

WHEN RECORDED, RETURN TO:

**CITY OF SARATOGA SPRINGS**

Attn: City Manager  
1307 N. Commerce Drive  
Saratoga Springs, Utah 84045

**AMENDED AND RESTATED  
MASTER DEVELOPMENT PLAN AGREEMENT  
FOR  
MT. SARATOGA PROJECT**

THIS AMENDED AND RESTATED MASTER DEVELOPMENT PLAN AGREEMENT FOR MT. SARATOGA PROJECT (this “**Agreement**”) is entered into and effective as of \_\_\_\_\_, 2016, by and among LEADING EDGE DEVELOPMENT, LLC, a Utah limited liability company (“**Edge**”), and DCP SARATOGA LLC, a Utah limited liability company (“**DCP**”, and together with Edge, individually and collectively, the “**Developer**”), and the CITY OF SARATOGA SPRINGS, a municipal corporation and political subdivision of the State of Utah (the “**City**”) (individually a “**Party**” and collectively the “**Parties**”).

This Agreement amends, replaces, and restates in its entirety that certain Master Development Plan Agreement for Mt. Saratoga Project between the City and Mt. Saratoga, Inc., Developer’s predecessor in interest, dated January 28, 2004 and recorded February 9, 2004 as Entry No. 14908:2004 in the Official Records of Utah County, as amended and modified by that certain Amendment to Master Development Plan Agreement for Mt. Saratoga Spring Project dated September 14, 2004 and recorded June 27, 2007 as Entry No. 93455:2007 (hereafter known as the “**Saratoga Heights Project**”) dated June 26, 2007 (collectively, as amended, the “**Original Development Agreement**”).

**RECITALS:**

- A. DCP owns approximately 688.05 acres of real property located within the municipal boundaries of the City of Saratoga Springs, Utah County, State of Utah, as more particularly described in Exhibit “A” (the “**Property**”) attached hereto and incorporated herein.
- B. DCP and Edge have entered into an agreement providing for the development of the Property by DCP and Edge.
- C. Developer desires and intends to develop the Property as a master-planned community to be known as Mt. Saratoga (the “**Project**”) as generally depicted on a conceptual use map prepared by Developer and attached hereto as Exhibit “B” and incorporated herein (the “**Use Map**”).
- D. Developer’s predecessor in interest and the City previously entered into the Original Development Agreement in connection with the planned development of the Property. Developer and the City desire to amend, replace, and restate the Original Development Agreement

in its entirety to reflect the agreement of the Parties with respect to the development of the Property as set forth herein.

E. Developer has filed with the City a complete application for a rezone and general plan amendment to change the Property from the current zone and general plan designation to Planned Community (the “**Planned Community District**”) and approve the Zoning and Land Use Map to enable development of the Project in a manner consistent with the intent of Original Development Agreement, all as provided in the City’s Land Development Code (collectively, the “**Planned Community Application**”). At the time the Original Development Agreement was entered into, the Planned Community District zoning designation was not available, which zoning designation is intended for larger developments like the Project.

F. In connection with the Planned Community Application, Developer filed with the City a complete application to adopt a Community Plan for the Project as provided in the City’s Land Development Code (the “**Community Plan**”).

G. On \_\_\_\_\_, the City’s Planning Commission recommended approval of the Planned Community Application and the Community Plan and forwarded the application to the City’s City Council for consideration.

H. On \_\_\_\_\_, the City’s City Council approved the Planned Community Application (the “**Planned Community District Approval**”), the Community Plan, the rezoning of the Project in accordance with the Community Plan, and an amendment to the City’s General Plan, all subject to approval of this Agreement.

I. The City finds the Planned Community District Approval, the Community Plan, and the Use Map (i) do not conflict with any applicable policy of the City’s General Plan; (ii) meet the spirit and intent of the City’s Land Development Code; (iii) will allow integrated planning and design of the Property and, on the whole, better development than would be possible under conventional zoning regulations; and (iv) meet applicable use limitations and other requirements of the Planned Community District.

J. The City finds that the Community Plan: (a) is consistent with the goals, objectives, and policies of the General Plan, with particular emphasis on community identity, distinctive qualities in communities and neighborhoods, diversity of housing, integration of uses, pedestrian and transit design, and environmental protection; (b) does not exceed the number of equivalent residential units and square footage of nonresidential uses of the General Plan; (c) contains sufficient standards to guide the creation of innovative design that responds to unique conditions; (d) is compatible with surrounding development and properly integrates land uses and infrastructure with adjacent properties; (e) includes adequate provisions for utilities, services, roadway networks, and emergency vehicle access; and public safety service demands will not exceed the capacity of existing and planned systems without adequate mitigation; (f) is consistent with the guiding standards listed in Section 19.26.06; and (g) contains the required elements as dictated in Section 19.26.07. More specific findings are contained in the written minutes and adopted findings and conditions of the Planning Commission attached hereto as Exhibit \_\_, the written minutes and adopted findings and conditions of the City Council attached hereto as Exhibit \_\_, and in the Report of Action and staff reports collectively attached hereto as Exhibit \_\_.

Development of the Property shall be consistent with the Community Plan as adopted with the conditions of approval in Exhibits \_\_, and

K. The City believes, based upon Developer's representations, that Developer has (i) sufficient control over the Property to ensure development of the Project will occur as approved and (ii) the financial capability to carry out the Project in accordance with this Agreement.

L. Developer desires to take all steps necessary to finalize approval of the Project and develop the Project as provided in this Agreement.

M. Each of the Parties is willing to enter into this Agreement in order to implement the purposes and conditions of both the Planned Community District Approval, the Community Plan, and the Use Map for the Project and to more fully set forth the covenants and commitments of each Party, while giving effect to applicable state law and the City's Land Development Code.

N. Acting pursuant to its authority under Utah Code Annotated, §§ 10-9a-101, *et seq.* ("**Utah Municipal Land Use, Development, and Management Act**"), and after all required public notice and hearings, the City, in its exercise of its legislative discretion has determined that entering into this Agreement furthers the purposes of the (i) Utah Municipal Land Use, Development, and Management Act, (ii) the City's General Plan, and (iii) the City's Land Development Code. As a result of such determination the City (i) has elected to approve the Project in a manner resulting in negotiation, consideration, and approval of this Agreement and (ii) has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of the City.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

### SECTION I. DEFINITIONS

Any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by the City's Land Development Code in effect on the date of the Application for the Planned Community District or, if different, by this Agreement or applicable State statute (as provided in the 2013 amended Section 102, *Definitions*, of the Utah "Impact Fee Act", Utah Code Annotated, Chapter 36a), as the case may be. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

1.1 "**City's Standard Technical Specifications and Drawings**" means the standards and specifications that the City uses for construction of public and private improvements.

