

AGREEMENT CONCERNING THE VILLAGE AT RIVERWALK

THIS AGREEMENT (the "**Agreement**") is made and entered into this 23rd day of August, 2005 (the "**Effective Date**"), by and between South Jordan City, a Utah municipal corporation (the "**City**") and Arbor/Gardner L.L.C. a Utah Limited Liability Company (the "**Developer**").

RECITALS:

- A. The City and Developer have previously entered into a Purchase and Sale Agreement (the "**Agreement**"), relating to the development of a master-planned community commonly known as The Village at Riverwalk (the "**Project**" or "**Riverwalk**"). 2005 - 045
- B. The development of the Project contemplates the installation of certain water and storm-water pipelines by Developer (as set forth on the Project Plat Map), which pipelines serve or will benefit residences and businesses not comprising part of the Project.
- C. In the course of the Project development, the City has agreed that it will reimburse, or provide credits to Developer for any and all amounts expended or costs incurred by the Developer in the construction the extra and/or oversized pipelines to do not directly benefit the Project.
- D. In conjunction with the pipeline installation, the Developer acquired a certain utility easement to facilitate the said pipeline installation, and the Developer has agreed to convey said easement to the City as part of this agreement.
- E. As part of the development of the Project, the City has agreed to provide to Developer a certain amount of fill dirt that is being excavated from the City's water tank projects.

NOW, THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

1. **Developer agrees to:**
 - A. Install a 42 inch pipeline for storm sewer in the area shown on Exhibit "A" attached hereto, which pipeline shall be approximately 1484 lineal feet, and shall cost approximately \$106,227.37, as shown on Exhibit "B" attached hereto.
 - B. Install a 16 inch water line in the are shown on Exhibit "A" attached hereto, which water line shall be approximately 2200 lineal feet, and shall cost approximately \$110,886.37, as shown on Exhibit "C" attached hereto.
 - C. Convey to the City of South Jordan the utility easement acquired by

Developer for the installation of the water line as shown on Exhibit "D" attached hereto and known as the Jerry and Ferry Ohrn Easement.

2. **City agrees to:**

- A. Upon installation of the 42 inch storm drain line, referred to herein, and upon presentation of invoice from the Developer, City shall within thirty (30) days of the presentation of the invoice, reimburse Developer for the installation of said storm drain line in an amount not to exceed \$106,227.37, which reimbursement amount shall be the lesser of the true and actual cost of the storm drain line or \$106,227.37.
- B. Upon installation of the 16 inch water line, referred to herein, and upon presentation of invoice from the Developer, City shall within thirty (30) days of the presentation of the invoice, reimburse Developer for the cost of the installation of the said water line. It is anticipated the total installed cost of said water line shall be \$110,886.37 which the City agrees to pay an amount equal to total costs less the actual and true cost of the up sizing of the water line, (up sizing is the difference between an eight inch water line up sized to a sixteen inch water line and is anticipated to cost an additional \$12,000).
- C. City has previously agreed in the Purchase and Sale Agreement for the Project real property to deliver to the Project site all of the dirt from the City's water tank projects in a good faith timely manner. City herein reaffirms that commitment to make said good faith effort for the delivery of dirt to the Project.

3. **Miscellaneous Provisions:**

- (a) Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is specified or is clearly a factor.
- (b) The parties shall execute all such instruments and documents and shall take in good faith all actions pursuant to the provisions of this Agreement in order to consummate the transactions contemplated in this Agreement.
- (c) The Recitals to this Agreement are incorporated as a part of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural and the masculine includes the feminine and vice versa. The term "including" and words of similar import mean "including, without limitation" and the phrase "sole discretion" means "sole and absolute discretion". This Agreement has been negotiated by the parties and shall not be construed for or against any of them. There are no third-party beneficiaries of this Agreement.
- (d) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

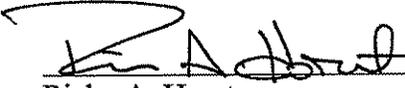
(e) Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties partners or joint ventures, or to render either party liable for any of the debts or obligations of the other.

(f) This Agreement and the transactions contemplated herein will be construed in accordance with and governed by the laws of the State of Utah.

IN WITNESS WHEREOF, the parties have executed this Agreement by and through their respective duly authorized representatives as of the Effective Date.

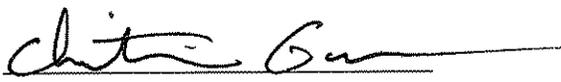
“City”

CITY OF SOUTH JORDAN

By: 
Ricky A. Horst
City Manager

“Developer”

Arbor/Gardner L.L.C.

By: 
Its: 