

WHEN RECORDED RETURN TO:

Toquerville City
Attn: City Recorder
212 N Toquer Blvd.
Toquerville, UT 84532

Record Against the Real Property
Described in **Exhibit A**

PRE-ANNEXATION AGREEMENT

THIS PRE-ANNEXATION AGREEMENT (“Agreement”) is entered into as of this _____ day of _____, 2026, by and between SOLARA COMMUNITIES, LLC, a Utah limited liability company (“Owner”) on the one hand, and TOQUERVILLE CITY, a Utah municipal corporation, on the other hand (the “City”). Owner and the City are hereinafter sometimes referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

- A. Developer intends to commence certain commercial and residential development on the real property described more particularly on **Exhibit A** hereto (the “Property”).
- B. The Property is approximately 200 acres in size. Owner intends to develop the Property to include both commercial and residential development, including up to 1,500 residential units, including single-family residential dwellings, townhomes, and multi-family units, as well as commercial space, as more fully reflected in the plan attached hereto as **Exhibit B** (the “Overall Plan”).
- C. The Property is currently located in unincorporated Washington County, Utah, but Owner intends to seek annexation into the City.
- D. Pursuant to Utah Code § 10-20-508, “...a municipality may enter into a development agreement containing any term that the municipality considers necessary or appropriate to accomplish the purposes of this chapter, including a term relating to... (c) an annexation...”
- E. The Parties understand and acknowledge that this Agreement is a “development agreement” as contemplated by Utah Code § 10-20-102(18).
- F. The Parties enter into this Agreement to provide the terms for potential annexation and development of the Property.
- G. This Agreement is also intended to provide a clear understanding of the legal requirements and procedure that govern the annexation of the Property, including but not

limited to Title 10, Chapter 4 of the Toquerville Municipal Code (“City Code”), Utah Code § 10-2-801 et seq., and Utah Code 10-20-101 et seq. (“LUDMA”).

- H. Toquerville City Council (“City Council”), acting pursuant to its authority under LUDMA and Utah Code § 10-2-80 *et seq.*, has made certain determinations with respect to the Property, and in the exercise of its legislative discretion, has voted to approve this Agreement.

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

AGREEMENT

- 1. Incorporation of Recitals and Exhibits.** The Recitals and exhibits are hereby incorporated by reference as part of this Agreement.
- 2. Annexation to the City.** Utah law encourages development to take place within the boundaries of cities and towns where land is within a city’s expansion area, as defined in Utah Code § 10-2-801. The Property is within expansion area identified in the City’s 2024 Annexation Policy Plan. *See Exhibit C.*
- 3. Petition.** Owner shall follow all applicable laws, regulations, and ordinances, including but not limited to, Utah Code § 10-2-401, et seq., LUDMA, and the City Code, including without limitation, § 10-4-1 et seq. (collectively, the “Annexation Process”) in seeking annexation of the Property. Upon receipt of a complete petition that complies with all applicable legal requirements (the “Petition”), the City shall complete its review process in accordance with the Annexation Process and this Agreement.
- 4. City Review of Petition; No Duty to Approve.** The City shall process, consider, and act upon the Petition in accordance with the Annexation Process. Nothing in this Agreement shall be construed to require the City to approve the Petition, to take action within any particular time period, or to refrain from continuing the matter, and City Council retains sole and absolute legislative discretion to approve, conditionally approve, or deny the Petition as permitted by law. Owner acknowledges that the time required to process and consider the Petition may be affected by, among other things, the completeness or accuracy of the Petition materials, the need for additional information or revisions, City staffing and scheduling constraints, coordination with third parties, statutory notice and hearing requirements, boundary adjustments, public comment, the filing or resolution of any protest, and any other circumstances permitted by law. Owner shall cooperate in good faith and provide all information, documents, corrections, fees, and revisions reasonably requested by the City to facilitate the City’s review.
- 5. Fiscal Impact Analysis.** Concurrent with the City’s consideration of the Petition, Owner shall, at Owner’s sole cost and expense, prepare and submit to the City a fiscal impact analysis report (“FIA”) in a form and substance acceptable to the City. At a minimum, the

FIA shall address the purpose, scope, methodology, and use of findings described in Subsections (a) through (c) below.

