



RESOLUTION 03-09-2021

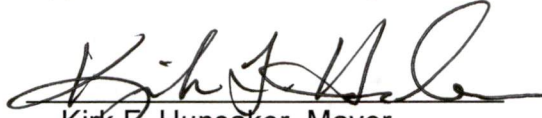
A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH SOUTH VALLEY HOLDINGS, LLC, A UTAH LIMITED LIABILITY COMPANY, REGARDING THE GREY CLIFFS DEVELOPMENT

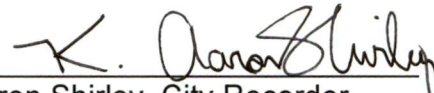
BE IT HEREBY RESOLVED:

SECTION 1: The attached document represents a Development Agreement with South Valley Holdings, LLC, a Utah limited liability company, regarding the Grey Cliffs development.

SECTION 2: This Resolution shall become effective upon passage.

Approved on this 16th day of March 2021.


Kirk F. Hunsaker, Mayor


K. Aaron Shirley, City Recorder

**Recording Requested By and
When Recorded Return to:**
Santaquin City
Attention: City Manager
275 West Main
Santaquin, Utah 84655

Parcel Numbers: 30-091-0014, 30-091-0029, 32-040-0041, 30-094-0023 & 30-095-0017

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

THIS DEVELOPMENT AGREEMENT is made and entered into on this ___ day of _____, 2021 (the “**Effective Date**”), by and between the City of Santaquin, Utah, a municipality and political subdivision of the State of Utah (“**City**”) and South Valley Holdings, LLC, a Utah limited liability company (“**Owner**”). City and Owner may be hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Santaquin City has adopted a General Plan governing the development and use of real property pursuant to the provisions of Utah Code Ann., Title 10, Chapter 9a; and

WHEREAS, Owner owns approximately 233.77 acres of property located at approximately 13439 South Highway 6, in Santaquin, Utah, as more fully described in Exhibit “A” attached hereto (the “**Property**”); and

WHEREAS, on November 20, 2018, the Property was conditionally approved to be rezoned from Agriculture (Ag) and Residential Agriculture (R-Ag) to R-10 Residential with a Planned Unit Development designation (R-10 PUD) as depicted in Exhibit “B” and subject to the approval of a development agreement by the City Council on or before November 20, 2019; and

WHEREAS, on November 20, 2019, the City Council authorized an extension of the deadline to on or before November 20, 2020; and

WHEREAS, the extension was granted for various reasons including, but not limited to, more time needed by the Owner to complete geotechnical evaluations of the Property as it relates to fault lines and other geologic hazards; and

WHEREAS, on November 20, 2020, the City Council authorized an extension of the deadline to on or before March 20, 2021.

WHEREAS, the extension was granted for various reasons including, but not limited to, more time needed for the Owner and City to negotiate terms of the development agreement; and

WHEREAS, the Parties desire to cooperate in the planning and approval of a subdivision or site plan for the Property for the purpose of encouraging an attractive and useful development that complies with the provisions of the R-10 PUD zone; and

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

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

SECTION I. DEFINITIONS

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

- 1.1 **“Applicant”** or **“Developer”** means Owner, or upon its disposition of any of the Property, each person or entity who owns any portion of the Property that applies for the development of a Project.
- 1.2 **“Buildout”** means the completion of the development of the Property.
- 1.3 **“Design Guidelines”** means Santaquin City Standard Specifications and Drawings, adopted by Santaquin City on September 3, 2019 together with any subsequent amendments thereto.
- 1.4 **“Effective Date”** shall have the meaning set forth in the introductory paragraph preceding the Recitals.
- 1.5 **“Owner(s)”** means South Valley Holdings LLC, and also includes all successors and assigns of the same, designated as the owner or owners of the Property, or any part thereof, as indicated on the records of the Utah County Recorder.
- 1.6 **“Project”** means any portion of the Property proposed for development by an Owner, Developer, or any successors or assigns thereof.
- 1.7 **“Property”** means the following parcels of real property, described by owner and parcel numbers as recorded in the office of the Utah County Recorder: South Valley Holdings LLC Parcel No’s. 30-091-0014, 30-091-0029, 32-040-0041, & 30-094-0023. The Property is more particularly described in Exhibit “A” hereto.

