



ENT 7327012020 PG 1 of 17
JEFFERY SMITH
UTAH COUNTY RECORDER
2020 May 29 2:15 pm FEE 0.00 BY HA
RECORDED FOR SANTAQUIN CITY CORPORATION

RESOLUTION 01-01-2020

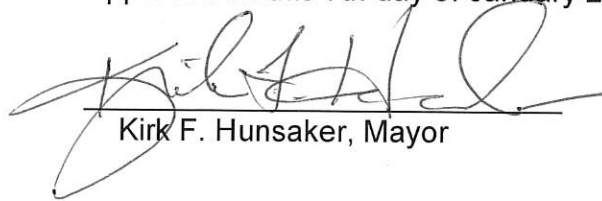
A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH JOHNSTON DEVELOPMENTS, LLC AND RG DEVELOPMENT, LC, BOTH UTAH LIMITED LIABILITY COMPANIES ("JD/RG"), REGARDING THE ORCHARD VISTAS DEVELOPMENT

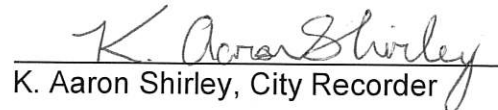
BE IT HEREBY RESOLVED:

SECTION 1: The attached document represents a Development Agreement with Johnston Developments, LLC and RG Development, LC, both Utah limited liability companies ("JD/RG"), regarding the orchard vistas development

SECTION 2: This Resolution shall become effective upon passage.

Approved on this 7th day of January 2020.


Kirk F. Hunsaker, Mayor

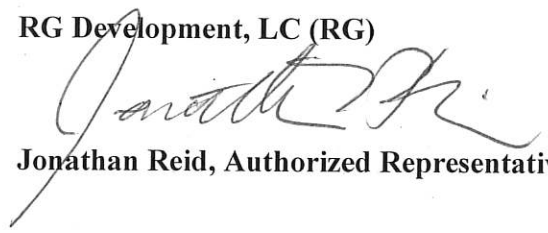

K. Aaron Shirley, City Recorder

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Effective Date.

Johnston Developments, LLC (JD)

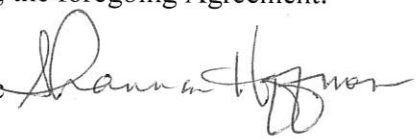

Ryan Johnston, Authorized Representative

RG Development, LC (RG)

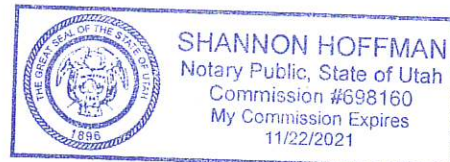

Jonathan Reid, Authorized Representative

STATE OF UTAH)
:SS
COUNTY OF UTAH)

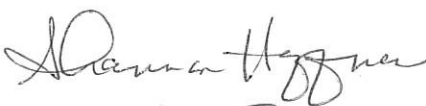
On this 9th day of ~~December~~ ^{January, 2020}, 2019, personally appeared before me Ryan Johnston, who after being duly sworn, stated that he is a Member of Johnston Developments, LLC; that he is authorized by the same to execute, and that he did execute, the foregoing Agreement.

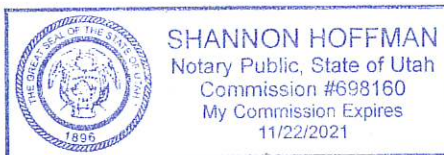
Notary Public 

STATE OF UTAH)
:SS
COUNTY OF UTAH)

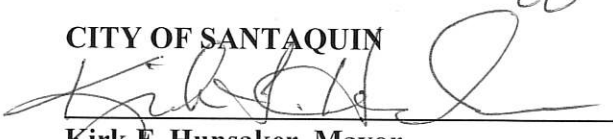


On this 9th day of ~~December~~ ^{January, 2020}, 2019, personally appeared before me Jonathan Reid, who after being duly sworn, stated that he is a Member of RG Development, LC; that he is authorized by the same to execute, and that he did execute, the foregoing Agreement.

Notary Public 



CITY OF SANTAQUIN


Kirk F. Hunsaker, Mayor

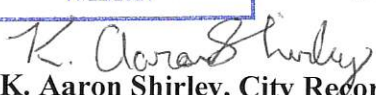

ATTEST: K. Aaron Shirley, City Recorder

EXHIBIT A

Legal Description and Engineering Concept Plan

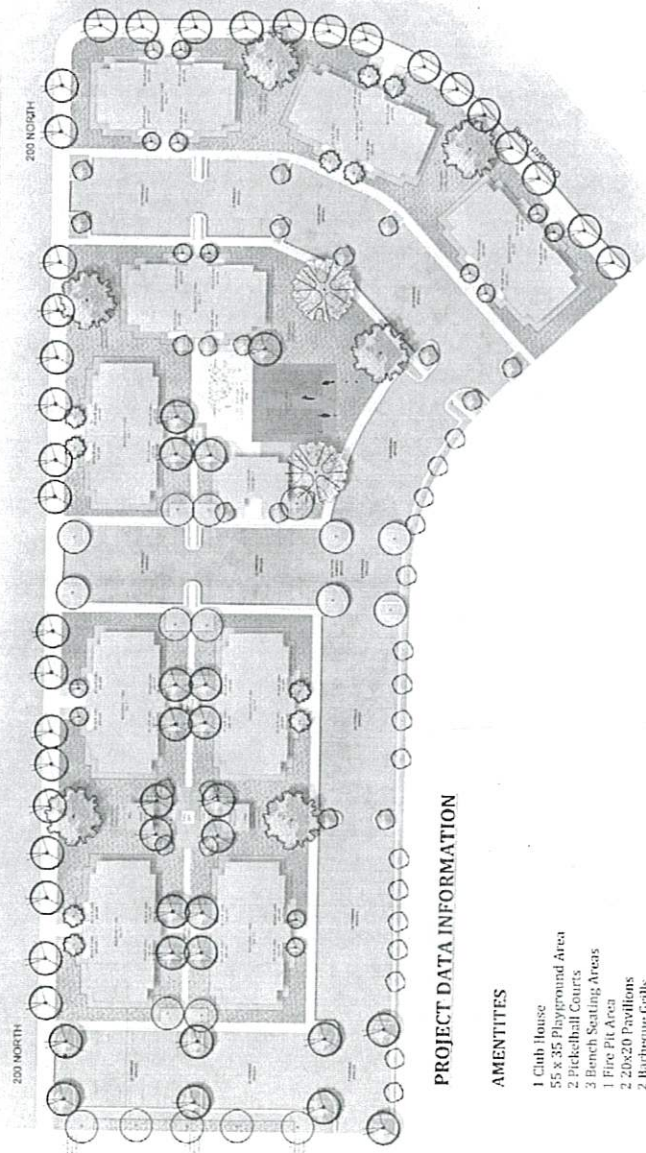
LEGAL DESCRIPTION OF PROPERTY

A part of the Northeast Quarter of Section 1, Township 10 South, Range 1 East, Salt Lake base and Meridian, U.S. Survey in Utah County, Utah:

Beginning at a point on the Future Easterly Line of 400 East Street located 1737.86 feet South $0^{\circ}30'42''$ East along the Quarter Section Line; and 29.85 feet South $89^{\circ}29'04''$ East from the North Quarter Corner of Section 1; and running thence along Future Street Right-of-Way Lines the following nine courses: North $0^{\circ}30'56''$ East 53.50 feet; North $6^{\circ}47'35''$ East 54.87 feet; North $0^{\circ}30'56''$ East 139.43 feet to a point of curvature; Northeasterly along the arc of a 12.00 foot radius curve to the right a distance of 18.77 feet (Central Angle equals $89^{\circ}37'17''$ and Long Chord bears North $45^{\circ}19'35''$ East 16.91 feet) to a point of tangency; South $89^{\circ}51'46''$ East 376.98 feet; South $89^{\circ}46'13''$ East 432.01 feet to a point of curvature; Northeasterly along the arc of a 12.00 foot radius curve to the right a distance of 18.85 feet (Central Angle equals $90^{\circ}0'0''$ and Long Chord bears South $44^{\circ}46'13''$ East 16.97 feet) to a point of tangency; South $0^{\circ}13'47''$ West 181.28 feet to a point of tangency; and Southeasterly along the arc of a 171.00 foot radius curve to the right a distance of 85.97 feet (Central Angle equals $28^{\circ}48'16''$ and Long Chord bears South $14^{\circ}37'55''$ West 85.07 feet) to the Northwestern Line of Orchard Lane; thence South $47^{\circ}49'42''$ 67.30 feet along said Northwestern Line; thence North $42^{\circ}10'40''$ West 27.48 feet to a point of curvature; thence Northwesterly along the arc of a 115.0 foot radius curve to the left a distance of 94.95 feet (Central Angle equals $47^{\circ}18'24''$ and Long Chord bears North $65^{\circ}49'52''$ West 92.28 feet) to a point of tangency; thence North $89^{\circ}29'04''$ West 666.49 feet to the point of beginning.

Contains 222,007 sq. ft. or 5.097 acres.

CONCEPT B



PROJECT DATA INFORMATION

AMENITIES

- 1 Club House
- 55 x 35 Playground Area
- 2 Pickleball Courts
- 3 Bench Seating Areas
- 1 Fire Pit Area
- 2 20x20 Pavilions
- 2 Barbecue Grills

EXHIBIT B

Amenities other than clubhouse:

Playground area and equipment (1):

The 2000 square foot playground area will have a ground surface of a Playsafer or equivalent rubber mulch is an exceptional playground protection surface, as it provides unmatched shock absorbency, and greatly reduces the incidence of playground injuries. Unlike other loose fill surfaces, Playsafer rubber mulch nuggets require minimal maintenance, dry quickly after rain and will not decompose.

Two PlayBooster® play structures themed to look like barns and colored in their traditional red and white colors, featuring plenty of climbing, swinging, sliding and exploring adventures.

The PlayBooster® playground structure, the original post-and-clamp system, combines ground-level components with climbing events and overhead activities for kids ages 5 to 12.

Two sets of swings for toddler in child safe seats along with a set of wings for toddlers ages 5 to 12. Will include tractor playset.

Pavilions (2):

Two 20ft x 20ft construction pavilions, color and appearance to match the adjacent building. Pavilions features hip roofs, clear spans (no center post) for optimal space usage, and post spacings up to 30'. All frames, posts, structural members, ect. will be powder coated steel with optional 2x6 tongue and groove roof decking. They also feature non-bird nesting designs. Options include a variety of roof pitches, clerestories, and cupolas.

All pavillons will be equipped with barbecue stations with picnic style table and chair combos. BBQ station will be well outside the pavilion area so as to maximize the usable area under the pavilion.

Fire Pit:

The 36" x 36" fire pit will be an industrial grade natural gas fueled fire pit. Constructed of stone to match the buildings in color and appearance. Cost for the natural gas will be paid through the HOA.

Pickleball Courts (2)

Two pickleball courts of standard size 20ft x 44ft with 3 ft high nets to accommodate singles and doubles play. Made of customary materials and appropriately painted surface and lines.

EXHIBIT C

Clubhouse Design Features:

The 2000 square foot clubhouse will also match the color and concept of the surrounding buildings and structures. The clubhouse will have a basic open concept to accommodate various groups and or activities. It will be equipped with 2 restrooms, meal prep and serving area, sink, refrigerator, and storage closet to accommodate tables and chairs that can be set up and stored when not in use.

