



RESOLUTION 12-07-2021
A RESOLUTION APPROVING THE AMENDED AND
RESTATED GREY CLIFFS DEVELOPMENT AGREEMENT

BE IT HEREBY RESOLVED:

SECTION 1: The attached documents represent the amended and restated development agreement between Santaquin City and South Valley Holdings LLC for purposes of the Grey Cliffs Development.

SECTION 2: This Resolution shall become effective upon passage.

Approved on this 14th day of December, 2021.

City of Santaquin,

Kirk F. Hunsaker, Mayor

Attest:

K. Aaron Shirley, City Recorder

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

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

Parcel Numbers: 30-091-0014, 30-091-0029, 32-040-0041, 30-094-0023, 30-095-0017, 38-289-0001, 30-091-0003, 30-094-0021, & 30-095-0015

**AMENDED & RESTATED DEVELOPMENT AGREEMENT BETWEEN
SANTAQUIN CITY AND SOUTH VALLEY HOLDINGS LLC FOR PURPOSES
OF THE GREY CLIFFS DEVELOPMENT**

THIS AMENDED & RESTATED DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into on this 14th day of December, 2021 (the "**Effective Date**"), by and between the City of Santaquin, Utah, a municipality and political subdivision of the State of Utah ("**City**"), and South Valley Holdings, LLC, a Utah limited liability company. City and South Valley Holdings LLC may be hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

The Parties entered into the original Development Agreement effective as of March 16, 2021 (the "**Original Agreement**"). This Agreement amends and restates in its entirety, and replaces and supersedes the Original Agreement.

RECITALS

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

WHEREAS, South Valley Holdings LLC owns approximately 340.56 acres of property located at approximately 648 N SR 198, in Santaquin, Utah, as more fully described in Exhibit "A" attached hereto (the "**Property**"); and

WHEREAS, The Parties entered into a Development Agreement effective as of March 16, 2021 from the passage of Resolution 03-09-2021.

WHEREAS, on December 14, 2021, the City zoned the Property as shown on the zoning map which was approved by Ordinance No. 12-03-2021.

WHEREAS, the Parties now desire to enter into this Agreement to establish certain parameters of development of the Property and other development objectives prior to development of the Property.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

SECTION I. DEFINITIONS

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

- 1.1 **"Applicant"** means Owner, or upon its disposition of any of the Property, each person or entity who owns any portion of the Property that applies for the development of a Project.
- 1.2 **"Benefitted Applicant"** means a person or entity who applies for development of any real property that is expected to benefit from connection to infrastructure constructed on the Property, but is not part of the Property.
- 1.3 **"Buildout"** means the completion of the development of the Property.
- 1.4 **"Design Guidelines"** means Santaquin City Standard Specifications and Drawings in effect as of the Effective Date of this Agreement, together with any subsequent amendments thereto.
- 1.5 **"Developer"** means a person or entity who applies for development of all or any portion of the Property, including lot owners who apply for a building permit.
- 1.6 **"Effective Date"** shall have the meaning set forth in the introductory paragraph preceding the Recitals.
- 1.7 **"Owner(s)"** means South Valley Holdings LLC, and also includes all successors and assigns of the same, designated as the owner or owners of the Property, or any part thereof, as indicated on the records of the Utah County Recorder.
- 1.8 **"Project"** means any portion of the Property proposed for development by an Owner, Developer, or any successors or assigns thereof.
- 1.9 **"Property"** means the following parcels of real property, described by owner and parcel numbers as recorded in the office of the Utah County Recorder: South Valley Holdings LLC Parcel No's. 30-091-0014, 30-091-00 29, 32-040-0041, 30-094-0023, 30-095-0017, 38-289-0001, 30-091-0003, 30-094-0021, & 30-095-0015. The Property is more particularly described in Exhibit "A" hereto.

SECTION II. GENERAL RIGHTS AND RESPONSIBILITIES

2.1 General Rights and Responsibilities of Owners

2.1.1 **Conditions of Approval and Impact Fees.** With respect to the development of the Property, Owners accept and agree to comply with the impact, connection, and building fees of the City currently in effect, or as amended, so long as any such fee schedule will be applied uniformly within the City or service area of the City, as applicable. Owners acknowledge that the development of any Project within the Property will require infrastructure supported by impact fees and finds the fees currently imposed to be a

reasonable monetary expression of exactions that would otherwise be required at this time. Owners agree not to challenge, contest, or bring a judicial action seeking to avoid payment of or to seek reimbursement for such fees, so long as such fees are applied uniformly within the City or service area.

2.1.2 Statement Regarding "Compelling, Countervailing Public Interest." 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.

2.1.2.1 The City acknowledges that as of the date of this Agreement, to the best of its knowledge, information and belief, the City is unaware of any material facts under which a desire of the City to modify the Owner's rights under this Agreement would be justified by a "compelling, countervailing public interest."

2.1.2.2 If, however, it should be discovered that there did, in fact, exist, as of the date of this Agreement, material facts under which modification of the Owners' rights under this Agreement would be justified by a "compelling, countervailing public interest," Owners' acknowledge that they neither have nor had any vested rights as to any matter arising from or affected by any material facts of which the City was not or should not have been aware as of the date of this Agreement.

2.1.3 Construction Mitigation. Prior to any development of a Project, Developer shall provide the following measures, all to the reasonable satisfaction of the City's Engineer, to mitigate the impact of construction within the Project. Developer 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 Project:

2.1.3.1 Limits of disturbance, vegetation protection and the re-vegetation plan for all construction, including construction of public improvements;

2.1.3.2 Compliance with each Fugitive Dust Control Permit required by the Utah Division of Air Quality during all applicable time periods.

2.1.3.3 Protection of existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed;

2.1.3.4 Construction traffic routing plan to minimize traffic impacts on Santaquin City and residential areas as approved by the City; and

2.1.3.5 No mass grading operations shall be permitted on the Property without prior approval of a conditional use permit from the City.

2.1.4 Vested Rights in Approved Zoning. An Owner or Developer may apply for development of a Project so long as the proposed development complies with all City land use ordinances, which are either in effect on the date that a complete application is submitted to the City, or as excepted herein. Land use regulations which are applicable to the Project may be modified when required by federal and/or state laws and regulations promulgated to avoid any imminent and substantial risk or threat of injury to the public

health and safety. All development within the Project shall be subject to and comply with any future amendments or changes to the International Building Code, American Association of State Highway Transportation Officials (AASHTO) standards, federal water quality regulations, as the City makes changes or amendments based on any such standards, codes and/or regulations that may now or then be applicable to the Project or any phase thereof.

2.1.5 Residential Design Standards.

2.1.5.1 Detached single-family homes shall comply with the following material standards:

Elevation			
Facing Public Street	Facing Private Access	Side	Rear
30% masonry ¹ coverage of ground floor Vinyl products may only be used in gable pediment areas and must be decorative in nature (e.g. shake, board and baton, etc.)	30% masonry ¹ coverage of ground floor, except where the only building entrance from the private access is a garage entrance then a minimum 3' wainscot is sufficient Vinyl products may only be used in gable pediment areas	Minimum 3' wrap of masonry ¹ from rear or front Vinyl products are permitted to the extent that ground floor and pediment areas are materially distinct (e.g., material type and style) from upper stories. Separation bands between material types must be provided	No minimum masonry ¹ coverage Vinyl products are permitted to the extent that ground floor and pediment areas are materially distinct (e.g., material type and style) from upper stories. Separation bands between material types must be provided
Note: ¹ Masonry coverage includes brick, stone, concrete siding products, etc. EIFS products are not considered masonry material for purposes of this section but may be used for trim and highlight purposes. For calculation purposes, coverage area does not include window and door surface areas.			

2.1.6 **Affirmation of Ownership.** South Valley Holdings LLC hereby affirms that the ownership of the Property as set forth on section 1.7 is accurate and truthful as of the date of execution of this Agreement.

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 Owners' detriment may render the City

liable to such remedies as may be available to Owners under such circumstances.

2.2.2 Compliance with City Requirements and Standards. Owners expressly acknowledge that nothing in this Agreement shall be deemed to relieve Owners' obligations to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and site plans for any Project in effect at the time of development approval, 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. Owners specifically acknowledge that the City may enact ordinance(s) regulating land use and development in a flood plain or potential geologic hazard to protect life or prevent the substantial loss of or damage to real property and agree to be bound by any such ordinances whether adopted prior to or subsequent to the execution of this Agreement.

2.2.3 Reimbursement Agreements. At the request of an Applicant, the City may enter into reimbursement agreement(s), with any applicant for development of property which receives a direct benefit from easements, rights-of-way, roads, water (culinary and secondary) or sewer improvements installed by Developer. Any such agreement shall provide that the applicants shall be assessed a pro-rata charge for the direct benefitting from any or all of the improvements described above. The City shall, in its sole discretion, determine the costs to be reimbursable to the Developer(s), the method of assessment, and the identity of the benefited property for purposes of reimbursement. Nothing in this agreement shall be interpreted to require the City to enter into any reimbursement agreement or seek reimbursement on behalf of any Owner or Applicant. Parks and recreation reimbursements are defined in section 3.6 (Open Space Improvements) below.

2.2.4 Power of Eminent Domain. The City agrees that in the event that an Applicant needs to obtain easements or rights of way for the purpose of constructing infrastructure improvements for a Project and is otherwise unable to negotiate a reasonably acceptable contract for such easements or rights of way, the City, upon the request of Applicant, may consider, but is not required to, exercise its power of eminent domain to obtain such easements or rights of way, any and all costs of which shall be borne by the Applicant so requesting.

2.3 Recording. The City shall cause this Agreement, together with all exhibits and attachments, to be recorded with the Utah County Recorder.

SECTION III. SPECIFIC RIGHTS AND RESPONSIBILITIES

3.1 Consideration of Adjacent Developments. Notwithstanding any contrary provisions, the Parties acknowledge that properties in the surrounding area may be planned for development. Owners agree to collaborate and cooperate to assure adequate sizing and locating of public utilities and road systems, as generally contemplated in the City's various master plans. Developers are not required to enter into agreements with other property owners unless offers and terms presented by the other owners are reasonable and economically viable, as determined by the Developers. Owners agree that each Project shall be designed and constructed in such a manner that will accommodate the extension and connectivity to roadways, utilities, and related infrastructure needed for the development of adjacent properties through the Property where needed. Additional costs to the Developer to provide for such capacities for all road systems and utilities shall not be the responsibility of the City. If the City determines that additional upsizing of infrastructure through the Property is needed, beyond that required to accommodate the development of adjacent

properties, the City will reimburse the Developer for costs as may be provided in sections 3.2 through 3.5 hereafter.

3.2 **Water.**

3.2.1 **Obligations of the Owners and Developers.**

3.2.1.1 **Water System.** The Owner shall, at their sole cost and expense, design, build, and dedicate to the City all water distribution facilities of sufficient capacity to handle the total estimated requirement of its Project at Buildout and to accommodate the development of all of the Property. Such facilities shall be built according to City specifications and standards. Additionally, all facilities located within the fault zone, as identified within the Geological Hazards Investigation and the Geotechnical Study, shall be adequately and appropriately protected to ensure complete operational capacities of the facilities during and after an emergency event (i.e. earthquake, etc.). All facilities necessary to provide a water system installed by Developer within the Project, upon acceptance by the City, shall be owned, operated, and maintained by the City. The obligations of Developers or their successors or assigns shall include the construction of water distribution lines outside the Project and outside the Property as necessary to connect to and/or loop the existing Santaquin City water system. Developer shall be similarly responsible for such infrastructure at such time as any portion of the Property is developed.

3.2.1.2 **Satisfaction of Water Rights Requirement.** Owners hereby assert that they are familiar with Santaquin City Code 8.04.100 and hereby agree that prior to either approval of a final plat for, or issuance of a building permit on, any parcel of property that is included in the Project, the owner of the subject parcel shall either dedicate water rights to the City or, with the City's written consent, pay a cash equivalent in value to the cost of the required water rights, as specified by, or as determined in accordance with, the provisions of the City Code. The City, in its sole discretion, shall determine whether the requirements of this section shall be satisfied by the dedication of water rights or the payment of money in lieu of said water rights. The City shall not be required to approve any plat, or issue any building permit, until such requirements are fully satisfied.

3.2.2 **City Obligations.** Upon the dedication and acceptance by the City of the water delivery system, satisfaction of the water rights requirements (as outlined in section 3.2.1.2), and payment of impact fees, the City shall provide all use areas served by such infrastructure within the Project, water service at a level generally provided to other areas of the City.

3.2.3 **High Elevation Area Water Service.** South Valley Holdings LLC acknowledges that existing City water facilities are not adequate to provide sufficient service to the building lots within zone 11NE (high elevation area) as identified in the Santaquin City Water Master Plans. Accordingly, as a condition and prior to City granting final approval for any subdivision plat that contains building lots within those relevant high elevation areas, Owner agrees to design and construct a water booster pump station. That booster pump shall be of sufficient size and capacity to provide water service that meets City's specifications for water pressure and flow to service all of the high elevation area planned for the Property at Buildout. Prior to the construction of the booster pump station Developer shall obtain the City's written approval of all design, drawings, plans and specifications.

3.3 Sanitary Sewer Service and Facilities.

3.3.1 Owners' Obligations. In recognition and consideration of the City's willingness to provide the sanitary sewer service necessary to meet the demands of the Project at Buildout, Owners voluntarily agree as follows:

3.3.1.1 Easements and Installation. Owners shall grant to the City, at no cost to the City, all easements necessary for the operation, maintenance, and replacement of all wastewater collection lines and related facilities ("**Wastewater Facilities**"), located within the Property and as may be needed off site for Buildout of the Property as the City determines to be reasonably necessary and in accordance with City Design Guidelines as well as in accordance with Utah State Rules governing sanitary sewer design requirements.

3.3.1.2 Construction of Sewer Infrastructure. Each Applicant for the development of a Project shall install or upsize, at its sole expense, all Wastewater Facilities which the City deems necessary to provide such disposal and treatment service from the Project to the Santaquin sewer system, including both on-site and off-site improvements. Developer shall construct all such facilities with capacity for development of all the Property, at its sole cost and expense.

3.3.1.3 Payment of Sewer Impact Fees. All preliminary and final subdivision plats and all site plan approvals presented after the effective date of this Agreement are subject to the payment of sewer impact fees and sewer connection fees then in effect and generally applicable to other development within the City, payable at the time of building permit issuance.

3.3.2 City Obligations. Upon construction to City specifications and standards of all required sewer-related infrastructure improvements, the payment of all required impact fees and other fees described herein, and dedication and acceptance of all lines and necessary sewer-related improvements and easements, the City shall provide to the Project, sanitary sewer service at a level generally provided to other areas of the City.

3.3.3 Sewer Lift Station. Owner acknowledges that, as a condition to City granting final approval for any subdivision plat that contains building lots that will not gravity flow to a sewer outflow line, Owner agrees to design and construct a sewer lift station. That sewer lift station shall be of sufficient size and capacity to provide sanitary sewer service that meets the approval of the City's anticipated wastewater flow as determined by the City's contracted modeling firm. Prior to the construction of the lift station Developer shall obtain the City's written approval of all design, drawings, plans and specifications.

All facilities necessary to provide a complete and fully operational sewer system installed by the Developer within the Project, upon acceptance by the City, shall be owned, operated, and maintained by the City. The obligations of Developers, Owners, or their successors or assigns shall include the design and construction costs of sewer lines outside the Project and outside the Property as necessary to connect to the existing Santaquin City sewer system and to provide sufficient capacities therein to serve the Development. Developer shall be similarly responsible for such infrastructure at such time as any portion of the Property is developed.

3.4 **Transportation and Traffic Mitigation.**

3.4.1 Developer's Obligations. Each Applicant for the development of a Project shall provide the following transportation and traffic mitigation measures which are intended to reduce potential traffic impacts resulting from the development anticipated by the Project.

3.4.1.1 Plans and Permits. Prior to any development of a Project, the Developer shall obtain all necessary approvals and permits from the City, and from the Utah Department of Transportation (hereinafter "**UDOT**") if applicable.

3.4.1.2 Roads Within a Project. In the event that the City shall approve a final plat for development of a Project, the Applicant shall construct all roads within the Project that are designated on said final plat, including internal circulation routes. All such construction shall be completed in accordance with the requirements of all such approvals and permits and the Design Guidelines. All such roads shall be constructed with capacity for development of all the Property at Developer's sole cost and expense. Prior to the construction of any of the improvements described herein, the Developer shall obtain the City's written approval of all plans, drawings, and specifications with respect to the alignment and construction of such road improvements. Upon completion of the construction of such improvements, the same shall be dedicated to the City. Applicant shall pay all costs of construction of such improvements.

3.4.1.3 Roads Outside the Project. The Developer shall, at its sole cost and expense, obtain all of the necessary easements and rights of way for the construction of all roadways and related improvements, which are outside its Project that, in the opinion of the City, are reasonably necessary to provide sufficient ingress to and egress from the Project and the remainder of the Property, and shall complete the construction of said roadways.

3.4.1.4 Sidewalk, Curb and Gutter. Each Developer of a Project shall construct, at its sole expense, internal curbing & pedestrian pathways in all portions of the Project as may be required by the City in connection with the approval of any final subdivision or development plat or building permit.

3.4.1.5 Landscaping. Upon the City's approval of any plat within a Project, the Developer shall comply with the landscape requirements set forth in Section 3.6 below.

3.4.2 City Obligations.

3.4.2.1 Dedication. The City shall accept the dedication of all streets in each Project, so long as such streets are constructed to the City specifications and standards, are dedicated free of all liens and encumbrances, and are covered by all required bonds and warranties.

3.4.2.2 Reimbursements.

3.4.2.2.1 Developer shall receive impact fee reimbursements for installation of landscaping and trail improvements along roads outside the Property, to the extent

said improvements are included in the City's Park Impact Fee Facility plans and associated analysis, Park impact fee reimbursements will not exceed the costs outlines for landscape and trail improvements installed and accepted by the City and City verified construction invoices and other necessary documentations. Reimbursement payments will be made on a quarterly basis and be equivalent to the parks impact fees received from development within the Project during the quarter. If park impact fees derived from the Project during the term of this agreement are insufficient to cover the City approved park and trail improvements under this part, the City shall assume no liability for reimbursement to the Developer for the facilities. Such landscaping and trail improvements reimbursement payments will be made over a maximum 3-year period from the date of right-of-way acquisition and dedication to the City.

3.4.2.2.2 Developer may be eligible for reimbursement of right-of-way acquisition costs associated with the roads outside a Project in accordance with the City's Transportation Impact Fee Facility Plan and associated analysis. Such road reimbursement payments will be made over a maximum 2-year period from the date of right-of-way acquisition and dedication to the City.

3.4.2.2.3 To the extent that offsite road improvements are more than what are necessary to serve the Project based on other developments and access routes being constructed on adjacent properties, the City may reimburse Developer the costs of grading and materials related to road construction. Any such reimbursements will be based on Developer completed and City accepted improvements as well as City verified construction invoices, weigh tickets, field measurements, or other necessary documentations. Reimbursement payments will be made on a quarterly basis equivalent to the transportation impact fees received from development within the Project during the quarter.

3.4.2.2.4 The City may elect to prepay, rather than reimburse, some or all of those costs outlined in sections 3.4.2.2.1 thru 3.4.2.2.3. The prepayment amount would be determined by coordination between the City Engineer and Developer after receiving appropriate bids and estimates for the work. If the City chooses to use this prepayment option, then Developer will not be entitled to reimbursement of funds as outlined above and waives any claim to reimbursement of funds beyond that amount determined by the City Engineer and Developer for the prepaid work.

3.5 Utilities.

3.5.1 **Applicant's Obligations.** Each Applicant for development of a Project shall be responsible at its sole cost and expense, for the provision of all utility infrastructure within the Project of sufficient capacity to accommodate the development of the remainder of the Property, including (but not necessarily limited to) the following:

3.5.1.1 As provided in section 3.2 hereof, culinary and secondary water systems including all appurtenances;

3.5.1.2 As provided in section 3.3 hereof, sewer and sanitary systems;

3.5.1.3 Runoff and storm drainage;

3.5.1.4 Natural gas;

3.5.1.5 Electricity;

3.5.1.6 Street lighting; and

3.5.1.7 Telecommunications.

3.5.2 **Easements, Rights-of-Way, Etc.** Owner shall grant, provide, and/or dedicate all such easements, rights of way, rights of entry, or other servitudes as may be necessary for the installation and maintenance of the infrastructure contemplated herein.

3.5.3 **City's Obligations.** The City agrees to allow, upon proper application and permit, work on property owned by the City as may be necessary to connect, link, construct, or accommodate utility improvements in a Project.

3.5.4 **Underground Utilities.** All utility lines, conduits, pipes, maintenance, or service stations, pump houses, and the like, that are installed or replaced in connection with the development of a Project, whether within or outside the Property, shall be installed underground, to the extent that such installation (i) is reasonably practicable, (ii) lies within the parameters of City specifications, (iii) complies with applicable federal, state, and local law, regulation, and ordinance, and (iv) accords with industry standards and practices. All utilities necessary for appropriate service to the Project, whether within or outside the Project, shall be installed or replaced at the sole cost of the Developer.

3.6 **Open Space Improvements.** The Parties acknowledge that the Property's designated zone (described in Section 4.1.1) requires that Owner set aside a stated percentage of the Property for open space, and that the open space be improved. Owner's compliance with the guidelines in this Section shall constitute its satisfaction of the open space improvement requirement.

3.6.1 **Open Space Design Plan.** South Valley Holdings LLC has prepared an open space design plan for the Project, which is attached hereto as Exhibit "C", outlining all improved and unimproved open space, and which is hereby adopted for the Project (the "**Open Space Plan**"). Owner agrees to construct all applicable open space improvements consistent with the Open Space Plan.

3.6.2 **Use of Impact Fee Funds for Open Space Improvements.** City shall assist in covering the costs of construction of applicable open space improvements within the Project by including such improvements in the City's master plan and capital facilities plan for park improvements. Upon doing so, City shall reimburse Owner for its construction of applicable open space improvements within the Project and contained within the updated Parks, Recreation, Trails, and Open Space (PRTOS) master plan utilizing park impact fee funds paid to the City from within the Project, with a cap on such reimbursement equal to the park impact fees paid from the total number of homes within the Project.

The City is currently in the process of modifying its PRTOS master plan capital facilities plan, PRTOS impact fee facility plan, and PRTOS impact fee analysis to incorporate the

cost of the proposed open space improvements in its assessment and adoption of PRTOS impact fees using a citywide basis of calculation. The City will diligently pursue the modification of said plans with a good faith effort, recognizing that said effort may take 12 months or more to complete. Subject to Section 3.6.4, beginning on the first day after the enactment of the modified PRTOS impact fee, the City agrees to reimburse Owner the PRTOS impact fees collected from all remaining building permits issued within the Project. PRTOS impact fee reimbursements will not exceed the costs outlined for the open space improvements installed by Owner and accepted by City, or City verified construction invoices and other necessary documentations. Reimbursement payments will be made on a quarterly basis and be equivalent to the PRTOS impact fees received from development within the Project during the quarter. If the PRTOS impact fees derived from the Project during the terms of this agreement are insufficient to cover the cost of the open space improvements, the City shall assume no liability for reimbursement to the Owner for the facilities. As public funds are anticipated to be used, all City procurement and bidding processes must be followed.

3.6.3 Timing of Open Space Improvements. With each subdivision phase approved by the City within the Project, Owner shall be required to construct applicable open space improvements corresponding to that phase determined by the following formula: (a) number of residential lots shown on the plat divided by the total planned lots in the Project at Buildout, and (b) multiplied by the verified costs of the applicable open space improvements in the corresponding phase as attached hereto in Exhibit “C”.

Owner shall, at its sole expense, construct all open space improvements approved by the City in each subdivision phase within the Project, within one year of the issuance of the first building permit issued in that subdivision phase. So long as Owner constructs all such improvements in full compliance with said subdivision approval, City shall reimburse Owner for a portion of the verified costs of construction of said improvements not to exceed one-half (50%) of the verified costs of said improvements, through park impact fees as set forth in section 3.6.2.

3.7 Owner Dedications and Contributions. South Valley Holdings LLC agrees to voluntarily dedicate to City, for its use as open space and recreational property, all mountainside portions of the Project that are not planned to be improved with building lots, roadway or utility improvements, private common areas, or other improvements (other than trail improvements) provided for in this Agreement, which property is more particularly described in Exhibit “C” hereto. All such dedications shall include a deed restriction running with the land that restricts such land from being used for anything other than open space, pedestrian/equestrian/bicycle trails, related mountainside recreation uses, or other governmental use as deemed appropriate by the City. City agrees to reasonably cooperate with Developer’s efforts to classify all such dedications as charitable contributions from South Valley Holdings LLC for potential U.S. income tax purposes, and to provide documentation to that effect.

3.7.1 Timing of Dedications and Contributions. South Valley Holdings LLC agrees to dedicate mountainside portions of the project to the City for its use as open space and recreational property, at the earlier of, 1) sale or transfer of the Property, 2) completion of the mass grading for the Project previously approved by the City, or 3) commencement of the fourth phase of the project. All other open spaces in the Project shall be dedicated at the time that improvements are completed in accordance with sections 3.6.2 and 3.6.3.

SECTION IV. ZONING

4.1 Santaquin Zoning Map.

4.1.1 **Zoning.** Upon execution of this agreement, the Property shall be zoned R-10 Residential and Interchange Commercial C-1 with a Hillside Overlay (City Code § 10-20-230) as shown in Exhibit "B". The Planned Unit Development designation approved for the Project by City on November 20, 2018, is hereby terminated. Except as otherwise provided in this Agreement, development of the Property will be predicated upon compliance with the requirements of the R-10 Residential and Commercial C-1 with Hillside Overlay zoning, including but not limited to, open space dedication requirements, density criteria, landscaping and architectural considerations, amenities, and all City Design Guidelines. All City Design Guidelines shall apply to development.

4.2 **Conservation Easement.** Portions of the Property (e.g. lots) that contain any conservation easement(s), restrictions shall include prohibiting outside irrigation, keeping of livestock, the construction of outbuildings, fencing options to be determined at final plat approval, and direction at final approval by fire authorities to provide consistent fire mitigation plans.

4.3 Homeowners Association. Within the approximately 80-acre property identified as assessor's parcels number 30-095-0017 and 30-095-0015, Owner shall be entitled to record a declaration of covenants, conditions and restrictions (the "CC&Rs"), and to create a homeowner's association to provide for common access and ownership of certain amenities. That portion of the Property shall include up to 10 residential lots, with each lot having required frontage and access to all required utilities, improvements and services. Garbage collection will be expected to be serviced at the frontage of a public street. To protect and preserve the natural vegetation and grade characteristics within that portion of the Property, Owner anticipates constructing a private access to act as a common driveway to those 10 homes with utilities-power, gas, water, sewer, metered along the frontage of a public street. Title to the private access will run concurrent with the individual ownership of the lots, with CC&Rs, and across the lane to the lots, long-term maintenance of the lane by the homeowner's association, and assessment rights by the association against the lot owners to fund maintenance costs of the private lane. Such private access shall comply with the requirements of the Hillside Overlay regarding design standards for and access by emergency equipment and vehicles. Additionally, Owner may submit to City plans for various amenities as laid out in the Open Space plan, Exhibit "C.5", to be enjoyed by owners of those 10 lots. Such plans may be submitted for approval by City both prior or subsequent to the effective date of this Agreement.

SECTION V. GENERAL PROVISIONS

5.1 **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 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. Except as otherwise provided herein, 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, or which would apply to the design and construction of all infrastructure necessary for the development of said portion of the Property and specifically including sufficient capacity of such infrastructure to accommodate developments of the Property as provided in

this Agreement. . 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.

- 5.2 **Transfer of Property.** South Valley Holdings LLC agrees to not transfer, sell, or otherwise convey any portion of the property until the time for a timely challenged referendum, and the time for Owner's rescission of this Agreement and all land use regulations enacted specifically in relation to this agreement have expired. Owners shall have the right to assign or transfer all or any portion of his/her rights and obligations under this Agreement to any party acquiring an interest or estate in the Property or any portion thereof. In the event of an assignment, the transferee shall succeed to all of Owner's rights under this Agreement. Owner shall provide written notice to the City of any completed assignment or transfer. All required dedication of land outlined herein to the City for all phases must happen before any transfer or sale of Property.
- 5.3 **No Agency, Joint Venture, or Partnership.** It is specifically understood and agreed to by and among the Parties that: (i) each Project is a private development; (ii) City and Owners hereby renounce the existence of any form of agency relationship, joint venture, or partnership between City and Owner(s); and (iii) nothing contained herein shall be construed as creating any such relationship between City and Owner(s).
- 5.4 **Consent.** In the event this Agreement provides for consent from the City or the Owners, 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.
- 5.5 **Legal Challenges.** If sponsors of a referendum timely challenge this Agreement and/or any land use regulation enacted specifically in relation to this agreement in accordance to Utah law, and South Valley Holdings LLC does not rescind the same pursuant to Utah law, South Valley Holdings LLC shall indemnify the City for all costs and attorneys' fees incurred by the City arising from the referendum and associated proceedings. In the event that any third party challenges this Agreement, or the development contemplated herein, upon request by an Owner, or with notice to Owners and Owners' consent or acquiescence, the City may undertake to defend this Agreement or the development. In such a case, Owners agree to accept responsibility, jointly and severally, for all legal fees, including attorneys' fees, expenses, and/or court costs incurred by the City upon presentation to the Owners of an itemized list of costs, expenses, and fees.

SECTION VI. MISCELLANEOUS

- 6.1 **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.
- 6.2 **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.
- 6.3 **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.
- 6.4 **Construction.** This Agreement has been reviewed and revised by legal counsel for Owner 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.

- 6.5 **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.
- 6.6 **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned by Owner to any other party, individual or entity without Owner assigning both the rights as well as the assignee assuming the obligations under this Agreement.
- 6.7 **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.

6.7.1 Mediation. Any and all disputes arising out of or related to this Agreement or the Parties' performance hereunder shall be submitted to non-binding 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 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; (iii) 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 any resolution agreement obtained through subsequent arbitration or mediation shall be entitled to reimbursement of attorneys' fees and costs incurred in said action.

6.7.2 Attorney's Fees. Except as otherwise provided herein, 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.

- 6.8 **Notices.** Any notice or communication required here under 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 one business day after being sent by the sender. 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:

Owner: South Valley Holdings, LLC
Attn: Stephen A. Larsen
935 West Center Street
Lindon, Utah 84042
Email: steve.sandlinc@gmail.com

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 courierservice, 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.

6.9 **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.

6.10 **Counterparts and Exhibits.** This Agreement may be executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement and its exhibits constitute the entire understanding and agreement of the Parties to this Agreement and supersedes all prior discussions, agreements and understandings. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A	Description of the Property with Illustrative Map
Exhibit B	Zoning Approval Map
Exhibit C	Open Space and Budget

6.11 **Duration.** This Agreement shall continue in force and effect until the earlier of December 31, 2031, or such time as all obligations hereunder have been satisfied (the "**Term**"). If Owner has not been declared to be currently in default as of December 31, 2031 (and if any such default

has not been cured) then this Agreement shall be automatically extended until December 31, 2036,

- 6.12 **Insurance and Indemnification.** South Valley Holdings, LLC shall defend and hold the City and its officers, employees, and consultants harmless for any and all claims, liability and damages arising from the execution of this Agreement including but not limited to rezoning of the Property, construction on the Property, challenges to this Agreement, damages resulting from mass grading operations, or any other operations performed under this Agreement by (a) South Valley Holdings, LLC or by South Valley Holdings, LLC contractors, subcontractors, agents or employees, or (b) any one or more persons directly or indirectly employed by, or acting as agent for, South Valley Holdings, LLC or any of South Valley Holdings, LLC contractors or subcontractors. Nothing in this Agreement shall be construed to mean that South Valley Holdings, LLC 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 dedicated to and accepted by the City for maintenance.

6.12.1 **Hazardous, Toxic, and/or Contaminating Materials.** South Valley Holdings, LLC 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 on the Property, except where such claims, liability, costs, fines, penalties, charges and/or claims are due to the actions of the City.

6.12.2 **Bodily Injury and Property Damage Insurance.** South Valley Holdings, LLC 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 on or with respect to the Property by South Valley Holdings, LLC 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, South Valley Holdings, LLC shall furnish or cause to be furnished to the City duplicate originals or appropriate certificates of insurance naming Santaquin City as an additional insured.

- 6.13 **Acknowledgment.** By its signature below, South Valley Holdings LLC acknowledges and represents that the execution of this Agreement has been duly authorized by South Valley Holdings LLC; that the Property is owned by South Valley Holdings LLC at the time of execution of this Agreement; and that the Property shall be subject to all of the terms and conditions of this Agreement upon execution by the City.

- 6.14 **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.

- 6.15 **Recordation of Development Agreement.** No later than ten (10) days after the Approval Date, the City shall cause to be recorded an executed copy of this Agreement in the official records of the County of Utah.
- 6.16 **Sub-developer Agreements.** The Parties hereto, or some of them, may enter into separate agreements with Sub-developers or others obtaining rights from Owner, provided however that nothing in any separate agreement may conflict with the entitlements and benefits obtained by Owner in this Agreement without the express written consent of Owner.
- 6.17 **Time of the Essence.** Time is of the essence to this Agreement, and every right or responsibility shall be performed within the times specified.

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.

OWNER
South Valley Holdings, LLC
A Utah limited liability company

By: Stephen A. Larsen
Its: Member
Date: _____

OWNER ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF UTAH)

On the ____ day of December, 2021 personally appeared before me _____, who being by me duly sworn, did say that he/she is the _____ of South Valley Holdings, LLC, a Utah limited liability company 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.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

CITY
Santaquin City

By: Kirk F. Hunsaker
Its: Mayor
Date: _____

Attest:

K. Aaron Shirley, City Recorder

Exhibit A
Description of the Property with Illustrative Map

Exhibit B
Zoning Approval Map

Exhibit C

Open Space Plan

C: Open Space Plan

C.1: Cliff Park Concept Plan

C.1.a: Cliff Park West Portion

C.1.b: Cliff Park East Portion

C.1.c: Cliff Park Budget

C.2: Sunset Park Concept Plan

C.2.a: Sunset Park North Portion

C.2.b: Sunset Park Mid Portion

C.2.c: Sunset Park South Portion

C.2.d: Sunset Park Budget

C.3: Sage Meadows Park Concept Plan

C.3.a: Sage Meadows Park North Portion

C.3.b: Sage Meadows Park South Portion

C.3.c: Sage Meadows Park Budget

C.4: Juniper Ridge Park Concept Plan

C.4.a: Juniper Ridge Park Budget

C.5: Cedar Lookout HOA Park Concept Plan

C.5.a: Cedar Lookout HOA Park Main Portion

C.5.b: Cedar Lookout HOA Park Budget

C.6: East Side Park Improvement Concept Plan

C.6.a: East Side Park Improvement Budget

C.7: Total Open Space Budget Summary Sheet