1.2 "**Community Plan**" means the Community Plan for the Project as approved by the City pursuant to Chapter 19.26 of the Land Development Code.

1.3 "**Culinary Water Master Plan**" means the master plan to provide culinary water within the Project as approved by City and attached hereto as Exhibit "E".

1.4 **“Density”** means the number of Equivalent Residential Units per acre as shown on the Use Map and as authorized under this Agreement.

1.5 **“Density Transfer”** means the ability of Developer to transfer densities as provided in Paragraph 2.4.4 of this Agreement.

1.6 **“Design Guidelines”** means the design standards and guidelines attached hereto as Exhibit “C”.

1.7 **“Developer”** means, individually and collectively, Leading Edge Development, LLC, a Utah limited liability company, and DCP Saratoga LLC, a Utah limited liability company, or their approved replacement developer, assigns and successors in interest, whether in whole or in part.

1.8 **“Development Activity”** as defined in U.C.A. § 11-36a-102(3) as amended means any construction or expansion of a building, structure, site, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for Public Facilities.

1.9 **“Development Guidelines”** means collectively: (a) the City’s Standard Technical Specifications and Drawings; (b) requirements in the Community Plan and applicable Village Plan(s); and (c) the Land Development Code.

1.10 **“Equivalent Residential Unit”** means (a) a unit of measurement used to measure and evaluate development impacts on public infrastructure including water, sewer, storm drainage, parks, roads, and public safety of proposed residential and non-residential land uses; and (b) is intended to represent the equivalent impact on public infrastructure of one single family residence.

1.11 **“Final Plat”** means a final subdivision plat of property, located within an approved Village Plan, which is approved by the City’s Land Use Authority and is recorded in the Official Records in Office of the Recorder of Utah County, State of Utah.

1.12 **“Hillside Development Standards”** means the standards in Chapter 19.10 of the City Code, as amended.

1.13 **“Land Development Code”** means the City of Saratoga Springs Zoning and Subdivision Ordinances, Title 19, as amended.

1.14 **“Land Use Application”** means any application for development within the Project submitted to the City by Developer or any other person subsequent to the execution of this Agreement.

1.15 **“Master Association”** means the association under the Master Declaration, its successors or assigns.

1.16 **“Master Declaration”** means a declaration of covenants, conditions and restrictions and reservation of easements for the Project, which will be created and recorded against the Property prior to recordation of the first Final Plat (as distinguished from various Phase or

Neighborhood Declarations, which will be created and recorded with individual phases and subdivision plats throughout the Project).

1.17 **“Multi-Family Use Neighborhoods”** means all Neighborhoods identified on the Use Map as Multi-Family, in which multi-family uses are allowed.

1.18 **“Neighborhoods”** means all Neighborhoods identified within each Village on the Use Map.

1.19 **“Ordinances”** means the City of Saratoga Springs Municipal Ordinances, including the Land Development Code,

1.20 **“Open Space Master Plan”** means the master plan for Open Space within the Project as approved by City and attached hereto as Exhibit “G”.

1.21 **“Open Space Standards”** means the standards attached hereto as Exhibit “L” which shall supersede any conflicting Ordinance.

1.22 **“Planning Commission”** means the City of Saratoga Springs Planning Commission.

1.23 **“Planned Community District Approval”** means the City’s approval of the Use Map and zone change request for the Project on \_\_\_\_\_.

1.24 **“Project”** means the improvement and development of the Project pursuant to this Agreement, the Development Guidelines, and the City’s Ordinances as generally depicted on the Use Map.

1.25 **“Project Improvements”** as defined in U.C.A. § 11-36a-102(14) as amended means site improvements and facilities that are: (i) planned and designed to provide service for development resulting from a Development Activity; (ii) necessary for the use and convenience of the occupants or users of development resulting from a Development Activity; and (iii) not identified or reimbursed as a System Improvement.

1.26 **“Proportionate Share”** as defined in U.C.A. § 11-36a-102(15) as amended means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any Development Activity.

1.27 **“Public Facilities”** means as defined in U.C.A. § 11-36a-102(16) as amended.

1.28 **“Use Map”** means the conceptual use map attached hereto as Exhibit “B”, and submitted to the Planning Commission and City Council as part of the Community Plan.

1.29 **“Sanitary Sewer Master Plan”** means the master plan to provide sanitary sewer within the Project as approved by City and attached hereto as Exhibit “H”.

1.30 **“Secondary Water Master Plan”** means the master plan to provide secondary water within the Project as approved by City and attached hereto as Exhibit “F”.

1.31 **“Single-Family Uses”** means all Neighborhoods identified on the Use Map as Single-Family, in which single-family uses are allowed.

1.32 **“Storm Drainage Master Plan”** means the master plan to provide storm drainage within the Project as approved by the City and attached hereto as Exhibit “M”.

1.33 **“Street Cross Sections Master Plan”** means the master plan for street cross sections within the Project as approved by City and attached hereto as Exhibit “I”.

1.34 **“System Improvements”** as defined in U.C.A. § 11-36a-102(21) as amended means (i) existing Public Facilities that are: (A) identified in the impact fee analysis under U.C.A. § 11-36a-304; and (B) designed to provide services to service areas within the community at large; and (ii) future Public Facilities identified in the impact fee analysis under U.C.A. § 11-36a-304 that are intended to provide services to service areas within the community at large.

1.35 **“Transportation Network Plan”** means the master plan for transportation within the Project as approved by City and attached hereto as Exhibit “J”.

1.36 **“Village”** means a separately developed portion of the Project for which a Village Plan and one (1) or more corresponding subdivision applications are filed with the City and thereafter approved by the City.

1.37 **“Village Plan”** means a development plan submitted for a Village as provided in the City’s Land Development Code.

