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Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 34 P.

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**
Redevelopment Agency of Salt Lake City
Attn: Chief Administrative Officer
PO BOX 145518
Salt Lake City, Utah 84114-5518

(Above space for recorder's use only)

DEVELOPMENT AGREEMENT

between

REDEVELOPMENT AGENCY OF SALT LAKE CITY

and

**BENCHMARK MODERN, INC.
as DEVELOPER**

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made and entered into as of August 12, 2016 ("Effective Date") by and between the REDEVELOPMENT AGENCY OF SALT LAKE CITY, a public agency ("Agency") and BENCHMARK MODERN, INC., a Utah company ("Developer"), both of whom are collectively referred to herein as the "Parties," and individually as a "Party."

WHEREAS, Developer and Agency executed that certain Purchase and Sale Agreement dated as of April 20, 2015 (the "Purchase Agreement"), pursuant to which Agency agreed to sell, and Developer agreed to purchase, on the terms and conditions contained therein, certain property located at 830 South Jefferson Street, Parcel # 15-12-254-026; 836 South Jefferson Street, Parcel # 15-12-254-027; 833 South 200 West, Parcel # 15-12-254-007; and 839 South 200 West, Parcel # 15-12-254-008, as more particularly described on Exhibit "A" attached hereto (the "Property");

WHEREAS, in the Purchase Agreement, Developer agreed that, in the event of a closing thereunder, it would construct certain improvements on the Property in accordance with the terms of a development agreement in the form hereof; and

WHEREAS, Developer purchased the Property as of the Effective Date and, in connection with the closing of such purchase, the Parties desire to enter into this Agreement.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1 Definitions

As used herein, the following terms shall have the meanings respectively indicated:

"Architect" means Leland A. Gray Architect, the Utah licensed architect hired by Developer to perform design and architectural services in connection with the Developer Improvements.

"City" means Salt Lake City Corporation, a municipal corporation.

"Closing Documents" means any and all written documents executed by Agency and Developer for the purpose of transferring the property and beginning the development process, including but not limited to any contingent assignment agreements, personal guarantees, and special warranty deeds.

"Construction Financing" means the loan obtained by the Developer from Agency to finance any of the costs of the construction of the Developer Improvements. Notwithstanding any of the foregoing, the Purchase Price Reduction Repayment Agreement executed concurrently with and as part of Developer's purchase of the Property shall in no way be construed to be Construction Financing.

“Deed and Reverter Agreement” means that certain Special Warranty Deed and Right of Reverter Agreement recorded in Salt Lake County Official Records on the date hereof pursuant to which Agency conveyed the Property to Developer.

“Developer Improvements” means the improvements to be constructed on the Property by Developer as described in Exhibit “B” attached hereto and as shown on the Site Plan.

“Events of Force Majeure” means any event or period of delay preventing the performance of Developer’s obligations, which delay is caused by strikes, lock-outs, fire or other casualty, inclement weather abnormal for the period of time and not reasonably anticipatable, the elements or acts of God, war, riot, insurrections, or shortages of or unusual delays in the delivery of construction materials (which have been ordered in a timely manner) or other causes, other than financial and managerial, beyond the reasonable control of Developer, or their subcontractors of any tier, agents, or employees.

“Final Construction Documents” means the final construction documents for the Developer Improvements, prepared by Architect and dated March 30, 2016, which were approved by Agency pursuant to the Purchase Agreement. A copy of the index sheet of the Final Construction Documents is attached hereto as Exhibit “E.”

“Loan Documents” means any and all written documents executed by Agency and Developer as part of the Purchase and Sale Agreement or Construction Financing, including but not limited to the loan agreement, and associated promissory notes, deeds of trust, guarantees, and escrow agreements..

“Material Change” means (i) with respect to any other element of the Developer Improvements, a reduction in the size of such element by more than five percent (5%), (ii) with respect to any element of the Developer Improvements, a substitution of any materials or a change in design from that specified in the Final Construction Documents that has a lower cost, or (vii) any other change in the Final Construction Documents, other than a change that the Executive Director of the Agency agrees in writing is an insignificant change..

“Punchlist Items” means incomplete or inadequately constructed items that are qualitatively minor and that do not materially impair Developer’s ability to use the Developer Improvements for their intended purpose or materially impair Developer’s ability to occupy the Developer Improvements.

“Purchase Price Reduction Repayment Agreement” means the Purchase Price Reduction Repayment Agreement that Developer executed as part of the consideration for its purchase of the Property.

“Schedule of Development” means the respective times for the completion of the construction of the Developer Improvements set forth in Exhibit “D” attached hereto.

“Site Plan” means the site plan attached hereto as Exhibit “C” that generally depicts the Property and the configuration of the Developer Improvements.

ARTICLE 2

Requirements for the Development of the Property

2.1 Insurance, Building Permits and Bonds. Prior to commencing any construction activities on the Property or adjacent property or any construction staging area, Developer shall deliver to Agency the following:

- (a) certificates of insurance verifying that the insurance required under Sections 2.2, 2.3, and 2.4 has been obtained.
- (b) copies of all permits, including without limitation building permits, which are required by the City or any other governmental agency having jurisdiction over the construction of the Developer Improvements.
- (c) in lieu of a performance bond and a payment bond, an agreement with Partner Engineering and Science Services guaranteeing timely performance by Developer of its obligations under this Agreement.

2.2 Property Insurance. Developer shall maintain property insurance in the amount of the contract price for construction of the Developer Improvements (including any increase in price based on change orders) on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance. Agency shall be named as an additional named insured of such insurance policy. Such insurance shall include the interests of Agency, Developer, and any subcontractors and sub-subcontractors in the work. Such property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, flood, earthquake, theft, vandalism, malicious mischief, collapse, false work, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect's services and expenses required as a result of such insured loss. Developer shall also maintain Boiler and Machinery Insurance, if necessary, which shall specifically cover such insured objects during installation until final acceptance by Developer. Agency shall be named as an additional named insured of such insurance policy. Such insurance shall include the interests of Agency, Developer, subcontractors and sub-subcontractors in the work.

2.3 Developer's Insurance. Developer shall maintain insurance with at least the following minimum insurance coverages:

- (a) To the extent required under Utah law, workers' compensation insurance in the amount of the statutory limit;
- (b) Employers' liability insurance in an amount not less than \$1,000,000; and
- (c) Comprehensive Automobile Liability Insurance, including coverages of owned, non-owned and hired vehicles, shall be written with combined single limits (including personal injury liability, bodily injury liability and property damage liability) of not less than \$3,000,000 per each occurrence during the policy year.

