Council Meeting of January 28, 2015
Agenda Item No. 7S

REQUEST FOR COUNCIL ACTION

SUBJECT:

A Resolution approving an Amended Development Agreement between Peterson Development and the City, governing the development of the Highlands master development project.

SUMMARY:

A dispute has arisen between Peterson Development and the City concerning the meaning of certain "vesting" provisions in the Highlands Development Agreement. Specifically Peterson Development believes that being vested in the WSPA zoning program relieves its Gladstone project in the Highlands, and other multi-family projects, from compliance with the City's Cap and Grade growth management tool, and possibly other provisions in the zoning code. The amendments to the Highlands Development Agreement eliminate any ambiguity about the scope of WSPA zoning for the Highlands, and also concedes that the Gladstone project only will be exempt from Cap and Grade, and may develop now.

FISCAL IMPACT:

No fiscal impact.

STAFF RECOMMENDATION:

Staff recommends APPROVAL of the Development Agreement.

MOTION RECOMMENDED:

"I move that the City Council adopt and approve Resolution 15-19, approving an Amended Development Agreement by and between Peterson Development and the City governing the development of the Highlands master development area."

Roll Call Vote X required. □ not required.

Reviewed by:	**Reviewed By:**	**Recommended By:**
Robert Thorup	**Tom Burdett**	**Bryce Haderlie**
Deputy City Attorney	**Development Dir.**	**Interim City Manager**

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

RESOLUTION NO. 15-19_____

A RESOLUTION AUTHORIZING THE EXECUTION BY THE MAYOR OF AN AMENDED DEVELOPMENT AGREEMENT FOR THE HIGHLANDS MASTER DEVELOPMENT AREA.

Whereas, a dispute has a arisen concerning the interpretation of the Development Agreement covering the Highlands master development area, and arguing that the vesting in WSPA zoning somehow relieves projects in the Highlands from compliance with the City's Cap and Grade growth management tool; and

Whereas, the parties have agreed to amend the Highlands Development Agreement to clarify any problem language on the scope and meaning of WSPA zoning and to allow one project, Gladstone Place, to move forward outside of the Cap and Grade tool; and

Whereas, such an Amended Development Agreement has been prepared; and

Whereas, the Mayor is authorized by the 2009 City Code to execute Development Agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Amended Development Agreement by and between Peterson Development and the City governing the Highlands master development area is approved.

Section 2. The Mayor is hereby authorized and directed to execute the agreement.

Section 3. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 28th day of January, 2015.

CITY OF WEST JORDAN

ATTEST:

By: _____
Mayor Kim V. Rolfe

_____
MELANIE BRIGGS, City Clerk

Res. 15-19

Voting by the City Council	"AYE"	"NAY"
Jeff Haaga	-----	-----
Judy Hansen	-----	-----
Chris McConnehey	-----	-----
Chad Nichols	-----	-----
Ben Southworth	-----	-----
Justin D. Stoker	-----	-----
Mayor Kim V. Rolfe	-----	-----

Recording Requested By and
When Recorded Return to:
West Jordan City
Attention: Robert Thorup
8000 South Redwood Road
West Jordan, Utah 84088

For Recording Purposes Do
Not Write Above This Line

AMENDED DEVELOPMENT AGREEMENT
THE HIGHLANDS SUB-AREAS MASTER PLAN

This Amended Development Agreement (this "**Agreement**") is made and entered into and made effective as of the date entered below (the "**Effective Date**"), by and among **West Jordan City**, a municipality and political subdivision of the State of Utah (the "**City**"), and **Peterson Development Company LLC**, a Utah limited liability company (the "**Master Developer**"). The City and the Master Developer may from time to time be collectively referred to as the "**Parties.**"

RECITALS

A. Master Developer has prepared and presented to the City a concept plan for The Highlands, which is a 426 acre multi-phase development, to be processed through many individual subdivisions, site plan and other applications. At this time, Master Developer contemplates three sub-areas for development: Highlands West (162 gross acres), Highlands East (87 gross acres) and Highlands North (121 gross acres)(hereinafter the entire 426 acre master plan development project is referred to as the "**Project**"). The concept plan for the Project is attached hereto as **Exhibit A** and by this reference made a part hereof.

B. Except as expressly provided in this Agreement, as and when submitted to the City, each application involving property within the Project will be reviewed and governed pursuant to the requirements of the 2009 City Code and related protocols and policies and other applicable zoning, engineering, fire safety and building requirements, all as then in force and legal effect at the time of complete application filing with the City. The resulting and finally approved development plan, preliminary and final site plan(s), preliminary and final subdivision plat(s), engineering drawings, conveyance documents, title reports and other documents submitted during the City's review and approval process will be referred to herein as the "**Highlands Development Documents**" or the "**Development Documents.**"

C. Pursuant to the authority of *Utah Code Ann.* § 10-9a-102(2) and the specific provisions of the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements, the City has determined to enter into this Agreement with Master Developer for the purpose of formalizing certain obligations of the Parties with respect to the Project, and such other matters as the City and the Master Developer have agreed.

D. As a condition of development approval, Master Developer is required to construct and install certain "Eligible Public Improvements" as defined in section 8-3B-2 of the 2009 City Code.

E. The Parties agree that the Eligible Public Improvements as specified in the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements are lawfully required as a condition of development approval; reasonably anticipated to serve future development; located off-site or will create additional or excess capacity beyond the proportionate share attributable to Master Developer to reasonably service the proposed development at the City's adopted level of service standards.

F. The City has adopted a policy, as set forth in section 8-3B-1 of the 2009 City Code, that the proportionate share of the cost for public improvements should be allocated to all the properties creating the need for or benefiting from the public improvements.

G. Master Developer desires to be reimbursed for a proportionate share of the costs associated with the construction and installation of the Eligible Project Improvements which are reasonably anticipated to provide benefits to neighboring and surrounding properties ("Benefited Properties"), the owners of which may not be currently participating in the cost of such Eligible Public Improvements.

H. City and Master Developer desire to identify the Benefited Properties and their anticipated level of participation.

I. Some of the Eligible Public Improvements are System Improvements, as defined in section 8-3B-2 of the 2009 City Code, for which Master Developer may receive partial reimbursement from Impact Fees collected by the City.

J. City and Master Developer desire to identify those Eligible Public Improvements that are System Improvements and to clarify the portion of such System Improvements for which reimbursement may be made available through Impact Fees.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I
LEGAL AUTHORITY AND PURPOSE

1.1 **City Laws and Purpose.** The City and Master Developer represent that they have the legal authority to enter into and perform their obligations under this Agreement and that the City has determined that this Agreement effectuates the above-referenced public purposes, objectives and benefits. This Agreement and the approved Development Documents will govern the City and the Developer with respect to development of the Project under the West Side Planning Area zoning to the extent they are consistent with the requirements of the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements, all as then in force and legal effect at the time of complete application filing with the City.

