

**MASTER DEVELOPMENT AGREEMENT
FOR
SANTAQUIN RESEARCH & TECH CENTER LCM DEVELOPMENT**

July 18, 2023

WHEN RECORDED, RETURN TO:

**Land Entitlement & Acquisition Partners, LLC
Attn: Tyler Dow
902 Michie Ln
Midway, UT 84049**

**MASTER DEVELOPMENT AGREEMENT (“MDA”)
FOR
SANTAQUIN RESEARCH & TECH CENTER LCM DEVELOPMENT**

THIS MASTER DEVELOPMENT AGREEMENT is made and entered into as of the July 18, 2023, by and between Santaquin City, a Utah municipality and Santaquin Industrial II, LLC a Utah limited liability company.

RECITALS

- A. The capitalized terms used in this MDA and in these Recitals are defined in Section 1.2, below.
- B. Master Developer is developing the Property.
- C. Master Developer and the City desire that the Property be developed to preserve the value, cohesiveness, and integrity of the Property and the surrounding properties.
- 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 Santaquin Research & Tech Center LCM Development and increasing property tax and other revenues to the City based on improvements to be constructed on the Property. (See Exhibit C)
- E. The Parties desire to enter into this MDA to specify the rights and responsibilities of the Master Developer and Subdevelopers 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 (2023) *et seq.*

G. The Property is currently zoned Planned Community Zone (PC) as shown on the City’s Zoning Map as of July 2023. Pursuant to the City’s Vested Laws, except as provided in an approved development agreement, portions of the Property that are designated as commercial in the development plan shall become subject to land use regulations contained within the Commercial Light Manufacturing (CLM) zone.

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” - “B” - “C” - “D” - “E” - “F” 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 Municipal Land Use, Development, and Management Act, Utah Code Ann. § 10-9a-101 (2023), *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 9, 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, except as modified herein, including in Exhibit "F" hereto), in effect as of the date of this MDA, a digital copy of which is attached as Exhibit "B".

1.2.10. **Commercial Light Manufacturing Uses** means those commercial, retail, office, light manufacturing, and other described uses as set forth in the City's Vested Laws except for those uses specifically prohibited within Exhibit F of this Agreement.

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 or other authorization from the City required for development of the Project.
- 1.2.16. **Final Plat** means the recordable map or other graphical representation of land that complies with Utah Code Ann. § 10-9a-603 (May 2022), 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.
- 1.2.17. **Impact Fees** means fees imposed by the City to mitigate the impacts of new development as provided in the Impact Fees Act. Utah Code Ann. § 11-36a-101 et seq.
- 1.2.18. **Master Developer** means Santaquin Industrial II, LLC, and its assignees or transferees as permitted by this MDA.
- 1.2.19. **MDA** or this Agreement means this Master Development Agreement and any amendments thereto, including all its Exhibits.
- 1.2.20. **Notice** means any notice to or from any Party to this MDA that is either required or permitted to be given to another Party.
- 1.2.21. **Outsource or Outsourcing** 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.

1.2.22. **Parcel** means all or a portion of the Property that is created by the Master Developer to be sold to a Subdeveloper as a Subdivision.

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

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

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

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

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

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

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

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

1.2.31. **User** means those Subdevelopers, individuals, or entities developing adjacent to and connecting to Public Infrastructure.

1.2.32. **Zoning** means the zoning for the Property in effect or as approved at the time of approval of this MDA.

1.2.33. **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 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), and this MDA. Any site plans or concept plans for the development of the Project or any portion of the Property must be approved by the Master Developer (i) prior to submission of the Development Application to the City, and (ii) again following any substantive changes made to the Development Application in response to comments or requirements imposed by the City.

2.2. **Limitation and No Guarantee.** Master Developer acknowledges that the development of the Project requires that each Development Application comply with the City's Vested Laws including, without limitation, the City's geological 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 Project until and unless all the applicable requirements of the City's Vested Laws are complied with.

