

DEVELOPMENT AGREEMENT

*Valley Estates
Subdivision*

Spanish Valley, San Juan County, Utah

Owner/Applicant: Elan Spanish
Valley, LLC

345 S Garden Grove Ln, Ste 100
Pleasant Grove, UT 84062

801-316-4301

April __, 2025 Final Adopted

This Development Agreement for the Valley Estates Subdivision ("Development Agreement") is approved this **day of April, 2025**, by the duly elected County Commission("County Commission") of San Juan County, Utah ("County"), a political subdivision of the State of Utah, whose address is 117 South Main, Monticello, Utah 84535, between the County and Elan Spanish Valley Estates, LLC, a Utah limited liability company ("Owner") whose address is 345 S Garden Grove Ln, Ste 100, Pleasant Grove, UT 84062. The Owner is the owner of certain real property, as identified by Exhibit A ("Subject Property").

SECTION 1: FINDINGS

The County Commission makes the following findings in approving this Development Agreement:

- 1.1. Owner is the fee owner of the Subject Property, as identified by the property records maintained in the office of the San Juan County Recorder.
- 1.2. The Subject Property is approximately 48.81 acres, as more particularly described by Exhibit A.
- 1.3. The Owner desires to develop the Subject Property as a residential community with amenities on the Subject Property, as more fully identified herein ("the Project").
- 1.4. On April 17, 2018, the County adopted the Spanish Valley Area Plan ("Spanish Valley Plan") that established various public policies for the unincorporated areas of the Spanish Valley. The Spanish Valley Plan identifies the Subject Property as suitable for the creation of a Residential Flex Planned Community.
- 1.5. The County has adopted the San Juan County Land Use Spanish Valley Ordinances ("Spanish Valley Ordinance"), a land use ordinance for the Spanish Valley.
- 1.6. The Spanish Valley Ordinance provides various zoning districts, including the Spanish Valley Planned Community and Spanish Valley Residential Flex Planned Community, and divides the unincorporated areas of the Spanish Valley into zone districts pursuant to the County land Use, Development, and Management Act, Utah Code Annotated, 1953, as amended ("the Act").
- 1.7. The Spanish Valley Ordinance also provides various standards and requirements for the establishment and operation of uses and activities allowed within each zoning district and further provides procedures and requirements for the division of all lands located in the Spanish Valley.
- 1.8. The Owner is contemplating presenting to the County various Land Use Applications to create the Valley Estates residential community, including necessary land use and subdivision applications, with required supporting information and materials.
- 1.9. The Owner is committed to providing all uses and activities occurring on the Subject Property to the highest standards to create a residential community and has proposed to develop the Subject Property consistent with a **Community Structure Plan** provided by the Owner to the County, and attached hereto as **Exhibit B**.

1.10. The San Juan County Planning Commission ("Planning Commission") previously considered a zoning district designation for the Subject Property and forwarded a positive recommendation to the County Commission on October 25, 2023 to rezone the Subject Property Residential Flex, and on December 14, 2023, the Planning Commission considered and recommended the Subject Property be approved for Spanish Valley Overnight Accommodations Overlay.

1.11. The Residential Flex rezone application provided,

- The Subject Property falls within the Spanish Valley Ordinances' definition for Central Development Areas:
 - These are the flattest, least sensitive, and easiest-to-develop sites in the Spanish Valley, which makes them suitable for a wide range of residential and park/open space uses. These are the preferred areas for locating higher residential density and mixed-use neighborhood centers, where a mix of residential, locally scaled commercial and civic services will be provided. 4-5 residential units/ERUs per acre.
- The San Juan County Spanish Valley Area Plan (April 17, 2018) recommends that, "...development should be implemented sequentially from north to south as part of a rational extension of municipal water and sewer services (Phases 1-6)." (p. 33)
- The Subject Property lies within Phase 1 of the SUMMARY OF LAND USE PHASING ASSUMPTIONS table which anticipates that Phase 1 properties will be developed first, within the next 0-10 years (written in 2018), and that these properties will draw from the existing 5,000 acre-feet of water supply. (p.36)
- This application to rezone approximately 45.5 acres ["Subject Property"] to the Spanish Valley Residential Flex is requested to accommodate a large-scale planned development, in accordance with the San Juan County Spanish Valley Development Ordinances of the San Juan County Zoning Ordinance, dated September 13, 2019.
- The proposed permitted and uses for the Valley Estates (Subject Property) include a range of lots consisting of single family, duplex, live/work/play townhomes.
- The rezone would allow for no additional density changes.
- The current preliminary layout includes a mix of single-family lots, duplex lots (up to 192 units/lots). It will have direct walkways and byways that connect to SITLAs plan for parks and access.
- The major utilities (gas, water, sewer, electric) are at, or near, the property boundary.

