WHEN recorder, return to:

Herriman City Recorder
5355 West Herriman Main Street
Herriman, Utah 84096

MASTER DEVELOPMENT AGREEMENT
FOR
OLYMPIA

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MASTER DEVELOPMENT AGREEMENT
FOR
OLYMPIA

THIS MASTER DEVELOPMENT AGREEMENT is made and entered into effective as of the ___ day of _______ 2021, by and between HERRIMAN CITY, a political subdivision of the State of Utah, by and through its City Council, THE LAST HOLDOUT, L.L.C., a Utah limited liability company, JORDAN SCHOOL DISTRICT, a Utah school district, and OLYMPIA LAND, LLC, a Utah limited liability company.

RECITALS

A. Owner is the current owner of the Property, and Master Developer has an option to acquire and develop the Property over a period of years.

B. Owner, Master Developer, and the City desire that the Property be developed in a unified and consistent fashion pursuant to the General Plan and this MDA.

C. In connection with entering into this MDA, the City desires to receive certain public and community benefits and amenities and the Master Developer is willing to provide these benefits and amenities in consideration of the agreement of the City for the densities and intensity of uses within the Planned Community pursuant to the terms of this MDA.

D. The Parties acknowledge that development of the 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 Property as a master planned community and increasing sales tax and other revenues to the City based on improvements to be constructed on the Property by the Master Developer.

E. Development of the 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 Master Developer will have the ability to develop the Property in accordance with this MDA.

F. On _____________, 2021 the City zoned the Property as shown on the Zoning Map pursuant to Ordinance No. ___________________.

G. The Zoning Map sets forth those land use classifications, residential and commercial densities, and development locations as are permitted under this MDA for the Planned Community.

H. This MDA identifies the standards and procedures that will be applied to the required administrative approvals contemplated in connection with the future development of the Planned Community, as well as the construction of certain improvements of benefit to the Planned Community and to address requirements for certain community benefits.

I. The City has established the Planned Community under the provisions of the City’s Vested Laws for the purpose of implementing development standards and processes that are consistent therewith. In doing so, the City found that the Planned Community is vested to proceed under the City’s Vested Laws, subject to the limitations outlined herein.

J. The City has adopted a General Plan that includes the Property, and this MDA and the Planned Community comply with the General Plan.
The City, acting pursuant to its authority under the Act and the City’s Vested Laws, has made certain determinations with respect to the proposed Planned Community, as a master planned community, and in the exercise of its legislative discretion has elected to approve the use, density, and general configuration of the Planned Community set forth in the Zoning Map through the negotiation, consideration and approval of this MDA after all necessary public hearings and recommendations from the Planning Commission.

The Parties, having cooperated in the drafting of this MDA, understand and intend that this MDA is a “development agreement” within the meaning of, and is entered into pursuant to, the terms of Utah Code Ann. § 10-9a-103(12) (2021).

Furthermore, the Parties desire to enter into this MDA to specify the rights and responsibilities of Owner and the Master Developer to develop the 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.

NOW, THEREFORE in consideration of agreements and obligations set forth below, and in reliance upon the recitals set forth above, which are incorporated as part of this Agreement, the City, Owner, Special Owner, and the Master Developer hereby agree as follows:

AGREEMENT

SECTION 1
DEFINITIONS

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


1.2. Administrator means the Herriman City Community Development Director or some other person appointed by resolution of the Council to serve as the Administrator of this MDA.

1.3. Administrative Action means and includes the actions related to Development Applications that may be approved by the Administrator as provided in Section 4.

1.4. Administrative Modifications means and includes any amendment, modification, or supplement to this MDA that may be approved by the Administrator as provided in Section 6.1.1.

1.5. Apartment Dwelling Unit(s) means...

1.6. Applicant means any person or entity making a Development Application for a portion of the Planned Community.

1.7. Backbone Infrastructure means those improvements shown and/or described in the Infrastructure Plan, as set forth in Exhibit “E”, and which are, generally, infrastructure improvements of a comprehensive scale that are a part of the overall development of the Planned Community and not merely a part of the development of any particular Phase or Subdivision. Unless otherwise excepted in the Infrastructure Plan, Backbone Infrastructure is considered to be in the nature of “System Improvements” as defined in Utah Code Ann. § 11-36a-102(22), (2021).
1.8. **Building Permit** means a permit issued by the City to allow construction, erection, or structural alteration of any building, structure, or private, public, or Project Infrastructure on any portion of the Planned Community, or to construct any off-site infrastructure within the City’s jurisdiction consistent with the International Building Code, International Fire Code and/or the City’s Vested Laws.

1.9. **Capital Roads** means those roads identified in the City’s transportation master plan within the Planned Community.

1.10. **City** means Herriman City, a city of the third class located in the County.

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

1.12. **County** means Salt Lake County, a political subdivision of the State of Utah.

1.13. **City’s Future Laws** means the ordinances, policies, rules, regulations, 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 Planned Community and which may or may not be applicable to the Development Application depending upon the provisions of this MDA.

1.14. **City’s Vested Laws** means the ordinances, policies, standards, and procedures of the City related to zoning, subdivisions, development, public improvements, and other similar or related matters that were in effect as of the Effective Date of this MDA, as more particularly described in the attached Exhibit “G”.

1.15. **Default** means a material breach of this MDA as more fully specified in Section 8.18, below.

1.16. **Design Guidelines** means the general standards for design of the building for the Intended Uses and Project Infrastructure as more fully specified in the attached Exhibits, and to the extent not established therein, those standards established consistent with the City’s Vested Laws, the general policies outlined in this MDA, and the approved Zoning Plan.

1.17. **Detached Single Family Dwelling Unit** means a building arranged or designed to be occupied by one family, the structure having only one dwelling unit and not attached to another dwelling unit.

1.18. **Development Application** means an application to the City for development of a portion of the Planned Community including a Preliminary Plat, Final Plat, a Building Permit, or any other permit, certificate or other authorization from the City for development of the Planned Community.

1.19. **Development Report** means a report containing the information specified in Section 2.2.3 submitted to the City by Master Developer, or any Subdeveloper pursuant to an authorized assignment hereunder, for the development of any Parcel or Subdivision or concurrent with any Development Application.

1.20. **Effective Date** means January 1, 2022 following the lieutenant governor’s issuance of a certificate of annexation under Utah Code Ann. § 67-1a-6.5.

1.21. **Extractable Natural Materials** means any rock, sand, or gravel products (but excluding any other underground material or other minerals that may be discovered on the Property) which may be used by the Master Developer, and/or its agents, successors, assigns, tenants, guests, and invitees as more
fully specified herein.

1.22. **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. § 10-9a-603, (2021), and approved by the City effectuating a Subdivision of any portion of the Property.

1.23. **General Plan** means the City’s General Plan for the area including the Property adopted by the City on ______________ 2021.

1.24. **Impact Fees** means those fees, assessments, or payments of money which may be imposed by the City, or any local or special service district as specified in the Utah Impact Fees Act, Utah Code Ann. §§ 11-36a-101, et seq., (2021).

1.25. **Independent Review Committee (“IRC”)** means …

1.26. **Individually Platted Dwelling Unit** means an RDU whose boundaries are drawn on a subdivision or condominium plat, such as Detached Single Family Dwelling Units, town homes, and condominiums, but not including an apartment dwelling unit.

1.27. **Infrastructure Plan** means the plan attached hereto and incorporated herein as Exhibit “E” which details the Backbone Infrastructure.

1.28. **Institutional Property** means any part of the Planned Community that is developed in connection with a public or private institute of higher learning and not for any residential or commercial uses.

1.29. **Intended Uses** means the use of all or portions of the Planned Community for single-family and multi-family residential units, hotels, restaurants, public facilities, businesses, commercial areas, professional and other offices, services, parks, trails and other uses as more fully specified in the Zoning Ordinance, the Master Plan, and this MDA.

