S/035/022
CC: Paul
Daron
CO

FRONT GATE™

Paul Baker
Reclamation Biologist
Division of Oil, Gas & Mining
1594 West North Temple, Suite 1210
Salt Lake City, UT 84114-5801

Re: Letter in Response to Cessation Extension dated November 1, 2005

Dear Mr. Baker,

As per our discussion, the City of Bluffdale has issued a completed signed Development Agreement. Please see attached. As per our discussion, the Division of Oil, Gas & Mining requires land to either be under control of a state issued Large Mining Permit or an active city signed agreement. We now have a city signed agreement in place.

As has been reported, the current disconnect lawsuit is still ongoing per the judges ruling on November 10, 2005. Our party asked for the signed Development Agreement with Bluffdale to serve as settlement for said lawsuit. The judges ruling stated that he would not accept the Development Agreement with Bluffdale as settlement. I believe the reasoning behind the decision was one that the judge made so a final settlement could be made. This would prohibit an additional resident group lawsuit from being pursued.

We propose the cessation order be left in place and on hold until January 30, 2006. We have a current court date with the judge for January 6, 2006. He indicated at the last hearing that the trial would be speedy. In addition, I would suggest an onsite visit to determine if there is an imminent danger threat with the reclamation currently done. I firmly believe there is absolutely no danger in the terrain as it exists today. My thought process is one that it does not make sense to fully reclaim the site, then in January with the Development Agreement in place to go disturb the land again. By leaving the cessation order in place and on hold this assures your position, should the judge rule against us in the final decision, you have the ability to force the cessation order for reclamation.

Sincerely,

Tom Gyuro
Project Coordinator

RECEIVED
NOV 17 2005
DIV. OF OIL, GAS & MINING

5635 South Waterbury Way, Suite 100, Salt Lake City, UT 84121
P: (801) 274-3037 F: (801) 274-3062 E: info@frontgateonline.com

5/035/022

CONSENT DECREE AGREEMENT
FOR THE
SOUTH HILLS DEVELOPMENT, L.L.C.
MASTER PLANNED COMMUNITY

by and between

BLUFFDALE CITY
a Utah municipal corporation

and

SOUTH HILLS DEVELOPMENT, L.L.C.

RECEIVED
NOV 17 2005
DIV OF OIL GAS & MINING

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CONSENT DECREE AGREEMENT FOR THE SOUTH HILLS DEVELOPMENT, L.L.C DEVELOPMENT PLANNED COMMUNITY

THIS CONSENT DECREE AGREEMENT ("Consent Decree") is made and entered as of the _____ day of October, 2005, by and between Bluffdale City, a Utah municipality, (the "City"), and South Hills Development, L.L.C., a Utah limited liability company, ("Master Developer"), and is adopted by the Court pursuant to the Court's Order.

RECITALS

A. Master Developer either owns or controls land which is located within the City (the "Property").

B. Except as otherwise set forth in this Consent Decree, the Property and its development are subject to and shall conform with the City's Laws as that term is defined herein.

C. City and Master Developer have cooperated in the preparation and drafting of this Consent Decree.

D. The parties desire to enter into this Consent Decree to settle certain litigation between the parties by specifying the rights and responsibilities of Master Developer and the rights and responsibilities of the City to allow such development, all as set out under the terms and conditions of this Consent Decree.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants contained herein, the settlement of the litigation and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the City and Master Developer stipulate and the Court orders:

1. **Incorporation of Recitals and Exhibits.** The foregoing Recitals "A – D" and the Exhibits which are referenced herein and attached hereto are incorporated into this Consent Decree.

2. **Definitions.** As used in this Consent Decree, the words and phrases specified below shall have the following meanings.

2.a. **Act** means the Municipal Land Use Development and Management Act, Title 10, Chapter 9a of the Utah Code.

2.b. **Architectural Requirements** means those standards and requirements that affect the architectural design of the development of the Property by Master Developer, which are an Attachment to the Design Guidelines.

2.c. **Buffer Parcels** means the parcels identified on the Development Plan which, pursuant to the Design Guidelines, provide a buffer of one acre lots, with no cluster development, between the City's existing development and the rest of the Project.

2.d. **Building Permit Application** means the application to construct a building or infrastructure.

2.e. **City** means Bluffdale City, a municipal corporation and political subdivision of the State of Utah located generally in the southern most portion of Salt Lake County, Utah.

2.f. **City Consultants** means those outside consultants in various disciplines employed by the City for reviewing certain aspects of the development of the Property.

2.g. **City's Laws** means and includes all of the City's General Plans, ordinances, regulations, development policies, and applicable engineering standards and specifications in effect as of the date this Consent Decree is entered.

2.h. **Commercial Development** means the development of a portion of the Project involving a building or buildings not to be located on individual lots in a Subdivision. Examples include apartments, planned unit developments, shopping centers or mixed use developments.

2.i. **Concept Plan** means, for purposes of this Consent Decree, the Development Plan which is hereby accepted by the City as the Concept Plan required by the City's Laws.

2.j. **Design Guidelines** means Exhibit "C" to this Consent Decree, and the Attachments to Exhibit "C", prepared and approved jointly with the City which specifies types and locations of uses on the Property and sets out standards for

setbacks, building sizes, open space, height limits, roads, infrastructure, trails, parks and other criteria for development of the Property.

2.k. **Developer** means other developers to whom Master Developer may sell certain portions of the Property subsequent to the date of this Consent Decree.

2.l. **Consent Decree** means this Consent Decree and all of its attached and incorporated Exhibits.

2.m. **Development Application** means an application to the City for a Subdivision or for the Commercial Development of a portion of the Property.

2.n. **Development Plan** means Exhibit "B" prepared and approved jointly with the City generally showing the land uses for the Property.

2.o. **Final Plat** means the recordable document: (1) effectuating a Subdivision of the Property or any portion thereof; (2) or effectuating a Commercial Development.

2.p. **General Plan** means the City's General Plan that was enacted and adopted by the City pursuant to Utah Code Ann. § 10-9a-401, et seq.

2.q. **HOA** means Home Owners Association(s) that may be established by Master Developer for certain phases of the Project which are established to set and enforce Architectural Requirements, and to maintain and finance open space, amenities and recreational facilities, not dedicated to the City or the public.

2.r. **Impact Fees** means those fees, assessments or payments imposed by the City as a condition of development approval as are permitted and defined in Utah Code Ann. § 11-36-101, *et seq.*

2.s. **Infrastructure Plans** means Exhibit "D" prepared and approved jointly with the City showing the backbone infrastructure for the Property and the Project for culinary water, secondary water, storm water, sanitary sewer and roads.

2.t. **Master Developer** means South Hills Development, L.L.C., a Utah limited liability company.

2.u. **Mountain View Corridor** means the transportation corridor proposed by the Utah Department of Transportation ("UDOT") that is approximately 328 feet wide that bisects the Property in a general north/south axis.

2.v. **Outsourcing** means the process of the City contracting with City Consultants to provide technical support in the review and approval of the various aspects of the development of the Property as is more fully set out in this Consent Decree.

2.w. **Phasing Plan(s)** means Exhibit "E," the plan or plans prepared and approved jointly with the City, showing the sequences for developing the Property and its infrastructure over time as contemplated by the Developer and the City as of the date of this Consent Decree.