1.12. The County Commission, acting as the County's legislative body, and following the receipt of a Planning Commission recommendations approved the zoning district designations on November 7, 2023 and January 2, 2023, respectively.

1.13. The County Commission has approved this Development Agreement based on its determination that the Subject Property requires a comprehensive and coordinated Community Structure Plan, as identified by the Spanish Valley Ordinance, for the establishment of all uses and activities occurring on the Subject Property, and to achieve the goals of the County and the Owner.

1.14. The County Commission finds that this Development Agreement contains provisions required by the Spanish Valley Ordinance, including compliance with all applicable requirements of Chapters 2 & 3 of the Spanish Valley Ordinance.

1.15. This Development Agreement, and all Exhibits attached hereto, identify the current condition of the Subject Property, promote the goals of the County and the Owner, and provide for the Owner's construction of those infrastructure, facilities, services and other amenities, benefits, and improvements necessary to meet the needs of the Subject Property in a coordinated and timely manner.

1.16. The County Commission finds this Development Agreement:

- 1.16.1. Is consistent with applicable provisions of the County's Spanish Valley Plan.
- 1.16.2. Conforms to applicable provisions of the Spanish Valley Ordinance.
- 1.16.3. Will better preserve the Subject Property and surrounding properties by integrated planning and design than would be possible under other zoning regulations.
- 1.16.4. Development of the Subject Property will contribute positively to the County's long-term economic stability, and
- 1.16.5. The infrastructure plan will not be detrimental to the County's health, safety, and welfare.

SECTION 2: PURPOSES

The County Commission approved this Development Agreement to advance the public goals and policies of the County and to promote coordinated, consistent, and efficient decision-making and administration for all matters governed by this Development Agreement including, but not limited to, the following:

- 2.1. To achieve the vision and goals of the County and Owner.
- 2.2. To achieve the goals and policies of the Spanish Valley Plan, including the creation of a Residential Flex Planned Community for the Subject Property.
- 2.3. To achieve the purposes of the Spanish Valley Residential Flexed Planned Community District to provide "a wide-range of residential uses, including single-family, multi-family, townhomes, employee housing" (Chapter 3, Spanish Valley Ordinance).
- 2.4. To provide the Owner with certain assurances related to the development of the Subject Property, as allowed by the Spanish Valley Residential Flexed Planned Community District, subject to compliance with all applicable local, State, and Federal laws, rules and regulations.
- 2.5. To establish clarity related to the development standards and regulations applicable to the Subject Property.
- 2.6. To identify the responsibilities of the County and the Owner-related to Land Use Applications for the Subject Property, and all portions thereof, the provision of necessary and required infrastructure and services, and the issuance of all necessary and related Land Use Permits and Building Permits.
- 2.7. To promote regular communication and coordination and to facilitate efficient decision-making by the County and the Owner on various matters related to the Subject Property and to achieve the goals and vision of the County and the Owner.
- 2.8. To facilitate communications and coordination with Local, State, and Federal agencies to the extent necessary to achieve the purposes of this Development Agreement and the Community Structure Plan.
- 2.9. To require and promote communication and coordination with all service providers as necessary, for the timely provision of necessary infrastructure, services, and amenities for the Subject Property.
- 2.10. To allow the Owner to voluntarily provide amenities, improvements, services, and facilities, as more fully described herein, for the benefit of the Subject Property, the County, and the Owner.

SECTION 3: APPROVAL

- 3.1. Upon receipt, full consideration and approval of the Planning Commission's recommendations for the zoning district designations for the Subject Property, and in consideration of the mutual goals of the County and the Owner, the County Commission approved this Development Agreement based upon the findings and purposes set forth herein.

SECTION 4: SUBJECT PROPERTY DESIGNATION, PROVISIONS, AND REQUIREMENTS

4.1. MANAGEMENT CODE DESIGNATION

4.1.1. The Subject Property is identified as "Residential Flex Planned Community" by the Spanish Valley Ordinance.

4.1.2. Consistent with the Spanish Valley Plan, and upon the execution of this Development Agreement by the County and the Owner, and upon the completion of all noticing as required by law and recordation of this Development Agreement in the Office of the San Juan County Recorder, the Subject Property shall be identified as a Residential Flex Planned Community (RFPC) of the Spanish Valley Ordinance, such zoning district being specifically identified as Residential Flex Planned Community District - Valley Estates ("RFPC-Valley Estates"), such district to remain in place and in effect during the term of this Development Agreement, unless changed by affirmative action of the County Commission, complying with the terms of this Development Agreement and all procedural and noticing requirements of Utah law as required for a land use ordinance amendment.

