

**ORIGINAL  
DEVELOPMENT AGREEMENT  
FOR  
STERLING VILLAGE  
11-15-2000**

When Recorded Please Return To:

SOUTH JORDAN CITY  
11175 South Redwood Road  
South Jordan, Utah 84095

7767861  
11/27/2000 03:45 PM NO FEE  
Book - 8403 Ps - 7120-7148  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
SOUTH JORDAN  
11175 S REDWOOD RD  
SOUTH JORDAN UT 84095-8265  
BY: ZJM, DEPUTY - WI 79 P.

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT is made and entered into as of November 15, 2000, by and between SOUTH JORDAN CITY, a municipal corporation of the State of Utah ("City"), and STERLING VILLAGE, L.C., a Utah limited liability company (formerly known as 11000 South 400 West L.C., a limited liability company) ("Developer").

**RECITALS:**

A. Developer owns approximately 54.56 acres of land in the City's municipal limits at approximately 11000 South 440 West (the "Property").

B. At its regular meeting held on November 14, 1995, the City Council of South Jordan City (the "City Council") approved an amendment to the zoning ordinance for the Property consistent with the Developer's proposal for not more than 880 units of multi-family residential apartments and condominiums (the "Project"), subject to various terms and conditions.

C. On or about April 30, 1999, Developer completed 300 of the 880 multi-family residential units ("Phase One") and various ancillary structures and improvements associated with the Phase One development ("Phase One Improvements"). The Phase One Improvements included but were not limited to, two Recreation and Leasing Buildings, an outdoor pool and spa, a Project entry road, and various underground utility facilities associated with future phases of the Project.

D. City and Developer are mutually desirous of setting forth their respective understandings and agreements with respect to the remaining Phases of the Project to assure that the Project described herein is developed and constructed in an aesthetically pleasing manner as provided herein and consistent with the quality and aesthetics of the Phase One development.

E. 11000 South 400 West L.C., a limited liability company has previously formally changed its name to Sterling Village L.C, a Utah limited liability company. The original Development Agreement, dated November 30, 1995, by and between 11000 South 400 West L.C., a limited liability company and the City shall terminate only upon the execution of this Agreement and at such time this Agreement shall commence and be in full force and effect.

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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 parties hereby agree as follows:

1. Incorporation of Recitals. The Recitals are incorporated into this Agreement.

2. Purpose of Agreement. The purpose of this Agreement is to reduce to writing the respective understandings and agreement of the parties with regard to the general development guidelines for the Project, including all improvements to be located therein, to be developed within that certain area of the City as set forth in the General Plan of the City located between 10600 and 11400 South and the 1-15 freeway and the Jordan River. It is the desire of the respective parties that the development of the Project proceed in such a manner as to benefit the residents of the City as well as the Developer. This Agreement contains certain requirements for design and development of the Project in addition to those contained in the ordinances, rules and regulations of the City governing the development of real property within the City.

3. Description of the Project. The Project shall be developed as a multi-unit residential planned unit development and is located within the C-FF zone of the City. The Project will be located on 54.56 acres depicted and described in the legal description attached hereto as Exhibit "A" and by this reference made a part hereof.

4. Site Plan. A Conceptual Master Site Plan for the entire Project is attached hereto as Exhibit "B" and by this reference is made a part hereof. A Final Site Plan shall be submitted by the Developer for each phase of the Project for approval by the City in accordance with the Site Plan Review Ordinance of the City. To the extent that Preliminary and Final Site Plan elements are the same as corresponding elements of the Concept Master Site Plan attached as Exhibit "B", then Preliminary and Final Site Plan approvals will not be unreasonably withheld by the City. The Developer acknowledges that final landscaping plans, buffering plans, grading plans, lighting plans, construction plans and specifications remain subject to City approval as provided in City ordinances. All portions of the Project receiving Final Site Plan approval must be developed in strict accordance with

the approved Final Site Plan for that phase. No amendments or modifications to the Final Site Plan for any phase shall be made by the Developer without the prior written approval of the City. The Conceptual Master Site Plan for the entire Project may be modified from time to time by the Developer with the approval of the Planning Commission. Notwithstanding the provisions contained in this Development Agreement, nothing herein shall be construed as granting Final Site Plan approval to the Developer for the Project, or any phase thereof, until Developer's application therefor has been made to the City and properly processed in accordance with the Site Plan Review Ordinance as contained in Chapter 22 of Title 12 of the City Zoning Ordinance.

