

**MASTER DEVELOPMENT AGREEMENT
FOR
ANTHEM MASTER PLANNED COMMUNITY**

November __, 2016

FINAL DRAFT (w TOC) 11/21/16

Incorporating John Brems and Heather comments

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WHEN RECORDED, RETURN TO:

Bruce R. Baird
Bruce R. Baird PLLC
2150 south 1300 East # 500
Salt Lake City, UT 84106

**MASTER DEVELOPMENT AGREEMENT
FOR
ANTHEM MASTER PLANNED COMMUNITY**

THIS MASTER DEVELOPMENT AGREEMENT is made and entered as of the 30th day of November, 2016, by and among the Herriman City, a political subdivision of the State of Utah, Fort Herriman Crossing, L.L.C. and Anthem Utah, L.L.C. a Utah limited liability company.

RECITALS

- A. The capitalized terms used in these Recitals are defined in Section 1.2, below.
- B. Owner owns the 60-Acre Property and the MU2 Property.
- C. The 60-Acre Property and the MU2 Property were both included as a part of a “zoning condition” for certain prior legislative actions by the City regarding those and other properties.
- D. Certain aspects of the development of the 60-Acre Property and the MU2 Property and other properties were also conditioned by certain prior legislative actions of the City upon the execution of a “development agreement”.
- E. This MDA is determined by the Parties to be a fulfillment and satisfaction of the requirements of the zoning condition and the requirement for a development agreement imposed by those prior legislative actions
- F. Master Developer has a contract with Owner to develop the 60-Acre Property and the

MU2 Property.

G. The City has or will zone(d) the MU-2 Property as C-2.

H. Owner, Master Developer and the City desire that 60-Acre Property and the MU2 Property be developed in a unified and consistent fashion pursuant to the Concept Plan and this MDA.

I. Development of the 60-Acre Property and the MU2 Property are related to a contemporaneous development of the Anthem Commercial Project and this MDA.

J. Development of the Project as a master planned community pursuant to this MDA is acknowledged by the parties to be consistent with LUDMA and the Zoning Ordinance and to operate to the benefit of the City, Owner, Master Developer, and the general public.

K. The City Council has reviewed this MDA, including the Concept Plan, and determined that it is consistent with the Act, the Zoning Ordinance and development of the 60-Acre Property and the MU2 Property.

L. The parties acknowledge that development of the 60-Acre Property and the MU2 Property pursuant to this MDA will result in significant planning and economic benefits to the City and its residents by, among other things requiring orderly development of the 60-Acre Property and the MU2 Property as a master planned community and increasing property tax and other revenues to the City based on improvements to be constructed on the 60-Acre Property and the MU2 Property.

M. Development of the 60-Acre Property and the MU2 Property pursuant to this MDA will also result in significant benefits to Owner and Master Developer by providing assurances to Owner and Master Developer that it will have the ability to develop the 60-Acre Property and the MU2 Property in accordance with this MDA.

N. Owner, Master Developer and the City have cooperated in the preparation of this MDA.

O. The parties desire to enter into this MDA to specify the rights and responsibilities of Owner and the Master Developer to develop the 60-Acre Property as expressed in this MDA and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this MDA.

P. The parties understand and intend that this MDA is a “development agreement” within the meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-102 (2016).

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 Owner and Master Developer hereby agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1. **Incorporation.** The foregoing Recitals and Exhibits “A” - “D” are hereby incorporated into this MDA.

1.2. **Definitions.** As used in this MDA, the words and phrases specified below shall have the following meanings:

1.2.1. **60-Acre Property** means that approximately sixty (60) acres of real property owned or controlled by Master Developer more fully described in Exhibit "A".

1.2.2. **Act** means the Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, *et seq.* (2016).

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

1.2.4. **Age-Targeted Units** means residential units designed and marketed for occupancy by persons aged 55 or over.

1.2.5. **Anthem Commercial Project** means the intended development by parties related to Master Developer of an approximately 56-acre site located at approximately 12000 South 5400 West which includes Walmart.

1.2.6. **Applicant** means a person or entity submitting a Development Application.

1.2.7. **Buildout** means the completion of all of the development on the entire Project in accordance with the approved plans.

1.2.8. **City** means the Herriman City, a political subdivision of the State of Utah.