## SECTION II. PLANNED COMMUNITY DISTRICT ZONE

2.1 **Designation as a Planned Community District.** In compliance with the requirements of Utah Code Ann. § 10-9a-501 *et seq.*, applicable provisions of the City’s Land Development Code, and following a public hearing with the Planning Commission on \_\_\_\_\_, and a public hearing with the City Council on \_\_\_\_\_, the City, pursuant to its legislative authority, approved the Planned Community District, the Community Plan, and the Use Map. The City hereby approves the findings contained in the staff report and Report of Action attached hereto as Exhibit “D”. The City agrees development of the Project may proceed as provided in this Agreement and acknowledges the Use Map and Design Guidelines are consistent with the City’s Land Development Code and General Plan. Developer acknowledges that development of the Project is subject to all normally-applicable City processes as set forth in Paragraph 2.2 and the following:

### 2.1.1 The Community Plan

2.2 **Applicable Laws and Regulations.** Except as otherwise set forth in this Agreement, all development and improvements of any sort, on-site or off-site, relating to the Project shall comply with the City’s Ordinances, regulations, requirements, and procedures established by and for the City.

2.2.1 **Planned Community Approval.** Except as specified in Section 3.1.4, the Planned Community District and the Use Map shall not be affected by any inconsistent or contrary

moratorium, ordinance, resolution, rule or regulation enacted by the City that prohibits or regulates the total number of Equivalent Residential Units, land uses, and site improvements shown on the Use Map.

**2.2.2 Local Roads.** The City acknowledges and agrees it has approved the cross section design of local roads in the Project as shown in the Community Plan, Except as otherwise provided in the Community Plan and in this Agreement, such roads shall be constructed according to the City's Standard Technical Specifications and Drawings Manual.

**2.2.3 Land Use Applications.** Except as otherwise provided in Paragraphs 2.2.1 and 2.2.2 above, any Land Use Application made subsequent to the execution of this Agreement shall conform to applicable provisions of the of the City's Land Development Code in effect when a complete application is submitted, or to the extent approved with each Village and/or subdivision plat submittal.

**2.2.4 Building Permits.** Any person or entity applying for a building permit within the Project shall be subject to the building, electrical, mechanical, plumbing, fire codes and other City ordinances and fees relating to the construction of any structure in effect when such person or entity files with the City a complete application for such building permit.

**2.3 Design Guidelines.** Developer shall establish Design Guidelines for each Village. Developer and Master Association shall be solely responsible to enforce the Design Guidelines to the extent such guidelines exceed the City Ordinance requirements. Nevertheless, as a courtesy to Developer and the Master Association, the City, prior to issuing any building permit for property within the Project, may, but shall not be obligated to, request the building permit applicant to produce a letter from Developer or the Master Association indicating the building plans which are the subject of the permit application have been approved by Developer or the Master Association.

**2.4 Zoning.** The zoning for the Project is the Planned Community District and shall be shown on the City's zoning map. The following development standards shall apply to the Project:

**2.4.1 Development Area.** The entire area of the Project shall be contained within the land described on Exhibit "A". Notwithstanding this Paragraph 2.4.1, the Parties acknowledge that the owners of other land adjacent to or surrounded by the Property may request to be included in the Project at a later date if approved by Developer. Such requests shall be made pursuant to the City's then applicable Ordinances and considered in the City's usual course of such business. Any change in the maximum development area of the Project shall be accomplished only pursuant to the City's then-applicable Ordinances and an amendment to this Agreement as provided in Paragraph 6.28 herein.

**2.4.2 Equivalent Residential Units/Residential Density.** The total number of Equivalent Residential Units permitted within the Project shall not exceed two-thousand six hundred eighty (2,680) and 2,553 residential units. The average number of Equivalent Residential Units or residential units per acre for the entire Project in the aggregate shall not exceed the number in the Community Plan, ; provided, however, that such number may be higher with respect to any individual Village. As shown on the Use Map, the Equivalent Residential Units are dispersed

throughout the Project at varying densities, which may be modified pursuant to the Density Transfer provision set forth in Paragraph 2.4.4 of this Agreement. The final design for each Village is not yet completed and the Parties acknowledge that the density designed within each Village will be determined upon review and approval of a Village Plan for each such Village. In the event the ERUs or residential units are not utilized by Developer during the term of this Agreement due to Developer's own volition, inability to provide adequate infrastructure, lack of market demand, or any other reason other than breach of this Agreement by City, the remaining unused ERUs shall expire and the property shall revert to the R-3 or equivalent zoning.

**2.4.3 Phasing.** The City acknowledges that Developer intends to submit Land Use Applications from time to time, in Developer's sole discretion, to develop and/or construct portions of the Project in Villages as generally shown on the Use Map. However, to coordinate City-provided services and facilities and services and facilities provided by other public agencies with the demand for public services and facilities generated by uses and activities within the Project, development sequencing of the Project shall provide for the logical extension, as reasonably determined by the City, of all required infrastructure and the provision of all reasonably related municipal services, including but not limited to, adequate fire protection and necessary ingress and egress. Except as specifically provided in this Agreement or the Land Development Code, such extensions shall be at the sole expense of Developer.

**2.4.4 Equivalent Residential Unit Transfers.** Since build-out of the Planned Community District will occur over many years, flexibility is necessary to respond to market conditions, site conditions, and other factors. Therefore, residential density or non-residential intensity may be transferred within the Planned Community District as necessary to improve design, accessibility, and marketability, in accordance with the guiding transfer provisions in the Community Plan. Detailed transfer provisions shall be established in the Village Plans. Transfer provisions shall adhere to the following standards:

(a) The overall intent and character of the Community Plan shall be maintained and the transfer of Equivalent Residential Units shall not alter the land use designation, or district established in the Community Plan.

(b) The maximum number of Equivalent Residential Units established in the Community Plan shall not be exceeded.

(c) The method to transfer Equivalent Residential Units shall be established within the Community Plan, provided that the transfer of Equivalent Residential Units within, into, or out of any Village established in the Community Plan shall not exceed fifteen (15%) percent without approval of the City Council. In no case shall the transfer of Equivalent Residential Units within, into, or out of any Village or Neighborhood exceed twenty (20%) percent of that established in the Community Plan.

