

WHEN RECORDED, RETURN TO:

Santaquin City Recorder
Santaquin City
275 West Main Street
Santaquin, Utah 84655

**FIRST AMENDMENT TO THE
MASTER DEVELOPMENT AGREEMENT
FOR
ERCANBRACK MIXED USE DEVELOPMENT**

THIS FIRST AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT (this “**First Amendment**”), is made and entered into as of this ____ day of _____, 2022, by and between W. M. Ercanbrack Co., Inc., a Utah corporation, (“**Master Developer**”); Vanquish Capital, LLC, a Utah limited liability company (“**Subdeveloper**”); and Santaquin City, a Utah municipal corporation (the “**City**”). Master Developer, Subdeveloper, and the City are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. W. M. Ercanbrack Co., Inc. (“**Ercanbrack**”) and the City executed that certain Master Development Agreement for Ercanbrack Mixed Use Development dated September 7, 2021 (the “**MDA**”) governing development of the Project on the Property (as said terms as defined in the MDA).

B. Vanquish Capital, LLC (“**Subdeveloper**”) subsequently purchased approximately twenty (20) acres of the Property, and with the City’s acceptance of the partial assignment becomes an assignee of Master Developer with respect to said acreage, pursuant to Section 15.5 of the MDA.

C. The original Master Plan for the Project is attached as Exhibit “B” to the MDA.

D. Following the approval and execution of the MDA, the Parties have agreed to adopt an updated and improved Master Plan for the Project, which clarifies and confirms the portions of the Project to be developed for: (1) residential uses, (2) commercial uses, and (3) “commercial, retail sales and services” and/or “warehouse, wholesale facility”, as well as the permitted densities of such uses, as depicted on the new Master Plan attached hereto as Exhibit “E” (the “**New Master Plan**”).

E. The Parties desire to amend the MDA to allow for the Project to be developed and improved as set forth in the New Master Plan.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the above-stated Recitals, and the mutual benefits to be derived herefrom, the Parties agree as follows and amend the MDA as set forth below.

1. Recitals. The above-stated Recitals are incorporated herein by this reference.
2. Definitions. The following definitions shall apply to this First Amendment. Capitalized terms that are not otherwise defined in this First Amendment shall have the meanings set forth in the MDA.
 - a. “First Amendment” means this First Amendment to the Master Development Agreement.
 - b. “Subdeveloper” means Vanquish Capital, LLC.
 - c. “Subdevelopment Property” means that portion of the Property owned by Subdeveloper, which is more particularly described in Exhibit “D” hereto.
3. Acceptance of Partial Assignment. Upon execution of this First Amendment, the City formally approves the partial assignment to Subdeveloper.
4. New Master Plan. The map attached as Exhibit “B” to the original MDA is hereby replaced and superseded by the New Master Plan attached as Exhibit “E” to this First Amendment. The New Master Plan attached as Exhibit “E” hereto shall govern the development, uses, and permitted densities for the Project.
5. New Zoning. Any zoning rights granted by the original MDA shall be superseded by the map attached as Exhibit “F” to this First Amendment which shows the New Zoning for the Subdevelopment Property, and which first must be approved through Santaquin City’s normal zoning process specified in the City’s land use and development management code.
6. Subdeveloper Rights and Responsibilities. By signing this First Amendment, Subdeveloper acknowledges and accepts all rights and responsibilities set forth in the MDA, including, but not limited to Section 15.5, Section 15.7, and Section 2 of the MDA as an assignee of a portion of the Property.
7. Provisions Run with the Land. The MDA, as amended by this First Amendment, and all covenants, rights, terms, conditions and obligations contained therein and herein pertaining to the development of the Project, shall run with the land and shall inure to the benefit of and be binding on all existing and future owners of the Property; provided, however, that all development obligations pertaining to the development of the Project shall cease to burden and run with that portion of the Property that is subdivided into individual lots or residential dwelling units pursuant to the applicable subdivision ordinances of the City, and each such lot or dwelling unit shall be released here from at the time of recordation of a deed conveying title thereto to a third-party purchaser unaffiliated with the Master Developer.
8. Force and Effect. Except as specifically modified by this First Amendment, all of the terms and conditions set forth in the MDA shall remain unchanged and in full force and effect. In the event of a conflict between the provisions of the MDA and the provisions of this First Amendment, the provisions of this First Amendment shall govern.

