

MEMO



To: Planning Commission

From: Camille Moffat, Planner I

Date: April 21, 2023

Re: **Proposed Amendment to The Orchards Development Agreement**

A development agreement for The Orchards development was approved in 2007. After 10 years and after some of the development had been constructed, it was determined that the development agreement needed to be re-written. The current development agreement for The Orchards development was entered into on December 13, 2017 and recorded on January 12, 2018. The development agreement for The Orchards established it as a Planned Unit Development (PUD) within the R-10 zone and entitled a total of 482 units to be built. A Property Development Concept Plan and Parks and Amenities Plan were included in the approved development agreement.

The current owners of the undeveloped real property of The Orchards development, Blue River Land Group LLC and Santaquin Development LLC, are proposing an amendment to the development agreement. The amendment would identify the remaining undeveloped property associated with the development agreement and primarily make changes to the Property Development Concept Plan and Parks and Amenities Plan. The owners are requesting that the Property Development Concept plan be amended to consolidate the number of buildings in the Apple Grove Apartments site of the subdivision. The proposal would reduce the number of apartment buildings from five to two, without reducing the number of individual units that were allowed per the original development agreement, which is 60 units.

Additionally, the owners propose amending the Parks and Amenities plan. Overall, the amendment would approve 15 proposed amenities, as opposed to the current 13 approved amenities. The amendment would approve an additional pavilion, tot lot, and two additional sport courts, and proposes to reduce the number of volleyball courts to be built from two to zero. In accordance with this amenities plan, the owners would construct two pickle ball courts in the Apple Grove Apartments site.

More details pertaining to the proposed amendment of The Orchards development agreement can be reviewed in the provided attachment of the draft development agreement amendment. Exhibit B-1 shows the proposed Property Development Concept Plan, and Exhibit D-1 shows the proposed Parks and Amenities Plan

Recommended Motion:

Motion to forward a positive recommendation to the City Council, of the proposed amendment to The Orchards development agreement with the following condition:

- Legal counsel's non-substantive comments need to be incorporated

Attachments

1. The Orchards Development Agreement Amendment Draft

**FIRST AMENDMENT TO
THE ORCHARDS DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO THE ORCHARDS DEVELOPMENT AGREEMENT (the “Amendment”) is entered into as of the ____ day of _____, 2023 by and between BLUE RIVER LAND GROUP, LLC, (“Blue River”) and SANTAQUIN DEVELOPMENT LLC, (“Santaquin Development”) (together, the “Owners”) and SANTAQUIN CITY, a fourth class city of the State of Utah (the “City” and, collectively with the Owners, the “Parties”).

RECITALS

A. WHEREAS, the Development Agreement for the Orchards Development (the “Development Agreement”) was entered into December 5, 2017, and was recorded in the official records of the Utah County Recorder on January 12, 2018 as Entry No. 4396:2018; and

B. WHEREAS, the Owners have acquired title to all of the remaining undeveloped real property relevant to the Development Agreement, and that is described in this Amendment (“the Land”); and

C. WHEREAS, the Parties desire to enter into this Amendment to clarify and modify certain development parameters for the Land as more particularly set forth herein; and

D. WHEREAS, the Owners have agreed to cooperate with the City as reasonably necessary to comply with the terms of the Development Agreement and this Amendment, and agree to be bound by the terms of this Amendment, as evidenced by their signatures below; and

E. WHEREAS, Blue River and Santaquin Development, each individually and together as Owners, intend to take all steps necessary to develop the Land according to the Development Agreement and this Amendment and agree to be bound by the same; and

F. WHEREAS, this Amendment shall modify the Development Agreement with respect to the Land, only as specifically set forth herein and all provisions of the Development Agreement which are not specifically amended herein shall continue in full force and effect.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

SECTION I. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Amendment that is not otherwise defined herein shall have the meaning given in the Development Agreement. Terms defined herein are as follows:

1.1 **“Development Agreement”** means the Development Agreement, as identified above.

1.2 **“Owners”** for purposes of this Amendment means, collectively, Blue River Land Group, LLC and Santaquin Development LLC.

SECTION II. SPECIFIC AMENDMENTS

The Development Agreement shall be specifically amended as follows:

2.1 **Description of the Land (with Illustrative Map) (Exhibit A-1).** The Parties agree that the Description of the Land with Illustrative Map, attached hereto and incorporated herein as Exhibit A-1, (i) identifies all of the remaining undeveloped property included in the Land, (ii) details the ownership of each undeveloped parcel, and (iii) demonstrates the property to which this Amendment applies.

2.2 **Property Development Concept Plan (Exhibit B-1).** The Parties agree that, as it applies to the remaining undeveloped Land, the Development Agreement Exhibit B, the Property Development Concept Plan, is hereby replaced by the Property Development Concept Plan, attached to this Amendment and incorporated herein by this reference as Exhibit B-1.