(d) Equivalent Residential Units may not be transferred from a multi-family neighborhood or flex residential neighborhood established in the Community Plan to a single-family neighborhood, or a multi-family neighborhood to a flex residential neighborhood. Transfers may not result in an increase of multi-family units within the Community Plan.

(e) Equivalent Residential Units may not be transferred into any open space or park unless said open space or park is replaced elsewhere at an equivalent acreage and or level of improvement.

**2.4.5 Development Applications.** Each residential development application submitted by Developer and/or its assignees who have purchased portions of the Project shall, in addition to those items required by the City's Land Development Code, or any other City Ordinance, include a statement of (a) the total number of Equivalent Residential Units allowed in the Project under this Agreement; (b) the cumulative total number of Equivalent Residential Units previously approved for all of the properties within the Project from the date of approval of this Agreement to the date of the application; (c) the number of Equivalent Residential Units and densities for which a permit is sought under the particular Village application; and (d) the balance of Equivalent Residential Units remaining allowable to the Project.

**2.5 Recordation of First Final Plat.** Developer shall record the approved Final Plat for the first Village in accordance with the City's Land Development Code.

### **SECTION III. GENERAL RIGHTS AND RESPONSIBILITIES**

#### **3.1 General Rights and Responsibilities of Developer.**

**3.1.1 Development Fees.** With respect to the development of the Project, Developer accepts and agrees to comply with the application, plan examination, building and similar fees (excluding impact fees, which are addressed separately by this Agreement) of the City in effect at the time a person or entity files with the City a complete application for a subdivision or a building permit, and the City agrees and represents that any such fee schedule will be applied uniformly within the City or any service area of the City, as applicable. Developer agrees not to challenge, contest, or bring a judicial action seeking to avoid payment of or to seek reimbursement for such fees, so long as such fees comply with Utah law, are applied uniformly within the City or service area, as applicable, and Developer receives all credits and offsets against such fees as provided in this Agreement.

**3.1.2 Reliance.** The City acknowledges that Developer is relying on the execution and continuing validity of this Agreement and the City's faithful performance of the City's obligations under this Agreement in Developer's existing and continued expenditure of substantial funds in connection with the Project. Developer acknowledges that the City is relying on the execution and continuing validity of this Agreement and Developer's faithful performance of its obligations under this Agreement in continuing to perform the obligations of the City hereunder.

**3.1.3 Vested Rights Granted by Approval of the Planned Community District and Project.** To the fullest extent permissible under the law, Developer shall have the full benefit of any rights granted and vested under the Original Development Agreement except as modified herein, and this Agreement grants and vests in Developer all rights, consistent with the Planned Community District Approval, the Use Map, and the City's Land Development Code, to develop the Project according to the Use Map under applicable law as provided in Paragraph 2.2

of this Agreement, which rights shall continue for the duration of this Agreement. The Parties intend that the rights granted to Developer and the entitlements for the Project under this Agreement are both contractual and provided under the common law concept of vested rights. It is expressly understood by the City that Developer may assign all or portions of its rights under this Agreement and the Planned Community District Approval provided such assignment conforms with the requirements of, and assignees agree to be bound by the terms of, this Agreement as provided in Paragraph 5.2, below.

#### **3.1.4 Statement Regarding “Compelling, Countervailing Public Interests”.**

The City and Developer acknowledge they are familiar with the “compelling, countervailing public interest” exception to the doctrine of vested rights in the State of Utah. The City acknowledges that as of the date of this Agreement, to the best of its knowledge, information and belief, the City is presently unaware of any material facts under which a desire of the City to modify Developer’s rights under this Agreement or the Use Map would be justified by a “compelling, countervailing public interest.” In accordance with Utah law, the City shall notify Developer if any such facts come to the City’s attention after the execution of this Agreement, and shall take all required steps to maintain Developer’s vested rights as set forth in this Agreement or the Use Map.

**3.1.5 Dedication of Infrastructure Improvements.** Unless otherwise specifically provided herein, Developer shall dedicate free and clear of liens, taxes (including rollback taxes), and encumbrances, subject to the cost sharing, reimbursement, and impact fee credit obligations of the City as set forth in Paragraphs 3.2.1 and 3.2.2, below, any System Improvements in the Project to the City when such improvements are accepted by the City.

**3.1.6 Developer’s Employees and Agents.** Developer shall cause its employees and agents to act in accordance with the terms of this Agreement.

### **3.2 General Rights and Responsibilities of the City.**

**3.2.1 Project and System Improvements — Cost Sharing.** Except as otherwise provided herein, Developer shall bear the entire cost of constructing Project Improvements needed to service the Project. With respect to any System Improvements or upsized Public Facilities that will benefit any other property in addition to the Project, the City shall participate in the cost of constructing such improvements or facilities by (i) making an upfront payment to Developer; (ii) providing impact fee credits or refunds; or (iii) reimbursing Developer, in either case, in an amount agreed upon by the City and Developer.

#### **3.2.2 Impact Fee Credits; Reimbursement; and Pioneering Agreements.**

(a) **General.** If, prior to the date an impact fee would be payable as provided under the City’s Ordinances (whether through the operation of an existing Ordinance or the adoption of a new Ordinance imposing an impact fee), Developer constructs System Improvements or Public Facilities that reduce the need for System Improvements for which an impact fee is normally collected (whether through the operation of an existing Ordinance or the adoption of a new Ordinance imposing an impact fee), Developer’s cost of constructing such System Improvements or Public Facilities that reduce the need for System Improvements shall be credited against the impact fees

otherwise due. Developer shall also be given an impact fee credit for land dedicated to and accepted by the City for System Improvements or Public Facilities that reduce the need for System Improvements. In each instance, Developer shall submit to the City invoices, or other reasonably acceptable documentation, as determined by the City, demonstrating the reasonable and verified costs incurred for such System Improvements or, in the case of land, appraisals indicating the fair market value of the dedicated land. The amount of the credit shall be equal to the lesser of (i) the total amount of impact fees otherwise required, or (ii) the reasonable and verified costs of the System Improvements or Public Facilities that reduce the need for System Improvements paid by Developer and the fair market value of land at the time of dedication. At the time of the recordation of each Final Plat that includes System Improvements (and/or Public Facilities when such is applicable), the City shall begin the process to update its impact fee facilities plans and corresponding impact fee studies in order to make such System Improvements costs eligible for credit against assessed impact fees taking into account any impact fee credits due to the owners or developers of any property outside of the Project, including, without limitation, those impact fee credits and waivers set forth in this Section 3.2.2.