5. Elevations. Preliminary building elevation drawings (both two story and three story), are attached hereto as Exhibit "C" and by this reference are made a part hereof (collectively the "Elevation Drawings"). The Project shall conform in all material respects to the Elevations Drawings approved by the City.

6. Development of the Project

(1) Phase 1.

(a) Development and construction of Phase 1 was completed in approximately April of 1999. This included construction of the Entry Road, construction of the Recreation Center near the entry to the Project, construction of 300 multi-family residential units, completion of storm drainage onto adjoining open space property to the west and other improvements on the open space property, and payment of Impact Fees and Building Permit Fees for the units included in Phase 1, (excluding the Deferred Park Impact Fees as set forth below).

(2) Deferred Impact Fees.

(a) Deferred park impact fees in the amount of Forty-Three Thousand Six Hundred Ninety Dollars (\$43,690) for the units included in Phase 1 shall be paid to the City by the Developer immediately upon City Council approval of the Development Agreement. This payment of Forty-Three Thousand Six Hundred Ninety Dollars (\$43,690) reflects the credit of One Hundred Sixty-six Thousand Three Hundred Twenty Dollars (\$166,320) as described in Paragraph 8(b) herein.

(3) Development Phases.

(a) The remaining portions of the Project will be developed in phases. Phasing of the Project shall take into account and be accomplished in order to ensure: continuity and orderly development of the Project, coordination in connection with the installation of infrastructure improvements, future utility capacity needs, availability of access to all portions of the Project, adequacy of utilities and related considerations. The specific location of each subsequent phase within the Property shall be determined by Developer. The essential features of each Phase, and the Schedule therefor shall be as follows:

(4) Phase II.

(a) Phase II may be commenced at any time, but Phase II shall be commenced not later than five (5) years from date of this Agreement.

(b) Developer may commence construction on Phase II in one or more phases consisting of any number of units as long as the total combined number of units for Phase I and Phase II is sufficient to bring the total units to at least 600 upon the completion of Phase II.

(c) Payment of Impact Fees and Building Permit Fees for the units included in Phase II shall be due at the time the building permits are issued for the Phase II units and shall be per the current adopted City Impact Fee Schedule.

(d) Completion of construction for all units in Phase II shall be within eight (8) years from the date of this Agreement.

(5) Subsequent Phases.

(a) The remainder of the units authorized hereunder may be constructed in one or more phases, which subsequent phases may be commenced at any time, whether or not construction under Phase II has then been completed.

(b) All building permits for units in this Project for the final phase of development, shall be applied for and issued, and all Building Permit Fees and Impact Fees paid therefor, not later than nine and one-half (9 1/2) years after the date of this Agreement.

(6) Development of the Project.

(a) The Project shall be developed by Developer in accordance with all of the requirements contained herein.

(1) Compliance with City Ordinances and Development Standards. The Project shall be developed by Developer in accordance with the Ordinances, rules, regulations, policies and development standards of the City.

(2) Number of Units. The Project may include (at Developer's option), but shall not exceed, a total of 880 units. The configuration of such units shall be subject to Final Site Plan approval as contemplated under Paragraph 4 above.

(3) Building Height. All buildings within the Project shall not exceed three stories or 38 feet whichever is less, which may include of stacking of three separate units so long as they are less than 38 feet in height (to be measured from finish floor to the mid point of sloping roofs). Flat roofs shall not be permitted on the dwelling units.

(4) Common Walls. Units may have three walls in common.

(5) Minimum Size. The minimum size of units within the Project Phases for which Final Site Plan approval has been given (in the aggregate), shall be 650 square feet; provided:

(a) At least 60% of the total units shall be not less than 1,000 square feet; and

(b) At least 85% of all the units (in the aggregate) shall be not less than 850 square feet.

