

**MASTER DEVELOPMENT AGREEMENT
FOR
ERCANBRACK MIXED USE DEVELOPMENT**

September , 2021

WHEN RECORDED, RETURN TO:

**Bruce R. Baird
Bruce R. Baird, PLLC
2150 South 1300 East, Suite 500
Salt Lake City, UT 84106**

**MASTER DEVELOPMENT AGREEMENT
FOR
ERCANBRACK MIXED USE DEVELOPMENT**

THIS MASTER DEVELOPMENT AGREEMENT is made and entered into as of the
day of September, 2021, by and between Santaquin City, a Utah municipality and W. M.
Ercanbrack Co., Inc., a Utah corporation.

RECITALS

- A. The capitalized terms used in this MDA and in these Recitals are defined in Section 1.2, below.
- B. Master Developer owns and is developing the Property.
- C. Master Developer and the City desire that the Property be developed in a unified and consistent fashion pursuant to the Master Plan.
- D. The Parties acknowledge that development of the Property pursuant to this MDA may result in significant planning benefits to the City and its residents by, among other things requiring orderly development of the Property known as the Ercanbrack Mixed Use Development and increasing property tax and other revenues to the City based on improvements to be constructed on the Property.
- E. The Parties desire to enter into this MDA to specify the rights and responsibilities of the Master Developer to develop the Property as expressed in this MDA and the rights and

responsibilities of the City to allow and regulate such development pursuant to the requirements of this MDA.

F. The Parties understand and intend that this MDA is a “development agreement” within the meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-101 (2018) *et seq.*

G. On September [REDACTED], 2021, the City zoned the Property as shown on the Zoning Map which was approved by Ordinance No. [REDACTED].

H. This MDA conforms with the intent of the City’s General Plan and the Zoning.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Master Developer hereby agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1. **Incorporation.** The foregoing Recitals and Exhibits “A” - “C” are hereby incorporated into this MDA.

1.2. **Definitions.** As used in this MDA, the words and phrases specified below shall have the following meanings:

1.2.1. **Act** means the Land Use, Development, and Management Act, Utah Code Ann. § 10-9a-101 (2018), *et seq.*

1.2.2. **Administrative Modifications** means those modifications to certain limited aspects of the MDA that may be made by the Administrator pursuant to Section 11, below.

1.2.3. **Administrator** means the person designated by the City as the Administrator of this MDA.

1.2.4. **Applicant** means a person or entity submitting a Development Application.

1.2.5. **Buildout** means the completion of all of the development on the entire Project in accordance with the approved plans.

1.2.6. **City** means Santaquin City, a Utah municipality.

1.2.7. **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage for reviewing certain aspects of the development of the Project.

1.2.8. **City's Future Laws** means the ordinances, policies, standards, and procedures which may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project, which contradict or change the City's Vested Laws, and which may or may not be applicable to the Development Application depending upon the provisions of this MDA.

1.2.9. **City's Vested Laws** means the substantive ordinances, policies, standards and procedures of the City, related to land use regulations affecting the Project (i.e., Santaquin City Code, Titles 10 and 11), in effect as of the date of this MDA, a digital copy of which is attached as Exhibit "C".

1.2.10. **Commercial Uses** means those commercial, retail, office and other uses as shown on the Master Plan, Exhibit "B".

1.2.11. **Council** means the elected City Council of the City.

1.2.12. **Default** means a material breach of this MDA as specified herein.

1.2.13. **Denied** means a formal denial issued by the final decision-making body of the City for a particular type of Development Application but does not include review comments or “redlines” by City staff.

1.2.14. **Development** means the development of a portion of the Property pursuant to an approved Development Application.

1.2.15. **Development Application** means an application to the City for development of a portion of the Project including a Subdivision or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.16. **Development Area** means one of the 8 areas for separate development of the Project as conceptually shown on the Master Plan, Exhibit “B”.

1.2.17. **Development Report** means a report containing the information specified in Section 2.4.

1.2.18. **Final Plat** means the recordable map or other graphical representation of land that complies with Utah Code Ann. § 10-9a-603 (July, 2021), or any successor provision, and the City’s Vested Laws, and is approved by the City, effectuating a Subdivision of any portion of the Project.

1.2.19. **Master Developer** means W. M. Ercanbrack Co., Inc. and its assignees or transferees as permitted by this MDA.