2.x. **Planning Area No. 4** means that certain geographical area within the boundary of the City that lies west of the Welby-Jacob Canal from the north City boundary to the south boundary and is designated as one of the planning areas in the General Plan and is the planning area in which the Property is located.

2.y. **Preliminary Plat** means the preliminary plat of the general layout of the lots or building pads and streets for a Development Application for a Subdivision or Commercial Development.

2.z. **Project** means the development to be constructed on the Property pursuant to this Consent Decree with the associated public and private facilities, infrastructure and open space.

2.aa. **Property** means that certain described real property in Exhibit "A" and located in Planning Area No. 4, which Master Developer either owns or controls.

2.bb. **Protective Covenants** means those covenants, conditions and restrictions that Master Developer has set out to be applicable to a portion or portions of the Property which govern certain aspects of the design and construction of the Property which are recorded and govern all subsequent purchasers.

2.cc. **Residential Dwelling Unit** means a unit intended to be occupied for residential living purposes. One single-family residential dwelling and each separate unit in a multi-family dwelling or condominiums equals one Residential Dwelling unit.

2.dd. **Special Improvement District** means a district or districts that Master Developer or a Developer petitions the City to create to fund identified infrastructure or amenities.

2.ee. **Subdivision** means the division of any portion of the Property into a parcel, or a condominium development.

2.ff. **System/Project Improvement Table** means Exhibit "F," a listing of those elements of the infrastructure required for the development of the Project differentiating between those elements which are considered "system improvements" and which are "project improvements" pursuant to the Utah Impact Fees Act, Utah Code Ann. § 11-36-101, *et seq.*

3. **Property Included in this Consent Decree.** The Property shall have its uses, densities and development determined by the terms and conditions of this Consent Decree and the City's Laws.

3.a. **After-Acquired Properties.** During the term of this Consent Decree if Master Developer acquires additional real property through purchase or by contract in Planning Area 4, the after-acquired real property shall be bound by the terms and provisions of this Consent Decree for its use, density and development including, but not limited to, the prohibition on development on slopes in excess of 30% as specified in the Design Guidelines.

3.b. **Scope of Development Plan.** The Development Plan depicts land uses and densities for properties not owned by Master Developer. Such depiction is not intended to grant such properties any development entitlements but is, instead, intended to be illustrative of the City's long-range plans for the development of Planning Area No. 4.

4. **Property Development.** The Property shall be developed as a master planned community subject to the City's Laws and this Consent Decree.

4.a. **Sales to Other Developers.** Master Developer may sell portions of the Property to Developers following the date of this Consent Decree. All development on the Property, or any portion thereof, shall comply with the requirements of this Consent Decree. Prior to closing on a pending sale, Master Developer shall provide to the Developer a copy of this Consent Decree and shall provide the City with notice of the pending sale.

4.b. **Lawful and Valid Contract.** The parties acknowledge that this Consent Decree, in addition to being an Order of the Court, is a lawful and valid contract between the City and Master Developer under Utah law. As such, this Consent Decree is

a binding contractual obligation which is fully enforceable under Utah law by both the City and Master Developer as well as their successors-in-interest.

4.c. **City Benefits.** Development of the Property pursuant to terms and conditions of this Consent Decree will result in significant planning and economic benefits to the City by requiring the orderly development of the Property as a whole with resulting benefits to transportation corridors, utilities, open space, parks, trails, and quasi - public amenities, together with increased property tax and sales tax revenues received by the City.

4.d. **Master Developer Benefits.** Development of the Property pursuant to this Consent Decree will provide long-term continuity and practicality for Master Developer resulting in significant benefits through assurances of consistency in the City Law's, standards and requirements for the long-term development of the Property.

4.e. **Compliance with the City's Laws.** The Property, and all portions thereof, shall be developed in accordance with the City's Laws and this Consent Decree, except when modifications are required by federal, state, county and/or City ordinances and regulations promulgated to protect the public health and safety. The vested rights provided herein are to provide consistency for a long term development pursuant to Utah's common law doctrine of vested rights and § 10-9-509 U.C.A., *et. seq.* Notwithstanding anything to the contrary, all development on the Property shall be subject to and comply with the then-current and any mandatory amendments or changes to the International Building Code, American Association of State Highway Transportation Official (AASHTO) standards and American Water Works Association standards or their designated successors, as the City makes such changes or amendments that are applicable to the Property.

4.f. **Future City Ordinances or Regulations.** Any ordinances, rules, regulations, processes or procedures of the City adopted after the execution of this Consent Decree that conflict or are inconsistent with this Consent Decree and which materially and adversely impact the development of the Property or the Project by decreasing the allowable density or uses, or materially increasing the burdens, times, or costs of development shall not apply to the development of the Property except for the following:

4.f.i. Future City ordinances, rules, regulations, processes or procedures that Master Developer or Developer agrees to in writing.

4.f.ii. Future land use ordinances, rules, regulations, or official policies of the City generally applicable to all properties in the City which are required to comply with State or Federal laws and regulations affecting the Property.

4.f.iii. Ordinances, rules, regulations, and official policies of the City such as updates or amendments to building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction of safety related codes, such as the International Building Code, that are generated by a nationally recognized construction/safety organization, or by the State or Federal governments and are required to alleviate legitimate and bona fide harmful and noxious uses.

4.f.iv. Taxes, impact fees, application fees, or review fees, or modifications thereto, so long as such taxes or fees are lawfully imposed and charged uniformly by the City to all properties, applications, persons, and entities similarly situated.

4.f.v. Laws and regulations required by Federal, State, County or City ordinances to protect the public safety.

4.g. **Application under Future City Ordinances.** Without waiving any rights granted by this Consent Decree, Developer may, with the reasonable consent of the City, choose to submit a Development Application for some or all of the Property under some future version of the City's ordinances, rules, regulations, processes or procedures.

5. **South Hills Development Plan.** The Property shall be developed by Master Developer and/or Developers in accordance with the Development Plan. The Development Plan may be amended from time to time with the approval of the City Council and Master Developer. Any proposed amendments to the Development Plan shall be submitted to the City for review and approval. Any approved amendment shall then be incorporated into and made a part of the approved Development Plan. The City's approval and acceptance of the Development Plan has been completed and there are no further requirements for a Concept Plan review of the Property or the Project by the City. Except as otherwise provided in the Design Guidelines, Master Developer shall be entitled to minor variations from literal depictions contained in the Development Plan without going through the Concept Plan review process required under the City's Laws if variations are not a material change in the Development Plan or any of its components.

6. **Approval Process for Subdivisions and Commercial Developments**. The Development Plan does not constitute approval of a Subdivision of the Property or for a Commercial Development.

6.a. **Limitations on Development.** No development of the Property shall be permitted except as an approved Subdivision or Commercial Development.

6.b. **Development Applications.** Development Applications shall be submitted by applicant on the forms of the City in effect under the City's Laws at the time of the adoption of this Consent Decree and shall be accompanied by the fees generally required by the City. Master Developer and/or Developer(s) shall also submit with the Development Application, a Preliminary Plat or Final Plat, depending upon what approval is being sought.

6.c. **Progress Meetings.** During the preparation of a Preliminary Plat and other required materials for each Development Application, City staff, the Planning Commission, the City Council, and Master Developer or Developer(s) may collectively or separately hold periodic progress meetings to discuss and review the development of the Property.

