DEVELOPMENT AGREEMENT FOR
CLEARFIELD JUNCTION, LLC

THIS DEVELOPMENT AGREEMENT (this "DA") is made and entered as of the _____ day of ___________, 2018, by and among Clearfield City, a political subdivision of the State of Utah (the "City"), the Clearfield Community Development and Renewal Agency (the "CDRA"), and CLEARFIELD JUNCTION, LLC a Utah limited liability company (the "Developer").

RECITALS

A. The capitalized terms used in these Recitals are defined in Section 1.2, below.

B. Developer shall purchase the Project Property that is subject to the DA.

C. The Project Property is currently assigned the Town Residential (TR) Zone as set forth in the Form Based Code within the Clearfield City Code, as amended by Ordinance 2017-0-10 adopted by the City on May 22, 2018.

D. The Parties desire that the Project Property be developed in a unified and consistent fashion pursuant to the provisions of the TR Zone within the Form Based Code and Developer provided Concept Plan.

E. Development of the Project Property as a mixed used project pursuant to this DA is acknowledged by the Council and Parties to be consistent with LUDMA and the TR Zone, and to operate to the benefit of the City, Developer and the general public.

F. The Parties acknowledge that development of the Project Property pursuant to this DA will result in significant planning and economic benefits to the City and its residents by, among other things, requiring orderly development of the Project Property and increasing property tax, sales tax and other revenues to the City based on improvements to be constructed on the Project Property.

G. Development of the Project Property pursuant to this DA will also result in significant benefits to Developer by providing assurances to Developer that it will have the ability to develop the Project Property in accordance with this DA.

H. The Parties have cooperated in the preparation of this DA.

I. The Parties desire to enter into this DA to specify the rights and responsibilities of Developer to develop the Project Property and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this DA.

J. The Parties understand and intend that this DA is a "development agreement" within the
meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-102

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 to the following:

TERMS

1. **Incorporation of Recitals and Exhibits/Definitions.**

   1.1. **Incorporation.** The foregoing Recitals and Exhibits "A" and "B" are hereby incorporated into this DA.

   1.2. **Definitions.** As used in this DA, the words and phrases specified below shall have the following meanings:

      1.2.1. **DA** means this Development Agreement including all of its Exhibits.

      1.2.2. **Buildout** means the completion of all of the development on the entire Project Property in accordance with this DA.

      1.2.3. **CDRA** means the Clearfield Community Development and Renewal Agency.

      1.2.4. **CRDA Property** means approximately 6.15 acres of CDRA land less approximately 1.5 acres reserved for Davis County located in Clearfield City, more particularly reflected on Exhibit "B" attached hereto.

      1.2.5. **City** means Clearfield City, a political subdivision of the State of Utah.

      1.2.6. **Concept Plan** means the documents provided by the developer for the Project, which is attached as Exhibit "A."

      1.2.7. **Council** means the elected City Council of the City.

      1.2.8. **Developer** means [Clearfield Junction LLC.] a Utah limited liability company, and its assignees or transferees as permitted by this DA (other than a Sub developer).

      1.2.9. **Development** means the development of a Parcel or a portion thereof pursuant to an approved Development Application.

      1.2.10. **Development Application** means an application to the City for development of a portion of the Project including a Subdivision or any other permit, certificate or other authorization from the City required for development of
1.2.11. **FORM BASED CODE** means specific regulations applied to the Downtown corridor within the City’s Land Use and Development Ordinance.


1.2.13. **Notice** means any notice to or from any party to this DA.

1.2.14. **Parcel** means a parcel of the Project that is created by the Developer as a Subdivision.

1.2.15. **Parties** mean the City, CDRA, and Developer.

1.2.16. **Phase** means the development of a portion of the Project at a point in a logical sequence as determined by Developer.

1.2.17. **Planning Commission** means the City's Planning Commission.

1.2.18. **Project** means the total development to be constructed on the Project Property pursuant to this DA with the associated public and private facilities, Phases and all of the other aspects approved as part of this DA.

1.2.19. **Project Property** means approximately 6.15 acres of CDRA land less approximately 1.5 acres reserved for Davis County Library and the approximately 2.2 acres of privately owned land (Albion Parcel) located in Clearfield City, more particularly reflected on Exhibit "B" attached hereto.

1.2.20. **Public Infrastructure** means those elements of infrastructure that are planned to be dedicated to the City as a condition of the approval of a Development Application.