(b) **Culinary and Secondary Water.** Developer shall receive an impact fee credit for the following:

- (i) any System Improvements or Public Facilities that reduce the need for System Improvements; and
- (ii) any cost sharing agreed to by the City in connection with the Project relating to culinary or secondary water System Improvements or Public Facilities that reduce the need for System Improvements.

(c) **Sanitary Sewer.** In connection with any System Improvements or Public Facilities that reduce the need for System Improvements constructed by Developer for sanitary sewer, Developer shall receive reimbursement in the amount of the Upsizing Costs related to such System Improvements (and/or Public Facilities when such is applicable) in the form of a pioneering agreement in form and content reasonably acceptable to the Parties.

(d) **Roads and Intersections.** Developer shall receive an impact fee credit for

any System Improvements or Public Facilities that reduce the need for System Improvements constructed by Developer for roads or intersections;

(e) **Storm Water.** In connection with any System Improvements or Public Facilities that reduce the need for System Improvements constructed by Developer for storm water.

(f) **Existing Talus Ridge Credits.** In addition to the foregoing, Developer shall be entitled to receive and utilize any unused impact fee credits under that certain Talus Ridge Reimbursement Agreement and Release of All Claims, dated June 9, 2015, between Wasatch Land Company, a Utah corporation, and the City (“**Talus Ridge Agreement**”). The Parties acknowledge that the developer under the Talus Ridge Agreement is an affiliate of Developer and was unable to utilize all of the credits under the Talus Ridge Agreement. The City and Developer hereby agree that Developer is entitled to the benefit of such unused credits.

(g) **Application.** In applying the foregoing provisions, any impact fee which is payable shall be charged as provided under the City’s Ordinances and any impact fee credit shall be used to offset the amount of the impact fee due.

3.2.3 **Compliance with the City Requirements and Standards.** Except as otherwise provided in Paragraphs 2.2 and 3.1.3 of this Agreement, Developer acknowledges it shall comply with applicable laws and regulations, as set forth in Paragraph 2.2 of this Agreement, necessary for approval of a Land Use Application to develop property within the Project.

3.2.4 **Request to Exercise Eminent Domain.** In the event of a written request by Developer, the City may, in its sole and absolute discretion, exercise its power of eminent domain to obtain such easements or rights-of-way, the cost of which shall be borne by Developer. Developer shall reimburse the City for all reasonable expenses incurred in taking the requested action, including reasonable attorney’s fees (or the reasonable value of what would have been charged for such legal services by a private law firm or private attorney, if the City Attorney provides such services to obtain the such property rights) and costs.

3.2.5 **Project a Part of the City.** The Project shall remain, for all purposes, including government, taxation, municipal services and protection, and consideration in all municipal matters, a part of the City. Except as otherwise provided herein, Development within the Project, and the residents and occupants thereof, shall be treated in all respects as any other development, resident, or occupant of the City is treated.

## SECTION IV. SPECIFIC RIGHTS AND RESPONSIBILITIES

### 4.1 Culinary Water.

#### 4.1.1 Developer’s Obligations.

4.1.1.1 **Dedication of Water.** Developer shall convey to or acquire from the City water rights sufficient for the development of the Property according to City regulations in effect at the time of plat recordation. Water rights to meet culinary water requirements must be approved for municipal use with approved sources from City owned wells or other sources at locations approved by the City. Prior to acceptance of the water rights from Developer, the City shall evaluate the water rights proposed for conveyance and may refuse to accept any right it determines to be insufficient in annual quantity or rate of flow, has not been approved for change to municipal purposes within the City and for diversion from City owned wells by the Utah State Engineer, or does not meet City regulations.

4.1.1.2 **Water System.** Developer shall, consistent with governmental requirements as of the date hereof, design and build onsite and offsite culinary water facilities, including water sources and storage and distribution facilities, of sufficient size to serve the Project, in accordance with the Culinary Water Master Plan. The facilities required to provide culinary water within a subdivision or Village Plan area shall be constructed and installed concurrently with the construction of other improvements in such subdivision or Village Plan area. All facilities necessary to provide a culinary water system installed by Developer within the Project, upon acceptance by the City, shall be owned, operated, and maintained by the City.

4.1.1.3 **Easements.** As part of the preparation of a water storage and delivery system for the culinary water system, the Parties shall cooperate in granting such easements, rights-of-way, rights of entry, or other servitudes as may be reasonably necessary for the Parties to introduce into, store in, and remove water from such ponds, streams, well sites, connections onto existing City water lines and the like.

4.1.2 **The City's Obligations.** Upon dedication, acquisition and/or acceptance by the City of the water delivery system, the City shall provide all use areas served by such infrastructure within the Project with culinary water service at a level generally provided to other areas of the City.

## 4.2 **Secondary Water.**

### 4.2.1 **Developer's Obligations.**

4.2.1.1 **Dedication of Water.** Developer shall convey to or acquire from the City water rights sufficient for the development of the Property according to City regulations in effect at the time of plat recordation. Water rights to meet secondary water requirements must be approved for municipal use with approved sources from City owned wells or other sources at locations approved by the City. Prior to acceptance of the water rights from Developer, the City shall evaluate the water rights proposed for conveyance and may refuse to accept any right it determines to be insufficient in annual quantity or rate of flow, has not been approved for change to municipal purposes within the City and for diversion from City owned wells by the Utah State Engineer, or does not meet City regulations

4.2.1.2 **Water System.** Developer shall, consistent with governmental requirements as of the date hereof, design and build onsite and offsite secondary water facilities, including water sources and storage and distribution facilities, of sufficient size to serve the Project, in accordance with the Secondary Water Master Plan. The facilities required to provide secondary water within a subdivision or Village Plan area shall be constructed and installed concurrently with the construction of other improvements in such subdivision or Village Plan area. The Parties agree that Developer will not be subject to any impact fees in connection with the secondary water System Improvements constructed or provided by Developer. All facilities necessary to provide a secondary water system installed by Developer within the Project, upon acceptance by the City, shall be owned, operated, and maintained by the City in accordance with the City's Standard Technical Specifications and Drawings.