(d) General Liability Insurance shall be written on a Commercial General Liability coverage form, which coverages shall include Independent Contractor's Liability coverage, Blanket Contractual Liability Endorsement, premise and operation coverage, Broad Form Property Damages Endorsement, explosion, collapse and underground hazard coverage, fire legal liability coverage, Product-Completed Operations coverage (which shall be kept in effect for two years after the completion of the Developer Improvements), and Personal Advertising Injury Coverage. The coverage limits shall be not less than the following:

- (i) Each Occurrence limit - \$1,000,000
- (ii) General Aggregate - \$2,000,000
- (iii) Product/Completed Operations Aggregate - \$2,000,000
- (iv) Personal and Advertising Injury Limit - \$1,000,000

Agency shall be an additional named insured on the Developer's General Liability Insurance and Comprehensive Automobile Liability Insurance. The Developer's General Liability Insurance and Comprehensive Automobile Liability Insurance shall be provided on an "occurrence" form and not on a "claims made" form.

2.4 Architect's Insurance. Developer shall cause the Architect to continuously maintain during the course of its performance of professional services, insurance as follows:

(a) General Liability Insurance written on an occurrence basis with per claim and aggregate annual limits of liability of not less than \$1,000,000 and with a deductible or self-insured retention of not greater than \$5,000; and

(b) Professional liability insurance with per claim and aggregate annual limits of liability of not less than \$1,000,00 per claim and \$2,000,000 aggregate and with a deductible or self-insured retention of not greater than \$5,000.

The Professional Liability Insurance shall be maintained without interruption for a period of two (2) years after the date of the completion of the Developer Improvements. Developer and Agency shall be additional named insureds on Architect's General Liability Insurance.

2.5 Insurance Requirements Generally. Each insurance policy and bond required hereunder must be issued by a company lawfully authorized to do business in the State of Utah rated A- or better with a financial size category of class VIII or larger by A.M. Best Company and, in the case of the bonds, from a surety holding a certificate of authority as an acceptable surety on federal bonds as listed by the United States Department of Treasury (Circular 570, as amended) in its most recent list at the time of issuance of the applicable bond. Developer shall obtain the agreement of Architect to permit Agency, upon request, to examine the original insurance policies required hereby along with any endorsements thereto. In the event the aggregate annual limits of any insurance policies required in Sections 2.2, 2.3, and 2.4 above are depleted below the aggregate annual limits required set forth therein because of payment of claims, defense costs, or any other reason, Developer shall require that the Architect purchase

such additional insurance coverage as is necessary to cause such insurance policy(ies) to achieve the aggregate annual limits of liability required in Sections 2.2, 2.3, and 2.4 above. Developer shall provide in its contracts with the Architect that if the Architect at any time neglects or refuses to provide the insurance required herein, or should such insurance be canceled, Developer shall have the right, but not the obligation, to procure the same at the cost and expense of the Architect, and the cost thereof may be deducted by Developer from any monies then due or thereafter to become due to the Architect. Developer shall promptly exercise its rights under such contracts. Developer shall bear all costs, expenses, and damages incurred by Agency arising from such failure to purchase and maintain insurance required by this Agreement.

ARTICLE 3

Agreements to Develop the Property

3.1 Developer Obligation. Developer agrees to cause the Property to be developed in accordance with the terms and provisions set forth in this Agreement. Within five days of the Effective Date, Developer shall commence demolition of the structures on the Property ("Structures"). Agency shall pay the contract cost of the demolition of the Structures, up to a maximum amount of Forty Thousand Dollars (\$40,000.00). Within fifteen (15) days of completion of the demolition of all the Structures, Buyer shall submit to Agency a copy of the contractor invoice for the demolition for payment by the Agency.

3.2 Subdivision & Platting. Developer shall subdivide and re-plat the Property, which may occur prior to or after closing under the Purchase Agreement. However, to the extent that any additional subdivision or platting work is required as Developer is constructing the Developer Improvements, then Developer shall complete such work at entirely its own expense, and any such work must be approved in advance by Agency.

3.3 Construction of Developer Improvements. Within five business days of the Effective Date, Developer shall commence and thereafter diligently prosecute to completion the construction of the Developer Improvements. Subject to Events of Force Majeure, by the time set forth in the Schedule of Development, Developer shall substantially complete the Developer Improvements in accordance with the Final Construction Documents and the requirements of all governmental authorities and fire underwriters, except for "Punchlist Items."

3.4 Cost of Construction of Developer Improvements. The cost of developing and constructing the Developer Improvements and all other costs shall be borne solely by Developer. Throughout construction, Developer shall provide monthly written confirmation from a title company selected by Agency that no liens have been recorded on the Property except those previously approved by Agency. Developer shall be entitled to the following two allowances from the Agency:

(a) Site Utility Reimbursement Allowance: The Agency will reimburse Developer or pay directly on Developer's behalf up to sixty thousand dollars (\$60,000) ("Site Utility Reimbursement Allowance") of the properly documented costs associated with the construction of extending water, sewer, and electrical service necessary to redevelop the Property according to the Final Construction Documents. The Site Utility Reimbursement Allowance shall not be available to pay for architectural fees. To receive

the Site Utility Reimbursement Allowance or any portion thereof Developer must submit requests for disbursement for expenses related to the construction of approved site utilities and Agency shall pay the amount requested by Developer upon Developer providing and/or satisfying the following:

(i) A statement describing the work for which Developer is seeking payment or reimbursement with sufficient detail to determine whether such work is reimbursable with the Site Utility Reimbursement Allowance, which determination of whether such expenses are reimbursable shall be made in Agency's reasonable discretion. The intent of the Site Utility Allowance is to offset the cost of extending water, sewer, and electric service to the Property from the public right of way;

(ii) A copy of all Developer invoices totaling, or in excess of, the amount of such work for which reimbursement or payment is sought.

(iii) A copy of all construction lien releases or other lien releases, or partial releases, on account of such construction work.

(iv) A copy of all building permits, to the extent required for the portion of work to be funded, with all sign-offs executed.

(v) Any other documentation that may be reasonably requested by Agency.

(b) **Public Walkway Allowance:** The Agency will reimburse Developer or pay directly on Developer's behalf up to One Hundred Sixty Five Thousand Dollars (\$165,000) ("Public Walkway Allowance") of the properly documented costs associated with the construction of a public mid-block walkway across the Property ("Public Walkway") in accordance with the Final Construction Documents. To receive the Public Walkway Allowance or any portion thereof, Developer must submit requests for disbursement for expenses related to the design and construction of the Public Walkway and Agency shall pay the amount requested by Developer upon Developer providing and/or satisfying the following:

(i) A statement describing the work for which Developer is seeking payment or reimbursement with sufficient detail to determine whether such work is reimbursable or payable with the Public Walkway Allowance, which determination of whether such expenses are reimbursable shall be made in Agency's reasonable discretion;

(ii) A copy of all Developer invoices totaling, or in excess of, the amount of such work for which reimbursement or payment is sought.

(iii) A copy of all construction lien releases or other lien releases, or partial releases, on account of such construction work.

(iv) A copy of all building permits, to the extent required for the portion of work to be funded, with all sign-offs executed.

(v) Any other documentation that may be reasonably requested by Agency.

3.5 Change Orders. Developer shall obtain Agency's prior written approval to any change order to the contract with any subcontractor that results in an increase or decrease in the contract price by more than 5%, or any change order that changes the original design concept or intent for the Developer Improvements as set forth in the Construction Documents.

