

DEVELOPMENT AGREEMENT

for the

PARK PLAZA COURT DEVELOPMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between FARR WEST CITY, a political subdivision of the State of Utah ("City") and WESTSIDE INVESTMENTS, L.C. ("Master Developer"), known together herein as the "Parties."

RECITALS

WHEREAS, Master Developer owns and intends to develop certain property located in City boundaries; and

WHEREAS, City's objective is to only approve development that supports and advances the health, safety, and welfare of the community, as generally described in the general plan and as otherwise determined appropriate by the Farr West City Council; and

WHEREAS, Developer is willing to develop the properties in a manner that is in harmony with and intended to promote the long-range policies, goals and objectives of the City's General Plan, City's Land Use Ordinances, and other development regulations; and

WHEREAS, This Agreement is intended to set forth the agreement between the Parties regarding the development of the Property in accordance with this Agreement to be consistent with the Municipal Land Development, and Management Act, as set forth in Title 10, Chapter 9a of the Utah Code, as amended ("Act"); as well as with the City's Land Use Ordinances as set forth in the Farr West City Code; and

WHEREAS, The Parties have cooperated in the preparation of this Agreement and understand that this Agreement is a "Development Agreement" within the meaning of the Act; and

WHEREAS, Developer has indicated a desire to voluntarily enter and be bound by this Agreement; and

WHEREAS, Developer desires to develop the Property in the Mixed Use zone (Farr West City Code of Ordinances Chapter 17.34) with completion of the development occurring no later than 24 months after the Final Plat approval by the City Council; and

WHEREAS, Developer is proposing residential single-family housing units and additional density beyond what is allowed in the current Mixed Use zone, and

WHEREAS, The Parties desire to enter into this Agreement to more fully specify the rights and responsibilities of Developer to develop the Property as expressed in this Agreement, and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement, and all other applicable laws.

WHEREAS, The Project will be located on land referred to herein as the "Property". The Property is as more specifically described in **Exhibit A – Property Legal Description** and illustrated in **Exhibit B – Property Graphic Depiction**. A Concept Plan showing the general location and layout of the Project is contained in **Exhibit C – Concept Plan**.

NOW, THEREFORE, in consideration of the recitals, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby

acknowledged, the Parties agree as follows

AGREEMENT TERMS

1. Incorporation of Recitals and Exhibits.

The foregoing Recitals and **Exhibits A, B, and C** are hereby incorporated into this Agreement.

2. Effective Date, Expiration, Termination.

2.1. Effective Date. The Effective Date of this Agreement is the latter of:

2.1.1. The last date upon which it is signed by any of the Parties hereto; or

2.1.2. The recordation of this Agreement.

2.2. Expiration and Zone Reversion.

2.2.1. Expiration of Agreement Related To Development of the Property. The expiration of this Agreement as it relates to the development of the Property or the establishment of new uses on the Property shall be as provided in Section 2.2.3 of this Agreement, unless earlier terminated or modified by written amendment as set forth herein, or unless the use is abandoned as governed by the Code. In the case of abandonment, this Agreement shall terminate on the date abandonment has been determined. Upon expiration or termination of this Agreement, the portion of the Property that has not been developed as set forth in this Agreement, including any parcel or portion of parcel that could be further developed, shall thereafter be governed as follows:

2.2.1.1. the rights and responsibilities set forth herein related to establishing new development on the Property or establishing new uses on the Property shall terminate; at which time the rights and responsibilities of the Prior Zone shall govern remaining development or the establishment of new uses on the Property; and

2.2.1.2. the portion of the Property that has not been developed as set forth in this Agreement shall automatically revert to the Prior Zone without further Notice, unless the legislative body decides to keep the existing zone or rezone the Property in any other manner. The Parties agree that should zone reversion occur, the process due and provided for the adoption of this Agreement and related rezone accomplishes the process due for the zone map to be reverted to the Prior Zone, and any future owners of any portion of the Property are hereby on notice accordingly. Existing development and uses lawfully established under this Agreement prior to expiration or termination shall be deemed nonconforming rights, as governed by the Code and the Act.