1.30. **Master Plan** means the layout and table set forth in Exhibit “B”, which provides for the use, density and general locations of the Intended Uses in the development of the Planned Community.

1.31. **Master Developer** means Olympia Land, LLC, a Utah limited liability company and its related entities, assignees, or transferees as permitted by this MDA.

1.32. **Maximum Residential Units** means the development on the Property of six thousand three hundred and thirty (6,330) Residential Dwelling Units.

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

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

1.35. **Open Space** means any open piece of land that is undeveloped and is accessible to the public and includes those uses described in greater detail herein.

1.36. **Owner** means The Last Holdout, L.L.C., a Utah limited liability company.

1.37. **Parcel** means an area identified for development of a particular type of Intended Use that is
not an individually developable lot.

1.38. **Party or Parties** means, collectively, the City, Owner, Special Owner, and Master Developer.

1.39. **Phase** means the development of a given portion of the Planned Community at a point in a logical sequence as determined by Master Developer and agreed to by the City.

1.40. **Planned Community** means the development to be constructed on the Property pursuant to this MDA including all of the Intended Uses and the Project Infrastructure.

1.41. **Planning Commission** means the City’s Planning Commission established by the Zoning Ordinance.

1.42. **Preliminary Plat** means a recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. § 10-9a-103(50) (2021), and as required by the City’s Vested Laws.

1.43. **Project Infrastructure** means those items of public or private infrastructure within the Property which are necessary for development of the Planned Community including all roads (including traffic signage, striping, and traffic control improvements), utilities, lighting, curbs, gutters, sidewalks, parks, trails, rough and final grading, trees, sod, seeding, and other landscaping, storm water detention and retention facilities, water mains, storm sewers, sanitary sewers, and all other improvements required pursuant to this MDA, Final Plats, City’s Vested Laws, and/or City’s Future Laws, as applicable.

1.44. **Project** means the development to be constructed on the Property pursuant to this MDA with all of the associated public and private facilities, Intended Uses, Densities, Phases, and all of the other aspects approved as part of this MDA including all of the Exhibits.

1.45. **Property** means that approximately nine hundred and thirty-three (933) acres described in Exhibits “A” and “A-1”.

1.46. **Residential Dwelling Unit (“RDU”)** means a single unit intended to be occupied for residential living purposes; and, for purposes of calculating the Maximum Residential Units, each Detached Single Family Dwelling Unit and each individual unit within a multi-family dwelling, apartment building, condominium, or time-share shall individually equal one RDU. Accessory apartments, casitas, and other similar uses that are ancillary to a primary residential use shall not be counted as a Residential Dwelling Unit for purposes of the Maximum Residential Units.

1.47. **School District Property** means that approximately sixty (60) acres described on Exhibit “A-1”.

1.48. **Special Owner** means the Jordan School District.

1.49. **Subdeveloper** means an entity or person not “related” (as defined by Internal Revenue Service regulations) to Master Developer which purchases a Parcel for development and pursuant to an assignment approved by the City pursuant to Subsection 6.1 hereof, is assigned the rights and assumes the responsibilities of this MDA applicable to such Parcel as more specifically set forth in the approved assignment and assumption agreement.

1.50. **Subdivision** means the division of any portion of the Property into a subdivision pursuant to state law and/or the Zoning Ordinance.
1.51. Traffic Impact Study ("TIS") means the study to estimate site-generated traffic volumes and assess their impact on the transportation system within and outside of the Planned Community. The TIS identifies off-site improvements that might be needed as a result of the Planned Community and is more fully specified in Exhibit “D”.

1.52. Workforce Unit means an RDU that is considered to be for workforce housing as specified in Exhibit “H”.

1.53. Zoning Ordinance means the City’s “land use ordinances” as set forth in Title 10 of the Herriman City Code and which have been adopted pursuant to the Act that were in effect as of the Effective Date as a part of the City’s Vested Laws.

SECTION 2
DEVELOPMENT OF THE PLANNED COMMUNITY

2.1. Compliance with Local Laws and Standards. The City has reviewed the City’s Vested Laws and the General Plan and has determined that the Planned Community substantially complies with the provisions thereof and hereby finds that the Planned Community is consistent with the purpose and intent of the relevant provisions of the General Plan and the City’s Vested Laws.

2.2. Approved Maximum Residential Units. The Maximum Residential Units in the Planned Community shall be six thousand three hundred thirty (6,330) Residential Dwelling Units. The RDUs shall be generally located in the areas illustrated in the Master Plan as more fully detailed in the Design Guidelines and future approvals as required by City’s Vested Laws or this MDA. Subject to the requirements of subsection 2.2.2, the Design Guidelines and Master Plan provide for certain flexibility in locating various types of RDUs within the areas of the Planned Community and making specified modifications of the numbers of each type of RDU within the designated areas.

2.2.1. No Guarantee. Master Developer and Owner acknowledge that the development of the Maximum Residential Units and every other aspect of the Master Plan requires that each Development Application comply with the City’s Vested Laws. The City’s entry into this MDA does not guarantee that the Master Developer or Owner will be able to construct the Maximum Residential Units or any other aspect of the Planned Community until and unless all the applicable requirements of this MDA and the City’s Vested Laws are complied with.

2.2.2. Housing Types. Of the total Maximum Residential Units, at least 30% shall be Detached Single Family Dwelling Units. At least 63% of the total Maximum Residential Units shall be Individually Platted Dwelling Units. Accordingly, no more than 37% of the Maximum Residential Units shall be apartment dwelling units. The Parties acknowledge that the types of RDUs used in the Traffic Impact Study (TIS), Exhibit D, were included for planning purposes to help determine future impacts of the Planned Community and do not create specific entitlements of exact numbers of housing types to the Master Developer. Each Phase or Subdivision will establish, in accordance with the Master Plan, the number, location, and compatibility of housing types.

2.2.3. Accounting for Use of Maximum Residential Units. At the recordation of a Final Plat for each Phase or Subdivision, with each Development Application, Master Developer, or a Subdeveloper as the case may be, shall provide the City a
Development Report showing the number and type of Maximum Residential Units, acres, amount of open space, and other items governed by this MDA that are used within the Phase, or Subdivision, or proposed Development Application and the number and type of Maximum Residential Units remaining with Master Developer for the remainder of the Planned Community.

2.3. Land Uses within Planned Community; Configuration. The approved general configuration of Intended Uses within the Planned Community are those identified in the Master Plan and Design Guidelines. The Master Plan reflects the general location and configuration of residential and commercial development and open space within the Planned Community. The City specifically delegates those determinations to the appropriate administrative land use authority as specified in the MDA or City’s Vested Laws, subject to the policy guidance in this MDA.

2.4. Compliance with TIS; Letter Required with Development Applications. The Parties hereby acknowledge that the current TIS is based upon projected land uses and numbers of units within the Planned Community. The Parties also acknowledge that the final number of units, the type of RDU’s, and layout of approved land uses within the Planned Community may be different than those projections used in the current TIS. Accordingly, Master Developer and/or a Subdeveloper shall submit with each Development Application a letter from a licensed traffic engineer certifying that the development proposed by the Development Application substantially complies with the TIS for the Phases(s) in which the proposed development will occur. The traffic engineer’s letter under this Section 2.4 shall also certify that the proposed road infrastructure will supply a level of service equal to or greater than “D” for off- and on-site roads when taking into account the effects of the development proposed by the Development Application. The City may request to review the assumptions and methodologies used in the traffic engineer’s letter prior to submission of a Development Application.

2.4.1. Additional Traffic Impacts; Updated Traffic Impact Study. If the traffic engineer’s letter under Section 2.4 indicates that the number of units, types of RDU’s, uses, or other relevant factors identified in the proposed Development Application do not substantially comply with the TIS or otherwise cause substantially and materially greater impacts on proposed or existing road infrastructure beyond those impacts considered in the TIS, then Master Developer and/or Subdeveloper shall be required to conduct an updated traffic impact study, at Master Developer’s or Subdeveloper’s own cost, prior to any development approval from the City or IRC, as the case may be, for the Development Application at issue.