4.1.3. The County and the Owner agree that various Land Use Application approvals, land Use Permits, and Building Permits will be required to implement this Development Agreement. All land Use Applications shall be reviewed and decided by the County, and all land Use Permits and Building Permits shall comply with all applicable requirements of this Development Agreement and the Spanish Valley Ordinance, as applicable. If the Development Agreement and Spanish Valley Ordinance should contradict, the Development Agreement shall control. If the Development Agreement does not address an issue, the Spanish Valley Ordinance shall govern.

4.2. CONCEPTUAL LAND USE PLAN AND DENSITY ENTITLEMENTS

4.2.1. The Community Structure Plan identifies the conceptual locations for each of the land use categories proposed for the Project.

4.2.2. The County and the Owner agree that all Land Use Application approvals and all Land Use Permits and Building Permits must be generally consistent with this Development Agreement and the Community Structure Plan.

4.2.3. Consistent with the maximum RDUs available and subject to compliance with the requirements of this Development Agreement, including Section 4.3.2 and Section 4.3.3, the Owner is entitled to have and the Community Structure Plan shall permit a maximum of 192 RDUs, as defined herein, on the Subject Property without any maximum square footage limitation on the floor area of a single-family residential dwelling.

4.2.4. Residential Dwelling Unit ("RDU") is defined as a building, or a unit within a multi-family building, containing one or more kitchens and one or more other rooms comprising a dwelling, and including areas for living and sleeping, designed to be used for human occupancy, and complying with all applicable provisions of the Building Codes and County Land Use Ordinances. Detached garages, sheds and other structures ("accessory buildings") without living space do not require or utilize additional RDUs.

4.2.5. The County and the Owner agree that the Total Units as shown on the Community Structure Plan shall include single family and multi-family units designated on the Community Structure Plan are estimates but total RDUs shall not exceed 192 RDUs.

4.2.6. The Community Structure Plan and Exhibit C, may be modified by mutual agreement by the County and the Owner from time-to-time, as additional information becomes available or as circumstances change, by complying with the procedures applicable to a Development Agreement amendment, as provided by Section 7.5.2 herein.

4.3. ALLOWED USES

4.3.1 **Exhibit C** establishes the design standards for the Subject Property.

4.3.2 Notwithstanding Section 4.2.4 and Section 4.2.5, the maximum number of RDUs permitted on the Subject Property shall be limited by the existing or reasonably planned capacity of:

- a. Culinary water facilities and services;
- b. Sanitary sewer facilities and services;
- c. Fire protection facilities and services; and
- d. Storm drainage and flood control facilities and services.

4.3.3 The determination of available, or planned, capacity for each item contained in Section 4.3.4 shall be made by the applicable Authority, as defined herein, and in consultation with the Owner and the service provider, as applicable, and based on level of service standards as established by Federal, State, or local agencies, as applicable.

4.3.4 Except for Section 4.3.2 and Section 4.3.3 and all applicable Federal, State, and local laws found necessary to protect the public health and safety, nothing in this Development Agreement shall be interpreted to modify or limit the density and use entitlements provided by Section 4.2.3 and Section 4.2.5.

4.4 DEVELOPMENT AGREEMENT, BUILDING CODES, ENGINEERING AND CONSTRUCTION STANDARDS, AND HEALTH CODES, AS ADOPTED TO APPLY. The review and approval of all land Use Applications, and the issuance of all land Use Permits and Building Permits for the Subject Property, or any portion thereof, shall comply with the following:

4.4.1 All land Use Permits shall comply with all applicable requirements of this Development Agreement and the Spanish Valley Ordinance, as applicable.

4.4.2 All Building Permits shall comply with all requirements of the County's Building Codes, as applicable, and in effect at the time a Building Permit Application is determined complete, as provided by the Act.

4.4.3 All Land Use Permits shall comply with the requirements of the adopted Spanish Valley Ordinance, as may be applicable, provided that such requirements do not conflict with the terms and provisions of this Development Agreement, but shall not be interpreted or applied so as to modify or limit the density and use entitlements provided by Section 4.2.5 and Section 4.2.6 herein.

4.4.4 All land Use Permits shall comply with all County engineering and construction standards, as applicable, and in effect at the time a land Use Application is determined complete, as provided by the Act.