3.6 Certificate of Completion. After completion of all construction and development of the Developer Improvements, Developer shall provide a certificate to Agency to that effect signed by Developer and the Architect. If Agency finds that the certificates are in order, Agency shall furnish Developer a certificate of completion ("Certificate of Completion") within twenty (20) days after a written request from Developer. The Certificate of Completion shall be a preliminary determination of satisfactory completion of Developer's obligations required by this Agreement with respect to the Developer Improvements and the Certificate of Completion shall so state. Notwithstanding any issuance of a Certificate of Completion, the duty of Developer to construct the Developer Improvements in accordance with the Final Construction Documents shall survive the issuance of a Certificate of Completion and causes of action related to the Developer Improvements shall be limited solely by the applicable statute of limitations; provided, however, that Agency agrees that it may not exercise the right of reverter in the Deed and Reverter Agreement related to the Development Improvements, after the date on which the Certificate of Completion is issued. Notwithstanding the foregoing, Agency shall continue to be able to exercise its right of reverter in the Deed and Reverter Agreement as it relates to owner occupancy even after the Certificate of Completion has been issued. A Certificate of Completion shall be in recordable form and may, at the option of Developer, be recorded in the Recorder's Office of Salt Lake County, and upon such recordation of the Certificate of Completion, this Agreement shall be terminated of record. If Agency refuses or fails to furnish a Certificate of Completion for the Developer Improvements within twenty (20) days after a written request from Developer, Agency shall, within five (5) days of written request therefor, provide Developer with a written statement of the reasons Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain Agency's opinion of the actions Developer must take to obtain a Certificate of Completion. Agency shall not refuse to furnish the Certificate of Completion if Developer has completed all construction and development of the Developer Improvements in accordance with the Development Agreement. A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Developer Improvements, or any part thereof.

3.7 Rights of Access. For the purpose of assuring compliance with this Agreement, so long as they comply with all safety rules of Developer, representatives of Agency shall have the right of access to the Property without charges or fees, during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Developer Improvements. In addition, Agency shall have the right

to enter the Property (and the improvements thereon) or any part thereof at all reasonable times for the purpose of exercising Agency's remedies, including cure rights contained in this Agreement and for the construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Property.

3.8 Local, State, and Federal Laws. Developer shall carry out the construction of the Developer Improvements in compliance with all applicable federal, state, county, municipal and other local laws, regulations, codes and ordinances, licenses, permits, and orders.

3.9 Antidiscrimination During Construction. Developer agrees that it, and in the construction of the Developer Improvements, its subcontractors, sub-subcontractors, Architect, and its and their agents and employees, shall not discriminate against any employee or applicant for employment on any unlawful basis.

3.10 Event of Force Majeure. Developer shall immediately notify Agency of the occurrence of an Event of Force Majeure and a proposed adjustment to applicable dates in the Schedule of Development, which Developer and Agency shall then modify as appropriate. If Developer fails to so provide Agency with notice of the occurrence of an Event of Force Majeure, Developer shall have waived the right to claim an Event of Force Majeure.

3.11 Maintenance of Records. Developer shall keep complete and comprehensive records and books of account as to all of its activities, including the performance of its obligations, under this Agreement ("Records"). Developer shall maintain all records pursuant to Generally Accepted Accounting Principles (GAAP) and pursuant to pronouncements by the Financial Accounting Standards Board (FASB). Upon not less than five (5) business days prior written notice to Developer, Agency shall have reasonable access during customary business hours to all records, functions, property and to the extent reasonably available personnel of Developer, including Developer's consultants and subcontractors under this Agreement, for the purpose of reviewing and auditing, at Agency expense, all records of Developer related to the Developer Improvements as necessary to determine Developer's compliance with this Agreement.

3.12 Contingent Assignment of Construction Documents to Agency. The Final Construction Documents, including the Architect Agreement and Construction Contract shall be contingently assigned to Agency in the form as attached hereto as Exhibit "F" ("Contingent Assignments").

3.13 Profit Sharing. Pursuant to the terms set forth in the Purchase Price Reduction Repayment Agreement, Developer shall pay to Agency one half of the profit in excess of 13% realized by Developer from the sale of the Property, or Developer Improvements, or any portion thereof. Profit means the gross revenue from all sales of the Property, or Developer Improvements, or any portion thereof, minus all costs associated with the construction and sale of the Developer Improvements and marketing and closing costs.

ARTICLE 4
Indemnity.

4.1 **Indemnification.** Developer assumes all responsibility, both before and after the issuance of the Certificate of Completion for, and holds Agency and the City, and their consultants, officers, employees, and agents harmless from, and agrees to indemnify and defend, Agency, the City, and their consultants, officers, employees, and agents (collectively and individually the "Indemnitees"), against, all claims, liabilities, losses, costs, and expenses (including, without limitation, attorneys' fees, reasonable investigative and discovery costs, and court costs), damages, and injuries (including, without limitation, injuries to persons, loss of life, damage to tangible or intangible property, rights, or economic loss, whenever occurring) arising out of or caused in whole or in part by the acts, errors, or omissions of Developer or its agents, employees, servants, or their contractors, subconsultants of any tier, or subcontractors of any tier, or anyone directly or indirectly employed by them or for whose acts they may be liable, in the design and construction of the Developer Improvements, the Property and/or adjacent property or any improvements thereon (as applicable), regardless of whether or not such claim, liability, loss, cost, expense, damage, or injury is caused in part by the negligence or other fault of an Indemnatee or whether liability is imposed upon an Indemnatee by applicable laws, rules or regulations, regardless of negligence or other fault of the Indemnatee. This indemnification obligation is intended to include, without limitation, the indemnification of Indemnitees for damages apportioned to any one or more of them in cases of comparative negligence or fault, where any portion of such damages is also apportioned to Developer or its agents, employees, servants, consultants, contractors, subconsultants of any tier, or subcontractors of any tier, or anyone directly or indirectly employed by them or for whose acts they may be liable.

4.2 **Defense.** Developer shall defend all suits brought upon such claims and shall pay all costs and expenses incidental thereto.

4.3 **No Effect on Other Rights.** This obligation to indemnify shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which may otherwise exist in favor of the Indemnitees.

