

AMENDED DEVELOPMENT AGREEMENT

This Amended Development Agreement is executed in duplicate this 27<sup>th</sup> day of December, 2012, by and between the City of Orem, a municipal corporation and political subdivision of the State of Utah, with its principal offices located at 56 North State Street, Orem, Utah 84057 (hereinafter referred to as the "City"); and BAC II, LLC, a Utah limited liability company and BAC III, LLC, a Utah limited liability company, both of which have their principal address at 500 North Marketplace Drive, Suite 201, Centerville, Utah 84014 (BAC II and BAC III are hereinafter collectively referred to as "Developer").

RECITALS

WHEREAS Developer owns a parcel of real property located at approximately 96 West Center Street, Orem, Utah, consisting of approximately 4.40 acres and more particularly described in Exhibit "A" which is attached hereto and by reference is made a part hereof (hereinafter referred to as the "Property"); and

WHEREAS the Property is currently zoned PD-30; and

WHEREAS on approximately October 28, 2008, the prior owner of the Property, Arrowgon, LLC, entered into a development agreement with the City (hereinafter referred to as the "Original Agreement") in which Arrowgon agreed to dedicate property along Orem Boulevard and Center Street to the City, to install street improvements in the dedicated areas, to install sidewalk and planter strips along Orem Boulevard and Center Street, and to perform certain other obligations; and

WHEREAS the Original Agreement was recorded against the Property and is binding upon the successors and heirs of Arrowgon, LLC; and

WHEREAS the Developer has acquired the Property and has submitted an application to make certain amendments to the PD-30 zone; and

WHEREAS the Developer also desires to make certain modifications to the Original Agreement; and

WHEREAS the City is willing to modify the Original Agreement as set forth herein; and

WHEREAS the City, acting pursuant to its authority under Utah Code Section 10-9-101, *et. seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has elected to approve this Agreement.



ENT 1347:2013 PG 1 of 2  
 JEFFERY SMITH  
 UTAH COUNTY RECORDER  
 2013 Jan 04 3:15 pm FEE 0.00 BY CLS  
 RECORDED FOR OREM CITY CORPORATION

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**ORIGINAL DOCUMENT**  
 City of Orem Recorder's Office

## COVENANTS

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the City and Developer hereby agree as follows:

1. **Replacement of Original Agreement.** The parties acknowledge and agree that this Amended Development Agreement shall replace the Original Agreement in its entirety. Upon execution and recording of this Amended Development Agreement, the Original Agreement shall be of no further effect.

2. **Dedication of Street Right of Way.** Developer agrees to dedicate a portion of the Property along Orem Boulevard and Center Street to the City (which may also be used by UDOT) as right of way for street improvements, sidewalk and/or a landscaped strip (hereinafter referred to as the "Dedication Area"). The Dedication Area is shown in the concept plan which is attached hereto as Exhibit "A" and by reference is made a part hereof. The Dedication Area is also more particularly described in Exhibit "A." The Dedication Area shall be formally dedicated to the City prior to the issuance of any building permit for construction on the Property.

3. **Construction of Right Turn Lane.** Developer shall construct, at Developer's expense, a new right turn lane on Orem Boulevard approaching the intersection with Center Street as shown in the concept plan. Developer shall construct the new right turn lane and related improvements concurrent with the development of that portion of the Property where the concept plan indicates the location of a convenience store. Developer shall only be obligated to construct this new right turn lane and related improvements between the areas on Exhibit "A" referred to as the "Proposed Right-of-way Dedication" and the "Existing Right-of-way." Developer will not be required to overlay or improve Orem Blvd outside of these parameters.

3.1. **Developer to Provide Construction Drawings.** Developer shall provide engineering plans and profile construction drawings needed for the construction and installation of the new right turn lane and for the realignment of the other lanes of Orem Boulevard at the northern intersection with Center Street. The construction drawings to be provided by the Developer shall include traffic signal relocation plans and pavement marking plans. Developer shall provide the construction drawings to the City concurrent with submittal of a site plan for the southeastern corner of the Property where the concept plan contemplates the location of a convenience store.

