STATE OF UTAH

OFFICE OF THE LIEUTENANT GOVERNOR

CERTIFICATE OF ANNEXATION

I, Deidre M. Henderson, Lieutenant Governor of the State of Utah, hereby certify that there has been filed in my office a notice of annexation known as the NORTH VILLAGE ANNEXATION, located in WASATCH COUNTY, dated MARCH 7, 2023, complying with Section §10-2-425, Utah Code Annotated, 1953, as amended.

Now, therefore, notice is hereby given to all whom it may concern that the attached is a true and correct copy of the notice of annexation, referred to above, on file with the Office of the Lieutenant Governor pertaining to the NORTH VILLAGE ANNEXATION, located in WASATCH COUNTY, State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the Great Seal of the State of Utah this 7th day of March, 2023 at Salt Lake City, Utah.

DEIDRE M. HENDERSON
Lieutenant Governor

Certificate #202451

HEBER CITY

EST. 1889

Heber City Corporation
75 North Main Street
Heber City, Utah 84032

*****NOTICE OF IMPENDING BOUNDARY ADJUSTMENT*****

December 13, 2022

Lt. Governor's Office
Utah State Capitol Complex
P.O. Box 142325
Salt Lake City, Utah 84114-2325

Emailed to: annexations@utah.gov

RE: North Village Annexation

To Lt. Governor Henderson:

During the November 15, 2022, Heber City Council Meeting, the Heber City Council approved Ordinance 2022-27, accepting the North Village Annexation. The annexation parcel consists of 109.7 acres and is located approximately between 2900 North Highway 40 and 3800 North Highway 40, in Wasatch County, Utah, and amends common boundaries as designated in Heber City's Annexation Policy Plan.

Also attached is a copy of the Ordinance, which includes the boundary description of the annexation, and a copy of the annexation map. The above-referenced annexation meets all applicable requirements of boundary action for annexation.

If approved, please send the Certificate of Annexation to:

Heber City
Trina Cooke
City Recorder
75 North Main Street
Heber City, UT 84032

If you have any questions, please feel free to call me at 435-657-7886.

Sincerely,

Trina Cooke

Trina Cooke
Heber City Recorder

ORDINANCE NO. 2022-27

AN ORDINANCE APPROVING THE NORTH VILLAGE ANNEXATION LOCATED AT APPROXIMATELY 3000 NORTH HIGHWAY 40.

BE IT ORDAINED by the City Council of Heber City, Utah, the properties described in Exhibit A, as illustrated in Exhibit B, are hereby annexed into the City of Heber City, Utah, and the properties contained therein shall initially have the zoning designation of North Village Overlay Zone (NVOZ).

This Ordinance shall take effect immediately upon passage, but not prior to the execution of the Master Development Agreements illustrated in Exhibit C.

PASSED, APPROVED and ORDERED TO BE PUBLISHED BY THE HEBER CITY COUNCIL this 15th day of November 2022.

	AYE	NAY	ABSENT	ABSTAIN
Rachel Kahler	X			
Michael Johnston	X			
Ryan Stack	X			
Scott Phillips	X			
Yvonne Barney		X		

APPROVED:

Heidi Franco

Mayor Heidi Franco

HEBER CITY CORPORATE Seal WASATCH COUNTY UTAH

ATTEST:

Dina W Cobler Date: 11/15/2022

RECORDER

SURVEYED PERIMETER DESCRIPTION:

A parcel of land lying and situate in the Southeast Quarter of Section 18, Southwest Quarter of Section 17, Northeast Quarter of Section 19, Northwest Quarter of Section 20, Southeast Quarter of Section 19, and the Southwest Quarter of Section 20, Township 3 South, Range 5 West, Salt Lake Base and Meridian. Comprising 109.70 acres contained in the following twenty-three (23) parcels of land 1) 07-7847, 2) 07-7862, 3) 07-8530, 4) 13-8359, 5) 16-0809, 6) 17-1897, 7) 17-2036, 8) 17-2051, 9) 17-4081, 10) 17-4099, 11) 20-0979, 12) 20-1445, 13) 21-2025, 14) 20-1446, 15) 20-1447, 16) 21-2025, 17) 21-2027, 18) 21-2028, 19) 21-2042, 20) 21-2266, 21) 21-2267, 22) 21-2609, 23) 21-2610 of the Official Records of Wasatch County, State of Utah. The Basis of Bearing for subject perimeter description being North 00°30'30" West 2488.52 feet (measured) coincident with the East line of the Northeast Quarter of said Section 19 between the 2005 Wasatch County aluminum cap marking the East Quarter Corner and the 1976 Wasatch County brass cap monument marking the Northeast Corner of said Section 19. Said parcel being more particularly described as follows:

Commencing at the Northeast corner of said Section 19, thence North 00°26'41" East 179.76 feet coincident with the east line of the Southeast Quarter Section 18, Township 3 South, Range 5 East, Salt Lake Base and Meridian to the northwest corner of Wasatch County Tax Parcel 07-8530, a point on the center line of the Timpanogos Canal and the True Point of Beginning.

Thence the following twenty five (25) courses coincident with the center line of said canal 1) South 55°06'34" East 15.62 feet; 2) South 51°51'25" East 45.18 feet; 3) South 47°56'47" East 261.47 feet; 4) South 39°35'56" East 102.04 feet; 5) South 75°05'38" East 26.17 feet; 6) North 89°46'54" East 71.96 feet to a point of curvature; 7) Southeasterly 120.62 feet along the arc of a 98.00 foot radius curve to the right (center bears South 00°13'06" East) through a central angle of 70°31'22" to a point of tangency; 8) South 19°41'44" East 102.74 feet; 9) South 34°55'51" East 147.43 feet; 10) South 37°00'16" East 100.58 feet; 11) South 48°04'46" East 20.70 feet; 12) South 55°30'26" East 169.89 feet; 13) North 55°00'00" East 7.03 feet to a point on the arc of a 36.82 foot radius curve; 14) Southerly 40.72 feet along the arc of said 36.82 foot radius curve to the right (center bears South 52°50'27" West) through a central angle of 63°21'57" to a point of reverse curvature; 15) Southerly 61.47 feet along the arc of a 147.36 foot radius curve to the left (center bears South 63°47'36" East) through a central angle of 23°54'02" to a point of compound curvature; 16) Southeasterly 144.25 feet along the arc of a 217.15 foot radius curve to the left (center bears South 87°41'38" East) through a central angle of 38°03'38" to a point of tangency; 17) South 35°45'16" East 156.56 feet to a point of curvature; 18) Southeasterly 280.41 feet along the arc of a 3029.45 foot radius curve to the left (center bears North 54°14'44" East) through a central angle of 05°18'12" to a point of tangency;

19) South 41°15'26" East 114.29 feet to a point on the arc of a 73.32 foot radius curve; 20) Southeasterly 26.35 feet along the arc of said 73.32 foot radius curve to the right (center bears South 48°44'27" West) through a central angle of 20°35'33" to a point of tangency;
21) South 20°40'00" East 106.86 feet to a point of curvature;
22) Easterly 80.09 feet along the arc of a 77.16 foot radius curve to the left (center bears North 69°20'01" East) through a central angle of 59°28'08" to a point of tangency; 23) South 80°08'06" East 50.42 feet to a point of tangency; 24) Easterly 62.66 feet along the arc of a 57.21 foot radius curve to the right (center bears South 09°51'44" West) through a central angle of 62°45'34" to a point of tangency;
25) South 17°22'52" East 54.70 feet to the northeast corner of Wasatch County Tax Parcel 20–1447; Thence South 48°11'11" West 1097.66 feet; Thence South 57°59'34" West 1110.23 feet to the east right of way of U.S. Highway 40; Thence North 31°58'30" West 655.86 feet coincident with said right of way to the northwest corner of Wasatch County Tax Parcel 16–0809; Thence the following twenty one (21) courses coincident with the exterior perimeter of College Downs Subdivision,
1) North 48°11'16" East 56.05 feet to a point of curvature;
2) Northeasterly 26.93 feet along the arc of a 168.00 foot radius curve to the left (center bears North 41°48'44" West) through a central angle of 09°11'03" to a point of tangency; 3) North 39°00'13" East 127.93 feet to a point of curvature; 4) southeasterly 342.43 feet along the arc of a 218.00 foot radius curve to the right (center bears South 50°59'47" East) through a central angle of 90°00'00"; 5) North 38°58'17" East 47.63 feet; 6) North 51°01'43" West 167.25 feet; 7) North 38°58'17" East 410.12 feet; 8) North 69°55'22" West 40.15 feet; 9) North 86°35'15" West 55.03 feet; 10) North 61°19'47" West 72.44 feet; 11) North 36°04'19" West 17.11 feet; 12) North 44°19'04" West 27.46 feet; 13) North 52°33'50" West 46.06 feet; 14) North 39°11'55" West 108.52 feet; 15) North 25°50'01" West 80.79 feet; 16) North 38°10'18" West 96.90 feet;
17) North 50°30'36" West 70.63 feet; 18) North 46°23'16" West 66.70 feet; 19) North 42°15'56" West 45.11 feet; 20) South 89°53'52" West 500.89 feet; 21) South 42°04'20" West 252.02 feet to the east right of way of said Highway 40; Thence North 32°01'03" West 615.35 feet coincident with said right of way; Thence North 63°59'24" East 67.85 feet; Thence North 18°56'53" West 154.68 feet; Thence South 68°41'35" West 24.24 feet; Thence North 24°49'56" West 150.13 feet; Thence North 69°59'44" East 398.58 feet to the northeast corner of Wasatch County Tax Parcel 21–2027; Thence the following eight (8) courses coincident with the west boundary of Wasatch County Tax Parcel 20–0979, 1) North 27°29'28" West 120.99 feet; 2) North 83°17'54" West 111.00 feet; 3) North 31°53'16" West 130.00 feet; 4) North 61°53'16" West 120.00 feet; 5) North 25°53'16" West 132.00 feet;
6) North 47°33'16" West 110.00 feet; 7) North 31°03'16" West 110.00 feet; 8) North 18°07'48" West 96.98 feet to the northwest corner of said Tax Parcel 20–0979; Thence North 63°50'34" East 303.38 feet; Thence South 36°39'46" East 820.30 feet; Thence North 28°36'44" East 381.74 feet; Thence North 36°21'03" East 151.00 feet; Thence South 27°36'26" East 485.18 feet; Thence North 43°19'55" East 52.54 feet; Thence North 43°52'21" East 632.86 feet; Thence South 89°59'56" East 120.30 feet to a point on the east line of the southeast quarter of said Section 18; Thence South 00°26'41" West 90.17 feet coincident with said section line to the point of beginning.

PARCELS

ANNEXATION PARCELS

	Parcel Number	Entry	Date	Book	Page	Property Owner
1)	07-7847	516199	3/8/2022	1400	785	Finch Creek Townhomes LLC
2)	07-7862	523287	8/12/2022	1419	740	Gold Stream Development LC
3)	07-8530	442251	9/1/2017	1200	358	North Village Properties LLC
4)	13-8359	333087	3/12/2008	962	384	Utah Valley State College
5)	16-0809	403500	8/12/2014	1110	754	English Heber City Congregation of Jehovahs Witness
6)	17-1897	342351	11/24/2008	978	153	Utah Valley University
7)	17-2036	342354	11/24/2008	978	162	Utah Valley University
8)	17-2051	342353	11/24/2008	978	159	Utah Valley University
9)	17-4081	342352	11/24/2208	978	156	Utah Valley University
10)	17-4099	342352	11/24/2008	978	156	Utah Valley University
11)	20-0979	517324	3/30/2022	1403	1466	RW Luekenga Land LLC
12)	20-1445	249492	10/7/2002	581	321	Utah Valley State College Foundarion
13)	21-2025	523287	8/12/2022	1419	740	Gold Stream Development LC
14)	20-1446	333087	3/12/2008	962	384	Utah Valley State College
15)	20-1447	333087	3/12/2008	962	384	Utah Valley State College
16)	21-2025	428172	8/29/2016	1168	8	North Village Views Associates, LLC
17)	21-2027	516199	3/8/2022	1400	785	Finch Creek Townhomes LLC
18)	21-2028	516199	3/8/2022	1400	785	Finch Creek Townhomes LLC
19)	21-2042	425364	6/10/2016	1160	1827	North Village Properties LLC
20)	21-2266	432395	12/14/2016	1178	817	North Village Properties LLC
21)	21-2267	432395	12/14/2016	1178	817	North Village Properties LLC
22)	21-2609	442251	9/1/2017	1200	358	North Village Properties LLC
23)	21-2610	442251	9/1/2017	1200	358	North Village Properties LLC

EXHIBIT B: ANNEXATION PLAT

Boundary Consultants
Professional Land Surveyors
5554 West 2425 North, Hooper, Utah
801 792 1569
dave@boundaryconsultants.biz

FINAL LOCAL ENTITY PLAT
NORTH VILLAGE ANNEXATION
HEBER CITY, UTAH

LYING AND SITUATE IN PORTIONS OF SECTIONS 17, 18, 19, & 20
TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN

08-29-22

1"=150'

2 of 2

EXHIBIT C: MASTER DEVELOPMENT AGREEMENTS

WHEN RECORDED, RETURN TO:

Heber City
Attention: City Recorder
75 North Main Street
Heber City, Utah 84032

Tax Parcel Nos.:

(Space above for Recorder's use only.)

DEVELOPMENT AGREEMENT FOR THE NSL RESIDENTIAL DEVELOPMENT

THIS DEVELOPMENT AGREEMENT FOR THE NORTH SLOPE LUEKENGA PROPERTIES, LLC (NSL) RESIDENTIAL DEVELOPMENT (this "**Agreement**") is made and entered into as of the 5th day of December, 2022, by and between HEBER CITY, a political subdivision of the State of Utah (the "**City**"), and NSL PROPERTIES, LLC, a Utah limited liability company ("**NSL**"). Each of NSL and the City are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. The capitalized terms used in these Recitals are defined in Section 1.2, below.

B. NSL is the owner of approximately 6.14 acres of undeveloped real property situated to the north of the Utah Valley University campus in Wasatch County, State of Utah, a legal description of which is set forth in **Exhibit A**, attached hereto (the "**Property**"). This Agreement and the Site Plan meets the intent of, and is guided by, the Envision 2050 Heber General Plan.

C. On Nov 15, 2022, the City approved and adopted, a Site Plan for the Project, subject to the Parties entering into this Agreement and the agreeing to annexation of the Property into the City. The Site Plan for the Property shall allow for a residential housing development, including recreational and open space uses. All such uses shall be consistent with the permitted uses in the NVOZ.

D. Provision of infrastructure to the Property is vital to its development in accordance with the Site Plan and this Agreement and, consistent with the foregoing, NSL will prepare an Infrastructure Plan (aka Civil Drawings).

E. NSL may not be the developer of the entire Property but may sell or otherwise convey some or all the Property to one or more Persons who will undertake the actual development work (each a **"Developer"** and together, the **"Developers"**). Notwithstanding that there may be sub-developers, transferees, purchasers or assignees from the original Developer or Developers, only those parties that NSL specifically designates in a written agreement as their "Successor", or

"Successor's in Interest", shall retain the right and standing to oppose, or seek amendment of this Agreement, or any other subsequent amendment thereto. Any third party not so specifically designated, that may purchase or receive portions, phases, lots or parts of this Development/Project, shall have no standing to oppose or seek amendment of any part of this Agreement, nor have any part in any negotiations to alter, change or amend. Additionally, notwithstanding the foregoing, once all backbone improvements are laid down, implemented and approved by the City, any subsequent Developer, Assignee, Successor, or Successor in Interest obtaining any portion, or part, or phase of this Development/Project by sale, transfer or assignment shall have no standing to oppose or seek to amend any portions of this Development/Project.

F. The Parties now desire to enter into this Agreement to establish and set forth the rights and responsibilities of NSL and its successors in interest, including but not limited to, those developers, sub-developers and builders who will develop the Property as a residential project in accordance with the terms hereof, and to establish the rights and responsibilities of the City to annex the Property into the boundaries of Heber City and to authorize and regulate such development pursuant to the requirements of this Agreement.

G. The City Council has reviewed this Agreement and determined that it is consistent with the Act, the Zoning Ordinance and the Heber City General Plan, and that it provides for and promotes the health, safety, welfare, convenience, aesthetics, and general good of the community as a whole. The Agreement does not contradict, and specifically complies with, and is governed by Utah Code Ann Section 10-9a. The Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to the terms of, the Act.

H. NSL and the City have cooperated in the preparation of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and NSL hereby agree to the following:

TERMS

1. **Incorporation of Recitals and Exhibits/ Definitions.**

1.1 **Incorporation.** The foregoing Recitals and **Exhibits A** through **E** are hereby incorporated into this Agreement.

1.2 **Definitions.** Any capitalized term or phrase used in this Agreement has the meaning given to it below or in the section where the definition of such term is given.

1.2.1 **Act** means the Municipal Land Use, Development, and Management Act, Utah Code Ann. §§10-9a-101, *et seq.* (2008).

1.2.2 **Administrative Action** means and includes any amendment to the Exhibits to this Agreement or other action that may be approved by the Administrator as provided in Section 17.

1.2.3 **Administrator** means the Person designated by the City as the Administrator of this Agreement.

1.2.4 **Agreement** has the meaning set forth in the preamble and includes all Exhibits attached hereto.

1.2.5 **Public Gathering Areas** means any public owned area or public park identified on the Site Plan that is intended to provide services to the community at large, such that it would be considered to be a System Improvement.

1.2.6 **Applicant** means a Person submitting a Development Application, a Modification Application or a request for an Administrative Action.

1.2.7 **Assessment Area** means an area or areas created by the Special Service District pursuant to Utah Code Ann. § 11-42-101, *et seq.* (2008), or other applicable State Law, with the approval of NSL and other Property Owners, if required, to fund the construction of some or all of the Backbone Improvements.

1.2.8 **Backbone Improvements** means those improvements shown as such in the Infrastructure Plan and which are, generally, infrastructure improvements that are intended to support the overall development of the Property and not merely a part of the development of any particular Subdivision. Backbone Improvements are generally considered to be in the nature of "System Improvements," as defined in Utah Code Ann. § 11-36a-101, *et seq.* (2008).

1.2.9 **Building Permit** means a permit issued by the City to allow construction, erection or structural alteration of any building, structure, private or public infrastructure, On-Site Infrastructure on any portion of the Project, or to construct any Off-Site Infrastructure.

1.2.10 **CC&Rs** means one or more declarations of conditions, covenants and restrictions regarding certain aspects of design and construction on the Property recorded or to be recorded with regard to the Property or any part thereof, as amended from time to time.

1.2.11 **Capital Facilities Plan** means a plan adopted or to be adopted by the City in the future to substantiate the collection of Impact Fees as required by State law.

1.2.12 **City** means the City of Heber, a political subdivision of the State of Utah.

1.2.13 **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage to review certain aspects of the development of the Project.

1.2.14 **City Updated North Village Street Master Plan** shall mean the City's Street Master Plan and Street Capital Facilities Plan.

1.2.15 **City Updated North Village Stormwater Master Plan** shall have the meaning provided in Paragraph 12.3.

1.2.16 **City's Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City that will be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and that may, in accordance with the provisions of this Agreement, be applicable to the Development Application.

1.2.17 **City's Vested Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City related to zoning, subdivisions, development, public improvements and other similar or related matters that are in effect as of the Effective Date.

1.2.18 Intentionally Omitted.

1.2.19 **Council** means the elected City Council of the City.

1.2.20 **Default** shall have the meaning provided in Paragraph 14.

1.2.21 **Design Guidelines** means the design guidelines referenced in the North Village Over Lay Zone.

1.2.22 **Developer** shall have the meaning provided in Recital E.

1.2.23 **Development Application** means an application to the City for development of a portion of the Project, a Building Permit, improvement plans or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.24 **Development Property** shall have the meaning provided in Section 23.1.