2.2.1.3. After the expiration or termination of this agreement, the legislative body may make changes to the zoning provisions established in Section 2.2.1.1 and Section 2.2.1.2 pursuant to their typical legislative authority.

2.2.2. Expiration of Agreement Related to Ongoing Performance Responsibilities. Notwithstanding the expiration or termination of this Agreement, all ongoing operations, performance, and maintenance responsibilities such as, but not limited to, compliance with requirements pertaining to outdoor lighting, landscaping, noise, berming or buffering, parks, pathways, or building or architectural designs shall remain in effect as legislatively adopted land use provisions that govern any development that has occurred on the Property pursuant to this Agreement. After the expiration or termination of this Agreement, typical legislative action shall be required to make changes thereto. This provision shall not be interpreted to be a restriction on the City's legislative power to act otherwise if deemed appropriate at that time by the legislative body.

2.2.3. Term. This agreement expires **7 years** after the Effective Date.

2.2.3.1. Automatic Renewal. If prior to the expiration of this agreement Master Developer has not been notified of any Default, or if any Default has been cured or is in the process of being cured as provided herein, then this Agreement shall be automatically extended for an additional 3 years. Any extension beyond this 3 year automatic renewal shall be permitted only if an amendment of this Agreement is executed between the parties indicating such.

2.3. Termination. This Agreement may be terminated by mutual written agreement of the Parties to this Agreement. This Agreement automatically terminates, without notice, in the following circumstances:

2.3.1. The term of this Agreement expires and is not extended as provided above;

2.3.2. The Project is abandoned or the use is discontinued, as provided for by Code and/or state law.

2.3.3. The Master Developer defaults on any provision of this Agreement and the default is not resolved as specified in Section 13 of this Agreement; or

2.3.4. The provisions of Section 5.4 of this agreement take effect.

3. Definitions and Interpretation.

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have the same meaning as provided by the Code, if applicable. When consistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall apply to all genders whenever the context requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental officials or entities refer to those officials or entities and their Successors. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.

3.1. Act means the Municipal Land Use, Development, and Management Act, Utah Code Ann. §§10-9a-101, et seq.

- 3.2. **Agreement** means this Development Agreement between the City and Master Developer, approved by the City Council, and executed by the undersigned, including all of this Agreement's exhibits.
- 3.3. **Applicant** means a person or entity submitting a Development Application, a Modification Application or a request for an Administrative Decision.
- 3.4. **Assignee** means a person or entity that assumes the rights and responsibilities of Master Developer pursuant to a valid assignment, as provided in Section 11.4 of this Agreement.
- 3.5. **City Council** means the elected members of the City Council of Farr West City.
- 3.6. **Building Permit** means the City's building permit or building permit review process, as specified in the Code.
- 3.7. **Buildout** means the completion of all of the development on all of the Property for all of the Project.
- 3.8. **Code** means the City's Code containing its land use regulations adopted pursuant to the Act.
- 3.9. **Concept Plan** means **Exhibit C – Concept Plan**, a conceptual plan for the Project which is hereby approved by the City as part of this Agreement. The Concept Plan sets forth general guidelines for the proposed future development of the Property.
- 3.10. **Design Review** means the City's design review process, as specified in the Code.
- 3.11. **Default** means a material breach of this Agreement.
- 3.12. **Development Standards** means a set of standards approved by the City as a part of the approval of the Concept Plan and this Agreement controlling certain aspects of the design and construction of the development of the Property including setbacks, building sizes, height limitations, parking and signage; and, the design and construction standards for buildings, roadways, and other Project Improvements.
- 3.13. **Development Application** means an application to the City for development of a portion of the Project including a Subdivision, a Design Review, a Building Permit, or any other permit, certificate, or other authorization from the City required for development of the Project.
- 3.14. **Effective Date.** "Effective Date" has the meaning set forth in Section 2 of this Agreement.
- 3.15. **Force Majeure Event** means any event beyond the reasonable control of the affected Party that directly prevents or delays the performance by such Party of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; pandemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third parties; riot or similar civil disturbance or commotion; material or supply delay; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes;

and, actions of governmental or judicial authority.

