

DEVELOPMENT AGREEMENT
THE LOFTS AT FALCON RIDGE, A RESIDENTIAL CONDOMINIUM

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of the ___ day of _____, 2019 (the “Effective Date”), by and between **SUNSET CITY**, a Utah municipal corporation (the “City”), and **FALCON HILL DEVELOPMENT, LLC**, a Utah limited liability company, (the “Developer”). The Developer and the City are sometimes collectively referred to herein as the “Parties” or singularly as a “Party.”

RECITALS

A. As of the Effective Date hereof, Developer is the owner of the property described on **Exhibit “A”** (the “Property”) hereto, located within Sunset City, Davis County, Utah.

B. The development of the Property is governed by the City Code (the “Code”). All Section references contained herein shall refer to the Code.

C. Developer has filed an application for and received approval by the City for the following a General Development Plan/Construction Drawings (the “General Development Plan”) for the Property consisting of residential and commercial condominium units, subject to approval of an acceptable development agreement. The project to be developed upon the Property pursuant to the General Development Plan is known as the Lofts at Falcon Ridge, a residential condominium. (the “Project”).

D. Pursuant to the City’s approval of the General Development Plan on ___ day of _____ 20___, the Plan consists of approximately 138 +/- residential condominium units and 18 +/- commercial condominium units. A copy of the approved General Development Plan/Construction Drawings (as presently constituted) is attached hereto as **Exhibit “B.”**

AGREEMENT

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

1. Incorporation of Recitals and Exhibits. The above Recitals and Exhibits attached and referenced herein are hereby incorporated into this Agreement.

2. General Development Plan Approval. To the fullest extent of its legal powers and authority and for the duration of the Term (as described below) of this Agreement, the City hereby approves the General Development Plan/Construction Drawings for the Project, including such specifics as the validity as the density, use, configuration, and specification designations as described in the General Development Plan and as described elsewhere herein. The City further approves Developer’s right, subject to obtaining required permits, to demolish any and all existing structures or vegetation now located upon the Property. The developer may not substantively deviate from the General Development Plan/Construction Drawings without prior approval by the City. Subject to the terms of this Agreement and subject to the Developer’s compliance with other provisions of the Code not specifically modified herein, the Developer shall have the right to have the Final Plat and Construction Plans approved by the City and to develop the Project. Developer and City hereby acknowledge and agree that the architectural plans, civil engineering plans and terms of this Agreement do not conflict with the requirements of the City Code, as currently drafted. Notwithstanding any provision herein to the contrary, all underground

development by the Developer or any successor shall be in compliance with the Sunset City Code, as of the effective date of this agreement.

3. Term. The vested rights described in this Agreement shall be effective for a period of ten (10) years following the date on which this Agreement is adopted by the city Council of Sunset and signed by the City's Mayor (the "Term").

4. Development of the Project. The Project shall be developed by Developer and/or Developer's successors and assigns in accordance with all of the requirements contained herein.

a. Elevations. Developer and City hereby agree that architectural elevations shall substantially conform to those depicted in **Exhibit "C"** attached hereto and incorporated herein.

b. Floor Plans. Developer and City hereby agree that floor plans shall substantially conform to those depicted in **Exhibit "D"** attached hereto and incorporated herein.

c. Final Plat. Developer and City hereby agree that the final plat shall substantially conform to those depicted in **Exhibit "E"** attached hereto and incorporated herein.

d. Water Meters. Developer and City hereby agree that Developer shall meter each building on separate water meters. The Developer (for the period of his warranty) and/or Association shall maintain the fire hydrants, water lines, water laterals up to the water meter, which water meter shall be maintained by the City. The Association shall also have its own individual meter(s) for irrigation water.

e. Covenants and Restrictions. The Developer hereby agrees, that prior to the sale of any units, to record against the title to such Final Plat, condominium covenants, conditions and restrictions ("CC&Rs"). The Developer hereby agrees to use its best efforts to enforce the CC&Rs during all such periods during which the Developer has control of the CC&Rs. Prior to recording the CC&Rs, Developer shall submit the same to the City for approval, which approval shall not be unreasonably withheld or unreasonably delayed. In the event that approval has not been granted by the city within 45 days of submittal to the City, Developer shall have the right to record the draft CC&Rs as submitted. In the event of any occurrence on the property which affects or threatens the health, safety or welfare of the City or its residents, the City shall notify the Developer or the Homeowners Association (HOA), of such condition. If the condition is not remediated within ten (10) days or less if the condition constitutes a bona fide emergency, the City may enter upon the property and remediate the condition and assess the cost to the HOA.

