

CLEARFIELD CITY COUNCIL
AGENDA AND SUMMARY REPORT
October 29, 2019 – WORK SESSION

Meetings of the City Council of Clearfield City may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207 as amended. In such circumstances, contact will be established and maintained via electronic means and the meetings will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.

Executive Conference Room
55 South State Street
Third Floor
Clearfield, Utah

6:00 P.M. WORK SESSION

(TENTATIVE) The Council may consider a motion to enter into a Closed Session for the purpose of discussing the purchase, exchange or lease of real property.
Utah Code Ann. § 52-4-204 and § 52-4-205(1)(e)

Discussion on the addendum development agreement for the Autumn Ridge Phase 5 Subdivision located at approximately 875 West 200 North (TINs: 12-019-0103 and 12-019-0117)

Discussion on Funding Strategies for the Veterans Memorial

Discussion on the City's Draft Moderate Income Housing Plan (MIHP)

Discussion on the Legislative Priorities in Preparation for the 2020 Legislative Session

(Any items not fully addressed prior to the Special Session will be addressed in a Work Session immediately following the CDRA Special Session)

7:30 P.M. SPECIAL SESSION

Presiding: Mayor Shepherd

1. **POSSIBLE CONSIDERATION OF THE DEVELOPMENT AGREEMENT AND FIRST ADDENDUM TO THE PUT/CALL AGREEMENT WITH LOTUS ACQUISITIONS, LLC, AND MEMORANDUM OF UNDERSTANDING (MOU) – 2 WITH THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA) AND LOTUS COMPANY FOR REDEVELOPMENT OF PROPERTIES LOCATED AT APPROXIMATELY 442 AND 448 SOUTH STATE STREET (MABEY PLACE)**

BACKGROUND: In the spring of 2018 the City purchased the Clearfield Mobile Home Park and partnered with Lotus for redevelopment of the area. The redevelopment is proposed to take place in three phases of residential development with a small amount of commercial space that will occur on the properties located at approximately 442 and 448 South State Street – part of a larger master plan for the creation of a new downtown, with Mabey Pond as the centerpiece. The scope of the Development Agreement is limited to the land currently under the control of the City or the Developer. The Memorandum of Understanding (MOU) – 2 deals with the plans for additional development on both sides of State Street. The Community Development and Renewal Agency (CDRA) is also a party to the MOU – 2 and this document would replace the first MOU and its addendum. The Put/Call Agreement specified that the City would purchase the property at 448

South State Street if a Development Agreement with Lotus was not reached by September 1, 2019; but since both parties feel reaching an agreement is close, the First Addendum to the Put/Call Agreement simply extends the deadline for the “put/call” to December 31, 2020.

RECOMMENDATION: Approve the Development Agreement and First Addendum to the Put/Call Agreement with Lotus Acquisitions, LLC, and Memorandum of Understanding (MOU) – 2 with the Community Development and Renewal Agency (CDRA) and Lotus Company and authorize the Mayor’s signature to any necessary documents.

*****ADJOURN AS THE CITY COUNCIL AND RECONVENE SPECIAL SESSION AS THE COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA)*****

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY (CDRA)
SPECIAL SESSION AGENDA

SCHEDULED ITEM:

1. POSSIBLE CONSIDERATION OF THE MEMORANDUM OF UNDERSTANDING (MOU) – 2 WITH THE CITY AND LOTUS COMPANY FOR REDEVELOPMENT OF PROPERTIES LOCATED AT APPROXIMATELY 442 AND 448 SOUTH STATE STREET (MABEY PLACE)

BACKGROUND: In the spring of 2018 the City purchased the Clearfield Mobile Home Park and the City and CDRA partnered with Lotus through a Memorandum of Understanding on April 10, 2018, for redevelopment of the area. The redevelopment is proposed to take place in phases including the properties located at approximately 442 and 448 South State Street – part of a larger master plan for the creation of a new downtown, with Mabey Pond as the centerpiece. The Memorandum of Understanding (MOU) – 2 outlines obligations of a continued partnership with Lotus for additional development on both sides of State Street. The City is also a party to the MOU – 2 and this document would replace the first MOU and its addendum.

RECOMMENDATION: Approve the Memorandum of Understanding (MOU) – 2 with the City and Lotus Company and authorize the Chair’s signature to any necessary documents.

*****ADJOURN AS THE CDRA*****

Dated this 24th day of October, 2019.

/s/Nancy R. Dean, City Recorder

The City of Clearfield, in accordance with the ‘Americans with Disabilities Act’ provides accommodations and auxiliary communicative aids and services for all those citizens needing assistance. Persons requesting these accommodations for City sponsored public meetings, service programs or events should call Nancy Dean at 525-2714, giving her 48-hour notice.



STAFF REPORT

TO: Mayor Shepherd and City Council Members

FROM: Brad McIlrath, Senior Planner

MEETING DATE: Tuesday, October 29, 2019

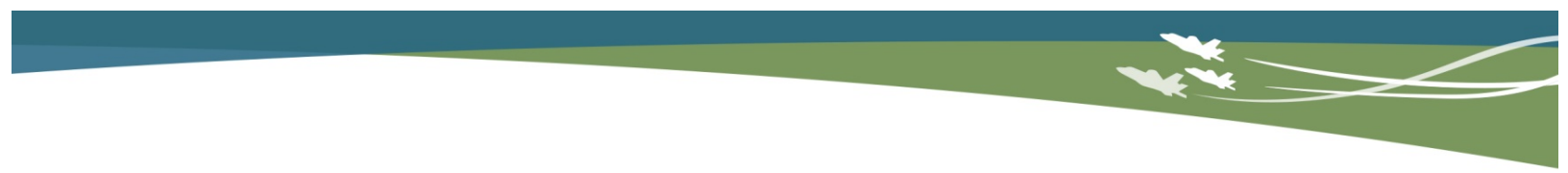
SUBJECT: Discussion on the addendum development agreement for the Autumn Ridge Phase 5 Subdivision located at approximately 875 West 200 North (TIN: 12-019-0103 & 12-019-0117).

DESCRIPTION / BACKGROUND

The Autumn Ridge single-family development includes a total of five (5) phases that have been completed or are planned to be completed in the near future. Each of the phases is located in the R-1-Open zone which requires a development agreement to outline the density and open space required by the zone. The original development agreement was executed on September 9, 2003 and was written to include all of the phases of the development. As the fifth (5th) and final phase of the development, the applicant is proposing an addendum to the original development agreement to address the terms and conditions for phase five (5).

On June 25, 2019 the Clearfield City Council approved the Autumn Ridge Phase 5 subdivision plat for the expansion of the development with thirteen (13) single-family lots. As a condition of that approval, a development agreement or in this case an addendum to the development agreement is required to be executed between the developer and the City. This proposed addendum to the development agreement requires compliance with all of the standards of the original agreement along with amendments made specifically for phase five (5) only. The following is a summary of the development and design standard amendments for phase five (5) of this subdivision development. These can also be reviewed in the attached development agreement addendum.

1. SCOPE. This Addendum shall be interpreted in conjunction with the Development Agreement previously executed by the Parties. However, to the extent that this Addendum conflicts with the Development Agreement, then this Addendum shall be controlling.
2. APPLICABILITY TO PHASES. By way of this Addendum, the Parties hereby agree that the Development Agreement shall be applicable to all phases of the Project. However, any modifications to the Development Agreement set forth in this Addendum shall only be applicable to phase five and all subsequent phases of the Project, not to phases one, two, three or four.



3. FINISHED TOTAL SQUARE FOOTAGE AND GARAGE REQUIREMENTS. For phase five and all subsequent phases of the project, Section 1, Paragraph c. of the Development Agreement is amended to read as follows:

Developer agrees garages and open porches are not included in the total finished square footage in any of the following structures.

i. Developer agrees all housing units within the subdivision of the Property shall be single-family dwellings and shall have a minimum two-car garage, which must be no less than 400 square feet. Developer agrees that if a dwelling has a third-car garage, the third car garage must have its own separate opening or entrance to access the third car garage.

ii. Developer agrees that the finished floor area of a one-story slab on grade structure, with any garages, shall not be less than 1,600 square feet.

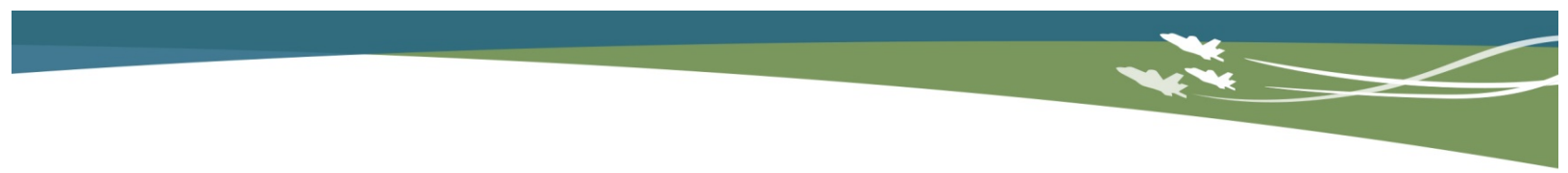
iii. Developer agrees that the finished floor area of a ramble structure, with a two-car garage, shall not be less than 1,350 square feet and that the finished floor area of a Rambler structure with a three-car garage minimum shall not be less than 1,300 square feet.

iv. Developer agrees the finished floor area of a two-story structure, with a two-story garage, shall not be less than 1,650 square feet and that the finished floor area of a two-story structure, with a three car garage minimum shall not be less than 1,600 square feet.

4. EXTERIOR CONSTRUCTION FINISHES. For phase five and all subsequent phases of the project, Section 1, Paragraph e. of the Development Agreement is amended and Paragraph 3 of Addendum to Development Agreement dated March 4, 2009 is amended to read as follows:

i. Developer agrees the front of all one-story structures must be comprised of at least one half brick or stone. The remaining half front of the structure shall be either stucco or fiber cement board. The sides of all homes must be either brick, stone, stucco, vinyl siding, or fiber cement board. The back of the home may be vinyl siding or any maintenance free material.

ii. Developer agrees the front of the first floor of all two-story structures must be comprised of at least one half brick or stone. The remaining half front of the first floor of the structure shall be either stucco or fiber cement board. The front of



the second floor must be either stucco or fiber cement board. The sides of all homes must be either brick, stone, stucco, vinyl siding, or fiber cement board. The back of the home may be vinyl siding or any maintenance free material.

iii. Developer agrees all side and rear exterior finishes may be brick, stucco, rock, vinyl siding, fiber cement or a combination thereof. Stucco finishes may not be installed using an exterior insulated finish system (EIFS). Each dwelling shall be constructed with six inch (6") fascia.

5. OPEN SPACE REQUIREMENT. For phase five and all subsequent phases of the project, this addendum is intended to address the open space requirements as set forth in the R-1-Open Zone as follows:

i. Developer agrees that, with a combined development area of approximately fourteen (14) acres, and a total number of thirty nine (39) lots combined, and a density of three (3) units to the acre, that the shared storm water detention basin meets the open space requirement for both phases four and five by having a detention basin of 17,859.6 square feet, which covers 3% of the developed area for these two phases.

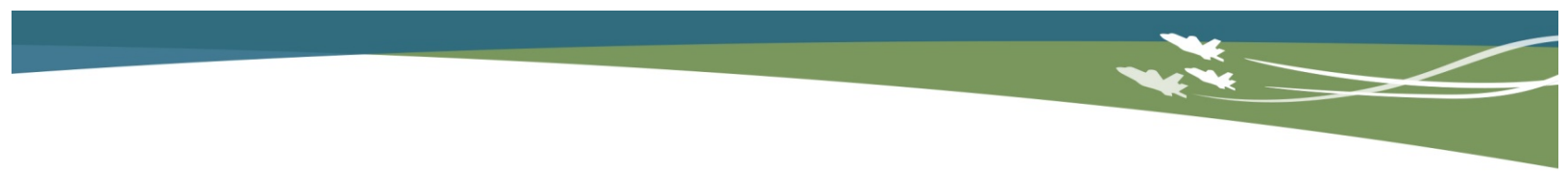
ii. Developer agrees the Homeowners Association Codes, Covenants and Restrictions have been revised to address the elements and maintenance of the open space, detention area of phases 4 and 5.