4.4.5 All land Use Permits, and all Building Permits, shall comply with all requirements of the Weber-Morgan Health Department, as applicable, and in effect at the time a land Use Permit and/or Building Permit application is determined complete.

4.4.6 All applicable state and federal laws.

4.5 PROVISION OF REQUIRED INFRASTRUCTURE AND SERVICES, LAYOUT, AND DESIGN STANDARDS. The County acknowledges that the Community Structure Plan is conceptual and the Project will be completed in phases. The County and the Owner mutually agree as follows:

4.5.1 The exact location and the accurate legal description of each phase shall be

determined by the Owner, based on the logical and efficient extension of all necessary infrastructure and services at the time a land Use Application is determined complete, as provided by the Act, and subject to compliance with the Site Planning and Development Standards and the approval of the County in connection with the review of the applicable Land Use Application. The overall phasing for the Project may be modified based on market conditions and other economic factors, as well as the logical and efficient extension of infrastructure and services to the Project and each Development Area.

4.5.2 The Site Planning and Development Standards, contained in **Exhibit C**, shall apply to the Subject Property and each portion thereof.

SECTION 5: REQUIRED INFRASTRUCTURE, FACILITIES AND SERVICES AND COUNTY AND OWNER RESPONSIBILITIES

5.1 NON-PUBLIC RIGHTS-OF-WAY INCLUDING ROADS, STREETS, AND APPURTENANT FACILITIES. The Owner will construct private and other non-public roads, streets, and appurtenant facilities within the Project. For such non-public roads, streets, and appurtenant facilities, the County and the Owner agree as follows:

5.1.1 Such roads, streets, and appurtenant facilities shall be private roads, streets, and appurtenant facilities and shall remain owned and controlled by the Owner, an appropriate district or a private body organized by the Owner (e.g., an association of property owners with authority to levy assessments against its members for operational costs), with all obligations for the maintenance, repair and replacement of such private roads, streets, and appurtenant facilities, including snow removal, remaining with the Owner, such district or private body organized by the Owner.

5.1.2 Emergency access easements will be established over private roads and streets for access by law enforcement, fire and other emergency services. Entrances and exits to and from the Subject Property may be, at Owner's discretion, secured by gates, guard houses or other means, provided that reasonable accommodations are made so that entrances, exits and private roads within the Subject Property are accessible to emergency service vehicles.

5.1.3 Neither the Utah Department of Transportation ("UDOT") nor the County shall have any obligations related to any private roads, streets, roadway side swales or drainages and appurtenant facilities, now or in the future, located on the Subject Property, or any portion thereof. Non-public roads and streets shall be constructed in compliance with the applicable San Juan County road construction standards and specifications applicable to private roads and streets.

5.1.4 To recognize all established legal public rights-of-way and public rights of access and all other legal accesses over the Subject Property to public or private properties adjacent to the Subject Property, or any portion thereof.

5.2 OPEN SPACE. Consistent with the vision and goals of the Owner to create a private residential community, an important element of the Community Structure Plan is the preservation of significant Open Space areas. The Owner has agreed that approximately [REDACTED] acres of the Subject Property will be preserved as Open Space, as conceptually identified on the Community Structure Plan.

SECTION 6: BEST MANAGEMENT PRACTICES

The Owner agrees to apply best management practices to all uses and activities occurring on the Subject Property, and any portion thereof, including but not limited to, the following:

6.1. Soil Protections and Erosion Control. The Owner agrees to establish and require soils and erosion control best management practices, as may be identified by the County, the Owner, or any State or Federal agency for the Subject Property, or any portion thereof.

6.2. Water Quality Protection. The Owner agrees to establish surface and ground water quality protections, as may be identified by the County, the Owner, or any State or Federal agency for the Subject Property, or any portion thereof.

SECTION 7: GENERAL TERMS AND CONDITIONS

7.1. INCORPORATION OF EXHIBITS

- 7.1.1. All Exhibits, as attached hereto, are incorporated into this Development Agreement by this reference.

7.2. AUTHORITY

- 7.2.1. The Owner warrants and represents that the Owner owns or controls all right, title and interest in and to all property located within the Subject Property and that no portion of said property, or any right, title, or interest therein has been sold, assigned, or otherwise transferred to any other entity or individual.
- 7.2.2. The Owner warrants and represents that to the best of its knowledge no portion of the property located within the Subject Property is subject to any lawsuit or pending legal claim of any kind.

7.3. MUTUAL DRAFTING.

- 7.3.1. Both the County and the Owner have participated in drafting this Development Agreement and therefore no provision of this Development Agreement shall be construed for or against the other based on whether the County or the Owner drafted any particular portion of this Agreement.