- a. **Purpose.** The FIA shall evaluate the anticipated short-term and long-term fiscal impacts to the City arising from the proposed annexation and development of the Property. At a minimum, the FIA shall identify projected City revenues and the projected costs to provide municipal services to the Property at the anticipated service levels, including without limitation: police, fire, streets, parks, utilities, administration, and other applicable municipal services.
- b. **Scope and Methodology.** The FIA shall be prepared by a qualified and experienced financial or economic consultant. The FIA shall include (i) a summary of all material assumptions, (ii) identification of data sources, and (iii) a description of the methodologies used.
- c. **Use of Findings.** The City may rely on the FIA in evaluating whether the proposed annexation and development are expected to be fiscally neutral or fiscally positive to the City. If the FIA projects a fiscal deficit or other adverse fiscal impact, the City may, as a condition of annexation approval, require mitigation measures reasonably designed to address such deficit or impact.

6. Zoning Upon Annexation; Development Standards.

- a. **Base Zoning Upon Annexation.** Upon issuance of a Certificate of Annexation by the Lieutenant Governor, the Property shall be zoned Multiple Use (MU-20) under Section 10-11A-1 *et seq.* of the City Code (the “Base Zoning”). The Base Zoning shall apply to the Property as the underlying zoning designation.
- b. **Development Agreement.** Owner acknowledges that development of the Property may only occur in accordance with either (i) the Base Zoning and other applicable provisions of the City Code, or (ii) the development, standards, uses, density/intensity, phasing, and other terms expressly authorized in the Development Agreement attached hereto as **Exhibit D** (the “Development Agreement”), which is incorporated herein by reference. No other basis for development approval is created by this Agreement.
- c. **Default to Base Zoning.** The Development Agreement shall apply only if Owner timely exercises its rights thereunder. If Owner does not timely exercise its rights under the Development Agreement, or if the Development Agreement expires or is terminated, then the Base Zoning shall exclusively govern all development of the Property.

7. Compliance With Applicable Law.

Owner shall comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and codes in connection with the annexation, subdivision, development, and use of the Property, as the same may be amended from time to time.

8. Vested Rights.

- a. *Vested Rights.* If the City approves the Petition to annex the Property, in addition to vested rights under Utah Code § 10-9a-509, the Owner shall be entitled to assume and rely upon all rights, approvals, conditions, density allocations, and other entitlements granted under the Development Agreement, as if such rights and approvals were granted by the City upon annexation.
- b. *Reserved Legislative Powers.* The Parties agree and acknowledge that nothing in this Agreement requires the City to approve any annexation petition the Owner may file and that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City those police powers that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of the Owner under the terms of this Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed legislative changes affecting the vested rights of the Owner under this Agreement shall be of general application to all development activity in the City; and, unless the City declares an emergency, Owner shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Property under the compelling, countervailing public interest exception to the vested rights doctrine.

9. Successors and Assigns.

- a. *Binding Effect.* This Agreement shall be binding upon all successors and assigns of Owner in the ownership or development of any portion of the Property.
- b. *Assignment.* Owner may not assign this Agreement (or any right or obligation under this Agreement) to any person or entity without the City's prior written consent. Any permitted assignment must assign all of Owner's rights and responsibilities under this Agreement. A request for consent may be submitted by written notice to the City in accordance with this Agreement. As a condition to any assignment, the proposed assignee shall execute an acknowledgment and consent, in a form acceptable to the City, agreeing to be bound by the terms of this Agreement.

10. Default.

- a. *Notice.* If Owner or the City fail to perform their respective obligations under this Agreement, the Party believing that a default has occurred shall provide notice to the other Party as provided herein ("Notice of Default").
- b. *Contents of the Notice of Default.* The Notice of Default shall:

- i. *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; and
 - ii. *Specify Materiality.* Identify why the default is claimed to be material.
- c. *Meet and Confer.* Upon the issuance of a Notice of Default, the Parties shall meet within ten (10) business days and confer in an attempt to resolve the issues that are the subject matter of the Notice of Default.
- d. *Remedies.* If, after meeting and conferring, the Parties are not able to resolve the default, then the Parties may pursue any of the following remedies:
 - i. *Legal Remedies.* The rights and remedies available at law and in equity, including, but not limited to injunctive relief, specific performance and termination, but not including damages or attorney's fees.
 - ii. *Enforcement of Security.* The right to draw on any security posted or provided in connection with the development of the Property and relating to remedying of the particular default.
 - iii. *Withholding Further Development Approvals.* The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Property and on those properties owned by the defaulting Party.
- e. *Public Meeting.* Before any remedy in Section 10(d) may be imposed by the City, the Party alleged to be in default shall have the right to request an opportunity to appear at a public meeting of the City Council to address the claimed default. The Party alleged to be in default must submit a written request for such appearance to the City within ten (10) calendar days after receipt of the City's written notice of default. If a timely request is made, the City shall place the matter on the agenda for a City Council meeting occurring within a reasonable time thereafter.
- f. *Cure Period; Extended Cure Period.* The defaulting Party shall have sixty (60) calendar days from receipt of the Notice of Default to cure the default (the "Cure Period"). If the default cannot reasonably be cured within the Cure Period, the Cure Period may be extended for such additional time as the Parties may agree in writing for good cause shown, provided the defaulting Party commences the cure within the Cure Period and thereafter diligently pursues the cure to completion.

