

When Recorded Return To:  
Town of Apple Valley  
1777 North Meadowlark Drive  
Apple Valley, Utah 84737

## DEVELOPMENT AGREEMENT FOR OCULTA ROCA

This *Development Agreement for Oculta Roca* (“**Development Agreement**” or “**Agreement**”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2023 (“**Effective Date**”) between Town of Apple Valley, a municipal corporation of the state of Utah (“**Town**”), and Hidden Rock Development Group, a Utah limited liability company (“**Developer**”). Together, the Town and Developer are the “**Parties**” to this Agreement, and individually each is a “**Party**” hereto.

### Recitals

A. Developer owns or controls certain parcels of property located in Town, totaling 204 acres, and having the following parcel ID numbers (“**Property**”):

- a. AV-2194-D
- b. AV-2194-B
- c. AV-2-2-27-432

B. Developer desires to develop on the Property a 44-key horizontal cabin rental development with amenities plus 22 residential lots, to be known as Oculta Roca (“**Project**”).

C. Developer has submitted to Town and Town has reviewed an application for a zone change that will permit the Project to proceed as planned. On Wednesday March 1, 2023, the Town Council after due deliberation unanimously voted to approve the requested zone change subject to certain conditions, including completion of and entering into a development agreement with the Town.

D. The Parties intend to enter into this Development Agreement in fulfillment of that condition upon zoning change, as well as to allow Developer and Town to resolve, agree upon, and vest issues such as land uses, zoning, density, streetscape, amenities, utility infrastructure, and other development objectives prior to development of the Project.

E. The Parties intend that this process will lead to an attractive and exemplary Project that will add quality of life to future residents, while allowing Town to provide

municipal services in a cost effective and efficient manner, all in accordance with the Town's general plan, applicable zoning ordinances, and construction and development standards.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises of the Parties contained herein, and for other valuable consideration received, the Parties agree as follows:

1. Recitals. The Parties agree that the recitals stated above are incorporated into and form a part of this Agreement.
2. Zoning. All obligations of both parties in this Agreement are fully conditioned upon the Town's final adoption and enactment the zoning districts on the property as shown in the Master Plan, which consist of an A-5 (residential) zone, a Cabin Zone, with PD (Planned Development) Overlay. Upon such adoption and enactment, this Agreement shall immediately vest in accordance with Section 2.
3. Vested Rights.
  - 3.1. Vesting. The Parties specifically intend and agree that this Agreement grants to the Developer "vested rights" pursuant to Utah Code § 10-9a-509 and as that term is construed in Utah's common law. Accordingly, the Developer has the right to develop the property in accordance with the Town's ordinances in place as of the Effective Date, without modification by the Town except as specifically provided in this Agreement.
  - 3.2. Conflicts. Development shall take place in accordance with the terms of this Agreement, State Code, and the Town ordinances in effect on the effective date of this Agreement. In the event of any conflicts, this Agreement shall control.
  - 3.3. Future Matters. The parties intend and agree that with regard to future applications, including preliminary and final plat applications, developer shall be obligated to comply with all development ordinances and standards as they exist as of the Effective Date, except that that future ordinances may apply, to the extent not conflicting with this Agreement, with respect to:
    - 3.3.1. Law changes that Developer agrees in writing to apply to the Project;
    - 3.3.2. Law changes which are generally applicable to all properties in the Town and which are required to comply with State and Federal laws and regulations affecting the Project;

3.3.3. Law changes that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAI-ISTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare.

3.3.4. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the Town to all properties, applications, persons and entities similarly situated.

3.4. Changes to Project. No material modifications to the Master Plan shall be made after approval by Town without Town Council's written approval of such modification. For purposes of this Agreement, a material modification shall mean any modification which (i) increases the number or general location of residential lots, number of cabins, amenity buildings or uses, or (ii) substantially changes the location of public roads. Modifications to the Master Plan which do not constitute material modifications may be made with the consent of Town staff.

