Sunset, UT
Special Council Work Meeting
Thursday, October 14, 2021 at 7:30 pm

PUBLIC NOTICE IS HEREBY GIVEN that the Sunset City Council will hold a special work meeting at the date and time noted above. It will be held following social distancing rules in the Council Chambers of the Sunset City Office Building, 200 West 1300 North, Sunset, Utah.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting should notify the Sunset City Offices, (801) 825-1628, at least 48 hours in advance of the meeting.

1. **Invocation and Pledge of Allegiance -**
2. **Discuss the Development Agreement for the Sunset Town Center, A Mixed Use Condominium**
3. **Adjourn**

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and agenda was posted in accordance with Utah State Code Annotated 52-4-202(3) and provided to the Standard Examiner.
Susan R. Hale, Recorder

| Agenda published on 10/12/2021 at 5:00 PM

DEVELOPMENT AGREEMENT
THE SUNSET TOWNE CENTER, A MIXED USE CONDOMINIUM

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the 5th day of October, 2021 (the "Effective Date"), by and between **SUNSET CITY**, a Utah municipal corporation (the "City"), and **1300 DEVELOPMENT, LLC**, a Utah limited liability company, (the "Developer"). The Developer and the City are sometimes collectively referred to herein as the "Parties" or singularly as a "Party."

RECITALS

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

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

C. Developer has filed an application for and received approval by the City for the following General Development Plan/Construction Drawings (the "General Development Plan") for the Property consisting of residential and commercial condominium units, subject to approval of an acceptable development agreement. The project to be developed upon the Property pursuant to the General Development Plan is known as the Sunset Towne Center, a mixed use residential & commercial condominium. (the "Project").

D. Pursuant to the City's approval of the General Development Plan on the 1st day of September, 2020, the Plan consists of approximately 250 +/- residential condominium units and 8 +/- commercial condominium units. A copy of the approved General Development Plan/Construction Drawings (as presently constituted) is attached hereto as **Exhibit "B."**

AGREEMENT

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

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

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

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

3. Term. The vested rights described in this Agreement shall be effective for a period of five (5) years following the date on which this Agreement is adopted by the city Council of Sunset and signed by the City's Mayor (the "Term"). In the event construction on the Project is commenced, but not completed, prior to the expiration of the term, the term shall automatically renew for an additional one (1) year term. So long as construction on the Project continues to progress thereafter, the term may be extended on an annual basis by up to three (3) additional one (1) year terms.

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

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

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

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

d. Water Meters. Developer and City hereby agree that Developer shall install such water meters as depicted on page C620 of Exhibit "B". Developer and/or Association shall maintain the fire hydrants, water lines, water laterals up to the water meter, which water meter shall be maintained by the City. The Association shall also have its own individual meter(s) for irrigation water.

e. Covenants and Restrictions. The Developer hereby agrees, that prior to the sale of any units, to record against the title to such Final Plat, condominium covenants, conditions and restrictions ("CC&Rs"). The Developer hereby agrees to use its best efforts to enforce the CC&Rs during all such periods during which the Developer has control of the CC&Rs. Prior to recording the CC&Rs, Developer shall submit the same to the City for approval, which approval shall not be unreasonably withheld or unreasonably delayed. In the event that approval has not been granted by the city within 60 days of submittal to the City, Developer shall have the right to record the draft CC&Rs as submitted. In the event of any occurrence on the property which affects or threatens the health, safety or welfare of the City or its residents, the City shall notify the Developer or the Homeowners Association (HOA), of such condition. If the condition is not remediated within ten (10) days or less if the condition constitutes a bona fide emergency, the City may enter upon the property and remediate the condition and assess the cost to the HOA.

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

i. Phase I shall consist of approximately 69 +/- residential condominium units and (zero) +/- commercial condominium units in such areas depicted on sheet C410 of the civil engineering plan.
ii. Phase II shall consist of approximately 69 +/- residential condominium units and (zero) +/- commercial condominium units in such areas depicted on sheet C410 of the civil engineering plan.

iii. Phase III shall consist of approximately 56 +/- residential condominium units and 6,993.5 +/- commercial condominium units in such areas depicted on sheet C410 of the civil engineering plan.

iv. Phase IV shall consist of approximately 56 +/- residential condominium units and 6,993.5 +/- commercial condominium units in such areas depicted on sheet C410 of the civil engineering plan.

g. Advertising. Developer may, at its sole discretion, erect new signage for the purposes of advertising units for sale or lease and may also utilize any and all existing billboards, placards, and signage for the purposes of tasteful advertising. Any signage must maintain compliance with applicable City ordinances. Additionally, Developer may utilize such existing outbuildings as necessary for storage or other purposes until such time as the phasing plan determines their demolition. Developer has the right to place one office trailer and/or one tool trailer on the site until Phase 4 is complete or all units are sold, whichever is later. Subcontractors may also park trailers, trucks, or equipment on site during the course of construction. Despite the fact that Developer is constructing the Project in phases, the City agrees to record the Final Plat for the entire project following the City Council's approval thereof.