6. DEVELOPER RECORDING. Developer agrees to record this Addendum as covenants running with the lots and land in the development and indicate on the Plats approved for phase five the existence of this addendum to the Development Agreement.

CORRESPONDING POLICY PRIORITY (IES)

Improving Clearfield's Image, Livability and Economy

As a continuation of the existing neighborhood and development pattern, phase 5 of the Autumn Ridge subdivision and site development aligns with this priority by providing additional housing and will improve the livability and community image in this area. The development will improve Clearfield's image by developing parcels adjacent to the existing single-family residential and will provide uniformity with development in the area. With compliance to ordinance design standards and those outlined in this addendum, the high quality and location of this development will encourage additional investment and create additional single-family housing options for residents.



FISCAL IMPACT

There are no fiscal impacts tied to this development agreement addendum.

ALTERNATIVES

None proposed.

SCHEDULE / TIME CONSTRAINTS

Upon approval of the development agreement addendum the developer will need to prepare the final document and record the agreement in conjunction with the final subdivision plat.

LIST OF ATTACHMENTS

- Autumn Ridge Phase 5, Addendum to Development Agreement

ADDENDUM TO DEVELOPMENT AGREEMENT

Between

CLEARFIELD CITY CORPORATION

And

HAMBLIN INVESTMENTS

For the

AUTUMN RIDGE SUBDIVISION

This Addendum to Development Agreement is entered into this _____ day of _____, 2019 (“Effective Date”), by and between Clearfield City Corporation (the “City”), a Utah Municipal Corporation, and Hamblin Investments Inc. (“Developer”), both of which may hereafter be referred to collectively as the “Parties” and individually as a (“Party”).

RECITALS

WHEREAS, the City and Developer previously entered into a Development Agreement dated September 9, 2003 (the “Development Agreement”) to govern the terms and conditions of the relationship between the Parties concerning Developer’s project known as the Autumn Ridge Subdivision (the “Project”) and to encompass the agreements reached as mandated by ordinance standards and as provided and approved in the Subdivision Preliminary Plat and Utility Plan attached as Exhibit B (“the Plat”) for said Project; and

WHEREAS, the Parties currently seek to clarify, modify, and /or add to the terms and conditions of the Development Agreement for the remaining phases of the Project; and

WHEREAS, the Parties desire to enter into this Addendum to the Development Agreement and do so willingly and voluntarily;

NOW THEREFORE, in consideration of the mutual covenants, conditions and consideration as more fully set forth below, the Parties hereby agree as follows:

AGREEMENT

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2. APPLICABILITY TO PHASES. By way of this Addendum, the Parties hereby agree that the Development Agreement shall be applicable to all phases of the Project. However, any modifications to the Development Agreement set forth in this Addendum shall only be applicable to phase five and all subsequent phases of the Project, not to phases one, two, three or four.

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6. DEVELOPER RECORDING. Developer agrees to record this Addendum as covenants running with the lots and land in the development and indicate on the Plats approved for phase five the existence of this addendum to the Development Agreement.

THIS ADDENDUM BEING EXECUTED AS OF THE DATE WRITTEN ABOVE.

CLEARFIELD CITY CORPORATION

HAMBLIN INVESTMENT, LLC.

Mark Shepherd, Mayor

Douglas B. Hamblin, President

ATTEST:

City Recorder

APPROVED AS TO FORM

City Attorney’s Office

APPROVED AS TO CONTENT

Community Development Director



STAFF REPORT

TO: Mayor Shepherd and City Council Members
FROM: Eric Howes, Trevor Cahoon
MEETING DATE: 10/29/2019
SUBJECT: Funding Strategies for the Veterans Memorial Discussion

DESCRIPTION / BACKGROUND

City Staff has obtained concept plans for a Veterans Monument located at Bicentennial Park at 931 East 600 South. Preliminary architectural estimates place the monument's construction cost close to \$215,000, in addition City Staff anticipates there would be an additional cost of 16%-20% due to contingency and final design work needed. Some minimal fundraising has occurred mainly with our 4th of July Pancake Breakfast which has contributed roughly \$3,000 so far.

As part of the October 9, 2019 work session the City Council and Staff had an open discussion about the desire and different alternatives that could be explored in funding and execution of the monument. Also discussed was to what level we wanted community involvement and buy in for the monument itself. Direction was given to staff to explore possible alternatives to funding and construction with emphasis being placed upon how to ensure the community feels connected to this project.

It is the goal of this work session to address which direction does City Council want to pursue and to what extent staff will expend time in the creation of this monument.

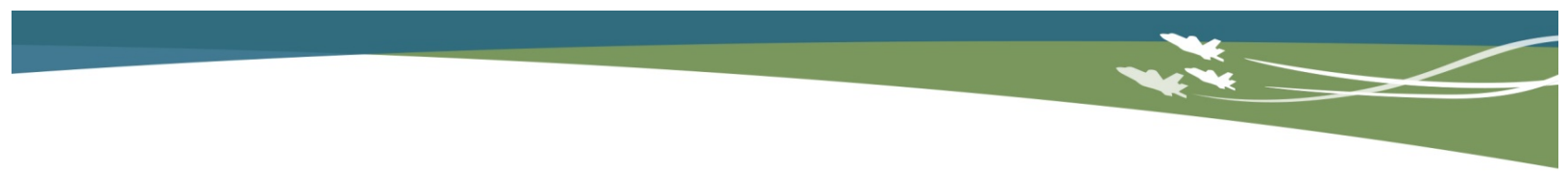
Staff is seeking direction from council on the following items:

- Where does the construction of this monument sit in priority to other projects?
- What set of alternatives need to be explored?

ALTERNATIVES

There are many different combinations that can be done in relation to the creation of a Veterans Memorial. This list is not meant to be exhaustive but informative as to what methods are available for execution.

- City Designed, City Funded, Current Design – This would be the quickest route to complete the monument. The City has already executed a concept design for the site and can begin the



process of creating construction documents very easily from that concept that is available. Funding sources can be: PARAT Tax, PARAT Tax Bonding, Fund Balance, General Fund, etc.

- City Designed, Community Fundraise with City Support, Current Design – Instead of relying solely on City funds donations will be solicited from the residents and businesses. Based on the amount of funds collected the City will then make up the difference to complete the project as designed. The City could set a goal for the City matching funds to help aid in maintaining interest for the project. This would slow down the process but can create ownership by the residents.
- City Designed, Community Fundraise, Current Design – We would rely only on raising funds from our residents. This would lengthen the timeframe of completion which may take a decade or more to complete. It would mean total resident ownership, but maintaining excitement for so long may be difficult.
- Phased-in Design, Community Fundraise – The design of the monument can largely stay in place but the overall design can be phased in as the community fund raises. This can be broken into pieces that make sense for aesthetics. These can be in smaller more manageable chunks of \$25,000 or \$50,000. Overall it would appear to get done faster but the overall effect of the monument may not be as great if only smaller portions are added at a time.
- Fundraise and Match – The City will seek fundraising from the community with the promise to match the dollar amount either 1:1, 2:1, 3:1, etc. Depending on the amount fundraised we will then create a concept with that budget in place. Anticipated fundraising would be approximately one year beginning on Veteran's Day.
- City Build, Creative Community Involvement – The City can construct a Veterans Monument and the community could then help in the execution or provide an additional feature to the monument to create buy in. Some examples may include: The construction of a wall to create a community mural allowing the community to come and paint the mural. This mural can be set to be redone at a regular rate to help current residents continue to feel connection to the area. Fundraising for additional features such as wall sculptures, free-standing sculpture, trees, benches, etc. Resident's creating tiles representing what Veterans mean to them and place those as a tile mosaic at the site. These among others can be accomplished.

FISCAL IMPACT

The fiscal impact will vary based upon funding options.



STAFF REPORT

TO:

Mayor Shepherd and City Council Members

FROM: Spencer W. Brimley, Community Development Director

MEETING DATE: Tuesday, October 29, 2019

SUBJECT: Moderate Income Housing Plan (MIHP) DRAFT Plan Discussion

RECOMMENDED ACTION

In a previous work session with the Council, staff discussed current regulations for Moderate Income Housing and provided the City Council with the “menu” of items to be included as a part of the updated plan. The Council directed staff to select four (4) items for inclusion into the plan, in addition to supporting data and information. This menu of items provides the basis for meeting State requirements for housing affordability.

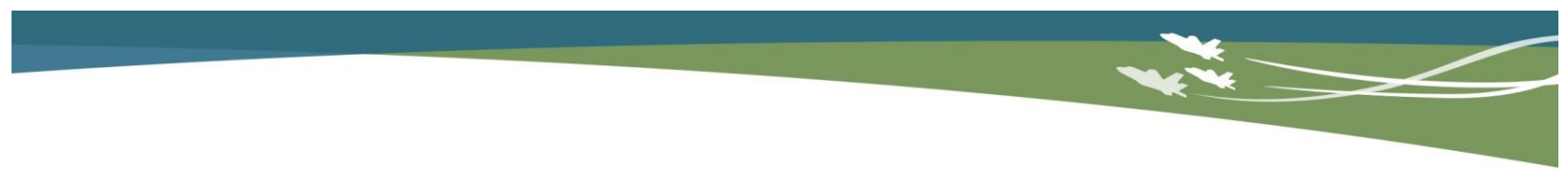
Staff has drafted this plan and is seeking feedback from the Council, in preparation for the upcoming public process for approval and inclusion into the Clearfield City General Plan.

DESCRIPTION / BACKGROUND

Staff has begun drafting the updated plan, but is still working on bringing all the data together in order to appropriately inform the Council and the community about needs and opportunities within the City. Staff has attached the selected “menu” items in draft form for review by the Council. These items have impacts on policy decisions and therefore staff is providing Council with these items prior to the public hearing process for the entire plan. The plan has been scaled back, based on some timing issues and the desire to be in compliance by December 1st. The proposed plan will meet the requirements of SB 34 and allow staff to include greater detail and analysis in the upcoming update to the General Plan. Staff as requested funding from the WFRC for an overhaul and update to the General Plan, given the efforts to be more consistent and compliant with local and regional planning and transportation goals outlined in WC 2050.

The current housing element, included as a part of the General Plan, is required to be updated with greater detail and to provide an analysis of existing and prospective housing needs. This process is important to address the needs for middle-, moderate-, and low-income housing in this region and to set forth measures for the implementation, preservation, improvement and development of housing.

Affordable housing is essential for individuals, households, and communities to thrive and prosper. The purpose of Clearfield City’s Moderate Income Housing element is to ensure that Clearfield City provides a reasonable opportunity for a variety of housing to meet the needs of the population desiring to live, work, and play in Clearfield City.



The population of Clearfield City, along with the Wasatch Front, is projected to increase substantially over the next several years. Included with this report is the “GAP” analysis, which seeks to identify areas where there are community needs, as well as what the current inventory for housing may be.

As Utah Code requires, a jurisdiction’s plan for moderate-income housing must include the following:

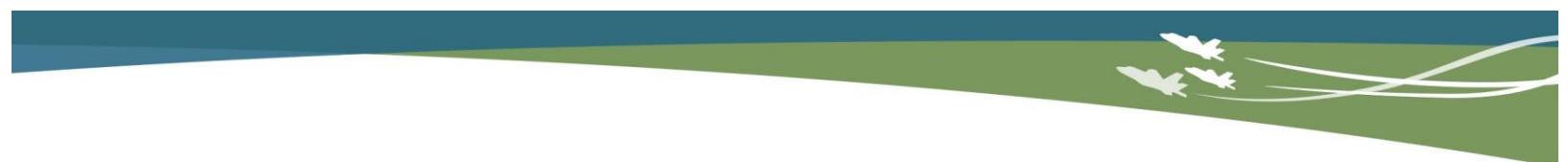
- An estimate of the existing supply of moderate-income housing located within the municipality;
- An estimate of the need for moderate-income housing in the municipality for the next five years;
- A survey of the total residential land use;
- An evaluation of how existing land use and zoning affect opportunities for moderate-income housing;
- A description of the municipality’s program to encourage an adequate supply of moderate-income housing and;
- A recommendation to implement three or more strategies from the “menu” of options. (we are 4).