(6) Parking and Garage Requirements. All vehicles shall be parked only in designated parking areas in the Project and there shall be no parking of vehicles in the internal roadways in the Project. A garage shall be constructed for each unit contained within the Project and 60% of the garages shall be attached. The minimum off street parking shall be 1.8 cars per residential unit with adequate provision for ingress and egress.

(7) Open Space. If the Final Site Plan(s) for the various Phases of the Project submitted by the Developer

differs materially from the Conceptual Master Site Plan attached hereto as Exhibit "B" with respect to permanent open space, then not less than 47% of the gross area of the Project (covered by the Final Site Plan approved for each Phase, in aggregate) shall be retained in permanent open space. The City's general PUD standards for open space shall be complied with. The City acknowledges that such 47% is the current best estimate by Developer's landscape architect of the open space shown on the Conceptual Master Site Plan attached hereto. The City further agrees to accept substantial compliance by the Developer in meeting this standard.

(8) Streets and Infrastructure.

(a) Entry Road. Developer has constructed, or caused to be constructed, without cost to the City, the entry road ("Entry Road") extending from 400 West southerly to the Project entry, including all curb, gutter and sidewalks on both sides of such Entry Road, together with sewer and storm drains and water mains as shown in the Final Site Plan. Upon acceptance by the City, such Entry Road shall be dedicated to the City as a public road, including the median strip and shall thereafter be maintained by the City, including snow removal. The landscaping shall be maintained by the Developer. The City and Developer shall complete and execute a reimbursement agreement (to the extent that there is sufficient tax increment generated by the Project to reimburse Developer for all costs related to the development and construction of the Entry Road) and all other necessary legal documents and descriptions for the Entry Road dedication within six (6) months from the date of this Agreement.

(b) Internal Roadways Private. The roadways located on and within the Project which are not to be dedicated to the City shall be private and shall be maintained, including snow removal, by the owner of the Project.

(9) Project Recreational Facilities. The recreational facilities to be located on and within the Project shall be private and not for public use.

(10) Utilities. All utility lines shall be placed underground in designated easements. Each contractor and Developer shall be responsible to know the whereabouts of all underground utilities. Protection of such utilities shall also

be their responsibility. Prior to construction, contact must be made with "Blue Stakes" to identify underground utility lines. Developer agrees to install and dedicate to the City and/or the applicable utility entities, the utility easements necessary to serve the Project. Separate water meters will not be required for each residential unit; provided that the Declaration of Covenants, Conditions and Restrictions ("CCRs") for the condominium plat (if filed by Developer) treat commonly metered water costs as shared common area expenses to be paid by the Homeowners Association and assessed to the unit owners.

(11) Water System Connections. Developer shall connect the Project to the City water system. The City may charge impact fees and connection fees relative to such connection in accordance with the current City fee schedule in place at the time of the request. The Developer acknowledges that the City's secondary water system is not presently available to the Project. The City will permit connection to the water System at two (2) locations (at 400 West and Entry Road, and at 11000 South on the west side of the railroad tracks). The City will provide the Project with adequate water (both as to water availability and transmission facilities to the two connection points) at the time of connection.

(12) Site Lighting. A consistent lighting plan and light design, including heights, light standard design and light intensity shall be established for the overall Project. Directional shielding shall be used to protect nearby residential areas to the south of the Project.

(13) Buffering and Fencing. Developer shall provide buffering and fencing for the Project on a phase-by-phase basis provided in the Specific Design Conditions attached hereto as Exhibit "D".

(14) Grading and Drainage. Drainage for the Project must follow current City requirements as determined by the City Engineer. Drainage shall not be allowed to flow upon adjoining properties unless an easement for such purpose has been granted by the owner of the adjoining property on which the water flows. The Final Site Plan with grading, drainage, and clearing plans shall be approved by the City Engineer before any such activities may begin -when the City accepts a dedication of the 34 acres of open space property adjoining the Project, the open space property will be subject to an easement at locations acceptable to the City in favor of the

Project for storm drainage detention, and for construction and maintenance of improvements relating to such storm drainage function. If such easement is not established prior to the dedication, then the City will grant such easement upon request after the dedication. If the City requires the Developer to up-size any storm drainage line or facilities above the sizes required to serve the Project then the City shall promptly pay the increase in cost of materials due to such up-sizing.

