

**DEVELOPMENT AGREEMENT  
FOR THE ROCK LOFT RIDGE ESTATES**

**THE DEVELOPMENT AGREEMENT** (the “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between **FRUIT HEIGHTS CITY**, a Utah municipal corporation, hereinafter referred to as the “City,” **ROCK LOFT ESTATES, LLC**, hereinafter referred to as the “Developer” and **Rock Loft Ridge Estates Owners Association**, hereinafter referred to as HOA.

**RECITALS:**

A. Developer owns or has under contract approximately 65.79 acres of property located within the City, which property is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the “Property”).

B. A portion of the property is currently located outside the corporate boundaries of Fruit Heights City and Developer has submitted an application to annex approximately 13.45 acres into the City. Developer has also submitted to the City a rezone application requesting that the property be rezoned from A-1 to R-1-12. The rezone application has been approved and the annexation is pending. Developer is also seeking subdivision and final plat approval for the Project (the “Project”).

C. Persons and entities hereafter developing the Property, or any portions of the Project thereon shall accomplish such development in accordance with the City’s laws and the provisions set forth in this agreement. This agreement contains certain requirements and conditions for design and/or development of the Property and the Project in addition to those contained in the City’s laws.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer hereby agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into this Agreement.
2. **Development of the Project.** The Project shall be developed by Developer and/or Developer’s successors and assigns in accordance with all the requirements contained herein.
  - a. The Project and all portions thereof shall be developed in accordance with the City’s laws, the preliminary plat, the final plat, and this agreement.
  - b. **Roads and Traffic.** Roads for the Project shall be developed in accordance with the City’s master transportation plan and the development plan and specifically as follows:

(i) The City hereby agrees that it shall acquire the property necessary for the construction of 1800 East Street, as shown on the final plat, from the Haight's Creek Irrigation Company. Developer shall build 1800 East Street from the end of the existing street, (including the removal of any portion of the existing street as necessary to appropriately tie in the newly constructed road with existing road) in accordance with the City's construction standards. The roads shall be constructed to the boundary of Developer's property as shown on the Project Site Plan shown in **Exhibit B** to this agreement. Developer hereby further agrees to extend the driveway located at 314 South 1800 East to the newly constructed 1800 East Street.

(ii) The Project Site Plan shows a continuous road extending from the south end of the Project through the north. The Parties hereby agree that the Project and the roadway must connect at 1800 East and make a continuous connection to Terrace Drive at the north end of the project. Phase one of the development will include a continuous road connecting 1800 East at the South end of the project with Terrace Drive at the north end of the project.

(iii) All roads to be constructed within the Project shall be engineered and constructed in accordance with the City's construction standards and with a grade of 12% or less.

(iv) Developer has provided the city with a traffic generation report for the project. The traffic generation report prepared by Reeve Engineering to demonstrate ability of the connecting roads to handle the traffic of the Project.

c. Geotechnical Study and Review. Based on recommendations stated in the Geotechnical and Geological Study, Rock Loft Ridge Estates Subdivision, dated February 3, 2021, the City agrees to allow a twenty (20) foot front yard setback for all residential units within the Development except for any lots that front Mountain Road. The Lots that front Mountain Road will be required to have standard front yard setbacks as per City zoning ordinance. Developer hereby agrees to comply in all respects with the City's SLED's ordinance. The Developer submitted a geotechnical report completed by CMT Engineering referred to as Geotechnical and Geological Study, Rock Loft Ridge Estates Subdivision, dated February 3, 2021. The City has completed a 3<sup>rd</sup> party review of that report. Developer has agreed to pay for the third party review of Developer's geotechnical study in accordance with the City's ordinance. Developer shall comply with all recommendations contained within the CMT report, and any additional conditions reasonably required by the 3<sup>rd</sup> party review. Further, Developer hereby agrees that it shall comply with conditions relating to the Haight's Creek Reservoir Dam as required by Haight's Creek Irrigation

Company. Each lot and/or homeowner within the project agree to perpetually comply with the recommendations of the Geologic and Geotechnical report prepared for the project. The geologic and geohazard report prepared by CMT Engineering is attached to this Development Agreement as **Exhibit “C”**.

Plat Note for Geologic Hazards. A plat note shall be inserted on the final plat that reads as follows: “Notice is hereby provided that the lots identified herein will be subject to one or more geological hazards, including, without limitation, a surface fault rupture, liquefaction, seismic stability, slope stability, landslide, debris flow, or rockfall, that may present a risk to life or property. Fruit Heights City has required a subdivision level study and report related to geological hazards on the property. A subdivision level study and report [CMT Engineering (2021): Geotechnical and Geological Study, Rock Loft Ridge Estates Subdivision, dated February 3, 2021, and CMT Hazards Plan (collectively, the “Report”)] has been prepared for the property which addresses the nature of the hazards and the potential effects on the development of the property and the occupants thereof in terms of risk and potential damage. The Report and conditions for development of the property are on file with Fruit Heights City and available for public inspection. The Report or any geologic hazards study area maps represent only those potentially hazardous areas known to the developer or Fruit Heights City and should not be construed to include all possible potential hazard areas. The development, or approval of the development, shall not create any liability on the part of Fruit Heights City, any Fruit Heights City officer, Fruit Heights City reviewer, or Fruit Heights City employee thereof, for any damages from geological hazards on the property. Lot owners acknowledge that each has received, read, and understands, or has had the opportunity to receive, read, and understand, the Report. Lot owners further acknowledge that he/she has been notified of all potential geological hazards known to Fruit Heights City or the developer, and that detailed descriptions of the potential geological hazards on the property, including but not limited to the Report and all soils, ground and surface water studies, analyses and reports known to Fruit Heights City and developer, have been made available to the lot owners at the lot owner’s request. On these bases, each lot owner, by acceptance of title to a lot, hereby waives, releases, and agrees to indemnify Fruit Heights City ~~and developer~~ against all claims of any nature, including but not limited to costs and attorneys’ fees, arising out of, related to, or resulting from any of the foregoing conditions or the geological hazards on the property. Additionally, each lot owner agrees and understands that they will be required to submit a report prepared by a Fruit Heights city approved Geotechnical Company that their home and building plans comply with the CMT report dated February 3, 2021, prior to the issuance of any building permits within the Project. These reports will be reviewed by the City’s designated third party reviewer and the cost of the City review shall be paid by each lot owner. Also, the lot owner will be responsible to comply with any site visits and inspections as called out by the required report. These site visits and inspections by the Geotechnical Company will be required to be documented and submitted to the

city prior to the issuance of a Certificate of Occupancy on any home or structure in the Project.

d. Retaining Walls. Any roadway retaining walls recommended by the Geotechnical Study and required by the city shall be designed and approved by the city and a licensed geotechnical engineer. On any lots, any retaining walls more than four (4) feet in height shall be designed and inspected by a geotechnical engineer to ensure proper design and installation. The homebuilder will be required to supply these geotechnical inspections to the city prior to obtaining certificate of occupancy. Additionally, if the developer installs any retaining walls on any lots, he will be required to submit a design and inspection report from a licensed geotechnical engineer to ensure proper design and installation.