4.2.1.3 **Easements.** As part of the preparation of a water storage and delivery system for the secondary water system, the Parties shall cooperate in granting such easements, rights-of-way, rights of entry, or other servitudes as may be reasonably necessary for the Parties to introduce into, store in, and remove water from such ponds, streams, well sites, connections onto existing City water lines and the like.

4.2.2 **The City's Obligations.** Upon dedication, acquisition and/or acceptance by the City of the water delivery system, the City shall provide all use areas served by such infrastructure within the Project with secondary water service at a level generally provided to other areas of the City.

#### 4.3 **Sanitary Sewer Service and Facilities.**

##### 4.3.1 **Developer's Obligations.**

4.3.1.1 **Sanitary Sewer System.** Developer shall, consistent with governmental requirements as of the date hereof, design and build sewer and waste water collection systems of sufficient size to serve the Project, in accordance with the Sanitary Sewer Master Plan. The system required to provide sewer and waste water collection services within a subdivision or Village Plan area shall be constructed and installed concurrently with the construction of other improvements in such subdivision or Village Plan area. The Parties agree that Developer will not be responsible for any impact fees in connection with the sewer and waste water collection System Improvements constructed or provided by Developer. The sewer and waste water collection systems installed by Developer within the Project, upon acceptance by the City, shall be owned, operated, and maintained by the City

4.3.1.2 **Easements.** As part of the preparation of the sanitary sewer system, the Parties shall cooperate in granting such easements, rights-of-way, rights of entry, or other servitudes as may be reasonably necessary for the Parties to introduce into and connect into existing City sewer lines and the like.

4.3.2 **The City's Obligations.** The City shall require Developer to adhere, where applicable, to such standards and requirements with respect to the sewer and waste water collection systems.

#### 4.4 **Storm Water.**

4.4.1 **Developer's Obligations.** The Project is located within the service boundaries of the City. Developer shall design, fund, and construct storm water collection systems to service the Project in compliance with the Storm Drainage Master Plan. The system required to provide storm drainage services within a subdivision or Village Plan area shall be constructed and installed concurrently with the construction of other improvements in such subdivision or Village Plan area. The Parties agree that Developer will not be responsible for any impact fees in connection with the storm drainage System Improvements constructed or provided by Developer.

4.4.2 **The City's Obligations.** The City shall require Developer to adhere, where applicable, to such standards and requirements with respect to the storm water collection systems.

4.4.2.1 **Dedication.** The City shall accept the dedication of and thereafter maintain all storm water collection and conveyance facilities or improvements in the Project, including but not limited to all within public roadways, so long as such roads are constructed in accordance with Paragraph 4.4.1 and are dedicated free and clear of liens and encumbrances.

#### 4.5 **Transportation, Traffic Mitigation, and Landscaping.**

4.5.1 **Developer's Obligations.** Developer agrees to provide the following transportation and traffic mitigation measures:

4.5.1.1 **Roads and Intersection Improvements.** The Village Plan for each Village shall show all road and intersection improvements and shall identify which improvements Developer will construct at no cost to the City. Said improvements shall include all interior public roads. Road and intersection improvements may be located differently than shown on the Use Map and Transportation Network Plan so long as any such road connects to an existing or planned road which intersects with or abuts the exterior boundary of the Project shown on the Use Map. Road and intersection improvements shall be constructed according to the City's Standard Technical Specifications and Drawings, except as otherwise set forth in this Agreement and in the Community Plan, in phases according to a schedule determined by Developer and approved by the City, which approval shall not be unreasonably withheld, conditioned, or delayed, consistent with the actual construction schedule for a particular Village. Road cross sections shall be reviewed on a case by case basis, but shall generally only be required to be improved to half-width—as defined in the City's Standard Technical Specifications and Drawings—when the opposite side of the road in question remains undeveloped. Subject to reimbursement by the City of its Proportionate Share of System Improvements, Developer shall dedicate such improvements to the City free and clear of liens and encumbrances upon completion and acceptance by the City.

4.5.1.2 **Certain Roads Retained.** Interior, local roads providing internal access to Multi-Family Uses shall not be dedicated to the City but shall be retained and maintained by Developer.

4.5.1.3 **Landscaping.** Upon the City's approval of each Village, Developer agrees to construct and create, at Developer's sole cost and expense, the landscape improvements as set forth in the Community Plan and Village Plan for such Village and consistent with the Open Space Master Plan, and the Open Space Standards. The timing and/or sequencing of the installation of such landscaping improvements shall be as set forth in the Village Plan, so long as all landscaping in a Village is completed in conjunction with such phase.

#### 4.5.2 **The City's Obligations.**

4.5.2.1 **Road Design.** The City accepts the local and private road design, as contained and provided in the Community Plan, as the specifications and standards for road design for parkway, arterial, collector, and local roads within the Project regardless of any future hillside development ordinance that may be adopted by the City, with the exception that certain

road designs have been modified from the Development Guidelines and said modifications are as shown in the Community Plan. All roadways according to the City's Transportation Master Plan are to be constructed to the City's Standard Technical Specifications and Drawings. All roads in the Project shall conform to the City's Standard Technical Specifications and Drawings except as otherwise specified in the Community Plan..

4.5.2.2 **Dedication.** Except as set forth in Paragraph 4.5.1.2, the City shall accept the dedication of and thereafter maintain all arterial, parkway, collector and public local roads in the Project so long as such roads are constructed in accordance with Paragraph 4.5.2.1 and are dedicated free and clear of liens and encumbrances, and meet the requirements for public streets identified in the Community Plan and the City's Standard Technical Specifications and Drawings.

#### 4.6 **Police and Fire Protection.**

4.6.1 The City shall provide to all residential and nonresidential areas in the Project, police and fire services.

4.6.2 Developer shall install fire hydrants within the Project in conformance with the City's Standard Technical Specifications and Drawings.