***Recording Requested By and
When Recorded Return to:***

Santaquin City
Attention: City Manager
275 West Main
Santaquin, Utah 84655

Parcel No. 32-003-0115

AGREEMENT

THIS AGREEMENT is made and entered into on this ____ day of December, 2019 (the "**Effective Date**"), by and between the City of Santaquin, Utah, a municipality and political subdivision of the State of Utah, hereinafter ("**City**") and JOHNSTON DEVELOPMENTS, LLC and RG DEVELOPMENT, LC, both Utah limited liability companies ("**JD/RG**"). City and **JD/RG** may be hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS:

A. **WHEREAS**, Santaquin City has adopted a General Plan governing the development and use of real property pursuant to the provisions of Utah Code Ann., Title 10, Chapter 9a; and

B. **WHEREAS**, **JD/RG** owns approximately 5.09 acres of property located between 400 East and 600 East, and 200 North and 100 North in Santaquin City, which property is more particularly identified in Exhibit A hereto; and

C. **WHEREAS**, on November 19, 2019, the Property was conditionally approved to be rezoned from Commercial, C-1 (Santaquin City Code § 10-7F-1) to Main Street Residential (Santaquin City Code § 10-7M-11) ("**MSR zone**") subject to the approval of a Development Agreement by the City Council no later than November 20, 2020; and

D. **WHEREAS**, the Parties desire to cooperate in the planning and approval of a Site Plan, for the purpose of encouraging an attractive and useful development that complies with the provisions of the MSR zone; and

E. **WHEREAS**, the Parties now desire to enter into this Agreement to establish certain parameters of development of the Property, including phasing, amenities, property management (through an HOA Agreement), and other development objectives prior to development of the Property in accordance with the City's General Plan and objectives.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is herein acknowledged, the Parties agree as follows:

1. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have the meaning given to it by this Agreement or, if different, by the Santaquin Zoning Ordinance in effect on the Effective Date. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

- 1.1. **"Applicable Law"** shall have the meaning set forth in Section 3.6 of this Agreement.
- 1.2. **"Approval Date"** shall mean the date the City Council approves this Agreement.
- 1.3. **"Changes in the Law"** shall have the meaning set forth in Section 3.7 of this Agreement.
- 1.4. **"CJM Agreement"** is an agreement by and between Santaquin City and CJM Limited Liability Partnership, an Idaho Company, dated effective on or about October 1, 2019 (See Utah County Document Recordation Number 101935:2019).
- 1.5. **"Development Phase"** means a portion of the Property for which a complete application for development is filed hereunder.
- 1.6. **"Development Standards"** means the Santaquin City Construction Standards and Specifications, and Santaquin City Code, as adopted by the City Council, including any amendments thereto, a copy of which is on file at the Community Development Department and may be reviewed during regular business hours.
- 1.7. **"Effective Date"** shall have the meaning set forth in the introductory paragraph preceding the Recitals.
- 1.8. **"Future Laws"** means the laws, ordinances, policies, standards, guidelines, directives, procedures and processing fee schedules of City which may be in effect in the future at any time when a complete application for a Development Phase is submitted and which may or may not apply to such application based upon the terms of this Agreement.
- 1.9. **"Phase"** means any portion of the Property for which a complete application is submitted for development of all or part of the 9 separate multi-family residential 12-plex buildings consisting of a total of 108 condominium units materially consistent with Exhibit B.
- 1.10. **"Property"** means all of the real property that is described in Exhibit A.
- 1.11. **"Amenities"** means Amenities for the development of the Property set forth in Exhibits B and C.
- 1.12. **"Sub-developer"** means an owner of a Phase within the Property which is not JD/RG, or an affiliate, successor, or assignee of JD/RG.
- 1.13. **"Term"** shall have the meaning set forth in 4.11 of this Agreement.