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

SANTAQUIN CITY

Daniel M. Olson, Mayor

ATTEST:

Amalie R. Ottley, City Recorder

MASTER DEVELOPER:

W.M. Ercanbrack Co., Inc., a
Utah corporation

Randall M. Ercanbrack, President

SUBDEVELOPER:

Vanquish Capital, LLC, a Utah limited
liability company

Garrett Seely, Manager

ACKNOWLEDGMENTS

STATE OF UTAH)
 :ss.
County of Utah)

On the _____ day of _____, 2022, personally appeared before me Daniel M. Olson known to me, or proved to me on the basis of satisfactory evidence, to be the Mayor of **Santaquin City**, who duly acknowledged that he signed the foregoing instrument on behalf of Santaquin City by authority of a duly adopted resolution of its City Council.

NOTARY PUBLIC

STATE OF UTAH)
 :ss.
County of Utah)

On the _____ day of _____, 2022, personally appeared before me Randall M. Ercanbrack, known to me, or proved to me on the basis of satisfactory evidence, to be the President of **W. M. Ercanbrack Co., Inc.**, who duly acknowledged that he signed the foregoing instrument in said capacity for said corporation.

NOTARY PUBLIC

STATE OF UTAH)

:ss.

County of Utah)

On the _____ day of _____, 2022, personally appeared before me Garrett Seely, known to me, or proved to me on the basis of satisfactory evidence, to be the Manager of **Vanquish Capital, LLC.**, who duly acknowledged that he signed the foregoing instrument in said capacity for said company.

NOTARY PUBLIC

EXHIBIT “D”
(Partial Assignment and Assumption of Master Development Agreement)

PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER DEVELOPMENT AGREEMENT

This Partial Assignment and Assumption of Master Development Agreement (this “**Assignment**”) is made and entered into as of the 7th day of July, 2022, by and between W. M. Ercanbrack Co., Inc., a Utah corporation (collectively, “**Assignor**”) and Vanquish Capital, LLC, a Utah Limited Liability Company (“**Assignee**”).

RECITALS:

A. Assignor and Santaquin City, a Utah municipality (“**City**”) entered into that certain Master Development Agreement for Ercanbrack Mixed Use Development dated September 7, 2021 (the “**Development Agreement**”) and recorded on _____, 2021 in the official records of _____ County, Utah (the “**Recorder’s Office**”) as Recording No. _____.

B. Assignor owns a portion of the Property as defined in the Development Agreement and has sold to Assignee a portion of the Property legally described on **Exhibit “A”** attached hereto and incorporated herein by reference (the “**Assignee Parcel**”).

C. Pursuant to Section 15 of the Development Agreement, Assignor has the right to partially assign its rights and obligations under the Development Agreement in connection with the sale of the Assignee Parcel to Assignor, subject to City’s prior written consent. By signing below, City is evidencing its consent to this Assignment in satisfaction of the notice and consent requirement in Section 15 of the Development Agreement; provided however, the City is not waiving the obligation under Section 15 of the Development Agreement that notwithstanding any assignment of all or any part of the Development Agreement, Assignor shall remain responsible for the obligations of the Developer (as defined in the Development Agreement).

ASSIGNMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the purposes set forth in the foregoing recitals, which are by reference incorporated herein, and acknowledged to be true and correct, the parties covenant and agree as follows:

1. Assignment and Assumption. As of the Effective Date, Assignor hereby assigns to Assignee, Assignor’s rights and obligations as an “Developer” under the Development Agreement to the extent and only to the extent the Development Agreement relates to the Assignee Parcel. As of the Effective Date, Assignee hereby accepts and assumes all of Assignor’s rights and obligations under the Development Agreement that pertain to the Assignee Parcel which accrue on or after the date of this Assignment. Assignee as the “Developer” of the Assignee Parcel, from and after the Effective Date, has all the rights, responsibilities, and obligations of Developer under the Development Agreement solely with respect to the Assignee Parcel. For purposes of this Assignment, the “**Effective Date**” shall mean the date Assignor conveys the Assignee Parcel to Assignee (and if the City does not approve the Assignment pursuant to Section 15, then this Assignment shall be of no effect).