1.2.21. **Subdivision** means the division of any portion of the Project Property into developable lots pursuant to State Law and/or Title 12 of the City’s Zoning Ordinance.

1.2.22. **Subdivision Application** means the application to create a Subdivision.

1.2.23. **Substantial Completion** means the date at which Certificate of Occupancy has been issued for all buildings shown on the site plan.

1.2.24. **Zoning** means the zoning for the Project.
1.2.25. **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that was in effect as of the date of this DA as a part of the City's Vested Laws.

2. **Conditions Precedent.** As conditions precedent to the obligations of the Parties hereunder, this DA is contingent upon and shall only become effective at such time, and in the event that:

   A. The Developer closes on the purchase of the Albion Parcel (approximately 2.2 acres) by June 30, 2018; and
   
   B. City, Davis County and Developer will mutually come to an agreement on the legal description of a portion of CDRA Property intended for a future library located within the Project.

      i. If Davis County decides for any reason to not to build on the intended property, the City and Developer will mutually come to an agreement on the legal description of that portion of CDRA Property which was previously intended for a future library located within the Project; and

   C. The Project Property must be properly zoned for the Development of the Project prior to issuance of permits for construction; and

   D. Developer obtains planning entitlements, e.g., subdivision and site plan, from Planning Commission and City Council.

Unless the parties mutually agree to amend the DA in accordance with paragraph 21, supra, and the above listed Conditions Precedent are not met within 6 months from the date of signatures to this agreement, the DA shall be null and void.

3. **Effect of the DA.** This DA shall be the sole agreement between the Parties related to the development of the Project except as it may be modified by agreement of the Parties. Developer and the City further acknowledge and agree that the current Project may require modifications based on the proposed future library development and agree to cooperate in good faith to address the issues arising from those changes as part of the process described herein including, but not limited to, improvements, location, design, open space designation, parking, etc.

4. **CDRA Property**

   4.1 **Incentive.** CDRA shall sell to Developer that portion of CDRA Property that is not identified for the library for $100,000. This incentive is valued at approximately a
$1,100,000 discount, which is intended to be offset by the development of the library parking lot improvements and commercial space in accordance with Section 2 of the DA.

4.2 Developer Incentive Requirements. Developer acknowledges and agrees that in exchange for the above described incentive, the CDRA shall be the primary lien holder against the incentivized CDRA Property in the amount of $1,000,000 until which time the Developer constructs a minimum of 20,000 square feet of commercial space. The primary CDRA lien may be released at any time in exchange for a bond or escrow in the amount of $1,000,000 held until the completion of 20,000 square feet of commercial space. An amount of $500,000 will be placed in escrow or in bond to be released to the Developer upon completion Project Buildout.

5. Development of the Project.

5.1 Project Development. Development of the Project shall be in accordance with the TR Zone to include specific development standards, within the Form Based Code and this DA, including the Conditions Precedent set forth herein, as outlined in Section 2:

A. Four buildings, each four stories high, with a total of approximately 244 residential units (+/- 10%); and

B. A minimum of 20,000 square feet of retail space located on the ground floor of all buildings that front on Main Street, with customer access from Main Street; and

C. The undergrounding of overhead powerlines on the Project Property, at Developer’s cost; and

D. Relocation of the existing billboard currently located on the Project Property, at Developer’s cost.

5.2 Adoption of Project Standards. The Parties understand and acknowledge that the TR Zone provides standards including, but not limited to, location of buildings, setbacks, lot coverage, building orientation, landscaping and other design features.

5.3 Phased Development / Timing of Development. The Parties agree that the project may be developed in phases. The Parties acknowledge that the efficient and economic development of the Project may be contingent and dependent upon numerous factors, such as market conditions and demand, interest rates, competition and similar factors. The City and CDRA hereby agrees that Developer shall have a reasonable level of flexibility for timing, sequencing, and phasing of the project provided the following occurs:
A. Developer may construct buildings in any order, provided that a minimum of one building is first erected adjacent to Main Street with a minimum of 180 lineal feet of retail frontage. Phase one construction shall commence no later than January 1, 2020.

B. Retail parking shall be built concurrent with retail space.

C. Library parking and library utilities shall be constructed per a separate agreement between the City and Davis County. If no separate agreement is reached, then there shall be no obligation on the developer.

D. A minimum of 20,000 square feet of retail must be built within 3 years of the Effective Date of this DA.

5.4 Approval Processes. Development approval of the Project shall follow the applicable review processes as set forth in the TR Zone within the Form Base Code Section of the Clearfield Municipal Code and the DA.