4.4 **Coverage.** This obligation to indemnify, defend, and hold harmless shall remain effective notwithstanding the completion of the Developer Improvements, and shall apply to damages and injuries discovered before and after termination of this Agreement. In claims against the Indemnitees by an employee of Developer, or its agents, employees, servants, consultants, subconsultants of any tier or subcontractors of any tier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Developer or its agents, employees, servants, consultants, subconsultants of any tier, or subcontractors of any tier, under workers' or workman's compensation acts, disability benefit acts, or other employee benefits acts. Without limiting the generality of the foregoing, the indemnity and obligation to defend and hold harmless shall extend to all claims and causes of action arising out of or caused in whole or in part by the acts, errors, or omissions of Developer or its agents, employees, servants, or their contractors, subconsultants of any tier, or subcontractors of any tier, or anyone directly or indirectly employed by them or for whose acts they may be liable, related to:

(a) Design and/or construction of the Developer Improvements or any other work or thing done in, on or about the Property or adjacent property (if applicable), or a part thereof;

(b) During the term hereof, any use, non-use, possession, occupation, construction, alteration, repair, condition, operation or maintenance of the Property or adjacent property (if applicable), or improvements thereon by or through Developer, or any nuisance made or suffered thereon or any failure by Developer to keep the Property, adjacent property (if applicable), or improvements thereon or of any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge, or space comprising a part thereof in a safe condition;

(c) Any fire, accident, injury (including death), or damage to any person or property occurring in, on, or about the Property or adjacent property (if applicable) or improvements thereon or any part thereof or in, on, or about any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof; and

(d) Any lien or claim which may be alleged to have arisen against or on the Property or adjacent property (if applicable), or improvements thereon or any part thereof or any of the assets of, or funds appropriated to, Agency, or any liability which may be asserted against Agency with respect thereto.

ARTICLE 5

Transfer; Financial Encumbrances

5.1 Prohibition Against Transfer of Property, Developer Improvements and Assignment of Agreement. Prior to the issuance by Agency of the Certificate of Completion, Developer shall not, without the prior written approval of Agency (which may be withheld in its absolute discretion) (i) sell, transfer, or convey directly or indirectly, the whole or any part of the Property or the buildings or structures thereon, or (ii) transfer, assign, or convey this Agreement or Developer's obligations hereunder. Developer shall not permit any change in the general partner(s), if applicable, or in the ownership of or with respect to the parties that own an interest in Developer on the date hereof, prior to the issuance of Certificate of Completion for the Developer Improvements, without the prior written consent of Agency, which consent may be withheld in its absolute discretion. These prohibitions shall not be deemed to prevent the granting of easements or permits to facilitate the construction of the Developer Improvements.

5.2 Encumbrances. Except pursuant to the Construction Financing provided by the RDA, no mortgages, deeds of trust, or other forms of conveyance required for any financing shall be permitted before the issuance of Certificate of Completion for the Developer Improvements. Approval of the Construction Financing shall be governed by the Purchase Agreement.

ARTICLE 6

Defaults and Remedies

6.1 Default. It shall be an event of default under this Agreement by Developer (an

“Event of Default”) if Developer shall fail to perform any of its duties or obligations hereunder at the time for performance set forth herein or if Developer shall default in its obligations under any of the covenants and conditions contained in Covenants First through Seventh in the Deed and Reverter Agreement, and thereafter fails to cure such default within thirty (30) days of its receipt of a written notice of default from Agency; provided, however, that in the event that the nature of such default is such that more than thirty (30) days are reasonably required for its cure, then such default will not be deemed to be an Event of Default if Developer shall commence such cure within such thirty (30) days period and shall thereafter diligently prosecute such cure to completion; provided, further, that the maximum additional time to complete such cure shall be thirty (30) days (sixty (60) days in total); provided further that if an Event of Force Majeure shall occur during such period then the time to complete such cure shall be extended by the time period of such event. Following an Event of Default, Agency shall have all remedies specified in the Deed and Reverter Agreement, and all remedies at law or in equity, which shall include the right to restrain by injunction any violation or threatened violation and by decree to compel specific performance of any terms, covenants or conditions of this Agreement, it being agreed that the remedy at law for any breach of any term, covenant, or condition of this Agreement is not adequate.

6.2 Right to Cure. Should Developer fail to timely perform any of the obligations set forth in this Agreement and thereafter fail to diligently commence performing any of such obligations within thirty (30) days of its receipt of Agency’s written demand therefor, Agency, its successors and assigns, shall, in addition to any other remedy provided at law or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of Developer, and Developer shall reimburse Agency, its successors and assigns, for the actual cost of performing such work within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event Developer does not reimburse Agency or its successors and assigns within such ten (10) days, Agency, its successors or assigns, shall have (i) the right to exercise any and all rights which Agency, its successors or assigns, might have at law to collect the same, and (ii) have a lien on the Property to the extent of the amount paid by Agency, its successors or assigns, but not reimbursed by Developer, which amount shall bear interest at a rate equal to the then published “Prime Rate” of Citibank, N.A., plus two percent (2%) per annum (the “Interest Rate”) (the Parties acknowledging that such rate may not be the lowest or “best” rate), or the highest legal rate of interest, whichever is less, from the date of billing until paid. Such lien may be filed for record as a claim against Developer, in the form required by law, in the Salt Lake County Recorder’s Office, which lien shall contain at least the following information:

- (a) The name of the lien claimant;
- (b) The name of Developer;
- (c) A description of the work performed on behalf of Developer and a statement itemizing the cost thereof; and
- (d) A description of the Property.

The lien so claimed shall attach from the date of recordation in the amount claimed, and it may be enforced and foreclosed in any manner allowed by law, including, but not limited to, suits to foreclose a mechanic's lien, trust deed, or mortgage under applicable law. Such lien, when so established against the real property described in such lien, shall be prior and superior to any right, title, interest, lien, or claim which may be or is acquired or attached to such real property after the time of recording the claim of lien, but shall in any event be subordinate to the lien of a Qualified Mortgagee (as defined below).

6.3 Breach Shall Not Permit Termination. No breach of this Agreement shall entitle Developer to cancel, rescind or otherwise terminate this Agreement.

6.4 No Limitation of Remedies; Sole Discretion. The various rights and remedies herein contained, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein. Developer and the successors and assigns of Developer, shall be jointly and severally liable for any default under this Agreement; provided, any action with regard to such default may be instituted against all or any one of them. All decisions and determinations made by Agency under this Article 7 may be made in Agency's sole discretion.

6.5 Rights of Agency on Revesting. Upon the revesting, if ever, in Agency of title to the Property or any part thereof as provided in the Deed and Reverter Agreement, Agency may elect (but is not required) to assume the Construction Contract or enter into new contract documents with a new contractor and complete construction of the Developer Improvements or such other improvements as it determines appropriate. Alternatively, Agency may resell the Property in such manner as Agency shall find feasible and consistent with applicable law to a qualified and responsible party or parties as determined by Agency, who will assume the obligation of making or completing the Developer Improvements, or such other improvements in their stead, as shall be satisfactory to Agency and in accordance with the uses specified for the Property. Upon such election or upon such resale of the Property, as the case may be, the following requirements shall be satisfied:

(a) First, any loan secured by a mortgage or deed of trust permitted by this Agreement, if any, shall be paid in full or assumed (subject to the terms and conditions set for the applicable mortgage or deed of trust and related documents thereto).