#### 4.7 **Park, Trail and Open Space Areas.**

4.7.1 **Developer's Obligations.** As required in section 19.26.06 of the Saratoga City Code, 30% of the Project will be comprised of open space. As shown in the Community Plan the open space will consist of major walking/ biking trails, public and private parks, private open space, and other recreation amenities to create the active outdoor theme of the Community Plan. Developer shall also construct a community park and related trail systems as shown in the Community Plan (collectively, the "**Community Park**"). All open space improvements, including, without limitation, the Community Park, shall be constructed by Developer in accordance with the City's Standard Technical Specifications and Drawings and Title 19 of the City Code. In accordance with Sections 4.1 and 4.2 of this Agreement, Developer shall be responsible for the dedication or purchase of culinary and secondary water and the installation of water facilities necessary to service the open space, parks, and trails required to be improved by Developer.

##### 4.7.2 **The City's Obligations.**

4.7.2.1 **Dedication.** The City shall accept the dedication of open space areas identified in the Community Plan as being dedicated to the City, so long as such open space areas are in compliance with Paragraph 4.7.1 and are dedicated free and clear of liens, taxes (including any rollback taxes), and encumbrances.

4.7.2.2 **Maintenance by the City.** Upon dedication and acceptance by the City of any open space area intended to be dedicated to the City, the City shall maintain each such area and any improvements thereon at a level of service consistent with City's policies and practices for maintenance of parks, trails, and open space.

4.8 **Maintenance of Certain Areas by Owners Association.** Developer shall create a homeowners associations for the Project, which shall have the responsibility to maintain those open space areas identified in the Community Plan as not being dedicated to the City. In the event such areas are not maintained in a manner consistent with the approved plan, the City may at its option cause such maintenance to be performed and assess the cost to the affected property owners' association, master association, or other governing body.

## SECTION V. GENERAL PROVISIONS

5.1 **Binding Effect.** The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties hereto and their successors in interest.

5.2 **Change in Developer.** Developer acknowledges that its qualifications and identity are of particular concern to the City, and that it is because of such qualifications and identity that the City is entering into this Agreement. Accordingly, Developer agrees for itself and any successor in interest of itself that during the term of this Agreement, Developer shall not convey, assign, or dispose of ("**Transfer**") the Project or any portion thereof to another developer except as provided in this Paragraph 5.2. In the event of a Transfer of the Project, or any portion thereof, Developer and the transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such Transfer an agreement satisfactory to the City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by the City. In such event, the transferee of the property so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the property so transferred. Notwithstanding the foregoing, the Parties acknowledge and agree that each entity constituting Developer shall, acting alone, be entitled (a) to enforce all the rights and to perform all the obligations of Developer hereunder and (b) to enforce such rights and perform such obligations with respect to any Village through a subsidiary entity so long as such entity is wholly owned, directly or indirectly, by either or both of the entities constituting Developer.

5.3 **No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and among the Parties that: (i) the Project is a private development; (ii) the City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership among the City and Developer; and (iii) nothing contained herein shall be construed as creating any such relationship among the City and Developer.

5.4 **Consent.** In the event this Agreement provides for consent from the City or Developer, such consent shall be deemed to be given thirty (30) days after consent is requested in writing in the event no response to the request is received within that period. All requests for consent shall be made in writing, and in no event shall consent be unreasonably withheld, conditioned, or delayed.

### 5.5 **Process for Modifying the Community Plan.**

5.5.1 **Intent.** The City acknowledges that the Community Plan and Use Map are a generalized depiction of the proposed development of the Project with specific land uses

permitted as shown on the Use Map. The Parties agree that that Developer may amend the Community Plan and Use Map as set forth in 19.26

**5.5.2 Minor Amendments.** The City and Developer agree that minor amendments shall be accomplished administratively by the Planning Director. Minor amendments include any amendment deemed a minor amendment under Chapter 19.26 of the Land Development

**5.5.3 Major Amendments.** If an amendment is deemed major by the Planning Director in accordance with Chapter 19.26 of the Land Development Code, it will be processed as outlined in the Land Development Code.

**5.6 No Obligation to Undertake Development.** Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall impose on Developer an obligation or affirmative requirement to develop the Project or any portion thereof. If Developer undertakes to develop all or any portion of the Project pursuant to the Use Map and this Agreement, Developer agrees to abide by the terms and conditions of this Agreement and the Use Map.

## SECTION VI. MISCELLANEOUS

**6.1 Incorporation of Recitals, Introductory Paragraphs, and Exhibits.** The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

**6.2 Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control the meaning or construction of any of the provisions hereof.

**6.3 Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive.

**6.4 Construction.** This Agreement has been reviewed and revised by legal counsel for Developer and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

**6.5 Further Assurances, Documents and Acts.** Each Party hereto agrees to cooperate in good faith with the others, and to execute and deliver such further documents and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each Party as allowed by law.

**6.6 Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned by Developer to any other party, individual or entity without assigning the rights as well as the obligations under this Agreement and complying with Paragraph 5.2 above and any other provision herein concerning assignment. The rights of the City under this Agreement shall not be assigned, but the City is authorized to enter into a contract with a third party or create a local district to perform obligations of the City to operate and maintain any infrastructure



6.10 **No Third Party Beneficiary.** This Agreement is made and entered into for the sole protection and benefit of the Parties and their assigns. No other Party shall have any right of action based upon any provision of this Agreement whether as third party beneficiary or otherwise.

6.11 **Counterparts; Exhibits; Entire Agreement.** This Agreement may be executed in multiple counterparts, each of which is deemed to be an original. This Agreement, together with all the exhibits identified below, constitute the entire understanding and agreement of the Parties to this Agreement.

Exhibit A PC report, minutes, report of action

Exhibit B CC report, minutes, report of action

Exhibit C Community Plan

**Duration.** This Agreement shall continue in force and effect for an initial term of ten (10) years from the date of this Agreement. So long as Developer is using commercially reasonable efforts to complete the development of the Project and is not in breach of any material term herein, the term of this Agreement shall automatically be extended for up to two (2) successive periods of five (5) years each. Upon the termination or expiration of this Agreement, the Parties shall, at the request of either Party, execute an appropriate recordable instrument confirming that this Agreement has been fully performed, terminated, or lapsed as provided for herein.

6.12 **No Further Exactions.** Subject to the obligations of Developer hereunder, no further exactions shall be required of Developer by the City. Notwithstanding the foregoing, this paragraph shall not be construed to relieve Developer from any dedications or other requirements required by applicable law or ordinance in effect when this Agreement is executed unless otherwise provided in this Agreement.