2.3. Master Developer acknowledges and agrees that its proposal to develop the Property in the manner described in Exhibit D and in accordance with the architectural designs and components set forth in Exhibit E is an essential portion of the consideration for the City entering into this MDA. Master Developer agrees that development of the Project will substantially conform to the content of those exhibits.

2.4. Notwithstanding anything to the contrary in this Agreement, no portion of the Property shall be developed or used as “Storage Unit Facilities” as defined in Section 10.08 of the Santaquin City Code.

2.5. Notwithstanding anything to the contrary in this Agreement, no portion of the Property shall be developed or used with portable shipping and or other types of storage containers for external storage or for any form of building construction.

2.6. **Power of Eminent Domain.** The City agrees that in the event that an Applicant needs to obtain easements or rights of way for the purpose of constructing infrastructure improvements for a Project and is otherwise unable to negotiate a reasonably acceptable contract for such easements or rights of way, the City, upon the request of the Applicant, may consider, but is not required to, exercise its power of eminent domain to obtain such easements or rights of way, any and all costs of which shall be borne by the Applicant so requesting.

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, and the Zoning, 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 (2023).

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 apply 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 (2022) *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, 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) (2023).

3.3. **Reservation of Legislative Authority.** Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall limit the City Council's authority in the future to (a) enact a land use regulation; or (b) take any action allowed under Utah Code Ann. § 10-8-84 as amended.

4. **Term of Agreement.** This MDA shall become effective on September 1, 2023, so long as Master Developer acquires fee simple title to the Property on or before that date. This MDA shall expire on December 31, 2033, unless Master Developer is not in Default as of December 31, 2033, in which case this MDA shall be automatically extended for a period of five (5) years, unless otherwise terminated pursuant to this Agreement.

5. **Zoning.**

5.1. **Applicability of Current Zoning.** The Project shall be developed in accordance with the Commercial Light Manufacturing Zoning and the City's Vested Laws.

5.2. **Process.** When and as a Development Application is filed for the Property or a Parcel, that Development Application shall specify any restrictions or limitations on the Zoning such as limiting the types of Commercial Light Manufacturing Uses that may be allowed. So long as the Development Application does not add to the types of allowable

Commercial Uses permitted under this MDA and in the City's Commercial Light Industrial CLM zone (see Exhibit F), the Development Application may be approved administratively. If the Development Application seeks a use that is not allowable in the City's Commercial Light Industrial CLM zone, then application must proceed through the standard City zoning approval processes.

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) (2022) 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. **Upsizing/Modifications/Reimbursements to Master Developer.**

7.1. **"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 and the City are made to compensate Master Developer for the incremental or additive costs of such upsizing, through Impact Fees derived from the Project using reimbursement agreements, or through connectors agreements. 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.

7.2. **“Modification”**. Master Developer may submit modifications to the City that conserve resources that are approved by the state and/or county, and/or City for alternative infrastructure solutions for sewer, water, storm drain, and/or power that may reduce demand on City/project maintenance, capital improvement/replacement needs, and/or in general to the project, City, and taxpayers. Such modifications shall not impede the City’s ability to safely and effectively deliver services to existing or surrounding parcels. Nothing in this section shall obligate City to consider or accept any such proposed modifications.

8. **Default.**

8.1. **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.

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

8.2.1. **Specific Claim.** Specify the claimed event of Default;

8.2.2. **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;

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

8.2.4. 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.

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

8.3.1. Law and Equity. Unless otherwise provided herein, all rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

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

8.3.3. 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.

8.4. **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 8.3 without the requirements of Section 8.2. 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.

8.5. **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.

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

8.7. **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.

8.8. **City Inspections.** Nothing in this Section 8 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.

9. **Modifications and Amendments.**

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

9.1.1. **Infrastructure.** Modification of the location and/or sizing and/or type of the infrastructure for the Project that does not materially change the functionality of the infrastructure, so long as costs are born by the applicant.

