WHEN RECORDED, RETURN TO:

DEVELOPMENT AGREEMENT
FOR THE
UPPER JORDANELLE MASTER PLANNED COMMUNITY

THIS DEVELOPMENT AGREEMENT FOR THE UPPER JORDANELLE MASTER PLANNED COMMUNITY ("MDA") is made and entered into as of the _____ day of _____, 2019, by and between Heber City, a political subdivision of the State of Utah (the "City"), and RE Investment Holdings, L.L.C. a Utah limited liability company ("Holdings"). Each of Holdings and the City are hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

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

B. Holdings is the owner of approximately 8,288 acres of undeveloped real property situated in Wasatch County, State of Utah, as more specifically described in Exhibit A-1, attached hereto and incorporated herein (the "Property").

C. On _____, 2019, the City approved and adopted, subject only to the parties entering into this MDA and the annexation of the Property into the City, a master plan for the Property that allows for mixed-used development, including residential, retail, office, civic, recreational and open space uses, all as specified in the Master Plan. The Master Plan included five thousand seven hundred and seventy (5,770) residential units, together with any additional affordable housing units that may be constructed on the Property.

D. Provision of infrastructure to the Property is vital to its development in accordance with the Master Plan and this Agreement, and, consistent with the foregoing, Holdings has prepared the Infrastructure Plan.

E. The City has adopted a new annexation boundary map and an annexation and policy plan according to State Statutes. The annexation area includes but is not limited to the Property. Holdings is willing to support and agree to the City's annexation plan, provided the City and Holdings can first agree on the terms and conditions under which the Property will be developed and as outlined in this MDA. Notwithstanding the above, Holdings does not intend to be a developer of the Property, but intends to sell the Property

to one or more Persons who will undertake the actual development work.

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

G. The City Council has reviewed this MDA and determined that it is consistent with the Act, the Zoning Ordinance and the Heber City General Plan, and that it provides for and promotes the health, safety, welfare, convenience, aesthetics, and general good of the community as a whole. The Parties understand and intend that this MDA is a "development agreement" within the meaning of, and entered into pursuant to the terms of, the Act.

H. Holdings and the City have cooperated in the preparation of this MDA.

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

TERMS

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

1.1. **Incorporation.** The foregoing Recitals and Exhibits "A" – "H" are hereby incorporated into this MDA.

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

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

1.2.2. **Administrative Action** means and includes any amendment to the Exhibits to this MDA or other action that may be approved by the Administrator as provided in Section 20.

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

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

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

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

1.2.7. **Average Density** means the number of Residential Dwelling Units divided by the total gross acres in a development area.

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

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

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

1.2.11. **Certifications/Certificate** means a person or company that has a state or federal license, diploma or is accredited to perform specific work on all or a part of a Development Application.

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

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

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

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

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

1.2.17. **Commercial Site Plan** means a plan submitted to the City for the approval of the development of a portion of the Project that may include, without limitation, multiple buildings that are not intended to be on individual subdivision lots, multi-family residential buildings, shopping centers or similar multi-building developments or plans for other developments on the Project that are allowed under the applicable Zone as a conditional use.

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

1.2.19. **Default** means a material breach of this MDA.

1.2.20. **Denied** means a formal denial issued by the final decision-making body of the City for a particular type of Development Application but does not include review comments or "redlines" by City staff.

1.2.21. **Density** means the number of Residential Dwelling Units allowed per acre of the Property.

1.2.22. **Design Guidelines** means the guidelines attached as Exhibit F, which are the approved guidelines for certain aspects of the design and construction of the development of the Property, including setbacks, building sizes, open space, height limitations, parking and signage, and, the design and construction standards for buildings, roadways and infrastructure, as set forth in and adopted as part of this MDA. The Parties acknowledge that given the size and long-term life of this Project, designs and styles will change over time. Accordingly, the Parties will work together in good faith to update the Design Guidelines in the future as market conditions evolve.

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

1.2.24. **Development Report** means a report containing the information specified in Sections 4.4 and/or 4.5 submitted to the City by Holdings for the sale of any Parcel to a Developer, Sub-developer or Builder or the submittal of a Development Application by a Developer, Sub-developer or Builder pursuant to an assignment from Holdings.

1.2.25. **Development Unit (DU)** means a unit of measure used to equate the number of residential units in a given area.

1.2.26. **Effective Date** means the date on which the later of both the following shall have occurred: the Parties have executed this MDA and the City's annexation of the Property has been completed and takes effect pursuant to Utah Code Ann. §10-2-101, et seq.

1.2.27. **Entitlements** shall have the meaning provided in Section 3.1.

1.2.28. **Equivalent Residential Unit (ERU)** means a unit of measure used to equate all land uses including non-residential or multi-family residential units to a specific number of single-family residences.

1.2.29. **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. §17-27a-603, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.2.30. **Highway 32** means a "state highway" type transportation corridor maintained by the Utah Department of Transportation that is located generally on the north boundary of the Property.

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

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

1.2.32 **Infrastructure Plan** means the infrastructure plan attached as Schedule 1.2.31, which is adopted simultaneously with this MDA and shows the Backbone Improvements for the Property, including culinary water, secondary water, storm water, sanitary sewer and roads, as amended from time to time

1.2.33. **Intended Uses** means the use of all or portions of the Project for single-family and multi-family residential units, hotels, restaurants, public facilities, businesses, commercial areas, professional and other offices, services,

open spaces, parks, trails and other uses permitted in the Zoning Ordinance, Design Guidelines and as shown on the Master Plan.

1.2.34. **Local Park** means a park that is planned and designed as an amenity to serve and necessary for the use and convenience of a particular Subdivision or Commercial Site Plan (or a group of related Subdivisions or Commercial Site Plans) and which is not a System Improvement.

1.2.35 **Master Plan** means the master plan attached as Exhibit B.

1.2.35. **Maximum Development Residential Units** means the development and number of Residential Dwelling Units allowed on the Property according to the Mountain Recreation Zone.

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

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

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

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

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

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

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

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

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

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

1.2.46. Person means any natural person, corporation, limited liability company, trust, joint venture, association,

company, partnership, limited partnership, governmental authority or other entity.

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

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

1.2.49. **Project** means the development of a mixed-used master planned community on the Property in accordance with this MDA, including, without limitation, all associated public and private facilities, Intended Uses, Density, Phases and all of the other aspects approved as part of this MDA and the Master Plan.

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

1.2.51. **Regional Park** means a park identified in the City's or County's Capital Facilities Plan, Infrastructure Plan or Master Plan and that is intended to provide services to the community at large such that it would be considered to be a System Improvement.

