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

MASTER DEVELOPMENT AGREEMENT

FOR

OLYMPIA

Approved: _____

TABLE OF CONTENTS

RECITALS.....	1
SECTION 1 – DEFINITIONS	3
1.1 Act.....	3
1.2 Administrator	3
1.3 Administrative Action.....	3
1.4 Administrative Modifications	3
1.5 Apartment Dwelling Unit.....	3
1.6 Applicant.....	3
1.7 Backbone Infrastructure.....	4
1.8 Building Permit.....	4
1.9 Capital Roads	4
1.10 City.....	4
1.11 Commercial Development	4
1.12 Council.....	4
1.13 County.....	4
1.14 City’s Future Laws.....	4
1.15 City’s Vested Laws	4
1.16 Default.....	4
1.17 Design Guidelines.....	4
1.18 Detached Single Family Dwelling Unit.....	4
1.19 Development Application	4
1.20 Development Report	4
1.21 Effective Date	5
1.22 Extractable Natural Materials	5
1.23 Final Plat.....	5
1.24 Impact Fees	5
1.25 Individually Platted Dwelling Unit.....	5
1.26 Institutional Property	5
1.27 Intended Uses.....	5
1.28 K-Park	5
1.29 Land Use Master Plan.....	5
1.30 Legislative Amendment.....	5
1.31 Master Developer.....	5
1.32 Maximum Residential Units	5
1.33 MDA	5
1.34 Notice.....	5
1.35 One-Time Contract Fee.....	6
1.36 Open Space	6
1.37 Owner.....	6
1.38 Parcel.....	6

1.39	Party or Parties	6
1.40	Phase	6
1.41	Planned Community	6
1.42	Planning Commission	6
1.43	Preliminary Plat	6
1.44	Project Infrastructure.....	6
1.45	Project	6
1.46	Property.....	6
1.47	Public Infrastructure.....	6
1.48	Residential Dwelling Unit (“RDU”)	6
1.49	School District Property.....	7
1.50	Special Owner	7
1.51	Subdeveloper.....	7
1.52	Subdivision	7
1.53	Traffic Impact Study (“TIS”).....	7
1.54	Zoning Ordinance	7
SECTION 2	– DEVELOPMENT OF THE PLANNED COMMUNITY.....	7
2.1	Compliance with Local Laws and Standards	7
2.2	Approved Maximum Residential Units	7
2.2.1	<i>No Guarantee.....</i>	<i>7</i>
2.2.2	<i>Housing Types.....</i>	<i>8</i>
2.2.3	<i>Accounting for Use of Maximum Residential Units.....</i>	<i>8</i>
2.3	Land Uses within Planned Community; Configuration	8
2.4	Compliance with TIS; Letter Required with Development Applications	8
2.4.1	<i>Additional Traffic Impacts; Updated Traffic Impact Study</i>	<i>8</i>
2.4.1.1	<i>Scope of Updated Traffic Impact Study.....</i>	<i>9</i>
2.4.2	<i>Proportionate Share of Additional Impacts Paid by Master Developer.....</i>	<i>9</i>
2.4.3	<i>Dispute Resolution of Disputes Relating to Traffic Impact Mitigation</i>	<i>9</i>
2.5	Telecommunications Services.....	9
2.5.1	<i>Easement; Developer Right to Contract.....</i>	<i>9</i>
2.5.2	<i>Franchise Agreement Required</i>	<i>10</i>
2.6	Master Developer’s Discretion	10
2.7	Concurrency Management Required	10
2.7.1	<i>Bonding.....</i>	<i>10</i>
2.8	Acknowledgement of Parcels.....	10
2.9	Order of Development	11
2.10	Commercial Development Within the Planned Community.....	11
2.10.1	<i>Intersection of 12600 South and U-111 within the Planned Community.....</i>	<i>11</i>
2.10.2	<i>Intersection of 12600 South and U-111 outside the Planned Community</i>	<i>11</i>
2.10.3	<i>Limitations on Commercial Uses</i>	<i>11</i>
2.11	Effect of this MDA	11
2.12	Effect of this MDA on Special Owner.....	12
2.13	Effect of this MDA on Institutional Property	12

2.14	Certain Extraction, Processing, and Uses Permitted.....	12
2.14.1	<i>Land Disturbance Permit Required</i>	12
2.12.1	<i>Transport of Natural Material</i>	12
2.13	Preservation of the Public Land Survey System.....	13
SECTION 3 – VESTED RIGHTS AND RESERVED LEGISLATIVE POWERS		13
3.1	Vested Rights	13
3.2	Invalidity	13
3.3	Reserved Legislative Powers	13
3.4	Excepted Laws and Ordinances	13
3.4.1	<i>Compliance with State and Federal Laws</i>	14
3.4.2	<i>Safety and Health Code Updates</i>	14
3.4.3	<i>Ordinances and Resolutions Not Inconsistent</i>	14
3.4.4	<i>Taxes</i>	14
3.4.5	<i>Fees</i>	14
3.4.6	<i>Impact Fees</i>	14
3.4.7	<i>Municipal Services Fees</i>	15
3.4.8	<i>Generally Applicable Laws not in Conflict with this MDA</i>	15
3.4.9	<i>Design Guidelines</i>	15
SECTION 4 – DEVELOPMENT APPLICATION REVIEW PROCESS		15
4.1	Required Process.....	15
4.2	Processing Under City’s Vested Laws.....	15
4.3	No Construction Without Development Application Approval.....	15
4.4	Standard Review Fees.....	15
4.5	Processing of Development Applications	15
4.6	Standard of Development Application Review.....	16
4.7	Non-City Agency Reviews	16
4.8	Acceptance of Certifications Required for Development Applications.....	16
4.9	City Denial of a Development Application.....	16
4.10	Meet and Confer Regarding Development Application Denials	16
SECTION 5 – FINANCING OF PUBLIC INFRASTRUCTURE IN PLANNED COMMUNITY... 16		
5.1	Construction of On-Site Public Infrastructure by Master Developer.....	16
5.1.1	<i>Bonding for Public Infrastructure</i>	16
5.2	Proportionate Share of Off-Site Impacts Paid by Master Developer	17
5.3	Public Infrastructure Financing.....	17
5.3.1	<i>One-Time Contract Fee</i>	17
5.4	Upsizing of Public Infrastructure	17
5.5	Buy-In	17
5.6	Offset.....	17
SECTION 6 – OPEN SPACE		17
6.1	Minimum Open Space Requirements and Layout	17

6.2	Pro Rata Accounting of Open Space.....	18
6.2.1	<i>Delayed Open Space Dedication</i>	18
6.2.2	<i>Catch-Up</i>	18
6.3	Denial of Open Space.....	18
6.4	Effect of School District Property on Open Space Requirements	18
6.5	Effect of Capital Roads on Open Space Requirements.....	19
6.6	Institutional Property as Open Space	19
6.7	Dedication of Open Space.....	19
6.8	Improvements to K-Park.....	19
6.9	Maintenance of Open Space	19
SECTION 7 – MODIFICATIONS AND AMENDMENT OF THIS MDA.....		20
7.1	Modifications to this MDA.....	20
7.1.1	<i>Administrative Modifications</i>	20
7.1.1.1	Application to Administrator	20
7.1.1.2	Referral by Administrator	20
7.1.1.3	Administrator’s Review of Administrative Modification	20
7.1.1.4	Appeal of Administrator Denial of Administrative Modification....	20
7.1.2	<i>Legislative Modifications</i>	20
7.1.2.1	Contents.....	21
7.1.2.2	City Cooperation	21
7.1.2.3	Planning Commission Review and Recommendation	21
7.1.2.4	Council Review.....	21
7.1.2.5	Council’s Denial.....	21
SECTION 8 – SUCCESSORS AND ASSIGNS.....		22
8.1	Assignability	22
8.2	Other Transactions	22
8.3	Sale of Lots	22
8.4	Notice.....	22
8.5	Time for Objection.....	22
8.6	Partial Assignment.....	22
8.7	Denial.....	22
8.8	Binding Effect.....	22
SECTION 9 – GENERAL TERMS AND CONDITIONS		23
9.1	Legal Challenges to this MDA and Related Legislative Approvals	23
9.1.1	<i>Referendum</i>	23
9.1.1.1	Initiation of Referendum	23
9.1.1.2	Pending Referendum	23
9.1.2	<i>Legality Challenge</i>	23
9.1.2.1	Initiation of Litigation	23
9.1.2.2	Pending Litigation	23
9.2	No Addition to Planned Community	24

