

REQUEST FOR COUNCIL ACTION

SUBJECT: MAVERIK @ THE HIGHLANDS SUBDIVISION

SUMMARY: Consider approving and authorizing the Mayor to sign a Development Agreement for the Maverik @ the Highlands Subdivision located at approximately 5700 West 7800 South.

FISCAL:
IMPACT: None.

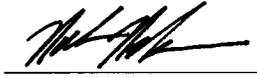
STAFF RECOMMENDATION:
Staff recommends that City Council approve the Development Agreement as prepared.

MOTION RECOMMENDED:
I move to approve Resolution 15-171 authorizing the Mayor to execute the Development Agreement by and among the City of West Jordan, Maverik, Inc., and Peterson Development Company.

Prepared by:


Loretta Grundvig
ODA Dev Coordinator

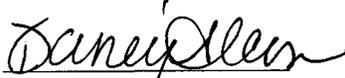
Reviewed by:


Nate Nelson
City Engineer

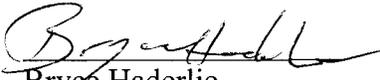
Reviewed by:


Wendell Rigby P.E.
Public Works Director

Reviewed as to legal form:


Darien Alcorn
Interim City Attorney

Recommended by:


Bryce Haderlie
Interim City Manager

BACKGROUND DISCUSSION:

The Maverik @ the Highlands subdivision is a one lot subdivision with a remainder parcel. It is being subdivided for the purpose of creating a commercial lot. The City has also received a site plan application for development of a Maverik on the lot. Because the property is within the Highlands Subdivision, it is governed by the Highlands master development agreement and is required to have its own development agreement. In part, the Maverik development agreement recognizes that the property is within the Highlands assessment area and whether any obligations of the master development agreement are assigned.

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 15-141

A RESOLUTION AUTHORIZING THE EXECUTION BY THE MAYOR OF THE DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF WEST JORDAN, MAVERIK, INC. AND PETERSON DEVELOPMENT

Whereas, the City Council of the City of West Jordan has reviewed the Maverik Subdivision Development Agreement (a copy of which is attached as exhibit A); and

Whereas, the City Council of the City of West Jordan desires that Maverik Subdivision Development Agreement be executed by the Mayor; and

Whereas, the Mayor is authorized to execute the agreement.

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

Section 1. After approval as to legal form by the City Attorney, the Mayor is hereby authorized and directed to execute the Maverik Subdivision Development Agreement.

Section 2. This Resolution shall take effect immediately upon passage.

Adopted by the City Council of West Jordan, Utah, this _____ day of _____, 2015.

CITY OF WEST JORDAN

By: _____
Mayor Kim V. Rolfe

ATTEST:

Melanie S. Briggs, City Clerk/Recorder

Voting by the City Council

"AYE"

"NAY"

Jeff Haaga

Judy Hansen

Chris McConnehey

Chad Nichols

Sophie Rice

Ben Southworth

Mayor Kim V. Rolfe

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

For Recording Purposes Do
Not Write Above This Line

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 Maverik, Inc., a Wyoming corporation (the "Developer"), and Peterson Development Company, LLC, a Utah limited liability company for purposes of assignment only. The City and the Developer may from time to time be collectively referred to as the "Parties."

RECITALS

A. Developer has prepared and presented to the City a development application for the Maverik Subdivision (the "Project") upon the property described in Exhibit A (the "Property").

B. On or about September 27, 2012, the City entered into a development agreement by and between City of West Jordan and Peterson Development Company, LLC (the "Master Developer"), entitled "Development Agreement The Highlands Sub-Areas Master Plan" (the "Master Development Agreement"), to which the Property is subject.

C. The City and Developer desire to acknowledge applicability of certain terms and conditions of the Master Development Agreement, including but not limited to acknowledgment of Developer's awareness of the City's creation of the assessment area envisioned in said agreement.

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:

1. **Recitals and Exhibits.** The above Recitals and all Exhibits hereto are hereby incorporated by reference into this Agreement.
2. **Conditions Subsequent.** Each of the City and 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 within two years after the effective date of this

Agreement, this Agreement shall be rendered null and void and none of the Parties shall have any further obligation to the other arising out of this Agreement. For purposes of this Agreement, the following shall constitute the "Conditions Subsequent": (a) recordation of the final subdivision plat for the Maverik Subdivision.

3. Transfer/Assignment of Master Developer Obligations. Development of the Project shall comply with the Master Development Agreement. Sale of lots is not an assignment unless designated by the Master Developer. Pursuant to Section 1.4.1 of the Master Development Agreement, the following Master Developer obligations are assigned to and accepted by Developer: None.

4. Maintenance of Detention Basins, Planters, Trees and Other Landscaping in Street Median Spaces and Alongside Streets and Sidewalks Appurtenant to, or Within, the Project. The Developer understands that the Property is subject to An Ordinance Designating and Establishing the Highlands Assessment Area Encompassing the Highlands Master Development Area, recorded on 8/12/2013 with the Salt Lake County Recorder as entry number 11703231, Book 10168, Page 1714-1720.