- 3.16. **Impact Fees** means those fees, assessments, or payments of money imposed by the City as a condition on development activity as specified in Utah Code Ann., §§ 11-36a-101, et seq.
- 3.17. **Modification Application** means an application to amend this Agreement.
- 3.18. **Notice** means any notice, demand, or other communication to or from any Party to this Agreement that is either required or permitted to be given to another Party.
- 3.19. **Parcel** means any parcel of land within the Property created by any means other than a Subdivision plat, upon which development is not approved.
- 3.20. **Parties** means the Master Developer and the City, including their Successors.
- 3.21. **Phase** or **Phasing** means the development of a portion of the Project at a point in a logical sequence as determined by Master Developer but in compliance with the Code and this Agreement.
- 3.22. **Planning Commission** means the Farr West City Planning Commission.
- 3.23. **Project** means the development to be constructed on the Property pursuant to this Agreement with the associated public and private facilities if applicable and all of the other aspects approved as part of this Agreement including its exhibits.
- 3.24. **Project Improvements** means those improvements of public or private infrastructure which are specified in this Agreement, by the Code, or as a condition of the approval of a Development Application because they are necessary for development of the Property, such as local roads or utilities.
- 3.25. **Property** means the land area on which the Project will be sited, as more specifically described in **Exhibit A – Property Legal Description** and **Exhibit B – Property Graphic Depiction**.
- 3.26. **Public Landscaping** means landscaping Improvements within street rights-of-way, in required Public Park Open Space, and on other properties owned by a public entity or required to be open to the public.
- 3.27. **Routine and Uncontested** means simple and germane to the Project or Property, having very little chance of affecting the general character of the area, and not anticipated to generate meaningful concern from the public.
- 3.28. **Subdeveloper** means an entity not “related” (as determined by Internal Revenue Service regulations) to Master Developer which purchases a Parcel for Subdivision platting.
- 3.29. **Subdivision** means the division of any portion of the Project into a subdivision pursuant to the Act and/or the Code.
- 3.30. **Subdivision Application** means the application to create a Subdivision.
- 3.31. **Successor** means a person or entity that succeeds to a Party’s rights and responsibilities under this Agreement by any means, whether in whole or in part, and whether directly or indirectly. It does not include a purchaser or other transferee to

whom Master Developer or its Successor conveys a lot within an approved subdivision.

4. Conflicting Provisions

The City's vested laws shall apply to each Development Application except as the City's vested laws are expressly modified by this Agreement (including any written provision in all exhibits thereto). For any conflict between the exhibits and this Agreement, this Agreement shall prevail. For any conflict between exhibits and each other, the most restrictive for Master Developer shall apply. The Parties agree that the graphic depiction of the Project provided in **Exhibit C – Concept Plan** is conceptual in nature and designed to illustrate the general layout and configuration of the Project's streets, clusters of lots, trails, open spaces, and other amenities to which Master Developer shall be entitled. By nature of being conceptual, these exhibits may not show all specifics necessary for the Project to comply with all City's vested laws, which shall not be interpreted to be an exception to City's vested laws.

5. Vested Rights and Reserved Legislative Powers.

5.1. Vested Rights. Master Developer shall have the vested right to develop and construct the Project on the Property in accordance with the Mixed Use zone and other allowances specifically addressed in this Agreement, subject to compliance with the terms and conditions of this Agreement and other applicable Code provisions in effect as of the Effective Date. The Parties intend that the rights granted to the Master Developer under this Agreement are contractual and also those rights that exist under statute, common law, and at equity.

5.2. Existing Laws. Except as otherwise specified in this Agreement, the Parties hereby mutually volunteer to the application of the Code in effect at the time of the Effective Date herein to the Project until this Agreement is terminated or expires. The Code is incorporated into this Agreement by reference.

5.3. Exceptions to Vested Rights. The Parties understand and agree that the Project may be required to comply with future changes to the Code that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the City that would be applicable to the Project:

5.3.1. City Discretion to Apply Future Laws. City has full discretion to either apply or not apply any future law or adopted standard provided it does not explicitly conflict with any specific provision of this Agreement.