9.3	Recordation and Running with the Land	24
9.4	Construction of MDA	24
9.5	Laws of General Applicability	24
9.6	Term/Renewal/Expiration.....	24
	9.6.1 <i>Failure of Option Agreement</i>	24
9.7	State and Federal Law.....	25
9.8	No Waiver.....	25
9.9	Entire Agreement.....	25
9.10	Notices	25
9.11	Effectiveness of Notice	26
	9.11.1 <i>Electronic Delivery</i>	26
	9.11.2 <i>Mail Delivery</i>	26
9.12	Applicable Law.....	26
9.13	Execution of Agreement	26
9.14	Indemnification.....	26
9.15	Nature, Survival, and Transfer Obligations	27
9.16	Four-year Reviews	27
9.17	Appointment of Representatives 27	
9.18	Default.....	27
	9.18.1 <i>Notice</i>	27
	9.18.2 <i>Contents of the Notice of Default</i>	27
	9.18.2.1 <i>Specific Claim</i>	27
	9.18.2.2 <i>Applicable Provisions</i>	27
	9.18.2.3 <i>Materiality</i>	27
	9.18.2.4 <i>Optional Cure</i>	27
	9.18.3 <i>Meet and Confer Regarding Notice of Default</i>	28
	9.18.4 <i>Cure</i>	28
	9.18.5 <i>Remedies</i>	28
	9.18.6 <i>Public Meeting</i>	28
	9.18.7 <i>Emergency Defaults</i>	28
9.19	Dispute Resolution.....	28
	9.19.1 <i>Mediation of Development Application Denials, Defaults, and Disputes</i>	28
	9.19.1.2 <i>Issues Subject to Mediation</i>	28
	9.19.1.2 <i>Mediation Process</i>	29
	9.19.2 <i>Arbitration of Development Application Denials, Defaults, and Disputes</i>	29
	9.19.2.1 <i>Issues Subject to Arbitration</i>	29
	9.19.2.2 <i>Arbitration Process</i>	29
9.20	Termination 30	
	9.20.1 <i>Termination Upon Completion of Development</i>	30
	9.20.2 <i>Termination Upon Default</i>	30
	9.20.3 <i>Effect of Termination on Master Developer Obligations</i>	30
	9.20.4 <i>Effect of Termination on City's Obligations</i>	30
	9.20.5 <i>Survival</i>	30
9.21	Titles and Captions	30

9.22	Savings Clause	30
9.23	Incorporation of Recitals and Exhibits.....	31
9.24	Force Majeure	31
9.25	Severability	31
9.26	Estoppel Certificate.....	31
9.27	Planned Community is a Private Undertaking.....	31
9.28	Attorney’s Fees	31
9.29	Warranty of Authority.....	31
TABLE OF EXHIBITS		32
SIGNATURES		33-35

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.

B. Owner, Master Developer, Special Owner, Salt Lake County, and the Greater Salt Lake Municipal Services District previously entered into a master development agreement for Olympia Hills effective as of March 26, 2020 and recorded as Entry # 13335521 at Book – 10983, Pages – 4638-4893 in the records of the Salt Lake County Recorder.

C. In early 2021, the City, Owner, and Master Developer all expressed a desire to annex the Property into the municipal boundaries of the City and to have the Planned Community developed under the jurisdiction of the City subject to a new master development agreement.

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

E. By entering into this MDA, the City is able to facilitate the orderly development of the Planned Community within the boundaries of the City and thereby capture substantial one-time funds as well as ongoing property and sales tax revenues to support the day-to-day operations of the City.

F. By engaging in negotiations with Owner and Master Developer for the annexation and development of the Planned Community, the City has also been able to secure fully developed local and regional parks and open space that contribute to the overall quality of life and enjoyment recognized by the residents the City and surrounding areas.

G. To support the development of the Planned Community, the City anticipates that the Master Developer will phase development and will support the phased development with adequate infrastructure, including roadways designed to handle increased traffic as a result of the Planned Community. Additionally, the Master Developer will help mitigate traffic related issues outside of the Planned Community, but within existing Herriman City boundaries, by contributing its proportionate share of off-site impacts as identified in Section 2.4.2 and 5.2 below.

H. In connection therewith, the City has approved public infrastructure districts within the Planned Community, in accordance with Utah Code Ann. § 17D-4-101 et seq., to aid in the financing of on- and off-site public improvements. This financing mechanism, which is not supported by a recurring property tax levy, but instead, by a one-time builder-paid fee, will not be a persistent annual financial burden to property owners within the Planned Community.

I. Additionally, by negotiating the orderly and systematic development of the Planned Community pursuant to this MDA, the City is attempting to help solve the housing shortages currently existing within the County and State. The number, type, and intensity of residential uses approved for development within the Planned Community are purposefully designed to help mitigate these housing shortages.

J. The City also acknowledges that by entering into this MDA, Owner and Master Developer shall receive considerable benefits.

K. Specifically, Master Developer will have substantial financial assistance in the form a public infrastructure districts to help finance the design and construction of public infrastructure within the Planned Community.

L. By entering into this MDA, Master Developer will also receive assurances as to the Development Application approval process, thereby providing Master Developer with certain guarantees as to the timely and orderly development of the Planned Community.

M. Additionally, Master Developer is able to develop the Planned Community in an already existing municipality and thereby receive the benefit of existing municipal services to the Planned Community.

N. As part of this negotiated process, Master Developer has also been able to make mutually favorable updates to the Design Guidelines for the Planned Community that better blend existing development within the current boundaries of the City with the Planned Community.

O. In connection with entering into this MDA, the City desires to receive certain public and community benefits and amenities, including those previously mentioned; and the Master Developer is willing to provide these benefits and amenities in consideration of the agreement of the City for the approval of public infrastructure districts, densities and intensity of uses within the Planned Community, and other benefits as identified herein and pursuant to the terms of this MDA.

P. 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.

Q. 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.

R. The City assigned the Property zones pursuant to the City's Large Project Master Planned Community Zoning tool and as depicted on the Land Use Master Plan.

S. The Land Use Master Plan, along with the Design Guidelines, sets forth those land use classifications, residential and commercial densities, and development locations as are permitted under this MDA for the Planned Community.

T. 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.

U. 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.

V. The City Council, 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 Land Use Master Plan through the negotiation, consideration and approval of this MDA after all necessary public hearings and recommendations from the Planning Commission.

W. 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).

X. 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:

1.1. **Act** means the Municipal Land Use, Development, and Management Act, UTAH CODE ANN. §§ 10-9a-101, *et seq.* (2021).

1.2. **Administrator** means the Herriman City Manager or their designee unless some other person or position is 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 Exhibit "F".

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 7.1.1.

1.5. **Apartment Dwelling Unit(s)** means a Residential Dwelling Unit that is not individually platted.

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 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. **Commercial Development** means the development of commercial uses as identified in the Design Standards.

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

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

1.14. **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.

1.15. **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 “E”.

1.16. **Default** means a material breach of this MDA as more fully specified in Section 9.18, below.

1.17. **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.

1.18. **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.

1.19. **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.

1.20. **Development Report** means a report containing the information specified in Exhibit “G” 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.

1.21. **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.

1.22. **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.

1.23. **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.

1.24. **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. **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.

1.26. **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.

1.27. **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.

1.28. **K-Park** means the 6.62 acre park identified by the letter "K" on the Hidden Oaks Land Use Plan and which borders a portion of the southern boundary of the Planned Community.

1.29. **Land Use 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.

1.30. **Legislative Amendment** means and includes any amendment, modification, or supplement to this MDA that must be approved by the Planning Commission or City Council as provided in Section 7.1.2.

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. **One-Time Contract Fee** means a fee paid by the Developer, Subdeveloper, or a third party to the City upon issuance of a building permit. This fee shall be remitted, subject to the terms and conditions of a separate interlocal agreement, to one or more public infrastructure districts for the purpose of financing public infrastructure within the Planned Community and surrounding areas.

1.36. **Open Space** means a use of land for active or passive, public or private, outdoor space, including such uses as parks, plazas, greens, playgrounds, or community gardens. Such land is preserved for the purpose of conservation, preservation, agriculture, resource enhancement, recreation, enhancing value to the public of adjacent parks or preserves, or otherwise providing a buffer to adjacent properties.

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

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

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

1.40. **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.

1.41. **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.

1.42. **Planning Commission** means the City's Planning Commission established by the Zoning Ordinance.

1.43. **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.

1.44. **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.

1.45. **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.

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

1.47. **Public Infrastructure** means infrastructure, improvements, or facilities that benefit the public and are owned by a public entity or a utility and are subject to public financing under the Public Infrastructure District Act of Utah Code Ann. § 17D-4-101 *et seq.*

1.48. **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.

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

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

1.51. **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 8 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.

1.52. **Subdivision** means the division of any portion of the Property into a subdivision pursuant to state law and/or the Zoning Ordinance.

1.53. **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”.

1.54. **Zoning Ordinance** means the City’s “land use ordinances” as set forth in Title 10 (2021) 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 and thirty (6,330) Residential Dwelling Units. The RDUs shall be generally located in the areas illustrated in the Land Use 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 Section 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. Master Developer's right to develop the Maximum Residential Units shall not supersede or otherwise supplant any of the other requirements or obligations of Master Developer under this MDA (i.e. the dedication and improvement of Open Space or construction of commercial development within the Planned Community).

