

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—July, 2022

SNOW CALDWELL BECKSTROM & WILBANKS, PLLC

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**DEVELOPMENT AGREEMENT
FOR
FIRELIGHT**

THIS DEVELOPMENT AGREEMENT FOR FIRELIGHT (“Agreement”) is entered into this ___ day of ~~June~~July, 2022 (“~~Effective~~Execution Date”) by and between FIRELIGHT DEVELOPMENT, INC., a Utah corporation, (~~“Developer”~~), 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 ~~Affiliates~~”) and TOQUERVILLE CITY, a Utah municipal corporation (“City”). Throughout this Agreement, the Developer, ~~Developer Affiliates~~ and the City may be referred to individually as a “Party” and collectively as “the Parties”.

RECITALS

A. WHEREAS, Developer ~~is and Developer Affiliates are~~ the owner of approximately 173.76 acres described in *Exhibit “A”* (“Subject Property”) and ~~holds an option~~ is under contract 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, ~~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 under zoning regulations that existed at the time 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, in the Fall of 2021, based upon the current underlying zoning of the Subject Property and the ACC Property (R-1-20), Developer, without the objection 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 Plan for both the Subject Property and the ACC Property, so that as Developer develops the Subject Property and ~~exercises its option to purchase~~ purchases the ACC Property in segments, and make them subject to this Agreement (“After Acquired Property”), it could develop a phased mixed-use master-planned community to be known as “Firelight” or the “Firelight Community” (“Firelight MPDO Plan”).

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

H. WHEREAS, subsequent to the ~~City’s~~ Conceptual Approval of the Firelight MPDO Plan, Developer has submitted an application for preliminary plat approval for a residential subdivision within the Subject Property containing two phases to be known as Sun River Firelight – Phases 1 & 2 pursuant to Section 10-15C-9(A) of the Toquerville City Code (“Firelight Initial Preliminary Plat”).

I. WHEREAS, on the th day of ~~May~~June, 2022, the Planning Commission conducted a public hearing on the Firelight Initial Preliminary Plat after which they made a recommendation to the City Council to approve with the conditions of approval as set forth in the City’s Zoning Administrator’s recommendation.

~~J. WHEREAS, on the th day of June, 2022 the City Council reviewed the Developer’s request for approval of this Agreement, approval of the Firelight Initial Preliminary Plat and “Preliminary Approval” of the Firelight MPDO Plan~~

~~J. WHEREAS, at the same meeting~~ WHEREAS, at the same meeting, the Planning Commission also conducted a public hearing on the application for “Preliminary Approval” of the Firelight MPDO Plan after which they made a recommendation to the City Council to approve with the conditions of approval recommended by the City’s conflict legal counsel and the City’s Zoning Administrator including the deferral of the requirements found in Toquerville City Code §10-15C-9 subsections (B)(2)(c) thru (I) until the approved final plat for Sun River Firelight Phases 1 and 2 is recorded.

~~K. WHEREAS, on the th day of June~~July, 2022, ~~The~~the City Council conducted a public hearing on Firelight Initial Preliminary Plat ~~and found that~~. After taking input from the public, reviewing the recommendation of the Planning Commission, and discussing the application amongst themselves, voted to approve the Firelight Initial Preliminary Plat, the ~~conditioned upon the requirements suggested by the City staff and the Planning Commission.~~

~~K-L. WHEREAS, at that same meeting, the City Council considered Developers application for “Preliminary Approval” of the Firelight MPDO Plan and this Agreement~~. After receiving input from City staff and the City’s conflict counsel, the City Council granted “Preliminary Approval” of the Firelight MPDO Plan on the condition that the requirements of the Toquerville City Code §10-15C-9 subsections (B)(2)(c) thru (I) be deferred and fully completed by the time the approved

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final plat for Sun River Firelight Phases 1 and 2 is recorded.

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M. WHEREAS, subsequent to the approval of the Firelight Initial Preliminary Plat and the granting of the Preliminary Approval of the Firelight MPDO Plan, Developer has submitted and received approval and sign off from the City, and the various utility providers within the City a complete set of construction drawings for Sun River Firelight Phases 1 and 2 which satisfies the deferred requirements of Toquerville City Code §10-15C-9 subsections (B)(2)(c) thru (I) (“Firelight Initial Phase Construction Drawings”).

N. WHEREAS, subsequent to the approval and sign off of the Firelight Initial Phase Construction Drawings, Developer submitted to the City an application and a proposed final plat for approval for Sun River Firelight – Phases 1 & 2 (“Firelight Initial Final Plat”).

O. WHEREAS, subsequent to the approval and sign off of the Firelight Initial Phase Construction Drawings, Developer has also submitted to the City an application for “Final Approval” of the Firelight MPDO Plan as to the Subject Property and any After Acquired Property and made subject to this Agreement pursuant to Section 10-15C-10 of the Toquerville City Code.

P. WHEREAS, on the 13th day of July, 2022, the Planning Commission conducted a public hearing on the Firelight Initial Final Plat after which they made a recommendation to the City Council to approve with the conditions of approval as set forth in the City’s Zoning Administrator’s recommendation.

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Q. WHEREAS, at the same meeting~~de~~, the Planning Commission also conducted a public hearing on Firelight’s application for “Final Approval” of the Firelight MPDO Plan after which they made a recommendation to the City Council to approve in the form of the ordinance designated as Toquerville Ordinance 2022- which amends the City’s Official Zoning Map to show the Subject Property and any After Acquired Property as being zoned MPDO.

R. WHEREAS, on the 20th day of July, 2022, the City Council conducted a public hearing on Firelight Initial Final Plat. After taking input from the public, reviewing the recommendation of the Planning Commission, and discussing the application amongst themselves, voted to approve the Firelight Initial Final Plat conditioned upon the requirements suggested by the City staff and the Planning Commission.

S. WHEREAS, at that same meeting, the City Council considered Developers application for “Final Approval” of the Firelight MPDO Plan. After receiving input from City staff and the City’s conflict counsel, the City Council granted “Final Approval” of the Firelight MPDO Plan and adopted Toquerville Ordinance 2022- which amends the City’s Official Zoning Map to show the Subject Property and any After Acquired Property as being zoned MPDO.

T. WHEREAS, in granting “Final Approval” of the Firelight MPDO Plan and adopting Toquerville Ordinance 2022- the City Council expressly made the following findings:

- i. The Firelight MPDO Plan does not conflict with any applicable policy of the City’s General Plan;

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ii. The Firelight MPDO Plan meets the spirit and intent of Chapter 15C of Title 10 of the Toquerville City Code (Master Planned Development Overlay Zone);

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iii. The Firelight MPDO Plan will allow integrated planning and design of the Subject Property and ~~segments of the ACC Property once acquired and added, pursuant to the terms of this Agreement to the Subject Property, by the Developer ("any After Acquired Property")~~; on the whole, create better development than would be possible under the ACC Development Agreement or conventional zoning regulations;

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iv. The Firelight MPDO Plan 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~~MPDO Zone);

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v. The Firelight MPDO Plan 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~~MPDO Zone); and

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vi. The Firelight MPDO Plan promotes the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of City.

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U. WHEREAS, ~~at in granting "Final Approval" of the same meeting on the _____th day of June, Firelight MPDO Plan and adopting Toquerville Ordinance 2022-~~ the City Council ~~relied upon Developer representations that also made the following express findings:~~

L. Developer has, or will have:

i. sufficient control over the Subject Property and any After Acquired Property to ensure development occurs in compliance with the Firelight MPDO Plan as approved and this Agreement;

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ii. Developer has, or will have the financial capability to carry out development of all of the Subject Property and After Acquired Property in compliance with the Firelight MPDO Plan as approved and this Agreement; and

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iii. Developer has, or will have, the level of experience, expertise, and depth of management necessary to carry out development of the Subject Property and After Acquired Property in compliance with the Firelight MPDO Plan as approved, and this Agreement.

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~~M.V.~~ WHEREAS, at the same meeting on the _____th^{20th} day of ~~June~~July, 2022, ~~the City Council~~ the City Council voted to approve the form of this Agreement and authorized the Mayor to execute the same on behalf of the City.

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~~N.~~ WHEREAS, ~~at the same meeting on the _____th day of June, 2022~~ the City Council

~~conducted its own public hearing on the Firelight Initial Preliminary Plat after which they took action to approve the Firelight Initial Preliminary Plat with the same conditions recommended by the Planning Commission.~~

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~~Q.W.~~ WHEREAS, City has expended considerable time, effort and resources in reviewing the Firelight MPDO Plan and will continue to expend considerable time, effort and resources of the City to ensure the development of the Subject Property and the After Acquired Property in compliance with Title 10 of the Toquerville City Code (Land Use Regulations), as modified by this Agreement, the Firelight MPDO Plan.

~~P.X.~~ 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 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 15 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. “Bonus Density Commitments” means those contractual commitments agreed to be performed by the Developer or successors in Section 9.d below, through which the City

grants up to an additional 30% bonus density to the Maximum Residential Density of the Firelight Community pursuant to Section 10-15C-6 of the City's Land Use Ordinances.

e. "City" means the Toquerville City, a Utah municipal corporation and political subdivision of the State of Utah.

f. "City's Land Use Ordinances" means Title 10 (Land Use Regulations) of the Toquerville City Code, as amended from time to time.

g. "City Ordinances" or "City Code" means the Toquerville City Code, including City's Land Use Ordinances.

h. "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.

i. "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.

j. "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.

k. "Developer" means Firelight Development, Inc., a Utah corporation, and the Developer Affiliates, as well as their successors and assigns.

l. "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.

m. "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.

n. "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 MPDO Plan, but may be designed and designated as such at a later date.

o. “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.

p. “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.

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q. “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.

r. “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.

s. “Firelight Commercial Uses” means those Commercial Uses listed as Permitted “P” or Conditional “C” in *Exhibit “H” (Commercial Planning Area – Permitted Use Table)*.

t. “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.

u. “Firelight Initial Preliminary Plat” means that certain Preliminary Plat prepared by Rosenberg Associates for Sun River Firelight – Phases 1 & 2 along with all application forms, narratives and supporting documents submitted by the Developer to the City.

v. “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.

w. “Firelight MPDO Plan” means the 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 MPDO Plan is 72 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 MPDO Plan is attached hereto, marked **Exhibit “C”**, and is incorporated herein by this reference.

x. “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.

y. “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.

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

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

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

~~ee.~~ “Modification Application” means the application and process prescribed for modifying this Agreement, the Firelight MPDO Plan set forth in Section 7, below.

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

~~ee.~~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.

~~ff.~~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.

~~gg.~~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.

~~hh~~.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.

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

~~jj~~.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.

~~kk~~.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~~.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.

~~mm~~.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 MPDO 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 MPDO 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 MPDO 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 Firelight MPDO 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 MPDO 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 MPDO 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 MPDO 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 11, 12 & 13, 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.

6. Process To Obtain "Preliminary Approval" and "Final Approval" of the Firelight MPDO Plan, and Corresponding Zoning. Pursuant to the ~~City's Land Use Ordinances, in addition to Recitals, which are incorporated herein by this reference, the Parties acknowledge and agree that Developer and Developer Affiliates have properly applied for, and received,~~ "Conceptual Approval" of the Firelight MPDO Plan ~~already granted, Developer must receive~~ in compliance with Section 10-15C-8 of the Toquerville City Code, "Preliminary Approval" of the Firelight MPDO Plan in compliance with Section 10-15C-9 of the Toquerville City Code and "Final Approval" of the Firelight MPDO Plan ~~pursuant Sections 10-15C-9 and 10-15C- and the effective rezoning of the of the Subject Property and any After Acquired Property in compliance with Section 10-15C-10~~ of the Toquerville City Code. For purposes of clarity, further explanation, sequencing and precedence, Developer and/or the Developer Affiliates have followed the following steps:

a. Preliminary Approval (§10-15C-9). The Firelight MPDO Plan ~~will be~~ was considered to have received "Preliminary Approval" once the following ~~has~~ occurred (in ~~the~~ the order ~~listed~~):

i. Developer ~~has~~ submitted the Firelight Initial Preliminary Plat to the City containing the following:

1. Written consent and owners dedication to the Firelight Initial Preliminary Plat and the Firelight MPDO Plan executed on behalf of all persons or entities owning the Subject Property.

2. A narrative identifying:

a. A generalized time schedule showing a rough estimate of the commencement of construction for each phase within the Firelight Initial Preliminary Plat;

b. The estimated rate of development and approximate

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completion date for each phase within the Firelight Initial Preliminary Plat; and

c. The stages of development of Private and Public Facilities within the Firelight Initial Preliminary Plat.

~~3.ii.~~ A Developer submitted a draft of a proposed “Firelight Master Declaration,” (to be known as the Firelight Community Charter), together with the filed a draft Articles of Incorporation and the Bylaws for the master property owners association, Firelight Community Association (“Firelight Master Governing Documents”). In addition to the Firelight Master Governing Documents, Developer submitted a draft proposed Sub-Declaration of Covenants, Conditions and all other documents providing Restrictions for Sun River Firelight, an active adult community located within the maintenance of any public open spaces and recreational areas not dedicated to Firelight (within which the City, including agreements by property owners’ associations, dedicatory deeds or reservations Firelight Initial Preliminary Plat is planned) together with a draft Articles of public open space Incorporation and Bylaws for the Sun River Firelight Owners Association (“Sun River Firelight Sub-Governing Documents”).

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~~4.iii.~~ A Developer submitted a draft of this Agreement acceptable in form to the Developer them (but subject to further modification and approval by the City and good faith negotiation between the Parties).

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~~5.~~ A written consent and acknowledgement signed by the Developer and the City indicating that submittal of all documents and plans identified Subsections 10-15C-9.B.2 will be deferred and submitted to the City after the Firelight Initial Preliminary Plat has been approved by the City Council.

~~iv.~~ The Planning Commission has On June 8, 2022, upon providing 10 days advanced notice in compliance with Section 10-19C-3.C.2 of the City’s Land Use Ordinance, the Planning Commission conducted a public hearing on the Firelight Initial Preliminary Plat, after which it has made a recommendation for approval approval to the City Council.

~~ii.v.~~ On June 8, 2022, upon providing 10 days advanced notice in compliance with conditions or denial Section 10-1-8-4 of the City’s Land Use Ordinance, the Planning Commission conducted a public hearing on Developer’s application for “Preliminary Approval” of the Firelight Initial Preliminary Plat. MPDO Plan and subsequently thereafter recommended approval of the same to the City Council.

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~~iii.vi.~~ The City Council On July 6, 2022, upon providing 10 days advanced notice in compliance with Section 10-19C-3.C.4 of the City’s Land Use Ordinance, the City Council conducted a public hearing on the Firelight Initial Preliminary Plat, after which it votes voted to approve, or approve with the same subject to the conditions, the Firelight Initial Preliminary Plat recommended by the City’s Staff &

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the Planning Commission.

vii. On July 6, 2022, upon providing 10 days advanced notice in compliance with Section 10-1-8-4 of the City's Land Use Ordinance, the City Council conducted a public hearing on Developer's application for "Preliminary Approval" of the Firelight MPDO Plan and subsequently thereafter granted said "Preliminary Approval".

b. ~~Final Approval (§10-15C-10).~~ The Firelight MPDO Plan ~~will be considered to have received "Final Approval" and the Subject Property was effectively re-zoned to MPDO~~ once the following ~~has occurred in this order:~~

i.b. ~~The City Council has approved this Agreement, authorized the Mayor to execute on behalf of the City and the Agreement is fully executed by the Parties and is recorded, without condition, (in the Official Records on file in the Office of the Recorder of Washington County, State of Utah; order listed);~~

ii.i. ~~Developer has had prepared (by a licensed civil engineer) and submitted to the City, all necessary plans and construction details sufficient to constitute and the various utility and special service providers operating within the City) the Firelight Initial Phase Construction Drawings containing~~ a complete set of "Construction Plans" for civil improvements within the phases identified in the Firelight Initial Preliminary Plat in a multiple of ten (10) copies. Pursuant to Section 10-15C-9.B.2 of the City's Land Use Ordinances said Construction Plans ~~shall include~~included maps and drawings at a minimum scale of one inch equals one hundred feet (1" = 100') showing the precise location of the following:

1. Existing contours (due to steep slopes, a 3-D model may be required);
2. Contours after development;
3. Location and size of proposed storm drainage system, sewer, water, power, natural gas, phone and cable television utilities;
4. A street system and lot design with appropriate dimensions and detailed cross-sections;
5. Location and dimensions of pedestrian walkways, paths and trails within the site and connecting to surrounding neighborhoods;
6. Location, arrangement, number and dimensions of off-street parking and as required by the City's Land Use Ordinances;
7. Location, arrangement and dimensions of truck loading zones (if applicable);

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8. Location of existing and/or proposed buildings and structures and their uses, open space and dedicated or reserved properties (if applicable);

9. A preliminary architectural plan depicting the general height, bulk and type of construction and their approximate location on lots;

10. A preliminary landscaping plan, including trees, screen planting, walls, fences, etc; and

11. Location, character and types of signs

~~iii.ii.~~ The City's Zoning Administrator ~~and, the~~ City Engineer and all required utility providers ~~have~~ reviewed, approved and signed off on the proposed Firelight Initial Phase Construction Drawings for the phases contained in the Firelight Initial Preliminary Plat.

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~~iv.iii.~~ Developer ~~has~~ submitted a proposed final plat Firelight Initial Final Plat for the phases ~~contained~~ previously designated in the Firelight Initial Preliminary Plat;

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~~iv.~~ The On July 13, 2022, the Planning Commission conducted a public hearing on this Agreement with specific emphasis on Sections 11, 12 & 13 and concluded that the variances from the City's Standards and Specifications for Public Improvements contained in those Sections were reasonable and therefore recommended to the City Council that it approve this Agreement and authorize the Mayor to execute the same on behalf of the City and cause a fully executed copy to be recorded against the Subject Property in the Official Records on file in the Office of the Recorder of Washington County, State of Utah.

~~v.~~ On July 13, 2022, the Planning Commission, upon providing 10 days advanced notice in compliance with Section 10-19C-3.C.2 of the City's Land Use Ordinance, conducted a public hearing on the Firelight MPDO Plan and proposed final plat for the phases contained in the Firelight Initial Preliminary Plat, after which it has found the proposed final plat found it to be in compliance with the approved Firelight Initial Preliminary Plat, the approved Firelight Initial Phase Construction Drawings and this Agreement and it has made a recommendation for "Final Approval" of the Firelight MPDO Plan and recommended its approval ~~(or approval with conditions)~~ of the propose final plat to the City Council.

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~~vi.~~ The City Council reviews On July 13, 2022, the Planning Commission's recommendation and finds the proposed final plat to be in compliance with the approved Firelight Initial Preliminary Plat, the approved Construction Drawings and this Agreement and grants Commission, upon providing 10 days advanced notice in compliance with Section 10-1-8-4 of the City's Land Use Ordinances, conducted a public hearing on Developer's application for "Final Approval" of the Firelight

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~~MPDO Plan by adoption of an ordinance in compliance with Section 10-15C-10.D indicating the City's and recommended to the City Council that said approval be granted and that the City Council adopt Toquerville Ordinance 2022- to amend the Official Zoning Map is amended of the City to reflect that the Subject Property and any After Acquired Property annexed in compliance with Section 15 below is thereafter designated with a "MPDO" zone classification, as having the MPDO zoning district designation.~~

vii. ~~The~~On July 20, 2022, the City Council ~~reviews~~reviewed the Planning Commissions' ~~Commissions~~ recommendation and ~~finds~~regarding the ~~proposed final plat~~adoption of this Agreement and voted to ~~be in compliance with the approved Firelight Initial Preliminary Plat, the approved Construction Drawings and~~approve this Agreement and ~~votes to approve the proposed~~authorize the Mayor this Agreement and cause a fully executed copy of this Agreement to be recorded against the Subject Property and any After Acquired Property in the Official Records on file in the Office of the Recorder of Washington County, State of Utah.

vii.viii. On July 20, 2022, the City Council, upon providing 10 days advanced notice in compliance with Section 10-19C-3.C.2 of the City's Land Use Ordinance, conducted a public hearing on the proposed final plat for Sun River Firelight, Phases 1 and 2 and thereafter voted to approve the final plat and authorize the various elected and ~~appointed~~appoint officials of the City to sign and record the same in the Official Records on file in the Office of the Recorder of Washington County, State of Utah after all Private and Public Facilities identified in the Fire Light Initial Phase Construction Drawings have been constructed, inspected and accepted by the City.

viii.ix. ~~The City Council reviews the Planning Commissions' recommendation and grants "Final Approval" of the Firelight MPDO Plan by adoption of an ordinance in compliance with Section 10-15C-10.D~~On July 20, 2022, the City Council, upon providing 10 days advanced notice in compliance with Section 10-1-8-4 of the City's Land Use Ordinances, conducted a public hearing on Developer's application for "Final Approval" of the Firelight MPDO Plan and thereafter voted to grant "Final Approval" of the Firelight MPDO Plan and to effectuate the same by adopting Toquerville City Ordinance 2022- indicating the City's Official Zoning Map is amended to reflect that the Subject Property and any After Acquired Property annexed in compliance with Section 15 below is thereafter ~~designated with a "MPDO" zone classification~~contain the MPDO zoning district designation subject to the uses and densities outlined in this Agreement.

c. Binding Effect of "Final Approval" of the Firelight MPDO Plan. The entitlements granted by the "Final Approval" of the Firelight MPDO Plan and the execution and recording of this Agreement relating toagainst the Subject Property and any After Acquired Property 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 Plan and this

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Agreement.

d. Subsequent Land Use Applications. Except as provided in Sections 11, 12 & 13, below, 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. By way of clarification, after "Final Approval" of the Firelight MPDO Plan is granted, Developer, Developer Affiliates and/or their successors and assigns may proceed to the subdivision or commercial site plan approval processes prescribed by the City's Land Use Ordinances and need not seek any further zoning approvals (except conditional use permits in the event a commercial use is designated as "conditional" in Exhibit "H" (Commercial Planning Area – Permitted Uses Table))

e. 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.

f. 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.

g. Moratorium. The rights of Developer under this Agreement, the Firelight MPDO Plan and this Agreement 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.

7. Process for Modifying the Firelight MPDO Plan After Final Approval.

a. Intent. City acknowledges that the Firelight MPDO Plan contains generalized narratives and depictions regarding the future development of the Firelight Community. Developer may modify the Firelight MPDO 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 materially 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 make non-material changes and/or adjustments ~~to~~ the exact location of various development uses and densities under the provisions of this Agreement between or among Residential Planning Areas, Commercial Planning Areas, Development Parcels and Sub-Development

Parcels pursuant to this Section. The purpose of this provision is to allow ~~Developer and the Developer and Developer Affiliates owning the Subject Property and any After Acquired Property~~ the opportunity to change the configuration of uses and densities shown or described in the Firelight MPDO 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 MPDO Plan as reasonably determined by City. Any proposed ~~material modifications~~modification of the Firelight MPDO Plan, ~~including without limitation changes~~ which increases the Maximum Residential Density, the Maximum Commercial Density ~~or, the Maximum Development Area,~~ adds other land uses or ~~property not depicted or described~~further modifies the City's Standards and Specifications other than that set forth in Firelight MPDO Plan Sections 11, 12 and 13 shall be accomplished only by a modification to the Firelight MPDO Plan as provided set forth in this Section ~~7~~.

b. Submittal of Modification Application. If Developer or its successors and assigns, desire to modify the Firelight MPDO Plan as described in Section ~~7(a),~~ above, Developer shall submit a modification application together with any required fee, in the form and amount prescribed by the City ("Modification Application").

b.c. Non-Material Modifications. Any Modification Application which, after the review of the City's staff, is deemed to be non-material and within the scope of the modifications permitted by Subsection ~~7(a),~~ above, as reasonably determined by City, may be modified by Developer by providing City with a modified Firelight MPDO Plan containing the revision date and supplemental summary referencing the revision date. Said supplemental summary shall briefly detail the changes made to the modified ~~Firelight MPDO Plan.~~

e. 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 incomplete. 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 unapproved.~~

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. 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 MPDO 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.~~

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~~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 MPDO Plan as described in Section 7(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 MPDO Plan. 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*).~~

~~d. Material Modifications. Any Modification Application which, after the review of the City's staff, is deemed to be material and outside of the scope of the modifications permitted by Subsection 7.a., above, may only be approved if Developer or a Developer Affiliate goes through the process of a traditional zone change aka amendment to the City's Official Zoning Map as prescribed in Section 10-8-3 of the City's Land Use Ordinances (Zone Changes/Amendments to Zone District Map). Only after a public hearing has been conducted by the Planning Commission and a recommendation made by them, can the City Council take action on the Modification Application. Developer or Developer Affiliates need not go through the three-step approval process of "Conceptual Approval", "Preliminary Approval" or "Final Approval" prescribed in the MPDO Sections of the City's Land Use Ordinances (10-15C-8 thru 10) to have a Modification Application approved. Rather a Modification Application is simply considered a modification of the "Final Approval" of the Firelight MPDO Plan.~~

~~e. Standard and Timing on Determination of Materiality of a Modification Application. The City shall make the determination of whether a Modification Application falls within the scope of changes capable of being made unilaterally by the Developer~~

pursuant to Subsection 7.a., above or whether the Modification Application seeks a material modification and must proceed pursuant to Subsection 7.b.. Said determination must be made by the City within thirty (30) days of the submittal of the Modification Application or it will be deemed non-material. In determining the materiality of a Modification Application, the City shall utilize a standard of reasonableness meaning the determination shall not be arbitrary or capricious and shall be supported by a majority of credible evidence and reasoning obtained or that should be obtained by the City.

f. Appeal of Adverse Determinations. The Parties stipulate and agree that the determination of the materiality of a Modification Application and the ultimate determination of the merits of the Modification Application are both land use decisions for which Developer shall have the right to appeal pursuant to Subsection 10-3-2(F) and (I) of the City's Land Use Ordinances.

8. General Conditions of the Firelight MPDO Plan Final Approval. As part of the Firelight MPDO Plan "Final Approval", 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 15, below:

a. Maximum Development Area. The Firelight Community and the entitlements granted by this Agreement and the Firelight MPDO 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 7, 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 ("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 density is~~ then increased by thirty percent (30%), to wit: 4,547 ERUs, based upon: (i) ~~the City~~ the City Council's acceptance of Developer's Bonus Density Commitments (defined below); and (ii) ~~Developer's~~ Developer and Developer Affiliate's compliance with the terms and conditions of this Agreement and the Firelight MPDO Plan. 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, sensitive land, prominent geological formations, open space areas and areas within the Firelight Community designated as Commercial Planning Areas and/or containing commercial buildings, structures, improvements and uses. When the maximum number of ERUs (with the 30% density bonus), to wit: 4547; is divided by the Maximum Development Area the Maximum Residential Density of 2.6 ERUs per acre is the product.

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 non-material modification of boundaries, intensity of use and size of an RPA may be unilaterally modified/accomplished by the Developer without seeking an approved modification of thru the Firelight MPDO Plan so Modification Application process prescribed in Section 7 above. 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 for the Subject Property and any After Acquired Property owned by Developer or the Developer Affiliates is not exceeded—because of the modification, the Modification Application shall be deemed non-material pursuant to Section 7.a., above.

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 7, above.

e. Commercial Planning Areas & Densities. The Firelight MPDO Plan allocates 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 MPDO 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 the approval and recording of a final plat for phases designated in the Firelight Initial Preliminary Plat, Developer shall adopt and record the Firelight 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, this Agreement 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 or the Firelight MPDO 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 preliminary and 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 ERUs approved under previous plats and the proposed plat do not exceed the Maximum Residential Density allowed for all of the Subject Property and After Acquired Property which has been annexed ~~into~~ and made subject to the Firelight MPDO Plan pursuant to Section 15, below. 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 a preliminary plat or final plat for approval by the City 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 approved under prior final plats for residential subdivisions within the Subject Property and all After Acquired Property, iii) the number of ERUs that will exist in the subdivision plat being proposed, iv) 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~~ v) 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~~ Developer Affiliates or their 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 Section 10-8-3(2) of the City's Land Use Ordinance.

9. 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 permit and other fees ~~at rates in effect~~ the amounts set forth in the City's uniform fee schedule at the time ~~the application for of~~ plan review ~~of~~ permit ~~is made~~, (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 uniform 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 and the recording of the final plat for the phases identified in the Firelight Initial Preliminary Plat vests in Developer as well as its successors and assigns, all rights, consistent with the Firelight MPDO 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

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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 and the Firelight MPDO Plan provided that such assignees agree to be bound by the terms of this Agreement as provided in Section 17, 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.

d. Bonus Density Commitments. The Parties acknowledge and agree that the Maximum Residential Density of 2.6 ERUs per acre with a maximum of 4547 ERUs throughout the entire 1749.27 acres of the planned Firelight Community is only permitted under the City's Land Use Ordinances (particularly 10-15C – MPDO Zone) by virtue of the MPDO Bonus Density program described in Section 10-15C-6. Specifically, Developer has committed to: i) dedicate to the City or reserve via an irrevocable conservation easement, open space in areas identified in *Exhibit "F"* (Firelight Residential Planning Area Map), ii) construct parks in those areas, and of a size, identified in *Exhibit "E"* (Firelight Parks Master Plan) and dedicate the same to the City such that the Firelight Community will have a level of service relating to parks in excess of that currently provided to other areas of the City, and iii) construct trails in those areas identified in *Exhibit "D"* (Firelight Trails Master Plan) such that the Firelight Community will have trails a level of service relating to trails in excess of that currently provided to other areas of the City (collectively "the Bonus Density Commitments"). So as to avoid the creation illegal subdivisions of land and unnecessary islands without access that might need to be modified in the future, and subject to ~~subsection~~ Subsection 9(e) below, the Bonus Density Commitments shall be performed by Developer when it commences Development Activity on the first phase of a residential subdivision or the first phase of a commercial site plan that directly abuts an area designated in the Firelight MPDO Plan as Open Space (*Exhibit "F"*), a park (*Exhibit "E"*) or a trail (*Exhibit "D"*).

e. Bonus Density Proportionality Catch-Up. In order to have the ability to accomplish the Bonus Density Commitments Developer will need to own and dedicate/reserve approximately 10.6 acres out of every 100 acres it develops for use as open space or a park (10.6%) ("Bonus Density Proportionality"). Because of the narrow and linear nature of

trails, no acreage has been estimated and allocated in the calculation of Bonus Density Proportionality. Presently the Subject Property owned by Developer or Developer's Affiliates does not meet the Bonus Density Proportionality in that the Subject Property does not contain sufficient acreage in areas located in the Firelight MPDO Plan as open space or a park to equal 10.6% Bonus Density Proportionality. Recognizing the shortfall, and the estimated development and buildout timeline for the entirety of the proposed Firelight Community, Developer covenants and agrees that it, or Developer's Affiliates, will acquire sufficient After Acquired Property over a period of ~~three~~four (4) years from the Effective Date of this Agreement to own and possess sufficient acreage capable of dedication or reservation in areas identified and designated as open space and/or parks in the Firelight MPDO Plan such that Developer owns or controls land possessing Bonus Density Proportionality. In the event that Developer has failed to obtain Bonus Density Proportionality within three years of the Effective Date of this Agreement, the City may ~~refrain~~ i) refrain from granting any further permits (including building, conditional use, or occupancy), or any further land use entitlements (including subdivisions, zone changes and MPDO amendments) until the Bonus Density Proportionality has been achieved, and/or ii) bring ~~an~~and action for specific performance.

10. 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 MPDO 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. The City acknowledges that Developer shall comply with all applicable ordinances, resolutions, policies and procedures and except as provided in Sections 11, 12 and 13 of this Agreement.

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, ~~Developers shall~~ Developer 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.

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.

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11. 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;

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ii. Public or private golf courses;

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iii. Private non-commercial recreation facilities;

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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".

12. 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, not to exceed ~~10~~ in number);
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. Minimum Building Area.¹ 1000 sf
- d. Maximum Lot Coverage. 65%
- e. Minimum Open Space per Lot. 35%
- f. Minimum Frontage per Lot.²
 - i. Along public street; 30'
 - ii. Along front building wall; 35'
 - iii. Along cul-de-sacs, curved roads & and flag lots. 20'
- g. Minimum Setbacks.³
 - i. Front⁴ 10' – 20' garage setback
 - ii. Side⁵ 5' (10' min. separation)
 - iii. Rear⁶ 3'-10' (20' min. separation)
 - iv. From Public Arterial Roads 10' behind 6' wall
 - v. Front, Rear and/or Side⁷ 25' with no wall
- h. Minimum Building Separation.
 - i. 10' for single and two-story side separation;⁸

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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'.

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.

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~~parking is prohibited unless said RV is enclosed in a garage. For purposes of this Subsection, the term "RV" shall be given the same meaning as set forth in Section 10-2-1 "Recreational Vehicle" of the City's Land Use Ordinance.

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. All roads containing cross-sections which are smaller than that which is prescribed in the City's Standards and Specification shall not be dedicated to the City, but rather owned and maintained by the Firelight Community Homeowners' Property Owners' Association or a sub-association thereof for the active adult neighborhood where the modified road cross-sections are located.

13. 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 and Developer Affiliates 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'

⁹ Building appurtenances such as steeples, bell towers and clock-towers may be 90' from finished grade. ~~Increased building heights may be approved by the City Council on a case-by-case basis. [Under what ordinance?]~~

c. Setbacks.¹⁰

- 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'

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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.

14. 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).

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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 property other than land

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. [Footnotes 11 and 12 may be problematic]

¹² As measured from private streets.

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 ~~to the City~~ each segment of the Firelight Water Distribution System.

ii. City Obligations.

1. Operation and Management of Water Storage Site and Firelight Water Distribution System. Subject ~~to~~ Developer fulfilling its obligations under ~~Section~~Subsection 14(a)(i) above, ~~the~~ 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 ~~413~~.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

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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:

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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 by this Agreement. All road system improvements shall be in the general size location as identified in the various plans and maps designated in Firelight 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 within the Active Adult Neighborhoods of Firelight or other portions of the Subject Property and After Acquired Property, 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 a 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 will shortly be awarding a contract for construction of Phase 1B of the Parkway. ~~In 2008, the Westbrook Partners donated the 120 foot right of way through the Firelight Community to the City which represented over 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 overnearing One Million ~~Six Hundred Thousand~~ Dollars

(\$1,600,000.00) ~~to~~for the 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~~ receive from the Developer and its predecessor amounts constitutes an amount that exceed the Project Improvement component of the Toquerville Parkway (as it relates to the Firelight Community). 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 the Toquerville Parkway Phases 1A and 1B as a Project Improvement for Firelight versus the Toquerville Parkway 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. ~~Developer agrees~~ to accept repayment of any excess contribution in partial impact fee credits reasonably calculated achieve repayment within eight (8) years from the making of the payment.

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 12(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.

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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 to ensure 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 Sheriff'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 Sheriff'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 & Public Works.

i. Developer's Obligations (Trails, Parks & OS, Open Space and Public Works). In order to preserve 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

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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 include Park areas shown in the Firelight Parks Master Plan.

4. **Open Space and Park 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, or abuts, 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.

4.5. **Public Works Donation.** Upon the recording of the final plat containing the 500th residential building lot ("Donation Trigger"), Developer shall work with the City to identify, designate and dedicate to the City a parcel of land consisting of no less than three (3) acres to be located

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near (but not necessarily adjacent to) the Toquerville Parkway and the Northwest Boundaries of the Firelight Community (“Public Works Parcel”). The purpose of the donation/dedication of the Public Works Parcel is so the City has land in which it may construct and maintain or sell and exchange for a different parcel upon which a public works building/facility for the City can be constructed and maintained. Developer may, at its discretion satisfy this donation requirement by donating to the City the cash equivalent of the fair market value of the Public Works Parcel as determined based upon a valuation date of when the Donation Trigger occurred.

5-6. 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)

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1. Maintenance Level of Service. After construction and dedication of any trails, parks or open space contemplated in the Firelight MPDO Plan and 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.

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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.

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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:

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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.

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15. 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.

16. Term. The purpose of this Agreement is to ensure the planned and organized development of the Firelight Community ~~through~~ 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 ("Effective Date") 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 ~~48~~17(a), below, regarding

termination. No permits or further land use applications may be applied for, approved or work commenced until this Agreement has been fully executed and recorded as set forth in this Section.

17. 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: i) the party City's consent – which consent will not unreasonably be withheld, and ii) the Party making the conveyance obtain from their transferee a notarized statement ~~(+)~~ acknowledging the existence of this Agreement and ~~(+)~~ 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 for the parcel of the Subject Property or After Acquired Property being conveyed and Developer shall be released from any further obligations under this Agreement as to the parcel so transferred.

18. 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 notice 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~~ after ~~of said the~~ notice is given. 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. Subject to Subsections 18(b) and (c) below, 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. Entire Agreement. This Agreement, together with its exhibits, and the Firelight MPDO 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.

28. 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.

29. 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.

30. 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.

31. 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.

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

33. 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.

34. 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.

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

36. 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.

37. 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 ~~the Developer, the Developer Affiliate, Sub-Developer/Affiliates~~ or their 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.

38. 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.

39. 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 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

DATED effective the first date set forth above.

DEVELOPER:

FIRELIGHT DEVELOPMENT, INC.
a Utah corporation

Darcy A. Stewart, President

STATE OF UTAH)
) ss:
COUNTY OF WASHINGTON)

Darcy A. Stewart, being first duly sworn, deposes and says that he is the President of Firelight Development, Inc., a Utah corporation (“Firelight”) and that he has read the foregoing Development Agreement for Firelight and knows the contents thereof; and that he signed said agreement for its intended purpose on behalf of Firelight under the authority given him by the Corporation’s Board of Directors and its By-Laws.

NOTARY PUBLIC

DATED effective the first date set forth above.

DEVELOPER AFFILIATES:

SRC LAND HOLDINGS, LLC
a Utah limited liability company

Darcy A. Stewart, Manager

T-VILLE DREAMZ, LLC
a Utah limited liability company

Laura Atwood, Manager

STATE OF UTAH)
) ss:
COUNTY OF WASHINGTON)

Darcy A. Stewart, being first duly sworn, deposes and says that he is the Manager of SRC Land Holdings, LLC, a Utah limited liability company (“SRC”) and that he has read the foregoing Development Agreement for Firelight and knows the contents thereof; and that he signed said agreement for its intended purpose on behalf of SRC under the authority given him by the Company’s Operating Agreement.

NOTARY PUBLIC

STATE OF UTAH)
) ss:
COUNTY OF WASHINGTON)

Laura Atwood, being first duly sworn, deposes and says that she is the Manager of T-Ville Dreamz, LLC, a Utah limited liability company (“TVD”) and that she has read the foregoing Development Agreement for Firelight and knows the contents thereof; and that she signed said agreement for its intended purpose on behalf of TVD under the authority given her by the Company’s Operating Agreement.

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

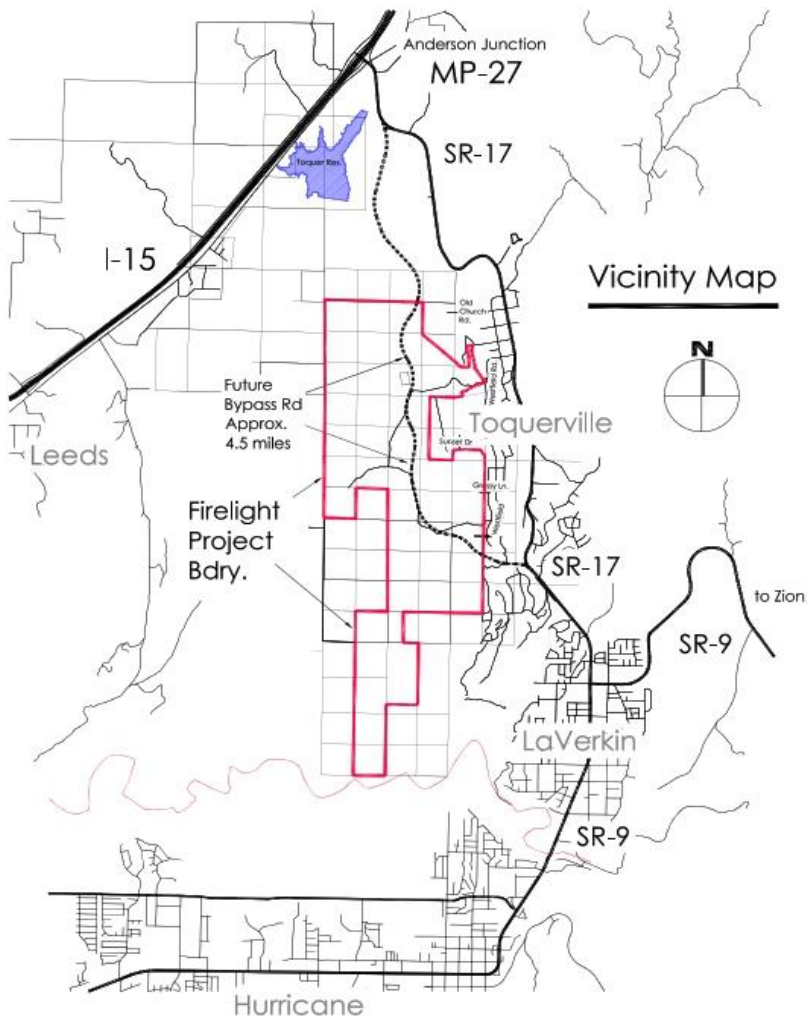
T-Ville Dreamz, LLC

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



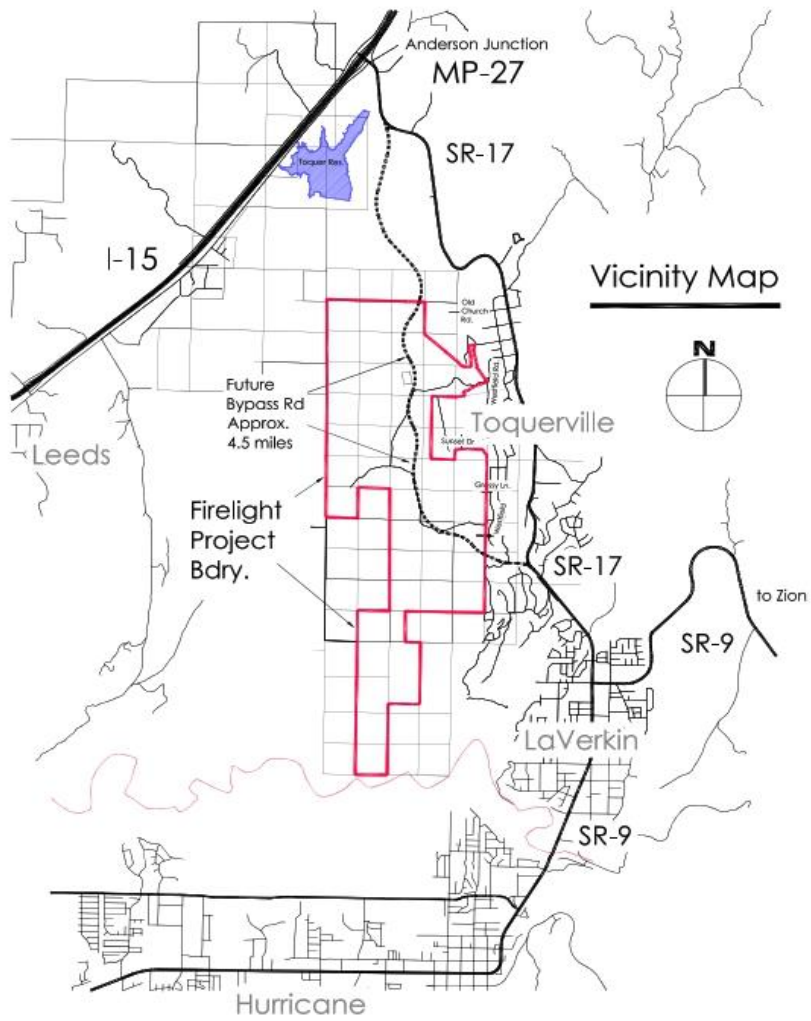


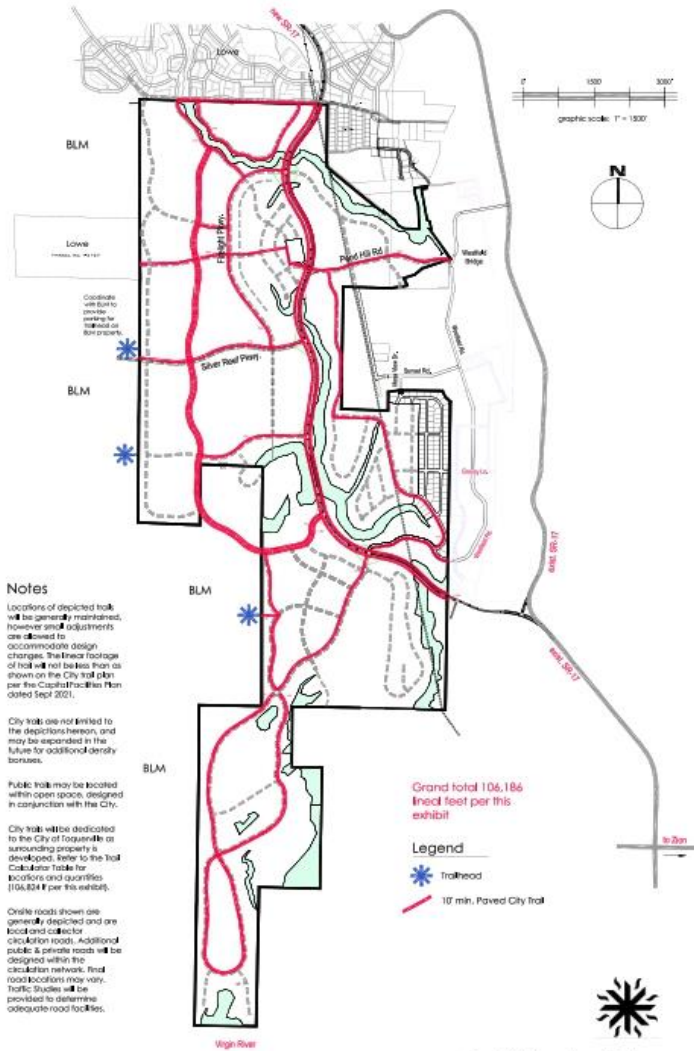
EXHIBIT “C”
(To Development Agreement for Firelight)

Firelight 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 final footcage 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 or surrounding property is developed. Refer to the Trail Calculator Table for locations and quantities (106,186 ft per this exhibit).

On-site 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

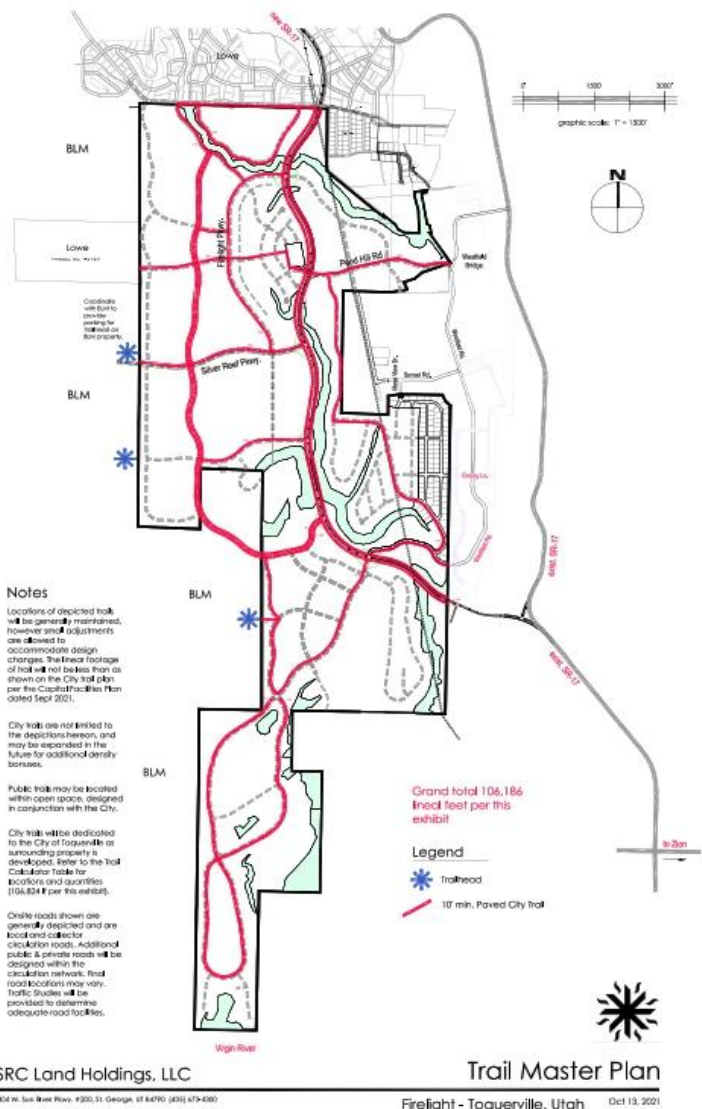
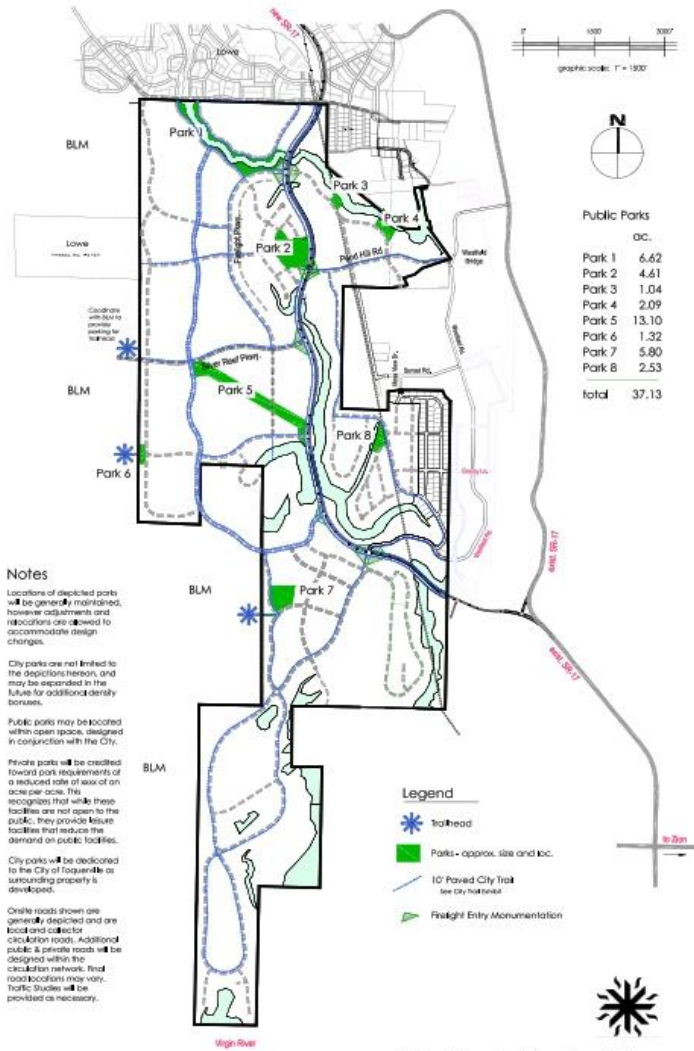


EXHIBIT "E"
(To Development Agreement for Firelight)

Firelight Master Park Plan



Notes

Locations of depicted parks will be generally maintained, however adjustments and relocations are allowed to accommodate design changes.

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

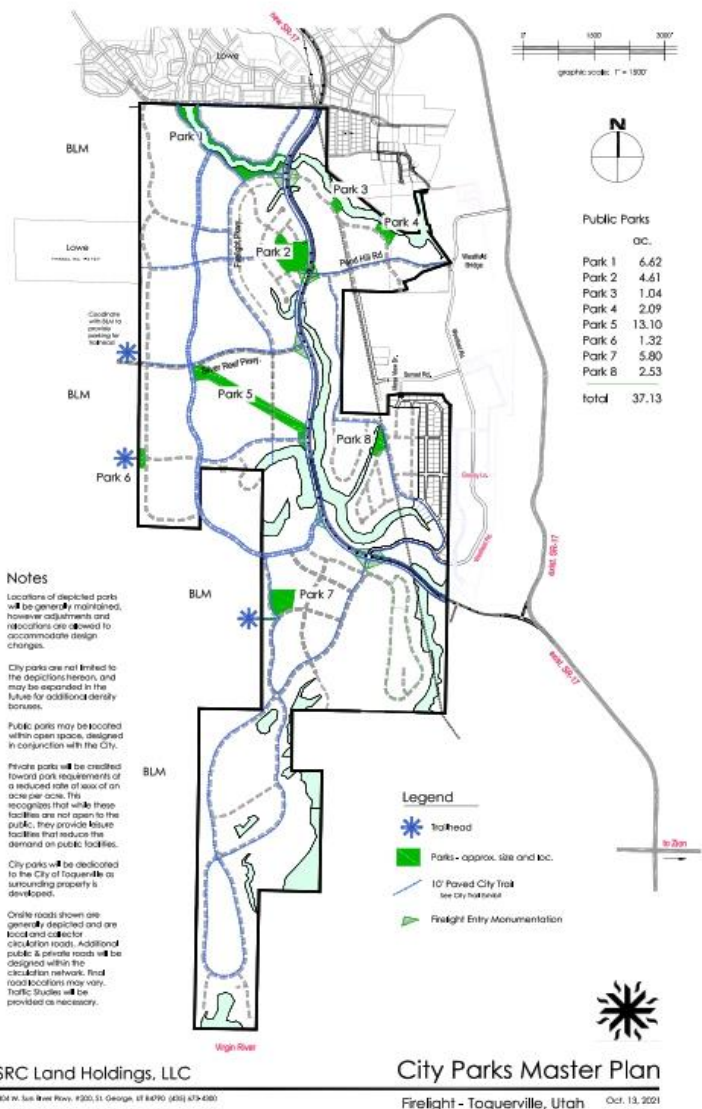
Public parks may be located within open space, designed in conjunction with the City.

Private parks will be created toward park requirements of a reduced rate of tax of an acre per acre. This recognizes that while these facilities are not open to the public, they provide future facilities that reduce the demand on public facilities.

City parks will be dedicated to the City of Toquerville as surrounding property is developed.

On-site 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 as necessary.

- Legend**
- Traffichead
 - Parks - approx. size and loc.
 - 10' Paved City Trail (see City handbook)
 - Freight Entry Monumentation

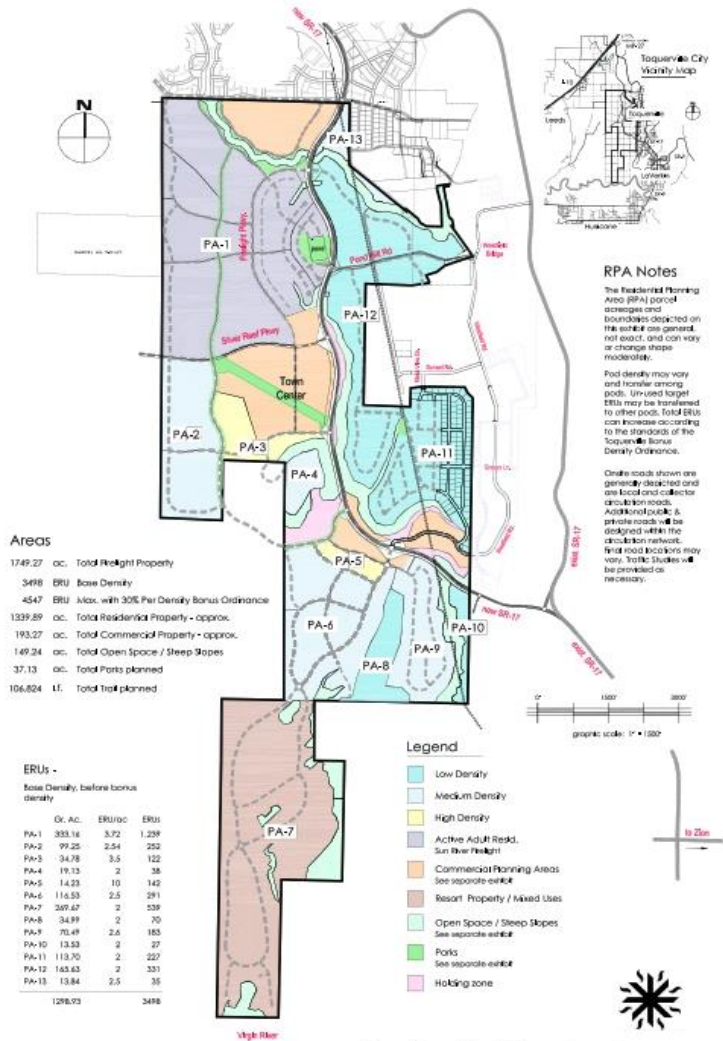


SRC Land Holdings, LLC
 1401 W. Sun Belt Hwy. #200, St. George, UT 84790 (435) 673-6300

City Parks Master Plan
 Firelight - Toquerville, Utah Oct. 13, 2021

EXHIBIT "F"
(To Development Agreement for Firelight)

Firelight Residential Planning Area Map



RPA Notes

The Residential Planning Area (RPA) parcel boundaries and boundaries depicted on the exhibit are general, not exact, and can vary or change shape moderately. Pod density may vary and transfer among pods. Unused target ERUs may be transferred to other pods. Total ERUs can increase according to the standards of the Toquerville Bonus Density Ordinance.

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

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 / Sleep Slopes
37.13	ac.	Total Parks planned
106.824	lt.	Total Trail planned

ERUs -

Base Density, before bonus density

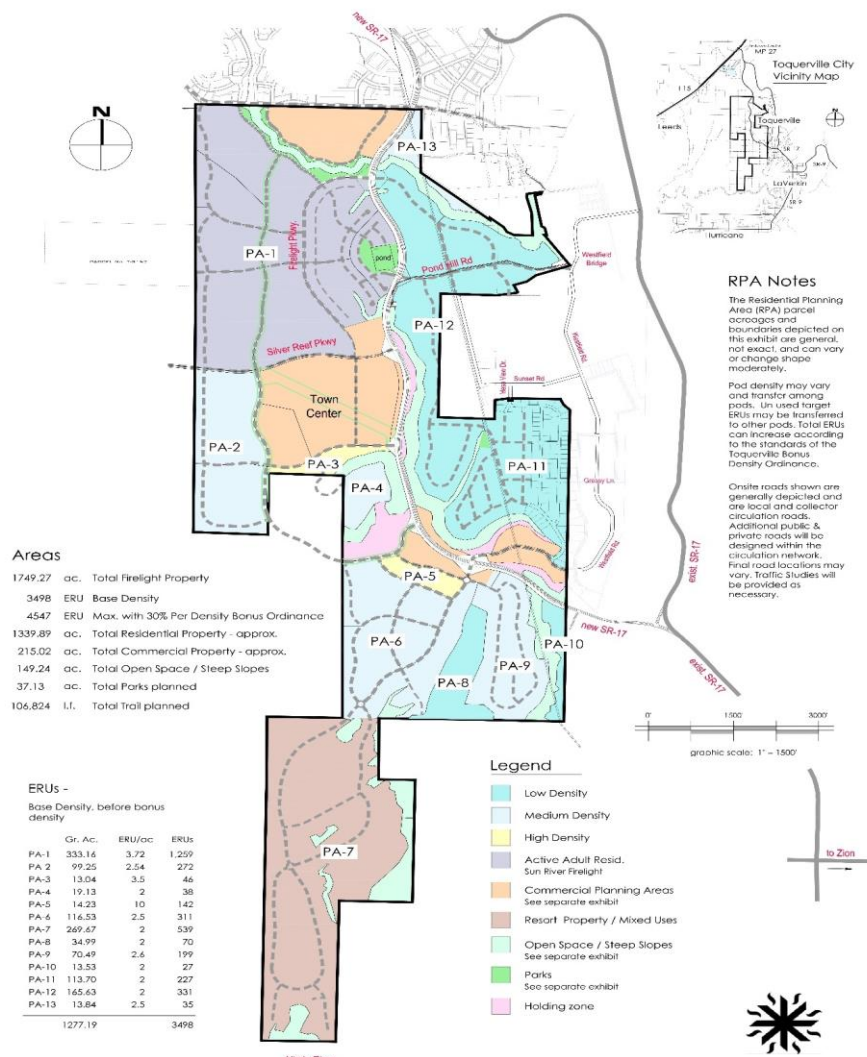
Gr. Ac.	ERU/ac	ERUs
PA-1	383.14	3,721
PA-2	99.25	254
PA-3	34.18	122
PA-4	19.13	38
PA-5	14.23	142
PA-6	116.53	2,529
PA-7	269.47	539
PA-8	34.89	70
PA-9	70.49	261
PA-10	13.53	27
PA-11	113.70	227
PA-12	143.63	287
PA-13	13.84	28
Total	1296.93	3498

Legend

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

SRC Land Holdings, LLC
1484 W. Sun River Pkwy. #200, St. George, UT 84790 (435) 675-0300

Residential Planning Areas
Firelight - Toquerville, Utah Oct. 21, 2021



RPA Notes
 The Residential Planning Area (RPA) parcel acreages and boundaries depicted on this exhibit are general, not exact, and can vary or change shape moderately.
 Pod density may vary and transfer among pods. Un-used target ERUs may be transferred to other pods. Total ERUs can increase according to the standards of the Toquerville Bonus Density Ordinance.
 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 as necessary.

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.
215.02	ac.	Total Commercial Property - approx.
149.24	ac.	Total Open Space / Steep Slopes
37.13	ac.	Total Parks planned
106,824	l.f.	Total Trail planned

ERUs - Base Density, before bonus density

	Gr. Ac.	ERU/ac	ERUs
PA-1	333.14	3.72	1,259
PA-2	99.25	2.54	272
PA-3	13.04	3.5	46
PA-4	19.13	2	38
PA-5	14.23	10	142
PA-6	116.53	2.5	311
PA-7	269.67	2	539
PA-8	34.99	2	70
PA-9	70.49	2.6	199
PA-10	113.53	2	227
PA-11	113.70	2	227
PA-12	165.63	2	331
PA-13	13.84	2.5	35
	1277.19		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

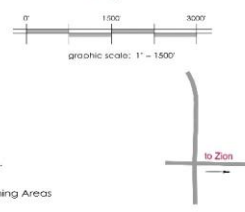
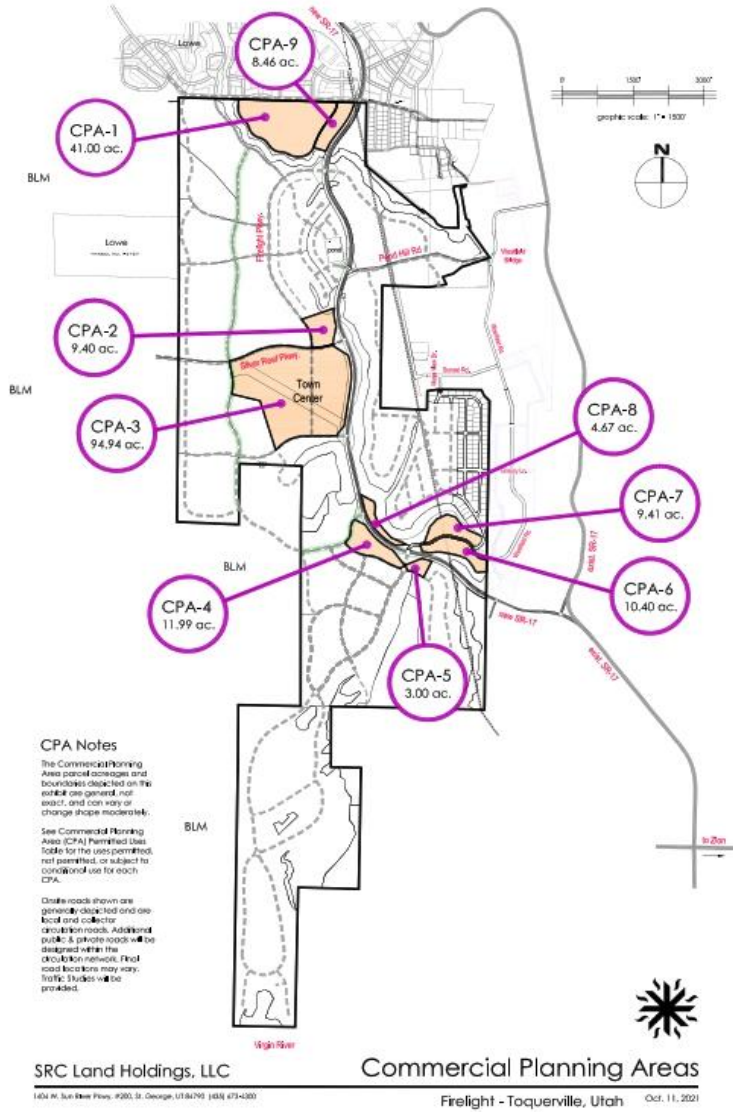
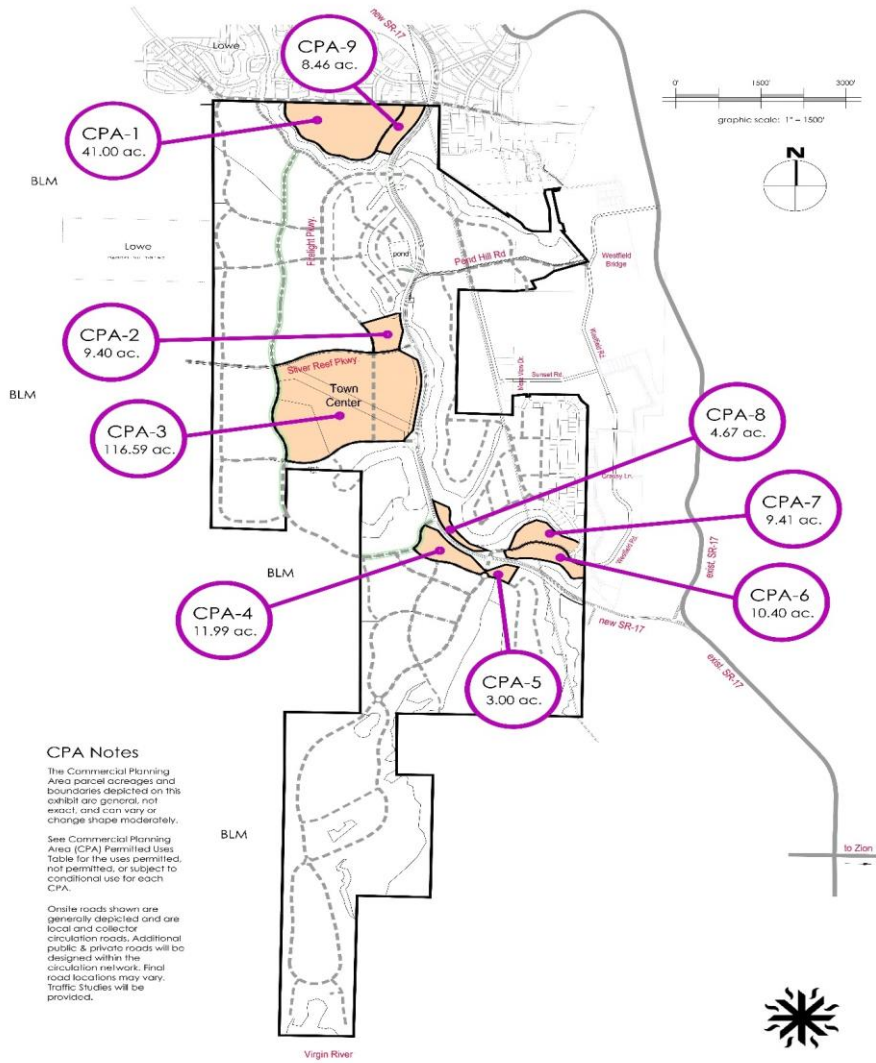


EXHIBIT "G"
(To Development Agreement for Firelight)

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 Uses Table for the uses permitted, not permitted, or subject to conditional use for each CPA.
 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.

SRC Land Holdings, LLC

Commercial Planning Areas

1404 W. Sun River Pkwy, #200, St. George, UT 84790 | (435) 673-4300

Firelight - Toquerville, Utah June 22, 2022



EXHIBIT “H”
(To Development Agreement for Firelight)

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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	P
Hotel/Motel	N	P	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	P
Timeshare units	N	N	N	N	N	N	N	N	N	N
Nightly Rental Units	N	N	P	N	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	C
Mental health treatment center, with overnight stay	N	C	C	C	C	C	C	C	C	C
Nursing home:	N	C	C	C	C	C	C	C	C	C
Office:	N	P	P	P	P	P	P	P	P	P
Religious facility:	P	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	P
Multi-Family (Up to 18 Units per Acre)	N	N	P	N	N	P	P	N	N	
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	P
Athletic and sporting goods store	N	P	P	P	P	P	P	P	P	P
Department store	N	P	P	P	P	P	P	P	P	P
Drive-through sales (pharmacy, dairy products, etc.)	N	P	P	P	P	P	P	P	P	P
Furniture and large appliances sales (used)	N	P	P	P	P	P	P	P	P	P
Furniture sales (new) and repair	N	P	P	P	P	P	P	P	P	P
Household appliance sales and service	N	P	P	P	P	P	P	P	P	P
Office supply, office machines sales and service	N	P	P	P	P	P	P	P	P	P
Paint or wallpaper store	N	P	P	P	P	P	P	P	P	P
Pawnshop	N	P	P	P	P	P	P	P	P	P
Seed and feed store, retail	N	P	P	P	P	P	P	P	P	P
Supermarket/grocery store	N	P	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	P
Vegetable stand	N	P	P	P	P	P	P	P	P	P
Payday lending/title loans:	N	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	C
Convenience markets with gas pumps/gas station	N	P	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

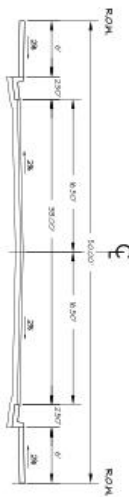
EXHIBIT "I"
(To Development Agreement for Firelight)

Firelight Active Adult Neighborhood Road Cross Sections

Inside Neighborhoods

- residential road cross-sections

Conventional lots - public streets



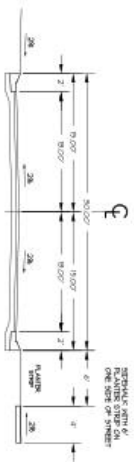
50' public r.o.w.
Local Road

Active Adult - Private Streets

Note: private streets will have reduced front setbacks



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



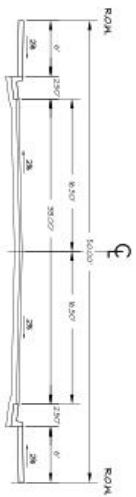
30' private r.o.w.
SCALE: NONE

Fig. 1

Inside Neighborhoods

- residential road cross-sections

Conventional lots - public streets



50' public r.o.w.

Local Road

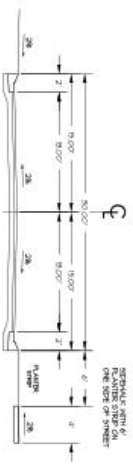
Active Adult - Private Streets

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)