1.2.25 **Development Report** means a report containing the information specified in Section 3.4 submitted to the City by NSL or any successor for the sale of any Parcel to a Developer, Sub-developer or Builder or the submittal of a Development Application by a Developer, Sub-developer or Builder pursuant to an assignment from NSL.

1.2.26 **Development Unit** means either a commercial or residential use of property with respect to which an ERU calculation can be applied in accordance with this Agreement.

1.2.27 **Effective Date** means the date on which the later of both the following shall have occurred: the Parties have executed this Agreement and the City's annexation of the Property has been completed and takes effect pursuant to Utah Code Ann. §10-2-425.

1.2.28 **Eligible Improvements** shall have the meaning provided in Section 8.9.

1.2.29 **Development Entitlements** shall have the meaning provided in Section 3.1 of this Agreement.

1.2.30 **Equivalent Residential Unit (ERU)** means the residential density allocated to: (a) any given Residential Unit when measured against a single-family dwelling unit, which measure shall be determined pursuant to Section 18.21.020.2.2(2) of the City's Vested Laws; and (b) commercial ERUs will be calculated as provided in Section 18.21.020.2.2(2) of the City's Vested Laws. For purposes of clarity, the Parties agree that no ERUs shall be allocated to schools and churches.

1.2.31 **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. §10-9a-603, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.2.32 **Highway 40** means a "state highway" type transportation corridor maintained by the Utah Department of Transportation and referred to as U.S. Highway 40.

1.2.33 **Homeowners' Association(s)** means one or more associations formed pursuant to Utah law to perform the functions of an association of property owners.

1.2.34 **Impact Fees** means those fees, assessments, exactions or payments of money imposed by the City as a condition on development activity as specified in Utah Code Ann. §§ 11-36a-101, *et seq.*, (2008).

1.2.35 **Improved Open Space** means open space, including but not limited to that which has been improved with one or more of the following, as selected by the City Manager or his or her designee: first and foremost those amenities listed in the City's Park's Site Plan, churches, schools and associated lands, playgrounds, tennis courts, club houses, swimming pools, trail systems, trail heads, skate parks, volleyball courts, Public Gathering Areas or parks, sports fields, bathrooms, irrigated landscaping, associated paved parking for improved open space, pavilions, playgrounds, trailheads, drinking fountains, natural areas integrated with open spaces and park areas, or other improvements.

1.2.36 **Infrastructure Plan** means the conceptual infrastructure plan, including culinary water, secondary water, storm water, sanitary sewer and private roads, as amended from time to time.

1.2.37 **Intended Uses** means the use of all or portions of the Project for open spaces, parks, trails and other uses permitted in the Zoning Ordinance, Design Guidelines and as shown on the Site Plan.

1.2.38 **Site Plan** means the Site Plan attached as **Exhibit B**, which Site Plan is a conceptual/illustrative depiction of the presently anticipated development plan for the Property, which Site Plan may be modified from time-to-time by NSL to respond to market, engineering and other development objectives.

1.2.39 **Modification Application** means an application to amend this Agreement (but not including those changes which may be made by Administrative Action).

1.2.40 **Mortgage** means (1) any mortgage or deed of trust or other instrument or transaction in which the Property, or a portion thereof or a direct or indirect ownership or other interest therein, or any improvements thereon, is conveyed or pledged as security, or (2) a sale and leaseback arrangement in which the Property, or a portion thereof, or any improvements thereon, is sold and leased back concurrently therewith.

1.2.41 **Mortgagee** means any holder of a lender's beneficial or security interest (or the owner and landlord in the case of any sale and leaseback arrangement) under a Mortgage.

1.2.42 **Intentionally omitted.**

1.2.43 **Non-City Agency** means a governmental or quasi-governmental entity, other than those of the City, which has jurisdiction over the approval of an aspect of the Project.

1.2.44 **North Fields** means that certain real property located generally west of the Property and generally depicted on **Exhibit C** attached hereto.

1.2.45 **Notice** means any notice to or from any Party to this Agreement that is either required or permitted to be given to another Party.

1.2.46 **Off-Site Infrastructure** means the off-site public or private infrastructure, such as roads and utilities, specified in the Infrastructure Plan that is necessary for development of the Property but is not located on the portion of the Property that is subject to a Development Application.

1.2.47 **On-Site Infrastructure** means the on-site public or private infrastructure, such as roads or utilities, specified in the Infrastructure Plan that is necessary for development of the Property and is located on that portion of the Property that is subject to a Development Application.

1.2.48 **On-Site Retention/Detention** shall mean a storm drain facility that is provided on-site upon private property within the development.

1.2.49 **Open Space** means the following: all parks (regardless of size or type); pedestrian, bicycle, and equestrian trails and pathways; passive open spaces, water features, and natural habitat areas; parkways and commonly maintained natural or landscaped areas; sidewalks, street tree plantings and medians; ballfields and recreational spaces (including, without limitation, any such facilities provided by or upon a school or church site, excepting areas within building footprints other than community gardens); drains and detention basins and swells, canals, protected slope areas, and any other quasi-public area that the City determines to be Open Space as a part of the approval of a Development Application. Open Space includes, but is not limited to, those areas identified as Open Space in the Site Plan.

1.2.50 **Outsourcing** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application, as is more fully set out in this Agreement.

1.2.51 **Parcel** means an area identified on the Site Plan with a specific land use designation that is intended to be further subdivided for future development.

1.2.52 **Person** means any natural person, corporation, Limited Liability Company, trust, joint venture, association, company, partnership, limited partnership, governmental authority or other entity.

1.2.53 **Phase** means the development of a portion of the Project.

1.2.54 **Intentionally omitted.**

1.2.55 **Planning Commission** means the City's Planning Commission.

1.2.56 **Project** means the mixed-used Site Plan to be developed on the Property in accordance with this Agreement, including, without limitation, all associated public and private facilities, Intended Uses, Phases and all of the other aspects approved as part of this Agreement and the Site Plan.

1.2.57 **Intentionally omitted.**

1.2.58 **Property Owner or Property Owners** means NSL and any other successor-in-interest to NSL as an owner of the Property or any portion thereof, including but not limited to, Developers, Sub-developers and builders.

1.2.59 **Site Plan** means the conceptual plan submitted to the City for the first stage of the approval of a residential housing development in accordance with the City's Vested Laws.

1.2.60 **Sub-developer** means any Person that obtains title to a Parcel from a Developer for development.

1.2.61 **Subdivision** means the division of any portion of the Project into a subdivision pursuant to State Law and/or the Zoning Ordinance.

1.2.62 **System Improvement** means those elements of infrastructure that fall within the definition of System Improvements pursuant to Utah Code Ann. §11-36a-102(21). System Improvements shall be defined as set out in the North Village Capital Facilities Plans and Master Plans.

1.2.63 **Zone** means the City's North Village Overlay District Zone.

1.2.64 **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that is in effect as of the Effective Date.

2. **Development of the Project.** Development of the Project shall be in accordance with this Agreement, the City's Vested Laws and the City's Future Laws as expressly set forth in this Agreement. The Parties acknowledge and agree that if there is a conflict with this Agreement and the City's current or future laws, then this Agreement shall supersede and take precedence to the fullest extent possible.

3. **Development of the Property in Compliance with the Site Plan.**

3.1 **Project Density.** Except as may be otherwise augmented hereinafter, Property Owners shall be entitled to and are vested with the right to develop and construct up to 23.5 ERUs on the Property consistent with the Intended Uses specified in the Zoning Ordinance and generally identified on the Site Plan (collectively, the "**Base Density Entitlements**"). The Base Density Entitlements represent the base density allocation per gross acre allowed by the City's Vested Laws and have been approved pursuant to the City's review of the Site Plan in accordance with the requirements of the North Village Overlay District Zone. In addition to the Base Density Entitlements, Property Owners shall be entitled to and are vested with the right to develop and construct an additional 1.25 ERUs on the Property consistent with the Intended Uses specified in the Zoning Ordinance and generally identified on the Site Plan (collectively, the "**Bonus Density Entitlements**," and together with the Base Density Entitlements, the "**Development Entitlements**"), which reflects a five percent (5%) increase in base density granted by reason of the Low Income Housing requirements imposed pursuant to this Agreement.

3.2 **Intended Uses by Parcel and Densities.** Intended Uses and Densities currently contemplated for each Parcel are shown on the Site Plan for the Property, which plan has been prepared in compliance with the requirements of the Heber City ordinances set forth in Chapter 17.20 Plans of the City's Vested Laws. Uses on the property shall not include stacked flats unless approved by the City Council.

3.2.1 The NSL development will contain detached single family dwellings, developed in anticipation of second home ownership and potential use as short term rentals. If development anticipates short term rentals, Restrictive Covenants (CCRs) will be recorded on the title of each property notifying prospective buyers of such short term rentals; CCRs will contain rules and regulations consistent with the City's Short Term Rental regulations.

3.2.2 Required affordable housing units will not be marketed, leased, sold or rented as short term rentals.

3.3 **Use of Density.** Notwithstanding the maximum gross density permitted under the Zone, NSL may allocate the Development Entitlements among any Subdivision within the Project;

3.4 **Accounting for Density for Parcels Sold to Sub-developers.** In connection with the sale of any Parcel sold by NSL to a Developer or Sub-developer, NSL shall provide the City with a written document specifying the identity of the Person to whom the Parcel is sold, the allocation, if any, of any Development ERUs associated with such Parcel, and the Open Space requirements and/or obligations associated with such Parcel. In connection with the recordation

of a Final Plat or other document of conveyance for any Parcel sold to a Developer or Sub-developer, NSL shall provide the City Recorder with a development report (a "**Development Report**") identifying the Parcel(s) sold, the Residential Development ERU and/or other type of use or Development Unit allocated with the Parcel(s), the Development ERU remaining with NSL and any material effects of the sale on the Site Plan.

3.4.1 Return of Unused Density. If a Developer or Sub-developer cannot or does not utilize all of the Development ERU allocated to it in connection with the transfer of one or more Parcels at the time the Developer or Sub-developer receives approval for the final Development Application for such transferred Parcel(s), the unused Development ERU shall automatically revert back to NSL. Such Development ERU shall be accounted for in any subsequent Development Report that NSL, or any of its successors in interest may be required to file with the City Recorder.

3.5 **Parcel Sales.** The City acknowledges that the precise location and details of the public improvements, lot layout and design and any other similar item regarding the development of a particular Parcel may not be known at the time of the sale of a Parcel.

3.6 **Low Income Housing Requirements.** For the purposes of this Agreement, Low Income or Affordable Housing shall maintain a selling price that is affordable for individuals or families with an income of less than 60% of the average median income (AMI) in Wasatch County, Utah. A minimum of 1.25 ERU's shall be deed restricted in perpetuity and sold or rented at an affordable rate to families earning no more than sixty percent (60%) of the average median income (60% AMI). NSL shall reasonably disperse the Low Income Housing units throughout the Project. NSL shall also be entitled to allocate any such Low Income Housing requirements to Developers and/or Sub developers as NSL may elect. The Low Income Housing ERUs shall be developed on a proportional basis with the development. Developer and the City shall follow and comply with any deed restrictions as outlined in the Low Income Housing Ordinance & Plan. Payment of a fee in lieu to fulfill the requirements of the Low Income Housing Ordinance & Plan is not an option, unless specifically agreed to by the City. Fractions of required Low Income Housing ERUs may be implemented with the payment of a fee in lieu option.

3.6.1 Allocation of Low Income Housing. At least one half of the required affordable housing (ERUs) shall be sold to parties that shall be required to reside in the units as their primary residence, "Owner-Occupied", with a specific restriction not to allow said units to be rented. ERUs constructed as Low Income Housing in the Project shall be deed restricted and preserved in perpetuity for those income qualified at 60% or less of the Average Medium Income for Wasatch County, Utah.

3.6.2 Rights of First Offer. Heber City, or its designee, shall have the first right to purchase all affordable dwelling units (aka, AMI deed restricted properties, or affordable deed restricted units). In the event that Heber City does not exercise or execute on its said option to purchase, then NSL, and its successors, shall grant or cause the applicable Developers and/or Sub-developers to grant to the following entities and their employees, in descending order of priority, a right to purchase Low Income Housing constructed and operated as affordable housing and available within the Project for sale to income qualifying households otherwise meeting the requirements of this Agreement: the **City**, the Wasatch County School District (the "**District**") and Wasatch County (the "**County**"). In the event the City, the District, and the County do not exercise their respective first rights, the applicable Low Income Housing Units may be sold, as the case may, be to members of the general public meeting the income qualification requirements, employed in Wasatch County and living or desiring to live in Wasatch County.

3.6.2.1 Deed Restrictions Protecting the Affordability and Sustainability of the Affordable Homes at NSL RESIDENTIAL DEVELOPMENT.

a. Prior to final approval for the NSL Residential Development, and, prior to transfer of ownership from Developer/ Owner of any Affordable Housing Units/ Homes, Developer/ Owner shall negotiate and enter into with the City a ***Deed Restrictions Covenant,*** *(which shall be recorded with the Wasatch County Recorder),* that shall serve as a Covenant Running With the Land to protect the affordability and sustainability of the Affordable Units/homes at NSL Residential Development, Heber City, Wasatch County, Utah. Some of the terms of such a Covenant should include, but shall not be limited to the following:

1. The Covenant is to provide and articulate terms, conditions, and restrictions. The Covenant shall be enforceable by the City and, upon its execution and recording in the public records of the County Recorder of Wasatch County, Utah, shall run with the land, enforceable against the Owners; each Unit Owner, and each Unit Owner's successors interest, assignees, heirs, devisees, mortgagees, lessees, trustees, beneficiaries, executors, administrators, personal representatives; any subsequent owners; and any other parties claiming an interest in the Property. In addition to the recording of this Covenant, Developer/Owner shall cause that any deed or plat map associated with any affordable housing properties or units shall reference said Covenant.

2. The City shall forever retain the right to purchase all Affordable housing units, in perpetuity, pursuant to such a Covenant running with the land and units.

3. Administration and Enforcement. The City shall have the right to enforce the terms of such a Covenant and may enforce its terms as it deems administratively proper through its employees, administrative offices, agents, or assigns. The Heber City Police Department shall be authorized to investigate certain affordable housing violations and to issue citations pursuant to applicable City Code and State Statute. The City may enforce this Covenant by any appropriate legal or equitable action including but not limited to specific performance, injunction, abatement, damages and such other remedies and penalties as may be specified in this Covenant. This Covenant shall inure to the benefit of the City and nothing herein shall be construed as creating a general scheme to the enforced by Unit Owners against each other.

4. At least 50% of the required affordable ERUs shall be Owner-Occupied unless a Unit Owner shall receive prior written consent of the City, in its sole and absolute discretion, for an exception. Each of these Unit Owners shall occupy the Unit as a Primary Residence. Unless the City gives its prior written consent, each Unit Owner shall not obtain, purchase, or otherwise acquire any other direct or indirect interest in real property while the Unit owner is a Unit Owner; neither the Unit Owner nor any person in the Unit Owner's Household shall establish a trust of which the Unit Owner is a beneficiary if such trust's corpus contains any other real property.

5. Resale of Unit. The Unit Owner shall send Notice to the City of such Unit Owner's intent to sell the unit (the date of such Unit Owner's Notice to the City shall be the "Offer Date") and shall not Sell any interest in such Unit without written consent of the City.

3.6.3 **Off-site Low Income Housing.** At the discretion of the developer, some or all of the affordable housing requirements may be met in partnership with the City to allow construction and location of affordable housing units off site on any available property whether owned by the City, third parties or other entities. The exact details of such an arrangement, if presented by the City and discretionally negotiated by developer, would be negotiated with the City at the time of development, if possible, and if the City has the property available at that time. It is the intent that such option

would not reduce the developer's requirements below that required in this MDA.

3.6.4 **Timing.** At least 50% of the required Low Income Housing units shall be constructed no later than the construction of the first 30 percent of the Market Rate units. The full Low Income Housing requirement shall be completed no later than construction of the first 60 percent of the Market Rate units.

3.6.5 **Non-Residential Development Timing.** Any commercial areas shown upon the Master Plan for the development shall be rough graded and provided with access to adequate utilities to serve the land uses no later than the construction of 60 percent of the residential units within the development.

4. **Zoning and Vested Rights.**

4.1 **Compliance with City Requirements and Standards.** Developer and Owners expressly acknowledge that nothing in this Agreement shall be deemed to relieve Developer or any Continuing or Successor Owner from its obligations to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and site plans for the Project, which are in place at the time of a complete and approved application, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of the City except as otherwise provided in this Agreement. Specifically, Developer and Owner acknowledge and agree that in the event adherence to the City Updated North Village Storm Water and the North Village Street Master Plans, may or actually does affect or compromise entitlements, Developer and Owner shall not be allowed to claim damages, takings or costs from or against the City.

4.2 **Current Zoning.** Concurrently with its execution of this Agreement, the City has annexed the Project to the City and zoned the Property under the North Village Overlay District Zone. The North Village Overlay District Zone (Section 18.21.010 and Section 18.21.060 of the Heber City Code) was approved by the Council on March 16, 2021.

4.3 **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and continue either for a period of ten (10) years, or the day upon which the final certificate of occupancy is approved and granted, whichever first occurs, (the "**Term**"), unless it is terminated in accordance with Section 26. The Term may, at NSL's option, be extended for one (1) additional five (5) year period, provided NSL is not in material default of any provisions of this Agreement and after providing the City with written notice not less than six (6) months prior to the

scheduled expiration date. Unless otherwise agreed between the Parties, NSL's vested rights and interests set forth in the Agreement shall expire at the end of the Term, or as the Term may be extended by mutual agreement of the Parties. Upon termination of this Agreement for any reason, the obligations of the Parties to each other created under this Agreement shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to the expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner, nor will any rights or obligations of Property Owners or the City intended to run with the land be terminated.

5. **Approval Processes for Development Applications.**

5.1 **Phasing.** The City acknowledges that NSL, Developers, and Sub-developers who have purchased Parcels of the Property may submit multiple applications from time to time to develop and/or construct portions of the Project in phases.

6. **Open Space, Improved Public Parks, and Trails Requirements.**

6.1 **Development Timing: Open Space, Neighborhood Parks, and Trails.** Neighborhood Parks and Trails shall be constructed and developed concurrently with the respective development within which said trails are located. The City shall not be obligated to make final approval and place into warranty any public improvements located within or constructed in conjunction with the development of a particular Phase until the parks and trails located within such Phase have been constructed, or the City has received an improvement completion assurance in the form of either a cash escrow deposit, a letter of credit or such other form of completion assurance as may then be accepted by the City with respect to such parks and trails meeting the requirements of Section 10-9a-604.5 of the Utah Municipal Land Use Development Management Act. Open space, parks and trails shall comply with the requirements of the NVOZ.

6.2 **Dedication of Open Space or Trails.** Property within the canal easements shall be granted and dedicated by the Property Owner to the City, or other public entity as determined by the City. Dedication of Trails to the City shall be by plat recordation or by dedication by deed from the applicable Property Owner which shall be without any financial encumbrance or other encumbrance (including easements) which unreasonably interferes with the use of the property for Open Space and/or Trails; In the event trails are established solely for the internal use by Homeowners' Association, no public easement shall be granted by NSL or any other Property Owner. Construction and dedication of the Highway 40 trail shall occur within the first phase of development.

6.3 **Maintenance of Open Space/or Trails.** Except as otherwise specifically provided in this Agreement, upon acceptance by the City of Trails and after formal

possession, the City shall be responsible for maintaining the Public Trail after final inspection and acceptance of the applicable improvements included therein, if any. If the Trails are dedicated to an entity other than the City, the dedication shall provide for the maintenance of the applicable Trails. Unless approved by, and dedicated to the City, any associated landscaping with such Traills shall be maintained by the respective property owners association.