2.4.1.1. Scope of Updated Traffic Impact Study. The updated traffic impact study, if required under Section 2.4.1, shall be completed by a licensed traffic engineering firm and shall identify the location, number, and mixture of housing types proposed by a Development Applications and shall take into account the regional impacts of such locations, number, and mixture of housing types. The updated traffic impact study shall also provide an update of the Recommended Improvements together with a calculation of the Master Developer’s proportionate share of the cost and timing of such Recommended Improvements.

2.4.2. Proportionate Share of Additional Impacts Paid for by Master Developer / Master Developer. Master Developer shall pay its proportionate share of the cost of the Recommended Improvements as identified in the updated traffic impact study. Such payment shall be made by Master Developer to City within 60 days of the
updated traffic impact study or, in the case of a dispute, within 30 days of resolution of such dispute. Material differences or disputes between the Master Developer’s proportionate share impacts or costs as determined by an updated traffic impact study shall be resolved in accordance with Section 2.4.3.

2.4.3. **Dispute Resolution of Disputes Relating to Traffic Impact Mitigation.** If there is a dispute relating to traffic impacts within the Planned Community, City and Master Developer shall meeting within fourteen (14) calendar days to resolve the dispute. If the City and Master Developer are unable, after meeting and conferring, to resolve the dispute, the Parties shall attempt within seven (7) days to appoint a mutually acceptable expert in traffic impact mitigation 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. Master Developer 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 not be binding on the parties.

2.5. **Telecommunications Services.** Subject to all applicable Federal and State laws, Master Developer and/or a Subdeveloper may install or cause to be installed underground all conduits and communications lines within the Planned Community and underneath any public streets within the Planned Community, at no expense to the City. Any and all conduits, cable, lines, connections and lateral connections (except for conduit installed for public utilities, such as power, natural gas, culinary water, telecommunications services that are regulated as such by the Federal Communications Commission, and sanitary sewer, that are installed as part of the System Improvements located on the Property, which will be owned by the City) shall remain the sole and exclusive property of Master Developer or its designee even though the roadways in which such conduits, cable, lines, connections and lateral connections are installed may be dedicated to the City.

2.5.1. **Easement; Developer Right to Contract.** Master Developer hereby reserves a commercial easement in gross on, through, over, across, and under such publicly dedicated right-of-way for such conduits and cables related to the communications services contemplated in this Section 2.6. Master Developer or any Subdeveloper may contract with any communications provider of its own choice and grant an exclusive easement to such telecommunications provider to furnish its services for the private property within the Planned Community.

2.5.2. **Franchise Agreement Required.** The City is entitled to charge and collect all taxes and/or fees with respect to cable, information and telecommunication services as allowed under State Law. The City shall execute franchise or similar agreements with each cable, information and/or telecommunications service provide selected by the Master Developer or a Subdeveloper that requires use of any publicly dedicated rights-of-way to provide its services within the Planned Community.

2.6. **Master Developers’ Discretion.** Notwithstanding anything to the contrary herein, nothing in this MDA shall obligate the Master Developer to construct the Planned Community or any particular Project or Phase therein, and the Master Developer shall have the discretion to determine whether to construct a particular Project or Phase based on such Master Developer’s business judgment. Once
construction has begun on a specific Preliminary or Final Plat, the relevant Master Developer or Subdeveloper(s) shall have the obligation to complete the improvements associated with such plat or plan, including all associated community benefits as described and scheduled within the applicable Phase within the time agreed upon by the City and Master Developer. If no time for completion of the improvements can be mutually agreed upon, the matter shall be subject to the dispute resolution procedures defined in Subsection 8.18.4.

2.7. **Concurrency Management Required.** Development Applications shall be required to include reasonable verification of the continued availability and adequacy of sanitary sewer service, storm water service, culinary water service, fire protection (including water fire flow, storage, and other similar requirements), and utilities for the development activity contemplated by each such Development Application. The City is under no obligation to issue any building permits until Master Developer and/or Subdeveloper provide the City with reasonable verification, based upon sound engineering standards, that adequate utility rights/contracts and infrastructure are available for each Phase or Subdivision and that such utility rights/contracts and infrastructure can be funded and installed as per the requirements of this MDA. Utility and infrastructure systems shall be phased based on the timing of the various Phases or Subdivisions, as the case may be, and as set forth in the Infrastructure Plan. All utility and infrastructure systems shall accommodate anticipated build-out and include a plan to reduce long-term costs, optimize efficiencies, and reserve land and corridors needed for future growth provided that there are appropriate provisions for reimbursement to Master Developer for “System Improvements”, as that term is defined in Utah Code Ann. § 11-36a-102(22), (2021).

2.7.1. **Bonding.** Bonding for public improvements, and any releases of those bonds, shall be governed by Utah State law, with installation of public improvements and release of bonds to take place in accordance with the City’s Vested Laws.

2.8. **Acknowledgement of Parcels.** The City acknowledges that the precise location and details of the public improvements, lot layout and design, and any other similar items regarding the development of a particular Parcel, may not be known at the time of the creation of or sale of a Parcel. The City acknowledges that Master Developer may create or sale a Parcel or Subdivision, as is provided in Utah Code Ann. § 10-9a-103(65)(c)(v) (2021), that does not create any individually developable lots in the Parcel or Subdivision 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 Parcel or Subdivision. Whenever a Parcel or Subdivision is sold by Master Developer, Master Developer shall provide the City with a Development Report pursuant to Section 2.2.3 above. The responsibility for completing and providing security for completion of any Public Infrastructure in the Parcel shall be that of the Master 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 Master Developer or Subdeveloper complies with this MDA and the City’s Vested Laws.

2.9. **Order of Development.** To effectuate the most efficient provision of municipal-type services, new residential phases shall, to the extent practical, be reasonably proximate to residential phases that have been constructed or are being constructed within the Planned Community. Notwithstanding the foregoing, Master Developer or an applicable Subdeveloper may, pursuant to an approved Phase or Subdivision, develop two or more Projects concurrently that are located in different areas of the Planned Community.

2.10. **Effect of this MDA.** Except as otherwise provided in this MDA, as the same may be amended or supplemented from time to time, this MDA shall be the sole agreement between the Parties for the development of the entirety of the Property. Notwithstanding the foregoing, various other development, infrastructure, and other agreements may be entered into by and among the Parties hereto and others with
respect to the development of various Projects, Phases, or specific infrastructure developments over the course of the Planned Community’s development. This MDA is intended to implement the approved Zoning Plan. In the event of any inconsistency between the terms of this MDA and the provisions of the Zoning Ordinance, the terms and provisions of this MDA shall control. Master Developer and Owner acknowledge and agree that notices have been properly given and required meetings and hearings have been held by the City with respect to the approval of this MDA. Additionally, Master Developer and Owner agree not to challenge City’s approval on the grounds of any procedural infirmity or any denial of or failure respecting any procedural right.

2.11. **Effect of this MDA on Special Owner.** The Parties acknowledge that the School District Property is being included in this MDA, and the Special Owner is executing this MDA for the purpose of acknowledging that School District Property is within the Property. The School District Property may be developed as a school or schools subject to applicable provisions of the City’s Vested Laws and the laws of the State of Utah. If, at any time, any portion of the School District Property is conveyed to Owner or Master Developer then that portion shall be subject to all the provisions of this MDA.

2.12. **Certain Extraction, Processing and Uses Permitted.** Master Developer, and/or its agents, successors, assigns, tenants, guests, and invitees shall be permitted to extract and process the Extractable Natural Materials located on the Property. The Extractable Natural Materials may be used and processed on-site in the construction of infrastructure, homes, or other buildings or improvements located on the Property. Additionally, the Extractable Natural Materials may be used for purposes of constructing public or private off-site improvements that are associated with development of the Planned Community or other projects associated with the Master Developer. The zoning for the Property shall not be construed to limit or restrict any such temporary development-related extraction, processing and hauling activities. Master Developer shall obtain a land disturbance permit from the City for such extraction and/or processing, which the City shall issue if the standards of this Section 2.13 are satisfied.

