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Agreement Page 1 of 11
Russell Shirts, Washington County Recorder
05/11/2018 12:24:04 PM Fee \$ 0.00
By ST GEORGE, CITY



Recorded at request of:
City of St. George
When recorded return to:
City Attorney's Office
175 East 200 North
St. George, Utah 84770

Tax ID: SG-LOF-1

DEVELOPMENT AGREEMENT FOR THE LOFTS AT GREEN VALLEY SUBDIVISION
(1122 South 1790 West)

THIS AGREEMENT is entered into this 8th day of May, 2018 (the "Effective Date"), between the City of St. George, a Utah municipal corporation (the "City"), The Lofts Development, LLC ("The Lofts" or "Developer") located at 1999 W. Canyon View Drive, St. George, Utah 84790. City and Developer sometimes are collectively referred to as the "Parties."

RECITALS

WHEREAS, Developer is the owner of certain property in St. George City generally located at 1122 South 1790 West, St. George, Utah, parcel number SG-LOF-1, and which project is commonly referred to as "The Lofts," a planned development townhouse project;

WHEREAS, The Lofts consists of 46 individual townhomes to be built, and Developer has already applied for and received building permits for each Unit, and is presently seeking partial occupancy of The Lofts (Lots 1 through 13 – the "Phase 1 Improvements") as townhouses, while the common area improvements are completed, which the City agrees to issue, if and only if, Developer strictly complies with the conditions and requirements of this Agreement, and as shown on Exhibits A and B, attached hereto and incorporated herein;

WHEREAS, The Lofts has agreed to escrow the estimated costs to complete the common area improvements to assure their completion;

WHEREAS, City cannot grant approval until Developer agrees to the conditions set forth herein;

WHEREAS, the Parties desire to enter into this Agreement to memorialize the terms and conditions for partial occupancy, and for completed construction and future occupancy of The Lofts; and

WHEREAS, City, acting pursuant to its authority under Utah Code Annotated, Section 10-9a-101, et. seq., and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has determined this Agreement is in the best interest of the citizens of the City of St. George, and in the exercise of its legislative discretion, has elected to approve this Agreement.

NOW, THEREFORE, in consideration of the premises, the Parties agree as follows:

AGREEMENT

Recitals. The foregoing recitals are incorporated herein by reference.

2. **Occupancy and Improvements.** City agrees to permit Developer to partially occupy The Lofts, the Phase 1 Improvements, as townhouses, if, and only if, Developer strictly complies with the conditions and requirements of this Agreement. No occupancy permits for the Phase 1 Improvements will be issued until this Agreement is fully executed and recorded, and the Phase 1 Improvements are fully constructed as set forth on Exhibit A, and they pass all inspections, and meet all requirements, of the City in its sole discretion.

Developer further agrees that in addition to the faithful completion of the Phase 1 Improvements prior to the City issuing a permit for occupancy for Units 1-13, Developer shall escrow the funds as outlined on Exhibit B, under terms acceptable to City, to complete the following Common Area Improvements:

- a. The Pool and Associated Buildings:
 1. The pool and buildings are excavated. The footings for the restrooms and equipment buildings are poured and the utility work is on-going.
 2. The pool area will be completed by July 31, 2018, complete with fencing, deck, and landscaping.
- b. Covered Parking:
 1. The parking structures are in progress, shop fabrication of the main frames is ongoing.
 2. Due to the workload of the sub-contractor, these structures will be completed and installed by May 31, 2018.
- c. Landscaping:
 1. The landscaping at the rear of the Units 1 through 13 cannot be completed until the pool deck work has finished. The landscape in front of Units 1 through 13 shall be completed before issuance of any occupancy permits for Units 1 through 13.
 2. The landscaping at the rear of Units 1 through 13 will be completed by July 31, 2018.