3.2. **Slurry Seal and Restriping.** The City shall be responsible for the restriping of that portion of Orem Boulevard just north of the intersection with Center Street after Developer completes the construction of the new right turn lane. In order to accommodate the restriping, a portion of Orem Boulevard will need to have a slurry seal applied from approximately the intersection with Center Street to the edge of the proposed driveway to the Property from Orem Boulevard. The City estimates that the cost of the slurry seal will be \$1,500. The parties agree that the City can most efficiently complete the slurry seal as part of its City-wide slurry seal contract. The City shall be responsible for completing the slurry seal described herein and Developer shall reimburse the City for the slurry seal in the amount of \$1,500.

3.3. **Relocation of Traffic Signal.** The City shall relocate the existing traffic signal located on the Property to a new location on the southeast corner of the Property to accommodate the construction of the new right turn lane on Orem Boulevard. The City and the Developer shall

each be responsible for one-half of the cost of relocating the traffic signal. The parties estimate that the cost of relocating the traffic signal will be approximately \$10,000.00. However, in the event that the total cost exceeds \$10,000, the City shall be responsible for all reasonable costs in excess of \$10,000 that are required to complete the relocation of the traffic signal.

**3.4. Limited Obligation.** The parties acknowledge and agree that Developer's obligations to improve Orem Boulevard and/or Center Street are limited to the obligations contained in this Agreement and that Developer shall not be required to overlay or otherwise improve Orem Boulevard or Center Street except as provided in this Agreement.

**4. Installation of Sidewalk and Landscape Strip.**

**4.1. Sidewalk.** Developer shall construct, at Developer's expense, the entire sidewalk adjacent to Orem Boulevard and Center Street as shown in the concept plan. Developer shall install the sidewalk adjacent to Orem Boulevard and Center Street (hereinafter referred to as the "Perimeter Sidewalk") concurrent with the first phase of construction on the Property. Following construction of the Perimeter Sidewalk, Developer shall dedicate and convey the Perimeter Sidewalk to the City and the City shall be responsible for the ongoing maintenance and repair of the Perimeter Sidewalk. However, Developer shall be responsible to keep the Perimeter Sidewalk free from debris, dirt, rocks, weeds, snow and ice in accordance with Orem City Code Section 16-1-16. Developer shall install the other sidewalks and landscape areas shown in Exhibit "A" concurrent with the phase in which such sidewalks and landscaping are located. Developer shall be responsible for the ongoing maintenance and repair of these other sidewalk areas.

**4.2. Landscape Strip.** Developer shall install and maintain a landscape strip (with trees as generally shown in the concept plan) at least eight feet (8') in width between the Perimeter Sidewalk and the back of curb line along Orem Boulevard and Center Street. The entire landscape strip shall be installed concurrent with the first phase of development on the Property. Developer shall be responsible for the ongoing maintenance and upkeep of the landscape strip.

**5. Easement for Bus Shelter.** Developer shall grant the City an easement on the Property for the future installation of a bus shelter. The location of the bus shelter easement shall be approximately one-half the distance between Orem Boulevard and the existing drive access to the Property from Center Street as shown in Exhibit "A."

**6. Bonding for Improvements.** Developer shall provide a bond to the City to ensure the construction of the improvements described in Sections 3 and 4 of this Agreement. The bonding shall meet the requirements of the City's ordinances relating to the bonding for subdivision improvements.

**7. Agreement Considered Mitigation of Impact.** In consideration for the agreement of Developer to develop the Property in conformity with this Agreement, the City staff shall make a recommendation to the Orem City Council to consider the terms of this Development Agreement as sufficient mitigation of the potential adverse impacts resulting from the request to amend the PD-30 zone as Developer has requested.