6.13 **Good-Standing; Authority.** The Parties warrant and represent as follows:

6.13.1 **Developer.** Developer hereby represents and warrants to the City: (a) Developer is a registered business entity in good standing with the State of Utah; (b) the individual executing this Agreement on behalf of Developer is duly authorized and empowered to bind Developer; and (c) this Agreement is valid, binding, and enforceable against Developer in accordance with its terms.

6.13.2 **The City.** The City hereby represents and warrants to Developer that: (a) the City is a Utah municipal corporation; (b) the City has power and authority pursuant to enabling legislation, the Utah Land Use and Development Management Act (U.C.A. § 10-9a-101 *et seq.*), and the City's Land Development Codes to enter into and be bound by this Agreement; (c) the individual executing this Agreement on behalf of the City is duly authorized and empowered to bind the City; and (d) this Agreement is valid, binding, and enforceable against the City in accordance with its terms.

6.14 **Failure to Execute.** The failure of any Party named above to execute this Agreement shall not invalidate the Agreement with respect to any of the remaining Parties or the

property owned by such Parties at the time of execution; provided the total density and Use Map shall be modified to remove that parcel and the applicable density and infrastructure.

6.15 **Concurrency.** The City desires that the resources, services and facilities needed to support development are available when a Land Use Application is approved. Notwithstanding any provision in this Agreement, the City shall not be obligated to approve a Land Use Application if infrastructure and services will not be available in a reasonable time to serve the development contemplated under such application.

6.16 **Indemnification.** Developer and the City each agree to defend and hold each other and their respective officers, employees and consultants harmless for any and all claims, liability, and damages arising out of or related to any work or activity connected with the Project, including approval of the Project; performed by a Party, its agents or employees except for willful misconduct or negligent acts or omissions of Developer or the City, as the case may be, or their respective officers, agents, employees or consultants.

6.17 **Default.** Failure by a Party to perform any of the Party's obligations under this Agreement within a thirty (30) day period (the "**Cure Period**") after written notice thereof from the other Party shall constitute a default ("**Default**") by such failing Party under this Agreement; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing Party commences its efforts to cure within the initial thirty (30) day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged Default and the manner in which said Default may be satisfactorily cured, if possible. Upon the occurrence of an uncured Default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or may terminate this Agreement. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action.

6.17.1 **Termination.** If the City elects to consider terminating this Agreement due to an uncured Default by Developer, then the City shall give to Developer written notice of the City's intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City's legislative body at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City's legislative body determines that a Default has occurred and is continuing, and elects to terminate this Agreement, the City shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated. The City may thereafter pursue any and all remedies at law or equity.

6.17.2 **No Monetary Damages Relief or Personal Liability Against the City.** The Parties acknowledge that the City would not have entered into this Agreement had it been exposed to monetary damage claims from Developer or personal liability for any of its officers, officials, or employees for any breach thereof except as set forth herein. As such, the Parties agree that specific performance, as may be determined by the court, is the intended remedy for any breach of this Agreement. In addition, no personal liability may attach to or be asserted against any City officer, official, or employee.

6.18 **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or Developer for the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

6.19 **Enforcement.** The Parties to this Agreement recognize that the City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of the City or violates the terms of this Agreement, the City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of the City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer. The City shall be free from any liability arising out of the exercise of its rights under this paragraph.

6.20 **Severability; Invalidity.** If the City's approval of the Project is held invalid by a court of competent jurisdiction this Agreement shall be null and void. If any provision of this Agreement shall be held to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction or as a result of any legislative action, such holding or action shall be strictly construed. Furthermore, provided the Parties are still able to retain all of the material benefits of their bargain hereunder, such provision shall be construed, limited or, if necessary, severed, but only to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall remain unaffected and this Agreement shall be construed and enforced as if such provision in its original form and content had never comprised a part hereof.

6.21 **Force Majeure.** Developer shall not be liable for any delay or failure in the keeping or performance of its obligations under this Agreement during the time and to the extent that any such failure is due to causes beyond the control and without the fault or negligence of the Party affected, including, acts of God, acts of the United States Government or the State of Utah, fires, floods, strikes embargoes, wars, terrorist acts or unusually adverse weather conditions. Upon the occurrence of any such cause, Developer shall notify the City and shall promptly resume the keeping and performance of the affected obligations after such cause has come to an end.

6.22 **Nondiscrimination.** Neither the City nor Developer nor the agents, employees, or representatives of any of them, shall discriminate against, segregate, persecute, oppress, or harass one another's agents, employees, or representatives; other developers (including any potential replacement developer); contractor or subcontractor; or the agents, employees, or representatives of any of the foregoing; tenants, owners, occupants or residents, whether actual or potential, or any other person or entity.

6.23 **No Waiver of Governmental Immunity.** Nothing in this Agreement is intended to, or shall be deemed, a waiver of the City's governmental immunity.

6.24 **Institution of Legal Action.** In addition to any other rights or remedies, any Party may institute legal action to cure, correct, or remedy any Default or breach, to specifically enforce

any covenants or agreements set forth in this Agreement, to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fourth District Court, State of Utah, or in the Federal District Court for the District of Utah.

6.25 **Names and Plans.** Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature developed, formulated or prepared by or at the request of Developer in connection with the Project.

6.26 **Amendment of Agreement.** This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the Parties. No change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of the City's City Council taken with the same formality as the vote approving this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been executed by Developer, by persons duly authorized to execute the same, and by the City, acting by and through its City Council by duly authorized persons.

**CITY:**

Attest:

City of Saratoga Springs,  
a Utah Municipality

\_\_\_\_\_  
\_\_\_\_\_, City Recorder

By: \_\_\_\_\_  
Jim Miller, Mayor

**DEVELOPER:**

LEADING EDGE DEVELOPMENT, LLC,  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

DCP SARATOGA LLC, a Utah limited  
liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
:SS  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 201\_\_\_, by Jim Miller, as Mayor, and \_\_\_\_\_, as Recorder of the City of Saratoga Springs.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
:SS  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of Leading Edge Development, LLC, a Utah limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
:SS  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of DCP Saratoga LLC, a Utah limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**EXHIBIT "A"**  
PC report, minutes, report of action

DRAFT

**EXHIBIT "B"**  
CC report, minutes, report of action

DRAFT

**EXHIBIT “C”  
Community Plan**

DRAFT