1.2.20. **Master Plan** means the conceptual layout for the Development Areas, Residential Dwelling Units, approved Commercial Uses, and Public Infrastructure for the Project, as set forth in Exhibit “B”.

1.2.21. **MDA** means this Master Development Agreement and any amendments thereto, including all of its Exhibits.

1.2.22. **Notice** means any notice to or from any Party to this MDA that is either required or permitted to be given to another Party.

1.2.23. **Open Space** shall have the meaning specified in Section 10.08.020 of the City's Vested Laws.

1.2.24. **Outsourc[e][ing]** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application as is more fully set out in this MDA.

1.2.25. **Parcel** means a portion of the Property that is created by the Master Developer to be sold to a Subdeveloper as a Subdivision that is not an individually developable lot as specified in Section 6.7.

1.2.26. **Party/Parties** means, in the singular, Master Developer or the City; in the plural Master Developer and the City.

1.2.27. **Planning Commission** means the City's Planning Commission.

1.2.28. **Project** means the total development to be constructed on the Property pursuant to this MDA with the associated public and private facilities.

1.2.29. **Property** means the real property proposed for development by Master Developer more fully described in Exhibit "A".

1.2.30. **Public Infrastructure** means those elements of infrastructure that are planned, agree, or required to be dedicated to the City as a condition of the approval of a Development Application.

1.2.31. Residential Dwelling Unit means a structure or portion thereof designed and intended for use as a single-family detached dwelling or multiple-unit dwelling as defined in the City's Vested Laws.

1.2.32. **Subdeveloper** means a person or an entity not "related" (as defined by Section 165 of the Internal Revenue Code) to Master Developer which purchases a Parcel for development.

1.2.33. **Subdivision** means the division of any portion of the Project into developable lots pursuant to State Law and/or the Zoning Ordinance.

1.2.34. **Subdivision Application** means the application to create a Subdivision.

1.2.35. **Zoning** means the zoning for the Property and each Development Area, in effect or as approved at the time of approval of this MDA.

1.2.36. **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that was in effect as of the date of this MDA as a part of the City's Vested Laws.

2. **Development of the Project.**

2.1. **Compliance with the Master Plan and this MDA.** Development of the Project shall be in accordance with the City's Vested Laws, the City's Future Laws (to the extent that these are applicable as otherwise specified in this MDA), the Master Plan and this MDA.

2.2. **Maximum Residential Units.** The maximum number of Residential Dwelling Units per Development Area is set forth in Exhibit "B" and shall not be transferrable from one Development Area to another Development Area.

2.3. **Limitation and No Guarantee.** Master Developer acknowledges that the

development of the potential number of Residential Dwelling Units and every other aspect of the Master Plan requires that each Development Application comply with the City's Vested Laws including, without limitation, the City's geologic hazards requirements. Notwithstanding any contrary provision of this Agreement, the City's entry into this MDA does not guarantee that the Master Developer will be able to construct the Maximum Residential Units or any other aspect of the Project until and unless all the applicable requirements of the City's Vested Laws are complied with.

2.4. Accounting for Residential Units for Parcels Sold to Subdevelopers. Any Parcel sold by Master Developer to a Subdeveloper or subsequent Subdeveloper shall include the transfer of a specified portion of the Maximum Residential Units sold with the Parcel. Upon any such transfer, Master Developer or Subdeveloper shall deliver a Development Report to the City, which includes the total Maximum Residential Units in each of the affected parcels.

3. Vested Rights.

3.1. Vested Rights Granted by Approval of this MDA. To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this MDA grants Master Developer all rights to develop the Project in fulfillment of this MDA, the City's Vested Laws, the Zoning and the Master Plan except as specifically provided herein. The Parties specifically intend that this MDA grant to Master Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2021).

3.2. Exceptions. The restrictions on the applicability of the City's Future Laws to the Project as specified in Section 3.1 are subject to only the following exceptions:

- 3.2.1. Master Developer Agreement. City's Future Laws that Master Developer agrees in writing to the application thereof to the Project;
- 3.2.2. State and Federal Compliance. City's 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;
- 3.2.3. Codes. Any City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, fire, 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;
- 3.2.4. 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;
- 3.2.5. 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;
- 3.2.6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City and which meet all requirements of the U. S. Constitution, Utah Constitution, law and applicable statutes, including but not limited to Utah Code

Ann. Section 11-36a-101 (2021) *et seq.*;

3.2.7. Planning and Zoning Modification. Changes by the City to its planning principles and design standards such as architectural or design requirements, setbacks or similar items so long as such changes do not work to reduce the Maximum Residential Units, are generally applicable across the entire City and do not materially and unreasonably increase the costs of any Development; or

3.2.8. Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(i) (2021).

