

DEVELOPMENT AGREEMENT10th day of December, 2013
Jan. 2014

This Development Agreement is executed in duplicate this ~~10th~~ day of December, 2013, 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 Rocking M Properties, LLC, a Utah Limited Liability Company with its principal address located at 226 East Southgate Avenue, Salt Lake City, Utah 84115, ("Rocking M"), and Keller Investment and Development, LLC, a Utah Limited Liability Company with its principal address located at 1937 Maple Hollow Way, Bountiful, Utah 84010, ("Keller"). Rocking M, Keller are hereinafter collectively referred to as "Developer."

RECITALS

WHEREAS Rocking M currently owns a parcel of real property located at 920 North State Street, Orem, Utah consisting of approximately 4.17 acres and identified as Parcel No. 17:038:0086 on the records of the Utah County Recorder (hereinafter referred to as the "Property") which parcel is more particularly described in Exhibit "A" which is attached hereto and by reference is made a part hereof; and

WHEREAS Keller has a contract to purchase the Property, and

WHEREAS the Property is currently zoned C2 and C3; and

WHEREAS Developer has submitted an application to create a new planned development (PD) zone known as the PD-39 zone and to apply the PD-39 zone to the Property; and

WHEREAS the PD-39 zone would allow for the development of a high-density apartment complex; and

WHEREAS in order to meet the need for access to the proposed development and in order to mitigate the negative traffic impacts resulting from development of the Property under the PD-39 zone, 400 West Street needs to be extended from 920 North to 800 North; and

WHEREAS, Developer is willing to construct the extension of 400 West from 920 North to 800 North; and

WHEREAS the City desires to ensure that the extension of 400 West between 920 North and 800 North is completed before the occupancy of any residential units on the Property; and

WHEREAS in order to mitigate the City's concerns about access and traffic impacts resulting from development of the Property under the PD-39 zone, Developer is willing to enter into this Development Agreement and to develop the Property in accordance with the provisions of this Development Agreement; and



ENT 4372:2014 PG 1 of 9
JEFFERY SMITH
UTAH COUNTY RECORDER
2014 Jan 22 9:12 am FEE 26.00 BY CLS
RECORDED FOR OREM CITY CORPORATION

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.

COVENANTS

NOW, THEREFORE, in consideration of the covenants, promises, terms, provisions 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. **Construction of 400 West from 920 North to 800 North.** In order to improve access to the property in the PD-39 zone and to mitigate the negative traffic impacts resulting from development of the Property under the PD-39 zone, Developer agrees to construct and install an extension of 400 West Street to connect the current stub of 400 West located north of 800 North to 920 North. Developer shall construct and install the new section of 400 West including street, curb, gutter and sidewalk improvements (the "400 West Improvements") in the location shown in Developer's concept plan which is attached hereto as Exhibit "B" and by reference is made a part hereof. Developer shall perform all design, engineering, construction and striping necessary to complete the 400 West Improvements. Developer shall review the design and engineering plans for the 400 West Improvements with the City and shall obtain City approval for the design, engineering, construction and striping of the 400 West Improvements.

1.1. The 400 West Improvements shall be constructed in accordance with the City's construction standards and specifications and in accordance with the dimensions shown in Exhibit "B."

1.2. The new section of 400 West shall have a buffered sidewalk on the west side of 400 West consisting of a landscaped strip eight feet (8') in width and a sidewalk at least five feet (5') in width. A sidewalk at least five feet (5') in width shall also be constructed on the east side of 400 West in the location shown in Exhibit "B."

1.3. The 400 West Improvements must be completed and accepted by the City before any residential units on the Property may be occupied. The City will accept the 400 West Improvements upon completion of construction of the 400 West Improvements in conformance with the approved engineering and design plans and in conformance with City construction standards and specifications as determined by the final construction inspection.

1.4. Developer shall be required to bond for the 400 West Improvements in conformance with the requirements of Section 17-6-6 of the Orem City Code.