This information must be included in all plans by December 1, 2019. Staff will present the DRAFT plan at the upcoming work session meeting on November 19th, following a review by the Planning Commission. As stated before, the information included as attachment 2 is more of a policy issue and required feedback and input from the body to insure the “menu” items previously identified by the Council are supported by the subsequent bullet points included with each. The Council’s feedback will help staff fine tune these items to make sure they are in line with Council priorities and objectives for the development of low to moderate housing and housing affordability within the community.

The goals and objectives should be evaluated on an annual basis to determine if the housing goals are being met. If the City is not progressively moving toward the goals, the objectives should be restructured and/or amended to better meet the City’s housing goals.

CORRESPONDING POLICY PRIORITY

The moderate income housing plan (MIHP) is primarily intended to accomplish the second Policy Priority of **“Improving Clearfield’s Image, Livability, and Economy”**. This project will facilitate updates to the General Plan, ordinance amendments, and focus being given throughout the City. This increased **effort** to address **housing** may be a **catalyst for additional positive changes** throughout the City. This policy priority is external and focused on what the City can and will do for its residents. Seeking to provide opportunities for safe, comfortable housing is a crucial part of **“Improving Clearfield’s Image, Livability and Economy.”**



SCHEDULE / TIME CONSTRAINTS

As outlined in SB 34 the MIHP is required to be approved and posted on the City's website no later than December 1, 2019. This date is tied to future transportation funding that may be available to the City for projects that are approved or planned. Annual reporting is required each December, starting in 2020. Staff is proposing the following as the time table for completion of this plan, in order to meet the required deadline, imposed by the State of Utah.

Next steps:

- ~~○ Framework of report and outline for the MIHP – August~~
- ~~○ Data sets and analysis for inclusions into the report Draft MIHP Plan – September and October~~
- **DRAFT goals and objectives provided to Council for review and feedback, prior to final data presentation**
 - Tuesday, October 29th – Council discussion and feedback on “Menu” Items (SB 34)
- **Final Data analysis and document presented to the Planning Commission and Council – November**
 - Wednesday, November 6th – Public hearing with Planning Commission in order to consider amending the City's General Plan and recommend approval of the MIHP plan as chapter 4, to the Council
 - Tuesday, November 19th – Work session with Council for DRAFT MIHP for the City as well as outstanding item or issue
 - Tuesday, November 26th – Public Hearing with Clearfield City Council for adoption of the MIHP and inclusion in the General Plan of the City

LIST OF ATTACHMENTS

1. Chapter 4 MIHE Clearfield City
2. DRAFT “menu items”
3. GAP Analysis – Clearfield City

CHAPTER 4 – AFFORDABLE HOUSING

Affordable housing is defined in the Utah Code as housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.

The overall goal of providing moderate housing is to meet the needs of those people who desire to live here, and to allow them to benefit from and fully participate in all aspects of the community.

The City's various residential zoning designations provide an opportunity for a variety of housing types, which can be defined as affordable housing. Clearfield's housing stock exceeds the current estimated need for affordable housing required through build out of the city. It is estimated that the development of housing in the land use areas identified on the general plan map and in potential zoning designations will provide a realistic opportunity for housing for income levels, families and individuals.

Current data show that more than 55% of the City's housing stock is considered affordable. According to the 2010-2014 American Community Survey 5-Year Estimates (census.gov), of the 9,767 households in Clearfield, 5,162 (52%) have an income of less than \$50,000 (71% of the Davis County area median—\$70,388). A reasonable estimate of the number of Clearfield households at or below 80% (\$56,310) of the area median income is 59%.



ATTACHMENT 2

DRAFT MIHP “menu items”

The following four items have been selected based on the feedback and input from the Council for inclusion in the DRAFT plan (**four items are required for Communities with fixed-guideway transit**):

1. (A) rezone for densities necessary to assure the production of MIH

- a. Develop and present for consideration to the Clearfield Planning Commission and City Council an ordinance amendment or official policy of the City that
 - i. Establishes minimum affordable housing requirements for all new multi-family projects.
- b. Utilize State and County resources to further the development of moderate-income housing in Clearfield.
- c. Ensure zoning of residential areas does not prohibit compatible types of housing.
- d. Support the use of density bonuses for constructing affordable housing options.

2. (F) allow for higher density or moderate income residential development in commercial and mixed-use zones, commercial centers, or employment centers

- a. Support a range of housing types, including townhomes, row-homes, and duplexes, which appeal to younger and older individuals as well as a variety of population demographics.
- b. Review zoning ordinances and make modifications where necessary to allowable housing types, lot size, setbacks and other factors that limit types of housing in a zone.
- c. Implement goals and objectives from Creating Clearfield Downtown Small Area plan to implement centers and create areas of focus along Major Transit Corridors.
- d. Consider policy changes that would allow for an expedited review process for projects that focus on moderate income housing.

3. (G) encourage higher density or moderate income residential development near major transit investment corridors

- a. Conduct developer, builder, and stakeholder focus groups to discuss barriers to affordable housing development and what role the City should play in facilitating development and redevelopment.
- b. Explore text amendments to the municipal code that impact minimum lot size, setbacks reductions, minimum house size, flag lots, and deep lots.
- c. Annually review the City Zoning Map to determine areas where a higher diversity of housing or other housing fits within the vision for the City. Specific consideration will be paid to major transportation corridors.

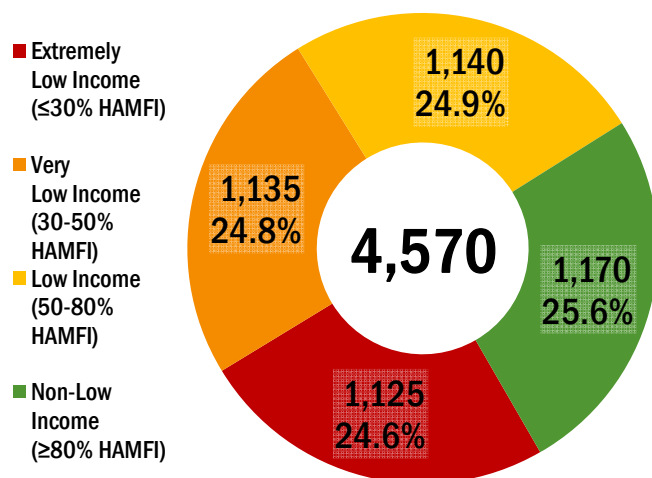
- d. Develop a report examining redevelopment potential of underutilized properties that analyzes vacancy rates, structure to land value ratio, status of delinquent property taxes, and potential partnerships to create mixed-income residential projects.
- e. The City will review any proposed development, redevelopment or code amendment for potential impacts on housing, including potential impacts on special needs, elderly, or low-income populations, including if those changes could result in displacement.
- f. Participate in regional discussions and planning efforts to ensure connectivity to surrounding communities and transit opportunities.

(L) preserve existing housing stock

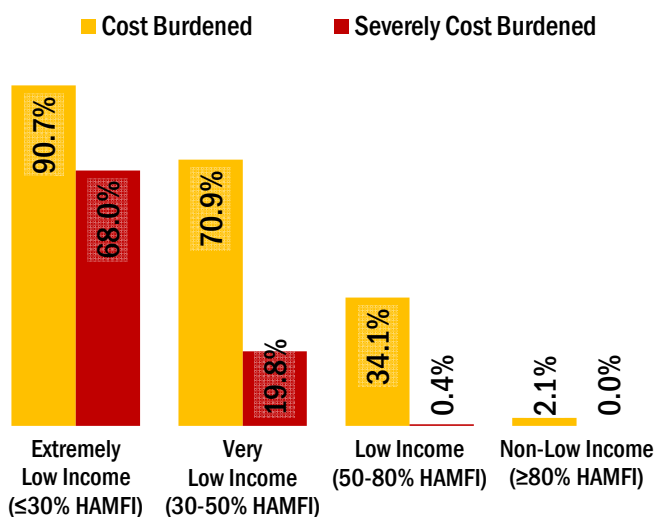
- a. Help maintain existing moderate income housing stock through community partnerships.
- b. In conjunction with Davis Community Housing Authority, ensure that all housing programs enacted by the City preserve and/or enhance the quality and/or unique character of existing Clearfield neighborhoods.
- c. Perform an assessment of the City's existing housing stock to identify neighborhoods that would benefit from housing rehabilitation programs.
- d. Evaluate city ordinances, standards, and regulations to determine if there are barriers to maintaining and improving the City's existing housing stock.
- e. Study the possibility of grandfathering existing ADU's and guest houses to recognize them to be legal non-conforming uses.
- f. Conduct studies and develop small area plans for nodes throughout the City to better understand what land use transitions are appropriate to facilitate job creation and retention, economic prosperity, moderate-income housing development, and economic sustainability.
- g. Encourage energy efficient and sustainable development practices as a means to reduce monthly expenses.

Affordable Housing Gap: Clearfield, 2010-2014

Clearfield's Renter Households by Income Level



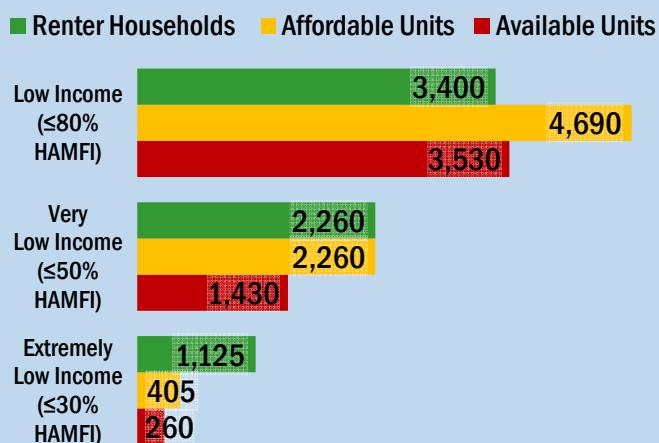
Clearfield's Proportion of Cost Burdened Renter Households



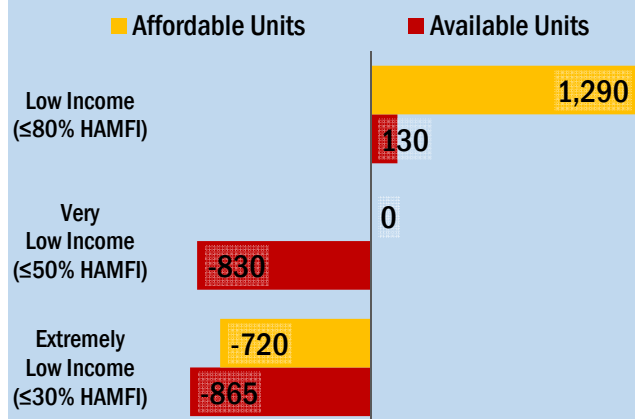
Comparison of Clearfield and Davis County's Affordable & Available Rental housing Units per 100 Renter Households

GAP HAMFI LEVEL	Affordable Units		Available Units	
	Clearfield	Davis County	Clearfield	Davis County
Low Income (≤80% HAMFI)	137.9	145.0	103.8	100.7
Very Low Income (≤50% HAMFI)	100.0	119.9	63.3	65.3
Extremely Low Income (≤30% HAMFI)	36.0	55.6	23.1	26.3

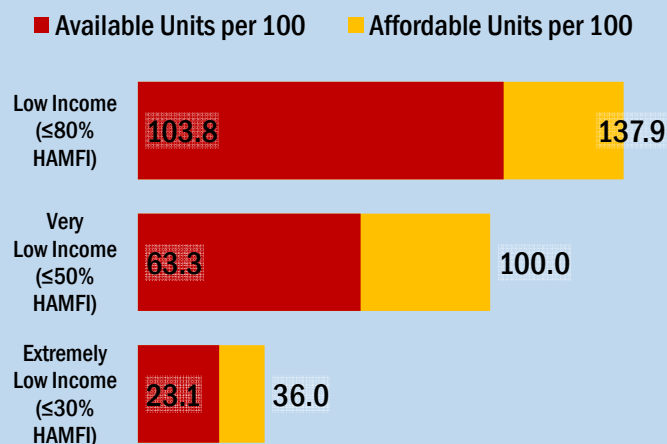
Clearfield's Affordable & Available Rental Housing Gap



Clearfield's Affordable & Available Rental Housing Deficit



Clearfield's Rate of Affordable & Available Rental Units per 100 Renters



Source: U.S. Dept. of Housing & Urban Development. (2017). Comprehensive Housing Affordability Strategy, 2010-2014 [Data]. Available at: <https://www.huduser.gov/portal/datasets/cp.html>



STAFF REPORT

TO: Mayor Shepherd and City Council Members
FROM: JJ Allen, City Manager
MEETING DATE: October 29, 2019
SUBJECT: 2020 Legislative Priorities

RECOMMENDED ACTION

Discussion only.