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) 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.** With each Development Application approval of a Preliminary Plat, sale of a Parcel as identified in Section 2.8, or approval of a mixed use Site Plan (that has some form of Residential Dwelling Units), 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, 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 Land Use 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 body for approval 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 assumptions and projections of 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, 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.** Pursuant to Section 5 hereof, Master Developer shall pay its proportionate share of the cost of the Recommended Improvements as identified in the updated traffic impact study. Master Developer may elect to construct the off-site improvement identified in the updated traffic impact study so long as the City provides a reasonable method of reimbursement to the Master Developer for the non-proportionate share of the off-site improvements.

2.4.3. **Dispute Resolution of Disputes Relating to Traffic Impact Mitigation.** Material differences or disputes between the Master Developer's proportionate share, impacts, costs, an updated TIS, or any other matter relating to traffic caused by or within the Planned Community shall be resolved in accordance with the dispute resolution provisions of Section 9.19.

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. This Section 2.5, and the following 2.5.1 and 2.5.2, are in no way intended to limit the installation of any telecommunications infrastructure or services by a third party within the publicly owned rights-of-way located in the Planned Community.

2.5.1. **Easement; Developer Right to Contract.** Master Developer hereby reserves a non-exclusive commercial easement in gross on, through, across, and under such publicly dedicated rights-of-way for such conduits and cables related to the communications services contemplated in this Section 2.5. 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.

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 Plat or Subdivision, the relevant Master Developer or Subdeveloper(s) shall have the obligation to complete the public and private road, storm drain, water, and other improvements associated with such plat or plan, including all associated community benefits (including parks and open space as required by this MDA) as described and scheduled within the applicable Phase, and those other improvements that may be outside of the approved Plat or Subdivision but which are reasonably necessary to complete the improvements within the Plat or Subdivision. Such improvements shall be completed 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 Section 9.19.

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 generally set forth in the Land Use Master 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. 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 and approval by the City, pursuant to this MDA, that creates individually developable lots. However, construction of such 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. **Commercial Development within the Planned Community.** The Parties acknowledge that there is a need to include certain commercial uses within the Planned Community. For the purposes of this Section 2.10, hospitals, medical clinics, building for fire/police/museums and other public municipal public services shall be counted as commercial development. The Parties also acknowledge that commercial uses are generally best located near high-volume traffic corridors. The intersection of 12600 South and U-111 (a.k.a. Bacchus Highway) is a high-volume traffic corridor that may intersect within the Planned Development. However, as of the Effective Date of this MDA, the Utah Department of Transportation (“UDOT”) has not yet finalized its preferred alignment for U-111. As a result, the final location of the intersection of 12600 South and U-111 is currently unknown. The Parties therefore agree to the following conditions with regard to the general locations and development of commercial uses within the Planned Community.

- 2.10.1. **Intersection of 12600 South and U-111 within the Planned Community.** If any part of the intersection of 12600 South and U-111 is aligned within the Planned Community, then Master Developer shall develop at least 300,000 gross leasable square feet of commercial uses within the Planned Community as permitted in the Design Guidelines and within a quarter(1/4) mile radius from the center of the intersection of 12600 South and U-111. If Master Developer develops any commercial uses outside of the quarter (1/4) mile radius, the gross leasable area (measured in square feet) developed outside of the quarter (1/4) mile radius shall be deducted from the square foot requirement inside of the quarter (1/4) mile radius.
- 2.10.2. **Intersection of 12600 South and U-111 outside of the Planned Community.** If the intersection of 12600 South and U-111 is located outside of the Planned Community, then Master Developer shall not have any obligation to locate commercial development within a specified area in the Planned Community. Notwithstanding, Master Developer shall develop at least 100,000 gross leasable square feet of commercial development within the Planned Community, as permitted in the Design Guidelines, and at locations that are reasonably designed to commercially support the types and intensities of Residential Dwelling Units within the Planned Community.
- 2.10.3. **Limitations on Commercial Uses.** Institutional, schools (public, private, or charter), religious, and other similar uses that are developed in areas designated by this MDA in Section 2.10 as being for commercial development shall not be considered to have satisfied the commercial development requirements hereof. Accordingly, and by way of example only, if a church or school is developed within a ¼ mile radius of the intersection of 12600 South and U-111, Master Developer shall still be required to develop 300,000 square feet of gross leasable area of commercial development within the ¼ mile radius.

2.11. **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. 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.

2.12. **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. If any of the School District Property is developed by Master Developer to include any Residential Dwelling Units or commercial uses as allowed by this MDA, then such non-school uses shall be required to comply with this MDA, including a contribution of at least the minimum amount of Open Space.

2.13. **Effect of this MDA on Institutional Property.** The Parties acknowledge that a portion of the Property may be developed as Institutional Property. If any of the Property is not developed as Institutional Property, however, then Developer shall not be entitled to any additional Residential Dwelling Units over the maximum number entitled by this MDA (6,330). Any residential or commercial uses developed by Master Developer on the Institutional Property shall be required to comply with this MDA, including a contribution of at least the minimum amount of Open Space.

2.14. **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.

2.14.1. **Land Disturbance Permit Required.** Master Developer shall obtain a land disturbance permit from the City prior to extracting or processing the Extractable Natural Materials on the Property. The land disturbance permit shall require a plan to mitigate fugitive dust control as required by the State of Utah and shall establish the maximum grade/depth from which the Extractable Natural Materials may be extracted. Master Developer agrees not to extract or process materials beyond the final grade for the site from which such Extractable Natural Materials are extracted. In the event that Master Developer does extract or process beyond the final development grade, Master Developer shall be required to backfill the site and return it to final development grades. The City shall issue a land disturbance permit if the standards of this Section 2.14 are satisfied.

2.14.2. **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.

2.15. **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 (AAHSTO) 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 assessed by the City or any other entity authorized to assess development related fees (including one or more public infrastructure districts that may be established in connection with the development of the Planned Community) 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. **Impact Fees Assessed.** The Planned Community shall only be assessed the Police and Fire Public Safety Impact Fees as enacted by the City and pursuant to the Impact Fees Act of Utah Code Ann. § 11-36a-101 *et seq.* (2021).

- 3.4.6.2. **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.

SECTION 4

DEVELOPMENT APPLICATION REVIEW PROCESS

4.1. **Required Process.** The approvals set forth in Exhibit "F" establish the required review and approval bodies 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 or approval.

4.2. **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.

4.3. **No Construction Without Development Application Approval.** No improvements shall be constructed within any Parcel without Master Developer or a Subdeveloper first obtaining approval of the Development Application for such Parcel from the City. Upon approval by the City of any Development Application, the Parcel related to such approval may be improved in accordance with the approved Development Application, subject to the terms, conditions, and provisions of the Development Application.

4.4. **Standard Review Fees.** Master Developer or a Subdeveloper shall pay to the City the standard fees applicable to any submittal of a Development Application under the City's fee schedule in effect at the time of the application.

4.5. **Processing of Development Applications.** The City shall cooperate reasonably and in good faith in promptly processing and reviewing all Development Applications in accordance with the procedures identified in this Agreement, including Exhibit "F". If Master Developer or a Subdeveloper determines that the City has not met all of the processes and timeliness set forth in the review processes

identified herein, then Master Developer or a Subdeveloper shall have the right to request a decision pursuant to Utah Code Ann. § 10-9a-509.5.

4.6. **Standard of Development Application Review.** If any conflict arises during the applications review process described herein between the Design Guidelines, the City's Vested Laws, and the City's Future Laws, the Design Guidelines shall control.

4.7. **Non-City Agency Reviews.** If any aspect or a portion of a Development Application is governed exclusively by a Non-City Agency, an approval for these aspects does not need to be submitted by an Applicant for review by any body or agency of the City. The Applicant shall timely notify the City of any such submittals and promptly provide the City with a copy of the requested submissions. The City may only grant final approval for any Development Application subject to compliance by Applicant with any conditions required such Non-City Agency's approval.

4.8. **Acceptance of Certifications Required for Development Applications.** Any Development Application requiring the signature, endorsement, or certification 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. A Development Application so signed, endorsed, certified, or stamped shall be deemed to meet the specific standards which are the subject of the opinion or certification without further objection or required review by the City or any other agency of the City. It is not the intent of this Section to preclude the normal process of the City's redlining, commenting on, or suggesting alternative to the proposed designs or specifications in the Development Application.

4.9. **City Denial of a Development Application.** If the Administrator, Planning Commission, or City Council denies a Development Application, the denying body shall provide a written determination advising the Applicant of the reason(s) for Denial including specifying the reasons the denying body believes that the Development Application is not consistent with this MDA, the City's Vested Laws, or the City's Future Laws that should apply to the Development Application.

4.10. **Meet and Confer Regarding Development Application Denials.** The Administrator and Applicant shall meet within fifteen (15) business days of any Denial to resolve the issues in the Denial. Denials that are unresolved after the Administrator and Applicant meet and confer shall be resolved by the dispute resolution provisions of this Agreement as identified in Section 9.19.

SECTION 5

FINANCING OF PUBLIC INFRASTRUCTURE IN THE PLANNED COMMUNITY

5.1. **Construction of On-Site Public Infrastructure by Master Developer.** Master Developer shall have the right and the obligation to construct or cause to be constructed and installed within the Planned Community all Public Infrastructure reasonably and lawfully required as a condition of approval of a Development Application as the Development Application work is done. The Public Infrastructure shall be designed and constructed in compliance with all applicable standards in this MDA; the City's Vested Laws; and any other Federal, State, or County laws, rules or regulations. The Public Infrastructure shall be consistent with and fulfill the purposes of adopted plans for such infrastructure that are a part of the City's Vested Laws.

5.1.1. **Bonding for Public Infrastructure.** If and to the extent required by the City's Vested Laws, unless otherwise provided by Utah State Law, security for any Public Infrastructure that is required by the City, Applicant shall provide it in a form acceptable to the City as specified in the City's Vested Laws. Partial release of any

such required security shall be made consistent with the City's Vested Laws.

5.2. **Proportionate Share of Off-Site Impacts Paid by Master Developer.** Master Developer shall pay to the City the Master Developer's proportionate share of impacts to existing Public Infrastructure within the City boundaries but located outside of the Planned Community. Payment by Master Developer to City shall be made when the impacts to off-site Public Infrastructure are actually recognized by such off-site infrastructure and paid within 60 days of City's request. City may determine when the impacts are actually recognized on the off-site Public Infrastructure. If the City and Master Developer are unable to agree on the scope or timing of the impacts on off-site infrastructure, the Dispute resolution provisions of Section 9.19 shall apply. At each four-year review under Section 9.16, the Parties shall review the City's future capital infrastructure plans and establish, where practicable, means to mitigate negative impacts to off-site infrastructure.

5.3. **Public Infrastructure Financing.** The City has adopted Public Infrastructure Districts to pay for the Public Infrastructure. Master Developer's obligation to construct the Public Infrastructure within the Planned Community shall not be negated or become invalid as a result of insufficient financing through such Public Infrastructure Districts. The Public Infrastructure Districts may also, at the Master Developer's sole discretion, be used to pay the City for Master Developer's proportionate share of Off-Site impacts to Public Infrastructure.

5.3.1. **One-Time Contract Fee.** The Parties hereby acknowledge that the collateral for securing public financing through the Public Infrastructure Districts shall be the One-Time Contract Fee. The Parties acknowledge that the One-Time Contract fee contemplated hereunder is not being assessed as an "impact fee" as that term is defined in Utah Code Ann § 11-36a-102(9) (2021).

5.4. **Upsizing of Public Infrastructure.** The City shall not require Master Developer to construct any Public Infrastructure larger than is required to service the Planned Community ("upsizing") unless financial arrangements reasonable acceptable to Master Developer are made to compensate 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 Master Developer for the 10% cost increase. An acceptable financial arrangement for upsizing of improvements means reimbursement agreements, payback agreements, and impact fee credits and reimbursement.

5.5. **Buy-in.** If the City has pre-constructed certain Public Infrastructure that, because of excess capacity, could benefit the Planned Community, Master Developer may elect to "buy-in" such excess capacity by paying to the City an amount equal to the share of excess capacity benefitting the Planned Community. By way of example only, if Master Developer uses 200,000 gallons of excess capacity in a 1,000,000 gallon tank owned by the City, Master Developer shall pay to the City 20% of the City's costs to replace the excess capacity used by Master Developer.

5.6. **Offset provision.** The Parties may, subject to a subsequent agreement, set off any upsizing, buy-in, or other Public Infrastructure related costs against any other payments owed/due the City by/from the Developer.

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 and as generally indicated in the Parks Master Plan attached hereto as Exhibit "B-1". 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 dedicate 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, more 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 completed within the larger Planned Community pursuant to the requirements of this MDA. However, in no event shall the completed 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 9.19 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 ($933 - 60 = 873 \times 20\% = 174.6$). 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 Roads Master Plan attached hereto as Exhibit “B-4” 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 ($933 - 15 = 918 \times 20\% = 183.6$).

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. **Improvements to “K-Park”.** Consistent with Section 5 above, Master Developer shall be financially obligated to construct and install all Public Infrastructure, including Park improvements, within the Planned Community. However, if Master Developer dedicates to the City at least 7 acres of land immediately adjacent to the “K-Park” as identified in the Hidden Oaks Master Plan, then the City shall be financially responsible for the Park improvements in the 7 acres adjacent to the K-park dedicated by Master Developer. Master Developer may elect to install, at its own cost, an underground detention facility in the Master Developer-dedicated 7-acres of the K-Park as well as any portion of the K-Park, including areas of the K-Park not located within the Planned Community, that are owned by the City.

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 and Amendments to this MDA.** The Parties acknowledge that there may be a desire to modify or amend portions of this MDA to accommodate a Development Application. Additionally, either party may request 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 an application to modify or amend this MDA. The following modifications and amendments to this MDA may be considered.

7.1.1. **Administrative Modifications.** The Administrator may approve, after consulting with City staff and without approval of the Council, sizing and or location modifications of the Backbone Infrastructure, 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.

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

7.1.1.3. **Administrator's Review of Administrative Modification.** The Administrator shall consider and decide upon the Administrative Modification after consulting with applicable City subject-matter experts and within ten (10) calendar days after receipt of the request for an Administrative Modification. If the Administrator approves the Administrative Modification, the Administrator shall record notice of such approval against the applicable portion of the Property in the official County records.

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

7.1.2. **Legislative Amendments.** Except for Administrative Modifications, any future modifications or amendments to this MDA shall be considered as Legislative Amendments. The Parties acknowledge that the entire MDA, including all of the attached exhibits, are subject to Legislative Amendment consistent with the

following processes.

- 7.1.2.1. Contents. An application for a Legislative Amendment Applications shall: (i) identify the property or properties affected by the requested Legislative Amendment; (ii) describe the effect of the Legislative Amendment on the affected portions of the Planned Community; (iii) identify any Non-City agencies potentially having jurisdiction over the Legislative Amendment; (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 reviewing and processing the application for the Legislative Amendment.
- 7.1.2.2. City Cooperation. The City shall cooperate reasonably in promptly and fairly reviewing applications for Legislative Amendments. However, the City shall be under no obligation to actually approve a Legislative Amendment to this MDA.
- 7.1.2.3. Planning Commission Review and Recommendation. All aspects of a proposed Legislative Amendment 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 proposed Legislative Amendment. The Planning Commission's vote on the Legislative Amendment shall be only a recommendation to the Council and shall not have any binding or evidentiary effect on the consideration of the Legislative Amendment by the Council.
- 7.1.2.4. Council Review. After the Planning Commission has made or been deemed to have made its recommendation on the proposed Legislative Amendment, the Council shall consider the Legislative Amendment at its next available regularly scheduled Council meeting.
- 7.1.2.5. Standard of Review/Approval; Sufficient Consideration Required. The Council, in reviewing the proposed Legislative Amendment, shall identify the consideration of the Parties and shall specifically call out such consideration and the benefits received by the City in the final written instrument approving a proposed Legislative Amendment.
- 7.1.2.6. Council's Denial. If the Council does not approve the proposed Legislative Amendment, the Council shall provide a written determination, or a verbal finding stated on the record, 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).

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 five (5) business days after the next regularly scheduled Council meeting 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 dispute resolution provisions of Section 9.19.

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. **Legal Challenges to this MDA and Related Legislative Approvals.** The Parties acknowledge that the effectiveness of this MDA and other aspects related to the annexation of the Property into the City, the Zoning, and any other related legislative actions of the City Council may be subject to a citizen initiated referendum under Utah Code Ann. § 20A-7-601 et seq., or a legal challenge under Utah Code Ann. § 10-9a-801. The City and Master Developer each acknowledge that it would not be in their individual or mutual best interests to have the annexation of the Property become effective if legal challenges to any of the annexation, zoning, or this MDA are still unresolved by a final unappealable decision of a court or if a referendum is pending as of January 1, 2022.

9.1.1. Referendum.

9.1.1.1. *Initiation of Referendum.* If no referendum is sought within the seven (7) day period as provided in Utah Code Ann. 20A-7-601(5) after enactment of the final legislative action necessary to effectuate the annexation, zoning, MDA, or any related approval, then Master Developer acknowledges that the annexation of the Property may continue to proceed.

9.1.1.2. *Pending Referendum.* If a referendum has been sought as provided in Utah Code Ann. § 20A-7-601 and remains actively pending then Master Developer, in its sole discretion, may terminate this MDA, the zoning, the annexation, and any other related legislative action at any time during the month of December 2021. The City shall take such steps as are necessary to ensure that the Lieutenant Governor does not record the annexation and that the City Recorder does not record this MDA.

9.1.2. Legality Challenge.

9.1.2.1. *Initiation of Litigation.* If no complaint or petition challenging this MDA, the zoning, the annexation, or any other related legislative action is filed within the thirty (30) day period as provided in Utah Code Ann. § 10-9a-801(5) after enactment of the final legislative action necessary to effectuate the annexation, zoning, this MDA or any related legislative or administrative approval, then Master Developer acknowledges that the annexation of the Property may continue to proceed.