6.d. **Preliminary Plat Elements.** Preliminary Plats shall include the following elements: Street and transportation layout; lot layouts with side yard requirement and square footage designations; utility easements; parks, trails and open space designations; landscape features; density and land use analysis; backbone infrastructure; and scale drawings.

6.e. **Outsourcing of Preliminary Plats.** Within fifteen (15) days after receipt of a Preliminary Plat, the City will confer with Master Developer or Developer(s) and determine whether the City wishes to retain outside consultants or needs to pay overtime to regular staff ("Outsourcing") to review any portion of the Preliminary Plat within the time specified by this Consent Decree. If the City determines in its sole discretion to utilize Outsourcing, Master Developer or Developer(s) will deposit in advance with the City the City's estimated cost differential between Outsourcing and routine in-house review of the Development Application and Preliminary Plat. Upon completion of the Outsourcing Master Developer or Developer(s) shall immediately pay or receive credit (as the case may be) for any differential in the actual costs incurred by the City to obtain outside or overtime review of the Development Application or Preliminary Plat, and supporting materials.

6.f. **Staff Review of the Preliminary Plat.** Unless Master Developer or Developer(s) and the City otherwise agree, the City or City Consultant(s) shall take no longer then thirty (30) days from receipt of a Preliminary Plat to review a Preliminary Plat and return the Preliminary Plat to the applicant with staff comments and concerns. Upon receipt of a revised Preliminary Plat, the revised Preliminary Plat shall be promptly referred to the City Planning Commission for hearing and review.

6.g. **Planning Commission Recommendation of a Development Application or Preliminary Plat.** Within twenty-one (21) days after referral by the City staff to the Planning Commission of a Preliminary Plat, the Planning Commission shall hold a hearing and provide a recommendation to the City Council. If the Planning Commission does not make a recommendation within the twenty-one (21) day review period, the Planning Commission shall be deemed to have recommended approval. If the Planning Commission declines to recommend approval of a Preliminary Plat, the Planning Commission shall state on the record its basis therefore.

6.h. **Consideration by the City Council.** Upon receiving the Planning Commission's recommendation for approval or disapproval, the Preliminary Plat shall be promptly referred to the City Council for a decision. The Preliminary Plat shall be approved if it complies with this Consent Decree and the City's Laws. Unless Master Developer or Developer(s) and the City otherwise agree, the City Council review and hearing process shall be completed within twenty one (21) days after the Preliminary Plat is approved or disapproved by the Planning Commission. If the City Council makes no decision within the twenty-one (21) day review period the Preliminary Plat is deemed approved by the City Council. If the City Council declines to approve a Development Application or Preliminary Plat the City Council shall state on the record its basis therefore. Any City Council disapproval of a Development Application or Preliminary Plat shall be subject to the mediation and arbitration processes set forth in Sections 16 and 17 of this Consent Decree.

6.i. **Effect of Approval of a Preliminary Plat.** A Preliminary Plat approval shall remain effective so long as a minimum of twenty percent (20%) of the lots (or 20% of the buildable area in the case of a Commercial Development) in the approved Preliminary Plat are submitted for Final Plat approval and recordation within a two (2) year period from and after the date of City Council's Preliminary Plat approval. In each one (1) year period thereafter, an additional twenty percent (20%) of the lots or buildable areas must be submitted to the City for Final Plat approval and recordation so that the entire Preliminary Plat will

have been submitted to the City for Final Plat approval no later than seven (7) years from the date of City Council's Preliminary Plat approval.

6.j. **Submission of Final Plats.** Master Developer and/or Developer(s) shall prepare and submit to the City a Development Application for Final Plat approval for each phase or portion thereof of a Development Application as required by the City's Laws. Accompanying the Final Plat shall be Master Developer and/or Developer(s) specific construction plans, and specifications for all infrastructure and development improvements that are required to be installed.

6.k. **Outsourcing of Final Plats.** Within fifteen (15) days after receipt of a proposed Final Plat, the City Staff will confer with Master Developer or Developer(s) and determine whether the City wishes to use Outsourcing to review any portion of the Final Plat within the time specified in this Consent Decree. If the City determines in its sole discretion to utilize Outsourcing, Master Developer or Developer(s) will deposit in advance with the City the City's estimated cost differential between Outsourcing and routine in-house review of the Final Plat. Upon completion of the Outsourcing services Master Developer or Developer(s) shall immediately pay or receive credit (as the case may be) for any differential in the actual costs incurred by the City to obtain outside or overtime review of the Final Plat, and supporting materials.

6.l. **Staff Review of the Final Plat.** Unless Master Developer or Developer(s) and the City otherwise agree, the City or City Consultant(s) shall take no longer then thirty (30) days from receipt of a Final Plat to review a Final Plat and return the Final Plat to the applicant with staff comments and concerns. Upon receipt of a revised Final Plat, the Final Plat shall be promptly referred to the City Council for hearing and review.

6.m. **City Council Review of a Final Plat.** Within twenty-one (21) days after referral by the City staff to the City Council, the City Council may hold a hearing and decide whether to approve the Final Plat. The City shall review the Final Plat to determine if the Final Plat complies with the Preliminary Plat, this Consent Decree and the City's Laws. If it does, the City Council shall approve the Final Plat subject to any necessary technical or engineering changes. If the City Council does not approve the Final Plat, it shall state on the record the reasons for denial. If the City Council does not make a decision within the twenty-one (21) day period, the City Council shall be deemed to have approved the Final Plat.

6.n. **Effect of Approval of Final Plat.** After a Final Plat has been approved by the City Council, the applicant shall record the Final Plat subject to the City's Laws.

6.o. **City Cooperation in Third-Party Approvals.** The City shall reasonably cooperate in good faith to assist Master Developer in obtaining any third-party approvals necessary for approval of a Preliminary Plat or Final Plat.

6.p. **Infrastructure as Prerequisite to Approval.** The City shall not be required to approve any Final Plat for Subdivision or Commercial Development unless all infrastructure required to access and serve such property has been installed or the construction has been approved by the City and security for its completion has been posted pursuant to the City's Laws.

7. **Development Criteria.** The Property shall be developed by Master Developer and/or any successor Developers in accordance with the requirements contained herein.

7.a. **30% Slope Limitation.** No structure shall be constructed on slopes in excess of 30%. No natural slope in excess of 30% shall be excavated to create a buildable pad on an otherwise unbuildable area, subject to the Design Guidelines.

7.b. **Phasing.** The Property shall be developed in accordance with the Phasing Plans. Phasing of the Property shall take into account orderly development of the Property, coordination in connection with the installation of infrastructure improvements, future utility capacity needs, availability of access, adequacy of utilities and related considerations, and providing of open space at various intervals of development as provided herein. The Phasing Plan may be altered by Master Developer in consultation with the City in light of changing market forces or other factors.

7.c. **Open Space Requirements.** Master Developer shall preserve certain open space within the Property as generally shown on the Development Plan and Phasing Plan. Master Developer, Developer or such Homeowners Association(s) as shall be established on the Property shall be entitled to retain certain designated open space as shown on an approved Final Plat so long as it is not used for residential or commercial purposes. All other open space and adequate access thereto shall be preserved and dedicated by conveyance by deed to City or other designated entity without cost to the City or the other designated entity. The City or any other designated entity shall be required to maintain the real property as open space when the open space is dedicated. Under no condition may dedicated open space be used for any type of residential, commercial, and manufacturing uses by the City or designated entity or by their successors-in-interest. Any open space

dedicated by conveyance to the City shall be free from regulation and assessment by Master Developer, Developer, Homeowner's Association, members associations, or other property owners associations, with the exception that any improvement to such open space shall be subject to the Design Guidelines and the Protective Covenants of record as established by Master Developer. The City or other entity will record a conservation easement on all open space that is conveyed to it by Master Developer.

