

**MASTER DEVELOPMENT AGREEMENT
FOR
DEER SPRINGS COMMUNITY**

June __, 2018

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WHEN RECORDED, RETURN TO:

Bruce R. Baird
Bruce R. Baird PLLC
2150 South 1300 East # 500
Salt Lake Town, UT 84106

**MASTER DEVELOPMENT AGREEMENT
FOR
DEER SPRINGS COMMUNITY**

THIS MASTER DEVELOPMENT AGREEMENT FOR DEER SPRINGS
COMMUNITY is made and entered as of the ___ day of June, 2018, by and between the
Town of Hideout, a political subdivision of the State of Utah, and Western States
Ventures, L.L.C. a Utah limited liability company.

RECITALS

- A. The capitalized terms used in these Recitals are defined in Section 1.2, below.
- B. Developer owns and is developing the Property.
- C. The Town has annexed, or will annex, the Property into the Town and both the Town and Developer have made such annexation conditioned upon entry into this MDA.
- D. Developer and the Town desire that the Property be developed in a unified and consistent fashion pursuant to the Concept Plan and this MDA.
- E. Development of the Property pursuant to this MDA is acknowledged by the parties to be consistent with the Act and the Zoning Ordinance and to operate to the benefit of the Town, Developer, and the general public.
- F. The Town Council has reviewed this MDA, including the Concept Plan, and determined that it is consistent with the Act and the Zoning Ordinance.

G. The parties acknowledge that Development of the Property pursuant to this MDA will result in planning and economic benefits to the Town and its residents by, among other things requiring orderly Development of the Property, increasing property tax and other revenues to the Town based on improvements to be constructed on the Property.

H. Development of the Property pursuant to this MDA will also result in benefits to Developer by providing assurances to Developer that it will have the ability to develop the Property in accordance with this MDA.

I. Developer and the Town have cooperated in the preparation of this MDA.

J. The parties desire to enter into this MDA to specify the rights and responsibilities of the Developer to develop the Property as expressed in this MDA and the rights and responsibilities of the Town to allow and regulate such Development pursuant to the requirements of this MDA.

K. The parties understand and intend that this MDA is a “development agreement” as contemplated by Utah Code Ann. §10-9a-102 (2017) and Section 10.03.501 of the Town’s Vested Laws.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town Developer hereby agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1.**Incorporation.** The foregoing Recitals and Exhibits “A” - “H” are hereby incorporated into this MDA.

1.2.**Definitions.** As used in this MDA, the words and phrases specified below shall

have the following meanings:

- 1.2.1. **Act** means the Land Use, Development, and Management Act, Utah Code Ann. § 10-9a-101, *et seq.* (2016).
- 1.2.2. **Additional Compensation** means those considerations offered by the Developer to the Town for the annexation of the Property as more fully specified in Section 10, below.
- 1.2.3. **Applicant** means a person or entity submitting a Development Application.
- 1.2.4. **Buildout** means the completion of all of the Development on the entire Project in accordance with approved plans.
- 1.2.5. **CC&Rs** means the Covenants, Conditions, and Restrictions applicable to the Project and the HOA.
- 1.2.6. **Concept Plan** means that plan for the Development of the Project attached as Exhibit “B”.
- 1.2.7. **Council** means the elected Town Council of the Town.
- 1.2.8. **Default** means a material breach of this MDA as specified herein.
- 1.2.9. **Denial** means a formal denial issued by the final decision-making body of the Town for a particular type of Development Application but does not include review comments or “redlines” provided by Town staff.
- 1.2.10. **Design Guidelines** means those guidelines for the look, feel and specifications for the Residential Dwelling Units to be developed in the Project as specified in Exhibit “D”.
- 1.2.11. **Developer** means Western States Ventures, L.L.C., a Utah limited liability

Company, and its assignees or transferees as permitted by this MDA.

- 1.2.12. **Development** means development, including construction of infrastructure, Residential Dwelling Units, or other improvements on a portion of the Property pursuant to an approved Development Application.
- 1.2.13. **Development Application** means an application to the Town for development of a portion of the or any other permit, certificate or other authorization from the Town required for Development of the Project.
- 1.2.14. **Fire District** means the Wasatch County Fire District or any successor entity providing fire suppression and / or emergency response services to the Project.
- 1.2.15. **HOA** means a homeowners association to be created for the Project.
- 1.2.16. **Internet Backbone** means the backbone internet facilities illustrated on Exhibit “G” and discussed in **Section 10**, below.
- 1.2.17. **Maintenance Building** means that building illustrated on Exhibit “F” and discussed in **Section 10**, below.
- 1.2.18. **Maximum Residential Units** means the Development on the Property of two hundred forty-eight (248) Residential Dwelling Units.
- 1.2.19. **MDA** means this Master Development Agreement for Deer Springs Community including all of its Exhibits.
- 1.2.20. **Notice** means any notice to or from any party to this MDA that is either required or permitted to be given to another party.
- 1.2.21. **Parks** means those parks within the Project illustrated on Exhibit “H” and discussed in **Section 7.6**, below.