4. **Term of Agreement.** This MDA shall expire December 31, 2031. If Master Developer has not been declared to be currently in Default as of December 31, 2031 (and if any such Default is not being cured) then this MDA shall be automatically extended until December 31, 2036. This MDA shall also terminate automatically at Buildout.

5. **Zoning.**

5.1. **Map.** The Parties acknowledge that the Development Areas shown with zoning designation on the Master Plan do not have legally specified boundaries because neither of the Parties knows at the time of the execution of this MDA precisely where the roads and other demarcating aspects of the Project will be actually located. The Master Plan establishes rough parameters for the location of the eventual zoning and this Section 5 establishes the processes for locating and establishing those zoning boundaries as the Project develops.

5.2. **Process.** When and as a Development Application is filed for a Subdivision of

Development Area that Development Application shall specify any restrictions or limitations on the Zoning other than those specified in the Master Plan such as limiting the types of Commercial Uses that may be allowed. So long as the area of land subject to the Development Application is not more than ten percent (10%) larger or smaller than shown for that Development Area on the Master Plan and does not add to the types of allowable Commercial Uses or Residential Uses than the Development Application may be approved administratively. Once the Development Application is approved then the City's Zoning Map shall be deemed amended to fix and specify the zoning boundaries for that Development Application area. Any other modification to the size or uses in a Development Area require approval of the City through the normal zoning process specified in the City's then current zoning code.

6. Processing of Development Applications.

6.1. Processing of Development Applications. Processing of Development Applications will be governed by City Code.

6.2. Acceptance of Certifications Required for Development Applications. Any Development Application requiring the signature, endorsement, or certification and/or stamping by a person holding a license or professional certification required by the State of Utah in a particular discipline shall be so signed, endorsed, certified or stamped signifying that the contents of the Development Application comply with the applicable regulatory standards of the City.

6.3. Independent Technical Analyses for Development Applications. If the City needs technical expertise beyond the City's internal resources to determine impacts of a Development Application such as for structures, bridges, water tanks, and other similar

matters which are not required by the City's Vested Laws to be certified by such experts as part of a Development Application, the City may engage such experts as City Consultants with the actual and reasonable costs being the responsibility of Applicant.

6.4. City Denial of a Development Application. If the City denies a Development Application the City shall provide a written determination advising the Applicant of the reasons for denial including specifying the reasons the City believes that the Development Application is not consistent with this MDA, the Zoning and/or the City's Vested Laws (or, if applicable, the City's Future Laws). The City may amend such written determination as necessary.

6.5. City Denials of Development Applications Based on Denials from Non-City Agencies. If the City's denial of a Development Application is based on the denial of the Development Application by a Non-City Agency, Applicant shall appeal any such denial through the appropriate procedures for such a decision and not through the processes specified below. Applicant's failure to successfully appeal any such denial shall preclude any action by Applicant against City for City's denial.

6.6. Mediation of Development Application Denials.

6.6.1. Issues Subject to Mediation. Issues resulting from the City's Denial of a Development Application that the parties are not able to resolve shall be mediated.

6.6.2. Mediation Process. If the City and Applicant are unable to resolve a disagreement subject to mediation, the parties shall attempt within thirty (30) calendar days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute. If the City and Applicant are unable to agree on a single acceptable mediator they shall each, within fifteen (15) calendar days, appoint their own representative.

These two representatives shall, between them, choose the single mediator. Applicant and the City shall split the fees of the chosen mediator, each Party paying 50% of the fees. The chosen mediator shall within thirty (30) calendar days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties. If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate.

The mediator's opinion shall not be binding on the parties.