7.c.i. **Tax Benefits.** Master Developer intends to seek and qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring designated open space to the City or other charitable organizations as permitted hereunder. Master Developer shall have the sole responsibility to claim and qualify for any tax benefits sought by Master Developer by reason of the foregoing. In the event that the City or other designated entity, after receiving written notice from Master Developer pursuant to Paragraph 7.b.ii below, of Master Developer's intent to dedicate a parcel(s) of open space and any of the entities then determines that the designated open space will not be accepted by them and that the designated open space is to be conveyed to an entity other than the City or other designated entity, Master Developer shall have the right to convey such open space directly to the other entity. The City or other designated entity shall have the right to convey any open space previously dedicated to it to another entity provided that the land conveyed is subject to a permanent conservation easement and any improvements to the land shall be subject to the Design Guidelines and the Protective Covenants. The City or other designated entity shall notify Master Developer or Developer in writing sixty (60) days prior to any such conveyance.

7.c.ii. **Notice of Intent to Dedicate.** Upon filing of each Preliminary Plat with the City for regulatory approval in which open space is located, Master Developer shall provide separate written notice to the City of its intent to dedicate certain parcels of open space. Notice shall be provided to the Mayor and the City Council. The City shall have thirty (30) days after the Preliminary Plat is approved, in which to accept in writing the conveyance of the proffered open space. Failure of the City to exercise its option within such time period shall constitute a waiver of its right to receive an outright conveyance of fee title to that parcel. If the City does not exercise the aforesaid option for any reason, such open space or common areas shall be offered to Salt Lake County, a conservation organization, a Homeowners Association or other similar designated entity. Dedication of the open space shall be by plat recordation or by dedication by deed from Master Developer which shall be without any financial encumbrance or other encumbrance

which unreasonably interferes with the use of the Property for open space. Upon acceptance by the City of the proffered open space and after formal possession the City shall be responsible for maintaining the open space after final inspection and acceptance of the improvements to the open space, if any.

7.c.iii. **Out of Phase Dedication.** The City may request a dedication and/or a conservation easement of open space designated in the Development Plan not associated with a current phase under development and Master Developer or Developer may grant the request if it does not create significant costs or undue financial expense to Master Developer that would not normally be incurred with the current phase under development. Master Developer's or Developer's approval shall not be unreasonably withheld.

7.c.iv. **Donation or Sale for Public/Quasi-Public Purposes.** If Master Developer donates open space or any property not developed by Master Developer to any entity or organization to be used by the public or for a quasi-public use, including but not limited to uses such as roads, sites for public infrastructure such as water tanks or secondary water ponds, parks, recreational facilities, libraries, schools or churches, Master Developer shall be able to use such acreage in calculating its allowable density of (2.6) dwelling units per acre. However, if Master Developer sells or conveys such property described above for financial gain (other than for tax purposes), such property sold and conveyed for financial remuneration shall be deducted from the allowable acreage in calculating the established density of (2.6) dwelling units per acre for the Property.

7.d. **Design Guidelines.** The Property shall be developed in accordance with the Design Guidelines. If Master Developer proposes exceptional or unusual uses not previously designated or clearly identified in the Development Plan, they shall be reviewed and determined by the City prior to any Preliminary Plat and/or Final Plat approvals.

7.e. **Density Requirements.** The residential density of the overall Property shall not exceed (2.6) Residential Dwelling Units per gross acre. The total number of Residential Dwelling Units is therefore (1,435) based on a total (552) gross acres of the Property. Density is based upon the total number of Residential Dwelling Units divided by the total gross acreage. If Master Developer acquires additional property in Planning Area 4 , Exhibit "A" shall be enlarged to include such additional property as part of the Property. After inclusion as part of the Property, the maximum gross residential density limitation of (2.6) Residential Dwelling Units per acre shall apply to any additional acreage acquired unless the

City otherwise agrees in writing. The additional property shall be developed in accordance with the Development Plan subject to the maximum project density requirement of this Section. The Development Application for each phase of the Property shall reflect a cumulative density for such phase together with any previously approved phases.

7.f. **On-Site Processing.** Master Developer may use natural materials on the Property, and may process such natural materials into construction materials such as concrete, asphalt, aggregate or topsoil for use in the construction of infrastructure, homes or other buildings or improvements located in Planning Area No. 4. Master Developer shall make an application for such uses pursuant to the processes for a Commercial Development.

8. **Roads.**

8.a. **Master Street Plan.** All roads installed in the boundaries of the Property and all roads providing access to the Property shall be designed and located in such a manner as to comply with the Master Street Plan component of the Infrastructure Plans and the City's Transportation Element of the General Plan and shall be subject to City review and approval as part of a Subdivision or Commercial Development. Except as otherwise provided in this Consent Decree, all required streets shall be designed and constructed according to the design standards of the City as of the date of this Consent Decree and the Design Guidelines.

8.b. **Mountain View Corridor (Legacy Highway).** The City and Master Developer acknowledge that there is a proposal by the Wasatch Front Regional Council and the State of Utah and other public agencies for the development of a Mountain View Corridor through the western part of Salt Lake County and through the Property. The real property in the proposed right-of-way shall not be dedicated to the City and shall remain the property of Master Developer until such time as the real property is acquired by the Utah Department of Transportation or other appropriate State or Federal agency. Master Developer and City acknowledge that construction of the roadway is a State and/or Federal responsibility and not that of Master Developer or the City.

8.c. **Other Roads.** All other roads that access the Property or any portion thereof under Master Developer's control and/or ownership, except for those determined to be private roads pursuant to the approval of any Final Plat, shall be dedicated to the City as required for development of a particular phase and shall be constructed by Master Developer and/or Developer(s) according to the Design Guidelines and as approved by the City Engineer.

9. **Trailways.**

9.a. **General.** Except as otherwise set forth in this Consent Decree, the following general provisions shall apply to the trailways in the Property.

9.b. **Dedication and Uses.** Master Developer and/or Developers shall grant and convey as directed by the City or other designated entity perpetual easements for access on public trailways within their respective portions of the Property as shown on the Plan, at the time a Final Plat is approved or at such earlier time as the parties may agree. All such easements and trailways shall first be offered to the City in writing. The City shall have an option to accept the easements and trailways for a time period of thirty (30) days after approval of a Preliminary Plat. If the City fails to timely accept the proffered easements and trailways in writing, Master Developer shall dedicate or grant the easements and trailways to another designated entity who shall agree to maintain the easement and trailways. Unless otherwise specified in the Design Guidelines or the Development Plan, trailways shall be multiple use and may be used for pedestrian, bicycle, equestrian and flood control storm drainage purposes as well as emergency/maintenance vehicle access, but need not be paved, so as to maintain their character, except in those areas determined by Master Developer to be subject to significant erosion or heavy use. Master Developer shall not be required to construct or provide improvements to trails except as set out in the Design Guidelines or the Development Plan. At the election of Master Developer, and with the written consent of the City, some trailways that are internal within a designated plat may be dedicated to a Homeowner's Association which would maintain ownership, maintenance and control of the trailways.