5.3.2. Written Agreement. The Parties may mutually agree, in writing, to the application of future laws to the Project.

5.3.3. Compliance with State and Federal Laws. 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.

5.3.4. Safety Code Updates. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code (IBC), International Residential Code (IRC), the American Public Works Association (APWA) Specifications, American Association of State Highway

and Transportation Officials (AASHTO) Standards, the Manual of Uniform Traffic Control Devices (MUTCD), the National Association of City Transportation Officials (NACTO) 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;

5.3.5. 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;

5.3.6. 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; and

5.3.7. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed, and collected.

5.4. Future Laws. The Parties agree that this Agreement and the associated rezone offers mutual benefits based on existing laws. As such, a future law or binding judicial decision that limits or interferes with any of Master Developer's material responsibilities herein could prevent the City from realizing such expected benefits in a manner that, had the future law or binding judicial decision existed at the time of consideration, might have dissuaded the City from executing this Agreement or granting the associated rezone. Therefore, the Parties agree that if a future law is implemented or a binding judicial decision is issued that gives Master Developer the right or ability to avoid, limit, or interfere with any responsibility specified in this Agreement, Master Developer hereby waives the new right or ability in favor of maintaining the applicability and integrity of this Agreement. In the event the new right or ability is such that Master Developer's waiver still limits or interferes with the responsibility or the applicability thereof, then this Agreement automatically terminates as provided in this Agreement. However, the termination shall be void and both Parties shall proceed as if no termination occurred if the City stipulates, in writing, to such.

5.5. Reserved Legislative Powers. Master Developer acknowledges that the City is restricted in its authority to limit its police powers by contract and that the limitations, reservations, and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under its police powers, any such legislation shall only be applied to modify the vested rights of Master Developer as referenced herein under the terms of this Agreement based upon policies, facts, and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah as codified in Utah Code Title 10 chapter 9a. Any such proposed change affecting the vested rights of the Project shall be of general application to all development activity in similarly situated unincorporated areas of the City; and unless in good faith the City declares an emergency, Master Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project under the compelling, countervailing public interest

exception to the vested rights doctrine.

6. Project Description.

- 6.1. The minimum lot size for Single-Family Detached homes shall be 6,000 square feet with setbacks of:
 - 6.1.1. Front Yard Setback: Twenty feet (20').
 - 6.1.2. Side Yards: A minimum of ten feet (10') between each unit.
 - 6.1.3. Rear Yard Setback: A minimum of fifteen feet (15').
 - 6.1.4. Building Height: Generally as allowed by the current adopted building code, with a maximum height of thirty-five feet (35'), but can be modified by the development plan to assure better transitions between uses and to maintain views.
- 6.2. Single-Family Attached units shall not exceed fifty percent (50%) of the total allowable dwelling units and shall not contain more than four units per building with setbacks of:
 - 6.2.1. Front Yard Setback: Ten feet (10').
 - 6.2.2. Side Yards: Ten feet (10') with a minimum of fifteen feet (15') between each building.
 - 6.2.3. Rear Yard Setback: Twenty feet (20').
 - 6.2.4. Building Height: Generally as allowed by the current adopted building code, with a maximum height of thirty-five feet (35'), but can be modified by the development plan to assure better transitions between uses and to maintain views, not to exceed 2-story elevations.
- 6.3. Buildable Area Requirements. Each lot shall have a reasonable building area.
- 6.4. General Standards: Development standards shall conform to the underlying Mixed Use zone as prescribed in Chapter 17.34 of the Farr West City Code of Ordinances except as expressly modified by this Agreement.

7. Project Location and Illustration.

The Project is located on the Property as described in **Exhibit A – Property Legal Description**, and illustrated in **Exhibit B – Property Graphic Depiction**.