e. Geotechnical Compliance Reports and Inspections. Upon submittal for any building permit, each applicant will provide a report prepared by a licensed geotechnical engineer that the home plans, grading plans, landscaping plans, and any plans for any structure comply with the Geotechnical and Geological Study, Rock Loft Ridge Estates Subdivision, dated February 3, 2021. These reports will be prepared by a Geotechnical Company that has been approved by Fruit Heights City. Initially, the following companies are approved by the city to prepare these reports: CMT Engineering, GSH Geotechnical Consultants, and AGECE Applied Geotechnical. Once these compliance reports are submitted to the City, then the report will be reviewed by the City's third party reviewer. Each permit applicant agrees to pay for the cost of the City's third party reviewer. Additionally, an onsite inspection by a geotechnical engineer will be required to observe the site excavation before footings can be installed. A geotechnical inspection will also be completed once all of the site grading has been completed prior to certificate of occupancy. If the landscaping is installed after certificate of occupancy, then an additional geotechnical inspection will be required once the landscaping is complete. The HOA agrees to monitor landscaping installed post certificate of occupancy to ensure compliance with this requirement. The HOA shall employ a geotechnical or other qualified engineer to inspect and monitor the Project on a quarterly basis to confirm the Lots' and Owners' compliance with the Geotechnical Report and the Water Covenants ("Quarterly Inspections"). The Association shall include the costs of the Quarterly Inspections in the annual budget and such costs shall be considered Common Expenses. If the engineer determines there is a Lot specific violation of the Geotechnical Report and or the Water Covenants, The Association shall levy an individual Assessment against the applicable Owner and require the Owner to immediately commence remediation to address any violation. Initially, the inspecting engineer will be CMT Engineering. Quarterly Inspections are expected to continue until 75% of the homes have been completed and received Certificates of Occupancy, at which time, the Geotechnical Inspection requirement will change from a Quarterly Inspection to an Annual Inspection.

f. Restrictive Covenant. Declarant hereby declares that the Lots 20-43 shall be subject to the following restrictive covenants (collectively, the “**Restrictive Covenant**”): (i) no buildings, structures, landscaping (which requires irrigation), or other improvements shall be installed or constructed within the Restricted Area; (ii) the original natural grade of the Restricted Area shall not be altered or modified in anyway whatsoever; (iii) the ground level, slope, pitch, or drainage patterns of the Restricted Area, as fixed by the original natural grade, shall not be altered or modified in anyway whatsoever; and, (iv) no owner or owners of the Lot shall, or shall permit, the disturbance, alteration, movement, or removal of the 6’ marker(s) identifying the Restricted Area. The 6’ markers shall be located on each side boundary and have a sign that states the area is restricted for “grading and disturbance and that the sign must not be removed”. Additionally, no fences shall be installed within the restricted area. If a homeowner wants to install a fence up to the Restricted Area, then a gate will be installed for maintenance and fire access to the Restricted Area. The Restrictive Covenant is perpetual and is intended to be read as broadly as possible to require approval by the City and or their designated Geotechnical Consultant before any work done or action taken in violation of the Restrictive Covenant is performed within the Restricted Area. If a homeowner violates any of the above rules for the Restricted Area, then the HOA agrees to levy a fine and the HOA agrees to perform remediation on the site and recoup the cost from the lot owner. **A Plat note will be inserted in the final plat with the above language.**

g. Grant of Easement. Developer and Declarant hereby conveys, declares, and grants for the benefit of the Association and the City, and their respective agents and employees a perpetual, exclusive, and continuous easement over, upon, and across the Restricted Area, for the ingress and egress to inspect the Restricted Area for compliance with the Geotechnical and Geological Study, Rock Loft Ridge Estates Subdivision, dated February 3, 2021 (the “**Access Easement**”). The Access Easement includes the right to ingress and egress over the Lot, as necessary, to access the Restricted Area. Developer and Declarant either has or will place six foot (6’) tall markers on the lot to identify the Restricted Area. The Restricted Area will be clearly marked on the final plat and the language in this section will be inserted as a Plat Note on the final Plat.

h. Developer agrees to submit for a PRUD on lot 54. Lot 54 PRUD will be recorded as its own plat. It will comply with Fruit Heights City ordinances regarding a PRUD. The access will be via a 27 foot wide private road. The private access will be approved by the area fire chief for compliance. Additionally, it is agreed that only one single family unit will be built on lot 54 PRUD.

i. Storm Drainage. Developer shall construct all storm drainage facilities within the Project. Developer further agrees to build and construct the detention basin as shown on the concept plan, which basin shall be dedicated to the City.

The basin shall be constructed in strict accordance with construction plans to be approved by the City. Developer's drawings show drainage into Bear Creek. Developer hereby agrees to obtain all required approvals from Davis County Flood Control prior to final plat approval. The approval from Davis County shall be in writing and shall address, in addition to any drainage in Bear Creek, culverts that need to be installed and any stream alteration permits required by the State of Utah. Upon the event of any debris flow, the HOA agrees to pay the cost for any debris that accumulates in the storm drains of the project and any clean up of the detention ponds. Alternatively, the city can complete this cleanup and be reimbursement from the HOA.

j. Water System. Developer shall construct and install a culinary water system necessary to serve the Project in accordance with the City's construction standards and as approved by the City Engineer. Developer's Project would normally require the installation of an 8 inch water line. The city has requested that Developer install a 12 inch water line to better serve the City's system. The City hereby agrees to reimburse Developer the marginal cost difference between the installation of a 12 inch water line and an 8 inch water line which difference shall include the difference in the cost of pipe and any difference in the cost of excavation for the location and installation of the water line. Developer further acknowledges and agrees that a pressure reducing valve station will be required. The cost of the pressure reducing valve station shall be paid for solely by the Developer. The Developer's construction shall meet the City's construction standards and shall be approved by the City Engineer with appropriate pressure settings as dictated by the City. The city will verify adequate fire flow and pressure settings prior to the issuance of any building permits within the Project.

k. Culinary Water for Outdoor Use: The city agrees to allow the use of culinary water for outdoor use and irrigation. The city is in the process of adopting a "Water Efficient Landscape Ordinance". The draft of this ordinance is inserted as Exhibit "D" to this agreement. This development will comply with this proposed ordinance. The city will be able to price the culinary water supplied to the Development at its own discretion. All landscape plans must be approved by the city and the HOA to ensure they comply with the new city ordinance and demonstrate the plan cuts down on water demand compared to more traditional northern Utah landscaping plans. Additionally, the development will have turf restrictions that will limit the amount of turf on any lot to the following: no more than 20% of the buildable area on the lot shall be turf on lots up to 1/2 acres in size, on lots in size that are greater than 1/2 acre then the turf restriction will be the lesser of no more than 20% of the buildable area of the lot or a maximum of 5,500 square feet of turf. . The buildable area shall be calculated by excluding any restricted or sensitive lands area marked on the plat and excluding any area of the lot with slopes in excess of 30%. No turf or non-drip irrigation shall be allowed in the restricted or sensitive area (as shown on the plat) on a lot. This turf restriction will not apply to artificial turf that doesn't require water. Trees and bushes will be encouraged as an integral part of the comprehensive landscape

plan. Each landscape plan needs to demonstrate that extensive efforts have been made to limit high demand landscaping such as the installation of grass turf. A combination of hardscapes, mulch, bark, trees, bushes, and other low water use features will be required on all landscaping plans. The HOA will review and ensure that all landscaping plans meet the intent of a low water use landscape plan prior to approval.

1. Utilities and Infrastructure. In addition to water and storm drainage as noted above, Developer shall install or cause to be installed natural gas, underground electrical service, sanitary sewer, and culinary water supply systems and storm drainage facilities as required by the City for the Project up to the boundary lines of the Project and any offsite improvements required to serve the Project. Such installation shall be done according to the reasonable and customary design and construction standards of the utility providers and the City Engineer. Developer shall make arrangements with, obtain written approval, and shall comply with the requirements of the Central Davis Sewer District to provide public sanitary sewer service to the Projecting all phases thereof.