h. Underground Development, Pavement and Demolition Phasing. The City understands and agrees that vertical construction shall proceed simultaneously with the underground development of the Property. The issuance of building permits and scheduled inspections (other than the certificate of occupancy) shall not be delayed by the fact that underground development of utilities or curbs, sidewalks or pavement has not been completed for Phase I or for subsequent phases, respectively. The City agrees that architectural and structural plan review shall not exceed 21 business days from the date of complete submittal. Developer is permitted to use, upgrade, access and/or improve to all city sewer lines and/or or water lines as may be deemed necessary by their civil engineering drawings, as approved by the City. Only those portions of the underground utility development necessary to service Phase I shall be completed during Phase I—to include installation of culinary water lines, fire hydrants, sewer lines, etc. The City understands that with regards to Phase II, Phase III or Phase IV no asphalt, curb or gutter, grading, demolition or underground utilities shall be completed until required by those phases or by the fire code, respectively.

i. Work in the Public Right-of-Way. Pursuant to the Sunset City Code, Developer shall post a cash deposit, or pay for a completion bond, or other financial guarantee, acceptable by Sunset City code, in the amount of 110% of the value of the proposed work in the Public Right of Way. The City agrees that the value of the proposed work equals **$493,481.12** (the "ROW Cost"). If a cash bond, upon satisfactory inspection of the work in the public right-of-way, the "ROW Cost" shall be regularly disbursed to Developer. The City shall not delay disbursement of the ROW Cost for any reason other than an inspection found to be not in conformity with the plans as approved by the City Engineer. If a cash bond, the City shall hold the amount of 10% of the PROW Cost for the period of 12 months from the date of acceptance by the City. Following the period of 12 months the 10% retained by the city shall be refunded to Developer.

j. Required Public Improvements. Developer agrees to construct required public improvements, if any, at its expense, pursuant to the Construction Drawings attached as Exhibit "B." The timing of those improvements (ie, road, curb, gutter, sidewalks, etc.) shall correspond to the phasing plan depicted in sheet C600 of Exhibit "B."

k. Sales. Developer's sales of owner-occupied condominium units shall conform to FHA requirements. In the event of market downturn, Developer shall have the right to rent the

condominium units until such time as Developer shall have determined, in his sole discretion, that the market has recovered sufficiently to resume selling the condominium units once again.

l. Parking & Shared Use. Pursuant to paragraph 10-5G-4 of the Town Center zoning ordinance, shared parking shall be allowed (up to 22 shared stalls). The project shall include 387 total parking stalls, as shown on Exhibit "B" page C401. The shared parking stalls shall be governed by recorded covenants and restrictions and shall include the use of signage to designate shared stalls, towing, and parking stickers to enforce the share parking rules.

m. Commercial Uses. In order to increase the market viability of the commercial space along 1300 North, the City agrees that any and all businesses (including, but not limited to day care facilities, dentists, insta-care, etc.) not specifically restricted in the relevant zoning ordinance his hereby allowed.

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

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

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

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

r. Anticipated Timeline. It is anticipated that each of the four phases will take 12-18 months to complete.

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

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

5. Agreement to Run with the Land/Assignment. The rights and obligations of Developer under this Agreement shall be those affecting the Property, and shall run with and be binding upon the Property and its successors and assigns, or any portion thereof. The terms of this Agreement shall be deemed to expire as to any portion of the Property upon the issuance of a certificate of occupancy for a structure on the subject portion of the Property. Developer shall have the right to assign this Agreement,

in whole or in part so long as such (1) assignee becomes the owner of fee simple title to that portion of the Property affected by the rights and obligations under this Agreement that are being assigned; and (2) signs such documents necessary to demonstrate to Developer and the City that assignee agrees to be bound hereby. After the improvements have been accepted by the City (which acceptance shall not be unreasonably delayed or withheld), Developer's warranty period shall extend for the period of 12 months.

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

To Developer: 1300 Development, LLC
Attn: Joseph M. Cook, Member Manager
PO Box 540395
North Salt Lake, Utah 84054

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

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

7. Default; Mediation. The Developer shall, pursuant to the terms of this Agreement, complete all improvements and perform all other obligations required herein, as such improvements or obligations may be shown on the Final Plat and Construction Drawings, or any documents executed in the future that are required by the City for the approval of an amendment to the Final Plat or the Agreement. In the event either Party fails to perform its obligations hereunder or to comply with the terms thereof, within thirty (30) days after giving written notice of default and the failure of the defaulting Party to cure such default, or if the default is of a nature that it cannot be reasonably cured within 30 days, then to have diligently and in good faith commenced to cure such default, and the non-defaulting Party may, at its election, have the following remedies:

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

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

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

d. The right to terminate this Agreement.

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

In the event of the default of any of the provisions hereof by either Party, which shall give rise to commencement of legal or equitable action against said defaulting Party, the Parties hereby agree to submit to non-binding mediation before commencement of action in any Court of law. In any such event,

defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party's reasonable attorney's fees and costs incurred by reason of the default. Nothing herein shall be construed to prevent or interfere with the City's rights and remedies specified in this Agreement.

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

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

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

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

12. Construction Site Safety**.** The Developer agrees to provide and install, at its expense, adequate barricades, flaggers, warning signs and similar safety devices at all construction sites within the public right-of-way and/or other areas as deemed necessary by the City Engineer, City Public Works Department, and Traffic Engineer in accordance with any and all Federal Regulations, the City's Policies and Procedures, Utah Department of Transportation Requirements, OHSA, and Manual of Uniform Traffic Control Devices ("MUTCD") and shall not remove said safety devices until the construction has been completed

13. Construction Site Waste**.** The Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, or building materials caused by the Developer's operation, or the activities of individual builders and/or subcontractors; shall remove such rubbish as often as necessary, but no less than daily and; at the completion of the work, shall remove all such waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. The Developer further agrees to maintain the finished street surfaces so that they are free from dirt caused by the Developer's operation or as a result of building activity. Any excessive accumulation of dirt and/or construction materials shall be considered sufficient cause for the City to withhold building permits and/or certificates of occupancy until the problem is corrected to the satisfaction of the City Building Inspector and/or the City Public Works Director. If the Developer fails to adequately clean such streets within two (2) days after receipt of written notice, the City may have the streets cleaned at the Developer's expense and the Developer shall be responsible for prompt payment of all such costs. The Developer also agrees to require all contractors within the Development to keep the public right-of-way clean and free from accumulation of dirt, rubbish, and building materials. Under no circumstances shall the Developer or any sub-contractors use open burning procedures to dispose of waste materials.

14. Compliance with City Building Inspector, City Engineer, and City Public Works Director**.** The Developer hereby agrees that it will require its contractors and subcontractors to cooperate with the City's Building Inspector, City Engineer, or City Public Works Director by ceasing operations when winds are of sufficient velocity to create blowing dust, which, in the inspector's opinion, is

hazardous to the public health and welfare. In any case, any cessation of work shall last no longer than one hour.

15. Protection Strips and Undevelopable Lots**.** Developer covenants and warrants that they have not, or will not in the future, unlawfully divide real property in such a way that a parcel of property is created or left behind that cannot be developed according to the requirements of Sunset City Land Use Ordinances, or other applicable laws. Examples of a parcel of property that is created or left behind that cannot be developed include, but are not limited to, spite strips or protection strips, which are parcels created or left for the sole purpose of denying another property owner access to their property, parcels with insufficient square footage, parcels with insufficient buildable area, parcels that do not meet the requirements of Sunset City Land Use Ordinances, and parcels that do not abut on a dedicated street. When a Developer unlawfully divides property, the Developer agrees, as a remedy, to dedicate and otherwise deed ownership of these undevelopable parcels of land to the City, upon the City's written request.

16. No Waiver of Regulation(s). Nothing herein contained shall be construed as a waiver of any requirements of the City Code or the Utah Code Annotated, in its current form as of the date of approval of the Final Plat, and the Developer agrees to comply with all requirements of the same.

17. City Council Budgetary Discretion. All financial obligations of the City arising under this Agreement that are payable after the current fiscal year are contingent upon funds for the purpose being annually appropriated, budgeted and otherwise made available by the Sunset City Council, in its discretion.

18. "Arms Length" Transaction. The Parties hereto expressly disclaim and disavow any partnership, joint venture or fiduciary status, or relationship between them and expressly affirm that they have entered into this Agreement as independent Parties and that the same is in all respects an "arms-length" transaction.

19. Preparation of Agreement. The Parties hereto acknowledge that they have both participated in the preparation of this Agreement and, in the event that any question arises regarding its interpretation, no presumption shall be drawn in favor of or against any Party hereto with respect to the drafting hereof.

20. Amendments. This Agreement may be amended at any time upon unanimous agreement of the Parties hereto, which amendment(s) must be reduced to writing and signed by all Parties in order to become effective.

21. Further Instruments. The Parties hereto agree that they will execute any and all other documents or legal instruments that may be necessary or required to carry out and effectuate all of the provisions hereof.

22. Governing Law; Jurisdiction and Venue. This Agreement shall be exclusively governed by the laws of the State of Utah, and any litigation arising herefrom shall have exclusive jurisdiction and venue in the 2nd District Court of Utah, in and for Davis County.

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

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

ATTEST:

_____
Susan R. Hale, City Recorder

CITY
SUNSET CITY

_____
By: D Howard Madsen
Its: Mayor

DEVELOPER
1300 DEVELOPMENT, LLC

_____
By: Joseph M. Cook
Its: Managing Member

Exhibit "A"
LEGAL DESCRIPTION

BEGINNING AT A POINT LOCATED NORTH 89°56'00" WEST 1791.23 FEET ALONG THE SECTION LINE AND SOUTH 00°00'00" EAST 33.00 FEET TO THE SOUTH LINE OF 1300 NORTH STREET FROM THE NORTHEAST CORNER OF SECTION 35, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, DAVIS COUNTY, UTAH, AND RUNNING THENCE SOUTH 89°56'00" EAST 226.64 FEET ALONG SAID SOUTH LINE; THENCE SOUTH 0°43'30" EAST 303.03 FEET; THENCE SOUTH 89°56'00" EAST 92.87 FEET TO THE WEST LINE OF ENCHANTED HOMES ADDITION - UNIT 2 SUBDIVISION; THENCE SOUTH 0°04'00" WEST 70.00 FEET ALONG SAID WEST LINE TO THE CENTERLINE OF A BLOCK WALL; THENCE SOUTH 60°28'28" WEST 189.41 FEET ALONG SAID CENTERLINE AND PROJECTION THEREOF TO THE NORTHWEST CORNER OF LOT 7, BLOCK A, SCOTTS-DALE SUBDIVISION (ENTRY #194349, DAVIS COUNTY RECORDER), AT A POINT ON THE EAST LINE OF 300 WEST STREET; THENCE SOUTH 73°01'40" WEST 51.00 FEET TO THE NORTHEAST CORNER OF LOT 1, BLOCK C, OF THE AMENDED PLAT OF SCOTTS-DALE SUBDIVISION, SAID POINT ALSO THE NORTHEAST CORNER OF THE PROPERTY CONVEYED IN A WARRANTY DEED (ENTRY #3079595, DAVIS COUNTY RECORDER); THENCE SOUTH 65°47'47" WEST 55.23 FEET ALONG SAID CONVEYANCE; THENCE SOUTH 60°35'47" WEST 67.08 FEET ALONG SAID CONVEYANCE TO THE NORTH LINE OF LOT 7 OF SAID AMENDED SUBDIVISION; THENCE ALONG THE NORTH LOT LINES OF LOT 7, LOT 8, LOT 9, AND LOT 10 OF SAID AMENDED SUBDIVISION THE FOLLOWING COURSES: 1) NORTH 40°29'37" WEST 64.98 FEET; 2) NORTH 60°41'07" WEST 91.54 FEET; 3) NORTH 76°38'18" WEST 91.26 FEET; 4) NORTH 79°22'45" WEST 18.96 FEET (18.42 FEET, BY RECORD) TO THE EXTENSION OF THE WEST LINE OF A BUILDING; THENCE NORTH 0°11'15" WEST 349.10 FEET (349.14 FEET, BY RECORD) ALONG THE WEST LINE OF AN EXISTING BUILDING AND BUILDING LINE EXTENDED; THENCE NORTH 89°48'45" EAST 14.46 FEET; THENCE NORTH 0°11'15" WEST 69.47 FEET TO THE SOUTH LINE OF 1300 NORTH STREET; THENCE SOUTH 89°56'00" EAST 215.50 FEET (214.99 FEET, BY RECORD) ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING.
CONTAINING 5.123 ACRES.

Exhibit “B”
CONSTRUCTION DRAWINGS

Exhibit "C"
ELEVATIONS

Exhibit “D”
FLOOR PLANS

Exhibit “E”
FINAL PLAT

Exhibit "F"
COVENANTS AND RESTRICTIONS

DEVELOPMENT AGREEMENT
THE SUNSET TOWN CENTER, A MIXED USE CONDOMINIUM

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the ___ day of _____, 2021 (the "Effective Date"), by and between **SUNSET CITY**, a Utah municipal corporation (the "City"), and **1300 DEVELOPMENT, LLC**, a Utah limited liability company, (the "Developer"). The Developer and the City are sometimes collectively referred to herein as the "Parties" or singularly as a "Party."

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

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Additionally, Developer may utilize such existing outbuildings as necessary for storage or other purposes until such time as the phasing plan determines their demolition. Developer has the right to place one office trailer and/or one tool trailer on the site until Phase 4 is complete or all units are sold, whichever is later. Subcontractors may also park trailers, trucks, or equipment on site during the course of construction. Despite the fact that Developer is constructing the Project in phases, the City agrees to record the Final Plat for the entire project following the City Council's approval thereof. *because this has nothing to do with advertising*

g. Advertising. Developer may, at its sole discretion, erect new signage for the purposes of advertising units for sale or lease and may also utilize any and all existing billboards, placards, and signage for the purposes of tasteful advertising. Any signage must maintain compliance with applicable City ordinances.

h. Underground Development, Pavement and Demolition Phasing. The City understands and agrees that vertical construction shall proceed simultaneously with the underground development of the Property. The issuance of building permits and scheduled inspections (other than the certificate of occupancy) shall not be delayed by the fact that underground development of utilities or curbs, sidewalks or pavement has not been completed for Phase I or for subsequent phases, respectively. The City agrees that architectural and structural plan review shall not exceed 21 business days from the date of complete submittal. Developer is permitted to use, upgrade, access and/or improve to all city sewer lines and/or or water lines as may be deemed necessary by their civil engineering drawings, as approved by the City. Only those portions of the underground utility development necessary to service Phase I shall be completed during Phase I—to include installation of culinary water lines, fire hydrants, sewer lines, etc. The City understands that with regards to Phase II, Phase III or Phase IV no asphalt, curb or gutter, grading, demolition or underground utilities shall be completed until required by those phases or by the fire code, respectively.

i. Work in the Public Right-of-Way. Pursuant to the Sunset City Code, Developer shall post a cash deposit, or pay for a completion bond, or other financial guarantee, acceptable by Sunset City code, in the amount of 110% of the value of the proposed work in the Public Right of Way. The City agrees that the value of the proposed work equals **$114,782.00** (the "ROW Cost"). If a cash bond, upon satisfactory inspection of the work in the public right-of-way, the ROW Cost shall be regularly disbursed to Developer. The City shall not delay disbursement of the ROW Cost for any reason other than an inspection found to be not in conformity with the plans as approved by the City Engineer. If a cash bond, the City shall hold the amount of 10% of the ROW Cost for the period of 12 months from the date of acceptance by the City. Following the period of 12 months the 10% retained by the city shall be refunded to Developer.

j. Required Public Improvements. Developer agrees to construct required public improvements, if any, at its expense, pursuant to the Construction Drawings attached as Exhibit "B." The timing of those improvements (ie, road, curb, gutter, sidewalks, etc.) shall correspond to the phasing plan depicted in sheet C600 of Exhibit "B."

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

l. Parking & Shared Use. Pursuant to paragraph 10-5G-4 of the Town Center zoning ordinance, shared parking shall be allowed (up to 22 shared stalls). The project shall include 387 total parking stalls, as shown on Exhibit "B" page C401. The shared parking stalls shall be governed by recorded covenants and restrictions and shall include the use of signage to designate shared stalls, towing, and parking stickers to enforce the share parking rules.

m. Commercial Uses. In order to increase the market viability of the commercial space along 1300 North, the City agrees that any and all businesses (including, but not limited to day care facilities, dentists, insta-care, etc.) not specifically restricted in the relevant zoning ordinance his hereby allowed.

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

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

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

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

r. Anticipated Timeline. It is anticipated that each of the four phases will take 12-18 months to complete.

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

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

5. Agreement to Run with the Land/Assignment. The rights and obligations of Developer under this Agreement shall be those affecting the Property, and shall run with and be binding upon the Property and its successors and assigns, or any portion thereof. The terms of this Agreement shall be deemed to expire as to any portion of the Property upon the issuance of a certificate of occupancy for a

structure on the subject portion of the Property. Developer shall have the right to assign this Agreement, in whole or in part so long as such (1) assignee becomes the owner of fee simple title to that portion of the Property affected by the rights and obligations under this Agreement that are being assigned; and (2) signs such documents necessary to demonstrate to Developer and the City that assignee agrees to be bound hereby. After the improvements have been accepted by the City (which acceptance shall not be unreasonably delayed or withheld), Developer's warranty period shall extend for the period of 12 months.

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

To Developer: 1300 Development, LLC
Attn: Joseph M. Cook, Member Manager
PO Box 540395
North Salt Lake, Utah 84054

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

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

7. Default; Mediation. The Developer shall, pursuant to the terms of this Agreement, complete all improvements and perform all other obligations required herein, as such improvements or obligations may be shown on the Final Plat and Construction Drawings, or any documents executed in the future that are required by the City for the approval of an amendment to the Final Plat or the Agreement. In the event either Party fails to perform its obligations hereunder or to comply with the terms thereof, within thirty (30) days after giving written notice of default and the failure of the defaulting Party to cure such default, or if the default is of a nature that it cannot be reasonably cured within 30 days, then to have diligently and in good faith commenced to cure such default, and the non-defaulting Party may, at its election, have the following remedies:

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

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

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

d. The right to terminate this Agreement.

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

In the event of the default of any of the provisions hereof by either Party, which shall give rise to commencement of legal or equitable action against said defaulting Party, the Parties hereby agree to

submit to non-binding mediation before commencement of action in any Court of law. In any such event, defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party's reasonable attorney's fees and costs incurred by reason of the default. Nothing herein shall be construed to prevent or interfere with the City's rights and remedies specified in this Agreement.

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

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

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

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

12. Construction Site Safety**.** The Developer agrees to provide and install, at its expense, adequate barricades, flaggers, warning signs and similar safety devices at all construction sites within the public right-of-way and/or other areas as deemed necessary by the City Engineer, City Public Works Department, and Traffic Engineer in accordance with any and all Federal Regulations, the City's Policies and Procedures, Utah Department of Transportation Requirements, OHSA, and Manual of Uniform Traffic Control Devices ("MUTCD") and shall not remove said safety devices until the construction has been completed

13. Construction Site Waste**.** The Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, or building materials caused by the Developer's operation, or the activities of individual builders and/or subcontractors; shall remove such rubbish as often as necessary, but no less than daily and; at the completion of the work, shall remove all such waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. The Developer further agrees to maintain the finished street surfaces so that they are free from dirt caused by the Developer's operation or as a result of building activity. Any excessive accumulation of dirt and/or construction materials shall be considered sufficient cause for the City to withhold building permits and/or certificates of occupancy until the problem is corrected to the satisfaction of the City Building Inspector and/or the City Public Works Director. If the Developer fails to adequately clean such streets within two (2) days after receipt of written notice, the City may have the streets cleaned at the Developer's expense and the Developer shall be responsible for prompt payment of all such costs. The Developer also agrees to require all contractors within the Development to keep the public right-of-way clean and free from accumulation of dirt, rubbish, and building materials. Under no circumstances shall the Developer or any sub-contractors use open burning procedures to dispose of waste materials.

14. Compliance with City Building Inspector, City Engineer, and City Public Works Director**.** The Developer hereby agrees that it will require its contractors and subcontractors to cooperate with the City's Building Inspector, City Engineer, or City Public Works Director by ceasing operations

when winds are of sufficient velocity to create blowing dust, which, in the inspector's opinion, is hazardous to the public health and welfare. In any case, any cessation of work shall last no longer than one hour.

15. Protection Strips and Undevelopable Lots**.** Developer covenants and warrants that they have not, or will not in the future, unlawfully divide real property in such a way that a parcel of property is created or left behind that cannot be developed according to the requirements of Sunset City Land Use Ordinances, or other applicable laws. Examples of a parcel of property that is created or left behind that cannot be developed include, but are not limited to, spite strips or protection strips, which are parcels created or left for the sole purpose of denying another property owner access to their property, parcels with insufficient square footage, parcels with insufficient buildable area, parcels that do not meet the requirements of Sunset City Land Use Ordinances, and parcels that do not abut on a dedicated street. When a Developer unlawfully divides property, the Developer agrees, as a remedy, to dedicate and otherwise deed ownership of these undevelopable parcels of land to the City, upon the City's written request.

16. No Waiver of Regulation(s). Nothing herein contained shall be construed as a waiver of any requirements of the City Code or the Utah Code Annotated, in its current form as of the date of approval of the Final Plat, and the Developer agrees to comply with all requirements of the same.

17. City Council Budgetary Discretion. All financial obligations of the City arising under this Agreement that are payable after the current fiscal year are contingent upon funds for the purpose being annually appropriated, budgeted and otherwise made available by the Sunset City Council, in its discretion.

18. "Arms Length" Transaction. The Parties hereto expressly disclaim and disavow any partnership, joint venture or fiduciary status, or relationship between them and expressly affirm that they have entered into this Agreement as independent Parties and that the same is in all respects an "arms-length" transaction.

19. Preparation of Agreement. The Parties hereto acknowledge that they have both participated in the preparation of this Agreement and, in the event that any question arises regarding its interpretation, no presumption shall be drawn in favor of or against any Party hereto with respect to the drafting hereof.

20. Amendments. This Agreement may be amended at any time upon unanimous agreement of the Parties hereto, which amendment(s) must be reduced to writing and signed by all Parties in order to become effective.

21. Further Instruments. The Parties hereto agree that they will execute any and all other documents or legal instruments that may be necessary or required to carry out and effectuate all of the provisions hereof.

22. Governing Law; Jurisdiction and Venue. This Agreement shall be exclusively governed by the laws of the State of Utah, and any litigation arising herefrom shall have exclusive jurisdiction and venue in the 2nd District Court of Utah, in and for Davis County.

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

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

ATTEST:

_____
City Recorder

CITY
SUNSET CITY

_____
By:
Its: Mayor

DEVELOPER
1300 DEVELOPMENT, LLC

_____
By: Joseph M. Cook
Its: Managing Member

Exhibit "A"
LEGAL DESCRIPTION

Exhibit “B”
CONSTRUCTION DRAWINGS

Exhibit “C”
ELEVATIONS

Exhibit “D”
FLOOR PLANS

Exhibit “E”
FINAL PLAT

Exhibit "F"
COVENANTS AND RESTRICTIONS

DEVELOPMENT AGREEMENT
THE SUNSET TOWN CENTER

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the ___ day of _____, 2021 (the "Effective Date"), by and between **SUNSET CITY**, a Utah municipal corporation (the "City"), and **1300 DEVELOPMENT, LLC**, a Utah limited liability company, (the "Developer"). The Developer and the City are sometimes collectively referred to herein as the "Parties" or singularly as a "Party."

RECITALS

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

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

C. Developer has filed an application for and received approval by the City for the following General Development Plan/Construction Drawings (the "General Development Plan") for the Property consisting of residential apartments and/or residential condominiums and commercial units, subject to approval of an acceptable development agreement. The project to be developed upon the Property pursuant to the General Development Plan is known as the Sunset Town Center, a mixed use project. (the "Project").

D. Pursuant to the City's approval of the General Development Plan on ___ day of _____20__, the Plan consists of approximately 250 +/- residential apartments and/or condominium units and 8 +/- commercial units. A copy of the approved General Development Plan/Construction Drawings (as presently constituted) is attached hereto as **Exhibit "B."**

AGREEMENT

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

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

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

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

3. Term. The vested rights described in this Agreement shall be effective for a period of five (5) years following the date on which this Agreement is adopted by the city Council of Sunset and signed by the City's Mayor (the "Term"). In the event construction on the Project is commenced, but not completed, prior to the expiration of the term, the term shall automatically renew for an additional one (1) year term. So long as construction on the Project continues to progress thereafter, the term may be extended on an annual basis by up to three (3) additional one (1) year terms.

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

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

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

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

d. Water Meters. Developer and City hereby agree that Developer shall install such water meters as depicted on page C620 of Exhibit "B". Developer and/or Association shall maintain the fire hydrants, water lines, water laterals up to the water meter, which water meter shall be maintained by the City. The Association shall also have its own individual meter(s) for irrigation water.

e. Covenants and Restrictions. In the event Developer decides to sell the units as condominiums, the Developer hereby agrees, that prior to the sale of any units, to record against the title to such Final Plat, condominium covenants, conditions and restrictions ("CC&Rs"). The Developer hereby agrees to use its best efforts to enforce the CC&Rs during all such periods during which the Developer has control of the CC&Rs. Prior to recording the CC&Rs, Developer shall submit the same to the City for approval, which approval shall not be unreasonably withheld or unreasonably delayed. In the event that approval has not been granted by the city within 60 days of submittal to the City, Developer shall have the right to record the draft CC&Rs as submitted. In the event of any occurrence on the property which affects or threatens the health, safety or welfare of the City or its residents, the City shall notify the Developer or the Homeowners Association (HOA), of such condition. If the condition is not remediated within ten (10) days or less if the condition constitutes a bona fide emergency, the City may enter upon the property and remediate the condition and assess the cost to the HOA.

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

i. Phase I shall consist of approximately 69 +/- residential apartments or condominium units and (zero) +/- commercial units in such areas depicted on sheet C410 of the civil engineering plan.
ii. Phase II shall consist of approximately 69 +/- residential apartments or condominium units and (zero) +/- commercial units in such areas depicted on sheet C410 of the civil engineering plan.

iii. Phase III shall consist of approximately 56 +/- residential apartments or condominium units and 6,993.5 +/- commercial units in such areas depicted on sheet C410 of the civil engineering plan.
iv. Phase IV shall consist of approximately 56 +/- residential apartments or condominium units and 6,993.5 +/- commercial units in such areas depicted on sheet C410 of the civil engineering plan.

Note: Developer may utilize such existing outbuildings as necessary for storage or other purposes until such time as the phasing plan determines their demolition. Developer has the right to place one office trailer and/or one tool trailer on the site until Phase 4 is complete or all units are sold, whichever is later. Subcontractors may also park trailers, trucks, or equipment on site during the course of construction. Despite the fact that Developer is constructing the Project in phases, the City agrees to record the Final Plat for the entire project following the City Council's approval thereof.

g. Advertising. Developer may, at its sole discretion, erect new signage for the purposes of advertising units for sale or lease and may also utilize any and all existing billboards, placards, and signage for the purposes of tasteful advertising. Any signage must maintain compliance with applicable City ordinances.

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j. Required Public Improvements. Developer agrees to construct required public improvements, if any, at its expense, pursuant to the Construction Drawings attached as Exhibit "B." The timing of those improvements (ie, road, curb, gutter, sidewalks, etc.) shall correspond to the phasing plan depicted in sheet C600 of Exhibit "B."

k. Sales. In the event that Developer sells the units as condominiums, Developer's sales of owner-occupied condominium units shall conform to FHA requirements. In the event of market

downturn, Developer shall have the right to rent the condominium units until such time as Developer shall have determined, in his sole discretion, that the market has recovered sufficiently to resume selling the condominium units once again.

l. Parking & Shared Use. Pursuant to paragraph 10-5G-4 of the Town Center zoning ordinance, shared parking shall be allowed (up to 22 shared stalls). The project shall include 387 total parking stalls, as shown on Exhibit "B" page C401. The shared parking stalls shall be governed by recorded covenants and restrictions and shall include the use of signage to designate shared stalls, towing, and parking stickers to enforce the share parking rules.

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

r. Anticipated Timeline. It is anticipated that each of the four phases will take 12-18 months to complete.

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

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

5. Agreement to Run with the Land/Assignment. The rights and obligations of Developer under this Agreement shall be those affecting the Property, and shall run with and be binding upon the Property and its successors and assigns, or any portion thereof. The terms of this Agreement shall be deemed to expire as to any portion of the Property upon the issuance of a certificate of occupancy for a

structure on the subject portion of the Property. Developer shall have the right to assign this Agreement, in whole or in part so long as such (1) assignee becomes the owner of fee simple title to that portion of the Property affected by the rights and obligations under this Agreement that are being assigned; and (2) signs such documents necessary to demonstrate to Developer and the City that assignee agrees to be bound hereby. After the improvements have been accepted by the City (which acceptance shall not be unreasonably delayed or withheld), Developer's warranty period shall extend for the period of 12 months.

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

To Developer: 1300 Development, LLC
Attn: Joseph M. Cook, Member Manager
PO Box 540395
North Salt Lake, Utah 84054

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

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

7. Default; Mediation. The Developer shall, pursuant to the terms of this Agreement, complete all improvements and perform all other obligations required herein, as such improvements or obligations may be shown on the Final Plat and Construction Drawings, or any documents executed in the future that are required by the City for the approval of an amendment to the Final Plat or the Agreement. In the event either Party fails to perform its obligations hereunder or to comply with the terms thereof, within thirty (30) days after giving written notice of default and the failure of the defaulting Party to cure such default, or if the default is of a nature that it cannot be reasonably cured within 30 days, then to have diligently and in good faith commenced to cure such default, and the non-defaulting Party may, at its election, have the following remedies:

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

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

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

d. The right to terminate this Agreement.