8. Development Standards.

- 8.1. **Project Density.** In exchange for the benefits offered by the Master Developer in this Agreement, City agrees to allow no more than the following amount of dwelling units.
 - 8.1.1. 14 total single-family dwelling units.
 - 8.1.2. 14 single family attached units.
- 8.2. **Phasing.** The City acknowledges that Master Developer, Assignees of Master Developer, and/or Subdevelopers who have purchased Parcels of the Property may submit multiple applications from time-to-time to develop and/or construct portions of

the Concept Plan for the Project in Phases. Allowance for Phasing is subject to the following and any other Phasing provision in this Agreement:

8.2.1. Construction Drawings Required. Phasing is only allowed if each Phase is based on an approved final plat that succeeds an approved preliminary plat/plan. A final plat for a Phase shall not be submitted or accepted until after a complete set of construction drawings for the entire preliminary plat has been approved by the City Engineer. The construction drawings shall include all required Improvements of this Agreement and the Code.

8.2.2. Streets and Pathways. Each Phase shall provide for the logical extension of improvements of the public road and pathways system as conceptually represented in the Concept Plan;

8.2.3. Project Improvements. Each Phase shall provide logical extension of Project Improvements through and throughout the Project as approved by the City in compliance with the terms of this Agreement and other applicable provisions of the Code.

8.2.4. Public Park Open Space. Reserved.

8.3. Street Right-of-Way Dedication. Master Developer agrees to dedicate or, if allowed by the City, otherwise reserve the Project's street rights-of-way, as illustrated and labeled in **Exhibit C – Concept Plan**, as public thoroughfares at no cost to the City.

9. Amendments, Modifications, and Revisions.

This Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and approved and signed by Master Developer and City (an "Amendment"). The following sections specify what Project changes can be undertaken without the need for amendment of the Development Agreement, and what changes require Amendment to this Agreement.

9.1. Who may Submit Modification Applications. Only the City and Master Developer or an Assignee that succeeds to all of the rights and obligations of Master Developer under this Agreement (and not including a Subdeveloper) may submit a Modification Application.

9.2. Modification Application Contents and Process.

9.2.1. Contents. Modification Applications shall:

9.2.1.1. Identification of Property. Identify the property or properties affected by the Modification Application.

9.2.1.2. Description of Effect. Describe the effect of the Modification Application on the affected portions of the Project.

9.2.1.3. Identification of Non-City Agencies. Identify any Non-City agencies potentially having jurisdiction over the Modification Application.

9.2.1.4. Map. Provide a map of any affected property and all property within one thousand feet (1000') showing the present or intended

uses and density of all such properties.

- 9.2.1.5. Fee.** Be accompanied by a fee in an amount reasonably estimated by the City to cover the costs of processing the Modification Application.

9.2.2. Planning Commission Review of Modification Applications.

- 9.2.2.1. Review.** All aspects of a Modification Application required by law to be reviewed by the Planning Commission shall be considered by the Planning Commission as soon as reasonably possible in light of the nature and/or complexity of the Modification Application.
- 9.2.2.2. Recommendation.** The Planning Commission's vote on the Modification Application shall be only a recommendation and shall not have any binding effect on the consideration of the Modification Application by the City Council.

- 9.2.3. City Council Review of Modification Application.** After the Planning Commission, if required by law, has made or been deemed to have made its recommendation of the Modification Application the City Council shall consider the Modification Application.

- 9.3. Project Facility Repair, Maintenance, and Replacement.** Master Developer shall be permitted to repair, maintain and replace the Project and its components consistent with the terms of this Agreement without amending the Agreement.

- 9.4. Authorized Changes, Enlargements, or Alterations.** As set forth below, City staff may review and approve certain minor changes, enlargements or adjustments ("Changes") to the Project in their respective administrative capacities. The following types of Changes are considered minor, provided that no such Changes shall directly or indirectly result in significantly greater impacts than those contemplated in the approval of this Agreement.

- 9.4.1. Landscaping Changes.** Any changes to this Agreement's landscaping designs, guidelines, standards, plantings, materials and installation of the same anywhere in the project.

- 9.4.2. De Minimis Changes.** Other de minimis changes requested by the Master Developer, which are reasonably consistent with the intent of this agreement and the Mixed Use zone, and are Routine and Uncontested.