DESCRIPTION / BACKGROUND

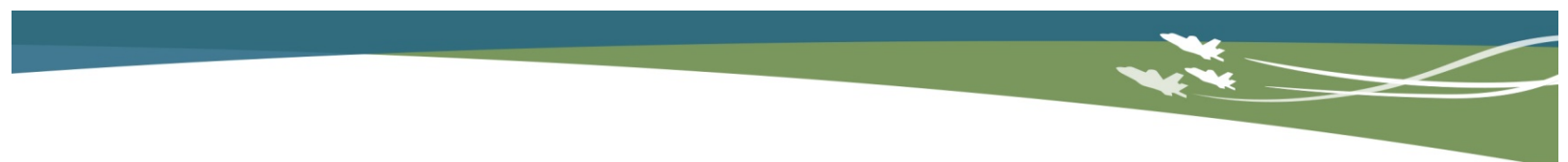
Mayor Shepherd and a few City staff will be meeting with our state legislators on November 13 to preview the City's legislative priorities in advance of the 2020 legislative session. To prepare for that meeting (and to help us put together a handout / infographic to deliver to the legislators), we'd like to have a discussion with the Council about any pressing needs or concerns you feel we have on the State level.

It may be helpful for this discussion to review the legislative priorities for the Utah League of Cities and Towns (ULCT), accessed [here](#). Topics that are high on the list for ULCT include the following:

- Tax reform (or more specifically, the impact thereof on local government)
- Changes to the Utah Retirement System (public safety or otherwise)
- Community-first economic development
- Air quality
- Housing
- Land Use
- Transportation
- Water

In last year's handout, we emphasized our support for the Commission on Housing Affordability's legislation, drawing the reader's attention to Clearfield's redevelopment and housing affordability efforts. We also identified maintaining the 50/50 sales tax distribution formula and selection of Clearfield Station as a TOD site as primary priorities.

What issues or priorities would you like us to emphasize as we approach the 2020 legislative session? Please come prepared to share your thoughts.



CORRESPONDING POLICY PRIORITY (IES)

Potentially all three!

- Providing Quality Municipal Services
- Improving Clearfield's Image, Livability and Economy
- Maintaining a Highly-Motivated and Well-Trained Workforce

FISCAL IMPACT

N/A

ALTERNATIVES

N/A

SCHEDULE / TIME CONSTRAINTS

It would be ideal to identify our top legislative priorities at the October 29 work session so that we can prepare a handout / infographic for our November 13 meeting with the legislators.



STAFF REPORT

TO: Mayor Shepherd and City Council Members
FROM: JJ Allen, City Manager
MEETING DATE: October 22, 2019
SUBJECT: Development Agreement, MOU-2, and Put-Call Addendum for the Mabey Place / Lotus Project

RECOMMENDED ACTION

Work Session – Discussion of the Development Agreement, MOU-2, and the First Addendum to the Put-Call Agreement.

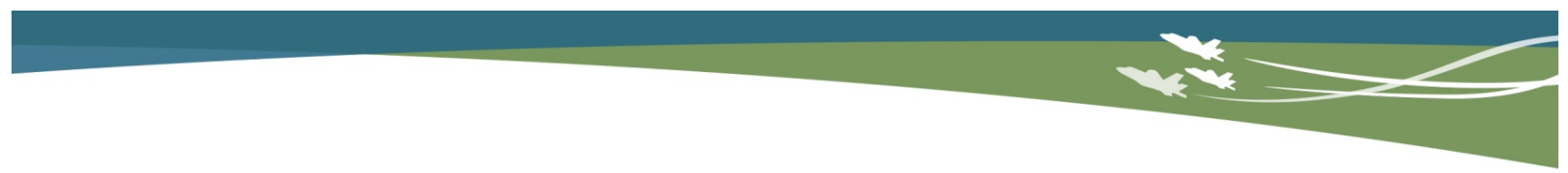
Policy Session (whether October 22 or a future date) – Approve the Development Agreement, MOU-2, and the First Addendum to the Put-Call Agreement with Lotus, and authorize the Mayor's signature to any necessary documents.

DESCRIPTION / BACKGROUND

As introduced in the October 15 Work Session, the attached documents provide for the redevelopment of the Clearfield Mobile Home Park (CMHP) and Minaya properties. This redevelopment is proposed to take place in three phases of residential development (with a small amount of commercial space), that will occur on this property—part of a larger master plan for the creation of a new downtown, with Mabey Pond as the centerpiece.

The scope of the Development Agreement is limited to the land currently under the control of the City or the Developer. Notable components of the Development Agreement include:

- Section 2.1(A) – A deferral (not waiver) of City impact fees (not NDSD or NDFD impact fees), accompanied by a 3% annual compounded interest rate for each year of deferral. See Attachment 3.
- Section 2.1(B) – A property swap with UTA, to acquire a 30-foot-wide strip along the west side of the project. UTA agrees that this 30 feet is not necessary for their second track efforts, and having it makes a big difference in the layout of Lotus' concept plan.
- Section 2.2(A) – Lotus will be applying for LIHTC financing for the two apartment buildings in Phase 1a. As noted in the October 15 work session, their intention is to have an 80% LIHTC / 20% market-rate split in these two buildings, with a target of 60% AMI.
- Section 3.1 – Lotus will purchase the property from the City based on the number of units included in each phase. \$8,800 for each apartment and \$14,000 for each townhome. Their



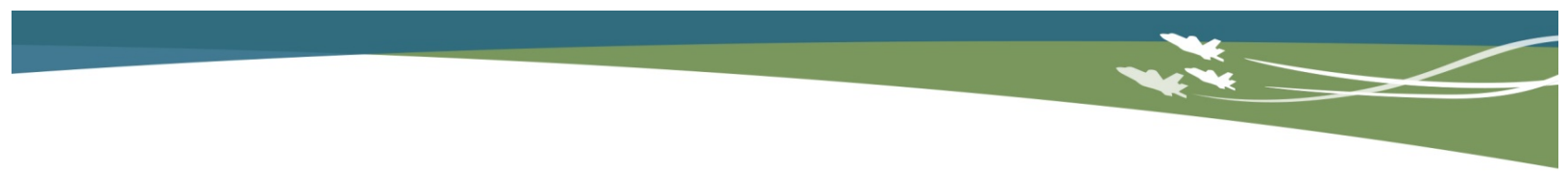
cost of acquiring the Minaya parcel counts toward the cost of the property. The total sale price—after all three phases and assuming the unit counts don’t change—is \$2,973,425.

- Section 4.1(C) – The City will bear the burden of developing the small ½ acre park, with an anticipated completion by the end of the calendar year, 2022. Lotus will bear the burden of installing all public improvements within the public rights-of-way (Depot Street and the West Arterial Road), except for the landscaping in the median of the West Arterial Road.
- Section 5.2 – Lotus will develop the phases as shown in Attachment 4, and summarized below:
 - Phase 1 to commence construction in August 2020.
 - Phase 2 to commence construction in October 2022.
 - Phase 3 to commence construction in October 2025.
- Section 9.4 and Attachment 5 – A handful of modifications to the Form Based Code are listed as authorized. Some of these are minor, but of particular note:
 - In the parking calculation, the development would be able to count on-street parking toward the visitor parking requirement.
 - Larger windows will be used instead of double-hung windows.
 - Front-loaded townhomes will be permitted.
 - Enhanced landscaping and tree canopy will be allowed in lieu of carports (more aesthetically pleasing).

MOU-2 deals with the plans for additional development on both sides of State Street. The CDRA is also a party to MOU-2, and it replaces our first MOU (and its addendum). Key components of MOU-2 include:

- Lotus’ obligations:
 - Pursue property acquisition (of properties identified in Attachment 1), to the extent possible.
 - Continue to work on site planning efforts.
 - While not specified in the MOU-2, Lotus and Better City have conducted quite a bit of outreach to potential commercial tenants, and we would expect these efforts to continue.
- City / CDRA’s obligations:
 - Continue the creation of a new Community Reinvestment Area (CRA). This work will depend heavily on Lotus’ master plan for the entire area.
 - Assist Lotus with property acquisition, if necessary. This could be accomplished with existing funds (remaining from the bond issuance, or park impact fees, for example). Or, if the CDRA needs to exercise eminent domain, the cost of acquisition will be paid by Lotus.

The original Put-Call Agreement specified that Clearfield would purchase the Minaya property from Lotus if we couldn’t reach a Development Agreement by September 1, 2019. We are obviously past



that date now, but both parties agree that we are close to reaching an agreement. Consequently, this First Addendum to the Put-Call Agreement simply extends the deadline for the “put/call” to December 31, 2020.

CORRESPONDING POLICY PRIORITY (IES)

Improving Clearfield’s Image, Livability, and Economy

FISCAL IMPACT

If this Agreement is approved, Clearfield City will receive nearly \$3M from the sale of the Clearfield Mobile Home Park property. The development would also result in significant impact fees (which would be deferred for several years before collection, with interest), as well as building permit and other development fees.

Moreover, if we are successful in the creation of a CRA and capturing tax increment, the CDRA would receive a new funding stream to support the redevelopment efforts of this area. This amount is difficult to estimate at this point, but would be identified during the CRA creation process.

The City issued bonds in early 2018 to purchase the property and promote redevelopment. Payment of this debt service will begin in 2021. Proceeds from the sale of land would cover some of these payments, and there are other resources that we should strongly consider for making up the difference (e.g. tax increment and holding the tax rate after the GO bond expires).

All this said, while the fiscal impacts should not be ignored, this decision is not primarily a fiscal one. It is more fundamental—an investment in the future of our downtown, and the entire Clearfield community.

ALTERNATIVES

General alternatives:

- Approve all documents on October 22 as proposed or with minor agreed upon changes.
- Table the item and schedule it to be discussed again in the October 29 work session (to provide more time for Council to consider the information, suggest significant edits, etc.).
- Table the item and schedule a special Policy Session for October 29 (to provide more time for Council to consider the information, suggest significant edits, etc.).
- Table the item to a different specified date, and direct staff regarding specific aspects that may still need to be addressed.