2. GENERAL RIGHTS AND RESPONSIBILITIES.

2.1. General Rights and Responsibilities of JD/RG.

2.1.1. **Development of the Property.** JD/RG agrees that the Property shall be developed pursuant to the terms and conditions of this Agreement. So long as JD/RG submits a complete development application consistent with the Site Plan and receives all normally required approvals, it shall be entitled to construct improvements on the Property generally consistent with the concept for development depicted in the Site Plan, or future plans submitted to and approved by the Santaquin City Council, subject to Applicable Law. To the maximum extent permissible under state and federal law, and at equity, City and JD/RG agree this Agreement grants to JD/RG vested rights as that term is construed under common law and pursuant to Utah Code Ann. § 10-9a-509 (2019). The Parties acknowledge and agree that City's agreement to perform and abide by the covenants and obligations of City set forth herein is a material consideration for JD/RG's agreement to perform and abide by the covenants and obligations of JD/RG's set forth herein. Unless otherwise agreed between City and JD/RG vested interest(s) and right(s) contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, for any reason, the obligations of the Parties to each other hereunder shall terminate, but none of the building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner, except as provided generally in the Santaquin City Code. No easements, maintenance requirements, or other agreements intended to run with the land shall expire. The Parties agree that any development of the Property after the Term of this Agreement shall comply with the provisions of the Santaquin City Code for single family residential development.

2.1.2. **Conditions of Approval and Impact Fees.** With respect to the development of the Property, JD/RG accepts and agrees to comply with the impact, connection and building fees of the City currently in effect, or as amended for multi-family developments; the City agreeing and representing that any schedule of such fees will be applied uniformly within the City or service area of the City, as applicable. JD/RG acknowledges that the Property requires infrastructure supported by impact fees and finds the fees currently imposed to be a reasonable monetary expression of exactions for multi-family housing that would otherwise be required at this time.

2.1.3. **Dedications to the City.** The Parties do not anticipate any dedication of the Property to the City. All taxes due or accrued on the above described properties shall be paid by JD/RG. Dedication of any water rights or shares shall be dictated per Santaquin City water dedication requirements for multi-family housing.

2.1.4. **Statement Regarding "Compelling, Countervailing Public Interests."** The Parties acknowledge that they are familiar with the "compelling, countervailing public interest" test that is generally an exception to the doctrine of vested rights in the State of Utah.

2.1.4.1. The City acknowledges that as of the Effective Date, to the best of its knowledge, information and belief, the City is presently unaware of any material

facts under which a desire of the City to modify JD/RG's rights under this Agreement would be justified by a "compelling, countervailing public interest."

2.1.4.2. If, however, it should be determined that there did, in fact, exist, as of the Effective Date, material facts consistent with the exceptions to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1988), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law, under which modification of the JD/RG's rights under this Agreement would be justified by a "compelling, countervailing public interest," JD/RG acknowledges that it neither has nor had any vested rights as to any matter arising from or affected by any material facts of which the City was not or could not have been aware as of the Effective Date.

2.1.5. **Construction Mitigation.** JD/RG shall provide the following measures, all to the reasonable satisfaction of the City's Engineer, to mitigate the impact of construction within its Phase. JD/RG shall also adhere to the usual construction impact mitigation measures required by the City. Additional reasonable site-specific mitigation measures may be required. The following measures shall be included in each application for development of any Development Phase:

2.1.5.1. Protection of existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed.

2.1.5.2. Mitigation for dust control to protect adjacent properties including orchards.

2.1.6. **Construction of Improvements.** JD/RG submitted a Site Plan to the City describing its plan for development of the Property (the "**Site Plan**") Exhibit B, on November 19, 2019. Final engineering and architectural plans will be submitted to the City and all required approvals for final plans will be properly reviewed and approved if proposed plans meet all requirements herein and all requirements of Development Standards. All utilities necessary for the development of the Property as per final engineering to be approved by the City, shall be constructed by JD/RG, in compliance with the Development Standards. Notwithstanding the foregoing, JD/RG shall also provide the City with complete plans and specifications for the construction of each roadway indicated within the Site Plan.