No occupancy permits for any additional Units will be issued until each of the provisions of this Agreement is satisfied, the Phase 2 Improvements (defined as the rest of the development not specifically outlined in Exhibit A or Exhibit B, and further defined as Units 14 through 46) are fully constructed as per the plans submitted to the City, and Developer passes all inspections, and meets all requirements of the City in its sole discretion. No Phase 2 Improvements will obtain occupancy permits until the Common Area Improvements are fully completed.

For the Phase 1 Improvements, failure to fully complete the improvements, pass all inspections, comply with all City requirements, and obtain certificates of occupancy on or before May 31, 2018 (the "Phase 1 Completion Date"), immediately extinguishes any right or interest of Developer to obtain partial occupancy of the Phase 1 Improvements under this Agreement. Failure to meet the Phase 1 Completion Date obligations will result in The Lofts project only obtaining certificates of occupancy when the improvements for the entire project are fully constructed, and they pass all inspections, and meet all requirements of the City. For the Common Area Improvements, failure to comply with this Agreement, fully complete construction, pass all inspections, comply with all City requirements, and obtain certificates of occupancy on or before July 31, 2018 (the "Common Area Completion Date"), is a breach of this Agreement.

3. **Cost of Improvements.** The cost of any and all Improvements, their installation and completion, shall be completely and wholly borne by Developer.
4. **Building Permits.** Developer shall at all times stay compliant with the terms and conditions of any and all building permits issued for any portion of The Lofts.
5. **Time.** Time is of the essence in this Agreement. As stated above, occupancy permits for any additional Units shall not issue until such time as the City determines all conditions and requirements of the building permits, and this Agreement, have been met, in its sole discretion. Failure to meet any completion date or deadline in this Agreement is a breach.
6. **Acceptance.** Developer shall not be relieved from the obligation to complete all conditions, and install any and all Improvements, until completed and installed to the satisfaction of City. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve it from the obligation to comply with applicable City Ordinances and City of St. George Standard Specifications for Design and Construction, and all applicable requirements of the City necessary for approval of any development of The Lofts, including the payment of fees, and compliance with all other applicable ordinances, resolutions, regulations, policies, and procedures of the City, except as modified or waived in this Agreement.
7. **Reimbursement and Escrow Fund.** Developer agrees to deposit 110% of the total estimated costs of the Common Area Improvements into a Southern Utah Title Company ("SUTC") escrow account established by Developer within seven (7) calendar days after execution of this Agreement, and before any certificate of occupancy issues under the terms of this Agreement, under escrow terms acceptable to City ("Escrowed Funds"). The total estimated costs of the Common Area Improvements are listed on Exhibit B. Escrowed Funds shall be held and distributed in accordance with instructions that conform to this Agreement. SUTC shall disburse Escrowed Funds to Developer only upon written instructions from City, and only upon satisfactory documentation showing that the Common Area Improvements are fully constructed, installed, inspected, approved, and warranted, on or before July 31, 2018. If Developer fails to perform the duties related to the Common Area Improvements, on or before July 31, 2018, City has sole right, title and interest in the Escrowed Funds. Developer does not have the right to delay City's demand on the Escrowed Funds for any reason, including, but not limited to promises to cure defects in the installation of Common Area Improvements. In addition, in the event of demand on the Escrowed Fund, the Parties expressly agree that City may at any time, at its option, install or complete any or all of the Common Area Improvements. Developer shall reimburse to City, within 30 days of written notice to Developer, all additional costs resulting from such installation and/or completion, if the cost is greater than the amount of the Escrowed Funds. Developer expressly grants City permission to enter The Lofts to complete any or all of the Common Area Improvements in the event they are not completed by Developer on or before the dates listed in Exhibit B and this Agreement. Developer agrees to pay SUTC its reasonable charges, costs, and fees, including a reasonable monthly charge, for acting as custodian of Escrowed Funds.
8. **Failure to Pay.** Should Developer fail to perform its obligations pursuant to the terms of this Agreement, or pay or reimburse City as herein agreed, Developer recognizes City's right to recover the costs necessary to complete the obligations and install any or all of the Improvements, or obtain payment or reimbursement therefor, through foreclosure proceedings on the situs of the The Lofts.

