception of extending a water line approximately 900 feet, no extensive off-site improvements are required.

6. Potential impact on existing and proposed streets;

Response: In the near term, all residents of the development will access the development from Slant Road. This will increase traffic on Slant Road and adjacent streets. A traffic study has been prepared and has determined that Slant Road will continue to function at a high level of service even with the increase traffic from the proposed project.

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: Upon approval of this annexation, there will be approximately 130 acres of land within the City's annexation boundary that will still remain in the unincorporated county.

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.