2. Indemnity. Assignor agrees to indemnify, defend and hold harmless Assignee for, from and against any and all claims, liabilities, costs and attorneys' fees (collectively, "Claims") suffered or incurred by Assignee arising out of or relating to the Development Agreement with respect to the Assignee Parcel and that accrue or arise out of events occurring prior to the Effective Date, and all Claims arising out of or relating to the Development Agreement with respect to any real property other than the Assignee Parcel. Assignee agrees to indemnify, defend and hold harmless Assignor for, from and against any and all Claims suffered or incurred by Assignor arising out of or relating to the Development Agreement with respect to the Assignee Parcel and that accrue or arise out of events occurring from and after the Effective Date.

3. Notices. Any notices given pursuant to or as required by the Development Agreement shall be provided to Assignee concurrently with providing such notices to the other Owners. Assignee's contact information for notice purposes is:

To Assignee: Vanquish Capital, LLC
295 West Center Street, Suite 200
Provo, UT 84601
Attention: Garrett Seely
Telephone: (801) 372-2077
E-mail: garrett@redpineland.com

With a copy to: Marc D. Blonstein, Esq.
Berens Blonstein PLC
7033 E. Greenway Parkway, Ste. 210
Scottsdale, AZ 85254
Telephone: (480) 624-2703
E-mail: mblonstein@berensblonstein.com

4. Allocation of Residential Dwelling Units. Assignor and Assignee agree that the Assignee Parcel shall be allocated the right to develop 180 Residential Dwelling Units under the Development Agreement, and Assignor shall retain the remaining rights to develop Residential Dwelling Units and Commercial Uses within the Property outside of the Assignee Parcel.

5. Miscellaneous. Any term not expressly defined herein shall have the definition contained in the Development Agreement. This Assignment shall be governed by and construed in accordance with the laws of the State of Utah. This Assignment may be executed in any number of counterparts, each of which when executed and delivered shall be an original, and each such counterpart shall, when combined with all other such counterparts, constitute one agreement binding on the parties hereto.

[SEE FOLLOWING PAGES FOR SIGNATURES]

EXHIBIT A

Legal Description of Assignee Parcel

A Parcel of Land lying in the Northwest 1/4 and the Northeast 1/4 of Section 2, Township 10 South, Range 1 East, Salt

Lake Base and Meridian and being further described as follows:

Beginning at a point on the West Line of Randolph's Acre Subdivision, Plat "A", which point lies North 89°45'12" East

54.57 feet along the Section Line and South 1270.77 feet from the North 1/4 Corner of Section 2, Township 10 South,

Range 1 East, Salt Lake Base and Meridian; thence along said subdivision the following two courses to wit: (1) South

0°58'20" East 87.85 feet, (2) South 67°30'00" East 237.34 feet; thence South 3°23'14" West 376.46 feet; thence North

88°06'09" West 253.46 feet; thence South 0°21'44" West 27.30 feet; thence South 4°15'41" East 6.84 feet; thence South

88°02'03" East 6.41 feet; thence South 3.82 feet; thence West 204.97 feet; thence North 4°11'33" East 387.93 feet; thence

North 85°48'27" West 315.50 feet; thence South 38°59'57" West 318.31 feet to the Northerly Line of U.S. Highway 6;

thence along Highway 6 the following four courses to wit: (1) North 55°00'24" West 46.43 feet, (2) North 51°05'26"

West 333.63 feet, (3) North 51°29'54" West 480.77 feet, (4) North 49°41'03" West 63.18 feet; thence North 14°06'45"

East 355.65 feet; thence South 71°45'22" East 715.06 feet along the remnants of an old fence; thence North 11°02'38"