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

1.2.10. **City's Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City which 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 which may or may not be applicable to the Development Application depending upon the provisions of this MDA.

1.2.11. **City's Vested Laws** means the ordinances, policies, standards and procedures of the City in effect as of the date of this MDA, a digital copy of which is attached as Exhibit "D".

1.2.12. **Concept Plan** means that plan for the development of the Project attached as Exhibit “B”.

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

1.2.14. **Default** means a material breach of this MDA as specified herein.

1.2.15. **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.

1.2.16. **Development** means the development of a portion of the Property pursuant to an approved Development Application.

1.2.17. **Development Application** means an application to the City for development of a portion of the Project including a Subdivision or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.18. **Development Report** means a report containing the information specified in Sections 3.5 or 3.6 submitted to the City by Master Developer for a Development by Master Developer or for the sale of any Parcel to a Subdeveloper or the submittal of a Development Application by a Subdeveloper pursuant to an assignment from Master Developer.

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

1.2.20. **Institutional Parcel** means that parcel shown on the Concept Plan for future use as a site for a religious facility or other civic use.

1.2.21. **Mary Bastian Legacy Ability Park** means that park area of at least 9 acres as shown on the Concept Plan.

1.2.22. **Master Developer** means Anthem Utah, L.L.C., a Utah limited liability Company, and its assignees or transferees as permitted by this MDA.

1.2.23. **Maximum Residential Units** means the development on the 60-Acre Property of three hundred forty-three Residential Dwelling Units.

1.2.24. **MDA** means this Master Development Agreement including all of its Exhibits.

1.2.25. **MU2 Property** means a portion of the Anthem Commercial Property of approximately 40 acres owned or controlled by Master Developer.

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

1.2.27. **Open Space** shall have the meaning specified in Section 10-20-9 of the City's Vested Laws.

1.2.28. **Outsourc[e][ing]** 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.

1.2.29. **Owner** means Fort Herriman Crossing, L.L.C., a Utah limited liability company.

1.2.30. **Parcel** means a portion of the Property that is created by the Master Developer to be sold to a Subdeveloper as a Subdivision that is not an individually developable lot as specified in Section 6.9.

1.2.31. **Planning Commission** means the City’s Planning Commission.

1.2.32. **Pod** means an area of the Project as generally illustrated on the Concept Plan intended for a certain number of Residential Dwelling Units and using a particular type of Product.

1.2.33. **Product** means the various types of Residential Dwelling Units intended for various Pods as generally illustrated on Exhibit “C”.

1.2.34. **Project** means the total development to be constructed on the 60-Acre Property pursuant to this MDA with the associated public and private facilities, and all of the other aspects approved as part of this MDA.

1.2.35. **Public Infrastructure** means those elements of infrastructure that are planned to be dedicated to the City as a condition of the approval of a Development Application.

1.2.36. **Residential Dwelling Unit** means a structure or portion thereof designed and intended for use as a single-family residence.

1.2.37. **Subdeveloper** means a person or an entity not “related” (as defined by Internal Revenue Service regulations) to Owner or Master Developer which purchases a Parcel for development.

1.2.38. **Subdivision** means the division of any portion of the Project into developable lots pursuant to State Law and/or the Zoning Ordinance.

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

1.2.40. **Zoning Ordinance** means the City’s Land Use and Development Ordinance adopted pursuant to the Act that was in effect as of the date of this MDA as a part of the City’s Vested Laws.

2. **Effect of MDA.** This MDA shall be the sole agreement between the parties related to the Project and the 60-Acre Property.

3. **Development of the Project.**

3.1. **Compliance with the Concept Plan and this MDA.** Development of the Project shall be in accordance with the City's Vested Laws, the City's Future Laws (to the extent that these are applicable as otherwise specified in this MDA), the Concept Plan and this MDA.

3.2. **Maximum Residential Units.** At Buildout of the Project, Owner and Master Developer shall be entitled to have developed the Maximum Residential Units as specified in and pursuant to this MDA. At least one hundred fifty-five of the Maximum Residential Units shall be Age-Targeted Units. The Maximum Residential Units shall not be reduced by the use or development of the Institutional Parcel shown on the Concept Plan.