2.3 **Parks and Amenities Plan (Exhibit D-1).** The Parties agree that, as it applies to the remaining undeveloped Land, the Development Agreement Exhibit D, the Parks and Amenities Plan, is hereby replaced by a revised Parks and Amenities Plan, attached to this Amendment and incorporated herein by this reference as Exhibit D-1.

2.4 **Construction of Pickle Ball courts (at Apple Grove Apartments).** The Parties agree that, in accordance with the Parks and Amenities Plan, the Owners will cause pickleball courts to be constructed and installed at the Apple Grove Apartments site, as more fully set forth herein.

2.5 **Indemnification.** Each Owner hereby agrees to jointly and severally indemnify and hold harmless the City and its officers, agents, and employees from any and all damages and claims of third parties arising from or related to the Development Agreement and/or this Amendment.

2.6 **City Improvements.** All improvements constructed on the Land shall comply with all applicable City and State regulations.

SECTION III. MISCELLANEOUS

3.1 **Incorporation of Recitals, Introductory Paragraphs, and Exhibits.** The Recitals contained in this Amendment, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Amendment as if fully set forth herein.

3.2 **Construction.** This Amendment has been reviewed and revised by legal counsel for Owners and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Amendment.

3.3 **Further Assurances, Documents and Acts.** Each Party hereto agrees to cooperate in good faith with the others, 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 Amendment and the actions contemplated hereby. All provisions and requirements of this Amendment shall be carried out by each Party as allowed by law.

3.4 **Assignment.** Neither this Amendment nor any of the provisions, terms or conditions hereof can be assigned by the Owners to any other party, individual or entity without assigning the rights as well as the obligations under the Development Agreement and this Amendment and complying with the other provisions herein concerning assignments. The rights of the City under the Development Agreement and this Amendment shall not be assigned, but the City is authorized to enter into a contract with a third party to perform obligations of the City to operate and maintain any infrastructure improvement so long as such party adequately and reasonably maintains and operates such facility or improvement.

3.5 **Amendment to Run with the Land.** This Amendment shall be recorded against the Land and shall be deemed to run with the Land.

3.6 **Governing Law and Dispute Resolution.** This Amendment shall be governed by and construed in accordance with the laws of the State of Utah. Any and all disputes arising out of or related to this Amendment or the Parties' performance hereunder shall be submitted to mediation before a mutually acceptable mediator prior to initiation of litigation or any other binding or adjudicative dispute resolution process. The Parties shall: (i) mediate in good faith; (ii) exchange all documents which each believes to be relevant and material to the issue(s) in dispute; (iii) exchange written position papers stating their position on the dispute(s) and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the dispute(s), and; (iv) engage and cooperate in such further discovery as the Parties agree or mediator suggests may be necessary to facilitate effective

mediation. Mediator, venue, and related costs shall be shared equally by the Parties to the dispute. Venue of the mediation shall be the State of Utah. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed by a court of competent jurisdiction. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation. The prevailing party in any action to enforce in whole or in part this mediation clause or in any subsequent arbitration or mediation shall be entitled to reimbursement of attorneys' fees and costs incurred in said action. In the event any dispute arising hereunder is not resolved through mediation, the parties to that dispute may pursue any other remedy allowed by law.

3.7 Notices. Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by registered or certified mail, return receipt requested or by facsimile. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. If given by facsimile to the address and number for such Party set forth below (provided, however, that the notice is not effective unless a duplicate copy of the facsimile notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given upon receipt by the other Party. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the address set forth below:

If to City to:

With a copy to:

Amalie R. Ottley	Nielsen & Senior
Santaquin City Recorder	P.O. Box 970663
275 West Main Street	Orem, Utah 84097
Santaquin, Utah 84655	Email: bbr@ns-law.com
Facsimile: (801) 754-3526	Attention: Brett B. Rich

If to Blue River Land Group, LLC. to:

With a copy to:

Burdette Stocking	Jay Stocking
470 N 2450 W	470 N 2450 W
Tremonton, UT 84337	Tremonton, UT 84337

If to Santaquin Development, LLC. to:

With a copy to:

Burdette Stocking	Jay Stocking
470 N 2450 W	470 N 2450 W
Tremonton, UT 84337	Tremonton, UT 84337

3.8 **No Third-Party Beneficiary.** This Amendment is made and entered into for the sole protection and benefit of the Parties and their assigns, subject to the provisions of the Amended Agreement. No other Party shall have any right of action based upon any provision of this Amendment whether as third-party beneficiary or otherwise.

3.9 **Counterparts and Exhibits.** This Amendment may be executed in duplicate counterparts, each of which is deemed to be an original. This Amendment consists of Ten (10) pages, and an additional Three (3) exhibits, which together constitute the entire understanding and agreement of the Parties to this Amendment. The following exhibits are attached to this Amendment and incorporated herein for all purposes:

Exhibit A-1 Description of the Land with Illustrative Map
Exhibit B-1 Property Development Concept Plan
Exhibit D-1 Parks and Amenities Plan

3.10 **Duration.** This Amendment shall continue in force and effect until all obligations under the Development Agreement relating to the Land have been satisfied.

3.11 **Acknowledgment.** By its signature below, each of the Owners acknowledges that the property owned by such Owner at the time of execution of this Amendment shall be subject to all of the terms and conditions of this Amendment upon execution by all Parties.

(Signature Page on Next Pages)

IN WITNESS WHEREOF, this Amendment has been executed by the Parties by duly authorized persons, by the City of Santaquin, acting by and through its City Council and by Blue River Land Group, LLC and Santaquin Development LLC, each by a duly authorized representative, as of the ____ day of _____, 2023.

SANTAQUIN CITY

Daniel M. Olson, Mayor

ATTEST:

By:_____
Amalie R. Ottley, City Recorder

BLUE RIVER LAND GROUP, LLC:

By: _____

Name: Burdette Stocking

Its: Manager

STATE OF UTAH)

:ss

COUNTY OF UTAH)

On this ____ day of _____, 2023, personally appeared before me _____, personally known to me, who after being duly sworn acknowledged to me that he/she executed this document with the authorization of, as _____ and on behalf of, Blue River Land Group, LLC.

Notary Public

SANTAQUIN DEVELOPMENT LLC:

By: _____

Name: Burdette Stocking

Its: Manager

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

On this ____ day of _____, 2023, personally appeared before me
_____, personally known to me, who after being duly sworn
acknowledged to me that he/she executed this document with the authorization of, as
_____ and on behalf of, Santaquin Development LLC.

Notary Public

EXHIBIT A-1

Description of the Land (with Illustrative Map)

As to BLUE RIVER LAND GROUP, LLC, real property identified in Utah County, State of Utah as Tax Parcel No. 29:040:0135, with the following legal descriptions:

For Tax Parcel No. 29:040:0135:

COM W 1444.45 FT & N 855.74 FT FR W 1/4 COR. SEC. 36, T9S, R1E, SLB&M.; N 33 DEG 17' 0" W 27.02 FT; ALONG A CURVE TO R (CHORD BEARS: N 52 DEG 15' 26" E 18.99 FT, RADIUS = 4799 FT); S 0 DEG 19' 22" W 34.21 FT TO BEG. AREA 0.006 AC.

As to SANTAQUIN DEVELOPMENT, LLC, real property situated in Utah County, State of Utah as Tax Parcel Nos. 29:042:0075 and 29:039:0081, with the following legal descriptions:

For Tax Parcel No. 29:042:0075:

COM N 1086.69 FT & E 285.2 FT FR W 1/4 COR. SEC. 36, T9S, R1E, SLB&M.; N 204.15 FT; N 71 DEG 28' 23" E 145.85 FT; ALONG A CURVE TO L (CHORD BEARS: N 11 DEG 13' 3" W 19.23 FT, RADIUS = 150 FT); N 14 DEG 53' 35" W 85.73 FT; N 75 DEG 6' 25" E 28 FT; S 14 DEG 53' 35" E 81.53 FT; ALONG A CURVE TO R (CHORD BEARS: S 11 DEG 23' 10" E 21.65 FT, RADIUS = 177 FT); N 71 DEG 28' 23" E 41.5 FT; N 14 DEG 53' 35" W 5.07 FT; N 73 DEG 18' 57" E 163.38 FT; E 82.56 FT; N 18.49 FT; N 85 DEG 24' 48" E 141.57 FT; ALONG A CURVE TO L (CHORD BEARS: S 8 DEG 42' 1" E 267.21 FT, RADIUS = 1027.5 FT); S 73 DEG 32' 57" W 14.5 FT; ALONG A CURVE TO L (CHORD BEARS: S 18 DEG 38' 58" E 89.95 FT, RADIUS = 1042 FT); ALONG A CURVE TO R (CHORD BEARS: S 21 DEG 39' 15" E 1.3 FT, RADIUS = 958 FT); N 89 DEG 50' 14" W 171.89 FT; W 466.9 FT TO BEG. AREA 4.169 AC.

For Tax Parcel No. 29:039:0081:

COM N 470.11 FT & W 1191.31 FT FR E 1/4 COR. SEC. 35, T9S, R1E, SLB&M.; N 33 DEG 17' 0" W 461.27 FT; N 0 DEG 19' 22" E 123.86 FT; ALONG A CURVE TO R (CHORD BEARS: N 57 DEG 59' 1" E 842.84 FT, RADIUS = 4870 FT); S 27 DEG 3' 9" E 71.05 FT; N 63 DEG 39' 57" E 106.37 FT; ALONG A CURVE TO R (CHORD BEARS: S 65 DEG 21' 50" E 12.27 FT, RADIUS = 10 FT); S 27 DEG 30' 0" E 99.63 FT; ALONG A CURVE TO R (CHORD BEARS: S 23 DEG 50' 8" E 77.52 FT, RADIUS = 623.6 FT); S 69 DEG 49' 3" W 15.16 FT; S 77 DEG 8' 59" W 115 FT; ALONG A CURVE TO R (CHORD BEARS: S 14 DEG 22' 56" E 125.44 FT, RADIUS = 479.82 FT); ALONG A CURVE TO R (CHORD BEARS: S 3 DEG 25' 3" E 56.92 FT, RADIUS = 506.45 FT); S 85.01 FT; ALONG A CURVE TO L (CHORD BEARS: S 5 DEG 28' 30" E 80.62 FT, RADIUS = 427.41 FT); S 10 DEG 57' 0" E 121.65 FT; S 79 DEG 3' 0" W 54.97 FT; S 10 DEG 57' 0" E 14.73 FT; S 81 DEG 55' 32" W 100.13 FT; S 84 DEG 18' 24" W 72.74 FT; S 76 DEG 41' 28" W 121.5 FT; S 57 DEG 31' 24" W 207.69 FT; S 56 DEG 55' 8" W 55 FT; S 33 DEG 4' 52" E 25.18 FT; S 56 DEG 43' 0" W 82.35 FT TO BEG. AREA 11.585 AC.

ILLUSTRATIVE MAP

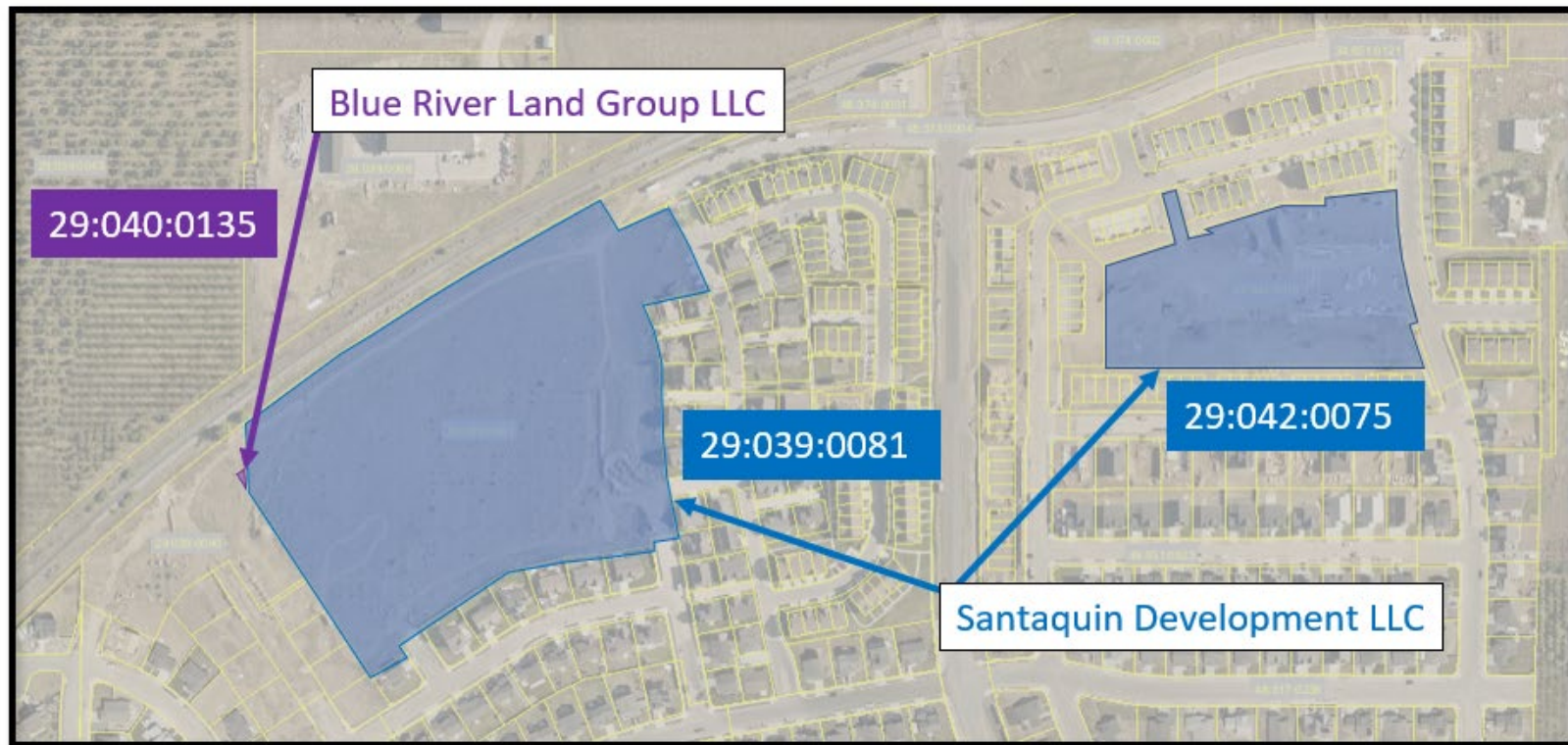
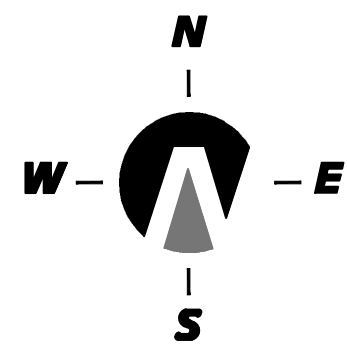


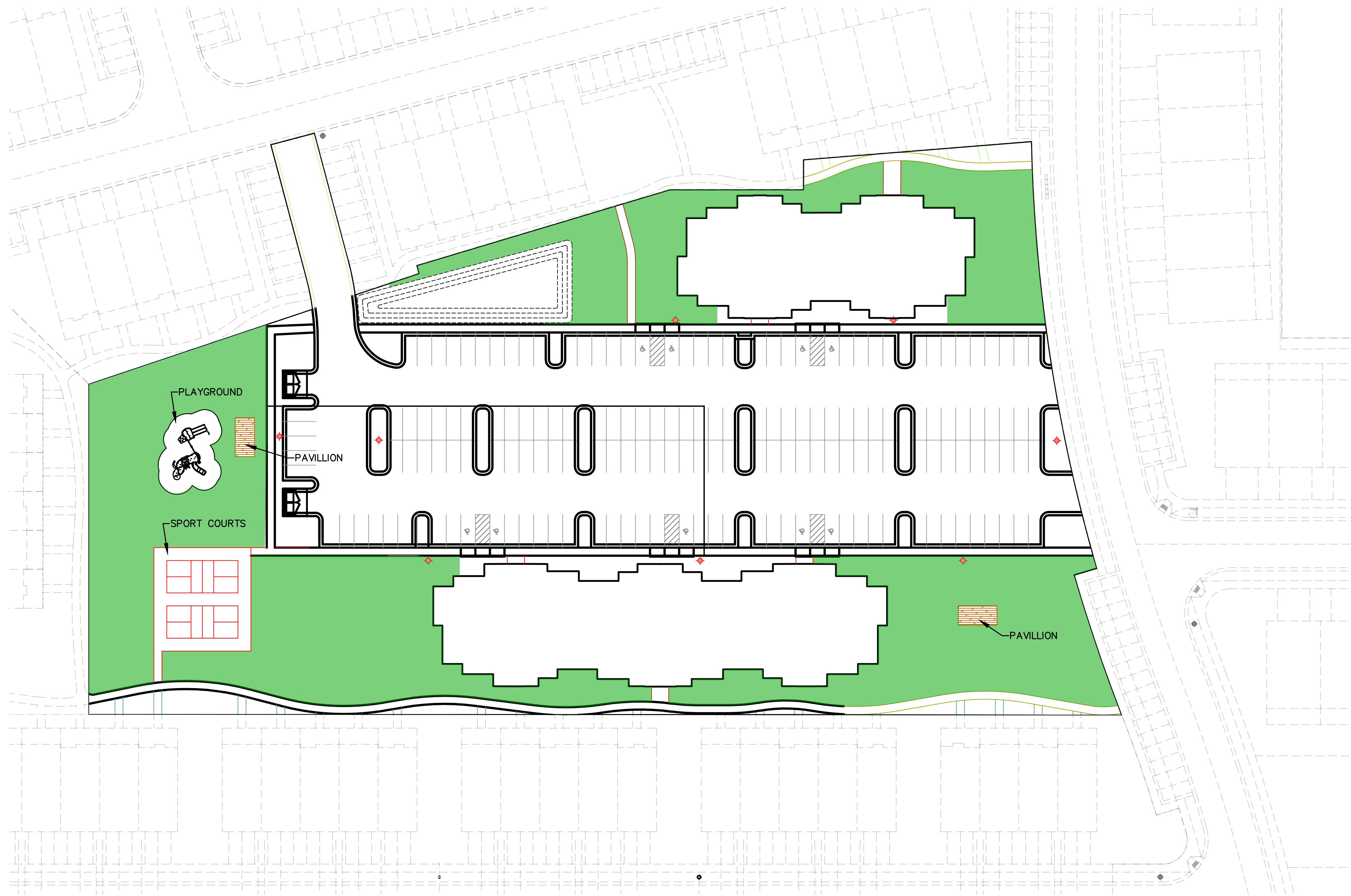
EXHIBIT B-1

Property Development Concept Plan

DRAFT



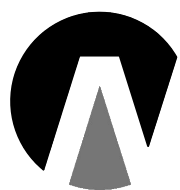
(24"x36")
SCALE 1" = 40'
(11"x17")
SCALE 1" = 80'



SCALE: 1" = 60'

THESE DRAWINGS, OR ANY PORTION THEREOF, SHALL NOT BE USED
ON ANY PROJECT OR EXTENSIONS OF THIS PROJECT EXCEPT BY
AGREEMENT IN WRITING WITH NORTHERN ENGINEERING, INC.

5			DESIGNED BY:	DATE:
4			DRAWN BY:	DATE:
3			CHECKED BY:	DATE:
2			APPROVED:	DATE:
1			COGO FILE:	DATE:
NO.	REVISIONS	BY	DATE	REV. COGO FILE:



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

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

**THE ORCHARDS
APPLE GROVE**

THE ORCHARDS @ APPLE GROVE

SANTAQUIN, UTAH

JOB NO.
3-20-031

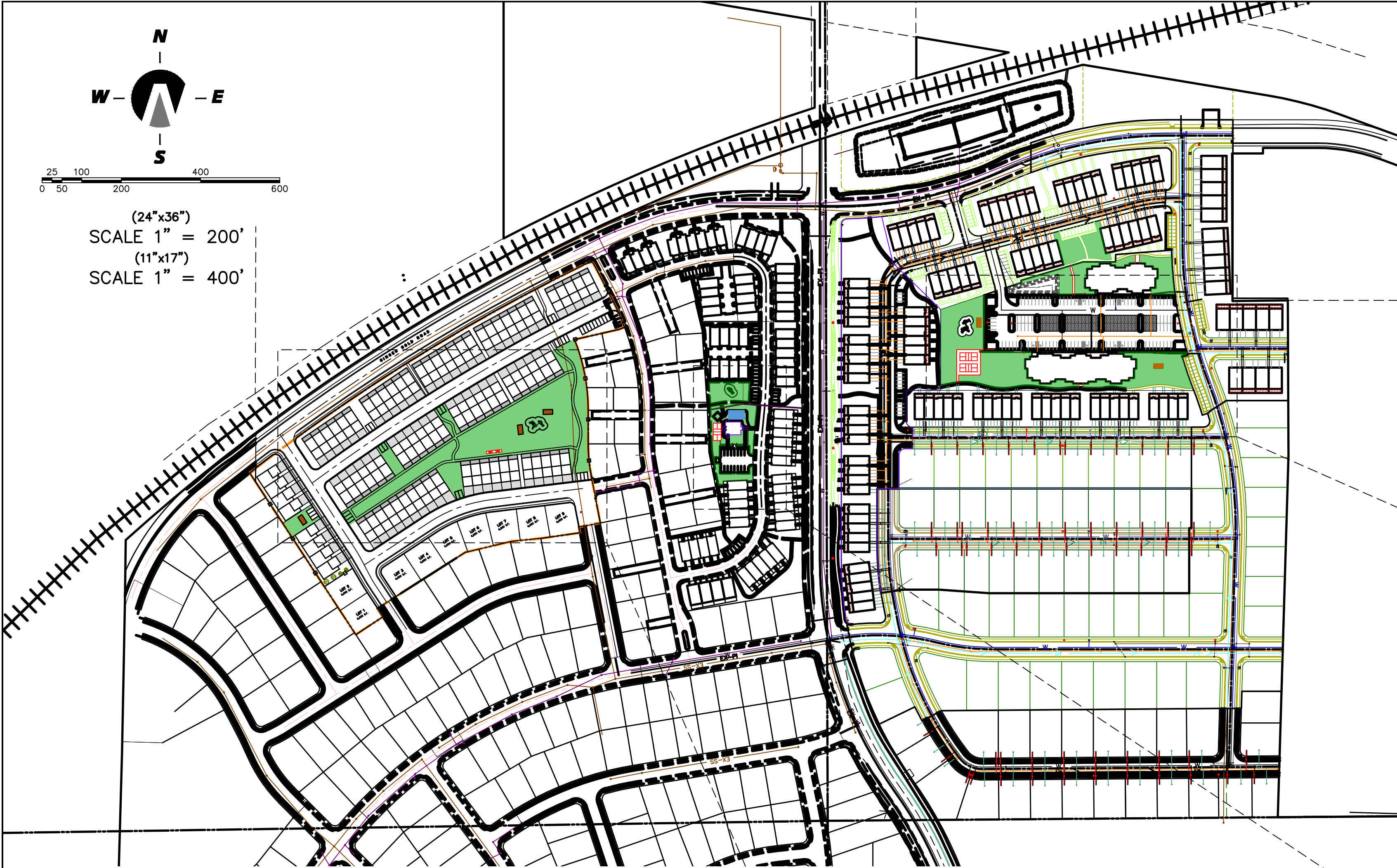
SHEET NO.
1

K:\3-20-031-00_Apple_Hollow\CAD\Concept\THE_ORCHARDS_AT_APPLE_GROVE_CONCEPT.dwg 3/22/2023 1:21 PM

EXHIBIT D-1

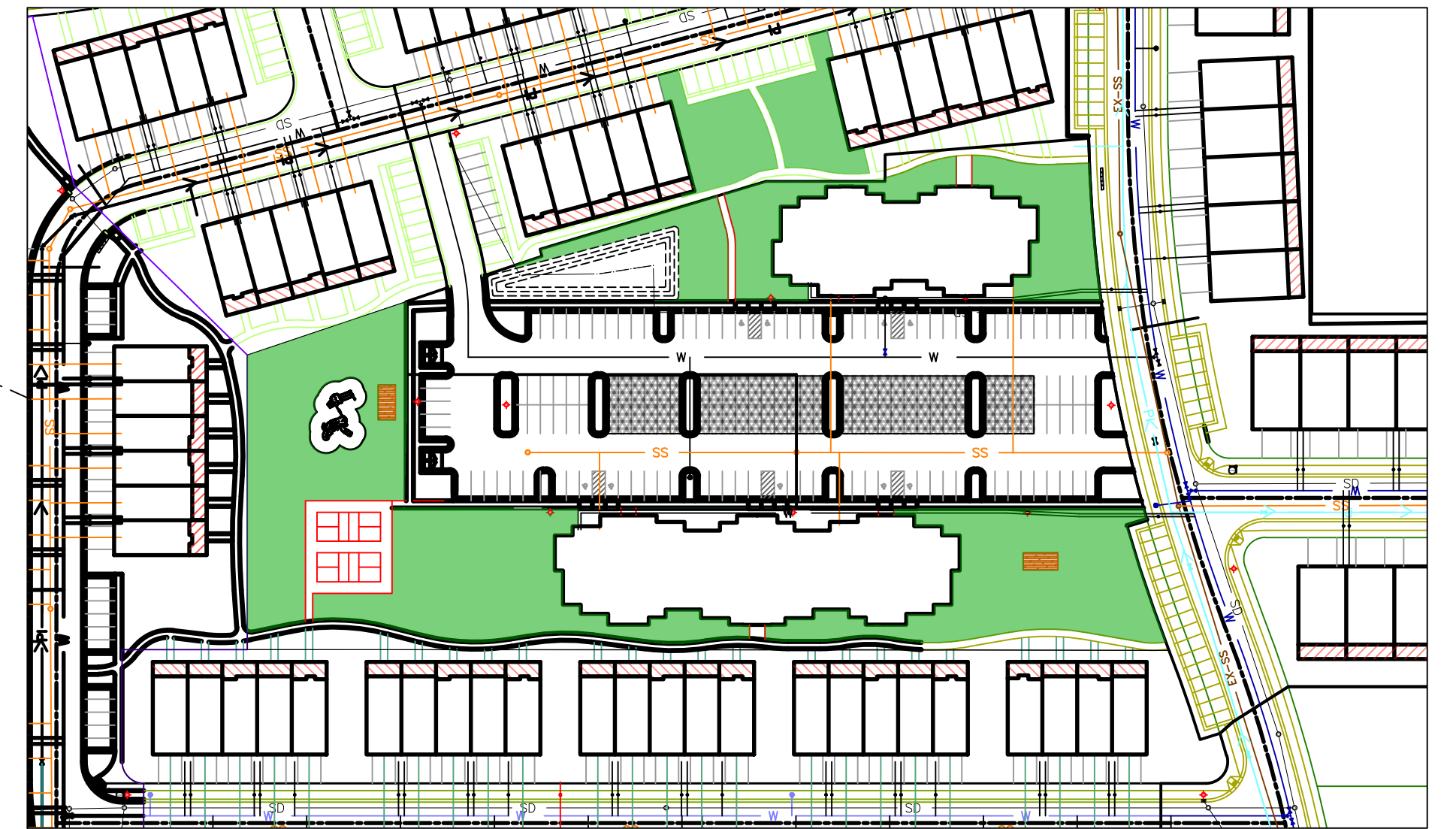
Parks and Amenities Plan

DRAFT



AMENITY COMPARISON TABLE

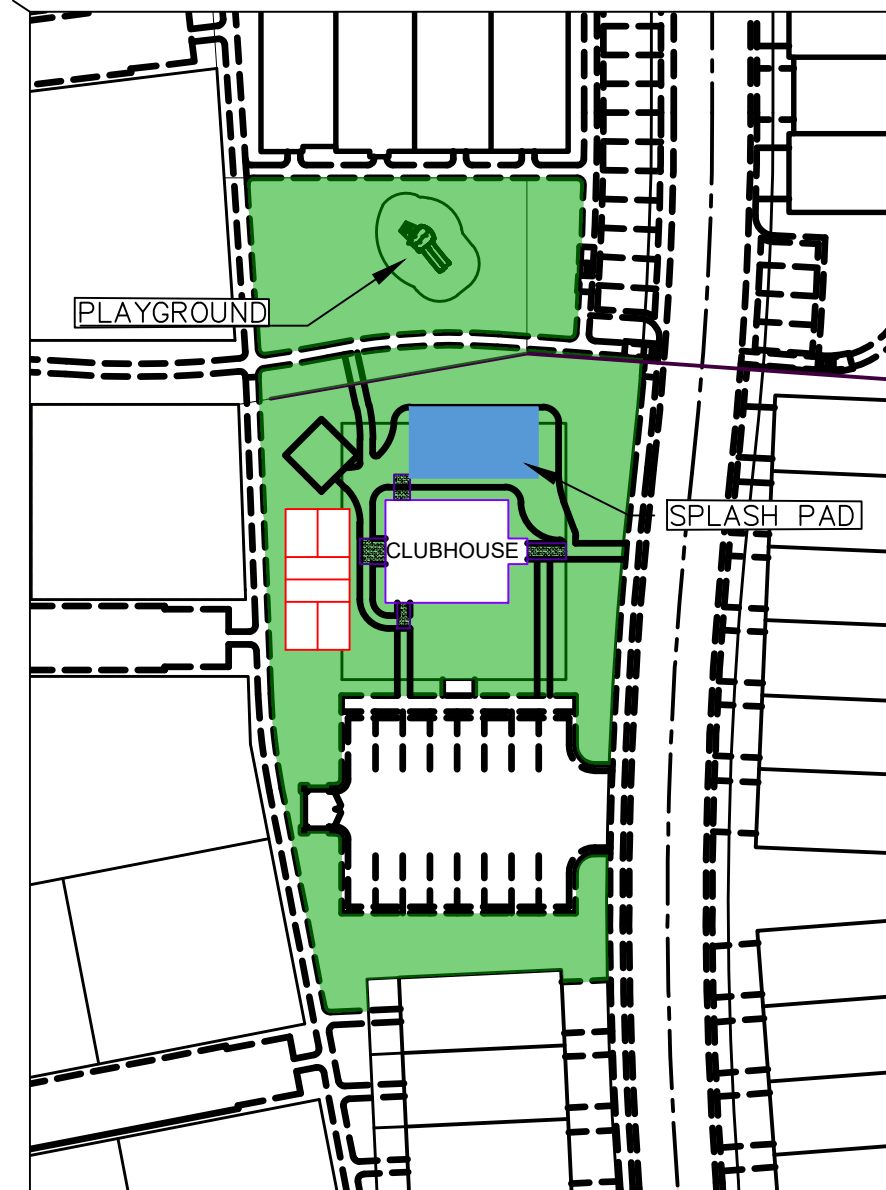
TOTAL QTY	APPROVED DEVELOPMENT AGREEMENT	PROPOSED	AMENITY DESCRIPTION
PAVILLION	5	6	PAVILLION - 12' X 24' ON CONCRETE PAD TWO PICNIC TABLES EACH PAVILLION TWO BBQ GRILLS EACH PAVILLION
VOLLEYBALL COURT	2	0	VOLLEYBALL COURT - CONCRETE SURROUND SAND FILL. NET AND POLES TBD
PLAYGROUND/ TOT LOT	2	3	PLAYGROUND - DESIGN INTENT FINAL PLAYSET TBD
BASKETBALL COURT	0	0	BASKETBALL COURT - 50' X 84' CONCRETE COURT PAINTED LINES. HOOPS TBD
SPLASH PAD	1	1	SPLASHPAD 22' X 40'
SPORT COURT	2	4	SHUFFLE BOARD, OR BOCCE BALL, OR PICKLE BALL 2 FINAL PLAY COURT TBD
CLUBHOUSE	1	1	2450 SQ. FT. CLUBHOUSE
TOTAL	13	15	



SCALE: 1" = 100'



SCALE: 1" = 60'



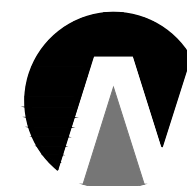
SCALE: 1" = 60'

LEGEND

- PAVILLION
- TOT LOT/PLAYGROUND
- PICKLE BALL COURT
- SPLASH PAD

THESE DRAWINGS, OR ANY PORTION THEREOF, SHALL NOT BE USED ON ANY PROJECT OR EXTENSIONS OF THIS PROJECT EXCEPT BY AGREEMENT IN WRITING WITH NORTHERN ENGINEERING, INC.

5	DESIGNED BY:	DATE:
4	DRAWN BY:	DATE:
3	CHECKED BY:	DATE:
2	APPROVED:	DATE:
1	COGO FILE:	DATE:
NO.	REV. COGO FILE:	DATE:



Northern
ENGINEERING INC
ENGINEERING—LAND PLANNING
CONSTRUCTION MANAGEMENT

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

THE ORCHARDS
APPLE GROVE

PARKS AND AMENITIES PLAN

SANTAQUIN, UTAH

JOB NO.
3-20-031

SHEET NO.
1