(15) Access Easement. Developer shall grant to the City a perpetual 20 foot easement for access of construction and maintenance vehicles and equipment across the Project, for the limited purpose of constructing and the storm drainage detention pond and other improvements on the open space property.

(16) General Maintenance. An overall maintenance schedule shall be implemented by the owner of the Project in maintaining all buildings, detention basins, landscaping, fences, walls, drives, parking lots (including surfacing and striping), or other structures. The property shall be maintained in good and sufficient repair in a safe and aesthetically pleasing manner. Roads and pavement shall be kept true to line and grade and in good repair.

(17) Specific Design Conditions. The specific design conditions attached hereto as Exhibit "D" are hereby approved for the Project.

## 7. Construction Standards and Requirements.

a. Construction standards. All construction shall be conducted and completed in accordance with ordinances, rules and regulations of the City. Developer shall provide City, without cost to the City, with "as built" drawings pursuant to the City's ordinances. All roadway improvements shall be installed in accordance with AASHTO and UDOT standards, as applicable, and the requirements of any governmental entity having jurisdiction over such improvements as well as applicable law.

b. Permits. Before commencement of construction or development of any phase of the work on or any improvement upon or relative to the Project, including off-site work, Developer shall, at its expense, obtain, or cause to be obtained all permits which may be required by the City or any

other governmental agency having jurisdiction over such phase of the work or improvement. The City shall cooperate with Developer in securing and issuing such permits.

c. Rights of Access. Representatives of the City shall have the reasonable right of access to the Project during the period of construction to inspect or observe the Project and any work thereon, or to conduct at the City's expense, such soil, geologic, engineering, surveying or other investigations as the City may desire, or as may be required by the City Engineer.

d. Local, State and Federal Laws. Developer shall construct, or cause to be constructed, all improvements on the Project in conformity with all applicable federal, state and local laws, rules and regulations.

e. Bonds. Developer shall not be required to post or deposit any completion bonds or other security for completion of construction or performance hereunder, EXCEPT with respect to the estimated costs of the Entry Road and the utilities installed therein.

#### 8. City Fees.

(a) Building Permit and Impact Fees. The Developer shall pay to the City all required impact and other fees for the Project and any phase thereof in a timely manner. The fee schedule of the City shall be the adopted fee schedule as set forth by the City at the time Permits are applied for. As a condition to the issuance of any building permit for the Project, Developer shall pay to the City the total net amount due as impact fees. There shall be no fees or inclusionary requirements for affordable housing on the Project. .

Developer shall pay all generally applicable charges including inspection fees and other normal charges for the Project. Except for the foregoing, the City shall not make any other charge in connection with the Project. Nothing contained herein shall limit the City's ability to levy general property taxes against the Project or to charge uniformly applicable fees for business licenses and other generally applicable charges in accordance with law.

b. Park Fees. The City acknowledges that the development of the Project will include construction of various private recreation facilities for use by the occupants

of the Project, and that such use will decrease the burden which the Project would otherwise impose on City park and recreational facilities. The Phase I parks improvement fee will be due and payable upon City Council approval of this Development Agreement, but Developer will be credited with a deemed payment of \$166,320; and if all building permits for units in this Project are not applied for and issued not later than nine and one-half (9 1/2) years after the date of this Agreement, then the Phase I fee credit of \$166,320 will be due and payable in full within thirty (30) days after written demand from the City, and the City shall have a lien against the Project for such payment.

c. Building Permit Fee Calculation. For purposes of calculating the Building Permit fees hereunder, such fees shall be based on an evaluation schedule as published in the latest edition of the City building permit schedule.