3.3. **Limits on Transfer of Residential Dwelling Units Between Pods.** The Parties acknowledge that the exact configuration of the final layout of the Project may vary from that shown in the Concept Plan due to final road locations, market forces and other factors that are unforeseeable. Master Developer may transfer the location of Residential Dwelling Units between and among Pods so long as no Pod exceeds 110 % of the Maximum Residential Dwelling Units specified in the Concept Plan. No transfer shall allow the Project to exceed the Maximum Residential Dwelling Units.

3.4. **Types of Product on Pods.** Each Pod shall utilize the type of Product as specified on the Concept Plan.

3.5. Accounting for Residential Units for Parcels Sold to Subdevelopers. Any Parcel sold by Owner or Master Developer to a Subdeveloper shall include the transfer of a specified portion of the Maximum Residential Units and, for any non-residential use, shall specify the amount and type of any such other use sold with the Parcel. At the recordation of a Final Plat or other document of conveyance for any Parcel sold to a Subdeveloper, Master Developer shall provide the City a Sub-Development Report showing the ownership of the Parcel(s) sold, the portion of the Maximum Residential Units and/or other type of use transferred with the Parcel(s), the amount of the Maximum Residential Units remaining with Owner and Master Developer and any material effects of the sale on the Concept Plan.

4. Zoning and Vested Rights.

4.1. Zoning. The City has zoned the MU-2 Property as C-2.

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, the City, Owner and Master Developer intend that this MDA grants Owner and Master Developer all rights to develop the Project in fulfillment of this MDA, the City's Vested Laws and the Concept Plan except as specifically provided herein. The Parties intend that the rights granted to Master Developer under this MDA are contractual and also those rights that exist under statute, common law and at equity. The parties specifically intend that this MDA grant to Master Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2016).

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

4.3.1. Owner and Master Developer Agreement. City's Future Laws that Owner and Master Developer agrees in writing to the application thereof to the Project;

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

4.3.3. Codes. City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, 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 legitimate concerns related to public health, safety or welfare;

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

4.3.5. 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.

4.3.6. Planning and Zoning Modification. Changes by the City to its planning principles and design standards such as architectural or design requirements, setbacks

or similar items so long as such changes do not work to reduce the Maximum Equivalent Residential Units, are generally applicable across the entire City to the respective Zones within the Project and do not materially and unreasonably increase the costs of any Development.

4.3.7. Compelling, Countervailing 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) (2016).

5. **Term of Agreement.** The term of this MDA shall be until December 31, 2025. This MDA shall also terminate automatically at Buildout.

6. **Processing of Development Applications.**

6.1. **Outsourcing of Processing of Development Applications.** Within fifteen (15) business days after receipt of a Development Application and upon the request of Master Developer the City and Master Developer will confer to determine whether the City desires to Outsource the review of any aspect of the Development Application to insure that it is processed on a timely basis. If the City determines that Outsourcing is appropriate then the City shall promptly estimate the reasonably anticipated differential cost of Outsourcing in the manner selected by the Master Developer or Subdeveloper in good faith consultation with the Master Developer or Subdeveloper (either overtime to City employees or the hiring of a City Consultant). If the Master Developer or a Subdeveloper notifies the City that it desires to proceed with the Outsourcing based on the City's estimate of costs then the Master Developer or Subdeveloper shall deposit in advance with the City the estimated differential cost and the City shall then promptly

precede with having the work Outsourced. 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 Master Developer or Subdeveloper) for the actual differential cost (whether by way of paying a City Consultant or paying overtime to City employees) of Outsourcing, Master Developer or the Subdeveloper shall, within ten (10) 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.

6.2. Acceptance of Certifications Required for Development Applications. Any Development Application 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 should endeavor to make all of its 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.

6.3. Independent Technical Analyses for Development Applications. If the City needs technical expertise beyond the City's internal resources to determine impacts of a Development Application such as for structures, bridges, water tanks, and other similar matters 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 6.1 with the actual and reasonable costs being the responsibility of Applicant. If the City needs any other technical

expertise other than as specified above, under extraordinary circumstances specified in writing by the City, the City may engage such experts as City Consultants under the processes in Section 6.1 with the actual and reasonable costs being the responsibility of Applicant.