9.c. **Location.** Trailways in the Property shall be located in the places approved by the City on the Final Plats and/or as generally indicated in the Development Plan.

9.d. **Construction.** Except as otherwise set forth herein, Master Developer and/or each Developer shall construct and/or preserve the trailways lying within that portion of the Property that is owned or governed by Master Developer and/or the Developer(s) on a phase-by-phase basis and at Master Developer's or the Developer's expense. All trailways shall be constructed and/or preserved in accordance with the Design Guidelines, the Development Plan and the City's Laws.

9.e. **Maintenance.** Following completion of construction, and acceptance of a trail by the City, each trail shall be maintained by the City, or a special service district

formed by the City or a Homeowner's Association or other entity to which the Property has been dedicated and/or conveyed as the City and Master Developer determine is appropriate.

10. **Specific Development Items.**

10.a. **Concept Plans.** The Development Plan attached satisfies the City's requirements in the City's Laws for a Concept Plan Review for the Property. Notwithstanding that compliance, there may be certain items of information listed in the Design Guidelines that are normally submitted with a Concept Plan Review Application which may not have been submitted with the Development Plan. The items of information may be detailed in nature and are either inappropriate or impractical to obtain at this stage of the Project's review due to the size of the Project. However, these items may be important for evaluating proposed developments for compliance with City Laws. Therefore, these items may be submitted with the Preliminary Plat or Development Application and shall be reviewed by the City pursuant to Section 6.

10.b. **Property Design Requirements.** The architecture of structures located within the Property shall comply with the Design Guidelines, which shall be referenced in the Protective Covenants. In addition to the Design Guidelines, Master Developer has prepared other design requirements for the Property which are incorporated into the Protective Covenants.

10.b.i. The Protective Covenants may be amended pursuant to their terms without a requirement to amend this Consent Decree.

10.c. **Review by Homeowner's Association.** Master Developer or the Homeowner's Association shall review and stamp when approved all plans prior to the submittal of the plans to the City in conjunction with a Building Permit Application or other application, attesting that same are in compliance with the Design Guidelines, the Architectural Requirements and the Protective Covenants. Master Developer or its assigns shall have the responsibility to interpret and enforce all Protective Covenants applicable to the Property. The City shall have no responsibility for the interpretation and enforcement of the Protective Covenants. The City shall determine compliance with the Design Guidelines prior to the issuance of any building permit for any building or structure on the Property.

11. **Utilities and Infrastructure.**

11.a. **General.** Master Developer shall install or cause to be installed, at no expense to the City, natural gas, underground electrical service, telephone, cable television, storm drain, flood control, sanitary sewer, culinary water, secondary water supply systems for each phase when developed in accordance with the Infrastructure Plans and the System/Project Improvement Table. Those installations shall be done in accordance with the design requirements and construction standards of the utility providers and the City Engineer.

11.a.i. Upon completion and acceptance by the City of each phase or segment of the public infrastructure ownership shall be transferred to the City which shall own, operate, repair, maintain and replace the infrastructure subject to the warranties provided by the City's Laws and this Consent Decree. Ownership of such infrastructure shall be transferred to the City free and clear of all liens and encumbrances upon completion and acceptance of the infrastructure by the City.

11.b. **Recreational Facilities, Parks and Trails .** Master Developer has designated in the Development Plan and the System/Project Improvement Table certain recreational facilities, active and passive parks, open space and trail systems. Master Developer and/or Developer shall install or cause to be installed and constructed such facilities as are mutually agreed to with the City in accordance with the Infrastructure Plans and the System/Project Improvement Table. Upon completion, inspection and acceptance by the City, the facilities shall be transferred and dedicated to the City or such other entity designated by the City for public use, without financial encumbrance and without any other encumbrance that materially interferes with the intended purpose, which shall thereafter be responsibility for all maintenance.

11.c. **Cable TV.** Master Developer may install or cause to be installed underground all conduits and cable service lines within the Property at no expense to the City. The conduits, cable, connections and lateral connections shall remain the sole and exclusive property of Master Developer or cable provider even though the roadways in which the cable TV conduits, cable, connections and laterals are installed are dedicated to the City. Master Developer shall be entitled to contract with and enter into agreements with any cable TV provider of its own choice and grant an exclusive access and/or easement to such provider to furnish cable TV services for those dwelling units on the Property, so long as the property is private and not dedicated to the public nor in violation of federal law.

11.d. **Fiber Optic Services.** Master Developer may install or cause to be installed underground fiber optic cable, conduits, connections and service lines with in the

Property at no expense to the City. The fiber optic cable, connections, and lateral connections shall remain the sole and exclusive property of Master Developer or cable provider even though the roadways in which the fiber optic cable, conduits, connections and laterals are installed are dedicated to the City. The City shall own the conduit and may license fiber optic providers to locate their lines in the conduit. Notwithstanding, Master Developer shall be entitled to contract with and enter into agreements with any cable provider of its own choice and grant an access and/or easement to such provider to furnish cable services for those dwelling units on the Property, so long as the property is private and not dedicated to the public nor in violation of federal law.

12. **Protective Covenants.** Unless waived by the City, prior to the issuance of any building permits for residential, business, commercial or recreational use but excluding infrastructure, Master Developer shall prepare for review by the City the Protective Covenants that provides for at least the matters set forth below. The Protective Covenants shall be consistent with this Consent Decree and the City's Laws. Additional separate restrictive covenants not in conflict with the Protective Covenants may be filed as to different types of property on individual plats by Master Developer or Developer(s). Master Developer shall record the Protective Covenants with the Salt Lake County Recorder.

12.a. **Homeowner's Association(s).** The Protective Covenants shall provide shall for the establishment of a Homeowner's Association(s), and requirements for the purpose of preserving the quality of all development, the maintenance of the Property, and preservation of property values.

12.b. **Rules and Assessments.** The Protective Covenants shall establish the structure, procedures, authorities and remedies of the Homeowner's Association(s), including the rights to make assessments and to lien defaulting properties and participants.

12.c. **Architectural Guidelines.** The Protective Covenants shall reference the Architectural Guidelines as contained in the Design Guidelines and contain a requirement that all plans for buildings and structures on the Property must comply with the same and be reviewed by Master Developer to assure such compliance.

13. **Payment of Fees.** Master Developer and/or the Developer(s) shall pay to the City in a timely manner all of their respective required fees which are due or which may become due pursuant to the City's Laws in connection with their respective developments located within the Property or any portion thereof, according to the

City's Laws, subject to any offsets, reimbursements, and credits by the City to Master Developer as are set out in this Consent Decree and State law. A 6% Development Application Fee will be due at Final Plat approval, if such fees are uniformly assessed. In view of the significant amount of open space in the Property that will remain undeveloped open space, the City shall not charge any development fees on the open space, except for the storm drainage Impact Fee.

14. **Infrastructure/Impact Fees.** The infrastructure for development of the Project consists of two components: "Project Improvements" and "System Improvements" as those terms are defined in the Utah Impact Fees Act §§ 11-36-101, et seq., U.C.A. The infrastructure shall be installed and financed as follows:

14.a. **Project Improvements.** Those elements of infrastructure which are identified as Project Improvements on the System/Projects Improvement Table, Exhibit "F", shall be paid for by Master Developer and shall be installed when and as required by the Phasing Plan(s), the Infrastructure Plans and any approved Final Plat.