5. Recordation; Effect on Master Development Agreement. 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: (a) shall be a burden on the real property constituting the Project; (b) shall be appurtenant to and for the benefit of the City and shall run with the land; and (c) shall be in addition to commitments and restrictions set forth in the Master Development Agreement, except as otherwise expressly stated herein. Building permits may be issued after the City has accepted all public improvements for the development, or a building permit may be issued for a building for which the following requirements are met: (1) developer has recorded a plat; (2) developer has posted the required improvement assurance with the City; (3) there is a paved, 20 foot wide, fire apparatus access road designed to carry 80,000 GVW that will allow emergency response access within 150 feet of all portions of the exterior of the structure; (4) any portion of the access road that is a dead end greater than 150 feet has a turnaround; (5) all fire lines and hydrants have been installed, tested, approved and operable; and (6) all other City Code requirements (except the requirement for City acceptance of public improvements) for building permit issuance have been met. Notwithstanding building permit issuance, permanent or temporary occupancy will not be permitted prior to the City's acceptance of all public improvements for the development. If the building is sold prior to the City's acceptance of public improvements, developer will notify the purchaser via the purchase agreement of this restriction for obtaining a certificate of occupancy. Issuance of building permits will not affect developer's obligation to complete all public improvements.

8. General.

- a. **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.
- b. **Captions and Construction.** This Agreement shall be construed according to its fair and plain meaning and as if prepared by all Parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this

Attention: Justin Peterson

Developer: Maverik, Inc.
Attn.: Real Estate Department
880 W. Center Street
North Salt Lake, Utah 84054

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.

- i. **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 development. It is expressly acknowledged by the Parties that additional agreements may be entered into by or among the Parties.
- j. **Effective Date.** This Agreement shall be effective upon the signing and execution of this Agreement by all Parties which, upon its occurrence, shall be deemed to have occurred as of the Effective Date.
- k. **Termination.** This Agreement shall terminate upon mutual written agreement of the parties hereto, failure of the Conditions Subsequent to occur on or before two years after the Effective Date, whichever occurs first.
- l. **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.
- m. **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. 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 to the development or the imposition of any requirement expressly set forth in this Agreement, the Master Development Agreement or the Development Documents. Moreover, Developer hereby releases and waives any and all claims Developer may have against the City with respect to any land use application submittals, acceptances, approvals, denials or processing with respect to the Project occurring prior to the Effective Date.

[signatures and acknowledgements to follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement.

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

By: _____
Kim V. Rolfe, Mayor

ATTEST: _____
Melanie Briggs, City Clerk

Maverik, Inc.,
a Wyoming corporation

By: _____

Its: _____

Print Name: _____

DEVELOPER ACKNOWLEDGEMENT

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this ____ day of _____, 2015, before the undersigned notary public in and for the said state, personally appeared _____, known or identified to me to be the _____ of Maverik, Inc., a Wyoming corporation, and the person who executed the foregoing instrument and acknowledged to me that said corporation 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: _____

[further signatures and acknowledgements to follow]

FOR PURPOSES OF ASSIGNMENT ONLY:

Peterson Development Company, LLC,
a Utah limited liability company,

By: _____

Its _____

Print Name: _____

MASTER DEVELOPER 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 _____, known or identified to me to be the _____ 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: _____
My Commission Expires: _____

EFFECTIVE DATE: _____

EXHIBIT "A"

Legal Description of the Property

Future Lot 1 of the forthcoming Maverik Highlands Subdivision lying within the Northeast Quarter of Section 35, Township 2 South, Range 2 West, Salt Lake Base and Meridian, U.S. Survey in Salt Lake County, Utah; temporarily described metes and bounds as follows:

Beginning at a point on the South Line of 7800 South Street as dedicated to 63.00 foot half-width located 1342.43 feet South 89°58'37" West along the Section Line and 63.00 feet South 0°04'35" West from the Northeast Corner of said Section 35; and running thence North 89°58'37" East 151.25 feet along said South Line; thence South 55°47'27" East 5.18 feet to a point of curvature; thence Southeasterly along the arc of an 83.50 foot radius curve to the right a distance of 45.98 feet (Central Angle equals 31°33'10" and Long Chord bears South 40°00'52" East 45.41 feet) to a point of compound curvature; thence Southeasterly along the arc of a 283.50 foot radius curve to the right a distance of 75.78 feet (Central Angle equals 15°18'54" and Long Chord bears South 16°34'50" East 75.55 feet) to a point of tangency; thence South 8°55'23" East 47.77 feet; thence South 0°02'26" West 146.11 feet; thence West 213.99 feet; thence North 0°04'35" East 303.33 feet to the point of beginning.

Tax Parcel No. 20-35-200-039