9.1.2.2. *Pending Litigation.* If a complaint or petitions has been south as provided in Utah Code Ann. § 10-9a-801 and remains actively pending, in the sole discretion of Master Developer, then Master Developer, in its sole discretion, may terminate this MDA, the zoning, the annexation and any other related legislative action at any time during the month of December 2021. The City shall take

such steps as are necessary to ensure that the Lieutenant Governor does not record the annexation and that the City Recorder does not record this MDA.

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 herein, then this MDA shall be automatically extended for up to two (2) five-year periods, unless Owner or Master Developer are declared to be in default as provided herein at the end of the first five-year renewal, in which case, this MDA shall be terminated at the end of the first five-year renewal. If Owner or Master Developer have not been declared to be in default at the end of the first five-year renewal, then this MDA shall continue for one final five-year renewal, or 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
527 East Pioneer Road, #200
Draper, Utah 84020
ryan@projectutah.com

With a Copy to: Bruce R. Baird
Bruce R. Baird, PLLC
2150 South 1300 East, Suite 500
Salt Lake City, Utah 84106
bbaird@difficultdirt.com

Owner: The Last Holdout, L.L.C.
Attn: Emily Markham
c/o Jacob Anderson
233 N. 1250 W., Suite 202
Centerville, Utah 84014
jake@andersonlawpllc.com

With a Copy to: Jacob Anderson
Anderson Law, PLLC
233 N. 1250 W., Suite 202
Centerville, Utah 84014
jake@andersonlawpllc.com

City: Herriman City Manager
5355 W. Herriman Main Street
Herriman, Utah 84096
ncherpeski@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
7905 S. Redwood Road
West Jordan, Utah 84088
scott.thomas@jordandistrict.org

With a Copy to: Paul VanKomen
9067 South 1300 West, Suite 302
West Jordan, Utah 84088
pvankomen@bvktlaw.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. Defaults that are unresolved after the Parties meet and confer shall be resolved by the dispute resolution provisions of this Agreement as identified in Section 9.19.
- 9.18.4. **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.
- 9.18.5. **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.
- 9.18.6. **Public Meeting.** Before any remedy in Subsection 9.18.6 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.
- 9.18.7. **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 9.18.6 without the requirements of mediation in Section 9.19.1 or a public meeting in Section 9.18.7. 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. **Dispute Resolution.** Defaults, Denials, or other matters subject to this MDA that are disputed by the Parties are subject to the following procedures of resolution.

9.19.1. **Mediation of Development Application Denials, Defaults, and other Disputes.**

- 9.19.1.1. *Issues Subject to Mediation.* Except as provided in 9.19.2.1, all issues resulting from the City's Denial of a Development Application, Default by any of the Parties, or other matters that are

disputed under this Agreement shall be mediated.

9.19.1.2. *Mediation Process.* If the Administrator and Applicant are unable to resolve a Denial, Default, or dispute, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the Denial, Default, or issue in dispute. If the parties to the Denial, Default, or dispute 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. Within ten (10) business days after the selection of the chosen mediator, each party shall provide to the chosen mediator and the other party a position paper setting forth their respective positions, along with any relevant facts or circumstances. The chosen mediator shall, within fourteen (14) calendar days, review the positions of the parties to the Denial, Default, or dispute and schedule a mediation. The final decision of the mediator shall not be binding on the parties to the Denial.

9.19.2. **Arbitration of Development Application Denials, Defaults, and other Disputes.**

9.19.2.1. *Issues Subject to Arbitration.* Issues regarding the City's Denial of a Development Application, Default by any of the Parties, or other matters that are disputed under this Agreement that are subject to resolution by scientific or technical experts such as traffic impacts, water quality impacts, pollution impacts, etc. are subject to arbitration as set forth herein.

9.19.2.2. *Arbitration Process.* In connection with all issues described in 9.19.2.1, the parties shall within ten (10) business days appoint a mutually acceptable expert in the professional discipline(s) of the issue in question related to the Denial, Default, or dispute. If the parties to the Denial, Default, or dispute 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, which shall be an expert in the professional discipline of the issue in question related to the Denial, Default, or dispute. Applicant and the City shall equally share the fees of the chosen arbitrator. The arbitration shall be performed in accordance with the most recently enacted American Arbitration Association Commercial Arbitration Rules and Procedures. Within thirty (30) days after selection of the arbitrator, the parties to the Denial shall submit to the arbitrator a statement of their respective positions. The chosen arbitrator shall, within fifteen (15) business days after receipt of the position statements, review the positions of the parties regarding the arbitration issue and render a decision. The arbitrator's final decision shall be final and binding upon the parties.

9.20. **Termination.**

- 9.20.1. **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 Section 9.6. 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.
- 9.20.2. **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.
- 9.20.3. **Termination upon Referendum or Legal Challenge.** The City acknowledges that Master Developer is under a contractual obligation under a pre-existing Master Development Agreement with Salt Lake County to try to annex the Property into a municipality. The City further acknowledges that if this MDA and the annexation of the Property are terminated by Master Developer as a result of a pending referendum or legal challenge as identified in Sections 9.1.1 and 9.1.2, then Master Developer shall be deemed by the City to have complied with the annexation attempt requirements of the Master Development Agreement with Salt Lake County which permits the buildout of 6,330 units within Salt Lake County.
- 9.20.4. **Effect of Termination on Master Developer Obligations.** Judicial termination of this MDA with respect to the Planned Community 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 9.14.
- 9.20.5. **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.

9.21. **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.

9.22. **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.

9.23. **Incorporation of Recitals and Exhibits.** All recitals stated above and all attached Exhibits A thru G 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.

9.24. **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.

9.25. **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. 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.

9.26. **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.

9.27. **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.

9.28. **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.

9.29. **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”	Land Use Master Plan
Exhibit “B-1”	Parks Master Plan
Exhibit “B-2”	Trails Master Plan
Exhibit “B-3”	Active Transportation Plan
Exhibit “B-4”	Roads Master Plan
Exhibit “C”	Design Guidelines
Exhibit “D”	Traffic Impact Study
Exhibit “E”	City’s Vested Laws
Exhibit “F”	Development Application Review and Approval Process
Exhibit “G”	Development Report

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

Nathan Cherpeski, City Manager

ATTEST

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)
)
) ss.
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)
)
) :SS.
)
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)
)
) ss.
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)
)
) ss.
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)

A parcel of land, situate in parts of Sections 27, 32, 33, and 34 Township 3 South, Range 2 West, Salt Lake Base and Meridian, U.S. Survey, more particularly described as follows:

Beginning at a point being North 89°30'06" West 126.52 along the section line from the Northeast Corner of Section 34, Township 3 South, Range 2 West, Salt Lake Base and Meridian (said Northeast Corner being North 89°30'06" West 5327.10 feet from the Northwest Corner of said Section 34); and running

thence South 00°16'16" West 291.47 feet;

thence Southwesterly 482.97 feet along the arc of a 650.00 foot radius curve to the right (center bears North 89°43'44" West and the chord bears South 21°33'26" West 471.94 feet with a central angle of 42°34'21");

thence South 21°58'48" East 351.33 feet;

thence Southeasterly 484.77 feet along the arc of a 960.00 foot radius curve to the right (center bears South 67°06'42" West and the chord bears South 08°25'19" East 479.63 feet with a central angle of 28°55'57");

thence South 06°02'39" West 47.82 feet;

thence West 1,231.28 feet to the 1/16 section line;

thence North 00°10'31" East 263.60 feet along the 1/16 section line to the Southeast Corner of the Northwest Quarter of the Northeast Quarter of said Section 34, monumented with a rebar and cap stamped "5251295";

thence North 89°31'41" West 2,661.50 feet along the 1/16 section line to the Southwest Corner of the Northeast Quarter of the Northwest Quarter of said Section 34, monumented with a Salt Lake County monument;

thence South 00°02'54" West 1,325.66 feet along the 1/16 section line to the quarter section line;

thence North 89°35'51" West 1,329.44 feet along the quarter section line to the East Quarter Corner of said Section 33, monumented with a Salt Lake County monument;

thence North 89°38'37" West 3,990.98 feet along the quarter section line to the Southwest Corner of the Southeast Quarter of the Northwest Quarter, monumented with a rebar and cap stamped "5251295";

thence South 00°20'42" East 1,323.10 feet along the 1/16 section line to the Southeast Corner of the Northwest Quarter of the Southwest Quarter of said Section 33, monumented with a rebar and cap stamped "5251295";

thence North 89°38'31" West 1,327.74 feet along the 1/16 section line to the Southeast Corner of the Northeast Quarter of the Southeast Quarter of Section 32, Township 3 South, Range 2 West, Salt Lake Base and Meridian;

thence North 89°29'26" West 2,641.53 feet along the 1/16 section line to the Southwest Corner of the Northwest Quarter of the Southeast Quarter of said Section 32;

thence North 00°09'01" East 149.81 feet along the 1/16 section line;

thence North 86°15'53" East 292.00 feet;

thence South 88°11'07" East 207.61 feet;

thence North 00°09'01" East 185.12 feet;

thence South 86°15'53" West 500.00 feet to the 1/16 section line;

thence North 00°09'01" East 405.38 feet along the 1/16 section line to the Northeast Right-of-Way Line of State Route-111 (SR-111), also known as Bacchus Highway;

thence Northwesterly and Northerly along said Northeasterly said right of way line of State Route-111 (SR-111) the following seven (7) courses:

(1) Northwesterly 246.50 feet along the arc of a 268.31 foot radius curve to the right (center bears North 05°49'12" East and the chord bears North 57°51'41" West 237.92 feet with a central angle of

52°38'15");

(2) North 31°32'34" West 437.23 feet;

(3) Northwesterly 288.95 feet along the arc of a 331.97 foot radius curve to the right (center bears North 58°27'27" East and the chord bears North 06°36'27" West 279.91 feet with a central angle of 49°52'13");

(4) North 18°19'39" East 201.90 feet;

(5) Northeasterly 470.16 feet along the arc of a 1,482.39 foot radius curve to the left (center bears North 71°40'21" West and the chord bears North 09°14'30" East 468.19 feet with a central angle of 18°10'19");

(6) North 89°50'40" West 17.00 feet;

(7) North 00°09'20" East 792.30 feet;

thence North 71°13'51" East 3,153.48 feet to the Northwest Corner of said Section 33, monumented with a Salt Lake County monument;

thence South 89°35'41" East 5,303.20 feet to the Northwest Corner of Section 34, Township 3 South, Range 2 West, Salt Lake Base and Meridian;

thence North 00°41'26" East 1,324.02 feet along the section line to the Northeast Corner of the Southwest Quarter of the Southwest Quarter of Section 27, Township 3 South, Range 2 West, Salt Lake Base and Meridian;

thence South 89°30'42" East 2,657.98 feet along the 1/16 section line to the Northeast Corner of the Southeast Quarter of the Southwest Quarter of said Section 27;

thence South 00°28'09" West 1,324.47 feet along the quarter section line to the South Quarter Corner of said Section 27;

thence South 89°30'06" East 2,537.48 feet along the section line to the point of beginning.

Contains 38,301,653 Square Feet or 879.285 Acres

EXHIBIT A-1
Legal Description of School District Property

A parcel of land, situate in parts of Sections 34 and 35, Township 3 South, Range 2 West, Salt Lake Base and Meridian, U.S. Survey, more particularly described as follows:

Beginning at the Northeast Corner of Section 34, Township 3 South, Range 2 West, Salt Lake Base and Meridian (said Northeast Corner being North 89°30'06" West 5327.10 feet from the Northwest Corner of said Section 34); and running

thence South 89°48'53" East 641.53 feet along the section line;

thence South 00°30'22" East 1,659.00 feet to the extension of the Northerly Boundary Line of Blackhawk Estates Plat "C", recorded as Entry No. 11719743 in Book 2013P at Page 178 in the Office of the Salt Lake County Recorder;

thence along the extension of and said Northerly Boundary Line of Blackhawk Estates Plat "C" the following nine (9) courses:

- (1) South 56°51'10" West 333.22 feet;
- (2) South 68°38'27" West 95.94 feet;
- (3) South 56°30'13" West 98.90 feet;
- (4) South 51°26'05" West 67.14 feet;
- (5) South 41°54'31" West 111.54 feet;
- (6) South 48°31'38" West 142.42 feet;
- (7) South 54°24'10" West 87.46 feet;
- (8) South 44°19'04" West 94.58 feet;

(9) South 72°52'33" West 99.94 feet to the Northerly Boundary Line of Blackhawk Estates Plat "B", recorded as Entry No. 11386427 in Book 2012P at Page 53 in the Office of the Salt Lake County Recorder;

thence along said Northerly Boundary Line of Blackhawk Estates Plat "B" the following six (6) courses:

- (1) South 72°52'34" West 12.55 feet;
- (2) South 82°11'10" West 94.89 feet;
- (3) South 86°16'00" West 83.86 feet;
- (4) South 66°09'21" West 95.83 feet;
- (5) South 58°13'58" West 137.09 feet;

(6) South 78°13'01" West 40.13 feet along said Northerly Boundary Line of Blackhawk Estates Plat "B" to the Northwest Corner of said Blackhawk Estates Plat "B";

thence South 12°44'34" East 10.64 feet along said Westerly Boundary Line of Blackhawk Estates Plat "B" to the Northerly Boundary Line of Western Creek PUD Plat A, recorded as Entry No. 10946923 in Book 2010P at Page 76 in the Office of the Salt Lake County Recorder;

thence along said Northerly Boundary Line of said Western Creek PUD Plat A the following three (3) courses:

- (1) South 78°07'21" West 16.66 feet;
- (2) South 57°11'41" West 95.42 feet;
- (3) South 73°50'10" West 172.86 feet along said Northerly Boundary Line of Western Creek

PUD Plat A to the Northerly Boundary Line of Western Creek Plat B, recorded as Entry No. 11429199 in Book 2012P at Page 92 in the Office of the Salt Lake County Recorder;

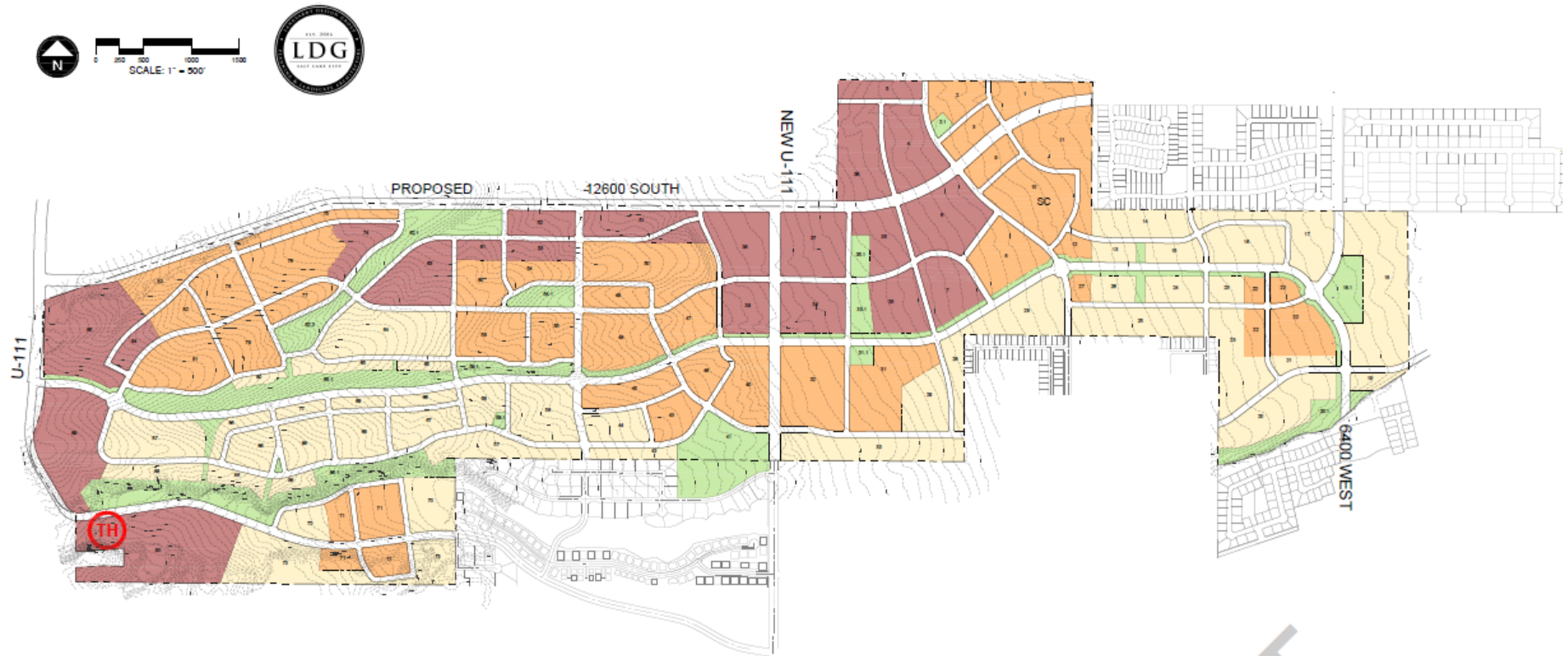
thence along said Northerly Boundary Line of Western Creek Plat B the following two (2) courses:

- (1) South 73°27'12" West 291.53 feet;
 - (2) South 80°15'09" West 106.84 feet to the 1/16 section line;
- thence North 00°10'31" East 1,078.74 feet along the 1/16 section line;
- thence East 1,231.28 feet;






thence North 06°02'39" East 47.82 feet;
thence Northwesterly 484.77 feet along the arc of a 960.00 foot radius curve to the left (center bears North 83°57'21" West and the chord bears North 08°25'19" West 479.63 feet with a central angle of 28°55'57");
thence North 21°58'48" West 351.33 feet;
thence Northeasterly 482.97 feet along the arc of a 650.00 foot radius curve to the left (center bears North 47°09'23" West and the chord bears North 21°33'26" East 471.94 feet with a central angle of 42°34'21");
thence North 00°16'16" East 291.47 feet to the northerly section line of said Section 34;
thence South 89°30'06" East 126.52 feet along said section line to the point of beginning.

Contains 2,613,516 Square Feet or 59.998 Acres

EXHIBIT B
Master Plan



KEY:

	TRAILHEAD		TOWN CENTER 20+ units/ac.		VILLAGE 9-20 units/ac.		NEIGHBORHOOD 4-8 units/ac.		OPEN SPACE
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OLYMPIA
MASTER LAND USE PLAN
EXHIBIT B
SEPTEMBER 7, 2021

EXHIBIT B-1
Parks Master Plan

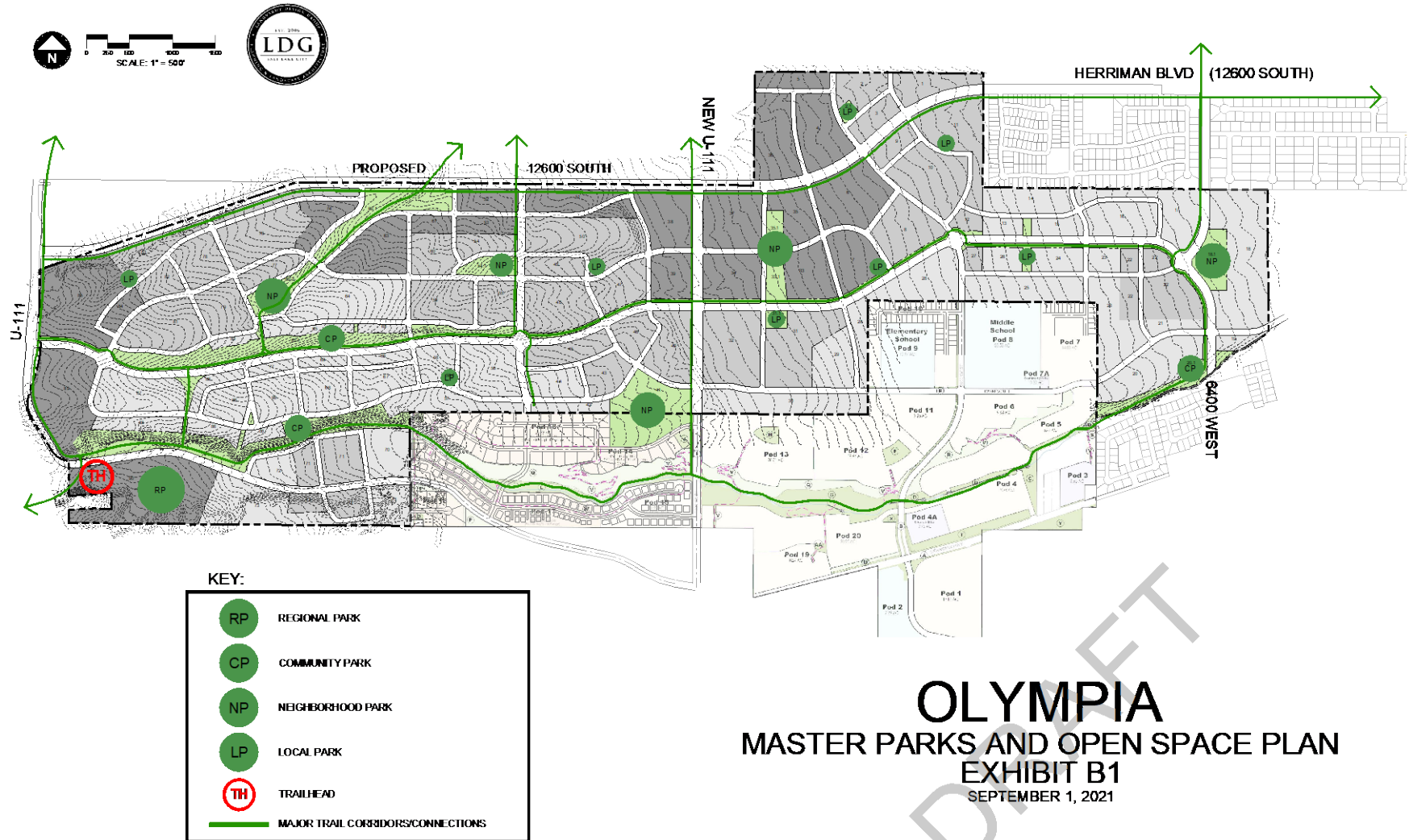
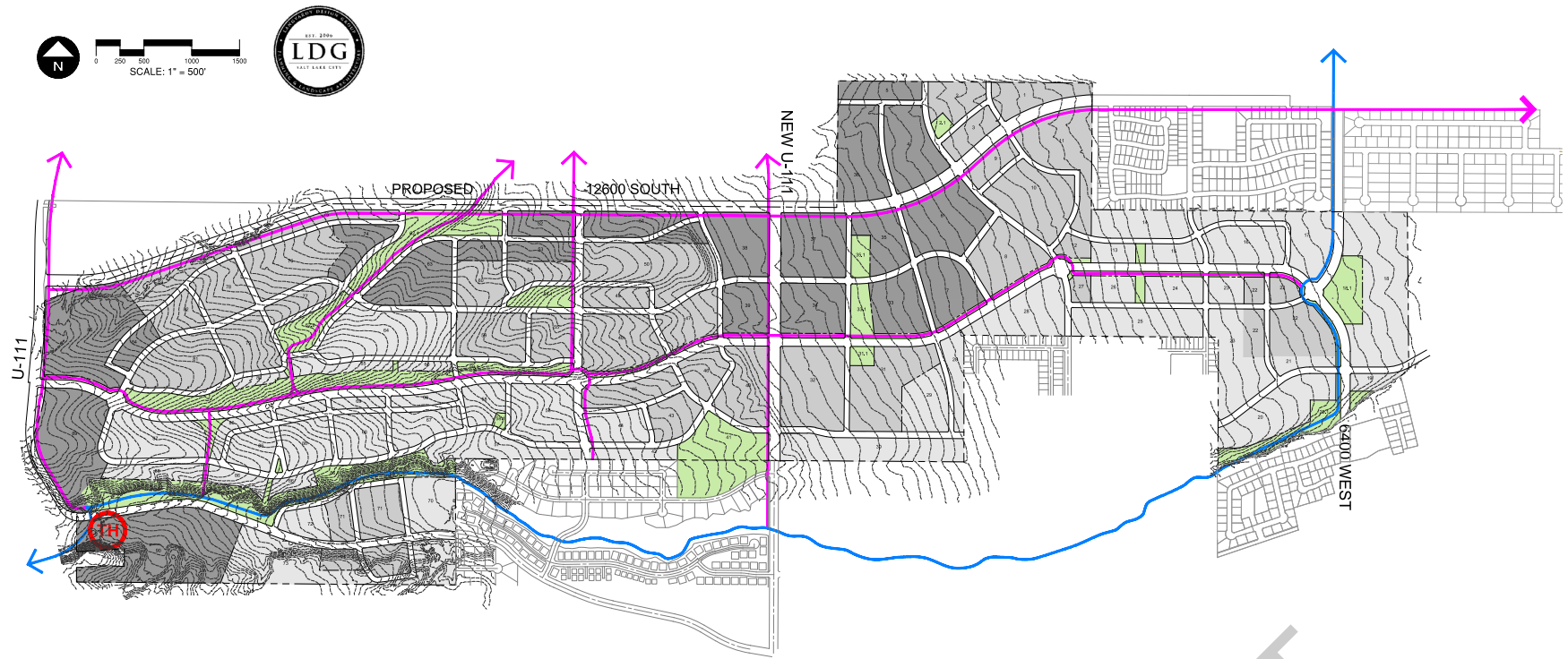


EXHIBIT B-2

Trails Master Plan



KEY:

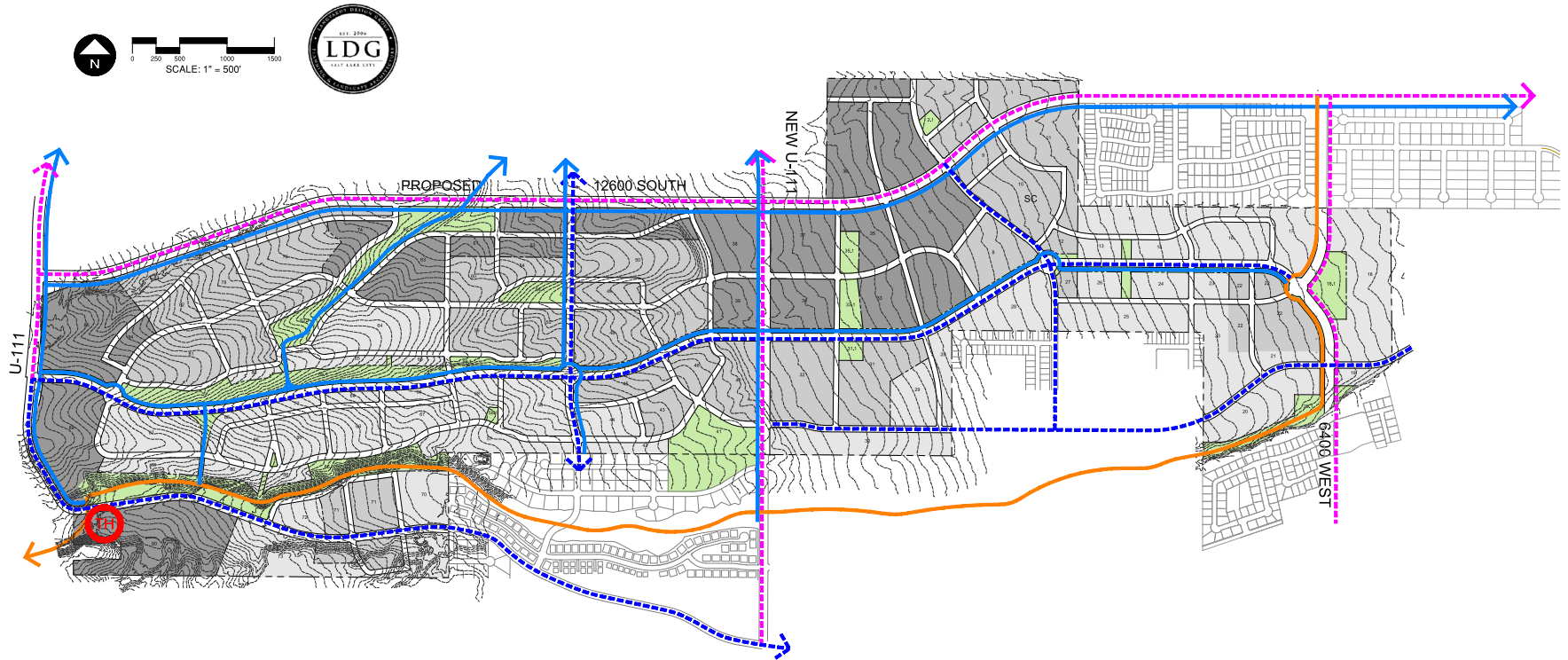
- MULTI-USE TRAIL
- DUAL PATH (EQUESTRIAN AND PAVED PATHS)
- TH TRAILHEAD

ALL TRAIL TYPES AND TRAIL FACILITY LOCATIONS REPRESENTED HERE ARE CONCEPTUAL AND BASED ON CURRENT DEVELOPMENT PLANS AND ARE SUBJECT TO CHANGE.

OLYMPIA
MASTER TRAILS PLAN
EXHIBIT B2
 SEPTEMBER 1, 2021

EXHIBIT B-3

Active Transportation Plan



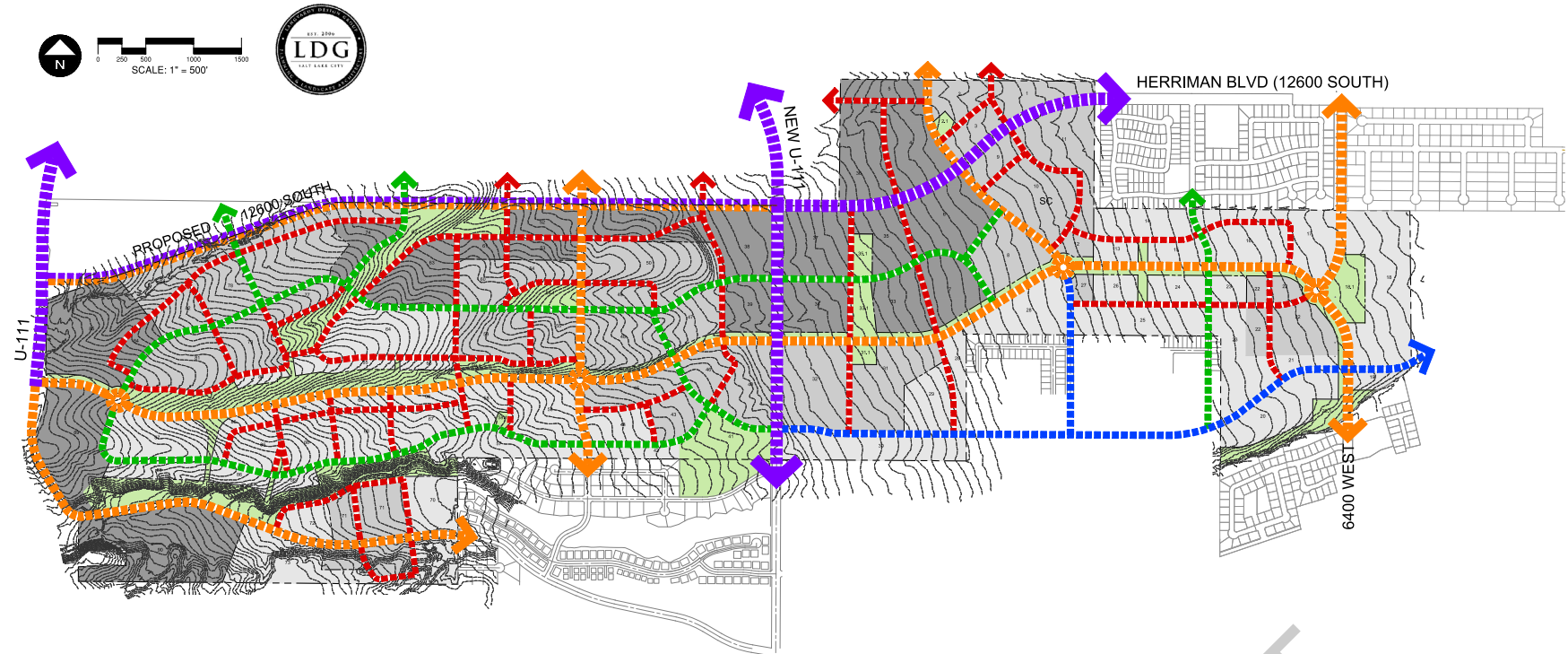
KEY:

- BUFFERED BIKE LANE
- PAVED PATH
- BIKE LANE
- DUAL PATH (EQUESTRIAN TRAIL AND PAVED PATH)
- TH TRAILHEAD

ALL ACTIVE TRANSPORTATION TYPES AND LOCATIONS REPRESENTED HERE ARE CONCEPTUAL AND BASED ON CURRENT DEVELOPMENT PLANS AND ARE SUBJECT TO CHANGE.

OLYMPIA
ACTIVE TRANSPORTATION PLAN
EXHIBIT B3
 SEPTEMBER 1, 2021

EXHIBIT B-4 Roads Master Plan



KEY:

	MAJOR ARTERIAL (120' ROW)		MAJOR COLLECTOR (86' ROW)		MINOR COLLECTOR (68' ROW)		MAJOR LOCAL (63' ROW)		MINOR LOCAL (55' ROW)
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ALL ROADWAY TYPES AND LOCATIONS REPRESENTED HERE ARE CONCEPTUAL AND BASED ON CURRENT DEVELOPMENT PLANS AND ARE SUBJECT TO CHANGE.

OLYMPIA
MASTER ROAD PLAN
EXHIBIT B4
SEPTEMBER 1, 2021

EXHIBIT C
Design Guidelines

EXHIBIT D
Traffic Impact Study

<https://herriman-website-files.s3.us-west-1.amazonaws.com/Olympia-Hills-Traffic-Impact-Study.pdf>

EXHIBIT E
City's Vested Laws

<https://codelibrary.amlegal.com/codes/herrimanut/latest/overview>

EXHIBIT F
Development Application Review and Approval Process

Type of Approval	Approving Body
Single Family Home Building Permit	City Staff (with ARC certification of compliance)
Subdivisions for Individually Platted Residential Dwelling Units	City Staff (with ARC certification of compliance) ¹
Apartment Dwelling Unit Site Plans	City Staff (with ARC certification of compliance) ¹
Commercial Site Plans	City Staff (with ARC certification of compliance) ¹
Vertical Mixed-Use Site Plans	City Staff (with ARC certification of compliance)
Initial Conditional Use Permit	Hearing Officer ²
Modification to Initial Conditional Use Permit	Planning Commission
Home Occupation Permits	Planning Commission
Open Space Design	City Staff

¹ If adjacent to an Individually Platted Residential Dwelling unit that has been sold to resident, the Planning Commission review and approval is required.

² The “Hearing Officer” shall be the City’s “Appeal Authority” as that term is defined in Herriman City Code 10-3-5.

EXHIBIT G
Development Report

Application Number (for City use only)		
Date of Report		
Subdeveloper / Builder Name		
Total acres		
Type(s) of Residential Uses (select all that apply below and indicated in which place type(s) each is located)		
Single Family Homes:		
Townhomes:		
Condominiums:		
Apartments:		
Commercial Sq/ft		
Amount of Open Space (acres)		
	Proposed Open Space Improvements (list below)	
Master Developer Acknowledgment:		
Subdeveloper Acknowledgment:		