7.4. GOVERNING LAW AND COURT REVIEW

- 7.4.1. This Development Agreement shall be governed by and construed in accordance with the laws of the County and the State of Utah.
- 7.4.2. The County and the Owner may enforce the terms of this Development Agreement as allowed by State and Federal laws.
- 7.4.3. An interpretation or evaluation of any provision of this Development Agreement by a court of competent jurisdiction shall be made by considering this Development Agreement in its entirety. No provision shall be interpreted or evaluated separately or in isolation from all other provisions of this Development Agreement for the purposes of determining compliance with applicable State and Federal law.

7.5. ENTIRE AGREEMENT AND AMENDMENT

- 7.5.1. This Development Agreement, together with all Exhibits hereto, constitutes the entire Development Agreement. No representations or warranties made by the County or the Owner, or their officers, employees or agents shall be binding unless contained in this agreement or subsequent amendments hereto.
- 7.5.2. Development Agreement Amendments; Major vs. Minor Amendments.
 - a. Major Amendment. The term "Major Amendment" means any change to this Development Agreement that: (i) constitutes an amendment to the County Spanish Valley Plan, (ii) changes the zoning designation of the Subject Property, (iii) modifies the Table of Permitted Uses, or (iv) modifies the boundaries of a designated Development Area and results in a net addition of more than 100 acres to such Development Area.
 - Minor Amendment. The term "Minor Amendment" means any amendment to this Development Agreement that does not constitute a Major Amendment.
 - b. The County and Owner agree that any Major Amendment to this Development Agreement, including any Exhibits hereto, shall only be made by following the procedures and notice required for an amendment to a County land Use Ordinance, as required by the Ordinances of the County.
 - c. The County and Owner agree that any Minor Amendment to this Development

Agreement, including any Exhibits hereto, may be submitted to the land Use Authority designated in Section 9.7.2 for review and approval, without the need for a public hearing. Upon approval of any Minor Amendment by the Land Use Authority, the amendment shall be recorded in the Office of the San Juan County Recorder.

7.6. RESERVED POLICE AND LEGISLATIVE POWERS

- 7.6.1. Subject to Section 9.13, Nothing in this Agreement shall limit the future exercise of the police power by the County in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of the County to enact such legislation under its police power, such legislation shall not modify the Developers' vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1988), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal.
- 7.6.2. Nothing contained in this Development Agreement constitutes a waiver of any governmental immunity and protections afforded the County by State or Federal law.

7.7. ADMINISTRATIVE INTERPRETATIONS AND ACTIONS

- 7.7.1. The singular includes the plural; the male gender includes the female; "shall" is mandatory, "may" is permissive.
- 7.7.2. In the event of a question of interpretation of any provision or requirement of this Development Agreement, the Planning and Development Services Department Director or other County staff member or administrative body designated by ordinance to interpret land use ordinances generally in the County, is hereby designated as the Land Use Authority to consider the provision or requirement that is the subject of interpretation. The Land Use Authority, after full and reasonable consideration, shall issue an opinion as to the correct interpretation.
- 7.7.3. The Planning and Development Services Department Director, is identified as the County representative with the responsibility to interpret and administer this Development Agreement on behalf of the County. The Planning and Development Services Department Director, or the Director's designee, is authorized to take the administrative actions necessary to efficiently carry out and implement this Development Agreement on behalf of the County.
- 7.7.4. The administrative actions of the Planning and Development Services Department Director, provided by Section 9.7.4 shall not be interpreted or have the effect of constituting an amendment to this Development Agreement.

7.8. DEVELOPMENT AGREEMENT TO RUN WITH THE LAND

- 7.8.1. Within thirty (30) business days of approval by the County Commission this Development Agreement shall be recorded in the Office of the San Juan County Recorder against the Subject Property, as described in Exhibit A, and shall run with the land, and shall be binding on the Owner, and all future successors and assigns of the Owner in any portion of the Subject Property. The benefits of this Development Agreement shall inure to successors-in-interest and subsequent owners, subject to transfer and assignment in accordance with Section 9.9.