1.5. Following completion of the 400 West Improvements and acceptance thereof by the City, Developer shall dedicate the street, curb, gutter and sidewalk improvements to the City.

1.6. Developer shall acquire any easements or other approvals necessary to construct the 400 West Improvements.

2. **Construction of Improvements to 920 North.** In order to mitigate the effect of additional traffic on 920 North resulting from development of the Property under the PD-39 zone, Developer shall make the following improvements to 920 North (hereinafter referred to the 920 North Improvements"):

2.1. Developer shall improve 920 North so that beginning at the intersection of 920 North with State Street and extending west for a distance of thirty feet (30'), 920 North is improved with a

westbound lane sixteen feet (16') feet in width, an eastbound left turn lane eleven feet (11') in width and an eastbound right turn lane eleven feet (11') in width. In order to improve the right turn movement onto State Street, the curb radii at the northeast corner of the Property shall be 25 feet. Developer shall perform all design, engineering, construction and striping necessary to complete the above-described improvements. Developer shall review the design and engineering plans for the 920 North Improvements with the City and shall obtain City approval for the design, engineering, construction and striping of the 920 North Improvements.

2.2. The 920 North Improvements must be completed and accepted by the City before any residential units on the Property may be occupied. The City will accept the 920 North Improvements upon completion of construction of the 920 North Improvements in conformance with the approved engineering and design plans and in conformance with City construction standards and specifications as determined by the final construction inspection.

2.3. Developer shall be required to bond for the 920 North Improvements in conformance with the requirements of Section 17-6-6 of the Orem City Code.

2.4. The 920 North Improvements shall be constructed in accordance with the City's construction standards and specifications.

2.5. Following completion of the 920 Improvements and acceptance thereof by the City, Developer shall dedicate the 920 North Improvements to the City.

3. Construction of Masonry Fence Adjacent to Residential Property. The parties acknowledge and agree that the PD-39 zone requires that a masonry fence seven feet (7') in height be constructed and maintained on the west boundary of the PD-39 zone where the PD-39 zone abuts residentially zoned property. Developer agrees that this required masonry fence shall be completed prior to the occupancy of any residential unit on the Property.

4. Obligations Apply Only if Residential Units Constructed. The obligations contained in this Development Agreement shall apply only if residential dwelling units are constructed on the Property at a density greater than four residential units per acre. The obligations in this Development Agreement shall not apply if the Property is developed entirely under the standards of the C3 zone as permitted under the terms of the PD-39 zone.

5. Release of Rocking M Properties, LLC. Rocking M Properties, LLC shall be released from the obligations of this Development Agreement upon the closing of the sale of the entire Property to Keller Investment and Development, LLC. However, this release shall not apply if Rocking M Properties reacquires title to the Property through a foreclosure proceeding (judicial or non-judicial), a reversion of title, or any other reconveyance of title of the Property to Rocking M Properties, LLC.

6. Agreement Considered Mitigation of Impact. In consideration for the agreement of Developer to construct the improvements and 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 change the zoning designation of the Property from the C2 and C3 zones to the PD-39 zone.

7. **No Guarantee of Rezone.** The City makes no representation that the request of Developer to have the Property rezoned will be approved by the Orem City Council. Therefore, this Agreement shall not be binding upon Developer unless the request for a rezone of the Property is approved by the Orem City Council.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

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

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

15. **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.

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

17. **Assignment.** This Agreement is assignable by Developer so long as both the rights and the obligations and responsibilities of the Developer under this Agreement are assigned.

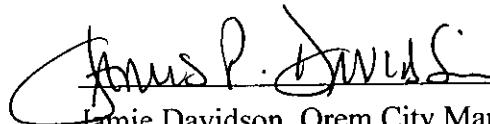
18. **Relationship of Parties.** This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to a third party.

19. **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.

20. **Counterparts.** This Development Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute one and the same agreement.

SIGNED and ENTERED INTO this 10th day of January, 2014.