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

In the event of the default of any of the provisions hereof by either Party, which shall give rise to commencement of legal or equitable action against said defaulting Party, the Parties hereby agree to submit

to non-binding mediation before commencement of action in any Court of law. In any such event, defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party's reasonable attorney's fees and costs incurred by reason of the default. Nothing herein shall be construed to prevent or interfere with the City's rights and remedies specified in this Agreement.

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

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

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

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

12. Construction Site Safety**.** The Developer agrees to provide and install, at its expense, adequate barricades, flaggers, warning signs and similar safety devices at all construction sites within the public right-of-way and/or other areas as deemed necessary by the City Engineer, City Public Works Department, and Traffic Engineer in accordance with any and all Federal Regulations, the City's Policies and Procedures, Utah Department of Transportation Requirements, OHSA, and Manual of Uniform Traffic Control Devices ("MUTCD") and shall not remove said safety devices until the construction has been completed

13. Construction Site Waste**.** The Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, or building materials caused by the Developer's operation, or the activities of individual builders and/or subcontractors; shall remove such rubbish as often as necessary, but no less than daily and; at the completion of the work, shall remove all such waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. The Developer further agrees to maintain the finished street surfaces so that they are free from dirt caused by the Developer's operation or as a result of building activity. Any excessive accumulation of dirt and/or construction materials shall be considered sufficient cause for the City to withhold building permits and/or certificates of occupancy until the problem is corrected to the satisfaction of the City Building Inspector and/or the City Public Works Director. If the Developer fails to adequately clean such streets within two (2) days after receipt of written notice, the City may have the streets cleaned at the Developer's expense and the Developer shall be responsible for prompt payment of all such costs. The Developer also agrees to require all contractors within the Development to keep the public right-of-way clean and free from accumulation of dirt, rubbish, and building materials. Under no circumstances shall the Developer or any sub-contractors use open burning procedures to dispose of waste materials.

14. Compliance with City Building Inspector, City Engineer, and City Public Works Director**.** The Developer hereby agrees that it will require its contractors and subcontractors to cooperate with the City's Building Inspector, City Engineer, or City Public Works Director by ceasing operations when winds

are of sufficient velocity to create blowing dust, which, in the inspector's opinion, is hazardous to the public health and welfare. In any case, any cessation of work shall last no longer than one hour.

15. Protection Strips and Undevelopable Lots**.** Developer covenants and warrants that they have not, or will not in the future, unlawfully divide real property in such a way that a parcel of property is created or left behind that cannot be developed according to the requirements of Sunset City Land Use Ordinances, or other applicable laws. Examples of a parcel of property that is created or left behind that cannot be developed include, but are not limited to, spite strips or protection strips, which are parcels created or left for the sole purpose of denying another property owner access to their property, parcels with insufficient square footage, parcels with insufficient buildable area, parcels that do not meet the requirements of Sunset City Land Use Ordinances, and parcels that do not abut on a dedicated street. When a Developer unlawfully divides property, the Developer agrees, as a remedy, to dedicate and otherwise deed ownership of these undevelopable parcels of land to the City, upon the City's written request.

16. No Waiver of Regulation(s). Nothing herein contained shall be construed as a waiver of any requirements of the City Code or the Utah Code Annotated, in its current form as of the date of approval of the Final Plat, and the Developer agrees to comply with all requirements of the same.

17. City Council Budgetary Discretion. All financial obligations of the City arising under this Agreement that are payable after the current fiscal year are contingent upon funds for the purpose being annually appropriated, budgeted and otherwise made available by the Sunset City Council, in its discretion.

18. "Arms Length" Transaction. The Parties hereto expressly disclaim and disavow any partnership, joint venture or fiduciary status, or relationship between them and expressly affirm that they have entered into this Agreement as independent Parties and that the same is in all respects an "arms-length" transaction.

19. Preparation of Agreement. The Parties hereto acknowledge that they have both participated in the preparation of this Agreement and, in the event that any question arises regarding its interpretation, no presumption shall be drawn in favor of or against any Party hereto with respect to the drafting hereof.

20. Amendments. This Agreement may be amended at any time upon unanimous agreement of the Parties hereto, which amendment(s) must be reduced to writing and signed by all Parties in order to become effective.

21. Further Instruments. The Parties hereto agree that they will execute any and all other documents or legal instruments that may be necessary or required to carry out and effectuate all of the provisions hereof.

22. Governing Law; Jurisdiction and Venue. This Agreement shall be exclusively governed by the laws of the State of Utah, and any litigation arising herefrom shall have exclusive jurisdiction and venue in the 2nd District Court of Utah, in and for Davis County.

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

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

ATTEST:

_____
City Recorder

CITY
SUNSET CITY

_____
By:
Its: Mayor

DEVELOPER
1300 DEVELOPMENT, LLC

_____
By: Joseph M. Cook
Its: Managing Member

Exhibit "A"
LEGAL DESCRIPTION

Exhibit “B”
CONSTRUCTION DRAWINGS

Exhibit “C”
ELEVATIONS

Exhibit “D”
FLOOR PLANS

Exhibit “E”
FINAL PLAT

Exhibit "F"
COVENANTS AND RESTRICTIONS