2.12.1. **Transport of Natural Material.** The Parties acknowledge that the transport of the Natural Materials for on-site and off-site uses as anticipated above will cause certain damage to existing roadway improvements within and around the Planned Community. To the extent commercially practicable, Master Developer agrees to utilize unimproved roadways to transport the Natural Material for on-site and off-site uses as authorized herein.

2.13. **Preservation of the Public Land Survey System.** The Salt Lake County Surveyor has identified the presence of approximately nine government survey monuments or public land survey government corners within the boundary of the Planned Community. Master Developer shall, in consultation with and at the direction of the Salt Lake County Surveyor, comply with the requirements of Utah Code Ann. §§ 17-23-14 and 17-23-15 throughout the process of constructing the Planned Community.

**SECTION 3**

**VESTED RIGHTS AND RESERVED LEGISLATIVE POWERS**

3.1. **Vested Rights.** To the extent permissible under the laws of the State of Utah and the United States and at equity, and subject to Subsection 3.4, the City and Master Developer intend that this MDA grants to Master Developer all rights to develop the Planned Community in accordance with the terms and conditions of this MDA. This MDA may modify, in certain respects, the operation of the Code and the City’s Vested Laws pertaining to the Property. To such an extent that the terms and conditions of the MDA conflict with the Code or the City’s Vested Laws, this MDA shall be considered a land use application and an ordinance adopted by the City through its legislative power and consistent with Utah Code Ann. § 10-9a-502 (2021), including a review and recommendation from the planning commission and a public
hearing, and shall thereafter operate as an amendment to any portion of the Code that is inconsistent with the terms and conditions of this MDA. The Parties specifically intend that this MDA grants to Master Developer “vested rights” as that term is construed in Utah Code Ann. § 10-9a-509 (2021).

3.2. **Invalidity.** Master Developer and Owner covenant and agree not to bring suit to have any of the City’s Vested Laws declared to be unlawful, unconstitutional, or otherwise unenforceable. If any of the City’s Vested Laws are declared to be unlawful, unconstitutional, or otherwise unenforceable, Master Developer and Owner, along with any Subdeveloper hereunder, will nonetheless comply with the terms of this MDA. Master Developer and Owner shall also, in that event, 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 provision and which implements the intent of the Parties in that regard as manifested by this MDA.

3.3. **Reserved Legislative Powers.** The Parties acknowledge that under the laws of the State of Utah (including Utah Code Ann. § 10-9a-532 (2021)) and the United States, the City’s authority to limit its police power by contract is restricted and, as such, the limitations, reservations, and exceptions set forth herein are intended to reserve to the City those police powers that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of the Master Developer under the terms of this MDA based upon the policies, facts, and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed legislative changes affecting the vested rights of the Master Developer under this MDA shall be of general application to all development activity in the City and, unless the City declares an emergency, Master Developer shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Planned Community under the compelling, countervailing public interest exception to the vested rights doctrine.

3.4. **Excepted Laws and Ordinances.** The City expressly reserves its authority to impose the City’s Future Laws to the Planned Community and the Property in any one or more of the following circumstances and Master Developer agrees to abide by such laws:

3.4.1. **Compliance with State and Federal Laws.** City’s Future Laws which are generally applicable to all similarly situated properties in the City and which are required to comply with State and Federal laws and/or regulations affecting the Planned Community and/or the Property.

3.4.2. **Safety and Health Code Updates.** City’s Future Laws that are updates or amendments to existing health regulations, building, plumbing, mechanical, electrical, street lighting, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, International Fire Code, Salt Lake County Health Department Regulations, the APWA Specifications, American Association of State Highway and Transportation Officials (AASHTO) Standards, the Manual on Uniform Traffic Control Devices (MUTCD) and similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the City, State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare.

3.4.3. **Ordinances and Resolutions Not Inconsistent.** Ordinances and resolutions of the City not in conflict with the provisions of this MDA and rights granted to the Master Developer and the Owner hereunder.

3.4.4. **Taxes.** Taxes, and modifications thereto, so long as such taxes are lawfully imposed
and charged uniformly by the City or any other local entity with taxing authority under Utah law, to all properties, applications, persons and entities that are similarly situated.

3.4.5. **Fees.** Changes to the amounts of fees by the City for the processing of Development Applications (including inspections) that are in accordance with the terms of this MDA or otherwise applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule).

3.4.6. **Impact Fees.** Impact Fees or modifications thereto which are lawfully adopted, imposed, and collected by the City or any other entity which is lawfully authorized to adopt, impose, and collect Impact Fees within the Planned Community. Master Developer, Owner, and any Subdeveloper agree that the impact fees imposed by the City meet all requirements of the U.S. Constitution, Utah Constitution, and all applicable statutes and other law including, but not limited to, Utah Code Ann. § 11-36a-101 et seq., (2021).

3.4.6.1. **No Challenge to Impact Fees.** Owner, Master Developer, and any Subdeveloper hereby agree not to challenge the City’s current impact fees and shall specifically notify any Subdeveloper of this provision.

3.4.7. **Municipal Services Fees.** Fees imposed to pay for municipal-type services and/or infrastructure provided by the City and/or any other provider, including but not limited to, stormwater utility, special assessments, parks, and connection or hookup fees.

3.4.8. **Generally Applicable laws not in conflict with this MDA.** City regulations, ordinances, resolutions, or policies adopted after the date of this MDA that are not in conflict with the terms and conditions for development of the Property established by this MDA, which are generally applicable throughout the City and which do not materially increase the cost of developing the Planned Community nor diminish the number or types of the Intended Uses.

3.4.9. **Design Guidelines.** Design Guidelines, as defined in this Agreement, that are agreed to after the Effective Date.

3.5. **Processing Under City’s Vested Laws.** Approval processes for Development Applications shall be as provided in the City’s Vested Laws, except as otherwise provided in this MDA. Development Applications shall be approved by the City if such Development Applications comply with the City’s Vested Laws and this MDA.

SECTION 4

DEVELOPMENT APPLICATION REVIEW PROCESS

4.1. **Required Process.** The procedure set forth in Exhibit H establishes the required review and approval process for Development Applications in the Planned Community. No Development Application shall be approved without first submitting such Development Application for review as set forth herein. This process is designed to limit the number of submittals and reviews required for Development of the Planned Community, to ensure that each Development Application is compliant with this MDA, and to make the implementation of this MDA an administrative function excepting only those items that, by
applicable law or pursuant to this MDA, require Planning Commission and/or City Council review and/or approval.

4.2. **Independent Review Committee.** There is hereby created an Independent Review Committee (“IRC”) to assist in the review and approval of Development Applications for the Planned Community. The IRC shall be composed of five members as follows: (1) the Administrator; (2) Neutral Architect; (3) Neutral Land Planner; (4) representative of the Architectural Review Committee; and (5) a representative designated by Master Developer.

4.2.1. **Selection of Neutral IRC Members.** The Neutral Architect and Neutral Land Planner shall be selected by mutual agreement of the Master Developer and City Parties. In the event that the Parties Master Developer and City are unable to agree on a Neutral Architect and/or Neutral Land Planner to sit on the IRC, each Party Master Developer and City shall each select a Neutral Land Planner or Neutral Architect, as the case may be, whereupon the individually selected Neutral Land Planners or Neutral Architects shall collectively select a third Neutral Architect or Land Planner to fill the membership position on the IRC that is in dispute.

4.2.2. **Term of Neutral IRC Members.** The Neutral Architect and Neutral Land Planner shall serve for an initial term of four years. Upon expiration of the initial term, the Neutral Architect and/or the Neutral Land Planner may be re-appointed by mutual agreement of the Parties for subsequent four-year terms with no limit on the number of terms. In the event that one of the Parties Master Developer or City does not agree to reappointing a Neutral IRC member, the selection procedures of Section 4.2.1.1 shall apply.