(i) The developer will obtain a will serve letter from Central Davis Sewer. The letter will indicate that the improvement plans have met the districts requirements. It is understood that the overall density of the project will not exceed 3 units per acre.

(ii) The developer shall submit a letter from Weber Basin Water indicating that the proposed development is in full compliance with the Bureau of Reclamation's easement on the aqueduct, and any improvements that will cross the aqueduct or be located within the easement.

(iii) The developer shall submit a letter from Rocky Mountain Power indicating that the power company has reviewed and approved the subdivision plans and agrees to the location of improvements as it relates to their easement.

(iv) The developer shall submit their final construction drawings to the City's Contracted Fire Department (Currently Kaysville Fire) and obtain written approval from the Fire Marshal for any fire related issues such as fire hydrant location, water pressure, street grades, and street layout.

(v) Except as otherwise noted herein, all public improvements for the Project which are intended to be owned by the City when completed shall be constructed and installed at the Developer's sole expense in accordance with the City's construction standards and the Fruit Heights City Code. All offsite improvements required by the Project will be constructed and

installed in a timely manner in order to coincide with the various phases of the Project.

- (vi) Developer agrees that its CC&Rs shall not conflict with any City codes including setback requirements. Setback recommendations from the Geotechnical Report shall be considered when determining setback requirements related to sensitive land overlay zone issues.
- (vii) Developer shall submit proposed CC&Rs for the project to the City for review and approval prior to approval of the final plat. The City approval shall be based on compliance with the City Code, required minimum setbacks (may depend on Geotechnical Study), including a twelve (12) foot fire break along the rear property line abutting the eastern boundary of the subdivision. This twelve (12) foot fire break shall be maintained by the respective property owners.

m. Parks and Trails. Developer agrees to construct a trail on the east side of the development. The trail location and access points are shown on the Project Site Plan in Exhibit “B” to this agreement. The final plat for the Project will show the trail and any access points to be approved by the city. The trail shall be constructed in strict accordance with the City’s construction standards, the approved construction plans for the Project and as shown on the final plat. Developer has agreed to rebuild the existing trail on the eastside of the Project to the northern most end of the Project boundary. Developer will submit construction plans showing a trail that is 10 feet wide with adequate road base to permit drainage and prevent standing water and retaining walls as necessary. Developer agrees that this construction is proportionate to the impact of the development and shall be paid for solely by the Developer. The trail will be located within a 20-foot easement and will be shown on the final plat. Developer agrees to dedicate the easement to the City, and the City shall own and maintain the trail in perpetuity. Developer agrees to provide Fruit Heights city with a bond or other financial security instrument upon recording of the plat to ensure the installation of the trails. The trail improvements will be part of the Phase 1 plan and shall be completed in conjunction with the Phase 1 infrastructure.

The Developer hereby agrees to replace any parking stalls lost, including curb, gutter, asphalt, and striping as a result of construction of 1800 East Street by expanding or reconfiguring the existing parking lot to create the lost parking stalls. Additionally, Developer agrees to contribute \$15,000 to Fruit Heights City to go toward the expansion and improvement of the trailhead parking.

n. Fire Approvals. Developer notes that the Fire Department has required a twelve-foot fire break between homes and the Forest Service Property. This twelve-foot fire break will be shown on the approved final plat and the construction plans for the Project. Developer hereby agrees to record against the

Property conditions, covenants and restrictions relating to the Development and to include the requirement of maintenance of the 12-foot fire break within the CC&R's. Additionally, the twelve foot fire break will be shown on the final plat as a firebreak easement and the City will have the authority to require maintenance, by the property owners, of the fire break in the interest of public health and safety, perpetually.

o. Dedication and Donation. Prior to, or concurrent with, the recording of the Final Plat for the Project in the office of the Davis County Recorder, the Developer agrees to dedicate, transfer and voluntarily donate to the City all required easements for the purposes of constructing, installing, operating, maintaining, repairing and replacing public improvements and utilities located within the Project by the Developer. Developer will take such actions as are necessary to obtain release of any monetary encumbrances on any property to be dedicated to the City at the time of final plat approval for the Project and to cause the owner of the Property to dedicate and donate the same without cost to the City.

p. Required Changes. If any revisions or corrections of plats or plans shall be required by any other governmental entity having jurisdiction or lending institutions involved in financing, the Developer and the City shall cooperate where appropriate to obtain or develop reasonable, mutually acceptable alternative plans or plats. Developer shall have the sole duty and responsibility to obtain approval from any other governmental entities having jurisdiction with respect to the Project as needed.

q. Construction Standards and Requirements. All construction shall be conducted and completed in accordance with the development standards of the City, the City's Laws and the terms of this Agreement. All required public improvements for the Project shall be constructed in accordance with the City's construction standards and shall be dedicated to the City. Prior to commencing any construction or development of any building, structures or other work or improvements within the Project, the Developer shall secure any and all permits which may be required by the City or any other governmental entity having jurisdiction over the work. Developer shall construct, or cause to be constructed, all improvements for the Project in conformity with all applicable federal, state and/or local laws, rules and regulations.

r. Security. Developer shall provide the City with security in a form satisfactory to the City to guarantee the installation and completion of all public improvements to be constructed by Developer within the Project and/or the Property or any portion thereof, as required, in accordance with the City's Laws. Security provided by the Developer shall also include funds to ensure revegetation acceptable to the City consistent with a revegetation plan prepared by Developer and approved by the City for all cuts and fills or any and all graded and disturbed areas related to the Project.

s. Inspection by the City. The City shall perform periodic inspections of the improvements being installed and constructed by the Developer and its assigns or their contractors. No work involving excavation shall be covered until the same has been inspected by the City's representatives and/or the representatives of other governmental entities having jurisdiction over the particular improvements involved. Developer, or its assigns as the case may be, shall warrant the materials and workmanship of all public improvements installed by Developer and its contractors within the Project and to be dedicated to the City for a period of twelve (12) months from and after the date of final inspection and approval by the City of the improvements in that phase. All buildings shall be inspected in accordance with the provisions of the International Building Code.

t. Maintenance During Construction. During construction, the Developer and the City, and their contractors shall keep the Project, and all affected public streets therein, free, and clear from any unreasonable accumulation of debris, waste materials, mud, and any nuisances created by their actions, and shall contain their construction debris and provide dust and mud control so as to prevent the scattering via wind and/or water.

3. Payment of Fees. The Developer shall pay to the City all required fees in a timely manner. Fees shall be paid in those amounts which are applicable at the time of payment of all such fees, pursuant to and consistent with standard City procedures, requirements, adopted by City.

4. City Obligations. Subject to Developer complying with all of the City's Laws and the provisions of this Agreement, the City agrees to maintain the public improvements dedicated to the City beginning 1 year following satisfactory completion thereof and acceptance of the same by the City and to provide standard municipal services to the Project including, but not limited to, police and fire protection subject to the payment of all fees and charges charged or levied therefore by the City.

5. Indemnification and Insurance. Developer and/or its contractors hereby agrees to indemnify and hold the City and its officers, employees, representatives, agents and assigns harmless from any and all liability, loss, damage, costs or expenses, including attorneys fees and court costs, arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to property of any person which shall occur within any publicly owned or dedicated areas of the Project or occur in connection with any off-site work done for or in connection with the Project or any phase thereof which shall be caused by any acts or omissions of the Developer or its assigns or of any of their agents, contractors, servants, or employees at any time. Developer and/or its contractor shall furnish, or cause to be furnished, to the City a satisfactory certificate of insurance from a reputable insurance company evidencing general public liability coverage for the Property and the Project in a single limit of not less than ~~One~~Two Million Dollars (\$~~1~~2,000,000) and naming the City as an additional insured.

6. **Right of Access.** Representatives of the City shall have the reasonable right of access to the Project and any portions thereof during the period of construction to inspect or observe the Project and any work thereon. Additionally, a plat note will be inserted on the plat that give the city or its third-party geotechnical advisor the right to go onto any lot for purposes of inspecting the lot to make sure it is in compliance with the recommendations of the Geotechnical and Geological Study, Rock Loft Ridge Estates Subdivision, dated February 3, 2021. This right will continue in perpetuity. This access right shall not create a responsibility for the city or its representatives to ensure compliance with the report since this responsibility is solely placed on the lot and/or homesite owner.

7. **Assignment.** The Developer shall not assign this Agreement or any rights or interests herein without giving prior written notice to the City. Any future assignee shall consent in writing to be bound by the terms of this Agreement as a condition precedent to the assignment.

8. **Notices.** Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be 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 shown below:

To Developer: Rock Loft Ridge Estates, LLC  
6028 South Ridgeline Drive, Ste 200  
Ogden, UT, 84405

To the City: Fruit Heights City  
Attn: City Manager  
910 S. Mountain Road  
Fruit Heights, Utah 84037

9. **Default.** In the event any party fails to perform its obligations hereunder or to comply with the terms hereof, within thirty (30) days after giving written notice of default, the non-defaulting party may, at its election, have the following remedies:

- a. All rights and remedies available at law and in equity, including injunctive relief, specific performance and/or damages.
- b. The right to withhold all further approvals, licenses, permits, or other rights associated with the Project or any development described in this Agreement until such default has been cured.
- c. The right to draw upon any security posted or provided in connection with the Project.
- d. The right to terminate this Agreement.
- e. The rights and remedies set forth herein shall be cumulative.

f. Notwithstanding the thirty-day cure period provided above, in the event more than thirty days is reasonably required to cure a default and the Defaulting Party, within the thirty day cure period, commences actions reasonably designed to cure the default, then the cure period shall be extended for such additional period as the Defaulting Party is prosecuting those actions diligently to completion.

10. **Attorney's Fees.** In the event of any lawsuit between the parties hereto arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled, in addition to the remedies and damages, if any, awarded in such proceeding, to recover their costs and a reasonable attorneys fee.

11. **Entire Agreement.** This Agreement together with the Exhibits attached thereto and the documents referenced herein, and all regulatory approvals given by the City for the Property and/or the Project, contain the entire agreement of the parties and supersede any prior promises, representations, warranties, or understandings between the parties with respect to the subject matter hereof which are not contained in this Agreement and the regulatory approvals for the Project, including any related conditions.

12. **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.

13. **Non-Liability of City Officials, Employees and Others.** No officer, representative, agent, or employee of the City shall be personally liable to the Developer, or any successor-in-interest or assignee of the Developer in the event of any default or breach by the City or for any amount which may become due Developer, or its successors or assigns, for any obligation arising under the terms of this Agreement unless it is established that the officer, representative, agent or employee acted or failed to act due to fraud or malice.

14. **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors, and assigns.

15. **No Third-Party Rights.** The obligations of Developer set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City. The parties hereto alone shall be entitled to enforce or waive any provisions of this Agreement.

16. **Recordation.** This Agreement shall be recorded by the City against the Property in the office of the Davis County Recorder, State of Utah.

17. **Relationship.** Nothing in this Agreement shall be construed to create any partnership, joint venture, or fiduciary relationship between the parties hereto.

18. **Termination.** Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the Project is not completed within five (5) years from the date of this Agreement or in the event the Developer does not comply with the City's Laws and the provisions of this Agreement, the City shall have the right, but not the obligation at the

sole discretion of the City, which discretion shall not be unreasonably applied, to terminate this Agreement. Such termination may be affected by the City by giving written notice of intent to terminate to the Developer set forth herein. Whereupon, the Developer shall have sixty (60) days during which the Developer shall be given an opportunity to correct any alleged deficiencies and to take appropriate steps to complete the Project. In the event Developer fails to satisfy the concerns of the City with regard to such matters, the City shall be released from any further obligations under this Agreement and the same shall be terminated.

19. **Severability.** If any portion of this Agreement is held to be unenforceable or invalid for any reason by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

20. **Amendment.** This Agreement may be amended only in writing signed by the parties hereto.

**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 herein above written.

**“CITY”**

**FRUIT HEIGHTS CITY**

By: Mayor

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Recorder

**“DEVELOPER”**

Rock Loft Estates, LLC  
6028 South Ridgeline Drive, Ste 200  
Ogden, UT, 84405

By:

\_\_\_\_\_

its:

**“HOA”**

Rock Loft Ridge Estates Owners Association  
6028 South Ridgeline Drive, Ste 200  
Ogden, UT, 84405

By:

Matthew Lowe, Chairman \_\_\_\_\_

**CITY ACKNOWLEDGMENT**

STATE OF UTAH            )  
  : ss.  
COUNTY OF DAVIS        )

On the \_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared before me John Pohlman, who being duly sworn, did say that he is the Mayor of **FRUIT HEIGHTS CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed on behalf of the City by authority of its governing body and said John Pohlman acknowledged to me that the City executed the same.

\_\_\_\_\_  
Mayor John Pohlman

Notary Public  
Residing at

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

**DEVELOPER ACKNOWLEDGMENT**

STATE OF UTAH            )  
  : ss.  
COUNTY OF                )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared before me, \_\_\_\_\_, who being by me duly sworn, did say that he is **MATTHEW LOWE**, and that the foregoing instrument was signed on behalf of said Developer and duly acknowledged to me that he executed the same.

\_\_\_\_\_  
Matthew Lowe

\_\_\_\_\_  
Notary Public  
Residing at:

My Commission Expires:

**HOA ACKNOWLEDGMENT**

STATE OF UTAH            )  
                                      : ss.  
COUNTY OF                )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared before me, \_\_\_\_\_, who being by me duly sworn, did say that he is **MATTHEW LOWE**, and that the foregoing instrument was signed on behalf of said HOA and duly acknowledged to me that he executed the same.

\_\_\_\_\_  
Matthew Lowe

My Commission Expires:

\_\_\_\_\_  
Notary Public  
Residing At:

## EXHIBIT A

### Property Description

A PART OF THE NORTHWEST, SOUTHWEST AND SOUTHEAST QUARTERS OF SECTION 36, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE BOUNDARY LINE OF LAND UNDER OWNERSHIP OF THE UNITED STATES OF AMERICA, SAID POINT BEING A FOUND BRASS CAP MONUMENT MARKING THE CENTER QUARTER CORNER OF SAID SECTION 36 (NOTE: BASIS OF BEARING IS N89°59'50"E BETWEEN EXISTING BRASS CAP MONUMENTS MARKING THE SOUTHWEST CORNER AND SOUTH QUARTER CORNER OF SAID SECTION 36), AND RUNNING THENCE ALONG SAID WESTERLY BOUNDARY LINE THE FOLLOWING SIX (6) COURSES: (1) S00°07'46"E ALONG THE QUARTER SECTION LINE OF SAID SECTION 36, 426.20 FEET, MORE OR LESS, TO A FENCE; (2) N71°12'36"E 175.14 FEET ALONG SAID FENCE; (3) S24°09'58"E 562.09 FEET ALONG SAID FENCE; (4) S24°56'28"E 476.67 FEET; (5) S89°54'57"E 708.83 FEET; (6) S00°00'02"E 1308.61 FEET, MORE OR LESS, TO A POST LABELED "FOREST BOUNDARY"; THENCE S89°58'50"W 361.59 FEET; THENCE N20°16'56"W 428.39 FEET; THENCE N20°16'07"W 145.00 FEET; THENCE S83°10'04"W 173.15 FEET; THENCE S73°14'09"W 319.99 FEET; THENCE N08°44'59"W 403.28 FEET, MORE OR LESS, TO A T-POST; THENCE N41°21'18"W 110.73 FEET; THENCE S74°04'30"W 170.15 FEET; THENCE N27°41'52"W 133.49 FEET; THENCE N70°41'50"E 167.97 FEET; THENCE N25°55'00"W 508.26 FEET; THENCE S71°26'10"W 21.91 FEET; THENCE N19°31'14"W 53.95 FEET; THENCE N19°21'10"W 255.92 FEET; THENCE N71°01'48"E 7.78 FEET; THENCE N31°25'46"W 314.06 FEET; THENCE N70°56'08"E 52.12 FEET, MORE OR LESS, ALONG A FENCE AND THE PROJECTION THEREOF; THENCE N32°56'10"W 288.40 FEET; THENCE N32°21'00"W 251.16 FEET; THENCE N31°13'42"W 249.40 FEET; THENCE N69°33'00"E 17.56 FEET; THENCE N47°11'47"W 195.33 FEET; THENCE N54°57'27"W 151.47 FEET; THENCE N22°56'32"E 15.00 FEET; THENCE N67°03'28"W 4.00 FEET; THENCE N22°56'32"E 60.00 FEET; THENCE N02°25'27"E 183.73 FEET, MORE OR LESS, TO A REBAR AND CAP STAMPED "ENSIGN ENGINEERING"; THENCE N69°49'33"E 703.05 FEET, MORE OR LESS, TO SAID WESTERLY BOUNDARY LINE OF LAND UNDER OWNERSHIP OF THE UNITED STATES OF AMERICA; THENCE ALONG SAID WESTERLY BOUNDARY LINE THE FOLLOWING THREE (3) COURSES: (1) S24°08'00"E 69.40 FEET; (2) N70°56'06"E 353.55 FEET; (3) S00°08'00"E 881.24 FEET TO THE POINT OF BEGINNING. CONTAINING 2,787,437 SQUARE FEET OR 63.991 ACRES MORE OR LESS

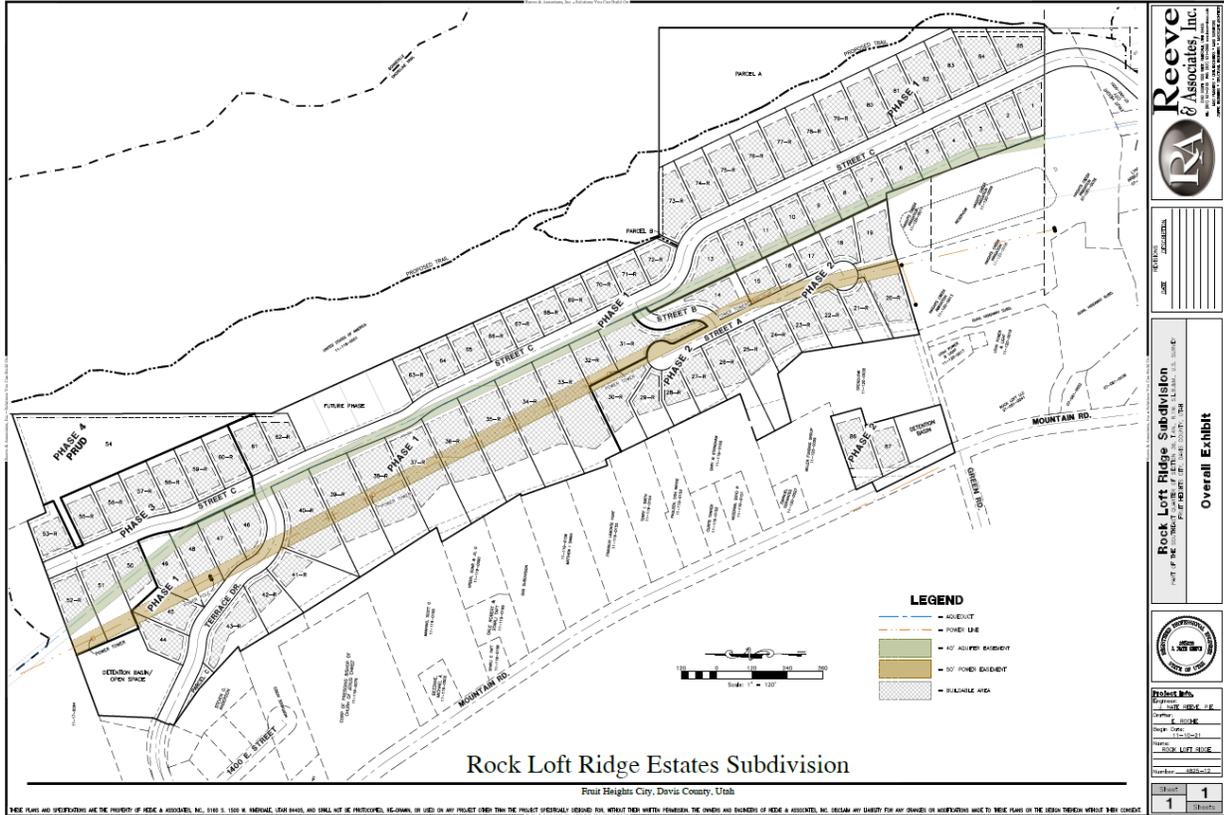
TOGETHER WITH: A PART OF THE SOUTHWEST AND SOUTHEAST QUARTERS OF SECTION 36, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DEESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, SAID POINT BEING S00°07'46"E 1898.37 FEET AND S89°52'14"W 14.19 FEET FROM THE CENTER OF SAID SECTION 36 (NOTE: BASIS OF BEARING IS N89°59'50"E BETWEEN EXISTING BRASS CAP MONUMENTS MARKING THE SOUTHWEST CORNER AND SOUTH QUARTER CORNER OF SAID SECTION 36), AND RUNNING THENCE S15°23'00"E 106.85 FEET; THENCE S73°12'41"W 59.99 FEET; THENCE S15°22'59"E 261.93 FEET; THENCE S73°13'00"W 170.60 FEET; THENCE N26°35'24"W 296.94 FEET; THENCE N63°51'50"E 37.04 FEET; THENCE N25°55'53"W 59.24 FEET; THENCE N70°41'50"E 263.30 FEET TO THE POINT OF BEGINNING. CONTAINING 78,405 SQUARE FEET OR 1.800 ACRES MORE OR LESS.

DRAFT

# EXHIBIT B

## Project Site Plan



**EXHIBIT C**

**Geotechnical and Geological Study, Rock Loft Ridge Estates Subdivision, dated February 3, 2021**

DRAFT

## EXHIBIT D

### WATER EFFICIENT DRAFT LANDSCAPE ORDINANCE DRAFT ORDINANCE

#### Section 1. Preamble

- A. Whereas, water is an increasingly scarce resource, of limited supply, and are subject to ever increasing demands;
- B. Whereas, it is the policy of Fruit Heights to promote the conservation and efficient use of water and to prevent waste of this valuable resource;
- C. Whereas, Fruit Heights recognizes that landscapes provide areas for active and passive recreation;
- D. Whereas; landscape design, installation, maintenance and management can and should be water efficient;
- E. Whereas, Fruit Heights desires to promote the design, installation and maintenance of landscapes that are both attractive and water efficient;
- F. Whereas, Fruit Heights can accomplish these goals by adopting this ordinance; and,
- G. Whereas, Fruit Heights has the authority to adopt this ordinance pursuant to Utah Code Annotated (2010) § 10-3-702, and hereby exercises its legislative powers in doing so.

#### Section 2. Ordaining Clause

Be it ordained by the Fruit Heights, that the Water Efficient Landscape Ordinance, Number Draft.

#### Section 3. Title, Water Efficient Landscape Requirements

- A. An ordinance amending the Zoning Code of the City of Fruit Heights so as to add a Water Efficient Landscape Ordinance of minimum landscape requirements. This ordinance shall be referred to as "Fruit Heights City Water Efficient Landscape Ordinance".

#### Section 4. Purpose

The City Council has found that it is in the public interest to conserve the public's water resources and to promote water efficient landscaping. The purpose of this ordinance is to protect and enhance the community's environmental, economic, recreational, and aesthetic resources by promoting efficient use of water in the community's landscapes, reduce water waste and establish a structure for designing, installing and maintaining water efficient landscapes throughout the City.

#### Section 5. Definitions

The following definitions shall apply to this ordinance:

Applied Water: The portion of water supplied by the irrigation system to the landscape.

Bubbler: An irrigation head that delivers water to the root zone by “flooding” the planted area, usually measured in gallons per minute. Bubblers exhibit a trickle, umbrella or short stream pattern.

Check Valve: A device used in sprinkler heads or pipe to prevent water from draining out of the pipe through gravity flow. Used to prevent pollution or contamination or the water supply due to the reverse flow of water from the secondary irrigation system.

Drip Emitter: Drip irrigation fittings that deliver water slowly at the root zone of the plant, usually measured in gallons per hour.

Effective Precipitation: The portion of total precipitation which becomes available for plant growth.

Established Landscape: The point at which plants in the landscape have developed significant root growth into the soil.

Establishment Period: the first year after installing the plant in the landscape.

Evapotranspiration (ET): The quantity of water evaporated from adjacent soil and other surfaces and transpired by plants during a specified time, expressed in inches per day, month or year.

Grading Plan: The Grading Plan shows all finish grades, spot elevations as necessary and existing and new contours with the developed landscape area.

Ground Cover: Material planted in such a way as to form a continuous cover over the ground that can be maintained at a height not more than twelve (12) inches.

Hardscape: Patios, decks and paths. Does not include driveways and sidewalks.

Irrigation System Audit: an in-depth evaluation of the performance of an irrigation system that includes, but is not limited to, inspection, system tune-up, system test with distribution uniformity or emission uniformity, reporting overspray or runoff that causes overland flow, and preparation of an irrigation schedule.

Irrigation Landscaped Area: All portions of a development site to be improved with plantings and irrigation. Natural open space areas shall not be included in the irrigated landscape area.

Irrigation Efficiency: the measurement of the amount of water beneficially applied, divided by the total amount of water applied. Irrigation efficiency is derived from measurements and estimates of irrigation system hardware characteristics and management practices.

Irrigation Plan: The irrigation plan shows the components of the irrigation system with water meter size, backflow prevention (when outdoor irrigation is supplied with culinary water), precipitation rates, flow rate and operating pressure for each irrigation circuit, and identification of all irrigation equipment.

Landscape Architect: A person who holds a certificate to practice landscape architecture in the state of Utah. Only a Landscape Architect can legally create commercial landscape plans.

Landscape Designer: A person who may or may not hold professional certificates for landscape design/architecture and cannot legally create commercial landscape plans. Landscape Designers generally focus on residential design and horticultural needs of home landscapes.

Landscape Education Package: A package that is intended to inform and educate water users in the City about water efficient landscapes. This package should include a listing of water conserving plants, certified landscape designers, landscape architects, certified irrigation designers, and certified irrigation contractors. Information regarding the City's water rates, billing format for water use and commitment to water conservation may also be included.

Landscape Plan Documentation Package: The preparation of a graphic and written criteria, specifications, and detailed plans to arrange and modify the effects of natural features such as plantings, ground and water forms, circulation, walks and other features to comply with the provisions of this ordinance. The Landscape Plan Documentation Package shall include a project data sheet, a Planting Plan, an Irrigation Plan, and a Grading Plan.

Landscape Zone: A portion of the landscaped area having plants with similar water needs, areas with similar microclimate (i.e., slope, exposure, wind, etc.) and soil conditions, and areas that will be similarly irrigated. A landscape zone can be served by one irrigation valve, or a set of valves with the same schedule.

Landscaping: Any combination of living plants, such as trees, shrubs, vines, ground covers, flowers, or grass; natural features such as rock, stone, or bark chips; and structural features, including but not limited to, fountains, reflecting pools, outdoor art work, screen walls, fences or benches.

Localscapes®: A locally adaptable and environmentally sustainable urban landscape style that requires less irrigation than traditional Utah landscapes (see [www.Localscapes.com](http://www.Localscapes.com)).

Maximum Applied Water Allowance (MAWA): the upper limit of annual applied water for the established landscaped area as specified in Section 8. It is based upon the area's reference evapotranspiration, a plant adjustment factor, and the size of the landscape area. The Estimated Total Water Use shall not exceed the MAWA.

Microclimate: The climate of a very small restricted area that is different from the surrounding area. These areas include shade areas, sun areas, and areas protected by surrounding structures.

Mulch: Any material such as rock, bark, wood chips or other materials left loose and applied to the soil.

Park Strip: A typically narrow landscaped area located between the back-of-curb and sidewalk.

Plant Adjustment Factor: A reference evapotranspiration factor, also referred to as a crop coefficient which is a value to indicate water needs of various plant types for optimum growth or yield. It is a factor to provide acceptable appearance and function of the plant.

Planting Plan: A Planting Plan shall clearly and accurately identify and locate new and existing

trees, shrubs, ground covers, turf areas, driveways, sidewalks, hardscape features, and fences.

Pop-up Spray Head: A sprinkler head that sprays water through a nozzle in a fixed pattern with no rotation.

Precipitation Rate: The depth of water applied to a given area, usually measured in inches per hour.

Pressure Compensating: A drip irrigation system that compensates for fluctuating water pressure by only allowing a fixed volume of water through drip emitters.

Rehabilitated Landscaping: Altering, repairing, or adding to a landscape to make possible a compatible use, increase curb appeal, decrease maintenance, etc.

Rotor Spray Head: A sprinkler head that distributes water through a nozzle by the rotation of a gear or mechanical rotor.

Runoff: Irrigation water that is not absorbed by the soil or landscape area to which it is applied, and which flows onto other areas.

Smart Automatic Irrigation Controller: An automatic timing device used to remotely control valves in the operation of an irrigation system using the internet to connect to a real time weather source or soil moisture sensor. Smart Automatic Irrigation Controllers schedule irrigation events using either evapotranspiration or soil moisture data to control when and how long sprinklers or drip systems operate and will vary based on time of year and weather/soil moisture conditions.

Special Landscape Area: (SLA) means an area of the landscape dedicated solely to edible plants, areas irrigated with recycled water, water features using recycled water and areas dedicated to active play such as parks, sports fields, golf courses, and where turf provides a playing surface.

Spray Sprinkler: An irrigation head that sprays water through a nozzle.

Stream Sprinkler: An irrigation head that projects water through a gear rotor in single or multiple streams.

Turf: A surface layer of earth containing grass species with full root structures that are maintained as mowed grass.

Waste of Water: shall include, but not necessarily limited to:

1. The use of water for any purpose, including outdoor irrigation, that consumes, or for which is applied substantial excess water beyond the reasonable amount required by the use, whether such excess water is lost due to evaporation, percolation, discharges into the sewer system, or is allowed to run into the gutter or street.
2. Washing sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas except to alleviate immediate health or safety hazards.

Water-Conserving Plant: A plant that can generally survive with available rainfall once

established although supplemental irrigation may be needed or desirable during spring and summer months.

#### Section 6. Applicability of Water Efficient Landscape Ordinance

The provisions of this ordinance shall apply to all new and rehabilitated landscaping for public agency projects, private commercial and industrial development projects, developer-installed landscaping in multi-family and single-family residential projects, and homeowner provided landscape improvements within the front, side, and rear yards of single and two-family dwellings.

#### Section 7. Landscape Design Standards

##### A. Plant Selection.

1. Plants shall be well-suited to the microclimate and soil conditions at the project site. Both native and locally-adapted plants are acceptable. Plants with similar water needs shall be grouped together as much as possible.
2. Areas with slopes greater than 33% shall be landscaped with deep-rooting, water-conserving plants for erosion control and soil stabilization.
3. Park strips and other landscaped areas less than eight (8) feet wide shall be landscaped with water-conserving plants, that do not a mass planting of any type of plant material requiring uniform overhead spray irrigation.

Note: Please see Exhibit A for a list of recommended plants for various landscape situations and conditions (not a comprehensive list).

B. Mulch. After completion of all planting, all irrigated non-turf areas shall be covered with a minimum four (4) inch layer of mulch to retain water, inhibit weed growth, and moderate soil temperature. Non-porous material shall not be placed under the mulch.

C. Soil Preparation. Soil preparation will be suitable to provide healthy growing conditions for the plants and to encourage water infiltration and penetration. Soil preparation shall include scarifying the soil to a minimum depth of six (6) inches and amending the soil with organic material as per specific recommendations of the Landscape Designer/Landscape Architect based on the soil conditions.

D. Tree Selection. Tree species shall be selected based on growth characteristics and site conditions, including available space, overhead clearance, soil conditions, exposure, and desired color and appearance. Trees shall be selected as follows:

1. Broad canopy trees shall be selected where shade or screening of tall objects is desired;
2. Low-growing trees shall be selected for spaces under utility wires;
3. Select trees from which lower branches can be trimmed to maintain a

healthy growth habit where vision clearance and natural surveillance is a concern;

4. Narrow or columnar trees shall be selected where awnings or other building features limit growth, or where greater visibility is desired between buildings and the street for natural surveillance;
5. Street trees shall be planted within existing and proposed park strips, and in sidewalk tree wells on streets without park strips. Tree placement shall provide canopy cover (shade) and avoid conflicts with existing trees, retaining walls, utilities, lighting, and other obstacles; and
6. Trees less than a two-inch caliper shall be double-staked until the trees mature to a two-inch caliper.

#### Section 8. Irrigation Design Standards

- A. Smart Automatic Irrigation Controller. Landscaped areas shall be provided with a WaterSense labeled smart irrigation controller which automatically adjusts the frequency and/or duration of irrigation events in response to changing weather conditions. All controllers shall be equipped with automatic rain delay or rain shut-off capabilities and shall be setup to operate in “smart” mode.
- B. Each valve shall irrigate a landscape with similar site, slope and soil conditions and plant materials with similar watering needs. Turf and non-turf areas shall be irrigated on separate valves. Drip emitters and sprinklers shall be placed on separate valves.
- C. Drip emitters or a bubbler shall be provided for each tree. Bubblers shall not exceed 1.5 gallons per minute per device. Bubblers for trees shall be placed on a separate valve unless specifically exempted by the City due to the limited number of trees on the project site.
- D. Drip irrigation or bubblers shall be used to irrigate plants in non-turf areas. Pop-up spray heads shall be at a minimum of four (4) inches in height to avoid blockage from lawn foliage.
- E. Sprinklers shall have matched precipitation rates with each control valve circuit.
- F. Sprinkler heads shall be attached to rigid lateral lines with flexible material (swing joints) to reduce potential for breakage.
- G. Check valves shall be required where elevation differences cause low-head drainage. Pressure compensating valves and sprinklers shall be required where a significant variation in water pressure occurs within the irrigation system due to elevation differences.
- H. Filters shall be required on all secondary water service connections. Filters shall have as a minimum a 30 mesh screen and shall be cleaned and maintained by the

property owner on a regular basis.

- I. Drip irrigation lines require additional filtration at or after the zone valve at a minimum of 200 mesh and end flush valves are required as necessary for drip irrigation lines.
- J. Valves with spray or stream sprinklers shall be scheduled to operate in accordance with local water supplier restrictions to reduce water loss from wind, evaporation or other environmental conditions not suitable for irrigation.
- K. Program valves for multiple repeat cycles where necessary to reduce runoff, particularly on slopes and soils with slow infiltration rates.

Each new development or rehabilitated landscape that uses primary potable water for landscape irrigation must provide a water budget calculation to demonstrate a Maximum Applied Water Allowance (MAWA) for the new landscape or development. For parcels using secondary water, the MAWA is determined by the secondary water provider based on parcel size and is referred to as an allocation.

The Maximum Applied Water Allowance shall be calculated using the following equation:

$$\text{MAWA} = (\text{ETo}) (0.62)(1.15)[(0.8 \times \text{LA}) + (0.3 \times \text{SLA})]$$

MAWA = Maximum Applied Water Allowance (gallons per year)

ETo = Reference Evapotranspiration (inches per year) as calculated from weather data at the closest available weather station.

0.62 = Conversion Factor (to gallons)

1.15 = Delivery Inefficiency Factor (sprinkler system uniformity etc.)

0.8 = ET Adjustment Factor (ETAF), plant factor or crop coefficient (.8 standard for cool season turf)

LA = Landscape Area including SLA (square feet)

0.3 = Additional Water Allowance for SLA

SLA = Special Landscape Area (square feet)

ETo values can be obtained directly from the USU Climate Center where a data base of weather data from local stations is collected, analyzed, and stored. If you cannot find the ET data you need, please contact the City.

Additional details and examples of calculations are found in Appendix A

## Section 9. Landscapes in New Single-family Residential Developments

- A. Homebuilders and/or developers subdividing lots and/or constructing new single-family residential homes shall provide water-efficient landscaping to prospective home buyers, such as the Locascapes design style when the landscape is installed by the homebuilder/developer. The water-efficient landscaping option shall meet the Landscape Design Standards and Irrigation Design Standards of this

ordinance, and any central open shape area consisting of plant material in mass requiring overhead spray irrigation shall not exceed 40% of the total landscaped area.

- B. Homebuilders and/or developers who construct model homes for a designated subdivision shall install water-efficient landscaping, such as the Locascapes design style. The water-efficient landscaping option shall meet the Landscape Design Standards and Irrigation Design Standards of this ordinance, and any central open shape area consisting of plant material in mass requiring overhead spray irrigation shall not exceed 40% of the total landscaped area.
- C. New Construction homes shall have landscaping and irrigation plans approved by the City Planning Department prior to issuance of building permits, for which no variance may be granted, and which meet the aforementioned requirements.
- D. Model homes shall include an informational brochure on water-efficient landscaping or Locascapes. Locascapes brochures can be obtained from the City Planning Department.
- E. When buyers or owners are installing their own landscaping on new home construction, a time frame for landscaping to be completed shall be 18 months from the time of occupancy to complete the front yard and no more than three years to complete the total landscape.

