

When Recorded Return To:

Firelight Development, Inc.
1404 W. Sun River Pkwy #200
St. George, Utah 84790

Effects Parcel Nos.: *See Exhibit "A"*



**AMENDED & RESTATED DEVELOPMENT AGREEMENT
FOR
FIRELIGHT**
(a Planned Mixed-Use Community)

May _____, 2022

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**DEVELOPMENT AGREEMENT
FOR
FIRELIGHT**

THIS DEVELOPMENT AGREEMENT FOR FIRELIGHT (“Agreement”) is entered into this ____ day of May, 2022 by and between FIRELIGHT DEVELOPMENT, INC., a Utah corporation, SRC LAND HOLDINGS, LLC, a Utah limited liability company and T-VILLE DREAMZ, LLC, a Utah limited liability company and their successors and assigns (collectively “Developer”) and TOQUERVILLE CITY, a Utah municipal corporation (“City”). Throughout this Agreement, the Developer and the City may be referred to individually as a “Party” and collectively as “the Parties”.

RECITALS

A. WHEREAS, Developer is the owner of approximately 173.76 acres described in *Exhibit “A”* (“Subject Property”) and holds an option to purchase an additional 1,575.51 acres of real property (“ACC Property”). The Subject Property and the ACC Property together contain a sum total of 1749.27 acres and is more fully depicted and described *Exhibit “B”* located near the western edge of the City’s current municipal boundaries. Both *Exhibit “A”* and *Exhibit “B”*, are attached hereto and incorporated herein by this reference.

B. WHEREAS, the Subject Property, prior to conveyance to Developer, was owned by the same group of individuals and entities who own the ACC Property (“Westbrook Partners”).

C. WHEREAS, while the Subject Property and the ACC Property was under the common ownership of the Westbrook Partners, they obtained a zone change from Multiple Use (MU-20) to Residential (R-1-20) from the City (“Original Zone Change”),

D. WHEREAS, as part of the Original Zone Change, the Westbrook Partners undertook limited high-level planning of their property and obtained conceptual approval for an overlay PDO zoning designation on most of the 1749.27 acres which would allow them to develop a phased master-planned community to be known as the “Ash Creek Crossing Project”.

E. WHEREAS, as a condition of the Original Zone Change, the City required the Westbrook Partners to enter into a development agreement whereby they and the City memorialized certain obligations and rights relating to the development of the Ash Creek Crossing Project which was ultimately recorded on the 12th day of May, 2008 as Document No. 20080019298 on the Official Records on file in the Office of the Recorder of Washington County, State of Utah, and later amended by a certain amendment recorded on the 14th day of October, 2008 as Document No. 20080039848 in the same Official Records (collectively “ACC Development Agreement”).

F. WHEREAS, based upon the current underlying zoning of the Subject Property and the ACC Property (R-1-20), Developer, with the restricted consent of the Westbrook Partners, applied for and received conceptual approval from the City Council pursuant to Section 10-15C-8 of the Toquerville City Code for a Master Planned Development Overlay of both the Subject

Property and the ACC Property, so that as Developer developed the Subject Property and exercised its option to purchase the ACC Property in segments, it could develop a phased mixed-use master-planned community to be known as “Firelight” or the “Firelight Community” (“Firelight Conceptual MPDO Plan”).

G. WHEREAS, on the 19th day of January, 2022, after receiving a recommendation from the Planning Commission who conducted public hearings over a period of 2 months, the City Council granted approval of the Firelight Conceptual MPDO Plan.

H. WHEREAS, subsequent to the City approving the Firelight Conceptual MPDO Plan, Developer has applied for approval of a preliminary site plan for the overall Firelight Community pursuant to Section 10-15C-9 of the Toquerville City Code (“Firelight Preliminary Site Plan”) wherein Developer would receive vested rights to develop the Subject Property only in such a manner as identified in the Firelight Conceptual MPDO Plan and the Preliminary Site Plan subject to the terms and conditions of this Agreement which sets forth the: i) the process for annexing segments of the ACC Property and making them subject to this Agreement once Developer has acquired fee title, ii) the process for final approval of individual phases of development within the Firelight Community made subject to this Agreement, and iii) specified uses, densities and standards applicable to the Subject Property and segments of the ACC Property once Developer has acquired fee title thereto.

I. WHEREAS, on the 11th day of May, 2022, the Planning Commission conducted another public hearing on the Firelight Preliminary Site Plan; specifically the portion of the Firelight Preliminary Site Plan relating to the Subject Property after which they recommended approval of the same to the City Council.

J. WHEREAS, on the 18th day of May, 2022, at its regularly scheduled business meeting, the City Council found that the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan:

- i. does not conflict with any applicable policy of the City’s General Plan;
- ii. meets the spirit and intent of Chapter 15C of Title 10 of the Toquerville City Code (Master Planned Development Overlay Zone);
- iii. will allow integrated planning and design of the Subject Property and segments of the ACC Property once acquired and annexed by the Developer, on the whole, create better development than would be possible under the ACC Development Agreement or conventional zoning regulations;
- iv. meets applicable density limitations of the City’s R-1-20 zone with a reasonable bonus density being given for Developer’s construction and dedication of certain public amenities and preservation of open space pursuant to Chapter 15C of Title 10 of the Toquerville City Code (Master Planned Development Overlay Zone);
- v. meets applicable use limitations of the City’s R-1-20 zone as modified and

qualified by Chapter 15C of Title 10 of the Toquerville City Code (Master Planned Development Overlay Zone); and

- vi. promotes the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of City.

K. WHEREAS, at the same meeting, the City Council also found, based upon: a) Developer's representations, and b) independent research conducted by them and City Staff, that Developer has:

- i. sufficient control over the Subject Property to ensure development will occur as approved;
- ii. the financial capability to carry out development of the Subject Property as approved and the ability to carry out development of the ACC Property once acquired by them;
- iii. the level of experience, expertise, and depth of management necessary to carry out development of the Subject Property as approved.

L. WHEREAS, City has expended considerable time, effort and resources in reviewing the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan and will continue to expend considerable time, effort and resources of the City to ensure the development of the Subject Property and the ACC Property as it is acquire by Developer and made subject to this Agreement, occurs in compliance with Title 10 of the Toquerville City Code (Land Use Regulations), as modified by this Agreement, the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan.

M. WHEREAS, each of the Parties are willing and desirous to enter into this Agreement in order to implement the purposes and conditions of Chapter 15C of Title 10 of the Toquerville City Code (Master Planned Development Overlay Zone) and to more fully memorialize the covenants and commitments of each Party, while giving effect to applicable state law and the Title 10 of the Toquerville City Code (Land Use Regulations).

AGREEMENT

NOW THEREFORE, in consideration of the foregoing promises, conditions, covenants and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated fully into this Agreement as if fully set forth herein.
2. Definitions. Any term or phrase used in this Agreement that has the first letter of each word capitalized shall have that meaning given to it by Title 10 of the Toquerville City Code (Land Use Regulations) in effect on the date this Agreement is executed, or, if different, by this

Agreement. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

- a. “ACC Property” means the 1,575.51 acres of real property depicted and described in *Exhibit “B”* presently owned by the Westbrook Partners and subject to an option to purchase by Developer. The ACC Property and Subject Property make up the totality of proposed Firelight Community.
- b. “After-Acquired Property” means any portion of the ACC Property acquired by Developer after the execution of this Agreement and made subject to this Agreement by the process set forth in Section 14 below.
- c. “Ash Creek SSD” means the Ash Creek Special Service District, a body politic created for the purpose of providing sewer and wastewater removal and treatment to the Hurricane Valley Basin Area, which includes the Subject Property and the ACC Property.
- d. “City” means the Toquerville City, a Utah municipal corporation and political subdivision of the State of Utah.
- e. “City’s Land Use Ordinances” means Title 10 (Land Use Regulations) of the Toquerville City Code, as amended from time to time.
- f. “City Ordinances” or “City Code” means the Toquerville City Code, including City’s Land Use Ordinances.
- g. “City’s Standards and Specifications” means those design and construction guidelines, standards and specifications adopted by the City Council in March 2020 and as amended by Toquerville City Ordinance 2021.07 found at <http://cdn-west.sqhk.co/cityoftoquerville/osiicAs/ToquervilleCityStandardsSpecifications5-10-21.pdf> , and as may be amended from time to time.
- h. “Commercial Use” or “Commercial Structure” means any commercial building, structure or use that complies with the limitations and types of use set forth as Permitted or Conditional in *Exhibit “H”* of this Agreement and Chapter 12 the of the City’s Land Use Ordinances.
- i. “Density Transfer” means the ability of Developer to transfer densities from one Development Parcel to other Development Parcels within the Firelight Community subject to the conditions set forth in Sections 7(f) and 7(g) of this Agreement.
- j. “Developer” means Firelight Development, Inc., a Utah corporation, and the Developer Affiliates, as well as their successors and assigns.
- k. “Developer Affiliates” means SRC Land Holdings, LLC, a Utah limited liability company, T-Ville Dreamz, LLC, a Utah limited liability company and any persons or entities who are members of the Developer.

- l. “Development Activity” means any design, engineering, entitlement, construction, expansion and marketing of a Development Parcel, building, structure, Lot, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities.
- m. “Development Parcel” means an area within the Subject Property that holds the potential of being developed, in part or in whole by Developer, or its successors and assigns, into one or more separate residential or commercial development envelopes. Development Parcel includes “super pads”, subdivision phases, commercial lots or pads within a commercial site plan or multiple lots within a subdivision phase. Development Parcels are not necessarily designated in the Firelight Conceptual MPDO Plan or the Firelight Preliminary Site Plan, but may be designed and designated as such at a later date.
- n. “Electrical Power Supplier” means Rocky Mountain Power, a division of PacifiCorp, or any other electrical power supplier who may provide electrical power service to the area of the City where Firelight is located in the future.
- o. “ERU” means equivalent residential unit. An equivalent residential unit means a Dwelling Unit as defined by City’s Land Use Ordinance. Commercial Structures are not ERUs.
- p. “Final Plat” means a final plat of a residential or commercial subdivision to be constructed as a phase within a Development Parcel which, after approval by the City Council, is to be recorded in the Official Records on file in the Office of the Recorder of Washington County, State of Utah.
- q. “Firelight”, “Firelight Community” and “Community” mean the Firelight planned mixed use community described more fully in Section 3, below and further described and depicted in *Exhibit “B”*, which is attached hereto and incorporated herein.
- r. “Firelight Commercial Uses” means those Commercial Uses listed as Permitted “P” or Conditional “C” in *Exhibit “H” (Commercial Planning Area – Permitted Use Table)*.
- s. “Firelight Design Standards” means those development and design standards set forth in this Agreement as well as those set forth in the City’s Land Use Ordinances, the Firelight Community Charter and the separate plans that will be adopted by Developer, including a community wide Culinary and Irrigation Water Storage and Distribution Plan, a Sewer and Storm Water Management Plan, a Traffic Circulation Plan, and Trails and Recreation (Park) Plan for the purpose of providing consistency and continuity throughout the Firelight Community.
- t. “Firelight Master Declaration” means the Firelight Community Charter that will be annexed to those Development Parcels, or portions thereof, located within of the

Subject Property and any After Acquired Property at the time of recordation of a Final Plat or Commercial Site Plan for said Parcels or portions thereof.

u. “Firelight Conceptual MPDO Plan” means the conceptual plan of development submitted by the Developer and approved by the City Council after extensive public hearings and recommendations made by the Planning Commission in late 2021 and the early part of 2022. The Firelight Conceptual MPDO Plan is 27 pages long consisting of several pages of introductory narrative regarding the types and location of uses and densities to be developed within the Firelight Community as well as detailed summary and notes regarding approved modifications to the City’s Standards and Specifications for certain types of standalone and mixed uses, a Vicinity Map, an Existing Conditions Map, an Open Space and Steep Slope Map, a Hillside Slope Analysis Map, a Commercial Planning Area Map, a Residential Planning Area Map, a Trails Master Plan, a Parks Master Plan, a Commercial Planning Area – Use Table, a Bonus Density Analysis and Tabulation, several modified Road Cross Section Standards and an Active Adult Lot Layout Diagram. The Firelight Conceptual MPDO Plan is attached hereto, marked ***Exhibit “C”***, and is incorporated herein by this reference.

v. “Firelight Preliminary Site Plan” mean those portions of the Firelight Conceptual MPDO Plan which depict the major collector roads, residential planning areas, commercial planning areas, parks, open space, trails, and topography of the proposed Firelight Community.

w. “Firelight Water Distribution System” means the system of water transmission lines within the Firelight Community to be designed, constructed by the Developer or Sub-Developers and dedicated to the City for the purpose of distributing both culinary and raw water to ERU’s and Commercial Uses in the Firelight Community.

x. “Land Use Application” means any application for development within Firelight submitted to City by Developer or any Sub-Developer subsequent to the execution of this Agreement.

y. “Maximum Commercial Density” means that definition prescribed to it in Section 7.d. of this Agreement.

z. “Maximum Development Area” means that definition prescribed to it in Section 7.a. of this Agreement.

aa. “Maximum Residential Density” means that definition prescribed to it in Section 7.b. of this Agreement.

bb. “Modification Application” means the application and process prescribed for modifying this Agreement, the Firelight Conceptual MPDO Plan, or the Firelight Preliminary Site Plan set forth in Section 6, below.

cc. “Planning Commission” means the Toquerville City Planning Commission.

dd. “Project Improvements” means site improvements and Public Facilities that provide services only to the Firelight Community resulting from a Development Activity and necessary for the use and convenience of the residents or guests of the Firelight Community. Project Improvements are not System Improvements - however, elements of both Project Improvements and System Improvements can be present within an individual Public Facility.

ee. “Proportionate Share” means the cost of Public Facility improvements that are roughly proportionate and reasonably related to the service demands and needs of a certain Development Activity.

ff. “Public Facility” or “Public Facilities” means any facility located within the City that is designed to provide services to the City and public at large. A facility that does not benefit the public, but rather individual lots or parcels or common areas within a development is not a Public Facility. Public Facilities include, but are not limited to, infrastructure and systems owned and maintained/operated by the City such as roads, rights of ways, buildings, parks, trails, sidewalks, bridges, and utility/drainage systems. Public Facilities include System Improvements.

gg. “Sub-Developer” means any person, entity, group or association responsible to design, engineer, entitle, construct and market a Development Parcel, or any part thereof, with or without structures or Dwellings thereon.

hh. “Subject Property” means the 173.76 acres of real property presently owned by Developer more particularly described in *Exhibit “A”* which is attached hereto and incorporated herein by this reference. The ACC Property and Subject Property make up the totality of proposed Firelight Community.

ii. “System Improvements” means existing Public Facilities that are designed to provide services to areas within the City at large; and future Public Facilities identified in the City’s Capital Facilities Plan that are intended to provide services to areas within the City at large. “System Improvements” are not Project Improvements - however, elements of both Project Improvements and System Improvements can be present within an individual Public Facility.

jj. “Toquerville Parkway” or “Parkway” means the parkway style by-pass road approximately 4.5 miles in length commencing at milepost 1.15 of Utah State Route 17 (SR-17) near Anderson Junction and running South by Southwest out around present Toquerville proper thru the Firelight Community and ultimately turning East by Southeast to a point where it will cross over Ash Creek and ultimately re-connecting with SR-17 at milepost 5.4., the first phases of which are presently being constructed by the City with the ultimate intent of dedicating and conveying the 120 foot wide right of way to the Utah Department of Transportation (UDOT) (to be known as the newly re-aligned SR-17) for maintenance and ultimate expansion as traffic counts dictate in the future. The Parkway is depicted more fully in *Exhibits “B” thru “G”*.

kk. “Water Storage Site” means that area within or near the Firelight Community to be identified and approved by both the Developer and the City and subsequently acquired, constructed and dedicated, if necessary, to the City for the purpose of receiving, holding, storing and transmitting culinary and raw water to a majority of the Firelight Community.

ll. “Westbrook Partners” means those persons and entities who own the ACC Property which is not yet sold to Developer as set forth in *Schedule “A”*.

3. Summary of Firelight. Firelight is planned as a phased mixed-use master-planned community which, upon full annexation to this Agreement and build out, will include residential, commercial, recreational and community related development consisting of approximately 1749.27 +/- acres located near the western edge of the City’s municipal boundaries. Firelight consists of the parcels of real property described in *Exhibit “A”* known as the Subject Property (173.76 acres) and the ACC Property which is described and depicted in *Exhibit “B”* known as the ACC Property (1,575.51 acres). It is anticipated that the Firelight Community will be split up into several Residential Planning Areas, Commercial Planning Areas and other recreational or open space areas. Said Areas (aka neighborhoods & commercial districts) will be further split up into Development Parcels (aka subdivisions and commercial sites) and eventually said Development Parcels may be further divided into phases. Developer will act as the master developer of the Firelight Community. As such, Developer will oversee and/or coordinate the design and construction of all major “on-site” and “off-site” Public Facility infrastructure and amenities necessary for the Firelight Community. Developer anticipates constructing individual portions of Development Parcels itself and possibly conveying some to Sub-Developers in a planned and regulated manner. Sub-Developers shall be bound by and shall cause its employees and agents to act in accordance with the terms of this Agreement. Developer intends to adopt a detailed set of Development Guidelines and CC&Rs which will govern the Firelight Community, a copy of which shall be reviewed and approved by the City. Such Development Guidelines shall be consistent with the provisions of this Agreement, the Firelight Conceptual MPDO Plan, the Firelight Preliminary Site Plan, the City’s Land Use Ordinances and the City’s Standards and Specifications (as modified by this Agreement).

4. Findings and Authority.

a. Compliance and Benefits to City. The City finds that (i) the Firelight Conceptual MPDO Plan, the Firelight Preliminary Site Plan and this Agreement are consistent with the City’s General Plan, as amended, Chapter 15C of Title 10 of the Toquerville City Code (Master Planned Development Overlay Zone) and all other applicable ordinances, rules, regulations and policies of City; and (ii) the development of the Firelight Community pursuant to this Agreement, the Firelight Conceptual MPDO Plan, the Firelight Preliminary Site Plan and the City’s Land Use Ordinances will result in significant planning and economic benefits to and will further the health, safety and general welfare of City and its residents by, among other things: (A) requiring development of the Firelight Community in a manner consistent with the applicable rules, regulations and policies of City; (B) providing for the design, construction and dedication

of Public Facilities to be completed in several phases as set forth herein; (C) increasing sales and/or property tax and other revenues to the City derived from businesses operated within the Firelight Community and residences constructed and occupied within the Firelight Community; (D) creating jobs from new businesses to be located within the Firelight Community, and (E) the construction of the first phase of the Toquerville Parkway.

b. Reliance by the Parties. City acknowledges that Developer is relying on the execution and continuing validity of this Agreement, the conditions set forth in this Agreement, and the land use entitlements derived from this Agreement and the fully approved Firelight Conceptual MPDO Plan and Firelight Preliminary Site Plan as they relate to the Subject Property and any After Acquired Property. Developer has expended substantial funds in the planning, design and engineering for the Firelight Community and the Toquerville Parkway, in reliance upon this Agreement and will continue to expend substantial funds in the actual construction of the Public Facilities and site improvements within the Firelight Community. Conversely, Developer acknowledges that City is relying on the execution and continuing validity of this Agreement and Developer's faithful performance of its covenants and obligations under this Agreement, the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan in granting the land use entitlements contained herein.

c. Purpose: Authorization to Develop. The Parties desire that the City have reasonable certainty concerning the manner in which the Firelight Community will be developed, and that the Developer will have reasonable certainty in proceeding with the development of the Firelight Community. Throughout this Agreement, Developer, the Developer Affiliate's and their successors and assigns agree to comply with the terms of the Firelight Conceptual MPDO Plan, the Firelight Preliminary Site Plan and this Agreement, and in exchange, City authorizes Developer and Developer's Affiliates, as well as their successors and assigns the right to develop the Firelight Community as set forth in the Firelight Conceptual MPDO Plan, the Firelight Preliminary Site Plan and this Agreement, subject only to future modification as set forth in Section 6, below.

5. Applicable Laws and Regulations. The Parties acknowledge that the entire proposed Firelight Community is located solely within the municipal boundaries of the City. Accordingly, except as provided in Sections 10, 11 & 12, below, the Parties agree that all Development Activity (including the construction of Public Facilities of any sort, on or off-site) relating to the Firelight Community shall comply with City's Land Use Ordinances and the City's Standards and Specifications.

a. Process To Obtain Final Approval of the MPDO Overlay Zoning. Pursuant to Chapter 15C of Title 10 of the City's Land Use Ordinances, the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan may receive "Final Approval" pursuant Section 10-15C-10 once the following has occurred:

- i. The City Council has approved this Agreement;

- ii. Developer has submitted and received approval from the City Engineer, the City's Planning and Zoning Administrator and the appropriate utility providers of improvement and construction drawings for an initial phase of the Firelight Community;
 - iii. Developer has submitted a final plat or final site plan for the initial phase of the Firelight Community;
 - iv. The City's Planning Commission has reviewed the final plat or final site plan for the initial phase of the Firelight Community and has conducted a public hearing on the same upon giving at least 72 hours advance notice to the public and made a recommendation of approval, approval with conditions or denial to the City Council
 - v. The City Council reviews and approves the final plat or final site plan for the initial phase of the Firelight Community by ordinance containing any conditions of approval.
 - vi. The adoption of the ordinance granting approval of the final plat or final site plan for the initial phase of the Firelight Community shall constitute "Final Approval" of the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan and shall also constitute an amendment to the City's official zoning map for all of the Subject Property and any After Acquired Property upon annexation as set forth in Section 14 below.
- b. Binding Effect of MPDO Approvals. The entitlements granted by the Final Approval of the Firelight Conceptual MPDO Plan, the Firelight Preliminary Site Plan and this Agreement shall not be affected by any subsequent inconsistent or contrary ordinance, resolution, rule or regulation enacted by City that prohibits or regulates the Maximum Residential Density, the Maximum Commercial Density, land uses, site improvements, rights of way, infrastructure, open space, parks and trails granted via said Plans.
- c. Subsequent Land Use Applications. Except as provided in Subsection 5(a), any Land Use Application made subsequent to the execution of this Agreement shall conform to applicable provisions of the of City's Land Use Ordinance in effect when a complete application is submitted.
- d. Building Permits. Any person or entity applying for a building permit within Firelight shall be subject to the building, electrical, mechanical, plumbing, fire codes and other safety codes and City ordinances relating to the construction of any structure in effect when a person or entity files with City a complete application for such a permit.
- e. Later Enacted State or Federal Law. The rights and obligations of the Parties under this Agreement shall be subject to later enacted State and Federal laws and regulations, to the extent applicable to the Firelight Community and controlling over the

City's Land Use Ordinances.

f. Moratorium. The rights of Developer under this Agreement, the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan shall only be subject to a subsequent moratorium or ordinance enacted by City to respond to a bona fide threat to the public health and safety or which involves facts and circumstances beyond the control of City and which threat represents a "compelling and countervailing public interest" as such term is used in the Utah Municipal Land Use Development and Management Act and the case law construing such term. The City represents that, as of the date of this Agreement, to its best knowledge, information and belief, it is not aware of any existing facts under which such a moratorium or ordinance might be enacted.

6. Process for Modifying the Firelight Conceptual MPDO Plan and Firelight Preliminary Site Plan After Final Approval.

a. Intent. City acknowledges that the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan contains generalized narratives and depictions regarding the future development of the Firelight Community. Developer may modify the Firelight Conceptual MPDO Plan and Firelight Preliminary Site Plan once Final Approval has been granted so long as the Maximum Development Area, the Maximum Residential Density, the Maximum Commercial Density, land uses permitted and Public Facilities depicted and described in said Plans, are not changed or increased. Subject to this limitation, and as provided in this Section and other related provisions throughout this Agreement, Developer is specifically entitled to, and City hereby grants to Developer, the right to change and/or adjust the exact location of various development uses and densities under the provisions of this Agreement between or among Development Parcels and Sub-Development Parcels pursuant to this Section. The purpose of this provision is to allow the owners of the Subject Property and any After Acquired Property the opportunity to change the configuration of uses shown or described in the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan to reflect future changes in economic factors, development, ownership or other relevant matters so long as such changes do not require the uncompensated relocation of Public Facilities which have been constructed or which materially and adversely impact other Public Facilities depicted and planned in the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan, as reasonably determined by City. Any proposed modification of the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan which increases the Maximum Residential Density, the Maximum Commercial Density or adds other land uses or property not depicted or described in Firelight Conceptual MPDO Plan and Firelight Preliminary Site Plan shall be accomplished only as provided in this Section 6.

b. Submittal of Modification Application. If Developer or its successors and assigns, desire to modify the Firelight Conceptual MPDO Plan or the Firelight Preliminary Site Plan as described in Section 6(a), above, Developer shall submit a modification application together with any required fee, in the form and amount prescribed by the City ("Modification Application"). Any Modification Application which, after the review of the City's staff, is deemed to be within the scope of modifications permitted by

Subsection 6(a), as reasonably determined by City, may be modified by Developer by providing City with a modified Firelight Conceptual MPDO Plan or modified Firelight Preliminary Site Plan containing the revision date and supplemental summary referencing the revision date. Said supplemental summary shall briefly detail the changes made to the modified Plan.

c. City Acceptance of Modification Application. City shall have fifteen (15) calendar days after submittal of a Modification Application to inform Developer whether the City considers the Modification Application to be complete. If City does not notify Developer in writing of any additional information required to complete said application, the Modification Application shall thereafter be deemed complete. If City determines the Modification Application is not complete as submitted, City shall notify Developer in writing within said fifteen (15) days specifying in detail any incomplete or missing information. If City does not notify Developer in writing within the fifteen (15) days after submittal of the additional information requested, the Modification Application shall be deemed complete.

d. City Review. The City shall have fifteen (15) calendar days to review the changes proposed in the Modification Application after said application is accepted as complete or deemed complete. If City does not object within fifteen (15) days, the final completed Modification Application shall be deemed accepted by City and shall constitute a modification of the Firelight Conceptual MPDO Plan and/or Firelight Preliminary Site Plan, provided that any such modification conforms to applicable law set forth in Section 5 of this Agreement. If any applicable law requires further public hearing or procedure to be followed, the Parties agree to follow said procedures as expeditiously as possible.

e. City's Objections. If City objects, disagrees, or disapproves of the changes contemplated by the Modification Application, City shall specify in writing with reasonable detail the reasons City believes that the proposal is not consistent with City's General Plan or other policies, plans and ordinances of general applicability allowed by this Agreement and the vested rights conveyed by this Agreement, including the right of the Developer to modify the Firelight Conceptual MPDO Plan and/or Firelight Preliminary Site Plan as described in Section 6(a) above.

f. Mediation. The City and Developer shall meet within fifteen (15) calendar days ("Mediation Deadline") of after receiving an objection asserted by the City pursuant to the preceding Subsections, to mediate and resolve all outstanding issues.

g. Arbitration. If the City and Developer are unable to resolve the issues via mediation pursuant to the preceding Subsections, by the Mediation Deadline, the Parties shall attempt within seven (7) days to appoint a mutually acceptable land use planning expert to arbitrate the terms of the Modification Application. The party requesting the arbitration shall pay the fees to initiate the arbitration. If the Parties are unable to agree on a single acceptable arbitrator, they shall each, within seven (7) additional days, appoint their own individual land use planning expert. These two land use planning

experts shall, between them, choose the single arbitrator within the next seven (7) calendar days. The chosen arbitrator shall within fifteen (15) days, review the positions of the Parties regarding the Modification Application and issue a decision. The arbitrator shall ask the prevailing party to draft a proposed arbitration award for consideration and objection by the other side. Upon adoption by the arbitrator, after consideration of such objections, the arbitrator's award shall be final and binding upon both Parties and shall constitute an approved modification of Firelight Conceptual MPDO Plan or Firelight Preliminary Site Plan, as the case may be. As part of the arbitrator's decision, the arbitrator shall determine the payment of the arbitrator's costs based on to the success or failure of each party's position in the arbitration. All arbitrations arising under this Agreement shall be conducted in compliance with Utah Arbitration Act (Utah Code Ann. § 78B-11-102 *et seq.*).

7. General Conditions of the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan Approvals. As part of the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan, the following general development conditions and guidelines for the Firelight Community shall apply proportionally to the Subject Property and any After Acquired Property that have been annexed and made subject to this Agreement pursuant to Section 14, below:

a. Maximum Development Area. The Firelight Community and the entitlements granted by this Agreement, the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan shall be limited to the Subject Property described in ***Exhibit "A"*** and any After Acquired Property within the ACC Property depicted in ***Exhibit "B"*** unless changed by an approved Modification Application pursuant to Section 6, above ("Maximum Development Area").

b. Maximum Residential Density. The Subject Property and any After Acquired Property may contain the maximum residential density of 2.6 residential units per acre inclusive of all areas dedicated or irrevocably reserved for open space, Public Facilities and those areas designated in the Firelight Conceptual MPDO Plan and Firelight Preliminary Site Plan as a Commercial Planning Area ("Maximum Residential Density"). The Maximum Residential Density is calculated by taking two (2) Dwelling Units per acre (per the underlying R-1-20 zoning held by the Subject Property and the ACC Property) and multiplying it by the total acreage within the proposed Firelight Community (1749.27 acres) to reach a base density of 3,498 ERUs. The Firelight base density is then increased by thirty percent (30%), to wit: 4,547 ERUs, based upon the City Council's acceptance of Developer bonus density commitments memorialized in this Agreement. There shall be no diminution in the Maximum Residential Density for property dedicated to the City or other entities for Public Facilities (such as roads, parks, trails, utility systems and rights of ways). Likewise, there shall be no diminution in the Maximum Residential Density for areas containing steep slopes, open space areas and areas within the Firelight Community designated as Commercial Planning Areas and/or containing commercial buildings, structures, improvements and uses.

c. Residential Planning Areas & Densities. The Maximum Residential Density has

been allocated throughout the Firelight Community in thirteen (13) different Residential Planning Areas (“RPA”). Each RPA consists of Development Parcels containing varying levels of residential density and residential uses. Each RPA, along with its boundaries, intensity of use and acreage is identified in *Exhibit “F” (Residential Planning Area Map)* which is attached hereto and incorporated herein by this reference. The various RPAs have been designated for planning purposes including the sizing and location of Public Facilities as well as efficiencies of scale and preservation of property values. It is intended by the Parties that there be a level of flexibility in the final location, size, and intensity of residential uses within all of the RPAs. Accordingly, the boundaries, intensity of use and size of an RPA may be unilaterally modified by the Developer without seeking an approved modification of the Firelight Conceptual MPDO Plan or the Firelight Preliminary Site Plan so long as each RPA maintains similar frontage and access to and from the major collector roads designated in the Residential Planning Area Map and the Maximum Residential Density is not exceeded because of the modification.

d. Maximum Commercial Density. The Subject Property and any After Acquired Property may contain those areas identified as Commercial Planning Areas (“CPAs”) in *Exhibit “G” (Commercial Planning Area Map)* which is attached hereto and incorporated herein by this reference. In no instance shall the Firelight Community, as a whole, contain more than **one hundred ninety-three and 27/100 (193.27) acres** of land developed into buildings, structures, site improvements and landscaping from which Permitted Commercial Uses can occur (“Maximum Commercial Density”) without obtaining an approved Modification Application pursuant to Section 6, above.

e. Commercial Planning Areas & Densities. The Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan allocate the Maximum Commercial Density among nine (9) different CPAs. Each CPA consists of Development Parcels or Sub-Parcels which front or have access to the Toquerville Parkway or a planned major collector road within Firelight. Each CPA, along with its boundaries and acreage is conceptually identified in *Exhibit “G” (Commercial Planning Area Map)*. The various CPAs have been designated for planning purposes including the sizing and location of Public Facilities as well as efficiencies of scale and preservation of property values. It is intended by the Parties that there be a level of flexibility in the final location, size, and types of commercial uses within all of the CPAs. Accordingly, the boundaries, size and types of commercial use within a CPA may be unilaterally modified by the Developer without seeking an approved modification of the Firelight Conceptual MPDO Plan or the Firelight Preliminary Site Plan so long as: i) each CPA maintains similar frontage and access to and from Toquerville Parkway and/or the major collector roads providing access to it, ii) modified uses are still within the Permitted Firelight Commercial Uses (as defined and discussed in the following Subsection), and iii) the Maximum Commercial Density is not exceeded based upon the proportional size of the Subject Property and After Acquired Property at the time to the overall acreage of the planned Firelight Community. There shall be no diminution in the Maximum Commercial Density for areas within Firelight containing a golf course or other sporting/recreational/resort/amusement facilities regardless of whether fees for admission

or use are charged.

f. Permitted Firelight Commercial Uses. Only those commercial uses identified in *Exhibit “H” (Commercial Planning Area – Permitted Uses Table)* may be conducted in a CPA (“Permitted Firelight Commercial Uses”) located within the Subject Property or After Acquired Property. Because some Permitted Firelight Commercial Uses are more intense and carry with it a higher possibility of detrimental effects, certain types will be designated as “C” or “Conditional” in the Permitted Use Table. In that instance, Developer shall apply for and obtain a conditional use permit from the City containing conditions of approval that the Planning Commission and City Council deem necessary and reasonable to mitigate the foreseeable detrimental effects of the proposed commercial use.

g. Phasing. City acknowledges that Developer intends either to develop individual Development Parcels itself or convey Development Parcels to various Sub-Developers for development. Accordingly, City may receive multiple land use applications for areas within the Subject Property or any After Acquired Property. The timing and phasing of Development Activity and construction of improvements on individual Development Parcels shall be determined by Developer and/or Sub-Developers in their sole discretion. Developer agrees to coordinate with City for the provision of utility services and installation of Public Facilities that will be needed on account of any new Development Activity which occurs within the Subject Property and any After Acquired Property. The Parties acknowledge that said coordination shall include the development phase sequencing that provides for the logical extension of all required Public Facilities including infrastructure for the provision of all reasonable municipal services.

h. Restrictive Covenants. Several Sub-Developers and contractors, in addition to the Developer may be designing and constructing Public Facilities and private improvements upon different Development Parcels at the same time. The Parties recognize the importance of ensuring consistency and continuity in the Firelight Community as it develops. Therefore, prior to approval of any Final Plat or Commercial Site Plan within the Subject Property or any After Acquired Property, Developer shall adopt and record a community charter (aka “CC&Rs”) for Firelight containing restrictive covenants and Development Guidelines that will guide development and construction over the entirety of the Community (“Firelight Master Declaration”). Developer agrees to have the City review and approve the Firelight Master Declaration to ensure consistency between the City’s Ordinances and the use/design provisions of said Declaration - and that purpose only. City may not withhold approval of the proposed Firelight Master Declaration for reasons other than non-compliance with existing City Ordinances not modified by this Agreement, the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan. Notwithstanding the City’s right to review and approve the Firelight Master Declaration, the City shall not have any obligations to enforce the covenants contained therein.

i. Variance in Residential Planning Area Densities. The Parties acknowledge that each Residential Planning Area, Development Parcel, or portion thereof, submitted to City for Final Plat approval of a residential subdivision may identify densities greater

than its pro rata portion of the Maximum Residential Density for a Residential Planning Area. The existence of such a density variance shall be approved so long as: i) nearby Public Facilities and infrastructure is sufficient and available to meet any increased demands created by the density variance, and ii) the cumulative number of approved ERUs do not exceed the Maximum Residential Density allowed for all of the Subject Property and After Acquired Property. In order to effectuate and track possible transfers of residential densities within the Subject Property and any After Acquired Property, Developer or its successors and assigns submitting an application for subdivision plat for final approval shall include on the first page of the Plat (in a conspicuous place), a statement containing: i) the Maximum Residential Density (in ERUs') for all of the Subject Property and After Acquired Property as of the date of anticipated approval, ii) the number of ERUs that will exist in the subdivision plat being proposed, iii) if additional residential density is being transferred into, or out of, a statement containing the Residential Planning Area where the variant ERUs are being transferred to/from, and iv) the balance of the unused ERUs left under the Maximum Residential Density for all of the Subject Property and After Acquired Property as of the date of anticipated approval.

j. Retained Right to Appeal Adverse Land Use Decisions. Any decision by City which is adverse to the Developer, its successors and/or assigns, regarding a development application, subdivision plat or amendment, certificate of compliance, conditional use, variance, building permit or any other approval required from City, other than a Modification Application, may be appealed as provided in City's Land Use Ordinance.

8. General Rights and Responsibilities of Developer.

a. Payment of Uniformly Assessed Fees. With respect to the Subject Property and any After Acquired Property, Developer, its successors and/or assigns, accept and agree to pay all plan review, impact, connection, building and other fees currently assessed by City, or as later amended unless deferred or otherwise waived by City pursuant to other provisions of this Agreement or by separate written agreement between the Parties. The City agrees that its current fee schedule and all future revisions thereto will be applied uniformly for Development Activity occurring both within the Firelight Community and elsewhere within the City.

b. Vested Rights. To the fullest extent permissible under the law, it is the intent of the Parties that the execution of this Agreement grants and vests in Developer as well as its successors and assigns, all rights, consistent with the Firelight Conceptual MPDO Plan, the Firelight Preliminary PDO Plan, this Agreement, and the City's Land Use Ordinance, to develop the Subject Property and any After Acquired Property within the Firelight Community with the uses and densities prescribed herein. The Parties intend that the rights granted to Developer under this Agreement are both contractual and provided under the common law concept of vested rights. It is expressly understood by the City that Developer may assign all or portions of its rights under this Agreement, the Firelight Conceptual MPDO Plan and the Firelight Preliminary Plan provided that such assignees agree to be bound by the terms of this Agreement as provided in Section 16,

below.

c. Dedication of Public Facility Improvements. Except those roadways which are designated as private and approved by the City as such, Developer, its successors and/or assigns shall dedicate and convey all Public Facilities in the Firelight Community to the City at such time as those improvements are inspected by the City and accepted as complete. Said dedication shall reserve for the benefit of Developer, its successors and/or assigns, all capacity in said Public Facility improvements that is necessary for the Firelight Community; provided, however, that the City may manage said Public Facilities so as to achieve operating efficiencies as the City may determine. This Subsection shall not apply to any upsizing of Public Facility improvements required, and paid for, by the City. If the City requires and pays for any upsizing of Public Facility improvements, all additional capacity in excess of that required for the Firelight Community shall be dedicated and reserved for the benefit of the City. The Parties agree that upon completion of construction (as determined by the City's Engineer) and dedication of any Public Facility improvement to the City, the City will conditionally accept said dedications subject to the warranty periods prescribed the City's Land Use Ordinances and the City's Design Standards.

9. General Rights and Responsibilities of City

a. Reserved Legislative Powers. This Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards or rules regulating Development Activity within the City. Any ordinance, plan, or regulations which operates to reduce the Maximum Residential Density, the Maximum Commercial Density, increase exactions or dedications or modify the Permitted or Conditional Uses approved in the Firelight Conceptual MPDO Plan, the Firelight Preliminary Site Plan or this Agreement shall be deemed to be waived by the City insofar as it relates to Development Activity within the Subject Property or any After Acquired Property.

b. Project and System Improvements – Cost Sharing. Developer, its successors and/or assigns shall bear the entire cost of constructing Public Facilities known as Project Improvements needed to service not only the Subject Property and the After Acquired Property but all of the Firelight Community. Should the City request and Developer consent, in its sole discretion, Developer may bear the initial cost of constructing Public Facilities known as System Improvements but shall be entitled to be reimbursed for the cost of such System Improvements. Prior to Developer constructing any System Improvement on behalf of the City, the Parties shall execute an agreement whereby Developer shall be reimbursed over time, credited, or paid upfront for the cost of constructing such System Improvements. Developer shall furnish an estimate of the cost of constructing such improvements prepared by an engineer registered to practice in the State of Utah and approved by City. The reimbursement agreement shall assure that neither Developer nor City bears more than their respective proportionate share of the cost of constructing a Public Facility containing both Project Improvements and System Improvements. Each reimbursement agreement shall be negotiated on a case-by-case basis at, or prior to, the commencement of construction of said Public Facility. All

reimbursements for the construction of Public Facilities which are System Improvements shall be drafted and entered into the by the Parties in compliance with Chapter 19I of the City's Land Use Ordinances.

c. Compliance with City Requirements and Standards. Except as provided in Sections 10 thru 12 of this Agreement, Developer acknowledges it shall comply with all applicable ordinances, resolutions, policies and procedures and construction guidelines of City necessary for approval of subdivision plats, site plans, conditional use permits, building permits, construction permits, grading permits, etc. for Development Activities conducted within the Firelight Community in effect at the time the land use approval is sought.

d. Power of Eminent Domain. City agrees that in the event Developer needs to obtain easements or rights of way for the purpose of constructing Public Facility improvements for the Firelight Community and is otherwise unable to negotiate a commercially reasonable contract for the procurement of said easements or rights of way, the City, upon the request of Developer, may exercise its power of eminent domain to obtain such easements or rights of way, the cost of which shall be borne by Developer, its successors and/or assigns making the request. Should the City exercise its power of eminent domain, the requesting Party shall reimburse City for all reasonable expenses incurred in taking the requested action, including reasonable attorney's fees and costs and the compensation to the landowner for the property taken. The decision whether or not to exercise the power of eminent domain is within the sole discretion of the City, which discretion, the City will not unreasonably withhold.

e. Public Financing Cooperation. The City may cooperate with Developer in connection with financing a portion of the Public Facilities within the Firelight Community thru the creation of public improvement districts (PIDs) or special assessment areas (SAAs). The decision of whether or not to sponsor the creation of a PID or SAA for the benefit of the Firelight Community lies within the discretion of the City. Notwithstanding, the City's sponsorship consent will not unreasonably be withheld.

10. Standards Unique to Firelight for General Neighborhoods Within Residential Planning Areas. In keeping with the purposes and intent of the Master Planned Development Overlay (MPDO) Zone contained in Chapter 15C of the City's Land Use Ordinances, the Parties expressly agree that the following unique standards shall apply to all general neighborhoods located in the Subject Property or After Acquired Property within the Firelight Community:

a. Permitted Uses for General Neighborhoods.

i. Single-family detached and attached dwellings, including, but not necessarily limited to: zero lot-line homes, patio homes, duplexes, triplexes, condominiums and other types of clustered homes;

ii. Public or private golf courses;

- iii. Private non-commercial recreation facilities;
 - iv. Churches and other places of worship;
 - v. Community centers, clubhouses and/or homeowner association meeting places and recreational and social amenities;
 - vi. Residential care facilities for persons fifty (50) years of age or older;
 - vii. Accessory structures and uses necessary and customarily incidental to a Permitted Use;
 - viii. Public and private schools;
 - ix. Public safety/service institutions;
 - x. Public libraries;
 - xi. Limited neighborhood scale office & retail not to exceed 25,000 s.f. of Gross Leaseable Area (GLA). GLA excludes areas within buildings not present for commercial or professional activities, e.g., restrooms, storage areas, etc.;
 - xii. Other uses as may be permitted by the City's Land Use Ordinances for a comparable zoning district;
 - xiii. Any combination of the above.
- b. Mixed Uses in General Neighborhoods. Any non-residential development within a General Neighborhood shall conform to the standards listed for "Commercial & Mixed Use Areas".

11. Standards Unique to Firelight for Active Adult Neighborhoods within Residential Planning Areas. In keeping with the purposes and intent of the Master Planned Development Overlay (MPDO) Zone contained in Chapter 15C of the City's Land Use Ordinances, the Parties expressly agree that the following unique standards shall apply to all Active Adult Neighborhoods within Residential Planning Areas in the Subject Property and After Acquired Property of the Firelight Community:

- a. Permitted Uses for Active Adult Neighborhoods.
 - i. All Permitted Uses for General Neighborhoods; and
 - ii. Discovery Villas (a small number of rentable residential units used for marketing and developing buyer interest. Discovery Villas are decommissioned after the Active Adult portion of Firelight is sold out and are ultimately sold as a normal residential unit.

b. Mixed Uses in Active Adult Neighborhoods: Any non-residential development within an Active Adult Neighborhood shall conform to the standards listed for "Commercial & Mixed Use Areas".

- | | | |
|----|---|------------------------------|
| c. | <u>Minimum Building Area.</u> ¹ | 1000 sf |
| d. | <u>Maximum Lot Coverage.</u> | 65% |
| e. | <u>Minimum Open Space per Lot.</u> | 35% |
| f. | <u>Minimum Frontage per Lot.</u> ² | |
| | i. Along public street; | 30' |
| | ii. Along front building wall; | 35' |
| | iii. Along cul-de-sacs, curved roads & and flag lots. | 20' |
| g. | <u>Minimum Setbacks.</u> ³ | |
| | i. Front ⁴ | 10' – 20' garage setback |
| | ii. Side ⁵ | 5' (10' min. separation) |
| | iii. Rear ⁶ | 3'-10' (20' min. separation) |
| | iv. From Public Arterial Roads | 10' behind 6' wall |
| | v. Front, Rear and/or Side ⁷ | 25' with no wall |
| h. | <u>Minimum Building Separation.</u> | |

¹ Minimum building area shall not include unfinished basements or garages.

² As measured along public streets only. There shall be no minimum frontage along private streets)

³ All setbacks are as measured from the building to the property line or limited common area separation line.

⁴ If a home should have a garage with side entry design, the setback may be 12' from the garage wall to the property line or back of sidewalk, whichever is closest. If a home should have a front loaded garage, the setback for the garage door shall be 20' from the property line or sidewalk, where present. Otherwise, the setback from any other part of the front elevation of the house to the property line shall be no less than 10'. In no case shall driveway length be less than 20' as measured along the centerline. Staggered variation in front building setbacks is encouraged.

⁵ Roof overhangs, decks, bay windows, chimneys, and other building appurtenances shall be allowed within setback areas.

⁶ A 3' setback is permitted where garages open onto rear alleys only. Otherwise, Rear setbacks are a minimum 10' (20' min. building separation).

⁷ The Side and Rear setbacks for two story homes shall be 25' min. along the boundary of an adjacent single-family zone and 20' along the boundary of an adjacent non-residential zone, except for golf course or other park or open space zones, in which case the setback need be no greater than 10'.

- i. 10' for single and two-story side separation;⁸
- ii. 20' for single story rear separation;
- iii. 30' for two story rear separation;

i. Off Street Parking. Two off-street parking spaces shall be required for all single family detached homes and single family attached homes. Required parking spaces may include garage and/or driveway spaces. Other than driveway, required parking are not allowed within the front setback area. Garages shall not be allowed to be converted into living spaces without additional enclosed parking being made available. Off-street parking other than that which is required may be allowed within all setbacks but shall not compromise landscaping and other buffering measures.

j. Recreational Vehicle (RV) Parking. RV Parking is prohibited unless said RV is enclosed in a garage.

k. Special Road Cross Sections. Private streets may use the road cross sections identified in *Exhibit "I" (Active Adult Road Cross Sections)* which is attached hereto and incorporated herein by this reference.

12. Standards Unique to Firelight for Commercial and Mixed Uses in Commercial Planning Areas. In keeping with the purposes and intent of the Master Planned Development Overlay (MPDO) Zone contained in Chapter 15C of the City's Land Use Ordinances, the Parties expressly agree that the following unique standards shall apply to all Commercial and Mixed Uses within Commercial Planning Areas located in the Subject Property and After Acquired Property of the Firelight Community:

a. Permitted Uses For Commercial Planning Areas. Only those uses identified in *Exhibit "H" (Commercial Planning Area – Permitted Uses Table)* may be conducted within a Commercial Planning Area ("Permitted Firelight Commercial Uses"). Because some Permitted Firelight Commercial Uses are more intense and carry with it a higher possibility of detrimental effects, certain types will be designated as "C" or "Conditional" in the Permitted Use Table. In that instance, Developer or the Westbrook Partners shall apply for and obtain a conditional use permit from the City containing conditions of approval that the Planning Commission and City Council deem necessary and reasonable to mitigate the foreseeable detrimental effects of the proposed use.

b. Maximum Height of Building.⁹ 50'

c. Setbacks.¹⁰

⁸ In the case of a zero side yard setback, one side yard may be 0' and the other 10'. In all circumstances there shall not be less than 10' between structures. No free-standing ancillary structure may protrude into a zero side yard.

⁹ Building appurtenances such as steeples, bell towers and clock-towers may be 90'. Increased building heights may be approved by the City Council on a case-by-case basis.

- i. Rear or Side from Public Arterial Roads: 15' behind 6' wall
- ii. Front, Rear and/or Side: 25' with no wall
- iii. Interior Rear/Side:¹¹ 10' for single story buildings
20' for two story+ buildings
- iv. Front, Rear and Side:¹² 10'

d. Open Space. Areas to be reserved as open space shall be those percentages required by the City's MPDO Ordinance (Chapter 15C), except within the Commercial Planning Area designated as the Town Center (Developer's Commercial Planning Area 3) – in said area open space reservation will be limited to 15%. Landscape parking islands, detention ponds, pedestrian walkways, and common amenities shall be included in minimum open space reservation calculations.

13. Specific Rights and Responsibilities of the Parties. The following Section will address and outline the specific rights and responsibilities of the Parties as to the construction and the perpetual operation and maintenance of various types of Public Facilities that will be located within or near the Subject Property and any After Acquired Property for the benefit of the Firelight Community and its residents as well as members of the public at large in some instances.

a. Water Public Facilities.

i. Developer Obligations (Water).

1. Water Storage. Developer shall design, fund, and construct a "Water Storage Site" containing a water storage tank for culinary water and a transmission main line from the well site located on property being donated to the City by Lowe Land TK, LLC to the Subject Property and any After Acquired Property. The general location of the transmission line from the well site to the Subject Property and any After Acquired Property shall be approved by the City, and if located upon private property, be within a properly dedicated utility easement. The water storage tank shall have sufficient capacity to serve the Firelight Community that cannot be served by the City's present water storage and distribution system. If the transmission main line is located within the Subject Property or any After Acquired Property, Developer shall dedicate to the City said line and a perpetual easement for access and maintenance upon completion and final inspection and acceptance by the City. If the Water Storage Site or a portion of the transmission main line is located on

¹⁰ All setbacks are measured from the building to the property line (or back of curb on private streets).

¹¹ As measured from public streets.

¹² As measured from private streets.

property other than land within the Subject Property, the City shall procure fee ownership of the Water Storage Site and a perpetual easement for the installation, access and maintenance of the transmission main line from the third party property owner at its sole expense.

2. Firelight Water Distribution System. Developer shall design, fund, and construct an adequate “Firelight Water Distribution System” of water transmission lines for the distribution of culinary water from the Water Storage Site to each residential Dwelling or Commercial Use or Commercial Structure planned within the Firelight Community that cannot be served by the City’s existing water system. If the Water Storage Site is to be located on property other than a location within the Subject Property or any After Acquired Property, the City shall procure all necessary third-party easements and rights of way necessary for the installation, operation and maintenance of the Firelight Water Distribution System at its expense.

3. Dedications and Grant of Easements/Rights of Way. Developer shall grant to the City such easements, rights of way, rights of entry, or other servitudes as may be necessary for the placement, operation and maintenance of the Firelight Water Distribution System once built. Once constructed by Developer and inspected and accepted by City, Developer shall dedicate each segment of the Firelight Water Distribution System.

ii. City Obligations.

1. Operation and Management of Water Storage Site and Firelight Water Distribution System. City shall operate and maintain the Water Storage Site and the Firelight Water Distribution System and shall provide all Residential Planning Areas, Commercial Planning Areas, Development Parcels, Dwellings, Commercial Structures and Public Facilities within the Firelight Community with culinary water service.

2. Obtainment of Easements and Rights of Way for Firelight Water Distribution System. If needed and pursuant to Subsection 13.a.i.2, above, the City shall obtain the appropriate easements, rights of way, rights of entry, or other servitudes as may be necessary for the construction, placement, operation and maintenance of the Firelight Water Distribution System that is located on property other than the Subject Property or After Acquired Property.

b. Sanitary Sewer Service and Facilities

i. The proposed Firelight Community is located within the service boundaries of the Ash Creek SSD. Developer will work with Ash Creek SSD to extend its sewer and wastewater collection system to service the Subject Property and any After Acquired Property in compliance with all regulations and

specifications of Ash Creek SSD. All administrative and regulatory authority in approving and maintaining sanitary sewer services and facilities within the Ash Creek SSD shall be vested in Ash Creek SSD, and/or its successors and assigns.

c. Transportation and Roads

i. Developer Obligations (Roads). Developer shall provide the following transportation infrastructure and take the following traffic mitigation measures:

1. General Road Improvements. Developer shall design, fund, construct or improve and dedicate all roads (including collector and arterial roads) within the Subject Property and any After Acquired Property. All roadways in Firelight shall be constructed according to the City's Specifications and Standards in phases according to a schedule determined by Developer and approved by City, unless otherwise modified or amended. All road system improvements shall be of the general size and location as identified in the various plans and maps designated in Firelight Conceptual MPDO Plan including but not limited *Exhibit "C"* thru *Exhibit "G"* and *Exhibit "I"*. Prior to the construction of any roadway or intersection improvements within the Subject Property or any After Acquired Property, the City shall review and approve all plans, drawings and specifications.

2. Dedication of Roads. Except for private roads approved by the City with the Active Adult Neighborhoods of Firelight, following completion of the construction of any roadway improvements, Developer, its successors and/or assigns shall dedicate said Public Facility to the City. Dedication may occur via the recording of a Final Plat for a subdivision or Commercial Site Plan containing sufficient dedicatory language or via a separate road dedication plat as the circumstances may require.

3. Toquerville Parkway. Presently the City, in coordination with UDOT, has commenced construction of Phase 1A of the Toquerville Parkway which bisects the Firelight Community. Likewise, the City is preparing a bid package for Phase 1B of the Parkway which should be awarded to a contractor by mid-summer of 2022. In 2008, the Westbrook Partners donated the 120 foot right of way thru the Firelight Community to the City which represented approximately one half of the overall length of entire Toquerville Parkway ("Westbrook Donation"). Prior to entering into this Agreement, Developer or Developer Affiliates deposited into an account held by the City the sum of Five Million Eight Hundred Thousand Dollars (\$5,800,000.00) and paid Horrocks Engineering the sum over One Million Six Hundred Thousand Dollars (\$1,600,000.00) to design and engineer Phases 1A and 1B of the Parkway (collectively "Developer Parkway Contribution"). The Parties acknowledge that the Developer Parkway Contribution was made to make up the estimated difference

between the funds received by the City from UDOT for the construction of the Toquerville Parkway Phases 1A and 1B and the estimated combined amounts necessary to design and construct said Phases. The Parties acknowledge that without the Developer Parkway Contribution, the City would not have the financial means to commence construction of Phases 1A and 1B of the Toquerville Parkway. The Parties further acknowledge that between the Westbrook Donation and the Developer Parkway Contribution, the City has received consideration from Developer and its predecessor that exceeds the Project Improvement component of the Toquerville Parkway (as a Public Facility). As such, the Parties agree that once the construction of Phases 1A and 1B of the Toquerville Parkway are completed and the final cost of design and construction of said Phases are determined, that Developer and the City will work together in good faith to develop and calculate: a) the proportionality of Phases 1A and 1B as a Project Improvement for Firelight versus Phases 1A and 1B as a System Improvement, b) assign a land value of the Westbrook Donation as it relates to the Subject Property and any After Acquired Property, and c) determine the amount of excess, if any, of dollar value of the Developer's portion of the Westbrook Donation and the Developer Parkway Contribution vs the actual cost of design and construction of the Project Improvement component of Phases 1A and 1B. If an excess contribution has been made, the Parties further agree to enter into an impact fee waiver agreement whereby Developer, its successors and/or assigns are given a partial waiver of the City's Transportation Impact Fee assessed against Development Activity on each lot within the Subject Property or After Acquired Property until said excess contribution has been fully reimbursed to Developer.

ii. City Obligations (Roads).

1. Street Design. The street design cross sections, as contained in the City's Specifications and Standards, as amended from time to time, (except those regarding private streets as set forth in Subsection 11(k) above and ***Exhibit "I"*** (*Active Adult Road Cross Sections*)), shall be the governing specifications and standards for the street design of all roadways (including arterial and collector streets) within the Firelight Community except for Toquerville Parkway which has its own standards and specifications as dictated by UDOT.

2. Acceptance of Dedication and Maintenance of Streets & Roads. City shall accept via dedication and maintain all interior, collector and arterial streets and roads in the Firelight Community, so long as such streets are constructed to City's Specifications and Standards and are dedicated without liens or encumbrances. Upon acceptance of the dedication and the expiration of any warranty period prescribed by the City's Land Use Ordinances, the City shall maintain all public roads and

streets located within the Firelight Community (except the Parkway which will be maintained by UDOT) at a level equal to, or higher than, that which other roads within the City are maintained.

d. Fire Protection and EMS Services. Firelight is located within the service boundaries of the Hurricane Valley Fire District (“HVFD”), a special services district created by Washington County for the provision of fire protection and EMS services to eastern portion of the County. Developer will work with HVFD insure that all necessary fire protection water lines, hydrants, sprinkler systems, detection systems and apparatuses are present and installed in compliance with the HVFD specifications and standards and the International Fire Code within the Subject Property and any After Acquired Property at the time of constructing a residential phase or a Commercial Structure. The Parties recognize that all administrative and regulatory authority in approving and maintaining fire protection and EMS services and facilities within the Firelight Community shall be vested in HVFD, and/or its successors and assigns.

e. Police Protection & Public Safety. Presently the City contracts with the Washington County Sherriff’s Department to provide all police protection and public safety services to the City and its residents. The City agrees to insure that it will continue to either: i) contract with the Washington County Sherriff’s Department or another law enforcement agency capable and willing to provide similar police protection and public safety services to the City, or ii) organize its own law enforcement department capable of providing similar police protection and public safety services and to provide said protections at the same level of service within the Firelight Community as it does elsewhere within the City.

f. Parks, Trails, Open Space Areas and School Sites.

i. Developer’s Obligations (Trails, Parks & OS). In order to reserve open space areas and improve recreational opportunities within the Firelight Community, Developer, and its successors and assigns, agree as follows:

1. Trails System. Developer shall design, fund, construct and dedicate a system of trails and trailheads throughout the Subject Property and any After Acquired Property in compliance with the City’s Specifications and Standards and which connect, if possible, with the City’s existing trail and road system. Said trails shall be designed for purposes of walking, hiking, and/or biking activities, and may include both improved and unimproved trails. Developer specifically covenants to construct trails on the Subject Property and any After Acquired Property in the locations generally depicted in the Firelight Trails Master Plan which is attached hereto, marked ***Exhibit “D”*** (*Firelight Trail Master Plan*) and incorporated herein by this reference. Said construction will commence when any Development Activity commences directly adjacent the location where a trail is designated in the Firelight Trail Master Plan.

2. Parks. Developer shall design, fund, construct and dedicate to the City those parks located within the Subject Property and any After Acquired Property identified in the Firelight Parks Master Plan which is attached hereto, marked **Exhibit “E”** (*Firelight Park Master Plan*) and incorporated herein by this reference. Parks may be designed with amenities and in various levels of improvement based upon the natural habitat around it. All park designs and amenities contained therein shall be in compliance with the City’s Specifications and Standards. Developer reserves the right to not dedicate to the City, but rather to the Firelight Community Owners Association certain parks (to be limited to private use of residents of Firelight or sub-developments located therein and maintained by said association or a sub-association thereof. In no instance shall more than one half of the park areas designated in the Firelight Parks Master Plan be dedicated and maintained for private use only.

3. Open Space. Developer shall dedicate to the City (with the City’s acceptance) or reserve for the perpetual non-use and obstruction of those areas of open space identified in **Exhibit “F”** (*Residential Planning Area Map*) located within the Firelight Community. The Parties acknowledge that open space areas used for calculation of density bonuses under the City’s MPDO Ordinance (Chapter 15C) does not included Park areas shown in the Firelight Parks Master Plan.

4. Dedication. At the time Developer obtains approval and seeks to record a Final Plat or Commercial Site Plan for any Development Parcel or phase or portion thereof, that is contiguous with an area depicted in **Exhibit “F”** as “Open Space” or contains a trail or park area, Developer shall also show said area in the Final Plat or Commercial Site Plan and dedicate said open space, trail and park area to the City; or, in the instance of open space, create, by reservation, an easement or restrictive servitude on said Final Plat or Commercial Site Plan that restricts any and all disturbance except for the construction, placement and maintenance of trails or park/recreation improvements.

5. School Sites. Developer shall work closely with the City and the Washington County School District to determine and plan for necessary sites for elementary, intermediate, middle and high school buildings (if necessary) within the Subject Property and any After Acquired Property.

ii. City Obligations (Trails, Parks & OS)

1. Level of Service. After construction and dedication of any trails, parks or open space contemplated in the Firelight Conceptual MPDO Plan, the Firelight Preliminary Site Plan, or this Agreement, the City shall maintain said Public Facilities at a level generally provided to other areas

of City.

g. Electrical Power

- i. Developer Obligations (Power). Firelight and other areas of the City currently do not receive electrical power service from the City - rather it receives said service from a third-party electrical power provider – currently Rocky Mountain Power (a division of Pacific Corp.). Developer will work with Rocky Mountain Power to design, and assist with construction, if necessary, of an electrical power transmission system to service the Subject Property and any After Acquired Property in compliance with all regulations and specifications of the Public Utilities Service Commission, the International Electrical Code and Rocky Mountain Power.
- ii. City Obligations (Power). If needed and pursuant to Subsection 9.d. City may obtain the appropriate easements, rights of way, rights of entry, or other servitudes as may be necessary for the construction, placement and maintenance of any transmission lines or other components of an electrical power transmission system constructed by Developer and Rocky Mountain Power to service the Subject Property and any After Acquired Property.

h. Miscellaneous Utilities.

- i. Developer’s Obligations (Misc). Developer shall be responsible for the provision of miscellaneous utility infrastructure within the Subject Property and any After Acquired Property, including (but not necessarily limited to) the following:
 1. Storm Drain. Runoff and storm drainage consistent with City’s Storm Water Master Plan;
 2. Natural Gas. Installation of a natural gas transmission and distribution system to be operated and maintained by a natural gas provider regulated by the Utah Public Service Commission. Currently the only natural gas provider within the City is Dominion Energy;
 3. Phone, Cable & Data. Installation of telephone, cable, and data (fiber-optic) transmission systems (or conduit and pull boxes for future installation) to be provided by the various service providers holding franchise agreements with the City; and
- ii. City’s Obligations (Misc). Subject to the location of existing or planned miscellaneous utility infrastructure, the City agrees grant extensions of providers franchise rights, grant easements within its rights of way necessary to connect, link, construct or accommodate the miscellaneous utility Public Facilities identified in this Subsection for the Subject Property and any After Acquired

Property, provided that the City shall have the authority to determine the route and location of said easements and improvements.

14. Annexation of After Acquired Property. Within sixty (60) days of Developer or one of the Developer Affiliates first acquiring fee title to any portion of the ACC Property from the Westbrook Partners, Developer or the appropriate Developer Affiliate shall record in the Official Records on file in the Office of the Recorder of Washington County, State of Utah, an instrument substantially similar to that contained in **Exhibit “J”** (*Transfer Declaration*) signed by both Developer or the appropriate Developer Affiliate and the Westbrook Partners which references the ACC Development Agreement (by its recording identifications) and effectively terminates and releases the ACC Development Agreement as to the newly acquired property and then references this Agreement (by its recording identifications) and annexes said newly acquired property and makes it subject to this Agreement. (“Transfer Declaration”). Once a Transfer Declaration has been recorded, the newly acquired property shall thereafter be considered “After Acquired Property” and shall be vested with all rights, entitlements and obligations set forth in this Agreement.

15. Term. The purpose of this Agreement is to ensure the planned and organized development of the Firelight Community thru its full buildout. Accordingly, the term of this Agreement shall commence on the date this Agreement has been recorded in the Official Records on file in the Office of the Recorder of Washington County, State of Utah and shall expire when all Public Facilities in Subject Property and any After Acquired Property has been constructed and accepted as complete by City and certificates of occupancy have been issued for all Commercial Structures and Dwellings/ERUs capable of being built on said property in compliance with Maximum Residential Density and the Maximum Commercial Density limitations set forth Section 7, above. This Agreement may also terminate in the event of default so long as the City has followed the procedure prescribed in Section 17(a), below, regarding termination.

16. Successors and Assigns. This Agreement shall be binding on the successors and assigns of Developer. Any conveyance of any portion of the Subject Property or After Acquired Property by Developer to any person or party other than Developer’s Affiliates shall require the party making the conveyance obtain from their transferee a notarized statement (i) acknowledging the existence of this Agreement and (ii) agreeing to be bound thereby. Said statement shall be signed by the buyer or transferee and delivered to City prior to the transfer or sale. In such event, the buyer or transferee of the parcel so transferred shall be fully substituted as Developer under this Agreement and Developer shall be released from any further obligations under this Agreement as to the parcel so transferred.

17. Default. Failure by a Party to perform any of the Party’s obligations under this Agreement within a ninety (90) day period (the “Cure Period”) after written notice thereof from the other Party shall constitute a default (“Default”) by such failing Party under this Agreement; *provided, however*, that if the failure cannot reasonably be cured within ninety (90) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing Party commences its efforts to cure within the initial ninety (90) day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the

alleged Default and the manner in which said Default may be satisfactorily cured, if possible. Upon the occurrence of an uncured Default under this Agreement, the non-defaulting Party may institute legal proceedings to either: i) enforce the terms of this Agreement, or ii) terminate this Agreement. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action.

a. Termination. If City elects to consider terminating this Agreement due to a Default by Developer, then the City shall give to Developer of City's intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting no earlier than fifteen (15) days in advance of said notice. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If City Council determines that a Default has occurred and is continuing, and elects to terminate this Agreement, City shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated. The Parties may thereafter pursue any and all remedies at law or equity.

b. No Monetary Damages Relief Against City. The Parties acknowledge that City would not have entered into this Agreement had it been exposed to monetary damage claims from Developer for any breach thereof. As such, the Parties agree that in no event shall Developer, its successors and/or be entitled to recover monetary damages against City for breach of this Agreement but shall only be entitled to specific performance as may be determined by the court.

c. Breach by City; Equitable Relief. In the event of a breach by the City of this Agreement, as a result of, among other things, an attempt by the City to limit or restrict the Developer's vested rights as set forth herein, Developer shall have the right to seek equitable relief, including emergency injunctive relief as may be warranted, from a court of competent jurisdiction consistent with this Agreement.

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

19. Notice and Filings. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served in writing and delivered personally, sent by certified United States Mail, postage prepaid, or by a national express overnight delivery service, freight prepaid, if to:

If to City:

TOQUERVILLE CITY
c/o City Manager or Clerk
212 Toquer Boulevard
PO Box 27
Toquerville, Utah 84774

With a copy to: JENKINS BAGLEY & SPERRY, PLLC
c/o Bruce Jenkins, Esq.
285 W. Tabernacle, Suite 301
St. George, Utah 84770

If to Developer: FIRELIGHT DEVELOPMENT, INC.
c/o Darcy A. Stewart
1404 Sun River Parkway, Suite 200
St. George, Utah 84790

With a copy to: SNOW CALDWELL BECKSTROM &
WILBANKS, PLLC
c/o Heath H. Snow, Esq.
253 W. St. George Blvd., Suite 100
St. George, Utah 84780

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals and communication given by personal delivery or overnight delivery shall be effective upon receipt and if given by mail shall be deemed delivered 72 hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above.

20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

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

22. Further Acts. Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary to carry out the matters contemplated by this Agreement.

23. Time is of the Essence; Force Majeure. Except as otherwise provided in this Section, time is of the essence for this Agreement. If either party is delayed or hindered in or prevented from the performance of any act required hereunder by reason or inability to procure materials, acts of God, failure of power, riots, insurrection, war or other reason of a like nature (other than labor disputes) not the fault of the Party delayed in performing work or doing acts required under this Agreement, then performance of such act will be excused for the period of delay and the time for the performance of any such act will be extended for a period equivalent to the period of such delay.

24. Binding Effect. All of the provisions of this Agreement shall inure to the benefit of and

be binding upon the successors and assigns of the Parties hereto, except as provided in Section 16 of this Agreement.

25. No Partnership or Third-Party Benefits. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Developer, the Westbrook Partners and the City. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

26. Entire Agreement. This Agreement, together with its exhibits, the Firelight Conceptual MPDO Plan and the Firelight Preliminary Site Plan shall constitute the entire agreement between the Parties pertaining to the subject matter hereof. All other prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein.

27. Names and Plans. Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature developed, formulated or prepared by or at the request of Developer in connection with the Subject Property, any After Acquired Property and the planned Firelight Community.

28. Good-Standing: Authority. The Parties warrant and represent as follows:

a. Developer hereby represents and warrants to the City that: (i) Developer is a registered corporation in good standing with the State of Utah; (ii) the individual(s) executing this Agreement on behalf of Developer are duly authorized and empowered to bind Developer; and (iii) this Agreement is valid, binding, and enforceable against Developer in accordance with its terms.

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

29. Severability. If any provisions of this Agreement are declared void or unenforceable, such provision shall be severed from this Agreement, and the Agreement shall otherwise remain in full force and effect.

30. State and Federal Law; Invalidity. The Parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes mandated by state or federal laws or regulations applicable to the Subject Property. The Parties further agree that if any provision of this Agreement becomes, in

its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.

31. Governing Law. This Agreement is entered into in Utah and shall be construed and interpreted under the laws of Utah.

32. Continued Cooperation. By executing this Agreement, the Parties hereto expressly agree to continue to operate in good faith to effectuate its purpose, by giving all consents, executing all documents and providing input and assurances within a reasonable time period after said actions are requested of any Party.

33. Recordation. No later than 10 days after this Agreement has been executed by City and Developer, it shall be recorded in its entirety, at Developer's expense, in the Official Records on file in the Office of the Recorder of Washington County, State of Utah.

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

35. Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees, special counsel, and representatives harmless from liability for damages, just compensation restitution, or judicial or equitable relief which may arise from or are related to any Development Activity connected with the development of the Subject Property and any After Acquired Property; the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf which relates to the development of the Firelight Community; or which arises out of claims for personal injury, including health, and claims for property damage. The obligations of Developer under this Section shall not be applicable to any claim arising by reason of the negligence or intentional tort actions of the City. The City shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than 30 days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Developer shall be entitled to participate in the defense of such claim. Each Party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

36. Enforcement. The Parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer, its successors or assigns violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after ninety (90) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such ninety (90) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer. City shall be free from any liability arising out of the exercise of its rights under this Section.

37. Institution of Legal Action. In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any Default or breach, to specifically enforce any covenants or agreements set forth in this Agreement, to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fifth District Court in and for Washington County, State of Utah.

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

(Signature Pages to Follow)

DATED effective the first date set forth above.

CITY:

TOQUERVILLE CITY
a Utah municipal corporation

Attest:

Keen Ellsworth, Mayor

Daisy Fuentes, City Recorder

STATE OF UTAH)
) ss:
COUNTY OF WASHINGTON)

Keen Ellsworth and Daisy Fuentes, being first duly sworn, deposes and says that they are the Mayor and City Recorder of Toquerville City, a Utah municipal corporation; that they have read the foregoing Amended and Restated Development Agreement for Firelight and knows the contents thereof; and that they signed said document for its intended purpose under the authority given by the Toquerville City Council.

NOTARY PUBLIC

SCHEDULE “A”
(To Development Agreement for Firelight)

List of Westbrook Partners

RD & CT HOLDINGS, LLC, a Utah limited liability company
PRINCE VIEJO VALLEY, LLC, a Utah limited liability company
SOUTHSTREAM HOLDINGS, LLC, a Utah limited liability company
CANYON EDGE, LLC, a Utah limited liability company
SOUTH FIELD PROPERTIES, LLC, a Utah limited liability company
EASTCREEK HOLDINGS, LLC, a Utah limited liability company
TOQUERVILLE GRANDEUR, LLC, a Utah limited liability company
LEE P. ESPLIN, TRUSTEE OF THE DONALD & RUTH ESPLIN REV TRUST u/a/d Nov. 9, 1990
SCOTT PARRY
LEE P. ESPLIN
WOODROW W. WAGNER, III
SHERI G. WAGNER
EQUITY TRUST COMPANY FBO LEE P. ESPLIN TRADITIONAL IRA 200321726 f/k/a
American Pension FBO Lee P. Esplin IRA 12524
EQUITY TRUST COMPANY FBO LEE P. ESPLIN ROTH IRA 200321138, f/k/a American
Pension FBO Lee P. Esplin IRA 11663
HIGH TORQ, LLC, a Utah limited liability company
EQUITY TRUST COMPANY FBO DAVID WEBB HUNTER IRA 200318098 f/k/a American
Pension FBO David Webb Hunter IRA 12922

EXHIBIT “A”
(To Development Agreement for Firelight)

Legal Description of Subject Property

SRC Land Holdings, LLC

T-3-1-11-341
T-3-1-10-231-PV1
T-3-1-10-232-PV2
T-3-1-10-233-PV3
T-3-1-10-234-PV4
T-3-1-10-235-PV5
T-3-1-10-236-PV6
T-127-PV1
T-128-PV1
T-129-PV1
T-190
T-191-PV1
T-192
T-193
T-195-PV1
T-1231
T-1232
T-1233
T-1234
T-1235
T-1236
T-1237
T-199-PV1

T-Ville Dreamz, LLC

T-3-1-11-340
T-3-1-11-342

Firelight Development, Inc.

T-141-PV1

EXHIBIT "B"
(To Development Agreement for Firelight)

Vicinity Map of the Firelight Community

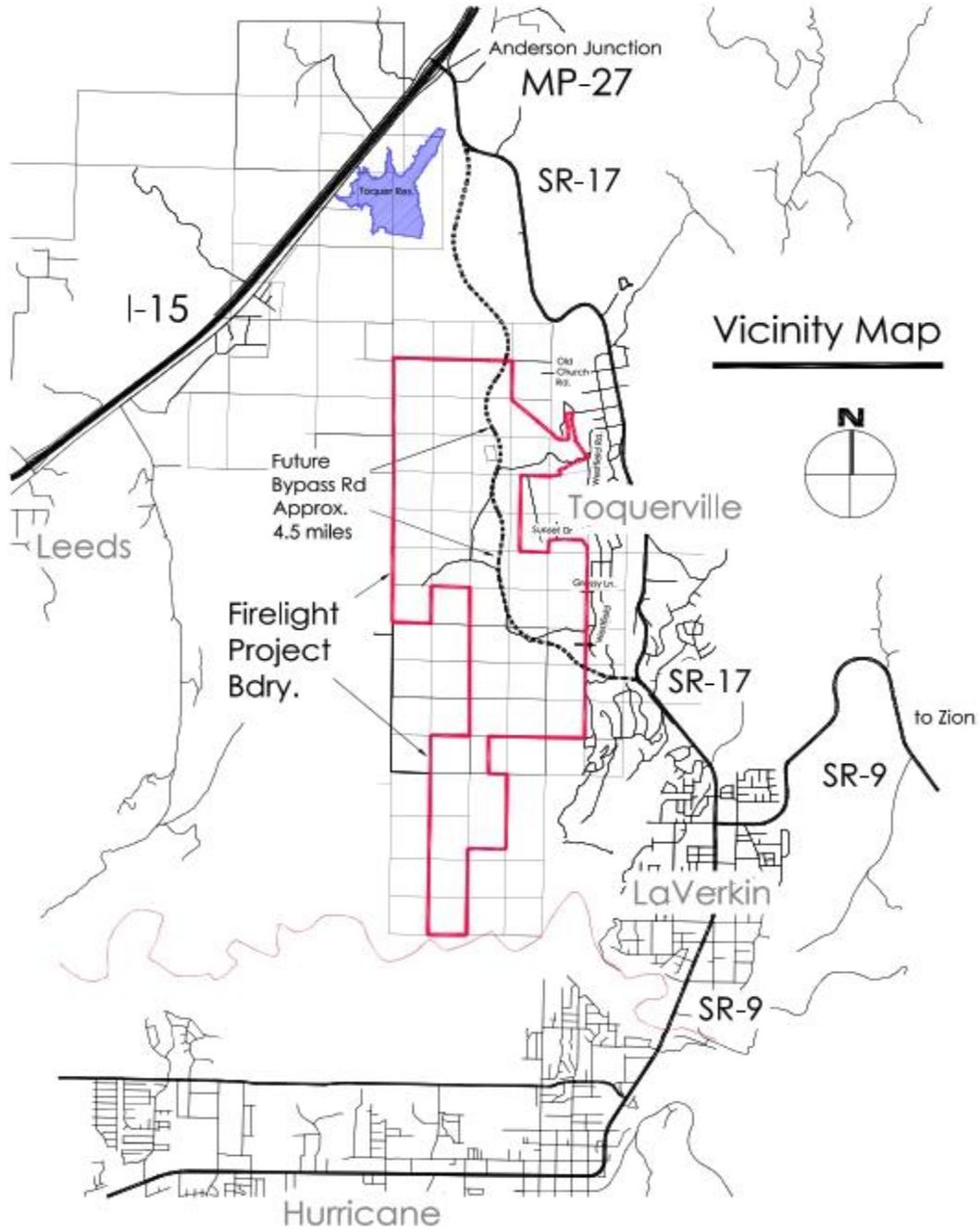


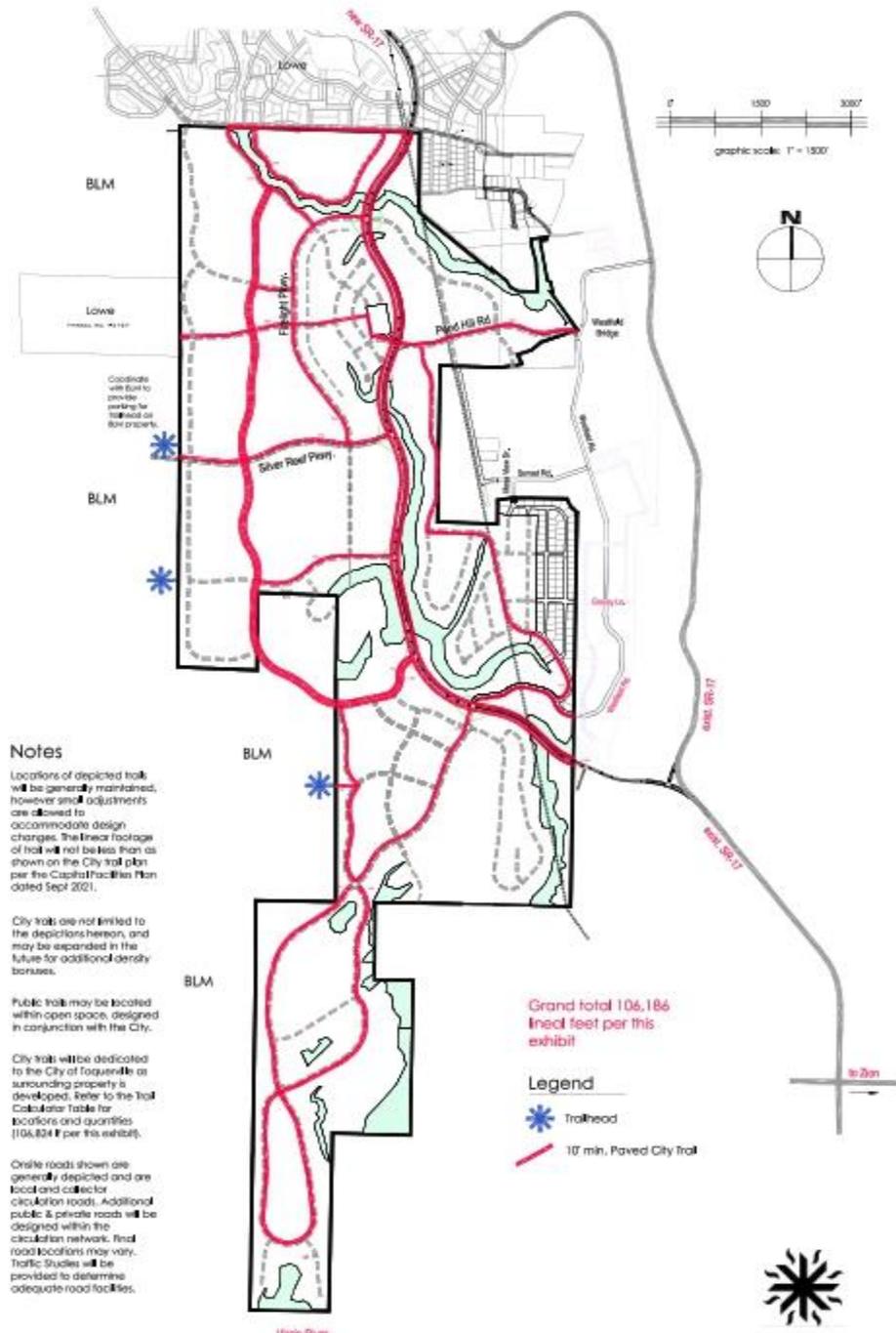
EXHIBIT “C”
(To Development Agreement for Firelight)

Firelight Conceptual MPDO Plan

(See Attached Plan)

EXHIBIT "D"
(To Development Agreement for Firelight)

Firelight Master Trail Plan



Notes

Locations of depicted trails will be generally maintained, however small adjustments are allowed to accommodate design changes. The linear footage of trail will not be less than as shown on the City trail plan per the Capital Facilities Plan dated Sept 2021.

City trails are not limited to the depictions herein, and may be expanded in the future for additional density bonuses.

Public trails may be located within open space, designed in conjunction with the City.

City trails will be dedicated to the City of Toquerville as surrounding property is developed. Refer to the trail Calculator table for locations and quantities (106,184 ft per this exhibit).

Onsite roads shown are generally depicted and are local and collector circulation roads. Additional public & private roads will be designed within the circulation network. Final road locations may vary. Traffic Studies will be provided to determine adequate road facilities.

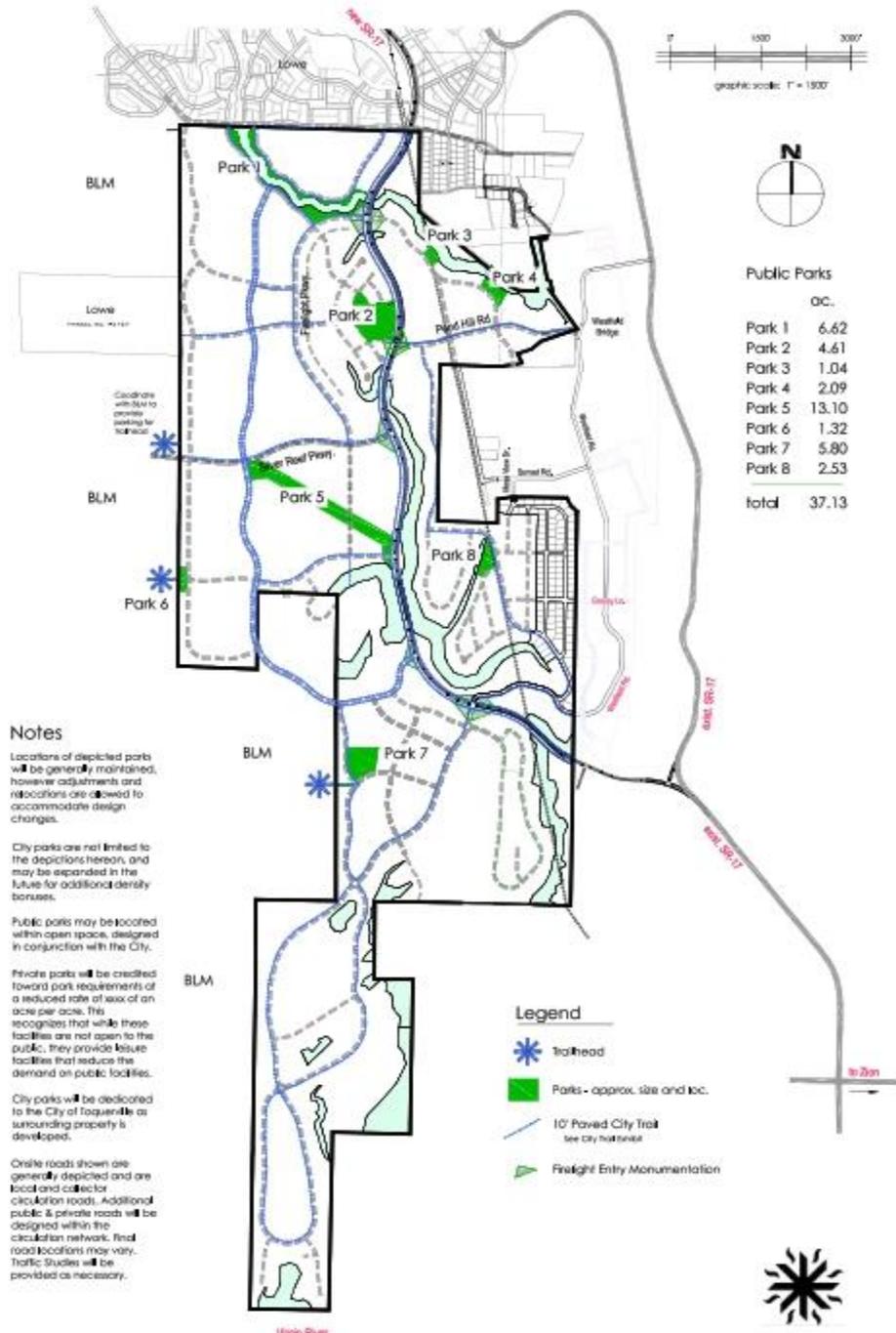
Grand total 106,186
lineal feet per this
exhibit

Legend

- Trailhead
- 10 min. Paved City trail

EXHIBIT "E"
(To Development Agreement for Firelight)

Firelight Master Park Plan



SRC Land Holdings, LLC

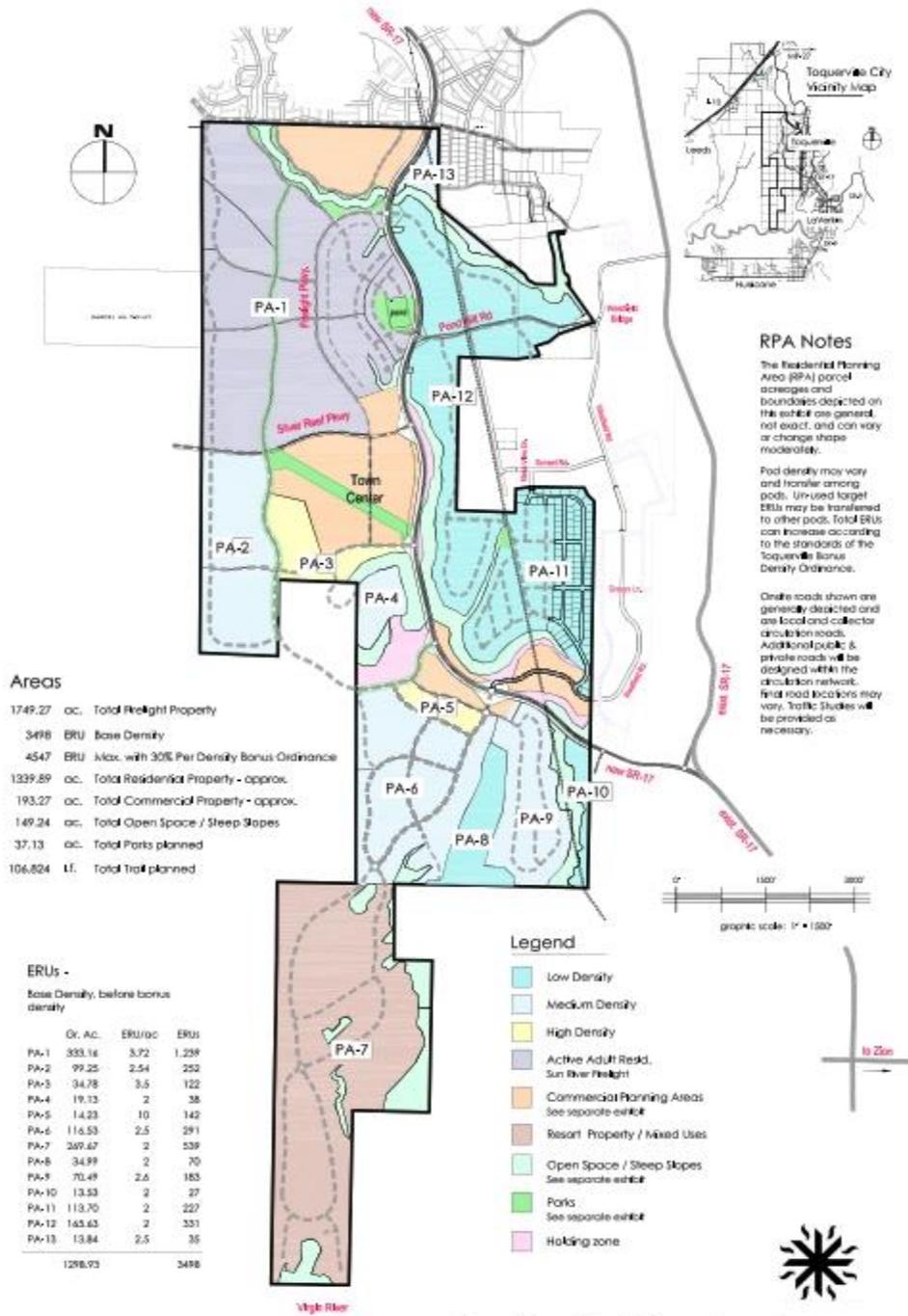
1424 W. Sun River Pkwy. #200, St. George, UT 84790 (435) 473-4360

City Parks Master Plan

Firelight - Toquerville, Utah Oct. 13, 2021

EXHIBIT "F"
(To Development Agreement for Firelight)

Firelight Residential Planning Area Map



Areas

1749.27	ac.	Total Firelight Property
3498	ERU	Base Density
4547	ERU	Max. with 30% Per Density Bonus Ordinance
1339.89	ac.	Total Residential Property - approx.
193.27	ac.	Total Commercial Property - approx.
149.24	ac.	Total Open Space / Steep Slopes
37.13	ac.	Total Parks planned
106.824	lf.	Total Trail planned

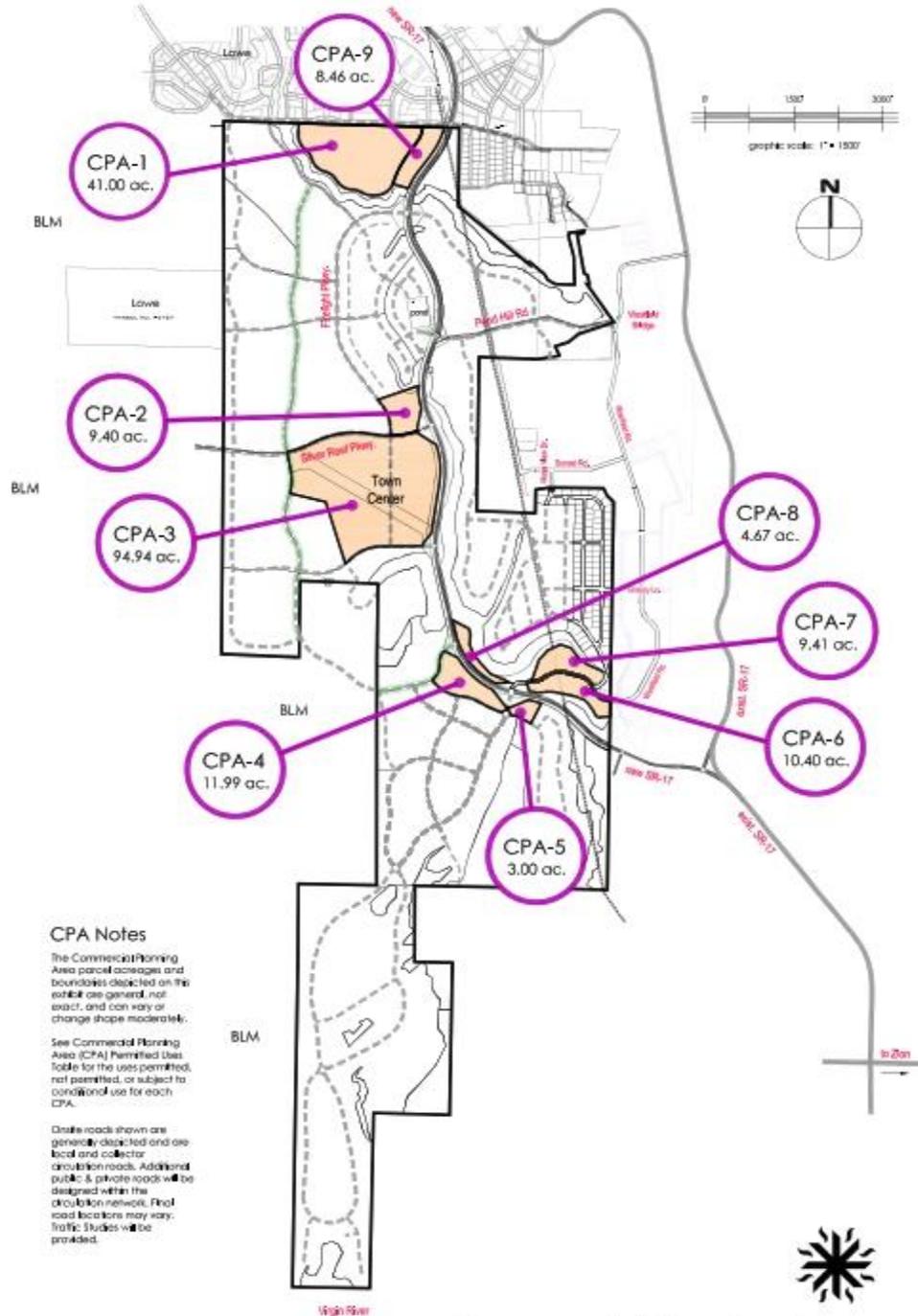
ERUs -
Base Density, before bonus density

Dr. Ac.	ERU/ac	ERUs	
PA-1	333.16	3,72	1,238
PA-2	99.25	2.54	252
PA-3	34.78	3.5	122
PA-4	19.13	2	38
PA-5	14.23	10	142
PA-6	116.53	2.5	291
PA-7	269.67	2	539
PA-8	34.99	2	70
PA-9	70.49	2.6	183
PA-10	13.53	2	27
PA-11	113.70	2	227
PA-12	163.63	2	331
PA-13	13.84	2.5	35
Total	1298.93		3498

- Legend**
- Low Density
 - Medium Density
 - High Density
 - Active Adult Resid., Sun River Firelight
 - Commercial Planning Areas See separate exhibit
 - Resort Property / Mixed Uses
 - Open Space / Steep Slopes See separate exhibit
 - Parks See separate exhibit
 - Holding zone

EXHIBIT "G"
(To Development Agreement for Firelight)

Firelight Commercial Planning Area Map



CPA Notes

The Commercial Planning Area parcel acreages and boundaries depicted on this exhibit are general, not exact, and can vary or change shape moderately.

See Commercial Planning Area (CPA) Permitted Use Table for the uses permitted, not permitted, or subject to conditional use for each CPA.

Dashed roads shown are generally depicted and are local and collector circulation roads. Additional public & private roads will be designed within the circulation network. Final road locations may vary. Traffic studies will be provided.

SRC Land Holdings, LLC

Commercial Planning Areas

1404 W. Sun Valley Pkwy., #200, St. George, UT 84790 | 435.473-4380

Firelight - Toquerville, Utah Oct. 11, 2021

EXHIBIT “H”
(To Development Agreement for Firelight)

Firelight Commercial Planning Area – Permitted Use Table

Commercial Planning Area - Permitted Uses Table

P = permitted, N = not permitted, C = conditionally permitted

	CPA 1	CPA 2	CPA 3	CPA 4	CPA 5	CPA 6	CPA 7	CPA 8	CPA 9
Alcohol establishment, including the following:									
Bar establishment	N	N	P	N	N	N	N	N	P
Off-premise beer retailer	N	C	P	C	C	C	C	C	C
Microbrewery or micro-winery (with restaurant or bar establishment)	N	C	P	C	C	C	C	C	C
Nightclub, dance hall (with alcohol)	N	P	P	P	P	P	P	P	N
Ambulance service:									
	N	C	P	P	C	C	C	C	C
Amusement centers, recreation and entertainment facilities (indoor):									
Indoor entertainment activities such as paintball, miniature golf, arcade	N	P	P	P	P	P	P	P	N
Indoor shooting range	N	C	C	C	C	C	C	C	N
Nightclub, dance hall (without alcohol)	N	P	P	N	N	N	N	N	N
Amusement centers, recreation and entertainment facilities (outdoor):									
	N	C	C	C	C	C	C	P	C
Animal services, including the following:									
Animal boarding/care for small animals only and boarded for less than 30 days a year; provided, conducted completely within enclosed building	N	N	N	P	P	P	P	P	P
Animal hospital and veterinarian clinic, including overnight care of large animals (no boarding)	N	N	N	C	C	C	C	P	N
Automobile and vehicle services, limited to the following uses:									
Automobiles and other similar vehicle sales lots	N	N	N	N	N	N	N	N	N
Automobile parts sales (new parts only); provided, conducted within completely enclosed building	N	N	N	P	N	N	N	N	P
Automobile rental (vehicles up to 26’ length)	N	N	N	C	N	N	N	N	C
Automobile repair, storage, including paint, body and fender, brake, muffler, upholstery or transmission work; provided, conducted within completely enclosed building (GVW 14,000 lbs or less)	N	N	P	N	N	N	N	N	N
Car wash, recirculating water system manual or auto spray	N	C	P	P	P	P	P	P	P
Tire sales and service; provided, conducted within completely enclosed building	N	N	N	C	C	C	C	C	C
OHV, ATVs rentals	N	N	N	N	N	N	N	N	C
Financial, medical and professional services									
	N	P	P	P	P	P	P	P	P
Food service establishments, including the following and similar uses:									
Catering establishment	N	P	P	P	P	P	P	P	P
Restaurant with onsite alcohol sales	N	P	P	P	P	P	P	P	P

Lodging, temporary, limited to the following uses:									
Bed and breakfast	N	P	P	P	P	P	P	P	P
Hotel/Motel	N	P	P	P	P	P	P	P	P
RV Parks, long and short term, and accessory uses	P	P	P	P	P	P	P	P	P
Timeshare units	N	N	N	N	N	N	N	N	N
Nightly Rental Units	N	N	P	N	N	N	N	N	N
Hospitals:									
Counseling center, mental health, alcohol, drugs (nonresidential, less than 24 hours)	N	C	C	C	C	C	C	C	C
Mental health treatment center, with overnight stay	N	C	C	C	C	C	C	C	C
Nursing home:	N	C	C	C	C	C	C	C	C
Office:	N	P	P	P	P	P	P	P	P
Religious facility:	P	P	P	P	P	P	P	P	P
Residential, limited to the following use:									
Living quarters for manager or security personnel for business which requires 24-hr assistance or security – Up to 600 sf w/ occupancy limited to 4 people.	P	P	P	P	P	P	P	P	P
Large floor area building (20,000 sf or more):	N	P	P	P	N	C	C	N	P
Retail shops:									
Antique store	N	P	P	P	P	P	P	P	P
Athletic and sporting goods store	N	P	P	P	P	P	P	P	P
Department store	N	P	P	P	P	P	P	P	P
Drive-through sales (pharmacy, dairy products, etc.)	N	P	P	P	P	P	P	P	P
Furniture and large appliances sales (used)	N	P	P	P	P	P	P	P	P
Furniture sales (new) and repair	N	P	P	P	P	P	P	P	P
Household appliance sales and service	N	P	P	P	P	P	P	P	P
Office supply, office machines sales and service	N	P	P	P	P	P	P	P	P
Paint or wallpaper store	N	P	P	P	P	P	P	P	P
Pawnshop	N	P	P	P	P	P	P	P	P
Seed and feed store, retail	N	P	P	P	P	P	P	P	P
Supermarket/grocery store	N	P	P	P	P	P	P	P	P
Thrift shop/secondhand store/consignment store (no outside storage and no drop-off items during the hours the business is closed)	N	P	P	P	P	P	P	P	P
Vegetable stand	N	P	P	P	P	P	P	P	P
Payday lending/title loans:	N	N	N	N	N	N	N	N	N
Retail sale of goods w/ some operations outdoors, limited to the following:									
Building materials sales	N	C	P	P	P	C	C	C	C
Convenience markets with gas pumps/gas station	N	P	P	P	P	P	P	P	P
Convenience markets with gas pumps located in the rear of the building	N	P	P	P	P	P	P	P	P

Farm implement sales (outdoor display)	N	N	N	C	C	C	C	C	C
Fence, sales and service	N	N	N	C	C	C	C	C	C
Garden supplies and plant material sales	N	N	N	C	C	C	P	C	C
Greenhouse and nursery; soil and lawn service	N	N	N	C	C	C	C	C	C
Landscape rock sales, ancillary to a permitted use	N	N	N	C	C	C	C	C	C
Service business, limited to the following uses:									
Barbershop/beauty shop	N	P	P	P	P	P	P	P	P
Body piercing, ancillary to a permitted use	N	P	P	P	P	P	P	P	P
Carpet and rug cleaning	N	N	N	C	C	C	C	C	C
Childcare center	N	P	P	P	P	P	P	P	P
Communication transmission facilities, including wireless, primary	N	C	C	C	C	C	C	C	C
Communication transmission facilities, inc wireless, primary, height over 50'	N	C	C	C	C	C	C	C	C
Construction trade services, plumbing shop, electrical shop, etc.	N	N	N	C	C	C	C	C	C
Crematorium, independent human	N	N	P	N	N	N	N	N	N
Educational institutions, schools, college, learning centers trade schools (no residential or 24-hour facilities)	N	P	P	P	P	P	P	P	P
Gunsmith	N	P	P	P	P	P	P	P	P
Janitor service and supply	N	P	P	P	P	P	P	P	P
Locksmith	N	P	P	P	P	P	P	P	P
Massage establishment	N	P	P	P	P	P	P	P	P
Mortuary	N	N	N	P	P	C	C	C	N
Permanent cosmetics, a secondary use to an establishment employing cosmetologist(s)/barber(s), aesthetician(s), electrologist(s), or nail technician(s) licensed by the state under	N	P	P	P	P	P	P	P	P
Pest control and extermination	N	P	N	P	P	P	P	P	P
Pet grooming	N	P	P	P	P	P	P	P	P
Printing, lithographing, or reproduction sales and service	N	P	P	P	P	P	P	P	P
Psychic, tarot card reader, fortune teller, occult art practitioners, hypnotist	N	N	C	C	C	P	P	P	N
RV Storage	C	N	N	P	P	P	P	P	P
Sign Sales	N	C	P	P	P	P	P	P	C
Storage rental units	N	N	N	N	N	P	P	P	P
Tattoo establishment	N	N	P	P	P	C	C	C	N
Taxidermist	N	C	C	C	C	C	C	C	C
Transportation, limited to the following uses:									
Bus Terminal	N	P	P	P	P	P	P	P	P
Taxi/shuttle	N	P	P	P	P	P	P	P	P
Government, public services, and facilities, limited to the following uses:									
City, all facilities	N	P	P	P	P	P	P	P	P
Public utility facilities, primary	N	P	P	P	P	P	P	P	p

EXHIBIT "I"

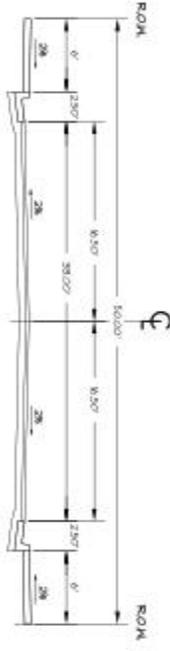
(To Development Agreement for Firelight)

Firelight Active Adult Neighborhood Road Cross Sections

Inside Neighborhoods

- residential road cross-sections

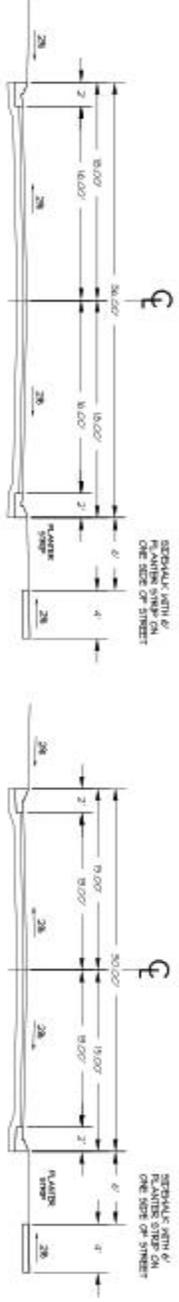
Conventional lots - public streets



50' public r.o.w.
Local Road

Active Adult - Private Streets

Note: private streets will have reduced front setbacks



36' private r.o.w.
SCALE: NONE

30' private r.o.w.
SCALE: NONE

Fig. 1

EXHIBIT “J”
(To Development Agreement for Firelight)

Transfer Declaration

(Sample Instrument to Follow)