f. Construction Phasing Plan. The City understands and agrees that Developer intends to construct the project in three (3) construction phases, as follows:

- i. Phase I shall consist of approximately 46 +/- residential condominium units and 6 +/- commercial condominium units in such areas depicted on sheet C400 of the engineering plan (formerly 2103 N. Main St.).
- ii. Phase II shall consist of approximately 46 +/- residential condominium units and 6 +/- commercial condominium units in such areas depicted on sheet C400 of the engineering plan (formerly 2087 N. Main St.).
- iii. Phase III shall consist of approximately 46 +/- residential condominium units and 6 +/- commercial condominium units in such areas depicted on sheet C400 of the engineering plan (formerly 2043 N. Main St.).

g. Advertising. Developer may, at its sole discretion, erect new signage for the purposes of advertising units for sale or lease and may also utilize any and all existing billboards, placards, and signage for the purposes of tasteful advertising. Additionally, Developer may utilize such existing outbuildings as necessary for storage or other purposes until such time as the phasing plan determines their demolition. Developer has the right to place one office trailer and/or one tool trailer on the site until Phase 3 is complete or all units are sold, whichever is later. Subcontractors may also park trailers, trucks, or equipment on site during the course of construction. Despite the fact that Developer is constructing the Project in phases, the City agrees to record the Final Plat for the entire project following the City Council's approval thereof.

h. Underground Development, Pavement and Demolition Phasing. The City understands and agrees that vertical construction shall proceed simultaneously with the underground development of the Property. The issuance of building permits and scheduled inspections (other than the certificate of occupancy) shall not be delayed by the fact that underground development of utilities or curbs, sidewalks or pavement has not been completed for Phase I or for subsequent phases, respectively. The City agrees that architectural and structural plan review shall not exceed 14 business days from the date of complete submittal. All underground development shall be completed during Phase I—to include installation of culinary water lines, fire hydrants, sewer lines, etc. The City understands that with regards to Phase II or Phase III no asphalt, curb or gutter, grading or demolition shall be completed until required by those phases, respectively.

i. Required Public Improvements. Developer agrees to construct required public improvements, if any, at its expense, pursuant to the Construction Drawings attached as Exhibit "B." The timing of those improvements (ie, road, curb, gutter, sidewalks, etc.) shall correspond to the phasing plan depicted in sheet C600 of Exhibit "B." Pursuant to BMU 10-5F-7:D, Builder shall install the following: (1) Lamp posts every 100 feet; (2) patterns and scored sidewalks in the concrete along Main Street; and (3) Bollards at all crosswalks. All streetlights shall use LED bulbs. Nothing in this agreement shall exempt Developer from the requirements of Section 11-5-12 of the City Code.

j. Sales. Developer's sales of owner-occupied condominium units shall conform to FHA requirements. In the event of market downturn, Developer shall be able to rent the condominium units until such time as Developer shall have determined, in his sole discretion, that the market has recovered sufficiently to resume selling the condominium units once again.

k. Parking & Shared Use. Pursuant to paragraph 10-5F-4A of the BMU ordinance, the required amount of parking for the project shall be reduced in relation to the amount of "amount of off-street parking" that "can be demonstrated may be in demand at different intervals of time throughout the day." Additionally, pursuant to paragraph 10-5F-4A of the BMU ordinance, Developer is entitled to count "available on-street parking" toward his total parking requirement.

l. Commercial Uses. In order to increase the market viability of the commercial space along Main Street, the terms "convenience retail, service and professional offices" as found in paragraph 10-5F-1 of the BMU ordinance, shall include any and all businesses (including, but not limited to, assisted living facilities, dentists, insta-care, etc.) not specifically restricted under paragraph 10-5F-6 of the BMU ordinance.

m. Storm Water Protection. Storm water protection shall be maintained in conformance with the SWPPP previously submitted to the City.

n. Project Amenities. At the sole discretion of Developer with regards to design, size and timing, Developer shall construct one of the following amenities on the property by the completion of the project: (1) workout facility, (2) conference room/banquet area; (3) swimming pool; (4) rooftop common area; and (5) dog restroom.

o. Entry Monument. Developer may place one entry monument at each entrance to the property so long as it conforms with Sunset City standards. Approval of the actual design of the entry monument shall not delay the issuance of building permits by the City.

p. TIFF & P.A.C.E. Financing. The City agrees to support and work with Developer on the implementation of tax increment financing and/or P.A.C.E. (Property Assessed Clean Energy) financing in order to pay for the cost of underground development for the site.