6.4. Planning Commission Review. The Planning Commission shall review and consider any Development Application that the City's Planning Staff determines is required to be so reviewed based on any PUD approval or other requirement of the City's Vested Laws. If the Planning Commission determines that the Development Application should be approved then the City shall approve it. If the Planning Commission does not approve the Development Application the City Council shall approve it if the Development Application is consistent with this MDA and the Concept Plan which shall be considered to be superior to any prior PUD approval.

6.5. City Denial of a Development Application. If the City denies a Development Application the City shall provide a written determination advising 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, if applicable, the City's Future Laws).

6.6. 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.

6.7. 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, Master Developer shall appeal any

such denial through the appropriate procedures for such a decision and not through the processes specified below.

6.8. Mediation of Development Application Denials.

6.8.1. Issues Subject to Mediation. Issues resulting from the City's Denial of a Development Application that are not subject to arbitration provided in Section 6.9 shall be mediated.

6.8.2. Mediation Process. If the City and 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 legal issue in dispute. If the parties are unable to agree on a single acceptable mediator they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator. Applicant shall pay the fees 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. The mediator's opinion shall not be binding on the parties.

6.9. Arbitration of Development Application Objections.

6.9.1. 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.

6.9.2. Mediation Required Before Arbitration. Prior to any arbitration the parties shall first attempt mediation as specified in Section 6.8.

6.9.3. Arbitration Process. If the City and 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 they shall each, within ten (10) business days, appoint their own individual appropriate expert. These two experts shall, between them, choose the single arbitrator. Applicant shall pay the fees 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 or Applicant's position was not only incorrect but was also maintained unreasonably and not in good faith then the arbitrator may order the City or Applicant to pay the arbitrator's fees.

6.10. **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 creation of or sale of a Parcel. Owner and Master Developer may obtain approval of a Subdivision that does not create any individually developable lots in the Parcel without being subject to any requirement in the City's Vested Laws to complete or provide security for any Public

Infrastructure at the time of such subdivision. The responsibility for completing and providing security for completion of any Public Infrastructure in the Parcel shall be that of the Developer or a Subdeveloper upon a subsequent re-Subdivision of the Parcel that creates individually developable lots. However, construction of improvements shall not be allowed until the Developer or Subdeveloper complies with the City's Vested Laws.

7. **Application Under City's Future Laws.** Without waiving any rights granted by this MDA, Owner and Master Developer 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 so long as Owner and Master Developer and any Subdeveloper is not in current breach of this Agreement. Any Development Application filed for consideration under the City's Future Laws shall be governed by all portions of the City's Future Laws related to the Development Application. The election by Owner and Master Developer at any time to submit a Development Application under the City's Future Laws shall not be construed to prevent Owner and Master Developer from relying for other Development Applications on the City's Vested Laws.

8. **Tax Benefits.** The City acknowledges that Owner or Master Developer may seek and qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring portions of the 60-Acre Property to the City or to a charitable organization for Open Space. Owner or Master Developer shall have the sole responsibility to claim and qualify for any tax benefits sought by Owner or Master Developer by reason of the foregoing. The City shall reasonably cooperate with Owner or Master Developer to the maximum extent allowable under law to allow Owner or Master Developer to take advantage of any such tax benefits.

9. **Public Infrastructure.**

9.1. **Construction by Owner and Master Developer.** Owner and Master Developer shall have the right and the obligation to construct or cause to be constructed and installed all Public Infrastructure reasonably and lawfully required as a condition of approval of the Development Application.

9.2. **Bonding.** If and to the extent required by the City's Vested Laws, unless otherwise provided by Chapter 10-9a of the Utah Code as amended, security for any Public or private Infrastructure—is required by the City it shall provide in a form acceptable to the City as specified in the City's Vested Laws. Partial releases of any such required security shall be made as work progresses based on the City's Vested Laws.

10. **Upsizing/Reimbursements to Master Developer.**

10.1. **"Upsizing".** The City shall not require Owner or Master Developer to “upsized” any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) unless financial arrangements reasonably acceptable to Owner and Master Developer are made to compensate Owner and/or Master Developer for the incremental or additive costs of such upsizing. For example, if an upsizing to a water pipe size increases costs by 10% but adds 50% more capacity, the City shall only be responsible to compensate Owner and Master Developer for the 10% cost increase. Acceptable financial arrangements for upsizing of improvements include reimbursement agreements, payback agreements, pioneering agreements, and impact fee credits and reimbursements.