7.9. ASSIGNMENT

- 7.9.1. The Owner shall not assign this Development Agreement, or any provisions, terms, or conditions hereto to another party, individual, or entity without assigning the rights as well as the obligations, and without the prior written consent of the County Commission, which shall not be unreasonably withheld or delayed. Said assignment shall be subject to review by the County, which is intended to provide assurances that the assignee possesses sufficient ability to assume the provisions, terms, and conditions of this Development Agreement. Any

- proposed assignee who possesses the financial wherewithal and sufficient ability to assume and carry out the provisions, terms and conditions of this Development Agreement shall be a permitted assignee, and the assigning Owner shall be released of all duties and obligations under this Development Agreement relating to that portion of the Subject Property transferred to an approved assignee.. If the County reasonably determines that the assignee does not have the financial wherewithal or sufficient ability to assume and carry out the provisions, terms and conditions of this Development Agreement, a portion of this Development Agreement may still be assigned to such assignee but the Owner shall remain responsible for the performance of all obligations of this Development Agreement. Consent of the County Commission shall not be required if such assignment is to a corporate affiliate of Owner.. No sale to the purchaser of an individual lot or a residential dwelling unit on the Subject Property shall require the consent of the County, and no sale to the developer of multiple lots or other development parcels or areas on the Subject Property shall require the County's consent if the selling/assigning Owner elects to remain liable for the performance of the Owner's duties and obligations hereunder with respect to the property being transferred. Consistent with Section 9.9.1 the Owner shall not sell, transfer, or assign the Subject Property, or any portion thereof, to another party, individual or entity (other than a transfer to a purchaser of a residential lot with the Subject Property for the purpose of constructing a residential dwelling unit thereon or to the purchaser of a residential dwelling unit within the Subject Property) without the transfer of the uses and densities allowed, and all improvement, open space and trails obligations within the Subject Property, or any portion thereof. At the time of approval of the assignment to the new owner the Owner shall provide to the County a notice showing the new ownership, the uses and densities, infrastructure, open spaces, trails and all other services and obligations being transferred, and the uses and densities remaining with the Owner.
- 7.9.2. If the Subject Property, or any portion thereof, is assigned to another party, individual or entity the Owner agrees that such assignment shall identify in writing the Assignee is subject to all provisions of this Development Agreement.
 - 7.9.3. Notwithstanding Subsections 9.9.1, 9.9.2 and Section 9.9.3 this Section shall not prohibit the Owner from borrowing against the Subject Property, or any portion thereof.
 - 7.9.4. A lender, who may acquire the Subject Property, or any portion thereof, shall constitute an approved assignee, without a requirement to obtain the specific consent or approval of the County, but such assignee shall be subject to all other provisions of this Development Agreement applicable to the property being acquired.
 - 7.10. PERFORMANCE AND REMEDIES
 - 7.10.1. Performance by the County and the Owner of their respective duties, as identified and required herein, is the essence of this Development Agreement. The County and the Owner agree to perform their respective duties with all due diligence in a timely manner. In the performance of this Development Agreement, the County and the Owner agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval or act required or necessary to the good faith performance of this Development Agreement. The County will use reasonable efforts to expedite all of the County development regulatory processes to the extent necessary for the timely development and construction of the improvements within the Subject Property, including but not limited to processes, procedures and inspections for construction and final acceptance of public improvements, and the review and processing of each land use application, land use permit and building permit applications within a reasonable period of time and without undue delay. If and to the extent that the Spanish Valley Ordinance establishes time periods applicable to the County's review and processing of land use applications, land use permits and building permit applications, the County shall comply with such time periods.
 - 7.10.2. In the event of a default of any duty by the County or the Owner under the terms of this Development Agreement, then, any non-defaulting party may deliver to the defaulting party notice of such default at the address specified herein. Thereafter, the defaulting party shall have thirty {30} days from and after receipt of such notice to cure such default. If such default cannot be cured within such thirty {30} day period the defaulting party, within such thirty (30) day period, may give notice that it is actively and diligently pursuing such cure, and the