2.1.7. **Phasing/Timing of Construction of Amenities/Property Management.** The Property may be developed in phases with appropriate parking for each phase, phasing may occur one building at a time. All noted amenities listed in the attached Exhibits shall be included in any final plan approvals. The two pickleball courts and one tot lot shall be built before commencement of construction of the 37th residential unit. The clubhouse shall be built before construction of the 61st residential unit. In developing each phase, JD/RG shall ensure the logical development through each phase, all in conformance with the requirements of this Agreement and the Development Standards in effect when the complete application is filed. The maintenance of the amenities, common space, streets within the Site Plan, procedures for dealing with emergencies, insurance, and other property management issues shall

be set forth in CCR's, HOA, or other management protocols that may be submitted by JD/RG and required by Santaquin City Code § 10-7M-11(K).

2.1.7.1. A proportional (per unit) amount of cash bonding for all amenities, including the clubhouse, shall be paid to the City with each building permit or phase and deposited into a non-interest bearing account to be held by the City until said amenities are completed per approved plans. Upon completion of each amenity per approved plans, partial release of this cash bonding may be released upon written request as provided in the Santaquin City Code.

2.1.7.2. Each individual phase must stand independent of any future onsite or Right-of-Way improvements, including but not limited to; parking, public and or private access, emergency ingress and egress, staging for future phases, etc.

2.1.8. **Compliance with City Requirements and Standards and City Code.** JD/RG expressly acknowledges that nothing in this Agreement shall be deemed to relieve JD/RG from its obligations to comply with all applicable requirements of the City necessary for approval and payment of all applicable fees for a Phase in effect at the time of development approval, including the payment of unpaid fees, the approval of plats and site plans, the approval of building permits and construction permits, and compliance with all applicable building, electrical, mechanical, plumbing, and fire codes, and other City ordinances relating to the placement and construction of the proposed structure, that are in effect at the time the person files with the City a complete application.

2.2. General Rights and Responsibilities of the City.

2.2.1. **Reserved Legislative Powers.** This Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards, or rules regulating development. The City acknowledges, however, that any exercise of its legislative or police powers which alters or modifies this Agreement to JD/RG's detriment may render the City liable to such remedies as may be available to JD/RG under such circumstances.

2.2.2. **Construction of Improvements on City Property.** All infrastructure improvements for the development of the Property shall be constructed by and except as otherwise specifically described herein shall be the sole responsibility of RG/JD. Utility access in City streets shall comply with Design Standards.

2.2.3. **City Streets and Rights-Of-Way.** The Parties acknowledge and agree that a portion of the required improvements connecting 200 North to Orchard Lane and connecting 500 East to 200 North will be or have been constructed under the CJM Agreement. All remaining construction of improvements to 500 East and 200 North within and along the frontage of JD/RG property along 500 East and 200 North are the responsibility of JD/RG, with the exception of any improvements to be constructed under the CJM Agreement. It is understood that only those portions of

improvements along 200 North as currently constructed have been constructed pursuant to the CJM Agreement.

- 2.2.4. **City Services.** City agrees that it shall make available (subject to application for service, issuance of applicable permits and payment of connection fees and applicable commodity usage rates) culinary water, sanitary sewer, pressurized irrigation and other municipal services to the Property. Such services shall be provided to the Property at the same levels of services, on the same terms and at rates as approved by the Santaquin City Council, which rates may not differ materially from those charged to other developments in MSR Zone for multi-family housing.

3. GENERAL PROVISIONS

- 3.1. **Covenants Running with the Land.** 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 Property 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 Property.
- 3.2. **Transfer of Property.** JD/RG shall have the right to assign or transfer all or any portion of its rights and obligations under this Agreement, only upon written approval of the City, which approval shall not unreasonably be withheld. JD/RG shall provide written notice to the City of any completed assignment or transfer. In the event of an assignment, the transferee shall succeed to all of JD/RG's rights and obligations under this Agreement.
- 3.3. **No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and among the Parties that: (i) development of the Property is a private development; (ii) City and JD/RG hereby renounce the existence of any form of agency relationship, joint venture or partnership among City and JD/RG, or any of JD/RG's successors in interest and assigns; and (iii) nothing contained herein shall be construed as creating any such relationship among City and JD/RG.
- 3.4. **Consent.** In the event this Agreement provides for consent from the City, or JD/RG, such consent shall be deemed to be given thirty (30) days after consent is requested in writing in the event no response to the request is received within that period. All requests for consent shall be made in writing, and in no event shall consent be unreasonably withheld or delayed. City will use reasonable efforts to process any application for a Development Phase promptly.
- 3.5. **Legal Challenges.** In the event that any person challenges this Agreement or the Development contemplated herein, upon request by JD/RG, or with notice to JD/RG and JD/RG's consent or acquiescence, the City may undertake to defend this Agreement or the Development. In such a case where JD/RG formally consents in writing, JD/RG agrees that it shall be liable for all legal fees, including attorneys' fees, expenses, and/or court

costs incurred by the City upon presentation to JD/RG of an itemized list of costs, expenses, and fees.

- 3.6. **Applicable Law.** Unless otherwise provided herein, the rules, regulations, official policies, standards and specifications applicable to the development of the Property (the "**Applicable Law**") shall be those rules, regulations, official policies, standards and specifications, including City ordinances and resolutions, in force and effect on the date of submission of a complete application for development.
- 3.7. **State and Federal Law.** Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("**Changes in the Law**") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

4. MISCELLANEOUS

- 4.1. **Incorporation of Recitals, Introductory Paragraphs, and Exhibits.** The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein.
- 4.2. **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.
- 4.3. **Severability.** If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.
- 4.4. **Construction.** This Agreement has been reviewed and revised by legal counsel for JD/RG and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.
- 4.5. **Further Assurances, Documents, and Acts.** Each of the Parties hereto agrees to cooperate in good faith with the others, and to execute and deliver such further documents, and to take all further actions reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each Party as allowed by law.
- 4.6. **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned by JD/RG to any other party, individual or entity without assigning the rights as well as the obligations under this Agreement. The rights of the City under this Agreement shall not be assigned.

4.7. Governing Law, and Dispute Resolution, and Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

4.7.1. Mediation. Any and all disputes arising out of or related to this Agreement or the Parties' performance hereunder shall be submitted to mediation before a mutually-acceptable mediator prior to initiation of litigation or any other binding or adjudicative dispute resolution process. The Parties shall: (i) mediate in good faith; (ii) exchange all documents which each believes to be relevant and material to the issue(s) in dispute; (iii) exchange written position papers stating their position on the dispute(s) and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the dispute(s), and; (iv) engage and cooperate in such further discovery as the Parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the Parties. Venue of the mediation shall be the State of Utah. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed by a court of competent jurisdiction. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation. The prevailing Party in any action to enforce in whole or in part this mediation clause or in any subsequent arbitration or mediation shall be entitled to reimbursement of attorneys' fees and costs incurred in said action.

4.7.2. Default Litigation. If any Party hereto is required to engage the services of counsel by reason of the default of another party, the substantially prevailing Party shall be entitled to receive its costs and reasonable attorney fees. Said costs and attorney fees shall include, without limitation, costs and attorney fees incurred in any appeal and in any proceedings under any present or future federal bankruptcy act or state receivership act.

4.8. Notices. Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by registered or certified mail, return receipt requested or by facsimile. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. If given by facsimile to the address and number for such Party set forth below (provided, however, that the notice is not effective unless a duplicate copy of the facsimile notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given upon receipt by the other Party. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the address set forth below:

JD/RG: RG Development, LC
 569 South 700 West
 Mapleton, UT 84664

Johnston Developments, LLC
251 West 1600 South
Springville, UT 84663

With a copy to: MacArthur, Hedler & Metler
Attention: Paul MacArthur
4844 North 300 West, Ste 300
Provo, Utah 84604

City: Santaquin City
Attention: City Manager
275 West Main
Santaquin, Utah 84655

With a copy to: Nielsen & Senior
Attention: Brett B. Rich
P.O. Box 970663
1145 South 800 East, Suite 110
Orem, Utah 84097
Email: bbr@ns-law.com

Notice is deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery or confirmed electronic transmission, on the date of delivery to the overnight courier service, if that service is used, and on the date of deposit in the mail, if mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

4.9. No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties and their assigns. No other party shall have any right of action based upon any provision of this Agreement whether as third party beneficiary or otherwise.