1.2 **Recitals and Exhibits.** The above Recitals and all Exhibits hereto are hereby incorporated by reference into this Agreement.

1.3 **Conditions Subsequent.** Each of the City and Master Developer is entering into this Agreement in anticipation of the satisfaction of certain conditions subsequent, which, if not satisfied, will frustrate the purposes of this Agreement. Accordingly, if the Conditions Subsequent are not satisfied or otherwise waived by the Parties, this Agreement shall be rendered null and void and none of the parties hereto shall have any further obligation to the other arising out of this Agreement. For purposes of this Agreement, the following shall constitute the only "**Conditions Subsequent**":

1.3.1 the final non-appealable approval and acceptance of this Agreement by the City Council.

1.4 **Definition of "Developer".** The term "Developer" as used in this Agreement not only refers to Peterson Development Company, LLC, as the Master Developer, but also to each and every other person or entity which now holds, or hereafter acquires, title to the real property within the Project for the purpose of developing the land; and to each and every person or entity which acquires land from Peterson Development Company, LLC within the Project for the purpose of developing that land. This Agreement and all of its covenants, requirements, benefits and burdens shall govern and inure to the benefit of the City and every such

person or entity acquiring land within the Project. The City agrees and understands that the rights and obligations created by this Agreement run with the land and are fully assignable, subject to the requirements stated herein.

1.4.1 **Assignment and Transfer of Development.** The Master Developer shall not assign its obligations under this Agreement or any rights or interests herein, and except as provided below, shall not convey the Project or any portion thereof, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed if the proposed transferee: (a) shall have the qualifications and financial responsibility necessary and adequate to fulfill the obligations undertaken pursuant to this Agreement and any then applicable Development Documents; and (b) by instrument in writing, shall have expressly assumed all of the obligations of the Master Developer under this Agreement, and any then applicable additional agreements, and agreed to be subject to all of the conditions and restrictions arising under this Agreement or any Development Documents. As explained more fully in Section 1.4.4 below, if and when the Master Developer assigns its rights and obligations under this Agreement to a purchaser of land within the Project, then the Master Developer shall be relieved of the obligations of this Agreement with respect to that portion of the Project acquired by the purchaser/assignee, and the City shall look only to the purchaser/assignee for performance of the obligations of this Agreement with respect to that portion of the Project.

If only a portion of the Project is assigned and/or conveyed under this section 1.4.1, the City will make a reasonable allocation of the Master Developer's duties appurtenant to that portion.

Master Developer agrees that any Master Developer's responsibility for constructing Master Planned Improvements and other Public Improvements in connection with the Project as originally presented and approved, and as agreed to herein, cannot be avoided by assigning portions of the Project to one or more third parties and then claiming that the Master Developer's or successor's building of the required Public Improvements is not justified by the impact of the remainder, or portion, of the Project.

1.4.2 **Sale of Lots.** When Master Developer itself acts as developer of an approved Area, Subdivision or Parcel, its selling or conveying of lots to builders or other users shall not be deemed an "assignment" subject to the above-referenced approval by the City unless specifically designated as an assignment by the Master Developer.

1.4.3 **Change in Ownership or Control of Master Developer.** A change in the majority ownership or control of the Master Developer shall be deemed a transfer requiring the consent of the City pursuant to the requirements of this Section 1.4.1. Notwithstanding the foregoing sentence, a transfer of all or a portion of the Project or change in the majority ownership or control of the Master Developer is permitted without the City's consent under the following circumstances: (i) a transfer occurs to an entity that is an affiliate of the Master Developer, (ii) a transfer or change in ownership occurs as a result of a merger or acquisition of Master Developer resulting in Master Developer and its principal(s) having the majority interest and control of the succeeding or resulting entity, and/or (iii) a transfer occurs only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Master Developer, or its permitted successor in interest, to perform its obligations under this Agreement or any of the Development Documents. If as a result of any of these described actions one or more new principals become associated with the Project, such principals shall sign a counterpart of this Agreement evidencing their personal guaranty of Master Developer's obligations hereunder, or shall provide further assurances to the City of one or more additional letters of credit or other acceptable security device as may be required to satisfy the security requirements of this Agreement.

1.4.4 **City-approved Transfer.** In the event of a City approved transfer of any portion of the Project and upon assumption by the transferee of Master Developer's obligations under this Agreement and the Development Documents, the respective transferee shall have the same rights and obligations as the Master Developer under this Agreement and the Development Documents, and the Master Developer shall be released from any further obligations with respect to that portion of the Project, provided that any successor shall first execute and deliver such agreements and instruments as the City may require to bind the successor under the terms of this Agreement and any related and subsequent agreements between the parties; and provided further that the provisions of this Agreement with respect to Master Planned Improvements and other Public Improvements not included in the transferred portion of the Project shall continue as an obligation of Master Developer unless expressly waived in writing by the City. The City shall not unreasonably withhold its approval of any transfer of a portion of the Project and the corresponding transfer and assignment of the rights and obligations of this Agreement pertaining to such portion of the Project.

1.5 **Vested Rights.** The City agrees and assures Developer that the Project can be developed under the rules, requirements and benefits provided in the City's West Side Planning Area (WSPA) notwithstanding the City's announced intent to repeal the WSPA in favor of a different zoning program. For purposes of this Agreement, the phrase "different zoning program" shall mean and refer to any ordinance that prescribes the uses and densities within the Project. To the maximum extent permissible under the laws of Utah and the United States and at equity, the City and Developer intend that this Agreement grants Developer all rights to develop the Project under the WSPA and this Agreement. The Parties specifically intend that this Agreement grants to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2009). The WSPA shall govern bonus densities as well as any Developer-requested zoning changes within the Project.

1.5.1 **WSPA Densities.** Specifically and without limitation, the City agrees that the base densities provided in the WSPA shall be available to Developer throughout the Project, regardless of whether or not the City repeals WSPA and adopts a different zoning program (as defined in Section 1.5 above). The City makes no assurance that Developer will in fact meet the requirements as to any particular density bonus it may seek under the WSPA. Developer shall be entitled to the full benefit of bonus densities for which it qualifies under the WSPA.

1.5.2 **Application Under City's Future Laws.** Without waiving any rights granted by this Agreement, Developer may at any time, choose to submit a Development Application for some or all of the Project under the City's future laws in effect at the time of the Development Application. Any Development Application filed for consideration under the City's future laws shall be governed by all portions of the City's future laws related to the Development Application. The election by Developer at any time to submit a Development Application under the City's future laws shall not be construed to prevent Developer from relying for other Development Applications on the Vested Rights provided to Developer under this Agreement.

1.5.3 **Clarifications Regarding Cap and Grade Ordinance.** In the event of any conflict between the language above in Sections 1.5, 1.5.1 and 1.5.2, on the one hand, and the language in Section 2.2 below, the language in Section 2.2 below shall govern.