8. **No Guarantee of City Council Approval.** The City makes no representation that the request of Developer to amend the PD-30 zone will be approved by the Orem City Council. Therefore, this Agreement shall not be binding upon Developer unless the request to amend the PD-30 zone is approved by the Orem City Council.

9. **No Limitation on Exercise of Police Power.** Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement.

10. **Compliance With All Applicable Laws.** Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and a site plan (if applicable), including the payment of fees and compliance with all other applicable ordinances, resolutions, including the Orem City Zoning and Subdivision Ordinances and design and construction standards.

11. **Agreement to be Recorded.** This Agreement may be recorded against the Property and shall be deemed to run with the land and shall be binding on all successors and assigns of Developer in the ownership or development of any portion of the Property.

12. **Indemnification.** Developer agrees to indemnify and hold the City harmless from and against any demand, claim, action, damages or loss of any type arising or resulting from the development of the Property except such demands, claims, actions, damages, or losses that are caused by the City's own negligence.

13. **Lawful Agreement.** The parties represent that each of them has lawfully entered into this Agreement, having complied with all relevant statutes, ordinances, resolutions, bylaws, and other legal requirements applicable to their operation. The parties further represent that each of them has authority to enter into this Agreement and that the individuals signing this Agreement on behalf of each party have authority to bind the party represented by the signing individual.

14. **Applicable Law.** This Agreement shall be interpreted pursuant to the laws of the State of Utah.

15. **Time of Essence.** Time shall be of the essence of this Agreement.

16. **Interpretation.** The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include the other gender. Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that both parties have participated in the preparation hereof.

17. **Modifications**. No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement.

18. **Assignment**. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement.

19. **Relationship of Parties**. This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to a third party.

20. **Incorporation of Recitals**. The Recitals to this Agreement are incorporated by reference into the Covenants section of this Agreement as if fully set forth herein.

SIGNED and ENTERED INTO this 27<sup>th</sup> day of December, 2012.

City of Orem

By:

Bruce Chesnut  
Bruce Chesnut, Orem City Manager



ATTEST: Donna R. Weaver  
Donna Weaver, City Recorder

BAC II, LLC

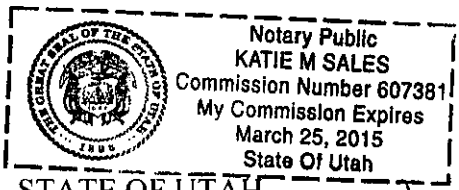
By:

[Signature]

STATE OF UTAH )  
 ) :SS.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 17 day of December, 2012, by Chad Bessinger, as the Manager of BAC II, LLC, who acknowledged that he/she signed this Agreement on behalf of BAC II, LLC.

Katie Sales  
NOTARY PUBLIC



BAC III, LLC

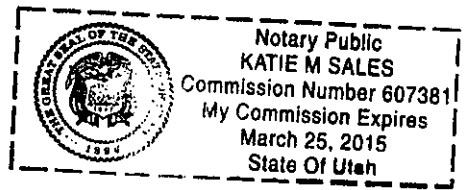
By:

[Signature]

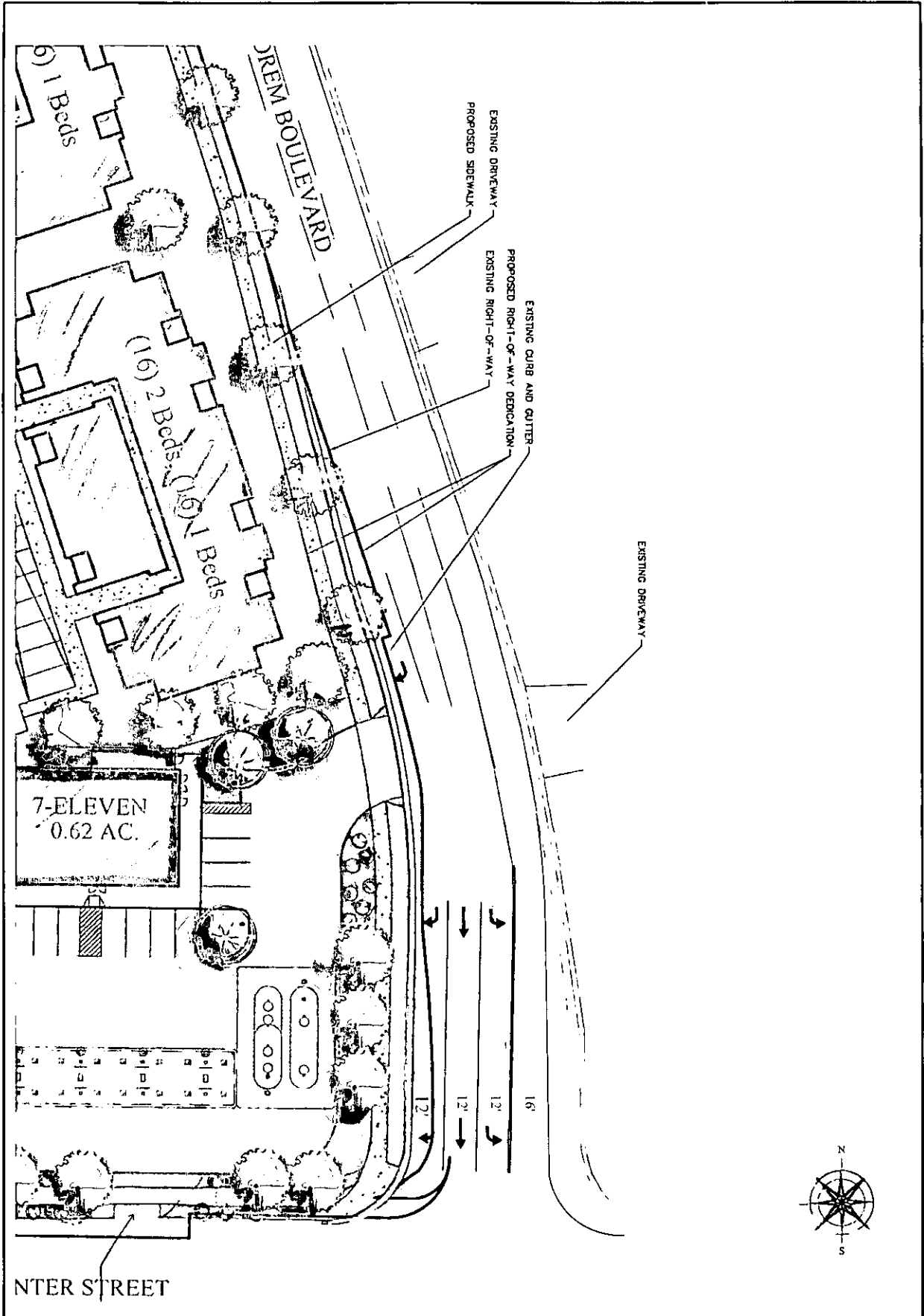
STATE OF UTAH )  
 ) :SS.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 17 day of December, 2012, by Chad Bessinger, as the Manager of BAC III, LLC, who acknowledged that he/she signed this Agreement on behalf of BAC III, LLC.

Katie Sales  
NOTARY PUBLIC







REVISION BLOCK	
NO.	DESCRIPTION

# CONCEPTUAL SITE PLAN APARTMENT PROJECT

**FOCUS**  
ENGINEERING AND SURVEYING, LLC  
301 WEST COTTAGE AVENUE  
SANDY, UTAH 84070 P.O. BOX 153-0073  
www.focusma.com

EXHIBIT A  
DATE: 08/20/13  
SCALE: 1/8" = 1'-0"