14.b. **System Improvements.** Those elements of infrastructure which are System Improvements as identified on the System/Projects Improvement Table, Exhibit "F", shall be paid for either by the creation of a Special Improvement District pursuant to §§ 17A-2-1301, *et seq.*, U.C.A, by impact fees or by any other method mutually acceptable to the parties. Master Developer hereby consents to participate in a Special Improvement District or Districts to finance the System Improvement components of Exhibit "F."

14.b.i. **Special Improvement District.** The parties shall cooperate in good faith to create the necessary Special Improvement Districts on or before March 1, 2006.

14.b.ii. **Timing of System Improvements.** System Improvements shall be constructed as and when required by the Phasing Plan(s) and any approved Final Plat. If the City has not implemented a Special Improvement District for such System Improvements or has not obtained sufficient funds by way of Impact Fees, then Master Developer shall be required only to construct the Project Improvement portion of such infrastructure.

14.b.iii. **Credits.** If Master Developer has installed or contracted to install a portion of a System Improvement, the City shall reimburse the Master Developer its construction costs out of available Impact Fees or Special Improvement District Funds.

14.b.iv. **Time of Imposition of Fees.** Impact Fees shall be collected with a Building Permit Application, except storm drainage impact fees shall be collected at the time of Final Plat approval.

15. **Construction Standards and Requirements.**

15.a. **General.** All construction on the Property shall be conducted and completed in accordance with the City's then-current International Building Code, engineering standards and specifications, the provisions of this Consent Decree and the City's Laws. Prior to final City release of construction security for the infrastructure improvements on any phase of the property "as built" drawings in both hard and electronic copy shall be provided, without cost, to the City. Improvements and landscaping for the Property shall be constructed for each phase pursuant to the Design Guidelines. Master Developer shall cause to be constructed public improvements, including associated revegetation/restoration, as indicated in this Consent Decree and the Development Plan, as such improvements are required to provide necessary and customary access and municipal services to each phase of the Property.

15.b. **Building Permits.** No buildings or other structures shall be constructed within the Property without Master Developer and/or the Developer(s) first obtaining building permits. Building permits for a visitor's center or model homes used for sales purposes only, shall be issued by the City without the requirement of an operable water system, if so approved by the City Fire Department. Nothing herein shall be construed as authorizing building occupancy without adequate fire protection, emergency access, approved water, sewer, sidewalks, signage and other essential services being available and operable.

15.c. **Security for Infrastructure.** Security to guarantee the installation and completion of all public improvements located within the Property on a phase-by-phase basis and recording of each Final Plat or any portion thereof shall be provided by Master Developer and/or the Developers as required by the City's Laws.

15.d. **City and Other Governmental Agency Permits.** Before commencement of construction or development of any buildings, structures or other work or improvements upon any portion of the Property, Master Developer and/or the Developer shall, at its expense, secure, or cause to be secured, any and all permits which may be required by the City or any other governmental entity having jurisdiction over the work. The City shall reasonably cooperate with

Master Developer or the Developer in seeking to secure such permits from other governmental entities.

15.e. **Rights of Access.** Representatives of the City shall have a reasonable right of access to the Property and any portion thereof prior to and during the period of any construction, to inspect or observe any work or proposed development on the Property.

15.f. **Compliance with Law.** Master Developer and/or the Developers shall comply with all applicable federal, state and local laws pertaining to Master Developer's and/or the Developer's activities in connection with the Property, and any phase thereof.

15.g. **Inspection and Approval by the City.** The City may, at its option, perform periodic inspections of any public improvements, such as streets and utilities, being installed and constructed by Master Developer, the Developer or their contractors. No work involving excavations shall be covered until the same has been inspected by the City's representatives and/or the representatives of any other governmental entities having jurisdiction over the particular improvements involved. The City shall promptly inspect any such excavations after reasonable notice by the Developer. The City shall maintain adequate staff as determined by the City to meet inspection requirements by Master Developer or Developers. Upon request by Master Developer, and if the City determines in its sole discretion to utilize Outsourcing beyond those services routinely contracted for by the City, to perform any portion of the inspection process, Master Developer will deposit in advance with the City the City's estimated cost differential between Outsourcing and routine inspections. Upon completion of the Outsourcing services, Master Developer or Developer(s) shall immediately pay or receive credit (as the case may be) for any differential in the actual costs incurred by the City to obtain outside or overtime inspection. Master Developer or the Developer shall warrant the materials and workmanship of all improvements installed in each phase, for a period of (24) months from and after the date of final inspection and approval by the City of the improvements in that phase. The City shall, at the time of final approval if requested by Master Developer or the Developer, provide written confirmation of the date of final approval and completion of the improvements for each phase.

15.h. **Use and Maintenance During Construction.** Master Developer and Developers covenant and agree that during construction, they shall develop the Property for the uses set forth in the Plan, as restricted and limited by this Consent Decree. During construction, Master Developer and the Developers

shall keep the Property free and clear from any unreasonable accumulation of debris, waste materials and any nuisances, and shall contain construction debris so as to prevent its scattering via wind and water. Master Developer and Developers shall keep the streets free from mud and erosion debris during construction periods, and shall remove snow from and keep the streets clean and clear until acceptance of the same by the City.

15.i. **Indemnification and Insurance During Construction.**

15.i.i. **Indemnification.** Master Developer shall indemnify and hold the City and its officers, employees, agents and representatives harmless from and against all liability, loss, damage, costs, or expenses, including attorneys' fees and court costs incurred or arising from or as a result of the death of any person of any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person (a) which shall occur within the Property or occur in connection with any off-site work done for or in connection with the Property and (b) which shall be directly, substantially and proximately caused by any negligent acts of Master Developer or its agents, servants, employers, or contractors. Master Developer shall not be responsible for (and such indemnity shall not apply to) the negligent or intentional acts of contractors who are not in Master Developer's employ, nor for acts of third parties.

15.j. **Insurance.** During the period from the commencement of work on the Property and ending on the date when all work is finally inspected and accepted by the City for the Property, Master Developer shall furnish, or cause to be furnished, to the City satisfactory certificates of liability insurance from reputable insurance companies evidencing commercial general liability insurance policies in the amount of at least $1,000,000.00 single limit, naming the City as an additional insured. Master Developer shall require all contractors and other employers performing any work on the Property to maintain adequate worker's compensation insurance and public liability coverage.

16. **Mediation.**

16.a. **Issues Subject to Mediation.** Issues resulting from the City's objections to a Plat or Development Applications or other issues related to the implementation of this Consent Decree shall be mediated.

16.b. **Meet and Confer.** Prior to any mediation the parties shall meet and confer in good faith to try to resolve any disagreements between them.

16.c. **Mediation Process.** If the City and Applicant are unable to resolve a disagreement subject to mediation, the parties shall attempt within seven (7) days to appoint a mutually acceptable mediator with knowledge of the issue in dispute. If the parties are unable to agree on a single acceptable mediator they shall each, within seven (7) days, appoint their own representative. These two experts shall between them, choose the single mediator. Applicant shall pay the fees of the chosen mediator. The chosen mediator shall within fourteen (14) days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties. If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the parties.

17. Arbitration of Plat, Development Application or Building Permit Disputes.

17.a. **Issues Subject to Arbitration.** Issues regarding the City's objections to a Plat, Building Permit, Development Application or other issues related to the implementation of this Consent Decree that are subject to resolution by scientific or technical experts such as traffic impacts, water quality impacts, pollution impacts, etc., are subject to arbitration.

17.b. **Mediation Required Before Arbitration.** Prior to any arbitration the parties shall first attempt mediation as specified in Section 16.b.

17.c. **Arbitration Process.** If the City and Applicant are unable to resolve an issue through mediation, the parties shall attempt within seven (7) days to appoint a mutually acceptable expert in the professional discipline(s) of the issue in question. If the parties are unable to agree on a single acceptable arbitrator they shall each, within seven (7) days, appoint their own individual appropriate expert. These two experts shall, between them, choose the single arbitrator. Applicant shall pay the initial fees of the chosen arbitrator. The chosen arbitrator shall within thirty (30) days, review the positions of the parties regarding the arbitration issue and render a decision. The arbitrator shall ask the prevailing party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, and consideration of such objections, the arbitrator's decision shall be final and binding upon both parties. Unless otherwise agreed to, each party shall pay 50% of the arbitrator's fee and its own costs and attorney's fees incurred in the arbitration process.

18. Provision of Municipal Services.

18.a. **Service Levels.** The City shall provide or cause to be provided standard municipal services to the Property as it develops approximately equal to the service the City provides to all other areas of the City.

18.b. **Culinary Water Service.** Culinary water service is to be provided by the City.

18.c. **Secondary Water Service.** Master Developer shall be required to provide secondary water service to the Property subject to the terms and conditions set out below. Secondary water service will consist of pressurized untreated irrigation water piped to all the Property.

18.c.i. The amount of secondary water that shall be required for the Property is still being determined by the City. The City will consult with Master Developer in completing any studies to determine issues related to secondary water service including the appropriate amounts of water for various types of development.

18.c.ii. Upon the completion of the City's secondary water studies the City shall determine what amounts of secondary water are required for development of the Property (the "Baseline"). Until the Baseline is determined the parties shall presume that at least 500 acre feet of secondary water will be needed for the Project.

18.c.iii. All secondary water shares transferred to the City which are conveyed by Master Developer or purchased with Master Developer's funds by the City shall be credited to the Baseline. A running balance of secondary water shares required and provided shall be maintained throughout the development of the Property both by the City and Master Developer.

18.c.iv. Those shares of water in the Welby Jacob Canal Co., or through some other available source which can be put to use on the Property and which may be owned by Master Developer may be conveyed to the City prior to the recording of a Final Plat.

18.c.v. Until all of the secondary water rights as required in the Baseline are acquired for use on the Property the City shall, periodically and in its sole discretion, identify water shares or water rights it determines are available to be used in the Property's secondary water system.

18.c.vi. The City shall then consult with South Farm LLC, and South Hills Development, LLC (collectively, "Master Purchasers"). The City shall state

the available water purchase price. Master Purchasers shall have fifteen (15) days to agree to pay the stated water purchase price. If Master Purchasers both agree to the price they shall each by the end of the fifteen (15) days deposit with the City 50% of the water purchase price and the City will use reasonable efforts to acquire the water shares or water rights at the stated price. If the City is unsuccessful, the City shall refund Master Purchaser's funds. If the City purchases the water rights, the City shall own the water share or water rights. The City will make the secondary water derived therefrom available to Master Purchasers' secondary water systems on a 50/50 basis.

18.c.vi.1. The City may, from time-to-time, determine that it needs to purchase available secondary water for its own uses. If the City makes such a determination it shall give notice to Master Developer if such secondary water could have been used to service the Property.

18.c.vii. If one of Master Purchasers timely agrees to the water purchase price but the other does not, the accepting Master Purchaser may deposit with the City funds for the water purchase in the entire amount and the City will use reasonable efforts to acquire the water shares or water rights. If the City is unsuccessful, the City shall refund Master Purchasers' funds. If the City completes the purchase the City shall make the secondary water derived therefrom available to the accepting Master Purchasers' secondary water system.

18.c.viii. So long as a Master Purchaser pays the water purchase price to acquire secondary water as set forth in Paragraph 18.c.vi. and/or 18.c.vii and if there is not sufficient secondary water to serve a proposed development in the Property that has received Final Plat approval, the City shall allow the purchase of culinary water from the City, at then-prevailing culinary water prices, for secondary water purposes. The City will notify the affected customers that secondary water is not available at which time culinary water shall be used in the secondary water system. At such time as secondary water becomes available to replace the culinary water, Master Developer shall use such secondary water.

18.c.ix. All secondary water rights the City acquires with Master Purchasers' funds must be allocated to the Property of the Master Purchaser. If the City obtains any secondary water rights through other means, and the water is to be placed or stored in the secondary water distribution infrastructure installed or constructed by Master Developer, Master Developer shall have the first

option to purchase the secondary water shares for use on the Property unless the City notifies Master Developer that the City needs the water for its own purposes.

19. **Default.**

19.a. **Notice.** If Master Developer or Developer(s), or the City believes that the other party has failed to perform their respective obligations hereunder or to comply with the terms of this Consent Decree or the City's Laws the party shall give Notice specifying the claim of default

19.b. **Meet and Confer/Mediation/Arbitration.** The parties shall follow the "meet and confer", mediation and, where appropriate, the arbitration provisions of Sections 16 and 17 regarding any claim of default.

19.c. **Failure to Resolve the Default.** If the parties are unable to resolve the default pursuant to section 19.b., the non-defaulting party may, at its election, have the following remedies.

19.c.i. **Legal and Equitable Relief.** All rights and remedies available at law and in equity, including, but not limited to, injunctive relief, specific performance and/or damages.

19.c.ii. **Security.** The right to draw on any security posted or provided in connection with the Property and relating to remedying of the particular default.

19.c.iii. **Future Approvals.** The right to withhold all further reviews, approvals, licenses, and permits for the Property, or development of any portion thereof, until such default has been cured but only after:

19.c.iii.1. Master Developer has failed to cure the default after sixty (60) days from the failure of the processes in section 19.b. (if the default cannot be reasonably cured within sixty (60) days the cure period shall be extended so long as Master Developer is prosecuting a cure with reasonable diligence); and

19.c.iii.2. The City Council has held a hearing regarding the default at the end of the (60) day cure period; and

19.c.iii.3. The City Council determines after the public hearing that future regulatory approvals on the Property should be withheld.

19.d. **Events Beyond the Control of Defaulting Party.** If any default under this Consent Decree is caused by acts of God or circumstances beyond the control of the party in default the non-defaulting party shall grant a reasonable time for such default to be cured.

19.e. **Cumulative Remedies.** The rights and remedies set forth herein shall be cumulative.

19.f. **Estoppel Certificate.** Within twenty (20) days of a written request by Master Developer or Developer, the City will execute an estoppel certificate to be provided by Master Developer or Developer in a form acceptable to the City to any third party certifying that Master Developer or Developer(s), as the case may be, at that time are/is not in default of this Consent Decree.