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

10. **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:

Santaquin Industrial II, LLC
Attn: Jon Jensen
PO BOX 970271
Orem, UT 84097

With a Copy to:

Land Entitlement & Acquisition Partners, LLC
Attn: Tyler Dow
900 Michie Ln
Midway, UT 84049
Email: td@tylerrdow.com

To the City:

Santaquin City
Attn: City Manager
Norm Beagley
275 West Main Street
Santaquin, UT 84655
nbeagley@santaquin.org
(801) 754-3200

With a Copy to:

Santaquin City
Attn: City Attorney
Brett B. Rich
Nielsen & Senior, P.C.
P.O. Box 970663
Orem, UT 84097
bbr@ns-law.com
(801) 701-7074

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

10.1.1. 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.

10.1.2. 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.

10.1.3. 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.

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

12. **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.

13. **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.

13.1. **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.

13.2. **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 be deemed to be an "assignment" subject to the above-referenced approval by the City.

13.3. **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.

13.4. **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.

13.5. **Partial Assignment.** If any 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.

13.6. **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.

13.7. **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.

14. **Insurance and Indemnification.** Master Developer shall defend and hold the City and its officers, employees, and consultants harmless for any and all claims, liability and damages arising from a possible rezoning of the Property, construction on the Property, or operation performed under this Agreement by (a) Master Developer or any of its contractors, subcontractors, agents or employees, or (b) any one or more persons directly or indirectly employed by, or acting as agent for Master Developer or any of its contractors or subcontractors. Nothing in this Agreement shall be construed to mean the Master Developers shall defend, indemnify, or hold the City or its elected and appointed representatives, officers agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from (i) the willful misconduct or negligent acts or omissions of the City, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the City of improvements that have been dedicated to and accepted by the City.

14.1. **Referendum.** If sponsors of a referendum timely challenge this Agreement and/or any land use regulation enacted specifically in relation to this Agreement in accordance with Utah law, and Master Developer does not rescind the same pursuant to Utah law, Master Developer shall indemnify the City for all costs and attorneys' fees incurred by the City arising from the referendum and associated proceedings.

14.2. **Hazardous, Toxic and/or Contaminating Materials.** Master Developer further agrees to defend and hold the City and its elected and/or appointed boards, officers,

agents, employees, and consultants, harmless from any and all claims, liability, costs fines, penalties, charges and/or claims of any kind whatsoever relating to the existence and removal of hazardous, toxic and/or contaminating materials on the Property, except where such claims, liability, costs, fines, penalties, charges and/or claims are due to the negligence or willful misconduct of the City.

14.3. **Bodily Injury and Property Damage Insurance.** Master Developer agrees to and shall indemnify and hold the City and its elected and appointed boards, officers, agents, employees, and consultants harmless from and against all liability, loss, damage, costs or expense (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done on or with respect to the Property by Master Developer or its agents, servants, employees, or contractors, except for willful misconduct or negligent acts or omissions of the City or its elected and appointed boards, officers, agents, employees, and consultants.

14.4. **Insurance Certificates.** Prior to any construction of the Property, Master Developer shall furnish or cause to be furnished to the City appropriate certificates of insurance naming the City as an additional insured, in amounts corresponding to the limits of liability specified in the Utah Governmental Immunity Act

15. **Binding Effect.** The provisions of this MDA shall run with the land.

16. **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.

17. **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.

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

19. **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.

20. **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.

21. **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 Jon Jensen. 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.

22. **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

whether Master Developer or a Subdeveloper, as the case may be at that time, has been declared to be in default of the terms of this Agreement, and whether the City is aware of any circumstances that would constitute such a default.

23. **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.

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

25. **Entire Agreement.** This MDA, together with 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.

26. **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.

27. **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 "B", shall not be recorded in the chain of title. A secure copy of Exhibit "B" shall be filed with the City Recorder and each party shall also have an identical copy.

28. **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. 07-02-2023 adopted by the City on July 18, 2023.

[Signatures and Acknowledgments Follow]

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

CITY
Santaquin City

By: Daniel M. Olson,
Its: Mayor
Date: _____

Attest:

City Recorder

CITY ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF UTAH)

On the ____ day of July, 2023 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 he executed the same.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

MASTER DEVELOPER
Santaquin Industrial II, LLC,
a Utah limited liability company

By: _____
Its: _____
Date: _____

MASTER DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF UTAH)

On the ____ day of July, 2023 personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of Land Entitlement & Acquisition Partners, LLC, a Utah limited liability company and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and that he signed the same in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

TABLE OF EXHIBITS

| | |
|-------------|---|
| Exhibit "A" | Legal Description of Property |
| Exhibit "B" | City's Vested Laws |
| Exhibit "C" | Description of Project |
| Exhibit "D" | Concept Plan |
| Exhibit "E" | Building Elevations |
| Exhibit "F" | Change from City's Vested Law Regarding Uses (Prohibited) |

Exhibit "A"
Legal Description of Property

Parcel 1:

COM S 2711.86 FT & W 868.97 FT FR NE 1/4 SEC. 15, T10S, R1E, SLB&M.; S 31 DEG 22' 40" W 689.45 FT; N 89 DEG 56' 17" W 755.1 FT; S 0 DEG 6' 20" E 363.08 FT; N 89 DEG 56' 17" W 367.94 FT; S 48 DEG 27' 55" W 316.34 FT; N 0 DEG 6' 19" W 1160.25 FT; E 1720.3 FT TO BEG. AREA 26.406 AC.

Parcel 2:

COM N 89 DEG 31' 57" E 524.88 FT & N 1644.62 FT FR S 1/4 COR. SEC. 15, T10S, R1E, SLB&M.; N 0 DEG 6' 20" W 363.04 FT; S 89 DEG 56' 17" E 760.09 FT; S 31 DEG 22' 44" W 25.28 FT; S 28 DEG 28' 47" W 388.22 FT; N 89 DEG 56' 17" W 561.13 FT TO BEG. AREA 5.500 AC.

Exhibit "B"
City's Vested Laws

Exhibit “C”
Description of Project

This project is located just south of Exit 242 on the west side of the freeway in Santaquin, UT. This project contains approximately 400,000 square feet of light commercial manufacturing building space.

The project contains dock high doors, flex space ground level doors, office space, and warehouse areas. The project has various landscape components designed to be drought and water conscious. The architectural features will be simple but pleasing using colors, textures, and articulations to help create the pleasing effect.

PARKING/BUILDING DATA

| | |
|----------------------|-----------------------|
| BUILDING 1 | 179,010 SF |
| TOTAL PARKING | 274 SPACES |
| <hr/> | |
| RATIO | 1.53/1,000 SF. |
| 8 GRADE DOORS | |
| 31 DOCK DOORS | |

| | |
|----------------------|-----------------------|
| BUILDING 2 | 151,470 SF |
| TOTAL PARKING | 245 SPACES |
| <hr/> | |
| RATIO | 1.62/1,000 SF. |
| 6 GRADE DOORS | |
| 27 DOCK DOORS | |

| | |
|----------------------|-----------------------|
| BUILDING 3 | 76,944 SF |
| TOTAL PARKING | 96 SPACES |
| <hr/> | |
| RATIO | 1.25/1,000 SF. |
| 4 GRADE DOORS | |
| 20 DOCK DOORS | |

| | |
|----------------------|-----------------------|
| FLEX 1 | 16,800 SF |
| TOTAL PARKING | 37 SPACES |
| <hr/> | |
| RATIO | 2.20/1,000 SF. |

| | |
|--------------------------|-------------------|
| BUILDING TOTAL | 424,224 SF |
| BUILDING COVERAGE | 30.56% |
| LANDSCAPING | 29.84% |



















Exhibit "F"
Change from City's Vested Law Regarding Uses (Prohibited)

| | |
|---|---|
| N | The listed use is a prohibited use within the zone. |
| Storage Unit Facilities/STORAGE UNIT FACILITIES | N |
| Portable/Non-Permanent Structures | N |
| Shipping Containers | N |