(b) Second, Agency shall be entitled to reimburse Agency, on its own behalf, or on behalf of Salt Lake City, for all costs and expenses of Agency incident to the sale and/or conveyance of the Property, for all costs and expenses incurred by Agency (including salaries to personnel) in connection with the exercise of Agency's rights hereunder and in the management and resale of the Property (but less any income derived by Agency from the Property in connection with such management); all taxes, assessments, and water, sewer and other utility charges with respect to the Property; any payments made or necessary to be made to discharge any existing encumbrances or liens, or prevent from attaching or being made any subsequent encumbrances or liens due to

obligations, defaults, or acts of the Developer or any expenditures made or obligations incurred with respect to the making or completion of the Developer Improvements or any part thereof on the Property or portion thereof; and any amounts otherwise owing Agency by Developer; and

(c) Third, any funds remaining from the resale of the Property after the reimbursements pursuant to paragraphs 6.5(a) and (b) above are made, Developer shall be entitled to a reimbursement in an amount equal to the sum of:

(1) the purchase price in cash actually received by Agency from Developer for the Property minus any payment to or on behalf of Developer that was provided by Agency pursuant to the Site Utility Reimbursement Allowance or Public Walkway Allowance above; plus

(2) the costs reasonably incurred by Developer in connection with the construction of any of the Developer Improvements existing on the Property at the time of the reentry and repossession (including the fees paid to the Architect for preparing the Final Construction Documents, to Developer's engineers, and to design development and construction professionals whose work product Agency determines creates value for the Development Improvements (but excluding all other soft costs and other expenses incurred by Developer in connection with the development of the Developer Improvements and the costs of personnel of Developer), if and to the extent that Agency determines such existing Developer Improvements may be used in completing the construction of the remaining Developer Improvements or may be used in completing any other development of the Property as determined by Agency (such determinations to be made on a reasonable basis).

Any balance remaining after such reimbursement shall be retained by Agency.

ARTICLE 7

Mortgagee Protection

7.1 Definitions. As used in this Agreement, each of the following terms shall have the indicated meaning:

(a) "Mortgage" means a mortgage, or a deed of trust, or other security agreement recorded in the Official Records.

(b) "Mortgagee" means the mortgagee under a mortgage, the beneficiary under a deed of trust or the secured party under any security agreement recorded with respect to the Property or any portion thereof in the Official Records.

(c) "Official Records" means the official records of the Salt Lake County Recorder, State of Utah.

(d) "Qualified Mortgagee" means a Mortgagee of which Agency has been given written notice, including such Mortgagee's name and address.

7.2 Obligations of Mortgagee. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Qualified Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Agreement.

7.3 Notices; Right to Cure. On delivering to Developer any notice, demand or other communication pursuant to the provisions of this Agreement, Agency shall at the same time deliver copies of such notice to each Qualified Mortgagee at the latest address provided to Agency by such Qualified Mortgagee. Although otherwise effective with respect to Owner and Developer, no notice delivered to Owner or Developer shall affect any rights or remedies of a Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to Developer or Owner.

7.4 Performance. A Qualified Mortgagee shall have the right to act for and in the place of Developer or Owner to the extent permitted by the applicable Mortgage or otherwise agreed to by Developer or Owner in writing. Agency shall accept performance by or on behalf of a Qualified Mortgagee as if the same had been performed by Developer or Owner. A Qualified Mortgagee shall have the right, to the extent Developer or Owner agrees in writing, to appear in a legal action or proceeding on behalf of Developer in connection with the Property.

7.5 Recognition. Within 30 days of a written request therefor together with evidence as Agency may reasonably require that a proposed Qualified Mortgagee in fact meets the requirements of a Qualified Mortgagee as set forth herein, Agency agrees to execute, acknowledge and deliver to such Qualified Mortgagee an instrument stating that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of this Article 7.

7.6 Estoppel Certificate. Within ten (10) days after a written request by Developer, a Qualified Mortgagee or a proposed Qualified Mortgagee, and upon payment of Agency's reasonable out-of-pocket legal costs incurred in connection with the issuance thereof, Agency shall issue a certificate confirming or not confirming if not accurate:

- (a) that this Agreement is in full force and effect;
- (b) that to Agency's knowledge no default (or event which, with the giving of notice or passage of time, or both, will constitute default) exists on the part of Developer or Agency under this Agreement;
- (c) that no change or modification of this Agreement shall be made without the written consent of Mortgagee;
- (d) that Agency shall provide Mortgagee with a copy of all notices including, without limitation, notices of default sent to Developer; and
- (e) such other matters pertaining to this Agreement as may reasonably be requested.

The Qualified Mortgagee requesting the certificate shall be entitled to rely on the certificate.

ARTICLE 8
General Provisions

8.1 Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

8.2 Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

8.3 Attorneys' Fees. In any legal or equitable proceeding for the enforcement of, or to restrain the violation of, or otherwise pertaining to a dispute concerning this Agreement or any provision hereof, by reference or otherwise, the prevailing Party shall be entitled to an award of reasonable attorneys' fees in such amount as may be fixed by the court in such proceedings, in addition to costs of suit. If counsel is otherwise employed to enforce this Agreement or any provision hereof, the Party forced to take action that does not involve litigation shall be entitled to its reasonable attorneys' fees.

8.4 Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing, and shall be deemed to be delivered, whether actually received or not, three (3) days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, or another commercially acceptable means requiring a return receipt, postage prepaid, addressed as follows:

If to Developer: Benchmark Modern, Inc.
760 South 500 East
Salt Lake City, UT 84102-3302
Attn: Garth Hare

If to Agency: Redevelopment Agency of Salt Lake City
Room 418, City & County Building
451 South State Street
P.O. Box 145518
Salt Lake City, Utah 84114-5518
Attention: Chief Administrative Officer

With a copy to: Salt Lake City Attorney's Office
451 South State Street, Room 418
P.O. Box 145478
Salt Lake City, UT 84114-5478
Attn: RDA Attorney

Upon at least ten days prior written notice, each Party shall have the right to change its address to any other address within the United States of America.

8.5 Governing Law. This Agreement is intended to be performed in the State of Utah, and the laws of Utah shall govern the validity, construction, enforcement, and interpretation of this Agreement, without giving effect to Utah's conflict or choice of laws provisions.

8.6 Entirety and Amendments. This Agreement, together with the Purchase Agreement, Closing Documents, and any Loan Documents executed between the Agency and Developer, embodies the entire agreement between the Parties and supersedes any prior agreements and understandings, if any, relating to the Property, and may be amended or supplemented only by an instrument in writing executed by both Agency and Developer.

8.7 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

8.8 Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed and delivered by Agency and Developer, Agency and Developer agree to perform, execute and deliver or cause to be performed, executed, and delivered any and all such further acts, deeds, and assurances as may be necessary to consummate the transactions contemplated hereby.

8.9 Survival. Except as otherwise provided for herein, all agreements, covenants, representations, and warranties contained herein shall survive the expiration or termination of this Agreement and the performance by Developer of its obligations hereunder.

8.10 Warranty against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys.

8.11 Recordation. At Agency's election, this Agreement or a memorandum of this Agreement shall be recorded in the office of the Salt Lake County Recorder.

8.12 No Relationship of Principal and Agent. Nothing contained in this Agreement, nor any acts of the Parties shall be deemed or construed to create the relationship of principal and agent or of limited or general partnership or of joint venture or of any other similar association between Agency, its successors or assigns, or Developer, its successors or assigns.