- 1.2.22. **Project** means the total Development to be constructed on the Property pursuant to this MDA with the associated public and private facilities, and all of the other aspects approved as part of this MDA.
- 1.2.23. **Property** means that approximately ninety-seven and eighty hundredths (97.80) acres of real property Owned by to be developed by Developer more fully described in Exhibit "A".
- 1.2.24. **Public Infrastructure** means those elements of infrastructure that are planned to be dedicated to the Town as a condition of the approval of a Development Application.
- 1.2.25. **Residential Dwelling Unit** means a structure or portion thereof designed and intended for use as a single-family residence on a single-family lot, or a Townhome configuration.
- 1.2.26. **Shoreline Drive** means that portion of Shoreline Drive as illustrated on the Concept Plan, Exhibit "D".
- 1.2.27. **Town** means the Town of Hideout, a political subdivision of the State of Utah.
- 1.2.28. **Town's Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the Town which may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and which may or may not be applicable to the Development Application depending upon the provisions of this MDA.
- 1.2.29. **Town's Vested Laws** means the ordinances, policies, standards and

procedures of the Town in effect as of the date of this MDA, a copy of which is attached as Exhibit “C”.

1.2.30. **Townhome** means two, three, or four Residential Dwellings Units that share a common wall and each are located on a separate lot.

1.2.31. **Zoning Ordinance** means the Town’s Land Use and Development Ordinance adopted pursuant to the Act that was in effect as of the date of this MDA as a part of the Town’s Vested Laws.

2. **Conditions.**

2.1. Development Rights Dependent on Annexation. To the extent the Council has not approved the annexation of the Property into the Town prior to the date of this MDA, Developer and the Town agree that Developer’s right to develop the Project under the terms of this MDA is contingent on the Property being annexed into the Town.

2.2. Indemnification. Developer agrees to indemnify and hold the Town and its officers, officials, employees, and agents (collectively, the “**Town Parties**”) harmless from all claims, costs, damages, expenses, liabilities or other losses incurred by, or asserted against, any of the Town Parties in connection with a challenge to the annexation of the Property as provided in Utah Code § 10-2-401 et seq. Developer also agrees to indemnify the Town Parties against all claims, costs, damages, expenses, liabilities or other losses incurred by, or asserted against, the Town Parties which are related to, or arise from, Development of the Project.

3. **Development of the Project.**

3.1. Compliance with the Concept Plan and this MDA. Development of the Project shall be in accordance with the Town's Vested Laws, the Town's Future Laws (to the extent that these are applicable as otherwise specified in this MDA), the Concept Plan and this MDA. The Project will be developed in multiple phases in the order and configuration identified on the Phasing Map attached as an exhibit to this MDA. Phase 1 and Phase 2, as shown on the Phasing Map, will be constructed prior to any other phases. Thereafter, Developer may have flexibility regarding the order in which phases are constructed, provided that this provision will not negate any of Developer's obligations with respect to the construction of Shoreline Drive or other Project infrastructure as provided herein.

3.2. Maximum Residential Units. At Buildout of the Project, Developer shall be entitled to have developed the Maximum Residential Units as specified in and pursuant to this MDA.

3.3. No Warranty About Using Units. The Town does not warrant to the developer, or know, if it is possible to build the Maximum Residential Units. Developer assumes all risk associated with the constraints that might limit density including, but not limited to: offsite and onsite storm drain and storm drain detention; ability of developer to secure water and sewer capacity; the City's Vested Laws and applicable provisions of the Town's Future Laws; compliance with Design Review Guidelines; sensitive lands as determined by a licensed soils engineer; and the effect of sloping roads and terrain

3.4. Project Subject to CC&Rs. Developer shall prepare CC&Rs for the Project consistent with the requirements of this MDA and the Town's Vested Laws. All

duties and obligations of the HOA, as set forth in this MDA, must be incorporated into the CC&Rs and the CC&Rs must provide for enforcement of the same by the Town. Before the CC&Rs are recorded, the Town shall have the right to review and approve the provisions of the CC&Rs which pertain to this MDA or the Town's Vested Laws.

3.5. Utilities. Developer shall be responsible, at Developer's sole cost and expense, to obtain and / or install all connections and other utility infrastructure necessary for the construction of Residential Dwelling Units within the Project. The parties agree that such infrastructure installed will benefit the Project only, will not result in excess system capacity, and that Developer will not be entitled to reimbursement from the Town, including by way of impact fees, or from any other developer or builder for the cost of such infrastructure.

4. Zoning and Vested Rights.

4.1. Zoning. The Town will zone the Property upon annexation as Mountain, as defined in Town's Vested Laws, with a "Planned Performance Development" designation. Notwithstanding the foregoing, the parties agree that no commercial use will be permitted within the Project without the approval of the Council.

4.2. Vested Rights Granted by Approval of this MDA. To the maximum extent permissible under the laws of Utah and the United States and at equity, the Town and the Developer intend that this MDA grant Developer all rights to develop the Project consistent with this MDA, the Town's Vested Laws and the Concept Plan except as specifically provided herein. The Parties intend that the rights granted to Developer under this MDA are contractual and also those rights that exist

under statute, common law and at equity. The parties specifically intend that this MDA grant to Developer “vested rights” as that term is construed in Utah’s common law and pursuant to Utah Code Ann. § 10-9a-509 (2017).

4.3. Bonus Density Qualification. The Town acknowledges that the Project, upon compliance with the provisions of this MDA, has met the requirements of the Town’s Vested Laws for the award of the maximum bonus density increase pursuant to Sections 11.06.114 and 11.07.131 of the Town’s Vested Laws and therefore is vested for the Maximum Residential Units subject to the terms of Section 3.3 of this MDA.

4.4. Exceptions. The restrictions on the applicability of the Town’s Future Laws to the Project as specified in Section 4.2 are subject to only any or all of the following exceptions:

4.4.1. Developer Agreement. Town’s Future Laws that Developer agrees in writing to the application thereof to the Project;

4.4.2. State and Federal Compliance. Town’s Future Laws which are generally applicable to all properties in the Town and which are required to comply with State and Federal laws and regulations affecting the Project;

4.4.3. Codes. Town’s Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or

by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

4.4.4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the Town to all properties, applications, persons and entities similarly situated;

4.4.5. Fees. Changes to the amounts of fees (but not changes to the times provided in the Town's Vested Laws for the imposition or collection of such fees) for the processing of Development Applications that are generally applicable to all development within the Town (or a portion of the Town as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law;

4.4.6. Planning and Zoning Modification. Changes by the Town to its planning principles and design standards such as architectural or design requirements, setbacks or similar items so long as such changes do not work to reduce the Maximum Residential Units, are generally applicable across the entire Town to the respective Zones within the Project and do not materially and unreasonably increase the costs of any Development;

4.4.7. Compelling, Countervailing Interest. Laws, rules or regulations that the Town's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(ii)(A) (2018); or

4.4.8. Impact Fees. Any impact fees which are lawfully adopted pursuant to the laws of the State of Utah, and Developer waives the provisions of Section

11-36a-401(2) regarding the ninety (90) day waiting period after the impact fee enactment is approved by the Town; provided, however, that other than waiver set forth in this Section, Developer does not waive any rights to challenge the impact fees for any reason allowed pursuant to Chapter 11-36a of the Utah Code.

5. **Term of Agreement.** The term of this MDA shall be until December 31, 2028. This MDA shall also terminate automatically at Buildout and it is not transferable to any other properties. Notwithstanding any expiration of the term of this MDA, all obligations of the HOA for maintenance of streets, Parks, or Public Infrastructure, as provided herein or as further agreed to by the parties, shall continue in perpetuity. Upon expiration of the term of this MDA, the Property shall be developed, if at all, pursuant to the Town's Future Laws.

6. **Processing of Development Applications.**

6.1. **No Pending Development Applications.** The parties acknowledge that, as of the date of this MDA, there are no pending Development Applications with respect to the Property or the Project.

6.2. **Submitting Development Applications.** Developer and any other Applicant shall submit Development Applications for improvements within the Project in the manner required under this MDA and the Town's Vested Laws (or, if applicable, the Town's Future Laws). The subdivision plat for any phase within the Project must, in addition to all other applicable requirements, be reviewed and signed by an authorized representative of the Fire District.

6.3. **Completion of Shoreline Drive.** No certificate of occupancy for any Residential

Dwelling Unit in the Project will be granted prior to the time that Shoreline Drive has been constructed pursuant to the standards set forth in this MDA and the Town's Vested Laws between Highway 248 and Jordanelle Parkway, as shown on the Concept Plan, and such construction has been approved and accepted by the Town, or the Developer otherwise constructs primary and secondary access to the Project acceptable to the Town.

6.4. Town Denial of a Development Application. If the Town denies a Development Application the Town shall provide a written determination advising the Applicant of the reasons for Denial including specifying the reasons the Town believes that the Development Application is not consistent with this MDA, and/or the Town's Vested Laws (or, if applicable, the Town's Future Laws).

6.5. Meet and Confer regarding Development Application Denials. The Town and Applicant shall meet within fifteen (15) business days of any Denial to resolve the issues specified in the Denial of a Development Application.

6.6. Mediation of Development Application Denials.

6.6.1. Issues Subject to Mediation. Issues resulting from the Town's Denial of a Development Application that are not subject to arbitration provided in Section 6.7 shall be mediated.