10. Miscellaneous Provisions.

- 10.1. Financial Guarantee Requirements.** Master Developer agrees to be governed by the financial guarantee provisions in the Code in effect at the time of the Effective Date. In addition to required Improvements listed in the Code, Master Developer further agrees that the financial guarantee shall include all required Project Improvements specified in this Agreement. Prior to the release or partial release of certain financial guarantee funds, the following are required.

- 10.2. Building Development or Design Requirements.** Unless otherwise provided herein,

Master Developer agrees to comply with the building design standards of the Mixed Use zone in Chapter 17.34 of the Farr West City Code of Ordinances.

10.2.1. Reserved.

- 10.3. Restriction on Right to Protest Future Tax or Taxing Entity.** If the Property is ever within the boundaries of a Proposed Taxing Entity or Proposed Tax, and the process for applying the Proposed Taxing Entity or Proposed Tax to the Property includes the right for affected landowners to file a protest in a manner that could hinder the application of the Proposed Taxing Entity or Proposed Tax to the Property, Master Developer hereby waives the right to file the protest, and agrees that any protest filed is void. Master Developer does so on behalf of itself and all future owners who may obtain any interest in the Property. Future owners are hereby on notice that the right is waived. This provision applies unless the City Commission agrees, in writing, with and to the protest.
- 10.4. Parcel Sales.** Master Developer may obtain approval of a Subdivision that does not create any individually developable lots in the Parcel without being subject to any requirement in the Code to complete or provide security for the Project Improvements at the time of the Subdivision, except that the City may require as a part of the Subdivision of the Parcel the construction of perimeter Project Improvements such as curb and gutter, sidewalks and fire hydrants, if reasonably necessary given the location of the Parcel Sale in relation to other development and the respective timing of the completion of such developments. The responsibility for completing and providing security for completion of any Project Improvements in the Parcel shall be that of the Master Developer or a Subdeveloper upon a further Subdivision of the Parcel that creates individually developable lots. The provisions of the foregoing notwithstanding, no division shall be made that disproportionately splits the public spaces or public Improvements anticipated by this Agreement or the Code without first providing adequate security in a manner satisfactory to City to ensure those public Improvements or spaces are provided.

11. General Provisions.

- 11.1. Entire Agreement.** This Agreement, 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.
- 11.2. Headings.** The captions used in this Agreement are for convenience only and are not intended to be substantive provisions or evidences of intent.
- 11.3. No Third Party Rights/No Joint Venture.** This Agreement does not create a joint venture relationship, partnership or agency relationship between the City and Master Developer. Further, the parties do not intend this Agreement to create any third-party beneficiary rights.
- 11.4. Assignability.** The rights and responsibilities of Master Developer under this Agreement may be assigned as provided below by Master Developer with the consent of the City as provided herein.

11.4.1. Partial Assignment. Assignment is only allowed if in whole. No partial assignment of the Project or Property is allowed.

11.4.2. Sales not an Assignment. Master Developer's selling or conveying a lot in any approved Subdivision, or a Parcel or any other real estate interest within the Project, to builders, users, or Subdevelopers, shall not be deemed to be an "assignment" subject to the above-referenced approval by the City. Despite the selling or conveyance, Master Developer still maintains all rights, responsibilities, and obligations of this Agreement relative to development on the sold or conveyed property.

11.4.3. Related Party Transfer. 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), 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 subsection within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

11.4.4. 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 the following.

11.4.4.1. All necessary contact information for the proposed Assignee.

11.4.5. Grounds for Denying Assignment. The City may only withhold its consent for the following reasons:

11.4.5.1. If the City is not reasonably satisfied of the proposed Assignee's ability to perform the obligations of Master Developer that are proposed to be assigned;

11.4.5.2. If the City has reasonable concern that the assignment will separate the Project in a manner that creates unreasonable additional demand for any type of governmental service, including additional demand for coordination amongst Assignees or other administrative review services not otherwise anticipated at the time of the execution of this Agreement; or

11.4.5.3. If the City has reasonable concern that the assignment will separate the Project in a manner that negates the purpose of master planning the Project area as one complete development.