8.13 No Presumption. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either Party.

8.14 Exhibits. All references to Exhibits contained herein are references to exhibits attached hereto, all of which are made a part hereof for all purposes.

8.15 Days. Unless otherwise specified in this Agreement, a reference to the word “**days**” shall mean calendar days. The term “**business days**” shall mean each day of the week except weekends and federal holidays during which the United States mail is not delivered.

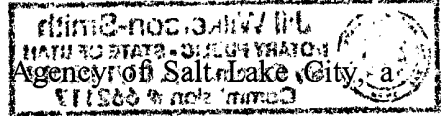
8.17 **Representation Regarding Ethical Standards for Agency or City Officers and Employees and Former Agency or City Officers and Employees**. The Developer represents that it has not: (1) provided an illegal gift or payoff to an Agency or City officer or employee or former Agency or City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the Salt Lake City’s conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, an Agency or City officer or employee or former Agency or City officer or employee to breach any of the ethical standards set forth in the Salt Lake City’s conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

[Signatures on Following Page]


IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

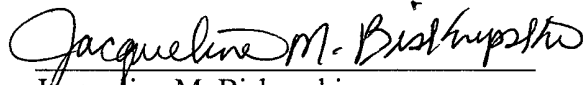
Agency:

Redevelopment
public agency



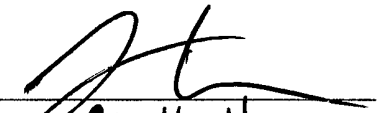
Approved as to form:
Salt Lake City Attorney's Office


Katherine N. Lewis


Jacqueline M. Biskupski
Executive Director

Developer:

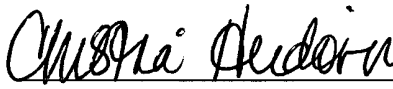
Benchmark Modern, Inc.

By: 
Name: Garth Hare
Title: President

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

On the 19 day of August, 2016, personally appeared before me Jacqueline M. Biskupski, who being by me duly sworn did say she is the Executive Director of the Redevelopment Agency of Salt Lake City, and that the foregoing instrument was signed on behalf of said Agency.

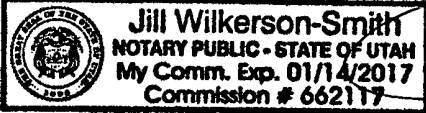




NOTARY PUBLIC
Residing at: 2601 S. Lincoln, SLC, UT 84106

My Commission Expires: 4/1/2019

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

On the 10th day of August, 2016, personally appeared before me Garth Hare, who being by me duly sworn did say he was the owner of Benchmark Modern, Inc., a Utah corporation, and that the within and foregoing instrument was signed on behalf of said company.





NOTARY PUBLIC
Residing at: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

830 South Jefferson Street

Parcel 15-12-254-026

LOT 30 BLK 2 WALKERS SUB OF BLK 5 PLAT A SLC SUR 6250-818 6250-0822 7432-1320 7630-2098 7632-2801 7865-1913 7989-2635 8197-2645 8309-4119 8362-7796

836 South Jefferson Street

Parcel 15-12-254027

LOTS 31 & 32, BLK 2, WALKER'S SUB OF BLK 5, PLAT A, SLC SUR 4589-673 4589-0672 6615-2907, 2909 6615-2911 6623-2765 7107-2531 7337-0746 7864-2907 8839-5090 9236-9346 9698-6529

833 South 200 West

Parcel 15-12-254-007

LOT 13 BLK 2 WALKER'S SUB OF BLK 5 PLAT A & COM 21 FT E FR SW COR SD LOT 13 S 2 FT E 52.67 FT N 2 FT W 52.67 FT TO BEG 7445-1381 9672-5002,5003

839 South 200 West

Parcel 15-12-254-008

COM AT SW COR LOT 12 BLK 2 WALKERS SUB OF BLK 5 PLAT A SLC SUR N 33 FT E 21 FT S 2 FT E 52.67 FT N 2 FT E 58.33 FT S 33FT W 8

EXHIBIT B

DESCRIPTION OF DEVELOPER IMPROVEMENTS

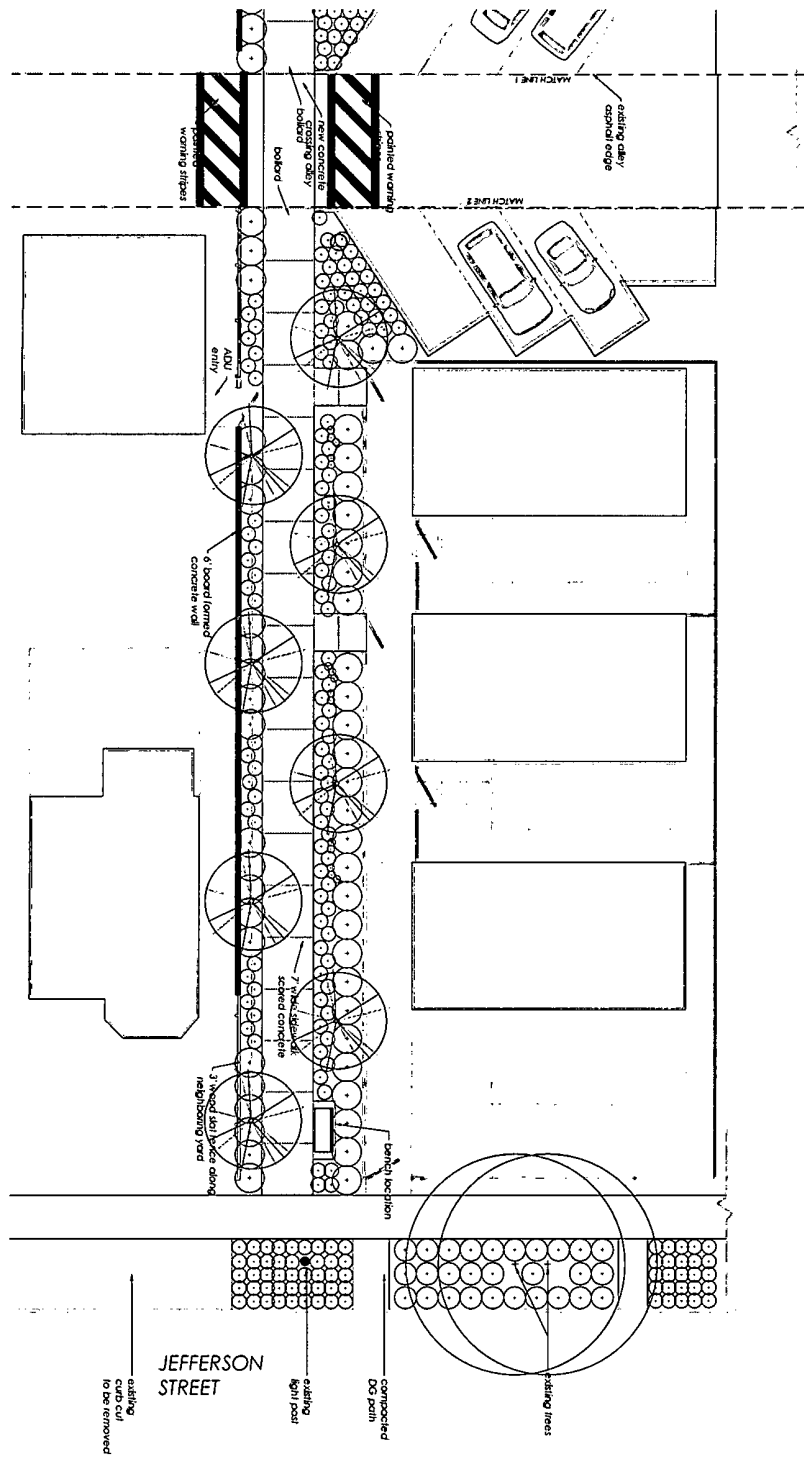
Single Family Residential Development: The Developer shall construct the Developer Improvements as follows:

- a. **New Structures:** Developer shall construct or renovate seven structures on the Property as follows:
 - 1) Construct six, new, two-story, single-family houses not to exceed 1,700 sq. ft. each;
 - 2) Relocate and renovate the home currently located at 830 S. Jefferson Street and construct a new garage for this home at the rear of the Project next to the alley as depicted in the approved construction documents. The garage shall be comprised of a two-car garage on the main level and an approximately 600 square foot dwelling unit on the second story. This structure shall have at least two lights along the western façade of the structure to illuminate the alley.
 - i. During the relocation process, if a structural engineer selected by the Agency determines that the house currently located at 830 S. Jefferson Street cannot survive the relocation process, or if the relocation expenses become excessive—as determined by the RDA Director—Developer shall demolish the home at 830 S. Jefferson Street and construct two, new single-family houses in its stead, according to the attached Approved Contingency Concept for the Property (Exhibit “G”).
- b. **Public Walkway:** Developer shall construct a public walkway connecting Jefferson Street to 200 West, as depicted in the Final Construction Documents. The public walkway shall be construction to at least provide:
 - 1) a clear, open view through the Project to enhance visibility and safety;
 - 2) the Public Walkway shall include lighting, as approved by Agency staff;
 - 3) the Public Walkway shall include perimeter landscaping, as approved by Agency staff;
 - 4) the Public Walkway shall include a perimeter wall/fence, as approved by Agency staff.
- c. **Landscaping:** Developer shall install full landscaping for the front, sides, and rear yards of each home.
- d. **Fencing:** Developer shall construct a privacy fence and/or wall enclosing each yard for the Project.

- e. **Parking.** Developer shall construct at least six shared parking stalls for the benefit of the homes being constructed or renovated as part of the Property.
- f. **Schedule for Construction:** Shall be as set forth in Exhibit "D" below.
- g. **Change Orders:** Developer agrees to provide Agency with notice of each change order. Agency's approval is required for all construction change orders that (either individually or together with any previous change orders) reduce the size of any element of the Project (more than 5%) involve the substitution of any materials or design specified in the Final Construction Documents that have a lower cost, or otherwise constitutes a material change from the Final Construction Documents.
- h. **Additional Developer Improvements:** Additional Developer Improvements, or terms and conditions related thereto, may be added or altered in the Development Agreement as a result of the design and approval process.

EXHIBIT C

SITE PLAN



Jefferson Walkway Landscape Improvements Salt Lake City, Utah

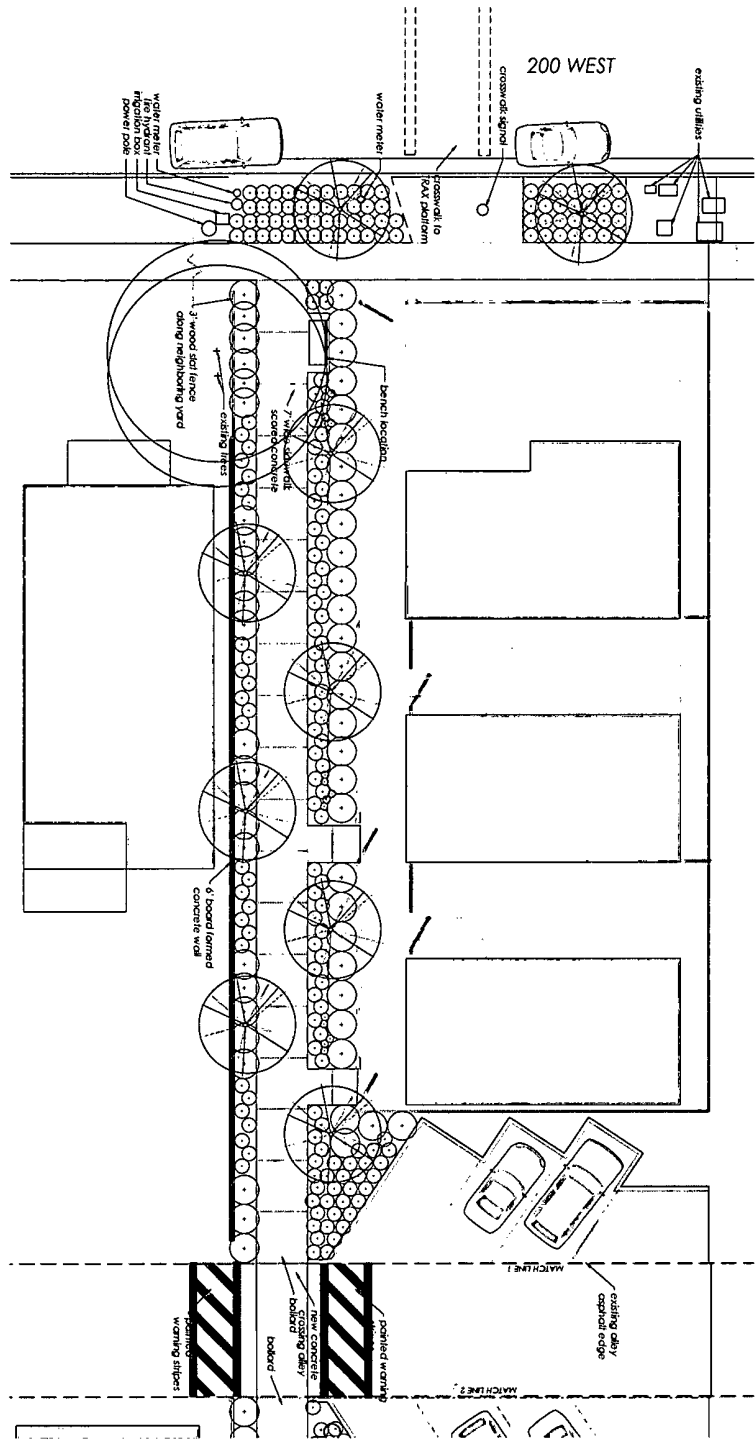
No.	Revised/Issue	Date

VODA
 VODA LANDSCAPE ARCHITECTURE
 288 S. 1000 E. SUITE 100
 SALT LAKE CITY, UTAH 84143
 801.525.2222 www.vodalandscap.com