9. Development Regulation/Vesting. This Agreement shall have a term of ten (10) years from the date of issuance of the first building permit in Phase II of the Project. During the term of this Agreement, Developer shall have the right to develop the Project pursuant to this Agreement, the Final Site Plan and the Elevation Drawings, and no change, amendment or modification in city procedure, impact fees, connection fees, design criteria, zoning, planning and land use ordinances or building codes shall be enforceable against the Project or against Developer in connection with the Project.

The expression of Developer's contractual rights under this Agreement shall in no manner operate as a waiver or relinquishment of any of Developer's rights at law or in equity pertaining to the Project, the Final Site Plan, the Elevation Drawings, or any permits issued in connection therewith.

10. Moratoria. The parties hereby acknowledge and agree that Developer may build the improvements on the Project in phases, and no moratorium, or future ordinance, resolution or other land use rule or regulation or limitation on the conditioning, rate, timing or sequencing of the development of the Project or any portion thereof shall apply to or govern the development of the Project during the term hereof, whether affecting parcel or subdivision or condominium maps, building permits, occupancy permits or other entitlement to use issued or granted by the City, except as otherwise provided in this Agreement, and except for any ordinance, resolution or

regulation provided in this Agreement, and except for any ordinance, resolution, or regulation enacted by the City after the date of this Agreement as may be necessary to: (i) comply with any state or federal laws or regulations, provided that if any such state or federal law or regulation prevents or precludes compliance with any provision of this Agreement, such affected provisions shall be modified as may be necessary to meet the minimum requirements of such state or federal law or regulation; (ii) comply with any resolutions or ordinances of any other governmental authority having a material bearing on the City's ability to provide services to the Project or otherwise comply with its obligations this Agreement, provided that if any such resolution or ordinance prevents or precludes compliance with any provision of this Agreement, such affected provisions shall be modified as may be necessary to meet the minimum requirements of such resolution or ordinance; or (iii) alleviate or otherwise contain a legitimate, bona fide harmful and noxious use of the Project in which event any ordinance, rule or regulation to be imposed in an effort to contain or alleviate such harmful and noxious use shall be the most minimal and the least intrusive alternative possible and may be imposed only after public hearing and comment and shall not, in any event, be imposed arbitrarily. In the event of any such moratorium, future ordinance, resolution or rule or regulation, unless taken by the City as provided under the three exceptions contained in the preceding sentence, Developer shall continue to be entitled to apply for and receive approvals for the implementation of the Final Site Plan and the Elevation Drawings in accordance with the rules, regulations and official policies applicable to and governing the development of the Project existing and in force as of the date of this Agreement.

11. Amendment. The City and Developer acknowledge that amendments to the Final Site Plan and the Elevation Drawings may be necessary from time to time. If and when the parties find that minor changes or adjustments are necessary or appropriate, they shall effectuate such changes or adjustment through administrative amendments approved by the City's Community Development Director and/or Building Official, without referral to the Planning Commission or the Council. Changes and adjustments in major elements of the Final Site Plan (which affect the overall concept and appearance of the Project), such as location of buildings, location and width of roadways, major amenities, fencing and buffers along the Entry Road and along the south boundary of the Project (excluding the Project interior), and overall architectural style shall

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be subject to approval by the City Council after receiving the recommendation of the Planning Commission. The parties shall cooperate in good faith to agree upon, and to process, any administrative or substantive amendments to the Final Site Plan.

12. City Decisions. City agrees to respond to Developer requests for amendment to the Final Site Plan and the Elevation Drawings, or to requests from the Developer for City action pertaining to the Project, in a prompt and timely manner.

13. Termination

a. Phase II must commence within five (5) years of the date of this Agreement per paragraph 6.(4)A. Construction of the improvements contemplated by approved Final Site Plan for the entire Project must be completed no later than ten (10) years from the date of the first building permit in connection with Phase II of the Project. In the event the Developer fails to do so, or in the event the Developer fails to complete the various phases of the Project as contemplated by Paragraph 6 above (including commencement of construction and payment of, fees), then the City shall give written notice of such failure to Developer, specifying such failures and giving notice that Developer's continued failure without cure for four (4) additional months (except for a failure to pay, in which case the cure period shall be one (1) month) may result in termination of this Agreement, upon written notice by the City, at its option.

b. In addition to the foregoing, in the event of any failure by the Developer to comply with its obligations hereunder, or with applicable City ordinances, the City shall have the right to pursue normal enforcement procedures permitted under its ordinances, and shall have all remedies otherwise available at law or in equity, including damages for breach of contract and injunctive relief.

c. Developer agrees to respond to City requests for information pertaining to the Project in a prompt and timely manner.

d. This Agreement shall terminate automatically upon completion of construction of the Project, as evidenced by a Certificate of Occupancy for all units for all Phases of the Project.