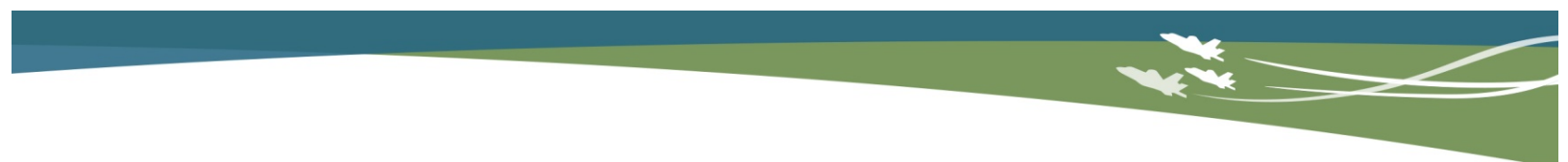
Issue-specific alternatives:

- LIHTC financing:
 - As has been noted previously, Lotus feels strongly that LIHTC financing is critical to the success of Phase 1a. If this is not acceptable to the Council, then we will need to find a different developer.
 - 50/50 vs 80/20 – As noted in the work session, for a period of time, indications were that 50/50 would be sufficient for Lotus to make the project “pencil.” Lotus’ assumption with that was that Clearfield would be paying for the public infrastructure and/or there would be tax increment to offset that cost (\$1.6 million). The current Agreement specifies a maximum of 80% LIHTC units, because Lotus will be paying for the public improvements (Depot Street and the West Arterial Street, with the underground utilities). If the Council would prefer a maximum of 50% LIHTC, the City or CDRA would need to find a way to fund the public improvements.
- Covered parking vs landscaping / tree canopy:
 - This is something that came to light in the late meeting (staff and Lotus) after the October 15 work session. The Form Based Code requires that 50% of the parking stalls for multi-family buildings be covered. Carports, however, are not the most beautiful structures, and they have other drawbacks, too (e.g. tight parking quarters, high damage rates, interference with snow removal, long-term maintenance, etc.). But a primary consideration is that it’s pretty difficult to do both landscaping islands / trees and carports. Lotus would prefer to invest more in beautifying the parking areas with landscaping islands and trees that will ultimately provide a shade canopy, as opposed to installing carports.

SCHEDULE / TIME CONSTRAINTS

As was explained in the October 15 Work Session, if the Council feels comfortable with the Agreement and associated documents and is willing to approve it on October 22, Lotus feels confident that they can meet the deadlines for their financing application (due in December; approval in January). This would result in construction in late spring / early summer 2020, following completion of the land use approval process required by City Code.

If the Council has unresolved concerns, or even just feels the need for more time to consider the information, this item can again be discussed during October 29 Work Session, and be considered for approval in a special Policy Session on October 29. If the Agreement and associated documents are approved on October 29, Lotus will do everything within their power to meet the same deadlines, but are less sure of their success in maintaining the proposed schedule.



If October 29 feels like too much of a rush, Lotus will target the next round of financing (March deadline; April approval). The result would be the construction and purchase schedule shifting by roughly three months.

Please know that we are your staff, and we want to be sure that you are comfortable proceeding forward. We don't want the Council to feel pressured into acting before you are ready. At the same time, we want to convey our confidence in the recommendation to approve, acknowledging that the Council doesn't have the benefit of having spent as much time as staff working through all of the issues.

LIST OF ATTACHMENTS

- Development Agreement
- MOU-2
- First Addendum to Put-Call Agreement

DEVELOPMENT AGREEMENT

Dated the ____ day of October, 2019

By and Between

Clearfield City

And

Lotus Acquisitions, LLC

DEVELOPMENT AGREEMENT

THIS AGREEMENT (the “Agreement”) is entered into as of the __ day of October 2019, between CLEARFIELD CITY, a political subdivision of the State of Utah (the “City”), and LOTUS ACQUISITIONS, LLC a Utah limited liability company (the “Developer”). The aforementioned are sometimes referred to in this Agreement as a “Party,” or collectively as the “Parties.”

WHEREAS:

- (1) The City has invested several years and significant funds into planning for the redevelopment and revitalization of its downtown area; and
- (2) In pursuit of the redevelopment and revitalization of its downtown area, the City issued bonds in early 2018 in order to acquire the Clearfield Mobile Home Park property; and
- (3) The City and Developer entered into a Memorandum of Understanding (MOU-1) in April of 2018 (with a subsequent Addendum 1) to plan specifically for the redevelopment of the Clearfield Mobile Home Park property and the vicinity; and
- (4) The Parties desire to develop a portion of the property described in MOU-1, specifically the Clearfield Mobile Home Park and Minaya properties (“the Site” for purposes of this Agreement); and
- (5) The Parties desire for MOU-1 and its subsequent Addendum 1 to terminate upon the execution of this Agreement and the simultaneous entry into MOU-2 for the remaining properties; and
- (6) The Parties desire that the Site be developed in a unified and consistent fashion pursuant to the provisions of the applicable Urban Residential (UR) or Town Residential (TR) zone within the Form Based Code, with the exception of only those specific variants from the Form Based Code set forth within this Agreement; and
- (7) Development of the Site as pursuant to this Agreement is acknowledged by the Parties to be consistent with Utah’s Land Use Development Management Act and the applicable Urban Residential (UR) or Town Residential (TR) zone, and to operate to the benefit of the City, Developer and the general public; and
- (8) The Parties acknowledge that development of the Site pursuant to this Agreement will result in significant planning and economic benefits to the

City and its residents by, among other things, requiring orderly development of the Site and increasing property tax, sales tax, and other revenues to the City based on improvements to be constructed on the Site; and

- (9) Development of the Site pursuant to this Agreement will also result in significant benefits to Developer by providing assurances to Developer that it will have the ability to develop the Site in accordance with this Agreement; and
- (10) The Parties have cooperated in the preparation of this Agreement; and
- (11) The Parties desire to enter into this Agreement to specify the rights and responsibilities of Developer to develop the Site and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement; and
- (12) The Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-102.

NOW, THEREFORE, each of the Parties for and in consideration of mutual promises and other good and valuable consideration, does covenant and agree as set forth herein.

ARTICLE 1- DEFINITIONS

The following capitalized terms have the meanings and content set forth in this Article 1, wherever used in this Agreement.

1.1 Certificate of Occupancy

The term "Certificate of Occupancy" means, with respect to a building, a permanent certificate of occupancy for the building that is issued by the City.

1.2 City

The term "City" means the City of Clearfield, a political subdivision of the State of Utah.

1.3 Concept Plan

The documents provided, although not a final site plan as required by Clearfield City code, by the developer depicting the development of the Site, and the phasing thereof, which are attached as Attachment 1.

1.4 County

The term “County” means Davis County, Utah.

1.5 Developer

The term “Developer” means Lotus Acquisitions, LLC, or any development special purpose LLC that is managed by a wholly owned affiliate of Lotus Acquisitions LLC, with its principal offices located at 338 South Temple, Suite B, Salt Lake City, UT 84111.

1.6 Private Improvements

The term “Private Improvements” means the improvements contemplated under this Agreement to be constructed and installed by the Developer on the Site, as more particularly described or referred to in Attachment 1 (the Concept Plan), including all buildings/structures, together with all parking, internal drive lanes, internal sewer, internal water, internal storm sewer, internal curbs and gutters, internal sidewalks and landscaping on the Site, as required by City codes, rules and regulations; all of which are intended to be privately owned and maintained which will be more specifically identified in the approved civil drawings.

1.7 Public Improvements

The term “Public Improvements” means the improvements contemplated under this Agreement to be constructed and installed by the Developer on the Site, as more particularly described or referred to in Attachment 2 together with all Right-of-Way parking, drive lanes, sewer, water, storm sewer, curbs and gutters, sidewalks and landscaping on the Site, as required by City codes, rules and regulations. In particular, this refers to the improvements contained with the public right-of-way for Depot Street, the West Arterial Road, and State Street.

1.8 Permitted Uses

The term “Permitted Use” or “Permitted Uses” shall be limited to the uses permitted by the City code, zoning ordinance and regulations of the City for the Site, with areas that are zoned Urban Residential (UR) or Town Residential (TR) at the time of this Agreement.

1.9 Purchase and Sale Agreement.

The term “Purchase and Sale Agreement” means the purchase and sale agreement, which will be entered into between the City and Developer for the purchase by Developer of property owned by the City that is located within the boundary of the Site.

1.10 Site

The term “Site” means the real property as shown in Attachment 1, subject to future legal descriptions.

ARTICLE 2 - CONDITIONS PRECEDENT TO THE DEVELOPER CONSTRUCTING OR INSTALLING THE PUBLIC AND PRIVATE IMPROVEMENTS

2.1 Conditions Precedent for City

As express conditions precedent to the Developer’s obligation to construct or install the Public and Private Improvements, the City shall meet each of the following conditions precedent:

(A) Upon the Developer’s request, the City shall defer the payment of impact fees for Phase 1a and 1b, subject to a 3% growth rate (to account for inflation), by the Developer according to the schedule of impact fee payments as described in Attachment 3. The City does not have authority to defer impact fees imposed by the North Davis Fire District or North Davis Sewer District.

(B) The City shall ensure that 30 feet of Utah Transit Authority’s (UTA) existing 60-foot-wide strip of property adjacent to the west property line of the Site is able to be incorporated into the Site.

(C) The City will convey to the Developer those areas of the Site owned by the City free and clear of any encumbrances, subject to the terms and conditions of the Purchase and Sale Agreement.

2.2 Conditions Precedent for Developer

As express conditions precedent to the City’s obligation to convey the property to the Developer as set forth in this Agreement, the Developer shall meet each of the following conditions precedent:

(A) The Developer shall obtain approval from the Utah Housing Corporation for the use of low-income housing tax credits (“LIHTC”) to assist with financing a portion of the Public and Private Improvements. The ratio of market-to-LIHTC units is contingent on the final proforma and infrastructure cost. The ratio shall not exceed 80% LIHTC units to 20% market-rate units for phase 1a. The target AMI index shall not fall below 60% AMI for any of the phases. In the event that Phase 1 Tax Credits are not obtained by the developer, the Development Agreement and Concept Plan will require an amendment that is mutually agreed on by the Developer and City.

(B) The Developer shall obtain any and all land use approvals required by Clearfield City Code (e.g. plat, site plan, etc.).

2.3 Failure to Meet the Conditions Precedent

In the event that either party fails to perform any term, covenant or condition precedent described in Sections 2.1 and 2.2, then this Agreement shall be null and void (unless the Parties agree, in writing, to amend the conditions precedent). The Developer shall have no obligation to construct and install the Public and Private Improvements, the City shall have no obligation to convey the property, and the Developer shall have no right to develop the property. The parties will have the rights as stipulated in Addendum 1 to the Put/Call Option Agreement.

ARTICLE 3 – LAND TRANSACTIONS

3.1 Former Clearfield Mobile Home Park Purchase Price

Developer's acquisition price for current and future phases will be determined on a per-unit basis equal to \$8,800 per flat and \$14,000 per townhome. Acreage acquired will not include rights-of-way (ROW) for the West Arterial Road or Depot Street or 0.5-acre park. The purchase price and timing of acquisition for all phases is described in Attachment 4, for an estimated total of \$2,973,425. All square footage below is approximate and subject to survey.

(A) Phase 1a Acquisition

Developer will acquire approximately 250,000 square feet for Phase 1a to accommodate the development of 211 flats. The total acquisition cost for the property for the flats is \$1,856,800 (211 x \$8,800). However, the developer has already acquired from a private landowner approximately 15,000 square feet at a price of \$325,375. The acquisition for the remaining 235,000 (250,000 – 15,000) square feet is to accommodate the 211-flat development. Therefore, the purchase price for the portion of the Clearfield Mobile Home Park property required for the flats is \$1,531,425 (\$1,856,800 - \$325,375), which will be the value paid by Developer to the City. Using the same per-unit basis, additional density may be added to this phase as mutually agreed upon by the Parties and via addendum to this Agreement.

(B) Phase 1b Acquisition

Developer will acquire approximately 75,000 square feet for Phase 1b to accommodate the development of 33 townhomes for a purchase price of \$462,000 (33 x \$14,000), paid by the Developer to the City. Using the same per-unit basis, additional density may be added to this phase as mutually agreed upon by the Parties and via addendum to this Agreement.

(C) Phase 2 Acquisition

Developer will acquire approximately 63,500 square feet for Phase 2 to accommodate the development of 16 townhomes for a total purchase price of \$224,000 (16 x \$14,000). Using the

same per-unit basis, additional density may be added to this phase as mutually agreed upon by the Parties and via addendum to this Agreement.

(D) Phase 3 Acquisition

Developer will acquire approximately 125,000 square feet for Phase 3 to accommodate the development of 54 townhomes for a total purchase price of \$756,000 (54 x \$14,000). Using the same per-unit basis, additional density may be added to this phase as mutually agreed upon by the Parties and via addendum to this Agreement.

3.2 Portions of Former Clearfield Mobile Home Park Property Retained for Public Purposes

The City will retain the property within the West Arterial Road and Depot Street rights-of-way and the 0.5-acre park area, which will not be included in the acreage to be purchased by Developer. Developer shall prepare a subdivision plat to dedicate these rights-of-way and create the park parcel.

3.3 Former Clearfield Mobile Home Park Take Down Schedule

The Developer will qualify to purchase the land in phases as the development schedule is met, according to Attachment 4. This includes closing on the land, receiving all necessary approvals, and commencing construction by the end of the month noted in Attachment 4.

The Developer will acquire property in accordance with the pricing and take down schedule in Attachment 4, and will have the right to accelerate the acquisition of subsequent phases so long as the Developer will be implementing the phased development plan. Developer shall not accelerate acquisition in order to profit from selling the land to another party.

Developer will act in good faith to commence construction according to the schedule. However, should macro or local economic market conditions become unfavorable for new development as determined by a reputable third-party (mutually approved by the Parties), the Developer shall have the right to extend the commencement period until such issues are resolved.

The Developer is allowed one six-month extension on the development permit application date per phase as outlined in Attachment 4 for any phase.

In the event that the Developer and/or City cannot gain control of parcels identified in MOU-2 or the land identified in the UTA land swap, the Developer shall have the right to make modifications to the Concept Plan (Attachment 1) Development Schedule Commencement (Attachment 4), Phasing Schedule, and/or Take Down Schedule as mutually agreed to with the City.

DEVELOPER'S OBLIGATIONS AND UNDERTAKINGS

ARTICLE 4-CONSTRUCTION AND INSTALLATION OF PRIVATE AND PUBLIC IMPROVEMENTS

The Developer also hereby agrees as follows:

4.1 Acquisition of Site and Construction, Installation and Operation of Improvements

(A) Acquisition, Construction, Installation and Operation of Private and Public Improvements. The Developer agrees, at its expense, to complete the acquisition of the Site, undertake the construction and installation of the Private Improvements, and Public Improvements, prior to dedication to the City. The Developer shall construct and install all of the Private Improvements without expense to the City. The Developer shall prepare the Site for construction and installation of the Private Improvements, and construct and install the Private Improvements, in such a manner that the development shall meet applicable parking, landscaping and other requirements of the City's laws and regulations, except for those modifications set forth in Attachment 5. All Improvements shall comply with the City's zoning, building, parking, sign and other ordinances and regulations, except for those modifications set forth in Attachment 5.

(B) City Permits and Certificate of Completion. The Developer shall have the sole responsibility for obtaining all necessary permits and approvals to construct and install the Private Improvements and shall make application for such permits and approvals directly to the City's Community Development Department and other appropriate agencies and departments as required.

(C) Funding of Public Improvements. The City shall have the sole responsibility for obtaining and securing all required funding for the 0.5-acre park and required parking for the park, with an anticipated completion date in calendar year 2022. Developer shall have the sole responsibility for obtaining and securing all required funding for Depot Street and the West Arterial Road. Developer will bear the cost of burying the power and telecommunication lines along the Site's State Street frontage. The Developer will not be responsible for any portion of the cost relating to the power and telecommunication lines beyond their respective portion, as agreed upon by the Parties. The City shall manage, maintain, operate, and service all Public Improvements at the sole discretion of the City, which may include, but is not limited to, abandoning, up-sizing, modifying, or changing the use and operation of any dedicated Public Improvement. In the event that Lotus is prevented from acquiring the phase 2 and/or phase 3 area identified in Attachment 1, Lotus will be reimbursed for a portion of the cost associated with the arterial road and collector road improvements/infrastructure. These costs will be divided between the phases based on the percentage of the total developable land area for each respective phase.

4.2 Construction and Installation of the Public Improvements

The Developer shall timely design the Public Improvements as set forth in Attachment 2 and shall submit said designs to the City for approval. The Developer shall complete the construction and installation of the Public Improvements in a timely manner and in accordance to the Phasing Plan in Attachment 4 and the Concept Plan in Attachment 1. The Developer shall design, construct and install all of the Public Improvements without expense to the City, except for those items to be funded by the City as provided for in this Agreement, see Attachment 2.

ARTICLE 5 – CONSTRUCTION REQUIREMENTS, ETC.

5.1 Issuance of Permits

The Developer shall have the sole responsibility for obtaining all necessary permits and approvals to construct and install the Private Improvements and shall make application for such permits and approvals directly to the City Community Development Department and other appropriate agencies and departments as required. The Developer will be responsible for the payment of Private Improvement impact and connection fees, while the City will be responsible for the payment of impact and connection fees associated with the Public Improvements.

5.2 Times for Construction

The Developer agrees that it shall promptly begin and diligently pursue to completion the development of the Site through the construction and installation of the Private Improvements thereon, and that such construction and installation shall in any event timely commence in accordance with the times set forth in the Attachment 4 hereto, unless such date is extended by the City, or the Developer is unable to timely undertake or commence the Private Improvements because of any of the reasons set forth in Section 8.3, Enforced Delay.

5.3 Access to Site

The Private Improvements on the Site and the work of the Developer shall be subject to inspection by representatives of the City. The Developer shall permit access to the Site by the City for purposes of inspection, and, to the extent necessary, to carry out the purposes of this and other sections or provisions of this Agreement. Inspections shall be made during reasonable business hours and shall be made in accordance with standard project safety guidelines.

ARTICLE 6 – LAND USES

6.1 Covenants

The Developer covenants and agrees for itself, and its successors and assigns to or of the Site or any part thereof, that the Developer, and such successors and assigns shall, subject to the terms and conditions contained in this Agreement:

(A) Devote the Site to, and only to and in accordance with, the uses and site designs specified in the Concept Plan (Attachment 1) and this Agreement, as hereafter amended and extended from time to time, but never without the prior written consent of the City for uses other than those specified.

(B) Pay when due and on or before the tax payment date all ad valorem taxes or assessments on or relating to the Site or any part thereof, and on any property located on the Site or any part thereof that the Developer owns.

(C) Except as otherwise provided herein, commence promptly the construction and installation of the Private Improvements on the Site and pursue diligently the construction and installation of the Private Improvements to completion, and complete the construction and installation of the Private Improvements, on or before the dates set forth in this Agreement.

(D) Prior to the completion of the Private Improvements and the issuance of the applicable Certificate of Occupancy, the Developer shall have no power to convey the Site, or any part thereof, without the prior written consent of the City. The Developer may, however, convey the Site, or any part thereof, prior to the completion of the Private Improvements and the issuance of the applicable Certificate of Occupancy, to: (1) a mortgagee or trustee under a mortgage or deed of trust permitted by this Agreement to obtain funds necessary to construct and install the Private Improvements; or (2) as security for obtaining financing permitted by this Agreement for the purposes of construction and installation of certain buildings, structures, or other Private Improvements; or (3) a new proposed developer pursuant to a development contract containing the applicable terms and conditions of this Agreement binding upon the new proposed developer, and in conformance with and subject to the approval of the City as provided for in this Agreement.

As provided above and elsewhere in this Agreement, until the Private Improvements are completed and a Certificate of Occupancy is issued by the City, the Developer shall obtain the written consent of the City before conveying the Site, or any part thereof. As a condition of granting such written consent, the City may require that any proposed transferee who wishes to purchase all or part of the Site prior to the completion of the Private Improvements and the issuance of a Certificate of Occupancy enter into a written agreement with the City to assume the obligations of the Developer under this Agreement and become a developer of all or part of the Private Improvements described on Attachment 1, and to be bound by the terms of this Agreement and to become the successor in interest to the Developer under this Agreement with respect to such parcel.

(E) Not discriminate against any person or group on any unlawful basis in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any improvements erected or to be erected thereon, or any part thereof.

6.2 Enforcement of Covenants

(A) It is intended and agreed that the agreements and covenants provided in this Article 6 shall be covenants running with the land and without regard to technical classification or

designation, legal or otherwise, be to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the City against the Developer, its successors and assigns, to or of the Site or any part thereof or any interest therein, and any party in possession or occupancy of the Site or any part thereof. The Parties agree that the City shall be deemed beneficiaries of the agreements and covenants provided in Section 6.1 of this Article, both for and in its own right and also for the purposes of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefit these agreements and covenants have been provided.

(B) The covenants and agreements contained in covenants numbered 6.1(C) and 6.1(D) shall terminate as to a particular parcel of real property of the Site on the date the City has issued the Certificate or Certificates of Occupancy as to the particular parcel of real property on the Site, or as to a particular phase of construction or installation of the Private Improvements, on the date that the City has issued the Certificate(s) of Occupancy to the Developer. The Certificate(s) of Occupancy shall be evidence that the Private Improvements or a particular portion of construction or installation of the Private Improvements on the Site have been completed. The covenants numbered 6.1(A), 6.1(B), and 6.1(E) shall not terminate.

ARTICLE 7– ANTI-SPECULATION AND ASSIGNMENT PROVISIONS

7.1 Representation as to Development

The Developer represents and agrees that its use of the Site, and the Developer's other undertakings pursuant to this Agreement, are and shall be only for the purpose of development of the Site and not for speculation in land holding. The Developer represents to the City that the Developer has not made or created, and that it will not, prior to the proper completion of the Private Improvements, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease (other than to an end user of a building or other portion of the Private Improvements), or any trust or power, or transfer in any other mode or form of or in respect to this Agreement or the Site, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the City.

7.2 Prohibition Against Transfer and Assignment

(A) The Developer further agrees, in view of: (1) the importance of the development of the Site to the general welfare of the community; (2) the public subsidy that has been or will be made available for the purpose of making such development possible; and (3) the fact that a change in the ownership or with respect to the identity of the parties in control of the Developer or the degree thereof until the Private Improvements are completed on the Site, is, for practical purposes, a transfer or disposition of the property owned by the Developer; that, except as otherwise provided below, no change in the ownership of the Site, or change in the majority ownership or control of the Developer, or with respect to the identity of the parties in control of the Developer, shall be permitted without the express written consent of the City until the time that the Private Improvements have been constructed and installed on the Site. The City's decision to approve or

disapprove of a transfer or assignment shall be based upon the City's evaluation of the ability of the proposed successors to construct, install, maintain and operate satisfactory improvements on the Site and provide benefits to the community from the Site which are comparable to those benefits contemplated to be provided by the Developer from the construction, installation, maintenance and operation of its Private Improvements on the Site and of the Public Improvements, as described in this Agreement. The City may require as conditions to any such approval that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken pursuant to this Agreement by the Developer;

(2) Any proposed transferee, by instrument in writing, shall have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all of the conditions and restrictions to which the Developer is subject; provided, that there has been submitted to the City for review, and the City has approved, all instruments and other legal documents involved in effecting transfer;

(3) The Developer and any subsequent transferee shall comply with such other conditions as the City may find desirable in order to achieve and safeguard the purposes of this Agreement. Provided, however, that in the absence of specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve the Developer or any successor of the Developer bound in any way by this Agreement or otherwise with respect to any term, covenant or condition of this Agreement, including but not limited to, the construction and installation of the Private and Public Improvements, or any of the obligations with respect thereto; and

(4) The consideration payable for the transfer by the transferee or on its behalf shall not exceed an amount representing the actual costs and expenses incurred and due under generally accepted accounting principles, including the Developer's cost of acquiring the portion of the Site being transferred, carrying charges, development costs, and return on investment (not exceeding 5% per annum) to the Developer of the Site and the Private Improvements, if any, theretofore made thereon by it.

(B) Notwithstanding the provisions of this Section 7.2, the Developer may transfer or make a significant change in the ownership or with respect to the identity of the parties in control of the Developer, but only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer, or its successor in interest, to perform its obligations with respect to making the Private Improvements under this Agreement.

(C) The provisions of this Section 7.2 shall terminate upon the issuance of the Certificates of Occupancy for all of the Private Improvements.

7.3 Reports and Notices – Changes in Ownership

The Developer agrees that during the period between execution of this Agreement and the issuance of the applicable Certificate(s) of Occupancy:

(A) The Developer will promptly notify the City of any and all changes whatsoever with respect to: (1) a change in the Project Manager of the Developer; (2) a change in 51% ownership, legal or beneficial of the Developer; (3) a change or any other act or transaction involving or resulting in any change in 51% of the ownership of the Developer; or (4) with respect to the identity of the parties in control of the Developer or the degree thereof, of which it or any of its managers or officers have been notified or otherwise have knowledge or information.

(B) The Developer shall, at such time or times as the City may request, but no more often than twice a year, furnish the City with a complete statement, subscribed and sworn to by the manager or an officer of the Developer, setting forth any person or entity having 51% the ownership interest of the Developer and the extent of their respective holdings, and in the event any other parties have a beneficial interest, their names and the extent of such interest.

7.4 Application to All Forms of Entities

The provisions of this Article shall apply without exception to all forms of business organization, including but not limited to, limited liability companies, corporations, sole proprietorships, joint ventures and partnerships, both general and limited.

ARTICLE 8– REMEDIES

8.1 General Remedies; City and Developer

Subject to the other provisions of this Article 8, in the event of any default or breach of this Agreement or any of its terms, covenants or conditions by any Party hereto, such Party shall, upon written notice from the other Party, proceed immediately to cure or remedy such default or breach, and in any event, do so within thirty (30) calendar days after receipt of such notice or if such default or failure is of a type that cannot reasonably be cured within such thirty (30) day period, within sixty (60) days provided that such cure is commenced within a thirty (30) day period and diligently pursued to completion, unless a longer period of time is agreed to by the Parties pursuant to Section 8.4. In case such action is not taken, or diligently pursued, or the default or breach shall not be cured or remedied within the time periods provided above, the aggrieved Party may institute such proceedings as may be necessary or desirable, at its option, to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations. In the event of any default in or breach of this Agreement by the Developer or the City which is not cured within the time limits contained in this Agreement, the non-defaulting Party may, at its option, take such action as allowed by law, in equity and/or provided for in this Agreement. Any delay by the City in instituting or prosecuting any such

actions or proceedings or otherwise asserting its rights under this Article shall not operate as a waiver of such rights.

8.2 Enforced Delay Beyond Party's Control

Neither the City nor the Developer shall be considered in breach of or default in its obligations hereunder, including but not limited to, with respect to the preparation of the Site for development, or the beginning and completion of construction and installation of the Private Improvements or Public Improvements, or progress in respect thereto, in the event of delay in the performance of such obligations due to causes occurring beyond its control and without its fault or negligence, including acts of God, Force Majeure, environmental contamination, geotechnical complications, unforeseen conditions, hazardous material abatement, or of the public enemy or terrorists, wrongful acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, tariffs, freight embargoes, wars and unusually severe weather or delays of subcontractors due to such causes. The purpose and intent of this provision is that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Developer with respect to the preparation of the Site for development or the construction and installation of the Private Improvements or the Public Improvements, as the case may be, can be extended for the period of the delay: Provided, that in order to obtain the benefit of the provisions of this Section, a Party, within fifteen (15) calendar days after becoming aware of any such delay, shall have notified the other Party thereof in writing stating the cause or causes for the delay. The Parties shall mutually agree to the duration of the extension.

8.3 Extensions by City

The City may in writing extend the time for the Developer's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as may be mutually agreeable to the Parties provided, however, that any such extension or permissive curing of any particular default shall not operate to release any of the Developer's obligations nor constitute a waiver of the City's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement.

8.4 Remedies Cumulative/Non-Waiver

The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party. No waiver made by any Party with respect to the performance, or manner or time thereof, or any obligation of the other Party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

ARTICLE 9– MISCELLANEOUS PROVISIONS

9.1 Conflict of Interest – City

No member, official, employee, consultant, or agent of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested.

9.2 No Personal Liability – City

No member, official, employee, consultant, agent or representative of the City shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

9.3 Developer to Indemnify the City

Developer shall, at all times, protect, indemnify, save harmless and defend the City 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 development of the Site, by Developer, Developer's agents, employees, subcontractors, or suppliers in the performance and execution of the work/development contemplated by the Agreement. This indemnification provision shall not apply to any claims or liabilities that are unrelated to the Site or this Agreement.

9.4 Modification to Form-Based Code

The Developer and City have approved various modifications to the Form-Based Code as set forth in Attachment 5.

9.5 Modifications to Concept Plan

The Parties recognize that the contemplated Private Improvements represent Developer's best attempt to estimate project economics, infrastructure design, project phasing, site layout, dwelling unit density, and traffic circulation to achieve the City's goals and objectives. Both parties acknowledge that these development assumptions are subject to change due to additional information such as architectural design, civil engineering, geotechnical investigation, title searches, UTA ROW requirements, and other unforeseen conditions. Proposed changes to the Concept Plan by the Developer may be approved at the planning staff level, as authorized by Clearfield City Municipal Code §11-5-3(B).

9.6 Notices

A notice or communication under this Agreement, by a Party to another Party, shall be sufficiently given or delivered, if given in writing by personal service, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such Party as follows:

(A) In the case of a notice or communication to the City:

Clearfield City
Attn: City Manager
55 South State Street
Clearfield, UT 84015

With a copy to the City Attorney at the same address.

(B) In the case of a notice or communication to the Developer:

Lotus Acquisitions, LLC
Attn: Bryan Wrigley
388 South Temple, Suite B
Salt Lake City, UT 84111

With a copy to:

Strong & Hanni
Attn: H. Burt Ringwood, Esq.
9350 South 150 East, Suite 820
Sandy, UT 84070

or addressed in such other way in respect to a Party as that Party may, from time to time, designate in writing dispatched as provided in this Section.

(C) Notwithstanding the foregoing, the City may make inquiries from time to time regarding the schedule of the Project to the following person:

Joe Torman, President of Construction and Development Telephone: 801-721-0335

9.7 Attachments/Recitals

All Attachments referred to in this Agreement as being attached or to be attached hereto, whether or not in fact attached, the Parties being satisfied that the correct documents can be supplied from the records of the Parties, and Recitals, are incorporated herein and made a part hereof as if set forth in full and are binding upon the Parties to this Agreement.

9.8 Headings

Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

9.9 Successors and Assigns of Developer

This Agreement shall be binding upon the Developer and its successors and assigns. Where the term “Developer” is used in this Agreement, it shall mean and include the successors and assigns of the Developer, except that the City shall have no obligation under this Agreement to any unapproved successor or assignee of the Developer where the City’s approval of a successor or assignee is required by this Agreement.

9.10 Mutual Drafting

Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either Party based on which Party drafted any particular portion of this Agreement.

9.11 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.

9.12 Severability

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

9.13 Attorneys Fees

In the event of a default hereunder, the defaulting Party agrees to pay all costs incurred by the other Party in enforcing this Agreement, including reasonable attorney’s fees, whether by in-house counsel or outside counsel and whether incurred through initiation of legal proceedings or otherwise.

9.14 Governing Law

This Agreement shall be interpreted and enforced according to the laws of the State of Utah.

9.15 Recordation and Running with the Land

This Agreement shall be recorded in the chain of title for the Site. This Agreement shall be deemed to run with the land.

9.16 Entire Agreement

This Agreement and all Attachments 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

9.17 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.18 Time

Time is of the essence of this Agreement and its Attachments.

9.19 Amendment

This Agreement may only be amended in a writing signed by the Parties hereto.

9.20 Authority

The Parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its behalf; and the Developer has caused the same to be duly executed in its behalf, on or as of the day and year first above written.

CLEARFIELD CITY

By _____, Mayor

ATTEST:

City Recorder

DEVELOPER:

By _____
Its Manager

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

On the ____ day of _____, ____, personally appeared before me _____ who being by me duly sworn did say that he is the Mayor of Clearfield City and that the within and foregoing instrument was signed in behalf of Clearfield City by authority of a motion or resolution of its City Council and said _____ duly acknowledged to me that Clearfield City executed the same.

My Commission Expires:

Notary Public
Residing at:

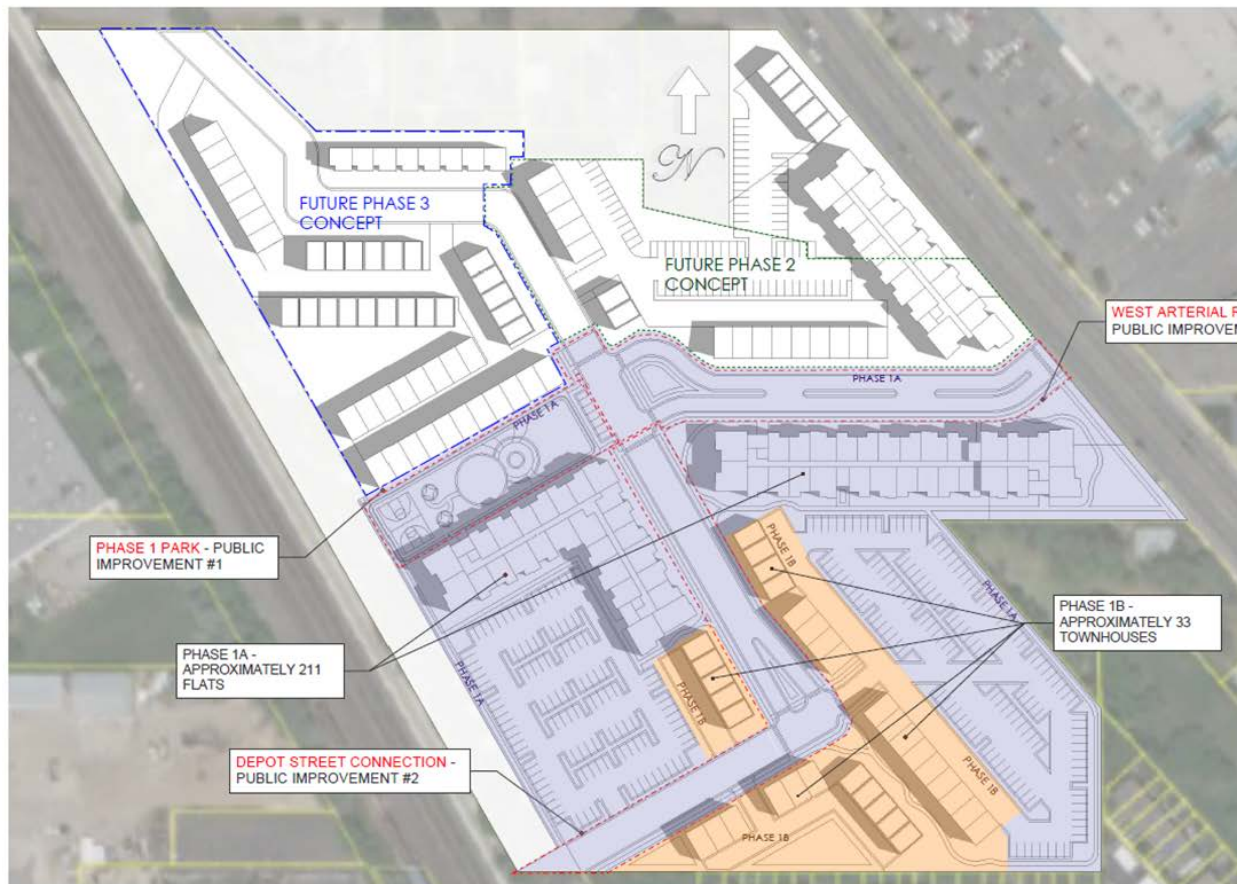
STATE OF _____)
:ss.
COUNTY OF _____)

On the ____ day of _____, ____ personally appeared before me _____, who being by me duly sworn did say, that he is the Manager of _____, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said company, and acknowledged to me that said company executed the same pursuant to authority under or as authorized by its operating agreement or other proper authority.

My Commission Expires:

Notary Public
Residing at:

ATTACHMENT 1 – CONCEPT PLAN



A1 SITE PLAN - ATTACHMENT #1
SCALE: NTS

LOTUS[™]

PROJECT
CLEARFIELD DOWNTOWN
REDEVELOPMENT PROJECT
ATTACHMENT #1

Document Date:

rev. date remark

Schematic Site Plan

-0.0

ATTACHMENT 2 – PUBLIC IMPROVEMENTS

Public Improvement #1

Depot Street

- Developer will provide connectivity to Depot Street, which may entail traffic being circulated through the development rather than an alignment along the west property line, as shown in Attachment 1.
- The City will ensure that the connection to Depot Street can be made through the existing UTA ROW at no additional expense to the Developer.
- The completion of the above Public Improvement will occur in accordance with the phasing shown in Attachment 1.

Public Improvement #2

West Arterial Road

- Will begin at State Street and terminate at the park, as shown in Attachment 1.
- Developer funded (except for the landscaping of the 6 ft. median which would be funded by City).
- The completion of the above Public Improvement will occur in Phase 1.

ATTACHMENT 3 – IMPACT FEE DEFERRALS

Impact Fee Deferrals													
Phase	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	Total
1a	-	-	-	-	-	-	-	10%	10%	19%	38%	23%	100%
1b	-	-	-	-	-	-	-	25%	25%	50%	0%	0%	100%

Growth Rate Calculation													
Phase	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	Total
Year Deferral	0	1	2	3	4	5	6	7	8	9	10	11	
1a	-	103.00%	106.09%	109.27%	112.55%	115.93%	119.41%	122.99%	126.68%	130.48%	134.39%	138.42%	
1b	-	103.00%	106.09%	109.27%	112.55%	115.93%	119.41%	122.99%	126.68%	130.48%	134.39%	138.42%	

The impact fees due and payable during project years 7 through 11 are calculated by multiplying the initial amount of impact fees due at the beginning of the project by 1) the percentage of the impact fee installment (Impact Fee Deferral table above) and 2) the growth rate factor (Growth Rate Calculation table above), in each respective year.

ATTACHMENT 4 – PHASING PLAN

			Flats				Townhomes			Total	
Phase	Development Schedule Commencement	Square Footage	Unit Count	Cost / Unit	Prior Acquisition	Extended Cost	Unit Count	Cost / Unit	Extended Cost	Unit Count	Extended Cost
1a	August 2020	250,000	211	8,800	325,375	1,531,425	-	14,000	-	211	1,531,425
1b	August 2020	75,000	-	8,800	-	-	33	14,000	462,000	33	462,000
SubTotal		325,000	211		325,375	1,531,425	33		462,000	244	1,993,425
2	October 2022	TBD	-	8,800	-	-	16	14,000	224,000	16	224,000
3	October 2025	TBD	-	8,800	-	-	54	14,000	756,000	54	756,000
SubTotal		-	-	8,800	-	-	70		980,000	70	980,000
Total			211		325,375	1,531,425	103		1,442,000	314	2,973,425

ATTACHMENT 5 – FBC MODIFICATION TABLE

BUILDING TYPE STANDARDS (Form Based Code Chapter 5)

MIXED USE BUILDING TYPE:

The two buildings located at the north end of the phase 1 site with commercial ground floors fronting Main Street.

Building Siting

Standard:	Requested Modification:
<i>Front Build to Zone: 0-10 feet</i>	15 foot setback, which is a modification to allow 0-15 feet instead of the 0-10 feet, in the code.
<i>Parking and Vehicular Access must be provided to rear of building</i>	Phase 1 will have a parking ratio of 1.25 stalls per unit. Parallel street parking may be used to fulfill the visitor parking requirement in Phase 1.

Height

Standard:	Requested Modification:
<i>Maximum Overall Height: 4 Stories Buildings taller than three stories shall have a step back of a minimum of 6 feet, which is located between the top of the first story and the top of the third story. The step back is required on street frontage side only.</i>	Compliance through design of the building for the step back requirement is being met or will be met through the design of the building façade, such as the uncovered balconies.
<i>Ground Story Minimum and Maximum Height per Story: 14 feet and 18 feet</i>	12' ceiling height in the commercial retail space.

Street Façade Requirements

Standard:	Requested Modification:
<i>Front Façade Entrance: Mixed Use or Arcade</i>	Flush storefront front-doors for all buildings that front State Street in Phase 1.
<i>Principal Entrance: Front Façade</i>	Flush storefront front-doors for all buildings that front State Street in Phase 1.

MULTI-FAMILY RESIDENTIAL BUILDING TYPE:

Building Siting

Standard:	Requested Modification:
<i>Parking and Vehicular Access must be provided to rear of building.</i>	Phase 1 will have a parking ratio of 1.25 stalls per unit. Parallel street parking may be used to fulfill the visitor parking requirement in Phase 1.

Height

Standard:	Requested Modification:
<i>Buildings taller than three stories shall have a step back of a minimum of 6 feet, which is located between the top of the first story and the top of the third story. The step back is required on street frontage side only.</i>	The developer is proposing to construct and design buildings in accordance with this requirement.

Additional Building Type Design Requirements

Standard:	Requested Modification:
<i>Secondary Building Materials: Limited to details and accents. Include gypsum reinforced fiber concrete for trim and cornice elements; metal for beams, lintels, trim and ornamentation, and exterior architectural metal panels and cladding. *Exterior Insulation and Finishing Systems (EIFS) are permitted for trim only on upper floor facades.</i>	Stucco may be used as a secondary facade material and used on the eaves/cornices of the buildings.
<i>Upper Story Residential Windows: Shall be recessed and double hung.</i>	Developer will utilize larger picture, slider and single-hung window options in lieu of the double-hung requirement. On average windows will be 5-6' tall in lieu of the 4' tall market standard.
<i>Balconies: Balconies must have a minimum area of 60 square feet and are required for a minimum of 40% of the units. All balconies must have a clear connection to the building and be architectural integrated into the building design. Balconies are not allowed to cover more than 40% of a building façade.</i>	Unit balconies must have a minimum depth of 5', and a total square footage no less than 60 square feet.

TOWNHOME BUILDING TYPE:

Building Siting

Standard:	Requested Modification:
<i>Parking and Vehicular Access must be provided to rear of building</i>	Front-loaded townhomes will be permitted.

Additional Building Type Design Requirements

Standard:	Requested Modification:
<i>Secondary Building Materials: Limited to details and accents. Include gypsum reinforced fiber concrete for trim and cornice elements; metal for beams, lintels, trim and ornamentation, and exterior architectural metal panels and cladding. *Exterior Insulation and Finishing Systems (EIFS) are permitted for trim only on upper floor facades.</i>	Stucco may be used as a secondary facade material and used on the eaves/cornices of the building.
<i>Upper Story Residential Windows: Shall be recessed and double hung.</i>	Developer will utilize larger picture, slider and single-hung window options in lieu of the double-hung requirement. On average windows will be 5-6' tall in lieu of the 4' tall market standard.

General Plant Requirements

Standard:	Requested Modification:
<i>The maximum amount of landscape area than may be turf grass is 60%.</i>	This is not yet verified, but will need to be shown or stated in order to decide whether or not there is a modification to be requested or that should be allowed.

OPEN SPACE (Form Based Code Chapter 6)

Standard:	Requested Modification:
<i>Each development is required to have a combined open space and landscaping percentage of twenty percent (20%) with no less than five percent (5%) provided for each.</i> <i>As required by the FBC, each development must incorporate an open space type identified as outlined in Chapter 6 of the code.</i>	The developer will need to identify the open space types (plaza, square or commons) as outlined in Chapter 6 of the FBC. This can be provided during the site plan review process, but is something that should at least be considered.

PARKING (Form Based Code Chapter 8)

Standard:	Requested Modification:
<i>Visitor parking is 15% of required amounts. On street parking directly in front of buildings may count towards required parking.</i> <i>The Residential Multi-family standards apply to all visitor Residential Building Types.</i>	Developer may use on-street parking toward requirement for visitor parking, but not toward requirement for resident parking.
<i>Required covered parking for Multifamily 50% of Required off street Parking Stalls</i>	In exchange for the aesthetic and practical benefits of the enhanced landscaping and tree canopy as shown in Attachment 1, the apartment flats will not be required to have covered parking.

STREETS (Form Based Code Chapter 4)

Standard:	Requested Modification:
<i>West Arterial Road – Neighborhood Street 63 foot ROW (no planted median on this street type)</i>	55 foot ROW (neighborhood street per form-based code excluding the 7 ft. parking on either side):
<i>No median is required for a neighborhood street cross section</i>	6 foot median comprised of planted trees with a curb and gutter.

First Addendum to the Put/Call Agreement

This First Addendum to the Put/Call Agreement (First Addendum”) is made effective this ____ day of October 2019 (the “effective date”), and is being entered into by and among Lotus Acquisitions, LLC, a Utah limited liability company, (“Lotus”), and Clearfield City, a Utah municipality, (“City”), hereinafter referred to collectively as, the “Parties.”

WHEREAS, the Parties entered into a Put/Call Agreement on April 16, 2019 (“Original Put/Call”).

WHEREAS, Section 9 of the Original Put/Call states that “this Agreement (Original Put/Call) may be amended at any time, but only by a written instrument which has been duly approved and executed by the Parties.”

WHEREAS, the Parties desire to amend the Original Put/Call pursuant to Section 9 to change a single date from September 1, 2019 to December 31, 2020.

NOW, THEREFORE, in consideration of the mutual promises, covenants and representations contained herein, the Parties hereto agree as follows:

AGREEMENT

(1) Recitals. The foregoing recitals are incorporated and made an integral part of this First Addendum by this reference.

(2) Amended Language/Cause for Addendum. The Parties agree to replace the fourth “WHEREAS” to the Original Put/Call with the following:

WHEREAS, if the Parties cannot mutually agree to the terms of the Development Agreement on or before December 31, 2020, the Property has no value to Lotus and the City desires to purchase the Property from Lotus.

(3) Original Put/Call. Except for the date change reflected in paragraph 2 above, all other terms and conditions within the Original Put/Call shall remain in place and applicable to the Parties.

(4) Binding Effect. All of the provisions of this First Addendum shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

(5) Severability. If any part or provision of this First Addendum shall be determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this First Addendum except that condition, covenant or other provision of this First Addendum shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(6) Miscellaneous.

- a. Legal Fees. Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this First Addendum or in pursuing any remedy provided hereunder or any applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.
- b. Survival. It is expressly agreed that the terms, covenants and conditions of this First Addendum shall survive any legal act or conveyance required under this First Addendum.
- c. Headings. The section and other headings contained in this First Addendum are for reference purposes only and shall not in any way affect the meaning or interpretation of this First Addendum.

IN WITNESS THEREOF, the parties hereto have caused this First Addendum to the Put/Call Agreement to be executed on the date indicated.

LOTUS ACQUISITIONS, LLC

CLEARFIELD CITY

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Attested By: _____

Print: _____

Title: _____