#### Section 10. Prohibition on Restrictive Covenants Requiring Uniform Plant Material Irrigated with Spray Irrigation

- A. Any Homeowners Association governing documents, such as bylaws, operating rules, covenants, conditions, and restrictions that govern the operation of a common interest development, are void and unenforceable if they:
  - 1. Require the use of any uniform plant material requiring overhead spray irrigation in landscape areas less than 8 feet wide or require any uniform plant material requiring overhead spray irrigation in other areas that exceed 40% of the landscaped area; or
  - 2. Prohibit, or include conditions that have the effect of prohibiting, the use of water-conserving plants as a group; or
  - 3. Have the effect of prohibiting or restricting compliance with this ordinance or other water conservation measures.

#### Section 11. Landscapes in Commercial, Industrial, and Institutional Developments

- A. Commercial, industrial and institutional landscapes shall meet the Landscape Design Standards and Irrigation Design Standards of this ordinance, and the turf area shall not exceed 15% of the total landscaped area, outside of active recreation areas.

Section 12. Documentation for Commercial, Industrial, and Institutional Projects

Landscape Plan Documentation Package. A copy of a Landscape Plan Documentation Package shall be submitted to and approved by the City prior to the issue of any permit. A copy of the approved Landscape Plan Documentation Package shall be provided to the property owner or site manager and to the local retail water purveyor. The Landscape Plan Documentation Package shall be prepared by a registered landscape architect and shall consist of the following items:

- A. Project Data Sheet. The Project Data Sheet shall contain the following:
  - 1. Project name and address;
  - 2. Applicant or applicant agent's name, address, phone number, and email address;
  - 3. Landscape architect's name, address, phone number, and email address; and
  - 4. Landscape contractor's name, address, phone number and email address, if available at this time.
  
- B. Planting Plan. A detailed planting plan shall be drawn at a scale that clearly identifies the following:
  - 1. Location of all plant materials, a legend with botanical and common names, and size of plant materials;
  - 2. Property lines and street names;
  - 3. Existing and proposed buildings, walls, fences, utilities, paved areas and other site improvements;
  - 4. Existing trees and plant materials to be removed or retained;
  - 5. Scale: graphic and written;
  - 6. Date of Design;
  - 7. Designation of a landscape zone, and
  - 8. Details and specifications for tree staking, soil preparation, and other planting work.
  
- C. Irrigation Plan. A detailed irrigation plan shall be drawn at the same scale as the planting plan and shall contain the following information:
  - 1. Layout of the irrigation system and a legend summarizing the type and size of all components of the system, including manufacturer name and model numbers;
  - 2. Static water pressure in pounds per square inch (psi) at the point of connection to the public water supply;

3. Flow rate in gallons per minute and design operating pressure in psi for each valve and precipitation rate in inches per hour for each valve with sprinklers, and
  4. Installation details for irrigation components.
- D. Grading Plan. A Grading Plan shall be drawn at the same scale as the Planting Plan and shall contain the following information:
1. Property lines and street names, existing and proposed buildings, walls, fences, utilities, paved areas and other site improvements, and
  2. Existing and finished contour lines and spot elevations as necessary for the proposed site improvements.

Section 13. Plan Review, Construction Inspection, and Post-Construction Monitoring for Commercial, Industrial, and Institutional Projects

- A. As part of the Building Permit approval process, a copy of the Landscape Plan Documentation Package shall be submitted to the City for review and approval before construction begins.
- B. All installers and designers shall meet state and local license, insurance, and bonding requirements, and be able to show proof of such.
- C. During construction, site inspection of the landscaping may be performed by the City Building Inspection Department.
- D. Following construction and prior to issuing the approval for occupancy, an inspection shall be scheduled with the Building Inspection Department to verify compliance with the approved landscape plans. The Certificate of Substantial Completion shall be completed by the property owner, contractor or landscape architect and submitted to the City.
- E. The City reserves the right to perform site inspections at any time before, during or after the irrigation system and landscape installation, and to require corrective measures if requirements of this ordinance are not satisfied.

Section 14. Prohibited Watering Practices

Regardless of the age of a development (commercial, industrial, office, or residential), water shall be properly used. Waste of water is prohibited.

Section 15. Enforcement, Penalty for Violations

The Public Utilities Director and other employees of the Public Utilities Department are authorized to enforce all provisions of this Ordinance.

Any consumer who violates any provisions of this Ordinance shall be issued a written notice of violation. This notice shall be affixed to the property where the violation occurred. The notice will

describe the violation and order that it be corrected, cured or abated immediately or within times specified by the City. Failure to receive a notice shall not invalidate further actions by the City. If the order is not complied with, the City may terminate water service to the customer and/or issue a citation.  
 Section 16. Effective Date

This ordinance shall be effective as of <EFFECTIVE DATE>.

Dated: _____	<u>&lt;CITY NAME&gt;</u>
	By: _____
	Its: _____ Mayor
[Municipal Recorder Attestation and Seal]	

The Maximum Applied Water Allowance shall be calculated using the equation:

$$\text{MAWA} = (\text{ETo}) (0.62) (1.15) [(0.8 \times \text{LA}) + (0.3 \times \text{SLA})]$$

The example calculations below are hypothetical to demonstrate proper use of the equations and do not represent an existing and/or planned landscape project. The ETo values used in these calculations are examples only but are real ETo values from Weber Basin's weather station and should be substituted for actual ETo values for your specific city. For actual irrigation scheduling, automatic smart irrigation controllers are required and shall use current reference evapotranspiration data (most of which is part of each controller company's supporting weather network) or soil moisture sensor data.

(1) Example MAWA calculation: a hypothetical landscape project in Layton Utah with an irrigated landscape area of 20,000 square feet without any Special Landscape Area (SLA= 0, no edible plants, or recreational areas). To calculate MAWA, the annual reference evapotranspiration value for Layton is 32.8 inches as documented from the Weber Basin weather station data.

$$\text{MAWA} = (\text{ETo}) (0.62) (1.15) [(0.8 \times \text{LA}) + (0.3 \times \text{SLA})]$$

MAWA = Maximum Applied Water Allowance (gallons per year)

ETo = Reference Evapotranspiration (inches per year)

0.62 = Conversion Factor (to gallons)

1.15= Delivery Inefficiency Factor (sprinkler system uniformity etc.)

0.8 = ET Adjustment Factor (ETAF) typical for cool season turf

LA = Landscape Area including SLA (square feet)

0.3 = Additional Water Allowance for SLA

SLA = Special Landscape Area (square feet)

$$\text{MAWA} = (32.8 \text{ inches}) (0.62) (1.15) [(0.8 \times 20,000 \text{ square feet}) + (0.3 \times 0)] = \mathbf{374,182 \text{ gallons per year}} \text{ (or 1.15 AF/yr)}$$

(2) In this next hypothetical example, the landscape project in Ogden Utah has the same ETo value of 32.8 inches and a total landscape area of 15,000 square feet. Within the 15,000 square foot project, there is now a 2,000 square foot area planted with edible plants. This 2,000 square foot area is considered to be a Special Landscape Area.

$$\text{MAWA} = (\text{ETo}) (0.62) (1.15) [(0.8 \times \text{LA}) + (0.3 \times \text{SLA})]$$

$$\text{MAWA} = (32.8 \text{ inches}) (0.62) (1.15) [(0.8 \times 15,000 \text{ square feet}) + (0.3 \times 2,000 \text{ square feet})] \\ = 20.34 \times [12,000 + 600] \text{ gallons per year} = \mathbf{280,696.8 \text{ gallons per year}} \text{ (or .86 AF/year)}$$