q. Fencing. Developer shall install vinyl privacy fence or wrought iron style fencing (in Developer's sole discretion) around all exterior boundaries in order to restrict access, foot traffic in and out of the property. All fencing shall comply with City ordinances.

r. Gates. Developer may, at his discretion, install automobile gates at the entrances of the Property to limit entrance to residents and their invited guests. Fire and emergency personnel shall at all times have current codes or remote control access to the gates. Additionally, there shall also be affixed to a post or bollard, in close proximity of the gates, a 'knock box' containing the master key or switch enabling fire or emergency personnel to control the gate.

s. Impact Fees, Connection, Building Fees. The City Council has approved that the development fees (including, but without limitation, storm drain assessment/fees, water development & connection fees, park development fees, public safety impact fees, roadway impact fees, if any) shall be paid on a per-unit or per-building basis at the time of pulling the specific construction permit for that particular unit or building. For example, Developer shall not be required to pay sewer impact fees or permit fees for Phases II or III at the approval of the plat, but only the fees for a particular building upon the issuance of a building permit for that specific unit or building. The payment of the North Davis Sewer District impact fees shall be collected in accordance with Sewer District policies and requirements.

t. Vacant Property. Developer shall maintain any vacant ground within the Project on which Developer has not commenced construction in a manner free of debris and hazards to the general health, safety and welfare of the public and residents of the area.

5. Agreement to Run with the Land/Assignment. The rights and obligations of Developer under this Agreement shall be those affecting the Property, and shall run with and be binding upon the Property and its successors and assigns, or any portion thereof. The terms of this Agreement shall be deemed to expire as to any portion of the Property upon the issuance of a certificate of occupancy for a structure on the subject portion of the Property. Developer shall have the right to assign this Agreement, in whole or in part so long as such (1) assignee becomes the owner of fee simple title to that portion of the Property affected by the rights and obligations under this Agreement that are being assigned; and (2) signs such documents necessary to demonstrate to Developer and the City that assignee agrees to be bound hereby. After the improvements have been accepted by the City (which acceptance shall not be unreasonably delayed or withheld), Developer's warranty period shall extend for the period of 12 months.

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

To Developer: Falcon Hill Development, LLC
Attn: Joseph M. Cook, Member Manager
PO Box 540395
North Salt Lake, Utah 84054

To the City: Sunset City
Attn: Mayor
200 W. 1300 North
Sunset, Utah 84015

In the event that either of the Parties desires to change its address as shown above, such Party shall provide written notice to the other Party pursuant to the requirements of this Section 6.

7. Default. In the event either Party fails to perform its obligations hereunder or to comply with the terms thereof, within thirty (30) days after giving written notice of default and the failure of the defaulting Party to cure such default, or if the default is of a nature that it cannot be reasonably cured within 30 days, then to have diligently and in good faith commenced to cure such default, and the non-defaulting Party may, at its election, have the following remedies:

a. All rights and remedies available at law and in equity, including injunctive relief, specific performance and/or damages.

b. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or any development described in this Agreement until such default has been cured.

c. The right to draw upon any security posted or provided in connection with the Project and this Agreement or enforce any lien on the Property.

d. The right to terminate this Agreement.

e. The rights and remedies set forth herein shall be cumulative.

8. Entire Agreement. This Agreement, together with the Exhibits attached hereto, documents referenced herein, and all regularly approvals given by the City for the Property and/or the Project or any phase thereof containing the entire agreement of the Parties with respect to the subject matter hereof and supersede any prior promises, representations, warranties or understandings between the Parties which are not contained in this Agreement, regulatory approvals and related conditions.

9. Severability. The Parties hereto agree that the provisions hereto are severable. If any provision of this Agreement is held invalid, the remainder of this Agreement shall be effective and shall remain in full force and effect unless amended or modified by mutual consent of the Parties.

10. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns.

11. No Third-Party Rights. The obligations of Developer set forth herein shall not create any rights in and/or obligations to any person or Parties other than the City. The Parties hereto alone shall be entitled to enforce or waive any provisions of this Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

ATTEST:

CITY
SUNSET CITY

City Recorder

By:
Its: Mayor

DEVELOPER
FALCON HILL DEVELOPMENT, LLC

By: Joseph M. Cook
Its: Managing Member

Exhibit "A"
LEGAL DESCRIPTION

Exhibit "B"
CONSTRUCTION DRAWINGS

Exhibit "C"
ELEVATIONS

Exhibit "D"
FLOOR PLANS

Exhibit "E"
FINAL PLAT

Exhibit "F"
COVENANTS AND RESTRICTIONS