14. General Provisions.

a. Assignment.

(1) Assignability. Developer shall not assign this Agreement, or any rights or interests herein, without the prior written consent of City. Nevertheless, City hereby consents to the assignment of this Agreement and all rights and benefits hereunder or relating to this Agreement to any entity as to which a majority of the equity interests are held either by Sanford Diller, and/or Sanford N. Diller and Helen P. Diller, Trustees of the D.N.S. Trust and/or Prometheus Real Estate Group, Inc. City hereby consents to Developer granting security interests in and collaterally assigning its rights hereunder in connection with any financing of the Project, and to any such lender realizing upon its collateral (including the rights granted Developer hereunder) in a foreclosure, deed in lieu conveyance or other proceeding in enforcing its rights under its security documents.

(2) Exceptions to General Prohibition. Nothing contained herein shall prohibit Developer from selling or leasing residential apartments or condominiums in the ordinary course of business of operating the Project.

(3) Qualifications of Transferee; Assumption. Except as expressly provided in this Agreement, any proposed assignee of this Agreement shall have the qualifications and financial responsibility necessary and adequate, as reasonably required by the City, to fulfill the obligations undertaken in this Agreement by Developer. Any such proposed assignee, by instrument in writing satisfactory to City, for itself and its successors and assigns, and for the benefit of the City, shall expressly assume all of the obligations of Developer under this Agreement with respect to the Project (or any portion thereof), and shall agree to be subject to all the conditions and restrictions to which Developer is subject with respect to the Project (or any part thereof). Such assignments shall be submitted to the City for review as to the consistency with this Agreement of such instruments and other legal documents. After such complete submittal, City may approve or disapprove such proposed assignee within thirty (30) days. If the proposed assignee is disapproved, City shall set forth the reasons for such disapproval in its notice. If City approves any such assignment, Developer shall be released from its

obligation hereunder for that portion of the Project for which assignment is approved.

b. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the stated rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights and/or remedies for the same default or any other default by the other party.

c. Notices, Demands and Communications Between the Parties. All notices, requests and demands required to be given hereunder shall be in writing and shall be deemed to have been duly given upon the date of service, if served personally upon the party for whom intended, or, if mailed by certified mail, return receipt requested, postage prepaid, to such party at its address as shown below with an additional copy sent by facsimile, three (3) business days after such mailing, or at such address as otherwise hereafter designated by such party in writing.

To Developer:

Sterling Village, L.C.  
c/o Prometheus Real Estate Group, Inc.  
350 Bridge Parkway  
Redwood City, California 94065  
Attn: Chief Operating Officer  
Fax: 650-596-5374

To City:

City of South Jordan  
11175 South Redwood Road  
South Jordan, Utah 84095  
Attn: City Administrator  
Fax: 801-254-3393

Any party may change its address for notice under this Agreement by written notice to the other party in accordance with this Paragraph.

d. Non-liability of City Officials and Employees. No officer, representative, agent or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City, of

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for any amount which may become due to Developer or its successors or for any obligation under the terms of this Agreement.

e. Attorney's Fees. In the event of any lawsuit between the parties hereto arising out of or relating to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled to recover reasonable attorney's fees and costs as determined by the Court.

f. Enforced Delay: Extension of Time of Performance. Performance by either party hereunder, with respect to items of construction and development required hereunder, shall not be deemed to be in default where delays are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, unusually severe weather, acts of the other party, acts or the failure to act of any public or governmental agency or entity (other than acts or failure to act of City which shall not excuse performance by the City), or any other causes beyond the control or without the fault of the party claiming the right to an extension of time to perform.. Any extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause.

g. Approvals by City and Developer. Wherever this Agreement requires the City and the Developer to approve, review or consent to any document, plan, proposal, specification, drawing or other matter, such approval, review or consent shall not be unreasonably withheld or delayed.

h. No Third Party Rights. The obligations of Developer set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than the City. The City alone shall be entitled to enforce or waive any provision of this Agreement running in favor of City.

i. Entire Agreement, Waivers and Amendments.

(1) Duplicate Originals. This Agreement is executed in four (4) duplicate originals each of which is deemed to be an original. This Agreement also includes the above-mentioned Exhibits and constitutes the entire

understanding and agreement of the parties with respect to the subject matter hereof. All exhibits which are attached hereto and schedules referred to herein are hereby incorporated herein as though set forth herein at length.

(2) Integration. This Agreement, together with the exhibits hereto, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all prior negotiations, representations, promises or previous agreements between the parties with respect to all or any part of the subject matter(s) hereof.

(3) Waivers/Amendments. All waivers of the provisions of this Agreement must be in a writing signed by the authorized officers of the City or Developer. Any amendments hereto must be in writing and signed by the authorized representatives of City and Developer.

(4) Further Documentation- This Agreement is entered into by both parties with the recognition and anticipation that subsequent agreements implementing and carrying out the provision of this Agreement may be necessary. The parties hereby agree to execute and deliver such additional documents and to take further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

(5) Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

j. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, including any other municipality which may, by subsequent annexation, acquire any jurisdiction over any portion of the Project. The obligations of the Developer hereunder shall be conditioned upon closing of Developer's intended acquisition of the Project from Anderson Development Co.

k. Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect any other term or provision of this Agreement.

l. Captions. The article and paragraph headings contained in this Agreement are for purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof.

m. Governing Law. This Agreement and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

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

SOUTH JORDAN CITY

By: Dix H. McMullin

ATTEST:

Ruby A. Hunt  
City Recorder

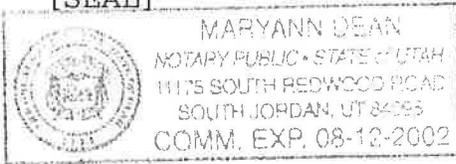
STATE OF UTAH

:SS

COUNTY OF SALT LAKE

The foregoing instrument was acknowledged before me this 15<sup>th</sup> of November, 2000, by Dix H. McMullin.

[SEAL]



NOTARY PUBLIC

Residing at South Jordan, UT

My Commission Expires: 08-12-2002

DEVELOPER:

STERLING VILLAGE, L.C.

By: PROMETHEUS REAL ESTATE GROUP, INC., Manager

By: [Signature]

By: [Signature]



STATE OF CALIFORNIA

COUNTY OF SAN MATEO

The foregoing instrument, was acknowledged before me this 13<sup>th</sup> day of November, 2000, for and on behalf Sterling Village, L.C.

Marguerite Gauvin

Exhibit A

Legal Description

Beginning at a point North, 39.746 feet and East, 911.23 feet from the Southwest Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and. Meridian; Running thence S03° 36'28"W, 214.554 feet; thence S75°12'05"E, 147.81 feet; thence S03°36'28"W, 19.28 feet; thence S02°34'30"W, 392.12 feet; thence S02°14'35"W, 235.32 feet; thence S07°17'03"W, 291.40 feet; thence S45°00'00"E, 44.245 feet; thence S07°17'03"W, 60.717 feet; thence South 74.381 feet; thence N89°29'00"E, 130.142 feet; thence South 30.00 feet; thence N89°29'00"E, 598.457 feet; thence S01° 16'56"E, 153.050 feet; thence N89°59'45"E. 36.87 feet; thence North, 5.81 feet; thence 89°48'53"E, 352.27 feet; thence N05°18'15"E, 1500.984 feet; thence S89°41'55"W, 520.00 feet; thence N00°18'05"W, 92.119 feet; thence Northeasterly, 238.249 feet along the arc of a 500.00 foot radius curve to the right (Note: Chord bears N13°20'57"E, 236.002 feet); thence N27°00'00"E, 154.328 feet; thence Northerly, 316.69 feet along the arc of a 955.00 foot radius curve to the left (Note: Chord bears N17°30'00"E, 315.241 feet); thence N08°00'00"E, 90.188 feet; thence Northeasterly, 231.599 feet along the arc of a 400.00 foot radius curve to the right (Note: Chord bears N24°35'13"E, 228.378 feet); thence Northwesterly 40.00 feet along the arc of a 353.00 foot radius curve to the right (Note: Chord bears N45°34'46"W, 39.979 feet); thence N84°40'00"W, 571.197 feet; thence S08°06'05"E, 204.829 feet; thence S10°44'55"W, 575.43 feet; thence N82°07'32"W, 485.319 feet; thence S00°18'05"E, 405.734 feet to the point of beginning.