ARTICLE II
PROJECT DEVELOPMENT

2.1 Developer Obligations.

2.1.1 **Conveyance or Dedication of Required Easements.** Developer shall convey or dedicate to the City or other applicable utility provider, at no cost, such required utility and other easements on or across the Project as are necessary to facilitate the extension of required utility services and City services to and through the Project. All such dedications shall comply with the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements.

2.1.2 **Public Improvements: Streets, Culinary Water, Sanitary Sewer and Stormwater.** Developer shall design, construct and dedicate to the City all public streets and other public infrastructure required by the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements and/or shown on the approved Development Documents (hereinafter referred to as the "**Public Improvements**"). This obligation shall survive termination of this Agreement and is intended to attach to and run with the land.

A. Access and Connecting Roads.

1. Access and connecting roads will provide for safe and efficient circulation within, and adequate entrances and exits for the Project. All access and connecting roads shall be completed in accordance with approved plans and specifications submitted in connection with one or more dependent and interrelated subdivision plats for the various phases of the Project as set forth in the approved Development Documents. No certificates of permanent occupancy will be issued until these access and connecting roads are complete and dedicated to, and accepted by, the City. Unless specifically authorized by City Code, approval of the West Jordan Fire Department is necessary for issuance of building permits.

2. Model homes may be constructed and located as allowed by the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements .

3. Master Developer shall dedicate to the City 63.00 feet roadway on the west side of 5600 West between 7800 South and

8200 South; provided, however, that the City shall pay Master Developer fair market value for 30 feet of such roadway (as set forth in a separate purchase agreement between the City and Master Developer).

B. Master Planned Improvements. Developer shall be required to construct all master planned streets, culinary water, sanitary sewer and stormwater improvements running along or through the 426-acre Project (the "**Master Planned Improvements**") or Developer shall be responsible for a pro-rated portion of the estimated cost of construction of such improvements at the start of each phase.. Notwithstanding the preceding sentence, the parties acknowledge that it is not possible, at this point in time, to identify all of the Master Planned Improvements that may be necessary for this Project. Hence, Master Planned Improvements will be identified as each phase of the Project is developed, and will be designed to coordinate with other phases of the Project, with appropriate reimbursement provisions regarding the costs of such Master Planned Improvements.

An improvement guarantee shall be posted for each phase of the Project including the Master Planned Improvements, or portion thereof, contained within that phase. Nothing in this provision shall be construed to require Developer to post an improvement guarantee and also deposit cash with the City for the same improvements.

2.1.3 **Construction Standards**. Notwithstanding any other provisions of this Agreement, all Public Improvements (e.g. all improvements to be dedicated to City or constructed upon property owned by City) shall be constructed in compliance with the approved Development Documents, all applicable federal, state and local laws and regulations, and City standards, specifications, and plans as adopted at the time of design.

2.1.4 **Completion within Two Years**. For each phase, construction of the Public Improvements and all private improvements (such as privately maintained detention basins, trails, etc.) contemplated in the Development Documents shall be completed within two years from the date of plat recordation. If Developer fails to complete construction of all Public Improvements within the time period set forth herein for completion, the City shall notify Developer that Developer shall have thirty (30) calendar days to complete such. If Developer fails to complete the Public Improvements within the allotted time, the City, in its discretion, may complete the construction of such Public Improvements and may recover the full

cost and expense, including administrative costs for contract preparation, contract administration and construction management, of such completion from Developer's Improvement Guarantee (defined hereafter) or, if not recovered therefrom, from Developer and its principals personally. Moreover if Developer fails to complete construction of all Public Improvements within the time period set forth herein for completion, including the extra thirty (30) calendar days following notice from the City, the City may withhold any and all further permits and approvals related solely to that Developer's involvement in or with the Project (but not with respect to other Developers or other phases in the Project) pending completion of the Public Improvements and private improvements.

2.1.5 Construction Process.

A. Shop Drawings. If any shop drawings are required for the construction of the Public Improvements, Developer shall submit such drawings to the City for review and acceptance prior to the performance of the work illustrated or described in such shop drawings.

B. Changes Prohibited without Consent. Following City approval of the Development Documents, Developer shall not make any changes to the Development Documents without the prior written consent of the City.

C. Studies and Testing. Developer shall pay for and complete all soils and materials and traffic testing required by the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements. The work shall be performed by testing agencies that are reasonably acceptable to the City Engineer. Copies of all test results shall be submitted to the City Engineer within ten (10) days after they are issued by the testing agency. The City Engineer may request that the test reports be certified by the testing agency. The requirements of this Section shall pertain only to property that is the subject of a pending development application, and shall not be construed to require such studies and testing for those portions of the Project that are not part of a pending development application.

D. Inspection and Punch List. When Developer notifies the City that Developer believes the Public Improvements and required nonpublic improvements are completed, the City shall make an inspection and prepare a list of the items which are incomplete or unsatisfactory and need to be corrected. If requested by

Developer in writing, the City shall provide a detailed explanation, in writing, describing the basis for the City's determination that the work is "unsatisfactory" and explaining what needs to be done for the work to be deemed "corrected" or "satisfactory." The City's failure to object to the completion of any item of work does not relieve Developer of the responsibility to complete the work in compliance with the Development Documents and all applicable laws and codes and the City of West Jordan public improvement standards, specifications, and plans.

2.1.6 Completion Extension.

A. Notification to City. If for any reason Developer determines, prior to the end of such period, that the Public Improvements will not be completed within the two-year period required under this Agreement, Developer shall promptly notify the City of the delay, the reasons therefore, and the anticipated completion date.

B. Extension Request. Developer may request that the City extend the completion time. Developer shall submit a construction schedule showing the anticipated completion date.

C. City's Grant of Extension. The City, by and through its City Manager, in his/her reasonable discretion, may grant or deny Developer's request for an extension in writing. If the extension is denied, the City may, at its sole discretion, pursue any remedy available at law or by the terms of this Agreement based on Developer's failure to complete the Public Improvements or required nonpublic improvements within the two-year period. If the extension is granted, all of the terms of this Agreement shall remain in full force and effect except as modified by the new completion date. The City Manager shall grant extension requests if they are reasonable under the circumstances.

D. Remedies Non-Exclusive. The City's extension of the completion date under this Article shall not preclude the City from exercising any rights or remedies available to the City pursuant to this Agreement, with the exception of declaring breach or default for failure to complete the improvements by the original completion deadline.

2.1.7 Deficient Materials. Developer shall disclose the materials it intends to use in the construction of public improvements to the

City Engineer. If any materials intended to be used in the construction of public improvements do not meet City specifications, the City Engineer, in his/her reasonable discretion, may require Developer to use materials approved by the City Engineer; provided, however, that the City Engineer shall not require Developer to use materials that are inconsistent with industry standards.

2.1.8 **File Record Documents.** Developer shall file with the City Engineer "Record Documents" conforming to City requirements.