3.5. Future Property. Developer may at its discretion add certain future property it acquires, identified as parcel number AV-2194-A to this Agreement without modification of this Agreement or of the Master Plan, if such property will not contain any buildings or other improvements. Developer may add other future property to this Agreement if Town agrees that the addition of such future property is appropriate in light of its proximity to the Project, compatibility and the appropriateness of such a development pattern.

#### 4. Master Plan.

4.1. Master Plan Approval. Approval of this Agreement shall include approval of the attached Master Plan. Development will generally occur as set forth therein.

4.2. Phasing. The Development Property may be developed in Phases Phase 1 will consist of all cabin buildings and amenity buildings, all roadwork as shown in Exhibit A, and all infrastructure. Phase 2 will consist of vertical construction of all residential lots.

4.2.1. The Development will be phased as justified market demand, with the intent of providing necessary and adequate infrastructure as needs arise.

4.2.2. Planning for each phase will include planning for public infrastructure and improvements to be installed with each phase, in accordance with the Master

Plan, and as may be required as phased development proceeds.

4.3. Project Density. Developer shall be vested in and entitled to develop on the Property, through final buildout, one horizontal 44-key cabin rental development, and 22 residential lots.

4.4. Transfer of Units

4.4.1. Developer may sell one or more portions of the Property, (in particular the residential lots), individually, or the entire cabin project to one or more sub-developers (“Successor Developer”), selected by Developer. Developer may do so without modification of this Agreement. The terms of such sale shall expressly include the transfer of the rights and obligations to develop the Successor Developer’s portion of the Project in accordance with this Agreement. Upon such sale Successor Developer will inure to all rights and obligations under this Agreement with respect to the portion of the Property sold to the Successor Developer, and Developer will no longer be obligated under this Agreement in any respect with regard to the portion of the Property sold to the Successor Developer. Developer will retain all rights and obligations hereunder with respect to unsold portions of the Property. Developer shall provide notice to Town of any sale of the Project or portion of Project to a Successor Developer.

4.5. Community Reinvestment Area. Not applicable.

4.6. Residential Unit Rental Pool.

4.6.1. 10% of the 22 residential lots in the Project shall be included in the residential unit rental pool (“**Rental Pool**”) per Apple Valley ordinance 10.14.020 Short Term Vacation Rentals. When not in use by the Owner, all units in the Rental Pool shall be managed by the property manager of Project and shall be made available for rental to third parties.

4.6.2. Developer shall select and appoint in its discretion an on-site Rental Manager (“**Rental Manager**”), and the Rental Manager shall be the exclusive authority to manage, administrate, and regulate all short-term (less than 30 days) rentals within the Project, including access by short-term tenants to common areas and amenities within the Project.

5. Application Approval Procedures.

5.1. Processing Under Town's Code. Approval processes for phased development

applications shall be as provided in this Agreement and the Town's Code.

5.1.1. Phased Development applications shall be approved by the Town if they comply with the applicable building codes, this Agreement, the State law, and to the extent not vested by this Agreement, the Town's Code in effect as of the date a development application is made. In the case of any conflicts, this Agreement controls.

5.1.2. Nothing in this Agreement shall be construed to require the Developer or any Successor Developer to obtain further Town zoning approval with respect to a Parcel's intended use or density, or rights granted to the Developer herein, provided that such phased development applications comply with the terms set forth in this Agreement, and to the extent not vested by this Agreement, the Town's Code in effect as of the date a phased development application is made.

5.2. Town's Cooperation in Processing Development Applications. The Town and Developer shall cooperate reasonably in promptly and fairly processing development applications.

5.3. Town Denial of a Development Application. If the Town denies a development application, the Town shall specify in writing in reasonable detail the reasons the Town believes that the development application is not consistent with this Agreement and/or the Town's code.

5.4. Town Denials of Development Applications Based on Denials from Non-Town Agencies. If the Town's denial of a development application is based on the denial of the development application by a non-Town agency, the Developer may appeal any such denial through the appropriate procedures for such a decision.

6. Developer-Provided Amenities.

6.1. Open Space. Developer and Town acknowledge that Developer will preserve by deed restriction 10 acres, as shown in the Master Plan, in fulfillment of its obligations as Developer to provide parks and open space. The preservation of parks and other open land shall be calculated as part of and credited toward any obligation in the Town code to provide open space and trails.

6.2. Amenities. Developer shall provide amenities, including but not limited to amenities such as a spa, restaurants, and bars, in accordance with those amenities shown on the Master Plan.

7. System Infrastructure.

- 7.1. Infrastructure Built by the Developer. Developer or Successor Developers may, from time-to-time, install and construct System Improvements (as that term is defined in the Utah Impact Fees Act) for the benefit of the Town. To the extent that such improvements go beyond the Project's proportionate impact, the Town shall reimburse or credit Developer for such facilities as required by the rough proportionality test found in Utah Code 10-9a-508, and in the Nollan/Dolan line of cases.
- 7.2. Reimbursement for "Upsizing". The Town shall not require the Developer to "upsized" any public improvements (i.e., to construct the improvements to a size larger than required to service the Project) unless financial arrangements reasonably acceptable to the Developer are made to compensate the Developer for the costs of such upsizing.
- 7.3. Preparation and Adoption of Impact Fees Facilities Plan and Impact Fee. The Town hereby agrees to promptly initiate and schedule amendments to the Town's current impact fees facilities plan with respect to any public infrastructure and improvements to be financed with the assistance of the Town, or upsized at the request or requirement of the Town, to enable prompt reimbursement therefor to the Developer. Developer shall pay any costs incurred by the Town for updating the IFFP in accordance with this Section 7.3.

8. Security for Improvements.

- 8.1. Security for Public Improvements. The completion of all improvements shall be subject to collateral requirements established by the Town using forms for surety approved by the Town as per municipal codes 11.02.130 Guarantee Of Completion Of Improvements; Form Of Surety; Release Of Funds and 11.02.140 Warranty Of Completed Improvements, and in compliance with State law.
- 8.2. Separate Security for Public Landscaping. Security for the completion landscaping requirements shall be provided only as required by State law.

9. Utilities and Public Services.

- 9.1. Improvements to Highway 59. Developer will provide improvements to Highway 59 at the intersection of Cinder Hill Road. The proposed improvement is a roadway widening of approximately 24 feet for approximately 2,150 linear feet and the addition of an Eastbound right-turn deceleration lane, a Westbound left-turn deceleration lane, and a Westbound acceleration lane as per recommendation of traffic consultant and in accordance with the plans shown in Exhibit B. The improvements to Highway 59 are to be approved by the town and state department of transportation (UDOT). Town acknowledges that Developer is responsible for 100% of these improvements, and the remaining 0% are deemed System Improvements as that term is defined in the Utah

Impact Fees Act. Such System Improvements are subject to the reimbursement provisions in this Agreement. Developer may seek reimbursement from adjacent landowners benefitting from Highway 59 improvements.

- 9.2. Other Roads. Developer and Town acknowledge that Developer will be asked to dedicate and construct additional roads through the Project, including North Cinder Hill Road and Bobcat Road, as shown in Exhibit C & as per Apple Valley Road Masterplan, in order to provide system-wide facilities to the benefit of future development. N Cinder Hill Road will be improved to a 26-foot-wide road with base shoulders of 4 feet on either side, capable of supporting an imposed load of 75,000 pounds. The non-curb and gutter road shall be built as per Town Design Standards and as approved in the off-site construction plans approved with Phase 1 of the development. The road crossing at Gould Wash shall be built per requirements as dictated by Town Design Standards & approved by Town Engineer. Gould Wash Road to Bobcat Road shall be the secondary emergency access road required by code and it shall be improved with 26' of road base as per Town Design Standards. Town acknowledges that Developer is responsible for 100% of these road improvements, and the remaining 0% are deemed System Improvements as that term is defined in the Utah Impact Fees Act. Such System Improvements are subject to the reimbursement provisions in this Agreement.
- 9.3. BLM Gate. Presently an access gate exists on the southwest area of parcel AV-2194-D, providing access to BLM land. The BLM access gate will remain in its current location as shown on site master plan Exhibit A.
- 9.4. Cable TV/Fiber Optic Service. Upon application to the Town and approval of a franchise Agreement for such facilities, the Developer may install or cause to be installed underground all conduits and cable service/fiber optic lines within the Project at no expense to the Town. The Developer may contract with any cable TV/fiber optic provider of its own choice and grant an access and/or easement to such provider to furnish cable TV/fiber optic services for those dwelling units or other uses on the Project, so long as the property is private and not dedicated to the public.
- 9.5. Water. All water requirements are to be confirmed in a separate agreement with Big Plains Special Service District.
- 9.6. Additional Easements.
  - 9.6.1. The Developer shall exercise reasonable efforts to secure any necessary utility and similar easements or similar property rights (including without limitation easements for water, sewer, power, gas, telephone, etc.) from neighboring property owners in connection with the planning and development of the

Development Property. The Town may cooperate with Developer in obtaining such easements.

9.6.2. To the extent that the Developer's efforts to secure necessary easements are unsuccessful due to issues beyond the reasonable control of Developer, the Town may consider using its eminent domain power (to the extent permitted by applicable state and federal law) to obtain such necessary easements, provided that nothing in this Section shall be construed to obligate the Town to exercise such power.

10. Future Property. If the Developer acquires any additional property then such future property may be added to this Agreement if the Town determines that the addition of such future property is appropriate in light of its proximity to the Project, compatibility and the appropriateness of such a development pattern.

11. Default.

11.1. Notice. If the Developer or a Successor Developer or the Town fails to perform their respective obligations hereunder or to comply with the terms hereof, the party believing that a Default has occurred shall provide Notice to the other party. If the Town believes that the Default has been committed by a Successor Developer then the Town shall also provide a courtesy copy of the Notice to the Developer ("Default").

11.1.1. Contents of the Notice of Default. The notice of default shall:

11.1.1.1. Specify the claimed event of Default;

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

11.1.1.3. Identify why the Default is claimed to be material; and

11.1.1.4. If the Town chooses, in its discretion, propose a method and time for curing the Default which shall be of no less than sixty (60) days duration.

11.2. Remedies. If the parties are not able to resolve the Default through good faith negotiations or through mediation (which both parties agree to submit to upon the request of the other party), then the parties may have the following remedies:

11.2.1. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief, specific performance and/or damages.



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

11.2.3. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by the Developer, or in the case of a default by a Successor Developer, development of those Parcels owned by the Successor Developer until the Default has been cured.

11.2.4. If the cure of any alleged Default can be effectuated by the Town because the alleged Default is covered by any security the Town may have for the completion of a public improvement then the Town may not declare a Default until it has attempted in good faith to use the security to remedy the alleged Default.

11.3. Notice and Public Meeting. Except for withholding the issuance of a building permit, before any remedy may be imposed by the Town the party allegedly in Default shall be afforded the right to notice of a public meeting before the Town Council and shall have the right to address the Town Council regarding the claimed Default.

11.4. Extended Cure Period. If any Default cannot be reasonably cured within sixty (60) days then such cure period shall be extended so long as the defaulting party is pursuing a cure with reasonable diligence.

## 12. Miscellaneous.

12.1. Authority. The Parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement.

12.2. Controlling Laws. Development of the Property will proceed in accordance with this Agreement, the laws of the State of Utah and the Codes and Ordinances of Eagle Mountain Town in effect as of the date an application is made, unless otherwise specified herein.

12.3. Term of Agreement. The term of this Agreement shall be until the tenth anniversary of the Effective Date. If as of that date the Developer has not been declared to be in default, or if any such declared default is not being cured as provided therein, then this Agreement shall be automatically extended until the fifteenth anniversary of the Effective Date.

12.4. Amendment. Any future amendments to this Agreement shall be in writing and signed by the Developer (or a duly appointed agent of the Developer) and a duly authorized representative of the Town.

- 12.5. Assignability. The rights and responsibilities of the Developer under this Agreement may be assigned in whole or in part by the Developer, provided that the Developer shall give Notice to the Town of any assignment, and shall further provide such information regarding the assignee that the Town may reasonably request. Such Notice shall include providing the Town with all necessary contact information for the proposed assignee. If any proposed assignment is for less than all of the Developer rights and responsibilities then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such partial assignment, the Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.
- 12.6. Binding Effect. This Agreement shall be deemed to run with the Property, and shall be binding upon and inure to the benefit of the heirs and assigns of the parties hereto, and to any entities resulting from the reorganization, consolidation, or merger of any party hereto.
- 12.7. Notices. Any notices, requests and demands required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party to whom the same is directed or three (3) days after being sent by United States mail, certified or registered mail, postage prepaid, addressed to such party's address set forth next to such party's signature below. Any party may change its address or notice by giving written notice to the other party in accordance with the provisions of this Section.
- 12.8. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.
- 12.9. Integration. This Agreement constitutes the entire understanding and Agreement between the parties, and supersedes any previous Agreement, representation, or understanding between the parties relating to the subject matter hereof.
- 12.10. Severability. If any part or provision of this Agreement shall be adjudged unconstitutional, invalid or unenforceable by a court or competent jurisdiction, then such a judgment shall not affect any other part or provision of this Agreement except that part or provision so adjudged to be unconstitutional, invalid or unenforceable. If any condition, covenant, or other provision of this Agreement shall be deemed invalid