5.5 Project Fees. The Parties acknowledge that the City does currently charge impact fees and that the Developer will be subject to all fees.


6.1. Vested Rights Granted by Approval of this DA. To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this DA grants Developer the right to develop and construct the Project consistent with the uses and building types as provided in the TR Zone and this DA. The Parties intend that the rights granted to Developer under this DA are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that the TR Zone and this DA, grant to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509. To the extent that any such conditions subsequent are not performed then vested rights shall be deemed to have lapsed.

6.2. Reserved Legislative Powers. Subject to the provisions of Section 4.2 above, the Parties acknowledge that any exception to the vested rights as set forth above must meet the compelling, countervailing public interest standard set forth in Utah Code Aim. §10-9a-509.

6.3. Legislative Discretion. Nothing in this DA shall be interpreted to usurp the independent exercise of the legislative discretion of the Planning Commission and Council.

7. Developer’s Non-Performance. Should the Developer fail to meet or perform the obligations defined within the DA, or in the event that Substantial Completion of the Project has not
been accomplished within five (5) years of the date of this DA, absent any extensions by further agreement of the Parties, this DA shall be automatically terminated and Developer’s escrow(s) as noted in §4.2 shall be disbursed to the CDRA in its entirety.

8. **Term of Agreement.** The term of this DA shall be until December 31, 2024. This DA shall also terminate automatically at Buildout.

9. **Tax Benefits.** The City shall reasonably cooperate with Developer to the maximum extent allowable under law to allow Developer to take advantage of any tax benefits sought by Developer. Developer acknowledges no additional tax benefits will be available through Tax Increment Financing (“TIF”) for this Project at this time but may apply after Phase 1 if project costs are excessive.

10. **City Obligations for Improvements.** In connection with the Project, the City agrees that it will perform the following obligations:

10.1. **Utilities.** The City shall permit Developer to connect to the City's utility lines, including, without limitation, water, sewer and storm drain.

11. **Upsizing.** The City shall not require Developer to “upsize” any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) unless financial arrangements reasonably acceptable to Developer are made to compensate Developer for the incremental or additive costs of such upsizing. For example, if an upsize to a water pipe size increases costs by 10% but adds 50% more capacity, the City shall only be responsible to compensate Developer for the 10% cost increase. Acceptable financial arrangements for upsizing of improvements includes reimbursement agreements, payback agreements, pioneering agreements, and impact fee credits and reimbursements.

12. **Developer to Indemnify the City and CDRA.** Developer shall, at all times, protect, indemnify, save harmless and defend the City and CDRA and its agents, employees, officers and elected officials from and against any and all claims, demands, judgments, expense, and all other damages of every kind and nature made, rendered, or incurred by or in behalf of any person or persons whomsoever, including the parties hereto and their employers, which may arise out of any act or failure to act, work or other activity related in any way to the Project, by Developer, Developer’s agents, employees, subcontractors, or suppliers in the performance and execution of the work/development contemplated by the DA. This indemnification provision shall not apply to any claims or liabilities that are unrelated to the Project or this DA.
13. **Notices.**

13.1. **Notice Addresses.** All notices required or permitted under this DA shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

**To the Developer:**

Clearfield Junction LLC  
Attn: Donovan Gilliland  
2123 North Bella Vista Drive  
Farmington, UT 84025

**To the CDRA:**

Clearfield Community Development and Renewal Agency  
Attn: CDRA Chairperson  
55 South State Street  
Clearfield, UT 8401

**To the City:**

Clearfield City  
Attn: Nancy Dean  
55 South State Street  
Clearfield, UT 84015

13.2. **Effectiveness of Notice.** Except as otherwise provided in this DA, each Notice shall be effective and shall be deemed delivered on the earlier of:

13.2.1. **Hand Delivery.** Its actual receipt, if delivered personally, by courier service, or by facsimile provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending party has confirmation of transmission receipt of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

13.2.2. **Electronic Delivery.** Its actual receipt if delivered electronically by email provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending party has an electronic receipt of the delivery of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

13.2.3. **Mailing.** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any party may change its address for Notice under this DA by giving written Notice to the other Parties.
14. **Assignment and Transfer of Development.** The Developer shall not assign its obligations under this Agreement or any rights or interests herein, and except as provided below shall not convey the Project or any portion thereof, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed if the proposed transferee: (a) shall have the qualifications and financial responsibility necessary and adequate to fulfill the obligations undertaken pursuant to this Agreement and any then applicable documents necessary to complete development; and (b) by instrument in writing, shall have expressly assumed all of the obligations of the Developer under this Agreement and then applicable additional agreements and agreed to be subject to all of the conditions and restrictions arising under this Agreement or any other related development documents.

