



ENT 135797:2019 PG 1 of 6  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2019 Dec 20 2:03 pm FEE 40.00 BY DA  
RECORDED FOR LEHI CITY CORPORATION

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“Agreement”) effective as of the date the last Party signs below (“Effective Date”) by and among Lehi City, a political subdivision of the State of Utah (“City”) and Home Sweet Home By Mitch, LLC, a Utah Limited Liability Company (“Developer”). The City and the Developer are hereinafter referred to individually as a “Party” and collectively as the “Parties.”

### RECITALS

A. City, acting pursuant to its authority under Municipal Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, -803, as amended, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations of Lehi City, in the exercise of its legislative discretion, has elected to approve and enter into this Agreement.

B. Developer is currently developing a subdivision known as Sunset Farms Plat B located at approximately 1900 South Bridle Path Loop in Lehi City (“Project”) and has applied to amend the General Plan (“Amendment”) from VLDRA (Very Low-Density Residential Agriculture) to VLDR (Very Low-Density Residential).

C. Upon approval of the Amendment by the Lehi City Council, the City would be obligated to reimburse Developer for property necessary for right-of-way and road improvements along 1900 South.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and provisions set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

#### ARTICLE 1

1.1 Right-of-Way Dedication. Upon approval of the Amendment, Developer agrees to dedicate all property along 1900 South necessary for the required right-of-way and to construct the road improvements associated with the Project.

1.2 Reimbursement Waiver. Developer agrees to waive any and all rights it has to a reimbursement from the City for the right-of-way dedication and costs associated with construction of the road improvements described in Section 1.1.

1.3 Condition Precedent. As a condition precedent to the obligations of the Parties hereunder, this Agreement is contingent upon and shall only become effective at such time, and in the event that, the City Council, in the independent exercise of its legislative discretion, elects to approve the Amendment. This Agreement is not intended to and does not affect or in any way bind or supersede the independent exercise of legislative discretion by the City Council in deciding whether to approve or deny the Amendment.

1.4 Covenant Running with the Land. This Agreement constitutes a covenant running

with the land and shall be recorded against the property.

## ARTICLE 2

2.1 Breach and Cure. Any material failure by any Party to perform any term or provision of this Agreement, which breach continues uncured for a period of ten (10) days following written notice of such failure from the non-defaulting Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged breach and, where appropriate, the manner in which said breach satisfactorily may be cured. If the nature of the alleged breach is such that it cannot reasonably be cured within such 10-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 10-day period. Upon the occurrence of an uncured breach or default under this Agreement, this Agreement shall be terminated and the non-defaulting Party may pursue any and all available legal or equitable remedies.

## ARTICLE 3

3.1 Indemnification. Developer agrees to indemnify, hold harmless and defend the City from and against any and all loss, damage, or expense which the City may suffer or for which the City may be held liable by reason of any injury (including death) or damage to any property to the extent arising out of the conduct of the Developer related to the matters referred to herein. This indemnity provision shall not apply to claims arising from or attributable to the negligence or intentional conduct of the City.

3.2 No Agency, Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties that this Agreement does not create any form of agency relationship, joint venture, or partnership expressed or implied between them.

3.3 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

3.4 Other Necessary Acts. Each Party shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement.

3.5 Construction/Interpretation. The Parties acknowledge that each has had the opportunity to have this Agreement reviewed and revised by legal counsel and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

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

3.7 Waiver. No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach, except as outlined in Article 4.1 above.

3.8 Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

3.9 Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement to ensure that the rights secured by the other Parties through this Agreement can be enjoyed.

3.10 Representations. Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing warranting Party;

(a) Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individual(s) represent.

(c) This Agreement constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium and equitable principles.

3.11 No Third-Party Beneficiaries. This Agreement is between the City and the Developer. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

3.12 Force Majeure. No liability or breach of this Agreement shall result from delay in performance or nonperformance caused, directly or indirectly, by circumstances beyond the reasonable control of the Party affected ("Force Majeure"), including, but not limited to, fire, extreme weather, terrorism, explosion, flood, war, power interruptions, the act of other governmental bodies, accident, labor trouble or the shortage or inability to obtain material, service, personnel, equipment or transportation, failure of performance by a common carrier, failure of performance by a public utility, or vandalism.

3.13 Notices.

Any notice or communication required hereunder between the parties must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United

States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City:

The Honorable Mayor Mark Johnson  
Lehi City  
153 North 100 East  
Lehi, UT 84043

With Copies to:

Ryan Wood  
Lehi City Attorney  
153 North 100 East  
Lehi, UT 84043

If to Developer:

[contact name]  
[address]  
[address]

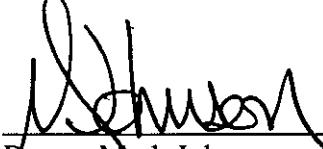
3.14 Entire Agreement, Counterparts and Exhibits

Unless otherwise noted herein, this Agreement is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer


IN WITNESS WHEREOF, this Agreement has been entered into by and between City, and Developer as of the Effective Date.



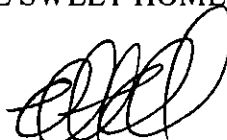
LEHI CITY CORPORATION

  
By: Mark Johnson  
Its: Mayor

ATTEST:

  
Teisha Wilson  
City Recorder


HOME SWEET HOME BY MITCH, LLC

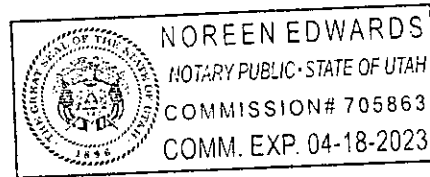
By:   
 Its: OWNER

STATE OF UTAH )  
 ) SS:  
 COUNTY OF Utah )

On this 12<sup>th</sup> day of December, 2019 before me, Noreen Edwards a notary public, personally appeared before me Mitchell McCuistion, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the owner of Home Sweet Home By Mitch, LLC and that said document was signed by him in behalf of said Company by Authority of its Articles of Organization, Operating Agreement, or (Resolution of its Manager(s)), and said Mitchell McCuistion acknowledged to me that said Company executed the same.

Witness my hand and official seal.

  
 Notary Public



(notary seal)

**Legal Description:** COM S 1091.72 FT & W 1196.13 FT FR E 1/4 COR. SEC. 20, T5S, R1E, SLB&M.; S 0 DEG 46' 9" W 619.81 FT; N 89 DEG 38' 34" W 335.33 FT; N 1 DEG 2' 27" E 622.57 FT; S 89 DEG 10' 17" E 332.37 FT TO BEG. AREA 4.761 AC.