2.1.9 **Completion.** Upon completion of all Public Improvements and any required nonpublic improvements for each phase, the Developer shall request an inspection. The Public Improvements and any required nonpublic improvements shall not be deemed complete until the City Engineer has verified that they are installed in accordance with the Development Documents, the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements and the City Manager has provided written documentation reducing the Improvement Guarantee, as defined herein, to 10% of its initial amount.

2.1.10 **Public and Private Improvement Warranty.**

A. Basic Warranty. Developer warrants and guarantees to the City that all the Public Improvements and required nonpublic improvements, including materials and workmanship, constructed by such Developer will not be defective and will be in accordance with the Development Documents, the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements. This warranty/guaranty applies to each Developer that constructs the subject improvements in the Project, but only with respect to the improvements constructed by such Developer. The warranty/guaranty provided in this Section shall cover a period of twelve (12) months following completion of the improvements.

B. No Warranty for Required nonpublic improvements and Common Areas of Ownership. As provided in the Development Documents and the Improvement Guarantee, Developer is expected to shoulder the same responsibility with respect to construction and completion of required nonpublic improvements or common areas of private ownership as with the Public Improvements, except required nonpublic

improvements shall not be subject to the twelve month warranty set forth herein below. Developer may determine to form home owners associations to maintain non-public improvements and common areas.

C. Twelve-Month Warranty Period for Public Improvements. If, within twelve months after the completion of the Public Improvements, as evidenced by written approval of the City Manager, or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee, any portion of the Public Improvements is found to be defective, the Developer that constructed the same shall promptly, without cost to the City and in accordance with City's written instruction, correct such defective work or replace it with non-defective work.

If, during the twelve-month warranty period, emergency repairs to any of the Public Improvements become necessary (including but not limited to any repairs which, in the opinion of the City, jeopardize public safety or convenience), the Developer that constructed the same shall complete the repairs at no cost to the City. If the City completes the repairs due to urgency or failure of the Developer to timely complete such repairs, the Developer that constructed the subject improvements shall reimburse City within five working days of receiving the notice of amount due.

During the twelve-month warranty period, the City will only provide street sweeping and snow plowing. All other maintenance shall be the responsibility of the Developer.

These provisions are intended to provide a remedy to the City in addition to the basic warranty set forth above enforceable against the Developer.

D. Warranty for Public Landscaping Improvements. If, within twenty four (24) months after completion of the Public Landscaping Improvements, as evidenced by written approval of the City Manager, any portion of the Public Landscaping Improvements is found to be defective, Developer shall promptly, without cost to the City and in accordance with City's written instruction, correct such defective work or replace it with non-defective work. During the twenty-four month warranty period, Developer shall maintain the Public Landscaping Improvements to ensure that said improvements become established and continue to comply with the 2009 City

Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements in effect on the effective date of this Agreement.

E. Developer's Failure to Correct. If Developer fails to correct defective work, or in an emergency where notice and delay would cause serious risk of loss or damage, the City may have the defective work corrected or the defective work removed and replaced. Developer shall be liable for and pay for all direct, indirect and consequential costs of such correction or removal and replacement by the City including, but not limited to, fees and charges of engineers, architects, and other professionals.

F. Normal Wear and Tear. Developer's warranty and guarantee hereunder excludes defects or damage caused by normal wear and tear under normal usage.

2.1.11 Improvement Guarantee.

A. Types of Security Devices. With respect to each phase of the Project for which a Development Application has been submitted, prior to the final approval of such application, unless expressly waived in writing by the City, the Developer of such phase shall file with the City Engineer an Improvement Guarantee. With the consent of the City Attorney, Developer may, during the term of this Agreement, replace an Improvement Guarantee, originally filed, with any other type of approved Improvement Guarantee or other security device(s) by any Developer of the Project.

B. Form of Improvement Guarantee. Developer shall submit either a personal guaranty by all of the principals of Developer; or a letter of credit, which shall condition the making of draws thereon and shall contain an automatic renewal provision. The letter of credit shall be irrevocable. The improvement guarantee required by this Section shall relate only to the phase(s) of the Project that are the subject of the corresponding development application. In lieu of a personal guaranty or a letter of credit, Developer may satisfy the improvement guarantee requirements by using a cash escrow that is reasonably acceptable to the City.

C. No Third Party Beneficiaries to Improvement Guarantee. Neither this nor any other provision requiring an Improvement Guarantee shall be construed to create any rights in any third

party claimant as against the City for construction of the Public Improvements. The payment of contractors and subcontractors is the sole responsibility of Developer.

2.1.12 Improvement Guarantee Releases for Public Improvements

A. Interim Reductions. After completing a system or systems within the phase to which the Improvement Guarantee applies, the Developer may submit a written request for reduction of the Improvement Guarantee. Written reduction requests may be made only once every thirty (30) calendar days in accordance with the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements. The amount of the reduction shall be determined by the City Engineer and shall not exceed seventy five percent (75%) of the amount set forth in the estimated cost of Public Improvements for the system category in which reduction is sought. The total Improvement Guarantee proceeds shall not be reduced below twenty five percent (25%) of the initial face amount, plus the estimated cost of a one inch (1") thick asphalt concrete overlay for public streets. No reduction shall be authorized until such time as City has inspected the Public Improvements and found them to be in compliance with the the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements. Completion of Public Improvements, even if verified by the City, shall not entitle Developer to an automatic release of any part of the Improvement Guarantee. Interim reductions not to exceed 75% of the initial amount shall be evidenced by the written authorization of the City Engineer.

The Developer shall receive written notice from the City Engineer regarding releases of partial sums. Copies of all partial releases from the City Engineer shall be sent to the City Clerk's Office for inclusion with and attachment to the Improvement Guarantee.

B. Retainage for Public Improvements. Developer expressly agrees that, notwithstanding any partial release requested by Developer and granted by the City, the maximum amount to be released upon satisfactory completion of the Public Improvements shall be 90% of the amount of the original Improvement Guarantee. The remaining 10% (herein the "Retainage"), shall not be released for twelve months following reduction to the 10% level as evidenced by written approval of

the City Manager. The Retainage shall be held to insure that the covered improvements do not have any latent defects in materials or workmanship as determined by City, and that the covered improvements continue to meet City standards throughout the warranty period as set forth in this Agreement. Notwithstanding said Retainage, Developer shall be responsible for any substandard or defective or damaged Public Improvements. At the request of Developer, the Retainage or any part thereof may be replaced with an Improvement Guarantee of a type and form permitted by the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements and approved by City. Developer shall be responsible for any substandard or defective covered improvements if the amount is inadequate to cover any such improvements.

Reduction to the 10% level shall not occur unless and until the following have occurred: verification by the City Engineer that all covered improvements have been satisfactorily completed; the receipt by the City of any lien waivers required by the City Engineer; and provided that the City has not received any claims or notices of claim upon the Improvement Guarantee.