1.2.52. **Residential Dwelling Unit** means, for purposes of calculating Density, a unit intended to be occupied for residential living purposes; one single-family residential dwelling and each separate unit in a multi-family dwelling, apartment building, or condominium equals one Residential Dwelling Unit.

1.2.53. **Site Plan** means the plan submitted to the City for the first stage of the approval of a Subdivision or Commercial Development in accordance with the City's Vested Laws.

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

1.2.55. **Sub-developer Property** shall have the meaning provided in Section 28.1.

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

1.2.57. **Subdivision Application** means the application to create a Subdivision.

1.2.58. **Subdivision Site Plan** means the plan submitted with a Subdivision Application.

1.2.59. **System Improvement** means those elements of infrastructure that are defined as System Improvements pursuant to Utah Code Ann. §11-36a-102(16) (2008).

1.2.60. **Zone** means the City's zoning for any Parcel as specified on the Zoning Map.

1.2.61. **Zoning Map** means the map attached as Exhibit G, which is a map of the Zones of the Property.

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

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

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

3.1. **Project Density.** Except as may be otherwise augmented hereinafter, Property Owners shall be entitled to and are vested with the right to develop and construct the Maximum Development Residential Units on the Property and to the other Intended Uses specified in the Zoning Ordinance, and the Master Plan (collectively, the "Entitlements").

3.2. **Intended Uses by Parcel and Densities.** Intended Uses and Densities for each Parcel are shown on the Master Plan for the Property.

3.3. **Use of Density.** Holdings may allocate the Maximum Development Residential Units among any Subdivision or any Commercial Site Plan within the Project and may develop such Parcel(s) at a density that exceeds the Average Density so long as the maximum density allowed under the MDA, calculated in accordance with the provisions of this MDA, is not exceeded for the Property as a whole, notwithstanding the maximum gross density permitted under the Zone.

3.4. **Accounting for Density for Parcels Sold to Sub-developers.** In connection with the sale of any Parcel sold by Holdings to a Developer or Sub-developer, Holdings shall specify the transfer, if any, of any Development Units. In connection with the recordation of a Final Plat or other document of conveyance for any Parcel sold to a Developer or Sub-developer, Holdings shall provide the City with a development report (a "Development Report") identifying the Parcel(s) sold, the Development Units and/or other type of use transferred with the Parcel(s), the Development Units remaining with Holdings and any material effects of the sale on the Master Plan.

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

3.5. **Parcel Sales.** The City acknowledges that the precise location and details of the public improvements, lot layout and design and any other similar item regarding the development of a particular Parcel may not be known at the time of the sale of a Parcel. The City acknowledges that Property Owners may seek and obtain approval of a portion of the Project Parcel without providing such detailed development information, subject to the specific "Parcel Sales" provisions of Section 6.14.

3.6. **Affordable Housing Requirements**. Holdings shall comply or shall cause Developers and/or Sub-developers to comply with any and all City guidelines to satisfy any affordable housing requirements. Affordable housing shall not be counted against the Maximum Development Residential Units within the Project. Holdings and the Developers and/or Sub-developers shall take into consideration any Affordable Housing units when planning for infrastructure. Holdings may elect to locate such affordable housing wherever it deems most beneficial and shall be entitled to allocate any such affordable housing requirements to Developers and/or Sub-developers as Holdings may elect. If affordable housing is required pursuant to this MDA, the units of such affordable housing shall not be less than 750 square feet. Any affordable housing building shall not exceed four stories in height.

4. Zoning and Vested Rights.

4.1. **Current Zoning.** The Project is currently zoned in the County as specified in the Zoning Map. The City agrees that it will annex the Project under the Mountain Community Zone. The Mountain Community Zone (MCZ- chapter 18.66 of the Heber City Code) was approved by the city council on August 16, 2018.

4.2. **Vested Rights Granted by Approval of this MDA.** To the maximum extent permissible under the laws of Utah and the United States and at equity, this MDA vests Holdings with all rights to develop the Project in accordance with this MDA and the Entitlements without modification or interference by the City, except as specifically provided herein. The Parties intend that the rights granted to Holdings under this MDA are contractual and that Holdings shall also have those rights that exist under statute, common law and at equity. The Parties specifically intend that this MDA and the Entitlements granted to Property Owners are "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann. §10-9a-509 (2008).

In addition, the Property, and all portions thereof, shall be developed in accordance with the City's Vested Laws, together with the requirements set forth in this MDA, in accordance with the following terms and conditions:

4.2.1. City's Future Laws. Neither the City nor any agency of the City shall impose upon the Project (whether by initiative, referendum, or other means) any ordinance, resolution, rule, regulation, standard, directive, condition or other measure or City's Future Law that reduces the development rights

provided by this MDA or by the Entitlements. Without limiting the generality of the foregoing, any City's Future Law shall be deemed to conflict with this Agreement and/or the Entitlements if it would accomplish any of the following results in a manner inconsistent with or more restrictive than the City's Vested Law, either by specific reference to the Project or as part of a general enactment that applies to or affects the Project:

4.2.1.1. limit or reduce the Maximum Residential Equivalent Units authorized under this MDA;

4.2.1.2. change any land uses or permitted uses of the Project;

4.2.1.3. limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner; or

4.2.1.4. apply to the Project any City's Future Law otherwise allowed by this MDA that is not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites with similar land use designations.

4.2.2. Invalidity. If any of the City's Vested Laws are declared to be unlawful, unconstitutional or otherwise unenforceable, then Property Owners shall cooperate with the City in adopting and agreeing to comply with a new enactment by the City which is materially similar to any such stricken provisions and which implements the intent of the Parties in that regard as manifested by this MDA.

4.2.3. Exceptions. The restrictions on the applicability of the City's Future Laws to the Project as specified in this Section 4.2 are subject to only the following exceptions:

4.2.3.1. *Compliance with State and Federal Laws.* City's Future Laws that are generally applicable to all properties in the City and that are required to comply with State and Federal laws and regulations affecting the Project;

4.2.3.2. *Safety and Construction Code Updates.* City's Future

Laws that are updates or amendments to subdivision standards, building, plumbing, mechanical, electrical, dangerous buildings, drainage, Heber City Engineering Standards and Specifications or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet compelling concerns related to public health, safety or welfare. Notwithstanding the forgoing, the City shall not be entitled to change the street standards set forth in Section 9.8 of this MDA.

4.2.3.3. *Taxes.* Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, and Persons similarly situated.

4.2.3.4. *Fees.* Changes to the amounts of fees (but not changes to the times provided in the City's Vested Laws for the imposition or collection of such fees) for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.

4.2.3.5. *Countervailing, Compelling Public Interest.* Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. §10-9a-509(1)(a)(i) (2008).