6.6.2. Mediation Process. If the Town and Applicant are unable to resolve a disagreement subject to mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute. If the parties are unable to agree on a single

acceptable mediator they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator. Applicant shall pay the fees of the chosen mediator. The chosen mediator shall within fifteen (15) business days from selection, or such other time as is reasonable under the circumstances, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties. If the parties are unable to reach an agreement, the parties shall request that the mediator notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the parties.

6.7. Arbitration of Development Application Objections.

6.7.1. Issues Subject to Arbitration. Issues regarding the Town's Denial of a Development Application that are subject to resolution by scientific or technical experts such as traffic impacts, water quality impacts, pollution impacts, etc. are subject to arbitration.

6.7.2. Mediation Required Before Arbitration. Prior to any arbitration the parties shall first attempt mediation as specified in Section 6.6.2.

6.7.3. Arbitration Process. If the Town and Applicant are unable to resolve an arbitrable issue through mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable expert in the professional discipline(s) of the issue in question or another experienced arbitrator with relevant expertise or experience. If the parties are unable to agree on a single acceptable arbitrator they shall each, within ten (10) business days,

appoint their own proposed expert. These two experts shall, between them, choose the single arbitrator. Applicant shall pay the fees of the chosen arbitrator. The chosen arbitrator shall within fifteen (15) business days from appointment, or such other time as is reasonable under the circumstances, review the positions of the parties regarding the arbitration issue and render a decision. The arbitrator shall ask the prevailing party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, and consideration of such objections, the arbitrator's decision shall be final and binding upon both parties.

6.8. Application Under Town's Future Laws. Without waiving any rights granted by this MDA, Developer may at any time, choose to submit a Development Application for some or all of the Project under the Town's Future Laws in effect at the time of the Development Application so long as Developer is not in current breach of this MDA. Any Development Application filed for consideration under the Town's Future Laws shall be governed by all portions of the Town's Future Laws related to the Development Application. The election by Developer at any time to submit a Development Application under the Town's Future Laws shall not be construed to prevent Developer making subsequent Development Applications under the Town's Vested Laws where allowed by this MDA.

7. Construction and Public Infrastructure.

7.1. Construction by Developer. Developer shall have the right and the obligation to construct or cause to be constructed and installed all Public Infrastructure reasonably and lawfully required by the Town in connection with, and as a

condition of approval for, a Development Application. All required easement rights that the Town does not have the authority to grant, and all other rights required for the Development of the Project, shall be the obligation of the Developer to obtain.

7.2. Sewer Treatment and Sewer Conveyance. The Parties acknowledge that sewer treatment facilities, sewer collection systems, and sewer pumping conveyance systems were planned, funded and constructed by JSSD through bonds which were paid through assessment to properties including some properties within the Town. These sewer facilities did not account for the full needed capacity of the proposed units for the Project beyond those equivalent residential units (“ERU”) associated with the parcels which did participate in the bond assessments. JSSD has established a sewer impact fee schedule for bonded ERUs and unbonded ERUs. Developer shall obtain from JSSD a “Will Serve Letter” addressed to the Town defining the amount of sewer impact fees associated with the Project to be collected by the Town for pass through to JSSD. The Will Serve Letter may also identify capital facility project(s) required by JSSD in order to provide sewer collection and treatment service for the Project. The Town must receive acknowledgment from JSSD that required conditions of this Section and the Will Serve Letter have been satisfied prior to approval of any Development Application for the Project.

7.3. Culinary Water Distribution, Source Development and Treatment. The Parties acknowledge that water sources, water treatment facilities, water storage and water conveyance systems were planned, funded and constructed by JSSD

through bonds which were paid through assessment to properties including some properties within the Town. These water facilities did not account for the full needed capacity of the proposed units for the Project beyond those ERUs associated with the parcels which did participate in the bond assessments. JSSD has established a water impact fee schedule for bonded ERUs and unbonded ERUs. Developer shall obtain from JSSD a “Will Serve Letter” addressed to the Town defining the amount of water impact fees associated with the Project to be collected by the Town for pass through to JSSD. The Will Serve Letter may also identify capital facility project(s) required by JSSD in order to provide water source, water treatment, water storage and/or water conveyance systems for the Project. The Town must receive acknowledgment from JSSD that required conditions of this Section and the Will Serve Letter have been satisfied prior to approval of any Development Application for the Project.

7.4. Water Rights. The Parties acknowledge that the Town has an agreement with JSSD for a fixed number of water reservation rights which does not account for the total number of units proposed for the portion of the Project within the Town nor the needed water rights for the portion of the Project being annexed into the Town. Developer shall be responsible to provide to JSSD with water rights sufficient for the indoor and outdoor water uses for the Project. Developer shall obtain in writing from JSSD acknowledgement that the Town shall receive this quantity of water represented by these water rights in addition to the contract amount of water delivery from JSSD prior to approval of any Development Application for the Project.

7.5. Bonding. If and to the extent required by the Town's Vested Laws or the Town's Future Laws (whichever is in force when a Development Application is submitted), unless otherwise provided by Chapter 10-9a of the Utah Code as amended, Developer shall provide security for any completion of Public Infrastructure and such components of private infrastructure owned by the HOA which will be open to the public or maintained by the HOA under this MDA. Developer shall provide such security in a form acceptable to the Town or as specified in the Town's Vested Laws or the Town's Future Laws (as applicable). Partial releases of any such required security shall be made as work progresses based on the Town's Vested Laws or the Town's Future Laws (as applicable).

7.6. Parks. Developer shall construct the Parks in locations shown on the Concept Plan in connection with the plans and specifications shown on Exhibit "H." The Parks will be open to, and for the use of, the public. At the time of the recordation of the plat Phase 2 of the Project, as shown on the Phasing Map attached as an exhibit to this MDA, Developer shall, at the Town's election: (a) dedicate the land for the Parks to the Town; or (b) dedicate such land to the HOA subject to the right of entry and use by the public. Developer shall begin constructing and improving the two Parks in connection with the construction of the subdivision improvements for second phase of the Project. Developer must complete all improvements associated with the Parks before a certificate of occupancy is issued for any Residential Dwelling Unit within the second phase of the Project or any subsequent phase. The HOA shall bear all costs and expenses associated with constructing the Parks and maintaining the Parks,

consistent with the maintenance standard applicable under Town's Vested Code, but in any event in a commercially reasonable manner. The HOA will also maintain insurance for the Parks in the manner applicable under Utah law to HOA common areas. The CC&Rs will provide that in the event of the HOA's default on the obligation to maintain the Parks then, in addition to other remedies, the Town may perform such maintenance and collect the costs thereof from the HOA or, to the maximum extent allowed by law, collect a pro-rata share of such costs directly from the members of the HOA.

7.7. Shoreline Drive and other Public Streets in the Project. Developer shall construct Shoreline Drive and other streets in the Project to the standards specified in the Town's Code and as required by the Fire District, and shall dedicate the streets to the Town when and as such streets are substantially completed and accepted by the Town. Developer shall bear all costs and expenses associated with constructing the streets and maintaining the streets consistent with the maintenance standard applicable under Town's Vested Code, but in any event in a commercially reasonable manner. To the extent not constructed and / or paid for by third-parties, Developer shall bear all costs and expenses associated with construction of those portions of Jordanelle Parkway, if any, located within the Town's municipal boundaries, including the Property, as annexed. The Town shall maintain the streets in the Project subject to reimbursement from the Developer and / or the HOA. The Town will submit invoices for the cost of such maintenance to the Developer and / or the HOA on a regular basis, but not more frequently than once each month, outlining the actual

and reasonable costs of such maintenance and including such supporting documentation as the HOA may reasonably request. The CC&Rs for the HOA will provide that in the event of the HOA's default on the obligation to fund the maintenance the streets then, in addition to other remedies, the Town may perform such maintenance and collect the costs thereof from the HOA or, to the maximum extent allowed by law, collect a pro-rata share of such costs directly from the members of the HOA. Notwithstanding the foregoing, in the event of a dispute regarding the cost of maintenance of the streets, the dispute resolution provisions of Section 6.6 and 6.7 shall apply.

7.8. **Common Areas.** In addition to the Parks, the Developer and HOA shall be responsible for all other common areas shown on the Concept Plan or required by the Town under this MDA or the Town's Vested Code or, if applicable, the Town's Future Code, in connection with a Development Application. The HOA will bear the cost of maintaining such common areas in a commercially reasonable manner. The CC&Rs for the HOA will provide that in the event of the HOA's default on the obligation to maintain the common areas then, in addition to other remedies, the Town may perform such maintenance and collect the costs thereof from the HOA or, to the maximum extent allowed by law, collect a pro-rata share of such costs directly from the members of the HOA.

7.9. **Trail.** Developer shall, as and when Shoreline Drive is constructed, also construct a ten foot (10') wide asphalt trail as illustrated on Exhibit "B" and shall dedicate the same to the Town upon completion and acceptance. After the dedication, the trail shall be maintained by the Town.

7.10. **Public Streets.** All streets in the Project shall be public streets built in compliance with the Town's Vested Laws and dedicated to the Town upon completion and acceptance. Notwithstanding the foregoing, the parties may enter into an agreement with Wasatch County governing the ownership and maintenance of those portions of Jordanelle Parkway, if any, within the Project. If such an agreement is executed, that agreement will control but only with respect to the provisions of this MDA relating to Jordanelle Parkway.

7.11. **Developer Liability.** The Developer will be jointly and severally liable with the HOA for all costs, expenses, and other obligations, including reimbursement and indemnification obligation, to be borne by the HOA as set forth herein.

8. **Model Homes.** The Town hereby authorizes Developer to construct up to eight (8) Residential Dwelling Units (in any combination of product types chosen by Developer as "Model Homes" located as generally illustrated on Exhibit "B" or in such a location as the Town and Developer agree on considering access, fire protection, services and marketability). The Town will, subject to terms of this MDA, the Town's Vested Code, and the normal approval of such building plans, issue building permits for these eight (8) units. Developer acknowledges that certificates of occupancy for these homes will not be issued by the Town except as otherwise provided by the Town's Vested Code and this MDA.

9. **Design Guidelines.** All Residential Dwelling Units and other improvements constructed in the Project shall comply with the Design Guidelines. The Town shall have no obligation to issue a building permit or certificate of occupancy for any

Residential Dwelling Units or other improvements which do not comply with the Design Guidelines. When used in the Design Guidelines, the terms “should,” “encouraged,” “preferred,” “appropriate,” “discouraged,” and other similar terms, may, at the Town’s discretion, be enforced as mandatory or prohibitory (as applicable).

9.1. **HOA Responsibilities.** Before the plans for any Residential Dwelling Units or other improvements within the Project are submitted to the Town with an application for a building permit, the HOA shall certify to the Town that such plans comply with the Design Guidelines. The HOA’s certification will be subject to confirmation by the Town.

9.2. **Town Review.** After receiving the HOA’s certification of compliance with the Design Guidelines, the Town, through a designated employee or agent, will review such plans for compliance with the other provisions of this MDA and with the Town’s Vested Laws or the Town’s Future Laws, as applicable. If, at any time, the Town has reason to question the accuracy of the HOA’s certification, the Town may, directly or through a third-party consultant, conduct its own review of compliance with the Design Guidelines and the Applicant will bear the cost of the Town’s review of the Design Guidelines.

9.3. **Enforcement.** In the event that the Town is required to take action to enforce the Design Guidelines, whether or not legal action is initiated, the non-complying Applicant shall be liable for all costs and expenses, including reasonable legal fees, incurred in such enforcement actions.

10. **Additional Compensation.** Developer shall provide the Additional Compensation

the Maintenance Building and either of the other two (2) options set forth below.

Developer agrees that in light of the various benefits Developer will receive as a result of being able to annex the Property into the Town and develop the Project pursuant to this MDA, the Additional Compensation is reasonable and appropriate.

10.1. **Election by Town.** Within thirty (30) days after the recordation of the first plat for any subdivision in the Project the Town shall give Notice to Developer which option for Additional Consideration in addition to the Maintenance Building the Town elects to receive as Additional Compensation.

10.2. **Maintenance Building.** Developer will construct the Maintenance Building in accordance with plans and specifications set forth on Exhibit "F" on land owned by the Developer and hereafter to be dedicated to the Town by separate agreement. Developer shall commence construction within Sixty (60) days after the date of this MDA. Developer shall substantially complete the Maintenance Building by October 31 of that year; provided, however, that if this MDA is executed after May 31 of any particular year then Developer, at its sole discretion, and to allow completion before winter, can choose to start construction the following year, provided that completion of the Maintenance Building shall then occur no later than September 1. The Town shall provide Developer such easements, licenses or other rights necessary to construct the Maintenance Building according to the Town's Vested Laws.

10.2.1. City Maintenance After Acceptance. After the Maintenance Building is accepted the City shall be responsible for the maintenance of the Maintenance Building.

10.3. **Internet Backbone.** In addition to the Maintenance Building, the Town may elect to have Developer construct the Internet Backbone. If the Town elects the Internet Backbone then Developer shall coordinate with the internet infrastructure provider chosen by the Town to construct the Internet Backbone. Specifically, Developer shall be responsible for the cost of trenching for and installing any conduit for the internet fiber, including, but not limited to trenching under any driveways that exist at the time of the installation (but not the cost of the fiber or any other electronic or physical infrastructure) between Points A and B as illustrated on Exhibit “G” which specifically excludes the Soaring Hawk and Shoreline at Hideout Canyon plats.

10.4. **Monetary Payment.** In addition to the Maintenance Building, the Town may elect to receive a cash payment of Six Hundred Thousand Dollars (\$600,000.00). If the Town elects a cash payment then Developer shall pay the Town \$600,000.00 within sixty (60) days of the Town’s election of this option.

10.5. **Dispute Resolution.** Any dispute regarding the Additional Compensation shall be subject to resolution by the process specified in Sections 6.6 and 6.7.

11. **Default.**

11.1. **Periodic Review and Notice of Default.** The Town may conduct a review of this MDA annually to evaluate compliance with this MDA by Developer. In addition, either party may, when such party becomes aware of a default in the performance the respective obligations hereunder, provide Notice to the other party.