C. Final Release. At the end of the twelve month warranty period for the Public Improvements and upon the receipt by the City of any lien waivers required by the City Engineer, and provided that the City has not received any claims or notices of claim upon the Improvement Guarantee, and provided that the Public Improvements remain in good condition, the City Manager shall release the final ten percent (10%) of the Improvement Guarantee, as evidenced by written approval of the City Manager.

2.1.13 Other Improvement Guarantee Releases.

A. Landscaping. Developer shall not receive a reduction to the 10% level as set forth in the immediately preceding section entitled "Improvement Guarantee Releases for Public Improvements," until such time as the City Engineer verifies that all Public Landscaping Improvements have been installed in accordance with the Development Documents, the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements. The ten percent (10%) retainage for Public Landscaping Improvement shall be held for twenty four (24)

months, and Developer shall not receive final release of the Improvement Guarantee at the expiration of the twenty four (24) month period until all dead vegetation is replaced through replanting, provided that the erosion control and/or slope stabilization remains acceptable to the City.

2.1.14 Acceptance and Title.

A. City Acceptance. For each phase, when the City is satisfied that the Public Improvements have been completed as required, and the City has verified at the end of the 12-month warranty period (24-months if pertaining to landscaping) that all final repairs have been made, a letter shall be prepared and signed by the City Manager indicating acceptance of the Public Improvements for that phase. Refusal by the City to deliver a letter accepting the Public Improvements for the phase shall not extend the warranty period, but the Developer has an ongoing duty to maintain such improvements pending acceptance by the City. Public Improvements located on City property (including easements owned by the City or on property dedicated to the City) shall thereupon become the property of the City upon acceptance by the City. Improvements located on property not owned by the City shall not become the City's property unless and until dedicated to and accepted by the City. Developer shall promptly execute and deliver to the City any documents reasonably required by the City establishing the City's ownership of the Public Improvements on the City's property. The City has no obligation to maintain any improvements that are not on property owned by or dedicated to and accepted by the City.

B. Developer's Continuing Obligation. Developer's obligation to perform and complete all Public Improvements and required nonpublic improvements in accordance with the approved Development Documents; applicable federal, state and local laws and regulations; and the City of West Jordan public improvement standards, specifications, and plans is absolute and continuing, None of the following constitute an acceptance of any or all of the Public Improvements that are noncompliant, and none of the following shall release Developer from its obligation to construct the Public Improvements in accordance with the same:

1. Informal observations by the City Engineer;

2. Use or occupancy of any Public Improvements or any part thereof by the City or the public;

3. Any review of a shop drawing or sample submittal or the issuance of a notice of acceptability with respect thereto by the City Engineer;

4. Any inspection, test, or approval by someone other than the City; or

5. Any correction of defective work by the City.

C. City Responsibility. From and after the City's acceptance of Public Improvements on City property, the City shall have the complete and sole jurisdiction over the operation and maintenance of such Public Improvements, including without limitation, sole discretion to: 1) discontinue operation and maintenance of the Public Improvements at any time; 2) convey or assign any or all City interests in the Public Improvements to any person at any time; and 3) convey or assign to any person any or all operation and maintenance responsibilities for the Public Improvements. Nothing in this Agreement shall create a duty for the City to ensure or guarantee operation of Public Improvements or construct any appurtenance necessary for operation.

2.1.15 Indemnification and Risk.

A. Developer to Indemnify the City. Developer shall, at all times, protect, indemnify, save harmless and defend the City and its agents, employees, officers and elected officials from and against any and all claims, demands, judgments, expense, and all other damages of every kind and nature made, rendered, or incurred by or in behalf of any person or persons whomsoever, including the parties hereto and their employees, which may arise out of any act or failure to act, work or other activity related in any way to the Project, by Developer, Developer's agents, employees, subcontractors, or suppliers in the performance and execution of the work/development contemplated by this Agreement.

B. Builder's Risk of Loss. Developer assumes the risk of loss for any damage or loss to the Public Improvements by any means or occurrence, with the exception of damage or loss caused by the City, until final acceptance of the Public Improvements as evidenced by written approval of the City Manager.

2.1.16 **Insurance.**

A. In General. All policies of insurance provided shall be issued by insurance companies qualified to do business in the State of Utah and either (1) listed on the U.S. Department of the Treasury's *Listing of Approved Sureties (Department Circular 570)* (as amended), or (2) having a current rating of "A" or better in the most current available A.M. Best Co., Inc.'s, *Best's Insurance Reports, Property and Casualty Edition.* Except in the case of workers' compensation insurance, the City shall be included as an additional named insured in all insurance policies. Developer shall cause copies of certificates of insurance to be furnished to the City concurrently with or prior to the signing of this Agreement. If requested, Developer shall also cause copies of the insurance policies required by this Agreement to be provided to the City.

B. Worker's Compensation Insurance. In addition to other required insurance, Developer shall ensure that Developer's contractors obtain and maintain, during the construction of the Public Improvements, worker's compensation insurance as required by laws and regulations for all of contractor's employees employed at the site of the Improvements, and in case any work is subcontracted, Developer shall require the subcontractor similarly to provide worker's compensation insurance for all of the subcontractor's employees, unless such employees are covered by protection as required by laws and regulations. If Developer's employees are ever present at the site of the Public Improvements, Developer shall obtain and maintain, during the construction of the Public Improvements, workers compensation insurance as required by laws and regulations for all of Developer's employees employed at the site of the Public Improvements.

C. Public Liability and Property Damage Liability Insurance.

(1) Developer shall secure and maintain, during the term of this Agreement and at all times thereafter when Developer or Developer's contractor(s) may be correcting, removing, or replacing defective work, a commercial general public liability and property damage liability insurance policy. The policy shall protect Developer and the City from claims for damages for personal injury, including accidental death, and from claims for property damage which may arise from Developer's operations under this Agreement, whether any such operation be by itself

or by any contractor, subcontractor or by anyone directly or indirectly employed by either of them. The minimum amounts of such insurance shall be not less than $2,000,000 for each occurrence, and $3,000,000 general aggregate, and $3,000,000 products/completed operations aggregate.

(2) Developer shall cause Developer's contractor(s) to secure and maintain, during the term of this Agreement and at all times thereafter when Developer's contractor(s) may be correcting, removing, or replacing defective work, a commercial general public liability and property damage liability insurance policy. The policy or policies shall protect the contractor(s) and the City from claims for damages for personal injury, including accidental death, and from claims for property damage which may arise from Developer's contractor's operations in connection with the Public Improvements, whether any such operation be by itself or by any contractor, subcontractor or by anyone directly or indirectly employed by either of them. The minimum amounts of such insurance shall be not less than $2,000,000 for each occurrence, and $3,000,000 general aggregate, and $3,000,000 products/completed operations aggregate.