- defaulting party shall have a reasonable period of time following the end of such thirty (30) day period to cure such default, provided such defaulting party is at all times within such additional time period actively, diligently, and in good faith, pursuing such cure. If such default is not cured as provided herein, the non-defaulting party shall have the right, without prejudice, to performance, or any other rights or remedies that may be available under County, State or Federal laws except that no party shall have the right to recover special, consequential, punitive or exemplary damages.
- 7.10.3. In the spirit of the timely and efficient resolution of any default of any duty by the County or the Owner, required by this Development Agreement, the County and the Owner mutually agree to meet and confer to discuss the default and, if possible, reach a mutually agreeable default resolution before exercising their respective rights, as provided by Section 9.10.2.
- 7.11. FORCE MAJEURE
- 7.11.1. If the County or the Owner is delayed in the performance of any of its obligations under this Development Agreement because of an event beyond the control of the County or the Owner, the time for performance of any obligations shall be extended for the period lost because of the event.
- 7.12. APPEALS
- 7.12.1. In the event of an appeal being brought related to the legislative approval of this Development Agreement the procedures for the Appeal of a legislative decision of the County Commission shall apply.
- 7.12.2. In the event of an appeal being brought related to any matter of interpretation, administration, or any other decision related to this Development Agreement, the procedures, as established and provided by the County for the Appeal of an administrative decision of a County Land Use Authority, as applicable, shall apply.
- 7.13. TERM OF DEVELOPMENT AGREEMENT
- 7.13.1. This Development Agreement shall have an initial term of twenty-five (25) years from the date of recordation. This Development Agreement will be extended for an additional period of fifteen (15) years provided that development activities on the Subject Property pursuant to the Community Structure Plan, as may be amended, is ongoing and has not been completed and the Owner is not then in material default of the terms and provision of this Development Agreement.
- 7.13.2. This Development Agreement will terminate with a finding by the County Commission that all obligations and responsibilities of this Development Agreement have been completed. The Owner shall provide written notice to the County that the Community Structure Plan is complete. Upon a finding by the County Commission that the Community Structure Plan is complete, and all obligations and responsibilities have been completed, the San Juan County Clerk shall record a notice in the Office of the San Juan County Recorder that this Development Agreement has been fully performed and has been terminated.
- 7.13.3. Provisions of this Development Agreement that relate to the continued operation of the Subject Property, or portion thereof, and the Community Structure Plan shall continue and shall survive after termination.
- 7.13.4. Development of the Project requires Owner to make substantial upfront capital investment in facilities, including the access roads, streets, water, sewer, drainage and recreational facilities, as well as other infrastructure improvements required by this Development Agreement. Given the scope and scale of the Project, much of such infrastructure will serve multiple phases of the development and the recoupment of such investment by Owner will occur incrementally as development of the Project progresses. The Owner's investment and commitment to develop the Project is dependent on assurance that there is an extended period of time in which the Project may be developed and marketed as currently envisioned, and that material modifications to the Community Structure Plan will not be unilaterally imposed by the County. During the term of this Development Agreement, neither the

Community Structure Plan or this Development Agreement shall be subject to any limitation or restriction on the number of building permits that may be issued for the construction of residential dwelling units in any calendar year, and the County shall not take any zoning or land use action which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay development or the use of the Subject Property in accordance with the Community Structure Plan, nor shall the County unilaterally amend the Community Structure Plan, except the following actions shall not be precluded during the term of this Development Agreement ("Permitted Actions"): (i) the enforcement and application of the County regulations in effect as of the date of this Development Agreement except to the extent that this Development Agreement constitutes an amendment of such County regulations; (ii) the enforcement and application of County regulations in effect at any point in time during the term of this Development Agreement which are generally applicable to the Subject Property and all other residential and mixed use property within the County, development, or construction within the County, except as expressly provided in this Development Agreement or in the Community Structure Plan; (iii) the enforcement and application of County regulations to which Owner consents; or (iv) the imposition of state or federal regulations which are beyond the control of the County as reasonably determined by the County. Prior to expiration of the term of this Agreement, Owner shall have the right to undertake and complete the development and use of the Subject Property in accordance with this Development Agreement and the Community Structure Plan and without any maximum square footage limitation on the floor area of single-family residential dwellings.

7.14. SEVERABILITY

- 7.14.1. If any part or provision of this Development Agreement is held to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, such judgment shall not affect the other parts or provisions of this Development Agreement, all of which shall in full force and effect.

7.15. NO THIRD-PARTY RIGHTS

- 7.15.1. Nothing contained herein shall be deemed or construed to create any third-party rights.

7.16. REGULAR COUNTY - OWNER COMMUNICATIONS

- 7.16.1. At least once per year during the term of this Development Agreement, and at other times as determined necessary by the County Commission and/or the Owner, an authorized representative of the Owner shall provide the County Commission, at a regular meeting, an "in- person" Valley Estates project progress and construction update.

7.17. NOTICE

- 7.17.1. Reasonable advance notice shall be provided to the Owner for all Public Hearings and all Public Meetings of the County and related to any provision of this Development Agreement.
- 7.17.2. All notices required by this Development Agreement shall, in addition to any other means of transmission, be given in writing by certified mail or nationally recognized overnight courier service to the following addresses:

a. To the County:

Chair, San Juan County Commission,
c/o San Juan County Clerk
117 South Main,
Monticello, UT 84535

b. To the Owner:

Elan Spanish Valley, LLC,

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- 7.17.3. A Notice shall be effective on the fifth business day after the notice is postmarked for mailing, postage prepaid, by Certified United States Mail or upon delivery to the intended recipient by nationally recognized courier service. The parties may change addresses for the purposes of receiving notice as required by this Section, by giving written notice in accordance with the provisions of this Section.