4.3. **Term of Agreement.** The term of this MDA shall commence on the Effective Date and continue for a period of forty (40) years (the "Term"). The Term may, at Holding's option, be extended for an additional ten (10) years, provided Holdings is not in material default of any provisions of this Agreement and after providing the City with not less than six (6) month notice. Unless otherwise agreed between the Parties, Holdings vested rights and interests set forth in the MDA shall expire at the end of the Term, or as the Term may be extended by the Parties. Upon termination of this MDA for any reason, the obligations of the Parties to each other shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to the expiration of the Term or termination of this MDA shall be rescinded or limited in any manner, nor will any rights or obligations of Property Owners or the City intended to run with the land be terminated.

4.4. **Moratorium.** In the event the City imposes by ordinance, resolution, initiative or otherwise a moratorium or limitation on the issuance of building permits or the regulatory approval and review of subdivisions for any reason, the Property and the Project shall be excluded from such moratorium or limitation unless the City demonstrates that it is necessary to include the Project within such moratorium or limitation due to circumstances constituting a compelling public interest to protect the health, safety, or welfare of the residents of the City. Moreover, such moratorium or limitation shall only apply to portions of the Project for which Property Owners (or their assignee(s), if applicable) have neither applied for nor obtained any building permits, unless a different result is required under applicable state law. In the event any such moratorium applies to the Project, the City shall inform Holdings of the City's requirements for ending the moratorium with regard to the Project and shall provide the City's reasonable estimate of the duration of such moratorium.

6. **Approval Processes for Development Applications.**

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

6.2. **Processing Under City's Vested Laws.** Approval processes for Development Applications shall be governed by the City's Vested Laws, except as otherwise provided in this MDA. Development Applications shall be approved by the City if they comply with and conform to this MDA and the Entitlements in accordance with Exhibit D.

6.3. **City's Cooperation in Processing Development Applications.** The City shall cooperate reasonably in promptly and fairly processing Development Applications.

6.4. **Outsourcing of Processing of Development Applications**. The City currently reviews the planning part of an application internally, but the engineering review is outsourced. Both the City and Holdings recognize that at some future date the City may review all parts of a Development Application internally. Within fifteen (15) business days after receipt of a Development Application and upon the request of either the Applicant or the City, the Applicant and the City shall confer and determine whether the City and/or the Applicant wishes the City to outsource the review of any aspect

of the Development Application to ensure that it is processed in accordance with the Review Schedule set forth in attached Exhibit H. If the City determines that Outsourcing is appropriate to meet the time line outlined in Exhibit H, the City shall outsource the review to one of the consultants as outlined in Section 6.7.1. The City will promptly estimate the reasonably anticipated differential cost of Outsourcing in the manner selected by the City in good faith consultation with Applicant as applicable (either overtime to City employees or the hiring of a City Consultant). If an Applicant notifies the City that it desires to proceed with the Outsourcing based on the City's estimate of costs, the Applicant shall deposit in advance with the City the estimated differential cost and the City shall then promptly precede with the Outsourced work. Upon completion of the Outsourcing services and the provision by the City of an invoice (with such reasonable supporting documentation as may be requested by the Applicant for the actual differential cost (whether by way of paying a City Consultant or paying overtime to City employees) of Outsourcing, the Applicant shall, within thirty (30) business days, pay or receive credit (as the case may be) for any difference between the estimated differential cost deposited for the Outsourcing and the actual cost differential.

6.5. **Non-City Agency Reviews.** If any aspect or a portion of a Development Application is governed exclusively by a Non-City Agency, an approval for these aspects does not need to be submitted by Applicant for review by any body or agency of the City. Notwithstanding the above, the Applicant shall timely notify the City of any such submittals and promptly provide the City with a copy of the requested submissions.

6.6. **Acceptance of Certifications Required for Development Applications.** Any Development Application, improvement plans, construction testing and oversite requiring the signature, endorsement, or certification and/or stamping by a person holding a license or professional certification required by the State of Utah in a particular discipline shall be so signed, endorsed, certified or stamped signifying that the contents of the Development Application comply with the applicable regulatory standards of the City. The City will therefore accept the application for review. It is not the intent of this Section to preclude the normal process of the City's ability to determine the completeness or "redlining", commenting on or suggesting alternatives to the proposed designs or specifications in the Development Application. Generally, the Development Applicant shall provide the City with a complete set of plans at the outset of the Application process and the City should endeavor to make all of it's redlines, comments or suggestions at the time of the first review of the Development Application unless and changes to the Development Application raise new issues that

need to be addressed.

6.7. **Additional Expert Review or Special Technical Review for Development Applications.** If the City, notwithstanding such a certification by Applicant's experts, subjects the Development Application to a review by City Consultants, for an Application that is beyond or outside the normal subdivision application, the City shall bear the costs of such review. If the City Consultants determine that the Applicant's expert certification was materially correct, then the City shall bear the cost of the additional review. If the City Consultants determine that the City's requirement of a review was reasonable and made in good faith, then payment of the reasonable and actual costs of the City Consultants' review shall be the responsibility of Applicant. If the City needs technical expertise beyond the City's internal resources to determine impacts of a Development Application which are not required by the City's Vested Laws to be certified by such experts as part of a Development Application, the City may engage such experts as City Consultants under the processes specified in Section 6.7.1 with the actual and reasonable costs being the responsibility of Applicant so long as the City provided Holdings with at least fifteen (15) days' advance notice before engaging such experts.

6.7.1. Selection of City Consultants for Review of Applications. The City Consultant undertaking any review by the City required or permitted by this MDA or the Zoning Ordinance shall be selected by the City as otherwise allowed by City ordinances or regulations. In the event the Applicant notifies the City that it has a conflict with or an objection to the consultant, the City will meet and confer with the Applicant to discuss and select the Consultant.

6.8. **City Denial of a Development Application.** If the City denies a Development Application, the City shall provide a written determination to the Applicant of the reasons for denial, including specifying the reasons the City believes that the Development Application is not consistent with this MDA and/or the City's Vested Laws (or, to the extent applicable in accordance with this MDA, the City's Future Laws).

6.9. **Meet and Confer regarding Development Application Denials.** The City and Applicant shall meet within fifteen (15) business days of any Denial to resolve the issues specified in the Denial of a Development Application.

6.10. **City Denials of Development Applications Based on Denials from Non-City Agencies.** If the City's denial of a Development Application is

based on the denial of the Development Application by a Non-City Agency, Applicant shall appeal any such denial through the appropriate Non-City Agency procedures for such a decision and not through the processes specified below.

6.11. **Mediation of Development Application Denials.**

6.11.1. Issues Subject to Mediation. Issues resulting from the City's Denial of a Development Application that are not subject to arbitration provided in Section 6.12 shall be mediated.