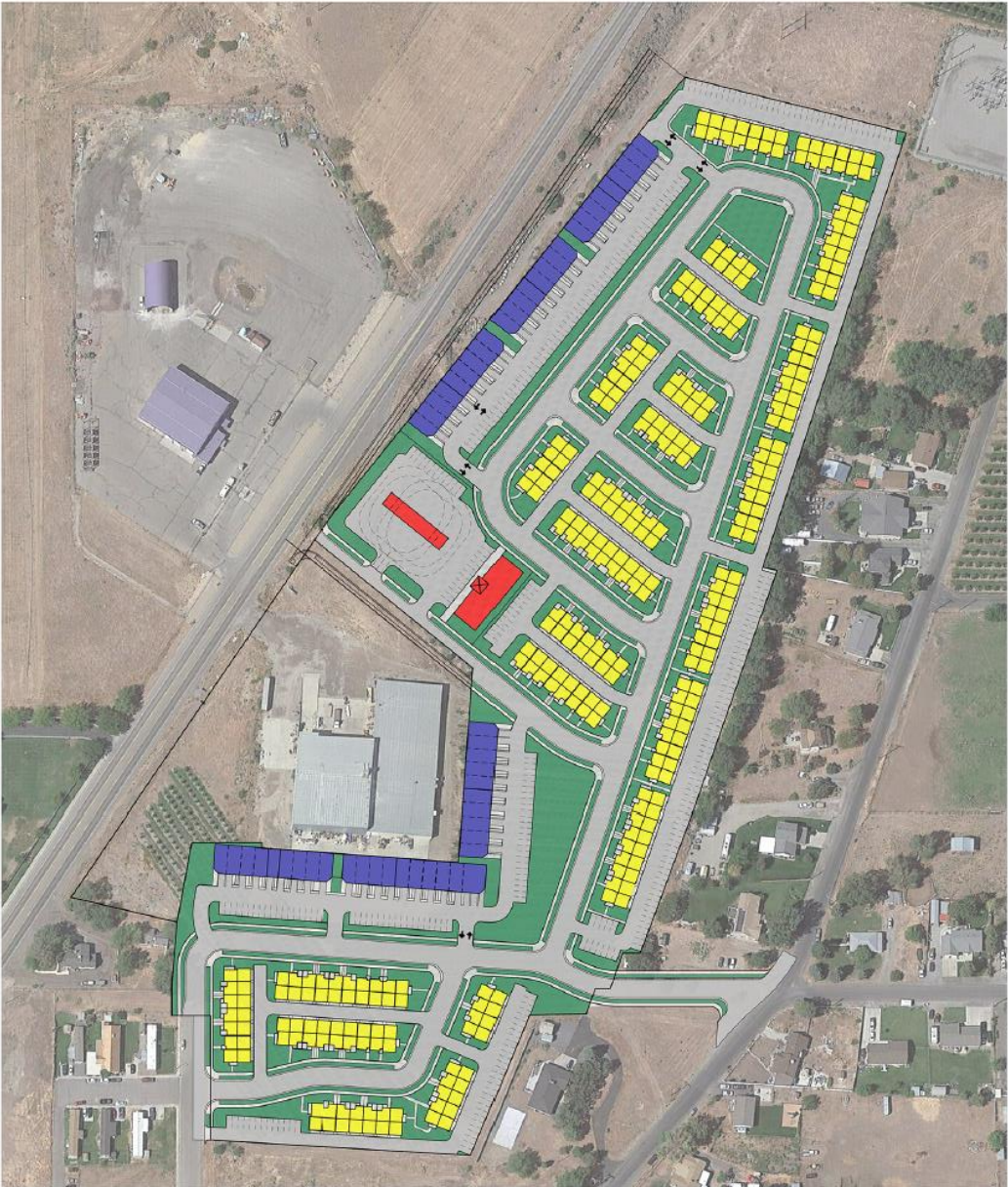
East 22.85 feet; thence South 70°47'24" East 387.40 feet along an existing Boundary Line Agreement (Entry

#36074:1986); thence South 69°30'48" East 245.96 feet continuing along said Boundary Line Agreement; thence South

27.27 feet; thence South 70°45'01" East 46.53 feet; thence South 42.01 feet; thence East 51.33 feet to the point of

beginning.

EXHIBIT "E"
(New Master Plan)



**ERCANBRACK
MIXED USE DEVELOPMENT**
Santaquin, UT
Red Pine Land
Garrett Seely
801-372-2077
garrett@redpineland.com

Overall Gross Acres:	24.46
Ercanback Gross Commercial Acres	4.30
Commercial Gross Acres:	1.44
Estimated GFA SF:	5,000
Commercial, retail sales, and services and/or Warehouse, wholesale facility	4.56
Estimated GFA SF:	40,000
Off-Street Parking Spaces:	155
Residential Gross Acres:	14.16
Proposed No. of Units:	165
Residential Gross DU/Acre:	11.65
Common Recreation Acres:	1.06
Common Landscaped Acres:	2.89
Total Residential Open Space Acres	3.95
Percent Residential Gross Acres:	27.90%

August 15, 2022

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Red Pine Land
 801-372-2077
 garrett@redpineland.com

EXHIBIT "F"
(New Zoning of Subdevelopment Property)