11.2. **Contents of the Notice of Default.** The Notice of Default shall:

- 11.2.1. Specific Claim. Specify the claimed event of Default;
- 11.2.2. Applicable Provisions. Identify with particularity the provisions of any applicable law, ordinance, rule, regulation or provision of this MDA that is claimed to be in Default; and
- 11.2.3. Optional Cure. If the Town chooses, in its discretion, it may propose a method and time for curing the Default which shall be of no less than thirty (30) days duration.
- 11.3. **Meet and Confer, Mediation, Arbitration.** Upon the issuance of a Notice of Default the parties shall engage in the “Meet and Confer” and “Mediation” processes specified in Sections 6.6. If the claimed Default is subject to Arbitration as provided in Section 6.7 then the parties shall follow such processes.
- 11.4. **Remedies.** If the parties are not able to resolve the Default by the dispute resolution provisions of Section 11.3, or if the Default is not subject to Arbitration then the parties may have the following remedies, except as specifically limited in 11.8:
- 11.4.1. Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.
- 11.4.2. Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.
- 11.4.3. Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for Development of the

Project.

- 11.5. **Public Meeting.** Before any remedy provided for in Section 11.4 may be imposed by the Town, the party allegedly in Default shall be afforded the right to attend a public meeting before the Town Council and address the Town Council regarding the claimed Default.
- 11.6. **Emergency Defaults.** Anything in this MDA notwithstanding, if the Town Council finds on the record that a default materially impairs a compelling interest of the Town and that any delays in imposing such a default would also impair a compelling interest of the Town then the Town may impose the remedies of Section 11.4 without complying with the requirements of Sections 11.5. The Town shall give Notice to Developer of any public meeting at which an emergency default is to be considered and the Developer shall be allowed to address the Town Council at that meeting regarding the claimed emergency Default.
- 11.7. **Extended Cure Period.** If any Default cannot be reasonably cured within thirty (30) days, then such cure period shall be extended so long as the defaulting party is continuously pursuing a cure with reasonable diligence.
- 11.8. **Limitation on Developer's Recovery for Default.** Anything in this MDA notwithstanding Developer shall not be entitled to any claim for any monetary damages as a result of any breach by the Town of this MDA and Developer expressly waives any claims thereto. The sole remedy available to Developer shall be that of specific performance. Notwithstanding the foregoing, in addition to any rights specifically set forth in this MDA, in the event of a default by

Developer, the Town may seek applicable remedies under law and equity including actual monetary damages incurred by the Town as a result of the Developer's failure to perform hereunder.

12. **Notices.** All notices required or permitted under this MDA shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Developer:

Western States Venture, L.L.C.
Attn: Mr. Nate Brockbank
2265 East Murray Holladay Road
Holladay, UT 84117

With a Copy for Developer to:

Bruce R. Baird, Esq.
Bruce R. Baird PLLC
2150 South 1300 East, Fifth Floor
Salt Lake Town, UT 84106
bbaird@difficultdirt.com

To the Town:

Town of Hideout
Attn: Town Clerk
10860 North Hideout Trail
Hideout, UT 84036

12.1. **Effectiveness of Notice.** Except as otherwise provided in this MDA, each Notice shall be effective and shall be deemed delivered on the earlier of:

12.1.1. **Hand Delivery.** Its actual receipt, if delivered personally, by courier service, or by facsimile provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending party has confirmation of transmission receipt of the Notice). If the

copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

12.1.2. Electronic Delivery. Its actual receipt if delivered electronically by email provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending party has an electronic receipt of the delivery of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

12.1.3. Mailing. On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any party may change its address for Notice under this MDA by giving written Notice to the other party in accordance with the provisions of this Section.

13. **Estoppel Certificate.** Upon twenty (20) days prior written request by the Town or Developer, then the other party will execute an estoppel certificate to any third party certifying that requesting party is not, at that time, in default of the terms of this MDA or identify a default which the responding party claims to exist.

14. **Headings.** The captions used in this MDA are for convenience only and are not intended to be substantive provisions or evidences of intent.

15. **No Third Party Rights/No Joint Venture.** This MDA does not create a joint venture relationship, partnership or agency relationship between the Town and Developer. Further, the parties do not intend this MDA to create any third-party beneficiary rights. The parties acknowledge that this MDA refers to a private

development. The Town has no interest in, responsibility for or duty to any third parties concerning any improvements to the Property or unless the Town has accepted the dedication of such improvements. At the time of acceptance, all rights and responsibilities—except for warranty bond requirements under Town’s Vested Laws and as allowed by state law—for the dedicated public improvement shall be the Town's except as otherwise provided in this MDA.

16. **Assignability.** The rights and responsibilities of Developer under this MDA may be assigned in whole or in part by Developer with the prior written consent of the Town as provided herein.

16.1. **Sale of Lots.** Developer’s selling or conveying lots in any approved Subdivision to home builders or end users (i.e. owners of individual Residential Dwelling Units) shall not be deemed to be an “assignment” subject to the above-referenced approval by the Town.