4.3. **Development Applications Subject to IRC Review.**

4.3.1. **Subdivisions, Commercial Site Plans, Mixed Uses, Multi-Family Housing, Conditional Uses.** Development Applications for Subdivisions, Commercial Site Plans, Mixed Uses, Multi-Family Housing, and Conditional Uses shall be submitted to the IRC for administrative approval and certification of compliance with the MDA and all other applicable development standards subject only to detailed engineering approval by the City. The IRC shall, within ten (10) calendar days of receiving a Development Application under this section, submit certification of the Development Application’s compliance with this MDA to the Administrator or, in the case of any issues/deficiencies with the Development Application, inform the Applicant in writing of any such issues/deficiencies with the Development Application. In the event of any issues/deficiencies with the Development Application, the Applicant may re-submit the Development Application to the IRC, upon which receipt thereof, the IRC shall submit certification of the Development Application’s compliance with the MDA to the Administrator within ten (10) calendar days. An Applicant, or the City, may file an appeal from an IRC administrative approval or denial of a Development Application. Any appeal to an IRC decision made under this Section shall be heard by the City’s Appeal Authority subject to Section 10-4-6 of the City’s Vested Laws. Either Party may appeal the Appeal Authority’s final decision to the Salt Lake County Third District Court.

4.3.2. **Building Permits, Signage.** Development Applications for single family home building permits or signs within the Planned Community shall be reviewed for compliance with the MDA and all other applicable development standards by the
ARC. The Administrator, or his/her designee, shall certify that the ARC’s review under this section is complete and accurate. If the Administrator determines in writing that the ARC’s review of a single-family home building permit or sign application is deficient, the Development Application(s) contemplated by this Section 4.3.2 shall be submitted to the IRC for final administrative approval.

4.4. **Fees for IRC Review.** An Applicant shall pay for the actual costs of IRC review under Section 4.3.1. and IRC appeal under Section 4.3.2.

**SECTION 5**

**FINANCING OF PUBLIC INFRASTRUCTURE IN THE PLANNED COMMUNITY**

5.1.

**SECTION 6**

**OPEN SPACE**

6.1. **Minimum Open Space Requirements and Layout.** Subject to the provisions of this Section 6, Master Developer shall set aside at least 20% of the Planned Community as Open Space. Such Open Space shall include parks, trails, detention/retention, and other qualifying uses as set forth in the Design Standards. Master Developer shall install a park approved in the Design Standards within one-quarter (1/4) mile from each Residential Dwelling Unit within the Planned Community. This 1/4-mile requirement may be waived at the Administrator’s sole discretion, after consultation with appropriate City staff, consistent with Section 7 of this MDA, when an alternative Open Space layout is more advantageous to the immediate and surrounding Residential Dwelling Units proposed by a Development Application. Any Administrative Modification to the 1/4-mile Open Space requirement shall be based upon the best community benefit, the factors identified in Section 6.2 of this MDA, and any other relevant considerations determined by the Administrator. The City agrees that the Open Space set aside by Master Developer for those qualifying uses as identified in the Design Standard shall be counted at one hundred percent (100%) of the actual acreage of such Open Space to satisfy the Open Space requirements of this MDA. Open Space shall not include park strips that are developed within publicly dedicated rights-of-way or between publicly dedicated roads or sidewalks.

6.2. **Pro Rata Accounting of Open Space.** The Parties intend that the creation of Open Space will maintain a pro rata relationship between the amount and use of land being developed under a Development Application and the total acreage designated for Open Space as identified herein. Accordingly, the Parties acknowledge that it may not be in their individual or mutual best interests to dedicated Open Space on such a basis that may result in constructing or designating incremental, small, unprogrammable, and/or unusable parcels of land. As such, each Development Application approval shall provide for the designation of Open Space in such amounts as are determined to be appropriate by the Parties taking into consideration each of the following factors: (a) any previously dedicated Open Space and its relative location and access to the proposed Development Application; (b) the amounts and types of regional-style Open Space within the Planned Community and their relative location to the proposed Development Application; (c) the amounts and types of Open Space remaining to be designated or constructed on the portion of the Planned Community that are remaining to be developed; and (d) the amount and nature of land and the types of land uses proposed by the Development Application.

6.2.1. **Delayed Open Space Dedications.** The Parties mutually recognize the public benefit of constructing larger, programmable Open Space within the Planned Community. As such, each Development Application need not individually set aside 20% of its acreage toward the Open Space requirements of this MDA so long as the
20% Open Space requirement for each Development Application is satisfied within the larger Planned Community pursuant to the requirements of this MDA. However, in no event shall the Open Space within the Planned Community fall behind more than 10% of the requirements of this MDA. By way of example only, if 100 acres of the Planned Community has been developed, Master Developer shall have set aside at least 10 acres of Open Space.

6.2.2. **Catch-Up.** If, with a proposed Development Application, Master Developer would fall greater than 10% behind on its obligation to set aside Open Space, the City may withhold building permits for the proposed Development Application until such time as Master Developer catches-up on the Open Space requirements hereunder.

6.3. **Denial of Open Space.** Any denial by the City of a Development Application based on the amount or location of Open Space shall be subject to the mediation provision in Section 9.18.4.2 of this MDA.

6.4. **Effect of School District Property on Open Space Requirements.** The Parties acknowledge that any part of the Planned Community that is developed by Special Owner and used as a school, and which does not include any commercial development or Residential Dwelling Units, shall not be required to contribute any amount of Open Space under this MDA. Accordingly, the final total acreage of property within the Planned Community that is developed as School District Property shall be reduced from the overall total acreage of the Planned Community (933) when calculating the minimum Open Space requirements established herein. For the sake of clarity, and by way of example only, if the acreage of the final School District Property is 60 acres within the Planned Community, the minimum Open Space requirement shall be 174.6 acres (933 – 60 = 873 x 20% = 174.6). If, however, any of the School District Property is developed to include any Residential Dwelling Units or commercial uses as allowed by this MDA, then such non-school related uses shall be required to contribute at least the minimum amount of Open Space as set forth above.

6.5. **Effect of Capital Roads on Open Space Requirements.** The Parties acknowledge that any part of the Planned Community that is improved with capital roads, as such are identified on the Infrastructure Plan attached hereto as Exhibit “E” and on the City’s Transportation Master Plan, shall not be required to contribute any amount of Open Space under this MDA. Accordingly, the total acreage of capital roads shall be reduced from the overall total acreage of the Planned Community (933) when calculating the minimum Open Space requirements established herein. For the sake of clarity, and by way of example only, if the capital roads cover 15 acres of property within the Planned Community, the minimum Open Space requirement shall be 183.6 acres (933 – 15 = 918 x 20% = 183.6).

6.6. **Institutional Property as Open Space.** Portions of any Institutional Property may be counted toward the overall Open Space requirement of this MDA provided, however, that the owner of such Institutional Property and the City enter into a long-term agreement (satisfactory to the City Council and the owner of such Institutional Property) regarding the public use and access of those portions of the Institutional Property that are to be counted as Open Space. If the City and owner of such Institutional Property are unable to reach an agreement as to the long-term public use of the Institutional Property as Open Space, then the property which is developed as Institutional Property shall have no requirement to contribute any Open Space. Accordingly, the final total acreage of property within the Planned Community that is developed as Institutional Property shall be reduced from the overall total acreage of the Planned Community (933) when calculating the minimum Open Space requirements established herein in the same manner as the School District Property and Capital Roads in Section 6.4 and 6.5, respectively. If, however, any of the Institutional Property is developed to include any Residential Dwelling Units or commercial uses as allowed by this MDA, then such non-higher education related uses shall be required to contribute at least
the minimum amount of Open Space as set forth above.

6.7. **Dedication of Open Space.** Master Developer and/or a Subdeveloper shall dedicate to the City any Local Parks, Neighborhood Parks, Community Parks, and other portions of Open Space that are at least two (2) contiguous acres or greater as provided in this MDA, excepting only trails which shall have no minimum acreage requirement for dedication to the City. All Open Space that is less than two contiguous acres in size, excluding only trails, shall be privately owned and maintain as provided herein. All such dedications to the City shall be made by Special Warranty Deed, subject to all matters of record; provided, however, that title will be conveyed free and clear of any financial or other encumbrances that materially and adversely interfere with the use of the property as Open Space. The dedication of any Open Space within a Subdivision shall occur immediately following the recordation of the final Subdivision plat and after final inspection and acceptance of the Open Space improvements by the City.

6.8. **Reimbursement of Open Space Improvements.** In the event that Master Developer or a Subdeveloper installs any Open Space within the Planned Community that is at least two acres in size and which is included in the City’s Park Impact Fee Facility Plan, the City shall reimburse the Master Developer and/or Subdeveloper for the actual costs associated with the design and installation of such Open Space. Such reimbursement shall be made pursuant to a subsequent reimbursement agreement between the City and the Master Developer or Subdeveloper.

6.9. **Maintenance of Open Space.** The City shall be responsible for maintaining all Open Space that is dedicated to the City pursuant to Section 6.7 of this MDA. All other Open Space shall be privately owned and maintained by an entity other than the City and shall be maintained consistent with City standards as updated from time-to-time in the City’s Future Laws. In the event that Master Developer or a Subdeveloper installs or improves any Open Space that is dedicated to the City as provided in Section 6.7, Master Developer or the Subdeveloper will provide the City with a warranty from the contractor that the improvements to such City-dedicated Open Space are free from defects for a period of one (1) year after all of the improvements have been installed and accepted by the City.

SECTION 7
MODIFICATIONS AND AMENDMENTS OF THIS MDA

7.1. **Modifications to this MDA.** The Parties acknowledge that there may be a need to amend portions of this MDA to accommodate a Development Application. Additionally, either party may elect to amend, modify, or supplement this MDA unrelated to any Development Application. Any amendment, modification, or supplement to this MDA must be in writing and approved by all of the Parties hereto as provided herein. Only the City and Master Developer with the consent of the Owner, or an assignee that succeeds to all of the rights and obligations of the Owner and Master Developer under this MDA, (and not including a Subdeveloper) may submit a Modification Application. The following modifications to this MDA may be considered.

7.1.1. **Administrative Modifications.** The Administrator may approve, after consulting with City staff and without approval by of the Council, sizing and or location modifications of the Infrastructure Plan, the Design Guidelines as permitted therein, location of Open Space within the Planned Community, and any part of the Backbone Infrastructure for the Planned Community that do not materially change the functionality of the Backbone Infrastructure and so long as such modifications are based upon sound engineering.

7.1.1.1. **Application to Administrator.** Applications for Administrative Modifications shall be filed with the Administrator.
7.1.2. **Legislative Modifications.** Except for Administrative Modifications, any future modifications or amendments to this MDA shall be considered as Legislative Modification Applications subject to the following processes.

7.1.2.1. **Contents.** Legislative Modification Applications shall: (i) identify the property or properties affected by the Modification Application; (ii) describe the effect of the Legislative Modification Application on the affected portions of the Planned Community; (iii) identify any Non-City agencies potentially having jurisdiction over the Legislative Modification Application; (iv) provide a map of any affected property and all property within three hundred feet (300’) showing the present or Intended Uses and RDUs of all such properties; and (v) be accompanied by a fee in an amount reasonably estimated by the City to cover the costs of processing the Legislative Modification Application.

7.1.2.2. **City Cooperation.** The City shall cooperate reasonably in promptly and fairly processing Legislative Modification Applications.

7.1.2.3. **Planning Commission Review and Recommendation.** All aspects of a Legislative 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 light of the nature and/or complexity of the Legislative Modification Application. The Planning Commission’s vote on the Legislative Modification Application shall be only a recommendation and shall not have any binding or evidentiary effect on the consideration of the Legislative Modification Application by the Council.

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

7.1.2.5. **Council’s Denial.** If the Council does not approve the Legislative 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, the Zoning Plan, the Infrastructure Plan, and/or the City’s Vested Laws (or, only to the extent permissible under this MDA, the City’s Future Laws).

7.1.2.6. **Meet and Confer regarding Modification Applications.** The City Council and Master Developer shall meet within fourteen (14) calendar days of any objection to resolve the issues presented by the Modification Application and any of the City Council’s bases for denial.

7.1.2.7. **Mediation regarding Modification Applications.** If the Council and Master Developer are unable to resolve a dispute regarding a Legislative 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. Master Developer 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 not be binding on the parties; however, the Parties agree to act in good faith and continue participating in the mediation process in order to reach a resolution of the dispute.

**SECTION 8**
**SUCCESSORS AND ASSIGNS**

8.1. **Assignability.** The rights and responsibilities of Master Developer under this MDA may not be assigned in whole or in part by Master Developer without the prior written consent of the Council, which consent shall not be unreasonably withheld, conditioned, or delayed. Any assignee, including all Subdevelopers, 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.

8.2. **Other Transactions.** Master Developer and/or Owner’s transfer of all or any part of the Property to any entity “related” to Master Developer and/or Owner (as defined by regulations of the Internal Revenue Service), Master Developer and/or Owner’s entry into a joint venture for the development of all or any part of the Property, or Master Developer and/or Owner’s pledging of part or all of the Property as
security for financing shall also not be deemed to be an “assignment” subject to the above-referenced approval by the Council unless specifically designated as such an assignment by the Master Developer and/or Owner. Master Developer and/or Owner shall give the City Notice of any event specified in this Subsection 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. Master Developer and/or Owner shall remain responsible for all obligations of this Agreement in such a transfer to a related entity, joint venture, or security for financing.

8.3. **Sale of Lots.** Owner’s and 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 Council unless specifically designated as such an assignment by Owner and Master Developer.

8.4. **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.

8.5. **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.

8.6. **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/or 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.

8.7. **Denial.** The City may only withhold their respective consent if the City is not reasonably satisfied of the assignee’s financial ability to perform the obligations of Owner or Master Developer, as the case may be, 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 9.18.3 and 9.18.4.

8.8. **Binding Effect.** If Owner sells or conveys Parcels of lands to Subdevelopers 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 Owner and as set forth in this MDA without any required approval, review, or consent by the City except as otherwise provided herein.

SECTION 9
GENERAL TERMS AND CONDITIONS

9.1. **Effect of Legal Referendum on this MDA.** This section forthcoming.

9.2. **No Addition to Planned Community.** No land may be removed from the Planned Community or added to the Planned Community for purposes of this MDA, except by written amendment to the MDA. Except as provided immediately above, this MDA shall not affect any land other than the Property.
9.3. **Recordation and Running with the Land.** This MDA shall be recorded in the chain of title for the Property. This MDA and the benefits, burdens, rights and obligations herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of all successors in ownership of the Property, or portion thereof, as applicable, with respect to that portion of the Property owned by such successors in ownership, except as expressly set forth in this MDA. Accordingly, each and every purchaser, assignee, or transferee of an interest in the Property or any portion thereof shall be obligated and bound by the terms and conditions of this MDA, but only with respect to the Property or such portion thereof sold, assigned or transferred to it.

9.4. **Construction of MDA.** This MDA was jointly drafted and shall be construed so as to effectuate the public purposes of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling, countervailing public interest, while providing reasonable assurances of continued vested private development rights under this MDA.

9.5. **Laws of General Applicability.** Where this MDA refers to laws of general applicability to the Planned Community and other properties, that language shall be deemed to refer to laws which apply to all other developed and subdivided properties within the City.

9.6. **Term/Renewal/Expiration.** The term of this Development Agreement shall commence upon the Effective Date and continue until December 31, 2045. If, as of that date, Owner or Master Developer have not been declared to be in default as provided in Section 8.18, then this MDA shall be automatically extended until December 31, 2055 upon which Date this MDA will be considered to have been terminated. Upon termination of this MDA, any undeveloped property shall become subject to the then existing City Future Laws, and all development rights vested under this MDA shall expire except that such expiration shall not apply to any Phases or Subdivisions that have been approved prior to the termination. Any such uncompleted Phases or Subdivisions shall be allowed to be completed by December 31, 2060. This MDA shall also terminate automatically at Buildout.

9.6.1. **Failure of Option Agreement.** Notwithstanding anything to the contrary in this MDA or otherwise, should the option agreement between Master Developer and Owner be terminated with respect to all or part of the Property, this MDA shall cease to be operative or effective unless the Owner expressly assumes all of the obligations of the Master Developer arising under this MDA in a writing approved by both the City. If Owner expressly assumes all of the obligations of the Master Developer for all or part of the Property, as described above, Owner may designate a Replacement Master Developer reasonably acceptable to the City. If the Replacement Master Developer is approved by the City, the Replacement Master Developer shall expressly assume the role and obligations of Master Developer arising under this MDA in a writing approved by both the City.

9.7. **State and Federal Law.** The Parties agree, intend, and understand that the obligations imposed by this MDA are only such as are consistent with applicable State and Federal law. The Parties further agree that if any provision of this MDA becomes, in its performance, inconsistent with applicable state or federal law or is declared invalid, this MDA shall be deemed amended to the extent necessary to make it consistent with the State or Federal law, as the case may be, and the balance of this MDA shall remain in full force and effect.

9.8. **No Waiver.** Failure of a Party 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 time said right or any other right it may have hereunder. Unless this MDA is amended or revised in writing as allowed by this MDA, no officer, official, or agent of the City has the power to amend, modify or alter this MDA or waive
any of its conditions as to bind the City by making any promise or representation not contained herein.

9.9. **Entire Agreement.** This MDA constitutes the entire agreement between the Parties with respect to the issues addressed herein and supersedes all prior agreements, whether oral or written, covering the same subject matter. This MDA may not be modified or amended except in writing mutually agreed to and accepted by all Parties to this MDA consistent with the provisions hereof.

9.10. **Notices.** All notices required or permitted under this MDA shall, in addition to any other means of transmission, be given in writing by email, certified mail, or regular mail to the following address:

Master Developer: Olympia Land, LLC  
Attn: Ryan Button  
[Address]  
ryan@projectutah.com

With a Copy to: Bruce R. Baird  
Bruce R. Baird, PLLC  
[Address]  
baird@difficultdirt.com

Owner: The Last Holdout, L.L.C.  
Attn: Emily Markham  
[Address]  
jake@andersonlawpllc.com

With a Copy to: Jacob Anderson  
Anderson Law, PLLC  
[Address]  
jake@andersonlawpllc.com

City: Herriman City Manager  
5355 W. Herriman Main Street  
Herriman, Utah 84096  
nccherpeski@herriman.org

With a Copy to: Herriman City Attorney  
5355 W. Herriman Main Street  
Herriman, Utah 84096  
candrizzi@herriman.org

To Special Owner: Jordan School District  
Attn: Scott Thomas  
[Address]  
scott.thomas@jordandistrict.org

With a Copy to: Paul VanKomen  
9067 South 1300 West, Suite 302  
West Jordan, Utah 84088  
pvankomen@bvktslaw.com

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

9.11.1. **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 as set forth herein on the same day and the sending party has an electronic receipt of the delivery of the Notice.

9.11.2. **Mail Delivery.** Three calendar days after 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.

9.12. **Applicable Law.** This MDA is entered into in Salt Lake 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. Legal actions shall be instituted in the Third Judicial District Court of the County of Salt Lake, State of Utah.

9.13. **Execution of Agreement.** This MDA may be executed in multiple parts or originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other Parties within seven (7) days of receipt of said facsimile copy.

9.14. **Indemnification.** Master Developer and Owner agree to, and do hereby, agree to defend, hold harmless and indemnify the City and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys from any and all claims that may be asserted at any time against any of them arising out of the negligence or willful misconduct of the Master Developer or Owner, each as applicable with respect to its own negligence or willful misconduct, in connection with the development, construction, maintenance, or use of any portion of the Planned Community, Backbone Infrastructure, or other improvements that Master Developer constructs. Master Developer and Owner, each as applicable with respect to its own negligence or willful misconduct, do hereby agree to pay all expenses, including without limitation legal fees and administrative expenses, incurred by City in defending itself with regard to any and all such claims. With respect to any other third-party claims challenging this Agreement or any provision herein, the Parties agree to cooperate with each other in good faith to defend said lawsuit, with each Party to bear its own legal expenses and costs.

9.15. **Nature, Survival, and Transfer of Obligations.** All obligations assumed by the Owner and/or Master Developer under this MDA shall be binding on the Owner and Master Developer personally, on any and all of the Owner and Master Developer’s heirs, successors, and assigns, and on any and all of the respective successor legal or beneficial owners of all or any portion of the Property.

9.16. **Four-year Reviews.** Notwithstanding anything to the contrary herein, every four years after the execution of this MDA, the Parties shall meet and confer to consider any issues that may have arisen regarding the MDA, the development of the Property, the general economy, and other issues related to the development of the Planned Community. The first meeting shall take place at a time and place mutually agreeable to the Parties between January 15 and February 15 of 2026 and then every four years thereafter. The Parties shall not be required to make any modifications of this MDA as a result of these reviews but may propose amendments for the consideration of the Parties.

9.17. **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’s Community Development Director. The initial representative for Master Developer shall be Ryan Button. The initial representative for Owner shall be Jacob Anderson. The Parties may change their designated representatives by Notice as provided herein. 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 Property.

9.18. **Default.**

9.18.1. **Notice.** If any of the Parties fails to perform its respective obligations hereunder or to comply with the terms hereof, a Party believing that a Default has occurred shall provide Notice to the other Parties. 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 Master Developer and Owner.

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

9.18.2.1. **Specific Claim.** Specify the claimed event of Default;

9.18.2.2. **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;

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

9.18.2.4. **Optional Cure.** If the City chooses, in their respective discretion, they may propose a method and time for curing the Default which shall be of no less than sixty (60) days duration.

9.18.3. **Meet and Confer regarding Notice of Default.** The Parties shall meet within fifteen (15) business days of any Notice of Default to resolve the issues specified in the Notice of Default.

9.18.4. **Mediation of Notice of Default.**

9.18.4.1. **Issues Subject to Mediation.** Issues resulting from the Notice of Default that the parties are not able to resolve by “Meet and Confer” shall be mediated.

9.18.4.2. **Mediation Process.** If the Parties 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 representatives shall, between them, choose the single mediator. Owner and/or Master Developer 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. Upon issuance of the mediator’s opinion, the Parties agree to act in good faith toward a resolution of the disagreement.

9.18.5. **Cure.** The defaulting Party shall have no less than sixty (60) days to cure the default or demonstrate that the said Party is not in Default. If a Default cannot be reasonably cured within sixty (60) days, the Parties may submit the time to cure such default to mediation consistent with the terms of Section 8.17.4.2. above.

9.18.6. **Remedies.** The Parties shall have all rights and remedies available at law and in equity, including, but not limited to, injunctive relief and specific performance, provided, however, the Owner and Master Developer (and any Subdeveloper to the extent it assumes the rights or obligations of this MDA) agree that it will not seek monetary damages against the City or any of their elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys, on account of the negotiation, execution, or breach of this MDA. In the event of such legal or equitable action, each party to that action will bear its own costs and fees, including attorney fees. The rights and remedies set forth herein shall be cumulative and shall also include: (i) the right to draw on any security posted or provided in connection with the Planned Community and relating to remedying of the particular Default, and (ii) the right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Planned Community in the case of a default by 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.

9.18.7. **Public Meeting.** Before any remedy in Subsection 8.18.6 may be imposed by the City, the Party allegedly in Default shall be afforded the right to address the Council in a properly noticed public meeting regarding the claimed Default.