6.11.2. Mediation Process. If the City and an Applicant are unable to resolve a disagreement subject to mediation, the Parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the issue in dispute. If the Parties are unable to agree on a single acceptable mediator, each shall, within ten (10) business days, appoint its own representative. These two representatives shall, between them, choose the single mediator. Holdings and the City shall share equally in the cost of the chosen mediator. The chosen mediator shall, within fifteen (15) business days, review the positions of the Parties regarding the mediation issue and promptly attempt to mediate the issue between the Parties. If the Parties are unable to reach agreement, the mediator shall notify the Parties in writing of the resolution that the mediator deems appropriate.

6.12. **Arbitration of Development Application Objections.**

6.12.1. Issues Subject to Arbitration. Issues regarding the City's Denial of a Development Application that are subject to resolution by scientific or technical experts such as traffic impacts, water quality impacts, pollution impacts, etc. are subject to arbitration.

6.12.2. Mediation Required Before Arbitration. Prior to any arbitration, the Parties shall first attempt mediation as specified in Section 6.11.

6.12.3. Arbitration Process. If the City and an Applicant are unable to resolve an issue through mediation, the Parties shall attempt, within ten (10) business days, to appoint a mutually acceptable expert in the professional discipline(s) of the issue in question. If the Parties are unable to agree on a single acceptable arbitrator, each shall, within ten (10) business days, appoint its own individual appropriate expert.

These two experts shall, between them, choose the single arbitrator. The City and the Applicant shall share equally in the cost of the chosen arbitrator. The chosen arbitrator shall, within fifteen (15) business days, review the positions of the Parties regarding the arbitration issue and render a decision. The arbitrator shall ask the prevailing Party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, and consideration of such objections, the arbitrator's decision shall be final and binding upon both Parties. If the arbitrator determines as a part of the decision that the City's position was not only incorrect but was also maintained unreasonably and not in good faith, then the arbitrator may order the City to pay the Applicant's share of the arbitrator's fees.

6.13. **Parcel Sales.** Holdings and its successors may sell portions of the Property in a manner that does not create individually developable lots. Such sales shall not be subject to any requirement to complete or provide security for any On-Site Infrastructure or Off-Site Infrastructure at the time of such sale. The responsibility for completing and providing security for completion of any On-Site Infrastructure or Off-Site Infrastructure in the Parcel shall be that of the Developer or a Sub-developer upon a subsequent re-Subdivision of the Parcel that creates individually developable lots.

7. **Application Under City's Future Laws.** Without waiving any rights granted by this MDA, an Applicant may at any time, choose to submit a Development Application for some or all of the Project under the City's Future Laws in effect at the time of the Development Application. Any Development Application filed for consideration under the City's Future Laws shall be governed by all portions of the City's Future Laws applicable to that Development Application. The election by Property Owners at any time to submit a Development Application under the City's Future Laws shall not be construed to prevent Applicants from relying on submitting other Development Applications under the City's Vested Laws.

8. **Open Space and Trails Requirements.** The Development Application approval for each separate Parcel shall provide that the Applicant shall construct or designate for dedication the land required for Open Space and/or Trails as provided in the Master Plan and/or the Design Guidelines. Any such designation shall include adequate assurances to the City that the land so designated can and will be used for the dedication and/or construction of the planned Open Space and/or Trails. The classification of a Parcel or a portion of a Subdivision or Commercial Site Plan as Open Space shall be irrespective of whether the land is owned by a private entity or by a Homeowners' Association. The donation of a portion of land by a Property Owner or a Sub-developer for a church, school or other public service shall be counted for Open Space. The Open Space, Local Parks

and/or Trails may be owned by a Homeowners' Association or may be dedicated to the City or a third party.

8.1. **Regional Parks.** City and Holdings anticipate that Regional Parks may be constructed on portions of the Property. Holdings shall cooperate with the City in the planning, design and financing of the Regional Parks. Holdings and the City shall negotiate in good faith for the acquisition of such property, including, but not limited to, the creation of an Assessment Area, Impact Fees or dedication of the necessary property to the City in exchange for credits against Impact Fees.

8.2. **Creation of Open Space, Local Parks and/or Trails.** Open Space, Local Parks and/or Trails shall generally be created and/or dedicated by means of a Subdivision or a Commercial Site Plan to which the Open Space, Local Parks and/or Trails are either internal or contiguous. The Parties intend that the creation of Open Space, Local Parks and/or Trails will generally maintain a pro rata relationship between the amount of land being developed with a Development Application and the total acreage designated for Open Space, Local Parks and/or Trails as established in the Master Plan, although Holdings shall be entitled to allocate Open Space requirements to Sub-developers as portions of the Property are sold, as Holdings may elect, provided Holdings is able to demonstrate to the City's reasonable satisfaction that the overall Open Space requirements will be met. The City acknowledges, however, that it may not be in the interest of either the City, Holdings, its assignees or Sub-developers to always dedicate Open Space and/or Trails on such a contiguous basis which may result in constructing and/or designating incremental, small, unusable parcels of land. Therefore, each Development Application approval shall provide for the designation for dedication and/or construction of Open Space, Local Parks and/or Trails in such amounts as are determined to be appropriate considering the factors specified below. Any Denial by the City based on the amount of Open Space, Local Parks and/or Trails to be constructed and/or designated for dedication shall be subject to the mediation and arbitration provisions of Sections 6.11 and 6.12. The factors to be evaluated are:

8.2.1. Amounts and Types Previously Developed. The amounts and types of Open Space, Local Parks and/or Trails provided on the portions of the Project previously developed;

8.2.2. Amounts and Types Remaining to be Developed. The amounts and types of Open Space, Local Parks and/or Trails remaining to be designated and/or constructed pursuant to the Master Plan; and

8.2.3. Nature of Proposed Uses. The amount and nature of the land and the types land uses proposed by the Development Application.

8.3. **Notice to the City**. Upon the initial filing of any Development Application in which Open Space, Local Parks and/or Trails are located, the Applicant shall provide Notice to the City of its intent to dedicate the proposed parcels of Open Space, Local Parks and/or Trails as a part of the final recorded instrument approving the Development Application. Within sixty (60) days of receipt of the Notice, the City shall make an initial determination whether the City intends to accept dedication of the Open Space, Local Parks or Trails. If the City does not intend to accept dedication of the Open Space, Local Parks or Trails the City shall notify Applicant of its decision. The City's notification that it does not intend to accept dedication of the Open Space, Local Parks and/or Trails shall constitute a waiver of its right to receive an outright conveyance of fee title to that parcel. If the City does not exercise this option for any reason, such Open Space, Local Parks and/or Trails shall be offered to a conservation organization, a Homeowners Association or another similar designated entity reasonably acceptable to the City.