7.18. RECORDING

- 7.18.1. As provided by Section 9.7 this Development Agreement shall be recorded in the Office of the San Juan County Recorder.
- 7.18.2. All Exhibits shall be maintained on file in the Office of the County Clerk and County's Department of Planning and Development Services.
- 7.18.3. Copies of the recorded Development Agreement, and all Exhibits, shall be provided to the Planning and Development Services Director, County Attorney, and Owner.

7.19. ENTIRE AGREEMENT

- 7.19.1. The Development Agreement constitutes the full and complete agreement of and between the County and the Owner. No representations or warranties made by the County or the Owner, or their officers, employees or agents shall be binding unless contained in this Development Agreement or subsequent amendments hereto.

7.20. AUTHORITY TO EXECUTE

- 7.20.1. Each signatory to this Development Agreement represents and warrants that they possess the lawful authority and authorization from their respective entities to execute this Development Agreement.

THE PARTIES, BY THEIR AUTHORIZED REPRESENTATIVES, EXECUTE THIS DEVELOPMENT THIS ____
DAY OF _____, 2024.

COUNTY COMMISSION OF SAN JUAN COUNTY, STATE OF UTAH

By: _____ on behalf of San Juan County Commission.

The foregoing instrument as acknowledged before me this ____ day of _____, 2024 by ,
_____ a Member County Commission of San Juan
County, State of Utah.

Notary Public

My commission expires _____

Residing at: _____

ATTEST:

San Juan County Clerk

APPROVED AS TO FORM:

San Juan County Attorney

Owner, Elan Spanish Valley, LLC

By: _____

The foregoing instrument as acknowledged before me this ____ day of _____, 2024 by ,
_____ a Member County Commission of San Juan
County, State of Utah.

Notary Public

My commission expires _____

Residing at: _____

Exhibit A: Subject Property Legal Description

A tract of land within the NE $\frac{1}{4}$ of Section 1, Township 27 South, Range 22 East and the NW $\frac{1}{4}$ of Section 6, Township 27 South, Range 23 East, SLB&M, County of San Juan, State of Utah, more particularly described as follows;

Beginning at a point located S00°04'00"W 867.58 feet along the section line and S89°57'50"W 236.20 feet from the northeast corner of said Section 1;

thence S00°01'55"E 460.98 feet,
thence S89°56'29"E 235.40 feet,
thence S89°56'29"E 390.57 feet,
thence S00°00'15"W 552.75 feet,
thence S00°00'46"W 767.62 feet,
thence N89°53'41"W 391.90 feet to the W $\frac{1}{4}$ corner of said Section 6,
thence S00°04'00"W 97.04 feet to the E $\frac{1}{4}$ corner of said Section 1,
thence S89°59'32"W 266.08 feet,
thence N00°00'28"W 295.20 feet,
thence West 50.97 feet,
thence North 163.46 feet,
thence West 250.29 feet
thence N00°04'01"E 10.23 feet,
thence N89°55'59"W 92.78 feet to the $\frac{1}{4}$ line,
thence N00°03'46"E 353.74 feet,
thence N0°04'21"E 497.00 feet,
thence S89°58'36"W 660.47 feet,
thence N00°03'16"E 558.19 feet,
thence N89°57'50"E 1085.08 feet to the point of beginning,

containing 42.33 acres more or less.

Exhibit B: Community Structure Plan

Exhibit C: Design Standards

Environmental and Landscape Conservation

- **Water Conservation:** Implement xeriscaping and drought-tolerant native plants in landscaping to minimize water usage.
- **Energy Efficiency:** Encourage the use of solar panels and other renewable energy sources. Design homes to take advantage of natural light and insulation to reduce energy needs.
- **Land Use:** Preserve natural features and minimize alterations to the topography. Utilize existing vegetation for landscaping where possible.

Architectural Design

- **Aesthetic Compatibility:** Designs should reflect or complement the natural desert landscape and cultural context of the Spanish Valley and the broader Moab area. Use materials and colors that blend with the natural surroundings.
- **Building Height and Setbacks:** Regulations might dictate maximum building heights and minimum setbacks from property lines to maintain open space and viewsheds.
- **Outdoor Lighting:** Use downcast, dark sky-compliant lighting to minimize light pollution, preserving the area's renowned night skies.





Exhibit D:

Exhibit E: