

WHEN RECORDED RETURN TO:

Pleasant View City Administrator
Attn: Bill Cobabe
520 W. Elberta Dr.
Pleasant View, Utah 84414

DEVELOPMENT AGREEMENT AND WATER USE RESTRICTIONS

(Weber County Parcel 16-004-0005)

THIS DEVELOPMENT AGREEMENT AND WATER USE RESTRICTIONS (this "Agreement") is made and entered into on Oct. 24, 2019, by and between Pleasant View City, a Utah municipal corporation and political subdivision of the State of Utah (the "City"), and Wadman Investments, a Utah limited partnership ("Owner").

RECITALS:

WHEREAS, Owner holds title to approximately 29 acres of land located in Weber County, Utah, which land is more fully described and depicted in the materials attached hereto as Exhibit A (the "Property"). Owner intends to develop the Property into a three (3)-lot subdivision in accordance with the applicable provisions of the Weber County Code of Ordinances and this Agreement (the "Project").

WHEREAS, in order to obtain the necessary subdivision and development approvals for the Project from Weber County, Owner needs to obtain "will-serve" letters from the City for culinary water service/connections to each of the proposed three (3) residential lots in the Project.

WHEREAS, Owner and the City previously entered into that certain Agreement dated December 20, 2005, recorded in the Weber County Recorder's Office on January 3, 2006, as Entry No. 2152362 (the "2005 Agreement"), addressing residential culinary water connections to be provided to the Property.

WHEREAS, to honor the terms of the 2005 Agreement while also providing the City with the assurances it desires concerning culinary water use at the Project, Owner and the City desire to enter into this Agreement.

AGREEMENT:

Now, therefore, in consideration of the recitals above and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and the City hereby agree as follows:

1. Recitals. The above Recitals are incorporated herein as part of this Agreement.
2. Effective Date. This Agreement shall become effective on the date it is executed by Owner and the City (the "Effective Date"). The Effective Date shall be inserted in the introductory paragraph preceding the above Recitals.
3. Culinary Water Service. Subject to the conditions and restrictions set forth in this Agreement, the City agrees to provide residential culinary water service for each of the three (3) proposed lots in the Project. The City shall charge, and Owner agrees to pay, the standard water service fees for such culinary water service for the three (3) lots consistent with the City's standard rate schedule applicable for culinary water service in the City. Following the full execution and recordation of this Agreement against the Property, the City will promptly issue "will-serve" letters, as requested by Owner, confirming the City's agreement to provide culinary water service to the three (3) lots in the Project as well as connection to one or more fire hydrants subject to the terms of this Agreement. For clarification, each lot will require a booster-pump for culinary water service to each residence. Owner shall install the booster pumps at Owner's expense. All improvements required by the City shall be constructed to current City standards.
4. No Use of Culinary Water for Secondary Water Purposes. As a material inducement to the City's agreement to provide culinary water service to the 3-lot Project, Owner covenants and agrees that it will not use any culinary water obtained from the City for secondary water purposes. Without limiting the general scope of the preceding sentence, this water use restriction means that culinary water shall not be used for irrigation, landscaping, outdoor water features, lawns, or other outdoor use. Owner acknowledges and agrees that this restriction means no landscaping or landscaping features shall be allowed on the Project unless they are designed, installed, and maintained in xeriscape fashion without any need for water. Culinary water from the City shall be used solely for culinary, household purposes. If and when the Project is connected to and receives secondary water from an approved secondary water system, then Owner (and future Owners of the lots in the Project) shall use such secondary water for outdoor, secondary water purposes, but the restriction set forth herein for use of culinary water from the City shall remain in full force and effect.
 - a. Swimming Pools. Notwithstanding the restrictions in Section 4 above, Owner and the City agree to work together in good faith to allow no more than one (1) outdoor swimming pool per lot in the 3-lot Project, with the pools to be filled and maintained with culinary water, so long as Owner (or the successor owner of the subject lot) pays all reasonable and necessary costs to cover the expenses of such use of culinary water. Owner shall give the City prior written notice when they fill a swimming pool. With the prior written notice, the City shall waive the monthly penalty for exceeding the water restriction amount for that month.
 - b. Rainwater Harvesting/Storage. Nothing in this Agreement shall be construed to prohibit Owner from using a rainwater harvesting/storage system to water trees on

the 3 lots in the Project.

5. Sewer Service; Will-Serve Letters. When this Agreement is approved and signed by both Parties, the City shall issue “will-serve” letters for water and sewer service in favor of the Project.
6. Covenant Against Further Subdivision. As a material inducement to the City’s agreement to provide culinary water service to the 3-lot Project, Owner covenants and agrees that it shall not subdivided the Project into more than three (3) lots now or in the future. If Owner or any successor owner of the Property attempts to subdivide the Project now or in the future into more than three (3) lots, then in addition to any and all other remedies available to the City, the City shall have no obligation of any kind, express or implied, to provide culinary water service or sewer service to any such additional lots.
7. Remnant Parcel. As additional consideration to the City, Owner hereby agrees that the City may retain ownership of, and shall not be required to convey to Owner, the parcel of property referenced in Paragraph 4 of the 2005 Agreement.
8. Culinary Water Connections. As additional consideration to the City, Owner hereby relinquishes and waives all claims to thirty (30) culinary water connections on the Property under the 2005 Agreement because, as set forth in this Agreement, there shall only be three (3) lots on the Property.
9. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police powers of the City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation, and other land use plans, policies, ordinances, and regulations after the date of this Agreement. Notwithstanding the retained power of City to enact such legislation under its police power, such legislation shall not modify Owner’s rights as set forth herein unless facts and circumstances are present that meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1988), or successor case law or statute. Any such proposed change affecting Owner’s rights shall be of general applicability to all development activity in City. Unless City declares an emergency, Owner shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project.
10. Successors and Assigns.
 - a. Change in Owner. This Agreement shall be binding on the successors and assigns of Owner. If the Property is transferred (“Transfer”) to a third party (“Transferee”), Owner and the Transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless, prior to such Transfer, Owner provides to City a letter from Transferee acknowledging the existence of this Agreement and agreeing to be bound thereby.

Said letter shall be signed by the Transferee, notarized, and delivered to City prior to the Transfer. Upon execution of the letter described above, the Transferee shall be substituted as a new "Owner" under this Agreement and the persons and/or entities executing this Agreement as a prior Owner shall be released from any further obligations under this Agreement as to the transferred Property.

- b. Deeds. All future conveyances of lots in the Project shall be made subject to the terms and restrictions of this Agreement regardless of whether the deed(s) or other instrument(s) of conveyance makes reference to this Agreement. The terms of this Agreement shall have priority over all such deeds and conveyances.

11. Default.

- a. Events of Default. Upon the happening of one or more of the following events or conditions the defaulting Owner or City, as applicable, shall be in default ("Default") under this Agreement:
 - i. a determination by City made upon the basis of a preponderance of the evidence that Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement;
 - ii. Owner (or a successor owner of a lot) violates the water use restrictions set forth in this Agreement;
 - iii. any other event, condition, act, or omission, either by City or Owner that violates the terms of, or materially interferes with the intent and objectives of this Agreement.

For clarification, no Owner of one lot shall be held responsible for the default or breach by a different Owner under this Agreement regarding that Owner's lot. Each Owner shall be responsible only for the performance of the obligations under this Agreement relating to that Owner's lot(s).

b. Procedure Upon Default.

- i. For each lot, Owner has the right to use up to (but not more than) 15,000 gallons of culinary water in the home per month. Subject to the inspection and confirmation provisions in subsection (b)(ii) below, if Owner exceeds this amount, except according to paragraph 4(a), Owner shall pay a penalty of \$5,000.00 for exceeding the use for that month. The penalty/fine is due and payable to the City within ten (10) days of the billing.
- ii. If a lot Owner (or a successor owner of any lot) violates the use restrictions set forth above regarding use of no more than 15,000 gallons of culinary water from the City in any given month, before any fine is imposed or paid, a City inspector shall inspect the Property to confirm that

the excess water usage was the result of Owner improperly using culinary water for outside purposes (landscaping or other outdoor use). The fine/penalty set forth in subsection (b)(i) above shall only be imposed on Owner if the City inspector reasonably concludes that the excess water usage was caused by Owner's improper use of culinary water for outdoor purposes.

12. Entire Agreement. This Agreement shall supersede all prior agreements with respect to the subject matter hereof, not incorporated herein, and all prior agreements and understandings are merged, integrated, and superseded by this Agreement.

13. General Terms and Conditions.

- a. Incorporation of Recitals. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.
- b. Recording of Agreement. This Agreement shall be recorded at Owner's expense to put prospective lot purchasers or other interested parties on notice as to the terms and provisions hereof.
- c. Severability. Each and every provision of this Agreement shall be separate, several, and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provision shall not affect the enforceability of any other provision hereof.
- d. Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect health, safety, and welfare of the citizens of City.
- e. Enforcement. The parties to this Agreement recognize that City shall enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance.
- f. No Waiver. Failure of a 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 time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the City Council taken with the same formality as the vote approving this Agreement, no officer, official, or agent of City has the power to amend, modify, or alter this Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.
- g. Amendment of Agreement. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties. No

change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of the City Council taken with the same formality as the vote approving this Agreement.

- h. Attorney Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.
- i. Notices. Any notices required or permitted to be given pursuant to this Agreement shall be deemed to have been sufficiently given or served for all purposes when presented personally, or four days after being sent by registered or certified mail, properly addressed to the parties as follows (or to such other address as the receiving party shall have notified the sending party in accordance with the provisions hereof):
 - To the Owner: Spencer Bradley
 2920 S 925 W
 Ogden, UT 84401
 - To the City: Bill Cobabe
 520 W Elberta Drive
 Pleasant View, UT 84414
- j. Applicable Law. This Agreement and the construction thereof, and the rights, remedies, duties, and obligations of the parties which arise hereunder are to be construed and enforced in accordance with the laws of the State of Utah.
- k. Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals, and all such counterparts together shall constitute one and the same agreement.
- l. Hold Harmless and Indemnification. Owner agrees to defend, indemnify, and hold harmless City and its elected officials, officers, agents, employees, consultants, special counsel, and representatives from liability for claims, damages, just compensation restitution, inverse condemnation, or any judicial or equitable relief which may arise from or are related to any activity connected with the Project, including approval of the Project, the direct or indirect operations of Owner or its contractors, subcontractors, agents, employees, or other persons acting on its behalf which relates to the Project, or which arises out of claims for personal injury, including health, and claims for property damage. This includes any claims

or suits related to the existence of hazardous, toxic, and/or contaminating materials on the Project and geological hazards.

- i. Nothing in this Agreement shall be construed to mean that Owner shall defend, indemnify, or hold the City or its elected and appointed representatives, officers, agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from: (i) the willful misconduct or negligent acts or omissions of the City, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the City of improvements that have been offered for dedication and accepted by the City for maintenance
- ii. City shall give written notice of any claim, demand, action or proceeding which is the subject of Owner' hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Owner shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.
- m. Relationship of Parties. The contractual relationship between City and Owner arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third-party beneficiary rights. It is specifically understood by the parties that: (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Owner, (ii) the Project is a private development; (iii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property; and (iv) Owner shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in this Agreement.
- n. Title and Authority. Owner expressly warrants and represents to City that Owner (i) owns all right, title and interest in and to the Property, or (ii) has the exclusive right to acquire such interest, and (iii) that prior to the execution of this Agreement no right, title or interest in the Property has been sold, assigned or otherwise transferred to any entity or individual other than to Owner. Owner warrants that the undersigned individuals have full power and authority to enter into this Agreement on behalf of Owner. Owner understands that City is relying on these representations and warranties in executing this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by City and by a duly authorized representative of Owner as of the date first written above.

THE CITY:

Attest:

Pleasant View City, a municipal corporation and political subdivision of the State of Utah

City Recorder

By: _____
Mayor

OWNER:

Wadman Investments, a Utah limited partnership

By: David Wadman

Its: Managing Member

State of Utah)
 :SS
County of Utah)
 Weber

The foregoing instrument was acknowledged before me this 24 day of October 2019 by David Wadman in his capacity as Managing Member of Wadman Investments.

SEAL:

Jerilyn Martin
Notary Public



Exhibit "A"

Property Ownership Map and Legal Description

(Weber County Parcel 16-004-0005)

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 7 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; RUNNING THENCE ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER NORTH 89°47'17" WEST 1332.39 FEET; THENCE NORTH 586.95 FEET TO A POINT OF THE WEBER/BOX ELDER COUNTY LINE; THENCE SOUTH 72°02'01" EAST 414.69 FEET; THENCE NORTH 7°20'28" WEST 372.80 FEET; THENCE NORTH 55°06'51" EAST 777.75 FEET ALONG SAID COUNTY LINE; THENCE SOUTH 62°04'20" EAST 393.37 FEET; THENCE ALONG SAID EAST LINE SOUTH 1094.30 FEET TO THE POINT OF BEGINNING. CONTAINING 28.92 ACRES