6.7. Parcel Sales. The City acknowledges that the precise location and details of the public improvements, lot layout and design and any other similar item regarding the development of a particular Parcel may not be known at the time of the creation of or sale of a Parcel. Master Developer may obtain approval of a Subdivision as is provided in Utah Code Ann., Section 10-9a-103(65)(c)(v) (2021) that does not create any individually developable lots in the Parcel without being subject to any requirement in the City's Vested Laws to complete or provide security for any Public Infrastructure at the time of such subdivision. The responsibility for completing and providing security for completion of any Public Infrastructure in the Parcel shall be that of the Master Developer or a Subdeveloper upon a subsequent re-Subdivision of the Parcel that creates individually developable lots. However, construction of improvements shall not be allowed until the Master Developer or Subdeveloper complies with the City's Vested Laws and the City's security requirements in effect at the time of a completed Development Application.

7. Application Under City's Future Laws. Without waiving any rights granted by this MDA, Master Developer may at any time, choose to submit a Development Application for all

or part of the Project under the City's Future Laws in effect at the time of the Development Application so long as the overall number of Residential Dwelling Units in the Project is not increased, and Master Developer is not in current breach of this Agreement.

8. Public Infrastructure.

8.1. Construction by Master Developer. Master Developer shall have the right and the obligation to construct or cause to be constructed and installed all Public Infrastructure reasonably and lawfully required as a condition of approval of the Development Application pursuant to the City's Vested Laws.

8.2. Bonding. Unless otherwise provided by Chapter 10-9a of the Utah Code as amended, Applicant shall provide security for any Public or private Infrastructure required by the City, in a form acceptable to the City. as specified in the City's ordinances in effect at the time of application. Partial releases of any such required security shall be allowed as work progresses based on the City's laws then in effect.

9. Upsizing/Reimbursements to Master Developer.

9.1. "Upsizing". All Public Infrastructure shall be of sufficient capacity to service the entire Project at Buildout. The City shall not require Master Developer to "upsized" any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) unless financial arrangements reasonably acceptable to Master Developer are made to compensate Master Developer for the incremental or additive costs of such upsizing. For example, if an upsizing to a water pipe size increases costs by 10% but adds 50% more capacity, the City shall only be responsible to compensate Master Developer for the 10% cost increase. An acceptable financial arrangement for upsizing of improvements means reimbursement agreements, payback

agreements, and impact fee credits and reimbursements. Providing Public Infrastructure with sufficient capacity to serve the entire Project at Buildout is not considered upsizing for purposes of this MDA, and all associated costs thereof are the sole responsibility of the Master Developer, and not the responsibility of the City.

10. **Default.**

10.1. **Notice.** If Master Developer or a Subdeveloper or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a Default has occurred shall provide Notice to the other Party. If the City believes that the Default has been committed by a Subdeveloper then the City shall also provide a courtesy copy of the Notice to Master Developer.

10.2. **Contents of the Notice of Default.** The Notice of Default shall:

10.2.1. Specific Claim. Specify the claimed event of Default;

10.2.2. Applicable Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this MDA that is claimed to be in Default;

10.2.3. Materiality. Identify why the Default is claimed to be material; and

10.2.4. Optional Cure. If the City chooses, in its discretion, it may propose a method and time for curing the Default which shall be of no less than thirty (30) calendar days duration.

10.3. **Remedies.** If the parties are not able to resolve the Default by “Mediation”, the parties may have the following remedies.

10.3.1. Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

10.3.2. Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

10.3.3. Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by Master Developer, or in the case of a default by a Subdeveloper, development of those Parcels owned by the Subdeveloper until the Default has been cured.

10.4. **Emergency Defaults.** Anything in this MDA notwithstanding, if the City Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of Section 10.3 without the requirements of Section 10.2. The City shall give Notice to Master Developer and/or any applicable Subdeveloper of any public meeting at which an emergency default is to be considered.

10.5. **Extended Cure Period.** If any Default cannot be reasonably cured within thirty (30) calendar days then such cure period shall be extended so long as the defaulting party is pursuing a cure with reasonable diligence.

10.6. **Default of Assignee.** A default of any obligations assumed by an assignee shall not be deemed a default of Master Developer.

10.7. **Limitation on Recovery for Default – No Damages.** Anything in this MDA notwithstanding no Party shall be entitled to any claim for any monetary damages as a result of any breach of this MDA and each Party waives any claims thereto. The sole remedy available to Master Developer or any Subdeveloper shall be that of specific

performance.

10.8. **City Inspections.** Nothing in this Section 10 shall be construed to limit the ability or authority of City's inspectors to assure compliance with construction standards and practices through the procedures applied generally to construction projects in the City.