City of Orem, by:



Jamie Davidson, Orem City Manager



ATTEST: Donna R. Weaver

Donna Weaver, City Recorder

Rocking M Properties, LLC, by:

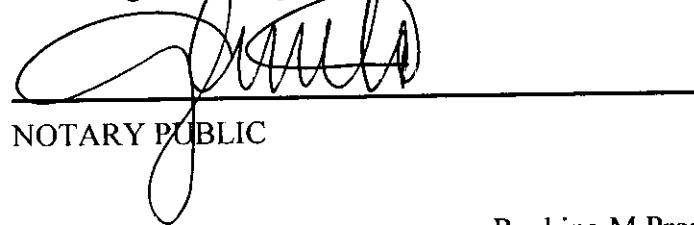


Flint J. Mollner, Manager

STATE OF UTAH)
:ss.

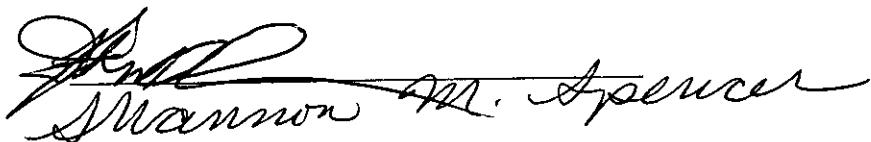
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 10th day of December, 2013, by Flint J. Mollner, as the Manager of Rocking M Properties, LLC, who acknowledged that he signed this Agreement on behalf of Rocking M Properties, LLC.



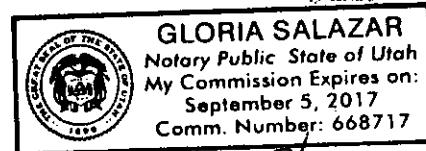
NOTARY PUBLIC

Rocking M Properties, LLC, by:



STATE OF UTAH)
:ss.

COUNTY OF UTAH)



GLORIA SALAZAR
Notary Public State of Utah
My Commission Expires on:
September 5, 2017
Comm. Number: 668717

The foregoing instrument was acknowledged before me this 10th day of December, 2013, by Shannon Spencer, Tint, as the Manager of Rocking M Properties, LLC, who acknowledged that he signed this Agreement on behalf of Rocking M Properties, LLC.

NOTARY PUBLIC

Keller Investment and Development, LLC, by:



Casey S. KellerSTATE OF UTAH)
:ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 10 day of December, 2013, by Casey S. Keller, as the Manager of Keller Investment and Development, LLC, who acknowledged that he signed this Agreement on behalf of Keller Investment and Development, LLC.



Casey S. Keller

NOTARY PUBLIC



ALEXANDRA DeMAIO
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE104579
Expires 6/19/2015

Beginning at the Southeast corner of the MOLLNER SUBDIVISION, Plat "A", located in the Southeast quarter of the Northwest quarter of Section 10, Township 6 South, Range 2 East, Salt Lake Base and Meridian, said point being South 00°36'59" East 660.42 (South 10.00 chains by record) along the West line of said Southeast quarter of said Northwest quarter from the Northwest corner of said Southeast quarter of the Northwest quarter; thence North 89°35'42" East 1210.58 feet along the South boundary of SUNRIDGE SUBDIVISION, Plat "D"; thence North 89°39'23" East 54.05 feet along the South boundary of said MOLLNER SUBDIVISION, Plat "A" to the Southeast corner thereof and said point of beginning, and running thence along an agreed upon boundary line South 89°21'36" East 893.36 feet (891.96 feet by deed) to the West right of way line of State Street; thence North 18°26'36" West 236.06 feet (234.68 feet by deed) along said West line to the South right of way line of 920 North Street; thence Southwesterly 48.75 feet along the arc of a non-tangent 150.00 foot radius curve to the right through a central angle of 18°37'22" subtended by a chord bearing South 80°52'08" West 48.54 feet; thence North 89°49'10" West 770.04 feet (769.11 feet by deed) along said South line of 920 North Street to the East line of said MOLLNER SUBDIVISION, Plat "A"; thence South 00°10'50" West 208.68 feet (217.34 feet by deed) along said East line to the point of beginning.