11. **Open Space/Ability Park.**

11.1. **Open Space.** Owner has previously satisfied the open space requirements for the Project by providing Open Space for other, related, developments.

11.2. **Mary Bastian Legacy Ability Park.** Owner shall dedicate to the City the Mary Bastian Legacy Ability Park on or before December 31, 2018. Improvements to the Mary Bastian Legacy Ability Park shall be constructed by the City using Park Impact Fees collected from development within the Project if permissible or with other City funds when and as deemed appropriate by the City.

12. **Default.**

12.1. **Notice.** If Owner, Master Developer or a Subdeveloper or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the party believing that a Default has occurred shall provide Notice to the other party. If the City believes that the Default has been committed by a Subdeveloper then the City shall also provide a courtesy copy of the Notice to Owner and Master Developer.

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

12.2.1. Specific Claim. Specify the claimed event of Default;

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

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

12.2.4. Optional Cure. If the City chooses, in its discretion, it may propose a method and time for curing the Default which shall be of no less than thirty (30) days duration.

12.3. **Meet and Confer, Mediation, Arbitration.** Upon the issuance of a Notice of Default the parties shall engage in the “Meet and Confer” and “Mediation” processes specified in Sections 6.6 and 6.8. If the claimed Default is subject to Arbitration as

provided in Section 6.9 then the parties shall follow such processes.

12.4. **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 then the parties may have the following remedies, except as specifically limited in 12.9:

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

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

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

12.5. **Public Meeting.** Before any remedy in Section 12.4 may be imposed by the City the party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default.

12.6. **Emergency Defaults.** Anything in this MDA notwithstanding, if the City Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of Section 12.4 without the requirements of Sections 12.5. The City shall give Notice to Owner and Master Developer and/or any applicable Subdeveloper of any public meeting at which an emergency default is to be considered and the Developer and/or any

applicable Subdeveloper shall be allowed to address the City Council at that meeting regarding the claimed emergency Default.

12.7. **Extended Cure Period.** If any Default cannot be reasonably cured within thirty (30) days then such cure period shall be extended so long as the defaulting party is pursuing a cure with reasonable diligence.

12.8. **Default of Assignee.** A default of any obligations assumed by an assignee shall not be deemed a default of Owner or Master Developer.

12.9. **Limitation on Recovery for Default – No Damages.** Anything in this MDA notwithstanding no party shall be entitled to any claim for any monetary damages as a result of any breach of this MDA and each Party waives any claims thereto. The sole remedy available to Owner, Master Developer or any Subdeveloper shall be that of specific performance.

13. **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 Master Developer:

Anthem Utah, L.L.C.
Attn: Doug Young
6150 South Redwood Road, Suite 150
Taylorsville, UT 84123

To Owner:

Fort Herriman Crossing, L.L.C.
Attn: Doug Young
6150 South Redwood Road, Suite 150
Taylorsville, UT 84123

With a Copy for Owner and Master Developer to:

Bruce R. Baird, Esq.
Bruce R. Baird PLLC
2150 South 1300 East, Fifth Floor
Salt Lake City, UT 84106
bbaird@difficultdirt.com

To the City:

Herriman City
Attn: City Manager
13011 South Pioneer Street (6000 West)
Herriman, UT 84096

Herriman City
Attn: City Attorney
13011 South Pioneer Street (6000 West)
Herriman, UT 84096

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

13.1.1. Hand 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). If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

13.1.2. 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. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

13.1.3. Mailing. 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. 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.

14. **Estoppel Certificate.** Upon twenty (20) days prior written request by Owner or Master Developer or a Subdeveloper, the City will execute an estoppel certificate to any third party certifying that Owner, Master Developer or a Subdeveloper, as the case may be, at that time is not in default of the terms of this Agreement.

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

16. **No Third Party Rights/No Joint Venture.** This MDA does not create a joint venture relationship, partnership or agency relationship between the City, Owner or Master Developer. Further, the parties do not intend this MDA to create any third-party beneficiary rights. The parties acknowledge that this 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 60-Acre Property or the MU2 Property unless the City has accepted the dedication of such improvements at which time all rights and responsibilities—except for warranty bond requirements under City’s Vested Laws and as allowed by state law—for the dedicated public improvement shall be the City's.