9.18.8. **Emergency Defaults.** Anything in this MDA notwithstanding, if the 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 8.18.6 without the requirements of mediation in Section 8.18.4 or a public meeting in Section 8.18.7. The City shall give Notice to Master Developer and/or any applicable Subdeveloper of any public meeting at which an emergency default is to be considered and the Master Developer and/or any applicable Subdeveloper shall be allowed to address the Council at that meeting regarding the claimed emergency Default.

9.19. **Termination.**

9.19.1. **Termination Upon Completion of Development.** This MDA shall terminate on the earlier of: (i) that certain date that the Planned Community has been fully developed and the obligations of the City, Owner, Master Developer, or any Subdeveloper in connection therewith are satisfied; or (ii) the expiration of the term as set forth in Subsection 8.6. Upon termination as set forth herein, Master Developer may request that the City record a notice that this MDA has been fully performed and therefore terminated as to the Planned Community.
9.19.2. **Termination upon Default.** This MDA shall be subject to termination by the City prior to the completion of the Planned Community following a judicial determination that a Default by Master Developer remains unresolved after notice and the opportunity to cure as provided herein.

9.19.3. **Effect of Termination on Master Developer Obligations.** Judicial termination of this MDA with respect to the Planned Community pursuant to Subsection 8.19.2 shall not affect Master Developer’s obligation to comply with the terms and conditions of any applicable zoning, subdivision plat, site plan, building permit, or other land use entitlement approved pursuant to this MDA with respect to any approved Planned Community. Termination of this MDA with respect to the Planned Community shall not affect or invalidate Master Developer’s obligations under Subsection 8.14.

9.19.4. **Effect of Termination on the City’s Obligations.** Upon any termination of this MDA with respect to the Planned Community, the entitlements, conditions of development, limitations on fees, and all other terms and conditions of this MDA and any amendments hereto shall no longer be vested by reason of this MDA with respect to any portion of the Planned Community then not subject to an approved Development Application, Phase, or Subdivision. Upon such a termination or expiration, the City shall no longer be prohibited by this MDA from making any changes or modifications to such entitlements, conditions, or fees applicable to such portions of the Planned Community that are not subject to an approved Development Application, Phase, or Subdivision.

9.19.5. **Survival.** This section forthcoming.

9.20. **Titles and Captions.** All Section titles or captions contained in this MDA are for convenience only and shall not be deemed part of the context nor affect the interpretation hereof.

9.21. **Savings Clause.** If any provision of this MDA, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this MDA, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

9.22. **Incorporation of Recitals and Exhibits.** All recitals stated above and all attached Exhibits A thru H shall be incorporated into and deemed a part of this MDA as though fully set forth herein, and the same shall be binding upon the Parties hereto.

9.23. **Force Majeure.** Any default or inability to cure a default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, enemy or hostile governmental action, civil commotion, fire or other casualty, or any other similar causes beyond the reasonable control of the Party obligated to perform, shall excuse the performance by such Party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a default in spite of the said Party’s reasonable best efforts.

9.24. **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 effect. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this
Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, any Party in good faith determines that such provision or provisions are material to its entering into this Agreement, that Party may elect to terminate this Agreement as to all of its obligations remaining unperformed and if any such termination causes any other Party to in good faith determine that the said termination adversely impacts the interests of said other Party, the other Party may also elect to terminate this MDA as to all of its obligations remaining unperformed.

9.25. Estoppel Certificate. Upon fifteen (15) business days prior written request by Master Developer or a Subdeveloper, the City will execute an estoppel certificate, to be prepared by the Master Developer or a Subdeveloper and in a form agreeable to the City, to any third party certifying that Master Developer or a Subdeveloper, as the case may be, at that time is not in default of the terms of this Agreement.

9.26. Planned Community is a Private Undertaking. It is agreed among the Parties that the Planned Community is a private development and that the City does not have any interest therein except as authorized in the exercise of its governmental functions. The Planned Community is not a joint venture, and there is no such relationship involving the City or the City’s elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys. Nothing in this Agreement shall preclude the Master Developer from forming any lawful form of investment entity for the purpose of completing any portion of the Planned Community.

9.27. Attorney’s Fees. In the event litigation is filed to enforce the terms of this MDA, the prevailing party in such litigation shall be entitled to receive its reasonable attorneys’ fees and expenses from the non-prevailing party, subject to the limitations set forth in the Utah Governmental Immunity Act for property damages.

9.28. Warranty of 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 is affixed to this MDA to lawfully bind the City pursuant to Ordinance No. ______ adopted by the Council on ____________. This MDA is approved as to form by the Herriman City Attorney.

Table of Exhibits

- Exhibit “A” Legal Description of the Property (not including the School District Property)
- Exhibit “A-1” Legal Description of School District Property
- Exhibit “B” Master Plan
- Exhibit “C” Design Guidelines
- Exhibit “D” Traffic Impact Study
- Exhibit “E” Infrastructure Plan
- Exhibit “F” Zoning Map
- Exhibit “G” City’s Vested Laws
- Exhibit “H” Development Application Review and Approval Process
- Exhibit “I” Parking Regulations
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.

CITY
Herriman City

ATTEST

Nathan Cherpeski, City Manager

Jackie Nostrom, City Recorder
Chase A. Andrizzi, City Attorney
Approved as to form and legality

OWNER
The Last Holdout, L.L.C.

MASTER DEVELOPER
Olympia Land, LLC

[Name, Title] [Name, Title]

SPECIAL OWNER
Jordan School District

[Name, Title]
CITY ACKNOWLEDGMENT

STATE OF UTAH  
COUNTY OF SALT LAKE  

On the _______ day of ____________, 2021, NATHAN CHERPESKI personally appeared before me, who being by me duly sworn, did say that they are the City Manager of Herriman City, a political subdivision of the State of Utah, and that the foregoing Master Development Agreement was signed on behalf of the City by authority of its City Council and said City Manager acknowledged to me that the City executed the same for the purposes described therein.

________________________________________
NOTARY PUBLIC

OWNER ACKNOWLEDGEMENT

STATE OF UTAH  
COUNTY OF SALT LAKE  

On the _______ day of ____________, 2021, _______________ personally appeared before me, who being by me duly sworn, did say that they are the ___________ of The Last Holdout, L.L.C, a Utah limited liability company, and that the foregoing Master Development Agreement was signed on behalf of the Owner by authority of its governing board and said _____________ acknowledged to me that the Owner executed the same for the purposes described therein.

________________________________________
NOTARY PUBLIC
MASTER DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH )
COUNTY OF SALT LAKE )

On the ______ day of ___________, 2021, ___________________________________ personally appeared before me, who being by me duly sworn, did say that they are the _________ of Olympia Land, LLC, a Utah limited liability company, and that the foregoing Master Development Agreement was signed on behalf of the Master Developer by authority of its governing board and said __________ acknowledged to me that the City executed the same for the purposes described therein.

________________________________________
NOTARY PUBLIC

SPECIAL OWNER ACKNOWLEDGMENT

STATE OF UTAH )
COUNTY OF SALT LAKE )

On the ______ day of ___________, 2021, ___________________________________ personally appeared before me, who being by me duly sworn, did say that they are the _________ of Jordan School District and that the foregoing Master Development Agreement was signed on behalf of the Special Owner by authority of its governing board and said __________ acknowledged to me that the Special Owner executed the same for the purposes described therein.

________________________________________
NOTARY PUBLIC
EXHIBIT A

Legal Description of Property
(not including the School District Property)
EXHIBIT A-1
Legal Description of School District Property
EXHIBIT B
Master Plan

OLYMPIA
MASTER LAND USE PLAN
EXHIBIT B
JUNE 17, 2021

Draft
EXHIBIT C
Design Guidelines
EXHIBIT D
Traffic Impact Study
# Exhibit E

**Infrastructure Plan**

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EXHIBIT F
Zoning Map
EXHIBIT I
Parking Regulations