D. Automobile Public Liability Insurance:

(1) Developer shall secure and maintain, during the term of this Agreement and at all times thereafter when Developer or Developer's contractor(s) may be correcting, removing, or replacing defective work, commercial automobile public liability insurance with limits not less than $2,000,000 per occurrence, covering owned, hired, and non-owned automobiles.

(2) Developer shall cause Developer's contractor(s) to secure and maintain during the term of this Agreement and at all times thereafter when Developer's contractor(s) may be correcting, removing, or replacing defective work, commercial automobile public liability insurance with limits not less than $2,000,000 per occurrence, covering owned, hired, and non-owned automobiles.

2.1.17 Landscaping.

A. Landscape Plans:

Developer shall submit landscape plans together with all site plan applications, such landscape plans to demonstrate compliance with all applicable laws and codes and the City of West Jordan public improvement standards, specifications, and plans then in published force and effect.

B. Cobble Rock:

Specifically, and without intent to limit, landscape plans may not utilize cobble rock unless such cobble rock is secured in cement.

C. Grasses:

Any grasses shall be irrigated with underground irrigation systems.

Grass seeding along trails shall be with City approved grass seed mixtures.

D. Trail Fencing:

No wood fences are permitted along trails.

E. No Walk-Away at Substantial Completion:

The City shall accept no improvement unless it is completed as provided on the landscape plan and unless the installed landscaping is growing after the 24-month warranty period. The Developer shall not walk away from landscape improvements that are only "substantially" complete, nor shall the City accept dedication of only "substantially" complete landscape improvements.

2.1.18 **Development to be Consistent with the Development Documents.** Except as expressly provided in this Agreement, all development within the Project area shown in **Exhibit A** whether by the Developer or a successor in interest, will be consistent with this Agreement and the finally approved Development Documents. Any substantial change to an approved Development Plan which change is inconsistent with this Agreement shall constitute an amendment to this Agreement.

2.1.19 **Parks, Trails and Pathways.** The Development Documents will provide for public use spaces consistent with the requirements of the 2009 City Code and related published protocols and policies and other

applicable zoning, engineering, fire safety and building requirements. The Developer and City will cooperate in reasonably locating and/or refining the location of such open spaces, trails and trail systems at the site plan level. The City shall accept no such improvement unless it is completed as provided on the landscape plan and/or site plan, and unless the installed landscaping is growing healthily and naturally after the 24-month warranty period. The Developer shall not walk away from landscape improvements that are only "substantially" complete, nor shall the City accept dedication of only "substantially" complete landscape improvements.

2.2 **Clarifications Regarding Cap and Grade Ordinance.** A dispute has arisen between the City and the Master Developer over the scope of vesting provided in this Agreement as originally signed and recorded. The City contends that the vesting provided in this Agreement was as to the application of the WSPA zone to the Project, and not to any exemption from other requirements in the City Code applicable to land development. The Master Developer contends that any provision in the City Code which is applicable City-wide to land development is a zoning program that conflicts with the Master Developer's vesting in the WSPA zone. The City and the Master Developer's vesting in the WSPA zone. The City and the Master Developer seek by means of an Amended Development Agreement to resolve their dispute. To that end, the Parties agree as follows:

2.2.1 **Gladstone Subproject.** The Gladstone subproject within the Highlands will be exempt from the City's recently enacted Cap and Grade ordinance, and from any successor ordinance or provision limiting the timing or size of new multi-family residential developments, provided that Developer proceeds to acquire land from UDOT to enlarge Gladstone and provided further that Developer moves ahead and completes, at its expense, the piping and filling in of the wash on the acquired UDOT property.

2.2.2 **Other Multi-Family Zoned Land in the Highlands.** Other than as provided in subsection 2.2.1 above, all other multi-family zoned land in the Highlands is subject to the Cap and Grade ordinance (as the same may be amended); provided, however, that applications for multi-family projects that were submitted to the City before the Cap and Grade ordinance was first instituted are vested outside of the Cap and Grade ordinance.

ARTICLE III
IMPACT FEES

3.1 **Impact Fees; Costs of Application Processing.** The Developer will be assessed and required to pay impact fees calculated by the City in accordance with the Utah Impact Fees Act,the 2009 City Code and related published protocols and policies and other applicable zoning, engineering,

fire safety and building requirements. To avoid "double dipping" with impact fees, Developer shall be reimbursed by the City if it constructs improvements within the project area that are identified on the City's impact fee capital facilities plans. In addition, Developer will be responsible for paying all City application and inspection fees and charges appropriately assessed for projects of the type being presented by Developer, including payment of hourly charges for all internal expert reviews and involvement. Because impact fees are assessed at the time of development, impact fees may be assessed in each phase of the Project.

3.2 **No Additional Off-Site Infrastructure Requirements.** The City shall not, directly or indirectly, charge the Developer, its affiliates or successors or the Property any development fees, impact fees, water hookup fees, or any similar fees, charges, assessments or exactions for infrastructure for the development of the Project except as set forth herein or otherwise permitted by the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements.

3.3 **Maintenance of Detention Basins, Planters, Trees and Other Landscaping in Street Median Spaces and Alongside Streets and Sidewalks Appurtenant to, or Within, the Development.** The Developer and the City have agreed to work together to form an Assessment Area covering the Project for the purpose of generating funding whereby the Assessment Area will maintain all detention basins, buffer landscaping, trails, parks and parkstrips, including within and along public arterial and collector streets where private property backs to the public right of way and is separated from the rest of the private property by a wall. This scope of maintenance will be up to the governing board of the assessment area and will only be triggered after the expiration of applicable warranty periods during which warranty periods Developer will maintain these improvements. Following the expiration of warranty periods and acceptance of dedication by the City, such improvements are expected to be maintained by the assessment area.

ARTICLE IV
DEFAULT AND COSTS

4.1 **Failure to Perform.** Developer hereby agrees that Developer shall perform all obligations imposed upon Developer pursuant to: this Agreement; the Development Documents, as approved; and all additional obligations imposed on Developer by Federal, state, City or County laws, ordinances, regulations or standards. Developer further understands and expressly agrees that failure to perform said obligations shall be deemed to be a default under this Article V.

4.1.1 **Notice of Default.** If Developer 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 or assignee, then the City shall also provide a courtesy copy of the Notice to Master Developer.

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

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

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

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

ii. Optional Cure. If the City chooses, in its discretion, propose a method and time for curing the Default which shall be of no less than sixty (60) days duration.

4.1.3 **Meet and Confer.** Upon the issuance of a Notice of Default the parties shall engage in the "Meet and Confer" process.

4.2 **Remedies.** If the parties are not able to resolve the Default by "Meet and Confer", and if still in dispute then the parties may have the following remedies:

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

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

4.2.3 **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 an assignee Developer or Subdeveloper, development of those Parcels owned by the Developer or Subdeveloper until the Default has been cured.