20. **Notices.** Any notices, requests and demands required or desired to be given hereunder (a "Notice") shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To Master Developer:

South Hills Development, L.L.C.
Attn: David Millheim
406 West South Jordan Parkway
South Jordan, Utah 84095

With a copy to Counsel:

Hollis S. Hunt, Esq.
Hunt & Rudd
392 East 12300 South
Draper, Utah 84020

Bruce R. Baird, Esq.
Hutchings, Baird & Jones
9537 South 700 East
Sandy, Utah 84070

To the City:

Bluffdale City
14350 South 2200 West
Bluffdale, Utah 84065

With a copy to Counsel:

Dale F. Gardiner, Esq.
Parry, Anderson & Gardiner
60 East South Temple, #1200
Salt Lake City, Utah 84111

Any party may change its address for Notice by giving Notice to the other party in accordance with the provisions of this Section. A Notice shall become effective on the date it is hand-delivered, actually delivered by a courier or three (3) days after it is postmarked.

21. **Attorneys Fees.** The parties herein each agree that should they default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee which may arise or accrue from enforcing this Consent Decree, or in pursuing a remedy in a court of law.

22. **Entire Consent Decree.** This Consent Decree and the exhibits attached hereto, together with those agreements listed below and their attached exhibits, constitute the entire agreement of the parties with respect to the subject matter hereof and supersede any prior promises, representations, warranties, agreements or understandings between the parties pertaining to the Property.

23. **Headings.** Headings contained in this Consent Decree are intended for convenience only and are not intended to be used to construe or limit the text herein.

24. **No Third Party Rights.** The obligations of the parties set forth in this Consent Decree shall not create any rights in or obligations to any persons or parties other than to the City and Master Developer, Developers and their successors and assigns. The City and Master Developer alone shall be entitled to enforce or waive any provisions of this Consent Decree to the extent that such provisions are for their benefit.

25. **Assignability.** Master Developer shall be entitled to freely assign Master Developer's obligations under this Consent Decree or any rights or interests herein. Any assignee

shall consent in writing to be bound by the terms of this Consent Decree as a condition precedent to the validity of the assignment. Master Developer shall give written notice of any such assignment of its duties and obligations to a successor-in-interest to the City within (15) days of the actual assignment. Assignments to financial institutions and individuals for financing purposes are exempt from the notice provisions set forth in this Section. In the event of a sale or transfer of the Property, or any portion thereof, the buyer or transferee shall be liable for the performance of each of the obligations contained in this Consent Decree as it relates to that portion of the Property it is buying, and acceptance of a deed to any portion of the Property shall constitute an agreement to assume and to be bound by the provisions of this Consent Decree as it relates to the Property covered by the deed, except that retail lot sales to builders, homeowners and sites for commercial buildings in whole or in part are exempt from the provisions of this paragraph. Notwithstanding anything to the contrary contained in this paragraph, Master Developer shall not be required to notify the City with regard to the sale or transfer to a bona fide homeowner, buyer, Developer(s) or commercial sales for which final plats have been approved by the City and recorded in accordance with this Consent Decree and which are intended for single family residential use, sales to a Developer of a multi-family site, or to commercial sites.

25.a. **Limitations on Assignments.**

25.a.i. **Special Improvement Districts.** No assignment by Master Developer shall be permitted if such assignment materially impairs, or materially increases the costs or other financial terms of any Special Improvement District contemplated by this Consent Decree

25.a.ii. **Secondary Water.** Master Developer may not assign Master Developer's rights or responsibilities regarding secondary water pursuant to Section 18.c. without the prior written consent of the City until such time as all secondary water for the Property has been acquired.

26. **Binding Effect.** This Consent Decree shall be shall be deemed to run with the Property and shall be binding upon the parties hereto and their respective officers, agents, employees, successors and assigns.

27. **Time Limitation.** Notwithstanding anything in this Consent Decree to the contrary, in the event the Property, including all phases thereof, is not fully developed within twenty-five (25) years from the date of this Consent Decree, the City shall have the right, but not the obligation, at the sole discretion of the City, to terminate this Consent Decree.

28. **No Waiver.** Any party's failure to enforce any provision of this Consent Decree shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

29. **Severability.** If any portion of this Consent Decree is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

30. **Exclusion from Moratoria.** If the City imposes by ordinance, resolution or otherwise a moratorium on the issuance of building permits or the regulatory approval and review of subdivisions for any reason, Master Developer and Developers shall be excluded from such moratorium unless such moratorium is based on a compelling, countervailing public purpose necessary for the health and public safety of the citizens of the City or the general public or the residents of the Property. The City may not adopt a moratorium if the cause of the moratorium relates to the inability of the City to review Development Applications within the times required by this Consent Decree. The City may choose but is not obligated to honor a moratorium issued by other governmental entities such as service districts or water conservancy districts.

31. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Consent Decree which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore, acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

32. **Recordation.** This Consent Decree shall be executed in recordable format and shall be recorded against the Property senior to the Protective Covenants, easements and debt security instruments encumbering the Property or any portion thereof except for those obligations previously recorded. This Consent Decree may be recorded by either party hereto in the offices of the Salt Lake County Recorder. This Consent Decree shall be deemed to run with the land, and shall be binding upon all successors in the ownership of any portion of the Property.

33. **Relationship.** Nothing in this Consent Decree shall be construed to create any partnership, joint venture or fiduciary relationship between the parties.

34. **Amendment.** This Consent Decree may be amended only in writing signed by the parties hereto.

35. **Non-Liability of City Officials and Employees.** No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to Master Developer, or any successor in interest or assignee of Master Developer, for any default or breach by the City, or for any amount which may become due to Master Developer, or its successors or assignees, or for any obligation arising under the terms of this Consent Decree. Nothing herein will release any person from personal liability for their own individual acts or omissions.

36. **Further Documentation.** This Consent Decree is entered into by the parties with the recognition and anticipation that subsequent agreements implementing and carrying out the provisions of this Consent Decree may be necessary. The parties agree to negotiate in good faith with respect to all such future agreements.

37. **Applicable Law.** This Consent Decree is entered into under and pursuant to and is to be construed and enforceable in accordance with the laws of the State of Utah.

38. **Construction.** This Consent Decree has been reviewed and revised by legal counsel for both the City and Master Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Consent Decree.

39. **Performance.** Each party, person and/or entity governed by this Consent Decree shall perform its respective obligations under this Consent Decree in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Consent Decree, the development of any portion of the Property or the issuance of Final Plats, Certificates of Occupancy or other approvals associated therewith.

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

"CITY"

Bluffdale City

By: _____
Mayor

ATTEST:
_____
City Recorder

"MASTER DEVELOPER"

South Hills Development, L.L.C., a Utah limited liability company

By: _____
Its: MANAGER

CITY ACKNOWLEDGMENT

STATE OF UTAH)
:ss.
COUNTY OF SALT LAKE)

Notary Public
JOSHUA F. HUNT
362 East 12300 South, Suite A
Draper, Utah 84020
My Commission Expires
September 6, 2009
State of Utah

On the 25 day of Oct, 2005, personally appeared before me Wayne Mortimer, who being by me duly sworn, did say that he is the Mayor of Bluffdale City, a municipal corporation, and that said instrument was signed in behalf of the City by authority of its governing body and said Mayor acknowledged to me that the City executed the same.

NOTARY PUBLIC

My Commission Expires: Residing at:

MASTER DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
:ss.
COUNTY OF SALT LAKE)

Notary Public
JOSHUA F. HUNT
362 East 12300 South, Suite A
Draper, Utah 84020
My Commission Expires
September 6, 2009
State of Utah

On the 25 day of Oct, 2005, personally appeared before me DAVID Millheim, who being by me duly sworn, did say that he is the MANAGER of South Hills Development, L.L.C., a Utah limited liability company, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: Residing at: