

ADDENDUM NO. 1
TO
DEVELOPMENT AGREEMENT FOR
FIRELIGHT
(a Planned Mixed-Use Community)

THIS IS AN ADDENDUM (hereinafter “Addendum”) to that certain Development Agreement for Firelight dated January 19, 2023 (hereinafter “Agreement”) by and between FIRELIGHT DEVELOPMENT, INC., a Utah corporation (“Developer”), SRC LAND HOLDINGS, LLC, a Utah limited liability company and T-VILLE DREAMZ, LLC, a Utah limited liability company (collectively “Developer Affiliates”) and TOQUERVILLE CITY, a Utah municipal corporation (“City”). Throughout this Addendum, the Developer, Developer Affiliates and the City may be referred to individually as a “Party” and collectively as “the Parties”.

RECITALS

A. WHEREAS the Parties entered into the Agreement on or about January 19, 2023, for the development of a phased mixed-use master-planned community known as “Firelight” or the “Firelight Community”.

B. WHEREAS the capitalized terms used in this Addendum and in these Recitals to the Addendum, unless otherwise defined herein, shall have the same meanings ascribed to them in the Agreement.

C. WHEREAS pursuant to Subsection 6(d) of the Agreement, upon the City’s Final Approval of the Firelight MPDO Plan, Developer, Developer Affiliates and/or their successors and assigns were permitted to proceed to the subdivision or commercial site plan approval processes prescribed by the City’s Land Use Ordinances; and were not required to seek any further zoning approvals (except conditional use permits).

D. WHEREAS, pursuant to Section 15 of the Agreement, the Developer or a Developer Affiliate may annex After Acquired Property by (i) acquiring fee title to any portion of the ACC Property from Westbrook Partners and (ii) recording a Transfer Declaration in the Official Records of Washington County, Utah, that references and terminates the ACC Development Agreement as to the acquired property and references the Agreement;

E. WHEREAS upon the recording of a Transfer Declaration in accordance with Section 15 of the Agreement, the acquired property becomes “After Acquired Property” and is thereby vested with all rights, entitlements, obligations, and requirements provided under the Agreement;

F. WHEREAS the Developer, Developer Affiliates, and/or their successors and assigns may, for business, financial, or logistical reasons, require the ability to apply for and obtain land use pre-approvals under the Firelight MPDO Plan or the City’s Land Use Ordinances for portions of the ACC Property prior to the annexation of such property as After Acquired Property pursuant to Section 15 of the Agreement;

G. WHEREAS the Parties now desire to amend the Agreement to expressly authorize such land use decisions for portions of the ACC Property prior to annexation, as well as to update Exhibit C to the Agreement, subject to the terms and conditions set forth in this Addendum.

ADDENDUM

The following terms are hereby incorporated as part of the Agreement, and to the extent that they modify or conflict with any provisions of the Agreement, these terms shall control. All other terms of the Agreement not modified shall remain the same. To the extent any terms of this Addendum contradicts any other term of the Agreement, this Addendum controls and governs.

1. Incorporation of Recitals. The recitals set forth above are incorporated fully into this Addendum as if fully set forth herein.
2. Modification of Section 6 of the Agreement. Section 6 of the Agreement is hereby amended to include the addition of Subsection 6(h) as follows:

h. Land Use Applications for ACC Property Prior to Annexation. The Developer, the Developer Affiliates, and/or their successors and assigns may submit land use applications in accordance with Subsection 6(d), as required by the Firelight MPDO Plan or the City's Land Use Ordinances, for portions of the ACC Property that have not yet been annexed as After Acquired Property pursuant to Section 15 of the Agreement. The terms "land use decision" and "land use application" shall have the meanings provided in Utah Code Ann. § 10-9a-103, as amended from time to time. Any approval of a land use application shall be expressly conditioned upon the annexation of the applicable portion of the ACC Property in accordance with the procedures set forth in Section 15 of the Agreement by the sooner of the following deadlines (i) the applicable lapse period associated with the land use decision provided by the City's Land Use Ordinances, or (ii) two (2) years after the approval of the land use application. If the annexation of such portion of the ACC Property does not occur by the deadlines specified in this Section, approval of the land use application shall automatically terminate and shall be deemed null and void without further action by the City or any obligation on the part of either Party. The right to proceed in accordance with an approved land use application shall only vest upon acquisition of title to all of the property in receipt of said approval by Developer, the Developer Affiliates, and/or their successors and assigns.

Developer, Developer Affiliates, and/or their successors and assigns may only submit up to two (2) land use applications pursuant to this Section per month. The City, in its sole discretion, may extend the review timeframes, as set forth in Utah Code § 10-9a-604.2, by up to thirty (30) business days for any land use application brought pursuant to this Section. Nothing in this Section shall be construed as a waiver of the obligation of the Developer, Developer Affiliates, and/or their successors and assigns to comply with all applicable ordinances and policies of the City.

All applicable City fees and costs, other than impact fees, shall be due and payable in full at the time a land use application is submitted to the City. All fees and costs paid to the City in connection with any application, review, or approval are non-refundable, including in the event that (i) approval of a land use application lapses, or (ii) if Developer, the Developer Affiliates, and/or their successors and assigns later modify, withdraw, or resubmit a land use application. Impact fees shall be

become due and payable upon annexation of the property subject to the land use decision.

3. Modification of Exhibit C to the of the Development Agreement (Firelight MPDO Plan). The table titled “ERUs Density, before bonus density” on Page 13 of the Firelight MPDO Plan attached as Exhibit C to this Agreement is hereby superseded and replaced in its entirety by the density distribution table attached hereto as **Exhibit A** (the “Updated Density Distribution Table”). A footnote is to be added to the Updated Density Distribution Table which states:

The Parties expressly acknowledge and agree that that this table: (i) is to be utilized by the Parties for planning and infrastructure sizing purposes only, (ii) shall not be construed as a waiver of Developer’s rights to change the size and location of each Residential Planning Area pursuant to Section 8(c) and Developer’s right to transfer density between Residential Planning Areas pursuant to Section 8(i), and (iii) shall not be construed as a waiver of Developer’s rights to change the individual size, location, and uses of each Commercial Planning Area pursuant to Section 8(e).

4. Further Amendment. The Parties agree that this Addendum may not be further modified, altered, amended, or otherwise changed except upon written consent by each of the Parties.
5. Severability. Should any provision of this Addendum be held invalid or unenforceable by a court of competent jurisdiction, the Parties agree that the remaining provisions shall remain in full force and effect.
6. Integration. This Addendum constitutes the entire agreement between the Parties with respect to the subject matter hereof, and there are no other understandings or agreements, written or oral, among them on the subject matter of this Addendum.
7. Captions; Drafting. The captions contained in the paragraphs of this Addendum are for convenience only and do not limit, expand, or modify the terms or provisions of this Addendum. This Addendum shall be interpreted and construed as if equally drafted and prepared by all Parties.
8. Construction. The Parties agree that this Addendum was fully negotiated; thus the language used in this Addendum shall be deemed to be the language chosen by the Parties to express their mutual intent, and this Addendum shall not be interpreted against any Party as the drafter of this Addendum
9. Counterpart. This Addendum may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed or caused to be executed by their duly authorized officials this Addendum on the date written above.

CITY:

TOQUERVILLE CITY
a Utah municipal corporation

Justin Sip, Mayor

ATTEST:

Emily Teaters, Recorder

DEVELOPER AFFILIATES:

SRC LAND HOLDINGS, LLC
a Utah limited liability company

T-VILLE DREAMZ, LLC
a Utah limited liability company

Darcy A. Stewart, Manager

Laura Atwood, Manager

DEVELOPER:

FIRELIGHT DEVELOPMENT, INC.
a Utah corporation

Darcy A. Stewart, President

Exhibit A