4.3 **Extended Cure Period.** If any Default cannot be reasonably cured within sixty (60) days then such cure period shall be extended so long as the defaulting party is pursuing a cure with reasonable diligence.

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

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

4.6 **Insolvency.** Insolvency, bankruptcy or any voluntary or involuntary assignment by any party for the benefit of creditors, which action(s) are unresolved for a period of 180 days shall be deemed to be a default by such party under this Article V.

4.7 **Court Costs and Attorney Fees.** In the event of any legal action or defense between the Parties arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party shall be entitled, in addition to the remedies and damages, if any awarded in such proceedings, to recover their court costs and reasonable attorney fees.

ARTICLE V
RECORDATION

5.1 **Recordation.** After its execution, this Agreement shall be recorded in the office of the County Recorder at the expense of the Developer. Each commitment and restriction on development set forth herein shall be a burden on the real property constituting the Project, shall be appurtenant to and for the benefit of the City and shall run with the land.

ARTICLE VI
REIMBURSEMENT FOR PUBLIC IMPROVEMENTS

6.1 **Developer's Obligations to Install Eligible Project Improvements.**

6.1.1 Developer shall, at its own expense and in accordance with the requirements of this Agreement, the Development Documents, the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements, Federal and State laws and regulations, and all other conditions of development approval, construct and install or cause to be constructed and installed the future prescribed Eligible Public Improvements collectively referred to herein as "**Eligible Public Improvements**".

6.1.2 Developer shall, at its own expense, acquire necessary real property interests for the construction and installation of the Eligible Public Improvements and shall dedicate the acquired real property interests and Eligible Public Improvements to City, in a form approved and acceptable to the City Attorney.

6.1.3 Developer understands and agrees that Eligible Public Improvements will not be reimbursable unless they are approved by City in advance of development in accordance with City's ordinances, rules, regulations, and engineering standards and specifications.

6.1.4 Developer further understands and agrees that Eligible Public Improvements identified herein are the only improvements for which reimbursement will be made available with respect to the development of Remainder Parcel 3 unless otherwise agreed to in writing by the City.

6.2 **Cost Allocation and Collection from Benefited Properties for Eligible Project Improvements.**

6.2.1 The Parties agree that the properties reasonably anticipated to benefit from the construction and installation of the Eligible Project Improvements (**"Benefitted Properties"**) shall be specified in the applicable pioneering agreement or subdivision-specific development agreement.

6.2.2 City shall allocate costs to the Benefited Properties as specified in the applicable pioneering agreement or subdivision-specific development agreement. The allocation will be based on frontage, zone, area, lot, impervious area, number of connections or other fair and equitable criteria.

6.2.3 City will make as a condition of approval for the owners of the Benefited Properties that seek City approval to develop, subdivide or build, to pay to the City the appropriate allocated costs identified herein, prior to granting any development, subdivision, conditional use, or site plan approval and prior to the City issuing any building permit, with respect to the Benefited Properties. The Parties acknowledge, understand and agree that the City is not liable if an approval, permit or action is granted inadvertently to a Benefited Property or person, unless done intentionally or by fraud. Notwithstanding the City's good faith efforts to require payment by owners of Benefited Properties, Developer is entitled to pursue its own civil action against the Benefitted Property owner for *quantum*

meruit. Nothing in this section requires the City to legally pursue a Benefitted Property owner.

6.3 **Reimbursement Payments.**

6.3.1 Upon collection of the allocated costs from the Benefited Properties as set forth herein, City shall pay the collected amount to Developer (each payment shall be referred to hereinafter as a "**Reimbursement Payment**"). Notwithstanding anything in this Agreement to the contrary, the City shall have no obligation to make any Reimbursement Payment to Developer until the allocated costs are actually received by City. The Parties acknowledge, understand and agree that: (a) the City is not directly responsible or liable for any Reimbursement Payment to Developer, other than to account for and pay sums received; (b) the City is not responsible in the event this Agreement is determined by a court of competent jurisdiction to be unenforceable.

6.3.2 Impact fee reimbursements for System Improvements shall be paid in accordance with Section 8-3B-4 of the 2009 City Code, attached hereto as **Exhibit B**.

6.3.3 No reimbursement, whether from Benefited Properties or from impact fees, shall be due to Developer until:

A. The applicable Eligible Public Improvements have been fully installed, inspected, and approved by the City, and the real property and Public Improvements have been dedicated to the City by lawful conveyance through plat, warranty deed or other method acceptable to the West Jordan City Attorney;

B. Developer has submitted to the City Engineer the documentation required by this Agreement evidencing actual costs of the Eligible Public Improvements; and

C. Such reimbursement is eligible by the terms of this Agreement and the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements.

6.4 **Reimbursement Amount.**

6.4.1 Maximum Reimbursement.

A. The maximum reimbursement for the Eligible Public Improvements shall be the lesser of: (1) the actual costs of Eligible

Public Improvements as evidenced by the documentation submitted in accordance with the terms of this Agreement, or (2) the estimated costs of the Eligible Public Improvements prepared by the City Engineer, or as said sum is amended under the terms of the applicable subdivision-specific development agreement.

B. "Actual Costs" means the costs actually incurred or expended to construct or install the Eligible Public Improvements, which costs shall include disbursements to general contractors, engineers, surveyors, construction management and inspection, and land planners. .

C. Developer shall provide to the City documentation, acceptable to the City Attorney, demonstrating the actual costs incurred by the Developer for the construction and installation of Eligible Public Improvements. Documentation shall include but not be limited to: receipts, checks, vouchers, bills, statements, bid documents, change orders, payment documents, and all other information necessary for the City to determine the actual costs incurred. Developer's failure to submit the required documentation shall result in rejection of the undocumented claimed amount.

6.4.2 Interest. No interest shall be included in the amount of the reimbursement, and no interest shall be paid to Developer by the City or any other person on any amounts due under this Agreement.

6.5 **Ownership of Eligible Public Improvements.** City shall own the Eligible Public Improvements in fee title absolute, together with the lands and rights-of-way dedicated to the City. Ownership shall be with the City upon: (i) completion of construction of the Eligible Public Improvements by Developer; (ii) completion of applicable warranty periods; and (iii) inspection, approval and written acceptance by the City.

6.6 **Termination of Reimbursement Payments.** Reimbursement from impact fees for Eligible System Improvements shall continue until such time as the maximum reimbursement from impact fees has been reached. Impact fees may be used only for reimbursement of Eligible System Improvements and no other purpose. Nothing in this Agreement prohibits or limits the use of pioneering agreements with benefitted property owners.

6.7 **Phasing.** Notwithstanding any provision to the contrary in this Agreement, the parties acknowledge and agree that reimbursements for Eligible Public Improvements may be determined and implemented on a phase-by-phase basis

ARTICLE VII
GENERAL MATTERS

7.1 **Amendments**. Any alteration or change to this Agreement shall be made only after complying with the same procedures followed for the adoption and approval of this Agreement.

7.2 **Captions and Construction.** This Agreement shall be construed according to its fair and plain meaning and as if prepared jointly by all Parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. Furthermore, this Agreement shall be construed so as to effectuate the public purposes, objectives and benefits set forth herein. As used in this Agreement, the words "include" and "including" shall mean "including, but not limited to" and shall not be interpreted to limit the generality of the terms preceding such word.

7.3 **Laws and Forum**. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns, and shall be construed in accordance with Utah law. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Salt Lake County, Utah.

7.4 **Legal Representation**. Each of the Parties hereto acknowledge that they either have been represented by legal counsel in negotiating this Agreement or that they had the opportunity to consult legal counsel and chose not to do so. In either event this Agreement has no presumptions associated with the drafter thereof.

7.5 **Non-Liability of City Officials.** No officer, representative, agent or employee of the City shall be personally liable to Developer or any successor in interest or assignee of Developer in the event of any default or breach by the City, or for any amount which may become due the Developer, or its successors or assigns, or for any obligation(s) arising under the terms of this Agreement.

7.6 **No Third Party Rights.** Unless otherwise specifically provided herein, the obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any other persons or third parties.

7.7 **Tax Benefits.** The City acknowledges that Developer may seek and qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring portions of the Property to the City or to a charitable organization for open space or permitted uses. Developer shall

have the sole responsibility to claim and qualify for any tax benefits sought by Developer by reason of the foregoing. .

7.8 **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 therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars; civil commotions; fires, floods, earthquakes 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. Any party seeking relief under the provisions of this paragraph must have notified the other party in writing of a force majeure event within thirty (30) days following occurrence of the claimed force majeure event.

7.9 **Notices.** All notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or when deposited in the United States mail, by registered or certified mail, addressed as follows:

The City:	West Jordan City 8000 South Redwood Road West Jordan, Utah 84088 Attention: City Clerk
Developer:	Peterson Development Company LLC 225 South 200 East #200 Salt Lake City, Utah 841111 Attention: Justin Peterson

Such addresses may be changed by notice to the other party given in the same manner as above provided. Any notice given hereunder shall be deemed given as of the date delivered or mailed.

7.10 **Entire Agreement.** This Agreement, together with the Exhibits attached hereto, documents referenced herein and all regulatory approvals given by the City for the Project, contain and constitute the entire agreement of the Parties with respect to the subject matter hereof and supersede any prior promises, representations, warranties, inducements or understandings between the Parties which are not contained in such agreements, regulatory approvals and related conditions. It is expressly agreed by the Parties that this Agreement and the additional agreements between the Developer and the City, as contemplated and referred to elsewhere in this Agreement, are intended to and shall govern the Project.

It is expressly acknowledged by the Parties that additional agreements may be entered into by or among the Parties and all such shall be included as Development Documents.

7.11 **Effective Date.** This Amended Agreement shall be **effective as of the date of signing of the approval ordinance by the Mayor.** This Amended Agreement shall supersede and replace the original Development Agreement dated September 2012.

7.12 **Termination.** This Agreement shall terminate upon mutual written agreement of the parties hereto or on the date that is thirty (30) years following the effective date of this Agreement, whichever occurs first.

7.13 **Further Action.** The Parties hereby agree to execute and deliver such additional documents and to take all further actions as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

7.14 **Effect of Agreement; Release of Claims.** Nothing in this Agreement shall be construed to relieve Developer of any obligations imposed on Developer by Federal or State laws, City and County ordinances, regulations, or standards, except as otherwise expressly provided in this Agreement (e.g., vesting under the WSPA). It is the intent of the Parties that this Agreement serve as a complete release and waiver by Developer of any and all claims Developer has or may claim to have with respect to the City's application of the 2009 City Code and related published protocols and policies and other applicable zoning, engineering, fire safety and building requirements to the Project or the imposition of any requirement expressly set forth in this Agreement or the Development Documents. The intent of the parties is that any issue of unconstitutionality or other violation of law or equity by one party regarding demands made in connection with an application as to the other party shall be clearly and forcefully brought to the fore by the other party during the discussions and public hearings associated with such applications for resolution prior to approval of such applications. The parties do not desire the situation of the parties moving forward with construction and development of a property under an approved application only to face legal challenge after the fact as to legal claims that could have been raised and settled or judicially determined before any funds or time was expended by any party.

IN WITNESS WHEREOF, the Parties have executed this Development Agreement.

WEST JORDAN CITY, a municipality and political subdivision of the State of Utah

By:_____
Kim V. Rolfe, Mayor

ATTEST:

_____
Melanie Briggs, City Recorder

CITY ACKNOWLEDGEMENT

STATE OF UTAH)
: ss.
County of Salt Lake)

On this ____ day of _____, 2015, before the undersigned notary public in and for the said state, personally appeared Kim V. Rolfe, known or identified to me to be the Mayor of West Jordan City and the person who executed the foregoing instrument on behalf of said City and acknowledged to me that said City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

_____
Notary Public for Utah
Residing at:_____
My Commission Expires:_____

PETERSON DEVELOPMENT COMPANY LLC,
a Utah Limited Liability Company,

By _____
Its Authorized Managing Member

DEVELOPER ACKNOWLEDGEMENT

STATE OF UTAH)
: ss.
County of Salt Lake)

On this 22nd day of January, 2015, before the undersigned notary public in and for the said state, personally appeared Barrett Peterson, known or identified to me to be the authorized managing member of Peterson Development Company LLC, and the person who executed the foregoing instrument and acknowledged to me that said company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

_____
Notary Public for Utah
Residing at: Davis County
My Commission Expires: 11/20/15

VICTOR BARNES
Notary Public State of Utah
My Commission Expires on:
November 20, 2015
Comm. Number: 649857

Exhibit A
Concept Plan

Exhibit B
City Code Section 8-3B-4

8-3B-4: REIMBURSEMENT FOR SYSTEM IMPROVEMENTS:

A. Authorized: Improvements specifically listed but not yet built in the city capital facilities plan (CFP) may be constructed by the developer out of the CFP planned sequence if such construction is acceptable to the city and does not create unreasonable collateral hardships to the infrastructure system. The developer may request a reimbursement agreement, pursuant to provisions of this title. The eligible costs shall not exceed the costs upon which the impact fees were established. The city manager or designee shall establish a priority for the CFP improvements, and eligible costs may be reimbursed from impact fees collected, after higher priority projects in the CFP have been adequately funded.

B. Expiration: The reimbursement for system improvements may continue until such time as the cumulative reimbursement amount being collected as, and paid from, impact fees reaches an amount equal to the maximum reimbursement for said system improvements. No reimbursement shall be due or payable in excess of the amount of impact fees available, after higher priority projects in the CFP have been adequately funded. (2001 Code § 89-6-413; amd. 2009 Code; Ord. 09-31, 10-14-2009)