9. **Additional Requirements.** No construction vehicles, equipment, or supplies shall be parked, or stored, on the public or private access roads and areas that provide access and parking for Lots 1 through 13, and as depicted in blue hatching on Exhibit A-2. Developer shall submit to inspections by the City of the Property and The Lofts at all times, with or without notice.
10. **Compliance.** Developer shall monitor compliance with the terms of this Agreement, and provide City with an updated Estimate of Remaining Work to Complete upon request, in order to verify Developer's progress on completing any and all Improvements in a timely manner.
11. **Penalty.** Time is of the essence in this Agreement. Failure to fully complete The Lofts' Phase 1 Improvements on or before the Phase 1 Completion Date shall result in immediate extinguishment of any right or interest of Developer to obtain partial occupancy of the Phase 1 Improvements under this Agreement.
12. **Notice.** If any notice is required to be provided pursuant to the terms and conditions of this Agreement, said notice must be provided as follows:

To City:

St. George City Corporation
Attn: Legal Department
175 East 200 North
St. George, Utah 84770

To The Lofts:

The Lofts Development, LLC
Attn: Jim Park/ILAW
1173 S. 250 W. Ste 311
St. George, Utah 84770

13. **Owner, Successors and Recording.** Developer hereby represents and warrants that as of the date of recording of this Agreement, Developer owns fee title interest to Parcel No. SG-LOF-LOF-1, and further hereby confesses judgment for itself, its heirs, representatives, devisees, assigns, and successors in interest, for the total of any and all amounts expended by the City for completion of any or all conditions, and installation of any or all Improvements, contemplated herein, and any expenses related thereto in accordance with the terms of this Agreement. The rights, duties, and obligations herein shall inure to the benefit of, and be binding upon, the heirs, representatives, successors-in-interest, assigns, and transferees of the Parties, and subsequent purchasers of the Property. Any and all of the obligations of Developer as outlined in this Agreement shall run with the land, and shall constitute an encumbrance thereon. Changing the name of The Lofts project, the Planned Development Subdivision, or the address, will not relieve the Developer, or its heirs, successors, assigns, and subsequent owners and purchasers, from the obligations of this Agreement. It is the intent of the Parties that this Agreement will be enforced against the situs of the real Property, regardless of the name of the project, subdivision, or address.
14. **Default.** Should any party default on any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorneys' fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, or to seek damages as a result of a breach hereof, the prevailing party in such action shall be entitled to recover reasonable attorney's fees, legal costs, and other collection fees and costs incurred by said prevailing party in connection with the suit, both before and after judgment, in addition to any other relief to which such party may be entitled.

15. **Exhibits.** All exhibits attached hereto are incorporated herein as part of this Agreement.
16. **Indemnification.** To the extent allowed by state law, except for claims arising from the willful misconduct of City, the Developer shall indemnify City against all third party claims, demands, causes or action, suits or judgments arising out of this Agreement, including but not limited to all claims, demands, causes of action, suits or judgments for death or injuries to persons or for loss of or damage to property, arising out of or in connection with this Agreement to the extent that it relates to performance of acts of the Developer, or its agents or assigns. In the event of any such third party claims made or suits filed against the City, City shall give Developer prompt written notice. Developer agrees to defend against any claims brought or actions filed against City arising out of this Agreement, whether such claims or actions are rightfully or wrongfully brought or filed. In case a claim should be brought or an action filed with respect to the subject of indemnity herein, the Developer agrees that City may employ attorneys of its own selection to appear and defend the claim or action on its own behalf at the expense of Developer. Said attorneys' fees shall be reasonable and subject to review by Developer. Developer shall be responsible for all costs associated with any claim, demand, action, suit, appeal, or judgment, including attorneys' fees for which it indemnifies or defends City.
17. **Attorneys' Fees.** If either party commences legal action to enforce or interpret any term of this Agreement, the prevailing party shall be entitled to recover from the other, all reasonable attorneys' fees, court costs, and any other costs incurred in connection with such action, whether at trial or on appeal.
18. **Severability.** If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining provisions shall not be affected thereby, but shall remain in full force and effect.
19. **Governing Law and Venue.** This Agreement shall be construed according to the laws of the State of Utah. The Parties agree that venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court for the State of Utah. The Parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction.
20. **Construction.** Each of the Parties has had the opportunity to review this Agreement with counsel of their choosing, and the rule of contracts requiring interpretation of a contract against the party drafting the same is hereby waived and shall not apply in interpreting this Agreement.
21. **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual, or entity without prior written consent of City, which consent shall not be unreasonably withheld.
22. **No Joint Venture, Partnership or Third Party Rights.** This Agreement does not create any partnership, joint venture, undertaking, business arrangement, or other arrangement between Developer and City. No term or provision of this Agreement is intended to be, nor shall it be, for the benefit or obligation of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
23. **Survival.** It is expressly agreed that the terms, covenants, and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement, or made subsequent to this Agreement.