17. **Assignability.** The rights and responsibilities of Owner and Master Developer under this MDA may be assigned in whole or in part by Owner or Master Developer with the consent of the City as provided herein.

17.1. **Sale of Lots.** Owner or Master Developer's selling or conveying lots in any approved Subdivision or Parcels to builders, users, or Subdevelopers, 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 Owner or Master Developer.

17.2. **Related Entity.** Owner or Master Developer's transfer of all or any part of the 60-Acre Property to any entity "related" to Owner or Master Developer (as defined by regulations of the Internal Revenue Service in Section 165), Owner or Master Developer's entry into a joint venture for the development of the Project or Owner or Master Developer'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 Master Developer.

Owner and Master Developer 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.

17.3. **Notice.** Owner and Master Developer shall give Notice to the City of any proposed assignment 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.

17.4. **Time for Objection.** Unless the City objects in writing within twenty (20) business days of notice, the City shall be deemed to have approved of and consented to the assignment.

17.5. **Partial Assignment.** If any proposed assignment is for less than all of Owner's or

Master Developer's rights and responsibilities then the 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, Owner and Master Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.

17.6. **Denial.** The City may only withhold its consent if the City is not reasonably satisfied of the assignee's financial ability to perform the obligations of Owner or Master Developer proposed to be assigned or there is an existing breach of a development obligation owed to the City by the assignee or related entity that has not either been cured or in the process of being cured in a manner acceptable to the City. Any refusal of the City to accept an assignment shall be subject to the "Meet and Confer" and "Mediation" processes specified in Sections 6.5 and 6.7. If the refusal is subject to Arbitration as provided in Section 6.8 then the parties shall follow such processes.

17.7. **Assignees Bound by 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.

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

19. **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.

20. **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.

21. **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, 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.

22. **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.

23. **Appointment of Representatives.** To further the commitment of the parties to cooperate in the implementation of this MDA, the City, Owner and Master Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Master Developer. The initial representative for the City shall be the City Manager and the initial representative for Owner and Master Developer shall be Doug Young. 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.

24. **Mutual Drafting.** Each party has participated in negotiating and drafting this 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.

25. **Applicable Law.** This MDA is entered into in Utah County 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.

26. **Venue.** Any action to enforce this MDA shall be brought only in the Third District Court for the State of Utah, Salt Lake City Division.

27. **Entire Agreement.** This MDA, and all Exhibits thereto, 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.

28. **Recordation and Running with the Land.** This MDA shall be recorded in the chain of title for the Project. This MDA shall be deemed to run with the land. The data disk of the City's Vested Laws, Exhibit "D", shall not be recorded in the chain of title. A secure copy of Exhibit "D" shall be filed with the City Recorder and each party shall also have an identical copy.

29. **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 City Manager of the City is affixed to this MDA lawfully binding the City pursuant to Resolution No. ___ adopted by the City on November __, 2016.

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.

MASTER DEVELOPER
Anthem Utah, LLC

CITY
Herriman City

By: _____
Its: _____

By: _____,
Its: City Manager

OWNER
Fort Herriman Crossing, LLC

By: _____
Its: _____

Approved as to form and legality:

Attest:

City Attorney

City Recorder

CITY ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF UTAH)

On the ____ day of November, 2016, personally appeared before me _____ who being by me duly sworn, did say that he is the City Manager of Herriman City, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said City Manager acknowledged to me that the City executed the same.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

MASTER DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

On the _____ day of November, 2016, personally appeared before me Doug Young, who being by me duly sworn, did say that he is the Manager of Anthem Utah, LLC, a Utah limited liability company and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

OWNER ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

On the _____ day of November, 2016, personally appeared before me Doug Young, who being by me duly sworn, did say that he is the Manager of Fort Herriman Crossing, LLC, a Utah limited liability company and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

TABLE OF EXHIBITS

Exhibit “A”	Legal Description of 60-Acre Property
Exhibit “B”	Concept Plan
Exhibit “C”	Illustrations of Product types
Exhibit “D”	City’s Vested Laws