due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

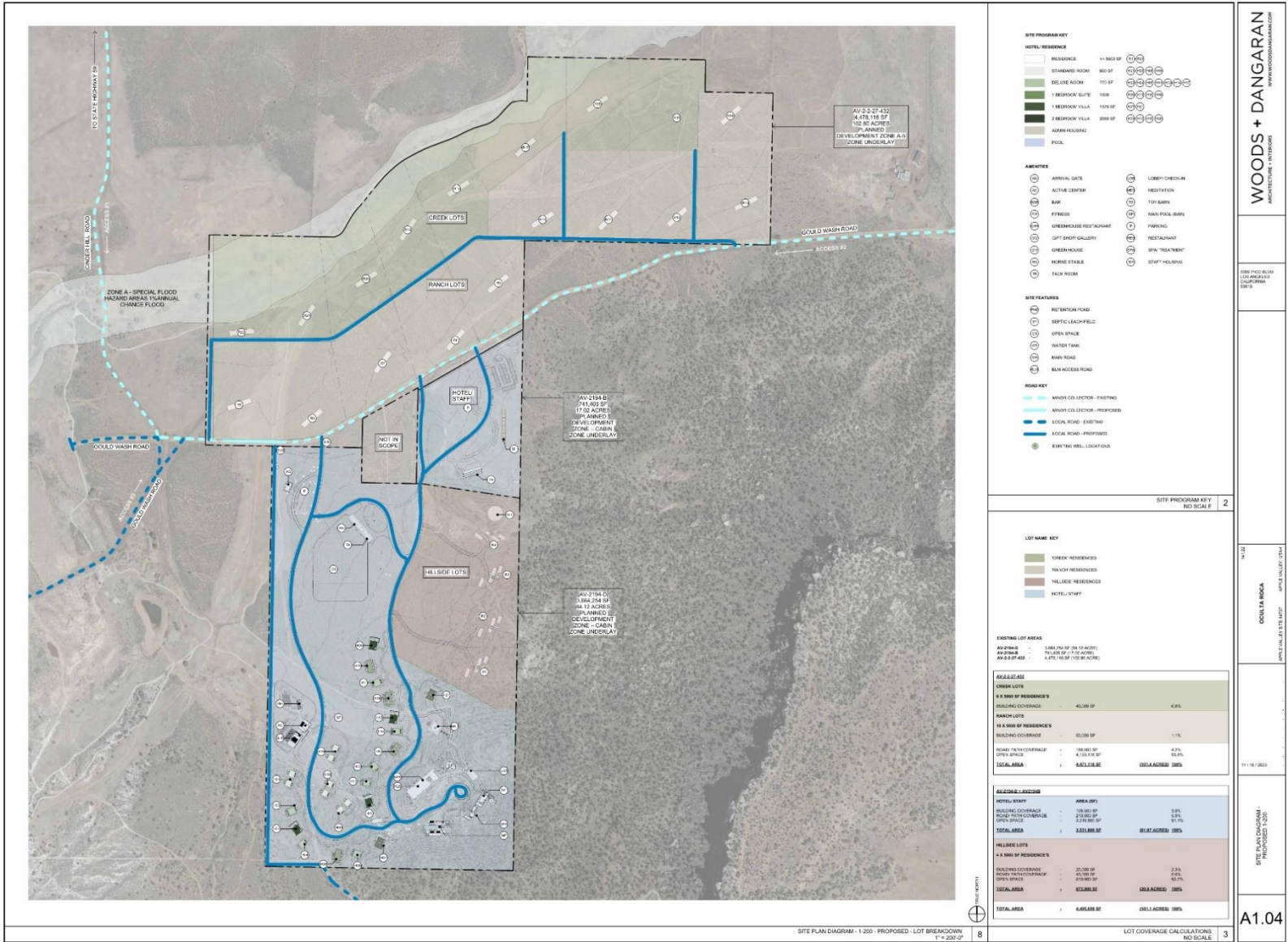
- 12.11. Waiver. Any waiver by any party hereto of any breach of any kind or character what so ever by the other party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement on the part of the other part.
- 12.12. Governing Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Utah.
- 12.13. Costs of Enforcement. In the event of default on the part of any party to this Agreement, that party shall be liable for all justifiable costs and expenses incurred by the other parties in enforcing the provisions of this Agreement, including but not limited to reasonable attorneys' fees, whether or not legal action is instituted.
- 12.14. Further Documentation. This Agreement is entered into by both parties with the recognition and anticipation that subsequent Agreements implementing and carrying out the provisions of this Agreement may be necessary. The parties agree to negotiate in good faith with respect to all such future Agreements.
- 12.15. Estoppel Certificate. If no default has occurred in the provisions of this Agreement and upon twenty (20) days prior written request by the Developer or a Successor Developer, the Town will execute an estoppel certificate to any third party, certifying that the Developer or a Successor Developer, as the case may be, at that time is not in default of the terms of this Agreement.
- 12.16. No Joint Venture. This Agreement does not create a joint venture relationship, partnership or agency relationship between the Town and the Developer.
- 12.17. 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.
- 12.18. 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 Town, the signature of the Mayor of the Town is affixed to this Agreement lawfully binding the Town pursuant to and is further certified as to being lawful and binding on the Town by the signature of the Town Attorney.
- 12.19. No Undisclosed Rights. Developer acknowledges that this Development

Agreement does not restrict any rights that Developer holds under clearly established state law. This Agreement is expressly authorized by Utah Code Section 10-9a-532. The Parties have had the opportunity to obtain legal counsel and have them review this Agreement. Due to Developer incentives and requirements consistent with Utah Code Section 10-9a-535 (1 and 3), the Parties acknowledge that this Agreement may remove, replace, or modify certain rights and responsibilities under the Utah Municipal Land Use, Development, and Management Act (the Act), the municipal code of the Town and applicable common law. Notwithstanding any legal rights afforded to the Parties under the Act, the terms of this Agreement shall govern. Developer expressly agrees that the Town has met any obligation it may owe under Utah Code Section 10-9a-532(2)(c).

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representatives effective as of the date first written above.



# EXHIBIT "A"





# EXHIBIT "C"