24. **Headings.** The section and other headings in this Agreement are for reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

25. **Counterparts.** This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.

26. **Modification.** The terms and conditions of this Agreement may be amended or modified only by written agreement of the Parties. This Agreement contains all the terms and conditions pertaining to the subject matter hereof and, except with regard to zoning and other approvals upon which this Agreement is based, supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the Parties, whether oral or written, with respect to the subject matter.

27. **Authority of Parties.** Parties executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated, and that this Agreement constitutes a valid and binding agreement.

CITY:

Jonathan T. Pike
St. George City
By: Jonathan T. Pike
Its: Mayor

Dated: May 10, 2018

DEVELOPER:

Dave Nasal
The Lufts Development, LLC
By: Dave Nasal
Its: Manager

Dated: May 8, 2018

Attest:

Christina Fernandez
Christina Fernandez, City Recorder

Dated: May 10, 2018

Approved as to form:

Victoria H. Hales 5/9/18
Victoria H. Hales, Assistant City Attorney

//notary page to follow

STATE OF UTAH)
 :SS
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this 10 day of May, 2018, by Jonathan T. Pike and Christina Fernandez, the Mayor and City Recorder, respectively of the City of St. George, a Municipal Corporation.

Diana M Hamblin
NOTARY PUBLIC

My Commission Expires:

03/23/2021



STATE OF UT.)
 :SS
COUNTY OF Washington)

The foregoing instrument was acknowledged before me this 8 day of May, 2018, by Dave Nasal of The Lofts Development, LLC, a Utah limited liability company.

Brandi Dawn Espitia
NOTARY PUBLIC

My Commission Expires:

7/19/20

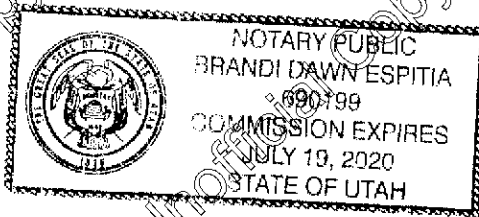


EXHIBIT A
REQUIREMENTS FOR PARTIAL OCCUPANCY OF THE LOFTS PROJECT
(LOTS 1 THROUGH 13 - "PHASE 1 IMPROVEMENTS")

Developer agrees to fully complete the area etched in blue on the attached drawing Pool Area Plan and Landscaping Areas (attached to this Exhibit A, and Exhibit A-2, and as fully incorporated herein by this reference) prior to the issuance of any certificate of occupancy for Lots 1-13. The blue area represents that area to be opened to the public and includes:

1. All subdivision improvements as per subdivision area grading permit including asphalt roadways, underground utilities, concrete curb and gutter, sidewalks, parking area, landscaping within the hatched area.
2. Improvements also include all buildings being constructed under individual building permits for Units 1 through 13.

The Parties to this Agreement agree that each and every component outlined herein must be completed on or before the Phase 1 Completion Date as stated in the Agreement.

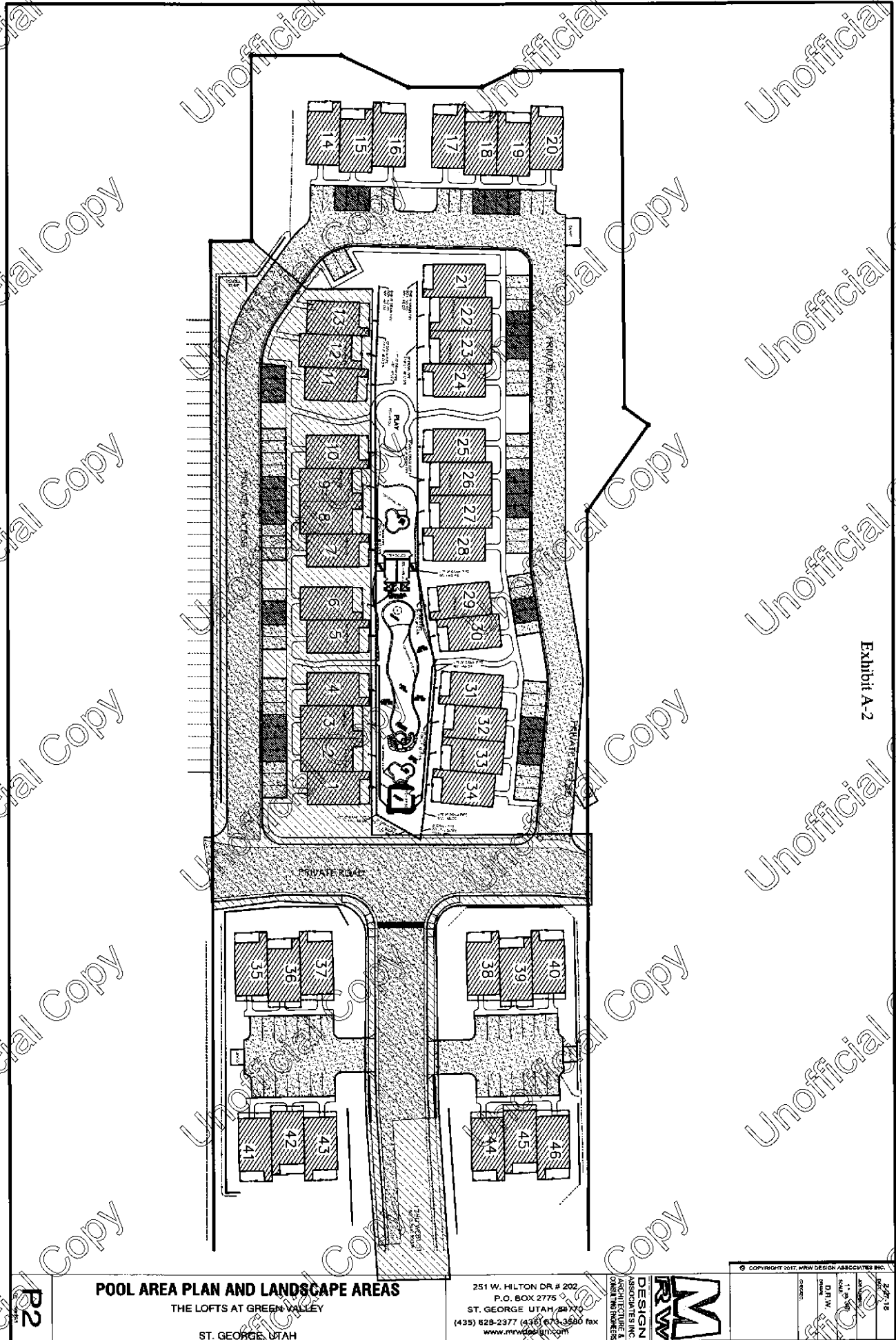


Exhibit A-2

B2

EXHIBIT B
COSTS OF COMMON AREA IMPROVEMENTS – TO BE ESCROWED

MRW DESIGN ASSOC.
 251 HILTON DRIVE SUITE 202
 ST. GEORGE UT

24-Apr-18

LOFTS AT GREEN VALLEY
 DEVELOPMENT AGREEMENT EXHIBIT 'B' COSTS

NO.	DESCRIPTION	UNIT COST	TOTAL COSTS
1	POOL AREA AND BUILDINGS		
	SWIMMING POOL	\$130,000.00	
	RESTROOM BUILDING	\$60,000.00	
	EQUIPMENT BUILDING	\$25,000.00	
	POOL DECK	\$12,500.00	
	FENCING	\$7,500.00	
	TOTAL		\$235,000.00
2	COVERED PARKING, UNITS 1 - 13		
	COST PER UNIT	\$1,100.00	
	TOTAL		\$14,300.00
3	LANDSCAPE AT COMMON AREA, ROO		
	AS PER JP LANDSCAPE BID:		\$45,000.00
GRAND TOTAL EXHIBIT 'B' COSTS			\$294,300.00

It is agreed that 110% the costs outlined above, being Three Hundred Twenty-Three Thousand Seven Hundred Thirty Dollars and Zero Cents (\$323,730.00) shall be escrowed in a Southern Utah Title Company escrow account with instructions that shall include the terms of this Agreement as controlling in all respects.

Legal Description
The Lofts at Green Valley Phase 1

BEGINNING AT A POINT BEING NORTH 00°48'55" EAST 780.27 FEET ALONG THE SECTION LINE AND WEST 104.75 FEET FROM THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING,

THENCE NORTH 54°57'51" EAST 31.59 FEET;

THENCE NORTH 34°13'37" WEST 139.92 FEET;

THENCE NORTH 55°46'23" EAST 68.42 FEET;

THENCE NORTH 80°49'31" EAST 56.69 FEET;

