

REQUEST FOR COUNCIL ACTION

SUBJECT: DEVELOPMENT AGREEMENT, HIGHLANDS
COMMERCIAL DEVELOPMENT

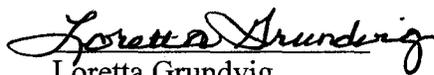
SUMMARY: Consider approving and authorizing the Mayor to sign a development agreement with Peterson Development, LLC

**FISCAL
IMPACT:** None.

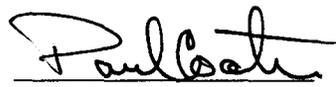
STAFF RECOMMENDATION:
Staff recommends that City Council direct staff to add exhibits to the Development Agreement and authorize the Mayor to execute the Development Agreement as presented once exhibits are added.

MOTION RECOMMENDED:
I move to approve Resolution 14-18 directing staff to add exhibits to the Development Agreement between the City of West Jordan and Peterson Development, LLC and authorizing the Mayor to execute the Development Agreement after approval as to legal form by the City Attorney.

Prepared by:


Loretta Grundvig
Development Coordinator

Reviewed by:


Paul Coates
ODA Manager

Reviewed by:


Nate Nelson
City Engineer

Reviewed as to legal form:


Jeff Robinson
City Attorney

Recommended by:


Richard L. Davis
City Manager

BACKGROUND DISCUSSION:

Developer has prepared and presented to the City a development application for the Highlands Commercial Subdivision upon property located at approximately 5600 West 7800 South.

On or about September 27, 2012, the City entered into a development agreement by and between City of West Jordan and Peterson Development Company, LLC (the "Master Developer"), entitled "Development Agreement The Highlands Sub-Areas Master Plan" (the "Master Development Agreement"), to which the Property is subject. Developer desires to acknowledge its awareness of the City's creation of the assessment area envisioned in said agreement and to confirm that Developer will not object to the creation of such district.

Prior to or concurrent with execution of this Agreement, the City will enter into a Project Participation Agreement with Developer requiring Developer to reimburse City for construction of roundabout improvements at approximately 5600 West Street and Dry Wash (7600 South) and 7800 South Street and 5800 West (the "Roundabout Improvements").

In addition to addressing the transfer of some obligations from the Master Development to this Highlands Commercial Subdivision, the proposed Development Agreement addresses the following items to be considered by City Council:

1. It includes a condition for the City and Developer to enter into a separate agreement, referred to as the "Project Participation Agreement" for participation including the Roundabout Improvements and other items.
2. The agreement addresses a remainder parcel and the requirement of a future subdivision plat prior to development of the remainder parcel.
3. The Developer has requested that building permits be issued prior to completion of all public improvements for the development. City staff has concerns about emergency access during construction. However, the Fire Department determined that if water and a 20'-wide paved fire road are available prior to delivery of combustible materials to the Project, construction may begin prior to completion of all public improvements. The Developer has requested to submit a design for an unpaved fire access road for review by the Fire Chief and City Engineer at a later date, so language has been included in section 2.1.3B allowing the Fire Chief, in consultation with the City Engineer to review and determine whether to accept an alternate surface.
4. Due to an upcoming City capital facilities project scheduled for award on February 12, the Development Agreement states that certain public improvements that would typically be required for the subdivision will not be required. The section is entitled "Unrequired Improvements" and is found at 2.1.4 A.
5. Roundabout Improvements are described as being addressed by the Project Participation Agreement that is also being presented to City Council in a different Request for Council Action.
6. There is an agreement in section 2.1.8 for the parties to encourage cooperation among contractors, as there will be on-going construction by various contractors in the vicinity.
7. Future maintenance is addressed in section 3.2.2. Roundabout Improvements, except monument signs, the 5600 West detention basin, 5600 West Street and 78000 South

Street improvements, including some landscaped medians will be by the City. Other maintenance will be as set forth in the City Code.

The Exhibits are not yet attached but are documents that are prepared, reviewed and approved during the City's regular plat review and approval process.

- Exhibit A is referenced as a legal description of the property being developed. The legal description will be on the plat and can be copied and added to the Development Agreement at that time.
- Exhibit B is referenced as a copy of the plat, which can be added after it is submitted and approved. City staff contemplates using the final document and not a draft. As the Development Agreement is only required to be recorded before the plat, it seems more efficient to finalize the two at the same time.
- Exhibit C will be the bond estimate prepared by the Office of Development Assistance and Engineering Division. The Developer does not have input into the bond estimate, and it is included to demonstrate the parties' understanding of the public improvements to be constructed with the Project. Since this will not be a negotiated item, it seems reasonable to add it after approval of the Agreement.

The City Attorney will review the Development Agreement and ensure exhibits are attached prior to approving the agreement as to legal form.

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 14-18

**A RESOLUTION AUTHORIZING THE EXECUTION BY THE MAYOR OF THE
HIGHLANDS COMMERCIAL DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF WEST JORDAN AND PETERSON DEVELOPMENT, LLC**

Whereas, the City Council of the City of West Jordan has reviewed the Highlands Commercial Development Agreement between the City of West Jordan and Peterson Development, LLC

Whereas, the City Council of the City of West Jordan desires that staff provide exhibits for the agreement as described in the Request for Council Action; and

Whereas, the City Council of the City of West Jordan desires that said agreement be executed by the Mayor after inclusion of exhibits and approval as to legal form; and

Whereas, the Mayor is authorized to execute the agreement.

**NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST
JORDAN, UTAH, THAT:**

Section 1. City staff is hereby directed to add to the Highlands Commercial Development Agreement the following exhibits: Exhibit A – Legal Description; Exhibit B – Copy of Plat; and Exhibit C – Bond estimate.

Section 2. After addition of exhibits and approval as to legal form by the City Attorney, the Mayor is hereby authorized and directed to execute the Highlands Commercial Development Agreement between the City of West Jordan and Peterson Development, LLC.

Section 2. This Resolution shall take effect immediately upon passage.

Adopted by the City Council of West Jordan, Utah, this 29th day of January ,
2014.

CITY OF WEST JORDAN

By: _____
Mayor Kim V. Rolfe

ATTEST:

Melanie S. Briggs, City Clerk/Recorder

Voting by the City Council

"AYE"

"NAY"

Jeff Haaga

Judy Hansen

Chris McConnehey

Chad Nichols

Ben Southworth

Justin D. Stoker

Mayor Kim V. Rolfe

Recording Requested By and
When Recorded Return to:
West Jordan City
Attention: City Clerk
8000 South Redwood Road
West Jordan, Utah 84088

For Recording Purposes Do
Not Write Above This Line

DEVELOPMENT AGREEMENT

This Development Agreement (this “**Agreement**”) is made and entered into and made effective as of the date entered below (the “**Effective Date**”), by and among West Jordan City, a municipality and political subdivision of the State of Utah (the “**City**”), and Peterson Development Company, LLC, a Utah limited liability company (the “**Developer**”). The City and the Developer may from time to time be collectively referred to as the “**Parties**.”

RECITALS

A. Developer has prepared and presented to the City a development application for the Highlands Commercial Subdivision upon the property described in **Exhibit A** (hereinafter referred to as the “**Project**”). The application package has been submitted and reviewed by the City pursuant to the requirements of the 2009 City Code and related protocols and policies and other applicable zoning, engineering, fire safety and building requirements. The resulting preliminary and final approved development plan, preliminary and final approved site plan(s), preliminary and final approved subdivision plat(s), approved engineering drawings, landscape plans, conveyance documents, title reports and other documents submitted during the City’s review and approval process will be referred to herein as the “**Highlands Commercial Development Documents**” or the “**Development Documents**”.

B. Pursuant to the authority of *Utah Code Ann.* § 10-9a-102(2) and the specific provisions of the 2009 City Code, the City has determined to enter into this Agreement with Developer for the purpose of formalizing certain obligations of the Parties with respect to the Project, and such other matters as the City and the Developer have agreed.

C. On or about September 27, 2012, the City entered into a development agreement by and between City of West Jordan and Peterson Development Company, LLC (the "Master Developer"), entitled "Development Agreement The Highlands Sub-Areas Master Plan" (the "Master Development Agreement"), to which the Property is subject. Developer desires to acknowledge its awareness of the City's creation of the assessment area envisioned in said agreement and to confirm that Developer will not object to the creation of such district.

D. Prior to or concurrent with execution of this Agreement, the City will enter into a Project Participation Agreement with Developer requiring Developer to reimburse City for construction of roundabout improvements at approximately 5600 West Street and Dry Wash (7600 South) and 7800 South Street and 5800 West (the "Roundabout Improvements").

AGREEMENT

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

ARTICLE I LEGAL AUTHORITY AND PURPOSE

1.1 **City Laws and Purpose.** The City and Developer represent that they have the legal authority to enter into and perform their respective obligations under this Agreement and that the City has determined that this Agreement effectuates the above-referenced public purposes, objectives and benefits. The City's 2009 City Code, this Agreement and the approved Development Documents will govern the City and the Developer with respect to development of the Project.

1.2 **Recitals and Exhibits.** The above Recitals and all Exhibits hereto or referenced herein are hereby incorporated by reference into this Agreement.

1.3 **Conditions Precedent and Subsequent.** Each of the City and Developer is entering into this Agreement in anticipation of the satisfaction of certain conditions precedent and subsequent (collectively, the "Conditions"), which, if not satisfied, will frustrate the purposes of this Agreement. Accordingly, if the Conditions are not satisfied or otherwise waived by the Parties, this Agreement shall be rendered null and void and none of the Parties shall have any further obligation to the other arising out of this Agreement. The Parties recognize that some of the Conditions may be satisfied

contemporaneously with, prior to or after the execution of this Agreement, but such Conditions have been identified herein for purposes of setting forth the intent of the Parties. For purposes of this Agreement, the following shall constitute the “**Conditions**”:

- 1.3.1 the final approval and acceptance of this Agreement by the City Council;
- 1.3.2 the City Council’s final approval of the Development Plan;
- 1.3.3 the final approval of the Highlands Commercial Subdivision plat;
- 1.3.4 recordation of the final subdivision plat for Highlands Commercial Subdivision.
- 1.3.5 execution of the Project Participation Agreement by Developer and the City.

ARTICLE II PROJECT DEVELOPMENT

2.1 **Developer Obligations.**

2.1.1 **Remainder Parcel.** The Project will consist of one phase and a remainder parcel as shown in **Exhibit B**. A separate plat shall be recorded prior to any development of the remainder parcel. The Parties understand and agree that the City will not accept, approve or allow development of the remainder parcel prior to recording of a final approved plat for the remainder parcel. Notwithstanding any other provision of this Agreement, development of the remainder parcel will be subject to the laws, ordinances, policies and procedures in place at the time of application for subdivision of the remainder parcel.

2.1.2 **Conveyance or Dedication of Required Easements.** Developer shall convey or dedicate to the City or other applicable utility provider at no cost such required utility easements on or across the Project as are necessary to facilitate the extension of required utility services to and throughout the Project.

2.1.3 **Access Roads.**

A. Access Roads Required. Access and connecting roads will provide for safe and efficient circulation within, and adequate entrances and exits for the Project. All access and connecting roads shall be completed in accordance with the approved plans and specifications submitted in connection with the Project as set

forth in the approved Development Documents.

B. Timing. Developer agrees that building permits shall be conditional and require Developer to design and construct the following on or before delivery of any combustible materials to the Property:

- A paved, 20 foot wide, fire apparatus access road that will allow emergency response access within 150 feet of all portions of the exterior of the structure and is designed to carry 80,000 GVW. Based on a cross-section design submitted to the City by Developer and certified by a soils engineer, the Fire Chief, after consulting with the City Engineer, may approve an alternative surface; provided that Developer agrees to perform, at Developer's cost, installation, testing and maintenance as directed by the City.
- Underground infrastructure, footings and foundations, and concrete flatwork can occur before the access road is in place.
- The Highlands Loop road may be considered as access to the west side of the building so long as it is in place prior to any combustible materials being on site.
- A single access point from an open, public street will be allowed.
- Any portion of the access road that is a dead end greater than 150 feet will be required to have a turnaround.
- A separate sheet of the road layout and a cross-section of the road profile may be required. This may be submitted separately of the construction documents if desired.
- All fire lines and hydrants shall be installed, tested, approved, and operable prior to any combustible materials being on site.

2.1.4 Public Streets, Culinary Water, Sanitary Sewer and Stormwater Improvements. Unless expressly identified herein as an Unrequired Improvement or addressed by separate written agreement, Developer shall design, construct and dedicate to the City all public streets and other public infrastructure required by the West Jordan City Code and City standards or shown on the approved Final Plat (hereinafter referred to as the "**Public Improvements**"), which, except as otherwise agreed by the City, shall not be approved unless they comply with the Development Documents. Notwithstanding any other term contained in the Master Development Agreement, the City's acceptance of dedicated public streets, including, but not limited to, the West Loop Road and the North Loop Road, shall be as defined in the 2009 City Code and the public improvement construction and assurance agreement. After City acceptance,

Developer shall not be obligated to perform maintenance of public streets except to the extent required by the 2009 City Code for sidewalks and parkstrips.

A. Unrequired Improvements. Due to a City project with which Developer construction may interfere, Developer will dedicate real property for, but will not be required to construct or pay for construction of, the following improvements:

1. 5600 West street improvements from the curb returns at 7800 South north to approximately 7000 South, except Developer will be required to construct sidewalk, street lights and landscaping at Developer's sole cost and expense. Developer agrees not to commence construction of the sidewalk, street lights and landscaping along 5600 West Street prior to completion of 5600 West street improvements from back-of-curb to back-of-curb.
2. 7800 South street improvements from approximately 600 feet east of the 5600 West/7800 South intersection to approximately 1,360 feet to the west or to the RMP substation east boundary line, except Developer will be required to construct sidewalk, street lights and landscaping at Developer's sole cost and expense. Developer agrees not to commence construction of the sidewalk, street lights and landscaping along 7800 South Street prior to completion of 7800 South street improvements from back-of-curb to back-of-curb.
3. 5600 West street intersection improvements at 5600 West 7800 South to/from approximately 600 feet south of the intersection, except Developer will be required to construct sidewalk, street lights and landscaping at Developer's sole cost and expense. Developer agrees not to commence construction of the sidewalk, street lights and landscaping prior to completion of the street improvements from back-of-curb to back-of-curb.
4. Burial of power lines along the west side of 5600 West Street from the curb returns at 7800 South north to approximately 7000 South, except Developer will be required, at Developer's sole cost and expense, to bury power lines within the Highlands Commercial Subdivision to serve lots within the subdivision.
5. Burial of power lines along the north side of 7800 South Street from approximately 600 feet east of the 5600 West/7800 South intersection to approximately 1,360 feet to the west or to the RMP substation east boundary line, except Developer will be required, at Developer's sole cost and expense, to bury power lines within the Highlands Commercial Subdivision to serve lots within the subdivision.

6. City master planned stormdrain facilities, public waterlines and sanitary sewer within the 5600 West right-of-way from the curb returns at 7800 South north to approximately 7000 South, except Developer will be required to install laterals within the Highlands Commercial Subdivision to serve lots within the subdivision. Except as otherwise provided in the Project Participation Agreement, such laterals will be installed at the Developer's sole cost and expense. Laterals will be subject to the 2009 City Code and City standards.

7. City master planned stormdrain facilities, public waterlines and sanitary sewer within the 5600 West/7800 South intersection.

8. City master planned stormdrain facilities, public waterlines and sanitary sewer within the 7800 South right-of-way from approximately 600 feet east of the 5600 West/7800 South intersection to approximately 1,360 feet to the west or to the RMP substation east boundary line, except Developer will be required to install laterals within the Highlands Commercial Subdivision to serve lots within the subdivision at the Developer's sole cost and expense. Laterals are governed by the 2009 City Code and City standards.

9. Detention Basin located on the west side of 5600 West Street at approximately Dry Wash (7600 South) (the "Detention Basin"), subject to the Agreement for Purchase and Sale of Property for the 5600 West Detention Basin dated December 4, 2013. Developer will pay the City for detention capacity within the Detention Basin in lieu of providing on-site detention for the Project, per the Agreement for Purchase and Sale of Property for the 5600 West Detention Basin dated December 4, 2013.

B. Roundabout Improvements. The Parties intend to address Developer's obligation relating to the following improvements by separate agreement:

1. The round-about at approximately 5600 West and Dry Wash (7600 South);
2. The round-about at approximately 5800 West and 7800 South;
3. The detention basin located on the west side of 5600 West Street at approximately Dry Wash (7600 South).

C. Required Improvements. **Exhibit C**, attached hereto and hereby made a part hereof, lists and otherwise describes all required and agreed improvements

and dedications required of Developer in connection with the Project, all of which are accepted by Developer and agreed upon.

2.1.5. Construction Standards. Notwithstanding any other provisions of this Development Agreement, all Public Improvements shall be constructed in compliance with: the approved Development Documents; all applicable federal, state and local laws and regulations; and the City of West Jordan public improvement standards, specifications, and plans as adopted at the time of design.

2.1.6 Compliance with the Master Development Agreement. The Project shall comply with and be governed by the Master Development Agreement and the concept plan attached thereto, except as modified by this Agreement and the Highlands Commercial Development Documents.

2.1.7. Intentionally left blank.

2.1.8. Construction Process.

A. Following City approval of the Development Documents, Developer shall not make any changes to the Development Documents without the prior written consent of the City.

B. Developer and the City agree to work together in good faith to assist with coordination among their respective contractors during construction, including reasonable access. Smith's Food & Drug Centers desires to act as the Developer's general contractor and commence construction of the Public Improvements and other Project-related improvements, including the Smith's building, on or before March 1, 2014. As a result, the City and the Developer recognize that construction of the Unrequired Improvements, Public Improvements and Project-related improvements, including buildings, will likely be in process at the same time. The City agrees that provided building permit applications meet City standards, building permits for improvements within the Project will be issued prior to completion of all Unrequired and Public Improvements. Nothing herein shall require Developer to commence construction of any Project-related improvements.

2.1.9. File Record Documents. Developer shall file with the City Engineer "Record Documents" or "As-Builts" conforming to City requirements.

2.1.10. **Indemnification.** Developer shall, at all times, protect, indemnify, save harmless and defend the City and its agents, employees, officers and elected officials from and against any and all claims, demands, judgments, expense, and all other damages of every kind and nature made, rendered, or incurred by or in behalf of any person or persons whomsoever, including the parties hereto and their employees, which may arise out of any act or failure to act, work or other activity related in any way to the Project, by Developer, Developer's agents, employees, subcontractors, or suppliers in the performance and execution of the work/development contemplated by this Agreement.

2.2 **Provision of Certain Utility Services.** The City agrees that it shall make available (subject to extension of the City's system by Developer, application for service, issuance of applicable permits and payment of connection fees and applicable commodity usage rates) culinary water, sanitary sewer and storm water, as well as garbage collection on public streets for residential properties and related services provided by the City to its citizens generally. Culinary water, sanitary sewer and storm water utility services will be provided through delivery and retention systems constructed by the Developer as depicted in the Development Documents. To the extent the delivery systems are properly and timely constructed by Developer, such services shall be provided as reflected in the Development Documents. Construction of infrastructure to serve the Remainder Parcel shall be the Developer's responsibility. The City shall have no obligation to extend infrastructure to serve the Project or the Remainder Parcel. The City shall not be required to permit connection at any location or by any method other than as shown and approved in the Development Documents.

2.3 **Development to be Consistent with the Development Documents.** Except as expressly provided in this Agreement, all development, whether by the Developer or a successor in interest, will be consistent with this Agreement and the approved Development Documents.

ARTICLE III IMPACT FEES

3.1 **Impact Fees; Costs of Application Processing.** The Developer will be assessed and required to pay impact fees calculated by the City in accordance with the Utah Impact Fees Act. In addition, Developer will be responsible for paying all City fees and charges appropriately assessed for projects of the type being presented by Developer, which fees have been properly adopted as part of the City fee schedule.

3.2 **Maintenance of Detention Basins, Planters, Trees and Other Landscaping in**

Street Median Spaces and Alongside Streets and Sidewalks Appurtenant to, or Within, the Development.

- 3.2.1 Developer, on behalf of itself, its successors and assigns, waives any and all right of protest and expressly agrees to participate in and consent to the creation of an assessment area or similar entity to perform maintenance of detention basins, planters, trees and other landscaping in street median spaces and alongside streets and sidewalks appurtenant to, or within the Development. Developer shall notify all lot purchasers and other successors and assigns of this obligation and obtain their consent. There shall be no club houses, swimming pools or other features within the dedicated areas that are not approved by the City.
- 3.2.2 Maintenance shall be as follows:
- A. Maintenance of landscaping within the Roundabout Improvements shall be by the City.
 - B. Maintenance of monument signs and sign lighting, if any, within the Roundabout Improvements shall be by the Developer.
 - C. Maintenance of the detention basin west of 5600 West Street at approximately Dry Wash shall be by the City.
 - D. Maintenance of Unrequired Improvements shall be by the City.
 - E. The owner of Lot 1 shall pay the monthly utility service bill for one (1) two-inch (2") irrigation water meter, and Developer shall pay the monthly utility service bill for such other additional two-inch (2") irrigation water meters as are actually installed within the remainder of the Project. Developer shall designate a single maintenance entity to pay for the cost of three (3) detector check meters as shown on the Highlands Commercial Subdivision plans. The City will bill the maintenance entity regardless of the ownership of individual lots within the Highlands Commercial Subdivision. Prior to establishment and designation of the maintenance entity, the Developer will receive and pay the monthly bill.
 - F. Maintenance of all other improvements shall be pursuant to the 2009 City Code.

**ARTICLE IV
DEFAULT AND COSTS**

4.1 Default. In the event of a failure by any party to comply with the commitments set forth herein, within thirty (30) days of written notice of such failure from the other party, the non-defaulting party shall have the right to pursue any or all of the following

remedies, which right shall be cumulative:

4.1.1 To cure such default or enjoin such violation and otherwise enforce the requirements contained in this Agreement; and

4.1.2 To enforce all rights and remedies available at law and in equity including, but not limited to, injunctive relief, specific performance and/or damages.

4.2 **Insolvency.** Insolvency, bankruptcy or any voluntary or involuntary assignment by any party for the benefit of creditors, which action(s) are unresolved for a period of 180 days shall be deemed to be a default by such party under this Article IV.

4.3 **Court Costs and Attorneys' Fees.** In the event of any legal action or defense between the Parties arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party shall be entitled, in addition to the remedies and damages, if any awarded in such proceedings, to recover their costs and reasonable attorneys' fees.

ARTICLE V ASSIGNMENT AND RECORDATION

5.1 **Assignment and Transfer of Development.** The Developer shall not assign its obligations under this Agreement or any rights or interests herein, and except as provided below shall not convey the Project or any portion thereof, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed if the proposed transferee: (a) shall have the qualifications and financial responsibility necessary and adequate to fulfill the obligations undertaken pursuant to this Agreement and any then applicable Development Documents; and (b) by instrument in writing, shall have expressly assumed all of the obligations of the Developer under this Agreement and any then applicable additional agreements and agreed to be subject to all of the conditions and restrictions arising under this Agreement or any Development Documents.

If only a portion of the Project is assigned and/or conveyed under this section 5.1, a reasonable allocation of the Developer's duties appurtenant to that portion will be made.

Developer agrees that any Developer responsibility for constructing the Master Planned Improvements and other material public improvements in connection with the

Project as originally presented and approved, and as agreed to herein, cannot be avoided by assigning portions of the Project to one or more third parties and then claiming that Developer's building of the required public improvements is not justified by the impact of the remainder of the Project.

5.1.1 The provisions of this Section 5.1 shall not prohibit the granting of any security interests for financing the acquisition and development of the Project, subject to the Developer complying with applicable law and the requirements of this Agreement.

5.1.2 A change in the majority ownership or control of the Developer shall be deemed a transfer requiring the consent of the City pursuant to the requirements of this Section 5.1. Notwithstanding the foregoing sentence, a transfer of all or a portion of the Project or change in the majority ownership or control of the Developer is permitted without the City's or Agency's consent under the following circumstances: (i) a transfer occurs to an entity that is an affiliate of the Developer, (ii) a transfer or change in ownership occurs as a result of a merger or acquisition of Developer resulting in Developer and its principal(s) having the majority interest and control of the succeeding or resulting entity, and/or (iii) a transfer occurs only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer, or its permitted successor in interest, to perform its obligations under this Agreement or any of the Development Documents. If as a result of any of these described actions one or more new principals become associated with the Project, such principals shall sign a counterpart of this Agreement evidencing their personal guaranty of the Developer's obligations hereunder.

5.1.3 In the event of a City approved transfer of any portion of the Project and upon assumption by the transferee of the Developer's obligations under this Agreement and the Development Documents, the respective transferee shall have the same rights and obligations as the Developer under this Agreement and the Development Documents, and the Developer shall be released from any further obligations with respect to that portion of the Project, provided that any successor shall first execute and deliver such agreements and instruments as the City may require to bind the successor under the terms of this Agreement and any related and subsequent agreements between the parties; and provided further that the provisions of this Agreement with respect to master planned roads and other public improvements shall continue as an obligation of Developer unless expressly waived in writing by the City.

5.2 **Recordation.** After its execution, this Agreement shall be recorded in the office of the County Recorder at the expense of the Developer. Each commitment and restriction on development set forth herein shall be a burden on the real property constituting the Project, shall be appurtenant to and for the benefit of the City and shall run with the land.

ARTICLE VI REIMBURSEMENT

6.1 **Reimbursement for Public Improvements.** There will be no reimbursement for public improvements for any phase of the Project.

ARTICLE VII GENERAL MATTERS

7.1 **Amendments.** Any alteration or change to this Agreement shall be made only after complying with the same procedures followed for the adoption and approval of this Agreement.

7.2 **Captions and Construction.** This Agreement shall be construed according to its fair and plain meaning and as if prepared by all Parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. Furthermore, this Agreement shall be construed so as to effectuate the public purposes, objectives and benefits set forth herein. As used in this Agreement, the words "include" and "including" shall mean "including, but not limited to" and shall not be interpreted to limit the generality of the terms preceding such word.

7.3 **Laws and Forum.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns, and shall be construed in accordance with Utah law. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Salt Lake County, Utah.

7.4 **Legal Representation.** Each of the Parties hereto acknowledge that they either have been represented by legal counsel in negotiating this Agreement or that they had the opportunity to consult legal counsel and chose not to do so. In either event this Agreement has no presumptions associated with the drafter thereof.

7.5 Non-Liability of City Officials. No officer, representative, agent or employee of a party hereto shall be personally liable to any other party hereto or any successor in interest or assignee of such party in the event of any default or breach by the defaulting party, or for any amount which may become due the non-defaulting party, or its successors or assigns, or for any obligation(s) arising under the terms of this Agreement.

7.6 No Third Party Rights. Unless otherwise specifically provided herein, the obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any other persons or third parties.

7.7 Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars; civil commotions; fires, floods, earthquakes or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage. Any party seeking relief under the provisions of this paragraph must have notified the other party in writing of a force majeure event within thirty (30) days following occurrence of the claimed force majeure event.

7.8 Notices. All notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or when deposited in the United States mail, by registered or certified mail, addressed as follows:

The City: West Jordan City
8000 South Redwood Road
West Jordan, Utah 84088
Attention: City Clerk

Developer: Peterson Development Company, LLC
Attention: Barrett Peterson
225 South 200 East, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 532-2233
Facsimile: (801) 532-7110

Such addresses may be changed by notice to the other party given in the same manner as above provided. Any notice given hereunder shall be deemed given as of the date delivered or mailed.

7.9 Entire Agreement. This Agreement, together with the Exhibits attached hereto, documents referenced herein and all regulatory approvals given by the City for the Project, contain and constitute the entire agreement of the Parties with respect to the subject matter hereof and supersede any prior promises, representations, warranties, inducements or understandings between the Parties which are not contained in such agreements, regulatory approvals and related conditions. It is expressly agreed by the Parties that this Agreement and the additional agreements between the Developer and the City, as contemplated and referred to elsewhere in this Agreement, are intended to and shall govern the development. It is expressly acknowledged by the Parties that additional agreements may be entered into by or among the Parties and all such shall be included as Development Documents.

7.10 Effective Date. This Agreement shall be effective upon the signing and execution of this Agreement by all Parties which, upon its occurrence, shall be deemed to have occurred as of the Effective Date.

7.11 Termination. This Agreement shall terminate upon mutual written agreement of the parties hereto, failure of the Conditions to occur on or before two (2) years after the Effective Date, whichever occurs first.

7.12 Further Action. The Parties hereby agree to execute and deliver such additional documents and to take all further actions as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

7.13 Effect of Agreement; Release of Claims. Nothing in this Agreement shall be construed to relieve Developer of any obligations imposed on Developer by Federal or State laws, City and County ordinances, regulations, or standards. It is the intent of the Parties that this Agreement serve as a complete release and waiver by Developer of any and all claims Developer has or may claim to have with respect to the City's application of the 2009 City Code to the development or the imposition of any requirement expressly set forth in this Agreement, the Master Development Agreement or the Development Documents. Moreover, Developer hereby releases and waives any and all claims Developer may have against the City with respect to any land use application submittals, acceptances, approvals, denials or processing with respect to the Project occurring prior to the Effective Date.

IN WITNESS WHEREOF, the Parties have executed this Development Agreement.

WEST JORDAN CITY, a municipality and political subdivision of the State of Utah

By: _____
Kim V. Rolfe, Mayor

ATTEST:

_____, City Recorder

CITY ACKNOWLEDGEMENT

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this ____ day of _____, 2014, before the undersigned notary public in and for the said state, personally appeared Kim V. Rolfe, known or identified to me to be the Mayor of West Jordan City and the person who executed the foregoing instrument on behalf of said City and acknowledged to me that said City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for Utah
Residing at: _____
My Commission Expires: _____

Peterson Development Company, LLC,
a Utah Limited Liability Company,

By: _____

Its: _____

Print Name: _____

DEVELOPER ACKNOWLEDGEMENT

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this ____ day of _____, 2014, before the undersigned notary public in and for the said state, personally appeared _____, known or identified to me to be the manager of _____, and the person who executed the foregoing instrument and acknowledged to me that said company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for Utah
Residing at: _____
My Commission Expires: _____

EFFECTIVE DATE: _____

EXHIBIT "A"

Legal Description

EXHIBIT "B"

Plat

EXHIBIT "C"

Bond Estimate