8.4. **Dedication of Open Space, Local Parks or Trails**. Dedication of the Open Space, Local Parks and/or Trails to the City shall be by plat recordation or by dedication by deed from the applicable Property Owner which shall be without any financial encumbrance or other encumbrance (including easements) which unreasonably interferes with the use of the property for Open Space, Local Parks and/or Trails.

8.5. **Maintenance of Open Space, Local Parks and Trails**. Upon acceptance by the City of the proffered Open Space, Local Parks and/or Trails and after formal possession, the City shall be responsible for maintaining the Open Space, Local Parks and/or Trails after final inspection and acceptance of the improvements to the Open Space, Local Parks and/or Trails, if any. If the Open Space, Local Parks and/or Trails are dedicated to an entity other than the City, the dedication shall provide for the maintaining the Open Space Local Parks and/or Trails.

8.6. **Out-of-Sequence Dedication of Open Space, Local Parks and/or Trails**. As a part of the consideration of any Development Application, the City may reasonably request the dedication of and/or grant of a conservation easement for Open Space, Local Parks and/or Trails designated in the Master Plan not associated with that Development Application but under common ownership with the portion of the Property subject to the Development Application. The Applicant shall grant the request if the requested out-of-

phase dedication of Open Space, Local Parks and/or Trails does not create significant costs or undue financial expense to Property Owners, as determined by the Applicant, that would not normally be incurred with the current phase under development. The amount and location of any accelerated dedication of Open Space shall be subject to the Applicant's or other affected Property Owners' approval, which approval shall not be unreasonably withheld.

8.7. **Projects for Public/Quasi-Public Purposes.** The City may propose locating a Public /Quasi Public Project within the Property at a negotiated price. In the event that condemnation is used to obtain land for the project, the affected Property Owner shall be entitled to not only the purchase price for the land taken but shall also be entitled to additional consequential and incidental damages that may result, including any limitations on the development or use of any other property that may be affected by the project. Any such proposal shall in no way diminish the ability of the Property Owner to exercise any of its rights as outlined under this MDA and the market and salability of any units within the Project. If for any reason the Property Owner conveys any property not developed by Property Owners to be used by the public or for a quasi-public use, such conveyance of property shall not in any way affect or diminish the Maximum Residential Units. Rather, the Residential Units that were planned to be developed on the property to be purchased may be used in any other portion of the Project.

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

9. Public Improvements.

9.1. **Utilities and On-Site Infrastructure.** The City acknowledges that Holdings has prepared an Infrastructure Plan to service the Development. Both Parties acknowledge that there will be a Capital Facilities Plan prepared for the Public Infrastructure. The Property Owners shall have the right to construct or cause to be constructed and installed, in phases, the On-Site and Off-Site Infrastructure according to the Capital Facilities Plan that is necessary to support the development proposed within a specific

Development Application. If the City constructs any On-Site Infrastructure or Off-Site Infrastructure required by the Capital Faculties Plan as a condition of approval of a Development Application, the City shall comply with the statutory processes and all other applicable laws, rules, and regulations governing such work. Property Owners may, at their option, elect to install septic systems for portions of the Project in lieu of sanitary sewer systems if otherwise permitted under the City's Vested Laws and the County's health ordinances and regulations in effect at the time a Development Application is submitted.

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

9.2.1. Reimbursements. The City covenants and agrees that it shall reimburse the applicable Property Owners for or expend concurrently, to the extent permissible under then-applicable law and the approved Capital Facilities Plan, any and all amounts expended, or costs incurred by the applicable Property Owners in the construction of Excess Improvements in accordance with the procedures set forth in attached Exhibit I (the "Reimbursement Procedures").

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

9.2.3. Backbone Improvements. Compensation to Property Owners for any "upsizing" of the Backbone Improvements that are not included in the approved Capital Facilities Plan shall be agreed to by Property Owners and the City as a part of the plan for financing the

construction of such Backbone Improvements as specified in Section9.3.

9.3. **Variations between Infrastructure Plan, Capital Facilities Plan and any City's Future Capital Facilities Plans.** The Parties acknowledge that the City may adopt a new Capital Facilities Plan supported by a new comprehensive plan and an Impact Fee ordinance as required by State Law for the collection of Impact Fees to pay for the construction of parts or all of the Backbone Improvements. The new Capital Facilities Plan shall in no way limit or reduce the Maximum Development Residential Units authorized under this MDA; change any land uses or permitted uses of the Project; limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this MDA and relevant sections of the Zoning Ordinance are satisfied. The Capital Facilities Plan and any future Capital Facilities Plan may differ from the Infrastructure Plan. As a part of the approval of a Development Application, the City may require Property Owners to build portions of the Backbone Improvements as shown on the Capital Facilities Plan (after it is adopted) instead of as shown on the Infrastructure Plan. However, the Property Owners shall not be required to build any such Backbone Improvements pursuant to the Capital Facilities Plans that exceed the facilities shown on the Infrastructure Plans unless the City and the Property Owners have executed an agreement providing for the reimbursement of the pro rata costs based upon the method of determining impact fees for the construction of any level of Backbone Improvements in excess of that needed to serve the development permitted under this MDA. If the Parties cannot reach agreement on the terms of a reimbursement agreement, the terms of such a reimbursement agreement shall be subject to the mediation and arbitration provisions of Sections 6.11 and 6.12.

9.4. **No Additional Off-Site Infrastructure Requirements.** Notwithstanding anything to the contrary in the City's Vested Laws, the City shall not, directly or indirectly, charge Property Owners or any Sub-developer, or any of their respective affiliates or successors, any development fees, impact fees, water hookup fees, or any similar fees, charges, assessments or exactions for Off-Site Infrastructure not contemplated in the Capital Facilities Plan.

9.5. **Modifications of Infrastructure Locations and the Boundaries of the Development Areas.** The City acknowledges that the exact locations of On and Off-Site Infrastructure and the boundaries of the Parcels are conceptual in nature and that additional surveying, engineering and similar studies are needed to finalize lot locations, road and utility alignments as well

as road and utility sizing. Therefore, Parcel boundaries, road and utility alignments and, subject to the requirements of this Amended MDA, infrastructure sizing may be further modified and revised upon the City's approval of subsequent Development Applications in accordance with the City's Vested Laws.

9.6. **Utilities Provided by the North Village Special Service District (NVSSD) and the Jordanelle Special Service District (JSSD)**. The Parties acknowledge that the Project is currently served by the NVSSD and the JSSD for Sewer and Water. It is the intent by both Parties that the NVSSD and the JSSD shall continue to serve the project for sewer and water through such service districts as long as they have capacity and capable of serving. If at any time it is deemed unfeasible to serve the Project, the Parties the City and the Property Owners will work together to serve the sewer and water needs of the Project.

9.7. **Water Rights. (Will save this for a separate agreement if city chooses to do this)**

9.8. **Streets.** Streets shall follow the Master Transportation Plan and Roadway Cross Sections Plan as identified in Exhibit C. All neighborhood streets should have a minimum asphalt width of 20' for private streets and 28' for public streets. In general, streets shall be designed to meet the level of travel, safety and service, while incorporating principles of traffic calming and pedestrian compatibility, i.e. tree-lined streets with pedestrian ways and linkages, decreasing the need for pavement width by spreading traffic through a grid or modified street hierarchy system. In general, all neighborhoods shall have two points of access as required by City's Vested Laws. This can be achieved by one or more of the following methods.

1. neighborhoods shall connect to a Major Local or larger street, as shown on Exhibit C;
2. A grade-separated divided roadway with minimum lane widths of 20 feet; and
3. Uses of a temporary emergency access roads.

The use of one or more cul-de-sac streets within a development in the Property will be allowed where:

(1) Portions of the land otherwise meeting ordinary use requirements would not be reasonably accessible without a cul-de-sac due to topographical, hydrological or other unique limiting conditions; and

The cul-de-sac utilizes either a circular turnaround or a hammerhead turnaround facility that meets the requirements of the City's Vested Laws at intervals along the cul-de-sac not exceeding every 1320 feet to allow for snow and solid waste removal and emergency traffic. Private areas and gated streets are allowed as long as adequate emergency vehicle access can be maintained. The overall design should promote lower design speeds.

10. **Cable TV/Fiber Optic Service.** Subject to all applicable federal and state laws, Property Owners may install or cause to be installed underground all conduits and cable service/fiber optic and other communication lines within the Project at no expense to the City. The conduits, cable, lines, connections and lateral connections shall remain the sole and exclusive property of Property Owners or cable/fiber optic and other communication provider even though the roadways in which the cable/fiber optic lines conduits, connections and laterals are installed may be dedicated to the City. Property Owners may contract with any cable TV/fiber optic and other communication provider of its own choice and grant an exclusive access and/or easement to such provider to furnish cable TV/fiber optic and other communication services for those dwelling units or other uses on the Project, so long as the property is private and not dedicated to the public. The City may charge and collect all taxes and/or fees with respect to such cable service and fiber optic and other communication lines as allowed under an applicable City ordinance or state law.

11. **CC&R's.** As more fully set forth in the CC&R's, Property Owners shall create and establish one or more Homeowners' Associations, which shall be responsible for the implementation and enforcement of the CC&R's and the Design Guidelines. The CC&R's may be amended by the processes specified in the CC&R's without any requirement of approval of such amendments by the City. Prior to the issuance of any building permits for residential, business, commercial or recreational use but excluding On or Off-Site Infrastructure or other infrastructure proposed by Property Owners, the architectural control subcommittee established by the CC&R's shall certify to the City that the proposed Development Application complies with the Design Guidelines and the CC&R's.

12. **Fees & Bonding.**

12.1. **General Requirement of Payment of Fees.** The City acknowledges its fees are subject to applicable State law. The City's impact fee requirements are set forth in the approved Capital Facilities Plan set forth in Exhibit J attached hereto and incorporated herein. Subject to credits and/or reimbursements available pursuant to the Impact Fee Ordinance or this

Amended MDA, Property Owners agree to pay the City impact fees set forth in attached Exhibit J to this MDA (the "Project Impact Fees") in connection with any structure built by Property Owners or any Sub-developer or by any of their respective agents, employees, contractors, or subcontractors.

12.2. **Limitations on New Development, Review or Impact Fees**. The Project shall not be made subject to any new development, review or impact fees and shall be tied to the Capital Facilities Plan. Any charges or development impositions enacted after the Effective Date unless: (a) it applies on a City-wide basis; (b) the amount charged has been determined in accordance with all applicable state laws; and (c) it is not, directly or in practical effect, targeted against or limited to the Project, any portion thereof or the areas or region of which the Project is a part or any uses to which the Project is put unless it is imposed and used to mitigate an impact caused solely by the development of the Project.

12.3. **Impact Fees for Open Space**. In view of the significant amount of Open Space in the Property that will remain undeveloped open space, any fees assessed, charged or levied by the City, including, without limitation, the Project Impact Fees, shall be applicable only on those areas of the Property intended for development or to be dedicated or conveyed to the City or other public entities or placed under conservation easements shall not be included as part of the "Gross Acre" for purposes of the Impact Fee Schedule.

12.4. **Bonding**. To the extent other public financing vehicles are not available for any on or off-site, publicly dedicated infrastructure or similar improvements for the Project, Property Owners or, as applicable, Sub-developers, shall provide performance or warranty bonds, or to the extent permitted by the Heber City Code, letters of credit, cash or set aside agreements (all forms approved by the City) in relation to any on or off-site, publicly dedicated infrastructure or similar improvements for the Project (the "Security"), including, without limitation, roads, curb and gutter, storm drains, sewer, water, street lighting, signs, sidewalks, landscaping within public rights of way, public open space, public parks and trails. Notwithstanding anything to the contrary under the City's Vested Laws, neither Property Owners nor any Sub-developer shall be required to post any such security for any privately-owned infrastructure or improvements, including, without limitation, landscaping for any private open space areas, private recreational facilities or similar amenities. The Security required under this section shall otherwise conform to the requirements of the City's Vested Laws.

12.5. **Infrastructure Built by Property Owners.** Property Owners or Sub-developers may, from time to time, install and construct portions of the infrastructure specified in the Infrastructure Plan that are System Improvements. The City shall ensure that Property Owners or any Sub-developer, as applicable, is either not charged Impact Fees for such System Improvements or that Property Owners or any Sub-developer, as applicable, otherwise receives credits, adjustments or reimbursements for such System Improvements as required by State law.

12.6. **Annexation Fees.** The City acknowledges and agrees that any Fee required because of Annexation shall follow the State laws on Fees and shall be limited to the cost of reviewing and acting upon the application.

13. **Construction Standards and Requirements.**

13.1. **Building Permits.** No buildings or other structures shall be constructed within the Project without Property Owners and/or a Sub-developer first obtaining building permits. Property Owners and/or a Sub-developer may apply for and obtain a grading permit following conceptual Site Plan approval or a subdivision Site Plan if Property Owners and/or a Sub-developer have submitted and received approval of a site-grading plan from the City Engineer in accordance with the City's Vested Laws.

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

14. **On-Site Processing of Natural Materials**. Property Owners may use the natural materials located on the Project, including, without limitation, sand, gravel and rock, and may process such natural materials into construction materials, including, without limitation, aggregate or topsoil, for use in the construction of On and Off-Site Infrastructure, commercial buildings, residential structures, or other buildings or improvements located in the Project and other locations outside the Project. Any on-site grading performed by Property Owner and/or Sub-developer can be accomplished with a grading permit approved by the City. Notwithstanding this provision, this does not permit the construction of any subdivision or site-specific improvements prior to the approvals as outlined in the Subdivision or Construction Process set forth in Exhibits G and H.

15. **Provision of Municipal Services.** The City shall provide all City services to the Project that it provides from time to time to other residents and properties within the City including, but not limited to, development services and inspections, road and street light maintenance on public streets police, other emergency services. Such services shall be provided to the Project at the same levels of services, on the same terms and at the same rates as provided to other residents and properties in the City.

16. **Default.**

16.1. **Notice.** If a Property Owner or the City causes an event of Default of this MDA, the Party claiming a Default shall provide a written Notice of Default to the other Party.

16.2. **Contents of the Notice of Default**. The Notice of Default shall:

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

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

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

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

16.3. **Meet and Confer, Mediation, Arbitration.** Upon the failure of a defaulting Party to cure a Default within the Cure Period or in the event the defaulting Party contests that a Default has occurred, the Parties shall engage in the "Meet and Confer" and "Mediation" processes specified in Sections 6.10 and 6.11. If the claimed Default is subject to Arbitration as provided in Section 6.12, the Parties shall follow such processes.

16.4. **Remedies.** If the Parties are not able to resolve the Default by "Meet and Confer" or by Mediation, and if the Default is not subject to Arbitration,

the Parties shall have the following remedies:

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

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

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

16.5. **Public Meeting.** For any Default by Property Owners, before any remedy in Section 18.4.3 may be imposed by the City, Property Owners shall be afforded the right to attend a public meeting before the Council and to address the Council regarding the claimed Default.

16.6. **Emergency Defaults.** Anything in this MDA notwithstanding, if the Council finds on the record in a public meeting that a Default by Property Owners materially impairs a compelling, countervailing interest of the City and that any delays in imposing a remedy to such a Default would also impair a compelling, countervailing interest of the City, the City may impose the remedies of Section 18.4.3 without the requirements of Sections 18.3. The City shall give Notice to Property Owners in accordance with the City's Vested Laws of any public meeting at which an emergency Default is to be considered and Property Owners shall be allowed to attend such meeting and address the Council regarding the claimed emergency Default.

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

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

To the Property Owners:

RE Investment Holdings, L.L.C.
Attn: Greg Taylor
6900 S. 900 E., #230

Midvale, Utah 84047

To the City:

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

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

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

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

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

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

18. Administrative Amendments.

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

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

18.1.2. Design Guidelines. Modifications of the Design Guidelines.

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

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

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

18.2.2. Administrator's Review of Administrative Amendment. The Administrator shall consider and decide upon the Administrative Amendment within a reasonable time not to exceed forty-five (45) days from the date of submission of a complete application for an Administrative Amendment.

18.2.3. Notification Regarding Application; Administrator's Approval. Within ten (10) days of receiving a complete application for an Administrative Amendment, the Administrator shall notify the City Council in writing. Unless the Administrator receives a notice pursuant to Section 20.2.4 requiring that the proposed Administrative Amendment be considered by the City Council as a Modification Application, the Administrator shall review the application for an Administrative Amendment and approve or deny the same within the 45-day period set forth in Section 20.2.2. If the Administrator approves the Administrative Amendment, the Administrator shall notify the Council in writing of the proposed approval and such approval of the Administrative Amendment by the Administrator shall be conclusively deemed binding on the City. A notice of such approval shall be recorded against the applicable portion of the Property in the official City records.

18.2.4. City Council Requirement of Modification Application Processing. The Council may, within ten (10) business days after notification by the Administrator, notify the Administrator that the Administrative Amendment must be processed as a Modification Application.

18.2.5. Appeal of Administrator's Denial of Administrative Amendment. If the Administrator denies any proposed Administrative Amendment, the Applicant may process the proposed Administrative Amendment as a Modification Application.

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

19.1. **Who May Submit Modification Applications?** Only the City and Property Owners or an assignee that succeeds to all of the rights and obligations of Property Owners under this MDA (and not including a Sub-developer) may submit a Modification Application.

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

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

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

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

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

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

19.3. **City Cooperation in Processing Modification Applications.** The City shall cooperate reasonably in promptly and fairly processing Modification Applications.

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

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

accordance with the City's Vested Laws in light of the nature and/or complexity of the Modification Application.

19.4.2. Recommendation. The Planning Commission's vote on the Modification Application shall be only a recommendation and shall not have any binding or evidentiary effect on the consideration of the Modification Application by the Council.

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

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

19.7. **Meet and Confer regarding Modification Applications.** The Council and Property Owners shall meet within fourteen (14) calendar days of any objection to resolve the issues presented by the Modification Application and any of the Council's objections.

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

20. **Estoppel Certificate.** Upon twenty (20) days prior written request by Property Owners or a Sub-developer, the City will execute an estoppel certificate to any third party certifying that this MDA has not been amended or altered (except as described

in the certificate) and remains in full force and effect, and that Property Owners or the applicable Sub-developer is not in default of the terms of this Agreement (except as described in the certificate), and such other matters as may be reasonably requested by Property Owners or such Sub-developer. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

21. **Attorneys' Fees.** In addition to any other relief, the prevailing Party in any action, whether at law, in equity or by arbitration, to enforce any provision of this Amended MDA shall be entitled to its costs of action including a reasonable attorneys' fee.

22. **Entire Agreement.** This MDA, and all Exhibits hereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

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

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

25. **Assignability.**

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

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

25.1.2. Developer and Sub-developer shall be afforded the rights of

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

25.1.2.1. submit any design guidelines to the City in respect to the Developer and/or Sub-developer Property and/or propose any amendments, modifications or other alterations to the Design Guidelines or any other design guidelines previously submitted by Holdings Owners to the City in respect of the Developer and/or Sub-developer Property;

25.1.2.2. process any Final Plats, site plans or Development Applications for the Developer and/or Sub-developer Property and/or propose any amendments, modifications or other alterations of any approved Final Plats, site plans, and/or Development Applications procured by Holdings for the Developer and/or Sub-developer Property; or

25.1.2.3. propose any amendments, modifications or other alterations to this MDA.

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

25.1.4. Holdings shall not amend, modify or alter this Agreement or the Design Guidelines, or any Final Plats, Development Agreements and/or site plans approved for the Developer and/or Sub-developer Property in a manner that would materially interfere with Developer and/or Sub-developer's rights hereunder in respect of such Developer and/or Sub-developer Property, in each case without Developer and/or Sub-developer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

26. **Change in Property Owner**.