11. **Modifications and Amendments.**

11.1. **Allowable Administrative Modifications.** The following modifications to this MDA may be considered and approved by the Administrator:

11.1.1. Infrastructure. Modification of the location and/or sizing of the infrastructure for the Project that does not materially change the functionality of the infrastructure.

11.1.2. General. Any other modifications deemed to be minor modifications by the Administrator.

11.2. **Process for Administrative Modifications.**

11.2.1. Who May Submit for an Administrative Modification. Only the City and Master Developer, or an assignee that succeeds to all of the rights and obligations of Master Developer under this MDA, (and not including a Subdeveloper) may submit a Modification Application.

11.2.2. Consideration by the Administrator. The Administrator shall consider and decide upon a request for an Administrative Modification within a reasonable time not to exceed forty-five (45) days from the date of submission of an for an Administrative Modification.

11.2.3. Notification to City Council. If the Administrator determines to approve a proposed Administrative Modification, the Administrator shall give written notice of the proposed approval to the City Council. If any member of the City Council gives

notice of an objection to the proposed Administrative Modification within fifteen (15) business days of the notice then the proposed Administrative Modification shall be considered by the City as an amendment to the MDA pursuant to the City's then-current process for amending zoning.

11.2.4. Recordation. If the City Council does not object to the Administrator's approval of the proposed Administrative Modification within the period specified above then the City approval shall be conclusively presumed and the Administrator record notice of such approval shall be against the applicable portion of the Property in the official City and County records.

12. Notices. All notices required or permitted under this MDA shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Master Developer:

Wm. Ercanbrack Co, Inc.

With a Copy to:

Bruce R. Baird
Bruce R. Baird, PLLC
2150 South 1300 East, Suite 500
Salt Lake City, UT 84106
bbaird@difficultdirt.com
(801) 328-1400

To the City:

Santaquin City
Attn: City Manager
Benjamin Reeves
275 West Main Street
Santaquin, UT 84655

breeves@santaquin.org
(801) 754-3200

With a Copy to:

Santaquin City
Attn: City Attorney
Brett B. Rich
Nielsen & Senior, P.C.
1140 South 800 East, Suite 110
Orem, UT 84097
bbr@ns-law.com
(801) 701-7074

12.1. **Effectiveness of Notice.** Except as otherwise provided in this MDA, each Notice shall be effective and shall be deemed delivered on the earlier of:

12.1.1. Hand Delivery. Its actual receipt, if delivered personally, by courier service, or by facsimile provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending party has confirmation of transmission receipt of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

12.1.2. Electronic Delivery. Its actual receipt if delivered electronically by email provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending party has an electronic receipt of the delivery of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

12.1.3. Mailing. On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any party may change its address for Notice under this MDA

by giving written Notice to the other party in accordance with the provisions of this Section.

13. **Headings.** The captions used in this MDA are for convenience only and are not intended to be substantive provisions or evidences of intent.

14. **No Third-Party Rights/No Joint Venture.** This MDA does not create a joint venture relationship, partnership or agency relationship between the City, or Master Developer. Further, the parties do not intend this MDA to create any third-party beneficiary rights. The Parties acknowledge that this MDA refers to a private development and that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to the Property or unless the City has accepted the dedication of such improvements at which time all rights and responsibilities—except for warranty bond requirements under City’s Vested Laws and as allowed by state law—for the dedicated public improvement shall be the City's.

15. **Assignability.** The rights and responsibilities of Master Developer under this MDA may be assigned in whole or in part, respectively, by Master Developer with the consent of the City as provided herein.

15.1. **Sale of Lots.** Master Developer’s selling or conveying lots in any approved Subdivision or Parcels to builders, users, or Subdevelopers, shall not be deemed to be an “assignment” subject to the above-referenced approval by the City unless specifically designated as such an assignment by Master Developer.

15.2. **Related Entity.** Master Developer’s transfer of all or any part of the Property to any entity “related” to Master Developer (as defined by regulations of the Internal Revenue Service in Section 165), Master Developer’s entry into a joint venture for the development of the Project or Master 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 Master Developer. Master Developer shall give the City Notice of any event specified in this sub-section within fifteen (15) calendar days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

15.3. **Notice.** Master Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

15.4. **Time for Objection.** Unless the City objects in writing within thirty (30) calendar days of notice, the City shall be deemed to have approved of and consented to the assignment.