4.10. Counterparts and Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of twelve (XX) pages, including notary acknowledgment forms, and an additional three (3) exhibits, which constitute the entire understanding and agreement of the Parties to this Agreement. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A	Legal Description and Engineering Concept Plan
Exhibit B	Site Plan, including amenities Concept B layouts Elevations and Rendering of Building
Exhibit C	Clubhouse Conceptual Design

4.11. **Duration.** This Agreement shall continue in force and effect until the earlier of December 31, 2035, or such time as all obligations hereunder have been satisfied (the "Term").

4.12. **Insurance and Indemnification.** JD/RG shall defend and hold the City and its officers, employees, and consultants harmless for any and all claims, liability and damages arising from the rezoning of the Property, construction on the Property, or operations performed under this Agreement by (a) JD/RG or by JD/RG's contractors, subcontractors, agents or employees, or (b) any one or more persons directly or indirectly employed by, or acting as agent for, JD/RG or any of JD/RG's contractors or subcontractors. Nothing in this Agreement shall be construed to mean that JD/RG shall defend, indemnify, or hold the City or its elected and appointed representatives, officers, agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from (i) the willful misconduct or negligent acts or omissions of the City, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the City of improvements that have been offered for dedication and accepted by the City for maintenance.

4.12.1. **Hazardous, Toxic, and/or Contaminating Materials.** JD/RG further agrees to defend and hold the City and its elected and/or appointed boards, officers, agents, employees, and consultants harmless from any and all claims, liability, costs, fines, penalties, charges and/or claims of any kind whatsoever relating to the existence and removal of hazardous, toxic and/or contaminating materials, except where such claims, liability, costs, fines, penalties, charges and/or claims are due to the actions of the City.

4.12.2. **Bodily Injury and Property Damage Insurance.** JD/RG agrees to and shall indemnify and hold the City and its elected and appointed boards, officers, agents, employees, and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done thereon or any errors or omissions of JD/RG or its agents, servants, employees, or contractors, except for willful misconduct or negligent acts or omissions of the City or its elected and appointed boards, officers, agents, employees, and consultants.

Prior to any construction on the Property, JD/RG shall furnish or cause to be furnished to the City duplicate originals or appropriate certificates of insurance as might be required by Applicable Law within the MSR Zone.

4.13. **Acknowledgment.** By its signature below, JD/RG acknowledges that the respective parcel of property owned by JD/RG at the time of execution of this Agreement shall be subject to all of the terms and conditions of this Agreement upon execution by the City.

- 4.14. **Amendment.** Unless otherwise stated in this Agreement, the Parties may amend this Agreement by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having an interest only in any specific lot(s), unit(s) or other portion of the Property.
- 4.15. **Recordation of Development Agreement.** No later than ten (10) days after the City enters into this Agreement, the City shall cause to be recorded an executed copy of this Agreement in the official records of the County of Utah.
- 4.16. **Sub-developer Agreements.** The Parties hereto, or some of them, may enter into separate agreements with Sub-developers or others obtaining rights from JD/RG, provided however that nothing in any separate agreement may conflict with the entitlements and benefits obtained by JD/RG in this Agreement without the express written consent of JD/RG.
- 4.17. **Exclusion from Moratoria.** The Property shall be excluded from any moratorium adopted pursuant to Utah Code § 10-9a-504 unless such a moratorium is found on the record by the Santaquin, Utah City Council to be necessary to avoid a compelling, countervailing public interest.