26.1. **Transfer or Assignment**. A Property Owner shall not transfer,

assign, or dispose of its obligations under this MDA to an unrelated third party (the "Replacement Owner"), unless such Property Owner and Replacement Owner comply with this Section.

26.1.1. Transfer Agreement Required. In connection with the transfer or assignment by a Property Owner of all or any portion of its obligations under this MDA to a Replacement Owner, such Property Owner shall enter into a written Transfer Agreement with the Replacement Owner or any other third-party transferee, subject to the City's consent in accordance with this Section. In the Transfer Agreement, the Replacement Owner or transferee shall assume and succeed to all or any portion of the obligations of the Property Owner under this MDA with regard to the Property being transferred.

26.1.2. Notice. Property Owners shall give Notice to the City of any proposed assignment that requires the City's consent and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

26.1.3. Grounds for Denying Assignment. The City may withhold its consent only if the City reasonably determines that the proposed assignee lacks the financial ability to perform the obligations of Property Owners proposed to be assigned. Any refusal of the City to accept an assignment shall be subject to the "Meet and Confer" and "Mediation" processes specified in Sections 6.9 and 6.11. If the refusal is subject to Arbitration as provided in Section 6.12 then the parties shall follow such processes.

26.1.4. Deemed Approved. Unless the City objects in writing within twenty (20) business days of its receipt of a written Transfer Agreement and Notice, the City shall be deemed to have approved of and consented to the assignment.

26.1.5. Partial Assignment. If any proposed transfer or assignment is for less than all of Property Owners' rights and responsibilities, such assignee shall be responsible for the performance of each of the obligations contained in this MDA to which the assignee succeeds. Upon any such approved partial assignment, the assigning Property Owner shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.

26.2. **When City Consent is Not Required**. Notwithstanding the foregoing or anything to the contrary herein, the rights and responsibilities of Property Owners under this MDA may be assigned in whole or in part by Property Owners without the consent of the City as provided herein.

26.2.1. Certain Sales Not an Assignment. A Property Owner's selling or conveying lots in any approved Subdivision or Parcels to builders, users, or Sub-developers, shall not be deemed to be an "assignment" subject to the above-referenced approval by the City unless specifically designated as such an assignment by the Property Owner.

26.2.2. Related Party Transfer. A Property Owner's transfer of all or any part of the Property to any entity "related" to the Property Owner (as defined by regulations of the Internal Revenue Service), A Property Owner's entry into a joint venture for the development of the Project or a Property Owner's pledging of part or all of the Project as security for financing shall also not be deemed to be an "assignment" subject to the above-referenced approval by the City unless specifically designated as such an assignment by the Property Owner. Property Owners shall give the City Notice of any event specified in this sub-section within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

26.3. **Assignee Bound by this Amended MDA**. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this MDA as a condition precedent to the effectiveness of the assignment.

26.4. **Effect of Breach**. Notwithstanding any other provision of this MDA, no breach or default hereunder by any Person succeeding to any portion of a Property Owner's obligations under this MDA shall be attributed to Property Owner, nor may a Property Owner's rights hereunder be canceled or diminished in any way by any breach or default by any such Person. No breach or default hereunder by a Property Owner shall be attributed to any Person succeeding to any portion of such Property Owner's rights or obligations under this MDA, nor shall such transferee's rights be canceled or diminished in any way by any breach or default by such Property Owner.

27. **Mortgagee Protection**. This MDA shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this MDA shall defeat, render invalid, diminish or impair the lien of any such Mortgage made in good faith and for value, but all

of the terms and conditions contained in this MDA shall be binding upon and effective against any Person that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Notwithstanding the provisions of this Section 29, no Mortgagee shall have any obligation or duty under this MDA to construct or complete the construction of improvements, or to guarantee such construction or completion. If the City receives a written notice from a Mortgagee requesting a copy of any notice of default given to a Property Owner or a Sub-developer and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to the Property Owner or a Sub-developer, as applicable, any notice of default or determination of noncompliance given to the Property Owner or such Sub-developer. Each Mortgagee shall have the right (but not the obligation) for a period of 90 days after the receipt of such notice from the City to cure or remedy the default claimed or the areas of noncompliance set forth in the City's notice. If such default or noncompliance is of a nature that it can only be cured or remedied by such a Mortgagee upon obtaining possession of the Property, then such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall within 90 days after obtaining possession cure or remedy such default or noncompliance. If such default or noncompliance cannot with diligence be cured or remedied within either such 90 day period, then such Mortgagee shall have such additional time as may be reasonably necessary to cure or remedy such default or noncompliance if such Mortgagee commences such cure or remedy during such 90 day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

28. **Binding Effect.** If a Property Owner sells or conveys Parcels of lands to Sub-developers or related parties, the lands so sold and conveyed shall bear the same rights, privileges, Intended Uses, configurations, and Density as applicable to such Parcel and be subject to the same limitations and rights of the City when owned by the Property Owner and as set forth in this MDA without any required approval, review, or consent by the City except as otherwise provided herein.

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

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

31. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, inclement weather, governmental restrictions, regulations or controls, judicial orders,

enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

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

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

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

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

36. **Recordation and Running with the Land.** This MDA shall be recorded in the office of the Wasatch County Recorder. This MDA shall be deemed to run with the land. Copies of the City's Vested Laws, Exhibit "D", shall not be recorded. A secure copy of Exhibit "D" shall be filed with the City Recorder and each Party shall also have an identical copy.

37. **Authority.** The parties to this MDA each warrant that they have all of the necessary authority to execute this MDA. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this MDA lawfully binding the City pursuant to Ordinance No. 08-26 adopted by the City on December 18, 2008. This MDA is approved as to form and is further certified as having been lawfully adopted by the City by the signature of the City Attorney.

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

PROPERTY OWNER

RE Investment Holdings, L.L.C.,
a Utah limited liability company

By: RE Management, L.L.C.
Its: Manager
By:_____
Name:_____
Its:_____

CITY

Heber City, a political subdivision of the State of Utah

By:_____
Name:_____
Its:_____

Approved as to form and legality: Attest:

City Attorney City Recorder

By:_____ By:_____

CITY ACKNOWLEDGMENT

STATE OF UTAH)
:ss.
CITY OF HEBER)

On the _____ day of _____, 2019, personally appeared before me _____ who being by me duly sworn, did say that he is the Mayor of City of Heber, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its governing body.

_____
NOTARY PUBLIC

PROPERTY OWNER ACKNOWLEDGMENT

STATE OF UTAH)
:ss.
CITY OF _____)

On the _____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn, did say that he is the Manager of RE Management, LLC, the Manager of RE Investment 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