Site Plan

101.1

Project #15-15	Issue 21 MAR 2016	North ↑
Scale 1/16" = 1'		



Jefferson Walkway
Landscape Improvements
Salt Lake City, Utah

VODA
LANDSCAPE ARCHITECTURE
307 West 200 South, Suite #207
Salt Lake City, Utah 84101
801.524.2441 www.voda.com

Sheet Title: **Site Plan**
Sheet No: **101.1**

Project: **P15-15**
Date: **21 Aug 2016**
Scale: **1" = 15'**

North Arrow

No.	Revision/Issue	Date

EXHIBIT D

SCHEDULE OF DEVELOPMENT

Requirement	Section/Article Reference	Outside Date
Developer to submit to Agency for its approval the proposed Concept Drawings	4.1(b) (of Purchase and Sale Agreement)	Completed
Agency to approve or disapprove the Concept Drawings	4.1(c) (of Purchase and Sale Agreement)	4/9/15
Developer to submit to Agency for its approval the proposed Schematic Design Drawings	4.1(c) (of Purchase and Sale Agreement)	5/9/15
Agency to approve or disapprove the Schematic Design Drawings	4.1(d) (of Purchase and Sale Agreement)	6/9/15
Developer to submit to Agency for its approval the proposed Design Development Drawings	4.1(d) (of Purchase and Sale Agreement)	7/9/2015
Agency to approve or disapprove the Design Development Drawings	4.1(e) (of Purchase and Sale Agreement)	8/9/2015
Developer to submit to Agency for its approval the proposed Construction Documents	4.1(e) (of Purchase and Sale Agreement)	9/9/2015
Agency to approve or disapprove the Construction Documents	4.1(b) (of Purchase and Sale Agreement)	10/9/2015
Outside Closing Date	7.2 (Of Purchase and Sale)	Six months from execution of this Agreement
Commencement of Developer Improvements, including demolition	Article 2 of this Agreement	Within five business days after the Closing Date
Completion of the Developer Improvements and issuance of certificate of occupancy	Article 2 of this Agreement	Within 18 months of Developer closing on the Property.

EXHIBIT E
INDEX SHEET OF FINAL CONSTRUCTION DOCUMENTS

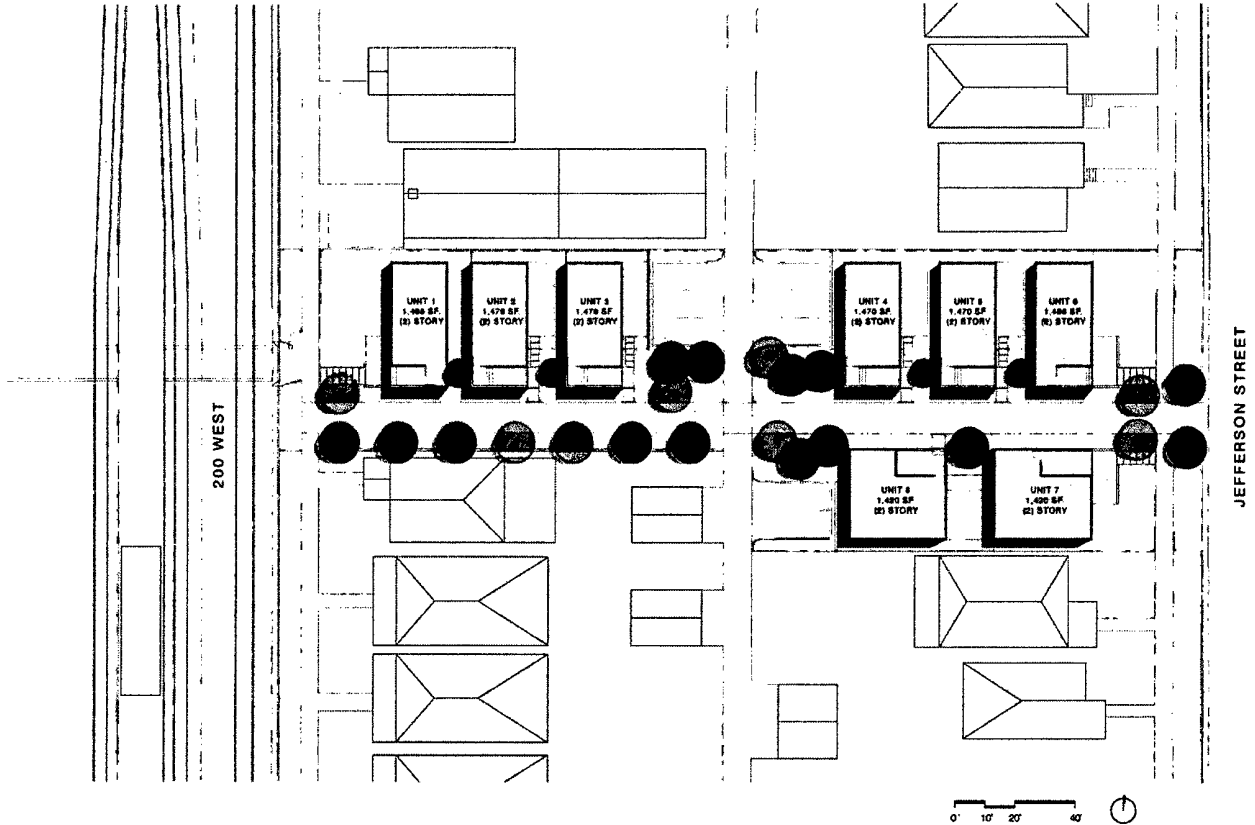
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 0002-Unit 1 (833) Type A - Sheet - A1-00 - ARCHITECTURAL FLOOR PLANS.pdf
 0003-Unit 1 (833) Type A - Sheet - A2-00 - EXTERIOR ELEVATIONS.pdf
 0004-Unit 1 (833) Type A - Sheet - A3-00 - BUILDING SECTIONS.pdf
 0005-Unit 1 (833) Type A - Sheet - A4-00 - ARCHITECTURAL ROOF PLAN & DETAILS.pdf
 0006-Unit 1 (833) Type A - Sheet - A5-00 - ELECTRICAL PLANS.pdf
 0007-Unit 1 S1.0 Type-A.pdf
 0008-Unit 1 S1.1 Type-A.pdf
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 0010-Unit 1 SN.1 Type-A.pdf
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 0205 id1.0landscape.pdf
 0210 Final Plat-1 6-23-16.pdf
 0211 Final Plat-2 6-23-16.pdf

EXHIBIT F
CONTINGENT ASSIGNMENTS

EXHIBIT G

Approved Contingency Concept for the Property



JEFFERSON STREET MID-BLOCK WALKWAY PROJECT

CONCEPT 2 - SITE PLAN

SUMMARY
DENSITY = 28 UNITS PER ACRE
(8) NEW (2) STORY UNITS