6.4 **Tax Benefits**. The City acknowledges that Property Owners may seek to qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring Open Space and/or Trails to the City or to a charitable organization. Property Owners shall have the sole responsibility to claim and qualify for any tax benefits sought by Property Owners by reason of the foregoing. The City shall reasonably cooperate with Property Owners to the maximum extent allowable under law to allow Property Owners to take advantage of any such tax benefits.

6.5 **North Fields Preservation**. NSL, for itself and with respect to each subsequent Owner of the Property, agrees that upon issuance of a building permit for a Development Unit, the Owner of such Development Unit shall pay to the City a fee equal to $2,500 per ERU or partial ERU attributable to such Development Unit (the "**North Fields Preservation Fee**"). The City shall utilize funds collected pursuant to the North Fields Preservation Fee solely for the purpose of preserving open space in the North Fields, including purchase of development rights. The City agrees that the North Fields Preservation Fee shall not be charged for Development Units constructed and operated as Low Income Housing Units.

7. Public Improvements.

7.1 **Utilities and On-Site Infrastructure.** The City acknowledges that NSL will prepare an Infrastructure Plan (a/k/a Civil Drawings). The Parties acknowledge that there will be a Capital Facilities Plan for the Public Infrastructure approved and adopted by the City. The Property Owners shall have the responsibility and obligation, to construct and fund, or cause to be constructed and installed, in phases, the On-Site and Off-Site Infrastructure according to the Capital Facilities Plan that is necessary to support the development proposed within a specific Development Application. If any Property Owners elect to construct any On-Site Infrastructure or Off-Site Infrastructure required by the Capital Faculties Plan as a condition of approval of a Development Application, the Property Owner shall pay the cost thereof, subject to its reimbursement rights set forth in Section 7.2. The City shall comply with the statutory processes and all other applicable laws, rules, and regulations governing such work. Parties contemplate that each Phase will be served by sanitary sewer, culinary water and secondary irrigation systems provided by others.

7.2 **Excess Improvements/Upsizing.** Any infrastructure requested by the Developer or required by the Development shall be the responsibility of the Developer. The City and NSL acknowledge and agree that, as a part of the Capital Facilities Plan, certain portions of the infrastructure improvements shown on the Capital Facilities Plan (including both On and Off-site Infrastructure) may need to be enlarged, increased or otherwise "upsized" or upgraded (collectively, the "**Excess Improvements**") at the request of the City or other responsible Non-City Agency to serve, directly or indirectly, developments or future developments on land areas outside of the Project's boundaries or owned by parties other than Property Owners (collectively, the "**Benefitted Property**"). In recognition of the foregoing, and as a material inducement to the execution of this Agreement by NSL:

7.2.1 **Reimbursements.** The City agrees that it shall reimburse the applicable Property Owners for, or to the extent permissible under then-applicable law and as identified in the approved Capital Facilities Plan, costs incurred by the applicable Property Owners in the construction of Excess Improvements. Subject to the City's approval, Property Owners may, from time to time, oversize and/or install and construct portions of the infrastructure specified in the Infrastructure Plan that are System Improvements. The City shall ensure that Property Owners, as applicable, are reimbursed for actual costs from Impact Fees for oversizing. City shall also make available reimbursement/pioneering agreements to reimburse Property owners-for installing Off-site System Improvements to serve their property as required by State law. Said pioneering agreements shall have a maximum duration of 10 years from the date of City's acceptance of associated improvements.

7.2.2 **Building Fee and Impact Fee Credits.** To the extent that any reimbursements paid to a Property Owner pursuant to the Reimbursement Procedures do not fully reimburse Property Owners for the amounts expended or costs incurred by the Property Owner in the construction of the Excess Improvements, City shall credit the applicable Property Owner up to the value of such deficiency against the Impact Fees applicable to the Project.

7.2.3 **Backbone Improvements.** Property Owners shall not be compensated for any "upsizing" of the Backbone Improvements that are not included as System Improvements in the approved Capital Facilities Plan.

7.2.4 **Phasing of Master Planned Facilities**. Public Facilities shown on the City's Capital Facilities Plan shall be constructed within the first phase of development.

7.3 Secondary Access. Subject to approval of the City and Wasatch County Fire Service District, NSL shall cause one of the proposed Secondary Access Roads to be completed in connection with the first phase of the Project. If approved, said Secondary Access Road shall satisfy the requirements of the City and the Wasatch County Fire Service District with respect to adequate ingress and egress for the Project.

7.4 **Variations between Infrastructure Plan, Capital Facilities Plan and any City's Future Capital Facilities Plan.** The Parties acknowledge that the City may adopt a new or amended Capital Facilities Plan. Additionally, the City may adopt new or amended Impact Fee ordinances as permitted by State Law for the collection of Impact Fees to pay for the construction of parts or all of the Backbone Improvements. The new Capital Facilities Plan shall in no way change any land uses or permitted uses of the Project; limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this Agreement and relevant sections of the Zoning Ordinance are satisfied. The Capital Facilities Plan and any future Capital Facilities Plan may differ from the Infrastructure Plan. As a part of the approval of a Development Application, the City may require Property Owners to build portions of the Backbone Improvements as shown on the Capital Facilities Plan (after it is adopted) instead of as shown on the Infrastructure Plan. If the Parties cannot reach agreement on the terms of a reimbursement agreement, the terms of such a reimbursement agreement shall be subject to the mediation and arbitration provisions of Section 14. Notwithstanding the above, nothing herein obligates the City to pay for the minimum backbone infrastructure needed for the Project.

7.5 **No Additional Off-Site Infrastructure Requirements.** Notwithstanding anything to the contrary in the City's Vested Laws, the City shall not, directly or indirectly, charge Developers or Sub-developers, or any of their respective affiliates or successors, any development fees, impact fees, water hookup fees, or any similar fees, charges, assessments or exactions for Off-Site Infrastructure not contemplated in the Capital Facilities Plan, or subsequent updates to said Plan. However, any and all such development fees, impact fees, water hookup fees, or any similar fees, charges, assessments or exactions for On-Site Infrastructure, shall be borne by Developers and Sub-developers, or any of their respective affiliates or successors, or residents, regardless of whether they are off-site or on-site, pursuant to the Capital Facilities Plan. In the event that Developer or Sub-developer is required to build Off-Site Infrastructure, and subject to the aforementioned 10 year limited duration, in the event pioneering agreements are used, the City would collect a pro-rata share from future, benefitting developers.

7.6. **Modifications of Infrastructure Locations and the Boundaries of the Development Areas.** The City acknowledges that the exact locations of On and

Off-Site Infrastructure and the boundaries of the Parcels are conceptual in nature and that additional surveying, engineering and similar studies are needed to finalize lot locations, road and utility alignments as well as road and utility sizing. Therefore, Parcel boundaries, road and utility alignments and, subject to the requirements of this Agreement, infrastructure sizing may be further modified and revised upon the City's approval of subsequent Development Applications in accordance with subsequent subarea infrastructure Site Plans that will be prepared by Developer for each Phase, and the City's Vested Laws, all subject to City final approval.

7.7 **Utilities Provided by the North Village Special Service District (NVSSD) and the Jordanelle Special Service District (JSSD).** The Parties acknowledge that the Project is currently served by the NVSSD and the JSSD for sewer and water, including secondary water. It is the intent by both Parties that the NVSSD and the JSSD shall continue to serve the project for these utilities through such service districts as long as they have capacity and are capable of serving. The Developer shall provide Commitment Letters from JSSD and NVSSD for the plat and/or phase being served before final approval for that particular plat is granted. Water for phases and all amenities shall be dedicated up front. If at any time it is deemed unfeasible to have JSSD or NVSSD serve the Project, the Developer shall secure other service providers. The City shall not be liable or responsible to provide such services.

7.8. **Water Rights.** Developers shall be required to comply with the JSSD and NVSSD water policies generally applicable to all NVSSD customers.

7.9. **Streets.** Street frontage shall be improved in compliance with the City's Standards and Specifications and the NVOZ.

Development shall obtain UDOT access approval for any accesses onto a state highway.

Development shall comply with the Highway 40 Access Management Agreement.

At the time of development, a transportation hub (area with a bus stop bench and bus turnout), will provided to the satisfaction of the City Engineer within each development, at a location that is central to the transportation network and convenient for access to the center of density within the development.

7.10 **Off-Site Connectivity**. All trails, canals, ditches and roads shall connect with existing and internal trails, canals, ditches and roads located immediately adjacent to the Project such that there is consistent, smooth linkage and connectivity with any and all municipal systems.

8. **Cable/Fiber Optic Service.** Subject to all applicable federal and state laws, as well as the City's authorization and capacity to timely install in a reasonable manner all required infrastructure and provide such service, NSL agrees that the City shall be the sole cable/fiber optic network provider for the Development. The City shall install or cause to be installed all underground conduits necessary to make available a minimum of one cable service/fiber optic communication provider, or other comparable information and communication service provider, within the Project. NSL shall cooperate and reasonably accommodate the City's installation and development of said cable service/fiber optic network, (CFON). Notwithstanding the foregoing, Property Owners may contract with any cable TV/fiber optic and other communication provider of their own choice and grant an exclusive right of access and/or easement to such provider to furnish cable TV/fiber optic and other communication services for those dwelling units or other uses on such Property Owner's real property so long as the property is private and not dedicated to the public. The City may charge and collect all taxes and fees with respect to cable, fiber optic and other communication lines as allowed under an applicable City ordinance or state law.

9. **CC&Rs.** As more fully set forth in the CC&Rs, Property Owners shall create and establish one or more Property Owners' Associations, which shall be responsible for the implementation and enforcement of the CC&Rs and the Design Guidelines, including but not limited to architectural reviews, water efficiency, wildfire education, open space, and private street and storm water system maintenance. Recordation of the CC&Rs and creation of such Property Owners' Associations shall be required at the time of Final Plat review and approval. They shall be recorded both with the County and City Recorders. The City shall not be responsible for the implementation and/or enforcement of any such CC&Rs and Design Guidelines. The CC&Rs may be amended by the processes specified in the CC&Rs without any requirement of approval of such amendments by the City. If any provision of the Design Guidelines is inconsistent with a specific provision of this Agreement, the terms of this Agreement shall govern. Prior to the issuance of any building permits for residential, business, commercial or recreational use, but excluding On or Off-Site Infrastructure or other infrastructure proposed by Property Owners, the architectural control committee established by the CC&Rs shall certify that the proposed Development Application complies with the Design Guidelines. To facilitate uniform application and enforcement of the Design Guidelines, the Design Guidelines shall incorporate the design standards set forth in the Zone. Potential avenues of enforcement of the applicable CC&Rs available to the applicable Property Owners' Association or Owners shall include judicial enforcement by a court having subject matter jurisdiction over the particular dispute.

10. **Fees & Bonding.**

10.1 **General Requirement of Payment of Fees.** The City acknowledges its fees are subject to applicable State law. The City's impact fee requirements will be set forth in the City's approved Capital Facilities Plan for the Project area to be developed subsequent to this Agreement and incorporated herein.

10.2 **Warranty Bonding.** To the extent other public financing vehicles are not available for any on or off-site, publicly dedicated infrastructure or similar

improvements for the Project, Property Owners, Developers or Sub-developers, as applicable, shall provide performance or warranty bonds, per the Heber City Code, in the form of letters of credit or cash bonds (all forms approved by the City) in relation to any on or off-site, publicly dedicated infrastructure or similar improvements for the Project (the "**Security**"), including, without limitation, roads, curb and gutter, storm drains, sewer, water, street lighting, signs, sidewalks, landscaping within public rights of way, public open space, public parks and trails. Notwithstanding anything to the contrary under the City's Vested Laws, Property Owners shall not be required to post any such security for any privately-owned infrastructure or improvements, not necessary for public health and safety. The Security required under this section shall otherwise conform to the requirements of State Law.

11. **Construction Standards and Requirements.**

11.1 **Building Permits.** No buildings or other structures that require permits, shall be constructed within the Project without the Developer or Sub-developer first obtaining building permits in accordance with the City's Vested Laws. Developers and Sub-developers may apply for and obtain a grading permit following Preliminary Site Plan approval if the Developers or Sub-developers, as applicable, have submitted and received approval of a site-grading plan and SWPPP and subject to a Land Disturbance Permit issued pursuant to Section 12 below.

11.2 **City and Other Governmental Agency Permits.** Before commencement of construction or development of any buildings, structures or other work or improvements upon any portion of the Project, a Developer or Sub-developer shall, at their expense, secure, or cause to be secured, any and all permits which may be required by the City under the City's Vested Laws or any other governmental entity having jurisdiction over the work. The City shall reasonably cooperate with Developers Sub-developers in seeking to secure such permits from other governmental entities.

11.3 **Limitation to Three Stories.** No structure in the Project shall exceed three (3) stories in height unless approved by the City Council.

12. **Grading, On-Site Processing of Natural Materials; Storm Water Management.**

12.1 Intentionally Omitted.

12.2 **On-Site Processing of Natural Materials**. Property Owners may use the natural materials located on the Project, including, without limitation, sand, gravel and rock, and may process such natural materials into construction materials, including, without limitation, aggregate or topsoil, for use in the construction of On

and Off-Site Infrastructure, commercial buildings, residential structures, or other buildings or improvements located in the Project and other locations outside the Project. Property Owner shall remediate any damage to trails, infrastructure, drainage or natural water features caused by such use. Notwithstanding this provision, this does not permit the construction of any subdivision or site-specific improvements prior to the requisite Final Plat review and approval for such improvements. Any such uses shall not be considered gravel pits.

12.3 **Storm Water Management**. The Parties acknowledge that the City is presently contemplating a future regional storm water master plan (as finalized and adopted by the City, the "**City Updated North Village Stormwater Master Plan**"). Concurrent with Provision 4.1 above, NSL shall be required to comply with all future policies and standards of the North Village Stormwater Master Plan and associated Stormwater Design Manual, yet to be adopted, and all standards and requirements of any and all exhibits attached and incorporated into this Agreement, including but not limited to the Engineering Review Letter.

12.3.1 As a condition of annexation, as outlined in the **City Updated North Village Storm water Master Plan**, Developer and Property Owner shall restore or replace the historic, natural drainage channels downstream of the existing irrigation canals, as outlined and contemplated in the above referenced Master Plan.

12.4 Intentionally Omitted.

12.5. **Future Transportation Plan.** The Parties acknowledge that the City is presently contemplating a future Updated North Village Transportation Plan (as finalized and adopted by the City, the (when finalized and adopted by the City, the "**City Updated North Village Transportation Plan**"). Concurrent with Provision 4.1 above, NSL shall be required to comply with all future policies and standards of the North Village Transportation Plan, yet to be adopted, and all standards and requirements of any and all exhibits attached and incorporated into this Agreement, including but not limited to the Engineering Review Letter.

13. **Provision of Municipal Services.** The City shall provide all City services to the Project that it provides from time to time to other residents and properties within the City including, but not limited to, development services and inspections, road and streetlight maintenance on public streets, police, and other emergency services. Such services shall be provided to the Project at the same levels of service, and on the same terms and rates as provided to other residents and properties in the City, unless such services are provided by other entities, or, because of the unique topography, location or other special or unique circumstances in the area covered by this Agreement, the cost to provide such services is higher than the like property rate throughout the City, and the City is able to demonstrate by empirical evidence, that such costs are a result of substantive additional or increased costs of municipal services, or financial burden to the City, then such additional costs, including but not limited to those required for additional special fire or

police services, may be passed on to the Property Owners by way of special municipal service zonal fees, or some other equivalent of such fees. The City may charge such increased rate fees to Property Owners with respect to the Project, Phase, or sections of a Phase proportionate to their share of the increased cost.

14. **Default.** Any failure by any party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following the receipt of written notice of such failure from the other party (unless such period is extended by mutual written consent, and subject to Sections 14.2 through 14.4), shall constitute a **"Default"** under this Agreement. Any notice given pursuant to the preceding sentence (**"Asserted Default Notice"**) shall comply with Section 14.1.

14.1. **Notice.** If a Property Owner or the City causes an event which remains uncured for a period of thirty (30) days, this would constitute a Default of this Agreement. The Party claiming a Default shall provide a written Asserted Default Notice to the other Party.

14.1.1. **Contents of the Asserted Default Notice.** The Asserted Default Notice shall:

14.1.1.1 Claim of Default. Specify the claimed event of Default;

14.1.1.2. Identification of Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default;

14.1.1.3. Specify Materiality. Identify why the claimed Default is claimed to be material; and

14.1.1.4. Proposed Cure. Specify the manner in which said failure may be satisfactorily cured.

14.2. **Cure.** Following receipt of an Asserted Default Notice, the defaulting Party shall have sixty (60) days in which to cure such claimed Default (the "Cure Period"). If more than 60 days is required for such cure, the defaulting Party shall have such additional time as is reasonably necessary under the circumstances in which to cure such Default so long as the defaulting Party commences such cure within the Cure Period and pursues such cure with reasonable diligence.

14.3. **Meet and Confer, Mediation, Arbitration.** Upon the failure of a defaulting Party to cure a Default within the Cure Period or in the event the defaulting Party contests that a Default has occurred, before initiating any formal litigation proceedings the Parties shall first engage in Mediation.

14.4. **Remedies.** If the Parties are not able to resolve the Default by Mediation, the Parties shall have the following remedies:

14.4.1. **Legal Remedies.** Legal Remedies available to both Parties shall include all rights and remedies available at law and in equity, including, but not limited to, injunctive relief, specific performance and/or damages. In addition to any other rights or remedies, any Party may institute legal action to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. Nothing in this section is intended to, nor does it limit Developer's or City's right to such legal and equitable remedies as permitted by law. It is specifically acknowledged by both Parties that neither Party waives any such rights for legal and equitable remedies.

14.4.2. **Enforcement of Security.** The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

14.4.3. **Withholding Further Development Approvals.** The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of that portion of the Property owned by the defaulting Property Owner.

14.5. **Public Meeting.** For any Default by a Property Owner, before any remedy in Section 14.4.1 may be imposed by the City, Property Owners shall be afforded the right to attend a public meeting before the Council and to address the Council regarding the claimed Default.

14.6. **Emergency Defaults.** Anything in this Agreement notwithstanding, if the Council finds on the record in a public meeting that a Default by Property Owners materially impairs a compelling, countervailing interest of the City and that any delays in imposing a remedy to such a Default would also impair a compelling, countervailing interest of the City, the City may impose the remedies of Section 14.4., without any further requirements or obligations to the Property Owners. The City shall give Notice to Property Owners in accordance with the City's Vested Laws of any public meeting at which an emergency Default is to be considered and Property Owners shall be allowed to attend such meeting and address the Council regarding the claimed emergency Default.

14.7. **Cumulative Rights.** The rights and remedies set forth herein shall be cumulative.

15. **Notices.** All notices required or permitted under this Amended Development Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Property Owners:

NSL, LLC
Attn: Jacob Luekenga
136 South 500 East
Lindon, UT 84042

To the City:

City of Heber
Attn: City Recorder
25 North Main Street
Heber, Utah 84032

15.1 **Effectiveness of Notice.** Except as otherwise provided in this Agreement, each Notice shall be effective and shall be deemed delivered on the earlier of:

15.1.1 **Physical Delivery.** Its actual receipt, if delivered personally, by courier service, or by facsimile, provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending Party has confirmation of transmission receipt of the Notice.

15.1.2 **Electronic Delivery.** Its actual receipt if delivered electronically by email, provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending Party has an electronic receipt of the delivery of the Notice.

15.1.3 **Mail Delivery.** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail.

15.1.4 **Change of Notice Address.** Any Party may change its address for Notice under this Agreement by giving written Notice to the other Party in accordance with the provisions of this Section.

16. **Administrative Amendments.**

16.1 **Allowable Administrative Applications:** The following modifications to this Agreement may be considered and approved by the Administrator.

16.1.1 **Infrastructure.** Modification of the location and/or sizing of the infrastructure for the Project that does not materially change the functionality of the infrastructure.

16.1.2 **Design Guidelines.** Modifications of the Design Guidelines.

16.1.3 **Development Unit Allocations.** Any allocation of Development Unit densities to be made by NSL or its successors.

16.1.4 **Minor Amendment.** Any other modifications deemed to be minor modifications by the Administrator.

16.2 **Application to Administrator.** Applications for Administrative Amendments shall be filed with the Administrator.

16.2.1 **Referral by Administrator.** If the Administrator determines for any reason that it would be inappropriate for the Administrator to determine any Administrative Amendment, the Administrator may require the Administrative Amendment to be processed as a Modification Application.

16.2.2 **Administrator's Review of Administrative Amendment.** The Administrator shall consider and decide upon the Administrative Amendment within a reasonable time not to exceed forty-five (45) days from the date of submission of a complete application for an Administrative Amendment. Applicant must provide all documents in their completed form and pay any required fee in accordance with State law.

16.2.3 **Notification Regarding Application and Administrator's Approval.** Within ten (10) days of receiving a complete application for an Administrative Amendment, the Administrator shall notify the Council in writing. Unless the Administrator receives a notice pursuant to these Sections, requiring that the proposed Administrative Amendment be considered by the Council as a Modification Application, the Administrator shall review the application for an Administrative Amendment and approve or deny the same within the 45-day period set forth in Section 16.2.2. If the Administrator approves the Administrative Amendment, the Administrator shall notify the Council in writing of the proposed approval and such approval of the Administrative Amendment by the Administrator shall be conclusively deemed binding on the City. A notice of such approval shall be recorded against the applicable portion of the Property in the official City records.

16.2.4 **City Council Requirement of Modification Application Processing.** If the Council requires the proposed Administrative Amendment to be considered by the Council as a Modification Application, it shall, within two (2) business days after the first Council meeting following notification by the Administrator pursuant to Section 16.2.3 above, notify the Administrator that the Administrative Amendment must

be processed as a Modification Application, and that the Council shall be the final determining body for any and all Modification Applications.

16.2.5 **Appeal of Administrator's Denial of Administrative Amendment.** If the Administrator denies any proposed Administrative Amendment, the Applicant may process the proposed Administrative Amendment to the Council for final adjudication. The Council shall be the final determining body for any and all Modification Applications.

17. **Amendment.** Except for Administrative Amendments, any future amendments to this Agreement shall be considered as Modification Applications subject to the following processes:

17.1 **Submissions of Modification Applications.** Only the City or NSL or an assignee of NSL, approved in writing by the City, and one that succeeds to all of the rights and obligations of NSL under this Agreement may submit a Modification Application.

17.2 **Modification Application Contents.** Modification Applications shall:

17.2.1 **Identification of Property.** Identify the property or properties affected by the Modification Application.

17.2.2 **Description of Effect.** Describe the effect of the Modification Application on the affected portions of the Project.

17.2.3 **Identification of Non-City Agencies.** Identify any Non-City agencies potentially having jurisdiction over the Modification Application.

17.2.4 **Map.** Provide a map of any affected property and all property within three hundred feet (300') showing the present or Intended Use and density of all such properties.

17.2.5 **Fee.** Modification Applications shall be accompanied by a fee in an amount reasonably estimated by the City to cover the costs of processing the Modification Application.

17.3. **Mutual Cooperation in Processing Modification Applications.** Both the City and Applicants shall cooperate reasonably in promptly and fairly processing Modification Applications.

17.4 **Planning Commission Review of Modification Applications.**

17.4.1 **Review.** All aspects of a Modification Application required by law to be reviewed by the Planning Commission shall be considered by the Planning Commission as soon as reasonably possible in accordance with

the City's Vested Laws in light of the nature and/or complexity of the Modification Application. The City shall not be required to begin its review of any application unless and until the Applicant has submitted a complete application.

17.4.2 **Recommendation.** The Planning Commission's vote on the Modification Application shall be only a recommendation.

17.5 **Council Review of Modification Application.** After the Planning Commission, if required by law, has made or been deemed to have made its recommendation of the Modification Application, the Council shall consider the Modification Application.

17.6 **Council's Objections to Modification Applications.** If the Council objects to the Modification Application, the Council shall provide a written determination advising the Applicant of the reasons for denial, including specifying the reasons the City believes that the Modification Application is not consistent with the intent of this Agreement and/or the City's Vested Laws (or, only to the extent permissible under this Agreement, the City's Future Laws).

17.7 **Mediation of Council's Objections to Modification Applications.** If the Council and Property Owners are unable to resolve a dispute regarding a Modification Application, the Parties shall attempt within seven (7) days to appoint a mutually acceptable expert in land planning or such other discipline as may be appropriate. If the Parties are unable to agree on a single acceptable mediator, each shall, within seven (7) days, appoint its own individual appropriate expert. These two experts shall, between them, choose the single mediator. Property Owners shall pay the fees of the chosen mediator. The chosen mediator shall within fourteen (14) days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties.

17.8 **Amendments by NSL.** Notwithstanding any other provision in this Agreement to the contrary, NSL may propose and if approved by the City, execute any amendment or other modification of this Agreement or the Site Plan, without the consent of any Property Owner provided that such amendments, modifications, land uses and density allocations: (a) are consistent with the requirements of the City's Vested Laws; and (b) shall not alter the ERU density allocated to such Property Owner identified in a duly executed Development Report or assignment from NSL or otherwise affect any development rights associated with such Property Owner's Development Property set forth in a property specific development agreement with the City pertaining to such Development Property or a recorded Subdivision Plat specific to such Development Property and no other portion of the Project. For avoidance of doubt, neither the City nor NSL shall be required to obtain the consent of any Property Owner or any subsequent owner of a portion of

the Project in order to amend this Agreement pursuant to this Section 17.

18. **Estoppel Certificate.** Upon twenty (20) days prior written request by a Property Owner, the City will execute an estoppel certificate to any third party certifying that this Agreement has not been amended or altered (except as described in the certificate) and remains in full force and effect, and that such Property Owner is not in default of the terms of this Agreement (except as described in the certificate), and such other matters as may be reasonably requested by the Property Owner. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

19. **Attorney Fees and Costs.** Subject to the Default provisions of Section 14 above, any and all disputes arising out of or related to the terms and conditions of this Agreement, including the interpretation and validity of the terms herein and the respective rights and obligations of the parties, shall first be negotiated informally in good faith between the parties. If such informal negotiations do not resolve the dispute, the parties shall participate, in good faith, in mediation. If mediation is unsuccessful, then either party may pursue whatever legal remedies may be available, at law or equity, before a court of competent jurisdiction, the losing party to the controversy shall pay to the successful party any and all costs and expenses, including reasonable attorney's fees, investigating such actions, taking depositions and discovery, and all other necessary costs incurred in, arising out of or resulting from such default (including any incurred in connection with any appeal or in bankruptcy court) incurred by such party and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

20. **Entire Agreement.** Unless expressly provided herein, nothing in this Agreement shall be interpreted to conflict with, replace or waive any requirements, obligations, standards, duties, rights and enforcements afforded to the Parties, provided by and through the NVOZ Zone and Ordinance, and shall be interpreted and presumed by the Parties to be consistent, in harmony with, and incorporated herein with this Agreement. This Agreement and all Exhibits hereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

21. **Headings.** The captions used in this Agreement are for convenience only and a not intended to be substantive provisions or evidences of intent.

22 **No Third-Party Rights/No Joint Venture.** This Agreement does not create a joint venture relationship, partnership or agency relationship between the City and Property Owner. Further, the Parties do not intend this Agreement to create any third-party beneficiary rights. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for or duty to any third parties, including but not limited to JSSD or NVSSD, concerning any improvements to the Property unless the City has accepted the dedication of such improvements at which time all rights and responsibilities for the dedicated public improvement shall be the City's.

23. **Assignability.**

23.1 **Transfer to Developers and Sub-developers.** Notwithstanding anything to the contrary in this Agreement, NSL or its successor may sell any portion of the Property to one or more Developers and/or Sub-developers at any time from and after the Effective Date. Each such transferred portion of the Property (each, a "**Development Property**") shall be developed by the Developer and/or Sub-developer in accordance with and subject to the terms hereof, including, without limitation, the following:

23.1.1 Developer or Sub-developer shall assume in writing for the benefit of the City and Property Owners all of the obligations and liabilities of Property Owners hereunder with respect to the Development Property;

23.1.2 Developer and Sub-developer shall be afforded the rights of Property Owners granted hereunder in respect of the applicable Development Property only, including, without limitation, any rights of Property Owners in and the impact fee credits and/or reimbursements pertaining to such Development Property; provided, however, that unless NSL otherwise agrees in writing, Developer and/or Sub-developer shall not, in each case without the prior written consent of NSL, which may be granted or withheld in NSL's sole discretion:

(ii) submit any design guidelines to the City in respect to the Development Property and/or propose any amendments, modifications or other alterations to the Design Guidelines or any other design guidelines previously submitted by NSL Owners to the City in respect of the Development Property;

(iii) process any Final Plats, site plans or Development Applications for the Development Property and/or propose any amendments, modifications or other alterations of any approved Final Plats, site plans, and/or Development Applications procured by NSL for the Development Property; or

(iv) propose or oppose any amendments, modifications or other alterations to this Agreement.

23.1.3 The City agrees not to accept or process any of the foregoing matters from a Developer and/or Sub-developer unless the matter has been approved by the owner of the Development Property.

23.1.4 NSL shall not amend, modify or alter this Agreement or the Design Guidelines, or any Final Plats, Development Agreements and/or site plans approved for the Development Property in a manner that would materially interfere with Developer and/or Sub-developer's rights hereunder in respect of such Development Property, in each case without Developer and/or Sub-

developer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

24. **Effect of Breach.** Notwithstanding any other provision of this Agreement, no breach or default hereunder, by any Person succeeding to any portion of a Property Owner's obligations under this Agreement shall be attributed to Property Owner. Nor may a Property Owner's rights hereunder be canceled or diminished in any way by any breach or default by any such Person. No breach or default hereunder by a Property Owner shall be attributed to any Person succeeding to any portion of such Property Owner's rights or obligations under this Agreement, nor shall such transferee's rights be canceled or diminished in any way by any breach or default by such Property Owner. During the development of the Project, until final approval of and dedication to the City, Developer, Owners or Owners, and their assigns, transferees, and sub - developers shall maintain the City as an additional named insured where reasonably possible, and without adding unreasonable cost, on any relevant or applicable liability insurance associated with the Project.

25. **Mortgagee Protection.** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any such Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any Person that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Notwithstanding the provisions of this Section, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion. If the City receives a written notice from a Mortgagee requesting a copy of any notice of default given to a Property Owner or a Sub-developer and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to the Property Owner or a Sub-developer, as applicable, any notice of default or determination of noncompliance given to the Property Owner or such Sub-developer. Each Mortgagee shall have the right (but not the obligation) for a period of 90 days after the receipt of such notice from the City to cure or remedy the default claimed or the areas of noncompliance set forth in the City's notice. If such default or noncompliance is of a nature that it can only be cured or remedied by such a Mortgagee upon obtaining possession of the Property, then such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall within 90 days after obtaining possession cure or remedy such default or noncompliance. If such default or noncompliance cannot with diligence be cured or remedied within either such 90 -day period, then such Mortgagee shall have such additional time as may be reasonably necessary to cure or remedy such default or noncompliance if such Mortgagee commences such cure or remedy during such 90 -day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

26. **Termination.**

26.1 This Agreement shall be terminated and of no further effect upon the occurrence of any of the following events:

(i) Expiration of the Term of this Agreement, unless extended as provided in Section 4.3;

(ii) Completion of the Project in accordance with the Development Entitlements and the City's issuance of all required occupancy permits and acceptance of all dedications and improvements required under the Development Entitlements and this Agreement;

(iii) Except for the payment of applicable fees and assessments, as for any specific residential dwelling or other structure within the Project, this Agreement shall be terminated for such dwelling or other structure upon the issuance by City of a certificate of occupancy therefore;

(iv) Entry of final judgment (with no further right of appeal) or issuance of a final order (with no further right of appeal) directing City to set aside, withdraw, or abrogate City's approval of this Agreement,

(v) The effective date of a party's election to terminate the Agreement as specifically provided in this Agreement, or

(vi) in the event that Developer or the project are in default, or where material, contractual and developmental obligations are not met, or any deadlines and conditions of this Agreement, and relevant State and Federal Laws not fulfilled or are violated, after appropriate default notices and cure provisions of this Agreement.

26.2 **Notice of Termination.** City shall, upon written request made by Developer or Developer's successor(s) or assign(s) or any Owner to City's Planning Director, determine if the Agreement has terminated with respect to any parcel or lot at the Property, and shall not unreasonably withhold, condition, or delay termination as to that lot or parcel. Upon termination of this Agreement as to any lot or parcel, City shall upon Developer or Developer's successor(s) or assign(s) or any Owner's request record a notice of termination that the Agreement has been terminated. The aforesaid notice may specify, and Developer or Developer's successor(s) or assign(s) and Owners agree, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement. Termination of the Agreement as to any parcel or lot at the Property shall not affect Developer or Developer's successor(s) or assign(s) or any Owner's rights or obligations under any of the Development Entitlements and Subsequent Entitlements, including but not limited to, the General Plan, Specific Plan, Zoning Ordinance and all other City policies, regulations, and ordinances applicable to the Project at the Property. City

may charge a reasonable fee for the preparation and recordation of any notice(s) of termination requested by Developer or Developer's successor(s) or assign(s) or any Owner.

26.3 **Partial Termination.** In the event of a termination of this Agreement with respect of any portion of the Property, any then-existing rights and obligations of the parties with respect to such portion of the Property shall automatically terminate and be of no further force, effect or operation. However, no termination of this Agreement with respect to any portion of the Property or the Project shall affect in any way the parties' rights and obligations hereunder with respect to any other portion of the Property or Project not subject to the termination. Subject to the provisions of the Default Paragraph 14, the expiration or termination of this Agreement shall not result in any expiration or termination of any Entitlement then in existence, without further action of City.

27. **Insurance and Indemnification.** Each Property Owner shall defend and hold the City and its officers, employees and consultants harmless for any and all claims, liability and damages arising out of the negligent actions or inactions of such Property Owner, its agents or employees pursuant to this Agreement, unless caused by the City's negligence or willful misconduct.

28. **Hazardous, Toxic, and/or Contaminating Materials.** Each Owner shall defend and hold the City and its elected and/or appointed boards, officers, agents, employees and consultants harmless from any and all claims, liabilities, costs, fines, penalties and/or charges of any kind whatsoever relating to the existence and removal, or caused by the introduction of hazardous, toxic and/or contaminating materials by such Property Owner on the Project or arising out of action or inactions of Developer, except where such claims, liability costs, fines, penalties and charges are due to the actions of the City or its elected or appointed boards, officers, agents, employees or consultants.

29. **Binding Effect.** If NSL or another Property Owner conveys any portion of the Property to one or more Sub-developers, the property so conveyed shall have the same rights, privileges, Intended Uses and configurations, and shall be subject to the same limitations and rights of the City, applicable to such property under this Agreement prior to such conveyance, without any required approval, review, or consent by the City, except as otherwise provided herein.

30. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future date any such right or any other right it may have.

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

32. **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, inclement weather, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires 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.

33. **Time is of the Essence.** Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

34. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and NSL each shall designate and appoint a representative to act as a liaison between the City and its various departments and NSL. The initial representative for the City shall be City Manager, or his designee and the initial representatives for NSL shall be Jacob Luekenga. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

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

36. **Applicable Law.** This Agreement is entered into in the City in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

37. **Recordation and Running with the Land.** This Agreement shall be recorded in the office of the Wasatch County Recorder. Copies of the City's Vested Laws, **Exhibit D**, shall not be recorded. A secure copy of **Exhibit D** shall be filed with the City Recorder and each Party shall also have an identical copy. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project Area to which the successor holds title. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Project Area. The obligations of Property Owners hereunder are enforceable by the City, and no other Person shall or may be a third party beneficiary of such obligations unless specifically provided herein.

38. **Authority.** The parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement. Specifically, on behalf of the City, the signature

of the Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to City Policy. This Agreement is approved as to form and is further certified as having been lawfully adopted by the City by the signature of the City Attorney.

39. **Covenant of Good Faith and Fair Dealing.** No party shall do anything which shall have the effect of injuring the right of another party to receive the benefits of this Agreement or do anything which would render its performance under his agreement impossible. Each party shall perform all acts contemplated by this Agreement to accomplish the objectives and purposes of this Agreement.

40. **Further Actions and Instruments.** The Parties agree to provide reasonable assistance to the other and cooperate to carry out the intent and fulfill the provisions of the Agreement. Each of the parties shall promptly execute and deliver all documents and perform all acts as necessary to carry out the matters contemplated by this Agreement.

41. **Partial Invalidity Due to Governmental Action.** In the event state or federal laws or regulations enacted after the Execution Date of this Agreement, or formal action of any governmental jurisdiction other than City, prevent compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified extended or suspended only to the minimum extent necessary to comply with such laws or regulations.

[Signatures appear on the following two pages.]

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

PROPERTY OWNER

NSL PROPERTIES, LLC
Utah limited liability company

By: _____
Name: Jacob Luekenga
Title: Manager

PROPERTY OWNER ACKNOWLEDGMENT

STATE OF UTAH)
:§.
CITY OF LINDON)

On the 1 day of December, 2022, personally appeared before me Jacob Luekenga, who being by me duly sworn, did say that he is the Manager of NSL PROPERTIES, LLC, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

TRINA N COOKE
NOTARY PUBLIC·STATE OF UTAH
COMMISSION# 725852
COMM. EXP. 08-21-2026

_____
NOTARY PUBLIC

CITY

Heber City, a political subdivision of the State of Utah

By: Heidi Franco
Name: Heidi Franco
Its: Mayor

HEBER CITY CORPORATE Seal WASATCH COUNTY UTAH

Approved as to form and legality:

City Attorney

By: _____

Attest:

City Recorder

By: Trina N Cooke

CITY ACKNOWLEDGMENT

STATE OF UTAH)
:§.
CITY OF HEBER)

On the 5th day of December, 2022, personally appeared before me Heidi Franco who being by me duly sworn, did say that she is the Mayor of City of Heber, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its governing body.

TRINA N COOKE
NOTARY PUBLIC • STATE OF UTAH
COMMISSION# 725852
COMM. EXP. 08-21-2026

Trina N Cooke
NOTARY PUBLIC

EXHIBIT A

TO DEVELOPMENT AGREEMENT FOR NSL RESIDENTIAL DEVELOPMENT

Legal Description

A portion of Lot 1 and all of Lot 2 of the North Horizon Subdivision, Entry No. 234823, Recorded in Wasatch County's Recorder's Office, particularly described as follows:

Commencing at the east corner of Lot 1; thence south 36* 14' 19" west 151.00 feet; thence south 28* 30'00" west 381.74 feet to the point of the beginning; thence south 28*30'00" west 202.57 feet; thence north 70*20'17" west 104.96 feet; thence north 27*36'12" west 120.99 feet; thence north 83*24'38" west 111.00 feet; thence north 32*0'0" west 130.00 feet; thence north 62*0'0" west 120.00 feet; thence north 120 feet; thence north 26*0'0" west 132.00 feet; thence north 47* 40'0' west 110.00 feet; thence north 31*10'0" west 110 feet; thence north 18*14'32" west 96.98 feet; thence north 63*43'50" east 303.36 feet; thence south 36*46'30" east 820.30 feet to the point of the beginning.

EXHIBIT B
TO DEVELOPMENT AGREEMENT FOR NSL RESIDENTIAL DEVELOPMENT
Site Plan

EXHIBIT C
TO DEVELOPMENT AGREEMENT FOR NSL RESIDENTIAL DEVELOPMENT
North Fields

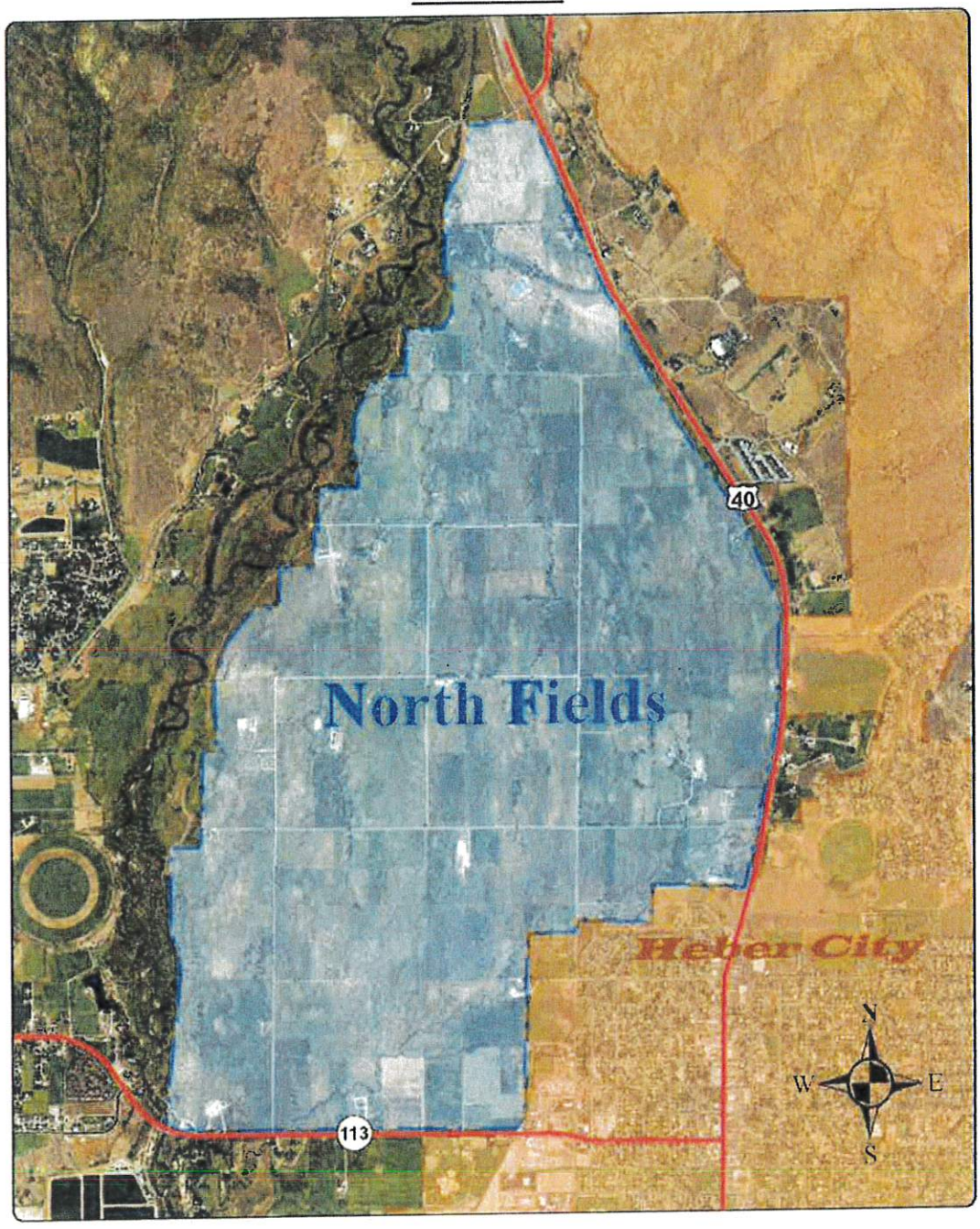

EXHIBIT D
TO DEVELOPMENT AGREEMENT FOR NSL RESIDENTIAL DEVELOPMENT

City's Vested Laws

For the City's Vested Laws, reference the North Village Overlay Zone (NVOZ), adopted by the City Council of Heber City, Utah, in Chapter 18.81 of Heber Municipal Code on March 16, 2021.

WHEN RECORDED, RETURN TO:

Heber City
Attention: City Recorder
75 North Main Street
Heber City, Utah 84032

Tax Parcel Nos.:

(Space above for Recorder's use only.)

DEVELOPMENT AGREEMENT FOR THE FINCH CREEK MIXED USE DEVELOPMENT

THIS DEVELOPMENT AGREEMENT FOR THE FINCH CREEK MIXED USE DEVELOPMENT (this "**Agreement**") is made and entered into as of the 5th day of December, 2022, by and between HEBER CITY, a political subdivision of the State of Utah (the "**City**"), and Finch Creek, LLC, a Utah limited liability company ("**FINCH CREEK**"). Each of FINCH CREEK and the City are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. The capitalized terms used in these Recitals are defined in Section 1.2, below.

B. FINCH CREEK is the owner of approximately 11.63 acres of undeveloped real property located at 3320 N., 3390 N. and 3400 N. Hwy 40 (Parcel # 00-0021-2028, #00-0007-7847 & #00-0021-2027) in Wasatch County, State of Utah, a legal description of which is set forth in **Exhibit A**, attached hereto (the "**Property**"). This Agreement and the Site Plan meets the intent of, and is guided by, the Envision 2050 Heber General Plan.

C. On Nov 15, 2022, the City approved and adopted, a Site Plan for the Project, subject to the Parties entering into this Agreement and the agreeing to annexation of the Property into the City. The Site Plan for the Property shall allow for a mixed use development, including recreational and open space uses. All such uses shall be consistent with the permitted uses in the NVOZ.

D. Provision of infrastructure to the Property is vital to its development in accordance with the Site Plan and this Agreement and, consistent with the foregoing, FINCH CREEK will prepare an Infrastructure Plan (aka Civil Drawings).

E. FINCH CREEK may not be the developer of the entire Property but may sell or otherwise convey some or all the Property to one or more Persons who will undertake the actual development work (each a **"Developer"** and together, the **"Developers"**). Notwithstanding that there may be sub-developers, transferees, purchasers or assignees from the original Developer or

Developers, only those parties that FINCH CREEK specifically designates in a written agreement as their "Successor", or "Successor's in Interest", shall retain the right and standing to oppose, or seek amendment of this Agreement, or any other subsequent amendment thereto. Any third party not so specifically designated, that may purchase or receive portions, phases, lots or parts of this Development/Project, shall have no standing to oppose or seek amendment of any part of this Agreement, nor have any part in any negotiations to alter, change or amend. Additionally, notwithstanding the foregoing, once all backbone improvements are laid down, implemented and approved by the City, any subsequent Developer, Assignee, Successor, or Successor in Interest obtaining any portion, or part, or phase of this Development/Project by sale, transfer or assignment shall have no standing to oppose or seek to amend any portions of this Development/Project.

F. The Parties now desire to enter into this Agreement to establish and set forth the rights and responsibilities of FINCH CREEK and its successors in interest, including but not limited to, those developers, sub-developers and builders who will develop the Property as a mixed use project in accordance with the terms hereof, and to establish the rights and responsibilities of the City to annex the Property into the boundaries of Heber City and to authorize and regulate such development pursuant to the requirements of this Agreement.

G. The City Council has reviewed this Agreement and determined that it is consistent with the Act, the Zoning Ordinance and the Heber City General Plan, and that it provides for and promotes the health, safety, welfare, convenience, aesthetics, and general good of the community as a whole. The Agreement does not contradict, and specifically complies with, and is governed by Utah Code Ann Section 10-9a. The Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to the terms of, the Act.

H. FINCH CREEK and the City have cooperated in the preparation of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and FINCH CREEK hereby agree to the following:

TERMS

1. **Incorporation of Recitals and Exhibits/ Definitions.**

1.1 **Incorporation.** The foregoing Recitals and **Exhibits A** through **E** are hereby incorporated into this Agreement.

1.2 **Definitions.** Any capitalized term or phrase used in this Agreement has the meaning given to it below or in the section where the definition of such term is given.

1.2.1 **Act** means the Municipal Land Use, Development, and Management Act, Utah Code Ann. §§10-9a-101, *et seq.* (2008).

1.2.2 **Administrative Action** means and includes any amendment to the Exhibits to this Agreement or other action that may be approved by the Administrator as provided in Section 17.

1.2.3 **Administrator** means the Person designated by the City as the Administrator of this Agreement.

1.2.4 **Agreement** has the meaning set forth in the preamble and includes all Exhibits attached hereto.

1.2.5 **Public Gathering Areas** means any public owned area or public park identified on the Site Plan that is intended to provide services to the community at large, such that it would be considered to be a System Improvement.

1.2.6 **Applicant** means a Person submitting a Development Application, a Modification Application or a request for an Administrative Action.

1.2.7 **Assessment Area** means an area or areas created by the Special Service District pursuant to Utah Code Ann. § 11-42-101, *et seq.* (2008), or other applicable State Law, with the approval of FINCH CREEK and other Property Owners, if required, to fund the construction of some or all of the Backbone Improvements.

1.2.8 **Backbone Improvements** means those improvements shown as such in the Infrastructure Plan and which are, generally, infrastructure improvements that are intended to support the overall development of the Property and not merely a part of the development of any particular Subdivision. Backbone Improvements are generally considered to be in the nature of "System Improvements," as defined in Utah Code Ann. § 11-36a-101, *et seq.* (2008).

1.2.9 **Building Permit** means a permit issued by the City to allow construction, erection or structural alteration of any building, structure, private or public infrastructure, On-Site Infrastructure on any portion of the Project, or to construct any Off-Site Infrastructure.

1.2.10 **CC&Rs** means one or more declarations of conditions, covenants and restrictions regarding certain aspects of design and construction on the Property recorded or to be recorded with regard to the Property or any part thereof, as amended from time to time.

1.2.11 **Capital Facilities Plan** means a plan adopted or to be adopted by the City in the future to substantiate the collection of Impact Fees as required by State law.

1.2.12 **City** means the City of Heber, a political subdivision of the State of Utah.

1.2.13 **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage to review certain aspects of the development of the Project.

1.2.14 **City Updated North Village Street Master Plan** shall mean the City's Street Master Plan and Street Capital Facilities Plan.

1.2.15 **City Updated North Village Stormwater Master Plan** shall have the meaning provided in Paragraph 12.3.

1.2.16 **City's Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City that will be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and that may, in accordance with the provisions of this Agreement, be applicable to the Development Application.

1.2.17 **City's Vested Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City related to zoning, subdivisions, development, public improvements and other similar or related matters that are in effect as of the Effective Date.

1.2.18 Intentionally Omitted.

1.2.19 **Council** means the elected City Council of the City.

1.2.20 **Default** shall have the meaning provided in Paragraph 14.

1.2.21 **Design Guidelines** means the design guidelines referenced in the North Village Over Lay Zone.

1.2.22 **Developer** shall have the meaning provided in Recital E.

1.2.23 **Development Application** means an application to the City for development of a portion of the Project, a Building Permit, improvement plans or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.24 **Development Property** shall have the meaning provided in Section 23.1.

1.2.25 **Development Report** means a report containing the information specified in Section 3.4 submitted to the City by FINCH CREEK or any successor for the sale of any Parcel to a Developer, Sub-developer or Builder or the submittal of a Development Application by a Developer, Sub-developer or Builder pursuant to an assignment from FINCH CREEK.

1.2.26 **Development Unit** means either a commercial or residential use of property with respect to which an ERU calculation can be applied in accordance with this Agreement.

1.2.27 **Effective Date** means the date on which the later of both the following shall have occurred: the Parties have executed this Agreement and the City's annexation of the Property has been completed and takes effect pursuant to Utah Code Ann. §10-2-425.

1.2.28 **Eligible Improvements** shall have the meaning provided in Section 8.9.

1.2.29 **Development Entitlements** shall have the meaning provided in Section 3.1 of this Agreement.

1.2.30 **Equivalent Residential Unit (ERU)** means the residential density allocated to: (a) any given Residential Unit when measured against a single-family dwelling unit, which measure shall be determined pursuant to Section 18.21.020.2.2(2) of the City's Vested Laws; and (b) commercial ERUs will be calculated as provided in Section 18.21.020.2.2(2) of the City's Vested Laws. For purposes of clarity, the Parties agree that no ERUs shall be allocated to schools and churches.

1.2.31 **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. §10-9a-603, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.2.32 **Highway 40** means a "state highway" type transportation corridor maintained by the Utah Department of Transportation and referred to as U.S. Highway 40.

1.2.33 **Homeowners' Association(s)** means one or more associations formed pursuant to Utah law to perform the functions of an association of property owners.

1.2.34 **Impact Fees** means those fees, assessments, exactions or payments of money imposed by the City as a condition on development activity as specified in Utah Code Ann. §§ 11-36a-101, *et seq.*, (2008).

1.2.35 **Improved Open Space** means open space, including but not limited to that which has been improved with one or more of the following, as selected by the City Manager or his or her designee: first and foremost those amenities listed in the City's Park's Site Plan, churches, schools and associated lands, playgrounds, tennis courts, club houses, swimming pools, trail systems, trail heads, skate parks, volleyball courts, Public Gathering Areas or parks, sports fields, bathrooms, irrigated landscaping, associated paved parking for improved open space, pavilions, playgrounds, trailheads, drinking fountains, natural areas integrated with open spaces and park areas, or other improvements.

1.2.36 **Infrastructure Plan** means the conceptual infrastructure plan, including culinary water, secondary water, storm water, sanitary sewer and private roads, as amended from time to time.

1.2.37 **Intended Uses** means the use of all or portions of the Project for open spaces, parks, trails and other uses permitted in the Zoning Ordinance, Design Guidelines and as shown on the Site Plan.

1.2.38 **Site Plan** means the Site Plan attached as **Exhibit B**, which Site Plan is a conceptual/illustrative depiction of the presently anticipated development plan for the Property, which Site Plan may be modified from time-to-time by FINCH CREEK to respond to market, engineering and other development objectives.

1.2.39 **Modification Application** means an application to amend this Agreement (but not including those changes which may be made by Administrative Action).

1.2.40 **Mortgage** means (1) any mortgage or deed of trust or other instrument or transaction in which the Property, or a portion thereof or a direct or indirect ownership or other interest therein, or any improvements thereon, is conveyed or pledged as security, or (2) a sale and leaseback arrangement in which the Property, or a portion thereof, or any improvements thereon, is sold and leased back concurrently therewith.

1.2.41 **Mortgagee** means any holder of a lender's beneficial or security interest (or the owner and landlord in the case of any sale and leaseback arrangement) under a Mortgage.

1.2.42 **Intentionally omitted.**

1.2.43 **Non-City Agency** means a governmental or quasi-governmental entity, other than those of the City, which has jurisdiction over the approval of an aspect of the Project.

1.2.44 **North Fields** means that certain real property located generally west of the Property and generally depicted on **Exhibit C** attached hereto.

1.2.45 **Notice** means any notice to or from any Party to this Agreement that is either required or permitted to be given to another Party.

1.2.46 **Off-Site Infrastructure** means the off-site public or private infrastructure, such as roads and utilities, specified in the Infrastructure Plan that is necessary for development of the Property but is not located on the portion of the Property that is subject to a Development Application.

1.2.47 **On-Site Infrastructure** means the on-site public or private infrastructure, such as roads or utilities, specified in the Infrastructure Plan that is necessary for development of the Property and is located on that portion of the Property that is subject to a Development Application.

1.2.48 **On-Site Retention/Detention** shall mean a storm drain facility that is provided on-site upon private property within the development.

1.2.49 **Open Space** means the following: all parks (regardless of size or type); pedestrian, bicycle, and equestrian trails and pathways; passive open spaces, water features, and natural habitat areas; parkways and commonly maintained natural or landscaped areas; sidewalks, street tree plantings and medians; ballfields and recreational spaces (including, without limitation, any such facilities provided by or upon a school or church site, excepting areas within building footprints other than community gardens); drains and detention basins and swells, canals, protected slope areas, and any other quasi-public area that the City determines to be Open Space as a part of the approval of a Development Application. Open Space includes, but is not limited to, those areas identified as Open Space in the Site Plan.

1.2.50 **Outsourcing** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application, as is more fully set out in this Agreement.

1.2.51 **Parcel** means an area identified on the Site Plan with a specific land use designation that is intended to be further subdivided for future development.

1.2.52 **Person** means any natural person, corporation, Limited Liability Company, trust, joint venture, association, company, partnership, limited partnership, governmental authority or other entity.

1.2.53 **Phase** means the development of a portion of the Project.

1.2.54 **Intentionally omitted.**

1.2.55 **Planning Commission** means the City's Planning Commission.

1.2.56 **Project** means the mixed-used Site Plan to be developed on the Property in accordance with this Agreement, including, without limitation, all associated public and private facilities, Intended Uses, Phases and all of the other aspects approved as part of this Agreement and the Site Plan.

1.2.57 **Intentionally omitted.**

1.2.58 **Property Owner or Property Owners** means FINCH CREEK and any other successor-in-interest to FINCH CREEK as an owner of the Property or any portion thereof, including but not limited to, Developers, Sub-developers and builders.

1.2.59 **Site Plan** means the conceptual plan submitted to the City for the first stage of the approval of a mixed use development in accordance with the City's Vested Laws.

1.2.60 **Sub-developer** means any Person that obtains title to a Parcel from a Developer for development.

1.2.61 **Subdivision** means the division of any portion of the Project into a subdivision pursuant to State Law and/or the Zoning Ordinance.

1.2.62 **System Improvement** means those elements of infrastructure that fall within the definition of System Improvements pursuant to Utah Code Ann. §11-36a-102(21). System Improvements shall be defined as set out in the North Village Capital Facilities Plans and Master Plans.

1.2.63 **Zone** means the City's North Village Overlay District Zone.

1.2.64 **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that is in effect as of the Effective Date.

2. **Development of the Project.** Development of the Project shall be in accordance with this Agreement, the City's Vested Laws and the City's Future Laws as expressly set forth in this Agreement. The Parties acknowledge and agree that if there is a conflict with this Agreement and the City's current or future laws, then this Agreement shall supersede and take precedence to the fullest extent possible.

3. **Development of the Property in Compliance with the Site Plan.**

3.1 **Project Density.** Except as may be otherwise augmented hereinafter, Property Owners shall be entitled to and are vested with the right to develop and construct up to 69.72 ERUs on the Property consistent with the Intended Uses specified in the Zoning Ordinance and generally identified on the Site Plan (collectively, the "**Base Density Entitlements**"). The Base Density Entitlements represent the base density allocation per gross acre allowed by the City's Vested Laws and have been approved pursuant to the City's review of the Site Plan in accordance with the requirements of the North Village Overlay District Zone. In addition to the Base Density Entitlements, Property Owners shall be entitled to and are vested with the right to develop and construct an additional 3.5 ERUs on the Property consistent with the Intended Uses specified in the Zoning Ordinance and generally identified on the Site Plan (collectively, the "**Bonus Density Entitlements**," and together with the Base Density Entitlements, the "**Development Entitlements**"), which reflects a five percent (5%) increase in base density granted by reason of the Low Income Housing requirements imposed pursuant to this Agreement.

3.2 **Intended Uses by Parcel and Densities.** Intended Uses and Densities currently contemplated for each Parcel are shown on the Site Plan for the Property, which plan has been prepared in compliance with the requirements of the Heber City ordinances set forth in Chapter 17.20 Plans of the City's Vested Laws. Uses on the property shall not include stacked flats unless approved by the City Council.

3.3 **Use of Density.** Notwithstanding the maximum gross density permitted under the Zone, FINCH CREEK may allocate the Development Entitlements among any Subdivision within the Project;

3.4 **Accounting for Density for Parcels Sold to Sub-developers.** In connection with the sale of any Parcel sold by FINCH CREEK to a Developer or Sub-developer, FINCH CREEK shall provide the City with a written document specifying the identity of the Person to whom the Parcel is sold, the allocation, if any, of any Development ERUs associated with such Parcel, and the Open Space requirements and/or obligations associated with such Parcel. In connection with the recordation of a Final Plat or other document of conveyance for any Parcel sold to a Developer or Sub-developer, FINCH CREEK shall provide the City Recorder with a development report (a "**Development Report**") identifying the Parcel(s) sold, the Residential Development ERU and/or other type of use or Development Unit allocated with the Parcel(s), the Development ERU remaining with FINCH CREEK and any material effects of the sale on the Site Plan.

3.4.1 Return of Unused Density. If a Developer or Sub-developer cannot or does not utilize all of the Development ERU allocated to it in connection with the transfer of one or more Parcels at the time the Developer or Sub-developer receives approval for the final Development Application for such

transferred Parcel(s), the unused Development ERU shall automatically revert back to FINCH CREEK. Such Development ERU shall be accounted for in any subsequent Development Report that FINCH CREEK, or any of its successors in interest may be required to file with the City Recorder.

3.5 **Parcel Sales.** The City acknowledges that the precise location and details of the public improvements, lot layout and design and any other similar item regarding the development of a particular Parcel may not be known at the time of the sale of a Parcel.

3.6 **Low Income Housing Requirements.** For the purposes of this Agreement, Low Income or Affordable Housing shall maintain a selling price that is affordable for individuals or families with an income of less than 60% of the average median income (AMI) in Wasatch County, Utah. A minimum of 3.5 ERU's shall be deed restricted in perpetuity and sold or rented at an affordable rate to families earning no more than sixty percent (60%) of the average median income (60% AMI). FINCH CREEK shall reasonably disperse the Low Income Housing units throughout the Project. FINCH CREEK shall also be entitled to allocate any such Low Income Housing requirements to Developers and/or Sub developers as FINCH CREEK may elect. The Low Income Housing ERUs shall be developed on a proportional basis with the development. Developer and the City shall follow and comply with any deed restrictions as outlined in the Low Income Housing Ordinance & Plan. Payment of a fee in lieu to fulfill the requirements of the Low Income Housing Ordinance & Plan is not an option, unless specifically agreed to by the City. Fractions of required Low Income Housing ERUs may be implemented with the payment of a fee in lieu option.

3.6.1 Allocation of Low Income Housing. At least one half of the required affordable housing (ERUs) shall be sold to parties that shall be required to reside in the units as their primary residence, "Owner-Occupied", with a specific restriction not to allow said units to be rented. ERUs constructed as Low Income Housing in the Project shall be deed restricted and preserved in perpetuity for those income qualified at 60% or less of the Average Medium Income for Wasatch County, Utah.

3.6.2 Rights of First Offer. Heber City, or its designee, shall have the first right to purchase all affordable dwelling units (aka, AMI deed restricted properties, or affordable deed restricted units). In the event that Heber City does not exercise or execute on its said option to purchase, then FINCH CREEK, and its successors, shall grant or cause the applicable Developers and/or Sub-developers to grant to the following entities and their employees, in descending order of priority, a right to purchase Low Income Housing constructed and operated as affordable housing and available within the Project for sale to income qualifying households otherwise

meeting the requirements of this Agreement: the **City**, the Wasatch County School District (the "**District**") and Wasatch County (the "**County**"). In the event the City, the District, and the County do not exercise their respective first rights, the applicable Low Income Housing Units may be sold, as the case may, be to members of the general public meeting the income qualification requirements, employed in Wasatch County and living or desiring to live in Wasatch County.

3.6.2.1 Deed Restrictions Protecting the Affordability and Sustainability of the Affordable Homes at FINCH CREEK MIXED USE DEVELOPMENT.

a. Prior to final approval for the Finch Creek Mixed Use Development, and, prior to transfer of ownership from Developer/ Owner of any Affordable Housing Units/ Homes, Developer/ Owner shall negotiate and enter into with the City a ***Deed Restrictions Covenant,*** *(which shall be recorded with the Wasatch County Recorder),* that shall serve as a Covenant Running With the Land to protect the affordability and sustainability of the Affordable Units/homes at Finch Creek Mixed Use Development, Heber City, Wasatch County, Utah. Some of the terms of such a Covenant should include, but shall not be limited to the following:

1. The Covenant is to provide and articulate terms, conditions, and restrictions. The Covenant shall be enforceable by the City and, upon its execution and recording in the public records of the County Recorder of Wasatch County, Utah, shall run with the land, enforceable against the Owners; each Unit Owner, and each Unit Owner's successors interest, assignees, heirs, devisees, mortgagees, lessees, trustees, beneficiaries, executors, administrators, personal representatives; any subsequent owners; and any other parties claiming an interest in the Property. In addition to the recording of this Covenant, Developer/Owner shall cause that any deed or plat map associated with any affordable housing properties or units shall reference said Covenant.

2. The City shall forever retain the right to purchase all Affordable housing units, in perpetuity, pursuant to such a Covenant running with the land and units.

3. Administration and Enforcement. The City shall have the right to enforce the terms of such a Covenant and may enforce its terms as it deems administratively proper through its employees, administrative offices, agents, or assigns. The Heber City Police Department shall be authorized to investigate certain affordable housing violations and to issue citations pursuant to

applicable City Code and State Statute. The City may enforce this Covenant by any appropriate legal or equitable action including but not limited to specific performance, injunction, abatement, damages and such other remedies and penalties as may be specified in this Covenant. This Covenant shall inure to the benefit of the City and nothing herein shall be construed as creating a general scheme to the enforced by Unit Owners against each other.

4. At least 50% of the required affordable ERUs shall be Owner-Occupied unless a Unit Owner shall receive prior written consent of the City, in its sole and absolute discretion, for an exception. Each of these Unit Owners shall occupy the Unit as a Primary Residence. Unless the City gives its prior written consent, each Unit Owner shall not obtain, purchase, or otherwise acquire any other direct or indirect interest in real property while the Unit owner is a Unit Owner; neither the Unit Owner nor any person in the Unit Owner's Household shall establish a trust of which the Unit Owner is a beneficiary if such trust's corpus contains any other real property.

5. Resale of Unit. The Unit Owner shall send Notice to the City of such Unit Owner's intent to sell the unit (the date of such Unit Owner's Notice to the City shall be the "Offer Date") and shall not Sell any interest in such Unit without written consent of the City.

3.6.3 **Off-site Low Income Housing.** At the discretion of the developer, some or all of the affordable housing requirements may be met in partnership with the City to allow construction and location of affordable housing units off site on any available property whether owned by the City, third parties or other entities. The exact details of such an arrangement, if presented by the City and discretionally negotiated by developer, would be negotiated with the City at the time of development, if possible, and if the City has the property available at that time. It is the intent that such option would not reduce the developer's requirements below that required in this MDA.

3.6.4 **Timing.** At least 50% of the required Low Income Housing units shall be constructed no later than the construction of the first 30 percent of the Market Rate units. The full Low Income Housing requirement shall be completed no later than construction of the first 60 percent of the Market Rate units.

3.6.5 **Non-Residential Development Timing.** Any commercial areas shown upon the Master Plan for the development shall be rough graded and

provided with access to adequate utilities to serve the land uses no later than the construction of 60 percent of the residential units within the development.

4. **Zoning and Vested Rights.**

4.1 **Compliance with City Requirements and Standards.** Developer and Owners expressly acknowledge that nothing in this Agreement shall be deemed to relieve Developer or any Continuing or Successor Owner from its obligations to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and site plans for the Project, which are in place at the time of a complete and approved application, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of the City except as otherwise provided in this Agreement. Specifically, Developer and Owner acknowledge and agree that in the event adherence to the City Updated North Village Storm Water and the North Village Street Master Plans, may or actually does affect or compromise entitlements, Developer and Owner shall not be allowed to claim damages, takings or costs from or against the City.

4.2 **Current Zoning.** Concurrently with its execution of this Agreement, the City has annexed the Project to the City and zoned the Property under the North Village Overlay District Zone. The North Village Overlay District Zone (Section 18.21.010 and Section 18.21.060 of the Heber City Code) was approved by the Council on March 16, 2021.

4.3 **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and continue either for a period of ten (10) years, or the day upon which the final certificate of occupancy is approved and granted, whichever first occurs, (the "**Term**"), unless it is terminated in accordance with Section 26. The Term may, at FINCH CREEK's option, be extended for one (1) additional five (5) year period, provided FINCH CREEK is not in material default of any provisions of this Agreement and after providing the City with written notice not less than six (6) months prior to the scheduled expiration date. Unless otherwise agreed between the Parties, FINCH CREEK's vested rights and interests set forth in the Agreement shall expire at the end of the Term, or as the Term may be extended by mutual agreement of the Parties. Upon termination of this Agreement for any reason, the obligations of the Parties to each other created under this Agreement shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to the expiration of the Term or termination of this Agreement shall

be rescinded or limited in any manner, nor will any rights or obligations of Property Owners or the City intended to run with the land be terminated.

5. **Approval Processes for Development Applications.**

5.1 **Phasing.** The City acknowledges that FINCH CREEK, Developers, and Sub-developers who have purchased Parcels of the Property may submit multiple applications from time to time to develop and/or construct portions of the Project in phases.

6. **Open Space, Improved Public Parks, and Trails Requirements.**

6.1 **Development Timing: Open Space, Neighborhood Parks, and Trails.** Neighborhood Parks and Trails shall be constructed and developed concurrently with the respective development within which said trails are located. The City shall not be obligated to make final approval and place into warranty any public improvements located within or constructed in conjunction with the development of a particular Phase until the parks and trails located within such Phase have been constructed, or the City has received an improvement completion assurance in the form of either a cash escrow deposit, a letter of credit or such other form of completion assurance as may then be accepted by the City with respect to such parks and trails meeting the requirements of Section 10-9a-604.5 of the Utah Municipal Land Use Development Management Act. Open space, parks and trails shall comply with the requirements of the NVOZ.

6.2 **Dedication of Open Space or Trails.** Property within the canal easements shall be granted and dedicated by the Property Owner to the City, or other public entity as determined by the City. Dedication of Trails to the City shall be by plat recordation or by dedication by deed from the applicable Property Owner which shall be without any financial encumbrance or other encumbrance (including easements) which unreasonably interferes with the use of the property for Open Space and/or Trails; In the event trails are established solely for the internal use by Homeowners' Association, no public easement shall be granted by FINCH CREEK or any other Property Owner. Construction and dedication of the Highway 40 trail shall occur within the first phase of development.

6.3 **Maintenance of Open Space/or Trails.** Except as otherwise specifically provided in this Agreement, upon acceptance by the City of Trails and after formal possession, the City shall be responsible for maintaining the Public Trail after final inspection and acceptance of the applicable improvements included therein, if any. If the Trails are dedicated to an entity other than the City, the dedication shall provide for the maintenance of the applicable Trails. Unless approved by, and dedicated to the City, any associated landscaping with such Trails shall be maintained by the respective property owners association.

6.4 **Tax Benefits**. The City acknowledges that Property Owners may seek to qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring Open Space and/or Trails to the City or to a charitable organization. Property Owners shall have the sole responsibility to claim and qualify for any tax benefits sought by Property Owners by reason of the foregoing. The City shall reasonably cooperate with Property Owners to the maximum extent allowable under law to allow Property Owners to take advantage of any such tax benefits.

6.5 **North Fields Preservation**. FINCH CREEK, for itself and with respect to each subsequent Owner of the Property, agrees that upon issuance of a building permit for a Development Unit, the Owner of such Development Unit shall pay to the City a fee equal to $2,500 per ERU or partial ERU attributable to such Development Unit (the "**North Fields Preservation Fee**"). The City shall utilize funds collected pursuant to the North Fields Preservation Fee solely for the purpose of preserving open space in the North Fields, including purchase of development rights. The City agrees that the North Fields Preservation Fee shall not be charged for Development Units constructed and operated as Low Income Housing Units.

7. **Public Improvements.**

7.1 **Utilities and On-Site Infrastructure.** The City acknowledges that FINCH CREEK will prepare an Infrastructure Plan (a/k/a Civil Drawings). The Parties acknowledge that there will be a Capital Facilities Plan for the Public Infrastructure approved and adopted by the City. The Property Owners shall have the responsibility and obligation, to construct and fund, or cause to be constructed and installed, in phases, the On-Site and Off-Site Infrastructure according to the Capital Facilities Plan that is necessary to support the development proposed within a specific Development Application. If any Property Owners elect to construct any On-Site Infrastructure or Off-Site Infrastructure required by the Capital Faculties Plan as a condition of approval of a Development Application, the Property Owner shall pay the cost thereof, subject to its reimbursement rights set forth in Section 7.2. The City shall comply with the statutory processes and all other applicable laws, rules, and regulations governing such work. Parties contemplate that each Phase will be served by sanitary sewer, culinary water and secondary irrigation systems provided by others.

7.2 **Excess Improvements/Upsizing.** Any infrastructure requested by the Developer or required by the Development shall be the responsibility of the Developer. The City and FINCH CREEK acknowledge and agree that, as a part of the Capital Facilities Plan, certain portions of the infrastructure improvements shown on the Capital Facilities Plan (including both On and Off-site Infrastructure) may need to be enlarged, increased or otherwise "upsized" or upgraded (collectively, the "**Excess Improvements**") at the request of the City or other responsible Non-City Agency to serve, directly or indirectly, developments or

future developments on land areas outside of the Project's boundaries or owned by parties other than Property Owners (collectively, the "**Benefitted Property**"). In recognition of the foregoing, and as a material inducement to the execution of this Agreement by FINCH CREEK:

7.2.1 **Reimbursements.** The City agrees that it shall reimburse the applicable Property Owners for, or to the extent permissible under then-applicable law and as identified in the approved Capital Facilities Plan, costs incurred by the applicable Property Owners in the construction of Excess Improvements. Subject to the City's approval, Property Owners may, from time to time, oversize and/or install and construct portions of the infrastructure specified in the Infrastructure Plan that are System Improvements. The City shall ensure that Property Owners, as applicable, are reimbursed for actual costs from Impact Fees for oversizing. City shall also make available reimbursement/pioneering agreements to reimburse Property owners for installing Off-site System Improvements to serve their property as required by State law. Said pioneering agreements shall have a maximum duration of 10 years from the date of City's acceptance of associated improvements.

7.2.2 **Building Fee and Impact Fee Credits.** To the extent that any reimbursements paid to a Property Owner pursuant to the Reimbursement Procedures do not fully reimburse Property Owners for the amounts expended or costs incurred by the Property Owner in the construction of the Excess Improvements, City shall credit the applicable Property Owner up to the value of such deficiency against the Impact Fees applicable to the Project.

7.2.3 **Backbone Improvements.** Property Owners shall not be compensated for any "upsizing" of the Backbone Improvements that are not included as System Improvements in the approved Capital Facilities Plan.

7.2.4 **Phasing of Master Planned Facilities**. Public Facilities shown on the City's Capital Facilities Plan shall be constructed within the first phase of development.

7.3 Secondary Access. Subject to approval of the City and Wasatch County Fire Service District, FINCH CREEK shall cause one of the proposed Secondary Access Roads to be completed in connection with the first phase of the Project. If approved, said Secondary Access Road shall satisfy the requirements of the City and the Wasatch County Fire Service District with respect to adequate ingress and egress for the Project.

7.4 **Variations between Infrastructure Plan, Capital Facilities Plan and any City's Future Capital Facilities Plan.** The Parties acknowledge that the City may adopt a new or amended Capital Facilities Plan. Additionally, the City may adopt new or amended Impact Fee ordinances as permitted by State Law for the collection of Impact Fees to pay for the construction of parts or all of the Backbone Improvements. The new Capital Facilities Plan shall in no way change any land uses or permitted uses of the Project; limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this Agreement and relevant sections of the Zoning Ordinance are satisfied. The Capital Facilities Plan and any future Capital Facilities Plan may differ from the Infrastructure Plan. As a part of the approval of a Development Application, the City may require Property Owners to build portions of the Backbone Improvements as shown on the Capital Facilities Plan (after it is adopted) instead of as shown on the Infrastructure Plan. If the Parties cannot reach agreement on the terms of a reimbursement agreement, the terms of such a reimbursement agreement shall be subject to the mediation and arbitration provisions of Section 14. Notwithstanding the above, nothing herein obligates the City to pay for the minimum backbone infrastructure needed for the Project.

7.5 **No Additional Off-Site Infrastructure Requirements.** Notwithstanding anything to the contrary in the City's Vested Laws, the City shall not, directly or indirectly, charge Developers or Sub-developers, or any of their respective affiliates or successors, any development fees, impact fees, water hookup fees, or any similar fees, charges, assessments or exactions for Off-Site Infrastructure not contemplated in the Capital Facilities Plan, or subsequent updates to said Plan. However, any and all such development fees, impact fees, water hookup fees, or any similar fees, charges, assessments or exactions for On-Site Infrastructure, shall be borne by Developers and Sub-developers, or any of their respective affiliates or successors, or residents, regardless of whether they are off-site or on-site, pursuant to the Capital Facilities Plan. In the event that Developer or Sub-developer is required to build Off-Site Infrastructure, and subject to the aforementioned 10 year limited duration, in the event pioneering agreements are used, the City would collect a pro-rata share from future, benefitting developers.

7.6. **Modifications of Infrastructure Locations and the Boundaries of the Development Areas.** The City acknowledges that the exact locations of On and Off-Site Infrastructure and the boundaries of the Parcels are conceptual in nature and that additional surveying, engineering and similar studies are needed to finalize lot locations, road and utility alignments as well as road and utility sizing. Therefore, Parcel boundaries, road and utility alignments and, subject to the requirements of this Agreement, infrastructure sizing may be further modified and revised upon the City's approval of subsequent Development Applications in accordance with subsequent subarea infrastructure Site Plans that will be prepared

by Developer for each Phase, and the City's Vested Laws, all subject to City final approval.

7.7 **Utilities Provided by the North Village Special Service District (NVSSD) and the Jordanelle Special Service District (JSSD).** The Parties acknowledge that the Project is currently served by the NVSSD and the JSSD for sewer and water, including secondary water. It is the intent by both Parties that the NVSSD and the JSSD shall continue to serve the project for these utilities through such service districts as long as they have capacity and are capable of serving. The Developer shall provide Commitment Letters from JSSD and NVSSD for the plat and/or phase being served before final approval for that particular plat is granted. Water for phases and all amenities shall be dedicated up front. If at any time it is deemed unfeasible to have JSSD or NVSSD serve the Project, the Developer shall secure other service providers. The City shall not be liable or responsible to provide such services.

7.8. **Water Rights.** Developers shall be required to comply with the JSSD and NVSSD water policies generally applicable to all NVSSD customers.

7.9. **Streets.** Street frontage shall be improved in compliance with the City's Standards and Specifications and the NVOZ.

Development shall obtain UDOT access approval for any accesses onto a state highway.

Development shall comply with the Highway 40 Access Management Agreement.

At the time of development, a transportation hub (area with a bus stop bench and bus turnout), will provided to the satisfaction of the City Engineer within each development, at a location that is central to the transportation network and convenient for access to the center of density within the development.

7.10 **Off-Site Connectivity**. All trails, canals, ditches and roads shall connect with existing and internal trails, canals, ditches and roads located immediately adjacent to the Project such that there is consistent, smooth linkage and connectivity with any and all municipal systems.

8. **Cable/Fiber Optic Service.** Subject to all applicable federal and state laws, as well as the City's authorization and capacity to timely install in a reasonable manner all required infrastructure and provide such service, FINCH CREEK agrees that the City shall be the sole cable/fiber optic network provider for the Development. The City shall install or cause to be installed all underground conduits necessary to make available a minimum of one cable service/fiber optic communication provider, or other comparable information and communication service provider, within the Project. FINCH CREEK shall cooperate and reasonably accommodate the City's installation and development of said cable service/fiber optic network, (CFON).

Notwithstanding the foregoing, Property Owners may contract with any cable TV/fiber optic and other communication provider of their own choice and grant an exclusive right of access and/or easement to such provider to furnish cable TV/fiber optic and other communication services for those dwelling units or other uses on such Property Owner's real property so long as the property is private and not dedicated to the public. The City may charge and collect all taxes and fees with respect to cable, fiber optic and other communication lines as allowed under an applicable City ordinance or state law.

9. **CC&Rs.** As more fully set forth in the CC&Rs, Property Owners shall create and establish one or more Property Owners' Associations, which shall be responsible for the implementation and enforcement of the CC&Rs and the Design Guidelines, including but not limited to architectural reviews, water efficiency, wildfire education, open space, and private street and storm water system maintenance. Recordation of the CC&Rs and creation of such Property Owners' Associations shall be required at the time of Final Plat review and approval. They shall be recorded both with the County and City Recorders. The City shall not be responsible for the implementation and/or enforcement of any such CC&Rs and Design Guidelines. The CC&Rs may be amended by the processes specified in the CC&Rs without any requirement of approval of such amendments by the City. If any provision of the Design Guidelines is inconsistent with a specific provision of this Agreement, the terms of this Agreement shall govern. Prior to the issuance of any building permits for residential, business, commercial or recreational use, but excluding On or Off-Site Infrastructure or other infrastructure proposed by Property Owners, the architectural control committee established by the CC&Rs shall certify that the proposed Development Application complies with the Design Guidelines. To facilitate uniform application and enforcement of the Design Guidelines, the Design Guidelines shall incorporate the design standards set forth in the Zone. Potential avenues of enforcement of the applicable CC&Rs available to the applicable Property Owners' Association or Owners shall include judicial enforcement by a court having subject matter jurisdiction over the particular dispute.

10. **Fees & Bonding.**

10.1 **General Requirement of Payment of Fees.** The City acknowledges its fees are subject to applicable State law. The City's impact fee requirements will be set forth in the City's approved Capital Facilities Plan for the Project area to be developed subsequent to this Agreement and incorporated herein.

10.2 **Warranty Bonding.** To the extent other public financing vehicles are not available for any on or off-site, publicly dedicated infrastructure or similar improvements for the Project, Property Owners, Developers or Sub-developers, as applicable, shall provide performance or warranty bonds, per the Heber City Code, in the form of letters of credit or cash bonds (all forms approved by the City) in relation to any on or off-site, publicly dedicated infrastructure or similar improvements for the Project (the "**Security**"), including, without limitation, roads, curb and gutter, storm drains, sewer, water, street lighting, signs, sidewalks, landscaping within public rights of way, public open space, public parks and trails.

Notwithstanding anything to the contrary under the City's Vested Laws, Property Owners shall not be required to post any such security for any privately-owned infrastructure or improvements, not necessary for public health and safety. The Security required under this section shall otherwise conform to the requirements of State Law.

11. **Construction Standards and Requirements.**

11.1 **Building Permits.** No buildings or other structures that require permits, shall be constructed within the Project without the Developer or Sub-developer first obtaining building permits in accordance with the City's Vested Laws. Developers and Sub-developers may apply for and obtain a grading permit following Preliminary Site Plan approval if the Developers or Sub-developers, as applicable, have submitted and received approval of a site-grading plan and SWPPP and subject to a Land Disturbance Permit issued pursuant to Section 12 below.

11.2 **City and Other Governmental Agency Permits.** Before commencement of construction or development of any buildings, structures or other work or improvements upon any portion of the Project, a Developer or Sub-developer shall, at their expense, secure, or cause to be secured, any and all permits which may be required by the City under the City's Vested Laws or any other governmental entity having jurisdiction over the work. The City shall reasonably cooperate with Developers Sub-developers in seeking to secure such permits from other governmental entities.

11.3 **Limitation to Three Stories.** No structure in the Project shall exceed three (3) stories in height unless approved by the City Council.

12. **Grading, On-Site Processing of Natural Materials; Storm Water Management.**

12.1 **Intentionally Omitted.**

12.2 **On-Site Processing of Natural Materials**. Property Owners may use the natural materials located on the Project, including, without limitation, sand, gravel and rock, and may process such natural materials into construction materials, including, without limitation, aggregate or topsoil, for use in the construction of On and Off-Site Infrastructure, commercial buildings, residential structures, or other buildings or improvements located in the Project and other locations outside the Project. Property Owner shall remediate any damage to trails, infrastructure, drainage or natural water features caused by such use. Notwithstanding this provision, this does not permit the construction of any subdivision or site-specific improvements prior to the requisite Final Plat review and approval for such improvements. Any such uses shall not be considered gravel pits.

12.3 **Storm Water Management**. The Parties acknowledge that the City is presently contemplating a future regional storm water master plan (as finalized and adopted by the City, the "**City Updated North Village Stormwater Master Plan**"). Concurrent with Provision 4.1 above, FINCH CREEK shall be required to comply with all future policies and standards of the North Village Stormwater Master Plan and associated Stormwater Design Manual, yet to be adopted, and all standards and requirements of any and all exhibits attached and incorporated into this Agreement, including but not limited to the Engineering Review Letter.

12.3.1 As a condition of annexation, as outlined in the **City Updated North Village Storm water Master Plan**, Developer and Property Owner shall restore or replace the historic, natural drainage channels downstream of the existing irrigation canals, as outlined and contemplated in the above referenced Master Plan.

12.4 **Intentionally Omitted.**

12.5. **Future Transportation Plan.** The Parties acknowledge that the City is presently contemplating a future Updated North Village Transportation Plan (as finalized and adopted by the City, the (when finalized and adopted by the City, the "**City Updated North Village Transportation Plan**"). Concurrent with Provision 4.1 above, FINCH CREEK shall be required to comply with all future policies and standards of the North Village Transportation Plan, yet to be adopted, and all standards and requirements of any and all exhibits attached and incorporated into this Agreement, including but not limited to the Engineering Review Letter.

13. **Provision of Municipal Services.** The City shall provide all City services to the Project that it provides from time to time to other residents and properties within the City including, but not limited to, development services and inspections, road and streetlight maintenance on public streets, police, and other emergency services. Such services shall be provided to the Project at the same levels of service, and on the same terms and rates as provided to other residents and properties in the City, unless such services are provided by other entities, or, because of the unique topography, location or other special or unique circumstances in the area covered by this Agreement, the cost to provide such services is higher than the like property rate throughout the City, and the City is able to demonstrate by empirical evidence, that such costs are a result of substantive additional or increased costs of municipal services, or financial burden to the City, then such additional costs, including but not limited to those required for additional special fire or police services, may be passed on to the Property Owners by way of special municipal service zonal fees, or some other equivalent of such fees. The City may charge such increased rate fees to Property Owners with respect to the Project, Phase, or sections of a Phase proportionate to their share of the increased cost.

14. **Default.** Any failure by any party to perform any term or provision of this

Agreement, which failure continues uncured for a period of thirty (30) days following the receipt of written notice of such failure from the other party (unless such period is extended by mutual written consent, and subject to Sections 14.2 through 14.4), shall constitute a **"Default"** under this Agreement. Any notice given pursuant to the preceding sentence (**"Asserted Default Notice"**) shall comply with Section 14.1.

14.1. **Notice.** If a Property Owner or the City causes an event which remains uncured for a period of thirty (30) days, this would constitute a Default of this Agreement. The Party claiming a Default shall provide a written Asserted Default Notice to the other Party.

14.1.1. **Contents of the Asserted Default Notice.** The Asserted Default Notice shall:

14.1.1.1 Claim of Default. Specify the claimed event of Default;

14.1.1.2. Identification of Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default;

14.1.1.3. Specify Materiality. Identify why the claimed Default is claimed to be material; and

14.1.1.4. Proposed Cure. Specify the manner in which said failure may be satisfactorily cured.

14.2. **Cure.** Following receipt of an Asserted Default Notice, the defaulting Party shall have sixty (60) days in which to cure such claimed Default (the "Cure Period"). If more than 60 days is required for such cure, the defaulting Party shall have such additional time as is reasonably necessary under the circumstances in which to cure such Default so long as the defaulting Party commences such cure within the Cure Period and pursues such cure with reasonable diligence.

14.3. **Meet and Confer, Mediation, Arbitration.** Upon the failure of a defaulting Party to cure a Default within the Cure Period or in the event the defaulting Party contests that a Default has occurred, before initiating any formal litigation proceedings the Parties shall first engage in Mediation.

14.4. **Remedies.** If the Parties are not able to resolve the Default by Mediation, the Parties shall have the following remedies:

14.4.1. **Legal Remedies.** Legal Remedies available to both Parties shall include all rights and remedies available at law and in equity, including, but not limited to, injunctive relief, specific performance and/or damages. In

addition to any other rights or remedies, any Party may institute legal action to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. Nothing in this section is intended to, nor does it limit Developer's or City's right to such legal and equitable remedies as permitted by law. It is specifically acknowledged by both Parties that neither Party waives any such rights for legal and equitable remedies.

14.4.2. **Enforcement of Security.** The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

14.4.3. **Withholding Further Development Approvals.** The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of that portion of the Property owned by the defaulting Property Owner.

14.5. **Public Meeting.** For any Default by a Property Owner, before any remedy in Section 14.4.1 may be imposed by the City, Property Owners shall be afforded the right to attend a public meeting before the Council and to address the Council regarding the claimed Default.

14.6. **Emergency Defaults.** Anything in this Agreement notwithstanding, if the Council finds on the record in a public meeting that a Default by Property Owners materially impairs a compelling, countervailing interest of the City and that any delays in imposing a remedy to such a Default would also impair a compelling, countervailing interest of the City, the City may impose the remedies of Section 14.4., without any further requirements or obligations to the Property Owners. The City shall give Notice to Property Owners in accordance with the City's Vested Laws of any public meeting at which an emergency Default is to be considered and Property Owners shall be allowed to attend such meeting and address the Council regarding the claimed emergency Default.

14.7. **Cumulative Rights.** The rights and remedies set forth herein shall be cumulative.

15. **Notices.** All notices required or permitted under this Amended Development Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Property Owners:

Finch Creek, LLC
Attn: James Stout

1113 S. 500 W.
Bountiful, UT 84010

To the City:

City of Heber
Attn: City Recorder
25 North Main Street
Heber, Utah 84032

15.1 **Effectiveness of Notice.** Except as otherwise provided in this Agreement, each Notice shall be effective and shall be deemed delivered on the earlier of:

15.1.1 **Physical Delivery.** Its actual receipt, if delivered personally, by courier service, or by facsimile, provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending Party has confirmation of transmission receipt of the Notice.

15.1.2 **Electronic Delivery.** Its actual receipt if delivered electronically by email, provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending Party has an electronic receipt of the delivery of the Notice.

15.1.3 **Mail Delivery.** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail.

15.1.4 **Change of Notice Address.** Any Party may change its address for Notice under this Agreement by giving written Notice to the other Party in accordance with the provisions of this Section.

16. **Administrative Amendments.**

16.1 **Allowable Administrative Applications:** The following modifications to this Agreement may be considered and approved by the Administrator.

16.1.1 **Infrastructure.** Modification of the location and/or sizing of the infrastructure for the Project that does not materially change the functionality of the infrastructure.

16.1.2 **Design Guidelines.** Modifications of the Design Guidelines.

16.1.3 **Development Unit Allocations.** Any allocation of Development Unit densities to be made by FINCH CREEK or its successors.

16.1.4 **Minor Amendment.** Any other modifications deemed to be minor modifications by the Administrator.

16.2 **Application to Administrator.** Applications for Administrative Amendments shall be filed with the Administrator.

16.2.1 **Referral by Administrator.** If the Administrator determines for any reason that it would be inappropriate for the Administrator to determine any Administrative Amendment, the Administrator may require the Administrative Amendment to be processed as a Modification Application.

16.2.2 **Administrator's Review of Administrative Amendment.** The Administrator shall consider and decide upon the Administrative Amendment within a reasonable time not to exceed forty-five (45) days from the date of submission of a complete application for an Administrative Amendment. Applicant must provide all documents in their completed form and pay any required fee in accordance with State law.

16.2.3 **Notification Regarding Application and Administrator's Approval.** Within ten (10) days of receiving a complete application for an Administrative Amendment, the Administrator shall notify the Council in writing. Unless the Administrator receives a notice pursuant to these Sections, requiring that the proposed Administrative Amendment be considered by the Council as a Modification Application, the Administrator shall review the application for an Administrative Amendment and approve or deny the same within the 45-day period set forth in Section 16.2.2. If the Administrator approves the Administrative Amendment, the Administrator shall notify the Council in writing of the proposed approval and such approval of the Administrative Amendment by the Administrator shall be conclusively deemed binding on the City. A notice of such approval shall be recorded against the applicable portion of the Property in the official City records.

16.2.4 **City Council Requirement of Modification Application Processing.** If the Council requires the proposed Administrative Amendment to be considered by the Council as a Modification Application, it shall, within two (2) business days after the first Council meeting following notification by the Administrator pursuant to Section 16.2.3 above, notify the Administrator that the Administrative Amendment must be processed as a Modification Application, and that the Council shall be the final determining body for any and all Modification Applications.

16.2.5 **Appeal of Administrator's Denial of Administrative Amendment.** If the Administrator denies any proposed Administrative Amendment, the Applicant may process the proposed Administrative

Amendment to the Council for final adjudication. The Council shall be the final determining body for any and all Modification Applications.

17. **Amendment.** Except for Administrative Amendments, any future amendments to this Agreement shall be considered as Modification Applications subject to the following processes:

17.1 **Submissions of Modification Applications.** Only the City or FINCH CREEK or an assignee of FINCH CREEK, approved in writing by the City, and one that succeeds to all of the rights and obligations of FINCH CREEK under this Agreement may submit a Modification Application.

17.2 **Modification Application Contents.** Modification Applications shall:

17.2.1 **Identification of Property.** Identify the property or properties affected by the Modification Application.

17.2.2 **Description of Effect.** Describe the effect of the Modification Application on the affected portions of the Project.

17.2.3 **Identification of Non-City Agencies.** Identify any Non-City agencies potentially having jurisdiction over the Modification Application.

17.2.4 **Map.** Provide a map of any affected property and all property within three hundred feet (300') showing the present or Intended Use and density of all such properties.

17.2.5 **Fee.** Modification Applications shall be accompanied by a fee in an amount reasonably estimated by the City to cover the costs of processing the Modification Application.

17.3. **Mutual Cooperation in Processing Modification Applications.** Both the City and Applicants shall cooperate reasonably in promptly and fairly processing Modification Applications.

17.4 **Planning Commission Review of Modification Applications.**

17.4.1 **Review.** All aspects of a Modification Application required by law to be reviewed by the Planning Commission shall be considered by the Planning Commission as soon as reasonably possible in accordance with the City's Vested Laws in light of the nature and/or complexity of the Modification Application. The City shall not be required to begin its review of any application unless and until the Applicant has submitted a complete application.

17.4.2 **Recommendation.** The Planning Commission's vote on the Modification Application shall be only a recommendation.

17.5 **Council Review of Modification Application.** After the Planning Commission, if required by law, has made or been deemed to have made its recommendation of the Modification Application, the Council shall consider the Modification Application.

17.6 **Council's Objections to Modification Applications.** If the Council objects to the Modification Application, the Council shall provide a written determination advising the Applicant of the reasons for denial, including specifying the reasons the City believes that the Modification Application is not consistent with the intent of this Agreement and/or the City's Vested Laws (or, only to the extent permissible under this Agreement, the City's Future Laws).

17.7 **Mediation of Council's Objections to Modification Applications.** If the Council and Property Owners are unable to resolve a dispute regarding a Modification Application, the Parties shall attempt within seven (7) days to appoint a mutually acceptable expert in land planning or such other discipline as may be appropriate. If the Parties are unable to agree on a single acceptable mediator, each shall, within seven (7) days, appoint its own individual appropriate expert. These two experts shall, between them, choose the single mediator. Property Owners shall pay the fees of the chosen mediator. The chosen mediator shall within fourteen (14) days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties.

17.8 **Amendments by FINCH CREEK**. Notwithstanding any other provision in this Agreement to the contrary, FINCH CREEK may propose and if approved by the City, execute any amendment or other modification of this Agreement or the Site Plan, without the consent of any Property Owner provided that such amendments, modifications, land uses and density allocations: (a) are consistent with the requirements of the City's Vested Laws; and (b) shall not alter the ERU density allocated to such Property Owner identified in a duly executed Development Report or assignment from FINCH CREEK or otherwise affect any development rights associated with such Property Owner's Development Property set forth in a property specific development agreement with the City pertaining to such Development Property or a recorded Subdivision Plat specific to such Development Property and no other portion of the Project. For avoidance of doubt, neither the City nor FINCH CREEK shall be required to obtain the consent of any Property Owner or any subsequent owner of a portion of the Project in order to amend this Agreement pursuant to this Section 17.

18. **Estoppel Certificate.** Upon twenty (20) days prior written request by a Property

Owner, the City will execute an estoppel certificate to any third party certifying that this Agreement has not been amended or altered (except as described in the certificate) and remains in full force and effect, and that such Property Owner is not in default of the terms of this Agreement (except as described in the certificate), and such other matters as may be reasonably requested by the Property Owner. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

19. **Attorney Fees and Costs.** Subject to the Default provisions of Section 14 above, any and all disputes arising out of or related to the terms and conditions of this Agreement, including the interpretation and validity of the terms herein and the respective rights and obligations of the parties, shall first be negotiated informally in good faith between the parties. If such informal negotiations do not resolve the dispute, the parties shall participate, in good faith, in mediation. If mediation is unsuccessful, then either party may pursue whatever legal remedies may be available, at law or equity, before a court of competent jurisdiction, the losing party to the controversy shall pay to the successful party any and all costs and expenses, including reasonable attorney's fees, investigating such actions, taking depositions and discovery, and all other necessary costs incurred in, arising out of or resulting from such default (including any incurred in connection with any appeal or in bankruptcy court) incurred by such party and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

20. **Entire Agreement.** Unless expressly provided herein, nothing in this Agreement shall be interpreted to conflict with, replace or waive any requirements, obligations, standards, duties, rights and enforcements afforded to the Parties, provided by and through the NVOZ Zone and Ordinance, and shall be interpreted and presumed by the Parties to be consistent, in harmony with, and incorporated herein with this Agreement. This Agreement and all Exhibits hereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

21. **Headings.** The captions used in this Agreement are for convenience only and a not intended to be substantive provisions or evidences of intent.

22 **No Third-Party Rights/No Joint Venture.** This Agreement does not create a joint venture relationship, partnership or agency relationship between the City and Property Owner. Further, the Parties do not intend this Agreement to create any third-party beneficiary rights. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for or duty to any third parties, including but not limited to JSSD or NVSSD, concerning any improvements to the Property unless the City has accepted the dedication of such improvements at which time all rights and responsibilities for the dedicated public improvement shall be the City's.

23. **Assignability.**

23.1 **Transfer to Developers and Sub-developers.** Notwithstanding anything to the contrary in this Agreement, FINCH CREEK or its successor may sell any

portion of the Property to one or more Developers and/or Sub-developers at any time from and after the Effective Date. Each such transferred portion of the Property (each, a "**Development Property**") shall be developed by the Developer and/or Sub-developer in accordance with and subject to the terms hereof, including, without limitation, the following:

23.1.1 Developer or Sub-developer shall assume in writing for the benefit of the City and Property Owners all of the obligations and liabilities of Property Owners hereunder with respect to the Development Property;

23.1.2 Developer and Sub-developer shall be afforded the rights of Property Owners granted hereunder in respect of the applicable Development Property only, including, without limitation, any rights of Property Owners in and the impact fee credits and/or reimbursements pertaining to such Development Property; provided, however, that unless FINCH CREEK otherwise agrees in writing, Developer and/or Sub-developer shall not, in each case without the prior written consent of FINCH CREEK, which may be granted or withheld in FINCH CREEK's sole discretion:

(ii) submit any design guidelines to the City in respect to the Development Property and/or propose any amendments, modifications or other alterations to the Design Guidelines or any other design guidelines previously submitted by FINCH CREEK Owners to the City in respect of the Development Property;

(iii) process any Final Plats, site plans or Development Applications for the Development Property and/or propose any amendments, modifications or other alterations of any approved Final Plats, site plans, and/or Development Applications procured by FINCH CREEK for the Development Property; or

(iv) propose or oppose any amendments, modifications or other alterations to this Agreement.

23.1.3 The City agrees not to accept or process any of the foregoing matters from a Developer and/or Sub-developer unless the matter has been approved by the owner of the Development Property.

23.1.4 FINCH CREEK shall not amend, modify or alter this Agreement or the Design Guidelines, or any Final Plats, Development Agreements and/or site plans approved for the Development Property in a manner that would materially interfere with Developer and/or Sub-developer's rights hereunder in respect of such Development Property, in each case without

Developer and/or Sub-developer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

24. **Effect of Breach.** Notwithstanding any other provision of this Agreement, no breach or default hereunder, by any Person succeeding to any portion of a Property Owner's obligations under this Agreement shall be attributed to Property Owner. Nor may a Property Owner's rights hereunder be canceled or diminished in any way by any breach or default by any such Person. No breach or default hereunder by a Property Owner shall be attributed to any Person succeeding to any portion of such Property Owner's rights or obligations under this Agreement, nor shall such transferee's rights be canceled or diminished in any way by any breach or default by such Property Owner. During the development of the Project, until final approval of and dedication to the City, Developer, Owners or Owners, and their assigns, transferees, and sub - developers shall maintain the City as an additional named insured where reasonably possible, and without adding unreasonable cost, on any relevant or applicable liability insurance associated with the Project.

25. **Mortgagee Protection.** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any such Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any Person that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Notwithstanding the provisions of this Section, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion. If the City receives a written notice from a Mortgagee requesting a copy of any notice of default given to a Property Owner or a Sub-developer and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to the Property Owner or a Sub-developer, as applicable, any notice of default or determination of noncompliance given to the Property Owner or such Sub-developer. Each Mortgagee shall have the right (but not the obligation) for a period of 90 days after the receipt of such notice from the City to cure or remedy the default claimed or the areas of noncompliance set forth in the City's notice. If such default or noncompliance is of a nature that it can only be cured or remedied by such a Mortgagee upon obtaining possession of the Property, then such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall within 90 days after obtaining possession cure or remedy such default or noncompliance. If such default or noncompliance cannot with diligence be cured or remedied within either such 90 -day period, then such Mortgagee shall have such additional time as may be reasonably necessary to cure or remedy such default or noncompliance if such Mortgagee commences such cure or remedy during such 90 -day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

26. **Termination.**

26.1 This Agreement shall be terminated and of no further effect upon the occurrence of any of the following events:

(i) Expiration of the Term of this Agreement, unless extended as provided in Section 4.3;

(ii) Completion of the Project in accordance with the Development Entitlements and the City's issuance of all required occupancy permits and acceptance of all dedications and improvements required under the Development Entitlements and this Agreement;

(iii) Except for the payment of applicable fees and assessments, as for any specific residential dwelling or other structure within the Project, this Agreement shall be terminated for such dwelling or other structure upon the issuance by City of a certificate of occupancy therefore;

(iv) Entry of final judgment (with no further right of appeal) or issuance of a final order (with no further right of appeal) directing City to set aside, withdraw, or abrogate City's approval of this Agreement,

(v) The effective date of a party's election to terminate the Agreement as specifically provided in this Agreement, or

(vi) in the event that Developer or the project are in default, or where material, contractual and developmental obligations are not met, or any deadlines and conditions of this Agreement, and relevant State and Federal Laws not fulfilled or are violated, after appropriate default notices and cure provisions of this Agreement.

26.2 **Notice of Termination.** City shall, upon written request made by Developer or Developer's successor(s) or assign(s) or any Owner to City's Planning Director, determine if the Agreement has terminated with respect to any parcel or lot at the Property, and shall not unreasonably withhold, condition, or delay termination as to that lot or parcel. Upon termination of this Agreement as to any lot or parcel, City shall upon Developer or Developer's successor(s) or assign(s) or any Owner's request record a notice of termination that the Agreement has been terminated. The aforesaid notice may specify, and Developer or Developer's successor(s) or assign(s) and Owners agree, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement. Termination of the Agreement as to any parcel or lot at the Property shall not affect Developer or Developer's successor(s) or assign(s) or any Owner's rights or obligations under any of the Development Entitlements and Subsequent Entitlements, including but not limited to, the General Plan, Specific Plan, Zoning Ordinance and all other City policies, regulations, and ordinances applicable to the Project at the Property. City

may charge a reasonable fee for the preparation and recordation of any notice(s) of termination requested by Developer or Developer's successor(s) or assign(s) or any Owner.

26.3 **Partial Termination.** In the event of a termination of this Agreement with respect of any portion of the Property, any then-existing rights and obligations of the parties with respect to such portion of the Property shall automatically terminate and be of no further force, effect or operation. However, no termination of this Agreement with respect to any portion of the Property or the Project shall affect in any way the parties' rights and obligations hereunder with respect to any other portion of the Property or Project not subject to the termination. Subject to the provisions of the Default Paragraph 14, the expiration or termination of this Agreement shall not result in any expiration or termination of any Entitlement then in existence, without further action of City.

27. **Insurance and Indemnification.** Each Property Owner shall defend and hold the City and its officers, employees and consultants harmless for any and all claims, liability and damages arising out of the negligent actions or inactions of such Property Owner, its agents or employees pursuant to this Agreement, unless caused by the City's negligence or willful misconduct.

28. **Hazardous, Toxic, and/or Contaminating Materials.** Each Owner shall defend and hold the City and its elected and/or appointed boards, officers, agents, employees and consultants harmless from any and all claims, liabilities, costs, fines, penalties and/or charges of any kind whatsoever relating to the existence and removal, or caused by the introduction of hazardous, toxic and/or contaminating materials by such Property Owner on the Project or arising out of action or inactions of Developer, except where such claims, liability costs, fines, penalties and charges are due to the actions of the City or its elected or appointed boards, officers, agents, employees or consultants.

29. **Binding Effect.** If FINCH CREEK or another Property Owner conveys any portion of the Property to one or more Sub-developers, the property so conveyed shall have the same rights, privileges, Intended Uses and configurations, and shall be subject to the same limitations and rights of the City, applicable to such property under this Agreement prior to such conveyance, without any required approval, review, or consent by the City, except as otherwise provided herein.

30. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future date any such right or any other right it may have.

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

32. **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, inclement weather, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires 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.

33. **Time is of the Essence.** Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

34. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and FINCH CREEK each shall designate and appoint a representative to act as a liaison between the City and its various departments and FINCH CREEK. The initial representative for the City shall be City Manager, or his designee and the initial representatives for FINCH CREEK shall be Marco Diaz. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

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

36. **Applicable Law.** This Agreement is entered into in the City in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

37. **Recordation and Running with the Land.** This Agreement shall be recorded in the office of the Wasatch County Recorder. Copies of the City's Vested Laws, **Exhibit D**, shall not be recorded. A secure copy of **Exhibit D** shall be filed with the City Recorder and each Party shall also have an identical copy. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project Area to which the successor holds title. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Project Area. The obligations of Property Owners hereunder are enforceable by the City, and no other Person shall or may be a third party beneficiary of such obligations unless specifically provided herein.

38. **Authority.** The parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to City Policy. This Agreement is approved as to form and is further certified as having been lawfully adopted by the City by the signature of the City Attorney.

39. **Covenant of Good Faith and Fair Dealing.** No party shall do anything which shall have the effect of injuring the right of another party to receive the benefits of this Agreement or do anything which would render its performance under his agreement impossible. Each party shall perform all acts contemplated by this Agreement to accomplish the objectives and purposes of this Agreement.

40. **Further Actions and Instruments.** The Parties agree to provide reasonable assistance to the other and cooperate to carry out the intent and fulfill the provisions of the Agreement. Each of the parties shall promptly execute and deliver all documents and perform all acts as necessary to carry out the matters contemplated by this Agreement.

41. **Partial Invalidity Due to Governmental Action.** In the event state or federal laws or regulations enacted after the Execution Date of this Agreement, or formal action of any governmental jurisdiction other than City, prevent compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified extended or suspended only to the minimum extent necessary to comply with such laws or regulations.

[Signatures appear on the following two pages.]

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

PROPERTY OWNER

Finch Creek, LLC
Utah limited liability company

By: _____
Name: James Stout
Title: Manager

PROPERTY OWNER ACKNOWLEDGMENT

STATE OF UTAH)
:§.
CITY OF SALT LAKE)

On the 5th day of December, 2022, personally appeared before meJames Stout, who being by me duly sworn, did say that he is the Manager of Finch Creek, LLC, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

TRINA N COOKE
NOTARY PUBLIC - STATE OF UTAH
COMMISSION# 725852
COMM. EXP. 08-21-2026

_____
NOTARY PUBLIC

CITY

Heber City, a political subdivision of the State of Utah

By: Heidi Franco
Name: Heidi Franco
Its: Mayor

HEBER CITY CORPORATE Seal WASATCH COUNTY, UTAH

Approved as to form and legality:

City Attorney

By:

Attest:

City Recorder

By: Trina N Cooke

CITY ACKNOWLEDGMENT

STATE OF UTAH)
:§.
CITY OF HEBER)

On the 5th day of December, 2022, personally appeared before me Heidi Franco who being by me duly sworn, did say that she is the Mayor of City of Heber, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its governing body.

TRINA N COOKE
NOTARY PUBLIC · STATE OF UTAH
COMMISSION# 725852
COMM. EXP. 08-21-2026

Trina N Cooke
NOTARY PUBLIC

EXHIBIT A

TO DEVELOPMENT AGREEMENT FOR FINCH CREEK MIXED USE RESIDENTIAL DEVELOPMENT

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN WASATCH COUNTY, UTAH AND IS DESCRIBED AS FOLLOWS:
PARCEL 1: (PARCEL NO.: 00-0007-7847/SERIAL NO.: OWC-0537-0-019-035)
ADDRESS: 3390 N HWY 40, HEBER CITY, UT 84032
COMMENCING AT A POINT HAVING STATE PLANE RECTANGULAR COORDINATES OF X:2022919.84 AND Y:806794.95 (BASED ON THE CONFORMAL PROJECTION, UTAH CENTRAL ZONE); SAID POINT ALSO BEING SOUTH 935.47 FEET AND EAST 1646.19 FEET FROM THE NORTH ONE-QUARTER CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 87°18'04" WEST 515.93 FEET; THENCE NORTH 28°34'26" WEST 129.47 FEET; THENCE NORTH 64°00' EAST 50.0 FEET; THENCE NORTH 18°56'24" WEST 153.68 FEET; THENCE NORTH 68°25'30" EAST 492.04 FEET; THENCE SOUTH 49°00'48" EAST 30.21 FEET; THENCE SOUTH 32°32'13" EAST 96.2 FEET; THENCE SOUTH 52°35'46" WEST 139.24 FEET; THENCE SOUTH 32°30'37" EAST 298.9 FEET TO THE POINT OF BEGINNING.
LESS AND EXCEPTING THE FOLLOWING DESCRIBED PROPERTY;

ALL THAT PORTION OF THE THOMAS W. AND PAULA P. ANDERSON PROPERTY, SITUATE IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER (NE 1/4 NE 1/4) OF SECTION NINETEEN (19), TOWNSHIP THREE (3) SOUTH, RANGE FIVE (5) EAST, SALT LAKE BASE AND MERIDIAN, INCLUDED WITHIN A STRIP OF LAND TWENTY-FIVE (25.00) FEET WIDE, TWENTY-FIVE (25.00) FEET RIGHT OR WESTERLY FROM THE CENTER LINE OF THE WASATCH CANAL, FROM STATION 97+22 TO 98+44: BEGINNING AT A POINT IN THE CENTERLINE OF THE WASATCH CANAL (STATION 97+22), AS SAID CENTERLINE IS DEPICTED ON THE ATTACHED EXHIBIT A (ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF), WHICH POINT IS FOUR HUNDRED SEVENTY-SIX AND SEVENTY-NINE HUNDREDTHS (476.79) FEET SOUTH AND ELEVEN HUNDRED AND FIFTY-SIX HUNDREDTHS (1100.56) FEET WEST FROM THE NORTHEAST CORNER OF SAID SECTION NINETEEN (19) (BRASS CAP SET 1976); THENCE SOUTHEASTERLY SIXTY-FOUR AND TWENTY-FOUR HUNDREDTHS (64.24) FEET ALONG THE ARC OF A ONE HUNDRED FORTY (140.00) FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 39°17'21" EAST SIXTY-THREE AND SIXTY-EIGHT HUNDREDTHS (63.68) FEET) TO THE POINT OF REVERSE CURVATURE OF A ONE HUNDRED SEVENTY-TWO AND FIFTY-FIVE HUNDREDTHS (172.55) FOOT RADIUS CURVE; THENCE SOUTHEASTERLY FIFTY-EIGHT AND FIFTY HUNDREDTHS (58.50) FEET ALONG THE ARC OF SAID CURVE TO A POINT (STATION 98+44) ONE THOUSAND TWENTY-SIX AND FOURTEEN HUNDREDTHS (1026.14) FEET WEST AND FIVE HUNDRED

SEVENTY-THREE AND TWENTY-SIX HUNDREDTHS (573.26) FEET SOUTH FROM THE NORTHEAST CORNER OF SAID SECTION NINETEEN (19) (BRASS CAP SET 1976).
EXCEPTING THE PORTION THAT LIES WITHIN THE HALL FAMILY PARTNERSHIP TRACT, (ENTRY NO. 185608, RECORDED MARCH 21, 1996, IN BOOK 318, AT PAGE 410, WASATCH COUNTY, UTAH).
THE SIDE BOUNDARIES OF SAID STRIP ARE TO BE SHORTENED OR EXTENDED SO AS TO BEGIN ON SAID NORTHERLY BOUNDARY LINE AND END ON SAID SOUTHERLY BOUNDARY LINE OF SAID PROPERTY BOUNDARY.
SITUATE INWASATCHCOUNTY, STATE OF UTAH.

PARCEL 2: (PARCEL NO.: 00-0021-2027/ SERIAL NO.: OWC-0539-5-019-035)

ADDRESS: NONE ASSIGNED

BEGINNING AT A POINT BEING SOUTH 00°30'30" EAST 1085.37 FEET AND SOUTH 89°53'52" WEST 669.21 FEET FROM THE NORTHEAST CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 89°53'52" WEST, A DISTANCE OF 466.63 FEET; THENCE SOUTH 42°04'20" WEST, A DISTANCE OF 263.72 FEET TO A POINT ON THE NORTHWEST SIDELINE OF STATE HIGHWAY 40; THENCE NORTH 31°21'37" WEST, ALONG SAID SIDELINE, A DISTANCE OF 402.47 FEET; THENCE NORTH 87°13'09" EAST, A DISTANCE OF 520.38 FEET; THENCE NORTH 32°30'59" WEST, A DISTANCE OF 298.91 FEET; THENCE NORTH 52°35'58" EAST, A DISTANCE OF 139.08 FEET; THENCE NORTH 32°24'17" WEST, A DISTANCE OF 96.36 FEET; THENCE NORTH 49°02'11" WEST, A DISTANCE OF 30.17 FEET; THENCE SOUTH 68°24'44" WEST 515.30 FEET TO A POINT ON THE NORTHWESTERLY SIDELINE OF SAID HIGHWAY 40; THENCE NORTH 24°49'56" WEST, ALONG SAID SIDELINE A DISTANCE OF 150.48 FEET; THENCE NORTH 69°59'05" EAST, A DISTANCE OF 399.34 FEET; THENCE SOUTH 70°20'17" EAST, A DISTANCE OF 104.96 FEET TO THE CENTER LINE OF WASATCH CANAL; THENCE ALONG THE CENTER LINE OF SAID WASATCH CANAL THE FOLLOWING NINE (9) COURSES; (1) SOUTH 62°37'14" EAST 78.81 FEET; (2) SOUTH 39°53'29" EAST 132.39 FEET; (3) SOUTH 55°57'44" EAST 111.02 FEET; (4) SOUTH 43°39'59" EAST 56.24 FEET; (5) SOUTH 32°00'02" EAST 23.20 FEET; (6) SOUTH 20°24'36" EAST 117.27 FEET; (7) SOUTH 41°35'39" EAST 119.93 FEET; (8) SOUTH 24°37'46" EAST 140.91 FEET; (9) SOUTH 33°44'06" EAST 85.31 FEET TO THE POINT OF BEGINNING.
SITUATE IN WASATCH COUNTY, STATE OF UTAH.

PARCEL 3: (PARCEL NO.: 00-0021-2028/ SERIAL NO.: OWC-0539-6-019-035)

ADDRESS: NONE ASSIGNED
BEGINNING AT A POINT BEING SOUTH 00°30'30" EAST 1085.37 FEET AND SOUTH 89°53'52" WEST 669.21 FEET FROM THE NORTHEAST CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; AND

RUNNING THENCE SOUTH 89°53'52" WEST, A DISTANCE OF 466.63 FEET; THENCE SOUTH 42°04'20" WEST, A DISTANCE OF 263.72 FEET TO A POINT ON THE NORTHWEST SIDELINE OF STATE HIGHWAY 40; THENCE NORTH 31°21'37" WEST, ALONG SAID SIDELINE, A DISTANCE OF 402.47 FEET; THENCE NORTH 87°13'09" EAST, A DISTANCE OF 520.38 FEET; THENCE NORTH 32°30'59" WEST, A DISTANCE OF 298.91 FEET; THENCE NORTH 52°35'58" EAST, A DISTANCE OF 139.08 FEET; THENCE NORTH 32°24'17" WEST, A DISTANCE OF 96.36 FEET; THENCE NORTH 49°02'11" WEST, A DISTANCE OF 30.17 FEET; THENCE SOUTH 68°24'44" WEST 515.30 FEET TO A POINT ON THE NORTHWESTERLY SIDELINE OF SAID HIGHWAY 40; THENCE NORTH 24°49'56" WEST, ALONG SAID SIDELINE A DISTANCE OF 150.48 FEET; THENCE NORTH 69°59'05" EAST, A DISTANCE OF 399.34 FEET; THENCE SOUTH 70°20'17" EAST, A DISTANCE OF 104.96 FEET TO THE CENTER LINE OF WASATCH CANAL; THENCE ALONG THE CENTER LINE OF SAID WASATCH CANAL THE FOLLOWING NINE (9) COURSES; (1) SOUTH 62°37'14" EAST 78.81 FEET; (2) SOUTH 39°53'29" EAST 132.39 FEET; (3) SOUTH 55°57'44" EAST 111.02 FEET; (4) SOUTH 43°39'59" EAST 56.24 FEET; (5) SOUTH 32°00'02" EAST 23.20 FEET; (6) SOUTH 20°24'36" EAST 117.27 FEET; (7) SOUTH 41°35'39" EAST 119.93 FEET; (8) SOUTH 24°37'46" EAST 140.91 FEET; (9) SOUTH 33°44'06" EAST 85.31 FEET TO THE POINT OF BEGINNING.
SITUATE IN WASATCH COUNTY, STATE OF UTAH.

EXHIBIT B
TO DEVELOPMENT AGREEMENT FOR FINCH CREEK MIXED USE RESIDENTIAL DEVELOPMENT
Site Plan

EXHIBIT C
TO DEVELOPMENT AGREEMENT FOR FINCH CREEK MIXED USE RESIDENTIAL DEVELOPMENT
North Fields