16.2. **Related Entity.** Developer’s transfer of all or any part of the Property to any entity “related” to Developer (as defined by regulations of the Internal Revenue Service in Section 165), Developer’s entry into a joint venture for the Development of the Project or Developer’s pledging of part or all of the Project as security for financing shall also not be deemed to be an “assignment” subject to the above-referenced approval by the Town unless specifically designated as such an assignment subject to approval by the Town. Developer shall give the Town Notice of any event specified in this sub-section within ten (10) days after the event has occurred. Such Notice shall include providing the Town with all necessary contact information for the affected entity. Nothing in this Section will

relieve Developer of any obligations hereunder unless and until another party, acceptable to the Town assumes in writing the duties and obligations set forth herein.

16.3. **Notice.** If the Developer intends to assign this MDA in a manner that would require consent from the Town, Developer shall give Notice to the Town of any proposed assignment and provide such information regarding the proposed assignee that the Town may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the Town with all necessary contact information for the proposed assignee.

16.4. **Time for Objection.** Unless the Town approves the proposed assignment in writing within twenty (20) business days of notice, the Town shall be deemed to have denied the proposed assignment.

16.5. **Partial Assignment.** If any proposed assignment is for less than all of Developer's rights and responsibilities under the MDA then the assignee shall be responsible for the performance of each of the obligations specifically referenced in the assignment instrument. Upon the assignee's assumption of rights and obligations any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but Developer shall remain responsible for the performance of any obligations that were not assigned. No assignment of any rights of Developer will be permitted with respect to a portion of the Project less than a complete phase, as shown on the Phasing Map attached as an exhibit to this MDA.

16.6. **Denial.** The Town may withhold its consent to a proposed assignment if the

Town is not reasonably satisfied of the assignee's financial or other ability to perform the obligations of Developer proposed to be assigned or if there is an existing breach of this MDA that either has not been cured or is not in the process of being cured in a manner acceptable to the Town.

- 16.7. **Successor and Assignees Bound by MDA.** Any successor or permitted assignee shall consent in writing to be bound by the assigned terms and conditions of this MDA as a condition precedent to the effectiveness of the assignment.
17. **No Waiver.** Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.
18. **Severability.** If any provision of this MDA is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this MDA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this MDA shall remain in full force and affect.
19. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this MDA which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

20. **Time is of the Essence.** Time is of the essence to this MDA and every right or responsibility shall be performed within the times specified.
21. **Appointment of Representatives.** To further the commitment of the parties to cooperate in the implementation of this MDA, the Town, Developer each shall designate and appoint a representative to act as a liaison between the Town and its various departments and the Developer. The initial representative for the Town shall be Phil Rubin and the initial representative for Developer shall be Nate Brockbank. The parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this MDA and the Development of the Project.
22. **Mutual Drafting.** Each party has participated in negotiating and drafting this MDA and therefore no provision of this MDA shall be construed for or against either party based on which party drafted any particular portion of this MDA.
23. **Applicable Law.** This MDA is entered into in Wasatch County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.
24. **Venue.** Any action to enforce this MDA shall be brought only in the Wasatch County, State of Utah.
25. **Entire Agreement.** This MDA, and all Exhibits thereto, is the entire agreement between the Parties regarding the subject matter set forth herein and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.
26. **Recordation and Running with the Land.** This MDA shall be recorded against the

Property prior commencement of any work related to Development of the Project.

This MDA shall be deemed to run with the land. The data disk of the Town's Vested Laws, Exhibit "C", shall not be recorded in the chain of title. A secure copy of Exhibit "C" shall be filed with the Town Recorder and each party shall also have an identical copy.

27. **Authority.** The parties to this MDA each warrant that they have all of the necessary authority to execute this MDA. Specifically, on behalf of the Town, the signature of the Mayor of the Town is affixed to this MDA lawfully binding the Town pursuant to Resolution No. ___ adopted by the Town on June __, 2018.

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

DEVELOPER
Western States Ventures, LLC

TOWN
Town of Hideout

By: _____
Its: _____

By: _____,
Its: _____

Approved as to form:

Attest:

Town Attorney

Town Recorder

TOWN ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF WASATCH)

On the _____ day of June, 2018, personally appeared before me Phil Rubin who being by

me duly sworn, did say that he is the Mayor of the Town of Hideout, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the Town by authority of its Town Council and said _____ acknowledged to me that the Town executed the same.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)

:ss.

COUNTY OF SALT LAKE)

On the ____ day of June, 2018, personally appeared before me Nate Brockbank, who being by me duly sworn, did say that he is the Manager of Western States Ventures, LLC, a Utah limited liability company and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

TABLE OF EXHIBITS

Exhibit "A"	Legal Description of the Property
Exhibit "B"	Concept Plan
Exhibit "C"	Town's Vested Laws
Exhibit "D"	Shoreline Drive
Exhibit "E"	Design Guidelines
Exhibit "F"	Maintenance Building Plans
Exhibit "G"	Internet Backbone
Exhibit "H:	Parks Plans