15.5. **Partial Assignment.** If any proposed assignment is for less than all of Master Developer’s rights and responsibilities then the assignee shall be responsible for the performance of each of the obligations contained in this MDA to which the assignee succeeds. Upon any such approved partial assignment Master Developer shall not be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations herein.

15.6. **Denial.** The City may only withhold its consent if the City is not reasonably satisfied of the assignee’s financial ability to perform the obligations of Master Developer proposed to be assigned or there is an existing breach of a development obligation owed

to the City by the assignee or related entity that has not either been cured or in the process of being cured in a manner acceptable to the City. Any refusal of the City to accept an assignment shall be subject to the “Mediation” process specified in Section 6.6.

15.7. **Assignees Bound by MDA.** Any assignee shall consent in writing to be bound by the assigned terms and conditions of this MDA as a condition precedent to the effectiveness of the assignment. That consent shall specifically acknowledge the provisions of Section 2.

16. **Binding Effect.** If Master Developer sells or conveys Parcels of lands to Subdevelopers or related parties, the lands so sold and conveyed shall bear the same rights, privileges, configurations, and number of Residential Dwelling Units as applicable to such Parcel and be subject to the same limitations and rights of the City when owned by or Master Developer and as set forth in this MDA without any required approval, review, or consent by the City except as otherwise provided herein. Each sale of a Parcel shall include a written designation of the maximum number of Residential Dwelling Units allocated to that parcel.

17. **No Waiver.** Failure of any 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 date any such right or any other right it may have.

18. **Severability.** If any provision of this MDA is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this MDA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this MDA shall remain in full force and affect.

19. **Survival.** If this MDA is terminated for any reason the provisions of Sections 9.1, 10.7, 14, 24, 25 and 26 shall survive the termination.

20. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

21. **Time is of the Essence.** Time is of the essence to this MDA and every right or responsibility shall be performed within the times specified.

22. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this MDA, the City and Master Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Master Developer. The initial representative for the City shall be the City Manager or his designee. The initial representative for Master Developer shall be [REDACTED]. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this MDA and the development of the Project.

23. **Estoppel Certificate.** Upon twenty (20) days prior written request by Master Developer or a Subdeveloper, the City will execute an estoppel certificate to any third party certifying that Master Developer or a Subdeveloper, as the case may be, at that time has not been declared to be in default of the terms of this Agreement, and that the City is not aware of any circumstances that would constitute such a default.

24. **Applicable Law.** This MDA is entered into in Utah County in the State of Utah and

shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

25. **Venue.** Any action to enforce this MDA shall be brought only in the Fourth District Court for the State of Utah, Salt Lake City Division.

26. **Entire Agreement.** This MDA, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

27. **Mutual Drafting.** Each Party has participated in negotiating and drafting this MDA and therefore no provision of this MDA shall be construed for or against any Party based on which Party drafted any particular portion of this MDA.

28. **Recordation and Running with the Land.** This MDA shall be recorded in the chain of title for the Project. This MDA shall be deemed to run with the land. The data disk of the City's Vested Laws, Exhibit "C", shall not be recorded in the chain of title. A secure copy of Exhibit "C" shall be filed with the City Recorder and each party shall also have an identical copy.

29. **Authority.** The Parties to this MDA each warrant that they have all of the necessary authority to execute this MDA. Specifically, on behalf of the City, the signature of the Mayor is affixed to this MDA lawfully binding the City pursuant to Resolution No. [REDACTED] adopted by the City on September [REDACTED], 2021.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

MASTER DEVELOPER
Wm. Ercanbrack Co, Inc.

CITY
Santaquin City

By: _____

By: Kirk F. Hunsaker,

Its: _____
Date: _____

Its: Mayor
Date: _____

Approved as to form and legality:

Attest:

City Attorney

City Recorder

CITY ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF UTAH)

On the ____ day of September, 2021 personally appeared before me _____ who being by me duly sworn, did say that he is the Mayor of Santaquin City, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said Mayor acknowledged to me that the City executed the same.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

MASTER DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF UTAH)

On the ____ day of September, 2021 personally appeared before me _____, who being by me duly sworn, did say that he/she is the _____ of Wm. Ercanbrack Co., Inc, a Utah corporation and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

TABLE OF EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B"	Master Plan
Exhibit "C"	City's Vested Laws

Exhibit "A"
Legal Description of Property

Exhibit "B"
Master Plan

Exhibit "C"
City's Vested Laws