Exhibit B

Conceptual Master Site Plan

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Exhibit C

Elevation Drawings

Preliminary Building Elevation Drawings (both two story and three story).

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Exhibit D

Specific Design Conditions

The following Specific Design Conditions reference the Project. For purposes of the Development Agreement and design guidelines, the term "Developer" refers to all of the current or future owners of the Project.

The Project shall be developed under the following design conditions and specifications:

1. BUILDING SEPARATION AND SIDEYARD RESTRICTIONS: No buildings shall be closer than fourteen (14) feet as measured from exterior building wall to exterior building wall.

2. INTERIOR ROADWAYS: Interior roadways in the Project shall have driving lanes of no less than ten (10) feet wide. Location of any such interior roadways shall be at the sole discretion and design of the Developer. No traffic impact study shall be required by the City in connection with the development of the interior roadways of the Project.

3. LANDSCAPING/BUFFERING: Landscaping shall comply with the Final Site Plan requirements and the standards set forth in the City's ordinances. The plans and specifications submitted for final approval shall be stamped by a registered and licensed landscape architect. Preliminary plans for buffering for the full Project will be submitted for review with Phase I. No structures, shall be constructed on the Project within 400 feet of the south boundary line without construction of a sound barrier wall along or near such boundary.

4. BUILDING MATERIALS/COLORS/FINISHES: All construction shall meet minimum uniform fire and building code standards in effect at the time a building permit is sought for the particular improvements which are the subject of such building permit(s). Exterior building materials which are a combination of brick veneer and stucco, consistent with the preliminary building elevations attached hereto as Exhibit "C" are acceptable. Brick veneer in natural earthtones (beige, brown, gray, etc.) is acceptable. Accent colors around windows, door frames, etc. are acceptable in earthtones, or white and forest green shades. Colors for roofs shall be in the discretion of the Developer. Roofs shall be composition shingle. No aluminum

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siding shall be used on the buildings. Any metal finishes will be non-reflective.

5. CONDOMINIUMS: The Developer may (at its option) file a Condominium Map for the Project. The CCR's required in connection with the Condominium Map (if any) shall provide that the Homeowners Association need not be legally filed with the State of Utah until just prior to sales of condominium units. Any condominiums developed in the Project shall conform to the minimum requirements contained in state law existing as of the time the Condominium Map is submitted for approval.

Requirements of size, building materials, parking, etc. shall be identical to those conditions set forth above.

6. SIGNAGE: Two (2) monument signs (not exceeding 10' wide and 6' high) at 400 West and Entry Road are acceptable. A temporary sign (not exceeding 10' wide and 6' high) may be installed by the Developer at the 10600 South 400 West corner (subject to landowners' approval) for a period until a permanent sign at that location is installed pursuant to approval of the City. The City is preparing a coordinated signage plan for the Project and nearby commercial property. Such plan will include a monument sign at 10600 South 400 West and the Developer will be allowed signage on such monument.

To the extent that any design conditions and specifications listed above, or the Final Site Plan, conflict with any City zoning ordinance, code, or policy, a variance to such zoning ordinance, code, or policy is deemed approved for the Project subject to this Exhibit D so as to allow contemplated development according to the design conditions and specifications set forth above.