SECTION II. GENERAL RIGHTS AND RESPONSIBILITIES

2.1 General Rights and Responsibilities of Owners

2.1.1 **Conditions of Approval and Impact Fees.** With respect to the development of the Property, Owners accept and agree to comply with the impact, connection, and building fees of

the City currently in effect, or as amended, so long as any such fee schedule will be applied uniformly within the City or service area of the City, as applicable. Owners acknowledge that the development of any Project within the Property will require infrastructure supported by impact fees and finds the fees currently imposed to be a reasonable monetary expression of exactions that would otherwise be required at this time. Owners agree not to challenge, contest, or bring a judicial action seeking to avoid payment of or to seek reimbursement for such fees, so long as such fees are applied uniformly within the City or service area.

2.1.2 Statement Regarding “Compelling, Countervailing Public Interest.” The Parties acknowledge that they are familiar with the “compelling, countervailing public interest” test that is generally an exception to the doctrine of vested rights in the State of Utah.

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

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

2.1.3 Construction Mitigation. Prior to any development of a Project, Developer shall provide the following measures, all to the reasonable satisfaction of the City’s Engineer, to mitigate the impact of construction within the Project. Developer shall also adhere to the usual construction impact mitigation measures required by the City. Additional reasonable site-specific mitigation measures may be required. The following measures shall be included in each application for development of any Project:

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

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

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

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

2.1.4 Subsequent Applications Under Future Development Code. Without waiving any rights granted by this Agreement, an Owner may, from time-to-time or at any time, request the City’s authorization to submit some or all of the Property for development under the version of

the City's Development Code in place at the time of the application, which request may be granted or denied by the City Council.

2.1.5 Vested Rights in Approved Zoning. An Owner or Developer may apply for development of a Project so long as the proposed development complies with all City land use ordinances, which are either in effect on the date that a complete application is submitted to the City, or as excepted herein. Land use regulations which are applicable to the Project may be modified when required by federal and/or state laws and regulations promulgated to avoid any imminent and substantial risk or threat of injury to the public health and safety. All development within the Project shall be subject to and comply with any future amendments or changes to the Uniform Building Code, American Association of State Highway Transportation Officials (AASHTO) standards, federal water quality regulations, as the City makes changes or amendments based on any such standards, codes and/or regulations that may now or then be applicable to the Project or any phase thereof.

2.1.6 Design Standards.

2.1.6.1 All multi-family or attached single family units must be approved by the City's architectural Review Committee in accordance with City Design Guidelines.

2.1.6.2 All single-family homes must meet or exceed masonry and siding materials standards provided in Santaquin City Code.

2.1.7 Affirmation of Ownership. Each of the Owners hereby affirms that the ownership of the Property as set forth on section 1.7 is accurate and truthful as of the date of execution of this Agreement.

2.2 General Rights and Responsibilities of the City

2.2.1 Reserved Legislative Powers. This Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards, or rules regulating development. The City acknowledges, however, that any exercise of its legislative or police powers which alters or modifies this Agreement to Owners' detriment may render the City liable to such remedies as may be available to Owners under such circumstances.

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

2.2.3 Reimbursement Agreements. At the request of an Applicant, the City may enter into reimbursement agreement(s), with any applicant for development of property which receives a direct benefit from easements, rights-of-way, roads, water (culinary and secondary) or sewer improvements installed by Developer. Any such agreement shall provide that the applicants shall be assessed a pro-rata charge for the direct benefitting from any or all of the improvements described above. The City shall, in its sole discretion, determine the costs to be reimbursable to the Developer(s), the method of assessment, and the identity of the benefited property for purposes of reimbursement.

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

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

SECTION III. SPECIFIC RIGHTS AND RESPONSIBILITIES

3.1 Consideration of Adjacent Developments. Notwithstanding any contrary provisions, the Parties acknowledge that properties in the surrounding area may be planned for development. Owners agree to collaborate and cooperate to assure adequate sizing and locating of public utilities and road systems, as generally contemplated in the City's various master plans. Developers are not required to enter into agreements with other property owners unless offers and terms presented by the other owners are reasonable and economically viable, as determined by the Developers. Owners agree that each Project shall be designed and constructed in such a manner that will accommodate the extension and connectivity to roadways, utilities, and related infrastructure needed for the development of adjacent properties through the Property where needed. Additional costs to the Developer to provide for such capacities for all road systems and utilities, shall not be the responsibility of the City. If the City determines that additional upsizing of infrastructure through the Property is needed, beyond that required to accommodate the development of adjacent properties, the City will reimburse the Developer for costs as may be provided in sections 3.2 through 3.5 hereafter.