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

12. Force Majeure. All time period imposed or permitted pursuant to this Agreement shall automatically be extended and tolled for: (a) period of any and all moratoria imposed by the City or other governmental authorities in any respect that materially affects the development of the Property; or (b) by events reasonably beyond the control of Owner including, without limitation, inclement weather, war, strikes, unavailability of materials at commercially reasonable prices, and acts of God, but which does not include financial condition of the Owner or their successors.

13. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the Party for whom intended or if mailed, be by certified mail, return receipt requested, postage prepaid to such Party at its address shown below:

OWNER: SOLARA COMMUNITIES, LLC

CITY: TOQUERVILLE CITY
Attn: City Recorder
212 N Toquer Blvd.
Toquerville, UT 84774

Any Party may change its address or notice by giving written notice to the other Parties in accordance with the provisions of this Section.

14. Agreement to Run with the Land. This Agreement shall be recorded in the Office of the Washington County Recorder against the Property. The covenants, conditions, and obligations set forth herein are intended to run with the land and shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, and any other persons or entities acquiring any right, title, or interest in or to any portion of the Property, including any successor owner or developer.

15. Entire Agreement; Amendments. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, discussions, representations, understandings, and agreements, whether oral or written. This Agreement may be amended only by a written instrument executed by all Parties.

16. Headings. The headings used in this Agreement are for convenience only and shall not be used to interpret, construe, or limit any provision of this Agreement.

17. Non-Liability of City Officials or Employees. No elected or appointed official, officer, employee, agent, or representative of the City shall be personally liable to Owner, or to any successor or assign of Owner, for any obligation of the City arising out of or relating to this Agreement, or for any claim based upon any alleged breach or default by the City.

- 18. No Third-Party Rights.** This Agreement is entered into solely for the benefit of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity other than the City and Owner any legal or equitable right, benefit, or remedy of any nature. Only the City and Owner may enforce, waive, or modify the provisions of this Agreement.
- 19. Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions. The remaining provisions shall remain in full force and effect as though the invalid or unenforceable provision had not been included.
- 20. Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving Party.
- 21. Survival.** All agreements, covenants, representations, and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.
- 22. Public Information.** The Parties understand and agree that all documents related to this Agreement shall be public documents, as provided in Utah Code § 63G-2- 101 *et seq.*
- 23. Governing Law; Venue.** This Agreement and the performance hereunder shall be governed by and construed in accordance with the laws of the State of Utah. Venue for any action arising out of or relating to this Agreement shall lie exclusively in the state courts located in Washington County, Utah (or, if federal jurisdiction exists, in the United States District Court for the District of Utah).
- 24. Counterparts.** This Agreement may be executed in multiple counterparts which shall constitute one and the same document.
- 25. Legal Review; Construction.** Each Party represents and warrants that such Party has had a full and fair opportunity to review this Agreement, to consult with legal counsel of such Party's choosing, and to negotiate the terms of this Agreement. Each Party further acknowledges and agrees that this Agreement is entered into voluntarily and with full knowledge of its legal effect. The Parties agree that no rule of construction shall be applied against any Party on the ground that such Party drafted or caused this Agreement to be drafted.
- 26. Governmental Immunity Act of Utah.** The Parties agree and understand that the City is a governmental entity entitled to the protections and safeguards of the Governmental Immunity Act of Utah, Utah Code § 63G-7-101 *et. seq.* Except as may be provided in Utah Code § 63G-7-301(1)(a) (i.e., waiver as to the City's contractual obligations under

Exhibit A
(Legal Description of the Property)

Exhibit B
(Overall Plan)

Exhibit C
(Expansion Area Identified in City's 2024 Annexation Policy Plan)

Exhibit D
(Development Agreement)