THENCE NORTH 55°46'23" EAST 55.97 FEET;

THENCE NORTH 30°39'58" EAST 28.29 FEET;

THENCE NORTH 55°46'23" EAST 81.32 FEET;

THENCE SOUTH 34°36'40" EAST 254.67 FEET;

THENCE SOUTH 88°32'51" EAST 22.48 FEET TO AN ANGLE POINT ON THE BOUNDARY OF LAS PALMAS RESORT CONDOMINIUMS - PHASE 1-B;

THENCE SOUTH 01°27'09" WEST 80.00 FEET ALONG SAID BOUNDARY OF LAS PALMAS RESORT CONDOMINIUMS - PHASE 1-B; THENCE SOUTH 34°08'51" EAST 294.05 FEET ALONG SAID BOUNDARY OF LAS PALMAS RESORT CONDOMINIUMS - PHASE 1-B AND THE BOUNDARY OF LAS PALMAS RESORT CONDOMINIUMS II - PHASE -1;

THENCE SOUTH 59°55'09" WEST 33.07 FEET;

THENCE SOUTH 55°56'44" WEST 65.12 FEET TO THE POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE TO THE LEFT;

THENCE 23.26 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 53°19'05";

THENCE NORTH 34°13'37" WEST 4.31 FEET;

THENCE SOUTH 55°46'23" WEST 50.00 FEET;

THENCE SOUTH 34°13'37" EAST 4.04 FEET TO A POINT ON A 25.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT WHOSE RADIUS BEARS SOUTH 18°54'11" WEST;

THENCE 23.11 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 52°57'28";

THENCE SOUTH 55°56'44" WEST 45.28 FEET;

THENCE SOUTH 50°30'45" WEST 54.03 FEET;

THENCE NORTH 34°13'37" WEST 500.41 FEET TO AND ALONG THE EAST LINE OF WORLDMARK, THE CLUB AT ST. GEORGE PHASE 1 AND THE EXTENSION THEREOF TO THE POINT OF BEGINNING.

CONTAINS 184,976.55 SF OR 4.246 ACRES.