3.2 Water.

3.2.1 Obligations of the Owners and Developers.

3.2.1.1 Water System. Each Developer shall, at its sole cost and expense, design, build, and dedicate to the City all water distribution facilities of sufficient capacity to handle the total estimated requirement of its Project at Buildout and to accommodate the development of all of the Property. Such facilities shall be built according to City specifications and standards. All facilities necessary to provide a water system installed by Developer within the Project, upon acceptance by the City, shall be owned, operated, and maintained by the City. The obligations of Developers or their successors or assigns shall include the construction of water distribution lines outside the Project and outside

the Property as necessary to connect to and/or loop the existing Santaquin City water system. Developer shall be similarly responsible for such infrastructure at such time as any portion of the Property is developed.

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

3.2.1.2.1 Application of Prior Credits for Water. Owner will receive credit, if any such exist, for water dedicated and money in lieu of water payments made before the execution of this Agreement.

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

3.3 Sanitary Sewer Service and Facilities.

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

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

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

3.3.1.3 Payment of Sewer Impact Fees. All preliminary and final subdivision plats and all site plan approvals presented after the effective date of this Agreement are subject

to the payment of sewer impact fees and sewer connection fees then in effect and generally applicable to other development within the City, payable at the time of building permit issuance.

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

3.4 Transportation and Traffic Mitigation.

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

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

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

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

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

3.4.1.5 Landscaping. Upon the City's approval of any plat within a Project, the Developer shall construct and create, at Developer's sole cost and expense, landscape improvements as set forth in the City's Design Guidelines and Development Code. Such

landscape improvements shall include the construction, creation, and maintenance of such improvements as shall be approved by the City in connection with the required development process.

3.4.2 City Obligations.

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

3.4.2.2 Reimbursements.

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

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

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

3.4.2.2.4 The City may elect to prepay, rather than reimburse, some or all of those costs outlined in sections 3.4.2.2.1 thru 3.4.2.2.3. The prepayment amount would be determined by coordination between the City Engineer and Developer after receiving appropriate bids and estimates for the work. If the City chooses to

use this prepayment option, then Developer will not be entitled to reimbursement of funds as outlined above and waives any claim to reimbursement of funds beyond that amount determined by the City Engineer and Developer for the prepaid work.

3.5 Utilities.

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

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

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

3.5.1.3 Runoff and storm drainage;

3.5.1.4 Natural gas;

3.5.1.5 Electricity;

3.5.1.6 Street lighting; and

3.5.1.7 Telecommunications.

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

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

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

SECTION IV. ZONING

4.1 Santaquin Zoning Map.

4.1.1 **Zoning.** Upon execution of this agreement, the Property shall be zoned R-10 Residential with a Planned Unit Development designation (R-10 PUD) as shown in Exhibit "B". Development of the Property will be predicated upon compliance with all R-10 PUD including but not limited to open space dedication requirements, density criteria, landscaping and architectural considerations, amenities, and all City Design Guidelines. All City Design Guidelines shall apply to development.

SECTION V. GENERAL PROVISIONS

5.1 **Covenants Running with the Land.** The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. Except as otherwise provided herein, all successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Property to which the successor holds title, or which would apply to the Owner through whom the interest was acquired. Such titleholder is not a third-party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Property.

5.2 **Transfer of Property.** Owners shall have the right to assign or transfer all or any portion of his/her rights and obligations under this Agreement to any party acquiring an interest or estate in the Property or any portion thereof. In the event of an assignment, the transferee shall succeed to all of Owner's rights under this Agreement. Owner shall provide written notice to the City of any completed assignment or transfer.

5.3 **No Agency, Joint Venture, or Partnership.** It is specifically understood and agreed to by and among the Parties that: (i) each Project is a private development; (ii) City and Owners hereby renounce the existence of any form of agency relationship, joint venture, or partnership between City and Owner(s); and (iii) nothing contained herein shall be construed as creating any such relationship between City and Owner(s).

5.4 **Consent.** In the event this Agreement provides for consent from the City or the Owners, such consent shall be deemed to be given thirty (30) days after consent is requested in writing in the event no response to the request is received within that period. All requests for consent shall be made in writing.