11.4.6. Assignee Bound by this Agreement. An Assignee shall be bound by the assigned terms and conditions of this Agreement.

- 11.5. Binding Effect.** Except as otherwise specified in this Agreement, this Agreement shall be binding upon the Parties and their respective Successors. Except as otherwise specified in this Agreement, and except where its application would clearly not be reasonable, this Agreement shall also be binding upon all other persons or entities acquiring all or any portion of the Project, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever, including any lot, parcel or any portion thereof within the Property.
- 11.6. 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 unless the Party has waived the right in writing.
- 11.7. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and effect.
- 11.8. Mutual Drafting.** Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either Party based on which Party drafted any particular portion of this Agreement.
- 11.9. Utah Law.** This Agreement is entered into under the laws of the State of Utah, and the Parties hereto intend that Utah law shall apply to the interpretation hereof.
- 11.10. Authority.** Each Party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement.
- 11.11. Duty to Act Reasonably and in Good Faith.** Unless otherwise expressly provided, each Party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement, and each of them covenants that it will not at any time voluntarily and unreasonably engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement.
- 11.12. Communication and Coordination.** The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Parties agree to use best efforts to communicate regarding issues, changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.
- 11.13. Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement that is due to a Force Majeure Event shall excuse performance of the obligation for a period equal to the duration of that prevention, delay or stoppage.

- 11.14. Incorporation of Recitals and Introductory Paragraph.** The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.
- 11.15. Subjection and Subordination.** Each person or entity that holds any beneficial, equitable, or other interest or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments hereof. Each such person or entity agrees to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to, Master Developer or the City.
- 11.16. Other Necessary Acts.** Each of the Parties shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement.

12. Notices.

- 12.1. Written Notice.** Any Notice given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). A courtesy copy of the Notice may be sent by facsimile transmission or email.
- 12.2. Addresses.** Notices shall be given to the Parties at their addresses set forth as follows in this section. Any Party may change its address for Notice under this Agreement by giving written Notice to the other Party in accordance with the provisions of this section.

If to the City:

Farr West City
1896 NORTH 1800 WEST
FARR WEST, UT 84404

If to Master Developer:

Westside Investments
4960 W. 2200 N.
Plain City, UT 84404

- 12.3. Effectiveness Of Notice.** Except as otherwise provided in this Agreement, each Notice shall be effective and shall be deemed delivered on the earliest of:
- 12.3.1. Physical Delivery.** Its actual receipt, if delivered personally or by courier service.
- 12.3.2. Electronic Delivery.** Its actual receipt, if delivered electronically by email or facsimile, provided that a paper copy of the email or facsimile is mailed or personally delivered as set forth herein on the same day and the sending Party has verifiable confirmation of the electronic delivery of the Notice.

12.3.3. Mail Delivery. 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.

13. Default and Remedies.

13.1. Notice of Default. 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.

13.1.1. Contents of the Notice of Default. The Notice of Default shall:

13.1.1.1. Claim of Default. Specify the claimed event of Default, including the approximate date of when the Default is determined to have begun;

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

13.1.1.3. Specify Materiality. Identify why the Default is claimed to be material.

13.2. Dispute Resolution Process.

13.2.1. Conference. In the event of any dispute relating to this Agreement, the Parties, upon the request of either Party, shall meet within fourteen (14) calendar days to confer and seek to resolve the dispute ("Conference"). The Conference shall be attended by the following parties: (a) the City shall send department director(s) and City employees and contractors with information relating to the dispute, and (b) Master Developer shall send Master Developer's representative and any consultant(s) with technical information or expertise related to the dispute. The Parties shall, in good faith, endeavor to resolve their disputes through the Conference.

13.2.2. Mediation. If this Conference process does not resolve the dispute within the 14-day Conference period, the Parties shall in good faith submit the matter to mediation. The Parties shall send the same types of representatives to mediation as specified for the "Conference" process. Additionally, the Parties shall have representatives present at the mediation, or available by telephone, with full authority to make a settlement within the range of terms being discussed, should settlement be deemed prudent. The mediation shall take place within forty-five (45) days of the Parties submitting the dispute to mediation. If the dispute is not able to be resolved through the mediation process in the 45-day period, the Parties may pursue their legal remedies in accordance with Utah and local law.

13.3. Remedies. If the parties are not able to resolve a Default, then the parties may exercise any or all of the following remedies, as applicable:

13.3.1. Code Enforcement. The Master Developer's failure to comply with this Agreement constitutes a violation of the Code, and is subject to the enforcement

provisions and remedies available for a code violation.

13.3.2. Legal Remedies. Subject to the dispute resolution process described above, the Parties may pursue any rights and remedies available at law and in equity, including injunctive relief and specific performance, but each Party explicitly waives the right to seek special, indirect, incidental, punitive, or consequential damages arising from a Default.

13.3.3. Enforcement of Security. The City may draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

13.3.4. Withholding Further Development Approvals. The City may 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 until the Default has been cured.

13.3.5. Extended Cure Period. If any Default cannot be reasonably cured within sixty days, then such cure period shall be extended so long as the defaulting Party can provide evidence that it is pursuing a cure with reasonable diligence.

13.3.6. Cumulative Rights. The rights and remedies set forth herein shall be cumulative.

13.4. Venue. Any action to enforce this Agreement shall be brought only in the Second Judicial District Court for the State of Utah, Weber City.

14. Entire Agreement.

This Agreement, together with all exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement is specifically intended by the Parties to supersede all prior agreements between them or recorded to the property, whether written or oral.

15. Covenants Running with the Land

The provisions of this Agreement shall constitute real covenants, contract and property rights, and equitable servitudes, which shall run with all of the land subject to this Agreement. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots, as opposed to Subdivided plats or Parcels, in the Project shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise.

16. Counterparts.

This Agreement may be executed in multiple counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile or by e-mail shall be deemed originally signed copies of this Agreement.

IN WITNESS HEREOF, the Parties hereto, having been duly authorized, have executed this Agreement.

FARR WEST CITY

Ken Phippen, Mayor

Vote of City Council

Yes No

_____ _____ Council Member Ferrin

_____ _____ Council Member Williams

_____ _____ Council Member Shupe

_____ _____ Council Member Blind

_____ _____ Council Member Jay

APPROVED AS TO FORM:

ATTEST:

City Recorder

Farr West City Attorney

“Master Developer”

By: _____

Print Name: _____

Title: _____

DATE: _____

Master Developer Acknowledgment

State of Utah)
)ss.

County of Weber)

On the _____ day of _____, 20____, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of _____, a limited liability company, and that the foregoing instrument was signed in behalf of said company by authority of its members or its articles of organization; and said person acknowledged to me that said limited liability company executed the same.

My Commission Expires:

Notary Public, residing in

Exhibit A – Property Legal Description

DRAFT

Exhibit B – Property Graphic Depiction

DRAFT

Exhibit C – Concept Plan

The following illustration represents the conceptual configuration of the project. The Parties understand that de minimis deviations from this configuration may be allowed to better consider actual site conditions, pursuant to **Section 9.4** of this Agreement. Any conflict contained within this agreement shall be interpreted to apply the stricter requirement. Master Developer agrees that any omission of required information shall be interpreted in a manner best suited to benefit the general public, as determined by the City, regardless of how it may affect the Project.

Requirements of a concept plan. A concept plan shall comply with the following. The final agreement should replace this text box with the concept plan.

- **Survey.** The surveyed boundary lines of the Property and, if multiple zones, the boundaries of the zones, showing measured and/or recorded bearings, distances, and other controlling data with ties to section corners. Survey boundaries shall match the legal description(s) of Exhibit A – Property Legal Description.
- **Lots.** Conceptually illustrate the general configuration of lot area. Unless otherwise required by the City, each lot or unit need not be illustrated, but rather each area that will contain lots and the configuration thereof.
- **Other.** Conceptually illustrate areas that are likely to be used for other purposes not specified above, such as area for open space, utilities, water reservoirs, lift stations, pump houses, etc.