If only a portion of the Project is assigned and/or conveyed under this Section 13, a reasonable allocation of the Developer’s duties appurtenant to that portion will be made.

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

13.1.1 The provisions of this Section 13 shall not prohibit the granting of any security interests for financing the acquisition and development of the Project, subject to the Developer complying with applicable law and the requirements of this agreement.

13.1.2 A change in the majority ownership or control of the Developer shall be deemed a transfer requiring the consent of the City pursuant to the requirements of this Section 13. Notwithstanding the foregoing sentence, a transfer of all or a portion of the Project or change in the majority ownership or control of the Developer is permitted without the City’s or consent under the following circumstances: (i) a transfer occurs to an entity that is an affiliate of the Developer, (ii) a transfer or change in ownership occurs as a result of a merger or acquisition of Developer resulting in Developer and its principal(s) having the majority interest and control of the succeeding or resulting entity, an/or (iii) a transfer occurs only by way of security for, an only for, the purpose of obtaining financing necessary to enable the Developer, or its permitted successor in interest, to perform its obligations under this Agreement or any of the development related documents. If as is result of any of these described actions on one or more new principals become associated with the Project, such principals shall sign a counterpart of this agreement evidencing their personal guaranty of the Developer’s obligations hereunder.
15. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this DA, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representative for the City and the CDRA shall be Summer Palmer, Assistant City Manager and the initial representative for Developer shall be Donovan Gilliland. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this DA and the development of the Project.

16. **Mutual Drafting.** Each party has participated in negotiating and drafting this DA and therefore no provision of this DA shall be construed for or against either party based on which party drafted any particular portion of this DA.

17. **Applicable Law.** This DA is entered into in Davis County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

18. **Venue.** Any action to enforce this DA shall be brought only in the Second District Court for the State of Utah, Davis County.

19. **No Waiver.** Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

20. **Severability.** If any provision of this DA is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this DA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this DA shall remain in full force and affect.

21. **Entire Agreement.** This DA and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

22. **Recordation and Running with the Land.** This DA shall be recorded in the chain of title for the Project. This DA shall be deemed to run with the land.

23. **Authority.** The Parties to this DA each warrant that they have all of the necessary authority to execute this DA. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this DA lawfully binding the City on May 22, 2018, and on behalf of the CDRA, the signature of the Chairperson is affixed to this DA on May 22, 2018.
IN WITNESS WHEREOF, the Parties hereto have executed this DA by and through their respective, duly authorized representatives as of the day and year first herein above written.

CITY:  
_____________________________  _____________________________
Mark Shepherd, Mayor  Kent Bush, Chairperson
Attest:  
_____________________________  _____________________________
Nancy Dean, MMC  Nancy Dean, MMC
City Recorder  City Recorder

Approved as to form:  
_____________________________  _____________________________
Stuart Williams, City Attorney  CDRA Legal Review

CITY:
STATE OF UTAH  )
ss.  )
COUNTY OF DAVIS  )

On this __ day of __________, 2018, personally appeared before me Mark Shepherd, Mayor of Clearfield City, who executed the foregoing instrument on behalf of Clearfield City.

My Commission Expires:  NOTARY PUBLIC
Residing at:

CDRA:
STATE OF UTAH  )
ss.  )
COUNTY OF DAVIS  )

On this __ day of __________, 2018, personally appeared before me Kent Bush, Chairperson of the CDRA, who executed the foregoing instrument on behalf of the CDRA.

My Commission Expires:  NOTARY PUBLIC
Residing at:
DEVELOPER:

CLEARFIELD JUNCTION, a Utah limited liability company, by its manager Donovan Gilliland.

By: __________________________________________
Name: Donovan Gilliland
Title: Manager

STATE OF UTAH

ss.
COUNTY OF DAVIS

On this __ day of__________, 2018, personally appeared before me Donovan Gilliland, a Manager of Clearfield Junction, a Utah limited liability company, who executed the foregoing instrument on behalf of said company.

My Commission Expires: ____________________________
Residing at: NOTARY PUBLIC
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Exhibit "A"

Concept Plan
Exhibit "B"

Lot Configuration of Project Property