5.5 **Legal Challenges.** In the event that any third party challenges this Agreement, or the development contemplated herein through referendum or otherwise, upon request by an Owner, or with notice to Owners and Owners' consent or acquiescence, the City may undertake to defend this Agreement or the development. In such a case, Owners agree to accept responsibility, jointly and severally, for all legal fees, including attorneys' fees, expenses, and/or court costs incurred by the City upon presentation to the Owners of an itemized list of costs, expenses, and fees.

SECTION VI. MISCELLANEOUS

6.1 Incorporation of Recitals, Introductory Paragraphs, and Exhibits. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

6.2 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

6.3 Severability. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

6.4 Construction. This Agreement has been reviewed and revised by legal counsel for Owner and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

6.5 Further Assurances, Documents, and Acts. Each of the Parties hereto agrees to cooperate in good faith with the others, and to execute and deliver such further documents, and to take all further actions reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each Party as allowed by law.

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

6.7 Governing Law, and Dispute Resolution, and Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

6.7.1 Mediation. Any and all disputes arising out of or related to this Agreement or the Parties' performance hereunder shall be submitted to mediation before a mutually-acceptable mediator prior to initiation of litigation or any other binding or adjudicative dispute resolution process. The Parties shall: (i) mediate in good faith; (ii) exchange all documents which each believes to be relevant and material to the issue(s) in dispute; (iii) exchange written position papers stating their position on the dispute(s) and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the dispute(s), and; (iv) engage and cooperate in such further discovery as the Parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the Parties. Venue of the mediation shall be the State of Utah. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed by a court of competent jurisdiction. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation. The prevailing Party in any action to enforce in whole or in part this mediation clause or in any subsequent arbitration or mediation shall be entitled to reimbursement of attorneys' fees and costs incurred in said action.

6.7.2 Attorney's Fees. If any Party hereto is required to engage the services of counsel by reason of the default of another party, the substantially prevailing Party shall be entitled to receive its costs and reasonable attorney fees. Said costs and attorney fees shall include, without

limitation, costs and attorney fees incurred in any appeal and in any proceedings under any present or future federal bankruptcy act or state receivership act.

6.8 Notices. Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by registered or certified mail, return receipt requested, or by facsimile. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. If given by facsimile to the address and number for such Party set forth below (provided, however, that the notice is not effective unless a duplicate copy of the facsimile notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given one business day after being sent by the sender. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the address set forth below:

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

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

With a copy to: Nielsen & Senior
Attention: Brett B. Rich
P.O. Box 970663
1145 South 800 East, Suite 110
Orem, Utah 84097
Email: bbr@ns-law.com

Notice is deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery or confirmed electronic transmission, on the date of delivery to the overnight courier service, if that service is used, and on the date of deposit in the mail, if mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

6.9 No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties and their assigns. No other party shall have any right of action based upon any provision of this Agreement whether as third party beneficiary or otherwise.

6.10 Counterparts and Exhibits. This Agreement may be executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement and its exhibits constitute the entire

understanding and agreement of the Parties to this Agreement and supersedes all prior discussions, agreements and understandings. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

- Exhibit A Description of the Property with Illustrative Map
- Exhibit B Zoning Approval Map

6.11 **Duration.** This Agreement shall continue in force and effect until the earlier of December 31, 2041, or such time as all obligations hereunder have been satisfied (the “**Term**”).

6.12 **Insurance and Indemnification.** South Valley Holdings, LLC shall defend and hold the City and its officers, employees, and consultants harmless for any and all claims, liability and damages arising from the rezoning of the Property, construction on the Property, or operations performed under this Agreement by (a) South Valley Holdings, LLC or by South Valley Holdings, LLC contractors, subcontractors, agents or employees, or (b) any one or more persons directly or indirectly employed by, or acting as agent for, South Valley Holdings, LLC or any of South Valley Holdings, LLC contractors or subcontractors. Nothing in this Agreement shall be construed to mean that South Valley Holdings, LLC shall defend, indemnify, or hold the City or its elected and appointed representatives, officers, agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from (i) the willful misconduct or negligent acts or omissions of the City, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the City of improvements that have been offered for dedication and accepted by the City for maintenance.

6.12.1 **Hazardous, Toxic, and/or Contaminating Materials.** South Valley Holdings, LLC further agrees to defend and hold the City and its elected and/or appointed boards, officers, agents, employees, and consultants, harmless from any and all claims, liability, costs, fines, penalties, charges and/or claims of any kind whatsoever relating to the existence and removal of hazardous, toxic and/or contaminating materials on the Property, except where such claims, liability, costs, fines, penalties, charges and/or claims are due to the actions of the City.

6.12.2 **Bodily Injury and Property Damage Insurance.** South Valley Holdings, LLC agrees to and shall indemnify and hold the City and its elected and appointed boards, officers, agents, employees, and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys’ fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done on or with respect to the Property by South Valley Holdings, LLC or its agents, servants, employees, or contractors, except for willful misconduct or negligent acts or omissions of the City or its elected and appointed boards, officers, agents, employees, and consultants.

Prior to any construction on the Property, South Valley Holdings, LLC shall furnish or cause to be furnished to the City duplicate originals or appropriate certificates of insurance as might be required by Applicable Law within the Residential R-10 PUD zone.

6.13 **Acknowledgment.** By its signature below, Owner acknowledges that the Property is owned by Owner at the time of execution of this Agreement and shall be subject to all of the terms and conditions of this Agreement upon execution by the City.

6.14 **Amendment.** Unless otherwise stated in this Agreement, the Parties may amend this Agreement by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having an interest only in any specific lot(s), unit(s) or other portion of the Property.

6.15 **Recordation of Development Agreement.** No later than ten (10) days after the Approval Date, the City shall cause to be recorded an executed copy of this Agreement in the official records of the County of Utah.

6.16 **Sub-developer Agreements.** The Parties hereto, or some of them, may enter into separate agreements with Sub-developers or others obtaining rights from Owner, provided however that nothing in any separate agreement may conflict with the entitlements and benefits obtained by Owner in this Agreement without the express written consent of Owner.

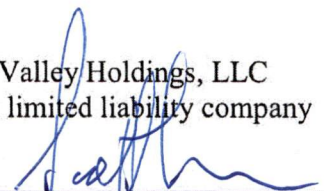
6.17 **Exclusion from Moratoria.** The Property shall be excluded from any temporary ordinance adopted pursuant to Utah Code § 10-9a-504 unless such a temporary ordinance is found on the record by the Santaquin, Utah City Council to be necessary to avoid a compelling, countervailing public interest.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Effective Date.

OWNER:

South Valley Holdings, LLC
a Utah limited liability company

By: 
~~Stephen A. Larsen~~ **Scott Larsen**
Member


STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

On March 22, 2021, ~~Stephen A. Larsen~~ **Scott Larsen** personally appeared before me and proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged that he executed the same in his capacity as a Member of South Valley Holdings, LLC.

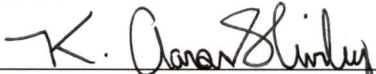
Notary Public

CITY:

City of Santaquin
a municipality and political subdivision of
the State of Utah

By: 
Kirk Hunsaker
Mayor

ATTEST:


K. Aaron Shirley, City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

On March 16th, 2021, Kirk Hunsaker personally appeared before me and proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged that he executed the same in his capacity as Mayor of Santaquin City, Utah.



Notary Public



Exhibit A Description of the Property with Illustrative Map

ZONE CHANGE PARCELS

30:091:0029	SOUTH VALLEY HOLDINGS LLC
30:091:0014	SOUTH VALLEY HOLDINGS LLC
32:040:0041	SOUTH VALLEY HOLDINGS LLC
30:094:0023	SOUTH VALLEY HOLDINGS LLC

ZONE CHANGE DESCRIPTION

BEGINNING AT A POINT WHICH IS EAST 1355.49 FEET & NORTH 20.34 FEET FROM THE SOUTHWEST CORNER OF SECTION 31, T9S, R2E, SLB&M.;

S 89°08' 25" W 9.85 FT;
N 23°37' 50" W 48.38 FT;
N 00°18' 56" W 285.16 FT;
N 00°44' 28" E 176.28 FT;
N 00°51' 53" W 289.12 FT;
N 56°40' 0" E 430.20 FT;
N 55°31'46" E 335.01 FT;
N 51°33'02" E 153.10 FT;
N 89°08'25" E 605.18 FT;
N 02°09'27" W 15.10 FT;
N 89°08'25" E 118.44 FT;
NORTH 679.39 FT;
WEST 37.79 FT;
N 34°13'11" E 1028.84 FT;
EAST 535.81 FT;
SOUTH 181.50 FT;
EAST 129.01 FT;
S 00°40'05" E 39.18 FT;
N 89°31'08" E 724.44 FT;
SOUTH 209.38 FT;
EAST 280.50 FT;
NORTH 211.73 FT;
N 89°31'08" E 319.06 FT;
S 00°28'52" E 1301.51 FT;
S 89°20'01" W 1999.42 FT;
S 00°51'35" E 402.47 FT;
S 88°53'26" E 113.62 FT;
N 00°51'35" W 150.00 FT;
S 87°04'34" E 1833.22 FT;
S 00°59'42" W 930.82 FT;
S 89°08'25" W 62.12 FT;
S 00°57'58" W 896.02 FT;
N 89°01'35" W 3000.00 FT;
N 00°58'24" E 800.01 FT;
S 89°08'25" W 856.23 FT TO THE POINT OF BEGINNING.

CONTAINS: 233.77 AC

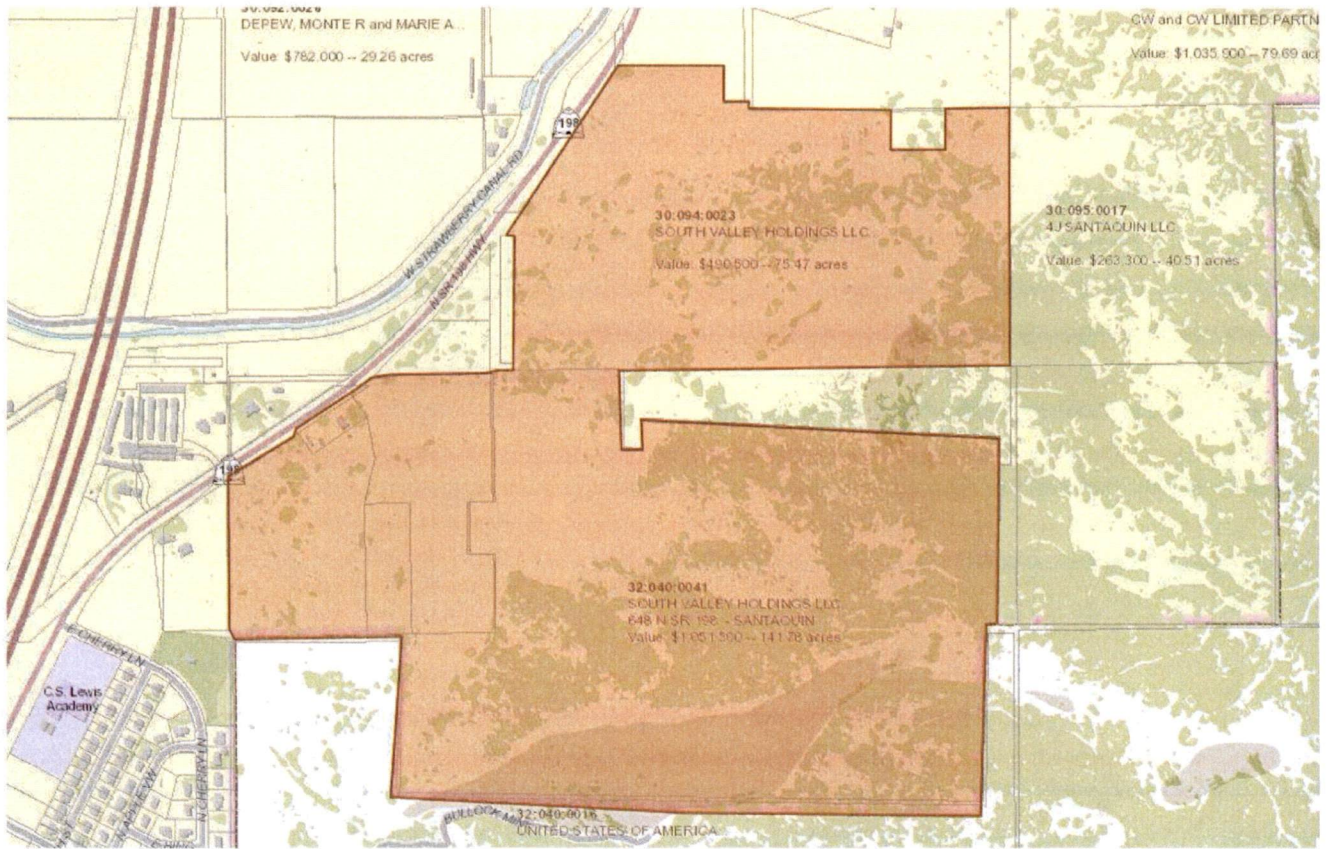


Exhibit B Zoning Approval Map

